

1 STATE OF MISSOURI  
2 PUBLIC SERVICE COMMISSION  
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6 TRANSCRIPT OF PROCEEDINGS  
7 On-the-Record Discovery Conference

8 March 6, 2007  
9 Jefferson City, Missouri  
Volume 2  
10  
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12 In the Matter of Missouri-American )  
Water Company's Request for )  
13 Authority to Implement a General ) Case No. WR-2007-0216  
Rate Increase for Water Service ) et al.  
14 Provided in Missouri Service Areas )

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16 COLLEEN M. DALE, Presiding,  
CHIEF REGULATORY LAW JUDGE.  
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15 Service Commission.

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

2 JUDGE DALE: Everybody who has an  
3 electronic device of any kind must immediately turn it  
4 off. Having said that, we're here today in the matter of  
5 Missouri-American Water Company's request for authority to  
6 implement a general rate increase for water and sewer  
7 service provided in the Missouri service areas, Cases  
8 WR-2007-0216 and 217 -- oh, wait, SR-2007-0217.

9 We will begin with entries of appearance,  
10 starting with Staff.

11 MR. THOMPSON: Thank you, your Honor.  
12 Kevin Thompson for the Staff of the Missouri Public  
13 Service Commission, Post Office Box 360, Jefferson City,  
14 Missouri 65102.

15 JUDGE DALE: Thank you. Public Counsel?

16 MS. BAKER: Christina Baker with Office of  
17 the Public Counsel, Post Office Box 2230, Jefferson City,  
18 Missouri 65102, here for Public Counsel and the  
19 ratepayers.

20 MR. COOPER: Dean Cooper from the law firm  
21 of Brydon, Swearngen & England, P.C., P.O. Box 456,  
22 Jefferson City, Missouri 65102, appearing on behalf of  
23 Missouri-American Water Company.

24 MS. SMITH: Jane Smith, Blitz, Bardgett &  
25 Deutsch, 308 East High, Suite 301, Jefferson City,

1 Missouri 65101, appearing on behalf of City of Joplin.

2 JUDGE DALE: Thank you.

3 MR. WOODSMALL: David Woodsmall with the  
4 firm Finnegan, Conrad & Peterson, appearing on behalf of  
5 Ag Processing.

6 MR. COMLEY: Mark W. Comley, Newman,  
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9 Jefferson, Missouri.

10 MR. STEINMEIER: William D. Steinmeier,  
11 William D. Steinmeier, P.C., appearing on behalf of the  
12 City of St. Joseph, Missouri.

13 JUDGE DALE: Thank you. And having failed  
14 to do so earlier in the record, I'm Colleen M. Dale. I'm  
15 the presiding officer assigned to this matter.

16 With that, I believe it was Staff that  
17 asked for this discovery dispute. If you will please  
18 proceed, Mr. Thompson.

19 MR. THOMPSON: Yes, Judge. I thought we  
20 could do this quickly and informally, but I can see that a  
21 lot of people didn't have anything to do this afternoon.

22 This concerns four Data Requests submitted  
23 by the Staff to the company and the company's objections  
24 thereto. I was hoping I could simply place the Data  
25 Requests and the company's objections before you and that

1     you would give us a quick and dirty ruling from the Bench  
2     on whether or not we get what we've asked for.

3                     JUDGE DALE: That sounds like a procedure  
4     we can start with, unless you have some objection,  
5     Mr. Cooper.

6                     MR. COOPER: I guess, yes, I will have an  
7     objection to that.

8                     JUDGE DALE: To the procedure or to the --

9                     MR. COOPER: To the procedure, I guess. I  
10    have substantive responses as well as procedural  
11    responses. In looking at the Commission's rule on this,  
12    it's unclear to me where we are in the process with a  
13    discovery -- an on-the-record discovery conference. We  
14    have offered, I think, three times, I have three e-mails I  
15    could present to you where we've offered to discuss these  
16    objections with Staff. We've gotten no response to that.

17                    Because of that, we have no idea why Staff  
18    believes that the information is relevant, and it would be  
19    very hard for us to respond on the spot if today's going  
20    to be the first time we're going to hear why Staff  
21    believes this information is relevant.

22                    Beyond that, I think the rule indicates  
23    that there are a couple of things that have to happen  
24    before a motion to compel can be filed, and thus I don't  
25    think we're at the point where we can have either a motion

1 to compel or a ruling on a motion to compel.

2 MR. THOMPSON: Well, I don't think  
3 anybody's filed a motion to compel, Judge.

4 JUDGE DALE: That would be my  
5 understanding, that this is what is usually an informal  
6 conference between the parties in the discovery dispute.

7 MR. COOPER: So what you would be talking  
8 about in terms of, I guess, what Mr. Thompson referred to  
9 as a ruling would merely be your reaction to the dispute,  
10 is that what we're talking about, as opposed to a ruling?

11 JUDGE DALE: I think what he's looking for  
12 is a ruling that either you must comply with his -- you  
13 must respond to his Data Requests or not.

14 MR. COOPER: And the difference between  
15 that and a motion to compel is what? I guess that  
16 confuses me.

17 JUDGE DALE: Because I'm just the RLJ  
18 assigned to this case and I'm not the Commission. So  
19 while it will be a ruling from the Bench, it would be  
20 subject to taking to the entire Commission and getting  
21 their reaction.

22 To be perfectly honest, this is the most  
23 formal I've ever had one of these be. Usually they're on  
24 the phone with both attorneys and we just talk about it.

25 MR. COOPER: That would have been my

1 experience.

2 JUDGE DALE: So having said that, it's my  
3 intention to treat this as though, even though we're under  
4 observation, as though we were all on the phone together  
5 talking about this.

6 MR. STEINMEIER: Everybody probably has  
7 cell phones.

8 JUDGE DALE: Yeah. We could just all  
9 conference in. There's a phone back in chambers. We can  
10 stand around it.

11 MR. THOMPSON: Your Honor, I have copies of  
12 the DRs and a copy of the company's objection letter.  
13 Should I simply bring these to you? Do you want them  
14 marked?

15 JUDGE DALE: Just bring them to me and make  
16 sure Mr. Cooper has copies.

17 MR. THOMPSON: Do you have copies?

18 MR. COOPER: I think so, although you  
19 mentioned four. I thought there were five, one that you  
20 dropped or are not seeking.

21 MR. THOMPSON: You're right, there are  
22 five. I apologize. I can't count. That's why I'm a  
23 lawyer, not a doctor.

24 If I may approach, your Honor?

25 JUDGE DALE: Absolutely. Thank you. What



1 conversations have you had concerning the modifications of  
2 the Data Requests to narrow them based on the company's  
3 objections?

4 MR. THOMPSON: I sent the company an e-mail  
5 asking them when they would be available to talk to you.  
6 That would indicate that I don't see any need to narrow  
7 our request.

8 JUDGE DALE: Okay. So there have been  
9 none?

10 MR. THOMPSON: That would be correct, your  
11 Honor.

12 JUDGE DALE: Okay. Thank you. Can you  
13 tell me why information pertaining to unregulated  
14 affiliates, parents, et cetera, is relevant to this  
15 conversation or this case?

16 MR. THOMPSON: Well, with respect to the  
17 parent, your Honor, Missouri-American Water is wholly  
18 owned by American Water, and while American Water is not  
19 presently publicly traded, they are preparing an initial  
20 public offering which will provide a great deal of  
21 guidance as to the cost of common equity with respect to  
22 that company, which will most likely be used by the  
23 Commission as a proxy for Missouri-American.

24 JUDGE DALE: When is this IPO going to  
25 happen, Mr. Cooper?

1                   MR. COOPER: I don't believe it's known at  
2 this time, your Honor.

3                   MR. THOMPSON: Obviously they can only give  
4 us what they have, and that's what we've asked for.

5                   JUDGE DALE: Well, of course, much of their  
6 objection is that they don't actually have it, some other  
7 company has it, an affiliated company.

8                   Does Missouri-American have a separate  
9 capital structure aside from the capital structure of its  
10 parent?

11                  MR. COOPER: Yes. Your Honor, if it would  
12 help things, I could probably provide some additional  
13 information at this point. I brought along a copy of --  
14 well, let me back up.

15                  There have been essentially four partial  
16 responses to these five Data Requests provided to Staff.  
17 I brought along copies of the three that are partial  
18 responses that are really in separate written form that I  
19 can provide to you for your consideration.

20                  And then I would also note that in the  
21 objection letter that you already have before you, as to  
22 Data Request 101, the second part of that question talked  
23 about, let's see, if a registration filing for the IPO has  
24 been made with the SEC, provide this filing. On the third  
25 page of the objection letter, the company did make an

1 affirmative statement that they would notify the Staff  
2 when such a filing has been made. No such filing has been  
3 made as of this time, as of the time the objection letter  
4 was provided, nor as of today.

5 I can't say that I have enough for everyone  
6 here. I wasn't expecting this size crowd. Anybody else  
7 really want one?

8 What I provided to you, your Honor, are the  
9 company's partial responses to 96, 97 and 104. Now, in  
10 addition to that, as I think you've noted and as the  
11 company would note, we believe that all five of these Data  
12 Requests ask at least in part for information that's not  
13 related to nor maintained by Missouri-American Water  
14 Company, but rather is related to affiliates.

15 In Missouri-American last rate case, Case  
16 No. WR-2003-0500, this Commission issued an Order  
17 Concerning Motion to Compel on December 2nd of 2003 in a  
18 somewhat similar situation. In that case, Staff was  
19 seeking affiliate information from MAWC through the use of  
20 Data Requests that were directed to MAWC, and the  
21 Commission stated in relevant part, the Staff directed  
22 Data Requests to Missouri-American that seek information  
23 that Missouri-American claims it does not have and does  
24 not control. The Commission concludes that  
25 Missouri-American must produce the requested information

1 or documents if indeed it possesses it or has access to  
2 it. Otherwise, Staff must seek this information directly  
3 from entities that possess or control it.

4 JUDGE DALE: And it is your position,  
5 Mr. Thompson, that your requests are inherently limited to  
6 those things in the possession of Missouri-American?

7 MR. THOMPSON: Well, you know, there's that  
8 word control, your Honor. I don't know the extent to  
9 which Missouri-American is able to obtain this information  
10 from its affiliates and its parent. Now, if Mr. Cooper  
11 will tell me that they cannot, then of course I will  
12 accept that response and I will pursue another strategy to  
13 obtain the necessary information from those affiliates and  
14 from that parent.

15 JUDGE DALE: As part of his objection, he  
16 states that the responsive information is not in the  
17 possession, custody or control of MAWC, and that they will  
18 provide information that is within their control and  
19 concerns MAWC. And it is -- is it your contention that  
20 they possess more information that they have --

21 MR. THOMPSON: It's my contention that if  
22 they can obtain it, then they have to.

23 MR. COOPER: Your Honor, I think the key  
24 word is control in this situation. As the Commission  
25 pointed out in the last rate case, Missouri-American has

1 no legal authority to obtain information and documents  
2 from its corporate parent and affiliates. I don't think  
3 anything about that has changed.

4 JUDGE DALE: Just to eliminate an easy one,  
5 in 104 --

6 MR. THOMPSON: Yes, your Honor.

7 JUDGE DALE: -- what is lacking in their  
8 response?

9 MR. THOMPSON: If I may confer?

10 JUDGE DALE: Okay.

11 MR. COOPER: We would suggest that the only  
12 thing lacking is Staff's request for us to provide ROEs  
13 and rate of returns suggested by all parties to all rate  
14 cases since January 1, 2004 for all American Water  
15 affiliates or subsidiaries around the country, and we --  
16 we certainly think that that is overbroad and burdensome  
17 to start with, beyond just the lack of possession, custody  
18 or control that we just discussed.

19 And as to relevance, as an example, we  
20 don't see why the City of Thousand Oaks' opinion on  
21 California-American's ROE, how that has anything  
22 whatsoever to do with this rate case before the Missouri  
23 Commission.

24 What you'll see attached there is a listing  
25 of rate cases that are ongoing, proposed ROEs, proposed

1 rate of returns, and then a second sheet that includes all  
2 the closed cases for the same period of time with all the  
3 same information, all of which is publicly available.  
4 Those lists also include the case numbers and  
5 jurisdictions. So I suppose that if there is additional  
6 information the Staff seeks, it could go obtain that  
7 information as easily as Missouri-American.

8 JUDGE DALE: And your response?

9 MR. THOMPSON: As you're well aware, your  
10 Honor, in setting a return on equity, the Commission is  
11 extremely concerned with what other jurisdictions have  
12 done with comparable companies. That seems to be the  
13 primary thing driving commission return on equity  
14 decisions in the past three or four years. We believe for  
15 that reason that this information is indeed particularly  
16 relevant to this proceeding.

17 JUDGE DALE: Inasmuch as they have already  
18 given you the recent final awards and the proposed and  
19 requested ROEs in the pending cases, it is my opinion that  
20 that's sufficient. You have the case numbers. If you  
21 need to go find out what the various parties proposed,  
22 you're welcome to do so, but I don't know that that would  
23 even be relevant in this case. I know that the Commission  
24 is interested in what happens elsewhere.

25 So on 104, it is my belief that the

1   presently provided response is adequate and the additional  
2   information is, as Mr. Cooper said, as readily available  
3   to you as to them.

4                   So looking at -- I believe it's 96, the  
5   targeted and projected returns on equity, how is that  
6   relevant?

7                   MR. THOMPSON: We believe it's relevant,  
8   your Honor, because it provides information as to what the  
9   company believes is a reasonable projected ROE for its  
10  water operations.

11                  JUDGE DALE: Why do we care?

12                  MR. THOMPSON: Well, if the company for  
13  internal purposes believes that the number is quite a bit  
14  lower than the number that it's championing in here, I  
15  think the Commission would find that intriguing.

16                  JUDGE DALE: Wouldn't their basis for those  
17  projected returns necessarily be tied to what they got in  
18  the last case here and the rates they were awarded?

19                  MR. THOMPSON: Not if it's projected, your  
20  Honor.

21                  JUDGE DALE: Mr. Cooper?

22                  MR. COOPER: Your Honor, I would note that  
23  as to MAWC, the answer provided by the company does  
24  provide a projected or targeted ROE for that company. I  
25  think that the only information in dispute here or that

1 has not been provided is information as to targeted or  
2 projected returns on equity for all of American Water and  
3 its subsidiaries other than MAWC.

4 In addition to the possession, custody and  
5 control argument that we talked about before, the company  
6 just does not see how such speculation has any relevance  
7 to the ROE for Missouri American that the Commission is to  
8 decide upon in this case.

9 MR. WOODSMALL: Your Honor, to jump in here  
10 briefly, everybody keeps talking about relevance. This is  
11 discovery. It's a different standard. We're not talking  
12 about putting information into the record, which is a  
13 relevance standard. This is discovery, which is under a  
14 standard -- now, don't quote me here, but it may lead to  
15 the discovery of information. It's a broader standard,  
16 and to be imposing that relevance standard is not  
17 appropriate at this point in time.

18 MR. THOMPSON: Additionally, your Honor, if  
19 I could point out, we do not agree that Missouri-American  
20 has a distinct capital structure. Consequently,  
21 information on the parent is directly relevant.

22 JUDGE DALE: The DR asks for targeted or  
23 projected returns. And one, targeted seems to me to mean  
24 what we sure would like, and projected is what we  
25 reasonably expect. How is what we sure would like going



1 to lead to any relevant evidence?

2 MR. THOMPSON: It would depend on the  
3 circumstances under which they hope to reach that target.

4 JUDGE DALE: But you don't ask for that.

5 MR. COOPER: Well, again, your Honor, we're  
6 not talking about Missouri-American. We're talking about  
7 targeted or projected returns for Illinois-American,  
8 California-American, Hawaii-American, et cetera.

9 JUDGE DALE: I would think that the parent  
10 information may lead to relevant information, but the  
11 information concerning the sister subsidiaries would not.

12 MR. WOODSMALL: Your Honor, then to that  
13 regards, let's take a situation in which the parent  
14 company is targeting a 10 percent ROE. By looking at the  
15 affiliates, all the affiliates, you can determine whether  
16 Missouri-American is being drug down by the affiliates or  
17 whether it is -- whether it's propping up the other  
18 affiliates or whether it's dragging them down. 10 percent  
19 is for the entire company. Then you need all the pieces  
20 to that puzzle to see how they all accumulate to the  
21 10 percent.

22 JUDGE DALE: I don't agree. It seems to me  
23 that having -- I can understand that you have -- that you  
24 might want to know what ROEs are established for those  
25 other subsidiaries, but we're talking about projected or

1     targeted ROEs for the next three years.

2                     MR. WOODSMALL:   And when a financial  
3     analyst comes out and says that, upon your IPO, let's say  
4     they say something like, we believe that they will speak  
5     in terms of the entire company.   It is unlikely given my  
6     experience with other consolidated companies that they  
7     will look for -- for instance, Aquila, they do not look  
8     just specifically at Missouri.   They will look at the  
9     entire company.

10                    So how do you interpret what the financial  
11    analyst is saying unless you know what's going on in the  
12    other jurisdictions business-wise, regulatory-wise, from  
13    all perspectives?

14                    JUDGE DALE:   But we do know what's going on  
15    in other jurisdictions.

16                    MR. WOODSMALL:   Regulatory-wise.

17                    JUDGE DALE:   We just know the projected,  
18    the internal company projections.

19                    MR. WOODSMALL:   Right.   So you would want  
20    to know how this company projects their earnings, their  
21    ROE for these other parts of the company so you can  
22    determine how it all feeds into the overall combined  
23    analysis.   This isn't looking at non-regulated.   This is  
24    looking at regulated operations across the company.  
25    They're not delving into HVAC stuff or anything like that.

1 JUDGE DALE: Despite the subliminal  
2 suggestion by Staff, I remain unconvinced. So as far as  
3 actuals, maybe that's relevant, but projected for the  
4 sister subs I think is not likely to lead to any relevant  
5 information.

6 MR. WOODSMALL: Let me ask how could  
7 actuals be relevant if projected aren't relevant? If  
8 one's relevant, the other is necessarily relevant.

9 JUDGE DALE: One's fact and one is wishful  
10 thinking.

11 MR. WOODSMALL: Well, and what a company's  
12 wishful thinking is, their projection on what they want  
13 for an ROE in this case is wishful thinking. It's not  
14 fact yet, but we allow them to put that information in and  
15 ask for it. They're both relevant. If one's relevant,  
16 the other is relevant.

17 MR. THOMPSON: Additionally, your Honor,  
18 the affiliate, the other subsidiaries compete with  
19 Missouri-American for capital.

20 JUDGE DALE: I'm sorry. I'm still not  
21 seeing it. To the extent that you're asking for this  
22 projected information for the other subsidiaries, it will  
23 be my opinion that it is not likely to lead to anything  
24 relevant.

25 MR. THOMPSON: Does that mean we get the

1 actuals?

2 JUDGE DALE: You have the actuals, don't  
3 you?

4 MR. COOPER: Not in 104. You haven't asked  
5 for the actuals yet.

6 DAVID MURRAY: But she gave me an idea.

7 MR. THOMPSON: We'll be happy to serve that  
8 on you.

9 MR. COOPER: We'll react when we see it.

10 JUDGE DALE: Have you provided any response  
11 to 101?

12 MR. COOPER: To 101? Your Honor, only the  
13 note in the objection letter as to the second sentence in  
14 101 that indicates no such filing has been made but that  
15 we would notify the Staff when it has been made.

16 MR. THOMPSON: If I could, your Honor, they  
17 indicate they'll notify the Staff. They don't indicate  
18 that they'll provide it. If on clarification of what  
19 they're saying is they'll provide it when it's available,  
20 then I guess we're done with 101.

21 JUDGE DALE: Are you willing to copy the  
22 Staff?

23 MR. COOPER: I think so, your Honor. My  
24 impression is that that's a public document anyway, and so  
25 whether we pull it out and send it to the Staff or not I

1 don't think makes any difference.

2 JUDGE DALE: Will you kindly agree to --  
3 now, I can't see him if you guys have your heads together.

4 MR. COOPER: Your Honor, I need to check  
5 and make sure that it's a public document. My impression  
6 is that it is, but that would be the only -- if it's not a  
7 public document, I would have to talk to some folks before  
8 I confirm that we could provide it. Certainly if it's a  
9 public document, there's no problem whatsoever.

10 JUDGE DALE: Why don't you guys get back  
11 with me on 101?

12 MR. THOMPSON: So if I could clarify, your  
13 Honor. Mr. Cooper, you're indicating that there is no  
14 analysis available at this time, none has been done?

15 MR. COOPER: No analysis. No. I'm  
16 indicating that as to your request, your second sentence,  
17 if a registration filing for the IPO has been made with  
18 the SEC, please provide this filing. I am indicating that  
19 as to that sentence, that request, no filing has been made  
20 with the SEC, and when it is, we'll notify you and  
21 certainly, if it's a public document, provide that  
22 document.

23 MR. THOMPSON: Well, we still want what we  
24 asked for under the first sentence, your Honor.

25 MR. COOPER: I would have thought that.

1 That's why I was surprised when you said that our  
2 providing the IPO -- or the SEC filing would take care of  
3 your issue.

4 MR. THOMPSON: I was confused, Mr. Cooper.

5 JUDGE DALE: I see the valuation, I view  
6 this valuation analysis information as essentially their  
7 work papers that go into putting together the IPO. Is  
8 that a correct understanding of what they are?

9 MR. COOPER: Certainly a part of that  
10 process. I don't know whether I --

11 MR. THOMPSON: We think there might be --

12 MR. COOPER: -- would describe it as work  
13 papers.

14 MR. THOMPSON: -- board presentations as  
15 well.

16 JUDGE DALE: It seems reasonable that if  
17 this IPO happens during this case, that all of that  
18 information, including the underlying analyses,  
19 presentations, et cetera, could lead to relevant evidence.  
20 Until it's filed, however, I'm not certain that it is,  
21 because IPOs are notoriously contingent on many, many  
22 things.

23 MR. THOMPSON: Well, your Honor, with that  
24 ruling you guarantee that it won't happen until this case  
25 is over. We think there's analyses that are ongoing, and

1   there necessarily will be such analyses before the IPO is  
2   finally issued, and we think those analyses are directly  
3   relevant to this case. As I indicated before, we don't  
4   believe that Missouri-American has a distinct capital  
5   structure, and consequently, Staff believes it's entitled  
6   to this information to the extent that it exists and that  
7   Missouri-American can provide it.

8                   MR. COOPER: Your Honor, I think the  
9   arguments in regard to this portion of 101, it would  
10   primarily be a repeat of things we talked about before.  
11   We have the initial level that certainly any valuation  
12   related to an IPO is not done at the Missouri-American  
13   Water Company level. So anything that there is out there  
14   is at a parent level.

15                   Beyond that, any valuation in conjunction  
16   with the IPO will be related to as the company might be at  
17   the point of the IPO, speculation related to something  
18   that may or may not happen in the future.

19                   JUDGE DALE: But an IPO of the parent must  
20   necessarily at least address to some extent the financial  
21   expectations of the subsidiaries, including this one.

22                   MR. COOPER: At some point, I suppose.  
23   Again, projected, speculative information.

24                   JUDGE DALE: Well, let me ask this to cut  
25   to the chase. Is Missouri-American in possession of, in

1 custody of or in control of any of this information such  
2 that it could provide it?

3 MR. COOPER: Missouri-American does not  
4 have this information. As I said before, the information  
5 exists only at the parent level and is fairly tightly  
6 held, we mentioned in our objection letter, and it's not  
7 so much an objection as kind of a reminder for folks, but  
8 when you're talking about the IPO process, you're talking  
9 about federal securities laws that are fairly strict in  
10 terms of disclosure and in terms of consequences for  
11 improper disclosure. So information related to the IPO is  
12 certainly not something that floats around willy-nilly in  
13 the world.

14 JUDGE DALE: I'm uncertain as to whether or  
15 not this will lead to relevant information. I would ask  
16 that Staff redirect this request to the parent company.  
17 And it would be my suggestion that when you do so, you  
18 list with as much particularity as you are able the  
19 documents that you want and not -- not so much why you  
20 want it as much as how you believe that it relates to what  
21 you're looking for.

22 MR. THOMPSON: Thank you, your Honor.

23 MR. COOPER: Your Honor, should we move to  
24 100 then? It is somewhat similar, I guess, to the 101 we  
25 just finished.



1 JUDGE DALE: So except that these are all  
2 past valuations.

3 MR. COOPER: Correct. It's a much broader  
4 request, and actually one of the -- one of the objections  
5 that we have to that one is premised on vagueness to start  
6 with, because I guess valuation is a pretty broad  
7 description in this context. When I think of valuations,  
8 I think of, for example, the rate base valuations that  
9 were done when the company purchased Valley Park, other  
10 properties in Missouri. As to those Missouri valuations,  
11 I believe that the Staff has that information, or to the  
12 extent they don't, it can be provided.

13 But valuations, similar valuations to other  
14 systems seems to be far beyond what's going on in this  
15 case. For example, rate base valuations associated with  
16 purchases of systems in New Jersey or Pennsylvania or  
17 California or with tax disputes in any of those states, or  
18 at one point an example was that Chattanooga was looked  
19 into a condemnation struggle. I'm sure there were  
20 valuations done of various Tennessee-American properties.  
21 And it's just unclear to me how any of that relates to  
22 this case.

23 MR. THOMPSON: Your Honor, we're not  
24 talking about plant in service valuations. We're talking  
25 about cost of capital valuations.

1 JUDGE DALE: Can you refine your request  
2 and resubmit it?

3 MR. THOMPSON: Well, we certainly can.

4 JUDGE DALE: So that leaves us 97. Am I  
5 following?

6 MR. COOPER: Yes, your Honor. In regard to  
7 97, we believe the Staff has asked for correspondence --  
8 correspondence and/or research reports for the last two  
9 years with outside financial analysts. MAWC itself is not  
10 a rated entity. We don't believe there's any reports as  
11 to MAWC. So there are none to be provided.

12 The company has provided reports related to  
13 American Water and Capital Corp for that time period, and  
14 that's in that packet that I provided you earlier. I  
15 think what that leaves outstanding is the request that the  
16 company provide all correspondence to or from any  
17 financial analysts over the course of a two-year period.  
18 Again, MAWC does not have that type of correspondence with  
19 the analysts, so what we're talking about is parent  
20 communications with those analysts.

21 For a two-year period that's I am told a  
22 considerable amount of communication. For example, most  
23 recently, I guess, as some of this has progressed, three  
24 or four calls a day per two or three people, so, you know,  
25 9, 12, items per day on one side, written communications

1 of several per week for a two-year period.

2                   So in addition to, as I say, in our  
3 possession, custody and control arguments that we've  
4 talked about before, the relevance or not reasonably  
5 related to lead to admissible evidence argument, we think  
6 it's overbroad and burdensome to try to track all this  
7 information for a two-year period.

8                   JUDGE DALE: Is there some way that Staff  
9 can make its request more specific to eliminate -- I don't  
10 know. Are there regularly filed questions that come to  
11 the company or reports from the company that they make to  
12 financial analysts?

13                   MR. THOMPSON: I'm told that we typically  
14 seek this information in rate cases and that  
15 Missouri-American is indeed the only company that objects  
16 to providing it. I think it's important for the Judge to  
17 understand that it is not Missouri-American that borrows  
18 money and has a credit rating. It is the consolidated  
19 entity that borrows money and has a credit rating.

20                   Consequently, it's necessary for us to have  
21 this correspondence in order to understand the amount of  
22 risk, that sort of thing.

23                   MR. COOPER: Your Honor, I don't think  
24 that's a completely accurate statement. I think that  
25 Missouri-American does issue some of its own debt.

1 MS. BAKER: And, your Honor, I'd like to  
2 say that Public Counsel certainly backs Staff on this  
3 particular issue. We do find this to be a very important  
4 issue in this case.

5 JUDGE DALE: Mr. Cooper, in mid sentence  
6 when we were cut off by the conferring heads --

7 MR. COOPER: I think my only point was, is  
8 that it is my belief that MAWC issues its own debt. I  
9 don't think it's accurate to say that it does not have any  
10 debt of its own.

11 MR. THOMPSON: I don't think we said they  
12 don't have any debt. I think we indicated that most of  
13 the debt is from the consolidated entity. That's my  
14 understanding, your Honor.

15 JUDGE DALE: Is the -- is this the standard  
16 wording of the DR?

17 DAVID MURRAY: Yes, this is standard  
18 wording. This is typically what goes out to each company  
19 in every rate case, and we usually don't have a problem  
20 with receiving the correspondence, e-mails, what have you  
21 that occur between S&P credit analysts and officers at the  
22 companies. And when I say the companies, I'm saying  
23 Empire, Aquila, Ameren, those types of -- you know, those  
24 types of companies and that type of correspondence between  
25 them.

1                   And so this is -- there has been some  
2   issues with credit rating agencies and the relaying of a  
3   report to the company to have the company revise some of  
4   the report. I mean, I think there was an article out in  
5   the west coast on that where the companies were adding  
6   language that actually added adjectives to the reports, so  
7   the objectivity was an issue.

8                   And so just receiving the reports  
9   themselves doesn't always necessarily give us -- doesn't  
10  give us an idea as to whether or not that's an objective  
11  analysis because there is a lot of collaboration between  
12  the companies and the analysts at times, which should just  
13  be to look at the accuracy of the report, not necessarily  
14  to add language to the report.

15                  MR. COOPER: Could I ask one thing of  
16  Staff? It appears to me that, you know, a part of this  
17  request is details of all telephone conversations that  
18  have occurred over this two-year period. Is -- I guess I  
19  don't have a better way to phrase this. Is it really the  
20  Staff's intent that telephone conversations be recreated  
21  for a two-year period?

22                  DAVID MURRAY: Well, to the extent it's  
23  available, but obviously I don't expect them to sit in a  
24  meeting room and say, do you remember when we had that  
25  conversation? To the extent there's documentation on it,

1    yes, but to the extent that there's not documentation,  
2    obviously it's not in your possession or control, I guess.

3                   JUDGE DALE:   So what I'm hearing is that  
4    this Data Request is actually limited to copies of  
5    correspondence or research reports between officers of the  
6    company and outside financial analysts, all substantive  
7    e-mails, and that means anything that talks about anything  
8    besides what time we're going to talk to each other, and  
9    such other documentation, notations or memorializations of  
10   conversations that the company has in its possession?  And  
11   by the company I mean either of these three entities.

12                  MR. THOMPSON:  I think that's a fair  
13   restatement, your Honor.

14                  MR. WOODSMALL:  Your Honor, did you limit  
15   that just to officers' communications?

16                  JUDGE DALE:  That's what Mr. Murray said he  
17   was interested in.

18                  MR. WOODSMALL:  Okay.  I just note that  
19   they're probably allocating costs from American Water for  
20   other individuals besides officers, employees in the  
21   treasury department, numerous other employees.  We may be  
22   seeking to expand upon that, to be more than just  
23   officers, but I'll leave that until we do that.

24                  JUDGE DALE:  I believe that addressed all  
25   of the disputed issues, and if people are still in pain

1     about this, file something and I'll take it to the  
2     Commissioners.

3                     MR. THOMPSON:   Thank you, your Honor.

4                     DAVID MURRAY:   Thanks.

5                     JUDGE DALE:    Is there anything else that I  
6     should answer while I'm here?

7                     MR. COOPER:    I have one matter to ask of  
8     you, but it can wait 'til we go off the record.

9                     JUDGE DALE:    Okay.   With that, then, we  
10    will be adjourned and go off the record.

11                    WHEREUPON, the discovery conference was  
12    concluded.

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## 1 C E R T I F I C A T E

2 STATE OF MISSOURI )  
3 ) ss.  
4 COUNTY OF COLE )

5 I, Kellene K. Feddersen, Certified  
6 Shorthand Reporter with the firm of Midwest Litigation  
7 Services, and Notary Public within and for the State of  
8 Missouri, do hereby certify that I was personally present  
9 at the proceedings had in the above-entitled cause at the  
10 time and place set forth in the caption sheet thereof;  
11 that I then and there took down in Stenotype the  
12 proceedings had; and that the foregoing is a full, true  
13 and correct transcript of such Stenotype notes so made at  
14 such time and place.

15 Given at my office in the City of  
16 Jefferson, County of Cole, State of Missouri.

17 Kellene K. Feddersen, RPR, CSR, CCR  
18 Notary Public (County of Cole)  
19 My commission expires March 28, 2009.  
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