

**In the Matter Of:**

In Re: Community Water Company - Rate Case

**HEARING, DOCKET NO. 17-098-01**

*October 19, 2017*

*Job Number: 423989*

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BEFORE THE UTAH PUBLIC SERVICE COMMISSION

IN THE MATTER OF: )  
COMMUNITY WATER COMPANY RATE CASE )  
Docket No. 17-098-01 )  
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REPORTER'S TRANSCRIPT OF PROCEEDINGS, taken at  
160 East 300 South, Salt Lake City, Utah, at  
9:17 a.m., on Thursday, October 19, 2017, before  
Amanda M. Murray, CSR 8981, RPR.

Job Number 423989

1 APPEARANCES OF COUNSEL:

2

3 The Hearing Officer:

4 MICHAEL HAMMER

5

6 For Applicant Community Water Company:

7 BY JUSTIN J. ATWATER

8 1840 Sun Peak Drive

9 Park City, Utah 84068

10

11 For Applicant Community Water Company:

12 CLYDE SNOW & SESSIONS

13 BY EMILY E. LEWIS

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17

18 For Respondent Division of Public Utilities:

19 OFFICE OF THE ATTORNEY GENERAL

20 BY PATRICIA SCHMID

21 160 East 300 South, Fifth floor

22 Salt Lake City, Utah 84111

23 (continued)

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25

1 For Respondent Plat B&D Homeowners Association:

2 SAVAGE, YEATES & WALDRON, P.C.

3 BY E. SCOTT SAVAGE

4 170 South Main Street, Suite 500

5 Salt Lake City, Utah 84101

6

7 Also Present: Sheri Bintz, Larry White, Gary Smith,

8 William Duncan, Terry Lange, Leanne Miller, Tena

9 Campbell, Francis Amendola (telephonically)

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12 E X H I B I T S

| 13 | EXHIBIT | DESCRIPTION | IDENTIFIED | MARKED |
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|----|---|-----------------------------|-----|-----|
| 14 | 1 | Subsidized Expenses Payable | 229 | 229 |
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| 15 | 2 | GL Account Ledger With Detail | 230 | 230 |
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09:17 1 9:17 a.m., Thursday, October 19, 2017, Salt Lake  
2 City, Utah.

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4 THE HEARING OFFICER: Good morning, everyone.  
09:17 5 Let's go on the record please. This is the time and  
6 place noticed for an interim rates hearing in the matter  
7 of application of Community Water Company for approval  
8 of general rate increase and special charge for major  
9 plant upgrade slash repair. That is commission docket  
09:17 10 number 17-098-01. My name is Michael Hammer. I'm the  
11 commission's designated presiding officer for this  
12 hearing. Let's go ahead and take appearances, please,  
13 beginning with the applicant.

14 MR. ATWATER: Thank you, Your Honor. Justin  
09:17 15 Atwater appearing on behalf of Community Water Company.

16 MS. LEWIS: Emily Lewis, and I'm appearing on  
17 behalf of Community Water Company.

18 MR. WHITE: Larry White appearing on behalf of  
19 Community Water Company.

09:18 20 THE HEARING OFFICER: Just for my edification, are  
21 all three of you appearing in capacities as attorneys or  
22 are some of you officers?

23 MR. ATWATER: So I'm appearing as an attorney on  
24 behalf of the applicant. Ms. Lewis is as well. She's  
09:18 25 entering her appearance this morning for the first time.

09:18 1 And Mr. White is the chief executive officer of TCFC  
2 Finance Co. which is the ultimate parent of the  
3 applicant.

4 THE HEARING OFFICER: Thank you.

09:18 5 MS. SCHMID: Good morning, Patricia E. Schmid with  
6 the Utah Attorney General's office on behalf of the Utah  
7 Division of Public Utilities. With me at counsel table  
8 are the Divisions's witnesses, Mr. William Duncan and  
9 Mr. Gary Smith.

09:18 10 MR. SAVAGE: Scott Savage on behalf of Plat B&D  
11 Homeowners Association.

12 MR. LANGE: Terry Lange. I'm the president of the  
13 board of Red Pine -- on behalf of Red Pine. I'm here as  
14 an intervenor.

09:19 15 MS. MILLER: Leanne Miller. I am president of the  
16 Hidden Creek HOA. I'm an intervenor also.

17 THE HEARING OFFICER: Are there any other parties  
18 in the room?

19 MS. SCHMID: There is one on the phone.

09:19 20 THE HEARING OFFICER: Sorry. Who do we have on the  
21 phone? Mr. Amendola -- pardon me. Mr. Amendola, are  
22 you on the phone?

23 MR. AMENDOLA: Yes, I am. I'm an intervenor with  
24 17098 on behalf of Red Pine and Hidden Creek HOA.

09:19 25 THE HEARING OFFICER: Mr. Lang, you and

09:19 1 Mr. Amendola, you represent or are here on behalf of the  
2 same entity; is that right?

3 MR. LANGE: That's correct.

4 THE HEARING OFFICER: All right. Before we begin  
09:20 5 with the applicant's presentation of its evidence, are  
6 there any preliminary matters? I'm aware of a motion to  
7 strike that was filed early this morning. Would you  
8 like to take that up now?

9 MS. SCHMID: Yes.

09:20 10 MR. ATWATER: I think so as well, but before we do,  
11 there is just a few other items that I want to address  
12 so that we can set the stage for the proceeding if  
13 that's okay. And one of them just simply relates to the  
14 direct testimony that was filed by the applicant. There  
09:20 15 were two testimonies that were filed in connection with  
16 the direct testimony. One was from me and one was from  
17 Mr. Kevin Larson with the engineering firm of Bowen  
18 Collins. Mr. Larson is unable to make it today. He had  
19 a preplanned vacation with his family. So in his place  
09:20 20 Tina Campbell is here with us. She is a partner of that  
21 engineering firm and worked very closely with Kevin.  
22 She may not have all of the answers that Kevin could  
23 provide, but she's very well versed in the materials  
24 that were prepared by Mr. Larson. So she's here on his  
09:21 25 behalf.

09:21 1 Regarding my testimony, inasmuch as there is a  
2 potential issue with an attorney representing an  
3 applicant in an administrative hearing and also being a  
4 witness, we've decided to ask Mr. White to replace me as  
09:21 5 the individual providing that direct testimony.

6 And so we would submit to the commission this  
7 morning that the testimony that was submitted by me,  
8 Justin Atwater, on behalf of the company, be adopted as  
9 the testimony of Mr. Larry White, chief executive  
09:21 10 officer of TCFC Finance Co., the ultimate parent of the  
11 applicant

12 THE HEARING OFFICER: Do you intend to call  
13 Ms. Campbell and Mr. White today and ask them to attest  
14 to the veracity of the documents you're asking them to  
09:21 15 adopt?

16 MR. ATWATER: We will do so. We intend to submit  
17 those as testimony so we will do so. We don't  
18 anticipate asking Ms. Campbell to restate what's in the  
19 testimony, but for her to testify to the veracity, yes.

09:22 20 THE HEARING OFFICER: All right. Any objection?

21 MS. SCHMID: No objection to the substitution. I'd  
22 just like to note that whether or not the testimony  
23 should be admitted will of course be determined when the  
24 testimony is moved into evidence.

09:22 25 THE HEARING OFFICER: Of course I view this as more



09:22 1 of a disclosure issue, but I don't think it's a  
2 substantive one.

3 MS. SCHMID: I view it as a disclosure issue as  
4 well.

09:22 5 MR. ATWATER: Thank you.

6 THE HEARING OFFICER: Anything else, Mr. Atwater?

7 MR. ATWATER: No.

8 THE HEARING OFFICER: Did any intervenors have a  
9 problem with Mr. Atwater's proposal?

09:22 10 MR. SAVAGE: No objection.

11 MR. LANGE: No objection.

12 MS. MILLER: No objection.

13 THE HEARING OFFICER: Thank you. Then we'll move  
14 to the motion to strike. Mr. Atwater, do you have

09:22 15 anything to say on behalf of your motion?

16 MR. ATWATER: Did everyone have a chance to look at  
17 the memo that was filed earlier this morning?

18 MR. SAVAGE: Five minutes ago.

19 MR. ATWATER: And I apologize for that.

09:22 20 THE HEARING OFFICER: Not to mislead you into

21 launching into an argument on the merits of a motion, I  
22 really just want to get the parties' position on whether  
23 we should take it up at this point, or whether it would  
24 be better to address later.

09:23 25 MR. ATWATER: Yeah. So my thoughts on this -- I

09:23 1 really struggle frankly with the idea whether or not it  
2 should be a motion to strike or simply an objection to  
3 the testimony. And our intention in filing the motion  
4 was to merely make it clear why we are here, and the  
09:23 5 purpose for the proceeding, and to focus the efforts of  
6 what we're here to speak on and to not include  
7 extraneous information that may not be relevant to that.

8 And so for me I don't know that it's important  
9 necessarily that we discuss whether they be stricken  
09:23 10 today, but I do want it to be focused in a way that  
11 allows us to accomplish the purpose we're here.

12 THE HEARING OFFICER: Ms. Schmid?

13 MS. SCHMID: As there is a pending motion, I  
14 believe it should be addressed today. I appreciate the  
09:23 15 fact that counsel for the company has given us notice --  
16 albeit brief -- of its intentions. I think that  
17 resolving the issue today, with argument and with a  
18 commission decision, will allow the hearing to proceed  
19 in a more orderly manner. The Division is ready to  
09:24 20 address the motion today.

21 MR. SAVAGE: I have no objection either way. This  
22 is Scott Savage. One of the focuses of the motion to  
23 strike or the submission that I made to the commission,  
24 I notice that they move to strike all of the exhibits to  
09:24 25 my alternative proposal, which includes their

09:24 1 application. That was one of my exhibits they moved to  
2 strike. And they moved to strike the June 15 update to  
3 the commission which is referenced in their application.  
4 But I -- so I think they have used a shotgun instead of  
09:24 5 a rifle in focusing on these things, and I would like to  
6 have more time to carefully examine their motion and  
7 compare my testimony to the application. But if it is  
8 the commission's desire to go forward, I can go forward  
9 right now.

09:25 10 THE HEARING OFFICER: Thank you, Mr. Savage.

11 MR. LANGE: Terry Lange. I have no objection in  
12 moving forward with it at this time.

13 MS. MILLER: I have no objection moving forward  
14 with it at this time.

09:25 15 THE HEARING OFFICER: All right. Mr. Atwater, it  
16 sounds like the parties want to address the motion now,  
17 and I'm fine with that. So I'll give you a few minutes  
18 if you'd like to argue on behalf of the motion's merits.

19 MR. ATWATER: Great. Thank you. So as stated in  
09:25 20 the written motion, rule 12-F of Utah rules of civil  
21 procedure and Utah code annotated 63G4206, allows  
22 commission to exclude evidence that is irrelevant,  
23 immaterial or unduly repetitious. The basis for  
24 striking or seeking a request to strike the paragraph  
09:25 25 suggested in the motion, incorporate all three of those

09:25 1 elements. Not only are they immaterial, and don't  
2 advance the interest of the public service commission,  
3 but also repetitive. And I think what Mr. Savage  
4 mentioned just a moment ago is illustrative of that  
09:26 5 point. We weren't striking them because we didn't think  
6 they were relevant. However, they're repetitious,  
7 already provided by the company and not necessary to be  
8 duplicative of what's already before the commission.  
9 We feel it's very important regarding the idea of  
09:26 10 irrelevance and unimportance to restate the purpose for  
11 why we're here, and to make it very clear that the  
12 efforts of the company have been genuine, have been very  
13 sincere. And we're here to determine whether or not  
14 there is a reasonable rate available to the company to  
09:26 15 balance the competing interests of both the public, in  
16 receiving adequate supply of water, but also the  
17 pecuniary interest of the company, the financial  
18 interest of the company and its ability to operate.  
19 That's why we're here today. We felt very obviously and  
09:27 20 clearly that the provisions that are asking to be  
21 stricken from the record do nothing to advance that  
22 purpose. And that's why we've asked that they be  
23 stricken so that we can focus the efforts. So that the  
24 testimony of the intervenors does not meander. I think  
09:27 25 I used the word hijack the proceeding for ulterior

09:27 1 motives and ulterior purposes. Rather we'd just like to  
 2 be very focused and clear on what we're trying to  
 3 accomplish. And that's the gist of the motion.  
 4 Otherwise we rest on the statement

09:27 5 THE HEARING OFFICER: Thank you, Mr. Atwater. Ms.  
 6 Schmid?

7 MS. SCHMID: Thank you. The Division objects to  
 8 the motion to strike and believes that the motion should  
 9 be denied. By statute, the commission is charged with  
 09:27 10 setting just, reasonable end rates that are in the  
 11 public interest. As part of that, the regulated utility  
 12 must come before the commission and present evidence.  
 13 An integral part of the process is the fact that parties  
 14 are permitted to intervene and present their own  
 09:28 15 evidence.

16 Part of the determination that the commission makes  
 17 when picking rates, is making sure that the rates are  
 18 just, reasonable and in the public interest, as I said  
 19 before. As such, the regulated company's actions are  
 09:28 20 appropriate for scrutiny. The scrutiny that a regulated  
 21 company's actions receive is based upon a prudent  
 22 standard. Not quoting directly, but a prudent standard  
 23 is the standard action that a reasonable utility would  
 24 do in the same circumstance, knowing the same facts, at  
 09:28 25 the same time as the subject public utility. As such,

09:29 1 the statements sought to be stricken and the associated  
2 exhibits are relevant and are necessary to the  
3 commission's full and fair process. The commission --  
4 the Division is not asserting that the commission should  
09:29 5 step into the management shoes of the company, but  
6 should instead examine the prudence of the company's  
7 decision.

8 In addition, the Division objects to the  
9 characterization of the provisions sought to be stricken  
09:29 10 as being for ulterior motives and ulterior purposes.  
11 The Division believes that is inappropriate and has not  
12 been proven. The standard for admitting evidence in an  
13 administrative proceeding is generally less strict than  
14 in traditional courts. The standard has been, I  
09:30 15 believe, relevant information or information that leads  
16 to relevant information that is admissible.

17 I think that the subject paragraphs fulfill that  
18 duty. I also believe that they are not immaterial,  
19 impertinent, repetitive or scandalous. I believe that  
09:30 20 they serve a purpose. I believe that they help set the  
21 stage for the company's actions. I think that the  
22 company's past actions are integral to the  
23 determination, particularly as they pertain to its  
24 request for interim rates and the special assessment.  
09:30 25 With that the Division urges the commission to reject

09:30 1 the motion.

2 THE HEARING OFFICER: Thank you, Ms. Schmid.

3 Mr. Savage?

09:30 4 MR. SAVAGE: Thank you, Your Honor. I'll address  
5 just my alternative proposal and direct testimony and  
6 the motion to strike as it pertains to it. This  
7 evidence is not irrelevant. It is not immaterial. It  
8 is not repetitious. It's not scandalous. It is  
9 directly relevant to the interim rate that we're here to  
09:31 10 discuss today.

11 For example, we are here today to determine whether  
12 or not the commission should award an immediate -- an  
13 immediate interim rate increase of \$1,103 for each of  
14 the 502 water users to pay for this tank. In the  
09:31 15 application, the applicant has stated, paragraph 18,  
16 without this assessment to cover the debt service and  
17 repayment, the company has been unable to demonstrate to  
18 potential lenders a clear path of repayment. In  
19 paragraph 20 of their application, company explored  
09:31 20 multiple financing options for the tank, but none that  
21 would be available and satisfy to sufficiently meet the  
22 needed time frame for the construction. That's what  
23 they have pled, and that frames the issues for why we're  
24 here and why they're asking for an immediate \$1,100  
09:32 25 assessment.

09:32 1 In my testimony which they moved to strike, I point  
2 out several occasions, even written letters signed by  
3 Mr. Larry White on behalf of the ultimate parent, TCFC,  
4 where they have stated that they have secured financing  
09:32 5 for the tank from the parent that's Mr. White's company.  
6 That directly conflicts with their representation to the  
7 commission that no financing is available, the only way  
8 to pay for this tank is the draconian measure of  
9 assessing every user \$1,100, and coming up with the  
09:33 10 \$500,000 in 15 days on the backs of the water users.

11 Addressing what the company has said before in my  
12 testimony, this is information that was directly given  
13 to me by the company. It was directly given in another  
14 update to the public service commission. And to strike  
09:33 15 that testimony would do a disservice and be unjust and  
16 inappropriate in this particular circumstance.

17 The company also in their application refers to all  
18 of the efforts they've made on paragraph 11. For  
19 example, company has continued productive dialogue with  
09:33 20 its customers. Customers have been instrumental.  
21 Paragraph 12 of their application, the update -- 2017  
22 update letter was sent to all customers. The update  
23 letter is incorporated in the application and I include  
24 it as an exhibit, not to be redundant, but for the  
09:33 25 convenience of the hearing examiner to have what I'm



09:34 1 referring to in my testimony be attached to that  
2 testimony so you don't have to search for it.

3 In addition, they also discuss as a result of the  
4 tank value, the company's imposed a complete restriction  
09:34 5 on outdoor water, and go on to say that there is no  
6 means to remedy the situation other than imposing a  
7 complete cessation of use of water -- irrigation water.

8 In my testimony they moved to be stricken, I point  
9 out that was not the case. That we worked hard as users  
09:34 10 to come up with a plan where some limited irrigation  
11 water could be done, and the company completely rejected  
12 it. They don't tell the commission that. And that  
13 their application is contrary to the facts that are  
14 stated in my testimony. They say the funds can only be  
09:35 15 satisfied by single charge upon the customers in  
16 paragraph 20. That's not true. They have stated they  
17 have secured financing. I think it's important in my  
18 testimony that I point out the background, and what has  
19 been stated to these customers that they refer to in  
09:35 20 their application as having various meetings with.

21 And they have stated that their intent -- the  
22 intent of TCFC is to get out of the water business and  
23 divest itself of CWC. And that they have proposed a  
24 means of doing that with Summit Water. And that was  
09:35 25 dependent upon getting out from under the jurisdiction

09:35 1 of the Public Service Commission. When that failed, the  
2 further discussion with the customers ceased and the --  
3 this application was filed.

4 I point out in the testimony they moved to be  
09:36 5 stricken, that the company was requested on numerous  
6 occasions in June that it seek Public Service Commission  
7 rate increase to cover the failed tank. That they  
8 should be proceeding in that manner instead of trying to  
9 get the customers to agree to a sale to -- or to a  
09:36 10 transfer to Summit Water that would leave the customers  
11 with no ability to control the decisions of Summit  
12 Water, and would take the company out from jurisdiction  
13 of the Public Service Commission so we would have no  
14 government agency with the authority to review  
09:36 15 assessments or proposed increases and rates or expenses  
16 imposed by this -- Summit Water's newly proposed  
17 corporation.

18 That is not irrelevant. That's what happened.  
19 That's what brought us here. They should have sued --  
09:36 20 or pursued this matter before the Public Service  
21 Commission in May or June. They told us that they  
22 couldn't do that because it would take 240 days. The  
23 hearing examiner knows that's not true. We're here  
24 today on a 45-day time frame to have an interim rate  
09:37 25 increase to start paying for that tank. That tank could

09:37 1 have been brought before the attention of the Public  
2 Service Commission 45 days after it failed in April.  
3 And instead we're here in October which is the date in  
4 their statements that they now move to be stricken.

09:37 5 Their very statements to the customers that this tank  
6 had to be immediately replaced, and if it went forward  
7 with the company funding that it would be replaced by  
8 October.

9 Well, it's not replaced by October. And I think

09:37 10 all of this is germane to the interim rate increase we  
11 have here. I think it's important to give the hearing  
12 examiner and the commission the full background of what  
13 has been said to the customers, what has been done. And  
14 I have testified to that information in my statement by

09:38 15 direct testimony that I was a witness to. There are  
16 some conclusions in my presentation, but that's not  
17 unusual in direct testimony in a rate matter. And they  
18 are conclusions that I think are reasonable inferences  
19 as to why the company has done certain things. And I

09:38 20 challenge the company to establish that those inferences  
21 are incorrect, that they have proceeded in this manner  
22 and waited this long. Because their desire was to get  
23 out from under Public Service Commission jurisdiction,  
24 and proceeding with an interim rate increase to fix this

09:38 25 failed tank, would complicate their effort to extricate

09:38 1 themselves from the supervision of the Public Service  
2 Commission.

3 There is nothing wrong with presenting that  
4 testimony. It's not irrelevant it's not immaterial.  
09:38 5 It's not even scandalous. And I take umbrage at there  
6 being some ulterior motive. I'm here for the statements  
7 I've made in my presentation, to have an alternative way  
8 to fund that tank, and an alternative way to -- other  
9 than an immediate interim rate increase -- to start  
09:39 10 repaying the \$38.6 million loan that hasn't even funded  
11 yet, for which no payments will be due until January of  
12 2019. Sorry I took that long but -- I probably could  
13 have made it briefer if I had more time to review all of  
14 this material.

09:39 15 THE HEARING OFFICER: Thank you, Mr. Savage. Mr.  
16 Lange?

17 MR. LANGE: Yes. So none of my testimony has been  
18 put forth in the motion to be struck. However, I think  
19 that the testimony in general that they wish to have  
09:39 20 stricken is very pertinent to setting the stage of the  
21 history from the customer's point of view of how things  
22 have transpired and whether or not they've influenced, I  
23 guess, prudent or imprudent decisions on the part of  
24 Community Water to move forward.

09:40 25 Our biggest concern is the lack of capacity, i.e.,

09:40 1 the failed tank at this point in time. And we really  
2 want to have that tank done sooner than later. I mean,  
3 I wish they were working on it today quite frankly. But  
4 they're not. This has been held off. We're very upset  
09:40 5 by this and don't understand the reasons why it hasn't  
6 gone forward the way they said it would be going  
7 forward. So consequently, I think that this motion to  
8 be stricken, this information, this testimony, should be  
9 denied.

09:40 10 THE HEARING OFFICER: Thank you. And Ms. Miller?

11 MS. MILLER: I also object to my testimony to be  
12 stricken. I believe that the comments speak to the  
13 importance of moving forward very expeditiously to get a  
14 new tank built. As we've heard before, we've had  
09:40 15 promises that it was going to move forward and those  
16 promises haven't been kept. And it's also important for  
17 the customers to understand what level of reliability  
18 exists in the system. We need to know what type of  
19 emergency plan for water service might be put in place  
09:41 20 if there is another failure.

21 THE HEARING OFFICER: Thank you. And I should have  
22 asked earlier, I was presuming since you are present  
23 that you would be Hidden Creek HOA's representative  
24 today, and that Mr. Amendola might be functioning as a  
09:41 25 witness. So I've been referring to you when I have a

09:41 1 question in your capacity as being here to represent the  
2 HOA. Should I be referring to Mr. Amendola or is that  
3 okay?  
4 MS. MILLER: That's fine.

09:41 5 THE HEARING OFFICER: Anything else from you,  
6 Mr. Atwater?  
7 MR. ATWATER: Does Mr. Amendola want to say  
8 anything?  
9 THE HEARING OFFICER: My point was, we just heard  
09:41 10 on behalf of --  
11 MS. MILLER: Oh, I'm not addressing Mr. Amendola's  
12 testimony or objection to his testimony. I'm sorry. I  
13 did not understand that.  
14 MR. SAVAGE: They've moved to strike his testimony  
09:41 15 too, Mr. Amendola's.  
16 THE HEARING OFFICER: Mr. Amendola is here on  
17 behalf of Red Pine?  
18 MS. MILLER: Red Pine HOA. But I'm Hidden Creek  
19 HOA.  
09:42 20 THE HEARING OFFICER: Mr. Lange is here on behalf  
21 of Red Pine, right?  
22 MR. LANGE: He's representing both Red Pine and  
23 Hidden Creek.  
24 THE HEARING OFFICER: We'll go ahead and give  
09:42 25 Mr. Amendola an opportunity to speak then.

09:42 1 MR. AMENDOLA: My turn, Your Honor?

2 THE HEARING OFFICER: Yes.

3 MR. AMENDOLA: Yes, I will be very brief. I'm out  
4 of town and I don't have the benefit of all the  
09:42 5 documents in front of me, but I would like to say that  
6 first and foremost, in no way are we trying to hijack  
7 this proceeding. And in no way are the owners that I  
8 represent seeking to provide or work from ulterior  
9 motives in this case. To the contrary, we have simply  
09:42 10 provided a historical count of the things that have  
11 happened since mid-April when the tank failed.

12 We also wanted to document that the company has  
13 acknowledged the severity of the situation and the need  
14 to move forward quickly with ulterior or -- alternate  
09:43 15 funding. They informed us on different occasions that  
16 there was alternate funding secured and work was moving  
17 forward on the tank with the hope of having this tank  
18 function yet this fall. And finally, I would offer that  
19 their request for a one-time funding or assessment of  
09:43 20 \$1,100 is obviously burdensome to all the customer base,  
21 but in an effort to try and move this issue forward and  
22 get this tank -- the work on the tank underway, we  
23 basically offered up an alternate method of payment that  
24 would reimburse the company very similarly to what one  
09:44 25 of their original offers was, you know, two, three

09:44

1 months ago.

09:44

2 So not only are we trying -- not trying to hijack  
3 the procedures, we are actually trying to facilitate and  
4 expedite work on this tank. We don't want to go into  
5 winter conditions without a tank, and if we are forced  
6 to, we want to make sure that we can reduce the time  
7 period before this tank comes on if it even has to come  
8 on in the early spring. But we have all provided  
9 background information and an alternative funding  
10 mechanism that we think should be acceptable to get this  
11 project moving forward. Thank you.

09:44

12 THE HEARING OFFICER: Thank you, Mr. Amendola.

09:45

13 MR. ATWATER: If I may just spend one more minute  
14 in response to the other parties' statements. I want to  
15 make it very clear that the company, the applicant in no  
16 way is suggesting that the intervenors not participate.  
17 We are very appreciative of the information they've  
18 provided to help and the assistance that they've given  
19 all along the way. That's very clear and we want you to  
20 know that, that this position to strike had nothing to  
21 do with whether or not we want you to participate. What  
22 it deals with is whether or not the commission should  
23 consider all of that background information when  
24 determining whether or not the rate requested is just  
25 and reasonable. We believe it's not relevant for that

09:45

09:45



09:45 1 purpose. We believe it's relevant clearly, the history  
2 of what's gone on here is very relevant to where the  
3 company is today. And we don't dispute that. And I  
4 apologize if it came across that way. What we're simply  
09:45 5 stating is that as the commission considers the  
6 application, that all of this additional information  
7 that may provide background and may be useful, not be  
8 considered when determining whether or not the rate  
9 meets the requirements of the statute, being just and  
09:46 10 reasonable and fair to the public and to the company's  
11 interest.

12 THE HEARING OFFICER: Thank you, Mr. Atwater. At  
13 this point the commission is disinclined to grant the  
14 motion to strike the portions of the written testimony  
09:46 15 filed by the witnesses at issue. So the motion is  
16 denied. That being said, all parties and their counsel  
17 retain the right to object to any testimony that might  
18 be presented during the hearing today.

19 MR. ATWATER: So to clarify, do we need to object  
09:46 20 every time testimony is made or can I make a blanket  
21 objection to their testimony with respect to those  
22 paragraphs at the outset?

23 THE HEARING OFFICER: You can elect -- I mean, you  
24 can elect to represent your client how you wish. It  
09:46 25 would probably be more efficient if you make the blanket

09:46 1 objection.

2 MR. ATWATER: So I just want to submit to the  
3 commission in that regard that the motion in itself  
4 actually makes the blanket objection to those  
09:47 5 provisions, those paragraphs that were asked to be  
6 stricken and we just restate that objection here in the  
7 hearing.

8 THE HEARING OFFICER: Understood. Are you prepared  
9 to call your first witness, Mr. Atwater?

09:47 10 MR. ATWATER: We are. And so in the spirit of  
11 history, and how important it is for this, the applicant  
12 would like to call Mr. Larry White as a witness before  
13 the commission. As stated before, Mr. Larry White is  
14 the chief executive officer of TCFC Finance Co. which he  
09:47 15 will explain in a little more detail. Our approach to  
16 this testimony, if the commission will allow, is to  
17 allow Mr. White to make open statements, rather than  
18 necessarily asking questions. I would think it's  
19 important that he provide the company's history in  
09:47 20 response to the testimony that was just accepted by the  
21 commission, and other statements that have been made by  
22 the DPU and the intervenors.

23 THE HEARING OFFICER: That's certainly fine.  
24 Mr. White, do you mind taking the stand?

09:48 25 MR. WHITE: Sure.

09:48 1 (Larry White is sworn in as a witness.)

2 MR. WHITE: So first of all, I want to make it

3 clear that I'm not a lawyer, I've never been involved in

4 an entity that has an interaction with a Public Service

09:48 5 Commission or oversight such as this. So this is all

6 very new to me. Without going into the entire

7 background and history of Community Water, let's go back

8 to the entity that is the sole member of Community Water

9 which is ASC Utah. That entity acquired a number of

09:49 10 assets which included Community Water in 1998. The

11 Talisker Corporation acquired ASCU in 2008. And Varde

12 Partners which was a private equity firm based in

13 Minneapolis, Minnesota invested in certain Canyon's

14 related assets in Park City in 2010. In 2013, the

09:49 15 Talisker member was removed as the managing member of

16 that entity, and Varde was inserted and TCFC Finance was

17 created. That's the history.

18 A little bit about Varde Partners. Varde is a

19 private equity firm based in Minneapolis. Its investors

09:49 20 are primarily pension funds, state pension funds,

21 college endowments and nonprofit agencies like Boy's

22 Town, for example, who was Varde's very first investor,

23 and the Annie E. Casey Foundation who basically provides

24 services to the poorest of the poor, to people who are

09:50 25 not caught in the social services net. That's the basis

09:50 1 of the various funds that Varde manages.

2 There has been a lot of conversation about this  
3 loan. So the way that private equity firms work is that  
4 they promise a preferred return to their investors. For  
09:50 5 Varde, the promise to the investors is a 13 percent  
6 basis in a preferred return. That means that before  
7 anything else happens, the investors have to get that  
8 kind of return. Their expectation, consistent with all  
9 private equity firms, is that their returns would be in  
09:50 10 the 17 or 18 to 22 percent range.

11 The nature of those funds, and the way that  
12 non-profits operate, is that they actually use those  
13 funds to -- or a portion of them to do all of their  
14 nonprofit acts. So for endowments it's to -- for  
09:51 15 college endowments, it's to provide scholarships for  
16 people who can't afford. In the case of Annie E. Casey  
17 Foundation, they're conducting their services around the  
18 city of Baltimore and elsewhere. So that's the nature  
19 of the funds that back TCFC, just so you're aware where  
09:51 20 the money comes from.

21 THE HEARING OFFICER: I'm sorry to interrupt you.  
22 We are live streaming this hearing today and it is  
23 currently a public proceeding. So to the extent you may  
24 be concerned about confidential information -- I know  
09:51 25 many of the exhibits filed in this case were filed as

09:51 1 confidential -- you should be aware that this we are  
2 streaming.

3 THE WITNESS: This is all public information. So  
4 it's important to understand that in the context of how  
09:51 5 we operate. So the nature of this -- because there have  
6 been all sorts of questions about this and I'm trying to  
7 clarify -- so that sole member of Community Water is ASC  
8 Utah. The sole member of ASC Utah is TCFC. The owner  
9 of TCFC is an interim of what goes back to the private  
09:52 10 equity firm. So that's the nature of our funding. So  
11 again, our understanding is that -- and there have been  
12 a number of attempts to have a rate case come before the  
13 Public Service Commission. That's based on the fact  
14 that for 30 years or more the customers of this company  
09:52 15 were paying \$12 a month and the system was allowed to  
16 deteriorate.

17 Last year there was a rate case that came before  
18 this commission, and the result of that was that the  
19 rate was increased to roughly \$30 a month per customer  
09:52 20 plus usage. Just to give you an idea of comparison to  
21 the other regional water companies, I'm a Summit Water  
22 customer. I live in Park City. My monthly rate is \$88  
23 a month. The average customer with Mountain Regional  
24 which is the other large regional water company is \$120  
09:53 25 a month.

09:53 1 At the same time that this rate case was brought  
2 back in July or August of 2016, there was a request for  
3 infrastructure improvements because half the meters in  
4 Community Water don't work. We are aware then of a  
09:53 5 number of deficiencies based on a study that was done by  
6 Bowen Collins that evaluated the entire system. Bowen &  
7 Collins is a water engineering company. They evaluated  
8 the entire system. We are aware there was a number of  
9 deficiencies. So part of that rate case was to request  
09:53 10 meters, pressure valves, and other parts of the system  
11 that were known to be failing.

12 Throughout this process our desire has been to  
13 transfer this company into responsible hands that is a  
14 larger operating water company. So just to give you an  
09:54 15 idea, Summit Water has roughly 5,000 customers, Mountain  
16 Regional has roughly 8,000 customers, Community Water  
17 has 500. So it clearly costs more per customer to  
18 operate a very small company than it does to spread  
19 those costs over a large number of customers.

09:54 20 We have met with the customers a number of times,  
21 trying to figure out a way to transfer this responsibly.  
22 We've talked about setting up a nonprofit customers  
23 would own, but it has to be managed by a responsible  
24 major water company. They don't have the capacity among  
09:54 25 the customers themselves to be able to manage this kind

09:54

1 of operation.

2 So we did offer back in July -- after the tank  
3 failed we did offer to provide a means by which we could  
4 replace the tank. So there are two separate issues

09:55

5 here. The first is the replacement was more immediate  
6 when the tank failed, which is the larger of the two  
7 water tanks, and could not be repaired. It had been  
8 repaired a number of times. Probably 40 years old. We  
9 did offer a financing mechanism back then based on the

09:55

10 customers volunteering a hundred -- it would have to be  
11 a hundred percent of the customers volunteering to repay  
12 the cost of the tank over time.

13 What we were told by that condo association, the  
14 representatives here, is they could not guarantee that  
15 their customers would pay. They had no mechanism to go  
16 back and guarantee that their customers would pay.

09:55

17 Therefore, from our standpoint and to my board and  
18 executive committee, I couldn't tell them that the  
19 repayment of their funding of this water tank could be  
20 guaranteed to them. So consequently, it was then that  
21 we decided we needed to come before the Public Service  
22 Commission and establish this rate case.

09:55

23 It's also my understanding that we cannot -- that  
24 Community Water cannot arbitrarily -- even in the case  
25 of an emergency such as the failure of the tank or the

09:56

09:56 1 need for replacement water -- charge the customers more  
2 just because an emergency has happened. So if we needed  
3 supplemental water, for example, we have that capacity  
4 to come from Summit Water, but we have no capacity to  
09:56 5 charge for the water that we're receiving because it  
6 comes at a much greater rate than our source water,  
7 which is well and service water.

8 So we now have a situation where the infrastructure  
9 of Community Water is clearly failing. We have known  
09:56 10 this over time, and yet every attempt that we've made to  
11 try and rectify it, has been thwarted either through  
12 this process with the department of utilities or through  
13 the customers. And so we have tried to do this in the  
14 most cost effective manner possible, which would be to  
09:57 15 turn the system over to Summit Water, which is a  
16 nonprofit mutual water company. We've also had  
17 discussions with Mountain Regional which is a municipal  
18 water company. They have generally a higher cost of  
19 operations so it would cost the customers more. We've  
09:57 20 had conversations with both of them.

21 Through the efforts of Emily Lewis, we have secured  
22 a loan based on the Bowen & Collins' study -- a loan  
23 from the state which is federally fund based to correct  
24 all of the known deficiencies in the water system. We  
09:57 25 originally included the tank, the failed tank, in that



09:57

1 cost.

09:58

2           However, given that we were not close to being able  
3 to settle on that loan, and because of the parameters of  
4 the loan which require that we not spend any hard costs  
5 prior to the loan closing, meaning we could not order  
6 the tank, we couldn't bid the tank. The requirements of  
7 that loan because of Davis Bacon and other federal  
8 requirements, require that the loan be closed first, and  
9 that we bid all of the components and comply with Davis  
10 Bacon before any money could be spent, hard costs could  
11 be spent. We could spend money on engineering, but we  
12 could not spend any hard costs on the tank. That's the  
13 reason we decided to separate the cost of the tank from  
14 the proposed loan.

09:58

15           So it was clear when we could not get consensus of  
16 the customers for a unanimous consent to the -- to a  
17 special assessment to repair the tank at the time that  
18 we needed to come back through this formal process and  
19 make application of the Public Service Commission. That  
20 takes time to prepare. So you know that the submission  
21 has roughly a thousand pages of material that has to be  
22 submitted. The cost of every one of these applications  
23 is roughly \$50,000 in engineering and legal time that  
24 has to get passed through the customers.

09:59

25           So we made application in this case for both a

09:59 1 special assessment as well as for preparing for the loan  
2 closing, which could happen in spring, that would then  
3 repair the entire system. The cost just for the tank  
4 between now and the spring, or whenever it's going to be  
09:59 5 installed is roughly five to \$600,000 -- call it  
6 \$550,000. The cost of just the engineering and legal  
7 work in order to prepare for the closing of the loan to  
8 repair the rest of the system is another \$500,000. If  
9 we don't get this rate situation straightened out, this  
10:00 10 system -- the entire community water system will fail.  
11 It's on the verge of that now. It's very clear and  
12 people have been in denial, I think, for decades that  
13 the condition of the system was deteriorating. That's  
14 why we're before you today.

10:00 15 MR. ATWATER: I have a few questions for you, Mr.  
16 White. Thank you for your statement.

17 Q. The first question is, Mr. Savage suggested  
18 earlier today and in the testimony that was accepted by  
19 the commission today, that the reason for waiting to  
10:00 20 file the rate case until September was because we did  
21 not want to thwart the effort of the company in  
22 conveying it to a nonprofit entity. Is that the reason  
23 for delaying? And if not, would you explain again for  
24 the record the reason for waiting until September to  
10:01 25 file the rate case increase?

10:01 1 A. It had nothing to do with that. We were on a  
2 parallel path to try and rectify the deficiencies in the  
3 water system as well as to transfer the entire entity to  
4 a responsible management company.

10:01 5 The issue at hand is that it is not appropriate for  
6 Summit Water customers, a mutual water company with  
7 shareholders, to assume the liabilities of Community  
8 Water, either as it exists today with all the  
9 deficiencies in the system or with a 3 million dollar  
10:01 10 loan in place to correct all those deficiencies. And so  
11 that's why we try -- we embarked on an attempt to set up  
12 a nonprofit entity which would receive the loan and that  
13 Summit Water would then manage. That was what was  
14 proposed at the time.

10:02 15 There are a variety of complications of that in  
16 terms of control, whose in control of, you know, the  
17 decisions, where to spend money and how the system gets  
18 repaired. So that has not been resolved. That's why we  
19 chose a parallel path to come back to the Public Service  
10:02 20 Commission and ask for the rate increases, to make sure  
21 that whoever is investing that money, whether it's Varde  
22 investing that money on behalf of its investors or the  
23 loan investment that is coming from the state agency,  
24 make sure there is a mechanism to pay them back.

10:02 25 Because nobody invests money or makes loans without

10:02 1 knowing how it's going to get paid back. Does that  
2 answer your question?

3 Q. Yes. Thank you. You also testified that your  
4 private equity firm named Varde Partners became involved  
10:02 5 with ASC Utah in approximately 2013.

6 A. So the original investment was made in Talisker  
7 in 2010 and then assumed the managing member position in  
8 2013, June of 2013.

9 Q. Okay. I believe it's important for you to  
10:03 10 discuss the time frame between 2010 and today, and why  
11 now we have the information that we have as a company  
12 and why you are taking the steps you're taking today  
13 verses in 2010.

14 A. So again I was not -- I did not join Varde  
10:03 15 until February of 2014 so I don't know what happened,  
16 you know, prior to that time. I just know when the  
17 investment was made. And I can only tell you what has  
18 happened since I've been involved. And I came on board  
19 largely because of this project, to manage this. At the  
10:03 20 time we had consultants that had taken over the  
21 accounting and the day-to-day management. We eventually  
22 replaced that with full time staff, and I was asked to  
23 come here and run it in May or March of 2016.

24 So I can only tell you what's happened since my own  
10:04 25 personal involvement. And that there have been several

10:04 1 attempts at developing rate cases which are complicated  
2 and expensive to come before this body. And that  
3 several of them have been thwarted or abandoned because  
4 of their complexity. The first one that finally came  
10:04 5 and was completed was just about a year ago. So I  
6 believe it was October, a year ago, when the rate case  
7 was approved. It was approved only for operational  
8 costs, not for infrastructure costs. And I can tell you  
9 that the operational costs that were approved is  
10:04 10 insufficient because the company is currently running  
11 without any management. Keep in mind that we have never  
12 charged any overhead, that this entity operates out of  
13 TCFC's offices with our accounting services provided for  
14 free, managing services provided for free.

10:04 15 And even with that the company is currently  
16 running, first nine months of this year, at \$112,000  
17 deficit. So without -- just in it's general operating  
18 costs without any infrastructure costs, \$112,000  
19 deficit. If we were to add a simple 9,000 dollar a  
10:05 20 month management fee which would be minimal to cover the  
21 cost of management, that would go up to close to  
22 \$200,000. So \$193,000 deficit so far this year.

10:05 23 I can tell you from just the engineering we spent  
24 \$36,000 to date just on the tank replacement, just on  
25 the engineering and planning. We spent \$10,000 to date

10:05 1 on the rate study. \$13,000 -- this is to date meaning  
2 this year -- on the loan, preparing for the loan. And  
3 another \$6,000 on easements where the infrastructure  
4 exists, but does not have property easements and needs  
10:05 5 to be perfected in order to establish the rights of the  
6 system.

7 **Q. So a follow-up question I think everybody wants**  
8 **to know. Why did you acquire Community Water?**

9 A. So it was just part of the asset. I can't tell  
10:06 10 you why ASCU acquired Community Water or whether it came  
11 along with the other holdings that they acquired, but  
12 all of the holdings were acquired then by Talisker and  
13 basically inherited in the subsequent acquisitions.

14 **Q. So it's your understanding that it wasn't**  
10:06 15 **necessarily an expectation that this would be a high**  
16 **return company that would allow for your investors to**  
17 **achieve the return that they normally require?**

18 MR. SAVAGE: CWC?

19 MR. ATWATER: Correct.

10:06 20 THE WITNESS: It was not acquired as an individual  
21 asset for that purpose.

22 MR. ATWATER: Okay. Great.

23 **Q. Would you please provide an update as to the**  
24 **status of the new tank -- the current status that's in**  
10:06 25 **progress?**

10:06 1 A. So we've done an evaluation on the new tank.  
2 Summit Water has been instrumental in evaluating,  
3 searching for tank providers, evaluating the right kind  
4 of tank in order to replace the one that failed. And we  
10:07 5 could move forward on ordering that tank as soon as we  
6 have the money to do so.

7 In terms of its installation time, where this tank  
8 is located is, for anybody that's familiar with the  
9 Canyons Resort, it's a ski resort, this tank and the  
10:07 10 smaller tank are located on easement land which is up  
11 "ludraw" which is a ski run. So if it isn't replaced  
12 within a certain time period, as soon as it starts  
13 snowing it's inaccessible by trucks and equipment.

14 So at this point in time, as soon as the path to  
10:07 15 repayment or payment of the tank is clear, the tank  
16 could be ordered. It will take roughly three to four  
17 months in manufacturing and transportation, and probably  
18 six weeks to actually install and become operational.

19 At this point, the earliest that that could occur  
10:08 20 would be in the spring of 2018, as soon as the path is  
21 clear to the site where the tank, the wells and the  
22 companion tank exist. So I would think that from a  
23 timing standpoint, it's likely in a best case scenario  
24 to be May or June of 2018.

10:08 25 **Q. Thank you. It's appropriate and necessary for**

10:08 1 me to ask you if you certify and adopt the testimony of  
2 Justin Atwater submitted with the direct testimony of  
3 the company as being true and accurate?

4 A. Yes, I do.

10:08 5 Q. You adopt that testimony as your own?

6 A. I do.

7 Q. Thank you.

8 MR. ATWATER: Your honor, the application has two  
9 requests as has been noted. One for a special increase  
10:09 10 related to the tank and one for a general increase

11 related to O&M and infrastructure. There are very  
12 detailed discussions to be had regarding both of those.

13 Mr. White has adopted the testimony that I've provided  
14 which includes details regarding both of those things.

10:09 15 We don't feel that it's necessary to read that in today  
16 unless the commission feels inclined for us to do so.

17 THE HEARING OFFICER: No. The commission's rules  
18 expressly allow parties to adopt summations so that we  
19 don't have to do that. Your witness is welcome to do so  
10:09 20 and of course he may be subject to cross-examination on  
21 any topic covered.

22 MR. ATWATER: Great. Thank you. The other  
23 question I have for the commission is, will the  
24 applicant have an opportunity at some point to provide  
10:09 25 statements outside of its witnesses?



|       |    |  |
|-------|----|--|
| 10:09 | 1  | THE HEARING OFFICER: A concluding argument?              |
|       | 2  | MR. ATWATER: Correct.                                    |
|       | 3  | THE HEARING OFFICER: Any objection to that?              |
|       | 4  | MS. SCHMID: No objection.                                |
| 10:09 | 5  | MR. SAVAGE: No objections.                               |
|       | 6  | MR. LANGE: No objections.                                |
|       | 7  | MR. ATWATER: Great. Then at this time we have no         |
|       | 8  | further questions for Mr. White.                         |
|       | 9  | THE HEARING OFFICER: Thank you. Ms. Schmid?              |
| 10:10 | 10 | MS. SCHMID: Is Mr. Atwater going to move for the         |
|       | 11 | admission of the testimony adopted by Mr. White?         |
|       | 12 | MR. ATWATER: Thank you. I move to admit the              |
|       | 13 | testimony of Mr. White.                                  |
|       | 14 | MS. SCHMID: No objection.                                |
| 10:10 | 15 | MR. SAVAGE: No objection.                                |
|       | 16 | MR. LANGE: No objection.                                 |
|       | 17 | MS. MILLER: No objection.                                |
|       | 18 | MR. AMENDOLA: None.                                      |
|       | 19 | THE HEARING OFFICER: It's admitted. Go ahead.            |
| 10:10 | 20 | MS. SCHMID: The Division has some                        |
|       | 21 | cross-examination questions for Mr. White, but because   |
|       | 22 | Mr. White's testimony ranged far more broadly than the   |
|       | 23 | testimony submitted by Mr. Atwater, the Division would   |
|       | 24 | like a few minutes to review its prepared                |
| 10:10 | 25 | cross-examination questions to see what can be stricken. |

10:10

1 Could the Division have 15 minutes? This is not my  
2 normal practice to ask for a delay and I submit that  
3 request in that nature.

10:10

4 THE HEARING OFFICER: Any objection to a 15-minute  
5 recess?

6 MR. SAVAGE: No objection.

7 MR. ATWATER: No objection.

8 THE HEARING OFFICER: We'll be in recess until  
9 10:30. Thank you.

10:11

10 MS. SCHMID: Thank you.

11 (Interruption in proceedings.)

12 THE HEARING OFFICER: Let's go back on the record  
13 please. Ms. Schmid, I believe we ended with you.

14 MS. SCHMID: Yes. I do have some questions for  
15 Mr. White, if he could be called to the stand.

10:29

16 THE HEARING OFFICER: Okay. Mr. White, would you  
17 please return to the stand. You're still under oath,  
18 sir.

19 MS. SCHMID:

10:29

20 **Q. Good morning.**

21 A. Good morning.

22 **Q. Is this your first experience in a regulatory**  
23 **setting?**

24 A. It is.

10:29

25 **Q. How long have you worked on the investment**

10:29

1 banker or the investment funding side of things?

2 A. For three and a half years.

3 Q. What is your background before that?

4 A. Real estate development.

10:30

5 Q. I have some questions, and some of these may be  
6 a little bit redundant because of what you testified to,  
7 but I want the commission to have precise facts on the  
8 record so I'm going to ask them.

9 You mentioned Talisker. Talisker bought American  
10 Ski Company; is that correct?

10:30

11 A. Correct.

12 Q. Is it correct that Varde Partners in 2010  
13 invested in the Canyons?

14 A. Correct.

10:30

15 Q. Is it correct that Canyons at that time was  
16 owned at least in part by Talisker Corporation?

17 A. I don't know whether -- it wasn't Talisker  
18 Corporation. It was probably a single purpose entity.

19 MR. SAVAGE: You said a single what?

10:30

20 THE WITNESS: Single purpose entity. Most assets  
21 are held by a single purpose entity.

22 MR. SAVAGE: A subsidiary of Talisker, is that what  
23 you mean?

24 THE HEARING OFFICER: You'll have your chance,

10:31

25 Mr. Savage.

10:31

1 MR. SAVAGE: I just couldn't hear. That's why I  
2 interrupted you.

3 MS. SCHMID:

10:31

4 **Q. So are you unfamiliar then with the involvement**  
5 **if any of Talisker in Community Water and TCFC?**

6 A. I don't know what -- if you're asking me  
7 what -- do I know what Talisker did during that period  
8 of time, I don't.

10:31

9 MR. ATWATER: May I object to the relevance of the  
10 question.

10:31

11 MS. SCHMID: The witness brought it up in his  
12 direct. We have established that the history of the  
13 corporation and that the company is very important. As  
14 part of his testimony here today, Mr. White talked about  
15 how the company had -- and I'll paraphrase because these  
16 weren't his direct words -- fallen into disrepair and  
17 needed some substantial improvements. Along those  
18 lines, I am trying to determine what knowledge if any  
19 Varde corporation -- Varde Partners had when it acquired  
20 the company. I believe that that is relevant as it  
21 pertains to not only the past management of the company,  
22 but also the current management.

10:31

10:32

23 THE HEARING OFFICER: And I was experiencing some  
24 cross-talk so I'm not sure I completely heard the  
25 question being objected to. Will you remind me of it?

10:32 1 MS. SCHMID: Yes, I asked about his knowledge of  
2 Talisker with American Ski Company and with Community  
3 Water Company. Also, in addition I believe that  
4 Talisker is in bankruptcy and I want to establish on the  
10:32 5 record, to the extent that he knows if that bankruptcy  
6 affects Community Water. And as a managing partner, I  
7 believe that Varde Partners would likely be aware of  
8 that.

9 MR. ATWATER: May I respond to that. We're okay  
10:32 10 with that question. If that's the intent of the  
11 question, I can make that -- ask Mr. White that  
12 question. We're okay with that.

13 MS. SCHMID: I have a series of questions.

14 MR. ATWATER: But if it's your intention to  
10:33 15 determine whether or not the company -- Mr. White in  
16 particular -- knows anything about the bankruptcy and of  
17 Talisker's impact on the company, you could ask those  
18 questions.

19 MS. SCHMID: That would be up to the administrator.

10:33 20 MR. ATWATER: We don't object. Excuse me.

21 THE HEARING OFFICER: I understand for purposes of  
22 the question that was just restated to me -- I  
23 understand that objection to be withdrawn and we'll  
24 proceed.

10:33 25 MS. SCHMID:

10:33

1 Q. Okay. So Mr. White -- and this is a slightly  
2 different question, but it's along the same lines -- is  
3 Talisker or a subsidiary of Talisker currently involved  
4 in CWC or TCFC, to your knowledge?

10:33

5 A. A Talisker entity is still a minority partner,  
6 a non-managing minority partner in the entity.

7 MR. ATWATER: In which entity?

8 THE WITNESS: I couldn't tell you, but it's in the  
9 Canyons investment entity.

10:34

10 MS. SCHMID:

11 Q. Okay. To your knowledge, do you know if  
12 Talisker is currently in bankruptcy?

13 A. To my knowledge, Talisker is not in bankruptcy.

14 Q. Okay. That eliminates that line of questions.

10:34

15 Thank you.

16 A. But to clarify, to answer your real question,  
17 is that there are certain other Talisker assets outside  
18 of the Canyons which were in bankruptcy and to our  
19 knowledge are now owned by Wells Fargo bank.

10:34

20 Q. Because Wells Fargo bank initiated a bankruptcy  
21 proceeding against Talisker; is that correct?

22 A. Right. But those assets have nothing to do  
23 with the Canyons, they're not related to TCFC or to  
24 Community Water Company.

10:34

25 Q. Thank you. That was very helpful. So it was

10:34 1 2010 when Varde Partners went through -- and I'm going  
2 to mispronounce it -- "flara" -- "plara" --

3 A. No. I don't know when "flara" was created.

4 Q. Okay. So Varde Partners invested in the  
10:35 5 Canyons; correct?

6 A. Correct.

7 Q. As part of that investment, was CWC and TCFC  
8 brought into the -- I'll just call it the family of  
9 assets -- pertaining to Varde Partners?

10:35 10 A. I believe that those were already part of the  
11 assets that were invested in, but I wasn't there at that  
12 time so I can't testify to that.

13 Q. You've had experiences as an investment banker  
14 for several years you said. In your experience as an  
10:35 15 investment banker, is it common for an entity prior to  
16 purchasing an interest to do a due diligence  
17 investigation?

18 A. Generally common.

19 Q. Would that due diligence investigation include  
10:35 20 generally a look at the balance sheets of a company  
21 that's going to be acquired?

22 A. I told you that I wasn't around at the time and  
23 I'm not --

24 Q. I'm asking in general.

10:36 25 A. Your generality does not make any difference.

10:36 1 What happened happened.

2 **Q. Are you refusing to answer the question?**

3 A. No. I'm saying to you that -- you know, in  
4 general, yes. But I cannot testify as to what was  
10:36 5 investigated at the time the investment was made. And I  
6 think it's irrelevant frankly. We are where we are  
7 today and the investment needs to be made now in fixing  
8 this system. That's all that matters. Seriously, it's  
9 all that matters.

10:36 10 MS. SCHMID: Objection. The witness is being  
11 argumentative with counsel.

12 MR. ATWATER: Objection to the line of questioning.

13 THE HEARING OFFICER: I agree that the examination  
14 has become argumentative. I think that Mr. White may  
10:36 15 have misinterpreted the question. As I understood it,  
16 Ms. Schmid was asking general questions about  
17 Mr. White's knowledge and experience as a professional,  
18 and not particulars as to what transpired in this case.

19 Are you satisfied at this point with the responses  
10:37 20 you've been given, Ms. Schmid?

21 MS. SCHMID: No.

22 THE HEARING OFFICER: Then we'll proceed. Please  
23 pause, Mr. White, after the question is asked so if  
24 Mr. Atwater wishes to object he has an opportunity to do  
10:37 25 so.



10:37 1 MR. ATWATER: And I do want to object to the  
2 question on the ground of relevance. And also Mr. White  
3 never testified that he was an investment banker. The  
4 question Ms. Schmid asked him was how many years have  
10:37 5 you spent in investment banking. And I think his  
6 interpretation when he said three years was his  
7 involvement with the company, not investment banking.  
8 He does not purport to be an expert on investment  
9 banking and never stated as such.

10:37 10 MR. SAVAGE: Objection. Speaking objection.

11 MR. ATWATER: Therefore it's irrelevant. He does  
12 not have the knowledge to answer that question.

13 MS. SCHMID: I think I can ask a question -- couple  
14 questions that will finish this line of questioning, and  
10:37 15 I believe that the questions are relevant and I believe  
16 that I probably can ask them and have them answered in a  
17 shorter time than what we have spent objecting.

18 THE HEARING OFFICER: For the sake of a clear  
19 record, because we've had some objections that haven't  
10:38 20 been ruled on, they're all overruled. The testimony  
21 will stand as it's been transcribed and we will proceed.

22 MS. SCHMID:

23 Q. Okay. Mr. White, you have experience in  
24 investment banking; is that correct?

10:38 25 A. I don't even know what the definition of that

10:38 1 is. So I have experience in investments.

2 Q. You have experience with Varde Partners?

3 A. I do.

10:38 4 Q. You also served as a real estate developer; is  
5 that correct?

6 A. I have in the past.

7 Q. Is it common that due diligence would be  
8 performed as part of an acquisition of say a real estate  
9 development?

10:38 10 A. It is.

11 Q. Along that lines, would the profit and loss  
12 statements and balance sheets likely be examined?

13 A. If they're available.

14 Q. Okay. Those are all my questions on that line.

10:39 15 Just one second. You've testified about the loan  
16 application and process with the Division of Drinking  
17 Water; is that correct?

18 A. Yes. I've referred to it, yes.

10:39 19 Q. Were you involved in the decision to seek a  
20 loan from DDW?

21 A. Yes.

22 Q. Have you been involved in the processing and  
23 application of that?

24 A. Generally, yes.

10:39 25 Q. Were you familiar with what was included in the

10:39

1 loan initially?

2 A. It was based on the Bowen and Collins' study.

3 Q. As part of that do you know if the tank was  
4 included?

10:40

5 A. In the original application it wasn't. It was  
6 added when the tank failed.

7 Q. Do you know if funds for the treatment plant  
8 were included in the original application?

9 A. I believe so.

10:40

10 Q. And is it your testimony that funds associated  
11 with the tank replacement had been withdrawn from the  
12 loan request?

13 A. I don't know whether they've been formally  
14 withdrawn or not, but from a timing standpoint and a  
15 practical standpoint, we discussed and have pursued that  
16 as a separate matter. Because it would have delayed the  
17 construction and implementation of the tank. I don't  
18 believe it's been formally withdrawn from the loan  
19 request yet.

10:40

20 Q. If it has not been withdrawn and if the loan is  
21 approved, then money for the tank would be included in  
22 the loan?

23 A. It could be. But that also means that the tank  
24 would not likely be constructed until 2019.

10:41

25 Q. I'll move to that right now then. So you

10:41 1 testified about the tank process in general, and I  
2 didn't take detailed notes so I can't remember the exact  
3 dates. So I'll ask you now. When did the tank fail?

4 A. I believe it failed in May of this year.

10:41 5 Q. Of 2017?

6 A. Yes.

7 Q. So was it in April or May?

8 A. It was sometime in the spring of this year. I  
9 don't remember the exact date.

10:41 10 Q. Has a replacement tank been ordered?

11 A. It has not.

12 Q. Have studies been conducted to determine what  
13 replacement tank should be ordered?

14 A. They have.

10:42 15 Q. And those studies were conducted by Summit  
16 Water; is that correct?

17 A. Yes. And by Bowen & Collins. By both.

18 Q. And by Bowen & Collins. Do you have any idea  
19 how long it takes from the time that a tank is ordered  
10:42 20 until a tank suitable for installation is deposited at  
21 the site?

22 A. It takes roughly four months.

23 Q. So the tank hasn't been ordered yet?

24 A. It hasn't. There is no money to order the  
10:42 25 tank.

10:42

1 Q. That's another line of questioning. We'll get  
2 there in a bit. When does the site for tank placement  
3 become inaccessible?

10:42

4 A. Probably depends upon snow. Depends upon the  
5 season. Likely late November.

6 Q. When does the site become accessible again?

7 A. Again, it depends upon snow and season and when  
8 it melts. But likely May.

10:43

9 Q. Likely May. Is there additional site  
10 preparation work that is required before the tank would  
11 be placed?

10:43

12 A. There is. And that was part of the study. One  
13 of the reasons the tank failed is that the foundation of  
14 the previous tank was inadequate. And it has to be  
15 taken out. So part of the study that we did was to  
16 actually do soil borings and design a new concrete  
17 foundation for the new tank.

18 Q. Is that design completed?

19 A. It is.

10:43

20 Q. Has any construction work begun tearing out the  
21 old foundation?

22 A. No.

23 Q. Has any construction work begun dismantling the  
24 old tank?

10:43

25 A. Yes. The old tank was dismantled and removed.

10:43 1 Q. Has any construction operations been initiated  
2 for the new foundation?

3 A. No. Not yet. Just the design.

4 Q. Do you know if the materials have been ordered?

10:43 5 A. No. It's all subject to the ability to pay.

6 Q. One option that has been discussed in addition  
7 to a loan from DDW is a loan from the parent  
8 corporation. Are you familiar with that?

9 A. Yes.

10:44 10 Q. Currently is that an option for the company?

11 A. I can't tell you that. Because I don't know.  
12 At the time that we looked at the voluntary repayment,  
13 it was. I have not requested it recently and that's why  
14 in the submission we requested for a special assessment  
10:44 15 for the entire cost of the tank. I can't tell whether a  
16 loan would be available today or not.

17 Q. Have you withdrawn the loan request?

18 A. It wasn't a formal request so there wasn't a  
19 written request.

10:45 20 Q. Okay. You also talked about a proposed  
21 transfer to Summit Water Distribution Company, and that  
22 Summit Water has participated in certain investigatory  
23 matters such as what tank should be ordered; is that  
24 correct?

10:45 25 A. Yes.

10:45

1 Q. What currently is the relationship between CWC,  
2 the company, and Summit Water Distribution Company?

10:45

3 A. Summit Water Distribution Company has been  
4 managing Community Water for as far as I know 20 years  
5 or more.

6 Q. And Summit Water is paid to do that; is that  
7 correct?

8 A. Yeah.

10:46

9 Q. Is it correct that CWC is still pursuing a  
10 transfer of the company and its assets in some form to  
11 Summit Water Distribution Company?

10:46

12 A. I would say that it is pursuing a management  
13 agreement. As I explained before, the -- Community  
14 Water is currently a liability. That liability cannot  
15 be transferred to the ownership or the shareholders of  
16 Summit Water. And so what's been discussed is setting  
17 up Community Water as a nonprofit and have it managed  
18 under a management agreement with Summit Water. That's  
19 what has been pursued.

10:46

20 Q. So the assets would be maintained in that  
21 separate newly formed company?

22 A. Correct.

10:47

23 Q. Is the replacement of the tank a prerequisite  
24 to Summit Water Distribution Company taking over the  
25 management in total of CWC as it would exist in that new

10:47

1 company?

2 A. Yes.

3 Q. So let's move to the regulatory world. And  
4 this is your first regulatory proceeding I understand.

10:47

5 But it's an exciting world and we're happy to be in it  
6 and we're glad that you joined us.

7 So would it surprise you to know that a public  
8 utility has the duty to provide reasonable -- sorry --  
9 to provide adequate service to its customers?

10:47

10 A. It would not surprise me, no.

11 Q. Would it surprise you that that obligation is  
12 independent of the company's financial status?

13 A. That would greatly surprise me because I don't  
14 understand how a company operates without the  
15 appropriate financial capacity to pay its bills.

10:48

16 Q. Is it your understanding -- and I believe you  
17 testified to this -- that a regulated utility can come  
18 in and ask for a rate increase?

19 A. Could you repeat the question.

10:48

20 Q. Is it your understanding -- and I believe you  
21 testified to this -- that a regulated utility can come  
22 in and ask for a rate increase?

23 A. Yes.

10:48

24 Q. We talked a little bit about that. Would it  
25 surprise you that in 2014 Community Water Company filed



10:48

1 a rate case?

2 A. Would it surprise me? No.

3 Q. Would it surprise you that the application was  
4 ordered incomplete by the commission?

10:48

5 A. No.

6 Q. Would it surprise you that CWC filed a rate  
7 case in July of 2015?

8 A. No.

10:49

9 Q. Would it surprise you that in December of 2015  
10 the water company filed a notice of intent to dismiss  
11 the application?

12 A. No.

13 Q. Would it surprise you that the reason was that  
14 the company had become aware of information that might  
15 allow it to meet its revenue requirement without  
16 increasing rates?

10:49

17 MR. ATWATER: Objection. Relevance.

18 MS. SCHMID: Again, I believe this is pertinent  
19 because it explains how we are where we are.

10:49

20 THE HEARING OFFICER: Overruled.

21 THE WITNESS: Yes, that would surprise me.

22 MS. SCHMID:

23 Q. Would it surprise you that in December of 2015  
24 there was an order of dismissal in the rate case?

10:49

25 A. Again, I have no knowledge of that but --

10:49

1 Q. You referenced that there has been a recent  
2 rate case. Would it surprise you that the Commission  
3 ordered the Division of Public Utilities, not the  
4 company, to file that rate case?

10:50

5 A. No.

6 Q. You talked about the Division thwarting  
7 Community Water's efforts to improve its system. Along  
8 those lines I have just a few questions.

10:50

9 Would it surprise you that it is the duty of the  
10 public utility to prove that a rate increase is needed?

11 A. No. I suppose it wouldn't surprise me.

12 Q. Would it surprise you that the burden of proof  
13 is on the company to make that?

14 A. No, it would not surprise me.

10:51

15 MS. SCHMID: Those are all my questions. Thank  
16 you.

17 THE HEARING OFFICER: Mr. Savage?

18 MR. SAVAGE: Thank you, Your Honor.

10:51

19 Q. Mr. White, I'd like to focus initially on the  
20 proposal that was made to the customers in meetings  
21 concerning a schedule for repayment for the tank. Do  
22 you understand what I'm talking about?

23 A. Uh-huh.

10:51

24 Q. Would you tell us what the proposal was that  
25 needed a hundred percent approval from the customers?

10:51 1 A. So the proposal was to cover a special  
2 assessment necessary to replace the failed tank.

3 Q. Wasn't that payment over time?

4 A. Yes, it was over time.

10:52 5 Q. And wasn't it approximately \$50 a month or  
6 something for 12 months or more?

7 A. I don't recall what the number was, but the  
8 notion was that whatever the cost of it would be, \$450-,  
9 \$500,000 would be divided by the customer base over a  
10:52 10 12-month period.

11 Q. So it would be paid in 12 installments over a  
12 12-month period?

13 A. Yes.

14 Q. And wasn't it also presented that this would be  
10:52 15 paid off, this 12-month loan before the \$3.6 million  
16 loan needed servicing?

17 A. In the original proposal that was the notion.

18 Q. Okay. And you're telling us that you believed  
19 at the time that it would be possible -- before you had  
10:52 20 these meetings it would be possible to get all 502 users  
21 to agree to that?

22 A. No. What -- the customers that we met with we  
23 asked whether they would voluntarily go along with the  
24 special assessment if we had unanimous consent. It was  
10:53 25 our understanding -- at least my understanding -- a lay

10:53 1 person's understanding that we did not need Public  
2 Service Commission approval for that. So that's why we  
3 sought the unanimous consent of the customer base for  
4 that special assessment.

10:53 5 **Q. Okay. You've just answered what would have**  
6 **been my next question. It was your understanding at the**  
7 **time that you needn't come to the Public Service**  
8 **Commission if you could get a hundred percent of the**  
9 **customers to agree to a 12-month loan payoff of the**  
10:53 10 **\$450,000, \$500,000 tank?**

11 A. It was my understanding that if we got  
12 unanimous consent for a special assessment regardless of  
13 the terms, that we did not need to come to a public  
14 service commission. That was my understanding. That's  
10:53 15 why we made the request.

16 **Q. Did you have support from the representatives**  
17 **of the customers at that meeting for that proposal?**

18 A. We did not.

19 **Q. Why not?**

10:53 20 A. Because we were told that associations could  
21 not guarantee that their constituents or owners would  
22 pay.

23 **Q. Did that surprise you?**

24 A. Yes. My knowledge since I've developed  
10:54 25 condominiums in general, condominium association

10:54 1 documents and bylaws allow for the associations to make  
2 sure that if there are special assessments, particularly  
3 for infrastructure or emergencies, that they're allowed  
4 to charge their owners and ensure to pay them.

10:54 5 **Q. Weren't there 50 or so homeowners that were not**  
6 **in condominium associations who were also customers who**  
7 **would need to consent?**

8 A. I don't know what the split is, but roughly  
9 70 percent or more of the Community Water customer base  
10:54 10 is condominiums.

11 **Q. Yeah. But you needed a hundred percent, and**  
12 **with what you just stated, 30 percent would be people**  
13 **that were not in condominium associations, individual**  
14 **owners? Pardon?**

10:54 15 A. What's your point?

16 **Q. You would need their consent as well?**

17 A. Correct. But we didn't have the consent of the  
18 condo owners so what difference does it make?

19 **Q. No. No. You're saying -- which one of us did**  
10:55 20 **not agree to try to get our condominium associations to**  
21 **support --**

22 A. Hidden Creek was one.

23 **Q. Pardon?**

24 A. Hidden Creek was one. It was specifically  
10:55 25 stated in the meeting that the condo associations did

10:55 1 not have the capacity to guarantee payments by owners.

2 Q. At that meeting?

3 A. At that meeting.

4 Q. Right. But didn't they express an interest in  
10:55 5 pursuing that and trying to get a loan of that type with  
6 an agreement from the homeowners?

7 A. There was interest in pursuing it, but there  
8 was no conclusion.

9 Q. All right. And there was a series of meetings  
10:55 10 about this issue, was there not? Two, three?

11 A. There were multiple meetings with customers.  
12 Yes, we've had multiple meetings with customers.

13 Q. And you said you went to your executive  
14 committee on -- I guess the company's board that owns  
10:56 15 CWC? Was that the organization you went to?

16 A. I already explained what the ownership  
17 structure of CWC is.

18 Q. Okay. Who's the direct owner?

19 A. ASC Utah.

10:56 20 Q. Okay. When you just told us a minute ago -- a  
21 few minutes ago that you went to the board and told --  
22 or your executive committee of the board and told them  
23 that you could not get a hundred percent agreement of  
24 the customers so forget about the loan, was that the  
10:56 25 board of ASC Utah?

10:56

1 A. There is no board of ASC Utah.

2 Q. So who did you go to?

3 A. To the executive committee of TCFC Finance.

4 Q. Okay. And I've seen TCFC Finance and TCFC.

10:56

5 Are they the same entity?

6 A. Yes.

7 Q. So does TCFC Financial own ASC Utah?

8 A. So I already explained the structure. The sole

9 member of CWC is ASC Utah. The sole member of ASC Utah

10:57

10 is TCFC Finance.

11 Q. You are in what position for those two

12 entities?

13 A. I am the CEO of TCFC.

14 Q. And do you have a position with ASC Utah?

10:57

15 A. No.

16 Q. And when you told us earlier that Talisker had

17 an interest in Talisker acquired by Varde and later

18 Varde took controlling interest, is that TCFC Financial

19 or is that another step up the ladder?

10:57

20 A. I believe it's TCFC Finance.

21 Q. That Varde has an interest in and now controls?

22 A. Yes.

23 Q. Is that V-A-R-D-E?

24 A. Yes.

10:57

25 Q. Thank you. So now when you went to the

10:57 1 executive committee of TCFC Financial, how many people  
2 are in that executive committee?

3 A. Two.

4 Q. And what is your title with respect to that  
10:58 5 committee?

6 A. I have no title of that committee.

7 Q. So it's a two-person committee?

8 A. Yes.

9 Q. And that's a committee made up of board members  
10:58 10 of TCFC?

11 A. It's an executive committee that consists of  
12 two people.

13 Q. All right. I understand that. Are they both  
14 board members?

10:58 15 A. I can't answer your question in terms of --  
16 again, I'm not a lawyer. I don't know the structure.

17 Q. You don't know if you were a board member?

18 A. I know I'm not a board member.

19 Q. Who appointed the committee of two?

10:58 20 A. Again, you're asking questions that I can't  
21 answer.

22 Q. All right. You were the CEO?

23 A. I am the CEO of TCFC.

24 Q. Okay. Did you appoint somebody else to be with  
10:58 25 you on this committee?



10:58

1 A. I did not.

2 Q. When you went to this committee of you and one  
3 other person and told them --

10:58

4 MR. ATWATER: Objection to the question, Your  
5 Honor. He suggested that Mr. White was on the committee  
6 which --

7 THE HEARING OFFICER: I think it misstates the  
8 testimony. I agree with you.

9 MR. SAVAGE:

10:59

10 Q. Are you on the committee?

11 A. I am not.

12 Q. I'm sorry. I misunderstood. When you went to  
13 the two-person committee and -- at that point in time  
14 was it planned that TCFC would provide the funding for  
15 the emergency replacement of the tank before you went to  
16 them?

10:59

17 A. Well, I can't say that we had a specific source  
18 of where the funding would come from, but we knew that  
19 we could provide the funding.

10:59

20 Q. Okay. And had you had a meeting with this  
21 committee before meeting with the customers of TCFC  
22 about needing a hundred percent agreement?

23 A. We have regular meetings so that was certainly  
24 expressed to them.

10:59

25 Q. No, I'm trying to get the timing of this. Did

10:59 1 this committee know that you needed a hundred percent  
2 approval for a 12-month assessment of the owners when  
3 you first talked to the committee about TCFC providing  
4 money to provide this tank?

11:00 5 A. The committee knew that there needed to be a  
6 source of repayment.

7 Q. Okay. Did they know about what you've later  
8 told us was a need for a hundred percent agreement?

11:00 9 A. I don't recall whether that was expressed to  
10 them explicitly or not.

11 Q. How long after the tank failed did you first  
12 have conversations with this committee about TCFC  
13 funding a short term loan?

14 A. Probably within a month.

11:00 15 Q. At that time did you talk to the committee  
16 about an alternative of applying to the public services  
17 commission for an interim rate increase to fund that?

18 A. We did not.

11:00 19 Q. Had you ever talked to them about that until  
20 let's say September 1st of 2017?

21 A. Yes. The decision was made after that meeting  
22 that we needed to pursue Public Service Commission  
23 approval because we did not have the approval of the  
24 homeowners or the customers.

11:00 25 Q. Isn't it true that you also attached another

11:00 1 condition to the users, that being that they would agree  
2 to the transfer of ownership to Summit and agree to  
3 Summit seeking -- support Summit's efforts to get out  
4 from under Public Service Commission supervision?

11:01 5 A. So part of the conversation and the  
6 conversation for a long time, as you well know, has been  
7 attempting to transfer Community Water customers over to  
8 Summit Water. It was the request of the Community Water  
9 customers that that happen.

11:01 10 Q. Well, it's also what TCFC wanted?

11 A. Mutual agreement. Seems like it should be  
12 easy, does it not?

13 Q. Is the answer yes? That's also what TCFC  
14 wanted?

11:01 15 A. Yes.

16 Q. Okay. And wasn't it the condition of money  
17 from the parent, TCFC, to fund this short-term loan to  
18 replace the tank -- wasn't it a condition that a vast  
19 majority of the users agree to the transfer of the  
11:02 20 company to a company control by Summit Water and seek  
21 and support Summit Water in an attempt to get out from  
22 under Public Service Commission supervision?

23 A. So we discussed a process by which Community  
24 Water would get transferred to the management of Summit  
11:02 25 Water. I've already said that we've already discussed

11:02 1 the process by which that would take place.

2 Q. You haven't answered my question.

3 A. I don't know the answer to your question.

4 Q. Wasn't a condition placed upon the money coming  
11:02 5 from Summit -- from TCFC -- the money coming to replace  
6 the tank -- wasn't a condition placed on that that the  
7 customers would support a transfer of the -- of CWC to  
8 Summit Water and Summit Water getting out from under --  
9 or CWC getting out from under public service control?

11:02 10 That's a yes or no. Wasn't that a condition?

11 A. We discussed a number of provisions by which we  
12 would process towards an end goal of repairing the  
13 system, including the tank, and transferring the assets  
14 to the customers with Summit Water management. That's  
11:03 15 what we discussed.

16 Q. Transferring it to the customers without the  
17 customers being able to vote for the majority of the  
18 board of that new company; is that correct? Wasn't that  
19 the proposal?

11:03 20 A. There were many discussions about how to manage  
21 the company.

22 MR. ATWATER: May I help reframe the question. I  
23 think maybe a different question would help. Is that  
24 okay?

11:03 25 MR. SAVAGE: Yeah.

11:03 1 MR. ATWATER: So what he's trying to determine is  
2 would TCFC have loaned the tank funds to Community Water  
3 had Community Water's customers not agreed to become  
4 Summit Water.

11:03 5 THE WITNESS: There were no specific, you know,  
6 terms of the loan that were discussed. It was an idea  
7 to try and advance quickly the replacement of the tank.  
8 That's all it was. And it was coincidental to the  
9 conversation about how to complete the rest of the  
11:04 10 infrastructure, close on the loan, get it under the  
11 appropriate management of Summit Water. That's what was  
12 going on at the time.

13 MR. ATWATER: So there was no expressed condition?

14 THE WITNESS: Not that I recall.

11:04 15 MR. SAVAGE:

16 Q. When you went to your executive committee, did  
17 you talk to them about the desire of TCFC to do a deal  
18 with Summit Water with the support of the customers?

19 A. Yes.

11:04 20 Q. And did you report back to them that that was  
21 also something that the customers did not support?

22 A. We've had those conversations, yes.

23 Q. Would you recommend that same committee  
24 tomorrow, that it fund a short-term loan to pay for the  
11:04 25 tank if this commission orders an emergency interim rate

11:04 1 increase with a stream of income of say 12 months to  
2 repay that loan with interest?

3 A. Again, it depends on the specific conditions,  
4 but in general, yes, I could recommend that.

11:05 5 Q. All right. Thank you. And that would be  
6 without any deal with Summit Water?

7 A. That would be independent of any deal with  
8 Summit Water.

9 Q. Okay. Now the --

11:05 10 A. But it would also be in -- with the intent of  
11 also repairing the rest of the system. Because it  
12 doesn't do any good just to replace a single tank when  
13 the rest of the system is failing, and when there were  
14 no meters, you know, to half the customers, in order to  
11:05 15 recover the cost of the water that's being used.

16 Q. I understand that. But we'll get to that  
17 later. You said that as of this moment, Community  
18 Water, CWC, is what? 72,000 in the red?

19 A. With no fees, yes. With no overhead allocated,  
11:05 20 yes.

21 Q. And isn't it true that in the history of CWC  
22 that you've been aware of, the bulk of its money comes  
23 in in the summer as revenue?

24 A. I couldn't tell you exactly the income curve,  
11:06 25 but that's generally when the highest use is.

11:06

1 Q. Sure. People are watering their lawns?

2 A. Correct.

3 Q. And that's a much higher use than indoor use  
4 during the winter; correct?

11:06

5 A. Correct.

6 Q. And isn't it a fact that you imposed -- CWC I  
7 should say -- imposed a restriction that nobody water  
8 their lawns this summer?

9 A. That's correct.

11:06

10 Q. And isn't that why there is \$112,000 deficit?

11 A. I don't think that there is any relationship  
12 between those two things.

13 Q. Okay. You don't think there is any  
14 relationship between receiving revenue and not receiving  
15 revenue you would have otherwise received and not being  
16 in the red?

11:06

17 A. I think that there is a direct relationship  
18 between the money that's being spent on engineering and  
19 legal fees to prepare for rate cases and prepare for the  
20 repairs that need to be made to the system.

11:07

21 Q. You said there have been \$36,000 in engineering  
22 fees for this tank already; correct?

23 A. Correct.

24 Q. Who paid for that?

11:07

25 A. There is \$30,000 that are currently in accounts

11:07

1 payable.

2 Q. Who is going to pay for that?

3 A. That's a good question.

4 Q. Whose paid what has been paid? Has TCFC paid  
5 anything?

11:07

6 A. So not directly. So TCFC makes loans to  
7 Community Water.

8 Q. Okay. To cover deficits?

9 A. To cover deficits, correct.

11:07

10 Q. And that also would be the type of structure  
11 that would be done in this instance if TCFC chose to  
12 fund the tank replacement with a guaranteed stream of  
13 income from the Public Service Commission?

14 A. With a guaranteed stream of income from its  
15 customers.

11:07

16 Q. Yeah. But I mean ordered by the Public Service  
17 Commission?

18 A. Correct.

19 Q. You indicated that -- well, let's back up. I'm  
20 still not clear as to who bought what. When was -- Did  
21 ASC Utah to your knowledge own CWC before Talisker  
22 became involved in the Canyons?

11:08

23 A. I wasn't around at that time so I have no idea  
24 of the legal structure.

11:08

25 Q. Do you have any knowledge as to who owned



11:08 1 Community Water before Talisker acquired an interest in  
2 the Canyons?

3 A. Again my understanding is that ASCU owned  
4 Community Water, but I wasn't around at the time. I  
11:08 5 don't know that as fact.

6 Q. And then when was it that Talisker purchased an  
7 interest in the Canyons?

8 A. In 2008.

9 Q. 2008. And at that time did it acquire  
11:08 10 indirectly Community Water?

11 A. Again, to my knowledge, that was part of the  
12 asset base, but I wasn't around at the time so I can't  
13 tell you how the structure worked.

14 Q. Do you know of any change in the structure  
11:09 15 since or prior to the structure you just told us about?

16 A. I'm not aware, no.

17 Q. Is it your understanding that TCFC when it  
18 acquired ASC, acquired the company of Community Water?

19 A. Again, I don't know what the transaction was  
11:09 20 that took place. But it's my understanding that  
21 Community Water were part of the assets of the  
22 investment.

23 Q. Right. But it was a company that was  
24 purchased, not just the assets of it. You didn't buy  
11:09 25 the pump and the tanks and the irrigation lines.

11:09

1 Talisker bought Community Water, the company?

2 A. I've already testified to the fact I don't know  
3 how that transaction was structured.

4 Q. Okay. When did you first become involved?

11:09

5 A. I became involved in February of 2014.

6 Q. And as of February 2014, TCFC owned the company  
7 CWC, not just its assets?

8 MR. ATWATER: Objection. It's been stated that  
9 TCFC owned ASC Utah.

11:10

10 MR. SAVAGE:

11 Q. Okay. Well, indirectly owned the company. ASC  
12 owned the water company; is that correct?

13 A. I've already explained the structure.

14 Q. Yeah, but I'm interested in making it clear for  
15 the record that Talisker, an entity controlled by  
16 Talisker, acquired the company and not just the assets  
17 of the company?

11:10

18 A. And I've already testified that I don't know  
19 how the company was acquired.

11:10

20 Q. Okay. So you don't know if the company was  
21 acquired or just its assets were acquired?

22 A. I've already answered your question.

23 Q. And it is you don't know?

24 THE HEARING OFFICER: It's asked and answered.

11:10

25 Let's move on.

11:10

1 MR. SAVAGE: You don't know; correct?

2 THE HEARING OFFICER: Asked and answered. Let's  
3 move on.

4 MR. SAVAGE:

11:10

5 Q. Now you stated in your direct testimony that  
6 people have been in denial about the dilapidated  
7 condition of the Community Water infrastructure. Do you  
8 recall that testimony?

9 A. I do.

11:11

10 Q. Who are the people?

11 A. You.

12 Q. So you're blaming the customers for the  
13 condition of the company's infrastructure?

14 MR. ATWATER: Objection. Relevance.

11:11

15 MR. SAVAGE: That's what he just said.

16 THE WITNESS: I'm not blaming anybody.

17 THE HEARING OFFICER: The objection is sustained.

18 It's argumentative. If you could restate your question  
19 in a way that would be more constructive to the issues  
20 at hand, that would be helpful.

11:11

21 MR. SAVAGE:

22 Q. All right. In saying the people have been in  
23 denial, you said me. By me, did you mean just me or do  
24 you mean the users, the customers?

11:11

25 A. So in all these conversations which you know

11:11 1 very well, because you've attended all these and spoken  
2 at length -- in all of our attempts to try and resolve  
3 these issues and talk about the infrastructure  
4 deficiencies and ways of trying to rectify them, the  
11:12 5 customers have been more interested in what they're  
6 paying per month and trying to, you know, maintain that  
7 at the lowest possible level versus, you know,  
8 understand, engage in and agree to a payment method to  
9 repair the system.

11:12 10 And every single one of these cases you've objected  
11 to. The last case you objected to. You're objecting to  
12 this one. In every case the customers have -- and you  
13 as representatives of your associations -- have objected  
14 to the rate case.

11:12 15 Q. I don't want to be argumentative, but I think  
16 I've made an alternative proposal. I'm objecting to the  
17 company's proposal for how this is paid. You're  
18 interpreting that as meaning the people who object to  
19 the amount of the rate increase or how the rate increase  
11:12 20 is to be accomplished, that those are people that are  
21 trying to keep the system in a dilapidated condition.  
22 Is that your belief?

23 A. No. My testimony is that they're trying to  
24 keep their rates as low as possible and they're not  
11:13 25 acknowledging what it actually costs to repair the

11:13 1 system. We have an engineering study which Fran  
2 Amendola and others have questioned the validity of, and  
3 we don't really have to do that. We don't really have  
4 to make all those changes to the treatment system to  
11:13 5 make it work. We can get by with less. And all these  
6 conversations are an attempt to thwart our ability to  
7 run this company appropriately and make the repairs that  
8 are necessary to have it function properly.

9 **Q. And you've said as you just stated now, every**  
11:13 10 **attempt has been thwarted; correct?**

11 A. That's what I said.

12 **Q. And isn't it true that since you became**  
13 **involved, this is the first rate case that has been**  
14 **filed by Community Water for a capital improvement other**  
11:13 15 **than the one that they moved to dismiss in 2016?**

16 A. Again, I'm not -- as I testified before, I was  
17 not surprised about the previous rate cases in terms of  
18 attempts, but as I was aware that there had been  
19 attempts before, again to my involvement this is the  
11:14 20 first time that we have brought one forward and brought  
21 all the evidence necessary to make the case.

22 **Q. Okay. So to your knowledge this is the first**  
23 **time that a rate case for a capital improvement has been**  
24 **brought forward?**

11:14 25 A. I don't know whether there have been previous

11:14 1 cases brought forward for capital improvements.

2 Q. I asked your knowledge.

3 A. I wasn't involved in any of the previous rate  
4 cases.

11:14 5 Q. To your knowledge, this is the first one?

6 MR. ATWATER: Objection. The record is clear on  
7 this issue.

8 THE HEARING OFFICER: He said "Yeah, I have no  
9 knowledge" and you're asking him again if he did.

11:14 10 Objection is sustained for the record.

11 MR. SAVAGE:

12 Q. Do you recall me suggesting in May or June that  
13 you ought to go on a parallel track and file a rate case  
14 for interim rate case to cover this failed tank at the  
11:15 15 same time you were trying to work a deal with Summit  
16 Water?

17 A. I don't recall that.

18 Q. Do you recall me proposing a rotational  
19 watering system to allow us to try to maintain our  
11:15 20 landscaping with some minimal water without endangering  
21 the capacity of the remaining tank?

22 A. I do recall you requesting that.

23 Q. And that was rejected, was it not?

24 A. It was.

11:15 25 Q. Now isn't it true in the Summit Water proposal

11:16 1 for this, you said a mutual company that the customers  
2 were owned as part of the discussions -- isn't it true  
3 that the proposed new company that would take over CWC,  
4 that the -- that Summit Water would own all of the class  
11:16 5 one stock and the users would be issued class two stock?

6 MR. ATWATER: Objection. Relevance.

7 MR. SAVAGE:

8 Q. Do you recall that?

9 THE HEARING OFFICER: Overruled.

11:16 10 THE WITNESS: There have been a number of  
11 discussions about how to structure this so that the  
12 liabilities of Community Water did not extend to Summit  
13 Water, but that the company be allowed to be managed in  
14 a professional manner by a company who was used to doing  
11:16 15 it.

16 MR. SAVAGE:

17 Q. And ownership and control by vote. Wasn't it  
18 true that the only proposal that we saw was that Summit  
19 Water would own all of the class one stock?

11:17 20 A. There have been several proposals in terms of  
21 how to structure this. I've already explained what the  
22 intention of the structure is.

23 Q. I want to know the ownership and who gets the  
24 vote.

11:17 25 A. There has been nothing settled about the -- it

11:17 1 was one proposal.

2 Q. Right. What was that proposal? Class one  
3 stock and class two stock, wasn't it?

4 A. The proposal was for the management of the  
11:17 5 company that would be controlled by Summit Water.

6 MR. ATWATER: Objection. Relevance.

7 THE HEARING OFFICER: Overruled.

8 MR. SAVAGE:

9 Q. And Summit Water would have control of the --  
11:17 10 electing the majority of the board of the remaining  
11 company?

12 A. That was one proposal.

13 Q. That's the only one that's been made to the  
14 user, isn't it?

11:17 15 A. I've explained that it's been a process to come  
16 up with a viable means to transfer the company into  
17 professional ownership.

18 Q. Isn't that the only one that's been presented?

19 A. I've explained that it's been a process to come  
11:17 20 up with the viable means to transfer the company into  
21 professional ownership.

22 Q. And has there been in any of those proposals a  
23 proposal that would allow the users to control the  
24 number of board members?

11:17 25 A. It has been discussed.



11:17 1 Q. Has that been proposed to the users?

2 A. It has been discussed, but it has not been  
3 proposed to the users.

4 Q. Who has it been discussed between? You and  
11:18 5 Summit Water?

6 A. Discussed between me and Summit Water and our  
7 counsel.

8 Q. I don't want to know about discussions with  
9 your counsel. So just so we're clear on the record,  
11:18 10 when you say there is a proposal for a -- for the  
11 owners -- for the users to take over ownership of the  
12 company, that has been a discussion between you and  
13 Summit Water?

14 A. And our counsel, yes.

11:18 15 Q. Okay. Does Summit Water require -- as a  
16 condition to being an owner in that new company, does it  
17 require as a condition that the new company not be under  
18 Public Service Commission control?

19 A. Summit Water is not under Public Service  
11:18 20 Commission control. It's a non-profit shareholder owned  
21 company.

22 Q. You didn't answer my question.

23 A. So yes, it's a requirement if it was to be  
24 transferred to their management that it not be under  
11:19 25 public service control.

11:19

1 Q. Thank you.

2 A. Or I should say oversight run.

3 Q. Do you recall anybody on behalf of TCFC or

4 Summit Water or CWC in one of these meetings stating

11:19

5 that it would complicate a deal with Summit Water to

6 apply to the Public Service Commission for an emergency

7 loan to fix this tank?

8 A. No.

9 Q. Okay. You don't recall Emily Lewis saying

11:19

10 something like that?

11 A. No.

12 Q. Isn't it true that you represented to the

13 customers that proceeding before the Public Service

14 Commission a special assessment will take a minimum of

11:19

15 120 days and more reasonably 240 days?

16 A. It was our understanding after repeated

17 requests through Emily Lewis, that there was no

18 provision for an emergency assessment or an emergency

19 rate increase. That the -- that whatever the

11:20

20 application process is, that there was no provision for,

21 you know, an emergency request or an emergency, you

22 know, special assessment or rate increase. That it

23 needed to take its full course of roughly 240 -- that

24 every rate increase or every rate case whether it be

11:20

25 special assessment or rate case, that it took 240 days.

11:20

1 Q. And yet we're here today in less than 45 days?

2 A. This is only the beginning of this case. This  
3 is not the conclusion of this case. This case will go  
4 on. As my understanding and as a layperson and a  
5 lawyer, that this will go on. That this is only the  
6 first part of this and that the subsequent part of the  
7 hearing can last up to 240 days.

11:20

8 Q. For adjustments to the interim rate?

9 A. I'm not going to opine as to --

11:21

10 THE HEARING OFFICER: Mr. Savage -- you don't need  
11 to answer that. Mr. Savage, let's go ahead and move on  
12 from this line of questioning. We know what the process  
13 is here.

14 MR. SAVAGE:

11:21

15 Q. Anyhow, you represented 240 days in your --

16 A. That was my understanding and remains my  
17 understanding today.

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

19 THE HEARING OFFICER: Mr. Lange?

11:22

20 MR. LANGE: I have no questions for Mr. White at  
21 this point in time.

22 THE HEARING OFFICER: Thank you. And Ms. Miller?

23 MS. MILLER: Yes, I have a couple of things.

24 Q. Mr. White, you testified that Hidden Creek HOA  
25 couldn't guarantee repayment of an assessment for the

11:22

11:22 1 tank. Would you be surprised to understand that in fact  
2 our amended condominium declaration requires that we  
3 have -- first obtain a majority of the project's  
4 ownership interest before we can make a one-time special  
11:22 5 assessment, but that a monthly payment plan would not be  
6 a problem for us to pass on to our owners?

7 A. Yes, that would be a surprise.

8 Q. Well, that in fact is the current case with our  
9 condominium declaration.

11:23 10 A. That was never expressed to us.

11 Q. Well, maybe you didn't listen to us. Let me  
12 ask you another question. Do you recall a request for  
13 documentation to support denial of the rotational  
14 irrigation? In other words, a request for system  
11:23 15 modeling that shows that the system cannot support  
16 rotational irrigation during the summer months to keep  
17 our landscaping alive.

18 A. So let's explain that. The remaining tank,  
19 which also is 40 years old, and could fail at any time  
11:23 20 is roughly 225,000 gallons. At the time that the larger  
21 of the two tanks failed, we asked the fire department to  
22 come out and inspect the tank and tell us how much  
23 needed to be held in reserve in order to keep an  
24 adequate supply of water in the event of fire or  
11:24 25 emergency. It was half the tank's capacity. On advice

11:24 1 of counsel we determined that we should not allow  
2 irrigation and put that out to all -- gave notice to all  
3 the customers that we would not be able to provide the  
4 irrigation water for this summer. We did that as a life  
11:24 5 safety manager and on the advice of counsel, that we  
6 would put homes and lives in peril if we allowed  
7 irrigation that potentially drew that tank down below  
8 the halfway mark, roughly \$110,000 to \$115,000 gallons.

9 That actually happened fairly recently when  
11:24 10 apparently some electrical switch was triggered on the  
11 well, and the tank was drawn down below that emergency  
12 level. But on advice of counsel and to notice of all  
13 the customers with full explanation as to why, we said  
14 no irrigation for this summer. And a number of the  
11:25 15 homeowners, including Mr. Savage, violated that and  
16 irrigated anyway.

17 **Q. So you're telling me you did not have an**  
18 **engineering study done to model the system to know how**  
19 **much excess capacity might be retained in the tank while**  
11:25 20 **still retaining fire safety?**

21 A. We did have that knowledge. We had --

22 **Q. No, I asked you if you had an engineering model**  
23 **done of the system that demonstrated how much excess**  
24 **capacity was left in the tank?**

11:25 25 A. We did not have an engineering model done. We

11:25 1 knew how much the tank held. We knew how much the  
2 customers used and we knew how much, based on the fire  
3 company, we needed to retain in the tank.

4 Q. Right. So you took a guess at how much -- the  
11:25 5 fact that there wasn't any water available for  
6 irrigation?

7 A. I think I've already explained it. It was not  
8 a guess.

9 Q. Okay. So it was an educated guess?

11:26 10 A. I think I've already answered your question.

11 Q. So what is the plan if the current tank fails  
12 before the new tank is installed?

13 A. So we have the capacity that the system is  
14 hooked up. Meaning there are pipes connecting the  
11:26 15 system to Summit Water system. The problem with that is  
16 that if we draw water, and we recently did draw water  
17 from Summit Water in order to fill the tank back up  
18 after the well was temporarily out of commission, it was  
19 discovered that the tank was drawn down below its -- the  
11:26 20 necessary fire reserve capacity, and we filled it back  
21 up with Summit Water.

22 The problem is that -- again, my understanding --  
23 so our cost of water from Summit is a high. It's like  
24 an emergency cost of water. And we have no way of  
11:26 25 passing that cost through to our customers, again,

11:26 1 without Public Service Commission approval. That's my  
2 understanding.

3 MS. MILLER: That's all my questions. Thank you.

4 THE HEARING OFFICER: Thank you. And I believe a  
11:27 5 representative from all of the HOAs and intervenors  
6 present, has already had an opportunity to ask  
7 cross-examination questions. It seems redundant and a  
8 little unorthodox to allow Mr. Amendola an additional  
9 opportunity, but I'll allow it if there is no objections  
11:27 10 from counsel and he wishes to do so.

11 MR. ATWATER: I have no objection.

12 MS. SCHMID: I have no objection.

13 MR. SAVAGE: No objection.

14 MR. LANGE: No objection.

11:27 15 THE HEARING OFFICER: Mr. Amendola, do you have any  
16 questions for the witness?

17 MR. AMENDOLA: Just a couple, and I have to tell  
18 you I didn't have the luxury of hearing many of the  
19 responses by Mr. White just because the signal is not  
11:27 20 very good.

21 Q. Mr. White, during the July 17 meeting that was  
22 held at your offices, do you recall just basically  
23 unanimous support for moving forward with replacing the  
24 tank expressed by the customers?

11:28 25 A. I think I've already testified to this. It was

11:28 1 our understanding that the customers were not capable of  
2 giving unanimous consent because they couldn't collect  
3 from owners. This is specific to the condo  
4 associations. So my understanding from that meeting is,  
11:28 5 no, we did not have unanimous consent. We could not get  
6 unanimous consent, and therefore we could not have a  
7 special assessment agreed to by the customers. And  
8 that's when we made the decision that we needed to go on  
9 the parallel path of pursuing Public Service Commission  
11:28 10 approval.

11 Q. Let me clarify my question. I think you're  
12 responding to unanimous support to attain funding by the  
13 HOA associations because they needed time. But for the  
14 people that were in that meeting, wasn't there unanimous  
11:29 15 support for the need to move forward with replacing the  
16 tank immediately?

17 A. It was certainly unanimous acknowledgment that  
18 we needed to move forward with replacing the tank, but  
19 there was no method of paying for it or if the company  
11:29 20 was to loan -- if TCFC was to loan the money to CWC to  
21 replace the tank, there was no ensured method of  
22 recovering that loan without -- I should say without  
23 coming back to the --

24 THE HEARING OFFICER: I'm sorry. You guys can't  
11:29 25 speak over each other. Let's go ahead and allow



11:30 1 Mr. Amendola to phrase his question and Mr. White can  
2 respond.

3 MR. AMENDOLA: One other question I have is that  
4 back in the 1609 rate case, do you recall the Red Pine  
11:30 5 and Hidden Creek comments that were submitted that  
6 basically requested that more money be approved to  
7 upgrade the water treatment plant and acknowledgment of  
8 the ill-maintained condition of the plant?

9 A. I do not.

11:30 10 MR. AMENDOLA: Okay. That's all I have. Thank you  
11 very much for the opportunity.

12 THE HEARING OFFICER: Thank you very much,  
13 Mr. Amendola. Mr. Atwater, any redirect?

14 MR. ATWATER: Just one. Thank you.

11:30 15 Q. Mr. White, in response to the questioning, I  
16 believe, of Ms. Schmid and Mr. Savage, you stated that  
17 an affiliate loan may be available to fund a replacement  
18 of the tank on certain terms and conditions. Do you  
19 have any purview as to what those terms and conditions  
11:31 20 might be specifically -- economic terms in terms of rate  
21 of return, time frame of return?

22 A. So we have not had any further discussion with  
23 our executive committee about what the terms might be,  
24 so I don't have the specifics of that. We've not made  
11:31 25 that request at this point in time because this case was

11:31 1 specific to special assessment to replace the tank  
2 immediately. So I don't have any such terms. I've not  
3 further discussed it with executive committee at this  
4 point.

11:31 5 Q. Thank you. Just one follow-up. You testified  
6 earlier that the promised rate of return to your  
7 investors -- or Varde's investors is approximately  
8 13 percent. Is it your anticipation that the rate of  
9 return would be in that ballpark or would it be  
11:31 10 something different?

11 11 A. Again, the way that the funds are set up,  
12 that's the minimum promise to the investors. So it's  
13 called a preferred rate of return to the investors. So  
14 that would be the minimal rate that would be expected  
11:32 15 for any further loan or investment.

16 Q. So let me just rephrase and get your  
17 confirmation. To the extent there is an affiliate loan  
18 available to fund the tank, the minimum rate of return  
19 required by that investment committee would be  
11:32 20 13 percent?

21 A. That's likely, but I can't predict what it is  
22 that they would determine, but that would be likely the  
23 minimum.

24 MR. ATWATER: Thank you.

11:32 25 MR. LANGE: May I ask a question?

11:32 1 THE HEARING OFFICER: Any objection?

2 MR. ATWATER: No.

3 MR. LANGE:

4 Q. So Mr. White, with the rate of return for Varde

11:32 5 at 13 percent, is that for each one of its individual

6 interests? Or in other words, is the return for

7 Community Water predicated on 13 percent, and say the

8 return on investment for other interests at the Canyons

9 came in at 23 percent or whatever it might be? Are we

11:32 10 looking at an overall global aspect of 13 percent, or do

11 we have to pay 13 percent -- or do you have to pay 13

12 percent precisely to Community Water?

13 A. So I've already testified to the fact I've not

14 had that conversation with our executive committee, so I

11:33 15 can't answer your question.

16 Q. Will you be having a conversation to clarify

17 that?

18 A. Depends on the outcome of this hearing.

19 MR. LANGE: Thank you. That's all the questions I

11:33 20 have.

21 THE HEARING OFFICER: All right. Anything else,

22 Mr. Atwater?

23 MR. ATWATER: No. Thank you.

24 THE HEARING OFFICER: I just have a couple,

11:33 25 Mr. White.

11:33 1 My understanding is that CWC was interested  
2 initially in pursuing funding for the tank through the  
3 Division of -- the department of water? DDW? Help me  
4 out.

11:33 5 THE WITNESS: Division of Drinking Water.

6 THE HEARING OFFICER: Thank you -- as you referred  
7 to it --

8 THE WITNESS: That's correct.

9 THE HEARING OFFICER: -- and later elected to --  
11:33 10 perhaps not formally -- but has elected at this time not  
11 to pursue funding for the tank with that money?

12 THE WITNESS: So for clarification we pursued  
13 funding of the tank directly through the special  
14 assessment because of timing and because of cost.

11:34 15 Because the nature -- again, my understanding of the  
16 loan, is that we could not front costs even in deposit  
17 for the tank prior to closing the loan. And that if it  
18 came under the loan provisions, we would have to wait  
19 until the loan was closed, then get bids on, you know,  
11:34 20 from multiple sources, and then wait for that period of  
21 time. It likely would have driven the costs up for the  
22 tank and delayed the time period, which is why we  
23 pursued a different means of funding the tank.

24 THE HEARING OFFICER: Okay. Aside from the funding  
11:34 25 from the Division of Drinking Water and the loan from

11:34 1 the parent company that we've discussed, did the company  
2 pursue any other financing options for the tank from any  
3 other financier?

4 A. No, sir. We don't believe that that's a  
11:34 5 commercially viable -- meaning going to a bank? There  
6 are no -- when a company is under water from a financial  
7 standpoint and from an infrastructure standpoint, it's  
8 not a commercially financable transaction.

9 THE HEARING OFFICER: Did the company explore  
11:35 10 whether there were other public financing options  
11 available except for the Division of Drinking Water?

12 THE WITNESS: Yes. Emily Lewis can testify to  
13 that. We pursued numerous public financing on both the  
14 federal and state level, which is how we sourced this  
11:35 15 particular loan, and thought that it was the best  
16 solution for the company. The lowest interest rate,  
17 longest term. And so in terms of, again, cost to the  
18 customer in the end, that it was the most efficient from  
19 a cost standpoint.

11:35 20 And one other, you know, element of this, just so  
21 you understand, in terms of the timing, we initially --  
22 when Emily originally discovered this loan opportunity  
23 and we made application to it, it was before the tank  
24 failed. And at that time we thought that the loan could  
11:35 25 close sometime in the summer. And as we got further

11:36 1 into it, further into the application, it gets more and  
2 more complicated. So we didn't fully understand all the  
3 provisions and requirements of the loan. So as we  
4 continued -- so it's our understanding now that we have  
11:36 5 to have full engineering. In other words, we have to  
6 invest in all of the engineering costs to repair the  
7 system up front before the loan can close and be able to  
8 submit that.

9 So consequently, the period of closing that loan  
11:36 10 became longer and longer. It's now projected at April  
11 at the earliest. So that was part of our decision in  
12 terms of separating or pursuing a different route to  
13 replace the tank rather than wait for that loan to  
14 close. So as both a cost and time consideration.

11:36 15 **Q. Did you consider or discuss with your parent**  
16 **company whether any short-term bridge financing might be**  
17 **available through the parent company pending eventual**  
18 **more permanent financing through the DDW?**

19 A. So again, our understanding is that we could  
11:37 20 not use the DDW loan for any infrastructure that was put  
21 into place prior to the loan closing. That was part of  
22 the complication. It can't replace. We tried that. We  
23 asked them. They can't replace infrastructure that is  
24 put into place prior to the loan closing because it  
11:37 25 doesn't follow Davis Bacon and other federal

11:37 1 requirements for bidding.

2 THE HEARING OFFICER: Right. I wondered whether it  
3 might be possible to fragment the project or something.  
4 Perhaps you could use a bridge loan to get going. It  
11:37 5 sounds like these questions might be better suited for  
6 another witness which I think I'm about to hear and I'm  
7 happy to wait.

8 THE WITNESS: Again, the answer to your question is  
9 that we could pursue some internal financing mechanism  
11:37 10 if the method of repayment was clear and approved, which  
11 is why we're here.

12 THE HEARING OFFICER: Okay.

13 MS. LEWIS: Just to clarify, the Division of  
14 Drinking Water requires that you have a repayment  
11:37 15 structure in place before you can close on the loan. So  
16 for that we are pursuing the parallel track of either  
17 having a Summit Water or Community Water non-profit  
18 structure be the repayment structure for a public  
19 service commission rate increase. So it is -- to close  
11:38 20 on the loan you need to prove you have a repayment  
21 structure. So that would be a hindrance in any kind  
22 of bridge.

23 THE HEARING OFFICER: Thank you. And you intend to  
24 testify; right?

11:38 25 MS. LEWIS: I can.

11:38 1 THE HEARING OFFICER: You do not intend to testify?

2 MR. AMENDOLA: Your Honor, can I have a follow-up

3 question on the loan?

4 THE HEARING OFFICER: No. Let's wait a minute.

11:38 5 What you essentially provided was testimony. So if

6 you want to make a statement, we need to put you under

7 oath. I think that would be appropriate.

8 MS. SCHMID: I am concerned if Ms. Lewis testifies

9 as a witness while also serving as counsel.

11:38 10 MR. ATWATER: Would it be possible to include that

11 in our closing statement?

12 MS. SCHMID: That's not evidence either. Perhaps

13 we could take a break and perhaps Mr. White's memory

14 could be refreshed.

11:39 15 THE HEARING OFFICER: Well, I want the witness who

16 is most qualified -- please let me finish -- I want the

17 witness who is most qualified to speak to these matters

18 to testify to them. And it's up to CWC whether or not

19 it wants its counsel to testify. My understanding is

11:39 20 that Ms. Lewis's role is perhaps more of a corporate

21 transactional counsel. I defer to the company whether

22 they want to call that witness.

23 MR. ATWATER: Sure. We're not concerned by the

24 same concern that Ms. Schmid expressed at this level.

11:39 25 Especially in the interim hearing. So we would be



11:39 1 perfectly fine calling Ms. Lewis as a witness.

2 MR. SAVAGE: I don't know the normal practice for  
3 Public Service Commission, but in court an attorney  
4 cannot argue a case if they are a witness. But other  
11:39 5 than that there is nothing stopping --

6 THE HEARING OFFICER: I understand that. That's  
7 why I don't have a problem necessarily with Ms. Lewis  
8 testifying because of Mr. Atwater's representing --

9 MR. SAVAGE: Mr. Atwater will know if she tries to  
11:40 10 argue, I'll object.

11 THE HEARING OFFICER: I think I'll conclude my  
12 questions for Mr. White. I'll allow Mr. Atwater to  
13 decide whether he wants Ms. Lewis to take the stand,  
14 make a statement she just felt compelled to make on the  
11:40 15 record or not. That of course will subject her to  
16 cross-examination. I just can't allow counsel to make  
17 statements of fact and accept them as evidence without  
18 being sworn to testify.

19 MR. ATWATER: Okay.

11:40 20 THE HEARING OFFICER: You're excused, Mr. White.

21 MR. ATWATER: We're inclined to call Ms. Lewis, but  
22 we would like to call Ms. Campbell prior to calling  
23 Ms. Lewis if that would be okay.

24 THE HEARING OFFICER: Absolutely. You can present  
11:40 25 your evidence in whatever order you prefer.

11:40 1 MR. ATWATER: So the applicant calls Ms. Tena  
2 Campbell, engineer with Bowen & Collins, engineering  
3 firm, to the stand.

4 (Tena Campbell is sworn in as a witness.)

11:41 5 MR. ATWATER: Thank you, Ms. Campbell, for  
6 attending.

7 Q. As a preliminary matter, I need to ask you, do  
8 you certify as true the testimony of Mr. Keith Larson  
9 who is a partner in Bowen & Collins and a partner of  
11:41 10 yours?

11 A. I do.

12 Q. I have just a few questions to you.

13 MR. ATWATER: In addition to the direct testimony  
14 provided by Mr. Larson, I also do want to clarify for  
11:41 15 those that cross-examine Ms. Campbell that the  
16 information in Mr. Larson's testimony regarding ERUs and  
17 other calculations are clear in the record, and  
18 Ms. Campbell may not have a direct knowledge to all of  
19 those questions. And to the extent they may not be able  
11:41 20 to be answered today, we will do so as promptly as  
21 possible just so that you're aware. She did not  
22 participate directly in the creation of the rate model.

23 Q. So my first question for you, Ms. Campbell,  
24 relates to -- first of all, what was your firm engaged  
11:42 25 to do with respect to the failed tank?

11:42 1 A. So upon having looked at the system previously  
2 through the master planning process, we were engaged,  
3 being familiar with the system, to look at the failed  
4 tank to help assess options for replacement, being the  
11:42 5 same style and type that's there or an alternative that  
6 would be -- function the same, but be just as cost  
7 effective and make the system whole again.

8 So we worked with Summit Water and their staff to  
9 evaluate above ground steel tanks, welded or bolted,  
11:42 10 determined what suppliers might supply such a tank, and  
11 what the timing of that might be. We also were engaged  
12 to provide a foundation design to support whichever tank  
13 was chosen to replace the existing tank.

14 **Q. Thank you. Do you recall the time frame, month**  
11:43 15 **when you were engaged to provide that level of service?**

16 A. It was almost immediately upon failure. We  
17 were brought in to help consult with the style of the  
18 tank and the feasibility of replacing it.

19 **Q. Thank you. And can you testify as to the**  
11:43 20 **current condition or state of the work regarding the**  
21 **tank?**

22 A. The existing tank has been removed. The  
23 existing foundation that was there, which was minimum,  
24 has been removed. So there is a bare ground site there  
11:43 25 right now. The supplier of the tank has been engaged

11:43 1 and has prepared some shop drawings for the new tank.  
2 We are in the process of review and comment on  
3 those shop drawings to make it so that it is feasible to  
4 construct. Bowen Collins has prepared a foundation  
11:44 5 design based upon the preliminary shop drawings with  
6 revision expected upon revision to the shop drawings.  
7 But we've also used that design that we've completed so  
8 far for preliminary bids on constructing that foundation  
9 on-site.

11:44 10 **Q. Thank you. Have you had any conversations with**  
11 **the Division of Drinking Water regarding the**  
12 **availability of the loan relative to construction of the**  
13 **tank?**

14 A. Yes. Just this week they had asked me is there  
11:44 15 a possibility of putting the tank in the loan as was  
16 originally asked upon the emergency situation. At that  
17 time, I did tell them how far along we were with the  
18 supplier and bids on the foundation, and that it would  
19 be difficult, and maybe not very advantageous, to try  
11:45 20 and roll that back into the loan because we would have  
21 to start over with competitive bids of the tank  
22 supplier. And that would change our design of the  
23 foundation to be with whichever tank met that criteria.

24 **Q. Thank you. And if I may just take a quick**  
11:45 25 **diversion to the general rate increase which has not**

11:45 1 really been discussed today, but this may be the last  
2 chance we have to have you on the stand. Your report in  
3 large part provides the evidence and information for  
4 substantiating those rates?

11:45 5 A. Yes.

6 Q. And could you just describe the process that  
7 Bowen & Collins employs generally in determining when  
8 engaged to prepare a water rate study what that process  
9 looks like?

11:45 10 A. Well, typically we do analysis of the water  
11 system. There is a few different options you can  
12 choose. This particular one is one that we used to  
13 existing water use for our basis of calculating the  
14 rate. Working with the water system on historic use,  
11:46 15 that type of thing, to prepare the rate that we could  
16 come up with. Industry standard is typically to  
17 calculate it based on use, which drags us to the ERU  
18 calculation that people are talking about. That's  
19 really an equivalent residential use, again, based on  
11:46 20 historical use.

21 Q. Thank you. And how do you determine the cost  
22 or the estimate cost of infrastructure to be replaced?  
23 Because your report does, in fact, include estimates of  
24 infrastructure that need replacement.

11:46 25 A. So our cost estimates from the master planning

11:46 1 process are based on our experience with similar  
2 projects and similar clients and our engineering  
3 standards and principals that we've used to prepare  
4 those estimates.

11:47 5 MR. ATWATER: Thank you. No further questioning.  
6 Thank you.

7 THE HEARING OFFICER: Ms. Schmid?

8 MS. SCHMID: I may have missed it, but did  
9 Mr. Atwater move?

11:47 10 MR. ATWATER: I will do so now.

11 MS. SCHMID: We often -- all of us often forget  
12 this part so --

13 MR. ATWATER: We move to submit the testimony of  
14 Ms. Tena Campbell into the record of evidence.

11:47 15 MS. SCHMID: The Division does not object except  
16 notes that since Ms. Campbell is not prepared to be  
17 subject to the ERU issues, that evidence -- while I  
18 don't think it will come up in the Divisions'  
19 discussion -- would possibly not be admissible as there  
11:47 20 is not a sponsoring witness for that part here. But  
21 again, it's not going to come up in the Divisions'  
22 discussion.

23 THE HEARING OFFICER: Understood. I think the  
24 problem, Mr. Atwater, is you said you moved to admit  
11:48 25 this witness's testimony, but you're really moving to

11:48 1 admit the written testimony filed by a witness who is  
2 not present; correct?

3 MR. ATWATER: That is correct.

4 THE HEARING OFFICER: And this witness isn't  
11:48 5 prepared to testify to all the contents of all that  
6 written testimony?

7 MR. ATWATER: He is not here today to testify to  
8 the contents.

9 THE HEARING OFFICER: And this witness isn't  
11:48 10 prepared to testify to the content either; right?

11 MR. ATWATER: Ms. Campbell?

12 THE HEARING OFFICER: Right.

13 MR. ATWATER: I think she could testify generally  
14 to that testimony. I think what both Ms. Campbell and  
11:48 15 Mr. Larson would do, however, is just restate what is in  
16 their written testimony. So I think it is worthwhile.  
17 And Ms. Campbell can potentially determine whether or  
18 not she's capable, but it is worthwhile for us to see if  
19 she is capable of answering those questions.

11:48 20 THE HEARING OFFICER: If there is no objection to  
21 the admission of the filed written testimony -- Yes, Mr.  
22 Savage?

23 MR. SAVAGE: Yes, I object to the portions of the  
24 written testimony of Mr. Larson pertaining to ERUs  
11:49 25 because we do not have an opportunity to cross-examine

11:49 1 him, and it's been stated to us that Ms. Campbell is not  
2 prepared to address in any detail the ERUs either. So I  
3 object to the portions of Mr. Larson's testimony dealing  
4 with ERUs.

11:49 5 MS. SCHMID: The Division concurs as previously  
6 stated in that objection.

7 THE HEARING OFFICER: Mr. Atwater?

8 MR. ATWATER: So what I would say is Ms. Campbell  
9 is prepared to testify to those issues. And if her  
11:49 10 answer is not responsive, I think that the commission  
11 should determine at that time whether or not it's  
12 appropriate.

13 THE HEARING OFFICER: How about this. Hearsay is  
14 admissible in a proceeding before the commission. We  
11:49 15 can't exclude evidence solely on the basis that it's  
16 hearsay. We'll go ahead and admit the prefilled written  
17 testimony into the record, and note that Ms. Campbell is  
18 not prepared to testify to all of its contents; is that  
19 sufficient?

11:50 20 MS. SCHMID: Yes.

21 MR. ATWATER: Thank you.

22 THE HEARING OFFICER: Okay. We'll proceed.

23 MS. SCHMID: I have just a couple of questions.

24 Q. I heard you say that the engineering study  
11:50 25 contains estimates based on Bowen Collins experience



11:50 1 with similar projects for similar clients based on Bowen  
 2 Collins general standards and principals. Is that a  
 3 fair restatement?  
 4 A. Correct.

11:50 5 Q. So is it true that the engineering study does  
 6 not include precise recently acquired bids for each  
 7 project proposed by the engineering study?  
 8 A. Correct.

9 MS. SCHMID: Those are all my questions. Thank  
 11:50 10 you.

11 MR. SAVAGE: I have no questions.

12 MR. LANGE: I have a couple of questions concerning  
 13 ERUs so I can kind of wrap my head around the  
 14 understanding of all that.

11:51 15 So I'm trying to educate myself through this whole  
 16 process too, as I think a lot of us are.

17 So it's my understanding ERUs more or less came  
 18 about because of inequality between single-family homes  
 19 and maybe highrises or something like that, or  
 11:51 20 multiple-family dwellings. And that the basis for ERUs  
 21 is predicated on the fact that most of a given clientele  
 22 customer base -- perhaps on average -- maybe the median,  
 23 whatever, consisted of single-family homes. Do you  
 24 understand my question? Would you agree with that?

11:51 25 A. The basis of an ERU is to convert historical

11:51 1 use to an equivalent residential unit, yes.

2 Q. So is my understanding, what I presented so far  
3 to you -- my understanding of it; is that correct?

4 A. I believe you said the majority of the customer  
11:51 5 base is single-family homes. I don't think that is true  
6 in this case.

7 Q. Okay. I had read that someplace. And my only  
8 point is the majority of the customers here are not  
9 single-family home?

11:52 10 A. Correct.

11 Q. They are all HOAs consisting of owners, of  
12 course -- 440, approximately 502 customer base.

13 MR. LANGE: Okay. Well, thank you for that.

14 THE HEARING OFFICER: Ms. Miller?

11:52 15 MS. MILLER: I have no questions.

16 THE HEARING OFFICER: Thank you. Mr. Amendola, do  
17 you have any questions?

18 MR. AMENDOLA: I just have one question of  
19 Ms. Campbell.

11:52 20 Ms. Campbell, originally the ERUs were calculated  
21 at 404 in, I think, the draft study. In the direct  
22 testimony from Mr. Atwater, if you added up the numbers  
23 in the table it was 401, I believe. And in the rest of  
24 the direct testimony by Mr. Atwater and the final  
11:53 25 report, the ERUs were estimated at 453. Can you give me

11:53 1 a little background in how those changes were arrived  
2 at?

3 A. Unfortunately, I personally was not involved in  
4 those specific calculations so I can't speak to why the  
11:53 5 change was made.

6 MR. ATWATER: May I state that the testimony of the  
7 company and of Mr. Larson is that there are 453 ERUs.  
8 The record is clear on that. And if it's not clear I'll  
9 make it clear.

11:53 10 THE HEARING OFFICER: Do you confirm, Ms. Campbell?

11 THE WITNESS: Yes.

12 THE HEARING OFFICER: Mr. Amendola, anything else?

13 MR. AMENDOLA: No. Thank you very much. Thank  
14 you, Ms. Campbell.

11:53 15 THE HEARING OFFICER: Okay. It's noon. We've been  
16 back about 90 minutes from our break. Would the parties  
17 like to break for lunch now or proceed?

18 MR. ATWATER: Your Honor, may I have two redirect  
19 questions?

11:54 20 THE HEARING OFFICER: I apologize. Of course.

21 MR. ATWATER:

22 Q. So Ms. Schmid asked you about the fact that  
23 there are no hard bids with your estimate. Have you  
24 ever made an estimate on infrastructure regarding a  
11:54 25 water plant in the past?

11:54 1 A. Yes.

2 Q. And do you have any idea how accurate the  
3 estimate was in those cases?

4 A. Typically when we do engineering estimates, we  
11:54 5 will choose a technology and work with a supplier to  
6 come up with preliminary numbers. So our previous  
7 experience on treatment plants is there is a level of  
8 contingency built into the number. But we are fairly  
9 close to coming up with a number that will make sense  
11:54 10 and you can budget to it.

11 Q. And did you employ that same process --

12 A. Yes.

13 Q. -- for our analysis? Are you aware -- why  
14 would Bowen Collins not have just obtained bids? Why is  
11:55 15 that not possible as part of this process?

16 A. It is difficult to get a contractor to provide  
17 a detailed bid to you when you have nothing for them to  
18 bid to. So at the time of our master plan, we had  
19 concepts of what needs to be done and that's where we  
11:55 20 estimate what those are going to cost. Once the design  
21 is complete and we have detailed plans and engineered  
22 drawings, that's when you go out to a contractor and you  
23 get a detailed bid number. So we cannot obtain those  
24 and contractors likely will never provide those on, you  
11:55 25 know, an up high in the sky idea. They need to have it

11:55 1 defined. They need to have it engineered. They need to  
2 have an industry standard to put numbers to.

3 Q. Thank you. Specifically with respect to the  
4 Division of Drinking Water loan, you've previously  
11:55 5 stated that -- maybe it was you. Let me ask you the  
6 question. When are bids available under that loan  
7 subject to the federal requirements?

8 A. As I understand it for this particular project,  
9 they would like to have hard bids for contractors in  
11:56 10 hand before closing the loan. So that requires us to  
11 engineer the projects, put them out for competitive bids  
12 at Davis Bacon wages to get those final bid numbers and  
13 then that is what they fund the loan on at Division of  
14 Drinking Water.

11:56 15 MR. ATWATER: Okay. Thank you.

16 MS. SCHMID: May I have permission to ask one or  
17 perhaps two recross questions based upon the redirect?

18 THE HEARING OFFICER: Yes.

19 MS. SCHMID:

11:56 20 Q. Is it your understanding that the proceeding  
21 here today before the Public Service Commission is a  
22 separate proceeding from the application for a loan  
23 before the Division of Drinking Water?

24 A. It is my understanding that they are separate.

11:56 25 MS. SCHMID: Thank you. That's my only question.

11:57 1 MR. SAVAGE: And I have a question also if I may.

2 Q. You said that the master plan -- there's  
3 concepts of what needs to be done and then design plans.  
4 Do you recall that testimony?

11:57 5 A. Yes.

6 Q. What stage is the planning that you've done for  
7 CWC that would relate to the interim rates for general  
8 capital improvements? Is that a concept plan?

9 A. At this point it's still a concept plan. We  
11:57 10 have recently been engaged by contract to start the  
11 design process for the loan projects and we are just  
12 barely getting that going. We've done some site  
13 surveying and a few other preliminary things, but final  
14 designs are not prepared at this time so those numbers  
11:57 15 are based on estimates.

16 Q. Okay. So just so I'm clear. So for the  
17 interim rate increase for general capital improvements,  
18 that's still just at the estimated concept stage?

19 A. Correct.

11:58 20 Q. Did you call those numbers high in the sky just  
21 a minute ago?

22 A. No, I said the idea of the design was concept  
23 and that contractors won't bid concept high in the sky  
24 design.

11:58 25 Q. And we are at the concept stage?

11:58 1 A. We are currently at the concept stage.

2 MR. SAVAGE: Thank you. Nothing further.

3 THE HEARING OFFICER: Any followup, Mr. Atwater?

4 MR. ATWATER: No. Thank you.

11:58 5 THE HEARING OFFICER: Would you like to call your

6 next witness before we break for lunch and I'll allow

7 the other parties to weigh in on the question.

8 MR. ATWATER: So does the commission feel that

9 Ms. Lewis needs to testify still with regards to

11:58 10 questions it has with regard to the loan?

11 THE HEARING OFFICER: No. It wasn't my intention

12 to express an interest on the part of the commission to

13 examine Ms. Lewis. I think I inappropriately assumed

14 when she jumped in that she intended to testify and I

11:58 15 thought I would save my questions for her.

16 MR. SAVAGE: I think right now the question is are

17 we going to lunch.

18 MR. ATWATER: Yeah, I'm trying to determine whether

19 I have any more witnesses.

11:59 20 MR. SAVAGE: Okay.

21 THE HEARING OFFICER: While you're talking

22 together, do the other parties have any position on

23 whether we should break at this time?

24 MS. SCHMID: I would support a break at this time.

11:59 25 THE HEARING OFFICER: Then I'll allow you to think

11:59 1 about it over the break, Mr. Atwater. I might have a  
 2 few more questions for Mr. White to the extent Ms. Lewis  
 3 is not going to testify. So we'll proceed with one or  
 4 the other when we get back and move to the Division's  
 11:59 5 case. We'll be in recess until 1:05.

6 MS. SCHMID: Thank you.

7 (Interruption in proceedings.)

8 THE HEARING OFFICER: Back on the record then.  
 9 Welcome back everyone.

13:02 10 Mr. Atwater, when we adjourned for -- pardon me --  
 11 recessed for lunch you were going to consult with  
 12 Ms. Lewis and your client and determine whether or not  
 13 Ms. Lewis is going to testify.

14 MR. ATWATER: Yes, Ms. Lewis is prepared to testify  
 13:02 15 in this matter.

16 THE HEARING OFFICER: Would you like to call her  
 17 now?

18 MR. ATWATER: Yes. The applicant calls Ms. Emily  
 19 Lewis to the stand to provide testimony in this matter.

13:03 20 (Emily Lewis is sworn in as a witness.)

21 MR. ATWATER:

22 **Q. Ms. Lewis, would you please describe for the**  
 23 **commission your engagement and involvement with the**  
 24 **water company.**

13:03 25 A. Certainly. I work for a private law firm here



13:03 1 in the city, Clydesdale and Sessions. I am a water law  
2 attorney which is my primary field of practice. I was  
3 retained by TCFC under the management of Larry White's  
4 predecessor, Tom Jolley, in 2015 -- probably late 2015.

13:03 5 Since that point in time we have assisted TCFC in a  
6 variety of water matters, including Community Water  
7 Company matters. And they span from helping with  
8 previous rate cases -- I've not really been involved in  
9 this rate case much at all, but also a lot of background  
13:04 10 information. We've done a fair amount of work for TCFC  
11 to understand what the water assets of Community Water  
12 Company are. We've retained engineers to look at the  
13 well assets and do well reports. We have looked at the  
14 various contracts to determine their standing.

13:04 15 Extensive amount of water work for the company.

16 Q. So I just want to ask the question on your last  
17 statement there. You indicated that you have provided  
18 extensive work for the company. And can you give us  
19 maybe a bit more context as to when you were engaged  
13:04 20 initially for the company and your involvement through  
21 the process. I guess we're speaking commencing in 2014  
22 which is when the current management became involved.

23 A. So we were retained -- I want to say like  
24 October 2015. So about two years ago. And we've been  
13:04 25 involved since then. When we first came in on

13:04 1 October '15 under the -- Tom Jolley was at that time the  
2 director. At that point in time the company was in the  
3 middle of its second rate case in 2015. The previous  
4 rate case that had been filed in 2014 was issued  
13:05 5 incomplete by the commission, which is true because  
6 the -- Varde had not yet taken -- had just taken over  
7 and had not done a lot of work to figure out what the  
8 problems with the company were. And at that point in  
9 time hired Bowen Collins to do the master study.

13:05 10 In 2015 when we came on, we discussed a variety of  
11 options for how to address the infrastructure problems  
12 with the company, but also the ongoing desire to have an  
13 ownership change from TCFC to another entity who is more  
14 suited to run the water company.

13:05 15 In the 2015 case, we made the decision to withdraw  
16 the case because at that point in time we were pursuing  
17 discussions, both preliminary discussions with  
18 potentially Mountain Regional, with Summit, and also at  
19 that point in time potentially forming a mutual water  
13:06 20 company for the customers that would be an alternative  
21 to public -- So we were looking at a variety of  
22 alternatives for the company.

23 And so in 2015, we withdrew the public service  
24 commission rate case. At that point in time, the public  
13:06 25 service commission asked that we keep them apprized of

13:06 1 what we were doing. So we've had communications with  
2 the Division of Public Utilities after that rate case  
3 was withdrawn. And then we -- our efforts turned to the  
4 unfortunately unfruitful, in terms of making a mutual  
13:06 5 water company or transitioning to Community Water, to  
6 Mountain Regional or Summit.

7 At that time in 2016, Division filed their rate  
8 case which was a maintenance and operations case and we  
9 helped extensively in that matter.

13:07 10 Q. Let me ask you specifically about some of the  
11 matters that you were engaged in and the level of work.  
12 So the testimony today from the Division -- excuse me --  
13 from the intervenors so far, the testimony -- the  
14 suggestions have been so far that the company has not  
13:07 15 done sufficient diligence, and the company has neglected  
16 its duties and responsibilities as a public utility.

17 In addition to all of the things that you've just  
18 discussed and that you've been engaged to do for the  
19 company, are there any other instances where you have  
13:07 20 seen a company involved in pursuing a path toward a  
21 reasonable resolution?

22 A. Yeah. I think the most -- the primary matter  
23 that would probably resolve is securing financing for  
24 the improvements. And so after the conclusion of the  
13:07 25 2016 rate increase which was limited to a rate that was

13:08 1 sufficient for simply maintenance and operations, even  
2 though we did request some additional amount of money to  
3 fund a meter package so we could replace meters, that  
4 was denied. We determined that the condition of the  
13:08 5 company was in such a dire state that we needed to find  
6 alternative funding. So at that point in time we looked  
7 into finding funding sources on the private and public  
8 markets.

9 And that's when we decided to reapply for the state  
13:08 10 revolving fund loan through the Division of Drinking  
11 Water. And we were always very open with the customers  
12 and the Division of Public Utilities about that process.  
13 It's a very low interest rate loan. We had approval at  
14 3.09 percent. It's rare it find money that cheap. We  
13:08 15 also with that had the expertise of the Division of  
16 Drinking Water working with us. So a lot of my time was  
17 spent doing that as well.

18 **Q. Why do you think the -- why did the company**  
19 **choose to go with the Division of Drinking Water loan**  
13:09 20 **versus any other possibility?**

21 A. One of the problems that we -- one of the  
22 issues that we wanted to address as promptly as possible  
23 was the fact that the system was an important addition  
24 as demonstrated by the failure of the tank. So one of  
13:09 25 our thoughts was that we would apply for funding and see

13:09 1 if we could get the funding. And then we would find a  
2 payment restructure path through either transitioning to  
3 a mutual water company format -- most likely through  
4 Summit or through the Public Service Commission -- and I  
13:09 5 had many discussions with Mark Long about this process  
6 as well. But making sure that our loan request would be  
7 something that would ultimately be acceptable to the  
8 Public Service Commission in asking for infrastructure  
9 improvements that would be appropriate to be covered in  
13:09 10 a public service rate increase. And if we were able to  
11 get out from underneath, Public Service Commission  
12 oversight would be repaid through assessments and a  
13 mutual water company.

14 **Q. So you mentioned that you had conversations**  
13:10 15 **with Mark Long. Who was Mark Long?**

16 A. Mark Long was the prior Division of Public  
17 Utilities' technical assistant -- I don't know --  
18 engineer. He had a very constructive relationship with  
19 the Division of Public Utilities throughout the last  
13:10 20 several rate cases. And I think that their expertise  
21 has been very helpful. This is a unique scenario, so we  
22 want to make sure that we were being transparent and  
23 communicative with our regulatory agencies.

24 **Q. Was it your understanding that the Division of**  
13:10 25 **Public Utilities recommended pursuing the loan as a**

13:10 1 viable option for funding?

2 A. Yes.

3 MR. ATWATER: I have no further questions.

4 THE WITNESS: I would like to make just a

13:10 5 clarification statement from our earlier comments. I

6 think one of the big issues that has been missing a

7 little bit in this discussion is that the first domino

8 for getting funding for the Division of Drinking Water

9 loan is proving to the Division of Drinking Water a

13:11 10 structure of repayment. And that's been the primary

11 focus for the company, once the loan was approved, is

12 securing a restructuring of payment. And we have made

13 great efforts to try and have that happen on a mutual

14 water company's side and a rate under a mutual water

13:11 15 company if they were able to get customer consent to

16 switch to a mutual water company.

17 And what we're here today on the parallel path is

18 to find the repayment structure for the Public Service

19 Commission for that funding. And the loan will not be

13:11 20 closed until there is a repayment structure under either

21 scenario.

22 MR. ATWATER: No further questions.

23 THE HEARING OFFICER: Thank you. Ms. Schmid?

24 MS. SCHMID: Yes. Good afternoon. This is a very

13:11 25 unusual situation cross-examining someone who has been

13:11 1 retained for the company as an attorney, but who is  
2 appearing here today as a witness for the company, not  
3 an attorney. That said I have some questions and I'll  
4 start.

13:12 5 **Q. Is money for the tank replacement currently in**  
6 **the loan application?**

7 A. Presently the loan is approved for  
8 \$3.6 million. That includes the \$425,000 line item  
9 assessment for the take that is approved by the board of  
13:12 10 Drinking Water. Subsequent to the approval of the loan  
11 and on May 12th of this year, we've had discussions with  
12 Julie Kobely at the Division of Drinking Water and have  
13 removed the \$425,000 line item to try and fund the tank  
14 through a separate process that would be more expedient  
13:12 15 and cheaper for the customers.

16 **Q. Your testimony conflicts with what I think I**  
17 **heard the previous company witness say. I believe the**  
18 **previous company witness said the tank amount was still**  
19 **in the loan?**

13:13 20 A. Yes, it is. \$3.6 million is our approved  
21 amount and that includes money for the tank. We've had  
22 subsequent discussions because the loan process is that  
23 you apply obviously. You apply on the best numbers you  
24 have available, which are mostly based on bids. And for  
13:13 25 our case are based on estimates by Bowen & Collins as

13:13 1 well as statements from Summit Water Distribution  
2 Company on some minor items. The loan is approved for  
3 the total amount.

4 After that you have a loan closing process period  
13:13 5 where the loan numbers of which you applied for are  
6 confirmed with hard bids. And so we have a number  
7 approved for the tank, but our discussions prior to --  
8 after the approval with Julie was to remove the tank.  
9 And then the final approved number that's closed is  
13:13 10 going to be less than what was approved.

11 **Q. Why was the tank removed or why is the tank**  
12 **going to be removed from the loan?**

13 A. We initially discussed removing the tank from  
14 the loan for two specific reasons. First, we had hoped  
13:14 15 to have a transition of the company to a mutual water  
16 company that would be more responsive to a special  
17 assessment, and we would be able to fund the tank  
18 through special assessments under the mutual water  
19 company. That was our hope.

13:14 20 Second -- and the point for that being is that  
21 understanding the nature and the emergency nature of the  
22 tank, we wanted to find the most expedient method  
23 possible to get the tank built and functioning. Second,  
24 the Division of Drinking Water loan has a number of  
13:14 25 federal requirements including the Davis Bacon act, the



13:14 1 minority business act. It has a competitive bidding  
2 process. That adds about 20 percent cost to anything  
3 that you do. And so we were trying to keep the tank  
4 loan cost as low as possible to -- removing it from the  
13:15 5 Division of Drinking Water process and reduce the loan  
6 amount -- or reduce the amount of the tank project.

7 **Q. Were you here when Mr. White testified about**  
8 **what we'll just call the expected return of the Varde**  
9 **group?**

13:15 10 A. I was here, yes.

11 **Q. Do you recall that that was a minimum of**  
12 **13 percent?**

13 A. I don't have general knowledge of how the  
14 company works, but I recall that Mr. White testified  
13:15 15 that the minimum repayment was about -- or preferred  
16 minimum return was 13 percent.

17 **Q. What is the interest rate on the Division of**  
18 **Drinking Water loan?**

19 A. 3.09.

13:15 20 **Q. And the term of that loan?**

21 A. It's a 20-year loan. Pretty sure it's 3.09.

22 **Q. Subject to check?**

23 A. Subject to check.

24 **Q. In any event it's much cheaper than --**

13:16 25 A. Much cheaper than 13 percent.

13:16 1 Q. Thank you. You read my mind. Is it true that  
2 the company is not precluded from trying to comply with  
3 those federal requirements such as the Bacon act, the  
4 minority act, and things like that?

13:16 5 A. We could voluntarily do those things, but I  
6 don't know why we would.

7 Q. Sorry. In the process of achieving the loan.  
8 So the company could still try and comply with those  
9 things for the loan?

13:16 10 A. For the tank project?

11 Q. Yes.

12 A. It would -- at this point in time the tank  
13 project is far enough along in the process that it  
14 would -- we've already bid -- my understanding is -- and  
13:16 15 Tena Campbell would really be the better person to speak  
16 to this -- but for us to now reincorporate the tank  
17 project into the Division of Drinking Water loan would  
18 require us to reduce several steps that would take a  
19 fair amount of time for us to do like refitting. It  
13:17 20 would require us to do a lot of work.

21 The company has always been sincerely desirous of  
22 getting this project done as fast as possible. So we've  
23 done a lot of work on the tank already. To  
24 re-incorporate that tank project into the Division of  
13:17 25 Drinking Water process would take a large amount of time

13:17 1 and effort and expense that would be duplicative.

2 Q. Let's turn now to the rate case that was --  
3 resulted in an order in 2016 granting a rate increase.  
4 Are you familiar with that case? Do I have my dates  
13:17 5 right?

6 A. I am familiar with that case. It's the  
7 unorthodox nature of this testimony.

8 Q. You characterized that as a maintenance and  
9 operations case; is that correct?

13:18 10 A. That is how I would characterize it.

11 Q. Did the company have the opportunity to include  
12 other expenses such as salaries and things in its sought  
13 after increase?

14 A. I think it's very important to clarify that the  
13:18 15 2016 public service commission case was initiated by the  
16 Division of Public Utilities. So therefore, we were not  
17 the applicant in that case. And so we had the  
18 opportunity through our direct testimony and through  
19 that case to include actual costs of which we tried to  
13:18 20 include in terms of minor -- not necessarily large  
21 capital -- but minor system improvements. And we tried  
22 to include them through various data requests and  
23 through amendments to our direct testimony.

24 Q. You're not testifying that because the company  
13:18 25 wasn't the applicant, it had no duty to show that the

13:18 1 rates resulting from that case would be just, reasonable  
2 and in the public interest, are you?

3 A. No, no. I'm just stating that at the time the  
4 company was preparing -- a little context might be  
13:19 5 helpful. So when we stopped doing the rate case in  
6 2015, the intent was because we were trying to get our  
7 ducks in a row to figure out a way to improve the  
8 system, to transfer ownership, and to move the company  
9 out of TCFC ownership, and to get the system working.

13:19 10 And so when the 2016 rate case was initiated, you  
11 know, we were obviously active participants and wanted  
12 to make sure that we had a rate that, you know, was  
13 sufficient. But it was not a rate case that we came  
14 prepared for or ready to have it be a capital rate case  
13:19 15 like the one we've filed at this point in time.

16 Q. Could the company have filed a rate case at  
17 that point in 2016?

18 A. It could, but at that point in time we were  
19 trying -- our ultimate goal is to leave public services  
13:19 20 commission oversight. Because this is a small company  
21 and it's an ill fit for this particular process. So at  
22 that point in time our energies were focused to try and  
23 find a way to transfer the company to another format.

24 Q. Is it still the company's desire to leave the  
13:20 25 regulatory umbrella held by the Public Service

13:20

**1 Commission?**

2 A. We believe that a different format would be  
3 more responsive to the needs of this particular company  
4 considering the large amount of infrastructure

13:20

5 improvements that are needed, the unknowns of the  
6 company, and the general smaller size. Each time -- the  
7 way -- and also the dilapidated condition of the company  
8 and the lack of funds.

9 It's very burdensome to come before the commission

13:20

10 every time that there is a tank failure or a well  
11 failure. And we feel like a mutual water company or  
12 another format would be more responsive to both customer  
13 needs and system improvements.

14 **Q. In a mutual water company, is it guaranteed**

13:20

15 **that every customer will have a vote equal to every**  
16 **other customer? Or is it true that some customers, like**  
17 **the animals in George Orwell's 1984, are more equal to**  
18 **others?**

19 A. All mutual water companies are defined by the

13:21

20 articles and bylaws. So it would depend on how each  
21 company is designed. Generally, the factors that  
22 determine mutual water company's ownership, if you're a  
23 shareholder you own a proportionate amount of assets of  
24 the company. How your voting is structured is dependent  
13:21 25 on how the company is formed.

13:21 1 Q. Are you familiar with the structure of Summit  
2 Water Distribution Company?

3 A. Generally so.

4 Q. Does Summit Water Distribution Company have  
13:21 5 different classes of shares?

6 A. Summit Water company does have different  
7 classes of shares.

8 Q. Are the votes ascribed to each class of shares  
9 identical?

13:21 10 A. Yes. And I believe that in a nonprofit code  
11 they must be so. So you have equal voting. Each class  
12 must be treated -- shareholders in each class must be  
13 treated the same. Different classes can be treated  
14 differently depending on how the bylaws of the company  
13:22 15 are structured.

16 Q. So if I owned say 14,000 A shares of stock, I  
17 could outvote someone else who had one share of B stock  
18 or C stock in Summit, based on your knowledge?

19 A. My understanding is that Summit -- it's the  
13:22 20 voting structure is limited to B shares and A shares are  
21 voting shares. But C and D shares are not voting.

22 Q. Okay. You talked a little bit about the loan  
23 application process and your discussions with Mr. Long.  
24 As an attorney, are you aware of the standard of proof  
13:22 25 that is required for the commission to base a decision

13:23 1 on regarding rates?

2 A. Yes. And I think that -- I think that this is  
3 an important point. And I also want to clarify what  
4 we're here today as today -- today is an interim rate  
13:23 5 case. So the process is meant to be -- this is an  
6 interim step where -- my understanding is going to be it  
7 will be trued up at the end of the final rate case, so  
8 the burden of proof is on the applicant. I understand  
9 that.

13:23 10 Q. Do you understand that documentation sufficient  
11 for a loan application may not be sufficient evidence  
12 for the Public Service Commission upon which to base a  
13 decision?

14 A. I believe it would be sufficient for an interim  
13:23 15 case.

16 Q. That is your legal opinion?

17 A. That is our hope today. So my understanding is  
18 I think that this is where the situation for this  
19 particular company is a little bit unorthodox. The  
13:24 20 matter is that for -- we're under now the auspices of  
21 several separate state entities. We're working  
22 concurrently with the Division of Drinking Water, with  
23 the Public Service Commission, Division of Public  
24 Utilities, and all of our customers who are their own  
13:24 25 regulatory entities. Sometimes they wield great power.

13:24 1 At the end of the day, pragmatically we all share the  
2 same goal of trying to fix the system, and trying to fix  
3 it in an environment that is not necessarily conducive  
4 to meeting that goal in an expedited manner.

13:24 5 And so at this point in time, what the company has  
6 done is it's provided the best information as possible  
7 as it is today with the hope that we can run the  
8 Division of Drinking Water loan process and the Public  
9 Service Commission process concurrently to get the  
13:24 10 information ultimately needed by both.

11 MS. SCHMID: Those are all my questions. Thank  
12 you. This was very unusual.

13 THE HEARING OFFICER: Mr. Savage?

14 MR. SAVAGE: Thank you, Your Honor.

13:25 15 **Q. Ms. Lewis, you attended all of the meetings**  
16 **with the customers -- representatives of the customers**  
17 **that we've been talking about; correct?**

18 A. I believe so.

13:25 19 **Q. Isn't it true that at least one of those**  
20 **meetings you presented a proposal for a period of months**  
21 **to pay off the tanks that would be paid off before any**  
22 **need to start paying for the \$3.6 million loan?**

23 A. We've had several discussions about how to  
24 finance the tank project and the capital improvements.

13:25 25 And generally those discussions have included paying off



13:25 1 the tank loan prior to the Division of Drinking Water's  
2 debt service -- You know, we need to restructure  
3 payment for that.

4 **Q. Before January of 2019?**

13:26 5 A. If we are able to secure a rate that the  
6 Division of Drinking Water finds sufficient as to be  
7 repayment of the loan, and we are able to close the loan  
8 this April, the first payment on the loan will be in  
9 2019. At this point in time, that being said, those  
13:26 10 dates may change depending on what -- how the  
11 construction goes and how the process plays out.

12 **Q. All right. Can you tell us what the proposal**  
13 **you recall making for these two assessments or interim**  
14 **emergency rate increase as well for the tank and one to**  
13:26 15 **start paying off the loan. Just tell us what you told**  
16 **the water users.**

17 A. In early June we had a meeting with the water  
18 users. The tank failed in mid-April. We had several  
19 communications by mail that are -- portions of which are  
13:26 20 included in your testimony. And then we had a public  
21 meeting early June to discuss the solutions that we had  
22 come up with, of which one was, as I stated, our goal  
23 was and still is to try and find a better format for  
24 this company of moving to Summit or a mutual water  
13:27 25 company. And repayment of the loan for the repayment

13:27 1 would be -- for the tank project would be -- the first  
2 chunk would be -- it would be earlier. And then the  
3 repayment on the Division of Drinking Water would be  
4 subsequent to that.

13:27 5 **Q. Was that to be -- with respect to the tank, was**  
6 **that to pay off a loan from the parent of CWC to**  
7 **immediately replace the tank?**

8 A. So the TCFC has floated several proposals, but  
9 the proposal I think you're alluding to is that we had  
13:27 10 stated that the parent company would provide a loan.  
11 That being said, you know, maybe this should have been  
12 more clearly stated, that that loan is contingent upon  
13 having a repayment structure. And then that would have  
14 gone first under a period of 18 months. The proposal is  
13:28 15 an 18-month loan.

16 **Q. How much per month, do you recall?**

17 A. In terms of per person payment?

18 **Q. Yeah.**

19 A. I don't recall how much per person.

13:28 20 **Q. But it was an amount of money that would retire**  
21 **\$450,000?**

22 A. Yes. At that point in time it was a \$450,000  
23 loan.

24 **Q. Eighteen months?**

13:28 25 A. Yeah.

13:28 1 Q. And it would be paid off before the loan kicked  
2 off for payments of the 3.6 million?

3 A. Our goal was to create as little -- our goal  
4 was to create the most consistency possible. So it  
13:28 5 worked out serendipitously if we structured repayment of  
6 the tank loan to dovetail with the payments to the  
7 Division of Drinking Water loan, water rates would  
8 remain relatively the same for customers and there  
9 wouldn't be a large debt or increase and that was our  
13:29 10 goal.

11 Q. Does it stick in your mind it was about a \$50  
12 increase over the existing rate? Something like \$95 or  
13 something?

14 A. That would make sense to me.

13:29 15 Q. So what you're telling us is that the proposal  
16 was that there would be a short-term increase of the  
17 water rates up to a total \$95 base rate until the tank  
18 was -- money for the tank was paid back to the parent;  
19 correct?

13:29 20 A. That was one of our proposals, yes.

21 Q. And then that would be hopefully done before  
22 the same amount of money kicked in to retire debt over  
23 20 years from the -- for the \$3.6 million?

24 A. Yes. I mean, this is all subject to -- these  
13:29 25 were estimates and not final numbers.

13:29

1 Q. I understand. But the goal and the proposal  
2 was essentially that it would be something like a \$95  
3 base rate that would stay the same after the mid-loan  
4 kicked in?

13:29

5 A. That's also why we're asking for our general  
6 rate case now as we'd like to have consistency with our  
7 rates.

8 Q. And the money for the tank was to come from the  
9 parent company?

13:30

10 A. At that point in time, yes, that was our  
11 proposal in June.

12 Q. What was the interest rate on that loan?

13 A. At that point in time, I believe it was to  
14 match the Division of Drinking Water loan.

13:30

15 Q. 3.39 percent? Not 13?

16 A. That is true. But as we said that was a  
17 proposal.

18 Q. And who makes -- well, let me back up. I can  
19 show you these documents, but I'm just going to -- in  
20 front of me the June 12, 2017 communication to the  
21 customers of CWC. Do you recall that?

13:30

22 A. Yes.

23 Q. By the way, did you review that before it went  
24 out?

13:30

25 A. Yes.

13:30

1 Q. And it's signed by Mr. Larry White, but he  
2 signs as chief executive officer, TCFC Finance Company  
3 and as manager of ASC Utah LLC; is that correct?

13:31

4 A. I don't have that information to speak to  
5 Larry's -- I mean if it says that on the paper, yes.  
6 Whether or not that's an accurate statement of his  
7 titles, I don't know.

8 Q. Well, that's not my question.

13:31

9 THE HEARING OFFICER: Mr. Savage, do you have a  
10 copy of what you're reading to the witness from?

11 MR. SAVAGE: No. But I could give her mine. I'm  
12 sorry. I didn't have copies of it. I didn't know we  
13 were going through this.

14 THE WITNESS: Me neither.

13:31

15 MR. SAVAGE: Do we need to mark it as an exhibit?

16 THE HEARING OFFICER: Do you want to introduce it?

17 MR. SAVAGE: It's already attached as Exhibit B to  
18 my statement so I'll refer to it that way.

13:31

19 MS. SCHMID: Could we go off the record for just  
20 one moment?

21 THE HEARING OFFICER: Certainly. Let's go off the  
22 record.

23 (Interruption in proceedings.)

13:32

24 THE HEARING OFFICER: Do you want to go back on the  
25 record, Mr. Savage?

13:32 1 MR. SAVAGE: Yes.

2 Q. I'll show you now what's been marked as Exhibit  
3 B to your statement, and can you identify that document?

4 A. Yes.

13:32 5 Q. What is it?

6 A. Throughout the company's tenure under 20144,  
7 it's one of our goals to have constant communication and  
8 transparency with our customers. This is one of those  
9 letters that was going to inform customers about a  
10 variety of issues. You know, one is the continued tank  
11 failure and irrigation restrictions and then funding  
12 options for that. Two, an update on the Division of  
13 Drinking Water loan and company transfer.

14 Q. And it's signed by Mr. Larry White?

13:33 15 A. As chief executive officer, TCFC Co., LLC,  
16 manager ASC Utah. So he is the -- yes.

17 Q. In your experience in dealing with this  
18 company, is he the person that makes the decisions for  
19 Community Water?

13:33 20 MR. ATWATER: Objection. The document that's being  
21 referenced does not state what is being suggested. It  
22 states --

23 MR. SAVAGE: I've got a question pending.

24 MR. ATWATER: Sorry.

13:33 25 THE HEARING OFFICER: You're objecting. You're

13:33 1 saying the question misstates the evidence?

2 MR. ATWATER: Correct.

3 THE HEARING OFFICER: Well, the witness just  
4 conferred it's stated correctly.

13:33 5 MR. ATWATER: I object to the response.

6 THE WITNESS: I think it's unclear about how this  
7 title is stated what exact role Larry is playing in  
8 terms of management.

9 MR. SAVAGE: That's what I'm trying to find out.

13:33 10 MR. ATWATER: TCFC is the manager of ASC Utah.  
11 That's what it says.

12 MR. SAVAGE: And he's also -- I see what you're  
13 saying. But he's the chief executive officer of TCFC?

14 MR. ATWATER: Right.

13:34 15 THE WITNESS: Yes.

16 MR. SAVAGE:

17 **Q. Is he signing as a manager of ASC? Do you know**  
18 **if he is a manager of ASC?**

19 A. I believe that his testimony would be the best  
13:34 20 for this. I don't feel qualified.

21 **Q. But anyway, it appears to you that he's signing**  
22 **on behalf of ASC who is the manager of TCFC and as a**  
23 **chief executive officer of TCFC; is that correct?**

24 MR. ATWATER: The reverse.

13:34 25 MR. SAVAGE:

13:34

1 Q. Okay. We'll reverse it; is that correct? I  
2 don't really care. I'm just trying to get to what he  
3 does.

13:34

4 A. ASC Utah is the manager of TCFC and he is the  
5 CEO of TCFC.

6 MR. SAVAGE: That's what I thought I just said.

7 MR. ATWATER: No, it's reversed. I think  
8 Mr. White's testimony is consistent with that.

13:34

9 THE HEARING OFFICER: I think the document can  
10 speak for itself. At this point we can probably move  
11 on.

12 MR. SAVAGE:

13:35

13 Q. At this point, I do not really care. He's not  
14 signing as any officer or employee of CWC; is that  
15 correct?

16 A. He's not signing as CWC.

17 Q. The parent controls this company, does it not?

18 A. Yes.

19 Q. And Mr. White makes the key decisions?

13:35

20 A. My understanding is he does. I do not know  
21 what the corporate structure is behind him. I feel  
22 uncomfortable answering corporate structure questions  
23 for where he falls in.

13:35

24 Q. From what you've observed, he's the guy that  
25 makes the decisions for CWC, is he not?



13:35 1 A. From what I've observed, Larry White makes  
2 decisions for CWC. Whether or not he is the only voice  
3 who makes those decisions, I do not know.

4 Q. The other voices would also be TCFC voices or  
13:35 5 ASC or Varde voices?

6 A. In the corporate family, yes.

7 Q. So the parent and the string of parents --  
8 well, we've already said they control the company. Do  
9 you recall we discussed -- you and I as early as June or  
13:36 10 maybe even in May -- that an alternative to trying to  
11 get everybody to agree to a rate increase not going  
12 through the PSC, that an alternative would be to apply  
13 to the PSC for an interim immediate rate increase to  
14 cover the tank?

13:36 15 A. The PSC is always available for us to go to in  
16 terms of our rate increase. The decision made was that  
17 we were going to discuss -- it's always been an option  
18 and hence why we are here today -- it's also an  
19 expensive option and I think that we as a company were  
13:36 20 hopeful that we could find a format to transfer the  
21 company to a mutual water company or other format and  
22 not need a PSC rate case which is an expensive drawn out  
23 process. That did not come to be, and hence we filed a  
24 rate case in September.

13:37 25 Q. And that was Mr. White's decision?

13:37 1 A. Ultimately, yes. I would say.

2 Q. So it was the decision of the parent to not  
3 immediately file for the PSC for the reasons you just  
4 stated, but instead to try to do some deal with Summit  
13:37 5 and the users. And it was his decision to finally file  
6 for the rate increase in September?

7 MR. ATWATER: Objection. Argumentative.

8 THE HEARING OFFICER: Sustained. It was compound.  
9 Maybe you can break it down.

13:37 10 MR. SAVAGE: Yeah, it's compound.

11 Q. Was it his decision to postpone filing for a  
12 rate increase to cover the tank?

13 A. There were many, many conversations that came  
14 to that conclusion from several voices, both from  
13:37 15 counsel, both discussions with Summit Water Distribution  
16 Company or discussions with the customers.

17 Q. Who made the decision?

18 A. Ultimately I guess it would be Mr. White, but I  
19 think that it was a long drawn out process to get to  
13:38 20 that point.

21 Q. I understand the process. I'm just trying to  
22 look at who controls this company and who decides  
23 whether or not to fund it. Was it also his decision  
24 that gave you -- or Mr. Atwater the decision to go ahead  
13:38 25 and file for this rate increase in September?

13:38 1 A. Once it became clear much earlier than  
2 September that the company would not be able to  
3 transition to a timely manner to a mutual water company,  
4 we began preparing in preparations for this rate case.  
13:38 5 We ultimately were in a position where we could do so in  
6 September after several weeks of preparing and  
7 collecting rate documents.

8 **Q. Who made the decision to go ahead?**

9 A. Mr. White.

13:38 10 **Q. You were present when the proposed structure**  
11 **for what's been called a mutual company was presented to**  
12 **the representatives of the customers?**

13 A. Yes.

14 **Q. And do you recall if there were two classes of**  
13:39 15 **stock being proposed, class one and class two?**

16 A. We had an open discussion with our customers  
17 about what kind of corporate structure would best meet  
18 their needs as well as the needs of Summit Water  
19 Distribution Company, who was the operator of the  
13:39 20 system.

21 We discussed having two classes of stock. One for  
22 a use stock. That would be a general customer stock.  
23 And one for a stock that would be held by Summit Water  
24 Distribution Company so that they could have some  
13:39 25 control in the management of the company of which they

13:39 1 were operating.

2 Q. Did you say sole control?

3 A. Some control.

4 Q. Some control. Didn't they have total control  
13:39 5 of the proposal?

6 A. This was a draft proposal for discussion.

7 Q. In the draft proposal, wasn't it proposed they  
8 had total control and they could elect the majority of  
9 the board?

13:39 10 A. The underlying principle was that we wanted to  
11 find a structure that provided Summit the autonomy to  
12 make large decisions on the company they operate, and  
13 they would be able to make those decisions in a timely  
14 and expeditious manner. So the class of stock that gave  
13:40 15 them some management control was an option to do so.

16 Q. But it gave them management control?

17 A. But not sole ownership of the company.

18 Q. That's true. But the other owners could only  
19 vote for a minority of the board?

13:40 20 A. We had discussed several formats for what the  
21 board would take.

22 Q. I'm just dealing with the one that was  
23 presented to the customers at one of these meetings.

24 That one was a class one stock that only Summit would  
13:40 25 own, and it would vote for a majority of the board. The

13:40 1 user, the customer, would have class two stock and could  
2 only vote for the minority of the board?

3 A. And I believe that although that structure was  
4 discussed, the concerns of the company -- of the  
13:40 5 customers are mediated by the fact that they would have  
6 voting powers on certain issues such as raising the  
7 management fees. And so it was not a sole management,  
8 but it was an active discussion about how to meet the  
9 needs both of Summit as the operator and as the customer  
13:41 10 as participants.

11 Q. I appreciate your explanation, but you didn't  
12 answer my question. Wasn't that proposal, the only one  
13 presented to the customers -- didn't that propose class  
14 one stock would be owned only by Summit and Summit could  
13:41 15 vote for majority of the board, and all the customers  
16 could do with their stock would be vote for a minority  
17 of the board?

18 A. The corporate bylaws were structured that way,  
19 but the management agreement provided for greater  
13:41 20 customer participation.

21 Q. Wasn't that the proposal of the ownership of  
22 the company presented to the customers?

23 A. It was a proposal we discussed, but it was  
24 modified by -- it just --

13:41 25 MR. ATWATER: Objection. Asked and answered.

13:41 1 THE HEARING OFFICER: I think it has been asked and  
2 answered, and I wonder how material this is to the  
3 decisions that we need to make today. If Mr. Savage has  
4 a question or two to wrap up, that's fine. But I think  
13:41 5 we should move on to more substantive issues before us  
6 in this interim rate hearing.

7 MR. SAVAGE:

8 **Q. In fairness, that meeting broke up, did it not,**  
9 **with there being some discussion that there would be an**  
13:42 10 **effort to get back to the customers with some**  
11 **modification that would give them a controlling vote on**  
12 **certain key issues?**

13 A. Yes.

14 **Q. Did that ever happen?**

13:42 15 A. We have now fully formed corporate bylaws and  
16 articles, management agreement, a subscription agreement  
17 and terms and conditions ready to present to the  
18 customers.

19 **Q. But it hasn't been presented yet?**

13:42 20 A. We are waiting for -- to see -- once this rate  
21 case became a little bit more contentious, we were  
22 waiting to kind of see what the -- what the result of  
23 the rate case was going to be, to see if that was an  
24 effort worth continuing.

13:42 25 **Q. Does Summit still require in any transfer of**

13:42 1 ownership to it of the control of CWC -- do they still  
2 require as a condition to that deal that the company get  
3 out from under Public Service Commission supervision?

4 A. Presently it's structured to be Community Water  
13:43 5 Company nonprofit stand alone company that will be  
6 maintained on its own. And Summit Distribution Company  
7 will be the manager and operator of the company with an  
8 intention to move the company to Summit at the end of  
9 the Division of Drinking Water loan repayment period.

13:43 10 Q. You didn't answer my question. Do they still  
11 want to get out from under the supervision of the Public  
12 Service Commission?

13 A. Summit Water Distribution Company, I'm not a  
14 representative of that company and don't feel  
13:43 15 comfortable completely answering on their behalf. But  
16 my understanding is that their intention is to remain a  
17 mutual water company of which they would like to have  
18 any -- and do not want to have a component of the  
19 company be publicly regulated.

13:43 20 Q. Did you understand that the customers or the  
21 representatives of the customers at this final meeting  
22 opposed what was presented, as a company they would not  
23 be able to vote for majority of the board members, did  
24 not have a say in key decisions, and that Mr. White  
13:44 25 said, "Well then, TCFC is not going to put any more

13:44 1 **money in the company"?**

2 A. The conclusion of the meeting with the  
3 customers was that we would go back and we would try and  
4 meet customer demands and design a company that met  
13:44 5 their needs and a management agreement that met their  
6 needs. And hence we did. And we made a very nice  
7 company. And the reality of the finances of continuing  
8 the company without a rate increase or an assessment  
9 through a mutual water company that's adequate to cover  
13:44 10 cost and capital infrastructure, is that it's a company  
11 losing money. Hence why we are here today to have an  
12 interim rate case to increase our cost so we can make  
13 needed improvements.

14 **Q. Have you looked at the books enough to know**  
13:44 15 **that the company is losing money because it put a ban on**  
16 **outside irrigation?**

17 A. I do not have knowledge to answer that  
18 question.

19 **Q. So you don't know why the company is losing**  
13:45 20 **money?**

21 A. I have looked at the rate model of the revenue  
22 we'd need to perform -- to have the company perform at a  
23 capacity that provides adequate water service, and they  
24 are far in excess of the current rates.

13:45 25 **Q. Do you know why the company is losing money?**



13:45 1 You just said they're losing money, that's why we're  
2 here today. Do you know why? What impact is the ban on  
3 irrigation?

4 A. I believe it's a historical problem on the ban  
13:45 5 of irrigation water. The summary is not going to be  
6 indicative of the total financial picture of the  
7 company.

8 Q. But is it indicative of why the company is  
9 losing money today?

13:45 10 A. I'm sure revenues were decreased from decreased  
11 irrigation, but I don't think that's a particularly  
12 relevant question for what we're doing now.

13 Q. Well, you said it was. You said that's why  
14 we're here today. I want to know what you know. Do you  
13:45 15 know why the company is losing money today?

16 A. We don't collect enough revenue.

17 Q. Do you know why you don't collect enough  
18 revenue?

19 A. Because our PSC rates are insufficient to cover  
13:46 20 our costs and our need for capital improvement.

21 Q. Well, your PSC rates include tiers of water  
22 usage? Do you know if you're really getting to those  
23 tiers of that irrigation?

24 A. We also don't have any meters to measure the  
13:46 25 water coming into our system.

13:46

1 **Q. Answer my question.**

2 MR. ATWATER: Objection; argumentative.

3 THE HEARING OFFICER: Restate your question,

4 Mr. Savage.

13:46

5 MR. SAVAGE:

6 **Q. We also have approved rates for increasing**

7 **gallons used -- increasing rate per gallon ultimately.**

8 **And do you know that those rates, those increased tiers**

9 **are not even being approached because there is no**

13:46

10 **irrigation?**

11 A. The rate of structure currently to have a base

12 rate that should cover our basic costs without

13 considerations of volume. That basic rate -- base rate

14 in the opinion of the company is insufficient currently

13:46

15 to cover our costs and not going to cover future costs.

16 So while volume does play a measure in the amount

17 of money and revenue the company takes in, the base rate

18 is really intended to be the operating cost of the

19 company. And at the last rate hearing we went from \$36

13:47

20 in our base rate to \$30 in our base rate. And so we

21 understand that -- or are recommended 36 to 30. The

22 base rates really is a bulk of how we make a lot of the

23 needed costs to cover company costs which is irrelevant

24 to usage.

13:47

25 **Q. Have you read my submission to the commission?**

13:47 1 A. I have, but not in great detail.

2 Q. Are you aware of what I proposed as an  
3 alternative to pay for the tank?

4 A. I am, but it would be better for you to present  
13:47 5 that.

6 Q. Well, I think it's \$50 a month for each 500  
7 users for 12 months which would be well more than  
8 \$500,000, and then that be paid off before any rate  
9 increase to start paying off the \$3.6 million loan. So  
13:48 10 that representation to you, is that significantly  
11 different from what the company was proposing during our  
12 meetings?

13 A. It's not significantly different. The issue is  
14 a timing issue. Right now the current problem is that  
13:48 15 there's no -- there is very little operating revenue for  
16 us to pay for the needed engineering and other costs  
17 needed to complete the Division of Drinking Water loan,  
18 to complete the needed capital improvements in place.

19 So while in June that may have been a very good way  
13:48 20 to go about things, now that we're in October and the  
21 transition to a mutual water company did not come to be,  
22 there may be a better format to meet the timing needs of  
23 what we're doing.

24 Q. And do you understand that my proposal would be  
13:48 25 just like your representation to the users that the

13:48 1 bridge loan would come from the parent company that

2 Mr. White is the executive officer of?

3 A. I believe that the fundamental issue is we just  
4 need a proven rate repayment structure for either a

13:49 5 bridge loan, the Division of Drinking Water loan. Any  
6 money from outside sources we get, we just need a proven

7 rate of repayment. And if there is a sufficient rate  
8 approved by the Public Service Commission that would

9 allow us to have repayment of our loans, then I think

13:49 10 that the company would be, you know, amenable to that.

11 That's our goal. That's what we want.

12 Q. By the company you mean the parent Mr. White's  
13 the chief executive of?

14 A. I can't speak for Mr. White, but my

13:49 15 understanding that that is true. We're looking for a  
16 repayment structure.

17 Q. And "we", you're talking about both on behalf  
18 of CWC and its parent?

19 A. I don't feel comfortable talking -- I don't

13:49 20 feel qualified to speak to whether or not that would be  
21 appropriate for the parent company. But I think CWC  
22 just is looking for repayment structure.

23 Q. I appreciate your candor on CWC's desire to get  
24 out from under public service commission's authority and

13:50 25 I want to ask you about that. Isn't it true that the

13:50 1 company has stated -- company representatives have  
2 stated in your presence and even you stated that it was  
3 deemed that it would complicate the deal with Summit  
4 Water for the company to apply for emergency rate  
13:50 5 increase to cover the tank back in June?

6 A. I believe this is an important point to  
7 clarify. The company has always been diligent in trying  
8 to find a way to get this tank built and operating. The  
9 issue is just finding a method of repayment, whether it  
13:50 10 be a TCFC loan, whether it be a Division of Drinking  
11 Water loan, the issue is finding a method of repayment.  
12 And the company has explored several options to do that,  
13 which has been a transfer and which has been a public  
14 service commission filing. So parallel paths.

13:51 15 We are here on public service commission's side  
16 because the timing became apparent that the other path  
17 wasn't going to work, and we needed to get funding in  
18 place or repayment structure in place.

19 Q. Has the company stated that it was concerned  
13:51 20 that applying to the commission would complicate  
21 concluding its deal with Summit Water?

22 A. One of our initial concerns and it's still a  
23 concern is the timing of which a Public Service  
24 Commission rate process takes. This is an interim  
13:51 25 hearing. And a larger rate hearing is still going to

13:51 1 take many weeks and months to go forward. Our hope and  
2 intent was to get customer support to transfer to a  
3 mutual water company in a shorter period of time to have  
4 a rate structure under the share assessments of a mutual  
13:51 5 water company in place to repay loans.

6 That did not happen so we are here under the public  
7 service commission's -- the considerations are still the  
8 same. It's still a complicated process. It's a long  
9 complicated process.

13:52 10 **Q. And matters pending under the Public Service**  
11 **Commission would complicate finishing the deal with**  
12 **Summit Water?**

13 A. They're parallel paths.

14 **Q. Were they parallel or did you wait until**  
13:52 15 **September to file before the commission when we needed**  
16 **that tank desperately being under construction in June,**  
17 **July and August?**

18 A. We needed a rate repayment structure and that's  
19 what we've been doing. We've been trying to figure that  
13:52 20 out through a mutual water company or through the Public  
21 Service Commission. And once we determined that a  
22 mutual water company was not going to be the most  
23 expedient way to do that, we filed for the Public  
24 Service Commission. We took several weeks to get our  
13:52 25 paperwork together and we filed in September. I

13:52 1 don't -- we're here and we couldn't be here any faster  
2 than we are anyway because we wouldn't have had any  
3 information to provide to the Public Service Commission  
4 without that time anyway.

13:52 5 **Q. So is it fair to say it was not exactly**  
6 **parallel?**

7 A. We're working in unison.

8 **Q. Pardon?**

9 A. We're working in unison. The point is being  
13:53 10 that it also took us some time to get the information  
11 that we needed collected to get to the Public Service  
12 Commission.

13 **Q. And it was the parent's decision through**  
14 **Mr. Larry White to wait until September 13th to apply**  
13:53 15 **for a rate increase that would cover repayment of the**  
16 **loan for this tank?**

17 A. Ultimately.

18 **Q. Yes? Right? You have to answer.**

19 A. Yes.

13:53 20 MR. SAVAGE: That's all I have. Thank you very  
21 much.

22 THE HEARING OFFICER: Thank you, Mr. Savage.  
23 Mr. Lange?

24 MR. LANGE: Yes. I have one question, Emily.

13:53 25 **Q. So you're pretty knowledgeable about the loan**

13:53 1 application; correct?

2 A. Yes.

3 Q. The Division of Drinking Water. So I have in  
4 front of me, this is part of the company's testimony  
13:53 5 here. There was a scoring table. The loan had a score  
6 of financial points. I believe it's called 26. And my  
7 question would be if it scored higher, would that  
8 somehow lower the interest rate or affect the terms of  
9 the loan?

13:54 10 A. So the Division of Drinking Water -- and I may  
11 not state this exactly correctly -- has a priority list  
12 system where they look at the deficiencies of a project,  
13 and that will determine what the -- how they prioritize  
14 giving loan funds.

13:54 15 They also have a medium adjusted gross income  
16 metric which depends on where you live in the state,  
17 whether or not you apply for grants. We scored very  
18 high on the deficiencies so we were a priority list --  
19 we were higher on their priority list in terms of their  
13:54 20 priority for funding. Due to the ZIP Code in which the  
21 company is located, we did not qualify for any grants  
22 based on median adjusted gross income metric.

23 Q. So the point of my question here is category  
24 three called project funding contributed by the  
13:55 25 applicant, has a scoring system of zero points to 17



13:55

1 points.

2 And the application here shows that there was no --  
3 CWC was apparent -- applicant here was less than  
4 2 percent of projected funds. So I'm curious if we were  
5 to take, for instance, the possibility of the loan from  
6 the parent company to cover the tank, that we'd probably  
7 see 10 percent of the projected funds, maybe closer to  
8 15 percent. That would add somewhere between 11 to --  
9 or 14 points on which would change the score from 26 to  
10 maybe 40 or 37. So with that kind of a score would  
11 there have been perhaps a lower interest rate or more  
12 favorable loan?

13:55

13:55

13 A. I think that the terms of the loan are  
14 absolutely the most favorable that we were going to get.  
15 I do not think they're going to issue anything lower  
16 than what we received, and I think it's important to  
17 remember the timing of which things happened. We  
18 applied for the loan in February or March and the tank  
19 failed in April. So when we submitted our initial  
20 application, the tank had not yet failed. The tank  
21 failed in April and the loan was approved in May. And  
22 so the -- I don't -- the timing wouldn't have worked out  
23 well. The timing wouldn't have worked to have  
24 included --

13:56

13:56

25 Q. But my question is more directed to -- granted

13:56 1 you got the most favorable rates based upon your score  
2 here. Had the score been higher 11 or 14 points, would  
3 you have gotten or would you get even more favorable  
4 rates?

13:56 5 A. That would be a decision that would be made  
6 based by the Division of Drinking Water. That being  
7 said, you would also be paying 13 percent or whatever it  
8 is on TCFC loans.

9 Q. I'm only concerned with this particular loan  
13:56 10 and the rates and how this particular scoring system  
11 affects the rates.

12 A. That would have been a Division of Drinking  
13 Water decision. My belief is that I asked every single  
14 way possible to get us the lowest interest rate and to  
13:57 15 get us the most grant money possible, and I was assured  
16 by the Division of Drinking Water that this was the best  
17 we could get. And I think it's very good for our needs.

18 MR. LANGE: Thank you. That's all the questions I  
19 have.

13:57 20 THE HEARING OFFICER: Ms. Miller?

21 MS. MILLER: I have no additional questions.

22 THE HEARING OFFICER: Thank you. I have a few.  
23 Mr. Atwater, would you like to reserve your redirect  
24 until after I ask my questions?

13:57 25 MR. ATWATER: Yes. Thank you.

13:57 1 THE HEARING OFFICER: I'll infer, Ms. Lewis, from  
2 one of your responses to a question earlier about  
3 ultimately truing up the interim rates, you understand  
4 this is an interim rate hearing?

13:57 5 THE WITNESS: Right.

6 THE HEARING OFFICER: And there will be another  
7 hearing in April to determine if the rates should be  
8 going forward. And you used the term "true up" so I  
9 take it you understand the rates are potentially to be  
13:58 10 refunded?

11 THE WITNESS: Yes.

12 THE HEARING OFFICER: Based on your knowledge of  
13 the company's books and accounts, will it have  
14 sufficient cash to refund the customers money should an  
13:58 15 adverse determination be made in April?

16 THE WITNESS: That is a good question. I don't  
17 know the answer to that. I think it will depend on what  
18 the ultimate rate we receive here is. If there is an  
19 adequate reserve that we could -- potentially could  
13:58 20 refund people some money from it. Our intent is  
21 hopefully to not have that happen. But I don't know the  
22 answer to that.

23 THE HEARING OFFICER: Well, to the extent the  
24 commissioner granted CWC's request with respect to the  
13:58 25 special charge on the tank and assessed the full fee of

13:58 1 a thousand and change on the customers, would CWC be in  
2 any position to refund that money in April to the  
3 customers?

4 THE WITNESS: I don't believe that -- in terms of  
13:58 5 repaying them the lump sum to get their thousand dollars  
6 back?

7 THE HEARING OFFICER: Right. Repaying all the  
8 money that was collected under that provision of the  
9 interim loan?

10 THE WITNESS: Well, I believe that money would be  
11 going to pay for the tank.

12 THE HEARING OFFICER: Right.

13 THE WITNESS: Yeah.

14 THE HEARING OFFICER: So the money would not be  
13:59 15 available to be refunded?

16 THE WITNESS: No. It would not be available to be  
17 refunded because it would be going to pay for tank costs  
18 that are being spent.

19 THE HEARING OFFICER: And you did, I thought, an  
13:59 20 excellent job of describing the DDW loan process. At  
21 least I feel I understand it better than I did before.  
22 But I might want you to repeat yourself a little bit.

23 So you said that the CWC applied for the DDW loan  
24 in April; is that correct?

13:59 25 THE WITNESS: The application was due in March.

13:59

1 THE HEARING OFFICER: It was due in March?

2 THE WITNESS: Uh-huh.

3 THE HEARING OFFICER: And was there a line item to  
4 replace the failed tank, it just hadn't failed yet?

13:59

5 THE WITNESS: No. So the original loan application  
6 requests are for a two-part project. So the first part  
7 project was a replacement of transmission and  
8 distribution lines, a pressure reducing valve and meter  
9 component. And then a second -- and that's the first

14:00

10 package. And then the second package is a water  
11 treatment plan replacement. So those are the two --  
12 those are the line items initially included in the loan  
13 request.

14 When the tank failed in April, we administratively  
15 asked the Division to include a line item request for  
16 the tank to present to the board of Drinking Water, and  
17 the loan was finally approved including money for the  
18 tank. We took that money back out subsequently to  
19 address the two issues I addressed earlier for

14:00

20 expediency and cost purposes to try and fund the tank  
21 not through the Division of Drinking Water loan.

22 THE HEARING OFFICER: What's the projected closing  
23 date for the DDW loan as it stands today?

24 THE WITNESS: As it stands right now it's most  
25 likely going to be April.

14:00

14:00

1 THE HEARING OFFICER: Non-specified date in April?

2 THE WITNESS: No. We're -- honestly a large  
3 component of it hinges on this hearing.

4 THE HEARING OFFICER: I see.

14:01

5 THE WITNESS: We cannot -- one of the conditions of  
6 closing the loan is having a rate repayment structure.  
7 And until we can either prove through either a share  
8 assessment structure or through a Public Service  
9 Commission approved rate increase, we cannot close on  
10 the loan and that money will no longer be available to  
11 us.

12 THE HEARING OFFICER: Would inserting a request for  
13 funds to pay for the failed tank back into the DDW loan  
14 delay that closing date?

14:01

15 THE WITNESS: Yes. It would also increase the  
16 cost. So the problem with inserting it back in is that  
17 we're just too far along in the process. Particularly  
18 so that the Division of Drinking Water loan requires a  
19 competitive bid process, whereas taking out of the loan  
20 we are able to directly go to a contractor and directly  
21 go to an engineering firm to do the designs. If we are  
22 to put it back in the Division of Drinking Water loan  
23 process, we'd have to scrap all that and put it out to  
24 competitive bid.

14:02

25 THE HEARING OFFICER: So what's your best estimate

14:02 1 of how long the loan would be delayed if you were to do  
2 that?

3 THE WITNESS: If we were to put it back into the  
4 loan, I don't -- I can't say. It would really be just  
14:02 5 duplicative efforts is what it would be. And ultimately  
6 the customers are going to bear the cost of the company.  
7 So we'd be hesitant to do that because it would be  
8 duplicating efforts for the customers as well.

9 THE HEARING OFFICER: Let's assume for the sake of  
14:02 10 argument that all the costs were deemed acceptable.  
11 What would the delay be?

12 THE WITNESS: I'm not quite sure, but I probably  
13 would -- but we probably would just roll it into the  
14 loan and have it close in April as well. See the --  
14:02 15 we'd roll it into the loan, so we'd just follow the same  
16 tracks, package A, package B, and it would probably  
17 be -- just become package C of the loan so that it would  
18 close in April.

19 The problem is that it would still put us -- it  
14:03 20 would still put us with a late summer completion date.  
21 Whereas if we keep it separate, we're hoping for an  
22 early summer completion date, and the customers' primary  
23 concern is their irrigation water.

24 THE HEARING OFFICER: Because under the DDW  
14:03 25 financing for the replacement tank you can't order it

14:03 1 until the loan closes; correct?

2 THE WITNESS: Exactly.

3 THE HEARING OFFICER: And you estimated it would be  
4 a late summer completion?

14:03 5 THE WITNESS: That's when we were intending to end  
6 most of our construction and --

7 THE HEARING OFFICER: Those are all my questions.  
8 Thank you. Mr. Atwater?

9 MR. ATWATER:

14:03 10 **Q. So it has come up a few times in questioning**  
11 **why the company decided to restrict irrigation --**  
12 **outdoor irrigation. Can you explain.**

13 A. Certainly. So when the tank failed in April --

14 One, I think it's important to recognize on the record  
14:04 15 if this has not yet been discussed, we've had ample  
16 discussions with the customers about alternatives for  
17 the tank. We've talked about bladders. We've talked  
18 about all kinds of ways to try and get continued water  
19 through the company. And at the end of the day, the  
14:04 20 cost and the time was to just try and replace  
21 immediately the tank.

22 And so at that point in time, we are operating our  
23 one primary water tank. And with -- in consultation  
24 with the Summit County Fire Department, it was

14:04 25 determined that that tank was inadequate to support



14:04 1 indoor watering, outdoor watering, and maintain a  
2 minimum threshold for fire protections.

3 And so we made the decision that an irrigation  
4 restriction and watering restriction was allowed for  
14:04 5 under our tariff during an emergency condition, and that  
6 we would restrict outdoor watering to maintain that  
7 minimum fire suppression of quantity in the tank.

8 Q. Had you wanted to remove the restriction, did  
9 the company have water to allow for the restriction to  
14:05 10 be lifted?

11 A. Was there ample water to --

12 Q. Correct.

13 A. I don't think -- I don't think I know the  
14 answer to that.

14:05 15 Q. So let me ask it in a different way. Did the  
16 company have to pay for water from Summit Distribution  
17 Company?

18 A. So there was discussion about providing  
19 irrigation water through Summit -- providing irrigation  
14:05 20 water through Summit Water Distribution Company. This  
21 was problematic for two reasons. First, it's much more  
22 expensive to hire Summit Water conservation -- or to  
23 higher -- to buy Summit Water and so that cost would  
24 have been -- we would have been unable to pass it along  
14:05 25 to the customers at their current rate. So that extra

14:05

1 cost would have been assumed by the company.

2 Second, Summit was unwilling to provide irrigation  
3 water because they've already put their customers under  
4 a conservation rate which is intended to have them  
5 reduce their water consumption. So providing extra  
6 water for irrigation purposes did not fall into their  
7 management structure of how they wanted to manage their  
8 water resources.

14:06

9 Q. So had the company, the applicant, wanted to  
10 raise revenues in order to pay for expenses, it did not  
11 have the ability to lift its irrigation restriction  
12 because it didn't have water and the water from Summit  
13 Water was not available; is that true?

14:06

14 A. True.

14:06

15 Q. There has also been a big line of questioning  
16 today about why the company did not pursue this hearing  
17 until September. Have you ever been involved in a rate  
18 case hearing for a public utility other than for  
19 Community Water?

14:06

20 A. No, I have not.

21 Q. Have you been involved in one previously on  
22 Community Water?

23 A. Yes, I have.

24 Q. How long does it take to prepare for a rate  
25 case?

14:06

14:06

1 A. It takes a substantial amount of time. And I  
2 believe that's also reflected in the 2014, turning our  
3 application back as incomplete, in that it takes a  
4 substantial amount of time. And that's also one of the  
5 reasons why we've applied for this interim rate hearing  
6 is that we need hard engineering. It takes time to do  
7 that.

14:07

8 Q. And so instead -- or as a parallel path, the  
9 company chose to do as you testified, which is seek  
10 other methods of finding funds for the company, which is  
11 completely permissible and allowed by the code?

14:07

12 A. Yes.

13 Q. Mr. Savage asked you a question about the  
14 decision making of the company and who was responsible  
15 for that decision making. Are you aware that with the  
16 company's direct testimony, there was filed an  
17 administrative services agreement between ASC Utah and  
18 the company?

14:07

19 A. I believe so.

14:07

20 Q. Okay. I just want to note that for the record,  
21 and the services that are required and provided  
22 thereunder, it's that agreement whereby the decisions  
23 were made?

24 A. Uh-huh.

14:08

25 Q. Okay. I do want to ask a few questions

14:08 1 regarding the loan just quickly.

2 So far as your testimony has been today the -- if  
3 the tank, \$525,000, is included in the Division of  
4 Drinking Water loan, the loan can still close in April?

14:08 5 The cost of the tank -- I'm sorry. I'll do one at a  
6 time.

7 A. Yes. We can include the tank in the Division  
8 of Drinking Water loan. It would -- but the timeline of  
9 the tank would also then parallel the timeline of the  
10 other project components. So April.

11 Q. So the loan can close in April?

12 A. Uh-huh.

13 Q. When can the tank be fully functional if it is  
14 funded in April?

14:08 15 A. If it's funded in April, I believe it would put  
16 us towards the back end of summer. But really the  
17 engineers would be a better witness for that.

18 Q. Is it possible that waiting until April to  
19 engage in bidding and redesigning, constructing --

14:09 20 because I believe Mr. White testified earlier that it's  
21 a three to four-month process. And so if it's April,  
22 and we start that process in April -- May, June, July,  
23 August, September potentially -- and if we have  
24 conditions that don't allow for it, it is conceivable

14:09 25 that the tank would not be constructed until 2019?

14:09 1 A. If we had an early winter. I do want to  
2 clarify the bidding process occurs as part of the loan  
3 closing. You need to do the bidding process. The large  
4 hiccup is that we aren't allowed to expend money on the  
14:09 5 actual construction outlays until the loan is closed.  
6 So we'd not be able to actually purchase the tank until  
7 the loan is closed. And that's the biggest problem  
8 because then that initiates the construction deadline  
9 from my understanding.

14:10 10 **Q. Great. Thank you for clarifying. It's also**  
11 **your testimony that the cost of the tank would increase**  
12 **by roughly 10 percent?**

13 A. Perhaps twenty percent. So the loan request  
14 for the tank originally when we included it after the  
14:10 15 tank failure in April was a \$450,000 line item. So the  
16 500 -- and since then tank costs have gone up. So my  
17 understanding of conversations from Summit Water  
18 Distribution representatives, mostly Mike Folkman and  
19 Dave Fuller is that the bidding process is expensive and  
14:10 20 it would increase costs by about 20 percent.

21 **Q. So we would be looking at a \$650,000 loan at**  
22 **3.39 percent payable over 20 years with the tank**  
23 **potentially not being constructed until 2019?**

24 A. Potentially, yes.

14:10 25 MR. ATWATER: No further questions.

14:10 1 THE HEARING OFFICER: Thank you. Will there be  
2 anything else from CWC?

3 MR. ATWATER: No. That rests our witness' case.  
4 We do want to reserve the right to make a closing  
14:11 5 statement.

6 THE HEARING OFFICER: Understood. Thank you,  
7 Ms. Lewis.

8 Ms. Schmid?

9 MS. SCHMID: May we have a five-minute break?

14:11 10 THE HEARING OFFICER: Yes. We'll be in recess  
11 until 2:20. Thank you.

12 (Interruption in proceedings.)

13 MS. SCHMID: The Division would like to call  
14 Mr. William Duncan.

14:18 15 (William Duncan is sworn in as a witness.)

16 MS. SCHMID:

17 **Q. Good afternoon.**

18 A. Good afternoon. Is my microphone on?

19 MR. GARY SMITH: Yes.

14:18 20 MS. SCHMID:

21 **Q. Please state your full name, business address,**  
22 **title and employer for the record.**

23 A. My name is William Duncan. I'm the manager of  
24 the telecommunication and water section of the Utah  
14:18 25 Division of Public Utilities. Business address, 160

14:18 1 East, 300 South, fourth floor.

2 Q. In connection with your employment by the  
3 Division, have you participated in this case?

4 A. Yes.

14:19 5 Q. Could you please briefly describe what actions  
6 you or your staff -- because you're a manager -- has  
7 taken in this case.

8 A. Yes. After receiving the application, we met  
9 together and seeing that there was a request for interim  
14:19 10 rates, we immediately set about trying to determine what  
11 we could recommend. And in conjunction with that, we  
12 went to Community Water Company on September 25th, I  
13 think -- there were three of us -- and reviewed various  
14 records, invoices relating to the costs of the company.

14:19 15 After the scheduling conference, we issued one data  
16 request to try and get more information in an effort to  
17 determine if we could come up with a rate that we could  
18 support.

19 Q. In connection with your employment and with  
14:20 20 your work for the Division in this case, did you prepare  
21 and cause to be filed your direct testimony marked for  
22 identification as DPU Exhibit 1 which was filed on  
23 October 13th, 2017?

24 A. Yes.

14:20 25 Q. Do you have any changes or corrections to that

14:20 1 testimony?

2 A. Yes, I do.

3 Q. The Division has passed out to the parties and  
4 has placed on the hearing officer's table corrected  
14:20 5 pages and a list that shows the corrections that need to  
6 be made -- that need to be made. With that, Mr. Duncan,  
7 could you please explain why corrections need to be  
8 made?

9 A. Yes. After filing our direct testimony, we  
14:21 10 conducted further research about the tank, the storage  
11 tank in question, and determined that it should probably  
12 be classified as a distribution reservoir under NARUC  
13 accounting codes. For those not familiar with NARUC,  
14 it's the National Association of Regulatory Utility  
14:21 15 Commissioners, which is account code 330. Rather than a  
16 collecting and impounding reservoir which is NARUC  
17 account 305.

18 Q. Is the depreciable life different for those two  
19 accounts?

14:21 20 A. Yes. The depreciable life for a distribution  
21 reservoir is 30 years. In my direct testimony I had  
22 used a 50-year depreciable life and those rates are  
23 prescribed by commission rule R746 dash 332.

24 Q. In connection with the reclassification of the  
14:22 25 applicable account for the water tank, numbers in your



14:22

1 testimony change?

2 A. Yes, they did.

3 Q. Could you please walk us through those -- and  
4 again this has been presented to counsel and has been  
5 placed on the hearing officer's table.

14:22

6 A. Yes. On page five line 80, change 10,500 to  
7 17,500. And change 50 to 30 to recognize the 30-year  
8 depreciable life. Page five line 81, change 46,680 to  
9 53,680. On line six -- page six line 88, change \$7.73  
10 to \$8.89. And on line 89, change \$46,680 to \$53,680.  
11 And then lastly on page eight line 124, change again  
12 \$7.73 to \$8.89.

14:22

13 Q. With those corrections, if I asked you the same  
14 questions that are set forth in your prefiled testimony,  
15 would your answers today be the same as they were when  
16 the testimony was filed with the commissioner?

14:23

17 A. Yes.

18 MS. SCHMID: With that, the Division moves for the  
19 entry into evidence of DPU exhibit number 1.0, direct  
20 testimony of Mr. William Duncan as corrected here today.

14:23

21 MR. ATWATER: No objection.

22 MR. SAVAGE: No objection.

23 MR. LANGE: No objection.

24 MS. MILLER: No objection.

14:23

25 THE HEARING OFFICER: It's admitted.

14:23

1 MS. SCHMID:

2 Q. Mr. Duncan, do you have a summary?

3 A. Yes, I do.

4 Q. Also, the scheduling order permitted live

14:24

5 rebuttal. Do you have anything in that context?

6 A. Not that I'm aware of right now.

7 Q. Okay. Please proceed.

8 A. The Division of Public Utilities is a posed  
9 one-time assessment or any other short-term assessment

14:24

10 regarding cost recovery for replacement of the failed  
11 tank. The Division believes the recovery of any cost  
12 should reasonably match the expected life of an asset  
13 being placed in public service. In this case, the asset  
14 in question, a storage tank has a depreciable life of 30  
15 years.

14:24

16 During the course of that 30 years, the Division  
17 expects a substantial number of customers will move out  
18 and new customers will move in. Some will likely stay  
19 several years, while others will be short-term  
20 occupants, requiring the current generation of customers  
21 to provide cost recovery immediately, will create an  
22 inter-generational inequity.

14:24

23 An inter-generational inequity exists when one  
24 generation of customers incurs the cost of an asset or  
25 expense, while another generation of customers receives

14:25

14:25 1 the benefit provided by that. Cost utility regulation  
2 has a long history of well established practices of  
3 providing cost recovery for investment in  
4 infrastructure.

14:25 5 Cost recovery is accomplished through capitalizing  
6 a new asset and receiving a reasonable rate of return.  
7 The Division views the addition of this new storage tank  
8 no differently. The Division believes Community Water  
9 should secure financing, build a storage tank,

14:25 10 capitalize the asset and have cost for recovery included  
11 in rates. These practices ensure that the utility  
12 customers pay only for the benefits they receive during  
13 the time period they receive service from the utility.

14 For this reason, the Division believes that the  
14:25 15 one-time assessment is not in the public interest and  
16 opposes the one-time assessment for the storage tank  
17 replacement. This completes my summary.

18 MS. SCHMID: Thank you. Mr. Duncan is now  
19 available for cross-examination questions and questions  
14:26 20 from the hearing officer.

21 THE HEARING OFFICER: We'll start with Mr. Atwater.

22 MR. ATWATER: Thank you.

23 Q. Mr. Duncan, you stated in your testimony -- or  
24 you suggest, I should say, and you just stated that the  
14:26 25 company should procure investor funds to pay for the

14:26

1 tank immediately?

2 A. Yes, they should. They should do their own  
3 financing, whether it's funding from investors or  
4 funding from the lending institution.

14:26

5 Q. Are you aware personally of any options  
6 available to the company outside of the options that  
7 have been supported and discussed today?

8 A. No, I'm not aware.

14:26

9 Q. Have you ever had a public utility company the  
10 size of Community Water need funds in this manner?

11 A. I cannot recall. I can recall one special  
12 assessment, but it was not an assessment for capital  
13 needs.

14 Q. And how did they obtain funding for that?

14:27

15 A. They applied to the commission.

16 Q. No outside funding, no outside loan, no  
17 investor funds?

18 A. No. It was from the customers.

14:27

19 Q. Okay. Do you believe it's in the public's best  
20 interest to potentially lose an additional irrigation  
21 season by waiting to have the tank constructed?

22 A. No, I believe that the company should move  
23 ahead as quickly as possible.

14:27

24 Q. Okay. And without funds, how do you propose or  
25 how do you suggest the company move forward?

14:27 1 A. Well, I would propose, as stated in my  
2 testimony, that the commission issue an order that  
3 allows for cost recovery upon completion of the tank,  
4 whenever that is. And depending upon such things as the  
14:28 5 final cost of the tank and the financing packages used.

6 **Q. But no suggestion as to where the funding would**  
7 **come from?**

8 A. No. It's not our job to try and help or try  
9 and manage the company or point them to different  
14:28 10 funding sources. That's a company decision.

11 **Q. So availability of funds, timing and**  
12 **availability of funds, is irrelevant to your**  
13 **recommendation?**

14 A. No. Timing and availability of funds is  
14:28 15 relevant. You should -- I think the company should  
16 pursue fundings as soon as possible, whether through DDW  
17 or other sources.

18 **Q. Do you believe the company has pursued**  
19 **adequately available funds or potential funding sources?**

14:28 20 A. I don't know. I only know that they pursued  
21 DDW funds. And in the application it talks about  
22 potential lenders. I don't know who those potential  
23 lenders are.

24 **Q. Okay. Let me rephrase this a little bit. If**  
14:29 25 **the commission were to approve your proposal, which is a**

14:29 1 repayment -- a cost recovery over 30 years?

2 A. Uh-huh.

3 Q. The presumption that the company would make in  
4 that regard would be that it would be -- the only funds  
14:29 5 available to it would be the DDW loan. And if that were  
6 the case, the potential of not constructing the tank in  
7 2018 is great. And if we assume --

8 MS. SCHMID: Objection. This is a compound  
9 question and I believe counsel is testifying.

14:29 10 THE HEARING OFFICER: It's sustained. If you want  
11 to break up your question that would be helpful.

12 MS. SCHMID: Thank you.

13 MR. ATWATER: Sure.

14 Q. If you had a choice of recommending to the  
14:29 15 commission construction of the tank in 2018 at a higher  
16 immediate cost to the customers versus construction of  
17 the tank in 2019 at a lower cost to the customers, what  
18 would your recommendation be?

19 A. Higher and lower are relative. I mean, you're  
14:30 20 talking much higher and much lower? I don't think I can  
21 answer that question until I see, you know, what the  
22 difference is.

23 Q. Let me rephrase the question. What's more  
24 important then? Finances or having water immediately or  
14:30 25 as soon as possible?

14:30 1 MS. SCHMID: Objection. I think that the duties of  
2 the Division of Public Utilities while broad, do not  
3 encompass making management decisions for the company.  
4 And with that I object to the question.

14:30 5 THE HEARING OFFICER: I did not really hear an  
6 evidentiary basis for the objection. I'm fine with  
7 Mr. Duncan answering to the extent he has an answer.

8 THE WITNESS: Could you repeat the question.

9 MR. ATWATER:

14:30 10 Q. Sure. If you had a choice in your  
11 recommendation of having a higher cost financially to  
12 the customers with the immediate resolution to the lack  
13 of water versus a lower cost, but a delayed receipt of  
14 water, what would your recommendation be?

14:31 15 A. You know, I can't answer. I don't know. I'd  
16 have to look at what the relative difference in the  
17 costs are.

18 Q. Okay. And we believe that is before the  
19 commission, that it's available.

14:31 20 A. But I'm just hearing higher and lower. I'm not  
21 hearing numbers.

22 Q. Okay. So Ms. Lewis testified that if the tank  
23 is included in the DDW loan, the total cost of the tank  
24 would be \$650,000 approximately, so it's an additional  
14:31 25 \$125,000. The tank potentially would not be constructed

14:31 1 until 2019. The interest rate would be 3.39 percent  
2 verses if the company were to build the tank immediately  
3 on its fastest track, the cost of the tank would be  
4 \$525,000 at some rate between 3.39 and 13 percent?

14:32 5 A. Okay. The way you structured the question  
6 makes it sound like it's not only faster, but lower cost  
7 if it's done in 2018.

8 Q. I agree.

9 A. So I would say the lower the cost and the  
14:32 10 faster you could do it, the better.

11 Q. Great. Thank you. I do have questions, a few  
12 questions about your written testimony.

13 A. Okay.

14 Q. With your written testimony you included  
14:32 15 Exhibit 2.1 which was redacted in part?

16 A. That was not a part of my testimony. That was  
17 part of Mr. Smith's testimony.

18 Q. Okay. I'll reserve it for him.

19 Have you ever had a situation before the commission  
14:33 20 where a public utility was not able to receive funds  
21 after exploring all options without approval of the  
22 commission or prior to approval of the commission?

23 A. State that again, please.

24 Q. So the Division of Drinking Water loan, one of  
14:33 25 the conditions to receive those funds in closing is that



14:33 1 there be an approved rate sufficient to cover debt  
2 service and repayment of principal?

3 A. Correct.

4 Q. Have you ever had a situation before the  
14:33 5 commission where that was the case?

6 A. I have not. I'm sure there's been some in the  
7 commission -- in our agency, but not in my particular  
8 cases that I've handled.

9 Q. Does the Division of Public Utilities  
14:33 10 understand that to be the case for this matter?

11 A. Yes. I think it was in my testimony that you  
12 need -- the Division of Drinking Water needs a repayment  
13 approval before they can move ahead with the loan, and  
14 that's why we put in our testimony that we would like  
14:34 15 the commission to approve a rate that is sufficient.  
16 Now sufficient is going to depend on the cost -- the  
17 final actual cost of the tank and the financing that's  
18 used.

19 Q. Okay. Thank you. In your experience --  
14:34 20 shifting gears to the general increase. In your  
21 experience, has there ever been a situation where you've  
22 had to recommend or not recommend a rate increase where  
23 the proof and evidence of the rate increase was based  
24 upon estimates of an engineer?

14:34 25 A. No. Not in my experience.

14:34 1 Q. And have you ever had a situation where  
2 approval of the rate is based upon loan requirements?

3 A. Yes.

4 Q. Do you mind describing that for us, if you  
14:35 5 remember?

6 A. Yes. I was involved in a case with a  
7 telecommunications company almost ten years ago that  
8 they had certain loan covenants that they had to meet.  
9 And they were in financial distress and they had to meet  
14:35 10 these loan covenants on a loan they'd taken out. So we  
11 based an interim rate on financial covenants.

12 Q. Okay. I have no further questions.

13 A. Okay.

14 Q. Maybe I have one. So just to reiterate your  
14:36 15 recommendation, is this still your recommendation, given  
16 the proceedings today, that the company somehow find  
17 loan -- or somehow find funds and then recover those  
18 costs over a 30-year period?

19 A. Yes.

14:36 20 Q. Do you believe that that is a business decision  
21 or is that --

22 A. No. That's a regulatory principle, not a  
23 business decision. A business can make decisions on  
24 their own. We try and make recommendations based on  
14:36 25 well-established principles.

14:36 1 Q. Okay. And as a follow-up to that question,  
2 based on the proceedings today and based on the previous  
3 question I had for you, do you feel like the Division of  
4 Drinking Water loan is the most appropriate method of  
14:37 5 funding?

6 A. I can't say that it's the most appropriate. I  
7 can say that it's a very, very good interest rate. But  
8 whether it's the most appropriate, I don't know what  
9 else is out there in the financial markets.

14:37 10 Q. Even at the risk of losing another irrigation  
11 season?

12 A. Well, I thought we just established that it was  
13 a lower cost and quicker response based on using the  
14 Drinking Water loan.

14:37 15 Q. No. I think it was the reverse. And I guess  
16 the issue I'm trying to get at is, if the Division of  
17 Drinking Water loan is the procedure which has a close  
18 recovery period to the 30-year period you're suggesting,  
19 they roughly match up.

14:38 20 A. Uh-huh.

21 Q. If the loan that Mr. White suggested is  
22 potentially available -- based on certain conditions is  
23 available -- that one of the conditions of that loan  
24 presumably would not be repayment over 20 years or 30  
14:38 25 years, for that matter?

14:38 1 A. I'm unclear on what loan he's proposing that  
2 might be available.

3 MS. SCHMID: Objection. Calls for speculation from  
4 the witness.

14:38 5 THE HEARING OFFICER: Why don't you clarify your  
6 question, Mr. Atwater. Sustained.

7 MR. ATWATER: Yeah.

8 Q. So the question is, I guess Mr. White testified  
9 earlier today and we've been talking all day about the  
14:38 10 idea of an affiliate loan in the amount of \$525,000?

11 A. Uh-huh.

12 Q. Mr. White also testified that there would be  
13 conditions that would match his investors' funds to  
14 repay that loan. Do you recall that?

14:38 15 A. Yes.

16 Q. In addition to the interest rate, there would  
17 be a repayment period that would be much shorter than 20  
18 years. In fact, it's been stated today that that was  
19 somewhere between 12 and 18 months.

14:39 20 A. As I state in my summary that we would be  
21 opposed to a short-term assessment. It doesn't  
22 reasonably match the asset life to the repayment period.  
23 So an 18-month loan or 12-month, it does not match a  
24 30-year investment.

14:39 25 Q. Okay. And that's great. I hope that clarifies

14:39 1 the point. The point is that the cheaper more  
2 beneficial option is not available based on your  
3 testimony?

4 MS. SCHMID: Objection. I think that "not  
14:39 5 available" is vague.

6 THE HEARING OFFICER: Sustained. I thought it  
7 misstated the testimony. If you'd like to rephrase  
8 that's fine.

9 MR. ATWATER:

14:39 10 Q. If the \$525,000 affiliate loan is made with a  
11 repayment period of 18 months --

12 A. Okay.

13 Q. -- can you company repay that loan based on  
14 your recommendation?

14:39 15 MS. SCHMID: Objection. That calls for facts not  
16 in evidence. The company has -- it appears different  
17 ways to finance, and I do not know that the company's  
18 recovery through its customers is the only means of  
19 recovering money to pay a debt. I don't know and I  
14:40 20 don't think anyone here knows.

21 THE WITNESS: Will you repeat the question?

22 MR. ATWATER: Sure. If I remember the question.

23 Q. If the agreed repayment period for the  
24 affiliate loan is 12 months or 18 months --

14:40 25 A. Okay.

14:40 1 Q. -- would your recommendation provide the  
2 company the ability to repay that loan?

3 A. I believe the Divisions's position would be  
4 that an 18-month loan presents the same inequity that we  
14:40 5 have with an immediate repayment, that you have inter-  
6 generational inequality, where customers -- the  
7 immediate customers pay for a service that they may not  
8 use for very long. And subsequent customers come in two  
9 years later and get the benefit of somebody that's made  
14:41 10 that payment.

11 Q. And the follow-up question would be, the  
12 Division of Drinking Water loan is a 20-year repayment  
13 period?

14 A. Correct.

14:41 15 Q. Your cost recovery is a 30-year period. Would  
16 your recommendation be sufficient to repay the Division  
17 of Drinking Water loan?

18 A. I think the 20-year loan more reasonably  
19 matches a 30-year depreciation.

14:41 20 Q. But still --

21 A. Still not exactly, but it's more reasonable.  
22 It's a closer match.

23 MR. ATWATER: Great. Thank you.

24 THE HEARING OFFICER: Are you finished,  
14:41 25 Mr. Atwater?

14:41 1 MR. ATWATER: Yes. Thank you.

2 THE HEARING OFFICER: Mr. Savage?

3 MR. SAVAGE: No questions.

4 THE HEARING OFFICER: Mr. Lange?

14:41 5 MR. LANGE: Yes. I've got a couple of questions  
6 here, Mr. Duncan.

7 Q. So if the customer base, maybe through its  
8 intervenors, felt that a shorter time period -- even  
9 though there isn't an equity there -- was a more  
14:42 10 responsible answer to getting this tank -- because there  
11 is an immediate need for the tank -- and a new owner 20  
12 years from now was not suffering or potentially could  
13 suffer from we -- what we can suffer from here in the  
14 short term -- so if the customer base through the  
14:42 15 intervenors suggested a shorter time period, would you  
16 fight us on that? Or I'm not sure I'm phrasing that  
17 quite right. But would you disagree with us on what we  
18 are willing to do?

19 A. I think that the Division's position would be  
14:42 20 the same, but I think that if you have a desire for that  
21 type of loan then you should make that argument with the  
22 commission.

23 Q. Well, I guess maybe at some level, perhaps  
24 we'll do that. But right now we're trying to figure out  
14:43 25 how to get some money going right away for the tank.

14:43

1 Like today --

2 A. I agree.

3 Q. -- or when the commission makes a decision. So

4 I'm fine appealing to the commission on this. Then so

14:43

5 be it.

6 A. Uh-huh.

7 Q. But again I just want -- I guess you're telling  
8 me that you would not agree with what we would want?

14:43

9 A. I would state that we have our position and our  
10 position is that the repayment period should closely  
11 match the asset life.

12 MR. LANGE: Okay. I understand. Thank you very  
13 much.

14 THE HEARING OFFICER: Ms. Miller?

14:43

15 MS. MILLER: I have no comments or questions.

16 THE HEARING OFFICER: Ms. Schmid, would you prefer  
17 I ask my questions before you redirect?

18 MS. SCHMID: Yes, please.

14:43

19 THE HEARING OFFICER: Mr. Duncan, based on reading  
20 your testimony, I inferred that you or other individuals  
21 who work at the Division have had communications with  
22 individuals at DDW; is that correct?

23 THE WITNESS: We have.

14:44

24 THE HEARING OFFICER: Who has been involved in  
25 those communications?



14:44 1 THE WITNESS: Myself and Mr. Smith and Mark Long.

2 THE HEARING OFFICER: Has DDW made any  
3 representations to you or to anyone else at the Division  
4 to your knowledge concerning the availability of funds  
14:44 5 to finance the replacement of the failed tank?

6 THE WITNESS: Yes.

7 THE HEARING OFFICER: And what were the content of  
8 those representations?

9 THE WITNESS: They were very close to what  
14:44 10 Ms. Lewis testified to just a few minutes ago, that they  
11 could still put funding for the tank back into the loan,  
12 but it would require that they backtrack and take  
13 some -- and do some steps that they had not done when  
14 pursuing an outside -- you know, getting bids from --  
14:44 15 without following all the federal regulations so it  
16 would be a delay.

17 THE HEARING OFFICER: Do you have any opinion as to  
18 whether the representations we've heard from other  
19 witnesses today concerning CWC's ability to order the  
14:45 20 tank or otherwise begin preconstruction work before loan  
21 closing are accurate?

22 THE WITNESS: I would say that they are generally  
23 accurate. And confirm what we've talked about with  
24 Drinking Water.

14:45 25 THE HEARING OFFICER: So DDW has confirmed to you

14:45 1 or others at the Division that the construction cannot  
2 be -- pardon me -- preconstruction work cannot begin  
3 prior to closing?

4 THE WITNESS: That is correct.

14:45 5 THE HEARING OFFICER: Do you have an opinion as to  
6 whether CWC's estimate that the tank will take  
7 approximately four months for manufacture is accurate?

8 THE WITNESS: I don't have an opinion on that.

9 THE HEARING OFFICER: So in light of everything you  
14:46 10 know about the case, as we sit here today do you have an  
11 opinion as to whether financing through DDW remains a  
12 feasible alternative?

13 THE WITNESS: I believe it remains feasible,  
14 although I can see that Community Water would have to  
14:46 15 act quickly to backtrack and do some of the steps that  
16 they did not do. So it's feasible, I think, and it's --  
17 as has been testified to it's a very good interest rate.

18 THE HEARING OFFICER: Okay. Let's change tracks  
19 and assume for a moment that the Commission were  
14:46 20 inclined to agree with the Division with respect to its  
21 recommendation on the failed water tank. I believe your  
22 testimony suggests that the order in this interim rate  
23 proceedings should provide some sort of authorization  
24 that would satisfy DDW that it would be assured of  
14:47 25 repayment; is that accurate?

14:47 1 THE WITNESS: Yes. That's accurate. But in  
2 addition to DDW, in the application -- Drinking Water's  
3 application in paragraph 18, it said without assessments  
4 to cover the debt service and repayment, the company has  
14:47 5 been unable to demonstrate to potential lenders a clear  
6 path of repayment. So I think it should not only apply  
7 to DDW, but maybe other lenders that they may have  
8 talked to.

9 THE HEARING OFFICER: Understood. And one sort of  
14:47 10 specific question, if we go to page five of your  
11 corrected testimony which was handed out earlier today,  
12 beginning on line 75, the question reads, "Does the  
13 Division have an estimate of the additional revenue  
14 required to recover the cost of rebuilding the failed  
14:48 15 water tank."

16 THE WITNESS: Correct.

17 THE HEARING OFFICER: You state, "Yes, based on the  
18 investment of \$525,000 and loan repayment conditions of  
19 20 years at 3.39 percent, the loan repayment would be  
14:48 20 \$3,000 -- pardon me -- \$3,015." On an annual basis you  
21 go on to explain that's \$36,180. Then you go on to  
22 combine an annual depreciation expense of \$17,500 per  
23 year; right?

24 THE WITNESS: Correct.

14:48 25 THE HEARING OFFICER: Is it consistent with general

14:48 1 rate making principles to allow for recovery -- back up.  
2 The monthly repayment here of \$3,000 -- I mean \$3,015  
3 includes both the principle and interest payment;  
4 correct?

14:48 5 THE WITNESS: Yes.

6 THE HEARING OFFICER: Is it consistent with  
7 generate rate making principles to allow a utility to  
8 recover the principle on its debt and also depreciate  
9 that asset in the same year?

14:49 10 A. I don't know.

11 THE HEARING OFFICER: I don't have any further  
12 questions. Thank you. Ms. Schmid?

13 MS. SCHMID: No redirect.

14 THE HEARING OFFICER: Thank you, Mr. Duncan.

14:49 15 Ms. Schmid, do you have another witness?

16 MS. SCHMID: We do. The Division would like to  
17 call Mr. Gary Smith as its next witness.

18 (Gary Smith is sworn in as a witness.)

19 MS. SCHMID:

14:49 20 **Q. Good afternoon.**

21 A. Good afternoon.

22 **Q. I believe this is the first time you've had the**  
23 **opportunity to testify before a regulatory body; is that**  
24 **correct?**

14:49 25 A. That is correct.

14:49

1 Q. Here we go. Welcome. Mr. Smith, could you  
2 please state your full name, title, employer and  
3 business address for the record?

14:50

4 A. My name is Gary Smith. And I'm employed by the  
5 Division of Public Utilities, state of Utah. My address  
6 is 160 East 300 South, fourth floor, Salt Lake City,  
7 Utah.

14:50

8 Q. In connection with your employment by the  
9 Division, have you participated on behalf of the  
10 Division in this docket?

11 A. I have.

14:50

12 Q. Did you prepare and cause to be filed what has  
13 been premarked for identification as DPU exhibit number  
14 2.0, the direct testimony of Gary Smith filed on  
15 October 13th, 2017?

16 A. Yes.

17 Q. Do you have any changes or corrections to that  
18 testimony?

19 A. I do not.

14:50

20 Q. If I were to ask you today the same questions  
21 that are contained in the prefled testimony, would your  
22 answers today be the same as those contained in the  
23 prefled testimony?

24 A. Yes, they would.

14:50

25 Q. With that, the Division moves for the admission

14:50 1 into evidence of DPU exhibit number 2.0?

2 MR. ATWATER: No objection.

3 MR. SAVAGE: No objection.

4 MR. LANGE: No objection.

14:51 5 MS. MILLER: No objection.

6 THE HEARING OFFICER: It's admitted.

7 MS. SCHMID: Thank you.

8 Q. Mr. Smith, the procedural schedule permits live  
9 rebuttal and Commission practice allows traditionally  
10 witnesses to present a summary. Would you please  
11 proceed?

12 A. I would. In rebuttal, I'd just like to note  
13 that the Division only has records that it receives from  
14 the source. We received an annual report which is  
14:51 15 required to be filed by the utility companies that we  
16 oversee.

17 According to 2015, the numbers, the operating  
18 numbers that we see for the company, they were positive.  
19 There was actually a surplus. In 2016, there was  
14:52 20 reported to us a deficiency. The rate increase that  
21 happened in 2016 took effect so the payment of that  
22 started at the first of this year. The annual amount  
23 for that, just on the base rate alone, was more than  
24 sufficient to cover the deficit that was covered in '16.

14:52 25 I only say that to give you an indication of where we're

14:52

1 at.

2 Now that doesn't include anything to do with the  
3 tier grades and the income that would come from that.  
4 But that's what the Division has been presented to it.

14:52

5 And since then the Division, in an effort to evaluate  
6 the company request for an interim rate increase,  
7 conducted a focused on-site review of the company  
8 records on September 25th, 2017 and filed its first data  
9 request on October 4th, 2017.

14:52

10 As detailed in my direct testimony dated  
11 October 13, '17, the information and the rate increase  
12 as presented by the company requires further  
13 clarification and resolution of the noted

14:53

14 inconsistencies identified in my Exhibit 2.1. Due to  
15 these inconsistencies, the Division is not able to  
16 determine whether the company's interim rate increase as  
17 proposed is just, reasonable and in the public's  
18 interest. Therefore, the Division recommends the  
19 commission not approve an interim rate as presently  
14:53 20 proposed.

21 MS. SCHMID: Thank you. Mr. Smith is now available  
22 for cross-examination questions and questions from the  
23 hearing officer.

24 THE HEARING OFFICER: Mr. Atwater?

14:53

25 MR. ATWATER: Thank you.

14:53 1 Q. Mr. Smith, you mentioned that the only  
2 information -- financial information available to you is  
3 that which was filed with the Division of Drinking  
4 Water; is that correct?

14:53 5 A. We only have information provided -- wait.

6 Q. Excuse me. The annual reports that were filed,  
7 I apologize.

8 A. Wait. You mentioned the Division of Drinking  
9 Water, didn't you?

14:54 10 Q. Sorry. I meant to refer to the annual reports.

11 A. Well, on an annual basis -- I mean, on an  
12 ongoing basis unless we have a rate case, of course  
13 there is that additional information that we request and  
14 obtain.

14:54 15 Q. Did you receive additional financial  
16 information from the company in connection with the  
17 application?

18 A. Yes, we did.

14:54 19 Q. Is that information consistent with the filings  
20 of the annual reports?

21 A. Actually, I would -- it's too hard to  
22 determine. I mean, we have spent an enormous amount of  
23 time trying to reconcile the numbers in the audit or  
24 annual report to the numbers in the invoices received.

14:54 25 So it has been a challenge.



14:54 1 Q. In your first stated request, did the company  
2 answer all of your questions?

3 A. They provided some information, but we were  
4 still evaluating whether or not, you know, it completely  
14:54 5 answers everything.

6 Q. In your data request did you include  
7 information about the inconsistencies?

8 A. In our -- we requested additional information  
9 which -- but since that time and with the remaining  
14:55 10 portion of the filing we became aware that -- the  
11 Division became aware of a -- potential inconsistencies  
12 and concerns with what expenses that a company actually  
13 has.

14 Q. Were these deficiencies in amounts or title?

14:55 15 A. Well, we were made aware of the contract  
16 that -- when we first met on September 25th, we were  
17 presented with some information about the structure of  
18 the company and how the employees were paid and what was  
19 considered included within the company's structure,  
14:55 20 including an allocation of people's time. We were not  
21 made aware of a contractual agreement until the filing.  
22 And that was -- it was news to us and it's unclear for  
23 us to determine what is covered under that as opposed to  
24 the other agreements which a company has.

14:56 25 Q. Have you reviewed the amounts due and payable

14:56 1 under the administrative services agreement versus the  
2 amounts allocated by the company prior to your knowledge  
3 of that agreement?

4 A. Which agreement are you referring to?

14:56 5 Q. The one that you just referred to, the  
6 administrative services agreement that you became aware  
7 of in the response?

8 A. Okay.

9 Q. Let me reask that question.

14:56 10 A. Yes.

11 Q. So this document, it was filed under  
12 confidentiality and so I won't discuss the numbers of  
13 that agreement.

14 However, my question for you is, did you compare  
14:56 15 the amount payable on a monthly basis under that  
16 agreement to the historical amount paid by or allocated  
17 to the company for administrative overhead?

18 A. We took time to compare on a monthly basis what  
19 was proposed under both. Both with the employees'  
14:57 20 allocation and also under the agreement, yes.

21 Q. And did you notice any material differences  
22 between the two?

23 A. Yes. We could not reconcile the two.

24 Q. The numbers didn't reconcile?

14:57 25 A. According to what we could tell, they did not.

14:57

1 Q. And were the amounts material, the  
2 irreconcilable amounts?

3 A. They could be, yeah. I mean --

14:57

4 Q. Are there any other inconsistencies or  
5 deficiencies that you noted in the application that make  
6 it impossible for you to make a recommendation?

7 A. The bulk of -- well, the inconsistencies that  
8 we discovered are included in my Exhibit 2.1.

9 Q. Can we go through each of them?

14:57

10 A. If you'd like.

11 Q. Great. Exhibit 2.1, page 1-B2, CWC will pay  
12 Summit Water Distribution. There is a contract between  
13 Summit Water Distribution and Community Water -- it's  
14 been well established -- a certain amount on a monthly  
15 basis. It's all been redacted. Your question -- your  
16 statement, your inconsistency, is that the amount  
17 actually paid to Summit Water does not match the amount  
18 under contract?

14:58

19 A. That is correct.

14:58

20 Q. Does the company provide any explanation as to  
21 why it's not the same?

22 A. We have not received any information.

23 Q. Did you request that information?

24 A. We have not.

14:58

25 Q. Did you read the language of the contract with

14:58 1 Summit Water Distribution Company?

2 A. We did, yes.

3 Q. Is the base amount that's payable on a monthly  
4 basis the only amount that's payable under that  
14:58 5 agreement?

6 A. No. That is not the amount. There are other  
7 things dealing with water supply.

8 Q. So it's conceivable that the additional amount  
9 that was payable to Summit Water Distribution Company in  
14:58 10 excess of the base amount could have been for other  
11 services provided under that --

12 A. I would have a hard time believing that because  
13 we also received other information or other invoices  
14 specifically outlining that it was not -- it was supply  
14:59 15 of water. So there was a definite delay issue between  
16 what we could tell was the monthly under the contractual  
17 obligation to pay for the managerial services as opposed  
18 to supply of water, yeah.

19 Q. Thank you. That was not my question. The  
14:59 20 agreement that we're referring to with Summit Water  
21 Distribution Company allows or permits the company to  
22 ask Summit Water Distribution to provide additional  
23 services in emergency situations, in repair situations  
24 and other circumstances that are not covered by the base  
14:59 25 amount.

14:59

1 A. Okay.

2 **Q. Is it conceivable that the additional amounts**  
 3 **paid to Summit Water Distribution are for those services**  
 4 **that are not payment for water nor the base rate?**

14:59

5 MS. SCHMID: Objection. Calls for speculation.  
 6 It's beyond the scope of his testimony.

7 THE WITNESS: I will say that --

8 THE HEARING OFFICER: Let me rule on the objection.  
 9 It does call for speculation, but I'm going to allow it  
 10 because I think this line of questioning has some merit  
 11 and I want to see where it goes. So it's overruled.

15:00

12 THE WITNESS: What brought it mostly to our  
 13 attention is that there was no difference between the  
 14 invoice received for the amount -- they were the same  
 15 identical for each month. There was no breakout for  
 16 where that total came from, and the amounts were exactly  
 17 the same. So it appeared to us, which requires more  
 18 clarification, that potentially the contractual amount  
 19 was not the -- was not justifiable.

15:00

20 **Q. So you're suggesting that potentially there is**  
 21 **an amendment?**

22 MS. SCHMID: Objection. Calls for speculation.

23 THE WITNESS: I wouldn't have any -- that's not  
 24 what I said.

15:00

25 THE HEARING OFFICER: Sustained.

15:00

1 MR. ATWATER:

2 Q. Is it relevant to you in your recommendation  
3 that the amounts paid to Summit Water Distribution  
4 Company are different than what the contractual  
5 agreement states?

15:01

6 A. I'm sorry. Say that again.

7 Q. Is it relevant to your recommendation or lack  
8 thereof that the amount paid to Summit Water  
9 Distribution is different than a contractual amount?

15:01

10 A. Well, it's concerning to us because it raises  
11 the question of, you know, what other costs are being  
12 treated properly as well.

13 Q. Do you recall the discrepancy -- the amount of  
14 the discrepancy between the payments under the contract  
15 and the amounts that were paid?

15:01

16 A. I do.

17 Q. Was it a material amount?

18 A. Is it material. Well, I mean, it could be,  
19 yes.

15:01

20 Q. Impactful to the rate?

21 A. If this was the only one, that would be one  
22 thing. But in addition to all the others, yes, it is.

23 Q. Okay. Thank you. The next inconsistency is a  
24 correct one, and we appreciate you pointing it out in  
25 the administrative services agreement between the

15:02

15:02 1 company and ASC Utah. There is a reference to a payment  
2 that is payable for administrative services. That  
3 contract, in your testimony, as you point out states  
4 that that is payable on a monthly basis. And you  
15:02 5 suggest that that should be payable on an annual basis  
6 in equal monthly installments. Is that your testimony?  
7 A. It appeared to us, because of the references in  
8 other documents, that this was incorrect and given the  
9 amount we would --  
15:02 10 Q. In other information provided to you,  
11 specifically the rate model that was an exhibit to the  
12 application, how did it characterize that amount? Was  
13 it an annual or a monthly amount?  
14 A. I believe it's identified as an annual amount.  
15:03 15 Q. Thank you. Do you believe that that clears up  
16 the inconsistency?  
17 A. Yes.  
18 Q. Thank you.  
19 A. Although I do recommend redraft and resubmittal  
15:03 20 to us of that corrected document.  
21 Q. All right. Your third inconsistency, the daily  
22 operation and maintenance expenses of Community Water  
23 Company have been subsidized by affiliate loans. That's  
24 from the testimony of the company, that statement.  
15:03 25 Your issue with that is that it's unclear from that

15:03 1 statement that the company has any outstanding loans  
 2 with its affiliates. And you are correct, the financial  
 3 statements that have been submitted to the company do  
 4 not reflect outstanding payables and balances owed by  
 15:03 5 Community Water to any of its affiliates.

6 A. May I clarify?

7 Q. Sure.

8 A. So you're saying that the company has no -- or  
 9 does have outstanding loans?

15:03 10 Q. That is correct. The testimony of the company  
 11 is that there are outstanding loans.

12 A. Okay. Are you aware that under a rate case and  
 13 going back to 2014, that those loans should have been  
 14 identified?

15:04 15 Q. Sure. And maybe a bit of an accounting  
 16 discussion here would help. Oftentimes in accounting  
 17 software, it is referred to as an inner-company  
 18 transaction. And they're not necessarily always kept on  
 19 the books and records of the company. And the company  
 15:04 20 has with it today, and would like to submit into  
 21 evidence, two exhibits. The first exhibit is referred  
 22 to as "Subsidized Expenses Payable" by Community Water  
 23 to its affiliates. I'll hand this out and then describe  
 24 it.

15:04 25 MS. SCHMID: I object. I do not believe there has



15:04 1 not been a foundation laid for those exhibits, and I am  
2 not sure that Mr. Smith can provide that foundation as  
3 he is not the company witness.

4 THE HEARING OFFICER: I think that's likely a  
15:05 5 meritorious objection, but I haven't even seen it yet so  
6 can we take a look at what you want to offer and then  
7 we'll discuss it.

8 MS. SCHMID: Of course.

9 MR. ATWATER: I'll bring you both, so I don't have  
15:05 10 to stand up twice. Just to counsel?

11 THE HEARING OFFICER: I'd like a copy as well,  
12 please. Thank you.

13 MR. ATWATER: Should I give it to everybody?

14 THE HEARING OFFICER: Yes.

15:05 15 MS. SCHMID: Having examined the documents that  
16 were passed out to me, I renew and restate the objection  
17 that I previously made.

18 THE HEARING OFFICER: Mr. Smith, have you seen  
19 these documents before?

15:06 20 THE WITNESS: I didn't get one now and I haven't  
21 seen it before.

22 MS. SCHMID: He needs one.

23 MR. ATWATER: Not if there is an objection.

24 THE HEARING OFFICER: Well, Mr. Atwater, I'm  
15:06 25 skeptical about a line of questioning asking this

15:06 1 witness to testify as to the contents of these  
2 documents. Not only because he has not reviewed them,  
3 but because no witness has attested to their voracity.  
4 If you'd like to reserve this question or line of  
15:06 5 questioning for Mr. Smith and recall the witness to lay  
6 some foundation, I think we can do that. But I think  
7 that would be more appropriate than having this witness  
8 testify to these documents he's not familiar with.

9 MR. ATWATER: I can do that. I can reserve some  
15:06 10 time to recall a witness. May I proceed?

11 THE HEARING OFFICER: Absolutely.

12 MR. LANGE: Page one of three, page three of three,  
13 but there is no page two of three.

14 MS. SCHMID: It's on --

15:07 15 MR. ATWATER: We'll get back to it.

16 MS. SCHMID: Isn't it on the flip side?

17 MR. LANGE: No, no.

18 MS. SCHMID: It's on the flip side of mine.

19 MR. ATWATER:

15:07 20 **Q. So Mr. Smith, do you have any -- what is your**  
21 **background in financial or accounting, if any?**

22 A. I have spent more than 20 years in the finance  
23 industry. The last 13, I made municipal loans. So I  
24 believe I have a good standing.

15:07 25 **Q. I do too. Have you ever heard of an**

15:07

1 **inner-company table?**

2 A. Yes.

3 **Q. Would you describe what that is for us?**

15:07

4 A. One part of the company makes another -- well,  
5 it's actually between two affiliates usually -- makes  
6 inner-department -- inner-company loans. So they'll  
7 make a loan to the other division of the company. But  
8 usually that's reflected in their annual reports.

9 **Q. Are you familiar with the consolidation**

15:08

10 **process?**

11 A. Why don't you describe it.

12 **Q. Are you familiar with the consolidation**

13 **process?**

15:08

14 A. When you say consolidation process, what do you  
15 mean?

16 **Q. Financial consolidation?**

17 A. Right. So you take two affiliates and combine  
18 them.

15:08

19 **Q. So is it conceivable that affiliate loans would**  
20 **not appear on financial statements if they're**  
21 **consolidated?**

22 MS. SCHMID: Objection. Calls for speculation.

15:08

23 THE HEARING OFFICER: Overruled. We've just  
24 established that Mr. Smith has some expertise in this  
25 area and he's being asked his opinion.

15:08

1 THE WITNESS: Ask me again.

2 MR. ATWATER:

15:08

3 Q. Is it conceivable that if financials are  
4 consolidated, affiliate loans and payables would not  
5 show up on those financial statements?

6 A. On which company?

7 Q. Either.

8 A. Either company. So you're saying -- I guess  
9 anything is possible.

15:08

10 Q. Is it common practice when companies are  
11 consolidated that the eliminating entries remove  
12 inner-company transactions?

13 A. My background is not in corporate finance and  
14 so I have to say that that part of the expertise would  
15 probably be left to somebody else.

15:09

16 Q. Okay. Thank you. Your next inconsistency  
17 noted -- in the company's direct testimony they state  
18 that the additional O&M requested in the application  
19 which are nominal are all expenses either not understood  
20 or subsidized at the time of the 2016 approval.

15:09

21 Your inconsistency is that it's unclear from this  
22 statement that the nominal addition to operation and  
23 maintenance would account for the level of interim  
24 increase in the rate the company has requested. An  
25 interim adjustment to rate should reflect the

15:09

15:09

1 demonstrated operation and maintenance needs of the  
2 company and not its plans for future capital  
3 improvements.

4 Would you explain what the inconsistency is there?

15:10

5 A. Well, in part of it, it says that the costs are  
6 nominal. In other words, a small change in operation  
7 and maintenance. And so yet you just -- the request  
8 going from \$30 to -- I'm not sure exactly what -- but  
9 the nearest we can tell, \$42 is probably more than

15:10

10 nominal.

11 Q. So line 44 in the testimony is referring to the  
12 increase in O&M charge only?

13 A. According to what we understood, that's  
14 correct. That's how we understood it.

15:10

15 Q. And you just referred to capital charges which  
16 would not be O&M?

17 A. To clarify, because the interim rate is for --  
18 is to evaluate what the needs of the company to operate  
19 are. And we understand that there are capital needs,  
20 however, the interim rate wouldn't necessarily account  
21 for that because a lot of that is still unknown.

15:11

22 Q. What additional information would the Division  
23 need to make that --

24 A. What additional information do we need to  
25 evaluate the capital needs. That your question?

15:11

15:11 1 Q. No. This particular item refers to the O&M  
2 increase from 2016 which was the original approval, the  
3 2016 rate case.

4 Is it okay if I provide a little context because  
15:11 5 you were not around then? So in 2016 the commission  
6 approved an O&M rate which has been discussed today.  
7 And the testimony is that that rate was not sufficient,  
8 and that's why we're here again today, which includes  
9 not only capital which is separate from my question, but  
15:12 10 also a slight nominal increase in the O&M 2016 approval.

11 So my question is what information was not provided  
12 to allow the Division to evaluate whether that nominal  
13 increase --

14 A. Well, a lot of clarity was not provided. So  
15:12 15 it's hard to evaluate what exactly the needs are when a  
16 lot of these outstanding items -- and maybe you could  
17 separate them out individually -- but collectively they  
18 pose a real obstacle for us to evaluate the exact needs  
19 of the company.

15:12 20 Q. I'll rephrase -- or I'll reask the question. I  
21 don't believe it was answered. What additional  
22 information would the Division need in order to answer  
23 the question of whether they're reasonable that wasn't  
24 already provided?

15:12 25 A. Well, a lot of what we found is within the two

15:12 1 agreements especially, we're not sure what covers what  
2 and how much that is. In addition to that, there are  
3 just outstanding items that -- we would probably submit  
4 another data request to obtain that information on.

15:13 5 **Q. So unfortunately this is the interim hearing,**  
6 **and this is a very important matter for the company.**  
7 **And had the Division made that data request previously**  
8 **to have been provided -- Why didn't the Division --**

9 MS. SCHMID: Objection; argumentative.

15:13 10 MR. ATWATER:

11 **Q. Why did the Division not make --**

12 THE HEARING OFFICER: Overruled to the extent  
13 Mr. Atwater asked why did the Division not -- previously  
14 not request the information.

15:13 15 THE WITNESS: As you know, we're on a very short  
16 time frame to do that. And we actually have spent an  
17 enormous amount of time going through trying to figure  
18 out what exactly has changed from 2016 to 2017 that  
19 would be enough to justify a rate increase.

15:14 20 MR. ATWATER:

21 **Q. Are you aware that the commission accepted the**  
22 **application as complete?**

23 A. That is on a -- the acceptance of it being  
24 complete means that you have provided the list of items  
15:14 25 on that. So it's a checklist. Now the review of that

15:14 1 obviously can't take place at that moment, so there is  
2 no different -- there is no direct lineation between  
3 being a complete file and being an accurate description  
4 that is understood by the recipient.

15:14 5 **Q. Is it your testimony that the statute does not**  
6 **allow you sufficient time to evaluate and request**  
7 **appropriate data?**

8 A. Given what we have and the time frame involved  
9 with that, it would be one thing if it was just a few  
15:15 10 things to figure out, but there are a number of items  
11 that we just can't -- we can't reconcile the numbers and  
12 the things which we've been given, and we're going  
13 through those now.

14 **Q. Right.**

15:15 15 A. That's the purpose of this.

16 **Q. Are you aware that this is the only hearing for**  
17 **the interim rate increase?**

18 A. I am.

15:15 19 **Q. Did you not think that was important to request**  
20 **that of the company prior to this hearing?**

21 A. It is, but also -- yes, it is.

22 **Q. Okay. Moving on. The testimony of Keith J.**  
23 **Larson, October 6th, 2017. The company has additional**  
24 **information since filing the application regarding**  
15:16 25 **reserves, system profit, and certain O&M costs. In**



15:16 1 order to ensure the financial viability of the  
2 company and to avoid system shutdown --

3 (Interruption in proceedings.)

4 MR. ATWATER: This is the testimony of Keith J.  
15:16 5 Larson, October 6th, 2017. The company has additional  
6 information since filing the application regarding  
7 reserve system profit and certain O&M costs in order to  
8 ensure the financial viability of the company and to  
9 avoid future system shutdown, the modifications in the  
15:16 10 update are critical to the company and its customers.

11 Your response to that is it is unclear what  
12 information the company has since filing the  
13 application. The only additional information the  
14 Division has received from the company was included in  
15:17 15 the Divisions's first data request response. It appears  
16 that this additional information may have relevance in  
17 evaluating the company's financial requirements. In the  
18 absence of the information the Division cannot support  
19 increases placed upon it.

15:17 20 In Mr. Larson's testimony, he submitted an updated  
21 rate model and an update to the master plan for the  
22 company, which included all the information that support  
23 the rate that he suggested be revised. Did you see that  
24 information?

15:17 25 A. Yes.

15:17 1 Q. So what additional information does the  
2 Division need to evaluate?

3 A. What is the company requesting as an interim  
4 rate. That's the question.

15:17 5 Q. Mr. Larson's testimony states that fairly  
6 clearly.

7 A. Okay. It differs than in your prior  
8 application.

9 Q. That is correct.

15:18 10 A. So what is the change?

11 Q. So the changes are noted on his rate model and  
12 those changes -- what I'm asking is, what additional  
13 information does the Division need other than what it  
14 already has to understand what those changes are?

15:18 15 A. Well, it's one thing to provide details on  
16 numbers, but how those numbers fit within the company  
17 and their operations would take some time. Just because  
18 somebody submits numbers doesn't mean that it's a clear  
19 indication of what the needs of the company are.

15:18 20 Q. Have you reviewed the company's direct  
21 testimony regarding the terms and conditions of the  
22 Division of Drinking Water loan?

23 A. Have I reviewed -- ask me again.

24 Q. The company's direct testimony where it  
15:19 25 discusses the terms and conditions of the Division of

15:19 1 Drinking Water loan --

2 A. Yes.

3 Q. -- are there any discussion of reserves in that  
4 testimony?

15:19 5 A. There are.

6 Q. Are you aware that that loan requires reserves?

7 A. Yes.

8 Q. And are you aware of the amounts?

9 A. I don't have them handy, but I am aware that  
15:19 10 there are amounts.

11 Q. They're at your disposal?

12 A. Right.

13 Q. And that is what is included in Mr. Larson's  
14 testimony is the additional reserves required by that

15:19 15 loan, and it's stated otherwise in the testimony?

16 A. But apparently the numbers that you're  
17 requesting may be lower. It's unclear exactly what your  
18 rate increase change is.

19 Q. In the amounts?

15:19 20 A. In the amounts.

21 Q. It's unclear because it's different or it's  
22 unclear because you don't understand them?

23 A. Well, both.

24 Q. So maybe we should open them and figure out why  
15:20 25 they're unclear. Do you have a copy of --

15:20 1 A. I do not. I apologize. I do not have a copy  
2 of that.

3 **Q. I didn't think I printed them. Maybe I did.**

4 MR. ATWATER: May I approach.

15:20 5 THE HEARING OFFICER: Yes.

6 MR. ATWATER: This is the written direct testimony  
7 of Keith J. Larson adopted today and sworn to by Tena  
8 Campbell of Bowen & Collins. It's on page eight and  
9 filtering over to page nine.

15:20 10 THE WITNESS: I'm sorry. Could you -- which one is  
11 it? This is Bowen Collins?

12 MR. ATWATER: This is the update, yes.

13 **Q. So you have in front of you the update that was**  
14 **included in Mr. Larson's testimony, and you suggested**  
15 **that that is confusing to you. Can you describe why the**  
16 **rate requested there is confusing?**

17 A. The basis of this rate goes back to the ERU  
18 units and how that's derived. And an interim rate  
19 increase is not the proper forum to change rate  
15:21 20 structure. So it's hard to take these numbers and try  
21 to convert them into what the base rate and the base  
22 rate structure currently is.

23 **Q. So that is a different question, which is fine,**  
24 **but the question relative to what you deemed an**  
15:21 25 **inconsistency which we had knowledge of before this**

15:22 1 without a data request was that you could not tell from  
2 that what was being requested.

3 Is that still your stance irrespective of ERUs?

4 A. Well, if you're proposing a base rate, why the  
15:22 5 change from 18 to 19? Is that -- why would those two  
6 numbers be different? Are you proposing a separate rate  
7 increase?

8 Q. We're proposing what is prepared and placed  
9 before the Division, together with the testimony of  
15:22 10 Mr. Larson. It's all we need.

11 A. Okay.

12 Q. Okay. The next item is in reference to Keith  
13 J. Larson's testimony, page five line 64. Contractual  
14 water system maintenance. This represents the amount  
15:22 15 paid to Summit Water Distribution Company. This  
16 includes salaries, testing and lab equipment, water  
17 sampling, system maintenance, office supplies, telephone  
18 and payroll tax and other miscellaneous expenses.

19 Your inconsistency with that statement is the above  
15:23 20 appears to address only the company's 2004 Water System  
21 Service Agreement with Summit Water. However, the items  
22 listed appear to be items covered in the administrative  
23 services agreement, the new agreement that's been  
24 referred to today between the company and ASCU, LLC with  
15:23 25 an effective date of January 2, 2017.

15:23 1 Summit's role and ASCU's role in connection with  
2 the company's 2004 agreement and the new agreement are  
3 unclear. Likewise, the proposed cost and benefit  
4 including any reallocation of expenses of the new  
15:23 5 agreement remain unclear. And the remainder of that  
6 should be redacted regarding amounts.

7 Q. Again, you testified earlier that you have read  
8 both of those agreements?

9 A. I have.

15:23 10 Q. And in your recollection, what services does  
11 Summit Water provide under that agreement?

12 A. It provides the management of the water system  
13 and an emergency basis supply of water.

14 Q. And no discussion of administrative functions?

15:24 15 A. I don't recall that, but not to the level of  
16 their payroll and so forth. None of those items, office  
17 supplies, telephone payroll, taxes and such, were not  
18 part of that agreement from our understanding.

19 Q. Sorry. Can you restate that. There was a  
15:24 20 negative in there that may have thrown me.

21 A. Sorry. The items referenced -- that you  
22 referenced, the office supplies, telephones, payrolls,  
23 taxes and so forth, were not lineated in the agreement.  
24 And so those kinds of things were actually lineated out  
15:24 25 in the new agreement. And so the way this was

15:24 1 presented, it was unclear. It seemed to have crossed  
2 over the two agreements.

3 Q. So you're understanding of the agreements based  
4 on your testimony is that ASC Utah and Summit Water  
15:25 5 Distribution are providing duplicative services to the  
6 company and both charging for it?

7 A. That is a potential.

8 Q. And again, back to the question of the amount  
9 payable under the administrative services agreement and  
15:25 10 the services provided under the administrative services  
11 agreement. How closely do they match the prior  
12 allocations of salaries, office expense, lease expense,  
13 insurance expense, and other items that were previously  
14 broken out in the base year and prior years? Do you  
15:25 15 have any recollection of that?

16 A. I do. We actually took time to try to evaluate  
17 that, and we found that the agreement seemed to cover  
18 that. It would be quite an increase actually. And I  
19 can't recall those numbers right now, I guess, but it  
15:25 20 was a substantial amount to have an impact on your rate.

21 Q. So the base -- the rate model with the base  
22 year of 2016, shows an approximate amount of \$90,000  
23 payable or allocated for those administrative services.  
24 The amount payable under the administrative services  
15:26 25 agreement in some cases would not be a material increase

15:26 1 from that. But we've discussed today that there are  
2 certain costs that were not known or that were being  
3 subsidized. Is it that that increase would cover those  
4 subsidies or costs that were unknown in prior years?

15:26 5 A. You're asking if the rate increase --

6 Q. Just the amount payable under the  
7 administrative services agreement relative to what was  
8 previously allocated by the company for administrative  
9 services. Is the difference -- you said there was a  
10 substantial increase -- is that difference justifiable  
11 by potential subsidies or amounts that were previously  
12 unknown?

13 A. I would -- I don't have that information so I  
14 would be speculating.

15:27 15 Q. Okay. And have you ever had a rate case with a  
16 public utility -- No. The answer is no. I already know  
17 that. Why am I asking that question.

18 Have you had any experience with managing a small  
19 company?

15:27 20 A. With managing a small company?

21 Q. Or the finances of a small company?

22 A. Not that would pertain to this, no.

23 Q. Okay. Any idea what typical overhead costs  
24 would be for a small company?

15:27 25 A. I would be guessing.



15:27

1           **Q. Okay. Is it possible that the two agreements**  
2       **do not cross over, and that, in fact, the services that**  
3       **are provided are completely independent?**

15:27

4           A. Is it possible. I would guess so. But just in  
5       reading the document, it did not include those services.

6           **Q. Which document?**

7           A. The first agreement from 2004.

8           **Q. Did not include those services?**

9           A. Correct.

15:28

10          **Q. And the new document does?**

11          A. Yes. It matched more with those, yes.

12          **Q. Would that not suggest that they are different?**

15:28

13          A. I'm sorry. Maybe I said that wrong. I said  
14       that backwards. Excuse me. The new agreement included  
15       what appeared to be those expenses for the company,  
16       which makes sense in the framework of what the agreement  
17       is.

15:28

18               The other -- which this is referring to in 2004,  
19       that agreement, I can't see where -- you know, you would  
20       have office supplies, telephone, payrolls, taxes, and so  
21       forth with the management agreement. That is for a  
22       total amount regardless of kind of what happens unless  
23       an emergency.

15:28

24           **Q. So that is correct, and I think the record is**  
25       **clear on that point. The two agreements address two**

15:28

1 completely separate services without cross-over.

2 A. So are you saying that this is a typographical  
3 error?

15:29

4 Q. No, no, no. What I'm saying is that it's not  
5 an inconsistency.

6 A. Okay.

15:29

7 Q. Okay. We'll move on. Page four, line 54,  
8 chemicals. This line was removed -- this is the  
9 testimony of Keith Larson -- this line item was removed  
10 inasmuch as the company does not anticipate using the  
11 treatment plant going forward. You note that that's an  
12 unclear inconsistent statement because Mr. Larson's  
13 testimony also suggests that the Division of Drinking  
14 Water loan requests \$523,000 for repair of the water  
15 treatment plant.

15:29

16 And your inconsistency is correctly stated. Why  
17 did the Division not include this in its first data  
18 request or subsequent data request when it became aware  
19 of the inconsistency?

15:29

20 A. We received this after our data request.

21 Q. Why did the Division not make a subsequent data  
22 request?

23 A. Probably due to time constraint.

15:30

24 Q. Okay. Did the Division investigate any further  
25 the analysis provided by Mr. Larson to determine whether

15:30

1 or not chemicals were actually included under a  
2 different line item?

3 A. What is the purpose of your question?

4 Q. The purpose of my question is that the  
5 chemicals are indeed included.

15:30

6 A. That brought more inconsistency because that  
7 same person said that they were not going to be  
8 included.

9 Q. So had you done more investigation or requested  
10 the company, could you have found that out before today?

15:30

11 A. Given timing, I don't know.

12 Q. Page four, line 60, the need for services. The  
13 line item -- excuse me -- is contractual services  
14 accounting. The need for the services represented by  
15 this line item is unclear with the new agreement and the  
16 company's agreement with Summit Water seemed to provide  
17 similar services. In your opinion, is there a  
18 difference between administrative services and  
19 accounting services?

15:31

20 A. It depends on who you're talking to. I would  
21 guess -- what is the title of the agreement?

22 Q. Administrative services agreement.

23 A. Right.

24 Q. Is it conceivable that there are independent  
25 accounting fees such as tax preparation, audit fees,

15:31

15:31 1 that may not be covered by an administrator?

2 A. Correct.

3 Q. Thank you. Page five, line 75, administrative  
4 expenses. The need for expenses represented by this  
15:31 5 line item is unclear with the new agreement and the  
6 company agreement with Summit Water seems to cover  
7 similar expenses.

8 Is it conceivable that there are administrative  
9 expenses that are direct expenses that are not covered  
15:32 10 by services provided by a manager or an administrator?

11 A. Why would there be an agreement that would  
12 encompass that on two different aspects of the company?

13 Q. Do companies have licensing fees, annual filing  
14 fees, corporate filing fees, things of that nature that  
15:32 15 are deemed administrative that would not be covered by  
16 an administrator typically?

17 A. I would have to direct your question to the  
18 draft of that whether that was meant to be in that  
19 agreement or not.

15:32 20 Q. Could the Division have asked that question  
21 before today?

22 A. Due to time constraint, I don't know the answer  
23 to that.

24 Q. Thank you. And finally page five, line 77,  
15:32 25 customer information, management system, postage and

15:32 1 mailing, winter transportation and access expense. The  
2 need for expense represented by this line item is  
3 unclear with the new agreement and the company's  
4 agreement with Summit Water covering similar expenses.  
15:33 5 Same question.

6 A. Well, given what we understand, the needs of  
7 the company and how it's potentially run, and the  
8 agreements, I would find it hard to find those outside  
9 of those agreements. Wouldn't you?

15:33 10 Q. So if you read the agreement -- and again, it's  
11 confidential -- it's a services agreement, not a  
12 goods -- not an expense agreement. And it does discuss  
13 this, direct expenses are expenses that the company pays  
14 in addition and apart from the administrative services  
15:33 15 fee.

16 A. So they're paying for them twice?

17 Q. No. They're paying for the administrator to  
18 lick the envelope and put it in the mail.

19 A. Okay.

15:33 20 Q. But they're also paying for the envelope and  
21 stamp separate and apart.

22 A. So you're saying that that's an addition to  
23 page five, line 64, where it says -- where it refers  
24 back to the 2004 agreement? We just discussed in that  
15:34 25 that there was these services including --

15:34

1 Q. Correct. It's the services portion of that.

2 The administrator will handle those portions, but the  
3 company is still responsible for paying the hard costs  
4 associated with it?

15:34

5 A. Okay.

6 Q. The administrator is not responsible to pay for  
7 the management system, it operates the management  
8 system?

15:34

9 THE HEARING OFFICER: Was that a question? Do you  
10 agree?

11 THE WITNESS: That is a possibility, yes.

12 MR. ATWATER:

13 Q. You would not be surprised?

15:34

14 A. I would hope that the company would be prudent  
15 in the way it runs its business so to avoid extra costs.  
16 So if you're proposing is this a prudent way, I don't  
17 know.

18 MR. ATWATER: Thank you.

19 MR. SAVAGE: No questions.

15:35

20 MR. LANGE: No questions.

21 THE HEARING OFFICER: I'm not sure Mr. Atwater is  
22 finished.

23 MS. SCHMID: I thought he was. I'm sorry.

24 MR. ATWATER: Thank you.

15:35

25 Mr. White has to leave, and so you suggested

15:35 1 previously that we could put the witness on the stand  
2 regarding the exhibits that I handed out. I was  
3 wondering if we could do that now.

4 MS. SCHMID: Mr. Smith also has to leave. So to  
15:35 5 the extent that we could make this an expeditious  
6 process, that would be appreciated. But again,  
7 Mr. Smith is available for the duration of the hearing  
8 as a witness should be.

9 THE HEARING OFFICER: Is there any objection to  
15:35 10 Mr. Smith's testimony being interrupted so that  
11 Mr. White can take the stand for a few moments to  
12 authenticate the rebuttal exhibit?

13 MR. LANGE: No objection.

14 MR. SAVAGE: No objection.

15:36 15 MS. SCHMID: No objection.

16 THE HEARING OFFICER: Thank you. Mr. Smith, you're  
17 excused for now.

18 MR. ATWATER: I call Mr. Larry White to the stand.

19 (Mr. Larry White returns to the stand.)

15:36 20 THE HEARING OFFICER: Mr. White you're still under  
21 oath.

22 THE WITNESS: Thank you. I apologize, Your Honor.  
23 So yesterday was my mother-in-law's 90th birthday. I  
24 missed her birthday so I could be at this hearing. I  
15:36 25 have adjusted my flight, which is at 5:00 o'clock, in

15:36 1 order to get back to the East Coast for her birthday  
 2 party tomorrow. My wife is already not happy with me  
 3 for missing her birthday, and will be even more unhappy  
 4 with me if I don't make it back in time for tomorrow.

15:36 5 THE HEARING OFFICER: We wish you the best of luck.  
 6 THE WITNESS: Otherwise, I'd be happy to stay here  
 7 for the duration.

8 MR. ATWATER:

9 Q. So Mr. White, I've handed you two exhibits that  
 15:37 10 have also been handed out to the parties. These  
 11 exhibits provide -- the first exhibit --

12 MR. SAVAGE: Could we have a number for this?

13 MR. ATWATER: Exhibit Number 1 would be the exhibit  
 14 titled, "Subsidized Expenses Payable." And Exhibit 2  
 15:37 15 we'll call the document titled, "GL Account Ledger With  
 16 Detail."

17 THE HEARING OFFICER: And I will note on my copy  
 18 that I don't have a page two. I have page one, a blank  
 19 back, and a page three.

15:37 20 MR. ATWATER: Were you the one that got the three  
 21 pages?

22 MS. SCHMID: I am. Would you like us to take a  
 23 small break and the Division could make copies so  
 24 everyone has all the pages?

15:37 25 MR. ATWATER: So I would suggest that the sum on



15:37 1 page three is really what we're going to talk about. In  
2 fact, we could remove the first two-pages.

3 MS. SCHMID: I object to having an incomplete  
4 exhibit.

15:38 5 MR. ATWATER: Then I will remove the first two  
6 pages.

7 MS. SCHMID: I object to having an incomplete  
8 exhibit and I would object to it being used to  
9 cross-examine.

15:38 10 THE HEARING OFFICER: It is a ledger. So I think  
11 to the extent the company seeks to admit it, it is  
12 appropriate to reproduce it in its entirety as it was  
13 intended to be. So we can recess for a few moments  
14 while it's copied. Thank you for making copies. Will  
15:38 15 five minutes suffice?

16 MS. SCHMID: Yes. Thank you.

17 (A recess is taken.)

18 THE HEARING OFFICER: Back on the record. Ms.  
19 Schmid, thank you for providing these copies.

15:44 20 Mr. Atwater, I'll turn them over to you.

21 MR. ATWATER: Thank you.

22 **Q. Mr. White, are you familiar with the document**  
23 **in front of you titled interim hearing Exhibit 1,**  
24 **"Subsidized Expenses Payable"?**

15:45 25 A. I am.

15:45

1 Q. What does this document represent?

2 A. So this is basically an allocation of  
3 administrative time and expenses for the past years that  
4 TCFC employees have expended on dealing with Community  
15:45 5 Water as constructed by our accounting firm.

6 Q. Thank you. Does this document fairly represent  
7 the time spent and the costs associated with Community  
8 Water?

9 A. I would say if anything it's probably  
15:45 10 understated. But yes.

11 Q. Would you elaborate?

12 A. Well, just, you know, the amount of time that  
13 it's taken to manage Community Water particularly  
14 through these processes is just enormous. And so I  
15:45 15 would say that if anything it's probably understated in  
16 terms of the amount of time that's been spent on  
17 preparing for these cases and trying to fix this issue.

18 Q. So to follow that line of questioning and to  
19 further substantiate this, are you able to make  
15:46 20 appropriate business decisions based on the current  
21 status?

22 A. I can tell you that we've had -- I've been on  
23 numerous conference calls where our advisers, Emily,  
24 Bowen & Collins, and representatives of the Department  
15:46 25 of Public Utilities, where we have asked for their

15:46 1 advice of how to get through this process, and they've  
2 said we can't advise you on that.

3 And they said several times today that they  
4 can't -- or that they're not making business decisions  
15:46 5 and businesses can make their own decisions. Businesses  
6 can make decisions on their own. That's a quote. I  
7 think it's pretty clear from this process that we can't  
8 make decisions on our own. We're subject to all of the  
9 scrutiny, and we have no capacity to make decisions on  
15:47 10 our own and that's why we're here. I mean that's -- it  
11 should be clearly evident that we can't make decisions  
12 on our own.

13 So, you know, I ask your advice. Is it in the  
14 public's best interest that the risk to the system is  
15:47 15 far greater than irrigation -- whether people can keep  
16 their lawns and trees, you know, green next year.

17 THE HEARING OFFICER: It's not appropriate for me  
18 to give you advice, sir, and I thought the witness was  
19 called simply to authenticate the exhibits.

15:47 20 MS. SCHMID: As he is discussing more, I will have  
21 a line of cross on this, please.

22 THE HEARING OFFICER: Okay. Please proceed.

23 MR. ATWATER: Are you done with the question?

24 THE WITNESS: Yes, I'm done.

15:47 25 MR. ATWATER:

15:47 1 Q. Okay. The amounts on the sheet that we just  
2 discussed, Exhibit 1, are they included, to your  
3 knowledge, on the financial statements? Or are these in  
4 fact the inner-company amounts that we spoke of earlier  
15:48 5 that do not show on the financials?

6 A. So if you're referring to the account ledger --

7 Q. No. Sorry. This allocation here.

8 MS. SCHMID: Is that the single sheet?

9 MR. ATWATER: That's the single sheet.

15:48 10 Q. Are these the inner-company amounts that we  
11 were discussing earlier with Mr. Smith?

12 A. Yes.

13 Q. Thank you. We would move to submit this  
14 Exhibit 1, "Subsidized Expenses Payable" into the record  
15:48 15 for discussion.

16 MS. SCHMID: I have a few questions pertaining to  
17 its admissibility, if I may.

18 THE HEARING OFFICER: You'd like to voir dire the  
19 witness on the exhibit?

15:48 20 MS. SCHMID: Thank you. Yes.

21 THE HEARING OFFICER: Go ahead.

22 MS. SCHMID:

23 Q. Could you please tell me where in the company's  
24 testimony I can find the information that is present in  
15:48 25 Exhibit 1 and the information that is -- the single

15:48

1 page, and where I can find the information that is

2 present in Exhibit -- what I'll call 2, the --

3 MR. ATWATER: Objection. This was discussed in Mr.

4 Smith's testimony that it was not included because it

15:49

5 was consolidated.

6 MS. SCHMID: That's all I wanted to know.

7 THE HEARING OFFICER: Do you want an answer from a

8 witness of fact?

9 MS. SCHMID: I would like that, please.

15:49

10 THE WITNESS: Your question again?

11 MS. SCHMID:

12 Q. My question is, please direct me to the part of

13 the company's testimony which reflects the numbers in

14 Exhibit 1, the single sheet of numbers, passed out by

15:49

15 your counsel, and Exhibit 2, the multiple page sheet,

16 passed out by your counsel.

17 A. So I don't believe that they were in the --

18 MS. SCHMID: Thank you.

19 THE HEARING OFFICER: Does any other counsel have

15:50

20 any questions with respect to the exhibits?

21 MR. SAVAGE: Not with respect to the exhibits, but

22 I think what's pending is the admissibility and I have

23 no questions.

24 THE HEARING OFFICER: Thank you for rephrasing my

15:50

25 question. Is there an objection then to the

15:50

1 admissibility of the exhibit?

2 MS. SCHMID: I do not object to the admissibility  
3 of the exhibit.

4 MR. SAVAGE: No objection.

15:50

5 MR. LANGE: No objection.

6 MS. MILLER: No objection.

7 THE HEARING OFFICER: Mr. Atwater, to be clear, are  
8 you moving for its admission?

9 MR. ATWATER: Yes. We move to submit.

15:50

10 THE HEARING OFFICER: Then this exhibit, hearing  
11 Exhibit 1, Subsidized Expenses Payable, is admitted as  
12 hearing Exhibit 1.

13 (Whereupon the document referred to is marked by  
14 the reporter as EXHIBIT 1.)

15:50

15 MR. ATWATER: Thank you.

16 **Q. Mr. White, looking at the document entitled G1**  
17 **Account Ledger With Detail, are you familiar with this**  
18 **document?**

19 A. I am.

15:50

20 **Q. What is this?**

21 A. So this is what I asked our accounting partner,  
22 controller, to give me just to give us a tracking as to  
23 what the current cash status of Community Water is.

24 **Q. Does this accurately and fairly represent the**  
25 **status?**

15:51

15:51 1 A. To the best of my knowledge, yes.

2 MR. ATWATER: Thank you. Those are all my  
3 questions for the witness.

4 THE HEARING OFFICER: Did you move for the  
15:51 5 admission of the exhibit?

6 MR. ATWATER: I can. Do you want to have him  
7 questioned first or move first?

8 THE HEARING OFFICER: Only if they have questions.

9 MS. SCHMID: I believe that he already testified  
15:51 10 that the multi-page exhibit was not present in the  
11 testimony previously filed.

12 THE HEARING OFFICER: Not withstanding that point,  
13 you don't object to the exhibit being admitted?

14 MS. SCHMID: I do not object to the exhibit having  
15:51 15 had my question answered.

16 THE HEARING OFFICER: Is there any other objection?

17 MR. SAVAGE: No.

18 MS. MILLER: No objection.

19 THE HEARING OFFICER: Then the exhibit handed out  
15:51 20 by Mr. Atwater entitled at the top GL Account Ledger  
21 With Detail is admitted as hearing Exhibit 2.

22 (Whereupon the document referred to is marked by  
23 the reporter as EXHIBIT 2.)

24 MR. ATWATER: I have no further questions of  
15:51 25 Mr. White.

15:52 1 THE HEARING OFFICER: You're excused, Mr. White.

2 MS. SCHMID: I have some questions for him. His  
3 testimony right now went beyond the mere facts of the  
4 numbers on the admitted exhibits, so I have some  
15:52 5 questions for him.

6 Q. Mr. White, did you say that a regulated  
7 business cannot make decisions on its own? Is that a  
8 fair paraphrase of your testimony?

9 A. What I said is that it's clear that we're not  
15:52 10 able to make business decisions on our own. That it's  
11 subject to input -- in this entity -- publicly regulated  
12 entity that we're not capable of making decisions on our  
13 own. We have to come for approvals to various state  
14 agencies.

15:52 15 Q. Is it correct, however, to say that the company  
16 can make business decisions on its own, but the recovery  
17 part is what is determined by the Public Service  
18 Commission?

19 A. I can't tell you that I understand the process  
15:53 20 well enough to answer your question. What I can tell  
21 you is that what we've endeavored to do is hire the best  
22 consultants we can find, Clyde Snow which is a water  
23 counsel specialist, and Bowen Collins, and with the  
24 advice of Summit Water who has been managing this system  
15:53 25 for many, many years.



15:53 1 Q. Is it true that the company has the  
2 responsibility to make sure that all pertinent  
3 information is in its application?

4 MR. ATWATER: Objection. Asks for an opinion.

15:53 5 MS. SCHMID: I will reply that he makes decisions  
6 on behalf of the company and was involved, I believe, in  
7 the application process and is a witness in this  
8 proceeding.

9 THE HEARING OFFICER: I'll overrule the objection  
15:53 10 with respect to the line of questioning. I just noticed  
11 the hour is getting late, and I hope -- we haven't even  
12 allowed the intervenors an opportunity to present any  
13 evidence yet. So if we can expedite questioning that  
14 might be extraneous to the issues that are directly at  
15:54 15 hand in this proceeding, I think that would be in  
16 everyone's best interest. But I will overrule the  
17 objection and allow Ms. Schmid to ask the question.

18 MS. SCHMID: Could the reporter please read the  
19 question back?

15:54 20 (The record is read by the reporter.)

21 THE WITNESS: I would say certainly it is. But as  
22 you know, these applications are extremely complicated  
23 by the volume that was submitted. And so if something  
24 was omitted, I apologize. But to the best of our  
15:55 25 ability we are trying to get through this process to

15:55 1 make this company work.

2 MS. SCHMID:

3 Q. And it's the company's responsibility likewise  
4 to make sure that the information in the application is  
15:55 5 accurate; is that right?

6 A. I guess it would be.

7 MS. SCHMID: Those are all my questions.

8 MR. SAVAGE:

9 Q. Mr. White, are you aware of a Utah statute that  
15:55 10 requires every public utility shall furnish, provide,  
11 and maintain such service, instrumentalities, equipment  
12 and facilities, as will promote the health, safety,  
13 comfort and convenience of its patrons, and will in all  
14 respects be adequate, efficient, just and reasonable?  
15:55 15 Anybody ever tell you about that Utah statute?

16 A. No.

17 Q. And you said "we've" been managing the system  
18 for many years?

19 A. No, I said Summit Water has been managing the  
15:56 20 system for many years.

21 Q. You said "we". Who did you mean when you said  
22 we?

23 A. What I meant to say is that Summit Water --  
24 when I said -- when I was listing the number of people  
15:56 25 that we had engaged in conversation --

15:56

1 MS. SCHMID: Sorry. Could you please ask the  
2 witness to speak into the microphone? I have some  
3 difficulty hearing.

15:56

4 THE WITNESS: What I said was that the company had  
5 engaged multiple experts, including Summit Water, that  
6 had been managing the company for several years.

7 MR. SAVAGE:

15:56

8 Q. So you don't think CWC has been managing the  
9 company as a public utility with obligations under the  
10 statutes of the state of Utah?

11 A. I can't answer. You're asking a legal opinion  
12 and I can't answer your question.

15:56

13 Q. Fair enough. And you said "our" controllers  
14 gave you this information on Exhibit 2. Who did you  
15 mean by "our"?

16 A. TCFC -- it would be TCFC's control. CWC has no  
17 direct employees. Community Water Company has no direct  
18 employees.

15:57

19 Q. You're in effect the chief executive officer of  
20 both TCFC and CWC?

21 A. No, I'm not.

22 Q. What are you?

23 A. I clearly stated this.

24 MR. ATWATER: Asked and answered.

15:57

25 THE HEARING OFFICER: That's sustained. It's been

15:57 1 asked and answered.

2 MR. SAVAGE:

3 **Q. There are no employees of CWC?**

4 A. No.

15:57 5 **Q. You make the final decisions for CWC?**

6 MR. ATWATER: Asked and answered. Objection.

7 THE HEARING OFFICER: It's sustained. This is a  
8 line of questioning that we've been spent quite a bit of  
9 time on already.

15:57 10 MR. SAVAGE: I'm sorry, Your Honor, I'm just trying  
11 to set up a question. I'll move to the question.

12 **Q. Exhibit 2 you have it in front of you there,**  
13 **the ledger?**

14 A. Yes.

15:57 15 **Q. GL, does that mean general ledger?**

16 A. I'm not an accountant.

17 **Q. And you don't know what that means, GL?**

18 A. No.

19 **Q. Okay. Is this an account ledger for TCFC?**

15:57 20 A. No, it's not.

21 **Q. I look at the top where it says Account Ledger**  
22 **With Detail. Do you see that upper left?**

23 A. I see that.

24 **Q. Right under it it says, TCFC, Inc.**

15:57 25 A. That would be the company that produced the

15:57

1 ledger.

2 Q. Okay. So this would -- in your -- as you sit  
3 here today, do you think this is part of the TCFC  
4 ledger?

15:58

5 A. I can't answer your question.

6 Q. But it is a breakout that the TCFC controller  
7 gave you of the cost of water and contract labor and  
8 other expenses for CWC?

9 A. For the first nine months of this year.

15:58

10 Q. Okay. And did you have any reason to doubt  
11 that those are carried actually on the books of TCFC?

12 A. I don't know how they're carried on the books.

13 Q. So you don't even know if they're separate  
14 books?

15:58

15 A. There are separate books. We have separate  
16 books for Community Water Company. So that's what I  
17 asked for was the basic cash position of Community Water  
18 Company for the first nine months of this year.

19 Q. And this was printed out?

15:58

20 A. That's right.

21 Q. Going to Exhibit 1, I think I understand the  
22 first one. Is that Stacy Wilson's salary?

23 A. Correct.

24 Q. And how did you get to the percent --

15:59

25 33 percent? Is that the time you think she devoted to

15:59

1 Community Water?

2 A. I've already given testimony to the fact that I  
3 think that underestimates the time she spent on  
4 Community Water.

15:59

5 Q. But that's time for Community Water, not the  
6 other way around?

7 Never mind. You think that -- let me back up.  
8 She's an employee of TCFC; correct?

9 A. Correct.

15:59

10 Q. And she's paid a salary by TCFC?

11 A. That's correct.

12 Q. And on this sheet you're telling us that  
13 somebody has estimated 33 percent of her time, which you  
14 think is an underestimation, is devoted to Community  
15 Water?

15:59

16 A. That's correct.

17 Q. Who determined the 33 percent that's on this  
18 exhibit?

19 A. It was an estimate.

15:59

20 Q. By who?

21 A. We don't punch a time clock.

22 Q. Who made it?

23 A. It was made by -- internally inside the  
24 company.

15:59

25 Q. Do you know?

15:59

1 A. It was an estimate.

2 **Q. Do you know who made it?**

3 A. It was an estimate. I don't know who made it.

4 **Q. You've testified under oath that you think that**  
 5 **estimate is low?**

15:59

6 A. I sit in an office right next to Stacy. I  
 7 observed the amount of time that she spends on the phone  
 8 and that she spends on billings, including with you and  
 9 other customers, and so that's my estimation. It is an  
 10 underestimate of the time that she spends on Community  
 11 Water.

16:00

12 **Q. You missed my point. I understand that. But**  
 13 **you haven't told me who came up with the estimate of 33**  
 14 **percent.**

16:00

15 A. I can't tell you that.

16 **Q. Okay. You're authenticating this document and**  
 17 **you can't tell us that?**

18 A. I've said what I have to say.

19 **Q. Okay. The next entry seems to be**

16:00

20 **administrative allocation, 50,000, consistent every**  
 21 **year. Am I reading that correctly?**

22 A. You are.

23 **Q. And you think that's an underestimation also?**

24 A. This is, I believe, an allocation to accounting  
 25 time and other time spent by our other employees on

16:00

16:00

1 Community Water matters.

2 Q. Other TCFC employees?

3 A. Correct.

4 Q. Do you know who decided on \$50,000 each year?

16:01

5 A. Again, it was an estimate by our accounting  
6 department.

7 Q. Somebody in the accounting department?

8 A. Yes.

9 Q. And you don't know who?

16:01

10 A. Likely Rebecca Christiansen.

11 Q. Okay. I don't understand the burden. What's  
12 that entry mean?

13 A. That would be the insurance and other  
14 incidentals of employment.

16:01

15 Q. Okay. So am I reading this correctly then,  
16 that the 50,000, you're assuming that all of those are  
17 salaries and there would be this burden of employment  
18 taxes and things like that on it?

19 A. Correct.

16:01

20 Q. The off-site legal. I don't understand Omni  
21 10 percent. What does that mean?

22 A. So this is of the amount that we pay to our  
23 in-house counsel, Justin Atwater. It's a percentage of  
24 our time that's allocated to Community Water. Again, a  
16:01 25 gross underestimate of the time he spends at Community



16:01

1 Water.

2 **Q. Where do you get the term, Omni?**

3 A. That's the name of his company.

4 MR. SAVAGE: Okay. That's all I have. Thank you,

16:02

5 sir.

6 THE HEARING OFFICER: Mr. Lange?

7 MR. LANGE: I have no questions.

8 MS. MILLER: And I have no questions either. Thank

9 you.

16:02

10 THE HEARING OFFICER: Anything else from you,

11 Mr. Atwater?

12 MR. ATWATER: No.

13 THE HEARING OFFICER: You're excused.

14 Mr. Lange.

16:02

15 THE WITNESS: Thank you very much for your time. I

16 appreciate it.

17 THE HEARING OFFICER: So returning to our regularly

18 scheduled hearing.

19 Ms. Schmid would you like to recall your witness?

16:02

20 MS. SCHMID: Yes, I would please. Mr. Smith could

21 you please take the witness stand again.

22 (Mr. Smith returns to the witness stand.)

23 THE HEARING OFFICER: Mr. Smith, you're still under

24 oath.

16:02

25 THE WITNESS: Okay.

16:02

1 THE HEARING OFFICER: In terms of our examination,  
2 where were we?

3 MR. ATWATER: I believe I had completed.

4 THE HEARING OFFICER: Okay. Mr. Savage?

16:03

5 MR. SAVAGE: I have no questions.

6 MR. LANGE: I have no questions.

7 MS. MILLER: I have no questions either. Thank  
8 you.

9 THE HEARING OFFICER: Ms. Schmid?

16:03

10 MS. SCHMID: I have some redirect questions, but I  
11 would like to reserve them, if I may, until after you  
12 have asked yours.

13 THE HEARING OFFICER: I don't have any.

14 MS. SCHMID: Okay.

16:03

15 **Q. This will be very brief. So Mr. Smith, do you**  
16 **recall Mr. Atwater's line of questions about what the**  
17 **Division did and did not do and about questions the**  
18 **Division did not ask of the company?**

19 A. Yes.

16:03

20 **Q. Do you understand that the purpose of today's**  
21 **hearing is to determine whether a regulated public**  
22 **utility should receive the requested interim rate**  
23 **increase?**

24 A. Yes.

16:03

25 **Q. Do you understand that the interim rate process**

16:03

1 by its nature is on a truncated and expedited time  
2 schedule?

3 A. Yes.

16:04

4 Q. Do you understand that the process for the  
5 interim rate hearing is much less than the full 240 days  
6 awarded the time to determine final rates and for the  
7 commission to make its decision?

8 A. Yes.

16:04

9 Q. Do you understand that the words prima facie  
10 mean -- translated from the Latin -- at first look?

11 A. Yes.

12 Q. Do you understand that the company has the  
13 burden of proof to show that the rates requested  
14 including the interim rate are appropriate?

16:04

15 A. Yes.

16 Q. Do you understand that it is not the  
17 Divisions's duty to determine what information the  
18 company submits with its application, but it is the  
19 company's duty to prepare a full and complete  
20 application?

16:04

21 A. Yes.

22 Q. So based on that, is it still your testimony  
23 today that the company has failed to prove, using the  
24 prima facie standard on its face, that its interim rate  
25 request is reasonable and should be granted?

16:05

16:05

1 A. I'm sorry. Say that again.

2 Q. Okay. I was going quite quickly. Is it your  
3 testimony today that the company has failed to prove  
4 that the interim rate increase it requested has not been  
5 proven by the evidence the company has submitted?

16:05

6 A. Yes.

7 MS. SCHMID: Thank you. Those are all my redirect  
8 questions.

9 THE HEARING OFFICER: Thank you, Mr. Smith.

16:05

10 MS. SCHMID: Mr. Smith also has an obligation.  
11 Could he please be excused for the remainder of the  
12 hearing? He can stay if necessary, but if he could be  
13 excused it would be appreciated.

14 THE HEARING OFFICER: I have no objection to his  
15 departure. Does anyone else?

16:06

16 MR. ATWATER: No objection.

17 MR. SAVAGE: No objection.

18 MR. LANGE: No objection.

19 MS. MILLER: No objection.

16:06

20 MS. SCHMID: The Division has nothing further.  
21 Thank you.

22 THE HEARING OFFICER: All right. Mr. Savage.

23 MR. SAVAGE: Thank you, Your Honor.

24 (E. Scott Savage is sworn in as a witness.)

16:06

25 THE WITNESS: I have a couple of corrections in my

16:06 1 alternative proposal and direct testimony, and it seems  
2 like my calculator wasn't working very well, but on page  
3 five, paragraph 12, I talked about a fine imposed in the  
4 second paragraph of \$600. It's actually \$1500. And  
16:06 5 then starting on page 12 where I present my alternative  
6 proposal for retainment of a loan for the failed tank, I  
7 was using the \$50 per month that was proposed in the  
8 meetings that I went to. And it was for 18 months  
9 instead of 12. And that generates \$450,000. And \$50  
16:07 10 per month for 12 months would not generate the money  
11 that is estimated to be the cost of replacing the tank.  
12 If you want it for 12 months, it would take \$90 a month  
13 for the 500 users for 12 months, or \$60 a month for 18  
14 months to generate enough money to pay the current price  
16:07 15 for the tank. I move for the admission into evidence of  
16 my alternative proposal and sworn direct testimony at  
17 this time.

18 MS. SCHMID: No objection.

19 MR. ATWATER: So the applicant previously objected  
16:08 20 and the motion was discussed. It renews its objections  
21 set forth in that motion -- excuse me -- does not renew  
22 the motion, renews the objection.

23 THE HEARING OFFICER: Overruled. Thank you.  
24 They're admitted.

16:08 25 THE WITNESS: The last thing I want to mention,

16:08 1 it's kind of been lost in the interesting journey we've  
2 had in finding out the fact that TCFC is in fact CWC.  
3 But one of the things I want to make sure, if this -- if  
4 the Public Service Commission were to impose an interim  
16:08 5 rate for the general capital improvements, the proposal  
6 for how the HOAs are to be billed and how that money is  
7 to be collected is patently unfair.

8 As I read their proposal, they would send one bill,  
9 for example, to Plat B&D for all of the water usage of  
16:09 10 all 30 homeowners, and all of the water usage for the  
11 irrigation. And then it would be up to Plat B&D, the  
12 HOA, to separately bill the members, the homeowners in  
13 its organization, and collect that money so that it  
14 could then pay the monthly bill. That's transferring,  
16:09 15 of course, the accounting collection and administrative  
16 costs from the utility to the customers, and would place  
17 them at a disadvantage, vis a vis, the individual  
18 homeowners, and it leaves open the question as to what  
19 happens if one of my 30 homeowners doesn't pay their  
16:10 20 water bill. Does that mean all 30 get their water shut  
21 off.

22 It should be -- it should be a collective allocated  
23 and the tiers should all be done the way it is presently  
24 being done for the operational expense rate increase,  
16:10 25 which is the 30 individual homeowners are billed

16:10 1 separately for their own separate use by the utility.  
2 And then 1/30th of the irrigation water, which goes  
3 through two separate meters, not the individual  
4 homeowners' individual meters, but there is two separate  
16:10 5 meters for all of the sprinkling water for the whole  
6 area.

7 The present rate requires that the homeowners  
8 association not be billed for that water, but 1/30th of  
9 the amount of that water isn't added to the bill of each  
16:11 10 of the individual homeowners. And for consistency, the  
11 methodology should be the same for the operational rate  
12 that we have in place and any rate for capital  
13 improvements.

14 So with that additional clarification of what I've  
16:11 15 stated, I would also like to state that I'm in complete  
16 agreement with Mr. Duncan's testimony. I recognize the  
17 inter-generational inequity of not paying off a loan for  
18 this tank over the life of the tank. I think that is  
19 the proper way to do it.

16:11 20 I have tried to assist Mr. White who left, and CWC  
21 and TCFC, by supporting and offering an alternative plan  
22 that is very similar to the one they were proposing to  
23 the users or the customers of a \$60 a month short-term  
24 temporary rate increase for 18 months, or a \$90 rate  
16:12 25 increase for 12 months to repay the loan, to make it

16:12 1 easier for CWC to get money from an outside bank, a  
 2 lending institution, or its parent, to be able to  
 3 immediately get funds available to get this tank  
 4 replaced. That being said I open myself up to  
 16:12 5 cross-examination if anybody has any.

6 THE HEARING OFFICER: We'll start with Mr.  
 7 Atwater.

8 MR. ATWATER:

9 **Q. Thank you. I think I just have one.**

16:12 10 A. Okay.

11 **Q. So you stated that you support Mr. Duncan's**  
 12 **testimony and --**

13 A. No, I said I agree with his overall general  
 14 statement that there is an inter-generational problem if  
 16:12 15 a capital improvement is not repaid over the life of the  
 16 capital improvement. If we repay -- we pay for this  
 17 tank in 18 months, being the present users, that means  
 18 I'm giving a benefit to some future homeowner that they  
 19 won't have to pay for it. And I recognize that. And I  
 16:13 20 think he's correct in his typical methodology.

21 **Q. But you still stand by your alternate proposal**  
 22 **as revised in your testimony today?**

23 A. Yes.

24 MR. ATWATER: Thank you.

16:13 25 THE HEARING OFFICER: Anything else?



16:13 1 MR. ATWATER: No.

2 MS. SCHMID: No questions.

3 MR. LANGE: No questions.

4 MS. MILLER: No questions.

16:13 5 MR. SAVAGE: Any questions, Your Honor?

6 THE HEARING OFFICER: No. Thank you, Mr. Savage.

7 THE WITNESS: Okay.

8 THE HEARING OFFICER: Mr. Lange.

9 (Terry Lange is sworn in as a witness.)

16:13 10 MR. LANGE: So I have testimony filed and posted on

11 the docket, and I just want to basically go over that

12 and have that be admitted along with the testimony of

13 Fran Amendola on behalf of Red Pine. He's not here now.

14 I want to have his testimony admitted also. So I move

16:14 15 to have that done.

16 MR. ATWATER: So I object -- sorry Terry. So I

17 renew my objection with respect to the provisions of

18 Mr. Fran Amendola's testimony as discussed earlier.

19 MS. SCHMID: And I will object to the admission of

16:14 20 Mr. Amendola's testimony since he is not present to be

21 cross-examined.

22 THE HEARING OFFICER: Yeah. That's a reasonable

23 objection. To the extent that Mr. Atwater is reserving

24 his objection with respect to Mr. Lange's filed

16:14 25 testimony, it's overruled. But we can't admit

16:14 1 Mr. Amendola's testimony as sworn evidence here in this  
2 hearing today without him being here to attest to its  
3 voracity or being subject to cross-examination.

4 THE WITNESS: Understood. Okay. So in my  
16:15 5 testimony I talk about a couple of different things  
6 which Scott Savage has mentioned. So Red Pine, we're  
7 concerned about the practice of taking -- at Red Pine,  
8 60 currently individually metered owners and putting out  
9 one single collect bill for that. We don't think that's  
16:15 10 right. There is no way to really collect that money  
11 from the HOA really legally from it's CC&Rs. The HOA  
12 has no legal authority to collect that money as such,  
13 nor does it have the legal authority to collect property  
14 taxes on behalf of Summit County, for instance. So it's  
16:15 15 very similar to that.

16 So we don't agree with this collective billing on  
17 that.

18 As far as the tank and the separation of the tank  
19 from the general rate increase, we're in favor of having  
16:15 20 a shortened time frame. We realize, of course, there  
21 isn't an equity in that. But we're going to accept that  
22 because right now my house is on fire so-to-speak and,  
23 you know, I want water to put the flames out. So just  
24 to kind of put that in very simple terms, so a shortened  
16:16 25 time frame that the commission would see fit to

16:16 1 authorize, whether it be 12 months, 18 months maybe, but  
2 the point here is to collect money up front to get this  
3 tank put in and do so on a very fast basis. We really  
4 can't afford to go through another irrigation season  
16:16 5 without irrigating. It's affecting property values.  
6 It's affecting sales. It's just affecting the mindset  
7 of the people who live there. It's very difficult to  
8 deal with that. And why prolong that for another season  
9 and bring it into the year 2019 if we could cure that  
16:16 10 early in the year 2018.

11 So it's just a matter of taking the numbers for  
12 that tank and dividing it by the customers, and not the  
13 ERUs, and assessing that over an appropriate time frame.

14 Of course I recognize that, you know, the  
16:17 15 Divisions's wanting to spread that cost out because it's  
16 very equal to do that over the life of the product. And  
17 I fully understand that, but in this case I think the  
18 commission should weigh in on the immediate needs, you  
19 know, right now, here and now, and to come up with  
16:17 20 something there that's going to make this tank happen  
21 sooner than later.

22 I'm talking literally months that this thing -- if  
23 it could be shortened up by 5, 6, 7, 8 months, it should  
24 be done that way. It's very, very important and I can't  
16:17 25 stress that enough. But that's my testimony.

16:17

1 THE HEARING OFFICER: Mr. Atwater, any cross?

2 MR. ATWATER: One question I should have asked of  
3 Mr. Savage, but I think it will be helpful for you to  
4 provide.

16:17

5 You mentioned in your testimony that you are the  
6 president of the Red Pine HOA; is that correct?

7 A. That's correct.

8 **Q. And what percentage of the customer base does**  
9 **Red Pine HOA represent?**

16:17

10 A. So let me give you a little overall oversight  
11 here of the entire campus as such. So Red Pine consists  
12 of 200 chalets, one bedroom and two bedrooms. It  
13 consists of 60 townhomes, which happen to be  
14 individually metered, whereas the chalets are a shared  
15 meter. And there is also an independent nonprofit  
16 organization called the Red Pine Clubhouse as such which  
17 functions and serves the needs of all 260 owners.

16:18

18 So I am the president of the Red Pine Chalets. I  
19 have the authorization for the townhomes to represent  
20 them. They have their own HOA as such. And so they  
21 have their own, I guess, budgets. Their own dues  
22 collection based upon their needs. And the clubhouse  
23 has its own dues based upon its needs. And collectively  
24 together we contribute on a proportional basis to the  
25 needs of the rec center and -- the recreation center and

16:18

16:18

16:19 1 what its needs are. So hopefully that explains.

2 Q. So in the aggregate you described, that  
3 represents what percentage of the customer base? Is it  
4 greater than 50? So 260 of 500?

16:19 5 A. I see what you're saying. So we have 260 --  
6 let me figure that out.

7 MR. SAVAGE: More than 50.

8 THE WITNESS: Right. A little bit more. 503.

9 MR. ATWATER:

16:19 10 Q. 503.

11 A. It's 51.886.

12 Q. And is your testimony that's provided today and  
13 written that has been submitted, on behalf of that  
14 51 percent?

16:19 15 A. That's correct.

16 MR. ATWATER: Okay. Thank you.

17 THE HEARING OFFICER: Ms. Schmid?

18 MS. SCHMID: No questions.

19 MR. SAVAGE: No questions.

16:19 20 THE HEARING OFFICER: Ms. Miller?

21 MS. MILLER: I do have one question. I probably  
22 should have asked the same question of Mr. Savage.

23 Q. Would it be correct to state that when  
24 customers receive their own monthly bill, that's a more  
16:20 25 effective tool to promote conservation than to have just

16:20 1 a lump sum provided on their HOA bill?

2 A. I think as an individual owner sees his own  
3 bill and decides whether or not it's within his  
4 parameters to pay it, if he's happy with it or if he  
16:20 5 should do something to conserve water so he would pay  
6 less so-to-speak. It's easier to do it on the  
7 individual basis than it is on a collective because when  
8 you have a collective as such, it's been my experience  
9 that you tend to ignore those little subtleties of what  
16:20 10 can be done. And you tend to lose the -- what shall I  
11 say -- the ability to manage that. So you start to lose  
12 some interest in -- you just wind up accepting whatever  
13 happens. And so anyhow, it's kind of a roundabout  
14 answer, but I believe that I have answered your  
16:21 15 question.

16 Q. Yeah, you did. I would think that that would  
17 be a good tool for the company to promote rather than  
18 take it away is my point I guess. You don't want to  
19 combine everybody's bill?

16:21 20 A. Well, if I may also suggest this. I looked at  
21 some numbers for the Red Pine Townhomes, and the usage  
22 for 2016, and it ranges from zero up to an  
23 astronomically large number. And from looking at a  
24 median standpoint or an arithmetic means standpoint,  
16:21 25 you've got one half of the customer base supporting the

16:21 1 additional water used by the second half of the customer  
2 base. And is that fair and equitable? I don't really  
3 think so.

4 If I was only using \$10,000 gallons a year, and now  
16:21 5 I'm expected to subsidize someone who is using  
6 275 gallons a year. Because it's -- according to a  
7 single bill, you're going to take the entire bill and  
8 divide it by 60 people -- and this is as far as demand  
9 goes. Everybody right now has their own base rate. But  
16:22 10 as far as demand goes, if you're not using water why pay  
11 for somebody else who is using their own water. That's  
12 my take.

13 THE HEARING OFFICER: Thank you, Mr. Lange. One  
14 question from me. You mentioned your home being on  
16:22 15 fire. I interpret that as meaning that the landscaping  
16 around your chalet -- is it -- that you live in?

17 THE WITNESS: Well, yeah. It's pretty desolate.  
18 And more to point out, I have an immediate need right  
19 here right now. Walking barefoot on glass would also be  
16:22 20 a good cause to have shoes, for instance.

21 THE HEARING OFFICER: Just so I understand the  
22 lifestyle impact that the customers are experiencing,  
23 it's primarily with respect to their inability to  
24 irrigate their landscaping?

16:22 25 THE WITNESS: That's correct. And we've had some

16:22 1 reports back from very dissatisfied people who were  
2 under contract to sell their units, and when a  
3 perspective buyer now learns that, hey, there is no  
4 water going on and it's all up in the air, and it's  
16:23 5 going to be unsettled for how long, and rates are going  
6 to go up, they pull out of the deal. And that causes  
7 harm too.

8 MR. SAVAGE: May I also address that because there  
9 is another aspect. There is a significant fire hazard.  
16:23 10 We have 20 acres of weeds that the county has set aside  
11 as permanent open space. It's not mowed. And those  
12 weeds go right up to the edge of our property which used  
13 to be green and verdant. And now we have brown tinder  
14 between the weeds and the field behind us and our  
16:23 15 houses. And we have dry trees. So there is a distinct  
16 fire hazard being posed as well as the aesthetics.

17 And the fact we're losing money. We have had trees  
18 killed because of this. Fortunately none of our big  
19 ones have died yet, but we have lost some trees as well  
16:24 20 as the lawn being completely dry.

21 THE HEARING OFFICER: Thank you, Mr. Savage. To  
22 preserve the procedural integrity, I have nothing else  
23 for Mr. Lange.

24 Does anyone else have anything for Mr. Lange?

16:24 25 MR. ATWATER: No.



16:24 1 THE HEARING OFFICER: I'll go ahead and let  
2 Mr. Savage's statement just now stand in his capacity as  
3 a witness today. Anybody else have any questions?  
4 MS. SCHMID: No questions.

16:24 5 THE HEARING OFFICER: Ms. Miller.  
6 (Leanne Miller is sworn in as a witness.)  
7 MR. ATWATER: Your Honor, may I restate my  
8 objection from earlier testimony regarding the testimony  
9 of Ms. Leanne Miller?

16:24 10 THE HEARING OFFICER: Yes.  
11 THE WITNESS: Okay. So I do request that my  
12 testimony be admitted into evidence and I do not have  
13 any additional comments to add.

14 THE HEARING OFFICER: Any other objections?

16:25 15 MS. SCHMID: I would just like to clarify that Ms.  
16 Miller prepared the testimony and that she's swearing to  
17 it as her testimony here today.

18 THE WITNESS: Yes, I did prepare this testimony,  
19 and as president of the Hidden Creek HOA, I'm submitting  
16:25 20 it on their behalf.

21 MS. SCHMID: Thank you. With that I have no  
22 objection.

23 MR. SAVAGE: No objection.

24 MR. LANGE: No objections.

16:25 25 THE HEARING OFFICER: It's admitted. Thank you.

16:25 1 Sorry. Ms. Miller, did you wish to make any prepared  
2 statement or make any remarks?

3 THE WITNESS: No, I do not.

4 THE HEARING OFFICER: Anyone have any cross-  
16:25 5 examination for Ms. Miller?

6 MR. ATWATER:

7 Q. So I have the same question I had for Terry  
8 which is, you are the president of the Hidden Creek HOA?

9 A. That's correct.

16:25 10 Q. And what percentage of the customer pool does  
11 Hidden Creek represent on an approximate basis?

12 A. We have 130 units so that's about 26 percent of  
13 the 503 customers.

14 Q. And your testimony today is on behalf of a  
16:26 15 representative of that 26 percent?

16 A. That's correct.

17 Q. Thank you.

18 THE HEARING OFFICER: Ms. Schmid?

19 MS. SCHMID: No questions.

16:26 20 THE HEARING OFFICER: Mr. Savage?

21 MR. SAVAGE: No questions.

22 THE HEARING OFFICER: Mr. Lange?

23 MR. LANGE: No questions.

24 THE HEARING OFFICER: And I don't have anything.

16:26 25 Thank you, Ms. Miller.

16:26 1 I believe that concludes the presentation of the  
2 evidence. There has been some expressed interest in  
3 having some time for concluding argument. Mr. Atwater,  
4 do you know about how many minutes you'll require for  
16:26 5 that?  
6 MR. ATWATER: Seven. Would that be okay?  
7 THE HEARING OFFICER: Ms. Schmid?  
8 MS. SCHMID: I will take less than seven.  
9 THE HEARING OFFICER: Mr. Savage?  
16:26 10 MR. SAVAGE: Seven.  
11 MR. LANGE: No more than two.  
12 MS. MILLER: Less than two.  
13 THE HEARING OFFICER: That is at maximum no more  
14 than 25 minutes, so we can handle it.  
16:26 15 Would you all like a short recess before we  
16 commence oral argument?  
17 MS. SCHMID: The Division does not require a short  
18 recess.  
19 MR. ATWATER: Does the scheduling conference  
16:27 20 contemplate public comments in this hearing?  
21 THE HEARING OFFICER: No.  
22 MS. SCHMID: Not for the interim rate hearing.  
23 MR. ATWATER: I don't think we need a recess then.  
24 I just wanted to be sure of that.  
16:27 25 MR. SAVAGE: I do not need a recess.

16:27 1 MR. LANGE: No recess.

2 THE HEARING OFFICER: Sounds like there is no  
3 interest in a recess.

4 Mr. Atwater, please proceed.

16:27 5 MR. ATWATER: So we appreciate the time that  
6 everyone spent today and we appreciate the efforts of  
7 all truly in getting us this far, and acknowledge that  
8 it's a team effort. There is no way that this works for  
9 anybody unless everybody comes together and helps solve  
16:27 10 the problems at Community Water.

11 As was mentioned in Ms. Lewis's testimony, we are  
12 here before the commission on an interim hearing basis  
13 for an interim rate increase. And I just want to  
14 reiterate what the code 57 -- excuse me -- 547124A3  
16:28 15 states, evidence presented at the hearing held pursuant  
16 to this subsection need not encompass all the issues  
17 that may be considered in a rate case hearing held  
18 pursuant to subsection 2-D, but shall establish an  
19 adequate prima facie showing that the interim rate  
16:28 20 increase is justified. We feel like the company has  
21 done that.

22 The commission has the balancing act quite frankly  
23 here, and it's exacerbated by the fact that this public  
24 utility is very small and insignificant. This  
16:28 25 proceeding would have been much easier if our name was

16:28 1 Rocky Mountain Power, but it's not. So the balancing  
2 act between the concept of providing adequate water on a  
3 timely basis to the public versus protecting the  
4 pecuniary interest and financial interest of the company  
16:28 5 is critical. And the Supreme Court of the United  
6 States, the 14th amendment, the 15th amendment makes it  
7 very clear that it would be a taking otherwise if that  
8 balancing act was not performed.

9 We feel a little bit that -- not this proceeding  
16:29 10 necessarily, but that the scale appears to tilt largely  
11 in favor of the public concern, which is clearly an  
12 important concern, but so is the financial interest of  
13 the company as its constitutional right to own its  
14 private property and that the government cannot take  
16:29 15 that private property without substantial -- excuse  
16 me -- without just compensation.

17 In addition, we are talking about -- there has been  
18 a lot of talk today, I tried to avoid it with my motion  
19 to strike, but was unsuccessful. And I renewed that,  
16:29 20 and I respect the opinion of the commission for allowing  
21 it. But there was a lot of talk that was allowed today  
22 about the circumstances and the histories of why we're  
23 here. And I think it's important. I'm glad that we  
24 were able to talk about it. Everybody was able to see  
16:29 25 why we're here. But never once has the company ever

16:30 1 allowed any of its customers to go without culinary  
2 water. It has a backup plan. It's expensive but its  
3 customers will not go without culinary water.

4 Have they gone without irrigation water for some  
16:30 5 time? Yes. But the company has never let its customers  
6 go without the ability to drink, flush toilets and do  
7 other things which are really important. And we  
8 understand that duty and responsibility.

9 It's been detailed in the multiple testimonies  
16:30 10 today about all the things the company has done. The  
11 company has not sat on its hands with its management.  
12 They have done significant lifting, expending  
13 significant dollars, especially for a company of this  
14 size. To me it's remarkable, frankly, the effort that  
16:30 15 this management team has put forth in order to provide  
16 for the customers, and remarkable the effort the  
17 customers have put in to make this work. It's no small  
18 feat. I just wanted to acknowledge that.

19 I do want to specifically in the last minute, I  
16:30 20 think that I have, address the tank, and reiterate what  
21 our position is. I think it's clear that the one-time  
22 assessment is not favored. And I hope the commission  
23 understands why we requested that in order to fund the  
24 tank immediately and give the customers the irrigation  
16:31 25 water that they've been requesting to save their lawns

16:31 1 and their trees.

2 We cannot, however, under any circumstances,  
3 endorse them as the Division of Public Utilities has  
4 suggested. It is just far too long. We risk the chance  
16:31 5 of losing another season of irrigation. And we would  
6 rather support the position supported by the intervenors  
7 provided today.

8 And then regarding the general request, we feel  
9 like there has been sufficient evidence to understand  
16:31 10 the interim rate provided. And that that evidence is  
11 included not only in today's testimony, but more  
12 importantly in the application. If the application is  
13 read very carefully, it's sophisticated, but it comes  
14 from a very reputable engineering firm that we've spent  
16:32 15 thousands of dollars on -- the company has spent  
16 thousands of dollars on. It's no mistake. It's no  
17 accident. It wasn't thrown together over night. And it  
18 does provide ample evidence to allow for an interim rate  
19 increase, and the information required to make a  
16:32 20 determination is fully available. Thank you, Your  
21 Honor.

22 THE HEARING OFFICER: One follow-up question,  
23 Mr. Atwater.

24 In your view is the record clear that if the  
16:32 25 commission were inclined to adopt Mr. Savage, Mr. Lange

16:32 1 or Ms. Miller's proposal, and allow a special charge to  
2 bond or finance the replacement tank to be amortized  
3 over 12 or 18 months, can you tell me or represent to me  
4 that you're sure the company could obtain financing on  
16:32 5 those terms?

6 MR. ATWATER: So what I can represent is as  
7 Mr. Savage amended his testimony here today, that to the  
8 extent the commission accepts the dollar amount  
9 requested, so the \$525,000 for the tank -- and that it  
16:33 10 be repaid over a short enough period of time -- and I  
11 think I understood Mr. White to indicate that a 12-month  
12 period -- that would be fine. The question we still  
13 have is the rate of return. Whether it's the  
14 3.39 percent under the Division of Drinking Water loan  
16:33 15 or whether it's something greater.

16 And that would have to be one thing that would need  
17 to be clarified or taken back to a potential funding  
18 source to determine the rate.

19 THE HEARING OFFICER: Okay. Thank you,  
16:33 20 Mr. Atwater.

21 Ms. Schmid?

22 MS. SCHMID: Thank you. As a regulated public  
23 utility, Community Water Company has certain rights and  
24 certain obligations. Its rights are that it is subject  
16:33 25 to Public Service Commission jurisdiction currently that



16:33 1 provides oversight and a means of recovering reasonable  
2 and proven expenses -- an opportunity to recover those  
3 reasonable and proven expenses. Its responsibilities as  
4 a regulated public utility are that Community Water must  
16:34 5 provide -- and I quote now from 54-3-1 -- "service that  
6 will be in all respects adequate, efficient, just and  
7 reasonable."

8 Community Water comes before you today seeking a  
9 one-time special assessment and an interim rate increase  
16:34 10 to its general rates. Community Water has not shown  
11 that its evidence supports a finding to -- a finding  
12 that interim rates, either to the general rate increase  
13 or for the special assessment, are justified.

14 The standard is low. It's a prima facie standard.  
16:35 15 But even that standard hasn't been met by the company.  
16 The Division has gone through a great deal of effort in  
17 trying to understand the company's application. Just as  
18 much as if it were the application of a larger company.

19 And on that note I will note that Community Water  
16:35 20 is one of the larger water companies. Frequently water  
21 companies have only 35, 40 or even fewer connections.  
22 So Community Water is sophisticated by comparison.

23 Community Water nonetheless has failed to prove its  
24 case that the interim rate and the special assessment  
16:35 25 are justified. The Division is concerned with the

16:35 1 inter-generational inequities that would result from the  
2 special assessment. The Division is concerned that the  
3 company seems to be abdicating its responsibility to run  
4 its company, and instead is shifting that responsibility  
16:36 5 to the Division.

6 The company has stated that the Division has  
7 thwarted the efforts of the company to provide  
8 reasonable service. That is not so. The company  
9 determines and has set its own course, and any failure  
16:36 10 of the company to prove on a prima facie standard that  
11 the interim rates are not justified and the special  
12 assessment is not justified rests with the company, not  
13 with the Division. Thank you.

14 THE HEARING OFFICER: Thank you, Ms. Schmid.  
16:36 15 Does the Division have any recommendation of any remedy  
16 the PSC has jurisdiction to provide or any action it  
17 might take to alleviate the problems being experienced  
18 by the customers, aside from denying the instant  
19 request?

16:37 20 MS. SCHMID: Yes. The Commission has the ability  
21 to approve settlements which are put before it by one or  
22 more -- by two or more parties. For example, one remedy  
23 the commission could have is that if the parties  
24 submitted a settlement seeking approval of the  
16:37 25 interim -- sorry -- of the special assessment on the 12

16:37 1 to 18-month basis, the Division perhaps likely would not  
2 object to that as it would be a settlement. And  
3 settlements can be approved by the Commission.

4 THE HEARING OFFICER: Thank you, Ms. Schmid.

16:37 5 MS. SCHMID: Thank you.

6 THE HEARING OFFICER: Mr. Savage.

7 MR. SAVAGE: Yes. We're going to accordingly  
8 address all of the other issues, but the critical issue  
9 to me is making sure we immediately get funding from the  
16:37 10 parent company, quote, unquote, for this tank. And I  
11 think as -- some people may have wondered why I was  
12 asking a lot of the questions I did, but I think we've  
13 established unequivocally that A, Community Water has  
14 the duty that Ms. Schmid just pointed out, and that they  
16:38 15 have been derelict in that duty, and derelict in that  
16 duty since they were required by TCFC.

17 Mr. Larry White says he thinks it's the customers  
18 fault that the infrastructure of CWC is in a bad state  
19 of repair. It isn't. It's the CWC's duty to be able to  
16:38 20 provide adequate water.

21 As Ms. Schmid just pointed out, section 54-31 also  
22 says that they shall furnish such service,  
23 instrumentalities, equipment and facilities, as will  
24 promote the safety, comfort and even convenience of its  
16:39 25 patrons. And instead they've gone years, after

16:39 1 representing in 2014 or 2015 that the system was in dire  
2 straits, and even years ago saying this tank was of  
3 concern. And waiting after the tank failed for several  
4 months to even apply to the Commission for anything to  
16:39 5 do about it.

6 And we now know that was all done by its parent.  
7 I'm not sure there is a CWC. I'm not sure there is a  
8 Community Water. It has no employees. Its decisions  
9 are ultimately made by Mr. White who doesn't even list  
16:39 10 himself as having any position with the utility,  
11 Community Water. He lists himself as the chief  
12 executive officer of the parent corporation. It is the  
13 parent company that is funding the shortfalls of  
14 Community Water. It is the parent company that has the  
16:39 15 accounting on its accounting system. Not CWC's. We  
16 look at the general ledger for TCFC and it has the  
17 ledger entries for Community Water.

18 They have -- he testified as to, I think I  
19 mentioned, any shortfalls that TCFC covers it. This  
16:40 20 whole problem -- and there is also statutes to say it's  
21 a crime for an individual to aid and abet a utility if  
22 they're not complying with its duty that Ms. Schmid just  
23 read.

24 Certainly TCFC if not the alter ego in this  
16:40 25 circumstance, has aided and abetted and even directed

16:40 1 the operation of this public utility that has put us in  
2 this situation. And I'm happy to not go down that road  
3 if TCFC and Mr. Atwater are willing to agree that the  
4 parent will put up the money that's needed short term if  
16:41 5 the users agree to have a short-term repayment, even  
6 with the long-term inequities of doing that. That's a  
7 fine compromise with me.

8 But if not, the Public Service Commission has the  
9 authority to order TCFC to do this. Fund this money,  
16:41 10 get this dam tank operational, get it in place, and  
11 let's get going on it. As to the general -- we have no  
12 idea about the ERUs. We have no idea how much money  
13 they're actually going to need from the 3.6 million  
14 dollar fund. We don't know how much the burden is going  
16:41 15 to be for these capital improvements. We don't know  
16 whether or not they're all needed now, or if some of  
17 them can be deferred. They seem to say, well, we can  
18 get the money, 3.6 million, let's use it all up. But  
19 then they say, no, we're not going to use it all up.  
16:42 20 But then it sounds like they're going to make sure the  
21 entire system is a spanking clean essentially brand-new  
22 system.

23 These are all the kinds of things that the  
24 supervision of the Division are essential to look into  
16:42 25 and make sure that the customers are not being

16:42 1 overcharged by the structure of any loan or any capital  
2 improvement, any repayment. It hasn't been addressed in  
3 any way shape or form adequate for interim  
4 consideration. And more importantly, as I stated in my  
16:42 5 testimony, there is no need to do it because the loan  
6 doesn't require a dollar to be repaid until January of  
7 2019.

8 So I think it's just a no-brainer that there is no  
9 adequate showing for proceeding with an interim rate  
16:42 10 increase to cover the general capital expenditures. I  
11 mentioned in my testimony -- and I'd just allude to it  
12 again -- that if we were to look at that, we've got to  
13 look at how the HOAs are being -- proposed to be  
14 treated, vis-a-vis individual homeowners, and make sure  
16:43 15 those are fair and equitable treatments. With that, I  
16 appreciate the examiners time and will rest my case.

17 THE HEARING OFFICER: Thank you, Mr. Savage.

18 Mr. Lange.

19 MR. LANGE: Yes.

16:43 20 Q. Just as far as a general rate increase goes --  
21 and I said this in my testimony -- going from a  
22 connected customer right now -- 503 customers -- to an  
23 ERU system of 400 and some, is kind of like changing  
24 horses midstream, so to speak. I think that stands in  
16:43 25 the way of actually even approving an interim rate case

16:43 1 as far as a general rate case goes. And I think it's  
2 very difficult. All those things have to be figured out  
3 before you could even impose an interim rate. But as  
4 far as the tank goes, that is definitely number one on  
16:43 5 my list. It's number one on Red Pine's list. And I  
6 believe it's number one on the other HOAs too.

7 And customer base as a whole, that needs to be  
8 addressed. I think that the settlement thing -- a  
9 settlement has to be done prior to an approval and we  
16:44 10 should work out some kind of a settlement. But this  
11 thing needs to be funded and to go forward forthwith, as  
12 quickly as possible.

13 THE HEARING OFFICER: Ms. Miller.

14 MS. MILLER: Okay. So Hidden Creek understands and  
16:44 15 supports a need for immediate replacement of the storage  
16 tank, and I personally support the construction in the  
17 Bowen & Collins' study. We don't expect a free ride,  
18 but we do need to reach a reasonable monthly payment  
19 plan. And I would support entering into a settlement  
16:44 20 agreement if we could get a monthly rate over 12 to 18  
21 months that is reasonable.

22 THE HEARING OFFICER: Thank you.

23 Mr. Atwater, as the applicant I'll offer you the  
24 last word if you want to exercise it.

16:45 25 MR. ATWATER: I think I will. Just one minute if I

16:45 1 may.

2 Again I want to thank everybody for participating  
3 in the process, but I am troubled by the fact that there  
4 is a lot of discussion about the company ignoring duties  
16:45 5 and that it's the only duty and the only issue that the  
6 Commission is balancing.

7 I believe the record is very clear that the company  
8 has gone well above and beyond its duty, and that  
9 everyone needs to remember that the pecuniary and  
16:45 10 financial interests of the company are paramount. If  
11 the company cannot pay its bills independent of its  
12 affiliates, it cannot be forced to do so by the  
13 Commission. That's a constitutional right. And I just  
14 want that to be very clear for everybody, that there is  
16:45 15 a balancing act. It's not one-sided. And that is --  
16 it's extremely important. None of us can be forced to  
17 give up our own property rights. That's the liberty of  
18 living in this country, and it's certainly applicable in  
19 this case. Thanks.

16:46 20 THE HEARING OFFICER: Thank you, Mr. Atwater. If  
21 there is nothing from anyone else, we are adjourned.

22 MS. SCHMID: Thank you.

23 MR. ATWATER: Thank you.

24 MR. SAVAGE: Thank you.

16:46 25 MR. LANGE: Thank you.



16:46

1 (The proceedings concluded at 4:46 p.m.)

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1 STATE OF CALIFORNIA ) ss

2

3 I, Amanda M. Murray, CSR 8981, RPR, do hereby  
4 declare:

5

6 That the above foregoing \_\_\_\_\_

7 ( ) pages contain a full, true and correct  
8 transcription of the proceedings.

9

10 I further declare that I have no interest in the  
11 event of the action.

12

13 I declare under penalty of perjury under the laws  
14 of the State of Utah that the foregoing is true and  
15 correct.

16

17 WITNESS my hand this 31st day of  
18 October, 2017.

19

20

21



\_\_\_\_\_  
Amanda M. Murray, CSR 8981, RPR

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|  |  |   |   |   |
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