

Missouri Public Service Commission

1 CROSS-EXAMINATION BY MR. DUFFY:

2 Q Mr. Gaddy, you say you are the President of
3 the Homeowners Association at Turkey Mountain Estates No. 2?

4 A Right.

5 Q Does it have a formal name?

6 A Just that, Homeowners Association of Turkey
7 Mountain Estates No. 2.

8 Q Is it a not-for-profit corporation, or is it
9 a legal entity, or what is it?

10 A No. It's just an organization formed by the
11 members of the area.

12 Q Okay. How does one become a member?

13 A By being a property owner and occupying the
14 lot at the present time.

15 Q If I own a lot there, am I required to be a
16 member of the Homeowners Association?

17 A No, sir.

18 Q It's a voluntary organization?

19 A Voluntary.

20 Q What are the dues, if any?

21 A Our dues were \$5.00. Last year we voted to
22 raise them to \$10.00 to fund some of the things that we
23 wanted to do.

24 Q What does the Association do?

25 A We, of course, are interested in the

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1 community, the welfare of the area itself primarily, that
2 the roads are kept up, that the things detrimental to a
3 neighborhood are held to a minimum and so forth.

4 Q You were authorized by this group to come up
5 here today and make a statement to the Commission; is that
6 correct?

7 A That's right.

8 Q How did that authorization take place?

9 A By unanimous vote of the organization.

10 Q What were you instructed to tell the
11 Commission?

12 A To present our--to the best of my ability,
13 the situation as far as the water is concerned.

14 Q Well, maybe I'm not clear in my mind. I don't
15 understand what the position of the Homeowners Association is.
16 Maybe you can help me out.

17 A Well, they sent me, along with other repre-
18 sentatives of the organization, out to investigate the talk
19 of raise in the water supply, and are seeking the advice and
20 interest of the Commission itself, the Water Commission, in
21 what is going on down there with our water system, whether
22 we're being dealt with properly and sensibly in the matter or
23 whether the rates that they're asking are too high and so
24 forth. We just want to rest assured in our own minds that
25 we are not being singled out for unauthorized action.

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1 Q Well, do I understand from that statement,
2 then, that you did not come up here with a preconceived
3 notion of how this Commission should rule on this case?

4 A Certainly not.

5 Q You just came to participate and see what
6 went on; is that correct?

7 A To participate in and find out as much of
8 the particulars in this as I could.

9 Q Do you understand that the Staff of the Public
10 Service Commission and the company had reached a stipulation
11 on the rates; do you understand that?

12 A They had reached a stipulation on the rates?

13 Q An agreement as to what rates would be
14 recommended to the Commission for final decision.

15 A No, I wasn't aware of that.

16 Q Were you made aware of whether that stipulation
17 contained a provision for the Applicant company to earn a
18 return of any invested money that they have put in the company?

19 A Would you repeat that?

20 Q Well, do you know what the term "rate base"
21 means?

22 A Rate base? Is it necessary to support a
23 utility or something like that?

24 MR. DUFFY: Well, I think I'll just withdraw
25 the question. That's all I have.

1 MR. CHARLES J. FAIN: Thank you, Mr. Gaddy.

2 (Witness excused.)

3
4 MR. CHARLES J. FAIN: I'll call Mr. Goens.

5 M A R S H A L L G O E N S,

6 called as a witness in behalf
7 of INTERVENOR, TURKEY MOUNTAIN
8 ESTATES NO. 2, being duly sworn,
9 testified as follows:

10 DIRECT EXAMINATION BY MR. CHARLES J. FAIN:

11 Q Your name is Marshall Goens?

12 A That is right.

13 Q And you live in Stone County; your address
14 being Shell Knob, Missouri?

15 A My address is Box 72, Shell Knob.

16 Q You are one of the members of the Turkey
17 Mountain Homeowners Association No. 2; is that correct?

18 A I am.

19 Q You are also an owner in Turkey Mountain
20 Estates No. 2, are you not?

21 A Yes.

22 Q Do you have a lot and a home on it?

23 A I have a lot and a home, live there.

24 Q You make that your full, year-round home?

25 A Permanent home.

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1 Q You are retired?

2 A Uh-huh.

3 Q Where did you live prior to coming to Shell
4 Knob?

5 A La Porte County, Indiana.

6 Q Tell me how did you first hear about Turkey
7 Mountain Estates?

8 A Through a brochure in the mail.

9 Q Did you receive that solicitation through
10 the United States mail?

11 A Yes, I did.

12 Q Did you come to Shell Knob, Missouri in
13 response to that solicitation?

14 A I did.

15 Q Just tell the Examiner what you did pertaining
16 to the purchase of your lot, if anything.

17 A In December of 1969, December 27th, to be
18 exact, my wife and I brought out the brochure and came to
19 Shell Knob. And on the afternoon of the 27th, we went to
20 the Turkey Mountain Estates office and were assigned a sales-
21 man, a Mr. Claude Frazier, Claude or Clyde; I don't remember
22 now which, but Mr. Frazier, anyway.

23 Q Claude Frazier. All right, sir.

24 Was he there on the premises acting as a
25 salesman for the owners?

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1 A He was at the Turkey Mountain Estates office,
2 had a little room of his own, I guess, it was his. There
3 were so many running around there that you couldn't tell who
4 was going where sometimes.

5 Q All right. Who seemed to be in charge of the
6 salesmen? Was that a Mr. Holt?

7 A Mr. Jay Holt.

8 Q Tell me what, if anything, you did in response
9 to being solicited by this organization and that salesman?

10 A Well, in the afternoon of the 27th, the day
11 we arrived, Mr. Frazier took us out to Turkey Mountain 2. We
12 looked at three lots, all in close proximity, area, and went
13 back to the office, and I asked him about the water and the
14 roads.

15 Q Okay. What response, if any, did he make?

16 A The water at that time he said would be
17 set up on a sectional basis with individual wells. I don't
18 have any idea how many there were supposed to be. But, we
19 were to--they would drill the well, and the owners would
20 furnish the pump and pay for putting the lines in, and it
21 would be--the cost would be distributed among the people
22 that would get the service.

23 Q All right, sir. Now, at that time did they
24 show you the HUD report on the matter?

25 A They gave me a HUD report before I left.

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1 Q All right, sir. Did that pretty well spell
2 out about what you said in regard to the water?

3 A About the same thing, as I read it.

4 Q Did you sign a Contract of Purchase in
5 response to that solicitation?

6 A On the 29th.

7 Q All right, sir.

8 MR. CHARLES J. FAIN: Would you mark that
9 Intervenor's Exhibit G.

10 (AT THIS TIME INTERVENORS' EXHIBIT G WAS
11 MARKED BY THE REPORTER FOR THE PURPOSE OF IDENTIFICATION.)
12 BY MR. CHARLES J. FAIN:

13 Q I hand you what has been marked Intervenor's
14 Exhibit G for identification. Is that the contract that you
15 entered into with those folks?

16 A It is.

17 Q Did you sign it?

18 A I did.

19 Q Okay. Who else signed it?

20 A My wife and, I guess, Mr. Frazier. I never
21 did see him when I went back by the office. I talked to Mr.
22 Holt. But, apparently, he signed it, and then Mr. Holt, Jay
23 Holt--

24 Q He signed it for Turkey Mountain Estates, Inc.;
25 is that correct?

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1 A That is correct.

2 Q All right, sir.

3 MR. CHARLES J. FAIN: So there won't be any
4 question, Your Honor, what we're interested in is, this is
5 a contract of sale, and the provision is identical with what
6 we've referred to before. In the contract, in the fourth
7 paragraph, I believe, it pertains to the water situation.

8 BY MR. CHARLES J. FAIN:

9 Q Without going into a lot of detail, does that
10 pretty well spell out in that contract what your understand-
11 ing of the water deal was at that time?

12 A That's right.

13 Q I want you to look at Intervenor's Exhibit F,
14 which admittedly is a later report, but what I'm trying to
15 determine, if you will turn to Page 3 and 5, I want you to
16 tell the Commission whether or not this represents and is
17 identical with the report that you saw or as best you can
18 remember. I realize, as Mr. Cowan has pointed out, you can't
19 remember every word. But, you can remember ideas. And I
20 want you to tell the Commission whether or not that is
21 basically the HUD report that was given to you prior to your
22 making that transaction?

23 A Well, mine was a little different, because I
24 think this is a report that was given to Turkey Mountain 1.

25 Q Okay. How did it differ?

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1 A The figures will be different. I can't
2 remember offhand, but it was of--

3 Q Let's see if this helps you any. I am now
4 handing you a document which hasn't been marked yet, but it
5 is the HUD report, too. Will you turn to those pages and
6 see if that refreshes your memory as to whether it's the
7 same.

8 MR. COWAN: If Your Honor please, I think if
9 the man is going to refer to a document, we ought to have it
10 identified.

11 MR. CHARLES J. FAIN: I will identify it as
12 soon as I can. I'm not going to waste a lot of time if he
13 doesn't--

14 WITNESS GOENS: This essentially is the same
15 thing, but I don't know when they changed. But, when they
16 put the new well in, this particular paragraph was obsolete.

17 MR. CHARLES J. FAIN: Okay. That's in the '77
18 document, is it not? Do you want to take a look at that and
19 let's see if you recognize that as being the new wording.

20 EXAMINER LORING: Off the record.

21 (Discussion off the record.)

22 (AT THIS TIME INTERVENORS' EXHIBIT H WAS
23 MARKED BY THE REPORTER FOR THE PURPOSE OF IDENTIFICATION.)

24 EXAMINER LORING: Back on the record.

25 WITNESS GOENS: No, I never--this paragraph

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1 here, I never had that. They've got the \$20.00 saddle fee
2 was the same. That's what I paid and \$25.00 a year--at the
3 time a \$25.00 a year service charge and \$200 installation.

4 BY MR. CHARLES J. FAIN:

5 Q What was that \$200 for? Did they tell you
6 what that was supposed to be for?

7 A For running the two-inch main across the back
8 of the lot to tap on to. I've never had this \$50.00 a year
9 that they've got in here. That must have been in the latter
10 half of '77 when this come out, because that started in July
11 of '77 when they raised it to \$50.00.

12 Q So, there's no question in your mind this is
13 changed as a later report than the earlier report that you
14 signed?

15 A The one that I originally got, it is.

16 MR. CHARLES J. FAIN: Now, Your Honor, this
17 is Intervenor Exhibit H, and in accordance with our statement
18 earlier this morning, that's just the pertinent pages there-
19 from, but the original we have here. And if these gentlemen
20 will bear with me, of course, we could make complete copies,
21 but we didn't want to go to all the trouble of all those
22 pages and burden them with all that at this time.

23 BY MR. CHARLES J. FAIN:

24 Q Let me ask you, Mr. Goens: Did you, in
25 response to the statements that were made, the information

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1 that was furnished you, did you rely upon and enter into this
2 contract of sale as a result thereof?

3 A Yes.

4 Q All right. Up until recently, you have
5 complied by paying the \$25.00 maintenance fee annually; is
6 that correct?

7 A The twenty-five and the fifty. When it was
8 raised to fifty, I paid too.

9 Q Now, would you be willing to continue to pay
10 a reasonable maintenance fee to these people if they operate
11 the system out there for the homeowners?

12 A (Witness nods head.)

13 Q What do you consider to be a reasonable fee?

14 A I would be willing to pay a reasonable fee,
15 but I've never heard it.

16 MR. CHARLES J. FAIN: Okay. You may inquire.

17 MR. COWAN: May we go off the record just a
18 moment?

19 EXAMINER LORING: Off the record.

20 (Discussion off the record.)

21 EXAMINER LORING: Back on the record.

22 CROSS-EXAMINATION BY MR. COWAN:

23 Q Let me hand you the document that you just
24 referred to, where you made a comment there has been changes.

25 A Uh-huh.

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1 Q Is that the one that you just referred to,
2 where you said, you looked at it and it wasn't the same as
3 the original report?

4 A It was a page back here that I was looking at.
5 This is the one that I said wasn't the same.

6 Q All right.

7 A This is \$35.00 and this \$50.00 has been
8 changed.

9 Q What property does this refer to?

10 A It says here Turkey Mountain 1.

11 Q There are others, are there not? There are
12 four listed, aren't there?

13 A That's right.

14 Q Is Turkey Mountain 2 on there?

15 A I don't see it.

16 MR. CHARLES J. FAIN: I didn't mark that one.
17 Do you want that one marked?

18 MR. COWAN: No.

19 BY MR. COWAN:

20 Q I only wanted to point out, Mr. Goens, the
21 last one you looked at doesn't apply.

22 A To Turkey Mountain 2?

23 Q Yes. In which you are interested. You are
24 not interested in any of the rest of them, are you?

25 A No. Turkey Mountain 2 is all I'm interested
in.

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1 Q Mr. Goens, you heard Mr. Gaddy testify that
2 at one time, the developer of Turkey Mountain Estates
3 suggested that you organize a homeowners association or
4 something of that nature, and they would turn over the water
5 properties to the association, did you hear that testimony?

6 A I heard that talked about. I wasn't--

7 Q You don't know anything about it?

8 A No, sir.

9 MR. COWAN: Well, that's all the questions I
10 have.

11 CROSS-EXAMINATION BY MR. DUFFY:

12 Q Mr. Goens, did you hear Mr. Gaddy and my
13 questions to him regarding him speaking for the Homeowners
14 Association?

15 A Yes, sir.

16 Q Did you hear him state the position of the
17 Homeowners Association?

18 A Yes.

19 Q Is that your understanding also of what the
20 Homeowners Association authorized him to present?

21 A That's right.

22 Q Nothing in your mind is different from what
23 he stated?

24 A No, I don't believe so.

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

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1 EXAMINER LORING: Any redirect?

2 MR. CHARLES J. FAIN: No redirect, Your Honor.

3 Thank you, Mr. Goens.

4 (Witness excused.)

5
6 MR. CHARLES J. FAIN: We'll call Mr. Bickel,

7 L A W R E N C E H. B I C K E L,

8 called as a witness in behalf

9 of INTERVENOR, TURKEY MOUNTAIN

10 ESTATES NO. 2, being duly sworn,

11 testified as follows:

12 DIRECT EXAMINATION BY MR. CHARLES J. FAIN:

13 Q You're Mr. Larry Bickel?

14 A Yes, sir.

15 Q You live down in Stone County, Larry?

16 A Yes, I do.

17 Q You and your wife own a home in Turkey
18 Mountain Estates No. 2?

19 A Yes, I do.

20 Q Are you also members of the Homeowners
21 Association there--

22 A Yes, I am.

23 Q --that Mr. Gaddy is President of?

24 A Yes, sir.

25 Q And you are here as a representative of that

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1 Homeowners Association today as well as a representative
2 homeowner; is that correct?

3 A Yes.

4 Q Where are you originally from, Mr. Bickel?

5 A Gillette, Wyoming.

6 Q All right, sir. When and how did you happen
7 to hear of Turkey Mountain Estates?

8 A I got an advertisement through the mail.
9 We were living at the time in Kimball, Nebraska. We received
10 the advertisement through the mail.

11 Q Was that in the United States mail?

12 A Yes, sir.

13 Q Was that prior to the time that you ever
14 talked to anyone down there about purchasing?

15 A Yes, sir.

16 Q What did you do in response to that
17 solicitation, if anything?

18 A We received that in the mail, approximately,
19 in March, and on August 26th, we went to Shell Knob and
20 looked over this land and purchased it.

21 Q Now, when you got down there, with whom did
22 you talk?

23 A Mr. Crymes.

24 Q Mr. Crymes. Where did you find Mr. Crymes?

25 A He was in Turkey Mountain Estates office.

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1 Q Was he one of the salesmen there of Turkey
2 Mountain Estates, Inc.?

3 A Yes.

4 Q Was he working under Mr. Jay Holt?

5 A He must have been.

6 Q Did Mr. Crymes show the various properties?

7 A Yes. He showed us two places, and we decided
8 on this one.

9 Q What, if anything, was said about the water
10 situation?

11 A He explained the water would be piped into
12 the back of our lot, and the water would be there for us,
13 and he explained the diagram and showed us the water well
14 that they happened to be drilling at that time south of us,
15 and there would be one area with so many houses and residents,
16 and this one well would take care of it, and we would each
17 share in the expenses on that well.

18 Q He gave you the understanding you were going
19 to have to stand the cost of putting the pump in and the well
20 and the running of the lines; is that correct?

21 A Yes, sir. He said it would be divided up in
22 this one division, this well, and that each one would pay
23 their share.

24 Q In other words, that's basically what the
25 contract spells out, isn't it?

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1 A As far as I know, yes.

2 MR. CHARLES J. FAIN: I would like this
3 marked Intervenor's Exhibit I.

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

6 EXAMINER LORING: Exhibit I has been marked
7 for identification.

8 BY MR. CHARLES J. FAIN:

9 Q Now, at the time when this sale was being
10 made to you, were you told anything or showed a HUD report?

11 A No, sir. I sure wasn't.

12 Q At any time did you ever see the HUD report?

13 A No.

14 Q So, basically, you relied upon the statements
15 that were made in that contract?

16 A Yes, sir. That's right.

17 Q And whatever actual, word-of-mouth statements
18 that were made by these gentlemen to you?

19 A Yes.

20 Q Did you talk to Mr. Holt?

21 A No. All Mr. Holt did was come in and sign
22 my contract, and we left an hour later. In fact, I was only
23 there two hours.

24 Q Have you since retired to your land down
25 there?

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1 A Yes, I have.

2 Q Did you build a home?

3 A Yes, bought a mobile home.

4 Q You have a mobile home down there, and you
5 and your wife live there?

6 A Yes.

7 Q You make that your permanent residence now?

8 A Yes.

9 MR. CHARLES J. FAIN: Okay. I don't have
10 anything else, Your Honor.

11 EXAMINER LORING: Mr. Cowan.

12 CROSS-EXAMINATION BY MR. COWAN:

13 Q At the time that you were talking about going
14 down and negotiating with Mr. Crymes and that sort of thing,
15 was that in 1969?

16 A Yes, it was. We left Kimball, Nebraska on
17 vacation, went to St. Louis, and come through here on the
18 26th, and we bought the property on the 26th, that afternoon.

19 Q Do you know anything about a Homeowners
20 Association that was proposed to operate a water system?

21 A I belong to the Homeowners Association.

22 Q Did you hear Mr. Gaddy say that the properties
23 were offered to the Homeowners Association to operate?

24 A No, I didn't know that,--

25 MR. COWAN: No further questions.

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1 WITNESS BICKEL: --not until today.

2 MR. COWAN: Thank you.

3 EXAMINER LORING: Gary.

4 CROSS-EXAMINATION BY MR. DUFFY:

5 Q Mr. Bickel, I am going to hand you what has
6 been marked as Intervenor's Exhibit I, and I believe that's
7 a photocopy of your Contract of Purchase; is that correct?

8 A Yes, it is.

9 Q Let me direct your attention to the second
10 page and to this paragraph where it starts out, "The SELLER
11 agrees to drill and cap certain water wells..."; and if you
12 would, please, read from the capitalized word, "BUYERS" the
13 rest of that sentence.

14 A Buyer shall not have the obligation--

15 Q No. Buyers shall have---

16 A --the obligation at their expense to pipe
17 water from said well to their property.

18 Q All right. Let me ask you this, sir: You
19 were the buyer under this contract. Have you incurred any
20 expense to pipe water from a well to your property?

21 A I paid \$200 for that expense. That's my--
22 that's the way I would--now, let's drop back here. I bought
23 this property in '69. I left approximately an hour and a
24 half afterwards. I returned in 1971, and went into Turkey
25 Mountain Estates and they said--asked about the water, when

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1 it would be in there. I figured I was going to retire in
2 '73, and they said that it would be \$200 and \$20.00 hookup,
3 \$25.00 a month (sic). And, so, in 1973, I returned, again.
4 I thought I was going to retire that year, and I went down
5 to pay my \$200 and my \$20.00 hookup, and they said, no,
6 better wait until I retire to come down there. So, in 1975,
7 when I retired, I come down and went in and paid my \$200 and
8 \$20.00 hookup, and on a separate check, I paid \$25.00 for
9 a year of water.

10 MR. DUFFY: Thank you, sir. That's all I have.

11 EXAMINER LORING: Any redirect?

12 MR. CHARLES J. FAIN: Nothing on Mr. Bickel.

13 EXAMINER LORING: Thank you, Mr. Bickel.

14 (Witness excused.)

15
16 MR. CHARLES J. FAIN: Edgar Simes.

17 E D G A R L. S I M E S.

18 called as a witness in behalf
19 of INTERVENOR, TURKEY MOUNTAIN
20 ESTATES NO. 2, being duly sworn,
21 testified as follows:

22 DIRECT EXAMINATION BY MR. CHARLES J. FAIN:

23 Q Will you state your name, please, to the
24 Commission?

25 A Edgar Simes.

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1 Q Where do you live, Mr. Simes?

2 A I live at the corner of 5th and B Streets in
3 Turkey Mountain Estates No. 2.

4 Q How long have you lived down there?

5 A We started building there in '71 and have
6 actually lived there since '73, August of '73.

7 Q Do you live in a permanent home there?

8 A I live in a conventional built home at that
9 location, and I built the home myself.

10 Q All right, sir. When did you first learn of
11 Turkey Mountain Estates?

12 A Through an advertising campaign through the
13 mail.

14 Q Was this the United States mail?

15 A Yes.

16 Q Where were you living at that time?

17 A Oklahoma City, Oklahoma.

18 Q In response to that advertisement that you
19 received through the United States mail, did you come to
20 Missouri and purchase some of this land?

21 A We did.

22 Q Would you tell the Commission what you
23 purchased?

24 A The wife and I came to Shell Knob, and we were
25 referred to Mr. Crymes, and he first took us to Turkey

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1 Mountain 1 and showed us the layout of Turkey Mountain 1,
2 and said, "Mr. Simes, I'm going to take you out here and
3 show you this, but we're not going to be able to sell you
4 anything out here in this particular subdivision, because
5 everything out here is already sold. But, I want to take
6 you out there and show you the accommodations that you will
7 be buying, the same as though you lived in Turkey 1," which
8 was a swimming pool and a golf course and an entertainment
9 pavilion, where you could bring your friends for special
10 dinners and so forth and so on if you so desired with, of
11 course, an extra fee. But, I was told that so far as member-
12 ship was concerned, at that time I would be a charter member
13 of the country club if I so desired to be so, which I didn't,
14 because in the first place, it's a little over five miles
15 from where we live over there; and, in the second place, I'm
16 not a golfer, and, in the third place, I'm not a party man.

17 Q All right, sir. What were you told, if any-
18 thing, in regard to water service?

19 A He took us over to Turkey 2 and showed us a
20 lot over there that we eventually bought, and then he drove
21 us around over the territory and advised me that most every-
22 thing in Turkey 2 was already sold. And in due process, in
23 taking me over the territory, he showed me this particular
24 well house, and he said, "That's where your water will come
25 from." And I asked him about the water situation, and he

1 said, "We will put in the water lines. The cost will be
2 prorated when everything is taken care of, when all the
3 property is sold, you will be prorated a certain amount of
4 what that water line cost, and that's what it will cost you
5 so far as water is concerned." And from then on, the water
6 lines will belong to this particular group in this one area
7 that that well will service." And that well is at the
8 present just one-half block east of where I built, and for
9 quite some time we did receive water from that well.

10 Q Now, what, if anything, did you pay toward
11 the laying of the pipes and the pump and so on?

12 A I'm coming up to that.

13 Q All right, sir.

14 A I asked Turkey Mountain Estates, "What does
15 it take for me to get hooked up to water?" Because, in the
16 meantime, we took this lot that we first bought, and because
17 the more I looked at it, the sicker I got, because there was
18 13 foot 6 inches difference in this corner and that corner
19 over there. And I come to the conclusion, after looking it
20 over good, that it would be a terrible place to try to build
21 on. So, I called Turkey Mountain Estates on Sunday morning
22 after I had come up there and saw this other lot that we
23 wound up with, which was Lot 252, and I called him back on
24 Sunday morning and told him--asked him if Lot No. 252 was
25 still available. And he said, "Yes, it is." And I was

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1 talking to Crymes. I said, "I'm not very happy, after look--
2 ing over that lot that we purchased" and had already paid
3 for it, but I hadn't gotten a deed on it yet. I wasn't
4 very happy with it. So, I told him over the telephone, I
5 said, "I will give you \$1,000 difference for that Lot 252.
6 He told me, to start off with, that he couldn't take that
7 offer at all. But, he said, "I'll tell you what I will do:
8 I'll talk it over with my superiors, and I will call you back."
9 It was just 20 minutes, by the clock, the telephone rang and
10 he said, "Simes, we're going to take you up on that. Do you
11 want me to send you a contract?" I said, "No, I don't want
12 you to send me a contract. The wife and I will be up there
13 in the morning, and we will do business right across the
14 table." The next morning we were in Shell Knob. I wrote
15 him a check--my wife wrote the check however. My wife wrote
16 the check for the difference, and he said, "We will see that
17 you get your deed not too far from now in the mail." Well,
18 consequently, we did not get the deed until in March, but
19 that's neither here nor there.

20 Q All right.

21 A We finally got the deed to it.

22 Q I don't have a copy of your contract, but
23 was it identical with all of those that have been put in here
24 on Turkey Mountain Estates No. 2? Would you look it up and
25 see if it's the same as Intervenors' Exhibit I?

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1 A I have compared these contracts, and with the
2 exception of who they were signed by and the price amount,
3 my contract is just exactly like this.

4 Q All right, sir. Now, what was your former
5 occupation or profession?

6 A I am retired from the Oklahoma City Engineer-
7 ing Department. I was Airport Engineer for the City of
8 Oklahoma City for several years, and then I was Construction
9 Engineer and Inspector for the Engineering Department of
10 Oklahoma City.

11 Q So, have you had considerable dealings, not
12 only as a homeowner, but in your profession with legal
13 descriptions and laying out of subdivisions and this sort
14 of thing?

15 A I consider myself a fairly good structural
16 engineer.

17 Q All right, sir. Now, I'll ask you, have you
18 had an opportunity to look--I believe, you've got your
19 warranty deed with you, haven't you?

20 A Yes, sir.

21 Q Well, why don't you take a look at it. Does
22 that in any way reserve any easements for water purposes in
23 the sellers of the land?

24 A It does not.

25 Q Do these contracts reserve that?

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1 A Those contracts, the only thing that those
2 contracts reserve is for light and telephone.

3 Q For electric and telephone easements; isn't
4 that correct?

5 A That's correct.

6 Q I'm going to hand you what has been marked
7 Intervenor's Exhibit H, and I will ask you if attached
8 thereto is the protective and restrictive covenants for
9 Turkey Mountain Estates; is that what that is? You look at
10 it thoroughly and look to see who signed it before you make
11 an answer on that. That's normally what would be filed,
12 the restrictive covenants along with the subdivision when
13 it's platted and laid out and dedicated; is that correct?

14 A That is correct.

15 Q All right, sir. Who signed it?

16 A Turkey Mountain Estates, Inc., but I'm sorry,
17 I can't read the signature.

18 Q It's pretty faint, but it's someone signing
19 for Turkey Mountain Estates?

20 A That's right.

21 Q Does it give where it's filed?

22 A It says it's filed in the County of Lawrence
23 County which Jim Norman--

24 Q Well, that's where it was notarized, County of
25 Lawrence, I believe it says up there.

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1 A January 15, in Stone County, Missouri,
2 recorded in the office of Stone County, Missouri.

3 Q All right, sir. Now, have you had an
4 opportunity to look that over in regard to the restrictive
5 covenant and the easements that might have been left in the
6 sellers, and I call your attention to that provision which
7 is designated on Page 2, No. 7, "EASEMENTS RESERVED." Have
8 you had an opportunity to go over that?

9 A It says, a distance of three foot back and
10 ten foot from the front and rear property line for electric
11 power and transmission lines and telephone lines together
12 with such guy poles, guy wires, and anchors as may be deemed
13 advisable by the persons installing and maintaining said
14 utilities on the terms--on or trim any tree growth or other
15 growth located on said residential lots which--some of this
16 isn't very plain, with or menace the construction or operation
17 of said utilities, and that's something else that's not
18 clear, streets individual installed and the streets or the
19 individual installed something of the residential lots.

20 Q All right, sir. Now, those are the restrictive
21 covenants that were filed with the dedication. Does that
22 in anywhere call for a reservation of an easement for water
23 purposes?

24 A Not for water, no.

25 Q It's restricted to telephone and electric

1 utilities, is it not?

2 A According to that, yes.

3 Q All right. Now, tell me where the water
4 lines run on those lots in Turkey Mountain Estates No. 2.

5 A I can tell you in my particular area.

6 Q All right.

7 A The water line, which is two-inch line, comes
8 up from the east along the side of our property along--which
9 would be the north side of our property and continues on to--
10 I mean, yes, the north side of our property and continues
11 on west, and a T that goes down the alley line, which would
12 be the alley line, of our block and also the block to the
13 north of us.

14 Q Now, since you have been there, have you had
15 any difficulties with breaches in the line, leaks?

16 A Well, I've had quite a bit of difficulty in
17 service interruptions for the simple fact that our location
18 is right on top of a hill, and when a water line breaks, I'm
19 number one without water. And there has been, at times, I
20 remember one time when the pump went kaput that we were out
21 of water almost three complete days.

22 Q Now, tell me, did you have an opportunity to
23 observe any of these lines being laid by Mr. Norman?

24 A I did observe the lines being laid, especially,
25 the ones at the rear of our property.

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1 Q Tell the Commission what kind of soil--this is
2 Stone County, and it's properly named, isn't it?

3 A That's right. It was--most of it is right
4 down in solid rock. Some of it isn't in solid rock. Some
5 of it can be trenched with a backhoe, and some of it can't
6 be trenched with a backhoe without use of dynamite. And in
7 my particular case, the line down behind our place, which is
8 a two-inch line that runs on down--continues on down that
9 one particular block, was dug by a backhoe which in our
10 terms, it wasn't dug by a line, it was dug by eyeballing.
11 In other words, you get what I mean?

12 MR. DUFFY: Excuse me. The record can't
13 reflect gestures.

14 WITNESS SIMES: It was crooked.

15 MR. DUFFY: Thank you.

16 WITNESS SIMES: I understand what you mean.

17 But, I asked about the water line, and I was
18 told by Mr. Gum when I paid him the 200 and some odd
19 dollars to get hooked up with water, asked him in detail,
20 how that water line was to be laid, because by that time I
21 found out it was going to be laid with plastic. And plastic
22 is very fragile as far as rock and stones and boulders are
23 concerned.

24 Our particular water line down behind our
25 property was--after he told me that it was going to be laid

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1 by hand and hand bedded, it was laid just pops-a-pooley
2 (phonetic) bang right on down the line, piped together,
3 plastic piped together, which is joined together with cement,
4 and it was laid over rocks and covered up with whatever
5 happened to be there. It was not hand bedded.

6 BY MR. CHARLES J. FAIN:

7 Q It was not hand embedded with either sand
8 or crushed stone?

9 A That's right.

10 Q And that is the normal procedure for the
11 laying of water lines?

12 A That is the normal procedure for plastic
13 pipe if you're laying it in that kind of soil.

14 Q You think, as a result of that, that you have
15 had a lot of these leaks?

16 A As a result of that, we've had, in the past,
17 we have had lots of--well, let's not say "lots." We have
18 had quite a bit of line breakage and in some instances, the
19 line was laid so close to the surface that the line even
20 froze and broke.

21 And I was told at the time that none of the
22 line would have less than 30 inches of cover over it, and
23 when they opened up the line to put my saddle on, which is
24 just to the north side of our home, when they opened up the
25 line to put that saddle on, I went out and laid a straight

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1 edge across the ditch, and measured it down, and it was just
2 exactly 13 inches down to the pipe.

3 Q That is a two-inch line; is that correct?
4 It's not a four-inch line--

5 A Two-inch line.

6 Q --in these areas.

7 Now, is there anything else, Mr. Simes, that
8 you want to bring to the attention of the Commission while
9 you're here today?

10 A Yes, there is.

11 Q All right, sir.

12 A Don't ever let it be said that we refused to
13 pay a legitimate fee for adequate water service. All that
14 we are interested in and speaking for myself and I've also
15 had the blessings of the Association and the property owners,
16 that all we are interested in is adequate water service at
17 a reasonable price. That's all that we are interested in is
18 adequate water service at a reasonable price. And I don't
19 think, under the circumstances, I don't think--I'll grant you
20 that Turkey Mountain Estates may be holding the bag, but
21 there's 1500 and some odd locations down there, as I remember
22 right, there's 1517, and it's less than 10 percent, a whole
23 lot less than 10 percent, of them are hooked on to water,
24 which makes it pretty rough for the water line to pay for
25 itself. But, why should we 100 or 105 or 110 or 106 or whatever

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1 it happens to be, that are paying for the water line, why
2 should we be penalized for somebody else's mistakes.

3 Q In other words, you had a contract, as I
4 understand what you're saying, on your water, and now you
5 can look down the road to see where they're going to put this
6 water out into all of these, and sell these other lots and
7 all of you people are going to be assessed with those costs
8 in the setting of rates; is that what you are saying?

9 A That's what I'm saying to a certain degree.
10 If even 50 percent of those lots were accurate, and because
11 they didn't hang a charge on these people that just came
12 down there and bought lots, because they didn't hang a charge
13 on them to install a water line, I don't know why we should
14 have to pay in advance for those thousands and thousands of
15 feet of water line that there's nobody hooked up to. Do you
16 understand what I'm getting at?

17 Q Yes, sir.

18 MR. CHARLES J. FAIN: I don't have anything
19 further.

20 EXAMINER LORING: It's time to take a break.

21 WHEREUPON, a recess was taken.
22
23
24
25

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

3 EXAMINER LORING: Back on the record.

4 MR. CHARLES J. FAIN: Are there any other
5 questions of Mr. Simes?

6 MR. COWAN: I have some questions when he is
7 tendered for cross-examination. Are you ready for cross-
8 examination?

9 EXAMINER LORING: Yes, we are ready.

10 WITNESS EDGAR L. SIMES RESUMED THE STAND

11 CROSS-EXAMINATION BY MR. COWAN:

12 Q Mr. Simes, I don't think I clearly understood
13 your position in this matter. Are you objecting to the
14 Commission taking jurisdiction over this water operation and
15 supervising it?

16 A Yes, I am.

17 Q The next question I have: When you purchased
18 your property, did you get an abstract of title?

19 A No, sir.

20 Q Did you get title insurance?

21 A No, sir.

22 Q Did you have the title checked through the
23 Recorder's Office to see what instruments there were of
24 record which might affect the title of the property?

25 A No. I talked to an abstract outfit in Cassville,

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1 and I asked them what the advantages would be of me having a
2 guaranteed title, insurance, and they told me the only
3 advantage was that they went over and checked the location,
4 checked the area for inequities that might cloud my warranty
5 title, warranty deed.

6 Q You live in Turkey Mountain Estates No. 2?

7 A That's right.

8 Q Is Turkey Mountain Estates No. 2 a formally
9 platted subdivision?

10 A Well, it's platted, yes.

11 Q Have you seen the plat?

12 A I see it right here.

13 Q Well, would you answer my question? You think
14 that is the plat?

15 A Well, I think it is.

16 Q Does it have an indication that it's recorded
17 in the Recorder's Office---

18 A I never looked to see.

19 Q --in Stone County, Missouri?

20 A I never looked to see.

21 Q Is that the only instrument that you've seen
22 that you would consider to be a plat?

23 A Well, with the exception of that one, and the
24 one that is hanging in Turkey Mountain Estates office, and
25 the one that they showed me where my lots are.

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1 Q Well, I'm talking about a formal plat on
2 record, if it is on record, in Stone County, Missouri or
3 Barry County, Missouri. Which county do you live in?

4 A I live in Stone County.

5 Q In Stone County, Missouri.

6 A I was taking their word for it.

7 Q But, you have not checked the plat?

8 A No.

9 Q Do you know what kind of easements are
10 reflected by that plat?

11 A I don't know that I can say I do.

12 Q You're an engineer you told us. Customarily
13 easements are reflected by the plat of the subdivision, are
14 they not?

15 A Yes.

16 Q Now, Mr. Simes, you testified a few moments
17 ago that you had been out of service from time to time.
18 Could you tell me the last time you were out of water
19 service?

20 A No. If you expect me to give you a date, I
21 can't.

22 Q You can give me a judgment as to how long it's
23 been.

24 A It was sometime last fall.

25 Q What caused the outage, if you know?

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1 A It was breakage on the four-inch line just
2 below us, and then other times.

3 Q Let's talk about them one at a time. When
4 did this occur, did you say? Last fall? The breakage of the
5 four-inch line that you just referred.

6 A It broke on several occasions.

7 Q We're talking about the last occasion.

8 A Well, if you expect me to remember dates, I
9 don't. Do you?

10 Q Well, my question was, you stated, if I under-
11 stood you correctly, that it was last fall sometime?

12 A That's right.

13 Q Do you know what caused that breakage?

14 A Well, I would say faulty pipe.

15 Q I'm asking you if you know? Did you see it
16 break, or do you know what the actual cause was?

17 A I saw the pipe after it broke.

18 Q But, you don't know what caused it to break?

19 A No.

20 Q How long were you out of service?

21 A Oh, that time that, that broke down there, I
22 was out of service close to 12 hours.

23 Q All right. Now, let's talk about the time
24 immediately before that. When was the next time you were
25 out of service?

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1 A I say once again, if you expect me to name
2 dates, no.

3 Q You can give us an approximate time. Was it
4 in the spring or in the winter, or when was it? You made
5 several rather broad statements here. I'm wondering if you
6 can--

7 A Let me say that so far as last year was
8 concerned, we were out of service several times. Whether it
9 was all caused from a break in the line or not, I don't know.

10 Q What do you mean by "several times"?

11 A That's what I mean, several times.

12 Q Are you talking about ten or three?

13 A I would say ten.

14 Q You think the company records will support
15 ten breakages in the year 1978?

16 A I would say that there was at least ten
17 breakages in the year of 1978. Now, wait a minute. Let me
18 clarify that. I'm not going to say they were all breakages,
19 because sometimes that breaker up on the pump house activates,
20 and we're out of water.

21 Q As an engineer, can you tell us what causes
22 that?

23 A Overloads.

24 Q Does lightning cause it?

25 A There are several things that can cause it.

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1 Lightning will cause it. An overload will cause it, and
2 the weakening of power will cause it.

3 Q How far do you live from Mr. Gaddy?

4 A About, I would say, in the neighborhood of
5 500 feet.

6 Q Where do you live from Mr. Goens?

7 A In the neighborhood of a quarter of a mile.

8 Q How far do you live from Mr. Bickel?

9 A In the neighborhood of 500 feet.

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

11 MR. DUFFY: No questions.

12 EXAMINER LORING: Thank you very much.

13 MR. CHARLES J. FAIN: Thank you, Mr. Simes.

14 (Witness excused.)

15
16 MR. CHARLES J. FAIN: Now, Your Honor, if
17 these gentlemen don't have any other questions, I would like
18 to ask, I have a few questions for Mr. Norman, but it wouldn't
19 require the presence of these gentlemen. If they could be
20 excused, maybe they would like to get on their way home.

21 EXAMINER LORING: Any problem? You're excused.

22 MR. CHARLES J. FAIN: You gentlemen are
23 excused if you want to go. If you want to stay, the hearing
24 won't be but a few minutes more. If you would like to stay
25 and talk to me afterwards, we'll do that.

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1 (Discussion off the record.)

2 EXAMINER LORING: Do the Intervenors rest
3 then, I take it, on the Intervenors' case?

4 MR. CHARLES J. FAIN: Well,--

5 EXAMINER LORING: I realize the Applicant's
6 case hasn't been rested.

7 MR. CHARLES J. FAIN: We have some questions
8 of Mr. Norman. We may have to call him. If they would
9 admit as to who their employees and agents were, as we under-
10 stand it, it's Mr. Holt, Mr. Turney, Mr. Mitchell, Mr.
11 Randolff, Mr. Allison, Mr. Claude Frazier, and Mr. Chester
12 Grymes, if they will--

13 MR. COWAN: Crymes.

14 MR. CHARLES J. FAIN: Crymes, that's a C
15 instead of a G. If they would acknowledge that they were
16 the agents that made the sales, we could shorten this a
17 great deal. Would you be willing to stipulate to that, Lou?

18 MR. COWAN: Could we do that? So there would
19 be no confusion, I think you offered in evidence all the
20 contracts, didn't you? Wherever their names appear on those
21 exhibits, we would agree that in that case they were the
22 agents.

23 MR. CHARLES J. FAIN: Then, may I word this--

24 MR. COWAN: For example, I've got right here--

25 MR. CHARLES J. FAIN: You word it, Lou, word

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1 the stipulation.

2 MR. COWAN: I believe it's Intervenor's
3 Exhibit I, and you show here as a witness, Chester Crymes.
4 Wherever that name appears on these various contracts,
5 whosever name it is, we'll admit they are agents.

6 MR. CHARLES J. FAIN: Very well.

7 MR. COWAN: In the sense of being a salesman.

8 MR. CHARLES J. FAIN: And Mr. Holt, of course,
9 his name is on all of them.

10 MR. COWAN: He's also a salesman for the
11 company.

12 MR. CHARLES J. FAIN: So, you'll admit they're
13 agents in that regard?

14 MR. COWAN: Well, in the sense that they
15 procure buyers for those lots, not a general agent, but a
16 real estate agent.

17 MR. CHARLES J. FAIN: And that they were
18 representing Turkey Mountain Estates, Inc.

19 MR. COWAN: As a real estate agent.

20 MR. CHARLES J. FAIN: Yes, in making the sale.

21 MR. COWAN: I wouldn't admit to a general
22 agent.

23 MR. CHARLES J. FAIN: Oh, no, no, of course
24 not. If you'll stipulate to that, is that agreeable with
25 you, Gary?

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1 MR. DUFFY: Fine.

2 MR. CHARLES J. FAIN: I just want, I have
3 about three or four questions of Mr. Norman.

4 EXAMINER LORING: Mr. Norman, will you take
5 the stand again, please?

6 (Witness sworn.)

7 WITNESS JIMMY NORMAN RECALLED TO THE STAND

8 RECROSS-EXAMINATION BY MR. CHARLES J. FAIN:

9 Q You are Mr. Norman, one of the officials
10 of the Applicant, Ozark Mountain Water Company; is that
11 correct?

12 A Yes, sir.

13 Q You were also one of the officers and stock-
14 holders of Turkey Mountain Estates, Inc., a Missouri
15 corporation, were you not?

16 A Yes, sir.

17 Q Would you tell me if Norman Construction
18 Company, is that a trade name, or is that a corporation?

19 A It's a corporation.

20 Q A corporation? Is that a Missouri corporation?

21 A Yes.

22 Q The Norman Construction Company, are you the
23 sole owner, you and your wife, the sole owners of the stock?

24 A Yes, sir.

25 Q So, any of the other developers were not in

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1 on Norman Construction Company; is that correct?

2 A No, sir.

3 Q Now, as I understand it, Norman Construction
4 Company has done all of the work on the water lines; is that
5 correct?

6 A No, sir.

7 Q I'm not correct, then. Tell me what Norman
8 Construction Company, what work it did perform?

9 A It has furnished men and tools for partial
10 work on the water system. Turkey Mountain Estates has their
11 own employees, which work on the water system.

12 Q Now, are the Turkey Mountain Estates employees
13 who worked on the water system, are they also employed by
14 Norman Construction Company?

15 A No, sir.

16 Q Well, Norman Construction Company did do work
17 on the water lines, did it not?

18 A Yes. It has done some work, but it didn't do
19 it all.

20 Q Okay. And, of course, I know you didn't drill
21 the wells. I understand that. I've gone through the exhibit.

22 Would you just describe, just a brief summary
23 for me, of the work that Norman Construction Company did and
24 how it did its billing, please, to Turkey Mountain Estates?

25 A Okay. Norman Construction Company has various

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1 equipment: Backhoes, dozers, heavy equipment. And up until
2 the last year, it maintained a work force to operate this
3 equipment. They were primarily engaged in the trenching work
4 and--for the water lines. And at such time as the man on the
5 backhoe was needed to go back and lay lines to catch up the
6 day's work, he parked the backhoe and got off and stuck the
7 pipe together with the Turkey Mountain crew.

8 Q So, actually, then, Norman Construction
9 Company just did the backhoe work; is that correct?

10 A Yes. And some of that work was actually done
11 by Turkey Mountain employees operating Norman Construction
12 Company equipment.

13 Q Okay. When you did that, how did you charge
14 them in that situation?

15 A It was charged on a different rate per hour.
16 In other words, the operators' wages were credited to Turkey
17 Mountain Estates or whoever we were laying pipe for.

18 Q Would you describe to me what sort of an
19 invoice or bill you presented to Turkey Mountain Estates for
20 the work that Norman Construction Company did?

21 A May I show you?

22 MR. COWAN: Your Honor, I don't want to delay
23 this any, but I think I ought to have an objection on the
24 record. This is completely immaterial, because no consideration
25 is being asked for the plant that's going into this company

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1 as of now, and it makes no difference what it cost or didn't
2 cost, because it's going in at a zero figure as far as the
3 rate base is concerned. So, it's completely immaterial. I
4 don't object to it, except that we're wasting time, and I
5 object to it on that basis.

6 MR. CHARLES J. FAIN: We already crossed that
7 bridge in the last hearing.

8 EXAMINER LORING: I'll overrule it, and let's
9 proceed.

10 BY MR. CHARLES J. FAIN:

11 Q For your information, I don't find any of
12 them. As I understood, I was being submitted with all of the
13 bills. I don't find any bills in there from Norman
14 Construction Company.

15 A I don't know.

16 Q Did you submit bills to Turkey Mountain
17 Estates?

18 A Yes.

19 Q Would you know where those bills are?

20 A No, I don't.

21 Q When is the last time you did work for Turkey
22 Mountain Estates on the water lines?

23 A At the present time, I don't have any employees
24 as Norman Construction Company, and they still rent my
25 equipment to do water line construction work with, and that

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1 billing, the last one, I think was sometime in the late fall
2 of last year.

3 Q Could you give me some explanation as to why
4 Turkey Mountain Estates does not have any invoices or bills
5 from Norman Construction Company on these lines?

6 A I imagine they're in accounting somewhere.
7 I don't know.

8 Q And they were just overlooked, is that what
9 you are saying?

10 A I don't know.

11 Q Would you glance through there and see if you
12 can find any of your bills or statements or invoices.

13 A No, I don't see any. They're made on a paper
14 similar to this, only it's a double sheet with columns over
15 it with it all extended out and all broke down pricewise.

16 Q Does it break down as to the hours spent and
17 the date and so on--

18 A Yes.

19 Q --and whether it was paid?

20 A You've got the checks there to back up that,
21 I'm sure.

22 Q If your attorney agreed, would you be willing
23 to submit copies of those statements that do back up the
24 notations that are made on those ledger sheets? You've
25 submitted all the others. I've checked them, and they

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1 tabulate. But, I didn't find anything from Norman
2 Construction Company. I mean, if he consents.

3 A If I can find them. I really don't know who
4 has them.

5 Q There would be no reason for withholding them.

6 A No. There's nothing to be gained from it.

7 Q I understand.

8 MR. COWAN: How far back would you want to go?

9 MR. CHARLES J. FAIN: Well, as far back as
10 these ledger accounts show payments to Norman Construction
11 Company.

12 WITNESS NORMAN: It would be somewhat confusing,
13 because you're going to have all the road construction and
14 all that mixed in with it, which it won't be spelled out as
15 water line, road construction or what. It will just be so
16 many hours.

17 BY MR. CHARLES J. FAIN:

18 Q I just suspect that's the situation.

19 But, the truth of the matter is that these
20 were submitted to me as all of the costs on the water company
21 were they not? That's what I was seeking.

22 A I don't know.

23 Q Do you recall the other hearing when--

24 A I recall the other hearing, and this is what
25 I presumed that you wanted.

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1 MR. COWAN: There's a breakdown right down
2 on the bottom of it, Charlie.

3 MR. CHARLES J. FAIN: Well, I understand that
4 there are figures put into the ledger sheet, but what I am
5 looking for are, as I understood, there would be an invoice
6 or a statement or a bill to justify and prove up those
7 ledger accounts that are set out there. And that's all I am
8 seeking. If I can get to them, that will serve my purposes.
9 As I understood, I was going to be submitted the original
10 billings on the cost of the water system, and the only thing--

11 MR. COWAN: We just agreed to furnish to you
12 what Mr. Taylor had. As far as I know, that's an absolute
13 list of everything that he's got.

14 MR. CHARLES J. FAIN: Okay. Well, I think--

15 WITNESS NORMAN: Are the canceled checks in
16 there?

17 BY MR. CHARLES J. FAIN:

18 Q I've looked at these before, and as I recall,
19 my answer is, no. In other words, you understand what a
20 billing is. It shows the date that you did the work and what
21 was done and the number of hours and how many dollars you
22 charged?

23 A Uh-huh.

24 Q And that's what I'm seeking if I can have it.
25 There's Harry Cooper's Supply bill and the whole bit. But,

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1 yours is the only one missing, Norman Construction Company,
2 which did a big part of the work, as I understand from the
3 ledger sheets?

4 A Uh-huh. I'm sure the ledger sheets were made
5 up from the billing at sometime.

6 Q Well, I'll ask you: Did you make up the
7 ledger sheets?

8 A No, I did not.

9 Q All right, sir.

10 MR. CHARLES J. FAIN: Well, Mr. Examiner, if
11 we can have an agreement on that, that Mr. Cowan will
12 diligently seek and provide me with those, I think that that
13 would be agreeable.

14 MR. COWAN: I can't agree to it now. If it's
15 readily available and it won't be a horribly expensive thing,
16 I would recommend that Mr. Norman furnish them. But, if it's
17 going to be something that is a serious burden, we would have
18 to object to it. I consider it completely immaterial for the
19 reasons we stated many times, and we're not going to
20 voluntarily spend a lot of money.

21 EXAMINER LORING: What are you going to do
22 with it once you get it? A late-filed exhibit, is that what
23 you're thinking?

24 MR. CHARLES J. FAIN: That would be satisfactory
25 with me.

Missouri Public Service Commission

1 EXAMINER LORING: Why don't we leave it at if
2 it is not unduly burdensome,--

3 MR. COWAN: I'll ask Mr. Norman to go back and
4 review his files and see what's there. As he said, it's not
5 a matter of not wanting to disclose it.

6 EXAMINER LORING: It may or may not be there,
7 too.

8 WITNESS NORMAN: Ten years of records is a lot
9 of digging.

10 EXAMINER LORING: If it's like the closets in
11 my home, I can guarantee--

12 MR. CHARLES J. FAIN: I understand that, Your
13 Honor. But, we have a situation here where the developers
14 are also the sole owners of the company that did the work.

15 EXAMINER LORING: Yes, I understand that.

16 MR. CHARLES J. FAIN: I find ledger accounts
17 where money was paid, but I don't find the statements or bills
18 like all the other companies, Harry Cooper Supply, the people
19 who furnished the dynamite, the ones who did the blasting.
20 It's all itemized in there and very fully, and I appreciate
21 that. The thing that is missing is the entire work schedule
22 of Norman Construction.

23 EXAMINER LORING: You're talking about these
24 individual invoices in that time frame?

25 MR. CHARLES J. FAIN: Yes, sir.

Missouri Public Service Commission

1 MR. COWAN: I'll make some investigation as
2 to how onerous the burden is, and give you--

3 EXAMINER LORING: If you can put them in as
4 an exhibit, and I'll assign a letter. Let's assign the letter
5 "J" if those are available. No, it would be Applicants'
6 exhibit, Applicants' Exhibit 23 to be late filed.

7 MR. CHARLES J. FAIN: Now, with that, Your
8 Honor, I would return the originals of the documents that
9 Mr. Cowan so graciously supplied me, and I've gone over
10 them. And the only thing that is missing is as I've stated,
11 and I would like to have those. And I don't have anything
12 further of Mr. Norman.

13 MR. COWAN: I have a few questions of Mr.
14 Norman.

15 FURTHER REDIRECT EXAMINATION BY MR. COWAN:

16 Q Mr. Norman, have you been associated with
17 these four developers over the years.

18 A With the four developers?

19 Q Right. Turkey Mountain Estates--I'll name them.
20 You know the companies--

21 A Yes.

22 Q --that I'm referring to. Tomahawk Developers,
23 for example.

24 A Yes.

25 Q Central Crossing Developers.

Missouri Public Service Commission

1 A I'm not affiliated with Central Crossing
2 Developers.

3 Q Turkey Mountain Estates, Inc.?

4 A Yes.

5 Q Lakeside Investment.

6 A Yes.

7 Q Are the subdivisions that have been discussed
8 here today and previously in this hearing reflected by plats
9 on record in the appropriate counties?

10 A Yes, they are.

11 Q Is there a plat on file in Stone County, the
12 Recorder's Office in Stone County, Missouri, for Turkey
13 Mountain Estates No. 2?

14 A There's seven plats recorded.

15 Q But, do the seven plats encompass the entire
16 subdivision called Turkey Mountain Estates No. 2?

17 A Yes, they do.

18 Q Were utility easements reserved on those plats?

19 A Yes.

20 MR. CHARLES J. FAIN: Now, Your Honor, just
21 a minute. I object to that for the reason that the plats
22 would be the best evidence.

23 MR. COWAN: If you will let us finish,--

24 MR. CHARLES J. FAIN: Let me make my objection.

25 EXAMINER LORING: Let him finish the question
first.

Missouri Public Service Commission

1 MR. CHARLES J. FAIN: Okay.

2 EXAMINER LORING: Had you finished your
3 question?

4 MR. COWAN: No, I haven't finished it.

5 EXAMINER LORING: Let's start all over again.

6 BY MR. COWAN:

7 Q I think my question was: Are there plats
8 of record for the seven components making up Turkey Mountain
9 Estates No. 2?

10 A Yes, sir.

11 Q Have those plats been properly filed and
12 recorded with the Recorder as far as you know?

13 A Yes.

14 MR. COWAN: Your Honor, I would ask leave to
15 file as a late-filed exhibit, I believe, it would be
16 Applicants' Exhibit 23, a certified copy--

17 EXAMINER LORING: Exhibit 24, because 23
18 would be those invoices.

19 MR. COWAN: Okay, 24. Certified copies,
20 certified by the Recorder of Deeds of Stone County, Missouri,
21 of the plats of Turkey Mountain Estates, the seven plats
22 Mr. Norman just referred to.

23 EXAMINER LORING: That would be late-filed 24.

24 MR. COWAN: I'll furnish Mr. Fain with a
25 xerox of the Recorder's certificate and a copy of the plat.

1 Now, Mr. Fain, I guess I wouldn't interrupt
2 your objection.

3 EXAMINER LORING: The objection I think is
4 mute.

5 MR. CHARLES J. FAIN: I don't have any
6 objection to that.

7 BY MR. COWAN:

8 Q Mr. Norman, going on, we submitted, and I
9 don't remember the number, but if you will bear with me,
10 drawings of the water system as it's now constructed or was
11 constructed at the time the drawings were made throughout these
12 various subdivisions, have you not?

13 A Yes.

14 Q Those, in fact, are not the plats, the recorded
15 plats, or even copies of them, are they?

16 A No. They're just a composite.

17 Q They're, you might call, construction drawings
18 that were made up when the system was being built?

19 A Yes.

20 Q Has your company had a few problems or problems
21 with outages in Turkey Mountain Estates No. 2?

22 A Yes. We had some defective pipe that we had
23 some problems with.

24 Q Have you undertaken to repair all those
25 defective segments of pipe?

Missouri Public Service Commission

1 A We made our best effort.

2 Q Do you recall of any instance when the pump
3 failed to work because of a malfunction of a breaker?

4 A I wouldn't say that it was a breaker. We've
5 had some fuse problems with fuses blowing and that sort of
6 thing.

7 Q Are you able to tell the Commission what
8 caused those fuses to blow?

9 A I'm really not; an act of God, I would have to
10 say.

11 Q In your judgment, when was the last time water
12 service was out in Turkey Mountain Estates No. 2?

13 A It was sometime in the fall of last year.

14 Q If it had been out at any other time, would
15 you have known about it in the ordinary course of business?

16 A Yes. I'm well aware when one goes out. I've
17 usually got half a dozen phone calls immediately.

18 Q Do you recall how many outages the company
19 experienced in 1978?

20 A I couldn't say the exact number, but I would
21 say maybe as many as six.

22 Q Do you know what caused the outage?

23 A Well, I would say, probably, three of them
24 due to this defective pipe, and another one or so with, what
25 I call, gremlins, people with backhoes digging into them and

Missouri Public Service Commission

1 that sort of thing.

2 Q Has the company installed cutoff valves to
3 try to alleviate a hardship on the customers in case a
4 segment of pipe goes out?

5 A Yes, we have. We've tried to valve each
6 feeder line from the main, so we can isolate the different
7 spots.

8 Q When was that project completed?

9 A It was last summer.

10 MR. COWAN: I have no further questions of
11 Mr. Norman. Just in case it was overlooked, I would like to
12 offer in evidence Applicants' Exhibits 1 through 24, I believe.

13 EXAMINER LORING: Well, 15 and 16 have been
14 received, but at this time, all Applicants' exhibits are
15 received through 24.

16 (AT THIS TIME APPLICANTS' EXHIBIT NOS. 1 TO
17 24 WERE RECEIVED IN EVIDENCE AND MADE A PART OF THIS RECORD.)

18 RECROSS-EXAMINATION BY MR. DUFFY:

19 Q Are you a professional engineer?

20 A No, sir.

21 Q Are there any professional engineers employed
22 by the Ozark Mountain Water Company?

23 A There was back in the design work of it.

24 Q Do you have any engineers who supervise the
25 laying of pipe?

1 A No.

2 Q Who supervises the laying of water pipe?

3 A I guess, I would have to take credit for that.

4 Q Are you familiar with the American Waterworks
5 Association's standards for laying plastic pipe, specifically,
6 bedding them and not laying them on big rocks?

7 A I've seen their book or leaflet or whatever
8 it is.

9 Q Do you follow those standards?

10 A I would have to read the standards to say
11 for sure, because I'm not immediately familiar with the
12 standards that you're talking about.

13 Q What I would like you to do is go on record
14 as obligating the company to lay plastic pipe in accordance
15 with either the AWWA standards or the manufacturer's standards
16 for bedding them properly, so we might avoid in the future
17 breaks due to the improper laying of pipe. Will you obligate
18 your company to do that?

19 A Yes. I guess we would.

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

21 EXAMINER LORING: Mr. Fain.

22 FURTHER RECROSS-EXAMINATION BY MR. CHARLES J. FAIN:

23 Q Mr. Norman, I want to ask you about some things
24 on Intervenor's Exhibit H. Now, I'm referring to that page,
25 it's entitled, Establishment of Protective and Restrictive

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1 Covenants for Turkey Mountain Estates No. 2. Do you see that?

2 A Uh-huh.

3 Q Now, this is, as I understand, the restrictions
4 and the retentions that were made on Turkey Mountain Estates
5 No. 2, and you filed them, as restrictions are, in the
6 Recorder's Office in the respective counties, did you not?

7 A These?

8 Q These are the restrictions that--

9 A These are the restrictions.

10 Q Yes.

11 A I really don't know, sir.

12 Q Well, would you tell me who signed them?

13 A It looks like I did.

14 Q All right, sir. Now, you also signed them
15 for Turkey Mountain Estates No. 1 which is I believe the one
16 in Barry County?

17 A Turkey Mountain is in Barry County.

18 Q Is that your signature?

19 A No, that isn't.

20 Q Whose signature is that appearing on Page 3?

21 A I don't know.

22 Q I couldn't make it out either. It says that
23 it is Mr. Jim Norman. Isn't that what the Notary Public says?

24 A That's what it says. Isn't this the same
25 signature, though?

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1 Q Well, that is a very fine friend of mine,
2 Robert Stemmons, a lawyer in Lawrence County. Do you know
3 Mr. Stemmons?

4 A Yes.

5 Q He represents Turkey Mountain Estates,
6 doesn't he?

7 A He did at one time.

8 Q But, you say that is not your signature; is
9 that correct?

10 A No, it is not.

11 Q All right, sir. Do you say that you did not
12 appear before Mr. Stemmons and make that affidavit that is
13 set out therein?

14 A I didn't sign it.

15 Q Well, do you recall appearing before Mr.
16 Stemmons and making that affidavit?

17 A No, I don't recall it.

18 Q All right. Can you throw any light on who
19 signed that as Vice President and why this affidavit was
20 made which states that you made it? Do you know anything
21 about that?

22 A No, I really don't.

23 Q All right, sir. Now, that is the protective
24 and restrictive covenants for Turkey Mountain Estates lying
25 in Barry County; is it not?

Missouri Public Service Commission

1 A Uh-huh.

2 Q Now, the other one, insofar as Stone County,
3 you stated that that is your signature appearing thereon,
4 so we've cleared that up?

5 A Uh-huh.

6 Q But, you don't know about the other one?

7 A I really don't know.

8 MR. CHARLES J. FAIN: Nothing further.

9 EXAMINER LORING: Staff.

10 MR. DUFFY: I have absolutely nothing further.

11 EXAMINER LORING: At this time--

12 MR. CHARLES J. FAIN: Your Honor, I would like
13 to make an offer if I may on my exhibits. We offer Exhibits
14 A, B and C.

15 EXAMINER LORING: They've been received.

16 MR. CHARLES J. FAIN: I would like to offer
17 the remainder of the Intervenor's exhibits. That's D, E, F,
18 G, H, and I.

19 EXAMINER LORING: Exhibits D through I are
20 received.

21 (AT THIS TIME INTERVENORS' EXHIBITS D THROUGH
22 I WERE RECEIVED IN EVIDENCE AND MADE A PART OF THIS RECORD.)

23 EXAMINER LORING: Staff Exhibit 1 was offered
24 at the last hearing and not received. It is received at
25 this time.

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1 (AT THIS TIME STAFF EXHIBIT NO. 1 WAS RECEIVED
2 IN EVIDENCE AND MADE A PART OF THIS RECORD.)

3 EXAMINER LORING: That clears up all the
4 record.

5 Let's go off the record.

6 (Discussion off the record.)

7 EXAMINER LORING: Back on the record.

8 Upon the receipt of late-filed exhibits and
9 the filing of the transcript, the Intervenor will have 20
10 days in which to file a memorandum or brief; and the
11 Applicant and Staff will have 20 days thereafter to file in
12 reply.

13 Anything further?

14 MR. CHARLES J. FAIN: Off the record.

15 EXAMINER LORING: Off the record.

16 (Discussion off the record.)

17 EXAMINER LORING: Back on the record.

18 The record in this case will be closed, and
19 the case is submitted on the record. The hearing is adjourned.

20 WHEREUPON, the hearing of this case was
21 concluded.

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E X H I B I T S

MARKED

RECEIVED

APPLICANTS' EXHIBITS:

Exhibit Nos. 1 - 18

*

374

Exhibit No. 19

Certified Copy of Consent of Directors
and Resolution of Tomahawk Developers,
Inc., signed by J. B. Gum, Secretary

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Exhibit No. 20

Certified Copy of Consent of Directors
and Resolution of Central Crossing
Developers, Inc., signed by Kenneth
E. Hamilton, Secretary

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Exhibit No. 21

Certified Copy of Consent of Directors
and Resolution of Turkey Mountain
Estates, Inc., signed by Blanche
Shafer, Secretary

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Exhibit No. 22

Certified Copy of Consent of Directors
and Resolution of Lakeside Investment
Company, Inc., signed by Blanche
Shafer, Secretary

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Exhibit No. 23

Invoices Submitted by Norman
Construction Company

**

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Exhibit No. 24

Seven Plats of Turkey Mountain
Estates No. 2

**

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* Marked in Previous Hearings
** Late-filed Exhibits

E X H I B I T S

MARKED

RECEIVED

INTERVENORS' EXHIBITS:

TURKEY MOUNTAIN ESTATES NO. 1:

Exhibit A

Questionnaire Sent Out by Turkey
Mountaineers Homeowners Association

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Exhibit B

Warranty Deed of John D. and Ruth A.
Charlton

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Exhibit C

Letter from Ken Hamilton of Turkey
Mountain Estates to George D. Willet

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TURKEY MOUNTAIN ESTATES NO. 2:

Exhibit D

Contract of Purchase by Jean C.
and Mildred L. Gaddy, Lot 279

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Exhibit E

Contract of Purchase by Jean C.
and Mildred L. Gaddy, Lot 277

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Exhibit F

Property Report

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Exhibit G

Contract of Purchase by Marshall R.
and Charlotte A. Goens, Lot 139

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Exhibit H

Property Report

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Exhibit I

Contract of Purchase by Lawrence H.
and June E. Bickel, Lot 282

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STAFF'S EXHIBIT:

Exhibit No. 1

*

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* Marked in Previous Hearing