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MEETING OF THE RATE COMMISSION

OF THE

METROPOLITAN ST. LOUIS SEWER DISTRICT

2011 WASTEWATER RATE CHANGE PROCEEDING

June 13, 2011

(Starting time of the Meeting: 9:00 AM)

1 APPEARANCES:

2 RATE COMMISSION:

3 Leonard Toenjes - Chairman

George Liyeos

4 Nancy Bowser

Mike O'Connell III

5 Eric Schneider

John L. Stein

6 Glenn Koenen

George Tomazi

7 Paul Brockmann

Brad Goss

8 Ralph Wafer

9

RAFTELIS FINANCIAL CONSULTANTS, INC.:

10

William Stannard

11 Thomas Beckley

12

LEGAL COUNSEL ON BEHALF OF THE RATE COMMISSION:

13

John Fox Arnold

14 Lisa O. Stump

Lashly & Baer, PC

15

16 ON BEHALF OF METROPOLITAN ST. LOUIS SEWER  
DISTRICT:

17

Susan Myers, Legal Counsel

18 Jan Zimmermann - Director of Finance

Keith Barber - Black & Veatch

19

20 ON BEHALF OF MISSOURI INDUSTRIAL ENERGY CONSUMERS:

21 John Kindschuh

Bryan Cave, LLP

22

Michael Gorman

23 Brubaker & Associates

24

25

1 ON BEHALF OF BARNES-JEWISH HOSPITAL:  
2 Lisa C. Langeneckert  
Sandberg, Phoenix & vonGontard, PC

3  
4 ON BEHALF OF ROBERT MUELLER:  
5 Robert Mueller

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21 Reported by:  
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25

1 COMMISSIONER TOENJES: Good morning.

2 It's 9:00 on June 13th and we will call to

3 order the Meeting of the Rate Commission for

4 the Metropolitan St. Louis Sewer District.

5 Miss Bowser, if you will call the roll please.

6 COMMISSIONER BOWSER: Mr. Brockmann.

7 COMMISSIONER BROCKMANN: Here.

8 COMMISSIONER BOWSER: Miss Casey.

9 Mr. Goss.

10 COMMISSIONER GOSS: Here.

11 COMMISSIONER BOWSER: Mr. Koenen.

12 COMMISSIONER KOENEN: Here.

13 COMMISSIONER BOWSER: Mr. Liyeos.

14 COMMISSIONER LIYEOS: Here.

15 COMMISSIONER BOWSER: Mr. O'Connell.

16 COMMISSIONER O'CONNELL: Here.

17 COMMISSIONER BOWSER: Mr. Post. Mr.

18 Schneider.

19 COMMISSIONER SCHNEIDER: Here.

20 COMMISSIONER BOWSER: Mr. Seidel.

21 Mr. Stein.

22 COMMISSIONER STEIN: Present.

23 COMMISSIONER BOWSER: Mr. Toenjes.

24 COMMISSIONER TOENJES: Present.

25 COMMISSIONER BOWSER: Mr. Tomazi.

1 COMMISSIONER TOMAZI: Here.

2 COMMISSIONER BOWSER: Mr. Wafer.

3 COMMISSIONER WAFER: Here.

4 COMMISSIONER BOWSER: We have a  
5 quorum.

6 COMMISSIONER TOENJES: We have a  
7 quorum, thank you, Miss Bowser. I would ask  
8 everyone to put their cell phones on vibrate or  
9 off. Thank you. My name is Len Toenjes. I am  
10 chairman of the Rate Commission of the  
11 Metropolitan St. Louis Sewer District and will  
12 serve as Chair of this proceeding. Present are  
13 the Rate Commissioners who identified  
14 themselves in the roll call as delegates of the  
15 Rate Commission.

16 The Charter Plan of the District was  
17 approved by the voters of St. Louis and St.  
18 Louis County in a special election on  
19 February 9th, 1954, and amended at a general  
20 election on November 7, 2000. The amendment to  
21 the Charter Plan established the Rate  
22 Commission to review and make recommendations  
23 to the District regarding changes in wastewater  
24 rates, stormwater rates, and rates proposed by  
25 the District. Charter Plan requires the Board

1 of Trustees of the District to select  
2 organizations to name delegates to the Rate  
3 Commission to ensure a fair representation on  
4 all users of the District's services. The Rate  
5 Commission represents different organizations  
6 to represent commercial industrial users,  
7 residential users, and other organizations  
8 interested in the operation of the District,  
9 including organizations focusing on  
10 environmental issues, labor issues,  
11 socioeconomic issues, community neighborhood  
12 organizations, and other non-profit  
13 organizations.

14 The Rate Commission currently  
15 consists of representatives of Associated  
16 General Contractors of St. Louis, the Regional  
17 Chamber and Growth Association, the Engineers  
18 Club of St. Louis, the League of Women Voters,  
19 Missouri Botanical Gardens, the Human  
20 Development Corporation of Metropolitan St.  
21 Louis, Missouri Industrial Energy Consumers,  
22 Home Builders Association of Greater St. Louis,  
23 the St. Louis County Municipal League, the St.  
24 Louis Council of Construction Consumers,  
25 cooperating school districts, the West County

1 Chamber of Commerce, St. Phillip's Lutheran  
2 Church, Greater St. Louis labor Council  
3 AFL-CIO, and the Missouri Coalition For the  
4 Environment.

5           Upon receipt of a rate change notice  
6 from the District, the Rate Commission is to  
7 recommend to the Board of Trustees changes in a  
8 wastewater, stormwater or tax rate necessary  
9 to, No. 1, pay interest and principal due on  
10 bonds issued to finance assets of the district;  
11 No. 2, pay for the cost of operation and  
12 maintenance; and No. 3, to pay such amount as  
13 may be required to cover emergencies and  
14 anticipated delinquencies.

15           Further, any changes in a rate  
16 recommended to the Board of Trustees by the  
17 Rate Commission is to be accompanied by a  
18 statement that the proposed rate change, No. 1,  
19 is consistent with constitutional statutory or  
20 common law as amended from time to time; No. 2,  
21 enhances the District's ability to provide  
22 adequate sewer and drainage systems and  
23 facilities or related services; No. 3, is  
24 consistent with and not in violation of any  
25 covenant or provision relating to any

1 outstanding bonds or indebtedness of the  
 2 District; No. 4, does not impair the ability of  
 3 the District to comply with applicable federal  
 4 or state laws or regulations as amended from  
 5 time to time; and No. 5, imposes a fair and  
 6 reasonable burden on all classes of ratepayers.

7 The Rate Commission received a rate  
 8 change notice from the District on May 10,  
 9 2011. The Rate Commission must on or before  
 10 September 6, 2011, issue its report on the  
 11 proposed rate change notice to the Board of  
 12 Trustees of the District unless the Board of  
 13 Trustees upon application of the Rate  
 14 Commission extends the period of time for the  
 15 issuance of the Rate Commission report for an  
 16 additional 45 day period.

17 Under procedural rules adopted by the  
 18 Rate Commission on May 17, 2011, any person  
 19 affected by the rate change proposal had an  
 20 opportunity to submit an application to  
 21 intervene in these proceedings. Applications  
 22 to intervene have been filed by the Missouri  
 23 Industrial Energy Consumers, Covidien,  
 24 Barnes-Jewish Hospital, and Robert Mueller.  
 25 These applications have been granted.

1                   On May 13, 2011, the District  
2 submitted to the Rate Commission prepared  
3 direct testimony of Jeffrey L. Theerman, Susan  
4 M. Myers, Brian L. Hoelscher, Jonathan Sprague,  
5 Janice M. Zimmerman, Karl J. Tyminski, and  
6 Keith D. Barber.

7                   On May 26, 2011, the Rate Commission  
8 submitted its discovery request to the District.  
9 On June 7, 2011, the District filed its  
10 responses.

11                   This technical conference will be  
12 held on the record regarding the rate setting  
13 documents and the direct testimony filed with  
14 the Rate Commission by the District. The  
15 purpose of this technical conference is to  
16 provide the District an opportunity to answer  
17 questions propounded by members of the Rate  
18 Commission, then by any intervenor, and finally  
19 by Lashly & Baer, legal counsel to the Rate  
20 Commission.

21                   Following the technical conference,  
22 the intervenors and the Rate Commission  
23 consultants may on or before June 22, 2011,  
24 submit prepared rebuttal testimony and  
25 schedules.

1           A technical conference will be held  
2    on July 13 through the 15, 2011, regarding the  
3    rebuttal testimony. At that technical  
4    conference, each person submitting rebuttal  
5    testimony shall answer questions propounded by  
6    members of the Rate Commission, the District,  
7    then the other intervenors and finally by our  
8    legal counsel.

9           Following the technical conference,  
10   the District, its consultants, the intervenors,  
11   and the Rate Commission consultants may on or  
12   before July 22, 2011, submit prepared  
13   surrebuttal testimony and schedules.

14           A technical conference will be held  
15   on the record on August 8th through the 10th,  
16   2011, regarding the surrebuttal testimony. At  
17   that technical conference, each person  
18   submitting rebuttal testimony shall answer  
19   questions propounded by members of the Rate  
20   Commission, then by the District, the  
21   intervenors, and finally by our legal counsel.

22           Ratepayers who do not wish to  
23   intervene will be permitted to participate in a  
24   series of on the record public hearings  
25   conducted in five sessions beginning on

1 August 16, 2011, and concluding on August 24,  
2 2011.

3 Who is here on behalf of the  
4 Metropolitan St. Louis Sewer District?

5 MS. MYERS: Myself, Susan Myers,  
6 general counsel. At the table with me I have  
7 Jan Zimmerman, the Director of Finance, and  
8 Keith Barber of Black & Veatch.

9 COMMISSIONER TOENJES: Who is here on  
10 behalf of the Missouri Industrial Energy  
11 Consumers?

12 MR. KINDSCHUH: Good morning. My  
13 name is John Kindschuh and I'm an attorney with  
14 Bryan Cave here on behalf of the Missouri  
15 Industrial Energy Consumers.

16 COMMISSIONER TOENJES: Who is here on  
17 behalf of Covidien? Let the record show no one  
18 is here on behalf of Covidien.

19 Who is here on behalf of  
20 Barnes-Jewish Hospital?

21 MS. LANGENECKERT: Lisa Langeneckert  
22 of the law firm of Sandberg, Phoenix, and  
23 vonGontard.

24 COMMISSIONER TOENJES: Who is here on  
25 behalf of Robert Mueller?

1 MR. MUELLER: I am here on behalf of  
2 Robert Mueller, and I am Robert Mueller.

3 COMMISSIONER TOENJES: Also present  
4 are William Stannard and Thomas Beckley of  
5 Raftelis Financial Consultants, Inc.,  
6 consultants to the Rate Commission, and John  
7 Fox Arnold and Lisa Stump of Lashly & Baer,  
8 legal counsel to the Rate Commission.

9 Under the Rate Commission's  
10 operational rules, no persons shall be required  
11 to answer questions for a total period of more  
12 than three hours and the time shall be evenly  
13 divided among all of the participants desiring  
14 to ask questions. Following questions by  
15 members of the Rate Commission, I will attempt  
16 to allocate the time equally among the  
17 participants and our legal counsel. To the  
18 extent that the District, one of the  
19 intervenors, or legal counsel has not completed  
20 the questions at the expiration of that  
21 person's allotted time, and to the extent that  
22 time remains, such persons will be permitted to  
23 propound additional questions until the three  
24 hours has expired. Are there any procedural  
25 matters? Ms. Stump.

1 MS. STUMP: One procedural matter  
2 that has come up that I wanted to bring to your  
3 attention is that the procedural schedule  
4 requires the filing of 20 hard copies with all  
5 filings in this case. As this process -- that  
6 was done before because in previous  
7 proceedings, hard copies were mailed to each  
8 Rate Commissioner. The process that's been  
9 done this year with the repository and with the  
10 use of e-mail, it's come to our attention that  
11 filing of hard copies is probably not  
12 necessary.

13 So, we discussed that with the  
14 chairs, the presenting officer who waived that  
15 requirement for everything that's been filed so  
16 far but I wanted to get that on the record that  
17 that requirement of filing 20 hard copies is  
18 waived and to make sure that none of the other  
19 Rate Commissioners have a problem with that.  
20 And if there isn't any problem, then I would  
21 like the record to reflect that the requirement  
22 of submitting 20 hard copies is waived.

23 COMMISSIONER TOENJES: Any comments  
24 from any of the Rate Commissioners either in  
25 opposition to that change in requirement?

1 Hearing none, we will allow for electronic  
2 filings. Yes, Ms. Myers.

3 MS. MYERS: Could I add. It is on  
4 the MSD website for all the public to see the  
5 documents, all the copies of the documents.

6 COMMISSIONER TOENJES: Thank you.  
7 There is a second procedural matter concerning  
8 the Missouri Industrial Energy Consumers and  
9 Barnes-Jewish Hospital proposal to revise the  
10 procedural schedule. Mr. Kindschuh, would you  
11 care to make a presentation in regard to that  
12 matter?

13 MR. KINDSCHUH: Yes, thank you,  
14 Mr. Toenjes, I appreciate it. My name is John  
15 Kindschuh and I'm an attorney with the MIEC,  
16 Missouri Industrial Energy Consumers. It's a  
17 not-for-profit mutual benefit corporation that  
18 represents the interest of certain corporations  
19 that are large commercial users of MSD  
20 services.

21 The MIEC co-authored a proposal dated  
22 June 7th to revise the procedural schedule in  
23 this rate case. We co-authored with  
24 Barnes-Jewish Hospital, BJH, another intervenor  
25 in this matter. Also as a point of note, we've

1 had a chance to speak with both Covidien and  
2 Robert Mueller, they agree to the terms of the  
3 proposal as well, so all the intervenors kind  
4 of come to you jointly with this proposal.

5 We submitted this proposal to revise  
6 the procedural schedule for three key reasons.  
7 The first is to provide all parties with  
8 additional time to better identify the issues  
9 in this rate case and hopefully resolve some of  
10 those issues; second of all is to provide all  
11 parties with an opportunity for additional  
12 discovery; and third, to provide the Rate  
13 Commission with more opportunity to evaluate  
14 the issues and draft the Rate Commission  
15 report. And there are many reasons why the  
16 schedule should be extended to include more  
17 time for the parties to file technical  
18 testimony and exchange discovery. We had  
19 submitted those, and quite honestly many others  
20 too, in the memo dated June 7th but let me  
21 highlight a few.

22 The first is the sheer magnitude of  
23 this proposal. MSD staff is proposing an  
24 increase in wastewater revenues of  
25 approximately \$130 million to take place over

1 the course of a four year period. This is  
2 approximately a 60 percent increase in  
3 wastewater revenue collections. We feel that  
4 all parties will want to carefully review the  
5 specifics of this kind of an increase.

6 Secondly, a capital program of nearly  
7 \$1.3 billion is planned over the next four  
8 years. In order to accomplish this program,  
9 MSD is going to increase the debt service cost  
10 by over \$70 million per year. Once again this  
11 is a sizeable number and we think all parties  
12 will want to evaluate this carefully.

13 And last but certainly not least  
14 involved the Consent Decrees. As we  
15 understand, MSD recently agreed to the terms of  
16 the consent. It's imperative that the Rate  
17 Commission and all of the parties understand  
18 the details of that agreement and whether or  
19 not the necessary capital improvement projects  
20 mandated by that agreement are in the proposed  
21 rate plan.

22 So, pursuant to terms of the Charter,  
23 the Rate Commission has the authority to  
24 recognize that the Board of Trustees that the  
25 120 day scheduling window be extended by one

1 additional 45 days. And in prior rate cases,  
2 the Rate Commission has in fact recommended  
3 this and the Board of Trustees has approved of  
4 this.

5 I would ask if you have a copy of our  
6 proposal in front of you, we put together a  
7 schedule, a proposed schedule in Exhibit A and  
8 I would like to walk through a few of those  
9 things with you. Some of our key goals in  
10 revising the schedule, first of all, we wanted  
11 to provide more time before rebuttal testimony  
12 and surrebuttal testimony. In particular, we  
13 added additional days, 26 to be exact, bottom  
14 of the page on June and the June 1st to July,  
15 we added an additional 26 days there because  
16 that way the Rate Commission and the  
17 intervenors can be allowed additional time to  
18 review and evaluate MSD's testimony and we can  
19 exchange more discovery and hopefully reach  
20 some resolution of the issues.

21 The second key thing that we wanted  
22 to do was provide additional time for you to  
23 deliberate. So, if you look at the schedule  
24 again, in October, we added an additional 16  
25 days at the end of the process so the Rate

1 Commission has time to digest the information,  
2 discuss, and, of course, draft a rather lengthy  
3 Rate Commission report. And let me emphasize  
4 that this schedule is submitted in a  
5 collaborative spirit. The dates and the  
6 schedule are not set in stone in our minds,  
7 rather we want to work with all of the parties  
8 to make sure that we best utilize the  
9 additional 45 days while minimizing any  
10 inconveniences to folks.

11 We worked very hard in revising this  
12 schedule to do that. For example, we looked at  
13 the original schedule and saw the timeframes  
14 between the various events, kept those same  
15 time frames as we shifted things back. Another  
16 thing is with respect to August, we were able  
17 to keep the same dates for the technical  
18 conference that was originally scheduled for  
19 the rebuttal testimony, we proposed those same  
20 dates in August be used for the testimony --  
21 excuse me, for the rebuttal testimony on our  
22 proposal which was originally for the  
23 surrebuttal testimony so hopefully those dates  
24 are still convenient for you and we can still  
25 have the conference then.

1           With respect to the public hearings,  
2 we recommend that all the public hearings that  
3 have been scheduled stay. We recognize there  
4 is some logistical issues with publications,  
5 obviously the public would like to participate  
6 and we want to hear what they have to say. We  
7 recommend keeping all of those meetings. The  
8 only thing is is the operational rules require  
9 at least one public hearing be conducted after  
10 the prehearing conference.

11           If the proposed schedule is adopted,  
12 we would have to move the prehearing conference  
13 date so we would have to schedule one  
14 additional public hearing. We find this would  
15 be beneficial for all parties since more  
16 members of the public can come and provide  
17 their input.

18           And most importantly, we recognize  
19 that MSD's staff is preparing for a bond  
20 election in April of 2012. Jan Zimmerman had  
21 distributed a timeline at the beginning of the  
22 year. We attached this timeline as Exhibit B  
23 and perhaps some of you had a chance to look at  
24 it. Honestly, Jan had the foresight to build  
25 in an additional 45 days into the schedule

1 which is great. So, if adopted, our proposed  
2 schedule will not interfere with MSD's bond  
3 election timeline which is important for  
4 everyone.

5 So, in conclusion, we are happy to  
6 work with all the parties to shift any of the  
7 dates as needed but we did our best to review  
8 the legal and procedural requirements, looked  
9 at the proposal, looked at the logistics and  
10 came up with Schedule A. Please let us know if  
11 you have any questions and once again, we  
12 appreciate your consideration of this proposal  
13 and hopefully this proposal will enable you to  
14 reach a fair and reasonable determination for  
15 this rate case.

16 COMMISSIONER TOENJES: I would ask  
17 the Rate Commissioners to hold their questions  
18 until we hear from the other intervenors from  
19 the District and from our labor -- our labor  
20 counsel, and hold your questions from all  
21 parties. Would any of the other intervenors  
22 care to make any comments on Mr. Kindschuh's  
23 presentation?

24 MS. LANGENECKERT: BJC obviously  
25 supports this. We join with MIEC and we think

1 it's a reasonable way to approach the case and  
2 make sure that we get all the information we  
3 can and everyone has their appropriate due  
4 process.

5 MR. MUELLER: I'll go on record as  
6 supporting the request also.

7 COMMISSIONER TOENJES: Thank you.  
8 The District have any comments on this request?

9 MR. THEERMAN: Mr. Chair, we support  
10 the additional time that's been recommended.  
11 We built that into our original schedule and we  
12 think it's appropriate given the concerns that  
13 have been expressed. If the Rate Commission  
14 decides to request this of our Board, we are  
15 prepared to take it to our Board at a special  
16 Board meeting on the 29th of this month. If  
17 for some reason that Board meeting doesn't  
18 occur, then the next Board meeting will be  
19 July 14th.

20 The only thing I point out is while  
21 the budget will support the additional  
22 advertising required for this, it will eat into  
23 the money we had allocated for radio  
24 advertising of the public hearings in August.

25 COMMISSIONER TOENJES: Ms. Stump or

1 Mr. Arnold, comments? Ms. Stump.

2 MS. STUMP: As you all know, we  
3 provided you with correspondence last week  
4 which has also been made a part of the public  
5 record. Whether or not to change the  
6 procedural schedule is within the discretion of  
7 the Rate Commission and it's your decision. We  
8 gave you some issues to consider.

9 First of all is the fact that the 45  
10 days does under the Charter really have to come  
11 from the Board of Trustees. So, there will  
12 have to be that procedural matter of actually  
13 asking for the 45 days from the Board of  
14 Trustees and the Board of Trustees granting the  
15 45 days before it can be put into the schedule.

16 Secondly, there is the cost of  
17 publication as we talked about. The Charter  
18 requires that the notice of the public hearings  
19 be published and we would recommend that the  
20 entire schedule be republished and changes be  
21 made just because the entire schedule is  
22 published the first time and we think it would  
23 be confusing to try to just do a shorter  
24 publication if something is changed.

25 Third, the Charter only has the

1 one-45 day extension, so it's certainly up to  
2 you all, assuming the Board of Trustees grants  
3 it, to include it throughout the process but  
4 that's it, that's one-45 days. If something  
5 else comes up later on, there is no provision  
6 under the Charter for any additional  
7 extensions.

8 And the last thing I think that we  
9 pointed out was the whole issue of education  
10 for the bond issue election. Certainly the  
11 sooner the Rate Commission makes its decision,  
12 the more time there is to educate the public on  
13 what it is that is going to be proposed.

14 So, those were the four things that  
15 that we pointed out which you all get to  
16 balance with the issues raised by Mr. Kindschuh  
17 and the intervenors, and then should the Rate  
18 Commission consider or want to consider  
19 changing it, there were certain things that we  
20 ask that you direct us to do beginning with  
21 asking for a change, directing us to ask the  
22 Board of Trustees for the extension, and then  
23 secondly, we need to push back the rebuttal  
24 testimony date until we actually can adopt a  
25 new procedural schedule, and what we would

1 contemplate is that we would meet with the  
2 intervenors and with the District and come up  
3 with a new schedule probably similar to what  
4 they have proposed but just to make sure that  
5 everybody is on the right page, we have places  
6 for all the hearings, everything is set, and  
7 then we would present that to the Rate  
8 Commission for approval. Probably at some date  
9 there would need to be a meeting some date  
10 after the Board of Trustees' meeting to approve  
11 a new schedule. Questions?

12 COMMISSIONER TOENJES: Thank you. Do  
13 any of the Rate Commissioners have questions  
14 for the intervenors or for the District or for  
15 Ms. Stump? Mr. Tomazi.

16 COMMISSIONER TOMAZI: Two quick  
17 questions. We will have to republish the  
18 entire public hearing schedule and all the  
19 other schedules and that have already been out  
20 half a dozen times in various publications?

21 MS. STUMP: We will need to  
22 republish. The Charter requires that you  
23 publish the notice of the actual public  
24 hearings but the Rate Commission always has the  
25 process of publishing everything including

1 these technical conferences.

2 So, since that was all published for  
3 the first time, we feel like it would be even  
4 more confusing for the voters or the patrons to  
5 just publish the hearing date so, yes,  
6 everything would have to be republished which  
7 we, given what we spent for the last  
8 publication, would probably be around \$20,000.

9 COMMISSIONER TOMAZI: Second  
10 question. If we put in the 45 day extension,  
11 what does this do in terms of having the MSD  
12 put out its public education program for the  
13 bond issue election in November? Is this going  
14 to be too tight?

15 MS. STUMP: I think really that's  
16 probably a question --

17 COMMISSIONER TOENJES: Jeff, Jan,  
18 Susan?

19 MR. THEERMAN: We built the schedule  
20 when we originally envisioned this with a 45  
21 day extension, so the answer would be we don't  
22 think it's too tight, we think we can do that.

23 COMMISSIONER TOENJES: Mr. Koenen.

24 COMMISSIONER KOENEN: We talked about  
25 putting out information for the public

1 hearings. If we don't have to repeat all the  
 2 technical date and things like that and the  
 3 advertising just talks about the public hearing  
 4 that is coming up in August, can't we just make  
 5 the ad simpler and figure the people who need  
 6 to know about this will find out about this  
 7 through the website and other communication?

8 MS. STUMP: Well, I think you could.  
 9 I think my concern would be that if you  
 10 published, let's say, the July -- I mean, if we  
 11 keep some of the same dates, then it may not be  
 12 a problem, but if we have a different date for  
 13 the prehearing conference that was published,  
 14 what if somebody does want to come or somebody  
 15 shows up at the wrong date? Certainly that's  
 16 something for you to consider. We can consider  
 17 putting something like language that there have  
 18 been changes have been made but that's  
 19 really -- that's up to you all.

20 COMMISSIONER TOENJES: Eric,  
 21 Mr. Schneider.

22 COMMISSIONER SCHNEIDER: The question  
 23 of Mr. Kindschuh. On your extension that you  
 24 submitted, I want to understand. You are  
 25 proposing that the issues of the Board would be

1 October 21st, is that correct?

2 MR. KINDSCHUH: That is correct.

3 COMMISSIONER SCHNEIDER: And am I  
4 interpreting, or Jan, the spreadsheet that was  
5 originally presented with the 45 day extension  
6 would have ended with the Board of Trustees on  
7 October 13th, is that correct?

8 MR. KINDSCHUH: That is correct but  
9 please note that the rate proposal to the Rate  
10 Commission was actually not submitted on  
11 May 2nd, which is what Jan had contemplated in  
12 Exhibit B, it was actually submitted I believe  
13 on May 10th. Yes, so you have to kind of  
14 extend that by an extra eight days so you're  
15 correct. It's the same idea, it's just shifted  
16 back about eight days from what Jan had  
17 originally proposed.

18 COMMISSIONER SCHNEIDER: We are  
19 talking about eight days, the difference  
20 between what the Board on fees would do,  
21 therefore that would be impacting to what the  
22 public would do -- we are only talking an eight  
23 day difference overall in terms of what the  
24 public campaign would be for this?

25 MR. KINDSCHUH: Yes. I think that

1 makes sense.

2 MR. THEERMAN: We can support that  
3 eight day change in our bond election work if  
4 that's the question.

5 COMMISSIONER TOENJES: Do you have  
6 other comments? Comments from the District?

7 MR. THEERMAN: We just want to make  
8 sure you understand what that eight days is.  
9 Mr. Kindschuh is right. The eight days relates  
10 to when we started the rate proposal. So  
11 instead of May 2nd, which had a total schedule  
12 including a 45 day extension ending on  
13 October 13th, we submitted a rate change notice  
14 to the commission on May 10th which given the  
15 same set of circumstances with the 45 day  
16 extension would have on -- would end on  
17 October 21st. So, it's not that there is a net  
18 change of eight days by this 45 day extension,  
19 that change in essence occurred because we  
20 submitted the rate change proposal on the 10th  
21 rather than the 2nd. By approval of the 45 day  
22 extension, it's a 45 day extension of the 120  
23 day schedule as prescribed in the chart.  
24 That's pretty long-winded.

25 COMMISSIONER TOENJES: Mr. Schneider.

1 MR. SCHNEIDER: So to clarify then,  
 2 let's say the Board of Trustees acted within  
 3 this timeframe and accepts the proposal of the  
 4 Rate Commission. How does that impact either  
 5 from what he's proposing or what the current  
 6 schedule is, the amount of time the public  
 7 would have to evaluate the rate proposal? It  
 8 sounds like there is zero impact then.

9 MR. THEERMAN: Is your question about  
 10 evaluating the rate proposal or evaluating a  
 11 bond election?

12 MR. SCHNEIDER: Bond election, I'm  
 13 sorry, a bond election.

14 MR. THEERMAN: If -- with the  
 15 extension, the Board of Trustees will have the  
 16 window of time by Charter, they can't take any  
 17 action on the rate proposal, and that 45 day  
 18 period, and don't get the two confused, there  
 19 is two-45 day periods there, the second 45 day  
 20 period is a waiting period for the Board and  
 21 that would end on December 5th, I believe.  
 22 Then the Board could introduce and adopt an  
 23 ordinance changing the rate. The actual moving  
 24 forward of a bond election isn't prescriptively  
 25 tied to any of these dates. The Board could go

1 ahead and put something on the ballot after we  
2 know what the rate reported is but before they  
3 do anything with an ordinance on the rate  
4 itself, and so we believe there is time to  
5 educate the public on a bond election given  
6 that those aren't directly tied to one another.  
7 We either get it on the ballot and educate the  
8 public before an election.

9 MR. SCHNEIDER: Thank you.

10 COMMISSIONER TOENJES: Any questions  
11 from any other Rate Commissioners? I have one  
12 question. Would it be accurate to assume that  
13 this is somewhat a restructuring of our 45 day  
14 extension then? Rather than asking for the 45  
15 days at the end, we are sort of in essence  
16 spreading out the 45 days with some of it at  
17 the beginning, some in the middle, and some at  
18 the end, is that an accurate --

19 MR. KINDSCHUH: Yeah, I believe  
20 that's very accurate.

21 COMMISSIONER TOENJES: I will ask the  
22 pleasure of the Rate Commissioners what they  
23 would care to do about this proposal.

24 COMMISSIONER LIYEOS: I would move  
25 that we take steps, advice that relates to

1 this, and recommend to the Board of Directors  
2 for MSD to grant the 45 day extension.

3 COMMISSIONER TOENJES: Motion by  
4 Mr. Liyeos. Is there a second?

5 COMMISSIONER KOENEN: Second.

6 COMMISSIONER TOENJES: Second on that  
7 motion. Any discussion on the motion? All in  
8 favor signify by saying aye. Opposed? Motion  
9 carries. We will move forward with accepting  
10 the recommendation to the change in our  
11 procedural schedule and Ms. Stump, I would ask  
12 you to work with Mr. Brockmann and the  
13 communications committee also concerning what  
14 does or doesn't get published on that --

15 MS. STUMP: Okay.

16 COMMISSIONER TOENJES: -- so that  
17 does or doesn't move forward.

18 MS. STUMP: May I ask one other  
19 thing? I would ask that the Rate Commission  
20 consider having a meeting and it may be by  
21 telephone, you know, for some of you that  
22 cannot be here, sometime after the 29th when  
23 the Board of Trustees meet at which time we  
24 would present the modified schedule, and that  
25 in the meantime, you authorize us to work with

1 the District and the intervenors to come up  
2 with the actual new schedule, and that would be  
3 approved at that meeting or considered at that  
4 meeting.

5 COMMISSIONER TOENJES: That's a fair  
6 request. We will move.

7 MS. STUMP: Okay. And then also  
8 let's push back -- the rebuttal testimony right  
9 now is due next week. So, in light of this, if  
10 we could push that back to -- let's say even --  
11 I'm looking at the dates that Mr. Kindschuh  
12 has. Even with the dates -- let's go ahead and  
13 say the 18th but we will be -- you will be  
14 meeting before then with a new schedule which  
15 may or may not have the 18th but let's at least  
16 say it's not due on the 22nd. We could even  
17 say on the 22nd and it's pushed back, that  
18 requirement has been waived, and it will be due  
19 on the date that you all adopt the new -- you  
20 know --

21 COMMISSIONER TOENJES: The date to be  
22 determined.

23 MS. STUMP: Yes.

24 COMMISSIONER TOENJES: Okay. So, the  
25 current date for the submission of the rebuttal

1 testimony would be waived by action of the Rate  
2 Commission, the motion we just adopted, and the  
3 new date will be announced when we meet at our  
4 next meeting after all the parties have agreed  
5 to what that date should be.

6 MS. STUMP: Sounds good.

7 COMMISSIONER TOENJES: Is that  
8 acceptable with everyone? Okay. Thank you for  
9 your clarification, Ms. Stump. Any other  
10 comments on that or questions on that  
11 procedural matter before we move forward? Are  
12 there any other procedural matters that we  
13 should entertain at this time that anyone would  
14 care to bring forward? Hearing none, Ms.  
15 Myers, would you care to make an opening  
16 statement on behalf of the District?

17 MS. MYERS: I would, thank you. Good  
18 morning. Again, I am Susan Myers, the general  
19 counsel for the Metropolitan St. Louis Sewer  
20 District. I would like to thank you all for  
21 the opportunity to provide an opening statement  
22 on behalf of the District. For the record, I  
23 would like to provide a summary of the  
24 District's history. MSD is the fourth largest  
25 sewer district in the country based on miles

1 per pipe, with the responsibility for over  
2 6,300 miles of sanitary and combined sewers.  
3 Although being the fourth largest sewer  
4 district in the country, MSD's rate base is  
5 approximately half the size of other comparable  
6 entities.

7 MSD was formed pursuant to the  
8 Missouri Constitution in 1954 and began  
9 operation in 1946. Over time, MSD has absorbed  
10 79 public and privately owned sewer systems  
11 thereby providing consolidated regional sewer  
12 treatment to the St. Louis community. Based on  
13 miles per pipe, the District is over two times  
14 as large as Kansas City. The large size of the  
15 MSD system will require a massive multi-decade  
16 reinvestment effort to maintain and improve the  
17 community wastewater sewer infrastructure.

18 As most of you are aware, in June of  
19 2007, the United States and the State of  
20 Missouri filed a civil action against the  
21 District for alleged violations of the Clean  
22 Water Act. For the past four years, the  
23 District has been in negotiations with the  
24 plaintiffs, their attorneys, and the  
25 intervenors, the Missouri Coalition For the

1 Environment. At it's June 9, 2011, meeting,  
2 the MSD Board of Trustees voted unanimously to  
3 introduce an ordinance that would allow the  
4 District to enter into a settlement or a  
5 Consent Decree with the United States and the  
6 Missouri Coalition For the Environment.

7           The State of Missouri, in spite of  
8 being involved in these negotiations since  
9 2007, has chosen not to sign the Consent  
10 Decree. This settlement will place St. Louis  
11 in a position to achieve compliance with the  
12 Clean Water Act through a multi-decade schedule  
13 without further litigation. This is consistent  
14 with agreements made in numerous other cities  
15 such as Kansas City, Indianapolis, Cincinnati,  
16 Baltimore, Los Angeles, Atlanta, Washington,  
17 D.C., and many others.

18           At this time, the District is unable  
19 to discuss all aspects of the Consent Decree.  
20 Full disclosure will be available once the  
21 Consent Decree is lodged with the court. The  
22 aspects of the decree that the District is at  
23 liberty to discuss are provided in the detail  
24 sheet submitted to the MSD Board on June 9th,  
25 2011. This information has been provided as

1 Exhibit MSD 11A32. The settlement resolves all  
2 issues raised in the plaintiff's complaint and  
3 includes a 23 year schedule which will allow  
4 the time necessary to achieve compliance with  
5 the Clean Water Act.

6 The District estimates the capital  
7 program required to achieve compliance with  
8 this agreement will cost \$4.5 billion in 2011.  
9 Included in this number is remaining master  
10 planning work as well as design and  
11 construction of remedial measures required to  
12 achieve compliance. Implementation of the  
13 District's CSO long-term control plan recently  
14 approved by state regulators, the use of green  
15 infrastructure in abating CSO discharges, and  
16 capacity management operations and maintenance  
17 program designed to optimally manage the  
18 collection system and very extensive progress  
19 reporting.

20 Also included in the decree is a  
21 civil penalty of \$1.2 million. \$1.6 million to  
22 fund supplemental environment projects related  
23 to low income, lateral repair, and septic tank  
24 elimination. Any settlement of the Missouri  
25 Coalition For the Environment's claim for cost

1 in the amount of \$116,050.

2           Throughout these technical  
3 conferences, the following should be kept in  
4 mind. The program outlined in the Consent  
5 Decree is a continuation of MSD's current  
6 capital program and has been under way for the  
7 past several decades. The capital program is a  
8 reinvestment in the St. Louis community to  
9 maintain and improve its wastewater  
10 infrastructure. MSD has spent a total of  
11 \$1.3 billion on the recent sanitary system  
12 since 1990 while spending an additional \$800  
13 million on the combined sewer system. During  
14 this period, the District has reduced CSO  
15 volume by over 30 percent and decreased the  
16 number of constructed sanitary sewer overflows  
17 from over 500 to less than 200.

18           The District has not been sitting  
19 idle unlike several other wastewater entities  
20 prior to entering similar Consent Decrees. The  
21 decree provides a schedule for MSD to  
22 accomplish compliance with the Clean Water Act.

23           The rate being proposed to the Rate  
24 Commission is the same wastewater rate method  
25 approved by the Rate Commission in the past

1 three rate change proceedings. It is the  
2 District's opinion the rate proposal imposes a  
3 fair and reasonable burden on all classes of  
4 ratepayers. As the proposed rates were  
5 determined using an industry-accepted  
6 wastewater rate design methodology, a  
7 methodology that has been determined to be fair  
8 and equitable by the Missouri Supreme Court in  
9 1997.

10 Our testimony today will provide  
11 clarification of the detailed aspects of the  
12 District's rate proposal and demonstrate how  
13 the proposed rates are necessary to MSD's  
14 future obligations including compliance with  
15 the Consent Decree. For the record, the  
16 District's proposal addresses wastewater rates  
17 only. Stormwater rates are not included due to  
18 ongoing litigation.

19 The order of appearance of MSD's  
20 witnesses today is Jeff Theerman, MSD's  
21 Executive Director; myself, Susan Myers, MSD's  
22 general counsel; Brian Hoelscher, MSD's  
23 Director of Engineering; John Sprague, MSD's  
24 Director of Operations; Karl Tyminski, MSD's  
25 Secretary/Treasurer; Jan Zimmerman, MSD's

1 Director of Finance; and Keith Barber of Black  
2 & Veatch as the District's rate consultant.

3 This concludes my opening remarks. I  
4 ask that my opening remarks be accepted by the  
5 Rate Commission as Exhibit MSD 14. Thank you.

6 COMMISSIONER TOENJES: Thank you, Ms.  
7 Myers. Are there any other parties present who  
8 wish to make an opening statement?

9 MR. KINDSCHUH: The MIEC requests at  
10 this point we do not have an opening statement  
11 prepared but if we could have the liberty to  
12 have any opening comments at the rebuttal  
13 testimony if needed. Thank you.

14 MS. LANGENECKERT: BJH would like  
15 that as well.

16 MR. MUELLER: I have no comment.

17 COMMISSIONER TOENJES: Hearing no  
18 other opening comments, Ms. Myers, are you  
19 ready to present those persons for whom you  
20 filed District testimony?

21 MS. MYERS: We are.

22 COMMISSIONER TOENJES: Please proceed.

23 MS. MYERS: We would like to call  
24 Jeff Theerman as our first witness.

25 COMMISSIONER TOENJES: Mr. Theerman,

1 is the testimony you're about to give the  
2 truth, the whole truth, and nothing but the  
3 truth?

4 MR. THEERMAN: I do.

5 COMMISSIONER TOENJES: Thank you.  
6 Please proceed.

7 MS. STUMP: We may want to just go  
8 down the list of the intervenors and give them  
9 an opportunity to ask questions first.

10 COMMISSIONER TOENJES: We will do  
11 that.

12 MS. STUMP: And the Rate Commissioners  
13 are free to ask questions at any time.

14 COMMISSIONER TOENJES: All right.  
15 Any questions, Mr. Kindschuh?

16 MR. KINDSCHUH: Thank you.

17

18 JEFF THEERMAN,  
19 of lawful age, being produced, sworn and  
20 examined, and says:

21

22 EXAMINATION

23 Questions By: JOHN KINDSCHUH

24 Q. Good morning. I have a couple of  
25 questions for you on behalf of the MIEC. You

1 state in your testimony that the rate change  
 2 notice is consistent with constitutional,  
 3 statutory, or common law as amended. Why is  
 4 this the case?

5 A. Well, we are following the procedure  
 6 aligned in the Charter for proposing a rate  
 7 change notice. The rate change notice we are  
 8 proposing is sufficient to satisfy the  
 9 requirements of a Consent Decree we are  
 10 planning to enter into with the federal  
 11 government. It should -- it's sufficient to  
 12 cover operating costs as well as the capital  
 13 improvements we need to make for regulatory  
 14 reasons as well as just the ongoing operations  
 15 of the District.

16 Q. With respect to that Consent Decree,  
 17 it's my understanding that agreement has been  
 18 reached between MSD, EPA, and Missouri  
 19 Coalition of the Environment, is that correct?

20 A. That's correct.

21 Q. Okay. And if so, when was that  
 22 agreement reached?

23 A. We've been negotiating a settlement  
 24 to a lawsuit for four years. Those  
 25 negotiations included the parties you spoke of

1 as well as the State of Missouri. We recently  
 2 got to the point of needing to seek approval of  
 3 our Board of Trustees to enter into this  
 4 Consent Decree. That process started last  
 5 Thursday with an ordinance being introduced  
 6 that if approved, it would allow Susan and I to  
 7 sign on behalf of the District for the  
 8 settlement. So, the exact day is officially  
 9 June 2nd when we posted the agenda showed that  
 10 potential settlement.

11 **Q. Is MSD able to provide a copy of the**  
 12 **Consent Decree to the Rate Commission?**

13 A. No.

14 **Q. Okay. Do you have any idea when that**  
 15 **would be available?**

16 A. The actual document becomes available  
 17 when it lies with the court is my understanding.  
 18 And that happens after all of the parties to  
 19 the Consent Decree have agreed to sign and have  
 20 signed.

21 **Q. And it's our understanding the State**  
 22 **of Missouri has not agreed to the terms as we**  
 23 **talked about. Do you know why the State of**  
 24 **Missouri did not agree to the terms of the**  
 25 **Consent Decree?**

1           A.    There are things I know that I cannot  
2    say because of a confidentiality agreement we  
3    entered into with the mediation process, and  
4    there are other aspects that I do not know.

5           **Q.    Are there things you're able to share**  
6    **at this point pursuant to the confidentiality**  
7    **agreement?**

8           A.    I can share with you matters of the  
9    public record.  When we were sued, the suit was  
10   brought by the United States Government and the  
11   State of Missouri.  The District filed  
12   counterclaims to that suit that are a matter of  
13   public record, and those counterclaims were  
14   heard by the court and some continue to stand  
15   today, others were dismissed because they were  
16   not yet ripe.  And in the process of hearing  
17   about those counterclaims, the court determined  
18   that the State had lost its sovereign immunity  
19   with respect to some of these issues.  I am not  
20   an attorney, I am not qualified to speak as one  
21   but these are the general facts.  So, there are  
22   counterclaims that still exist and there are  
23   counterclaims that may be raised again if they  
24   become ripe.

25           **Q.    Thank you.  So I'm correct in saying**

1     **that the agreement is not binding upon MSD at**  
2     **this point?**

3           A.    It is not.  As I mentioned earlier in  
4    the proceeding on the 29th of June, we have a  
5    Board of Trustees meeting where they will take  
6    up the adoption of that ordinance that would  
7    allow us to enter into the decree.

8           **Q.    Is the MSD Board of Trustees at**  
9    **liberty at this point to change parts of that**  
10   **agreement or have they been asked to approve**  
11   **the agreement at this point?**

12          A.    They've been asked to approve what  
13    has been negotiated.

14          **Q.    Okay.  They are in the process of**  
15    **reviewing those documents at this time?**

16          A.    They are.  There's been a fairly  
17    lengthy education process.  This isn't anything  
18    that's been finalized in a few days, so...

19          **Q.    Do you have any idea, Mr. Theerman,**  
20    **when the Consent Decree would formally go into**  
21    **effect?**

22          A.    That's a really hard date to determine.  
23    Assuming our Board of Trustees approves the  
24    ordinance allowing you to sign, our ordinances  
25    have a 15 day waiting period, so I would sign

1 that ordinance or actually sign the CD in the  
2 middle of July. I am told that the plaintiff's  
3 signatures would be subsequent to that and then  
4 the Consent Decree would be lodged with the  
5 court, the federal consent decree have a  
6 mandatory 30 day public notice period. The  
7 court would have -- and at that point, all the  
8 terms of the CD are public knowledge and can be  
9 reviewed and commented on. Following that  
10 period, the court will take whatever time it  
11 needs to finalize and enter the decree.

12 **Q. Thank you. How will the terms of the**  
13 **agreement impact the rate change notice that**  
14 **was submitted by MSD on May 10th of 2011?**

15 A. Rate change notice that we submitted  
16 to the Rate Commission was crafted with the  
17 requirements of the Consent Decree in mind, so  
18 there are no changes anticipated to the rate  
19 change notice.

20 **Q. Ms. Myers mentioned a list of cities**  
21 **that have been involved in the Clean Water Act**  
22 **enforcement actions that are similar to ours.**  
23 **Is MSD's Consent Decree modeled after any**  
24 **particular agreement with another city or other**  
25 **cities in mind?**

1           A.    No, but all federal Consent Decrees  
2    have a similar format, similar deliverables.  
3    In my testimony, there was a rather long list  
4    of cities that precede this and depending on  
5    whether they have combined or combined and  
6    separate sewer systems, they can be different.  
7    Some of those decrees were crafted more than  
8    ten years ago.  So, there has been an evolution  
9    in Consent Decrees over the last ten years.

10           **Q.    And you had stated in your testimony**  
11   **that both the U.S. and the State of Missouri**  
12   **jointly sued MSD for violations for the Clean**  
13   **Water Act.  Have any costs associated with any**  
14   **finances or penalties been included in MSD's rate**  
15   **change proposal that was submitted today?**

16           A.    I don't believe so.  We have  
17    encumbered the dollars associated with the  
18    \$1.2 million fine.  The supplemental  
19    environmental projects, I believe, they may be  
20    included in the rate case.

21           **Q.    Do you know which projects those are?**

22           A.    That's \$1.6 million of work over five  
23    years on -- it's intended to benefit low income  
24    customers that have lateral problems or are on  
25    septic tanks be put on the public sewer.

1           Q.    Thank you.  You also mentioned in  
2   your testimony that there are numerous new  
3   regulations that are being considered by  
4   regulators or that will affect wastewater  
5   utilities.  What are these new regulations that  
6   you're referring to?

7           A.    I spoke about it generally in my  
8   testimony.  There is a myriad of regulations  
9   and formation at any given time, so this is not  
10   an exhaustive list but I can tell you sort of  
11   what the big issues are right now that St.  
12   Louis is facing that is not included in the  
13   Consent Decree.

14                    First is the issue of water quality  
15   standards on the Mississippi River.  MSD has  
16   worked for the last seven years on analysis of  
17   the use of the Mississippi River here in St.  
18   Louis, the 28 miles in front of St. Louis, and  
19   the ability for that waterway in that area to  
20   be used recreationally.  There is no doubt that  
21   the Mississippi River is used for boating in  
22   that area.

23                    We have developed two different  
24   scientific reports called Use Attainability  
25   Analyses that are intended to show the use of

1 the river and its ability to be used for  
2 certain uses. This is a procedure in the Clean  
3 Water Act. The federal government has the  
4 perspective that the 28 miles of the  
5 Mississippi River here in St. Louis should be  
6 used for swimming, should be able to be  
7 attainable for swimming, and the impact of that  
8 sort of a decision would be significant because  
9 of combined sewer overflows that exist on the  
10 Mississippi River.

11 We developed our long-term control  
12 plan. A part of the plan that was not  
13 recommended was the construction of combined  
14 sewer storage tunnels along the Mississippi  
15 River with a cost of approximately  
16 \$1.5 billion. Those tunnels were not included  
17 in our long-term control plan report that was  
18 approved by the State of Missouri. So, that  
19 particular decision has a potential additional  
20 \$1.5 billion impact. All are or practically  
21 all paid for by the ratepayers of MSD.

22 Another regulation that's just  
23 currently been created deals with sewage sludge  
24 incineration. The byproduct of the treatment  
25 process that we have in our treatment plants

1 creates a solid that has to be appropriately  
 2 dealt with. Approximately 60,000 tons of bile  
 3 solids generated from our treatment plants is  
 4 incinerated every year at two of our  
 5 facilities. These new rules have the potential  
 6 to advance about a quarter billion dollar  
 7 investment we had planned for ten years or more  
 8 into the future, bringing it forward and need  
 9 to be expended very quickly. MSD is included  
 10 in a group of four utilities that practice  
 11 sewage sludge incineration and we are  
 12 challenging that new regulation. So, that is a  
 13 significant potential change.

14           The next big thing is nutrients.  
 15 Nutrient pollution deals with nitrogen and  
 16 phosphorus. It's the cause of environmental  
 17 issues like gulf hypoxia, a dead zone in the  
 18 gulf. You see rules being enacted in the  
 19 Chesapeake Bay and in Florida and in other  
 20 states concerning nutrient pollution. It's  
 21 likely that in the next ten years, MSD's  
 22 treatment facilities will be required to remove  
 23 nutrients and I don't have a cost for what it  
 24 takes to do that. It's hundreds of millions of  
 25 dollars to do that.

1           And then there is a myriad of other  
2 things that may or may not become regulations,  
3 climate change issues, emergent contaminants,  
4 security requirements. So, there is a  
5 considerable environmental regulatory burden  
6 that is either on the horizon or maybe to be  
7 drawn.

8           **Q. And you had mentioned a number of**  
9 **things, the water quality standards, the sewage**  
10 **sludge incineration, and nutrients. Mr.**  
11 **Theerman, do you expect that any of these new**  
12 **regulation issues that will impact this rate**  
13 **proposal submitted on May 10th?**

14           A. Well, it's possible. If there is a  
15 swimming determination on the Mississippi  
16 River, for example, then there will have to be  
17 a re-evaluation of our long-term control plan.  
18 If we are unsuccessful challenging the sewage  
19 sludge incineration rule, we will have to dig  
20 deeper if we really have to advance that  
21 investment or whether we can rely on staying  
22 off into the future perhaps ten years. I don't  
23 -- it's really hard to handicap when nutrient  
24 standard might come into play. They could.

25           MR. KINDSCHUH: Thank you. The MIEC

1 has no further questions at this time.

2 COMMISSIONER TOENJES: Thank you,  
3 Mr. Kindschuh. Ms. Langeneckert, do you have  
4 any questions?

5 MS. LANGENECKERT: We do not, not of  
6 Mr. Theerman.

7 COMMISSIONER TOENJES: Mr. Mueller,  
8 do you have any questions?

9 MR. MUELLER: Yes.

10

11 EXAMINATION

12 Questions by: ROBERT MUELLER

13 Q. In the MSD rate change notice that  
14 appeared in the Post Dispatch and in the public  
15 notice I think that was related to this Rate  
16 Commission, I did not detect any disclosure of  
17 the \$4.7 billion that was mentioned by Ms.  
18 Myers earlier. Are you aware of any other  
19 public notice that has been published  
20 disclosing that amount of money that is really  
21 in question here?

22 A. Well, first of all, the reason \$4.7  
23 billion is not found in those notices is  
24 because until June 2nd, the mediation process  
25 did not allow us to make that public. The full

1 disclosure of that occurred on June 2nd. You  
 2 saw a front page article in the Post Dispatch  
 3 the very next day. So, that's the reason for  
 4 that not occurring earlier.

5 But the District has made no bones  
 6 about the fact that over the next multiple  
 7 decades, we have a \$6 billion burden  
 8 regulatorally and from the infrastructure  
 9 respect that needs to be spent. I said that  
 10 repeatedly in the seven years I've been the  
 11 Executive Director. So, while we didn't have a  
 12 CD tied to a certain dollar amount, certainly  
 13 been very openly talked about for a number of  
 14 years.

15 **Q. Did I just hear you mention \$6 billion?**

16 A. \$6 billion is the number when you  
 17 include stormwater and other costs that are not  
 18 directly reflected in the requirements of the  
 19 Consent Decree. So, things like nutrient  
 20 standards that may come about, treatment plant  
 21 renewal and replacement, that sort of thing.

22 MR. MUELLER: I have no further  
 23 questions.

24 COMMISSIONER TOENJES: Thank you,  
 25 Mr. Mueller. Mr. Arnold or Ms. Stump, do you

1 have any questions for the witness?

2 MR. ARNOLD: I do have a couple if I  
3 may.

4

5 Examination

6 Questions by: JOHN FOX ARNOLD

7 Q. My name is John Fox Arnold and you  
8 are well aware that together with Ms. Stump we  
9 represent the Rate Commission and our role is  
10 to essentially to assist and I've got a couple  
11 of questions if I may. If you don't  
12 understand, please let me know and we will work  
13 that out.

14 In Ms. Myers' opening statement, I  
15 believe she reported that all of the information  
16 which can be shared with the commission at this  
17 point with respect to the consent judgment is  
18 found in Exhibit 11A32, is that correct?

19 A. That's correct.

20 Q. All right.

21 A. I'll just add unless it's a matter of  
22 public record, it may not be in there. I mean,  
23 for example, the counterclaim issue I spoke  
24 about earlier is not in that exhibit but it is  
25 a matter of public record.

1 Q. Okay. Now, you've jumped to my next  
2 question. The nature of the counterclaims  
3 relate to matters to which parties involved in  
4 the litigation have not agreed?

5 A. I'm not at liberty to say at what the  
6 parties are not agreeing to at this point. I'm  
7 just -- earlier I just spoke about -- I was  
8 asked the question is there anything else and  
9 that was a matter of public record.

10 Q. Well, let me return to 11A32 and do  
11 you have available the responses which the  
12 Commission -- I'm sorry, the District made to  
13 our discovery request?

14 A. I do.

15 Q. Thank you. The question No. 29 on  
16 page 14, and if you need to read aloud the  
17 question or the response, I call your attention  
18 to the last paragraph of that response, at the  
19 top of page 15. If I may read it. "The entire  
20 rate increase is crafted to fund required  
21 infrastructure investment which is detailed in  
22 the list of proposed projects and activities  
23 provided as Exhibit MSD 11A10." What is the  
24 difference between MSD 11A10 and MSD 11A32, if  
25 any, or should I ask someone else?

1           A.    I don't have 11A10 or 11A32 in front  
2   of me.

3                   MR. ARNOLD:   May I approach?

4                   COMMISSIONER TOENJES:   Yes.

5           A.    11A10 is a list of capital  
6   improvements that we're proposing in this rate  
7   case.  So that would be for the fiscal year '13  
8   through '16.  11A32 is a detail sheet from our  
9   Board agenda of last week that details certain  
10   aspects of the Consent Decree that's proposed  
11   between us, the federal government, and the  
12   Missouri Collision For the Environment.  So, a  
13   big difference between the two is that the  
14   11A10 deals with a four fiscal year window and  
15   the terms of the Consent Decree are dealing  
16   with a bunch of longer periods of time.  There  
17   are others but those -- that's a significant  
18   difference between the two.

19           **Q.    Thank you.  Now, in the testimony**  
20   **which you and your colleagues have filed, there**  
21   **is sometimes reference to a six year test**  
22   **period, sometimes reference to a five year**  
23   **planning window, and sometimes a reference to**  
24   **four fiscal years 2013 through 2016.  Is it**  
25   **fair to say that this rate increase proposal is**

1     **limited to the period 2013 to 2016?**

2           A.     Our fiscal year is 2013 to 2016, yes.

3           MR. ARNOLD: All right. Thank you,  
4 Mr. Chairman.

5           COMMISSIONER TOENJES: Any members of  
6 the commission have questions for this witness?  
7 Mr. Stein.

8

9

EXAMINATION

10 Questions by: JOHN L. STEIN

11           **Q. Mr. Theerman, I believe that both you**  
12 **and Ms. Myers indicated that the plans for the**  
13 **overflow plant has been approved by the State**  
14 **of Missouri. Does the agreement once the**  
15 **parties for the Consent Decree imply that EPA**  
16 **also has approved the CSO plan or is that still**  
17 **out there as a future issue?**

18           A. No. With respect to the long-term  
19 control plan, State approval is what's  
20 required. So, there is no further approval  
21 necessary. The EPA did send a letter to the  
22 State -- one moment. EPA sent a letter to the  
23 State recommending approval.

24           COMMISSIONER STEIN: Thank you.

25           COMMISSIONER TOENJES: Mr. Tomazi.

1 EXAMINATION

2 Questions by: GEORGE TOMAZI

3 Q. Two quick questions, Mr. Theerman.  
4 One, at this point, the verbally agreed upon  
5 arrangement between MSD and the federal  
6 government in terms of the \$4.7 billion  
7 settlement, more or less, to what extent is  
8 that front end loaded? Number two, what  
9 timeframe it has been at least at this point  
10 verbally agreed upon in terms of meeting all of  
11 those EPA requirements?

12 A. I'm going to direct my comments to  
13 Exhibit 11A32 which is the detail sheet we  
14 spoke about earlier. It's a 23 year schedule.  
15 That includes in it early action projects, 50  
16 or so overflow eliminations by 2012. So, those  
17 are a front loaded part of the agreement. The  
18 delivery of a master plan that addresses the  
19 elimination of all the other constructed  
20 overflows by the end of 2013, and that master  
21 plan would dictate the removal schedule of all  
22 the remaining constructed overflows.

23 The remedial mazes associated with a  
24 long-term control plan and that schedule has  
25 been made public. It includes the construction

1 of a number of treatment and storage facilities  
 2 in the combined sewer area and that stretches  
 3 through the entire 23 year period. There is a  
 4 requirement to remove, eliminate 85 percent --  
 5 I'm sorry, I'm bouncing back and forth, but 85  
 6 percent of the constructed sanitary sewer  
 7 overflows by the end of 2023 and then the  
 8 remaining 15 percent by 2033.

9 So, you see a front loading as  
 10 constructed SSO removal just based on those  
 11 facts, then an ongoing program of what is  
 12 called CMOM, but that's in essence operation  
 13 and maintenance on the system to control  
 14 overflows, basement backups.

15 So, there is a front loading of work  
 16 identified in the detail sheet, some prescribed  
 17 in early action, some that will become more  
 18 concrete with the delivery of a master plan.

19 COMMISSIONER TOENJES: Mr. Brockmann.

20

21 EXAMINATION

22 Questions by: PAUL BROCKMANN

23 Q. You mentioned the State will not  
 24 participate in signing this Consent Decree.  
 25 Does that mean there is going to be ongoing

1    **discussions, or discussions has stopped, there**  
2    **is no further action, or if there is ongoing**  
3    **discussions, is one to assume that you're still**  
4    **negotiating, and what would you estimate would**  
5    **be the potential cost of that setup, worst case**  
6    **scenario?**

7           A.    That's going to take just a moment to  
8    think about.  One of the most difficult things  
9    about this is I want to be forthright and I  
10   can't be so please don't take this as being  
11   evasive.  We are always open to further  
12   discussion.  I think it's the best scenario in  
13   any of these federal agreements if all parties  
14   can enter into the agreement.  We haven't been  
15   able to get to that yet.  I don't have a  
16   timeframe for when that can happen.  We don't  
17   envision additional costs of settlement at this  
18   point.

19           **Q.    Additional costs related to the**  
20   **litigation or additional mandatory construction**  
21   **or otherwise cost?**

22           A.    We don't envision additional costs of  
23   construction for addressing compliance issues  
24   at this point.

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EXAMINATION

Questions by: BRAD GOSS

Q. I'm confused about the State not signing on the Consent Decree and the effect of the litigation. Could you clarify that for me because what I heard was that the Consent Decree would be submitted after all parties had signed, and if the State of Missouri isn't going to sign the Consent Decree, I don't understand what is going to be submitted to the court. That is my first question.

A. Consent Decree is a settlement between the United States Government, the Missouri Coalition For the Environment, and MSD.

Q. Would the litigation still continue with respect to the stay?

A. That will end up being a matter for the court to decide, I believe.

Q. Do you have ongoing litigation, do you not?

A. Yes.

Q. So, is it MSD's intention to continue that litigation if the matter isn't settled by this Consent Decree were to stay?

A. We believe that the litigation -- we

1 believe it's likely the litigation will not  
2 proceed further.

3 **Q. Now, the litigation that is outstanding**  
4 **with the State involves counterclaims by MSD**  
5 **against the State, is that correct?**

6 A. There are remaining counterclaims and  
7 there are counterclaims that have been dismissed  
8 as not being ripe.

9 **Q. There are remaining counterclaims**  
10 **that have not been dismissed, have those**  
11 **allowed for cost recovery by MSD against the**  
12 **State?**

13 A. I am not -- I'm not able to testify.  
14 Susan may be able to help with that in her  
15 testimony. The remaining counterclaims, I'm  
16 not sure I can elaborate on.

17 **Q. Assuming those counterclaims involve**  
18 **cost recovery against the State, would that**  
19 **have a favorable impact on this rate proposal**  
20 **in terms of its impact upon those who otherwise**  
21 **will be paying for this rate proposal?**

22 A. I'll answer that in a more general  
23 station. Any revenues the District may be able  
24 to receive could have a favorable effect on the  
25 total amount needed for compliance. Timing

1 would certainly be a question.

2 Q. Could you quantify the dollar amount  
3 of the claims that MSD has against the State?

4 A. No.

5 Q. Has anyone done that?

6 A. Not to my knowledge.

7 Q. So, you don't know what the possible  
8 impact could be on successful recovery of those  
9 costs?

10 A. No.

11 Q. Is that information which can be  
12 determined within this rate proceeding?

13 A. I think that would be unlikely.

14 Q. Why is that?

15 A. It would be a matter of working its  
16 way through court. I don't think it could be  
17 determined at this point.

18 Q. I'm asking for your estimate of the  
19 dollar value, not the court's determination of  
20 the value.

21 A. We have not made an estimate of that  
22 dollar value.

23 Q. And you said you can't determine that  
24 dollar estimate in this rate proceeding. I  
25 don't understand why.

1           A.    Again, we are talking about the  
 2    claims that remain that have not been dismissed  
 3    and I've suggested to you and I am not -- I'm  
 4    not in a position to speak knowledgeably about  
 5    those remaining claims.

6           **Q.    I understand that.  My question was**  
 7    **as to the quantification of the dollar value**  
 8    **for those claims, not as to the legal status of**  
 9    **them.**

10          A.    Without having a complete  
 11   understanding of what remains, I can't give you  
 12   an answer, but we have not calculated a dollar  
 13   figure related to those claims.

14          **Q.    Who would be able to answer these**  
 15   **questions?  Ms. Myers?**

16          A.    Susan will be able to tell you what  
 17   the remaining claims are, I believe.

18          **Q.    And as to the quantification of what**  
 19   **dollar value this may have?**

20          A.    I'm telling you we've not calculated  
 21   a dollar value for those claims.

22                    COMMISSIONER GOSS:  Thank you.

23                    COMMISSIONER TOENJES:  Are there any  
 24   other questions for this witness?  Mr. Koenen.

25

1 EXAMINATION

2 Questions by: GLENN KOENEN

3 Q. Very quickly. The swimming standard  
4 from the river water, that would seem to  
5 include not just MSD but the East Side  
6 Sanitation District and perhaps even Duck Creek  
7 and other people on the Missouri watershed.  
8 Because of the nature of that, that would also  
9 seem to be a very expensive proposition premise  
10 for everyone else. Do you perceive a  
11 likelihood of anything happening on that matter  
12 before the end of fiscal year '16?

13 A. It's possible. The State of Missouri  
14 has presented the position that they may want  
15 to change the water quality standards in this  
16 area to include sort of a hybrid approach, but  
17 it would include a standard that would be  
18 requiring sizable investment the way I spoke  
19 about earlier at the Clean Water Commission  
20 this past month. So, it is possible they'll  
21 make a determination that swimming needs to be  
22 protected in that 28 mile stretch and if that  
23 becomes the case, then the District will have  
24 to decide how to deal with that.

25 COMMISSIONER TOENJES: Any other --

1 Ms. Myers, do you have questions for this  
2 witness?

3 MS. MYERS: I do. I have a few.

4 COMMISSIONER TOENJES: Please proceed.

5

6

EXAMINATION

7 Questions by: SUSAN MYERS

8 Q. Earlier you mentioned the early  
9 action projects that are part of the Consent  
10 Decree. Are these early action projects part  
11 of this rate proposal?

12 A. No, they are not. They are already  
13 funded in our current -- in the revenue stream  
14 that was approved by the Rate Commission in  
15 2008.

16 Q. Okay. In regard to the Consent  
17 Decree and the parties during the negotiation,  
18 is the Consent Decree the best option for the  
19 District at this point?

20 A. Yes. The alternative would be  
21 ongoing federal litigation and we believe this  
22 is an appropriate settlement, albeit a hard one  
23 to swallow, but one that is protective of the  
24 environment, deals with the overflows, and  
25 eliminates the need for further litigation.

1           Q.    Okay.  Now to switch gears a little  
2 bit here.  Is MSD a member of the NACWA  
3 organization?

4           A.    Yes, we are.

5           Q.    And can you kind of give the  
6 Commission an overview of what NACWA is and  
7 what kind of work they do?

8           A.    It's the National Association of  
9 Clean Water Agencies.  It's an advocacy group  
10 for large and medium size wastewater utilities  
11 in the country.  We advocate the utilities both  
12 with Congress and with the regulators on issues  
13 of interest to utilities.

14          Q.    And what is your role with the NACWA?

15          A.    I'm President of NACWA for about a  
16 month and a half more.

17          Q.    And so some of the national  
18 regulatory -- future regulatory requirements  
19 that you spoke of earlier, does your knowledge  
20 of those and information come through your work  
21 with NACWA?

22          A.    Well, the national issues like  
23 nutrients emergent contaminants, climate change  
24 is all NACWA information that I've come to  
25 understand through working there.  The issue of

1 swimming on the Mississippi River, the issue of  
2 sewage sludge incineration is a combination of  
3 what we know here in our work at MSD and sort  
4 of the national perspectives by the agencies.

5 MS. MYERS: I have nothing further.

6 COMMISSIONER TOENJES: Hearing no  
7 more questions for this witness, thank you,  
8 Mr. Theerman. We will take a ten minute break  
9 and reconvene at 25 til 11.

10 (Break.)

11 COMMISSIONER TOENJES: Our next  
12 witness is Ms. Susan Myers. Ms. Myers, is the  
13 testimony you're about to give the truth, the  
14 whole truth, and nothing but the truth?

15 MS. MYERS: Yes, it is.

16 COMMISSIONER TOENJES: Thank you.  
17 Does any member of the Rate Commission have any  
18 questions for Ms. Myers before we move forward?  
19 Hearing none, Mr. Kindschuh, do you have any  
20 questions for Ms. Myers on behalf of the  
21 Missouri Industrial Energy Consumers?

22 MR. KINDSCHUH: Yes, we have a few.

23 COMMISSIONER TOENJES: Please proceed.

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SUSAN MYERS

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EXAMINATION

Questions By: JOHN KINDSCHUH

Q. Good morning. I have a couple of  
questions regarding your testimony. You  
indicated in your testimony that a, quote,  
large proportion, end quote, of the proposed  
rate change is necessary to meet legal  
requirements in that the failure to construct  
mandated projects or properly maintaining  
existing lines and facilities bring them with  
immediate and direct repercussions. What  
constitutes as a large proportion, expressed in  
like a percentile?

A. Well, I'm probably not the best  
person to discuss that. I'll probably push  
that off to Keith Barber with the rate proposal.

Q. So, we should direct that line of  
inquiry to Mr. Barber?

A. Yes.

Q. Okay. Great. And specifically I  
wanted to ask you what those projects were and

1     **what the percentage is, I should direct that**  
2     **all to Mr. Barber?**

3             A.     That would be Keith Barber and Brian  
4     Hoelscher.

5             Q.     Okay. Great. Thank you. And the  
6     **other question I had actually was inspired by**  
7     **the Rate Commissioners. Can you please describe**  
8     **the status of the outstanding counterclaims in**  
9     **the present suit?**

10            A.     Okay. I'm going to start with all  
11     the counterclaims. We, MSD, filed  
12     counterclaims to the civil action and part of  
13     those counterclaims that had to do with Hancock  
14     were dismissed by the court, so they were  
15     dismissed out of the case for not being ripe.  
16     There were some counterclaims that remained in  
17     the case. Those are non Hancock related type  
18     counterclaims that have to do with different  
19     things that may happen in the future, not  
20     related to Hancock, such as maybe if there is  
21     legislative changes, if there is Charter type,  
22     MSD Charter changes, things could happen in the  
23     future not related to Hancock.

24            Q.     **And can you please break those down**  
25     **further for us and describe what those are?**

1           A.    The ones that still remain?

2           **Q.    Correct.**

3           A.    I don't have them in front of me  
4 specifically so I'm speaking in general about  
5 them.  And my summation of them is the same as  
6 I just gave you, they are legislative type,  
7 Charter type changes, maybe a bond limits change.

8           **Q.    Thank you.  The MIEC and other**  
9 **parties that asked Mr. Theerman a number of**  
10 **questions about the Consent Decree and there is**  
11 **some confidential things in place.  Is there**  
12 **anything Mr. Theerman omitted when we were**  
13 **asking questions about generally what was going**  
14 **on with the Consent Decree, whether the Board**  
15 **of Trustees would be able to approve it?  Is**  
16 **there anything else that you would like to add**  
17 **with respect to the lines of questions that we**  
18 **have for Mr. Theerman?**

19          A.    I think Jeff covered it pretty well.  
20 The timeline and the process going forward is,  
21 you know, we'll ask the Board to adopt the  
22 ordinance to give Jeff and I the authority to  
23 sign a Consent Decree on July 29th.  Then it  
24 will go -- there is a 15 day waiting period.  
25 Once we sign the Consent Decree, then it will

1 go back to the Department of Justice and EPA  
 2 for their signatures. We don't really have an  
 3 idea of how long that will take them. Once  
 4 they get that done, then there will be a notice  
 5 to lodge it with the court. Once it's lodged,  
 6 that will start a 30 day public comment period,  
 7 and then based upon how many comments the  
 8 regulators get from the public will determine  
 9 how long they need to respond to those comments  
 10 and when the Consent Decree may be available  
 11 for entry into the court.

12 **Q. And at this point, are you aware if**  
 13 **the MSD Board of Trustees would like to make**  
 14 **any recommendations to change what has been**  
 15 **agreed upon or is it too soon to say?**

16 A. Could you repeat that, please?

17 **Q. Sure. At this time, are you aware if**  
 18 **MSD Board of Directors would like to make any**  
 19 **changes to what has been already agreed upon**  
 20 **between EPA, the coalition, and MSD?**

21 A. I'm not aware at this time.

22 MR. KINDSCHUH: Okay. Thank you.  
 23 The MIEC has no further questions, Chair.

24 COMMISSIONER TOENJES: Thank you,  
 25 Mr. Kindschuh. Ms. Langeneckert, do you have

1 any questions?

2 MS. LANGENECKERT: No questions of  
3 Ms. Myers.

4 COMMISSIONER TOENJES: Mr. Mueller,  
5 do you have any questions?

6 MR. MUELLER: No questions.

7 COMMISSIONER TOENJES: Mr. Arnold.

8 MR. ARNOLD: Mr. Chairman, I do have  
9 two questions depending on follow-up.

10

11 EXAMINATION

12 Questions by: JOHN FOX ARNOLD

13 Q. Ms. Myers, I would like to continue  
14 discussing the Consent Decree, if I may, and  
15 simply to understand when, if at all, that  
16 information will be available to the Rate  
17 Commission, and I say if at all because if it's  
18 signed on July 15th, then after the 15 day  
19 waiting period, EPA and the Department of  
20 Justice then have to act, and then after they  
21 act, there will be a 30 day comment period and  
22 EPA and Justice will have to respond to the  
23 comments and then it will be lodged with the  
24 court. Has the District any experience with  
25 the timeliness of the lawyers and bureaucrats

1 of EPA and the Department of Justice responding  
2 to this kind of a proceeding?

3 A. Well, the entire Consent Decree  
4 document will become a public document once  
5 it's lodged with the court. So, best case  
6 scenario is MSD would get authority to sign the  
7 Consent Decree June 29, 15 days from that time  
8 we would sign the Consent Decree which is  
9 middle of July. The document would then go to  
10 the Department of Justice and EPA for their  
11 signatures. I don't have a clear understanding  
12 of how long their signatures would take but we  
13 have been told that, you know, that they have  
14 been having discussions about getting this  
15 Consent Decree signed. So, once the federal  
16 government signs the Consent Decree and the  
17 Coalition For the Environment, at that time the  
18 document would be lodged with the court and  
19 that's when it would become public.

20 Q. Thank you. In your testimony, you  
21 referred to the complaint in the Consent Decree  
22 requesting both injunctive relief and  
23 penalties. Do you have a copy of the complaint  
24 handy?

25 A. I do not.

1 MR. ARNOLD: May I approach?

2 COMMISSIONER TOENJES: Yes.

3 Q. Go to, if you would, please, nearly  
4 the end -- I apologize. I've got a cold and  
5 bear with me. If you'll go toward the end of  
6 the document, page 24 -- I'm sorry, page 23,  
7 and the prayer for relief.

8 A. Right.

9 Q. The EPA requests permanent injunction  
10 for any and all ongoing violations of the Clean  
11 Water Act. A permanent injunction prohibition  
12 on unpermitted discharges under the Clean Water  
13 Act. It goes on for nine such permanent  
14 injunctions. May we assume that the Consent  
15 Decree will deal with some, if not all of  
16 these -- of this list of prayer for relief?

17 A. The Consent Decree will resolve all  
18 the claims made in this complaint.

19 Q. All complaints?

20 A. Yes.

21 Q. Finally, do you have handy a copy of  
22 your response to -- I'm sorry, the District's  
23 response to our request for information?

24 A. Which number? Which question are  
25 you --

1           Q.    Well, I managed to destroy this  
2 document. This is a general, not a specific  
3 question. Let's try question No. 35. And if I  
4 may, I'd like to read only a part of it. We  
5 refer to a statement that Mr. Theerman made and  
6 identify the pages and the lines at which that  
7 statement was made and then we say, "Please, A,  
8 describe the analysis which supports this  
9 conclusion, and B, provide a copy of any  
10 memorandum, report, work papers, summary,  
11 analysis, or schedule which supports this  
12 conclusion." Is that accurately stated?

13           A.    Yes.

14           Q.    Okay. And then the response referred  
15 to your direct testimony of question 7, page 2  
16 to 4. I would characterize your testimony, if  
17 I would, as the analysis?

18           A.    Give me a moment to find my direct  
19 testimony. Okay. What was your question?

20           Q.    Is it fair to analyze your response  
21 to which we will refer as the analysis?

22           A.    Yes.

23           Q.    Then I refer to -- return again to  
24 sub B. Are there copies of any memoranda,  
25 report, work papers, or such which support this

1 conclusion?

2 A. Well, there is definitely court cases  
3 and case law that support this analysis.

4 Q. Well, my question is whether or not  
5 the District has a copy of any memorandum,  
6 report, work paper, or summary stating that the  
7 rate change is consistent with constitutional,  
8 statutory, or common law?

9 A. Well, the rate change proposal before  
10 you all at this time is the same methodology  
11 that we've used in the past on the wastewater  
12 rate change proposals which was ruled  
13 constitutional in the Missouri growth case  
14 which this is referencing.

15 Q. I understand that and I understand  
16 Missouri growth. My question is whether or not  
17 there is any District document which could be  
18 shared with the Commission which was the basis  
19 for your analysis as contained in your testimony?

20 A. For this particular rate proposal?

21 Q. Yes, ma'am.

22 A. Okay. We did not do a separate  
23 analysis for this rate proposal because the  
24 methodology had not changed from the previous  
25 rate proposal.

1 Q. Thank you. Now, several times in the  
2 response to our request for information we will  
3 be referred to either a new document or  
4 testimony or information which is the analysis.  
5 Several times we were not provided with a copy  
6 of any memorandum, report, work paper, summary,  
7 et cetera. Is it fair to say that for the  
8 purpose of that response and analysis, no such  
9 documents exist?

10 A. Are you still referencing question  
11 53?

12 Q. No, ma'am, there are a handful of  
13 responses like this.

14 A. Without specifically knowing which  
15 ones you're referring to, I cannot answer that.

16 Q. Is it then necessary for us to ask  
17 for them again?

18 A. I can't answer without specificity.

19 MR. ARNOLD: Thank you. I have no  
20 further questions. Thank you, Mr. Chairman.

21 COMMISSIONER TOENJES: Thank you,  
22 Mr. Arnold. Questions from any Rate  
23 Commissioners for Ms. Myers? Hearing none --  
24 I'm sorry, Mr. Goss.

25

1 EXAMINATION

2 Questions by: BRAD GOSS

3 Q. You had said that the MSD is not able  
4 to provide the document, Consent Decree, to the  
5 Commission because of the prohibition contained  
6 in the mediation process, and listening, if I  
7 heard you right, listening to this timeframe  
8 which is dependent upon circumstances of people  
9 and agencies that are out of your control, I  
10 have concern that you could get to a point  
11 where we don't see this Consent Decree prior to  
12 us having to make some kind of decision.

13 Is it possible to go to the  
14 Department of Justice, EPA, and Coalition of  
15 the Environment and ask them if that document  
16 could be disclosed to the Rate Commission with  
17 a confidentiality provision placed upon us?

18 A. We have been working very closely  
19 with the Coalition For the Environment and the  
20 United States and they understand the Rate  
21 Commission process that we are going through  
22 and the timing and the need for specific  
23 information that we can get. We have not  
24 specifically asked them if we could provide you  
25 a confidential copy of the agreement, but they

1 are working to get this document signed on  
 2 their end in an expedient manner to support our  
 3 Rate Commission process.

4 **Q. That's not answering my question,**  
 5 **though. Is that something that you would be**  
 6 **able to ask them?**

7 A. We had not asked them to date. We  
 8 could -- I guess we could consult with our  
 9 attorney helping us about the negotiations as  
 10 to whether we could do that.

11 **Q. When would you be able to get back to**  
 12 **the Rate Commission and let us know when that**  
 13 **would be possible to do that?**

14 A. I will check with our outside counsel  
 15 later today.

16 **Q. Earlier Mr. Theerman had made a**  
 17 **statement that the court had made a ruling with**  
 18 **respect to the waiver of sovereign immunity on**  
 19 **the part of the State of Missouri. Could you**  
 20 **explain that?**

21 A. When we filed our counterclaims, the  
 22 State then addressed the court requesting that  
 23 they had sovereign immunity under the U.S.  
 24 Constitution 11th Amendment which provides a  
 25 state sovereign immunity to protect itself from

1 civil actions. The Federal District Court  
2 ruled and then the 8th Circuit Appellate Court  
3 upheld that the State did not have sovereign  
4 immunity because they brought this claim  
5 against MSD as a plaintiff and, therefore, they  
6 did not have sovereign immunity to protect  
7 themselves because they weren't protecting  
8 themselves, they were being aggressive and  
9 suing us. So, that's how they lost their  
10 sovereign immunity.

11 **Q. I had asked Mr. Theerman a series of**  
12 **questions about whether there was any kind of**  
13 **quantification of the dollars associated with**  
14 **MSD's counterclaims. Can you respond to any of**  
15 **those questions?**

16 **A. Yeah. The counterclaims were -- the**  
17 **counterclaims that were dismissed were the**  
18 **counterclaims that had to do with the Hancock**  
19 **provision and they were dismissed for not being**  
20 **ripe at the time, and so we don't have a dollar**  
21 **value on what those claims are. The**  
22 **counterclaims that still remain in the action,**  
23 **like I said earlier, the counterclaims would be**  
24 **determined -- the State has to impact MSD from**  
25 **being able to comply with the requirements of**

1 the Consent Decree, so when that impact would  
2 take place, that's when we would determine the  
3 value of the counterclaim.

4 **Q. Can you be a little more specific?**

5 A. The counterclaims that still exist  
6 are not Hancock. So, let's say it's a  
7 legislative change, for example. That  
8 legislative change would have to happen and  
9 then MSD could enforce its counterclaim. So,  
10 depending on what that matter -- what that is  
11 that happens to not allow MSD to comply with  
12 the Consent Decree would then determine the  
13 value. So, you can't determine the value of  
14 the impact until you know what the impact is.

15 **Q. Well, were the counterclaims that you**  
16 **raised at this point take the position that the**  
17 **State had prevented MSD from complying with the**  
18 **federal requirements?**

19 A. Those types of counterclaims were  
20 included in the counterclaims that were  
21 dismissed for not being ripe.

22 **Q. When would those become ripe?**

23 A. Well, you need a judgment for those  
24 counterclaims to become ripe.

25 **Q. And so the settlement decree that you**

1 entered into would mean there would be no  
2 judgment rendered and, therefore, those claims  
3 would go away?

4 A. Not necessarily. We feel that the  
5 Consent Decree could be considered the  
6 judgment.

7 Q. And does the State share that  
8 consideration?

9 A. I can't speak for the State.

10 Q. So, once a Consent Decree -- I'm  
11 going to go back. I had asked Mr. Theerman so  
12 what does MSD plan to do as it relates to the  
13 State after the entry of the Consent Decree,  
14 and I think what I heard was that the  
15 litigation would not be ongoing, that there is  
16 no plans to continue that. So, I'm confused by  
17 that response.

18 A. Well, we have not made the  
19 determination at this time. I mean, what I can  
20 tell you is that the counterclaims that have  
21 been dismissed, they are no longer part of this  
22 case. So, if we were to -- if we were to  
23 refile or if we were to re-address those  
24 counterclaims, it would have to be done as a  
25 new suit.

1           Q.    I will go back to the non Hancock  
 2    claims because you have some existing non  
 3    Hancock claims that I would have thought  
 4    existing legislation was the basis for those.  
 5    Am I confused about that?

6           A.    The reason for the counterclaims is  
 7    not based upon existing legislation.  The way  
 8    they were written was to cover things that may  
 9    happen that were not Hancock related.  So, they  
 10   were not written around things that exist now,  
 11   they were written around to protect us from  
 12   things that may happen in the future that were  
 13   not related to Hancock.

14          Q.    Those claims sound unripe to me.  I  
 15    think they don't -- they sound speculative so  
 16    I'm really confused by that.

17          A.    They were left -- all I can say, the  
 18    Judge left those in the case.

19          Q.    You mentioned that in response to  
 20    Mr. Arnold's question that your analysis was  
 21    based on the prior memorandum and analysis that  
 22    had been prepared in the prior rate case, and I  
 23    think that was in response to his question  
 24    about work papers or memoranda, analysis, and  
 25    for the request for document production No. 35.

1 You said there was a prior memorandum that you  
2 had used, is that right?

3 A. I didn't refer to a memorandum. What  
4 I referred to was previous case law.

5 Q. Then you said you followed previous  
6 case law but I thought your response to his  
7 question, you answered that you did not do any  
8 separate analysis because the methodology  
9 hadn't changed from the prior rate case. Did  
10 you produce something in the prior rate case  
11 that was a memorandum or analysis at the time?

12 A. I don't recall.

13 Q. If you did, would you produce that  
14 for the Commission at this time?

15 A. We can go back and check the previous  
16 Rate Commission. What I was referring to was  
17 that there is Supreme Court case law out there  
18 that approved the method that we developed the  
19 wastewater rate with previously or previous  
20 Rate Commissions and we have not changed that  
21 methodology; therefore, there was no need to  
22 redo the analysis of whether the methodology is  
23 constitutional or not.

24 Q. There has been no case law in the  
25 intervening period that would have changed the

1 holding in that case, is that correct?

2 A. Correct.

3 Q. So, your answer was if there was a  
4 prior analysis, you will furnish it to the  
5 Commission, is that true?

6 A. We can look, yes.

7 Q. You can furnish that then?

8 A. Yes.

9 MR. GOSS: Thank you.

10 COMMISSIONER TOENJES: Thank you, Mr.  
11 Goss. Any further questions for Ms. Myers?  
12 Hearing none, thank you.

13 MS. MYERS: Thank you.

14 COMMISSIONER TOENJES: The next  
15 witness will be Mr. Brian Hoelscher.  
16 Mr. Hoelscher, is the testimony you're about to  
17 give the truth, the whole truth, and nothing  
18 but the truth?

19 MR. HOELSCHER: Yes, I do, sir.

20 COMMISSIONER TOENJES: Thank you.  
21 Does any member of the Rate Commission have any  
22 questions for Mr. Hoelscher at this time?  
23 Hearing none, Mr. Kindschuh, questions for  
24 Mr. Hoelscher?

25 MR. KINDSCHUH: Yes, we do.

1 BRIAN HOELSCHER,  
2 of lawful age, being produced, sworn and  
3 examined, and says:

4

5 EXAMINATION

6 Questions by: JOHN KINDSCHUH

7 Q. Good morning, Mr. Hoelscher.

8 A. Good morning.

9 Q. A couple of questions about your  
10 testimony that you had submitted. What  
11 progress requirements has MSD made over the  
12 past five years to timely address the changing  
13 regulatory requirements that you refer to in  
14 your testimony?

15 A. What requirements have we made?

16 Q. What progress adjustments has MSD  
17 made over the past five years, and in  
18 particular, I am looking at page 2, question 10  
19 of your testimony.

20 A. Page 2, question 10.

21 Q. Correct. Your response to question  
22 10 on page 2, that is correct.

23 A. The adjustments that were made to the  
24 capital improvements program.

25 Q. Uh-huh, yes.

1           A.    Yes.  Most of the adjustments were  
2    made to the program were changes in regulatory  
3    requirements that occurred during the last rate  
4    cycle, the biggest one being requirement for  
5    disinfection facilities to be installed on  
6    treatment plants that was discharged to the  
7    Mississippi River.  One was unanticipated.

8                    There were other items that also  
9    moved to the forefront contrary to what was  
10   originally proposed.  Pilot program for a Green  
11   Infrastructure Program for CSO discharges to  
12   the Mississippi.  Cleaning of sewers in a  
13   proactive fashion.  Some of the items and  
14   issues that came up as part of the ongoing  
15   mediation and negotiations with the regulators,  
16   but, by far and large, disinfection was the  
17   largest item, largest adjustment that had to be  
18   made.

19           Q.    Thank you.  My next question, I'm  
20   referring to your answer to question 12 which  
21   is found at the bottom of page 3 -- excuse me,  
22   bottom of page 2, top of page 3.  And  
23   specifically, what necessary adjustments to the  
24   engineering consultant delivery model have been  
25   to ensure cost effective and timely completion

1     **of the CIRP?**

2           A.     With the past program, staff was of  
3     sufficient size and the program identified to  
4     the place where we actually did project by  
5     project consultant selection and management of  
6     projects. We had a project manager, a  
7     consultant would be hired for a project and  
8     complete that project. With what's coming up,  
9     the ability to have resources much more  
10    available in a much more timely manner was  
11    needed and so we've changed our delivery model.

12                 We have divided up the District kind  
13    of along regulatory lines and technical  
14    expertise and we will now go to actually hiring  
15    consultant teams for packages of projects.  
16    They will -- what this will gain us is it will  
17    allow them to help us with the scheduling,  
18    long-term scheduling, short-term scheduling  
19    within these watersheds. The way we hire them  
20    and with the resources we have available as  
21    things come up in a much more timely fashion,  
22    we will be able to bring resources to bear on  
23    issues that were unknown whether they are  
24    projects we're going after or issues that  
25    weren't really identified up front. And also

1 hopefully some cost effectiveness in that while  
 2 we are performing certain types of activities,  
 3 say surveying for certain projects are  
 4 identified, we have adjacent areas that we know  
 5 are coming up in the future and actions and  
 6 activities that can be performed to gather that  
 7 data on the front end in a much more timely  
 8 fashion, we'll have the ability to do that with  
 9 the changed model.

10 Q. Thank you. I have a couple of  
 11 questions with respect to the Consent Decree  
 12 and I'll narrow it down on the projects. What  
 13 CIRP projects are required to be completed  
 14 pursuant to the terms of the agreement between  
 15 MSD and EPA?

16 A. All of them.

17 Q. All of the projects?

18 A. Yes.

19 Q. Okay. So, will Exhibit MSD 9B1 which  
 20 is the fund of 660 infrastructure projects  
 21 which was attached to that exhibit, will that  
 22 need to be revised at all because of the  
 23 Consent Decree?

24 A. No.

25 Q. So, all of the projects on this

1 **Exhibit 9B1 are projects that are required by**  
 2 **the Consent Decree? I could give you a copy.**

3 A. Yeah, I have it here. They are all  
 4 regulatory requirements, most of them  
 5 regulations that will be stated in the Consent  
 6 Decree. There are random items like expansion  
 7 of an ash lagoon so that we continue to have a  
 8 place to dispose of ash out of the treatment  
 9 plants is not specifically listed in those, the  
 10 items you saw in the fact sheet that was given  
 11 earlier, but nevertheless they are a regulatory  
 12 requirement.

13 Q. Okay. Are there any other examples  
 14 like the ash issue you just raised that you can  
 15 think of to share with the Rate Commission at  
 16 this point?

17 A. As I was flipping through the list, I  
 18 think that was the only one I saw.

19 Q. Okay. Thank you. What portion in  
 20 dollars of MSD's identified CIRP is associated  
 21 with the elimination of the remaining 185  
 22 constructed sanitary sewer overflows?

23 A. I haven't calculated those but if you  
 24 refer to Exhibit MSD 9B1 under the various  
 25 years, the items sanitary sewer overflow and

1 probably almost all cases as related to  
 2 constructed sanitary sewer overflows. There  
 3 may be random ones where we have sanitary sewer  
 4 overflows not through constructed, but for the  
 5 most part they are all addressed in constructed  
 6 sanitary sewer overflows.

7 **Q. Okay. And will the 185 known**  
 8 **remaining constructed sanitary sewer overflows**  
 9 **need to be removed pursuant to the Consent**  
 10 **Decree?**

11 A. Yes.

12 **Q. Okay. And do you have any idea about**  
 13 **what date do those remaining 185 constructed**  
 14 **sanitary sewer overflows need to be eliminated?**

15 A. If you look at the fact sheet that  
 16 Jeff Theerman referred to earlier, it's item 4,  
 17 remedial measures. 85 percent by 2023 and all  
 18 remaining by 2033.

19 **Q. Thank you. What portion in dollars**  
 20 **of MSD's identified CIRP is associated with the**  
 21 **elimination of the remaining 199 combined sewer**  
 22 **overflows, CSO's?**

23 A. Restate the question, I'm sorry.

24 **Q. Sure. What portion in dollars of**  
 25 **MSD's identified CIRP is associated with**

1 **eliminating the remaining 199 CSO's?**

2 A. I think to revise the question,  
3 elimination of the CSO isn't what is required,  
4 it's mitigating their impact, in some cases  
5 that is removal, in other cases it's reducing  
6 the amount of volume. That number -- just a  
7 minute. I have a lot of numbers floating  
8 around in my head. It's 1.9 billion.

9 **Q. And will those 199 remaining**  
10 **permitted CSO's need to be removed or abated**  
11 **pursuant to the Consent Decree?**

12 A. Yes.

13 **Q. By what date does that need to occur?**

14 A. They also fall under in the fact  
15 sheet -- it's either one. Schedule of 23 years  
16 from the date of approval by the State of  
17 Missouri.

18 **Q. Thank you. You indicated in your**  
19 **testimony, Mr. Hoelscher, because of the**  
20 **economy, MSD was receiving bids for capital**  
21 **work that in some cases was 40 percent below**  
22 **the traditional cost. Do you have that**  
23 **testimony?**

24 A. Yes.

25 **Q. Okay. How many projects were bid out**

1 at this rate that was approximately 40 percent  
 2 lower than expected?

3 A. That was probably the extreme example.  
 4 I think I was giving the bottom. They are  
 5 traditionally smaller open cut sewer type  
 6 projects where we are seeing the most benefit  
 7 from the economy. They would have been those  
 8 sewer projects are probably large in number but  
 9 lower in dollar value, they are lower cost  
 10 projects. Exactly, I can't really tell you  
 11 exactly how many of those that were 40 percent  
 12 or less but that was probably the extreme case.

13 Q. You mentioned that the extreme case  
 14 for 40 percent. What would be a more common  
 15 percentage where you were able to receive a  
 16 lower bid than expected?

17 A. Best I can tell from the information,  
 18 you probably saw in the overall program, 5 to  
 19 10 percent reduction from what we thought the  
 20 cost of projects would be at the start of the  
 21 last rate case.

22 Q. Okay. And can you describe generally  
 23 what type of projects that would entail, the 5  
 24 to 10 percent reduction?

25 A. Well, again, 5, 10 percent would be

1 the program overall. So, I think I had  
2 mentioned the 40 percent coming in at 40  
3 percent, that is very few projects at small  
4 dollar amounts. The larger projects, you  
5 wouldn't see that kind of reduction, you might  
6 see it in the 5 approaching the 10, the piece  
7 that would drive most of the programs. So,  
8 probably 5 or 10 percent is probably about kind  
9 of an average.

10 **Q. How has this reduced cost**  
11 **construction bidding affected the level of**  
12 **capture expenditure cost in the rate change case?**

13 A. It wasn't taken into account in  
14 the -- you're talking about this rate change?

15 **Q. Correct.**

16 A. It was not taken into account.

17 **Q. Why was it not taken into account?**

18 A. What we found to be successful  
19 practice after we've gone through this process  
20 is to have additional work available if it  
21 turns out we can get more projects done for a  
22 given dollar. The main reason for that, we can  
23 have the projects ready and if the economy is  
24 such that we do have the extra dollars  
25 available, it means we can get a good buy for

1 future work.

2 So, over the last five, six years  
3 that's been the strategy we've used is to have  
4 extra projects sitting in the queue waiting to  
5 go, and we've gone ahead and awarded those  
6 projects and bid those projects up to the  
7 amount of revenues that were available.  
8 Strategies worked real well. It's got a good  
9 long-term benefit to it and that would be the  
10 kind of strategy we would use if these economic  
11 conditions will exist through '13 through '16  
12 if it does turn out that way.

13 **Q. If for some reasons the economic**  
14 **conditions change, how would you revise that**  
15 **strategy?**

16 A. Change in what way? Change in '13  
17 through '16?

18 **Q. Correct, yes. Change through '13**  
19 **through '16.**

20 A. '13 through '16, if we get this type  
21 of economic climate, we would do this in the  
22 same fashion. We would try to accelerate work.  
23 This kind of economy would mean we are getting  
24 work done at a better price. If it went the  
25 other way and the economy went where prices

1 went up, in general there is probably two  
2 options. There is addressing prioritization of  
3 projects with the regulators in light of the CD  
4 or possibly requesting additional dollars,  
5 additional revenues.

6 **Q. Okay. And how will this reduced cost**  
7 **construction bidding affect the level of**  
8 **capital expenditure costs over the next four**  
9 **years?**

10 A. Again, if we use the strategy that I  
11 had mentioned, you'll end up with kind of the  
12 same result as we are at the end of this rate  
13 cycle where we are able to spend all the  
14 dollars that are available, and again the  
15 benefit being if you do that, you spend the  
16 same amount of dollars but get more work done;  
17 therefore, you've lowered the overall cost of  
18 the program. That is what we would do in '13  
19 through '16 as well.

20 **Q. And looking further out into the**  
21 **future, I'll ask the same question with a**  
22 **different timeline. How will the reduced cost**  
23 **construction bidding affect the capital of**  
24 **expenditure costs in ten years potentially?**

25 A. Again, the answer is the same for

1 whatever the time period you bid. I think my  
2 comments about the strategy we've used through  
3 '13 through '16 is based on what we know right  
4 now. Depending on what the conditions are in  
5 the end of that rate cycle, you may take a  
6 different strategy for the next rate cycle over  
7 whatever period that is.

8 So, what we are currently doing now  
9 would be something we consider but I think it  
10 would really be dependent upon the situation  
11 the next time we consider it coming from a rate  
12 proposal.

13 Q. Okay. And my final question, and I  
14 actually asked Susan Myers this question and  
15 she suggested that I talk with you or  
16 Mr. Barber about it but let me state it again.  
17 Ms. Myers had indicated in her testimony that,  
18 quote, a large proportion, end quote, of the  
19 proposed rate change is necessary to meet legal  
20 requirements and the failure to construct  
21 mandated projects or properly maintaining  
22 existing lines and facilities bring with them  
23 an immediate and direct repercussion. My  
24 question of Ms. Myers is what constitutes a  
25 large proportion in a percentage in that setting?

1           A.     And I think where we are sitting  
2     today, it's all of the program is regulatory in  
3     nature as opposed to almost all.

4           MR. KINDSCHUH:   Okay.   Thank you.   I  
5     appreciate your time.   I have no further  
6     questions.

7           COMMISSIONER TOENJES:   Thank you,  
8     Mr. Kindschuh.   Ms. Langeneckert, questions for  
9     the witness?

10          MS. LANGENECKERT:   Just one, just  
11     clarification.

12

13                                   EXAMINATION

14     Questions by:   LISA C. LANGENECKERT

15           Q.     On your testimony on page 2, you  
16     describe at line 13 which is question 9, the  
17     list of projects in your direct testimony and  
18     you say 3B1.   Should that be 9B1?   I think  
19     maybe it was numbered differently at the time.

20           A.     That is correct.

21           Q.     I just wanted to make sure when I  
22     referenced it, I had the right one.

23           MS. LANGENECKERT:   That was my only  
24     question.   Thank you.

25           COMMISSIONER TOENJES:   Thank you.

1 Mr. Mueller, any questions for the witness?

2 MR. MUELLER: Yes.

3

4 EXAMINATION

5 Questions by: ROBERT MUELLER

6 Q. Hopefully this is within your area of  
7 knowledge. Can you tell me when unpermitted  
8 discharges take place?

9 A. When as in under what conditions or  
10 date I guess?

11 Q. What conditions.

12 A. Under what conditions. Two  
13 conditions. There can be something happen in  
14 the system when there is not a wet weather  
15 event. Blockage is somebody washes grease down  
16 our sewers during the holidays and it blocks  
17 the sewer, and even without rains, the sewer  
18 will back up. It will happen during dry  
19 weather. If the system is functioning, we  
20 don't have any dry weather overflow of the  
21 system, that occurs when something is not  
22 functioning properly in the system.

23 The most -- the event I think we are  
24 kind of talking here is during wet weather.  
25 There is something called I & I which is called

1 inflow and infiltration and that is stormwater  
2 getting into the system and that stormwater,  
3 when it exceeds the capacity of the system, you  
4 have an overflow from the system driven by the  
5 amount of stormwater that gets into the system.  
6 Those are kind of the two events that -- those  
7 are the two events that cause an overflow.

8 **Q. So that other than an unanticipated**  
9 **event during dry weather, the only unpermitted**  
10 **discharges occur during stormwater events or**  
11 **storm rain events?**

12 A. I think -- I hope I'm not missing  
13 some real oddball thing but I believe, yes,  
14 that is correct.

15 **Q. Okay.**

16 A. I will give you another one.  
17 Somebody apparently poked a hole in one of our  
18 forced mains at one time we didn't know about.  
19 I guess you would call that a failure of the  
20 system. Lacking that, there are no overflows  
21 during dry weather.

22 **Q. Are the issues in the litigation with**  
23 **the EPA and the Coalition For the Environment,**  
24 **do they deal primarily with unpermitted**  
25 **discharges resulting from stormwater events, or**

1 do they also include other operational issues,  
2 in other words, some of the things that you've  
3 talked about?

4 A. Yes, they include --

5 Q. So they include --

6 A. Yeah, I would refer probably the best  
7 description of that is Item 5 on the facts  
8 sheet under the CMOM program. I think that  
9 gives a description kind of a pretty  
10 comprehensive general list of the types of  
11 things that are also in this Decree besides  
12 eliminating wet weather overflows.

13 MR. MUELLER: Okay. Thank you. I  
14 have no further questions.

15 COMMISSIONER TOENJES: Thank you,  
16 Mr. Mueller. Mr. Arnold, questions for the  
17 witness?

18 MR. ARNOLD: I have a couple of  
19 clarification issues if I may.

20

21 EXAMINATION

22 Questions by: JOHN FOX ARNOLD

23 Q. Good morning, Mr. Hoelscher. Would  
24 you please take a look at your testimony on  
25 page 2, question 11?

1 A. Yes.

2 Q. And you refer to Table 3-9 as being  
3 the basis for the wastewater capital improvement  
4 and replacement program. Do you have 3-9 handy?

5 A. I don't have it here.

6 MR. ARNOLD: May I approach?

7 COMMISSIONER TOENJES: Yes.

8 Q. As I read that document, that's not a  
9 declaration of the projects but the nature of  
10 the financing for the projects, is that fair?

11 A. Yes.

12 Q. All right. And I'm no expert but  
13 could you look at 3B which I've also handed  
14 you -- I'm sorry, 3-8.

15 A. Oh, Table -- I'm sorry, 3-8.

16 Q. Is it possible to use that as the  
17 basis for the wastewater CIRP program?

18 A. Yes.

19 Q. Thank you, sir. In response to our  
20 request for discovery, you prepared a  
21 tabulation of actual CIRP expenditures and we  
22 also asked you whether or not the information  
23 on Table 3-8 represented annual cash  
24 expenditures or encumbrances, and your response  
25 on page 12 of that document, if you don't have

1     **it, I --**

2           A.    Page 12 of the discovery request?

3           **Q.    Yes, sir.**

4           A.    Okay.

5           **Q.    And your response is, those are**  
6 **encumbrances.  Mr. Hoelscher, what is the**  
7 **difference between an expenditure and**  
8 **encumbrance?**

9           A.    The encumbrance, there must be a  
10 sufficient -- we want to start a \$5 million  
11 project.  The fund that we want to fund that  
12 project out of has to have at least \$5 million  
13 in it for us to make the appropriation.  So the  
14 Board will take an action, appropriate \$5  
15 million, and the money is not encumbered so the  
16 fund has to have sufficient dollars to be able  
17 to make that appropriation.  The expenditures  
18 would be the actual cash flow of the payments  
19 as that project moves forward.

20           **Q.    And that's later than the encumbrance?**

21           A.    Yes.

22                   MR. ARNOLD:  Thank you.  Thank you,  
23 Mr. Chairman.  Thank you, Mr. Hoelscher.

24                   COMMISSIONER TOENJES:  Thank you,  
25 Mr. Arnold.  Any further questions for this

1 witness from any of the Rate Commissioners?

2 Mr. Tomazi.

3

4 EXAMINATION

5 Questions by: GEORGE TOMAZI

6 Q. I have one comment. Back in June of  
 7 '07 when this EPA in the State of Missouri  
 8 filed a lawsuit, filed their lawsuit, I  
 9 remember at that time a rather different price  
 10 tag of something in the range of \$20 billion  
 11 was thrown on the table to achieve everything  
 12 that was in that suit. Today we're  
 13 at 4.7 billion which still by any standard a  
 14 big number but it's a very significant change  
 15 from where this whole thing seemed to start  
 16 back in '07. So, all I can say is whatever you  
 17 did, you did good.

18 A. Thank you. I think I'll provide a  
 19 little clarification. I think the larger  
 20 number came from very much a worst case  
 21 scenario out of the long-term control plan but  
 22 we will take any compliment we can get.

23 COMMISSIONER TOENJES: Mr. Schneider.

24

25

1 EXAMINATION

2 Questions by: ERIC SCHNEIDER

3 Q. In the Consent Decree fact sheet  
4 mentions the Green Infrastructure Program or  
5 the pilot program. Does this current rate  
6 proposal have any elements of it that addressed  
7 the Green Infrastructure, the \$100 million  
8 dedicated to the Green Infrastructure Program?

9 A. The five year pilot program, out of  
10 that \$100 million, \$3 million has already been  
11 appropriated prior to this rate hearing, prior  
12 to this rate proposal for the five year pilot  
13 program, so that leaves the balance of the  
14 program being \$97 million and there are dollars  
15 in this rate proposal to start addressing the  
16 \$100 million commitment that is identified.

17 Q. Do you have an estimate of how many  
18 dollars of the 97 remaining, how many will be  
19 addressed in this rate proposal?

20 A. If you want me to take the time to  
21 look through the list to find that. It's not  
22 locked with me. It's \$20 million, \$5 million a  
23 year.

24 Q. And kind of a similar question  
25 regarding the SSO. Remedial measures on the

1 SSO master plan, you had the removal of 85  
 2 percent of the constructed SSO outfalls by  
 3 2023. Roughly what percentage are you going to  
 4 get to in this rate proposal to get close to 85  
 5 percent?

6 A. Here is what I can give you. In  
 7 the -- if you look at the fact sheet on Item 2,  
 8 you do see 50 of the overflows being addressed  
 9 by 2012. Those will be funded prior to this  
 10 rate case. Of the ones that remain, the exact  
 11 schedules will come out of the SSO master plan  
 12 that's described under Item 3 but any  
 13 information about the exact details of removal  
 14 is unavailable.

15 MR. SCHNEIDER: Okay. Thank you.

16 COMMISSIONER TOENJES: Questions by  
 17 any other Rate Commissioners for Mr. Hoelscher?  
 18 I have a question, Mr. Hoelscher.

19

20 EXAMINATION

21 Questions by: LEONARD TOENJES

22 Q. You mentioned program adjustments in  
 23 disinfection. What was the cost of that  
 24 program adjustment?

25 A. The disinfection was in the range of

1 \$75 million for disinfection.

2 Q. Okay. And that 75 million dollars  
3 was not anticipated in the last rate case?

4 A. Correct.

5 Q. So, could you describe the impact on  
6 the rest of the program that occurred by having  
7 to meet that \$75 million obligation?

8 A. Sure. Once that came up, we  
9 prioritized the funding for that regulatory  
10 requirement. I think I mentioned earlier there  
11 was some other ones but disinfection being the  
12 largest. We started the design followed by the  
13 construction process, dollars were eliminated  
14 to address other regulatory issues that we  
15 identified during the process. Those were set  
16 aside, put on the shelf. If they were in the  
17 design phase and toward the end of the design  
18 phase, the design phase was completed; if they  
19 were in the beginning, they were simply halted.

20 Because we were tracking the actual  
21 dollar cost for the disinfection versus our  
22 estimates, it did become evident that there  
23 were going to be some more dollars available  
24 because the bidding climate we mentioned, that  
25 allowed us to pull some of the program in there

1 but it was a continuous monitoring of the  
2 actual cost of the disinfection to see what we  
3 could bring back into the program that had been  
4 originally planned.

5 Q. So, would it be accurate to say that  
6 approximately \$75 million of the work that was  
7 considered during the prior rate case was not  
8 completed?

9 A. We recovered about \$40 million to \$50  
10 million of that -- I can't compare them because  
11 they are different timings but it's something  
12 less than \$75 million as it became apparent of  
13 the extra dollars being available, we were able  
14 to pull some work up. Off the top of my head,  
15 I think it was in the \$20 million to \$25  
16 million range that we were able to put back  
17 into the program.

18 Q. About \$50 million, can I assume that  
19 that got rolled forward into this rate case,  
20 into this CIRP then?

21 A. Yes, there are projects that were  
22 identified in the first rate case that appeared  
23 now in this rate case.

24 Q. You know, we had some discussions  
25 when that adjustment occurred and I guess a

1 concern I have is and continue to have is when  
2 we are at a four year timeframe of a rate case,  
3 if some of these program adjustments or  
4 regulatory changes take place in year two or  
5 year three, in effect you are unable to address  
6 that \$50 million until the wheel came around  
7 again?

8 A. Correct.

9 Q. And I think that continues to be a  
10 concern of mine, that inability to respond and  
11 I guess I would wonder where is the threshold?  
12 How bad does it have to be before you decide  
13 you're going to change and come back with  
14 another rate? Is it \$50 million, is it \$100  
15 million, where is that pain threshold because  
16 our guys felt it.

17 A. The threshold -- we are under a  
18 different set of rules. Under the last rate  
19 proposal, the regulatory requirements we are  
20 talking about, and I'll use constructed SSO's  
21 as an example, they were illegal. We were  
22 removing those as revenues were made available,  
23 but as we sit here today, they are illegal.  
24 That framework changes and we had the ability,  
25 we have set deadlines for disinfection, do

1 those, move some of the other regulatory issues  
2 off that don't have set deadlines.

3           The Consent Decree indicates  
4 schedules of removal and addressing either  
5 mitigation or removal of some of these issues.  
6 There will now be a measure for everything.  
7 So, MSD would have much less latitude to be  
8 able to make adjustments. Things are that are  
9 in the program simply have to get done. So,  
10 you won't see us -- we won't have the  
11 ability -- nutrients happen tomorrow and we  
12 have to spend 200 --

13           **Q. Or happens two days after we finish**  
14 **setting our new rate is more the question.**

15           A. Whatever the worst time. If that  
16 \$250 million come up, we now have set schedules  
17 for everything we are proposing to you. So,  
18 it's the world is different. MSD will not  
19 unilaterally be able to make a decision about  
20 that. It will have to involve a lot of other  
21 individuals. If that helps address the  
22 question.

23           **Q. I'm just trying to figure out what it**  
24 **takes to push that button.**

25           A. The threshold happens almost

1 immediately this time as compared to the last  
2 rate cycle.

3 COMMISSIONER TOENJES: Any further  
4 questions for Mr. Hoelscher? Thank you. Ms.  
5 Myers, do you have questions for Mr. Hoelscher?

6 MS. MYERS: I do have a couple.  
7

8 EXAMINATION

9 Questions by: SUSAN MYERS

10 Q. The schedule for compliance of the  
11 Consent Decree is outlined in the detail sheet  
12 as 23 years, is that correct?

13 A. Correct.

14 Q. And the rate case that we have here  
15 before us supports the start of that 23 years?

16 A. Correct.

17 Q. Okay. Do you foresee the ability to  
18 get a longer schedule than the 23 years that's  
19 outlined in the detail sheet?

20 A. Do I?

21 Q. Let me rephrase that. If we decided  
22 we needed 25 or 29 years at this point, do you  
23 foresee that we could obtain that?

24 A. I would think probably not without  
25 some very, very extreme reasons to be able to

1 extend the schedule.

2 MS. MYERS: Okay, thank you. I have  
3 nothing further.

4 COMMISSIONER TOENJES: Thank you,  
5 Mr. Hoelscher. Your next witness in order of  
6 testimony filed is Jonathan Sprague. Is  
7 Mr. Sprague here?

8 MR. SPRAGUE: Yes, I am.

9 COMMISSIONER TOENJES: Thank you,  
10 Mr. Sprague. Is the testimony you're about to  
11 give the truth, the whole truth, and nothing  
12 but the truth?

13 MR. SPRAGUE: Yes, it is.

14 COMMISSIONER TOENJES: Thank you.  
15 Any of the Rate Commissioners have questions  
16 for the witness? That being the case,  
17 Mr. Kindschuh, would you have questions for  
18 Mr. Sprague?

19 MR. KINDSCHUH: Yes, we do. Thank  
20 you.

21 COMMISSIONER TOENJES: Please  
22 proceed.

23

24 JONATHAN SPRAGUE,  
25 Of lawful age, being produced, sworn and

1 examined, and says:

2

3

EXAMINATION

4 Questions By: JOHN KINDSCHUH

5

6

7

8

9

Q. Good morning. I have a few questions regarding your testimony that you submitted and in particular, if I could direct your response to question 17, this is on page 5 of your testimony.

10

A. All right.

11

12

13

14

Q. Specifically in your response to this question, "What federal requirements create mandatory levels of wastewater service that must be met by MSD that you refer to"?

15

16

17

18

19

20

21

22

A. I can't speak specifically about what's in the Consent Decree but there was a reference in the Board paper CMOM requirements, Capacity Management Operations and Maintenance that it stands for, and anticipate there will be operations and maintenance requirements that in essence become mandates and will drive our program.

23

24

Q. Thank you. And have copies of those documents been provided?

25

A. The Consent Decree isn't available

1 for public viewing yet.

2 Q. I'm aware of that.

3 MR. KINDSCHUH: Thank you. That's  
4 all the questions that we have.

5 COMMISSIONER TOENJES: Thank you.  
6 Ms. Langeneckert, do you have any questions of  
7 this witness?

8 MS. LANGENECKERT: Not of Mr. Sprague,  
9 no.

10 COMMISSIONER TOENJES: Mr. Mueller,  
11 do you have any questions?

12 MR. MUELLER: I have no questions.

13 COMMISSIONER TOENJES: Mr. Arnold?

14 MR. ARNOLD: Nor have I.

15 COMMISSIONER TOENJES: Any  
16 Commissioners have any further questions for  
17 this witness? Ms. Myers?

18 MS. MYERS: We have none.

19 COMMISSIONER TOENJES: Mr. Sprague,  
20 thank you for this.

21 I think we will begin Mr. Tyminski's  
22 testimony and the Chair will reserve the right  
23 to take a lunch break if we get too far into  
24 his testimony.

25 You have to tell the truth both

1 before and after lunch. The testimony you're  
2 about to give the whole truth and nothing but  
3 the truth?

4 MR. TYMINSKI: It is.

5 COMMISSIONER TOENJES: Thank you.

6 Does any member of Rate Commission have  
7 questions for Mr. Tyminski at this time?  
8 Mr. Kindschuh, do you have questions for  
9 Mr. Tyminski?

10 MR. KINDSCHUH: Yes, we do.

11 COMMISSIONER TOENJES: Please  
12 proceed.

13

14 KARL TYMINSKI,  
15 of lawful age, being produced, sworn and  
16 examined, and says:

17

18 EXAMINATION

19 Questions by: JOHN KINDSCHUH

20 Q. Mr. Tyminski, good morning. This may  
21 not be as short as Mr. Sprague.

22 A. I only wish.

23 Q. You indicate in your testimony that  
24 the CIRP is anticipated to be funded with a  
25 combination of 85 percent senior bonds and 15

1 percent State revolving fund loans, is that  
 2 correct?

3 A. That is correct, plus the cash.

4 Q. Sure. What are the maximum number or  
 5 amount of State revolving fund loans that MSD  
 6 could receive per year during the plan?

7 A. I'll go over what the constraints  
 8 are. I'm not sure there is a hard maximum on  
 9 that because it's a function of a number of  
 10 variables that have to be taken together.

11 The program itself that the State of  
 12 Missouri runs and I sent you, I believe, in the  
 13 response or at least in the Rate Commission's  
 14 response, I sent a copy of the intended use  
 15 plan from the State of Missouri is roughly a  
 16 billion dollar program. In looking at that  
 17 program, and knowing that their terms are  
 18 roughly a 20 year term, that presupposes a 5  
 19 percent payback a year or 1/20, so from that  
 20 you can deduce there is a cash flow of about  
 21 \$50 million a year going into their program.

22 On top of that, the State of Missouri  
 23 receives capital grants from the federal  
 24 government as does any other state. The  
 25 capital grants were a target of the

1 administration's cuts. So, the administration  
2 is pushing more for this Obama bank, a larger  
3 infrastructure bank, and not necessarily as  
4 much targeted to the SRF type funds. But it's  
5 safe to say that the State gets about \$30  
6 million in terms of that type of grant a year  
7 so they have an inflow of about \$80 million a  
8 year. Of the billion dollars, roughly all  
9 million dollars is spoken for.

10           The unwritten ruled had been to  
11 allocate the funds in the pool in a manner  
12 similar to that of the population of the state.  
13 Our service area has roughly 20 percent of the  
14 population so if you do the math, 20 percent of  
15 a billion dollars is about \$200 million.  
16 Currently we have closer to \$400 million  
17 outstanding so we are at a maximum level, I  
18 believe, with the State of Missouri right now.  
19 Given where we are population-wise, our share  
20 of the pool, we're the largest singular  
21 borrower in the pool. With that said, I would  
22 see our return or our ability to use SRF funds  
23 in the future to be something in the  
24 neighborhood of \$25 to \$35 million depending on  
25 their constraints in a given year, depending on

1 the projects, depending on the priority points  
2 reaching those projects. Long answer but that  
3 is the best answer.

4 They are constrained by the inflows.  
5 They no longer have a leverage program because  
6 of the market conditions. This is a cash basis  
7 program so understand that what we are doing is  
8 divvying up a share of that cash and I am  
9 saying to you, if you think of that cash inflow  
10 at \$80 million a year, 20 percent would be 16  
11 million, we are looking at a rate of that  
12 already.

13 **Q. All right. How many applications has**  
14 **MSD submitted for State revolving loan funds at**  
15 **this point?**

16 A. I don't have an exact count. I know  
17 it's numerous. We certainly have submitted for  
18 the Missouri River Treatment Plant, we've  
19 submitted other loans, smaller dollars in  
20 nature, so my guess, somewhere between three  
21 and five. It's a year by year basis. I don't  
22 have an exact.

23 **Q. What are the status of these**  
24 **applications?**

25 A. Missouri River Treatment Plant has

1    been approved. That is the one that we are  
 2    seeking that we are seeking current funding on.  
 3    We've been approved for a total of \$77 million  
 4    of that on that plant. Future ones are to be  
 5    determined and it will be in the cycles of a  
 6    few years.

7           **Q.    Okay. And you state in your**  
 8    **testimony that the rate proposal assumes**  
 9    **approximately \$35 million of the State revolving**  
 10   **fund loans per year.**

11           A.    Right.

12           **Q.    Given all the information that you**  
 13   **know today, do you still feel that that \$35**  
 14   **million is an appropriate number?**

15           A.    I think it's on the optimistic side  
 16    but, yes, it's appropriate.

17           **Q.    What factor or factors could enable**  
 18   **MSD to secure more than \$35 million?**

19           A.    I have to think that one through.  
 20    Obviously some windfall to the State of  
 21    Missouri program, but there is nothing that I  
 22    can see in the current legislation given the  
 23    current structure of the federal government  
 24    that would raise that.

25           **Q.    Okay. Thank you. What is the status**

1 of Congress approving the authorization for the  
2 Build America bonds or other similar vehicles  
3 that you referenced in your testimony?

4 A. Well, if I could answer that  
5 question, I should become a Washington  
6 lobbyist, but barring that, the legislation,  
7 you know, guide last year did not get renewed.  
8 There is talk about that but I really can't  
9 answer it. It's pure speculation on my part.

10 Q. Are there any other types of  
11 government bonds or funding program grants, for  
12 example, that MSD has considered at this point?

13 A. At this point, no.

14 Q. Are you aware of any other wastewater  
15 districts that have received government-  
16 sponsored funding assistance to fund their  
17 capital expenditure programs?

18 A. Various districts have received  
19 funding. I'm not sure of all the specifics. I  
20 know that some have, though.

21 Q. Okay. Do you know what districts  
22 these are?

23 A. Again, just in general I know that  
24 they exist.

25 Q. And Mr. Tyminski, are you the person

1     **who speaks with the State revolving fund staff**  
2     **about loan availability?**

3           A.    I am one of the people that speaks to  
4     them.

5           **Q.    Who else on MSD's staff would also**  
6     **speak with them?**

7           A.    A representative from the engineering  
8     department would usually go with me.

9           **Q.    But you're involved in almost all of**  
10    **those conversations?**

11          A.    Yes.

12          **Q.    Okay.  What federal, state, or local**  
13    **agencies have you and your staff contacted to**  
14    **discuss grants and contributions at this point?**

15          A.    Over the last 15 years, we have  
16    gotten grants from the U.S. EPA, from Homeland  
17    Security, and from the Department of the Army  
18    through the Corps of Engineers projects.

19          **Q.    And have you contacted all of those**  
20    **agencies recently?**

21          A.    We have a federal lobbyist that works  
22    on our behalf to try to gain funds.  There  
23    really are no funds available at this point in  
24    time, other than with the Corps and the  
25    projects that are targeted in the St. Louis

1 area.

2 Q. Are there any other funds, federal,  
3 state, local agencies, you intend to contact at  
4 this point but haven't done so?

5 A. We always look to various federal  
6 agencies but again, the budget situation in  
7 Washington is kind of strained and we do not --  
8 we will work to obtain the most possible  
9 funding but it is limited given the constraints  
10 in Washington.

11 Q. Thank you. You stated in your  
12 testimony that a feasibility report assumes  
13 that future revenue bonds will be issued in the  
14 average annual interest rate of 5.50 percent  
15 over the next 30 years. Do you recall that?

16 A. For a 30 year term over the next four  
17 years or over the life cycle of the term of the  
18 rate report, yes.

19 Q. Correct, yeah. Thank you for that  
20 clarification. Where did you get this  
21 information, Mr. Tyminski?

22 A. At the time we were looking at an  
23 existing rate on the 30 year debt of about four  
24 and a half percent. We know that there is --  
25 we looked at long-term graphs that are in the

1 public domain such as on Bloomberg and the  
2 various media sources and we know that we are  
3 at one of the low points of that graph, so what  
4 we did is we added 100 basis points to the  
5 existing rate to get the five and a half percent.

6 **Q. Do you believe that the five and a**  
7 **half percent is an appropriate figure at this**  
8 **point?**

9 A. At this point it is. I mean, if you  
10 consider the past rate cycle, the high point of  
11 interest rates on a coupon basis was between  
12 five and a half and 6 percent which occurred in  
13 the fall -- late fall of 2008. So, given where  
14 the last cycle was, given that parts were below  
15 and parts were above, there is some uncertainty  
16 with respect to interest rates.

17 You keep hearing about how the  
18 interest rates are going to have to go up at  
19 some point in time. We are projecting out that  
20 the earliest we could issue the debt would be  
21 at sometime in 2012, so we are projecting at  
22 least a year if not four or five years into the  
23 future. We were looking at more normalized  
24 rates so that is why the five and a half was a  
25 more realistic rate.

1           Q.    I appreciate it.  You just  
2    anticipated my next question, so thank you.  
3    With respect to that feasibility report, how  
4    does it arrive to the conclusion that the rate  
5    will be at 5.5 percent?

6           A.    Based on discussion between myself,  
7    our financial advisor, and Mr. Barber, who  
8    you'll have to chance to talk to later.

9                   MR. KINDSCHUH:  Great.  Thank you.  
10   At this point, the MIEC has no further questions.

11                   COMMISSIONER TOENJES:  Thank you.  
12   Ms. Langeneckert, do you have questions for  
13   Mr. Tyminski?

14                   MS. LANGENECKERT:  I do have a few if  
15   I could move on up.

16

17                                   EXAMINATION

18   Questions by:  LISA C. LANGENECKERT

19           Q.    Good morning, Mr. Tyminski.  If the  
20   District receives approval for \$945 million  
21   bond authorization and issues all of the bonds  
22   in the fiscal year of 2013 -- by fiscal year of  
23   2016, what will the District's debt-to-equity  
24   ratio be?

25           A.    It would be -- I'll double check it

1 but I believe it will be -- we would reach 67  
 2 percent, I believe, debt to 30 percent -- 33  
 3 percent equity, I believe. I'll have to double  
 4 check the numbers.

5 **Q. And what's the District's current**  
 6 **debt-to-equity ratio?**

7 A. You are talking total or by the  
 8 wastewater line itself?

9 **Q. Give me both.**

10 A. Can I defer to a little later? I  
 11 need to get the financial statements. I'll be  
 12 happy to get those for you.

13 **Q. Okay. So, later --**

14 A. Because we have a break for lunch,  
 15 I'll have those after lunch.

16 **Q. Okay. Did the District consider an**  
 17 **alternative amount of unauthorization?**

18 A. The alternative is obviously cash.

19 **Q. No, an alternative amount. A higher**  
 20 **amount of cash and a lower amount of bonds.**

21 A. We looked at a number of different  
 22 amounts. What we put in the report itself are  
 23 what I call the two book ends. We looked at  
 24 zero percent bonds of 100 percent cash and we  
 25 looked at and what we are proposing is pretty

1 much the polar opposite of that, being 94  
2 percent bonds and roughly 6 or 7 percent cash.

3 Q. And did you look in the middle? Did  
4 you look at a little more cash, a little less  
5 bonds, or did you just look at the two options?

6 A. We looked at the two end posts  
7 basically. We focused on the higher bond number  
8 gives you yield a lower rate in the current  
9 cycle. It gives you a more gradual rise in  
10 rate but will cost more over the long run so,  
11 yes, there are an infinite number of points  
12 between zero, you know, percent bonds and 100  
13 percent cash and where we are, so we do not  
14 look at all of them but any of those could be  
15 visited by this Commission.

16 Q. But you did not look at any other  
17 than the two end posts?

18 A. Right.

19 Q. You didn't look at the middle?

20 A. No.

21 Q. Did you participate in the decision  
22 to seek \$945 million of bond authorizations?

23 A. Yes.

24 Q. If the MSD receives voter approval  
25 for the bond funding, the plan is to phase in

1 rates, is that correct?

2 A. Yes.

3 Q. And MSD would increase rates by 11  
4 percent in 2013 fiscal year, 12 percent per  
5 year through 2016?

6 A. I thought it was around 13 percent a  
7 year but okay.

8 Q. If the MSD does not receive voter  
9 approval for the bonding issuance, the plan is  
10 to increase rates in fiscal year 2013 by about  
11 155 percent, is that correct?

12 A. About \$73, yeah.

13 Q. For the average residential customer?

14 A. Right.

15 Q. And rates would remain flat for 2014  
16 to 2016?

17 A. Essential. If you take a look at it  
18 from a kind of a cost standpoint, the sooner  
19 you get an increase, the longer you can keep  
20 that increase going, so obviously if you take a  
21 big jump in year one, then you can keep that  
22 for a longer period of time, you'll end up  
23 paying less in the total program over time, but  
24 you're paying for it by cash. The bonds serve  
25 as a gradual increase or somewhat more gradual

1 increase or a series of smaller step increases  
 2 to some point in time and then the cost of the  
 3 bonding will be greater than the cost of the  
 4 cash program.

5 **Q. So, is that why the rates are not**  
 6 **phased in under the PAYGO scenario?**

7 A. If you go with the PAYGO scenario,  
 8 you'll have to pay for the program up front  
 9 right now in cash and that cash will come in on  
 10 a 1/12 basis. You know, a little bit each  
 11 month. But you're going to have to be able to  
 12 fund a program right now so you're going to  
 13 even have to do some short-term borrowing to  
 14 get to where you need to be in that all cash  
 15 scenario.

16 **Q. So, all of the cash would have to be**  
 17 **received in the very beginning, you could not**  
 18 **get smaller amounts as you would under the**  
 19 **bonding?**

20 A. Are you asking -- okay, you're saying  
 21 instead of -- you are saying in an all cash --  
 22 I don't know the answer to that. I don't  
 23 believe so. I think you're going to have to go  
 24 straight up to the 73.

25 **Q. And why is that?**

1           A.    Because you're funding a program and  
2    you need the ability to say we have a balanced  
3    budget clause in our Charter.  To comply with  
4    the balanced budget clause of the Charter, we  
5    have to show the ability to pay for the  
6    projects.

7                    So, if the projects for the cycle,  
8    some of those are multi-year projects, you'll  
9    have to pay for those up front.  You'll have to  
10   say okay, I've got the funding basis in hand.  
11   So, because of that, you're going to have to  
12   raise your rates significantly in the early  
13   year to fund those projects.

14           **Q.    So, the reason for asking the full**  
15   **amount in the beginning is because of the**  
16   **clause in your --**

17           A.    The balanced budget clause, correct.

18                    MS. LANGENECKERT:  That's all I have.

19   Thank you.

20                    COMMISSIONER TOENJES:  Thanks, Ms.  
21   Langeneckert.  Mr. Mueller.

22                    MR. MUELLER:  I have no questions,  
23   thank you.

24                    COMMISSIONER TOENJES:  Mr. Arnold.

25                    MR. ARNOLD:  I do have several

1 questions.

2

3

EXAMINATION

4 Questions by: JOHN FOX ARNOLD

5

Q. Good morning. Early on in your

6

testimony you refer to the rate covenant in the

7

master bond ordinance. How many bond issues

8

have been authorized by the Board of Trustees

9

since the master bond ordinance was adopted?

10

A. Bear with me. Two in 2004, one in

11

2005, three in 2006, none in 2007, two in 2008,

12

and two in 2010.

13

Q. During the negotiations of the

14

amendment to the master bond ordinance, have

15

the rate -- has the rate covenant ever been

16

changed?

17

A. No. Rate covenant remains in effect

18

at 125 and 150.

19

Q. Okay. On page 4 of your testimony,

20

you make reference in the answer which begins

21

on line 13 to generation of debt service

22

coverages consistent with rating agencies,

23

expectations for high AA rated large

24

metropolitan wastewater systems. Have the

25

bonds issued by the Trustees generally been

1 treated as AA?

2 A. Yes. They've been AA+ bonds throughout.

3 Q. All right. Have they been rated AA+  
4 bonds with or without a credit enhancement?

5 A. Well, in more recent days there are  
6 no credit enhancements. They've been rated  
7 without the credit enhancements. Only the 2004  
8 A series did we use credit enhancements.

9 Q. The pattern now is that the credit  
10 markets do not require credit enhancements for  
11 District obligations?

12 A. The credit enhancements would be very  
13 questionable in the current market, yes.

14 Q. No question because --

15 A. Yes, I'm in agreement.

16 Q. All right. Moving on to line 17, you  
17 refer to today's cash on hand estimated at 485  
18 days which is modestly stronger than credit  
19 agencies median for this metric. Where does  
20 the metric come from?

21 A. Metric comes from Fitch.

22 Q. It is Fitch.

23 A. It is a Fitch metric, yes. And also  
24 there is a comparison table that our financial  
25 advisor uses, it's somewhat proprietary. I do

1 not have it in my files.

2 Q. Then that may be the answer to my  
3 next question. Does the District currently  
4 engage a financial advisor?

5 A. Yes, we do, we engage two. We use  
6 the firm of PFM and we also use the firm of  
7 ButcherMark.

8 Q. I'm sorry?

9 A. ButcherMark and PFM.

10 Q. Page 7, question 21 at line 9, you  
11 talk about 20 year term, two and a half net  
12 interest administration fee, issuance cost of  
13 .65, and a recent feasibility study series  
14 2011A. Was that feasibility study prepared by  
15 PFM or ButcherMark?

16 A. No, that feasibility study was  
17 prepared by Black and Veatch.

18 Q. Thank you. Do you know whether or  
19 not PFM and ButcherMark agreed with the  
20 feasibility study prepared by Black and Veatch?

21 A. They seen copies of the feasibility  
22 study or areas of the feasibility study that  
23 would impact interest rates and issuance costs,  
24 so yes, they have seen it and they have  
25 concurred.

1 Q. So, they have not expressed any  
2 reservations about the terms of the study?

3 A. As it stands, no.

4 Q. Page 8, your response beginning on  
5 line 8 and here we are talking about what you  
6 describe as the District's revenue bond  
7 requirements. Are these bonds different than  
8 the State revolving fund?

9 A. Yes, they are.

10 Q. All right?

11 A. This is our stand-alone debt.

12 Q. All right. And you refer to a  
13 feasibility report which assumes --

14 A. The same feasibility report.

15 Q. It's the same report?

16 A. The same.

17 Q. All right. I'll pretend to ask all  
18 of my PFM questions and you'll pretend to  
19 answer?

20 A. Okay.

21 Q. Okay. Were you present when  
22 Mr. Hoelscher described the distinction between  
23 encumbrance and expenditure?

24 A. I was.

25 Q. Could you describe the District's

1 **policy with respect to encumbrance, the**  
 2 **requirement for an encumbrance?**

3 A. The requirement for a encumbrance in  
 4 general is a municipal accounting period to  
 5 encumber your cost. In the case of the  
 6 District when it comes to the capital projects,  
 7 which is really the focus of this discussion,  
 8 essentially we have a balanced budget clause in  
 9 our Charter. Most projects are appropriated or  
 10 cumbered at the time they are approved by the  
 11 Board, with the exception of a large multi-year  
 12 project that would drain the dollars where we  
 13 will sometimes go in with phased appropriation  
 14 over time. So, there is a correlation between  
 15 them from a budget standpoint.

16 If you think in terms of  
 17 appropriations in a one year period of time,  
 18 roughly 60 percent of those are actually  
 19 expended in that year, 30 percent will be  
 20 expended in the following year, 10 percent the  
 21 year after that. So it's 60, 30, 10 kind of  
 22 flow on average.

23 **Q. All right. Now, the Internal Revenue**  
 24 **Service takes the position, I hope you agree**  
 25 **with me, that if the District issues bonds,**

1 that the District must generally -- there is  
2 some exceptions -- expend an amount within six  
3 months, an amount within 18 months, and nearly  
4 all of it at three years. If we have a  
5 significant bond program such as the one with  
6 which we are now concerned, do you have an  
7 opinion as to whether or not recommendation of  
8 the staff to the District would be to  
9 completely encumber these projects or partially  
10 encumber these projects, and if there is a  
11 recommendation for partial encumbrance, what  
12 would be the threshold?

13 A. Obviously there is going to be a  
14 spend on provision in the IRS code, and 60  
15 percent -- what is it 45 percent in six months  
16 and everything spent out in the three year  
17 period of time. So, the bond issues that we  
18 will go out with will be sized to meet those  
19 spend-out requirements as they have in the past.

20 Now, with respect to the encumbrances  
21 in a larger -- there is something that has to  
22 be considered. In a larger project, you can  
23 effectively encumber on an annualized basis to  
24 kind of spread over time. A series of smaller  
25 projects, it's much more difficult because of

1 the nature and the number of them and when they  
2 actually will come out. So, we have an -- all  
3 I'm saying is that there is an administrative  
4 constraint to the issue. We have to a degree  
5 factored in multi-year or phased-in  
6 appropriations. Case in point, cold water  
7 project is one of those that we used and that  
8 is the \$77 million project, a very large  
9 project, concurrent environment that we have  
10 phased in over time. We have a history with  
11 other projects where they are very large single  
12 dollar projects that we phase in over time so  
13 it's going to become a function of the  
14 composition of the projects.

15           You have a number of million dollar  
16 projects, you may, as Mr. Hoelscher pointed  
17 out, as dollars become available through, let's  
18 say, competitive bidding, keep in mind, we have  
19 a program -- we have a program going which is a  
20 series of projects so you're constantly moving  
21 projects in and out of that program or forward  
22 and back in that program.

23           So to answer your question, yes, I  
24 think we've considered to the best possible  
25 case given the administrative side of how these

1 projects work.

2 Q. There's been testimony this morning  
3 about front end loading. Is there a cost to  
4 the ratepayers when projects are front end  
5 loaded?

6 A. Well, to a degree, yes. I mean, you  
7 know, just from a conceptual standpoint. The  
8 earlier you spend the money, the earlier it  
9 leaves the treasury, that is going to incur an  
10 interest cost, so yeah, there is a time value  
11 of money to it.

12 Q. Is it possible to recover any of that  
13 by investing the proceeds of the bond issues  
14 before the expenditure of those funding without  
15 running afoul of the arbitrage's rules?

16 A. In a normal interest rate environment  
17 like we are in today, I would say yes, it is.  
18 It is possible to do that as long as the issue  
19 is sized correctly, and the interest rate  
20 structure is more competitive with respect to  
21 the interest expense structure. That is not  
22 the case today, though. When you're investing  
23 at five basis points or ten basis points, I'm  
24 more concerned about the negative arbitrage.

25 Q. Has the District issued any Build

1 **America bonds?**

2 A. Sure have.

3 **Q. And would you describe the role of**  
 4 **the federal government in the opinion of**  
 5 **interest -- in the payments of interest on**  
 6 **these bonds?**

7 A. The Build America bonds were targeted  
 8 for the -- targeted in the corporate bond  
 9 marketplace so they are issued as taxable bonds  
 10 and the federal government will give us a 35  
 11 percent return or credit in the form of cash  
 12 after the interest was paid. We make a filing,  
 13 we file every year. We get 35 percent back in  
 14 cash.

15 So, when you look at the net interest  
 16 rate to the District, I think the Build America  
 17 bonds were something like a 340 for us for a 30  
 18 year debt which we thought was quite good,  
 19 though in fact we probably paid closer to like  
 20 5 percent of the coupon, but the federal  
 21 government gave us money back, yes, sir.

22 **Q. Have you received any indication that**  
 23 **the federal government will delay the payment**  
 24 **of these federally-supported interest payments**  
 25 **as part of the discussion on debt, deficit, and**

1 **budgets?**

2 A. We have received no formal notice.

3 **Q. Informal notice? I read the Wall**  
4 **Street Journal too.**

5 A. I read what you've read in the press.  
6 I don't have -- I don't have any formal or  
7 informal notice for it.

8 MR. ARNOLD: Thank you, sir.

9 COMMISSIONER TOENJES: Thank you,  
10 Mr. Arnold. We will now break for lunch until  
11 1:20. We will reconvene at 1:20. We will  
12 resume Mr. Tyminski's testimony.

13 (Break.)

14 COMMISSIONER TOENJES: We will resume  
15 with the questioning for Mr. Tyminski. We left  
16 off with Mr. Arnold having completed his  
17 questioning and we will ask any Rate  
18 Commissioners at this point if they have any  
19 questions for Mr. Tyminski. Mr. Tomazi, please  
20 proceed.

21

22 EXAMINATION

23 Questions by: GEORGE TOMAZI

24 **Q. Would you tell us at the present time**  
25 **what the existing total bonded indebtedness is**

1 of the District and, second, what is it, the  
2 maximum that the District can do without being  
3 in serious financial trouble on interest rates  
4 and credit rating?

5 A. Okay. The District currently has  
6 outstanding as of April 30, \$613,571,000 and  
7 change. Now, the maximum -- there is a maximum  
8 level of debt when it comes to general  
9 obligation bonds, but in revenue bonds there's  
10 not. It's what the market will bear in kind of  
11 how you stack up against other agencies.  
12 Traditionally, that had always been roughly  
13 \$1,000 per capita. So, if St. Louis had a  
14 population of a million four, that is what our  
15 service area is, multiply it by \$1,000 is a  
16 billion four.

17 That standard has gone up, though,  
18 because of the EPA's pressure nationwide in  
19 various cities to construct programs. That's  
20 gone up.

21 Now, is there a magic number? There  
22 is no set number but what it is it's ten  
23 criteria that you're judged under depending on  
24 how you fall on those ten, one of which would  
25 be your coverage ratio, your interest rate

1 coverage ratio. In this proposal you targeted  
 2 two and a quarter times, 2.25 times coverage.  
 3 In this proposal, another one is the amount of  
 4 cash you have on the end, the number of days  
 5 cash you have on end and I'll answer that in  
 6 your bottom line question in a second. What  
 7 has happened with the Districts, we've seen our  
 8 cash eroded. When Mr. Hoelscher was up here  
 9 earlier, he talked about the projects that were  
 10 not included in the rate cycle, the  
 11 disinfection projects. Those disinfection  
 12 projects were paid for on a cash savings. The  
 13 District drew down cash, so that cash number is  
 14 a little lower today than it had been in the  
 15 past which impacts the amount of bonding we can  
 16 take on in the future without a decrease.

17           The third thing they look at is  
 18 something called operating margin. It's how  
 19 much extra we have after our operations, you  
 20 know, to sum total. Somebody like Northeast  
 21 Sewer District would -- out of the Cleveland  
 22 area -- would be about 60 percent. Our numbers  
 23 show more like 30 percent. So, if you take a  
 24 look at all of these metrics or measures, we  
 25 come off somewhere in the billion seven to

1 \$2 billion area before we run into a credible  
2 problem.

3 But, again, that's a judgment call.  
4 Everybody is going to look at these differently.  
5 The rating agencies have been under a lot of  
6 pressure since 2008. They can get scared very  
7 fast. It's not a quantitative judgment, it's a  
8 qualitative. It's just a judgment call.

9 Q. Second part of that question is, as I  
10 recall, there was -- there is a limit also  
11 based on the median family income of how much  
12 the monthly bill could be or annual bill and  
13 there might have even been different rates for  
14 the St. Louis City and St. Louis County. Do  
15 you have those handy?

16 A. There is -- there is a percentage of  
17 median household income to determine burden on  
18 the ratepayer themselves. I'm probably not the  
19 best person to ask that question to. I'm going  
20 to defer either to Jan or to Keith coming after  
21 me for that answer but there is -- you are  
22 correct.

23 COMMISSIONER TOENJES: Further  
24 questions? Yes, Mr. Koenen.

25

1 EXAMINATION

2 Questions by: GLENN KOENEN

3 Q. Compared to other sewer districts  
4 around the country, \$945 million in new bonds,  
5 where would that put St. Louis, say, compared  
6 to Cleveland or other areas that have gone into  
7 debt with bonds?

8 A. Pretty much in the middle of the  
9 pack. It will fall right in the medians across  
10 the board. If you currently have \$600 million  
11 outstanding, you add 945 to that and subtract  
12 out maybe \$70 million in payments, you're going  
13 to be kind of right at that number. You're not  
14 going to be above it. Your days of cash on  
15 hand will be decent but not 600 or 700 days of  
16 cash on hand, more like four.

17 The operating margins, as I said, is  
18 already running a little bit below where others  
19 are. So, looking at the variables, they'll put  
20 us at the median, not above.

21 Q. Which would imply a pretty decent  
22 bond rating because you're not on the outside?

23 A. No, we're above. Right now we are  
24 AA+ in two of the categories and AAA with  
25 Fitch. It means that our metrics are above

1 normal. It will put us more in line with  
2 normal. It's slightly below where we are or  
3 show right now.

4 MR. KOENEN: Thank you.

5 COMMISSIONER TOENJES: Any further  
6 questions for Mr. Tyminski from the Rate  
7 Commission? Yes, Eric.

8

9

EXAMINATION

10 Questions by: ERIC SCHNEIDER

11 Q. Karl, in your testimony on Question  
12 6, you talked about the projected debt  
13 coverage, kind of go in some calculations about  
14 the senior debt service coverage and percentage  
15 of and your final sentence says, "While the  
16 projected debt coverage exceeds master bond  
17 ordinance" -- I'm on page 2.

18 A. I see it. Lines 20 through 23.

19 Q. "Projected cover rates are only in  
20 line with median metrics used by the credit  
21 rating." Can you expand on that? You said  
22 only in line with median metrics. What are the  
23 median metrics and exactly where?

24 A. The median metrics, the best place to  
25 find them would be in the Fitch 2011 Median

1 Metrics or Metrics for Organizations of various  
2 size or various size and credit ratings.

3 We are carrying a better than average  
4 credit rating and what I'm saying to you is  
5 that the metrics that we are seeing are more in  
6 line -- this program will be a large burden for  
7 the population. I mean, there is two things  
8 you have to consider. When this program comes  
9 to us, you have to consider first the number of  
10 miles of sewers that we have. That was  
11 mentioned in the opening comments but I would  
12 like to hone in on that a little bit.

13 We have 10,000 miles of sewers, much  
14 greater than anybody else. So, you got a large  
15 number of sewers concentrated on a smaller  
16 population base than other cities, which is  
17 going to require a program size which is larger  
18 than some that we've seen. I mean, if you take  
19 a look at the program size to the average  
20 population, it's like \$13,000 a person. There  
21 are some larger than ours but it is on the  
22 larger size, so this is a large program for  
23 this area. We are also seeing an area that is  
24 not an area that's of great growth. Anything,  
25 we've seen a slight negative growth.

1           So, what I'm saying is that what we  
2    are seeing is median metrics, we carry a better  
3    than median credit rating now. There is some  
4    pressure on that credit rating is what I'm  
5    saying. That is exactly what I was trying to  
6    get at.

7           **Q. And then it's hard to predict for the**  
8    **next rate cycle but if we were to continue**  
9    **bonding, that puts continued pressure on the**  
10   **rate. If we were to do the same type of**  
11   **percentage bonding for the next rate proposal,**  
12   **that would put considerable more pressure on**  
13   **the bond ratings or does --**

14          A. As you go through with a large use of  
15    debt, it is going to put considerably more  
16    pressure on bond ratings because you'll have --  
17    it comes down -- think of in terms like your  
18    household and how much you have in the bank as  
19    far as savings and how much you have cushion  
20    each paycheck, and the more savings you have  
21    and the more cushion you have, the stronger  
22    credit rating you have.

23                   In the case where we go through a  
24    large program when you start drawing down that  
25    cash and the amount of PAYGO cash relative to

1 debt cash is smaller means that you're not as  
2 able to meet an unexpected event as you are  
3 with higher cash.

4 MR. LIYEOS: Mr. Chairman.

5 COMMISSIONER TOENJES: Mr. Liyeos.

6

7

EXAMINATION

8 Questions by: GEORGE LIYEOS

9 Q. The bonding capacity that you have is  
10 based upon assessed valuation?

11 A. No. That is a general obligation  
12 bond rating -- remember, the two types, the GO  
13 bonds which are based on assessed valuation and  
14 then there is revenue bonds which are based on  
15 the metrics I was talking about.

16 Q. Okay. In terms of the cycle that  
17 you've experienced over the last several years,  
18 has there been a downturn in terms of that  
19 revenue stream?

20 A. Yes. As a matter of fact, I'll defer  
21 to Ms. Zimmerman. They'll talk about that but,  
22 you know, you have a number of major players  
23 that are not here today that were here then.

24 Q. Does that represent, again, to Eric's  
25 point as it relates to the timing of this, if

1     **you go forward with that, that may continue to**  
2     **decrease in terms of that revenue stream?**

3           A.     That's correct. There is going to be  
4     pressure on our credit rating as we go through  
5     this program. The goal is that we maintain  
6     that credit rating as long as possible at the  
7     current level.

8           **Q.     And more than likely, a AAA bond**  
9     **rating is not in the cards?**

10          A.     Over the long-term, I would doubt it.  
11     There is no other place to go but down.

12                    COMMISSIONER TOENJES: Thank you,  
13     Mr. Tyminski. Further questions by any Rate  
14     Commissioners?

15

16                                   EXAMINATION

17     Questions by: LEONARD TOENJES

18           **Q.     As the bond rating drops, which I**  
19     **think you suggested it may.**

20          A.     It could.

21           **Q.     What is the dollar value of that for**  
22     **each drop in rating percentage-wise?**

23          A.     It depends. A drop from, let's say,  
24     a AAA to a AA+ probably could be absorbed in  
25     the numbers that we are looking at right now.

1 If it drops more than a couple notches, like if  
2 you have a AAA, then you have a AA, then you  
3 have an A, if you go from a AAA -- or a AA to  
4 an A, let's take that hit, that could easily be  
5 75 basis points or three-quarters of a percent  
6 on the amount that you're paying over a third  
7 of your life. You can have significant  
8 numbers. On this proposal I looked at if we  
9 went from a AA to an A, you could be talking at  
10 least \$25, \$30 million more. So, the credit  
11 rating does matter.

12 **Q. And your suggestion is that this 67**  
13 **percent that the equity where you'd be in 2016**  
14 **would be in the middle of the pack?**

15 A. It would be in the middle of the  
16 pack, yes. It would be in the middle of the  
17 pack. It puts us in the middle. What does  
18 that mean to the credit rating agencies? I'm  
19 not sure. Does that mean it's a AAA? Probably  
20 not. Does it mean it's a AA? I don't know,  
21 it's only speculative. Does it mean it's a  
22 AA-? I don't know. I'm hoping that we stay in  
23 that area. We are working to that stay in that  
24 area.

25 **Q. I think you would be, from what I'm**

1 hearing, you would be safe to assume by the  
 2 conclusion, if the bonding proposal you have  
 3 before us was accepted by the Rate Commission,  
 4 that you would see a reduction in the bond  
 5 rating for the District?

6 A. I don't know if I would say would.  
 7 You could. You could. There are other factors  
 8 that come into play and that's how -- we have a  
 9 number of factors going forth to keep in mind  
 10 that the credit rating, like the management,  
 11 like the proactive stance we've taken and like  
 12 our strategic planning, they feel the community  
 13 has responded well, so there is some pluses  
 14 there. I can't speak for them. I would say  
 15 that there is that possibility, could be a  
 16 strong possibility, but I wouldn't say it  
 17 would. Okay.

18 Q. I have one other question. You  
 19 mentioned that you had developed book ends that  
 20 you had before us but didn't develop any  
 21 scenarios along the rest of the continuum?

22 A. That is correct. And maybe you want  
 23 to defer to Mr. Barber to see if he has any  
 24 extra set of scenarios but I did not use any  
 25 other scenarios, I looked at the two book ends.

1 COMMISSIONER TOENJES: Any other  
2 questions by any Rate Commissioners? Ms.  
3 Myers, do you have questions for Mr. Tyminski?

4 MS. LANGENECKERT: Could I inquire  
5 before she does? Mr. Tyminski was able to get  
6 the answer during the lunch break?

7 A. Yes, I was. Right as of April 30th,  
8 our total net assets are \$2.2 billion. As of  
9 April 30th, as I just testified, we have \$613  
10 million of debt. On a total basis that  
11 calculates out to be 27 percent. On the  
12 wastewater operation alone, our assets are a  
13 billion, 698 net, of which \$613 million is the  
14 debt. That comes out to be 36 percent.

15 MS. LANGENECKERT: Thank you.

16 COMMISSIONER TOENJES: Ms. Myers.

17 MS. MYERS: I just have one.

18

19 EXAMINATION

20 Questions by: SUSAN MYERS

21 **Q. For clarification purposes, the Fitch**  
22 **metrics that you were referencing in your**  
23 **discussion, are those shown in MSD Exhibit 11C?**

24 A. That is correct.

25 MS. MYERS: Thank you. That's it.

1                   COMMISSIONER TOENJES: Thank you,  
2 Mr. Tyminski. Our next witness by order of  
3 testimony filed is Janice Zimmerman. Janice,  
4 is the testimony you're about to give the  
5 truth, the whole truth, and nothing but the  
6 truth?

7                   MS. ZIMMERMAN: Yes.

8                   COMMISSIONER TOENJES: Thank you.  
9 Does any member of the Rate Commission have  
10 questions for the witness at this time? Seeing  
11 none, Mr. Kindschuh, do you have any questions  
12 for Ms. Zimmerman?

13                  MR. KINDSCHUH: Yes, we do.

14                  COMMISSIONER TOENJES: Please proceed.

15

16                                 JANICE ZIMMERMAN,  
17 of lawful age, being produced, sworn and  
18 examined, and says:

19

20   EXAMINATION

21 Questions by: JOHN KINDSCHUH

22                 **Q. You state in your testimony that the**  
23 **proposed wastewater increase is fair and**  
24 **reasonable and that it proportionately**  
25 **distributes the District's projected costs over**

1 all classes of ratepayers using a user charge  
 2 method tied to customer water usage. Why is  
 3 this the case?

4 A. Primarily because this is a rate  
 5 design method that is -- has been accepted and  
 6 used across the country and has been upheld by  
 7 the Missouri courts. So, based on that  
 8 methodology, we consider the rate to be fair  
 9 and equitable.

10 Q. Thank you. Why did MSD get rid of  
 11 the Uniform Compliance Charge?

12 A. The Uniform Compliant Charge, if you  
 13 remember from the last proceeding, ended up  
 14 being about \$30 per commercial entity  
 15 regardless of the size, and that was one of the  
 16 components where we did have some members of  
 17 the public appear and basically express their  
 18 dissatisfaction with that.

19 The individuals, if I remember  
 20 correctly, who appeared were of smaller  
 21 commercial entities and the example that we use  
 22 when we explain this is sort of like an H & R  
 23 Block, they have a bathroom, maybe they have a  
 24 little kitchenette and a sink, and so they  
 25 don't require as much monitoring for

1 environmental reasons of their wastewater flow,  
2 and they were still bearing the \$30 a month  
3 charge versus an Anheuser-Busch. So, this  
4 proposal restructures that compliance charge to  
5 what we think makes it more fair and equitable.

6 So, there are tiers so that if a  
7 customer is an H & R Block, which is 94 percent  
8 of our commercial customers, they will pay less  
9 and it ramps down from the \$30 a month which  
10 they'll be paying for one more year to just  
11 over \$2 a month by fiscal '12. Conversely, the  
12 larger commercial customers will then pay more  
13 relative to the amount of monitoring that's  
14 required for clean water.

15 **Q. How did MSD develop this five tier**  
16 **structure?**

17 A. We looked at the cost. We do have a  
18 component of the District that does nothing but  
19 monitor these types of environmental components  
20 in the wastewater flow. We looked at their  
21 costs and we determined through their costs on  
22 an inspection and sample basis how much was  
23 associated to varying levels of commercial  
24 customers. Usually the larger the customers,  
25 the more the number of inspections they need

1 and the number of samplings. Not always the  
2 case. You can have a restaurant, small, but  
3 they have grease going into their drains so  
4 that may require more of a sample, more  
5 sampling.

6 So, we looked at their costs and we  
7 were able to discern what levels of monitoring  
8 apply to different sizes of commercial  
9 customers, and on that we were able to use that  
10 as the basis to charge back, if you will, the  
11 cost of that compliance based on commercial  
12 charges.

13 **Q. Okay. Why did MSD define the level**  
14 **of effort by the number of inspections and**  
15 **samples needed to assess the compliance of each**  
16 **residential customer?**

17 A. Primarily because that's the cost  
18 driver, and MSD, since we are not a profit-  
19 oriented company, we have to recover our costs,  
20 so it's tied as closely as we could to the  
21 cost.

22 **Q. Are there any other cost drivers**  
23 **besides the inspections of the sampling?**

24 A. No. I mean, there is a level of  
25 regulatory monitoring that occurs across the

1 District, so part of that compliance charge was  
 2 to shift that to basically everybody. So,  
 3 everybody shares the cost of that more generic  
 4 kind of monitoring but it's all tied to one  
 5 monitoring cost.

6 **Q. What are MSD's anticipated environmental**  
 7 **compliance costs for non residential customers**  
 8 **for this year?**

9 A. I don't have that handy. I don't  
 10 have it handy right now. I would have to look  
 11 that up.

12 **Q. Is that something you prepared and**  
 13 **have available or is that something that you**  
 14 **haven't --**

15 A. No, we can make it available.

16 **Q. Okay, great. And then what portion**  
 17 **of MSD's costs are recovered from each customer**  
 18 **tier level, you know, 1 through 5, for each**  
 19 **year?**

20 A. I don't know on a percentage basis  
 21 the total cost. As I said, we tried to  
 22 structure the rate so it recovered the costs  
 23 associated with each of those types of tiers  
 24 but I don't have the exact percentage  
 25 proportion right now.

1           **Q.    So, the goal would be to recover as**  
2           **close to 100 percent of those costs as possible?**

3           A.    Definitely.  That's how the entire  
4           rate proposal is designed.  We have to recover  
5           our costs.

6           **Q.    Okay.  Are there any customers that**  
7           **do not fall into one of the five tiers for any**  
8           **reason?**

9           A.    Residential.  It only applies to  
10          commercial customers.  And multi-family, it  
11          doesn't apply to multi-family.

12          **Q.    Are there any exemptions or**  
13          **opportunities for non residential customers to**  
14          **move down in a classification?  For example,**  
15          **originally identified as a Tier 5 then would be**  
16          **reclassified as a Tier 4?**

17          A.    I suppose that's a possibility.  We  
18          didn't really factor that kind of movement into  
19          the proposal.

20          **Q.    Okay.  With respect to the budget,**  
21          **what are the inflation allowances used in the**  
22          **rate study report and how are these derived?**

23          A.    There were -- I can talk generally to  
24          it since I don't have it in front of me, and I  
25          think the more specific information would come

1 from Mr. Barber, but for the most part, we used  
2 inflationary types of percentages but then  
3 there are key components of our budget that do  
4 not bear on inflation. As we all know health  
5 benefit costs are very high, our pension plan  
6 growth is based on investments and how much we  
7 have to contribute. Those are two big  
8 categories that are out of, say, whack and  
9 there are some others, but for the most part,  
10 we try to gauge it off of inflation.

11 **Q. Okay. And how do these inflation**  
12 **allowances compare with previous budgets for**  
13 **MSD? For example, are they higher, are they**  
14 **lower, are they the same?**

15 A. They are slightly lower. We don't  
16 tag them to what inflation is right now,  
17 recognizing that we are kind of in an  
18 extraordinary situation right now in the  
19 economy, so we try to do the best we can and  
20 say what was the historical average, yet we  
21 know the historical average was probably too  
22 high to take going forward. So we try to do  
23 kind of a best estimate as we plan the worst  
24 case scenario with the best case scenario.

25 **Q. How do these inflation allowances**

1     **compare with other budgets for other sewer**  
2     **districts across the country?**

3           A.    I can't tell you that.  I don't know.

4           **Q.    That's something you haven't studied?**

5           A.    No.

6           **Q.    Do you know if there is anyone on**  
7     **MSD's staff who has studied that?**

8           A.    Not to my knowledge, no.

9           **Q.    Do you anticipate that there will be**  
10    **any deficiencies or challenges with the budget**  
11    **that's currently being reviewed by the Board of**  
12    **Trustees?**

13          A.    No, I don't.  We historically come  
14    under budget every year and we do have to  
15    present a balanced budget, and given that we  
16    tightly budget and we tightly manage to that  
17    budget, I don't foresee any problems.  That's  
18    the general operating budget I'm referring to.

19          **Q.    Thank you.  And shifting topics a**  
20    **little bit to the taxing subdistricts.  What**  
21    **portion of the SEP is associated with MSD's two**  
22    **taxing subdistricts, the Lower Meramec River**  
23    **Basin and the Missouri River Bottom?**

24          A.    I can't answer how those projects  
25    fall into those two subdistricts.  That would

1 be a question for Brian Hoelscher.

2 Q. Mr. Hoelscher?

3 A. Yes.

4 Q. And what was the amount of the ad  
5 valorem tax revenue collected in these  
6 subdistricts prior to 2008?

7 A. In those particular two?

8 Q. Correct?

9 A. I would have to check and get that to  
10 you. I don't have it in front of me.

11 Q. But that's information that you would  
12 have available?

13 A. Yes, it is.

14 Q. Okay. Thank you. And my final  
15 question, why have ad valorem taxes not been  
16 levied in either subdistricts since 2008?

17 A. Those are wastewater only  
18 subdistricts. All the other subdistricts we  
19 have are stormwater. When the stormwater  
20 litigation came on in and that rate was  
21 determined to be unconstitutional, we put those  
22 taxes back in place; however, those two  
23 subdistricts are wastewater only and so we  
24 don't run wastewater with taxes, so there are  
25 no taxes in those two.

1 MR. KINDSCHUH: Okay. Thank you for  
2 your time. The MIEC has no further questions.

3 COMMISSIONER TOENJES: Thank you,  
4 Mr. Kindschuh. Ms. Langeneckert, do you have  
5 any questions?

6 MS. LANGENECKERT: I do.

7

8 EXAMINATION

9 Questions by: LISA C. LANGENECKERT

10 Q. I'm referencing your testimony,  
11 Exhibit 90, on page 2, and lines 5 through 7.

12 A. Am I looking at direct testimony  
13 or --

14 Q. Yes, your direct testimony.

15 A. Okay.

16 Q. And you state that the rate proposal  
17 is necessary to avoid jeopardizing the  
18 District's compliance with anticipated  
19 regulatory requirements.

20 A. Yes.

21 Q. Does the District now know what those  
22 regulatory requirements are going to be for  
23 compliance?

24 A. What that refers to is the Consent  
25 Decree and the entire CIRP is structured to

1 comply with that CD, so that is limited to the  
2 CD.

3 Q. So, you learned of that before any of  
4 the rate increase was put together?

5 A. Excuse me?

6 Q. You knew what the amount would be and  
7 what your requirements would be for compliance  
8 before the actual rate case was developed?

9 A. No, no, that is not what I said.

10 Brian Hoelscher in engineering developed a CIRP  
11 to meet, what my understanding is, what he  
12 knows of the CD. I wasn't privy to those  
13 conversations as part of the mediation, and so  
14 it's basically engineering presented what that  
15 program needs to be and we structured a rate to  
16 make sure that it could be funded.

17 Q. Okay. So, at the time the case was  
18 designed, someone was aware of what the  
19 requirements would be so that it could meet  
20 those requirements?

21 A. I really can't -- I don't know. I  
22 don't know what engineering knows and what they  
23 were basing it on. I just know that the  
24 premise of this was to parallel and be in  
25 compliance with the Consent Decree.

1 Q. Mr. Hoelscher?

2 A. Yes. The projects and CIRP would be  
3 Mr. Hoelscher.

4 Q. Did you participate in the decision  
5 to seek the \$945 million in bond authorization  
6 to help the MSD's CIRP program?

7 A. I was involved with that discussion  
8 to the extent that it would affect the cash  
9 debt relationship and the rate proposal and  
10 what that would do with rates.

11 Q. If MSD receives voter approval for  
12 the bond funding, the plan is to phase in rate  
13 increases, is that correct?

14 A. Yes.

15 Q. And in some of the materials, the  
16 numbers showed 11 to 12 percent and others it  
17 showed 13 percent. So, what is your  
18 understanding of how the rates would increase  
19 over that four year period?

20 A. 13 percent a year.

21 Q. These are the same questions I asked  
22 Mr. Tyminski so you probably know what is  
23 coming. If MSD doesn't receive the voter  
24 approval for the bond issue, the plan is to  
25 increase the rates by 155 percent and the rates

1 would remain flat for the remaining years, is  
2 that correct?

3 A. Right. In the rate proposal, the  
4 rates hit about \$47 a month by fiscal '16 and  
5 ramps up to that point from fiscal '13. If we  
6 didn't get the bond authorization, those rates  
7 would have to go up to about \$73 a month right  
8 away and then they would level out which was,  
9 if you remember the last Rate Commission, there  
10 was the concept of, you would use PAYGO,  
11 meaning 100 percent cash, to a certain point,  
12 you would use bonds to a certain point, and  
13 eventually they would cross and you would be in  
14 100 percent PAYGO situation.

15 In the last proceedings, that is what  
16 we proposed is that we use PAYGO longer before  
17 we tapped into debt. And then at the point  
18 that it would go to 100 percent debt, it levels  
19 out basically at rate of inflation.

20 Well, given the need for bonds now  
21 and if we don't get that authorization, we  
22 would be basically crossing into that 100  
23 percent PAYGO right away and the same premise,  
24 it then would stay at about inflationary rate  
25 going forward. That is why you see the drop

1 and then it stays flat. Not that you can see  
2 my hands moving on the record.

3 **Q. And that's why there is no phase-in**  
4 **of PAYGO?**

5 A. In the second alternative?

6 **Q. Yes.**

7 A. Yes.

8 **Q. Well, not alternative, but yeah.**

9 A. Yes.

10 **Q. The default program.**

11 A. Right. It assumes that since we  
12 don't have bonds to fund what is the  
13 significant portion of that CIRP, we have to  
14 get the money somewhere, we would have to get  
15 it out of PAYGO.

16 **Q. You would have to get it all up front?**

17 A. Right.

18 **Q. Is that because all of the projects**  
19 **that you have to develop would be paid for in**  
20 **the very beginning?**

21 A. Well, the projects still have to be  
22 paid for and right now the projects are for  
23 each of those components paid for with a piece  
24 of cash and a piece of debt. When you remove  
25 that debt, you still have to pay for that total

1 CIRP and the only place you can make it up is  
2 in the cash, okay. And then that gets you the  
3 rate that you need to sustain what is pretty  
4 much an equal CIRP every year. It's about 250  
5 to 270 in terms of a million.

6 So you get up to cover your first  
7 \$250 million chunk what you need through cash  
8 and then every year you are doing about 250, so  
9 that same rate can be sustained and funded the  
10 same every year.

11 Q. Has the District considered an  
12 alternative CIRP project schedule if the voters  
13 reject the bond issuance?

14 A. No, not to my knowledge. The CIRP is  
15 what we need to comply with the Consent Decree.

16 Q. So, it's because of the Consent  
17 Decree, then, it is that amount and you  
18 couldn't change it even if you wanted to?

19 A. That's my understanding.

20 Q. Now, you reference Mr. Hoelscher's  
21 direct testimony -- I already asked him this.  
22 In Mr. Barber's testimony, he was asked the  
23 question and maybe that you will prefer that I  
24 ask him this but I wanted to get your opinion.  
25 He states that his testimony, and I can give

1 you the page reference if you have it, page 16,  
2 line 3. He states, "That although anticipated  
3 expenditure levels are presented as fixed, the  
4 District has scheduling flexibility of the  
5 projects within each major category." If the  
6 District has scheduling flexibility, was this  
7 considered in determining the PAYGO alternative  
8 or is your answer still the same as previously?

9 A. I would rather leave that to  
10 Mr. Barber. By major category, I think you can  
11 look at page 3.6 in the rate report and that  
12 will give you the CIRP broken down by the  
13 types, CSO, SSO, et cetera. My understanding,  
14 I'm not sure, you would have to defer to  
15 Mr. Hoelscher, if we have any flexibility to  
16 move them between those major categories, but  
17 that's what Mr. Barber is referring to is those  
18 major categories, not deferring or changing  
19 projects.

20 Q. Okay. I'll check with Mr. Barber.  
21 Did the District consider an alternate amount  
22 of bond authorization? I know Mr. Tyminski  
23 said no but I didn't know if perhaps you had or  
24 other divisions in the District have?

25 A. I can't remember the exact dollars.

1 It might have changed from \$900 million to 945.

2 It was always very close to the 945.

3 Q. So, the percentage was generally the  
4 same?

5 A. Right. Right.

6 Q. And do you know if there is a reason  
7 why that was not considered other alternatives  
8 other than the end posts as Mr. Tyminski  
9 described?

10 A. We were trying to take an approach of  
11 being -- as having a practical balance as we  
12 can between bonds and cash to still provide as  
13 much mitigation of rate increases as we could.  
14 So that was still our philosophy to try to use  
15 the bonds to keep the rates what we think is as  
16 low as practical given the CDs.

17 Q. And a little bit earlier after lunch  
18 Mr. Tyminski had said what he thought that the  
19 debt-to-cash ratio was for the company. Are  
20 those numbers that you also agreed to?

21 A. Agreed to --

22 Q. Do you agree with the numbers, the  
23 percentages he gave?

24 A. Yes.

25 MS. LANGENECKERT: That's all I have.

1 Thank you.

2 COMMISSIONER TOENJES: Thank you, Ms.  
3 Langeneckert. Mr. Mueller.

4 MR. MUELLER: I have no questions.  
5 Thank you.

6 COMMISSIONER TOENJES: Mr. Arnold.

7 MR. ARNOLD: Thank you, Mr. Chairman.  
8 I do have at least one area I would like to  
9 explore a little bit.

10

11 EXAMINATION

12 Questions by: JOHN FOX ARNOLD

13 Q. Good afternoon, Ms. Zimmerman.

14 A. Good afternoon.

15 Q. Do you have handy MSD 11B --

16 A. Yes.

17 Q. -- which represents the responses to  
18 our discovery request?

19 A. Yes.

20 Q. Could you turn to page 25. In  
21 response to our request, you provided a  
22 schedule of the bad debt expense and write-offs  
23 for the years 2006 through 2010 and also part  
24 of 2011. If I read this schedule correctly,  
25 the bad debt in fiscal year 2006, now, is this

1 at the end of the fiscal year?

2 A. End of the fiscal year.

3 Q. Okay. Was \$3,160,972?

4 A. Yes.

5 Q. All right. And at the end of 2010,  
6 it was \$10,187,508?

7 A. Correct.

8 Q. I won't mess with the partial year  
9 for '11. What is the policy of the District  
10 with respect to writing off bad debt?

11 A. Bad debt is written off per our  
12 financial statements after 12 months. So, if  
13 the debt is older than a year, it is written  
14 off for financial statement purposes. There is  
15 a percentage, though, that the debt is looked  
16 at in total and then there is a probability  
17 applied. So, if something is 90 days  
18 delinquent, what is the probability you would  
19 collect it. Probably close to 100 percent. As  
20 the accounts get older, your probability of  
21 collection goes down. So, those write-offs are  
22 a combination of the probabilities of what we  
23 would collect of things that are 12 months or  
24 less in length. Did that answer your question?

25 Q. Yes, ma'am. Does the staff of the

1 District have any opinion as to why the bad  
2 debt rose, I guess, a little more than three  
3 fold over the four year period?

4 A. There is two things that probably  
5 impacted that the most. The rate increases  
6 were happening through there. So, someone who  
7 might be delinquent on a current bill, then  
8 their delinquency grows because the bill itself  
9 has gone up. In addition, we are also starting  
10 to see the impact of the economy. Delinquencies  
11 have increased since the economy has gotten  
12 worse and people didn't have the ability to  
13 pay, so it's a combination of those two things.

14 Q. Now, at our request you provided a  
15 description of the District's process for  
16 payment of receivables from delinquent accounts?

17 A. Correct.

18 Q. What I'd like to do, if I may, is go  
19 through each of these areas and have you  
20 describe it for us.

21 A. Fine.

22 Q. How about pre collect?

23 A. Pre collect is the initial portion of  
24 our collection process. It's pretty much an  
25 automatic call on your phone, I'm sure

1 everybody has gotten them. They are referred  
2 to as robocalls. If someone is 30 days  
3 delinquent, they'll get an automated call just  
4 kind of reminding them hey, and we do that for  
5 the first 90 days. So, that's pre collect.

6 **Q. Now, you started this program in**  
7 **January of this year?**

8 A. Yes. As a pilot, like a beta  
9 program. We are about to implement it  
10 permanently but we did have considerable  
11 success on a beta basis.

12 **Q. And why did you pick 120 days as the**  
13 **delinquency period?**

14 A. 120 days is pretty much a standard.  
15 When you look at collection operation, 120 day  
16 delinquencies is the first threshold that you  
17 then take it to another level in the collection  
18 process.

19 **Q. All right. Let's go to collection**  
20 **agencies where you're talking about 90 to 120**  
21 **days. It seems to be the same metric, if you**  
22 **will, for the pre collect?**

23 A. Correct. I mean, we hit accounts at  
24 120 days and we move them to collection  
25 agencies. Robo Cops -- Robo Cops, I have a

1 22-year-old who is a film major so I've got  
2 movies on my mind. Anyway, 120 days, we don't  
3 necessarily stop these calls when they move to  
4 a collection agency, we will continue them for  
5 some time after that to still give someone an  
6 opportunity to bring their account current.  
7 But it does at 120 days, our system does  
8 transfer those accounts that have hit 120 days  
9 delinquent to one of our four collection agencies.

10 **Q. All right. How are the collection**  
11 **agencies compensated?**

12 A. They are on a commission basis.  
13 They, whatever they collect, they get 15 percent,  
14 which the average in the industry is about 18.  
15 So, we are able to pay. But you have to  
16 understand, where we pay 15 percent, they bring  
17 in about \$21 million of bad debt a year. So,  
18 it's a pretty good return on investment.

19 **Q. Now, I'm having a little trouble**  
20 **understanding the material at the page -- at**  
21 **the top of page 26 because I'm not sure that I**  
22 **understand the time period to which you refer**  
23 **when you talk about 15,268 accounts at \$11**  
24 **million.**

25 A. When we -- we have revamped our

1 collection operation over the last year. We  
2 are not completely finished implementing the  
3 entire plan but what we have is implemented  
4 what we call the algorithm. In the past,  
5 collection agencies were basically allowed to  
6 keep a delinquent account until they told us  
7 that they couldn't get anything out of it. And  
8 what we saw through looking at those numbers is  
9 they weren't necessarily going after the longer  
10 term delinquencies, they were going after low  
11 hanging fruit so they could get their 15  
12 percent, and they would hold the account for a  
13 significant amount of time.

14 We put this algorithm in place  
15 basically telling them you have six months and  
16 you have to not only collect a piece of a  
17 delinquency but you have to get them to pay --  
18 keep the current charges going, so then we  
19 continue to make headway, and that algorithm is  
20 in place and if after six months they have  
21 three months of which they did not meet the  
22 algorithm, we pull the account away from them  
23 and we take it to the next step.

24 When we initially put this in place,  
25 we looked at their accounts and found thousands

1 of accounts that they didn't meet the  
2 algorithm. So, we pulled all of those accounts  
3 and we shifted them partially to a second  
4 placement but mostly to the litigation phase of  
5 our process and that's what that represents.

6 Q. All right. Thank you. Now, the last  
7 sentence of that first paragraph you refer to  
8 15,768 accounts valued at \$26 million. Are  
9 these in the first collection agency payment  
10 process or in the second?

11 A. That's in the first.

12 Q. All right. So, you've identified \$37  
13 million, something north of 30,000 accounts  
14 that are in the first phase of this collection  
15 program?

16 A. By first phase --

17 Q. I'm sorry, the first collection  
18 agency phase?

19 A. Yes, yes. We were able to determine  
20 basically what they hadn't been touching for  
21 quite a long time and we yanked all of those  
22 and put them into our legal status.

23 Q. All right. Then please describe for  
24 me the activities of the second placement  
25 collection agency?

1           A.    The second placement agency is the  
2    same as the first.  The only difference is  
3    customers hear a different name and they see a  
4    different letterhead and it's been proven that  
5    that produces a little bit more result.  People  
6    tend to think it's been ratcheted up and in  
7    reality it's the same thing as the first  
8    collection agency was doing.

9           **Q.    All right.  And then describe for me**  
10   **the activity of the law firms.**

11          A.    The point that an account has gotten  
12    either too old or the collection agency hasn't  
13    made any progress, we place a lien on that  
14    property, we prepare packets of information  
15    that are required to take it to a law firm, and  
16    then they can start legal proceedings to try to  
17    collect the money.  We have three law firms  
18    that are now helping us with that.

19                So, what this has resulted in is a  
20    much faster collection path than we had in the  
21    past but that's what the law firm portion  
22    applies to.

23          **Q.    All right.  Now, how are the law**  
24    **firms compensated?**

25          A.    They are on a percentage basis also.

1 Q. Do you happen to know what the  
2 percentage is?

3 A. I'm not -- I don't think they get the  
4 same as the collection agencies. I think it's  
5 slightly less but I would have to check. I  
6 don't have it in front of me. It's a  
7 percentage commission, though.

8 Q. Would you be in a position to provide  
9 that information?

10 A. Yes.

11 Q. Thank you. Ms. Zimmerman, with  
12 respect to the low income program, you indicate  
13 that the program will discount the bill for an  
14 individual who qualifies for low income by 50  
15 percent upon their payment of the other 50  
16 percent, and that there are approximately 1,900  
17 customers in the program. What percentage, if  
18 you know, of the low income program qualifiers  
19 are also delinquent?

20 A. That's approximately 20 percent.

21 Q. Now, in response to our request, you  
22 prepared and filed Exhibit MSD 11A33?

23 A. Yes.

24 Q. Age receivables. If I read this  
25 correctly, from 2006, the number of accounts

1 has grown from 71,791 to 177,293. Now, these  
2 accounts vary in delinquency from 15 years to  
3 three months, and the dollars have grown from  
4 \$42,444,213 to \$75,223,520. Has any of this  
5 been written off?

6 A. Anything greater than one year is  
7 written off.

8 Q. All right. So that reading down  
9 from -- let's take --

10 A. If I could clarify. It's written off  
11 for financial statement purposes.

12 Q. I understand.

13 A. But it's still money that we go after  
14 to collect.

15 MR. ARNOLD: All right. So that --  
16 you just answered my next two questions. I  
17 think I'm going to let you go. Wait a minute,  
18 with your permission, Mr. Stannard.

19 COMMISSIONER TOENJES: Yes.

20

21 EXAMINATION

22 Questions by: BILL STANNARD

23 Q. Thank you. I just had a few more  
24 questions on the delinquent account and bad  
25 debt area just to make sure I understand the

1 information that has been provided. I'm  
2 going -- I'll go back to Exhibit MSD B, the  
3 responses to the first discovery request,  
4 question 51 on page 25, just to make sure I'm  
5 understanding what is being presented in the  
6 response.

7 For those historic years 2006 through  
8 2010 and the partial year 2011, there was a  
9 table that presents three columns. One, the  
10 actual bad debt which was determined as being  
11 at some level of delinquency during the year to  
12 determine those would be bad debts, and then  
13 the actual write-off balance, and then a column  
14 called year end bad debt balance. So that the  
15 bad debt balance is not what is in your reserve  
16 or bad debts on your balance sheet but is the  
17 total of all of the accounts whether or not  
18 they've been written off that you determined to  
19 be doubtful at this point. Is my understanding  
20 correct?

21 A. Yes. That year end debt balance is  
22 pretty much the dollar amount that is still out  
23 there to try to collect.

24 Q. In total?

25 A. In total, yes.

1 Q. So that when I -- I don't have -- I  
 2 don't believe the 2010 financial statements are  
 3 an exhibit but I'm looking at your June 30,  
 4 2010, balance sheet and there is a receivable  
 5 less allowances in 2010 of \$4,055,258 and  
 6 that's what's on the balance sheet as an  
 7 allowance for doubtful accounts.

8 A. The receivable? Are you talking  
 9 about the receivable?

10 Q. The financial statements says the  
 11 sewer service charges receivable less allowance  
 12 of \$4,055,258. So, that was the, again, for  
 13 the financial statement purposes, the allowance  
 14 for doubtful accounts at that point. That's  
 15 not in -- because then on the other -- back on  
 16 question 51, for 2010, we had a bad debt  
 17 balance of \$51,858,057. So, the difference is  
 18 that of that \$58 million, all but a lot of that  
 19 has been written off already for financial  
 20 statement purposes, not for collection purposes?

21 A. Correct. Yes.

22 MR. STANNARD: That's all I have.

23 COMMISSIONER TOENJES: Thank you.

24 Any further questions, Mr. Arnold?

25 MR. ARNOLD: No, sir.

1                   COMMISSIONER TOENJES: Any Rate  
2 Commission members have any questions for this  
3 witness? Yes, Mr. Koenen.

4

5                   EXAMINATION

6 Questions by: GLENN KOENEN

7           **Q. Very quickly. It appears the number**  
8 **of past due accounts is still rising, is that**  
9 **true?**

10           A. Yes, but the collection plan is just  
11 now starting to bear fruit so you're not seeing  
12 it in the numbers there, but in fact in the  
13 last several months, we've seen a substantial  
14 increase in the collection of those bad debts.  
15 We are anticipating over the next year or two  
16 as that collection plan really starts to make  
17 an impact, that we will start to see that  
18 number either stabilize or even get better.  
19 So, we are hoping this plan will help deal with  
20 that. We still won't have any control over the  
21 economy, so I don't know what real impact that  
22 will continue to have.

23           **Q. You mentioned that part of the reason**  
24 **for the increase in the bad debt seemed to be**  
25 **the last rate increase. Would you expect a new**

1 **rate increase to budge that number upward again?**

2 A. Yes. There is something that happens  
3 obviously if the rate goes up, more and more  
4 people have a hard time paying that,  
5 particularly compounded by the economy. People  
6 resist paying that. There is a resistance.  
7 So, we would expect to see those delinquencies  
8 be impacted by that. That has been factored in  
9 somewhat to the rate report but not a lot. The  
10 last go around with the Rate Commission, it was  
11 decided that resistance should not be factored  
12 into the rate.

13 COMMISSIONER TOENJES: Yes, all the  
14 way at the end. Ralph and then Mr. Tomazi.

15

16 EXAMINATION

17 Questions by: RALPH WAFER

18 **Q. What percentage of delinquencies are**  
19 **residential accounts versus commercial accounts?**

20 A. We have about 420,000 total accounts,  
21 30,000 of that are commercial. I don't have  
22 the percentage exactly but just by the nature  
23 of how many more residential and multi-family  
24 accounts that we have, the largest portion of  
25 those delinquencies fall within residential and

1 multi-family.

2 Q. In managing the data when a house or  
 3 building becomes unoccupied, how long does it  
 4 take for MSD to learn that and realize its  
 5 effect -- in other words, it's no longer  
 6 producing wastewater?

7 A. We generate our bills based on water  
 8 usage. That comes from primarily American  
 9 Water. Most of our customers, a lot of our  
 10 customers are in the county. We get water  
 11 usage from them, we get water usage data from  
 12 the city, and from Kirkwood. Those are  
 13 automatic fees into our system. As long as we  
 14 are getting water usage readings, we continue  
 15 to bill.

16 If it's an empty building and the  
 17 owner has gone through the process of having  
 18 the water officially shut off, that will come  
 19 through in those readings and then we stop  
 20 billing that account.

21 Q. So, you feel that's as effective a  
 22 method you have of knowing that the debts that  
 23 are out there, they are not false debts, they  
 24 are not -- there is not money there that you're  
 25 trying to collect because -- I'm thinking in

1 the city how many are on -- are not metered  
2 that you don't have any way of knowing unless  
3 the water division communicates with you  
4 clearly or you communicate with them.

5 A. There are -- and we do. They are  
6 part of that data feed but let me just make the  
7 distinction. In the county -- and you'll see  
8 that in our rate structure. In the county,  
9 most people have meters, overwhelming people  
10 have meters, so we get a meter reading. In the  
11 city, that's not the case. The majority do not  
12 have meters. So, there is an equivalent  
13 component charged to the city and it's based on  
14 what we call attributes, number of rooms,  
15 number of bathrooms, showers, et cetera. The  
16 city does give us that information, okay, and  
17 then we apply those same calculations to that.

18 When a house is vacant, that's one of  
19 the detriments to the people in the city. They  
20 have less ability to control their usage, if  
21 you will, because it's not based on meters.  
22 You can't exactly shut off a room. So, that is  
23 one of the disadvantages to city residents not  
24 having meters, but we do get data from the city  
25 that we use to chart their bills.

1           Q.    Do you get data from -- when  
2 buildings are renovated and swimming pools are  
3 constructed that would obviously affect your  
4 rating, it would affect the water division  
5 rating too, do you get that data on a  
6 continuous basis? Are you confident in what  
7 you get?

8           A.    Residential customers, we go through  
9 what is called an annual rate or usage  
10 adjustment. We only take readings during what  
11 we call the winter period so it doesn't take  
12 into account the building of swimming pools,  
13 washing people's cars, running a sprinkler. We  
14 only grab the usage period that we think is a  
15 pure measurement of what actually goes into the  
16 system and then we take that usage once a year,  
17 we then calculate residential usage, and it  
18 stays constant then all year until we go  
19 through it again in July. So, we are trying to  
20 isolate what we call pure -- goes into the  
21 system pure.

22           Q.    That makes sense and I knew that. I  
23 shouldn't have added swimming pool to my  
24 question. That was more of a City Hall question.

25           A.    Maybe I misunderstood.

1 Q. No, you didn't. It was right there.  
2 But in a flat rate account when renovation is  
3 done and bathrooms are added, which is frequent,  
4 are you confident in the information you get  
5 that that is reflected in your knowledge? I  
6 know you get information from the city water on  
7 a metered account. Other than that, you're  
8 just dependent upon what city water tells you  
9 is at that house or that building?

10 A. That's correct.

11 Q. And there is no auditing process or  
12 any investigation you make to ensure that --

13 A. No. No, there isn't.

14 Q. Well --

15 A. We haven't done any audits.

16 MR. WAFER: Done.

17 COMMISSIONER TOENJES: Thank you.

18 Mr. Tomazi.

19

20 EXAMINATION

21 Questions by: GEORGE TOMAZI

22 Q. One quick question, Ms. Zimmerman.  
23 The number of people that qualify for the low  
24 income assistance program, is that set by a  
25 fixed budget or a certain percentage or all of

1     **the above?**

2           A.     It's based on a combination of  
3     household income, assets, those are the two  
4     primary components, but in assets, the  
5     residence is not included, so if you have a  
6     home, that's not included.

7           Last time we came to the Rate  
8     Commission, that program was only offered to  
9     residential customers. We've now expanded that  
10    so it includes multi-family. We've known for  
11    some time that tenants are in need more times  
12    than not of this type of assistance. So, we  
13    have revamped that program so it's on a voucher  
14    basis. So multi-family or tenants when they  
15    meet the requirements get these vouchers and  
16    they are able to pay -- they get the 50 percent  
17    discount and as long as they are able to show a  
18    voucher which is barcoded, they get advantage  
19    of the 50 percent, and that was our way to get  
20    the relief to the tenant rather than to the  
21    property owner because then we couldn't  
22    guarantee that the tenants themselves were  
23    getting 50 percent, the property owner was  
24    taking it all. So, we've expanded that help  
25    but the requirements are basically the same.

1           **Q. In the proposed rate increase,**  
2           **normally what percentage or what dollar amount**  
3           **has been factored into the next four years?**

4           A. I would have to check on the rate. I  
5           don't have it off the top of my head but right  
6           now we are at 1,900 low income customers. We  
7           don't anticipate that going through the roof.  
8           We expect some steady increases because of the  
9           voucher program, but that's only been in place  
10          for a short time.

11                   COMMISSIONER TOENJES: Any other  
12          questions, Mr. Tomazi?

13          A. That question, Mr. Tomazi, about the  
14          dollar amount, Mr. Barber will be able to  
15          address that.

16                   COMMISSIONER TOENJES: Mr. Goss.

17

18                                   EXAMINATION

19          Questions by: BRAD GOSS

20           **Q. How does the delinquency rate in the**  
21           **District compare to those of other districts?**

22          A. I haven't really done that much  
23          comparison to other districts.

24           **Q. Did I understand you correctly that**  
25           **delinquency rate isn't being factored into the**

1 **current rate proposal?**

2 A. It's being factored into the extent  
3 that we are seeing usage go down and number of  
4 accounts decrease but there hasn't been a  
5 resistance factor greatly factored into that.

6 **Q. No kind of bad debt set aside or**  
7 **anything like that?**

8 A. No. There is reserve set aside, so  
9 bad debt is taken into consideration. The  
10 resistance factor, what I meant is the  
11 incremental change as rates go up.

12 **Q. So, the fact that you, if I heard**  
13 **your numbers right, you had like a 200 percent**  
14 **increase in the amount of delinquent accounts**  
15 **over the last rate period, is that right? Go**  
16 **from \$3 million to \$10 million?**

17 A. It's kind of a little bit of an  
18 anomaly. When the stormwater rate was found to  
19 be unconstitutional, we had to stop billing  
20 those stormwater accounts, right? So, we had  
21 to put those into our bad debt and that was  
22 40,000 accounts that paid stormwater only. So,  
23 you're seeing kind of an artificial increase  
24 built in there. So, we could include those in  
25 our calculations.

1 Q. Have you supplied the unadulterated  
2 unofficial amount to anyone so we could true  
3 the numbers up?

4 A. No, we don't have it but we can get  
5 that for you.

6 Q. And could you explain to me what the  
7 priority of MSD's lien is when the non payment  
8 occurs?

9 A. All I can say is I know it's near the  
10 top. It's either the second or the third from  
11 taxes or whatever, but I don't know off the top  
12 of my head. I just know it's a fairly strong  
13 lien.

14 Q. That was my understanding as well.  
15 It has priority over the loan of a first deed  
16 of trust, for example, is that your understanding?

17 A. Yes.

18 Q. The collection policy seems to be one  
19 that has a fairly lengthy period of time in  
20 this collection effort. Is there a reason for  
21 that?

22 A. To the point we get to a lien or --

23 Q. To the point you get to a lien. If I  
24 was hearing you right.

25 A. We could place a lien on an account

1 that was delinquent immediately. It's purely  
2 an aspect of manpower.

3 Q. Does that notice go to the lenders,  
4 go to the holders of the deed of trust on those  
5 properties?

6 A. I don't know the details of actually  
7 filing each lien. So, I'm not sure.

8 Q. Is there any settlement policy the  
9 District has with respect to settling these  
10 disputes, any guidelines?

11 A. There aren't necessarily -- the only  
12 guideline is really we do not settle on actual  
13 sewer charges. When an account is delinquent  
14 and it gets to a point where someone is either  
15 wanting to make a settlement, we will make  
16 settlements more times than not, writing off  
17 late charges, but we never go beyond settling  
18 and giving up any actual sewer charges.

19 Now, we do routinely make payment  
20 plans. I wouldn't consider those settlements  
21 but people will call and we will work out a  
22 payment plan between two and three years  
23 interest free and they are able to pay down  
24 their account.

25 Q. In the city, the account continues to

1 remain open unless somebody is to shut off the  
2 water, do I hear you correctly? You're not  
3 actually meter reading the majority of the  
4 homes in the city?

5 A. Right, we are not metering them.

6 Q. If someone leaves a building and the  
7 building becomes vacant but they don't go to  
8 the trouble of notifying the water department,  
9 they just continue to generate bills, MSD will  
10 continue to show that as a live account, is  
11 that right?

12 A. Yes, until we have indication from  
13 the water usage providers that either there  
14 isn't any water usage or for some reason there  
15 isn't a basis to bill, we continue to bill. We  
16 will bill at a minimum amount which is like 3  
17 CCF, 2 CCF, but we continue to bill. We have  
18 to have basic -- we have to have some type of  
19 information to justify to stop billing.

20 MR. GOSS: Thank you.

21 COMMISSIONER TOENJES: Mr. Schneider.

22

23 EXAMINATION

24 Questions by: ERIC SCHNEIDER

25 Q. In your testimony, Ms. Zimmerman, on

1 page 5 here, you talk about the question was  
 2 what was the percentage of total operating  
 3 budget the District actually spends. You said  
 4 the three year average is a favorable variance  
 5 of less than 2 percent. Do I understand that  
 6 correctly it means that for three years you  
 7 average being under budget by 2 percent?

8 A. I've been here ten years and we've  
 9 always been under budget. Last couple of years  
 10 we've been under 2 percent, and that's not  
 11 indicative of us spending every little penny in  
 12 the budget, we've just gotten better and better  
 13 at budgeting. They are very tight budgets now  
 14 and so that is correct. The last couple of  
 15 years it's been 2 percent.

16 Q. Where does the variance go, the  
 17 positive variance go? Does it go to the  
 18 capital plan or does it go to the operating  
 19 reserve?

20 A. That is our first choice is to shift  
 21 that variance, positive variance, to the CIRP  
 22 to escalate houses, to do more projects as  
 23 Brian indicated. There are projects in the  
 24 queue where we can put more money there to  
 25 bring those projects on-line.

1 Q. You annually switch it over to the  
2 CIRP or do you do it in larger increments like  
3 over two or three years?

4 A. It's usually annually at the end of  
5 the year.

6 Q. So, roughly how much money is that in  
7 that 2 percent? What dollar amount is that  
8 roughly?

9 A. It's about \$2 million or so.

10 Q. Then on the same page, actually, you  
11 talk about you said that the inflation  
12 allowance used in the rate study are  
13 reasonable, you answered yes to that question.  
14 Can you give some of the inflation allowances,  
15 percentages that you used in the major  
16 categories, what allowances you used to create  
17 this budget?

18 A. Mr. Barber can give you the actual  
19 details but it's around 3 percent on an -- just  
20 a basic inflationary kind of factor, if I  
21 remember. Keith will be able to verify that.  
22 It's double digits on benefits and pension and  
23 things like that.

24 MR. SCHNEIDER: Okay.

25 COMMISSIONER TOENJES: Any other

1 questions? I have one question or a couple of  
2 questions.

3

4

EXAMINATION

5

Questions by: LEONARD TOENJES

6

Q. I'll shift away from the debt

7

discussion here. Just to sort of set the

8

stage, I guess I live in a construction world

9

where we've had -- we negotiate a labor

10

agreement, we negotiate overall rates for

11

trade, per trade, so much per hour and out of

12

that negotiated rate comes pension, wages, and

13

medical, all out of there. So, when I looked

14

at the, you know, I know some of the trades

15

have had freezes, some have had rollbacks, and

16

I look at page 2.3 when I see 3 percent per

17

year for wages, I see 10 percent for group

18

insurance from 2011 to 2015, and 6 percent in

19

2016, then I see pension increases of 8.4, 9.3,

20

10.2, 11.4 and 5 --

21

A. Which page?

22

Q. Page 2.3.

23

A. Of the rate proposal.

24

Q. Of the rate proposal, yes.

25

A. I see where you are.

1           Q.    I guess when I start thinking about  
2    some math here and start talking about the  
3    tight budgeting and economy and resistance  
4    factor, I've had several people raise this  
5    issue to me that if you add up the salary plus  
6    the insurance, plus the pension, what is  
7    that -- my question is what does that total up  
8    in an annual increase in personnel costs  
9    because it's not 3 percent, it's probably more  
10   like 4 or 5, 6 percent annually by the time you  
11   go all in. In the world I'm living in, we go  
12   all in. Here is what my total package went up  
13   this year.

14                Now, what is the total package? I  
15   guess I probably don't have it which I  
16   understand but I'd like to have some  
17   information of what the total package is when  
18   you're looking at all in wages, medical,  
19   pension, what does that really mean for what it  
20   costs the District per employee to employ that  
21   person? It's not 3 percent.

22           A.    No. This might give you a little bit  
23   of a benchmark but I can get those numbers for  
24   you and calculate in that detail. But someone  
25   is hired in at a salary, obviously, and then

1 when we want to do all in, we usually add 41  
2 percent. That then puts that all in, the  
3 benefits, the pension, FICA, all the other  
4 costs associated with the salary.

5 Q. I guess what -- taxes are taxes but --

6 A. Right.

7 Q. We live in a world where people  
8 haven't had a cost of living adjustment in two  
9 years and I guess what I'd like to see is  
10 what -- all I'm looking at is wages, pension,  
11 and medical.

12 A. In terms of the percentage increase?

13 Q. In terms of the percentage increase  
14 per year over the length of this rate proposal.

15 A. I see what you're looking for.

16 Q. Looking forward to what you have  
17 here, if you could combine the 3 percent, the  
18 10 percent, and the 8.4 percent, what does that  
19 really mean in terms of --

20 A. In dollars?

21 Q. Yeah. In terms of overall increase.  
22 That would help considerably, I think.

23 A. I can get you that.

24 COMMISSIONER KOENEN: I have a  
25 follow-up question.

1  
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EXAMINATION

Questions by: GLENN KOENEN

**Q. Is your pension plan defined benefit or defined contribution?**

A. We just switched to defined contribution is what we just switched to.

**Q. Are the payments to the fund automatic or are they calculated each year to get to your target level based on investment income and things like that?**

A. Each year based on an actuary report.

COMMISSIONER TOENJES: I'm assuming that these are determinations that are made by the Trustees, not by the State?

A. Which determinations?

COMMISSIONER TOENJES: The wages, salaries, overtime, group insurance, and pension, those are numbers that are determined by the Trustees?

A. Well, we factor those into our budget but the Board approves the budget and they are encompassed in there.

COMMISSIONER TOENJES: Okay.

1 EXAMINATION

2 Questions by: JOHN L. STEIN

3 Q. What percentage of your employees are  
4 bargaining unit employees for whom wages and  
5 benefits are negotiated?

6 A. I would say two-thirds or so. 60  
7 percent.

8 COMMISSIONER TOENJES: I just have  
9 some sensitivity to that issue. Any other  
10 questions by any of the Rate Commissioners?  
11 Ms. Myers.

12 MS. MYERS: I do have one.

13

14 EXAMINATION

15 Questions by: SUSAN MYERS

16 Q. Jan, in reference to the bad debt  
17 collection, does MSD have shutoff capability?

18 A. Technically we can shut off a sewer  
19 is my understanding, I'm not an engineer, but  
20 obviously we don't do that. It's not a pretty  
21 picture if we were to do that. So, we don't  
22 really have a shutoff. We do selectively on  
23 commercial accounts, we don't do that that  
24 often. It's one of the detriments to us  
25 collecting bad debt. We are not like the water

1 company and we are not like the cable company.  
2 If you don't pay, they shut off the water, they  
3 shut off the cable, whatever, and that tends to  
4 get people to pay pretty quickly. We don't  
5 shut off their ability to use their sewer. So,  
6 we don't have what I call the big hammer to get  
7 people to pay.

8 MS. MYERS: I have nothing further.

9

10 EXAMINATION

11 Questions by: GEORGE LIYEOS

12 Q. As it relates to delinquency for  
13 other cities who have gone through this process  
14 in terms of a rate increase, what kind of  
15 increase are we looking at in terms of  
16 delinquency rates?

17 A. Compared to other utilities?

18 Q. No. Compared to other sewer  
19 districts in other parts of the country who  
20 have gone through this.

21 A. I haven't done that kind of comparison,  
22 comparing us to other sewer entities.

23 Q. Would somebody else know?

24 A. We -- I can get that information. I  
25 just don't -- we haven't done it to this point.

1           Q.    Okay.  Very good.  I'd like to see  
2   that.  I don't know if the rest of the Rate  
3   Commission would be interested in that number  
4   but I think it's important to note going  
5   forward.  I let the Chair decide on that.

6                    COMMISSIONER TOENJES:  Good point.  
7   Anything else as far as the witness?  All  
8   right.  Let us thank you, Ms. Zimmerman, for  
9   your testimony and let us take a break until  
10  2:45.

11                   (Break.)

12                   COMMISSIONER TOENJES:  It's 2:45.  
13  Let us reconvene the Rate Commission of the  
14  Metropolitan Sewer District and call our next  
15  witness in order of testimony which is  
16  Mr. Keith Barber.  Mr. Barber, is the testimony  
17  you're about to give the truth, the whole  
18  truth, and nothing but the truth?

19                   MR. BARBER:  Yes, it is.

20                   COMMISSIONER TOENJES:  Thank you.  
21  Does any member of the Rate Commission have a  
22  question for Mr. Barber?  Hearing none at this  
23  time, Mr. Kindschuh, do you have a question of  
24  Mr. Barber?

25                   MR. KINDSCHUH:  Yes, Mr. Chairman.

1 COMMISSIONER TOENJES: Please  
2 proceed.

3 MR. KINDSCHUH: Thank you. The MIEC  
4 would like to introduce at this time Michael  
5 Gorman of Brubaker & Associates. Mr. Gorman is  
6 our consultant in this matter. And with your  
7 permission, Mr. Chair, I would like to ask  
8 Mr. Gorman to ask questions on behalf of the  
9 MIEC.

10 COMMISSIONER TOENJES: Please  
11 proceed, Mr. Gorman.

12 MR. KINDSCHUH: Thank you.

13  
14 KEITH BARBER,  
15 of lawful age, being produced, sworn and  
16 examined, and says:

17  
18 EXAMINATION

19 Questions By: MICHAEL GORMAN

20 Q. Good afternoon, Mr. Barber.

21 A. Good afternoon.

22 Q. I would like to refer you to your  
23 rate study page 3.18, Table 3-11. Am I  
24 accurate, Mr. Barber, that that table represent  
25 the summary of your projected increase in

1 revenues and cost of service --

2 A. Yes.

3 Q. -- during this time period? So, I'd  
4 like to walk through this a little bit to get a  
5 better understanding of all the elements that  
6 have gone into determining the amount of the  
7 needed rate increase during that time period.  
8 Is line 1 on that, does that represent the  
9 amount of revenues the District would produce  
10 under current rates?

11 A. Yes.

12 Q. Okay. And now under that, you're  
13 showing a decrease in revenues under current  
14 rate, is that correct?

15 A. Yes.

16 Q. And that is produced because you're  
17 projecting client and volumetric sales for  
18 metered building units?

19 A. I didn't hear the last name.

20 Q. For metered building units.

21 A. It's declining in part due to a  
22 continuation of customer growth decline, and in  
23 part due to decline in billable sales, yes.

24 Q. Okay. And this is produced through  
25 your electronic version of this cost-to-service

1 model, is that correct?

2 A. Yes, it is.

3 Q. In that electronic version of  
4 cost-to-service model, would there be some  
5 historical data showing the annual levels of  
6 revenue produced under existing rates?

7 A. Yes, there is.

8 Q. There is. And how does calendar year  
9 2011 sales compare to the sales in the last  
10 several years in terms of billing units and  
11 rate revenue?

12 A. Those summaries are presented in the  
13 front end of the report. Table 3-1 on page 3.2  
14 shows the projection of customer accounts as  
15 well as historical information that you  
16 requested. Table 3-2 shows the historical  
17 information for wastewater volume. Those  
18 projected accounts and volumes are applied to  
19 Table 3-3 for the current year which is the  
20 last column of Table 3-3. And that produces  
21 the number on Table 3-5 on page 3.9 and the  
22 bottom total there on line 12 will match up  
23 with line 1 of Table 3-11.

24 Q. Thank you. Then on page 3.2 under  
25 Table 3-1, that shows the decline in volumetric

1     **billing units for all the rate classes in the**  
2     **District as a whole, is that correct?**

3           A.    Table 3-2?

4           Q.    **Yes.**

5           A.    Yes.

6           Q.    **So, the projects for calendar year**  
7     **2011 represent a decrease in volumetric billing**  
8     **units relative to the period 2008 through 2010,**  
9     **is that correct?**

10          A.    Yes. This is a continuation of the  
11    decline in billable units as you notice at the  
12    bottom on line 12, that the decline in 2010 was  
13    4 percent and before that in 2009 it was 5.3  
14    percent.

15          Q.    **If you go back from '06 to '08, there**  
16     **is a slight increase to a level, volumetric**  
17     **sales level for the District during that time**  
18     **period, is that correct?**

19          A.    Yes.

20          Q.    **And then around 2009 through 2011,**  
21     **there is -- that's the period of declining sales?**

22          A.    We've had a constant decline since  
23    2007.

24          Q.    **Now, within that time, you agree that**  
25     **the Metropolitan Sewer District territory and**

1 the U.S. economy as a whole has experienced one  
2 of the worst recessions we've had in 100 years?

3 A. Part of the decline is likely due to  
4 the economy.

5 Q. Okay. And your projections would  
6 suggest that the sales levels that were lost  
7 due to economic activity during that time  
8 period will not come back in the forecasted  
9 period?

10 A. We are forecasting that the decline  
11 will taper off and be much lower than it has  
12 been in the past and then level off by 2016.

13 Q. Is that based on your projection of  
14 economic activity in the MSD service territory?

15 A. No. There has not been a projection  
16 of the economic activity as part of this study.

17 Q. Okay. Did you review any state,  
18 local, or federal government projection of  
19 economic activity in the counties?

20 A. No.

21 Q. So, how exactly did you derive the --  
22 your projection used in the forecast?

23 A. Projection was based on the analysis  
24 of historical accounts and how those would  
25 likely be projected out in the future, and we

1 also looked at the relationship of historic  
2 volume to accounts to see how the billed volume  
3 per account was going and that was showing a  
4 slight decline. And so we estimated what we  
5 expected to be the billed volume in the future  
6 and apply that to the projected accounts and  
7 that is how we got to the billed volume  
8 projection.

9 **Q. Okay. But if any of that lost volume**  
10 **was a result of lost sales due to depressed**  
11 **economic conditions, that was not captured in**  
12 **your study?**

13 A. No, like I said before, there was no  
14 attempt to do any kind of economic study.

15 **Q. Referring back to page 3.18 and Table**  
16 **3-11, again, back to line 1 of that, the effect**  
17 **of the decline in sales resulted in loss of**  
18 **approximately three and a half million dollars**  
19 **on an annual basis between 2016 and 2011, is**  
20 **that pretty accurate?**

21 A. Yes. The revenue introduced rates  
22 shown in line 1 of Table 3-11 is projected to  
23 decline by \$3 million in that six year period,  
24 which out of \$210 million I suspect represents  
25 maybe less than a 2 percent decrease.

1 Q. But it is a decrease?

2 A. Yes, it is a decrease.

3 Q. And if the sales were to stay flat  
4 like they were during the '06 to '08 period,  
5 then revenue production during that period of  
6 current rates would be higher than reflected in  
7 your study?

8 A. I'm sorry, can you repeat the question?

9 Q. If your sales level stayed relatively  
10 flat between 2010 and 2016, similar to the  
11 pattern sales from 2006 through 2008, then the  
12 amount of revenue produced at current rates as  
13 shown on line 1 would be higher?

14 A. Yes.

15 Q. Thank you. I'd like to briefly go  
16 through the other revenue items and ask whether  
17 or not they are also impacted by the projection  
18 for declining sales levels. On line 9, you  
19 have other operating revenue. Is that impacted  
20 by the decline in projected volumetric sales  
21 units?

22 A. No.

23 Q. Line 10, connection fee?

24 A. No.

25 Q. Would that be impacted if you were

1 projecting lower numbers of new customers on  
2 the system?

3 A. If they were new customers, yes, it  
4 would be impacted.

5 Q. Okay. So it might not be directly  
6 related to volume but part of the same  
7 assumption, projection of decline in the number  
8 of customers on the system?

9 A. Yes.

10 Q. Skip over the interest income, those  
11 are not affected by sales levels, is that  
12 correct?

13 A. That's correct.

14 Q. Now, down to lines 16 and 17, that  
15 reflects the increase in operation of  
16 maintenance expense during forecast period,  
17 correct?

18 A. Yes.

19 Q. Line 17, there are new O and M  
20 activities projected starting in calendar year  
21 2013, footnote B indicates that they are  
22 anticipated regulatory projects, is that  
23 correct?

24 A. That is correct. They are the new  
25 regulatory projects that will be built during

1 the study period.

2 Q. Okay. So, if you look at the total  
3 increase in O and M included in the study per  
4 calendar year 2016, it would be the sum of  
5 \$162.1 million and \$7.9 million of the O and M  
6 related to the new projects?

7 A. Yes.

8 Q. Roughly \$171 million. So, over the  
9 time period, it would be roughly a \$36 million  
10 increase in O and M?

11 A. Yes.

12 Q. Relative to 2011, O and M expense  
13 level of \$134.4 million. So, it's a very  
14 significant increase in O and M, is that correct?

15 A. Yes, it is an increase in O and M.

16 Q. Okay. What is the historical  
17 operation and maintenance expense level for the  
18 District?

19 A. That is shown on Table 3-7 on page  
20 3.12 -- I'm sorry, you have to go back to  
21 Section 2. In Section 2 we have it in total  
22 historically from 2006 it went from \$116  
23 million in 2010 to \$149 million, an increase of  
24 about \$33 million in five years.

25 Q. I'm sorry, Table 2-1, are you

1 referring to line 21?

2 A. Yes, line 21.

3 Q. Well, how do we get a direct  
4 comparison of the 2011 O and M shown on Table  
5 3-11 that shows \$134.4 million, roughly on line  
6 16? Where does that number appear in Table  
7 2-1?

8 A. Table 2-1 is combined utility and  
9 Table 3-11 is wastewater only.

10 Q. Have you separated Table 2-1 for  
11 wastewater and sewer?

12 A. Not on the historic basis.

13 Q. Okay. Would that information be  
14 included in the electronic version of your  
15 cost-to-service model?

16 A. No.

17 Q. Is that information available?

18 A. Only reason we have separated in 2011  
19 and forward is for rate design purposes. The  
20 District budgets by department, and within  
21 those departments, they either provide direct  
22 support for wastewater and stormwater  
23 operations or indirect support, and the only  
24 way at this current time to determine how much  
25 is wastewater and how much is stormwater is to

1 apply the factors shown in Section 2. Now, the  
 2 District has recently gone to segmented  
 3 financial statements but those are on a  
 4 different basis than the budget.

5 Q. Do you have a budget through 2016  
 6 that would correspond with the information you  
 7 have on Table 3-11 for total system, or is that  
 8 what is shown on Table 2-1?

9 A. The District doesn't have a 2016  
 10 budget at this time.

11 Q. On Table 2-1 you do have projected  
 12 out to 2016. How much of that includes  
 13 approved budgets for the District, or proposed  
 14 budget?

15 A. Well, at the time of this report, the  
 16 2011 was the budget values.

17 Q. Okay. So, past 2011 it's a  
 18 projection and not yet an official bucket?

19 A. Yes.

20 Q. Okay. I think you've -- Ms. Zimmerman  
 21 has already commented on some of the escalation  
 22 projections including the O and M numbers and I  
 23 believe she was going to provide me all the  
 24 escalation and labor costs. Some of the larger  
 25 escalation items identified in your report

1 relate to healthcare benefits and pension  
2 benefits. Now, did I understand correctly or  
3 do you know that MSD has recently changed its  
4 pension plan from defined benefit to defined  
5 contribution?

6 A. That was testified to earlier, yes,  
7 I'm aware of that.

8 Q. Are you familiar with that?

9 A. No, I'm not familiar with the details  
10 beyond what I heard today.

11 Q. So, the pension numbers included in  
12 your study were provided to you from staff?

13 A. The pension numbers were provided  
14 from staff, that is correct.

15 Q. Did you do some work with staff or  
16 participate with staff in doing any stress test  
17 like evaluations of the projections to make  
18 assessments whether or not they can be reduced  
19 or managed in some other way?

20 A. No, that was not part of my  
21 responsibility during this study.

22 Q. Okay. Do you know -- did anybody  
23 else perform that study that you're aware of?

24 A. That would be a better question for  
25 the District staff to answer.

1           **Q. Thank you. Did you perform a rate**  
2           **comparability study for the District staff as**  
3           **included in your cost to service file?**

4           A. We compared the District's rates with  
5           the survey that Black and Veatch does  
6           periodically on the largest 50 states.

7           **Q. Okay. Now, do those rate comparisons**  
8           **also consider the projected increase in**  
9           **wastewater rates for other sewer districts?**

10          A. Yes, they include the largest 50  
11          sewer districts by population.

12          **Q. Would those rate projections, then,**  
13          **include details underlying those projected**  
14          **increase or change in rates for those**  
15          **districts?**

16          A. Well, page 5.6 of our report does  
17          show a NACWA survey. On that graph is a red  
18          line, the blue bars are the projected rates for  
19          the District, and as you can see, what NACWA is  
20          projecting is pretty close to what the District  
21          is projecting.

22          **Q. But other than the actual change**  
23          **in -- these are residential bills, correct?**

24          A. Residential bill with 10-100 cubic  
25          feet per month.

1           Q.    If you look at the website identified  
2    on this page, would I see some details backing  
3    up why they are projecting these rates to  
4    increase at the level they are?

5           A.    You're referring to the NOCWA survey?

6           Q.    Whatever survey you've identified on  
7    this page.

8           A.    You would see a number of tables with  
9    different classes and how the water and  
10   wastewater rates for those various cities  
11   compare with each other by different categories  
12   like small residential, medium residential,  
13   large residential, commercial, and industrial.

14          Q.    And do you know what the source  
15   documents are for those projections in that  
16   report?

17          A.    Those were internal calculations  
18   developed by Black and Veatch based on a survey  
19   of rates from the various cities contacted.

20          Q.    But it's projected rates.  What --

21          A.    Those are historic rates.

22          Q.    All right.  For the projection, what  
23   information was provided to Black and Veatch to  
24   support the forecast?

25          A.    You're talking about the NACWA

1 projection?

2 **Q. Whatever information was used to**  
 3 **project what wastewater rates would be at other**  
 4 **wastewater systems.**

5 A. NOCWA surveys their member agencies  
 6 and then they provide that projection themselves.  
 7 I'm not aware of how they go about doing it.

8 **Q. They don't provide any detail**  
 9 **underlying that projection?**

10 A. No, no, but you can get this  
 11 information from the NACWA site and it will  
 12 show you -- it's called the Service Charge  
 13 Index and they'll show the projection but I  
 14 don't recall it explaining how it projects.

15 **Q. Okay. For example, they wouldn't**  
 16 **provide operating statements out through a**  
 17 **forecast period that shows suspected change in**  
 18 **revenues and operating costs, debt-to-service**  
 19 **costs, and capital improvements?**

20 A. No, I don't believe so. They do  
 21 provide details financial information. They  
 22 have a survey questionnaire helping filled out  
 23 by their members to provide detailed  
 24 information early next year, and they do have a  
 25 historic one out now that was based on 2008

1 data.

2 Q. Okay. So, that might be one source  
3 of getting a sense of just how other wastewater  
4 systems are attempting to manage these cost  
5 escalators that you've included in your cost  
6 per service projection.

7 A. The information they collect is very  
8 detailed and very informative. It's well worth  
9 getting a copy of it.

10 Q. So, have you done any review of that  
11 information other than the projections and  
12 residential bills as shown at page 5.6?

13 A. No.

14 Q. Was Black and Veatch retained to  
15 review the proposed capital budget of the  
16 District?

17 A. No.

18 Q. Have you done any benchmarking to  
19 determine whether or not the projected capital  
20 expenditures are consistent with good industry  
21 practice to meet the requirements of BPU's  
22 infrastructure expansion and enhancement?

23 A. I'm not sure -- are you talking about  
24 the BPU?

25 Q. Pardon me, the MSD.

1           A.    Okay.  I'm somewhat aware of the BPU  
2   but I was surprised it came up here.  No, we  
3   didn't do any benchmarking.  A lot of that is  
4   going to be based on the negotiations the  
5   District had with the EPA, so, and those  
6   negotiations are unique to each individual  
7   utility.  So, you can't really benchmark them  
8   because each utility has a different situation.

9           **Q.    Right.  But if there is capital**  
10   **replacements of existing sewer lines in that,**  
11   **is there a standard practice for reviewing what**  
12   **the cost might be to accomplish stated**  
13   **infrastructure activities MSD has identified as**  
14   **necessary over the next four years?**

15          A.    Well, again, that's going to be  
16   unique to each utility.  It depends on how long  
17   they've been making improvements.  Some  
18   utilities defer capital improvements due to  
19   pressures on rates.  Some, you know, especially  
20   the ones with PAYGO, are able to keep up with  
21   them.  A lot of times utilities defer that and  
22   then they are operating from a catch-up  
23   position and so it's going to be different.  I  
24   don't think you can categorize utilities by  
25   benchmarking on how much they are spending on

1 improvements unless you know the point where  
 2 they started from.

3 **Q. You're reviewing their annual capital**  
 4 **budget for accomplishing specific capital**  
 5 **expenditure projects. Is there a way of**  
 6 **comparing the MSD's estimated cost of**  
 7 **accomplishing those objectives relative to what**  
 8 **other sewer district utilities might be**  
 9 **projecting for similar type activities?**

10 A. You can get a utility's budget, I  
 11 suppose, and look at what they are spending,  
 12 but I'm not sure they are really comparable. I  
 13 mean, there are several factors involved. Age  
 14 of the system, for example. Whether you have  
 15 separate sewers only or you have a system of  
 16 separate sewers and combined sewers. How many  
 17 storm sewers you have. There is just really  
 18 too many variables to say you can compare  
 19 utility A with utility B and if utility B has  
 20 an answer you like, then utility A is wrong.  
 21 There is no right and wrong in their capital  
 22 improvement programs. It's what they happen to  
 23 need at that particular time.

24 **Q. All right. Thank you. The funding**  
 25 **projections included for meeting the necessary**

1     **financing programs, were you simply using MSD**  
 2     **staff's projected interest rates for revenue**  
 3     **bonds and State revolving loan costs?**

4             A.    I initially came up with those rates  
 5     and those rates were discussed with the  
 6     financial advisors and deemed to be reasonable.

7             **Q.    How was -- what sort of information**  
 8     **was used to deem them to be reasonable?**  
 9     **Specifically with respect to revenue bond.**

10            A.    Well, basically looking at the market  
 11    to see what interest rates you expect.  I mean,  
 12    the District has been issuing bonds on a 30  
 13    year basis, so the term was fixed at that.  The  
 14    percent increase I think Mr. Tyminski has  
 15    already testified to is basically based on an  
 16    estimate of what you might expect in the future  
 17    especially if your bond rating is starting to  
 18    slip due to the magnitude of the bonds that  
 19    will be coming out.  So, we are looking at  
 20    reasonable estimates is about all we can do.

21            **Q.    Historically do you know whether or**  
 22    **not tax exempt municipal utility bonds have had**  
 23    **an interest rate that is lower than taxable**  
 24    **corporate utility bonds?**

25            A.    I have not compared corporate to

1 municipal.

2 Q. Okay. Is that something the  
3 financial advisor might have provided you to  
4 help deem that the 5.5 percent is reasonable?

5 A. I'm not sure what information the  
6 financial advisors maintain, but that might be  
7 a question better addressed to Mr. Tyminski.

8 MR. GORMAN: Thank you very much.  
9 That's all the questions I have.

10 COMMISSIONER TOENJES: Thank you.  
11 Ms. Langeneckert, do you have any questions for  
12 the witness?

13 MS. LANGENECKERT: I do.

14

15 EXAMINATION

16 Questions by: LISA C. LANGENECKERT

17 Q. Good afternoon, Mr. Barber.

18 A. Good afternoon.

19 Q. I'm rarely accused of not talking  
20 loud enough so I better grab this just in case.  
21 Your testimony on page 3, lines 6 through 8,  
22 you state that "The proposed rate change will  
23 increase the District's wastewater revenues to  
24 provide funds for essential repairs,  
25 replacements, and improvements," and Ms.

1 Zimmerman stated that the funds were needed for  
2 anticipated regulatory requirements. Are the  
3 essential repairs, replacements, and  
4 improvements you referenced the same as those?

5 A. Yes, these are all regulatory  
6 requirements.

7 Q. If the estimated regulatory  
8 requirements are less in terms of actual  
9 projects and/or costs than those that were  
10 anticipated, would that change your opinion of  
11 what is essential?

12 A. What do you mean by if they are less?

13 Q. If it turns out that they are less  
14 than what has been previously thought.

15 A. Well, if there is some reason that  
16 the District did not need to build some of the  
17 projects currently on the schedule, then yes, I  
18 would agree with that.

19 Q. Okay. Now, referencing your  
20 testimony on page 7, lines 16 through 21, you  
21 discuss modest adjustments being made to  
22 projected annual billed volume per customer  
23 account to reflect a decreasing trend  
24 historically experienced by the District. What  
25 is the dollar amount of the increase of the

1     **CIRP balance?**

2           A.     That comes from Table 3-9. You can  
 3 see on page 3.15, Table 3-9, we take the lowest  
 4 point of the study period is in 2012. As our  
 5 existing bond authority is exhausted, we drop  
 6 to a \$4 billion level, but through the  
 7 increased rates beginning in 2013 through 2016,  
 8 we are able to build that up in fiscal years  
 9 '13, '14 and '15 to the level specified by the  
 10 financial advisors in order to provide  
 11 liquidity for the utilities and enhance the  
 12 bond rating possibly.

13           Q.     Okay. Then it goes in 2015 it goes  
 14 from \$52 million to \$37.9 in 2016?

15           A.     Yes.

16           Q.     What would be the effect on the  
 17 District's bond rating if some of the extra  
 18 liquidity in the CIRP balance was used to make  
 19 up potential revenue shortfalls?

20           A.     I think that's a better question for  
 21 the District's financial advisor.

22           Q.     On page 12 of your testimony, lines  
 23 15 through 17, you indicate that "Revenues were  
 24 allocated to the respective wastewater and  
 25 stormwater operations based on staff input and

1 the District's method to segment its financial  
2 statements as accepted by external auditors."

3 What allocation of revenues between wastewater  
4 and stormwater remain the same if the stormwater  
5 impervious charge were still in place?

6 A. I think those didn't remain the same.  
7 Are you saying they did?

8 Q. I'm asking, would they if the  
9 stormwater impervious charge was still in place?

10 A. If we still had the same revenue  
11 levels as we did when we were implementing the  
12 impervious charge, yes, then they would have no  
13 reason for them to be changed.

14 Q. In your testimony on page 13, lines  
15 21 through 23, you indicate that "The proposed  
16 wastewater capital financing plan anticipates  
17 17.5 percent as the major capital improvement  
18 cost for the six year study period will be met  
19 from annual wastewater revenues on a PAYGO  
20 basis." Does that 17.5 percent equal the  
21 historical amount of PAYGO funding?

22 A. I'm sorry, what page are you on?

23 Q. I am on page 13, lines 21 through 23.

24 A. I'm sorry, I'm not clear. That is  
25 not what --

1 Q. Yes, 15. Thank you.

2 A. Can you restate the question?

3 Q. I think. Does 17.5 percent equal the  
4 historical amount of PAYGO funding?

5 A. No.

6 Q. Okay. And why not?

7 A. In the past, the District had the  
8 availability of more PAYGO, so the percentage  
9 of PAYGO was much higher than that. It wasn't  
10 until the prior rate proceedings where we were  
11 more or less limited to the increases that made  
12 a shift more towards debt, and as you shift  
13 more towards debt, at that point then you're  
14 going to get a higher percentage of debt than  
15 you had before and, therefore, a lesser percent  
16 of PAYGO. That's within this period. It  
17 doesn't mean the cumulative level that was  
18 discussed earlier.

19 Q. All right. I had a question for Ms.  
20 Zimmerman and she said that I should ask you,  
21 so here we are. On page 16, line 6-3, you  
22 indicate that "Although anticipated expenditure  
23 levels are represented as fixed, the District  
24 has scheduling flexibility of the projects  
25 within each major category." If the District

1 had scheduling flexibility, was this considered  
 2 when determining the PAYGO alternative?

3 A. No.

4 Q. Why not?

5 A. What I mean by scheduling flexibility  
 6 is that the District will spend perhaps a fixed  
 7 amount of money within a specific period but  
 8 not necessarily in the categories presented in  
 9 Table 3-9. As I understand it, there are  
 10 milestones that need to be met and there is  
 11 flexibility in those milestones but that's all  
 12 I know.

13 So, what we know for sure is that the  
 14 total number was \$4.7 million and there are  
 15 projects that are currently allocated different  
 16 shares but that is over a 23 year period. It  
 17 doesn't matter if in my opinion if you do one  
 18 more than the other but at the end of the  
 19 period, you have to spend those amounts in that  
 20 Decree to get that 4.7.

21 So, what I'm thinking there is  
 22 flexibility in not only between categories but  
 23 perhaps in scheduling but really all the EPA is  
 24 concerned with is whether or not milestones are  
 25 set as part of that Consent Decree, those are

1 met at those times.

2 Q. Those times being the end of the full  
3 period?

4 A. Those times being whatever was set by  
5 EPA which I have no knowledge of.

6 Q. Okay. Do you know who the \$4.7  
7 million, is that a number that MSD came up with  
8 or a number that is part of the Consent Decree  
9 or do you know and can you say?

10 A. I only know what was in the fact  
11 sheet presented to the June 9th Board, and in  
12 that fact sheet it said \$4.7 million was the  
13 negotiated amount.

14 Q. Okay. So that was the negotiated --  
15 that was a dollar number, not certain set items  
16 that had to be done?

17 A. It was a dollar number.

18 Q. In 2011.

19 A. That's what I understand.

20 Q. Okay. Now, I've gone through the  
21 proposed rate structure and I'm sure I have  
22 made this too simplistic but I hope that you  
23 might be able to help me out and figure out  
24 what -- where I'm missing the numbers. This is  
25 Exhibit MSD 3 but it's also part of the numbers

1 that are under 3-17, I believe. 3-21 on  
2 page 3.36 of the plan has the comparison  
3 existing and proposed wastewater rates. And  
4 I'm looking at the compliance charge for the  
5 different tiers and then I'm multiplying that  
6 by the number of customers in each of the five  
7 tiers, and the numbers are coming out very  
8 differently so I'm trying to understand why  
9 there is such a large difference between the  
10 two.

11 If I multiply out Tier 1 in July of  
12 2015 or fiscal year 2016, if I multiply all the  
13 numbers in that row, I only come out with  
14 \$171,000 under compliance charges. But it  
15 appears currently there is \$804,000 when you  
16 take the total number of people paying the  
17 compliance charge by the 3195 uniform number.

18 A. These are monthly charges.

19 Q. Right. You multiply it by 12 if you  
20 want or 1/12.

21 A. Well, for the 2012 you should get  
22 something around \$8 million.

23 Q. Well, I'm just doing it for one  
24 month. If I multiply one month of the number  
25 of customers times 3195, I come up with

1     **\$804,000.**

2           A.    Okay.

3           **Q.    But if I do the same for fiscal year**  
4     **'16 for all those same customers under the new**  
5     **rates, I only come up with \$171,000.  So I'm**  
6     **trying to figure out where the \$630,000 is and**  
7     **I know there is some shift from residential,**  
8     **but --**

9           A.    There is significant shift of cost  
10    from non residential to all customers such that  
11    where you might have, say, \$8 million in 2012,  
12    by 2016 you'll only be looking at around \$2  
13    million.

14          **Q.    So, you're shifting it to residential?**

15          A.    We are shifting it out of the non  
16    residential customer class to other cost  
17    components which affect all customer classes.

18          **Q.    Okay.  Is there a schedule that shows**  
19    **that?**

20          A.    If the schedule -- I'm sorry, other  
21    than 3-21?

22          **Q.    Well, I see the numbers there but I'm**  
23    **trying to see the shift where the shift**  
24    **actually occurred.  I see the dollars there**  
25    **but --**

1           A.    The discovery request out now that  
2 asks that question on 123. I have an answer  
3 for it.

4           **Q.    Okay. That would be the discovery**  
5 **request from the Rate Commission?**

6           A.    It's from MIEC.

7           **Q.    The answer has not been provided yet,**  
8 **has it?**

9           A.    We are still formulating our responses.

10          **Q.    Okay. So, I should wait for that?**

11          A.    Yeah.

12                   MS. LANGENECKERT: Okay. That's all  
13 my questions.

14                   COMMISSIONER TOENJES: Thank you, Ms.  
15 Langeneckert. Mr. Mueller, do you have  
16 questions for the witness?

17                   MR. MUELLER: I have no questions.

18                   COMMISSIONER TOENJES: Mr. Arnold.

19                   MR. ARNOLD: Mr. Chairman, may I  
20 yield my time to Mr. Stannard?

21                   COMMISSIONER TOENJES: Yes. Mr.  
22 Stannard.

23

24                                   EXAMINATION

25                   Questions by: BILL STANNARD

1           Q.    Thank you, Mr. Arnold. Mr. Barber, I  
2    have a couple of questions with regard back on  
3    the operation and maintenance expense and I'm  
4    going to refer you to Exhibit MSD 4A which is  
5    the detailed printout from the electronic model  
6    that you've developed and used for this  
7    analysis. And I would like to start with  
8    Schedule D7 that is the summary of the historic  
9    operation and maintenance expense, and at the  
10   bottom of that page it totals it for the system  
11   which is both stormwater and wastewater for  
12   these historic years as fiscal years 2006  
13   through 2010 and it also has a budget for 2011  
14   and then at far right is the wastewater budget  
15   for 2011 which I presume was calculated based  
16   on the allocation factors that you discussed in  
17   your testimony?

18           A.    Yes.

19           Q.    What, on line 4-66 which is pension  
20    contributions, in 2006 that number was  
21    \$216,243. If we move over to actual 2010, that  
22    was just shy of \$8.3 million. The budget for  
23    2011 was \$9.3 million -- \$9.4 million and the  
24    wastewater share of that is \$7,892,000. Am I  
25    correct that the forecast for the rate proposal

1 starts with the 2011 budget for wastewater as  
2 the base year and then applies the escalation  
3 rates that are presented in the report to  
4 each -- to that 2011 going forward?

5 A. Yes.

6 Q. If based on the -- in this analysis,  
7 you've not made any adjustment for any changes  
8 to the pension program that might impact that  
9 base level of \$7,892,000. That's based on the  
10 actual or the budget for 2011 which pretty much  
11 tied with the actual 2010. So, do you know if  
12 the budget reflects some of the changes to the  
13 pension program that was described earlier by  
14 Ms. Zimmerman?

15 A. I don't know if it does or not. That  
16 number was from the budget looking forward from  
17 page D1 that is an expense that has increases  
18 factored in which are different for each year  
19 which was provided by Mr. Tyminski. So, if  
20 that was known at that time, then perhaps those  
21 adjustments are built into those inflation  
22 factors.

23 Q. For the inflation factors that are  
24 incorporated in the -- in your forecast?

25 A. Yes.

1           Q.    Would it be -- if I looked at those  
2    historic years by major categories which  
3    included personal services, which includes  
4    wages and salaries, insurance, which I presume  
5    is health insurance and insurance related to  
6    employees and it's provided to employees,  
7    pension contributions, then supplies,  
8    utilities, contractual services and so forth,  
9    if I look over that historic period of 2006  
10   through 2010, that would give me a sense of  
11   what MSD's actual experience has been in  
12   escalation of cost during that period?

13           A.   It may, but during this time, there  
14   is also shifts in personnel reductions,  
15   increases. So, it would be difficult just to  
16   relate it just on price and inflation.

17           Q.    So, for employees, the employee count  
18   has changed over this period?

19           A.   It changes and shifts and sometimes  
20   the organization is restructured. So, I mean,  
21   it would be pretty difficult, I think, to just  
22   look at these raw numbers and see what the  
23   overall inflation is at any one point in time.

24           Q.    Do you know if MSD's total head count  
25   over the last several years has changed? Did

1 you look at that as you were analyzing the  
2 operating costs?

3 A. The head count has increased over  
4 time.

5 Q. Okay. I just wanted to find another  
6 of my dog-eared page. Go to Schedule G16 which  
7 presents the wastewater fund balance summary  
8 table.

9 A. Yes.

10 Q. Okay. In this table, you present a  
11 beginning balance as of beginning of fiscal  
12 year 2011. Would the beginning balance number  
13 tie to MSD's balance sheet in its consolidated  
14 annual financial report?

15 A. It should tie to end the year 2010.

16 Q. But in the end of 2010 which is the  
17 beginning of 2011?

18 A. Yes, I mean, this is on a cash basis  
19 so it may not exactly tie to the financial  
20 statement but it would tie to the detail that I  
21 was provided.

22 Q. Okay. The balance sheet probably?

23 A. Probably pretty close.

24 Q. One of the questions I have is at the  
25 bottom is the reserve for capital improvement

1 encumbrances. Earlier Mr. Hoelscher explained  
 2 and in response to our data request with regard  
 3 to the CIRP that it's based on encumbrances,  
 4 does that \$178,998 shown for 2011, that  
 5 reflects the amount of money that's been  
 6 previously raised either through bonds or other  
 7 borrowings plus cash that has been essentially  
 8 encumbered by all the existing CIRP projects  
 9 not included in the new CIRP?

10 A. Yes.

11 Q. Can you explain the process that you  
 12 used to project how those funds were used over  
 13 the rate period?

14 A. I believe they are drawn down. I  
 15 can't recall the assumptions right now but the  
 16 purpose of this line is more or less to make  
 17 sure we capture income. So, I'd have to check  
 18 my notes and see what that is.

19 Q. Possibly you did get some information  
 20 with regard to expected cash draw schedules on  
 21 the existing construction projects?

22 A. I don't recall.

23 Q. But I notice that as to \$50 million  
 24 in 2015 but then stays at \$50 million thereafter.

25 A. Right.

1 Q. Is that the anticipation that there  
2 will be \$50 million that will be left over?

3 A. It's anticipation that at any one  
4 point in time there will be about \$50 million  
5 available of earned interest income due to cash  
6 in and cash out.

7 Q. Okay. The other fund balances that  
8 are shown above, some of which are described in  
9 the rate proposal in your report, others are  
10 not, but I think this is a very helpful  
11 presentation understanding what the makeup of  
12 the MSD's cash fund balance is in terms of the  
13 operating fund, the bond reserve fund which is,  
14 of course, required by the bond adventures and  
15 one year principal and interest payments on the  
16 outstanding bonds, the capital fund and the  
17 emergency fund plus the operating reserve which  
18 is I understand is one of the objectives of the  
19 fiscal policies of the Board of Trustees to  
20 maintain an operating reserve of 60 days of  
21 operation and that is reflected in that  
22 operating reserve?

23 A. 60 days of operating and maintenance  
24 expense plus capital outlay.

25 Q. Plus the capital outlay. And then as

1 you've forecasted, interest income in your  
2 forecast to recognize interest income, these  
3 fund balances are what is part of the analysis  
4 that you do in your algorithms to estimate what  
5 future interest income will be even at the  
6 miserably low interest rates that Karl is able  
7 to earn on investments?

8 A. Yes. These are factored in the  
9 interest calculations.

10 Q. If interest rates that we can earn on  
11 investments go up, that will be a positive  
12 impact on the interest earnings of MSD?

13 A. Yes, it would.

14 Q. Going back to Exhibit MSD 1, I'll  
15 refer to Table 3-6 on page 3.10, and if we can  
16 kind of review the components of this table  
17 which relates to other operating revenue that  
18 MSD earns and generates on an annual basis and  
19 what you're forecasting for the period 2011  
20 through 2016. The first is a category called  
21 billing adjustments and I think the footnote  
22 explains that very clearly, so you don't need  
23 to get into that. The second is the bad debt  
24 provision which starts at \$10.9 million, then  
25 drops to a minus \$6.8 million, and then starts

1 growing annually a bit up to in 2016 to \$12.6  
2 million. I believe this ties generally with  
3 what shows again with the consolidated annual  
4 financial reports and the income statements as  
5 far as revenues that essentially the bad debt  
6 expense for recent years had climbed to about  
7 \$10 million, so it appears that your  
8 forecasting continuation of that in 2011 of  
9 about \$10.9 million, that would be considered  
10 bad debt expense and it would be recognized by  
11 the District, either then confirmed by the  
12 auditor?

13 A. Yes.

14 Q. Then it does decrease to \$6.8 million  
15 as an expense, a reduction -- it's an expense,  
16 you're showing it as a reduction in --

17 A. Operating revenue.

18 Q. You have that going down. What  
19 causes that to go down?

20 A. I believe it's noted in here that  
21 during this two year period, the District has  
22 implemented enhanced collection efforts and a  
23 lot of that collection will be for older debt,  
24 and the consideration here is that the various  
25 collection firms and the legal firms that have

1    been contracted by the District will be  
2    successful enough to collect that. There will  
3    be a point in time when you can't get any more  
4    and at that point in time, then the bad debt  
5    will more or less increase basically at prior  
6    levels and then in relationship to the  
7    percentage of increase of the sewer service  
8    returns.

9           Q.    I believe and I apologize, I don't  
10   have the page in Exhibit M4A directly, but my  
11   recollection was that I saw about a four and a  
12   half million dollar recognition in 2012 that  
13   the collection -- increased collection efforts  
14   would generate an additional four and a half  
15   million dollars and then that dropped to two  
16   and a half million in the subsequent years?

17           A.    Right. That's based on those  
18   enhanced collection efforts.

19           Q.    But that -- so that as Ms. Zimmerman  
20   explained in the presentation of the response  
21   to our initial data request, there was at the  
22   end of the fiscal year 2010, our total  
23   receivables that were, I believe, older than  
24   one year stood at about \$58 million which is  
25   what the enhanced collection coverage will be

1 focused on initially, but then will be --  
2 you're expecting to continue to increase that  
3 by these bad debt expense amounts each year but  
4 that as the enhanced collection -- until they  
5 actually go into place and we start seeing  
6 results, we don't really know what is going to  
7 happen?

8 A. That's correct.

9 Q. So, it might be possible that instead  
10 of just four and a half million next fiscal  
11 year and followed by two and a half million in  
12 the subsequent years, they may be more  
13 successful than that?

14 A. That's a possibility. It's also a  
15 possibility they could be less successful.

16 Q. But until we get some experience, we  
17 won't know?

18 A. That's correct.

19 Q. This was your best estimate of what  
20 you, in consultation with MSD staff, what you  
21 believe would be a reasonable recognition of  
22 those results that may happen?

23 A. Yes.

24 MR. STANNARD: Okay.

25 MR. ARNOLD: Thank you, Mr. Chair.

1                   COMMISSIONER TOENJES: Thank,  
 2 Mr. Arnold, thank you, Mr. Stannard. Does any  
 3 of the Commission have questions for -- yes,  
 4 Mr. Tomazi.

5

6                   EXAMINATION

7 Questions by: GEORGE TOMAZI

8           Q. Two questions that Ms. Zimmerman  
 9 thought Mr. Barber might best answer and one of  
 10 them has to do with the question about what is  
 11 the maximum annual bill that could be assessed  
 12 against a customer of the District? I  
 13 understand based on median income in the St.  
 14 Louis City and median income in the St. Louis  
 15 County. What are those out of curiosity?

16           A. Page 5.11 of our report.

17           Q. Page what?

18           A. 5.11. I think that addresses your  
 19 question. And basically I think what you've  
 20 been referring to --

21           Q. Paragraph now?

22           A. Pardon? The whole Section 5.6.

23           Q. Okay. That's about the 30 -- okay.  
 24 It looks to me like at the current proposed  
 25 rate out in 2015, that we are going to be

1 **pushing those limits, is that right? Did I**  
 2 **read that correctly?**

3 A. That what is presented in this  
 4 section is affordability analysis as of 2009  
 5 which is --

6 **Q. Pardon?**

7 A. The mean household incomes in this  
 8 Section 5.6 is based on 2009 projections. At  
 9 the writing of this report, the 2010 data has  
 10 not been compiled but I don't expect it to be  
 11 that much different, and at this time, I think  
 12 we made a reference to \$389 per year as being  
 13 the upper limit, which if you divide that by  
 14 12, I suppose you get around \$135 per inside  
 15 city.

16 **Q. Okay. The other question I have is,**  
 17 **how much is in the proposed rate increase for**  
 18 **low income families? How is that sorted out?**  
 19 **Is it in dollars or is it a fixed amount or how**  
 20 **did that come up with that?**

21 A. Whatever increase residential  
 22 customers have are also the increases for low  
 23 income customers except they pay half the  
 24 amount. So, if we are increasing inside the  
 25 city by 13 percent, then low income also gets

1 increased by 13 percent but instead of paying  
2 the full bill, they are paying half the bill  
3 but the increase is still 13 percent.

4 Q. Okay. But is that in your forecast,  
5 pick a year, 2013, does that come out to \$5  
6 million or \$55 million?

7 A. As far as low income credits?

8 Q. Right.

9 A. I believe we are talking around  
10 \$800,000 a year.

11 Q. Where?

12 A. \$800,000.

13 Q. \$800,000, okay.

14 A. I can get you that.

15 MR. TOMAZI: That's all I have.

16 COMMISSIONER TOENJES: Thank you,  
17 Mr. Tomazi. Yes, Mr. Koenen.

18

19 EXAMINATION

20 Questions by: GLENN KOENEN

21 Q. Back in the summer of 2006 we've been  
22 trying to project what is going to be happening  
23 in the summer of 2011. Anybody who has it  
24 right would be driving a Bentley right now.  
25 Looking now at 2011 to 2016, how wide do you

1 think is the cone of probability where these  
2 numbers are going to fall? Do you think  
3 they're in the middle, do you think they're on  
4 the conservative end, or do you think you're  
5 reaching for the fences?

6 A. It's really hard to say. I mean, if  
7 you look back at five years before that, it was  
8 a much greater drop than what we are looking at  
9 now. Personally I think we might be a little  
10 optimistic. I know we have nearly a 2 percent  
11 decrease in revenues under the existing rates.  
12 To me that could be right. I mean, but I think  
13 it's in the range of reasonableness and I think  
14 what's important and may not have been brought  
15 forth so far in these proceedings, we are  
16 dealing with a municipal utility, not an  
17 investor-owned utility. You can do all kinds  
18 of analysis and try to narrow this down to \$1  
19 if you want, but in the end, really all the  
20 money that comes into the utility stays in the  
21 utility.

22 So, if for whatever reason we end up  
23 with more revenue than we projected at the end  
24 of 2013, all that really means is that we are  
25 going to have more money to cash finance

1 improvements in 2014 and less debt. If it goes  
 2 the other way and we underproject revenue, that  
 3 means we have less cash and we will have to  
 4 bond finance more.

5 So, right now we are still going to  
 6 pay all the O and M costs and everything else  
 7 that we have to. We are going to maintain debt  
 8 service but really the variable is how much of  
 9 our CIRP is cash finance versus debt finance.

10 MR. KOENEN: Thank you.

11

12 EXAMINATION

13 Questions by: GEORGE LIYEOS

14 **Q. Let's just take your hypothetical for**  
 15 **a moment and step further as it relates to**  
 16 **projection that is made in terms of the revenue**  
 17 **stream. There is a gap. How would that gap be**  
 18 **made up?**

19 A. You mean the shortfall?

20 **Q. Yes.**

21 A. We do have money, I think we  
 22 mentioned before, that is used for liquidity  
 23 purposes and that would probably be the first  
 24 call. Other than that, the only other thing we  
 25 can do if we have adequate bond authority would

1 be to leverage more with debt on a short-term  
2 basis.

3 So, I mean, I guess the safety net  
4 there, instead of asking for exactly \$945  
5 million, you might want to ask for \$1 billion  
6 just to have that little cushion, but in the  
7 end, the District is going to use that and  
8 likely more since they are facing 4.7 CIRP in  
9 the next 23 years.

10 Q. Let's say the number you say is \$1  
11 billion and I think 9475 is what you were at?

12 A. \$945 million, yes.

13 Q. \$945 million, okay. Does it make  
14 sense to ask for a billion if that can't be  
15 supported?

16 A. That's a policy decision. I mean,  
17 yeah, if you want to go exactly for 945, I  
18 mean, that's up to the District. In the past  
19 it was \$500 million and 275, so there has been  
20 a semblance of rounding, I think, at least in  
21 my mind.

22 Q. And I understand that but based upon  
23 what we are experiencing, it seems we are in  
24 unique circumstances, if not unchartered  
25 waters, and I just fear if there is a gap

1 there, then some of the revenue stream may have  
 2 to be tapped into to get additional funds for  
 3 the work that you want to do, and we are  
 4 drawing down upon reserves or something, some  
 5 other revenue stream to do that.

6 Now, again, I agree with you, it's a  
 7 policy decision but it's a difficult decision  
 8 to make when we have numbers that seem to be a  
 9 moving target.

10 A. Well, in addition, you have to  
 11 realize that the 945 is only through 2016.  
 12 After that, there is going to be more bond  
 13 authority needed.

14 MR. LIYEOS: Okay.

15 COMMISSIONER TOENJES: Mr. O'Connell.

16

17 EXAMINATION

18 Questions by: MIKE O'CONNELL

19 Q. The question 336 and 338 in your  
 20 exhibit talking about the compliance charges  
 21 and the different tiers. That is what my  
 22 questions are about. You mentioned how -- can  
 23 you go over a little bit of how they are  
 24 calculated? I'm looking specifically at  
 25 Table 3.2, it talks about the monthly unit cost

1 per tiers, Tier 1 through Tier 5, and I'm  
2 comparing that to the actual charges that would  
3 be incurred -- I know there is a year  
4 difference but looking at 2013 versus 2000, and  
5 then looking at the unit cost. If I'm reading  
6 this correctly, I'll give you an example, and  
7 tell me if I'm reading correctly here, your  
8 monthly units cost for Tier 5 is \$145 per  
9 month. In 2013 you're going to charge at Tier  
10 5, \$165.50. Is it fair to say you're charging  
11 more for the actual unit cost for that tier in  
12 terms of what it costs to comply with the  
13 services?

14 A. I'm not following your numbers.

15 Q. I'm on Table 3.22, the reading column  
16 for Tier 5, monthly unit cost?

17 A. Okay. Tier 5.

18 Q. My question is if my definition is  
19 right. If I -- do I understand it correctly  
20 that your definition of monthly unit cost is  
21 the cost it takes to comply with the  
22 environmental -- the testing and the  
23 environmental regulations, the cost for Tier 5  
24 users is \$145. Am I correct on that?

25 A. For 2010, that is correct.

1 Q. And by 2013 you're going to charge  
2 this tier \$165, is that correct?

3 A. Yes.

4 Q. So, there is a little bit of  
5 inflation factor for the three year difference  
6 but --

7 A. Yes.

8 Q. It's fair to say that -- is it fair  
9 to say that Tier 5 users, I'm comparing Tier 5  
10 and Tier 1 tiers. It looks like Tier 5 is the  
11 only tier that pays more in than receives back  
12 in terms of the cost of service, is that a fair  
13 assessment?

14 A. Tiers 2 through 5 go directly from  
15 the uniform compliance charge to cost of  
16 service charges. So, what you see on  
17 Table 3-21 is not only the charge but the cost  
18 of service that is charged. Tier 1 doesn't get  
19 to their cost of service charge until 2016.

20 Q. Right. But the other tiers, the  
21 other tiers already get to that point, right?

22 A. Yes. They go to that point  
23 immediately in 2013.

24 Q. Is that what you were saying -- when  
25 you were asked in your testimony if it was the

1 rate -- let's see here. You were asked --  
2 excuse me here. You were asked in the  
3 testimony, I can't find the exact page, I  
4 apologize, but you were asked is this a fair  
5 and equitable and you said yes because of the  
6 transition time. Is that what you mean by that?

7 A. Yes.

8 Q. Okay. My other question concerned  
9 going back to the allocation of residential  
10 usage. You said you basically use historical  
11 averages from the past. You're using 2006 kind  
12 of deal, 2006 data. I want to make sure I'm  
13 clear. You do not account for any economic  
14 factors, you do not account for any demographic  
15 factors, you do not -- is that correct?

16 A. Not separately. Any economic -- any  
17 change in usage due to economic conditions are  
18 already factored into the unit usage changes  
19 over that historic period.

20 Q. Over that historic period. So the  
21 past is prologued is kind of what you're  
22 saying?

23 A. Yes.

24 Q. Then my other final question, you  
25 compare residential rates under the NACWA

1 survey. You compare them to residential rates.  
2 I think you said residential rates were ranked  
3 32 among the top 50 cities. Where under non  
4 residential usage is the NACWA survey to non  
5 residential usage, and where does St. Louis MSD  
6 rank for non residential usage in terms of  
7 rates?

8 A. I'm not sure NACWA does a non  
9 residential rate.

10 Q. Does Black and Veatch do a non  
11 residential rate?

12 A. Yes, Black and Veatch does. That  
13 information is not available in our rate report  
14 but it is available in the bond feasibility  
15 report which is in draft form but I can tell  
16 you something about that. It's very  
17 interesting how this works.

18 In the Black and Veatch survey, we  
19 delve in five different classes. Small  
20 residential is users with 3.75 thousand  
21 gallons, mean residential is seven and a half  
22 thousand gallons which is essentially 10 CCF,  
23 large residential is 15,000 gallons, commercial  
24 is 100,000 gallons, and industrial is  
25 considered to be 10,000 gallons per month. In

1 the small residential category, MSD -- keep in  
 2 mind this is back in 2009 -- MSD ranked No. 32  
 3 lowest, where 1 is the lowest and 50 is the  
 4 highest rate. When that moves to medium  
 5 residential, MSD moves up to No. 27. When that  
 6 moves into large residential, MSD moves up to  
 7 22. When it goes into commercial, MSD moves up  
 8 to 18. When it goes into industrial, MSD  
 9 ranked as No. 14, the lowest in those 50 cities  
 10 which implies that the other 50 cities have  
 11 higher volume charges than MSD and that is why  
 12 MSD is improving in their ranks as it moves  
 13 forward.

14 COMMISSIONER TOENJES: Anything else  
 15 from the Commissioners? I have one question in  
 16 the tiers question that Eric asked just a  
 17 minute ago.

18

19 EXAMINATION

20 Questions by: LEONARD TOENJES

21 **Q. Is it accurate to say Tiers 2 through**  
 22 **4 are basically supporting Tier 1 until 2016**  
 23 **when the rates are all --**

24 **A. No, it's actually the opposite. Tier**  
 25 **1 has been supporting Tiers 2 through 5 for**

1 decades, ever since the charge was imposed,  
2 because their service requirements were so much  
3 lower than the ones that had more sample points  
4 and more monitoring, so Tier 1 are the  
5 customers that are more or less still carrying  
6 the load more or less and helping to moderate  
7 residential rates and keeping them at the 13  
8 percent level that is just fixed. But as of  
9 2013, Tiers 2 through 5 are no longer supported  
10 by Tier 1 as they have in the past.

11 **Q. One other question. You're looking**  
12 **at, you know, \$1.6 billion program and \$945**  
13 **million of bonding, so you're basically bonding**  
14 **94 percent of the overall program. How does**  
15 **that compare with other districts?**

16 A. I would say that's probably on the  
17 high side but that's just an opinion, but  
18 really --

19 **Q. Do you have comparative data?**

20 A. No. I mean, at this point, because  
21 of the lower increases in the past and moving  
22 from a PAYGO in 2007 to more or less minor  
23 increases and more debt in 2008, you got to the  
24 point where you really don't have a choice.  
25 Once you raise rates as much as you think it

1 could be accepted by the public, which is the  
 2 13 percent level, the rest has to be debt, and  
 3 that's basically what you have once if the  
 4 capital improvement program is fixed by the  
 5 Consent Decree.

6

7

EXAMINATION

8 Questions by: ERIC SCHNEIDER

9

Q. Can you just expand on that 13  
 10 percent number? You said in your testimony  
 11 that you kind of -- your proposed schedule can  
 12 only -- holding future rate increases to  
 13 residential customers at approximately 13  
 14 percent per year. Why is 13 percent the magic  
 15 number, not 15 or 10?

16

A. That was a decision by the senior  
 17 management of the District to hold it at 13  
 18 percent.

19

Q. What were some of the factors to get  
 20 to that 13 percent? The median household  
 21 income or --

22

A. I would defer that question to  
 23 District staff.

24

COMMISSIONER TOENJES: Further  
 25 questions from any Rate Commissioners? Ms.

1 Myers, do you have questions for the witness?

2 MS. MYERS: I just have a couple.

3

4 EXAMINATION

5 Questions by: SUSAN MYERS

6 Q. In regard to the Consent Decree, do  
7 you have any firsthand knowledge regarding the  
8 flexibility of the schedule which was  
9 negotiated in the Consent Decree?

10 A. I have no firsthand knowledge of what  
11 flexibility there actually is other than  
12 knowledge that they may be able to shift some  
13 cost and that is all I know. I have no  
14 knowledge of any order of magnitude.

15 Q. Okay. And in regard to the Black and  
16 Veatch survey data that you were just speaking  
17 to, do all the surveyed communities provide  
18 retail service to the customers?

19 A. Yes.

20 Q. Okay. So, some of those entities  
21 that were surveyed don't have other charges  
22 that are associated with the service charge?

23 A. They likely have charges but the  
24 survey was only based on the wastewater service  
25 charges, not other charges.

1           Q.    Okay.  So, is it fair to say that  
2   MSD's charges are all in?

3           A.    As far as wastewater, I would say  
4   yes.

5                   MS. MYERS:  Okay.  Thank you.  That's  
6   all I have.

7                   COMMISSIONER TOENJES:  Thank you, Ms.  
8   Myers.  Thank you, Mr. Barber.  Are there any  
9   other matters for the Rate Commission prior to  
10  our adjournment?

11                   MS. STUMP:  May I just remind the  
12  Rate Commission that since we will be changing  
13  the schedule, that you will need to set a new  
14  meeting after the 29th, so I assume Pam will  
15  try to get -- it will have to come pretty  
16  quickly after the 29th in order to get the new  
17  notice out and proceed with the new schedule.

18                   And the other thing I would like to  
19  remind you all is that in listening to the  
20  testimony and the questions, when the Rate  
21  Commission issues its report, it will make a  
22  decision on the rate that's proposed and what  
23  that will be, but the Rate Commission also has  
24  the authority in its report to make  
25  recommendations on different issues.  So, you

1 may end up approving a rate but you still may  
 2 want to comment on something and that you will  
 3 have the authority to make recommendations and  
 4 that regarding the report. So, just keep that  
 5 in mind as you're looking at the materials.

6 COMMISSIONER TOENJES: I think this  
 7 will conclude our technical conference. There  
 8 will be -- our next meeting will be on-call  
 9 based on what happens on the 29th at the  
 10 Trustees meeting if the Trustees grant our  
 11 request for 45 additional days at either prior  
 12 to or at that point, the intervenors and our  
 13 counsel and District staff will meet to  
 14 finalize the new schedule and it will be  
 15 incumbent upon the Rate Commission to meet and  
 16 approve and adopt that schedule as soon as  
 17 possible after those two steps occur. So,  
 18 right now there is no further meeting of the  
 19 Commission scheduled until at least after the  
 20 29th.

21 COMMISSIONER KOENEN: Move to adjourn.

22 COMMISSIONER TOENJES: All in favor,  
 23 signify by saying aye. Thank you to all the  
 24 Rate Commissioners and intervenors and  
 25 District.

1 (WHEREIN, the technical conference  
2 was concluded at 4:04 PM.)

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CERTIFICATE OF REPORTER

STATE OF MISSOURI ) ss:  
COUNTY OF ST. LOUIS)

I, KIMBERLY A. GANZ, a Certified Court Reporter in and for the State of Missouri, qualified and authorized to certify to this Meeting of the Rate Commission of the Metropolitan St. Louis Sewer District, and the officer before whom the foregoing Meeting was taken, do hereby certify that the foregoing was taken by me to the best of my ability and thereafter reduced to typewriting under my direction; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this was taken, and further that I am not a relative or employee of any attorney or counsel employed by the parties thereto, nor financially or otherwise interested in the outcome of the action.

\_\_\_\_\_  
Certified Court Reporter

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