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BEFORE THE  
COMMONWEALTH OF KENTUCKY  
PUBLIC SERVICE COMMISSION

IN THE MATTER OF:  
  
ADJUSTMENT OF THE RATES OF  
KENTUCKY-AMERICAN WATER COMPANY  
  
CASE NO. 2004-00103

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TRANSCRIPT OF EVIDENCE  
  
VOLUME I

DATE OF HEARING: November 8, 2004

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1 CHAIRMAN GOSS:

2 Good morning. Everyone please be seated. We'll be on  
3 the record in the Commonwealth of Kentucky, Public  
4 Service Commission in the matter of notice of adjust-  
5 ment of the rates of Kentucky-American Water Company  
6 effective on and after May 30, 2004, Case No. 2004-  
7 00103. My name is Mark David Goss. I'm Chairman of  
8 the Kentucky Public Service Commission. Seated to my  
9 right is Ellen C. Williams, Vice Chairman of the  
10 Commission. Seated to my left is Greg Coker,  
11 Commissioner. This case was initiated on April 30,  
12 2004 when Kentucky-American Water Company filed its  
13 Application to adjust rates using a forecasted test  
14 period. The Commission entered a procedural Order  
15 setting out certain prehearing deadlines culminating in  
16 this hearing today. Before we move any further, let's  
17 go ahead, please, Counsel, and receive your  
18 appearances. We'll start with Kentucky-American.

19 MR. INGRAM:

20 For Kentucky-American, Lindsey Ingram, Jr. and Lindsey  
21 Ingram III, Stoll, Keenon & Park, 300 West Vine Street,  
22 Suite 2100, Lexington 40502.

23 CHAIRMAN GOSS:

24 Good morning, Mr. Ingram and Mr. Ingram.  
25

1 MR. INGRAM III:

2 Good morning.

3 CHAIRMAN GOSS:

4 The Attorney General?

5 MR. SPENARD:

6 Good morning. Appearing on behalf of Gregory D.  
7 Stumbo, Attorney General, David Edward Spenard and  
8 Dennis G. Howard II, 1024 Capital Center Drive,  
9 Suite 200, Frankfort, Kentucky 40601.

10 CHAIRMAN GOSS:

11 Mr. Spenard and Mr. Howard, nice to see you this  
12 morning.

13 MR. HOWARD:

14 Good morning.

15 CHAIRMAN GOSS:

16 For LFUCG?

17 MR. BARBERIE:

18 Good morning, Your Honor. David Barberie on behalf of  
19 the Lexington-Fayette Urban County Government,  
20 Department of Law, 200 East Main Street, Lexington,  
21 Kentucky 40507.

22 CHAIRMAN GOSS:

23 Mr. Barberie, good morning to you. Bluegrass FLOW?

24 MR. OCKERMAN:

25 Good morning, Commissioners. Foster Ockerman, Jr.

1 of Martin, Ockerman & Brabant, 200 North Upper,  
2 Lexington, Kentucky 40507.

3 CHAIRMAN GOSS:

4 Good morning, Mr. Ockerman.

5 MR. OCKERMAN:

6 Thank you.

7 CHAIRMAN GOSS:

8 For the PSC?

9 MR. WUETCHER:

10 Your Honor, I believe there's another party before the  
11 Commission Staff, but, on behalf of Commission Staff,  
12 Gerald Wuetcher and Jeb Pinney.

13 CHAIRMAN GOSS:

14 All right. Who am I leaving out?

15 MR. WUETCHER:

16 I believe Community Action.

17 MR. CHILDERS:

18 Yes.

19 CHAIRMAN GOSS:

20 All right. For Community Action? I apologize.

21 MR. CHILDERS:

22 That's okay, Your Honor. Joe Childers, 201 West Short  
23 Street, Suite 310, Lexington, Kentucky.

24 CHAIRMAN GOSS:

25 Good morning, Mr. Childers. It's always nice to have

1           you, sir.

2 MR. CHILDERS:

3           Thank you, Your Honor.

4 CHAIRMAN GOSS:

5           Okay. Let me go over just a few ground rules, if you  
6 want to call them those, for the hearing this week. We  
7 will try to - we got a little late start this morning,  
8 but we'll try to convene the hearing each morning at  
9 nine o'clock and we will try to go, unless there's some  
10 problem that one of the parties has, until at least  
11 five o'clock, and I think we have an item tomorrow  
12 that's going to require the Commission to be over in  
13 the Capitol area until about one o'clock. Is that what  
14 we said?

15 VICE CHAIRWOMAN WILLIAMS:

16           Right.

17 CHAIRMAN GOSS:

18           Until about one o'clock, so we will not be convening  
19 tomorrow, and I apologize for that, we will not be  
20 convening tomorrow until 1:00 p.m. here in Hearing  
21 Room 1, but, other than tomorrow, we'll try to go from  
22 nine to five each day, and, when we get to the end of  
23 the day, we'll sort of adjust that depending upon where  
24 we are and where the parties think we need to go. I  
25 always try to provide the parties with breaks, both in

1 the morning and the afternoon. We'll try to take a  
2 break around ten-thirty and another one around three.  
3 Certainly, if one of the parties has a witness issue or  
4 some other reason to take a break, just let me know and  
5 we'll try to accommodate you. With regard to cell  
6 phones, I certainly don't have a problem with folks  
7 having cell phones in the courtroom. I would just ask  
8 that those cell phones be placed either on vibrate or  
9 silent so we're not in the middle of the hearing and a  
10 bunch of phones start ringing. Certainly, if you get a  
11 phone call, you're more than free to get up and go out  
12 and tend to it. We do have several meeting rooms that  
13 are available. I asked PSC Staff, Ms. Dotson, to  
14 reserve some of those rooms for folks. I think Kentucky-  
15 law-related folks would use Conference Room 3.  
16 For the rest of you all. For the rest  
17 of you, there are several other rooms, offices,  
18 conference rooms and such. Specifically, Rooms 154  
19 and 155. All of you go out the door that  
20 is to the left of the courtroom corner. There  
21 are several offices and such. If you need more room  
22 ~~you can go out the door that is to the right of the~~ out front and we'll  
23 have a meeting room, and Becky has also  
24 reserved some of those rooms 155 so those can be  
25 used for you all. I'll pass those at you.

**CONNIE SEWELL**  
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1 convenience. Many times during the hearing, data  
2 requests will need to be propounded. Our standing rule  
3 is that any data requests that need to be answered will  
4 need to be answered within ten days following the close  
5 of the hearing, and I think, under the procedural  
6 schedule, Mr. Wuetcher, we have briefs due on or before  
7 December 20th. Is that right?

8 MR. WUETCHER:

9 I believe that's correct, Your Honor.

10 CHAIRMAN GOSS:

11 And those are simultaneous briefs?

12 MR. WUETCHER:

13 Yes, sir.

14 CHAIRMAN GOSS:

15 And what about reply briefs? Do the parties wish to  
16 file simultaneous reply briefs, do you think, or do you  
17 want to wait till we get to the end?

18 MR. INGRAM:

19 No. I'd like to have the opportunity to file a reply  
20 brief, Your Honor.

21 CHAIRMAN GOSS:

22 Okay.

23 MR. SPENARD:

24 That's fine. Sure.  
25

1 CHAIRMAN GOSS:

2 All right. Is that in the procedural - are reply  
3 briefs in the procedural schedule? Do you know?

4 MR. WUETCHER:

5 I don't believe so, Your Honor, but . . .

6 CHAIRMAN GOSS:

7 Okay. What do we typically . . .

8 MR. WUETCHER:

9 . . . I would just simply suggest perhaps, given the  
10 fact that the reply time would fall over the Christmas  
11 holidays, that perhaps giving the parties until the end  
12 of the first week following New Year's, and we can  
13 supply the date for that once we pull out our  
14 calendars, but that would allow, I think, the parties  
15 more than 14 days, give or take some time for  
16 merriment.

17 CHAIRMAN GOSS:

18 Okay. All right. We'll iron that out, then, at the  
19 appropriate time. Typically, before we begin the  
20 evidentiary portion of the hearing, the Commission will  
21 receive public comment. As everyone is probably aware,  
22 we did things a little differently in this case. We  
23 held a public hearing and comment session last Thursday  
24 night at Dunbar High School, in Lexington, and we ran  
25 that from 5:00 until 9:00 p.m. and got several

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comments. So, because that public hearing has already been held, we will not be accepting verbal public comment this morning. Certainly, if any member of the public who is out in the audience or watching over the Internet wishes to provide the Commission with written public comment, we'll be more than happy to accept that either on paper or by e-mail to the Commission's website. I understand that there are at least a couple of outstanding motions. Before we take those up, Mr. Ingram, why don't you go ahead, sir. I presume that you're prepared to introduce newspaper publications of the notice of public hearing and notice of the evidentiary hearing.

MR. INGRAM:

I am, Your Honor, and I have the original for the Reporter and I respectfully suggest that this should be marked Kentucky-American's Exhibit No. 1.

CHAIRMAN GOSS:

All right. Is there any objection? Hearing none, the motion for admission will be sustained. Very good.

KAWC EXHIBIT 1

CHAIRMAN GOSS:

Now, I understand, as I said just a minute ago, that there are a couple, at least a couple, of motions that had been filed last week. Let's start - Mr. Spenard, I

1 think the AG filed - renewed its motion for  
2 surrebuttal. Is that correct, sir?

3 MR. SPENARD:

4 Yes, Mr. Chairman, that's correct.

5 CHAIRMAN GOSS:

6 Would you care to bring that on?

7 MR. SPENARD:

8 Yes, sir. The Attorney General's Office filed a motion  
9 for surrebuttal and the Commission denied it by an  
10 Order of October 27th, but, in the Order denying the  
11 motion for surrebuttal, the Commission did expressly  
12 state that we could renew our motion and, in its Order,  
13 set forth very clear grounds in terms of what was  
14 expected if we were to file surrebuttal and, again,  
15 reading from the Order, the Commission has held that a  
16 party seeking surrebuttal, unless it bears the burden  
17 of proof, must demonstrate good cause. In this  
18 particular instance, because we have advanced a  
19 proposal that was not in Kentucky-American's  
20 Application, we bear the burden of proof. So, reading  
21 those two factors in tandem, we believe that the motion  
22 for surrebuttal is proper. We made a recommendation.  
23 The company opposes it. We bear the burden on this  
24 particular item. So we have introduced surrebuttal  
25 and, consistent with the Commission's Order, we went

1 ahead and tendered the testimony as well.

2 CHAIRMAN GOSS:

3 And that goes to an adjustment to revenue; is that  
4 correct?

5 MR. SPENARD:

6 Yes, sir.

7 CHAIRMAN GOSS:

8 Would you briefly explain - I've seen your motion, but  
9 would you briefly explain for the record, Mr. Spenard,  
10 what that adjustment is all about?

11 MR. SPENARD:

12 It's about consolidated income taxes. The Kentucky-  
13 American Water Company files a consolidated return. We  
14 have posed an adjustment to talk in terms of their  
15 effective tax rate as opposed to the statutory tax  
16 rate, because we believe the effective tax rate is the  
17 more appropriate revenue amount to use for setting  
18 their rates to prevent an overrecovery on this  
19 particular area. This is relatively new because, as  
20 with Union Light, Heat & Power and LG&E, this is a new  
21 topic in Kentucky. I know that Union came in and they  
22 proposed one based upon their consolidated return or  
23 their effective rate. We proposed one in LG&E and  
24 this, again, is another area where we've come in and  
25 said, "Let's explore this area. We believe that the

1 adjustment is appropriate."

2 CHAIRMAN GOSS:

3 And, again, the AG takes the affirmative position that  
4 you bear the burden of proof on convincing the  
5 Commission that this is an appropriate adjustment?

6 MR. SPENARD:

7 Yes, sir, and, in reading the Order, "Except in those  
8 instances that he advances proposals in areas or on  
9 issues that Kentucky-American has not addressed in its  
10 application, the AG has no burden of proof to meet,"  
11 our reading of the Order is that they did not propose a  
12 consolidated income tax adjustment and we have. We  
13 believe that that falls within that particular language  
14 of the Commission's Order and, again, basically trying  
15 to make sure that we follow what you all have said,  
16 and, under this Order, we believe we do have the burden  
17 and obviously, if we're wrong, we'll stand corrected.

18 CHAIRMAN GOSS:

19 All right. Thank you.

20 MR. SPENARD:

21 You're welcome.

22 CHAIRMAN GOSS:

23 Mr. Ingram?

24 MR. INGRAM III:

25 Good morning, Your Honor.

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CHAIRMAN GOSS:

Good morning.

MR. INGRAM III:

We oppose the motion. We think the Commission got it exactly right when it said that the Attorney General must establish good cause for the submission of the surrebuttal testimony, and what they have said, what Mr. Spenard has said, is that he believes that the burden of proof here on this tax issue lies with the Attorney General. We respectfully disagree with that. The burden of proof for our entire revenue requirement, including how taxes should be treated, lies with Kentucky-American Water. That includes any issue, including tax issues. We have set forth in our Application how taxes ought to be treated in this case, and the sole argument that they have made that taxes ought to be treated in a different manner doesn't somehow shift the burden to the Attorney General. Again, the burden lies with Kentucky-American Water, and so therefore it should go back to your original ruling on the original motion for surrebuttal which states that good cause must be established by the Attorney General. That hasn't been met here. Good cause must be established by the Attorney General unless he has the burden of proof on a particular issue

1 and, since he doesn't have the burden of proof, good  
2 cause has not been established. So we would respect-  
3 fully request and suggest that the renewed motion for  
4 surrebuttal be denied.

5 CHAIRMAN GOSS:  
6 Okay. Mr. Ingram, thank you. Mr. Childers, do you  
7 have a position, sir, on this motion?

8 MR. CHILDERS:  
9 No, Your Honor, I don't have a position.

10 CHAIRMAN GOSS:  
11 All right. Mr. Barberie?

12 MR. BARBERIE:  
13 No, sir.

14 CHAIRMAN GOSS:  
15 Mr. Ockerman?

16 MR. OCKERMAN:  
17 No position, sir.

18 CHAIRMAN GOSS:  
19 All right. Mr. Wuetcher, let me hear from you.

20 MR. WUETCHER:  
21 Your Honor, the Commission Staff would tend to agree  
22 with the analysis of the Attorney General. To the  
23 extent that the Attorney General is proposing an  
24 adjustment that was not set forth in Kentucky-  
25 American's original Application, he would bear the



1 CHAIRMAN GOSS:  
2 All right. The Commission has considered the AG's  
3 motion and the arguments of counsel and is of the  
4 opinion that the surrebuttal testimony which the AG  
5 seeks to offer does go to an adjustment that the AG is  
6 attempting to convince the Commission it should adopt  
7 and has freely admitted that it bears the burden on  
8 attempting to convince the Commission that it should be  
9 adopted and, for that reason, the Commission believes  
10 that it is an appropriate subject for surrebuttal.  
11 However, it will be limited certainly to that one  
12 narrow issue, and I think, Mr. Spenard, you indicated -  
13 yes, I have it here - that this witness' testimony, the  
14 testimony of Andrea Crane, is the witness that is  
15 offered on surrebuttal on that issue; is that correct?  
16 MR. SPENARD:  
17 Yes, sir.  
18 CHAIRMAN GOSS:  
19 All right. So the Commission will order that the AG's  
20 motion will be sustained and the testimony of Ms. Crane  
21 will be offered and placed in the record.  
22 MR. SPENARD:  
23 Yes, sir.  
24 CHAIRMAN GOSS:  
25 Okay. Let's move on, then, to - I understand that

1 Bluegrass FLOW has filed a motion, late last week, to  
2 dismiss or, in the alternative, to postpone this  
3 hearing. Is that correct, Mr. Ockerman?

4 MR. OCKERMAN:

5 To dismiss or to set a new procedural schedule, sir.

6 CHAIRMAN GOSS:

7 Okay. Would you care to come up and sit next to Mr.  
8 Howard just for a minute or stand just so the  
9 microphone can catch you? And, if you would - I'm very  
10 happy for you to remain seated - if you would, sir, go  
11 ahead and bring on your motion.

12 MR. OCKERMAN:

13 Thank you, sir. This is a very simple motion in its  
14 intent although its impact obviously could be dramatic.  
15 Bluegrass FLOW moved to intervene in this case on June  
16 14th of this year. That motion was pending for two and  
17 a half months. During that time period, all deadlines  
18 for participating in the discovery process expired. As  
19 soon as the deadline for submitting intervenor  
20 testimony expired on a Friday, the following Tuesday,  
21 September 1st, the Order was entered granting Bluegrass  
22 FLOW the right to intervene with full rights of a  
23 party. Obviously that's impossible. Our opportunity  
24 to participate in the data request process was  
25 completely killed by the way this was done. The

1 Community Action Council received its Order in three  
2 weeks after its motion, so it is possible that the  
3 Commission can rule in a timely manner. During the  
4 pendency of our motion to intervene, the procedural  
5 schedule was adjusted to change the date for the public  
6 hearing and for this evidentiary hearing, so it is  
7 possible, during that time period, to adjust the  
8 calendar to allow an intervening party to participate.  
9 Our point is, very simply, that our procedural and  
10 substantive due process rights have been impaired and,  
11 for that reason, we should either start again, dismiss  
12 this case and allow it to be refiled and a new calendar  
13 set, or recess this hearing and permit us to  
14 participate. Thank you.

15 CHAIRMAN GOSS:

16 All right. Mr. Ingram? Mr. or Mr. Ingram, whichever  
17 one of you wishes to speak.

18 MR. INGRAM:

19 It's my turn, Your Honor, and I strenuously object to  
20 the granting of the relief sought by FLOW. If I may  
21 characterize the timeliness of the filing of this  
22 motion, I think it verges on being unconscionable. If  
23 FLOW indeed intended to actively participate in this  
24 proceeding and felt like that some of their rights had  
25 been extinguished because of time, they certainly could

1 have petitioned immediately after being authorized to  
2 intervene in this case on September 1 for whatever  
3 relief they felt like they wanted. Secondly, if I had  
4 been making this motion or any responsible intervenor  
5 had been making this motion, I assume there would have  
6 been attached to it intervenor's testimony that they  
7 would like to tender for the record. Seeing none, I  
8 assume the only thing that FLOW wants to do is submit  
9 data requests to Kentucky-American, and they certainly  
10 could have done that because supplemental data requests  
11 to Kentucky-American were due on October 22nd, long  
12 after they were granted intervention. So I  
13 respectfully suggest that not a single due process  
14 right of FLOW has been abrogated by this Commission  
15 allowing them to intervene, and this motion should be  
16 overruled.

17 CHAIRMAN GOSS:

18 Thank you, Mr. Ingram. Mr. Spenard?

19 MR. SPENARD:

20 No position.

21 CHAIRMAN GOSS:

22 Mr. Childers, do you have a position, sir?

23 MR. CHILDERS:

24 No position, Your Honor.  
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CHAIRMAN GOSS:

All right. Mr. Barberie?

MR. BARBERIE:

No position, Your Honor.

CHAIRMAN GOSS:

Mr. Wuetcher?

MR. WUETCHER:

Your Honor, Commission Staff would, in general, agree with Kentucky-American on this point. While the Commission acted - took some time in order to review Bluegrass FLOW's motion to intervene, that, in part, was because of the unique nature of Bluegrass FLOW's participation in two prior Commission proceedings and, in fact, in Bluegrass FLOW's motion in the case that was subsequently consolidated into Kentucky-American's application. So it was a motion that required considerable deliberation. To the extent that the Commission issued a procedural schedule in this case, the last major modification to that schedule was on July 8th. There was a subsequent modification to the procedural schedule on September 1, but that was merely to insert into the existing procedural schedule the time and location of a public comment hearing that was held last week. Bluegrass FLOW had opportunity to move for either a modification of the procedural schedule or

1 to file a request to make discovery and file testimony  
2 out of time, and, in fact, I would note for the  
3 Commission that, in the prior proceeding that Bluegrass  
4 FLOW participated in, Case 2002-00317, which involved  
5 Kentucky-American's application for transfer of  
6 control, in that proceeding, which has a much shorter  
7 statutory time period in which the Commission could  
8 act, Bluegrass FLOW filed such a motion to ask that  
9 there be modifications to the procedural schedule so  
10 that it would have time to file testimony. So  
11 Bluegrass FLOW, Commission Staff would submit, was  
12 aware of a process. To grant the motion now would  
13 create a great deal of disorder to the procedural  
14 schedule. The Commission has to rule on the  
15 Application within ten months. Over six months has  
16 passed since the Application was filed. To postpone  
17 the proceedings and have an evidentiary hearing at a  
18 later date, especially with the onset of the Christmas  
19 holidays and the delays that are inherent with that  
20 period of the year, it would be very difficult, if not  
21 impossible, for the Commission to meet the statutory  
22 time limit and produce the quality of review that this  
23 Commission is known for. Given that, given that the  
24 Commission has to balance both the intervenors'  
25 interests plus that for the orderly administration of

1 these proceedings, Commission Staff would submit to the  
2 Commission that, given the delay in Bluegrass FLOW  
3 invoking its rights or making its request for a  
4 modification, that the balance has to be given to  
5 ensuring that an Order is issued in a timely manner.  
6 So, for that reason, we would agree with the utility.

7 CHAIRMAN GOSS:

8 It's the Commission's concern with the last issue that  
9 Mr. Wuetcher raised and that is getting this case  
10 decided within the ten months that gives us the most  
11 pause. Certainly, the Commission desires to give each  
12 and every party appropriate due process and we're  
13 keenly aware that due process is something that not  
14 only is - well, it's something that's absolutely  
15 required, obviously. However, it is true, I think,  
16 that FLOW had an opportunity at least for a period of  
17 60 days to petition or to request the Commission to  
18 amend the procedural schedule to give it an opportunity  
19 to take any reasonable discovery it thought appropriate  
20 and it failed to do that, and we're here just a couple  
21 or three days before this evidentiary hearing is to  
22 commence and we receive this motion asking for  
23 additional time. I don't think, quite frankly, Mr.  
24 Ockerman, that your motion is timely in that, if you  
25 believe that your client was prejudiced by allowing

1 intervention on September 1 but no discovery, the  
2 appropriate procedure would have been for you to,  
3 again, ask the Commission for additional time. FLOW  
4 did not do that, and we just don't think it's  
5 appropriate at this time, just before we're about to  
6 take evidence in this case, to continue the hearing, to  
7 either dismiss the hearing or to continue it, because,  
8 if we continued it and gave an additional 60 days or  
9 whatever you felt was appropriate, I just really don't  
10 think we could get the case heard and briefs written  
11 and decided within the ten month period. So, for that  
12 reason, the Commission will overrule Bluegrass FLOW's  
13 motion to dismiss or, in the alternative, to postpone  
14 the hearing, and we will be issuing a written Order to  
15 that effect probably later today.

16 MR. OCKERMAN:

17 Thank you.

18 CHAIRMAN GOSS:

19 Thank you. All right. Are there any other outstanding  
20 motions that the Commission needs to consider before we  
21 begin taking evidentiary testimony? Are there any  
22 other housekeeping matters of any kind? Mr. Wuetcher?

23 MR. WUETCHER:

24 Your Honor, there is one matter. For purposes of  
25 ensuring a complete and clear record, in July of this

1 year, the Attorney General, in this proceeding, moved  
2 for the Commission to disclose any contacts that the  
3 Commission or the Commission Staff might have with  
4 Kentucky-American regarding any issues that are pending  
5 or posed by Kentucky-American's Application. On  
6 Friday, the Commission issued an Order in which it  
7 disclosed the results of the Commission's General  
8 Counsel's investigation and disclosed - listed all  
9 contacts revealed by that investigation and all  
10 documents related to any contacts that Commission Staff  
11 or the Commission had with the utility regarding the  
12 establishment of a regulatory asset or other matters  
13 that are at issue in this case. At this time, I would  
14 ask the Commission - suggest to the Commission that it  
15 inquire of the parties as to whether they have any  
16 questions or inquiries to make regarding those contacts  
17 or any comments that they might wish to make regarding  
18 the appropriateness of those contacts.

19 CHAIRMAN GOSS:

20 Mr. Ingram, do you, either Mr. Ingram, wish to respond  
21 to that?

22 MR. INGRAM:

23 I'm not sure what I'm going to say, Your Honor, is a  
24 direct response, but what I will say for the record,  
25 which seems to me to go to the heart of the current

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Attorney General's investigation and allegations, is that, to my knowledge, no representative of Kentucky-American Water Company has attempted in any ex parte communication to influence any current Commission member or any of the Staff of the Commission with respect to any issue involved in these consolidated matters.

CHAIRMAN GOSS:

Okay. Mr. Spenard?

MR. SPENARD:

Yes, a couple of points. The first point is that I anticipate that we'll have questions for at least one of the Kentucky-American witnesses on the subject, and we are in possession of the Order and are reviewing the Order. The second comment is, after the hearing, after we have an opportunity to ask a few questions, I think that this is appropriate for us to put forward in a brief or some other motion, but we're ready to proceed.

CHAIRMAN GOSS:

All right. Mr. Childers, do you have any response?

MR. CHILDERS:

No response, Your Honor.

CHAIRMAN GOSS:

Okay. Mr. Barberie?

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MR. BARBERIE:

Your Honor, it's possible that I will have a limited number of questions regarding the number of letters that were provided by the water company as a part of the discovery in this case.

CHAIRMAN GOSS:

Okay. Mr. Ockerman?

MR. OCKERMAN:

No response.

CHAIRMAN GOSS:

Okay. All right. Are there any other housekeeping matters, then, to take up? Okay. We'll try to follow the following order. Of course, Kentucky-American has the burden so they will lead, followed by the Attorney General, followed by Community Action, followed by LFUCG, followed by Bluegrass FLOW. Does anyone have a problem with that order? All right. Mr. Ingram, would you go ahead, sir, and call your first witness?

MR. INGRAM:

I will, Your Honor, and I call Dr. Spitznagel.

CHAIRMAN GOSS:

Dr. Spitznagel, would you come forward, please, sir?

WITNESS SWORN

1                   The witness, EDWARD L. SPITZNAGEL, JR., after  
2                   having been first duly sworn, testified as follows:

3                                   DIRECT EXAMINATION

4 BY MR. INGRAM:

5 Q.     Would you state your name, please?

6 A.     Edward L. Spitznagel, Jr.

7 Q.     Good morning, sir.

8 A.     Good morning.

9 Q.     What is your business address?

10 A.     One Brookings Drive. That's Washington University,  
11         St. Louis, Missouri 63130.

12 Q.     Have you filed direct testimony on behalf of Kentucky-  
13         American Water Company in this case?

14 A.     I have.

15 Q.     If I asked you the questions contained therein, would  
16         you provide me with the same answers today?

17 A.     Yes, I would.

18 MR. INGRAM:

19                 That's all I have at this time, Your Honor.

20 CHAIRMAN GOSS:

21                 Thank you. Mr. Spenard?

22 MR. SPENARD:

23                 Yes, sir.  
24  
25

1 CROSS EXAMINATION

2 BY MR. SPENARD:

3 Q. Good morning, Dr. Spitznagel.

4 A. Good morning.

5 Q. Are you familiar with the National Oceanic and  
6 Atmospheric Administration?

7 A. I am.

8 Q. And we'll call that NOAA for short.

9 A. Yes.

10 Q. Do you agree that NOAA is a governmental department or  
11 agency that addresses weather-related issues?

12 A. Yes.

13 Q. Do you agree that NOAA defines normal weather  
14 conditions?

15 A. NOAA records rainfall and records drought. I'm not  
16 aware that they would actually define something to be  
17 normal.

18 Q. But that is the basis of what you have looked at with  
19 regard to trying to determine normal weather  
20 conditions; is that correct?

21 A. Yes. I've used their data over a 30-year period to  
22 determine normal.

23 Q. Okay. Well, with regard to your direct testimony on  
24 Page 2, you discuss the model you use for water  
25 consumption. Am I correct that the variables you used

1 in the model were calendar month, drought severity  
2 index, and calendar year?  
3 Q. Okay, and your regression analysis contains seven years  
4 and one month of actual data; is that correct?  
5 A. That's correct.  
6 Q. How much data was included in the regression analysis  
7 used in the company's last base rate case?  
8 A. That was ten years.  
9 Q. Okay. You provided responses to discovery requests,  
10 and I'm looking at your Response to the Public Service  
11 Commission's Second Set of Information Requests, Items  
12 48 and 49. Do you have that in front of you?  
13 A. No, I do not.  
14 MR. INGRAM:  
15 Do you have a copy for the witness?  
16 MR. SPENARD:  
17 Well, I have my copy. Could you supply him with a  
18 copy?  
19 MR. INGRAM III:  
20 Sure.  
21 MR. INGRAM:  
22 Sure. Not knowing where you're going, it'll take  
23 us a minute to get the paper.  
24 MR. SPENARD:  
25 Okay.

1 MR. INGRAM:  
2           Which one was it?  
3 MR. SPENARD:  
4           PSC 2, Item 48, and PSC 2, Item 49.  
5 A.    I have it.  
6 Q.    In response to PSC 2, Item 48, you list a series of  
7        variables that you considered. Am I correct that all  
8        of these variables were rejected?  
9 A.    "In addition to the Palmer Drought Severity Index, ..."  
10       "... average daily precipitation ..." "... available  
11       soil moisture index ..." "In addition to cooling  
12       degree days, three other temperature measures ..." -  
13       yes, they were considered.  
14 Q.    Okay, and did you reject these variables?  
15 A.    Yes.  
16 Q.    Okay. Were any of the variables discussed in this  
17        response used in any of the other cases here in  
18        Kentucky in which you provided testimony?  
19 A.    My recollection is somewhat dim on that, but the very  
20        first case I was ever involved in, in which the witness  
21        was Scott J. Rubin, I analyzed his testimony, so I  
22        probably used that information at that time.  
23 Q.    Did you use any of these variables to support your  
24        position in any of the other cases in Kentucky in which  
25        you provided testimony?

- 1 A. No, none of the other cases.
- 2 Q. Okay. In response to PSC 2-49, you provided some  
3 information about consumption projections in Kentucky-  
4 American Water Company prior cases.
- 5 A. Yes, I did.
- 6 Q. Okay. In all cases, you used a May through December  
7 normal that was based on a 30-year average; is that  
8 correct?
- 9 A. That's correct.
- 10 Q. And, in that response, you state that the 30-year  
11 average drought severity index for the period 1967  
12 through 1996 was 0.64; is that correct?
- 13 A. That's correct.
- 14 Q. And for the period 1969 through 1998, it was 0.59; is  
15 that correct?
- 16 A. That's correct.
- 17 Q. Am I correct that, in two years, the 30-year normal  
18 changed by 7.8 percent?
- 19 A. Yes.
- 20 Q. Okay, and, one year later, the 1970 through 1999  
21 average dropped to 0.51; is that correct?
- 22 A. That's correct.
- 23 Q. And that represents a change of 13.6 percent; is that  
24 correct?
- 25 A. Without calculating it, I'll accept your computation.

1 Q. Yes, sir, and, four years later, it had dropped to  
2 0.40; is that correct?  
3 A. That's correct.  
4 Q. And that represents a change of roughly 21.6 percent?  
5 A. That's correct.  
6 Q. Okay. So, from the first case to the fourth case, the  
7 overall change in the index was a decline of roughly  
8 34.4 percent in seven years?  
9 A. Now, it should be understood that the index varies  
10 between something like minus four and plus four, so the  
11 percentages that you are calculating are relative to  
12 simply the zero value.  
13 Q. But, if we take a look in terms of the numbers that we  
14 just discussed, if we go from the 30-year average  
15 drought severity index for 1967 through 1996 and then  
16 take a look at the most recent, that does represent a  
17 change of 34.4 percent in seven years?  
18 A. That's, again, relative to simply the value of zero.  
19 Q. Okay. Do you know why a period of 30 years is used to  
20 designate normal weather?  
21 A. The 30 years seems to be standard. I do not know why  
22 there's any particular logical reason for choosing  
23 exactly 30 as opposed to 25 or 35.  
24 Q. But NOAA uses weather over three consecutive decades  
25 for its purposes; is that correct?

1 A. That's correct.

2 Q. Now, does NOAA recalculate its 30-year normal each year  
3 or does it recalculate it once a decade?

4 A. NOAA recalculates once a decade.

5 Q. Okay. Am I correct that your model applied the drought  
6 severity index to the months of May through December?

7 A. That's correct.

8 Q. Okay. Was any weather-related variable considered for  
9 the months of January through April?

10 A. The computations were done by me. In screening all the  
11 information to set up the model, that, once that was  
12 done and it was established those months had no  
13 weather-related utilization changes, they were set to  
14 be weather free.

15 Q. Okay. Am I correct that there was a drought in  
16 Kentucky-American's service territory in 1999?

17 A. Yes, there was.

18 Q. Am I correct that Kentucky-American asked its customers  
19 to restrict water usage for four months during that  
20 year?

21 A. They definitely asked the customers to restrict. I  
22 don't know for sure that it was exactly four months.

23 Q. Well, was there a period of time in which there was a  
24 ban on outdoor water usage?

25 A. I believe there was.

- 1 Q. Do you know the length or the duration of the period of  
2 that ban?
- 3 A. I would imagine it was on the order of several months,  
4 but I don't know the precise starting date and precise  
5 ending date.
- 6 Q. How were these restrictions factored into your model?
- 7 A. Those restrictions, in fact, are not factored into the  
8 model.
- 9 Q. Okay. Could you turn to Exhibit E, Page 1 of your  
10 direct testimony?
- 11 A. Yes, I have it.
- 12 Q. This exhibit shows projections of residential water  
13 utilization for 2004 through 2007; is that correct?
- 14 A. That's correct.
- 15 Q. Am I correct that you are projecting approximately a  
16 2 percent reduction in water usage each year during  
17 this period?
- 18 A. Yes, that is correct.
- 19 Q. Am I correct that these projections are all based on  
20 normal weather so that you have eliminated weather-  
21 related variances?
- 22 A. That's correct.
- 23 Q. For how long do you anticipate that this 2 percent  
24 annual reduction will continue?
- 25 A. That's very difficult to say because, in searching for

1 reasons for its existence, I examined the increasing  
2 number of customers that Kentucky-American had and the  
3 growth has been quite large. As far as I can tell,  
4 it's largely due to new construction, not by  
5 acquisition of smaller surrounding water companies.  
6 So, if Lexington continues to grow at the rate that it  
7 grows and all the new housing with the 1.5 gallon  
8 toilets, with, presumably, water-conserving  
9 showerheads, and all new appliances put in there would  
10 be water conserving, it could continue into the future.

11 MR. SPENARD:

12 One moment, please.

13 Q. Thank you, Dr. Spitznagel. That's all the questions I  
14 have for you this morning.

15 CHAIRMAN GOSS:

16 Thank you, Mr. Spenard. Mr. Childers, do you have  
17 any questions, sir?

18 MR. CHILDERS:

19 No questions, Your Honor.

20 CHAIRMAN GOSS:

21 Mr. Barberie?

22 MR. BARBERIE:

23 I have no questions for this witness.

24 CHAIRMAN GOSS:

25 Thank you. Mr. Ockerman?

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MR. OCKERMAN:

We have no questions of this witness.

CHAIRMAN GOSS:

Mr. Wuetcher?

MR. WUETCHER:

Just a few.

CROSS EXAMINATION

BY MR. WUETCHER:

Q. Good morning, sir.

A. Good morning.

Q. In your direct and rebuttal testimony, you use the phrase "statistically significant downward time trend." Just for purposes of clarifying the record, could you put that in - could you give us a simplified definition of what you mean by that?

A. Well, the term "statistically significant" means that the observed change or downward trend is too large to be due just to chance. Statisticians, when they analyze data, have to look up a lot of possible phenomena and they always have to make sure that, beyond reasonable doubt, that phenomenon isn't just a chance occurrence. So "statistically significant" means that there's less than a one in twenty chance that that trend would have occurred just by random fluctuation, and did you want the definition of

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"downward time trend"?

Q. Yes, sir.

A. The downward time trend is the fact that there's a projected decrease in utilization per customer, gallons per customer day, as the years progress.

Q. Just to briefly perhaps summarize your testimony in a couple of words, is it your testimony that the decrease in Kentucky-American's customer usage is a result of improved water-conserving fixtures and appliances?

A. I have no way to determine that statistically, but, in searching for reasonableness, I believe that to be true, particularly because, in the weather-insensitive months of January, February, March and April, we see that same downward trend almost to the same degree.

Q. In your opinion, would there be any other cause for the downward trend besides the improved water fixtures and appliances?

A. The other possibility, of course, is an educated public will just use water during the summer months more wisely, that is, use soaker hoses instead of sprinklers, and so on. I do not know that that could be true, but it's a possibility.

MR. WUETCHER:

That's all we have. Thank you.

1 CHAIRMAN GOSS:

2 Does the Commission have any questions?

3 EXAMINATION

4 BY CHAIRMAN GOSS:

5 Q. I just have a couple of very brief questions, Dr.  
6 Spitznagel. On your Exhibit E that you just testified  
7 about a second ago, it looks like that the reduction  
8 from 2004 to 2007 for the months January through  
9 September are fairly uniform; however, when you get in  
10 October and November, the difference between 2004 and  
11 2007, for instance, is quite a precipitous drop. Do  
12 you have any explanation for the differential in those  
13 two months vis-a-vis the other months?

14 A. Considerable amounts of the fluctuations from one month  
15 to another in the rate of decline is, in fact, a  
16 statistical variation with only seven years to work  
17 with, and the reason for using the seven years instead  
18 of the normal ten is Kentucky-American has shifted over  
19 to monthly billing which gives us a much more precise  
20 estimate and, instead of using the older method in  
21 which I converted back to what the effective quarterly  
22 billing would have been, I judged that seven years of  
23 monthly information would have been better than ten  
24 years of the old blurred information. So a lot of that  
25 is, in fact, random fluctuation. The computation of

1 the overall rate of decline could be obtained by  
2 putting all the months together into a single model, as  
3 I think I explained in my testimony, but that I lay it  
4 out here because it's much easier for everyone to see  
5 exactly how the mechanisms work.

6 Q. All right. Okay. That's fine. Thank you.

7 CHAIRMAN GOSS:

8 Redirect, Mr. Ingram?

9 REDIRECT EXAMINATION

10 BY MR. INGRAM:

11 Q. Dr. Spitznagel, are you aware that the gallon per day  
12 residential consumption for Kentucky-American in 2003  
13 was less than you projected to be in the forecasted  
14 test year?

15 A. I had to have seen that, but, you know, I actually did  
16 not pay attention to it.

17 Q. Okay. Are you aware that the residential per day  
18 consumption for Kentucky-American's customers during  
19 the base period in this case is actually less than your  
20 projection for the forecasted test year?

21 A. I believe I heard that discussed, but I actually have  
22 not seen the precise figures.

23 Q. That's fine. Thank you, sir.

24 MR. INGRAM:

25 That's all.

1 CHAIRMAN GOSS:  
2 Recross limited to the scope, Mr. Spenard?  
3 MR. SPENARD:  
4 One moment. No, sir. No, thank you.  
5 CHAIRMAN GOSS:  
6 All right. Any other parties have any questions?  
7 Mr. Wuetcher?  
8 MR. WUETCHER:  
9 No, sir.  
10 CHAIRMAN GOSS:  
11 Okay. Thank you, Dr. Spitznagel.  
12 MR. INGRAM:  
13 Your Honor, Dr. Spitznagel has a class to teach  
14 tonight in St. Louis and I hope he may be excused  
15 now to make his progress westward from here.  
16 CHAIRMAN GOSS:  
17 All right. It's fine by me. Does anyone else  
18 need him?  
19 MR. SPENARD:  
20 No objection.  
21 CHAIRMAN GOSS:  
22 All right. Have a nice flight, Dr. Spitznagel.  
23 Thank you.  
24 DR. SPITZNAGEL:  
25 Thank you.

1 CHAIRMAN GOSS:  
2 Okay. Mr. Ingram, you can call your next witness.  
3 MR. INGRAM:  
4 I call Dr. Rubin.  
5 WITNESS SWORN  
6 CHAIRMAN GOSS:  
7 Thank you. Please be seated. Okay, Mr. Ingram.  
8 The witness, KENNETH I. RUBIN, after having been  
9 first duly sworn, testified as follows:  
10 DIRECT EXAMINATION  
11 BY MR. INGRAM:  
12 Q. Would you state your name, please?  
13 A. Kenneth Rubin.  
14 Q. What is your business address?  
15 A. 1750 Pennsylvania Avenue, Washington, D.C. 20006.  
16 Q. Dr. Rubin, have you filed direct testimony in this  
17 case?  
18 A. I have.  
19 Q. If I asked you the questions contained therein today,  
20 would you give me the same answers?  
21 A. I would with a single exception.  
22 Q. And what is that exception?  
23 A. On Page 15, Line 20, . . .  
24 Q. Yes, sir.  
25 A. . . . in fact, if I were to read the whole sentence, it

1           would read, "This is well within a reasonable range,  
2           compared to hourly costs for police guards elsewhere  
3           in the American Water system, which ranged from  
4           \$14.50/hr to \$47/hr (with an average of ...)," and the  
5           correct number is "\$29.30/hr) for 90 water systems in  
6           9 states."

7   Q.    Other than the correction of those two numbers, do you  
8           want to make any other corrections to your testimony?

9   A.    I do not.

10  MR. INGRAM:

11           Your Honor, that's all I have at this time.

12  CHAIRMAN GOSS:

13           Thank you, Mr. Ingram. Mr. Spenard, cross  
14           examination?

15  MR. SPENARD:

16           Yes, sir. Good morning. We have no questions for  
17           this witness.

18  CHAIRMAN GOSS:

19           Thank you. Mr. Childers?

20  MR. CHILDERS:

21           No questions for this witness, Your Honor.

22  CHAIRMAN GOSS:

23           Mr. Barberie?

24  MR. BARBERIE:

25           None, Your Honor.

1 CHAIRMAN GOSS:

2 Mr. Ockerman?

3 MR. OCKERMAN:

4 No questions, Your Honor.

5 CHAIRMAN GOSS:

6 Mr. Wuetcher?

7 MR. WUETCHER:

8 I have a few, Your Honor.

9 CROSS EXAMINATION

10 BY MR. WUETCHER:

11 Q. Good morning, Dr. Rubin.

12 A. Good morning.

13 Q. I believe that, immediately after the September 11  
14 terrorist attack, Kentucky-American began using  
15 Lexington-Fayette Urban County Government police to  
16 provide security at their facilities; is that correct?

17 A. That's correct.

18 Q. Now, currently today - is that still the situation  
19 today, sir?

20 A. No, it's not.

21 Q. Who is providing security today?

22 A. I believe a commercial firm, Murray Guard, is providing  
23 guard service.

24 Q. Could you explain for us, I guess, the evolution from  
25 the use of Lexington-Fayette Urban County Government

1 police officers to the use of security guards?  
2 A. Yes. Briefly, as I state in my testimony, there were  
3 three periods of guard use in total between September  
4 11, 2001 and today. There was a use of LFUCG police  
5 early on directly through the City. There was a use of  
6 LFUCG police obtained through Alliance Staffing, and  
7 then finally there was a switch to Murray Guard after  
8 August of 2003, I believe.  
9 Q. You've had an opportunity to review the cost figures  
10 for Kentucky-American's use, first, of the Lexington-  
11 Fayette Urban County Government police for a period  
12 from September 12 of 2001 through March of 2002, and  
13 then, subsequently, the use of guards through Alliance  
14 Staffing, and then the use of Murray Guard? Are you  
15 familiar with the figures?  
16 A. Yes, I have.  
17 Q. There is a significant drop-off in the cost; would you  
18 not agree?  
19 A. There was an increase in the cost and than a drop-off;  
20 that's correct.  
21 Q. Can you explain for us the reasons for the drop-off in  
22 cost?  
23 A. Well, the big drop-off that I think you're talking  
24 about is the cost of Murray Guard compared to police  
25 guards, and the biggest difference is just generally

1 the quality of performance and service that one gets  
2 with police guards versus a commercial guard service.

3 Q. When you talk about the difference in the quality, what  
4 is that difference?

5 A. Well, it really goes to many, many things, but, to  
6 summarize, as I've stated in my testimony, typically  
7 police guards carry the full force of their job as  
8 police when working overtime in this capacity; that is  
9 they carry firearms; they are authorized to use deadly  
10 force. In many cases, they can use their police car  
11 with all the auxiliary equipment one might find in that  
12 police car. They are connected to the dispatch system  
13 because of their radios and can call for help, if  
14 needed, in an emergency situation. They are typically  
15 better trained, better screened in response actions.  
16 They're able to take response actions with that  
17 authority. A commercial service like Murray Guard is  
18 unarmed, not particularly trained to be a response  
19 component of a security shield, and doesn't have all of  
20 the other attributes that you would find of a regular  
21 police person. Just to summarize, it's two entirely  
22 different levels of service.

23 Q. Well, can you explain that, then? Currently, in the  
24 current period, we're talking about a commercial  
25 service, guard service, providing security at Kentucky-

1 American facilities. Subsequent to the September 11th  
2 attacks, you have a police presence at those  
3 facilities. To the extent that there is a difference  
4 or a decline in the - I guess you would state that that  
5 is a decline in the quality of the service, or not  
6 quality but the level of the protection that's  
7 being . . .

8 A. The range of services provided by Murray Guard, it's  
9 difficult to characterize that as in any way the same  
10 level of performance and breadth of services that you  
11 get from a police guard.

12 Q. Well, then, were the level of services provided - I  
13 assume the level of services being provided now is, in  
14 your opinion, adequate to meet the threat.

15 A. Well, it is if it's considered in the context of all  
16 the other security improvements that Kentucky-American  
17 has made over the period since 9/11. That's really the  
18 key, is that the Murray Guards today are providing the  
19 right level of service if you think of them in concert  
20 with all of the other security improvements that  
21 Kentucky-American has made.

22 Q. Well, obviously, without disclosing any sensitive  
23 security improvements, can you walk us through the  
24 benefits that were provided by the use of the  
25 Lexington-Fayette Urban County Government police and

1           how they are no longer necessary or that higher level  
2           is no longer necessary as a result of the improvements?  
3    A.     Yes, I can.  
4    Q.     And perhaps I can make it a little bit easier in terms,  
5           for example, you mentioned that the current guards are  
6           not armed whereas the police officers were armed. Can  
7           you explain the difference in that in terms of the  
8           improvements?  
9    A.     Yes. Well, you've asked a very, very broad question.  
10           I'll try to simplify it.  
11   Q.     Okay.  
12   A.     In any security approach, one typically tends to look  
13           for three things: a capability to detect an event; a  
14           capability to delay an event; and a capability to  
15           respond and recover from an event. Early on, in the  
16           evolution of security thinking at Kentucky-American,  
17           the use of police guards were providing detection,  
18           delay, and response. They were fighting all three  
19           levels, and there were other attributes of the security  
20           system in place at the time providing certain of those  
21           attributes. Over the period, Kentucky-American studied  
22           the problem, learned from many others doing similar  
23           things, learned from their other affiliates around the  
24           U.S., and generally the entire sector nationwide was  
25           learning at that same time. During that period,

1 Kentucky-American made many changes to its security  
2 approach, typically generally replacing human  
3 intervention with automation of one kind or another.  
4 So, by August of 2003, management felt comfortable  
5 enough to replace the police guards with Murray Guards,  
6 because they had other ways of finding detection. They  
7 had other delay mechanisms, and, when push came to  
8 shove, they still had the response capability of the  
9 local police that they could get, if need be, if  
10 called, if summoned. Does that answer the question?

11 Q. I believe it does.

12 A. Thank you.

13 Q. To your knowledge, aside from the commercial guard  
14 services, were there any other available protection  
15 forces available in lieu of the Police Department  
16 immediately following the September 11th attacks?

17 A. I'm unaware of any others.

18 Q. Do you know if any request was made for the stationing,  
19 for example, of National Guardsmen?

20 A. I don't know.

21 Q. Do you know if any type of use of National Guardsmen to  
22 police or provide force protection at water utility  
23 plants occurred at any spot around the nation?

24 A. I know of none.

25 Q. The vulnerability assessments that were done, I take it

- 1           that Kentucky-American was engaging in vulnerability  
2           assessments prior to the September 11th attacks?
- 3   A.   My understanding is, although I'm not very familiar  
4           with their activities prior to September 11th, that the  
5           assessments they were looking at there had to do with  
6           other kinds of events as opposed to terrorism events.
- 7   Q.   In terms of your knowledge of the industry as a whole,  
8           prior to September 11th, vulnerability assessments were  
9           being conducted by most major water utilities; is that  
10          correct?
- 11   A.   Not in the sense that vulnerability assessments have  
12          become known to be done since September 11th. Prior to  
13          September 11th, I think, to answer your question, most  
14          American water utilities, U.S. water utilities, that  
15          is, didn't really consider terrorism as a generating  
16          event to which they would be responding. Most of the  
17          events that were looked at in vulnerability assessment,  
18          business continuity planning, if you will, had to do  
19          with employee actions or vandalism of one kind or  
20          another.
- 21   Q.   After the September 11th attacks, would it be correct  
22          to say that there was a fairly dramatic shift in terms  
23          of emphasis on security?
- 24   A.   Yes.
- 25   Q.   Would it be correct to say that perhaps many utilities

1 provided an extra level of security while they examined  
2 their security needs and assessed their potential  
3 vulnerabilities?

4 A. It's difficult to characterize anything as extra, but  
5 most utilities reacted relatively swiftly after the  
6 attacks on the World Trade Center and the Pentagon with  
7 interim actions, and some of those actions lasted quite  
8 some time while the industry studied the problem,  
9 because, again, you'll recall there was not a lot of  
10 activity in this area in the United States prior to  
11 those attacks. So the industry really had some catch-  
12 up to do.

13 Q. Well, would it be correct, then, to say that the level  
14 that existed on September 10, 2001 and that that  
15 existed after September 11th was such that there was a  
16 much higher level of security in immediate response to  
17 the terrorist attack?

18 A. It began at the end of the day on September 11th, and  
19 it continues today at a level that was different than  
20 prior to; yes. That's correct.

21 Q. And I take it that, after the initial precautions that  
22 were put into effect at the end of the day on September  
23 11th and that continued for a while, utilities then  
24 began a reassessment process to determine how much  
25 security would be sufficient.

1 A. That's correct, how much that they were comfortable in  
2 providing.

3 Q. Okay. For most utilities, how long did that assessment  
4 process take, let's say, for utilities the size of  
5 Kentucky-American?

6 A. It varied quite a bit. There was, at this time, a  
7 legislative requirement to submit formal vulnerability  
8 assessments which varied by the size of a utility. In  
9 the case of Kentucky-American, their deadline was March  
10 of 2003, at the end of March 2003, and virtually every  
11 other water utility serving 100,000 in population or  
12 more had that deadline, and virtually every utility  
13 took until that time to submit their vulnerability  
14 assessments.

15 Q. Kentucky-American's gradual, I guess, implementation or  
16 use of commercial security guards, does that parallel  
17 or how does that compare to other companies in terms of  
18 the amount of time that was taken from the use of  
19 police guards to the time commercial security guards  
20 were used?

21 A. Well, based on my experience, it varies very, very  
22 broadly. There are many utilities today that still use  
23 police guards.

24 Q. Do you have any knowledge as to how Kentucky-American  
25 decided that Alliance Staffing was the most appropriate

- 1 agency to provide security services?
- 2 A. I believe I've read that they had done business with  
3 Alliance in the past, and, under the circumstances, it  
4 was, in their minds, inappropriate to seek a staffing  
5 plan very broadly beyond existing business relation-  
6 ships for security purposes.
- 7 Q. Rather than try to ask you specific - is most of your  
8 knowledge in this area based upon what has been  
9 provided by other company witnesses in terms of the  
10 hiring of the security guards?
- 11 A. I really have no firsthand knowledge of exactly the  
12 interactions between the City, Alliance, and Murray  
13 Guard other than what I've read from documents provided  
14 by the company.
- 15 Q. So it would be preferable to direct questions of that  
16 nature to Mr. Larson?
- 17 A. Another witness might have more firsthand knowledge.  
18 My knowledge is secondhand knowledge.
- 19 Q. Have you conducted any comparison or studies to  
20 determine what would be a reasonable overhead for those  
21 companies that are providing security services?
- 22 A. I have not.
- 23 Q. Just a couple more questions. In terms of the use of  
24 security guards, how common is it for security  
25 clearances to be run on those guards or some type of

1 background check prior to their retention, for example,  
2 by a water utility?

3 A. Are you talking about commercial security guards?

4 Q. Yes, sir.

5 A. I don't know a direct answer to your question, but I  
6 would expect that the use of any security guard service  
7 the buyer would want to be fairly certain that  
8 appropriate security and background checks had been run  
9 on those employees.

10 Q. Is that one condition that is normally a selling point,  
11 for example, when bids are taken for the provision of  
12 commercial security guard services?

13 A. Could be.

14 Q. To the extent of your knowledge in the field, is it  
15 common for commercial security firms to advertise that  
16 they had performed background checks on their  
17 personnel?

18 A. Well, I think it's like any other industry, any other  
19 sector. There's a full range of levels of service and  
20 quality of service that I'm sure is priced according to  
21 the performance and quality that you're buying. Very  
22 high-end security services, I'm sure, make their market  
23 according to the background checks and the quality of  
24 their people, ranging all the way down to the very low  
25 end, night watchmen, for example, for whom there may be

1 very little background checking going on. There's no  
2 standard in the industry, if that's the question.

3 Q. Well, in terms of availability, I assume that, after  
4 the September 11th attacks, there was an increased  
5 demand for security services. Those firms that would  
6 be providing background checks, the higher-end level of  
7 services, I think is the way you phrased it, would  
8 there be an adequate supply, or did you see in the  
9 industry a significant shortage of those services?

10 A. I am not an expert in that industry, but, from what I  
11 have observed working with my utility clients around  
12 the U.S., most utilities had relatively little trouble  
13 finding security services to meet whatever level of  
14 quality and demand they had.

15 MR. WUETCHER:

16 I think that's all we have. Thank you.

17 CHAIRMAN GOSS:

18 I have just a question. Any of the Commissioners  
19 have a question before I ask?

20 EXAMINATION

21 BY CHAIRMAN GOSS:

22 Q. Would you turn to Page 15 of your testimony? You  
23 indicated that, for the time period September 12, 2001  
24 to March 31, 2002, the hiring of Lexington police  
25 officers was at the rate of approximately \$26.91 per

- 1 hour; is that correct?
- 2 A. That's correct.
- 3 Q. That's on Line 17. Then you move over to Page 16, on  
4 Line 5, and you indicate that, once Alliance came on  
5 the scene, from the dates April 1, 2002 to August 19,  
6 2003, that \$26.91 per hour rate rose to approximately  
7 \$51 per hour; is that correct?
- 8 A. That's correct.
- 9 Q. And you say there, on Line 5, that Jackie Howard,  
10 President of Alliance Staffing estimated that that  
11 company's overhead was 65 to 70 percent; is that also  
12 correct?
- 13 A. I believe she never revealed exactly what her cost  
14 structure was, but we had a general discussion about  
15 the levels of overhead in her industry and that was the  
16 range that she talked about at the time.
- 17 Q. Well, I've done some rough math here, and it appears  
18 that the difference between \$26.91 an hour and \$51 an  
19 hour is a lot more than 65 to 70 percent. It looks  
20 like it's about 95 percent. Can you explain to me, if  
21 the overhead is at 65 to 70 percent, where the other 25  
22 to 30 percent is and the difference between the  
23 respective hourly wages?
- 24 A. I don't know the answer to that.
- 25 Q. Do you know if any other Kentucky-American witnesses



1 CHAIRMAN GOSS:

2 Thank you, Mr. Ingram. Recross?

3 MR. SPENARD:

4 No, sir.

5 CHAIRMAN GOSS:

6 Anybody in the back; Mr. Childers, Mr. Ockerman,  
7 Mr. Barberie, Mr. Wuetcher?

8 MR. WUETCHER:

9 Just a couple more, Your Honor.

10 CHAIRMAN GOSS:

11 All right.

12 RECCROSS EXAMINATION

13 BY MR. WUETCHER:

14 Q. Dr. Rubin, when you were preparing your testimony, did  
15 you review expenses or the actions taken by other  
16 utilities within this general area, let's say, within  
17 the Commonwealth of Kentucky in their response to  
18 September 11th?

19 A. I looked very generally at a couple of others; yes.

20 Q. Okay. Which utilities were those?

21 A. I believe I looked at, from what one can find - you  
22 have to understand that these data are not regularly  
23 available or publicly available, but, from websites and  
24 public documents, I looked at Louisville, I believe.

25 Q. And how did Louisville compare as to Kentucky-American?

1 A. I don't have the exact numbers.

2 Q. So you don't know if their expenses were higher or  
3 their security measures were different than those of  
4 Kentucky-American?

5 A. I recall, when looking, that I couldn't actually get  
6 the expenditure numbers. All I could get was a general  
7 idea of the kinds of responses Louisville was going  
8 through.

9 Q. Okay. In terms of threat assessment, obviously - well,  
10 would it be correct to state that the threat may differ  
11 inside the United States? Areas, for example, on the  
12 East Coast that are extremely highly populated would  
13 have a greater threat than perhaps those within the  
14 American interior?

15 A. Very difficult question to answer. There are those who  
16 would believe that, and I can tell you, from my  
17 experience working with lots of utilities all around  
18 the U.S., that there are many utilities that would  
19 disagree with that as would their cities that they're  
20 trying to protect.

21 Q. Well, in your opinion, then the threat would be the  
22 same regardless of the size or location of the city?

23 A. Well, the probability of occurrence of a threat I think  
24 is generally taken to be greater where there is a  
25 larger population at risk. In the threat assessment

1 literature, you'll find references to the kinds of  
2 outcomes that foreign terrorists are typically looking  
3 for and large effect, such as against large  
4 populations, is typically cited.

5 Q. In determining the reasonableness of a utility's action  
6 and I guess a utility's costs, then, would you have to  
7 factor into your assessment analysis the size of the  
8 population the utility is serving, its location, the  
9 general threat in that area, at least as it's been told  
10 by the law enforcement officials?

11 A. Yes, I would.

12 Q. To your knowledge, were there any specific threats that  
13 were identified by law enforcement agencies for the  
14 Kentucky area?

15 A. There were actual events that occurred in this part of  
16 the country; yes. Specific threats against Kentucky  
17 utilities, I'm unaware of any.

18 Q. Okay. When you say "in this part of the country,"  
19 which part of the country are you talking about? I  
20 mean, it's a big country.

21 A. I believe I captured some of those in an exhibit.  
22 Let's see, yeah, the Schedule 5. So, when I say "this  
23 part of the country," I'm referring to Tennessee,  
24 Virginia, Pennsylvania. There's a column "Location"  
25 that you can look at.

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MR. WUETCHER:

Okay. That's all I have. Thank you, sir.

CHAIRMAN GOSS:

Anything further, Mr. Ingram?

MR. INGRAM:

No, Your Honor.

CHAIRMAN GOSS:

Any other attorney wish to ask? Okay. Thank you,  
Dr. Rubin.

A. You're welcome.

CHAIRMAN GOSS:

You may step aside. Let's go ahead and take about  
a 15-minute break. We'll come back at a quarter  
till eleven. We'll be in recess.

OFF THE RECORD

CHAIRMAN GOSS:

I indicated earlier this morning that we were not  
going to resume until one o'clock tomorrow  
afternoon because of a prior commitment that the  
Commission had. We just found out that that  
commitment was canceled. So we'll go ahead and  
start at nine per usual in the morning, if that's  
all right with everybody. Okay. Mr. Ingram, go  
ahead and call your next witness.

1 MR. INGRAM:

2 I call Mr. Larson.

3 WITNESS SWORN

4 CHAIRMAN GOSS:

5 Thank you. Please be seated.

6 The witness, BRUCE M. LARSON, after having been  
7 first duly sworn, testified as follows:

8 DIRECT EXAMINATION

9 BY MR. INGRAM:

10 Q. Would you state your name, please?

11 A. Bruce Larson.

12 Q. By whom are you employed?

13 A. American Water Works Service Company.

14 Q. Where is your office?

15 A. 1025 Laurel Oak Road, Voorhees, Virginia 08043.

16 Q. Have you provided testimony in this case?

17 A. Yes, I have.

18 Q. If I asked you the questions contained therein, would  
19 you give me the same answers today?

20 A. With one exception.

21 Q. What is that exception?

22 A. On Page 2 of my direct testimony, Lines 2 through 4, I  
23 refer to an organization that I was appointed to that,  
24 through the evolution of the Department of Homeland  
25 Security, has changed its name.

1 Q. What is the current name of the Water Sector Critical  
2 Infrastructure Protection Advisory Committee?

3 A. Group.

4 Q. Group.

5 A. Yes. That is now - an equivalent organization is the  
6 Water Sector Coordination Council directed under a  
7 separate and new Presidential Directive.

8 MR. INGRAM:

9 Thank you, Mr. Larson. That's all I have at this  
10 time, Your Honor.

11 CHAIRMAN GOSS:

12 All right. Thank you. Mr. Spenard, do you wish  
13 to cross?

14 MR. SPENARD:

15 No, sir.

16 CHAIRMAN GOSS:

17 Okay. Mr. Childers? Mr. Barberie?

18 MR. BARBERIE:

19 No, sir.

20 CHAIRMAN GOSS:

21 Mr. Ockerman?

22 MR. OCKERMAN:

23 No, sir.

24 CHAIRMAN GOSS:

25 Mr. Wuetcher?

1 MR. WUETCHER:

2 Thank you, Your Honor.

3 CROSS EXAMINATION

4 BY MR. WUETCHER:

5 Q. Good morning, Mr. Larson.

6 A. Good morning, sir.

7 Q. How long have you been the Director of Security at  
8 American Water Works?

9 A. The titles have changed of recent. I have been the  
10 Director of Security since the restructuring in January  
11 of 2002 - January of 2003; I'm sorry.

12 Q. Prior to that time, what was your position at the  
13 American Water Works?

14 A. Director of Physical and Information Security.

15 Q. Just so I have an understanding, what is your  
16 relationship, in your position, to that of Kentucky-  
17 American Water Company specifically? Are you overall  
18 responsible for that company's physical and  
19 informational security, or is there someone that  
20 reports to you regarding it?

21 A. With regards to American Water as a corporate entity,  
22 the Service Company provides support facilitization and  
23 coordination to all of the subsidiary utilities,  
24 including Kentucky-American Water Company. The  
25 responsibility rests with the local company management.

1 Q. I assume you serve in - you provide advice and counsel  
2 to the local officials?  
3 A. Local management of Kentucky-American.  
4 Q. The local management.  
5 A. Yes, I do, sir.  
6 Q. In terms of Kentucky-American, was security planning  
7 being conducted prior to the September 11, 2001  
8 terrorist attack?  
9 A. Yes, it was, sir.  
10 Q. Can you describe for us what the nature of that  
11 security planning was?  
12 A. In 1998, Presidential Decision Directive 63 coined the  
13 term "National Critical Infrastructures," and  
14 designated water and wastewater services as one of  
15 those infrastructures. Pursuant to that and the  
16 preparations for Y2K, Kentucky-American was conducting  
17 regular reviews and assessments of security situations  
18 and the vulnerabilities that face the utility.  
19 Q. Were some of the objects of those vulnerability  
20 assessments terrorist attacks?  
21 A. I think that terrorist attacks have always been a  
22 reality since World War II in the country. As Dr.  
23 Rubin had testified earlier, the probability of  
24 occurrence, that is the differentiator and that, while  
25 there had been very little history of and certainly no

1            expectation of terrorist activities in the heartland,  
2            so to speak, that would be a fair calculation that it  
3            was considered but not weighed as probable.

4    Q.    Well, when you say that, are you then saying that there  
5            were contingency planning for it, but, because of the  
6            perceived low probability, that those were more of a  
7            contingency planning than an immediate need to  
8            implement a plan that would be readily necessary to  
9            implement, or have I lost you with that question?

10   A.    No.  If you could, restate it, please.

11   Q.    Okay.  You stated that the possibility of a terrorist  
12            attack was always one of the objects of the security  
13            planning; is that correct?

14   A.    It is not my direct knowledge prior to 1998 that  
15            terrorist activities were considered.

16   Q.    No.  I'm talking about . . .

17   A.    I think it's fair to assume.

18   Q.    Well, I'm talking about from 1998 onward.

19   A.    Correct.

20   Q.    But, in the analysis that the company was conducting,  
21            the perceived probability was less than what it was,  
22            say, on September 12, 2001?

23   A.    It may have been.  I was not involved in those  
24            processes at that time prior to September 11.

25   Q.    Well, let me step back, then.  In terms of the security

1           planning that was being conducted at Kentucky-American,  
2           what knowledge do you have of it prior to September 11,  
3           2001?

4    A.    I was not involved in it but had seen the results of it  
5           in some of the planning and culminating in the direct  
6           response to the attacks of September 11.

7    Q.    Okay.  The focus of the planning was, I take it,  
8           directed primarily to more high probability events  
9           prior to September 11th.

10   A.    That would be a fair characterization of the presumed  
11           probability; yes.

12   Q.    Okay, and those higher probability events were what?

13   A.    Interruption of service is one that is consistent  
14           across many utilities and certainly is always of  
15           concern and interest to Kentucky-American.

16   Q.    Okay, and, when we talk about interruption of service,  
17           are we talking about that interruption being caused by  
18           an outside force as opposed to, say, a natural event?

19   A.    I think it's fair to characterize that, prior to  
20           September 11th, the nation as a whole and specifically  
21           Kentucky-American and utilities considered threats in  
22           the context of both natural and man-made.

23   Q.    Okay.  In terms of the planning, then, there was some  
24           consideration to - what I'm trying to find out is what  
25           was the extent of planning regarding a terrorist attack

1 prior to September 11th. As I gather from your  
2 testimony, you're stating that it was considered, but  
3 it was regarded as a low probability event.

4 A. I certainly know for a fact that it was considered and  
5 at the time I became involved with it to assess that  
6 level of probability or level of assessment was post-  
7 9/11. Therefore I think that it's unfair for - I have  
8 no firsthand knowledge of those probability statements  
9 that may have been made prior to 9/11.

10 Q. Okay. To the extent I were to ask you questions  
11 regarding what plans or actions had been taken prior to  
12 September 11th with regard to a potential terrorist  
13 attack or a perceived terrorist threat to Kentucky-  
14 American's facilities, would you be able to answer?

15 A. No, sir.

16 Q. Okay. Now, in terms of post-September 11th, you would  
17 be able to answer?

18 A. Yes, sir.

19 Q. In terms of security at Kentucky-American, has there  
20 been any change in responsibility for it after the  
21 September 11, 2001 terrorist attack, or does that . . .

22 A. No. The responsibility for security measures within  
23 Kentucky-American has and will continue to remain with  
24 the local management team.

25 Q. Okay. After September 11th, there was a - I think your

1 testimony describes it as a significant analysis of the  
2 vulnerability threat at Kentucky-American.

3 A. Which page are you referring to?

4 Q. I may be just briefly summarizing your testimony.  
5 Would it be correct to say that there was a significant  
6 review of security at Kentucky-American following the  
7 September 11th attacks?

8 A. Absolutely.

9 Q. And when was that review conducted; over what time  
10 period?

11 A. It is my understanding that the specific site and  
12 facility reviews for all of the water systems within  
13 the American Water subsidiary utility family began on  
14 September 11th to better understand what the existing  
15 threat environment was.

16 Q. When was that review completed?

17 A. I would like to offer that it won't complete; that  
18 we'll continue to be assessing the threat environment  
19 and evolving our protections against it. There were  
20 several different, shall we say, decision points to  
21 make some very quick initial reactive measures to  
22 improve the security immediately.

23 Q. Could you go over those decision points for us in terms  
24 of what date and what decision was made?

25 A. It's my understanding that, while I was not involved in

1 the decision itself, that, on or about the evening of  
2 September 11, 2001, there was a decision to enhance the  
3 security posture of our utilities and, in specific,  
4 their critical facilities that are providing the  
5 operations, to include adding guards.

6 Q. When you state "adding guards," we're talking about the  
7 request for the Lexington-Fayette Urban County Police  
8 Department to provide extra police protection to  
9 Kentucky-American facilities?

10 A. Yes, sir.

11 Q. Do you know if any additional agencies were requested  
12 to provide security?

13 A. I am not aware of any, sir.

14 Q. Do you know if any request was made, for example, to  
15 the National Guard?

16 A. I am not aware of any.

17 Q. Would those requests have come from you or come from  
18 the local officials?

19 A. They could have come from either direction. Today it  
20 would come from the Center as we coordinate with the  
21 Department of Homeland Security.

22 Q. Okay. As I understand it, within three days of the  
23 attack, there was a new set of practices that was  
24 developed by American Water Works in terms of security.

25 A. There was a set of practices that have been under

1 evolution since 1998. There were some very quick  
2 reactions that were put into place as the threat was  
3 all that obvious on September 12, 2001.

4 Q. Would it be correct to say that those practices were  
5 the company's contingency planning? Those were already  
6 on the board ready to go?

7 A. Some were in preference or contingency planning, as you  
8 put it. The bulk were in direct response to what we  
9 had perceived as a dramatic shift in the threat  
10 environment for the company and the nation.

11 Q. Do you know if there had been any contingency planning  
12 prior to September 11th regarding enhanced physical  
13 security at the plants in the event of, let's say, an  
14 attack or natural occurrence that would require  
15 additional security?

16 A. I'm sure that there must have been over history, but I  
17 have no firsthand knowledge of those plans per se.

18 Q. As of today, do such contingency plans exist for  
19 American Water Works subsidiaries?

20 A. Yes, they do.

21 Q. The development of those plans, is that a result of the  
22 September 11th attacks and a lesson learned, or is that  
23 simply an ongrowth of what was going on prior to  
24 September 11th?

25 A. I think it's an extension of the efforts that were

1 started prior to September 11, 2001, all that more  
2 hastened by the very obvious events of that day, and  
3 they are ongoing today.

4 Q. I believe, in your testimony, you discuss why Kentucky-  
5 American did not use competitive bidding to solicit  
6 bids for the services of off-duty law enforcement  
7 officers; is that correct?

8 A. Well, not being involved firsthand in that decision, I  
9 responded to the data request questions directly.

10 Q. Well, you stated - do you have your testimony in front  
11 of you?

12 A. Which question were you referring to?

13 Q. I'm referring to your direct testimony at Page 14,  
14 Question 12. Do you have that, sir?

15 A. I do.

16 Q. Okay, and you state there, "Kentucky American  
17 determined that the training, background, connections  
18 with law enforcement agencies and other attributes of  
19 off-duty law enforcement officers could not be matched  
20 by conventional security services in the area and  
21 provided the best security for the company's system and  
22 customers"; is that correct?

23 A. Yes.

24 Q. Well, let's go through those. First, what's the  
25 difference, or are there any differences between law

1 enforcement personnel and the purposes of law  
2 enforcement and those of, let's say, facilities  
3 protection?  
4 A. I think there's every bit a difference. I think that  
5 law enforcement is exactly that, enforcing the laws of  
6 the land compared to the protection of critical  
7 facilities.  
8 Q. So . . .  
9 A. Sometimes humans are used in that purpose.  
10 Q. Okay. So there are different purposes there and  
11 different training? Perhaps the law enforcement  
12 officials or law enforcement personnel have additional  
13 training or additional qualifications?  
14 A. Yes. Perhaps I misunderstood your previous question,  
15 but there's absolutely a bit of a difference between a  
16 traditional security guard, a night watchman, and an  
17 off-duty law enforcement officer in the conduct of  
18 guard services.  
19 Q. Okay. Well, let's step back a second. The purpose  
20 behind the personnel that are stationed or based at  
21 Kentucky-American facilities is to protect those  
22 facilities; is that correct?  
23 A. Yes.  
24 Q. And that protection extends to ensuring that those  
25 facilities can continue in operation and provide water

1 service to the local community; is that correct?

2 A. Amongst other things, yes.

3 Q. And one of the purposes, I suppose, behind that

4 facilities protection is the prevention of a terrorist

5 attack on those facilities.

6 A. I think that those guard services play a role in a

7 system of systems that aim to prevent and mitigate the

8 risks of terrorist attacks; yes.

9 Q. Okay. Now, a law enforcement officer has a wide

10 variety of duties beyond just simply physical security

11 or facilities protection; does he or she not?

12 A. Correct. They do.

13 Q. They do. So that, in one extent, if you have a law

14 enforcement officer providing facilities protection,

15 while he or she may have training for that, he or she

16 brings added qualities or training perhaps beyond what

17 is needed for facilities protection; would that be a

18 fair statement?

19 A. No, I don't think that's a fair statement at all. I

20 think it's exactly the types of services that we wanted

21 and needed to procure at the time based upon the threat

22 that was then all too evident.

23 Q. Okay. Let's step back, then. What were the exact

24 services that Kentucky-American was trying to procure?

25 A. Okay. As the nation woke up one morning and had a

1 changed threat environment and as we were conducting  
2 that analysis and assessment of what our existing  
3 posture of security was that very day, we wanted to  
4 enhance that and augment that posture. Some of the  
5 attributes of a guard service procurement that we  
6 wanted to have were all of those extra attributes that  
7 a law enforcement officer brings, that professionalism,  
8 that experience in the assessment of what is normal on  
9 the street. Those are imperative things. Additional  
10 aspects of what is important to have is were we going  
11 to have armed guard forces provide the services at our  
12 facilities and, if so, is not the law enforcement  
13 officer one of the most highly proficient and trained  
14 individuals with a firearm, and, as you've heard  
15 earlier today, the ability to reach back on their  
16 Police Department radio, their service radio, brings a  
17 very timely response with a much broader reach-back and  
18 a much more timely reach-back to the full extent of  
19 first responders' capacities, whether they be in the  
20 emergency services, Fire Department, or in the Police  
21 Department. Those are all types of things that we  
22 assessed as were critical to providing effective  
23 services on that day to augment our existing posture.  
24 Q. I apologize. As I understand it, then, at least two of  
25 the issues are the availability of weapons for the

1 personnel providing force protection or facilities  
2 protection and the second is the ability to communicate  
3 with local officials, whether it be other first  
4 responders or the local Police Departments; is that  
5 correct?  
6 A. Those are two of the considerations; yes.  
7 Q. All right. Now, I take it that the testimony we heard  
8 from the earlier witness indicated that the current  
9 guard service - that those guards are not armed.  
10 A. Correct.  
11 Q. So there is apparently some substitute for the  
12 provision of weapons for the facilities protection at  
13 this point?  
14 A. Absolutely. As I said earlier, we continue to evaluate  
15 what are effective solutions to the current threat  
16 environments.  
17 Q. So you're saying, at the time after September 11, 2001,  
18 you perceived an armed attack potentially possible on  
19 your facilities?  
20 A. I don't think that the nation had a good understanding  
21 of what was reasonable. We knew what had just occurred  
22 and were, of course, envisioning the potential  
23 execution of further attacks everywhere.  
24 Q. Okay. Well, let's move on one month after that. You  
25 still perceived the potential of an armed attack on the

1 Kentucky-American facilities?

2 A. I think it's not within the intelligence - from a  
3 perspective of government intelligence, not  
4 intellectual prowess. I don't think that we have the  
5 necessary national security intelligence to make those  
6 types of assessments ourselves. Therefore we rely upon  
7 the government to assist us in making those decisions.  
8 The threat is very real and very present of terrorist  
9 attacks against critical infrastructure in the United  
10 States.

11 Q. That threat remains the same today; does it not?

12 A. I don't know that it - it was the same today as it was  
13 yesterday or on September 11th. The threat remains  
14 constant; yes.

15 Q. Well, in terms of the need for having armed guards, the  
16 company has made the decision that that need no longer  
17 exists?

18 A. Without getting into the specific protective systems  
19 that we have deployed since initially engaging in those  
20 guard services, we feel that we have a comprehensive  
21 suite of protective systems that include all of the  
22 aspects that we want to be effective in conducting  
23 detection of an event occurring, delay of the impact of  
24 that event until we can effect an appropriate response.  
25 So, in light of those issues, yes, we have a

1 comprehensive suite and that the guards on shift today  
2 without weapons are an effective and appropriate part  
3 of that suite of systems.

4 Q. Now, at what point in time did Kentucky-American switch  
5 from the armed guards to the unarmed guards?

6 A. I'm not sure of the exact date, sir.

7 Q. Could you give me a ball park figure? Okay. Could  
8 you . . .

9 A. It would have been last year. As we set standards for  
10 all of our water companies, we assess the effectiveness  
11 of that augmented and continuing to be augmented suite  
12 of security solutions. As that effectiveness began to  
13 surpass that of the guards that we had on station, then  
14 we looked to further augment and deploy the appropriate  
15 levels of human guard forces.

16 Q. Well, let me ask. I take it, was the transition from  
17 armed guards to unarmed guards, did that occur with the  
18 retention of Murray Guard to provide the security of  
19 facilities protection?

20 A. Yes, it does. Obviously, as I said just a moment ago,  
21 it's not the inclusive security platform for the  
22 protection of those services but rather that Murray  
23 Guards are performing their specific role within that  
24 suite of protective systems.

25 Q. You also mention in your testimony connections with law

1 enforcement agencies as, I guess, a key ingredient to  
2 the initial retention of the, I guess, the local - of  
3 the Lexington-Fayette Urban County Police Department.  
4 Can you explain what you mean by "connections"?

5 A. Certainly. I think, as I just testified in the earlier  
6 comments this morning, it is not necessarily with the  
7 best - the water company may not be the best  
8 organization to be judging the national security threat  
9 posture. So, at the time, there was a great hunger to  
10 have that information at the company level so that we  
11 could be making the appropriate decisions on how best  
12 to protect our facilities. The best people with the  
13 best knowledge at that time were in the local  
14 government arena, and the local government has always  
15 had and does have today better connections to the  
16 Department of Homeland Security or FBI perhaps at the  
17 federal law enforcement level than would a private  
18 company. So it was, in effect, to leverage that  
19 connection with the current understandings especially  
20 immediately after September 11, 2001.

21 Q. I'm not sure I'm following you. Are you saying that  
22 the company retained services from the Lexington-  
23 Fayette Urban County Police Department because it would  
24 then get better information as opposed to if the  
25 company simply asked the local officials and the Police

- 1 Department in Lexington to provide that information?
- 2 A. Oh, no, sir. I think that we were asking for that  
3 information and were provided information. I'm saying  
4 that, in the contracting of guard services that were,  
5 at that point, LFUCG off-duty law enforcement officers,  
6 we ensured that every one of those individuals on duty,  
7 from day one, would have that current situational  
8 awareness, and it would be further enhanced in their  
9 time as a law enforcement officer such that, when they  
10 came to work in our facilities after hours, they would  
11 be all the better informed.
- 12 Q. What entities did Kentucky-American consider besides  
13 the local Police Department in terms of providing this  
14 facilities protection immediately after September 11th?
- 15 A. I'm not aware that we considered any other  
16 organizations. Principal among that is the scope of  
17 the services that were provided or, shall we say,  
18 scale. At one point, there was over 300 LFUCG off-duty  
19 enforcement officers involved with protecting our  
20 facilities. So I think that was one of the decisions  
21 but again.
- 22 Q. Well, the transition made to use, for lack of a better  
23 word, civilian facilities, commercial security  
24 protection entities, when was that decision made?
- 25 A. I think the decision was, again, as I said earlier,

1 when there were the effective suite of protective  
2 systems at, in this case, Kentucky-American was at a  
3 sufficient level that we could transition from the  
4 detection delay and response attributes that we had  
5 come to employ with the LFUCG law enforcement  
6 officials. That determination of effectiveness is that  
7 day you're looking for. As referenced before, I think  
8 it's in testimony as to when the hourly rates shifted.  
9 I think that that date is . . .

10 Q. Okay. I think the transition to Murray occurred in  
11 September of 2003. So, prior to that time, there was  
12 not any review by the company to determine if there  
13 were commercial security firms that could provide  
14 comparable service to what was being provided by the  
15 off-duty Lexington police officers?

16 A. It is not my knowledge that there was.

17 Q. Well, what was the practice for other American Water  
18 Works operating companies in terms of securing  
19 additional securities?

20 A. I think what you're hearing today is exactly consistent  
21 across all of the subsidiary utilities that compose  
22 American Water.

23 Q. So every American Water Works operating company relied  
24 initially on off-duty police officers and only after a  
25 period of a year or two transitioned over to commercial

1 security forces?

2 A. Every American Water Works subsidiary utility operating  
3 company that had critical infrastructure assessed their  
4 protective environment consistently and considered and  
5 many did employ the use of law enforcement officers as  
6 an augmented solution on the road to the total set of  
7 solutions, but every facility is different. So it's  
8 unfair to characterize across scope, scale, source of  
9 supply, etc.

10 Q. To eliminate asking you some needless questions, in  
11 terms of the specifics about the arrangements under  
12 which the Lexington-Fayette Urban County Government  
13 police officers were retained to provide facilities  
14 protection for Kentucky-American facilities, would  
15 those questions be better directed to another witness  
16 in terms of the actual firm that was retained or the  
17 firm that was doing the administrative staffing?

18 A. As I testified, I was not directly involved in those  
19 decisions. So I think that's a fair statement.

20 Q. Okay.

21 CHAIRMAN GOSS:  
22 Who would that be, Mr. Larson?

23 A. Excuse me, sir.

24 CHAIRMAN GOSS:  
25 Who would that be?

1 MR. INGRAM:

2 That would be Rich Svindland, who is here.

3 CHAIRMAN GOSS:

4 All right. Thank you, Mr. Ingram.

5 Q. To your knowledge, has any American Water Works  
6 operating company used, for example, National Guardsmen  
7 as part of their facilities protection?

8 A. We have not used National Guard troops in the  
9 protection of any of our facilities. We consider them  
10 as a tool in the toolbox and, as we have a flexible  
11 security plan, have plans to request those should the  
12 need arise again.

13 Q. But no operating company requested . . .

14 A. To date, we have not.

15 Q. Is there any specific reason that you're aware of why  
16 those troops would not be requested?

17 A. I'm not sure there's any legality or procedural reasons  
18 not to request them, but it has everything to do with  
19 the threat that is evident and the credibility of  
20 intelligence that would lead to one of those threats,  
21 and, to date, we have not had a credible direct set of  
22 intelligence against any one of our American Water  
23 facilities.

24 Q. Of the firms that have been retained throughout the  
25 American Water Works system, was competitive bidding

1 used? Was a competitive bidding process used to select  
2 those firms for any of the operating companies?  
3 A. Not to my knowledge, on the night of September 11th,  
4 again, if the goals were to be in place by September  
5 12th.  
6 Q. No, sir, I'm not speaking now of September 11th. I'm  
7 assuming the vulnerability assessments have been done  
8 and . . .  
9 A. Certainly.  
10 Q. . . . some of the measures are in place, and the  
11 transition to commercial firms providing the security  
12 services can take place. At that point, did any of the  
13 American Water Works operating companies use com-  
14 petitive bidding to select the firm that would be  
15 providing the facilities protection?  
16 A. Yes, we have, and that's exactly where I was going, is  
17 that, . . .  
18 Q. Okay.  
19 A. . . . as we look forward, there is value and benefit in  
20 bulk procurement opportunities, and we have pursued  
21 that where it is appropriate and applicable.  
22 Q. Do you know if it was done in this instance with the  
23 retention of Murray Guard?  
24 A. I do not know that it was done, sir.  
25 Q. To your knowledge, what operating companies have used

1 the competitive bidding process?

2 A. Which operating companies?

3 Q. Yes, sir.

4 A. Specifically, I'll reference Illinois-American.

5 Q. Are you aware of any others besides Illinois-American?

6 A. I'm sure that there are on a competitive nature. I was  
7 not involved in the competition processes for any  
8 others, so I don't want to comment on them.

9 Q. Would you have the ability of learning who those - what  
10 other entities within the American Water Works system  
11 used competitive bidding?

12 A. I certainly could.

13 Q. Could you provide us with that information?

14 A. I can.

15 MR. WUETCHER:

16 I guess I would ask Kentucky-American to provide  
17 us with that information.

18 CHAIRMAN GOSS:

19 Just make that a data request. Treat it as a data  
20 request.

21 MR. INGRAM:

22 I will respond affirmatively to your request; yes.

23 MR. WUETCHER:

24 Thank you, sir.

25

1 MR. INGRAM:

2           You're welcome.

3 Q.    In your experience with the transition from the use of  
4       local law enforcement officers to commercial firms  
5       providing the physical security arrangements at the  
6       American Water Works operating plants, was there a  
7       noticeable decline in the cost to provide the service  
8       once commercial firms were retained?

9 A.    I think it's obvious that there is a reduction in the  
10       rates, the hourly rates, for the services we were -  
11       you're talking about the transition from law  
12       enforcement officers to commercial guard forces?

13 Q.    Yes, sir.

14 A.    There's obviously a reduction in that rate, but it is  
15       apples to oranges. You know, these are not direct  
16       comparisons for the services that were being deployed.

17 Q.    In terms of other communities that were being served by  
18       an American Water Works operating company, what were  
19       the arrangements in terms of dealing with the local  
20       Police Department? And let me add on to that, in the  
21       arrangement that Kentucky-American had with the  
22       Lexington-Fayette Urban County Government Police  
23       Department, I think originally there was a direct  
24       coverage of costs, I guess, for lack of a better word,  
25       by the local government. Subsequently, a firm was

- 1 retained to handle all the administrative details  
2 although local police officers were still providing the  
3 facilities protection. Was that a similar arrangement  
4 for the other operating companies?
- 5 A. Across numerous states and hundreds of water systems,  
6 there is a great variety of engagements and  
7 arrangements. That is certainly not the only one where  
8 we had direct engagements and arrangements with the  
9 local law enforcement entities.
- 10 Q. Well, I'm primarily looking at the transition from the  
11 direct arrangement with the municipal or government to  
12 one in which a private entity does all the organi-  
13 zational work but the staffing is still done by the  
14 local law enforcement. Was that common?
- 15 A. I think that, just as we've talked throughout the rest  
16 of the day of the transition from the immediate  
17 aftermath of September 11th to some medium period to  
18 some long-term sustainable arrangements, I think it is  
19 common, in my experience.
- 20 Q. This is an unfair question, but I'll ask it anyway.  
21 How common was it? I mean, in terms of the number of  
22 operating companies, were more than half operating  
23 under this transitional scheme?
- 24 A. I would hate to comment on a number, sir.
- 25 Q. Okay. Would you say that the critical date in terms of

1           transitioning over to, I guess, a commercial provider  
2           of security services was the completion of the  
3           vulnerability assessment?

4   A.   No, I would not. As I said earlier, it would be the  
5           assessment of effectiveness. The vulnerability  
6           assessments, and they will be ongoing as we go forward,  
7           may set the measure for the risk that is evident, but  
8           principally the effectiveness of implementing measures  
9           to mitigate those risks is really that transition  
10          threshold that you're looking for.

11   Q.   I assume this entire enterprise that occurred, in terms  
12          of security, that the company - and, by "company," I  
13          mean the American Water Works - envisioned that, in the  
14          aftermath of the September 11th attacks, that it was  
15          going to be a costly venture. Would that be a correct  
16          assessment?

17   A.   I don't know that cost was something that we were  
18          considering in the immediate aftermath. I do know that  
19          we were considering what we needed to do to provide  
20          reasonable precautions within our scope with everything  
21          that we had available to us.

22   Q.   Well, I'm not suggesting that cost was an overriding  
23          factor. What I'm suggesting is the cost certainly was  
24          discussed; was it not?

25   A.   Not to my knowledge in the immediate hours after.

- 1 Q. So, during this entire process, let's say, up  
2 throughout 2002, you weren't given a blank check; were  
3 you?
- 4 A. Oh, gosh, no. You're asking for the questions that was  
5 in the immediate aftermath. In the decisions that  
6 brought forth the law enforcement officers to our  
7 facilities as well as other protective measures in an  
8 immediate response action, there may not have been,  
9 and, again, I was not involved in those executive  
10 management decisions. It is not my knowledge that cost  
11 was an overriding decision. Going forward, we were  
12 certainly not given a blank check but were tasked with  
13 tabulating the costs associated with these and  
14 estimating what they would be in an ongoing fashion.
- 15 Q. So I assume part of your job - and I say "your job,"  
16 your division's job - was not only to assess the  
17 potential vulnerabilities or at least state possible  
18 courses of action to correct those vulnerabilities and  
19 to provide the dollar figures that would be required  
20 with those various courses of action.
- 21 A. I would say it would be working with the local  
22 management and the local operations to conduct those  
23 assessments, develop those remediative plans and, yes,  
24 to estimate costs that may be associated with those.
- 25 Q. If we speak beyond the immediate aftermath of the

1           September 11th attack, and we're talking about a month  
2           following the attack and going forward from there, at  
3           that point, management is getting information, both at  
4           the local level and at the higher corporate level, as  
5           to the potential cost in terms of making decisions on  
6           how to strengthen or more secure its facilities; is  
7           that correct? Is that your understanding?

8   A.    I think we were taking all the information that we had  
9           available to us from the local and national levels,  
10           yes, corporate and governmental.

11   Q.    You had mentioned before that it was an ongoing  
12           process. So I assume that that information was  
13           constantly being or very frequently being updated.

14   A.    As frequently as the situations in the environment  
15           changes, yes, and as it's ongoing in its change today.

16   Q.    So it would be correct to say that management, both at  
17           the local level and at the corporate level, had a  
18           fairly good understanding as the process went on, not  
19           the immediate aftermath but as months went on after the  
20           attack, as to the potential costs involved in having  
21           the appropriate level of security?

22   A.    Yes, I think that's a very safe statement.

23   MR. WUETCHER:

24                    If I can have just one moment, I think I'm  
25                    finished.

1  
2 MR. WUETCHER:

3 That's all we have. Thank you.

4 A. Thank you.

5 CHAIRMAN GOSS:

6 Questions?

7 COMMISSIONER COKER:

8 I have just one.

9 EXAMINATION

10 BY COMMISSIONER COKER:

11 Q. You may have covered this. I know, in Dr. Rubin's  
12 testimony, he mentioned that cost per customer, a  
13 common metric - that's a common metric used to evaluate  
14 the reasonableness of security costs, and you may have  
15 provided this, but have you provided the Commission  
16 with a comparison between Kentucky-American Water and  
17 its sister operations as far as a cost per customer for  
18 security costs? And I know you mentioned the caveat  
19 that they're not apples to oranges.

20 A. We have not provided that, to my knowledge, unless it  
21 came in from other testimony, and, as you said very  
22 correctly, it is widely variant upon the scope and  
23 scale of the operation as well as the specific  
24 environmental, and what I mean by that is the source  
25 of supply in the case of Kentucky-American Water



1 various classifications of security in place. In other  
2 words, what approval, if any, would local management  
3 have had to have obtained from American Water Works on  
4 September 12th when officers were employed directly  
5 through the city government? What approval process  
6 would there have been in place when the transition  
7 occurred from working with LFUCG to Alliance and then  
8 the transition from Alliance to Murray? What sort of  
9 approval process generally is there; if any?

10 A. Well, I think that's a broad question. If I read what  
11 you're asking correctly, Your Honor, the immediate  
12 aftermath approval process was, "Here are some  
13 recommendations. Do them where you have the potential  
14 to do them. Execute them however you can." In  
15 transitioning forward, the responsibility for how to  
16 procure and deploy solutions is completely within the  
17 approval process of the local management. Where we  
18 assist the local management from the Center is to bring  
19 some measures or some of this audit of effectiveness  
20 and consistency across all of our operations.

21 Q. All right. So . . .

22 A. That approval process remains at the local level.

23 Q. At the local level. All right. Would American Water  
24 Works have had absolute veto power over a decision made  
25 at the local level with regard to either the type of

1 security or the cost of that security?

2 A. I have not been involved in a security decision with  
3 any of the subsidiary utilities where there was a veto.  
4 I would rather think that we would be empowered to  
5 assist them in making the right decisions . . .

6 Q. Okay.

7 A. . . . to best secure the facilities.

8 CHAIRMAN GOSS:  
9 Thank you. Mr. Ingram, do you have redirect?

10 MR. INGRAM:  
11 No, Your Honor.

12 CHAIRMAN GOSS:  
13 Okay. Recross by anyone?

14 MR. SPENARD:  
15 No, sir.

16 CHAIRMAN GOSS:  
17 I'll quit calling on you individually. That takes  
18 too much time. Mr. Wuetcher, do you have any  
19 recross?

20 MR. WUETCHER:  
21 Just a couple, Your Honor.

22 CHAIRMAN GOSS:  
23 Okay.

24 MR. WUETCHER:  
25 Famous last words.



1           communicate or direction.  
2   Q.   And, again, I just want to clarify, but, as of February  
3       of 2003, to your knowledge, both the local company and  
4       the corporate headquarters of the American Water Works  
5       system, they can be described as being aware at least  
6       of the magnitude of the potential security costs  
7       associated with the current threat and to correct or  
8       remedy that?

9   A.   The directions were to be tracking against that. To  
10       what level and how timely was the tabulations aware at  
11       which point, it is difficult to say. Yes, we were  
12       tracking those costs, and costs were a factor as we  
13       looked forward into the procurement of services.

14   Q.   Okay. In that time period, the February 2003 time  
15       period?

16   A.   Yes, that's obviously within the - March 2003 was when  
17       the formal EPA mandated vulnerability assessment was  
18       completed. After the vulnerability assessments were  
19       completed, we then began to consider what the total set  
20       of solutions were required. So, from the February 2003  
21       time frame, yeah, very close to March.

22   MR. WUETCHER:

23                 Thank you. That's all I have.

24   CHAIRMAN GOSS:

25                 All right. Anything further? All right. Mr.





1 A. These are 15 copies.

2 Q. Have you changed your testimony as well as the exhibit?

3 A. Yes.

4 Q. Does that change affect the conclusion that you reached  
5 in your testimony?

6 A. No, it does not. The conclusion is still the same;  
7 that the costs of services from the Service Company are  
8 significantly lower than the cost of outside service  
9 providers.

10 MR. INGRAM:

11 If it would be appropriate, Your Honor, I would  
12 like to have the revised testimony and revised  
13 exhibit marked as Kentucky-American Exhibit No. 2  
14 in this case.

15 CHAIRMAN GOSS:

16 Do we know, Mr. Ingram, precisely where in the  
17 original testimony the change will occur? I want  
18 to be fair to the other parties and not just  
19 receive testimony and not really know where the  
20 changes are.

21 A. Yes. Well, in the testimony, the three-page testimony  
22 itself, what I have done is strike out . . .

23 CHAIRMAN GOSS:

24 I see.

25 A. . . . the numbers that were in the original and put the

1 new number in there so it would be easier to follow  
2 what the change was.

3 CHAIRMAN GOSS:

4 Okay.

5 A. The study, the exhibit, just has the updated pages.

6 CHAIRMAN GOSS:

7 All right.

8 A. So you can refer to the testimony to see the  
9 differences.

10 CHAIRMAN GOSS:

11 For the record, the changes appear to be at Lines  
12 23, 38, and 41. Okay. Is there any objection to  
13 this request?

14 MR. SPENARD:

15 We have no objection, but we would like to take a  
16 few minutes to take a look at it.

17 CHAIRMAN GOSS:

18 Right.

19 MR. SPENARD:

20 Okay.

21 CHAIRMAN GOSS:

22 Right. We'll wait until Mr. Ingram is finished  
23 and then, before you ask, we'll give you that  
24 opportunity.  
25

1 MR. SPENARD:

2 Thank you. Mr. Chairman, if we may at this time,  
3 we're suggesting that we take about a five or ten  
4 minute break, and it will allow us an opportunity  
5 to review this.

6 CHAIRMAN GOSS:

7 Sure. What time is your plane?

8 A. It's not until four o'clock.

9 CHAIRMAN GOSS:

10 Okay. We can certainly do that. Let's go off the  
11 record, then, for - what do you need; five  
12 minutes?

13 MR. SPENARD:

14 Yes, sir, that should be enough.

15 CHAIRMAN GOSS:

16 If five is not enough, let us know. We'll go off  
17 the record for five minutes and come back, and  
18 we'll see where we are in terms of lunch and in  
19 continuing, and so forth. All right. We'll be  
20 off the record.

21 OFF THE RECORD

22 CHAIRMAN GOSS:

23 Everyone, please be seated. Thank you.

24 MR. INGRAM:

25 I have no further questions at this time.

1 CHAIRMAN GOSS:

2 Thank you, Mr. Ingram. Mr. Spenard, did you folks  
3 have an opportunity over the break to take a look  
4 at this revised testimony?

5 MR. SPENARD:

6 Yes, sir, we have and we're ready to proceed.

7 CHAIRMAN GOSS:

8 Okay. Let's go ahead and go for just a few  
9 minutes and we'll see where we are, and then break  
10 for lunch. So go ahead and proceed, if you would.

11 MR. SPENARD:

12 Yes, sir.

13 CHAIRMAN GOSS:

14 I'm sorry. For housekeeping purposes, did we make  
15 this an exhibit?

16 MR. INGRAM:

17 We did.

18 CHAIRMAN GOSS:

19 Okay.

20 MR. INGRAM:

21 Collectively, Kentucky-American Hearing Exhibit 2.

22 CHAIRMAN GOSS:

23 No. 2.

24 MR. INGRAM:

25 Thank you.

1  
2 CHAIRMAN GOSS:

3 I'm sorry, Mr. Spenard. Go ahead.

4 MR. SPENARD:

5 Yes, sir. Thank you.

6 CROSS EXAMINATION

7 BY MR. SPENARD:

8 Q. Mr. Baryenbruch, will you refer to Page 9 of the study  
9 attached to your prefiled testimony, Exhibit PLB?

10 A. Yes.

11 Q. And, on Page 9, you have a breakdown of Service Company  
12 charges allocated to Kentucky-American for the calendar  
13 year 2003; is that correct?

14 A. That's right.

15 Q. And, out of approximately \$3.29 million, roughly  
16 \$1.76 million constitutes labor cost; is that correct?

17 A. That's right.

18 Q. And the support cost of \$42,165 shown on that page,  
19 that also represents labor cost as well; is that  
20 correct?

21 A. That's correct. It's the cost of support personnel,  
22 secretaries, administrative assistants.

23 Q. Okay. In the year 2003, the labor-related overhead  
24 expense amount is approximately \$546,000; is that  
25 correct?

1 A. That's correct. That's benefits.

2 Q. Okay. So, for the year 2003, approximately \$2.35 mil-  
3 lion of the Service Company costs were either direct  
4 labor or labor-related charges; is that correct?

5 A. I get \$2,348,000 approximately.

6 Q. Okay. So roughly what percent of that, for the year  
7 2003, what percent of that \$3.29 million is  
8 attributable to direct labor or labor-related charges?

9 A. Seventy-one percent.

10 Q. Okay, and your Service Company study concludes that the  
11 hourly rates charged to Kentucky-American by the  
12 Service Company were reasonable relative to hourly  
13 rates that would be charged by third parties, such as  
14 management consultants, attorneys, CPAs, and engineers;  
15 is that correct?

16 A. Yes.

17 Q. Now, does your analysis assume that every hour spent by  
18 a Service Company employee is an hour of service that  
19 Kentucky-American Water would be required to obtain  
20 from a third party?

21 A. Yes, . . .

22 Q. Okay.

23 A. . . . every billable hour excluding holidays, vacation,  
24 sick. I denominated the hours in calculating the  
25 Service Company charges in the same way that an outside

1 provider would. An outside provider charges, for  
2 instance, 1,700 hours per year on average; not the full  
3 2,080 hours of work per year.

4 Q. So did you use that 1,700 hour figure in your study?

5 A. For calculating the - yes. For calculating the hourly  
6 rates for the Service Company, I used, in effect, the  
7 1,700 hours. I excluded from my analysis, again, hours  
8 of Service Company employees for vacation, holiday,  
9 sick.

10 Q. So, for example, did you examine whether a Service  
11 Company attorney who is on the payroll and therefore  
12 charging utilities for 1,700 hours per year could be  
13 replaced by an outside attorney that may only be  
14 utilized for, say, 1,400 hours per year?

15 A. I did not look at that. I had no way to determine  
16 whether there were efficiencies. There may be  
17 instances where it may take more time for an outside  
18 attorney because they don't have the same knowledge of  
19 the American Water system than the Service Company  
20 attorney. So I used the hours that were charged to  
21 Kentucky-American as the total hours that I compared to  
22 outside service providers, the total workload.

23 Q. Okay. The difference between the 1,700 hours a year  
24 and the hours actually worked are being charged to the  
25 utilities; is that correct?

1 A. That's correct. Again, the vacation, holiday, sick is  
2 a component of payroll costs and which is included, in  
3 effect, in the hourly rate of the Service Company  
4 employees.

5 MR. SPENARD:  
6 Thank you, Mr. Baryenbruch. We have no further  
7 questions at this time.

8 CHAIRMAN GOSS:  
9 Okay. Mr. Childers, Mr. Barberie, Mr. Ockerman,  
10 any questions?

11 MR. BARBERIE:  
12 None.

13 MR. OCKERMAN:  
14 No, sir.

15 CHAIRMAN GOSS:  
16 All right. Mr. Wuetcher, do you have questions?

17 MR. WUETCHER:  
18 I do, Your Honor.

19 CHAIRMAN GOSS:  
20 Okay. Extensive questions or just a few or . . .

21 MR. WUETCHER:  
22 I don't believe so. I don't believe I have that  
23 many.

24 CHAIRMAN GOSS:  
25 Okay. Let's go ahead and let you start, then, so

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we can get him on his plane.

CROSS EXAMINATION

BY MR. WUETCHER:

Q. Good afternoon, Mr. Baryenbruch.

A. Good afternoon.

Q. Let me just ask one question that's more of mechanics than anything else. When the Service Company provides a service to Kentucky-American, does Kentucky-American, at some point, receive a periodic report, an invoice, some document that shows what service was provided, who provided it, and what the nature of the service was?

A. Yes. If you'll look on Page 38 of my study, I provide a list of what I call governance related activities that Kentucky-American exercises relative to the Service Company charges, and there are several listed here. This is just to provide evidence that the Service Company bills aren't simply accepted and recorded by Kentucky-American or any other American operating company; that there is scrutiny given to those bills as they come in, and one of the things that comes in monthly is an invoice from the Service Company that has a summary page of what the charges are and then detail behind that that will allow anyone in the operating company to review charges to scrutinize them to determine that they are appropriate.

1 MR. WUETCHER:

2           Could the company provide to Commission Staff the  
3           Service Company bill for the period that Mr.  
4           Baryenbruch conducted his study?

5 MR. INGRAM:

6           Sure, we can provide Service Company bills. I'm  
7           not sure what period of time you're talking about  
8           here, but we can iron that out.

9 MR. WUETCHER:

10           I believe, and the witness can correct me, if I'm  
11           wrong, it looks like it's the 12-month period  
12           ending December 31 of 2003.

13 A.       January through December 2003.

14 MR. INGRAM:

15           The answer is, yes, Mr. Wuetcher, we'll do that.

16 MR. WUETCHER:

17           Thank you.

18 Q.       One other question. I would like to refer you to  
19       Schedule 3 of your testimony. Using the bills we just  
20       talked about, can those bills be related to the numbers  
21       that appear in Schedule 3?

22 A.       Yes. One of the items that the charges are tagged  
23       with, all charges from the Service Company, are the  
24       categories, service categories, that you see on the  
25       left-hand side, "Accounting, Administration, Audit,"

1 under "Corporate," for instance, and again the bills  
2 are broken down in that same format, as I recall. So  
3 the numbers you see here are a tabulation of the  
4 12 monthly bills from 2003. Now, there's one thing I  
5 do want to add. I got my numbers perhaps earlier on  
6 before they were finalized for the rate case. So, if  
7 you're trying to tie them in dollar for dollar, penny  
8 for penny, that may not happen. I had to get the  
9 numbers early in order to start my study and be able to  
10 finish it. So I don't know if these numbers tie  
11 exactly into the numbers that are in the rate case  
12 here.

13 Q. Okay. We understand.

14 A. Okay.

15 Q. Will the bills contain a specific or fairly detailed  
16 description of the service that's being provided or  
17 will it simply be in terms of the categories that are  
18 listed in the second column of Schedule 3?

19 A. I cannot answer that. It has been a couple of years  
20 since I looked at a bill, perhaps a year and a half. I  
21 did it in conjunction with a project for another  
22 American Water subsidiary, and I do not have - so I  
23 didn't bring a bill with me to refer to here.

24 Q. Can you tie the bills with these categories that are  
25 set forth in your schedule if somebody is trying to

1           recreate that?  
2    A.    I believe so; yes.  If I could offer one more clarifi-  
3           cation just to let you feel comfortable that the  
4           numbers that I used were tied in exactly to the company  
5           charges, I was given a database in an Excel spreadsheet  
6           that contained all the details of the charges going to  
7           Kentucky-American Water during 2003 and that database  
8           had over 22,000 line items in it.  So that's indicative  
9           of the detail available, I think, to the operating  
10          company.

11  MR. WUETCHER:

12                   Well, speaking for our accountants, I'm sure that  
13                   we would like to have the spreadsheet, too.

14  MR. INGRAM:

15                   If you'll promise me you'll review every line,  
16                   I'll be glad to.

17  MR. WUETCHER:

18                   I promise that they will review every line.

19  CHAIRMAN GOSS:

20                   As can I.

21  MR. INGRAM:

22                   It will be done.  That will be done in electronic  
23                   form.

24  MR. WUETCHER:

25                   That will be acceptable, in an Excel spreadsheet

1 format.

2 MR. INGRAM:

3 Yes.

4 Q. Just so that we're clear so that we can analyze the  
5 information, the descriptions that are there that are  
6 on the bills or in the spreadsheet, are they detailed  
7 enough to allow us to go beyond just simply a - give us  
8 a better understanding of the service other than simply  
9 something that may be classified as accounting?

10 A. I do have the column heads of the spreadsheet that I  
11 made a copy of. Let me refer to that . . .

12 Q. Okay.

13 A. . . a second and I can tell you what's in there. I'm  
14 giving you an example of what's in here. There's a  
15 field that is called "Explanation" that lists often the  
16 individual that is doing the charging. So that's  
17 available. There's another field for explanation that  
18 has various codes in it, and I don't know what those  
19 are. They weren't important for my study to tabulate  
20 these dollars. There's an office code. So there is  
21 additional information there, but I think it's going to  
22 be hard for you to go to this to say precisely what  
23 this charge was for.

24 Q. Could you provide us with a greater breakdown in terms  
25 of the services that are listed on Schedule 3, where

1           you list "Accounting," what types of services would be  
2           considered as accounting services?

3   A.    Are you talking just verbally what's in there or . . .

4   Q.    Well, no, I'm asking in terms of a posthearing response  
5           rather than have you do that on the stand.

6   MR. INGRAM:

7           Yes.  What we will do, if it's sufficient, I'll  
8           take each one of the items listed in this second  
9           column, and I'll provide you the nature of the  
10          services described there.  Is that okay?  Is that  
11          what you want?

12  MR. WUETCHER:

13          That would be acceptable and, if you could also,  
14          to the extent there are codes that would appear on  
15          the spreadsheet, if you have those codes  
16          available, if you could provide those also.

17  MR. INGRAM:

18          Sure.

19  MR. WUETCHER:

20          Thank you, sir.  That's all we have.

21  A.    Okay.

22  CHAIRMAN GOSS:

23          Any redirect, Mr. Ingram?

24  MR. INGRAM:

25          No, Your Honor.

1 CHAIRMAN GOSS:

2 Anything further of this witness? Mr. Spenard?

3 MR. SPENARD:

4 One second, please. No, sir. No, thank you.

5 CHAIRMAN GOSS:

6 All right. Thank you very much. You may step  
7 aside.

8 MR. HOWARD:

9 Mr. Chairman, I was informed at break that there's  
10 been a natural gas explosion in East Kentucky.  
11 I've spoken with Mr. Melnykovych and Mr. Amato,  
12 and they're currently reviewing the situation as  
13 well. So I might be a little late coming back  
14 from lunch, but Mr. Spenard, of course, will be  
15 proceeding.

16 CHAIRMAN GOSS:

17 That's just fine. We're trying to monitor the  
18 situation, too, but certainly Mr. Spenard - Mr.  
19 Spenard will be here?

20 MR. HOWARD:

21 Yes.

22 MR. SPENARD:

23 Yes.

24 MR. HOWARD:

25 Oh, yes.

1 CHAIRMAN GOSS:  
2 Okay. That will be fine. I appreciate that, Mr.  
3 Howard.  
4 MR. HOWARD:  
5 Thank you.  
6 CHAIRMAN GOSS:  
7 Okay. Let's go ahead and break for lunch, then.  
8 It's twelve-fifteen. We'll come back at - let's  
9 go an hour and fifteen minutes because some of you  
10 all are going to have to go out into town. We'll  
11 be back at one-thirty. We'll be in recess until  
12 one-thirty.  
13 MR. HOWARD:  
14 That will be fine.  
15 OFF THE RECORD  
16 CHAIRMAN GOSS:  
17 All right. We'll be back on the record. Mr.  
18 Ingram, call your next witness.  
19 MR. INGRAM:  
20 Coleman Bush, please, Your Honor.  
21 WITNESS SWORN  
22 CHAIRMAN GOSS:  
23 Thank you. Please be seated. Okay, Mr. Ingram.  
24  
25



1 Q. I personally would consider that unnecessary unless  
2 somebody asks you about them personally.

3 A. Okay.

4 MR. INGRAM:

5 That's all I have at this time.

6 CHAIRMAN GOSS:

7 Thank you. Mr. Spenard, do you have cross?

8 MR. SPENARD:

9 Yes, sir.

10 CROSS EXAMINATION

11 BY MR. SPENARD:

12 Q. Good afternoon, Mr. Bush.

13 A. Good afternoon, Mr. Spenard.

14 Q. What is the current number of full-time equivalent  
15 employees at Kentucky-American?

16 A. Well, I would just have to base that on a data request  
17 that Mr. Miller answered. That would be we have 14  
18 vacancies in Mr. Miller's latest data response and that  
19 would be subtracted from the 133 we had in the case.

20 Q. Okay. Did the Pineville operations make a profit in  
21 the year 2003?

22 A. No, sir.

23 Q. Okay. Did Bluegrass Station make a profit in 2003?

24 A. My recollection is that it did not.

25 Q. Okay. With regard to the contract with the City of

1 Jackson, and this is in terms of your knowledge, your  
2 understanding, do you know whether or not the  
3 Commission has jurisdiction over the agreement?  
4 A. We filed that agreement, but I do not believe they  
5 would have jurisdiction over that.  
6 Q. Okay. In Exhibit 3 of your direct testimony, you  
7 provide an article discussing Kentucky-American's  
8 efforts in assisting the Tri-Village system prior to  
9 its acquisition.  
10 A. Yes, sir.  
11 Q. Can you describe the efforts undertaken by Kentucky-  
12 American prior to the acquisition?  
13 A. Well, prior to the acquisition, one of our conditions  
14 of closing that acquisition was, as part of our due  
15 diligence, we get the water quality issues straightened  
16 out. They had been required to notify publicly of  
17 increased levels of THM for some time, and we were  
18 involved in helping the City of Owenton and Tri-Village  
19 resolve those issues.  
20 Q. Okay. THM, trihalomethanes?  
21 A. Trihalomethanes, yes, sir.  
22 Q. Okay. In terms of helping them resolve these issues,  
23 just in general, what did that entail, people visiting  
24 Tri-Village?  
25 A. Yes, sir, people visiting Tri-Village and Owenton and

1 providing guidance in terms of their treatment process.

2 Q. Mr. Bush, did those efforts begin before the

3 discussions about the acquisition of Tri-Village?

4 A. To my knowledge, not before the discussions about the

5 acquisition.

6 Q. Okay, and how were these efforts funded?

7 A. They were funded - the best of my recollection is some

8 were funded as business development costs of the

9 company and, as later we had a contract, some of those

10 efforts were included as acquisition costs.

11 Q. Okay. So all of those costs were funded in some way by

12 Kentucky-American as opposed to Tri-Village?

13 A. To the best of my knowledge.

14 Q. Okay. Turning to your rebuttal testimony, Page 5 . . .

15 A. Okay. I'm there.

16 Q. In the question and answer for 7., you indicate that

17 the expenses for Spindletop Hall and Keeneland Club are

18 included in Accounts 426.41 and 426.42. Do you see

19 that?

20 A. Yes, I do.

21 Q. With regard to Schedule F-1 of the Kentucky-American

22 Water Company's updates, do you have that?

23 A. If I could see it.

24 Q. Can you tell me the account that those are included on

25 per the updates?

1 A. And you were referring to Spindletop Hall and the . . .  
2 Q. Keeneland.  
3 A. . . . Keeneland Club?  
4 Q. Yes, sir.  
5 A. Yeah, this lists Account 417.22. I'm not sure for the  
6 reason for the difference; still would be a below-the-  
7 line expenditure.  
8 Q. Okay. Mr. Bush, are you the best witness to ask with  
9 regard to contracts with East Clark County Water  
10 District and Peaks Mill, or is that better for another  
11 witness say, for example, Linda Bridwell?  
12 A. Well, it probably would be better for her.  
13 Q. Okay.  
14 A. I was not involved in those.  
15 MR. SPENARD:  
16 Thank you, and, at this time, we have no further  
17 questions for Mr. Bush.  
18 CHAIRMAN GOSS:  
19 Okay. Mr. Childers, Mr. Barberie, or Mr.  
20 Ockerman, do any of you folks have any questions?  
21 MR. BARBERIE:  
22 I have a few, Your Honor.  
23 CHAIRMAN GOSS:  
24 Okay. Did you have any, Mr. Childers?  
25

1 MR. CHILDERS:

2 No.

3 CHAIRMAN GOSS:

4 Okay.

5 MR. OCKERMAN:

6 I do not.

7 CHAIRMAN GOSS:

8 Okay. Thank you, Mr. Ockerman. Come have a seat  
9 right next to Mr. Ingram there, Mr. Barberie.

10 MR. BARBERIE:

11 Hopefully, I can do this without bringing my big  
12 box down there.

13 CHAIRMAN GOSS:

14 Okay. All right.

15 CROSS EXAMINATION

16 BY MR. BARBERIE:

17 Q. Good afternoon, Mr. Bush.

18 A. Afternoon.

19 Q. I'm not sure whether this particular question is best  
20 asked of you, but, to your knowledge, is the LFUCG  
21 essentially the only public fire hydrant customer of  
22 Kentucky-American Water Company?

23 A. They're not. The University of Kentucky, for example,  
24 is another one, and there are more. I just probably  
25 couldn't name those.

1 Q. Do you have an idea of the scale with respect to your  
2 respective fire hydrant customers; what percentage  
3 roughly would the Urban County Government make up of  
4 that?

5 A. It's speculation, to some extent, but I know the Urban  
6 County Government has in the neighborhood of 5,800 fire  
7 hydrants, and I suspect total public fire hydrant  
8 numbers are in the range of 6,500, something like that,  
9 and probably a later witness could clear that up.

10 Q. Do you know the witness that would be?

11 A. Linda Bridwell would have a better . . .

12 Q. Okay. You provided some testimony with respect to  
13 answering some of our requests for information  
14 pertaining to franchise fees. Let me see if I can  
15 accurately summarize what I think you're saying. Is it  
16 Kentucky-American Water Company's position that any new  
17 tariff cannot be part of the gross revenues under the  
18 franchise fee?

19 A. Well, the contract is pretty clear that we have, and I  
20 suspect you have a copy, and it lists specifically  
21 those items that are included, and I think the closing  
22 statement is "All other sources of revenue are  
23 excluded," and so, I think, if you'll read that . . .

24 Q. What I'm really trying to get a feel for is, in your  
25 opinion or in the company's opinion, if something is

1 currently being charged to the water company and  
2 they're paying a franchise fee on it, is it the water  
3 company's position that they could seek Commission  
4 approval to have a new tariff created that would  
5 essentially avoid the payment of some or all of that  
6 fee?

7 MR. INGRAM:

8 Your Honor, to the extent that that question calls  
9 for a legal conclusion from the witness, I don't  
10 think it's appropriate to require the witness to  
11 answer it. The franchise is a binding contractual  
12 arrangement between Kentucky-American Water  
13 Company and Lexington-Fayette Urban County  
14 Government. To the extent that any segment of  
15 revenue of Kentucky-American may be subject to a  
16 franchise fee is a matter of interpretation for  
17 that contract, and, quite frankly, I don't think  
18 it's a matter of interpretation for the Public  
19 Service Commission. I hate to disappoint you, but  
20 I think that would be a matter for a court system.

21 CHAIRMAN GOSS:

22 Mr. Barberie?

23 MR. BARBERIE:

24 I'm only asking Mr. Bush because Mr. Bush is the  
25 one that answered our initial questions about the

1 franchise fee. I think it's appropriate on a  
2 limited - I don't generally disagree with Mr.  
3 Ingram about what the proper forum ultimately to  
4 resolve a potential issue on this might be. I'm  
5 just trying to get a better understanding of what  
6 the company's position is with respect to its  
7 ability to possibly change an existing revenue  
8 stream to become something new and thereby avoid  
9 payment of the franchise.

10 CHAIRMAN GOSS:

11 All right. Does anyone else have a response to  
12 that? Mr. Wuetcher? I certainly don't want you  
13 to - well, first of all, you've not been qualified  
14 as an attorney, and we don't want you to give any  
15 sort of legal opinion. Do you believe that you  
16 can answer the question without rendering a legal  
17 opinion?

18 A. I can give my opinion . . .

19 MR. BARBERIE:

20 That may be as good as it gets.

21 A. . . . and that would not be a legal opinion.

22 CHAIRMAN GOSS:

23 You're here as a representative of Kentucky-  
24 American Water Company. So certainly, to the  
25 degree that that opinion is the company's opinion,

- 1                   go ahead and answer the question.
- 2   A.   Well, Mr. Barberie, I don't remember. Were you in the  
3       room with us when we talked about the Kentucky River  
4       Authority fee?
- 5   Q.   Yes, sir, and, if I recall correctly, it was yourself,  
6       Mr. Miller, Mr. Herb Miller, from the water company,  
7       and . . .
- 8   A.   Right, and what we relied on there was past practice on  
9       our treatment of that and realized that, yes, we should  
10      have been assessing a franchise fee, and I think the  
11      difference here is that these new charges are totally  
12      new tariffs, and, if you're alluding to whether or not  
13      we might try to change a residential classification and  
14      call it something else, in my opinion, I do not ever  
15      believe that would be the case. It's just that the  
16      contract, as I read it, states the specific types of  
17      charges on which we will assess a franchise fee, and  
18      then it says, "All other sources of revenue will be  
19      excluded."
- 20   Q.   You have provided some discovery responses pertaining  
21      to Kentucky American's advertisements?
- 22   A.   Yes, sir.
- 23   Q.   Can you pull that stuff up on there, or do I need to  
24      give you . . .
- 25   A.   I think I have it here, if you can tell me which

1 data . . .

2 Q. Well, I guess it would be two different requests, but I  
3 think it's the same general question with respect to  
4 these requests. I've got a sampling of some of the  
5 ones that you've provided. First off, it was in  
6 Response to Lexington-Fayette Urban County Government's  
7 First Request No. 45, and it looks like it would be  
8 Attachment - I guess it's Exhibit Attachment 2, . . .

9 A. Yes.

10 Q. . . . Page 20 of 23 . . .

11 A. Page 20 of 23.

12 Q. . . . and that would be - I think what I've got is the  
13 electronic version, but it looks like you've also got  
14 some handwritten page numbers on these, as well, and  
15 I'm not exactly sure how you all track it, but it looks  
16 like, on the Adobe file, it would be Page 20 of 23.

17 A. And it says, "Always ready to help"?

18 Q. Yes.

19 A. Okay. I have that.

20 Q. Okay. Is this particular advertisement a material  
21 benefit to ratepayers?

22 A. Let me take a second and read it. Yeah, I believe it  
23 is. To the extent that we have involvement in our  
24 community that reaches out beyond what people are  
25 required to do at work, I believe it's important to let

1 our customers know that and to know that we are a vital  
2 part of that community.

3 Q. So, in your mind, is this not an institutional or  
4 promotional advertisement?

5 A. If you could give me your definition of . . .

6 Q. Well, I'm just looking at the general definition as  
7 provided in the regulation that applies to advertis-  
8 ing costs, advertising for a utility which would be  
9 807 KAR 5:016 "Advertising." With respect to material  
10 benefit, there's a definition which I believe you  
11 understood what that was by answering my previous  
12 question. With respect to institutional advertising,  
13 it is defined as "Advertising which has as its sole  
14 objective the enhancement or preservation of the  
15 corporate image of the utility and to present it in a  
16 favorable light to the general public, investors, and  
17 potential employees," and then it goes on to define a  
18 limited number of things that this would not include,  
19 and I believe it breaks that out, first off, by other  
20 than water utilities and then by telephone, water, or  
21 sewage utilities. Are you generally familiar with this  
22 regulation?

23 A. I'm generally familiar with that, yes, sir, and, you  
24 know, perhaps in some ads there can be some gray areas,  
25 but I do believe that our involvement in the community,

1 and we're a huge part of this community, I see  
2 absolutely nothing wrong with sharing that information  
3 with our customers in this manner.

4 Q. Let me direct you to a different advertisement sample  
5 from the same request. This one would be, I guess,  
6 No. 19 of 23, from the same batch. It's titled  
7 "Leading the Way for Generations."

8 A. Okay. I have that.

9 Q. The same question; in your mind, is that a material  
10 benefit to the ratepayers?

11 A. Well, I think, to the extent that our customers know  
12 their water is safe, they have nothing to be concerned  
13 about. We talked about the situation in Tri-Village  
14 and many other cases where customers don't know that,  
15 and, for industries moving into town, I think it's  
16 important. For the people who live there now, it's  
17 important.

18 Q. And these are examples of advertisement that ratepayers  
19 actually pay for; is that correct?

20 A. These are included above the line. These are past ads.  
21 These are not necessarily included in the forecast.

22 Q. But a similar one would be, I believe, based on your  
23 subsequent responses, this would be in response to  
24 actually the PSC's last request, which I guess would be  
25 No. 4. In No. 22, you provided a limited number of

1 attachments to the extent that they were available, and  
2 this one I - to my recollection - I don't have the  
3 whole attachment in front of me, but I think there were  
4 three or four pages of sample ads.

5 A. Yes, sir, there were.

6 Q. This one is styled "Annual Water Quality Report"?

7 A. Yes.

8 Q. The same question; in your mind, is this a material  
9 benefit?

10 A. Yeah, the one that's one, two, three, four, it looks  
11 like five or six pages, yeah, that's our Consumer  
12 Confidence Report.

13 Q. Okay. Is that all one?

14 A. That's all one.

15 Q. Okay. So all of that is the same . . .

16 A. That's . . .

17 Q. It's like a brochure?

18 A. Yes.

19 Q. Okay.

20 A. It's a Consumer Confidence Report that's required.

21 Q. I misunderstood that; okay. So that's all one.

22 A. Yes, sir. Okay.

23 Q. I don't have necessarily the same concern about that if  
24 it's all . . .

25 A. Okay.

1 Q. . . . one particular advertisement.

2 A. Okay.

3 Q. I have some - and I'm going to try to avoid Mr.

4 Ingram's objections on this, so I'll try to clear the

5 way on why I'm asking some of this stuff. It's my

6 general actually part personal and part from what I've

7 heard from living in Lexington. At one point in time,

8 there were advertisements that were specifically

9 designated as not being paid for by ratepayers, and

10 there were, you know, a significant number of those at

11 earlier points in this calendar year. A lot of them

12 were related, I suppose, directly to condemnation type

13 efforts, which would be why that disclaimer was put on

14 them. More recently, there have been some advertise-

15 ments where that same disclaimer has not been made. As

16 an example, I have something. I don't know whether

17 you're familiar with this or not. It's called "Life

18 Under a Microscope." This appears to be a recent

19 mailing that was sent out to Kentucky-American

20 customers. I believe it was in the last month.

21 A. Okay.

22 Q. My question with respect to this particular document

23 is, are the ratepayers paying for this particular

24 document?

25 A. Well, of course, in the rates right now, they would not

1 be, because I doubt that was envisioned in the rates  
2 that are currently in effect. I do not know what  
3 account number that was charged to. I could find that  
4 out and provide that, some information.

5 Q. Okay. Would you be willing to do that?

6 A. I sure would.

7 Q. I have the same general question, and I don't know  
8 whether you would be the person on the television and  
9 radio advertisements. The same general concern; there  
10 were a number of advertisements run probably the month  
11 of October, maybe even into the beginning of November  
12 where I will describe them as being - I believe they  
13 were employees of Kentucky-American. They would state  
14 that they were employees of Kentucky-American, and they  
15 would generally describe what a good situation they had  
16 there and what a good situation it was working for the  
17 company. Are you familiar with those types of  
18 advertisements?

19 A. I don't really watch a lot of television, but, again,  
20 if you can list the ads, we can certainly find out how  
21 those were accounted for.

22 Q. I'm not as certain about the television advertisements  
23 as I am about the radio ones. The radio ones, I  
24 believe there's probably at least two different ones,  
25 and I think they were actually - I don't know that we

1 have the employees' names, but it was represented in  
2 the radio advertisement that these were employees of  
3 Kentucky-American and, you know, they just wanted to  
4 basically say how great Kentucky-American was, and my  
5 only concern on these, once again, is I just want to  
6 make sure we understand whether the ratepayers are  
7 paying for any of the costs of those ads or not.

8 A. You know, honestly, I'm not the right person to ask  
9 about that. I was not involved in those. I was  
10 involved in responding to the data requests that came  
11 in on the advertising.

12 Q. Do you know who would be the right person to ask about  
13 those?

14 A. Let's see. Here today?

15 Q. Yes.

16 A. I suppose . . .

17 Q. Or here tomorrow, I mean, if they're not here today,  
18 but here in this case.

19 MR. INGRAM:  
20 I'll tell you what I'll try to do. I will try to  
21 find you answers for these two questions . . .

22 MR. BARBERIE:  
23 That's fine.

24 MR. INGRAM:  
25 . . . and let you know, but I need that ad. Can I

1                   have that one?

2   MR. BARBERIE:

3                   Sure. I have an extra copy of this. I don't know

4                   if you all want to take this as an exhibit or not.

5   CHAIRMAN GOSS:

6                   It's up to you. You're the . . .

7   MR. BARBERIE:

8                   At this point in time, it's for a very limited

9                   basis. I would rather just go ahead and get it in

10                   as an exhibit. I think it would be cleaner to do

11                   it that way, and I'll provide Mr. Ingram a copy of

12                   it.

13   CHAIRMAN GOSS:

14                   That will be fine. Is there any objection to it

15                   for that limited purpose?

16   MR. SPENARD:

17                   No objection.

18   MR. INGRAM:

19                   No, Your Honor.

20   CHAIRMAN GOSS:

21                   All right. Let's mark that, then, as LFUCG

22                   Exhibit No. 1, and, David, if you'll just hand

23                   that to one of the Staff folks over there, they

24                   can run as many copies as you want.

25

1 MR. BARBERIE:

2 Sure. Oh, great.

3 LFUCG EXHIBIT 1

4 CHAIRMAN GOSS:

5 How is Mr. Ingram going to get you this  
6 information? Is that going to be informally, or  
7 is it going to be by data request, or . . .

8 MR. BARBERIE:

9 I would like it to be formally. Once again, my  
10 only concern at this time with that particular  
11 type of advertisement is just knowing what the  
12 expectation is on who's going to bear the cost of  
13 it.

14 MR. INGRAM:

15 I . . .

16 CHAIRMAN GOSS:

17 Let's just make it a formal data request.

18 MR. INGRAM:

19 I will endeavor to do it two ways. I'll endeavor  
20 to transmit the information orally, as soon as I  
21 can find out, as well as informally at the end of  
22 the proceeding.

23 CHAIRMAN GOSS:

24 That's good enough. Thank you, Mr. Ingram.

25 Q. Let me ask you this question, Mr. Bush, and I honestly

1 don't know whether you would be the appropriate person  
2 to answer this or not. Do you have any kind of under-  
3 standing about how the company uses its customer  
4 mailing list just in a general sense?  
5 A. In a general sense, it's only used - the customer  
6 information is considered private.  
7 Q. Do you all have - I know little or nothing about this  
8 area. Are there regulations that apply to the  
9 company's use of that information?  
10 A. That, I don't know.  
11 Q. Do you all have internal controls on that use?  
12 A. Yes, we do.  
13 Q. Could you elaborate?  
14 A. It should only be used for company purposes and not for  
15 those purposes that you would not benefit the  
16 ratepayer.  
17 Q. Okay. When you say "company," is that exclusive to  
18 Kentucky-American Water Company?  
19 A. That would be exclusive. That's my understanding.  
20 Q. What if one of your Service Companies, a sister company  
21 or perhaps a non-regulated venture that you all were  
22 getting into - I don't know that that has happened yet,  
23 but, if there was a desire to use that information for  
24 one of those groups, is it the position of the company  
25 that they would make them pay for that or . . .

1 A. Well, I really couldn't answer that. You know, you  
2 asked for my general observation, and my understanding  
3 is, my involvement has been, that it has been limited  
4 to information, sending out customer bill inserts, for  
5 example, sending out information that related to the  
6 water, to the safety of the quality of the water.

7 Q. So you're not aware that the company is in a position  
8 right now to be actually selling or attempting to sell  
9 that type of information?

10 A. Do you mean the customer mailing list?

11 Q. Yes.

12 A. I'm not aware.

13 Q. Okay.

14 A. I couldn't answer that.

15 Q. What's the status of the Owenton acquisition?

16 A. Still pending.

17 Q. Okay. What's . . .

18 A. We don't have a . . .

19 Q. What is your understanding of that situation?

20 A. Well, we don't have a definite date for close, and,  
21 beyond that, I don't know that I could give you an  
22 answer.

23 Q. Is it my understanding that the company is now going to  
24 file an application for that particular transaction?  
25 Is that understanding . . .

1 A. Are we going to file an application with the  
2 Commission?  
3 Q. Yes.  
4 A. That's correct.  
5 Q. Okay. Help me out here. My understanding of your  
6 testimony that was filed, and I think it was LFUCG  
7 No. 67 - that would be the first batch - and LFUCG  
8 Second Request, No. 38, it's my understanding that the  
9 company took the position that it was not required to  
10 file for approval from the Commission and, in fact, I  
11 believe you all provided a copy of an informal letter  
12 indicating that the Commission thought it wasn't  
13 necessary either.  
14 A. That's correct.  
15 Q. Has anything changed since then?  
16 A. That's correct. If you'll read further on in that  
17 letter, the indication is it's not binding, and it's  
18 our intent, at this time, to also file for rates when  
19 we file that application, and we just felt it was best  
20 to file the application when we get around to doing  
21 that.  
22 Q. But you don't have any understanding of when that might  
23 be?  
24 A. No, sir, I don't.  
25 Q. Let me ask you a question about your billing statements

1 so I can have an understanding of how those are being  
2 taken care of. I think it will only be necessary to  
3 ask you about one of them as a sample, although I  
4 believe you have more than one that's been provided in  
5 response to a couple of separate data requests. This  
6 one would be in Response to LFUCG Third Request for  
7 Information No. 9, and this would be Page 7 out of 105.  
8 A. Yeah. I don't have that with me. If . . .  
9 Q. Well, let me walk you - it's general stuff that I would  
10 like to ask you about, and then I can show it to you if  
11 you've got a further question.  
12 A. Okay.  
13 Q. It looks to me like your normal practice, as a witness  
14 or as an expert in this case, when you send the water  
15 company a bill, you've broken it out among the  
16 different hours that you've spent on different  
17 assignments, and then there's a total number, and the  
18 assignments that you have broken out are this  
19 particular rate case, at least if I'm reading that  
20 correctly, . . .  
21 A. That's correct.  
22 Q. . . . it would be Kentucky 2004 rate case, Owenton, and  
23 then Kentucky generally?  
24 A. Okay.  
25 Q. Okay. With respect to the rate case expenses, what is

1 your understanding? Is this entire bill being borne as  
2 part of the rate case expenses of this case, or is only  
3 the portion that is the Kentucky 2004 rate case  
4 expense? Do you understand what I'm asking?

5 A. No, I don't yet.

6 Q. You submitted a monthly bill for a total amount and  
7 then you broken it out three ways. My question is,  
8 with respect to the treatment in the rate case expenses  
9 of this case, . . .

10 A. Okay.

11 Q. . . . are two of these things segregated out and you're  
12 only paying the - or the consumers are only paying 2004  
13 rate case expenses? Are your rate case expenses part  
14 of the rate case expenses for this case?

15 A. Are you talking about what we're asking for in this  
16 case in rate case expenses?

17 Q. Yes.

18 A. I know there was an estimate included for me in the  
19 rate case expense. To the extent that estimate is  
20 accurate, then that would be included. Well, to the  
21 extent that that estimate is approved, that that would  
22 be included in rates. If I end up billing more, then  
23 it would not be included.

24 Q. Let me ask you a different way. To your knowledge, is  
25 Owenton, the breakout of Owenton, is that included as a

1 rate case expense in this case?  
2 A. No, it's not.  
3 Q. Okay. What is the Kentucky general stuff? Is that  
4 just miscellaneous?  
5 A. It could be anything. I still get lots and lots of e-  
6 mails on various subjects. I've worked on various  
7 matters, just like the franchise fee matter I worked  
8 on. I've worked on various matters where I've got some  
9 knowledge, and those are not specifically included in  
10 this case.  
11 Q. Now, when you say "not specifically included in this  
12 case," is that included at all or just as rate case  
13 expenses?  
14 A. You mean those expenses that we talked about, the  
15 general expenses?  
16 Q. Yes. Right.  
17 A. Yeah. There's no provision, to my knowledge, for any  
18 expenses that I'm charging the company now in this  
19 forecasted test year other than the rate case expenses  
20 you mentioned earlier.  
21 CHAIRMAN GOSS:  
22 Do you want to make the original your exhibit, Mr.  
23 Barberie, or a copy?  
24 MR. BARBERIE:  
25 Go ahead and make this an exhibit. I can get you

1 better copies than what you've got, because I have  
2 a copy lying around somewhere where I've actually  
3 got the entire thing on two pieces of paper as  
4 opposed to four or six or however many that took.  
5 So . . .

6 CHAIRMAN GOSS:

7 Connie, we'll mark that as LFUCG 1.

8 LFUCG EXHIBIT 1

9 Q. Mr. Bush, with respect to the Emergency Pricing Tariff  
10 meetings that took place that ended back in 2000, in  
11 your opinion, were those productive meetings?

12 A. Yes, they were.

13 Q. I believe Mr. Spenard may have asked you something  
14 along these lines. With respect to the currently  
15 filled positions at Kentucky-American, are all of those  
16 currently full-time at this point in time?

17 A. The positions that are currently filled with employees?  
18 Is that . . .

19 Q. My understanding is you have 133 or 134 slots.

20 A. One hundred and thirty-three in the case.

21 Q. About 19 of them are vacant.

22 A. Fourteen.

23 Q. Fourteen. I'm not talking about the vacant ones. With  
24 respect to the ones that are actually manned at this  
25 point in time, is it still your testimony that all of

1           those are full-time Kentucky-American Water Company  
2           employees?  
3    A.    Let's see.  Some that are filled, I believe that they  
4           may be Service Company employees now.  
5    Q.    Now, who are those?  
6    A.    That, I don't know.  I just know that there may be, and  
7           that's subject to check.  
8    Q.    Do you know who could tell me that?  
9    A.    I suspect Mike Miller could tell you.  
10   MR. BARBERIE:  
11                 Okay.  I think that's it for me.  
12   CHAIRMAN GOSS:  
13                 All right.  Mr. Wuetcher, any questions?  
14   MR. WUETCHER:  
15                 Yes, sir.  
16                                 CROSS EXAMINATION  
17   BY MR. WUETCHER:  
18   Q.    Good afternoon, Mr. Bush.  
19   A.    Good afternoon, Mr. Wuetcher.  
20   Q.    Let me start off with a very - just to resolve the  
21           exhibit that was passed out, at least the black and  
22           white copy.  
23   A.    Okay.  
24   Q.    Is this item of literature, is it also listed in the  
25           schedule that's found at Kentucky-American's Response

1 to the Commission's Fourth Set of Information Requests,  
2 Item 22?  
3 A. Is that on advertising, Mr. Wuetcher?  
4 Q. Yes, sir, it is.  
5 A. I don't believe that it is. Does that publication have  
6 a date on it?  
7 Q. This one? No, sir, it doesn't. The most I can tell  
8 you is it has Mr. Rowe's picture on the back of it.  
9 A. Okay.  
10 Q. So I guess it was done recently.  
11 MR. INGRAM:  
12 I don't know whether this will impact your line of  
13 inquiry, but I've just gotten a message from  
14 somebody who called Kentucky-American Water  
15 Company, that the LFUCG's exhibit and the ads  
16 talked about that ran primarily in October for  
17 showcasing company employees, none of those nor  
18 this one were paid for by Kentucky-American Water  
19 Company.  
20 MR. WUETCHER:  
21 Well, that may close out our line of questioning  
22 on this point.  
23 Q. I assume that this type of publication - is that  
24 included in the schedule that's found at Response 22?  
25 A. That particular type, I don't know. I know that we do

1 have community newsletters in there and some of the  
2 examples in the past that I've been able to get on the  
3 community newsletters are information on water supply.  
4 We've had information on the riffle effect that has  
5 gone out in the past, and, of course, this being a  
6 forecast, I'm not sure that the exact text or message  
7 has been written for these.

8 Q. Okay. So this wouldn't fall under the category of  
9 newspapers, or would it?

10 A. Under newspapers, I don't believe so, and, since that  
11 was not paid for by the company, I would just have to  
12 speculate that it was not envisioned that that would be  
13 included here.

14 Q. Okay. Let me refer you to Pages 5 and 6 of your  
15 rebuttal testimony.

16 A. Okay.

17 Q. You refer to an error in the calculation of advertising  
18 expenses. I think it was originally stated at  
19 \$171,544, and, in your rebuttal testimony, you correct  
20 that to state that the forecast should be \$134,704?

21 A. Yes, sir.

22 Q. Can you tell us what was the nature of the error?

23 A. A wrong number must have been picked up and put in the  
24 schedule. I'm not sure what period it was based on. I  
25 didn't go back to investigate, but, when I got the

1 question, I looked at the forecast and I just saw that  
2 it did not match with the information that had been  
3 provided at first. I'll certainly be happy to  
4 investigate it to find why.

5 Q. If there's a reason other than a calculational error,  
6 if you could let us know what the error was, . . .

7 A. Okay. I sure will.

8 Q. . . . we would like to have that. In your direct  
9 testimony, you testified concerning the activation fee?

10 A. Yes, sir.

11 Q. In regards to how that fee would affect certain groups,  
12 can you explain to us how Kentucky-American currently  
13 handles accounts for rental properties? When a renter  
14 would leave a rental property, is the water service  
15 turned off, or does it remain in the name of the  
16 landlord?

17 A. There are many different ways of handling that,  
18 depending on the circumstances, and I'll be happy to go  
19 through a scenario.

20 Q. Yes, sir, if you could elaborate.

21 A. Well, first, in some cases, it may be that the water is  
22 in the renter's name. So it would be treated just as  
23 if it was a homeowner; there would be no distinction,  
24 and, in some cases, we have landlords who have landlord  
25 agreements. So, when the renter leaves, the water

1 automatically goes into the landlord's name. Then,  
2 when a new tenant comes in, the new tenant signs up,  
3 and it goes out of the landlord's name into the  
4 tenant's name. In some cases, renters wouldn't even  
5 know about the water bill, because it might be a master  
6 meter and that would just go to the landlord. The  
7 landlord would pay it and presumably pass that along in  
8 some fashion in the rent.

9 Q. Could you provide us with the number of landlord  
10 accounts that Kentucky-American currently has? By  
11 that, I mean those accounts where the bill would  
12 automatically pass to the landlord and then . . .

13 A. When it would revert to the landlord?

14 Q. Yes.

15 A. Did you say could I?

16 Q. Yes, sir. Would you provide that to us?

17 A. Yes, I will.

18 Q. I take it, under those circumstances, an activation fee  
19 would not be assessed.

20 A. In the case of the landlord?

21 Q. Yes, sir.

22 A. Well, you still have to go out and read the meter,  
23 though. It's just that the water is not discontinued  
24 and that's for the convenience of the landlord in  
25 getting the property cleaned up. So the service is

1 still performed.

2 Q. So an activation fee would be assessed?

3 A. Yes, sir.

4 Q. So, unless a renter is being served through a master  
5 meter, he or she is going to be assessed this  
6 activation fee when they move from rental property to  
7 rental property?

8 A. Yes.

9 Q. Kentucky-American operates one sewage treatment plant;  
10 is that correct?

11 A. That's correct.

12 Q. What's the current number of customers served by that  
13 sewage treatment plant?

14 A. Subject to check, it's in the neighborhood of  
15 40 customers.

16 Q. Okay. I would like to refer you to Exhibit 1 of your  
17 direct testimony. Do you have that, sir?

18 A. I do. Okay. I have it.

19 Q. Okay. In this exhibit, you provide, I guess, a  
20 breakdown per certain operating units of Kentucky-  
21 American.

22 A. Yes.

23 Q. Is the Boonesboro sewer operations - are those included  
24 in the breakdown?

25 A. No, sir, it's not.

- 1 Q. Okay. Where would the expenses, the common expenses,  
2 be - where would they end up in terms of these  
3 accounts?
- 4 A. They would have their own accounting for the Boonesboro  
5 expenses in its own business unit.
- 6 Q. Okay. Have those been backed out of this?
- 7 A. Yes, they have been. Well, "out of this," they've been  
8 backed out of the case, to my understanding. We're not  
9 asking for an increase in the expenses on the sewer.
- 10 Q. In terms of the purchase of any water system, who, at  
11 Kentucky-American, makes the decision to make the  
12 acquisition?
- 13 A. That would be recommended by the employees and then the  
14 Board would finally have to make that decision.
- 15 Q. In terms of the purchase price for an acquisition, who  
16 would be the deciding authority as to whether the price  
17 is reasonable or not?
- 18 A. That would take Board approval.
- 19 Q. There are two acquisitions that are involved in this  
20 proceeding . . .
- 21 A. Yes, sir.
- 22 Q. Can you identify for us the specific cost savings that  
23 Kentucky-American achieved by its purchase of Tri-  
24 Village Water District?
- 25 A. As I identified in some of my responses to data

1 requests, I believe, if we're always looking for costs  
2 to go down, I don't think that's always going to be the  
3 case. I think a lot of the cost savings have inured to  
4 that district in what we've been able to do in the  
5 water quality in that district. I really have no way  
6 of knowing exactly what Tri-Village would have done to  
7 try to remedy their problem, but we were able, with  
8 some operational changes, to remedy their problem.  
9 They have not had a THM violation in some time. I have  
10 not quantified what that savings was, but I believe it  
11 to be material.

12 Q. Would that operational savings have resulted, could it  
13 have resulted, from an event other than the actual  
14 acquisition of the system?

15 A. Could you restate that?

16 Q. Well, let me put it this way. You're stating that  
17 there were certain changes made in Tri-Village's method  
18 of operation in how it either produced, treated, or  
19 distributed its water. Could those methods have been  
20 implemented without Kentucky-American actually  
21 purchasing the water district?

22 A. Could they have been? I would say that they could, but  
23 were they? No. With our involvement, I think that's  
24 what precipitated the improvements. With the expertise  
25 that we have, not just at Kentucky-American but

1 throughout the system, those are some of the benefits.

2 Q. So is it possible that, for example, if Kentucky-

3 American had entered into an operation agreement with

4 Tri-Village as opposed to purchasing it, that the same

5 results would have occurred in terms of the improve-

6 ments in the distribution?

7 A. In terms of the improvements, I would agree, but then

8 you would have to look at the whole scheme of costs and

9 what savings might have resulted from an O&M agreement

10 versus the acquisition. I didn't take it that far,

11 but, yes, the improvements, sure. If we had been

12 involved, we would have put the same diligence to

13 solving the problem on an O&M basis that we did on the

14 purchase basis.

15 Q. Okay. Which party, Kentucky-American or Tri-Village,

16 made the first step or inquiry into Kentucky-American's

17 acquisition of the system?

18 A. Which party?

19 Q. Yes, sir.

20 A. My recollection is, and I guess, I know it's in my

21 testimony so if I answer wrong, but I believe Tri-

22 Village approached us about the desire to talk.

23 Q. Did any rate reduction result to the customers of Tri-

24 Village from the acquisition of that system by

25 Kentucky-American?

1 A. No, not to my knowledge.

2 Q. Is there any rate reduction currently planned for the  
3 customers of the former Tri-Village system?

4 A. Not in this case.

5 Q. Can you identify any cost savings that resulted from  
6 Kentucky-American's acquisition of the Elk Lake system?

7 A. Again, as I responded in a data request, Elk Lake was  
8 faced with not meeting some water quality standards  
9 that were looming, and they were faced, as was Tri-  
10 Village, with some rather expensive capital  
11 improvements. They were also faced with the loss of an  
12 operator. It's not that they couldn't have probably  
13 replaced that operator, but it would have been probably  
14 difficult in the area where it was, and they were  
15 desirous of getting out, and, while I didn't quantify  
16 as I mentioned in my response to my data request, I  
17 believe, rather than spending a lot of money for  
18 capital improvements for a small treatment plant, it  
19 just made a whole lot more sense to connect to the Tri-  
20 Village system, as we did. So there are savings there.  
21 They've not been quantified.

22 Q. Is it correct to say that, in this case, Kentucky-  
23 American has proposed to allocate the entire  
24 acquisition adjustment from Elk Lake and Tri-Village  
25 purchases to the respective customers of those systems?

1 A. That's correct.

2 Q. Why is Kentucky-American proposing that?

3 A. Well, because of the reasons that we've stated in  
4 numerous data requests in following the Delta Gas  
5 criteria, the operational savings, the improved  
6 service, financial savings. Again, while they're not  
7 perhaps immediate, you know, I think there's a longer  
8 term benefit to it, and we're proposing that that piece  
9 of the acquisition be included and recovered over time.

10 Q. Okay. In the last rate case proceeding that Kentucky-  
11 American had, its acquisition of Boonesboro Water  
12 Association was an issue. The acquisition adjustment  
13 that related to Boonesboro Water Association, how did  
14 Kentucky-American allocate that adjustment?

15 A. To the best of my knowledge, that was ultimately  
16 allocated to the customers through an amortization of  
17 the utility plant acquisition adjustment.

18 Q. Okay. Was that allocated solely to the former  
19 customers of Boonesboro, or was it allocated to all of  
20 the customers systemwide?

21 A. Since we have one set of rates for the Central  
22 Division, it would have been allocated to all customers  
23 in the Central Division.

24 Q. Well, at that time, did Kentucky-American have two  
25 divisions?

1 A. At the time in the last case?

2 Q. Yes, sir.

3 A. No. We just had the one division.

4 Q. And the second division was created upon the  
5 acquisition of Elk Lake and Tri-Village?

6 A. It was created on the acquisition of Tri-Village, and  
7 then Elk Lake was added a year later.

8 Q. Are there costs that are being allocated across  
9 divisions?

10 A. There are costs being allocated out of the Kentucky-  
11 American Central Region to the Northern Division, yes,  
12 and direct charges made as well.

13 Q. Is there any reason why the acquisition adjustment  
14 should not be spread to all the customers of Kentucky-  
15 American as opposed to just those in that one division?

16 A. Since we have two separate tariffs at this time, two  
17 separate sets of rates, it would just not seem to be  
18 the mechanical way to do that at this time.

19 Q. Well, I take it, then, that the concern of the company  
20 is more of the mechanics as it is opposed to the  
21 principle of allocating that to the customers in the  
22 Central Division?

23 A. Well, I didn't state that very well, then, obviously  
24 but, well, I think, at this time, until such time as we  
25 do seek single tariff pricing, if you just select a

1 part that was associated entirely with the Northern  
2 Division, to me, it just would not seem to be the thing  
3 to do in ratemaking.

4 Q. To the extent that you know, when does Kentucky-  
5 American propose or does it propose to have single  
6 tariff pricing for its system?

7 A. I believe in Mike Miller's testimony he indicated in  
8 our next case we would perhaps seek single tariff  
9 pricing.

10 Q. What would be the impact of allocating the acquisition  
11 adjustments to the entire customer base now as opposed  
12 to dividing it amongst the two divisions or as opposed  
13 to allocating it to the Northern Division?

14 A. Well, it would certainly be less of an increase on a  
15 per customer basis than what's currently being  
16 requested in Tri-Village/Elk Lake.

17 Q. Do you have a calculation in terms of the actual amount  
18 that would be the impact of the acquisition adjustment  
19 if it was spread across the entire system?

20 A. I don't now, but we could certainly provide that.

21 Q. Could you provide that for us?

22 A. Yes, sir, I will.

23 Q. You stated that Kentucky-American was approached by  
24 Tri-Village first in terms of the negotiations; is that  
25 correct?

1 A. That's my recollection of it.

2 Q. And what about Elk Lake?

3 A. Elk Lake, I would have to - let me take a look.

4 Q. Okay.

5 A. Can I ask for some help from my counsel?

6 MR. INGRAM:

7           What do you need?

8 Q. Certainly.

9 A. The data request where I listed all of those contacts,  
10 all of those meeting notes, what was that?

11 MR. WUETCHER:

12           I think that may have been the company's Response  
13 to the Staff's Fourth Set of Information Requests,  
14 Item 17.

15 A. Is that it, Item 17? Okay. There we are.

16 Q. No charge.

17 A. Okay. Thank you. Just a few data request responses.  
18 Yeah, what I said, as best as we can determine, the  
19 company began discussions with Elk Lake repre-  
20 sentatives in '99 as part of the discussions with the  
21 Tri-Village Water District. Then I know there was a  
22 specific reference to a - let's see. Yeah, on July 19,  
23 1999, even going back, on April 17, "Kentucky-American  
24 ... is building a 20" water line through our area and  
25 wants to service people along that route. They have

1           agreed to purchase Tri-Village, are talking to Owenton  
2           .... and want to talk to Elk Lake about our water  
3           company. Carl (Stich) is waiting on a call from them  
4           and we will listen to what they propose." So I'm not  
5           sure. I guess it could have been a chance meeting at  
6           the site of some connection; a mutual interest was  
7           developed. It doesn't say who called who.

8   Q.    Is it correct to say that Kentucky-American has been  
9           looking or has been pursuing potential opportunities or  
10           acquisitions in the last few years, . . .

11   A.    Yes, it is.

12   Q.    . . . acquisitions of other systems?

13   A.    Yes, sir.

14   Q.    In both these instances, I think your testimony  
15           described a lot of serious technical problems that  
16           would be difficult for the district or the water  
17           association to overcome without the intervention and  
18           acquisition by Kentucky-American. The fact that there  
19           were problems these two utilities apparently were  
20           facing, at least according to what you've told us,  
21           would that have given the company leverage to secure a  
22           better purchase price?

23   A.    Well, it has been my experience that usually, unless a  
24           company is troubled, they're not interested in selling  
25           or an O&M contract. Could it have given us leverage

1 for a better purchase price? It would really depend on  
2 what their debt was, what their needs for capital were  
3 versus continued operations.

4 Q. Well, would you consider either one of these utilities  
5 as a troubled utility?

6 A. I think "troubled utility" has a lot of definitions,  
7 but I certainly would consider them troubled based on  
8 Tri-Village's instance of the THM problems and, while  
9 Elk Lake, as I mentioned in one of my data request  
10 responses, I think they had even received a  
11 commendation fairly recently from the PSC, but that was  
12 on a going level basis and not a going forward basis.  
13 You know, they had some problems looming and Tri-  
14 Village had some problems currently.

15 Q. Well, given those problems, how would you answer the  
16 criticism that, in light of those problems, the company  
17 should have been in a position to have acquired the  
18 plants at least at their book value as opposed to  
19 having to pay a premium over the book value?

20 A. Well, the premiums were, I believe, relatively small  
21 but, in an arm's length negotiation, the sellers had  
22 certain needs for the cash and, particularly in the  
23 case of Tri-Village, a tremendous amount of debt and,  
24 in the case of Elk Lake, they had some infrastructure  
25 needs that had to be met, and, while we attempted to

1 negotiate a lower price, we weren't successful.

2 Q. Well, in terms of Tri-Village, how much debt did the  
3 water district have outstanding at the time of the  
4 purchase?

5 A. I could tell you exactly by going through my data  
6 requests, which would take me a minute, . . .

7 Q. Well, just give me your . . .

8 A. . . but it was in the neighborhood of \$1.6 million to  
9 \$1.7 million. I can go back and find it, if you want  
10 me to.

11 Q. Okay.

12 A. The principal amount was \$1.678.7 million.

13 Q. And the purchase price, the purchase price for Tri-  
14 Village?

15 A. Let's see. Well, I've got it in two components,  
16 \$1.659 million and \$26 million. So I guess that's  
17 \$1.685 million.

18 MR. INGRAM:  
19 \$26,000.

20 A. What's that?

21 MR. INGRAM:  
22 \$1.659 million and \$26,000.

23 A. \$26,000. I'm sorry. So \$1.685 million.

24 Q. So I take it that the company actually paid more than  
25 the outstanding debt to Tri-Village?

1 A. Yes, there was more than the . . .

2 Q. Do you know what the remaining amount - what Tri-

3 Village used that remaining amount for?

4 A. They used the remaining amount to expand the system.

5 Q. Okay. When you say "expand the system," . . .

6 A. To add new customers through the extension of water

7 lines.

8 Q. I take it that that extension then became part of

9 Kentucky-American system.

10 A. That's correct.

11 Q. In terms of the Elk Lake system, what outstanding

12 liabilities existed at the time Kentucky-American

13 acquired it?

14 A. What outstanding . . .

15 Q. What outstanding debt did Elk Lake have at the time

16 that the acquisition occurred?

17 A. In my review of their information, I could not find a

18 great deal specifically about debt. They apparently

19 had some indebtedness from their members. They may

20 have used it to pay that off. We didn't have anything

21 like we did with the settlement with Rural Development

22 as we did with Tri-Village, you know.

23 Q. Okay. To your knowledge, did Rural Development dictate

24 a particular purchase price for Tri-Village?

25 A. To my knowledge, they did not. Of course, the debt had

1 to be paid.

2 Q. Okay.

3 A. That would have dictated the price to some extent.

4 Q. In terms of the negotiations, how many offers or  
5 counteroffers were there in terms of the negotiations?

6 A. That's not terribly clear from the record. I found two  
7 specific proposals that the company made. I was not  
8 personally involved in those negotiations. Mr. David  
9 Baker was, who is still with the company but just not  
10 in Kentucky - he is in Illinois - and my search of the  
11 records found two specific proposals which appear to be  
12 formal proposals, and I don't know about the counter-  
13 offers or the exchanges.

14 Q. In Response to Commission Staff's Fourth Set of  
15 Information Requests, Item 9, the company was asked to  
16 provide a quantitative analysis that was performed to  
17 determine the initial investment plus the cost of  
18 restoring Tri-Village Water District and Elk Lake Water  
19 Company facilities to required standards. The  
20 Response, which I believe you're responsible for,  
21 states that no analysis was performed. How do you  
22 respond to the suggestion that, given the lack of any  
23 type of analysis, Kentucky-American may have paid an  
24 excessive price for those systems or one of the  
25 systems?

- 1 A. Well, I think the question related to whether or not  
2 there was an analysis that talked about an adverse  
3 impact on rates, a quantitative analysis, and there was  
4 not a specific study performed on that. You know, we  
5 had a good sense of what the rates might go to and some  
6 range and still felt that was within the range of  
7 reason.
- 8 Q. In your opinion, if Kentucky-American had not acquired  
9 the systems, do you believe that they would be allowed  
10 to remain in operation as of January of 2005?
- 11 A. I think the water systems would still continue to  
12 operate, but would they be meeting the standards, would  
13 they be subject to fines, you know, that's the more  
14 likely event.
- 15 Q. Do you know if the Division of Water had levied any  
16 fines against either of the systems as of the time of  
17 the acquisition?
- 18 A. Excuse me. Could you . . .
- 19 Q. I'm sorry. At the time of the acquisition, had the  
20 Division of Water levied any fines . . .
- 21 A. Okay.
- 22 Q. . . . for drinking water violations against either  
23 system?
- 24 A. I'm not aware that they did.
- 25 Q. To your knowledge, at the time of the acquisition, did

1 the Division of Water have any plans for requiring  
2 either of the systems to terminate service if they  
3 failed to take corrective action?  
4 A. Not to my knowledge, no.  
5 Q. Believe it or not, I'm almost finished.  
6 A. I believe it.  
7 Q. I want to refer again to Kentucky-American's Response  
8 to Commission Staff's Fourth Set of Information  
9 Requests, Item 18, Section f.  
10 A. Let me find Item 18. Okay, I'm there.  
11 Q. Okay. Can you explain for us or elaborate on whether  
12 the in-house payroll cost assigned to acquisitions is  
13 included in the calculation of the payroll capital-  
14 ization rate for the forecasted test period?  
15 A. Okay. If you don't mind, I would prefer to defer this  
16 one to Mr. Miller. He and I were joint authors of this  
17 and that happened to be his particular section.  
18 Q. Very good. Okay. Let me refer you to Page 3, Lines 25  
19 to 31 of Ms. Bridwell's rebuttal testimony.  
20 A. Okay. I don't have a copy of that. Did you say  
21 Page 3, Mr. Wuetcher?  
22 Q. Yes, sir, Lines 25 through 31.  
23 A. Okay.  
24 Q. At that section of her testimony, Ms. Bridwell states  
25 that preventative maintenance costs were one area that

1 was reduced as a result of security costs that had been  
2 deferred.

3 A. Now, you're reading that on Page 3, Line . . .

4 Q. Page 3, Lines 25 through 31.

5 A. Where it starts out, "Resources were stretched ..."?

6 Q. Yes, sir.

7 A. Okay.

8 Q. My question is, can Kentucky-American quantify the  
9 amounts of preventative maintenance costs that were  
10 reduced as a result of the security costs having to be  
11 deferred?

12 A. I'm sure we could, you know, make an attempt at that.  
13 I couldn't do it right now, but I can get with Ms.  
14 Bridwell, and we can attempt to do that.

15 Q. If you could, provide us with that information.

16 A. Okay.

17 Q. Could you also provide us and quantify any other  
18 expenses that were reduced as a result of the company's  
19 level of security costs?

20 A. Okay.

21 Q. Did the reduction or cutting of preventative  
22 maintenance costs in these years result in forecasted  
23 maintenance expenses in this case that are higher than  
24 would have been experienced otherwise?

25 A. You mean otherwise in the past year?

1 Q. Yes, sir, or I guess the better way to put it is, as a  
2 result of having to defer preventative maintenance  
3 costs in previous years because of spending on security  
4 costs, did that result in an increase in forecasted  
5 maintenance costs for the forecasted test period?  
6 A. Not to my knowledge. I guess it would be - I presume  
7 that - if you put something off, you know, one year, is  
8 it possible it might require a little more maintenance?  
9 Yeah. I don't know that, but I know that the forecast  
10 was prepared based on the maintenance needs that were  
11 anticipated to be there during the forecast year. If  
12 there was some maintenance delayed, it would have been  
13 a short-term delay. It's hard for me to imagine it  
14 would have had material impact on anything.  
15 Q. So your testimony is any delay or failure to provide  
16 preventative maintenance because expenditures were  
17 being instead placed into - were being expended for  
18 security measures, that that would not have any impact  
19 on future preventative maintenance costs or needs?  
20 A. Well, my testimony would really be that I'm not aware  
21 that we've included anything in the forecast that would  
22 be due to a lack of preventative maintenance.  
23 MR. WUETCHER:  
24 Okay. Thank you.  
25 A. Thank you.

1 CHAIRMAN GOSS:

2 Mr. Ingram, do you have any redirect?

3 REDIRECT EXAMINATION

4 BY MR. INGRAM:

5 Q. Mr. Bush, is it your testimony that there are no  
6 expenses included in the forecasted test year in this  
7 rate case for the operations in Pineville, Bluegrass  
8 Station, Jackson, and Boonesboro Sewage Treatment  
9 Plant?

10 A. Yes, sir.

11 Q. Would Kentucky-American entertain any offer to buy the  
12 Boonesboro Sewage Treatment Plant?

13 A. Yes, sir.

14 MR. INGRAM:

15 That's all I have. Thank you.

16 CHAIRMAN GOSS:

17 Are you making an offer, Mr. Ingram?

18 MR. INGRAM:

19 How about a gift, Your Honor?

20 CHAIRMAN GOSS:

21 Mr. Spenard, do you have any questions?

22 MR. SPENARD:

23 No, sir, no questions.

24 CHAIRMAN GOSS:

25 All right. Mr. Ockerman?

1 MR. OCKERMAN:

2 Mr. Chairman, I have two or three follow-up  
3 questions on our exhibit, but, first, I would ask  
4 Mr. Bush if you're more familiar with these  
5 mailings or Ms. Bridwell or Mr. Miller. I would  
6 like to ask the right witness.

7 A. Can I look at it? I don't know that you're any more  
8 familiar than I am, Mike, I . . .

9 MR. OCKERMAN:

10 I'll approach it more close to the microphone, Mr.  
11 Chairman.

12 CROSS EXAMINATION

13 BY MR. OCKERMAN:

14 Q. My questions, from what has been brought out here this  
15 afternoon, either we have a customer privacy issue or  
16 we need to come back to where the costs for these  
17 mailings come, because I notice it appears, on what is  
18 the last page of the copy I have, there's a Lexington  
19 postmark being used, a bulk mailing permit being used.  
20 So, if it's a third-party organization in Lexington,  
21 has a customer list been given out improperly? Were  
22 any employees of Kentucky-American - if the list was  
23 not given out, then employees of Kentucky-American, in  
24 order to preserve the privacy, had to be involved, in  
25 which case, where are their costs allocated above and

1 below the line? That's the basket of kind of  
2 questions. So . . .

3 A. I don't believe I can give you the answer right now. I  
4 think it's just one of those we're going to have to get  
5 an answer to why that is.

6 Q. I think it is important to know who did . . .

7 A. Okay.

8 CHAIRMAN GOSS:  
9 Certainly.

10 Q. . . . have their hands on the list and who paid for  
11 this.

12 A. Okay.

13 Q. So I appreciate that.

14 A. We can do that.

15 MR. OCKERMAN:  
16 Thank you.

17 CHAIRMAN GOSS:  
18 Are you all comfortable with what Mr. Ockerman is  
19 asking by way of a data request?

20 MR. INGRAM:  
21 I am, Your Honor.

22 CHAIRMAN GOSS:  
23 Okay. Thank you, Mr. Ockerman. Mr. Childers, Mr.  
24 Barberie, any follow-up?  
25

1 MR. BARBERIE:

2 I have one follow-up. Do I need to come down?

3 CHAIRMAN GOSS:

4 Just kind of, if you don't care, stand up and  
5 speak . . .

6 MR. BARBERIE:

7 I think I can talk loud enough.

8 CHAIRMAN GOSS:

9 . . . speak a little loudly so the mike can get  
10 you.

11 RE CROSS EXAMINATION

12 BY MR. BARBERIE:

13 Q. Mr. Bush, are the types of costs and expenses that the  
14 activation fee is designed to recover, are those  
15 currently being paid for by the ratepayers?

16 A. The types, yes, are currently being paid by the  
17 ratepayers.

18 Q. My understanding is that the concept of this would be  
19 it's going to allocate it on perhaps the appropriate  
20 class to pay for it, but it's not like the . . .

21 A. Yeah.

22 Q. . . . company is currently foregoing whatever it's out-  
23 of-pocket for this type of cost. It's just spread out  
24 across the ratepayers; is that accurate?

25 A. That's correct.

1 MR. BARBERIE:

2 Okay. Thank you.

3 CHAIRMAN GOSS:

4 Anything else, Mr. Wuetcher?

5 MR. WUETCHER:

6 No, sir.

7 CHAIRMAN GOSS:

8 Okay. Mr. Bush, thank you very much.

9 A. Okay. Thank you.

10 CHAIRMAN GOSS:

11 You may step aside. Okay. Let's take a short  
12 recess until three o'clock. Now, I had indicated  
13 that we were going to try to go until five today.  
14 One of the Commissioners has an obligation that's  
15 going to require us to stop about five or ten  
16 minutes to four. So we'll stop a little early  
17 today, if that's all right with you all, and we'll  
18 take back up in the morning at nine and go till  
19 late in the day. So let's take a break till three  
20 o'clock.

21 OFF THE RECORD

22 CHAIRMAN GOSS:

23 Everyone, please be seated. Thank you. Okay.

24 Mr. Ingram, who do we have next, sir?

25

1 MR. INGRAM:

2 I'll call Jim Salser, Your Honor.

3 WITNESS SWORN

4 CHAIRMAN GOSS:

5 Thank you. Please be seated. Okay, Mr. Ingram.

6 The witness, JAMES E. SALSER, after having been  
7 first duly sworn, testified as follows:

8 DIRECT EXAMINATION

9 BY MR. INGRAM:

10 Q. Would you state your name, please?

11 A. James E. Salser.

12 Q. What is your business address?

13 A. 169 Ohio Avenue, Murraysville, West Virginia.

14 Q. Prior to your retirement, were you an employee of the  
15 American Water Works system in various capacities?

16 A. Yes.

17 Q. Have you filed direct and rebuttal testimony in this  
18 case?

19 A. Yes, I have.

20 Q. If I asked you the questions contained therein today,  
21 would you give me the same answers?

22 A. I would with the direct testimony. I have a change on  
23 the rebuttal.

24 Q. All right, sir. What is that change?

25 A. If you would, turn to Exhibit JES-1, Page 1 of 2, . . .

1 Q. Yes, sir.  
2 A. . . . under the third part, . . .  
3 Q. Part III?  
4 A. Part III, yes.  
5 Q. Uh-huh. Yes.  
6 A. Out from "Central," the third column where it has  
7 "99,745," . . .  
8 Q. Yes, sir.  
9 A. . . . that should be "99,845," and then that would give  
10 you a total of "102,069." Now, as a result of that  
11 change, it changes testimony on Page 5.  
12 Q. Okay.  
13 A. On Line 24 where it indicates "101,956," that becomes  
14 "102,069." The "3,853" becomes "3,966." That's also  
15 the same number on Line 26. It would be "3,966."  
16 Then, on Line 27, "2,975" replaces the number of  
17 "2,890."  
18 Q. What's the new number?  
19 A. 2,975.  
20 Q. All right.  
21 A. And then, on Line 29, "520" customers become "633."  
22 Then, on Line 30, the "669" becomes "556."  
23 Q. All right. Are those the only changes?  
24 A. Yes.  
25

1 MR. INGRAM:

2 I have no further questions at this time, Your  
3 Honor.

4 CHAIRMAN GOSS:

5 Mr. Spenard?

6 MR. SPENARD:

7 Yes.

8 CROSS EXAMINATION

9 BY MR. SPENARD:

10 Q. Good afternoon.

11 A. Good afternoon.

12 Q. With regard to your direct testimony, Page 2, at Lines  
13 10 through 12, you state, "For the purpose of filing  
14 this case, the Company has prepared a new lead/lag  
15 study that utilizes the methodology in its last study  
16 performed in 1996"; is that correct?

17 A. Yes. Yes.

18 Q. Okay, and did the company use a lag of 6.65 days for  
19 its chemical expense?

20 A. In this case?

21 Q. Yes, sir.

22 A. Yes.

23 Q. Okay. In the last case, was the chemical expense a lag  
24 of 30.49 days?

25 A. That is correct.

1 Q. Okay. Do you agree that the Service Company was  
2 established to provide services that are required by  
3 all operating utilities which can be provided more  
4 efficiently on a consolidated basis rather than by  
5 having each utility provide the service for itself?  
6 A. That's what the Service Company is for; yes.  
7 Q. Okay. Did you use a negative lag of 1.34 for all  
8 Service Company charges?  
9 A. I did in the original filing, yes, but that was based  
10 on sister companies' lead-lag study on 2002  
11 information, and the current number is a positive .40,  
12 which is in a data request.  
13 Q. Okay. You were here when Mr. Baryenbruch testified; is  
14 that correct?  
15 A. Yes.  
16 Q. And did you hear the discussion with regard to what  
17 percentage of the Service Company charges relate to  
18 payroll costs? He indicated that was approximately  
19 71 percent.  
20 A. That included fringe benefits, too, also; didn't it?  
21 Q. Yes.  
22 A. Yes, I was here.  
23 Q. Okay, and is that correct?  
24 A. I have no reason to doubt that, . . .  
25 Q. Okay.

1 A. . . . but, if you're looking at the labor charged in  
2 the Service Company bill as a result of lag days, you  
3 also have some fringe benefits that are paid monthly in  
4 advance; not on a lag as labor.

5 Q. Are you familiar with cash flow statements?

6 A. Yes.

7 Q. Okay. In the company's cash flow statement, is  
8 depreciation expense shown as a non-cash expense?

9 A. It's a non-cash item in the cash . . .

10 Q. Okay. So depreciation actually provides a source of  
11 cash to the company; is that correct?

12 A. Yes, but that's a return of capital that the company  
13 has invested a number of years ago and depreciation  
14 expense is a return of that capital plus the cost  
15 removal less salvage. That's what the depreciation is  
16 set up for.

17 Q. Okay. Have you prepared lead-lag studies for other  
18 American Water Works companies?

19 A. Yes.

20 Q. Okay. Approximately how many?

21 A. About four, I believe.

22 Q. Okay, and in how many other jurisdictions does American  
23 Water Works operate sewer utilities, water or sewer  
24 utilities? In how many jurisdictions does American  
25 Water Works have operations in either water or sewer

1 utilities?

2 A. Could you make that a little bit more specific? Are  
3 you talking about companies, or are you talking about  
4 each location, city?

5 Q. How many states, how many jurisdictions?

6 A. I believe, when I was an employee, it was around 20  
7 states, but I think they have expanded since then.

8 Q. Okay. Other than in Kentucky and New Jersey, what  
9 other jurisdictions include depreciation expense in a  
10 utility's cash working capital claim?

11 A. I haven't reviewed all the cash working capital  
12 allowance.

13 Q. Okay. Can you identify any states other than Kentucky  
14 and New Jersey?

15 A. No.

16 Q. Okay. With regard to your rebuttal testimony, Page 2,  
17 Lines 24 through 26, you indicate that the company  
18 records depreciation expense monthly and that increases  
19 accumulated depreciation and reduces rate base?

20 A. That is correct.

21 Q. Okay. Do ratepayers receive a monthly rate reduction  
22 to flow through to this rate base reduction?

23 A. No, but it's built into the 13-month average.

24 Q. How does the company define normal weather?

25 A. I don't know if the company defines normal weather.

1 Q. Does the company use weather normalization?  
2 A. In rate cases, yes.  
3 Q. Okay, and is it based upon a National Oceanic and  
4 Atmospheric Administration 30-year normal?  
5 A. I'm not aware of that.  
6 Q. Okay.  
7 MR. SPENARD:  
8 Would counsel provide this witness with the  
9 company's Response to PSC Second Request, Item 19?  
10 MR. INGRAM:  
11 Sure.  
12 MR. SPENARD:  
13 Okay.  
14 MR. INGRAM:  
15 PSC Second Set, Item 19?  
16 MR. SPENARD:  
17 Yes, sir.  
18 Q. Okay. In looking at this exhibit, . . .  
19 MR. INGRAM:  
20 Could you wait just a minute?  
21 MR. SPENARD:  
22 Oh, I'm sorry.  
23 A. Do you have a magnifying glass?  
24 Q. I don't.  
25 A. My glasses probably won't . . .

1 CHAIRMAN GOSS:  
2 Are you saying you can't read it?  
3 A. Yes, sir.  
4 CHAIRMAN GOSS:  
5 Well, I don't know how he's going to testify from  
6 an exhibit he can't read.  
7 MR. INGRAM:  
8 If Your Honor would permit it, he can come down  
9 here and look at it, . . .  
10 CHAIRMAN GOSS:  
11 Sure.  
12 MR. INGRAM:  
13 . . . and I'll enlarge it.  
14 CHAIRMAN GOSS:  
15 That's a good idea. Let's do that.  
16 MR. SPENARD:  
17 Well, . . .  
18 CHAIRMAN GOSS:  
19 Can you read it, Mr. Spenard?  
20 MR. SPENARD:  
21 I can read it, but I guess perhaps a way we could  
22 do this is I could ask the questions subject to  
23 check, and, if there's some dispute afterwards, we  
24 can do that rather than . . .  
25

1 CHAIRMAN GOSS:

2 He can step down off the witness stand and sit  
3 next to the Messrs. Ingram there and look off the  
4 laptop.

5 MR. SPENARD:

6 Okay.

7 Q. For the year 1999, what was the total precipitation in  
8 the company's service territory?

9 A. 4.67.

10 MR. INGRAM:

11 No. Total, right here.

12 A. Oh, total, 30.77.

13 Q. Okay, and what was the total precipitation for the year  
14 2000?

15 A. 42.02.

16 Q. And would you agree that, for the years 2001, it was  
17 38.98; for 2002, 49.17; and, for 2003, the total  
18 precipitation was 53.41 inches?

19 A. Yes.

20 Q. And so, in terms of total rainfall, 2003 was the  
21 wettest year in any of the past five years; is that  
22 correct?

23 A. Yes.

24 Q. Okay, and, again, looking at this response, for the  
25 third quarter of 2003, would you agree that the third

1 quarter of 2003 was the wettest quarter of any quarter  
2 in the past five years?

3 MR. INGRAM:

4 Do you want us to look at all of them or just  
5 agree to that, subject to check, Mr. Spenard?

6 A. It's not.

7 MR. SPENARD:

8 One moment, please. Wettest third quarter. No.  
9 I'm sorry. Let me withdraw that question.

10 Q. Turning to the issue of the number of customers,  
11 the . . .

12 CHAIRMAN GOSS:

13 Are you finished with that exhibit? Can he . . .

14 MR. SPENARD:

15 Yes, sir.

16 CHAIRMAN GOSS:

17 Okay.

18 Q. The company provided updates to its filing to reflect  
19 actual results for the base period; is that correct?

20 A. Yes.

21 Q. And do you recall when the updates were provided?

22 MR. INGRAM III:

23 September 15, 2004.

24 A. I was just informed by my attorney that it was  
25 September 15, 2004.

1 Q. Okay, and referencing the updated Schedule I-2, Page 1,  
2 this schedule shows the number of customers.  
3 A. Repeat the schedule.  
4 Q. It's Schedule I-2, Page 1.  
5 A. Okay. I have it.  
6 Q. Okay, and it shows the number of customers?  
7 A. Yes.  
8 Q. Okay, and this schedule shows that, for the year 2004,  
9 the number of residential customers at 102,418.  
10 A. Yes, that's . . .  
11 Q. Okay, and, for the year 2005, it shows 104,801?  
12 A. Yes, that's what's on the schedule.  
13 Q. Okay. With regard to the forecast period, what is the  
14 projection for the number of residential customers for  
15 the forecasted period according to this schedule?  
16 A. 103,304.  
17 Q. Okay. With regard to commercial customers, does this  
18 schedule show a customer count of 8,285 for 2004?  
19 A. Yes.  
20 Q. And, for 2005, 8,406?  
21 A. Yes.  
22 Q. On this schedule, what is the forecast for commercial  
23 customers?  
24 A. 8,341.  
25



1 Question No. 6. You've provided a revised schedule in  
2 Subsection c. of that particular request, sir. Are you  
3 to the particular point we're talking about now, 6c.,  
4 asking you to . . .

5 A. Are you talking about Schedule I?

6 Q. Yes. "Explain why the stated number of customer  
7 bills . . .," etc., etc., "for the 12-month period ending  
8 November . . ." differs in the Business Plan versus the  
9 forecasted period. Actually, I believe it's for  
10 Schedule 37M. Let me just tell you what I think you  
11 said and you can correct me if I'm wrong.

12 A. Okay.

13 Q. In response to this, you've been asked, and this is by  
14 the Commission Staff, "Explain why the stated number of  
15 customer bills for the 12-month period ending November  
16 30, 2005 differs in Kentucky American's Business Plan,  
17 its forecasted period, and Exhibit 37M (Updated)." And  
18 you've responded that, "The undated Exhibit 37M  
19 included only customer bills for the base period." And  
20 then you've indicated that, "A forecasted Exhibit 37M  
21 was not filed with the update." Then you've also  
22 indicated, "Attached is a revised Schedule I detailing  
23 the customer count for the base period and forecasted  
24 period." What I'm interested in is your next statement  
25

1 where you indicate that, "The Business Plan includes  
2 customer growth from business development initiatives  
3 which were eliminated from the Company's rate case  
4 filing in the base period, as well as the forecast  
5 period, as it relates to revenues, expenses, and rate  
6 base items." What has been eliminated and why?

7 A. Okay. There were some proposed acquisitions that were  
8 not completed at the time the case was going to be  
9 heard or completed, like Owenton. None of that cost  
10 was brought into the case. We had some Pineville and  
11 Bluegrass operations that was eliminated, some of the  
12 non-operating business that we were doing.

13 Q. And your testimony basically is that both the revenue  
14 and the expenses associated with those are not  
15 included; is that correct?

16 A. Yes.

17 Q. Let me ask you with respect to the expenses. Did the  
18 company account for the salaries and overhead of the  
19 actual in-house employees that were involved in these  
20 projects? Has that somehow been accounted for?

21 A. I'm really not the person to ask that question.

22 Q. Who would be; do you know?

23 A. Probably Mr. Miller.

24 MR. BARBERIE:

25 Okay. Thank you. That's all I have.

1 CHAIRMAN GOSS:

2 Thank you, Mr. Barberie. Mr. Wuetcher, do you  
3 have questions?

4 MR. WUETCHER:

5 Yes, Your Honor. If I could have one minute,  
6 we're still trying to resolve a discrepancy here.

7 CHAIRMAN GOSS:

8 Okay. All right. Let me know when you're ready.

9 MR. WUETCHER:

10 I believe we're ready.

11 CHAIRMAN GOSS:

12 Okay.

13 CROSS EXAMINATION

14 BY MR. WUETCHER:

15 Q. I'm going to make reference to the same response to the  
16 same information request that Mr. Barberie just made  
17 reference to, but I want to go back to Question 6a. In  
18 Response to the Commission Staff's Request, you  
19 provided a daily average for the entire customer class  
20 for the six customer classes?

21 A. Yes.

22 Q. Can you provide us an average per customer usage per  
23 day for each customer class?

24 A. Yes.

25

1 Q. Okay.

2 A. I have two of them. I don't have all four of them here  
3 in front of me.

4 Q. Okay. While you're providing us with that, can you  
5 tell us the number of - part of our attempt to follow  
6 what you've done is we're having difficulty trying to  
7 figure out the number of customers you used.

8 A. Okay. The number of customers are the actual bills  
9 rendered during that period of time. You cannot take  
10 the customers each month and come up with the correct  
11 number, because, during that 12-month period, you have  
12 customers come on line the latter part of the period  
13 more than in the front part of the period, so your  
14 average is not going to work.

15 Q. Okay. So the number of bills you used was based on the  
16 number of bills . . .

17 A. Actually billed during that 12-month period.

18 Q. Okay. For the 12-month period ending September 30,  
19 2004?

20 A. That is correct.

21 Q. Okay, and what was your average per customer usage for  
22 residential customers?

23 A. It was 161.19 gallons. The billings was 98,188.

24 Q. Okay. For the commercial class?

25

1 A. Commercial class customers was 8,200 and the gallons  
2 was 1,366.47 gallons.  
3 Q. Okay. The industrial class?  
4 A. I don't have that in front of me. I'll provide that.  
5 Q. Okay. Could you provide that to us?  
6 A. Yes.  
7 Q. How about the next class, the OPA?  
8 A. I'll provide that for all . . .  
9 Q. For the remaining . . .  
10 A. . . . the remaining classes.  
11 Q. Okay. Now, I would like to refer you to your Response  
12 to Question 6c. Can you identify where these revised  
13 figures were obtained from in relation to the original  
14 Application and the update that was previously filed  
15 with the Commission? In order to make it easier, let  
16 me try to . . .  
17 A. I believe what the difference was, under the total  
18 number of customers, the 12-months average and end of  
19 period were the same. I think that's what the problem  
20 was in the original filing.  
21 Q. Just a couple more questions. You were previously  
22 asked about the use of depreciation in lead-lag  
23 studies. How many jurisdictions include depreciation  
24 in lead-lag studies?  
25 A. I'm aware of two.

1 Q. Can I assume, of the remaining jurisdictions in which  
2 Kentucky-American Water Works (sic) companies operates,  
3 that's not permitted?  
4 A. I'm not aware of that. I know there's a few that do  
5 not, but I haven't looked at all the companies' lead-  
6 lag study.  
7 Q. Could you provide for us - I recognize that we're  
8 asking you for a bit of information that maybe you  
9 don't have available right now, but could you provide  
10 for us the jurisdictions that do include depreciation  
11 in lead-lag studies, those jurisdictions in which  
12 Kentucky-American companies operate, and then also list  
13 those states that do not permit or do not include  
14 depreciation in lead-lag studies in which American  
15 Water Works companies operate?  
16 MR. INGRAM:  
17 I will see if American has that information. I  
18 doubt it. So I can't promise that I'll provide  
19 you the answer, but I'll make an inquiry of  
20 American to see if it is available. I can't  
21 commit to go beyond that.  
22 MR. WUETCHER:  
23 That would be satisfactory for us.  
24 MR. INGRAM:  
25 I can't get into rate cases in California in that

1 detail.

2 MR. SPENARD:

3 Well, I guess that goes to - I want to do both,  
4 but, understanding what you're asking for, are you  
5 asking for the jurisdictions that they can  
6 identify where it has been allowed as opposed to  
7 the jurisdictions where they've yet to identify an  
8 allowance because cases get settled and - I'm  
9 trying to understand the nature of . . .

10 MR. WUETCHER:

11 We're looking for those jurisdictions where the  
12 Commission has specifically, in an Order,  
13 specifically permitted it as opposed to those  
14 where it may be simply a settlement agreement,  
15 where the Commission has accepted a settlement  
16 agreement as opposed to expressly approved  
17 the inclusion of depreciation in a lead-lag  
18 study.

19 MR. SPENARD:

20 Expressly approved and not expressly approved?

21 MR. WUETCHER:

22 That's correct, to the extent that that  
23 information is available and the company has it.

24 MR. SPENARD:

25 Okay, and, if you could, to identify the basis

1                   whether it's by reference to an Order or something  
2                   like that would be good, too. We would ask that.  
3                   Then we could take a look at the Orders. If we  
4                   could ask to more or less increase a little bit  
5                   their data request.

6   CHAIRMAN GOSS:  
7                   I think he's just asking that Kentucky-American  
8                   provide that information from those jurisdictions  
9                   that had allowed it specifically as the result of  
10                  a decision or an Order; correct?

11   MR. WUETCHER:  
12                  That's correct although I was going to follow up  
13                  and Mr. Spenard beat me to the punch. To the  
14                  extent that the company also has or can provide us  
15                  with a citation to those opinions, we would like  
16                  to have that.

17   MR. INGRAM:  
18                  Of course.

19   CHAIRMAN GOSS:  
20                  To those opinions . . .

21   MR. WUETCHER:  
22                  Where the . . .

23   CHAIRMAN GOSS:  
24                  . . . where it was by settlement or . . .  
25

1 MR. WUETCHER:  
2 No.  
3 CHAIRMAN GOSS:  
4 I'm sorry.  
5 MR. WUETCHER:  
6 This is a long day for me.  
7 CHAIRMAN GOSS:  
8 Well, I may be confusing it more than it needs to  
9 be.  
10 MR. WUETCHER:  
11 Okay. We would like to have the citation to those  
12 opinions where the utility regulatory commission  
13 expressly approved or required the inclusion of  
14 depreciation in the lead-lag study as opposed to  
15 those in which the utility regulatory commis-  
16 sion merely approved a settlement where that may  
17 have been one of the terms of the settlement  
18 agreement.  
19 CHAIRMAN GOSS:  
20 And, to the degree possible, you want the  
21 citations?  
22 MR. WUETCHER:  
23 Yes, sir.  
24 CHAIRMAN GOSS:  
25 All right.

1 MR. WUETCHER:

2 To the extent that the company or its company  
3 parent has that information.

4 CHAIRMAN GOSS:

5 Mr. Ingram has agreed to endeavor to try to obtain  
6 that information, but he's not promising that that  
7 information exists so that they can . . .

8 MR. INGRAM:

9 That's correct, Your Honor.

10 CHAIRMAN GOSS:

11 Okay.

12 MR. WUETCHER:

13 That's all we have. Thank you, sir.

14 CHAIRMAN GOSS:

15 Okay. Redirect, Mr. Ingram?

16 REDIRECT EXAMINATION

17 BY MR. INGRAM:

18 Q. Mr. Salser, do you know whether or not rainfall is the  
19 exclusive factor used in developing the Palmer Drought  
20 Severity Index?

21 A. No, I do not know that. I know, based on experience,  
22 that, if you get a whole bunch of rain at one time, a  
23 lot of it runs off, and it doesn't soak into the  
24 ground.

25

1 MR. INGRAM:  
2 Thank you. That's all I have.  
3 CHAIRMAN GOSS:  
4 Mr. Spenard, follow-up?  
5 MR. SPENARD:  
6 No, sir.  
7 CHAIRMAN GOSS:  
8 Mr. Barberie, follow-up?  
9 MR. BARBERIE:  
10 No, sir.  
11 CHAIRMAN GOSS:  
12 All right. Mr. Wuetcher?  
13 MR. WUETCHER:  
14 No, sir.  
15 CHAIRMAN GOSS:  
16 Okay. Thank you, Mr. Salser. You can step down.  
17 As I said, we need to stop in about ten or fifteen  
18 minutes. Do you want to start your next witness,  
19 or do you want rather to start fresh in the  
20 morning?  
21 MR. INGRAM:  
22 Well, whatever suits the Commission.  
23 CHAIRMAN GOSS:  
24 Who is your next witness? Do you mind identifying  
25 your next witness? And we'll see . . .

1 MR. INGRAM:

2 Of course, not. Rich Svindland.

3 CHAIRMAN GOSS:

4 Okay. Hold on just a second, Mr. Svindland. Do  
5 you all anticipate extensive cross examination of  
6 this witness?

7 MR. SPENARD:

8 I don't have any questions for him.

9 CHAIRMAN GOSS:

10 Okay. Do you? What about you, Mr. Wuetcher?

11 MR. WUETCHER:

12 I do, sir, so I would suggest that we adjourn at  
13 this point.

14 CHAIRMAN GOSS:

15 Okay. Well, there's really no point in getting  
16 him on there just to accept his testimony if we're  
17 then going to have to stop. So let's go ahead and  
18 stop a little early today and we'll take back up  
19 at nine o'clock. Are there any matters that  
20 counsel wishes to take up with the Commission  
21 before we adjourn for the evening?

22 MR. INGRAM:

23 It might be a good time, Your Honor, to report on  
24 the discussion that I've had with counsel. I  
25 think, as the Commission is aware, one of my

1 witnesses, one of the company's witnesses, Dr.  
2 James Vander Weide, had some surgery Thursday, and  
3 the last information I had from his wife this  
4 weekend is that he is not able to travel. We're  
5 still discussing the potential for cross  
6 examination of him by video connection. Mrs.  
7 Vander Weide was looking into that possibility on  
8 their end in Durham. I have not heard back from  
9 her, but I will continue to pursue that, and  
10 counsel has been gracious enough to agree that we  
11 can do that if I can't bring him here expedi-  
12 tiously, and I don't know yet when he'll be able  
13 to travel.

14 CHAIRMAN GOSS:

15 Okay. Well, I really appreciate counsel's  
16 willingness to accommodate this situation. Some-  
17 times these things - all of us who have practiced  
18 law know how that can occur from time to time, and  
19 I appreciate everybody's consideration in that  
20 regard. Just let us know, Mr. Ingram, when you  
21 nail something down on that and certainly we'll  
22 try to accommodate you and accommodate him to the  
23 degree possible.

24 MR. INGRAM:

25 Thank you.

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CHAIRMAN GOSS:

Thank you. All right. We'll stand in recess,  
then, till 9:00 a.m. tomorrow morning.

HEARING CONTINUED  
OFF THE RECORD

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STATE OF KENTUCKY  
COUNTY OF FRANKLIN

I, Connie Sewell, the undersigned Notary Public, in and for the State of Kentucky at Large, do hereby certify the foregoing transcript is a complete and accurate transcript, to the best of my ability, of the hearing taken down by me in this matter, as styled on the first page of this transcript; that said hearing was first taken down by me in shorthand and mechanically recorded and later transcribed under my supervision; that the witnesses were first duly sworn before testifying.

My commission will expire November 19, 2005.

Given under my hand at Frankfort, Kentucky, this the 22nd day of November, 2004.

*Connie Sewell*  
\_\_\_\_\_  
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State of Kentucky at Large  
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