

EVIDENTIARY HEARING - Vol. II 9/27/2017

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STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION

TRANSCRIPT OF PROCEEDINGS

Evidentiary Hearing

September 27, 2017  
Jefferson City, Missouri  
Volume 2

In the Matter of the Application )  
of Missouri-American Water Company ) No. WU-2017-0296  
for an Accounting Order Concerning )  
MAWC's Lead Service Line Replacement )  
Program. )

JUDGE RONALD D. PRIDGIN, Presiding  
DEPUTY CHIEF REGULATORY LAW JUDGE  
DANIEL Y. HALL, CHAIRMAN  
STEPHEN M. STOLL,  
WILLIAM P. KENNEY,  
SCOTT T. RUPP,  
COMMISSIONERS

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Staff Exhibit No. 135  
Date 3-8-18 Reporter mm  
File No. WA - 2017-0296  
SR - 2017-0296

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A P P E A R A N C E S (CONTINUED)

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1 P R O C E E D I N G S

2 JUDGE PRIDGIN: All right. Good morning.  
3 We are on the record. This is the hearing in File  
4 No. WU-2017-0296. I am Ron Pridgin. I'm the  
5 Regulatory Law Judge assigned to preside over this  
6 hearing that is being held on September 27th, 2017,  
7 in the Governor Office Building in Jefferson City,  
8 Missouri.

9 The time is about 8:34 a.m. I would like  
10 to begin getting oral entries of appearance from  
11 Counsel, please, beginning with Missouri  
12 American?

13 MR. COOPER: Thank you, your Honor.  
14 Dean Cooper from the law firm of Brydon, Swearngen  
15 & England, PC, and Timothy Luft for Missouri  
16 American Water Company appearing on behalf of  
17 Missouri-American Water Company. And the court  
18 reporter has our contact information.

19 JUDGE PRIDGIN: Mr. Cooper, Mr. Luft,  
20 Thank you. On behalf of DED, please?

21 MR. BEAR: Brian Bear, General Counsel on  
22 behalf of DED. The court reporter has my contact  
23 information already.

24 JUDGE PRIDGIN: Mr. Bear, thank you. On  
25 behalf of the Staff of the Commission, please?

1 MS. MERS: Nicole Mers and Kaci Aslin on  
2 behalf of Staff. Our information has been provided  
3 to the court reporter.

4 JUDGE PRIDGIN: Ms. Mers, Ms. Aslin, thank  
5 you. On of MECG?

6 MR. WOODSMALL: David Woodsmall on behalf  
7 of Midwest Energy Consumers Group.

8 JUDGE PRIDGIN: Mr. Woodsmall, thank you.  
9 MIEC has waived any opening or any cross, but let  
10 me doublecheck. Any appearance for MIEC? Hearing  
11 none, any appearance for Consumers Council, please?

12 MR. COFFMAN: Yes, your Honor. Let the  
13 record reflect John B. Coffman on behalf of the  
14 Consumers Council of Missouri.

15 JUDGE PRIDGIN: All right. Mr. Coffman,  
16 thank you. Entry on behalf of the Office of Public  
17 Counsel, please.

18 MR. OPITZ: Thank you, Judge. For the  
19 Office of Public Counsel, I'm Tim Opitz. My  
20 address is P.O. Box 2230, Jefferson City, Missouri,  
21 65102.

22 JUDGE PRIDGIN: Mr. Opitz, thank you.  
23 Before we proceed to opening just a quick, I guess,  
24 road map for today. I planned on breaking sometime  
25 mid-morning. I'll try to go with the flow, look

1 for a natural break to try to give everybody a  
2 break sometime in the morning.

3 The Commission has agenda at noon, so we  
4 will need to break at least a few minutes before  
5 noon, and I will try to look for a natural break.

6 But if I have to tackle somebody in the  
7 middle of a syllable, I apologize, but the  
8 Commission does have agenda. And I will check with  
9 the Commission and -- and kind of look at their  
10 schedules.

11 We will probably resume sometime in the  
12 1:15 to 1:30 area to give the Commission time for  
13 agenda and a bit of a lunch break. And then I'm  
14 looking, of course, at a mid-afternoon break and  
15 then we'll see how far we get.

16 I don't anticipate going late unless we go  
17 painfully slow today because it is set for two  
18 days, but we'll just kind of play it by ear this  
19 afternoon.

20 Any questions or anything from the Bench  
21 or from Counsel before we proceed with opening  
22 statements? All right. Hearing nothing, we'll  
23 being -- we'll proceed with opening statements.  
24 And Missouri-American, Mr. Cooper, when you're  
25 ready, sir.

1 MR. COOPER: Thank you, your Honor.

2 OPENING STATEMENT

3 BY MR. COOPER:

4 MR. COOPER: Before I move forward, I  
5 have a hand-out. And what this is is diagrams that  
6 are contained in Schedule GAN02 of Mr. Naumick's  
7 testimony.

8 As you're aware the company is seeking  
9 deferral of accounting approval for its investment  
10 in the replacement of the customer owned lead  
11 service lines in this case.

12 Now, what portion of a service line is  
13 owned by the customer differs within  
14 Missouri-American's territory. On that hand-out  
15 that I -- that I just gave you, you can see that on  
16 the top half of the page, we have a diagram that  
17 shows the situation outside of St. Louis County.

18 On the bottom part of the page, we have a  
19 diagram showing what happens within St. Louis  
20 County. Without out -- outside of St. Louis  
21 County, the differentiation occurs approximately at  
22 the property line or the -- or the water meter  
23 location.

24 So to the left -- colors aren't great.  
25 But to the left of that dotted line, it's the

1 company owned portion. To the right of that dotted  
2 line, it's the customer owned portion.

3 That differs substantially within St.  
4 Louis County. You can see below the entire line  
5 from the main to the premise is the customer-owned  
6 part of the service line.

7 You'll hear people talking from time to  
8 time today about full lead service line  
9 replacements and partial lead service line  
10 replacements.

11 Again, going back to the outside of  
12 St. Louis County diagram, generally, when we talk  
13 about partial, we're talking about that portion  
14 from the main to the water meter, the property  
15 line.

16 And when we're talking about a full  
17 replacement, we're talking about from the main to  
18 the premise.

19 MAWC estimates, based upon its existing  
20 data from its tap cards and its field experience,  
21 that there are approximately 30,000 service lines  
22 in its territory that are lead.

23 Lead can enter the drinking water where  
24 pipes and plumbing fixtures that contain lead  
25 corrode or are disturbed.



1           Removal of lead service lines in contact  
2 with drinking water provides an opportunity to  
3 significantly reduce the risk of exposure to lead  
4 in drinking water.

5           Lead service lines can be encountered on  
6 the utility side or the customer side during water  
7 main construction and relocation projects or  
8 service line repairs and renewals.

9           Removing lead service lines in their  
10 entirety will compliment the other mitigation work  
11 the utility already performed such as providing  
12 stable water quality and treatment to minimize  
13 corrosion, compliance sampling and following good  
14 management practices.

15           The company's treatment and sampling  
16 efforts have effectively reduced potential lead  
17 exposure from drinking water. However, as the  
18 research regarding potential exposure to lead has  
19 been further developed and refined, the company has  
20 determined it should take additional steps to  
21 further mitigate potential customer exposure to  
22 lead and drinking water.

23           The growing body of research indicates  
24 that partial lead service line replacement and the  
25 physical disturbance of the lead service lines have

1 the potential to increase lead levels following  
2 replacements.

3 Now when MAWC encounters a lead service  
4 line during the course of its main replacement  
5 projects, the company believes all segments of lead  
6 in the service line should be replaced, both the  
7 portions owned by the company and the lead portions  
8 owned by the customer or the property owner.

9 Doing so is appropriate for safety reasons  
10 when the service line is determined -- is  
11 disturbed. Replacing such lead service lines in  
12 conjunction with main replacements is the most cost  
13 effective, efficient and responsible way to address  
14 the health and safety concerns associated with the  
15 lead service lines.

16 The lead service line replacements that  
17 have been performed and are projected to be  
18 performed from January 1st, 2017, through May 31st  
19 of 2018, which is approximately the operation of  
20 law date for the pending Missouri-American rate  
21 case will amount to approximately -- this is the  
22 number we show in Mr. LaGrand's rebuttal testimony,  
23 11.5 percent of net income as presented at MAWC's  
24 2016 annual report that was filed with the  
25 Commission.

1           MAWC proposes the following accounting for  
2 these expenditures. First, the portion of any such  
3 replacement where MAWC owns the service line would  
4 be recorded on MAWC's books like any other capital  
5 project.

6           The special pieces comes for this -- asks,  
7 really, in this case comes in regard to the  
8 customer-owned piece. For that piece, MAWC asks  
9 that the Commission grant it an accounting  
10 authority order allowing it to defer the costs  
11 associated with the replacement of these  
12 customer-owned lead service lines as follows.

13           One, to record and defer on the books the  
14 cost of all customer-owned lead service line  
15 replacements made from January 1st, 2017, through  
16 May 31st, 2018. To allow it to calculate a monthly  
17 carrying charge on the balance in that accounting  
18 for the weighted average cost of capital from the  
19 company's last general rate case. And to allow  
20 MAWC to defer and maintain these costs on its books  
21 until the effective date of the Report and Order in  
22 MAWC's pending general rate proceedings. And that  
23 any amortization should start with the effective  
24 date of that Report and Order.

25           You may note that I left out one request

1 that had been found in the company's application  
2 and shows up in -- in testimony and probably our  
3 statement of position as well.

4 But that was there had previously been a  
5 line requesting that this regulatory asset remain  
6 in place until all eligible costs are amortized and  
7 recovered in rates.

8 MAWC, in the testimony, has agreed that  
9 recovery is a question that needs to be addressed  
10 in the rate case and is dropping that aspect of its  
11 -- of its original request. Mr. LaGrand will be  
12 making that change when I put him on the stand.

13 Additionally, there has been an issue  
14 raised in regard to the use of the words  
15 "regulatory asset" in Missouri-American's request.

16 While I believe that description has been  
17 used in certain, probably several past Commission  
18 cases, MAWC does agree that the identified  
19 expenditures should be reported in NARUC Account  
20 186, which is termed Miscellaneous Deferred Debits  
21 and does not ask the Commission to make a GAAP  
22 regulatory asset determination.

23 If Missouri-American doesn't receive the  
24 requested accounting treatment, it presents it with  
25 a difficult situation. The likely outcome is that

1 Missouri-American may try to avoid areas with lead  
2 service lines and postpone main replacement  
3 projects with known lead service lines to avoid  
4 increased risk of potential exposure to lead  
5 associated with partial replacement.

6           However, there are several down-sides  
7 associated with that approach, to include the fact  
8 that the lane main replacement projects can  
9 increase the number of main breaks and leaks over  
10 time. This can be disrupting to customers and the  
11 community.

12           On the other hand, if the main  
13 replacements go forward without such replacements,  
14 a great opportunity for replacement is missed  
15 because, as I said previously, replacing lead lines  
16 in conjunction with main replacements when the  
17 streets are open, when the crews are there already  
18 is the most cost effective and efficient way to  
19 address the health and safety concerns associated  
20 with these lines.

21           Now, the Office of Public Counsel has  
22 taken a two-pronged approach to this issue. First,  
23 as of its Statement of Position, OPC has argued  
24 that MAWC's tariff does not permit it to replace  
25 customer-owned service lines. In other words,

1 company replacement of customer-owned service lines  
2 is unlawful.

3 And, second, OPC has proposed a pilot  
4 study associated with replacement of customer-owned  
5 lead service lines, which includes a cap on  
6 replacement costs and an AAO for only those going  
7 forward costs incurred by the company; thus,  
8 suggesting that those replacement costs already  
9 incurred and to be incurred between now and the  
10 effective date of an order should be expensed.

11 As to the tariff issue, we believe none of  
12 the tariffs cited by OPC prohibit MAWC from  
13 replacing customer-owned water service line.

14 This is for good reason as -- for example,  
15 in almost every main replacement in St. Louis  
16 County, lead or not -- and you'll recall from our  
17 diagram the customer owns every piece from the  
18 plain to the premise.

19 In almost every replacement, it's  
20 necessary to replace at least some portion of that  
21 customer-owned water service line in order to  
22 complete the main replacement. So it just is a  
23 normal course of business the company is in that  
24 business to some extent.

25 Those partial customer-owned service line

1 replacements are -- are treated as restoration  
2 costs under the USOA similar to costs to replace  
3 disturbed pavement, pavement base, sidewalk,  
4 curbing and landscaping as well as costs related to  
5 damage to the property of others and other general  
6 costs related to restoring the areas to their prior  
7 conditions.

8           While the company does not own that  
9 property being restored and others would be  
10 responsible on a going forward basis for their  
11 maintenance or repair, the company still incurs  
12 restoration costs as a part of the project.

13           For safety reasons, including the partial  
14 replacements of the customer-owned service lines,  
15 the restoration cost is appropriate when the  
16 service line is disturbed or damaged during main  
17 replacements.

18           Again, we do not believe that lead service  
19 line replacements violate MAWC's tariff. Now, the  
20 pilot study posed by OPC is quite extensive. It's  
21 described as a two-year pilot study to explore the  
22 feasibility, legality and associated policy  
23 implications of full lead service line replacement  
24 across MAWC's entire service territory and the  
25 State of Missouri with the results presented to the

1 Missouri Public Service Commission, Missouri  
2 Legislature and the Missouri Governor's Office for  
3 consideration.

4 The program would include five policy  
5 tracks. An Advisory Committee led by a third party  
6 consultant who is responsible for issues on the  
7 final report taking into account a large range of  
8 considerations, scoping analysis to provide lead  
9 service line estimates and information and the  
10 feasibility of developing a repository to contain  
11 lead service line information and water testing  
12 results, a two-year lead service line replacement  
13 pilot program that includes testing and modeling to  
14 verify the length between lead service line removal  
15 and lead abatement in drinking water.

16 A review and summary of the Advisory  
17 Committee's thoughts on communications, disclosure,  
18 prioritization and implementation and ancillary  
19 considerations such as potential job creation,  
20 lead paint and soil abatement.

21 It's MAWC's position that the proposed  
22 study would result in unjust delay, costs and  
23 limitation on the replacement process.

24 Missouri-American Water Company Witness  
25 Naumick detailed the extensive and detailed



1 research and study that has already been performed  
2 by many Government organizations, private  
3 foundations and other groups to include the Lead  
4 Service Alignment Replacement Collaborative.

5 Hiring a third party to essentially repeat  
6 this work makes little sense. However, the company  
7 certainly will continue to seek constructive input  
8 on specific key areas where such input from  
9 relevant stakeholders can help optimize the  
10 effectiveness of the program that it proposes.

11 Moreover, in -- in regard to the pilot  
12 study, it's unclear what will happen at the end of  
13 the proposed study. OPC proposed that it will be  
14 presented, as I said, to Commission, to the General  
15 Assembly, to the Governor's Office for  
16 consideration.

17 What would happen next and when would be  
18 anybody's guess. I don't think there's any  
19 compelling reason for the Commission to start an  
20 independent march down the study path.

21 Now, in closing, I'd leave you with this:  
22 OPC discusses many issues beyond the potential  
23 exposure to lead and drinking water, including the  
24 history of lead contamination, other conduits of  
25 human lead exposure and the regulatory history of

1 -- of lead.

2 David LaGrand, who is the head of American  
3 Water Works Association has stated, If there's one  
4 lesson to be learned from the Flint crisis, it is  
5 this.

6 Our communities will be safer in the  
7 long-run with no lead pipes in the ground. Removal  
8 of lead service lines is the one pathway of human  
9 exposure that a water utility can resolve.

10 And this is what Missouri-American is  
11 proposing to do in an aggressive and efficient  
12 manner through its proposed lead service line  
13 replacement program. Thank you.

14 JUDGE PRIDGIN: Thank you. Any Bench  
15 questions?

16 CHAIRMAN HALL: Yes. Good morning.

17 MR. COOPER: Good morning.

18 CHAIRMAN HALL: I'm looking at the tariff  
19 that's at issue here.

20 MR. COOPER: I'm sorry, Chairman. I'm  
21 going to go off my tariffs.

22 CHAIRMAN HALL: And it's -- Sheet 17,  
23 which is the last page.

24 MR. COOPER: Yes.

25 CHAIRMAN HALL: It says, Repairs or

1 maintenance necessary for the customer water  
2 service line, dot, dot, dot, shall be the  
3 responsibility of the customer. Is it the  
4 company's position that replacement is different  
5 than repair or maintenance?

6 MR. COOPER: It's really the company's  
7 position that while the tariff sets out an  
8 obligation for the customer, and, certainly, the  
9 company could -- could enforce that in terms of  
10 forcing the customer to make those expenditures,  
11 that this doesn't prohibit the voluntary  
12 replacement that -- that the company has proposed.

13 That goes back a little bit to what I said  
14 in the opening statement. There's some of that --  
15 setting aside the lead service line replacement  
16 program, there's some of that that goes on every  
17 time they go down the street, especially in  
18 St. Louis County.

19 The process of disconnecting the service  
20 line from the main, installing the main, getting  
21 that back in almost always. And Mr. Aiton would be  
22 a better -- would be the appropriate witness to  
23 talk to about that.

24 It almost always is going to require some  
25 repair of that customer-owned service line. I

1 think it -- I don't think there's anybody that --  
2 that would argue that the company should, after  
3 doing that, send a bill to the -- to the customer  
4 for that.

5 CHAIRMAN HALL: Is -- is the company's  
6 request for an AAO for this customer-owned lead  
7 service line similar to the rate-making treatment  
8 that the company receives for restoration work  
9 generally?

10 In other words, when -- when -- when the  
11 company has to perform a restoration work on  
12 customer property, is -- what is the rate-making  
13 treatment of that?

14 MR. COOPER: So that rolls into, as I  
15 understand it, a plant account and gets treated  
16 like other plant investment -- utility plant  
17 investment.

18 So, ultimately, it would be a part of rate  
19 base and considered in rates as a -- in that  
20 fashion. It is similar, what the company is  
21 requesting, in that that's the goal.

22 The goal is to treat these expenditures in  
23 a way that's similar to investments the company  
24 would make in -- in its own plant, in plant that it  
25 would own on a going forward basis.

1 CHAIRMAN HALL: Okay. When did -- when  
2 did the company start this program?

3 MR. COOPER: Primarily this calendar year,  
4 2017.

5 CHAIRMAN HALL: And -- and how much money  
6 has it expended to date?

7 MR. COOPER: Well, I'm not sure I can give  
8 you the date, Chairman. It's -- it's projected  
9 that it will be around \$2 million in this -- by the  
10 end of this calendar year.

11 CHAIRMAN HALL: And what is the projection  
12 for how much it would include up to the effective  
13 date of new tariffs in the currently pending rate  
14 case?

15 MR. COOPER: Well, I would ask that you --  
16 Mr. LaGrand would be our witness that would have  
17 that number, a more specific number than I would.

18 In his rebuttal testimony, on page 3, at  
19 that point in time, it was estimated to on  
20 8.9 million.

21 CHAIRMAN HALL: Well, what do you -- what  
22 do you believe the appropriate standard is that the  
23 Commission should employ in making this decision?

24 MR. COOPER: Well, in our application, I  
25 think -- and some of our direct testimony, we've --

1 we've circled around the -- the more traditional.  
2 That's what I would call the AAO standard,  
3 extraordinary standard that's applied to costs to  
4 be deferred.

5 CHAIRMAN HALL: So extraordinary and  
6 materiality?

7 MR. COOPER: Well, materiality is  
8 interesting. In this case, I think it truly --  
9 it's material under anybody's -- under the  
10 definitions that have been thrown out before  
11 because it's greater than 5 percent.

12 Having said that, there's some -- there is  
13 a Commission case, in fact, as a past  
14 Missouri-American case that points out that while  
15 there's a materiality standard in the gas and  
16 electric USOA, there's not one in the NARUC USOA  
17 for water companies.

18 So I hesitate to say that's necessarily a  
19 standard for a water company. However, in this  
20 case, it's -- the facts kind of make it -- that  
21 legal question I won't say irrelevant, but make it  
22 less important because they clearly exceed that --  
23 that percentage anyway.

24 CHAIRMAN HALL: Is -- is -- is American  
25 Water engaging -- not -- Missouri-American, but is

1 -- is American Water or any of the subsidiaries  
2 nation-wide doing a program similar to what  
3 Missouri-American is doing?

4 MR. COOPER: The answer is yes. And  
5 Mr. Naumick would be most familiar with that.

6 CHAIRMAN HALL: And -- and would he be  
7 able to explain the -- the situation in  
8 Pennsylvania and the -- the agreement that was  
9 reached there, the status of that?

10 MR. COOPER: He would certainly be the  
11 right person to ask. But he'll have to tell you  
12 what his level of knowledge is in regard to  
13 Pennsylvania.

14 CHAIRMAN HALL: Would -- would -- would --  
15 would he also be the one to -- to ask -- no. Never  
16 mind. Okay. I have no further questions.

17 JUDGE PRIDGIN: Thank you. Further Bench  
18 questions?

19 COMMISSIONER STOLL: No questions.

20 COMMISSIONER COLEMAN: Thank you.

21 JUDGE PRIDGIN? Mr. Cooper, thank you.  
22 DED, Mr. Bear, when you're ready, sir.

23 MR. BEAR: Thank you, your Honor.

24 OPENING STATEMENT

25 BY MR. BEAR:

1           The Department of Economic Development's  
2 concerns have always been, as it says in the name,  
3 economic development. And what we've empirically  
4 known is that if there is a health crisis or an  
5 environmental concern that, oftentimes, that can  
6 undermine the ability for DED and the State to have  
7 economic growth.

8           We've seen this in Flint and kind of seen  
9 that whenever there is a concern about health and  
10 safety in a community because, ultimately, the  
11 foundation of every economic development proposal  
12 that we do in the Department is based upon a strong  
13 community incentive cycle.

14           And it's become clear that when a crisis  
15 does occur and people feel that they do not have  
16 safe and adequate access to drinking water, the  
17 cycle of this investment is real and  
18 non-controversial.

19           In OPC's testimony, it describes the issue  
20 with Freddie and Fannie, Freddie Mac and Fannie Mae  
21 not accepting mortgages out of Flint, Michigan, in  
22 the aftermath of the lead crisis in their water  
23 supply.

24           Thankfully, we don't have a crisis today.  
25 But the company has presented an option to the



1 Commission to start addressing it before it becomes  
2 an outright crisis. And, ultimately, DED's  
3 position is that that concern is reasonable. And  
4 it should be acted upon.

5 While DED takes no position on the  
6 accounting treatment that should be used in this  
7 case, whether it's an AAO or perhaps a debit  
8 company, it's clear that the company is trying to  
9 do the right thing here and is engaging in the type  
10 of behavior that we would like from a regulated  
11 entity; that is, being proactive, identifying a  
12 problem and providing a solution today rather than  
13 one that will be arrived at after two years of  
14 study.

15 That's not to say that this is the perfect  
16 proposal Al from the company to address this risk.  
17 There are certain concerns that DED does have about  
18 moving forward with customer-owned replacement as  
19 they go through main water replacement.

20 And that's -- you know, there's really no  
21 focus on the highest risk areas of exposure of lead  
22 throughout the State. There's also concerns that  
23 we have about the allocation of costs.

24 While it may be appropriate to allocate  
25 and socialize those costs for all residential

1 ratepayers for low income individuals, that  
2 argument starts to lose some merit when we start to  
3 think about high income owners and perhaps other  
4 types of sophisticated entities with the resources  
5 to do lead service cost replacement.

6 But perfect should not be the enemy of the  
7 good. And DED believes that the company has  
8 provided a very reasonable way to go about dealing  
9 with this until we move to the next rate case.

10 With that being said, there is some merit  
11 to a pilot study in order to figure out what the  
12 best way is to address this problem.

13 But the study that's been proposed by OPC  
14 is a little bit too grand in cost and in scope.  
15 And to the extent that a study would be useful in  
16 order to craft public policy, it should be reigned  
17 in with some very reasonable guideposts to prevent  
18 studies for all.

19 I think at the core of this concern is  
20 that Missouri-American should not pay for a study  
21 that defines the State's policy at large. That's  
22 something for the General Assembly to appropriate  
23 and to be carried out in a manner that's not just  
24 going to burden one class of ratepayers for one  
25 regulated utility.

1           Instead, the study should be limited only  
2 to Missouri-American's areas that they service. It  
3 should be limited in time and scope and, also, in  
4 money.

5           One of the concerns that DED has observed  
6 is that taking a percentage of the amount of  
7 recovery that's being proposed by OPC could present  
8 a study cost approaching seven figures.

9           And, frankly, when we look at other  
10 studies that DED has done and the Division of  
11 Energy has done on other regulated utility rates,  
12 it's just far and above even the most ambitious  
13 scopes as far as costs.

14           DED would propose a -- a pilot study of no  
15 more than \$150,000 limited in scope, limited in  
16 time. But that study should not defer action  
17 today.

18           And that's why the company's proposal to  
19 move forward in the way that it has presented today  
20 is appropriate until we figure out what the perfect  
21 is. For now, the good is good enough.

22           Today, we will have testimony -- hopefully  
23 today we'll have testimony from Martin Hyman, who  
24 will present these views. Beyond the views just  
25 expressed DED has no further view about accounting

1 treatments or other types of legality of the AAO in  
2 this context. Thank you.

3 JUDGE PRIDGIN: Mr. Bear, thank you. Any  
4 Bench questions?

5 CHAIRMAN HALL: No questions.

6 COMMISSIONER STOLL: No questions.

7 JUDGE PRIDGIN: Okay. Thank you. From  
8 staff? Ms. Mers, when you're ready.

9 MS. MERS: Good morning, Judge. Good  
10 morning, Commissioners.

11 COMMISSIONER STOLL: Good morning.

12 COMMISSIONER COLEMAN: Good morning.

13 OPENING STATEMENT

14 BY MS. MERS:

15 MS. MERS: I have here at Staff's table  
16 the route cause of all the issues you're going to  
17 hear about today.

18 And that's such a small pipe to cause such  
19 a great deal of controversy. That right there is  
20 a lead pipe that has been pulled from a service  
21 line replacement during a water main replacement in  
22 St. Louis County.

23 That's the one if you'd read the testimony  
24 is Staff Witness Jonathan Dallas that he described  
25 and was a part of it.

1           And pipes such as this all over St. Louis  
2 County, all over Missouri, all over the nation have  
3 become a focal point in the fight to end lead  
4 poisoning because there's grave human health  
5 impacts that elevated blood levels cause.

6           And as a nation, we have developed  
7 programs to eradicate lead in paint, lead in  
8 gasoline and lead in soil.

9           And now after the events of Flint,  
10 Michigan, we have to face the most common way that  
11 lead poisoning can get into our drinking water,  
12 which is through the lead service pipelines.

13           And this must be addressed because study  
14 after study for the past decade has consistently  
15 demonstrated that there is no safe level of lead.  
16 There's just absolutely no safe level of lead.

17           And because we are at the forefront of  
18 exploring possible ways to safely remove the  
19 numerous lead service lines in a way to mitigate  
20 costs to ratepayers, the Commission is presented  
21 with the case before you today.

22           Missouri-American's request is a  
23 significant extraordinary undertaking.  
24 Missouri-American is proposing to remove the  
25 customer-owned portion of the lead service line as

1 part of their main replacement activity.

2 Generally, customers are responsible for  
3 their maintenance and repair of their portion of  
4 the service line. But Missouri-American is  
5 requesting recovery for undertaking removal of lead  
6 service lines owned by the customer as an  
7 increasing body of research recommends full lead  
8 service line removal as a best practice because  
9 that reduces the risk of a lead contamination  
10 event.

11 Replace only the portion of a lead service  
12 line that's owned by the company but leaving the  
13 customer-owned portion of the lead service line  
14 intact has been shown to increase lead levels in  
15 the water because the protective scaling is  
16 dislodged.

17 And Ms. Aslin can show you my handy prop a  
18 little closer because she can show you where this  
19 pipe, when it was cut, this dislodged scaling has  
20 been knocked loose, which is what increases the  
21 lead leeching into the drinking water. So if  
22 anybody wants to touch it, we have gloves.

23 But -- and -- and obviously, that gross  
24 build-up is actually what's, you know, good for  
25 human health, which is shocking to me. But that's

1 what's protecting the lead from leeching into your  
2 water.

3 Although replacing the entire lead service  
4 line is a best practice, the reality is that many  
5 homeowners will not be able to undertake such a  
6 project due to the prohibitive cost. And,  
7 therefore, the synergy of Missouri-American's  
8 planned main replacements, they can be lost.

9 So Missouri-American is here today to  
10 request the AAO, which staff supports, that allows  
11 them an opportunity, but it does not guarantee them  
12 a recovery of costs that's they have or will have  
13 expended from January 2017 to May 31st, 2018, in  
14 replacing customer-owned lead service lines during  
15 the regularly scheduled main replacements, which  
16 both mitigates the potential for a lead crisis, but  
17 also achieves practical cost reductions by taking  
18 advantage of the construction work that's already  
19 been completed or started.

20 As Staff Witness Jonathan Dallas notes in  
21 his testimony, this is both the logical time to  
22 replace customer-owned portions of the service line  
23 as both the service line and the main have already  
24 been unearthed and exposed.

25 That is common sense to complete all the

1 work at once rather than re-excavating the property  
2 and the road in the future at a greater expense.

3 Now, the opponents to  
4 Missouri-American's proposal seems to suggest that  
5 Missouri-American should re-bury any lines it  
6 encounters until more information about the dangers  
7 of lead and what exact amount of lead poisoning you  
8 may receive from a partial line service replacement  
9 exist.

10 The testimony cites some various unknowns  
11 such as the precise, exact costs that lead service  
12 line replacements could entail in the future.

13 Firstly, Missouri-American's proposal is  
14 not, as OPC claims, an indefinite blank check. It  
15 is, rather, a request for an accounting authority  
16 to book as an asset money that has or will be  
17 expended from January 1st, 2017, to May 31st, 2018.

18 Any ongoing lead service replacement  
19 program expenses beyond those points should be  
20 proposed as part of Missouri-American's general  
21 rate case.

22 Second, Staff used Missouri-American's  
23 proposal as akin to insurance. You don't get  
24 property insurance once you've been hit by the  
25 hurricane. You do it before the hurricane as to



1 minimize your damages and expense.

2 So even if we disregard the expert opinion  
3 of Missouri-American's technical witnesses in  
4 coming up with their figures for the amount of lead  
5 pipes in the service territory and you look at  
6 OPC's proposed high end of \$180 million in  
7 preventive cost, that is still significantly lower  
8 than the \$480 million dollars in economic and  
9 health damages that Flint, Michigan, has incurred  
10 since its life crisis.

11 And that doesn't include the drop in  
12 average life expectancy for Flint residents, IQ  
13 impacts, and approximately 198,276 fetal deaths and  
14 miscarriages due -- from 2013 to 2015 due to lead  
15 exposure.

16 The best time to mitigate damages is not  
17 in the middle of a lead crisis. With no safe limit  
18 for lead, that point, it is too late.

19 I mean, the agency that's charged with  
20 representing the public, I mean, it's a little  
21 puzzling to me that they're suggesting that a known  
22 human health hazard like lead service lines should  
23 remain in the ground.

24 I think a refusal to allow lead service  
25 line replacements without OPC's necessary and

1 costly studies that would be born solely by  
2 Missouri-American ratepayers, as we stated, makes  
3 the perfect enemy of the good because even OPC's  
4 testimony admits that the practice of partial lead  
5 service line replacements is flawed.

6           Commissioners, it's really important today  
7 to remember the question before you for your  
8 consideration is whether or not the company has  
9 met the standard to receive your authorization on  
10 a specific accounting authority treatment for  
11 dollars that the company has already spent or may  
12 spend over the next six months.

13           An AAO is not a guarantee recovery of  
14 these dollars, nor does your decision today  
15 regarding the AAO approve or deny the company from  
16 continuing the lead service line replacement that  
17 it has proposed.

18           OPC has focused much about what it thinks  
19 the company is doing could be better, but has not  
20 put forward credible testimony on why an AAO should  
21 not be granted.

22           So in conclusion, Staff supports  
23 Missouri-American's request for an AAO as replacing  
24 the customer-owned portion of the service line as  
25 an extraordinary, non-recurring action that has a

1 significant impact on their earnings if not allowed  
2 to be considered for recovery.

3 Staff believes that since these projects  
4 are similar to plant and service costs during the  
5 period a plant is under construction and not  
6 eligible for inclusion of rate base, we recommend  
7 that it be treated like AFEDC and its carrying  
8 costs should be calculated using American Water  
9 Works company's short-term debit rate. I'm also  
10 here to answer any questions that you might have.

11 JUDGE PRIDGIN: Thank you. Bench  
12 questions?

13 CHAIRMAN HALL: Good morning.

14 MS. MERS: Good morning.

15 CHAIRMAN HALL: Should the probability of  
16 recovery in rates be one factor that we take into  
17 account when determining whether or not an AAO is  
18 appropriate?

19 MS. MERS: To -- to my knowledge, I think  
20 that there has been AAOs granted with a probability  
21 of recovery has not been assured.

22 I'm thinking of the -- I believe the  
23 Joplin tornado case where that has occurred, AAO --  
24 granted the AAO before recovery was not granted in  
25 the -- in the later rate case.

1           So I -- I don't think that that is the  
2 end-all be-all standard of looking at it as if you  
3 grant this today that it --

4           CHAIRMAN HALL: Well, I would agree that  
5 it shouldn't be the be-all standard, but is it a  
6 factor that we should take into account?

7           MS. MERS: I believe you can take it into  
8 account.

9           CHAIRMAN HALL: Should we take it into  
10 account?

11          MS. MERS: I think you should with the  
12 recognition that a -- an approval of the AAO today  
13 would not mean that every single cost captured are  
14 incurred.

15          CHAIRMAN HALL: Right. It wouldn't -- it  
16 wouldn't bind a future Commission.

17          MS. MERS: Right. Yes. And I don't even  
18 think it would bind this Commission if in the rate  
19 case you find that it is --

20          CHAIRMAN HALL: We will be a future  
21 Commission.

22          MS. MERS: But yeah. And I don't think  
23 that a -- if there's critical issues that any  
24 decision today would -- would tie you down to full  
25 recovery of - of an AAO granted.

1           CHAIRMAN HALL: Does Staff has any  
2 thoughts about what type of criteria -- criteria  
3 the Commission should look at when determining  
4 whether or not recovery is appropriate? Assuming  
5 -- assuming that we grant the AAO and then comes  
6 rate case and -- and the Commission has a -- has to  
7 determine whether or not to allow recovery in  
8 rates, what -- what should the Commission look at  
9 in making that determination?

10           MS. MERS: I would point to the Staff --  
11 or it's the Office of Public Counsel v. PSC 1992  
12 case that talks about the unusual reoccurring  
13 events and transactions of significant effect.

14           I think that if the AAO once deferred  
15 still remain has the significant impact that -- at  
16 -- at the time of the request that it's thought to  
17 have that that makes it more suitable for recovery.  
18 That -- that would be my judge post, guidepost, I  
19 guess.

20           CHAIRMAN HALL: Okay. I have no further  
21 questions. Thank you.

22           JUDGE PRIDGIN: Thank you. Other Bench  
23 questions? Commissioner Rupp?

24           COMMISSIONER RUPP: Yeah. Good morning.

25           MS. MERS: Good morning.

1           COMMISSIONER RUPP: I was listening on --  
2 on my drive in. So if you covered this -- it cut  
3 out a few times, so if you covered this, I  
4 apologize.

5           But OPC has argued that -- that you guys  
6 would be violating your tariffs and you would need  
7 waivers if you were to move forward. That -- what  
8 is -- what is Staff's position that -- would you  
9 need to grant waivers to the company if -- if we  
10 approve this?

11          MS. MERS: Staff does not believe or read  
12 the tariff to prohibit Missouri-American's  
13 program. I think that they're simply offering a  
14 plumber, contractor to work on the customer service  
15 line in conjunction with the project they're  
16 already entailing.

17          But I do think that if the Commission is  
18 concerned about that, that it is a very simple case  
19 then as a part of this case, proposed tariff  
20 language to be proposed and ordered.

21          I don't think a clarification, if that's a  
22 concern of the rights and responsibilities of the  
23 obligation Missouri-American and the customers have  
24 would be inappropriate as a part of this case.

25          COMMISSIONER RUPP: All right. Great.

1 Thank you.

2 JUDGE PRIDGIN: Thank you. Further Bench  
3 questions? All right. Ms. Mers, thank you.

4 MS. MERS: Thank you.

5 JUDGE PRIDGIN: Opening for MECG?  
6 Mr. Woodsmall, when you're ready, sir.

7 OPENING STATEMENT

8 BY MR. WOODSMALL:

9 MR. WOODSMALL: Good morning. David  
10 Woodsmall appearing on behalf of the Midwest Energy  
11 Consumers Group.

12 I'm here today to discuss MECG's thoughts  
13 on Missouri-American's lead service line  
14 replacement proposal and the associated cost  
15 recovery.

16 The important thing to remember about this  
17 is that Missouri-American is seeking to replace  
18 customer-owned lines. And instead of charging that  
19 customer for the replacement of their line,  
20 Missouri-American wants to socialize those costs,  
21 build them in rates and charge everybody else. Not  
22 the customer. Everybody else.

23 There's an old expression, Fools rush in  
24 where angels fear to tread. Based upon the public  
25 outrage on the lead in the drinking water in Flint,

1 Michigan, Missouri-American proposes to rush in  
2 with the solution in Missouri.

3 Rather than study the situation, determine  
4 the scope of the problem and the most cost  
5 effective solution to the problem,  
6 Missouri-American simply asks for a blank check to  
7 replace all the customer-owned lead service lines  
8 in its service territory.

9 Missouri-American has not considered the  
10 fact that many of these homes had internal piping  
11 and appliances that include lead and lead solder.  
12 Therefore, there is a significant question for  
13 whether the replacement of the customer-owned lead  
14 service line will even solve this problem.

15 Even more disconcerting, Missouri-American  
16 has not considered other solutions. For instance,  
17 should we instead look to lead water filters  
18 similar to those used in Flint as well as numerous  
19 other locations around the State of Missouri?

20 After all, if the lead is leeching in  
21 because of piping in the customer's house, why  
22 replace the service line? Give them filters to  
23 solve the problem. None of those solutions have  
24 been considered.

25 MECG -- Missouri-American has simply



1 reached for the solution that will inflate the  
2 earnings of its shareholders, the replacement of  
3 customer-owned service lines.

4 This is potentially a large problem that  
5 needs study and clear thinking from individuals  
6 with simply more than shareholder profits. It  
7 takes deep thinkers that want to fix the potential  
8 problems in the most efficient manner possible.

9 For this reason, MECG supports OPC's  
10 proposed pilot program. Dr. Marke can answer more  
11 questions about this program. But at a basic  
12 level, it seeks to study the problem, determine the  
13 scope of the problem, how many service lines we're  
14 looking at and consider potential solutions as well  
15 as the cost.

16 MECG does not make this recommendation  
17 lightly. Suffice it to say, this has involved  
18 considerable soul-searching on the part of my  
19 clients.

20 Bottom line, MECG feels that it is better  
21 to study this problem rather than simply throwing a  
22 \$180 million check at Missouri-American to replace  
23 service lines that may, in actuality, exacerbate  
24 the problem.

25 So what is MAWC actually seeking?

1 Missouri-American wants to replace all  
2 customer-owned service lines and socialize the  
3 costs of replacing those lines by including the  
4 cost in rates.

5 In this way, Missouri-American  
6 shareholders earn a hefty return for this  
7 investment. All total, shareholders will earn a  
8 return, including taxes, of approximately 11 and a  
9 half percent.

10 What is the potential scope? As reflected  
11 in its direct testimony, Missouri-American  
12 estimates there are 30,000 lead service lines in  
13 its service area.

14 Initially, it estimated that the cost may  
15 be \$3,000 per service line. Its surrebuttal, it  
16 has raised that estimate and now believes it will  
17 cost \$6,000 per service line.

18 Therefore, we are talking about  
19 Missouri-American investing \$180 million to replace  
20 piping that belongs to the customer.

21 Missouri-American investing \$180 million  
22 to replace piping and charging all other customers  
23 for that cost.

24 It is important to note, also, that  
25 Missouri-American did not wait for Commission

1 approval to begin replacing these service lines.  
2 Instead, it just jumps in.

3 While this case was filed in May,  
4 Missouri-American began unilaterally replacing  
5 these service lines earlier in the year.

6 So let's look at the scope of the program  
7 today. Missouri-American claims in its testimony  
8 that it has already spent a million dollars in 2017  
9 and expects that it will spend a total of two,  
10 million dollars in calendar year 2017.

11 Staff testimony provides us more  
12 information. Staff testimony gives us invoices  
13 that show where this has occurred to date.

14 Specifically, Staff provides in  
15 Mr. Merciel's rebuttal testimony plumbing contract  
16 invoices that were provided by Missouri-American.

17 These invoices are for 11 customer-owned  
18 service line replacements in St. Joe, one in  
19 Jefferson City, two in Mexico, and 57 in Clayton.  
20 Seventy-one invoices, and 57 are in Clayton.

21 Now, one of my big criticisms has been  
22 that this program -- one of my big criticisms has  
23 been that this program is that Missouri-American  
24 simply asks for a blank check so it can replace the  
25 customer-owned service line and then seeks to

1 socialize the cost.

2 But Missouri-American never asked, Can the  
3 customer do this on their own? So later in my  
4 testimony, I propose that customers with homes that  
5 are worth more than a hundred thousand dollars  
6 should be expected to pay this cus -- this  
7 replacement of their customer service line on their  
8 own. Their houses are worth something. Let them  
9 replace it.

10 So using the invoices provided by Staff,  
11 let's look at some of the homes that were affected  
12 to date. I randomly looked at some of the invoices  
13 in Staff' rebuttal testimony.

14 Here's one of the 11 homes that saw a free  
15 service line replacement in St. Joseph. This home  
16 is worth over \$160,000. Yet Missouri-American  
17 simply gave this homeowner a \$5,000 service line  
18 replacement and wants its captive customers to pay  
19 these costs.

20 Here's a picture of the home. It's a  
21 beautiful home in St. Joseph. But the customer  
22 wasn't asked to fork over a single penny for this  
23 service line replacement. Rather,  
24 Missouri-American wants its captive customers to  
25 pay these costs.

1                   And just to show that I'm being  
2 completely transparent and objective, I didn't only  
3 show the nicest homes.

4                   Here is one of two homes in Mexico,  
5 Missouri. This home is worth just shy of \$45,000  
6 and was the beneficiary of a service line  
7 replacement.

8                   So as I said, given my recommendation this  
9 customer would have been -- would have had a  
10 service line available to it because that home is  
11 worth less than a hundred thousand dollars. And  
12 here's a picture of that house in Mexico.

13                   So let's move on to the homes in Clayton.  
14 As mentioned, of the 71 invoices contained in  
15 staff's rebuttal testimony, 57 were located in  
16 Clayton, Missouri.

17                   Let's look at the demographics of these  
18 Clayton homes. Here's a home on Carswold Drive.  
19 While this home is worth just shy of a half a  
20 million dollars, Missouri-American gave this  
21 customer a \$12,000 service line replacement and  
22 didn't ask the customer to fork over a penny.

23                   Here's a picture of that beautiful home in  
24 Clayton, Missouri. Another home in Clayton on  
25 Arundel Place was also the beneficiary. This home

1 is worth just shy of \$700,000, yet  
2 Missouri-American deemed this customer to be so  
3 destitute, apparently, that they gave this customer  
4 an \$8800 service line replacement and expects its  
5 other customers to pay for this.

6 Again, it is important to remember that  
7 these service lines are owned by the customer.  
8 Missouri-American expects its less affluent  
9 customers to pay for Missouri-American's suddenly  
10 generous nature. Here is a picture of that home in  
11 Clayton.

12 Another home in Clayton on Edgewood that  
13 was the unexpected beneficiary. This home is worth  
14 \$650,000 and was given a \$6,000 service line  
15 replacement. Picture of that home. Pretty  
16 impressive home.

17 And finally -- or another home on Arundel  
18 Place. This one is worth in excess of  
19 three-quarters of a million dollars.

20 And the owner was given an \$11,000 service  
21 line replacement and wasn't asked to pay a penny.  
22 Picture of that house.

23 Finally, another home in Clayton worth in  
24 excess of over \$700,000 was given an \$11,000  
25 service line replacement. And here's a picture of

1 that home in Clayton.

2 Again, 71 invoices in Staff's testimony.  
3 Fifty-seven of them in Clayton. These aren't  
4 people in inner city St. Louis. It can't be.

5 People in inner city St. Louis aren't  
6 serviced by Missouri-American. These are people in  
7 the County, by in large, customers that can afford  
8 to pay for these service line replacements on their  
9 own. They own the service line.

10 So let's move on. Let's look a little bit  
11 at Commission jurisdiction. Now I applaud Public  
12 Counsel. They went through the tariffs, and they  
13 cite in their position statement a number of  
14 tariffs that are implicated by this program. And I  
15 agree with Public Counsel.

16 I took a more -- a broader view. Let's  
17 look at the statutes. The Missouri Courts -- the  
18 Supreme Court has said that the -- the Public  
19 Service Commission is a creature of statute and  
20 necessarily must have express statutory authority  
21 for its actions.

22 So let's look at Section 386.025.58 or  
23 .025.59, which defines water system. A water  
24 system is defined as property, quote, owned,  
25 operated, controlled or managed by the utility.

1 That doesn't fit any of this. This is  
2 customer-owned service lines.

3 It's not owned, operated, controlled or  
4 managed by Missouri-American. It is owned,  
5 operated, controlled and managed by the customer.  
6 So there's certainly a question as to whether there  
7 is express statutory authority for the Commission  
8 to reach beyond this definition and allow  
9 rate-making for costs associated with the  
10 customers' property.

11 I ask you to think back a little bit, and  
12 I'm not going to go into depth about this. But  
13 think just in the last year, the -- the position  
14 that you took in KCP&L's electric vehicle charging  
15 station.

16 There the Commission refused to reach  
17 beyond the -- the utility's property and provide  
18 rate-making for costs. Here, Missouri-American  
19 wants you to do that exact thing, reach beyond  
20 their system, reach to customer-owned property and  
21 provide rate-making.

22 The two seem to be somewhat in conflict to  
23 me. And in addition to that obvious conflict,  
24 there are policy arguments that were implicated in  
25 the electric vehicle charging station that I think



1 you should think about when making this decision.

2           Regarding Commission jurisdiction, another  
3 relevant factor is the fact that Missouri-American  
4 attempted to get Legislation proposed and passed  
5 that would have fixed this problem.

6           The General Assembly never even took up  
7 that Legislation. It was referred to committee,  
8 but the Legislation was never even granted a  
9 hearing. The fact that the General Assembly did  
10 not deem this problem suitable for passing  
11 Legislation yet tells me something.

12           And, certainly, the fact that  
13 Missouri-American felt like it needed this  
14 Legislation tends to lead you to believe that there  
15 is not currently Commission jurisdiction. If there  
16 was, why would they need this Legislation?

17           Finally, I want to point out a couple  
18 things. Don't look at this problem simply in a  
19 vacuum. This is all part of the current 340  
20 Missouri-American rate case.

21           Here you see a chart where -- it's rather  
22 small, but a chart of the rate increases that are  
23 coming out of Missouri-American's rate increase.

24           If you go to the charge for St. Louis  
25 Metro, you see customers there in the rate case

1 that are looking at 40 to 50 percent rate  
2 increases.

3 This replacement of customer-owned lead  
4 service lines will certainly exacerbate those  
5 problems.

6 So what are my recommendations? First  
7 off, MECG agrees with Public Counsel that --  
8 utilize a pilot program, study this, look at scope  
9 of the problem, look at the cost, look at who  
10 should be picking up the costs. And look at the  
11 most cost effective means of addressing this  
12 problem.

13 By studying this, we can get  
14 Missouri-specific information that will be valuable  
15 to the General Assembly.

16 I'd also ask that you apply a means test.  
17 If -- there is always a limited amount of money out  
18 there. To the extent we're going to throw money at  
19 this, let's throw it at the people that can't  
20 afford to replace these service lines, these lead  
21 service lines on their own.

22 Certainly, that wouldn't involve  
23 three-quarter of a million dollar houses in  
24 Clayton. You know, the houses in Mexico,  
25 absolutely. But it shouldn't involve 57 homes in

1 Clayton.

2 So let's apply a means test. As I said,  
3 houses that are less than a hundred thousand  
4 dollars. Someone else suggested on a conference  
5 call, we could look at LIHEAP information to the --  
6 where a customer is relative to low income. You  
7 know, we can make it some percentage of that.

8 There are ways to tackle this. But,  
9 certainly, letting Missouri-American have a blank  
10 check to replace service lines in Clayton isn't  
11 answer.

12 We agree with Staff and Public Counsel  
13 that if you do defer any costs it should be at the  
14 utility's short-term debt cost.

15 Finally, we believe that costs should  
16 remain in the district in which they are incurred.  
17 We don't want to see a situation in which we  
18 replace service lines in Clayton and expect  
19 utilities -- or expect customers in Joplin to pick  
20 up those costs. So let's try to keep the costs in  
21 the district in which they are incurred.

22 And, finally, we ask that they are --  
23 remain in the class in which they are incurred. I  
24 don't know if there are industrial customers that  
25 have lead service lines. I would think they should

1 be responsible for paying those lead service lines.

2 But just as they should be responsible for  
3 their own costs, I don't believe industrial  
4 customers should pick up the cost of residential  
5 service line replacement. Thank you.

6 JUDGE PRIDGIN: Thank you. Bench  
7 questions? Mr. Chairman?

8 CHAIRMAN HALL: Just a few. You come  
9 right out and make the argument that this program  
10 is -- is part and parcel of a -- a design of the  
11 condition to enrich shareholders.

12 MR. WOODSMALL: Absolutely.

13 CHAIRMAN HALL: And I assume you don't  
14 take that kind of charge lightly, because that  
15 would be a -- a rather strong charge to make  
16 without a good amount of evidence and support for  
17 it.

18 MR. WOODSMALL: Sure. And -- and I think  
19 if this is where you're headed that the best  
20 example of that is Staff and Public Counsel both  
21 say that the deferred costs should be at short-term  
22 debit rate. The company wants their full rate of  
23 return on this. So it --

24 CHAIRMAN HALL: So let me ask you this.  
25 And I'll -- I'm taking your hundred --

1 \$180 million figure. I think the company has a  
2 somewhat different figure on that.

3 But let's -- but let's take your  
4 \$180 million figure. If the company were to use  
5 that 180 million dollars on projects that you  
6 believe are within -- if they spend \$180 million on  
7 -- on simply replacing a company-owned projects --

8 MR. WOODSMALL: Uh-huh.

9 CHAIRMAN HALL: -- what would -- what  
10 would the return be on that?

11 MR. WOODSMALL: The return would be the  
12 same as if -- as I seek on -- for the lead service  
13 line replacement.

14 CHAIRMAN HALL: Well, I guess my point is  
15 if the company was solely interested in profit,  
16 couldn't they take that \$180 million and use it on  
17 projects that are solely company-owned projects?

18 MR. WOODSMALL: They do.

19 CHAIRMAN HALL: And is it your position  
20 that they don't have a \$180 million worth of mains  
21 for replacement or -- or other company-owned --

22 MR. WOODSMALL: I don't know how much  
23 money they have. Certainly --

24 CHAIRMAN HALL: Well, it's not how much  
25 they have. But it's the back log of projects

1 available. I mean, isn't it -- isn't it -- isn't  
2 it very clear, clear that they could spend a  
3 \$180 million quite easily on company-owned  
4 infrastructure, and then we wouldn't even be here  
5 today?

6 MR. WOODSMALL: They seek to do both.

7 CHAIRMAN HALL: Right.

8 MR. WOODSMALL: They -- they seek to do  
9 both. So we're not seeing just the rate increase  
10 associated with replacing water treatment plant.  
11 The company wants to have the rate increase  
12 associated with the water treatment plant as well  
13 as the rate increase associated with replacing  
14 customer-owned service lines.

15 CHAIRMAN HALL: I guess my point is that  
16 if -- if they have X amount of money available to  
17 invest, and they could invest that in company-owned  
18 infrastructure or company-owned and customer-owned  
19 infrastructure, what difference -- why would they  
20 be motivated by profit to do customer and company  
21 if they could get the same return by putting all of  
22 that into company-owned.

23 And I think it's crystal clear that they  
24 have a back-log of projects available of a -- on  
25 company-owned infrastructure.

1 MR. WOODSMALL: So I -- I -- I can't agree  
2 with the concept that the company is doing this  
3 just out of the goodness of their heart.

4 CHAIRMAN HALL: Because that would just --  
5 why? Why?

6 MR. WOODSMALL: Because -- because if  
7 they're seeking -- if it was done out of the  
8 goodness of their heart, they wouldn't be seeking  
9 the inflated return that they're seeking. Both --  
10 and that's a question that needs to be asked.

11 CHAIRMAN HALL: Well, they're seeking the  
12 same return that they would receive if they were  
13 spending that money on company-owned  
14 infrastructure.

15 MR. WOODSMALL: You're assuming it's an if  
16 one, not the other. It's not an if one -- if you  
17 do the customer-owned service lines, you can't do  
18 water treatment plant.

19 The company wants to do both. They --  
20 they seek an opportunity for investment, which  
21 otherwise shouldn't be there because it's  
22 customer-owned property.

23 CHAIRMAN HALL: Okay. Well, we'll move  
24 on. I'm -- I'm intrigued with your statutory  
25 jurisdiction argument. Do you -- do you take the

1 position that all restoration on customer-owned  
2 property is -- is outside this Commission's  
3 jurisdiction? So --

4 MR. WOODSMALL: All restoration on  
5 customer-owned property?

6 CHAIRMAN HALL: Right. So if the company  
7 goes in working on -- on company-owned service  
8 lines and does damage to the customer's sidewalk,  
9 do you think that it would be inappropriate for --  
10 for the company to repair that sidewalk and include  
11 that as restoration work?

12 MR. WOODSMALL: I think that is incidental  
13 to the work they are doing on --

14 CHAIRMAN HALL: So is incidental the  
15 keyword there? Is that the standard?

16 MR. WOODSMALL: I don't know. When you  
17 talked about sidewalks, I started to hesitate  
18 because, frankly, I don't know who owns the  
19 sidewalk.

20 You know, so -- but let's make it a more  
21 clear example. If the customer's yard gets torn up  
22 and they have to lay some sod, that's clearer. I  
23 think it is purely incidental to the overall goal  
24 of working on the company-owned mains. This  
25 can be done by the customer. The company can still



1 do the replacement of their service lines without  
2 replacing the customer-owned service line. It's  
3 not necessary. Putting down --

4 CHAIRMAN HALL: Well, isn't there a great  
5 deal of research out there that the partial service  
6 line replacement is -- is -- is actually  
7 detrimental?

8 MR. WOODSMALL: Well, they're -- I can't  
9 speak for the research. There is some research,  
10 certainly, that is in the record.

11 But that same question then applies where  
12 does it stop? If -- if you feel like you need to  
13 replace the customer-owned service line because  
14 it's detrimental, then why do you stop there?  
15 Don't you have to replace the customer lead pipe  
16 and lead solder fittings in their house?

17 CHAIRMAN HALL: So are you modifying your  
18 position now to support the AAO including  
19 customer-owned plumbing?

20 MR. WOODSMALL: No. I'm saying that the  
21 Commission tariffs are very clear as to where it  
22 stops.

23 CHAIRMAN HALL: Okay. Let me switch gears  
24 again. Do you believe -- I'm going to ask you the  
25 same question I asked Staff Counsel.

1           Do you believe that the probability of  
2 recovery is a factor that we should take into  
3 account when determining whether or not to  
4 establish the AAO?

5           MR. WOODSMALL: I -- that's a tough  
6 question. I -- I don't know if the Commission  
7 should consider probability of recovery because, as  
8 you pointed out, you can't bind a future  
9 Commission.

10           I -- I think to the extent you should  
11 provide guidance. For instance -- and this is the  
12 point of my recommendation. Let's don't socialize  
13 the costs for homes that are worth more than a  
14 hundred thousand dollars.

15           We could leave that for the rate case.  
16 You know, we could get in a rate case and say it  
17 was imprudent to give away a service line  
18 replacement to a home that's worth a million  
19 dollars. But why not give that guidance to the  
20 company?

21           So I -- I think you can give guidance  
22 while you're here. So whether you call it the  
23 probability of recovery or simply providing  
24 guidance, I don't know. But you can't bind a  
25 future Commission as you pointed out.

1 CHAIRMAN HALL: Okay. Thank you.

2 MR. WOODSMALL: You're welcome.

3 JUDGE PRIDGIN: Commissioner Kenney?

4 COMMISSIONER KENNEY: Thank you. Good  
5 morning, Mr. Smallwood.

6 MR. WOODSMALL: Good morning.

7 COMMISSIONER KENNEY: You know, every year  
8 when I turn my business Quick Books over to my  
9 accountant, he says it's like continuing education  
10 all over again because it's such a mess. That's  
11 kind of what I get when I hear tons of attorneys  
12 just arguing back and forth because I have two  
13 children that are attorneys.

14 But I have a question. You have no  
15 problem with replacement of lines that are company  
16 -- on the company side of the meter, correct?

17 MR. WOODSMALL: No re -- no problem. as  
18 long as there are lines that need to be replaced, I  
19 think it should be done in an orderly fashion. You  
20 shouldn't replace a 100-year-old line when there's  
21 a 200-year-old line. No.

22 COMMISSIONER KENNEY: Lines that have lead  
23 in them.

24 MR. WOODSMALL: No.

25 COMMISSIONER KENNEY: You have no problem

1 with that?

2 MR. WOODSMALL: No.

3 COMMISSIONER KENNEY: And we can't make a  
4 customer do anything, right? If they don't want to  
5 replace their lines, they don't have to?

6 MR. WOODSMALL: No.

7 COMMISSIONER KENNEY: Do you think the  
8 company has a liability if they know that their  
9 recent studies show that once they disturb a line  
10 it's going to cause lead to leech in the system? I  
11 mean, that's what recent studies show?

12 MR. WOODSMALL: Well, and I think Public  
13 Counsel addresses that in their testimony about the  
14 company giving notice to the customers. That --

15 COMMISSIONER KENNEY: That if they  
16 disturbed a line, it could cause lead to leech into  
17 their system?

18 MR. WOODSMALL: And the -- the extent of  
19 the problem is unknown. You have a lead service  
20 line already. You may have lead in your house.  
21 Filters are available. That kind of education, I  
22 think, is legitimate.

23 Part of my problem is the slippery slope  
24 that we're getting on. This is for the water  
25 company. But imagine a situation where based upon

1 the decision here the gas company says, Okay, we  
2 want to start replacing furnaces and hot water  
3 heaters. Where is that going to stop? Electric  
4 utility companies --

5 COMMISSIONER KENNEY: Let's not go down  
6 that road. But I -- I understand your concern. I  
7 -- I do.

8 But I don't think a means test has  
9 anything to do with it because just because someone  
10 doesn't have -- we do one -- we -- we take one  
11 segment of society, and we are going make sure  
12 that, Okay, you're not going to have any lead in  
13 your water, but we don't do it on this side because  
14 you may have more money. I mean, I -- but overall,  
15 I can understand your -- your --

16 MR. WOODSMALL: Well, if -- if that is the  
17 policy direction you want to go, I understand that,  
18 then let's move this. The company wants to replace  
19 the customer-owned service line, charge everybody  
20 else and then give it back to the customer.

21 If we're going to say we're not going to  
22 apply a means test, let's make this part of  
23 company's property. You know, if the company is  
24 going to replace it and there's not going to be any  
25 means test, let's have them do it for everybody.

1 They don't want do that.

2 COMMISSIONER KENNEY: But if they did do  
3 it for everyone, you'd be okay with that?

4 MR. WOODSMALL: No. I don't think that  
5 that -- typically, the Commission has always tried  
6 to look at -- and this is where I draw the analogy  
7 to the electric vehicle charging station.

8 Let's look at what is the necessary scope  
9 of the monopoly? And, certainly, the service mains  
10 running down the street are a necessary part of the  
11 monopoly.

12 The line in your yard coming into the  
13 house isn't a necessary part of the monopoly. You  
14 could have any plumbers do that. And maybe they  
15 should.

16 You said on the electric vehicle charging  
17 station it's not a necessary part of the monopoly.  
18 So why extend the utility's monopoly to this  
19 segment?

20 COMMISSIONER KENNEY: Thank you.

21 JUDGE PRIDGIN: Further Bench questions?  
22 Commissioner Rupp?

23 COMMISSIONER RUPP: I thoroughly was  
24 expecting to see a picture of my house on your  
25 slides.

1 MR. WOODSMALL: Do you live in Clayton?

2 COMMISSIONER RUPP: I'm not -- I'm in  
3 Missouri-American Water. I just --

4 MR. WOODSMALL: I don't know your address  
5 either, so you're safe.

6 JUDGE PRIDGIN: Any other Bench questions?  
7 Anything?

8 COMMISSIONER STOLL: No.

9 JUDGE PRIDGIN: Mr. Woodsmall, thank you.  
10 I believe MIEC has waived opening. Consumers  
11 Counsel, Mr. Coffman?

12 MR. COFFMAN: Yes. I'll be brief, if I  
13 can just sit here. The --

14 JUDGE PRIDGIN: Certainly.

15 OPENING STATEMENT

16 BY MR. COFFMAN:

17 MR. COFFMAN: Consumers Council of  
18 Missouri shares the jurisdictional concerns that  
19 you heard from Mr. Woodsmall.

20 We think that it is a slippery slope to be  
21 providing the opportunity to earn on property  
22 that's not owned or controlled by the utility, it's  
23 not essential for providing safe and adequate  
24 service to the system.

25 We think this is a -- a very serious

1 problem. We're not convinced that this particular  
2 solution is really getting at the majority of the  
3 problem or it's really the right way to go about  
4 it. But we certainly support the Office of Public  
5 Counsel's pilot program. We think that could give  
6 us more insight. Thank you.

7 JUDGE PRIDGIN: Mr. Coffman, thank you.  
8 Bench questions?

9 CHAIRMAN HALL: No questions. Thank you.

10 COMMISSIONER STOLL: No questions.

11 COMMISSIONER RUPP: No questions.

12 JUDGE PRIDGIN: Public Counsel?

13 MR. OPITZ: Thank you, Judge.

14 JUDGE PRIDGIN: Mr. Opitz, when you're  
15 ready, sir.

16 COMMISSIONER COLEMAN: Thank you.

17 COMMISSIONER STOLL: Thank you.

18 COMMISSIONER RUPP: Thank you.

19 COMMISSIONER KENNEY: Thank you.

20 CHAIRMAN HALL: Thanks.

21 OPENING STATEMENT

22 BY MR. OPITZ:

23 MR. OPITZ: May it please the Commission.  
24 Before I get into my prepared remarks, I want to  
25 respond to some statements by the Staff.



1 Frankly, from what I heard, it's pretty  
2 clear that the Staff either did not read or does  
3 not understand Public Counsel's proposal.

4 We're not saying to cease this program of  
5 replacement right now until the pilot is approved.  
6 We're trying to say, Look, this pilot is designed  
7 to permit you to continue doing that.

8 I heard reference to punitive facts that  
9 -- that I've -- I've scoured the record and I don't  
10 know where those facts are in the record.

11 And I think it's irresponsible and  
12 dangerous to be fomenting here in that way in a  
13 public forum.

14 Public Counsel has proposed a pilot  
15 program because the company's proposal is flawed  
16 from a legal perspective, from a policy perspective  
17 and from an accounting perspective.

18 Other than those three issues, the only  
19 questions remaining are, I guess, who, what, when,  
20 where, why, how and who pays?

21 Boil down to it here, what the company is  
22 asking the Commission to do, and understand it's  
23 been modified this morning by the company's Counsel  
24 is approve cost recovery of expenses it has  
25 incurred violating its tariff.

1           The company began replacing customer-owned  
2     service lines in January of 2017.  Importantly, it  
3     began doing so without making any demonstration  
4     whether it's program was legal, without  
5     demonstrating the program was necessary and without  
6     providing any cost benefit study and without  
7     consideration of any effects on public disclosure.

8           The company chose to skip over all of  
9     that.  And, instead, they have focused entirely on  
10    cost recovery.  They see a pipe.  They replace a  
11    bit more of the pipe.  Think raise rates.  That's  
12    their program.

13          As I alluded to, a skeptical mind might  
14    question whether the motivation behind this project  
15    endeavored in such a manner is really about safety  
16    or its about some people in New Jersey coming up  
17    with a plan to turn an unrelated crisis in Michigan  
18    into a profit opportunity, the return of and return  
19    on \$180 million or more.

20          That \$180 million isn't the company's high  
21    end.  That's the company's estimate of 30,000 pipes  
22    in their service territory times the company's  
23    revised estimate of \$6,000 per pipe on average.  So  
24    that is the company's estimate  
25    \$180 million.

1           If we take the revised figures of -- of  
2     the company's 6,000 per pipe and apply it to what  
3     Public Counsel believes there are available in  
4     Missouri, we're approaching two billion dollars.

5           You know, as -- as I will explain a little  
6     bit more in detail, and it may be modified by -- by  
7     the company's position that they made in opening --  
8     but the company is really in anywhere -- in their  
9     application, in their position statement and in  
10    their prefiled testimony, they seem to be asking  
11    for rate recovery.

12           It asks for a promise -- it ask for a  
13    promise of rate recovery implicitly when they ask  
14    for an order granting a regulatory asset.

15           And it asks for regulatory explicitly when  
16    it asks for specific treatment and language stating  
17    that the regulatory asset will remain in place  
18    until all eligible costs are amortized and  
19    recovered in rates. That is asking for rate of  
20    recovery.

21           Now I understand the company has since had  
22    the good sense to drop that. But it still remains  
23    in their application, it remains in their pre-filed  
24    system and it remains in their Petition.

25           These decisions that the company is asking

1 you to make are decisions you can't make outside of  
2 a rate case.

3 But before discussing the accounting  
4 issue, this Commission must examine the legality of  
5 what the company is doing and what it proposes to  
6 continue doing.

7 Make no mistake. This isn't about just  
8 this stub period that they're trying to tell you,  
9 Well, it's only for the period of the rate case.  
10 If they get what they want, they intend to continue  
11 doing this.

12 Which brings me to the first issue for the  
13 Commission to determine -- to determine. Does  
14 Missouri-American's tariff permit the company to  
15 replace customer-owned service lines?

16 Put simply, no. The company's tariff very  
17 clearly explains that the kind of work being done  
18 here by Missouri-American is the responsibility of  
19 the customers.

20 Whether it is installation, construction,  
21 maintenance or replacement, if it's on that  
22 customer-owned pipe, the pipe, the responsibility  
23 does not change.

24 Yes, they maybe required to replace  
25 sidewalk or yard in the normal course, but their

1 tariffs talk about pipe.

2 The company's position statement that the  
3 tariff language neither requires Missouri-American  
4 to nor prohibits Missouri-American for replacing a  
5 customer service line is nonsense. Of course it  
6 does. The tariff language is there in black and  
7 white.

8 Maybe the Commission may be able to permit  
9 the company to do it. That's going to be part and  
10 parcel of our proposed pilot program.

11 But the company cannot decide to hoist  
12 those costs onto all customers. That's what those  
13 tariffs are designs to prohibit.

14 Astonishingly, the Staff's position on  
15 this point is that it has no formal position. It  
16 suggests that one paragraph is all that's needed to  
17 cure the legal deficiency.

18 Well, what language are they proposing?  
19 What's this one paragraph? There is no proposal by  
20 the company or the Staff to accomplish this goal.  
21 As you've heard, the company doesn't even believe  
22 that it is a problem.

23 Second, this problem is broader than a  
24 single paragraph. In addition to replacing  
25 customer-owned property, the company is entering

1 unauthorized contracts and unlawfully assuming  
2 additional liability.

3 When the company assumes liability, that  
4 liability gets born by all other ratepayers. In my  
5 slide show, I've listed the relevant -- what I  
6 believe to be the relevant portions of the tariff.  
7 I've listed the company's actions, and I've  
8 asserted that I believe there to be a violation.

9 Aside from the very clear tariff  
10 violations, there is a broader question here of  
11 jurisdiction. And MCEG alluded to it. Can the  
12 question -- can the Commission require replacement  
13 of customer-owned property?

14 You've seen this in nearly every case.  
15 It's a UCCM quote explaining that the Commission is  
16 a creature of statute and your authority is limited  
17 by what the statutes say.

18 The company's proposed draft in the recent  
19 Legislative session demonstrates that even the  
20 company harbors some doubt that what it's doing  
21 might not be legal.

22 This is an e-mail I've included from the  
23 company to various parties this past April.  
24 As far back as April 17th, the company and  
25 Commission were discussing enabling language for

1 lead service line replacement.

2 As you can see, their enabling legislation  
3 would have required an additional step of a  
4 rule-making proceeding before the company could  
5 endeavor on there. Neither one of those has  
6 occurred.

7 The company's plan and current actions are  
8 unlawful because they violate the company's tariff.  
9 And, furthermore, even if the tariff were  
10 different, even if some modification were made,  
11 there is a question about the Commission's  
12 authority to authorize such a principle.

13 Public Counsel is not simply saying no.  
14 Public Counsel has proposed that the company should  
15 withdraw its AAO request and instead seek to  
16 implement a pilot in the context of its rate case.

17 We have even outlined what the pilot  
18 should look like, what issue should be considered,  
19 and we've done so in a way that gives the company  
20 greater certainty of cost recovery.

21 Understand, you can do rate-making  
22 treatment in a rate case. You can't do that in an  
23 AAO.

24 For the past several months, Public  
25 Counsel has worked to develop a legal basis to

1 continue the program, an evidentiary basis to  
2 continue the program, a policy basis to continue  
3 the program.

4           And we've also tried to develop  
5 appropriate accounting treatment for the program.  
6 But every step of the way, the company has  
7 steadfastly brushed us aside. Only OPC's proposal  
8 offers the Commission a legal, evidentiary and  
9 policy basis to authorize Missouri-American to  
10 continue examining lead service line replacement.

11           Moving to the second decision point.  
12 Has Missouri-American demonstrated the necessity of  
13 replacing customer-owned service lines? Look,  
14 whether the project is necessary itself is one of  
15 the many policy issues the company has failed to  
16 address.

17           We hear lots of vague references to, All  
18 of the studies say this. Well, we haven't seen  
19 those studies. And the studies we've seen, as  
20 Dr. Marke will be able to tell you -- will be able  
21 to tell are you far from conclusive.

22           Demonstrating the necessity of this  
23 project is a burden the company has failed to meet.  
24 The company has offered no testimony demonstrating  
25 the necessity of customer-owned lead service lines.



1           In fact, it would be hard for them to do  
2           so because Missouri-American is presently in  
3           compliance with the lead and copper rule.

4           Importantly, the company, in its  
5           application, in its testimony, and in its position  
6           statements, are not telling you that replacing  
7           customer-owned service lines is necessary because  
8           of any immediate threat to public health.

9           Instead, in its position statement, the  
10          company argues that full removal is necessary  
11          because of, quote, the risk of potential exposure  
12          to lead associated with partial replacement, end  
13          quote.

14          The company's testimony similarly offers  
15          that the project will reduce, quote, potential  
16          exposure to lead and drinking water, end quote.

17          I want to make very clear that this is a  
18          temporary potential exposure to lead in drinking  
19          water and it exists whether the company performs a  
20          full or partial replacement.

21          Furthermore, the term full lead service  
22          line replacement is a misnomer. In fact, in some  
23          cases, the company is simply removing more lead  
24          than they were before to just outside the  
25          customer's home leaving a portion of the lead pipe

1 in place. Full does not always mean full.

2 So why is Missouri-American spending  
3 upwards of \$10,000 per house in some cases when the  
4 potential exposure exists regardless?

5 That's an outstanding question. The  
6 company vaguely references its projects in New  
7 Jersey and Illinois as being supportive of this  
8 plan.

9 But when I asked the company for those  
10 reports from those states, they say that none  
11 exist. Our pilot would provide an opportunity to a  
12 report to be produced.

13 Public Counsel wants to know if what the  
14 company is doing at great cost is actually better  
15 than the alternative. At this point, it's  
16 uncertain.

17 And even though it is incumbent on  
18 Missouri-American to actually demonstrate this,  
19 Public Counsel has proposed the framework for a  
20 pilot study to explore that very issue.

21 What is the objective of this project?  
22 First, to me, its not clear what  
23 Missouri-American's objective is.

24 However, if the objective is to reduce  
25 overall lead exposure, its program might make

1 things worse.

2 First, as mentioned, the potential  
3 increase to lead levels in water through disturbing  
4 the lines exist even if the full service line is  
5 replaced.

6 This graph -- this is a graph in -- I  
7 guess it's an illustration in Dr. Marke's testimony  
8 showing the various potential sources of lead in a  
9 home.

10 Even the act of removing the line from the  
11 ground out in the yard -- removing the line in the  
12 ground from the yard while not in the water supply  
13 increase potential lead exposure.

14 Excavation or extraction of lead-based  
15 products requires additional remedial precautions  
16 for workers on the site and in the lead disposal to  
17 ensure that there is no lead left over in the soil,  
18 for example.

19 How does Missouri-American's proposal  
20 ensure its customers don't face increased lead  
21 exposure in other areas due to their contractor's  
22 excavation process?

23 We don't know. A second way that  
24 Missouri-American's proposal may make things work  
25 is that it may give customers a false sense of

1 security about their lead exposure.

2 Removing lead service lines is a very  
3 expensive proposition. And it does not even  
4 necessarily equate to lower lead levels.

5 In his testimony, Dr. Marke describes the  
6 experience that the City of Madison, Wisconsin, had  
7 replacing its lead service lines. The City spent  
8 decades replacing all of the lead service lines.

9 Once they were replaced, four years after  
10 all of that was taken out, high lead levels were  
11 still found in a number of the water samples.

12 Removing just the service line is not some  
13 panacea that will cure all water lead exposure. We  
14 need to understand Missouri-American's objective,  
15 and we need to have an open and honest dialogue  
16 about how to accomplish that objective.

17 Public Counsel's pilot proposal would  
18 facilitate that discussion. It comes up here, and  
19 you've heard it this morning, references to public  
20 health benefits.

21 Evaluation of the necessity of replacing  
22 these lines closely relates to the policy question  
23 about the impact, if any, on public health from the  
24 condition's proposed program.

25 Without alleging any Missouri-specific

1 facts, I suppose DED's witness references a census  
2 some census data. The company and other parties  
3 vaguely reference Flint as the main reason that  
4 this program should go forward.

5 Only Public Counsel made any attempt to  
6 examine and provide the Commission information on  
7 Flint. Dr. Marke's testimony contains a tremendous  
8 amount of information on that.

9 So what do we know about Flint? The  
10 first thing to know is that the water crisis in  
11 Flint occurred at a time when the City decided to  
12 cease purchasing water from the City of Detroit and  
13 instead pumped un or untreated water through its  
14 system.

15 The second thing to know is that Flint --  
16 whenever somebody mentions Flint, the conversation  
17 immediately turns to lead.

18 Dr. Marke put in significant time and  
19 effort to research the available information about  
20 the impact on lead levels resulting from the Flint  
21 water crisis.

22 That is presented more fully in his  
23 pre-filed system. And I encourage you to ask him  
24 about that today.

25 However, I want to point out a few pieces

1 of information he presents. First, Dr. Marke  
2 provides an overview of the trend and the blood  
3 lead levels over the past several decades. As you  
4 can see, blood lead levels have gone down.

5 Moving to a Flint-specific chart, the  
6 percentage children with elevated blood lead levels  
7 has declined significantly since the early 2000s.

8 Based on the news coverage Flint, prior to  
9 digging into this case and working with Dr. Marke  
10 on -- on researching this issue, I would have  
11 expected the blood lead levels in Flint to have  
12 been at all time highs during their water crisis.

13 But this charge shows that that was not  
14 the case. There is a modest increase in the  
15 percentage of children with elevated blood lead  
16 levels. But the impact is about the same levels as  
17 they were in 2012.

18 This next slide is a -- is a chart showing  
19 numerically the incidence of elevated blood levels  
20 before Flint began using the water from the Flint  
21 River, during the time the Flint River was a source  
22 of water both early on and later on, and, again,  
23 after the water was once again purchased from  
24 Detroit.

25 Again, there is some increase, but not the

1 precipitous spike one would have expected based on  
2 the news reports or statements by other parties of  
3 this case.

4 Here is a slide showing the incidence of  
5 elevated blood levels during three overlapping  
6 periods at the height of the water crisis when  
7 Flint was pumping un- or under-treated water from  
8 the Flint River.

9 At all points during that time, the  
10 percentage of children with elevated blood lead  
11 levels in Flint was lower than the State average of  
12 Michigan.

13 So what is the take-away? Even under the  
14 worst case scenario or for a period of several  
15 months, they pushed un- or under-treated water  
16 through the distribution system.

17 The public health impact as it relates to  
18 blood lead levels is uncertain. In addition to  
19 examining the blood lead level data in Flint, Dr.  
20 Marke also examined the available information on  
21 water lead levels.

22 His testimony explains that the impact on  
23 water lead levels, especially assigning causation  
24 of that water lead level to service lines is  
25 similarly uncertain.

1           If the Commission is going to authorize a  
2 program to replace customer-owned lead service  
3 lines as a reaction to a perceives public health  
4 threat, it should base its decision on competent  
5 and substantial evidence, not vague references to a  
6 crisis, not a vague reference to holding a pipe  
7 wearing gloves.

8           The pilot program proposed by Public  
9 Counsel is intended to give the Commission and the  
10 Legislature and the Governor that additional  
11 information to make the right decision.

12           Another policy issue in  
13 Missouri-American's proposal that's been failed to  
14 address is the prioritization of replacement. The  
15 company, Staff and DED all reference the social  
16 concern that some customers will be unable to pay  
17 to replace their own lead service lines, and so the  
18 company must socialize these costs to all  
19 customers.

20           However, the facts do not support that  
21 hypothesis? You saw the slides presented by -- by  
22 Mr. Woodsmall. Here is an additional slide in  
23 Dr. Marke's testimony showing where the company has  
24 replaced lead service lines.

25           His analysis shows that most replacement



1 -- replacements so far have occurred in an area  
2 with an average home value four times the state  
3 median.

4 Missouri-American does not have a plan to  
5 prioritize people who are unable to pay to replace  
6 their own service lines. In fact, the opposite  
7 appears to be occurring.

8 Another unanswered policy question is  
9 customer disclosure. The company has no plan to  
10 expose the presence of lead service lines to  
11 customers until they are offering to replace the  
12 line as part of a program.

13 When a customer declines to have the lead  
14 service line replaced, which has occurred, the  
15 company has no plan to notify future customers at  
16 that address.

17 A related policy consideration is the  
18 potential impact of disclosure on property values.  
19 For homes that Missouri-American identifies to have  
20 a lead service line but does not plan to get to for  
21 ten years, what happens?

22 In Flint, all of the homes were de-valued.  
23 Counsel for DED referenced, and I believe he was  
24 referencing the testimony of Dr. Marke, Federal  
25 loan agencies wouldn't insure loans there.

1           What happens if property values plummet  
2 because Missouri-American and the Staff have  
3 fomented fear without showing the necessity of a  
4 public benefit?

5           The relationship between the benefits  
6 resulting from replacing customer-owned lead  
7 service lines and the cost of replacing  
8 customer-owned lead service lines is another  
9 important policy for the consideration of the  
10 Commission.

11           So what is the cost of Missouri-American's  
12 proposed program to replace customer-owned service  
13 lines? I don't know. Dr. Marke doesn't know.  
14 Public Counsel witness Mr. Hyman doesn't know.

15           Importantly, Missouri-American does not  
16 know either. Instead, the company asks for a blank  
17 check without demonstrating necessity of the  
18 project or developing any kind of cost benefit  
19 study.

20           This is a chart in Dr. Marke's testimony  
21 that gives an overview of the tremendous potential  
22 cost for replacing lead service lines.

23           Public Counsel has challenged the  
24 company's estimates of these -- the number of lines  
25 and the cost of replacing the line.

1           In their surrebuttal testimony,  
2 Missouri-American witnesses Naumick and Aiton admit  
3 that the company's estimate of lead service lines  
4 it not perfect.

5           Mr. Aiton also addresses the inaccuracy of  
6 the company's initial cost estimate, now stating  
7 that the company expects the average costs across  
8 all replacements to be \$6,000.

9           With the company's new estimate of \$6,000,  
10 assuming that their lead -- number of lead service  
11 line replacement is accurate, that cost increases  
12 and this is the company's estimate and the  
13 company's cost average to \$180 million.

14           This is not a trivial amount of money to  
15 customers to bear, especially considering that  
16 Missouri-American is currently seeking to increase  
17 rates by its customers the St. Louis through its  
18 ongoing rates case.

19           Rather than a program that is a simplistic  
20 see pipe, replace a bit more of the pipe, raise  
21 rates, the company should be exploring all  
22 available options.

23           Public Counsel's proposed pilot program  
24 offers an opportunity to do so while continuing to  
25 replace the lead service lines until the study is

1 concluded.

2 For example, if the argument is that a  
3 partial lead service line replacement potentially  
4 leaves -- potentially leaves some elevated lead  
5 level in the water in the short-term, would a point  
6 of use lead-free water filter represent a  
7 reasonable alternative? Lead-free water filters  
8 have been historically utilized by the EPA as super  
9 fun sites in Missouri's old lead district.

10 Today, lead-free water filters -- and  
11 these are being used in Flint -- costs  
12 approximately \$50. \$10,000. \$50. If water  
13 filters are appropriate in Federally designated  
14 super fund sites, certainly, it should be an option  
15 considered to address the mere potential for  
16 temporarily increased water lead levels.

17 And as I mentioned, there is a potential  
18 for elevated water lead levels when they do the  
19 full replacement.

20 Through Public Counsel's proposed pilot  
21 and collaborative study, the company would have an  
22 opportunity to identify alternative solutions that  
23 could produce superior public health benefits at a  
24 fraction of the cost.

25 So the question that the company wants you

1 to answer is should the Commission grant  
2 Missouri-American the accounting authority order it  
3 has requested in this indication? No.

4 First, the company's proposal does not  
5 address the fundamental question of its legal  
6 ability to replace these customer-owned service  
7 lines.

8 Second, as a matter of policy, the  
9 company's plan -- proposed plan focuses on the  
10 overly simplistic engineering aspect of replacing  
11 customer lines without demonstrating any cost  
12 benefit analysis, without addressing any of the  
13 feasibility or policy considerations raised in the  
14 testimony of Dr. Marke.

15 Third, to the extent that  
16 Missouri-American is seeking an ordinary  
17 determining the probability of rate recovery, the  
18 Commission can only make rate determinations in a  
19 rate case, and so it cannot grant the AAO with the  
20 language requested by the company in its position  
21 statement, in its application and in its prefiled  
22 testimony.

23 Now, I understand that may have been  
24 changed this morning as a result of -- of their  
25 Counsel's opening statement.

1           Furthermore, Missouri-American's business  
2 model is to treat water. It's to replace pipes.  
3 These lead pipes have been in the ground for years.  
4 Their existence is a surprise to no one, which is  
5 why the industry takes steps to treat their water  
6 and why Federal and State agencies have promulgated  
7 standards and are overseeing their activities,  
8 standards which Missouri-American Water is  
9 currently in compliance with. Treating their water  
10 and replacing lines is literally in the ordinary  
11 course of their business.

12           When utilities ask for accounting  
13 authority orders, they often talk in terms of  
14 creating a regulatory asset as a means to deferred  
15 cost from one period into another period. In fact,  
16 that is what the company has asked the Commission  
17 to do here.

18           In its position statement, in its  
19 application and in the testimony of Mr. LaGrand,  
20 the company asked for a regulatory asset.

21           However, I understand the company has said  
22 that they're no longer requesting that  
23 determination. And that's evident, also, in their  
24 position statement where the company, despite  
25 having said they were asking for it in Issue 1, in

1 Issue 7 says, The Commission need not make a  
2 regulatory asset determination.

3 The Commission should not be making a  
4 determination on whether a utility can book an item  
5 as a regulatory asset outside of a rate case. This  
6 is because, according to the generally accepted  
7 accounting practices or GAAP, the defining feature  
8 of a regulatory asset is a determine by the utility  
9 management -- determination by the utility  
10 management that those costs are probable of  
11 recovery in a rate case.

12 Outside of a rate case, this is a decision  
13 that only utility management can make.  
14 Importantly, when it comes to water who are  
15 obligated to follow for Commission purposes the  
16 NARUC USOA.

17 The closest account to a regulatory asset  
18 is Account 186. Account 186 is merely a deferred  
19 debit account. Costs recorded to a deferred debit  
20 account have no association with rate recovery  
21 because -- and I believe this is the dedication of  
22 that account -- the proper final disposition of the  
23 account is uncertain and, therefore, it's not a  
24 regulatory's asset.

25 Notably, as Public Counsel Witness Hyneman

1 explains in his surrebuttal  
2 testimony, Missouri-American does not need  
3 Commission approval to record expenses into Account  
4 186, Miscellaneous Deferred Debits.

5 This fact supports the inference that  
6 Missouri-American is asking for an implicit promise  
7 of future rate recovery. As I mentioned earlier,  
8 the company is not really asking for an implicit  
9 promise of rate recovery but had also previously,  
10 in its application, in its position statement and  
11 in its pre-filed testimony, but it's now withdrawn,  
12 they had explicitly asked for rate recovery. This  
13 is relief that the Commission cannot grant.

14 The relevant decision point on this issue  
15 is Issue 7. If the Commission grants an AAO, does  
16 it classify it any deferred costs as a deferred  
17 debit, or does it classify any deferred cost as a  
18 regulatory asset?

19 For the reasons I just mentioned and those  
20 explained in more detail in the testimony of  
21 Mr. Hyneman, and, again, I encourage you to ask him  
22 about any accounting related questions.

23 If the Commission grants an AAO, it should  
24 only permit the company to classify the deferred  
25 costs as a deferred debit to be in NARUC account



1 USA Account 186.

2 The Commission staff offers a strange  
3 position on this question stating that, quote, Any  
4 costs deferred to the utility's balance sheet upon  
5 order of the Commission should be considered a  
6 regulatory asset for regulatory accounting purposes  
7 regardless of how such a term may be defined under  
8 generally accepted account principles, end quote.

9 Staff's position makes very little sense.  
10 Account 186 is not a regulatory asset. It is a  
11 deferred debit.

12 Second, this is an accounting case  
13 occurring outside of a rate case. The company must  
14 follow GAAP for accounting purposes. Otherwise,  
15 they run the risk of getting bad opinions from  
16 outside auditors, face potential Sarbanes-Oxly  
17 issues and face potential SEC violations. The  
18 company must follow GAAP.

19 Now, in a rate case, the Commission can  
20 tell them to book things in different ways, can  
21 call things regulatory assets, but it can't do that  
22 here and it shouldn't do that here.

23 In this accounting case, only the company  
24 management can determine if an expense item should  
25 be recorded as a regulatory asset.

1           If the Commission grants an AAO, what  
2     carrying costs should be utilized? The monthly  
3     carrying costs to be charged to Account 186, if the  
4     Commission decides to issue that order, could be at  
5     the American Water Works Company's current  
6     short-term debt rate.

7           The short-term debt interest rate is the  
8     first cost applied to utility construction  
9     projects. This is a practice required by the  
10    regulatory body such as the FERC and has been  
11    required by this Commission in the allowance for  
12    funds used during construction formula.

13          On this point, Public Counsel's  
14    recommendation to use short-term debt rate is  
15    consistent with the Staff's recommendation.

16          IF the Commission grants an AAO, what is  
17    the starting date of the amortization of the  
18    deferred account? Again, if the Commission decides  
19    to grant an AAO, it should require  
20    Missouri-American to begin amortization  
21    immediately.

22          The matching principle matches the  
23    occurrence of the cost to the benefit received from  
24    the -- resulting from the occurrence of those  
25    costs, not the specific month of rate recovery.

1           To delay amortization as proposed by  
2 Missouri-American of the expense deferral to a date  
3 significantly later than the date when the benefit  
4 of the expense is received, that would be the true  
5 deviation from the matching principle and should be  
6 rejected.

7           So what do I propose? Public Counsel  
8 recommends that the Commission reject the company's  
9 current April application, and if the company seeks  
10 relief within the pending rate case, consider  
11 Public Counsel's alternative for a two-year pilot  
12 study in which know no than 4 million annually or  
13 8 million in total can be spent on planned full  
14 lead service line replacement and the third party  
15 administrative costs associated with the  
16 collaborative research efforts.

17           We've put those numbers, and I have  
18 conveyed to the parties that that is an area where  
19 we're willing to work with them if they apply for  
20 that in the rate case. But they have to  
21 demonstrate what it is that they need to spend to  
22 continue doing replacement during the pilot.

23           Right now, we know they're at about  
24 2 million for the year. So what we did, knowing  
25 that they said that they're going to ramp up their

1 replacement, we said, Let's double it to allow them  
2 wiggle room.

3 The company's estimates on how much  
4 they're going to replace when I asked them about  
5 that, and I believe it's in the testimony, the  
6 pre-filed testimony of the company, is that, We  
7 estimate 30,000, we want to do it over ten years,  
8 so we're going to do 3,000 a year.

9 That doesn't cut it for me. They need to  
10 show how they're going to spend that money, how  
11 many lines are going to replace, they need to take  
12 into account working days, rain days. We're not  
13 going to agree to a blank check. If I agreed to a  
14 blank check, I should be fired.

15 Our pilot study is designed to explore the  
16 feasibility, legality and associated policy  
17 implications of full lead service line replacement.

18 We want it to culminate a report that  
19 Commission will be able to examine and perhaps if  
20 the results show one way, you might see another  
21 application for something. You might see other  
22 utilities do it, not just Missouri-American.

23 The pilot is described in the testimony of  
24 Dr. Marke and would involve as -- as Counsel for  
25 the company explained, five policy tracks and

1 culminate in a final report.

2 This includes an advisory committee that  
3 would hire or come up with the ideas and the  
4 policies that the company report is going to  
5 explore.

6 The second component would be a scoping  
7 analysis to examine and come up with the best  
8 estimates of the location of these pipes and the  
9 number of these pipes.

10 The third component is the testing and  
11 planned service line replacement itself. The  
12 fourth component relates to the communications,  
13 disclosure, prioritization and implementation of  
14 very important policy consideration.

15 And the last component is the  
16 consideration of ancillary issues. This is where  
17 the group working together would consider aspects  
18 such as, you know, showing the potential job  
19 creations associated with a project like this.  
20 Maybe that's a benefit to it.

21 Exploring outside sources of funding to  
22 the project. Dr. Marke's testimony talks about how  
23 maybe if the study shows that there's benefit to  
24 this and we've developed a plan to do it to go  
25 forward, this would be perfect for a shuttle ready

1 -- shovel infrastructure project.

2           If the Commission wants to enable  
3 Missouri-American to continue replacing  
4 customer-owned lead service lines, only Public  
5 Counsel provides a legal basis to do so. Only  
6 Public Counsel provides the Commission with the  
7 relevant facts and evidentiary basis for a  
8 decision.

9           Only Public Counsel has made an attempt to  
10 critically examine the multiple policy issues  
11 presented by the company's plans.

12           Importantly, Public Counsel's proposed  
13 pilot program presents a path forward to address  
14 all of those issues, including the necessity and  
15 the efficacy of full lead service line replacement  
16 while permitting the company to continue replacing  
17 lead service lines as the pilot is conducted.

18           If have you any questions about the  
19 accounting treatment, Public Counsel Witness  
20 Charles Heinemann will testify later.

21           And I encourage you to ask him about the  
22 demerits of the company's AAO request as well as  
23 the specific treatment that Public Counsel proposes  
24 associated within a pilot program, treatment that  
25 is fair to the utility and, in some cases, a

1 benefit. And it's certainly a benefit  
2 because it would be more certainty of rate  
3 recovery. Public Counsel will also have Dr. Marke  
4 appear. He has put in a tremendous amount of work  
5 into the policy issues. And having identified many  
6 deficiencies in the company's program, he has gone  
7 out of his way to develop an outline for how to  
8 proceed with the pilot proposal.

9 You know, there is a lot of material in  
10 his testimony, and it is weighty stuff. If you're  
11 unsure about anything, please ask him. If you see  
12 a graph and you don't know what that graph is  
13 demonstrating, please ask him.

14 You know, I -- I will tell you this to  
15 show the extent of work that Dr. Marke has put into  
16 this. Missouri-American's witness Naumick in his  
17 direct testimony references that a range of  
18 national experts support his position.

19 So I asked the company to identify those  
20 experts. They said, Well, Gary Naumick works with  
21 a range of experts. I said, Well, that's not good  
22 enough. You can't just tell me he works with  
23 experts. Tell me those experts.

24 The response, they included a few  
25 witnesses' names in their supplement, which

1 included somebody's name. And then inside a  
2 parenthetical, it said, A student of Mark Edwards.

3 Well, OPC's Dr. Marke has actually talked  
4 to the Professor himself, not just the student. He  
5 has been in touch with a number of other experts on  
6 the issue across all fields of study, not just the  
7 engineering aspect of it. He has left no stone  
8 unturned. So I encourage you, please inquire of  
9 him.

10 We want to get this right, and a blank  
11 check is not the way to do it. And, of course, if  
12 you have questions of me, specially as pertains to  
13 the little aspects, please ask me. Thank you.

14 JUDGE PRIDGIN: Mr. Chairman?

15 CHAIRMAN HALL: I'll let you take a  
16 breath. I'm going to ask this -- this question to  
17 Dr. Marke as well. But if the -- if the Commission  
18 were to establish an AAO somewhere along the lines  
19 of as it was getting requested but it was also open  
20 to requiring certain aspects of the pilot as  
21 recommended by OPC, what are the most important  
22 aspects of the pilot, from your perspective?

23 MR. OPITZ: So from my perspective, the  
24 most important aspect of the pilot is it provides a  
25 legal opportunity to do this because of the



1 uncertainty about what they're doing.

2 CHAIRMAN HALL: I guess in terms of  
3 gathering information and -- and analysis?

4 MR. OPITZ: So --

5 CHAIRMAN HALL: What aspects of the pilot  
6 are the most important?

7 MR. OPITZ: Perhaps Dr. Marke will offer a  
8 -- a better informed decision on the types of  
9 information gathered. But -- but from my standing  
10 here, I will say, I want to know the efficacy of  
11 what they're doing, is this producing a better  
12 result? And right now, to me, that answer is  
13 uncertain.

14 I want to know the cost benefit. I want  
15 know what is the benefit that's being received? Is  
16 it short-term? Is it long-term? You know, if --  
17 if the benefit is that, you know, there's less risk  
18 that if Missouri-American somehow decides to start  
19 pumping untreated river water through its system,  
20 which would cause, you know, leeching of lead into  
21 the system, well, I don't -- I hope that's not ever  
22 going to happen.

23 And I -- and I expect that it wouldn't  
24 last as long as it did in Flint. What happened in  
25 Flint, it's my hope and my belief, won't be

1 repeated here. So there is less risk here of  
2 having lead service lines. At least that's what I  
3 think.

4 And I hope the study would -- would talk  
5 about what benefits would be there. If it's the  
6 pilot. So I started to state little aspect, I  
7 believe it's a legal path forward, especially given  
8 the uncertainties.

9 I believe that an important and a vital  
10 aspect of this pilot and any pilot is whether we do  
11 the pilot and we learn that information. It has  
12 the teeth to inform how they move forward.

13 So right now, that's inconsistent with  
14 what the company is -- is asking for because  
15 they're saying, Yeah, we want the AAO, but, yeah,  
16 we'll do a few aspects of your pilot.

17 Well, that's not what I'm looking for. I  
18 want to have a thorough examination of the best way  
19 to do this, if at all, and use that to inform how  
20 they do it.

21 CHAIRMAN HALL: Okay. Well, I mean,  
22 essentially, what you just did was restate your  
23 entire argument for why the pilot is necessary.

24 And what I was interested in is what  
25 aspects of it are most important from your

1 perspective? But you know what? I'll just ask Dr.  
2 Marke.

3 MR. OPITZ: Thank you.

4 CHAIRMAN HALL: Thank you.

5 JUDGE PRIDGIN: Thank you. Any further  
6 Bench questions?

7 COMMISSIONER STOLL: No questions.

8 JUDGE PRIDGIN: All right. This looks to  
9 be the perfect time to take a mid-morning break?  
10 The clock in the hearing room shows 10:30. Let's  
11 resume at 10:45. I think we will stand in recess  
12 until 10:45. We are off the record.

13 (Break in proceedings.)

14 JUDGE PRIDGIN: All right. Good morning.  
15 We are back on the record. As I mentioned at the  
16 beginning of the hearing this morning, we are going  
17 to need to break somewhere around 11:45 for  
18 Commissioners to get to agenda.

19 I will look for a natural break. But if I  
20 am unable to find one, I may have to simply  
21 interrupt someone in the middle of a question or  
22 middle of an answer.

23 If so, I apologize in advance. I will do  
24 my best to -- to not do that. But if I have to, I  
25 have to.

1           Looking at order of witnesses, and I  
2 believe Mr. Naumick is the first witness listed to  
3 take the stand this morning, No. 1; is that  
4 correct?

5           MR. COOPER: That's correct, your Honor.

6           JUDGE PRIDGIN: Is there anything else  
7 from Counsel before he takes the stand?

8           MR. COOPER: Not from Missouri-American.

9           MR. OPITZ: Judge, I guess as we're  
10 getting into this -- and I don't know if it's  
11 applicable yet, but the parties did file separate  
12 orders of cross-examination.

13           I don't believe the order of the DED  
14 witness was the same. I believe everything else  
15 was. And -- and I guess just ask for clarification  
16 on which you would prefer to do?

17           JUDGE PRIDGIN: I have with me and I don't  
18 have a -- a preference, obviously, since we're all  
19 going to get to it anyway. I think I have -- just  
20 for convenience sake, I had Missouri-American's  
21 list of issues because it's the first one I found  
22 on EFIS.

23           If the parties are not able to agree and  
24 you want to -- you want to bring your dispute to me  
25 on the record once we get to the DED witness, I'll