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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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VOLUME III

DATE OF HEARING: November 10, 2004

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1 CHAIRMAN GOSS:

2 Thank you. Everyone, please be seated. Good morning,
3 Counsel.

4 MR. SPENARD:

5 Good morning.

6 MR. INGRAM:

7 Good morning, Your Honor.

8 CHAIRMAN GOSS:

9 Let's go back on the record. Are there any matters to
10 bring up before the Commission before we resume with
11 Mr. Miller's cross examination?

12 MR. WUETCHER:

13 Yes, sir.

14 CHAIRMAN GOSS:

15 Mr. Wuetcher?

16 MR. WUETCHER:

17 Commission Staff would like to go ahead and make a
18 brief statement for the record. During Mr. Spenard's
19 cross examination of Mr. Miller yesterday, reference
20 was made to a July 2, 2002 letter that was apparently
21 written by Corporate Counsel for Kentucky-American to
22 the Executive Director of the Public Service
23 Commission, then Executive Director Tom Dorman. The
24 Commission Staff, at least those assigned to this case,
25 and I believe the entire Staff, was totally unaware of

1 the existence of this letter. Prior to the hearing,
2 the Commission Staff had conducted a search, assisting
3 the Commission's General Counsel in determining all
4 documents and events that may have occurred in which
5 there were any contacts between Kentucky-American, its
6 representatives or employees, and Commission Staff or
7 other representatives of the Commission involving any
8 issue that is pertaining to this current rate case.
9 Our search did not indicate this letter, July 2nd
10 letter. Immediately following the adjournment of the
11 hearing yesterday, I inquired of all the Staff members
12 who were assigned to this case. None of them were
13 aware of this letter, and we did a search of the
14 Commission's mail logs and of the cases where we
15 thought the letter may have been inadvertently filed.
16 That included the two merger cases, Case Nos. 2002-
17 00018 and 2002-00317, and the Case No. 2001-00440, I
18 believe, involving Kentucky-American's application for
19 an asset protection surcharge, and we could not locate
20 any of the documents here or any of the - the letter of
21 July 2, 2002. We would like to note for the record
22 that this is the first time that we are aware of the
23 existence of this letter and we're continuing to
24 search. We attempted to do a search of the prior
25 Executive Director's mail log this morning and did not

1 note any notation pertaining to either a letter being
2 received from Kentucky-American from its Corporate
3 Counsel pertaining to this issue around this date or
4 any type of response to Kentucky-American regarding
5 this type of issue. While we're continuing to search,
6 we would just like to note that for the record and note
7 our complete surprise as to the existence of that
8 letter.

9 CHAIRMAN GOSS:

10 All right. Mr. Bentley, I believe, that the Commission
11 Staff prepared a response or prepared a log as a result
12 of a request by the Attorney General's Office for any
13 and all - I don't remember how it was couched -
14 including all correspondence, contacts, and that sort
15 of thing, with regard to the merits of the case between
16 Commission Staff and any other party in the case; is
17 that correct?

18 MR. BENTLEY:

19 Yes, sir. They made a motion for disclosure of all
20 ex parte communications between the parties in this
21 case and the Commission and its Staff.

22 CHAIRMAN GOSS:

23 And this Commission, I believe, entered an Order . . .

24 MR. BENTLEY:

25 We issued an Order, yes.

1 CHAIRMAN GOSS:
2 . . . sustaining that motion and . . .
3 MR. BENTLEY:
4 Disclosing those contacts.
5 CHAIRMAN GOSS:
6 Okay. Was this letter that Mr. Wuetcher just informed
7 the Commission about part of that log or part of the
8 response to that?
9 MR. BENTLEY:
10 No, sir, it was not.
11 CHAIRMAN GOSS:
12 All right. You've seen the letter, I presume.
13 MR. BENTLEY:
14 Yes, I have.
15 CHAIRMAN GOSS:
16 And will you supplement or amend the response that has
17 been previously provided to the parties to include a
18 notation concerning this letter?
19 MR. BENTLEY:
20 Yes, Mr. Chairman.
21 CHAIRMAN GOSS:
22 Okay. Please do that. Any of the other parties have
23 any sort of comment or anything they wish to say with
24 regard to what Mr. Wuetcher has just informed the
25 Commission about? Mr. Barberie?

1 MR. BARBERIE:

2 Your Honor, I'll simply state for the record that I was
3 counsel for the Urban County Government during the
4 merger case in which that letter was apparently sent
5 while that was before the Commission. I never received
6 a copy of that letter until it was provided as part of
7 the discovery responses to the Urban County Govern-
8 ment's Third Set of Data Requests. I'll just state
9 that for the record.

10 CHAIRMAN GOSS:

11 Okay. Mr. Howard?

12 MR. HOWARD:

13 Mr. Chairman, we appreciate General Counsel's due
14 diligence. I'm confident that he did the best job that
15 he could. I'm sure that there were volumes of
16 materials that he had to go through. We received that
17 information, I believe it was, Thursday morning. At
18 this point, we're not really sure what, if anything,
19 will be done with that, but we wanted to make sure that
20 we got that into the record, and, again, we appreciate
21 the efforts that the Commission has undertaken, but we
22 felt compelled that we needed to get that into the
23 record in this case.

24 CHAIRMAN GOSS:

25 All right. I appreciate it.

1 MR. HOWARD:

2 And, likewise, I was also, along with Mr. Spenard,
3 counsel in the underlying cases in which that
4 particular matter was addressed.

5 CHAIRMAN GOSS:

6 Okay. So the first time that you saw the letter was
7 Thursday morning?

8 MR. HOWARD:

9 Thursday morning.

10 CHAIRMAN GOSS:

11 Okay.

12 MR. HOWARD:

13 It was my understanding, as I recall, that information
14 was supplied to us by electronic delivery from the
15 company Wednesday at approximately five-thirty. I
16 reviewed it Thursday morning, and it was at that point
17 in time that we discovered that information.

18 CHAIRMAN GOSS:

19 Okay. All right. Okay. Mr. Ingram?

20 MR. INGRAM:

21 Two observations, Your Honor. First of all, the tenor
22 of the letter is no different than my initial letter on
23 the subject of requesting deferrals. Secondly, when
24 that letter was discovered at Kentucky-American very
25 recently, there was some question about whether or not

1 the letter was ever sent, and I cannot affirmatively
2 represent to the Commission or to the Staff that the
3 letter was actually sent. Nobody at Kentucky-American
4 can stand up and say that's the case, which could
5 perhaps explain why it can't be found at the PSC. I'm
6 not representing that it wasn't sent.

7 CHAIRMAN GOSS:

8 I understand. Okay. Mr. Barberie?

9 MR. BARBERIE:

10 Is Mr. Miller, Herb Miller, the best person to testify
11 about that? I'd like to know if it was sent or not,
12 because . . .

13 MR. INGRAM:

14 Well, . . .

15 MR. BARBERIE:

16 I mean, it seems kind of - I believe it was likely sent
17 based upon what's happened so far, but it was never
18 disclosed until - as part of your Application, I don't
19 believe it was disclosed. The first time it was
20 disclosed, I think, probably to anybody that's
21 acknowledging its disclosure was Thursday. I have a
22 problem either way. If it was represented by Mr.
23 Miller that that was provided to the auditors in
24 support of it being likely that they would get the
25 asset or what they were seeking as a result of

1 providing that letter, I have a problem with what he
2 has provided to his auditors. So I'd really like to
3 know if it was sent or not and I'd like them to produce
4 someone that will testify one way or the other, and I
5 would think it would be Mr. Miller.

6 CHAIRMAN GOSS:

7 Okay. Mr. Ockerman?

8 MR. OCKERMAN:

9 I just want to echo for the record Mr. Barberie's
10 statements. I was counsel for Bluegrass FLOW in the
11 underlying cases where it was an intervenor and I had
12 no knowledge of that letter until it was produced into
13 my office Thursday.

14 CHAIRMAN GOSS:

15 Okay.

16 MR. HOWARD:

17 If I may add one other point, Mr. Chairman, I'm trying
18 to understand, and I've spoken to some degree with Mr.
19 Spenard, but, of course, with the magnitude of the
20 case, we're handling a lot of issues, that the date of
21 that letter was July 2nd, and that was pertaining, at
22 least by inference, to a current case. That case, the
23 Order on rehearing was not issued until July 10th. So,
24 if it was sent, a letter by the company, relative to
25 issues that were being addressed in a current case, a

1 case that was not - there was not an Order issued on
2 rehearing until July 10th, so, there again, the issue
3 of ex parte communication.

4 CHAIRMAN GOSS:

5 Sure. And, of course, for the record, we're talking
6 about July 2nd and July 10th, 2002.

7 MR. HOWARD:

8 That's correct, Your Honor.

9 CHAIRMAN GOSS:

10 And I also note from the back page of the letter that
11 it was signed by Mr. Miller and that there is no - for
12 the record, I would state that there is no indication
13 that a carbon copy of any type was sent to anyone else
14 and it does appear at the bottom of the letter that
15 some sort of attachment was included with the letter,
16 but was there an attachment provided when this letter
17 was disclosed last Wednesday evening? Do we know that?
18 Do you know that, Mr. Howard? Was there an attachment
19 to this letter that was provided?

20 MR. BARBERIE:

21 I don't believe so, Your Honor.

22 CHAIRMAN GOSS:

23 Okay.

24 MR. BARBERIE:

25 It looked like it was just the letter attached.

1 MR. WUETCHER:

2 There's no attachment in the documents that were filed
3 with the Commission and provided to Lexington-Fayette
4 Urban County Government. The attachment is identified
5 in the letter itself as a copy of a NARUC Resolution of
6 its Board of Directors regarding, I believe,
7 precautionary steps to secure facilities.

8 CHAIRMAN GOSS:

9 Oh, okay. Well, that's probably something that the
10 parties could get hold of anyway if it's some sort of
11 NARUC Resolution. I'm sure that's a matter of public
12 record. Okay. Well, I just bring that to everyone's
13 attention that there does appear to be . . .

14 MR. BENTLEY:

15 Mr. Chairman, if I could be recognized, . . .

16 CHAIRMAN GOSS:

17 Yes, sir, Mr. Bentley.

18 MR. BENTLEY:

19 I would also like to point out that this letter was
20 addressed to Tom Dorman who is the former Executive
21 Director here. He's no longer with the Commission.
22 The current Staff has no recollection of this letter
23 whatsoever. We went to Mr. Dorman's secretary this
24 morning and asked her if she had ever seen the letter.
25 She could not recall. We searched her files and her

1 records and there was no record of the letter.

2 CHAIRMAN GOSS:

3 Okay. There appears to be on the top of the letter, at
4 least on my copy, it looks like a fax transmittal
5 notation where it was faxed on January 7, '03, at
6 14:45 hours from KAWC, and that's where my copy is
7 unclear. There's some writing over top of it and I
8 can't really tell. Well, you know, the letter speaks
9 for itself. Certainly, Mr. Barberie indicates that
10 he'd like for Mr. Miller . . .

11 MR. BARBERIE:

12 If there's going to be an issue about whether it was
13 sent or not, I think it's perfectly appropriate . . .

14 CHAIRMAN GOSS:

15 Sure. Sure.

16 MR. BARBERIE:

17 . . . to have the person that allegedly mailed the
18 letter come up and testify about whether he sent it or
19 not.

20 MR. INGRAM:

21 Well, now, I think Mr. Barberie is stretching what I
22 intended to say beyond where I think it ought to be
23 assumed. What I said was there was a discussion, when
24 this letter was discovered, as to whether or not it was
25 sent.

1 CHAIRMAN GOSS:

2 Right.

3 MR. INGRAM:

4 Now, let's assume it was sent. I have no problem with
5 that.

6 CHAIRMAN GOSS:

7 Okay. Okay. All right.

8 MR. BARBERIE:

9 If they're going to acknowledge, in fact, that it was
10 sent, I don't need Mr. Miller to testify that it was,
11 obviously.

12 MR. INGRAM:

13 I'm perfectly willing to assume it was sent. All I'm
14 saying . . .

15 MR. BARBERIE:

16 I'm just trying to get a binding commitment from them
17 in this case that that letter was, in fact, sent so
18 that there's no ability at a later point in time to say
19 that it was not.

20 MR. INGRAM:

21 Well, I am unprepared to do that, Your Honor.

22 MR. BARBERIE:

23 Then I think you need to have Mr. Miller available to
24 testify about that.

25

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MR. INGRAM:

He's in Pennsylvania this morning.

CHAIRMAN GOSS:

Well, why don't we do this. Why don't - how about, Mr. Ingram, if you speak to Mr. Miller on the phone at a break or whenever you can and inquire of him whether or not he remembers this letter being sent? If you can come back, then, after your discussions with him and are willing to state on the record that it is Kentucky-American Water Company's position that the letter was sent, then I think that takes care of the problem.

MR. BARBERIE:

That would take care of it from my perspective, Your Honor.

CHAIRMAN GOSS:

If Mr. Miller indicates that he does not know one way or the other, then perhaps Mr. Miller would need to appear so he could be questioned on the matter.

MR. INGRAM:

I will do that, Your Honor.

CHAIRMAN GOSS:

Okay. Let's try to do it that way, and, if you would, Mr. Ingram, just let us know when you're able to contact Mr. Miller and advise us one way or the other as to whether or not we need to have him here. Okay?

1 MR. HOWARD:

2 Thank you, Mr. Chairman.

3 CHAIRMAN GOSS:

4 All right. Thank you all. All right. Are there any
5 further matters, then, to take up before the Commission
6 prior to resuming with Mr. Michael Miller's cross
7 examination? All right. Hearing none, we'll proceed,
8 then. Mr. Childers, are you going to go first?

9 MR. CHILDERS:

10 Yes, Your Honor.

11 CHAIRMAN GOSS:

12 Okay.

13 The witness, MICHAEL A. MILLER, after having been
14 previously duly sworn, testified further as follows:

15 CROSS EXAMINATION

16 BY MR. CHILDERS:

17 Q. Good morning, Mr. Miller.

18 A. Mr. Childers, how are you, sir?

19 Q. Is it true, Mr. Miller, that Kentucky-American's
20 stockholders currently provide some assistance to low-
21 income users through the Water for Life program?

22 A. Yes, sir, that's correct.

23 Q. And would you describe briefly for the Commission what
24 that program is?

25 A. Yes. The company, through its below-the-line

1 donations, provides funds, what we call Water for Life.
2 We send out bill inserts about that and give our
3 customers the opportunity to add one dollar to their
4 payment or their bill each month for the purpose of
5 this also. The money donated by the company and by the
6 customers towards this are turned over to the group
7 that's represented by Mr. Childers who administers
8 those funds to help low-income customers of the water
9 company who may have trouble paying their water bills.
10 Q. Now, in terms of the low-income program that's proposed
11 as part of this rate case, my understanding - and I'm
12 looking at a data response. It's the Public Service
13 Commission's Second Set of Information Requests,
14 No. 31, and I believe you were the responding witness
15 in which you said, "The proposed tariff places the
16 additional assistance on the customer base in a manner
17 similar to programs approved in other jurisdictions.
18 This assistance is provided at a minimal and reasonable
19 cost to the customers." Can you explain that?
20 A. Yes, sir. What we're treating this like and what it's
21 been treated like in other jurisdictions is it would
22 just be recovered as an expense of the company. We
23 would make payments regarding this tariff to whatever
24 extent there were applicants and it needed to be
25 covered. We would pay that, and we've talked to your

1 organization again about administering that for us.
2 Our experience in other states, and what this tariff is
3 all about is we're proposing a 25 percent discount on
4 the service charge of a bill for Kentucky-American.
5 For anyone that can demonstrate that they meet the
6 Federal Poverty Guidelines for whatever their family
7 situation may be, household size, and so forth, CAC
8 would determine that eligibility. Once that eligi-
9 bility has been determined, then we would simply go
10 into the customer record and apply that discount to
11 those customers who have been certified as being
12 qualified for the discount. It would just be like an
13 expense to the company that we'd recover in our rates.
14 We're asking for \$30,000, which we think is a fair
15 estimate of what that program would cost on an annual
16 basis, to be recovered in rates and it's identified in,
17 I think, my testimony and some of the data requests.
18 We've based that estimate of \$30,000 on experience in
19 other states, which is about two and a half cents per
20 customer per month. So the remaining customers would
21 have to pay that small portion in order to help those
22 that are in most need of help.

23 Q. Now, during the past, in the past, the Water for Life
24 program has been the only program available for low-
25 income assistance; is that true?

- 1 A. To my knowledge, unless there's some state legislative
2 program, but I'm not aware of that.
- 3 Q. And isn't it true, Mr. Miller, that, at times, there
4 were times when there were no funds available during
5 2003 for low-income assistance?
- 6 A. That's my understanding; yes, sir.
- 7 Q. And do you know the total amount of the money that was
8 allocated to the Water for Life program in 2003?
- 9 A. Yes, sir. It was \$6,602.66. \$5,000 of that came from
10 the company's donation and \$1,602 from the customers.
- 11 Q. Mr. Miller, would you describe for the Commission the
12 program that is in place in Pennsylvania with
13 Pennsylvania-American Water Company that is similar to
14 the program that's being proposed here for low-income
15 assistance?
- 16 A. Certainly, Mr. Childers. It's essentially identical to
17 the Pennsylvania program. I mean, the components are a
18 25 percent discount on customers who are qualified to
19 meet the Federal Poverty Guidelines. That would be
20 applied. They would have to be recertified each year
21 that they still remain below, at or below the Federal
22 Poverty Guidelines. That's about it. It's a pretty
23 simple application actually.
- 24 Q. Now, you indicated earlier that the 25 percent discount
25 is on the service cost. Is that the entire water bill?

1 A. No, sir. It's just - our water tariffs are made up of
2 two components. There's a service charge which
3 captures basically your, you know, your costs
4 associated with just the customer billing, meter
5 reading, things like that, and then there's a price per
6 thousand gallons, if you will, for any usage and we're
7 only talking about applying the discount just to the
8 service charge portion of the tariff.

9 Q. Have you done any estimates of how much that would be
10 on each bill, say, in the different areas that
11 Kentucky-American serves, the Central and the Tri-
12 County (sic) or Elk Lake? I forget the names. Elk
13 Lake, is that right? Yeah.

14 A. Somewhere we answered that in a data request, Mr.
15 Childers. I don't have those numbers stuck to memory,
16 but it seems like to me the discount in at least the
17 Central Division was somewhere \$2.50 per month.

18 Q. Per month? Okay. Now, isn't it true also, Mr. Miller,
19 that, in West Virginia, there's currently pending an
20 application for a similar tariff as had been approved
21 in Pennsylvania?

22 A. Yes, sir. We've applied for that in West Virginia.
23 It's part of the current case there, and we've also
24 requested a very similar tariff in our Tennessee rate
25 case, which we filed in September.

1 Q. And isn't it also true, Mr. Miller, that, in Pennsyl-
2 vania, the Pennsylvania company has now been approved
3 for an increase from 25 percent to 50 percent for their
4 low-income program?

5 A. In their latest rate case, that adjustment was made;
6 yes, sir.

7 Q. Now, isn't it also true that the company donates more
8 money from its stockholders in Pennsylvania than it
9 does in Kentucky?

10 A. I'm not sure of the number in Pennsylvania, Mr.
11 Childers. I mean, they're a much larger company, at
12 least from customer base.

13 Q. Is that true?

14 A. I would think it's true.

15 Q. Do you know how many customers Pennsylvania has? I
16 think that's been asked for in a data request.

17 A. Somewhere over 600,000 customers.

18 Q. As opposed to 100,000?

19 A. 105,000 or 110,000.

20 Q. Okay. What about West Virginia? Do you know roughly
21 the number of customers that that company serves?

22 A. Approximately 165,000 customers.

23 Q. Okay. Now, it is true in West Virginia that the
24 company donates \$50,000 toward that program?

25 A. That's true.

1 Q. Now, in terms of the Water for Life program, do you
2 have the figures for what's been available to the low-
3 income community in that program for several years
4 prior?
5 A. Yes, I do.
6 Q. Can you tell the Commission what those figures are?
7 A. I think the program was initiated in 1999 and, since
8 1999 up through present date in 2004 or the end of
9 September, I think it is, it's been \$36,047.
10 Q. Would you break that down by year?
11 A. Sure. In 1999, it was just kicking off. It was \$507.
12 In 2000, it was \$7,334. In 2001, \$9,650. In 2002,
13 \$6,362. In 2003, \$6,602, and, year to date '04 is
14 \$5,590.
15 Q. Okay. In the Public Service Commission's Second Set of
16 Information Requests, Item No. 28, you were asked to
17 explain how, in the absence of any express statutory
18 authority to provide a separate customer classification
19 based upon income, the Commission may authorize the
20 low-income tariff, and do you have those in front of
21 you?
22 A. I can get them.
23 Q. It's the Public Service Commission's Second Set of
24 Information Requests.
25

1 MR. SPENARD:

2 What item number?

3 MR. CHILDERS:

4 Item No. 28.

5 A. I have that, sir.

6 Q. Okay. No. 28, your response was that the company may
7 use reasonable considerations for reasonable classifi-
8 cations of rates, and you cite KRS 278.030(3). At the
9 bottom, you go on to say that this " ... is philo-
10 sophically no different than requiring the cost of
11 service to a particular area to be borne system-wide
12 rather than by customers in the particular area." Can
13 you explain that for the Commission, please?

14 MR. SPENARD:

15 I'm going to object. I'm sorry to interrupt, Mr.
16 Childers. I'm going to object. To the extent
17 that he is asking this witness with regard to
18 legal conclusions, this witness is not qualified.
19 I also point to this witness' Response to the
20 Attorney General's First Request, AG Item 1-173,
21 when we asked for an identification of the
22 statutory basis under the current regulatory
23 framework in Kentucky authorizing the imple-
24 mentation of the surcharge, the Response,
25 "Kentucky-American ... objects to this data

1 request because the information sought is a legal
2 conclusion." If he wants to ask him some things
3 with regard to policy in some general sense, that
4 may be permissible, but if he's going to - the way
5 this question sounds like it's set up, he's
6 talking about specific statutory or regulatory
7 framework, and this witness is not qualified to
8 give that answer and this witness also did not
9 answer our question with regard to this matter,
10 and we don't want to see that flip over now.

11 CHAIRMAN GOSS:

12 Thank you. Mr. Childers?

13 MR. CHILDERS:

14 Yes, Your Honor. The statute basically says that
15 a classification has to be reasonable and that's a
16 factual determination. This is a proposal that's
17 been put forth by the company, and the Commission
18 is charged with determining the facts as to
19 whether it's a reasonable classification or not.
20 I think it's appropriate for the witness who
21 designed the program and who has given answers in
22 data requests along the lines of why this is
23 considered to be a reasonable classification, I
24 think he's entitled to explain the answer that he
25 gave to the Public Service Commission Staff in the

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Second Set of Data Requests.

CHAIRMAN GOSS:

What's the statutory cite? 278?

MR. CHILDERS:

In here, it's 278.030. There is also - I can point the Commission to 278.170(1). Basically what we're saying is this is a question of fact, that he's entitled to testify about matters of fact.

CHAIRMAN GOSS:

Other counsel have any dog in this fight?

MR. INGRAM:

Well, Your Honor, as I understood the question, it really was is the low-income tariff philosophically compatible with other issues in the cost of service study, and it doesn't have anything to do with interpreting a statute. I think this witness is clearly competent to talk about the cost of service study.

CHAIRMAN GOSS:

Mr. Spenard?

MR. SPENARD:

Well, Mr. Chairman, if I understand the nature of what Mr. Childers said, is that he is asking this witness specifically about his conclusions

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regarding whether or not the program meets the mandates of 278.030(3), and that's not simply a general policy question. That's an application of a specific set of facts to a specific statute and that's not merely a . . .

CHAIRMAN GOSS:

Well, that's certainly something - that's within the Commission's purview. That's something that the Commission must decide, and I agree with you. To the extent that his question may have asked for a legal conclusion or a legal opinion, the objection will be sustained, but, to the degree that the question merely asks for some policy or philosophical belief or opinion on his part as to the cost of service study or some other issue, I think it's appropriate. So why don't we try the question again.

MR. CHILDERS:

Okay.

CHAIRMAN GOSS:

And, if you would, just rephrase it such that it does not ask for a legal conclusion. I'm not saying that your question before asked for a legal conclusion, but let's try it again.

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MR. CHILDERS:

Yes, sir.

Q. Mr. Miller, the company has proposed this low-income discount as part of its rate case, and my question to you is you have indicated in data responses that philosophically it's no different than requiring the cost of service to a particular area to be borne systemwide rather than by customers in a particular area. Can you explain that and expound on that, please?

A. I'll attempt to, Mr. Childers.

Q. Okay.

A. I mean, cost of service studies per se are averaging and allocating costs to entire classes of customers. I mean, the true fact is the true cost to each customer is probably different, but it's just not feasible, if you will, to try to set up tariffs like that so that each customer per se would have their own tariff. This is a class of customers that, you know, I think it's reasonable to address. They're the most needy people in our community here, and I think it's appropriate and reasonable, from our looking at things, in a cost of service to do or attempt to do something to assist those customers who have the most need. I think that falls within the broad cost of service type allocations

1 that we deal with in the regulated business.

2 Q. Thank you, Mr. Miller, and you've indicated, I believe,
3 earlier that the estimated cost is 2.5 cents per month
4 per customer?

5 A. Yes, sir. That's our estimate based on what's
6 occurred in other jurisdictions.

7 Q. You were asked in a data request from the Public
8 Service Commission in their Third Set of Information
9 Requests, and this was No. 55, whether Kentucky-
10 American's stockholders considered increasing their
11 contribution to the fund and, in your response, you
12 indicated that, "The Company does review its contri-
13 butions to the community annually and will review the
14 funding of this item in relation to the level of
15 assistance requested from the Program and consider an
16 increase to this program in relation to the numerous
17 requests the Company receives for funding ..." from
18 other community organizations, and my question to you
19 is two part. My understanding is that, as part of this
20 rate case, the activation fee is being proposed for the
21 first time, which is a \$24 fee for new service or, when
22 someone moves, they will pay the - it's basically a
23 hook-up fee. Does that apply to the low-income
24 customers as well?

25 A. The activation fee itself?

1 Q. Yes.

2 A. Yes, it would apply to each and every customer that
3 fell under the conditions of that tariff.

4 Q. And would the company have any objection to the Water
5 for Life program, which is a separate program funded by
6 stockholders, being used in part to assist low-income
7 customers to pay that activation fee if that's a
8 problem for low-income customers?

9 A. The company would have no objection to that.

10 Q. Well, it's true, though, that, for 2005, the company
11 has only budgeted \$5,000 as a contribution for the
12 Water for Life program; correct?

13 A. That's true; yes, sir.

14 Q. Now, in response to the Public Service Commission's
15 Third Set of Information Requests, No. 47, you were
16 asked to talk a little bit about the Pennsylvania-
17 American program and to review that, and you indicated
18 that, in discussions with the President, the Vice
19 President of Finance and Director of Rates for
20 Pennsylvania-American Water Company, the company
21 learned of the low-income tariff in place and the
22 manner in which it was implemented and operated, and,
23 based on those discussions, there was a positive
24 reaction and the impact the tariff had experienced was
25 a positive experience. Can you explain that and your

1 discussions with those folks?

2 A. Yes, sir. I mean, it's normal in American Water Works
3 that people in positions similar, Director of Rates,
4 VPs of Finance, we get together and we talk about
5 what's going on around in the various jurisdictions,
6 and this was just a meeting we had to talk about
7 general rate matters that it came up. This was
8 something that Pennsylvania had done sometime ago.
9 There had been a very positive reaction from the
10 customer base up there regarding the program, and,
11 based on those discussions, I felt that, and I agreed,
12 that this seemed to be a reasonable type program for
13 the company to request, and each rate case that I've
14 been involved with in Virginia - or not Virginia; I'm
15 sorry - but West Virginia, Kentucky, and now file in
16 Tennessee, we've filed similar tariffs, because we
17 think they're appropriate and reasonable and, you know,
18 designed to help those customers who have the most need
19 at a very small cost to the rest of the customer base.

20 Q. Is it a simple and easily implemented tariff, in your
21 opinion?

22 A. Absolutely. Once we have a third-party organization
23 certify the eligibility according to the Federal
24 Poverty Guidelines, we simply go in and simply make a
25 tick in the customer file that that tariff applies and,

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from there forward, it will be applied.

Q. Okay. As to the cost of service issue, Mr. Miller, is the cost of service to the low-income - the cost of service to the low-income community, is it higher due to higher credit and collection costs, in your opinion?

A. I don't have any specific data about that. I could give you my opinion. Yes, I think generally the lower-income people have more trouble meeting their payments than the affluent, if you will. I mean, that's a common sense answer, if that's good enough, sir.

Q. And it costs money for the company to go out and collect those bills; correct?

A. Yes, sir.

Q. So, if that is assisted in any way, it would lower the overall collection costs anyway for the company, in your opinion?

A. I think that would be an auxiliary benefit from this program; yes, sir.

MR. CHILDERS:

That's all I have. Thank you very much.

CHAIRMAN GOSS:

Thank you, Mr. Childers. Mr. Barberie, do you have questions?

MR. BARBERIE:

I have a few, Your Honor.

1 CHAIRMAN GOSS:

2 Okay.

3 CROSS EXAMINATION

4 BY MR. BARBERIE:

5 Q. Good morning, Mr. Miller. I'm Dave Barberie, on behalf
6 of the Urban County Government.

7 A. Good morning, Mr. Barberie. How are you, sir?

8 Q. Well, as long as we don't get into ROE too much, I
9 think I'll be all right. Is your full-time Government
10 Affairs person at Kentucky-American a registered
11 lobbyist?

12 A. I don't know the answer to that, sir.

13 Q. Would you accept that he or she is, subject to check?

14 A. I would think they are, but I don't know that for
15 certain, subject to check.

16 Q. In your mind, what benefit to the ratepayers does
17 having a full-time Government Affairs person serve?

18 A. Well, I mean, there's all kinds of matters in legis-
19 lative and in the regulatory areas that affect our
20 business that we need to have input into in regards to
21 making sure that we're looking after the best interests
22 of our customer. It could be any number of things
23 regarding water quality regulations, different
24 regulations, potential legislation that could be
25 damaging, in our opinion, to our customers and we think

1 that, you know, we need to monitor those and have our
2 input into that process.

3 Q. Do you have any specific examples you can provide me,
4 recent memory, distant memory, as far as what legis-
5 lative efforts someone in this position might have
6 undertaken?

7 A. It's not something that I follow closely. I mean, I'm
8 sure there are continual regulation issues and things
9 coming out of the Department of Water, and things like
10 that, and other legislative matters that need to be
11 looked at. I don't know the specifics. That's not my
12 area, Mr. Barberie.

13 Q. What about with respect to the full-time Corporate
14 Communications person? Do you have any understanding
15 of what that person does?

16 A. Certainly.

17 Q. Okay. What do they do?

18 A. Well, I mean, a big part of their job is to stay
19 abreast of things that are going on in our company,
20 services that we provide, enhancements to our service,
21 and obviously communicate that information to keep our
22 customers informed of things that are pertinent to
23 their service with the company.

24 Q. How much of it is informing the customer and how much
25 of it is just staying on top of those types of issues

1 from an internal perspective?

2 A. I think they're one and the same.

3 Q. In anticipation of Mr. Ingram objecting to me bringing
4 this up, let me get into why, lay a little bit of
5 background. It's my understanding - we asked you some
6 follow-up questions regarding the net revenues and the
7 dividends of Kentucky-American as part of our Third
8 Data Request to you all. We had some confusion about
9 the numbers that were purported, I think, in some of
10 the information versus some of the other information
11 that had been provided in the case, and I don't want to
12 put words in your mouth, but my understanding was that
13 the representation was that there had been a mistake
14 and that the numbers are pretty much close to what they
15 have historically been normally in that area.

16 A. I'm . . .

17 Q. Well, let me direct you to the . . .

18 A. There are a lot of data requests, Mr. Barberie.
19 I'm . . .

20 Q. It would be LFUCG Third Request for Information, No. 2.

21 A. Is it okay if I get that, sir?

22 CHAIRMAN GOSS:
23 Sure.
24 Q. Sure. That's fine.
25 A. LFUCG 3-2?

1 Q. Yes, sir.
2 A. I've got it.
3 Q. We've asked you generally about the additional retained
4 earnings because there appear to be an inconsistency in
5 the amounts that had previously been provided.
6 A. Yeah, I recall now.
7 Q. Okay.
8 A. Yes, sir.
9 Q. So, basically, in summarizing your testimony, the
10 reason the amounts are different is because there have
11 been mistakes on some of the information that had been
12 provided?
13 A. There was an error in our original filing . . .
14 Q. Okay.
15 A. . . . which we corrected several times.
16 Q. The reason I'd like to ask you more about this is
17 because, and I am not . . .
18 MR. BARBERIE:
19 Just so I can anticipate where Mr. Ingram might
20 come from on this, I'm not representing that this
21 is true, but, in the Sunday Edition, November 7th,
22 of the Herald-Leader, there was an article
23 regarding the, quote/unquote, "water issue," and
24 Mr. Warren Rogers, who, it's my understanding, is
25 purported to be a prime sponsor of the Coalition

1 Against a Government Takeover, has represented
2 that they got contributions from the stockholders
3 of the water company, and then he goes on,
4 according to the newspaper, to define a stock-
5 holder contribution as money that comes from the
6 water company that otherwise would have been paid
7 to shareholders as dividends. All I'm trying to
8 get at is an assurance, once again, that the
9 ratepayers aren't the ones that paid any monies to
10 the Coalition Against a Government Takeover, so
11 all I'm ultimately going to ask is that the
12 company provide sufficient documentary evidence to
13 that effect, and I don't think it's from the -
14 from the information on the retained earnings, it
15 doesn't look like his statement is necessarily
16 true, at least from the information we have on
17 that. My only intent is to track the money to
18 ensure that the ratepayers didn't end up paying
19 for any of that, and I think we had previously
20 asked generally for some information to that
21 effect with respect to political activities in one
22 of our previous data requests and it was more or
23 less, I think, generally denied, but, once again,
24 my only intent is to have clarification on Mr.
25 Rogers' statement from the water company's

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perspective.

MR. INGRAM:

Well, I hate to disappoint Mr. Barberie, but I do not object to the question, but I will simply point out this in response to his question. He asked basically for some documentary evidence and I don't know how Kentucky-American can provide that, but I would respectfully suggest, when he also asks whether or not the ratepayers of Kentucky-American have contributed to the Coalition against the takeover, I have no information about what the ratepayers of Kentucky-American have done, but I would assume that there are two places to find that out; ask the ratepayers or ask the Coalition or perhaps look at the results.

MR. BARBERIE:

My intent is not to suggest that certain ratepayers may not have contributed individually. My intent is only to track the money that Mr. Rogers is claiming came from the water company.

CHAIRMAN GOSS:

I guess the \$64,000 question is how do you - what do you want from Kentucky-American and . . .

1 MR. BARBERIE:

2 Well, first of all, I'd simply like a
3 clarification . . .

4 CHAIRMAN GOSS:

5 Hold on just a second - and in what format would
6 you like it? Do you know?

7 MR. BARBERIE:

8 I think the first question I'd like answered is
9 simply whether or not he is correct, Mr. Rogers is
10 correct, because that would be an answer to my
11 general question. If he's correct, he seems to be
12 saying it came out of the revenue stream, which I
13 don't have an issue with; I just would like to
14 know whether that's the case or not.

15 CHAIRMAN GOSS:

16 Okay.

17 MR. BARBERIE:

18 If that's not the case, what we had originally
19 asked for was documentary evidence on the - where
20 we thought something like this might be paid for,
21 if it was coming from the company, they have a
22 political activities account. I'm not saying that
23 that's where it would have been found, based upon
24 the previous disclosures that, I guess, if I'm
25 understanding it right, it's more or less that

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Kentucky-American paid for little or nothing of what went on directly with respect to these issues. I just want, you know, there to be a sufficient - and I'm not trying to ask - what I'm trying to do is not ask for too much information.

CHAIRMAN GOSS:

I understand.

MR. BARBERIE:

I think it would be a very limited amount of information that would be required to answer the question.

CHAIRMAN GOSS:

And I appreciate that. Of course, in fairness to - I think what Mr. Ingram is saying is he doesn't mind - don't let me put words in your mouth - I think he's saying he doesn't mind providing that type of information if he knows what you're asking for. Is that right?

MR. INGRAM:

Yes, Your Honor. I think witnesses have . . .

CHAIRMAN GOSS:

And you may not know what to ask for. Maybe we're in a - I didn't mean to interrupt you, Mr. Ingram.

1 MR. BARBERIE:

2 The reason I don't know what to ask for is I don't
3 want to make it - I don't really want to know
4 what all these accounts say . . .

5 CHAIRMAN GOSS:

6 Okay.

7 MR. BARBERIE:

8 . . . other than to have enough information to
9 verify that it wasn't something that was passing
10 to the ratepayers.

11 CHAIRMAN GOSS:

12 Okay.

13 MR. INGRAM:

14 Every witness that has been asked the question
15 has testified under oath that there are absolutely
16 no costs that Kentucky-American Water Company has
17 put in the forecasted test year in this case that
18 relate to the government takeover of its assets.
19 Now, if that's insufficient comfort for Mr.
20 Barberie, I don't know where we go from here, to
21 be honest with you. If he can tell me what he
22 wants, we'll try to supply it.

23 MR. BARBERIE:

24 Well, I guess my initial question would be just
25 to follow up on whether or not is it correct that

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- I just want clarification or verification that Mr. Rogers' statement is accurate or inaccurate with respect to the water company.

CHAIRMAN GOSS:

Okay. Why don't you ask Mr. Miller that question and let's see if he knows the answer. Let us see if he can give you an answer.

MR. BARBERIE:

I may need the article back.

Q. I mean, do you understand what I was asking? My concern is it looks to me like . . .

CHAIRMAN GOSS:

Just read Mr. Rogers' statement there and paraphrase it if you want to, and let Mr. Ingram and Mr. Howard look over your shoulder to make sure you're paraphrasing it correctly, and then let's see if Mr. Miller can respond to it.

MR. BARBERIE:

Okay.

Q. Mr. Rogers purportedly says that, ". . . we get contributions from the stockholders of the water company," and that's part of a quote, and then he goes on to say, "Rogers defined stockholder contributions as money that comes from the water company that otherwise would have been paid to shareholders as dividends." So

1 it looks - I understand his statement to basically be,
2 "Instead of giving shareholders dividends, we gave some
3 of the money to the Coalition Against a Government
4 Takeover." I'm not saying it's true. I'm just - that
5 seems to me what he's saying.

6 A. I'll try my best, Mr. Barberie. Certainly, I had no
7 contact with Mr. Rogers, and I can't speak for what he
8 says or if it was quoted accurately in the paper. I
9 will say this; that, as far as Kentucky-American is
10 concerned, we had, in our filing, in our base period
11 filing, we had expenses that we tried to capture in an
12 account that was easily recognizable that dealt with
13 what we were spending in legal fees and otherwise
14 regarding defending ourselves in that pursuit, and, to
15 the best of our ability and knowledge, through lots of
16 discovery and lots of questions, we can say, to the
17 best of my ability, that there is none of those
18 expenses that were in the base period carried forward
19 into the forecasted test year and we're not requesting
20 any of those expenses for recovery of rates in this
21 case.

22 Q. But getting back to my question, do you know whether
23 his characterization is accurate?

24 A. I don't know. I know for a fact I don't think
25 Kentucky-American did that. Does a stockholder, out of

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their own pocket, do that? I don't know what he means by that.

Q. No, and that's not how I'm reading it. I'm not trying - I'm not reading his statement now. The way I read his statement is, prior to the company even issuing - and maybe I just have a misunderstanding about what he said, but I think he's saying, prior to the dividends even being issued to the shareholders that own a stake in the company, there was a decision made that some of those earnings would instead go to pay to the Coalition. That's how I read his statement.

A. Then, to the best of my knowledge, I don't think that's - I don't agree with that statement in regards to this. I mean, obviously, if the company expended money and those are in this case - we've provided even invoices and a recap of what we said we spent - to the extent we spent those, obviously they reduced our earnings and they did impact retained earnings, but absolutely I don't understand what Mr. Rogers is saying fully and I don't think it's consistent with my understanding.

Q. I don't understand it either, which is why I was asking about it. It did not - based on the information you all provided, his statement does not make sense to me, the way I'm reading his statement.

A. I would rather stand on my statement, which is we have

1 not asked for any expenses, to the best of our
2 knowledge and ability to look through a lot of
3 documents, that there is any expense included in the
4 forecasted test year regarding the LFUCG condemnation
5 effort.

6 Q. Do you have your direct testimony in front of you?
7 A. Yes, sir.

8 Q. Could you please turn to Page 3? On Lines 10 through
9 13, you make a statement regarding the fact that the
10 company has not increased rates in nearly four years
11 from those approved in Case 2000-120 and, as a
12 condition to the change of control proceeding for the
13 purchase of American Water, you were basically
14 precluded from filing for rates before March 16th of
15 2004. Do you agree - and, when I talk about the merger
16 case, I guess, I'll talk about them collectively,
17 because I think the conditions essentially stayed the
18 same, more or less, between the 00018 case in 2002 and
19 the 00317 case in 2002. Do you agree that all of the
20 conditions of the merger cases were voluntarily
21 accepted by the company?

22 A. We - well, I mean, the obvious answer to that is yes.
23 Lots of discussion about those conditions, but, in the
24 end, they were accepted, Mr. Barberie.

25 Q. And obviously, based upon your statement in your

1 statement, you were aware that you couldn't file a rate
2 case any earlier than March 16, 2004 as one of those
3 conditions.

4 A. Yeah. I mean, in my reading of those conditions, it
5 was clear that part of the benefit that it was wanting
6 by the Commission to flow to the customers from this
7 transaction was a rate freeze, if you will, until
8 March 16, 2004. Going back to my Direct Exhibit 1, our
9 rate of return has continued to slip. There's been, in
10 my opinion, a tremendous benefit flowed to the
11 customers over that period because of that condition.

12 Q. Do you agree that the company was willing to accept the
13 stay out and its possible consequences in order to have
14 the merger with RWE approved?

15 A. Can you repeat that question, sir?

16 Q. Do you agree that you'd accept the potential con-
17 sequences of having to stay out?

18 A. Obviously. I mean, that's true.

19 Q. Let me direct you to Page 5, once again, of your direct
20 testimony. I'd like to ask you a few questions about
21 the American Water Capital Corporation. Is that an
22 affiliate of American Water Works Company?

23 A. It is a subsidiary of American Water Works Company and
24 its an affiliated agreement between American Water
25 Works Capital Corp. and Kentucky-American Water.

1 Q. Is one of its purposes to secure capital for American
2 Water companies, including Kentucky-American?
3 A. Absolutely. That's its primary purpose.
4 Q. When did this company first come into being? Or, I
5 guess, the type of arrangement you have today, has that
6 changed at all in the last couple of years?
7 A. No, sir. I think that it came into being, at least in
8 Kentucky, an approval, in Case No. 2000-189 which
9 approved that.
10 Q. Okay.
11 A. That was July 21st that the Order was entered,
12 July 21st of 2000.
13 Q. Does the American Water Capital Corporation secure
14 capital for any companies that are not American Water
15 companies?
16 A. Not to my knowledge.
17 Q. Is the American Water Works Company responsible for all
18 of the capital needs of the American Water system? I
19 guess - is it responsible for the capital needs of
20 Kentucky-American?
21 A. Are you speaking of American Water Works Capital Corp.?
22 Q. Yes.
23 A. The agreement gives Kentucky-American the option to use
24 Capital Corp. We're not required to exclusively use
25 Capital Corp. If we can obtain capital at a better

1 rate and better issuance cost somewhere else, we're
2 certainly free to do that. It's been my experience
3 that, by Capital Corp. combining the overall needs of
4 American Water Works and taking into consideration the
5 economies of scale of larger bond issues, I've not seen
6 an instance where we had an option to get lower-cost
7 capital than through that means, at least up to this
8 point.

9 Q. I think you probably just answered this question. Is
10 the value of American Water Works Company that it can
11 utilize its combined size and resources to obtain
12 capital at a lower cost?

13 A. Absolutely.

14 Q. Does American Water Capital Corporation utilize access
15 to foreign credit markets to obtain capital for
16 Kentucky-American Water?

17 A. I'm not sure I understand that question, but let me try
18 to answer it and, if it's not what you want, I'll try
19 again, Mr. Barberie. American Water Works Capital
20 Corp., at least in the last few issues, has placed its
21 bond issues and its short-term line needs on the
22 market. Those have been purchased by RWE, as I
23 identified in the synergy statement filed earlier this
24 year and attached at least to a schedule to my
25 testimony, at below what we could have gotten in the

1 market. So, I mean, RWE has been the purchaser of the
2 bonds.
3 Q. Okay.
4 A. I don't think that's a foreign market per se, but . . .
5 Q. Sure.
6 A. . . . RWE purchased the bonds.
7 Q. Has Kentucky-American utilized internal capital to
8 finance any construction in the last year?
9 A. Absolutely. I mean, we talked about that a little bit
10 yesterday.
11 Q. Is there a . . .
12 A. We do generate cash and, to the extent that we have
13 cash, we utilize that to fund our capital improvement
14 plan.
15 Q. Is there a previously provided exhibit or testimony in
16 this case that breaks down what those projects are?
17 A. Yes, sir. I mean, to my knowledge, I can't just go
18 find that data request, but it would be in numerous
19 schedules in our exhibits with the original filing, in
20 our work papers, and in response to several data
21 requests, if I recall.
22 Q. Let me turn you to Page 8 and 9 of your testimony. In
23 Question 15, you are asked about a permanent debt
24 financing schedule for September of next year. With
25 respect to the numbers that are provided in your

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answer, are those projections, with respect to the 30-year issuance, are those based upon U.S. or European capital markets, if you know?

A. Yeah. Those projections are based on U.S. markets. My source of information is Value Line, as I indicated in an exhibit that's attached to both my direct and updated in my rebuttal, and I simply looked at recent spreads between Treasury bonds and corporate bonds, used the projections from Value Line in the year of rates in this, 2005, to come up with what I believe is a very reasonable estimate.

Q. Let's turn to Page 11 of your direct testimony. Is it the company's belief that the cost of equity has increased since the year 2000, which was when it filed its last rate case?

A. Mr. Barberie, we've provided testimony by Mr. Vander Weide. He's went through a very detailed process to determine that, in his opinion, the cost of capital is 11.2 percent. The company reviewed that. Obviously, if we didn't agree with Mr. Vander Weide, we would have asked him to change it or we would have found another witness, but, yes, sir, we agree with Mr. Vander Weide's recommendation in this case.

Q. And is that higher or lower than it was in the year 2000?

1 A. We were authorized 11 percent in the last case. I
2 think the company asked for more than 11 percent,
3 though.

4 Q. Let's move on to Page 24 of your testimony, and I
5 apologize, because I think yesterday you indicated that
6 some of these numbers have changed and I'm not sure I
7 picked up on all of the changes you suggested. I know
8 the \$143,194 for ongoing is now one hundred thirty-four
9 thousand . . .

10 A. Four hundred twelve.

11 Q. Okay.

12 A. And there's two other instances in the following pages
13 that you'll see the \$143,194 that I indicated that's
14 now \$134,412.

15 Q. And does the four twenty-four go down accordingly also?

16 A. No, sir.

17 Q. Okay. Is the differential going to be the same, then?
18 I guess it's not.

19 A. Well, there's two pieces that we're requesting, Mr.
20 Barberie. One is our ongoing costs that will be there
21 in 2005. That's the \$134,412. We're also asking for
22 an amortization of our - I'm sorry. I spoke
23 incorrectly. The four twenty-four is the total of our
24 amortization plus the ongoing. So, yes, the four
25 twenty-four would go down by a like amount.

1 Q. Okay. All right.

2 A. I'm sorry.

3 Q. Okay. So the \$280,566 has stayed constant? Is that
4 accurate?

5 A. The amortization piece stayed constant, but the
6 difference between one forty-three and one thirty-four
7 would impact the four twenty-four.

8 Q. Okay.

9 A. Sorry for not correcting that.

10 Q. Just so I'm clear on this, is the entire \$280,566 to be
11 included in rate base to earn a return?

12 A. The unamortized balance is being requested as a rate
13 base return; yes, sir.

14 Q. Okay, and I may not ask this the right way. Let me
15 explain why I'm asking this. Are the federal and state
16 income taxes due on this unamortized portion, is that
17 already reflected in there, or is it going to go up as
18 a result of the tax issues?

19 A. Well, what we're really asking for in rate base is the
20 net of tax number.

21 Q. Okay.

22 A. Because we would have flowed that through as a tax
23 deduction when the money was spent, deferred the income
24 taxes, and appropriately that should be an offset or a
25 rate base reduction to the security costs.

1 Q. So that I understand it, the numbers won't - the
2 numbers aren't going to change as a result of tax rami-
3 fications?
4 A. No, sir.
5 Q. Okay. When is Kentucky-American suggesting that the
6 accrual for these assets should actually begin?
7 A. When rates from this rate case are approved and placed
8 in effect.
9 Q. Are you aware of the Case No. 2000-120 rate Order?
10 A. Yes, sir, Mr. Barberie. I took part in that case and
11 familiar with it.
12 Q. Would you agree, subject to check, that, on Page 23 of
13 that Order, the following statement is made? And if
14 you want to have your counsel pull it for you, that's
15 fine.
16 A. I just happen to have a copy here, Mr. Barberie.
17 Q. Okay. Page 23: "The Commission is concerned with
18 Kentucky-American's present practice of deferring
19 expenses as regulatory assets. In the future,
20 Kentucky-American shall formally apply for Commission
21 approval before accruing an expense as a regulatory
22 asset regardless of the ratemaking treatment that the
23 Commission has afforded such expense in previous rate
24 case proceedings." Do you agree that that statement is
25 contained in this Order?

1 A. Yes, sir, I do.

2 Q. Okay. Do you also agree that, with respect to the
3 actual ordering paragraphs contained on Page 71 and 72
4 of the same Order - and just so the record is clear,
5 this is the November 27th of the year 2000 Order of the
6 Commission. Do you agree that Condition No. 6 is that,
7 "Prior to accruing an expense as a regulatory asset,
8 Kentucky-American shall formally apply to the
9 Commission for approval of such accrual"?

10 A. Yes, sir, that's what it says. I would just like to
11 add one thing. I mean, first of all, we think we've
12 done that and, secondly, that the term "regulatory
13 asset" creates some problems for some people, and I've
14 tried to explain this in the letter of November 18th to
15 Mr. Dorman, of 2003, that a regulatory asset means one
16 that's being recovered in rates, and what we did
17 request was no rate treatment for the assets that we
18 had requested accounting deferral for, and I think
19 there's a difference in that, but, needless to say, I
20 mean, we still believe we've met the terms of that.

21 Q. As part of your direct testimony, you provided Exhibit
22 MAM-6 . . .

23 A. Direct, sir?

24 Q. Yes, sir.

25 A. Okay.

1 Q. At least I think it is.

2 MR. INGRAM:

3 Direct.

4 Q. "In the Matter of: Application of Kentucky-American
5 Water Company for Approval of Accounting Accruals"; is
6 it your understanding that this document was ultimately
7 filed with the Commission at some point in time?

8 A. It's my understanding; yes, sir.

9 Q. Do you recall when that was?

10 A. I'm not exactly sure. I mean, subject to check, I
11 think it was December 12th.

12 Q. Of 2003?

13 A. Yeah, I think, subject to check.

14 Q. Did you have any input into this particular document?

15 A. Yes, sir.

16 Q. So you're pretty familiar with its language; is that
17 correct?

18 A. I've read it numerous times; yes, sir.

19 Q. With respect to numbered paragraph 3. of that Order,
20 Page 2, the company has basically indicated that the
21 November 27, 2000 Order, in Case 2000-120, it was
22 directed to "formally apply for Commission approval
23 before accruing an expense ..." and then it goes on to
24 say, "This requirement is inconsistent with former
25 practice and the treatment afforded other utilities

1 subject to the jurisdiction of the Public Service
2 Commission. The requirement constitutes an unnecessary
3 burden with attendant costs and should be changed." Do
4 you agree that that statement is in the application?

5 A. Yes, sir.

6 Q. Are you aware of any other basis for Kentucky-
7 American's refusal to follow the formal application
8 requirement of that Order other than the language
9 that's contained in this paragraph?

10 MR. INGRAM:

11 I object to the question because it assumes that
12 the process prior to the filing of this case was
13 not a formal process.

14 Q. Well, let me ask you this, then, Mr. Miller. Are you
15 aware of - are you generally aware of the regulations
16 that pertain to the Public Service Commission in
17 Kentucky?

18 A. Generally aware, Mr. Barberie. I've not read the
19 entire code, certainly.

20 Q. Are you aware that, in 807 KAR 5:001 "Rules of
21 procedure," Section 15 specifies forms - I'll provide
22 you with a copy of that.

23 MR. HOWARD:

24 Mr. Barberie, what was that cite again, please,
25 sir?

1 MR. BARBERIE:

2 This would be basically Section 15 of the first
3 Section regarding Chapter 278, which is the "Rules
4 of procedure."

5 Q. Section 15, do you agree, after reviewing this
6 document, that Section 15 includes a provision that
7 basically says, "In all practice before the commission
8 the following form shall be followed insofar as
9 practicable:" and that Subsection (c) of that is
10 "Application"?

11 A. Are you asking me if that's what the document says?

12 Q. Yes.

13 A. Yes, sir.

14 Q. Would you also agree that, after reviewing the next
15 page of this particular reg, there is, in fact, the
16 preferred form of an Application provided?

17 A. Mr. Barberie, I'm - as it's been pointed out, I'm not
18 an attorney, but, I mean, subject to check, if that's
19 what you're saying . . .

20 Q. Well, let me ask you this. In retaining your attorney,
21 would you expect your attorney to be familiar with this
22 particular regulation?

23 A. Yes, sir.

24 Q. Is it accurate to state that the Commission could find
25 that the company is not entitled to the accrued

1 security costs?

2 A. Pardon? Can you repeat that question?

3 Q. Well, let me state that a different way. With respect
4 to the attempt by the company to recover accrued
5 security costs, is it accurate to state that this
6 Commission could find that the company is not entitled
7 to receive recovery for those amounts?

8 A. Well, Mr. Barberie, I would say that this Commission is
9 free to take the evidence in this case and make the
10 decision that they think is proper.

11 Q. I think I'm almost done. I may characterize this
12 particular document incorrectly. I believe the company
13 provided what was styled a Strategic Business Plan as
14 part of the discovery in this case.

15 A. That's correct, sir.

16 Q. Who developed that plan? Do you know?

17 A. Certainly. Mr. Barberie, as the VP Finance position, I
18 mean, I'm responsible for at least the financial
19 section of that. That is a document, though, that is
20 developed from a wide range of people and management
21 people that are responsible for Kentucky-American.
22 Obviously it involves a comprehensive look at our
23 capital spending. It involves a comprehensive look at
24 our operations. So we do have a lot of operations, and
25 Water Quality and different people look at that. It

1 all comes together in at least a financial outlook for
2 the next five years, at least, and it's not meant to be
3 down to the nitty-gritty detail, because that's simply
4 not possible. It's to lay out a road map that's here
5 is where we see we're going, here's where we want to
6 be, and here's what we need to do to get there, but
7 certainly, when it gets down to the time to go and talk
8 to our Board of Directors about that plan, Mr. Jarrett,
9 myself, Mr. Rowe, or Mr. Mundy would be an integral
10 part of presenting that document.

11 Q. I just wanted to know who developed it, basically. I
12 don't . . .

13 MR. INGRAM:

14 Now you know.

15 A. Well, it's not one person. It's a lot of people -
16 okay? - go together to develop that document.

17 Q. There seems to be some confusion, at least in my mind.
18 Is that document dated now in some respects?

19 A. It is dated. That document was - and I think I
20 indicated so in a data request - that was prepared back
21 in 2003, and obviously there has been a lot of things
22 change, as there normally would be when you're trying
23 to look out three or four years in the future.

24 Q. Let me ask you some questions about Owenton, because
25 I'm confused by the testimony that's been provided now

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that all of the questions have been asked with respect to the discovery. What is the company's position now on acquiring Owenton?

A. We have a purchase agreement, a contract, with the City of Owenton. There was some issues about the grant money that you heard about coming in in regards to the intake that had to be worked out. There is a need currently to increase the rates in Owenton. It's our intention and what we're trying to work on in between coming to this rate case and after we get through with this rate case is Ms. Valentine and I will be going back and trying to complete our review of that in order to come up with the documents that we anticipate to file before this Commission in that regard.

Q. Well, that's where my confusion lies, and I'm not trying to mischaracterize anything. It seems to me that Mr. Bush, in responding to the Urban County Government's and probably the other parties' initial inquiries with respect to Owenton, the position of the water company seemed to be that they were not required to go to the Commission for approval, and now it is my understanding, based upon the most recent testimony which you supported, that they are, in fact, required, or maybe I shouldn't say "required," but is choosing to go before the Commission. What, in fact, has changed

1 from Mr. Bush's statement that you don't have to go in
2 front of the Commission for approval to now apparently
3 the company choosing to go before the Commission?

4 A. Well, I mean, to the best of my knowledge, and that's
5 all I can speak to, I mean, there is some question in
6 our mind to whether we do or not now with the change of
7 rates and, whether we do or don't, we're going to err
8 on the side of safety and we're going to file it before
9 this Commission. If the Commission decides that they
10 don't have jurisdiction or don't want to take it up,
11 that's fine, and, if they do, we'll proceed with what
12 we file.

13 Q. Do you have an anticipated closing date at this point
14 in time for the Owenton acquisition?

15 A. It depends on when we get this document filed and what
16 the outcome of what I just described to you is. We had
17 hoped we could do it sometime late in December or
18 possibly first of the year. That would be our wish.

19 Q. One of the jurisdictions that I believe approved the
20 accrual of security costs was West Virginia; is that
21 accurate?

22 A. Absolutely.

23 Q. What was the return on equity that that commission gave
24 Kentucky-American?

25 A. They didn't give Kentucky-American ROE, but - you said

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Kentucky-American.

Q. I'm sorry; West-Virginia American.

A. We don't want the West Virginia commission coming to Kentucky; that's for sure. Seven percent is what they issued in their last Order. We have a current case pending that that issue is back out there again, but, Mr. Barberie, I have to tell you, in all honesty, I just have to comment on that, being an integral part of that rate case and the goings-on in West Virginia, it's not very often that the Supreme Court of Appeals takes up a PSC Order. The West Virginia Supreme Court of Appeals has accepted that, the company's appeal of that Order. It doesn't happen very often, but it has happened, and the oral arguments on that case will be January 12th of 2004 (sic).

Q. 2005?

A. 2005; I'm sorry.

Q. But nonetheless, as it stands today, that's still the return that you all are getting in West Virginia? When I say "you," I mean West Virginia-American.

A. I mean, yeah, there was no change in rates, Mr. Barberie, other than they did approve some what we call cost-causer tariffs, things similar to the activation fee we're talking about here. There was no change in general tariffs from the previous case, which

1 authorized a much higher rate of return. The case is
2 under appeal, so . . .

3 Q. But when we asked you with respect to whether it's
4 stayed as a result of being appealed, I believe your
5 answer is no.

6 A. There was no change in rates, so there was no stay to
7 it. I mean, it didn't change the Order, if that's what
8 you mean, but there was no change in rates, the general
9 rates, anyway.

10 Q. Okay. With respect to the Herb Miller letter that was
11 discussed earlier today, that was provided in response
12 to LFUCG's Third Request for Information, No. 4; is
13 that correct?

14 A. Can I grab that, sir?

15 Q. Sure.

16 A. Yes, sir.

17 Q. All right. And my understanding is that this was a
18 document that, in your mind, you thought had been
19 provided to the auditors in support of the company's
20 position that, under the applicable FAS, it was likely
21 to recover these costs?

22 A. Mr. Barberie, I don't know that I'm representing that I
23 gave this to the auditors.

24 Q. Well, let . . .

25 A. In reviewing my files and trying . . .

1 Q. Well, let me ask you this . . .
2 A. Can I answer the question?
3 Q. Sure.
4 A. I tried to go through my files and see the documents
5 that I had regarding what I had provided the auditors,
6 and what I really provided the auditors was my opinion,
7 as the Comptroller of the company, that rate recovery
8 of these expenses was likely. The documents that I
9 actually provided, I know for a fact, are the
10 Regulatory Asset Authorization forms that I attached.
11 I know I provided those to Mr. Sievers at American
12 Water Works. What I have done with the Price
13 Waterhouse external auditors is I've had discussions
14 with them each and every time. I know I provided them
15 these asset authorization forms. I indicated I hadn't
16 provided them the letters in November - I'm sorry -
17 September of 2003 or the responses in November from the
18 Commission, but I had relayed to them my discussions
19 and, based on those discussions, I gave my opinion.
20 Q. All I'm trying to verify is you specifically stated -
21 and you're the only witness sponsoring this testimony
22 in response to this request - you've said, "Attached
23 are the documents supplied to the company's external
24 auditors." Is there someone other than yourself
25 that would have been providing documents to these

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auditors?

A. No. No, sir.

Q. Then how did you come upon the opinion that this document was provided to the auditors?

A. I had this in my file, Mr. Barberie, and I've disclosed it and I supplied it to you, trying to be giving you the information that I had.

Q. And let me turn you to your response, also LFUCG Third Request for Information - this would be No. 6. The Urban County Government specifically asked why did the company wait until, apparently, September 24th to seek permission to accrue these assets, and your response was: "The Company did not wait until September 24, 2003 to seek permission. See letter from ..." - I'm assuming this is supposed to be "Herbert," Herbert A. Miller - "... Herbert A. Miller, Vice President and Corporate Counsel for the Company, to Mr. Thomas Dorman dated July 2, 2002."

A. Yes, sir, and, to be honest with you, I hadn't recalled this letter until you asked the Data Request No. 4 that you just referenced. In reviewing through my files, I found that. I did try to confirm that that had been issued or sent. It was indicated to me that it had been, and I provided it in response to this data request.

1 Q. If I had questions about Mr. Mundy's departure from the
2 company, would those be directed towards you or Mr.
3 Jarrett?

4 A. I think you should talk to Mr. Jarrett about those.

5 Q. Okay.

6 MR. BARBERIE:

7 I have no other questions.

8 CHAIRMAN GOSS:

9 Thank you, Mr. Barberie. Mr. Ockerman, I assume
10 you have some questions.

11 MR. OCKERMAN:

12 Yes, sir, I do.

13 CHAIRMAN GOSS:

14 Why don't we go ahead, then, and take our mid-
15 morning break and come back at 10:45, and we'll
16 start with you.

17 MR. OCKERMAN:

18 Yes, sir.

19 OFF THE RECORD

20 CHAIRMAN GOSS:

21 Thank you. Please be seated. All right. Is
22 there anything to take up before Mr. Ockerman
23 begins his cross examination?

24 MR. INGRAM:

25 There is, Your Honor.

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CHAIRMAN GOSS:

All right.

MR. INGRAM:

Based on my telephone conversations, I think it's reasonable to assume that Herb Miller's letter of July 2, 2002, attached to Kentucky-American's Response to the Lexington-Fayette Urban County Government's Third Set of Data Requests, Item 4, was, in fact, mailed. I will point out for the record that the production of this letter in this rate case should not have come as a surprise to the Attorney General as it was supplied in the Attorney General's investigation of the conduct of Kentucky-American Water Company with respect to the PSC.

CHAIRMAN GOSS:

Okay.

MR. SPENARD:

Mr. Chairman, on that point, it clarifies that - I'm with the rate group in the office. I'm not doing the investigation on - that's, to me, a collateral matter, and I'm not part of that investigation. I haven't seen that investigatory file. So, when he says it's not a surprise to our office, he's talking about a different function in

1 our office. I didn't see the letter until it was
2 supplied in response to that data request.

3 CHAIRMAN GOSS:

4 Okay. I understand. All right. So, Mr.
5 Barberie, does that allay your concerns about
6 whether or not we need to have Mr. Miller appear?

7 MR. BARBERIE:

8 If this is to be treated as a legal admission on
9 their part, that alleviates my concern.

10 CHAIRMAN GOSS:

11 Well, that's what I - I mean, that's the way I
12 take it.

13 MR. INGRAM:

14 Yes. You're absolutely correct, Your Honor.

15 CHAIRMAN GOSS:

16 Okay. All right.

17 MR. BARBERIE:

18 And I'll just, once again, clarify for the record
19 that I did not receive that letter until we
20 received our responses to the data requests . . .

21 CHAIRMAN GOSS:

22 Okay. I understand.

23 MR. BARBERIE:

24 . . . regardless of whether the Attorney General
25 did or not.

1 CHAIRMAN GOSS:

2 I understand. And so you're not requesting that
3 Mr. Miller appear?

4 MR. BARBERIE:

5 No, sir.

6 CHAIRMAN GOSS:

7 All right. Okay. Mr. Ingram, thank you, and
8 thank you, Mr. Barberie. Okay, Mr. Ockerman.

9 MR. OCKERMAN:

10 Thank you, Mr. Chairman.

11 CROSS EXAMINATION

12 BY MR. OCKERMAN:

13 Q. Mr. Miller, . . .

14 A. How are you, Mr. Ockerman?

15 Q. I'm well, sir, and you?

16 A. I'm doing fine.

17 Q. Holding up, are you?

18 A. Absolutely.

19 Q. Good. Good. I want to begin with some follow-up
20 questions behind other questions that you've been asked
21 yesterday afternoon and today. In your direct
22 testimony, at Page 35, Question 58 and 59, you describe
23 the restructuring of American Water Company generally,
24 and I take it from this that the change has been that,
25 rather than Thames Water being the operating entity for

1 the Northern and Southern Hemisphere, as Mr. McGivern
2 testified in the merger case or transfer of control
3 case, that is now American Water; is that correct?
4 A. I don't have the transcript of what Mr. McGivern said,
5 but I think the intent was always to be that American
6 Water Works would be exactly as you just described.
7 Q. Okay. Is Mr. McGivern still with Thames?
8 A. He's an employee of American Water Works Service
9 Company, I think, or the parent. I'm not sure about
10 that - subject to check - and he's the COO of our
11 company.
12 Q. Thank you. Mr. Barberie referenced a full-time
13 Communications Officer as being one of the employees at
14 Kentucky-American. Is the Kentucky-American website
15 the responsibility of that individual?
16 A. I would say the information that ends up there would be
17 reviewed . . .
18 Q. Yes, that would be more accurate; not the technical
19 sustaining of the Internet site.
20 A. But most people are like me; they may or may not have
21 the capability of actually putting that information
22 there, but certainly to review it, and I would think
23 so; yes, sir.
24 Q. And would be in charge of changing the information from
25 time to time?

1 A. I would think so; yes, sir.

2 Q. And would that individual be the one responsible for
3 putting or causing the Webmaster to put a link on that
4 website to the No Takeover Coalition?

5 A. I don't know about that, Mr. Ockerman. I don't know.

6 Q. Yesterday, Ms. Bridwell stated, and I'm asking you to
7 confirm, that the only shareholder of Kentucky-American
8 is American Water Company.

9 A. I think that's correct; yes, sir.

10 Q. Okay. What she could not give me a definitive answer
11 to - there may not be one, but I'm asking you - if the
12 statement is made that something, such as one of the
13 letters answered this yesterday, was not paid for by
14 the customers, do you know who it was paid for?

15 A. Do I know who paid for those?

16 Q. When the statement is made that some publication is not
17 paid for by the customers of Kentucky-American Water
18 Company, is there a definitive answer as to who paid
19 for those things?

20 A. I'll give you the best answer I can give you . . .

21 Q. That's all I asked.

22 A. You can determine if it's definitive or not. Okay? I
23 mean, it could have been paid for by a consultant,
24 reimbursed by American Water Works. It could have been
25 paid by a number of people. I don't think those were

1 paid for by Kentucky-American. In reviewing the
2 expenses that were in the, you know, account that we
3 track things that were paid for directly by Kentucky-
4 American, I don't think the cost of that was in there,
5 at least in my review.

6 Q. All right. Do you think it was paid for, most likely,
7 by American Water?

8 A. You know, subject to check, Mr. Ockerman, that would be
9 my thought; yes, sir.

10 Q. I understand your answer that, to Mr. Barberie's line
11 of questions about the Coalition, that you have
12 segregated expenses with respect to the condemnation
13 fight in Lexington and that those expenses have not
14 been put into the forecast period and there's been an
15 attempt to keep all of that out of this discussion, and
16 I understand that, and you gave very good answers, but
17 I don't think that the core question was really
18 answered, so let me go back to read the paragraph
19 before the quote that Mr. Barberie read to you by Mr.
20 Rogers. This is . . .

21 CHAIRMAN GOSS:

22 Mr. Ockerman, would you go ahead and identify
23 what you're reading from, please?

24 MR. OCKERMAN:

25 I'm sorry. Yes, sir. This is an article in

1 the Lexington Herald-Leader dated November 7,
2 2004, which begins on Page 1 and continues
3 on Page A 13, and I'm beginning to read at
4 the bottom of the third column.

5 CHAIRMAN GOSS:
6 There's been a lot of reference made to that
7 particular article. Let's go ahead and make
8 that an exhibit so the record will be clear.

9 MR. OCKERMAN:
10 All right. Would you like it . . .

11 CHAIRMAN GOSS:
12 We'll just make this your exhibit. Do you mind
13 doing that?

14 MR. OCKERMAN:
15 No, sir. No, sir.

16 CHAIRMAN GOSS:
17 Okay.

18 MR. OCKERMAN:
19 This will be Bluegrass FLOW, I believe, No. 4,
20 and we'll ask Staff at the next break to make
21 copies.

22 CHAIRMAN GOSS:
23 To make copies and give to everybody and the
24 Court Reporter. Thank you.
25

1 MR. OCKERMAN:

2 Yes, sir.

3 BLUEGRASS FLOW EXHIBIT 4

4 Q. The reporter writes, "In this election cycle, ..."
5 referring to the just concluded Urban County Council
6 races, "... the utility ...," referring to Kentucky-
7 American, "... has been a prime sponsor of the
8 Coalition Against a Government Takeover, a citizens
9 group that supports the water company's position. No
10 one knows exactly how much has been given to the
11 coalition, however, because it is an unincorporated
12 issues group that does not have to report its contri-
13 butions to the public." So that's the context in which
14 Mr. Rogers' quote then appears. "'Certainly my wife
15 and I have contributed to the coalition,' said the
16 group's president, Warren Rogers. 'The member
17 organizations of the coalition have been very active in
18 terms of donations. We get contributions from
19 individuals. And yes, we get contributions from the
20 stockholders of the water company.'" Breaking that
21 down, we know that Kentucky-American is a member of the
22 Coalition. It says so on the Coalition's website. I
23 don't think anybody has disputed that. Do you?

24 A. I don't have any reason to dispute they're a member.

25 Q. So the question comes down to Mr. Rogers is saying

1 basically the water company or the shareholders of
2 Kentucky-American have made contributions to the
3 Coalition, and that's the question; how much was paid
4 by either Kentucky-American or American Water Works or
5 some other affiliated company to the Coalition in terms
6 of dues, contributions, donated employee time, or any
7 other thing of value directly or indirectly?

8 MR. INGRAM:

9 Your Honor, I strenuously object to the question.
10 We have repeatedly said in this case that there is
11 absolutely no cost of condemnation incorporated
12 into the forecasted test year. Secondly, what any
13 entity other than Kentucky-American Water Company
14 has done or has not done, with all due respect,
15 sir, does not give jurisdiction to this Commission
16 to even inquire into it. If a shareholder of
17 American or an American shareholder has con-
18 tributed to the effort of the government takeover
19 of the assets of Kentucky-American Water Company
20 stock, it's not a matter for the rate proceeding
21 that we're involved in now.

22 CHAIRMAN GOSS:

23 Well, I understand your objection. I don't think
24 Mr. Ockerman had gotten to the point where he
25 had even asked a question yet. Is that right?

1 Weren't you just sort of laying a predicate,
2 laying a foundation for a question?

3 MR. OCKERMAN:

4 Well, I was laying the predicate, but my last
5 comment was a question, how much has been paid,
6 and I . . .

7 CHAIRMAN GOSS:

8 Okay. Well, that's been asked and answered
9 several times; hasn't it?

10 MR. OCKERMAN:

11 It's been asked and answered with regard to con-
12 demnation expenses in this rate case. It has not
13 been answered as respects the absolute question,
14 and the reason I think it's relevant is that Mr.
15 Miller has testified to a very extensive and
16 sophisticated chargeback procedure within and
17 among the affiliated companies, and the next
18 question I was going to ask goes to that
19 direction, and that is, if the shareholders of
20 Kentucky-American have, in fact, made contri-
21 butions to this Coalition, has there been any
22 interaccounting or offsetting credits or debits
23 amongst the water companies, the affiliated
24 companies, such that it is tantamount to a
25 Kentucky-American contribution, and this is not

1 insignificant. We have evidence in the record of
2 four mailings to customers. That totals over
3 400,000 mailings by definition. At a conservative
4 cost for mailing of 75 cents, that's \$300,000 of
5 potential aid for the Coalition plus the member
6 dues and contributions. Mr. Rogers is quoted as
7 saying the members have made contributions.
8 Kentucky-American Water Works is listed as a
9 member. So I'm just trying to follow that money.

10 CHAIRMAN GOSS:

11 So you're trying to inquire as to whether or not
12 there had been any interaccounting or any way that
13 it could have been back-doored? Is that basically
14 what you're asking?

15 MR. OCKERMAN:

16 Yes, sir, and, if so, how much.

17 CHAIRMAN GOSS:

18 I think that's probably an appropriate question.
19 Let's not go too far down the line with it. If he
20 knows, fine, let him answer, and if . . .

21 Q. I think you know the substance of what I'm asking.

22 A. I think I understand, Mr. Ockerman. I'll . . .

23 Q. Well, if not, I'll ask a follow-up.

24 A. I'll attempt to answer to the best of my ability.

25 Q. All right.

1 CHAIRMAN GOSS:

2 Do you understand the question? Do you want him
3 to repeat it, or do you think you understand
4 it?

5 A. I think I understand his question.

6 CHAIRMAN GOSS:

7 Okay.

8 A. If Kentucky-American paid a membership in the
9 Coalition, and I think they did, that was charged what
10 we call below the line. It's a donation or a
11 membership not to be considered for regulatory
12 purposes. I don't think Kentucky-American has done a
13 direct contribution to them outside the scope and the
14 legal ramifications that apply to those areas. I think
15 you are confused by American Water Works, American
16 Water Works Service Company, and Kentucky-American
17 Water. There are three entities there. American Water
18 Works' parent does not allocate any costs back to the
19 subs that are borne by American Water Works' parent
20 and, to the best of my knowledge, American Water Works
21 Service Company management fees that we call in this
22 rate case. So, to the best of my knowledge, there is
23 no expenses in American Water Works Service Company
24 that's been allocated back to Kentucky-American.

25 Q. With respect to the Coalition?

- 1 A. Yes, sir.
- 2 Q. Do you know who attends the membership meetings on
3 behalf of the company?
- 4 A. No, sir, I do not.
- 5 Q. Okay. Mr. Barberie referenced the Business Plan 2004-
6 2008, which was provided in response, I believe, to the
7 Attorney General's Data Request No. 1 as Item 176, and
8 you said, if I recall correctly, that there were many
9 people who contributed to putting that together
10 although you were one of four who had the responsi-
11 bility of presenting it to the local Board of
12 Directors.
- 13 A. Can I get a copy of that, Mr. Ockerman, or can I get
14 the number again so that I can pull it out?
- 15 Q. Yes. It's Attorney General's Request No. 1, and it is
16 referenced as No. 176 of your Response. You're
17 identified as the witness.
- 18 A. Can I get that, sir?
- 19 Q. Or is this the Supplemental Response? I'm sorry. The
20 Supplemental Responses.
- 21 A. I don't think I have that. Can I please get a copy?
- 22 Q. I only have my copy.
- 23 A. Okay. The Strategic Business Plan, sir? Is that what
24 we're referring to?
- 25 Q. Mine is labeled "Kentucky-American Water Company

1 Business Plan 2004-2008.”

2 A. I have it, sir.

3 Q. Okay. Thank you. We were discussing that there were
4 many hands in the crafting of this instrument. If you
5 will look at Page 22 of 69, at the bottom of that page
6 begins a section numbered 8., “Key Relationships.”

7 A. Can I find that, sir?

8 Q. Yes, sir.

9 A. I have it.

10 Q. Okay. Do you know who the author or primary author of
11 that section was?

12 A. Which section are you referring to?

13 Q. Section 8., “Key Relationships.” It begins at the
14 bottom of Page 22 of 69 and continues through most of
15 the next page, two-thirds.

16 A. Mr. Ockerman, I can't speak to the direct author of
17 this. I mean, this would be the kind of thing that
18 would normally come from Mr. Mundy, as President of
19 the company at that time. Obviously I reviewed it;
20 Mr. Jarrett reviewed it, but I don't really know
21 who actually wrote the words on the sheet of paper.

22 Q. So it passed through several hands?

23 A. Yes, sir.

24 Q. Unlikely that there were accidental statements
25 included?

1 A. I don't think there were accidental statements; no,
2 sir.

3 Q. You said that this was produced in the year 2003?

4 A. That's correct.

5 Q. And to put that in context, that is the year following
6 the last round of Urban County Council elections in
7 2002, November. In the middle of the Page 23 of 69,
8 there is a paragraph that begins with the underlined
9 phrase "LFUCG Council," and it says, in paraphrasing,
10 "... we need to work harder to get people elected to
11 the LFUCG council who have a pro-free enterprise
12 philosophy." Now, that, to me, implicitly states that
13 there had been work going on that was deemed
14 inadequate; otherwise you would not have to work
15 harder. Would you agree?

16 A. No, I don't agree with that. I mean, obviously . . .

17 Q. What does this statement mean to you?

18 A. Well, I mean, obviously what it means to me, I mean,
19 the company has always taken its community involvement
20 seriously. It's always been a part. I mean, obviously
21 I don't think anyone could disagree the circumstances
22 involving what we feel was an ill-advised condemnation
23 effort required us to attend to that as we needed to.

24 Q. Three paragraphs down is a paragraph mentioning the
25 Coalition Against a Government Takeover and reporting

1 that there are now over 14,000 members. Do you know
2 what this paragraph was included in a Strategic
3 Business Plan?

4 A. Certainly I think to point out that there were a great
5 number of citizens in Lexington-Fayette County,
6 Kentucky that did not agree with what the Urban County
7 Government was doing.

8 Q. Is there any update to this plan?

9 A. It's not complete yet, sir. It won't be taken for
10 approval until sometime later. I'm not sure exactly
11 when we . . .

12 Q. And that would be taken to what Board?

13 A. To me and Mr. Jarrett, first.

14 Q. And then to the . . .

15 A. We do not have it in our possession at this point in
16 time.

17 Q. Okay.

18 A. It's still being worked on.

19 Q. Was this plan adopted by the Kentucky-American Board of
20 Directors?

21 A. I do not believe it was ever officially acted upon. It
22 was taken to the Board for review, but there was never
23 an official action approving or disapproving this plan.

24 Q. Do you know why that is?

25 A. No, sir, I don't recall. I don't think - it wasn't

1 specific to Kentucky-American. I don't think we
2 actually, the Boards of any of the five states that I
3 participate in, took action on the Strategic Business
4 Plans. We took them there as we normally do, reviewed
5 them, talked about them, let them know where we're
6 going, but there was no official Board action saying,
7 "This is approved," or disapproved, or whatever. It
8 was just a discussion item.

9 Q. That's all. Thank you.

10 MR. OCKERMAN:

11 Thank you, Mr. Chairman.

12 CHAIRMAN GOSS:

13 Thank you, Mr. Ockerman. I appreciate it. Mr.
14 Wuetcher?

15 MR. WUETCHER:

16 Thank you, Your Honor.

17 CROSS EXAMINATION

18 BY MR. WUETCHER:

19 Q. Good morning, Mr. Miller.

20 A. How are you, Mr. Wuetcher? Good morning.

21 Q. Let me start out with some basic questions. There have
22 been a number of tariff changes proposed by Kentucky-
23 American and I just want to make sure for the record
24 that we understand all those that are being proposed.
25 The Economic Development Tariff that was in the

1 Application, the company is still putting that forward
2 for Commission review and approval; is that correct?
3 A. The Economic Development Tariff?
4 Q. Yes, sir.
5 A. No, sir. I don't think we ever proposed actually that
6 being approved in this case. We were simply making the
7 Commission and the parties aware that that's something
8 we'd like to pursue in the future. Here's a form of
9 that tariff that we'd like to pursue. Obviously we'd
10 like to see a solution to the source of supply at least
11 be identified and ready to move forward before we come
12 back for official approval of that tariff. So we
13 weren't asking for that tariff in this case.
14 Q. The Emergency Pricing Tariff, is that still being put
15 forward by the utility for Commission review and
16 approval?
17 A. Absolutely, yes, sir.
18 Q. Let me ask a question to your earlier response. Why
19 would the company inject into a rate case proceeding a
20 proposed tariff that it did not intend to at least
21 immediately implement?
22 A. Simply to try to put forth to the Commission that the
23 company supports economic development, that these are
24 the kind of ideas we have to start some process
25 thinking about where we can move with that in the

1 future, but that's why we did it, Mr. Wuetcher.

2 Q. And I'm not expressing any opinion on what the company
3 was trying to do or its merits, but doesn't that add
4 to, injecting that issue, add to the possibility of a
5 greater rate case expense because of discovery being
6 conducted on a tariff that is not even going to be -
7 the company doesn't even want the Commission to
8 consider at this time?

9 A. I mean, I don't think there was a lot of time spent on
10 it, Mr. Wuetcher, to basically me. I took a tariff
11 that we had in other jurisdictions; I modified it
12 slightly, put it out here just to let the Commission
13 know these were the kind of things we're thinking
14 about, trying to keep the Commission aware. I don't
15 recall a lot of discovery on that issue other than
16 questions asked and were we seeking approval of that
17 tariff or not. So there was very little effort spent
18 on that.

19 Q. There was some discussion about cost of capital.
20 Previously, when Kentucky-American, Thames Aqua and RWE
21 appeared before the Commission for approval of the
22 proposed transfer, one of the arguments advanced in
23 favor of the proposed transfer of control was RWE's
24 ability to tap into worldwide capital markets and thus
25 to reduce the cost of capital that American Water Works

1 Company and ultimately Kentucky-American would have in
2 terms of financing new construction. Do you recall
3 that?

4 A. Yes, sir.

5 Q. I'm assuming that, if worldwide capital markets are now
6 being drawn upon by Kentucky-American, even indirectly,
7 that the exchange rate, foreign exchange rate, may have
8 an impact, then, on some of the cost of capital?

9 A. Directly to Kentucky-American, I don't believe that's
10 true, sir.

11 Q. Okay. So it would be correct, then, to say, in the
12 company's calculations as far as the cost of capital,
13 the cost of debt, that any change or fluctuation in the
14 foreign exchange rate was not considered?

15 A. No, because I think it has absolutely no impact.
16 American Water Works Capital Corp. issued notes and
17 they were purchased by RWE who was a purchaser. It
18 could have been someone else if they had a better
19 price, but that doesn't have any impact in the
20 accounting of Kentucky-American, any impact on
21 Kentucky-American. We sold them at a stated interest
22 rate in U.S. dollars, and that's the impact of
23 Kentucky-American, nothing more, nothing less.

24 Q. So, in effect, any impact at the foreign exchange rates
25 would be totally borne by RWE?

- 1 A. You know, I just don't know enough to speak to those
2 things, but my general opinion is, if there is any
3 impact or risk, it's borne by them. It's certainly not
4 by American Water Works Capital Corp. or Kentucky-
5 American.
- 6 Q. So your answer is it wasn't considered and, to the
7 extent of your knowledge, it's not - it doesn't have an
8 impact?
- 9 A. It wouldn't be considered by me in placing those debt
10 issues through AWWCC because it is a non-issue to us.
11 We sold the bonds at a stated interest rate in U.S.
12 dollars and that's what it is. So it's not an issue as
13 far as I was concerned.
- 14 Q. Would you agree with the statement that rate
15 applications filed using a fully forecasted test year
16 are more complex than those using a historical test
17 period?
- 18 A. No, actually I don't agree with that. When you file
19 with a historical test year, you have to kind of go
20 back and you have to determine how you get from A to B
21 to do known and measurable changes. In a forecasted
22 test year, you're starting with a budget that you
23 already have. Certainly you need to review that, to
24 scrub that, and determine if everything there is as
25 accurate as you can possibly make it, but I don't know

1 that there's a huge difference between filing a
2 forecasted test year in what's required to make the
3 filing. I mean, I think more the regulations and the
4 kind of discovery you go through may have a bigger
5 impact on things than whether it's a forecasted or a
6 historical test year adjusted for known and measurable.

7 Q. Okay. So, in your opinion, there's no - in fact,
8 there's greater complexity to a historical test period
9 filing than there would be for a future test year?

10 A. No, I don't think I said that, Mr. Wuetcher, and, if I
11 did, I didn't intend to.

12 Q. Okay.

13 A. I said I didn't think there was a great deal of
14 difference one way or the other.

15 Q. All right. Well, let's take that approach, then. In
16 your opinion, then there is no significant difference
17 between a historical test period filing and a future
18 test period filing in terms of complexity; would that
19 be correct?

20 A. From the company's point of filing the case?

21 Q. Yes, sir.

22 A. No, I don't think there's a big difference one way or
23 the other.

24 Q. Okay. So, in your opinion, would there be a
25 significant difference in cost between the two?

1 A. No, Mr. Wuetcher. I mean, I did answer this in several
2 data requests. I think what I see driving rate case
3 costs is the number of issues you have, if those
4 require outside witnesses or expert witnesses, and I've
5 indicated in a data request that I think, you know, in
6 this case there are a number of issues that required us
7 to seek some outside help and expert witnesses, and I
8 think that's been a major driver in this case. The
9 amount of discovery in this case has driven the cost of
10 this case.

11 Q. Okay. When you talk about a number of issues, is the
12 number of issues related to the type of test period
13 used, whether it's historical or future?

14 A. No, sir. I mean, you know, there's been some testimony
15 about that, but, in my opinion, the issues that I'm
16 talking about are Call Center, Shared Services,
17 security. There's some been some other issues
18 inserted, if you will, in the positions taken by the AG
19 that we didn't anticipate, but no, and I said in, I
20 think, in my rebuttal testimony I didn't see whether
21 it's a historical or a forecasted test year had any
22 bearing on the rate treatment that we're seeking in
23 those matters in this case.

24 Q. You testified yesterday - and correct me if I'm
25 mischaracterizing your testimony - you said that the

1 company was, in terms of benefits to the company, it
2 was indifferent to either a historical or future test
3 period; is that correct?

4 A. I don't think I used the word "indifferent." Let me
5 try to say what I meant.

6 Q. Okay. Well, let me - your answer is I'm mischaracter-
7 izing it, so let me step back a second. In your
8 opinion, what benefits are achieved to the company
9 through the use of a future test year period as opposed
10 to a historical test year period?

11 A. I think what I said, to paraphrase it - I'm sure it's
12 not word for word - but I think that there are a number
13 of ways, but the purpose of regulation, in my opinion,
14 is for all parties to try at their best to determine
15 what the cost of service is going to be in the period
16 that those rates are going to be effective. You can do
17 that through a historical test year period adjusted for
18 known and measurable changes, and there are literally
19 hundreds of variations of different items that I'm
20 aware of even in the states where I have had
21 experience. Another way is a forecasted test year. I
22 think I said that, in the company's opinion, the
23 forecasted test year is the better way to do that.

24 Q. Okay. Now, what are the benefits to the company of
25 using a future test period as opposed to a historical

1 test period? Are you saying that it's just simply more
2 accurate?

3 A. No, sir . . .

4 CHAIRMAN GOSS:

5 Let me interrupt you just a minute. Mr. Wuetcher,
6 as I understand it, by statute, this company has
7 the right to file its rate application based on a
8 historical test year. Am I not correct about
9 that?

10 MR. WUETCHER:

11 Yes, sir.

12 CHAIRMAN GOSS:

13 And so I'm trying to understand where you're
14 going with this. I mean, if they have the right
15 to do it, what difference does it make as to what
16 benefit or detriment would inure to the company?

17 MR. WUETCHER:

18 Well, Your Honor, we just wanted to explore the
19 cost in relations to filing a future test period
20 as opposed to a historical test period and
21 whether, if additional benefits accrue to the
22 company as a result of using the future test year
23 period, whether or not it might be appropriate in
24 that regard to consider whether there should be
25 some sharing of the rate case expense between the

1 ratepayers and the shareholders of the company.
2 CHAIRMAN GOSS:
3 Okay. I understand. Go ahead.
4 A. Mr. Wuetcher, let me state this. It may not be a
5 direct answer to your question, but I need to explain
6 to you my caution here, and that is that the AG used
7 the term "windfall" and, to me, that's a negative
8 connotation that the company somehow, by filing a
9 forecasted test year, is getting a windfall or
10 something that they are not entitled to, and I took
11 that issue on pretty strong in my rebuttal testimony
12 regarding the AG. So, when you say "benefit" and the
13 AG says "windfall," I just want to make clear that the
14 company doesn't get something that it's not entitled to
15 because it files a forecasted test year. The
16 forecasted test year is just a method that you
17 determine the cost of service in the future period for
18 which this Commission is trying to establish rates.
19 So, with that said, I'm just cautious with the word
20 "benefit" because I don't want to indicate and I really
21 do not believe that the company receives some kind of
22 benefit or windfall that it's not entitled to. So
23 that's why I'm being cautious. So that's why I have a
24 problem with the word "benefit."
25 Q. I'm not using the term "windfall" and I'm not even

1 suggesting that one method is over the other. I'm
2 simply asking, in terms of the company making the
3 choice and in terms of the costs that are incurred, why
4 the company chose a particular method.

5 A. Okay. Obviously, in a fully forecasted test year, if a
6 company is in a capital-intensive situation and
7 investing a lot of capital to put a lot of rate base in
8 the ground, there is a tendency to get that rate base
9 recovered in rates, which, in my opinion, is proper,
10 than there may be in the way some states use a
11 historical test year. So it's a benefit, but it's a
12 benefit, in my mind, that it is, at the proper time,
13 recognizing the capital that the company is investing
14 and on which, in regulation, it's entitled to a fair
15 and reasonable rate of return. So, if that's a benefit
16 from filing a forecasted test year, I will agree with
17 you, but I just want to make clear that that in no way
18 is a windfall or the company does not believe that's
19 something it's not entitled to. It is just fair and
20 reasonable ratemaking to recover the costs that we've
21 invested. A forecasted test year is one way of doing
22 that and we think that's a reasonable way to do that.

23 Q. I take it, then, to characterize the company's position
24 it would be that one benefit of the future test period
25 would be overcoming regulatory lag?

1 A. I think in some jurisdictions that regulatory lag is
2 definitely a problem, and I think the use of a
3 forecasted test year can properly, in my opinion, help
4 alleviate the problems created with a regulatory lag in
5 getting, you know, the investment of the company
6 properly recognized for ratemaking purposes.

7 Q. I'm not wanting to beat a dead horse, so this will be
8 my last question on the issue.

9 CHAIRMAN GOSS:

10 I think he's already dead, Mr. Wuetcher, but
11 go ahead.

12 MR. WUETCHER:

13 It's hard for me to understand, Your Honor.

14 Q. In summing up your testimony on this issue this
15 morning, essentially, then, there are no significant
16 benefits to the company and there's no significant cost
17 differences between the two methods of applying for a
18 rate adjustment?

19 A. Mr. Wuetcher, I did answer a data request and I think
20 it was to the PSC. Like I said, there's a lot of them
21 over there and I can't remember - I remember most of
22 the information, but I think I did indicate that the
23 company was willing to sit down, outside this rate
24 case, and discuss this with the parties to this case
25 about how the company would pursue filing its rate

1 cases in the future. I told you yesterday or I told
2 Mr. Spenard yesterday that, you know, - I may not be
3 right on this point, but I think I am - that, if we
4 make a decision to move back to a historic test year,
5 that's a permanent decision. We would want to discuss
6 about how we handle posttest year construction
7 additions, and known and measurable changes, and things
8 like that before we make that decision and . . .

9 Q. I'm sorry. You said if you switched back to a
10 historical test period, that's a permanent decision?

11 A. That was - that's been my understanding, that, once you
12 move back, you . . .

13 Q. That's your interpretation of a statute?

14 A. I'm not sure . . .

15 Q. Okay.

16 A. It's just been my understanding.

17 Q. Okay.

18 A. Okay? If I'm mistaken, I'm mistaken, but . . .

19 Q. Okay.

20 A. . . . I'll be more than happy to be straightened out on
21 that point.

22 Q. Well, I will move on except to note for the record,
23 while that horse might be dead, it seems to keep on
24 moving. Let me move to the area of management fees for
25 a moment. Do any of the management fees that are paid

1 to the Service Company by Kentucky-American include a
2 profit margin for the Service Company?
3 A. Absolutely not.
4 Q. Do they include overhead costs?
5 A. Let me define "overhead costs," if I can. There are
6 labor; there are benefits. Those are overhead costs;
7 absolutely. Are there office supplies and stationery
8 and rental facilities that are in management fees?
9 Yes. If you're considering those overheads on top of a
10 labor cost, then, yes, there are, but there is
11 absolutely no markup or profit on those charges.
12 Q. Okay. Included in the - would it be correct to say
13 that the forecasted management fees that Kentucky-
14 American will pay for the test period are projected to
15 be \$804,286?
16 A. \$3.8 million? Is that . . .
17 Q. No. \$804,286, payment to the Southeast Region.
18 A. Just the Southeast Region?
19 Q. Yes, sir.
20 A. Subject to check, Mr. Wuetcher. We provided that
21 in a data request, I think. I remember the total;
22 specifically to each office I do not.
23 Q. Okay. Well, let me refer you to Work Paper 3-5, Page 1
24 of 2. I've just got a couple of questions on that and
25 the figure appears at that page.

1 A. I don't have the work papers with me. Can you help me
2 with that?

3 MR. INGRAM:

4 Okay. Sure.

5 A. Mr. Wuetcher, are you talking about the forecasted
6 period Southeast Region Office charges of \$804,286?

7 Q. Yes, sir. Do you have that schedule?

8 A. I believe that's what's in our filing.

9 Q. Okay.

10 A. I have a supplemental schedule that I have, but I think
11 that to agree to the work papers; yes, sir.

12 Q. All right. How many employees are currently employed
13 by the Southeast Region, or at least are assigned to
14 the Southeast Region?

15 A. Right at this minute? I don't know the answer to that.
16 I mean, I can provide it, but I just don't know that
17 right off the top of my head, Mr. Wuetcher.

18 Q. Okay. If you could provide that. Are any of these
19 employees specifically assigned to provide services to
20 Kentucky-American, or are they all at the disposal of
21 Kentucky-American?

22 A. They're all at the disposal of Kentucky-American.

23 Q. Can the company provide a schedule of the services and
24 charges provided by the Southeast Region in return for
25 the \$804,286?

1 A. Can you be more specific in what you'd like to see on
2 that schedule, Mr. Wuetcher?

3 Q. Yes, sir, I can. If we could have a schedule that
4 showed the payroll cost for each employee assigned or
5 each employee assigning cost to Kentucky-American and a
6 description of the services provided that resulted in
7 such assignment.

8 A. For each employee?

9 Q. Yes, sir.

10 A. Yes, sir. We'd be happy to provide that information.

11 Q. Could you also provide us the allocation of admini-
12 strative and general time showing the basis of such
13 allocation?

14 A. For the forecasted period?

15 Q. Yes, sir.

16 A. Yes, sir.

17 Q. Could you also provide similar information for the
18 amount that's been - for the management fees associated
19 with the corporate?

20 A. Mr. Wuetcher, you're - I mean, we're getting into a
21 very, very, I mean, large amount of work, I mean, to go
22 back - I mean, when you get down to all of the Service
23 Company, there are several thousand people that are on
24 the Service Company payroll.

25 Q. Well, instead of doing it for each employee for the

1 corporate, could you at least identify the services in
2 some detail, the services that are being provided in
3 return for the \$707,000 that's been projected?
4 A. Like a department by department breakdown and what kind
5 of services they provide?
6 Q. Yes, sir.
7 A. Yes, sir.
8 Q. And, if possible, a cost for each department.
9 A. If I can get that information, I will certainly provide
10 it.
11 Q. To the best that the company can supply it.
12 A. Yes, sir.
13 MR. INGRAM:
14 Would you be amenable to a request for a period
15 of time longer than ten days after the close of
16 the hearing just for this information in the event
17 we need it?
18 MR. WUETCHER:
19 Yes, sir. We recognize we're asking for a
20 lot
21 MR. INGRAM:
22 Thank you.
23 MR. WUETCHER:
24 . . . and we would certainly ask that the
25 Commission give additional time for the company to

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provide that information.

MR. INGRAM:

If we need it, we'll ask. Thank you.

Q. Let's talk about deferred assets for a moment. In Case No. 2000-00120, the Commission required Kentucky-American to formally apply for PSC approval before accruing an expense; is that correct?

A. Yes, sir. Is that the paragraph that Mr. Barberie had me read earlier?

Q. Yes, sir. I think Mr. Barberie has already discussed this. I will try to narrow my questions to items that haven't been discussed.

A. I just wanted to be sure it was the same thing, Mr. Wuetcher.

Q. But you're familiar with that paragraph, though; is that correct, sir?

A. Yes, sir.

Q. In the company's Application in Case No. 2003-00440, I think the request for approval of a regulatory - the creation of the deferred assets, which was subsequently merged into this case, in the Application, the company stated that the requirement imposed by the Commission was an unnecessary burden with attendant costs and should be changed. Is that still the company's position?

1 A. I think so, sir. I will say this, that, in the letters
2 that we filed and made a part of my testimony, and so
3 forth, we thought we had done what was required in a
4 formal application. I mean, that was our opinion.
5 Q. Okay. Well, I will get to that in a second, because I
6 want to make sure for the record we understand what the
7 company's understanding of what the requirements were
8 under the Order.
9 A. Right.
10 Q. But to the extent of the Order itself, do you know,
11 did the company appeal the Commission's Orders from the
12 last rate case proceeding?
13 A. In Case 2000-120?
14 Q. Yes, sir.
15 A. Yes, sir, or we asked for reconsideration.
16 Q. Okay. Do you know if - there was no appeal taken from
17 the final Order, from the Order on rehearing?
18 A. No, sir, not to my knowledge.
19 Q. Okay. In terms of the rehearing that was requested,
20 was there a rehearing requested on the Commission's
21 requirement regarding obtaining PSC approval before
22 accruing an asset?
23 A. Mr. Wuetcher, subject to check, I don't think so. I
24 mean, the main issues were regarding the source of
25 supply in the Bluegrass Pipeline and some items like

1 that, some other items.

2 Q. Okay. Let's go back to the company's interpretation of
3 the language in the Order. In the company's view, when
4 can it begin accruing the asset? And let me be more
5 specific. Is it when the company requests the approval
6 from the Commission, makes the application, or is it
7 when the Commission actually grants its approval?

8 A. Well, I mean, I think, in my opinion, under FAS 71,
9 that we can begin accruing them if we think and I can
10 certify, or whoever is the financial person required to
11 certify, that we think future rate recovery is likely.
12 If the ultimate decision, whether we file for approval
13 of that, which in many states we don't have to, or we
14 do have to file for accounting approval, I mean, you
15 wouldn't stop deferring it until there was a clear
16 indication that you can't do that. Does that answer
17 your question?

18 Q. So I take it - I'm just trying to understand the
19 timing. Assuming the company believes that regulatory
20 approval is likely, it interprets the Order as saying
21 that, once the application is filed, it's complied with
22 the terms of the Order and can start accruing the
23 asset?

24 A. Yes, sir.

25 Q. In the company's opinion, express Commission approval

1 is not required to begin accruing?

2 A. No, sir, because, again, I think this is an accounting
3 issue. It's not necessarily a ratemaking issue at that
4 time. It's an accounting issue that I have to certify,
5 or whoever is the financial officer responsible to do
6 that, that there is reason to defer this under FAS 71
7 and it is likely that future rate recovery will be
8 there. It is not a rate recovery issue at that time.
9 It's simply an accounting issue.

10 Q. I understand. I'm just trying to make sure for the
11 record we understand the company's position on how it's
12 interpreting the Orders.

13 A. Okay. Yes, sir.

14 Q. As in terms of what would constitute a formal
15 application, recognizing you are not an attorney and
16 that you are not perhaps in a position to interpret the
17 Commission's regulations, but what is the company's
18 position on what constitutes an application, a formal
19 application?

20 A. Mr. Wuetcher, we thought filing the letters that we
21 filed with the Commission met those requirements. If
22 they hadn't, we would have maybe expected somebody to
23 say that they didn't and we need to do something
24 different, but, regardless of that, I think what the
25 company tried to do and its intent was to do what it

1 thought was proper from that Order. We've not tried to
2 hide anything. We've written letters. We've tried to
3 move this forward from an accounting deferral stand-
4 point, but . . .

5 Q. I'm not suggesting that the company has acted
6 improperly . . .

7 A. I understand.

8 Q. I'm just simply trying to get - try to make sure what
9 the company's interpretation is to the extent that the
10 Commission believes some clarification is needed in the
11 Order because there has been some question about what
12 the requirements of the other Order was, to make sure
13 that all the parties' positions are on the record.

14 A. Right. I mean, but you asked me our position, and our
15 position is that we thought we were doing what we
16 needed to do. We weren't trying to hide anything from
17 anybody.

18 Q. Now, in the Application for the deferral, the company
19 had stated that it was an unnecessary burden to seek
20 approval with the attendant costs. Can you tell me
21 what exactly - what effect of the requirement - or what
22 effect has it had on Kentucky-American's operations?

23 A. What . . .

24 Q. Of seeking the formal - making a formal Application to
25 the Commission. Has it had any effect on the company's

1 operations?

2 A. I don't think so, Mr. Wuetcher. I mean, we - you know,
3 I think what we were referring there to is - it's at
4 least my experience in other places, when you approach
5 these kind of things like were in that Order, we're
6 talking about an accounting deferral. Those are
7 normally done by making an application, similar to what
8 we did in this case, to the Staff. That's the way it's
9 handled almost everywhere. At least that was my
10 thought; we were doing what we thought we needed to be
11 doing.

12 Q. Well, is the effect of making a formal application,
13 does it increase the cost and thus perhaps serve as a
14 disincentive for perhaps some smaller expenses from
15 being accrued?

16 A. If we were free to file a letter, come in and talk to
17 the Staff . . .

18 Q. Well, I'm saying - let's say, for example, there is no
19 formal requirement at all. Would that increase the
20 number of deferred deferrals?

21 A. I'm not sure I can answer. I'm not sure I understand,
22 I guess.

23 Q. Well, the Application that was filed with the
24 Commission talked about unnecessary burdens and
25 attendant costs. So I'm assuming that means it takes

1 company time, additional man-hours, additional costs to
2 obtain the necessary Commission approval or at least
3 make the application for Commission approval. Would it
4 be correct, then, to say that, in deciding whether to
5 defer one of these expenses, you're measuring the cost
6 of the deferred expense against the cost of making the
7 application?

8 A. Yeah. I think you always look at the cost of - and the
9 more formal an application and the more formal the
10 process, normally the more it costs, if that's what
11 you're asking me.

12 Q. Well, no. What I'm asking is, to the extent that it
13 costs something, it's going to be - there's going to be
14 more careful consideration on whether it's made unless
15 smaller items may not be placed in as a deferred
16 expense?

17 A. I think I agree with your statement, Mr. Wuetcher, and,
18 believe me, we heard the language in the prior Order
19 2000-120 and we have not deferred any what you might be
20 referring to as small items, like were in the last
21 case, 2000-120. If you'll notice the new deferrals, I
22 would not consider them minor.

23 Q. Okay. What is the materiality threshold that Kentucky-
24 American's external auditors use regarding deferred
25 debits?

1 A. The materiality limit is pretty large, actually. It's
2 more like 10 percent of maybe assets or something like
3 that, and that's subject to check, Mr. Wuetcher. I
4 mean, it's a pretty big number. Okay? So I don't
5 think - materiality is more about your balance sheet
6 presentation versus whether you defer it or not. I
7 mean, we have heard and tried to abide by that Order in
8 2000-120, and we're not going to burden this Commission
9 with what we might consider minor issues regarding
10 deferrals, and we haven't done that.

11 Q. Then I take it - well, do any of the deferred debits in
12 this case exceed the materiality threshold of Kentucky-
13 American's external . . .

14 A. Again, I don't know that the materiality threshold that
15 I was talking about as far as presenting fair and
16 reasonable financial statement presentations, I don't
17 really think that's apples and oranges to what you're
18 asking me. Do I think that the new deferred debits
19 that we've asked to be considered in this case, are
20 they material to the operations of Kentucky-American?
21 In my opinion, they are, and that's why we requested
22 this, and that's why we're asking the Commission to
23 consider them in this case.

24 Q. Well, let me put it this way. Whether or not Kentucky-
25 American's external auditors agreed with Kentucky-

1 American's treatment of the deferred debits that are at
2 issue, that would not have any impact on the auditors'
3 decision about issuing an unqualified opinion on
4 Kentucky-American's financial statements; would it?
5 A. It obviously did not, because we got an unqualified
6 opinion.
7 Q. When did Kentucky-American begin deferring the security
8 costs that are at issue in this case?
9 A. Mr. Wuetcher, it may have taken us a week or two after
10 the events of September 11th to get the accounting and
11 account numbers set up, and so forth, but I think
12 pretty much since those costs started coming into the
13 company.
14 Q. And, at the time that the deferral started, did the
15 company have PSC approval for such deferral?
16 A. No. Again, that's - I mean, that's an accounting
17 issue, but shortly after that, and I don't recall the
18 exact date, is when we filed the application for the
19 surcharge.
20 Q. Okay. When you say you filed the application for a
21 surcharge, that was the company's filing of a tariff
22 for the Asset Protection Charge?
23 A. Yes, sir.
24 Q. Okay. Now, that was not an application but merely a
25 tariff filing; wasn't it?

1 A. Again, I mean, subject to check, I'll take your word
2 there, I mean, but we did make a filing for the
3 Commission to consider the costs that were being
4 incurred regarding security in the form of a surcharge
5 tariff; yes, sir.

6 Q. Okay. Was anything in that filing referencing a
7 deferral of the cost, any type of the accounting
8 treatment, not in the Order but in the tariff filing?

9 A. I don't recall, Mr. Wuetcher.

10 Q. At Page 26 of your testimony, you stated, and you may
11 want to refer to it, but you state that, after several
12 discussions and conferences with the Commission Staff,
13 a letter was filed with the Commission on behalf of
14 Kentucky-American seeking specific accounting deferral
15 of its additional security costs. I think this was -
16 this is, I think, referencing the letter of Mr. Ingram
17 that was filed on September 24, 2003; is that correct?

18 A. It was referencing to what transpired prior to that
19 letter coming into the Commission; yes, sir.

20 Q. Okay. You mentioned "several discussions and
21 conferences." Can you elaborate on that?

22 A. Only to say this; that Mr. Ingram and I talked numerous
23 times about what we were going to do with this and
24 where we were going with this, and I had no
25 conversations with anybody. I mean, Lindsey, Mr.

1 Ingram II (sic) (Court Reporter's Note: Mr. Ingram III)
2 had said he talked to someone here. I don't know if
3 that was ten times or one time. I don't think it was
4 more than once or twice, and I may have overstated it
5 in saying "several."

6 Q. Okay. Well, the information that was filed in support
7 of the application for the regulatory accounting
8 treatment mentioned a few specific items. There was a
9 September 6, 2001 letter requesting an informal
10 conference or requesting approval of some deferred
11 assets . . .

12 A. What date was that, Mr. Wuetcher?

13 Q. September 6, 2001.

14 A. Yes, sir.

15 Q. You're familiar with that letter?

16 A. Yes, sir.

17 Q. Okay.

18 A. It's attached to my testimony.

19 Q. Okay, and then also in your testimony I think maybe
20 reference to a - I don't know if it's in your
21 testimony. I believe Mr. Ingram's letter of September
22 24, 2003 is also attached as an exhibit to your
23 testimony.

24 A. It is; yes, sir.

25 Q. Okay, and, in Mr. Ingram's letter of September 24,

1 2003, he references an informal conference held with
2 Commission Staff on October 25, 2001.

3 A. Yes, sir, and I attended that, that meeting; yes, sir.

4 Q. Okay. Now, aside from those two written communications
5 and that meeting - well, let's step back a second,
6 because the September 24, 2003 letter generated some
7 correspondence between the company and Commission
8 Staff; did it not?

9 A. It did.

10 Q. Okay, and I take it that is part of what you're
11 referring to in your conferences and discussions, . . .

12 A. Yes, sir.

13 Q. . . . or is it?

14 A. It was. I mean, I took part in the meeting back in
15 2001 you talked about . . .

16 Q. Okay. Well, I'm sorry to interrupt, but the way
17 your testimony is worded, it says, "After several
18 discussions and conferences with Commission Staff,
19 a letter was filed with the Commission on September
20 24 ..." So I'm assuming the correspondence that was
21 generated after the filing of the September 24, 2003
22 letter, you're not referring to that, at this point, in
23 your testimony?

24 A. No, sir.

25 Q. Okay. Aside from the informal conference in October of

1 2001 and aside from the two written communications, one
2 on September 24, 2003 and September 6, 2001, what other
3 discussions or conferences with Commission Staff are
4 you referring to?

5 A. I took part in none and I don't know of any conferences
6 other than the one in 2001 that I participated in.
7 There could have been a phone call between Mr. Ingram
8 and someone here, but, other than that, I don't think
9 there were any.

10 Q. Okay.

11 CHAIRMAN GOSS:

12 Mr. Ingram?

13 MR. INGRAM:

14 Mr. Wuetcher, I think the Order entered by this
15 Commission with the documents attached to it on
16 November 5, 2004 enumerates two conversations that
17 I personally had with a Staff member, one dated
18 October 6th, one dated October 17th, and then the
19 meeting that Mr. Miller is talking about, dated
20 October 25th, all in 2001, and I think those are
21 the only discussions and conferences that we're
22 aware of, and those are the ones that Mr. Miller
23 made reference to.

24 A. I'm sorry, Mr. Wuetcher. I'm not clear.

25 Q. No, that's okay.

1 A. There were none that I know of.

2 Q. Okay. I just want to clarify for the - make sure your
3 testimony is clear on the record so everyone knows
4 where your testimony stands. In terms of the letter
5 that you were questioned about earlier today by Mr.
6 Barberie, the letter that Mr. Herbert Miller wrote to
7 the Commission's Executive Director in July of 2002,
8 can you tell me when you first learned of the existence
9 of that letter?

10 A. Mr. Wuetcher, as I said earlier, and I don't want to
11 repeat myself, but just to let you know, when I was
12 attempting to find some data in response to LFUCG 3,
13 No. 4, I went through my files and I had a copy of the
14 letter that was in question. It was sent to me. I
15 don't know when. It was in that file. I don't get
16 into that file a whole lot, so it had been there some
17 time. I think I got a copy when it was sent, but I
18 can't assert that for sure, but it was - I found it in
19 my file, and I really hadn't thought about that letter
20 in a long time until I was trying to respond to that
21 data request, and it was there, but I can't tell you
22 that I got it July 2nd, 2003 or '02, or whenever it was
23 written. It was there. It was pertinent to the
24 information that I had to fill on those authorization
25 forms and certify to our auditors, and I attached it to

1 the data request, but I can't tell you when I first saw
2 it. I just don't recall.

3 Q. Well, let me rephrase the question. In light of the
4 fact that it was not attached as an exhibit to your
5 filed testimony, you were not aware of it at the time
6 you prepared your direct testimony?

7 A. I just didn't recall that I had that in my file . . .

8 Q. Okay. That's fine.

9 A. . . . and it was in a different location. It was
10 actually with these authorization forms, not in the
11 file that I . . .

12 MR. INGRAM:
13 So the answer to the question is "Yes"?

14 A. Yes.

15 MR. WUETCHER:
16 Thank you, Mr. Ingram.

17 Q. To the extent - you participated in the preparation of
18 the application for the approval of the deferred asset,
19 the application that was filed in December of 2003; is
20 that correct?

21 A. Yes, sir. I worked with Mr. Ingram on that.

22 Q. When that application was filed, did you recall or were
23 you aware of the existence of this July 2, 2002 letter?

24 A. When I did that? No. It was not in my thought process
25 at that time.

1 Q. Okay. Did you assist Mr. Ingram when he prepared the
2 written request of September 24, 2003 to the
3 Commission's Executive Director regarding the security
4 costs and the condemnation costs and the appropriate
5 accounting treatment?
6 A. Absolutely.
7 Q. At that time, were you aware, or did you recall or have
8 some knowledge of the existence of that 2002 letter?
9 A. It was not in my memory at that time, sir.
10 Q. Okay. Let's move back to July of 2002, then. Who
11 would have instructed Mr. Herbert Miller to make a
12 request to the Commission for the accounting treatment
13 that is requested in that letter?
14 A. Normally, in my position, I'm involved with those kind
15 of things. I recall having some conversations with
16 Herb Miller back in that time frame about it. I
17 obviously got a copy of the letter, but that's about
18 the most I can tell you about it.
19 Q. There's a notation on the letter. It looks like it was
20 faxed, and the fax header at the very top references, I
21 think, "KAWC," and it also has a notation for "WVAWC"
22 which I assume would be West Virginia-American Water
23 Company.
24 A. I can't say this with absolute certainty, but - and I
25 was paying attention when Chairman Goss mentioned that

1 - I think that I received this letter by fax and, when
2 it said West Virginia-American Water Company, I think
3 that's a fax that's in the building where I work.
4 Q. So you would have - I'm assuming this was sent to West
5 Virginia-American Water Company.
6 A. Well, it would have been sent probably to my attention.
7 Q. Okay. So you would have had this in January of 2003,
8 assuming it was . . .
9 A. If it was sent on this date, I would have had it; yes,
10 sir.
11 Q. Now, assuming for the moment that - let's assume you -
12 well, six months would have passed between the time
13 this letter was written and the time that you received
14 it, is that correct, at least the time it was faxed to
15 West Virginia-American Water Company?
16 A. As far as . . .
17 Q. If the header at the top of the letter is correct, the
18 fax?
19 A. I mean, obviously that is absolutely true according to
20 this fax copy; yes, sir.
21 Q. Okay. Well, do you recall looking at the letter at
22 all?
23 A. Yes, sir. I mean, I obviously did and I took the time
24 to put it in the file where I had the information about
25 authorizations that I had to provide on deferrals.

1 Q. The reason I'm asking this is I'm trying to figure out
2 - since I've worked for the government all my life, I
3 know there's a different standard between the
4 government and the private sector, but, if the letter
5 was written on July 2, 2002 and apparently no response
6 had been made to it, when you received it, did you
7 follow up to ask if there had been any response to the
8 letter?

9 A. I don't recall doing that, Mr. Wuetcher.

10 Q. After having seen the letter - well, can you explain -
11 the company requested certain accounting treatment for
12 these assets or expenses in, for some of these assets,
13 in September of 2001. It made a subsequent request for
14 deferrals in July of 2002; at least, we have a copy of
15 what was purportedly sent or mailed to the Commission.
16 There's no follow-up, at least as far as the record
17 indicates, until September of 2003. Why the delay?

18 A. I mean, we continued in this time frame to talk about
19 this letter and these deferrals. I don't know, Mr.
20 Wuetcher, the answer to your question. I mean, we did
21 what we did. We thought it was an accounting issue.
22 We weren't asking for ratemaking. We knew we couldn't
23 file a rate case until after March 16, 2004. We just
24 didn't think - or we did think that we had done what we
25 needed to do. I mean, I don't know what other answer

1 to give you in that regard.

2 Q. Well, did the company, to your knowledge, receive any
3 type of acknowledgment of the July 2, 2002 letter from
4 the Public Service Commission?

5 A. I'm not aware of that.

6 Q. So it would be correct, at least as far as your
7 knowledge is concerned, the company never received a
8 response either from Commission Staff or from the
9 Commission directly to any of its requests for a
10 deferral until a response was issued to the September
11 24, 2003 letter?

12 A. To my knowledge, that's true; yes, sir.

13 Q. And just so I understand, if you were not aware of it,
14 would anybody else at Kentucky-American or the
15 Southeast Region be aware of it?

16 A. Other than Mr. Ingram, I can't think of anybody, and I
17 know Mr. Ingram well enough, if he would have known, he
18 would have more than likely talked to me about it.

19 Q. Okay. The employees that worked for Kentucky-American
20 would have known that this issue would have been
21 something that they should report to you about?

22 A. I would think so; yes, sir.

23 Q. I have one other question on the security costs
24 relating back to the company's Response to Lexington-
25 Fayette Urban County Government's Third Request for

1 Information, Item 4, Page 1 of 14.

2 A. Yes, sir, I have that.

3 Q. Okay, and this is the authorization, the Regulatory
4 Asset Authorization; is it not?

5 A. It is.

6 Q. Okay, and you have signed it and it's dated - your
7 signature apparently was affixed to it on January 31,
8 2002; is that correct?

9 A. That's correct.

10 Q. In the portion that talks about "Plan to address
11 recovery in rates," could you read that first sentence
12 to yourself?

13 A. "The Company has filed a request with the Public
14 Service Commission for an emergency surcharge to
15 recover this cost or, in the absence of that surcharge,
16 for permission to defer these costs as a regulatory
17 asset ..."

18 Q. Okay. Now, at the time that you signed this, the
19 company had, in fact, filed the request for the Asset
20 Protection Charge Tariff; is that correct?

21 A. Yes.

22 Q. Okay. Had the company filed anything else requesting,
23 in the alternative, a surcharge or permission to defer
24 the costs as a regulatory asset?

25 A. Mr. Wuetcher, I'm not certain, but, I mean, we can pull

1 out that application and see if it says what it says
2 here. I mean, if we asked for the surcharge or, in the
3 absence of the surcharge, permission to defer, if it's
4 in the petition, it's there; if it's not, it's not, but
5 I'm not certain.

6 Q. Well, the only reason I'm bringing this up is I have
7 reviewed the case file. The case file only contains a
8 tariff for the proposed Asset Protection Charge.
9 There's no reference to any type of alternative relief.
10 In fact, there's an absence of any application. The
11 company's actions were in the form of a tariff filing
12 as opposed to a specific formal application. So
13 there's no alternative plea for - or there's no
14 pleading for alternative relief. So I'm just trying to
15 find out why that statement in this authorization was
16 made.

17 A. I don't know. I need to go back and review what we
18 filed in that; if it was in a letter, if it was not. I
19 think there was a basis, at least in my mind, for
20 making a statement like that and I don't recall what
21 that is right now.

22 Q. Okay. If you could provide us with that information
23 once you've reviewed your records.

24 A. I'd be glad to, Mr. Wuetcher.

25 Q. There's been considerable discussion about the

1 conditions that were set forth in the Commission's
2 Order approving the transfer of control of Kentucky-
3 American from American Water Works Company to RWE, and
4 I won't belabor that point, but let me ask, at the time
5 that the conditions were accepted, to your knowledge,
6 were Kentucky-American, American Water Works Company,
7 and RWE fully aware of the costs that would be
8 associated with the increased security after September
9 11, 2001?

10 A. The time frame would have been March of 2003? I think
11 so; yes, sir.

12 Q. Okay. At a minimum, those companies would have been
13 aware of what the existing costs were and that there
14 was a potential for additional costs to be incurred to
15 provide for adequate facilities protection at the
16 Kentucky-American facilities?

17 A. Yes, sir, and I'm just going to take this - I'm going
18 to say that I explained this in my testimony when we
19 read that condition. I mean, it was our inter-
20 pretation, my interpretation, that we could pursue this
21 in a future rate case, which is where we're at and what
22 we're asking the Commission to do in this proceeding.

23 Q. To the extent that the Commission had made as one of
24 the conditions to the approval of the transfer of
25 control that there be no rate adjustment for a period

1 of a year after the proposed date of the completion of
2 the transfer, does the company interpret that condition
3 as meaning that costs incurred during that one-year
4 period could not be recovered through rates?
5 A. No, I did not interpret it that way. I thought - my
6 interpretation was that we just couldn't change rates,
7 period, before March 16, 2004.
8 Q. If costs were incurred during that period and then they
9 were subsequently requested in the form of a deferred
10 asset, some type of ratemaking treatment on those
11 deferred costs, in a subsequent rate period, would that
12 in some way circumvent the intent of the Commission's
13 Order to keep rates frozen during that one-year period?
14 A. I did not interpret it that way.
15 Q. So to the extent that a cost may have been incurred
16 during the moratorium period and simply shifted to a
17 subsequent period, you don't view that in any way
18 inconsistent with what the Commission was intending
19 with that condition?
20 A. I mean, I can only read what's on the piece of paper
21 and from what I read - I don't know what people were
22 thinking; I know what was on the piece of paper, and,
23 from that, I think it says, "You cannot change rates."
24 We have not asked for anyone to change rates. We've
25 only asked for permission to defer it for accounting

1 purposes for consideration in this case to change
2 rates, and, in my thinking and in my opinion, we're
3 consistent with that Order.

4 Q. Let's switch gears, the low-income tariff . . .

5 CHAIRMAN GOSS:

6 This is a good time, I think, probably to take
7 a lunch break, if you're going to switch gears,
8 Mr. Wuetcher.

9 MR. WUETCHER:

10 Thank you, Your Honor.

11 EXAMINATION

12 BY CHAIRMAN GOSS:

13 Q. Before I forget it, Mr. Miller, I do have one question.
14 If I don't ask it now, I probably won't ask it.
15 Educate the Commission just a minute on what the
16 September 6, 2001 letter requested. Did it request a
17 deferral of some sort?

18 A. Yes, sir. There were a number of items. There . . .

19 Q. Was security one of those?

20 A. No, sir, not on September 6, 2001, . . .

21 Q. Okay. Right.

22 A. . . . but what we had asked for was - mentioned there
23 was some costs dealing with potential acquisitions we
24 were dealing with, to defer those potentially, some
25 things that we normally defer, like tank painting,

1 those are pretty routine things. The two transitions
2 to the Call Center and Shared Services were included in
3 that request. That's about it. The only thing, if I
4 could, out of the norm, if you will, that we had
5 historically deferred and recovered in rates, like tank
6 painting and sludge removal, were the Call Center and
7 Shared Services at that time.

8 Q. Okay. That's fine. Thank you. I appreciate you
9 clearing that up.

10 CHAIRMAN GOSS:

11 Let's break for lunch, then, and come back at -
12 was an hour and a half too long yesterday, or
13 was it about right? Is everybody going out to
14 get lunch or . . .

15 MR. INGRAM:

16 I would assume we can all get back here by
17 one- . . .

18 CHAIRMAN GOSS:

19 One-thirty?

20 MR. INGRAM:

21 Yes, Your Honor.

22 CHAIRMAN GOSS:

23 Okay. Is that all right with you all? That
24 gives us an hour and 15 minutes.

25

1 MR. WUETCHER:

2 Your Honor, I have had some inquiries concerning
3 the Commission's intentions on how far it wishes
4 to proceed this evening.

5 CHAIRMAN GOSS:

6 Well, it's abundantly clear to me we're not
7 going to get finished today. I mean, we're here -
8 we've still got Mr. Miller on the stand and he's
9 not finished and we're a half day - we've just got
10 a half a day left. I mean, I guess I would expect
11 to go until five o'clock or thereabouts. If we
12 get real close to finishing at five o'clock, we
13 might go a little later, but, if we're still
14 substantially a ways away from getting finished,
15 then we'll have to - we'll actually have to come
16 back - tomorrow is a State holiday and there will
17 be no employees here at the Commission, and I have
18 to testify over in Lexington at a hearing, in
19 terms of my duties as Chairman of the Commission,
20 Friday morning, and it would be Friday probably
21 right after lunch before we could get started
22 back. The next week, we have to be - the
23 Commission has to be in Nashville for a meeting,
24 which I suppose we could put off, cancel, if need
25 be, but that's sort of what our schedule looks

1 like.

2 MR. HOWARD:

3 Mr. Chairman, of course, we're looking at our
4 experts and the scheduling for their partici-
5 pation and trying to minimize the cost. You know,
6 ideally, perhaps we could go tomorrow. I too have
7 to be in Lexington on Friday. So all the
8 schedules right now are really piling on top of
9 each other, but, depending on how the afternoon
10 goes, perhaps counsel can recommend that, with the
11 liberty of going a little bit later tonight,
12 trying to complete this today. I haven't spoken
13 with anyone about this, but I think we'd like to
14 try to wrap it up today.

15 CHAIRMAN GOSS:

16 Well, maybe you gentlemen could have a few minutes
17 to talk about that and be in a position to let the
18 Commission know what your desires are when we come
19 back after the lunch break.

20 MR. INGRAM:

21 I can make that very clear, Your Honor.

22 CHAIRMAN GOSS:

23 Okay.

24 MR. INGRAM:

25 I will be here when the Commission is open for

1 business.

2 CHAIRMAN GOSS:

3 Okay. Okay. All right. Okay. I appreciate
4 that. We'll come back, then, at one-thirty.

5 OFF THE RECORD

6 CHAIRMAN GOSS:

7 All right. Everyone, please be seated. The
8 Commission apologizes for making you folks wait.
9 We had two hallway meetings between my office and
10 down here on administrative matters with regard to
11 the Commission, so that's why we're late. I
12 apologize. Okay. Mr. Wuetcher, you were about to
13 move on into another subject with Mr. Miller, I
14 think.

15 MR. WUETCHER:

16 Yes, sir, although I may have to return to the one
17 I left on, but I will . . .

18 CHAIRMAN GOSS:

19 Well, that's fine. First, let me ask, are there
20 any matters to take up before the Commission
21 before Mr. Wuetcher begins? All right. Go ahead,
22 Mr. Wuetcher.

23 MR. BARBERIE:

24 I think there was some general discussion about
25 how late you wanted to go tonight, but it's

1 nothing to me because I don't have any witnesses
2 anyway, but I think there was some . . .

3 CHAIRMAN GOSS:

4 Well, let me tell you, we sort of talked about it
5 at lunch. I think we can go as late as five or
6 five-thirty. One of the Commissioners has a
7 family obligation that needs to be attended to.
8 Thursday, there's no way, folks, that we can do
9 this tomorrow, because, if I had 10 or 15 PSC
10 employees come in and everybody is being paid comp
11 time, they'd hang me from the highest tree in
12 Frankfort, and I have, as I said, to testify
13 before a committee Friday morning at ten-thirty.
14 However, I'm trying to get that changed to either
15 someone covering for me or being first out of the
16 gate early Friday morning, which would hopefully
17 get me back here by nine or nine-thirty. So that
18 would give us essentially all day Friday to
19 finish. So I think we're going to go probably
20 until five or five-thirty today and then, if we
21 can't get completed, get the case completed, we'll
22 go into Friday. Does anybody have a problem with
23 that in terms of their schedules? Okay. Okay,
24 Mr. Wuetcher, go ahead.

25 Q. Good afternoon, Mr. Miller.

1 A. Hi, Mr. Wuetcher.

2 Q. Let's shift gears for a second to the low-income
3 tariff. If you would refer to Page 65 of your
4 testimony, of your direct testimony, you state that the
5 proposed 25 percent discount in that tariff would
6 generate a \$2.12 monthly discount for qualifying
7 households; is that correct?

8 A. Yes, sir.

9 Q. Okay. Does Kentucky-American intend to apply the
10 proposed discount to its Northern Division customers?

11 A. Yes, sir.

12 Q. Okay. Would you agree that the minimum - first of all,
13 for the Elk Lake Property Owners Association, there's
14 no customer service charge, is there, specifically?

15 A. I think there's a meter minimum.

16 Q. There's a minimum bill - will you accept, subject to
17 check, that the minimum bill is \$20.95 per month?

18 A. Yes, sir.

19 CHAIRMAN GOSS:

20 Excuse me. Mr. Spenard, are your all's monitors,
21 and, Mr. Ingram, are your all's monitors working?

22 MR. SPENARD:

23 My monitor is not working. I just asked . . .

24 COMMISSIONER COKER:

25 She's checking on it.

1 CHAIRMAN GOSS:

2 Okay. Before we go on, let's make sure we're
3 making a video record. It says we're on the air
4 and I think I've done everything I'm supposed to
5 up here, but let's wait just a second and make
6 sure.

7 OFF THE RECORD

8 CHAIRMAN GOSS:

9 Okay. I've been told that we are making a record
10 and that there's some sort of problem with the
11 monitors that Staff is going to try to fix, but we
12 are making a record so we can go on. I don't
13 think anybody has to have the monitor working for
14 us to continue. So go ahead, Mr. Wuetcher.

15 MR. WUETCHER:

16 Thank you, Your Honor.

17 Q. Mr. Miller, let's go back for a second. The monthly
18 minimum charge for Elk Lake customers is \$20.95
19 currently; is that correct?

20 A. Subject to check, Mr. Wuetcher, I think that's correct.

21 Q. Okay, and, unfortunately, I don't believe I've got the
22 proposed revised tariff, but let's just use that rate
23 for the time being . . .

24 MR. INGRAM:

25 I can help you, if you want. The revised tariff

1 is \$29.74.

2 MR. WUETCHER:

3 Okay.

4 Q. And that does not include a service charge? That's the
5 minimum monthly amount; is that correct?

6 A. Yeah. We didn't change their tariff makeup.

7 Q. Okay. In applying the low-income tariff to customers
8 of the Elk Lake division, the Elk Lake customers, how
9 would that work?

10 A. We propose to apply it to that minimum bill, which
11 would be a 25 percent discount on that minimum bill.

12 Q. Okay. Would the same methodology be used for those
13 persons that were previously served by Tri-Village
14 Water District?

15 A. Yes, sir.

16 Q. Do you foresee any problem to the extent that you're
17 effectively offering one level of discount to the
18 customers in the Central Division and a larger amount
19 of discount to the customers in the Northern Division?

20 A. I personally don't see a problem. It's 25 percent
21 of the minimum bill or the service charge. The
22 tariffs in the Northern Division are higher. I mean,
23 mathematically, they get a larger dollar amount but the
24 same percentage.

25 Q. Does the component for that minimum charge in the

1 Northern Division include a minimum amount water
2 monthly?

3 A. I think it does, yes, sir.

4 Q. So the discount would not only be on the amount of the
5 service charge but also on a portion of the water?

6 A. That's right, Mr. Wuetcher. We tried to keep this
7 simple, that it applied to the minimum bill, the meter
8 charge and minimum bill or the service charge. That
9 makes it very easy to administer and that was a
10 concern. We didn't want to create a lot of convoluted
11 implementation issues.

12 Q. Okay. I need to go back to deferred debits for just a
13 minute. With regard to the Customer Care and Shared
14 Services Center, is it correct that Kentucky-American
15 offset the expensed amortization with savings generated
16 by their creation?

17 A. Yes, sir. Based on the estimates we had at the time we
18 went into those transitions to those functions in the
19 Shared Services and Call Center, we lowered the
20 deferred debit at that point in time by the savings up
21 and through the point of this rate case.

22 Q. Were there any savings or reduced expenses resulting
23 from the prior period security costs that were deferred
24 and included in this case?

25 A. There was no offsetting savings to those; no, sir.

1 Q. Okay. I believe Ms. Bridwell had testified in her
2 rebuttal testimony that there is some maintenance
3 expenses that were not incurred because costs or funds
4 were diverted from preventative maintenance to
5 security.

6 A. I don't recall exactly the wording Ms. Bridwell used,
7 but my interpretation was that it was as much a matter
8 of manpower as anything. I mean, you have people
9 focused on one area that weren't able to focus on
10 others. You know, if you have a lot of balls in the
11 air, sometimes you can't do everything that might need
12 to be done, and, at the moment, security was taking
13 priority over some of those other things.

14 Q. Well, then, would it be the company's position that,
15 even though the preventive maintenance was not
16 performed and therefore effectively some savings were
17 achieved which were instead diverted to security
18 expenditures, that the amount of the deferred security
19 costs should not be reduced to reflect that savings?

20 A. Yes, sir, that's my position, because I wouldn't
21 consider them savings. They were simply deferring
22 the time to do those, and actually some of those
23 maintenance projects we've carried forward to complete.
24 It wasn't that you can just forego them forever. We
25 just were behind on them. I don't consider that a

1 savings. It was just a shifting of the time frame in
2 which you were going to do those deferred maintenance
3 projects.

4 Q. If you would, refer to Kentucky-American's Response to
5 the Fourth Set of Commission Staff Data Requests, Item
6 28. I'm going to refer to the attachment that's found
7 at Page 1 of 1 of the Kentucky-American's Response.

8 A. This is the one about rate recovery of security?

9 Q. Yes, sir.

10 A. Yes, sir, I have that.

11 Q. First, can you tell us - there are several American
12 Water Works subsidiaries that do not have any listed
13 deferred security costs. Among those are Arizona-
14 American, California-American, Etown, Hawaii-American,
15 Illinois-American. Why is there no deferred security
16 costs for those utilities, if you know?

17 A. In regards to the first four, I mean, the "7" code
18 indicates, as we discussed yesterday, that whatever
19 security that they had deferred has already been
20 amortized in between rate filings. Some of these are
21 well supplies and things like that. I don't really
22 know what the level of security they may have had, if
23 it was extensive as other places or not. I don't know,
24 Mr. Wuetcher.

25 Q. Is there any way that you can supply that for us? I

1 believe the initial request of Staff to Kentucky-
2 American was the amount of the deferred security costs.
3 I mean, if you're saying that no costs were deferred at
4 any point . . .

5 A. I'm not saying that.

6 Q. Okay.

7 A. If I can clarify, I'm not saying that at all.

8 Q. Okay.

9 A. I mean, the code itself, to me, indicates that they
10 were, but they have been amortized.

11 Q. Okay. Could you provide us what the level was before
12 the amortization began? Is that possible?

13 A. I will attempt to get that information from my counter-
14 parts.

15 Q. In looking at the table on the "Status Notes," there's
16 several different notes, but I notice down at the
17 bottom you had, as part of the key, that No. 8 was
18 "Unamortized balance in rate base," and there does not
19 appear to be - that notation does not appear for any of
20 the American Water Works subsidiaries; is that correct?

21 A. Yes. I mean, that note is correct.

22 Q. Okay. To your knowledge, does - I'm interpreting that
23 to mean that the unamortized balance was never
24 permitted in rate base.

25 A. I can tell you that I know that's not true, at least in

1 a few instances that I've been directly related in. In
2 West Virginia, the deferred balance is being treated as
3 rate base. I know that for a fact, and I know that for
4 a fact in Virginia.

5 Q. In order to save time, could the company refile this
6 exhibit and just reflect upon it those operating
7 entities that have, in fact, been allowed - to reflect
8 those companies in which the regulatory commission in
9 that state has allowed the unamortized balance in rate
10 base?

11 A. Mr. Wuetcher, could I just simply have a column added
12 to that and, on the ones that have been approved,
13 either have an "8" or not have an "8"? Would that
14 be . . .

15 Q. Yes, sir, or, in those instances where it has been
16 denied, if you could go ahead and indicate that also.
17 If there's been a specific request made to the
18 regulatory commission of that state and it's been
19 denied, if you could indicate that also.

20 A. Do you mean if it's been denied for amortization but
21 they may have allowed rate base? Is that - I just want
22 to be clear; that's all.

23 Q. If it's been denied for rate base treatment but it's
24 been allowed for amortization.

25 A. Okay. I'll clarify this as you request.

1 Q. Thank you, sir. Is it correct that Kentucky-American
2 has requested that the unamortized balance for rate
3 case expense be placed in rate base?
4 A. We asked for that in our initial filing, yes, sir.
5 Q. To your knowledge, what states currently follow that
6 course of ratemaking treatment? Are you aware of any?
7 A. I'm not aware of any.
8 Q. To your knowledge, has this Commission ever permitted
9 the unamortized portion of rate case expense into rate
10 base?
11 A. No, sir.
12 Q. Given the Commission's past history on this point, can
13 you explain why the company is requesting it in this
14 instance?
15 A. One goal that we tried to accomplish in our filing was
16 to match the capital we have invested and the rate base
17 we were requesting except for items that have
18 previously been declined for rate base treatment, but
19 that's why we did it, Mr. Wuetcher. I mean, to be
20 honest with you, in the rebuttal testimony I did not
21 touch that subject.
22 Q. Thank you. Which American Water Works regulated
23 subsidiaries are currently allowed rate base treatment
24 for unamortized deferred maintenance?
25 A. There's a lot of - there are several different methods

1 even within the five states in which I primarily work.
2 Tennessee, they simply capitalize it, for instance. In
3 West Virginia, we trend it up to current cost and
4 amortize it over 14 years. So it's not officially
5 recognized in rate base, but there is some recognition
6 of a cost beyond the actual cost. In Virginia, subject
7 to check, but I believe we get rate base on that there.
8 I'm just saying that there are a lot of different ways
9 of handling it in different states.

10 Q. Yes, sir.

11 A. But, at least in the states where I operate, it's
12 handled in some fashion that gives you a return on that
13 asset.

14 Q. Let me refer you now to Kentucky-American's Response
15 to the Commission Staff's Fourth Information Request,
16 Item 37.

17 A. Is this regarding OPEB, sir?

18 Q. Yes, sir, it is.

19 A. I have it.

20 Q. Okay. Would you agree that Kentucky-American's actual
21 expenses for Other Postretirement Employee Benefits
22 have differed significantly from its budgeted
23 projections?

24 A. They have differed, yes, sir.

25 Q. Well, would you agree that in some instances the

1 variance has been significant, up to almost 20 percent
2 or more?

3 A. Subject to check the numbers, I'll say there are
4 variances there for 20 percent, more than likely, just
5 doing the math in my head real quick.

6 Q. Okay. Given that variance, why should the Commission
7 give much weight to the company's projection for the
8 test period?

9 A. Well, there are a lot of reasons, you know, for that,
10 which I think I did try to explain in my rebuttal
11 testimony, that, you know, just looking at things on
12 its face value is not always representative of what
13 happened. We did have some movement to the Call Center
14 and Shared Services and a change in employees there.
15 That might have been budgeted at Kentucky-American but
16 ended up being charged, like the Call Center and Shared
17 Services, in management fees, and, in the instances
18 where that occurred, the benefit costs or OPEBs would
19 have also been moved over to Service Company costs. I
20 mean, the first impression is this is not just an
21 apples and - it's not just an apples and apples
22 comparison, if you will. In some cases, because of
23 those movements between management fees and labor,
24 direct labor, at Kentucky, there are some mismatches
25 here.

1 Q. Could you - let's just use the two examples with the
2 greatest variance, the 1999 and 2003 years. Could you
3 provide us just with an explanation for the variance,
4 with what you've proposed here, with what you believe
5 to be the cause of it that you testified to today is
6 what occurred, the reason for this variance?
7 A. You mean from actual to budget each year?
8 Q. Yes, sir, or at least for the two years that have
9 the greatest variance, 1999 and 2003, just to check
10 and . . .
11 A. Well, I mean, obviously, you know, our budgeting
12 process, as we've described it, we get updates from our
13 actuarial studies on which to base those estimates.
14 From '99 to 2003, I explained in my rebuttal testimony
15 that the average increase over that period was 7 per-
16 cent, and I think we were asking for a 9 percent in
17 2004 over the current actuarial study, we had - not a
18 study, but update to the study which gave us the 2004
19 costs to expect, and we thought that 9 percent was
20 reasonable considering that, during the period from '99
21 to 2003, the average increase was 7 percent, but that
22 was impacted by the reduction of employees that were
23 shifted to the Service Company. That's the explanation
24 I gave in my rebuttal. If that's not good enough, Mr.
25 Wuetcher, I'll be glad to try to do better.

1 Q. Well, if that's your testimony, that the variance for
2 the two - the two years with the greatest variance,
3 that that's the explanation, that's fine. I think you
4 had suggested before that you needed to go back and
5 check, that you weren't clear on it, but, if you're
6 clear on it, that's fine. Let me go ahead and refer
7 you to Item 38, the same Information Request. In that
8 Request, the Commission Staff requested a description
9 of the procedures and assumptions that Kentucky-
10 American routinely uses for its annual budgeting
11 process for OPEBs. The Response that the company gave
12 back was specific to the forecasted test period. Could
13 the company provide an updated Response that addresses
14 the methods and procedures that have been routinely
15 used by Kentucky-American over the last five years?

16 A. If it wasn't clear in this answer, I'm going to - I
17 would like to respond that there has been no change in
18 procedures. We get updated information from Towers
19 Perrin on which to base our plans and that's how we do
20 our budget and that's how we prepared this forecasted
21 test year. They're one and the same process.

22 Q. Well, let's step back, then. Let's go back to '99 just
23 so that we can go through. You're saying that the
24 company receives an actuarial - bear with me; I have
25 problems speaking. You take that study and then you go

1 ahead and make certain assumptions to it? I'm just
2 trying to get the . . .

3 A. Well, I mean, our actuarial consultants do, Towers
4 Perrin.

5 Q. And that is provided how frequently?

6 A. It's provided - the actuarial study itself comes out in
7 about December of each year. In our planning process
8 for the next year, they take that information, update
9 it for any change in assumptions that they might know
10 from when the actuarial report was done, and they give
11 us a reforecast, if you will, of what our expenses are
12 going to be in the upcoming year. That's what we use.
13 That's how we prepared this rate case also.

14 Q. Let me see if I understand correctly, then. In order
15 to prepare for the forecasted test year amount, you
16 took the actuarial study and increased it 9 percent for
17 the forecasted test period; is that right?

18 A. If I could, and I'll try to paraphrase it without
19 dragging out the data request, but . . .

20 Q. Well, is that what you did?

21 A. Yes, . . .

22 Q. Okay, and . . .

23 A. . . . and AG 1 . . .

24 Q. Well, hold on. Now, when you're normally preparing a
25 budget, not for ratemaking purposes, not for purposes

1 of filing an application, but just in a normal planning
2 budgets within the corporation, is that - do you just
3 simply take a percentage amount and increase it over
4 what the study has stated for the next budget period?

5 A. Mr. Wuetcher, that's not what we did for 2004. Towers
6 Perrin - and it was attached, I think, to AG 1-175. We
7 took that actuarial projection, which they did use the
8 same basis of the '03 study. They changed the
9 assumptions as they indicated on those pages attached
10 to AG 1-175. What we did for 2005 was add 9 percent
11 based upon the information that was in there in the
12 actuarial study, and that's consistently what we do
13 each and every time.

14 Q. Let me see if I understand correctly, then. If you're
15 budgeting now for 2005, you would use the study that I
16 believe you've referred to in some data requests that
17 was supposed to come out in November of 2004; is that
18 correct?

19 A. No, sir. AG Data Request 1-75, not 175, at Pages 78
20 and 79, included the assumptions we used. Also in our
21 working papers, I believe, we provided a schedule that
22 took the 2003 actuarial study, updated that study to
23 reflect 2004 costs, and that was the basis for the 2004
24 budget. To that, we added 9 percent for the year 2005
25 to arrive at both the budget that we had and this

1 forecasted test year amount.

2 Q. Your process for coming up with this amount is based on
3 your general budgeting procedures?

4 A. It's consistent with the way we've budgeted this
5 expense in my history in prior rate cases.

6 Q. So, when you're budgeting for 2005 - I take it the 2005
7 budget has already been prepared.

8 A. It's not been completed at this point in time, Mr.
9 Wuetcher, but we're . . .

10 Q. Okay. When it is completed, will it - as I understand
11 it, is it correct to say that you're about to get an
12 actuarial report within the next month regarding 2004
13 expenses?

14 A. Yes. Regarding 2004 expenses, yes.

15 Q. Okay, and then that will be adjusted - will that be
16 adjusted for purposes of determining the final 2005
17 budget?

18 A. The 2005 - let me try to clarify this. The 2005
19 budget, right now - by the time we get that actuarial
20 report, we'll probably be finalizing the budget. Right
21 now, the budget is prepared with the same 9 percent
22 increase that I have included in this forecasted test
23 year. If that actuarial study came out and the costs
24 for 2004 were significantly different than the estimate
25 Towers Perrin gave me back in February for 2004, it

1 could impact the budget for 2005, plus or minus, but I
2 won't know that until I get the actuarial report.

3 Q. I believe we've already requested a copy of the report
4 when it comes out, but just to renew that request
5 today, and, when you file that, if you could provide us
6 with what impact that report will have on the OPEB and
7 the pension expense.

8 A. I'll be glad to, Mr. Wuetcher.

9 Q. If you'll go ahead and refer to Kentucky-American's
10 Response to Item 39 of the same Information Request.

11 A. I have it, sir.

12 Q. Okay. Kentucky-American was asked to provide a
13 description of the management fees referred to or
14 tabbed as business development costs. I believe the
15 Response states that these costs are for salaries,
16 wages and salary overheads for business development
17 employees. Could you provide for us a description or a
18 statement of the services that are provided to
19 Kentucky-American in return for these fees?

20 A. Yes, sir. I think you asked me previously to provide a
21 list of all the Southeast Region employees. The
22 business development employees will be on there.

23 Q. Okay.

24 A. I think it would be encompassed in the request you've
25 already asked me for.

1 Q. Okay. Could you, when you provide that, could you
2 perhaps provide a separate designation as to what part
3 of that is related or referred to or part of the
4 business development expenses?
5 A. I'd be glad to.
6 Q. If you would refer to Exhibit 7 of your rebuttal
7 testimony . . .
8 A. I have it, sir.
9 Q. Okay. I believe Exhibit 7 is used to demonstrate or
10 support the statement that 95 percent of the major
11 utilities provide some type of incentive plan for their
12 executives; is that correct?
13 A. We had been asked in a data request and, to be quite
14 honest with you, I had some trouble getting the
15 information that was requested. I don't have it - I
16 don't want to insinuate or indicate in any way this is
17 every utility. These are utilities that responded to a
18 survey done by Towers Perrin, and I think it's
19 comprised of, if I'm not mistaken, 93 utilities that
20 responded to the survey and, of those 93 utilities,
21 99 percent had an annual incentive plan for its
22 executive group of employees and 83 responded in
23 regards to what they call middle management type
24 positions, and 95 percent of those utilities responding
25 out of 83 had those type of plans that applied to their

1 middle management.

2 Q. Okay. Can the company provide any information
3 regarding the level of incentive compensation for these
4 companies that you've listed it?

5 A. Mr. Wuetcher, I don't know that I have the ability to
6 do that.

7 Q. Okay. Well, that's . . .

8 A. Like I said, I mean, most companies don't really want
9 to freely share these things.

10 Q. Well, that's an acceptable answer. I'm just trying to
11 find out what you have. Does the company have any
12 information regarding the ratemaking treatment that
13 utility regulatory commissions have had regarding these
14 type of incentive plan expenses?

15 A. Well, certainly I could research a lot of Orders and
16 try to find that out. I didn't do that. I know . . .

17 Q. Well, rather than try to get you to do our research for
18 us, let me ask this. Based on your knowledge, your
19 personal experience, what has been the general
20 ratemaking treatment for these types of incentive plans
21 in the commissions that you are familiar with?

22 A. In the five states where I've operated but not counting
23 Kentucky, but four, Virginia, Maryland, West Virginia,
24 and Tennessee, we get recovery of those costs.

25 Q. Okay. Do you get complete recovery, or is there some

1 sharing between the . . .

2 A. I think . . .

3 Q. . . . ratepayers and shareholders?

4 A. I'm sorry. I didn't mean to interrupt you. In some
5 instances, it might be limited to only what was spent
6 in the historical test year per se West Virginia I
7 think that's the way it works and probably Virginia.
8 In Tennessee, we do a forecasted test year. I don't
9 remember this being an issue in that case last time, in
10 2003.

11 Q. Okay.

12 A. In regards to that, just what my rebuttal said in this
13 regard, I didn't take exception with Ms. Crane's
14 proposal in regards to this, that, because it can
15 fluctuate year to year, that a three-year average was
16 not acceptable in this case to the company and, as a
17 matter of fact, I agreed with Ms. Crane's recom-
18 mendation.

19 Q. Do you recall that, when the Commission approved the
20 transfer of control of Kentucky-American to RWE, it
21 expressly found that savings resulting from the
22 acquisition should be shared with Kentucky-American
23 ratepayers?

24 A. I don't have that condition in front of me, but I'm
25 generally aware that that condition is there in some

1 form, yes, sir.

2 Q. Okay. Was one of the features of the transaction the
3 creation of Thames Water Aqua US Holdings?

4 A. I believe it was, yes, sir.

5 Q. Okay, and I believe that company was formed, in part,
6 to permit the filing of a consolidated tax return and
7 to permit the total entity to obtain the benefits of
8 such a consolidated filing?

9 A. I recall that language being there.

10 Q. Okay. Do you also recall that the Attorney General and
11 Lexington-Fayette Urban County Government proposed in
12 that proceeding that any tax savings achieved through
13 the write-off of losses incurred in unregulated U.S.
14 operations against regulated U.S. earnings be treated
15 as a benefit to be shared with ratepayers?

16 A. Am I aware that they did that?

17 Q. Or do you recall that being proposed by Lexington-
18 Fayette Urban County Government and the Attorney
19 General?

20 A. In the change of control proceeding?

21 Q. Yes, sir.

22 A. No, I don't recall that.

23 Q. Okay. Will you accept, subject to check, that they
24 made such a proposal and asked that the Commission make
25 it one of the conditions to approval of the transfer?

1 A. I mean, the record will speak for itself, Mr. Wuetcher.
2 Q. Okay. So if I suggested to you that the Commission
3 refused to accept that proposal and found that it was
4 unnecessary because such savings were already required
5 to be tracked and allocated, you would not recall that
6 either?
7 A. I'm familiar with the language you're talking about.
8 Q. Okay.
9 A. I wasn't there, but I . . .
10 Q. Okay. No, I just want to make sure that you
11 understand. I don't want to misrepresent something to
12 you. To your knowledge, has Kentucky-American incorpo-
13 rated the benefits achieved from any income tax consol-
14 idation in its tracking mechanism?
15 A. In the filing that we made earlier this year?
16 Q. Yes, sir.
17 A. No, and I would like to add that it would be absolutely
18 inappropriate to do so, because there are none
19 regarding the statutory tax rate that we pay. I mean,
20 one benefit of filing a consolidated tax return may be
21 the administrative costs to produce that versus
22 producing 25 or however many companies and subs
23 American Water Works has, maybe 50. That's an admini-
24 strative savings, but it's always prepared a consol-
25 idated tax return. So is there a benefit from an

1 administrative cost to do that versus doing all these
2 individual returns? Yes, and those savings have always
3 been built in, but I will say the reason that there's
4 none on that synergy statement is because there is no
5 savings. It's an adjustment proposed by the AG that is
6 not there and it's not available, in my opinion, to
7 Kentucky-American. When we write a check to pay our
8 income taxes up to the parent, it's 35 percent of
9 taxable income. If I could just add one other thing,
10 that's a phantom savings, in my opinion.

11 CHAIRMAN GOSS:

12 I'm sorry?

13 A. There is no savings. It's a phantom savings.

14 CHAIRMAN GOSS:

15 Thank you.

16 Q. Well, let me refer you, then, to Kentucky-American's
17 Response to the Fourth Commission Staff's Request, Item
18 40.

19 A. No. 40, sir?

20 Q. Yes, sir.

21 A. Which . . .

22 Q. That's the Fourth Commission Staff's Request. It would
23 have been the one issued in response to the company's
24 rebuttal testimony.

25 A. Just a second. I have it, sir.

1 Q. Okay. Is there a requirement for an expenditure of
2 cash equal to the federal tax expense of Kentucky-
3 American?
4 A. Is there a requirement?
5 Q. Yes, sir.
6 A. Yes, sir. We pay up at the statutory tax rate that
7 applies to Kentucky-American's taxable income and
8 that's 35 percent.
9 Q. Okay, and that requirement is imposed by the tax code?
10 Who imposes the requirement?
11 A. It's a part of our . . .
12 Q. Is it the operating agreement?
13 A. I'm not sure if there is a written one. If there is, I
14 don't have it. That is the policy of the company, that
15 each will pay up at whatever tax liability that applies
16 to their taxable income and vice versa; if there's a
17 sub that doesn't have taxable income, they get a
18 refund.
19 Q. Well, I guess, then, it's safe to sum up on this issue
20 that you would not view Ms. Crane's proposed adjustment
21 for consolidated tax filings as one means of sharing
22 merger savings.
23 A. I would say this; I couldn't disagree with Ms. Crane
24 more, and the savings she's talking about aren't
25 savings at all, and they have nothing to do with the

1 merger.

2 Q. So the answer is "Yes," you disagree. Okay.

3 A. I do disagree very much; yes, sir.

4 Q. Okay. One more question on this. So the original
5 transaction that was placed before the Commission in
6 early 2002 did not include the creation of a Thames US
7 Holdings; did it? Let me step back . . .

8 A. Yeah.

9 Q. When the proposed transfer of control to RWE was
10 presented to the Public Service Commission, the idea of
11 a U.S. holding company, Thames Aqua US Holdings did not
12 exist, and that was not put in front of the Commission
13 at that time; was it?

14 A. I think that's the difference between Case 00018 and
15 00377; yes, sir.

16 Q. Well, let me rephrase it, because I know Mr. Ingram is
17 going to - it was not - there was not an express
18 proposal for the creation of Thames Aqua US Holdings;
19 is that correct?

20 A. I think that's correct.

21 Q. Thames Aqua US Holdings came into existence after the
22 Commission - or was incorporated after the Commission
23 issued its final Order in 2002-00018; is that correct?

24 A. Yes.

25 Q. As a result of some modifications to the transaction

1 and the creation of Thames Aqua US Holdings, there was
2 a subsequent application made to the Commission to
3 approve that new arrangement that included Thames Aqua
4 US Holdings; is that correct?

5 A. Yes.

6 Q. All right, and, in fact, one of the reasons that the
7 second case was presented to the Commission was the
8 fact that this new U.S. holding company was going to be
9 owning Kentucky-American indirectly, is that correct,
10 to the extent you know?

11 A. To the extent I know, I mean, I think they're in that
12 chain of command; yes, sir.

13 Q. And wasn't one of the reasons given for this new
14 arrangement, in part, the need for RWE and Thames Aqua
15 to have a U.S. subsidiary created so that a consoli-
16 dated tax filing could be made?

17 A. Mr. Wuetcher, I don't know the full reason that that
18 was done. Okay? American Water Works prepared a
19 consolidated tax return prior to the change of control
20 and there's some reason that that needed to be done.
21 Specifically, I don't know the answer to your question.
22 I can tell you the impact on Kentucky-American to this
23 point is that we're doing taxes exactly the way we were
24 prior to the merger.

25 Q. Okay. I promise this will be the last few questions.

1 In response to . . .

2 CHAIRMAN GOSS:

3 Mr. Howard doesn't believe you, Mr. Wuetcher.

4 MR. WUETCHER:

5 He's been around the Commission too long, around
6 these Commission proceedings too long.

7 Q. The Commission Staff requested details of the amounts
8 deferred or incurred to establish the Customer Call
9 Center in Alton and the Shared Services Center in New
10 Jersey. The amounts that were deferred were \$629,339
11 for the Customer Call Center and \$704,179 for the
12 Shared Services Center. We requested three different,
13 or made requests in two different data requests, Second
14 Data Request, Items 76a. and c., and, in the Third
15 Commission Staff's Set of Information Requests, Item 25
16 and 27. In response, the Commission Staff received
17 some, for lack of a better term, generic journal
18 entries with reference to Service Company charges.
19 Could the company provide a more detailed analysis of
20 the amounts deferred with a more detailed description
21 of the services or products that were provided in
22 return for these expenses?

23 A. Mr. Wuetcher, I would be happy to try to define what
24 types of expenses they were in more detail. The fact
25 of the matter is that this was an American Water Works

1 project and, you know, Kentucky-American shares here
2 that there is literally, I mean, a tractor-trailer full
3 of detail that we could find somewhere, and certainly I
4 can't provide you every invoice, if that's what you're
5 asking me, but if you . . .

6 Q. No, sir. A more detailed statement would be
7 appreciated that would at least itemize, of a general
8 nature, the services that were provided and the amounts
9 associated for those particular services.

10 A. Thank you. I can do that, Mr. Wuetcher.

11 Q. Well, my colleagues have made me a liar, so let me ask
12 you a couple of more questions. Hopefully, these . . .

13 CHAIRMAN GOSS:

14 Mr. Howard had you pegged, Mr. Wuetcher.

15 MR. WUETCHER:

16 Hopefully, these will be the last.

17 Q. Could you refer to Exhibit 37D-1 of the Application.

18 A. Give me just a moment to get that, if you don't mind,
19 Mr. Wuetcher. I have that, Mr. Wuetcher.

20 Q. Okay. I'm going to refer you to - it's Schedule D-1,
21 Page 1 of, it looks like, 18.

22 A. I think I have that, sir.

23 Q. Okay.

24 A. It's regarding revenues?

25 Q. Yes, sir.

1 A. Okay.

2 Q. At least it starts out regarding revenues. Down at
3 Line 27, it appears that an adjustment was made to
4 remove \$20,576 from revenues. I think that may be
5 related to collections from the Boonesboro Sewer
6 operations; is that correct?

7 A. I believe that would be correct.

8 Q. Okay. Can you show us where the expenses related to
9 the Boonesboro Sewer operations were also eliminated
10 from forecasted expenses?

11 A. Mr. Wuetcher, instead of holding everybody up and me
12 looking through these schedules, because I don't know
13 exactly where that's at, could we . . .

14 Q. Yes, sir, you can.

15 A. . . . provide you a schedule to do that?

16 Q. Yes, sir, you can. I will take it the company agrees
17 that the expenses associated with the sewer operations
18 should be removed from the forecasted test period
19 operations; is that correct?

20 A. Absolutely.

21 Q. Okay. If you could just identify for us in a post-
22 hearing data response, that would be fine.

23 A. I'll be glad to do that, Mr. Wuetcher.

24 MR. WUETCHER:
25 That's all we have.

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CHAIRMAN GOSS:

Does the Commission have any questions? Mr. Coker? Are you awake, Mr. Coker?

COMMISSIONER COKER:

I'm just in awe of Mr. Wuetcher over there. He asked all my questions. I was going to ask a couple of those last ones. Thank you.

MR. WUETCHER:

I'm glad you handed them to me before the hearing.

EXAMINATION

BY CHAIRMAN GOSS:

Q. I do have one question, Mr. Miller. What is the basis for your belief that this Commission - that the deferred assets that we've been talking about here for the last day and a half would be recognized in rates by the Commission?

A. Mr. Chairman, are we speaking to the Call Center, Shared Services, and security, primarily?

Q. Yes, yes.

A. And let me make sure I understand the question one more time. It's why should the Commission approve those?

Q. No, sir. I had understood, and maybe I'm misunderstood, but I had understood that you had articulated to your auditor that you believed, or there was a reasonable chance that the Commission would accept the

1 company's request or the company's treatment of these
2 deferred assets. Is that correct?
3 A. Yes.
4 Q. And I guess what I want to know is what is the basis -
5 what was going through your mind, or what is the basis
6 for your belief that the Commission would treat these
7 deferred assets in a way consistent with what the
8 company wanted?
9 A. Thank you. I understand, Mr. Chairman. I think I'll
10 have to deal with them individually in order to answer
11 that question.
12 Q. Okay.
13 A. Or maybe I can deal with Shared Services and the Call
14 Center together, and I think security is a little
15 different. In regards to the Shared Services and Call
16 Center costs, we knew - and one of the reasons that we
17 were doing this was to save costs; to provide better
18 service 24 hours a day, 7 days a week, which we could
19 not cost-justify doing locally at all the American
20 companies, because each company had that before, that
21 we want to provide "Best in Class" service at the least
22 cost possible. So there are specific savings related
23 to the Shared Services and Call Center transition
24 costs, and I've identified those as Exhibit No. 5 to my
25 direct testimony. FAS 71 - and I'm going to

1 paraphrase, you know, one of those CPA documents. I
2 don't want to get too complicated here and be as simple
3 as I can. It says that you're permitted to defer those
4 costs for accounting purposes for future rate recovery
5 if you believe they're likely, but, to the extent there
6 were transitions costs associated with those in order
7 to generate those savings, that you should write off or
8 write down those savings or those deferred assets by
9 the amount of savings until they can be addressed in a
10 future ratemaking proceeding. That's exactly what we
11 did, and it was my belief that, given what was going on
12 around the country in other properties where American
13 Water Works work and that we were doing what we think
14 our public service obligation is, we're trying to
15 improve service, provide expanded service, and do that
16 at a lower cost, that this Commission would eventually
17 recognize that what we did was in the best interest of
18 the customers, we're passing those savings through in
19 this rate filing, and that we should get recognition or
20 an amortization of the deferred transition costs which
21 the company was required to spend in order to effect
22 those savings. We think that's fair, reasonable, and
23 just ratemaking, and, based on what I know from the way
24 things have been handled at Kentucky and what was going
25 on in a lot of the other jurisdictions that I monitor,

1 as well as work in, I thought that, because we're doing
2 exactly what our public service obligation is, that
3 this Commission would eventually decide that that was
4 the right thing to do and provide us an amortization
5 and a return on and of those expenditures that we made
6 in order to pass those savings and increase our service
7 to the customers. That may be too long, but that's as
8 simple as I can get on those two.

9 Q. That's fine.

10 A. On security . . .

11 Q. Yeah. Go ahead and talk about security.

12 A. I would like to, if I can, find the language that was
13 in that Condition No. 2, and, if you will bear with me
14 just a moment, I'd like to get that in front of me. I
15 don't think anybody could have visualized on September
16 10th what was going to occur on September 11. The
17 company, in my opinion, in all prudence, had to and did
18 what it was required to do, and that was to go protect
19 the assets of Kentucky-American which are utilized for
20 the public service of residents in this company. I
21 said in my testimony, you know, can anybody imagine
22 what the impact would be if you woke up one day and a
23 population of 250,000 people doesn't have water. It
24 would be devastating. I think our company acted
25 prudently. They did what they had to do to make sure

1 that didn't happen. The language in that Order that's
2 been a condition here, you know, it says - we did first
3 what we thought was the proper thing, which was to ask
4 for a surcharge, because we knew the costs were going
5 to be significant and it was going to have an impact on
6 the company's financial condition. We thought it was
7 the proper and prudent thing to do, and we pursued the
8 surcharge. In the same time frame, the change of
9 control agreement moved through and Condition 2 was
10 part of that, but I think the most important words in
11 Condition No. 2, to me, were that it says the company
12 cannot apply for a change in rates regarding security
13 before 2007, and at no time before, except in a general
14 rate filing. To me, that does not mean that Kentucky-
15 American was precluded from asking for recovery of
16 those costs, to the extent they were prudently
17 expended, in a future rate case. That's what that
18 language means to me. That's how we interpreted that
19 condition when it was placed upon us, and that's what
20 we're asking the Commission to do right now. We think
21 we acted prudently and did what we had to do, and we're
22 asking the Commission to recognize that now in this
23 general rate filing, which has been our position on
24 that subject from day one.

25 Q. To your knowledge, has any Commissioner or Staff person

1 at the Public Service Commission in any way signaled
2 the Commission's intention to treat those, prior to
3 this rate case, signaled the Commission's intention to
4 treat these deferred assets in the manner that the
5 company seeks?

6 A. No, sir. Not . . .

7 Q. Okay. I just wanted to be clear about that.

8 A. Not once has anyone ever indicated to us that we were
9 going to get rate recovery.

10 Q. All right.

11 A. What I am basing my opinion to the auditors on, at the
12 time, was that the company acted prudently. We think
13 we've done exactly what the Order and the Condition
14 No. 2 said we'd do, and we've put forth the best
15 testimony of our reasoning and thoughts as to why we
16 think that's appropriate in this case, and that's where
17 we're at, Mr. Chairman.

18 Q. Okay, and you understand that, if that happened, either
19 overtly or with a wink and a nod, this Commission wants
20 to know about it? You understand that?

21 A. Absolutely, and . . .

22 Q. Okay.

23 A. . . . I'm telling you, and, believe me, these kind of
24 topics of these deferrals and rate treatment, and so
25 forth, are near the top of my things to be concerned

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about in my job, and I can honestly tell you there's no one ever indicated that, "We're going to do it," and that's not what the company has been asking over the last two years. We've only been asking that the Commission give us our day in court about them in this hearing, and that's what we've done.

Q. All right. Okay. Thank you, Mr. Miller.

CHAIRMAN GOSS:

Any follow-up, Commission?

VICE CHAIRWOMAN WILLIAMS:

No.

CHAIRMAN GOSS:

All right. Okay. I'll turn it back over to you, Mr. Ingram, for redirect.

MR. INGRAM:

I feel obliged to state for the record, Your Honor, in response to your last question to Mr. Miller, that I have never received any message directly or indirectly, with a wink or a nod, from anybody from the Public Service Commission or any Commissioner with respect to any treatment that Kentucky-American has requested for security costs, Shared Services costs, or Call Center costs.

1 CHAIRMAN GOSS:

2 Okay. I appreciate that, Mr. Ingram, because,
3 again, I would say the same thing to you that I
4 said to Mr. Miller. We've got a new Commission
5 here and, if something like that occurred, we
6 certainly want to know about it.

7 MR. INGRAM:

8 I will include in my statement present and all
9 former Commissioners of the Public Service
10 Commission.

11 CHAIRMAN GOSS:

12 Okay. That's fine. All right.

13 MR. INGRAM:

14 Just a couple or three questions.

15 REDIRECT EXAMINATION

16 BY MR. INGRAM:

17 Q. Mr. Miller, are you aware that the Director of
18 Governmental Relations for Kentucky-American Water
19 Company is registered as a legislative lobbyist only?
20 Would you know that?

21 A. I don't really know that, Mr. Ingram.

22 Q. If I told you that was the case, would you accept that?

23 A. I would, sir.

24 Q. I want to hit the dead horse a couple of times here.
25 Does Kentucky-American send to the entity filing a

- 1 consolidated tax return every year a check equal to
2 35 percent of its taxable income?
- 3 A. I've worked here 28 years in the accounting field and
4 each and every year that has been the case because we
5 have had taxable income.
- 6 Q. Is that what is shown on the income statements of
7 Kentucky-American Water Company?
- 8 A. Absolutely.
- 9 Q. Does Kentucky-American Water Company ever get back from
10 the entity filing the consolidated tax return any
11 refund to those federal taxes?
- 12 A. No, sir.
- 13 Q. Does the entity filing the consolidated tax return take
14 a part of the money that it has accumulated and gives
15 it to the subsidiary that has an operating loss as a
16 then-incurred tax benefit instead of postponing that
17 tax benefit to a loss carry-forward year?
- 18 A. Yes, sir.
- 19 Q. The last question I'll ask you, Mr. Spenard, I think
20 asked you about your projection of the return on equity
21 to be achieved by Kentucky-American Water Company for
22 the year 2004, and I believe somewhere in this massive
23 record there's a number of 8.46 percent. Do you
24 remember him asking you about that?
- 25 A. Yes, sir. It was attached to my testimony as Direct

1 Exhibit No. 1.

2 Q. Does Kentucky-American monthly file its financial
3 statements with the PSC?

4 A. We do.

5 Q. Have you filed a financial statement for the 12 months
6 ending September 2004?

7 A. I have.

8 Q. Do you know what the earned return on equity for
9 Kentucky-American Water Company has been for the
10 12 months ending September 2004?

11 A. Yes, sir. It's 5.2 percent.

12 MR. INGRAM:

13 I have no more questions, Your Honor.

14 CHAIRMAN GOSS:

15 Thank you, Mr. Ingram. Mr. Spenard, do you
16 have recross limited to the scope of redirect?

17 MR. SPENARD:

18 I have two limited to the scope of redirect, and
19 I have a request that I believe is within bounds.
20 First, on the redirect . . .

21 RECCROSS EXAMINATION

22 BY MR. SPENARD:

23 Q. Mr. Miller, does Pennsylvania-American send 35 percent
24 of its taxable income to the parent as well?

25 A. It does. Well, let me rephrase that, Mr. Spenard. As

1 long as it has taxable income, it does.

2 Q. Okay. What about West Virginia-American?

3 A. Mr. Spenard, yes, that's the case of each subsidiary.

4 Q. Okay.

5 MR. SPENARD:

6 I'm going to ask, during the Staff's examination

7 of this witness, there was a Regulatory Asset

8 Authorization form discussed in response to a

9 Data Request, LFUCG DR 3, No. 4. It's got Mr.

10 Miller's signature, and I would like to ask the

11 witness if he can identify the initials, who

12 initialed the . . .

13 CHAIRMAN GOSS:

14 I don't see a problem with that. Go ahead.

15 MR. SPENARD:

16 Okay. If either want to see it, it's Page 1 of

17 14.

18 MR. INGRAM:

19 He knows who that is.

20 MR. SPENARD:

21 Okay.

22 COURT REPORTER:

23 Page 1 of 14 of what?

24 MR. SPENARD:

25 It's Kentucky-American Water's Response to

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Lexington-Fayette Data Request 3, Item 4, Page 1
of 14. It's the initials under "Reviewed By:"
and I'd ask Mr. Miller to identify who that has
been approved by or reviewed by, rather.

A. Mr. Spenard, I submitted this document to Robert
Sievers and I believe that to be his initials. Mr.
Sievers is Comptroller of American Water Works.

Q. Okay.

MR. SPENARD:

Thank you, Mr. Chairman. That's it.

CHAIRMAN GOSS:

Okay. Thank you. Thank you, Mr. Spenard. Mr.
Childers, do you have any further questions?

MR. CHILDERS:

No, Your Honor.

CHAIRMAN GOSS:

Mr. Barberie?

MR. BARBERIE:

I have a couple of clarification matters.

CHAIRMAN GOSS:

Okay. Come on up next to Mr. Howard so the mike
can get you, please.

1 RECROSS EXAMINATION

2 BY MR. BARBERIE:

3 Q. Mr. Miller, I think Mr. Ockerman asked you some further
4 questions about the Business Plan and I believe you
5 said it had not been adopted. Are you implying that
6 it's also not being followed in any manner?

7 A. No, sir.

8 Q. Okay.

9 A. I'm just saying that there are things that change from
10 when that plan is prepared.

11 MR. BARBERIE:

12 And I think I'm ready to ask for what I want to
13 ask for that I couldn't clarify to you earlier,
14 and let me go ahead and ask for it and see if I
15 can get it or not.

16 CHAIRMAN GOSS:

17 Okay. All right.

18 MR. BARBERIE:

19 I think, in order to satisfy my curiosity about
20 the expenditures issue, it would be sufficient if
21 the company could provide a breakdown of the
22 political activities number that was provided as -
23 I don't know which one it was. I think it was
24 Schedule F-7, and I'd request that information and
25 that would suffice for my inquiry about the

1 Coalition matter.
2 CHAIRMAN GOSS:
3 Do you know what he's talking about, Mr. Ingram?
4 MR. INGRAM:
5 I do not, Your Honor.
6 MR. BARBERIE:
7 It's Exhibit 37F, Page 11 of 11. There's a
8 breakout of different categories, one of them
9 being political activities. I believe the amount
10 is \$108,509. If I could be provided a breakdown
11 of what constitutes that amount, I think it would
12 be sufficient for what I wanted to verify. I
13 don't think they have such a breakout today. It
14 would be a supplemental request.
15 CHAIRMAN GOSS:
16 Take just a second and consult with Mr. Miller, if
17 you need to, to see if you can agree to comply
18 with that request. It sounds like a reasonable
19 request to me.
20 MR. INGRAM:
21 37 what?
22 MR. HOWARD:
23 F-7, Page 1 of 1, . . .
24 MR. BARBERIE:
25 Well, here's where I get confused. It's 37F,

1 Page 11 of 11, but I've got to think it was a
2 supplement because of the date that's on it.

3 MR. INGRAM:

4 Have you got it?

5 A. I've got that; yes, sir. I think I have it. So, Mr.
6 Barberie, you're asking me can we provide a breakdown
7 of that?

8 Q. Yeah. I just want a breakdown of what those costs are.

9 A. I mean, we can. I can tell you, subject to check, that
10 I'm pretty certain that those are charged to a below-
11 the-line account number as we refer to which are not
12 requested as part of the ratemaking process.

13 Q. Sure. Right. Right.

14 A. But can we confirm - if we can confirm that that's in a
15 below-the-line account and excluded from it? Would
16 that be . . .

17 Q. No. I'd like a breakdown of what's in the account.

18 MR. INGRAM:

19 Well, I don't think that's at all appropriate,
20 Your Honor. If it's not requested for rate
21 relief, I don't see what difference it makes.

22 MR. BARBERIE:

23 I don't have a way of knowing where they put it
24 if I can't look at this account, would be my
25 opinion on it.

1 MR. INGRAM:
2 Well, you've got the sworn testimony it's not
3 been included for rate purposes in the forecasted
4 test year. Is the inference that you don't
5 believe that?

6 MR. BARBERIE:
7 I'd be a lot more comfortable if I could see what
8 was in the breakdown of those amounts. That's all
9 I'm saying.

10 MR. INGRAM:
11 I don't think you're entitled to that, sir.

12 MR. BARBERIE:
13 Well, that's your opinion.

14 MR. INGRAM:
15 Yes, it is.

16 CHAIRMAN GOSS:
17 Would you want to weigh in, Mr. Ockerman, anybody,
18 before we issue . . .

19 MR. SPENARD:
20 We don't have any position.

21 CHAIRMAN GOSS:
22 Mr. Wuetcher? Mr. Ockerman?

23 MR. OCKERMAN:
24 I think it would be helpful in view of the dis-
25 cussion I had with the witness. If that

1 information were provided, it's germane to our
2 discussion as well.

3 CHAIRMAN GOSS:

4 Mr. Wuetcher?

5 MR. WUETCHER:

6 Your Honor, given that it's below the line,
7 Commission Staff has some difficulty in seeing its
8 relevance since the company has not requested
9 recovery of it. Unless there is another reason
10 or, I guess, a basis articulated of a concern of
11 the Lexington-Fayette Urban County Government that
12 those amounts have somehow been placed above the
13 line, Commission Staff doesn't see the relevance.

14 CHAIRMAN GOSS:

15 Well, I sort of feel the same way. I mean, we do
16 have the sworn testimony of a witness that it's
17 below the line and there's been nothing whatsoever
18 to come before the Commission that in any way
19 rebuts or calls that sworn testimony into
20 question. If we're going to get into a bunch of
21 stuff that's below the line, why, we could
22 probably fill this room up with documents and take
23 quite a bit of time getting responses. So I guess
24 at this point, unless, Mr. Barberie or Mr.
25 Ockerman, you all are in a position to convince

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the Commission that what Mr. Miller has said with regard to this particular account is incorrect, the Commission I think would rule - the Commission does rule that the requested information is not relevant to the issue that we have to decide, and I'm going to sustain Mr. Ingram's objection with regard to providing that information.

MR. BARBERIE:

Thank you, Your Honor.

CHAIRMAN GOSS:

Thank you, Mr. Barberie. Mr. Ockerman, thank you.

MR. OCKERMAN:

Mr. Chairman, I don't have any additional questions, but we have now taken the newspaper article that Mr. Barberie first made reference to and which has been introduced or identified as Bluegrass FLOW Exhibit No. 4 and, at Mr. Wuetcher's very good suggestion, it has been drawn down off the Internet so that the copy that will be entered in the record is far more readable. I represent that I have read the two side by side and it is the same article, and that portion of the report which I identified as being on Page A 13 at the bottom of Column 3 is now located on the second page of this exhibit beginning with

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the very last paragraph of that page.

CHAIRMAN GOSS:

That's good thinking. Thank you very much. I think, Connie, we indicated that would be Flow Exhibit No. 4.

MR. OCKERMAN:

That's correct, sir.

BLUEGRASS FLOW EXHIBIT 4

CHAIRMAN GOSS:

All right, Mr. Ockerman. Thank you for taking care of that for us. Okay. Did you have any further questions, Mr. Ockerman?

MR. OCKERMAN:

No, sir, I do not.

CHAIRMAN GOSS:

Okay. Mr. Wuetcher, do you have any further questions?

MR. WUETCHER:

No, sir.

CHAIRMAN GOSS:

All right. Thank you very much, Mr. Miller. You may step down. Do you all need a break, or do you want to go on? We've been at it about an hour and a half.

1 MR. HOWARD:

2 Who do you anticipate going next, Mr. Ingram?

3 MR. INGRAM III:

4 Sheila Valentine is our next witness.

5 CHAIRMAN GOSS:

6 Well, let's go ahead and get Ms. Valentine up here
7 and we'll maybe go into her testimony 10 or 15
8 minutes and we'll take a break.

9 WITNESS SWORN

10 CHAIRMAN GOSS:

11 Okay. Mr. Ingram, you may proceed.

12 The witness, SHEILA A. VALENTINE, after having
13 been first duly sworn, testified as follows:

14 DIRECT EXAMINATION

15 BY MR. INGRAM III:

16 Q. State your name, please.

17 A. Sheila Valentine.

18 Q. Ms. Valentine, by whom are you employed?

19 A. American Water Works Service Company, Southeast Region.

20 Q. And could you state your business address, please?

21 A. 1600 Pennsylvania Avenue, Charleston, West Virginia
22 25302.

23 Q. Have you filed direct testimony in this case?

24 A. Yes, I have.

25 Q. If I asked you the same questions that were asked in

1 the direct testimony that has already been filed, would
2 you give the same answers today?

3 A. Yes, I would.

4 CHAIRMAN GOSS:

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

6 MR. SPENARD:

7 Yes.

8 CROSS EXAMINATION

9 BY MR. SPENARD:

10 Q. Good afternoon.

11 A. Good afternoon.

12 Q. I'm going to begin with Page 7 of your direct
13 testimony. Just tell me when you're there.

14 A. I've got it.

15 Q. Okay. On Lines 18 through 26, you discuss the waste
16 disposal; is that correct?

17 A. Yes.

18 Q. And, in the filing Exhibit 37D, Page 24, there's an
19 amount. The original claimed cost for this was
20 \$238,996?

21 A. That's correct.

22 Q. Okay, and, in the updated filing, this claim was
23 reduced slightly to \$226,996?

24 A. Yes.

25 Q. And am I correct that the difference between the

- 1 company's updated claim and Ms. Crane's recommendation
2 relates to the forecasted cleaning at their Richmond
3 Road Station?
- 4 A. That's correct. We had actually found that they had
5 overforecast that.
- 6 Q. Okay, and you used a one-year recovery period; is that
7 correct?
- 8 A. Yes.
- 9 Q. And Ms. Crane uses a three-year recovery period?
- 10 A. Yes.
- 11 Q. Who made the decision to use a one-year recovery period
12 at the time that your direct testimony was filed?
- 13 A. That decision was made after discussions with the
14 Production Superintendent of Kentucky.
- 15 Q. And who is the Production Superintendent?
- 16 A. Dillard Griffith (sic) (Court Reporter's Note:
17 Griffin).
- 18 Q. Okay. Now, in Response to the Public Service
19 Commission's Second Data Requests, and this is Item
20 99b., you responded and your Response includes the
21 statement, "The forecasted cleaning for Richmond Road
22 Station is not an annual cleaning." Is that your
23 understanding of the response?
- 24 A. Yes.
- 25 Q. Okay. Was the cleaning done in the year 2002?

1 A. Yes, it was.

2 Q. And, prior to the year 2002, when was the most recent
3 cleaning performed?

4 A. I do not know that.

5 Q. Okay. Do you remember the date you provided this
6 response?

7 A. No, I don't.

8 Q. Now, subsequent to this, in Response to the
9 Commission's Third Data Request, Item 39, this topic
10 was addressed again; is that correct?

11 A. Yes.

12 Q. Okay, and it includes the statement under Subpart b.,
13 "After further discussions with the production staff at
14 Kentucky American Water and given the current water
15 quality conditions and treatment processes, the Company
16 is forecasting that these cleanings will be an annual
17 expense and should be included in this rate filing"?

18 A. That's correct.

19 Q. Okay. Now, are you the author of the Response?

20 A. Yes, I am.

21 Q. And did you engage in these discussions with the
22 production staff?

23 A. Yes, I did.

24 Q. And was that Mr. Griffin?

25 A. Mr. Griffith (sic) (Court Reporter's Note: Griffin)

1 was one involved, yes.

2 Q. Who were the other individuals?

3 A. Well, we had discussions with Linda Bridwell as well,
4 and she addressed that in her rebuttal testimony.

5 Q. Okay, and approximately when did the discussions take
6 place?

7 A. Well, I don't remember an exact date. It was after the
8 first DR was submitted and prior to the second.

9 Q. Okay. Your testimony includes a discussion of what we
10 call OPEBs, the Other Post-Employment Benefits; is that
11 correct?

12 A. Yes.

13 Q. Okay. Kentucky-American's OPEB liability is based on
14 an accrual methodology that is laid out in FAS 106; is
15 that correct?

16 A. Yes.

17 Q. And you have an understanding of that FAS 106?

18 A. Yes.

19 Q. Okay. Is a company's annual OPEB expense impacted by
20 the number of retirees?

21 A. I would assume it would be.

22 Q. Okay. What about the benefits received by the
23 retirees?

24 A. Yes.

25 Q. Okay. Age of the retirees, does that impact the annual

1 OPEB expense?

2 A. Yes.

3 Q. And what about the discount rate?

4 A. Yes.

5 Q. Okay. So there are many factors that have an impact on

6 a company's annual OPEB expense?

7 A. That's true.

8 Q. Okay. Could you take a look at the company's Response

9 to the Attorney General's First Data Request, Item 77?

10 A. What does that relate to, sir?

11 Q. This is on FAS 106.

12 MR. INGRAM III:

13 First AG 77, David?

14 MR. SPENARD:

15 Yes.

16 A. Okay.

17 Q. Okay. For the year 1999 to 2000, did the OPEB increase

18 or decrease?

19 A. From '99 to 2000?

20 Q. Yes.

21 A. It decreased.

22 Q. Did health care costs increase or decrease from 1999 to

23 2000?

24 A. I don't have anything to verify that.

25 Q. Okay. Take a look at the costs between 2001 and 2002.

1 Are they approximately - was the cost for the year 2001
2 approximately the same as the costs for the year 2002?

3 A. It was relatively close; yes.

4 Q. Okay. Do you know if health care costs increased or
5 decreased over this period?

6 A. I don't have anything to verify that either.

7 Q. Okay. You also discuss miscellaneous expenses?

8 A. Yes.

9 Q. Okay. This is a - we're going to have to make copies.
10 I don't have them now. We'll make copies of the
11 pertinent pages. The company includes, in its case,
12 the money for advertising; is that correct?

13 A. Yes, it does.

14 Q. And one of the things the company spends money on
15 advertising is in publications, such as the publication
16 known as "City"; is that correct?

17 MR. SPENARD:

18 And she can see the ad. It's . . .

19 A. I've not seen any of those advertisements.

20 CHAIRMAN GOSS:

21 Approach the witness there and show it to her, Mr.
22 Spenard.

23 MR. SPENARD:

24 Sure. Sure.

25 Q. Are you familiar with the magazine "City"?

- 1 A. No, I'm not.
- 2 Q. Would you accept it that, in general terms, the mission
3 of "City" is to advise and inform people in municipal
4 governments and interested municipal governments about
5 things of interest to them? I think that sometimes
6 they might call that a trade publication.
- 7 A. Okay. I'll take your word for it.
- 8 Q. Okay, and Kentucky-American advertises in "City"?
- 9 A. There is an advertisement in this publication; yes.
- 10 Q. And that particular advertisement, was it required by
11 law in terms of something like the Consumer Confidence
12 Report? Were you required by law to disclose that
13 information?
- 14 A. I'm not exactly sure what the requirements are for the
15 Consumer Confidence Report.
- 16 Q. Okay. Well, for that particular ad, are you aware of
17 anything that that particular ad was an ad that
18 Kentucky-American was required to place?
- 19 A. No, I'm not.
- 20 Q. Okay. Kentucky-American is not just a water company
21 anymore; is that correct?
- 22 A. I don't know.
- 23 Q. Do you all have sewerage operations?
- 24 A. Yes.
- 25 Q. And you keep a separate set of books for the sewerage

1 operations?

2 A. There are separate business units and the records for
3 sewer; yes.

4 Q. Okay, and you all have some activities - in contract
5 management, you all have some non-regulated activities.

6 A. That's correct.

7 Q. Okay. Does anything in that ad distinguish or
8 differentiate the contracted from the - the unregulated
9 from the regulated, in terms of identifying Kentucky-
10 American?

11 A. Could I see that again? It just talks about commitment
12 to water treatment excellence.

13 Q. Okay.

14 CHAIRMAN GOSS:

15 Mr. Ingram III, would you please show that to the
16 Commission?

17 MR. INGRAM III:

18 Sure.

19 MR. SPENARD:

20 And we'll make copies and supply that at a break.

21 Q. Let's talk about social club dues. Are social club
22 dues included in the miscellaneous costs?

23 A. Some are.

24 Q. Okay, and, in this Application, would you accept that
25 in the neighborhood of \$5,228 in the filing are related

1 to social club dues?

2 A. Subject to check, I believe that's correct.

3 Q. Okay, and these dues are for memberships in various

4 clubs, including Spindletop and the Keeneland Club and

5 the Lafayette Club?

6 A. I'm not sure of the specific ones, but those were

7 listed on our Schedule F.

8 Q. Okay. Now, do you know if the memberships in these

9 clubs are for specific individuals at Kentucky-American

10 or the affiliate such as the Southeast Region or are

11 these memberships for the company as a whole?

12 A. I believe they're for individuals

13 Q. Okay. You sponsored the company's claim for an

14 increase in maintenance costs; is that correct?

15 A. Yes.

16 Q. Okay. This was discussed on Page 10, Lines 8 through

17 13 of your testimony?

18 A. That's correct.

19 Q. Okay. The company included an adjustment of \$166,394,

20 and it appears in Exhibit 37D, Page 25.

21 MR. INGRAM III:

22 Is this Page 25 of 116, Mr. Spenard?

23 MR. SPENARD:

24 I believe that's correct; yes.

25 A. Okay.

1 Q. Okay. Does it amount to, roughly, for the forecasted
2 period, does it reflect, roughly, a 12.2 percent
3 increase over the base period?
4 A. I would say approximately.
5 Q. Okay, and did you provide any discussion in your
6 prefiled testimony regarding why an increased level of
7 maintenance cost was necessary?
8 A. Not an in-depth discussion; no.
9 Q. Okay.
10 A. I, however, did provide work papers that listed the
11 expenditures for that.
12 Q. Would that work paper be maintenance expense, WP-3-14?
13 A. Yes.
14 Q. Okay, and I'm looking at Page 2 of 9?
15 A. Yes.
16 Q. Okay, and you're the one who provided the forecasted
17 amounts?
18 A. That's correct.
19 Q. Okay. What was your basis in terms of the forecasted
20 amounts in terms of how you got to these? Did you talk
21 to some other folks?
22 A. This was what was provided from the company.
23 Q. Okay, and, in terms of "provided from the company,"
24 anybody in particular?
25 A. Linda Bridwell.

1 Q. Okay. With regard to property taxes, . . .

2 A. Yes.

3 Q. . . . are property taxes directly related to the amount

4 of property that the company has in place?

5 A. It does take utility plant into consideration; yes.

6 Q. Okay, and so, to the extent that there was some

7 slippage in the company's construction program, would

8 that slippage have an impact on the company's property

9 tax liability?

10 A. Yes, but it was only minor. I think it was about

11 \$1,900.

12 MR. SPENARD:

13 Okay. Thank you, and that's all the questions I

14 have.

15 CHAIRMAN GOSS:

16 Thank you, Mr. Spenard. Mr. Childers, do you have

17 any questions?

18 MR. CHILDERS:

19 No, Your Honor.

20 CHAIRMAN GOSS:

21 Mr. Barberie?

22 MR. BARBERIE:

23 I have about five minutes worth.

24 CHAIRMAN GOSS:

25 Okay. Come on up.

1 CROSS EXAMINATION

2 BY MR. BARBERIE:

3 Q. Good afternoon, Ms. Valentine.

4 A. Good afternoon.

5 Q. I would like to ask you a couple of questions about
6 your direct testimony. On Page 6, Question 13, you've
7 indicated that the company purchases water from the
8 City of Owenton. Is it the intent of the company to
9 continue to purchase such water assuming the Owenton
10 acquisition is consummated? Once Owenton is acquired,
11 would that still be necessary, to purchase that water?

12 A. As I understand it, yes.

13 Q. Okay. Let me turn you to Page 10. You've provided
14 some testimony regarding the real property taxes of the
15 company. This question would be pertinent to both the
16 year 2002 and the year 2003. The question is, was the
17 applicable property tax base of the company increased
18 in any way to reflect, in whole or in part, the premium
19 paid by RWE for American Water Works assets which would
20 include Kentucky-American Water Company?

21 A. No.

22 MR. BARBERIE:

23 That's the only questions I have.

24 CHAIRMAN GOSS:

25 Thank you, Mr. Barberie. Mr. Ockerman, do you

1 have any questions?

2 MR. BARBERIE:

3 No questions, sir.

4 CHAIRMAN GOSS:

5 Thank you. Mr. Wuetcher?

6 MR. WUETCHER:

7 Just a few.

8 CHAIRMAN GOSS:

9 Okay.

10 CROSS EXAMINATION

11 BY MR. WUETCHER:

12 Q. Good afternoon, Ms. Valentine.

13 A. Good afternoon.

14 Q. I'm going to refer to Kentucky-American's Response
15 to Item 1 of the Commission's First Set of Informa-
16 tion Requests. In particular, I'm looking at Work
17 Paper 1-3, accumulated depreciation reserve, at Page 2.
18 Do you have that? And also at Work Paper 4-1,
19 "Depreciation Amortization," at Page 1.

20 MR. INGRAM:

21 Both Pages 1?

22 MR. WUETCHER:

23 Yes, sir. Well, Work Paper 1-3, we're looking at
24 Page 2; Work Paper 4-1, we're looking at Page 1.

25

1 MR. INGRAM III:
2 What was the first one, Mr. Wuetcher? I'm sorry.
3 MR. INGRAM:
4 Work Paper 1-3, Page 2; am I correct?
5 A. Okay. I've got that in front of me.
6 Q. We're trying to - what I'm seeking is an explanation
7 for what appears to be a difference between the amounts
8 in these two columns. If you look at Work Paper 4-1,
9 for Page 1, for the month of November 2004, at the very
10 bottom, the total is \$613,760; is that correct?
11 A. I'm not sure I see where you're looking at.
12 Q. Okay. Do you have Work Paper 4-1?
13 A. Yes, I do.
14 Q. Page 1 of 16.
15 A. Okay.
16 Q. It's under the column labeled . . .
17 A. November, okay. I see that.
18 Q. . . . the month of November.
19 A. November '04.
20 Q. Okay, and, at the very bottom, the last row.
21 A. Yes.
22 Q. Okay. Now, if you compare that to Work Paper 1-3, Page
23 2, . . .
24 A. Okay.
25 Q. . . . and the column for the month ended November 2004,

1 depreciation expense, the row at the very bottom, . . .

2 A. Yes.

3 Q. . . . "Total Accumulated Depreciation Reserve," that

4 number is \$599,419.

5 A. Okay.

6 Q. I guess my first question is, shouldn't both those

7 columns or both of those numbers be equal to each

8 other, and, since they're not equal to each other, is

9 there a problem?

10 A. I didn't prepare this schedule, so I would have to

11 actually do some research, to be honest with you.

12 Q. Okay. If I represented to you that, for each month

13 from November of 2004 through November 2005, there is a

14 difference, could you provide us with an explanation

15 for the difference? That difference varies, according

16 to our calculations, from \$8,474 to \$11,987. So we're

17 just trying to figure out what the explanation is for

18 the difference or if there's a missing line item.

19 A. I'll be happy to take a look at it for you.

20 MR. WUETCHER:

21 Okay. That's all we have.

22 CHAIRMAN GOSS:

23 Thank you, Mr. Wuetcher. Redirect, Mr. Ingram?

24 MR. INGRAM III:

25 No questions, Your Honor.

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CHAIRMAN GOSS:

Anything further?

MR. SPENARD:

No, sir.

MR. BARBERIE:

No, sir.

MR. INGRAM III:

No, sir.

CHAIRMAN GOSS:

All right. Ms. Valentine, thank you. You may step down. Let's go ahead and take a break for about 15 minutes. We'll come back at 20 minutes till.

OFF THE RECORD

CHAIRMAN GOSS:

Everyone, please be seated. Thank you.

WITNESS SWORN

CHAIRMAN GOSS:

Thank you. Please be seated. Mr. Ingram?

MR. INGRAM:

Your Honor, before I forget to ask, may Ms. Valentine and Mr. Miller be excused?

MR. SPENARD:

We have no objection.

1 CHAIRMAN GOSS:

2 Yes, they may. Thank you.

3 The witness, CHRIS E. JARRETT, after having been
4 first duly sworn, testified as follows:

5 DIRECT EXAMINATION

6 BY MR. INGRAM:

7 Q. State your name, please.

8 A. Chris Jarrett.

9 Q. By whom are you employed?

10 A. American Water Works Service Company.

11 Q. Where is your office?

12 A. 1600 Pennsylvania Avenue, Charleston, West Virginia.

13 Q. Have you filed testimony in this case?

14 A. I have.

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

17 A. In all but one instance.

18 Q. And what is that instance?

19 A. If I may, on Page 5 of 8 of my direct testimony, the
20 first paragraph, there is a sentence that reads: "The
21 Board has directed Mr. Mundy to devote his full time
22 and energies to defending the Company." I want to
23 apologize to this Commission and those intervenors.
24 That was a less than elaborate enough response, and I
25 gather that by the number of times we had data requests

1 pertaining to it. That decision was not made lightly.
2 In reviewing the duties that Mr. Mundy was to perform
3 for Kentucky-American Water Company, the running of the
4 company and becoming the person in charge of the
5 condemnation defense, it was felt, and I'm the one that
6 did it, that we were asking more of Mr. Mundy than we
7 had a right to do. The preparation, the meetings, the
8 attendance at rate hearings was one thing that I felt
9 was asking too much in addition to all of these other
10 duties he was being required to do. Having done
11 testimony at the Kentucky Commission before and
12 testifying in other jurisdictions, I took the liberty
13 of recommending to the Executive Committee that I be
14 permitted to go in and take that duty off Mr. Mundy,
15 and it was a decision of the Executive Committee to do
16 just that, and I wish I had elaborated that much in
17 this direct testimony, but I apologize.

18 MR. INGRAM:

19 That's all I have, Your Honor.

20 CHAIRMAN GOSS:

21 Okay. Thank you, Mr. Ingram. Mr. Spenard?

22 MR. SPENARD:

23 Good afternoon. We have no questions for Mr.
24 Jarrett.

25

1 CHAIRMAN GOSS:

2 Okay. Thank you. Mr. Childers, do you have any
3 questions?

4 MR. CHILDERS:

5 No questions, Your Honor.

6 CHAIRMAN GOSS:

7 Mr. Barberie?

8 MR. BARBERIE:

9 I have a handful, Your Honor.

10 CHAIRMAN GOSS:

11 Okay.

12 CROSS EXAMINATION

13 BY MR. BARBERIE:

14 Q. Good afternoon, Mr. Jarrett. I'm Dave Barberie with
15 the Urban County Government.

16 A. Good afternoon, Mr. Barberie.

17 Q. You responded, at one point, to a data request the
18 Urban County Government made with respect to whether
19 Mr. Rowe was going to testify. I take it, by his
20 absence today, that he is not going to testify, and I
21 would just like to get on the record why Mr. Rowe is
22 not testifying in this case.

23 A. For the same reasons that I gave for Mr. Mundy. Mr.
24 Rowe is being asked to do a new job, that of President
25 of Kentucky-American Water Company, while he was an

1 employee of Kentucky-American as Vice President of
2 Operations for many years, and I would submit that the
3 duties of the President is a little different than he
4 might be anticipated to have known going into the job.
5 He also has taken Mr. Mundy's role over with respect to
6 condemnations. In addition, Mr. Rowe is in a
7 transition phase between his old job and his new job
8 and is still being required to do some things out there
9 on an as needed basis.

10 Q. With respect to the transition you just mentioned, is
11 that his transition from his existing duties with the
12 Service Company?

13 A. His former position prior to taking the job of
14 President of Kentucky-American Water Company.

15 Q. What's the expected date of the end of that transition?

16 A. Mr. Barberie, I don't know that I have a specific date
17 to give you. We would certainly hope that it would be
18 sooner than later, but it may be another month or so
19 before everything is completed. There has not been a
20 replacement named for his former position.

21 Q. Not holding you to a specific date, your expectation
22 would be that he would be the full-time President of
23 Kentucky-American by the end of this calendar year? Is
24 that what you're saying?

25 A. I would that to be true, but it may take just a little

1 longer.

2 Q. There was some testimony yesterday regarding the
3 reorganization of the company pursuant to, I guess, the
4 reorganization of the Southeastern Region of the
5 American system, and I believe that Ms. Bridwell and
6 Mr. - and I'm probably going to say his name wrong -
7 Svindland . . .

8 A. That's his name.

9 Q. . . . were the two persons that were identified as
10 having switched their duties. Are you aware of anyone
11 else in Kentucky-American that has switched their
12 duties as a result of that reorganization?

13 A. I am not.

14 Q. When did Mr. Mundy resign from the company?

15 A. I don't have the specific date, but it was a couple
16 months ago.

17 Q. If it was reported to be, ball park, July 15 of this
18 year, . . .

19 A. That sounds . . .

20 Q. . . . subject to check, would you accept that?

21 A. Yes, sir. Yes, sir.

22 Q. Was Mr. Mundy asked to resign as part of this
23 reorganization of the Southeastern Region?

24 A. He was not.

25 Q. So the timing of the phases of the region with his

1 resignation is just coincidental?

2 A. That is correct.

3 Q. We may have asked about this, but I'm really not sure.

4 I believe somebody asked a data request regarding Mr.

5 Mundy's termination compensation package, and it was

6 represented that that had not been finalized. Is there

7 such a package?

8 A. There is.

9 Q. Has it been finalized?

10 A. I have not seen that document.

11 Q. I guess my question would be - I just have a concern

12 for the ratepayers - if Mr. Mundy resigned of his own

13 volition, there's not an expectation that the rate-

14 payers would somehow pay for some sort of termination

15 compensation; is there?

16 A. My understanding is he will receive some form of

17 termination compensation as a result of the change in

18 control that happened. That is not going to be charged

19 to the customers of Kentucky-American Water.

20 Q. Other than your previous comment a couple minutes ago

21 with respect to my questions on this, your testimony

22 that the reorganization has not affected any personnel

23 changes, which is Page 4 of 8, with the exception of

24 Ms. Bridwell and Mr. Svindland, that's your testimony

25 with respect to the reorganization?

1 A. That's to my knowledge; yes.

2 MR. BARBERIE:

3 I don't have any other questions.

4 CHAIRMAN GOSS:

5 Thank you, Mr, Barberie. Mr. Ockerman, do you
6 have questions? Oh, he's thinking.

7 MR. OCKERMAN:

8 No, sir.

9 CHAIRMAN GOSS:

10 Okay. Mr. Wuetcher, do you have any questions?

11 MR. WUETCHER:

12 Yes, sir.

13 CROSS EXAMINATION

14 BY MR. WUETCHER:

15 Q. Good afternoon, Mr. Jarrett.

16 A. Good afternoon, Mr. Wuetcher.

17 Q. Mr. Jarrett, how many members are on Kentucky-
18 American's Board of Directors?

19 A. There are eight members.

20 Q. And who currently sits on the Board?

21 A. Robert Ross, he was the Managing Director of the
22 Southeast Region; Mr. Lindsey Ingram, Jr.; Mr. Chris
23 Buls, who is the Financial Director for the Southeast
24 Region; Mr. William Kelvington, who is the Director of
25 Operations, if you will, for the Southeast Region; Mr.

1 John Young, who is with the corporate American system;
2 there are two additional outside Board members,
3 Patricia Freibert and Mr. William Sisson.

4 Q. And, of those people who sit on the Board, how many are
5 residents of the Kentucky-American service area?

6 A. Three.

7 Q. And those? I take it one would be Mr. Ingram.

8 A. That's correct.

9 Q. Okay, and the other two?

10 A. Ms. Freibert and Mr. Sisson. I'm sorry, Mr. Wuetcher,
11 but I make up the eighth member on that Board. I think
12 I failed to mention my name.

13 Q. Okay. If you would, turn to the first page of your
14 testimony. At Question 4, you identify the officers of
15 Kentucky-American, and, based on the record in the
16 case, there appears to have been some change in
17 personnel. If we could go through that just to
18 indicate any changes, you are still Chairman of the
19 Board, of course.

20 A. That is correct.

21 Q. Mr. Rowe is now the President?

22 A. That is correct.

23 Q. And I take it, based on the testimony we've heard, that
24 right now he is splitting his time between Kentucky-
25 American and the Service Company until his transition

1 is complete?

2 A. Yes, he is being required to help - the majority of his
3 time today is spent right here in Kentucky, but there
4 are those occasions when he has to assist in his old
5 job.

6 Q. Okay, and you may have been asked this before. So I
7 apologize. When is Mr. Rowe's transition to full
8 Kentucky-American, or when is his transition to
9 devoting his attention solely to the Kentucky-American
10 operations to be completed?

11 A. My response to Mr. Barberie was that I would hope by
12 the year end, . . .

13 Q. Okay.

14 A. . . . but it may take a little longer than that.

15 Q. And Mr. Rowe will be headquartered in Lexington? He'll
16 be operating out of the Lexington office? He won't be
17 operating somewhere else; will he?

18 A. That is correct. Even though he had a different job,
19 he has always remained right here in Lexington.

20 Q. Okay. The Vice President of Finance, Treasurer and
21 Comptroller, Mr. Miller?

22 A. Mr. Miller.

23 Q. That remains unchanged?

24 A. He is the Vice President and Treasurer, . . .

25 Q. Treasurer.

1 A. . . . and Comptroller of Kentucky-American; yes.
2 Q. Okay, and he works out of?
3 A. Charleston, . . .
4 Q. Charleston.
5 A. . . . West Virginia.
6 Q. And the Vice President and Secretary, Mr. Miller, that
7 remains unchanged?
8 A. Mr. Herb Miller.
9 Q. Is Mr. Miller a - is he assigned to the Service Company
10 or assigned to Kentucky-American, or is he allocated
11 between both?
12 A. He is assigned to the Service Company and has been for
13 some time.
14 Q. Mr. Schultz, is he still Vice President?
15 A. He has left the company.
16 Q. Is he working out of Lexington?
17 A. No, sir. He has left the company.
18 Q. He has left the company?
19 A. Yes.
20 Q. Has there been a replacement chosen for him?
21 A. No, sir, there has not.
22 Q. Is one anticipated, or will that position just lapse?
23 A. Mr. Wuetcher, I'll be happy to give you an updated
24 list, because I'm sure, when you get on down to some of
25 these names, I'm not going to remember which one of

1 these . . .

2 Q. Okay.

3 A. . . . that we've changed, just a few.

4 Q. For purposes of time, . . .

5 A. I would be happy to give it to you.

6 Q. I would appreciate that. When you give us the updated

7 list, could you also indicate, for those persons,

8 whether they are an employee of Kentucky-American or

9 the Service Company and where their principal place of

10 duty is?

11 A. I would be happy to.

12 Q. Thank you. Are you familiar with the Commission's

13 Orders in the prior rate case proceeding?

14 A. I am familiar with them.

15 Q. Okay.

16 A. I haven't looked at them for several years.

17 Q. Okay. Are you aware that the Commission required

18 Kentucky-American to provide assurance that the

19 management, operations, and policy decisions would

20 remain under local control?

21 A. Yes, sir.

22 Q. Okay, and I assume that you're aware that the

23 Commission expressed some concern in at least its Order

24 in the first transfer proceeding, Case No. 2002-00018,

25 about the potential impact of the proposed transfer of

1 control on Kentucky-American's responsiveness to local
2 needs.

3 A. I am.

4 Q. And the Commission's concerns about Kentucky-American
5 retaining some measure of local economy from, for lack
6 of a better word, the mother company?

7 A. Yes, I'm aware of that, and we fully intend to comply
8 with it.

9 Q. Okay. Given the further transfer of local resources to
10 the Southeast Region resulting from the current
11 reorganization, what is the level of local control at
12 Kentucky-American at the current time?

13 A. Mr. Wuetcher, it has not changed the local control.
14 Linda Bridwell will remain right here in Lexington,
15 Kentucky. She's not being required to move. There is
16 no intent to change local control at Kentucky-American.

17 MR. WUETCHER:

18 I believe that's all I have. Thank you.

19 A. Thank you.

20 CHAIRMAN GOSS:

21 Mr. Ingram?

22 MR. INGRAM:

23 No further questions, Your Honor.

24 CHAIRMAN GOSS:

25 Okay. Mr. Spenard?

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MR. SPENARD:

No questions.

CHAIRMAN GOSS:

Mr. Childers, Mr. Barberie, or Mr. Ockerman?

MR. OCKERMAN:

No, sir.

MR. BARBERIE:

No.

MR. CHILDERS:

No.

CHAIRMAN GOSS:

All right. Thank you, Mr. Jarrett. Does the Commission have any questions? Thank you, Mr. Jarrett. You may step down.

A. Thank you.

CHAIRMAN GOSS:

Okay. Mr. Ingram, if I'm reading my witness list correctly, those are all the witnesses that Kentucky-American is offering; is that correct?

MR. INGRAM:

Yes, sir.

CHAIRMAN GOSS:

Okay. Thank you very much. Okay. Mr. Spenard, go ahead and call your first witness.

1 MR. SPENARD:
2 Yes, sir. As a matter of course in house-
3 cleaning, I would like to hand out photocopies of
4 the advertisement that we discussed during the
5 cross examination of Ms. Valentine.
6 CHAIRMAN GOSS:
7 Do you wish to make this a formal exhibit?
8 MR. SPENARD:
9 Yes, sir, I do.
10 CHAIRMAN GOSS:
11 If I'm keeping them straight, that would be AG
12 Hearing Exhibit No. 2.
13 MR. SPENARD:
14 Yes, sir, I believe that's correct.
15 CHAIRMAN GOSS:
16 Any objection?
17 MR. INGRAM:
18 None, Your Honor, but may Mr. Jarrett be excused?
19 CHAIRMAN GOSS:
20 Yes. I'm sorry. Mr. Jarrett may be excused.
21 MR. INGRAM:
22 Thank you. I'm sorry.
23 CHAIRMAN GOSS:
24 Thank you, Mr. Jarrett. All right. So let it be
25 marked as AG Hearing Exhibit 2 and formally

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admitted.

AG HEARING EXHIBIT 2

MR. SPENARD:

At this time, we call our second witness, Scott J. Rubin, to the stand.

WITNESS SWORN

CHAIRMAN GOSS:

Thank you. Please be seated. Mr. Spenard?

MR. SPENARD:

Yes.

The witness, SCOTT J. RUBIN, after having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. SPENARD:

Q. Please state your name.

A. Scott Rubin, R-u-b-i-n.

Q. And, Mr. Rubin, have you been retained by the Office of the Attorney General for this proceeding?

A. Yes.

Q. Okay, and did you submit prefiled direct testimony?

A. Yes, I did.

Q. And, at this stage, do you have any corrections, changes, or modifications to the prefiled direct testimony?

A. No, I don't.

1 Q. And, if I were to ask you all of the questions
2 contained in your direct testimony today, your answers
3 would be the same?

4 A. Yes.

5 MR. SPENARD:

6 Thank you. At this time, I will tender the
7 witness for cross examination.

8 CHAIRMAN GOSS:

9 Okay. Thank you. Mr. Ingram, do you care to
10 cross?

11 MR. INGRAM:

12 I do, Your Honor.

13 CHAIRMAN GOSS:

14 Okay.

15 CROSS EXAMINATION

16 BY MR. INGRAM:

17 Q. Mr. Rubin, do I understand your testimony to be, with
18 respect to Kentucky-American's proposed activation
19 charge, that you recommend to this Commission that it
20 be denied?

21 A. That's correct.

22 Q. As a part of that recommendation, you say that there
23 are some principles in the M1 Manual, and I believe you
24 address those on Page 11 of your testimony, Line 16.
25 You say there are six general principles; is that

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correct?

A. Yes, sir.

Q. The MI Manual actually says that each of those principles should be considered; does it not?

A. Yes.

Q. It doesn't say that every one of them has to be complied with; does it?

A. No, it doesn't.

Q. One of those principles that you point out is that the services for which there are specific charges should generally be voluntary; is that correct?

A. Yes.

Q. And is it your opinion that the services to be covered by the activation charge are generally not voluntary?

A. For the most part, that's true. As I understand the activation charge, it could be applied to a customer. For example, if you had someone who spent three months in Florida during the winter and wanted to turn off their water while they were gone, the activation charge would be applied to them, and, in that case, it would be voluntary, but, as I understand it, most of the charges would be for customers who are new to that particular residence, moving in or whatever, and, in that case, it would not be a voluntary charge.

Q. It would certainly be voluntary to the extent that a

1 homeowner decided to turn an irrigation system on or
2 off annually which might be separately metered; would
3 it not?

4 A. Yes, that would be true.

5 Q. The second principle to be considered that you discuss
6 in your testimony was one that the special fee should
7 be designed to change behavior; is that correct?

8 A. Yes.

9 Q. And you have suggested, have you not, that this
10 proposed fee is not designed to change behavior, in
11 your opinion?

12 A. Again, in the majority of cases, that's true. If you
13 had, for example, the irrigation system, the customer
14 who left seasonally, that is behavior that you might
15 want to change, but, for the most part, the fee would
16 be charged to customers moving in and that's behavior
17 the company wants to encourage.

18 Q. Do you know how many customers that Kentucky-American
19 changed the name on the account to another person in
20 the household in order to avoid charges?

21 A. No, sir, I don't.

22 Q. Would the imposition of an activation fee for that
23 process operate as a disincentive for that action?

24 A. Yes, I think so and, just to be clear, I can envision
25 instances where an activation fee would be appropriate,

1 like the one you just named, like the seasonal
2 customer, but that's not what the company has proposed
3 here. The company has proposed an activation fee that
4 applies to basically all changes in the account, and,
5 as I understood the information we received in
6 discovery, most of those were customers who were moving
7 into a new residence and that's the basis for my
8 objecting to the fee.

9 Q. Lastly, I believe you object to the imposition of the
10 activation fee because you believe it falls primarily
11 on low-income ratepayers; is that correct?

12 A. I don't know if I would say "primarily." I believe I
13 said it would affect low-income customers more heavily
14 than it would higher-income customers.

15 Q. And, in support of that belief, you quoted some census
16 statistics indicating that lower-income homeowners move
17 more frequently than higher-income homeowners; am I
18 correct?

19 A. Yes, that's correct.

20 Q. Those statistics do not take into account renters of
21 real property, do they, Mr. Rubin?

22 A. Yes, they do.

23 Q. Do you understand that, in the City of Lexington,
24 renters of apartments generally are not metered
25 separately for water?

- 1 A. I don't know how it's generally handled in Lexington.
- 2 Q. Has that been your experience where you've testified,
3 if you have any knowledge?
- 4 A. I have knowledge. It's an issue I've studied, and it
5 varies a great deal from one part of the country to
6 another.
- 7 Q. But you have no familiarity with Lexington?
- 8 A. Not specifically; no.
- 9 Q. Or Kentucky-American?
- 10 A. In terms of the percentage of your customers who are
11 renters as opposed to homeowners, I don't know.
- 12 Q. Is it possible that what the census statistics you
13 quoted tell us is that, as family income progresses
14 upwardly, people move up into more expensive housing?
- 15 A. That's part of what it tells us, but I think part of
16 what it says also is that lower-income households tend
17 to be more mobile for a variety of reasons. Some of it
18 may be moving upward. Some of it may be changing
19 locations to try to get a better paying job. Some of
20 it may be just trying to change the quality of the
21 housing in which they live.
- 22 Q. Is it fair for me to conclude that part of your opinion
23 is that this activation fee is regressive in nature?
- 24 A. That is part of my reasoning; yes.
- 25 Q. Does the MI Manual also suggest that one of the options

1 that utilities can utilize to offset the regressive
2 nature of service charge is to offer a low-income
3 discount?
4 A. That is mentioned in the manual; yes.
5 Q. Which leads me into your opinion about the low-income
6 discount proposed by Kentucky-American Water Company.
7 I believe you have offered the opinion that it is not
8 lawful in Kentucky; am I right?
9 A. Well, that's an opinion that was offered by counsel for
10 the Attorney General. I'm simply passing that along.
11 Q. Oh, it is the Attorney General's opinion that you are
12 reiterating? Is that . . .
13 A. Yes. Yes. That is not my legal opinion.
14 Q. Okay.
15 A. I think I say very clearly I was advised by counsel,
16 and I know there was some discovery on that which was
17 responded to by counsel; not by me.
18 Q. Would you be comfortable discussing that legal opinion
19 with me or not?
20 A. No, I wouldn't. I've read the discovery response that
21 counsel provided, but I had no part in preparing that
22 response. I haven't done any of the research. So, I'm
23 sorry, but I'm not your guy.
24 Q. Do you have an opinion as to whether or not low-income
25 homeowners have more difficulty in paying their utility

1 bills than higher-income homeowners?

2 A. I do have an opinion on that; yes.

3 Q. And what is your opinion?

4 A. That, again, generally speaking, lower-income home-

5 owners would have more difficulty paying their utility

6 bills than those with higher incomes.

7 Q. Do you agree with me that difficulty to pay bills

8 involves increased arrearages at the water company,

9 late payments, disconnection notices, service

10 terminations, attendant collection costs, and write-

11 offs?

12 A. Yes, that all sounds reasonable.

13 Q. Do you agree with me that the MI Manual specifically

14 points out that a number of utilities are addressing

15 water affordability in their rates?

16 A. I haven't read that chapter of the manual in quite a

17 while. In fact, I helped write that chapter of the

18 manual, but I think that's right. It sounds right.

19 Q. Would you take my word for it, or do you want to see

20 it, Mr. Rubin?

21 A. No. I'll take your word for it, Mr. Ingram. As I

22 said, that sounds right.

23 Q. If you want to look later, it's on Page 131 under

24 "Policy Issues," if you wrote it. Do you suppose the

25 Attorney General, when he gave you his opinion that

1 this low-income discount was illegal, was aware of the
2 fact that Columbia Gas' tariff, the Third Revised Sheet
3 51B of its tariff provides a surcharge of .0672 cents
4 per thousand cubic feet of gas sold for its Energy
5 Assistance Program?

6 MR. SPENARD:

7 Mr. Chairman, I would like for counsel for
8 Kentucky-American to repeat the very first part of
9 that question.

10 MR. INGRAM:

11 Sure.

12 MR. SPENARD:

13 I'm not sure I caught it.

14 MR. INGRAM:

15 Sure.

16 Q. Do you know whether or not the Attorney General was
17 aware, when he gave you his opinion that this proposed
18 tariff of Kentucky-American was illegal, of the
19 existence of Columbia Gas' tariff that provides a
20 surcharge for its Energy Assistance Program?

21 A. Mr. Ingram, I don't know what went into that opinion.

22 Q. Okay. Are you aware of that tariff of Columbia Gas?

23 A. Not specifically. I was aware that there were energy
24 utilities in Kentucky with some type of low-income
25 program, but I don't know the specifics of those.

1 Q. Are you aware of the LG&E and KU Home Energy Assistance
2 Programs?

3 A. My answer would be the same. I'm aware that there are
4 programs, but I don't know the specifics.

5 Q. I take it, then, you would not be aware that recently,
6 in Cases 2004-00303 and 00304, this Commission
7 authorized the tariffs of KU being ten cents per
8 residential meter per month and LG&E being ten cents
9 per residential meter per month per nature of service
10 for each of their respective Home Energy Assistance
11 Programs.

12 A. My answer is the same. I don't know the specifics.

13 Q. In like fashion, you have suggested that this
14 Commission not approve any kind of Economic Development
15 Tariff for Kentucky-American Water Company; is that
16 correct?

17 A. Yes.

18 Q. You expressed your concern about the legality of it and
19 the policy issues and the costs; am I correct?

20 A. Well, again, on the . . .

21 CHAIRMAN GOSS:

22 Excuse me a second. Is that the same tariff that
23 Kentucky-American has indicated it is not seeking
24 in this case?

25

1 MR. INGRAM:

2 Not seeking approval of, that is correct, Your
3 Honor. We . . .

4 CHAIRMAN GOSS:

5 Do we need to go into that area? If you all are
6 not seeking approval of it, then why do we need to
7 go in that direction?

8 MR. INGRAM:

9 Well, we would have no objection if the Commission
10 orders us to implement it and, if there are
11 impediments to the implementation that are present
12 by the opinion of the Attorney General, I would
13 like to cross examine, but I'll tell you what I
14 think I can do . . .

15 CHAIRMAN GOSS:

16 Well, I don't want to cut you off.

17 MR. INGRAM:

18 No. No.

19 CHAIRMAN GOSS:

20 I just want to make sure that we're - I mean, I
21 don't want to go into something that we don't need
22 to be going into if it's not something you're
23 asking for.

24 MR. INGRAM:

25 I'll address it in the brief.

1 CHAIRMAN GOSS:

2 Okay.

3 Q. Lastly, Mr. Rubin, it gets me to the Emergency Pricing
4 Tariff; am I right?

5 A. You're in charge here, but, yes, that is the other
6 major issue I've addressed.

7 Q. Okay, and, again, you indicated that you have questions
8 about the legal effect, the policy issues, the cost,
9 and your recommendation is that it not be approved;
10 right?

11 A. Yes. I'm not sure that was a full list of my concerns,
12 but that covers several of them.

13 Q. Yeah. Okay. Now, you've been involved in Kentucky-
14 American source of supply proceedings going back over
15 some period of time; have you not?

16 A. Back to the 1994 case, I believe.

17 Q. Do you agree that it would be desirable for Kentucky-
18 American to limit consumption during a recurrence of a
19 drought of record period to 35 million gallons per day
20 or less?

21 A. Given the current constraints and its source of supply,
22 yes.

23 Q. Have you examined the Emergency Pricing Tariff
24 independently to determine for yourself whether or not
25 it will accomplish that objective?

1 A. I have examined the tariff. I've read the tariff, but
2 I have not conducted any type of analysis to determine
3 if it would achieve that objective.

4 Q. Are you aware of whether or not the information is in
5 the forecasted test year of Kentucky-American's rate
6 case here to make that analysis?

7 A. I do not believe that there is any information in the
8 record that would permit me or anyone else to make that
9 analysis.

10 Q. Did you read the Public Service Commission's letter,
11 dated May 16, 2001, to all of its jurisdictional water
12 utilities which has been filed in this record?

13 A. You would have to give me an idea of the subject.

14 Q. Sure.

15 A. I'm sorry.

16 Q. I'm sorry. That was unfair. Have you read the letter
17 from the Public Service Commission to all the
18 jurisdictional water utilities, dated May 16, 2001,
19 asking the water utilities to develop a water shortage
20 response plan?

21 A. Yes.

22 Q. Do you recall that that directive contains the verbiage
23 that, if water usage needs to be curtailed for an
24 extended period of time, it may be necessary to include
25 a penalty provision for customers who choose not to

1 curtail their usage?

2 A. I'll take your word for it. That sounds right.

3 Q. Do you recall that there were three phases of penalties
4 offered in that directive?

5 A. Yes.

6 Q. Do you understand now that Kentucky-American has
7 investigated the billing cost for implementation of its
8 Emergency Pricing Tariff?

9 A. I have not seen anything on the billing cost. I
10 believe the rebuttal testimony had information on the
11 computer programming costs, but I don't recall more
12 than that.

13 Q. Maybe I misstated my question. Do you recall Mr.
14 Bush's rebuttal testimony indicating it's going to cost
15 \$165,600 to implement the programming for the system?

16 A. Yes.

17 Q. And his estimate likewise that it would cost about
18 \$36,224 a month for 14 additional meter readers to
19 implement the program?

20 A. I don't recall the exact figure, but I recall the cost
21 estimate for meter reading; yes.

22 Q. Do you consider those costs unreasonable in view of the
23 objective to be obtained here?

24 A. Well, first, I don't know if those costs are reasonable
25 or not, because we don't know what kind of benefit will

1 be received from implementing the type of emergency
2 tariff the company has proposed, and, second, those two
3 elements of cost are far from being the only elements
4 of cost, and I haven't seen any type of analysis that
5 looks at the total costs of implementation and the
6 total benefit that would be received from implementing
7 the specific tariff. I haven't seen any analysis like
8 that at all.

9 MR. INGRAM:

10 That's all the questions I have, Your Honor.

11 CHAIRMAN GOSS:

12 Thank you, Mr. Ingram. Mr. Childers, do you have
13 questions?

14 MR. CHILDERS:

15 Yes, Your Honor.

16 CROSS EXAMINATION

17 BY MR. CHILDERS:

18 Q. Good afternoon, Mr. Rubin.

19 A. Good afternoon, sir.

20 Q. It's true, isn't it, that you're an attorney and your
21 practice is limited to matters affecting the public
22 utility industry?

23 A. Yes.

24 Q. And you have testified, in this case, both here today
25 and in your prefiled testimony, that you've been

1 advised by counsel, who you've identified as counsel
2 for the AG, that it's not lawful for the company to
3 adopt a special rate for a low-income program; correct?

4 A. Yes.

5 MR. CHILDERS:

6 May I approach the witness, Your Honor?

7 CHAIRMAN GOSS:

8 Certainly.

9 Q. Mr. Rubin, I want to hand you KRS 278.170, which is a
10 statute in Kentucky, and ask you to take a look at
11 Subparagraph (1) if you would.

12 A. Yes.

13 Q. Is it your testimony that you characterize the low-
14 income discount that's being proposed by the company as
15 an unreasonable preference or advantage to any person
16 or would subject any person to an unreasonable
17 prejudice or disadvantage?

18 MR. SPENARD:

19 I'm going to interject at this stage. Mr. Rubin's
20 testimony is on the record. Our office has taken
21 a position. If Mr. Childers is asking Mr. Rubin
22 to make an assessment as to whether or not the
23 facts pertaining to Kentucky-American's proposed
24 tariff meet or otherwise fall within the
25 requirements of 278.170 Subsection (1), we object.

1 That's not why he was retained and that's not why
2 he is here to give testimony.

3 MR. CHILDERS:

4 Your Honor, this witness has indicated that he's
5 an attorney specializing in matters affecting the
6 utility industry. In the statute that I gave the
7 witness, under Subsection (4), it states, "The
8 Commission may determine any question of fact
9 arising under this section." So, clearly, what
10 I'm addressing here are questions of fact as to
11 whether this witness has an opinion as to the
12 unlawfulness based on the facts that this would
13 create some sort of undue prejudice, and I think
14 that he's qualified, certainly, to answer that
15 question. He has indicated that this is his
16 specialty.

17 CHAIRMAN GOSS:

18 It's been awhile since I read his testimony, and I
19 don't recall, but does he specifically, in the
20 course of his testimony, delve into the legality
21 or illegality of this particular issue?

22 MR. CHILDERS:

23 In response to a data request, Your Honor - may I
24 have that back, Mr. Rubin? Thank you.

25

1 CHAIRMAN GOSS:

2 Because, I mean, if he has opened the door, then
3 I'm going to permit you to do it. If he hadn't
4 opened the door, then I'm not so sure about it.

5 MR. CHILDERS:

6 Okay.

7 MR. SPENARD:

8 We ask for the identification of the specific data
9 request.

10 MR. CHILDERS:

11 One second, Mr. Spenard. Well, particularly, in
12 regards to his testimony on Page 11, he there was
13 talking about the economic development tariff and
14 he said, as was the case for the low-income
15 tariff, he has been advised by counsel that it's
16 not lawful for Kentucky-American to adopt a
17 special rate, and then he goes on to state his own
18 opinion, particularly because it could result in
19 providing the customer with an undue preference.
20 So I think he has opened the door.

21 MR. SPENARD:

22 He's conveying, and the testimony speaks for
23 itself, he's conveying what he was advised.

24 MR. CHILDERS:

25 I think he went further in that testimony, here,

1 though. He gave his own opinion. Similarly, on
2 Page 10, he said, in short, he believes there are
3 ways that the company could assist his low-income
4 customers without running afoul of the law. He
5 says that the low-income program runs afoul of the
6 law. He certainly opened the door to this line of
7 questioning.

8 MR. SPENARD:

9 Where we don't agree with that is that he has been
10 advised by our office that this program would run
11 afoul of the law, and he has offered his
12 assessment that there are other ways that the
13 company can help its customers, and, in the other
14 case, it says specifically, "Based on this legal
15 advice, I would recommend that the Company cease
16 expending its resources on the development of an
17 economic development tariff." I think his
18 testimony makes it very clear that he was given
19 instructions by our office that our office would
20 take the issue with regard to the legality as an
21 issue of law and that was the position of this
22 office.

23 CHAIRMAN GOSS:

24 Well, I guess where I've got a problem, Mr.
25 Spenard, with that argument is that, and I go back

1 to Page 9, Line 11, if he had said, "I am advised
2 by counsel that it is not lawful for KAWC to adopt
3 a special rate for a customer because of the
4 customer's income," and had stopped there, maybe
5 what you're saying is correct, but he goes on and
6 says, "Based on this ... advice, I cannot
7 recommend that the Commission adopt ... proposed
8 low-income discount," and then, over on Page 11,
9 he again, at Line 9, recommends that the company
10 cease expending its resources on the development
11 of an economic development tariff. It does appear
12 that he is relying upon your office's legal
13 opinion that it is an unlawful rate or tariff, but
14 he goes further and actually makes an overt
15 recommendation to the Commission that it not adopt
16 Kentucky-American's tariff. Now, am I reading
17 that wrong, or is that what that says?

18 MR. SPENARD:

19 It is what it says, but I think, again, to be
20 clear, is that we, early in the proceeding, said
21 that the issue of the low-income discount and the
22 issue of the not really proposed but their
23 economic development tariff were matters of law
24 that this office would address and advised him
25 that we felt that they were unlawful. That's how

1 he addressed it in his testimony. He said, based
2 upon the legal assessment, . . .

3 CHAIRMAN GOSS:

4 All right. Let me huddle with my compatriots here
5 just a second.

6 OFF THE RECORD

7 CHAIRMAN GOSS:

8 The Commission is of the opinion that Mr. Rubin
9 has, in fact, opened the door with regard to this
10 issue by making certain recommendations to the
11 Commission in his testimony based upon advice
12 received by the Attorney General, and, because
13 that door has been opened, I believe that Mr.
14 Childers' questions to Mr. Rubin with regard to
15 the statute are appropriate, and we will overrule
16 Mr. Spenard's objection. Go ahead, Mr. Childers.

17 MR. CHILDERS:

18 Thank you, Your Honor.

19 Q. Mr. Rubin, the statute that I just showed you,
20 KRS 278.170 Subsection (1), states, and I quote, "No
21 utility shall, as to rates or service, give any
22 unreasonable preference or advantage to any person or
23 subject any person to any unreasonable prejudice or
24 disadvantage, or establish or maintain any unreasonable
25 difference between localities or between classes of

1 service for doing a like and contemporaneous service
2 under the same or substantially the same conditions."
3 You're familiar with these sorts of statutes in other
4 jurisdictions in which you've testified; aren't you?

5 A. Yes.

6 Q. And isn't it true that many utilities across the
7 country, in fact, as many as 8 percent of all the
8 utilities that have been surveyed, indeed have
9 different rates for low-income customers?

10 A. That 8 percent figure, I believe, at least from the
11 research that I've done, applies to the water industry
12 as a whole, most of which is government-owned; not
13 investor-owned like Kentucky-American.

14 Q. In fact, you have given a presentation that was
15 produced as part of the record in this case in which
16 you cite such a survey to show that 8 percent of those
17 utilities, in fact, had a different rate for low-income
18 discount programs; correct?

19 A. Yes.

20 Q. Okay, and are you familiar, Mr. Rubin, with any case
21 law in Kentucky which indicates that a special class or
22 a special rate applicable to aluminum smelters, in
23 fact, is a reasonable classification even based on the
24 fluctuating world price of aluminum?

25 A. I have not done that research in Kentucky.

1 Q. Nevertheless, some discrimination is allowed by state
2 utility regulatory commissions as long as it's not an
3 unreasonable discrimination; correct?

4 A. I'm not sure I would use the term "discrimination."
5 Differences in rates among different classes of
6 customers or among customers with different circum-
7 stances generally is permissible. When you get down to
8 rates based on a customer's specific economic circum-
9 stances, often there's a specific state statute that
10 sets the parameters within which the Commission can
11 give preferences based on those types of circumstances.

12 Q. In Kentucky, the standard is whether it's reasonable;
13 correct?

14 A. Well, you have shown me one subsection of one statute.
15 I have no idea if that's all there is to Kentucky law
16 on this question. I hope I've made clear I have not
17 researched this issue in Kentucky. I received advice
18 from counsel that gave me a bottom line that said, "We
19 don't think this is lawful. You know, you go from
20 there." So I have no idea what the statutes or
21 judicial decisions or Commission decisions are in this
22 state on this issue.

23 Q. Do you know what the total increase in revenue sought
24 by the company in this rate proceeding is?

25 A. Off the top of my head, I don't have that figure. I

1 know the approximate percentage, but, I mean, rough
2 numbers, it's, you know, a few million dollars.

3 Q. And, in terms of the estimate by the company of the
4 low-income discount, I think the estimate that's in the
5 record is that it's going to cost \$30,000.

6 A. Yes.

7 Q. Have you calculated what percentage of the total
8 revenue increase that \$30,000 represents?

9 A. No.

10 Q. It's a very small percentage; is it not?

11 A. Yes.

12 Q. And is it your testimony here today that that's an
13 unreasonable discount program under the Kentucky
14 statute that I showed you?

15 A. My testimony today is that I was advised by counsel
16 that the company's proposal is not lawful.

17 Q. And therefore it is not reasonable? Is that your
18 testimony?

19 A. If it violates the law, by definition, it is not
20 reasonable. It is not something a utility is permitted
21 to do.

22 Q. Okay. We can argue, I guess, about the law in our
23 posthearing briefs, but I wanted to get . . .

24 A. I hope so, because I can't do that with you.

25 Q. I wanted to ask you your opinion about the reasonable-

1 ness because that really goes to the fact finding that
2 the Commission has before it. Thank you. In your
3 testimony, you have also, as Mr. Ingram pointed out
4 earlier, stated that the activation charge is likely to
5 fall most heavily on the low-income customer; is that
6 true?

7 A. Yes.

8 Q. And isn't it true that the low-income discount being
9 proposed by the company will offer some relief to the
10 low-income community that's going to be affected by
11 that activation fee?

12 A. I suppose you could look at it that way. The low-
13 income discount that the company proposed, in round
14 numbers, would be about \$2 a month, so \$24 a year, and
15 the activation fee they've proposed would be \$24 each
16 time a customer moves or, you know, makes, I guess, a
17 change in the account. I hadn't thought about tying
18 those two together in terms of dollars, but I guess you
19 could look at it that way.

20 Q. I want to go back just for a minute to the study that
21 was attached to your testimony. At that point in time,
22 it was a work in progress, not for publication or
23 distribution.

24 A. You mean that was provided in discovery because . . .

25 Q. Yes.

1 A. Okay.

2 Q. Excuse me, that was provided in discovery, called
3 "Serving Low Income Water Customers," and it's a study
4 of the American Water Works Association. This draft
5 was dated June 14, 2004?

6 A. Yes. Just to be clear on what this is, this is a
7 presentation that was given summarizing some work that
8 was then in progress for the American Water Works
9 Association. This was not the study itself. This was
10 a, roughly, I think, 20 or 30 minute presentation that
11 summarized some of the key points in the study.

12 Q. Isn't it true that that study or the presentation that
13 you gave concluded with a slide that said the bottom
14 line is the problem for the low-income customers of
15 growing rates and higher energy cost, including water
16 bills, is a real severe and growing problem?

17 A. Yes, I used those terms.

18 Q. And that there are steps that can be taken to help
19 alleviate that problem?

20 A. Yes.

21 Q. Let me refer you for a moment, Mr. Rubin, to Page 10 of
22 your direct testimony, Lines 6 through 9. You refer to
23 the federal Low-Income Home Energy Assistance Program,
24 LIHEAP. You are aware, aren't you, that LIHEAP funds
25 may not be utilized for water bills?

1 A. That's not entirely correct. If water is used as part
2 of the home heating system, then LIHEAP can be used to
3 pay water costs, and I know for a fact that that's done
4 in the City of Philadelphia. The Philadelphia Water
5 Department receives several hundred thousand dollars a
6 year from LIHEAP precisely for those types of homes.

7 Q. So you're talking about homes that have some sort of
8 heated water system as their primary heat source?

9 A. Hot water heat, steam heat, yes. If water is needed
10 for the home heating system, then LIHEAP can be used to
11 pay water costs, obviously, as long as the water
12 provider registers with the LIHEAP program.

13 Q. Absent that, LIHEAP funds cannot be used to pay water
14 bills; correct?

15 A. That's true.

16 Q. And are you aware that Kentucky has one of the highest
17 participation rates by the eligible population in
18 LIHEAP in the country?

19 A. I have not done that comparison.

20 Q. Assume for me for just a second that that's true, that
21 we have a high participation rate in LIHEAP. Given
22 that high participation rate and the efforts by
23 Kentucky State Government, Kentucky's electric and gas
24 utilities, and low-income groups to promote LIHEAP, on
25 what basis do you conclude that Kentucky-American Water

1 Company could increase LIHEAP participation?
2 A. Well, first, when you say "a high participation rate,"
3 I don't know what that means. Nationally, the LIHEAP
4 participation rate is about 20 percent of eligible
5 households. So a high rate could be 40 or 50 percent
6 of eligible households, which would be terrific. It
7 would be twice the national average, but there's still
8 a long way to go. So that's one thing, and the other
9 is there are a lot of people who would be eligible for
10 LIHEAP who just don't know about it or who may not -
11 you know, they may not read the information they get
12 from their energy utility. They may not see the ads
13 that the state places. Whatever anybody can do to help
14 increase participation in that program is a benefit not
15 just to the customers but to the community as a whole.
16 Q. But you're not aware of the substantial efforts that
17 are already being made in Kentucky to make that
18 population aware?
19 A. I have not looked at that specifically; no.
20 Q. Are you aware that Fayette County, where the largest
21 number of Kentucky-American Water customers live, has
22 one of the highest participation rates in the Earned
23 Income Tax Credit program?
24 A. Again, I have not looked at that information. I don't
25 know.

- 1 Q. Nevertheless, if that's true, what you're suggesting is
2 that, rather than have a low-income program, that
3 Kentucky-American ought to promote these other programs
4 which would help the low-income community as opposed to
5 a direct program like this one; correct?
- 6 A. Yes. The direct program that Kentucky-American has
7 proposed would provide about \$24 a year to a low-income
8 household. The typical LIHEAP grant is about \$150 to
9 \$175 a year and it could be twice that if there's a
10 crisis situation. The Earned Income Tax Credit
11 provides, on average, over \$2,000 a year to a low-
12 income household. So we're talking very different
13 orders of magnitude in terms of the benefits that are
14 available from these other programs. While I'm sure a
15 low-income household would like to have an additional
16 \$2 a month, it would be much better to have an
17 additional \$10 or \$15 a month that it could receive
18 under LIHEAP, an additional, effectively, \$150 to \$200
19 a month from the Earned Income Tax Credit, or, you
20 know, in the neighborhood of \$8 to \$10 a month from the
21 telephone Lifeline program.
- 22 Q. These aren't mutual exclusive programs, though; are
23 they?
- 24 A. No, of course not.
- 25 Q. A LIHEAP recipient would also be eligible for the water

1 discount program; correct?

2 A. Presumably, they would be; yes.

3 Q. Are you aware of the current high level of activity by
4 community organizations in Fayette County to ensure
5 that low-income working families benefit from EITC?

6 A. As I think I've said a couple of times now, I have not
7 looked at any specific data for Lexington or Fayette
8 County.

9 Q. Is it true to say that you're not very knowledgeable
10 about what state, local, and private programs are
11 available to assist Kentucky-American Water Company's
12 low-income customers?

13 A. That's probably a fair statement; not on a local level.

14 Q. Now, I'll refer you to Page 12 of your direct
15 testimony, Line 21, and then Page 13, Line 11. Are you
16 aware that census data for Kentucky-American Water's
17 service area indicates that about 75 percent of low-
18 income renters live in multifamily housing units?

19 A. I'm sorry. Could you give me that figure again?

20 Q. Seventy-five percent of low-income renters live in
21 multifamily housing units.

22 A. In what area?

23 Q. Kentucky-American's service area.

24 A. I have not - I don't think I've looked at that
25 specifically for Fayette County. I know I haven't

1 looked at it in the surrounding counties.

2 Q. Has the American Water Works Association study been
3 completed now?

4 A. Boy, that's a good question. I think my work on it is
5 completed. Some of the work that we did will not be
6 published. There is one piece that is supposed to be
7 published, and it's working its way through the
8 process. So, at this point, I'm not certain that will
9 see the light of day, but I think it will.

10 Q. I would like to request that you provide us a copy, as
11 far as is complete to date, of that study or your
12 participation in that study as a data request.

13 A. I think I've made that clear through the discovery
14 process that that's something I cannot do. That's why
15 I provided the power point presentation, if you will,
16 in discovery because that was already made public.
17 This is all the work product of the American Water
18 Works Association. They decide what to do with it.
19 They decide what becomes public and what doesn't. I'm
20 just not at liberty to disclose that until they've
21 decided what will go public. Just to be clear, most of
22 the work that I did for them was done to help them in
23 their internal policy-making process, and they were
24 very clear about that. So I don't mean to be
25 difficult, but it's not something I'm at liberty to

1 disclose at this point.

2 Q. Do you not own the copyright of your own material that
3 you've created?

4 A. I do not; no. The copyright belongs to the Association
5 on this project.

6 MR. CHILDERS:

7 That's all I have, Your Honor.

8 CHAIRMAN GOSS:

9 Thank you, Mr. Childers. Mr. Ockerman, do you
10 have any questions?

11 MR. OCKERMAN:

12 No questions.

13 CHAIRMAN GOSS:

14 Mr. Wuetcher, do you have questions?

15 MR. WUETCHER:

16 Just a few, Your Honor.

17 CROSS EXAMINATION

18 BY MR. WUETCHER:

19 Q. Good afternoon, Mr. Rubin.

20 A. Good afternoon.

21 Q. Let me start out by trying not to beat a dead horse but
22 just to get some clarification. In your knowledge of
23 existing case law in various jurisdictions, have you
24 come across any decisions in which a court has held
25 that income of a customer may serve as a basis for

1 reasonable customer classification?

2 A. Yes.

3 Q. Okay. Now, in those decisions, was that absent any
4 type of specific statutory permission to use income?

5 A. You're testing my memory. I believe so, yes, and, just
6 to be complete, I'm also aware of decisions that hold
7 precisely the opposite where, without a specific
8 statutory grant of authority, if you will, that income
9 cannot be used as a preference. So I've . . .

10 Q. Fair enough. Absent express statutory authority, it's
11 a mixed bag in the jurisdictions?

12 A. Yes. I'm aware of states that go both ways, and, by
13 the way, I haven't done this research in a couple of
14 years, but, from the research, when I did it, I don't
15 believe I found a Kentucky case that dealt with the
16 question one way or the other, but I did find cases in
17 other jurisdictions that went both ways.

18 Q. Okay. During your cross examination by Mr. Ingram, he
19 referenced some low-income assistance programs that
20 apparently were approved by the Commission involving
21 the Louisville Gas and Electric Company. Do you recall
22 that?

23 A. I recall his reference; yes.

24 Q. Okay. Are you aware of KRS 278.285 Section (4) that
25 specifically authorizes home energy assistance programs

1 as part of a demand-side management program?

2 A. No, I am not familiar with that.

3 Q. You're not familiar with that. Would you state, in
4 your opinion, if you can render one on this issue,
5 would the provision of water service come within the
6 definition of a home energy assistance program?

7 A. I'm not familiar with that statute. I really couldn't
8 give you an opinion.

9 Q. Okay. Fair enough. Kentucky-American proposes
10 essentially two different sets of rates, doesn't it;
11 one for its Northern Division and then one for its
12 Central Division?

13 A. I would say actually three rates, because they have two
14 different ones in the Northern Division.

15 Q. Okay, three sets of rates. I think you expressed in
16 your testimony some opinions regarding the development
17 of a uniform rate for the entire system; is that
18 correct?

19 A. Yes. I'm not sure I gave a full opinion on that. I
20 believe I said that Kentucky-American has indicated
21 that's something that they will be looking at probably
22 in the next rate case and that's an effort that I would
23 encourage on their part. I believe they said they
24 wanted the benefit of a fully allocated cost of service
25 study before making a proposal in that regard, and I

1 would agree with them, that that's a piece of
2 information you should have before you decide whether a
3 unified rate makes sense and how to get there.

4 Q. All right. Let me ask two questions to follow up on
5 that. One, in your opinion, is a uniform rate
6 preferable to what is currently being proposed?

7 A. I don't think I can say that in the abstract. I think
8 we need the benefit of a fully allocated cost of
9 service study to make that judgment. Generally, I'm
10 very supportive of moving toward unified rates, but I
11 would emphasize "moving toward." It may not mean a
12 unified rate that you just implement in one case. It
13 may be something that you gradually move into over -
14 I've seen some as long as ten years or more, but
15 generally I think there needs to be movement in that
16 direction for Kentucky-American, recognizing its recent
17 acquisitions in the north, but I can't tell you
18 specifically when and how it should get there without a
19 lot more information.

20 Q. Okay. So your guidance to the Commission, then, would
21 be that the absence of a fully allocated cost of
22 service study is an obstacle to imposing a uniform rate
23 in this proceeding?

24 A. Yes, and, as, if you will, a stopgap measure, my
25 recommendation in this case is that there should be no

1 change in either of the Northern Division rates since
2 the expectation is that those rates most likely will
3 come down in the next case as part of a movement toward
4 unified rates, and it would be unreasonable to increase
5 those rates substantially here if the expectation is
6 that they will then be decreased substantially two or
7 three years down the road.

8 Q. In terms of percentage, the number of customers in the
9 Northern District as opposed to those in the Central
10 District, the Northern District composes a very small
11 number of customers as to Kentucky-American's total
12 customer base; does it not?

13 A. Yes.

14 Q. To the extent that a uniform rate were implemented, I
15 take it one problem or one objection you might have to
16 it without a fully allocated cost of service study is
17 that it may produce some immediate subsidies from
18 the Central Division to the Northern Division. Is
19 that . . .

20 A. That's always a concern; yes.

21 Q. Given the small, in relative terms, number of customers
22 as compared to the Central Division, would that
23 relative smallness of the Northern Division somewhat
24 reduce some of the concerns you might have to an
25 immediate implementation of a uniform rate?

1 A. Again, talking in general terms, the answer is yes.
2 That's certainly one of the things you look at, how
3 many customers, you know, would be having their rates
4 lowered and what would the impact be on the remaining
5 customers, but, without the fully allocated cost of
6 service study, we don't know the magnitude of the
7 dollars that would be moving and that's one of the big
8 question marks here, but, you know, in very general
9 terms, what you said is true, but I don't feel
10 comfortable actually recommending that type of movement
11 in this case.

12 MR. WUETCHER:

13 I think that's all I have. Thank you.

14 CHAIRMAN GOSS:

15 All right. Thank you. Mr. Spenard, redirect?

16 MR. SPENARD:

17 We do have some redirect.

18 REDIRECT EXAMINATION

19 BY MR. SPENARD:

20 Q. Mr. Rubin, if a person cannot pay their water bill, the
21 consequence is their water service will likely be shut
22 off; is that correct?

23 A. Ultimately, yes.

24 Q. Okay. So, in terms, if they get a bill for, say, \$20
25 and they can't pay that bill, that service is likely to

1 be disconnected?

2 A. Yes.

3 Q. Okay. Do you see any evidence in this record that
4 talks in terms of, well, if that bill had only been
5 \$18, X amount of people would have still been
6 disconnected as opposed to the number that would have
7 been disconnected if it were \$20?

8 A. I have not seen any information on that.

9 Q. Or any information of the benefit of the number of
10 disconnections that would be prevented if the bill
11 were, say, \$5 lower?

12 A. I have not seen any information that attempts to
13 quantify the benefits to the company in terms of
14 reduced expenses from having a low-income discount.

15 Q. Okay. We've talked a little bit about 278.170. I want
16 to go there for just a minute. Now, is an elevated
17 service area an example of a difference in condition
18 for a ratepayer who receives service? If you have one
19 ratepayer and they live in an area that has service at
20 one level but another group of ratepayers live at a
21 level that requires additional pump stations or some
22 type of additional facilities for pressure in an
23 elevated service area, that's a distinction between the
24 service to those two customers; is that correct?

25 A. Yes, that's a fairly - well, I guess I would call it a

1 fairly common characteristic that would lead a water
2 utility to have two different rates for the same class
3 of customers.

4 Q. So, even if the same water, same source of supply,
5 basically the same water, same water quality, that
6 distinction can be a basis for saying, "We're going to
7 charge this group of customers a rate that differs from
8 another group of customers"?

9 A. Yes.

10 Q. Okay. Now, if you have a situation where you have two
11 households side-by-side, the assumption is that the
12 cost of service to those two households side-by-side,
13 if they're on the same meter, ought to be about the
14 same?

15 A. Yes, generally.

16 Q. Okay. Now, in one house, you have someone who is low-
17 income and, in the next house, you have someone who's
18 not low-income. That would be the difference between
19 the two households, okay, as we go further with this
20 example. Is the fact that a low-income person lives in
21 the household here, does that change the cost of
22 delivering the service through the system to that
23 particular household as opposed to the customer who
24 lives on the other side who is not low-income?

25 A. It shouldn't. I mean, the only thing I can think of

1 that might result in a difference in cost is if there
2 were a substantial difference in billing and collection
3 costs. I know there has been some discussion of that
4 here, . . .

5 Q. Okay.

6 A. . . . but, in terms of the physical delivery of
7 service, that would be the same. There may be a cost
8 difference on the billing and collection side.

9 Q. Okay. Now, with regard to behavior, okay, we talked
10 about - I guess we're going to delve into some other
11 areas, but, if you have an electric plant and you need
12 to add capacity, that addition of capacity is chunky;
13 isn't that correct? You might have to build a new
14 facility. You don't just go from having, say, 750
15 megawatts to 751 megawatts. You're going to go from
16 750 megawatts to some large increment.

17 A. That's usually true; yes.

18 Q. Okay. One of the things that is utilized as a means of
19 reducing or deferring the need for expansion is demand-
20 side management; is that correct?

21 A. Yes.

22 Q. Okay, and, with regard to water, one of the things that
23 has been suggested even at times for Kentucky-American
24 as a means to shave seasonal peak is the implementation
25 of a seasonal rate. Are you familiar with that general

1 debate?

2 A. Yes.

3 Q. Okay. Now, the purpose of a seasonal rate is to
4 actually impact demand and to reduce the customer's
5 usage of water; is that correct?

6 A. Yes.

7 Q. Okay. Now, with regard to the low-income discount
8 rate, is the Kentucky-American proposal for the low-
9 income discount rate an attempt to make the low-income
10 discount receivers of the service reduce their water
11 usage?

12 A. No.

13 Q. In fact, it's to allow them to have a normal amount of
14 water usage. That would be the general theory. You're
15 helping them have the water service?

16 A. Yes. The way the company has proposed the discount, it
17 has no relationship to the amount of water that the
18 customer uses.

19 Q. Okay. Now, with regard to a statute - we've covered
20 that one. With regard to the statute that Mr. Childers
21 provided, he referenced 278.170, and he had you read
22 Subsection (1); is that correct?

23 A. Yes.

24 Q. Now, he didn't have you read Subsection (2); did he?

25 A. No.

1 Q. And, in Subsection (2), is there some language that
2 talks in terms of free or reduced rates for service?

3 A. I don't have it in front of me. I did look at that
4 when he showed me the copy and I glanced at that
5 section. So I can answer, yes, there is language, but
6 that's all I know.

7 Q. Sure.

8 A. I, you know, looked at it for a couple of seconds.

9 Q. Fair enough.

10 MR. SPENARD:

11 The rest of the questions are - the information is
12 adequately covered in the material already.

13 That's the end of the redirect.

14 CHAIRMAN GOSS:

15 Thank you, Mr. Spenard. Mr. Ingram, follow-up?

16 Do you have any follow-up?

17 RE CROSS EXAMINATION

18 BY MR. INGRAM:

19 Q. Mr. Rubin, are you personally philosophically opposed
20 to Kentucky-American Water Company's proposed Low-
21 Income Discount Tariff?

22 A. No.

23 MR. INGRAM:

24 That's all I have, Your Honor.
25

1 CHAIRMAN GOSS:

2 Mr. Childers?

3 MR. CHILDERS:

4 Just a couple, Your Honor.

5 RE CROSS EXAMINATION

6 BY MR. CHILDERS:

7 Q. You were asked by Mr. Spenard in redirect, if a person
8 can't pay their water bill, the result would be that
9 their water would be shut off, I believe you said.
10 Isn't it true that that would necessitate reconnect
11 fees, arrearages, and collection costs to the company?

12 A. Yes.

13 Q. And you went ahead, I believe, and said that that, in
14 fact, may provide a difference between two like
15 households side-by-side where one is a low-income
16 household, the other is not. The low-income household,
17 in fact, may cost the company more in collection fees;
18 true?

19 A. That's very possible; yes.

20 Q. I want to refer you back to Subsection (2) of the
21 statute that Mr. Spenard just asked you about,
22 KRS 278.170. Take a look at that, if you would,
23 for as long as you need to.

24 A. I've read it.

25 Q. Okay. Now, in that subsection, isn't it true that that

1 subsection deals with free or reduced rate service to
2 officers, agents, employees of the company, or to
3 charitable organizations or to the United States, and
4 so on, those types of organizations, on the one hand;
5 correct?

6 A. Yes.

7 Q. And doesn't it also go ahead and say that the utility
8 may grant free or reduced rate service for the purpose
9 of providing relief in case of flood, epidemic,
10 pestilence, or other calamity?

11 A. That's what the statute says; yes.

12 Q. And, in your opinion, would that provide any justi-
13 fication for the proposed low-income program being
14 proposed here by Kentucky-American?

15 A. If you're asking me to interpret the statute, I can do
16 that if I'm told I should be doing it. I think that's
17 asking for a legal opinion. I mean, if . . .

18 Q. From a lawyer, right?

19 A. Well, from a lawyer who's not licensed to practice in
20 Kentucky.

21 Q. But who specializes in utility work?

22 A. Sure.

23 Q. Go right ahead.

24 A. All right. Well, I don't see my counsel jumping up.
25 So I guess it's fair game.

1 MR. SPENARD:

2 Well, I'm going to object, because I can't
3 authorize him to participate in the unauthorized
4 practice of law. So I'm not authorizing him to do
5 it.

6 CHAIRMAN GOSS:

7 Well, I don't know if that's the unauthorized
8 practice of law or not. If it is, then two-thirds
9 of the citizens in this state ought to be put in
10 jail. At least, every private client I've ever
11 represented, Mr. Spenard, has engaged in the
12 unauthorized practice of law. I understand your
13 point.

14 MR. SPENARD:

15 Yes, sir.

16 CHAIRMAN GOSS:

17 If Mr. Rubin feels able to answer Mr. Childers'
18 question, let him try.

19 A. Okay. Well, I can try using the rules of statutory
20 construction that I'm familiar with. I'm not positive
21 those are the same rules that are used in Kentucky.

22 Q. Qualification accepted.

23 A. With that understanding, I do not think that the
24 sentence you've pointed me to would provide a
25 justification for a low-income discount rate. I read

1 this as authorizing free or reduced rate service for
2 the purpose of providing relief in what I view as being
3 natural disasters, flood, epidemic, pestilence, and
4 then it says "or other calamity," and, as I was taught
5 to interpret statutes and using the rules I'm familiar
6 with in other jurisdictions, that phrase "or other
7 calamity" would be read as being within the same class
8 and character of the terms that come before it, flood,
9 epidemic, pestilence. Generally, having a low income
10 would not be in that same category. You perhaps could
11 make an argument for extreme illness or injury or
12 something of that nature, but . . .

13 Q. So you don't believe the low-income person would
14 believe themselves to have a calamity by virtue of not
15 being able to pay their water bill?

16 A. Well, you asked me two different things there. Would a
17 low-income person likely view themselves as having a
18 calamity? Generally, my answer to that is no. If they
19 can't pay their water bill is a very different
20 question, because there's nothing in the company's
21 proposal that applies it only to customers who can't
22 pay their water bill. The only qualification to come
23 under their tariff is that their income has to be below
24 a certain level as certified either by the company or
25 by a qualified community organization. So there's

1 nothing in there that ties it to ability to pay the
2 water bill.

3 Q. And that level is the federal poverty level; correct?

4 A. Was it the federal poverty level or 150 percent of the
5 poverty level?

6 Q. I believe it was the federal poverty level, subject to
7 correction, . . .

8 A. Okay. I think that's right.

9 Q. . . . which is \$18,000 for a family of four; correct?

10 A. Well, a little over that, yes.

11 MR. CHILDERS:

12 Thank you. That's all.

13 CHAIRMAN GOSS:

14 Mr. Ockerman, do you have anything you want to
15 ask?

16 MR. OCKERMAN:

17 At this point, I wouldn't dare.

18 CHAIRMAN GOSS:

19 Mr. Wuetcher?

20 MR. WUETCHER:

21 No, sir.

22 CHAIRMAN GOSS:

23 Okay. Thank you very much, Mr. Rubin. You may
24 step aside.

25 A. Thank you.

1 MR. SPENARD:
2 And may Mr. Rubin be excused?
3 CHAIRMAN GOSS:
4 He may be.
5 MR. SPENARD:
6 Thank you.
7 CHAIRMAN GOSS:
8 Thank you, Mr. Rubin. Be careful going back home.
9 All right. Mr. Spenard, it looks like, according
10 to my list here, you still have, of course, Ms.
11 Crane and - well, I guess just Ms. Crane.
12 MR. SPENARD:
13 Yes.
14 CHAIRMAN GOSS:
15 Ms. Crane, you live quite a ways away. I'm very
16 sorry that you're going to have to stay over,
17 although Kentucky is not a bad place in early
18 November.
19 MS. CRANE:
20 That's quite all right, Your Honor. I'm looking
21 forward to it.
22 CHAIRMAN GOSS:
23 All right.
24 MR. WUETCHER:
25 Your Honor, I believe we also have - Community

1 Action has one witness; does it not?

2 MR. CHILDERS:

3 We do have one witness, and I had asked last week

4 if anybody had any questions. I don't know that

5 anybody does. Maybe Staff does. I don't know if

6 I heard from you.

7 MR. WUETCHER:

8 I don't believe we have any questions.

9 MR. BARBERIE:

10 I have no questions of Mr. - is it Mr. . . .

11 MR. CHILDERS:

12 Mr. Burch, Jack Burch.

13 MR. BARBERIE:

14 Yeah.

15 MR. SPENARD:

16 As it stands today, if his testimony as submitted

17 is all they care to tender with no corrections or

18 changes, I have no questions.

19 CHAIRMAN GOSS:

20 Mr. Ockerman?

21 MR. OCKERMAN:

22 I have no questions.

23 CHAIRMAN GOSS:

24 Mr. Ingram, do you have any questions of Mr.

25 Childers' witness?

1 MR. INGRAM:

2 I do not, Your Honor.

3 CHAIRMAN GOSS:

4 Okay. Well, he won't need to come, then, Mr.
5 Childers.

6 MR. CHILDERS:

7 Okay. Thank you.

8 CHAIRMAN GOSS:

9 Thank you. Okay. My General Counsel has worked
10 this afternoon to try to get my schedule changed
11 for Friday. So I'm going to go do my little
12 testimony obligation at eight o'clock Friday
13 morning, and we'll reconvene, if nobody has an
14 objection, at nine-thirty.

15 MR. SPENARD:

16 I do raise the point that, because of a prior
17 commitment, our witness will not be available.
18 She will be available around eleven. She's going
19 to be participating in a teleconference for a
20 prior commitment in another jurisdiction.

21 CHAIRMAN GOSS:

22 Okay. All right. We've made her wait around here
23 for an extra day and a half, so I think we can
24 accommodate her for an hour and a half. So we
25 will reconvene, then, at eleven o'clock on Friday.

1 Everyone needs to understand I think we have a
2 luncheon meeting at noon that we have to attend
3 which will probably last an hour. So we'll
4 probably go an hour, take an hour off, an hour and
5 fifteen minutes, and then start back right after
6 that until we get you finished.

7 MS. CRANE:

8 Thank you.

9 MR. BARBERIE:

10 Your Honor, is this being broadcast over the
11 Internet, . . .

12 CHAIRMAN GOSS:

13 Yes.

14 MR. BARBERIE:

15 . . . as far as you know?

16 CHAIRMAN GOSS:

17 Yes.

18 MR. BARBERIE:

19 I have regular motion practice on Friday in
20 Fayette Circuit Court. I may or may not be
21 directly available. I don't have any questions of
22 the witness, . . .

23 CHAIRMAN GOSS:

24 Okay.

25

1 MR. BARBERIE:
2 . . . but, if I'm not here on Friday, that's why.
3 CHAIRMAN GOSS:
4 We'll understand, Mr. Barberie. Thank you.
5 MR. OCKERMAN:
6 Likewise, Mr. Chairman, I have to be in court at
7 one o'clock on Friday for approximately an hour.
8 I'll check the Internet to see if the hearing is
9 still going on.
10 CHAIRMAN GOSS:
11 Okay.
12 MR. OCKERMAN:
13 I'll be here at eleven to begin the matters, but,
14 at this point, I don't plan to have any questions
15 of the witness.
16 CHAIRMAN GOSS:
17 Okay. Thank you, Mr. Ockerman, very much. Is it
18 okay with the Messrs. Ingram? Do you all have any
19 problem with that time?
20 MR. INGRAM:
21 None at all.
22 CHAIRMAN GOSS:
23 Okay. Mr. Childers, no . . .
24 MR. CHILDERS:
25 No problem, Your Honor.

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CHAIRMAN GOSS:

Okay. All right. Mr. Howard, and everybody?

Okay. All right. Well, thank you all very much.

We will . . .

MR. HOWARD:

Thank you, Mr. Chairman.

CHAIRMAN GOSS:

Yes, sir?

MR. HOWARD:

No. I said, "Thank you."

CHAIRMAN GOSS:

Oh, okay. Thank you all very much. We will see you, then, back at eleven o'clock on Friday.

HEARING CONTINUED
OFF THE RECORD

1 STATE OF KENTUCKY
2 COUNTY OF FRANKLIN

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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
Connie Sewell, Notary Public
State of Kentucky at Large
1705 South Benson Road
Frankfort, Kentucky 40601
Phone: (502) 875-4272