

1 Q Did you obtain an easement?

2 A We do not.

3 Q Did you obtain a contract for the pipe
4 that's out in their ground?

5 A We do not. We only have the -- the right
6 of access that we -- that they've given us.

7 Q So they give you a right of access to put
8 the pipe on their property?

9 A Correct.

10 Q So who owns that pipe now?

11 A As far as we're concerned, they still own
12 that pipe.

13 Q So then it's not plant and service, right?

14 A Not currently. Again, that -- that would
15 be the determination in the rate case.

16 Q But, I mean, if it's not -- if you don't
17 own it, how can you claim it as plant in service?

18 A That's one of the reasons we're here to
19 discuss that and get some indication from the
20 Commission.

21 Q But -- okay. Well, that didn't answer my
22 question.

23 A Or sorry.

24 Q Because that's one of the things, I
25 understand. But if you don't have a contract or

1 you don't have an easement and you don't have
2 anything and it's not on your property, it's their
3 pipe.

4 A That's correct.

5 Q Okay. All right. You also mentioned the
6 fact that you have -- you have bonding capability.
7 Don't plumbers within St. Louis County have to be
8 -- carry general liability insurance and Workers'
9 Comp.?

10 A Yes.

11 Q Okay. So the fact that you have bonding
12 doesn't really make a difference. They have to
13 have that anyway, right?

14 A Well, now --

15 Q Most --

16 A In only terms of re -- if somebody fails
17 to perform and gives us additional leverage against
18 that contract.

19 Q So do you guarantee their work? Do you
20 guarantee their work?

21 A When.

22 Q Does Missouri-American guarantee their
23 contractors' work?

24 A We would be the ones responsible to fix it
25 if it went badly. Yes.

1 Q So you would take care of it?

2 A Yes.

3 Q Even if you hire a contractor, he -- if he
4 disappears, would your company have to take care of
5 that service line that the customer owns?

6 A First -- first line of defense, would be
7 we'd go back to that contractor and have him fix
8 it? yes.

9 Q And if he disappeared?

10 A We're responsible to our customers.

11 COMMISSIONER KENNEY: Okay.

12 JUDGE PRIDGIN: Thank you. Further Bench
13 questions? Cross based on Bench questions? DED,
14 any questions?

15 MR. BEAR: No question.

16 JUDGE PRIDGIN: Staff?

17 MS. MERS: No questions.

18 JUDGE PRIDGIN: MECG?

19 MR. WOODSMALL: Yes, your Honor.

20 CROSS-EXAMINATION

21 BY MR. WOODSMALL:

22 Q Questions from Commissioner Kenney, in one
23 of those, you talked about 400,000 customers,
24 300,000 of which were in St. Louis County. Do you
25 know how many total of your -- how many of your

1 total customers are residential customers?

2 A I do not.

3 Q Okay. Now, working backwards, you talked
4 about if there is a problem the company is
5 ultimately responsible to fix that; is that
6 correct?

7 A In that particular case, yes.

8 Q Okay. Let's say the contractor has gone
9 out of business, disappeared. There is a cost to
10 you to fix that line; is that correct?

11 A There potentially could be.

12 Q Who would pick up that cost to fix that
13 line?

14 A In that case, it would depend. But it
15 would probably just go through the company.

16 Q Okay. So you're not -- you would not be
17 looking to re -- incur or pass that cost through to
18 ratepayers?

19 A I don't believe, at lease in that
20 particular case.

21 Q Okay. Just so I understand the -- the
22 progression, how the conversation goes, you make a
23 determination whether it's through potholing, your
24 tap cards or whatever that John Doe, you're likely
25 to have lead service line. You then go up to the

1 door, communicate with them in some fashion and
2 say, We believe you have a lead service line.
3 We're going to replace the mains. Would you like
4 your service line replaced; is that correct?

5 A Generally, yes.

6 Q Okay. Customer typically asks, How much
7 is it going to cost me?

8 A I'm not in those conversations.

9 Q So you don't know?

10 A No.

11 Q Okay. Do you know if the company has told
12 these customers, no, there's no cost to you?

13 A Yes.

14 Q You have told them there's no cost to
15 them?

16 A Correct.

17 Q So if the Commission then -- you made that
18 determination on your own. So if the Commission
19 determines that you don't get the AAO, the company
20 is then eating the cost of the service line
21 replacements that's done to date; is that correct?

22 A That's a potential risk, yes.

23 Q Okay. Now, going back -- we were talking
24 about potholing, tap cards, going back to some
25 questions from Mr. Bear and working this, Mr. Bear

1 was suggesting that there are efficiencies that
2 while you're trenching, it's cheaper to replace
3 their service line while you're there in the area;
4 is that correct?

5 A Yes.

6 Q Okay. If -- if you know weeks in advance
7 because of the tap cards and -- or potholing --

8 MR. COOPER: Your Honor, I have an
9 objection, I think, at this point. We're not
10 circling back around to original cross questions,
11 are we?

12 MR. PRIDGIN: Aren't we on just re-cross
13 based upon questions from the Bench?

14 MR. WOODSMALL: And -- and I'm not doing
15 that.

16 Q (By Mr. Woodsmall) I'm -- I made a
17 reference to that, but I'm talking about the
18 questions from Commissioner Kenney about potholing.
19 So when you -- when you pothole or look at the tap
20 cards, you know sometimes in advance of the time
21 that you're going to replace the service line; is
22 that correct?

23 A Yes. We have some indication from the tap
24 cards. But then we confirm or -- what the actual
25 field indications are through potholing.

1 Q And could that be weeks in advance of your
2 work?

3 A Sometimes less. It depends -- it depends
4 on the particular thing, on the particulars.

5 Q Okay. So if the customer was held
6 responsible for doing their own service line
7 replacements because they know in advance, they
8 could coordinate that to do that while you're
9 trenching; is that correct?

10 A In theory, yes.

11 Q Okay. So the company -- the customer
12 could still gain the efficiencies of doing it at
13 the same time without the company being responsible
14 for the costs; is that correct?

15 A If they have the resources to do that.

16 MR. WOODSMALL: Thank you. No further
17 questions.

18 JUDGE PRIDGIN: Mr. Woodsmall, thank you.
19 Public Counsel?

20 MR. OPITZ: No, thank you, Judge.

21 JUDGE PRIDGIN: Redirect?

22 MR. COOPER: Yes, your Honor.

23 REDIRECT EXAMINATION

24 BY MR. COOPER:

25 Q Mr. Aiton, you were asked some questions

1 about the invoices from customer lead service line
2 replacement in Clayton. Do you remember that?

3 A Yes, sir.

4 Q Just kind of as an initial question, why
5 were you doing a project in Clayton?

6 A The --

7 Q Or projects, I guess.

8 A The -- the first half of the year,
9 generally, in -- particularly in St. Louis County,
10 we coordinate with the various municipalities with
11 road projects that they are on. And we do pipe
12 replacements in those -- in conjunction with the
13 road projects that the municipalities are doing.
14 In those projects in Clayton, they were replacing
15 the road, so we went in to replace the main at the
16 same time.

17 Q And then you have a -- another
18 prioritization process for main replacements,
19 correct?

20 A Correct. Yeah. The balance of the year
21 or the balance of the pipes that are replaced are
22 done either by -- by breaks in the line or leaks a
23 in the line, pipe condition, pipe age. Looking at
24 the one on the table there, it's pretty corroded,
25 so --

1 Q And they may -- they take you where they
2 take you once you do that prioritization; is that
3 correct?

4 A Correct. Yes.

5 Q And I think Commissioner Kenney had asked
6 you a question about whether the lines were
7 customer -- or the service lines were longer in
8 St. Louis county versus outside St. Louis County.
9 Do you remember that?

10 A Yes, sir.

11 Q There is a difference, however, in the
12 portion of the line that we describe as
13 customer-owned service line, correct?

14 A Yes.

15 Q So all else being equal, if you have the
16 same length, conditions, everything else, and you
17 have a -- a service line in St. Louis County, and
18 you have a service line outside of St. Louis County
19 where the company actually owns a piece of that,
20 would you expect the St. Louis County piece to be
21 more expensive?

22 A No. I --

23 Q Or I'm sorry. The -- the amount
24 associated with the customer-owned portion to be
25 more expensive?

1 A Yeah. The -- the -- the overall length of
2 the customer-owned side would be shorter outside of
3 St. Louis County because we own a portion from the
4 curb to the pipe. In St. Louis County, the entire
5 portion would be customer-owned.

6 Q You mentioned in response to a question
7 from Mr. Woodsmall that you check for lead lines
8 yourself before you buy your home. Why do you do
9 that?

10 A Abundance of caution.

11 Q Do you want a home that has a lead service
12 line?

13 A No. The one that I mentioned to him,
14 also, to check the sewer lines, so --

15 MR. COOPER: That's all the questions I
16 have, your Honor.

17 JUDGE PRIDGIN: Mr. Cooper, thank you.
18 Mr. Aiton, thank you very much. You may step down.
19 This looks to be an opportune time to take a break.

20 And before we do that, I understood that
21 there may be some dispute between Missouri-American
22 and Public Counsel on the order of cross and DED.

23 I guess when we come back from the break,
24 I'll ask if they I still have that dispute, and so
25 I will rule accordingly. Anything further before

1 we take a break? If nothing else, we will stand in
2 recess until 3:15. Thank you. We're off the
3 record.

4 (Break in proceedings.)

5 JUDGE PRIDGIN: Good afternoon. We're
6 back on the record. Mr. Hyman is on the stand.
7 I'll swear him in momentarily. Did I understand
8 that -- that Public Counsel and Missouri-American
9 had a difference of opinion on the order of cross
10 for this witness?

11 MR. WOODSMALL: I'll -- I can try and
12 tackle that. It was a minor thing having to do
13 with order of cross. I talked to Mr. Cooper. My
14 amount of cross for Mr. Hyman is so short that it's
15 not worth dealing with, so, no, I don't think we
16 have a problem.

17 MR. OPITZ: I've got no issue then either.

18 JUDGE PRIDGIN: Okay. So does it -- does
19 it not matter?

20 MR. WOODSMALL: Doesn't matter. If you
21 want to -- whichever order you want to use.

22 JUDGE PRIDGIN: Okay. Because I was just
23 glancing over them. To me, it looks like the least
24 adverse to the most adverse is the order of cross,
25 that -- that Public Counsel and the like --

1 Missouri-American going first, then Staff, MECG and
2 then Public Counsel.

3 MR. COOPER: I'm fine with that, your
4 Honor.

5 JUDGE PRIDGIN: All right. Anything
6 further before Mr. Hyman is sworn? All right.
7 Mr. Hyman, if you'll raise your right hand to be
8 sworn, please.

9 MARTIN HYMAN,
10 being first duly sworn to testify the truth, the whole
11 truth, and nothing but the truth, testified as follows:

12 DIRECT EXAMINATION

13 BY MR. BEAR:

14 JUDGE PRIDGIN: Thank you, sir. You may
15 have a seat. Mr. Bear, when you're ready, sir.

16 Q (By Mr. Bear) Would you state your name
17 for the record?

18 A Yes. Martin R. Hyman.

19 Q And how are you employed, sir?

20 A I'm employed as a Planner III within the
21 Missouri Department of Economic Development,
22 Division of Energy.

23 Q And did you cause to be filed in this case
24 today rebuttal testimony regarding issues in the
25 case?

1 A I did.

2 Q And that testimony contains questions and
3 answers, correct?

4 A Yes.

5 Q And those would be your questions and
6 answers if I were to ask them to you today?

7 A Yes, sir.

8 Q Do you have any corrections you need to
9 make?

10 A No, sir.

11 MR. BEAR: I'd move at this time that
12 Mr. Hyman's testimony be admitted into the record.

13 JUDGE PRIDGIN: And I show that as Exhibit
14 10. And Exhibit 10 has been offered. Any
15 objections? Hearing none, Exhibit 10 is admitted.

16 (Exhibit 10 was offered and admitted into
17 evidence.)

18 MR. BEAR: I tender the witness.

19 JUDGE PRIDGIN: Mr. Bear, thank you.

20 Cross-examination, Missouri-American?

21 MR. COOPER: No, thank you, your Honor.

22 JUDGE PRIDGIN: Staff?

23 MS. ASLIN: Just a few questions.

24 CROSS-EXAMINATION

25 BY MS. ASLIN:

1 Q Mr. Hyman, do you have your testimony in
2 front of you?

3 A I do.

4 Q I'd like you to turn to page 6 of your
5 rebuttal, please.

6 A Okay. Okay. I'm there.

7 Q And on that page, you reference Missouri
8 Statute 393.130.1, and you emphasize the portion of
9 that statute that says, Every water corporation
10 shall furnish and provide such service
11 instrumentalities and facilities shall be safe and
12 adequate. Is that correct?

13 A Yes. That's lines 3 through 4.

14 Q Yes. And even without Missouri-American's
15 lead -- lead service line replacement program,
16 would you consider that requirement to be met by
17 the company?

18 A I think that depends.

19 Q And would you consider -- the requirement
20 of safe and adequate service, would you consider
21 that to be a base on the actions of the company, or
22 would you consider that to be limiting their
23 actions?

24 A I guess I'm not quite sure I understand
25 the question.

1 Q I'll rephrase. Would you consider safe
2 and adequate to be once it is met that the company
3 can take no further action or that they can expand
4 on that and further that goal?

5 A I would say that they can expand and
6 further that goal as the situation requires.

7 Q All right.

8 MS. ASLIN: Thank you. No further
9 questions.

10 JUDGE PRIDGIN: All right. Thank you.
11 Cross-examination, MECG?

12 MR. WOODSMALL: Thank you, your Honor.

13 CROSS-EXAMINATION

14 BY MR. WOODSMALL:

15 Q Following up on that, can you tell me, for
16 purposes of that statute on Line 4, how do you
17 define facilities?

18 A Well, I'm not an attorney, but I would say
19 that facilities would be the plant that you use to
20 provide water to the customer.

21 Q And should it be company-owned plant?

22 A I don't know if I can answer that as I'm
23 not an attorney. I would say that my understanding
24 would be, based on what you presented earlier
25 today, that it also includes things that are

1 controlled or managed by the company.

2 So to the extent that the company is
3 trolling or managing the service line, just from a
4 layman's perspective, that would seem to include
5 service lines, yes.

6 **Q From a layman's view, the company doesn't**
7 **own, control, manage your faucet in your kitchen.**
8 **So would you consider that to be a facility?**

9 A Again, I'm not an attorney, so I don't
10 really think I can go that far down this road. But
11 I -- I think there are -- you know, there's a
12 reasonable cut-off there.

13 **Q And where is the reasonable cut-off in**
14 **your mind?**

15 MR. BEAR: Your Honor, at this point, I'm
16 going to object. It calls for a legal opinion.
17 Mr. Hyman has noted that he's not an attorney. I
18 think that should be left for briefing.

19 MR. WOODSMALL: Well then, your Honor, I'd
20 move to strike lines 1 through 6 on page 6, which
21 is, Is the LSLR program consistent with the
22 Commission's governing statutes.

23 JUDGE PRIDGIN: The -- the motion to
24 strike is overruled. The objection is overruled.
25 I'll let Mr. Hyman answer the question if he knows

1 the answer. And if he doesn't know, he can say so.

2 A I'm sorry. Can you ask the question
3 again?

4 Q (By Mr. Woodsmall) Where is the line for
5 where you believe the company's facility should
6 end?

7 A And, again, as an attorney (sic), I don't
8 think that I have a good answer to that for you
9 right now.

10 Q Okay. On at that same page, moving down
11 -- the next question is, What is DED's interest in
12 this case? Do you see that?

13 A Yes.

14 Q And moving down to line 17 and continuing
15 over to the next page, you say, The ability of low
16 income customers to afford a 3,000 to \$5,500 lead
17 service line replacement is doubtful. Do you see
18 that?

19 A Line 1 through 18, and the sentence
20 continues. Yes.

21 Q Yes. Can you tell me how you define for
22 purposes of this case a low income customer?

23 A I don't know that I have a definition for
24 purposes of this case. Although I do know there
25 are many definitions out there that could be used

1 to select what one considers low income.

2 Q So when you make the statement that their
3 ability -- this low income customer, their ability
4 to afford a 3,000/\$5,500 lead service line
5 replacement, how do you make that determination if
6 you don't know what their income is?

7 A Well, I don't know what any particular
8 customer's income is. But I think it's fair to say
9 that if you are making at or below Federal poverty
10 left that three to 5500 is probably going to be a
11 pretty big number for you.

12 Q So in general, low income being Federal
13 poverty level?

14 A No. Not necessarily. I'm using that as
15 an example.

16 Q Okay. Can you tell me what is low income
17 customers, then, for purposes of your testimony?

18 A For purposes of my testimony, I don't have
19 a specific definition. But as I said before, I
20 think there are various definitions out there that
21 one could look at.

22 Q If a customer owns a house that's worth a
23 half a million dollars, would you consider that to
24 be a low income customer?

25 A Well, I don't think that the value of the

1 house represents the income. But my assumption
2 would be no.

3 Q Okay. How would you determine, then, if
4 you were to look at a Missouri-American customer
5 whether they're low income? How would you make
6 that determination?

7 A And I think, again, it would have to -- I
8 think there are a variety of definitions that could
9 be used, and I don't have one immediately available
10 or that has been discussed in this case.

11 Q Okay. Well, let's then flip it. Tell me
12 a customer that you believe can afford the
13 3,000/\$5,500 lead service line replacement.

14 A I think there are a lot of factors that
15 actually go into that besides, you know, income or
16 property value. It's going to depend not just on
17 your gross income, but on your disposal income,
18 what some of your other utility bills are, how much
19 your rent is, if applicable, your mortgage,
20 whatever.

21 Q I'm sorry. Does your testimony reference
22 that, or does it just state low income customers?

23 A It states low income.

24 Q Okay. So you're changing that now to
25 include what other factors?

1 A Well, I'm not changing my testimony.

2 Q You say it depends on other factors
3 besides low income.

4 A I think it could. But I think that, in
5 general, the low income customer is going to be
6 less likely to be able or -- or let's see. What is
7 it I said doubtful that they would be able to
8 afford it.

9 Q Okay. So for purposes of a hypothetical,
10 if a customer made a half a million dollars a year,
11 are you concerned about their ability to afford
12 this \$5,500 service line replacement?

13 A I'd probably be -- probably be less
14 concerned.

15 Q Okay. What if they made \$150,000 a year?

16 A Well, again, that's going to get into -- I
17 mean, probably not. But I would note that, for
18 example, Federal poverty, again, not binding myself
19 to Federal poverty level, but that's actually
20 dependent on the number of people in a household.
21 So it's not just a matter of a raw number from even
22 that perspective.

23 Q And, again, I'm just trying get a better
24 understanding of DED's, quote, interest in the
25 case. And -- and you tied your words, not mine,

1 to, quote, low income customers.

2 A I would say that that was part of my
3 testimony on what our interest is.

4 Q Okay. And that's the part I'm trying to
5 get at. And you can provide no further
6 clarification of what you mean in that sentence by,
7 quote, low income customers?

8 A Again, I can provide you examples, which I
9 have attempted to do. But nothing firm as to for
10 the purposes this program if one were to use a
11 definition what would be the definition.

12 Q And to try to -- if we were to try to
13 tailor this to meet your interests, DED would be
14 amenable to -- to putting a test, so to meet the
15 low income concerns?

16 A I believe so. Yes.

17 MR. WOODSMALL: Okay. No further
18 questions. Thank you.

19 JUDGE PRIDGIN: All right. Thank you.
20 Cross from Public Counsel?

21 MR. OPITZ: No, thank you, Judge.

22 JUDGE PRIDGIN: Thank you. Any Bench
23 questions? Mr. Chairman.

24 CROSS-EXAMINATION

25 BY CHAIRMAN HALL:

1 Q Yeah. Good afternoon.

2 A Good afternoon.

3 Q My understanding is that your testimony is
4 that the Division supports the -- the LSLR program
5 but is taking no position on whether an AAO should
6 be established?

7 A Yes. That's -- that's right. We're not
8 really taking a position on what the best mechanism
9 is. Just we want to see this move forward.

10 Q Okay. So focusing on -- on the current
11 LSLR program, my understanding is that the -- the
12 program involves a main replacement initiative, and
13 when -- when the company discovers lead service
14 lines, then those are replaced. Is that -- is that
15 your understanding as well?

16 A Yes. That is my understanding as well.

17 Q So there is no attempt to prioritize based
18 upon either income or vulnerable populations or age
19 or -- of -- of individuals or age of the homes; is
20 that correct?

21 A That's -- well, that's -- yeah. I'd say
22 generally that's my understanding. I don't -- you
23 know, I don't know that that binds the program
24 going forward once -- once parties have had time to
25 consider such issues, but I think for now, yes.

1 Q And were you in the hearing room during
2 Mr. Naumick's testimony?

3 A I was here.

4 Q And you were in here -- in response to
5 questions from me indicated that the company would
6 be open to some kind of collaboration that might
7 set some criteria for prioritization of projects?

8 A Yes. And I think we're -- we're open to
9 that as well. I think, you know, the concern for
10 us is just not halting or limiting work while we
11 try to figure all this out.

12 Q What do you think that collaboration
13 should look like if -- if there was one
14 established?

15 A Well, just from a dollar perspective, I
16 think OPC had mentioned 12.5 percent of 8 million
17 dollars. When you work that out, that's a million
18 dollars.

19 And as my Counsel noted in his opening,
20 the Division of Energy has certainly done
21 state-wide studies, which I don't think this would
22 need to be, for far less. I don't know if I can
23 get into specifics since these are contracts that
24 the State --

25 Q Yeah. I guess my sense that it would not

1 -- it wouldn't necessarily require a study. It
2 might just require getting the right people in a
3 room to sit down and discuss how to prioritize.

4 A Sure. I mean, if that -- if we don't do a
5 study, then yeah. I think that's all you need.

6 And I think in terms of -- sorry.

7 Q No.

8 A In terms of, you know, what the scope
9 should be, I think that was one of the keys that
10 we've noted is that it shouldn't be a state-wide
11 thing.

12 If we're talking about money from
13 Missouri-American ratepayers, it should be
14 something to specific to Missouri-American and the
15 things that they can control, which is lead in the
16 water.

17 Q So what -- who do you think the right
18 parties would be for that kind of collaboration?
19 and I won't necessarily hold you to this. I'm just
20 interested in your -- in your thoughts as you sit
21 here today. Who would be the right parties in that
22 kind of collaboration?

23 A We thought about that. I think some of
24 the parties that OPC just suggested for sure such
25 as OPC, Staff. I think he mentioned that -- OPC

1 mentioned Department of Health. I think DNR would
2 make sense. I think DED would make sense.

3 I think there are a lot of them that --
4 that could be in it. But I think, you know, sort
5 of general outlines make sense in terms of who
6 would be included.

7 CHAIRMAN HALL: Okay. I have no further
8 questions. Thank you.

9 JUDGE PRIDGIN: Thank you. Any further
10 Bench questions?

11 COMMISSIONER STOLL: No questions.

12 JUDGE PRIDGIN: Thank you. Any recross
13 based on Bench questions? Missouri-American?

14 CROSS-EXAMINATION

15 BY MR. COOPER:

16 Q And I would assume Missouri-American would
17 be on your list as well?

18 A Oh, you know, I get into these cases. I
19 just make assumptions about -- yeah. Yes, they
20 would. Sorry.

21 JUDGE PRIDGIN: All right. Thank you, Mr.
22 Cooper. Staff?

23 MS. ASLIN: No questions.

24 JUDGE PRIDGIN: MECG?

25 MR. WOODSMALL: Yes, briefly.

1 CROSS-EXAMINATION

2 BY MR. WOODSMALL:

3 Q In response -- or following up on the
4 question from the Chairman, other than the cost,
5 the outlying of the collaborative as set forth in
6 Mr. Marke's testimony, other than the cost, you
7 have no problem with the scope of his pilot?

8 A Well, I don't believe that was my
9 testimony.

10 Q Okay. What parts of his pilot other than
11 the costs do you take exception to?

12 A Well, I think one of the things that I
13 mentioned to the Chairman just now was that this
14 should be limited to Missouri-American's territory
15 since we're talking about Missouri-American
16 ratepayers. I think that's one potential thing.

17 I'd -- I'd have, you know, go back and
18 look point by point at what he suggested, but I
19 think that's kind of the big one right there.

20 Q Okay. Off the top of your, and that's
21 all --

22 A Yes.

23 Q That's the one and the cost that stands
24 out to you?

25 A Yeah. I think those are the two things,

1 you know, just right now. But if I went back and
2 looked, I'd -- I'd have to go back and look and see
3 it point by point.

4 But, for example, his question about real
5 estate is interesting. I think it's something that
6 could be explored.

7 **Q Okay. And would DED be willing to**
8 **participate in such a collaborative as set forth by**
9 **Mr. Marke?**

10 A Generally, yes. I mean, I -- I can't make
11 a commitment for the Director. But I -- I think
12 generally, yes.

13 MR. WOODSMALL: Okay. No further
14 questions. Thank you.

15 JUDGE PRIDGIN: Thank you. Public
16 Counsel?

17 MR. OPITZ: No, thank you, Judge.

18 JUDGE PRIDGIN: Thank you. Redirect?

19 MR. BEAR: Just some brief redirect.

20 REDIRECT EXAMINATION

21 BY MR. BEAR:

22 **Q Earlier, you were discussing with**
23 **Mr. Woodsmall the definition of low income and how**
24 **you would use that within your testimony. Do you**
25 **recall that, sir?**

1 A Yes, I do.

2 Q And the Department of Economic Development
3 and the Division of Energy, which is within it,
4 there are multiple programs, correct, which try to
5 get at that definition, correct?

6 A Right. And, I mean, it really depends by
7 the program what definition you use. I mean, I
8 think that to low income heating assistance might
9 be different than weatherization or a particular
10 utility's energy efficiency program. It's really
11 going to vary.

12 A And would it be fair to say that as far as
13 the precise contours of low income that you would
14 feel that that would be most appropriate for
15 collaboration or further study in order to
16 precisely set those contours?

17 A Oh, yes. Absolutely.

18 Q But as I understand it, it would be fair
19 to say that you're philosophically okay with
20 allocating different treatment for different income
21 classes of customers of Missouri-American?

22 A If -- if by allocation you mean figuring
23 out who pays for what, then yes.

24 Q And -- and that might even include
25 possibly the customer having to, in certain

1 instances, have to pay part or all of the line?

2 A In certain instances, sure.

3 Q Okay. The Chairman had asked some
4 questions about prioritization. In your testimony,
5 you're not philosophically opposed to conducting a
6 study, correct?

7 A No. Not philosophically. I think the
8 main issue is just what they're doing now doesn't
9 stop or get limited.

10 Q Basically, if I understand this, your
11 testimony is that while we are replacing water
12 main, we should address lead pipes until we figure
13 out the overall policy for doing so?

14 A Right. And I think we've heard today
15 that, you know, the options, if you don't go ahead
16 with this that they have to start re-prioritizing
17 mains that they're avoiding ones that they might
18 otherwise need to replace.

19 Then you might have to do something
20 sub-optimal such as a partial replacement. It just
21 becomes a bit messier if you continue as is before
22 you figure out the right solution.

23 Q And in your opinion -- and that would be
24 bad public policy to not address it at least in the
25 interim?

1 A I think so. Yeah.

2 MR. BEAR: Okay. Nothing further.

3 JUDGE PRIDGIN: All right. Mr. Hyman,
4 thank you very much. You may step down. It looks
5 like the next witness is Mr. Merciel. And after
6 that it would be Mr. Dallas.

7 And then we'll -- we'll see how long cross
8 takes. My goal is to kind of keep going until we
9 have a natural break somewhere around 5:00 so
10 people would be prepared depending on how
11 long-cross examination goes. I would appreciate
12 it. Anything further before Mr. Merciel is sworn?

13 MR. BEAR: Yes. Your Honor, I have no
14 further cross-examination for any witnesses. I
15 would ask permission for Mr. Hyman and myself to be
16 excused so that we can handle other legal business
17 for the State.

18 JUDGE PRIDGIN: Any objections? All
19 right. That request is granted. Thank you very
20 much.

21 MR. BEAR: Thank you, your Honor.

22 JUDGE PRIDGIN: All right. Anything
23 further? All right. Mr. Merciel, if you'll raise
24 your right hand to be sworn, please.

25 JAMES MERCIEL,

1 being first duly sworn to testify the truth, the whole
2 truth, and nothing but the truth, testified as follows:

3 DIRECT EXAMINATION

4 BY MS. ASLIN:

5 JUDGE PRIDGIN: Thank you very much. You
6 may have a seat, Mr. Merciel. And Ms. Aslin, take
7 it when you're ready.

8 Q (By Ms. Aslin) Would you please state and
9 spell your name?

10 A James A. Merciel, Jr. Merciel is
11 M-e-r-c-i-e-l.

12 Q And how are you employed and in what
13 capacity?

14 A I'm employed at the Public Service
15 Commission in the Water & Sewer Department. I am
16 an engineer.

17 Q Did you prepare or cause to be prepared
18 rebuttal testimony in this case marked as
19 Exhibit 13?

20 A Yes, I did.

21 Q Do you have any changes or corrections to
22 that testimony?

23 A No.

24 Q If I were to ask you those same questions
25 today, would your answers be the same?

1 A Yes.

2 Q And are the answers contained in that
3 testimony true and correct to the best of your
4 knowledge and belief?

5 A Yes.

6 MS. ASLIN: I move for the admission of
7 Exhibit 13.

8 JUDGE PRIDGIN: Any objections. Hearing
9 none, Exhibit 13 is admitted.

10 (Exhibit 13 was offered and admitted into
11 evidence.)

12 MS. ASLIN: And I tender the witness for
13 cross.

14 JUDGE PRIDGIN: Ms. Aslin, thank you.
15 Cross-examination, Missouri-American?

16 MR. COOPER: No questions.

17 JUDGE PRIDGIN: MECG?

18 MR. WOODSMALL: No questions.

19 JUDGE PRIDGIN: Public Counsel?

20 MR. OPITZ: No, thank you, Judge.

21 JUDGE PRIDGIN: Any Bench questions?
22 Mr. Chairman?

23 CHAIRMAN HALL: Yeah. I think I have a
24 few.

25 CROSS-EXAMINATION

1 BY CHAIRMAN HALL:

2 Q Good afternoon.

3 A Good afternoon, Mr. Chairman.

4 Q Could you explain to me why partial lead
5 service line replacement is not a good policy?

6 A Yes. When doing partial service line
7 replacements, that means an existing service line
8 would be cut so that it may be modified, extended,
9 whatever, leak repaired.

10 And in so doing, it gets into an effect
11 that's called scaling in water pipes, and the
12 scaling is an insulator between the water and the
13 lead.

14 And that helps prevent any -- any leaking
15 of lead into the water. Well, when you disturb the
16 pipe, than that scaling can be disturbed and
17 cracked off and you do expose the water to the
18 lead. And that's -- that's where the risk comes
19 in.

20 Q And how long does that risk last?

21 A Well, I suppose the risk would last until
22 the scaling reforms. And I -- to be honest, I
23 don't know how long that would take. We're --
24 we're likely talking about months -- weeks or
25 months. I'd also like to point out that the water

1 leaching -- lead leeching into the water, it
2 doesn't really happen when the water is flowing
3 through a pipe. It's more when the water is
4 sitting there. It takes some time to do that, like
5 water sitting other night.

6 So when the water is sitting there, you
7 would have a slug of water that could come -- come
8 through and end up in your -- in your cup and you
9 ingest it.

10 Q And so is that part of the reason why the
11 service line is -- is a more serious issue than --
12 than the interior plumbing?

13 A Well, yes. I should also add, in
14 reviewing news articles and studies that we see
15 from time to time, including the lead service line
16 replacement collaborative and papers we see with
17 AWWA and -- and with various groups with EPA like,
18 their Science Advisory Board and Drinking Water
19 Advisory Board, groups like that, there seems to be
20 consensus that -- that lead service lines is one of
21 the primary risks of lead leaching leaking into the
22 water, more so than internal piping.

23 It does exist there with lead solder
24 joints and lead in the water fixtures, you know,
25 faucets and that sort of thing. But the consensus

1 is the lead service lines are the larger risk.

2 And, also, that's something outside of the
3 house. It's underground, something utilities are
4 able to deal with as opposed to plumbing inside the
5 house.

6 Everything I see, everybody seems to be
7 drawing the line at -- at the customer's foundation
8 wall or just inside of it.

9 Q Do you believe that -- that the
10 prioritization that is in place for this program as
11 to what service lines to replace is the ideal
12 program? Or do you think that could be improved
13 upon?

14 A I -- I -- well, there's always room for
15 improvement. And there's more that can be done.
16 And I believe I stated in my testimony, I don't --
17 the program that -- that Missouri-American is
18 proposing, at this point in time, I don't think
19 will be addressing all service lines because they
20 are proposing that as many replacements are done
21 they will replace the lead service lines as they
22 run across them with those replacements.

23 I think it's reasonable. I think it's a
24 wise thing to do. But, you know, this company's
25 been replacing water mains for -- for many years.

1 It got pretty serious in the '90s. That's how we
2 ended up with the ISRS law when -- when they
3 started ramping up the main replacement.

4 And the point there being within the past
5 20 years or so, there are a lot of mains that have
6 been replaced that I'm sure have had lead service
7 lines attached to them. I don't have a count of
8 them.

9 But there are -- there are some lead
10 service lines that are connected to fairly new
11 mains. Those mains are not going to be replaced
12 within the next ten years.

13 **Q Would -- would Staff support a -- a**
14 **modification to the program so as to prioritize**
15 **certain lead service lines over others, for**
16 **example, maybe those that are leading into schools**
17 **or -- or other -- or establishments with -- with**
18 **vulnerable populations?**

19 A Yes. I think there are things like that
20 that can be done. The company's already mentioned
21 as one of the factors of selecting main replacement
22 priorities doing a lead service line overlay and
23 lead -- the presence of lead service lines can be a
24 factor.

25 I don't think it changed. As far as I

1 know, they already have critical customers. Like
2 the hospitals are on -- on some of the mains and
3 might be up for replacement. That might bump it up
4 a little bit.

5 I guess there are other types of critical
6 customers. Schools certainly could be included or
7 at least, you know, considered to be, to be
8 included.

9 **Q And -- and -- and would -- would Staff**
10 **support that type of collaborative process?**

11 A Oh, as far as collaborative, absolutely. I
12 mentioned that in my testimony, too. I -- I think
13 the program that's being proposed is reasonable,
14 and it should go forward, but further explore this
15 for -- to get to a more comprehensive lead service
16 line replacements, I think, is reasonable.

17 **Q Do you believe that the -- the company's**
18 **estimate of 30,000 lead service customer lead**
19 **service lines is a reasonable estimate?**

20 A It's -- to me, it's plausible. I -- I've
21 heard that number, actually for a long time before
22 this really became an issue, particularly in St.
23 Louis. St. Louis County water company always had
24 good records, and they've kind of had a handle on
25 what they had.

1 As Mr. Aiton said, some of the other
2 areas, they don't really have quite so good records
3 compared to the system from somebody else. But I
4 -- I really have no reason to doubt their -- their
5 estimates. It is an estimate, you know. Whether
6 it's -- it's not going to be that exact number so
7 we have to keep that in mind.

8 CHAIRMAN HALL: Okay. I have no further
9 questions through.

10 MR. MERCIEL: Yes, sir.

11 JUDGE PRIDGIN: Any questions?
12 Commissioner Stoll.

13 CROSS-EXAMINATION

14 BY COMMISSIONER STOLL:

15 **Q Good afternoon.**

16 **A Good afternoon.**

17 **Q Since I -- since we've got you on the**
18 **stand, what's the situation like in other**
19 **jurisdictions in Missouri? Do you have any idea?**

20 **Like how many lead lines do -- lead**
21 **service lines do people think there are in**
22 **municipalities and so on?**

23 **A I've -- I've never seen a count on that.**
24 **We called some of our companies is. As all of you**
25 **probably recall, the water and sewer department**

1 wrote a report about the state of lead in Missouri
2 at Chairman Hall's request.

3 We called some of our companies. Raytown
4 Water Company, for example, the founder of that
5 company did not believe in lead back in 1925. And
6 they say they don't have any lead -- lead service
7 lines. They never did -- they never did prevent
8 them to be installed.

9 Some of the other utilities, Empire
10 Electric Company has water systems in three small
11 towns in southwest Missouri. It's very likely the
12 old parts of town have -- have lead service lines.
13 But I don't know that. I've not seen a count.

14 You know, I've never seen any evidence of
15 anybody digging them up. But it's -- it's probably
16 safe to suspect that there are some. As far as
17 state-wide, I really have no idea, though.

18 COMMISSIONER STOLL: Okay. Yeah. Okay.
19 Thank you.

20 MR. MERCIEL: Yes, sir.

21 JUDGE PRIDGIN: Any further Bench
22 questions? Recross based on Bench questions?
23 Missouri-American?

24 RE CROSS EXAMINATION

25 BY MR. COOPER:

1 Q Just a clarification, a follow-up on
2 Commissioner Stoll's question. I take it from
3 that, then, that you don't have a feel for City of
4 Kansas City, City of St. Louis, Springfield,
5 Columbia, those larger cities that are -- that are
6 served by municipalities?

7 A That's correct. I have no idea. First of
8 all, we don't deal with them. Even with contacts
9 with some of the municipals through water
10 organizations, I've never -- never seen any data.
11 Never heard anything about any count.

12 MR. COOPER: Thank you.

13 JUDGE PRIDGIN: MECG?

14 MR. WOODSMALL: Briefly.

15 RE CROSS EXAMINATION

16 BY MR. WOODSMALL:

17 Q You were asked some questions by the
18 Chairman about prioritizing, -- I think the word he
19 used, vulnerable customers?

20 A I believe that's correct. Yes.

21 Q You attached some invoices to your
22 rebuttal testimony. Do you recall that?

23 A Yes, I do.

24 Q Do you know if any of those invoices were
25 for customers that you would consider to be

1 **vulnerable?**

2 A You know, I -- I don't know because I
3 didn't really look at that. That was simply from
4 some projects that this company got started.
5 That's what we asked for in the data request in --
6 I'm not sure when it was. Maybe in May or earlier
7 this year.

8 And those were -- were the invoices from
9 projects that they got back. It -- it was -- it
10 was -- I don't believe it was based on any
11 vulnerability. That's just the projects it had
12 going on at the time.

13 **Q So you are not aware whether any of those**
14 **invoices are for schools, hospitals, nursing homes,**
15 **low income?**

16 A Well, it's my understanding all of -- all
17 of those are residential.

18 **Q Okay. And do you -- are you aware whether**
19 **any of them are vulnerable in terms of low income?**

20 A I really don't know.

21 **Q You didn't study that at all?**

22 A I didn't look at that. No, sir.

23 MR. WOODSMALL: Okay. No further
24 questions.

25 JUDGE PRIDGIN: All right. Thank you.

1 Public Counsel?

2 MR. OPITZ: Briefly, Judge.

3 RE CROSS EXAMINATION

4 BY MR. OPITZ:

5 Q Mr. Merciel, you were discussing, I guess,
6 rescaling occurring in the pipes --

7 A Yes.

8 Q -- with the Chairman. What is the basis
9 for your estimate of weeks or months for a pipe to
10 rescale?

11 A I have to admit it's a wild guess.

12 Q Okay.

13 A I don't know. I've never -- I've never
14 looked at it. Scaling does occur.

15 Q Okay.

16 A I don't know how long it takes a water --
17 somebody better with water chemistry would have to
18 answer that.

19 Q You mentioned that sometimes a disturbance
20 will cause the scale to break off in the pipe?

21 A Yes.

22 Q Can you tell me what kind of disturbance
23 would be required for the scale to break off?

24 A Well, any time there's any vibration -- I
25 don't know. I don't know how to describe it.

1 Shaking, moving of the pipe. The example we have,
2 you can see where that pipe was cut with a saw, and
3 -- and that -- that broke some scaling off.

4 I saw a news article, it was from New
5 Orleans, City of New Orleans was doing some street
6 work, and they also own their water system,
7 municipal water system. And the City was informing
8 customers that doing street work could be causing
9 vibrations if they had lead service lines or it
10 cause could cause them some problems.

11 They weren't offering to replace it or
12 anything like that. It was just notifying
13 customers that there could be issues with lead
14 pipes. Just one of the bits of information that I
15 saw and reviewed all the stuff.

16 **Q Since you mentioned the street**
17 **disturbance, is city of Jefferson City served by**
18 **Missouri-American?**

19 **A Yes, it is.**

20 **Q And have you noticed any, I guess,**
21 **construction going on around town here?**

22 **A Well, I'm going to -- I'm going to say**
23 **yes. I think every City has projects going on from**
24 **time to time.**

25 **Q And do you know if the company is**

1 notifying customers around those construction
2 projects, whether it's -- it's got -- they have
3 lead service lines?

4 A To my knowledge, they're not.

5 Q Okay. Thank you.

6 A I could be wrong, but not to my knowledge.

7 MR. OPITZ: That's all I have, Judge.

8 Thank you.

9 JUDGE PRIDGIN: All right. Thank you.

10 Redirect?

11 REDIRECT EXAMINATION

12 BY MS. ASLIN:

13 Q Mr. Merciel, in the '90s, was there, to
14 your knowledge, a collaborative work group that
15 worked on prioritizing main replacements?

16 A There -- yeah. I believe there was a work
17 group. There was quite a bit of activity with main
18 replacements, what the company should be doing, how
19 they should be studying it.

20 It -- it went through, I'm going to say,
21 two or three rate cases on how to settle that. So
22 the answer is yes.

23 Q And do you know how they were prioritizing
24 those replacements?

25 A Well, I -- I don't remember. It's based

1 primarily on -- on break rates. Like rates per --
2 I'm going to say, breaks per -- I'm going to say
3 breaks per mile. Might have to break it down
4 different -- you know, shorter lengths.

5 It's with main breaks and leaks. But
6 there are other prioritizations the company's
7 already mentioned they do in conjunction with road
8 work you do have critical customers.

9 I'm -- there's probably other factors that
10 I'm forgetting, but there were several -- several
11 factors involved with main replacement work.

12 **Q And just one last question. You talk**
13 **about -- you talked about in answers to questions**
14 **approximate lead leaching when there's some sort of**
15 **disturbance when the scale is removed from the**
16 **pipe. That also be caused by unanticipated events,**
17 **like natural disasters, like maybe an earthquake?**

18 **A I suppose it could.**

19 **Q Thank you.**

20 **A I haven't seen a study on that, though.**

21 **MS. ASLIN: No further questions.**

22 **JUDGE PRIDGIN: Mr. Merciel, thank you**
23 **very much. You may step down. I believe Mr.**
24 **Dallas is the next witness. PRIDGIN: If you'll**
25 **raise your right hand to be sworn, please, sir.**

1 JONATHAN DALLAS,
2 being first duly sworn to testify the truth, the whole
3 truth, and nothing but the truth, testified as follows:

4 DIRECT EXAMINATION

5 BY MS. ASLIN:

6 JUDGE PRIDGIN: Thank you, sir. You may
7 have a seat. And, Ms. Aslin, when you're ready.

8 Q (By Ms. Aslin) Would you please state and
9 spell your name for the court reporter?

10 A Jonathan, J-o-n-a-t-h-a-n, Dallas,
11 D-a-l-l-a-s.

12 Q How are you employed and in what capacity?

13 A I'm employed by the Missouri Public
14 Service Commission, Water & Sewer Department, as a
15 Utility Operations Specialist.

16 Q And did you prepare or cause to be
17 prepared rebuttal testimony in this case marked as
18 Exhibit 11?

19 A Yes.

20 Q Do you have any changes or corrections to
21 that testimony?

22 A No.

23 Q And are those answers true and correct to
24 the best of your knowledge and belief?

25 A They are.

1 Q If I were to ask you those questions
2 today, would your answers be the same?

3 A Yes.

4 MS. ASLIN: Judge, I'd move for the
5 admission of Exhibit 11.

6 JUDGE PRIDGIN: Any objections? Hearing
7 none, Exhibit 11 is admitted.

8 (Exhibit 11 was offered and admitted into
9 evidence.)

10 MS. ASLIN: I tender the witness for
11 cross.

12 JUDGE PRIDGIN: Thank you.
13 Cross-examination, Missouri-American?

14 MR. COOPER: No, thank you, your Honor.

15 JUDGE PRIDGIN: MECG?

16 MR. WOODSMALL: No questions?

17 JUDGE PRIDGIN: Public Counsel?

18 MR. OPITZ: No, thank you, Judge.

19 JUDGE PRIDGIN: Any Bench questions?

20 CHAIRMAN HALL: No questions. Thank you.

21 COMMISSIONER STOLL: No questions.

22 COMMISSIONER KENNEY: No questions. Thank
23 you.

24 JUDGE PRIDGIN: Mr. Dallas, thank you very
25 much. You may step down. Ms. McMellen, you're the

1 next witness. If you'll raise your right hand to
2 be sworn, please.

3 AMANDA MCMELLEN,
4 being first duly sworn to testify the truth, the whole
5 truth, and nothing but the truth, testified as follows:

6 DIRECT EXAMINATION

7 BY MS. ASLIN:

8 JUDGE PRIDGIN: Thank you very much. You
9 may have a seat. Ms. Aslin, when you're ready.

10 Q (By Ms. Aslin) Would you please state and
11 spell your name?

12 A Amanda McMellen, M-c-M-e-l-l-e-n.

13 Q How are you employed and in what capacity?

14 A I'm employed by the Staff of the Missouri
15 Public Service Commission as Utility Regulatory
16 Auditor.

17 Q And did you prepare or cause to be
18 prepared rebuttal testimony in this case marked as
19 Exhibit 12?

20 A Yes.

21 Q Do you have any changes or corrections to
22 that testimony?

23 A No, I do not.

24 Q And are the answers contained in that
25 continual true and correct to the best of your

1 **knowledge and belief?**

2 A Yes.

3 **Q If I were to ask you those questions**
4 **today, would your answers be same?**

5 A Yes.

6 MS. ASLIN: Judge, I'd ask for the
7 admission of Exhibit 12.

8 JUDGE PRIDGIN: Any objections? No
9 objections, Exhibit 12 is admitted.

10 (Exhibit 12 was offered and admitted into
11 evidence.)

12 MS. ASLIN: Tender the witness for cross.

13 JUDGE PRIDGIN: Ms. Aslin, thank you.
14 Cross-examination, Missouri-American?

15 MR. COOPER: No, your Honor.

16 JUDGE PRIDGIN: MECG?

17 MR. WOODSMALL: No questions.

18 JUDGE PRIDGIN: Public Counsel?

19 MR. OPITZ: Briefly, Judge.

20 CROSS-EXAMINATION

21 BY MR. OPITZ:

22 **Q Ms. McMellen, are you a Certified Public**
23 **Accountant?**

24 A No, I am not.

25 **Q Have you been in the hearing room since**

1 the opening statements this morning?

2 A Yes, I have.

3 Q And you were here when the -- Counsel for
4 the company said that they were no longer
5 requesting an order calling it a regulatory asset.

6 Do you recall that?

7 A Yes, I do.

8 Q Does that change your recommendation?

9 A No, it does not.

10 Q Are you aware of -- of anything in the
11 USOA or GAAP that requires the company to get an
12 order from the Commission prior to booking costs to
13 Account 186?

14 A It's not required.

15 MR. OPITZ: That's all the questions I
16 have. Thank you.

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

19 CROSS-EXAMINATION

20 BY CHAIRMAN HALL:

21 Q Good afternoon.

22 A Good afternoon.

23 Q You -- you've testified that -- that you
24 believe that it's -- that it would be appropriate,
25 for the company to -- to book these expenses in

1 Account 186; is that correct?

2 A Correct.

3 Q Do you have a position as to whether it
4 would be appropriate to book it in 345?

5 A Not at this time. That would be
6 determined in the pending rate case.

7 Q I understand that that's when it will be
8 ultimately determined. I want to make you have an
9 opinion on -- on that issue.

10 A Not at this moment.

11 Q Isn't it true that it's -- that it's --
12 that it's necessary and -- hang on a second,
13 please.

14 Do you believe that it is appropriate
15 under the uniform system of accounts to -- to put
16 investment in customer-owned services -- or
17 customer owned-service lines?

18 A In regular investment, such as like plant
19 in service?

20 Q Exactly.

21 A Typically, no. And that's not what
22 they're requesting in this AAO case.

23 Q I understand. Why -- why typically no?

24 A Because it's customer-owned property that
25 the -- that is not the responsibility of the

1 company.

2 Q And so, typically, it would be
3 inappropriate to put that -- that kind of
4 investment in 345?

5 A Correct.

6 CHAIRMAN HALL: Okay. I have no further
7 questions. Thank you.

8 JUDGE PRIDGIN: Thank you. Bench
9 questions?

10 COMMISSIONER STOLL: No questions. Thank
11 you.

12 JUDGE PRIDGIN: All right. Cross based on
13 Bench questions? Missouri-American?

14 MR. COOPER: Yes, briefly.

15 RECROSS EXAMINATION

16 BY MR. COOPER:

17 Q Ms. McMellen, if you're aware -- well, let
18 me back up. Are you aware of any deferrals that
19 are treated like rate base, meaning that the
20 unamortized balance is given a rate of return?

21 A Yes.

22 Q On the -- post rate case even?

23 A Yes. That has happened in the past.

24 Q Okay. Thank you.

25 MR. COOPER: That's all the questions I

1 have.

2 JUDGE PRIDGIN: Thank you. MECG?

3 MR. WOODSMALL: No questions.

4 JUDGE PRIDGIN: Public Counsel?

5 MR. OPITZ: No, thank you, Judge.

6 JUDGE PRIDGIN: Redirect?

7 MS. ASLIN: No questions.

8 JUDGE PRIDGIN: All right. Ms. McMellan,
9 thank you. I think Dr. Marke is the next witness.
10 If you'll raise your right hand to be sworn,
11 please.

12 GEOFF MARKE,
13 being first duly sworn to testify the truth, the whole
14 truth, and nothing but the truth, testified as follows:

15 DIRECT EXAMINATION

16 BY MR. OPITZ:

17 JUDGE PRIDGIN: Thank you, sir.

18 Mr. Opitz, when you're ready, sir.

19 Q (By Mr. Opitz) Would you please state and
20 spell your name for the record?

21 A Geoff, G-e-o-f-f-, Marke, M-a-r-k-e.

22 Q And where are you employed and in what
23 capacity?

24 A Missouri Office of Public Counsel. I'm
25 the Chief Economist.

1 Q Did you prepare pre-filed testimony in
2 this case that is going to be marked as Exhibit 14,
3 your direct testimony, Exhibit 15, your rebuttal
4 testimony, and Exhibit 16 and 16-C, your
5 surrebuttal testimony?

6 A Yes.

7 Q If I were to ask you the questions posed
8 in that testimony, would your answers be the same?

9 A Yes.

10 Q And that testimony is true and accurate to
11 the best of your knowledge and belief?

12 A It is.

13 MR. OPITZ: Judge, at this time, I would
14 offer Exhibits 14, 15, 16 and 16-C into evidence.

15 JUDGE PRIDGIN: Any objections? Hearing
16 no objection, Exhibits 14, 15, 16 and 16-C are
17 admitted.

18 (Exhibits 14, 15, 16 and 16-C were offered
19 and admitted into evidence.)

20 MR. OPITZ: I'll tender the witness for
21 cross-examination.

22 JUDGE PRIDGIN: Mr. Opitz, thank you.
23 Cross, MECG?

24 MR. WOODSMALL: Yes. Briefly.

25 CROSS-EXAMINATION

1 BY MR. WOODSMALL:

2 Q There were some questions from primarily
3 Commissioner Stoll earlier to company witnesses, so
4 I'll just jump to those now.

5 Are you aware of what other jurisdictions
6 are doing for regulated utilities that have
7 customer-owned lead service lines?

8 A I -- I have an idea.

9 Q And what is your understanding?

10 A As the company witnesses already alluded
11 to, on the investor-owned side, it's influx. So
12 Pennsylvania American Water, New Jersey American
13 Water both recently put out lead service line
14 replacements within the context of their rate case.

15 Missouri is the only one that's doing it
16 outside of a rate case that I'm aware of. Indiana
17 did have Legislative -- enabling Legislative action
18 that was eventually passed.

19 York Water, which was referenced earlier
20 by Chairman Hall, in that case, York Water was in
21 violation of the lead and copper rule. So they
22 were -- essentially penalized and their
23 shareholders were penalized in that regard.

24 Municipal side, in my surrebuttal
25 testimony, I've got a map that Mr. Naumick had

1 printed up which listed various municipal systems
2 that had undergone action.

3 I would caution that there's a big
4 distinction between municipal systems and
5 investor-owned. And since the question was
6 investor-owned, I'll just leave it at that. But
7 that's what I'm aware of.

8 Q Well, you can then probably guess my next
9 question. What has happened on the municipal side,
10 to your knowledge, around the country?

11 A The -- the big case study, the big go-to
12 example is Madison, Wisconsin. In Madison,
13 Wisconsin, the company -- municipal company was not
14 able to use the phosphate chemical treatment for
15 environmental reasons.

16 This is around the mid '90s. At that
17 point, they decided in absence of being able to
18 treat the water, let's go ahead -- and, again,
19 Madison was in violation, so they -- they exceeded
20 the lead and copper rule threshold.

21 They had to take some -- they're required
22 by Federal rational action to take some action.
23 They decided to move forward with actually
24 replacing the lead service line, and that process
25 took over a decade.

1 Customers, in some cases, were given up to
2 \$1,000 of -- to offset some of the costs through
3 the -- the municipal system.

4 I actually referenced Madison as case
5 study example in my direct testimony thinking that
6 was a -- a good example. Right? As I delved
7 further into the research, I -- I went through
8 Madison's post-replacement programs and their
9 studies.

10 And in the Madison example, what happened
11 was the lead came back. I mean, they -- they --
12 they had high concentrations of lead in particular
13 homes even after they withdrew those lead service
14 lines.

15 Flint's the other example. There's a lot
16 of discussion about Flint. I've given it a lot of
17 attention, you know, within my testimony. That's a
18 municipal system that's taking place.

19 In Washington D.C., which is where a lot
20 of the -- the -- the fear about partial line
21 replacement first came up. That's a good example
22 right there.

23 And the distinction here is important
24 because when we talk about partial line
25 replacement, when we're talking about removing that

1 -- I heard Mr. Merciel say that that was an example
2 of a saw cut.

3 And even in an example like that, you're
4 going to get variability within the studies. I
5 mean, think of it in this terms.

6 Any time you break a pipe, any time you
7 have disturbance, you run the risk of -- of lead
8 getting into the system.

9 If we're sawing something, that's going to
10 release particles much easier than, say, a pipe
11 cut. Right? That's -- that's the sort of detail
12 that -- that really needs to be undergone when you
13 look at the studies that have taken place.

14 And there are in the a lot of studies.
15 But I'm -- I'm jumping ahead. But that's --
16 that's what I know in terms of municipal systems.

17 **Q Okay. So bottom line, are you aware of**
18 **any utilities, regulated or municipal, that have**
19 **socialized or uplifted the costs from customers to**
20 **other customers?**

21 A No. And we -- in my surrebuttal, I
22 actually point that fact out, that between Staff,
23 between the company, between DED, there isn't an
24 example that we can point to, and that's the model
25 example we should be following that's the

1 regulatory precedent to be following, and that's
2 why this case is so important because this is
3 really setting -- this would be an unprecedented
4 regulatory ruling if we were to move forward as --
5 as the company's projecting -- is planning on
6 doing, proposing.

7 Q So to date, to the extent these service
8 lines, lead service lines, are being replaced,
9 customers are footing the bill for that. Is that
10 your understand?

11 A In -- in the vast majority of cases,
12 that's -- that's the issue. I mean, the initial
13 lead and copper rule actually provided for the
14 utilities to go ahead and replace the customer's
15 side.

16 It was actually the AWWA that sued the
17 EPA. And the District Court found in favor of the
18 AWWA to overturn that. And we've been in limbo
19 since then.

20 Q Okay. So initially, the Feds attempted to
21 impose that legal obligation onto the utility, and
22 AWWA sued so they -- they weren't legally obligated
23 to replace those customers' service lines. Is that
24 what you're saying?

25 A That is correct. And this is detailed in

1 my rebuttal testimony, if you give me one second.
2 Page 12, beginning on line 21, to page 13, line 6.

3 Q Thank you. Moving on, you've talked about
4 in your direct testimony, and it's been the subject
5 of conversation here today, of a collaborative.
6 And I use that interchangeable with pilot program.
7 Are you comfortable with both those terms?

8 A I am.

9 Q Okay. Are there any entities that you
10 would expect or want to see in a pilot program that
11 aren't present in this case today?

12 A Yes, there are. I think that's -- I would
13 point that as a -- as a real deficiency in what's
14 in place right now.

15 Just to illustrate, to state examples are
16 or State offices. I think it's important that DNR
17 be present, that Health & Human Services be
18 present, or Health & Senior Services.

19 I stand corrected. Even Social Services.
20 These are -- Social Services is obviously in charge
21 of, you know, low income and low income at risk
22 kids.

23 Health & Senior Services actually
24 regulates and administers the blood levels across
25 the state. I've spoken with them. They -- at

1 great lengths.

2 DNR who is actually charged with enforcing
3 or making sure that companies are compliant with
4 the lead and copper rule.

5 I mean, right now, what we're talking
6 about is -- is an accelerated schedule to -- to an
7 AAO, and that's just severely deficient in my
8 opinion. So, yes, there -- there should definitely
9 be more people at the table.

10 Q You talked earlier about municipalities.
11 And I believe Mr. Merciel might have mentioned
12 Kansas City, St. Louis, Columbia and Springfield.
13 What is -- in your expert opinion, what do you
14 think the state of customer-owned lead service
15 lines would be in those municipalities? More
16 prevalent? Less prevalent?

17 A More prevalent.

18 Q And why is that?

19 A Yeah. On a real general level, you know,
20 the lead service lines are going to follow the age
21 of the homes, generally speaking.

22 I can tell you having, visited
23 Missouri-American on the site visit and having
24 looked at their tap records, having looked at, you
25 know, what's available, I feel confident sitting

1 here today, and I think if you were to ask them,
2 too, the municipal system in St. Louis and Kansas
3 City would have a larger number of lead service
4 lines present.

5 Q Based on your expert opinion, if you were
6 a Manager of a municipal water system and you
7 learned that MAWC was granted an AAO here, would
8 that change your outlook on the logic of owning a
9 municipal system?

10 A I mean, I think that's the real risk, and
11 that's why -- I mean, this has given me a lot of
12 sleepless nice as well with these discussions that
13 were -- without asking questions, if we're just
14 moving forward with what's -- what's been planned
15 and we're socializing these costs across all
16 Missouri-American customers, I would think one of
17 the first thing that would happen would be that
18 this would become public knowledge, that there
19 would be more of a -- of a discussion in the state
20 over lead service lines.

21 At that point, I think it's reasonable --
22 I think people would -- would question whether or
23 not they're present in their home. I think there's
24 a lot of room for miseducation. You could run -- I
25 mean, in short, I think what could happen is a bank

1 run. I mean, you could -- you could incite a lot
2 of concern.

3 If you're municipal system that has a lot
4 of cost prohibitive costs, it might be more
5 attractive at that point to go ahead and sell your
6 system.

7 That has implications for the rest of
8 customers, too. I mean, in short, we might be in a
9 position where we're talking about, you know,
10 privatizing the state.

11 **Q So whereas we're talking about 30,000**
12 **service lines for MAWC's system now, to the extent**
13 **that those municipal systems are privatized, it**
14 **could increase dramatically from 30,000; is that**
15 **correct?**

16 **A** If you're a city that has a dwindling tax
17 revenue, that all of a sudden has to -- to raise a
18 significant amount of funds to go ahead and
19 mitigate perceived health concerns and there's an
20 alternative option, absolutely.

21 And based off of the numbers that the
22 company presented be in their application, which
23 referenced the AWWA paper, in which I reprinted in
24 my rebuttal testimony, I mean, at that point, then
25 we're talking billions of dollars. We're not

1 talking hundreds of millions. We're talking
2 billions.

3 So that's -- that's what gives me pause
4 when we only have a -- what amounts to, you know, a
5 very thin application and an expedited schedule.
6 Let's -- there needs to be a conversation about
7 this.

8 MR. WOODSMALL: Thank you. No further
9 questions.

10 JUDGE PRIDGIN: All right. Thank you.
11 Staff?

12 CROSS-EXAMINATION

13 BY MS. MERS:

14 Q Good afternoon, Dr. Marke. How are you
15 doing?

16 A I'm good.

17 Q Okay. So you have correctly noted that
18 340 Missouri-American and, in fact, all regulated
19 water utilities presently are meeting the lead and
20 copper rule, right?

21 A Yes.

22 Q Can you say that 30 years of compliance
23 guarantees 30 years of future compliance?

24 A No.

25 Q And you were -- you were talking a little

1 bit about just kind of mechanics the sawing, the
2 cutting, the kind of engineering behind this. Your
3 background is you're an Economist, correct?

4 A I am.

5 Q Okay. And have you ever participated in
6 or watched the water service line replacement?

7 A On video.

8 Q On video. Okay. So then from that
9 experience, do you have any evidence to doubt the
10 expert testimony of Staff Witness Jonathan Dallas
11 or Missouri-American's own testimony that,
12 oftentimes, a portion of the customer -- part of
13 the service line is replaced by Missouri-American
14 to complete a main replacement?

15 A If I may restate the question.

16 Q Yes. Yes.

17 A You're asking me if I doubt Mr. Dallas's
18 testimony that Missouri-American replaces partial
19 service lines?

20 Q As part of -- not even including the lead
21 service line. But as a part of their normal
22 ongoing main replacement program that sometimes
23 there is a portion of the customer -- part of the
24 service line that -- to reconnection to the water
25 main must be replaced?

1 A Yes.

2 Q Okay. And to your knowledge, has OPC ever
3 filed a complaint alleging that practice of
4 Missouri-American replacing a portion of the
5 customer-owned service line to complete a main
6 replacement is a violation of their tariff?

7 A I can't speak to that.

8 Q Do you believe that practice is a
9 violation of their tariff?

10 MR. OPITZ: Objection. Calls for a legal
11 conclusion.

12 JUDGE PRIDGIN: I'll overrule. He can
13 answer if he knows. And if not, he can say he
14 doesn't know.

15 A I don't know.

16 Q (By Ms. Mers) Okay. So you don't -- you
17 don't have an opinion on that. In your testimony,
18 it seems at some points that you are stating that
19 Missouri-American should abandon its proposal to
20 replace lead service lines during main replacement
21 projects and, instead, agree to OPC's pilot
22 program.

23 But in other portions, it almost seems
24 like you say Missouri-American should continue the
25 lead service line replacement while also pursuing

1 OPC's recommendation.

2 So just to clarify, does OPC support or
3 oppose Missouri-American undertaking the lead
4 service line replacement during main replacement
5 projects at this time?

6 A I want to be perfectly clear on this.

7 Q Sure.

8 A Okay? Our proposal is replacing the full
9 lead service lines. We're doubling their budget.
10 If -- if the company feels comfortable with
11 throwing out larger numbers, we have been
12 forthright from the very beginning, please provide
13 some evidence for that.

14 Q And to -- just to clarify, though, are you
15 supporting without OP -- I mean, if -- if the
16 company was not willing to go through with your
17 pilot program, are you still in support of their
18 replacement of main projects?

19 Or is it only in the context of your pilot
20 project that you think it's acceptable to replace
21 the lead service lines?

22 A So we've had several witnesses come up
23 here, and I've heard answers like, That was a wild
24 guess, I don't know.

25 Q Do you -- I think it's almost a yes or no

1 question if you support --

2 A Do we support the company's application?

3 We do not.

4 Q Okay. So you were proposing, then, that
5 the company stop lead service line replacements and
6 perhaps until their tariff is amended -- amended to
7 allow in OPC's opinions?

8 A I can't speak to legal conclusions on
9 that.

10 Q Okay. Would that entail, then, the
11 company going back and re-excavating lead service
12 lines that they didn't replace during that period
13 of time?

14 A I'm sorry. Could you please restate that?

15 Q Sure. If the lead service line program is
16 stopped --

17 A Right.

18 Q -- until -- and OPC is -- it seems like
19 they're arguing the tariff is amended, does that
20 then mean that OPC recommends that the company goes
21 back and re-excavates the lead service lines that
22 aren't replaced during this period of time?

23 A That it re-excavate the lines it has not
24 replaced?

25 Q So if the main is open to replace those

1 lead service lines --

2 A Right.

3 Q -- and, you know, say it's happening
4 today --

5 A Right.

6 Q -- you say it's a tariff violation. So in
7 the future, would OPC recommend that that line be
8 re-dug up and replaced in the future?

9 A With a lead line?

10 Q No, no. Instead of replacing the lead
11 service line while it's -- you know what? I can,
12 can I withdraw that question.

13 So I see from your resume -- and,
14 actually, I think I've been involved in these cases
15 with you -- you've been involved in a variety of
16 different utility programs, some new such as the
17 MEEA. There's been the electric vehicle programs,
18 you know, different emerging issues.

19 In your experience, is it unusual for
20 tariff changes to occur as a result of a new
21 program service or responsibility on a utility's
22 behalf?

23 A Is it my experience that -- and I
24 apologize. Is it my experience that it's unusual
25 for tariffs to change?

1 Q As a result of a -- a new program. So,
2 for example, did -- MEEA programs require changes
3 to tariff sheets and new tariffs.

4 A They do.

5 Q Okay. And that's also probably true of
6 the -- many low income programs offered that
7 require some tweaks to tariff sheets, correct?

8 A Sure.

9 Q And were you part of the electric vehicle
10 case, ET-2016-0246?

11 A I was.

12 Q And in that case, as part of that order,
13 it's correct that the Commission ordered Ameren
14 Missouri to incorporate language to clarify
15 electric vehicle charging was not sale for resale,
16 correct?

17 A That's my understanding.

18 Q And so you agree the Commission can
19 approve changes to new tariff sheets that result
20 from new program services or the like?

21 A I -- I don't feel comfortable speaking to
22 that --

23 Q Okay.

24 A -- given my position.

25 Q Okay. Fair enough. Okay. So then you

1 don't feel comfortable stating that the Commission
2 can approve or order Missouri-American to change
3 tariff sheets as appropriate or clarify the lead
4 service line replacement program?

5 A I would have to seek advice from Legal
6 Counsel on that.

7 Q Sure. Would you be able to agree or
8 disagree that Missouri-American could file a tariff
9 rule if it does not alter existing service line
10 ownership or maintenance protocol but could
11 recognize extraordinary approved company service
12 line activity?

13 MR. OPITZ: Objection. Calls for a legal
14 conclusion.

15 JUDGE PRIDGIN: Again, I'll overrule. He
16 can answer if he knows. And if he doesn't, he can
17 say so.

18 A I -- I think the same response.

19 Q (By Ms. Mers) Sure. I think, though,
20 from -- from the answers you have given me that --
21 would you agree that a tariff sheet as OPC claims
22 that does not allow this replacement service,
23 that's not an immutable, unchangeable condition,
24 correct?

25 A I'm sorry.

1 Q A tariff sheet is not an immutable,
2 unchangeable condition, correct? It can be
3 changed.

4 A A tariff sheet be changed.

5 Q And since the Commission can order or
6 approve a change in the tariff to capture a lead
7 service line replacement program, therefore, OPC's
8 allegations to the tariff would not be fatal to the
9 case, correct?

10 MR. OPITZ: Objection. Compound question.

11 JUDGE PRIDGIN: Overruled.

12 A I think I would have to seek Legal Counsel
13 on that as well.

14 Q (By Ms. Mers) Dr. Marke, your testimony
15 outlines the pilot program that allows
16 Missouri-American to replace customer-owned lead
17 service lines, correct?

18 A That's correct.

19 Q Can you point to the page in your
20 testimony where you propose new tariff language?

21 A I don't believe there is any.

22 Q So if Missouri-American's proposed
23 replacement program is a violation of tariff,
24 wouldn't OPC's then also be a violation of the
25 tariff?

1 MR. OPITZ: Objection. Calls for a legal
2 conclusion.

3 JUDGE PRIDGIN: Overruled. He can answer
4 if he knows. And if not, he can say so.

5 A I don't know.

6 Q (By Ms. Mers) So you proposed a pilot
7 program, but you can't tell me if it's a violation
8 of the tariff?

9 A I proposed a pilot program. I cannot
10 speak to the legal merits of it. If the question
11 is about the policy behind it, the justification,
12 rationale, I'd be more than happy to --

13 MS. MERS: Okay. I think I have no
14 further questions. Thank you.

15 JUDGE PRIDGIN: All right. Thank you.
16 Missouri-American?

17 MR. COOPER: Yes, your Honor.

18 CROSS-EXAMINATION

19 BY MR. COOPER:

20 Q You referenced both in your testimony and
21 earlier in cross-examination the original lead
22 copper rule, correct?

23 A That's correct.

24 Q And I believe you stated that the original
25 rule would require replacement of customer-owned

1 service, correct?

2 A Correct.

3 Q And is -- so it was EPA's desire that the
4 entire lead service line be replaced, correct?

5 A That's my understanding.

6 Q In terms of your -- your pilot study that
7 you have proposed, could the State of Missouri
8 undertake that pilot study, for example, the
9 Department of Natural Resources?

10 A I mean, I think the State of Missouri is
11 able to do what the State of Missouri is able to
12 do.

13 Q And -- and if the State undertook such a
14 study, wouldn't it be possible to -- to deal with
15 the -- the various things that you've talked about
16 in your testimony, the risk -- well, first off,
17 just territorially, from border to border instead
18 of just in one investor-owned company, you know,
19 all aspects of lead contamination, and -- and in
20 particular, you know, rope in those large
21 Metropolitan areas that are served by municipal
22 utilities that are not within the Commission's
23 jurisdiction? You know, you mentioned, I think,
24 maybe we did as well earlier St. Louis, Kansas
25 City, Springfield, Columbia. Wouldn't that be a

1 more global study than the Public Service
2 Commission attempting to do that?

3 A I think the Public Service Commission can
4 enable that sort of dialogue, and I think that's,
5 in part, what this pilot study does. I mean, the
6 reality is this -- this is a complicated issue.

7 Q You made a statement in response to, I
8 think, an MCEG question that approval of an AAO,
9 and I assume what you mean is the AAO to deal with
10 the costs incurred from January of 2017 through May
11 of 2018 would be an unprecedented -- it would be
12 unprecedented to move forward in that fashion. Do
13 you remember that?

14 A I do.

15 Q Okay. As OPC has also pointed out, I
16 think in its testimony, these issues are going to
17 be discussed again within the rate case to some
18 extent, correct?

19 A Yes.

20 Q And the program we're talking about --
21 and, again, I think OPC has made the point over and
22 over, they refer to this as a 10-year program,
23 correct?

24 A That's what they put forward, yes.

25 Q But you don't think they can get to all

1 these lines within ten years, correct?

2 A I think the number of lines that are being
3 proposed were understated.

4 Q How many opportunities do you think that
5 Commission is going to have to take a look at this
6 program in the ten years or ten years plus if
7 you're right that they're not able to get to it in
8 ten years? More than one rate case likely,
9 correct?

10 A Yes.

11 Q And potentially other types of -- of cases
12 as well, correct?

13 A Yes.

14 Q I think you also made a statement, this
15 was in response to staff, that you wanted to be
16 very clear that -- that you were, I think in favor
17 of replacing full -- or full lead service line
18 replacements. Did I have that correct?

19 A Within the context of our study, yes, I
20 am.

21 Q But without, I guess, in this case any
22 treatment of the accounting for the cost of those,
23 correct?

24 A I would suggest you direct the accounting
25 questions to Mr. Hyman.

1 Q Okay. But I think you made this statement
2 earlier that it's OPC's position that as a part of
3 your pilot study proposal that the company should
4 dismiss -- well, tell me how you -- how you see us
5 moving forward.

6 Are you foreseeing that the company
7 dismisses this current application to get to your
8 pilot study?

9 A I -- I understand what you're saying.

10 Q Yes.

11 A And then refilled it in the context of the
12 rate case. Yes.

13 Q Some sort of motion within the rate case?

14 A Absolutely.

15 Q And the rate case operational law date is
16 not until end of May sometime. Would you agree
17 with that?

18 A That's correct.

19 MR. COOPER: I think that's all the
20 questions I have for now, your Honor.

21 JUDGE PRIDGIN: All right. Thank you.
22 Bench questions? Mr. Chairman?

23 CROSS-EXAMINATION

24 BY CHAIRMAN HALL:

25 Q Good afternoon.

1 A Good afternoon.

2 Q There's nothing that would prevent the
3 Commission from requiring some type of study
4 consistent with -- or similar to the pilot study
5 that -- that you proposed, order that in
6 conjunction with granting an AAO; is that correct?

7 A Chairman Hall, I --

8 Q The two -- the two don't preclude each
9 other?

10 A I can't speak to the AAO. And I'm not
11 trying to be deaf to that. I mean, I would -- I
12 really would direct those questions to Mr. Hyneman.

13 But our study does propose to go ahead and
14 -- and have a lump sum of money for the company,
15 get recovery of those costs and to move forward
16 with pursuing some of the questions that we've
17 outlined.

18 So we -- we feel like we've -- we've
19 offered up a fairly detailed frame work from --
20 from which everybody can come out happy.

21 Q Well, I guess my point -- and maybe I'll
22 inquire of Mr. Hyneman about it.

23 My point is that it doesn't seem to me
24 that there is anything in the pilot study itself
25 that would require that the AAO not be granted,

1 that -- that, in fact, we -- we could grant the
2 AAO, and, in addition to that, require some type of
3 study consistent with the pilot study. But if you
4 can't answer that question, I'll address it to
5 Mr. Hyneman.

6 Okay. You were in the hearing room when
7 there's -- when there was discussion about private
8 organization of projects?

9 A (Witness nods head.)

10 Q What does is your pilot study recommend
11 with regard to that issue?

12 A So our -- our -- our pilot study doesn't
13 take a position whether we should prioritize -- as
14 I look at it right now, Staff and the company have
15 largely supported replacing service lines as the
16 main -- in conjunction with main replacement.

17 DED has raised, you know, the issue of
18 whether or not, you know, low income customers need
19 to be considered.

20 I think from our -- from our perspective,
21 if, if the basis for this is public health, all the
22 literature points to children and pregnant women
23 being the main at risk target groups here.

24 To the extent that schools are the focus,
25 that has been the enabling policy for a lot of

1 municipal systems across the country, that that
2 should be targeted.

3 I would say that if we're going that
4 route, then that changes the cost structure on
5 this. So it's -- I mean, this is an important
6 conversation to happen because even if the
7 Commission grants the AAO, even if we move forward
8 with exactly what the company has proposed, all
9 these other outstanding questions still are there.
10 They don't go away.

11 We -- as I hear it, we don't necessarily
12 have a disclosure policy in place here. What I
13 heard Mr. Aiton say is if somebody calls up, we'll
14 tell them whether or not it's on their tap record.
15 But it's their responsibility to look at that.

16 When I hear that, my fear is people might
17 be taking that the wrong way. And it could incite
18 a lot of potential problems.

19 Q Okay. Well, let -- come back to my
20 question.

21 A Okay.

22 Q What is your position on whether or not
23 there should be some type of collaborative
24 established to help the -- the company and the
25 Commission prioritize these lead service line

1 replacement projects?

2 A I think we should absolutely be having a
3 conversation. I think the -- the setting that
4 we're in right now does not enable that. It's
5 doesn't -- you know, this -- having a confined
6 regulatory setting doesn't -- and the fact that we
7 have -- it's absent key stakeholders doesn't allow
8 that.

9 Q Okay. So -- so you would support --

10 A I'd support it.

11 Q -- that type of collaborative. And would
12 you recommend that the -- members of your Advisory
13 Committee as set forth on page 6 of your direct
14 testimony, are those the -- the individuals or the
15 entities that should be on such a collaborative?

16 A These are individuals -- yes, that -- that
17 have expressed interest that I've reached out to.

18 CHAIRMAN HALL: I have no further
19 questions. Thank you.

20 JUDGE PRIDGIN: Thank you. Further Bench
21 question?

22 COMMISSIONER STOLL: No, Judge. Thank you
23 for your testimony.

24 JUDGE PRIDGIN: Recross based on Bench
25 questions? MECG?

1 MR. WOODSMALL: No questions.

2 JUDGE PRIDGIN: Thank you. Staff?

3 MS. MERS: No questions. Thank you.

4 JUDGE PRIDGIN: Missouri-American?

5 MR. COOPER: No questions.

6 JUDGE PRIDGIN: Redirect?

7 MR. OPITZ: Yes, judge. Just a moment. I
8 apologize.

9 RE CROSS EXAMINATION

10 BY MR. OPITZ:

11 Q Dr. Marke, on questions from Counsel from
12 Missouri-American, there was a question about the
13 estimates of the company, and I believe -- do you
14 recall those questions that --

15 A I do.

16 Q And I recall your answer being that you
17 believed them to be understated. Can you tell me
18 why you believe those estimates are understated?

19 A The company relies on tap records and I
20 guess localized knowledge I guess would be the best
21 way to describe it across districts.

22 Based off our conversation with University
23 of Michigan who was brought in to go ahead and --
24 they partnered up with Google, in fact, to go ahead
25 and identify the number of lead lines in the Flint

1 area.

2 The initial estimates were grossly
3 understated. In -- in Flint, it was nearly triple
4 what they had initially thought.

5 We found out that it's -- you know, again,
6 the same study, the researchers. We're able to go
7 ahead and use empirical data and posit that high
8 concentrations of elevated lead in water weren't
9 necessarily connected or correlated with lead
10 service lines.

11 So, again, that internal plumbing, that
12 internal premise plumbing is -- is still at risk.
13 And that's, from our perspective, a real concern
14 for two reasons.

15 I mean, one, that we don't want to give
16 customers the false sense of security that, you
17 know what, we replaced your lead line, it's all
18 good. Everything's fine.

19 And the second thing is, is this. Any
20 disruption is potential hazardous. Whether we're
21 doing partial or we're doing full that leaching,
22 that -- that -- that period there where you might
23 be -- you might have a high concentration of lead
24 exposed is present.

25 So my fear is that we're going to drop

1 hundreds of millions of dollars and not get results
2 that we want. And the company or anybody else in
3 this case hasn't been able to put forward evidence
4 to show me otherwise. Whether that's secondary,
5 primary, the company's own primary pilot studies.

6 So that's -- that's what I feel like is
7 lost in this translation and in this dialogue.

8 Q Dr. Marks, Staff Counsel asked you a
9 series of questions about tariffs. And I think you
10 recall those questions?

11 A I do.

12 Q And I think you concede that tariffs do
13 change sometimes?

14 A Yes.

15 Q In your experience, for example, with
16 MEEA, did the company begin implementing that
17 program before the tariffs were modified and in
18 effect?

19 A No.

20 Q And, for example, with the tariff change
21 related to MEEA, was there specific statutory
22 language underlying that change?

23 A There was.

24 Q And you didn't propose tariffs in your
25 testimony in this case; is that correct?

1 A That's correct.

2 Q You're not proposing that the pilot would
3 occur in this case at all; is that right?

4 A That's -- that's correct.

5 Q Staff Counsel was talking to you about I
6 think the -- whether the replacement would
7 continue. Do you recall those questions during the
8 pilot period?

9 A Yes.

10 Q And you started to give an answer where
11 you were talking about, you know, the kind of
12 testimony that you had heard today before you were
13 cut off. Was there any other information you
14 wanted to add related to that, I think?

15 A I would -- I would just, you know, refer
16 back to the record. When the witness for the
17 Department of Economic Development was asked -- or
18 was posited questions about low income, there was
19 no answer.

20 When Staff was -- was crossed over
21 specific questions over the testing or where other
22 testimony systems were going, we got ambiguous
23 answers.

24 The -- I think it's appropriate to go
25 ahead and -- and have a setting where we sit down

1 across the table and just have a frank conversation
2 about some of the risks and how we can go ahead and
3 leverage this into an opportunity or something that
4 all parties can share and benefit from.

5 And to the extent that our -- our fifth
6 policy string has spoken in ancillary
7 considerations that we've had with outside parties,
8 institutions, Universities that have expressed
9 interest in -- in funding research, I think we're
10 missing a golden opportunity here.

11 Q So Counsel for Staff asked you a couple
12 questions about past compliant guarantee -- not
13 guaranteeing future compliance. Is there anything
14 -- do you recall those questions, first of all?

15 A I did.

16 Q Is there anything that the Commission
17 should know about past practice and future --
18 guaranteeing future compliance?

19 A When Public Counsel sat back and looked at
20 sort of a worst case scenario here, we tried to
21 figure out, you know, how much risk exposure our
22 ratepayers are looking at in terms of public
23 health.

24 The default answer when other parties have
25 pointed to this was this Flint, Michigan. I was

1 shocked going through the -- the Flint information
2 to the point where, you know, I contacted the -- I
3 contacted Flint, Michigan, and asked, Is this
4 really what I'm seeing?

5 I would have expected lead levels, blood
6 lead levels, water lead levels to be through the
7 roof. And the empirical evidence doesn't suggest
8 that that's the case.

9 I'm not sitting here saying that what
10 happened in Flint was -- was wrong or right or
11 anything else. But that gives me enough pause to
12 sit back in the -- before we jump to conclusions,
13 we should look at what we're approving.

14 **Q All the way back to MECG, he was asking --**
15 **he had asked you a question, and your answer**
16 **referenced Madison, Wisconsin. Do you recall those**
17 **series of questions?**

18 A I do.

19 **Q And in one of your responses, you**
20 **referenced, you know, looking at the studies. What**
21 **do you know about the studies that have taken place**
22 **regarding full lead service line replacement?**

23 A My surrebuttal speaks to it, to a large
24 extent. But there's a lot of research about lead.
25 There is much, much, much less research about lead

1 line replacement, the exposure, risk exposure
2 that's present there, or the link between lead in
3 the water and elevated blood lead levels.

4 It's not -- speaking with the State's
5 epidemiologist, speaking with Health & Human
6 Services that are charged with every day working
7 with lead, lead in water, lead service lines are
8 relatively low on the priority list.

9 There's an opportunity cost here at the
10 end of the day. And at hundreds of millions of
11 dollars and in the process of a 45 percent rate
12 increase with St. Louis -- in St. Louis County
13 right now, I think we would be doing ourselves a
14 disservice by not at least asking tough questions.

15 MR. OPITZ: That's all I have. Thank you.

16 JUDGE PRIDGIN: All right. Dr. Marke,
17 thank you very much. You may step down.

18 DR. MARKE: Thank you.

19 JUDGE PRIDGIN: And before we get to
20 Mr. Hyneman, let me, since we're getting close to
21 5:00, I -- we do have a whole 'nother day set aside
22 for hearing. And I kind of hate to come back for
23 one witness. But then again, I hate to go late if
24 we have a whole 'nother day. But let me see -- I'm
25 guessing Counsel is going to have quite a bit of

1 cross-examination. Let me check with Counsel.

2 MR. WOODSMALL: I have one minute. I
3 won't be slowing this witness down?

4 MR. COOPER: Very brief cross.

5 JUDGE PRIDGIN: Very brief. All right.
6 Rock an roll. Mr. Hyneman, come forward to be
7 sworn. If you'll raise your right hand to be
8 sworn, please.

9 CHARLES HYNEMAN,
10 being first duly sworn to testify the truth, the whole
11 truth, and nothing but the truth, testified as follows:

12 DIRECT EXAMINATION

13 BY MR. OPITZ:

14 JUDGE PRIDGIN: Sir, you may have a seat.
15 And, Mr. Opitz, when you're ready, sir.

16 MR. OPITZ: My apologies, Judge.

17 Q (By Mr. Opitz) Would you please state and
18 spell your name for the record?

19 A It's Charles Hyneman, H-y-n-e-m-a-n.

20 Q And where are you employed and in what
21 capacity?

22 A I'm employed at the Missouri Office of the
23 Public Counsel as Chief Accountant.

24 Q Did you prepare pre-filed testimony in
25 this case that will be marked as Exhibit 17, your

1 direct testimony, and Exhibit 18, your surrebuttal
2 testimony?

3 A Yes.

4 Q If I were ask you the questions posed in
5 that testimony, would your answers be the same?

6 A They would.

7 Q And that testimony is true and accurate to
8 the best of your knowledge and belief?

9 A Yes, it is.

10 MR. OPITZ: Judge, at this time, I would
11 offer Exhibits 17 and 18 into evidence.

12 JUDGE PRIDGIN: Any objections? Hearing
13 none, 17 and 18 are admitted.

14 (Exhibits 17 and 18 were offered and
15 admitted into evidence.)

16 MR. OPITZ: Tender the witness for
17 cross-examination.

18 JUDGE PRIDGIN: Thank you.
19 Cross-examination, MEEG?

20 MR. WOODSMALL: Yes. One minute.

21 CROSS-EXAMINATION

22 BY MR. WOODSMALL:

23 Q Mr. Hyneman, you discussed in your
24 testimony carrying costs for the AAO; is that
25 correct?

1 A That is correct.

2 Q And there's been several terms thrown
3 about, and I just want to get some clarification.
4 Are you familiar with the term short-term debt
5 rate?

6 A Yes.

7 Q And can you tell me what that is?

8 A Usually, the -- well, short-term debt rate
9 is the rate that the company is charged to finance
10 construction projects and -- it's usually
11 eventually rolled into long-term debt.

12 Q Okay. And can you tell me what
13 Missouri-American's current short-term debt rate
14 is?

15 A In -- in Missouri-American's application,
16 on their cost of capital worksheets, they put that
17 the rate at 2 percent.

18 Q Okay. And can you tell me what is their
19 full rate of return, including an equity and debt
20 component?

21 A Well, I did the calculation, and the gross
22 rate of return after tax return --

23 Q Well, let's -- we'll move on to that. Can
24 you tell me just what their rate of return is?
25 Would you accept 8.07? I took that from the rate

1 case.

2 A That sounds familiar. Yes.

3 Q Okay.

4 A And that -- when you gross up the equity
5 piece of that, it turns into 11.5 percent.

6 Q And you have to gross up the equity
7 component of that because that's considered profit,
8 and the company has to pay income taxes on that
9 portion; is that correct?

10 A That's correct. The -- the debt piece of
11 that is tax -- is tax deductible. So there's no
12 tax gross up. But the equity piece being profit is
13 taxed.

14 Q So, currently, the difference between, --
15 Staff and Public Counsel both say carrying costs
16 short-term debt rate; is that correct?

17 A Yeah. I think there's somewhat of a
18 difference from -- my understanding of Staff's
19 positions today, which gave me some concern, is
20 that they're saying the short-term debt rate right
21 now in an AAO and then possibly changing the rate
22 case. OPC's position is that the short-term debt
23 rate would apply throughout the project.

24 Q But the differences between OPC's
25 short-term debt rate carrying costs of 2.0 and the

1 company's proposal is approximately 10 percent
2 difference; is that correct?

3 A Yes.

4 Q Okay. And real briefly, you heard
5 earlier, I believe, Mr. LaGrand, I believe, said
6 that the company currently as 470,000 customers.
7 Are you familiar with that?

8 A Yes.

9 Q And can you tell me how many of those are
10 residential customers?

11 A Yes. I had somebody look into that. And
12 as the December 2016, that number was 426,201.

13 Q Okay. And just for purposes of round
14 numbers, the company's estimating 30,000 service
15 line replacements; is that correct?

16 A Yes.

17 Q At \$6,000 a service line, that's a total
18 of \$180 million; is that correct?

19 A Yes.

20 Q If you spread that -- and let's assume
21 that's all kept within the residential class, just
22 for purposes of a hypothetical. If you spread that
23 180 million dollars over the 426,000 residential
24 customers, we're talking about each customer
25 picking up \$422. Would you accept that subject to

1 check?

2 A Subject to check, yes.

3 MR. WOODSMALL: Thank you. No further
4 questions.

5 JUDGE PRIDGIN: Thank you. Cross from
6 Staff?

7 CROSS-EXAMINATION

8 BY MS. MERS:

9 Q I -- I guess, Mr. Hyneman, to start out,
10 the \$422 in your opinion, that last hypothetical,
11 is that a year or over a period of ten years or --
12 or what time frame is that \$422 over? I know it
13 wasn't your hypothetical.

14 A In fact, I want to calculate that number
15 again. Subject to check, I want to --

16 MR. WOODSMALL: Yeah.

17 A Subject to check means I could verify it
18 later.

19 MR. WOODSMALL: I get it. Sure.

20 A Could I get that number again, the basis
21 of that number? 180 million.

22 MR. WOODSMALL: 180,426,000 customers.

23 A Yes. \$422.

24 Q (By Ms. Mers) And now, subject to --
25 running that number, is that a year or amortized

1 over ten years or -- or --

2 A Well, that number is -- is simply the
3 total investment, just the total plant investment,
4 not return, divided by all residential customers.
5 So that -- that's what it is.

6 Q An usually, they -- they -- it's not a
7 lump charge to consumers, correct? It's usually
8 divided out over a few years, correct?

9 A Well, I mean, that number is 180,000
10 that's going to be recovered. And depending on the
11 amortization period, I think it might be 65 years,
12 but that -- during that 65 years, you'll have that
13 180,000 and have the rate of return on top of that
14 11.5 that they're proposing. And so that's going
15 to be the cost.

16 Q Okay. Would you agree that Missouri
17 Public Service Commission is the entity that has
18 the responsibility for setting regulatory
19 accounting requirements from Missouri's
20 jurisdictional investor-owned public utilities?

21 A The Missouri Public Service Commission has
22 promulgated a rule that requires Missouri utilities
23 to comply with the Uniform System of Accounts.

24 Q Okay. So yes. So in setting the
25 regularity accounting requirements for Missouri

1 utilities, is the Missouri Commission obligated to
2 follow generally accepting -- accepted accounting
3 principles?

4 A Well, yes, because the USOA follows
5 generally accepted accounting principles. And the
6 Commission orders the use of those.

7 Q And --

8 A To answer that question.

9 Q Can you cite to a rule, statute or policy
10 that you're depending on for your answer?

11 A Well, I know for a fact that the USOA is
12 based on GAAP. In fact, I think the FERC has
13 stated that it tries to keep up with GAAP and its
14 accounting requirements.

15 Q So you -- you can't cite to anything from
16 the Missouri Public Service Commission, though,
17 correct that --

18 A Well, I would say if -- a utility -- a
19 utility is required to comply with GAAP for
20 accounting purposes. If they don't, they'd be
21 subject to serious legal repercussions, fines and
22 all kinds of things.

23 I don't think the Commission would think
24 that's a good idea. So do I think the Commission
25 wants its utilities to comply with GAAP? I do.

1 Q Would you agree that it's possible for the
2 Commission to use different standards to govern the
3 booking of deferrals by utilities under its
4 jurisdiction for regulatory -- regulatory
5 accounting purposes than the GAAP standards used to
6 govern whether utilities can reflect the cost
7 deferrals on their financial statements?

8 A Not in an accounting case. In a rate
9 case, the Commission basically determines that.

10 Q So you say -- so to the answer is no then?

11 A No. I'm giving you my answer.

12 Q It's a yes or no question, please.

13 A I -- can you repeat the question?

14 Q Would you agree that it is possible for
15 the Commission to use different standards to govern
16 the booking of deferrals by utilities under its
17 jurisdiction for regulatory accounting purposes
18 than the GAAP standards used to govern whether
19 utilities can reflect cost deferrals on their
20 public financial statements?

21 A What are some examples of different
22 standards?

23 Q For example, the probability of recovery
24 standard.

25 A And may I put that answer in the context

1 of this case? The Commission in this case can --
2 even though it's not necessary, they can say, You
3 can book these deferrals in Account 186.

4 That 186 is -- is no connotation for
5 regulatory asset. If the company books something,
6 for example, electric or gas utility account 182.3,
7 Regulatory Assets, and the Commission orders them
8 to do that, then the Commission is saying, We, the
9 Commission, determined these costs are probable of
10 recovery. And that standard means it is likely to
11 occur. Rate recovery is likely to occur.

12 And I -- and I think the Staff has put the
13 Commission in an unfortunate condition for many
14 years by telling them, Yeah, you're saying you're
15 not doing any rate recovery, but you actually are.
16 You're saying that these costs are probable
17 recovery. I think that's unfortunate.

18 **Q Would you agree that it's possible for a**
19 **utility -- that it's possible a utility may not be**
20 **allowed to reflect a cost of deferral on its public**
21 **financial statements that it was authorized to book**
22 **for regulatory accounting purposes by the Missouri**
23 **Commission?**

24 **A** And, again, can you state that question
25 again?

1 Q Sure. And it should be just a yes or no
2 question. So would you agree that it is possible
3 that a utility may not be allowed to reflect a cost
4 deferral on its public financial statements that it
5 was authorized to book for regulatory accounting
6 purposes by the Missouri Commission?

7 A Again, there is -- it's not a yes or no
8 because it's depends.

9 Q Okay.

10 A If the Commission says --

11 Q Your Counsel can help redirect you. In
12 setting customer rates for Missouri utilities, is
13 the Missouri Commission obligated to follow
14 generally accepted accounting principles in
15 determining utility revenue requirements?

16 A You're speaking a little fast, so I'm
17 going to --

18 Q I'm sorry. I can repeat the question?

19 A Yeah, if you would.

20 Q Okay. I have -- I apologize?

21 A Yes, please.

22 Q In setting customer rates for Missouri
23 utilities, is the Missouri Commission obligated to
24 follow general accepted accounting principles in
25 determining utility revenue requirements?

1 A In a rate setting process, no.

2 Q Okay. I -- I've got a few. I apologize.
3 **Just one second. So you're saying that there are**
4 **no provisions of the USOA that are inconsistent**
5 **with GAAP?**

6 A I'm not saying that. One example is I
7 think the USOA may allow bad debt expense to be
8 recorded on a net write-off basis and may -- and I
9 think GAAP may or used to require an accrual basis.
10 There may be some minor difference, especially in
11 lease accounting.

12 But I know that the FERC goes to great
13 efforts to make sure that USOA is compliant with
14 GAAP.

15 Q **And is the treatment of the equity**
16 **component of AFUDC and USA -- USOA another example**
17 **of an inconsistency with GAAP?**

18 A No. Because ASC980 is GAAP. And ASC980
19 reflects how Commissions treat it. So I would say
20 it's entirely consistent with GAAP.

21 MS. MERS: Okay. No further questions.

22 JUDGE PRIDGIN: Thank you. Cross from
23 Missouri-American?

24 MR. COOPER: Thank you, your Honor.

25 CROSS-EXAMINATION

1 BY MR. COOPER:

2 Q Mr. Hyneman, do you agree with the
3 statement that an AAO case is not an appropriate
4 case to determine any aspect of future rate
5 recovery from the cost at issue?

6 A Yes.

7 Q And earlier in response to Mr. Woodsmall's
8 question, I believe that you said that your
9 proposal as to the -- the use of short-term debt as
10 the carrying cost is not just for the purpose of
11 this case. It's for the entire project, correct?

12 A That would be our proposal. Right. And
13 we're recommending that -- there's no need for an
14 AAO case here. We're proposing in a rate case that
15 we would propose this rate-making treatment.

16 Q Okay. And we're not in the rate case,
17 though, here today, right?

18 A Right. We are actually in a rate case.
19 But this hearing is -- is an AAO case. But you and
20 OPC and Staff are in a rate case.

21 Q But today, we're not in that rate case?

22 A Correct.

23 Q Mr. Woodsmall also -- he utilized the
24 number, I think, 180 million, which you -- you were
25 referring to as \$180,000 at some point. But the

1 \$180 million is simply an extrapolation of 30,000
2 lead service lines times 6,000, correct?

3 A It's the company's numbers we're using,
4 yes.

5 Q And that is assuming that it -- that the
6 company is able to do is on its schedule, a 10-year
7 number, correct?

8 A That's the company proposal.

9 Q And perhaps OPC thinks it will take longer
10 than ten years, correct?

11 A I don't know. I mean, Dr. Marke may have
12 a different opinion on that. I -- I don't know.

13 Q So here's my question. There's not going
14 to be any 180 million on this issue dealt with in
15 the pending Missouri-American rate case, is there?

16 A No. You -- that's over a 10-year period.

17 Q You talked about the Commission's adoption
18 of the USOA. Would you agree with me that the
19 Commission adopts the USOA utilizing authority from
20 the statutes that give it authority to direct how
21 utility costs are going to be booked and accounted
22 for?

23 A I believe that's true.

24 Q And I think more than once you referred to
25 FERC keeping up with GAAP. When we talk about

1 Missouri-American, we're talking about the NARUC
2 USOA, not the FERC USOA, correct?

3 A Correct.

4 MR. COOPER: That's all the questions I
5 have for right now.

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

8 CHAIRMAN HALL: Thank you.

9 CROSS-EXAMINATION

10 BY CHAIRMAN HALL:

11 Q Do you believe that it was necessary for
12 the company to get a ruling from the Commission
13 before it booked its expenses in Account 186?

14 A No. It -- in fact, it is never required
15 for a utility to get permission from this
16 Commission to book a cost, to defer a cost.

17 Q In Account 186?

18 A In Account 1 -- any -- any -- basically,
19 any -- any regulatory asset or deferred debit
20 account, it's -- it's no need to get Commission
21 approval for that.

22 Q Well, if they wanted to book it as a
23 regulatory asset, would that require Commission
24 approval?

25 A No. The Commission has no influence or

1 impact on regulatory assets. The -- the
2 classification of a regulatory asset is solely made
3 by utility management based on evidence.
4 And that evidence would be your past rate orders or
5 your policies or procedures.

6 **Q Well, couldn't that evidence be a**
7 **Commission ruling on the appropriateness of booking**
8 **that as a regulatory asset?**

9 A If -- if it was your policy -- and this is
10 ASC 980. If it was your that you granted rate
11 treatment in the AAO, then that would be
12 sufficient. But your policy is that you don't.
13 So, therefore, you can't grant a regulatory asset.

14 **Q So your position is that it is never**
15 **appropriate for a -- for a utility to come to the**
16 **Commission and seek treatment of a particular**
17 **expense as a regulatory asset?**

18 A Correct. In fact, FERC doesn't do it.
19 And they do it the right way. And they say --

20 **Q So we've been doing it the wrong way here**
21 **for a while?**

22 A Yes. Many years. It's actually true.

23 **Q So if the company had simply backed these**
24 **expenses in at 186 and then this issue had come up**
25 **in the rate case, what would -- would OPC's**

1 position be that those expenses should not be put
2 into rates?

3 A I -- I don't think so. I think we're
4 proposing rate -- in a rate case, we would be
5 proposing rate-making treatment.

6 Q Consistent with -- consistent with the
7 pilot study?

8 A Yes. And I think Dr. Marke indicated we
9 -- we would certainly be willing to discuss other
10 components of it. I mean, we're not locked in
11 stone. We -- there are give and take in a
12 negotiation process, so --

13 Q So let me ask you, would you believe that
14 it would be inappropriate or appropriate to book
15 those expenses in Account 345?

16 A Totally inappropriate. That's a plant
17 account. That's would violate every accounting
18 rule, USOA, GAAP that I'm aware of.

19 Q Why is that?

20 A Because the company doesn't own it. They
21 can't book something as a plant if they don't own
22 it.

23 Q Are there any examples that you are aware
24 of when a utility has booked in 345 capital
25 expenditures related to property that it does not

1 own?

2 A I've never seen that ever take place for
3 any utility in Missouri.

4 Q Okay. Do you believe that if the
5 Commission were to grant the AAO in this case and
6 determine that it's appropriate to book those --
7 book those expenses in 186, whether or not it would
8 be appropriate for the Commission to give any
9 indication whatsoever to the company and other
10 parties as to the propriety of recovering it in
11 345?

12 A Yes. I mean, even though it's not
13 necessary that you give them permission, they
14 already have permission to defer those costs of the
15 186.

16 If you gave them permission, there's
17 nothing wrong with that. And -- and I wouldn't
18 recommend addressing Account 345 in such a -- such
19 an order.

20 Q What was that last piece again?

21 A I thought you asked if it would be okay if
22 issued an AAO saying it's okay to defer costs to
23 186 but not mention Account 345. Maybe I
24 misunderstood.

25 Q Oh, I -- I framed it differently, but I

1 think you answered the question. You think it
2 would be inappropriate for the Commission to
3 provide some guidance to the company and the other
4 parties as to the propriety of -- of recovery
5 through 345?

6 A Oh, no. I'm sorry. I did misunderstand.
7 No. I think it's perfectly appropriate for you to
8 address that. Certainly.

9 Q Why is that?

10 A Well, we're in here. You don't -- this
11 case doesn't need to take place. You're not going
12 to be doing anything for the company that they
13 can't do by themselves.

14 But since we're here and ask they're
15 asking for your -- your advice, I think it's
16 perfectly appropriate to give your advice.

17 There are certain restrictions on it by
18 your own policies and by GAAP that you can't say
19 you can book this to the regulatory asset account.
20 Because that means you're telling them it's
21 probable that you'll allow recovery in the next
22 rate case.

23 And probably under GAAP means likely to
24 occur. And I don't think that's what you intend to
25 do. So other than not confer probability to

1 recovery, you could provide all assistance,
2 guidance I think that's reasonable.

3 Q So let me ask you a couple questions that
4 I asked Dr. Marke earlier and that he indicated you
5 would be more equipped to answer.

6 Is there anything in the -- the pilot
7 study that is inconsistent with the company
8 continuing its current program?

9 A Again, I don't know of any
10 inconsistencies. I mean, I'm just not aware of
11 any. I mean, the pilot program would be taking
12 place in the current rate case simultaneous with
13 this case. So I'm not aware of any conflicts.

14 Q Are there any conflicts between the
15 Commission ordering some type of study to similar
16 to the pilot study in conjunction with issuing an
17 AAO or allowing that these expenses be booked into
18 186?

19 A No. I -- I -- I'm a believer in that the
20 Commission has a lot of authority in that areas.
21 And I'm not aware of any restrictions on that
22 Commission activity.

23 CHAIRMAN HALL: Okay. Thank you.

24 JUDGE PRIDGIN: Thank you. Any further
25 questions?

1 COMMISSIONER STOLL: No questions. Thank
2 you.

3 JUDGE PRIDGIN: Recross based on Bench
4 questions? MECG?

5 MR. WOODSMALL: No questions.

6 JUDGE PRIDGIN: Staff?

7 MS. MERS: Just -- just one.

8 RECCROSS EXAMINATION

9 BY MS. MERS:

10 Q So, Mr. Hyneman, in your opinion, when, if
11 ever, should a company file an AAO application with
12 the Commission for the purpose of deferring certain
13 costs?

14 A Normally never. I can give you an example
15 where potentially they could. And I think this was
16 recognized by Union Electric a few years ago where
17 they said, you know, we know we can defer on our
18 own to a regulatory asset. We make a
19 determination. But because this situation is so
20 unique, we want the Commission to weigh in on it.

21 So there's nothing prohibiting the
22 Commission from giving guidance and advice. But
23 it's definitely not necessary.

24 And for most AAO cases, for example,
25 extraordinary acts, the utilities are very well

1 aware of the Commission orders and precedents, and
2 they can book it and seek recovery in a rate case.

3 MS. MERS: Okay. Thank you.

4 JUDGE PRIDGIN: All right. Thank you.

5 Missouri-American?

6 MR. COOPER: No questions.

7 JUDGE PRIDGIN: Redirect?

8 MR. OPITZ: Yes, Judge.

9 REDIRECT EXAMINATION

10 BY MR. OPITZ:

11 Q Mr. Hyneman, starting with that last
12 question, aren't there some accounts that do
13 require Commission approval before costs can be
14 booked there?

15 A Yeah. No -- not a regulatory asset
16 account. But I think FERC has extremity property
17 losses or there's one type of a loss in Account 186
18 that requires Commission approval. And in a NARUC
19 account -- I don't know what Commission you're
20 talking about, but in America USA, FERC requires
21 approval before books or costs to subaccounts.

22 Q Counsel for Missouri-American was asking
23 you about the short-term debt carrying costs. And
24 I just wanted to make sure. When you're talking
25 about short-term debt being applied to the life of

1 the project, are you railroading to the pilot
2 program only?

3 A No. Oh, I'm sorry. Yes. I'm -- I'm
4 talking about the short-term debt rate, which is --
5 is -- I'm trying to think of the appropriate way to
6 phrase this. Yeah. It would be the short-term
7 debt rate that typically -- that -- that
8 Missouri-American would include in their AFUDC
9 calculations which they capitalize the plant, like
10 under their construction projects.

11 And that would apply to accrual throughout
12 of the amortization of the deferral in Account
13 186.

14 MR. OPITZ: I think that's all I have.
15 Thank you, Judge.

16 JUDGE PRIDGIN: All right. Thank you.
17 Mr. Hyneman, thank you very much. You may step
18 down. That appears to be our last witness, and I
19 believe we already have a briefing schedule set.

20 So anything further from Counsel or the
21 Bench before we go off the record? All right.
22 Hearing nothing, we are adjourned. Thank you. We
23 are off the record.

24 (The proceedings were concluded at 5:00 p.m. on
25 September 27, 2017.)

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