

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

TRANSCRIPT OF PROCEEDINGS
Rulemaking Hearing
August 7, 2018
Jefferson City, Missouri
Volume 1

In The Matter Of A Proposed)
Rule Regarding An) File No. AX-2018-0241
Environmental Improvement)
Contingency Fund)

MORRIS L. WOODRUFF, Presiding
CHIEF REGULATORY LAW JUDGE

DANIEL Y. HALL, Chairman,
COMMISSIONER

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P R O C E E D I N G S

JUDGE WOODRUFF: Let's go ahead and get started again. We're here for a rulemaking hearing in Commission File No. AX-2018-0241. The subject of this is a proposed rule regarding Rule No. 4 CSR 240-10.095 which concerns an Environmental Improvement Contingency Fund. This is the public hearing comment hearing that was described in the proposed rule when the proposed rule was published in the Missouri Register.

These are generally fairly informal hearings, just a chance for the filing of comments. You don't have to be an attorney. I'm not going to take entries of appearance. I'm not going to swear in anyone as a witness.

I'll let you make your statement. We may have questions. I may have questions for you. The Chairman may have questions for you. And we'll just have -- The purpose, of course, is to try and gather information from the public as to the proposed rule. So we'll begin. Who would like to go first? Mr. Jenkins? If you'd identify yourself and who you're with.

MR. JENKINS: Jim Jenkins representing Missouri-American Water Company. As the parties are aware, Missouri-American did file comments in this rulemaking and was basically asking to make this

1 applicable for consideration for a company the size of
2 Missouri -American. However, upon reflection and
3 actually taking a closer look at the rule, we decided
4 that it really is not applicable to us. As we read and
5 understand it more, we just don't think it's applicable
6 and are here to listen.

7 JUDGE WOODRUFF: Do you have any questions?

8 CHAIRMAN HALL: No questions. Thank you.

9 JUDGE WOODRUFF: Public counsel?

10 MR. HALL: Caleb Hall appearing on behalf of
11 the Office of Public Counsel and Ryan Smith from the
12 Office of Public Counsel is joining me as well. Good
13 afternoon, everyone.

14 The Office of Public Counsel does believe that
15 environmental compliance and quality should be
16 maintained and secured whenever possible. We aren't
17 against those goals. Those are indeed laudible.
18 However, our concern is that this rule as drafted is not
19 properly founded under either common law or Commission
20 statutes that are provided for to address this problem.

21 The Missouri legislature already saw fit to
22 expressly address environmental compliance issues with
23 SB 179 back in 2005. In fact, they were so sure on this
24 being the way to address the environmental compliance
25 issues that was passed with an emergency clause, the

1 Commission acted and drafted rules on that issue and
2 created the environmental cost adjustment mechanism.
3 Since we already have an existing statute and regulatory
4 framework to address environmental noncompliance in
5 small utilities, I believe that we should either be
6 looking at presumably there may be deficiencies in this
7 rule based on what I can find from history hasn't been
8 used all that often since its creation. Perhaps we
9 could start over, go back to fixing the rules that we
10 have now which would parsimoniously be in line with then
11 Governor Greitens' executive order to consolidate
12 existing rules.

13 And secondly, our other recommendation is that
14 if the Commission does not find that the environmental
15 cost adjustment mechanism is a sufficient way to address
16 the goals of the environmental improvement contingency
17 fund rule, then perhaps we can look at the interim rate
18 making framework provided by the Laclede Gas court
19 decision where the court created a framework for the
20 Commission to intervene and create interim rates in the
21 cases of an emergency where a utility has become so
22 financially distraught that it cannot even pay its own
23 workers, it can't possibly meet environmental costs, it
24 cannot provide safe and adequate service.

25 Since these are two legal avenues to address

1 environmental compliance that have been upheld and
2 created by the courts, we believe that the Commission
3 should adopt at least one of those measures. That way
4 then the goals of the environmental cost, the goals of
5 the environmental improvement contingency fund rule can
6 be met without -- while surviving judicial review and
7 avoiding unneeded costs for possible litigation going
8 forward.

9 CHAIRMAN HALL: The interim rate concept,
10 that's only applicable after a rate case has been filed,
11 correct?

12 MR. HALL: I do not believe that is the case.

13 CHAIRMAN HALL: How would interim rates help
14 in the situation that we're trying to address here?

15 MR. HALL: So if you have a small water system
16 that becomes so financially impaired in the same manner
17 that a small water system can come to the Commission and
18 ask for assistance in a general ratemaking, we envision
19 a small water utility approaching the Commission and
20 asking for the creation of interim rates. That would
21 have the benefit of setting up this additional revenue
22 flow up front.

23 CHAIRMAN HALL: How would we set up those
24 interim rates without doing a rate case?

25 MR. SMITH: Sure, if I may, Chairman. Under

1 the case that we cited to, they set forth a legal
2 framework on how that would work. Basically there would
3 be an interim rate. The idea would be if you're a
4 utility, small utility that is so financially distressed
5 that maybe you'd go out to certain banks let's just say,
6 for example, they say we're not going to lend to you
7 because your income is at a certain rate right now and
8 your income would need to be at a higher rate to
9 basically cover those debt obligations that would be
10 necessary to invest capital to ensure safe and adequate
11 service. So if you're a utility like that, the Laclede
12 gas case stood for the proposition that if you're so
13 financially distressed you could come to the Commission
14 and request interim rates on that basis.

15 MR. HALL: Unless I'm misunderstanding your
16 question, Chairman, we saw the Laclede legal framework
17 as similar and analagous to the decoupling statutes that
18 are phrased in the interim rate language and those don't
19 require a full rate case proceeding. So maybe I'm
20 missing something.

21 CHAIRMAN HALL: Let me ask staff to respond.
22 OPC is suggesting that instead of this particular
23 mechanism that we look at either interim rates or the
24 environmental cost adjustment mechanism. Does staff
25 believe that either of those two mechanisms would be

1 effective or could be effective?

2 MR. WESTON: I don't think so. So I'm going
3 to actually speak about the ECAM first and then I'll
4 address interim rates.

5 The primary issue with ECAM, particularly for
6 small systems, is the actual 2.5 percent cap of gross
7 income that's required by the statute for we're talking
8 about very small systems or small utilities.

9 Their gross revenue is \$50,000 a year, \$60,000
10 a year or less. 2.5 percent cap of that gross revenue
11 amount is thousands of dollars.

12 CHAIRMAN HALL: Okay. And so the 2.5 percent
13 cap is in the statute, it's not in the rule?

14 MR. WESTON: Correct.

15 CHAIRMAN HALL: That eliminates that as an
16 option. How about the interim rate?

17 MR. WESTON: The interim rates for -- interim
18 rates -- I don't think it's appropriate for this
19 scenario. Interim rates might be appropriate for a
20 scenario where immediate funds are needed to keep
21 operations going, but the purpose of this rule that
22 we're proposing is to allow a company to begin immediate
23 capital investment, large capital investment to meet
24 ongoing compliance problems with the Department of
25 Natural Resources, EPA or otherwise and to be able to

1 begin that investment and pay for it simultaneously with
2 an interim rate. You would have to know -- to
3 accomplish that, you would have to know much of the same
4 here but you would also have to be able to have proposed
5 rates already in place. That might be challenging for
6 very small systems who are trying to take advantage of
7 the staff assisted rate case rule who aren't able to do
8 a full explanation of what they think their rate base
9 is.

10 CHAIRMAN HALL: To do interim rates, wouldn't
11 the company need to know what the problem is, how to fix
12 it, how much it costs to fix it, anything else? Is that
13 it?

14 MR. WESTON: It would need at least all of
15 those things. The other kind of problem with interim
16 rate suggestion is the fact that it actually implicates
17 a rate case which we suggest that this would be filed at
18 the time of a rate case, the contingency fund. But an
19 interim rate in an actual rate case still is subject to
20 the 11-month process. We're talking about needed
21 capital investment that takes more than 11 months to be
22 installed. You're limiting a period of time for this
23 necessary investment for a rate case period and that's a
24 problem especially if you're trying to update major
25 treatment, drinking distribution facilities.

1 CHAIRMAN HALL: The proposed rule envisions
2 that the company could roll this cost into the customer
3 charge before the improvement is used and useful?

4 MR. WESTON: Yes.

5 CHAIRMAN HALL: Would that also be the case
6 for interim rates?

7 MR. WESTON: I don't think so. I think that's
8 part of the issue.

9 CHAIRMAN HALL: Explain that.

10 MR. WESTON: The interim rate suggests that
11 there's some kind of ongoing expense lack of funds that
12 are needed that are already spent or need to be recouped
13 that have been spent. And in a standard rate case, even
14 an interim rate case, the requirement is those moneys
15 are spent up front and they are recouped through rates.
16 The purpose of this regulation is to allow the company
17 to make the investment and recover it in rates
18 simultaneously.

19 CHAIRMAN HALL: Okay. Let me have OPC respond
20 to that because I think that is the distinction.

21 MR. HALL: I think staff is pointing out some
22 key logistical differences between interim rates and
23 EICF. We can understand why staff would then think that
24 this contingency fund would be preferential to the
25 interim rate. However, you're still coming up against

1 the threshold of what's legal and what the Commission
2 can do.

3 CHAIRMAN HALL: Right. I understand that.
4 But from a practical perspective, do you agree with
5 staff that the interim rates concept would not allow the
6 utility to start receiving the funds to finance the
7 improvement before the improvement has been made? I
8 think that's a critical component.

9 MR. HALL: I think the distinction that I see
10 is that once an interim rate is approved that small
11 utility is then in a better position to then go to a
12 lender and seek additional revenue from that angle.

13 CHAIRMAN HALL: So you think you could get the
14 interim rate prior to expending the moneys necessary for
15 the improvement and before actually starting or
16 completing the project?

17 MR. HALL: Not necessarily before a compliance
18 -- not necessarily before a compliance upgrade becomes
19 used and useful but rather with the promise and the
20 securing of interim rates additional lending and revenue
21 streams from outside, banks and other facilities are
22 then -- the small utility then has access to those
23 avenues.

24 MR. WESTON: If I might respond. Part of the
25 issue with using interim rates in this fashion is that

1 those rates are only set -- are only in place until an
2 actual rate case sets final rates. And unless those
3 final rates are allowed to include a potentially
4 unfinished plant, capital investment, which I think we
5 all have accounting concerns with, the point of the EICF
6 is that it will be in effect until the project is done
7 and then that will go away and rates will be set based
8 on the actual rate base at that time. So the idea is
9 that the contingency fund would allow for the funding of
10 the project for a known period of time, for the actual
11 cost of the project, all of that information up front
12 and identified and then it goes away when that is
13 completed where if you set it on an interim rate basis
14 that is going to go away either at a subsequent rate
15 case when natural rates are set, which probably cannot
16 be more than 11 months later based on our understanding
17 of how interim rates work, and then that project is not
18 yet completed. So either the return have to change
19 again and not recoup the actual cost of the project,
20 which is not used and useful which we'd have problems
21 with, or you're going to have to allow for some other
22 kind of mechanism that calls for the prerecoupmnt of
23 incomplete capital.

24 MR. HALL: I think there might be a key
25 distinction that I haven't made clear or at least would

1 help in the discussion is that the Laclede interim rate
2 framework applies when you have these emergency
3 situations whereas staff's proposed rule is just
4 applying to the small water and sewer utilities
5 generally.

6 We imagine that when you have a small utility
7 --

8 CHAIRMAN HALL: Well, a small water or sewer
9 utility with a serious environmental problem.

10 MR. HALL: Right. And we imagine that when
11 you have one of those small sewer or water utilities
12 with an emergency situation, that will encompass all if
13 not significantly all of these cases of environmental
14 noncompliance. So if staff is looking to create a rule
15 that's available for all small utilities outside of this
16 emergency situation, well, then OPC falls back on its
17 concerns that we need to have a proper legal foundation.
18 So far -- I mean, staff is citing -- sorry.

19 CHAIRMAN HALL: When you're describing or
20 discussing a proper legal foundation, you're really
21 addressing single issue ratemaking issues, right?

22 MR. HALL: I haven't heard it phrased that
23 way.

24 CHAIRMAN HALL: Well, the used and useful
25 statutory requirement doesn't apply to water and sewer,

1 correct?

2 MR. HALL: That is technically correct,
3 Chairman, yes.

4 MR. WESTON: Yes.

5 CHAIRMAN HALL: So the legal concerns around
6 this rule have to do with single issue ratemaking; is
7 that correct?

8 MR. WESTON: Staff certainly proposed the rule
9 as being a part of a rate case so as to address and
10 avoid any kind of specifics in ratemaking issues.

11 CHAIRMAN HALL: So then when OPC talks about a
12 legal foundation, what are you talking about?

13 MR. HALL: We're talking about that you have
14 to find something that either the courts have accepted
15 or that you have an express statutory policy to support
16 what the Commission is proposing to do.

17 CHAIRMAN HALL: Okay. So you're not talking
18 about any prohibitions. You think that we've got to
19 find specific statutory authority for this mechanism?

20 MR. HALL: Yes. The Commission is a creature
21 of statute.

22 CHAIRMAN HALL: With broad discretion to set
23 just and reasonable rates.

24 MR. HALL: With setting just and reasonable
25 rates, you are correct, Chairman. However, I would not

1 agree that it has broad authority for outside mechanisms
2 or other possible creation of other revenue streams.

3 CHAIRMAN HALL: You keep talking about outside
4 mechanisms. And as staff points out, this would be part
5 of a rate case.

6 MR. HALL: It's part of the rate case, you're
7 correct, but OPC does not see it as part of a rate. The
8 proposed rule says that the EICF is going to be part of
9 a customer charge on the bill. Does that -- That could
10 either be envisioned as a separate surcharge such as
11 a --

12 CHAIRMAN HALL: It wouldn't be a separate
13 surcharge because there is case law on that issue. But
14 if it was part of the customer charge.

15 MR. HALL: Respectfully, we see taking -- If
16 you take a surcharge and then you hide it within the
17 fixed customer charge, it still seems to contravene the
18 logic of the cases that have found that the Commission
19 cannot create an extra statutory surcharge.

20 MR. WESTON: If I might interrupt briefly.
21 This is not a surcharge. This is not a legal surcharge
22 -- this is not a surcharge. Staff did not want to have
23 any question whether or not this was a surcharge.
24 Surcharge, that word has got a commonplace language use.
25 It also has a commission more term of art use. And yes,

1 there are past cases that have found surcharges to be
2 unconstitutional needing specific statutory authority.
3 However, the Commission does have express statutory
4 authority to create contingency funds. That exists
5 within the statute. We're not talking about a
6 surcharge, a charge that exists in perpetuity that can
7 be adjusted outside of a rate case. We're talking about
8 a specifically determined amount created via a rate case
9 identified, supported by documentation that the
10 Commission relies on that allows for the specific
11 recoupment of a particularized cost or costs meant to
12 make environmental improvements.

13 We're not talking about an FAC charge. We're
14 talking specifically about a charge, an ability to
15 recoup specifically for a fund to make reimbursements
16 for a very specific investment. I think that's a very
17 important legal distinction.

18 JUDGE WOODRUFF: Is this really a rate design
19 question?

20 MR. WESTON: No. Although the reason why we
21 suggest that it be on or in the customer charge is
22 because it needs to be identified for rate design
23 purposes the idea that you're addressing fixed costs
24 rather than a variable cost. You know what the fixed
25 costs of the installation of the project will be. So

1 it's appropriate to go into a customer charge which
2 tends to recover fixed costs rather than variable ones.
3 That's the identification I'm putting in the customer
4 charge. Now that I've said that, I have to find it.

5 JUDGE WOODRUFF: Did public counsel have
6 further comments?

7 MR. HALL: I guess staff is saying that
8 there's statutory authority for contingency funds. I
9 know of no such statute that uses that phrase, provides
10 for any type of fund creation mechanism. The staff does
11 cite to general cost setting authority in 393.270. OPC
12 generally sees environmental compliance as part of the
13 cost of service of providing water and sewer services.
14 If that's the case, then perhaps these utilities except
15 in these cases of emergency situations should be coming
16 in for these rate cases and having those costs factored
17 into the rate base.

18 Furthermore, when you look at PSC statutes,
19 the only time environmental concerns are expressly
20 addressed it's in the ECAM statute or in underutilized
21 for not the Commission's fault, because of DNR's
22 inability to partner with the PSC and 393.147's loan
23 program.

24 MR. SMITH: Chairman, this is Ryan Smith, OPC.
25 Another reason we were thinking interim rates may be

1 more of an attractive option for a small utility is if
2 there is such an emergency and you would have to wait in
3 that general rate case, then that is quite a bit of time
4 under which presumably there could be an emergency that
5 isn't being quenched by emergency rate relief. Instead,
6 that emergency essentially continues forward up until
7 the conclusion of the general rate case.

8 The interim rate framework under Laclede
9 essentially would allow for that emergency to be
10 quenched but then at the time of the rate case you would
11 roll that into regular rates and so it would just be
12 part of the utility's rates going forward and there
13 wouldn't be -- I think as staff has it proposed or the
14 Commission has it proposed in the rule, I think it's
15 something like reasonably anticipated project within a
16 five-year time horizon. You know, I could envision a
17 lesser period of time that might be more appropriate. I
18 hope that explanation was somewhat helpful in terms of
19 our intent.

20 And I would say public counsel is encouraged
21 that staff in their comments I think said that there was
22 a banker's organization they reached out to that was
23 generally supportive of their proposed rule. Although
24 we do have some questions about the legal authority,
25 that was something that was encouraging to public

1 counsel because we do recognize that utilities can
2 struggle find findings. So we were encouraged by
3 staff's interviewing of the banking organization and
4 relaying that in their comments.

5 MR. WESTON: Chairman, I'm sorry to interrupt.
6 I've been trying to find the reference to contingency
7 funds which is in the statute. It it under 393.270.4.
8 I am trying to pull it up on my phone. The Revisor
9 Missouri.gov page keeps crashing on my phone. So I'm
10 unable to --

11 JUDGE WOODRUFF: I've got a copy of the
12 statutes back here.

13 MR. WESTON: Thank you, Judge. So it says sub
14 4 is in determining the price to be charged for gas,
15 electricity, or water the commission may consider all
16 facts which in its judgment have any bearing upon a
17 proper determination of the question although not set
18 forth in the complaint and not within the allegations
19 contained therein -- this is the 270 which talks about
20 complaints for rate cases -- with due regard, among
21 other things, to a reasonable average return upon
22 capital actually expended and to the necessity of making
23 reservations out of income for surplus and
24 contingencies. This is a contingency fund.

25 MR. SMITH: Chairman, I think that same

1 statute he just referenced said capital actually
2 expended. I thought I heard that. So I'm not sure that
3 is quite as authoritative as staff may have wished.

4 MR. HALL: Staff's use of the word contingency
5 in the proposed rule is an adjective. In that statute
6 it's a noun. I think that's an interesting reading of
7 the statute at best I would say. But if OPC can comment
8 on putting aside our disagreement on the foundation of
9 the rule, with the proposed rule itself section (6) on
10 the reporting provision, that every quarter after
11 receiving approval, the small utility shall submit
12 documentation to staff and public counsel. We had
13 concern about at what point, within every quarter is it
14 the beginning of every quarter, the end, the middle.
15 Any type of clarification of what the Commission
16 believes is better either the beginning or the end would
17 be appreciated.

18 CHAIRMAN HALL: Yeah, I thought I agreed with
19 that suggestion. Does staff have a thought on that?

20 MR. WESTON: We think that reporting every
21 quarter in common practice is usually at the end of the
22 quarter. OPC's suggestion to clarify that is
23 appropriate.

24 CHAIRMAN HALL: Is appropriate?

25 MR. WESTON: We think that's fine. We think

1 it's obvious that to report what happened in the quarter
2 would have to occur at the end of the quarter. If that
3 clarification makes it clearer.

4 MR. HALL: For further clarification, if the
5 EICF is not going to be a separate surcharge, we would
6 still suggest that the charge be prominently displayed,
7 at least separately displayed on a customer's bill so
8 the customer knows what part of their bill is attributed
9 to the EICF so at least there's some transparency and
10 possibly some revisions within the text of the rule
11 itself because when it just says as part of the customer
12 charge, our office was unclear as to whether that meant
13 a surcharge or within the fixed charge or some other
14 tertiary charge that we had not thought of.

15 CHAIRMAN HALL: Does staff have a response to
16 issue No. 12 of OPC?

17 MR. WESTON: I think the language of the
18 proposed regulation as actually printed in the register
19 assaults that concern, that statement that the EICF
20 should be trued up and reviewed to determine that if it
21 should, and then three options are provided, remain in
22 effect at a current rate, remain in effect at a
23 different rate or be terminated. The language of the
24 regulation itself identifies that these are an exclusive
25 or list, either one or the other or the third, and the

1 unnecessary verbiage is actually just the way the rule
2 is presented.

3 CHAIRMAN HALL: Does staff have a response to
4 Missouri American's suggestion its third -- its
5 suggestion at paragraph 3 of its comments? Just making
6 it clear that --

7 MR. WESTON: Yeah, my response would be I
8 suppose that makes it clear that it would be the
9 Commission directing the general counsel to seek civil
10 penalties from a procedural and operational standpoint
11 of how the Commission operates. That makes sense.

12 CHAIRMAN HALL: And does that mirror other
13 statutory language?

14 MR. WESTON: It mirrors the actual operations
15 of the Commission. It explains how that authority is
16 divided and created.

17 CHAIRMAN HALL: In Missouri, DNR has
18 jurisdiction over safe drinking water, correct?

19 MR. WESTON: That's correct.

20 CHAIRMAN HALL: So if there was a problem with
21 lead in the water from pipes, service lines or
22 otherwise, DNR would investigate and issue orders
23 related thereto, correct?

24 MR. WESTON: They are the primary water
25 quality agency, yes.

1 CHAIRMAN HALL: Okay. So would their rules,
2 regulations and orders be considered environmental
3 because they are an environmental agency?

4 MR. WESTON: Would they be considered
5 environmental?

6 CHAIRMAN HALL: I'm looking at the Rule
7 (4)(A)1. (4)(A) is a list of necessary improvements and
8 then 1, the list, and they only include those
9 improvements that are directly related to environmental
10 rules.

11 MR. WESTON: Yes.

12 CHAIRMAN HALL: I'm wondering if we -- and it
13 would relate to rules, regs and orders issued by DNR,
14 EPA or other regulatory authority, city ordinances,
15 state attorney general. Is environmental modifying all
16 of that?

17 MR. WESTON: I wouldn't say that it's
18 modifying all of that, but let me give you an example of
19 other agencies that might have pertinent orders that
20 could affect this. For example, a local health
21 department or a county health department. They can
22 identify if there's an issue with water which would be
23 DNR's wheelhouse, but they can identify if buildings can
24 continue to be occupied or not. And if there's such a
25 problem that water is not being provided, the health

1 department might be able to order certain behavioral
2 responses, localized responses to that. Health
3 departments are also responsible for specific septic
4 on-site systems.

5 CHAIRMAN HALL: My question is, would those --
6 Is that regulation environmental? I'm wondering if
7 maybe we need to remove the word environmental.

8 MR. WESTON: And just make it rules,
9 regulations?

10 MR. HALL: Perhaps it could be necessary to
11 provide safe and adequate service or sub type maybe even
12 to a Commission rule or a Commission statute.

13 CHAIRMAN HALL: I wouldn't want a situation
14 where there was a health agency, be it state, county or
15 local that would issue an order or have a regulation
16 requiring a utility to take certain action and this
17 contingency fund not be deemed applicable.

18 MR. WESTON: Chairman, I generally agree that
19 we wouldn't want it to miss anything. We would want to
20 be very careful then that other local authority orders
21 that come at the end of that list of potential
22 directives from other governmental agencies wouldn't
23 necessarily accidentally pick up something completely
24 unintended. I suppose that would still have to fall
25 within the Commission's determination of the

1 appropriateness of the request.

2 CHAIRMAN HALL: And I think OPC's suggestion
3 that maybe if we were to delete environmental, we
4 instead tie it to --

5 MR. HALL: Is your concern, Chairman, that
6 you're going to have an order or regulation unrelated to
7 environmental concerns that then a utility then attempts
8 to use as a basis for receiving an EICF?

9 CHAIRMAN HALL: If there's a governmental
10 entity that is telling or ordering a utility, a small
11 water or sewer utility to take certain action, I think
12 that this contingency fund should be available whether
13 or not it is tied to an environmental standard but it
14 could be determining what exactly an environmental
15 standard is. If it's a standard issued by an
16 environmental entity, is it an environmental standard.
17 I think we need to make that clear.

18 JUDGE WOODRUFF: Along those lines, we've got
19 orders of the agencies and the state attorney general.
20 Should we also have orders of the courts? Anybody want
21 to respond to that?

22 MR. WESTON: I think that's a fine addition,
23 Judge.

24 JUDGE WOODRUFF: You nodded your head and then
25 started writing, but I think that did get on the record.

1 MR. WESTON: Sorry. Yes, Judge, I think
2 that's appropriate.

3 JUDGE WOODRUFF: Public counsel have any other
4 comments?

5 MR. HALL: We have a suggestion that perhaps
6 more environmentally -- I hesitate to say this because
7 it is not that energy is not an environmental issue or
8 that the Commission doesn't deal with environmental
9 concerns but OPC suggests that perhaps DNR, EPA or
10 another pure environmental law focused agency might be
11 better suited for setting up a compliance schedule or at
12 least should be included in the creation of a compliance
13 schedule.

14 MR. WESTON: Staff agrees that the rule -- the
15 reg that's proposed identifies the schedule to try to
16 get the requested improvement done would be based on or
17 include those kinds of compliance schedules that are put
18 forth from an environmental administrative agency. I
19 don't think that that's an issue. We don't necessarily
20 need DNR or EPA coming in and negotiating with staff
21 about what a compliance schedule is or set one forward
22 when we're talking about trying to put in the length of
23 time for a contingency fund that allows the company to
24 meet compliance with that schedule. If that schedule is
25 external, we're not going to want to create problems

1 with that. So whatever the fund would be intended to do
2 have to work within that already issued order or court
3 order involving that compliance schedule.

4 JUDGE WOODRUFF: We're talking about
5 subparagraph (4)(C), is that the schedule we're talking
6 about, schedule for completion of the list of
7 improvements?

8 MR. WESTON: Yes.

9 MR. HALL: Yes, Judge.

10 JUDGE WOODRUFF: Then moving over to staff,
11 any additional comments that you'd like to make?

12 MR. WESTON: Aside from the comments that we
13 filed, I think just the one thing we want to make very
14 clear, the idea of this rule is to try to prevent an
15 emergency situation. The idea is that if a utility --
16 small utility is beginning to encounter some financial
17 constraints and it's prevented that utility from making
18 necessary capital investment to meet environmental
19 compliance or to meet safety and adequacy standards that
20 the utility will have an option or if they cannot obtain
21 standard financing to hold that up front, those costs up
22 front and pay for it all and then be able to keep itself
23 fiscally solvent that it could do this and pay as it
24 goes. We think that's important.

25 The example I have is we have utilities that

1 do a very good job that are very small that have to put
2 up personal property or real estate as collateral that
3 is not utility property to try to cover loans here. We
4 don't want that kind of situation being the case. And
5 something like this might be able to provide those kinds
6 of small utilities the ability to put in the capital and
7 not have the painful kind of costs that are involved
8 with that initial up front investment.

9 JUDGE WOODRUFF: You're talking about where
10 the owner has to put their house up as collateral?

11 MR. WESTON: Exactly, that's exactly right.
12 We want to try to avoid those kinds of situations. That
13 facility might be running perfectly fine and not be in a
14 true emergency, but this would at least make sure that
15 does not happen or become any worse.

16 JUDGE WOODRUFF: Anything else from staff?

17 MR. WESTON: I have nothing further.

18 JUDGE WOODRUFF: Anyone else in the room
19 wishing to make a comment?

20 MR. JENKINS: This is Jim Jenkins with
21 Missouri-American. Listening to the conversation and
22 being familiar with the regulatory process, I do commend
23 the Commission parties for looking into this. It's a
24 challenge. What you've got is a ratemaking process that
25 really sets rates on one-year increments and then you've

1 got a list of environmental type of projects out there
2 that a small utility could encounter. So unless that
3 small utility just files a rate case, continuous rate
4 cases, which is really not practical, it's not practical
5 for a company the size of Missouri-American to do that,
6 that utility finds itself in a situation that's a
7 problem. I think that's what the parties are raising.
8 When I look at it, what you're trying to do is set up a
9 fund. And that fund you've got, it's a third-party fund
10 if I read this correctly. It's set up, you know, you
11 can make it a third party or they can designate it as a
12 fund and you have that base rate case to start, certain
13 amount going into this fund and then there's procedures
14 that are accessed by the parties for, you know, so those
15 moneys are spent on the actual environmental projects
16 that you've identified. A little cumbersome but it's
17 certainly something that's certainly probably a better
18 approach than filing back to back rate cases for a
19 company that's the size that we're talking about here,
20 but that's a challenge that I hear you running into and
21 then you've got your protections in treating those funds
22 as contributions too. That's my comments.

23 JUDGE WOODRUFF: Anyone else?

24 CHAIRMAN HALL: I have a question. What if
25 instead of environmental we put health and safety? So

1 under (4)(A)(1)A are directly related to health and
2 safety rules, regulations, orders, et cetera?

3 JUDGE WOODRUFF: What about environmental,
4 health and safety, three options?

5 CHAIRMAN HALL: Oh, yeah. It would make for a
6 very odd acronym.

7 MR. HALL: If I might respond that I believe
8 if it was just a health and safety contingency fund
9 that's still going to -- well, from our perspective it's
10 going to run into our position on the lead line case
11 where the evidence as to whether or not health or safety
12 is actually being affected will be up for dispute. And
13 so we may have future concerns on why customer charges
14 are increasing for unsubstantiated health problems.

15 JUDGE WOODRUFF: My thought on it was if
16 there's an order from the EPA to prevent pollution
17 that's killing fish in a stream, that's not really
18 health or safety but it would be environmental.

19 MR. WESTON: That is a compliance issue that
20 small utilities may encounter is they're unable to
21 properly treat and they're discharging things that could
22 lead to true not human health and safety but
23 environmental which frankly if a discharge is killing
24 fish, then it's dangerous to human health and safety,
25 yes.

1 MR. SMITH: One concern I guess that I hadn't
2 thought about until now is just it does seem if we're
3 making the scope of any EICF so large that it
4 encompasses the entirety of the cost of service almost,
5 and I don't think that's the intent, but if we broaden
6 it that big, that could sort of swallow the rate case
7 rule and such where it's more of an EICF request. We're
8 talking about five years or possibly longer. I don't
9 know what to do about that. I just thought I'd raise
10 it, something I thought about.

11 JUDGE WOODRUFF: Any other comments?

12 MR. HALL: Nothing further.

13 MR. WESTON: No, thank you, Judge.

14 JUDGE WOODRUFF: Then we are adjourned.

15 (Off the record.)
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CERTIFICATE OF REPORTER

I, Beverly Jean Bentch, RPR, CCR No. 640,
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A	affect 22:20 afternoon 3:13 agencies 22:19 23:22 24:19 agency 21:25 22:3 23:14 25:10,18 agree 10:4 14:1 23:18 agreed 19:18 agrees 25:14 ahead 2:2 allegations 18:18 allow 7:22 9:16 10:5 11:9,21 17:9 allowed 11:3 allows 15:10 25:23 American's 21:4 amount 7:11 15:8 28:13 analagous 6:17 angle 10:12 anticipated 17:15 Anybody 24:20 appearance 2:13 appearing 3:10 applicable 3:1,4 3:5 5:10 23:17 applies 12:2 apply 12:25 applying 12:4 appreciated 19:17 approach 28:18 approaching 5:19 appropriate 7:18,19 16:1 17:17 19:23,24 25:2	appropriateness 24:1 approval 19:11 approved 10:10 art 14:25 aside 19:8 26:12 asking 2:25 5:20 assaults 20:19 assistance 5:18 assisted 8:7 attempts 24:7 attorney 2:12 22:15 24:19 attractive 17:1 attributed 20:8 August 1:7 authoritative 19:3 authority 13:19 14:1 15:2,4 16:8,11 17:24 21:15 22:14 23:20 available 12:15 24:12 avenues 4:25 10:23 average 18:21 avoid 13:10 27:12 avoiding 5:7 aware 2:24 AX-2018-0241 1:13 2:4	based 4:7 11:7 11:16 25:16 basically 2:25 6:2,9 basis 6:14 11:13 24:8 bearing 18:16 beginning 19:14 19:16 26:16 behalf 3:10 behavioral 23:1 believe 3:14 4:5 5:2,12 6:25 29:7 believes 19:16 benefit 5:21 Bentch 1:23 31:3,15 best 19:7 better 10:11 19:16 25:11 28:17 Beverly 1:23 31:3,15 big 30:6 bill 14:9 20:7,8 bit 17:3 briefly 14:20 broad 13:22 14:1 broaden 30:5 buildings 22:23	careful 23:20 case 5:10,12,24 6:1,12,19 8:7 8:17,18,19,23 9:5,13,14 11:2 11:15 13:9 14:5,6,13 15:7 15:8 16:14 17:3,7,10 27:4 28:3,12 29:10 30:6 cases 4:21 12:13 14:18 15:1 16:15,16 18:20 28:4,18 cause 31:7 CCR 1:23 31:3 31:15 certain 6:5,7 23:1,16 24:11 28:12 certainly 13:8 28:17,17 CERTIFICATE 31:1 Certified 31:4 certify 31:6 cetera 29:2 Chairman 1:18 2:16 3:8 5:9,13 5:23,25 6:16 6:21 7:12,15 8:10 9:1,5,9,19 10:3,13 12:8 12:19,24 13:3 13:5,11,17,22 13:25 14:3,12 16:24 18:5,25 19:18,24 20:15 21:3,12,17,20 22:1,6,12 23:5 23:13,18 24:2 24:5,9 28:24 29:5
	B	C		
	back 3:23 4:9 12:16 18:12 28:18,18 banker's 17:22 banking 18:3 banks 6:5 10:21 base 8:8 11:8 16:17 28:12	C 2:1 26:5 Caleb 3:10 calls 11:22 cap 7:6,10,13 capital 6:10 7:23 7:23 8:21 11:4 11:23 18:22 19:1 26:18 27:6 caption 31:8		

challenge 27:24 28:20 challenging 8:5 chance 2:11 change 11:18 charge 9:3 14:9 14:14,17 15:6 15:13,14,21 16:1,4 20:6,12 20:13,14 charged 18:14 charges 29:13 CHIEF 1:17 cite 16:11 cited 6:1 citing 12:18 city 1:8 22:14 civil 21:9 clarification 19:15 20:3,4 clarify 19:22 clause 3:25 clear 11:25 21:6 21:8 24:17 26:14 clearer 20:3 closer 3:3 collateral 27:2 27:10 come 5:17 6:13 23:21 coming 9:25 16:15 25:20 commend 27:22 comment 2:7 19:7 27:19 comments 2:11 2:24 16:6 17:21 18:4 21:5 25:4 26:11,12 28:22 30:11 commission 1:2 2:4 3:19 4:1,14	4:20 5:2,17,19 6:13 10:1 13:16,20 14:18 14:25 15:3,10 17:14 18:15 19:15 21:9,11 21:15 23:12,12 25:8 27:23 Commission's 16:21 23:25 COMMISSIO... 1:18 common 3:19 19:21 commonplace 14:24 company 2:23 3:1 7:22 8:11 9:2,16 25:23 28:5,19 complaint 18:18 complaints 18:20 completed 11:13 11:18 completely 23:23 completing 10:16 completion 26:6 compliance 3:15 3:22,24 5:1 7:24 10:17,18 16:12 25:11,12 25:17,21,24 26:3,19 29:19 component 10:8 concept 5:9 10:5 concern 3:18 19:13 20:19 24:5 30:1 concerns 2:6 11:5 12:17 13:5 16:19	24:7 25:9 29:13 conclusion 17:7 consider 18:15 consideration 3:1 considered 22:2 22:4 consolidate 4:11 constraints 26:17 contained 18:19 contingencies 18:24 contingency 1:14 2:6 4:16 5:5 8:18 9:24 11:9 15:4 16:8 18:6,24 19:4 23:17 24:12 25:23 29:8 continue 22:24 continues 17:6 continuous 28:3 contravene 14:17 contributions 28:22 conversation 27:21 copy 18:11 correct 5:11 7:14 13:1,2,7 13:25 14:7 21:18,19,23 31:10 correctly 28:10 cost 4:2,15 5:4 6:24 9:2 11:11 11:19 15:11,24 16:11,13 30:4 costs 4:23 5:7 8:12 15:11,23 15:25 16:2,16	26:21 27:7 counsel 3:9,11 3:12,14 16:5 17:20 18:1 19:12 21:9 25:3 county 22:21 23:14 course 2:18 court 1:23 4:18 4:19 26:2 31:4 31:4 courts 5:2 13:14 24:20 cover 6:9 27:3 crashing 18:9 create 4:20 12:14 14:19 15:4 25:25 created 4:2,19 5:2 15:8 21:16 creation 4:8 5:20 14:2 16:10 25:12 creature 13:20 critical 10:8 CSR 2:5 cumbersome 28:16 current 20:22 customer 9:2 14:9,14,17 15:21 16:1,3 20:8,11 29:13 customer's 20:7	decoupling 6:17 deemed 23:17 deficiencies 4:6 delete 24:3 department 7:24 22:21,21 23:1 departments 23:3 described 2:8 describing 12:19 design 15:18,22 designate 28:11 determination 18:17 23:25 determine 20:20 determined 15:8 determining 18:14 24:14 differences 9:22 different 20:23 directing 21:9 directives 23:22 directly 22:9 29:1 disagreement 19:8 discharge 29:23 discharging 29:21 discretion 13:22 discussing 12:20 discussion 12:1 displayed 20:6,7 dispute 29:12 distinction 9:20 10:9 11:25 15:17 distraught 4:22 distressed 6:4,13 distribution 8:25 divided 21:16 DNR 21:17,22
--	---	--	--	---

22:13 25:9,20 DNR's 16:21 22:23 documentation 15:9 19:12 doing 5:24 dollars 7:11 drafted 3:18 4:1 drinking 8:25 21:18 due 18:20	energy 25:7 ensure 6:10 entirety 30:4 entity 24:10,16 entries 2:12 environmental 2:6 3:15,22,24 4:2,4,14,16,23 5:1,4,5 6:24 12:9,13 15:12 16:12,19 22:2 22:3,5,9,15 23:6,7 24:3,7 24:13,14,16,16 25:7,8,10,18 26:18 28:1,15 28:25 29:3,18 29:23 Environmenta... 1:14 environmenta... 25:6 envision 5:18 17:16 envisioned 14:10 envisions 9:1 EPA 7:25 22:14 25:9,20 29:16 especially 8:24 essentially 17:6 17:9 estate 27:2 et 29:2 evidence 29:11 exactly 24:14 27:11,11 example 6:6 22:18,20 26:25 exclusive 20:24 executive 4:11 existing 4:3,12 exists 15:4,6 expended 18:22	19:2 expending 10:14 expense 9:11 Explain 9:9 explains 21:15 explanation 8:8 17:18 express 13:15 15:3 expressly 3:22 16:19 external 25:25 extra 14:19	finds 28:6 fine 19:25 24:22 27:13 firm 31:4 first 2:20 7:3 fiscally 26:23 fish 29:17,24 fit 3:21 five 30:8 five-year 17:16 fix 8:11,12 fixed 14:17 15:23,24 16:2 20:13 fixing 4:9 flow 5:22 focused 25:10 foregoing 31:10 forth 6:1 18:18 25:18 31:8 forward 5:8 17:6,12 25:21 found 14:18 15:1 foundation 12:17,20 13:12 19:8 founded 3:19 framework 4:4 4:18,19 6:2,16 12:2 17:8 frankly 29:23 front 5:22 9:15 11:11 26:21,22 27:8 full 6:19 8:8 31:10 fund 1:14 2:7 4:17 5:5 8:18 9:24 11:9 15:15 16:10 18:24 23:17 24:12 25:23 26:1 28:9,9,9	28:12,13 29:8 funding 11:9 funds 7:20 9:11 10:6 15:4 16:8 18:7 28:21 further 16:6 20:4 27:17 30:12 Furthermore 16:18 future 29:13
<hr/> E		<hr/> F		<hr/> G
E 2:1,1 ECAM 7:3,5 16:20 effect 11:6 20:22 20:22 effective 7:1,1 EICF 9:23 11:5 14:8 20:5,9,19 24:8 30:3,7 either 3:19 4:5 6:23,25 11:14 11:18 13:14 14:10 19:16 20:25 electricity 18:15 eliminates 7:15 emergency 3:25 4:21 12:2,12 12:16 16:15 17:2,4,5,6,9 26:15 27:14 encompass 12:12 encompasses 30:4 encounter 26:16 28:2 29:20 encouraged 17:20 18:2 encouraging 17:25		FAC 15:13 facilities 8:25 10:21 facility 27:13 fact 3:23 8:16 factored 16:16 facts 18:16 fairly 2:10 fall 23:24 falls 12:16 familiar 27:22 far 12:18 fashion 10:25 fault 16:21 file 1:13 2:4,24 filed 5:10 8:17 26:13 files 28:3 filing 2:11 28:18 final 11:2,3 finance 10:6 financial 26:16 financially 4:22 5:16 6:4,13 financing 26:21 find 4:7,14 13:14,19 16:4 18:2,6 findings 18:2	found 14:18 15:1 foundation 12:17,20 13:12 19:8 founded 3:19 framework 4:4 4:18,19 6:2,16 12:2 17:8 frankly 29:23 front 5:22 9:15 11:11 26:21,22 27:8 full 6:19 8:8 31:10 fund 1:14 2:7 4:17 5:5 8:18 9:24 11:9 15:15 16:10 18:24 23:17 24:12 25:23 26:1 28:9,9,9	G 2:1 gas 4:18 6:12 18:14 gather 2:18 general 5:18 16:11 17:3,7 21:9 22:15 24:19 generally 2:10 12:5 16:12 17:23 23:18 give 22:18 go 2:2,20 4:9 6:5 10:11 11:7,14 16:1 goals 3:17 4:16 5:4,4 goes 11:12 26:24 going 2:12,13 5:7 6:6 7:2,21 11:14,21 14:8 17:12 20:5 24:6 25:25 28:13 29:9,10 good 3:12 27:1 governmental 23:22 24:9 Governor 4:11 Greitens' 4:11 gross 7:6,9,10 guess 16:7 30:1

H	house 27:10	15:25	31:15	17:8
Hall 1:18 3:8,10	human 29:22,24	installed 8:22	Jefferson 1:8	language 6:18
3:10 5:9,12,13	I	intended 26:1	Jenkins 2:20,22	14:24 20:17,23
5:15,23 6:15	idea 6:3 11:8	intent 17:19	2:22 27:20,20	21:13
6:21 7:12,15	15:23 26:14,15	30:5	Jim 2:22 27:20	large 7:23 30:3
8:10 9:1,5,9,19	identification	interesting 19:6	job 27:1	laudible 3:17
9:21 10:3,9,13	16:3	interim 4:17,20	joining 3:12	law 1:17 3:19
10:17 11:24	identified 11:12	5:9,13,20,24	Judge 1:17 2:2	14:13 25:10
12:8,10,19,22	15:9,22 28:16	6:3,14,18,23	3:7,9 15:18	lead 21:21 29:10
12:24 13:2,5	identifies 20:24	7:4,16,17,17	16:5 18:11,13	29:22
13:11,13,17,20	25:15	7:19 8:2,10,15	24:18,23,24	legal 4:25 6:1,16
13:22,24 14:3	identify 2:21	8:19 9:6,10,14	25:1,3 26:4,9	10:1 12:17,20
14:6,12,15	22:22,23	9:22,25 10:5	26:10 27:9,16	13:5,12 14:21
16:7 19:4,18	imagine 12:6,10	10:10,14,20,25	27:18 28:23	15:17 17:24
19:24 20:4,15	immediate 7:20	11:13,17 12:1	29:3,15 30:11	legislature 3:21
21:3,12,17,20	7:22	16:25 17:8	30:13,14	lend 6:6
22:1,6,12 23:5	impaired 5:16	interrupt 14:20	judgment 18:16	lender 10:12
23:10,13 24:2	implicates 8:16	18:5	judicial 5:6	lending 10:20
24:5,9 25:5	important 15:17	intervene 4:20	jurisdiction	length 25:22
26:9 28:24	26:24	interviewing	21:18	lesser 17:17
29:5,7 30:12	improvement	18:3	K	let's 2:2 6:5
happen 27:15	2:6 4:16 5:5	invest 6:10	keep 7:20 14:3	limiting 8:22
happened 20:1	9:3 10:7,7,15	investigate	26:22	line 4:10 29:10
head 24:24	25:16	21:22	keeps 18:9	lines 21:21 24:18
health 22:20,21	improvements	investment 7:23	key 9:22 11:24	list 20:25 22:7,8
22:25 23:2,14	15:12 22:7,9	7:23 8:1,21,23	killing 29:17,23	23:21 26:6
28:25 29:1,4,8	26:7	9:17 11:4	kind 8:15 9:11	28:1
29:11,14,18,22	inability 16:22	15:16 26:18	11:22 13:10	listen 3:6
29:24	include 11:3	27:8	27:4,7	Listening 27:21
hear 28:20	22:8 25:17	involved 27:7	kinds 25:17 27:5	litigation 5:7
heard 12:22	included 25:12	involving 26:3	27:12	little 28:16
19:2	income 6:7,8 7:7	issue 4:1 7:5 9:8	know 8:2,3,11	LLC 1:23 31:5
hearing 1:6 2:3	18:23	10:25 12:21	15:24 16:9	loan 16:22
2:7,7	incomplete	13:6 14:13	17:16 28:10,14	loans 27:3
hearings 2:10	11:23	20:16 21:22	30:9	local 22:20
help 5:13 12:1	increasing 29:14	22:22 23:15	known 11:10	23:15,20
helpful 17:18	increments	25:7,19 29:19	knows 20:8	localized 23:2
hesitate 25:6	27:25	issued 22:13	L	logic 14:18
hide 14:16	informal 2:10	24:15 26:2	L 1:16	logistical 9:22
higher 6:8	information	issues 3:22,25	lack 9:11	longer 30:8
history 4:7	2:18 11:11	12:21 13:10	Laclede 4:18	look 3:3 4:17
hold 26:21	initial 27:8	J	6:11,16 12:1	6:23 16:18
hope 17:18	installation	Jean 1:23 31:3		28:8
horizon 17:16				looking 4:6

12:14 22:6 27:23	MORRIS 1:16 moving 26:10	on-site 23:4 once 10:10 one-year 27:25 ones 16:2 ongoing 7:24 9:11 OPC 6:22 9:19 12:16 13:11 14:7 16:11,24 19:7 20:16 25:9 OPC's 19:22 24:2 operates 21:11 operational 21:10 operations 7:21 21:14 option 7:16 17:1 26:20 options 20:21 29:4 order 4:11 23:1 23:15 24:6 26:2,3 29:16 ordering 24:10 orders 21:22 22:2,13,19 23:20 24:19,20 29:2 ordinances 22:14 organization 17:22 18:3 outside 10:21 12:15 14:1,3 15:7 owner 27:10	parsimoniously 4:10 part 9:8 10:24 13:9 14:4,6,7,8 14:14 16:12 17:12 20:8,11 particular 6:22 particularized 15:11 particularly 7:5 parties 2:23 27:23 28:7,14 partner 16:22 party 28:11 passed 3:25 pay 4:22 8:1 26:22,23 penalties 21:10 percent 7:6,10 7:12 perfectly 27:13 period 8:22,23 11:10 17:17 perpetuity 15:6 personal 27:2 personally 31:6 perspective 10:4 29:9 pertinent 22:19 phone 18:8,9 phrase 16:9 phrased 6:18 12:22 pick 23:23 pipes 21:21 place 8:5 11:1 31:7,12 plant 11:4 point 11:5 19:13 pointing 9:21 points 14:4 policy 13:15 pollution 29:16 position 10:11	29:10 possible 3:16 5:7 14:2 possibly 4:23 20:10 30:8 potential 23:21 potentially 11:3 practical 10:4 28:4,4 practice 19:21 preferential 9:24 prerecoupment 11:22 present 31:6 presented 21:2 Presiding 1:16 presumably 4:6 17:4 prevent 26:14 29:16 prevented 26:17 price 18:14 primary 7:5 21:24 printed 20:18 prior 10:14 probably 11:15 28:17 problem 3:20 8:11,15,24 12:9 21:20 22:25 28:7 problems 7:24 11:20 25:25 29:14 procedural 21:10 procedures 28:13 proceeding 6:19 proceedings 1:5 31:6,9 process 8:20
M	N			
maintained 3:16 major 8:24 making 4:18 18:22 21:5 26:17 30:3 manner 5:16 Matter 1:13 mean 12:18 meant 15:11 20:12 measures 5:3 mechanism 4:2 4:15 6:23,24 11:22 13:19 16:10 mechanisms 6:25 14:1,4 meet 4:23 7:23 25:24 26:18,19 met 5:6 middle 19:14 mirror 21:12 mirrors 21:14 missing 6:20 Missouri 1:1,8 2:9 3:21 21:4 21:17 31:5 Missouri-Ame... 2:23,24 3:2 27:21 28:5 Missouri.gov 18:9 misunderstan... 6:15 modifying 22:15 22:18 moneys 9:14 10:14 28:15 months 8:21 11:16	N 2:1 natural 7:25 11:15 necessarily 10:17,18 23:23 25:19 necessary 6:10 8:23 10:14 22:7 23:10 26:18 necessity 18:22 need 6:8 8:11,14 9:12 12:17 23:7 24:17 25:20 needed 7:20 8:20 9:12 needing 15:2 needs 15:22 negotiating 25:20 nodded 24:24 noncompliance 4:4 12:14 notes 31:11 noun 19:6			
	O			
	O 2:1 obligations 6:9 obtain 26:20 obvious 20:1 occupied 22:24 occur 20:2 odd 29:6 office 3:11,12,14 20:12 Oh 29:5 Okay 7:12 9:19 13:17 22:1	P 2:1 page 18:9 painful 27:7 paragraph 21:5		

<p>27:22,24 program 16:23 prohibitions 13:18 project 10:16 11:6,10,11,17 11:19 15:25 17:15 projects 28:1,15 prominently 20:6 promise 10:19 proper 12:17,20 18:17 properly 3:19 29:21 property 27:2,3 proposed 1:13 2:5,8,8,19 8:4 9:1 12:3 13:8 14:8 17:13,14 17:23 19:5,9 20:18 25:15 proposing 7:22 13:16 proposition 6:12 protections 28:21 provide 4:24 23:11 27:5 provided 3:20 4:18 20:21 22:25 provides 16:9 providing 16:13 provision 19:10 PSC 16:18,22 public 1:2 2:7,19 3:9,11,12,14 16:5 17:20,25 19:12 25:3 published 2:9 pull 18:8 pure 25:10</p>	<p>purpose 2:18 7:21 9:16 purposes 15:23 put 25:17,22 27:1,6,10 28:25 putting 16:3 19:8</p> <hr/> <p style="text-align: center;">Q</p> <hr/> <p>quality 3:15 21:25 quarter 19:10 19:13,14,21,22 20:1,2 quenched 17:5 17:10 question 6:16 14:23 15:19 18:17 23:5 28:24 questions 2:16 2:16,17 3:7,8 17:24 quite 17:3 19:3</p> <hr/> <p style="text-align: center;">R</p> <hr/> <p>R 2:1 raise 30:9 raising 28:7 rate 4:17 5:9,10 5:24 6:3,7,8,18 6:19 7:16 8:2,7 8:8,16,17,18 8:19,19,23 9:10,13,14,25 10:10,14 11:2 11:8,13,14 12:1 13:9 14:5 14:6,7 15:7,8 15:18,22 16:16 16:17 17:3,5,7 17:8,10 18:20 20:22,23 28:3</p>	<p>28:3,12,18 30:6 ratemaking 5:18 12:21 13:6,10 27:24 rates 4:20 5:13 5:20,24 6:14 6:23 7:4,17,18 7:19 8:5,10 9:6 9:15,17,22 10:5,20,25 11:1,2,3,7,15 11:17 13:23,25 16:25 17:11,12 27:25 reached 17:22 read 3:4 28:10 reading 19:6 real 27:2 really 3:4 12:20 15:18 27:25 28:4 29:17 reason 15:20 16:25 reasonable 13:23,24 18:21 reasonably 17:15 receiving 10:6 19:11 24:8 recognize 18:1 recommendati... 4:13 record 24:25 30:15 recoup 11:19 15:15 recouped 9:12 9:15 recoupment 15:11 recover 9:17 16:2 reference 18:6</p>	<p>referenced 19:1 reflection 3:2 reg 25:15 regard 18:20 regarding 1:13 2:5 register 2:9 20:18 regs 22:13 regular 17:11 regulation 9:16 20:18,24 23:6 23:15 24:6 regulations 22:2 23:9 29:2 regulatory 1:17 4:3 22:14 27:22 reimbursements 15:15 relate 22:13 related 21:23 22:9 29:1 relaying 18:4 relief 17:5 relies 15:10 remain 20:21,22 remove 23:7 report 20:1 REPORTED 1:22 Reporter 31:1,4 reporting 1:23 19:10,20 31:5 representing 2:22 request 6:14 24:1 30:7 requested 25:16 require 6:19 required 7:7 requirement 9:14 12:25 requiring 23:16</p>	<p>reservations 18:23 Resources 7:25 Respectfully 14:15 respond 6:21 9:19 10:24 24:21 29:7 response 20:15 21:3,7 responses 23:2,2 responsible 23:3 return 11:18 18:21 revenue 5:21 7:9 7:10 10:12,20 14:2 review 5:6 reviewed 20:20 revisions 20:10 Revisor 18:8 right 6:7 10:3 12:10,21 27:11 roll 9:2 17:11 room 27:18 RPR 31:3 rule 1:13 2:5,5,8 2:9,19 3:3,18 4:7,17 5:5 7:13 7:21 8:7 9:1 12:3,14 13:6,8 14:8 17:14,23 19:5,9,9 20:10 21:1 22:6 23:12 25:14 26:14 30:7 rulemaking 1:6 2:3,25 rules 4:1,9,12 22:1,10,13 23:8 29:2 run 29:10 running 27:13 28:20</p>
---	--	---	--	--

Ryan 3:11 16:24	setting 5:21 13:24 16:11 25:11	28:15 staff 6:21,24 8:7 9:21,23 10:5 12:14,18 13:8 14:4,22 16:7 16:10 17:13,21 19:3,12,19 20:15 21:3 25:14,20 26:10 27:16	streams 10:21 14:2 struggle 18:2 sub 18:13 23:11 subject 2:4 8:19 submit 19:11 subparagraph 26:5 subsequent 11:14 sufficient 4:15 suggest 8:17 15:21 20:6 suggesting 6:22 suggestion 8:16 19:19,22 21:4 21:5 24:2 25:5 suggests 9:10 25:9 suited 25:11 support 13:15 supported 15:9 supportive 17:23 suppose 21:8 23:24 surcharge 14:10 14:13,16,19,21 14:21,22,23,24 15:6 20:5,13 surcharges 15:1 sure 3:23 5:25 19:2 27:14 surplus 18:23 surviving 5:6 swallow 30:6 swear 2:13 system 5:15,17 systems 7:6,8 8:6 23:4	24:11 takes 8:21 talking 7:7 8:20 13:12,13,17 14:3 15:5,7,13 15:14 25:22 26:4,5 27:9 28:19 30:8 talks 13:11 18:19 technically 13:2 telling 24:10 tends 16:2 term 14:25 terminated 20:23 terms 17:18 tertiary 20:14 text 20:10 thank 3:8 18:13 30:13 thereof 31:8 thereto 21:23 thing 26:13 things 8:15 18:21 29:21 think 3:5 7:2,18 8:8 9:7,7,20,21 9:23 10:8,9,13 11:4,24 13:18 15:16 17:13,14 17:21 18:25 19:6,20,25,25 20:17 24:2,11 24:17,22,25 25:1,19 26:13 26:24 28:7 30:5 thinking 16:25 third 20:25 21:4 28:11 third-party 28:9 thought 19:2,18 19:19 20:14
S	sewer 12:4,8,11 12:25 16:13 24:11 sheet 31:8 significantly 12:13 similar 6:17 simultaneously 8:1 9:18 single 12:21 13:6 situation 5:14 12:12,16 23:13 26:15 27:4 28:6 situations 12:3 16:15 27:12 size 3:1 28:5,19 small 4:5 5:15 5:17,19 6:4 7:6 7:8,8 8:6 10:10 10:22 12:4,6,8 12:11,15 17:1 19:11 24:10 26:16 27:1,6 28:2,3 29:20 Smith 3:11 5:25 16:24,24 18:25 30:1 solvent 26:23 somewhat 17:18 sorry 12:18 18:5 25:1 sort 30:6 speak 7:3 specific 13:19 15:2,10,16 23:3 specifically 15:8 15:14,15 specifics 13:10 spent 9:12,13,15	staff's 12:3 18:3 19:4 standard 9:13 24:13,15,15,16 26:21 standards 26:19 standpoint 21:10 start 4:9 10:6 28:12 started 2:3 24:25 starting 10:15 state 1:1 22:15 23:14 24:19 31:5 statement 2:15 20:19 statute 4:3 7:7 7:13 13:21 15:5 16:9,20 18:7 19:1,5,7 23:12 statutes 3:20 6:17 16:18 18:12 statutory 12:25 13:15,19 14:19 15:2,3 16:8 21:13 Stenotype 31:9 31:11 stood 6:12 stream 29:17	submit 19:11 subparagraph 26:5 subsequent 11:14 sufficient 4:15 suggest 8:17 15:21 20:6 suggesting 6:22 suggestion 8:16 19:19,22 21:4 21:5 24:2 25:5 suggests 9:10 25:9 suited 25:11 support 13:15 supported 15:9 supportive 17:23 suppose 21:8 23:24 surcharge 14:10 14:13,16,19,21 14:21,22,23,24 15:6 20:5,13 surcharges 15:1 sure 3:23 5:25 19:2 27:14 surplus 18:23 surviving 5:6 swallow 30:6 swear 2:13 system 5:15,17 systems 7:6,8 8:6 23:4	T take 2:12 8:6 14:16 23:16

29:15 30:2,9 30:10 thousands 7:11 three 20:21 29:4 threshold 10:1 tie 24:4 tied 24:13 Tiger 1:23 31:4 time 8:18,22 11:8,10 16:19 17:3,10,16,17 25:23 31:7,11 transcript 1:5 31:11 transparency 20:9 treat 29:21 treating 28:21 treatment 8:25 true 27:14 29:22 31:10 trued 20:20 try 2:18 25:15 26:14 27:3,12 trying 5:14 8:6 8:24 18:6,8 25:22 28:8 two 4:25 6:25 type 16:10 19:15 23:11 28:1	unintended 23:24 unnecessary 21:1 unneeded 5:7 unrelated 24:6 unsubstantiated 29:14 update 8:24 upgrade 10:18 upheld 5:1 use 14:24,25 19:4 24:8 useful 9:3 10:19 11:20 12:24 uses 16:9 usually 19:21 utilities 4:5 7:8 12:4,11,15 16:14 18:1 26:25 27:6 29:20 utility 4:21 5:19 6:4,4,11 10:6 10:11,22 12:6 12:9 17:1 19:11 23:16 24:7,10,11 26:15,16,17,20 27:3 28:2,3,6 utility's 17:12	water 2:23 5:15 5:17,19 12:4,8 12:11,25 16:13 18:15 21:18,21 21:24 22:22,25 24:11 way 3:24 4:15 5:3 12:23 21:1 we'll 2:17,19 we're 2:3 5:14 6:6 7:7,22 8:20 13:13 15:5,7 15:13,13 25:22 25:25 26:4,5 28:19 30:2,7 we've 13:18 24:18 WESTON 7:2 7:14,17 8:14 9:4,7,10 10:24 13:4,8 14:20 15:20 18:5,13 19:20,25 20:17 21:7,14,19,24 22:4,11,17 23:8,18 24:22 25:1,14 26:8 26:12 27:11,17 29:19 30:13 wheelhouse 22:23 wished 19:3 wishing 27:19 witness 2:14 wondering 22:12 23:6 WOODRUFF 1:16 2:2 3:7,9 15:18 16:5 18:11 24:18,24 25:3 26:4,10 27:9,16,18 28:23 29:3,15 30:11,14	word 14:24 19:4 23:7 work 6:2 11:17 26:2 workers 4:23 worse 27:15 wouldn't 8:10 14:12 17:13 22:17 23:13,19 23:22 writing 24:25	4 4 2:5 18:14 22:7 22:7 26:5 29:1 5 50,000 7:9 6 6 19:9 60,000 7:9 640 1:23 31:3,15 7 7 1:7
U unable 18:10 29:20 unclear 20:12 unconstitutio... 15:2 understand 3:5 9:23 10:3 understanding 11:16 underutilized 16:20 unfinished 11:4	V variable 15:24 16:2 verbiage 21:1 Volume 1:9 W wait 17:2 want 14:22 23:13,19,19 24:20 25:25 26:13 27:4,12	X Y Y 1:18 yeah 19:18 21:7 29:5 year 7:9,10 years 30:8 Z 0 1 1 1:9 22:8 1)A 29:1 11 8:21 11:16 11-month 8:20 12 20:16 179 3:23 2 2.5 7:6,10,12 2005 3:23 2018 1:7 240-10.095 2:5 270 18:19 3 3 21:5 393.147's 16:22 393.270 16:11 393.270.4 18:7		