

Missouri Public Service Commission

STATE OF MISSOURI

PUBLIC SERVICE COMMISSION

At a Continued Hearing of the Public
Service Commission, held in Jefferson City,
Missouri, on the 28th day of
March, 1979.

C O N S O L I D A T E D R E C O R D

CASE NO. WA-78-170

In the Matter of the Application
of Ozark Mountain Water Company
for a Certificate of Convenience
and Necessity to Become a Public
Utility for the Purpose of Serving
Water.

CASE NO. WF-78-171

In the Matter of the Application
of Lakeside Investment Company to
Hold More Than 10% of the Common
Stock Issued by Ozark Mountain
Water Company.

CASE NO. WF-78-172

In the Matter of the Application
of Turkey Mountain Estates, Inc.,
to Hold More Than 10% of the
Common Stock Issued by Ozark
Mountain Water Company.

Missouri Public Service Commission

1 **BEFORE:**

2
3 **STANLEY A. LORING, Presiding,**

4 **HEARING EXAMINER.**

5 **HUGH A. SPRAGUE,**
6 **LEAH BROCK MCCARTNEY,**

7 **COMMISSIONERS.**

8
9
10 **REPORTED BY:**

11 **Judi Johnston**

Missouri Public Service Commission

APPEARANCES:

LOUIS W. COWAN, Attorney at Law,
626 Woodruff Building,
Springfield, Missouri,

FOR: APPLICANTS:
OZARK MOUNTAIN WATER COMPANY,
LAKESIDE INVESTMENT COMPANY,
TURKEY MOUNTAIN ESTATES, INC.

CHARLES B. FAIN, Attorney at Law,
333 Madison Avenue,
Jefferson City, Missouri,

FOR: INTERVENOR:
TURKEY MOUNTAIN ESTATES NO. 1.

CHARLES J. FAIN, Attorney at Law,
333 Madison Avenue,
Jefferson City, Missouri,

FOR: INTERVENOR:
TURKEY MOUNTAIN ESTATES NO. 2.

GARY W. DUFFY, Assistant General Counsel,
P. O. Box 360,
Jefferson City, Missouri,

FOR: STAFF OF THE MISSOURI PUBLIC
SERVICE COMMISSION.

Missouri Public Service Commission

1 PURSUANT to a Notice of the Missouri Public
2 Service Commission, dated the 13th day of February, 1979,
3 entitled, "NOTICE OF HEARING," said Notice reads, in part,
4 as follows: "Please take notice that the Public Service
5 Commission of the State of Missouri has set the above-
6 numbered case for further hearing on WEDNESDAY, the 28TH
7 day of MARCH, 1979, at 10:00 A.M., before the Commission in
8 its hearing room on the tenth floor of the Jefferson State
9 Office Building in Jefferson City, Missouri."; at which time,
10 date and place the following proceedings were had:

11 (Written Entries of Appearance Filed.)

12 EXAMINER LORING: Let's go on the record.

13 The Commission this morning has set a
14 continued hearing in Cases WA-78-170, WF-78-171 and
15 WF-78-172.

16 Have you made your written entries? Will you
17 make your oral entries now, please, starting with the
18 Applicant.

19 MR. COWAN: Louis W. Cowan, I'm a lawyer at
20 Springfield, 626 Woodruff Building, 65805. I represent the
21 Applicants in this matter.

22 EXAMINER LORING: Thank you.

23 MR. CHARLES B. FAIN: I am Charles B. Fain,
24 333 Madison Street. I represent Intervenor, Turkey Mountain
25 Estates No. 1 in this matter.

Missouri Public Service Commission

1 EXAMINER LORING: Thank you, Mr. Fain. Staff.

2 MR. DUFFY: Gary W. Duffy, Assistant General
3 Counsel, appearing for the Staff of the Public Service
4 Commission, P. O. Box 360, Jefferson City, Missouri 65102.

5 MR. CHARLES J. FAIN: I'm Charles J. Fain,
6 333 Madison, representing the Respondents in this matter
7 which includes Turkey Mountain Estates No. 2.

8 EXAMINER LORING: Thank you, Mr. Fain.

9 MR. CHARLES J. FAIN: And I'll be representing
10 them specifically in this hearing here today.

11 EXAMINER LORING: Let's go off the record
12 just a minute.

13 (Discussion off the record.)

14 (AT THIS TIME APPLICANTS' EXHIBIT NOS. 19 TO
15 22 WERE MARKED BY THE REPORTER FOR THE PURPOSE OF IDENTIFICATION.)

16 EXAMINER LORING: Let's go back on the record.
17 The record will show that Applicants' Exhibits
18 19 through 22 were marked for identification.

19 Mr. Fain, you may call your first witness.

20 MR. CHARLES B. FAIN: Okay, Your Honor.
21 Perhaps,--

22 EXAMINER LORING: Opening statements?

23 MR. CHARLES B. FAIN: Perhaps, I could make a
24 brief opening statement. It might clear up some of the issues
25 that I'm sure will be raised during testimony.

Missouri Public Service Commission

1 It's the position of Turkey Mountain Estates
2 No. 1, Intervenor, which I represent, that the water service
3 and the water system and the service of water to the home-
4 owners of Turkey Mountain Estates No. 1 does not constitute
5 a water corporation as defined by the statutes and laws of
6 the State of Missouri.

7 Now, our proof will be to show that the water
8 system and the water service was set up for that; the owner-
9 ship, the management, and the maintenance was agreed to by
10 a contractual agreement when the homeowners purchased their
11 lots. And that agreement will defeat any assertion that this
12 operation is a water corporation. So, our proof will go to
13 the terms of purchase of the lots and the material and the
14 evidence that affects the setup of the water system and
15 certain declarations that were made by the Applicants during--
16 or predecessors to the Applicants during the sale of these
17 lots which affects the ownership of this water system. That's
18 what our proof is going to be.

19 I am ready to call my first witness now.

20 EXAMINER LORING: Okay. Call your first
21 witness.

22 MR. CHARLES J. FAIN: I think, it might be
23 well if I make just a brief comment in regard to Turkey
24 Mountain Homeowners No. 2, Your Honor, so that we can get the
25 whole picture here before you at one time. And, that is, you

Missouri Public Service Commission

1 will recall that there were two homeowner associations,
2 Intervenor, in this matter. One represents the homeowners
3 in Turkey Mountain Estates No. 1. Turkey Mountain Estates
4 Homeowners Association No. 2 represents the homeowners in
5 Turkey Mountain Estates No. 2. They're separated by several--
6 they're separated by several miles apart.

7 Now, in addition to the opening statement,
8 which Charles has made, which we adopt, Turkey Mountain
9 Estates No. 2, its proof will be just a little bit different.
10 The documents are different. Therefore, we'll have to put in
11 what was going on over in Turkey Mountain Estates No. 2 to
12 show that, beyond any question, it seems, after you see
13 these documents, that what they were told and what went on
14 was that they would be the owners of the water system, and
15 that they would be expected to keep it going, and that was
16 what went on, transpired. And for that reason, obviously,
17 then, this Ozark Mountain Water Company, it has no ownership
18 rights at all to any of that property or in this development.
19 And, so, we'll show that on Turkey Mountain Association No.
20 2 beyond any question that they own the water system, and
21 that it was done by legal documents and representations that
22 were made to them by the owners in the HUD report, and by
23 their salesmen, and by their managers when these lots were
24 purchased.

25 So, it will be just a little different, but

1 the overall approach is just about the same for both of them.

2 EXAMINER LORING: Okay. Mr. Fain, why don't
3 you call your first witness, please.

4 MR. CHARLES B. FAIN: Raymond Bottger.

5 (Witness sworn.)

6 RAYMOND BOTTGER,

7 called as a witness in behalf
8 of INTERVENOR, TURKEY MOUNTAIN
9 ESTATES NO. 1, being duly sworn,
10 testified as follows:

11 DIRECT EXAMINATION BY MR. CHARLES B. FAIN:

12 Q What is your address, Raymond?

13 A Beg pardon?

14 Q Your address?

15 A Star Route 2, Box 186, Shell Knob, Missouri

16 65747.

17 Q Do you own a lot in Turkey Mountain Estates?

18 A Turkey Mountain Estates No. 1.

19 Q What is the lot number?

20 A 248.

21 Q When did you purchase that lot?

22 A I believe in April of '71.

23 Q Do you have a home on the lot?

24 A Yes, a mobile home. Well, it started out to
25 be a mobile home.

Missouri Public Service Commission

1 Q Are you connected to the water system--

2 A Yes, I am.

3 Q --out there?

4 When were you connected, do you recall?

5 A I don't know whether it was April or in May

6 of '72.

7 Q Who did you buy your lot from?

8 A Burl Turney.

9 EXAMINER LORING: How do you spell that, sir?

10 How do you spell that name?

11 WITNESS BOTTGER: Burl, B-u-r-l and Turney,

12 T-u-r-n-e-y.

13 EXAMINER LORING: Thank you.

14 BY MR. CHARLES B. FAIN:

15 Q Who did he work for, Ray?

16 A Turkey Mountain Estates.

17 Q What price did you pay for that lot?

18 A I believe it was twenty-one ninety-five.

19 Q Would twenty-one fifty-five be correct or
20 twenty-one ninety-five?

21 A I don't know. I would have to hunt back my
22 papers.

23 Q Now, do you own that lot free and clear?

24 A Yes.

25 Q You don't owe any money on it now?

Missouri Public Service Commission

1 A No.

2 Q Do you live there year-round?

3 A That's right.

4 Q Now, prior to purchasing your lot, were any
5 representations made to you, or were you told any statements
6 regarding the water system or the water service?

7 A Well, yes. Right in the office there, they
8 said they had a HUD report, and it would be \$25.00 for ten
9 years or more.

10 Q Twenty-five dollars for what?

11 MR. COWAN: Now, if Your Honor please, I'm
12 going to object to this, unless there's a foundation laid.
13 There has been no foundation laid as to who made the state-
14 ments, if they were in fact made. It's not proper evidence.
15 I object to it.

16 Further, I'll object to it on the grounds of
17 materiality. It has nothing to do with what is before this
18 Commission. This Commission cannot determine who holds
19 legal title to the property. Legal title has to be evidenced,
20 as you well know, by formal documents. The statute of fraud
21 requires that all such documents be in writing. And this is
22 a matter completely outside the jurisdiction of this
23 Commission to decide what the extent of this man's ownership
24 in this property or whether there are burdens on it or what-
25 not. It's something this Commission can't decide. That kind

Missouri Public Service Commission

1 of a decision is reserved exclusively for the court.

2 MR. CHARLES B. FAIN: I'll be happy to ask a
3 few preliminary questions to satisfy the foundation objection.

4 As far as materiality, as you'll recall, in
5 my opening statement, I stated that the position of Turkey
6 Mountain Estate Homeowners Association, that's Turkey
7 Mountain Estates No. 1, is that the water system does not
8 qualify as a water corporation or as a public utility under
9 the laws of Missouri. And to prove that, we intend to show
10 that the indicia of ownership and management and distribution
11 for gain and selling and supplying of water for gain do not
12 exist in Turkey Mountain Estates No. 1. And to prove that,
13 we have to show what representations were made and what
14 actual obligations flow from the developers to the landowners
15 in regard to the water system, and that's why I think it is
16 certainly material.

17 But, I'll be happy to lay a foundation for
18 this.

19 EXAMINER LORING: Well, I agree with Mr. Cowan's
20 objection. It's well stated, that it is beyond the juris-
21 diction of the Commission, of course, to decide ownership of
22 property; and the Commission's Report and Order can make no
23 findings therein. But, I will permit you to go ahead and lay
24 a foundation and put the testimony in.

25 MR. CHARLES B. FAIN: Thank you.

Missouri Public Service Commission

1 BY MR. CHARLES B. FAIN:

2 Q Now, if you will recall the last question,
3 Mr. Bottger, I'm going to ask you some preliminary questions
4 before I reask that question.

5 Who made to you any representations about the
6 water system and the water service at Turkey Mountain Estates?

7 A Well, every salesmen that I talked to in the
8 office. When I was hesitating about buying it, I said, "How
9 long is this water going to be available at this price?"

10 Q What salesmen? Do you remember any names?

11 A Burl Turney,--

12 Q Who did he work for?

13 A --and Jay Holt said the same thing.

14 Q Who did they work for?

15 A The same place. He was head, what do you
16 call it, head salesman or manager of the salesmen at that
17 time.

18 Q What did they tell you?

19 A It would be for ten years or more.

20 Q At what price?

21 A At \$25.00 a year.

22 Q What did they tell you that \$25.00 a year was?

23 A To maintain the water to your lot line.

24 Q Now, did those same people make any repre-
25 sentation as to what the purchase price of your lot covered

1 in regard to the water system?

2 A Yes.

3 MR. COWAN: If Your Honor please,--

4 WITNESS BOTTGER: Yes, what I told you.

5 MR. COWAN: --I'm going to object unless he
6 names the person who made the representation and where it
7 took place.

8 MR. CHARLES B. FAIN: Well, Your Honor, we
9 just named them.

10 MR. COWAN: You named a half a dozen of them.

11 EXAMINER LORING: Yes. You'll have to pin it
12 down to who said what.

13 MR. CHARLES B. FAIN: We named two people,
14 Your Honor, and those same two people are who we're talking
15 about now.

16 MR. COWAN: We want to know who said what.

17 EXAMINER LORING: You'll have to bring out
18 that both people said the same thing to him, you know, what-
19 ever it is. You know, what I mean.

20 MR. CHARLES B. FAIN: Yes.

21 BY MR. CHARLES B. FAIN:

22 Q Who made any representations to you about
23 what, in regard to the system, was covered by the purchase
24 price of your lot? I'm asking for the person's name.

25 A Burl Turney and Jay Holt both on that.

Missouri Public Service Commission

1 Q What did Burl Turney tell you?

2 A That it would be \$25.00 a year for ten years
3 or more.

4 Q Did he tell you anything in regard to who was
5 going to bring the lines to your lot, the water lines?

6 A Yes, Turkey Mountain Developers, and they
7 laid about, I think, 80 foot, maybe 120, I don't know, before
8 I was connected.

9 Q Did the other man you mentioned, Mr. Holt,--

10 A That's right.

11 Q --did he make any representations along those
12 lines?

13 A Yes. He said, "Sure, we'll have the water
14 in when you get your trailer up." And they were out there
15 digging about the, oh, the day after I had my trailer
16 brought out.

17 Q Since you purchased this lot, can you tell me
18 what your charge has been, your yearly charge for this water
19 service?

20 A Well, it was \$25.00 a year up till last year.

21 Q Then, what was it last year?

22 A I think it was last year, it jumped to fifty.
23 Wait a minute. Seventy-seven--it might have been seventy-six
24 already. I don't know.

25 Q Okay. Now, after you entered into your

Missouri Public Service Commission

1 purchase contract for the land, were you told any repre-
2 sentations by any employee of Turkey Mountain Estates, any
3 statements about the water system? Tell me who made the
4 statement, first, please.

5 A About what, sir?

6 Q About the water system or the rates.

7 A It belonged to Turkey Mountain Estates.

8 Q Who told you that?

9 A Burl Turney for one, I know.

10 Q Okay. When the rates were raised to \$50.00,
11 did you pay that increase?

12 A Yes, after a delay.

13 Q Are you retired from full-time employment at
14 this time?

15 A Yes, I am.

16 Q Do you work for anyone down in the Shell Knob
17 area?

18 A I mow some lawns.

19 Q Okay. Your income--would you say you live
20 on a fixed income, or does your income fluctuate with how
21 much you earn?

22 A It's pretty well fixed. Social Security
23 don't raise up very much.

24 Q Now, have you had any trouble with the water
25 system?

Missouri Public Service Commission

1 A No, I haven't.

2 Q Has it been adequate for your needs?

3 A It certainly has.

4 Q Let me show you a document here, and I'll ask
5 you to identify that, please.

6 A Yes. That's the contract of my purchase.

7 Q That's the purchase of the lot you own?

8 A (Witness nods head.)

9 Q Answer yes or no.

10 A Yes.

11 Q Is your signature on the contract?

12 A Right here.

13 Q Can you tell me what that is?

14 A The other side of the contract.

15 Q Okay. Can you tell me if that contract for
16 the sale of that lot speaks of any easements for water lines
17 or speaks to the water system in any way?

18 MR. DUFFY: Objection. The document will
19 speak for itself.

20 EXAMINER LORING: I've got an objection
21 pending here.

22 MR. COWAN: Well, Your Honor, may I add to
23 that objection. I object to it, too, because the contract
24 is not proof of ownership. It's the deed itself. The
25 original instrument hasn't been produced as of yet, and I

Missouri Public Service Commission

1 was going to object, but I did not follow it up. So, I might
2 as well do so now. It's common hornbook law, the contract is
3 merged into the contract of conveyance, the instrument of
4 conveyance.

5 MR. DUFFY: The basis of my objection goes
6 further to the question asked, whether there was an easement
7 granted in there, and I think that gets into the purview of
8 making this witness render a legal judgment as to whether
9 an easement is created in that document. So, I further
10 object to it on that basis. I'm not objecting to the
11 document itself. I'll let it speak for itself.

12 MR. CHARLES B. FAIN: I withdraw that question.
13 I intended to introduce this later as evidence. I mainly
14 wanted him to identify it.

15 BY MR. CHARLES B. FAIN:

16 Q Now, have you talked with the people who run
17 this water system about the maintenance charge, the mainten-
18 ance cost of the system?

19 A No.

20 Q Have you ever tried to get any kind of main-
21 tenance breakdown from them?

22 A No.

23 Q Do you have any knowledge as to actual main-
24 tenance expenses down there?

25 A No.

Missouri Public Service Commission

1 Q Now, have you made any improvements to what
2 you initially indicated was a trailer house on that land?

3 A Yes, I have.

4 Q What improvements have you made?

5 A Put a roof over it and put a foundation under
6 most of it and added two rooms to it.

7 Q Are you a member of the Turkey Mountaineers
8 Homeowners Association?

9 A Yes, I am.

10 Q How long have you been a member of that?

11 A Since it started.

12 MR. CHARLES B. FAIN: I have no further
13 questions at this time, Your Honor.

14 EXAMINER LORING: Okay.

15 CROSS-EXAMINATION BY MR. COWAN:

16 Q Is your name Bottger? How do you pronounce
17 your name?

18 A Two syllables, B-o-t-t-g-e-r, Bottger.

19 Q Bottger?

20 A Yes.

21 Q Where did you live before you moved to your
22 present home, Mr. Bottger?

23 A Council Bluffs, Iowa.

24 Q Did you live in this area when you purchased
25 this lot, or did you purchase this lot from the time when you

Missouri Public Service Commission

1 were still living in Iowa?

2 A I was living in Iowa at that time.

3 Q Do you remember when you had these conversa-
4 tions with Mr. Turney?

5 A Yes, when I was down there to purchase the lot.

6 Q Can you tell me when?

7 A In '71.

8 Q Do you remember what month?

9 A It was either March or April, I think April.

10 Q Where did these conversations take place?

11 A In the Turkey Mountain Estates office and
12 also when we were out standing on the lot.

13 Q Where were you when you had these conversat-
14 tions with Mr. Holt, is that his name?

15 A In the office.

16 Q Was Mr. Holt and Mr. Turney present at the
17 same time?

18 A Yes.

19 Q In other words, when you were talking with
20 them, you were talking with both of them?

21 A That's right.

22 Q Did you sign a contract for the purchase of
23 this property?

24 A Yes, I did.

25 Q Who was present when you signed the contract?

Missouri Public Service Commission

1 A A fellow who witnessed that thing then. I
2 don't know. Burl Turney and Jay Holt were the two I remember.

3 Q Were they present, to the best of your
4 knowledge?

5 A Yes.

6 Q Did you get a warranty deed--

7 A That's right.

8 Q --to that property?

9 Do you have it with you?

10 A No. But, there is a photostatic copy of the
11 deed right there.

12 MR. COWAN: May I see it, Mr. Fain?

13 EXAMINER LORING: Let's go off the record.

14 (Discussion off the record.)

15 EXAMINER LORING: Let's go back on the record.

16 BY MR. COWAN:

17 Q Mr. Bottger, you're mistaken. The deed is not
18 attached to the instrument you alluded to. Do you have a
19 copy of the deed at home?

20 A That is what I have at home. If I don't have
21 that, I don't even have a deed. That's where Turkey Mountain
22 might be wrong there.

23 Q Did you receive title insurance or an abstract
24 of title when you purchased the property?

25 A I don't know. I went and recorded what I had.

Missouri Public Service Commission

1 Q Do you recall when you had it recorded?

2 A Well, shortly after I got the deed in '72.

3 Q Now, Mr. Bottger, I've just looked at the
4 document, and there is no deed there. Apparently, there is
5 some mistake, an error or something. Could you furnish us
6 with a copy of that deed?

7 A Of what I have at home, yes. That's identical
8 to that.

9 EXAMINER LORING: Let's go off the record.

10 (Discussion off the record.)

11 EXAMINER LORING: Back on the record.

12 BY MR. COWAN:

13 Q Mr. Bottger, a few minutes ago your Counsel
14 handed this document to you, and asked you to comment on it.
15 Would you show me where the deed is that is attached to that
16 document?

17 A Well, on top it says--that don't show in here.
18 No, this is the Contract of Purchase.

19 Q All right. I'm asking about the warranty
20 deed by which you acquired title to this lot.

21 A The one that looks just like this that says
22 "Warranty Deed" on top, I'm pretty sure.

23 Q But, it is not attached to that piece of paper?

24 A No.

25 Q Now, my question is: Is it available? Do you
have one?

Missouri Public Service Commission

1 A I have one at home, yes.

2 Q Could you furnish us a copy of it?

3 A What I have at home, yes.

4 MR. COWAN: Mr. Fain, would you provide us
5 with a copy of it?

6 MR. CHARLES B. FAIN: Certainly.

7 BY MR. COWAN:

8 Q Now, do you recall whether you received an
9 abstract of title when you purchased the property? Do you
10 know what an abstract of title is?

11 A Yes, I do. But, I don't believe I ever got
12 one.

13 Q Did you get title insurance?

14 A No.

15 Q So, the only thing that you could tell us
16 today about the ownership of the property is based on this
17 document that we just looked at, together with your statement
18 that you made a moment ago?

19 A Yes.

20 Q But, you will provide us with a copy of the
21 deed?

22 A If I have the deed.

23 Q All right. Well, did you not tell me it was
24 recorded in, was it Barry County?

25 A I recorded what I got, the warranty deed.

Missouri Public Service Commission

1 Q Where was it recorded?

2 A In Cassville, Missouri.

3 Q All right. In Barry County in the Recorder's
4 Office?

5 A That's right.

6 Q Did I understand you correctly to say that
7 your water, you started receiving water from Turkey Mountain
8 Estates in 1972?

9 A That's right.

10 Q Service has been good up until now?

11 A Yes. It's still good.

12 MR. COWAN: All right. That's all I have.

13 EXAMINER LORING: Gary.

14 CROSS-EXAMINATION BY MR. DUFFY:

15 Q Mr. Bottger, you were talking about when you
16 moved your trailer to the lot, and the company came out and
17 connected the water service. Did you say that was pretty
18 quick after you moved your trailer in there?

19 A Yes.

20 Q Were there any problems involved in getting
21 you water service?

22 A No.

23 Q Were you satisfied with what the company did?

24 A They had the water line in before the power
25 company would even hook me up.

Missouri Public Service Commission

1 Q Did they charge you anything extra for doing
2 that, for hooking you up?

3 A Just the saddle on the water line.

4 Q How much did they charge you, do you remember?

5 A I believe it was \$25.00.

6 MR. DUFFY: That's all I have.

7 EXAMINER LORING: Any redirect?

8 MR. CHARLES B. FAIN: Yes, please, Your Honor.

9 REDIRECT EXAMINATION BY MR. CHARLES B. FAIN:

10 Q Mr. Bottger, I earlier asked you about state-
11 ments made by a salesman of Turkey Mountain Estates in regard
12 to the water system. Now, putting your attention on state-
13 ments made by Mr. Turney, did any of his statements in regard
14 to the water system affect your judgment as to whether or not
15 to purchase the lot?

16 MR. COWAN: Now, if Your Honor please, I'm
17 going to object to that question. That's a self-serving
18 question. It calls for an opinion. It's not proper evidence,
19 and I object to it.

20 EXAMINER LORING: I'm going to overrule it.

21 BY MR. CHARLES B. FAIN:

22 Q You may answer.

23 A Would you please repeat the question?

24 Q I say, did any representations or statements
25 by Mr. Turney in regard to the water service in any way

1 affect your decision as to whether or not to purchase the lot?

2 A Well, yes. At that price, I figured that was
3 damn cheap water.

4 MR. CHARLES B. FAIN: Thank you.

5 EXAMINER LORING: Any recross-examination?

6 RECROSS-EXAMINATION BY MR. COWAN:

7 Q Just one more question, Mr. Bottger. Are all
8 of the documents you have respecting this property the deed
9 that you described which you say is at home and the contract?
10 Do you have anything else?

11 A Well, I'll go look and see what I've got.

12 MR. COWAN: All right.

13 EXAMINER LORING: Any recross by Staff?

14 MR. DUFFY: No.

15 EXAMINER LORING: Thank you very much, Mr.
16 Bottger.

17 MR. CHARLES B. FAIN: Thank you, Mr. Bottger.

18 (Witness excused.)

19 _____
20 MR. CHARLES B. FAIN: Ruth Charlton I would
21 like to call next, Your Honor.

22 (Witness sworn.)
23
24
25

Missouri Public Service Commission

1 R U T H C H A R L T O N,

2 called as a witness in behalf
3 of INTERVENOR, TURKEY MOUNTAIN
4 ESTATES NO. 1, being duly sworn,
5 testified as follows:

6 DIRECT EXAMINATION BY MR. CHARLES B. FAIN:

7 Q What is your address, Mrs. Charlton?

8 A Star Route 2, Box 162, Shell Knob, Missouri
9 65747.

10 Q Do you own any property in Turkey Mountain
11 Estates?

12 A We own Lot 9 West in Turkey Mountain.

13 Q You say, "we." Who else--

14 A My husband, John.

15 Q Is that John D. Charlton?

16 A Yes.

17 Q What date did you purchase the lot?

18 A September 1, 1968.

19 Q Do you have a home on the lot?

20 A We do.

21 Q When did you construct that home?

22 A The early part of 1973. We moved into it
23 November 3rd, 1973.

24 Q Do you recall when you were hooked on to the
25 water system, approximately?

Missouri Public Service Commission

1 A I think it was in August. I'm not sure. We
2 were not here. We were back in Indiana.

3 Q Who did you buy your lot from?

4 A From--the salesman was Joe Mitchell.

5 Q Salesman for who?

6 A For Turkey Mountain Developers.

7 Q Do you remember the price of the lot?

8 A The contract was for forty-one ninety-five,
9 and then there were deductions, and I don't remember--I
10 couldn't mention them offhand, but it shows on the contract.

11 Q Where do you at this time make your primary
12 residence?

13 A In Turkey Mountain No. 1 at the address given.

14 Q That's year-round you live there?

15 A Year-round, yes, sir.

16 Q Now, did this Joe Mitchell, prior to you
17 purchasing the lot in September of '68, make statements to
18 you or representations in regard to the water system or water
19 service?

20 A We asked about water. He said, "Water is no
21 problem, that the developers were furnishing the water." We
22 would pay a maintenance fee of \$25.00 a year. Nothing was
23 said about a time.

24 Q About what?

25 A About length of time that that \$25.00 a year

Missouri Public Service Commission

1 would stay. But, he said that the water was no problem, that
2 it would be furnished, but there was a maintenance fee of
3 \$25.00 a year.

4 Q Can you name any other employees of Turkey
5 Mountain Estates who might have made any representations to
6 you in regard to the same?

7 A No. Because he was the only one we talked to,
8 except Mr. Randolff, I believe, was in the office, and he
9 also signed our contract.

10 Q Now, how much have your water bills been since
11 you were hooked on?

12 A They were \$25.00 a year up until, I believe,
13 it was July of '77, and then they have been \$50.00 since then.

14 Q Now, did you pay the increased amount?

15 A We paid \$50.00 in '77 and '78. That is, in
16 '78 we were billed for half a year at twenty-five, and, then,
17 later the other twenty-five.

18 Q Are you and your husband retired from full-
19 time employment?

20 A Yes.

21 Q Do you live on a fixed income?

22 A Yes.

23 Q Now, the water system is, as it operates now,
24 adequate for your usage?

25 A Yes, it is adequate.

Missouri Public Service Commission

1 Q Do you belong to Turkey Mountaineers Home-
2 owners Association?

3 A I do.

4 Q Do you hold an office in that Association?

5 A I'm Secretary-Treasurer.

6 Q How long have you been a member of that
7 Association?

8 A If I remember rightly, it was 1974 when we
9 joined, '74 or '75, I'm not positive.

10 Q I'm going to show you a document and ask you
11 to identify what this document is.

12 A This is our Contract of Purchase. It has
13 my husband's and my signature on it.

14 Q Okay. For what property does this cover?

15 A Lot 9 West.

16 Q Now, what other signatures are on the document?

17 A Joe Mitchell and William Randolff.

18 Q Now, I'm going to hand you this document and
19 ask you to identify that, please.

20 A That is our Warranty Deed.

21 Q To what property?

22 A To Lot 9 West.

23 Q Who is that signed by?

24 MR. COWAN: If Your Honor please, if we are
25 going to be referring to documents, it seems to me they

Missouri Public Service Commission

1 should be identified and made a part of the record. If this
2 lady is going to testify as to this deed, I think it should
3 be part of the record.

4 MR. CHARLES B. FAIN: Perhaps, it would be
5 best to stop and mark all these documents at this time.

6 EXAMINER LORING: Why don't we do that. Off
7 the record.

8 (AT THIS TIME INTERVENORS' EXHIBITS A AND B
9 WERE MARKED BY THE REPORTER FOR THE PURPOSE OF IDENTIFICATION.)

10 EXAMINER LORING: Back on the record.

11 MR. CHARLES B. FAIN: We'll continue question-
12 ing, Your Honor, about the warranty deed as soon as we are
13 furnished copies back from one of the secretaries.

14 BY MR. CHARLES B. FAIN:

15 Q Mrs. Charlton, we talked earlier about
16 representations by Mr. Mitchell.

17 A Yes.

18 Q And you said he made some representations in
19 regard to the water system?

20 A Yes.

21 Q Did those representations by Mr. Mitchell, in
22 regard to the water system, have any effect on your judgment
23 as to whether or not to purchase this lot?

24 A Yes. Because I think water is a problem any-
25 where you live, and that was one of the first things we asked
about.

Missouri Public Service Commission

1 Q Now, I'm going to hand you, Mrs. Charlton,
2 what has been marked Intervenor's Exhibit A. This is a
3 portion of it. Can you tell me what that is, please?

4 A That is our copy of the questionnaire and
5 a copy of our contract.

6 EXAMINER LORING: Excuse me. Could I ask
7 for clarification, what the questionnaire is?

8 WITNESS CHARLTON: It's a blank questionnaire.

9 EXAMINER LORING: Would you have her identify
10 what it is.

11 MR. CHARLES B. FAIN: Yes.

12 BY MR. CHARLES B. FAIN:

13 Q Now, would you please tell me what caused you
14 to fill this questionnaire out?

15 A It was furnished to us by Mr. Fain to be
16 distributed to the Turkey Mountaineers Homeowners Association
17 members. We asked as many as we could get in touch with to
18 complete them and return them to us. We, in turn, sent them
19 back to Mr. Fain. And they are questions pertaining to our
20 ownership of the property, what representations were made
21 at the time we purchased, and has to do with what we under-
22 stood as far as the water situation is concerned.

23 EXAMINER LORING: Thank you.

24 BY MR. CHARLES B. FAIN:

25 Q Now, attached to this questionnaire, can you

Missouri Public Service Commission

1 identify this document?

2 A Yes. That's the contract of--our Contract of
3 Purchase that we signed when we bought the lot.

4 Q Now, did you have any part in the distribution
5 or collection of these questionnaires?

6 A Yes, I did.

7 Q What part did you play?

8 A Well, we sort of took it by sections, and my
9 husband and I distributed them to our neighbors closest to
10 us, and then received them back from them personally.

11 Q Then, what did you do with the questionnaires?

12 A I mailed them to Mr. Fain.

13 Q Was there any discussion by you and the
14 officers of Turkey Mountain Estates No. 1 as to this
15 questionnaire prior to distributing the questionnaire?

16 A Not personally, no.

17 Q I'm going to hand you what has been marked
18 Intervenors' Exhibit B, and ask you to identify that, please.

19 A That's the Warranty Deed from Turkey Mountain
20 Estates, Inc. to my husband and myself, John and Ruth
21 Charlton.

22 Q What is the date on that?

23 A October 16, 1972.

24 Q Now, is that document recorded?

25 A Yes.

Missouri Public Service Commission

1 Q Where is it recorded?

2 A Barry County.

3 Q Now, does the deed state what book and page
4 it's recorded at?

5 A Yes. It was recorded November 9, 1972 in
6 Book No. 263 at Page 370.

7 MR. CHARLES B. FAIN: Thank you very much. I
8 have no further questions at this time.

9 EXAMINER LORING: Mr. Cowan.

10 MR. COWAN: I didn't follow the exhibit that
11 was marked Exhibit A. Am I right on that, Intervenors'
12 Exhibit A? What was that?

13 MR. CHARLES B. FAIN: Intervenors' Exhibit A
14 is all the questionnaires and all the attachments that were
15 part of the survey. That's this whole deal, all these.

16 MR. COWAN: Mr. Examiner, I'm confused as to
17 what Mrs. Charlton was asked to look at or referred to when
18 the inquiry as to the questionnaire was made. Was that
19 limited to the questionnaire, purportedly to be prepared by
20 Mr. and Mrs. Charlton?

21 MR. CHARLES B. FAIN: What are you asking me?

22 MR. COWAN: I'm trying to determine what the
23 piece of paper was that Mrs. Charlton discussed a moment ago
24 that you called a questionnaire.

25 MR. CHARLES B. FAIN: It was a portion of

Missouri Public Service Commission

1 Intervenor's Exhibit A, the questionnaire that was filled out
2 by Mr. and Mrs. Charlton.

3 MR. COWAN: And the contract that was attached?

4 MR. CHARLES B. FAIN: Is their contract for
5 purchase of that lot.

6 CROSS-EXAMINATION BY MR. COWAN:

7 Q Mrs. Charlton, I'm going to hand you a
8 document which was taken from Intervenor's Exhibit A. It's
9 headed, Turkey Mountaineers Homeowners Association
10 Questionnaire, and the name John D. and Ruth A. Charlton
11 appear on it. Is that the instrument you were referring to
12 when Mr. Fain was interrogating you?

13 A That is it.

14 Q Is the instrument that is attached a copy of
15 the Contract of Purchase that you entered into with the
16 Turkey Mountain Estates when you purchased this lot?

17 A That is correct.

18 Q Is it complete?

19 A Yes.

20 Q Would you read this last, this paragraph near
21 the bottom of the page to which my finger is pointed and
22 read it for us, please?

23 A "The BUYER agrees that there have been no oral
24 representations, statements, or agreements relied upon in
25 this contract other than the terms and conditions of this

1 "sale as herein set out."

2 Q Is that statement correct?

3 A I suppose it is.

4 Q Very well.

5 A It's printed.

6 MR. COWAN: That's all the questions I have.

7 EXAMINER LORING: Gary. Excuse me just a
8 moment, ma'am. He may ask you some questions.

9 CROSS-EXAMINATION BY MR. DUFFY:

10 Q You are the Secretary-Treasurer of the
11 Homeowners Association?

12 A Yes, sir.

13 Q Is the name of that Turkey Mountaineers
14 Homeowners Association?

15 A Yes.

16 Q And that represents Turkey Mountain Estates
17 No. 1?

18 A Right.

19 Q Not No. 2?

20 A Not No. 2.

21 Q Can you tell me something about this Home-
22 owners Association, when it started?

23 A I don't know. I don't remember exactly when
24 it started, because it was started before we moved down here.

25 Q How does one become a member of that
Association?

Missouri Public Service Commission

1 A If you are a homeowner, you're invited to
2 become a member.

3 Q But, it's by invitation only?

4 A No, not necessarily. If you're a homeowner,
5 it is a homeowners association, and mostly it's the people
6 who live there; although, there are some members who do not
7 live here all the time. They just have a summer home, but
8 they are members, and they pay annual dues.

9 Q Are there any residents in Turkey Mountain
10 Estates No. 1 that are not members of the Homeowners
11 Association?

12 A Yes, there are.

13 Q Do you know why that is so?

14 A Some of them choose not to belong.

15 Q You don't count them as members of your
16 Association even though--

17 A They're not really members of the Association
18 if they're not supporting it.

19 Q Are there dues that have to be paid?

20 A Yes, there are annual dues.

21 Q How much is that?

22 A Four dollars a year per person. A husband
23 and wife would pay, if I remember right, no, it's \$2.00 per
24 person, I think; \$4.00 for a couple.

25 Q How often does the Association meet?

1 A It depends. We have an annual meeting every
2 year, and then we call special meetings if we have something
3 special comes up that we feel should be discussed.

4 Q Have you had a special meeting concerning the
5 water system?

6 A Yes, we did, last year.

7 Q Was it just one meeting, or did you have
8 several?

9 A No, there were a couple of meetings.

10 Q Without going into great detail, can you
11 enlighten the Commission as to what went on at those meetings,
12 just summarize them, if you can.

13 A The pro and con arguments and such and the like
14 about whether or not we should just go along with whatever
15 the developers wanted to do, or if we should try to protect
16 our rights as purchasers. Some of us felt that in forming
17 a water corporation, they were probably trying to get away
18 from or make our rates so high that we would be more or less
19 paying double for what we had already paid for. And most
20 all of us felt that we had already paid for the piping in
21 the ground, and it was the understanding that they would
22 merely furnish the water, and we would pay only a maintenance
23 fee. That's what the meeting was about, more or less,
24 whether or not we should hire an attorney.

25 Q Did you take a vote on that question?

Missouri Public Service Commission

1 A Yes, we did, and it was decided to hire an
2 attorney.

3 Q Do you remember what the vote was? Were there
4 some people who voted against it?

5 A About 6 out of about 36.

6 Q That vote was whether or not to hire an
7 attorney?

8 A Yes.

9 Q Has the Homeowners Association ever considered
10 itself as the operator of the water system?

11 A No.

12 Q Does the Homeowners Association contend that
13 they own the title to the water system?

14 A No, we do not.

15 Q It's the individual property owners who own
16 the system; is that what you're saying?

17 A The developers own the system, the water
18 system. What was promised to us was water with a maintenance
19 fee of \$25.00 a year.

20 Q I'm trying to understand what your position
21 is. You think that that \$25.00 promise binds the developers
22 to provide water for \$25.00 for however long?

23 A Now, this is my personal opinion.

24 Q That's all I'm asking for.

25 A It might not be somebody else's. But, we

Missouri Public Service Commission

1 figured, we feel that when we purchased the lot, we were
2 told that there would be no charge for water; there would be
3 a charge only for maintenance. All right. If a water
4 corporation is formed, and then they set up the base price
5 of what that corporation has had to pay for all the equipment
6 and everything else, we'll be paying again for that, in that
7 base price, that they set our rates by. We figure we should
8 just pay a maintenance fee for the cost annually.

9 Q You think you should just reimburse the
10 company for their expenses?

11 A Their expenses, yes.

12 Q The normal operating expenses. And you
13 shouldn't contribute anything to what has already been
14 invested there?

15 A No, I don't see why we should.

16 Q Do you understand that that's also the
17 position of the Staff of the Public Service Commission?

18 A No, I didn't understand what your position
19 was.

20 Q Where did you live before you--

21 A In Hammond, Indiana.

22 Q Where did you get your water supply in
23 Hammond, Indiana?

24 A From Lake Michigan.

25 Q What--

Missouri Public Service Commission

1 A We had, right there, we were close to the
2 Lake, and we had our own water system, and Hammond, I believe,
3 furnished two or three outlying communities.

4 Q Are you saying you had your own well?

5 A No, no. It was a water company.

6 Q Was it run by the city, or was it a private
7 company?

8 A I'm trying to think now. I'm not positive.
9 I could not say definitely.

10 Q Did you pay a flat yearly fee?

11 A We paid a flat yearly fee, yes.

12 MR. DUFFY: I think that's all I have. Thank
13 you, ma'am.

14 EXAMINER LORING: Any redirect?

15 MR. COWAN: May I ask a couple of questions?

16 FURTHER CROSS-EXAMINATION BY MR. COWAN:

17 Q Mrs. Charlton, in light of Mr. Duffy's
18 questions, I have two or three questions.

19 I'm a little puzzled by some of your answers.
20 Were you told by anyone, your Counsel or otherwise, that the
21 developers, such as Turkey Mountain Estates and others,
22 propose to contribute for nothing all of the water property
23 to this new corporation?

24 MR. CHARLES B. FAIN: Your Honor, I'm going
25 to object to that as calling for hearsay and perhaps

1 privileged information.

2 MR. COWAN: It's set out right in the
3 application, Your Honor.

4 EXAMINER LORING: I will overrule the
5 objection.

6 BY MR. COWAN:

7 Q Were you told that fact?

8 A Would you repeat just exactly what you said?

9 Q That these developers--and let's just talk
10 about Turkey Mountain Estates, because that is the one you
11 dealt with. I am right, am I not?

12 A Yes.

13 Q Did you understand that it proposes to give
14 all of those water mains and what have you to this new
15 corporation, and it will not be included in the new
16 corporation's rate base?

17 A (No response.)

18 Q You're talking about paying for them twice?

19 A Yes.

20 Q What I'm saying is, were you told that the
21 Turkey Mountain Estates doesn't expect to get a dime for
22 those properties, either in the way of a return or in
23 compensation for them; it intends to give those properties
24 to the operating water company?

25 A No, I was not told that.

Missouri Public Service Commission

1 Q Is this the first time you knew of that?

2 A Well, possibly, I might have heard something
3 to that effect in the last hearing that I was at, but I'm
4 not positive.

5 Q Does it come as a surprise to you now that
6 these developers are not asking to recover one dime for the
7 investment they made in water plant?

8 A Yes, I could say it does.

9 MR. COWAN: All right. That's all.

10 EXAMINER LORING: Thank you, Mrs. Charlton.

11 (Witness excused.)

12

13 EXAMINER LORING: We need a break.

14 WHEREUPON, a recess was taken.

15

16 PURSUANT to the recess, the hearing of this
17 case was resumed, and the following proceedings were had:

18 EXAMINER LORING: Back on the record.

19 MR. CHARLES B. FAIN: I would like to call

20 Mr. George D. Willet at this time, Your Honor.

21 (Witness sworn.)

22

23

24

25

Missouri Public Service Commission

1 G E O R G E D. W I L L E T,

2 called as a witness in behalf
3 of INTERVENOR, TURKEY MOUNTAIN
4 ESTATES NO. 1, being duly sworn,
5 testified as follows:

6 DIRECT EXAMINATION BY MR. CHARLES B. FAIN:

7 Q Give us your address, please, George.

8 A Star Route 2, Box 185, Shell Knob, Missouri
9 65878.

10 Q Do you own a home in Turkey Mountain Estates?

11 A Yes, I do.

12 Q Tell us what subdivision it is and what lot
13 number.

14 A It's the east second subdivision lot 260.

15 Q Do you recall when you purchased the lot?

16 A October of 1970. I don't recall the exact
17 date.

18 Q Have you constructed anything on the lot?

19 A I had a mobile home put on a year after I
20 bought the lot. In 1975, when I retired, I've built on one
21 room and put a basement under the mobile home to make a
22 permanent home out of it.

23 Q Are you hooked up to any water lines?

24 A I don't--I am a bit hard of hearing and--

25 Q Are you hooked up to any water lines?

Missouri Public Service Commission

1 A Yes. I'm hooked up to the Turkey Mountain
2 Estates water line.

3 Q When did you hook up?

4 A That was hooked to the mobile home on the
5 last day of 1971, I believe. I know it was New Year's Eve
6 was the first time I had water, and I think it was 1971.

7 Q Who did you buy this lot from, George?

8 A From Turkey Mountain Estates, Inc.

9 Q Do you remember the salesman's name?

10 A Burl Turney.

11 Q What price did you pay for the lot?

12 A I believe the original price is twenty-six
13 ninety-five, and I was given a \$500 voucher as part payment
14 to come down and look at the property, I believe. By paying
15 one-third down, there was more---there was some rebate there.
16 I believe actually I paid \$1795 for the lot in actual cash.

17 Q Do you make your primary residence on this
18 lot at this time?

19 A Yes, I do.

20 Q Did Mr. Burl Turney make any representations
21 to you about the water system or water service prior to your
22 purchasing the lot?

23 A The morning we were looking at the property
24 in Turkey Mountain Estates 1, I inquired about wells: How
25 much it would cost to get water, or wells down. I knew--I

Missouri Public Service Commission

1 have never been in the area before the evening before that
2 in my life, and I inquired about water, what the cost of
3 putting down a well, and he said, "Well, in their setup,
4 there was no problem, because they had a water system in."
5 And he said, "Part of your contract on your lot, you buy a
6 lot, the water is put to your lot line." He also said that,
7 I inquired about the wells, and he said, he wasn't sure; he
8 thought there was three but he wasn't sure. He did stop
9 going into the east subdivision, and he pointed to one place
10 that looked like a six-inch pipe from the ground, and he
11 said, "I believe that is one of the wells, but I will not be
12 sure." Since that time, I have reason to believe it may be
13 a booster pump for our area, but I can't be sure of that
14 either.

15 Q Did Mr. Turney relate to you that there would
16 be any charges in regard to the water service?

17 A He told me at the time it was \$25.00 a year
18 maintenance to keep the water lines in shape.

19 Q How much have you paid for this maintenance
20 fee over the years?

21 A I paid \$25.00 a year until I think it was
22 '77, when it was raised to \$50.00 a year. And there was
23 quite a controversy over a much higher rate to start. And
24 at that time this question come up about fighting it. So,
25 since that, we have paid--I have paid \$25.00 a year under

Missouri Public Service Commission

1 protest. All of my checks I've paid have been marked \$25.00
2 under protest.

3 Q Now, after the time when you purchased this
4 lot, did you have any other discussions with Mr. Turney about
5 the water service?

6 A Not with Mr. Turney, no.

7 Q Did you have any discussions with any
8 employees of the developers?

9 A I had no trouble with my water--with any
10 service as far as that. The only discussion we had was,
11 Mr. Norman came to my place one evening after this whole
12 controversy came up, and I asked him about the new lines
13 that were being installed beyond my place up on the hill.
14 And he said that, as anyone that had purchased a lot came in
15 to build, then, they extended the line to that property so
16 that they would serve the water that they had contracted
17 for. Other than that, I have had no other discussions about
18 the water system.

19 Q Now, do you make this your year-round home
20 now?

21 A Yes, I do.

22 Q Are you retired from full-time employment?

23 A (No response.)

24 Q Are you retired?

25 A Yes, sir.

Missouri Public Service Commission

1 Q Has this water system been adequate to serve
2 your needs?

3 A To this point, it has, yes.

4 Q Are you a member of Turkey Mountaineers
5 Homeowners Association No. 1?

6 A Yes, sir, I am.

7 Q Do you hold an office in that organization?

8 A I am the President of the organization at the
9 present time.

10 Q How long have you been President?

11 A This is my second year.

12 Q I am going to hand you a part of what has
13 been marked Intervenors' Exhibit A and ask you to identify
14 that, please. Just tell me what it is in your own words.

15 A It looks like a questionnaire that was sent.

16 Q Okay. As an officer of Turkey Mountaineers
17 Homeowners Association, did you have any part in distributing
18 that questionnaire?

19 A Yes, sir.

20 Q How did you do that?

21 A Partly, by mail and partly in person.

22 Q Who did you distribute it to?

23 A All of the Homeowners Association members and
24 some people that were not members as long as they had a home
25 within Turkey Mountain Estates No. 1.

1 Q How were these questionnaires returned to you?

2 A (No response.)

3 Q How were they returned to you?

4 A Many of them were returned by mail, people
5 that did not maintain a home there year-round. And a lot
6 of them were brought back personally and handed. Some of
7 them came back and asked to have help with some of the
8 questions that they didn't understand. By mail and by person,
9 I would say.

10 Q What did you do with them after you received
11 them?

12 A Well, I turned most--I turned all of them
13 over to the Secretary to put in the files.

14 Q Who is that?

15 A Ruth Charlton, Turkey Mountain.

16 Q Is this the questionnaire that you filled out,
17 Mr. Willet?

18 A It looks very much like it, yes, sir.

19 Q Here is your name at the top; is that--

20 A Yes. This looks like the questionnaire I
21 filled out, yes.

22 Q Now, I'm showing you an attachment to that,
23 and ask you if you can identify that attachment?

24 A That is the contract of the purchase of my
25 lot.

Missouri Public Service Commission

1 Q Is that a true and accurate copy of the
2 actual contract?

3 A It looks like it is, yes, sir.

4 Q Is your signature on it?

5 A Yes, sir.

6 Q Now, can you identify these other two
7 signatures?

8 A Burl Turney was the salesman and Jay Holt
9 signed as the seller, yes.

10 Q Now, were you ever furnished by Turkey
11 Mountain Estates any report that had been filed with the
12 HUD, Housing and Urban Development?

13 A I received the HUD report. It's in that
14 questionnaire, the date that I received it, and I also
15 received a letter with it at the same time. Why I was not
16 given it at the time of purchasing the lot--

17 MR. CHARLES B. FAIN: Could we go off the
18 record a second?

19 (AT THIS TIME INTERVENORS' EXHIBIT C WAS
20 MARKED BY THE REPORTER FOR THE PURPOSE OF IDENTIFICATION.)
21 BY MR. CHARLES B. FAIN:

22 Q I'm going to show you what has been marked
23 Intervenor's Exhibit C and ask you if that's the letter you
24 were speaking about?

25 MR. COWAN: May I interrupt, please? The copy

1 we have is not complete. It starts with Page 2.

2 MR. CHARLES J. FAIN: Your Honor, I can
3 explain that. What we've done, we tried to save as much paper
4 as possible. I'm sorry I didn't bring this up earlier. But,
5 what we've done, Your Honor, these HUD reports are quite
6 massive, and we have excerpted the--we have the original,
7 which shows the HUD report complete. But, then, we pulled
8 out those pages pertaining to the water. Otherwise, we would
9 be coming over here--we would have a tremendous record when
10 we go out.

11 EXAMINER LORING: The original is available
12 to Counsel if he wants to inspect it.

13 MR. CHARLES J. FAIN: We've got the original
14 that they can inspect. We will have a record like this if
15 they have to put all those HUD reports in in full. So, we're
16 asking their indulgence to let us just put in those pages,
17 but the original will be in, that is the complete HUD report,
18 but we'll make copies just of the pertinent pages, if they
19 will go along with that. Otherwise, we're going to have a
20 tremendous record to go up on.

21 EXAMINER LORING: Let's go off the record a
22 minute.

23 (Discussion off the record.)

24 EXAMINER LORING: Let's go back on the record.
25

Missouri Public Service Commission

1 BY MR. CHARLES B. FAIN:

2 Q Mr. Willet, do you also have a warranty deed
3 to this property?

4 A Yes, sir. I do.

5 Q Can you please state to us where this document
6 is recorded?

7 A 26th day--looks like 26th day of March, 1971.

8 Q Might that be November?

9 A That could be.

10 Q Can you tell me what book and what page?

11 A In Book 257 at Page 283.

12 Q Is that in Cassville?

13 A Cassville in Barry County.

14 MR. COWAN: Is November right on that, Charlie?

15 MR. CHARLES B. FAIN: I believe it is.

16 MR. COWAN: It's not materially important
17 since we have the book and page.

18 MR. CHARLES B. FAIN: It is.

19 BY MR. CHARLES B. FAIN:

20 Q Can you tell me what date you received that
21 warranty deed?

22 A It's marked here 25th day of October, 1971.

23 Q Thank you.

24 MR. CHARLES B. FAIN: That's all I have right
25 now, Your Honor.

Missouri Public Service Commission

1 CROSS-EXAMINATION BY MR. COWAN:

2 Q How long have you lived in the Shell Knob
3 vicinity, Mr. Willet?

4 A I have been living there permanently since
5 February of 1975.

6 Q When did you build your home that is there now?

7 A Well, I started to add on to my mobile home
8 the same year that I moved in there, during 1975.

9 Q When did you put the mobile home on the lot?

10 A 1971.

11 Q Were the water lines laid when you put your
12 mobile home on the lot?

13 A They were hooked up when--they were ready for
14 hookup at the time we went to hook them up. I don't know
15 when they were laid.

16 Q Where was the water line located? I'm not
17 talking about your service line. I'm talking about the main.
18 Where is the main located?

19 A Well, down--it's right behind my lot. It's
20 right on the back lot line.

21 Q It's on the property lot line?

22 A Yes, I would say on the property line.

23 Q When you purchased this property, did you have
24 an abstract of title?

25 A I didn't understand you.

Missouri Public Service Commission

1 Q When you purchased the property, did you get
2 an abstract of title?

3 A (No response.)

4 Q Do you know what an abstract of title is?

5 A Yes, I do. I was told if I wanted an abstract,
6 I would have to go through an abstract attorney in Mt. Vernon,
7 and I never could locate him. And they said that, Burl
8 Turney told me that there was an abstract that covered all
9 of the whole area there, and he said it probably wouldn't be
10 necessary unless we had to go and check it out.

11 Q Did you have the title checked?

12 A (No response.)

13 Q Did you have the title checked by an attorney?

14 A No, we did not have the title checked.

15 Q Do you know what the easements of record are
16 with respect to this property?

17 A Other than what I've got on my warranty deed,
18 I do not.

19 Q Mr. Fain was asking you a question a moment ago
20 concerning a part of Intervenor's Exhibit A. Would you look
21 at this document, and tell me if this is the document that
22 Mr. Fain showed you?

23 A (No response.)

24 Q Is that a copy of the same thing?

25 A It looks very much like it is, yes, sir.

Missouri Public Service Commission

1 Q Turning to Page 3, did you prepare that?

2 A (No response.)

3 Q Mr. Willet, Mr. Fain has kindly given me--

4 A Yes, I believe I did. This is my own
5 composition.

6 Q Are these just some comments to describe your
7 ideas about the thing?

8 A (No response.)

9 Q Does Page 3 just contain comments, where you
10 put down in writing your ideas about the water system there?

11 A Yes.

12 Q All right. Now, I have one that was actually
13 marked as an exhibit. I'll hand it to you now. Is that a
14 copy of the Contract of Purchase that you signed with Turkey
15 Mountain Estates?

16 A It looks very much like it, yes, sir.

17 Q Would you read this paragraph right here,
18 please?

19 A "The BUYER agrees that there have been no
20 oral representations, statements, or agreements relied upon
21 in this contract other than the terms and conditions of this
22 sale as herein set out."

23 Q Was that sentence in there when you signed
24 the contract?

25 A I would say, yes. I didn't read that part of

Missouri Public Service Commission

1 the contract in actual--

2 Q Now, Mr. Willet, have you been informed as to
3 what the developer proposes to do with the water property
4 as far as this case is concerned? I'm talking about water
5 mains, wells, and that type of thing?

6 A What it is suppose to be?

7 Q Have you been informed as to what this
8 proposal before the Commission contains with respect to those
9 properties?

10 A No. I don't believe so.

11 Q Did anyone inform you, your Counsel or others,
12 that the developers, including Turkey Mountain Estates,
13 propose to give these properties to this water company and
14 to ask for no return on them, nor to recover their money
15 on them?

16 MR. CHARLES J. FAIN: Now, Your Honor, I want
17 to lay that matter to rest. I don't know why this is--if
18 this is going to be going on and on, I want to make a state-
19 ment on the record.

20 EXAMINER LORING: Are you objecting?

21 MR. CHARLES J. FAIN: Because I can see the
22 implication has been put in both his questions, and I think
23 they're uncalled for.

24 MR. COWAN: They're correct, Your Honor.

25 MR. CHARLES J. FAIN: Let me make my statement

Missouri Public Service Commission

1 EXAMINER LORING: Let him make his objection,
2 and I'll make the ruling.

3 MR. CHARLES J. FAIN: And I resent the
4 implication that is in his statement.

5 EXAMINER LORING: Calm down now. Let's just
6 have an objection, a ruling, and keep an orderly proceeding.

7 MR. CHARLES J. FAIN: Let me make a statement
8 on the record. There has been an effort made here to
9 indicate that in some way Counsel has misled these people
10 as to what was being offered. Now, here's what happened:

11 At the last hearing, the Staff came in with
12 an exhibit showing what they would propose, and it showed
13 nothing but operating expenses. These people were here, and
14 we have explained that time and time again to them -- the
15 rate-making process, how it goes forward.

16 Now, as Your Honor knows, it's very intricate.
17 But, the Staff has proposed, and they put in an exhibit, and
18 this has been explained all the way through, that at this
19 time for an interim rate that the Staff is proposing, there
20 would be nothing in rate base.

21 Now, as you know, this is a pretty intricate
22 subject, but you've got the question of contributions in aid
23 of construction, which wouldn't allow them to probably anyway.
24 But, there's nothing on what the Commission might decide or
25 what might happen in the future, and that's why we wanted to

Missouri Public Service Commission

1 cross-examine on the documents going into the basic, under-
2 lying costs of the system. But, there has been no effort
3 made here in any way to hide the fact that the Staff is
4 recommending that there be nothing allowed for rate base at
5 this time and that's exactly the way it happened.

6 This came up at the last hearing. It had
7 nothing to do with our various contacts with our clients up
8 until the last hearing. I didn't even know that was the
9 position of the Staff until they gave me that document at
10 the last hearing.

11 MR. COWAN: Well, Your Honor, I'm not in any
12 way suggesting that Mr. Fain was derelict, because I've
13 known him long enough to know that he was not. But, what
14 I'm trying to determine is the understanding of these
15 witnesses. Mr. Fain says it's a very complicated thing.
16 And with due respect to all the lay people, it is doubtful
17 that it's the type of thing that they would clearly under-
18 stand.

19 EXAMINER LORING: You can ask these questions
20 if you delete reference to Counsel.

21 BY MR. COWAN:

22 Q My only question is, did you understand before
23 you got on this witness stand that the developers, and I'll
24 use Turkey Mountain Estates specifically, do not expect to
25 be paid for the property they built, nor do they expect to

1 earn a return on them, but they're merely contributing them
2 to the water company? Were you aware of that? Did you under-
3 stand that?

4 A I understand now, I think.

5 MR. COWAN: I have no other questions.

6 EXAMINER LORING: Mr. Duffy.

7 CROSS-EXAMINATION BY MR. DUFFY:

8 Q Mr. Willet, this is another copy of the same
9 document we've been referring to. I think that purports to
10 be your responses to a questionnaire. Did you type the
11 answers to this questionnaire on here?

12 A Yes, sir. I did.

13 Q Now, I notice that it looks like it's the
14 same typewriter that typed the answers to Mr. Bottger's
15 questionnaire and Mrs. Charlton's questionnaire. Were all
16 these responses typed on the same typewriter by these people?

17 A No, sir. I have my own typewriter, and no
18 one else has used it, not to my knowledge.

19 Q Well, how did these things come to be type-
20 written?

21 A (No response.)

22 Q Did the individual people fill them out in
23 longhand and return them and somebody else typed up the
24 answers?

25 A I do not know that. I didn't type up their

Missouri Public Service Commission

1 answers, I know that.

2 Q But, you typed your answers?

3 A I typed my own, yes.

4 Q Okay.

5 A But, whether these, perhaps, are copies made
6 from the one I typed--

7 Q So, that's your document. You typed those
8 answers on that piece of paper?

9 A I cannot swear that this is the exact document
10 that I typed.

11 MR. COWAN: The original is here, Mr. Duffy.
12 We don't challenge the fact that he did.

13 BY MR. DUFFY:

14 Q Now, in direct examination by your attorney,
15 and I'm asking these questions for clarification, you said
16 your Zip Code was 65878; is that correct?

17 A 65747. Did I? Perhaps, I did.

18 Q Maybe you misstated it.

19 A 65747 is the Zip Code.

20 Q You also said on direct examination that you
21 didn't remember the date you purchased your lot. You said
22 it was some time in October.

23 A I believe.

24 Q On this document it says October 18, 1970; is
25 that correct?

1 A Well, I had looked it up when I answered the
2 questionnaire. But, I don't remember those dates, actually,
3 So, I copied it from the other document.

4 Q Now, you also said on direct examination that
5 you were hooked up to the water supply system on New Year's
6 Eve, 1971;--

7 A Yes, sir.

8 Q Is that correct?

9 A I remember that very plainly.

10 Q Why does this say, "What date did you hook
11 up to the water system" and the answer is "November 27, 1971"?

12 A I believe that was the date that my mobile
13 home was supposed to have been moved in there, but when I
14 got back down to Turkey Mountain for the New Year's holiday,
15 the hookup had not been made. Now, why I put this in, I'm
16 not sure. But I very specifically remember that the people
17 that I bought the mobile home from sent two of their men out
18 there, and we had to chase for some parts. And on New Year's
19 Eve, they were hard to get. And, finally, the boss located
20 the parts and he hooked it up. But, when I got back from
21 Aurora with other parts, he had the thing hooked up. And I
22 very distinctly remember this, because I made a trip the very
23 next day to Elk Grove Village in Arkansas. And I stayed in
24 my mobile home for the first time on New Year's Eve of 1971.

25 Q So, this date in November is incorrect?

Missouri Public Service Commission

1 A This would be incorrect, yes, sir.

2 Q Did you hear the questions that I asked Mrs.
3 Charlton about the meetings of the Homeowners Association?

4 A No, sir. I did not understand them. I say,
5 I'm hard of hearing, and back there I couldn't understand
6 them.

7 Q I'll try to remember the questions that I
8 asked her and ask them of you also. I asked if there were
9 any special meetings of the Homeowners Association concerning
10 this water system.

11 A Yes. There has been.

12 Q Have you been present at all of those meetings
13 concerning the water system?

14 A Yes, I have.

15 Q Do you remember one that Mrs. Charlton talked
16 about where a vote was taken as to whether the Homeowners
17 Association would contest this proceeding?

18 A Yes.

19 Q Do you remember the outcome of that vote?

20 A I don't remember the exact outcome or the
21 exact number, but I know it was the overwhelming majority
22 to go ahead and consult an attorney in regards to this water
23 raise that we called it.

24 Q I think she said there were six people who
25 voted against doing that. Does that--

Missouri Public Service Commission

1 A That sounds about like what it was.

2 Q --agree with you?

3 A I can't even remember 40, 31 to 6 or 36 to 6.
4 I don't remember the exact figures, no, sir.

5 Q Now, she was also telling me that there are
6 some people who live in this subdivision who are not members
7 of the Homeowners Association. Is that also your understand-
8 ing?

9 A That is true.

10 Q Do you know why they are not members?

11 A Well, a lot of them just didn't want to belong
12 at first, and then after this water situation come up, they
13 didn't want to become involved.

14 Q Do you consider that if somebody lives in
15 that subdivision that they have to be a member of the Home-
16 owners Association?

17 A No, sir.

18 Q It's a voluntary organization?

19 A Yes, sir. It is.

20 Q Is there any organization down there of the
21 same nature as the Homeowners Association that all residents
22 are required to belong to?

23 A None that I know of, no.

24 Q Where did you reside before you moved to Shell
25 Knob?

Missouri Public Service Commission

1 A Elgin, Illinois.

2 Q What was your water system in Elgin, Illinois?

3 A City water, metered.

4 Q Would you like to have a meter on your system
5 at Shell Knob?

6 A No, actually, I wouldn't.

7 Q You prefer a flat rate for an unlimited amount?

8 A I would rather see a flat rate, yes, sir.

9 MR. DUFFY: I think that's all I have. Thank
10 you.

11 MR. CHARLES B. FAIN: A couple more questions.

12 REDIRECT EXAMINATION BY MR. CHARLES B. FAIN:

13 Q Mr. Willet, when these questionnaires were
14 sent to you, were you given any instructions about distributing
15 the questionnaires?

16 A Well, other than in all the, I would say, all
17 of the people that belong to the Association that maintain
18 even part-time houses that had a water hookup and also the
19 nonmembers of the Association as long as they had a water
20 hookup to the system.

21 Q Now, were you told by any person how to answer
22 the questions, what words to put down?

23 A No, sir.

24 Q Were you given any answers to any of the
25 questions?

Missouri Public Service Commission

1 A No, sir. My answers are my own.

2 Q Did you have any input from anyone else on how
3 to answer these questions?

4 A Well, I've had people ask me different
5 questions. I can't recall which ones. How would I answer
6 this, and my only answer was: Just tell the truth. In your
7 own mind, tell the truth. That's all I could tell them.

8 Q Were any instructions given to any of the
9 other people that filled out these questionnaires as to what
10 answers they should put down?

11 A Not to my knowledge.

12 Q To your knowledge, did any of these people
13 collaborate and get together and answer as a group?

14 MR. COWAN: Well, Your Honor, that calls for
15 hearsay. I would object.

16 MR. CHARLES B. FAIN: I said, to his knowledge.

17 EXAMINER LORING: To his knowledge, he can
18 answer. Overruled.

19 BY MR. CHARLES B. FAIN:

20 Q Go ahead and answer.

21 A Other than the committee that was appointed
22 for the water commission for this water situation, we had
23 never--I had never had any occasion to talk to any group on
24 how to answer any of them.

25 Q Now, after these questionnaires were sent back

Missouri Public Service Commission

1 to me, were any of them returned to you for further answering?

2 A No, sir. I don't believe.

3 Q Were you ever contacted and asked to change
4 any answers?

5 A No, sir.

6 Q Had you even seen any of these questionnaires
7 until today?

8 A No, sir. I haven't.

9 MR. CHARLES B. FAIN: I don't have any further
10 questions, Your Honor.

11 EXAMINER LORING: Any recross-examination?

12 MR. COWAN: I don't think so.

13 EXAMINER LORING: Does the Staff have any?

14 MR. DUFFY: None.

15 EXAMINER LORING: Okay. We'll take the noon
16 break until 1:15.

17 WHEREUPON, the noon recess was taken.
18
19
20
21
22
23
24
25

1 PURSUANT to the noon recess, the hearing of
2 this case was resumed, and the following proceedings were
3 had:

4 EXAMINER LORING: Back on the record.

5 MR. CHARLES B. FAIN: Mr. Examiner, I would
6 like to recall Mr. Willet to the stand please.

7 EXAMINER LORING: Mr. Willet, will you come
8 up, please?

9 WITNESS GEORGE D. WILLET RECALLED TO THE STAND

10 FURTHER REDIRECT EXAMINATION BY MR. CHARLES B. FAIN:

11 Q Mr. Willet, I'm going to hand you what has
12 been marked Intervenors' Exhibit C and ask you to glance at
13 that to refresh your memory.

14 A Yes, sir.

15 Q Now, the first page of Exhibit C, do you
16 recognize what that is?

17 A This is the letter I received at the time I
18 was sent a HUD report, the first HUD report I got.

19 Q What is the date on that letter?

20 A November 10, 1970.

21 Q Is that a true and accurate copy of the letter
22 you received?

23 A It looks very much so, yes.

24 Q What is attached to that?

25 A The property report.

1 Q Now, was that attached to the letter at the
2 time you received it?

3 A I believe it was in the same envelope, I
4 believe, at the time I got it. I don't know whether it was
5 attached or whether it was a separate document.

6 Q Is that a true and accurate copy of that
7 report as you recall it?

8 A I would have to go over it.

9 Q Well, glance through it to satisfy yourself.

10 A This does not look like it's complete of what
11 I originally received, because I believe it was the property
12 report and then there was, they call it, a covenant in the
13 letter part of it, and I do not find them here.

14 Q There was a what?

15 A A covenant.

16 Q Okay. I would like for you to glance at
17 Paragraph 10 of the property report and look at the seventh
18 full paragraph under that Paragraph 10.

19 A Which paragraph?

20 Q The seventh full paragraph under Paragraph 10.

21 A Yes.

22 Q The one that begins with "Water:"; have you
23 had a chance to glance through that paragraph?

24 A Yes.

25 Q Do you recall at the time you received this

Missouri Public Service Commission

1 document if it contained a paragraph exactly like the seventh
2 paragraph under Paragraph 10?

3 A Yes, I believe it did.

4 MR. CHARLES B. FAIN: I have no further
5 questions at this time, Mr. Examiner.

6 EXAMINER LORING: Okay.

7 MR. COWAN: Is the original of that document
8 available?

9 MR. CHARLES B. FAIN: No. All we had was
10 what was supplied, what was attached to the letter, and it
11 was a copy of that document.

12 MR. COWAN: Is the document from which this
13 xerox copy was made available?

14 MR. CHARLES B. FAIN: Lou, we made the xerox
15 copy from what he has right there.

16 MR. COWAN: May I see it, Mr. Willet?

17 RECROSS-EXAMINATION BY MR. COWAN:

18 Q Mr. Willet, which one of the subdivisions is
19 your home located in?

20 A I beg your pardon?

21 Q Are you in Turkey Mountain Estates No. 1 or 2?

22 A No. 1.

23 Q This property report covers more than one
24 subdivision?

25 A Yes, it does.

Missouri Public Service Commission

1 MR. COWAN: I'm not going to ask any further
2 questions of him.

3 MR. CHARLES B. FAIN: I don't have any
4 further questions at this time.

5 RECROSS-EXAMINATION BY MR. DUFFY:

6 Q Mr. Willet, did you on any occasion contact
7 the Public Service Commission with a complaint regarding this
8 company before this case started?

9 A At the time that our original water raise
10 came into, I believe, it was 1977, through the meeting that
11 we had with Turkey Mountain Estates in their office at Shell
12 Knob, we--well, they had raised us from \$25.00 to \$50.00 a
13 year. The original raise, as rumor had it, was going to be
14 to \$120.00 a year, which we questioned very strongly. After
15 this meeting, when it was determined it was going to be
16 \$50.00 a year, we had a meeting of the Homeowners Association.
17 At the time of the meeting, we asked Mr. Mitten, who was at
18 that time President of Turkey Mountain Estates, how long the
19 \$50.00 a year would last, how about next year or the year
20 after. The only answer we could get from him: We'll have to
21 let next year take care of itself. I took this information
22 with my committee back to the Homeowners Association. And
23 it was very nearly an unanimous vote that we consult an
24 attorney and see what could be done about this to bring it
25 to some positive answer that we could rely on.

Missouri Public Service Commission

1 The Homeowners Association, through previous
2 dealings, had even recommended Senator Melton as the attorney
3 to consult. They, also, named my committee. I, as President,
4 did not name that committee. They designated the committee
5 they would like to go. We talked to Senator Melton. It was
6 last year in March, I believe, when things were beginning to
7 come to a head, and Senator Melton advised us to consult a
8 corporation attorney. He was not a corporate lawyer. And
9 he recommended that we get a hold of Charles Fain. I was
10 not present at the time all this happened. I was on vacation.

11 When I came home, I found that the Vice
12 President had called the Board together, and they had agreed
13 to draft a letter and send it to Charles Fain. That is the
14 first contact that I had with this--after this water was
15 raised.

16 Q You never called the Public Service Commission
17 directly? You understand Mr. Fain has nothing to do with the
18 Public Service Commission?

19 A Yes, sir. I understand that.

20 Q You never contacted us directly?

21 A Well, after we had a meeting with Mr. Fain,
22 after I had returned home, at that time, then, I wrote a
23 letter or I signed the letter, rather, and had it written,
24 to the Public Service Commission, inquiring about--just a
25 minute. I don't want to make a mistake. I'm not certain

Missouri Public Service Commission

1 whether that was before we contacted Mr. Fain or if it was
2 after. I would have to go back in the records to find when
3 that letter was written, sir.

4 Q I am under the impression that someone from
5 the Homeowners Association contacted the Public Service
6 Commission with a complaint about the rates or the service
7 down there long before this case started, and that as a
8 result of that complaint, we contacted--

9 MR. CHARLES J. FAIN: We object to that for
10 the reason he is not a witness. And I don't think it's
11 proper for him to make conclusionary statements on the record
12 in view of the position Staff has taken.

13 MR. DUFFY: Can I finish my question?

14 MR. CHARLES J. FAIN: Well, I'm making an
15 objection to it. He can ask his question. He is now making
16 a statement on the record.

17 EXAMINER LORING: I'm going to overrule the
18 objection. He is leading toward the question, and I will let
19 him finish it.

20 MR. DUFFY: I will try to restructure it.

21 EXAMINER LORING: Try to simplify it.

22 BY MR. DUFFY:

23 Q I am under the impression that the Commission
24 was contacted by a member of the Homeowners Association with
25 a complaint, and that, that complaint led to this case. Are

Missouri Public Service Commission

1 you aware of anyone who made such a complaint, or did you
2 make such a complaint?

3 A That complaint would have been filed with
4 our homeowners after our annual meeting of the Homeowners
5 Association, and that letter was written and I signed it.
6 I'm quite sure I know the letter you refer to. It was not
7 a personal complaint. It was a complaint of the homeowners.
8 I can't tell you the exact date of it. I would have to go
9 in the files to find it.

10 Q Who was Leland Mitten, or who is Leland Mitten?

11 A Leland Mitten, I believe, at the time of our
12 first meeting here, he was President of the Turkey Mountain
13 Estates.

14 Q Is he no longer?

15 A I do not know that, sir.

16 MR. DUFFY: That's all I have.

17 EXAMINER LORING: Okay. Thank you, Mr. Willet.

18 MR. CHARLES B. FAIN: Mr. Examiner, at this
19 time I would like to introduce into evidence Intervenors'
20 Exhibits A, B and C. A is the survey. B is a warranty deed
21 to the Charltons and C is the letter to Mr. Willet with the
22 attached HUD report.

23 MR. COWAN: Mr. Examiner, with reference to
24 Intervenors' Exhibit A, I'm not real sure what Mr. Fain
25 proposes to offer in evidence. If he proposes to offer in

Missouri Public Service Commission

1 evidence any of the questionnaires that he has had identified,
2 other than the one by Mr. Bottger, Mrs. Charlton and Mr.
3 Willet, I am going to object to it for several reasons: One
4 reason, it purports to recite facts or state facts. The
5 witnesses are not here and not under oath.

6 EXAMINER LORING: Excuse me, Mr. Cowan. I
7 don't want to cut you off, but I've anticipated the objection,
8 and I'm going to sustain that objection to the questionnaires
9 of the witnesses that are not present for cross-examination
10 today. So, we can go on to the next--

11 MR. CHARLES B. FAIN: Mr. Examiner, I would
12 like to be heard.

13 EXAMINER LORING: Go ahead.

14 MR. CHARLES B. FAIN: Unless, Lou, do you
15 want to object to the others first, or do you want me to go
16 ahead?

17 MR. COWAN: I'm going to object--I would like
18 to object also to a portion of the answers to the question-
19 naire by Mr. Bottger, especially, the one that has No. 30 for
20 the reason it's conclusions and not factual, and it has no
21 probative value to this proceeding. The same thing with
22 reference to the one by Mrs. Charlton. And, particularly,
23 do we object to the one by Mr. Willet, where he has a long
24 recitation of some of his ideas and conclusions. They're
25 simply conclusions in all instances and are not factual, and

Missouri Public Service Commission

1 we think they have no probative value and should be rejected
2 for those reasons. These people were not asked this question
3 but I won't raise it, the fact that were the questions asked
4 of them now, their answers would be the same. I won't raise
5 that matter.

6 MR. CHARLES B. FAIN: Mr. Examiner first, in
7 regard to all these questionnaires, we feel that the question-
8 naires are admissible as a survey taken. There has been no
9 objection to the phrasing of the questions, any biasness
10 in the questions. We feel the questions are fair. We feel
11 that the manner that the survey was taken in was fair,
12 unprejudiced and unbiased, and that the results were
13 unprompted and wholly the result of the responses of the
14 answers.

15 Now, surveys of this type have been admitted
16 for several years in administrative hearings as long as there
17 is some corroborative evidence on the same subject matter
18 presented at the hearing. If the survey was done in a fair
19 way, in a fair manner, without the possibility of bias or
20 prejudice, then, for whatever worth the answers are, they
21 should be taken into the record.

22 There's Missouri authority in regard to that,
23 to the acceptance of surveys of this type, and this Commission
24 has in the past accepted surveys in utility cases along with
25 public opinion polls and that sort of thing. I think that if

Missouri Public Service Commission

1 we attempted to introduce these questionnaires without any
2 evidence along the same lines by actual witnesses, that there
3 would be some question. But, we haven't done that. We
4 brought a group of witnesses that are representative of this
5 group that was surveyed. I also feel that if the Commission
6 doesn't accept this, one main purpose for this survey was to
7 allow the homeowners down there and the people that are going
8 to be most affected by the Public Service Commission's
9 actions, a manner, a vehicle in which they could express
10 their views to the Public Service Commission. Now, unless
11 the Commission wants to go down there and have a hearing, I
12 don't think the Commission would want to impose the hardship
13 upon 30-40 people or however many we have here to drive up
14 here. Mr. Examiner, I'm sure you wouldn't want us to parade
15 40 people by here to answer these very same questions. I do
16 think it's relevant to show that the issues that I discussed
17 in my opening argument, which you have ruled on the
18 materiality of that in earlier objections, I can't see--I
19 don't think a hearsay objection is valid, because of the
20 Missouri law in regard to surveys of this type.

21 So, our position is that surveys for whatever
22 probative value they have must be included in the record, and
23 Mr. Examiner, you certainly can make your decision based on
24 whatever weight you feel that these questionnaires should be
25 given.

Missouri Public Service Commission

1 In addition, the attachments to the question-
2 naires, we feel, are also important. They're numerous
3 contracts which show the intent of the parties and are
4 material to this controversy.

5 Now, in regard to the specific objections to
6 certain questions by Mr. Bottger, Mr. Willet and Mrs.
7 Charlton, these people have all been called as witnesses,
8 and if Mr. Cowan had any objections to those specific things,
9 he could have covered them in cross-examination. We heard
10 about their views. We've heard some long recitations from
11 these people. I don't feel that--I suppose his objection is
12 that besides not being material is that he didn't have a
13 chance to cross-examine these people. That was part of his
14 objection. Well, he had the chance with these people, and I
15 don't think those specific questions should be thrown out.

16 EXAMINER LORING: I'm going to rule that I
17 am going to admit in total the questionnaires of Mr. Bottger,
18 Mr. Willet and Mrs. Charlton and the other questionnaires I
19 think is a fundamental question of due process and should not
20 be admitted.

21 MR. CHARLES B. FAIN: Mr. Examiner, I would
22 like to make an offer of proof.

23 EXAMINER LORING: Yes, you may.

24 MR. CHARLES B. FAIN: If we could, we would
25 just let the exhibit speak for itself and mark those

Missouri Public Service Commission

1 questionnaires that aren't included in the ones you admitted
2 as our offer of proof. They can speak for themselves.

3 MR. CHARLES J. FAIN: Further, Mr. Examiner,
4 at this time we move for a reversal of the ruling of the
5 Presiding Examiner on this matter of the evidence on the
6 survey, and we ask that that motion be ruled on by a majority
7 of the Commission before there is anything further in this
8 proceeding.

9 EXAMINER LORING: We'll go off the record.

10 (Discussion off the record.)

11 EXAMINER LORING: Back on the record.

12 MR. CHARLES J. FAIN: And we ask that we be
13 allowed to present this matter to the Commission.

14 EXAMINER LORING: Sure.

15 Let's go off the record.

16 WHEREUPON, a recess was taken.

Missouri Public Service Commission

1 PURSUANT to the recess, the hearing of this
2 case was resumed, and the following proceedings were had:

3 EXAMINER LORING: Let's go back on the record.

4 MR. CHARLES B. FAIN: Mr. Examiner and
5 Commissioners, the reason we asked for ruling on this exhibit,
6 do you have copies of the exhibit, or do you need them?
7 What the exhibit is, is a survey that was conducted of home-
8 owners and members of the Turkey Mountaineers Homeowners
9 Association, which I represent, and also of some other home-
10 owners that do not belong to the Association, but are home-
11 owners in this same subdivision.

12 We presented three witnesses, the President of
13 the Association and the Secretary of the Association, who
14 distributed the questionnaires and collected them and
15 forwarded them, and one other witness, who also filled out a
16 questionnaire.

17 We moved to have the entire survey admitted
18 for whatever probative value the Examiner wishes to give it,
19 of course, and objection was made by Mr. Cowan, and the
20 objection was sustained as to the questionnaires and their
21 attachments which were other than the three that we had the
22 witnesses here for.

23 The reason we asked for another ruling is that
24 perhaps, the same reason we think that the questionnaires,
25 the survey, should be admitted: First, for the practical

Missouri Public Service Commission

1 reason that if this survey is not admitted, I suppose, the
2 alternatives are to have all these witnesses travel up here
3 from Shell Knob, Missouri and present their views on the
4 issue here; or to have a hearing down there. But, this
5 seems to be the most expeditious and cheapest vehicle to
6 get their views before the Commission.

7 There was no objection to the manner in which
8 the survey was taken. There was no objection as to the word-
9 ing of the questions.

10 MR. COWAN: May I interrupt? I was not allowed
11 to complete my objection. The Examiner ruled on my first
12 reason.

13 MR. CHARLES B. FAIN: Right.

14 MR. COWAN: I had not completed my objection.
15 I saw no need to pursue it further.

16 MR. CHARLES B. FAIN: There may be an
17 objection to that, then. But, there were objections, well,
18 we'll see I suppose on that.

19 But, Mr. Cowan did make some specific
20 objections to the answers to three questions on the
21 questionnaires that the witnesses themselves were here to
22 answer the same questions, most of the same questions. The
23 Examiner allowed those questionnaires to be entered.

24 As I said, the practical reason for this is
25 it's the most expeditious and cheapest way to let these

Missouri Public Service Commission

1 people make their views known without having them drive all
2 the way up here from Shell Knob, which is just a few miles
3 from the Arkansas line. The hardship that will be caused
4 if this questionnaire is not considered as evidence is that
5 an offer of proof, which has already been made, will have to
6 be addressed on appeal, which is more trouble and more
7 expense for this Homeowners Association.

8 As far as the legal precedent to support this
9 survey, surveys of this type have been admitted in Missouri
10 in numerous cases where the survey was conducted in an
11 unbiased manner and where there has been no prejudice shown
12 to the answers of the questionnaires, and where the questions
13 appear to be fair and the answers unprompted.

14 Now, as I recall, the Commission has allowed
15 the Staff to take surveys of various types in utility cases.
16 Now, I don't recall the exact case. I believe in a Kansas
17 City Power & Light or a UE case, the Staff conducted a survey.
18 My father tells me the utility officials also conducted some
19 surveys which were allowed. It appears to me that the
20 Commission should accept these questionnaires. The Examiner
21 should decide what probative value to give the questionnaires,
22 and we should proceed from there, rather than making this
23 issue go up on appeal.

24 COMMISSIONER McCARTNEY: I would like to hear
25 the other side.

Missouri Public Service Commission

1 MR. COWAN: Are you finished, Mr. Fain?

2 MR. CHARLES B. FAIN: Yes.

3 MR. COWAN: May it please the Commission, on
4 behalf of the Applicant in this case, perhaps, I should state
5 for the benefit of the Commissioners that just came in what
6 this case is about. This case was--

7 COMMISSIONER SPRAGUE: I don't think that
8 will be--unless Mrs. McCartney wants to hear it.

9 COMMISSIONER MCCARTNEY: Yes. I would like
10 for him to tell me in his own way.

11 MR. COWAN: This case involves an application
12 for a certificate of convenience and necessity by a newly
13 formed corporation to operate as a water distributing company
14 down in the southern part of the state. Prior to this
15 activity, four corporations, acting as developers, have
16 constructed a rather substantial amount of water properties
17 in the area and have sold water for sometime to quite a few
18 people in that area.

19 It was brought to the attention of the
20 officers of the company by the Legal Staff of the Commission
21 that, in the opinion of the Staff, it was a utility operation.

22 The developers caused this corporation to be
23 organized, and the issue before the Commission, as I see it,
24 is nothing in the world but whether or not Ozark Mountain
25 Water Company should have a certificate of convenience and

Missouri Public Service Commission

1 necessity to distribute water and to use the properties that
2 have been tendered to it by these developers. Now, Mr. Fain
3 has--

4 COMMISSIONER MCCARTNEY: Of course, that's
5 not the question here, Counselor.

6 COMMISSIONER SPRAGUE: You wanted him to go,
7 so let him go.

8 MR. COWAN: Mr. Fain has been employed by a
9 certain number of the residents to object or to protest the
10 granting of this certificate of convenience and necessity.
11 He has questionnaires here from people living down in that
12 area, and I think there are probably 25 of them. I tried to
13 count them, but I wouldn't want to rely on that count. As
14 far as I can see, it contributes nothing to the issues before
15 the Commission in this case.

16 They are completely immaterial, and they
17 purport to develop facts that have nothing to do with whether
18 or not the company should have a certificate of convenience
19 and necessity. Now, that's the major point of law.

20 The technical point of law is that they're not
21 here to be cross-examined. They purport to give facts to the
22 Commission, I don't know whether they're true or not. I have
23 no way to find out. They're not even signed. They haven't
24 been sworn to before a Notary or anyone such as that.

25 Now, I realize, I've been around here a long

Missouri Public Service Commission

1 time, the Commission is not bound by strict rules of evidence.
2 But, yet, you are admonished by the statutes to conduct the
3 proceedings somewhat comparable to the way they're conducted
4 in the circuit court, and I know of no way under the wildest
5 stretch of imagination that this could be admissible evidence
6 in the circuit court. And I think the Examiner was correct.

7 COMMISSIONER McCARTNEY: My question was
8 going to be whether or not Counsel for the Intervenor could
9 get these notarized.

10 MR. CHARLES B. FAIN: I suppose, you're asking
11 that question of me?

12 COMMISSIONER McCARTNEY: Yes.

13 MR. CHARLES B. FAIN: We could, yes. We can
14 do that and have them sent back.

15 COMMISSIONER McCARTNEY: You may go on.

16 MR. COWAN: That, of course, would not cure
17 what I believe to be the basic fault with this. I have not
18 yet heard Mr. Fain say what he expects to prove by this
19 questionnaire, and I don't think it will prove any issue that
20 is properly before this Commission, whether we agree to it or
21 didn't agree to it.

22 COMMISSIONER McCARTNEY: There are such
23 liberal rules of evidence in administrative proceedings, and
24 the Commission, I think, can determine whether or not the
25 questionnaires have any probative value. I know we have done,

Missouri Public Service Commission

1 in certain cases, where we dealt with EAS, we have permitted
2 a composite of the information which was obtained by surveys
3 to be admitted into evidence, and we don't have such strin--
4 gent requirements for that. I would be inclined, I don't
5 know what Commissioner Sprague thinks, but I would be
6 inclined to let it in, but to require an affidavit by the
7 person who compounded the questionnaire and got the answers
8 that it was done, and that he has not tampered with that
9 since it would obviously be a hardship to get them back to
10 the people who provided the questionnaires. If the person
11 who submitted them to the people in that area would give us
12 an affidavit, is that person here?

13 MR. CHARLES B. FAIN: Ma'am, he was here, and
14 we went into that in detail on direct examination in regard
15 to the method in which he passed them out, in regard to the
16 instructions he gave the people--

17 COMMISSIONER MCCARTNEY: That is on direct?

18 MR. CHARLES B. FAIN: Yes, ma'am.

19 MR. DUFFY: May I throw in my ten cents' worth?

20 EXAMINER LORING: Yes.

21 MR. DUFFY: All I want to do is, since the
22 Staff is neutral on this issue, but I would point out
23 536.070 Subsection 11 which I believe is copied verbatim in
24 the Rules of Practice and Procedure of this Commission. That
25 talks about the results of statistical examination or studies

Missouri Public Service Commission

1 or of audits, compilations of figures or surveys. And the
2 concluding sentence is, "All the circumstances relating to
3 the making of such an examination, study, audit, compilation
4 of figures or survey, including the nature and extent of the
5 qualifications of the maker, may be shown to effect the
6 weight of such evidence but such showing shall not affect its
7 admissibility." I just wanted to point that out to the Commission.

8 COMMISSIONER McCARTNEY: Thank you. That was
9 the way I was headed in ruling without having that.

10 COMMISSIONER SPRAGUE: I'm not sure I heard
11 all that. What does that say?

12 MR. DUFFY: Let me show you the statute.

13 COMMISSIONER McCARTNEY: Is that Volume 20?

14 MR. DUFFY: No. It's Chapter 536 of the
15 Administrative Procedure.

16 EXAMINER LORING: Off the record.

17 (Discussion off the record.)

18 EXAMINER LORING: Back on the record.

19 MR. DUFFY: I just wanted to point out that
20 section of the statutes to the Commission. I have nothing
21 further to offer.

22 COMMISSIONER McCARTNEY: Thank you, Counselor.

23 COMMISSIONER SPRAGUE: Do you want my question
24 now? I have the same question Judge McCartney alluded to.
25 The question I had when I first saw this stack of stuff was,

Missouri Public Service Commission

1 what's the difference between this stack of data and the
2 kind of questionnaire we've had, whether it be a St. Joe
3 Light & Power Company survey of customer attitudes or Kansas
4 City Power & Light had a survey we admitted in a recent case.
5 Surveys seem to be admissible without going and getting every-
6 one who made the survey and bringing them into the courtroom.
7 But, is there a difference between a survey, which is a
8 summary of the results of a number of interviews and
9 questions, and a stack of unrelated documents that you would
10 have to read each one to find out what the range is, or what
11 the results are. You see, I've got the problem, it looks
12 to me--I know what you're going to say: This is the raw
13 data behind it.

14 COMMISSIONER MCCARTNEY: I would be inclined
15 to, without putting Counsel to the expense of getting someone
16 to tabulate these, I think the Commission is fully enough
17 competent that it can make whatever probative value, that it
18 can evaluate what these are saying, and whether or not they
19 have any probative value. So, I would be inclined to let these
20 in for whatever they're worth.

21 COMMISSIONER SPRAGUE: Let me second that. I
22 think, probably, I've based my opinion on what our Counsel
23 has read out of the statutes. I wasn't familiar with that
24 section. But, I agree, it looks to me like they would be
25 admissible. I have a little question about whether it's

Missouri Public Service Commission

1 joined together sufficiently, but let me say this: Mr. Cowan
2 said that he didn't think this was relevant anyhow. So, if
3 it's not relevant, and we decided it's not, it's not going
4 to hurt his case at all. If he had said, "This is extremely
5 relevant material to my case," then, I would be much more
6 lenient to put it in--I mean, much more hesitant to put it
7 in. But, since Counsel has said, "I don't think any of this
8 is relevant anyhow," to be consistent for my four years,
9 which is coming to a close in a couple of weeks, I have
10 always erred on the side of letting too much in, especially
11 when the Counsel on the other side says, "Well, it's not
12 relevant anyhow." Then, he can make his argument whether or
13 not it's relevant. So, I would have to side with Judge
14 McCartney in this case and say I would rather err and say,
15 "Yes, let it in for whatever relevance it's worth," and then
16 let both Counsel argue in their brief or arguments about the
17 relevance of it.

18 MR. CHARLES B. FAIN: Thank you very much.
19 Sorry for the trouble.

20 COMMISSIONER McCARTNEY: That's all right.
21 That's just part of our job.

22 MR. CHARLES J. FAIN: We do appreciate it.

23 EXAMINER LORING: Exhibits A, B and C are
24 admitted.
25

Missouri Public Service Commission

1 (AT THIS TIME INTERVENORS' EXHIBITS A, B AND
2 C WERE RECEIVED IN EVIDENCE AND MADE A PART OF THIS RECORD.)

3 EXAMINER LORING: Your next witness.

4 MR. CHARLES B. FAIN: Your Honor, Turkey
5 Mountain Estates No. 1 has no more witnesses. Turkey
6 Mountain Estates No. 2, which my partner and father handled,
7 does.

8 I would like to inquire of Mr. Cowan. Do you
9 anticipate wanting to ask Turkey Mountain Estates No. 1
10 people any more questions?

11 MR. COWAN: Well, I would think not. I don't
12 know. No. I would say, we have no more questions.

13 MR. DUFFY: I have nothing further.

14 MR. CHARLES B. FAIN: I would ask that these
15 people be excused, so they can head back home if they so
16 desire.

17 EXAMINER LORING: Yes. The folks from Turkey
18 Mountain Estates No. 1 are excused.

19 MR. CHARLES B. FAIN: Thank you very much.

20 MR. CHARLES J. FAIN: Our four witnesses from
21 Turkey Mountain Estates No. 2, if you gentlemen would all
22 stand, we'll have you sworn at one time.

23 (Witnesses sworn.)
24
25

Missouri Public Service Commission

1 J E A N C. G A D D Y,

2 called as a witness in behalf
3 of INTERVENOR, TURKEY MOUNTAIN
4 ESTATES NO. 2, being duly sworn,
5 testified as follows:

6 DIRECT EXAMINATION BY MR. CHARLES J. FAIN:

7 Q Your name is Mr. Jean C. Gaddy?

8 A That is correct.

9 Q You and Mrs. Gaddy, Mildred Gaddy, are the
10 owners of a lot and home in Turkey Mountain Estates No. 2;
11 is that correct?

12 A Yes.

13 Q This is a portion of the area that the
14 proponent in this case is attempting to set up as a public
15 utility for the sale of water; is that correct?

16 A That is correct.

17 Q Mr. Gaddy, to lay a little background, will
18 you just tell the Examiner, very briefly, where your area
19 lies and how it differs from the homeowners in Turkey
20 Mountain Estates No. 1, just give them a little bit of the
21 geography first.

22 A The geography?

23 Q Yes.

24 A Do they know where Shell Knob is located?

25 Q Well, I don't know.

Missouri Public Service Commission

1 A Shell Knob is just before you cross the
2 Central Crossing Bridge on Table Rock Lake, oh, half a mile
3 lays the little town of Shell Knob. Now, shortly after
4 passing Shell Knob, you'll see a road taking off to the left
5 in the direction east of 39. We are about two miles east of
6 39 on YY. This will be the entrance gate of Turkey Mountain
7 Estates No. 2. It's so designated by a large sign just
8 inside the entrance gate.

9 Q All right. What county are you in?

10 A Stone County.

11 Q And the other folks, their land lies over
12 in Barry County, does it not?

13 A Turkey Mountain 1 is in Barry County.

14 Q How many miles apart are you?

15 A Oh, I never--I would think about five or six
16 miles.

17 Q That's as the crow flies. How about the way
18 you have to go around?

19 A I really never checked it. It might be a
20 little further than that.

21 Q I would think so.

22 Do you have any bodies of water between your
23 area and the area served by these good folks who just
24 testified here?

25 A Body of water in between?

Missouri Public Service Commission

1 Q Yes, sir.

2 A No. We're both north of the Table Rock Lake
3 on the north shore.

4 Q How about any bodies of water that would
5 separate the two of you? I don't mean on different sides of
6 the Lake. You're both on the north side?

7 A Yes.

8 Q But, I'm talking about coves and so on that
9 would separate the two subdivisions? Or if you don't know,
10 that's all right. We can pass on to something else.

11 A No really large coves. James River comes
12 into the Lake near us, but it's to the east of both locations.

13 Q Okay. What I'm trying to ask you is, is it
14 physically, economically feasible to connect up the two
15 subdivisions with water service?

16 MR. DUFFY: Objection. How can this witness
17 know anything about that? He's not been qualified as an
18 expert on water systems.

19 MR. CHARLES J. FAIN: He lives in the area.
20 That's all I'm asking him about.

21 EXAMINER LORING: You asked him for his
22 opinion as a nonexpert. He can give an answer to it.

23 WITNESS GADDY: In my opinion, it wouldn't be
24 possible.
25

Missouri Public Service Commission

1 BY MR. CHARLES J. FAIN:

2 Q So, really, what you're saying, and I think
3 they acknowledge it, that even if it is set up as a public
4 utility, it will have to be two different operations?

5 A Yes, sir.

6 Q Now, Mr. Gaddy, when did you first learn of
7 Turkey Mountain Estates?

8 A We received a brochure, I'll say sometime in
9 '69. And we often camped on the shores of Table Rock Lake
10 during our vacation periods. So, it was no hardship for us
11 to investigate the opportunities when we came down, and this
12 we did.

13 Q Okay. Was that brochure mailed out from
14 Turkey Mountain Estates, Inc. from its office in Shell Knob,
15 Missouri?

16 A I'm afraid my memory is not--

17 Q Is this the type of brochure you're talking
18 about, or was it something else?

19 A I couldn't say. I don't remember. My memory
20 is not that good.

21 Q Did it come through the United States mail?

22 A It came through the mail, yes.

23 Q Where did you live at the time?

24 A St. Louis, Missouri.

25 Q Now, in response, did you go down to the

Missouri Public Service Commission

1 Ozarks to look at the land in response to having been
2 solicited through the United States mail?

3 A Yes, we did.

4 Q Tell me where you went and what transpired,
5 just as briefly as you can?

6 A We were camping in the Old Highway 86 area.
7 We set up our camping facilities, and in the next day or so,
8 I don't remember, we went--we came over and communicated
9 with Turkey Mountain Estates.

10 Q All right, sir. Who did you talk to?

11 A If we go back beyond the salesman, I really
12 can't remember. I think it was the secretary at the desk in
13 the office.

14 Q Did you talk to a salesman there on the
15 premises?

16 A We went into the office, and I believe his
17 name was Mr. Allison.

18 Q All right, sir.

19 A I don't know if you can verify that.

20 Q That's a new one. We don't have him down. I
21 have Holt, Turney, Mitchell and Randolff, but no Allison.
22 But, you think it was a Mr. Allison?

23 A We can verify it by the contract that you
24 have in your hand. I know the other seller, but I'm not
25 sure about the first lot we purchased.

Missouri Public Service Commission

1 MR. CHARLES J. FAIN: I would have the
2 Reporter mark it Intervenor's Exhibit D for identification.

3 EXAMINER LORING: All right. Be so marked.

4 (AT THIS TIME INTERVENORS' EXHIBIT D WAS
5 MARKED BY THE REPORTER FOR THE PURPOSE OF IDENTIFICATION.)

6 WITNESS GADDY: Mr. Fain, this is the second
7 lot we purchased.

8 BY MR. CHARLES J. FAIN:

9 Q That's the second lot. Okay. We'll get both
10 of them in at the same time. Thank you, Jean. That will
11 shorten it a little.

12 MR. CHARLES J. FAIN: I ask that Intervenor's
13 Exhibit E be marked for identification, Your Honor.

14 EXAMINER LORING: Be so marked.

15 (AT THIS TIME INTERVENORS' EXHIBIT E WAS
16 MARKED BY THE REPORTER FOR THE PURPOSE OF IDENTIFICATION.))

17 BY MR. CHARLES J. FAIN:

18 Q Let's look at E, Intervenor's Exhibit E.
19 Will you state to the Commission what that is, please?

20 A That's our sales contract on one of my two
21 lots.

22 Q All right, sir. Who sold, well, first of all,
23 did you tell me what lots you own?

24 A Lot 277 and 279.

25 Q Okay. D is a Contract of Purchase to Lot 279;

1 is that correct?

2 A No, this is 277. E?

3 Q E is 279.

4 A No. E is--

5 EXAMINER LORING: Let's go off the record.

6 (Discussion off the record.)

7 EXAMINER LORING: Back on the record.

8 BY MR. CHARLES J. FAIN:

9 Q Who was the salesman that you talked with
10 that day in regard to that lot?

11 A Chuck Allison.

12 Q Mr. Allison. All right, sir. His name
13 doesn't appear on the contract, does it?

14 A On this contract?

15 Q Yes.

16 A Yes.

17 Q Oh, it does.

18 A Yes.

19 Q Okay. Anyone else?

20 A Just myself, my wife and Mr. Holt, Mr. Jay
21 Holt.

22 Q Mr. Jay Holt's signature appears thereon also?

23 A Yes.

24 Q Evidently, he must have been in some super-
25 visory or executive capacity--

Missouri Public Service Commission

1 A I believe Sales Manager.

2 Q --from the way his name appears on all these
3 documents. Okay.

4 But, you talked with Mr. Allison. Did you
5 have any specific contact, any discussions with Mr. Holt
6 prior to the signing of the contract?

7 A No, not at this time.

8 Q Okay. Now, let's get down to cases here.
9 What, if anything, was told to you in regard to whether
10 there would be water available?

11 A Yes. They did state that water was available,
12 that there would be a connection charge. I'm sure, although
13 my memory is not absolutely clear, I'm sure they stated the
14 requirements of the \$200.00 fee plus collar that was to be
15 put on the water line to supply our home with water.

16 Q All right. Now, what were they told in regard--
17 what were you told as to whether or not this company would
18 be selling you water? What was the arrangement that was
19 described to you?

20 A Well, the cost of the water line and the hook-
21 up was told to us, and also that the charge would be \$25.00
22 per year for water maintenance.

23 Q Okay. Now, is that covered in your contract?
24 Look at your contract, and tell the Examiner whether or not
25 that's covered in your contract? I don't want you to read it.

Missouri Public Service Commission

1 I just want you to point it out, so he can get to it quickly.

2 MR. DUFFY: Which exhibit are we looking at?

3 MR. CHARLES J. FAIN: E.

4 BY MR. CHARLES J. FAIN:

5 Q I would refer you to about the fourth
6 paragraph on the back side.

7 A On the back side. Oh, yes, here we are.
8 Should I read that portion?

9 Q Well, you can if you wish, if there is no
10 objection. I think it will get it to everyone's attention
11 real quickly.

12 A The seller agrees to drill and cap certain
13 water wells in the vicinity of the lands described herein
14 and guarantees adequate water to supply the reasonable house-
15 hold use of buyers; however, it is understood that seller
16 should not be obligated to install pumps or pump houses or
17 to maintain same and that buyers shall have the obligation
18 at their expense to pipe water from said well to their
19 property.

20 MR. DUFFY: I think we need to correct that.
21 It reads, "the SELLER shall not be obligated to install
22 pumps," and I believe he said, "the seller should not be
23 obligated to."

24 WITNESS GADDY: Shall not, okay.

25 MR. CHARLES J. FAIN: Thank you.

Missouri Public Service Commission

1 BY MR. CHARLES J. FAIN:

2 Q Now, does that pretty well spell out what
3 your understanding of the water situation was at the time
4 you bought the lot?

5 A Yes. Originally, before they were denied the
6 use of the several wells, this was the understanding that
7 we had with them.

8 Q In other words, at that time the Clean Water
9 Commission had not gotten into the act, had it?

10 A That's right.

11 Q What they were providing was a certain well
12 for so many homeowners, and you would own the well and the
13 facilities and so on, isn't that briefly what was going on;
14 or if not, tell the Examiner what was going on.

15 A That was the later understanding. I don't
16 believe that was brought out at the initial sale. We were--
17 can I go into the property report?

18 Q Yes, sir.

19 A We were given the property report to read at
20 the time we bought the first lot. It was in the salesman's
21 office. Of course, we looked through it only briefly, and
22 we accepted the salesman's word on the water system. And he
23 just told us, then, that water would be supplied, and the
24 cost would be to us, beyond the initial hookup, \$25.00 per
25 year.

Missouri Public Service Commission

1 Q Okay. Now, did you at that time see the
2 property report that had been made to HUD that they gave you?

3 A I can't absolutely identify it, but I think
4 this would be a copy of that report that was shown us.

5 Q All right, sir. Now, when you say "this,"
6 you are referring to a document--

7 A Yes.

8 Q --that I'm going to have the Reporter mark.

9 EXAMINER LORING: Can you get sufficient
10 copies of that?

11 MR. CHARLES J. FAIN: Your Honor, I would like
12 that marked F, Intervenor's Exhibit F.

13 (AT THIS TIME INTERVENORS' EXHIBIT F WAS
14 MARKED BY THE REPORTER FOR THE PURPOSE OF IDENTIFICATION.)
15 BY MR. CHARLES J. FAIN:

16 Q Now, as I understand, they had copies of these
17 there in the office, and they exhibited it to you to peruse
18 and study before you made up your mind about purchasing; is
19 that correct?

20 A We were entitled to look through it, yes.

21 Q So we can focus on this very quickly, would
22 you tell the Presiding Examiner what page of the document
23 pertains to water?

24 MR. DUFFY: Can we be supplied copies of this
25 if he's going to be reading from this document? We haven't

Missouri Public Service Commission

1 seen what it is. I'll be happy to go make copies of it.

2 EXAMINER LORING: Let's go off the record.

3 WHEREUPON, a recess was taken.

4
5 PURSUANT to the recess, the hearing of this
6 case was resumed, and the following proceedings were had:

7 EXAMINER LORING: Let's go back on the record.

8 WITNESS JEAN C. GADDY RESUMED THE STAND

9 DIRECT EXAMINATION BY MR. CHARLES J. FAIN (CONTINUED):

10 Q As I understand it, Mr. Gaddy, you think that
11 this may not be the one you looked at, but especially insofar
12 as water provision, that is identical to the one that you
13 read down there on the premises that day; is that correct?

14 A That was my understanding of the original
15 reading or copy.

16 Q Now, Mr. Gaddy, you are the President of
17 Turkey Mountain Homeowners Association No. 2; is that correct?

18 A That is correct.

19 Q How many members do you have?

20 A I think we have, let's see, a few over 50,
21 about 56 I believe at the moment.

22 Q All right. These are all owned lots there in
23 Turkey Mountain No. 2; is that correct?

24 A Yes.

25 Q Okay. You are spokesman in representing that

Missouri Public Service Commission

1 organization today as well as being a homeowner and landowner
2 in the area; is that correct?

3 A Yes, sir.

4 Q Mr. Gaddy, since that time, would you tell the
5 Examiner what has happened in regard to the water development
6 in your particular lot in your subdivision, that's No. 2.

7 A What has happened since we've been in the area?

8 Q Yes, sir.

9 A Well, although, recently the service has been
10 good, previously several of the lines in the area were dead
11 ended just one block below our house; thus, creating a
12 stagnant situation in the pipes. This has been corrected.
13 As far as we're concerned, there is a circular flow of the
14 water. There has been several ruptures in the water system
15 which causes some inconvenience, because in fixing the
16 rupture, the entire system has to be shut off. I believe
17 recently there has been some shut-off valves placed in the
18 system. Just how extensive they are or where they're located,
19 I'm not sure. But, since the extra line was placed in and
20 the water can now circulate, the water has greatly improved
21 in quality. As far as the rupturing gates, I can't give you
22 a definite figure. But, that has also diminished as of late.
23 As far as I know, this year we have had no such occurrence.

24 Q Now, sir, it's your understanding based upon
25 what you've said transpired here and what has been carried on,

Missouri Public Service Commission

1 that you people in Turkey Mountain Estates No. 2 had assumed
2 the responsibility of the ownership of this system, and that
3 these people were doing the maintaining for you?

4 MR. COWAN: Just a minute.

5 BY MR. CHARLES J. FAIN:

6 Q Is that a correct statement of it, or, if not,
7 would you just tell the Commissioner what it is?

8 A We were of the understanding that the \$200
9 fee was the cost of pipe and installation as far as the
10 piping system was concerned, the pipe system itself, that
11 they were in paying Turkey Mountain Estates, \$200, we were
12 paying the entire cost of the pipe that supplied our homes
13 with the water. This was my understanding.

14 Q All right. sir. Is there anything else at
15 this time that you want to bring to the attention of the
16 Commission?

17 A I would like to make this statement if I
18 could:

19 Sometime back, we were talking to representatives
20 of Turkey Mountain Estates and discussing the water situation.
21 At one point, Turkey Mountain Estates asked us if we would
22 be interested in taking over the water system and operating
23 it ourselves. Now, I don't think it's hard to see that with
24 the few members that we've got in the area, and remembering
25 that we have over 12 miles of system, that it would be very

1 difficult for the few people living in the area to be
2 encumbered with such a large or could be such a large
3 expense to the few of us that were there.

4 Q In other words, you're talking now about
5 lots that have not yet been sold?

6 A Yes.

7 Q I see.

8 A And, therefore, are making no contribution
9 to the water system whatsoever. There is nothing in the
10 selling contract that obligates any of these owners that are
11 now occupying the area to contribute to the support of the
12 water system in any way, just those that are hooked up to
13 the system itself.

14 Q I see. Okay.

15 CROSS-EXAMINATION BY MR. COWAN:

16 Q Did I understand you correctly, Mr. Gaddy,
17 that at one time the representatives of the developer offered
18 to give the property to the Homeowners Association?

19 A They asked us if we would like to take it
20 over and to operate the, perform the maintenance.

21 Q That's with reference to Turkey Mountain
22 Estates No. 2?

23 A Yes.

24 Q And you refused it, because you thought it
25 was an impractical thing for the homeowners to try to do?

Missouri Public Service Commission

1 A That's right.

2 Q Mr. Gaddy, how long has it been since you've
3 had an accident to the system that caused the water to be
4 cut off?

5 A It was last fall, I'm pretty sure, but as far
6 as dates--

7 Q Several months ago?

8 A Yes.

9 Q How long was it before the water was restored?

10 A We've never had to wait over one day for the
11 break to be repaired.

12 Q Mr. Gaddy, I'm going to show you some documents
13 which I think are the ones that you have just testified to,
14 and I would like you to take a look at them. Is Exhibit D
15 the document you testified to concerning a contract with
16 Turkey Mountain Estates for Lot 279 in Subdivision 2?

17 A That's correct, yes.

18 Q What is the date of that instrument?

19 A The date, 19th of July, 1971.

20 Q Is Intervenor's Exhibit E the contract you
21 referred to dealing with Lot No. 277 in Subdivision 2?

22 A That's correct.

23 Q What is the date of that instrument?

24 A That's the 30th day of August, 1969.

25 Q Now, is Intervenor Exhibit F the document that

Missouri Public Service Commission

1 you examined in the offices of the company there in Shell
2 Knob to the best of your knowledge?

3 A To the best of my knowledge, yes.

4 Q Would you look and tell me the effective date
5 shown on the first page of that document?

6 A June 2nd, 1972.

7 Q So, that's some three years after the first
8 contract, isn't it?

9 A Apparently.

10 Q So, there must be some mistake.

11 A There must be some mistake on that, yes.

12 MR. CHARLES J. FAIN: Well, Your Honor, the
13 question that was asked him was whether that page pertaining
14 to the water was identical with the one that they showed him
15 down there. He's not saying that's the document, but we're
16 just interested in that page pertaining to the water. That's
17 all we're---

18 BY MR. COWAN:

19 Q You bought this lot in 1969, didn't you?

20 A My first lot, yes.

21 Q Do you think you could remember ten years
22 later if those documents were the same?

23 A No, I couldn't. To be honest with you, I
24 couldn't.

25 Q All right. Thank you, sir.