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1 THE CLERK: All rise. Court is in session. Please
2 be seated.

3 THE COURT: Good morning.

4 MR. KILPATRICK: Good morning.

5 THE CLERK: Calling Case Number 14-4732, Lyda, et
6 al., versus City of Detroit, Michigan.

7 THE COURT: Is everyone present who needs to be
8 present?

9 MS. JENNINGS: Yes, your Honor, at this time.

10 THE COURT: Okay.

11 MS. JENNINGS: We're actually making copies of other
12 things.

13 THE COURT: Okay. All right. So we can go ahead
14 with our --

15 MS. JENNINGS: Yes, you may.

16 THE COURT: -- go ahead with our TV watching? You
17 can start the video -- thank you -- or restart.

18 (Video deposition of Eric P. Rothstein played as
19 follows:)

20 "Q And that includes some of your ideas in it?

21 A Yes.

22 Q That includes your ideas. And I know I didn't give you a
23 long time to look at it, but have your ideas about the best
24 practices changed since this time?

25 A No.

1 Q Okay. All right. One minute. You had a chance to
2 review the collection practices of the rules of the city of
3 the DWSD; is that correct?

4 A In very general terms.

5 Q All right. And you believe those are consistent with
6 those of most other cities.

7 A Generally, yes.

8 Q Do you think the ten-day notice period in the rules for a
9 shutoff is sufficient?

10 A It's certainly not inconsistent with what you see in
11 other communities.

12 Q Okay. Do you know -- can you name any other communities
13 have a ten-day shutoff rule?

14 A I can't. That's not really the area of -- a great area
15 of specialty for me, the specific rules --

16 Q And do you know if there --

17 THE COURT REPORTER: I'm sorry. I didn't get the
18 answer.

19 MR. THORNBLADH: My -- okay.

20 THE WITNESS: That is not an area of specific
21 expertise for me. I don't typically help in drafting of
22 customer service rules.

23 BY MR. THORNBLADH:

24 Q And do you even know if they're following their own
25 rules?

1 MR. O'BRIEN: Is it clear who "they" are?

2 MR. THORNBLADH: All right. Well, the proper noun,
3 which I had used right before I said "they" was Detroit
4 Water -- I said DWSD, meaning Detroit Water and Sewage
5 Department, so I'm sorry if I was misleading brother counsel.

6 BY MR. THORNBLADH:

7 Q But I meant do you know if the DWSD is following their
8 own rules?

9 A I don't know of, you know, what happens -- you know, what
10 has happened in each and every day of providing customer
11 services. I will -- I can say this, that it is -- it is not
12 uncommon for there to be individual circumstances in which
13 utility -- utilities have circumstances in which they have
14 not followed all the rule -- the customer service rules.

15 Q Right.

16 A These are rules that are implemented by individuals in
17 customer service offices in big organizations, and so my
18 experience around the country has been is that there's often
19 instances in which not all the customer service rules were
20 followed to the letter of the customer service prescriptions
21 and rules and procedures that are included in the utilities'
22 general rules and policy procedures. My understanding is
23 that here in Detroit, much like is true in most other
24 utilities, that utility management has -- is making an effort
25 to try to help ensure that the rules -- customer service

1 rules are abided by and are followed.

2 Q Okay. Now, you favor water affordability plan; is that
3 correct?

4 A I do.

5 Q All right. And would you agree that it would take more
6 than ten days to determine if a typical household can qualify
7 for a water affordability program?

8 A Yes, but the ten-day that we're talking about is
9 something different.

10 Q Well, let me just ask the question this day. I asked you
11 if ten days were sufficient to determine if a party was
12 eligible for a water affordability program. That was my
13 question.

14 A Generally, the determination of qualification for low
15 income affordability programs is a little bit involved, and
16 it would be unsurprising that in some cases it would take
17 longer than ten days, but the ten days that we're talking
18 about with respect to shutoff notice, one can get a shutoff
19 notice essentially -- essentially deferred by applying and by
20 signing up for a payment plan.

21 Q Now, subject to proof by the plaintiffs, are you aware
22 that there are people who have been shut off after signing up
23 for water affordability programs, subject to proof by the
24 plaintiff, in the City of Detroit?

25 A I have not reviewed individual cases of shutoffs.

1 Q If then that were the case, would it be unfair for the
2 plaintiffs to ask for injunctive relief in the form of
3 stopping all shutoffs until it can be determined that
4 defendant is giving people adequate time to determine if they
5 have a defense under the rules or eligibility for water
6 affordability?

7 MR. O'BRIEN: Objection to the form of the question
8 and asking for his opinion about whether it would be fair.

9 MR. THORNBLADH: All right.

10 BY MR. THORNBLADH:

11 Q Well, can you answer the question?

12 A I don't think a moratorium on shutoffs is the mechanism
13 to -- is an appropriate mechanism to address procedural
14 issues and implementation issues associated with customer
15 service. I think there are a number of things that can and
16 are, to my understanding, being done to try to ensure that
17 those parties who are facing shutoff have every opportunity
18 to have their service restored, get on payment plans,
19 participate in low income affordability assistance, if they
20 so qualify.

21 Q Now, when you refer to those parties, would those parties
22 be entitled to a temporary injunction in order to determine
23 their eligibility?

24 A On an --

25 MR. O'BRIEN: Same objection.

1 MR. THORNBLADH: Thank you.

2 BY MR. THORNBLADH:

3 Q Can you answer the question?

4 A On an individual customer basis in seeking a relief, yes,
5 I believe so.

6 Q Okay. Now, if there's a systemic problem, would a
7 temporary moratorium be a solution?

8 A No.

9 Q If there's a systemic problem, could a temporary
10 moratorium be part of the solution?

11 A I think it would cause more problems than it would
12 assist.

13 Q All right. But, now, if there's somebody that's eligible
14 for an affordability plan and you cut off the -- and you cut
15 off the service, is that -- does that in many cases result in
16 a abandoned house, if you know?

17 A I don't know about -- about those -- about individual
18 instances of people abandoning their properties because of a
19 water shutoff.

20 Q All right. But if that were the case, shutting off the
21 water before making a determination as to eligibility for
22 water affordability would probably reduce revenue for the
23 utility? Agree or disagree?

24 A From a revenue generation perspective as well as a basic
25 customer service perspective, the best option is for the

1 utility to be able to respond to a notification from the
2 customer of problems with their -- or challenges with their
3 ability to pay their bills by getting them enrolled in a
4 payment plan and bill assistance. And to the extent that
5 there is time required to get those customers enrolled in
6 those programs, shutoffs should not be imposed on those
7 individual customers while that transactional process is
8 occurring.

9 Q Now, is it the utility's responsibility to inform the
10 public of those kinds of options you just described in your
11 last answer?

12 A I think it certainly is best management practice. I'm
13 not certain of the legal requirements to do so.

14 Q So it would be best practices to inform customers as to
15 that?

16 A Yes.

17 Q All right. Would a temporary moratorium be justified in
18 order to inform people that that -- those practices will be
19 followed?

20 A No.

21 Q Would a partial temporary moratorium be justified maybe
22 for a neighborhood or a street?

23 A If we're talking about a circumstance in which, for
24 example, consider a hypothetical of three people that are on
25 a street, all of whom face affordability challenges, then I

1 guess you could say that deferral of shutoffs for that
2 confined street would be appropriate to enable those few
3 customers to participate in the various measures for --
4 programs for assistance, but, again, I think that the notion
5 of a moratorium and, in fact, the term "moratorium" is
6 problematic insofar as it conveys to customers who are able
7 to pay their bills that there is a potential for them to be
8 able to continue to receive service, and there is a
9 moratorium on shutoffs, and they will not face the
10 consequence of nonpayment.

11 Q Now, you are aware, Mr. Rothstein, that the DWSD did
12 grant a moratorium and an extension on the moratorium?

13 A I do.

14 Q You think that was contrary to best practices?

15 A In that particular circumstance, I think that there's --
16 that it was understandable why that was done. I think there
17 maybe have been other mechanisms to accomplish the same thing
18 that may have been preferable, but in that particular
19 circumstance where there were a number of basic customer
20 service improvements that could be made to help facilitate
21 the provision of information, the access to the department to
22 be able to make application for payment plans and for
23 assistance, it is understandable that a pause may be placed.

24 Q So in some cases a pause or deferral would be
25 appropriate?

1 A In some cases, a pause and deferral is one option to look
2 at. I think there also are others.

3 Q What would the other options be?

4 A Well, while you're still providing for shutoffs that are
5 to customers that are demonstrably in a position to pay and
6 thereby don't have a systemwide moratorium, I think you could
7 look towards mechanisms towards trying to address some of
8 those logistical challenges and making it easier for those
9 customers who do face affordability concerns to be able to
10 enroll and access assistance without necessarily declaring a
11 systemwide moratorium on shutoffs.

12 Q Okay. So it might be possible in a limited fashion?

13 Yes.

14 A Yes.

15 Q I didn't hear you. Yes. Okay. All right. Oh, in the
16 industry is it regarded as an acceptable business practice to
17 knowingly maintain water service for properties that have
18 been abandoned?

19 A It would certainly not be best management practices to
20 continue services to properties that have been abandoned.

21 Q And, in fact, that's what it referred to as nonrevenue
22 water?

23 A Nonrevenue water is a broad category dealing with a whole
24 host of reasons why not all the water that is produced from
25 the water treatment plants ends up being metered and billed

1 for service.

2 Q Would the best practice for a financially distressed
3 utility be to go after the nonrevenue water in the sectors
4 that are best able to pay?

5 A Again, nonrevenue water is typically not thought of in
6 terms of a sectoral or geographic distribution, per se, so
7 nonrevenue water deals with things like water loss, but, you
8 know, nonrevenue water also is associated with water used to
9 flush water lines to ensure that they're clean and compliant
10 with utility regulations, so nonrevenue water is not a
11 geographic -- per se is not a geographically distributed
12 concept. It does -- it is best management practices to try
13 to seek to manage water losses, and, in fact, part of what
14 the Great Lakes Water Authority -- or memorandum of
15 understanding deals with is in some sense attempting to
16 address some of those water loss concerns.

17 Q You authored an article entitled "The Business Case For
18 Low Income Affordability Programs," did you not?

19 A I did.

20 Q And your opinions today, do they differ at all from what
21 you stated in that article?

22 A No.

23 Q And the principles that apply in that article you would
24 feel also apply to the Detroit Water and Sewage Department
25 today; is that correct?

1 A Yes, with an important --

2 Q I haven't asked you a question yet.

3 MR. O'BRIEN: Well, I don't think he's finished his
4 answer, counsel.

5 MR. THORNBLADH: There's a pretty big gap in time,
6 pretty big gap in time between --

7 MR. O'BRIEN: He was going to say "with an
8 important" --

9 MR. THORNBLADH: -- the answer. No. I --

10 MR. O'BRIEN: -- "with an important" -- you don't
11 want him to answer?

12 MR. THORNBLADH: No. I got the answer.

13 MR. O'BRIEN: Very well. We'll have a chance in
14 redirect if you want to do it that way.

15 MR. THORNBLADH: All right. Okay. Sorry. Okay.
16 All right. We're good.

17 MR. O'BRIEN: Okay.

18 MR. THORNBLADH: Mr. Rothstein, thank you, and, as
19 always, I enjoyed talking to you in the few times we've had
20 to talk.

21 THE WITNESS: Okay. Great.

22 MR. THORNBLADH: All right.

23 MR. O'BRIEN: I just have a couple things.

24 REDIRECT EXAMINATION

25 BY MR. O'BRIEN:

1 Q So let me give you the opportunity to finish the answer.

2 MR. THORNBLADH: Oh, wait a moment. Wait a minute.
3 Repeat the question. That's an open -- you know, it's like,
4 "What do you want to say?" That's kind of a leading
5 question.

6 MR. O'BRIEN: Counsel, you're welcome to place
7 objections on the record, but I'm asking the questions. You
8 don't direct --

9 MR. THORNBLADH: This is --

10 MR. O'BRIEN: Excuse me.

11 MR. THORNBLADH: Go ahead.

12 MR. O'BRIEN: I'm asking the questions, and you
13 don't direct the witness about whether he's to do something
14 or not or the court reporter. If you want to object, you
15 object. What's your objection, sir?

16 MR. THORNBLADH: All right. Well, excuse me, but
17 I'm going to put my objection on the record. It's like there
18 was a -- I asked the witness a question. It's in my notes.
19 I don't even recall what it was at the moment. And then the
20 witness wants to violate -- wants to -- excuse me -- wants to
21 expound on his answer after he's had a chance to answer it.
22 Maybe he didn't think that the answer would please the
23 defendant. I don't know. But I think you should repeat the
24 question before you -- before you ask it.

25 MR. O'BRIEN: All right. Your objection is noted.

1 BY MR. O'BRIEN:

2 Q Would you go ahead and provide the balance of the answer
3 to the question that was posed to you before the cross-exam
4 ended?

5 A Right. So the -- as I recall, the question was related
6 to whether the principles that I had talked about in my paper
7 on "The Business Case for Low Income Affordability" would
8 apply in Detroit in the same way that I had talked about
9 generally in my paper. I wanted to just offer the caveat
10 that the legal framework for provision of assistance and rate
11 setting in Michigan is different and imposes some additional
12 constraints on what one is able to do here in Michigan than
13 what may prevail elsewhere, for example, in places like
14 Atlanta.

15 Q In your understanding as an economist, what are those
16 restraints?

17 A Well, the two basic constraints relate to requirements
18 for rates to be reflective of the cost of providing service,
19 which basically means that, for example, an income qualified
20 rate that would provide discounts or free service for
21 customers that meet some sort of income qualification would
22 be prohibited because those customers basically impose the
23 same types of costs as other customers who may be able to
24 have higher incomes but receive the same levels of service.

25 The second of the major constraints, as I understand

1 it, relates to basically public provision of financial
2 benefit in the form of things like assistance, no assistance.

3 Q And, finally, just to be clear on terms that are being
4 used, under the general topic of measures of assistance for
5 people that have income and payment challenges, can we put
6 under that broad category customer service such as payment
7 plans or the \$2 million fund that's been testified to?

8 A Yes.

9 Q All right. And separate from that, do we have the
10 affordability programs, which are programs outside of the
11 department that may provide revenue to customers to pay their
12 bills?

13 A Yes.

14 MR. O'BRIEN: Very well. That's all I have.

15 RE-CROSS-EXAMINATION

16 BY MR. THORNBLADH:

17 Q In the answer that you gave to the last question, does
18 part of your information come from the public appearance of
19 Mr. Latimer?

20 A No.

21 Q In your answer to the last question. Okay. Just to tie
22 up a loose end from before, do you know if Mr. Latimer was
23 speaking at a Water Commission meeting or at a city council
24 meeting?

25 A I've seen him speak at the Board of Water Commission.

1 Q Okay. Have you seen him speak at the city council?

2 A No.

3 MR. THORNBLADH: Okay. Thank you.

4 MR. O'BRIEN: I think we're good.

5 MR. THORNBLADH: We're good.

6 VIDEOGRAPHER: We're going off the record. It is
7 1:28 p.m."

8 (Video deposition concluded)

9 THE COURT: All right. We'll deal with the three
10 objections that were made in the deposition or the part of
11 the deposition that we heard today. There were two similar
12 objections at the 1:12, 1:13 time dealing with the form of
13 questions. Both of the questions to which objections were
14 stated dealt with the fairness or appropriateness of an
15 injunction. The Court will sustain those objections as
16 beyond the expertise of the witness. Finally, there was an
17 objection at the beginning of redirect at about 1:23, 1:24 to
18 the open-ended question about finishing a prior answer. The
19 Court concludes that in the context it was clear enough both
20 to the witness and to the Court what the question related to,
21 although it was as broad as it was. Accordingly, the Court
22 will overrule that objection.

23 MS. MITHANI: Your Honor, we call our next witness,
24 Alexis Wiley.

25 THE COURT: Step forward. Over here is fine.

1 Please raise your right hand.

2 ALEXIS WILEY, CITY'S WITNESS, SWORN

3 THE COURT: Please sit down.

4 DIRECT EXAMINATION

5 BY MS. MITHANI:

6 Q Good morning, Ms. Wiley. How are you today?

7 A I'm good. Good morning.

8 Q Good morning. Could you state and spell your name for
9 the record, please?

10 A Alexis Wiley, A-l-e-x-i-s, Wiley, W-i-l-e-y.

11 Q And could you give us a brief description of your
12 educational background, please?

13 A I have a journalism degree from the Medill School of
14 Journalism at Northwestern University.

15 Q And where are you currently employed?

16 A I work for the City of Detroit in the Mayor's Office.

17 Q And what is your current position?

18 A I am the chief of staff.

19 Q And what are your responsibilities as the mayor's chief
20 of staff?

21 A My responsibility is to really oversee the office and key
22 initiatives and work on making sure that we have synergy
23 between all the different departments, and we're working to
24 implement the mayor's agenda.

25 Q And you're aware that at some point the emergency manager

1 transferred responsibilities for DWSD to the mayor; correct?

2 A Yes.

3 Q When that happened, what, if anything, did you do after
4 the transfer of those responsibilities?

5 A The mayor tasked me with pulling together a team and
6 going to the water department and coming up with a plan to
7 really address the needs of our citizens and to really right-
8 size the situation.

9 Q Okay. So what did you do to put together that plan?

10 A So what we did was -- I'm sorry -- we pulled together a
11 team of people in our mayor's office and many with different
12 kinds of expertise, so finance expertise, social service
13 expertise, and we all just dove in, and we went -- first step
14 was we worked with the leadership at the water department, so
15 we met with Sue McCormick and Bill Wolfson and Darryl
16 Latimer. And then after that, we went into, you know, full
17 mode where we went to each of the customer service centers.
18 We met with the customer service reps to talk to them about
19 what they were seeing and what were some of the issues. We
20 met with customers and just informally. No one was expecting
21 us, but we spent every single day there. And within a matter
22 of hours of the mayor tasking us with this, we went right
23 into the centers and went right into action.

24 THE COURT: When was this, ma'am?

25 THE WITNESS: This was on Tuesday, July 29th, in the

1 morning.

2 BY MS. MITHANI:

3 Q You mentioned that you met with the customers. What did
4 you learn from your meetings with the customers?

5 A Well, I personally spoke with a number of customers, and
6 what they were telling us was that, you know -- there were
7 actually a lot of seniors, and they were saying that they
8 were having a hard time paying their bills and that they --
9 that there were a number of barriers in terms of what it took
10 to actually -- if you were to come in and you wanted to
11 pay -- take responsibility for a water bill, you often needed
12 more than just your ID. You'd have to bring in other
13 documentation. And we had some people who even said that --
14 let's say they had an elderly family member and they wanted
15 to take action and enter into a payment plan for them. They
16 had a hard time doing it. And what we did was we took
17 everything that we learned and used that to formulate a plan.

18 Q And what were some of the things that you did in response
19 to what you learned and what you heard about these obstacles?

20 A Well, we built the ten-point plan, so what we did was we
21 said, you know, if you want to come in and take
22 responsibility for a bill, all you need to do is bring in a
23 valid ID. Then we said that we were really cutting red tape,
24 and we expanded hours at our customer service centers. We
25 added more customer service reps. What we did was we found

1 temporary staffing who could come in and just be tellers, but
2 we took the more experienced people so that we had more
3 people with DWSD experience who could directly interface with
4 the customers.

5 Q And why did you do that? Why did you pick the people who
6 were more experienced to interface directly with customers?

7 A Because we knew that there were some complicated
8 situations, and we also knew -- one big challenge we had was
9 that there were -- people didn't have a clear understanding
10 of what it took to enter into a payment plan, for one, so we
11 knew that, you know, the standard was 30 percent, but
12 sometimes we talk in terms of what you had to put down to
13 enter into a payment plan, but we had a number of customers
14 who said 30 percent was still too much for them, so we took
15 it from 30 percent to 10 percent and then made sure that we
16 trained every single one of our staff members so that they
17 all understood that this was the standard, so they knew that
18 it was ten percent to enter into a payment plan. And we gave
19 them 24 months to actually pay, to get on top of their
20 arrearage.

21 Q So these are formal terms?

22 A Absolutely.

23 Q And why pick ten percent?

24 A Well, what we did was we really did some analysis with
25 our -- in terms of the financial data, and we figured out

1 that the average arrearage was about \$540, and we knew that
2 ten percent was a little bit more approachable for people.
3 We actually talked to people in the centers and told them --
4 asked them what they thought about it. The vast majority
5 told us, yeah, that made sense, "I could do ten percent," so
6 that's how we came at that number.

7 Q Now, you mentioned that you also met with social services
8 groups?

9 A Yes. So day one was where we really went into the
10 customer service centers, but the day after we brought a
11 number of customer service -- excuse me -- of social service
12 agencies together to also kind of figure out what's really
13 happening, what are they hearing, so we brought together a
14 group of United Way, THAW, WAVE, the Wayne County Department
15 of Human Services. We also had the Michigan Community
16 Health Endowment Fund involved. We had state
17 representatives. We had Wayne Metro. And we said, "What are
18 you hearing from the customers that you serve?" And they
19 were telling us about some of the different barriers even for
20 how some of the programs worked in terms of, you know, that
21 there were a number of different assistance programs, but
22 money was getting low, and everyone needed like a clear path,
23 a clear fund that they could really kind of point people to,
24 and -- you know, because we really wanted to make sure that
25 we had a complete understanding of what was happening. And,

1 you know, really working with Wayne County Department of
2 Human Services was really important for us as well because we
3 wanted to know -- you know, we were hearing these stories
4 of -- you know, foundation partners were coming to us saying,
5 "Hey, is this true?" you know, things about children being
6 taken out of homes because of water loss in homes. When we
7 went to the state and to Wayne County, they told us that
8 there's not a single instance of a child being taken out of a
9 home because of -- because there was no water because when
10 you look at what Wayne County does, they have resources that
11 they connect people to, so they have the resources to help
12 you turn your water back on. So they've been really -- so we
13 really have been working very closely with all our social
14 service partners.

15 Q So what was the city's response then in terms of what you
16 learned from the social service partners?

17 A We used that data to really help inform our plan and then
18 also to build the Detroit Water Fund.

19 Q And what is the Detroit Water Fund?

20 A The Detroit Water Fund is a fund that is designed to help
21 people stay on top of their bills because what we found out
22 was that it wasn't enough to just give someone a lump amount
23 of money at the beginning of -- you know, just one lump sum.
24 They needed consistent assistance, so what we did was we took
25 customers who were 150 percent -- and just to let you know,

1 we worked very closely with United Way and then also modeled
2 some aspects of the program with the DTE LSP plan, and we
3 took customers who were 150 percent of the federal poverty
4 line who had arrearages between 300 and a thousand dollars
5 and then had average water usage for the size of their homes,
6 their family, and came up with a program that would allow
7 them to -- where we would pay 25 percent of both their
8 current bill and their arrearage for up to 12 months so that
9 we could really help them get out of the situation that they
10 were in and give them an opportunity to stay on top of both
11 their current bill and their past due bill.

12 Q And how much money is in the fund?

13 A So it was about a little more than \$2 million, and right
14 now I'd say we're about 1.7 million.

15 Q And what's the source of that funding?

16 A The source of that funding is -- there are multiple
17 sources. United Way made a donation. The General Motors
18 Foundation made a donation. We also had a -- the most
19 sizeable chunk of it, the two million, came from the Michigan
20 Health Endowment Fund, which is funded by -- well, I won't
21 get into that, but it is the Michigan Health Endowment Fund.

22 Q And is the mayor's office continuing to look for sources
23 of funding for the Detroit Water Fund?

24 A Absolutely. In fact, the mayor is at a fund-raiser right
25 now that WAVE is having, a golf outing, and we have -- the

1 United Way made it very easy for people to give. You can
2 text to give. You can donate on line. You can send in a
3 check. So there's so many avenues for people to really offer
4 assistance.

5 Q What is WAVE? You mentioned WAVE.

6 A So WAVE is a water affordability program that's been in
7 existence for a very long time, and they fund-raise and have
8 for a long time raised money to help people who were having
9 trouble keeping their water on.

10 Q And are there any other potential affordability funds on
11 the horizon for these low income individuals that you've been
12 looking to help?

13 A Oh, absolutely. For one, as I said, the fund-raising is
14 continuing, but as we're moving into the potential of the
15 Great Lakes Water Authority, that will create a water
16 affordability, I guess you'd say, pot of money of more than
17 \$4 million that will be there every single year and is
18 expected to grow over the years so that we can really meet
19 the needs of the community.

20 Q And then in your meetings, did you ever meet with any of
21 the plaintiff's groups that are here today?

22 A I did. I met with We the People. We met with Michigan
23 Welfare Rights. The Water Brigade, I don't quite know if
24 they are a plaintiff in this, but the Water Brigade was
25 present in the meeting and the Sierra Club, and what we did

1 was we said we want to talk with you about our plan and show
2 you what we have, and we asked them if they had any customers
3 that they wanted us to really -- wanted to direct us to who
4 are truly in need that they had complete access to us, and
5 anything that they needed in terms of connecting customers to
6 resources to help them get their water turned on, we were
7 willing to provide it.

8 Q Could you do me a favor and turn to the black binder,
9 turn to the tab that's numbered Number 2?

10 A Okay. Oops, sorry. Apologize.

11 Q So you have in front of you what's been premarked for
12 identification as Exhibit 2, and you'll see that it's
13 actually on the screen in front of you as well. Do you
14 recognize Exhibit 2?

15 A Yes, I do.

16 Q I'll wait for you to catch up.

17 A I'm sorry.

18 Q No. That's okay. And just so we're clear, do you
19 recognize Exhibit 2?

20 A Yes, I do.

21 Q And what is Exhibit 2?

22 A This is the explanation of the ten-point plan. We
23 distributed this to all our community groups, to our district
24 managers, to our city council, and they were available in
25 every single DWSD customer care center and on the Detroit

1 city website and the water department's website.

2 Q And what, if any, involvement did you have in creating
3 Exhibit 2?

4 A I helped develop it.

5 Q And does Exhibit 2 reflect the activities of DWSD in the
6 city?

7 A Yes, it does.

8 Q And it's been published in the city's website, as you
9 said; correct?

10 A Yes.

11 Q Okay.

12 MS. MITHANI: Your Honor, at this time, we move to
13 admit Exhibit 2 in evidence.

14 THE COURT: Any objections?

15 MS. JENNINGS: I have no objection, your Honor.

16 THE COURT: It is admitted.

17 (City Exhibit 2 received at 9:36 a.m.)

18 BY MS. MITHANI:

19 Q And then if you could, could you please turn to Tab 8 in
20 your binder? We're showing you what's been marked for --
21 premarked for identification as Exhibit 8. Do you recognize
22 Exhibit 8?

23 A I do.

24 Q And then can you tell us what Exhibit 8 is?

25 A This is the explanation of the 10/30/50 plan, and what we

1 wanted to do was make sure that people understood what the
2 plan was and that we were clearly explaining it, so we've
3 given it -- we distributed it all over the place, so 10/30/50
4 is basically to get into a payment plan, all you have to do
5 is put ten percent of your past due balance down, and you're
6 enrolled. Your arrearage is spread out over 24 months. Now,
7 if you miss a payment, then you have to put down 30 percent
8 of the outstanding balance, and -- but, again, you still have
9 that same 24-month period, and then it goes up to 50. We
10 felt that it was really key to build a program that was
11 really kind of holistic and helped people get on top of their
12 bills but also made it clear that you really have to make it
13 a priority to stay on top of this.

14 Q Is there discretion to deviate from this plan?

15 A Yes, yes. We gave -- we met with the customer service
16 reps and the directors of the centers and trained them and
17 made it clear that if there's somebody who has an extenuating
18 circumstance or something weird going on and you think
19 there's some real questions here, you do have some discretion
20 in terms of how you process that because the end goal is to
21 really help the customer.

22 Q And do you know if Exhibit Number 8 has been made
23 available to the public?

24 A Yes.

25 Q And explain to me how it's been made available to the

1 public?

2 A Again, this was distributed in the website -- or excuse
3 me -- on our websites and in the centers, and we also took
4 this and created a -- I would call it a package, but
5 something that would run on our cable channel and on our You
6 Tube channel that people could see so people could see what
7 the payment plan was so that there was a clear understanding.
8 And, in fact, when we were out talking with customers during
9 the Water Fair, people were quoting 10/30/50, so it was
10 getting out there.

11 Q And this 10/30/50 plan, that's part of the city and
12 DWSD's activities?

13 A Yes.

14 Q And what involvement, if any, did you have in creating
15 Exhibit 8?

16 A I helped develop it.

17 Q All right.

18 MS. MITHANI: Your Honor, I move to admit Exhibit 8
19 in evidence at this time.

20 MS. JENNINGS: No objection, your Honor.

21 THE COURT: It is admitted.

22 (City Exhibit 8 received at 9:39 a.m.)

23 BY MS. MITHANI:

24 Q And, finally, could you turn to Exhibit 9 in your book?
25 You're taking a look at what's been premarked for

1 identification as Exhibit 9. Do you recognize Exhibit 9?

2 A I do.

3 Q And tell us what Exhibit 9 is.

4 A So Exhibit 9, again, is an explanation for the public of
5 the Detroit Water Fund, and this was really what we used to
6 help people, one, understand the core purpose of the fund but
7 also ways you can donate to help people, so it was what we
8 developed with the United Way and also in consultation with
9 our other community partners in terms of helping them -- I
10 guess ways that we can really reach people.

11 Q And so who's the intended audience of Exhibit 9?

12 A I would say that this has dual audiences. I think that
13 it's both the customers who are in need because it's also
14 approachable. We wanted people to feel like they had -- like
15 there was a clear place for you to go and there was a clear
16 resource for you and that there was no shame in you needing
17 assistance, so it's designed so it's approachable but also as
18 a way for people who want to get involved to really make
19 donations and offer -- you know, do their part to really
20 offer assistance.

21 Q And do you know if Exhibit 9 has been made available to
22 the public?

23 A Yes, it has.

24 Q And how has it been made available to the public?

25 A At the different DWSD customer care centers, at -- on our

1 website, Facebook. It's been all over the place, and on the
2 United -- United Way has also distributed it themselves.

3 Q And is securing money for this fund part of DWSD and the
4 city's regular activities?

5 A Absolutely.

6 Q And what, if any, involvement did you have in creating
7 Exhibit 9?

8 A I helped develop the fund and develop the promotional
9 material.

10 MS. MITHANI: Your Honor, we move to admit Exhibit 9
11 in evidence at this time.

12 MS. JENNINGS: No objection, your Honor.

13 THE COURT: It is admitted.

14 (City Exhibit 9 received at 9:41 a.m.)

15 BY MS. MITHANI:

16 Q How much time have you spent working on the ten-point
17 plan?

18 A It was literally from the moment that the mayor said,
19 "Alexis, this is what you're going to be doing," I've worked
20 24/7 on it, and it took us -- our whole team did it. I mean
21 we had so many different people with all different kinds of
22 expertise, so IT, customer service, social service. I mean
23 the United Way and I worked like this, and we all worked
24 through the night developing a funding formula, looking at
25 our customer base, trying to figure out how best we can

1 really help people, and, you know, it took us -- I mean it
2 literally was -- we worked really hard on it, and I think
3 that we've really been able to reach a lot of people.

4 Q So now that you had the ten-point plan, what are the next
5 steps?

6 A Well, you know, the next steps for us is really working
7 the ten-point plan, so every day I get data from our
8 different customer care centers that tells me how many people
9 came in, how many people entered into payment plans, what's
10 our numbers in terms of enrollment in the Detroit Water Fund,
11 what are our wait times when it comes to our call center, so
12 everything that we implemented we're measuring to determine
13 really the value of it. And, you know, I've been getting a
14 lot of data from the United Way. That's been really, really
15 helpful.

16 Q So during this hearing, we've heard much testimony about
17 what low income customers need DWSD to do to help them. What
18 does the city need from its low income customers to be able
19 to help them more?

20 A We need our customers to come forward. Tell us that you
21 have a situation. Tell us that you have a problem. And we
22 even need -- we need our advocacy groups to actually bring
23 people. You know, one of the things that I asked when we had
24 our meeting when I met with some of the members of the
25 People's Water Board, I said -- I cited all these cases, and

1 I said, "You know what? Even before -- one, let's work to
2 organize a group of people to come down to the Water Fair to
3 get assistance, but even if you don't want to do that," a few
4 days before, I said, "let's maybe Thursday if you want to
5 bring a group of people to one of our customer care centers,
6 I'll make sure that we have enough staff, that we've got
7 appointments set up, and that we're able to really deal with
8 each individual case," and I never got anything.

9 Q Based on your meetings with the groups and the data that
10 you're receiving and the investigations that you're taking
11 post the creation of the ten-point plan, do you believe the
12 ten-point plan is working?

13 A Absolutely.

14 Q What's your basis for saying that?

15 A So, one, you look at how many people are now on payment
16 plans. We have, you know, 30,000 that have gotten into
17 payment plans. We have more than 300 people within just a
18 few weeks that have gotten assistance from the Detroit Water
19 Fund, so their water shutoffs have been halted. And then
20 I've been getting data from United Way, and what they saw
21 was -- with their 211 system they track the purpose of each
22 call, and their calls for water assistance -- in August they
23 received about a thousand calls, but this month they're down
24 to about 300.

25 Q And what do you think that means?

1 A That means that we're reaching people, that they
2 understand that there's assistance, and that we've changed
3 our model so that we have systems in place to really be able
4 to help our citizens and help them get on top of their water
5 bills and keep their water on because that's all we've wanted
6 to do from the very beginning.

7 MS. MITHANI: I have no further questions, your
8 Honor.

9 CROSS-EXAMINATION

10 BY MS. JENNINGS:

11 Q Good morning, Ms. Wiley.

12 A Good morning.

13 Q I think I met you in the hallway.

14 A Yes.

15 Q Is DW -- Detroit Water and Sewerage Department still
16 cutting off or shutting off water for its residents?

17 A They still engage in shutoffs, yes.

18 Q Okay. And is that at the level of 350 to 400 per day?

19 A That number -- you know what? I'd defer to the experts
20 at DWSD.

21 Q Do you know if it's several hundred a day?

22 A I would assume that your number is fairly close, yes.

23 Q Why is it if your plan is so successful that there's
24 still 350 to 400 people a day being shut off, Ms. Wiley?

25 A Well, you know, I can't speculate, but I can also say

1 that they were shutting off far more before that, and we've
2 clearly reached a huge chunk of people, so I think that we
3 keep working and we keep reaching more people to halt -- to
4 help them get on top of their bills, those who want to.

5 Q And isn't it true that if there was a temporary
6 moratorium for people, let's say just for six months through
7 these winter months for the most part, that would give DWSD
8 as well as the mayor the opportunity to saturate the group of
9 people that would be involved? For instance, you could take
10 the list of shutoffs that Homrich Wrecking is using to do
11 shutoffs, and you could do outreach, couldn't you?

12 MS. MITHANI: Objection. Speculation.

13 THE COURT: Well, it was --

14 MS. JENNINGS: Hypothetical, your Honor.

15 MS. MITHANI: Objection. Hypothetical.

16 THE COURT: Okay. It was more than one question.

17 MS. JENNINGS: Okay. I will make it --

18 THE COURT: And I'm going to ask you to try to be as
19 specific as you can with your one question at a time.

20 MS. JENNINGS: Very well, your Honor.

21 BY MS. JENNINGS:

22 Q Ms. Wiley, is it true that if there was a temporary
23 moratorium for six months, the 350 to 400 people who are
24 being shut off every day, you could take a list of those
25 shutoffs and you could do specific outreach to those

1 candidates who are scheduled to be shut off?

2 A I wouldn't agree with that.

3 Q Okay. All right. That's fair. That's fine. I don't
4 know if it's fair. Have you ever done any medical assessment
5 yourself in terms of reaching out to the Health Department
6 and making a determination as to whether having thousands of
7 homes without water presents any kind of medical risk to the
8 citizens?

9 A I did reach out to our Health Department, and -- to get a
10 real assessment of the situation, and they checked with local
11 hospitals, and they found that there was no health crisis
12 happening at the moment.

13 Q And did you do that before the flu season started?

14 A When is flu season? When does it --

15 Q Somewhere around now.

16 A I would say that it was before now.

17 Q Okay. All right. And do you have a report of that
18 medical assessment that was done by the Health Department?

19 A No, I do not have a report of that.

20 Q Was that client-specific in terms of going to homes where
21 water had been shut off?

22 A I can't speak to that.

23 Q Okay. Now, the ten-point plan for Detroiters, is that
24 based then on financial need, a financial needs assessment?

25 A Well, I mean what we did look at was our customer base

1 that was behind on their bills, what was the average, and
2 then we looked at, of course, the numbers of need in our
3 community, so that's how we really judged it based on the
4 data.

5 Q Let me ask you a more specific question. Is it per
6 individual assessments that are being done? In other words,
7 someone is going to be shut off. They come to DWSD. Their
8 own financial situation is evaluated.

9 A Well, for the assistance with the water fund, they have
10 to meet certain guidelines when it comes to income, so that's
11 really where we -- in terms of giving assistance, we look at
12 your income.

13 Q Okay. So is it true that if someone gets a shutoff
14 notice and they have an affordability plan, they can go to
15 DWSD and their water will not be shut off?

16 MS. MITHANI: Objection. Hypothetical.

17 THE COURT: Objection what, please?

18 MS. MITHANI: Hypothetical.

19 THE COURT: Overruled. Please answer.

20 THE WITNESS: Okay. Can you repeat again because I
21 was trying to follow you through?

22 BY MS. JENNINGS:

23 Q Okay. If a person gets a shutoff notice, the water --
24 let's say they've got the door hanger.

25 A Um-hmm.

1 Q Can they go to DWSD and say, "I can't pay it. I don't
2 have the money. Please don't shut my water off," and,
3 indeed, will that water not be shut off until the person has
4 gone through the evaluative process?

5 A Yes. I mean if someone is on a payment plan and they
6 come in and they have a shutoff notice and they say, "I can't
7 pay for this. I'd like to apply for assistance from the
8 Detroit Water Fund," they can apply for assistance, and as --
9 the minute you apply, your shutoff is halted.

10 Q Okay. And where is that? Where is that in a policy or
11 procedural manual?

12 A It has been absolutely communicated to all our customer
13 service reps because they're the ones who process customers.

14 Q All right. Now, is there a comprehensive cohesive
15 collection of rules and regulations for the DWSD as we stand
16 here today or I stand and you sit?

17 A In terms of what we created and the guidelines --

18 Q Please listen to my question.

19 A Okay.

20 Q Is there a comprehensive plan or set of -- strike that --
21 policies and procedures that outline the rules and
22 regulations that govern DWSD?

23 A You'd have to direct that question to a DWSD
24 representative.

25 Q So is there anywhere a person who works for DWSD can

1 go --

2 A Right.

3 Q -- and pick up a manual and say these are the rules for
4 DWSD, and we can offer -- if someone is being shut off and
5 they need to not be shut off --

6 A Right.

7 Q -- there's a form we can give them, they can fill it out
8 and --

9 A Well, based on what we --

10 MS. MITHANI: Objection. Foundation.

11 MS. JENNINGS: Okay.

12 THE COURT: Overruled, but, ma'am, you need to wait
13 for the end of the question.

14 THE WITNESS: I apologize.

15 THE COURT: I know you're eager.

16 THE WITNESS: I'm sorry.

17 BY MS. JENNINGS:

18 Q Yeah. You should probably wait. But is it true then
19 that they could fill out a form and that would abate or hold
20 in abeyance their shutoff?

21 A Yes.

22 Q Okay. There's a form at DWSD that could allow that?

23 A Once you process someone for assistance, so that's done
24 on -- that's done through like their computers.

25 Q And so where is the policy and procedural manual?

1 A So the policy and procedure, we created a training manual
2 essentially with like just -- just outlining what people
3 should do and -- in terms of our staff, and that was
4 developed by our team that went down and trained with the
5 DWSD customer care reps.

6 Q Does that have everything in it, including the interim
7 collection and rules? Have you ever seen that?

8 A I don't know.

9 Q Have you ever seen this, Exhibit 120?

10 A No.

11 Q So when you were creating the ten-point plan, you didn't
12 know what rules and regulations already existed with DWSD?

13 A I learned about them based on the information I gathered
14 from the director, deputy director, CFO, and COO.

15 Q But you've never read these yourself?

16 A I've never read those myself.

17 Q Do you know if the ten-point plan contradicts anything in
18 the interim collection and procedures guidelines?

19 A I do not.

20 Q Okay. Do you know if this is still on DWSD's website,
21 the Exhibit 120, the interim collection rules and procedures?

22 A I do not.

23 Q Do you know when there will be a comprehensive handbook
24 for DWSD? When will we get it?

25 A I mean I couldn't speak to that.

1 Q Okay. Let me come back to your answer a moment ago. You
2 said that internally the trainers -- the folks were trained
3 to tell people certain things, but has there been any news
4 flash or mailing directly to the homes of the customers that
5 say if you get a shutoff notice, you cannot get your water
6 shut off if you go down and fill out a form for your
7 financial condition. When did that go to the customers?

8 A I'm not sure. I'm not sure, and I don't want to say
9 anything that might not be accurate.

10 Q It really didn't yet go to the customers, did it?

11 A I mean it went to the customers in terms of it's on the
12 door hangers that we provided, that we created. It's on the
13 past due bills. There's also a new document that we sent out
14 to customers letting them know that if they're in danger of
15 shutoff, they can help -- they can help themselves by coming
16 to us and here are the different avenues.

17 Q Okay. But they're not -- there's nothing that tells them
18 in plain language in a meaningful way if you have an
19 affordability issue and you're about to be shut off, you can
20 come to DWSD and stop that shutoff by filing for a plan
21 that's based on your finances?

22 A There are documents that do that, yes.

23 Q Okay. And which ones would you point to?

24 A I would point to the door hanger. I would point to the
25 shutoff notices. I would point to the -- there's a number of

1 collateral, and I don't have it all here, that was created
2 that is directly designed for our customers.

3 Q Okay. Now, I'm looking at the door hanger, which is
4 Exhibit Number 7.

5 A Okay.

6 Q Do you have it there?

7 A Yeah, I should.

8 Q Okay. And is there anything here that says your water
9 won't be shut off if you come in and put an application in
10 for affordability issues?

11 A It just says help is available to help you pay your bill
12 and keep your water on.

13 Q Okay. So help is available, but there's no specifics on
14 how you trigger an application that will stop the water
15 shutoff; correct? Correct?

16 A Nothing specific on this, no.

17 Q Okay. All right. And Mr. Wolfson, who we understand is
18 writing the policies and procedures, he's not finished
19 writing them yet, is he?

20 A I couldn't speak to that.

21 Q So you're not working with him to make sure there's a
22 timeline for getting a full set of policies and procedures
23 for DWSD?

24 A I work with him on a number of different things, and
25 we -- you know, he's really responsible for managing his

1 own -- the timeline for finishing things up.

2 Q As we sit here today, Ms. Wiley, or I'm standing, of the
3 40-something thousand homes, the residence where people live,
4 can you tell me how many of those folks who were shut off are
5 still shut off?

6 A I can't because one other issue with you quoting 40,000
7 residence where people live is there's issues with whether
8 some are abandoned properties, whether -- that data has to be
9 further distilled, so I can't say there are 40,000 residence
10 with people living in them.

11 Q So even as you sit here today, you do not know the full
12 extent of this problem, whether it's a small problem or it's
13 a bigger problem?

14 A We know, based on a number of different factors, in terms
15 of how many people we're reaching and how many people we
16 still need to reach, so I would say we have a fairly good
17 handle on this.

18 Q How many people are living in Detroit without water in
19 their homes, Ms. Wiley?

20 A I couldn't say --

21 Q You don't know.

22 A -- exactly.

23 Q You don't know, do you?

24 A I don't know the exact number.

25 Q And you don't know how many people are children, do you,

1 that are living in homes without water, do you?

2 A No.

3 Q There's been no assessment by the mayor or DWSD to make
4 that determination, has there?

5 A Not directly.

6 Q Okay. Or indirectly, have they?

7 A We rely on our partners who do their own analysis of the
8 community who are social service agencies.

9 Q Well, Homrich Wrecking is not doing anything to determine
10 whether or not there's an inhabitant with children, are they?

11 A I can't speak to what Homrich is doing.

12 Q Have you looked at any of their techniques?

13 A Just -- no.

14 Q You're aware they're putting blue paint in front of
15 people's homes as well as on the sidewalk, aren't you?

16 A I can't really speak to that.

17 Q How many future shutoffs are planned in the next year?

18 A That's all based on how many people pay their bills and
19 how many residence are vacated. I can't speak to that.

20 Q Okay. And at this point in time, are there homes where
21 there are shutoffs where there's no computers so people can't
22 go to DWSD's website? Are these homes without computers?

23 A I'd assume there are plenty of homes without computers.

24 Q And do you know if they're homes that don't have cable TV
25 despite the rumors?

1 A I assume there are homes without cable TV.

2 Q So if you didn't have a computer to look up the website
3 and you don't get cable TV, have you sent a mailing out that
4 would tell folks anything about this not -- abeyance on
5 shutoffs?

6 A About the abeyance on shutoffs?

7 Q Yes.

8 A No.

9 Q If there was abeyance on -- abeyance for shutoffs for
10 affordability plan, ASAP plan, so to speak, is that something
11 that the mayor's office would be interested in, abeyance on
12 shutoffs for --

13 A So essentially another moratorium? Is that what you're
14 saying?

15 Q -- for people who cannot afford to pay until the
16 evaluation is made?

17 A No, we would not support an extension considering that
18 Detroiters are the ones who have to pay for other Detroiters
19 who aren't paying their bills. We cannot saddle our citizens
20 with any more than what they're already dealing with.

21 Q Okay. Now, what has the mayor done to get some money in
22 here to fix some of the infrastructure issues that's being
23 poured back on Detroiters' backs?

24 A Well, for one, I mean the --

25 THE COURT: Excuse me. How is that relevant to the

1 issues before the Court?

2 MS. JENNINGS: Well, your Honor, it's relevant
3 because for the issue of the \$21 million worth of
4 foreclosures, there was testimony yesterday by the director
5 that that money goes back -- the wasted water, it all goes
6 back on our bills. It goes back on Detroiters' bills. So my
7 question, if that gets shrunk, then the bills get --
8 presumably would also be decreased, and I know I'm on limited
9 time. I'm almost wrapping up, but --

10 THE COURT: I'm going to ask you to move on
11 because --

12 MS. JENNINGS: Okay.

13 THE COURT: -- if we're going to have a hearing on
14 what it takes to fix the Detroit --

15 MS. JENNINGS: Okay.

16 THE COURT: -- water system, we're going to be here
17 a whole lot more than --

18 MS. JENNINGS: Yeah.

19 THE COURT: -- the time that we're allowed here.

20 MS. JENNINGS: All right. Thank you, your Honor.

21 BY MS. JENNINGS:

22 Q Now, the 10/50/30/50 plan is all based on the customer
23 having money, is that correct, to pay?

24 A Yes.

25 Q Okay. So if a person doesn't have any money and that's

1 the problem, 10/50/30/50 doesn't work for them, does it?

2 A Well, that's why we worked with Wayne Metro to build a
3 program where they could give up front assistance to help
4 customers who had trouble making their down payment.

5 Q And when did you roll that out to the customers, the
6 Wayne Metro part?

7 A Well, Wayne Metro has been working on this on their own,
8 but they had the backing of the mayor's office after July
9 29th when we got involved.

10 Q Please answer my question, which was what document did
11 you send to the customers, the residential customers, that
12 lets them know about this Wayne Metro?

13 A I personally --

14 Q Yes.

15 A -- did not send anything out.

16 Q Do you know if DWSD did?

17 A Wayne Metro worked with --

18 Q Okay.

19 A -- city council.

20 Q I'm sorry, ma'am.

21 A I'm sorry.

22 Q I'm on limited time.

23 A Okay.

24 Q Did DWSD send anything out?

25 MS. MITHANI: Objection. Foundation.

1 THE COURT: If she doesn't know, she can say so.

2 THE WITNESS: I don't know.

3 MS. JENNINGS: Okay. Thank you. I don't have
4 anything else.

5 MS. MITHANI: Just a couple redirect questions, your
6 Honor.

7 REDIRECT EXAMINATION

8 BY MS. MITHANI:

9 Q Could you turn to Exhibit 7 in your binder, please?

10 A Yes.

11 Q You were asked several questions about the -- about
12 Exhibit 7, correct, by Ms. Jennings?

13 A Oh, yes, yes.

14 Q Yes. What is Exhibit 7?

15 A Exhibit 7 is the shutoff door hanger that we created, and
16 what we found was that we wanted to add another layer of
17 notification for our customers, so when you are seven days
18 away from shutoff and really truly seven days away, meaning
19 that it is scheduled, a door hanger is put on your door to
20 let you know that you've got to come in and pay your bill or,
21 as it says, help is available, find help.

22 Q And what does it say specifically, if anything, about
23 avoiding water shutoff?

24 A So it says, "Help is available to help you pay your bill
25 and keep your water on. Please call 313-267-8000 immediately

1 or stop by one of our customer care centers to make payment
2 arrangements. If you do not arrange to pay your past due
3 amount, your water may be shut off."

4 Q And then what about on the flip side of the door hanger?

5 A So, "Keep the water on. DWSD has temporarily extended
6 business hours to make sure our customers have a chance to
7 sign up for payment plans to prevent shutoffs. We are also
8 opening -- temporarily opening doors on Saturday and have
9 extended our weekday hours to better serve you." And then it
10 has a list of everything -- all the different customer care
11 centers with their addresses, which are, you know, located on
12 each side of the city, and then it says, "Bring a valid ID."

13 Q And you stated that this is placed on the homes that are
14 scheduled for shutoff?

15 A Yes.

16 Q Okay. And this is every home scheduled for shutoff?

17 A Yes, yes.

18 MS. MITHANI: Okay. Nothing further, your Honor.

19 RE CROSS-EXAMINATION

20 BY MS. JENNINGS:

21 Q Is it true that WAVE has no money right now?

22 A I believe that WAVE is low on --

23 Q Zero?

24 A Yes.

25 Q Yes, they have no money; correct?

1 A They raise money for the Detroit Water Fund.

2 Q Okay. And Wayne Metro doesn't have money either, do
3 they?

4 A They have \$300,000.

5 Q Okay.

6 A And they will get more after October.

7 Q When did they get that?

8 A They had the money through the -- from what I understand,
9 they reallocated money when we talked to them so that they
10 had 300,000 additional dollars to work with customers.

11 Q But they didn't have it. They had to go and reallocate
12 it recently?

13 A They had money before.

14 Q Okay. All right. Now, is it true that the door hanger
15 and all of the things on the ten-point plan, all that was
16 developed after this lawsuit was filed on July 21st, 2014;
17 correct?

18 A Yes.

19 MS. JENNINGS: Okay. Thank you.

20 THE COURT: Stand by, please. How many customers
21 did you speak to about their difficulties in paying their
22 water bills?

23 THE WITNESS: I spoke to probably close to -- me
24 personally?

25 THE COURT: Yes.

1 THE WITNESS: Probably about like six, seven or
2 somewhere in that range in terms of the customers that I met
3 at the centers.

4 THE COURT: Among those customers, what were the two
5 or three most prevalent reasons why these customers told you
6 they were having difficulty paying their water bills?

7 THE WITNESS: Well, I'm trying to think. I think
8 the key thing that they -- that a lot of people talk to, one,
9 most of the customers that I spoke to -- a lot of them are
10 seniors, and -- oh, actually, and when you talk about the
11 people who were at the Water Fair, I would say that they
12 just -- you know, some just hadn't paid their bill. They
13 had, you know -- they maybe hadn't received a bill or there
14 were some who were just like, "I'm on a tight budget, and I
15 hadn't -- I wasn't able to pay my bill."

16 THE COURT: So some people, for whatever reason, had
17 sufficient resources to pay but didn't?

18 THE WITNESS: That's absolutely true.

19 THE COURT: Some people just didn't have the income
20 or other assets to pay the bill?

21 THE WITNESS: That's true.

22 THE COURT: In that second group, were there some
23 people for whom that inability was temporary and others for
24 whom that inability was more long-term?

25 THE WITNESS: Well, everyone had -- when I spoke

1 with people, they had -- what they reflected to me were
2 things like, "I lost my job," or, "I'm going to start a job
3 really soon," or, "I was sick," so they all pointed to
4 temporary situations. They may have been more long-term, but
5 they pointed to things like that.

6 THE COURT: The seniors on fixed income, though,
7 they would have a more long-term challenge, wouldn't they?

8 THE WITNESS: Yes.

9 THE COURT: Let's talk about them.

10 THE WITNESS: Okay.

11 THE COURT: What in your plan helps them?

12 THE WITNESS: Well, we worked with the Detroit Area
13 Agency on Aging and closely with them to talk about kind of
14 what were some of the issues. One of the things that they
15 dealt with was that 150-percent poverty level. That can
16 cover a lot of the -- not a lot of the -- I don't know the
17 number, but that covers seniors, and the Area Agency on Aging
18 felt it was sufficient because they were with us as we built
19 the plan. Another thing that we did --

20 THE COURT: I need you to answer my question.

21 THE WITNESS: I'm sorry.

22 THE COURT: What in your plan helps them?

23 THE WITNESS: I would say the Water Fund.

24 THE COURT: Okay. And tell me what that is again.

25 THE WITNESS: So the Detroit Water Fund is the fund

1 designed to help --

2 THE COURT: What is it? What is it? What is it?

3 THE WITNESS: It's an assistance fund. It's an
4 assistance program.

5 THE COURT: Okay. How does it work?

6 THE WITNESS: If a customer is 150 percent of the
7 federal poverty line or enrolled in DTE's LSP program, which
8 is an affordability program, and their bill is between 300
9 and a thousand dollars and they have average water usage,
10 they can enroll in the program, and they essentially enter
11 into the 10/50/30 payment plan, but what they get is 25
12 percent -- a 25-percent credit on their monthly bill for 12
13 months, and then they can reapply at the end of 12 months if
14 their situation -- if they still meet the standards.

15 THE COURT: So a senior who has struggled to make
16 the water payment but has made the water payment and isn't
17 behind doesn't get to take advantage of this?

18 THE WITNESS: No.

19 THE COURT: Is that right, ma'am?

20 THE WITNESS: Yes. You're right, your Honor.

21 THE COURT: And a senior who has struggled to the
22 point where they are more than a thousand dollars behind
23 doesn't get to take advantage of this program?

24 THE WITNESS: Not of the Detroit Water Fund
25 unless -- may I? No. Okay.

1 THE COURT: Feel free to answer my questions.

2 THE WITNESS: I'm sorry. So unless we can get --
3 figure out and get their arrearage down to that manageable
4 300 to a thousand level and the -- if we can do that, then we
5 can get them into the program.

6 THE COURT: And how would you get it down?

7 THE WITNESS: So one thing we found is that there
8 have been some billing errors. There have been some -- if
9 let's say that you had -- we've had people come to us and say
10 that they've had issues like let's say they had kind of like
11 leaky pipes and such where it wasn't necessarily their fault
12 that they had this issue and that their bill got high, we've
13 been working with them to try to get their bills down so that
14 they could get into the program. And I believe DAAA has been
15 working closely in terms of identifying people and working
16 with the water department.

17 THE COURT: What's DAAA?

18 THE WITNESS: Excuse me. I'm sorry. Detroit Area
19 Agency on Aging.

20 THE COURT: Is it your testimony to this Court that
21 the Detroit Water Department will reduce an arrearage if the
22 arrearage is caused by leaky pipes?

23 THE WITNESS: I can't say that they do it across the
24 board as their policy.

25 THE COURT: Is it possible to get an arrearage

1 that's over a thousand dollars reduced to below a thousand
2 dollars by accessing help from other agencies?

3 THE WITNESS: I believe so through agencies like
4 Wayne Metro and I believe the DHS and such.

5 THE COURT: In any event, if someone gets on the
6 plan successfully and they get this 25-percent credit for 12
7 months, they have to come back in and reapply for this 25-
8 percent credit?

9 THE WITNESS: Yes, sir.

10 THE COURT: And you make them do that even though --
11 well, let me just ask. Why?

12 THE WITNESS: Because their situation may have
13 changed, so they may have gotten a job or they may have --
14 their income level may have changed, so we just have to make
15 sure that they still meet the income requirement.

16 THE COURT: What's your assessment on how often that
17 happens for seniors?

18 THE WITNESS: I really can't speak specifically to
19 seniors, your Honor.

20 THE COURT: Where does the -- let me -- does
21 someone -- or does -- is there a fund that pays that 25
22 percent for the individual, or is it just -- how is it
23 accounted for?

24 THE WITNESS: So it's -- so I helped really develop
25 the funding model, but essentially I'd rather that question

1 go to the water department in terms of how it comes in, but
2 it's from the fund. So the United Way is the fiduciary, so
3 the money sits within the United Way --

4 THE COURT: Okay.

5 THE WITNESS: -- and they would transfer it to the
6 water department based on the bill and the person meeting the
7 requirements.

8 THE COURT: So it's not like the fee is waived by
9 the department?

10 THE WITNESS: No.

11 THE COURT: It is paid by someone.

12 THE WITNESS: In terms of that 25 percent, yes.

13 Yes, sir.

14 THE COURT: So the viability of that waiver on a
15 long-term basis depends on funding it somehow?

16 THE WITNESS: Yes, yes.

17 THE COURT: And your funding model as of now is
18 private contributions?

19 THE WITNESS: Yes.

20 THE COURT: So excuse the pun, but if they dry up,
21 then the plan is no longer viable?

22 THE WITNESS: Yes, yes.

23 THE COURT: All right. That's all the questions --
24 well, hang on one second, please. One second, please. In
25 your testimony, you used the phrase "valid identification."

1 THE WITNESS: Yes, sir.

2 THE COURT: What, in your understanding, would that
3 consist of?

4 THE WITNESS: A valid state ID or a passport or some
5 sort of valid identification, so it couldn't be expired.

6 THE COURT: I'm sorry. You say it could or could
7 not be expired?

8 THE WITNESS: Could not; could not.

9 THE COURT: So people who don't have enough money to
10 get one of those can't get the assistance you've been talking
11 about?

12 THE WITNESS: They can't enter into a payment plan.

13 THE COURT: Well, they can't get the assistance
14 you've been talking about; right?

15 THE WITNESS: Sure. Yes, sir.

16 THE COURT: All right. Any more questions?

17 MS. MITHANI: Just a couple more to follow up
18 briefly on your questions.

19 THE COURT: Sure.

20 REDIRECT EXAMINATION

21 BY MS. MITHANI:

22 Q Is it possible to get money from other funds, Wayne
23 Metro, without necessarily having a valid driver's license?

24 A Yes.

25 Q Okay. And then with respect to long-term

1 sustainability -- I'm sorry.

2 THE COURT: Excuse me. I want to be sure I
3 understand that last question.

4 MS. MITHANI: Sure.

5 THE COURT: When you say "without a valid driver's
6 license" --

7 MS. MITHANI: I'm sorry. I misspoke.

8 THE COURT: -- you mean without any valid ID?

9 MS. MITHANI: I meant valid state ID, the ID that
10 Ms. Wiley was talking about.

11 THE WITNESS: Yes.

12 BY MS. MITHANI:

13 Q I guess the question I'm really asking, is the ID a
14 barrier to obtaining funds from other sources of assistance?

15 A No. I think one of the -- so there are other agencies
16 that can help you do things like a get a valid state ID, and
17 for us, because it's essentially a binding contract, you
18 can't come in with an ID saying that you want to -- that
19 you're going to enter into this agreement and we can't
20 validate who you are.

21 Q The payment plan you're talking about; correct?

22 A Yes.

23 Q And then turning back to my question regarding the long-
24 term viability of financial assistance for low income
25 customers --

1 A Um-hmm.

2 Q What does the new authority again contemplate with
3 respect to that?

4 A The new authority would allocate at least \$4 million a
5 year, and we're expecting that money to grow, so that creates
6 a huge pot of money that will be reoccurring every single
7 year because we know that the \$2 million is a finite pot
8 right now, but now that we've approved the -- the City of
9 Detroit has approved the authority -- we have a few more
10 other steps, but at the same time we understand that this --
11 that was a key piece that the mayor made sure to put in
12 place.

13 Q And that's not based on financial donations; correct?

14 A No, that's not. It's based on the system.

15 MS. MITHANI: No other questions.

16 RE-CROSS-EXAMINATION

17 BY MS. JENNINGS:

18 Q Is it true --

19 THE COURT: One second, Ms. Jennings.

20 MS. JENNINGS: I'm sorry, your Honor.

21 THE COURT: Before you proceed, I want to caution
22 you that you now have 35 minutes left for all of your cross-
23 examinations of all of the city's witnesses and your closing
24 argument.

25 MS. JENNINGS: Thank you, your Honor.

1 BY MS. JENNINGS:

2 Q Is it true that there is a limit on the amount that a
3 WAVE or Metro will give a recipient?

4 A Yes.

5 Q Okay. And you heard people testify, Detroiters, that
6 their bills were 8,000, 3,000, and so forth. Do any of the
7 agencies you know of assist people with bills that large?

8 A I don't know all the agencies and what they would do.

9 MS. JENNINGS: Okay. Thank you.

10 THE COURT: Any further questions?

11 MS. MITHANI: No, your Honor.

12 THE COURT: You're excused. Thank you for coming
13 today.

14 THE WITNESS: Thank you, your Honor.

15 (Witness excused at 10:19 a.m.)

16 MR. O'BRIEN: Your Honor, we'd ask that the Court
17 call and swear Nicolette Bateson.

18 THE COURT: Please raise your right hand.

19 NICOLETTE BATESON, CITY'S WITNESS, SWORN

20 THE COURT: Please sit down.

21 DIRECT EXAMINATION

22 BY MR. O'BRIEN:

23 Q Good morning.

24 A Good morning.

25 Q Would you tell us your full name, please?

1 A Nicolette Bateson.

2 Q Your professional address?

3 A 735 Randolph, Detroit, Michigan 48226.

4 Q And what do you do for a living?

5 A I am the chief financial officer for the City of Detroit
6 Water and Sewer Department.

7 Q And what are your responsibilities in that position?

8 A My primary responsibilities I would divide into long-term
9 and short-term. Short-term is transforming the organization
10 pursuant to Judge Cox's orders to stand up an independent
11 finance function and procurement function of the City of
12 Detroit as well as the day-to-day activities of the
13 department. Long-term function focuses on instituting new
14 levels of long-term forecasting, planning to assure
15 sustainability of the department.

16 Q Would you take a look at what's marked as Proposed
17 Exhibit Number 11 in the black binder? My question to you is
18 do you have a current resume or curriculum vitae?

19 A Yes, I do.

20 Q Can you identify Proposed Exhibit Number 11?

21 A Exhibit Number 11 is the -- my current resume or
22 curriculum vitae.

23 Q And does it fairly and accurately reflect your education
24 and professional accomplishments --

25 A Yes, it --

1 Q -- to date?

2 A Yes, it does.

3 MR. O'BRIEN: May we stipulate to the admission of
4 this exhibit?

5 MR. GOLDBERG: Yes.

6 MR. O'BRIEN: We'd move admission based on the
7 stipulation.

8 THE COURT: It is admitted.

9 (City Exhibit 11 received at 10:22 a.m.)

10 BY MR. O'BRIEN:

11 Q Let's just touch on some of your background. First of
12 all, your education.

13 A I have a bachelor's in professional accountancy from the
14 University of Michigan Dearborn and a master's in public
15 administration from Eastern Michigan University.

16 Q How long have you been with the City of Detroit?

17 A Since February 2013, so a little over a year and a half.

18 Q What did you do before that?

19 A Prior to that, I was with Michigan State University
20 Extension Program working -- focusing on issues related to
21 local government.

22 Q And how long did you hold that position?

23 A I was there for approximately two years.

24 Q And before that?

25 A Prior to that, I was the assistant city manager and

1 finance director and treasurer for the City of Northville.

2 Q And how long were you there?

3 A Seventeen years.

4 Q And prior to that?

5 A Prior to that, my career began in public accounting, my
6 professional career, with the firm of Grant Thornton.

7 Q And how long were you at Grant Thornton?

8 A Approximately five years.

9 Q And what position did you end up holding there before you
10 left?

11 A Lead auditor but also a consultant.

12 Q Have you had occasion to publish during your career?

13 A Yes.

14 Q Your publications are listed on your curriculum vitae --

15 A Yes, they are.

16 Q -- is that right? During the time that you've been with
17 the department -- and I'm referring to the Detroit Water and
18 Sewer Department -- have you now had enough opportunity to
19 come to fully understand their finances?

20 A Yes.

21 Q Are you the person -- the most senior person responsible
22 for tracking the finances of the department?

23 A Yes.

24 Q Does any aspect of what you do involve rate setting?

25 A Yes.

1 Q And in what way?

2 A The finance group includes the rate setting function as
3 well as monitoring revenues generated from rates and
4 variances that occur.

5 Q We have testimony already in this hearing about where the
6 money comes from to run the department, and -- but we now
7 have you on the stand, and let me just ask where do your
8 operating funds originate from?

9 A Primarily from user fees.

10 Q And I know that rate setting is not a simple issue, but
11 in basic terms, how are rates set?

12 A Rates are set first by looking at what we call the
13 revenue requirement, so that's really looking at the expense
14 side. And then once we determine what our expenses are, then
15 we look at what rates we need to raise to pay for the
16 expenses of the system.

17 Q There's been testimony about a fund that has been
18 established from private sources that we'll call an
19 affordability fund.

20 A Yes.

21 Q And do you have any role in monitoring that fund?

22 A I'm sorry. When you say "the affordability fund,"
23 actually there's a number of affordability funds.

24 Q All right.

25 A There's one that is internal to DWSD where the funding

1 source, the revenues are from 50-cent donations on customer
2 bills.

3 Q Let's talk about that. And, first of all, what's the
4 proper name for that fund?

5 A It's the Detroit Residential Water Assistance Program.
6 It has been referred to by its acronym in this testimony as
7 DRWAP.

8 Q So what is the purpose of that fund?

9 A The purpose of that fund is to provide assistance to
10 those who need help with paying their bills.

11 Q And where does the money come from to go into that fund?

12 A It's 50 cents donation through -- that's paid with
13 customer water bills. I suppose people could also make a
14 cash or extra contribution to it. We certainly would not
15 reject that. And then the -- my group, the finance group,
16 accounts for the money coming in. Mr. Latimer's group, the
17 customer service group, works with customers to apply it to
18 their accounts within the scope of the program.

19 Q Do you know the approximate balance today?

20 A I do not.

21 Q How is the 50-cent number arrived at? Why that instead
22 of 75 cents or 35 cents?

23 A That predates me by quite some time from doing my own
24 research on the Internet of the city's history that brought
25 us to where we are today. It was a program that I think was

1 established in approximately 2004, 2005 era, and subject to a
2 desire on the city council department to provide an
3 assistance program.

4 Q Do you know whether other municipal water -- storm water
5 and sewage departments proceed in a similar or like fashion
6 in terms of the charges to their customers?

7 A Not in the State of Michigan, from my knowledge, and in
8 working with cities in fiscal stress that also have high
9 rates and concerns about funding their water department,
10 there are not -- I would conjecture that Michigan -- it's
11 because there's really legislative -- there's no legislative
12 path to do that where there are in other states. Ohio,
13 California, New York provide for senior discount programs,
14 for example. The State of Ohio also does not appear to have
15 legislative barriers to providing for affordability programs
16 funded through rates.

17 Q So you've mentioned one fund. Is there a second fund?

18 A There is not a second fund within DWSD. I would say
19 there's more partnerships working with a number of the
20 nonprofit entities that have been identified earlier today.

21 Q What about the \$2 million fund that was just testified
22 to? Who manages that?

23 A I believe that is managed by United Way.

24 Q All right. What role do you have in determining the
25 budget for the department for a given year?

1 A I would say my role as a staff person is to facilitate
2 and coordinate a budget based on the board's objectives and
3 strategies and to present a budget for their consideration.

4 Q And in setting a budget for a fiscal year; is that right?

5 A Yes.

6 Q What is your fiscal year?

7 A Our fiscal year ends June 30th.

8 Q All right. So for developing a budget for the next
9 fiscal year, do you review your performance for the prior
10 year?

11 A Yes.

12 Q Do you look at what the budget was and also what your
13 revenues were?

14 A That is correct.

15 Q Is weather a factor in the budgets that you set?

16 A Yes, it is, especially on the water side of our business.
17 We really have two sides. I'll refer to it as -- of our
18 business of the sewer side and the water side. When we have
19 wet weather years like we did last summer and to some extent
20 this summer, people are watering outdoors less, so that
21 brings down our amount of revenue, so last August 2013, for
22 example, we had a negative revenue variance of 18 percent.

23 Q Meaning -- translate that. Negative revenue variance
24 meaning --

25 A Meaning that we will have a shortfall in revenues if that

1 continues throughout the year. And considering that the
2 department has very lean cash reserves, that's very
3 problematic and continues to be a concern for the department.
4 On the sewer side of our business with our wholesale
5 customers, we've entered into a rate simplification process
6 where starting this fiscal year that started July 1, 2014,
7 those revenues are based on fixed monthly charges.

8 Q You are familiar with the order that the plaintiffs wish
9 the Court to enter in this case?

10 A Yes.

11 Q And have you had an opportunity to consider from a
12 financial standpoint the impact on the department if that
13 order were entered and the department was required to create
14 a moratorium on shutoffs and to reinstate service in any home
15 that someone could prove was occupied?

16 A Yes.

17 Q What would the impact be from the financial side of the
18 operation of the department?

19 A The impact is trying to understand the extent to which it
20 creates more uncertainty in the ability to collect revenues
21 going forward.

22 Q So help explain that to me. Why is it uncertain?

23 A Well, shutoffs is a tool in the collection toolbox. It's
24 the tool of last choice, but Detroit is not like any other
25 public utility where shutoffs are part of the collection

1 program, and, unfortunately, similar to Ms. Wiley's
2 testimony, when she met with some of the people at customer
3 service centers where perhaps there was an ability to pay but
4 it just wasn't a priority, sometimes those things like the
5 door hangers are used to get people's attention who can pay
6 to come in.

7 Q Well, if this program -- if the order were entered, do
8 you expect that revenues would decrease?

9 A Yes.

10 Q Why?

11 A Because for those who can pay but choose not to or do not
12 make it a priority outside of the affordability issues, that
13 would undermine the ability for the department to effectively
14 collect its revenues.

15 Q What impact, if any, would it have on rates?

16 A Well, I can use this past year as an example. In the
17 Detroit revenue requirement on which rates were based, the
18 revenue requirement was \$334 million for water and sewer
19 combined. Based on recent history and the cash flows that
20 we've been seeing from collections, there was an additional
21 \$42 million added to the city's retail revenue requirement to
22 increase that to 376 million. So in order to receive net
23 cash flow of 332 million, we had to add another \$42 million.
24 How that equates to the senior citizen, the person sitting
25 there paying their bill, for each \$100 that they pay of their

1 bill, that means \$11 in this year's rates is going to bad
2 debt expense. I would call that a revenue inefficiency. I
3 would like to close that gap so that everybody who's paying
4 their bill is not going to something that is inefficient in
5 the system.

6 Q So in basic terms, if there's a requirement that service
7 be reinstated to homes where it's been shut off and there's a
8 moratorium on payments coming in, is it --

9 MR. GOLDBERG: Objection, your Honor. No one is
10 talking about a moratorium on payments coming in. That's not
11 part of this case at all.

12 THE COURT: I need to hear the question, and then
13 I'll hear your objection.

14 MR. GOLDBERG: That's fine.

15 BY MR. O'BRIEN:

16 Q I think I was at the point of saying if there aren't
17 revenues coming in as part of the order because there's a
18 moratorium on shutoffs, is that going to cost the system more
19 to operate?

20 MR. GOLDBERG: I'm going to repeat my objection.
21 There's no -- he's stating that a moratorium -- a temporary
22 moratorium on shutoffs means there's a moratorium on revenues
23 coming in, and there's simply no testimony to that effect,
24 and that is not what is being proposed in this case.

25 THE COURT: The objection is overruled. Please

1 answer the question.

2 THE WITNESS: I'm sorry. Could you reask that?

3 BY MR. O'BRIEN:

4 Q Sure. I'm trying to figure out if the order that's been
5 requested is entered, will the department have to perform
6 more services than it's currently performing, supply more
7 water?

8 A I'm sorry. I don't completely understand the question.

9 Q Okay. Let me just break it down.

10 A Okay.

11 Q If the judge says you've got to reinstate water to houses
12 where it's been turned off, will there be more water going to
13 those houses?

14 A There will be more water going to the houses.

15 Q Is there a cost connected with that?

16 A The cost -- the system is largely a fixed cost system, so
17 the cost of providing the water isn't so much the concern as
18 much as it is the bad debt expense and how that rolls into
19 rates and the revenue requirement.

20 Q And if there's a moratorium on shutoffs so the service
21 continues to homes where under the circumstances they could
22 be shut off, is there an increased cost to the department for
23 doing that?

24 A The concern would be the cause and effect, so it might
25 not -- it doesn't necessarily relate to individual specific

1 cases, but, again, if one of the tools in the toolbox to
2 effectuate a collection program would be hindered, our
3 ability to collect revenues would be hindered, then that
4 would have a negative impact on revenues, which would have a
5 negative impact on rates.

6 Q Can you make any reasonable forecast as to what increase
7 there would be in rates if the six -- if an order were
8 entered that would require the sort of relief we've been
9 talking about for six months?

10 A As of today, no. I would want to look at the cash flow.
11 From the short time period where there was a moratorium,
12 there certainly was a reduction in cash flow. To what extent
13 we would be able to project that over next year's rates, we
14 would have to do that analysis, but I would say that it would
15 be a concern that we'd have to investigate carefully.

16 Q Does the department have bond obligations?

17 A Yes, it does. Forty-six percent of the revenue
18 requirement is to simply pay bond debt interest and expense.
19 The department is heavily capitalized and has a heavy debt
20 burden. That is something that is not optional. Of the
21 budget, 46 percent is bond principal and interest. Forty
22 percent is operating expenses, which are also largely fixed
23 costs. I would say the operations and maintenance expense
24 are probably about 90 percent fixed costs, and then the
25 remainder goes to a reserve to build up the cash flow that we

1 need to provide under our bond indenture agreement.

2 Q So that's the structure of the bonds, but how would this
3 potential order impact those obligations?

4 A If the impact of the order is to limit the tools for the
5 department to be able to collect revenue, bonds payments come
6 first, although it -- without wanting -- not wanting to wind
7 up in a Chapter 9 situation, the -- there would be
8 certainly -- the operations and maintenance program would be
9 impacted. This department has been under a cash conservation
10 program because of uncertainties related to the Chapter 9 and
11 the collection efforts and the weather impact that we've seen
12 the past two years, and programs -- capital programs to make
13 the system more efficient like addressing the nonrevenue
14 water would be negatively impacted.

15 Q Are you subject to any scrutiny by any rating agencies?

16 A Yes.

17 Q Okay. And tell us who scrutinizes you and why.

18 A So there's three rating agencies, Standard & Poor's,
19 Fitch Ratings, and Moody's Investor Service. Fitch has us on
20 a quarterly review process, and most recently with issuing
21 refunding bonds and new bonds for sewer system improvements,
22 we underwent a review by all three rating agencies, and their
23 reports are issued August 25th and 26th.

24 Q And what impact do you believe entry of the order
25 requested would have in terms of the ratings that you

1 receive?

2 A It would be a material concern to the rating agencies.
3 In my quarterly reviews with Fitch, I would say over 50
4 percent of the time spent communicating with them is related
5 to their concern about the retail collections program. When
6 the rating agencies issued their reports on August 25th and
7 26th, Standard & Poor's gave us an unprecedented ten-notch
8 upgrade, but part of that was at that point we were
9 demonstrating the ability to address the receivable issue.
10 Fifth made similar comments highlighting the collection
11 efforts as well as Moody's focusing on the stability of the
12 revenue system, all four being justification for improving
13 our bond ratings.

14 Q Well, what happens if, as a result of their scrutiny,
15 they don't like the impact of the order? What happens
16 financially? What financial impact can that have on the
17 department?

18 A So when we did the refunding in August, we were able
19 to -- with the rating agencies and what that sends -- the
20 message that sends to the investment community is we were
21 able to refund a significant portion of our portfolio and
22 recognize \$13 million of cash flow savings for the next 19
23 years. Within the next two years, we have approximately \$1.5
24 billion worth of bonds that will be eligible for refunding,
25 so certainly as the CFO it's my concern to preserve an

1 excellent bond rating from the agencies to be able to secure
2 similar level of savings for our customers through those
3 refundings.

4 Q Have you had any role in the discussions that led to the
5 memorandum of intent in terms of a regional water authority?

6 A Yes.

7 Q And do you have an opinion as to what the impact of the
8 entry of the sort of order requested would have on the
9 likelihood that that memorandum of understanding would come
10 to fruition and turn into a formal agreement?

11 MR. GOLDBERG: Objection, your Honor. It's my
12 understanding that those were confidential discussions and
13 are not subject to -- that we certainly have no knowledge of.

14 BY MR. O'BRIEN:

15 Q Didn't mean to ask you --

16 MR. O'BRIEN: Sorry.

17 THE COURT: Yeah. The objection is overruled, but,
18 Mr. O'Brien, let me ask you to establish a little more
19 foundation on what that judgment might be based on.

20 MR. O'BRIEN: Yes.

21 BY MR. O'BRIEN:

22 Q So we're going to talk. First of all, I only intend to
23 ask you about things that are public. Fair enough?

24 A Absolutely, and I would not violate Judge Cox's order
25 related to the mediation secrecy.

1 Q All right. None of us would want to do that. So in
2 terms of -- do you have an opinion -- don't tell me what it
3 is. Do you have an opinion? Don't tell me what it is. I
4 just want to know do you have an opinion about what the
5 impact would be?

6 A Yes.

7 Q All right. What is your opinion based on?

8 A My opinion is based on interaction with the wholesale
9 customer communities for which the counties represent and
10 statements that they have made publicly and in the press.

11 THE COURT: All right. I'll permit the evidence
12 then. Go ahead.

13 THE WITNESS: So DWSD has a wholesale customer
14 outreach program, and there's seven advisory committees. I
15 am most actively involved with the committee on the sewer
16 rates committee and the water rates committee. There's also
17 an analytical work group committee. And from my first
18 meeting with those constituent groups probably in March 2013,
19 their focus -- and they highlighted to me because I was new
20 and sorting through things -- they highlighted to me their
21 concerns about collections of the retail system because when
22 you look at the numbers, it would appear that the retail --

23 THE COURT: Excuse me, ma'am. I have to -- I have
24 to interrupt your answer.

25 THE WITNESS: I'm sorry.

1 THE COURT: The question was not what they told you.

2 THE WITNESS: Oh.

3 THE COURT: The answer is what is your judgment on
4 the impact of granting the relief that the plaintiffs seek
5 here on the prospects of the memorandum of understanding
6 going forward to the creation of the Great Lakes Regional
7 Authority.

8 THE WITNESS: I think it would undermine the spirit
9 of cooperation and the direction that the city was moving in
10 with the collections program.

11 BY MR. O'BRIEN:

12 Q All right. Is there any other impact on the financial
13 condition of the department that we haven't talked about?

14 A Not that I can think of that would be relevant for this
15 conversation.

16 Q There was testimony earlier in the case about a statement
17 from an independent contractor in response to a request for
18 proposal. Do you remember that?

19 A Yes.

20 Q Okay. Do you remember the name of that contractor?

21 A I differ with your use of the word "contractor" because
22 it was a proposal. A contractor would infer that somebody
23 was hired.

24 Q All right. What term would you like?

25 A Firm.

1 Q Okay.

2 A A firm.

3 Q All right.

4 A Um-hmm.

5 Q And their name?

6 A CDG.

7 Q Okay. First of all, who requested that they make a
8 proposal?

9 A I did.

10 Q Okay. Why was it?

11 A I was concerned about the level of retail delinquency and
12 reached out to five firms trying to find experts in the field
13 to help me better understand this and look for tools that
14 other utilities have used that I might not have drawn on in
15 the past.

16 Q Were they hired?

17 A No.

18 Q Do you know the basis for the statement they made that
19 was quoted during earlier testimony?

20 A I had a very brief phone conversation with them, and at
21 that particular time there was a lot of press articles about
22 a commercial customer storm water billing issue.

23 Q As far as you know, did the department ever formally or
24 informally adopt that thinking reflected in their statement?

25 A No.

1 Q Do you think that assessment was correct?

2 A I would hesitate to call it an assessment because it
3 wasn't really --

4 Q Statement; statement.

5 A -- based -- the statement was incorrect.

6 MR. O'BRIEN: All right. Nothing further. Thank
7 you.

8 CROSS-EXAMINATION

9 BY MR. GOLDBERG:

10 Q Ms. Bateson, you have no expertise on water affordability
11 programs, do you?

12 A No, other than the fact that I've been --

13 Q That answered my question. Thank you. And --

14 THE COURT: Well, hold on. Let's let her finish her
15 answer.

16 MR. GOLDBERG: Okay. I apologize.

17 BY MR. GOLDBERG:

18 Q Go ahead.

19 A Other than the fact that for 20 years I've been
20 responsible for collections for a water and sewer system. At
21 my previous employer where I was at for 17 years, I was
22 responsible for that collections program.

23 Q But you're not suggesting that we're proposing that a
24 moratorium on -- a temporary moratorium on shutoffs for the
25 poor would stop collection of rates, are you? You're not

1 suggesting that's a moratorium on people paying their bills,
2 are you, ma'am?

3 A Moratorium on people paying their bills? I don't
4 understand the question.

5 Q You commented on the relief we're asking for in the
6 order. There's nowhere in this order that we're suggesting
7 there'd be a moratorium on people's responsibility for paying
8 their bills, are you?

9 A From my recollection of reviewing the order, I don't
10 remember seeing specific wording to that extent.

11 Q And you have no knowledge except speculation that a
12 moratorium would cause a cessation in people's bills, do you,
13 ma'am?

14 A Based on my years of doing water and sewer system
15 collections, I can say it would have an impact.

16 Q Have you ever been in a situation where there was a
17 temporary moratorium, a two-month moratorium or a six-month
18 moratorium to allow for an affordability plan to be
19 developed?

20 A The specific use of the word "moratorium," no.

21 Q Okay. We've had testimony in this case that allowing for
22 an affordability plan to be developed for the poorest people
23 who cannot afford their bills right now would actually
24 increase revenues for the water department. Do you have
25 anything to contradict that?

1 A No. I think the affordability programs help. As stated
2 in earlier testimony, it brings in money from outside the
3 department, which is a good thing.

4 Q And also we've had a study done by Roger Colton. Have
5 you ever studied Mr. Colton's proposals?

6 A I did read it.

7 Q And isn't it true that he posits that an affordability
8 plan based on percentage of income would actually increase
9 revenue for the department?

10 A Perhaps he posited that, but it was not within the
11 context of understanding state law, so I think it was --

12 Q Are you an expert on state law, ma'am? Are you a lawyer?

13 MR. O'BRIEN: Excuse me. I don't think that the
14 witness had had an opportunity to finish that answer.

15 THE COURT: Well, I have a more fundamental
16 question, which is why are we asking this witness what
17 another witness testified to?

18 MR. GOLDBERG: She testified that -- on the effects
19 on revenue. I'm just asking to confirm that Mr. Colton's --
20 that she's -- is she aware of Mr. Colton's testimony that, in
21 fact, it would increase revenue.

22 THE COURT: Why is that relevant? Why is that
23 relevant?

24 MR. GOLDBERG: It goes to the credibility of her
25 answer, your Honor.

1 THE COURT: Move on, please.

2 MR. GOLDBERG: Move on. Okay.

3 BY MR. GOLDBERG:

4 Q Were you involved in the -- as chief financial officer,
5 were you involved in the drafting of the recent \$854 million
6 bond proposal?

7 A Yes.

8 Q I'd like to show you the proposal, and are you aware --
9 are you familiar with the official statement that was
10 associated with the proposal?

11 A Yes.

12 Q I'm going to show you and read the first paragraph.
13 Well, let me question first -- I'm sorry. Isn't it true that
14 in the official statement there was a -- the official
15 statement said that despite the level of delinquencies as of
16 July 1st, 2014, the department had not experienced cash flow
17 problems?

18 MR. O'BRIEN: Excuse me, your Honor. Are we
19 referring to something that is not in evidence?

20 MR. GOLDBERG: It is Exhibit 130.

21 MR. O'BRIEN: Is it in evidence?

22 MR. GOLDBERG: Well, we'll produce it into evidence.

23 MR. O'BRIEN: Well, then we're not going to -- I
24 would object to getting into the contents of an exhibit --
25 proposed exhibit that's not in evidence.

1 THE COURT: The objection is sustained.

2 MR. GOLDBERG: Okay.

3 BY MR. GOLDBERG:

4 Q I want to just see if you're familiar -- then I would --

5 MR. GOLDBERG: Your Honor, I'd like to introduce
6 Proposed Exhibit 130. It's the official statement of the
7 Michigan Finance Authority in association with the \$854
8 million bond proposal.

9 MR. O'BRIEN: Objection. Foundation.

10 MR. GOLDBERG: It's a public -- it's a business
11 record.

12 MR. O'BRIEN: Objection. Foundation.

13 THE COURT: You have not established that in the
14 evidence.

15 BY MR. GOLDBERG:

16 Q Are you familiar with the official statement of the
17 Michigan Finance Authority?

18 A Yes, I am.

19 Q Are you familiar that there was a \$854 million bond
20 proposal that was put into effect August 27th?

21 A Yes.

22 MR. GOLDBERG: Your Honor --

23 THE COURT: You have not established that Exhibit
24 130 is that document.

25 BY MR. GOLDBERG:

1 Q I'll show it to you. Can I show you the statement of the
2 official --

3 THE COURT: All right. Counsel, again, I have to
4 remind you to speak only near a microphone.

5 BY MR. GOLDBERG:

6 Q Is what I showed you the -- at least an excerpt of the
7 official statement?

8 A Yes.

9 Q Okay. Thank you. I want to call your attention to page
10 85.

11 A I have it in front of me.

12 Q Isn't it true that it states in there that as of --

13 THE COURT: Excuse me one second. Now that you have
14 authenticated it, you need to move it into evidence.

15 MR. GOLDBERG: Excuse me, your Honor. I would move
16 for the admittance of Exhibit 130 into evidence.

17 MR. O'BRIEN: No objection.

18 THE COURT: All right. Exhibit 130 is admitted.

19 (Exhibit 130 received at 10:52 a.m.)

20 MR. GOLDBERG: Thank you.

21 THE COURT: Now you can ask about its content.

22 MR. GOLDBERG: I certainly will.

23 BY MR. GOLDBERG:

24 Q And I want to show you -- isn't it true that on page
25 180 -- on page 85 -- I think it's a third or fourth

1 paragraph -- it states that as of -- despite the
2 delinquencies, as of July 1st, 2014, there was not a cash
3 flow problem for the department?

4 A That is correct.

5 Q Okay. Thank you. You discussed bad debt as a big
6 problem for the department, is that not correct, ma'am?

7 A Yes.

8 Q Isn't a part of bad debt the chargebacks on tax
9 foreclosures?

10 A Yes. That is a part of the problem.

11 Q And by that we mean that properties -- that water bills
12 are attached to the property taxes, and when they're sold for
13 a lesser amount, those monies are charged back to the
14 department?

15 A Yes.

16 Q Are you aware of the amount of tax foreclosures on water
17 bills subject to tax foreclosure this year alone?

18 A I am not.

19 Q You're not aware of that? Are you aware of what --

20 A Of the amounts, no.

21 Q Okay. Are you aware of what those figures were in past
22 years?

23 A I don't have -- without having the schedule in front of
24 me, I can't recall the exact amounts offhand. I'm sorry.

25 Q Are you aware of how many of those -- of the chargeback

1 is due to vacant properties, ma'am?

2 A It's a three-year rolling schedule.

3 Q Yeah.

4 A And for FY '13 we did have a significant entry for catch-
5 up of the foreclosures over this three-year cycle and the
6 Wayne County Treasurer working with the constituents to try
7 to lessen that amount, and last year there was a material
8 adjustment, but I cannot recall offhand exactly what the
9 amount was. I would estimate it that it was at least 20
10 million.

11 Q Thank you. One other question, too. The bonds that were
12 floated in 2011 -- are you aware of the bonds that were
13 floated in 2011 and 2012 by the one water sewage -- one water
14 bond, one sewage bond?

15 A I was not with the department at that time, but I am
16 aware of the bond issues.

17 Q And are you aware of what amount of those bonds was
18 actually attributed to termination fees on swaps?

19 A I do not have that amount with me. It was certainly a
20 material amount.

21 Q Did you prepare a report on May 8th, 2013?

22 A I prepare lots of reports on a regular basis, so it's a
23 possibility.

24 Q Let me show you here.

25 MR. O'BRIEN: Counsel, would you identify the

1 exhibit?

2 MR. GOLDBERG: Certainly. I'd admit it as an
3 exhibit. We would propose it as an exhibit.

4 THE COURT: What number is it?

5 MR. GOLDBERG: We would propose it as Exhibit 132.
6 I just found this document last night, your Honor.

7 MR. O'BRIEN: Your Honor, this is not on their list.

8 MR. GOLDBERG: No, it's not.

9 MR. O'BRIEN: I would, therefore, object to its
10 admission.

11 THE COURT: We have an objection to the use of this
12 document on the grounds that it wasn't on your list.

13 MR. GOLDBERG: It's just basically to refresh --
14 well, I'm just using it to refresh her recollection on a
15 report that she prepared, your Honor.

16 THE COURT: All right. Ma'am, after you look at
17 that document, does it refresh your recollection on the
18 question that counsel proposed to you?

19 THE WITNESS: Yes, it does.

20 THE COURT: All right.

21 BY MR. GOLDBERG:

22 Q And how much were the --

23 THE COURT: Hold on. Hold on. Turn it over.

24 THE WITNESS: Okay.

25 THE COURT: Now that your recollection has been

1 refreshed, what is the answer?

2 THE WITNESS: I'm sorry. What was the question?

3 BY MR. GOLDBERG:

4 Q The question was what percentage -- what amount of the
5 \$1.1 billion in water and sewage bonds in 2011-12 were for
6 interest rate swaps? You can look at --

7 A I didn't look at that specific --

8 Q Can you look at page 4?

9 A I didn't look at it long enough.

10 Q I'm sorry. Page 4, yes.

11 A Page 4.

12 Q The chart.

13 A I inserted a table that was the use of the bonds.

14 THE COURT: Ma'am, we're not asking you what the
15 exhibit says --

16 THE WITNESS: Oh, I'm sorry.

17 THE COURT: -- okay -- because it's not in evidence.
18 The question is does it refresh your recollection on this
19 question?

20 THE WITNESS: Yes.

21 THE COURT: Okay.

22 BY MR. GOLDBERG:

23 Q And what was the amount, ma'am?

24 A The swaps termination, not fees, but the termination of
25 the swaps was approximately half billion dollars combined for

1 the two funds.

2 Q Has the water board -- have you taken up the question of
3 potentially going after the banks to --

4 MR. KILPATRICK: I'm going to -- your Honor, I've
5 been quiet. I'm here on behalf of the department. I'm going
6 to object. That's beyond the scope of the direct.

7 MR. GOLDBERG: Beyond the scope of direct?

8 THE COURT: One attorney per side. Would you repeat
9 the question?

10 MR. GOLDBERG: Sure.

11 BY MR. GOLDBERG:

12 Q Has the water board -- have you imparted any discussions
13 within the Detroit Water and Sewage Department about taking
14 action to collect -- to recoup those funds, recoup the 537
15 million in swap termination fees?

16 MR. O'BRIEN: The objection would be on the basis
17 that it exceeds the scope of the direct examination.

18 THE COURT: Well, it also exceeds the scope of this
19 hearing, so the objection is sustained.

20 MR. GOLDBERG: Well, your Honor, the reason I would
21 raise the question is that --

22 THE COURT: Move on, counsel.

23 MR. GOLDBERG: Okay. I'm done, your Honor.

24 REDIRECT EXAMINATION

25 BY MR. O'BRIEN:

1 Q I have just one question for you, and that is Exhibit 130
2 that was introduced. Was that prior to the moratorium that's
3 been testified to in this case?

4 A I believe it's stated as a particular date. This was all
5 happening at the same time, so the time that language was
6 drafted -- now, the official statement was August 27th. You
7 know, I think there's -- you know, using the words "cash flow
8 problems" is a very broad term and has a lot of context to
9 it.

10 Q So is that to say --

11 A It doesn't mean that I'm not concerned about cash flow.

12 Q No.

13 A It means that we've been able to pay our bills.

14 Q Was the statement made before the moratorium?

15 A I cannot recall the dates of the moratorium offhand.

16 MR. O'BRIEN: All right. Thank you.

17 THE COURT: All right. One moment, please. All
18 right. We're going to take our morning recess now. Ma'am,
19 you are excused. Plaintiffs have 23 minutes left and the
20 city 155. And we'll be in recess until 11:15, please.

21 THE CLERK: All rise. Court is in recess.

22 (Recess at 10:59 a.m., until 11:17 a.m.)

23 THE CLERK: All rise. Court is in session. Please
24 be seated.

25 MS. MITHANI: We call our next witness, Darryl

1 Latimer, to the stand.

2 THE COURT: Okay.

3 DARRYL LATIMER, CITY'S WITNESS, SWORN

4 THE COURT: All right. Please sit down over there.

5 DIRECT EXAMINATION

6 BY MS. MITHANI:

7 Q Good morning, Mr. Latimer. How are you today?

8 A I'm good. And you?

9 Q Fine. Thank you. Could you state and spell your name
10 for the record, please?

11 A Darryl, D-a-r-r-y-l, Latimer, L-a-t-i-m-e-r.

12 Q Could you briefly describe your educational background
13 for the Court?

14 A I have a bachelor's degree from Wayne State and a
15 master's degree from Central Michigan.

16 Q And what is your master's degree in?

17 A Administration.

18 Q Where do you currently work?

19 A I work for the City of Detroit Water and Sewage
20 Department.

21 Q Or DWSD?

22 A Or DWSD.

23 Q And I'll probably refer to the Detroit Water and Sewage
24 Department as DWSD throughout our examination. Is that fair?

25 A That's fair.

1 Q What do you do for DWSD?

2 A I'm the deputy director.

3 Q Do you have another title at DWSD?

4 A I'm also the chief customer service officer.

5 Q And how long have you worked for DWSD?

6 A I've worked for DWSD a little over 25 years.

7 Q And how long have you served as deputy director?

8 A I've been the deputy director since February 2010.

9 Q And how about chief customer service officer? How long
10 have you served in that role?

11 A I started that role at the beginning of this year.

12 Q The beginning of 2014?

13 A Yes.

14 Q What jobs have you held at DWSD prior to serving as
15 deputy director and chief customer service officer?

16 A I've held many titles in the department. I initially
17 started in the department as a messenger. I've worked in
18 customer service. I worked in administration. I've worked
19 in contracts and grants as well as managed contracts and
20 grants.

21 Q And can you describe to us your responsibilities as
22 deputy director and chief customer service officer?

23 A My responsibility is to deal with the day-to-day
24 operations of the department. There's various decisions and
25 different things that occur during a typical day for the

1 department. I work with all of the operations and help
2 moving things forward as well as in customer service I was
3 tasked with making a change into our new organization with
4 the department, redoing customer service and looking over
5 some of the processes and changing processes and changing
6 staffing and changing some of our collections and processes.

7 Q So that task of looking into the processes of customer
8 service and changing tasks, that would have started when you
9 assumed the role in 2014?

10 A Yes.

11 Q And in your role as deputy director and chief customer
12 service officer, are you generally familiar with DWSD's
13 spending process and its revenues and expenses?

14 A Yes.

15 Q And I assume you're in charge of the oversight of the
16 customer care centers and all the call centers?

17 A Yes.

18 Q And in your role as chief customer service officer and
19 deputy director, are you familiar with all of DWSD's policies
20 and procedures?

21 A Yes.

22 Q And that would include all policies regarding customer
23 service, billing, collection, notification, and shutoff?

24 A Yes.

25 Q And is it your responsibility in your roles at DWSD to

1 implement and enforce all of these policies and procedures?

2 A Yes.

3 Q Your understanding -- you understand that you're here
4 today in connection with a lawsuit regarding the city's water
5 shutoff policies; correct?

6 A Yes.

7 Q Tell me more about DWSD's water shutoff policies and
8 procedures before this lawsuit was filed. What was the city
9 doing in this regard?

10 A Well, with regards to shutoffs, 60 days past due notice
11 and a bill greater than \$150 triggered and put you in shutoff
12 status, and what the department does is once you go into
13 shutoff status, you receive a shutoff notice, and at some
14 point, depending on how many shutoff orders we have, we'll
15 either get to you after the ten day has expired in your
16 notice or sometime thereafter.

17 Q Now, this is what DWSD was doing before this lawsuit?

18 A Yes.

19 Q Okay. And in terms of collections, what was DWSD (sic)
20 doing in terms of the actual shutoff procedures? What was
21 DWSD doing?

22 A Well, you were allowed to either pay your bill in full or
23 enter into a payment plan, which will continue your service.

24 Q And what were the terms of that payment plan?

25 A That payment plan required 30 percent down, which you've

1 probably been hearing about the 10/30/50 plan, and our plan
2 was basically 30/40/50.

3 Q And then in terms of collections, was there a certain
4 plan with respect to what accounts you would go after with
5 respect to collections?

6 A With respect to collections, what you typically did was
7 you went after some of the higher accounts because we had so
8 many customers that were in shutoff status, you could not
9 touch every account, so you generally went after those higher
10 accounts.

11 Q Is that still the plan today?

12 A No. The plan today is to try to execute all shutoffs
13 when any customer reaches shutoff status.

14 Q There's been prior testimony about the practice of using
15 bill collectors. Are you familiar with that practice?

16 A Yes.

17 Q What can you tell us about it as it existed at DWSD?

18 A Well, when that process was in place, a bill collector
19 was also the person who executed the shutoff. That person
20 would knock on the door just to make sure that the customer
21 had not paid their bill. The reason for that is at that time
22 those collectors were operating off paper work orders, so
23 during the time that they arrived to a customer's home to
24 execute a shutoff, a customer could have visited a center and
25 actually made a payment, so they were to verify that the

1 payment was not made. And so if that payment was not made,
2 then they would move forward with execution of the shutoff.

3 Q Now, just so we're clear, is that practice still in place
4 at DWSD?

5 A No.

6 Q And how long has it not been in place? Do you know?

7 A It stopped somewhere around 2007. The reasons that it
8 stopped was that one -- one of the main reasons, it wasn't
9 very safe, but the overwhelming reason was it was a procedure
10 that was used to verify if the customer had paid by the time
11 the employee came to the house to execute a shutoff. Now
12 those employees have computers, so when they arrive at the
13 home, they can pull up the account and verify if payment has
14 been made. If payment hasn't been made, they execute the
15 shutoff. If payment have been made, then they would move on
16 to the next account.

17 Q So what are you doing, if anything, now to notify
18 customers at the home about impending shutoffs?

19 A Well, besides from receiving a shutoff notice, you
20 receive a door hanger. The door hanger lets you know that
21 you are scheduled for shutoff in seven days.

22 Q And the door hanger is placed on the actual door of the
23 home?

24 A Correct.

25 Q Now, you testified earlier that you're familiar with

1 DWSD's policies and procedures; right?

2 A Correct.

3 Q Are you familiar with DWSD's interim collection rules and
4 procedures?

5 A Correct.

6 Q Can you explain what these are?

7 A Well, it's a mix. It's a mix of rules that govern the
8 department and how you're going to deal with shutoffs and the
9 various things associated with an account, and there's also
10 some procedures that the employees are to follow, so you have
11 rules that govern what the employees are going to do that you
12 want the customers to know as well as there's some procedures
13 that the employees know that they need to follow.

14 Q So, in essence, who's the intended audience of the
15 interim collection rules and procedures?

16 A For the most part, employees.

17 Q And why are these rules on the website then?

18 A For the most part, they were put there because we are a
19 public entity. We typically get FOIAs for information, and
20 as a department, we try to put out as much information as
21 possible to eliminate FOIAs.

22 Q Now, are you familiar with part one of those rules and
23 procedures?

24 A Yes.

25 Q And what do those relate to?

1 A They relate to the collection process associated with
2 accounts, disputes, shutoffs and what have you.

3 Q Okay. And what do the rules and procedures say about the
4 notices that are sent to customers about delinquent bills?

5 A Well, it basically talks about that you would receive a
6 past due notice, and then if the bill is unpaid, you will
7 receive a shutoff notice, and ten days after receiving that
8 shutoff notice a shutoff will be executed if the bill isn't
9 paid.

10 Q And then are you familiar with 20A in those rules and
11 procedures?

12 A Yes.

13 Q Okay. And is that rule called "Shutoff Procedure for
14 Delinquent Water Bill Collectors"?

15 A Yes.

16 Q Who is the intended audience of Rule 20A?

17 A Employees.

18 Q Why? Why do you need to tell your employees what to do
19 when they're shutting off?

20 A Well, basically it's just procedures that you want them
21 to follow. For instance, if an employee went out to a home
22 and just executed a shutoff, you would typically get a call
23 in the department, "Hey, I paid this morning, and my water
24 was shut off." It's to let our employee know, hey, you
25 should verify that the account hasn't been updated before you

1 execute the shutoff.

2 Q What's the status of Rule 20A?

3 A We don't use that anymore because of the computer system.
4 Actually, I've been working on these rules, and for the most
5 part I had them complete, but things change daily in the
6 department with the mayor taking over, some of the changes he
7 wanted to make, so I've been redoing these rules it seems
8 like monthly.

9 Q Is there a specific effort to modify Rule 20A?

10 A Yes.

11 Q Tell me more about that.

12 A We're going to modify that just to exclude that piece but
13 to add that there will be a door hanger placed on the home to
14 notify the customer that in seven days they will be due for
15 shutoff.

16 Q And does DWSD have to provide notice before it amends its
17 procedures and rules?

18 A No.

19 Q And when do you anticipate that Rule 20A will be revised?

20 A October.

21 Q What happens in October?

22 A At our board meeting we present all of our rules and
23 collection procedures to our board and ask them to approve
24 those procedures.

25 Q And you said that you've been working on revising all of

1 the rules and procedures. What's the status of that right
2 now?

3 A We're just making a few more changes. What has occurred
4 is the department is going through what you call
5 optimization, so in optimizing jobs have changed. Some jobs
6 have been combined. Some of the responsibility of the
7 employees have changed, so I've been incorporating all of
8 those responsibilities associated with the employees and
9 moving that forward. And as we've been working with the
10 mayor and some of the changes that he wanted to make, those
11 directly affect those procedures.

12 Q Turning back to water shutoffs, who's the current DWSD
13 director?

14 A Sue McCormick.

15 Q And when did she become director?

16 A She became the director, I believe, December of 2011.

17 Q Okay. And since the time she's been director, what, if
18 any, approach did she take towards water shutoffs?

19 A That we would continue to execute our shutoffs as it was
20 mandated.

21 Q And do you know how many property accounts had water
22 shutoffs in 2013?

23 A There was a little over 24,000.

24 Q Okay. And how does DWSD's approach to water shutoffs in
25 2013 compare to its approach in 2014?

1 A Right now we're about at the same level that we were at
2 2014, so we're right around that 24,000, 25,000 mark.

3 Q Okay. And when do you measure that period of time for
4 the start of shutoffs?

5 A For the most part, we look at the whole year, but
6 generally the shutoffs just really start in March when the
7 weather gets consistently above 32 degrees.

8 Q Is there anything different about what's being done in
9 2014 versus 2013 regarding shutoffs?

10 A One of the biggest things is publicity. We've just
11 always year after year executed shutoffs and never really
12 talked about it. This year there was a concerted effort to
13 publicize that we were going to be executing shutoffs and to
14 get that out to the public and make them aware before we
15 actually got started.

16 Q And why did you want to publicize this?

17 A Well, one of the reasons, you wanted customers to be
18 proactive. That's the main reason. You wanted customers to
19 be proactive with their accounts. With the number of
20 accounts that you have in delinquency or shutoff status, you
21 know you're not going to be able to touch all of those
22 accounts in terms of executing the shutoff, but you're hoping
23 that customers come in so it decreases shutoffs.

24 Q There were some questions to Director McCormick about the
25 fact that DWSD didn't do any studies to determine the age or

1 health of individuals living in the homes where water was
2 planned to be shut off. Do you know -- do you know if any
3 such studies were done?

4 A No.

5 Q No, you don't know, or, no, none were done?

6 A No, none was done that I'm aware of.

7 Q And do you know why?

8 A Because we bill the resident. We don't bill the
9 individual, so the resident changes constantly, and that's
10 just data that we haven't kept up with, who's in the home,
11 who's the owner of the home. It just says resident up at the
12 top.

13 Q So how would you come to know this information?

14 A The only way we would come to know this information is if
15 a person is a renter and they come in and go into what we
16 call a landlord-tenant agreement, and, therefore, they've
17 given us their name, and they've taken responsibility for the
18 bill or if a customer enters into a payment plan and they've
19 taken responsibility for the bill and their name is added as
20 the responsible party.

21 Q Turning back to your discussion about the difference
22 between the 2014 approach with shutoffs with respect to you
23 publicizing it, what happened to collections as a result of
24 DWSD publicizing its shutoff efforts?

25 A We started to collect -- how do I term this -- basically

1 we were breaking records in terms of collections with -- if
2 you compare that to previous years.

3 Q And so based on your experience with DWSD's collections
4 and billing process and customer service, what do you believe
5 caused this increase in collections?

6 A One, there was an awareness of what was actually going to
7 take place, and also customers started to get an
8 understanding that I've received the shutoff notice, and now
9 they're actually coming out. In the past customers didn't
10 believe that we were coming.

11 Q You mentioned approximately 24,000 accounts have been
12 shut off in 2014; is that correct?

13 A 24 to 25.

14 Q Okay. Are these permanent water shutoffs?

15 A No.

16 Q So explain to me why that number is not permanent.

17 A What happens is when you execute a shutoff, the customer
18 at any time, if the home is occupied, can come in and make a
19 payment, pay the bill in full, make a payment arrangement.
20 We would come back out in 24 hours and restore the service.

21 Q And has that, in fact, been done in 2014?

22 A Yes.

23 Q And do you have a sense of how many homes have actually
24 been turned back on in 2014?

25 A Out of that 24 to 25,000, there's been about 14 to 15,000

1 restored.

2 Q Okay. And then what about those remaining 8 to 9,000?
3 My math may be a little off, but what about the remaining
4 homes that are actually turned off?

5 A It's a combination of vacant homes, combination of
6 illegal usage. We have a high rate of illegal usage where
7 customers turn on their own service, and there's possibly
8 some folks that have chosen to not have their service
9 restored. We don't know the exact numbers.

10 Q Do you have a sense of how many vacant homes DWSD turns
11 off in a week?

12 A Typically in a week we turn off anywhere between 70 to 90
13 homes per week.

14 Q And why does DWSD spend time turning off water to vacant
15 homes?

16 A Well, one, you don't want the water loss associated with
17 bad debt because even though it's been termed as
18 uncollectable, it's still metered water that's going through
19 a home even though the likelihood of collecting on that is
20 probably nil. You want to make sure that you're not wasting
21 your resources as well as you want to make sure that you
22 don't cause damage to the property.

23 Q And speaking of collections, do you know what percentage
24 of DWSD customers actually pay their accounts on time?

25 A Typically 60 percent of our customers are paying their

1 bills on time and are not delinquent.

2 Q I want to now turn to the mayor's ten-point plan. As the
3 chief customer service officer, are you familiar with the
4 ten-point plan that's been discussed throughout the hearing?

5 A Yes.

6 Q And briefly in your own words tell us what the ten-point
7 plan is.

8 A The ten-point plan basically was designed to give a clear
9 pathway in what you should do if you're having affordability
10 issues, issues with contacting the department. It made a
11 clear pathway for paying the department or getting assistance
12 or getting your service restored.

13 Q Were you involved in discussions with Ms. Wiley as this
14 plan was being developed?

15 A Yes. As she stated, there was long hours.

16 Q I'd like you to turn to Exhibit 2 in your binder.
17 Exhibit 2 has been admitted into evidence. Do you recognize
18 Exhibit 2?

19 A Yes.

20 Q And what is Exhibit 2?

21 A Exhibit 2 is the ten-point plan.

22 Q Okay. And when did DW -- well, let me ask you this. Has
23 DWSD implemented the ten-point plan?

24 A Yes.

25 Q And when did DWSD begin doing that?

1 A We began doing that somewhere about July -- the early
2 part of August, somewhere around the 5th or the 6th,
3 somewhere around there.

4 Q So roughly how long has it been in place?

5 A It's been in place for about a month and a half or so.

6 Q Are there any parts of the ten-point plan that remain to
7 be implemented?

8 A No. We're doing everything that's in the ten-point plan.

9 Q Okay. And the revisions that you've been working on with
10 the rules and procedures, are you making any revisions that
11 account for the ten-point plan?

12 A Yes. Like I said, before our payment plan started off at
13 30 percent. I've had to change that. I've had to change
14 some of what we expect to receive from customers. In the
15 past, we used to require that you gave us legal proof that
16 you -- legal proof that you were legally occupying the home,
17 and now we're just asking for a state ID.

18 Q Is DWSD committed to continuing the ten-point plan beyond
19 today?

20 A Yes.

21 Q And for how long?

22 A As long as it makes sense and it works for our customers.

23 Q Okay. I want to ask you about some of the points in the
24 ten-point plan. Let's start with the first point, which is
25 waive turn on fees and late payment penalties. Could you

1 explain point one for us?

2 A What this is is there's a turn on fee and a turn off fee.
3 Basically, we turn on customers. Once they have their water
4 restored, there's a \$30 fee, and there's also penalties
5 associated with paying your bill late.

6 Q Okay. And so for what period of time was this waiver in
7 place?

8 A We started this waiver -- I want to say somewhere around
9 the 13th of August.

10 Q And then -- and how long did it last until?

11 A We continue it on a case-by-case basis. We continue it
12 for those customers that have affordability issues where we
13 will -- if you have a true affordability issue, we will look
14 at these fees and waive them.

15 Q Okay. So if you look at bullet point one, there's
16 reference to a term called "moratorium."

17 A Yes.

18 Q What does this mean? Explain what this concept meant in
19 connection with the ten-point plan.

20 A This concept basically mean during that period of the
21 moratorium, which the moratorium ended on the 25th, so this
22 particular piece of the ten-point plan was to end on the
23 25th.

24 Q Okay. But as you -- strike that. Who is covered by the
25 moratorium?

1 A All of our residential customers.

2 Q And was water being shut off during the moratorium?

3 A No.

4 Q Was water being turned back on during the moratorium?

5 A Yes.

6 Q Why did DWSD and the city enact the moratorium?

7 A Well, we enacted the moratorium for a couple of reasons.
8 One, as I appeared in court before Judge Rhodes, he stated
9 that we hadn't did a good job with communicating to our
10 customers, so the chief reason for the moratorium was
11 communication so that customers knew what was available and
12 how to access what was available. And one of the things the
13 mayor wanted to do was he wanted to beef up our service
14 centers as well as our call center, so he stated that the
15 problem that he was hearing from customers was that they
16 didn't have access. The lines were busy or lines at customer
17 service centers was long, so that was the continuation of the
18 moratorium so that he could put this plan in place.

19 Q As a result of the moratorium, approximately how many
20 water accounts were turned back on, if any?

21 A There was, I believe, somewhere around 6,000 or so,
22 something like that.

23 Q Turned back on?

24 A Yeah, during the time -- the whole time frame.

25 Q And why were these accounts turned back on?

1 A Either customers came in and paid the bill, customers
2 made payment arrangement, or they received some type of
3 assistance from one of the various programs.

4 Q What's the status of the moratorium now?

5 A There is no moratorium. The department is continuously
6 shutting off service for nonpayment.

7 Q Can you tell me what happened to DWSD's collection of
8 revenues during the moratorium?

9 A Well, during the moratorium, we saw a sharp decrease in
10 our collections. In June our collection efforts was a little
11 over 800,000. In July they were a little over 900,000 with
12 being on pace to reach somewhere around 1.5 million. But the
13 moratorium started in July, and when we got to August we
14 collected a little over 200,000.

15 Q So as a result of the drop in collections, what happened
16 to the city's revenue during the moratorium?

17 A It decreased. We looked at some of the -- what we did
18 was we looked at some of the previous months, the months
19 before the moratorium, during the moratorium, and after, and
20 we saw that we were decreasing our collectables in terms of
21 we were collecting more money, but when the moratorium went
22 into place, it went back up.

23 Q And you say when the moratorium went into place it went
24 back up. Roughly at what time frame did revenues go back up?

25 A We started to see it at the end of that July period and

1 that August period.

2 Q And based on your familiarity with DWSD's revenues and
3 collections, if revenue continued to trend as it did during
4 the moratorium, what effect would it have on the system as a
5 whole?

6 A Well, it would have a -- you got to understand what we do
7 is that the revenue requirement is what you need to operate
8 the department, so if you're not able to recoup that revenue
9 requirement through your rates, that mean you have to make
10 some decisions about things that you're not going to do, and
11 those decisions will be putting off some maintenance, putting
12 off some capital investment, or possibly even laying off
13 employees.

14 Q If collections go down, what ultimately happens to the
15 rates themselves?

16 A They would increase because what happens is now you have
17 to add what you call a bad debt factor to collect a lesser
18 amount of money, so you're adding more in there to collect a
19 certain amount of money.

20 Q Can you explain the bad debt factor a little bit more?

21 A Basically, as was stated earlier by the financial person,
22 which is Nicky Bateson, Detroit revenue requirement was \$334
23 million, but there's a bad debt factor -- and that's water
24 and sewage, but there's a bad debt factor of \$42 million, 12
25 million for water, 30 million for sewage, so that \$42 million

1 is added onto the 334 million just to collect the 334
2 million.

3 Q So if the bad increases, then that bad debt factor will
4 have to increase for the following year?

5 A Correct.

6 Q And that would ultimately increase rates?

7 A Correct.

8 Q Okay. Well, so now let's move to the next point, which
9 is point two. Point two is titled "cut red tape." What did
10 DWSD do to cut red tape?

11 A Well, what we did was we did away with the person having
12 to bring in a lease, a deed, basically prove that they had
13 legal right to occupy the home. All we asked for was a valid
14 state ID.

15 Q In the context of what?

16 A In the context of we wanted to make sure that when a
17 customer came in to go into a payment arrangement or to
18 restore service that they were legally -- they had a legal
19 right to be in the home. We didn't look at that anymore, so
20 if someone wanted to restore service or enter into a payment
21 plan, all they needed was valid ID.

22 Q Why does DWSD need a valid ID?

23 A We need a valid ID because if we're asking you to enter
24 into a payment arrangement, which is a binding agreement that
25 you're taking responsibility for the account, we want to make

1 sure that you're who you say you are.

2 Q Let's turn to point three of the ten-point plan, point
3 three and point four actually. Let's talk about them
4 together. These points relate to the customer care centers
5 and the call center hours and staffing. Explain to me what
6 points three and four are about.

7 A Well, this talks about, one, decreasing the hours at our
8 service centers. We increase --

9 Q I'm sorry. You said "decrease."

10 A -- excuse me -- increased our hours at our service
11 centers. We went from 8:30 to five to eight o'clock to six
12 and also added Saturday hours from eight to three.
13 Previously on Saturday we only operated from eight to four at
14 one center. Now we had all three centers open. And also
15 what four did was it increase staff. We added 12 staff
16 persons to our service centers and added probably about -- I
17 believe it was somewhere -- 13 to 15 folks on our phones.

18 Q And at what point in time in 2014 were points three and
19 four implemented by DWSD?

20 A They were implemented during the moratorium.

21 Q This would have been in end of July and August of 2014?

22 A Yes.

23 Q And do these expanded service hours and increased
24 staffing arrangements exist today?

25 A Yes.

1 Q If you look at point four, it states, "Starting August
2 18th, the call center will have 50 percent more staff and new
3 phone technology to better serve customers." Do you know if
4 the call center increased its staff?

5 A Yes.

6 Q By how many employees?

7 A We increased our staff probably by about 25 to 26
8 employees.

9 Q Okay. So how many staff members do you have now at both
10 the customer care centers and the call centers?

11 A There's between 80 to 90 employees.

12 Q And why were these particular measures implemented?

13 A Because of some of the complaints about long lines and
14 not being able to get through to the call center, and, you
15 know, most of the customers coming into the centers, they're
16 not coming in just to pay their bill. They're coming in to
17 either make some type of payment arrangement, go in a
18 landlord-tenant agreement, and that requires one on one with
19 a rep.

20 Q There's a reference to new phone technology. Was new
21 phone technology ever provided by DWSD?

22 A Yes. What we did was we went into an agreement with
23 AT&T, and what that did was allow us to route calls, so
24 basically with the contractor that we hired that added the 15
25 or so folks to answer phones, certain calls were routed to

1 them. If you want to make a bill payment, make inquiries and
2 stuff like that, it would go to the contractor. However, if
3 you wanted to make meter appointments, you wanted to file a
4 complaint for whatever reason or if you saw an emergency
5 situation, you wanted to enter into payment plans, everything
6 else associated with DWSD went to our reps.

7 Q Now, in your role as chief customer service officer, what
8 can you tell, if anything, has happened as a result of
9 increasing the staff at the care centers and the call
10 centers?

11 A We've seen a sharp decrease in wait times for customers
12 as well as wait times on the phone.

13 Q Turning back to the entirety of Exhibit 2, I'd like you
14 to describe the next point, which is point five, and that
15 point is called Cobo Water Fair, August 23rd. What does that
16 mean?

17 A That mean that we held an event at the Cobo Center for
18 customers to come in and to either get their service restored
19 if they were off or if they were in delinquent status to come
20 current or if they were in shutoff status, enter into a
21 payment plan and be removed from shutoff status as well as we
22 had a number of agencies there to help assist. For instance,
23 we had United Way that was there that was prequalifying
24 customers for assistance.

25 Q Was this fair held on August 23rd?

1 A Yes.

2 Q Was more than one fair held?

3 A Yes.

4 Q How many fairs were held?

5 A This was the second fair.

6 Q When was the first fair?

7 A I believe our first fair -- I can't remember the exact
8 date. It was somewhere the earlier part of August.

9 Q If you look at point five of the mayor's ten-point plan,
10 it references the fair as a water affordability fair. Do you
11 know why it was called a water affordability fair?

12 A No, and I wouldn't have used that term.

13 Q Why not?

14 A Because the term was misleading for customers. The fair
15 was just to give the customers access to the department in
16 terms of creating a day and a time, which was on a Saturday,
17 that customers can come and make their accounts whole or that
18 was also to let customers know that there was assistance
19 available. Customers came to that fair with the intentions
20 that their bills were going to get paid by someone.

21 Q Do you know why these fairs were held?

22 A These fairs were held because, one, we were being told
23 that customers didn't have the proper access to the
24 department, so we were holding these fairs on a Saturday and
25 basically were staffing them with a large number of staff so

1 that we could see a large number of customers.

2 Q Do you know if these fairs were publicized?

3 A Yes, they were.

4 Q What was done to publicize each of the fairs?

5 A Well, one, they were put on our website as well as we
6 made up fliers. We had meeting with Detroit clergy. We had
7 various speaking engagements for various organizations.
8 Myself and my staff did outreach associated with that.

9 Q You mentioned that there were two fairs. Describe the
10 first fair for me.

11 A The first fair was held at our eastside center, which is
12 on East McNichols. It was held from 8:30 to 5:00 at that
13 center. We serviced about 413 customers.

14 Q And you mentioned that there were various things that
15 were done at the fair. What type of assistance was DWSD able
16 to provide at this fair to customers who showed up?

17 A Well, we were able to waive some fees and waive some late
18 penalties and get customers in active payment plans.

19 Q Okay. And what about financial assistance? Was that
20 available at this fair?

21 A No. What we would do is prequalify customers and refer
22 them to various agencies.

23 Q But that could have been done at this fair?

24 A Yes.

25 Q Okay. If you turn to Exhibit 8 in your binder, do you

1 recognize Exhibit 8?

2 A Yes.

3 Q Okay. And what is Exhibit 8?

4 A Exhibit 8 is the 10/30/50, which is the -- which
5 describes the payment plan for the department.

6 Q And do you know if the payment plan is an independent
7 element of the ten-point plan?

8 A Yes.

9 Q Okay. And so if we turn back to Exhibit 2, which point
10 in Exhibit 2 covers the payment plan?

11 A Seven.

12 Q Okay. And could you describe for us generally the
13 payment plan process? What does 10/30/50 mean?

14 A For a customer that has a delinquent account, with
15 putting ten percent down of that delinquency account and
16 making payments moving forward over a 24-month, you can
17 continue to have your water restored. I also like to note
18 that the 24 months also encompasses your current bill, so you
19 pay your arrearage over a 24-month period plus your current
20 bill.

21 Q What's the value of having a payment plan from a
22 customer's perspective?

23 A The value for a customer is it allows you to pay an
24 arrearage account over 24 months as opposed to a payment in
25 full.

1 Q Do you have any discretion to deviate from the 10/30/50
2 plan?

3 A Yes.

4 Q And have you deviated from the 10/30/50 plan?

5 A Yes.

6 Q Under what circumstances?

7 A Typically what happens -- you get a customer come in, and
8 we deal with all different types of cases, so you look at
9 that case, and a customer may come in in a situation where
10 they're able to make ongoing payment, but they don't have the
11 actual down payment, and we in those cases have put customers
12 in payment plans.

13 Q Can you give me an example of a particular situation in
14 which you've actually not accepted ten percent, accepted less
15 than ten percent?

16 A Well --

17 THE COURT: Without naming names.

18 BY MS. MITHANI:

19 Q Yes.

20 A Okay. I've had customers personally call me. And the
21 publicity associated with water shutoffs, I get a lot of
22 calls, so I've had customers call me and had their water
23 shut. I've immediately had their water restored, and the
24 customer told me that they were unable to put a down payment
25 because their arrearage was so large but that they could make

1 a monthly payment, and I worked out that monthly payment with
2 them and moved them forward.

3 Q Okay. And what happens once an account holder is
4 enrolled in a payment plan? What happens to the account?

5 A Well, the account is spread out over those 24 months, and
6 when you receive your bill, you receive a bill that shows
7 your payment for that month as well as your current bill.

8 Q And what happens to the account if it's scheduled for
9 shutoff?

10 A The shutoff is voided, and the account is no longer in
11 delinquency status.

12 Q Why don't we take a look at point -- the next point on
13 the ten-point plan? Earlier in your testimony you were
14 talking about working to provide mechanisms of financial
15 assistance to customers. What were you specifically
16 referring to when you mentioned that?

17 A Well, there's a number of organizations that provide
18 assistance in point eight. United Way is a program that was
19 set up by the mayor, which is Detroit Water Fund, which was
20 stated earlier has a little over \$2 million. And it provides
21 assistance to a customer of about 25 percent, but there's
22 other programs. We have the Detroit Residential Water
23 Assistance Program.

24 Q Well, so hold on. What's that?

25 A The Detroit Residential Program is an assistant program

1 that was started back in 2006, 2007 that was born out of what
2 Roger Colton talked about when he talked about affordability.
3 Detroit was unable to charge customers according to what they
4 could afford to pay. However, we set up a fund that would
5 allow customers to pay what they could afford to pay, so over
6 a 12-month period if a customer's bill was \$67, the fund
7 would pay 50, the customer would pay 17, and each quarter a
8 portion of their arrearage would be paid, so what this did
9 was encourage customers to stay in the program.

10 Q How much money was the -- is the DRWAP fund still in
11 existence?

12 A Yes.

13 Q How much money is in that fund?

14 A When we started pre -- well, when we started qualifying
15 customers, there was somewhere around 1.1 million, but we're
16 qualifying customers. We've qualified some 400 and something
17 customers. We anticipate we'll have somewhere around a
18 little over 800 customers in the program.

19 Q Do you have a sense of when that \$1.1 million figure --
20 what date that's from or month?

21 A No, because what happens with this program is there's a
22 rollover factor, so if a customer defaults in the program,
23 they've moved out of the program, the money is rolled back
24 over into the program, so there's a number of dollars
25 associated in the program that roll over.

1 Q So it sort of revolves over time?

2 A It sort of revolves. And the initial money comes from
3 the 50-cent donation that's a part of water bills.

4 Q Okay. But based on your last known information, it was
5 roughly 1.1 million?

6 A Right.

7 Q Okay. And then you mentioned the Detroit Water Fund.
8 About how much money is in that right now?

9 A Right now there's probably between 1.7 and 1.8, somewhere
10 around there, million.

11 Q What other types of financial assistance are available to
12 low income Detroit customers?

13 A Wayne County DHS. You have --

14 Q Well, what is Wayne County DHS? What do they offer to
15 their customers -- or to our customers?

16 A They offer two things to the customer. They offer --
17 there is a one-time assistance payments that's small. It's
18 about \$170, somewhere around there, and what that does is
19 they'll -- that'll either help a customer with a down payment
20 or in some cases pay a customer's bill in full, but they also
21 have a larger fund that they will pay an account off in full.

22 Q Any other sources of relief, financial assistance or
23 relief?

24 A Yes. You have Wayne Metro. Wayne Metro provides
25 assistance as well as WAVE. Also, there's a number of other

1 referral companies that do not want us to advertise their
2 numbers, but as customers come into the department, they want
3 us to make referrals.

4 Q And when you make a referral, will you place the call on
5 behalf of the customer, or do you provide the organization's
6 name to the customer and then the customer reaches out?

7 A We place a call on behalf of the customer to the
8 organization.

9 Q Now, who can qualify to receive financial assistance
10 under this Detroit Water Fund?

11 A Anyone that's already pre-enrolled in the LSP program,
12 which is a DTE program for low income customers, or anyone
13 that is 150-percent below at the poverty level.

14 Q Are there other enrollment requirements besides those
15 two?

16 A Yes. You have to be in an active payment plan.

17 Q And what about the balance on your payment plan --

18 A The balance on your --

19 Q -- or your balance on your account? I apologize.

20 A The balance on your account. You have to be in an active
21 payment plan. This program will pay 25 percent of that
22 balance as well as 25 percent of your bill moving forward.

23 Q As a customer, though, is my ability to be in the
24 financial assistance plan or to enroll for the Detroit Water
25 Fund dependent on my account balance value?

1 A Yes. Your balance has to be between 300 and a thousand
2 dollars.

3 Q And then are there any usage limitations that are placed
4 on people who enroll in the Detroit Water Fund?

5 A Yes. You have to maintain average usage for your
6 household size.

7 Q Why is that limitation there?

8 A Well, one of the things that -- you want to make sure
9 that the customer is conserving as much as possible and that
10 you're having an average usage so that there's not leaks and
11 problems in the home that is causing the bill to be
12 extraordinarily high.

13 Q If there is a leak in the home, is there a fund that's
14 been established as sort of -- a pilot fund that's been
15 established to sort of deal with the potential repair of
16 those types of issues?

17 A Yeah. Wayne Metro is looking at that because that's one
18 of the biggest issues with some of these customers with some
19 of these very large accounts. They have very faulty
20 plumbing. So Wayne Metro is setting up this pilot fund to do
21 water audits in homes.

22 Q Earlier today Ms. Wiley was asked about enrollment for
23 the Detroit Water Fund. Do you know whether someone has to
24 apply on an annual basis?

25 A Yes.

1 Q And why is that?

2 A Your income level can change. The number of people in
3 the home could change. The number of people in the home with
4 income can change, and that varies with our customers.

5 Q So with respect to a senior citizen who usually has a
6 stable source of income if they're receiving assistance, why
7 would you need them to reapply?

8 A Because typically what will happen is a lot of times with
9 senior citizens they end up having relatives live with them,
10 and you have to verify that source of income if it has been
11 an addition to the home.

12 Q Now, if someone applies for enrollment in the Detroit
13 Water Fund, what happens with that customer's bill or
14 account?

15 A Well, if someone applies for Detroit Water Fund, what
16 happens is that account goes into a payment plan, and what we
17 will do moving forward is we would set that account aside
18 until the program has qualified the person, and moving
19 forward that 25 percent will start to go on that person's
20 bill and decreasing their bill.

21 Q And if that person is scheduled for shutoff, what happens
22 with the status of the shutoff?

23 A The shutoff is terminated.

24 Q And for how long is the shutoff terminated?

25 A The shutoff is terminated as long as the employee stays

1 in good standing in terms of actually paying their bill.

2 Q Now, you mentioned that there were two fairs. Do you
3 know how many people, if any, attended the second water fair?

4 A 1,340 customers attended the Cobo Hall Water Fair.

5 Q And what kind of assistance was provided to people at the
6 second water fair?

7 A There was -- at that time we had established the Detroit
8 Water Fund, so we also had United Way there at this fair, and
9 they were prequalifying customers for assistance.

10 Q Do you know how many, if any, people were placed on
11 payment plans at the fair?

12 A Yes. There was somewhere around 1,140 customers placed
13 on payment plans.

14 Q And do you know if any customers applied for financial
15 assistance at the fair?

16 A Yeah. There was somewhere around -- there was about 150
17 customers applied for assistance.

18 Q And did anyone qualify for assistance?

19 A About 73.

20 Q And just so we're clear on the numbers, since the time
21 you testified before the Court in July 2014 to now today, how
22 many DWSD customers have been enrolled in a payment plan or
23 some sort of financial assistance program?

24 A From that time period, a little over 16,000.

25 Q Do you know -- I think you testified there was

1 approximately 1.8 million in the Detroit Water Fund right
2 now?

3 A Yes.

4 Q What -- well, strike that. Let's go back to the ten-
5 point plan. We were discussing the affordability fair, and
6 then as a result we ended up discussing points seven and
7 eight. Let's go back to point six. Tell me more about
8 improved notification for customers that are in danger of
9 shutoff.

10 A Well, what we wanted to do is a lot of times you have
11 customers that receive a shutoff notice, and sometime they
12 may not open it and realize that they have a shutoff notice,
13 so what we decided to do is add door hangers. So what we
14 started to do is add door hangers to homes to let them know
15 that in seven days they were scheduled for shutoff.

16 Q Okay. Well, now, point six also says, quote, "Bills will
17 more clearly explain their status, and assistance information
18 will be included on the bill," unquote. What about the bills
19 changed, if anything?

20 A Well, we changed the envelope. We put on the outside in
21 red, "Urgent. Shutoff Notice," so the customer would know
22 that this wasn't a typical water bill. We also changed the
23 past due notice. We put more of some of the writing in red
24 to highlight it, and -- so that the customer would know
25 that -- to pay attention that it was a past due notice. We

1 also -- part of the shutoff notice was already highlighted in
2 red at the top, but we added some other portions of the
3 writing in red to make it highlighted that this was a shutoff
4 notice.

5 Q Okay. I'd like you to turn to Exhibits 4, 5, and 6 in
6 your binder and just take a moment to flip through those. So
7 you're looking at what's been marked for identification as
8 Exhibits 4, 5, and 6. Do you recognize these three
9 documents?

10 A Yes.

11 Q And what are they?

12 A The first one is the envelope that we've changed, and if
13 you look on the outside, it says, "Urgent. Shutoff Notice
14 Enclosed."

15 Q Okay. And what are the other two documents, briefly?

16 A The other document is a past due notice, and it
17 highlights that your account is past due, and the other
18 document also is a shutoff notice.

19 Q Okay.

20 THE COURT: Are these going to be brought up on the
21 screen, or should I get them out?

22 MS. MITHANI: No. They are going to be brought up
23 on the screen.

24 THE COURT: Okay.

25 MS. MITHANI: I just wanted to -- and I guess I'll

1 ask Ms. Jennings now. Do you stipulate to their admission,
2 or do you want me to lay business record foundation?

3 MS. JENNINGS: No. I stipulate.

4 MS. MITHANI: Okay. Then that saves a lot of time
5 for us, so --

6 THE COURT: So let's pause a second. What are the
7 exhibit numbers?

8 MS. MITHANI: Exhibits 4 -- well, your Honor, I
9 move, based on stipulation, in evidence, Exhibits 4, 5, and
10 6.

11 THE COURT: Okay. They are admitted.

12 (City Exhibits 4, 5, and 6 received at 12:07 p.m.)

13 BY MS. MITHANI:

14 Q All right. I'd like you to walk us through what some of
15 the improved notification elements are in each of these
16 exhibits, so let's start with Exhibit 4.

17 A So in Exhibit 4 if you notice you see in red "Urgent.
18 Shutoff Notice Enclosed." So in our previous mailings, that
19 was not there. We just sent out what we sent out in our
20 normal envelope.

21 Q And then let's turn to Exhibit 5, and I think Exhibit 5
22 is two pages, so let's focus on the first page first. What
23 additional information was added on Exhibit 5? And Exhibit 5
24 is a past due notice; correct?

25 A Correct.

1 Q Okay. And when in the state -- before we talk about the
2 actual specifics, when in the status of an account is a past
3 due notice sent to a customer?

4 A The past due notice is sent out. Usually it's the second
5 bill you received after you received your original bill. If
6 you do not make a payment once that original bill becomes
7 due, then you receive a past due notice.

8 Q And time frame in receiving a past due notice?

9 A It typically takes about 30 days in total after your bill
10 has been sent.

11 Q And so let's look at the additional language that was
12 added. What areas of page 1 were added to improve
13 notification?

14 A Well, in the block red, you see that that language
15 there -- that language there was changed and highlighted in
16 this red part. Before there was just some red writing at the
17 bottom, but this was just black, and now it's highlighted in
18 red. Also, you have -- up at the top you have the account is
19 past due in red, and you have the past due water mark going
20 across.

21 Q So the watermark is actually on the actual past due bill?

22 A The watermark is something that we're going to add which
23 is new. We're testing it right now. Everything else is
24 already there. The watermark will get us to the final stage
25 of this, and we're testing it right now.

1 Q Okay. And then if we look at page two of Exhibit 5, what
2 does page 2 contain to give the customer better notification
3 about shutoff procedures and billing procedures?

4 A Well, basically what we added was the dispute piece at
5 the bottom so that customers understand what was needed to
6 dispute a bill in terms of making a complaint and the time
7 frame associated with that.

8 Q And if you take a look at the top half, which we can see
9 on the published screen, there's a reference to the DWSD
10 website. Do you see that?

11 A Yes.

12 Q What information is available, if any, on the DWSD
13 website to inform customers about payment disputes and
14 shutoffs?

15 A Well, it talks about that a customer can request a
16 hearing or make a dispute or can dispute their bill, so a
17 customer has a right to a hearing.

18 Q Let's turn to Exhibit 6. What is Exhibit 6, Mr. Latimer?

19 A Exhibit 6 is basically the shutoff notice that's sent out
20 to a customer letting the customer know they're in shutoff
21 status and that they have ten days to pay their bill or their
22 water service will be terminated.

23 Q Okay. And what items on Exhibit 6 exist to improve
24 customer notification about shutoffs?

25 A Well, the water shutoff notice at the top was already

1 there. The piece at the bottom when you have all of that in
2 red, that was added, and that was changed so we could
3 highlight. All of that was changed to highlight that the
4 customer is in shutoff status, and so it would be in red so
5 it can bring more attention to that fact.

6 Q And the piece on the top, that was already in existence
7 prior to the ten-point plan?

8 A Yes.

9 Q When in the billing process -- I guess let me take a step
10 back and ask you this way. How much period of time passes
11 between the time a customer receives a past due notice and
12 receives this notice, the shutoff notice?

13 A About 30 days.

14 Q And then if you flip to the back page of Exhibit 6, what
15 sort of notifications are provided here to the customer?

16 A Well, you're letting the customer know what's needed to
17 basically stave off the shutoff, that they can enter in
18 payment arrangements and what that is and what they need to
19 do, what their rights is about filing a complaint and those
20 various things.

21 Q And you mentioned disputes. If a customer disputes a
22 bill, is the customer's water shut off?

23 A No. The customer is allowed to dispute his current bill,
24 and that amount that is in dispute will be set aside until a
25 resolution is reached.

1 Q How long does the customer have to dispute his or her
2 current bill?

3 A They have 21 days -- 28 days. Excuse me.

4 Q Now, what happens if a customer doesn't dispute the bill
5 within 28 days?

6 A Then you've lost the opportunity to dispute that current
7 bill and it's deemed as accepted.

8 Q So disputes really relate to current bills?

9 A Correct.

10 Q Do you receive many disputes from residential customers?

11 A Last year we held about 260 hearings. We probably had
12 somewhere around a thousand actual disputes, somewhere around
13 there.

14 Q Now, you're mentioning hearings. Is that something
15 distinct from disputes?

16 A Yes, because the customer may dispute a bill, and they
17 give us their reason for dispute, and we investigate. And if
18 the customer -- what the customer is telling us has some
19 validity, then we'll come back and send the customer a letter
20 and let them know what our findings are. At that time, the
21 customer can either accept our findings or they can request a
22 hearing.

23 Q Now, during the dispute period while DWSD is
24 investigating, is the account subject to shutoff?

25 A The account is not subject to shutoff for that disputed

1 amount.

2 Q So for whatever amount is disputed, the customer cannot
3 be shut off for not paying that amount?

4 A Correct.

5 Q And then with respect to a hearing, when does the hearing
6 come into play in connection with a dispute?

7 A Well, after we conduct our investigation, we send out a
8 letter to the customers letting them know what we found, and
9 at that time the customer has ten days from the time that
10 they receive that letter to request a hearing.

11 Q Okay. So if the customer requests a hearing within the
12 ten-day period --

13 A Right.

14 Q -- can the customer be shut off for the amount in dispute
15 that's going to be adjudicated at the hearing?

16 A No.

17 Q Typically how long does it take to actually get a hearing
18 scheduled from the time it's requested?

19 A A month or two.

20 Q I'm sorry.

21 A A month -- one to two months.

22 Q Does the customer have the ability to reschedule that
23 hearing?

24 A Yes.

25 Q And do we follow up with the customer, or does the

1 customer have to follow back up with DWSD to reschedule the
2 hearing?

3 A If the customer has asked to adjourn a hearing for
4 whatever reason, it's incumbent upon the customer to get back
5 in contact with DWSD to reschedule.

6 Q Does the dispute process also apply to commercial
7 accounts as well?

8 A Yes.

9 Q Do you know whether commercial customers have disputed
10 DWSD's bills?

11 A Yes.

12 Q Generally what's the nature of those types of disputes?

13 A The nature of those disputes usually center around
14 drainage charges.

15 Q What do you mean by "drainage charges"?

16 A Your bill has three main components. It has a water
17 charge, a sewer charge, and a storm water drainage and snow
18 melt, you know, drainage charge that's associated with the
19 account.

20 Q So I don't know if you've been in the courtroom, but
21 there's been some testimony about delayed billing with
22 respect to commercial accounts. Have you been here for that?

23 A Yes.

24 Q Okay. What does that refer to?

25 A Well, there was something that occurred in the system

1 that when you shut off an account, meaning that they no
2 longer have an active water and sewage account, it was also
3 taking out the drainage account, so we had a number of those
4 accounts that were not billing drainage. Even though a
5 commercial account does not have service with us, we continue
6 to charge them a drainage, so that --

7 Q That's only in the context of commercial accounts?

8 A That's only in the context of commercial accounts.

9 Q Okay. So continue. I'm sorry to interrupt.

10 A So those accounts for a period of time didn't bill
11 drainage, and when we discovered that that had occurred in
12 the system, we corrected it and went back and -- during that
13 time period and back billed those customers.

14 Q Okay. Have certain commercial customers disputed that
15 billing?

16 A Yes.

17 Q And are those disputes currently being investigated by
18 DWSD?

19 A Yes.

20 Q Has DWSD, you know, resolved all those disputes or just
21 decided not to collect from those customers?

22 A Some customers we've collected from. Some customers the
23 disputes have been resolved. Some customers continue to
24 dispute, and some of their reasons is not so much as the
25 actual billing. There's various reasons. Some of it is that

1 we have their property size wrong, we have their
2 imperviousness wrong, so they're disputing various things.

3 Q Turning back to Exhibit 6, I want you to look --

4 MS. MITHANI: I'm sorry, Colin. Can you blow that
5 back up? That's okay.

6 BY MS. MITHANI:

7 Q I want you to turn your attention to point six. It talks
8 about having the right to postpone shutoff for 21 calendar
9 days if someone is living in the house with a medical
10 emergency. Do you see that?

11 A Yes.

12 Q What can you tell me about that policy?

13 A Well, that policy basically gives the customer the right
14 to -- with proof from a doctor or any type of health agency
15 to show proof that the impact of the shutoff will have an
16 effect on a person's medical health, and that gives the
17 customer 21 additional days, so the customer can enter into a
18 payment plan that will become effective 21 days later or the
19 customer just have an additional 21 days. After 21 days if
20 the customer has not entered in a payment plan or paid the
21 bill, the shutoff will be executed.

22 Q Is this a new policy? Well, let me take a step back.

23 How long has this been a policy of DWSD?

24 A It's been a policy for quite some time.

25 Q Is there any other notice that DWSD provides its

1 customers with respect to impending shutoff?

2 A Other than the door hangers -- we provide the door
3 hangers, which let a customer know that they're scheduled for
4 shutoff in seven days.

5 Q Why don't you turn to Exhibit 7 in your binder? Do you
6 recognize Exhibit 7?

7 A Yes.

8 Q And what is that?

9 A This is the door hanger that's provided to a customer
10 that is in -- scheduled for shutoff.

11 Q Okay. Why does DWSD rely on the door hanger?

12 A Well, we've already at this point sent out a notice of
13 shutoff in the mail, and what this does as well is gives the
14 customer additional notice that we actually have you
15 scheduled, so this has a date certain that your service will
16 be terminated and also gives you the opportunity to let you
17 know how to contact the department if you need assistance.

18 Q What parts of the door hanger are intended to better
19 notify customers about shutoffs?

20 A Well, basically the door hanger itself -- the part that
21 is put in red at the top was trying to get your attention to
22 let you know that, hey, there's an urgent situation that's
23 about to occur at your home with regards to your loss in
24 service, so that big red part is to grab the customer's
25 attention.

1 Q And will this -- is this door hanger -- well, let me take
2 a step back. When you talked about revising Rule 20A of the
3 interim rules and procedures, will the door hanger be
4 implemented into that revision?

5 A Yes. The door hanger basically will replace the -- well,
6 I won't call them customer -- our field crews from knocking
7 on the door to alert the customers. This will replace that.

8 Q And, again, what's the benefit of doing the door hanger
9 versus the door knocker?

10 A The door hanger allows us to place this on the home
11 without disturbing the home or bringing attention, and it's
12 more of a safety issue.

13 Q So roughly how much time is there between the time the
14 customer gets their first bill and the time this door hanger
15 is placed to reach out to DWSD and talk about getting into a
16 payment plan or enrolling in financial assistance to avoid a
17 shutoff?

18 A The customer has at least 70 days from that original bill
19 until that final notice.

20 Q And during that period of time, are Exhibits 5, 6, and 7
21 provided to the customer to --

22 A Yes.

23 Q -- alert them about the shutoffs?

24 A Yes.

25 Q Typically, in your experience, once DWSD notifies -- I'm

1 sorry -- once a customer notifies DWSD about having
2 difficulty paying and wanting to enroll in financial
3 assistance, how long does it take for a qualified low income
4 customer to obtain financial assistance?

5 A Well, in the Detroit Water Fund, if you're in the LSP,
6 you're already prequalified, takes about two days. If you're
7 not in the LSP program, it can take four to five days.

8 Q And do commercial customers receive more or less notice
9 than residential customers?

10 A They receive the same notices.

11 Q Now, turning back to Exhibit 2, I want you to describe
12 the last two points of the ten-point plan, so let's turn to
13 point nine. Why don't you explain point nine to us, the
14 building of neighborhood partnerships?

15 A Well, in building the neighborhood partnerships, we've
16 had extensive meetings with DHS, Wayne Metro, United Way,
17 and some of the other entities that provide assistance, and
18 basically what we've done is we've built a connection there,
19 so we communicate, so if they have a customer that they're
20 working on an account for a customer to provide assistance
21 and they haven't quite finished, they will contact us to let
22 us know that they're working on this customer, and,
23 therefore, we can put the shutoff in abeyance until they're
24 able to complete that process, so we have this ongoing
25 dialogue where we'll refer customers. They have a dialogue

1 of letting us know where they're at with that process with
2 customers.

3 Q Okay. And then what about point ten?

4 A Point ten just provides a way to make donations. It
5 provided a way to make donations to the water fund, and it
6 provides that you can do it on line. You can do it over the
7 phone. You can mail it in. It's just a way of making it
8 easy to donate to the Detroit Water Fund.

9 Q And this is a way to communicate the issues with low
10 income affordability to other people who may want to assist?

11 A Yes. Anyone that has a concern, whether you're in state,
12 out of state and you're concerned, this provides a clear path
13 to assist those customers.

14 Q What, if any, effect have all of these measures in the
15 ten-point plan had on shutoffs?

16 A It has decreased shutoffs.

17 Q By how much?

18 A What we look at is we look at on a day-to-day basis in
19 the past we were shutting off -- prior to this, we were
20 shutting off between 700 to 900 accounts per day. Now we're
21 at about three -- between three and 400 per day.

22 Q So by approximately 50 percent the shutoffs --

23 A Correct.

24 Q -- have decreased?

25 A Correct.

1 Q And since what period of time?

2 A Since we started really tracking this decrease. We
3 started looking at it when we came out of the moratorium.

4 Q I'm sorry.

5 A When we concluded the moratorium.

6 Q So do you know how many water shutoffs there have been
7 since the moratorium?

8 A I can't remember offhand, but there haven't been many as
9 compared to previously.

10 Q Well, how -- I'm sorry. Go ahead.

11 A As compared to previously, there has been a sharp
12 decrease.

13 Q What does a -- describe the actual physical process of
14 actually performing a water shutoff at a residence. What has
15 to happen before DWSD can actually turn off the water?

16 A Well, typically what happens is once the customer has
17 been in shutoff status, we've put the door hanger out letting
18 the customer know that they have seven days, and that date
19 certain would be on there. If the customer hasn't made a
20 payment, payment arrangements, we send crews out to the home.
21 The crew has to locate the stop box. Typically the stop box
22 is hidden under grass and what have you because grass has
23 overgrown it. They use a metal detector to try to find it.
24 Once they find the stop box, they -- in a lot of cases they
25 may have to do some light digging to uncover the stop box,

1 and then they have to pull the cap off. And we have a tool
2 that goes in there that basically turns the water off, and
3 typically what they do is they'll spray on there so that it's
4 easily to identify the service when we go back out if we
5 restore. In some cases, you have to spray a mark -- a
6 locator mark because in some cases we can't execute a shutoff
7 with this device. You have to actually excavate to
8 recondition the stop box.

9 Q Okay. So when you say "locate" or "mark," is that the
10 blue marking that everybody has been talking about in this
11 hearing?

12 A Yes.

13 Q What is the blue marking intended to designate?

14 A The blue marker is for the location of our service. It
15 identifies the location of the service line, so if a crew has
16 to come back out and do an excavation, they know exactly
17 where our service line is at, whether it be our crews, DTE
18 crews, what have you.

19 Q Does every customer who's facing shutoff and is actually
20 shut off have a blue mark on their property?

21 A Not necessarily. Some we do spray the cap, but there may
22 not be a particular mark on the sidewalk.

23 Q And if there's a particular mark on the sidewalk
24 designating where the water line is located, are there other
25 utility markers as well?

1 A Yes. A lot of times you'll see gas markings a lot of
2 times with DTE, and typically a lot of times you'd see,
3 though, they're in yellow.

4 Q And why do those markings need to be there?

5 A Those markings need to be there so that when we excavate
6 that we don't hit another service line because typically our
7 lines are the deepest lines in a homeowner's area, so
8 typically what happens is we'll have those other utilities
9 mark their service lines so when we're excavating we do not
10 hit them.

11 Q Could the blue marking in front of a resident's home be
12 placed by someone other than DWSD?

13 A It's possible.

14 Q Under what circumstances?

15 A It's possible if someone is just trying to stake out an
16 area for excavation.

17 Q It wouldn't necessarily be connected to shutoffs?

18 A No, it wouldn't necessarily be connected to shutoffs.

19 Q Okay. I want to turn your attention now to some of the
20 witnesses that testified yesterday. You were provided a
21 subpoena to produce DWSD's business records for all the lay
22 witnesses listed on plaintiff's witness list, and that list
23 was attached as Exhibit A; correct?

24 A Correct.

25 Q And were you specifically asked to provide a customer

1 bill, a work order history, and a detailed history report?

2 A Yes.

3 Q And are those records in front of you today in the white
4 binder?

5 A Yes.

6 Q Okay. Why don't you turn to the white binder?

7 MS. MITHANI: These won't be electronically
8 displayed.

9 THE COURT: Okay. Thank you.

10 BY MS. MITHANI:

11 Q Are the records in the white binder all of the records
12 you brought in response to the subpoena?

13 A Yes.

14 Q Okay. And so you're taking a look at what's been
15 premarked as -- for identification as Exhibits 12(a) through
16 12(z). Do you recognize those?

17 A Yes.

18 Q And then just confirm for us what they are, please.

19 A They're basically exhibits that show a customer's bill
20 and a customer's payment history as well as work order
21 history.

22 MS. MITHANI: Would you like me to lay a business
23 records foundation?

24 MS. JENNINGS: Yes, I would.

25 MS. MITHANI: Okay. Sure.

1 BY MS. MITHANI:

2 Q And is everyone that was included on plaintiff's witness
3 list A included in the binder, the white binder?

4 A As far as I can tell.

5 Q Okay. Were these records gathered at your request?

6 MS. JENNINGS: I'm going to object to the extent
7 that John Smith on LaSalle Boulevard was not --

8 MS. MITHANI: That's true. And just to clarify, we
9 received the wrong address, so we weren't able to pull
10 records for him, but I will stipulate that John Smith is not
11 in this binder.

12 THE COURT: Okay.

13 BY MS. MITHANI:

14 Q With the exception of Mr. Smith, were these records
15 gathered at your request?

16 A Yes.

17 Q And were these records prepared at or near the time of
18 the most recent account information contained in the records?

19 A Yes.

20 Q Were they created by individuals with knowledge of the
21 customer accounts?

22 A Yes.

23 Q And those individuals work for you?

24 A Yes.

25 Q Are these records made and maintained in the course of

1 DWSD's regular collection and billing activities?

2 A Yes.

3 Q And part of DWSD's regular business activities do include
4 collection and billing; correct?

5 A Correct.

6 Q And is it part of DWSD's regularly conducted business
7 activities to maintain these types of records?

8 A Correct.

9 MS. MITHANI: Your Honor, we'd move to admit
10 Exhibits 12(a) through 12(z) in evidence at this time.

11 MS. JENNINGS: I have no objection, your Honor.

12 THE COURT: Some of them have already been
13 admitted --

14 MS. MITHANI: Yes.

15 THE COURT: -- so the balance of them are admitted
16 now.

17 (City's Exhibits 12(a) through 12(z) received at 12:31
18 p.m.)

19 BY MS. MITHANI:

20 Q Mr. Latimer, have you had a chance to review these
21 business records as it relates to the residential customers
22 who were identified on the plaintiff's witness list?

23 A I've had a chance to look over them briefly.

24 Q Okay. What can you tell me about these accounts
25 generally?

1 A I can tell you that these accounts have various
2 circumstances, and there's no two accounts that are alike.
3 There's various issues from bills that go back three to four
4 years that haven't been paid or property transactions that
5 have occurred, so there's just a number of different things
6 that have taken place.

7 Q Do these records inform you about whether the various
8 individuals have actually received notice of shutoffs?

9 A Yes.

10 Q What do they tell you?

11 A They tell me that typically most of the customers at one
12 point was in shutoff status and under some type of payment
13 plan and that some are back in shutoff status.

14 Q Do these records reveal --

15 THE COURT: Excuse me. Excuse me. I need you to
16 answer the question, which was, "What do these records say
17 about whether these people received a shutoff notice?"

18 THE WITNESS: Yes.

19 BY MS. MITHANI:

20 Q Yes, they have received a shutoff notice?

21 A Yes.

22 Q Okay. Do these records reveal that there's been contact
23 between the department and the individuals?

24 A Yes.

25 THE COURT: Is your answer -- is your answer there

1 intended to apply to all of the individuals or just a general
2 statement about them?

3 THE WITNESS: The general statement that I would say
4 all of the accounts that I looked at -- and I believe they
5 mentioned that one wasn't here, so I'm not for sure about
6 that one, but all of the ones that I look at, there was some
7 contact with the department.

8 BY MS. MITHANI:

9 Q Okay. Setting the binder aside, we spent some time
10 talking about what DWSD is doing to help customers keep their
11 water on. What efforts can a customer undertake to help
12 decrease water shutoffs?

13 A A customer can either contact the department, enter into
14 a payment plan or pay their bill under \$150 so that they
15 don't have an arrearage that exceeds \$150. They can also
16 gain assistance from any of the various programs that will
17 provide assistance, which may pay their bill in full or help
18 them enter into a payment plan, or they can enter into the
19 Detroit Water Fund as well as help them assist with their
20 bill.

21 Q Looking at the changes that DWSD and the city have made
22 to practices since July of 2014, what are DWSD's goals and
23 objectives now going forward?

24 A Our goals and objective is to keep our customers current
25 so that we don't have to execute shutoffs.

1 MS. MITHANI: I have nothing further, your Honor.

2 MS. JENNINGS: Your Honor, would you like me to
3 proceed at this point?

4 THE COURT: Yes, please.

5 CROSS-EXAMINATION

6 BY MS. JENNINGS:

7 Q Mr. Latimer, I counted approximately 48,000 homes that
8 have been shut off since January of 2013. Does that sound
9 about right to you? Residential only.

10 A When you add "residential," give or take.

11 Q Okay. 24,000 in 2013, and you just testified to either
12 24,000 or 25,000 this year; correct?

13 A That includes commercial.

14 Q Okay. For residential, how many this year?

15 A Probably about 24.

16 Q Okay. So approximately 50,000 homes have been shut off
17 in two years. Do you know how many of those shutoffs were
18 for occupied homes with people, Detroiters?

19 A As we stated, we bill the resident. We don't know who's
20 living there or who's not living there.

21 Q So as you sit here today, you do not know how many of
22 those homes that remain without water have people in them?

23 A No.

24 Q Okay. And you did not personally request any type of
25 health and safety review by the Health Department?

1 A No.

2 Q You did not personally request that there be any
3 financial evaluation of any of the people who might have
4 their water shut off or have had their water shut off?

5 A No.

6 Q Okay. So as you sit here today, do you know how many of
7 those individuals who might be living with water are below
8 the poverty level --

9 A No.

10 Q -- or are 150 percent below?

11 A No.

12 Q Right now Homrich is continuing even as we have this
13 hearing to shut off water; is that true?

14 A Correct.

15 Q At a rate of how many per day?

16 A Between three and 400.

17 Q Okay. And is it -- would you say that this ten-point
18 plan has not yet become successful?

19 A I would say that it has been successful.

20 Q It's successful. Do you know how many of those 300 to
21 400 homes a day have people in them?

22 A Don't know.

23 Q Do you know whether or not those people have got the news
24 that they can come into the DWSD department and even without
25 any money be able to enter into some kind of plan to save

1 water in their house for themselves, their children, or
2 senior citizens?

3 A I wouldn't know what they know, but I would say that
4 everybody in the United States know that DWSD is shutting off
5 water, so I would think that they would come and contact the
6 department.

7 Q If they have a TV, would that be correct?

8 A That's one avenue.

9 Q Newspapers?

10 A One avenue.

11 Q Or a computer?

12 A One avenue.

13 Q If you don't have any of the three, you might not know.
14 Would that be fair?

15 A Possible.

16 Q Okay. Now, as we sit here today, have you sent a notice
17 to each and every home in the City of Detroit that says there
18 is a plan that if you do not have money and you do not have
19 even the ten percent down, we can get you some assistance
20 through the Water Fund? And that would have all have
21 happened, of course, after July.

22 A We sent two notices out that did not -- it said that if
23 you needed assistance that you should call our 267-8000
24 number.

25 Q Please listen to my question. Did you put any notice out

1 to people that they could -- to the Detroiters that if they
2 have no funds, there is the ability to keep their water from
3 being shut off?

4 A No.

5 Q Is there anything on the door hanger or the two new
6 policies and procedural-type -- it's not on the door hanger,
7 but in the two notices that come before that, number five or
8 six. Do you have any language in those two shutoff notices
9 that a person could come in, a family, and keep their water
10 on?

11 A Yes.

12 Q Okay. And what does it say?

13 A It says to maintain service, you can come in and enter
14 into a payment arrangement.

15 Q Okay. But doesn't that, by its very language, say they
16 have to have some money?

17 A Right. That's why we would not send out nothing saying
18 that you don't need money because it would be misleading to
19 do that.

20 Q Okay. So there are only a few people who could get the
21 benefit of getting their water to continue because of
22 payment --

23 A Everyone --

24 Q -- of the inability to pay?

25 A Everyone will have to make a payment.

1 Q Even the poorest people who don't have any money? I
2 thought you just testified that there were waivers that could
3 occur where people could get -- where a Detroiter could not
4 have to pay any money.

5 A We said on a case-by-case basis we would waive a down
6 payment, but you still have to pay your monthly payment
7 associated with the payment plan.

8 Q But to keep the water from being shut off, it's on a
9 case-by-case basis; is that correct?

10 A Correct.

11 Q But who knows that? Who have you sent that on a case-by-
12 case basis we will not shut your water off if you come in and
13 talk to us?

14 A That's a direction that's an internal policy. It's not
15 given to customers. Typically we have customers come in, say
16 that they don't have money, and we tell them that they have
17 to pay. Then later they pull out money and pay the down
18 payment. This is a direction that's internally. It's not
19 meant for customers because if a customer is having that
20 issue, then that will be vetted out once the customer gives
21 us some prescreening information to determine that they don't
22 have sufficient funds, not that they make the declaration.

23 Q Okay. All right. So right now -- and I'm on limited
24 time, so I'm going to try to kick this really quick. The MOU
25 or the memo of understanding, that 4.5 million would be for

1 the whole region, not just for Detroiters; correct?

2 MS. MITHANI: Objection. I think that's beyond the
3 scope of the direct.

4 THE COURT: I'll permit it. Please answer.

5 THE WITNESS: Based on my understanding, it's for
6 all customers.

7 BY MS. JENNINGS:

8 Q Okay. And all customers in the region, not just Detroit?

9 A All DWSD customers.

10 Q All right. Are you aware that the DWSD interim rules are
11 still on the website?

12 A Yes.

13 Q And why are they still there if they're not in effect?

14 A Because officially they have not been changed out. I've
15 been working on them for a number of months. And even if I
16 took them off the website, a FOIA can be requested, and we
17 will have to turn them over.

18 Q Okay. So people who actually have a computer and can go
19 to the website, they will receive wrong information about
20 DWSD's current policies; correct?

21 A In terms of procedures for an employee, yes.

22 Q Okay. And they would receive wrong information about the
23 ten-point plan because the interim policy doesn't have that
24 in there, does it?

25 A The ten-point plan is the first thing you see when you

1 open the website. It's on the website.

2 Q Wouldn't you -- isn't it true, Mr. Latimer, that the DWSD
3 is in transition as it relates to its policies and procedures
4 for shutoffs?

5 A We're in transitions as it relates to our employees and
6 rechanging our employee titles and job duties.

7 Q Okay. And for customers as well, aren't you?

8 A For employees.

9 Q So right now is there a booklet a customer can go to that
10 has all the rules and regulations from the beginning of their
11 service to the shutoff process that would be comprehensive
12 and cohesive?

13 A Yes. We will complete that, and we will modify the
14 current plan and remove the piece where it right now says
15 that a water worker will knock on your door and replace it
16 with a door hanger, and we will make that change October.

17 Q Okay.

18 THE COURT: Excuse me one second. Mr. Thornbladh,
19 would you sit down for me, please?

20 MR. THORNBLADH: Your Honor, I'm the timekeeper for
21 our side.

22 THE COURT: Excellent. Would you have a seat for
23 me?

24 MS. JENNINGS: Thank you.

25 MR. THORNBLADH: I will sit down.

1 MS. JENNINGS: I'm sorry, your Honor. I asked to be
2 disturbed at ten minutes so I could know.

3 THE COURT: That part is fine.

4 MS. JENNINGS: Okay.

5 BY MS. JENNINGS:

6 Q Mr. Latimer --

7 THE COURT: I don't know what Mr. Thornbladh told
8 you, but by my count you now have 14 minutes left --

9 MS. JENNINGS: Okay. Thank you very much.

10 THE COURT: -- including closing argument.

11 MS. JENNINGS: I understand that, your Honor.

12 BY MS. JENNINGS:

13 Q Okay. Mr. Latimer, is it true that book or manual you're
14 working on is not yet done?

15 A The current manual is not complete because there's
16 changes that's being made throughout the department.

17 Q And that would be a no; right? It's not done?

18 A Yes.

19 Q Okay. Yes, no?

20 A Yes.

21 Q There is no completed manual for DWSD presently?

22 A There is a completed manual that we will operate off of
23 that is current and that we will make a change to it on
24 October just removing that one part, and everything else in
25 there we are operating from.

1 Q And there's nothing on the website that's comprehensive;
2 correct?

3 A There's something on the website in terms of -- what do
4 you mean, manual or --

5 Q That has the --

6 A -- because earlier you stated the ten-point plan, so I
7 didn't --

8 Q That would have all the rules and regulations in it.

9 A No.

10 Q Okay. Now, is it true that you can put a little flag up
11 under Miss Dig instead of spray-painting blue paint on the
12 sidewalk and around, not -- under the statute for marking?
13 Do you know?

14 A The flags are typically used on grass.

15 Q Okay. But is it true that you can do that instead of
16 marking blue under the statute, if you know?

17 A I'm not for sure you can put a flag on cement.

18 Q Okay. So you don't have to put a flag -- can't you put a
19 flag right close to the part that's got the cement cap on it
20 according to Miss Dig?

21 A Yes, but we don't -- we use that only in a grass area.
22 We used the paint for the cement.

23 Q And you use paint that doesn't come right off, don't you?

24 A Because if it rains, then you've wasted your time.

25 Q Okay. But you've already cut the person off; right?

1 A Not necessarily.

2 Q So this paint stays on for how many years?

3 A I don't know how many years it stays on.

4 Q Okay. And I'm handing you a colored chart, the DWSD
5 four-month collection comparison, and that is -- I've handed
6 you Exhibit 125. It is a colored chart of the four-month
7 collection policy. And in July 2004 (sic) there was a
8 \$377.88 collection; is that correct?

9 A No.

10 Q Okay. Is this your -- is this your chart?

11 A Yes. This chart was taken at a snapshot in time in maybe
12 like July 11th. For the whole month of July there was
13 923,000.

14 Q What was it for the whole month of July?

15 A It was somewhere around \$923,000.

16 Q All right. So as you stand here today, are you saying
17 that the plaintiffs who are here didn't have the benefit of
18 any of these new rules?

19 A Yes. They had the benefit since -- this rules have been
20 in place in the ten-point plan that's put in place. They've
21 had the benefit.

22 Q Since what date?

23 A Since -- they've had the benefit of any of these rules
24 since the ten-point plan is put in place starting back in
25 August, and prior to that we wasn't actually even doing the

1 door knockers and what have you. We were doing -- we were
2 doing the funding plan with THAW, and that started back in
3 May.

4 Q Okay. But all of the door knockers, the new rules, the
5 hearing process and all that is brand new; correct? When we
6 filed this lawsuit, none of that stuff -- none of those
7 documents existed, did they?

8 A The door hanger is new, yes.

9 Q Okay. And also the back of the page of the bill --
10 shutoff bill is new, isn't it?

11 A Some of it.

12 Q Some of it. The hearing part is new, isn't it?

13 A It's just explaining --

14 Q Yes.

15 A -- the hearing part.

16 Q Okay.

17 A It was always on there that you could request a hearing.
18 It just didn't give details.

19 THE COURT: All right. Ma'am, I have to recommend
20 that you terminate your cross-examination at this time.

21 MS. JENNINGS: I'm going to terminate the
22 examination at this time, your Honor. Thank you.

23 THE COURT: Any redirect?

24 MS. MITHANI: I just have one question, your Honor.

25 REDIRECT EXAMINATION

1 BY MS. MITHANI:

2 Q Ms. Jennings referred to --

3 MS. JENNINGS: May I get my door hanger?

4 MS. MITHANI: Sure. I'm sorry.

5 MS. JENNINGS: Thank you.

6 BY MS. MITHANI:

7 Q Ms. Jennings referred to 48,000 accounts or homes shut
8 off in 2013 and 2014. Are all of those permanently shut off?

9 A No.

10 Q Are some of those turned back on?

11 A Yes.

12 MS. MITHANI: Nothing else.

13 THE COURT: All right. You are excused, sir. Thank
14 you.

15 THE WITNESS: Thank you.

16 THE COURT: No. Actually, I have -- sir, I'm sorry.
17 I have one question for you. Does the department have a
18 program by which it alerts customers when it thinks there's a
19 leak at the house?

20 THE WITNESS: Yes.

21 THE COURT: What is that program?

22 THE WITNESS: What we have in our new system -- and
23 this is only if you're on our new system, and that's why we
24 require the meter change-out, but on our new system we can
25 record usage in a home 24 hours, so our systems record that

1 usage every hour. So what we do, if we see continuous usage
2 for a 24-hour period, we send you a letter telling you that
3 we expect -- suspect that you have a leak in your home. And
4 if you request it, we'll send you a printout letting you know
5 that this is what's taken place in your home on a 24-hour
6 period.

7 THE COURT: So can you explain -- I know I said one
8 question, but I'm doing what lawyers do. Can you explain how
9 it happened that our first witness yesterday -- were you here
10 yesterday --

11 THE WITNESS: Yes.

12 THE COURT: -- how it happened that our first
13 witness had an \$8,000 bill?

14 THE WITNESS: Well, typically what it is is very
15 high usage. The bill ranges for three to four years where a
16 customer hasn't made any payments. I'm actually dealing with
17 some customers that have high bills like this.

18 THE COURT: Well, my question wasn't generally. My
19 question was as to that particular customer. You've got her
20 bills there --

21 THE WITNESS: Right.

22 THE COURT: -- right?

23 THE WITNESS: Right. High usage over nonpayment.

24 We're not going to send you a letter --

25 THE COURT: Was that a leak situation or --

1 THE WITNESS: No.

2 THE COURT: -- was it just nonpayment for a long
3 time?

4 THE WITNESS: Nonpayment for a long time. What
5 happens is for us to send you a leak letter, it has to be 24-
6 hour usage that we're recording, so the time when you would
7 be asleep, we're recording usage when we think you should be
8 asleep, so it typically is a toilet that's running
9 constantly.

10 THE COURT: All right. We're going to break for
11 lunch now and convene at 2:20, please.

12 (Witness excused at 12:49 p.m.)

13 THE CLERK: All rise. Court is in recess.

14 (Recess at 12:50 p.m., until 2:20 p.m.)

15 THE CLERK: All rise. Court is in session. Please
16 be seated.

17 MS. MITHANI: We have one last housekeeping matter
18 before we close our proofs. I believe that I forgot to move
19 for the admission of Exhibit 7 in evidence, and so I'll ask
20 Ms. Jennings if she will stipulate to the admission of
21 Exhibit 7, which is the door hanger.

22 MS. JENNINGS: I will do so.

23 MS. MITHANI: So at this time, I move for Exhibit 7
24 in evidence, please.

25 THE COURT: All right. That is admitted.

1 (City Exhibit 7 received at 2:20 p.m.)

2 MS. MITHANI: Then we close our proofs at this time.

3 THE COURT: All right. Closing arguments.

4 MS. JENNINGS: Thank you, your Honor. Your Honor, I
5 believe I have 13 minutes, but I just better check it with
6 the Court before I start.

7 THE COURT: Ten minutes.

8 MS. JENNINGS: Ten minutes I have left? Okay. Very
9 well.

10 CLOSING ARGUMENT

11 MS. JENNINGS: Your Honor, we are here to close. We
12 did come to the Court on September 2nd, and we argued rather
13 extensively our motion regarding the legal basis for a TRO or
14 for an injunction. Today we are here to argue the factual
15 basis here at the hearing.

16 Detroit has a endemic poverty issue. Unfortunately,
17 even in the last ten years the rate of poverty has increased
18 now to the point that we are now approximately 55 percent of
19 our residents below the 150-percent poverty level and some 20
20 percent, indeed, 50 percent under the poverty level. We
21 believe we have shown success on the merit in this case,
22 particularly as it relates to due process. We have admitted
23 facts from the director of DWSD stating that, indeed, the
24 information that they had available to the public regarding
25 the process for protesting their bills and also asking for a

1 hearing was not factually correct. In fact, the director,
2 Ms. McCormick, agreed that the bill -- the persons who went
3 out to shut off, that being the contractor, Homrich, did not
4 follow any of the procedures that were last known to DWSD's
5 customers and, in fact, that the bills fell into disuse, but
6 there was no notice to the public about such failure.

7 Also, your Honor, factually we have proved that DWSD
8 has allowed bills as large as \$8,000 to incur without any
9 shutoff, and, indeed, Ms. Peasant testified as well as Mr.
10 Smith and Ms. Bogden about bills which were above the level
11 that would make one even applicable for their latest Detroit
12 Water Fund plan. There's no preventive program in place to
13 stop water shutoffs before they happen. In fact, what exists
14 is a after the fact let's see what we can do to cobble
15 together from several hodgepodge of programs different type
16 of funds that may be helpful to a limited group. We know,
17 your Honor -- and it has been factually shown, and it has
18 been admitted to by Mr. Latimer -- that over 48,000 homes
19 have been shut off since January of last year. We know that,
20 indeed, there will be shutoffs at the rate of between 350 and
21 400 every week to -- I suppose until the ground gets too cold
22 to do so. We also know that of those shutoffs, over 5,400
23 still remain in shutoff status. Even today as we sit here
24 and stand here, we do not know which of those homes are
25 inhabitable. We don't know what children are in them. We

1 don't know what seniors are in them, what the medical needs
2 are of that community, nor do we know the financial status.
3 We are asking a brief moratorium for those that have been
4 hardest hit by the financial circumstances here in Detroit
5 whether they're poverty, under the poverty level or, indeed,
6 low income or even someone that's just down on their luck for
7 the moment. We are asking that DWSD, by admission of
8 Mr. Latimer, that there be a time that that plan of action or
9 new rules and regulations come into being, that they get
10 burped. At this point, they're -- with all due respect to
11 Mr. Latimer, he's got them done, but nobody else knows what
12 those rules and regulations say. We don't even know whether
13 or not the rules and regulations that are being crafted are
14 going to meet even minimum due process and equal protection
15 for the citizens that they were put in place because it is,
16 after all, a public municipality, to protect, and so we are
17 stating, your Honor, that we believe that we have -- on the
18 merits we can show the possibility -- a good possibility of
19 meeting our burden there as it relates to irreparable harm.
20 Nothing can be more harmful, your Honor, than if an epidemic
21 of some crisis, as Mr. Gaines testified -- the Health
22 Department isn't there to treat people after they get ill.
23 The Health Department is there to prevent illnesses that
24 could be prevented through education and putting certain
25 protections in place. What we know is that having vacant

1 homes at the level that are in existence here in Detroit
2 today and having homes with residents with children, as
3 was -- Ms. Peasant lived without water from September right
4 up to June when a guardian angel from DWSD could not do what
5 she had been told to do and, indeed, turned the water back
6 on. She was there to make sure the water was still off.

7 Further, your Honor, I would request that the Court
8 actually look at defendant's exhibit that has all of our
9 clients' bills in it. You will find, for instance, Ms.
10 Peasant complaining about leakage repeatedly. You will find
11 that Nicole Hill complained and moved and requested, "Please
12 give me some help. I've got this 5,000, now \$6,000 bill.
13 Please help me." There's a ledger there where phone calls
14 are coming in, where the person comes to the office. None of
15 these folks sat on their rights, your Honor, and I would
16 request that you take defendant's exhibit and please review
17 it if the Court has not already done so.

18 We are asking for a very brief, in reality, probably
19 two months before the -- it looks like the moratorium for
20 winter takes hold sometime in December and goes to the
21 beginning of April. In that time, we would request that that
22 hodgepodge of rules and regulations and all these multiple
23 programs come together in a comprehensive and a cohesive
24 fashion much like what Roger Colton has described to the
25 Court. As the Court heard from the testimony of Mr. Colton

1 that he believes that where there is a water affordability
2 plan that is comprehensive and allows folks to know that
3 they've got to pay -- make a payment certain every month,
4 there is actually an increase in the amount of money that
5 DWSD could expect to bring in, so the irreparable harm we
6 think not only goes to the public health, but there's some
7 emotional harm that was spoken to by Maureen Taylor. She
8 talked about children coming to school with clothes that
9 smelled or that they were rumped and that they were being
10 treated differently and I believe Mr. Armelagos, the R.N.
11 from U of M who came in and testified to what happens when a
12 child gets dehydrated or a senior citizen. These are
13 irreparable harms that cannot be fixed by money or anything
14 else if they are allowed to go. The winter of discontent for
15 the citizens of Detroit if they must go through with a -- not
16 having a comprehensive and -- comprehensive and cohesive plan
17 would, indeed, be a detriment irreparably.

18 The harm to Defendant DWSD we see and the proofs
19 came in that -- and actually through Ms. Wiley that to the
20 extent the water affordability issues with the Detroit water
21 plan and the other funding sources comes into a comprehensive
22 unit because that is charitable money or money that's given,
23 at least for the moment, that money would actually be paid to
24 DWSD so they would actually -- where there was a customer --
25 a Detroiter who couldn't pay, they would actually be getting

1 paid, and so the harm to DWSD would be different.

2 Now, one of the things the defendant doesn't want to
3 do is to say a moratorium is being issued for bondholders or
4 whomever. However, certainly a plan that is an affordability
5 shutoff abatement plan or ASAP for citizens who have real
6 financial harm, no one is here trying to get over on a system
7 when they're living in a house without any water. They're
8 really trying to just get help.

9 And I would state further to the Court we have met
10 the harm to defendant with, in fact, facts empirically that
11 show there would actually be a benefit by getting those folks
12 in -- I really believe that their expert also said that in
13 his deposition -- to the extent you're doing a limited
14 moratorium that is addressing the needs of the very hardest
15 hit financial customers, Detroiters, that will actually inure
16 to more benefit and that the last resort is shutoff, not the
17 first resort.

18 The public interest on two levels would be assisted
19 by this moratorium, one for people who are, in essence,
20 helping to pay their neighbors' bills where there is funds
21 that are coming in from other sources that are actually --

22 THE COURT: All right. Your time has expired, but I
23 want to ask you this question.

24 MS. JENNINGS: Yes, your Honor.

25 THE COURT: If during the time period you have

1 requested here you work with the city to create this
2 comprehensive plan that you envision --

3 MS. JENNINGS: Yes.

4 THE COURT: -- how will that really help people over
5 the long haul to pay for water? I ask that because it
6 appears that a substantial portion of the people who are in
7 default of their water bills are in default because they just
8 don't have enough income to pay all the expenses of life.
9 And if that's so, how will this comprehensive plan address
10 that because most of the plan is designed to help people just
11 catch up?

12 MS. JENNINGS: Well, your Honor, it would help
13 people because it will give them a sum certain that they know
14 they've got to pay, and they will pay that amount. Let's say
15 it's \$40 instead of the full amount. They would be put on a
16 payment plan for the arrearages or portions of the arrearages
17 for 48 months, not 24 months. Secondly --

18 THE COURT: I'm talking about people who can't pay
19 their regular bill. That's why they got in arrears.

20 MS. JENNINGS: Okay. And if they --

21 THE COURT: How is this going to help them?

22 MS. JENNINGS: If they can -- well, the water
23 affordability that we would like to have the opportunity to
24 work with the City of Detroit on would be based on their
25 ability to pay. And the EPA recommends that water and sewage

1 should be no more than two or three percent of a person's
2 income. In Detroit --

3 THE COURT: How will that be funded?

4 MS. JENNINGS: And that will be funded through a
5 variety of sources, including the DWSD understanding that if
6 they can receive that sum certain, it will assist them in
7 getting more money than they're getting now because now when
8 these accounts go into shutoff, they don't get any money.
9 The home is left. The people move out. The blight situation
10 starts all over again. If a child is removed from the home,
11 the state pays. Now, I agree there needs to be -- we need to
12 go further than this. We need to rise up --

13 THE COURT: Why do you think --

14 MS. JENNINGS: -- to Lansing.

15 THE COURT: Why do you think that DWSD income is
16 what you're now talking about can be used to pay the bills of
17 people who can't pay?

18 MS. JENNINGS: When you say "DWSD income," you mean
19 the --

20 THE COURT: Revenues. Perhaps that's a better word.

21 MS. JENNINGS: Revenues that are coming in.

22 Because, your Honor -- and if you look at DTE's plan --

23 THE COURT: We can't do that.

24 MS. JENNINGS: Okay. Well --

25 THE COURT: DWSD has its own set of --

1 MS. JENNINGS: Okay.

2 THE COURT: -- rules, regulations, and restrictions.

3 MS. JENNINGS: Okay. So we have got to be creative
4 here. I'm not saying that we don't -- we don't have all the
5 answers right now. I'm not saying we have some of them. But
6 we certainly --

7 THE COURT: You want me to impose a moratorium on
8 the hope that you all will be able to be creative enough
9 to --

10 MS. JENNINGS: No. I'm not --

11 THE COURT: -- find the resources to pay people's
12 water bill when they can't afford them.

13 MS. JENNINGS: Well, right now, your Honor,
14 defendants are saying they have conquered the territory by
15 being able to get this money that's coming into the water
16 fund and that they're -- and it's based on income and
17 affordability.

18 THE COURT: And I'm going to ask the city about
19 that, but right now you're the one at the lectern.

20 MS. JENNINGS: Okay. And I am -- I agree. I am
21 here, and I am the one on the hot spot. And I would say,
22 your Honor, we have got to do more. We've got to reach out
23 also to the legislature and to the state for funding. We
24 have got to go to Washington, D.C. I saw John --
25 Congressperson Congress -- from Congress, John Conyers, and I

1 said to him in the hallway a minute ago this is something
2 that we've all got to wrap our arms around, but right now
3 even a moratorium that allows those who don't even know what
4 the rules and regulations are, that we can start funneling
5 folks through these programs that will -- we may not be able
6 to save everybody. I hate to say that, but we can maybe keep
7 some children and some parents in homes with running water.

8 THE COURT: All right. Thank you.

9 MS. JENNINGS: Thank you.

10 MR. O'BRIEN: Good afternoon, your Honor.

11 THE COURT: Good afternoon. You have a mere 78
12 minutes.

13 MR. O'BRIEN: So I'll start off with a promise that
14 I won't use all that time.

15 THE COURT: Excellent.

16 MR. O'BRIEN: If I were smart, see, I'd sit down
17 right now.

18 THE COURT: Yep.

19 CLOSING ARGUMENT

20 MR. O'BRIEN: Let me say that I don't intend to go
21 back through every argument that has been made by the city
22 throughout this proceeding either in a brief or that you've
23 heard during opening statement or through the objections or
24 even through all the witnesses. I just want to touch on some
25 of the what I believe are high points and also say going into

1 this that I think I express the views of all the people
2 representing the city and the department that we agree that
3 poverty in Detroit has been endemic. There's no question
4 about that. And we also -- you can't help but feel for the
5 people that are caught in those situations but trained in the
6 law and understanding that the courts are vested not only
7 with great power but also with restrictions, and there are
8 just some things that courts -- problems courts can't solve,
9 and it wasn't part of our process to assume that courts would
10 solve them. I want to look at this through the lens that I
11 believe the Court is going to apply when it looks at what's
12 before you.

13 A broad remedy is being sought here, broad, indeed,
14 because what they ask for is a remedy across the whole
15 system, and it requires turning on service that's been shut
16 off to innumerable residences and preventing shutoffs to
17 people who otherwise should be shut off, and this is based on
18 the testimony of just three plaintiffs that you heard today.
19 No class action has been certified. There were a total of
20 five, including those three plaintiffs, and yet they ask for
21 this particular remedy. None of the events that those people
22 talked about occurred after August 2nd when power was
23 transferred from the emergency manager to the City of
24 Detroit, and some significant and important and relevant
25 things have happened since that time.

1 One consideration for the Court, as we know, and
2 it's a familiar thing, is success on the merits, and your
3 Honor identified in an earlier opinion perhaps the largest
4 legal obstacle to success here, and that was the
5 constitutional separation of powers doctrine implemented by
6 Section 904 of the Bankruptcy Code. And as we know, that's a
7 very important principle, and as your Honor said as you
8 looked at the relief that was requested when they wanted to
9 intervene, that these were exactly the sort of policy matters
10 that the Court was not supposed to get involved with -- at
11 least that's what Congress said -- in terms of the daily
12 functioning of the Detroit water and sewer department. Court
13 is not supposed to have to figure out --

14 THE COURT: Okay. I appreciate that you have
15 focused the Court's attention on that issue in the context of
16 reasonable likelihood of success, but I expect that's going
17 to be the subject of the motion to dismiss following this, so
18 let's --

19 MR. O'BRIEN: I won't belabor --

20 THE COURT: -- reserve any more in-depth
21 conversation about that till we get there.

22 MR. O'BRIEN: And so I won't belabor it. There is
23 also the constraints imposed by the Michigan Revenue Bond Act
24 about free service being provided, so that's another
25 constraint.

1 Where are we today? When this lawsuit was filed,
2 allegations were made, and much of the history you've heard
3 predated August 2nd. Where we are today is that we know that
4 there's a new mayor elected in the City of Detroit and under
5 circumstances where there were write-in votes, and I don't
6 know in contemporary history of any city this size who's ever
7 had anybody win a position like mayor with write-in votes.
8 It signals at some level a knowledge and an acquiescence on
9 behalf of people that this is who they wanted as their
10 elected leader. We know that there was a ten-point plan that
11 is a lot more than just somebody constructing something on a
12 piece of paper at night over an hour or two. It was
13 something that occurred because thought was given to it. The
14 community was consulted. The authorities within the
15 administration were consulted. It was developed. It was
16 intended to be practical. Is it perfect? Of course not.
17 Will it be subject to change going forward? It will. But is
18 it something that somebody can look at, go on the website and
19 understand? It is. And does it provide relief to people
20 that are in these circumstances? It provides them with a
21 process and a process that one could say is due. They
22 certainly will have under this process a lot of notice. We
23 heard that it could be 70 days from where you get your first
24 overdue bill to finally when that water is shut off, and
25 there are lots of ways to stop it, you've got a medical

1 problem, you dispute your bill, you're going for partial
2 payments. There is a safety net out there, again, not
3 perfect, but there are a number of, first of all, public
4 funds that are available and also private funds, too, not to
5 mention churches and the like that people could go to. And
6 if the memorandum of understanding -- if this comes to
7 fruition --

8 THE COURT: Before you --

9 MR. O'BRIEN: Yes.

10 THE COURT: Before you go there, what is the safety
11 net for --

12 MR. O'BRIEN: There are -- I'm sorry. I'm sorry.

13 THE COURT: -- for people whose only realistic
14 option for water is the city but who just don't have enough
15 income to pay all of their bills, including what the city
16 decides or what the city charges for water? Where's the
17 safety net?

18 MR. O'BRIEN: So I think that there are sources
19 through the State of Michigan. There are emergency sources
20 of funds that don't -- if a person qualifies for you can get
21 a one-time grant of the money.

22 THE COURT: Yeah, but these are people who are
23 chronically year-in and year-out short in their monthly
24 budgets.

25 MR. O'BRIEN: I would say that the testimony that

1 you heard is not going to provide water to everybody
2 regardless of income. There are going to be people that
3 don't have the income or much income that aren't going to be
4 able to afford the water. And so far as I know --

5 THE COURT: Does the city have any responsibility to
6 those people?

7 MR. O'BRIEN: So far as I know, we have not
8 recognized in the State of Michigan a right to free water
9 that was articulated in the motion before you.

10 THE COURT: Well, but the question isn't the right
11 to free water. The question is the right to water at a cost
12 that's commensurate with ability to pay.

13 MR. O'BRIEN: I would say they have to take
14 reasonable measures to make that accommodation, and those
15 measures --

16 THE COURT: You would say who has to take those
17 accommodations?

18 MR. O'BRIEN: I would say the city and the
19 department consistent with the constraints on them. They owe
20 obligations to all of their customers, and they have to keep
21 that in mind, and they have to understand who's paying. And
22 it ultimately comes down to all the rest of the -- the paying
23 customers are the ones that are going to foot the bill, and
24 there are --

25 THE COURT: Yes, but you raise an interesting

1 question, though. Do the statutes under which the water
2 department operates, either state statutes or city
3 ordinances, permit the department to impose the costs that
4 low income people can't pay on the other customers?

5 MR. O'BRIEN: So I'm not the expert on that
6 question, and I would be happy to have someone with the
7 resources of our firm who could address that that deals with
8 that. I would say to the Court, though, that the two guiding
9 principles have to be the Revenue Bond Act and the case Bolt
10 versus City of Lansing, that these are a couple of decisions
11 that provide direction, and there are limits to what the city
12 can do. Those limits should increase under the memorandum of
13 understanding with the new fund that's going to be created.
14 If we are to take at face value what we've heard, it's going
15 to put us in the forefront of the country in terms of what we
16 can provide low income people in terms of support.

17 THE COURT: Well, that may be true, but we don't
18 have any analysis which establishes that that fund of money
19 even together with the Detroit Water Fund is a sufficient
20 amount of money to address the problem that I'm asking you
21 about here, do we?

22 MR. O'BRIEN: We don't. All we know today is that
23 there is this fund in the City of Detroit, and right now this
24 afternoon there's \$1.7 million sitting there, so it hasn't
25 all been used up. We know that this other fund will kick off

1 4.5 million give or take a year, and that's a significant sum
2 of money in addition to what else is there, and it goes along
3 way. No. What's going to solve the problem? Ultimately
4 jobs for people in the city and an income. I mean that's the
5 answer, not --

6 THE COURT: Well, jobs doesn't solve the problem for
7 seniors and the disabled --

8 MR. O'BRIEN: Right, perhaps not, but it --

9 THE COURT: -- whose incomes are either SSI or
10 Social Security.

11 MR. O'BRIEN: I would say to the Court I think it's
12 beyond what the City of Detroit and the water department
13 could reasonably do. No one could more intimately know their
14 circumstances than your Honor, as the only member of
15 judicial -- of the judicial branch of government that sat
16 through all the testimony about the city and where they are,
17 and there are just limits on what they can do regardless of
18 what they'd like to do, and I think that's the hard reality.

19 But in terms of where we are today, in addition to
20 the things I said, they did increase staff. There have been
21 these fairs. There's been training. It looks like a lot
22 more than just papering the file, just a little bit of lip
23 service, like some real things have taken place where there
24 is an attempt -- and it doesn't happen overnight, and we
25 understand that -- for the word to get out, and we can always

1 count on the fact that there's going to be a loyal group of
2 lawyers willing to point out to the city perceived failings
3 at every step and to be heard loud and clear as advocates for
4 people that don't have water and if there's some misstep in
5 terms of the implementation of the ten-point plan, but isn't
6 that what's supposed to happen here in a democracy and with
7 elected officials and with water boards? That's the kind of
8 business they're supposed to deal with. They can figure out
9 should the paint be paint that wears off in five days or one
10 day or goes for a year, those details, not place that on your
11 Honor at this time. That's not something that we think
12 Congress intended or we want you to have to go through.

13 The harm to the plaintiffs. There was no evidence,
14 medical evidence of any imminent medical threat, and even
15 though that specter was raised in Mr. Rothstein's deposition
16 when the question was posed about cholera, even though it was
17 raised in opening statement and otherwise put before the
18 Court, when the medical witnesses got on the stand and I
19 cross-examined, there was no evidence. There was no
20 evidence there's been any uptick in communicable diseases
21 since the time of these shutoffs in the last year or the last
22 couple of years, so that just is not here. And I think we
23 need to be careful if we're responsible. In a way, is it any
24 different than yelling "fire" in a theater, a crowded
25 theater, when there's no fire? Do we understand that a lack

1 of water can lead to health problems over time? Yes, indeed.
2 Of course it can. That's a given, but we didn't hear with
3 the individual plaintiffs, the three of them, or otherwise
4 that there's some imminent medical threat in the City of
5 Detroit today on September 23rd, 2014.

6 So what is the harm to them? Just because a person
7 is out of water doesn't mean they can't get water. It's a
8 difficult situation, but it doesn't mean that it's like being
9 diagnosed with cholera where time is of the essence. You're
10 being dehydrated. You need water on the spot. It does mean
11 that circumstances are urgent. Things need to be done.

12 Finally, what about the harm to others? Have we
13 lost sight of the fact that obligations are owed to all of
14 the customers of the Detroit Water and Sewer Department and
15 beyond that many suburbs and other areas that rely on that
16 water service and if we now have a regional authority who's
17 going to depend on what arguably will be the largest system
18 of its kind in the United States? There are obligations that
19 run to them, too, and who could so casually say for people
20 that are low income but aren't here today, aren't represented
21 by the lawyers at this table, who could benefit from that
22 \$4.5 million fund that so cavalierly we might should do
23 something, enter some order that could really make that not a
24 possibility. And we heard -- I think it's uncontradicted
25 testimony from the person perhaps as close to that situation

1 as you can get, Mr. Rothstein, about his view of what would
2 happen if the sort of order that they've asked for gets
3 entered, and I think that's a serious consideration going
4 forward.

5 We would ask the Court under all of the
6 circumstances here to deny the relief requested. I think it
7 can be said that even being brought into a hearing like this
8 in open court where public employees are put on the stand,
9 are cross-examined, there's a level of accountability that
10 takes place because of that, and people watch. People know.
11 The public understands. The word gets out, but we think no
12 abuse of discretion happens today if your Honor exercises
13 that discretion and denies the relief before it.

14 THE COURT: Thank you. All right. Let's turn our
15 attention to the city's motion to dismiss. Who will be
16 arguing that? Yes, sir. Go ahead.

17 MR. SWANSON: Good afternoon, your Honor. Marc
18 Swanson from Miller, Canfield, Paddock & Stone. Your Honor,
19 I wanted to pick off where -- pick up where Mr. O'Brien left
20 off, and that was with this Court's opinion with respect to
21 the intervention motion. This Court said Section 904 means
22 that the Court cannot interfere with the choices a
23 municipality makes as to what services and benefits it will
24 provide. Further, this provision makes clear that Chapter 9
25 was created to give courts only enough jurisdiction to

1 provide meaningful assistance to municipalities that require
2 it, not to address the policy matters that such
3 municipalities control. Consequently, given the constraints
4 of Section 904, the Court will not have the authority to
5 require the DWSD to stop mass water shutoffs, to require that
6 the DWSD refrain from implementing a program of mass water
7 shutoffs in the future, or require the DWSD to implement
8 procedures regarding rate setting or water affordability
9 plans.

10 THE COURT: Okay. What does Section 365 of the
11 Bankruptcy Code say about the relief that the plaintiffs seek
12 here?

13 MR. SWANSON: Section 365 of the Bankruptcy Code
14 provides this Court with authority over certain issues
15 regarding executory contracts. This Court has the authority
16 to approve the city's decision to either assume or reject
17 certain contracts. What the plaintiffs argue, though, is
18 they argue something different. They argue that this Court
19 has the authority to decide for the city using the Court's
20 business judgment whether the city needs to assume contracts,
21 and that is something that's not found in Section 365 and is
22 not found in any of the cases that they cite.

23 THE COURT: Okay. But pause there and take a step
24 back in the analysis.

25 MR. SWANSON: Sure.

1 THE COURT: And let's talk about whether the
2 relationship between the city and a customer is an executory
3 contract. You didn't quite concede that in your papers or at
4 least I didn't interpret it that way. Is that right?

5 MR. SWANSON: That's right.

6 THE COURT: What is the nature of the relationship
7 if it's not an executory contract?

8 MR. SWANSON: Your Honor, it's the city's position
9 that it -- that there's -- it provides water and customers
10 will pay for water, and that doesn't create an executory
11 contract between the parties. And I know, your Honor --

12 THE COURT: Okay, but -- yeah. Let me inquire into
13 that because I've been thinking about that kind of structure.

14 MR. SWANSON: Sure.

15 THE COURT: What in either Michigan law or city
16 ordinance authorizes or requires Detroit as a municipality to
17 provide water to its residents?

18 MR. SWANSON: I don't believe that there's anything
19 that requires --

20 THE COURT: Okay. What authorizes it then?

21 MR. SWANSON: I'm also not certain if there's
22 anything in the ordinance which -- the plaintiffs have
23 pointed out a portion of the city charter, which says that
24 the --

25 THE COURT: I sense your colleague over here --

1 MR. WOLFSON: Your Honor --

2 THE COURT: -- wants to be heard on this question.

3 MR. WOLFSON: -- if I may, William Wolfson, chief
4 administrative officer, chief compliance officer, general
5 counsel of DWSD, the man of many titles. Perhaps I can be of
6 some assistance.

7 THE COURT: I just need one answer.

8 MR. WOLFSON: I will, and that is that under the
9 Michigan Home --

10 MR. THORNBLADH: If I may, your Honor, this man is
11 on the witness list. You're getting a legal argument from a
12 witness, and we have no chance to cross-examine him, so --

13 THE COURT: That objection is overruled. Go ahead,
14 sir.

15 MR. WOLFSON: Thank you. The Michigan Home Rule
16 City's Act, Section 117, and I believe it's .4f, authorizes a
17 city to provide water, Michigan law also allows private
18 companies to provide water. There is no mandate that a city
19 provide water.

20 THE COURT: Okay. So what was that citation again?

21 MR. WOLFSON: MCL 117.4f. I believe it's 4f.

22 THE COURT: Okay. We'll have a -- we'll have a look
23 at that. Thank you, sir.

24 MR. WOLFSON: Thank you. Thank you.

25 THE COURT: There's your answer.

1 MR. SWANSON: There we are.

2 THE COURT: All right. So assuming that there is
3 this statute, as Mr. Wolfson asserts here, that authorizes
4 the city to provide water, so this is a service the city
5 provides, right --

6 MR. SWANSON: Correct.

7 THE COURT: -- in the same sense that streets are,
8 Belle Isle is, other parks, fire, police, the idea being that
9 if the city provides this service and chooses to charge for
10 it, then in order to take advantage of this service, like any
11 other service the city could choose to charge for, residents
12 must pay for it.

13 MR. SWANSON: Sure.

14 THE COURT: So does that election by the individual
15 to take advantage of this service that the city provides,
16 does that create an executory contract under Section 365?

17 MR. SWANSON: We don't believe it does, your Honor.
18 We believe it's --

19 THE COURT: What's the argument as to why not?

20 MR. SWANSON: Because there was never any meeting of
21 the minds. There was never any contractual agreement. There
22 was nothing that you would traditionally point to which would
23 evidence an executory contract.

24 THE COURT: Well, I mean the first day in contract
25 we learned that a contract is an offer and acceptance; right?

1 City makes the offer, we'll give you water if you pay our
2 fees. Customer says, "Oh, I need water. Okay. I'll pay
3 your fee if you give me water." Isn't that a meeting of the
4 minds, mutual consideration and all that?

5 MR. SWANSON: Sure, sure. And for purposes of the
6 motion today, you know, they pled it's an executory contract.
7 We're willing to deal with that allegation whether -- if and
8 when the plan is confirmed and if and when that relationship
9 or how that relationship is treated under the plan is a
10 different issue that, frankly, I'm not here to address today.

11 THE COURT: Well, but as of now --

12 MR. KILPATRICK: Your Honor, may I?

13 THE COURT: You know, as much as I would love to
14 hear the benefit of your bankruptcy expertise here, Mr.
15 Kilpatrick, you put your appearance on behalf of a department
16 of the city, which is not a party here and I think I may have
17 already held is not an entity.

18 MR. KILPATRICK: It was just on the matter of
19 whether this is an executory contract because you have to
20 look at the Countryman or the Andrews definitions, and under
21 either it isn't.

22 THE COURT: Under either what?

23 MR. KILPATRICK: It is not an executory contract.
24 It's a contract.

25 THE COURT: All right. Just because I'm struggling

1 with this, I will seek the benefit of your counsel on this,
2 but hold on. Hold on. Hold on. Not so fast. If you don't
3 mind, after counsel here is done.

4 MR. KILPATRICK: Thank you, your Honor.

5 THE COURT: All right.

6 MR. SWANSON: Thank you, your Honor. So as I was
7 reading this Court's opinion and thinking about well, is
8 there any difference between the context of intervention and
9 the context of this adversary proceeding, procedurally or
10 otherwise, which would dictate a different result, and I
11 couldn't think of anything, and I don't think the plaintiffs
12 have pointed to anything in their papers which would yield a
13 different result in this adversary proceeding versus the
14 opinion for denying intervention. As I'm sure the Court has,
15 if we look at the first amended complaint and we go to the
16 prayer for relief, you look at Section A and Section F. They
17 want an order stopping water shutoffs. It couldn't be
18 clearer in this Court's opinion. It said it can't provide
19 the plaintiffs with an order stopping shutoffs. If you look
20 at prayer for relief G, order the DWSD to implement a water
21 affordability plan with income-based payments, if you look at
22 this Court's opinion, it said it can't require the DWSD to
23 implement procedures regarding rate setting or water
24 affordability plans.

25 THE COURT: So the doctrine you're relying upon is

1 the law of the case --

2 MR. SWANSON: Yes, your Honor, and --

3 THE COURT: -- because -- I'm sorry.

4 MR. SWANSON: Sure. Yes, the law of the case, and
5 certainly your Honor's opinion is not an outlier. It's
6 entirely consistent with a fairly well-developed body of case
7 law under Section 904 that's stunningly consistent. I mean
8 you look at decision after decision, and they've consistently
9 applied the same principles that your Honor applied in its
10 opinion.

11 Your Honor, we also argued with respect to the
12 individual counts, and we also move on those counts as well.
13 We don't think that the plaintiffs added anything that we
14 need to address here, and we'd ask that the Court apply the
15 longstanding principle that if there's a constitutional issue
16 and a nonconstitutional issue that it should decide the issue
17 on the nonconstitutional basis, and that's --

18 THE COURT: All right. Well, I'm going to -- I'm
19 going to take you up on your offer -- or maybe it wasn't an
20 offer, but I'll take you up on it anyway -- to discuss the
21 executory contract issue in some greater detail. Assuming,
22 contrary to what Mr. Kilpatrick is about to argue to me, that
23 it is an executory contract for a moment, okay, what's the
24 city's position on what its obligation is, assuming it's an
25 executory contract, pending the Court's approval of an

1 assumption or rejection --

2 MR. SWANSON: If this were --

3 THE COURT: -- because none of these have been
4 assumed or rejected yet; right?

5 MR. SWANSON: Yes; correct. So we're assuming that
6 it's an executory contract, and your question is what are the
7 city's obligations.

8 THE COURT: Yeah.

9 MR. SWANSON: Your Honor, as the Hayes Lemmerz case
10 in this district and cases in many districts have held,
11 executory contracts during the pendency of a bankruptcy case
12 are enforceable by the debtor, but they're not enforceable
13 against the debtor, and, thus, really they're --

14 THE COURT: So your position is that if these
15 contracts and the thousands which the city has with its
16 residents are executory contracts, as far as the Bankruptcy
17 Code is concerned, it's not required to perform; that is to
18 say, it's not required to provide water services?

19 MR. SWANSON: That's what the Code -- that's what
20 the Code would say, your Honor.

21 THE COURT: Now, let's assume the city did want to
22 assume the contract. For those customers who it chose to
23 continue to provide services and, therefore, is not in
24 default, it would just be a question of the business judgment
25 to continue to provide those services; right?

1 MR. SWANSON: Yes.

2 THE COURT: For those customers who were terminated
3 by the city and, therefore, as to whom the city is arguably
4 in default, we would have to litigate whether the city was in
5 default and, if so, figure out a cure; right?

6 MR. SWANSON: If there wasn't a material breach --

7 THE COURT: Right.

8 MR. SWANSON: -- by the other side prior during
9 the --

10 THE COURT: Yeah. If the city's failure to perform
11 was excused by a prior breach by the counterparty; right?

12 MR. SWANSON: Correct.

13 THE COURT: That's what you mean. Yeah.

14 MR. SWANSON: Yes.

15 THE COURT: All right. Thank you, sir.

16 MR. SWANSON: Thank you.

17 THE COURT: Mr. Kilpatrick.

18 MR. KILPATRICK: Thank you, your Honor. There are
19 two definitions of executory contracts that are well-accepted
20 in the bankruptcy arena. One is the Countryman definition.
21 That was the one that we've used traditionally to determine
22 whether a contract is executory. It's determined by looking
23 as to whether -- what are the responsibilities of each party
24 to a contract? Are they so unperformed that the breach by
25 one would relieve the other party from performing? This is a

1 contract for services. We ship water, we take away sewage,
2 and we send a bill. There is no duty to continue to provide
3 that service beyond the extent that -- beyond the extent of
4 what's given in any particular month. To find that it's
5 executory, what is the unperformed duty on behalf of the
6 debtor other -- on behalf of the resident other than paying?
7 I mean courts that have looked at this say simply a
8 responsibility to pay us doesn't make the contract executory.

9 The other is the functional approach. The
10 functional approach looks at whether the assumption or
11 rejection of a contract would --

12 THE COURT: Well, but hang on.

13 MR. KILPATRICK: -- advance the interest of the
14 debtor --

15 THE COURT: Hang on.

16 MR. KILPATRICK: -- would advance the interest of
17 the debtor.

18 THE COURT: Let's go back to the first one.

19 MR. KILPATRICK: Um-hmm.

20 THE COURT: You think by continuing to talk I'm
21 going to give up on my question?

22 MR. KILPATRICK: No, not after all these years.

23 THE COURT: No. Okay. So but why isn't the
24 obligation to pay sufficient to make the contract executory
25 on that side of the contract? I ask that because your client

1 certainly takes the position that the failure to pay excuses
2 performance by your client.

3 MR. KILPATRICK: That would make every installment
4 contract executory, your Honor.

5 THE COURT: Precisely. What's the problem with
6 that?

7 MR. KILPATRICK: That's not the law. That's just
8 not the law. I mean everyone --

9 THE COURT: Have you got a --

10 MR. KILPATRICK: That would make every installment
11 loan by every financial institution an executory contract
12 because there's a responsibility for some party to pay under
13 those contracts.

14 THE COURT: Every installment loan.

15 MR. KILPATRICK: Installment loans. A receivable
16 that's owed to a debtor would become executory. I can't see
17 how --

18 THE COURT: Well, but in the context of a receivable
19 owed to the debtor, the debtor has no more obligation to
20 perform.

21 MR. KILPATRICK: And the department has no
22 obligation to perform. Where are you finding the duty to
23 perform to provide water?

24 THE COURT: I ask the questions, not you.

25 MR. KILPATRICK: But there's an assumption here,

1 your Honor, that there is a duty to continue to provide
2 water. It's like saying Detroit Edison --

3 THE COURT: I'm going to turn that around on you.
4 The city has --

5 MR. KILPATRICK: -- has a duty to provide
6 electricity.

7 THE COURT: The city has agreed to provide water --

8 MR. KILPATRICK: If you pay for the service.

9 THE COURT: -- so long as the debtor pays for it.

10 MR. KILPATRICK: Yes.

11 THE COURT: It's the debtor's breach that excuses
12 obligation -- not the debtor, the customer's breach that
13 excuses obligation by the city. In the context of a
14 receivable, as you look at the contract, the debtor has fully
15 performed. It hasn't been excused from performance by the
16 breach. It has fully performed.

17 MR. KILPATRICK: Okay. Well, here. Let's do this a
18 different way. We provide services from January 1 to January
19 30th. That's our performance. We send a bill. Our
20 performance is complete for that month. You have the right
21 to dispute that bill, but otherwise you have to pay it. We
22 then provide services from February 1 to February 28th.
23 We've completed our duty. We've completed the provision of
24 the water for that particular month. You pay the bill.
25 We'll then --

1 THE COURT: Yeah, but you're describing a series of
2 one-month contracts.

3 MR. KILPATRICK: That's exactly what --

4 THE COURT: That strikes me as highly artificial.

5 MR. KILPATRICK: But that's what utilities do. I
6 mean it's like saying a cable bill is an executory contract,
7 your Honor.

8 THE COURT: When a person gets behind three months,
9 you don't send them three bills. You send them one bill.

10 MR. KILPATRICK: No. We send them individual bills
11 for each month, which aggregate the unpaid balances --

12 THE COURT: Right.

13 MR. KILPATRICK: -- for the prior months.

14 THE COURT: Right.

15 MR. KILPATRICK: But we bill each month
16 individually.

17 THE COURT: Right, but the last bill includes all
18 the bills.

19 MR. KILPATRICK: That's because they haven't paid
20 the prior bills, which they --

21 THE COURT: Why is it only one month?

22 MR. KILPATRICK: -- which are due --

23 THE COURT: Why isn't it daily?

24 MR. KILPATRICK: -- which are due upon receipt.

25 Excuse me?

1 THE COURT: Why isn't it daily or weekly --

2 MR. KILPATRICK: Well, as a habit, we --

3 THE COURT: -- or by cubic foot? For every cubic
4 foot there's an obligation to pay, and that's a contract.

5 MR. KILPATRICK: We could do it that way. It would
6 be a little bit cumbersome, but the traditional method of
7 sending it is monthly, and that's the way most utilities --

8 THE COURT: Well, that just describes the billing
9 period. It doesn't describe the contract.

10 MR. KILPATRICK: But the contract -- but, again,
11 you're saying there's a contract between the individual and
12 the municipality for the --

13 THE COURT: Ah, let's talk about that and move into
14 the functional approach.

15 MR. KILPATRICK: Yes. Well, no. Before we leave --
16 before we leave the unperformed -- the Countryman definition,
17 if, indeed, these are found to be executory, these are --
18 these contracts are in breach right now, and would you then
19 ask -- the requirement would then be for us to reject every
20 executory contract where the debtor is -- where the residents
21 haven't made their payments as they come due. Is that a
22 beneficial result is what I would ask?

23 THE COURT: Um-hmm.

24 MR. KILPATRICK: I mean is that really a result
25 because we have to make a -- as you say, as was said by

1 counsel, it's a business decision.

2 THE COURT: Well, I think you are very astute to
3 point out that what the plaintiffs want here is not at all a
4 rejection of these contracts; right? It wants the city to
5 assume them --

6 MR. KILPATRICK: But the Court --

7 THE COURT: -- if they are executory.

8 MR. KILPATRICK: Indeed, if they are executory,
9 they'll be rejected. And if they're -- because, you know,
10 otherwise -- in the exercise of business judgment, in all
11 probability they will be rejected. If that were to happen,
12 does it bring about beneficial results for the plaintiff?

13 THE COURT: Well, but it's not even clear that
14 assumption brings about a beneficial result because --

15 MR. KILPATRICK: Yeah. That's true as -- that's
16 true as well because --

17 THE COURT: -- because assumption doesn't excuse
18 their performance.

19 MR. KILPATRICK: Exactly. And the other thing is
20 there's nothing -- cure is going to be really interesting,
21 having to prove up on cure for every one of those contracts.
22 Let's go to the functional approach.

23 THE COURT: Well, but the only cure the Court would
24 be concerned about is the debtor's cure, not the creditor's
25 cure. You're on your own on that one. Anyway, let's talk

1 about functional.

2 MR. KILPATRICK: But, again, that would sort of
3 compel the debtor to look at rejection rather than
4 assumption. Let's talk about the functional approach, and
5 then functional approach really looks at whether the
6 assumption of these contracts would advance the interest of
7 the debtor. Obviously that would not be the case. What
8 would be the benefit of assumption of a contract that
9 purportedly has been breached by DWSD in some fashion, which
10 we don't admit, by the way? So if you -- even under the
11 functional approach, what you would do -- what it would do is
12 compel a rejection, again, which I don't think brings about a
13 beneficial result for the plaintiffs. I submit -- and we
14 will do the writing that the Court has asked for and
15 thoroughly brief this issue.

16 THE COURT: You'll do what?

17 MR. KILPATRICK: Miller Canfield will do the writing
18 and thoroughly brief this issue as the Court has asked.

19 THE COURT: Now, there won't be any post-hearing
20 briefs here.

21 MR. KILPATRICK: I thought you said you wanted the
22 issue of executory contracts --

23 THE COURT: No, I didn't.

24 MR. KILPATRICK: Oh, no, you didn't?

25 THE COURT: No.

1 MR. KILPATRICK: Okay. Your Honor --

2 THE COURT: I was looking for an answer on the
3 statute that authorizes the city to provide water services,
4 and I got that.

5 MR. KILPATRICK: Okay. Well, your Honor, again, my
6 argument is simply that these aren't executory. These are
7 not executory contracts.

8 THE COURT: Okay. So there's a group of cases that
9 look at some contracts that are executory but which hold that
10 the creditor's interest is such that Section 365 doesn't
11 apply, for example, a land contract. We know under Sixth
12 Circuit law Terrell is an executory contract. Yes?

13 MR. KILPATRICK: Correct.

14 THE COURT: But we also know that case law prohibits
15 the debtor from rejecting that contract even though the
16 reason the debtor wants to do it is because the value has
17 gone up. They've got a purchaser at a higher price, and the
18 benefit of that appreciation will go to all of the creditors.
19 Why? Because the creditor on the land contract has such an
20 interest that it's deemed worthy of protection.

21 MR. KILPATRICK: Um-hmm.

22 THE COURT: It's an equitable interest in property,
23 a property interest that under the Fifth Amendment can't be
24 so blively taken away. Am I right so far?

25 MR. KILPATRICK: It actually deals with a vendor and

1 vendee and allows the vendee to continue to perform so that
2 they can maintain the economic benefit.

3 THE COURT: Okay. You're looking at the provision
4 that was added into the Bankruptcy Code to protect
5 purchasers.

6 MR. KILPATRICK: Correct.

7 THE COURT: I'm looking at the law before then. It
8 also applies, by the way, to creditors who hold options to
9 purchase property. Those contracts are deemed executory even
10 though on one side the obligation is contingent and we don't
11 deprive that individual of their property right in that
12 option just because the value has gone up; right?

13 MR. KILPATRICK: No, your Honor, because they
14 bargained for a -- they bargained for a specific right in
15 property, a specific property that existed at the time of the
16 filing of the bankruptcy case that has now grown in value,
17 accelerated and appreciated in value, and what you -- the
18 Code preserves that appreciation for that option holder or
19 the economic interest for that other -- for the holder of
20 other types of property. I mean obviously the easiest
21 revision, again -- the reason that the change was made to
22 engraft the land contract vendor-vendee into the -- into 365
23 was a manifestation of -- it was basically a codification of
24 case law, which says that somebody who's paid in and
25 benefitted and held onto this property should have the right

1 to continue to perform -- that's it -- continue to perform
2 post-petition and continue to have the benefit of that
3 contract going forward, but all those cases have required --
4 and what you're talking about, the case law and the
5 provisions under 365 require performance. I mean the option
6 holder who does not perform doesn't get to keep the option.
7 They lose the option. The vendee on a land contract who
8 doesn't make the payments post-petition loses that right and
9 those protections that afford it, and if they breach pre-
10 petition, they have the -- they're not given those
11 protections post-petition.

12 THE COURT: Well, in a sense you're right, of
13 course, but the reason we protect those creditors' rights in
14 those circumstances is because outside of bankruptcy those
15 creditors would be entitled to specific performance by the
16 debtor because they have no adequate remedy at law; right?

17 MR. KILPATRICK: That's correct.

18 THE COURT: Now let's move into the water context.
19 Okay? And this is why I asked where the authorization or
20 obligation on the part of the City of Detroit to provide
21 water comes from. Would a customer who's not in default but
22 as to whom the city, for whatever reason, decided to
23 terminate service be entitled to specific performance to
24 restore that service? I ask that, and I'm going to tell you
25 why to give you a moment to think about the answer, because

1 if the answer to that is yes, the answer to that question is
2 yes, the creditor would be entitled to specific performance,
3 then the same logic that gives the option holder and the land
4 contract holder rights that they have that other kinds of
5 creditors don't have would apply to the customer, it seems to
6 me.

7 MR. KILPATRICK: I appreciate the Court's
8 hypothetical, but I cannot for the life of me envision a
9 circumstance where we would cut water off for no reason.

10 THE COURT: I'm really glad to hear that, but I need
11 an answer because it tests in an analytical way what the
12 relationship is between the city and its customer. Does the
13 city have the right to say to, you know -- I'm going to use
14 the name John Smith and not because I'm picking on any John
15 Smiths in Detroit, "We're not going to give you water. We
16 know you're current. We know your plumbing is up to date.
17 We're not going to give you water"?

18 MR. KILPATRICK: There are other ways to get to
19 that. I mean you asked if there's specific performance.
20 That would be an arbitrary and capricious act, I mean which
21 would not be condoned under any number of theories.

22 THE COURT: So the answer to my question is "yes"?

23 MR. KILPATRICK: I'm not -- I can't --

24 THE COURT: That customer would be entitled to an
25 order requiring the city to provide service?

1 MR. KILPATRICK: Your Honor, that's a tortious --

2 THE COURT: Don't be afraid to admit it.

3 MR. KILPATRICK: That's a tortious --

4 THE COURT: If you can't think of any reason --

5 MR. KILPATRICK: That's a tortious hypothetical

6 to --

7 THE COURT: -- to deny it --

8 MR. KILPATRICK: That's a tortious hypothetical to
9 get to a specific result, which I just can't envision. You
10 know, it's never --

11 THE COURT: If that's your best answer --

12 MR. KILPATRICK: I don't know if there --

13 THE COURT: -- I'm going to assume the answer to my
14 question is "yes."

15 MR. WOLFSON: Your Honor, if I may, William Wolfson
16 again.

17 THE COURT: Yes, you may.

18 MR. WOLFSON: We certainly -- the Home Rule City's
19 Act --

20 THE COURT: Are you going to give me a "yes" or "no"
21 answer to my question?

22 MR. WOLFSON: I cannot give you a "yes" or "no"
23 answer.

24 THE COURT: Then I'm not interested --

25 MR. WOLFSON: If you would allow me to --

1 THE COURT: Then I am not interested in your
2 answer --

3 MR. WOLFSON: May I --

4 THE COURT: -- because the answer has to be either
5 "yes" or "no." It can't be some long-winded explanation that
6 doesn't come to a "yes" or "no."

7 MR. WOLFSON: Well, it will come to a "yes" or "no."

8 THE COURT: Then I just want the "yes" or "no."

9 MR. WOLFSON: It would depend on the circumstances,
10 your Honor.

11 THE COURT: Precisely the answer I am not interested
12 in because my hypothetical doesn't contain any circumstances
13 other than the city has decided to terminate services.

14 MR. WOLFSON: To an individual who is tapped into
15 the system and is receiving water?

16 THE COURT: Yeah.

17 MR. WOLFSON: And is in full compliance with their
18 terms?

19 THE COURT: Yeah, all that.

20 MR. WOLFSON: The city would not terminate services.

21 THE COURT: That's not the question. The question
22 is if they did, would the customer be entitled to an order
23 requiring them to provide services?

24 MR. WOLFSON: Your Honor, I do not believe -- I
25 believe the answer to the question is no. Unlike private

1 utilities in Michigan that are regulated per the MPSE,
2 municipal utilities are not regulated utilities, and,
3 therefore, a municipality would, assuming that its governing
4 law permitted such action, which -- and assuming that such
5 action was not arbitrary or capricious, I believe that then
6 the service can be terminated.

7 THE COURT: What could possibly not be arbitrary and
8 capricious about it because the hypothetical eliminates all
9 the reasons that a city might -- good reasons why a city
10 might have or the City of Detroit might have to deny service?

11 MR. WOLFSON: Perhaps the individual had installed a
12 valve on their property that was --

13 THE COURT: Didn't happen.

14 MR. WOLFSON: Well, if there's no -- if your
15 hypothetical is that there are no circumstances possible --

16 THE COURT: Yes, precisely.

17 MR. WOLFSON: -- then I've answered your question.

18 THE COURT: There are no circumstances that would
19 rationally justify denying service.

20 MR. KILPATRICK: Your Honor, I would submit that
21 this -- it's a very difficult hypothetical to deal with
22 because the realities are that we --

23 THE COURT: The answer is either "yes" or "no."
24 There's nothing difficult about it. You just don't want to
25 admit it. Why do you hesitate? All right. Let me ask

1 you --

2 MR. KILPATRICK: Because I know what --

3 THE COURT: Let me ask you the question.

4 MR. KILPATRICK: -- I know what follows that, and
5 then we're going to have to get to whether it really is
6 similar. Is it analogous to -- if, indeed, would they be
7 entitled to some type of -- bring some type of action to
8 compel the water to be turned -- probably, and I'll give you
9 a probably.

10 THE COURT: Okay. All right.

11 MR. KILPATRICK: Now, if that exists --

12 THE COURT: Okay. I'll take "probably" as a yes.

13 MR. KILPATRICK: -- then is that analogous to
14 retaining an economic benefit that you created that was
15 created pre-petition that you --

16 THE COURT: Oh, no, no. That's way too big a leap,
17 and I don't -- and I don't want to press you on that, but
18 what it does say is that there -- that the customers have a
19 right outside of bankruptcy that would be recognized as
20 something that money damages could not substitute for and,
21 therefore, the creditor is entitled to be recognized in
22 bankruptcy, but, as you pointed out in the context of the
23 options in the land contract, only if it's paid for; right?

24 MR. KILPATRICK: Correct.

25 THE COURT: But if the debtor does want to pay for

1 it -- not the debtor, the creditors do want to pay for it,
2 okay, because we're not talking about just those residents
3 here who are in default. I mean this analysis of whether
4 we're dealing with executory contracts applies to every
5 customer in the city; right?

6 MR. KILPATRICK: If, indeed, these are characterized
7 as executory contracts.

8 THE COURT: So does the law say -- all right. I've
9 tortured you enough. I'm sorry. You're done.

10 MR. KILPATRICK: Thank you, your Honor.

11 MR. THORNBLADH: Your Honor, Kurt Thornbladh on
12 behalf of the plaintiffs in this case, and, first of all,
13 I'll start apologizing to the Court. In the last few weeks
14 I've had very little sleep. I've had a very heavy briefing
15 schedule. There's been a lot of briefs. We've had a lot of
16 brilliant people on our side contribute to the briefs. I've
17 had to put them together within the page limit. I've been
18 walking around here knocking things off tables. I think I
19 knocked out your sound system yesterday. I apologize. If I
20 could get a little sleep, I'd be much better, but please
21 accept my apology.

22 Your Honor, our team on this side of the aisle,
23 about two and a half months ago most of us didn't even know
24 each other, and then some events happened which you well
25 remember, which was the city started its system of shutoffs,

1 and that got it -- and that was a public relations disaster
2 for the city, and they were criticized by an agency of the
3 important influential agency of the United Nations. And I
4 think you asked on the record, "Do I have jurisdiction over
5 this?" Some of us got together. I got to meet Mrs.
6 Jennings. I've known Jerry since a little earlier this year.
7 I knew Marilyn passingly. And we've had a team of excellent
8 volunteer lawyers, some of whom have come here from out of
9 state like Monica Lynn Lewis, who's a brilliant young civil
10 rights lawyer from New York state, and Veronica, and I'm
11 sorry. I forgot Veronica's last name.

12 It was I who suggested at a meeting that I think you
13 have two kinds of jurisdiction in this case. First, you have
14 the core jurisdiction. The only way I can find that you have
15 core jurisdiction is under Section 365, which is executory
16 contracts. Now, to find out what you think about executory
17 contracts, I did go on the opinion search, and I found an
18 unreported opinion of yours, Collins & Aikman Corporation, et
19 al.. It's a 2008 decision in a Chapter 11 case, and that
20 defines what an executory contract is, but before I talk
21 anything about executory contracts, I remind the Court that
22 there's a second basis of jurisdiction which is before the
23 Court today, which is noncore jurisdiction, so Judge Cox in
24 a -- I'm not sure if it's a reported decision or not, but
25 Judge Cox in the St. Martin's Co-Op versus City of Detroit

1 and Detroit Water and Sewage Department did say that Section
2 1983 applies against the Water and Sewage Department. The
3 plaintiff in that case, I think, received a \$5,000 award.
4 And as Mrs. Jennings says -- I agree -- that the due process
5 arguments, the equal protection arguments are very, very
6 powerful, but our wedge issue is the executory contracts. I
7 would answer the questions that you asked of my good old
8 friend, Mr. Kilpatrick, by saying, yeah, there are cases
9 where you can't allow a debtor to reject an executory
10 contract, and we found some of those cases, even cases that
11 discuss that in the context of a Chapter 9.

12 Now, I remind the Court that despite the broad
13 application of Section 904 which has been given and argued,
14 Section 901 says -- and I'll skip a few words here -- it's
15 entitled "Applicability of other sections of this title,
16 Sections 365 of this title applied to a case under this
17 chapter, Chapter 9." I looked at the original case, United
18 States versus Bekins, by a great conservative civil
19 libertarian, Charles Evans Hughes, who had to balance the
20 interests of a municipality of the checks and balances under
21 our system of federalism and declared that the rewritten
22 version of Chapter 9 which existed under the old Bankruptcy
23 Act was constitutional in United States versus Bekins.

24 Now, all our Bankruptcy Code is a dialectic. There
25 are two principles always at work in our Bankruptcy Code, the

1 debtor and the creditor. In this case, the creditor can be a
2 group of poor people who deny that they are in default
3 because they say that they have rights under the rules and
4 regulations of the water department.

5 Now, the water department has argued out of both
6 sides of its mouth whether or not those rules and regulations
7 apply. My friend, Mr. Rothstein, says that they meet the
8 standards of best practices, and my friend --

9 THE COURT: Hold on. You've jumped over the
10 argument about executory contract.

11 MR. THORNBLADH: Yes, your Honor. I got a bit -- I
12 got a bit away from that. I was coming back.

13 THE COURT: Oh, all right.

14 MR. THORNBLADH: All right. So although there's two
15 sets of arguments about the effect of the rules that are
16 given by different witnesses on the other side, the theme
17 seems to be -- and we heard this from Mrs. McCormick -- that
18 it's a contract and the rules apply to the contract. That's
19 unrebutted in the record of the TRO. It is a contract, and
20 the rules apply. If the rules apply, the individual
21 plaintiffs ought to have a chance to show that they are not
22 in violation of the rules; that the city is acting
23 arbitrarily and capriciously; that they have the same rights
24 as many other creditors do under Section 365, and they can
25 demand specific performance. It may require a due process

1 hearing in some cases. It may require a chance to see if
2 they can qualify for assistance in other cases. It may
3 require a chance to see if they can negotiate into the
4 10/30/50 plan, which we just learned this morning in the
5 discretion of the debtor --

6 THE COURT: Well, but let's pause here. Your
7 contention is that the relationship between the city and its
8 customers is an executory contract.

9 MR. THORNBLADH: Yes, your Honor.

10 THE COURT: Well, but it's an executory contract
11 that you don't want the city to have the option to reject;
12 right?

13 MR. THORNBLADH: No, your Honor. We believe it
14 falls into a narrow class of situations under case law and
15 under Section 365 itself perhaps that the creditor can
16 receive specific performance.

17 THE COURT: Okay. Let's hold on that question for a
18 second. But is it your contention that when one party to an
19 executory contract is a municipality, that --

20 MR. THORNBLADH: May I finish that for you, your
21 Honor?

22 THE COURT: -- that the municipality is obligated to
23 provide due process rights before it breaches the contract?

24 MR. THORNBLADH: Yes, your Honor. It is our
25 contention that if it is a municipality and it has rules, it

1 must provide due process rights under the rules, and the city
2 has not been dealing with its customers.

3 THE COURT: Well, what's the law that elevates
4 contract claims to constitutional claims --

5 MR. THORNBLADH: Well, it's in the -- it's in the --
6 well, I would say --

7 THE COURT: -- because when you say "due process," I
8 think Constitution?

9 MR. THORNBLADH: Right.

10 THE COURT: Maybe you don't mean it in that sense.

11 MR. THORNBLADH: No, your Honor. I think there's
12 also a branch of contract law that says we must interpret
13 contract involving a government agency to comply with
14 constitutional law.

15 THE COURT: Okay. But how does that help you?

16 MR. THORNBLADH: It helps us in this case because
17 the individual named plaintiffs in the pleadings supported by
18 the witnesses that testified here today and gave declarations
19 almost universally say that, yes, I didn't pay the water
20 bill, but I had a medical emergency, I had a financial
21 emergency, I have a massive billing error that I can't deal
22 with that I've never been given the opportunity for a
23 hearing. Therefore, their rights under these contracts have
24 not been -- have not been --

25 THE COURT: Well, but why isn't the remedy for that

1 a simple breach of contract without having to elevate it all
2 the way to the 14th Amendment?

3 MR. THORNBLADH: In order to -- in order to
4 establish that they would have a right to specific
5 performance.

6 THE COURT: Why isn't contract law sufficient to get
7 you there --

8 MR. THORNBLADH: I do believe we can get --

9 THE COURT: -- because you're the one that pointed
10 out that the city's witness testified that the rules on which
11 you rely for your due process argument are part of the
12 contract?

13 MR. THORNBLADH: I do believe that we can get there
14 under contract law without invoking constitutional law. I do
15 not think it is a necessity. And, in fact, we do --

16 THE COURT: All right.

17 MR. THORNBLADH: We do have some cases in a footnote
18 which includes the Ten Broek case from Michigan and a non-
19 constitutional issue in the Memphis Power & Light, which says
20 that typically in a dispute over whether somebody has
21 breached their contract -- a water user has breached their
22 contract, they are entitled to a TRO until the issue can be
23 determined because the provision of water is so important in
24 life, and I believe the Court has seen our footnote.

25 If I may, your Honor, I would just like to get to

1 our next set of issues, which is the -- which is the noncore
2 proceedings, and I don't think that's been adequately
3 addressed anywhere in the response, and I do not think that
4 Section 904 applies to that. Section 904 specifically
5 applies to proceedings under the Bankruptcy Code which would
6 be core proceedings. The Court could also take jurisdiction
7 over this matter under many other, I believe, well -- I
8 didn't craft them, so I'll say it -- well-crafted and well-
9 thought out counts concerning issues such as due process of
10 law under Section 1983 of Title 42, equal protection of the
11 law under the 14th Amendment and also under Section 1983 of
12 Title 42. there's also a constitutional argument about
13 estoppel just to show that what happened to these people here
14 was the result of a sudden change in policy, which under
15 contract law might give rise to an estoppel. Also, some very
16 capable environmental lawyers have crafted a complaint that
17 arises under the Public Trust Doctrine, and that's premised
18 on the doctrine that water itself belongs to people in
19 common. It's a property right to all.

20 THE COURT: All right. So what in 904 or the case
21 law creates an exception to it for claims that do not arise
22 under the Bankruptcy Code when brought in Bankruptcy Court?

23 MR. THORNBLADH: Well, that would be under the Title
24 28, which creates the noncore jurisdiction -- the noncore
25 jurisdiction, and the noncore jurisdiction would be something

1 that's related to the bankruptcy itself, but not arising
2 under the bankruptcy laws.

3 THE COURT: But my question was what's in -- what in
4 904 or the case law creates that exception because 904 is
5 very broad in its statement that notwithstanding any power of
6 the Court there are these limitations.

7 MR. THORNBLADH: That's very interesting, your
8 Honor. When I looked at this, I looked at the retirees'
9 adversary proceeding that they had brought, and that, of
10 course, the Court was able to get the parties to settle.
11 They had also filed a request that --

12 THE COURT: By which you mean the mediators.

13 MR. THORNBLADH: I'm sorry, your Honor.

14 THE COURT: By which you mean the mediators.

15 MR. THORNBLADH: Well, yeah. The mediators got that
16 to settle, so I looked at that, and I saw that the Court had
17 entertained that and allowed that case to go forward and took
18 that case as the case law which establishes that you can go
19 forward under 1983 on a noncore issue.

20 THE COURT: Did I specifically hold that?

21 MR. THORNBLADH: No, your Honor, but seriatim that
22 was held because that case was not dismissed on that issue.
23 It went forward.

24 THE COURT: All right. I'll have a look at that.

25 MR. THORNBLADH: So it remain -- so it remains to be

1 decided.

2 THE COURT: All right. Is that it then?

3 MR. THORNBLADH: Thank you, your Honor.

4 THE COURT: All right. Any rebuttal?

5 MR. SWANSON: Just briefly, your Honor. Your Honor,
6 for purposes of our motion to dismiss, frankly, it doesn't
7 matter whether they are executory contracts or they're not
8 executory contracts. This Court has held in the context of
9 904, which applies to core and noncore proceedings, that it
10 can't do the things the plaintiff wants the Court to do --

11 THE COURT: Um-hmm.

12 MR. SWANSON: -- and that's it. Thanks.

13 THE COURT: All right. It doesn't sound like Mr.
14 Kilpatrick wants to supplement that in any way.

15 MR. KILPATRICK: Well, actually, your Honor, since
16 you invited me --

17 THE COURT: Oh, yes, yes. That was an invitation.

18 MR. KILPATRICK: In answer to your question -- and,
19 by the way, specific performance would not be required. You
20 could obtain a judgment for money damages and buy water and
21 services from other people. You could buy a porta-potty and
22 put it in your backyard. You can buy water from Walmart, and
23 you can obtain a judgment against the municipality for
24 discontinuance of the service in whatever monetary amount is
25 necessary to meet those obligations. So, again, I --

1 THE COURT: The city's position is that its
2 provision of water to its residents is not so core to our
3 very lives that a court would not impose a specific
4 performance remedy in those circumstances.

5 MR. KILPATRICK: I couldn't say what a court could
6 do, but it could find that a money judgment would satisfy the
7 person whose service was terminated in a fashion that would
8 never be done by the municipality.

9 THE COURT: All right. Thank you. All right. The
10 Court is going to take this under advisement and give you a
11 decision next Monday morning at 8:30 before we resume the
12 trial of our plan confirmation. I want to -- what's the
13 matter?

14 MS. JENNINGS: Sorry, your Honor. Did you want to
15 hear the due process and equal protection arguments and the
16 balance that the -- I'm sorry, your Honor. Did the Court
17 want to hear the due process and the 12(b) argument on the
18 rest of plaintiff's complaint, or does the -- we did
19 thoroughly argue it --

20 THE COURT: Yeah. The city's argument here this
21 afternoon focused on jurisdiction --

22 MS. JENNINGS: Yes.

23 THE COURT: -- which is what Mr. Thornbladh
24 addressed.

25 MS. JENNINGS: Okay.

1 THE COURT: So I'm all set.

2 MS. JENNINGS: Okay. Could I just add this, your
3 Honor, regarding 904?

4 THE COURT: Um-hmm.

5 MS. JENNINGS: The language of 904 states
6 specifically --

7 THE COURT: Yes.

8 MS. JENNINGS: -- "Notwithstanding any power of the
9 court unless the debtor consents or the plan so provides."
10 In the plan under Section 4 there is a section about DWSD and
11 its client and its customer base and the fact that there was
12 A, B, C, the request that there -- that the plan would look
13 at affordability issues, the plan would look at ability to
14 pay, and would look at delinquencies of bills as well, so I
15 would --

16 THE COURT: But how do I construe that to be consent
17 for this Court to preside over those decisions that the
18 debtor might make?

19 MS. JENNINGS: Why did the defendants -- I'm sorry,
20 your Honor. I don't mean to ask you a question, but it begs
21 the question why did defendant put that into its plan unless
22 there was some agreement that they were allowing this issue
23 to come before the Court? And this is above and besides the
24 executory contract issues, your Honor.

25 THE COURT: All right.

1 MS. JENNINGS: Thank you.

2 THE COURT: I want to be sure that the only exhibits
3 that I retain for my deliberations are those which were
4 admitted into evidence, so I have a list here not in
5 numerical order, so I want to review the list with you to see
6 if I have missed any. Okay. 107(h), 12(a) through (z),
7 107(d) and 107(f), 25, 103, 110, 2, 101, 7, 8, and 9, 11,
8 130, and 4, 5, and 6. So let me just sit here for a minute
9 while you consult among yourselves to see if there were any
10 that I have missed, so we'll just take a minute to do that.

11 MR. SWANSON: Your Honor, I believe Exhibit 1 was
12 missing from the list. That was admitted during Mr.
13 Rothstein's deposition.

14 THE COURT: Exhibit 1, did you say?

15 MR. SWANSON: Yes.

16 THE COURT: All right. I will check that out.
17 Whose testimony did you think that was admitted during,
18 please?

19 MR. SWANSON: That's Mr. Rothstein's CV. It was
20 admitted by stipulation with Mr. Thornbladh.

21 THE COURT: Do you agree?

22 MR. THORNBLADH: Oh, that was the resume of Mr.
23 Rothstein. Sure.

24 THE COURT: Okay. Any others on either side?

25 MS. JENNINGS: Your Honor, the plaintiffs would move

1 to admit the curriculum vitae of Jim Armelagos. It was
2 Exhibit 101. He was the R.N. from U of M that came in to
3 testify.

4 MR. O'BRIEN: No objection.

5 THE COURT: All right. 101 is also admitted.

6 (Plaintiff's Exhibit 101 received at 3:47 p.m.)

7 THE COURT: Any others? Okay. Can I --

8 MS. JENNINGS: Your Honor, 107(b) as well.

9 MS. MITHANI: You said (d), your Honor, and --
10 107(d), and I thought it was 107(b). Let me see.

11 MS. JENNINGS: 107(b) and 107(d), your Honor. Is
12 there any objection?

13 THE COURT: Okay. What is 107(b), please?

14 MS. JENNINGS: It is the records for Margaret Davis.

15 THE COURT: Are they included in 12?

16 MS. MITHANI: It was (d).

17 MS. JENNINGS: Okay. It was --

18 MS. MITHANI: They heard (b). It was (d).

19 MS. JENNINGS: Okay. It was (d) your Honor. We
20 misspoke ourselves.

21 THE COURT: Okay. All right. All right. So I'm
22 going to ask counsel to work with my staff here to fix these
23 exhibit books that I have so that only these exhibits which
24 have been admitted are left with the Court. Okay. Hopefully
25 it won't take you very long to do that. And we'll be in

1 recess until 8:30 Monday morning. Did I say the right time?

2 MR. SWANSON: Thank you, your Honor.

3 MR. KILPATRICK: Thank you, your Honor.

4 MS. MITHANI: Thank you, your Honor.

5 (Proceedings concluded at 3:49 p.m.)

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I certify that the foregoing is a correct transcript from the sound recording of the proceedings in the above-entitled matter.

/s/ Lois Garrett

September 29, 2014

Lois Garrett