

1 STATE OF MISSOURI
2 PUBLIC SERVICE COMMISSION
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6 TRANSCRIPT OF PROCEEDINGS

7 Hearing

8 December 20, 2006
9 Jefferson City, Missouri
Volume 5

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12 In the Matter of the Application)
of Central Jefferson County)
13 Utilities, Inc., for an Order)
Authorizing the Transfer and)
14 Assignment of Certain Water and)Case No. SO-2007-0071
Sewer Assets to Jefferson)et al.
15 County Public Sewer District and)
in Connection Therewith, Certain)
16 Other Related Transactions)

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HAROLD STEARLEY, Presiding,
19 REGULATORY LAW JUDGE
JEFF DAVIS, Chairman,
20 CONNIE MURRAY,
STEVEN GAW,
21 ROBERT M. CLAYTON, III,
LINWARD "LIN" APPLING,
22 COMMISSIONERS.

23

24 REPORTED BY:

25 PAMELA FICK, RMR, RPR, CCR #447, CSR
MIDWEST LITIGATION SERVICES

1 APPEARANCES:

2 MARK W. COMLEY, Attorney at Law
3 NEWMAN, COMLEY & RUTH
4 601 Monroe, Suite 301
5 PO Box 537
6 Jefferson City, Missouri
7 65102-0537
8 comleym@ncrpc.com
9 (573) 634-2226

10 FOR: Raintree Plantation Property
11 Owner's Association, Inc.

12 W.R. England, III, Attorney at Law
13 Dean Cooper, Attorney at Law
14 BRYDON, SWEARENGEN & ENGLAND
15 312 E. Capitol Avenue
16 PO Box 456
17 Jefferson City, Missouri
18 65102-0456
19 trip@brydonlaw.com
20 (573) 635-7166

21 FOR: Central Jefferson County Utilities,
22 Inc.

23 MICHAEL SCHMID, Attorney at Law
24 SCHREIMANN, RACKERS, FRANCKA & BLUNT
25 2316 St. Mary's Blvd.
Suite 130
Jefferson City Missouri 65109
(573) 634-3580
mjs@srfblaw.com

FOR: Missouri Department of Natural
Resources

1 CHRISTINA BAKER, Counsel
PO Box 2230
2 Jefferson City, Missouri 65102
(573) 751-4857

3
4 FOR: Office of the Public Counsel and
the Public

5

6

KEITH R. KRUEGER, Deputy General Counsel
7 PUBLIC SERVICE COMMISSION - STATE OF MISSOURI
Governor Office Building, Suite 800
8 200 Madison Street
Jefferson City, Missouri 65102-0360
9 (573) 751-9285
keith.krueger@psc.mo.gov

10

FOR: The Missouri Public Service
11 Commission

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1 P R O C E E D I N G S

2 JUDGE STEARLEY: All right. Good
3 morning. It's December 20th, 2006, and we are here
4 for day two in our evidentiary hearing in
5 SO-2007-0071, In the Matter of the Application of
6 Central Jefferson County Utilities and Company,
7 Incorporated For an Order Authorizing a Transfer and
8 Assignment of Certain Water and Sewer Assets to
9 Jefferson County Public Sewer District and in
10 Connection Therewith, Certain Other Related
11 Transactions.

12 Before we get started this morning, I
13 would like to remind everyone to please have their
14 cell phones and Blackberries, et cetera, turned off
15 and please keep them off. We did have a little
16 glitch toward the end of our hearing yesterday with
17 our webcasting, and sometimes those devices will
18 cause that to happen. So I'll ask that you-all
19 please keep those off.

20 My understanding, Mr. England, is we're
21 gonna start this morning with Mr. McClain; is that
22 correct?

23 MR. ENGLAND: That is correct. That is
24 correct, your Honor.

25 JUDGE STEARLEY: And are you ready to

1 proceed?

2 MR. ENGLAND: We are, your Honor.

3 JUDGE STEARLEY: All right. You may
4 proceed.

5 MR. ENGLAND: May I call Mr. McClain to
6 the witness stand?

7 JUDGE STEARLEY: Please do.

8 Mr. McClain, will you please state and spell your
9 name for the court reporter?

10 THE WITNESS: My name is Norville
11 Kenneth McClain, Norville, N-o-r-v-i-l-l-e, Kenneth,
12 K-e-n-n-e-t-h, McClain, M-c-C-l-a-i-n, and this is
13 junior.

14 (The witness was sworn.)

15 DIRECT EXAMINATION BY MR. ENGLAND:

16 Q. Please state your name for the record.

17 A. Norville Kenneth McClain, Junior.

18 Q. And are you familiar with the Central
19 Jefferson County Utilities, Inc.?

20 A. Yes.

21 Q. Are you an officer with that company?

22 A. Yes.

23 Q. What office do you hold, Mr. McClain?

24 A. The presidency.

25 Q. Do you also own or have ownership

1 interest in that company?

2 A. That's correct.

3 Q. And what business is that company in?

4 A. The sewer and water business.

5 Q. Is that its only business?

6 A. Yes.

7 Q. Mr. McClain, yesterday we had marked for
8 purposes of identification an Exhibit No. 2 which was
9 the verified application and supplement and amendment
10 thereto that were filed with the Commission
11 initiating this case. Do you have that in front of
12 you?

13 A. Yes.

14 Q. And turning -- well, first of all, do
15 you recognize that document?

16 A. Yes.

17 Q. In fact, I think you signed a
18 verification that is toward the end of the
19 application but before the --

20 A. That's correct.

21 Q. -- before the exhibit. Are the
22 statements in that document -- excuse me -- in that
23 document true and correct to the best of your
24 knowledge, information and belief?

25 A. Yes, they are.

1 Q. Let me turn your attention now to
2 appendix 1 of that document which is the tri-party
3 purchase and sale agreement that we've been talking
4 about.

5 A. Uh-huh.

6 Q. Do you have that in front of you?

7 A. Yeah, I believe. There we go.

8 Q. Now, are you familiar with that
9 agreement?

10 A. Yes, sir.

11 Q. And is Central Jefferson County
12 Utilities a party to that agreement?

13 A. Yes, they are.

14 Q. And did you execute that agreement on
15 behalf of Central Jefferson County Utilities?

16 A. I believe I did, yes.

17 Q. Will the result of that tri-party
18 agreement be to transfer all of the physical assets
19 associated with Central Jefferson County Utilities
20 Company, its water and sewer systems to the sewer
21 district?

22 A. Yes.

23 Q. Did you have something else you wanted
24 to say in response to an earlier question?

25 A. That was Jerry Nixon who signed that.

1 Q. Okay. But you are familiar with that
2 document?

3 A. Yes, sir.

4 Q. Once all of the facilities of Central
5 Jefferson County Utilities Company have been
6 transferred to the sewer district, will Central
7 Jefferson County be out of the water and sewer
8 business?

9 A. That's correct.

10 Q. And will it have any need, then, for a
11 certificate of public convenience and necessity from
12 this Commission?

13 A. No, it will not.

14 MR. ENGLAND: Thank you, sir. I have no
15 other questions of the witness, then, and tender him
16 for cross-examination.

17 JUDGE STEARLEY: All right. Thank you,
18 Mr. England. And we will begin cross-examination
19 with Staff. Mr. Krueger?

20 MR. KRUEGER: Thank you, your Honor.

21 MR. ENGLAND: Excuse me a second, your
22 Honor. I neglected to offer the application.

23 JUDGE STEARLEY: All right. Would you
24 like to offer it at this time?

25 MR. ENGLAND: Yes, I would.

1 JUDGE STEARLEY: Are there any
2 objections to the admission of Exhibit No. 2?

3 (NO RESPONSE.)

4 JUDGE STEARLEY: Hearing none, it will
5 be received and admitted into evidence.

6 (EXHIBIT NO. 2 WAS RECEIVED INTO
7 EVIDENCE AND MADE A PART OF THE RECORD.)

8 MR. ENGLAND: Thank you.

9 CROSS-EXAMINATION BY MR. KRUEGER:

10 Q. Good morning, Mr. McClain.

11 A. Good morning.

12 Q. If this transfer is approved, what
13 assets will Central Jefferson transfer to the sewer
14 district?

15 A. Pardon me?

16 Q. If this asset transfer is approved, what
17 assets will Central Jefferson transfer to the sewer
18 district?

19 A. Well, all the plant, sewer lines, water
20 towers, pump stations, everything that we have.

21 Q. That includes all the assets that
22 Central Jefferson presently uses to provide sewer
23 service?

24 A. Yes.

25 Q. And all the assets it uses to provide

1 water service?

2 A. That's correct.

3 Q. What assets will Central Jefferson still
4 own after the transfer is completed?

5 A. I'm not sure exactly. I believe some --
6 I believe it's some receivables or -- I don't know
7 how it will finally wind up.

8 Q. Will Central Jefferson receive any cash
9 as a result of this transaction?

10 A. I'm not sure there will be, but I
11 believe we're gonna try to.

12 Q. From this transaction?

13 A. Will it receive any cash from this
14 transaction? No.

15 Q. Okay. Thank you.

16 A. No, this is a gift.

17 Q. Will it receive any other asset?

18 A. No.

19 Q. But EMC will assume Central Jefferson's
20 obligation on its debt to National CitiBank?

21 A. That's correct.

22 Q. Now, I want to ask you some questions
23 about Raintree Plantation, Inc. Are you an owner of
24 that corporation?

25 A. Yes, I'm one of the stockholders.

1 Q. Who are the other owners?

2 A. Well, the other owners are Jeremiah
3 Nixon and I guess it's now Norville -- I don't know
4 which trust owns it now.

5 Q. Are those the same people that own
6 Central Jefferson?

7 A. That's correct.

8 Q. And Raintree Plantation was the
9 developer of this subdivision?

10 A. That's correct.

11 Q. Are you familiar with the connection fee
12 that Raintree Plantation, Inc. charged to those who
13 bought lots in the subdivision?

14 A. There was a lot fee I understood, but
15 okay.

16 Q. What was the amount of that fee?

17 A. Originally started with \$1,000 and was
18 increased by the POA to 1,100 at one time.

19 Q. What was the purpose of the fee?

20 A. For Raintree Plantation to recoup some
21 of its expenses and amenities to the project, the
22 lines and operating expenses, that type of stuff for
23 operating -- for operating -- that we had to donate
24 to Central Jefferson County for operations.

25 Q. Who had to pay that fee?

1 A. Pardon me?

2 Q. Who had to pay that fee?

3 A. Fee?

4 Q. Who had to pay that connection fee -- or

5 what you call a lot fee?

6 A. The lot owners.

7 Q. All lot owners?

8 A. Yes.

9 Q. Is that \$1,000 per lot or per customer?

10 A. It's 1,100 per lot.

11 Q. Per lot?

12 A. Yes.

13 Q. And when was that fee to be paid?

14 A. At the time the sewer and water were

15 connected.

16 Q. Have all of those lot fees been paid?

17 A. Only the people that are actually using

18 the system right now are the only ones that have paid

19 so far.

20 Q. They have been paid by everybody who's

21 connected?

22 A. Yes. I think the number was mentioned

23 the other day, 670 or 680 or something like that.

24 Q. Have all of the lots in Raintree

25 Plantation Subdivision been sold?

1 A. No. I think we still have 30 or so
2 lots.

3 Q. Okay. But for the others, all of the
4 other people have agreed to pay that lot fee?

5 A. That's correct.

6 Q. Now, I want to make one more attempt to
7 understand the payments that the sewer district must
8 pay to Raintree Plantation under the sewer and water
9 service fee agreement.

10 A. Uh-huh.

11 Q. Were you here yesterday when we had the
12 discussion about that?

13 A. I believe so.

14 Q. Do you have a copy of that agreement
15 with you?

16 A. It's the tri-party agreement you're
17 talking about?

18 Q. No. This is the sewer and water service
19 fee agreement. It was Exhibit 8. It's an agreement
20 between Raintree Plantation, Inc. and the sewer
21 district.

22 MR. ENGLAND: I don't believe he has
23 one, Keith.

24 MR. KRUEGER: Okay. If you have an
25 extra one, I'd appreciate it.

1 THE WITNESS: Oh, okay.

2 BY MR. KRUEGER:

3 Q. Call your attention to the sixth page --
4 page 6 of that document, and do you see the signature
5 of Jeremiah Nixon there on behalf of Raintree
6 Plantation?

7 A. Yes.

8 Q. And he was authorized to sign on behalf
9 of the corporation?

10 A. Yes, sir.

11 Q. Now, calling your attention to page 2,
12 paragraph 3 A.

13 A. 3 A. Okay.

14 Q. That actually consists of two
15 paragraphs. I'd ask you to review the first
16 paragraph there at the top of page 2.

17 Okay. And that says, "The sewer
18 district shall pay Raintree or its designee a fee of
19 \$1,100." Do you see that.

20 A. That's correct.

21 Q. And where does that \$1,100 come from?

22 A. It will be coming from the property
23 owners.

24 Q. From the lot owners?

25 A. The lot owners.

1 Q. But it's paid to Raintree by the sewer
2 district; is that right?

3 A. That's correct.

4 Q. And is that the lot fee or connection
5 fee that we've been talking about?

6 A. That's correct.

7 Q. So it's actually an obligation of the
8 lot owner to Raintree?

9 A. That's correct.

10 Q. So what actually happens, then, is that
11 the sewer district basically acts as the agent of
12 Raintree to collect the \$1,100 that the lot owner
13 owes to Raintree, and then pays it to Raintree which
14 pays it to AquaSource for the construction work it
15 did; is that right?

16 A. That's correct.

17 Q. And the sewer district doesn't have to
18 provide any of its own funds for that purpose?

19 A. No.

20 Q. Okay. And that also satisfies the lot
21 owner's obligation on the lot fee?

22 A. That's correct.

23 Q. Okay. Now I'd call your attention to
24 the first paragraph under B there about the middle of
25 the page and ask you to briefly review that.

1 A. That's correct.

2 Q. Okay. Except that the amount in that
3 paragraph is changed to \$800 and \$550, the language
4 in that paragraph is very similar to the language in
5 the paragraph we just talked about; is that right?

6 A. Correct.

7 Q. But in this -- in this circumstance,
8 there is no payment to AquaSource; is that correct?

9 A. That's correct.

10 Q. And the sewer district does not have to
11 use its own funds to make that payment either?

12 A. No.

13 Q. That's money that it collects from the
14 lot owners?

15 A. That's correct.

16 Q. And that discharges the lot owner's
17 obligation to pay the lot fee to Raintree?

18 A. That's correct.

19 Q. And so Raintree is willing to settle for
20 this lesser amount so long as it gets enough from
21 this source to cover the expenses that it paid on
22 behalf of Central Jefferson which are mentioned on
23 page 3 of the agreement; is that right?

24 A. That's correct. Engineering...

25 Q. Now, if the Commission said that it

1 would approve the asset transfer that you've
2 requested but only if the provisions of that
3 paragraph 3 were rescinded, would Central Jefferson
4 be willing to complete the transfer?

5 A. Well, I'm having to deal with a lot of
6 different -- to put these deals together, dealing
7 with a lot of different people. I'm dealing with the
8 trust with some very difficult trustees and some very
9 difficult heirs. I put the deal the best I could and
10 they accepted this. Anything beyond this is really
11 beyond my control.

12 Q. So you don't know?

13 A. I don't know.

14 Q. Okay.

15 A. That's a good answer. I don't know.

16 Q. Okay. But in that circumstance,
17 Raintree would still have the right to collect the
18 \$1,100 lot fee; is that right?

19 A. That's correct.

20 Q. Okay. Now, at the end of the day
21 yesterday there was a lot of discussion about John
22 Kolisch's property. Were you present for that
23 discussion?

24 A. Yes.

25 Q. I'm hoping that you'll be able to help

1 me and the Commission understand the provisions of
2 this agreement that you're looking at in regard to
3 this, and I'd call your attention to paragraph 5
4 which is on page 4 of that agreement. Do you have
5 that?

6 A. Line -- oh, John. Okay.

7 Q. Paragraph 5.

8 A. Yeah, John Kolisch. Sure.

9 Q. Okay. And that begins, "Raintree
10 will -- shall honor a previous commitment." Do you
11 see that?

12 A. Yes.

13 Q. Whose commitment is Raintree going to
14 honor there? What does that refer to?

15 A. I started working on that last night.
16 They're working on a new agreement to try to satisfy
17 Mr. Kolisch or try to get him somehow taken care of
18 in this thing, and I understand it's being culminated
19 now. I don't know.

20 Q. Do you know the answer to my question,
21 whose commitment is Raintree going to honor?

22 A. No, I don't know the answer.

23 Q. Okay. You don't know whether it's
24 Raintree's commitment or Central Jefferson's or
25 somebody else?

1 A. Lawyers drew this up. I can't
2 understand it.

3 Q. Okay. Did you see this document before
4 it was signed?

5 A. Briefly.

6 Q. But you didn't write it?

7 A. No.

8 Q. Okay. Now, the agreement then says that
9 the commitment is to pay \$799.83 related to sewer and
10 water services for lots 129 through 135 of Section 5,
11 and \$2,783.11 for lots 46 and 47 in Section 1 of
12 Raintree Plantation; is that correct?

13 A. Yes, uh-huh.

14 Q. Now, does that \$799.83 relate to sewer
15 and water services? Do you know where that number
16 comes from?

17 A. No, I don't know where the number came
18 from. I understand it comes from the line extension
19 agreements under our tariffs that he's gonna be
20 reimbursed for costs that he had. How that -- how
21 these numbers were formulated, I don't know. I was
22 working with the Public Service at that time. I
23 really was never party to that and I don't know.

24 Q. Okay. Do you think that there's
25 supposed to be a different rate for the lots that are

1 in Section 5 and the lots that are in Section 1?

2 MR. ENGLAND: Your Honor, I think the
3 witness has indicated he doesn't know.

4 JUDGE STEARLEY: If you don't know the
5 answer, please just state that you don't know.

6 THE WITNESS: Don't know the answer,
7 sir.

8 BY MR. KRUEGER:

9 Q. What was your understanding of the
10 intent of this paragraph?

11 A. Are you talking about paragraph 5 for
12 John Kolisch?

13 Q. Paragraph 5.

14 A. The way I understood it is to try to
15 reimburse him for his cost in getting into the --
16 getting sewer and water service into his -- he
17 extended the lines into our district -- or our
18 certificated area, and under the tariffs he's
19 entitled to reimbursement.

20 Q. But you don't know who is supposed to
21 make that reimbursement?

22 A. No. I didn't put the deal together.

23 Q. Or the amounts?

24 A. No.

25 Q. Or the timing?

1 A. No.

2 Q. Only that the intent was to discharge
3 any obligation to Mr. Kolisch?

4 A. That's correct.

5 Q. Okay. Did Central Jefferson make an
6 agreement with AquaSource to sell its water and sewer
7 utility systems to AquaSource?

8 A. Yes, they did back in '99, I believe it
9 is.

10 Q. Was that agreement carried out?

11 A. To AquaSource, no.

12 Q. Why not?

13 A. I don't know. AquaSource may -- pulled
14 the plug on it. I don't know why.

15 MR. KRUEGER: I'd like to have an
16 exhibit marked.

17 JUDGE STEARLEY: We're at Exhibit
18 No. 10.

19 (EXHIBIT NO. 10 WAS MARKED FOR
20 IDENTIFICATION BY THE COURT REPORTER.)

21 MR. KRUEGER: May I approach, your
22 Honor?

23 JUDGE STEARLEY: Yes, you may.

24 BY MR. KRUEGER:

25 Q. I want to show you a document that's

1 been marked for identification as Exhibit 10 and ask
2 if you can identify that document.

3 A. Okay.

4 Q. Can you tell me what that document is?

5 A. It's an agreement between Raintree
6 Plantation, AquaSource Utility, Central Jefferson
7 County, and that's it.

8 Q. Okay.

9 A. Uh-huh.

10 Q. And on page 3, that bears a couple of
11 signatures. I think one signature is missing. Do
12 you know if that was fully executed?

13 A. No.

14 Q. You don't know? Do you know if that's
15 an accurate copy of the agreement that was made?

16 A. Looks like it should be.

17 MR. KRUEGER: Okay. Thank you. Offer
18 Exhibit 10, your Honor.

19 JUDGE STEARLEY: Any objection to the
20 offer of Exhibit No. 10?

21 MR. ENGLAND: Just a second, your Honor.
22 My copy, which I believe was supposed to be a copy we
23 submitted to Staff in response to data requests
24 actually has a signed signature page on the very
25 final page of the underlying agreement, and I don't

1 see that on Mr. Krueger's copy. So if we could
2 straighten that out at a break, can we just
3 reserve --

4 JUDGE STEARLEY: Yes, we can straighten
5 that out and we can hold off on admission until that
6 time.

7 MR. KRUEGER: Okay. Thank you.

8 JUDGE STEARLEY: If I may ask a
9 question, Mr. Krueger. Also, my copy is somewhat --
10 it's not a real clear copy. Is the date on the top
11 June 17th, 1999?

12 MR. KRUEGER: My copy is not very clear
13 either, but I think that is the date on it because I
14 have another document that refers to that date.

15 JUDGE STEARLEY: Thank you, Mr. Krueger.

16 MR. ENGLAND: Your Honor, and maybe
17 Mr. Krueger is gonna get to this. There was a
18 separate settlement agreement attached to -- were you
19 gonna make that --

20 MR. KRUEGER: That's what I'm gonna get
21 to.

22 MR. ENGLAND: I'm sorry. I have no
23 objection.

24 JUDGE STEARLEY: All right. Have no
25 objection, then I will go ahead and -- Exhibit No. 10

1 will be received and admitted into evidence.

2 (EXHIBIT NO. 10 WAS RECEIVED INTO
3 EVIDENCE AND MADE A PART OF THE RECORD.)

4 MR. KRUEGER: And I'd like to have
5 another exhibit marked.

6 (EXHIBIT NO. 11 WAS MARKED FOR
7 IDENTIFICATION BY THE COURT REPORTER.)

8 MR. KRUEGER: May I approach the
9 witness?

10 JUDGE STEARLEY: Yes, you may.

11 BY MR. KRUEGER:

12 Q. I'll show you a document that's been
13 marked for identification as Exhibit 11 and ask if
14 you can identify that document.

15 A. It's the settlement agreement and it's
16 a settlement agreement for -- settlement agreement
17 between Central Jefferson and AquaSource.

18 Q. Okay. And was that an agreement to
19 settle disputes that arose out of that contract that
20 we just talked about?

21 A. Yes, that's correct.

22 Q. Okay. What was the -- I'm sorry.
23 Strike that. Is it fair to say that the first
24 agreement, Exhibit No. 10, by that agreement Raintree
25 assigned to AquaSource its right to receive

1 connection fees and AquaSource agreed to construct
2 sewer lines?

3 A. Which one is 10? Is this 10?

4 Q. Ten is the original agreement from 1999.

5 A. The settlement agreement or the original
6 agreement?

7 Q. The original agreement.

8 A. Okay. You're referring to the one in
9 2001 or the one here in --

10 Q. I'm referring to the one from 1999.

11 A. Okay. There we go.

12 Q. And by that agreement Raintree assigned
13 to AquaSource its right to receive connection fees
14 and AquaSource agreed to construct sewer lines?

15 A. That's correct.

16 Q. Okay. And then the next document was to
17 resolve disputes that arose out of that contract?

18 A. Okay, yes.

19 MR. KRUEGER: Okay. I'd offer Exhibit
20 11, your Honor.

21 JUDGE STEARLEY: Are there any
22 objections to the admission of Exhibit No. 11?

23 MR. ENGLAND: No objection.

24 JUDGE STEARLEY: All right. Then
25 Exhibit No. 11 will be received and admitted into

1 evidence.

2 (EXHIBIT NO. 11 WAS RECEIVED INTO
3 EVIDENCE AND MADE A PART OF THE RECORD.)

4 MR. KRUEGER: I'd like to have one more
5 exhibit marked, your Honor.

6 (EXHIBIT NO. 12 WAS MARKED FOR
7 IDENTIFICATION BY THE COURT REPORTER.)

8 MR. KRUEGER: May I approach, your
9 Honor?

10 JUDGE STEARLEY: Yes, you may.

11 BY MR. KRUEGER:

12 Q. I'll show you now a document that's been
13 marked for identification as Exhibit 12 and ask if
14 you can identify that document?

15 A. That's the intrastate exemption
16 agreement.

17 Q. Okay. That copy is unsigned, correct?

18 A. That's correct.

19 Q. Can you tell me what -- how that
20 agreement was used?

21 A. How the agreement was used? Well, it
22 was used -- let's see. That's going back a ways.
23 That was a disclosure statement to the customers at
24 Raintree when they purchased.

25 Q. Okay. And was that made a part of every

1 transaction?

2 A. It was, yes.

3 Q. Okay. And so for every sale of a lot,
4 that document was signed?

5 A. That's correct.

6 Q. By both Raintree and the buyer?

7 A. That's correct.

8 Q. And calling your attention now to the
9 underlying language there at the bottom, that
10 provides for the payment of a \$300 connection fee for
11 water service and \$700 connection fee for sewer
12 service, correct?

13 A. 700 for sewer, 300 for water, right.

14 MR. KRUEGER: I'd offer Exhibit 12, your
15 Honor.

16 JUDGE STEARLEY: Is there any objection
17 to the admission of Exhibit No. 12?

18 MR. ENGLAND: No objection.

19 JUDGE STEARLEY: Okay. It will be
20 received into evidence, then.

21 (EXHIBIT NO. 12 WAS RECEIVED INTO
22 EVIDENCE AND MADE A PART OF THE RECORD.)

23 BY MR. KRUEGER:

24 Q. All right. Do you have any financial
25 interest in EMC?

1 A. EMC?

2 Q. In EMC, correct.

3 A. No.

4 Q. Will you have any financial interest in
5 EMC after this transaction is completed?

6 A. No.

7 Q. Do you believe that the initial
8 investment in the distribution mains that were
9 installed by Raintree development has been paid for
10 by the connection fees collected from the current 680
11 customers?

12 A. Has -- what I'm saying is -- are you
13 asking, have --

14 Q. I'm asking has Raintree collected its
15 initial investment in the distribution mains that
16 were installed by Raintree development --

17 A. No.

18 Q. -- through these connection fees?

19 A. Portions of it, not all of it, no.

20 Q. Okay. About how much of it has been
21 collected, do you know?

22 A. Well, it would be \$1,100 per lot that's
23 been sold so far -- or that's been connected to.

24 Q. Okay. As a percentage of the total
25 investment, would you be able to make an estimate?

1 A. For Raintree Plantation, I think it's a
2 little over 4 million and I don't know, there's been
3 about -- I don't know for expenditures and so forth,
4 back to the utility company, about 1.6, 1.7 million,
5 something like that. So you add those two together,
6 total about 5.7, something like that.

7 Q. That's the investment or that's what
8 you've collected?

9 A. No, no, no. That's the -- that's the
10 amount we've invested in the plant, sewer lines and
11 everything, waterlines in Raintree, and the other
12 part is operation cost, so forth in the utility
13 company.

14 Q. Do you know how much the investment is
15 in the distribution mains?

16 A. I haven't got that all broken down.

17 Q. Okay. Now, if the conditions in
18 paragraph 3 of Exhibit 8 are approved, that's the
19 agreement between Raintree and the sewer district?

20 A. Okay.

21 Q. If those conditions are approved, will
22 the lot owners -- will the lot owners have any
23 further obligation to make payments under this
24 intrastate exemption agreement other than as
25 specified in that -- in that agreement?

1 A. On the intrastate exemption, it says 300
2 and 700. This agreement says 1,100.

3 Q. Okay.

4 A. Okay?

5 Q. But paragraph 3 B of Exhibit 8 --

6 A. Okay.

7 Q. -- refers to payments of \$800 and \$550,
8 correct?

9 A. I'll find it in just a minute. Okay.
10 8, and you're on which paragraph?

11 Q. Paragraph 3 B.

12 A. 3 B. Okay. 800 and 550, correct.

13 Q. And if they pay that, they will not have
14 any obligation under the intrastate exemption
15 agreement?

16 A. That's right.

17 MR. KRUEGER: Okay. That's all the
18 questions I have, your Honor.

19 JUDGE STEARLEY: Thank you, Mr. Krueger.
20 Cross-examination by Raintree Plantation, Mr. Comley?
21 So there's no confusion, they're the Association.

22 CROSS-EXAMINATION BY MR. COMLEY:

23 Q. Mr. McClain, my name is Mark Comley. I
24 represent the Association in this matter.

25 A. All right.

1 Q. First question would be, if the
2 Commission decides not to approve the transaction
3 applied for in this case, what would the utility do?

4 A. Well, I don't know.

5 Q. Do you have any plans at all in the
6 event that the Commission denies the request in your
7 application?

8 A. I don't have any plans at this time. We
9 haven't really decided what to do with it yet.

10 Q. If the Commission decides not to approve
11 the transaction, you'll still be a regulated company,
12 won't you, correct?

13 A. Correct.

14 Q. And you'll still have an obligation to
15 provide water and sewer service to the residents in
16 the Association; is that correct?

17 A. That's correct, but which we probably
18 can't do, so I don't know where that's gonna leave
19 us.

20 Q. Has the company considered any form of
21 relief outside of the Commission if this transaction
22 should not go through?

23 A. Well, maybe the Commission would like to
24 run it. I guess, like I say, I don't know.

25 Q. So basically, you're telling us that

1 there has been no contingency plan in place or
2 considered by the company in the event the
3 transaction does not go through?

4 A. No.

5 Q. If the Commission does decide to approve
6 this transaction, when do you think the transaction
7 can close?

8 A. Whenever they say. Right away.

9 Q. Right away?

10 A. Uh-huh.

11 Q. Do you know of any serious or material
12 impediment -- and I know that's kind of a loaded
13 question -- but do you know of any serious or
14 material impediment to closing if the Commission
15 should approve this transaction?

16 A. No. I believe there's property issues
17 to straighten out, but, no. I mean, just lines and
18 surveying stuff and that's about it.

19 Q. Would it be fair to say that if the
20 Commission does approve this, you would expect to
21 close, say, within 30 to 45 days?

22 A. Yes.

23 Q. Mr. England, I think, gave you a copy of
24 Exhibit 2, the verified application in this case?

25 A. Exhibit 2?

1 Q. Yes.

2 A. All right.

3 Q. And I wanted to bring your attention to
4 the appendix on the application which is the
5 tri-party agreement.

6 A. Okay. Tri-party.

7 Q. Yes, and let's go to Exhibit A. It's
8 entitled "Legal description" in paragraph 1.

9 A. Okay. Where are you at now?

10 Q. Paragraph 1 of Exhibit A.

11 A. Okay.

12 Q. It talks about the water treatment plant
13 described in Exhibit No. 1. There's a statement
14 that, "Additional real property may need to be
15 acquired from Raintree Plantation Property Owners
16 Association for expansion of the wastewater treatment
17 plant."

18 A. Okay.

19 Q. Do you know the extent of the property
20 that will be needed for that capacity addition?

21 A. No, I can't tell you offhand. I know
22 there was -- we had to make a little space for a
23 place and an aerator under the plans that we had back
24 with DNR a couple of years ago, but I don't know if
25 they've modified it or what the heck -- what they

1 were gonna need, I don't know.

2 Q. You're referring to construction plans
3 that Central Jefferson County prepared two or three
4 years ago?

5 A. That's right.

6 Q. Would those be the plans, I think, that
7 were referred to by Mr. Thomas yesterday? I think
8 they were talking about a set of plans that were made
9 in connection with the construction permit by the
10 utility?

11 A. That's correct.

12 Q. Let's go to Exhibit G of the same
13 exhibit, Exhibit 2, the appendix of Exhibit 2. I've
14 had a series of questions about this exhibit, but
15 particularly paragraph 1.

16 A. I'm lost as to where you're at exactly.

17 Q. Okay. It's in the verified application
18 and its appendix is the tri-party agreement, and
19 Exhibit G --

20 A. Okay. Which page are you on?

21 Q. You know, they're not numbered,
22 Mr. McClain. I'm sorry.

23 A. Mine are.

24 Q. I would say it's the second to the last
25 page of the entire exhibit.

1 A. Okay. Second to the last page of the
2 entire exhibit. Okay. Oh, you're talking about the
3 title dispute part?

4 Q. Yes.

5 A. Yeah, okay, gotcha.

6 Q. And it says that "A dispute exists
7 between the utility company and the Raintree
8 Plantation Property Owners regarding the location of
9 existing and future water treatment facilities," and
10 I wanted to get to the bottom of this.

11 So far no one's been able to explain the
12 nature of the dispute. And I was going to check with
13 you today. Can you explain to me and the Commission
14 what that paragraph refers to?

15 A. I don't know.

16 Q. You do not know?

17 A. No. I don't know of really any disputes
18 right now.

19 Q. You don't know of any disputes right
20 now?

21 A. No.

22 Q. Okay. Do you know why that was inserted
23 in the agreement?

24 A. Lawyers need a little extra fees, I
25 guess, on it.

1 Q. That could be one explanation but I'm
2 not going to verify that in front of everyone anyway.
3 My understanding would be that based upon plans that
4 were prepared by a company engineer or a retained
5 engineer --

6 A. Uh-huh.

7 Q. -- there are locations set for the
8 capacity addition to the wastewater treatment plant?

9 A. That's correct.

10 Q. And also on those plans, did you
11 identify places for the storage tank and the pump
12 house that would be part of the water system
13 improvements?

14 A. Are you talking about a storage tank and
15 a well?

16 Q. I think -- well, I think it was a --
17 I've been knowing about a pump house. Perhaps a
18 well?

19 A. See, I'm not really familiar with any
20 storage tank or well that they've presented. We
21 only -- the only plans we ever submitted to DNR were
22 on the treatment plant.

23 Q. Very well. Then, do you know, has there
24 been any discussion between you, the district and EMC
25 respecting the location of the water storage tank?

1 A. Not between me, no.

2 Q. In Article 5 of the same agreement we're
3 working on, let's go to Article 5, the appendix, and
4 I think I do have a page number for that for you. It
5 would be page 7 of the appendix under -- it's
6 paragraph 5.1, subparagraph lettered i. It says,
7 "Central Jefferson and EMC shall have agreed on a
8 satisfactory resolution of a dispute between Central
9 Jefferson and AquaSource."

10 A. Right.

11 Q. Can you tell me what dispute between
12 Central Jefferson and AquaSource that paragraph is
13 referring to?

14 A. We had a dispute with AquaSource. They
15 were to install the water mains -- or the sewer
16 mains, I'm sorry. And there was a dispute between
17 who paid for the engineering.

18 Q. Has that dispute been resolved yet?

19 A. No.

20 Q. As I recall that's also referred to in
21 Exhibit 8, the agreement about the service fees?

22 A. Eight. Exhibit 8, okay.

23 Q. I don't have a copy of that in front of
24 me. Do you have a copy of that in front of you?

25 A. Okay.

1 Q. In paragraph 2 of Exhibit 8, let me
2 direct your attention to that paragraph.

3 A. Yes.

4 Q. Does that describe the dispute that's
5 also referred in paragraph 5.1, subparagraph i of the
6 tri-party agreement?

7 A. Yes.

8 Q. Do you know if that dispute is beginning
9 to resolve and do you have an idea of when it might
10 resolve?

11 A. No, I don't have any idea.

12 Q. It is a condition upon the closing?

13 A. Yes.

14 Q. Mr. Krueger asked you a question about
15 the number of lots that still may be in the name of
16 the developer, Raintree, Inc.

17 A. That's correct.

18 Q. And you said around 30, was that
19 correct?

20 A. I believe that's about what it is.

21 Q. Did Central Jefferson County perform any
22 infiltration and inflow studies with respect to the
23 system?

24 A. I believe Roger Phibbs did a little
25 preliminary study about six, eight months ago,

1 something like that.

2 Q. Did you get a copy of that study, are
3 you familiar with its findings?

4 A. No, I didn't have a copy of it, just
5 that he and I -- what we talked about was all.

6 Q. Did the company undertake any
7 improvements to the collection system or to the
8 manholes as a consequence of that infiltration and
9 inflow study?

10 A. I believe he started on a few things,
11 leaking manhole lids, stuff like that, just patching
12 here and there, that kind of stuff, yeah.

13 Q. Do you know whether that maintenance was
14 completed?

15 A. Not the entire thing, no.

16 Q. So the entirety of the maintenance on
17 the manholes and the leaking manholes was not
18 completed?

19 A. No.

20 Q. Do you know if any other infiltration
21 and inflow study will be done by EMC or perhaps by
22 the utility company in advance of closing on this
23 transaction?

24 A. I don't know what they're gonna do with
25 that.

1 Q. Do you know when the gravity lines in
2 the system were last inspected?

3 A. You're talking about the entire system?

4 Q. Yes.

5 A. No.

6 Q. There has not been any recent study?

7 A. No. I haven't -- no, there's been no
8 recent studies other than just in-house that the
9 plant manager did himself, that was it.

10 Q. Did he keep records of that study?
11 Would there have been a camera study, perhaps, of
12 each line?

13 A. I believe that was just visual
14 inspections.

15 Q. Visual?

16 A. (Nodded head.)

17 Q. Records -- are there records of that
18 study?

19 A. You'd have to talk to Mr. Phibbs about
20 that. I didn't -- I don't have the records. He
21 might have some notes himself.

22 MR. COMLEY: Your Honor, I think I'm
23 nearly through but I wanted to visit with the
24 president of the board a minute. Could I take just a
25 second to do that?

1 JUDGE STEARLEY: Certainly.

2 MR. COMLEY: I have no other questions.

3 JUDGE STEARLEY: Thank you, Mr. Comley.

4 Cross-examination by Department of Natural Resources,
5 Mr. Schmid?

6 CROSS-EXAMINATION BY MR. SCHMID:

7 Q. Mr. McClain, how many lots do you
8 personally own in the Raintree Subdivision?

9 A. I don't believe I personally own
10 anything. It's owned by the corporation.

11 Q. Okay. How many lots does Raintree own,
12 Raintree Plantation, Incorporated own?

13 A. I don't know, offhand. I think it's
14 around the 30 mark, I don't know. I haven't tallied
15 that up in a long time.

16 Q. Does Central Jefferson County Utilities
17 own any lots?

18 A. No.

19 Q. I want to get back to the \$1,100 fee.
20 You call it a lot fee, correct?

21 A. Correct.

22 Q. I'll try to use that terminology so
23 we're on the same page. Can you explain what is that
24 lot fee for?

25 A. It's to help Raintree reimburse some of

1 its primary construction cost and monies that it
2 advanced or that -- or we use to help support Central
3 Jefferson County Utilities in the last 20, 25 years.

4 Q. Okay. Do you have Exhibit 12 in front
5 of you? It's the intrastate exemption statement.

6 A. Okay. What did I do with that? Yes.

7 Q. And if you look at that sentence that is
8 underlined, only part of it's been underlined, but
9 can you just read that sentence for us? It starts
10 with "Water and sewer service."

11 A. Okay. "Water and sewer service and
12 pipes laid in easements or in the streets will be
13 furnished by Central Jefferson County Utilities. A
14 connection fee of 700 for the sewer and water and 300
15 for the water must be paid to Raintree Plantation
16 prior to commencing construction of any home."

17 Q. Okay. So based on that language, the
18 expenses of \$700 for sewer and \$300 for water, that
19 was for infrastructure for physically laying pipe,
20 correct?

21 A. Seems to read that way but that fee was
22 actually to recoup all expenses with the system:
23 Treatment plants, wells, everything.

24 Q. Who physically laid the lines in the
25 Raintree Subdivision?

1 A. Different contractors.

2 Q. In looking at this Exhibit 12, it seems
3 to -- it doesn't seem to, it says that, "The pipes
4 shall be furnished by Central Jefferson County
5 Utilities," correct?

6 A. Pipes furnished by... I don't know where
7 you're at exactly.

8 Q. That same sentence we just read.

9 A. Okay. "Water and sewer service end
10 pipes laid in easements..."

11 Q. Okay. Keep going.

12 A. Okay. "... or in the streets will be
13 furnished by Central Jefferson County Utilities."

14 Q. So it's Central Jefferson County
15 Utilities who has incurred the expense of laying the
16 pipes?

17 A. No, it was the developer.

18 Q. So Central Jefferson County Utilities --
19 but Central Jefferson County Utilities owns the
20 pipes, correct?

21 A. Pardon me?

22 Q. Central Jefferson County Utilities owns
23 the pipes?

24 A. Yes, it's later dedicated by the
25 developer to the utility company. That's the way

1 they all work, really.

2 Q. Okay. So then Raintree Plantation, Inc.
3 gave the pipes to Central Jefferson County Utilities
4 for free?

5 A. Right.

6 Q. When Raintree Plantation, Inc. sold the
7 lots, did you anticipate that people would build
8 homes on those lots?

9 A. Eventually, yes.

10 Q. Okay. And how many lots --
11 approximately how many lots were sold?

12 A. I think there's about 3,000 -- a little
13 over 3,000.

14 Q. Okay. So you anticipated that there
15 could be potentially 3,000 homes in change,
16 basically?

17 A. Correct.

18 Q. Okay. When was the wastewater treatment
19 facility last upgraded?

20 A. I don't know, six, eight years ago, I
21 guess. Something like that.

22 Q. When -- and do you know what the
23 capacity -- how many homes that facility can serve?

24 A. We were projecting the growth on
25 Raintree at that time to be about 30 homes a year, so

1 that should have taken us up to about 2010, and we
2 got caught in a building boom and it almost tripled
3 for a couple of years, roughly. It went from 30 to
4 around 100.

5 Q. But you had sold all of the lots so you
6 anticipated that there would be future growth? I
7 just want to make that clear.

8 A. That would be future growth, right.

9 Q. Okay. And did you think that the
10 current wastewater treatment facility could
11 adequately handle the wastewater produced by this
12 future growth?

13 A. No, it has to be added onto.

14 Q. Okay. And so you eventually knew that
15 this -- that the current wastewater treatment
16 facility would need to be upgraded to handle the
17 additional capacity requirements by the lots that you
18 sold?

19 A. That's correct.

20 Q. Okay. Since the last time it was up --
21 since the last time the wastewater treatment facility
22 was upgraded, how much money has Central Jefferson
23 County Utilities put aside for the future capital
24 improvements like expanding the wastewater treatment
25 facility?

1 A. Zero. There's nothing to put aside.

2 Q. I want to turn to Exhibit 8 for a
3 moment, the sewer and water service fee agreement.

4 A. Okay.

5 Q. In this agreement did Raintree
6 Plantation, Inc. assign to the Jefferson County
7 Public Sewer District the right to collect the full
8 \$1,100 in fees?

9 A. Correct.

10 Q. Okay. So it's your understanding by
11 this agreement on page 2, subparagraph B, that the
12 sewer district has a right to collect the full 1,100
13 and only send \$800 back to Raintree until some
14 conditions are met at which time it goes down to 550?

15 A. That's right, and then there's a 15-year
16 sunset clause, I believe.

17 Q. Okay. So the district has the right to
18 those fees from 1,100 -- well, initially 300 and then
19 \$550?

20 A. Right.

21 Q. Okay. In paragraph 4 on page 3 of
22 Exhibit 8 --

23 A. Paragraph 4, okay.

24 Q. -- has -- well, let's start over. On
25 subparagraph E, has Raintree, Incorporated incurred

1 attorney's fees to responding to state and federal
2 investigations?

3 A. Yes.

4 Q. And are some of the costs involved there
5 in reference in subparagraph E included in
6 subparagraph F?

7 A. Yes, probably.

8 Q. And do you know, when we talk about
9 subparagraph F, there's \$65,000 in attorney's fees.
10 Are those fees that were incurred responding to
11 allegations that -- allegations that -- by DNR that
12 the facility has violated the State's environmental
13 statutes?

14 A. I really don't know. I don't really
15 have the breakdown on that fee. I don't know exactly
16 what all's in that fee, to tell you the truth. I
17 mean, I couldn't really say. It might be but I don't
18 know for sure.

19 Q. Just so we're clear, Raintree's the
20 developer, correct?

21 A. That's correct.

22 Q. Okay. So Raintree Plantation, Inc. is
23 not the owner and operator of the treatment facility?

24 A. No.

25 Q. The Department of Natural Resources has

1 never alleged that Raintree Plantation, Inc. has
2 violated the environmental statutes?

3 A. I don't know. I don't believe so. I
4 think it was Central Jefferson County Utilities,
5 that's right.

6 Q. So then there really is -- there
7 shouldn't be any fees from Raintree for responding to
8 DNR investigations.

9 A. Yes, but Central Jefferson County
10 doesn't have any money. Raintree helped with some of
11 it.

12 Q. So it was a loan, then, from Raintree to
13 Central Jefferson?

14 A. Another expenditure. Like I said, we
15 have years of expenditures of helping Central
16 Jefferson out.

17 Q. Shouldn't the funds, then, go to Central
18 Jefferson County Utilities to repay Raintree for the
19 loan?

20 A. Pardon me?

21 Q. Shouldn't any funds go to Central
22 Jefferson County Utilities to repay Raintree for the
23 loans?

24 A. I can't answer that question.

25 Q. Why not?

1 A. I just can't. I don't know the answer
2 to it. I'd have to think that one over.

3 Q. Do you need a minute?

4 A. I don't know what to say. I mean, I
5 don't know how to answer the question for you. I
6 mean, I'm kind of getting lost in what you're saying.

7 MR. ENGLAND: Your Honor, the witness
8 has answered the question, he doesn't know. My
9 objection is I think that line of inquiry should come
10 to an end, badgering him.

11 JUDGE STEARLEY: Please move on,
12 Mr. Schmid.

13 MS. SCHMID: Will do.

14 BY MR. SCHMID:

15 Q. Has Central Jefferson County Utilities
16 been issued any notices of violations by the
17 Department of Natural Resources?

18 A. Yes.

19 Q. Do you offhand know how many?

20 A. No.

21 Q. Okay. Turning to Exhibit 10, please,
22 the agreement between Raintree Plantation and
23 AquaSource. I just want to make sure I'm clear on
24 the substance of this. I'll wait until you have it.

25 A. That's the settlement agreement you're

1 talking about?

2 Q. 10 is the agreement, Exhibit 11's the
3 settlement agreement. 10 is the one dated June -- it
4 looks like 17th, 1999.

5 A. Okay. Yeah, looks like June -- like
6 17th or something like that -- 12, something like
7 that, okay.

8 Q. I just want to make sure we're looking
9 at the same document. Does this document give
10 AquaSource the right to collect all outstanding lot
11 fees of \$1,100 for all remaining lots in the
12 subdivision?

13 A. No, just for the lots that they're
14 supplying sewer service to.

15 Q. Okay. So it was just the specific lots
16 referenced --

17 A. Right.

18 Q. -- here? Okay. So then -- strike that
19 question.

20 MR. SCHMID: I have no further
21 questions.

22 JUDGE STEARLEY: Thank you, Mr. Schmid.
23 Cross-examination by Office of Public Counsel,
24 Ms. Baker?

25 MS. BAKER: Thank you.

1 CROSS-EXAMINATION BY MS. BAKER:

2 Q. My name is Christina Baker and I'm from
3 the Office of Public Counsel.

4 A. My pleasure.

5 Q. I would like to begin with a question
6 about the sewer moratorium that was put on by the
7 Environmental Protection Agency.

8 A. Yes, ma'am.

9 Q. When exactly was that moratorium put
10 into effect approximately?

11 A. I don't know for sure. A couple --

12 Q. A number of years ago?

13 A. Yeah.

14 Q. Okay. All right. What has Central
15 Jefferson done to attempt to lift that sewer
16 moratorium?

17 A. Well, Central Jefferson County, since
18 1999 -- and I had a timeline or something on that --
19 but has been attempting to either sell or improve the
20 system since 1999.

21 Q. What type of improvements have you
22 attempted to do?

23 A. Well, the first thing was with the
24 AquaSource, and then we went to several other
25 companies and tried to make sales to those people to

1 try to upgrade the system. I had talked to the City
2 of Hillsboro. City of Hillsboro would take the
3 system but they'd have to be able to annex the entire
4 Raintree Plantation project in, and I don't think the
5 Raintree property owners wanted to do that.

6 Let's see. I met with a couple of
7 developers that were wanting to take the system over
8 to try it get the thing moving. I met with the
9 property owners, offered to give it to them two years
10 ago and tried to help them straighten it out, give
11 them control and they could make their own agreements
12 up with anybody.

13 Went down to DNR several times with --
14 well, actually started about three years ago and I
15 went with a plant expansion improvement at that time.
16 I met with a guy named Tom Siegel along with my
17 engineer. We laid out a set of plans and
18 specifications for a treatment plant, paid them the
19 permit fees and that type of stuff, and I was frankly
20 told by Mr. Siegel to come back in and see me in
21 about a year and a half and they might have an answer
22 for you then, that they were behind on the time, and
23 we'd start talking about it then.

24 They needed about a year before they
25 could start reviewing, about six months for review.

1 Came back in about a year and a half and they still
2 hadn't done -- there was a state representative,
3 Belinda Harris and I and the engineer, and the roads
4 and several of the other DNR officials met again to
5 try to get it on track. Belinda Harris was a big
6 help on that.

7 Q. Okay. I'm going to interrupt you in the
8 timeline, but you did receive a construction permit?

9 A. That's correct.

10 Q. And that construction permit was good
11 for how long?

12 A. Six months.

13 Q. Has the construction permit expired at
14 this time?

15 A. Oh, yes.

16 Q. Is that the -- the basis that was given
17 to EMC?

18 A. That's correct.

19 Q. Okay. What has Central Jefferson done
20 to deal with the excess lead issue in well No. 1?

21 A. Well, it's kind of a funny question.
22 Excess -- we're still -- the wells, as far as I know,
23 and I don't have all test results in front of me, I
24 believe DNR sets an upper limit on lead of about like
25 15 parts -- or I guess it would be the lower limit --

1 15 parts per million.

2 And I believe all the wells actually --
3 both wells actually have some lead in them, but well
4 No. 1, I believe, was a little higher than well
5 No. 2. So we utilized well No. 2 all the time. The
6 only time that well No. 1 comes on line is if we have
7 a water -- we have more demand on the system. And
8 then that's taken to a tank -- both wells are fed
9 into a tank and those are mixed.

10 Q. Okay. I'm going to give you a document
11 which I -- I supplied yesterday. It was marked as
12 Exhibit No. 9 yesterday.

13 A. Oh, boy. Another exhibit. See, I was
14 getting confused. A couple of these don't have any
15 exhibit numbers.

16 Q. Can you take a look at this letter and
17 see who it was sent to, who it was sent from? Do you
18 recognize --

19 A. Looks like Mr. Martin Toma.

20 Q. Okay. And who is -- who is -- or what
21 is the company name underneath?

22 A. Central Jefferson County Utilities.

23 Q. Okay. So you recognize this letter as a
24 letter that's come from Department of Natural
25 Resources to the Central Jefferson County Utilities?

1 A. Looks like a letter from the Department
2 of Natural Resources.

3 Q. To Central Jefferson County Utilities?

4 A. That's correct.

5 MS. BAKER: Okay. At this point I'd
6 like to go ahead and enter that as Exhibit No. 9.

7 JUDGE STEARLEY: Any objection to the
8 admission of Exhibit No. 9?

9 MR. ENGLAND: We have no objection, as I
10 said yesterday, to the contents of the letter. It is
11 what it is, we provided it in discovery. As I said,
12 if the intent is to try to show that Mr. Toma was an
13 employee of Central Jefferson County as of the date
14 of that letter, I believe his testimony is contrary
15 to that, so that would be my limited objection.

16 JUDGE STEARLEY: All right. Well, we
17 shall go ahead and receive and admit the document as
18 Exhibit No. 9, and you can renew any objection you
19 might have to the purposes that Ms. Baker may try to
20 use the exhibit for.

21 MR. ENGLAND: Thank you.

22 MS. BAKER: Thank you.

23 (EXHIBIT NO. 9 WAS RECEIVED INTO
24 EVIDENCE AND MADE A PART OF THE RECORD.)

25 BY MS. BAKER:

1 Q. Go ahead and take a look at the letter
2 and the attachments that go with the letter,
3 especially note the last page. Is that a notice that
4 Central Jefferson has given to the customers
5 regarding the plan that you just laid out on how to
6 deal with the lead issue with well No. 1?

7 A. Yes.

8 Q. Okay. Did you also prepare a plan on
9 what Central Jefferson County Utilities would do if
10 well No. 2 were to go offline and well No. 1 would be
11 the only well that was available?

12 A. That was the -- the plan was actually
13 moved without Mr. Siegel. I don't -- about a year
14 ago, I believe.

15 Q. And what plan was that?

16 A. Well, just if we -- if No. -- let's see,
17 which one had the -- lead No. 1 had the well -- or
18 well No. 1 has the lead?

19 Q. It's my understanding that well No. 1 --

20 A. Yeah, No. 1. If No. 2 does go offline,
21 then they have -- there's supposed to be notice sent
22 out, signed in front of Raintree and however they
23 notify the people. If it goes out, not to drink the
24 water. It's usable, just not to drink it.

25 Q. Have there been any outages on well

1 No. 2?

2 A. I don't know offhand. Roger Phibbs
3 handled that.

4 Q. Okay. Are you-all aware that some of
5 the customers there at Central Jefferson have been
6 having to clean out their own sewer boxes?

7 A. I've heard about that, yeah.

8 Q. Are you aware of EMC dealing with that
9 issue?

10 A. Yes, ma'am, I think EMC was notified
11 about the situation and I think they've been working
12 to correct the problem.

13 Q. Do you know if they have completed that
14 correction?

15 A. No, I haven't gotten any reports back
16 from them. They normally send me a monthly report
17 and I haven't really gotten anything back.

18 Q. There's been some mention of the
19 agreement with AquaSource and -- that there was a
20 settlement which was given in Exhibit No. 11.

21 A. Uh-huh.

22 Q. Then you stated that there was an
23 ongoing disagreement with AquaSource?

24 A. Uh-huh.

25 Q. What is the difference between those two

1 issues?

2 A. That's -- that is it, we're just
3 disputing over the engineering and the fees. It was
4 thought that they were supposed to put it all -- take
5 care -- play (sic) the engineering, pay the fees into
6 the Department of Natural Resources, and their
7 contention is we were just to install the lines, that
8 we were supposed to -- that's the only dispute we
9 really have.

10 Q. So the settlement that is Exhibit
11 No. 11, in your opinion, does not settle the issue;
12 there are still questions remaining, correct?

13 A. We have -- yes, we have disputes with
14 AquaSource but that's our problem.

15 Q. Okay. And so isn't it true that if the
16 transfer does not go through, that Central Jefferson
17 will remain liable for all the environmental
18 regulations and violations that will come?

19 A. Uh-huh.

20 Q. Does Central Jefferson have any plans on
21 how they would meet that liability if the transfer
22 does not go through?

23 A. Well, in the first place, we don't
24 contend that there are any violations. I mean,
25 we're -- totally disagreement (sic) with you-all.

1 Q. Do you have a plan to keep the system in
2 a nonviolation status?

3 A. The system really isn't in any violation
4 right now. And what we've been doing -- by not
5 adding on any more customers and so forth, and with
6 the mixing in the sewers, we're actually well below
7 the minimum standards that are required.

8 I mean, I think your BOD's and all the
9 other formulas like that are like 15 parts per
10 million, will run around the six, seven. Acidity is
11 running around the seven mark, six mark. I mean,
12 we're well below the standards. Suspended solids is
13 well below what's allowed for discharge. I mean, the
14 plant -- the only time we have any problem with the
15 plant is during acts of God when we get flooding
16 conditions.

17 Q. How often do you have to truck out
18 sewage?

19 A. I don't know that offhand. Roger Phibbs
20 actually handles that. I think he told me, but I
21 don't recall and I don't -- wasn't clear on how much
22 he has to haul out.

23 Q. But you are aware that sewage is being
24 trucked out?

25 A. Not sewage. Sludge.

1 Q. Sludge. That sludge is being trucked
2 out?

3 A. That's normal operations. That's normal
4 for every plant, every system.

5 Q. All right. Let's go to Exhibit 8 which
6 is the sewer district Raintree Plantation,
7 Inc. agreement, and Mr. Schmid, from Department of
8 Natural Resources had you look at -- on page 3,
9 No. 4, the expenses of Raintree, Exhibit 8, sewer and
10 water service fee agreement.

11 A. Is that the June 17th or whatever it is?

12 Q. It is the agreement between Raintree
13 Plantation, Inc., and Jefferson County Sewer
14 District. It has a 13th of July, 2006 date written
15 in.

16 A. Now I'm lost in here.

17 MS. BAKER: May I approach?

18 THE WITNESS: Now, are you referring to
19 the tri-party agreement?

20 MS. BAKER: No, no.

21 JUDGE STEARLEY: Yes, you may.

22 THE WITNESS: Thank you. I appreciate
23 that.

24 BY MS. BAKER:

25 Q. It's the one that looks like that.

1 A. This one?

2 Q. Yeah.

3 A. Okay. Thank you. Appreciate that.

4 Q. And so again, let's go to page 3, No. 4.

5 So these are -- it's your understanding that this is

6 a list of expenses that Raintree has and will incur

7 that will be --

8 A. On behalf of Central Jefferson County

9 Utilities, right.

10 Q. Okay.

11 A. Uh-huh.

12 Q. It's your understanding that any cost

13 that fits within these -- within paragraph No. 4 --

14 A. Uh-huh.

15 Q. -- will be included in the \$800-per-lot

16 fee?

17 A. Uh-huh, yes, ma'am.

18 Q. Do you have any agreements or any

19 documentation that says how you will dispute these --

20 these expenses if the sewer district comes back and

21 denies some of them?

22 A. I don't know if that's covered.

23 Q. Okay.

24 A. Don't recall offhand.

25 Q. All right. You had also said that you

1 were paying money on behalf of -- or that Raintree
2 Plantation, Inc. was paying money on behalf of
3 Central Jefferson County Utilities.

4 A. Uh-huh.

5 Q. Do you have any formal agreements
6 regarding any of the money that's been moved between
7 Raintree Plantation, Inc. and Central Jefferson?

8 A. I don't know if any exists or not,
9 ma'am.

10 Q. Okay. So is it your understanding that
11 all of the agreements regarding the transfer of the
12 utility have been finalized, all rights, all
13 agreements have been finalized?

14 A. Finalized or in final form? I mean, we
15 haven't --

16 Q. Finalized, I mean by signed, final.

17 A. As far as I know, yeah.

18 Q. And that includes the issue with
19 AquaSource, has that been finalized?

20 A. I'm not sure.

21 Q. Has Central Jefferson been collecting
22 water and sewer payments from customers?

23 A. Yes.

24 Q. Where has the money been going?

25 A. To pay expenses and to AquaSource -- or

1 I'm sorry, to EMC -- too many companies over the
2 years. I'm sorry.

3 MS. BAKER: I believe that's all the
4 questions I have.

5 JUDGE STEARLEY: All right. Thank you,
6 Ms. Baker. We will begin with some questions from
7 the bench. Chairman -- Mr. Davis will be down
8 shortly so if he's not down by the time the other
9 Commissioners have finished asking their questions,
10 we'll take a short break at that time until he can be
11 with us.

12 THE WITNESS: Appreciate that.

13 JUDGE STEARLEY: We'll start with
14 Commissioner Gaw.

15 COMMISSIONER GAW: I'll pass for now.

16 JUDGE STEARLEY: All right.
17 Commissioner Appling, any questions?

18 COMMISSIONER APPLING: Judge, I don't
19 have a lot of questions that I can come up with and
20 ask a lot of questions that you probably don't know,
21 whatever the case is, but I would like to kind of
22 make a statement here if that's allowed.

23 QUESTIONS BY COMMISSIONER APPLING:

24 Q. We have a pretty good ways to go in this
25 agreement to get it signed, sir, and get it

1 finalized. I truly would, for the benefit of the
2 Association and the people that have the houses in
3 this location, I really would like to see this
4 project go forward.

5 A. Well, I would too, sir.

6 Q. So my question this morning is a couple
7 of things. I'm a little concerned about the lead.
8 Can you tell me what's the distance between the two
9 wells, well 1 and well 2?

10 A. You mean physical distance?

11 Q. Physical distance.

12 A. I guess it's about, I'd say it
13 approaches a mile.

14 Q. A mile from each other?

15 A. Yes, sir.

16 Q. Okay. Is there a major concern that the
17 lead content will increase on well 1?

18 A. You mean is it being used more, is my
19 understanding, from usage?

20 Q. Uh-huh.

21 A. There's always that possibility, yes,
22 sir.

23 Q. Okay. Do you have any other concessions
24 other than what has already been agreed to or at
25 least put on paper that you could agree to later on

1 that would give this project a better chance to move
2 forward, or have you made all the concession that you
3 feel you need to make or can afford to make?

4 A. What I've expressed before is when I
5 had -- my father died three years -- three years ago.

6 Q. All right.

7 A. And before that time, if he'd have still
8 been alive, we'd have had this thing done by now. We
9 wound up -- and it's still going -- an ongoing fight
10 with heirs, their wives, all kinds of stuff in his
11 estate.

12 Q. Uh-huh.

13 A. I've attempted in the last several
14 years, to the best of my ability as president, to try
15 to get everybody together and this is the best I can
16 come up with. If -- go back and asking for more, I'm
17 a 30 percent stockholder, I don't have control. If I
18 had 66 percent, maybe.

19 But I'm dealing, like I said, with a
20 nasty trust attorney and a bunch of heirs that are
21 very hard to deal with. And as I said, I have no
22 final say on anything. Anything can be proposed, but
23 what I've come up against, I don't think so.

24 Q. Okay. Well, sooner or later I'm gonna
25 have to be one of the parties to render a decision

1 here --

2 A. I fully understand, sir.

3 Q. -- and I'm trying to get comfortable
4 enough to render that decision. I am concerned about
5 the Association and the people that have their homes
6 there, and specifically a person that has built a
7 home and don't even have it hooked up at this stage
8 of the game --

9 A. That's correct.

10 Q. -- and that to me just sounds very
11 unfair.

12 A. That is.

13 Q. And also to me it sounds very unfair
14 that there's other people own homes, there are lots
15 of them want to build homes and can't do that.

16 A. Correct.

17 Q. So I'm stretching here. I'm really
18 trying to get my arms around how we can figure out
19 how to move this project forward even though there's
20 a lot of questions, there's gonna be a lot of other
21 questions asked, and try to answer here today. But
22 we need to try to move to a level that we can see
23 this project go forward if we can. I really would
24 like to see that.

25 A. I went back to Public Service two years

1 ago for rate increases to expand it. The problems I
2 ran into with the estate is that, frankly, they don't
3 have to put any money into it.

4 Q. Uh-huh.

5 A. For a while after he had died I could
6 have probably done it, but the -- Lewis & Rice are
7 the trustees. I went back to Public Service and I
8 said, "Look, guys, I've got a problem. I have to be
9 able to show the estate that if they invest money in
10 this project, they'll get a return or they'll get
11 their investment back."

12 Don't know how trusts work exactly, but
13 they said, "You have to come back with a number to
14 us. If you can get Public Service to give us a rate
15 tap-on fee or show some ability to be able to repay
16 this money, we may consider going along with it."

17 Public Service also, at the same time --
18 I said, well, I was going to borrow the money. I
19 took it back to the banks and I'm on a board of
20 directors at the bank so I have a little bit of a
21 problem that I have to disclose everything.

22 The bank said -- they asked for the
23 20-year operating statement -- or 20 years of income
24 tax returns on Central Jefferson County Utilities.
25 The 20-year operating statement showed -- tax

1 returns, that is -- showed about a \$1.6 million loss
2 in 20 years of which in the last 12 years, I think a
3 little over 100,000 of it was paid to fees in the
4 Public Service.

5 They said, "If you can get -- if you can
6 show us a way to repay this, we'll go along with it."
7 I went to the Public Service on two occasions, asked
8 for rate increases or possibly tap-on fees to help
9 with this, and declined. Like I said, with no --
10 they said "Build it and we'll talk about rates,"
11 which I understand is the procedure. But I ran into
12 this problem with the trust and with the bank that
13 said, "You show us the rates or somehow ability to
14 repay this first and then we'll make you a loan, or
15 we'll advance money to it." That's where I'm at.

16 Couldn't get any rate commitments from
17 Public Service, banks said no, trust said no. So I'm
18 sitting right here.

19 Q. So this morning you feel that you have
20 negotiated?

21 A. I'm negotiated out.

22 Q. You're eventually getting closer.

23 A. Yes, sir, I'm telling you I am. I have.
24 I've done the best I can with it.

25 Q. Get closer to the mic.

1 A. I've done the best I can with it. I'm
2 sorry.

3 Q. Okay.

4 A. My abilities -- I'm sorry. Sorry my
5 abilities aren't better, but that's it.

6 COMMISSIONER APPLING: Thank you very
7 much, sir.

8 THE WITNESS: Thank you very much.

9 JUDGE STEARLEY: Commissioner Gaw?

10 QUESTIONS BY COMMISSIONER GAW:

11 Q. Mr. McClain, I'd like to explore this
12 just a little bit more, if you don't mind.

13 A. Where are you at?

14 Q. I'm sorry.

15 A. I have to put my long-distance glasses
16 on for you now.

17 Q. That's fine. I've got the opposite
18 problem. I've got to have things now for this
19 close-up work. I don't know what happened to that.
20 I didn't used to have that problem. Doesn't have
21 anything to do with age or something, I don't know.

22 A. Well, I've been having a lot of health
23 problems here in the last two years and I asked my
24 doctor what I would die of and he said probably not
25 old age.

1 Q. Well, I'm sorry, I think, but I'm not
2 sure what that all means. Let me -- clear this up
3 for me on this ownership. The company, how is it
4 split up on ownership?

5 A. A third, third and a third.

6 Q. Okay. And give me the -- how is it
7 held, those third interests? You own a third?

8 A. I own a third, my dad's trust owns a
9 third now.

10 Q. All right.

11 A. And Jerry Nixon.

12 Q. All right. So when you're trying to get
13 something done with this thing, you're having
14 difficulty with the trust, that third interest; is
15 that correct?

16 A. Yes, sir. That's the biggest problem.

17 Q. Okay.

18 A. Jerry's pretty well -- he'll go along
19 with anything, but the trust is the big one.

20 Q. Okay.

21 A. See, even though Jerry and I might agree
22 to anything right now --

23 Q. Yes?

24 A. -- the trust can deal us a real fit.

25 They can say --

1 Q. Explain that to me.

2 A. I mean, if we don't have -- on borrowing
3 money and so forth, if we don't have the full consent
4 of the votes, banks won't go along with it, and
5 frankly, the trust can tell us well, you guys can
6 borrow all you want but we're not gonna guarantee it,
7 we're not going to put any money into it, and if you
8 screw it up and give us any problems, we're coming
9 after you, so here we are.

10 Q. Is there -- is there written
11 documentation of this discussion that you've been
12 talking to us about? Have there been letters back
13 and forth and things of that sort?

14 A. I have a timeline and I have in a
15 timeline somewhere a couple of meetings that we've
16 actually had. Yes, Jerry Nixon and I, I think met
17 twice with Public Service in the last two years. And
18 I have the -- I have -- there were two requests, one
19 two years ago and one about a year ago or so. I
20 would need those timelines in order to -- to really
21 tell you anything about those.

22 Q. And in particular I'm talking about
23 your -- this dispute that you have with the trust --

24 A. Oh, right.

25 Q. -- itself. Are there letters back and

1 forth on that?

2 A. Yes.

3 Q. Other documents of that sort?

4 A. I recall seeing a couple letters come

5 through.

6 Q. The entity that we're dealing with here

7 is a corporation, correct?

8 A. C Corp., yes.

9 Q. Can you give me the officers off the top

10 of your head?

11 A. Well, there's only two of us right now,

12 Jerry Nixon and I.

13 Q. And the board?

14 A. Pardon me?

15 Q. The board of directors? Do you know?

16 A. Not offhand. There's only three of us.

17 Q. It's a matter of public record but is

18 there someone on the board that represents the trust?

19 A. Yes.

20 Q. Who is that?

21 A. A girl named Linda Els (phonetic spelling).

22 Q. And how is it that she holds that

23 capacity? What's her -- what's her relationship with

24 the trust?

25 A. She was my -- that's my father's niece.

1 Q. Okay.

2 A. She's tough.

3 Q. Who is the trustee for the trust?

4 A. She's actually the trustee and -- along
5 with Lewis & Rice.

6 Q. Is Lewis & Rice a cotrustee or are they
7 the attorneys representing --

8 A. I'm not a trustee. I'm not really a
9 party to it. I mean, this is -- I -- just all I know
10 is that I end up having to talk to them the biggest
11 part of the time.

12 Q. Okay.

13 A. I've had several meetings with -- Jerry
14 Nixon and I actually had a meeting with them and I'm
15 sure it's recorded somewhere. The written document
16 you're asking for, I think it came out of that
17 meeting, but they flat looked -- they told us what
18 the criteria was and we didn't meet it. They said
19 no.

20 Q. Okay. So you're telling us part of the
21 reason that you've had difficulty with investment has
22 to do with -- with the inability to borrow money when
23 you have a dispute within -- within the corporation
24 by the trust?

25 A. Yes.

1 Q. When was it that the company stopped
2 adding customers?

3 A. I believe it's about two years ago.

4 Q. Okay. Up to that point in time, was --
5 was there an issue in regard to adding customers to
6 your knowledge? Did that develop suddenly or
7 gradually?

8 A. It developed suddenly. We still do meet
9 water standards, or discharge standards. Our problem
10 came along with several floods that we had at the
11 plants, some six, eight-inch rains that came in and
12 flooded our plant.

13 And then DNR -- we went to DNR. We've
14 told them about -- we told these boys about that
15 three years ago, they knew about it, that we were
16 having problems with it. I went in and met with the
17 guys, laid the plans on the table and said, "Look, we
18 need to build this quick." And like I said, they
19 said, "Come back and see us in about 18 months, we
20 might be able to give you an answer."

21 I could have resolved the problem -- a
22 lot of the flooding problem right then and there.
23 All I needed to do was throw in a second clarifier.
24 And there was a guy named Guy LeVar who was our
25 engineer, and as we talked with the boys from DNR, I

1 said, "Look, okay, take a year and a half to do the
2 plans, but give us a quick release on this extra
3 clarifier." I said, "That will take care of our
4 flooding problem and our infiltration problem from
5 right now, and then we won't have to worry about this
6 stuff about when it rains, that we're out of
7 compliance with you guys."

8 They said no. But I said, "It's an
9 emergency deal, we need it now." "No, won't do it.
10 Come back, see us in a year and a half." And they
11 would have still been sitting on the plans if it
12 wouldn't have been for our state representative down
13 there. And we actually went in and had a meeting
14 with the Department of Natural Resources. Belinda
15 Harris went with us. And I'm sure we wouldn't have
16 been sitting on our permit that we do have if it
17 wouldn't have been for her efforts to push it
18 through.

19 Q. So after you got the permit, what did
20 that do for you?

21 A. Mainly give us about a six-month permit.
22 So by the time we got it all put together and
23 everything, the guy calls, says, "Your permit's
24 expired." So we have to do a new application on the
25 thing.

1 Q. Okay. And then what happened?

2 A. Just kind of got frustrated at that time
3 and then this deal was starting to consummate with
4 EMC.

5 Q. I see.

6 A. I said, "I can't handle it no more, you
7 guys take it."

8 Q. Okay. Now, as I understand it, -- well,
9 let me ask you this: Are you-all receiving -- what
10 is -- what's the company receiving if this
11 transaction goes through as contemplated --

12 A. Nothing.

13 Q. -- as far as money is concerned?

14 A. You're talking about Central Jefferson
15 County?

16 Q. Yes.

17 A. Nothing. Given to them.

18 Q. And what about the debt that's there
19 with the company? Does it -- it goes with the
20 transaction?

21 A. That's the water tower, which you people
22 already have the rates set up to pay that off, and
23 that was a debt of Central Jefferson County
24 Utilities.

25 Q. Okay. Was the infrastructure that

1 was -- that was owned by the company, is it shown in
2 rate base or is it -- was it donated?

3 A. It was donated. The -- it was donated.

4 Q. So it's not actually producing anything
5 in rates, is it, if I'm following you? I'll ask
6 somebody here in a minute. I mean --

7 A. No, it doesn't near cover the operating.
8 The people are absolutely right. It needs -- I had
9 in '90 -- I believe it was about '94, '95, I actually
10 had Alliance operating this system, and they're
11 competitors of EMC's. Doing a great job.

12 They have -- people like EMC and
13 Alliance, they have the manpower, the resources.
14 They have a lot of equipment that's on hand with them
15 that we just don't have the access to, and it's not
16 built in our rates. Sludge trucks, vacuum cleaners
17 to vacuum up spills, TV cameras. The type of
18 luxuries that public districts, cities can afford, we
19 can't afford under our rate structure. They already
20 have those things.

21 So if they come on board, they might
22 build a plant and improve the wells, but the
23 infrastructure they have to run their companies is
24 already there. They have all those luxuries. Great
25 organizations.

1 Q. Does the -- does the company own
2 anything else other than this sewer and water
3 infrastructure?

4 A. No.

5 Q. Has it ever -- has this been its only --
6 only business since it was incorporated?

7 A. That's correct, yes, sir.

8 Q. So no one gets -- no one who's a
9 shareholder in the company as a result of this
10 transaction is going to get any -- any dollars as
11 contemplated under this --

12 A. No.

13 Q. -- agreement?

14 A. No.

15 COMMISSIONER GAW: I'm gonna stop for
16 now. I may have some more questions later.

17 JUDGE STEARLEY: Commissioner Clayton?

18 COMMISSIONER CLAYTON: I don't have any
19 questions.

20 JUDGE STEARLEY: I understand the
21 Chairman is on his way down, but he hasn't arrived
22 here yet, and I understand you have some health
23 concerns and I want to give our court reporter a
24 break as well, so let's take a ten-minute break and
25 we'll resume at 10:15.

1 (A RECESS WAS TAKEN.)

2 JUDGE STEARLEY: All right. We're going
3 back on the record. Mr. McClain is on the stand. It
4 was a short intermission. You're still under oath,
5 Mr. McClain.

6 THE WITNESS: Yes, sir.

7 JUDGE STEARLEY: Do the Commissioners
8 have any further questions?

9 COMMISSIONER GAW: Not at the time.

10 JUDGE STEARLEY: Okay. I have just a
11 couple of quick questions for you, Mr. McClain, and
12 then we will go to recross from the attorneys.

13 QUESTIONS BY JUDGE STEARLEY:

14 Q. You had mentioned who the board members
15 are for Central Jefferson already and what their
16 percentage interests are in the company, correct?

17 A. That's correct, yes.

18 Q. How often does the board meet?

19 A. I would say we've been probably -- been
20 meeting three or four times a year in the last
21 several years.

22 Q. Okay. And when did the board become
23 aware of the customer complaints regarding having to
24 clean their own sewers or sewage in yards, things of
25 that nature?

1 A. Actually, the first I had heard about it
2 was at the -- there was a public hearing at Jefferson
3 College.

4 Q. On November 6th?

5 A. That's when I really first heard about
6 it. That was my first time, yes.

7 Q. And prior to the interim agreement with
8 EMC right now for operation and maintenance, who was
9 providing the maintenance under the water and sewer
10 system?

11 A. There was a gentleman there since, I
12 believe -- boy, I don't remember how long, now.
13 Roger Phibbs, but I don't recall -- I think he's been
14 on with us about ten years.

15 Q. And Mr. Phibbs never reported --

16 A. Phibbs.

17 Q. -- any types of these customer problems
18 to you during his -- while he was doing the
19 maintenance on the sewer and water system, he never
20 came to you and reported the types of problems that
21 you became aware of at the local public hearing?

22 A. No. The -- I had gotten a list sometime
23 back in -- I believe that was generated by the public
24 hearing, I believe, yes. I'm not sure. Roger and I
25 kind of -- he -- I don't micromanage. Roger does

1 call me when he needs some additional help.

2 Q. Would any of the other board members, to
3 your knowledge, have received information regarding
4 these concerns at an earlier time?

5 A. No. The trust -- the trust board member
6 really doesn't care. I mean, it's not -- it's just
7 not -- she has an estate to take care of and she's
8 not really into any of the corporations, Raintree or --

9 JUDGE STEARLEY: That's all I have for
10 you. We will now have recross based on questions
11 from the bench.

12 COMMISSIONER GAW: Judge, let me ask --

13 JUDGE STEARLEY: A follow-up?

14 COMMISSIONER GAW: -- a couple of
15 follow-ups that I just thought of.

16 QUESTIONS BY COMMISSIONER GAW:

17 Q. Mr. McClain, are you familiar with
18 Raintree's ownership?

19 A. Yes.

20 Q. And who owns -- first, is that a
21 corporation?

22 A. That's a corporation, yes, sir.

23 Q. And who owns Raintree?

24 A. Jerry Nixon, myself and now my father's
25 estate -- or trust.

1 Q. Okay. So the same owners?

2 A. Same owners, yes, sir.

3 Q. Same percentages?

4 A. Same percentages.

5 COMMISSIONER GAW: Thank you.

6 JUDGE STEARLEY: Okay. Recross

7 beginning with Staff. Mr. Krueger?

8 MR. KRUEGER: No questions.

9 JUDGE STEARLEY: Mr. Comley?

10 MR. COMLEY: Just two, if I could do it

11 from here.

12 RECROSS-EXAMINATION BY MR. COMLEY:

13 Q. Judge Stearley asked you about

14 Mr. Phibbs, and I wanted to know, is he still an

15 employee of Central Jefferson County Utilities?

16 A. No. I believe he's a consultant right

17 now with EMC, and I don't know if they have

18 terminated that relationship or not.

19 Q. Do you know if Mr. Phibbs is still in

20 some way connected with the operation and maintenance

21 of the system?

22 A. Just as a consultant, I believe, to him.

23 That's it.

24 Q. Does Mr. Phibbs have equipment in his

25 home that monitors the systems, either water or

1 sewer?

2 A. No.

3 Q. Do you know if he's a licensed operator?

4 A. Yes.

5 Q. What's the classification on his

6 license?

7 A. I don't have that information offhand.

8 Q. Do you know if he's ever -- has that

9 license ever lapsed?

10 A. Yes, it did for one time, yes.

11 Q. Did he renew the license?

12 A. He renewed it, yes, sir.

13 Q. But you don't know his classification at

14 this time?

15 A. No.

16 Q. Was he responsible for mixing the wells?

17 A. Yes, sir. Yes, sir.

18 MR. COMLEY: That's all, thank you.

19 JUDGE STEARLEY: Thank you, Mr. Comley.

20 Recross from Department of Natural Resources,

21 Mr. Schmid?

22 MS. SCHMID: Yes. May I just use it

23 from here?

24 JUDGE STEARLEY: Yes, you may.

25 RECROSS EXAMINATION BY MR. SCHMID:

1 Q. Is Mr. Phibbs -- who's the operator?
2 A. I don't have the spelling on it.
3 Phibbs.
4 Q. I just was looking for a general
5 pronunciation so I get that right.
6 A. Try Phibbs. We always call him Phibbs.
7 Go ahead.
8 Q. You mentioned that Mr. Phibbs' license
9 lapsed, correct?
10 A. Yes, sir.
11 Q. And while that license lapsed, he
12 continued to operate the facility; isn't that
13 correct?
14 A. He continued to operate the facility
15 with the assistance of another licensed operator.
16 Q. Was a notice of violation issued by the
17 Department of Natural Resources to Central Jefferson
18 County Utilities for having -- for not having a
19 licensed operator?
20 A. I think it -- I believe it was, yeah.
21 Q. Okay. You -- as the first step in
22 obtaining a construction permit from the DNR --
23 A. Uh-huh, yes.
24 Q. -- you agree you have to submit an
25 engineering report, correct?

1 A. I don't know if that is true on an
2 existing plant. I'm not sure.

3 Q. Do you know when Central Jefferson
4 County Utilities submitted an engineering report to
5 the Department of Natural Resources?

6 A. No, that was handled by the engineers.
7 I didn't handle that.

8 Q. I'm just trying to get a handle. You
9 had mentioned that there was a year and a half delay
10 before the Department of Natural Resources took
11 action. I just want to know when that --

12 A. It was longer than that, actually. Go
13 ahead.

14 Q. When do you propose that started, that
15 delay?

16 A. About three years ago.

17 Q. Are you saying it took three years to
18 obtain a construction permit?

19 A. I was told that they would -- they said
20 they were behind. If it had been an emergency
21 situation, then maybe they'd consider it faster. But
22 plan on about 18 months. It would be a year before
23 they started the review, six months to review.

24 Got it that time and we still didn't
25 have anything, and then some of the property owners,

1 I believe, talked to Belinda Harris and Belinda -- I
2 met with Belinda and some of the Staff members and
3 some of the higher-ups and they got things rolling
4 again. It was a long time.

5 I don't exactly know what the timeline
6 was. They should be stamped and I -- along with
7 plans and everything, you have to submit fees like
8 canceled checks and all that kind of stuff. I don't
9 have it with me.

10 Q. Can you just estimate for us how long
11 you believe it took Central Jefferson County
12 Utilities to obtain the construction permit?

13 A. I think about three -- some -- probably
14 two years at least. Okay. I'm not exactly sure of
15 the timeline, but...

16 Q. Your operating permit has a maximum
17 daily flow of 64,000 gallons per day, correct?

18 A. Yes.

19 Q. Okay. And the daily flow has exceeded
20 100,000 gallons per day for a number of years; isn't
21 that also correct?

22 A. Yes, sir.

23 Q. Okay. So you are currently not --

24 A. In flood conditions, yes.

25 Q. In nonflood conditions it's not over

1 64,000 gallons per day?

2 A. I don't exactly know how you do that. I
3 thought they averaged it, but I don't exactly know
4 what the flow rates are right now. I've been filing
5 some reports with them but I'd have to check back on
6 those documents.

7 Q. You -- I'm sorry.

8 A. It goes up, it goes down. You know,
9 it's not always consistent.

10 Q. So are you saying sometimes it's above
11 64,000 gallons per day and sometimes it's not?

12 A. Sure, right. At night it's not.

13 Q. Okay. If it was above 64,000 gallons
14 per day, that would mean that you're operating not in
15 compliance with your permit, correct?

16 A. No.

17 Q. Doesn't your permit --

18 A. The standards set the permit. Under the
19 permit I have standards. Certain amount of BOD,
20 certain amount of acidity you have to make, certain
21 amount of -- let's see, biological oxygen, certain
22 amounts of solids.

23 JUDGE STEARLEY: Mr. McClain --

24 THE WITNESS: Yes, sir.

25 JUDGE STEARLEY: -- could you please

1 speak into our microphone?

2 THE WITNESS: Yes, sir, I'm sorry. I'm
3 sorry, being turned around.

4 JUDGE STEARLEY: I understand.

5 THE WITNESS: There's standards to meet
6 and as long as you meet those standards, you're still
7 in compliance. Theoretically, the plant is out of
8 compliance, but the standards are still met. The
9 only time the standards -- well, we can't even
10 measure the standards during a flood condition, but
11 neither could New Orleans.

12 BY MR. SCHMID:

13 Q. So just so I understand, you're saying
14 that the maximum daily flow of 64,000 gallons per day
15 is not a standard?

16 A. Pardon me?

17 Q. Are you saying that the maximum daily
18 flow of 64,000 gallons per day is not a standard that
19 the facility needs to comply with?

20 A. I've gotten a criteria of the effluent.
21 The effluent is the standard, as far as I know.

22 MR. SCHMID: Okay. I have no further
23 questions.

24 JUDGE STEARLEY: Thank you, Mr. Schmid.
25 Recross, Office of Public Counsel, Ms. Baker?

1 MS. BAKER: I have no further questions.

2 Thank you.

3 JUDGE STEARLEY: All right. Redirect,
4 Mr. England?

5 MR. ENGLAND: Yes. Thank you, your
6 Honor. Your Honor, may I have an exhibit marked,
7 please?

8 JUDGE STEARLEY: Certainly.

9 (EXHIBIT NO. 13 WAS MARKED FOR
10 IDENTIFICATION BY THE COURT REPORTER.)

11 JUDGE STEARLEY: Please proceed.

12 MR. ENGLAND: Thank you, your Honor.

13 REDIRECT EXAMINATION BY MR. ENGLAND:

14 Q. Mr. McClain, I've handed you what's been
15 marked for purposes of identification as Exhibit 13.
16 Do you have that in front of you?

17 A. 13, yes, sir.

18 Q. And I believe in one of the questions, I
19 can't recall from which attorney, you were talking
20 about a timeline that you prepared. Is this the
21 timeline you were referring to?

22 A. Yes, sir.

23 Q. And what does this basically document or
24 demonstrate?

25 A. This demonstrates the efforts that we've

1 made since 1999 in trying to either sell or somehow
2 get this plant in compliance.

3 Q. And this was timeline -- excuse me, was
4 this timeline prepared by you or under your
5 supervision?

6 A. Yes, sir, by myself and my attorney.
7 That's who put it back together.

8 Q. And is it true and correct to the best
9 of your knowledge and belief?

10 A. Yes, sir.

11 MR. ENGLAND: I'd offer Exhibit 13.

12 JUDGE STEARLEY: Are there any
13 objections to the admission of Exhibit 13?

14 MR. KRUEGER: No objection.

15 JUDGE STEARLEY: Okay. Hearing none,
16 the exhibit will be received and admitted into
17 evidence.

18 (EXHIBIT NO. 13 WAS RECEIVED INTO
19 EVIDENCE AND MADE A PART OF THE RECORD.)

20 MR. ENGLAND: Thank you. May I have
21 another exhibit marked, please?

22 JUDGE STEARLEY: Certainly.

23 (EXHIBIT NO. 14 WAS MARKED FOR
24 IDENTIFICATION BY THE COURT REPORTER.)

25 JUDGE STEARLEY: You may proceed.

1 MR. ENGLAND: Thank you.

2 BY MR. ENGLAND:

3 Q. Mr. McClain, do you have in front of you
4 what has been marked as Exhibit 14?

5 A. Yes, sir.

6 Q. You indicated you could not recall why
7 AquaSource terminated the agreement that you had with
8 them back in '99 to sell the system to AquaSource?

9 A. Yes, sir.

10 Q. Do you recall seeing this letter?

11 A. Oh, yes, sir.

12 Q. And does that help to refresh your
13 memory as to why AquaSource at least told you why
14 they terminated the agreement?

15 A. Yes, sir.

16 MR. ENGLAND: Your Honor, I'd offer
17 Exhibit 14 into evidence as well.

18 JUDGE STEARLEY: Are there any
19 objections to the admission of Exhibit 14?

20 MR. KRUEGER: No objection.

21 JUDGE STEARLEY: Hearing none, it will
22 be received and admitted into evidence.

23 MR. ENGLAND: Thank you.

24 (EXHIBIT NO. 14 WAS RECEIVED INTO
25 EVIDENCE AND MADE A PART OF THE RECORD.)

1 BY MR. ENGLAND:

2 Q. Briefly, Mr. McClain, could you explain
3 why you understood AquaSource to terminate the
4 agreement?

5 A. Well, they apparently couldn't come to
6 an agreement with the Public Service Commission on
7 what was to be applied in their rate -- what -- for
8 the rate -- for their rate request. They couldn't
9 agree with the Public Service with certain rates.

10 Q. Now, as a result of AquaSource
11 terminating the agreement, did Central Jefferson
12 County Utilities sue AquaSource?

13 A. Yes, sir, we did.

14 Q. And did that give rise to the agreement
15 that I believe has been placed into evidence, the
16 number of which I can't remember. 11, I think.

17 A. Yes.

18 Q. Okay.

19 A. Yes, that was a settlement agreement
20 with AquaSource, and that's why their response (sic)
21 for putting in the rest of the sewer lines at Raintree.

22 Q. Now, the current dispute, if you will,
23 with AquaSource, I believe you referred to was over
24 who was gonna pay for engineering fees and permit
25 fees related to extension of the sewer to the 400

1 lots we've been talking about?

2 A. Yes, sir.

3 Q. That's a separate dispute from the '99
4 or 2001 dispute; is that right?

5 A. That's entirely separate.

6 Q. Okay. That dispute, in your opinion,
7 does it have any effect whatsoever on the transfer of
8 the system that's contemplated by the application in
9 this case?

10 A. No, it will have no effect. That's our
11 response. That's a dispute between AquaSource and
12 us. It has nothing to do with the district or EMC.

13 Q. Thank you, sir. The other dispute I
14 believe you were asked about had to do with titled
15 certain property; do you recall that?

16 A. Yes, sir.

17 Q. In your opinion, is that a material
18 dispute such that it would hold up the transfer of
19 the system in accordance with the application and
20 agreement?

21 A. No. No, sir, I don't believe it would.

22 Q. Do you have every expectation that will
23 be resolved?

24 A. Yes, sir.

25 Q. Thank you. Do you have Exhibit No. 8 in

1 front of you? I believe it's the service connection
2 fee agreement between Raintree and Jefferson County
3 Public Sewer District.

4 A. Yes, sir, No. 8. Okay.

5 Q. I believe you were asked if there was
6 any dispute resolution procedures in that agreement.
7 Would you please turn to page 4, paragraph 7 and read
8 to me the title of that section?

9 A. Page 4, paragraph 7?

10 Q. Yes.

11 A. "Alternate Dispute Resolution, The
12 parties hereto agree to attempt" --

13 Q. I'm sorry. I didn't want you to read
14 the whole paragraph, just the title.

15 A. Oh, I'm sorry. Yes, sir.

16 Q. Is it your understanding that if any
17 disputes arise with regard to this agreement, it will
18 be resolved through those procedures?

19 A. Yes, sir.

20 Q. Thank you, sir. Hopefully, one last
21 brief series of questions. Exhibit No. 9 which is a
22 three-page document, the first page of which is a
23 letter from Department of Natural Resources to
24 Mr. Toma dated August 12th, 1997.

25 A. Yes, sir.

1 Q. You were asked some questions about the
2 third page of that exhibit which was a notice to
3 customers. Do you see that?

4 A. I've lost it.

5 Q. This was provided by the company in
6 response to a data request from, I believe, the
7 Office of Public Counsel; is that your recollection?

8 A. That's correct.

9 Q. Page 3, the notice to customer, did
10 that -- was that notice contemporaneous with this
11 letter? In other words, was that notice issued in
12 1997 or at a later date?

13 A. A later date.

14 Q. Approximately when was that notice sent
15 to customers? Within the last year or two?

16 A. I'm trying to remember. Yes, about a
17 year, I guess.

18 MR. ENGLAND: Thank you, sir. I have no
19 other questions and would offer -- I guess I have
20 offered those two exhibits that I brought to
21 redirect, did I not, your Honor?

22 JUDGE STEARLEY: Yes, you did.

23 MR. ENGLAND: Okay. Usually I don't do
24 that. Thank you.

25 JUDGE STEARLEY: Mr. McClain, at this

1 time you may step down. The Chairman, I know, has
2 some questions for you, so you'll be recalled later,
3 and at that time you will still be under oath.

4 THE WITNESS: Very fine.

5 JUDGE STEARLEY: All right. Thank you
6 for your testimony.

7 We had originally planned this morning
8 at this time to call Mr. Thomas to complete a couple
9 of his redirect from yesterday, but the Commission is
10 kind of interrupting our scheduling. Now we're going
11 to call an additional witness at this time. The
12 Commission is going to call Representative Belinda
13 Harris to the stand. At the conclusion of
14 Ms. Harris's testimony, we will start up with
15 Mr. Thomas.

16 Representative Harris, if you would
17 please state and spell your name for our record.

18 THE WITNESS: Belinda Harris,
19 B-e-l-i-n-d-a, H-a-r-r-i-s.

20 (The witness was sworn.)

21 JUDGE STEARLEY: Thank you. You may
22 proceed with your comments.

23 THE WITNESS: It was mentioned that
24 I was at a meeting with the Department of
25 Natural Resources and members here that are

1 Mr. McClain, there was Rick Avila, other -- let's
2 see, I think Hockensmith was there, Attorney
3 Hockensmith.

4 And during that meeting we were kind of
5 going over the problems that they -- Central
6 Jefferson County Utilities was having to get their
7 permit to expand. And I talked with the Department
8 of Natural Resources in trying to find out what
9 exactly was happening, why it was taking so long to
10 get this expansion permit, the construction permit of
11 a sewer treatment plant.

12 After talking -- having discussions with
13 the Department of Natural Resources and with
14 individuals from the utilities and the regional
15 office plus the office here in Jefferson City, there
16 was kind of a timeline that was happening.

17 First, they were having some problems
18 with the surface water getting into the treatment
19 plant. It was stated that some of the extension
20 lines might have breaks and an excess amount of
21 rainwater was getting into the lines and overflowing
22 the treatment plant. And the creek below the
23 treatment plant is Galligher Creek. It was -- at
24 different times, the Department of Natural Resources
25 had come out and examined the creek and found that

1 that was like in -- maybe like December of 2004, then
2 we realized that things were serious because there
3 was no more building in Raintree. The idea of the
4 expansion wasn't happening, the violation was out
5 there, they didn't want any more homes added to the
6 extension lines, adding a bigger burden to the
7 treatment center.

8 And so because of this decision to just
9 stop all building, this is when, January of 2005,
10 that we had this meeting. This meeting, as I said,
11 was with those individuals from the utilities, DNR
12 and it was in St. Louis that we had this meeting.
13 The whole purpose was it doesn't matter what happened
14 in the past, let's get something moving with DNR.

15 DNR can be very difficult to deal with,
16 and I grant that, because they -- they don't, you
17 know, hold somebody's hand. They expect you to be in
18 contact with them all the time, and a lot of people
19 are assuming that there is an approval when all it is
20 is an approval to move forward and send them more
21 paper. And so that's where I see a lot of the
22 breakdown.

23 Okay. January, '05, we had this
24 meeting. There was a preliminary engineering plan
25 that was presented by Fribis. DNR looked over it but

1 they had comments on it and they wanted a final plan
2 before they could give an approval. That didn't
3 happen right away.

4 I feel that the Central Jefferson County
5 Utilities felt that that was like an okay. They were
6 waiting for this permit -- construction permit to be
7 approved but instead, DNR was waiting for them to
8 give them the final engineering plans with some of
9 their comments that were listed. So there was
10 another delay of just maybe a month and a half.

11 You know, we talked with the utilities.
12 They finally did get the -- the final engineering
13 plans to DNR, and then I think it was like April or
14 May of that same year, 2005, that they did get the
15 approval for construction.

16 So there was an approval and they could
17 have started construction at any time, but it didn't
18 happen. They were trying to sell, trying to find
19 other avenues. But my comments today were just to
20 try to explain kind of the holdup between the
21 Department of Natural Resources and the utilities.

22 JUDGE STEARLEY: All right. Thank you,
23 Representative.

24 COMMISSIONER GAW: I have questions from
25 the bench, Judge.

1 JUDGE STEARLEY: Should we give the
2 attorneys an opportunity to cross first?

3 COMMISSIONER GAW: They'll have a chance
4 when I'm through.

5 JUDGE STEARLEY: Okay.

6 QUESTIONS BY COMMISSIONER GAW:

7 Q. Representative, first of all, thank you
8 for coming and I know you've been sitting in on good
9 portions of this hearing. I think it -- where is
10 your district, would you mind saying that for the
11 record?

12 A. Yes. I'm in District 110 and it takes
13 in the city limits of Hillsboro but it also takes in
14 all of Raintree Plantation, all the lakes and the
15 development there. I take in the southwest Jefferson
16 County, northern Washington County down to Potosi,
17 and then also a corner of Franklin County.

18 Q. And how long have you been familiar with
19 this development area out there in Raintree?

20 A. I've lived in the area for 37 years, so
21 I have seen it go on from a farm to a development.

22 Q. Okay. You were at the public hearing
23 that was held on this -- on this issue, correct?

24 A. Yes, yes, I did.

25 Q. You're in constant contact with your

1 constituents, I know, but I'm asking you that
2 question.

3 A. There's individuals within the Property
4 Owners Association that have been very active in
5 gathering information, and we've both been sharing
6 information back and forth.

7 Q. Okay. In your view, what is it, without
8 necessarily asking you to tell me what's in the best
9 interest of the outcome of this particular case, but
10 as -- but as far as your understanding of the
11 situation in that area, what is it that needs to be
12 accomplished in changing what the situation is there
13 with this sewer and water service?

14 A. I think the biggest thing is we need
15 construction of a treatment plant and that needs to
16 be started as soon as possible. As I understand,
17 this permit was only for a certain period of time and
18 that has -- it's expiring, I think, January of this
19 year. So an engineering plan will probably have to
20 be resubmitted and approved by Department of Natural
21 Resources, which should happen fairly quickly because
22 they've already approved a previous plan, but it
23 still has to be refiled.

24 I feel someone has to step up to the
25 bat. If they can't find a buyer or if this

1 transaction between the public sewer district doesn't
2 happen, then the utilities themselves need to start
3 construction. It is something that Raintree is not
4 going to be able to grow. Individuals that are
5 there, the -- as I understand from different ones
6 through the Department of Natural Resources, the
7 treatment plant that is already in existence is
8 pretty much at its max, can't take any more. That's
9 why there's this moratorium.

10 If there is going to be a transfer, I
11 think the public needs to have a better understanding
12 of the rate increases that they will incur and any
13 other expenses that will incur, just so they have a
14 bottom line. Because once it becomes a public
15 utilities, they will have less abilities to have
16 input versus, you know, with the Public Service
17 overseeing.

18 The -- I think this issue with this
19 Raintree, Inc. and the sewer hookup fees, it seems
20 like a double cost there because I know individuals
21 that have been talking to me, they feel like that
22 was -- the \$1,100 was the pay for the hookups for
23 sewers and waters and hydrants and things of that
24 sort. To have to pay it a second time seems like
25 double-dipping, so I think that needs to be really

1 addressed.

2 COMMISSIONER GAW: Representative, thank
3 you for your time --

4 THE WITNESS: Yes, sir.

5 COMMISSIONER GAW: -- and for coming up
6 and talking to us.

7 JUDGE STEARLEY: Questions from
8 Commissioner Clayton?

9 COMMISSIONER CLAYTON: Judge, thank you.
10 I don't have any questions. I would just thank the
11 Representative for coming, and hopefully, I hope you
12 consider the Commission an open door in working
13 through some of these issues in the future.
14 Appreciate your involvement.

15 THE WITNESS: Yes.

16 JUDGE STEARLEY: Commissioner Appling?

17 COMMISSIONER APPLING: Thank you very
18 much for coming up and good to see you again.

19 THE WITNESS: Thank you.

20 COMMISSIONER APPLING: And appreciate
21 you being here this morning. Thank you.

22 THE WITNESS: You're welcome.

23 JUDGE STEARLEY: We'll now give the
24 attorneys an opportunity to cross-examine the
25 Representative, starting with Staff. Mr. Krueger?

1 MR. KRUEGER: No questions, your Honor.

2 JUDGE STEARLEY: All right. The
3 Association, Mr. Comley?

4 MR. COMLEY: No questions.

5 JUDGE STEARLEY: Department of Natural
6 Resources, Mr. Schmid?

7 MS. SCHMID: No questions.

8 JUDGE STEARLEY: Office of Public
9 Counsel, Ms. Baker?

10 CROSS-EXAMINATION BY MS. BAKER:

11 Q. Actually, I just have one verification.
12 You had stated that there are customers who have come
13 to you who are concerned with the fact that there are
14 a lot of agreements that are still outstanding. Is
15 that a true statement of what people have reported to
16 you?

17 A. Yes. I would say that there are a lot
18 of the concerns. Even the overearnings, that is kind
19 of still a suit out there, they would like to see
20 that resolved.

21 MS. BAKER: Okay. Thank you. No
22 further questions.

23 JUDGE STEARLEY: All right. And Central
24 Jefferson, Mr. England?

25 MR. ENGLAND: Thank you, your Honor.

1 CROSS-EXAMINATION BY MR. ENGLAND:

2 Q. Good morning, Representative Harris. My
3 name is Trip England. I represent Central Jefferson
4 County Utilities Company. I've just got a couple of
5 questions on discussions back and forth between
6 Central Jefferson County and DNR that I believe you
7 may have been involved in in 2004.

8 A. Uh-huh.

9 Q. Was it your understanding that Central
10 Jefferson County Utilities, in applying for a permit
11 or construction permit, had proposed an aeration
12 treatment system?

13 A. Now, the aeration treatment center --
14 system, I was not familiar with that. What I had
15 mostly been dealing with was just more of the
16 expansion. And I guess maybe a lot of my
17 conversations were when the moratorium started and we
18 saw that it was getting to be a serious problem, so
19 the aeration I didn't -- I saw as -- the engineering
20 plan that I saw was for the expansion, as I
21 understand.

22 Q. Does the term "sequential batch reactor"
23 ring any bells with you?

24 A. No, it does not.

25 Q. Okay. Let me try it at about a 20,000-

1 foot level. Do you understand that Central Jefferson
2 County, in proposing to build the new treatment
3 plant, was proposing one type of technology and DNR
4 was insisting on another type, or maybe not insisting
5 but at least urging another type of technology?

6 A. Okay. I'm getting a little bit more
7 information here. Yes, yes. Now, I do know that
8 they had a difference in opinion on how this was to
9 be handled.

10 Q. Okay. Eventually it was settled that
11 Central Jefferson could go forward with the plans or
12 at least the treatment method that they had
13 originally proposed?

14 A. And I understand that what DNR's largest
15 concern was, that their proposal by Central Jefferson
16 County Utilities was too much of a temporary fix and
17 they wanted something that would last longer because
18 they felt that more and more homes would be coming in,
19 they wanted something that could last at least ten
20 years.

21 Q. DNR, though, wasn't concerned with plant
22 held for future use?

23 A. Say that again.

24 Q. DNR was not concerned with possible plant
25 held for future use, plant that's not available for

1 consumers today but would be available for future
2 customers?

3 A. As I understand, they were saying that,
4 you know, you can't build a system so large that it's
5 not functional because if it's too large and you
6 don't have the right amount of fluents, it's not
7 really a working plant. So they did understand that
8 it could be in like increments. It's a plant that,
9 you know, has a certain footprint, and a certain
10 portion would be opened, and as the time warranted to
11 expand, you could expand. So I was thinking that was
12 the direction DNR was going.

13 Q. Okay. And my understanding is now the
14 parties are all on board with the 400,000-gallon
15 plant that's been discussed here in the last day or so?

16 A. Okay. Is it the same as the one that
17 was the construction permit approved?

18 Q. Yes, ma'am?

19 A. Yes.

20 MR. ENGLAND: Okay. Thank you. No
21 other questions.

22 JUDGE STEARLEY: Representative Harris,
23 would you like to make any further statements at this
24 time?

25 THE WITNESS: I appreciate the time that

1 the Public Service Commission is taking. I
2 understand yesterday you were here for -- fairly late
3 in the day. I'm sure a lot of people think it's an
4 8:00 to 4:00 job but it is not. And I understand
5 that there's still a lot more to be said today, so I
6 think this is what we need, is to get all this
7 information out. So I do appreciate all this time.

8 JUDGE STEARLEY: All right. Thank you
9 for your testimony and you are finally excused.

10 And Mr. England, I guess we will get
11 back to what we had discussed earlier in terms of
12 orders of witness. Is Mr. Thomas here at this time?

13 MR. ENGLAND: Yes, he is.

14 JUDGE STEARLEY: Okay. And are you
15 ready to proceed with his redirect?

16 MR. ENGLAND: I was anticipating I
17 wouldn't do that until after the questions -- final,
18 I guess, questions from the bench and recross based
19 on those questions.

20 JUDGE STEARLEY: All right. Thank you
21 for reminding me where we were at yesterday.
22 Mr. Thomas, if you will please step forward.
23 Mr. Thomas, you're reminded that you're still under
24 oath.

25 THE WITNESS: Yes, sir. Yes, your

1 Honor.

2 JUDGE STEARLEY: And we are ready, then,
3 for questions from the bench beginning with
4 Commissioner Gaw? Commission Clayton? Commissioner
5 Appling?

6 QUESTIONS BY COMMISSIONER APPLING:

7 Q. Mr. Thomas, giving you a night off, you
8 haven't went home and changed your mind about this
9 whole project? Sounds like it's getting pretty
10 close.

11 You have anything else that -- you know,
12 you and I talked a little bit yesterday but do you
13 have anything else to offer this morning other than
14 what you said yesterday that would contribute to
15 moving this project ahead?

16 A. No, sir.

17 Q. Not a thing. So everything that you
18 have already agreed to is still in place?

19 A. Yes, sir.

20 COMMISSIONER APPLING: Thank you very
21 much, sir.

22 JUDGE STEARLEY: All right. And I don't
23 have any additional questions for you at this time,
24 so we'll go to recross beginning with Staff,
25 Mr. Krueger.

1 MR. KRUEGER: No questions, your Honor.

2 JUDGE STEARLEY: Okay. Recross from the
3 Association, Mr. Comley?

4 MR. COMLEY: None from the Association.

5 JUDGE STEARLEY: DNR, Mr. Schmid?

6 MR. SCHMID: No further questions.

7 JUDGE STEARLEY: Office of Public
8 Counsel, Ms. Baker?

9 MS. BAKER: No further questions.

10 JUDGE STEARLEY: And then redirect,
11 Mr. England?

12 MR. ENGLAND: Thank you, your Honor.
13 Your Honor, I've got, among perhaps some other
14 redirect that I believe can be done in public,
15 overnight Mr. Thomas was able to pull -- well, first
16 of all, get authorization to reveal certain
17 information on a confidential basis, and thereafter
18 pull together the costs of his -- or his company's
19 incurring and operating the system today. And I
20 believe this was in response to a question from
21 Public Counsel.

22 So we have that information, it's in a
23 proprietary document, and I can offer it -- I mean, I
24 can have him explain it now but if we need to go
25 in-camera or I can do it later at the end of what

1 little I think I have of public redirect.

2 JUDGE STEARLEY: Okay. Why don't you go
3 ahead and do your public redirect first and then
4 we'll go in-camera for the remainder.

5 REDIRECT EXAMINATION BY MR. ENGLAND:

6 Q. Mr. Thomas, yesterday you were asked
7 some questions about the timetable for building the
8 treatment plant. Do you recall that?

9 A. Yes.

10 Q. And I believe those -- there are outer
11 limits that you have to meet as part of the
12 compliance agreement you're discussing with DNR and
13 the sewer district?

14 A. That is correct.

15 Q. And I think you indicated that those
16 were outer limits; is that right?

17 A. Yes, that's correct.

18 Q. And I think you also said that there was
19 a business or economic incentive for you to complete
20 that project sooner?

21 A. That is -- that is absolutely correct.

22 Q. Could you explain that, please?

23 A. Well, in one of the exhibits, I believe
24 it's Exhibit 4, it showed kind of the outline of how
25 EMC gets paid under the agreement that we're

1 contemplating with Jefferson County Public Sewer
2 District, and one of those items -- well, actually
3 all three of those items, sewer bill, water rate per
4 1,000 and tap-on fees, essentially the more homes
5 there are in Raintree, the more of these revenues we
6 get. So we're absolutely financially incented to do
7 the project as quickly as possible so the moratorium
8 can be lifted and more homes can be built.

9 Q. Thank you, sir. Will EMC perform its
10 own inflow and infiltration analysis investigation
11 after the transfer?

12 A. The compliance agreement, you know,
13 calls for a registered professional engineer. We
14 have professional engineers on Staff. We may use one
15 of our own, we may hire that out. But when you say
16 will we perform it ourselves, we'll manage the
17 process either with our own engineer or not.

18 Q. But it's your expectation to complete
19 that whether you do it yourself or hire it out?

20 A. That's correct.

21 Q. And are there time limits, if you will,
22 on that as well?

23 A. In the contemplated compliance
24 agreement, yes.

25 Q. Do you have an update on the efforts by

1 your staff to clean out these collection boxes that
2 we've heard about?

3 A. I believe my numbers at least ought to
4 be for the most part accurate. They're something
5 like 18, 16 or 18 of the collection boxes, I believe,
6 were halfway completed. Our manager, Gene Thurman,
7 sent out an update and I think in the document, the
8 letter, he said that they should be completely done
9 within the next two weeks, something like that.

10 MR. ENGLAND: May I have an exhibit
11 marked, your Honor?

12 JUDGE STEARLEY: Certainly. This will
13 be Exhibit No. 15 if I have the correct count.

14 (EXHIBIT NO. 15 WAS MARKED FOR
15 IDENTIFICATION BY THE COURT REPORTER.)

16 JUDGE STEARLEY: You may proceed.

17 MR. ENGLAND: Thank you.

18 BY MR. ENGLAND:

19 Q. Mr. Thomas, I've handed to you what's
20 been marked as Exhibit 15. Do you have that in front
21 of you?

22 A. I do.

23 Q. Is this the letter you were referring to
24 that your employee --

25 A. Yes, sir.

1 Q. And does that basically confirm what you
2 just said as far as the status report on the
3 clean-out of the collection boxes?

4 A. It does. I said two and I think his
5 language is the next few weeks, so they'll be
6 finished.

7 MR. ENGLAND: Let me, if I can, offer
8 Exhibit 15, please.

9 JUDGE STEARLEY: All right. Are there
10 any objections to the admission of Exhibit 15?

11 MR. KRUEGER: No objection.

12 JUDGE STEARLEY: Hearing none, it will
13 be received and admitted into evidence.

14 (EXHIBIT NO. 15 WAS RECEIVED INTO
15 EVIDENCE AND MADE A PART OF THE RECORD.)

16 BY MR. ENGLAND:

17 Q. I think Mr. Toma clarified this in your
18 absence yesterday, but I want to make sure I
19 understand it from you. And I believe it has
20 reference to Exhibit 4 that you were talking about a
21 minute ago.

22 Under the proposed rate structure that I
23 believe you created and submitted to the public sewer
24 district as a proposal for them to charge end user
25 customers, you are retaining or receiving a portion

1 of that; is that correct?

2 A. That's correct.

3 Q. Okay. Can you tell me exactly what it
4 is EMC will be paid of those proposed fees or
5 portions of those proposed fees as shown in
6 Exhibit 4?

7 A. Again, the agreement between EMC and the
8 sewer district is not complete, but what has been
9 verbally agreed to is what's on the first page of
10 this Exhibit 4, that EMC would receive the -- 100
11 percent of the \$37 flat fee, we would receive --
12 that's for sewer. For water we would receive \$5.80
13 per 1,000 gallons and EMC would receive \$1,500 per
14 new home.

15 Q. Anything over and above that would go to
16 the sewer district?

17 A. That's correct.

18 Q. If it makes you feel any better, that's
19 exactly what Mr. Toma said yesterday.

20 A. That's good news.

21 MR. ENGLAND: I have no other public
22 redirect.

23 JUDGE STEARLEY: All right. At this
24 time, all those people present in the hearing room
25 who have not signed the nondisclosure agreement in

1 this case will be asked to leave because we will be
2 going in-camera.

3 (EXHIBIT NO. 16 WAS MARKED FOR
4 IDENTIFICATION BY THE COURT REPORTER.)

5 (REPORTER'S NOTE: At this point, an
6 in-camera session was held, which is contained in
7 Volume 6, pages 494 through 502 of the transcript.)

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1 JUDGE STEARLEY: Mr. McClain?

2 THE WITNESS: Yes, sir.

3 JUDGE STEARLEY: You're reminded that
4 you're still under oath.

5 THE WITNESS: Yes, sir.

6 JUDGE STEARLEY: And we have questions
7 from Chairman Davis.

8 THE WITNESS: Yes, sir.

9 QUESTIONS BY CHAIRMAN DAVIS:

10 Q. Mr. McClain, I apologize, I had to miss
11 some of your earlier testimony. Would it be -- would
12 it be fair to say that you're a home builder by
13 trade?

14 A. No.

15 Q. No? What is your trade?

16 A. My specialty is in building sewer and
17 water treatment plants. I've been doing it 37 years.
18 I've probably built a big portion of the sewer
19 treatment plants for midwest Missouri: St. Peters,
20 St. Charles, O'Fallon, Wentzville, Herculaneum,
21 Barnhart, Licking, Missouri.

22 That's all I've specialized in all my
23 life is building sewer and water treatment plants.
24 It's the main thing. I do some bridges, do a little
25 development when the market is down on the treatment

1 plants for general contractors.

2 Q. Okay. And you're one of the owners of,
3 what is it, Raintree, Incorporated; is that correct?

4 A. Yes, sir.

5 Q. And is that a one-third undivided
6 interest or I mean, how is that ownership
7 distributed?

8 A. Just one-third, uh-huh.

9 Q. Just straight thirds across the board.
10 Okay. So you are in the business of constructing
11 sewer and water treatment plants?

12 A. Yes, sir, I am. You're talking about
13 me, what I -- yes.

14 Q. That's what you do?

15 A. I do.

16 Q. That's what you do, okay. Now, how
17 many -- how many of them have you ever owned
18 personally or through corporations?

19 A. This one and Herculaneum too.

20 Q. Herculaneum. Did Herculaneum ever have
21 any violations?

22 A. No, I don't believe so. I don't recall
23 any.

24 Q. Okay. Now, have there been violations
25 here with --

1 A. Alleged.

2 Q. Alleged violations. Okay. Can you
3 just -- and you may have already done this, but can
4 you just walk me through from day one how, you know,
5 Central Jefferson was formed to how we got to where
6 we are right now? Can you do that?

7 A. I think I can. Central Jefferson was
8 formed 20, 25 years ago, and it was a corporation
9 that was set up to service the utilities for Raintree
10 Plantation. And at that time the designs and systems
11 were made up for Raintree Plantation and -- or for
12 Central Jefferson County, because -- the layouts that
13 they needed for the subdivision. Been operating it
14 ever since, producing water and sewer service, and
15 last year started running into some snags.

16 Q. When did you first become aware that
17 Central Jefferson had capacity issues?

18 A. The last phase we built on was about six
19 years ago, I believe, and I think it was -- on the
20 treatment plant I'm talking about.

21 Q. Okay.

22 A. And it was designed for -- you kind of
23 make projections. When you build a treatment plant
24 you've got to be able to pay for it out of users'
25 fees and pay for its operations.

1 Q. Uh-huh.

2 A. And so we designed it in increments. It
3 was supposed to go along for -- at the rates that
4 Raintree was selling, they were -- and building it.
5 They were building it about 30 lots a year. And so
6 we just projected ten years it will take care of 300,
7 ten years down the line we've got to start looking at
8 about seven or eight years.

9 Well, we hit this building boom. Back
10 about three or four years where everybody was -- I
11 mean, it just went ballistic, and the permits, I
12 think, jumped up, I think at one time, to around 100
13 permits for one year. It kind of caught us
14 flat-footed. We got into three years ago, right
15 after my father died, we were actually starting
16 working on it when my father died and then there was
17 a little lull there for a few months until everything
18 got adjusted there, and then we went back at it.

19 There was another company that was
20 interested in buying it right when he died. And when
21 my dad died, Jerry said, hmm, let's let another
22 company have it. Did some work with them. And then
23 they immediately didn't want it because they
24 apparently -- I don't know, for whatever reason. And
25 so then we -- we started then on the treatment plant

1 expansion plans and the engineering and then --

2 Q. What year was that?

3 A. It was around three years ago. I had
4 that timeline before and I got it with the papers
5 back there but didn't bring it back with me. About
6 three years ago.

7 Q. 2003 roughly?

8 A. Roughly.

9 Q. Okay.

10 A. Thank you, Trip. Let's see what we got
11 here. Actually, it started about 2002 because we met
12 with the Property Owners Association and we suggested
13 then that they might be better off being in control
14 of their own destiny and they could set cheaper rates
15 and do things themselves.

16 I think Jerry at that time said he could
17 either help them form a sewer district or help them
18 get it organized. And then I met again with him in
19 2004, similar type of deal. So they were actually
20 offered the whole thing back in 2002. And then...

21 Q. So is it fair to say that in 2004 you
22 were looking to get out of it but couldn't find
23 anybody to take it?

24 A. Well, May of 2004, I actually came back
25 for a tariff increase here with the Public Service

1 of -- we could have done a little quick expansion on
2 the thing. We asked for -- at that time, for a
3 \$2,500 fee and -- to finance a \$400,000 loan for the
4 treatment plant expansion right-of-way.

5 Q. In the outline here, I believe it's
6 Exhibit 13 --

7 A. Uh-huh.

8 Q. -- did you prepare this outline or did
9 Mr. England?

10 A. No, myself and Dana Hockensmith did.

11 Q. Okay. Yourself and Dana... Okay. PSC
12 Staff -- this is the May 17th, 2004 line says that --
13 the last sentence in the block there says, "The PSC
14 Staff would not support approval of the connection
15 fee."

16 A. That's correct.

17 Q. Do you have an opinion as -- I mean, as
18 to why they would not support it?

19 A. (Shook head.)

20 Q. You have no idea?

21 A. Huh-uh.

22 JUDGE STEARLEY: Mr. McClain, please
23 speak your answers.

24 THE WITNESS: No, sir, I don't have any
25 idea. Thank you.

1 BY CHAIRMAN DAVIS:

2 Q. You don't have any idea. Well, then --
3 did you talk to them directly or did someone else
4 talk to them?

5 A. I don't know if I was along on that one.
6 That might have been Jerry Nixon on that one. I
7 might have been there but I was definitely there on
8 October 31st, 2005 when the second request went
9 through. I think I was there in May 17th. As a
10 matter of fact, one of these, I thought it was gonna
11 get approved at one of these. I don't remember which
12 one it was, though.

13 Q. Okay. So after -- after the May 17th,
14 2004 request where the PSC Staff said they would not
15 support approval of the connection fee, did you ever
16 ask anyone why the approval didn't get -- the Staff
17 didn't approve it?

18 A. No. There might be -- I don't know if
19 they ever give us a written comment on it or not.

20 Q. I mean, you didn't think it was
21 important to ask, well, you know, why are these
22 government bureaucrats just saying no?

23 A. No, I didn't ask. I went ahead --

24 Q. I asked did you think -- you didn't even
25 think it was important to ask that question?

1 A. No. I had started to work with Aqua
2 Missouri at that time, and another -- and Rick Avela
3 at that -- I just started to work on that instead of
4 going back and asking them why.

5 Q. Okay.

6 A. If they say no, to somewhere -- you
7 know, just try something else.

8 Q. Did you attend the local public hearing
9 that we had back -- what was the date on that, Judge?

10 JUDGE STEARLEY: November 6th.

11 BY CHAIRMAN DAVIS:

12 Q. November 6th, did you attend that local
13 public hearing?

14 A. No. No, sir.

15 Q. Did you hear about it?

16 A. Yes, sir, I read the transcript.

17 Q. You read the transcript. So how do you
18 respond to the allegations that were raised in that
19 hearing that Central Jefferson County Utilities was
20 failing to provide service to people for apparently
21 some time, that people couldn't build homes, that
22 there's at least one person who can't get hooked up
23 to the system, that people are having to clean out
24 lines, et cetera. How do you respond to those
25 allegations?

1 A. Go back to 2004. I needed money to
2 build plants and operate the stuff and Public Service
3 denied it. I needed more men. Raintree -- that
4 Raintree system and the size it is now, I think takes
5 three full-time operators. I run it on one because
6 there's just not the money there. I mean, that's a
7 large system and there's a lot of customers out there
8 and there's a lot of fine customers out there. But
9 it just -- like I said, when you guys -- a system
10 that size, if it was a public sewer district or a
11 city or any of the hundreds of customers I've dealt
12 with over the years, I've seen some very fine water
13 sewer treatment plants, lines built. I mean, they
14 have Staff. I mean, if you want quality, you've got
15 to have Staff. If the money's not there for it, I
16 can't provide it.

17 Q. Going back to Exhibit 13 it says, "PSC
18 Staff would not support approval of the connection
19 fee."

20 A. Correct.

21 Q. Were there any -- were there any
22 qualms about them approving the loan to finance
23 construction of the expansion of the wastewater
24 treatment plant?

25 A. They said, "After you build it we'll

1 determine a rate for you then."

2 Q. So it's a situation of who came first,
3 the chicken or the egg?

4 A. I guess that would be a good analogy,
5 yes, sir.

6 Q. Obviously, I guess there's a -- I guess
7 there's another theory out there that growth ought to
8 pay for growth. Do you think that's a fair
9 statement?

10 A. Growth ought to pay for growth?

11 Q. Right. The expansion -- the expansion
12 in the system ought to be able to cover -- you know,
13 the additional number of houses being built ought to
14 be able to cover the expansion in the plant. Does
15 that sound like a reasonable concept?

16 A. Well, what we were asking for, yes. If
17 you're talking about just on fees, I never have
18 agreed with that.

19 Q. Uh-huh. So it's your recollection going
20 back to 2004 that this never -- this request never
21 even made it to the Commission, that it never got
22 past the Staff; is that correct?

23 A. I don't know where it made it to. I
24 don't think it ever did get past the Staff.

25 Q. That's fine if you don't --

1 A. Let me answer it, I don't know. I don't
2 know.

3 Q. That's a perfectly -- perfectly fair
4 answer. Are you aware that this Commission has a
5 penalty authority?

6 A. No, I wasn't really aware of that.

7 Q. Okay. Are you aware of any state
8 statutes that are out there that says the Commission
9 has the authority to go out and get court orders to,
10 you know, take whatever steps are necessary to, you
11 know, ensure that customers have service?

12 A. I'm gonna make the assumption that you
13 do have that authority.

14 Q. Okay. So if you were gonna say anything
15 to the Raintree homeowners out there today, I mean,
16 would you just say, you know, it's the PSC's fault
17 for not granting our rate increase and that's why
18 things have been bad for two or three years now? Is
19 that what you'd tell them?

20 A. I don't have -- well, I don't know what
21 to say there. We used up everything we've got. It's
22 finally come down to the line that something's gonna
23 have to be done.

24 Q. Uh-huh.

25 A. I think the service for the people would

1 have been -- had the PSC gave us this grant, sure, it
2 would have been a lot better for them. I provided
3 the best I could with what I had to work with.

4 CHAIRMAN DAVIS: Mr. England, do you
5 have a copy of Exhibit No. 12?

6 MR. ENGLAND: I'm sure I do, your Honor.

7 CHAIRMAN DAVIS: Would you provide your
8 client with a copy of Exhibit No. 12?

9 MR. ENGLAND: Yes, sir.

10 BY CHAIRMAN DAVIS:

11 Q. Mr. McClain, are you familiar with this
12 document?

13 A. Yes, sir.

14 Q. Okay. I'd like to direct you on page 1
15 to what I will call paragraph No. 4, "Assessments."
16 Line three there is a number \$100 that has been
17 struck out, and there is a \$150 amount inserted and
18 the initials MRT that have been ascribed there on the
19 left-hand side.

20 A. Uh-huh.

21 Q. Could you identify whose initials those
22 are?

23 MR. ENGLAND: Your Honor -- or
24 Commissioner, before we go any further, I don't have
25 a problem with him answering that but it may relate

1 to an actual individual who signed this agreement.

2 His name has been redacted to maintain

3 confidentiality, so if he knows --

4 CHAIRMAN DAVIS: If you know.

5 MR. ENGLAND: But my point is, we might

6 want to go in-camera to get that identified.

7 JUDGE STEARLEY: Mr. McClain, if you

8 would first answer yes or no, do you -- are you able

9 to identify who made those initials?

10 THE WITNESS: No. No, sir.

11 MR. ENGLAND: Never mind.

12 BY CHAIRMAN DAVIS:

13 Q. You're not able to identify those

14 initials?

15 A. No.

16 Q. Okay. Do you know Martin Toma?

17 A. Yes, sir.

18 Q. How well do you know Martin?

19 A. Worked with Martin about 18 years.

20 Q. Okay. Do you know Martin's middle name?

21 A. No, I don't, but I think I'll find out.

22 Q. So you don't know whether or not these

23 are, in fact, Mr. Toma's initials?

24 A. No, sir, I don't.

25 Q. Mr. McClain, you did not appear -- you

1 were not present at the local public hearing that we
2 had back on November 6th?

3 A. That's correct.

4 Q. But someone who did attend, who did
5 listen to testimony, it was -- it was visible to me
6 and at least some of the witnesses who were
7 testifying who were members of the Homeowners
8 Association that they were almost afraid. Do you
9 have any reason to understand why they would all --
10 would be acting afraid?

11 A. Afraid of what?

12 Q. I don't know.

13 A. No, I don't.

14 Q. I don't know. Is it fair to say,
15 Mr. McClain, that you don't want to put any more
16 money into this system?

17 A. Yes.

18 Q. If this Commission were to further
19 review the allegations that were raised at the local
20 public hearing and have also been raised previously
21 with this Commission, apparently, and were to seek
22 some sort of equitable resolution on behalf of those
23 customers who have allegedly been aggrieved to make
24 that as a condition precedent of the approval of the
25 sale, transfer of assets, how would you feel about

1 that?

2 A. I think just about the deal's on the

3 table. I think from here we're at our last --

4 Q. All right. So --

5 A. -- last option.

6 Q. Hypothetically speaking, if the

7 Commission rejects this deal --

8 A. Uh-huh.

9 Q. -- and it's back to you --

10 A. Uh-huh.

11 Q. -- then the Commission goes and seeks a

12 receivership --

13 A. Yes.

14 Q. -- takes over the plant --

15 A. Okay.

16 Q. -- you're okay -- would you be okay with

17 that?

18 A. Sure.

19 Q. Would you be okay if we still kept

20 sending you bills?

21 A. I don't know. I don't think so.

22 Q. You don't think so?

23 A. No.

24 Q. So let me just -- do you feel like your

25 obligation to provide water and sewer service to the

1 customers there of Central Jefferson Utilities, you
2 know, only applies so long as the customers are
3 paying their bills?

4 A. Pardon me?

5 Q. Does your -- do you only feel obligated
6 to provide people water and sewer service when, you
7 know, your -- you're -- you're receiving enough money
8 to operate the system? Is that the only time you
9 feel -- you felt obligated to, you know, provide
10 service?

11 A. We've been running Raintree -- or not
12 Raintree, but Central Jefferson County at a loss for
13 20 years. There's only been a few years it's ever
14 made any money. Now, you can do -- Public Service,
15 as far as I'm concerned maybe, can do Enron
16 accounting, whatever they want, but when you look at
17 audited tax returns that I send to the IRS for the
18 last 20 years, I have kicked in over about
19 1.6 million. I think it's enough for just operation
20 costs.

21 Q. So did you bill the water and sewer
22 system just to sell lots in a subdivision?

23 A. No. I also built it to have a -- to
24 operate -- to have a water and sewer company that
25 could provide service to my customers that I could

1 also make a little profit on.

2 Q. Okay. And when was that company formed,
3 back 25 years ago roughly?

4 A. 25 roughly, I guess, yeah. I don't have
5 that in front of me.

6 Q. Okay. And so assuming that the company
7 was formed roughly 25 years ago, when did you come in
8 and say, PSC, we need a rate increase?

9 A. Quite a few years over the last 20 years
10 because that's when it really started showing
11 significant -- I have the log statements and
12 everything on there. Like I said, not yours, I have
13 audited tax return statements.

14 Q. So if we were gonna go back and take a
15 look at the PSC records for, say, the period of --
16 let's say 1982 to 1992 when roughly, say, Mr. Toma
17 was involved in the operations of the system, you
18 know, were there any rate increases requested during
19 that period?

20 A. I believe -- I don't know for sure. I
21 know the last rate increase that I was aware of that
22 we actually got was when we built the water tower.

23 Q. And what year was that?

24 A. That wasn't that long ago. I don't know
25 when it was for sure but it's not that long ago, the

1 last five or six years.

2 Q. Okay. Okay. So you did request a rate
3 increase. Was that -- five or six years ago, was
4 that before you got into the agreement with
5 AquaSource or after?

6 A. Oh, I guess it would have been -- I
7 think that's before. I'm not sure of that timeline.
8 You got me there. I just can't give you a date.

9 Q. Okay. But you could -- you could come
10 up with a timeline that forms Exhibit 13 but that's
11 something you can't recall?

12 A. I probably could but I have to go back
13 to check records and everything to really be accurate
14 for you.

15 Q. So it's not worth any more money to you
16 to get rid of this thing; is that what you're telling
17 me?

18 A. That's right. I think we've paid our
19 fair share over the years subsidizing this thing.

20 Q. Did you make any money off of Raintree,
21 Incorporated?

22 A. Yes.

23 Q. How much?

24 A. I don't have note of that offhand.

25 That's not --

1 Q. Guess.

2 A. -- something I was -- I didn't think I'd
3 have to really bring a -- or that's even a part of
4 this. Made money off my construction companies which
5 builds sewer plants and several other things.

6 Q. So you made -- made money off building
7 plants, you've made money off the subdivision. Did
8 you make money -- did you build any houses in the
9 subdivision, did you make any money that way?

10 A. Built two in the subdivision and lost
11 money on both of them.

12 Q. Did you get any intangible benefits from
13 the construction of those -- did you get any
14 intangible benefits from the construction of those
15 houses, the fact -- I mean, were they spec homes that
16 other people could come see?

17 A. No, they were built for two friends of
18 ours that live out there and one that I've done
19 business with over the years, both I've done
20 business, I'm sorry.

21 Q. And who were those people?

22 A. One gentleman named Bill Sweikowski
23 (phonetic spelling) and another one was a guy named
24 Jim Smith.

25 Q. Okay. And did Mr. Toma live in either

1 one of those houses?

2 A. No -- wait a minute. I don't know.

3 Martin -- I better go back -- there's three, I guess.

4 Martin built a home out there for himself but I don't
5 recall that Essex was ever involved in it.

6 CHAIRMAN DAVIS: No further questions,
7 Judge.

8 JUDGE STEARLEY: All right. Do we have
9 any recross from attorneys based upon additional
10 questions from Chairman Davis?

11 MR. KRUEGER: I have a couple of
12 questions.

13 JUDGE STEARLEY: All right. Proceed,
14 Mr. Krueger.

15 RECROSS-EXAMINATION BY MR. KRUEGER:

16 Q. Mr. McClain, you remember Chairman Davis
17 asking you questions about when you first became
18 aware of problems with the treatment facilities
19 there?

20 A. Yes, sir.

21 MR. KRUEGER: I'd like to have an
22 exhibit marked, your Honor.

23 (EXHIBIT NO. 17 WAS MARKED FOR
24 IDENTIFICATION BY THE COURT REPORTER.)

25 BY MR. KRUEGER:

1 Q. Would you take a moment to review that
2 document, please?

3 A. Uh-huh, yes.

4 MR. ENGLAND: Before we go any further,
5 can I inquire where this document was obtained -- how
6 this document was obtained?

7 JUDGE STEARLEY: Mr. Krueger, are you
8 going to provide any foundation for this?

9 MR. KRUEGER: I'm going to ask
10 Mr. McClain about the document. I think he can
11 identify the document. It's a letter written to --
12 it appears to be a letter written to him. I think
13 that establishes the foundation part.

14 MR. ENGLAND: But my concern -- I'm not
15 so much -- I'm sorry. My concern's not so much that
16 I have an objection as I do with the proprietary
17 nature of this document. If it was obtained by Staff
18 as a result of an onsite audit or, for that matter,
19 given to them in response to a data request, I have
20 not seen it before but my suspicion is, that it was
21 obtained as part of their audit, in which case it was
22 a private or at least a confidential docket, and
23 they're required to maintain that confidentiality
24 under the statute and I would ask that it continue to
25 be maintained confidential if we're gonna talk about

1 it here in this proceeding.

2 JUDGE STEARLEY: Mr. Krueger, could you
3 address that?

4 MR. KRUEGER: I'm informed that it was
5 obtained as a result of an audit so we can mark it
6 proprietary.

7 JUDGE STEARLEY: All right. We'll mark
8 it as proprietary and we can go in-camera for any
9 questioning on the exhibit, then. So once again, I
10 will ask all those members of the audience here who
11 have not signed a nondisclosure agreement to leave
12 the room.

13 (REPORTER'S NOTE: At this point, an
14 in-camera session was held, which is contained in
15 Volume 6, pages 525 through 531 of the transcript.)

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1 JUDGE STEARLEY: And Mr. Schmid, we will
2 pick up with your cross.

3 RECROSS-EXAMINATION BY MR. SCHMID:

4 Q. Do you have any affiliation with Essex
5 Contracting?

6 A. I'm half owner, 49 percent.

7 Q. Okay. How many lots does Essex
8 Contracting own in Raintree?

9 A. It doesn't own any that I know of.

10 Q. Is Essex -- what is Essex Contracting?

11 A. Essex Contracting is a company that's
12 been around -- I've been in it 37 years, it's been
13 around about 45 years. It specializes in water,
14 sewer treatment plants, road construction, pipelines,
15 bridges, airports, whatever you want to build.

16 But the main bread and butter of Essex
17 Contracting over the last 35 years has been sewer and
18 water treatment plants, metropolitan sewer district,
19 St. Louis County Water, just about everything around,
20 O'Fallon, a lot of St. Charles customers, down as far
21 as Jefferson County, Saint Genevieve, all the way
22 down to -- I guess south all the way down to the state
23 line and as far west as -- I think we -- one is -- in
24 Lebanon is as far as they went to put in a water
25 system. A lot of state parks, also do a lot of work

1 for the Corps of Engineers.

2 Q. Okay.

3 A. Okay.

4 Q. Does Essex Contracting do any

5 residential development?

6 A. At one time it did, built a few homes up
7 in the Chesterfield area and that is no more.

8 Q. Did it ever build any homes in Raintree?

9 A. Two of my partners had requested we
10 build them homes, Bill Sweikowski and Jim Smith who I
11 have some other business dealings with, good friends
12 of ours, they were friends for years. Essex built
13 them the houses at cost and a loss, whatever it was.
14 We didn't make -- it wasn't a profit deal, it was
15 just for friends who asked us to build it for them.

16 Q. So those were the two homes you were
17 referring to earlier?

18 A. Pardon me?

19 Q. Were those the two homes you were
20 referring to earlier?

21 A. That's what I was referring to. I
22 understand -- now, Martin, when -- and I don't really
23 know for sure, but I think that he might have used
24 some of our people, carpenters and stuff like that,
25 to assist him in building, but he was acting as his

1 own general contractor.

2 So he might have subbed out the plumbing
3 and electrical. As a matter of fact, I even think he
4 did some of that stuff himself and Essex might have
5 helped him with some carpenters or something, but he
6 did reimburse us. I mean, that's -- we don't do
7 that. He paid for it.

8 MR. SCHMID: Thank you.

9 JUDGE STEARLEY: Thank you, Mr. Schmid.
10 Any cross from Office of Public Counsel?

11 MS. BAKER: No, thank you.

12 JUDGE STEARLEY: Mr. England, any
13 redirect after Chairman's questions?

14 MR. ENGLAND: Yes, sir.

15 FURTHER REDIRECT EXAMINATION BY MR. ENGLAND:

16 Q. I'll try to be brief. Mr. McClain, you
17 were asked some questions by Commissioner Davis
18 regarding the connection fee that you proposed, and
19 I'm talking about the first one back in May of 2004.
20 I'm sorry. And I misspoke. Actually, I'm talking --
21 I think he was asking you about the October 31st,
22 2005 connection fee increase, if you will, request.

23 A. Oh, okay.

24 Q. Is it your understanding that that
25 connection fee was to be pledged to secure the loan

1 that would be used to construct the new treatment
2 plant?

3 A. That's correct, yes.

4 Q. Thank you, sir. Is that also your
5 understanding with respect to the earlier connection
6 fee in 2004?

7 A. That's correct.

8 Q. That it was to be used to secure the
9 \$400,000 loan that you were asking the Commission
10 approval for?

11 A. Yes, sir, that's correct.

12 Q. And were those your requirements or the
13 bank's requirement?

14 A. Those are bank requirements.

15 MR. ENGLAND: Thank you, sir. No other
16 questions.

17 JUDGE STEARLEY: All right. Thank you,
18 Mr. England. At this time, Mr. McClain, you'll be
19 allowed to step down. You're not fully excused in
20 case the Commissioners would have additional
21 questions.

22 THE WITNESS: I fully understand, sir,
23 and thank you very much. Appreciate it.

24 JUDGE STEARLEY: All right. Thank you,
25 sir. At this time we're going to break for lunch.

1 Let's plan on starting up about, 1:30. And just
2 prior to the attorneys leaving for lunch, if they
3 could meet with me very briefly prior to them
4 leaving. I appreciate it. Thank you.

5 (THE NOON RECESS WAS TAKEN.)

6 JUDGE STEARLEY: All right. We are back
7 on the record in day 2 of our evidentiary hearing in
8 SO-2001-0071, and I believe we are now starting with
9 Staff witnesses. Mr. Krueger, if you'd like to call
10 your first witness?

11 MS. SCHMID: Your Honor, if I may
12 brief -- sorry, your Honor?

13 JUDGE STEARLEY: Yes.

14 MR. SCHMID: Department of Natural
15 Resources. It's just come to my attention that my
16 witness needs to be out of these proceedings by five
17 o'clock. I've spoken to all of the counsel and
18 everyone was in agreement should this Commission
19 allow us, to -- after the Staff witnesses, to put my
20 one witness on, basically switch the order of the DNR
21 witness and Raintree Plantation Property Owners
22 witness?

23 JUDGE STEARLEY: All right. That's
24 acceptable to all parties?

25 (NO RESPONSE.)

1 JUDGE STEARLEY: Yes, that's no problem
2 at all.

3 MS. SCHMID: Thank you, your Honor.

4 JUDGE STEARLEY: Thank you.

5 Mr. Krueger?

6 MR. KRUEGER: Call Dale Johansen.

7 JUDGE STEARLEY: Mr. Johansen, if you'd
8 please first state and spell your name for our court
9 reporter.

10 THE WITNESS: It's Dale Johansen,
11 J-o-h-a-n-s-e-n.

12 (The witness was sworn.)

13 DIRECT EXAMINATION BY MR. KRUEGER:

14 Q. Good afternoon, Mr. Johansen.

15 A. Good afternoon.

16 Q. State your name and address for the
17 record, please.

18 A. Dale Johansen. My business address is
19 Post Office Box 360, Jefferson City, Missouri 65102.

20 Q. By whom are you employed and in what
21 capacity?

22 A. I'm employed by the Missouri Public
23 Service Commission and I'm the manager of the water
24 and sewer department.

25 Q. What are your duties as manager of the

1 water and sewer department?

2 A. I have general managerial duties that
3 involve supervising seven employees. I participate
4 in all water and sewer cases before the Commission,
5 either directly, sometimes as an expert witness or at
6 least from a supervisory capacity.

7 Q. Do your duties with the Commission
8 include participating in earnings investigations?

9 A. Yes, they do.

10 Q. Have you had occasion to participate in
11 an earnings investigation of Central Jefferson County
12 Utilities?

13 A. Yes.

14 Q. How many times have you done that?

15 A. Since I started this position, probably
16 at least twice, if not three times.

17 Q. Okay. And when did you start this
18 position?

19 A. June of 1995.

20 Q. Okay. When did you most recently
21 investigate Central Jefferson's earnings?

22 A. The company submitted a proposal -- I'm
23 looking for some reference document here. The
24 company submitted a proposal in October of 2005 for
25 approval of a new customer connection fee for sewer

1 service. And that was eventually determined that
2 that would be processed as what we call a small
3 company rate increase request, so that was the last
4 time that -- the most recent filing that the company
5 has made that resulted in an audit.

6 Q. As part of this investigation, did you
7 attempt to ascertain Central Jefferson County
8 Utilities Company's rate base?

9 A. Yes, we did.

10 Q. Were you here this morning when
11 Mr. McClain testified?

12 A. Yes.

13 Q. Did you hear -- did you hear his
14 testimony that infrastructure was donated and that it
15 is not included in rate base?

16 A. Yes.

17 Q. Is that a correct statement?

18 A. Not completely, no, it's not.

19 Q. In what sense is it incorrect?

20 A. The initial facilities that were built
21 in the Raintree Plantation Subdivision by Raintree
22 Plantation, Inc. were contributed to Central
23 Jefferson County Utilities Company.

24 Q. Okay. Let me interrupt for just a
25 second. What did those facilities include?

1 A. Trunk sewers, smaller sewer mains and
2 water distribution mains, a -- what, at the time, was
3 termed a temporary treatment facility and also water
4 supply facilities. Those -- those facilities were
5 all -- from the best I can determine from the
6 original application case, were all contributed by
7 Raintree Plantation, Inc. to Central Jefferson County
8 Utilities.

9 Since that time as investments have been
10 made by the utility company, that has created what we
11 call a rate base value for the company. For example,
12 the current treatment plant is -- does have a
13 ratemaking value to it. Both water wells have
14 been -- are in what we call in rate base, as well as
15 the new recently -- somewhat recently constructed
16 water storage facility.

17 Q. Are the utilities that are contributed
18 by the company included in rate base?

19 A. No, they are not.

20 Q. Okay. In connection with this most
21 recent investigation, did you reach a conclusion as
22 to what the company's rate base was at that time?

23 A. Yes. As of December 31st, 2005, which
24 is the test year we used for our rate audit, the
25 ratemaking rate base was approximately \$313,840.

1 Q. I'm sorry. Say the amount again?

2 A. 313,840.

3 Q. Okay. Thank you. Have you kept
4 yourself informed about the activities of Central
5 Jefferson County Utilities since the time of that
6 investigation?

7 A. Yes.

8 Q. Do you know if there have been any
9 significant changes in the company's rate base since
10 then?

11 A. Not that I'm aware of, no.

12 Q. Have you seen and reviewed the tri-party
13 agreement that Central Jefferson filed with the
14 Commission in this case?

15 A. Yes.

16 Q. If the Commission approves this sale as
17 proposed, what compensation will Central Jefferson
18 receive from the assets that it transfers to the
19 sewer district?

20 A. Basically that -- no direct
21 compensation, if you will. There's actually no money
22 changing hands. The sewer district and EMC, through
23 their participation in the tri-party agreement, will
24 assume the outstanding debt that Central Jefferson
25 County Utilities has on the new water tower, and

1 information that was obtained, I believe, through
2 responses to Public Counsel data requests in this
3 case, show that that current balance is approximately
4 \$102,000.

5 Q. Will it receive anything else of value
6 according to this agreement?

7 A. No, it will not.

8 Q. Did you hear Mr. McClain testify this
9 morning about the company's request for approval of a
10 connection fee?

11 A. Yes.

12 Q. And I believe he referred to the
13 timeline that is in evidence in this case as
14 Exhibit 13. Do you have a copy of that?

15 A. I believe I do, if you give me just a
16 second here. Yes, I have that.

17 Q. Calling your attention there to the
18 entry dated May 17th, 2004, the last sentence states,
19 "PSC Staff would not support approval of a connection
20 fee." Do you see that?

21 A. Yes.

22 Q. Is that an accurate statement?

23 A. Basically it is, but there's certainly
24 reasons behind that.

25 Q. Can you tell me what the reasons were

1 that the Staff did not support approval of the
2 connection fee?

3 A. Yes. As we have done with the most
4 recent submission of a proposed connection fee, at
5 the time that the connection fee proposal was
6 submitted in May of 2004, the company and the Staff
7 agreed that Staff would have the opportunity to
8 review the company's overall earnings as part of our
9 evaluation as to whether we believed the proposed
10 connection fee at that time which was \$2,500 for
11 sewer service, would be appropriate.

12 And as a result of that audit that we
13 conducted in 2004, we reached a conclusion that the
14 company's earnings were sufficient to fund the
15 construction of that -- of the addition that was
16 proposed at that time through current earnings.

17 Q. Okay. Thank you. That entry dated
18 May 17th, 2004 on that timeline also refers to
19 requesting approval of a \$400 loan. Did they request
20 approval of financing at that time?

21 A. Yes, they did.

22 Q. What specifically did they request?

23 A. There was actually -- the submissions at
24 that time were actually in two parts. The first
25 was -- well, they were made on the same day,

1 actually.

2 There was a finance application filed
3 which was assigned Case Number SF-2004-0587, and that
4 is the application through which the company
5 requested the commission's approval to enter into a
6 loan agreement for a \$400,000 loan to fund
7 construction of a treatment plant upgrade.

8 In conjunction with that finance case
9 filing, they also submitted the proposed \$2,500 sewer
10 service connection fee tariff.

11 Q. And what position did the Staff take in
12 regard to that financing request?

13 A. We advised the company after the audit
14 was completed that while we did not support the sewer
15 service connection fee that was proposed, that we --
16 we did not oppose and would file a recommendation for
17 approval of the finance application.

18 Q. Okay. Thank you. All right. Now, also
19 on Exhibit 13 there's an entry on October 31, 2005.
20 Do you see that?

21 A. Yes.

22 Q. Can you describe what that request was?

23 A. That's what I referred to earlier as the
24 most recent submission that resulted in our most
25 recent audit. This applicant -- this proposed

1 service connection fee, again, was a proposal by the
2 company to establish a sewer service connection fee
3 for the purpose of funding the most recently proposed
4 upgrades to the treatment facility.

5 Q. And did the Staff take a position on
6 that?

7 A. The small company rate case tracking
8 file, if you will, that was established in
9 conjunction with that proposal has basically been put
10 on hold because of the filing of this case.

11 This case was filed during the time that
12 the company and Staff were discussing the results of
13 the Staff's audit that was conducted in conjunction
14 with that submission. So there basically hasn't been
15 a final resolution reached on that matter.

16 Q. Okay. Thank you. Has the company
17 sought rate increases from the Commission over the
18 years?

19 A. Yes.

20 Q. Do you recall the dates of those
21 requests?

22 A. I don't have the dates of the request
23 but I can tell you from the standpoint of the -- of
24 the company's water and sewer tariff sheets when
25 changes in the rates occurred.

1 Q. Okay. Would you please do so?

2 A. Yes. The company's -- from the water
3 service standpoint, the company's original tariff
4 went into effect in March of 1982. The rate sheet in
5 that tariff was changed in November of 1995. That's
6 the only -- that's the change -- November '95 was the
7 change that was made from the original rate.

8 And then the current rate sheet on the
9 water side went into effect in June of 1998 and that
10 also reflected a change in the company's rates.

11 On the sewer side, the original tariff
12 sheet, again, dates back to the May 1982 time frame.
13 Those rates were subsequently changed for the first
14 time in April of 1994 and the current rate sheet went
15 into effect in September of 1997.

16 Q. Have there been any plant expansions on
17 the water side since June of 1998?

18 A. I don't believe so. I think that's the
19 time frame when the new water tower was built and
20 reflected in rates.

21 Q. Are any other significant changes in
22 rate base?

23 A. I don't believe so, no.

24 Q. What about the sewer side, have there
25 been any plant expansions since September of 1997?

1 A. Not significant ones, no.

2 Q. Okay. Do you believe the Commission
3 should approve the transfer of assets as proposed?

4 A. I think there needs to be some
5 conditions placed on it. Two of the conditions are
6 ones that I would basically say I think it's clear
7 there are no disagreements on; those being that the
8 compliance agreement involving the Department of
9 Natural Resources, the Jefferson County Public Sewer
10 District and EMC be executed and -- as well as the
11 O&M agreement between the sewer district and EMC,
12 that should also be executed in conjunction with or
13 as a condition to the Commission approving the
14 application.

15 I think there are some other things
16 that, you know, the Commission should consider as far
17 as the conditions are concerned, but those are the
18 two that certainly -- most certainty should be part
19 of any Commission order.

20 Q. Okay. Let's talk about those for a
21 minute. With regard to the compliance agreement, do
22 you think that should be executed in exactly its
23 present form or with modifications?

24 A. Based on the most recent draft that I
25 have seen, which I'm looking for a copy of here,

1 based on the most recent draft of the compliance
2 agreement that I have seen, which I received most
3 recently on December 4th from a representative of the
4 Department of Natural Resources, if there are any
5 changes that the parties to that agreement are still
6 negotiating, I've not been advised of those, but I
7 would say substantially in the form that it is
8 currently in would be sufficient.

9 Q. What are the key provisions of that that
10 you would want to see included in the compliance
11 agreement?

12 A. Well, I think the key provisions,
13 clearly, are the construction time frames that are
14 included in the agreement. I think -- I don't
15 believe there are any differences of opinion between
16 who will be the parties to this agreement about those
17 time frames, so I don't think that's an issue. I
18 think they are appropriate. I think it is key that
19 those types of time frames be included in the
20 agreement.

21 From the standpoint of the district and
22 EMC, I think other key -- one of the other key
23 provisions is that it's clear that so long as they
24 are in compliance with the construction guidelines
25 and operating the existing facilities essentially as

1 best they can, that they will not be subject to any
2 violations that may have occurred prior to the time
3 that they take over these facilities. I think that's
4 key. I think it's appropriate that that kind of a
5 provision be in the agreement.

6 I think another key agreement from the
7 standpoint of the DNR that we certainly agree with is
8 that, along with the requirement for the certain
9 timelines that are set out in that agreement to be
10 met, the district and EMC have agreed to stipulate a
11 penalty in the event they don't meet those timelines
12 and I think that's a key ingredient to the overall
13 agreement.

14 I think it's -- again, I don't think
15 that's an issue that there are any -- that there are
16 any disagreements on among the -- among the parties
17 and I think it's, again, an appropriate provision for
18 that agreement.

19 Q. Okay. If modifications are made to the
20 compliance agreement in its present form, do you have
21 a recommendation on how that might be reviewed and
22 approved by the Commission or the other parties?

23 A. I would say that probably the best way
24 to do it would be that, for example, if the
25 Commission issues an order approving the transfer of

1 assets, that a condition to that at minimum, be a
2 showing that the compliance agreement has been
3 executed.

4 I think it would also be reasonable for
5 the other parties to the case that have an interest
6 in that agreement to be given the opportunity to
7 advise the Commission as to whether they think the
8 agreement in the form executed is appropriate.

9 Q. Okay.

10 A. At minimum, I think there needs to be a
11 showing as a condition that the agreement has been
12 executed.

13 Q. Okay. Thank you. Now, with regard to
14 the execution of the operation and maintenance
15 agreement, do you believe that that needs to be
16 executed in its present form or with modifications?

17 A. I think essentially present form as --
18 as I have reviewed it, is essentially -- is
19 essentially fine. I would say in substantially the
20 form with one exception. Based on our review of the
21 information that was -- that's been provided during
22 the course of this hearing regarding the calculations
23 for the proposed water rate that's going to be set
24 out in the agreement, the Staff does have some
25 concerns with the manner in which that rate was

1 calculated.

2 We believe that that needs to be looked
3 at very carefully by the district before such time as
4 it actually executes the agreement. And the main
5 issue that we have there is that the proposed rate
6 for water service was calculated using an average
7 residential customer usage of 5,000 gallons of water
8 per month.

9 The Staff's most recent audit, the
10 per-customer usage that we use to annualize revenues
11 for purposes of our rate audit was 6,250 gallons per
12 month. That's a very significant difference and it
13 has a very significant impact on what that rate
14 should be, in our opinion.

15 Q. How would it affect the rate that you
16 would recommend changing the assumption from 5,000
17 gallons per home per month to 6,250 gallons per home
18 per month?

19 A. I'll preface my answers by saying these
20 are my calculations that I made this morning sitting
21 in the audience, so I might want to have a chance to
22 maybe do a late-filed exhibit where I can actually
23 verify some of this.

24 Q. Okay. Thank you.

25 A. Looking at the EMC's projected expenses,

1 their projected operating profit, and I believe --
2 let me tell what you I'm referencing here, it's
3 Exhibit 4.

4 Q. Okay. Thank you.

5 A. If you change the usage per customer
6 from 5,000 to 6,250 per month, that increases the
7 revenues at the rates that are currently in the O&M
8 agreement by over \$64,000. So that would have a
9 significant impact on the operating profit line item,
10 if you will, that is shown on, I believe what is
11 page 1 of Exhibit 4.

12 If you do a calculation basically going
13 backwards to, say, to maintain that 12 percent
14 operating profit, what would the rate need to be if
15 customers use 6,250 gallons instead of 5,000, that
16 comes out to a total rate of approximately \$5.04 per
17 1,000 gallons instead of a rate of \$6.30 per 1,000.
18 So that's a significant impact.

19 Q. And so what effect would you like to see
20 this have on the operation and maintenance agreement?

21 A. Well, it would be my recommendation that
22 the per-1,000-gallon rate that is set out in the
23 contract as going to EMC be changed consistent with
24 the calculation that I just explained.

25 Q. And would you want to make the

1 commission's approval of the asset transfer
2 conditioned upon that?

3 A. I think it should be, yes.

4 Q. And would that allow the sewer district
5 and EMC to recover their cost?

6 A. It would.

7 Q. Again, if modifications are made to the
8 operation and maintenance agreement, would Staff
9 request the opportunity to review that and inform the
10 Commission about its view prior to issuance of a
11 Commission order?

12 A. Again, I think it could be done, that
13 the Commission order could be issued conditional upon
14 the O&M agreement being executed and filed with the
15 Commission. In this case, I would say with the
16 modification we've just discussed, and that not only
17 the Staff but the other parties to the case at that
18 point be able to advise the Commission whether they
19 believe the O&M agreement, as executed, satisfies the
20 condition. And at that point if the answer is yes
21 similar to the compliance agreement, that the parties
22 would so advise the Commission that the condition has
23 been met.

24 Q. Okay. Thank you. Now, have you seen
25 the statement of positions that the Property Owners

1 Association filed in this case?

2 A. Yes, I have.

3 Q. And included in that statement of
4 positions, there are about 13 conditions that they
5 would like to see imposed, I believe; is that
6 correct?

7 A. I believe that's the correct number,
8 yes.

9 Q. Okay. With regard to those conditions
10 that they recommended, do you support any or all of
11 those conditions for inclusion in the commission's
12 order?

13 A. Well, I think condition C is certainly
14 reasonable and, quite honestly, I wouldn't have any
15 reason to believe that that's the process that's
16 going to be followed. I think condition E is
17 reasonable. I think it's a situation that's clearly
18 going to be up to the district board at the time that
19 it's -- that it's going through its ratemaking
20 process to determine if that would be the manner in
21 which they do it, but I certainly think it would be a
22 reasonable approach to that process.

23 I think condition F is, in my view, is
24 somewhat inherent in the process that public
25 districts use to set rates, so I wouldn't think that

1 that would be an issue with the district, for
2 example. I think it's reasonable.

3 I think item G is certainly reasonable,
4 and to some extent I think EMC and the district, or
5 at least the district through its, what I'll call
6 proposed rate structure, is, in essence, doing that
7 in that they are considering establishing a reserve
8 fund for future expansion. So I think that it is a
9 reasonable, you know, operating approach to take.

10 Item H we just talked about, I certainly
11 agree with that. Item I we just talked about, we
12 certainly agree with that.

13 Item J, I believe that is inherent in
14 the compliance agreement so that's certainly a
15 reasonable one that I think will be accomplished,
16 actually.

17 Item K, to the extent that the
18 district's authority allows it to do something like
19 this, I think it's reasonable. I would say that
20 information that we've obtained from the district in
21 response to data requests certainly indicates that
22 this is their intent, so, you know from that
23 standpoint I think it's something that will be
24 accomplished.

25 Item L, we really don't have a position

1 on. I think that's purely an issue between the POA
2 and the district.

3 And with regard to item M where they're
4 talking about the district and EMC's capabilities, we
5 certainly believe that EMC has the capabilities to
6 carry out this scope of a project based on
7 information we've reviewed regarding other projects
8 that they have used, so I think it would -- I
9 certainly think it's reasonable for the Commission to
10 make that finding and I would recommend that they do
11 so.

12 Q. Okay. Other than the conditions that we
13 have already talked about, are there any other
14 conditions that you would like to see the Commission
15 impose on the approval of the transfer of these
16 assets?

17 A. I think one additional recommendation,
18 and I won't say that this goes to a Commission
19 condition, if you will, but I certainly think that it
20 would -- it would be reasonable for -- from the
21 district's perspective, that when it is setting its
22 connection fees and its policies with regard to
23 collection of the connection fees, that it will be
24 obligated to pay to Raintree Plantation, Inc. under
25 the agreement that involves the AquaSource lots and

1 other situations that we quite honestly have some
2 concern that payment of those fees is a condition
3 precedent to customers receiving service.

4 I can't say that that rises to the level
5 of us recommending that the Commission impose that as
6 a condition, but we would certainly recommend that
7 that be an issue that would be further reviewed at
8 least by the district, and an additional issue that
9 the Commission should at least consider in
10 determining what conditions it should impose.

11 Q. Okay. Were you here yesterday during
12 when Mr. Kolisch testified to the Commission?

13 A. For most of it, I believe all of it.

14 Q. Do you believe that the Commission needs
15 to impose as a condition of the transfer of assets a
16 modification to the agreement between the sewer
17 district and Raintree dealing with Mr. Kolisch, that
18 that should be clarified an agreement reached
19 regarding that?

20 A. I think it's certainly reasonable for
21 the language that's in that agreement currently to be
22 rewritten to where it's clear what it's talking about
23 because it really is not.

24 I think the best resolution, obviously,
25 is for the -- for Raintree and/or Central Jefferson

1 and Mr. Kolisch to reach an agreement and to have
2 that contract that we're referring to modified to
3 reflect that agreement. That certainly would be the
4 best but I would say, yes, at a minimum that that
5 paragraph needs to be revisited so it's clear exactly
6 what the agreement is for.

7 Q. Now, did you hear testimony in regard to
8 a proposed transaction for selling the assets of the
9 company to AquaSource?

10 A. Yes, I did.

11 Q. Was any application made to the
12 Commission in regard to that?

13 A. Yes, there actually was.

14 Q. Did the Staff take a position on that?

15 A. The -- we actually -- that case actually
16 did not get to the point in the process to where a
17 Staff recommendation or testimony or anything along
18 those lines was filed, and just for your reference,
19 that was Commission Case Number SM-2000-214.

20 During the pendency of that case, there
21 were issues that the Staff was basically asked to
22 address by AquaSource regarding certain portions of
23 the application. The Staff responded to that. It
24 had to do with what the Staff's position regarding
25 recovery of acquisition premiums was, and we

1 responded to that -- to that issue to AquaSource.

2 And subsequent to that response is when
3 AquaSource sent the letter that I believe was marked
4 as Exhibit 14 this morning to Central Jefferson.

5 Q. And what did the Staff tell AquaSource
6 its position was in regard to that?

7 A. Basically that we reiterated to them
8 that it was the Staff's position that acquisitions of
9 utility systems by regulated -- by another regulated
10 entity, that any acquisition premium paid by the
11 purchaser would not be recovered through rates to be
12 charged to its customers. That was the main issue.

13 There were some other issues addressed
14 in the Staff letter to -- to AquaSource, but that was
15 really the main issue that they wanted to know our
16 position on prior to that case moving forward.

17 MR. KRUEGER: Okay. Thank you. That's
18 all the questions I have, your Honor.

19 JUDGE STEARLEY: All right. Thank you,
20 Mr. Krueger. We have cross-examination by DNR,
21 Mr. Schmid.

22 MS. SCHMID: I have no questions.

23 JUDGE STEARLEY: Thank you, Mr. Schmid.
24 Office of Public Counsel, Ms. Baker.

25 CROSS-EXAMINATION BY MS. BAKER:

1 Q. Good afternoon.

2 A. Good afternoon.

3 Q. You had given us a Commission tracking
4 number for one of the cases but could you tell me
5 what the Commission tracking number was for the
6 October 31st, 2005 rate increase request?

7 A. Yes, I can.

8 Q. I know I can when I find it.

9 MR. ENGLAND: Was the question the case
10 number for the 2004 connection fee/financing
11 application case?

12 MS. BAKER: No, for the October 31st,
13 2005 rate increase request.

14 MR. ENGLAND: Sorry. Can't help you.

15 THE WITNESS: Okay. For our electronic
16 filing and information system for small company rate
17 cases, we use a Q designation. For this particular
18 submission that was actually for the proposed service
19 connection fee, that was assigned tracking number
20 QS-2006-0003.

21 BY MS. BAKER:

22 Q. Okay. Thank you. So that was a request
23 that went through the small rate increase tracking
24 system?

25 A. Yes.

1 Q. Okay. With this request, you stated
2 that an audit or review was done?

3 A. Correct.

4 Q. Was that audited based on company
5 records that were supplied by Central Jefferson?

6 A. Yes.

7 Q. And those numbers were reviewed by
8 Commission Staff?

9 A. Correct.

10 Q. And is it correct to say that no rate
11 increase has been granted on this request?

12 A. Correct.

13 Q. Okay. What is the current rate for
14 water service?

15 A. For water service there are actually two
16 components to the rate. There's a customer charge
17 component for service provided through a
18 five-eighths-inch meter. That customer charge is
19 \$3.45 per month. For a one-inch meter, it's \$8.50
20 per month, and for a two-inch meter, it's \$28 per
21 month, and then all customers pay a commodity charge
22 per 1,000 gallons of usage of \$1.81 per 1,000.

23 Q. And that commodity charge was one dollar
24 and --

25 A. 81 cents.

1 Q. -- 81 cents. And earlier you had said
2 that your audit found that the average usage was
3 6,250 gallons per month?

4 A. Correct. That's the customer, that's
5 the residential customer usage that we use to
6 annualize residential customer revenues.

7 Q. Okay.

8 A. There are other types of customers that
9 would have different usages that we would have used
10 to annualize the revenues but those are all -- in
11 fact, one of the things I checked this morning is
12 that it's a small number of customers but all of
13 those customers have a higher per-month average usage
14 than the 6,250. So when I was talking about doing a
15 calculation regarding the EMC O&M agreement with the
16 district, that's why I used 6,250 for all
17 customers --

18 Q. I see.

19 A. -- because the customers that are not
20 residential are, in fact, even higher than that.

21 Q. So whenever you would do the
22 calculations in the EMC agreement or the rate study
23 that EMC had done for an actual residence, you might
24 recommend -- or you might use a number that is more
25 than 6,250; is that what you're saying?

1 A. No, I'm saying -- I'm saying -- my
2 suggestion would be that you use the 6,250 per
3 customer as the base usage. And the main reason for
4 that is that the vast majority of these customers are
5 residential customers in that for those customers
6 that are not residential, the usage is a little
7 higher, so that would not adversely affect EMC, if
8 you will, from the standpoint of their revenue
9 collections that they would be due under the
10 contract.

11 But by not splitting it out in great
12 detail, it also doesn't have a significant impact at
13 all on the overall customer base.

14 Q. And so you found an increase over -- the
15 \$6.30 that was on the rate proposal, you found an
16 estimated increase over that of about \$5; is that
17 what you said?

18 A. No, no, no. The rate that is on the
19 Exhibit 4 --

20 Q. Yes.

21 A. -- I believe -- I believe it's the first
22 page of that exhibit, is the draft pricing proposal.

23 Q. Yes.

24 A. The total rate that -- for water on
25 there is \$6.30 per 1,000 gallons. That is -- that

1 generates a certain amount of revenue based on 5,000
2 gallons per month per customer usage.

3 What I did in my calculation was say,
4 okay, I still need to collect that much money, but my
5 usage is significantly higher, so what does my rate
6 need to be to collect the same amount of money?

7 Q. Okay.

8 A. That rate changes from a total of \$6.30
9 to a total of \$5.04. So it's a significant reduction
10 in the rate itself.

11 Q. So if they leave it at the \$6.30, that
12 is a significant overcalculation from what you are
13 suggesting at \$5.04?

14 A. That's our opinion, yes.

15 MS. BAKER: Okay. No further questions.

16 JUDGE STEARLEY: Thank you, Ms. Baker.

17 The Association, Mr. Comley?

18 CROSS-EXAMINATION BY MR. COMLEY:

19 Q. Mr. Johansen, you gave the current rate
20 for water service. I didn't hear what the current
21 rate approved for Central Jefferson County Utilities
22 is for the sewer rate.

23 A. Okay. It's not that you didn't hear it,
24 it's that I didn't give it.

25 Q. Oh, okay.

1 A. For single-family residential service,
2 it's \$25.72 per month. For multi-family residential
3 units on a per-unit basis, it's \$20.57 per month.
4 And then for commercial customers, it's \$25.72 per
5 month which includes the first 7,000 gallons of
6 usage. For any usage over 7,000 gallons, there's
7 then a commodity charge of \$3.67 per 1,000 gallons.

8 Q. I have a few questions about the rate
9 account structure but before I get to that, I wanted
10 to know if the Staff had the occasion to physically
11 inspect the condition of the collection system for
12 the sewer system?

13 A. We -- we have occasion to do that on
14 what I will call a spot inspection basis at times
15 during our field inspections. We're more likely to
16 actually, you know, physically, you know, look into
17 manholes, look into clean-outs in conjunction with
18 customer complaints that might be brought to our
19 attention.

20 For example, we had a situation that was
21 brought to our attention in the January 2006 public
22 meeting that was held and one of our field
23 inspectors, you know, worked with the customer and
24 the company on the resolution of that, and it did
25 involve some actual, you know, system inspection.

1 We don't, as a general rule, do what I
2 would call a system inspection from the standpoint of
3 inspecting all of the system.

4 Q. Based upon the reports you've received
5 and the series of inspections you have had over the
6 time of the regulation for the company, is there
7 anything about the condition of the system which
8 should change your opinion about rate structure
9 involved in this case?

10 A. Well, I think from a standpoint of the
11 sewer collection system, we see periodic problems
12 with that. There are periodically sewer backups that
13 happen, for example, where clean-ups get clogged up.

14 I would say from an overall condition
15 standpoint of the collection system and certainly
16 taking into consideration the fact that it's
17 contributed in those dollars that are related to the
18 installation are not being recovered through rates,
19 it -- we really haven't found anything that would
20 lead us to believe that the rate structure is
21 inappropriate.

22 Q. Would you happen to have the Office of
23 Public Counsel's Exhibit No. 5 handy? That would be
24 draft utility operation and maintenance and capital
25 improvement agreement between EMC and the district.

1 A. Yes.

2 Q. Would you mind turning to Exhibit B.

3 It's an exhibit that talks about utility asset
4 improvements. In paragraph 3 there's a discussion of
5 improvement cost allowance.

6 A. Can you hang on a second?

7 Q. I'm sorry.

8 A. I want to make sure I've got the correct
9 contract. I've got several here.

10 Q. The one that I have has a note at the
11 top right-hand corner, "Received 12/14/06, water and
12 sewer department," and it looks to be your initials.

13 A. That will be it.

14 Q. Okay.

15 A. Yeah, I've got it here.

16 Q. And again, I would like to point your
17 attention to Exhibit B, the third paragraph, numbered
18 paragraph there.

19 A. Okay.

20 Q. I'm gonna read the last sentence of
21 that, cross-checking with you. "EMC shall be
22 permitted to include a customary and reasonable fee
23 of 10 percent for its cost associated with the
24 design, engineering, project management, procurement,
25 construction management, permitting, insurance,

1 general conditions and other costs associated with
2 the utility asset improvements."

3 That's a defined term but I was going to
4 ask if in connection with your review of the rate
5 structure in this case, was any account taken for the
6 fact that EMC might be able to charge that 10 percent
7 customary fee in connection with design and that kind
8 of thing?

9 A. Well, the audit that the Staff has done
10 in conjunction with the company's most recent
11 submission of their proposed connection fee, for
12 example, doesn't involve EMC at all. We have not,
13 from the standpoint of -- of looking into the manner
14 in which EMC has calculated its draft pricing
15 proposal, we have not looked at any of the background
16 information on that, so the answer is no, we have not
17 looked at that. And quite honestly, we just -- we
18 just received a copy of that draft pricing proposal
19 within the last couple of weeks, so...

20 Q. How would you interpret that? I'm gonna
21 ask you the question. Do you know how that could be
22 interpreted for purposes of the improvements on
23 this -- for the upgrades? Do you have a moment to
24 look at it?

25 A. Well --

1 Q. Could this -- would it be possible if
2 they took 10 percent of their improvement cost of 1.8
3 million and deduct for purposes of the upgrades?
4 That's what I --

5 A. No, here's -- here's -- here's the way
6 that I would look at it. And let me put it in a
7 context of a utility company going out and hiring an
8 engineering firm to design a wastewater treatment
9 plant.

10 It is not at all unusual from the
11 standpoint if you're doing a -- what I'll call a
12 design build project where you have a company that's
13 designing a facility and building a facility, that
14 it's not at all unusual for that contractor to have
15 as part of its build cost a 10 percent overhead of
16 the costs related to its design function. So let's
17 say it costs you \$50,000 for an engineering firm to
18 do a design, they're also gonna do the build.

19 At 10 percent, that would not be unusual
20 to see what would be a 10 percent of the design cost
21 being added to the construction cost. So you'd
22 basically have design of 50,000, an overhead of 5,000
23 and any actual construction cost would be your total
24 project cost. That's what I think that's talking
25 about

1 Q. So in this instance as I read this, the
2 10 percent would be deducted from the 1.8 that would
3 be devoting to the upgrades; is that -- do you know
4 whether that's the agreement?

5 MR. ENGLAND: Your Honor, I think I'm
6 gonna put an objection in at this time. He's
7 asking -- first of all, the witness has no foundation
8 to comment on a contract to which he's not a party,
9 and even if he does, I don't know what the relevance
10 of what his opinion would be to the either literal
11 terms or the intent of that contract if he's not a
12 party to it.

13 JUDGE STEARLEY: Mr. Comley?

14 MR. COMLEY: My response would be that
15 the Staff did review their draft pricing proposal.
16 The draft pricing proposal does not include how this
17 10 percent management fee is included into the cost
18 recovery for EMC, and it appears to be another cost,
19 or at least another way for EMC to earn money that is
20 not reflected on the rates. And the question was
21 whether or not the 10 percent management fee was part
22 of the review of the draft pricing proposal and if it
23 were, what -- what its effects would be.

24 MR. ENGLAND: Mr. Comley has had an
25 opportunity and I believe either he or other counsel

1 have taken that opportunity to question the parties
2 to the agreement, both Mr. Toma and Mr. Thomas. And
3 they're the people who are familiar with the
4 agreement. I just don't see the purpose of this, and
5 even if he gets an answer, I don't know what
6 relevance it would have to this agreement.

7 MR. COMLEY: My response is that I think
8 that Staff's review of the proposed rate structure
9 would be relevant to the commission's consideration
10 of approval of this transaction.

11 JUDGE STEARLEY: Mr. Johansen, are you
12 able to even answer this question since it's been
13 dropped on you?

14 THE WITNESS: I have an answer.

15 JUDGE STEARLEY: You have an answer?

16 THE WITNESS: I do.

17 JUDGE STEARLEY: All right. I will
18 overrule the objection and want you to answer to the
19 extent of your own knowledge and ability to
20 calculate.

21 THE WITNESS: Okay. I think what you're
22 getting at, Mr. Comley, is the 10 percent overhead
23 charge here, in effect, reducing the dollars
24 available for capital improvements from 1.8 million
25 to some -- a number 10 percent less than that.

1 BY MR. COMLEY:

2 Q. Correct.

3 A. And my answer to that would be it
4 probably is. That's the way I would interpret this,
5 is that as part of their overall capital project that
6 they've committed to spend \$1.8 million on, this
7 would be reflective of dollars that will not be spent
8 on hard plant but will be recouped as part of the
9 total project.

10 Q. And included into the draft pricing
11 proposal that was marked as Exhibit 4?

12 A. Well, the manner in which the \$1.8
13 million is recovered is a straight 20-year
14 amortization of \$90,000 a year. So the 10 percent
15 doesn't change the pricing proposal, as I see it. It
16 changes the dollars to spend on plant. It doesn't
17 change the pricing proposal.

18 Q. Very well. To clarify, your proposal
19 would be instead of using 5,000 gallons per month as
20 the average usage for residential -- or residential
21 use in Raintree Subdivision, your proposal would be
22 6,250 gallons per month?

23 A. Actually, our proposal is that 6,250
24 gallons per month per customer would be the average
25 monthly usage applied to all customers, not just

1 residents but to all customers.

2 Q. All customers.

3 A. And as I mentioned earlier, two reasons
4 for that: No. 1, the vast majority of the customers
5 are residential customers. Those that are not
6 actually have a little higher usage, so there would
7 be no detriment, if you will, to EMC to using the
8 6,250 for all customers.

9 Q. Did the Staff undertake any kind of
10 investigation of rates in the vicinity to compare how
11 this rate might compare to those being charged by
12 others in neighboring subdivisions or neighboring
13 communities?

14 A. We did not and we do not do that in our
15 normal course of business.

16 Q. Would these rates be comparable to other
17 regulated sewer companies within that same area?

18 MR. KRUEGER: I think he's answered that
19 question that he didn't make a comparison.

20 JUDGE STEARLEY: Mr. Krueger, are you
21 raising that as an objection?

22 MR. KRUEGER: Yes.

23 MR. COMLEY: Mr. Johansen --

24 THE WITNESS: I don't know.

25 MR. COMLEY: I'll withdraw the question.

1 BY MR. COMLEY:

2 Q. With respect to the Staff's statement of
3 position on, I think it was paragraph 10, let me just
4 draw your attention to that. Do you have a copy of
5 your statement of position?

6 A. I do, somewhere. Okay. I have that.

7 Q. This talks about lifting the moratorium
8 and deciding priority among owners. Is it Staff's
9 position that, to the extent the district is capable
10 of doing so, that the subdivision be given priority
11 over potential new customers outside the development
12 and particularly individual property owners building
13 homes and the subdivision should be given priority
14 over developers outside the subdivision?

15 A. I think that is certainly an approach
16 that the district should take from a public policy
17 standpoint. I think one of the other points we make
18 here is that with the additional capacity that is
19 going to be available when this new plant comes
20 online, it's really probably not an issue, but our
21 preference would certainly be that they do that.

22 MR. COMLEY: That's all I have.

23 JUDGE STEARLEY: Thank you, Mr. Comley.
24 Cross-examination by Central Jefferson, Mr. England?

25 MR. ENGLAND: Yes, please. Thank you.

1 CROSS-EXAMINATION BY MR. ENGLAND:

2 Q. Good afternoon, Mr. Johansen.

3 A. Good afternoon.

4 Q. I'm gonna jump around because that's the
5 way I took my notes.

6 A. Okay.

7 Q. Let me kind of start with a couple of
8 things that I heard most recently, and I thought you
9 said to Mr. Comley there would be no detriment to EMC
10 using a 6,250 usage figure versus the 5,000 in the
11 rate proposal.

12 A. No.

13 Q. You didn't say that?

14 A. No.

15 Q. Okay.

16 A. Using 6,250 per month for all customers,
17 because that's the residential usage and
18 nonresidential customers actually use more than that,
19 would not -- to me is a reasonable way to do it.
20 That if you actually looked at each type of customer
21 and built in their average usage and the numbers of
22 those customers, the rate that I calculated, I
23 believe at \$5.04, would be even lower.

24 So my point is, using the 6,250 for all
25 customers creates the \$5.04 rate but that would

1 actually -- could potentially even be lower if you
2 used actual for all.

3 Q. But you would agree with me that if you
4 use 6,250 per customer for designing rates and actual
5 usage happens to be 5,000 per customer, you're not
6 going to hit your revenue target, you're gonna come
7 up short, correct?

8 A. Oh, absolutely.

9 Q. Okay. Thank you. With respect to that
10 figure that you calculated at 6,250, you say that
11 came out of the Staff's most recent earnings
12 investigation?

13 A. Correct.

14 Q. I assume that came from the 2005 books
15 and records of the company?

16 A. Correct.

17 Q. Was that -- were those production
18 numbers or were those delivered numbers?

19 A. Build.

20 Q. Build numbers?

21 A. Correct.

22 Q. So that's water that actually got to the
23 customer as opposed to came out of the plant?

24 A. Correct.

25 Q. Okay. Was it averaged with any other

1 years or was it just 2005?

2 A. I believe it was 2005 but I'm not sure.

3 Q. And would you agree with me that 2005
4 was a drier than normal year?

5 A. I don't know.

6 Q. If it was, that number could be skewed
7 that you calculated, correct?

8 A. Correct.

9 Q. Okay. If I understand what you're
10 saying here is, you -- you like -- I know that's
11 going a little too far. You're okay with the
12 agreement between the sewer district and EMC on hold,
13 but you'd like to see them implement water rates
14 based on a 6,250 figure as opposed to a 5,000-gallon
15 figure?

16 A. I certainly -- at minimum, I think the
17 district should take a real close look at that issue.
18 I -- I -- even looking at the information that was
19 included in that exhibit which I believe was
20 Exhibit 4, I don't think there's a three-month
21 rolling average as they put it on that one -- on that
22 one column, on the final page. I don't think there's
23 ever a three-month rolling average that's as low as
24 5,000 gallons a month.

25 So I don't think the information that

1 they presented themselves supports using 5,000
2 gallons a month to design rates that are gonna be
3 into effect for 20 years.

4 Q. Well, I appreciate that. I want to get
5 at the bigger picture. Are you proposing that the
6 Commission implement as a condition of transfer that
7 they substitute essentially yours or Staff's judgment
8 for the setting of rates for water as opposed to that
9 negotiated between those two parties?

10 A. I think at -- I think at a minimum that
11 that issue needs to be looked at. And I understand
12 that gets to the issue of who actually has the
13 authority to decide that. I -- I have a lot of
14 concern from the standpoint that you're -- you are,
15 in effect, setting rates for what is -- what has been
16 said is gonna be, in essence, a 20-year fixed rate,
17 and while there are certainly benefits to that, I
18 think you have to be very, very careful about how you
19 set that initial rate.

20 And I think if -- the way that I did the
21 calculation to check the -- what I consider to be the
22 reasonableness of that rate, I didn't mess with the
23 expenses that EMC projects, I didn't mess with their
24 12 percent profit margin. I left all that alone.
25 All I did was look at revenues. And I've got serious

1 concerns about using 5,000 gallons of water per month
2 on average to create those revenues.

3 Q. Is it fair to say, then, that you don't
4 necessarily believe that Mr. Toma and the other
5 members of the board of trustees are looking out for
6 the best interests of the customers of the sewer
7 district?

8 A. They may not be in that situation.

9 Q. Despite his testimony to the contrary,
10 that's your concern?

11 A. I understand that is their charge, I
12 understand that Mr. Toma is very serious about that.
13 I'm not -- you know, I'm not casting any dispersions
14 on them, I just think it's an issue that they need to
15 seriously look at when there appears to be some
16 significant problems.

17 Q. If, in fact, that rate is too high, as I
18 understand that -- never mind. Let me strike that.
19 As I understand, your own admission on the stand was
20 that that calculation was made here today in the
21 hearing room, the 6,250?

22 A. Yes, it was.

23 Q. Okay.

24 A. Something I thought about overnight to
25 look at.

1 Q. Okay. I'm trying to take the easy ones
2 first, but -- believe me. It may not appear that
3 way. The sale to AquaSource.

4 A. Yes.

5 Q. I believe you sort of verified what
6 Mr. McClain testified to earlier or what was in that
7 letter from AquaSource to Central Jefferson County
8 terminating the agreement. When they were advised by
9 Staff that it would not consider an acquisition
10 premium for purposes of ratemaking, they essentially
11 pulled the plug on the deal?

12 A. Yes, that's true. Their letter was a
13 fairly accurate representation of what they were
14 told.

15 Q. I want to get to kind of a higher level
16 or a more theoretical. An acquisition premium, in my
17 opinion -- and you can agree or disagree as you
18 choose -- suggests to me that AquaSource is willing
19 to pay more than the book cost of the rate base.

20 A. Correct.

21 Q. And you've testified earlier that the
22 booked rate base in this case was -- do you have that
23 number? It says a 300,000 figure.

24 A. Yes, at 1,231.05 it was \$313,840.

25 Q. So AquaSource was willing to pay

1 something in excess of that for these properties at
2 that time?

3 A. Correct.

4 Q. Do you have any recollection of how much
5 more?

6 A. I don't, and I had hoped to get back to
7 that case file over the lunch break and didn't have
8 time to do so.

9 Q. Okay. I think in response to some
10 questions by your counsel, you indicated that the
11 Property Owners' Association conditions C and E
12 seemed reasonable to you?

13 A. C, yes. And E, yes, that's true.

14 Q. Okay. And did you hear Mr. Toma
15 yesterday, I believe, say that those were problematic
16 from the board's perspective?

17 A. I did not hear that testimony, no.

18 Q. Assume for purposes of my question that
19 he did.

20 A. Okay.

21 Q. And that these would be deal breakers
22 from the district's perspective. Is it your
23 testimony that it seems reasonable -- can I take it
24 further or is that as far as it goes -- that it ought
25 to be a condition that this Commission imposes upon

1 the sale?

2 A. They would seem to me to be reasonable.
3 If they're deal breakers, I would not suggest that
4 the Commission impose them.

5 Q. Thank you, sir. I think you also
6 recommended that connection fees -- or payment,
7 excuse me, of connection fees not be a reason for
8 withholding service. Did I understand that to be
9 your testimony?

10 A. I said that that was a concern that, you
11 know, something that, you know, we have some concern
12 about. It does not rise to the level -- that concern
13 would not rise to the level of being a suggested
14 condition.

15 Q. Okay. And you'd agree with me that as a
16 general matter, even regulated utilities that have
17 tariffed connection fees, they are condition
18 precedents to obtaining service?

19 A. Oh, yes, that's correct.

20 Q. You also addressed the Kolisch issue.

21 A. Yes.

22 Q. If I were to ask you would it be
23 acceptable if the company -- excuse me, if Raintree
24 Plantation, Inc. and the sewer district were to
25 rewrite that section so as to put Mr. Kolisch in the

1 same position after the sale that he was before,
2 would that appear to be reasonable to you?

3 A. I think that is very reasonable and I
4 think the main issue there is that when I read what's
5 there today, I'm not sure he's in the same position.

6 Q. I agree with you and we intend to
7 rewrite that.

8 A. Okay.

9 Q. But as long as he's no more soft
10 tomorrow after the sale than he is today before the
11 sale, that would seem to be a reasonable solution to
12 you?

13 A. I believe it is, yes.

14 Q. Do you have a copy of the company's 2005
15 annual report?

16 A. I do not.

17 MR. ENGLAND: Your Honor, I only have
18 one copy. May I approach the witness?

19 JUDGE STEARLEY: Certainly.

20 BY MR. ENGLAND:

21 Q. I'll try to do it back from the podium,
22 but I may come back.

23 A. Okay.

24 Q. Mr. Johansen, I've handed you what I
25 hope is an accurate copy of the company's 2005 annual

1 report, and if you could verify that for me, I'd
2 appreciate it.

3 A. It has the -- our file stamp on it, so
4 I'll make the same assumption you're making.

5 MR. ENGLAND: Okay. And to the extent
6 necessary, your Honor, if need be, we can take
7 official notice of it. I believe it's on file with
8 the Commission.

9 BY MR. ENGLAND:

10 Q. I was interested in your discussion
11 about contributed plant because I believe the -- even
12 though it -- even though a plant is constructed by
13 the developer contributed to the utility company at
14 no cost, it's my understanding it still is recorded
15 on the company's books at original cost.

16 A. It should be.

17 Q. Okay. Would you take a look, and I
18 think I've got some Post-its on at least -- I think
19 the first Post-it you'll come to, I think, provides a
20 summary of the original cost of the plant that was
21 put in service at the Raintree Subdivision. Could
22 you read those figures in, please?

23 A. Yes. And this is from page 4 of the
24 report, line 3, "Water plant in service, \$1,710,822."

25 Q. And then for sewer, please?

1 A. "Sewer plant in service, \$2,319,937."

2 Q. So just as a rough comparison, the
3 company currently has about \$4 million of original
4 cost plant in the ground?

5 A. That's probably true, yes.

6 Q. Okay. And perhaps a little over 300,000
7 of which is invested -- company-invested, if you
8 will, rate base that would be recognized for
9 ratemaking purposes?

10 A. Correct.

11 Q. One other question in that regard. If
12 Raintree -- and I'm gonna keep this at a pretty high
13 level -- has collected \$1,100 for the existing
14 connections, and I'm gonna round that to 700, would
15 you agree with me that they've collected roughly
16 \$770,000 in connection fees?

17 A. Yes.

18 Q. And further, if they were to collect a
19 sewer connection fee or service connection fee for
20 all 3,000 lots, they will have collected 3.3 million
21 of the original 4 million investment, right?

22 A. Correct.

23 Q. Do you think they'll ever have 3,000
24 homes at Raintree Subdivision?

25 A. I seriously doubt it.

1 Q. What's a more realistic build-out, if
2 you know?

3 A. Just based on what we see here with
4 other -- I can't hardly say similar developments
5 because this is one of the largest, you know, that
6 we've -- we've experienced, if you will, if you get
7 to 75 percent build-out from what your original
8 platted lots are, it's pretty darn good.

9 Q. And you understand some folks down there
10 have bought two or three lots to build their home on?

11 A. Oh, sure. And I do know that you may
12 have started out with somewhere around 3,300 platted
13 lots, and there certainly are the situation you
14 just -- you just described where, you know, several
15 people have bought at least two and sometimes three
16 lots to build their homes on, so...

17 Q. Now, I'm gonna get into the tough stuff.
18 I want to talk about the investigation of -- our
19 earnings investigation that you-all did with the most
20 recent --

21 A. Okay.

22 Q. -- sewer connection fee request.

23 A. Okay.

24 Q. First of all, I want to make sure you
25 agree with me, that was simply a request to implement

1 a service connection fee of \$4,000 for new customers.

2 A. Correct.

3 Q. There would have been no change
4 whatsoever in monthly user rates?

5 A. Correct.

6 Q. The company, in its filing and in its
7 draft tariff, proposed to escrow or operate those
8 dollars and specifically agree that they would only
9 be used for the repayment of the debt necessary to
10 construct the new sewer facility, correct?

11 A. Correct.

12 Q. And I don't mean to be putting words in
13 your mouth, but it -- or at least it was your
14 understanding the company felt that since they needed
15 this new plant to provide capacity for new customers,
16 the fairest way to do that was through this service
17 connection fee as opposed to an increase in user
18 rates?

19 A. That was the company's opinion, yes.

20 Q. Fair enough, fair enough. Now, I think
21 your position -- and again, I'm not gonna -- well, of
22 course I'm gonna try to put words in your mouth, but
23 you're smart enough you can fix it if I don't get it
24 right.

25 Staff's position is that new customers

1 shouldn't have to bear the brunt entirely of that
2 treatment plant?

3 A. That's correct.

4 Q. Okay. And what you would like to see is
5 a combination, I believe, of connection fees and user
6 rate increases?

7 A. Correct.

8 Q. But the way things work here at the
9 Commission, that only happens after you put the plant
10 in service?

11 A. Correct.

12 Q. After you've spent the money?

13 A. Correct.

14 Q. And if you borrowed it, after you borrow
15 the money?

16 A. Correct.

17 Q. Now, the Staff's test period for
18 purposes of its audit, because it -- you need to look
19 at that side of the equation as well, correct?

20 A. Correct.

21 Q. Was 2005?

22 A. Yes.

23 Q. Okay. Would you agree with me that to
24 the extent Central Jefferson County has now
25 contracted with EMC to operate and maintain the

1 system, the 2005 test period may not be an accurate
2 representation of its cost as of today in looking
3 forward?

4 A. That's probably true, yes.

5 Q. And with reference to that annual report
6 that you have in front of me -- of you, and I think
7 I've Post-it-ed -- if that's a verb -- a couple of
8 pages involving the income statement, at least as
9 reported on the annual report for both water and
10 sewer, and taking a look at that, would you agree
11 with me that at least as far as the annual report is
12 concerned, it appears that on both the water and
13 sewer side, the company is roughly spending in
14 expenses as much as it's taking in in revenues?

15 A. That's what is reported, yes.

16 Q. And I want to keep this at a pretty high
17 level. As I understand it, when Staff does its
18 audit, there's some expenses that it disallows
19 because it doesn't think they're appropriate for
20 ratepayers to recover?

21 A. Correct.

22 Q. And then there are other expenses that
23 may be one-time expenses that, although legitimate,
24 aren't fair to be recovered in one year?

25 A. Correct.

1 Q. And you would amortize them over a
2 period of time?

3 A. Correct.

4 Q. And then there may be other expenses
5 that ought to be capitalized as opposed to expensed
6 in the year that they're incurred?

7 A. Yes.

8 Q. And then after you make all of these
9 adjustments, you come up with your analysis or
10 recommendation?

11 A. Correct.

12 Q. Would you agree with me -- well, let me
13 ask you, to the extent that you're familiar with it,
14 was the Public Counsel's complaint case and testimony
15 based on Staff's analysis?

16 A. Yes, that's my understanding.

17 Q. Were they at all involved in that
18 investigation that you performed?

19 A. No.

20 Q. Did you have any conversations with them
21 about your investigation at the time you were
22 performing it?

23 A. Probably not during the time we were
24 performing it. They were advised of the results of
25 our audit at the same time the company was.

1 Q. Okay. Would you agree with me that the
2 owners of this utility have not taken any salary out
3 of the utility?

4 A. If you'll give me a second, please.

5 Q. Sure.

6 A. I believe if you're talking about
7 specifically the owners, I believe that's correct.

8 Q. Okay.

9 A. And can I interrupt for just a moment?

10 Q. It depends. Is it gonna be something I
11 like or I don't like?

12 A. I'm not sure.

13 Q. Go ahead.

14 A. If you're gonna have a lot of what I'll
15 call detailed questions about the audit, we probably
16 need to have Mr. Meyer address those.

17 Q. Okay.

18 A. I can address them -- if you don't get
19 any more detailed than what we just did, I'm okay.

20 Q. I think I can keep it at that level --

21 A. Okay.

22 Q. -- and that's where I intend to, but
23 feel free --

24 A. Okay.

25 Q. -- if you don't feel comfortable, to

1 refer to Mr. Meyer. Would you also agree with me
2 that the shareholders have not taken any dividends
3 out of this company?

4 A. That I don't know.

5 Q. Okay.

6 A. And I don't know that the audit results
7 would show whether that had happened or not.

8 Q. Do you know if the company did pay their
9 health insurance costs?

10 A. They did.

11 Q. Okay. But they didn't take any salary
12 above and beyond that?

13 A. That's my understanding, yes.

14 Q. Okay. Now, as part of Staff's earnings
15 analysis, you also did a pro forma analysis of what
16 impact a new treatment plant would have on the cost
17 of service of this company, correct?

18 A. Correct.

19 MR. ENGLAND: May I have an exhibit
20 marked, please?

21 JUDGE STEARLEY: Certainly. Believe
22 we're up to 18 now.

23 (EXHIBIT NO. 18 WAS MARKED FOR
24 IDENTIFICATION BY THE COURT REPORTER.)

25 JUDGE STEARLEY: You may proceed.

1 MR. ENGLAND: Thank you.

2 BY MR. ENGLAND:

3 Q. Mr. Johansen, you have in front of you
4 what's been marked for purposes of identification as
5 Exhibit 18?

6 A. I do.

7 Q. And I'm hoping you're gonna tell me that
8 looks familiar.

9 A. It does.

10 Q. Could you describe that briefly for the
11 record, please?

12 A. The cover sheet, if you will, is a copy
13 of an e-mail that I sent to you and Dean Cooper at
14 your firm and Linda Dennis with Central Jefferson
15 County Utilities with copies to several Staff people
16 by which I transmitted to you what we've called our
17 ten-year analysis with new plant that was done in
18 conjunction with the QS file that I mentioned
19 earlier.

20 Q. Great. I'd like to try to stay at a
21 pretty high level but I'm gonna have to --

22 A. You will need to on this.

23 Q. Flip the page, if you would, please, and
24 I'm looking at a sheet in the upper right-hand column
25 that says ten-year-scenario new treatment plant.

1 Assume it goes into service 1/1 of year one.

2 A. Correct.

3 Q. You see that?

4 A. Yes.

5 Q. Okay. And so if I'm following this

6 through, the plant figure there of 1,342,000 would

7 reflect the new sewer treatment plant?

8 A. That's correct.

9 Q. Okay. And then the depreciation

10 chemical expense testing and property taxes would be

11 additional expenses attributed solely to that plant?

12 A. Correct.

13 Q. Accumulated depreciation would be a

14 number that would accumulate in the first year and

15 then in subsequent years act to reduce your rate

16 base, right?

17 A. Correct.

18 Q. Okay. Then there's a return calculation

19 which is a return on your net investment, original

20 cost less accumulated depreciation?

21 A. That's correct.

22 Q. Okay. And what you come up with --

23 again, correct me if I'm wrong -- is a revenue

24 requirement, and I'll call it the traditional type

25 revenue requirement, for this plant only?

1 A. I believe that's accurate, yes.

2 Q. Okay. Now, in this analysis you then
3 deduct what you had alleged as an overearnings for
4 the 2005 period?

5 A. Correct.

6 Q. And then I think you assume some
7 additional revenues because new customers come online
8 in those next three lines?

9 A. Yes, that's correct.

10 Q. Okay. And netting, if you will, all
11 those figures, the 215,000 less the overearnings --
12 and I'm sorry, I don't have my reading glasses with
13 me. I'm having a hard time here. I think it's
14 58,000?

15 A. 68,000.

16 BY MR. ENGLAND:

17 Q. 68,000. Did it get bigger while I was
18 standing here?

19 A. No.

20 Q. Anyway, it's a netting process and you
21 come up with the additional revenue required which,
22 if you assume 75 percent of the new customer revenue
23 supports the new facilities, there's a deficiency of
24 roughly 128,000?

25 A. Let me run a couple numbers here real

1 quick and make sure that's right.

2 Q. Sure.

3 A. I believe that's correct, yes.

4 Q. Okay. And then you have another
5 assumption where you take 50 percent of the
6 customers' contributing, I guess, their user revenues
7 towards reducing the cost of service attributable to
8 this plant?

9 A. Yes.

10 Q. And that number is roughly 134, 135,000?

11 A. Correct.

12 Q. Okay. So -- and the point I'm getting
13 at is, once you-all factored in the 1.3 million and
14 factored in the earnings -- overearnings that you
15 claim that exists today, there still is a substantial
16 need for rate relief day one when this plant goes
17 into service?

18 A. Yes.

19 Q. And if I were to take the 128,000 as a
20 percent of existing sewer revenues, which I believe
21 from that annual report was about 223,000, that would
22 be roughly a 57-percent increase?

23 A. Roughly.

24 Q. Okay. Or if you take 135,000 as a
25 percent on top of the 223,000, it would be about a

1 60-percent increase in current revenues?

2 A. Yes.

3 Q. Now, if there's no overearnings or
4 something less than what you've alleged in your
5 audit, that number only gets -- the revenue
6 requirement number only gets bigger, right?

7 A. That's correct.

8 Q. Okay. I think we're nearing the end
9 here.

10 MR. ENGLAND: So may I offer this
11 exhibit, please?

12 JUDGE STEARLEY: Any objections to the
13 admission of Exhibit No. 18?

14 MR. KRUEGER: No objection.

15 JUDGE STEARLEY: Hearing none, it will
16 be received and admitted into evidence.

17 (EXHIBIT NO. 18 WAS RECEIVED INTO
18 EVIDENCE AND MADE A PART OF THE RECORD.)

19 BY MR. ENGLAND:

20 Q. So if I understand the traditional
21 ratemaking process and applying it to the 2005
22 service connection fee request --

23 A. Okay.

24 Q. -- what would happen in Staff's view is,
25 after you've performed your audit, we would reduce

1 rates on the sewer side by 68,000?

2 A. I think that's the aggregate
3 overearnings.

4 Q. Oh, okay.

5 A. Let me check that.

6 Q. Okay. Well, let me -- I'm not so much
7 concerned with the number as I am with the process.

8 A. Okay. That is the aggregate number, by
9 the way.

10 Q. Okay. Thanks. So it might be something
11 less for sewer, but anyway --

12 A. Yes.

13 Q. -- the process would be we'd reduce
14 rates today on a go-forward basis, go into a build
15 situation however we can do that and finance
16 1.3 million in plant. Let's say it's constructed in
17 18 months. 18 months from now we come in and we
18 request a rate increase to cover our increased cost
19 of service in the new plant, and it could take as
20 much as 11 months after that filing before we find
21 out whether or not we're gonna recover those costs,
22 all or a portion of them, correct?

23 A. That's possible, yes.

24 Q. Would you agree with me that that
25 process is not very workable for small utilities that

1 have to make this kind of investment?

2 A. Well, I think going back to the -- one
3 of the first steps you just mentioned, if you have a
4 company who is committing the investment that needs
5 to be made and is in a construction project mode, we
6 would not recommend that those overearnings be
7 returned on a temporary basis.

8 That's -- step one of your process is,
9 in effect, not reflective of what we would propose.
10 We would not propose that the rates be reduced for
11 some period of time and then jumped up significantly
12 higher if you're in the mode -- if you are, in fact,
13 spending the money and clearly are going to be, you
14 know, in the need of a significant rate increase. We
15 would simply not do that.

16 Q. Fair enough, but let me interrupt.

17 A. Okay.

18 Q. That is what Public Counsel is proposing
19 through their complaint case; would you agree with
20 me?

21 A. Its been a while since I've read it, but
22 that's probably accurate.

23 Q. Okay. And I didn't mean to cut you off.
24 You might have something else you wanted to say. Go
25 ahead.

1 A. No, that's fine.

2 Q. Well, the point I want to get at, at
3 even a higher level, years ago we referred to as
4 Lumpe investment when Commissioner Lumpe was here,
5 but with small companies, would you agree with me
6 that it's very difficult under traditional ratemaking
7 procedures to finance a large construction project
8 under traditional rate-base rate-of-return
9 regulation, where you don't get any construction work
10 in progress, you don't get any advanced monies to
11 help fund that project?

12 A. I would generally agree with that, yes.

13 MR. ENGLAND: Okay. Thank you, sir. I
14 have no other questions.

15 JUDGE STEARLEY: Thank you, Mr. England.
16 Questions from the Commissioners at this time?
17 Commissioner Gaw, do you have any questions for
18 Mr. Johansen?

19 COMMISSIONER GAW: I do have. I was
20 hoping that I might be able to get to them a little
21 sooner.

22 MR. ENGLAND: All you had to do was
23 interrupt, your Honor.

24 COMMISSIONER GAW: I know and I thought
25 about it, actually, but you were on a roll.

1 MR. ENGLAND: Thank you. Not a good
2 one.

3 COMMISSIONER GAW: Anyway, I do have a
4 few questions and I may run out of time because I
5 have something that I might have to go out for, and
6 if I do, I may have to come back later and visit with
7 you.

8 THE WITNESS: I will be here.

9 QUESTIONS BY COMMISSIONER GAW:

10 Q. First of all, I'm gonna explore just a
11 bit this issue of what is actually in rate base.

12 A. Okay.

13 Q. And I'm just talking -- when Mr. England
14 says he's talking at a high level, well, I'm talking
15 at an even higher level than what he was discussing
16 with you.

17 But when I'm asking you -- what I'm
18 asking about is what is there that this company owns
19 that generally was contributed to the company by
20 another entity or entities?

21 A. Essentially, all of the water
22 distribution mains, all of the sewer trunk lines and
23 collecting mains were -- were built by the
24 development company and contributed to the utility
25 company at no charge.

1 Q. Okay. And the development company
2 was -- is Raintree?

3 A. Raintree Plantation, Inc.

4 Q. Okay.

5 A. Now, a small caveat to that is that
6 there are about approximately 400 lots to which sewer
7 mains have not yet been extended. Other than that,
8 the subdivision is essentially piped, if you will,
9 for both water and sewer service.

10 Q. Okay.

11 A. And those mains have all been
12 contributed to the utility company.

13 Q. Do you know what the -- what the initial
14 cost was for that contribution on Raintree's part?

15 A. Well, that actually goes back to one of
16 the questions that Mr. England asked me about, their
17 annual report.

18 Q. Yes.

19 A. And just with having just looked at this
20 and this morning having just looked at some
21 information from the original certificate case --

22 Q. Yes.

23 A. -- it appears that there is about
24 \$4 million of plant in service that has been
25 contributed to the utility company by Raintree

1 Plantation, Inc.

2 Q. And that is shown on the books of the
3 sewer company as zero in rate base?

4 A. Well, it's shown on the -- the way you
5 do it from an accounting standpoint or the way it
6 should be done, which I believe is actually the way
7 that Central Jefferson has done it here, it should be
8 recorded at plant in service at its original cost.

9 Q. At its original cost to which entity?

10 A. To whichever entity. Raintree
11 Plantation, Inc. expended the original dollars.

12 Q. Okay.

13 A. They contributed that plant to Central
14 Jefferson County Utilities. Under the Water and
15 Sewer System Uniformed System of Accounts, that gets
16 recorded as plant in service on the books of the
17 utility company even if they didn't expend the funds.

18 Q. Okay. So is it shown as 4.5 million --

19 A. It is shown --

20 Q. -- initially?

21 A. Yes, it is. It's shown as plant in
22 service on the utility company's books.

23 Q. Okay. Is it subject to depreciation the
24 same way --

25 A. Yes.

1 Q. And is it built into rates?

2 A. No.

3 Q. Okay. Tell me why not.

4 A. Because it is contributed plant.

5 Q. All right. So how is that -- how is
6 that shown, just very generally, so that it actually
7 acts as a zero value instead of the actual value
8 that's shown in the books?

9 A. For ratemaking purposes, at a high
10 level.

11 Q. That's what I'm asking.

12 A. For ratemaking purposes, you -- it is on
13 the books, and let's use the \$4 million figure. It's
14 on the books as plant in service of \$4 million.
15 Within the next ten years, the utility company is
16 gonna invest \$500,000 in plant that it built and
17 expended the funds for.

18 So I have total plant in service of
19 \$4.5 million on the utility company's books. When I
20 calculate rate base for ratemaking purposes, I have
21 \$500,000 in rate base because the 4 million, even
22 though it's on the books appropriately under the
23 USOA, it's netted out for ratemaking purposes because
24 it's contributed.

25 Q. Okay. So in essence, is there any

1 difference between that and -- from a ratemaking
2 standpoint and just showing it as a zero value to
3 begin with?

4 A. There is not. And --

5 Q. Okay. Same -- same end result?

6 A. The end result is the same.

7 Q. Okay. Now, do you know how much in
8 additional revenue if that had been actually built
9 into rates at the full value rather than at the -- at
10 the zeroed out value, how much additional revenue
11 would that produce for the company?

12 A. Oh, the number that I have historically
13 used to equate investment-to-revenue requirement is
14 15 percent. A 10 percent return factored up, you
15 know, for taxes is about 15 percent. So if you've
16 got \$4 million in plant, you would need 15 percent of
17 that, which would be \$600,000 in revenue to support
18 it.

19 Q. Okay. So an additional 600,000 a year,
20 that would be accurate?

21 A. Very roughly, yes.

22 Q. And that's assuming that there hadn't
23 been any intervening rate cases where depreciation
24 would have reduced that amount?

25 A. Right, yeah.

1 Q. How much in additional revenue are we
2 talking about in this settlement if the -- if the
3 plant is transferred, according to the proposal
4 that's --

5 A. Oh, over current revenues?

6 Q. Yes.

7 A. I think I can get that for you.

8 Q. Okay.

9 A. I'm sorry. I've got way too many papers
10 here.

11 Q. You have my empathy.

12 A. Actually, I'm nowhere close. Okay.
13 With reference to Exhibit 4 which was the draft
14 pricing proposal that EMC put together for the
15 district --

16 Q. Okay.

17 A. -- which reflects the terms of the
18 operating agreement with the district, total utility
19 revenues would be basically \$560,000 under -- under
20 the proposed rates in -- that would come out of the
21 sewer district EMC agreement.

22 Q. What was that other number that you gave
23 me a few minutes ago?

24 A. 600,000, purely by coincidence.

25 Q. I'm sure.

1 A. Current revenues --

2 Q. I know it's apples and oranges, but it's
3 interesting that those two figures are so close in
4 regard to what is evidently needed to, according to
5 some parties, to get them into a position to build
6 this additional plant that's required, wouldn't you
7 say?

8 A. It's an interesting coincidence.

9 Q. Yes. Now, when we are in a position
10 with these companies and then know -- Mr. Johansen,
11 you have seen occasions in the past where this --
12 have you seen occasions in the past where we've had
13 issues with the amount of rate base generating
14 insufficient revenues for some companies as a result
15 of contributed property into the rate base?

16 A. That's not an unusual situation at all
17 with our -- with our smaller companies.

18 Q. In fact, it's sort of -- it has been not
19 an unusual practice for developers to contribute
20 infrastructure that is used for water and/or sewer
21 into a separate company that will be managing or
22 owning or operating the water and sewer services for
23 a subdivision?

24 A. Well, that's -- that is true from the
25 standpoint with the way a lot of the companies came

1 into existence. I would say, though, that the
2 practice of main extensions being funded by parties
3 other than the utility company, for example, that is
4 standard practice, not only in water and sewer, but
5 also in gas and electric utility operations.

6 So we're not different -- we, being
7 water and sewer -- we're not different from an
8 industry standpoint in that regard. Where you
9 make --

10 Q. There is a difference, though, in regard
11 to the practicality of its impact?

12 A. Well, the difference from the practical
13 standpoint is that most of our utilities are very
14 small, and even if they are able to fund the
15 improvements, the impact on the customers is
16 drastically different on a -- you know, on a
17 per-customer basis, that's certainly true.

18 Q. The impact also in regard to how much of
19 a percentage of impact there is on total rate base is
20 different too, isn't it? It's more significant with
21 a smaller company when you have contributed
22 infrastructure such as you have in a development for
23 a small water and sewer company as opposed to what an
24 extension would be to a large gas utility, for
25 instance?

1 A. That's probably a fair assessment, yes.

2 Q. Now, when this contribution is generally
3 done, and I guess I should ask you first of all, in
4 this particular case when this contribution was done,
5 do you know whether or not the developer recovered
6 from -- recovered its cost for the infrastructure for
7 water and sewer when the lots were sold by the
8 developer or is that clear?

9 A. In this situation it's actually a little
10 more clearer than it is in most.

11 Q. Okay. Explain that, please.

12 A. And I say that -- in this situation,
13 Raintree Plantation, Inc., as the developer, as part
14 of their lot sales agreements, specifically set out
15 what was originally a \$1,000 connection fee, if you
16 will, \$700 related to sewer and \$300 related to
17 water.

18 As part of the real estate contract,
19 that was a commitment that lot buyers were making,
20 that at such time that they connected to the utility
21 system, they would pay the developer the \$1,000.

22 That is the method in this situation
23 through which the developer is recouping at least
24 some, if not all, of its infrastructure costs. Most
25 of the time it's not set out separately -- separately

1 like that.

2 Q. It may be we might be able to assume
3 that that's what's occurring --

4 A. Yes.

5 Q. -- but it's not clear from -- from the
6 documents that there's -- that it's -- that it's
7 occurring?

8 A. It's not as clear usually as it is here,
9 actually.

10 Q. Do you know how that amount that you
11 mentioned does compare to the actual infrastructure
12 costs for those particular -- for each particular
13 lot? Did you do anything to study how that
14 comparison comes out?

15 A. Well, in this situation, about the only
16 comparison you can make is that the -- again, using
17 \$4 million as the -- as the rough estimate of the
18 initial investment, this development has, I believe,
19 about 33 or 34 platted lots in it. So if each of
20 those lots sold and each one was built on and you
21 collected your connection fee that's due you from the
22 real estate perspective, in this situation you'd be
23 collecting about 3.4 million out of the 4 million.

24 Q. Okay. So about 600,000 short?

25 A. And again, that's a very --

1 Q. Rough estimate?

2 A. -- that's a lot of if's in there.

3 Q. Yeah. But that money, then, goes to the
4 developer; is that correct? It doesn't go into the
5 sewer company?

6 A. No, it goes to the developer, that's
7 correct.

8 Q. Now, if instead of the contribution that
9 had been done here, the water and sewer company had
10 incurred the expenses of putting in the
11 infrastructure, first of all, that would have meant
12 that the amount that was expended on the
13 infrastructure would have been in -- in the rates in
14 all likelihood?

15 A. Correct.

16 Q. It would also mean that if a similar
17 hookup requirement had been made to the lot owners,
18 that that money would have flowed back into the water
19 and sewer company?

20 A. Correct. Which, for those companies
21 where the initial investment in the water
22 distribution and sewer collecting mains in the few
23 situations where we have that as being how it started
24 out, those companies do, in fact, have a fairly
25 significant connection fee associated with taking

1 service whereby that initial cost is, you know,
2 that's partial recoupment of that initial cost.

3 Q. It might also be that the connection
4 cost would have been less than that and -- but there
5 would have been some recovery of the cost through
6 the -- through the rates because of the fact that the
7 expense was built into the rates itself?

8 A. Yes, there would have been recovery
9 through the tariff either through normal monthly
10 rates or, most likely, some combination of monthly
11 rates and connection fees.

12 Q. Yes.

13 A. Yes.

14 Q. And would those things have been --
15 theoretically worked out in tandem --

16 A. Yes.

17 Q. -- so that they would have come up to a
18 total sum of some sort --

19 A. Yes, that's correct.

20 Q. -- that would have been the same or
21 similar?

22 A. Yeah.

23 Q. Would it also be the case that if that
24 had occurred and the amounts were in rate base, that
25 the amount that might have been paid for this company

1 by another entity if that entity that were -- were
2 attempting to acquire this water and sewer company,
3 were a regulated entity, that it might have changed
4 the dynamic on whether or not a certain price did or
5 did not require an acquisition premium?

6 A. Oh, definitely, that would definitely
7 affect that issue.

8 Q. Would that have been the case, if you
9 know, with the Aqua Missouri interest in this
10 utility? And I can't remember if you said you
11 actually knew how much that offer was.

12 A. I don't know how much -- I don't know
13 what the acquisition premium issue was worth, if you
14 will, but what we're talking about certainly could
15 have had an impact on that issue, yes.

16 Q. If you check that, would you mind making
17 a high-level comparison for me because I am gonna
18 have to leave here.

19 A. Yes, I can do that, and I will say I can
20 do that based on the assumption that that AquaSource
21 case that was filed here has the information in it
22 that I need to do the comparison.

23 Q. I understand.

24 A. Okay.

25 COMMISSIONER GAW: And I am gonna have

1 to stop for the moment. I may have some other
2 questions --

3 THE WITNESS: That's fine.

4 COMMISSIONER GAW: -- later, but thank
5 you for your indulgence. I'm sure there will be some
6 other -- other issues that will be bound to come up
7 in my absence. Thank you.

8 JUDGE STEARLEY: All right. We've been
9 going now for just about two hours. Is there gonna
10 be some recross for Mr. Johansen after Commissioner
11 Gaw's questions from any parties?

12 MR. ENGLAND: I have one.

13 JUDGE STEARLEY: Okay. And Mr. Krueger,
14 I'm assuming you're gonna want to do some redirect?

15 MR. KRUEGER: I will have some redirect.

16 JUDGE STEARLEY: Okay. Why don't we go
17 ahead, Mr. England, and take your one recross
18 question, and then we will take a ten-minute break.

19 MR. ENGLAND: It may have been answered
20 so I apologize if I'm repeating what's already in the
21 record.

22 RE-CROSS-EXAMINATION BY MR. ENGLAND:

23 Q. But the discussion with Commissioner Gaw
24 regarding contributions in aid of construction -- and
25 maybe you said this. Again, I apologize. If a sewer

1 or water utility establishes a connection fee, at
2 least pursuant to tariff, revenues collected from
3 that are also treated as contributed plant, are they
4 not?

5 A. Generally speaking, yes. There -- when
6 it comes time to calculating the rate base for rate
7 of return purposes, the end result is that they are,
8 in essence, treated as contributions, yeah.

9 MR. ENGLAND: Okay. Thank you.

10 JUDGE STEARLEY: All right. And with
11 that, we will go off the record and take a ten-minute
12 intermission.

13 (A RECESS WAS TAKEN.)

14 COMMISSIONER APPLING: We are back on
15 the record.

16 QUESTIONS BY COMMISSIONER APPLING:

17 Q. I'm sorry that I missed your testimony,
18 and I was looking forward to that. You know that,
19 don't you?

20 A. Yes, sir.

21 Q. I had to run out for just a few minutes.
22 Chickens always come home to roost. You know that,
23 don't you? Anyway, it was my understanding that
24 Commissioner Gaw did go through the rate increase and
25 all that information with you.

1 A. We talked about a lot of things related
2 to that as well as the plant-in-service issues and
3 contributions and --

4 COMMISSIONER APPLING: Okay. And
5 George, I will rely on the information in the
6 hearing, okay?

7 JUDGE STEARLEY: All right. We are going
8 to proceed with redirect from Staff. And Mr. Johansen,
9 now that we're back from intermission, I just want to
10 remind you that you're still under oath.

11 THE WITNESS: Yes, sir.

12 JUDGE STEARLEY: You may proceed,
13 Mr. Krueger.

14 MR. KRUEGER: Thank you, your Honor.

15 REDIRECT EXAMINATION BY MR. KRUEGER:

16 Q. Mr. Johansen, what is the source of the
17 numbers that are provided in the annual reports that
18 are filed with the Commission?

19 A. Those are based on the company's records
20 and they are provided by the company.

21 Q. Does the -- are they audited by the
22 Staff or otherwise reviewed?

23 A. They are reviewed, to use a term that
24 we've been using this afternoon, at a very high level
25 from the standpoint of verifying that there are no

1 discrepancies from one year to the next and -- for
2 example, in plant balances, that is essentially the
3 only type of review that's done on the annual reports
4 currently.

5 Q. You testified that the company had
6 received about \$4 million of contributions?

7 A. Yes.

8 Q. Now, is that a gross amount or is that
9 after allowing reserve for depreciation?

10 A. No, that's the gross amount.

11 Q. Okay. And was that all from mains or
12 were there other types of assets included in that?

13 A. Based on what I've been able to see from
14 the original application case, and then the very
15 brief look at the annual report, I would say that the
16 vast majority, if not all, is related to water
17 distribution mains and sewer collection mains.

18 Q. Except for the pipes, how much of the
19 original investment is in service today, do you know?

20 A. The original sewer treatment facility is
21 not in service. It's been replaced with the plant
22 that's currently in service. From the standpoint of
23 the wells, I'm not sure at the time the system was
24 initially constructed if there were one or two wells
25 that were drilled, so there may be the original well

1 or wells.

2 But there have been, I know, from
3 looking at the information that we have available
4 from the original case as well as our audits, that
5 the pumping equipment, for example, for both wells
6 has been replaced somewhat recently, so the original
7 pumping equipment, for example, is no longer in
8 service.

9 Q. And the replacement treatment plant and
10 pumps and so forth were not contributed?

11 A. That's correct.

12 Q. Okay. Is it unusual for developers to
13 contribute to plants such as the mains and so forth?

14 A. No. That's actually more the norm
15 rather than the exception. For water and sewer
16 utilities, the exception is where the utility company
17 makes the investment in the mains, for example.

18 Q. Okay. I believe you testified that the
19 revenue requirement associated with an investment of
20 about \$4 million in rate base would be approximately
21 \$600,000 per year; is that right?

22 A. Yes.

23 Q. Would that change over time as the
24 property depreciates or would that remain constant?

25 A. Well, no, that would change over time.

1 Rate base is a function of original cost, less
2 contributions, less depreciation. So, for example,
3 if you've got a plant that has -- a facility that has
4 a 20-year life, ten years into that life the rate
5 base value is reduced by depreciation, so the revenue
6 requirement associated with that particular facility
7 would be less as well.

8 Q. Okay. What type of assets are currently
9 included in Central Jefferson's rate base?

10 A. There are two wells, the pumping
11 equipment associated with those wells, the well
12 houses, for example, associated with those, the
13 controls, the water storage tower and the sewage
14 treatment plant makes up basically all of the rate
15 base.

16 Q. Is the fact that contributed plant
17 reduces the amount of revenue available to a company
18 a problem for Central Jefferson?

19 A. No.

20 MR. KRUEGER: That's all the questions I
21 have.

22 JUDGE STEARLEY: All right. Thank you,
23 Mr. Krueger. Mr. Johansen, at this time you'll be
24 allowed to step down, but you'll not be finally
25 excused in case the Commissioners have additional

1 questions for you.

2 THE WITNESS: Okay. Thank you.

3 JUDGE STEARLEY: Thank you for your
4 testimony. I know Staff has an additional witness
5 for us today but we're going to alter our -- once
6 again, we're going to alter our order of witnesses to
7 accommodate Mr. Dorsey for the DNR. As I understand,
8 he has to leave by 5:00 today. So DNR would call
9 Mr. Dorsey.

10 MR. SCHMID: Thank you, your Honor.

11 JUDGE STEARLEY: Mr. Dorsey, if you'd
12 please state and spell your name for our court
13 reporter.

14 THE WITNESS: Lance Dorsey, L-a-n-c-e,
15 D-o-r-s-e-y.

16 (The witness was sworn.)

17 JUDGE STEARLEY: Okay. You may be
18 seated. You may proceed, Mr. Schmid.

19 MR. SCHMID: Thank you.

20 DIRECT EXAMINATION BY MR. SCHMID:

21 Q. Mr. Dorsey, who is your current
22 employer?

23 A. Missouri Department of Natural
24 Resources.

25 Q. And what is your position with the

1 Department of Natural Resources?

2 A. I'm an environmental specialist.

3 Q. Okay. Are you acquainted with Central
4 Jefferson County Utilities?

5 A. Yes.

6 Q. In fact, are you the case manager for
7 this particular file at the Department of Natural
8 Resources?

9 A. Yes, in compliance and enforcement.

10 Q. Okay. Are you also the custodian of
11 records for this particular file?

12 A. Yes.

13 Q. Okay. Is Central Jefferson County
14 Utilities a regulated sewer company?

15 A. Yes.

16 Q. Okay. And does Central Jefferson County
17 Utilities have a permit to operate a wastewater
18 treatment facility?

19 A. Yes.

20 Q. Who issued that permit?

21 A. The Missouri Department of Natural
22 Resources.

23 Q. And what does that permit allow Central
24 Jefferson County Utilities to do?

25 A. To discharge effluent.

1 Q. Okay. Pursuant to the permit, is
2 Central Jefferson County Utilities required to submit
3 documentation to the department?

4 A. Yes.

5 Q. What sort of documentation?

6 A. Monthly discharge monitoring reports and
7 other necessary papers.

8 Q. Do the monthly discharge monitoring
9 reports of that give explanation as to the effluent
10 that's being discharged?

11 A. Right. It's just what it -- just what
12 it sounds like. It's a report of their monthly
13 discharge whenever they test it.

14 Q. Okay. What has been Central Jefferson
15 County Utilities' compliance history to date with its
16 permit?

17 A. They've -- there's been problems -- the
18 current overcapacity problem dates back about five
19 years. Department Staff have also noted -- reported
20 observing sludge in Galligher Creek below the outfall
21 on a number of occasions, and they -- they've had
22 bypasses from the collection system, they were cited
23 for not having a certified operator.

24 Q. We can get into some of the specifics.
25 I want to clarify something that -- from

1 Mr. McClain's testimony. What is the maximum daily
2 flow for this particular wastewater treatment
3 facility?

4 A. 64,000 gallons per day.

5 Q. Is the maximum daily flow a standard
6 according to which a permittee must comply?

7 A. Yes, it's what's called the design flow.

8 Q. Is the treatment facility at Raintree
9 currently above its maximum daily flow of 64,000
10 gallons per day?

11 A. Yes.

12 Q. Do you know approximately what its daily
13 flow is, average daily flow?

14 A. It's gone up every -- the average has
15 gone up every year for the last six years and I
16 believe the dry weather flow is over 100,000 gallons
17 per day now as an average.

18 Q. Okay. Has Central Jefferson County
19 Utilities received any notices of violations from the
20 Department of Natural Resources?

21 A. Yes.

22 MR. SCHMID: If I may have an exhibit
23 marked. I think we're on 19?

24 JUDGE STEARLEY: Yes, we're up to 19.

25 (EXHIBIT NO. 19 WAS MARKED FOR

1 IDENTIFICATION BY THE COURT REPORTER.)

2 BY MR. SCHMID:

3 Q. Mr. Dorsey, can you explain the document
4 that you're looking at?

5 A. This is a notice of violation issued by
6 the Department of Natural Resources. This would have
7 been issued by the regional office in St. Louis after
8 some Staff had been out there and observed the
9 violations.

10 Q. Can you explain what violations are
11 noted on this document?

12 A. There's two here. It's caused pollution
13 of Galligher Creek. "Waters of the state are placed
14 or caused prevent -- permitted to be placed. Water
15 contaminants, in this case, sewage solids, in
16 locations where they are reasonably certain to cause
17 pollution in waters of the state."

18 And the second one is, "Discharge water
19 contaminants into waters of the state, Galligher
20 Creek, which reduce the quality of such waters below
21 the water quality standards established by the
22 Missouri Clean Water Commission."

23 Q. And there are two dates on this,
24 September 1st and September 7th, 2004. What are
25 those two dates?

1 A. Those were two inspections or two dates
2 that Staff paid the -- or did an inspection and
3 observed the violations.

4 MR. SCHMID: Okay. Your Honor, at this
5 time I'd move for Exhibit 19 to be entered into
6 evidence.

7 JUDGE STEARLEY: Are there any
8 objections to the admission of Exhibit 19?

9 MR. KRUEGER: No objection.

10 JUDGE STEARLEY: Hearing none, it will
11 be received and admitted into evidence.

12 (EXHIBIT NO. 19 WAS RECEIVED INTO
13 EVIDENCE AND MADE A PART OF THE RECORD.)

14 MR. SCHMID: If I may approach with
15 another exhibit?

16 JUDGE STEARLEY: Yes, you may.

17 (EXHIBIT NO. 20 WAS MARKED FOR
18 IDENTIFICATION BY THE COURT REPORTER.)

19 BY MR. SCHMID:

20 Q. Mr. Dorsey, can you please explain what
21 Exhibit 20 is?

22 A. This is also a notice of violation
23 issued by the Missouri Department of Natural
24 Resources. This violation was for not having a
25 certified operator and for failing to submit complete

1 or timely discharge monitoring reports.

2 Q. And what is the date when these -- what
3 is the date when this notice was issued?

4 A. August 4th, 2005.

5 MR. SCHMID: Okay. And your Honor, I'd
6 move for Exhibit 20 to be admitted into evidence.

7 JUDGE STEARLEY: All right. Any
8 objections to the admission of Exhibit 20?

9 MR. KRUEGER: No objection.

10 JUDGE STEARLEY: Hearing none, it will
11 be received and admitted into evidence.

12 (EXHIBIT NO. 20 WAS RECEIVED INTO
13 EVIDENCE AND MADE A PART OF THE RECORD.)

14 MS. SCHMID: I have another exhibit,
15 your Honor. It will be 21.

16 JUDGE STEARLEY: 21.

17 (EXHIBIT NO. 21 WAS MARKED FOR
18 IDENTIFICATION BY THE COURT REPORTER.)

19 BY MR. SCHMID:

20 Q. Mr. Dorsey, can you please explain what
21 this document is?

22 A. This is a notice of violation issued by
23 the Missouri Department of Natural Resources.

24 Q. And what violations are noted on this
25 document?

1 A. Two violations: "Operating, using or
2 maintaining a water contaminant. Wastewater was
3 discharged to an unnamed tributary of Galligher
4 Creek, waters of the state, without a Missouri state
5 operating permit and caused pollution to an unnamed
6 tributary to Galligher Creek. Waters of the state
7 are placed or caused -- or permitted to be placed a
8 water contaminant in a location where it is
9 reasonably certain to cause pollution to waters of
10 the state."

11 Q. And when was this issued?

12 A. October 26th, 2005.

13 MR. SCHMID: Your Honor, at this time
14 I'd move for Exhibit 21 to be entered into evidence.

15 JUDGE STEARLEY: Any objections?

16 (NO RESPONSE.)

17 JUDGE STEARLEY: It will be received and
18 admitted.

19 (EXHIBIT NO. 21 WAS RECEIVED INTO
20 EVIDENCE AND MADE A PART OF THE RECORD.)

21 BY MR. SCHMID:

22 Q. Mr. Dorsey, has the federal government
23 also been involved in regulating Central Jefferson
24 County Utilities?

25 A. Yes.

1 Q. And which agency is involved in that
2 regulation?

3 A. United States Environmental Protection
4 Agency.

5 MR. SCHMID: Your Honor, I have another
6 exhibit. There are two, both from the EPA. I'm
7 gonna put them both together so we can -- I think
8 that will probably be faster.

9 JUDGE STEARLEY: All right. That will
10 be fine. It will be marked as Exhibit 22.

11 MR. ENGLAND: Your Honor, before we go
12 through that exercise, may I inquire because I may
13 make an objection and we may be able to short circuit
14 this.

15 JUDGE STEARLEY: Certainly.

16 MR. ENGLAND: Are these EPA order of
17 violations (sic)?

18 MS. SCHMID: It's the finding of
19 violation and order of compliance from December and
20 March.

21 MR. ENGLAND: Issued by EPA?

22 MR. SCHMID: Correct.

23 MR. ENGLAND: I'm not sure this
24 witness -- well, my objection will be I don't believe
25 this witness is qualified to testify as to what

1 EPA -- he's not here as a spokesman or representative
2 of the EPA.

3 JUDGE STEARLEY: Your response,
4 Mr. Schmid?

5 MR. SCHMID: He is the custodian of
6 records, this is part of the file. We're just, I
7 guess for informational purposes, submitting this to
8 the Commission for its review.

9 JUDGE STEARLEY: Okay. I will overrule
10 the objection and allow it to be admitted, but
11 Mr. Dorsey will not be allowed to testify as an
12 expert regarding these reports.

13 MR. SCHMID: Okay. Thank you, your
14 Honor.

15 (EXHIBIT NO. 22 WAS MARKED FOR
16 IDENTIFICATION BY THE COURT REPORTER.)
17 BY MR. SCHMID:

18 Q. Mr. Dorsey, is it your understanding
19 that these are the EPA orders that have been issued
20 to Central Jefferson County Utilities?

21 A. Yes.

22 Q. Okay. And as part of your duties as
23 case manager, is this a document that would be in the
24 file, Central Jefferson County Utilities' file?

25 A. Yes.

1 MR. SCHMID: Okay. Your Honor, I'd move
2 for Exhibit 22 to be admitted into evidence.

3 JUDGE STEARLEY: All right. Any other
4 objections besides Mr. England's, or Mr. England,
5 would you like to renew that objection?

6 MR. ENGLAND: I can. Can I add hearsay
7 to it? I know it's not gonna make much difference,
8 but I thought I'd give it a shot.

9 JUDGE STEARLEY: Any comments to the
10 hearsay objection?

11 MS. SCHMID: No, other than as I
12 introduced before: He's the custodian of records and
13 it's just for informational purposes.

14 JUDGE STEARLEY: All right. I'll
15 overrule that objection and it will be admitted.

16 (EXHIBIT NO. 22 WAS RECEIVED INTO
17 EVIDENCE AND MADE A PART OF THE RECORD.)

18 BY MR. SCHMID:

19 Q. Mr. Dorsey, there has been some
20 discussion, at least on my part, as to possible
21 penalties against Central Jefferson County Utilities
22 for the allegations that the department has. Can you
23 please discuss for us first, how are the penalties
24 calculated? Is it dollars per day, per violation,
25 briefly?

1 A. The -- by statute, the department is
2 authorized to seek a maximum of \$10,000 per day per
3 violation.

4 Q. And how many violations has the
5 department determined exist that -- strike that
6 question. How many violations is the department
7 alleging exist in this particular instance?

8 A. I believe there are 12.

9 Q. Okay. Do you know -- can you give us
10 some dates as to when some of those violations may
11 have occurred?

12 A. February 9th, 2004, Staff observed
13 sludge in the creek below the outfall, and again, on
14 September 1st, 2004. August 4th, 2005, the notice of
15 violation that we went over a minute ago, and
16 October 26th, 2005, the notice of violation we went
17 over.

18 Q. Okay. And just to be -- so we're clear,
19 how many total individual violations is the
20 department alleging in this instance?

21 A. 12.

22 Q. There were four days, but how many
23 violations on those days?

24 A. Four -- four separate violations on
25 February 9th, 2004, four separate violations again on

1 September 1st, 2004, two separate violations on
2 August 4th, 2005, and two more separate violations on
3 October 26th, 2005.

4 Q. So the department is claiming a total of
5 12 violations?

6 A. Yes.

7 Q. And that would be for a maximum of
8 \$120,000 in penalties?

9 A. That would be the maximum.

10 Q. Okay. Is there any minimum?

11 A. No.

12 MR. SCHMID: Okay. And your Honor, I
13 would just like to -- for the record, when I -- in my
14 opening statement I had referenced that I thought the
15 minimum was \$50,000. I was incorrect. I was
16 misinformed and so I apologize. I guess I'd strike
17 that. There is no minimum. There is a maximum.

18 JUDGE STEARLEY: All right. Thank you
19 for that correction, Mr. Schmid.

20 BY MS. SCHMID:

21 Q. And also to be clear, the notices, the
22 violations that you just discussed, the 12
23 violations, that is not necessarily 12 included in
24 the notice of violations that we've just examined?

25 A. Correct.

1 Q. Correct. Okay.

2 MS. SCHMID: I have another exhibit,
3 your Honor. What number are we on?

4 JUDGE STEARLEY: We are on 23.

5 (EXHIBIT NO. 23 WAS MARKED FOR
6 IDENTIFICATION BY THE COURT REPORTER.)

7 MR. SCHMID: If I may approach?

8 JUDGE STEARLEY: You may.

9 BY MR. SCHMID:

10 Q. Mr. Dorsey, do you recognize this
11 document?

12 A. Yes.

13 Q. And can you briefly explain to us what
14 this document is?

15 A. That is a draft compliance agreement
16 that's being negotiated between the Department of
17 Natural Resources, EMC and the Jefferson County
18 Public Sewer District.

19 Q. Is this the most updated version of the
20 compliance agreement to your knowledge?

21 A. Yes.

22 Q. And just so the record is clear, this is
23 the compliance agreement that we have been discussing
24 throughout the hearing?

25 A. Yes.

1 MR. SCHMID: Okay. Your Honor, I would
2 submit Exhibit 23 for evidence.

3 JUDGE STEARLEY: All right. Any
4 objections to the admission of Exhibit 23?

5 MR. ENGLAND: No, your Honor.

6 JUDGE STEARLEY: Hearing none, it will
7 be received and admitted into evidence.

8 (EXHIBIT NO. 23 WAS RECEIVED INTO
9 EVIDENCE AND MADE A PART OF THE RECORD.)

10 MS. SCHMID: I have one further exhibit,
11 Exhibit 24, I believe.

12 JUDGE STEARLEY: That's correct.

13 (EXHIBIT NO. 24 WAS MARKED FOR
14 IDENTIFICATION BY THE COURT REPORTER.)

15 BY MR. SCHMID:

16 Q. Mr. Dorsey, can you briefly explain to
17 us what Exhibit No. 24 is?

18 A. This is a memorandum prepared by Jim
19 Rhodes of the St. Louis regional office. It's a
20 chronology of significant events.

21 Q. So does this summarize the -- some of
22 the significant events that DNR has had with Central
23 Jefferson County Utilities dating back to
24 October 23rd, 1996?

25 A. Yes.

1 Q. Okay. There has been -- were you
2 present when Mr. McClain testified?

3 A. Yes.

4 Q. Okay. And there was a great deal of
5 talk about the construction permit, and I just wanted
6 to go through a few things. What is your
7 understanding of the event that took place on
8 February 19th, 2004?

9 A. That would be the department received a
10 preliminary engineering report from Fribis
11 Engineering which is the engineering company that
12 Central Jefferson County Utilities was using.

13 Q. And can you explain to us what is the
14 significance of a preliminary engineering report to
15 the process of obtaining a construction permit?

16 A. That's the first step before they
17 actually would submit an application in the
18 preliminary engineering report, lets the department
19 engineer -- it gives them a sketch of what they're
20 planning and they can give them -- tell them -- tell
21 the company whether or not it's even a viable option.

22 Q. And before we get into some more of
23 this, why don't you -- once the preliminary report is
24 submitted, what's -- explain kind of the next steps
25 in the construction permit process.

1 A. The company would submit a preliminary
2 engineering report, the department will look that
3 over, tell them that it looks okay, then the company
4 would submit an application with the appropriate fee,
5 a full set of plans and specifications. The
6 department would then usually comment -- they're
7 usually back and forth on different engineering
8 matters assuming that the application plans and specs
9 are complete.

10 Once that's over, the -- it gets put out
11 on public notice, the draft operating permit gets put
12 out on public notice before the construction permit
13 is issued, and the draft operating permit comes off
14 the public notice. Then the construction permit can
15 be issued.

16 Q. Okay. And again, looking at Exhibit 24,
17 how big of a plant was Central Jefferson County
18 Utilities looking to build in this preliminary
19 engineering report?

20 A. In early 2004 it was the -- application
21 came in for a 200,000-gallon-per-day treatment plant.

22 Q. Okay. Do you know whatever happened to
23 that preliminary engineering report? Was it pursued
24 by the department? Did this case -- did this case go
25 further?

1 A. That particular application was pursued
2 until August 17th, 2004. The department received a
3 letter that that particular expansion was no longer
4 under consideration since Aqua Missouri intended to
5 use their own engineers and design and construct an
6 upgrade.

7 Q. And were the -- did there come a time in
8 the procedures for how the construction permit should
9 be -- or the process of the construction permit being
10 issued is -- was explained to Central Jefferson
11 County Utilities?

12 A. Yes.

13 Q. Can you explain that?

14 A. That same week they -- there was a
15 meeting held at the regional office with
16 representatives from Central Jefferson County
17 Utilities and Aqua Missouri, and staff explained the
18 process of applying for and receiving a construction
19 permit to -- to construct the expansion -- expansion.

20 Q. Okay. And were you also present this
21 morning when Representative Harris testified?

22 A. Yes.

23 Q. Okay. And is the meeting that she
24 referenced noted in Exhibit 24?

25 A. Yes.

1 Q. What date is that?

2 A. January 7th, 2005.

3 Q. And what occurred at that meeting?

4 A. That was also at the St. Louis regional
5 office. Fribis Engineering outlined plans for a new
6 treatment system. That would be after the Aqua
7 Missouri deal fell through.

8 Q. Okay. How big of a plant were they
9 looking at?

10 A. The new plans were for a
11 400,000-gallon-per-day expansion.

12 Q. Okay. And when did the department
13 receive those preliminary plans or the application
14 for those plans?

15 A. On March 3rd, 2005.

16 Q. Okay. And what happened after March --
17 what happened after the department received those
18 plans?

19 A. The process proceeded. The --
20 eventually, the draft operating permit was put on
21 public notice, it came off of public notice. Due to
22 the visibility of this case, and the fact that there
23 are many -- many of the homeowners and people
24 involved were contacting the department, the
25 department felt it was necessary to have a public

1 hearing that took place in July, I believe July 7th,
2 2005.

3 Q. Was a construction permit finally
4 issued?

5 A. And then later that month at the end of
6 July, the construction permit was issued, July 2005.

7 Q. So the entire process for this -- well,
8 strike that. And how long was the construction
9 permit good for?

10 A. That one had a term of six months.

11 Q. So it expired six months after
12 July 27th, '05?

13 A. Correct.

14 Q. Okay. So the process took about seven
15 months to get the construction permit approved?

16 A. Yes.

17 MR. SCHMID: Your Honor, at this time
18 I'd move Exhibit 24 into evidence.

19 JUDGE STEARLEY: Any objections?

20 MR. ENGLAND: Yes, your Honor. No
21 foundation, hearsay.

22 JUDGE STEARLEY: Mr. Schmid?

23 MS. SCHMID: As a -- as a summary of
24 business record, I believe the custodian of records
25 can -- as a summary and the business record, I

1 believe that it is -- can be entered by the custodian
2 of records. I can establish his -- the foundation
3 for him as the custodian of records, but I think it
4 would be admissible under those grounds.

5 JUDGE STEARLEY: Okay.

6 MR. ENGLAND: Your Honor?

7 JUDGE STEARLEY: Yes.

8 MR. ENGLAND: If I may be heard, and I
9 haven't heard any testimony to this effect, but it's
10 obviously a document prepared by someone else in his
11 office, summarizing events that people were in
12 attendance at. I don't believe this gentleman has
13 been -- personally been at that, and I think -- I
14 mean, we've got a serious problem with hearsay and a
15 lack of proper foundation to let it in.

16 JUDGE STEARLEY: All right. Mr. Schmid,
17 can you lay some more foundation for this piece of
18 evidence?

19 MR. SCHMID: I will try, your Honor.

20 BY MR. SCHMID:

21 Q. Mr. Dorsey, do you know, was this record
22 made by a person with knowledge of the facts recorded
23 or made from information transmitted by a person
24 having knowledge of the facts recorded herein?

25 A. Yes.

1 Q. Okay. And is it part of the regular
2 practice to -- of the Department of Natural Resources
3 to come up with a summary when there are so many --
4 so many events taking place?

5 A. Yes.

6 Q. And would this record be kept in the
7 regular course of the department's business?

8 A. Yes.

9 Q. And are you, in fact, the keeper of the
10 file in which this particular exhibit comes from?

11 A. Yes.

12 MR. SCHMID: Okay. Your Honor, I would
13 submit that that establishes him as a custodian of
14 record and on that basis this exhibit could be
15 admitted into evidence.

16 JUDGE STEARLEY: Mr. England?

17 MR. ENGLAND: I still think its
18 foundation is insufficient and it's still subject to
19 the hearsay objection.

20 JUDGE STEARLEY: Any response to the
21 hearsay objection, Mr. Schmid?

22 MR. SCHMID: I think this document is
23 reflective of events that are occurring and not
24 actually statements. I don't know where the hearsay
25 would come in.

1 MR. ENGLAND: Well, it's clearly being
2 offered for the truth of the matters contained
3 therein. It's a summary of meetings as well as what
4 was discussed and decided, if you will, at those
5 meetings. And I'm not gonna be able to ask this
6 witness any questions about it if he wasn't
7 personally involved.

8 MS. SCHMID: I think the hearsay would
9 apply to statements and not so much to events that
10 we've been referring to.

11 JUDGE STEARLEY: I am going to overrule
12 the objection and allow it to be admitted into
13 evidence.

14 (EXHIBIT NO. 24 WAS RECEIVED INTO
15 EVIDENCE AND MADE A PART OF THE RECORD.)

16 JUDGE STEARLEY: The fact that it may be
17 considered hearsay will go to its weight and
18 credibility.

19 MR. SCHMID: Okay. Thank you, your
20 Honor.

21 BY MR. SCHMID:

22 Q. Mr. Dorsey, for informational purposes
23 for -- will the -- should the assets be transferred,
24 will EMC need to apply for a construction permit?

25 A. Yes.

1 Q. Okay. And so they'll have to go through
2 the exact same process you were just describing?

3 A. Yes.

4 Q. Is it possible that that process could
5 be expedited?

6 A. I believe it will as long as they're
7 constructing the same expansion proposed by Central
8 Jefferson County Utilities.

9 Q. Okay. And to also clarify another
10 matter, are you familiar with a family called the
11 Tuckers who live out in Raintree?

12 A. Yes.

13 Q. And there's been some -- it's been
14 discussed that there was one house that had been
15 built in Raintree that had not been connected to the
16 system. Is that the Tuckers?

17 A. I believe that's -- that was made
18 reference to earlier. I think that's... that was the
19 Tuckers.

20 Q. And have they recently -- I'm sorry.
21 What were you saying?

22 A. I believe that's -- the reference was to
23 the Tuckers.

24 Q. To your knowledge, have the Tuckers been
25 added to the system now?

1 A. Yes.

2 Q. And that was done very recently,
3 correct?

4 A. Correct.

5 Q. Okay. Can you briefly explain to us
6 what the Department of Natural Resources' concerns
7 are regarding this application for transfer of
8 assets?

9 A. We're concerned that we don't have a
10 signed compliance agreement with EMC and Jefferson
11 County Public Sewer District, and we're also
12 concerned that the overloading of the plant gets
13 addressed --

14 Q. Okay.

15 A. -- and, you know, the construction
16 gets -- the upgrade gets completed.

17 Q. What has been the department's
18 experience with EMC?

19 A. Positive. They're -- they manage the
20 treatment plants in St. Charles and they do so well.

21 Q. So is it -- if you can speak on behalf
22 of the department, is EMC capable of performing the
23 necessary upgrades in operating the facility in
24 compliance with state law?

25 A. We believe so, yes.

1 MS. SCHMID: I have no further
2 questions.

3 JUDGE STEARLEY: All right. Thank you,
4 Mr. Schmid. We will have cross-examination beginning
5 with the Association, Mr. Comley.

6 CROSS-EXAMINATION BY MR. COMLEY:

7 Q. This shouldn't take very long,
8 Mr. Dorsey. I know you have a deadline to meet. But
9 can you look at Exhibit 23 that's been marked
10 previously by the reporter and admitted into
11 evidence? It's the compliance agreement.

12 A. Yes.

13 Q. And I understand that that's still in
14 progress, that's not been executed by the parties?

15 A. Correct.

16 Q. But I understand as well that you're
17 very close to getting that finalized and executed?

18 A. Yes.

19 Q. With respect to the compliance
20 agreement, can you tell me, is it -- is it designed
21 so that the -- is it designed so that EMC will not
22 only bring the system into compliance but will the
23 agreement ask them -- strike that. Strike that.

24 Will the agreement allow not only for
25 compliance with DNR and EPA regulations and rules,

1 but will it also allow for additional capacity in
2 anticipation of future growth?

3 A. This agreement?

4 Q. Yes. Or is it just to make sure that
5 the plant complies?

6 A. It's to make sure that the expansion is
7 constructed according to a agreed-to timeline.

8 Q. But is it to -- I'm -- is there anything
9 built into this, this agreement which would
10 anticipate future growth in Raintree Plantation
11 Subdivision, or is it just designed to make the
12 system comply with the requirements of DNR at the
13 present?

14 A. Right. It's designed to bring the
15 system back into compliance.

16 Q. All right. As with the existing loads
17 that are there now; is that a fair statement?

18 A. The actual -- I don't think the capacity
19 is specifically mentioned in here.

20 Q. Do you know what DNR would approve in
21 terms of the wastewater capacity?

22 A. So if we're gonna assume that EMC is
23 using the same plans that Jefferson County Public
24 Sewer District proposed and were issued a
25 construction permit for which was 400,000 gallons per

1 day --

2 Q. Using that assumption.

3 A. -- then this would address current flows
4 and some number into the future.

5 Q. All right. When would -- if -- if EMC
6 and the district do fulfill the requirements under
7 this compliance plan, when would the moratorium on
8 building be lifted?

9 A. I -- I can't answer that directly
10 because the moratorium is actually voluntary. It
11 wasn't imposed by the department.

12 Q. Is there a provision in the agreement
13 that covers that?

14 A. No.

15 Q. I'm looking at paragraph 8 on page 9,
16 and read with me and see if I'm correct. "Unless
17 otherwise agreed, EMC and the district agree to
18 prohibit all new sewage connections to the collection
19 system until upgrades in the expansion are complete."

20 So under this agreement, my
21 understanding would be if they do sign this, there
22 would be a prohibition on connections until the
23 upgrades are complete.

24 My question is, do you know when the
25 moratorium would be lifted? Let's say that someone

1 certifies that the upgrades are complete. Would DNR
2 have a voice in when that moratorium would be lifted?

3 A. If we're gonna use this paragraph, then
4 I would say whenever the operating permit is issued
5 after the expansion.

6 Q. So they would have to go through an
7 operating permit application process; is that
8 correct?

9 A. That's an extension of the construction
10 permit process. When they're 30 days out from
11 bringing the plant online, they apply for the
12 operating permit.

13 Q. All right. And that would be, let's
14 see, respecting the wastewater facilities, that would
15 be on page 6 of the agreement. Let me direct you to
16 page 6 and the table that's on page 6. I'm looking
17 at something that says, "Submit an application Form B
18 for the modification of the MSOP to the department."
19 Is that the operating permit application?

20 A. Yes.

21 Q. So they would have to go through a
22 operating permit application that would have to be
23 approved, and at that point you understand there
24 would then be cause to lift the moratorium, as you
25 understand the agreement?

1 A. The paragraph 8 in this agreement, I
2 don't know if you're referencing the
3 two-and-a-half-year-old moratorium, that's -- again,
4 that was voluntary.

5 Q. The new paragraph 8 apparently imposes
6 one that's not necessarily voluntary but required by
7 the agreement.

8 A. Right.

9 Q. And I was wanting to know when that
10 would be lifted.

11 A. To hold EMC and Jefferson County Public
12 Sewer District to that.

13 Q. Correct. And my understanding is that
14 there would be an operating permit process after the
15 upgrades are completed that would have to go through
16 the process at DNR for approval, and at that point
17 the moratorium would be lifted under paragraph 8.
18 Would that be a fair reading of your agreement?

19 A. The operating permit Form B, that's
20 designed to already be in place once the expansion is
21 brought online, so...

22 Q. Once it's brought online, then that
23 would be the time when the moratorium could be
24 lifted?

25 A. Correct.

1 MR. COMLEY: Thank you.

2 JUDGE STEARLEY: Cross by Staff,
3 Mr. Krueger?

4 MR. KRUEGER: Thank you, your Honor. I
5 have just a couple of questions.

6 CROSS-EXAMINATION BY MR. KRUEGER:

7 Q. Mr. Dorsey, have you had the opportunity
8 to observe EMC's compliance with the Clean Water Law
9 and the Safe Drinking Water Law?

10 A. Observe it how?

11 Q. Have you had the opportunity to observe
12 their compliance with those laws?

13 A. I reviewed the compliance history of the
14 St. Charles wastewater treatment facilities that they
15 manage.

16 Q. Do you know if DNR has ever issued
17 notices of violations to EMC?

18 A. I don't know.

19 Q. What violations of the Clean Water Law
20 currently exist at Raintree Plantation Subdivision?

21 A. You mean ongoing violations?

22 Q. That presently exist, yes, ongoing.

23 A. Let's see. They're over capacity.
24 They're beyond their design flow. Staff observed
25 sludge in the creek recently at -- well, those would

1 be the main ones.

2 Q. And if this compliance agreement is
3 executed and if the parties fully perform that, will
4 those violations be cured?

5 A. Yes.

6 Q. So there will, at that time, be no
7 ongoing violations?

8 A. Correct.

9 Q. Okay. What about the Safe Drinking
10 Water Law, what violations of the Safe Drinking Water
11 Law currently exist at Raintree Plantation?

12 A. I probably can't speak to that directly.
13 I don't think there are any and -- I don't think
14 there are. But again, I can't speak to that
15 directly. I don't have direct knowledge of that.

16 Q. Okay. If the parties execute the
17 compliance agreement and fully perform it, would any
18 ongoing violations of the Safe Drinking Water Law be
19 cured?

20 A. I believe so.

21 MR. KRUEGER: Okay. Thank you. That's
22 all the questions I have.

23 JUDGE STEARLEY: Cross-examination by
24 Office of Public Counsel. Ms. Baker?

25 CROSS-EXAMINATION BY MS. BAKER:

1 Q. Hello. My name is Christina Baker. I
2 just have a few questions for you. On your
3 Exhibit 24, there is an entry on December 29th, 2004,
4 that reads "Enforcement action request sent from SLRO
5 to Kevin Mohammadi." Can you explain what an
6 enforcement action request is?

7 A. Yes.

8 Q. Could you do so, please?

9 A. When the regional office has a regulated
10 party that's -- they believe they've exhausted all
11 their -- I should start over.

12 The regional office will try and get a
13 facility back into compliance through -- through a
14 process of assisting them with, you know, they make
15 initial assistance visits and they -- if there's a
16 violation, they work it out with the regulated -- you
17 know, the regulated party. And once -- if the
18 regional office doesn't feel that they're making any
19 progress, then those are -- those facilities are
20 referred to compliance and enforcement which is in
21 the Central Office in Jeff City.

22 Q. Okay. So if the St. Louis regional
23 office filed an enforcement action request, that
24 would be the time that they felt that they could no
25 longer work with the -- work with the company to

1 alleviate some of the problems; it would have to be
2 moved to a higher step; is that basically what you
3 mean?

4 A. Right. The region would feel that
5 they're not -- they're unable to bring the facility
6 back into compliance and that heightened enforcement
7 action is necessary.

8 Q. Okay. And what office, again, do you
9 work with? Is it within the Department of Natural
10 Resources?

11 A. I'm in the compliance and enforcement
12 section.

13 Q. So would the file move to your section
14 at that point or were you involved before that point?

15 A. I would become -- our section is
16 involved from that point on unless the region
17 consulted with Mr. Mohammadi before that for some
18 reason.

19 Q. All right. I understand. Looking at
20 Exhibit 21, one of the violations that is listed is
21 that they were operating without a Missouri state
22 operating permit. Can you explain what exactly that
23 means?

24 A. In this case, this notice of violation
25 that was issued on October 26th, 2005 was for a

1 bypass from the collection system. So any bypass --
2 any wastewater that gets discharged that isn't
3 treated from the outfalls is considered -- it's a
4 discharge that's not -- they're operating that
5 discharge without a permit.

6 Q. Okay.

7 A. So the bypass itself is operation
8 without a permit.

9 Q. So that applies to the bypass itself,
10 that does not mean that they did not have an active
11 state operating permit?

12 A. Right, that's separate from their
13 operating permit that was originally issued, yeah.

14 Q. Okay. I see the -- a little bit higher
15 up Missouri state operating permit number MO0099473.
16 Is that the operating permit that is issued to
17 Raintree Plantation?

18 A. Correct.

19 Q. And they are currently operating under
20 that?

21 A. No, it's issued to Central Jefferson
22 County Utilities.

23 Q. Okay. So it is in the name of Central
24 Jefferson County Utilities?

25 A. Correct.

1 Q. And Central Jefferson Utilities is
2 operating under that numbered operating permit at
3 this time?

4 A. Correct.

5 Q. Do you know if that is an expired permit
6 or if that is a --

7 A. It's an expired permit.

8 Q. When will it be renewed?

9 A. I don't know. It depends on if the
10 plant gets upgraded and then the new owners would
11 have to apply for a new --

12 Q. Have the owners taken any steps to
13 reissue the permit that they have now that that is
14 expired?

15 A. Central Jefferson County Utilities?

16 Q. Yes.

17 A. They applied for renewal at some point
18 but the department did not renew the permit based on
19 the fact that the plant was so overloaded.

20 Q. Is Central Jefferson County Utilities
21 being held to the effluent discharge limits in the
22 expired permit?

23 A. Yes.

24 Q. So technically, those limits still stay
25 in effect?

1 A. Yes, that's part of the regulations that
2 any facility is still bound by the terms in the
3 expired permit.

4 Q. Once this transfer takes place, if it
5 does take place, would this transfer relieve Central
6 Jefferson Utilities of any of these past violations
7 or any penalties that may be assessed because of
8 those?

9 A. No.

10 Q. Is the fact that there is a compliance
11 agreement that is on the table, does that relieve
12 Central Jefferson from any past violations or any
13 penalties that may be assessed?

14 A. No.

15 MS. BAKER: Thank you. I have no
16 further questions.

17 JUDGE STEARLEY: Thank you, Ms. Baker.
18 Cross-examination by Central Jefferson, Mr. England.

19 MR. ENGLAND: Thank you, your Honor.

20 CROSS-EXAMINATION BY MR. ENGLAND:

21 Q. Good afternoon, Mr. Dorsey.

22 A. Good afternoon.

23 Q. You know I represent Central Jefferson
24 County Utilities, do you not?

25 A. Yes.

1 Q. Okay. Excuse me. I'm beginning to lose
2 my voice. Maybe I'm gonna work backwards with some
3 questions that you received from the attorneys here.
4 In answer to a question by Ms. Baker, you said that
5 one of the violations was bypassing without a permit;
6 do you recall that?

7 A. Yes.

8 Q. How does one go about getting a permit
9 to bypass?

10 A. That -- as you might be assuming that,
11 we would not issue a permit to bypass.

12 Q. So there is no such thing as a bypass
13 permit, right?

14 A. Correct.

15 Q. Okay. In response to a question by
16 Mr. Krueger, I think he asked you about any
17 violations of the Safe Drinking Water Act, and if I
18 understood your -- you weren't sure, you didn't think
19 so. I'd like to show you the written statement that
20 your department filed with the Commission in this
21 case on or about September 6th and ask that he read
22 at least the second full paragraph into the record
23 and then I'll ask him a question with respect to
24 that.

25 JUDGE STEARLEY: Go ahead and proceed.

1 MR. ENGLAND: Thank you.

2 BY MR. ENGLAND:

3 Q. That's the paragraph I'd like for you to
4 read, please.

5 A. Do you want me to read it out loud?

6 Q. Yes, please.

7 A. Okay. "The department does not
8 currently have any enforcement or compliance actions
9 against Central Jefferson County Utilities, Inc.
10 pertaining to its drinking water operations.
11 Further, the department does not consider Central
12 Jefferson County Utilities, Incorporated in regard to
13 drinking water to be in significant noncompliance or
14 a threat to public health or the environment at this
15 time."

16 Q. And would you agree with that statement
17 today?

18 A. Yes. As I understand the...

19 Q. Okay. Thank you. In response to a
20 question by Mr. Comley, you indicated that the
21 moratorium on connections is voluntary. Do you have
22 your Exhibit 24 in front of you, please? It's that
23 memorandum that I've tried to keep out of the record.

24 A. Yes.

25 Q. And now I'm glad I didn't. Turn to the

1 entry next to December 28th, 2004 and read that, if
2 you would, please, out loud.

3 A. December?

4 Q. December 28th, 2004. It's on page 5, I
5 believe, of the memorandum.

6 A. "Letter sent from Mohamad Alhalabi to
7 Dana Hockensmith informing him that Central Jefferson
8 County Utilities must cease any additional
9 connections to the treatment plant until after the
10 treatment system has been expanded."

11 Q. Thank you, sir. Now turn your attention
12 to Exhibit 22 which I was unsuccessful in keeping out
13 of the record.

14 A. Of the first one?

15 Q. Let me show you.

16 A. Yes. Yeah, okay.

17 Q. Paragraph 2, could you read that into
18 the record too, please, out loud?

19 A. "All new sewer connections to the
20 wastewater treatment plant are prohibited unless and
21 until a professional engineer registered and in good
22 standing in the State of Missouri certifies in
23 advance that the new connection to the sewage
24 collection system will not result in the wastewater
25 treatment plant exceeding its existing design average

1 daily hydraulic treatment capacity limit of 64,000
2 gallons per day."

3 Q. Would you agree with me that reading
4 those two excerpts from those two exhibits that it's
5 clear that the moratorium is not voluntary, it's
6 mandated by DNR and EPA?

7 A. No. I was referencing the original
8 moratorium that took place in a voluntary fashion in
9 August of 2004.

10 Q. Okay. Well, then I misunderstood you.
11 How about the current moratorium, I think that's when
12 Mr. Comley was asking when that would be lifted? I
13 thought your response was that was voluntary.

14 A. Since the original voluntary moratorium,
15 they are under two EPA compliance orders and -- well,
16 that's the -- that's really the only place that it's
17 stated.

18 Q. And the Tuckers who you, I think,
19 testified recently were allowed to hook on, they had
20 to get permission from either you and/or EPA to do
21 that, correct?

22 A. Yes.

23 Q. Okay. That wasn't the company's
24 decision, right?

25 A. Correct.

1 Q. Thank you. I'd like to ask you some
2 general questions now about the process of at least
3 DNR. You've issued the notice of violations and your
4 counsel has been very careful to refer to them as
5 allegations.

6 Am I correct in understanding that once
7 you issue a notice, it just begins the process, and
8 the next step in the process is to try to work
9 something out on an amicable basis with the person or
10 entity to whom you sent that notice?

11 A. Correct.

12 Q. And failing that, if that doesn't work,
13 then it's up to DNR to pursue more formal action like
14 the filing of a lawsuit; is that right?

15 A. Sometimes it ends up in court, yes.

16 Q. Okay. I just want to make sure I
17 understand where this is in the process. We're still
18 at the notice of violation stage, there's been no
19 lawsuit filed, correct?

20 A. There's been no lawsuit filed, that's
21 correct.

22 Q. And there's been no finding by a court
23 of competent jurisdiction that these allegations are
24 true, correct?

25 A. It hasn't been before a judge, that's

1 correct.

2 Q. And then finally -- and I think
3 Ms. Baker got to this, but maybe not quite the way I
4 want to ask it, and that is, what, if any, impact
5 will the transfer of this system have on your ability
6 to pursue those lawsuits if you're not able to
7 amicably resolve the issues with Central Jefferson
8 County Utilities?

9 A. The transfer itself?

10 Q. Uh-huh.

11 A. I don't think it will -- the Central
12 Jefferson County Utilities is still liable for the
13 past violations.

14 Q. And even though the sewer and water
15 assets are transferred to the sewer district, you
16 still can proceed against Central Jefferson County
17 Utilities if you're not able to resolve that
18 amicably, right?

19 A. Correct.

20 MR. ENGLAND: Okay. Thank you. No
21 other questions.

22 JUDGE STEARLEY: Thank you, Mr. England.
23 Any questions from the Commissioners? Commissioner
24 Appling?

25 QUESTIONS BY COMMISSIONER APPLING:

1 Q. How are you doing, Mr. Dorsey?

2 A. Good.

3 Q. Let's take the violation that was
4 September the 27th, I think it is. There was two
5 violations on there, I think. It was 9/1 and
6 9/7/2004; do you have that one?

7 A. Yes.

8 Q. How many days do Mr. Dorsey (sic) have
9 to correct these two violations? Is there some set
10 time that someone is gonna come back and look at them
11 to determine whether this violation is being
12 corrected or not corrected? He has 90 days, 120 days
13 after this violation has been issued? Do we have a
14 certain amount of days he needs to act on this
15 violation?

16 A. There's not a -- there's not a
17 predetermined number of days. When this was -- or
18 when any notice of violation is issued, there's a
19 cover letter and a report, and included in the cover
20 letter is some sort of corrective action or they
21 want -- the regional office might want a response, a
22 written response, or certain actions can be taken by
23 a certain number of days but there's no predetermined
24 number of days.

25 Q. Okay. Thank you. But is this an onsite

1 inspection or is this just something that has been
2 pulled out of the file and these violations, because
3 you didn't get a report, so you cite him for a
4 violation? Is there someone who went to Raintree
5 Plantation and rendered this -- these violations?

6 A. In these -- for this one, yes, on both
7 of those dates.

8 Q. You have four of them here for a
9 collection of 12 violations, if I understood you
10 correctly. Was all of those onsite investigations or
11 was they some that you pulled out of the file?

12 A. The violation of not having a certified
13 operator and incomplete discharge monitoring reports?

14 Q. Right. Those done from your office?

15 A. Those would be more of a -- you know,
16 paperwork violations so there's nothing to actually
17 be gained by visiting the site.

18 Q. Okay. I gotcha on that. But another
19 question is, for a gentleman like Mr. McClain, is
20 there something in DNR and -- that will help him
21 understand the merit of regulations that DNR have?
22 Is there someone there to give him some instruction
23 on what he needs to do, when he needs to do it and
24 all that?

25 Do you have a policy that you can lay in

1 front of him to say, "Mr. McClain, this is what is
2 necessary in order for you to stay in compliance with
3 DNR"? Do you-all have such a policy or do you-all
4 have individuals on your Staff that is -- that set
5 down with a gentleman like him when he first asked
6 for certification and then tell him what he need?

7 A. Yes.

8 Q. Okay. Could you describe that for me?
9 What time do you got to get out of here today for
10 another appointment? What time do you need to leave
11 today? Because I want to be respectful of your time.

12 A. Ideally, I was hoping to get out of here
13 by 5:00 p.m.

14 Q. Okay. Well, answer that question for me
15 and I'll let that be my last question, okay?

16 A. There's a process called conference
17 conciliation and persuasion. That's a department
18 philosophy that the -- you know, you inform -- you
19 inform the person what the violation was and then you
20 try to bring them back into compliance.

21 The -- our current director, Doyle
22 Childers, he's expanded this program and they've --
23 now they have initial assistance visits and water
24 specialists that are really -- it's more of a
25 nonregulatory position and they can go out and assist

1 the treatment plant operator in operations that's
2 not -- initial assistance visit is also a non -- you
3 know, the initial assistance visit would -- they go
4 over each violation or what they did right or what
5 they did wrong and they lay out, you know, how you
6 stay in compliance.

7 In addition to that, the -- we also have
8 an ombudsman program where if a person doesn't think
9 that their voice is getting heard through the
10 regional office, and that's where all this initial
11 assistance visits and compliance assistance takes
12 place is in the regions, if they don't think they're
13 getting served by the region, then they can call
14 their regional ombudsman who serves as more of a
15 mediation between the regional office and the person
16 or the organization.

17 Q. I understand, and I will end my question
18 there. But I will say that your director, I know him
19 very well and he's a good man, and -- but I also know
20 that DNR, with my 15 years of experience of trying to
21 wade through some of you-all issues, that you-all can
22 be very bureaucratic at times. I just want you to
23 leave here today that you are probably one of the top
24 bureaucratic organization that deals in state
25 government. And I want you to hear that from me, and

2 You know what I mean?

3 And you-all need to -- you-all need to
4 look at that because people out here are trying to make
5 a living and I don't encourage you to let them get away
6 with violation because that is wastewater out there
7 and Raintree and everybody else needs to comply.

17 That's enough said by me, but the last
18 question that I have is, why does it take so long to
19 approve a construction permit? Is there a process
20 that is required? And to me 18 months is an awful
21 long time, especially, I heard Mr. McClain come today
22 and say he came and knocked on you-all door to
23 include the PSC's door today, and say, "I need help
24 and they say, "Come back in 18 months."

1 can take a tour around the world in 18 months. Why
2 do it take so long to get that permit through? Is
3 there something that's causing that? Talk to me
4 about it. Or is this not an area that you are
5 familiar with?

6 A. In this case I don't believe it took
7 18 months.

8 Q. Okay.

9 A. I believe they abandoned their plans and
10 then resubmitted plans for a treatment plant
11 expansion that was twice as large as the first
12 proposed expansion.

13 Q. Uh-huh.

14 A. And if you start, stop and submit a
15 completely new thing, of course it's gonna be --
16 that's gonna delay things. And the higher -- keep
17 talking about higher levels, the standard process,
18 the time -- the reason it gets drug out is because
19 when an engineering firm submits the plans and specs,
20 the DNR's engineers goes over that with a
21 fine-toothed comb and usually has a ton of questions
22 about -- engineering questions.

23 And in some ways it's even -- it's out
24 of the responsible parties' hands because the
25 engineer is the one that has to respond to these

1 engineering questions, so they go -- they go back and
2 forth and if the engineer doesn't answer the question,
3 then usually the department won't move on past that
4 point if they don't -- if all those questions aren't
5 answered, they're not gonna move to the next step
6 until -- sorry, until those questions are answered.

7 COMMISSIONER APPLING: Okay. Mr. Dorsey,
8 I'm not cutting you off here. I know you have a
9 schedule and I respect that. So thank you very much
10 for your comments, okay?

11 THE WITNESS: You're welcome. And I
12 understand what your comments about the department,
13 and if you've talked to Director Childers lately,
14 he's made that his focus to change our image and make
15 our process more efficient.

16 COMMISSIONER APPLING: I know he did,
17 and I have a lot of respect for him because him and I
18 worked together. He was very helpful to me when I
19 was running all of the state-owned billings. Very,
20 very helpful to me. So I have a tremendous amount of
21 respect for him. And I hope he keeps chipping away
22 at you guys until he gets something going in the
23 right direction over there. Thank you very much for
24 your time. Appreciate you, okay?

25 JUDGE STEARLEY: All right. Is there

1 any recross based upon questions from the
2 Commissioner?

3 MR. COMLEY: No questions.

4 MR. KRUEGER: No questions.

5 JUDGE STEARLEY: Any redirect,
6 Mr. Schmid?

7 MS. SCHMID: No, your Honor.

8 JUDGE STEARLEY: May this witness be
9 finally excused?

10 (NO RESPONSE.)

11 JUDGE STEARLEY: Okay. You may be
12 excused, Mr. Dorsey. Thank you for your testimony.

13 THE WITNESS: Thank you.

14 JUDGE STEARLEY: At this time we've been
15 going, once again, for about an hour and a half and
16 we'll take a very short ten-minute break, give our
17 court reporter a rest, and we'll come back with
18 Staff's final witness.

19 (A RECESS WAS TAKEN.)

20 JUDGE STEARLEY: All right. We are back
21 on the record, and I believe, Mr. Krueger, you have
22 your second witness to call.

23 MR. KRUEGER: I call Greg Meyer.

24 JUDGE STEARLEY: Mr. Meyer, will you
25 please state and spell your name for our court

1 reporter?

2 THE WITNESS: Greg R. Meyer, M-e-y-e-r.

3 (The witness was sworn.)

4 JUDGE STEARLEY: You may proceed,

5 Mr. Krueger.

6 MR. KRUEGER: Thank you.

7 DIRECT EXAMINATION BY MR. KRUEGER:

8 Q. State your name and address for the
9 record, please.

10 A. Greg R. Meyer, 9900 Paige Avenue, Suite
11 103, Overland, Missouri 63132.

12 Q. All right. By whom are you employed and
13 in what capacity?

14 A. Missouri Public Service Commission. I'm
15 a regulatory auditor V.

16 Q. Did you hear the testimony of Dale
17 Johansen this afternoon?

18 A. Yes, I did.

19 Q. Did you participate in the audit of
20 Central Jefferson County Utilities that he referred
21 to?

22 A. I didn't directly participate in the
23 audit but I was the supervisor in charge of the
24 auditors that performed the audit.

25 Q. Did you hear his testimony in regard to

1 the average usage at Central Jefferson being 6,250
2 gallons per customer per month?

3 A. Yes, I did.

4 Q. Do you know how that number was
5 determined?

6 A. Yes. As part of our audit, and most
7 audits that are performed on the St. Louis office,
8 every customer in Central Jefferson that was a
9 customer of Central Jefferson during 2005 was
10 analyzed separately, and an annual consumption of
11 water was determined for each customer based on their
12 current usage.

13 And then that current usage or that
14 annual usage was compared to a -- historical levels
15 that were -- that were obtained. We have a record of
16 each customer's usage over the last five years.

17 Q. So the usage was determined for the year
18 2005; is that correct?

19 A. That's correct. The 6,250 is the
20 average consumption by month for all of the
21 residential customers analyzed individually.

22 Q. And that was compared with the usage for
23 the four previous years?

24 A. The four previous years are used as a
25 check against the levels that were determined through

1 the audit.

2 Q. And the 6,250, was that found to be in a
3 reasonable range?

4 A. Yes.

5 MR. KRUEGER: That's all the questions I
6 have, your Honor.

7 JUDGE STEARLEY: Thank you, Mr. Krueger.
8 Cross-examination by DNR, Mr. Schmid?

9 MS. SCHMID: I have no questions, your
10 Honor.

11 JUDGE STEARLEY: All right. Thank you.
12 The Association?

13 MR. COMLEY: No questions.

14 JUDGE STEARLEY: Office of Public
15 Counsel?

16 CROSS-EXAMINATION BY MS. BAKER:

17 Q. You were saying that the Staff under you
18 performed an audit in the case that was given the
19 tracking number that Dale Johansen provided,
20 QS-2006-003; is that correct?

21 A. That's correct.

22 MS. BAKER: Okay. I have an exhibit I'd
23 like to put in.

24 JUDGE STEARLEY: All right. We should
25 mark that as Exhibit 25.

1 (EXHIBIT NO. 25 WAS MARKED FOR
2 IDENTIFICATION BY THE COURT REPORTER.)

3 BY MS. BAKER:

4 Q. Do you see at the top of this document
5 the tracking number QS-2006-003?

6 A. Yes, I do.

7 Q. Can you tell me what this document is?

8 A. It appears to be the results of the
9 Staff's audit of the Central Jefferson Utilities'
10 water operations.

11 Q. Okay. Near the front it says, "Central
12 Jefferson County Utilities water." Will you also
13 agree that further back is Central Jefferson County
14 Utilities sewer near the middle of the document?

15 A. Yes, I see it.

16 Q. Okay. So these are the Staff's audit of
17 Central Jefferson County Utilities for both water and
18 sewer that were performed under tracking number
19 QS-2006-0003?

20 A. From just a cursory review of the
21 document you've given me, it appears that it's
22 identical to the results I have with me. So yes, I'd
23 agree with that.

24 MS. BAKER: Okay. I'd like to go ahead
25 and enter this in.

1 JUDGE STEARLEY: Any objections?

2 MR. KRUEGER: No objection.

3 MR. ENGLAND: Objection as to relevancy.

4 JUDGE STEARLEY: Ms. Baker, the
5 relevance?

6 MS. BAKER: This document has been
7 talked about with Dale Johansen's testimony. Some of
8 the numbers have come out of it. There were
9 questioning regarding some overearnings, and I would
10 like to pull out from this document where those
11 overearnings numbers came from.

12 JUDGE STEARLEY: Mr. England, can you
13 reply?

14 MR. ENGLAND: Well, I still question the
15 relevancy of the analysis. I understand -- I know
16 that this is also the basis for Public Counsel's
17 complaint case which I understand is separate and
18 apart from this case.

19 JUDGE STEARLEY: How is this relevant to
20 the primary issues of this case?

21 MS. BAKER: The issues in this case are
22 whether this transfer is detrimental to the public,
23 and it is Public Counsel's view that we are already
24 in an overearning situation with this company, and
25 any increase that may be given with the transfer

1 would just compound that overearnings issue. And we
2 would like the chance for the Commission to look to
3 see what the overearnings and what the Staff audit is
4 at this moment so that they can make a clear view and
5 a clear decision on the transfer.

6 JUDGE STEARLEY: Mr. England?

7 MR. ENGLAND: Your Honor, first of all,
8 this is a 2005 test year. There's been no indication
9 that it's particularly relevant for the experience of
10 the company today, and more importantly, if this
11 transfer takes place, it has no relevance to what the
12 cost of service will be for the sewer district and
13 EMC who's performing the service for the sewer
14 district.

15 So any attempt to try to compare a Staff
16 analysis which, by the way, never was corroborated by
17 a Commission finding, for 2005 with what the district
18 and/or EMC's costs on a going-forward basis may be is
19 a classic apples to oranges.

20 JUDGE STEARLEY: All right. Well, I
21 will allow the admission.

22 (EXHIBIT NO. 25 WAS RECEIVED INTO
23 EVIDENCE AND MADE A PART OF THE RECORD.)

24 JUDGE STEARLEY: I will overrule the
25 objection, and Mr. England, you can attack the

1 document's credibility on your cross-examination.

2 MS. BAKER: Thank you very much.

3 BY MS. BAKER:

4 Q. So was this audit performed based on
5 company's records that were provided to the Staff?

6 A. Yes, the Staff went to the offices of
7 Central Jefferson Utilities Company, and as a result
8 of those reviews, came up to these conclusions.

9 Q. And was the audit performed using the
10 normal standards for high quality for products coming
11 out of a review of this type?

12 MR. ENGLAND: Objection. I think that
13 question assumes either a vague standard or a
14 standard certainly not in evidence.

15 JUDGE STEARLEY: All right. Without you
16 answering it, Mr. Meyer, could you please repeat the
17 question?

18 MS. BAKER: Was this audit performed
19 using your normal procedures within the Staff?

20 MR. ENGLAND: I'll withdraw the
21 question -- or the objection. I think that it is a
22 different question.

23 JUDGE STEARLEY: All right.

24 MS. BAKER: Sorry about that.

25 THE WITNESS: This audit was performed

1 as we would have performed any other small audit.

2 BY MS. BAKER:

3 Q. Okay. Can you turn to the sixth page?

4 I know they're double-sided, so the sixth page. And

5 this page says "Central Jefferson County Utilities'

6 water rate design schedule." And look at the item

7 No. 43. Can you read that to me, please?

8 A. "Incremental increase in rate revenues."

9 Q. Okay. Can you read the two numbers that
10 are after that?

11 A. "Negative 16,895, negative 12.96

12 percent."

13 Q. Does that indicate that there was --

14 there was an overearnings of 16,895?

15 A. Yes.

16 Q. Okay. Can you turn to the 20th page?

17 It's a similar page that has "Sewer" at the top. So

18 it's Central Jefferson County Utilities' sewer rate

19 design schedule.

20 A. I'm there.

21 Q. Okay. Can you read to me the line item
22 42?

23 A. "Incremental increase in rate revenues."

24 Q. Can you read the two numbers that

25 precede that?

1 A. "Negative 51,521 and negative 23.12
2 percent."

3 Q. Technically the 51,521 is in
4 parentheses?

5 A. It's a negative, yes.

6 Q. That indicates a negative number as
7 well?

8 A. Yes.

9 Q. Okay. Does that indicate that there was
10 an overearnings in the sewer rates of \$51,521?

11 MR. ENGLAND: Objection. It's simply
12 Staff's proposal, it's not a finding.

13 JUDGE STEARLEY: I apologize.

14 MR. ENGLAND: My objection was to the
15 characterization of the question.

16 JUDGE STEARLEY: And Mr. Meyer, without
17 you answering again, I'm sorry, would you please
18 repeat the question?

19 MS. BAKER: The question was, does the
20 line item in 42 indicate to the Staff that there was
21 an overearnings of \$51,521 in the sewer rates?

22 MR. ENGLAND: I think that question is
23 better phrased so I'll withdraw my question -- or
24 objection.

25 JUDGE STEARLEY: All right.

1 MS. BAKER: If I get two chances, I get
2 it, huh?

3 JUDGE STEARLEY: Mr. Meyer, you can
4 answer that question.

5 THE WITNESS: Based on a Staff's
6 audits -- Staff's audit, that's our conclusion,
7 correct.

8 MS. BAKER: Okay. Thank you. I have no
9 further questions.

10 JUDGE STEARLEY: All right.
11 Cross-examination by Central Jefferson, Mr. England.

12 MR. ENGLAND: Yes, thank you.

13 CROSS-EXAMINATION BY MR. ENGLAND:

14 Q. Good afternoon. Mr. Meyer. Let's stick
15 with Exhibit 25 that I was unsuccessful -- or
16 unsuccessful in keeping out of the record. Let's
17 look at the first page, and as I understand, you take
18 the company test year amounts which were per books
19 from 2005; is that right?

20 A. Our starting -- excuse me. Our starting
21 point would be we would take the check register, post
22 all the checks that were paid in 2005, some of them,
23 put them into the appropriate categories. So it may
24 not be exactly what's considered to be the book.

25 Q. But at least it's verifiable expenses

1 that the company recorded as expenses on their book?

2 A. That's correct.

3 Q. And then when you go to column D, that
4 represents what Staff believes to be an appropriate
5 level of expense for the test period, right?

6 A. Correct.

7 Q. And we're still talking about 2005,
8 right?

9 A. Yes.

10 Q. And 2005 was when the company, I think,
11 employed Mr. Phibbs, I believe we've discussed
12 earlier in this proceeding?

13 A. He was a full-time operator for the
14 company.

15 Q. Okay. And then column E is the
16 difference between what the company was able to
17 support as expenses, what you believe are appropriate
18 for ratemaking on a go-forward basis?

19 A. Correct.

20 Q. Okay. And as I had a conversation
21 earlier with Mr. Johansen, sometimes you disallow an
22 expense because it's improper, right?

23 A. Correct.

24 Q. Sometimes you annualize an expense,
25 maybe it doesn't reflect a full 12 months' worth?

1 A. That's correct.

2 Q. Sometimes you may take an item that the
3 company expenses but you may, for ratemaking
4 purposes, think it ought to be normalized and say
5 amortized over a three, five or longer year period of
6 time?

7 A. Correct.

8 Q. Or sometimes you may take an expense
9 that the company puts on the books as an expense but
10 recategorize it as a -- as a rate base act?

11 A. Correct.

12 Q. For example, I think one of the things
13 you disallowed in here was a substantial amount of
14 money that was spent on an outside engineer for some
15 engineering plans?

16 A. I believe that there was engineering
17 fees charged during the test year that the Staff
18 believed should be properly capitalized, that's
19 correct.

20 Q. I keep forgetting it's on both sides.
21 Excuse me. I think -- for example, I'm looking at
22 the sewer adjustment, S-13.

23 A. I'm there.

24 Q. Okay. So even though the company may
25 have incurred an expense and actually paid an expense

1 in the test period here for professional services to
2 an engineering firm of roughly \$43,000, what you do
3 for purposes of ratemaking is take that and
4 capitalize it?

5 A. I'd have to review the document in more
6 detail. I know that -- I can tell you that this
7 adjustment takes it out of expense because we would
8 believe it's not an ongoing annual expense and
9 shouldn't be reflected in rates that way. My only
10 hesitation is whether we literally took the 43,000
11 and capitalized it because I'm not sure at this point
12 if that represented a plant that was in service.

13 Q. Okay. Well, let's talk hypothetically.
14 Let's say the company incurred in 2005, \$40,000 in
15 engineering fees related to the plans for this new
16 treatment plant we've been talking about.

17 A. Okay.

18 Q. And you audit it and say, sure enough,
19 you spent \$40,000 on this engineering firm and it's a
20 valid expense but we think it ought to be
21 capitalized. It would be -- it would be added to the
22 gross investment -- original cost investment in the
23 plant when that plant came online, right?

24 A. That's correct.

25 Q. So if the plant cost \$1 million, you'd

1 add the 40,000 to it and it would be \$1,040,000 for
2 that plant?

3 A. If the engineering fees that you
4 described were reasonable, correct.

5 Q. Okay. And then the company recovers
6 those engineering fees over the life of the plant
7 through depreciation expense?

8 A. And they also receive a return on it,
9 that's correct.

10 Q. Right. So essentially they're
11 out-of-pocket in year one \$40,000, and if the useful
12 life of the treatment plant is 20 years, they don't
13 recover money for a full 20 years?

14 A. Well, the general assumption is that
15 those expenses are backed by debt or equity within
16 the company.

17 Q. I understand, but you agree with that
18 analysis, that although they're out-of-pocket in year
19 one, it takes them 20 years to recover it all through
20 the capitalization and depreciation and return
21 exercise we talked about?

22 A. It's similar to any type of plant,
23 correct.

24 Q. Excuse me. Questions that I had and you
25 may be able to answer this better than Mr. Johansen,

1 I want to make sure the record reflects the fact that
2 none of the owners took a salary out of this company
3 for the period you audited, correct? And I'm drawing
4 a distinction between salary and benefits.

5 A. To the best of my knowledge, neither of
6 the owners drew a salary.

7 Q. Okay. They did receive, as I believe,
8 health insurance from the company?

9 A. Healthcare costs were included in the
10 company's books and records for both the owners,
11 that's correct.

12 Q. Right. You've disallowed them for
13 ratemaking purposes?

14 A. Yes.

15 Q. And then I also want the record to
16 reflect, hopefully, there were no dividends paid to
17 these owners during the period of time you audited?

18 A. I can't testify to that.

19 Q. You don't --

20 A. Because --

21 Q. You disagree or you just don't know?

22 A. Well, my assertion is that because the
23 cost of services is in excess, that funds went
24 someplace. So whether they went to owners or not, I
25 can't -- I don't know.

1 Q. Well, the funds went to pay \$40,000 in
2 engineering fees, didn't it?

3 A. Like I said, you can achieve that
4 through debt also, debt issuances.

5 Q. This company has to come to the
6 Commission to issue debt and it hasn't done so in the
7 last five years, has it?

8 A. It could also use equity from the
9 company.

10 Q. Well, did the company issue any debt or
11 equity during the test period?

12 A. I'm not aware that they issued any debt.

13 Q. If they issued dividends to the
14 stockholders, there would be some recognition in its
15 books and records that it did so, wouldn't it?

16 A. Not if they took it as a draw.

17 Q. There wouldn't be any evidence in the
18 books and records that that money was distributed to
19 stockholders?

20 A. If it went through -- if it went to
21 retained earnings and it was drawn down. I don't
22 know that there would be an entry that would be a
23 check.

24 Q. Who on Staff performed the audit,
25 Mr. Meyer?

1 A. Ms. Lisa Hanneken and Mr. Jeremy
2 Hagemeyer.

3 Q. What, if any, involvement did
4 Mr. Robertson with OPC or anyone from the office of
5 OPC have in this audit?

6 A. I'm not aware that Mr. Robertson was
7 involved in putting these numbers together. I don't
8 know that he was not -- if he had conversations with
9 them, I'm not aware of that.

10 Q. Do you know if he was onsite with your
11 people at the time they performed their audit?

12 A. I wasn't aware of that, no.

13 Q. Do you know if anybody from Office of
14 Public Counsel was involved besides Mr. Robertson?

15 A. You'd have to ask them.

16 Q. Okay. Do you know if they were involved
17 in the presentation of the findings of your Staff to
18 you that you obviously had to approve before this
19 report was issued?

20 A. Is your question was Mr. Robertson
21 present when the results were presented to me?

22 Q. Right.

23 A. No.

24 Q. Or involved in any way that you know of?

25 A. No, this audit was performed out of

1 St. Louis.

2 Q. Okay. Did you have any conversation
3 with Mr. Robertson about this report?

4 A. Nothing substantial, if I had any.

5 Q. Again, we were talking about a 2005 test
6 period, correct?

7 A. Correct.

8 Q. And that was the year in which
9 Mr. Phibbs was still employed by the company as a
10 full-time employee?

11 A. That's correct.

12 Q. Now, if Mr. Phibbs has left the employ
13 of the company and EMC has been hired on an interim
14 basis to maintain the system, that may change the
15 cost of service for this company on a going-forward
16 basis, would it not?

17 A. The possibility is there, that's
18 correct.

19 Q. Okay. And if this system gets
20 transferred to the sewer district and EMC takes over
21 the operations, cost of service may be entirely
22 different than what it was in 2005 when it was owned
23 by Central Jefferson County Utilities?

24 A. It's not the basis for the rate, if
25 that's your question.

1 Q. No, I'm just talking about what their
2 costs of service are gonna be.

3 A. Well, they assume that it's gonna be the
4 same.

5 Q. The same as which number? Your number
6 or the company's number?

7 A. No. They've assumed for purposes of --
8 excuse me. For purposes of calculating their rates,
9 they've assumed that the expenses are going to be the
10 same as they reported on their Form 1s.

11 Q. So looking at your -- I believe
12 Ms. Baker had you look at the sewer revenue
13 requirement -- excuse me. This is not the revenue
14 requirement, it's the expense schedule.

15 A. I'm there.

16 Q. Column C, I believe, would be the
17 company's -- what the company believed their expenses
18 were for the test period which is roughly \$227,000?

19 A. Yes. If you add the -- if you add the
20 water expenses and the sewer expenses, you get to 360
21 which is extremely close to what is contained in
22 Exhibit 4.

23 Q. Okay. But I guess my point is that the
24 cost of service to the sewer district, once they
25 acquire these -- we don't know what the cost of

1 service to the sewer district was gonna be, do we?

2 A. All I testified to was that the sewer
3 district and EMC assumed that it was gonna be similar
4 to what was in their FERC Form 1.

5 Q. Which is collectively nearly \$70,000
6 higher than what you have proposed in your report
7 here?

8 A. For sewer?

9 Q. For both.

10 A. It's higher than that.

11 Q. I'm sorry. Which is higher than what?

12 A. The 360 is higher than what we've
13 proposed. It's included.

14 Q. Okay. Sewer district and EMC are at 360
15 annual expenses for water and sewer, right?

16 A. That's correct.

17 Q. Okay. Where are you under this report?

18 A. We believe the system will be -- as a
19 result of these audits, we would -- we would claim
20 that the systems can be operated for approximately
21 \$257,000 annually.

22 Q. Nearly \$100,000 less?

23 A. That's why I said it was different.

24 Q. And you heard Mr. Thomas testify that
25 he's planning on having at least two full-time people

1 down here when they take over?

2 A. I heard that.

3 Q. Okay. So their cost structure and their
4 staffing could be entirely different than what it is
5 for Central Jefferson County?

6 A. All I said was that the basis for what
7 they set their rates was exactly equal to or very
8 close to what they put in their FERC Form 1. The
9 manpower differences aren't that different between
10 what's in their -- what's in our rates and what
11 Mr. Thomas testified that he was gonna operate with.

12 Q. Well, I guess my point is that their
13 assertion is that the -- their belief is that their
14 total expenses are gonna be 100,000 more than what
15 you have.

16 A. Based off of -- based off of a FERC
17 Form 1, that's correct.

18 Q. You keep saying a FERC Form 1.

19 A. Well -- I'm sorry. The annual report.
20 I'm using the wrong term, wrong utility.

21 Q. I think we've got enough regulation at
22 the state level.

23 A. You're right.

24 MR. ENGLAND: I'd rather not go to the
25 Federal Energy Regulatory Commission if I don't have

1 to. Thank you, sir. No other questions.

2 JUDGE STEARLEY: Thank you, Mr. England.

3 Questions from the Commissioners? Commissioner
4 Appling?

5 QUESTIONS BY COMMISSIONER APPLING:

6 Q. Mr. Meyers, how you doing?

7 A. Okay.

8 Q. Am I right in my assumption that Staff
9 is supporting this transfer or recommending that this
10 transfer take place?

11 A. I could say that with the conditions or
12 the modifications that Mr. Johansen described
13 earlier, yes, that we'd say it should go forward.

14 Q. I'm sorry that I missed Mr. Johansen's
15 presentation here today, but could you -- and this
16 will be my last question for you. Can you list the
17 conditions which -- which the Staff is requiring?

18 A. Okay. We believe that there should be
19 some clarification for Mr. Kolisch and some clearing
20 up of the reimbursement for his line extensions that
21 were made. We have concerns about the commodity rate
22 that is included to be charged by EMC of \$6.30 based
23 off of an annual -- or I'm sorry. Excuse me -- an
24 average monthly usage of 5,000 gallons.

25 Our analysis would suggest that the more

1 correct figure is that the average residential
2 customer in Raintree uses 6,250 gallons of water a
3 year -- or I mean, of water a month, excuse me --
4 which has a fairly substantial rate impact. The rate
5 would go from, I believe, \$6.30 under Mr. Johansen's
6 calculation to, I believe, \$5.04.

7 There is also -- we have also expressed
8 concerns over the connection fees that are subject to
9 collection by the district to be transferred to
10 Raintree, and that concern is more that I think we're
11 in the position that the district should only collect
12 what they literally have to transfer to Raintree and
13 not anything in excess to that.

14 Q. I make the assumption that Mr. Johansen
15 had somebody working on that -- on those issues?

16 A. My understanding earlier this afternoon,
17 that Mr. England offered some testimony or some
18 evidence that suggested that they are currently
19 trying to work on Mr. Kolisch's situation to clarify
20 that language.

21 COMMISSIONER APPLING: Thank you very
22 much, sir.

23 JUDGE STEARLEY: Any recross based upon
24 Commissioner Appling's questions?

25 (NO RESPONSE.)

1 JUDGE STEARLEY: Redirect, Mr. Krueger?

2 MR. KRUEGER: No questions, your Honor.

3 JUDGE STEARLEY: All right. May this
4 witness be finally excused?

5 MR. KRUEGER: Yes.

6 JUDGE STEARLEY: You may be excused,
7 Mr. Meyer. Thank you for your testimony.

8 MR. KRUEGER: Your Honor, at this point
9 I would suggest that we might recall Mr. Johansen.
10 Commissioner Gaw had a question for him this
11 afternoon that he indicated that he could supplement
12 his response to later on, but it might be easier to
13 do that at the present time because he has an answer
14 for that, and that would give the other parties an
15 opportunity to cross-examine him on his answer.

16 JUDGE STEARLEY: I'll have to see if we
17 can locate Commissioner Gaw.

18 MR. KRUEGER: I don't think Commissioner
19 Gaw needs to be present. He asked a question and
20 Mr. Johansen has the answer now.

21 JUDGE STEARLEY: All right. Well, we
22 can go ahead and put him on the stand for that
23 answer, and I will also send an e-mail just in case
24 Commissioner Gaw is available. Mr. Johansen, you're
25 reminded that you're still under oath.

1 THE WITNESS: Yes, sir.

2 FURTHER REDIRECT EXAMINATION BY MR. KRUEGER:

3 Q. Mr. Johansen, you testified this
4 afternoon in answer to questions by Commissioner Gaw
5 about the acquisition premium in the AquaSource case?

6 A. Yes.

7 Q. Can you briefly restate Commissioner
8 Gaw's question?

9 A. I will try. I believe one of the things
10 that, when we were talking about the various
11 plant-in-service contribution issues and talking
12 about the fact on the AquaSource case that the Staff
13 had notified AquaSource of our position that we would
14 oppose the recovery of an acquisition premium in
15 their application case that was on file at the time
16 to purchase the stock of Central Jefferson County
17 Utilities, and I believe he asked me if I knew what
18 the amount of that acquisition premium was.

19 Q. Okay. And do you have an answer for
20 that question now?

21 A. I do.

22 Q. And what is the answer?

23 A. Based on the proposed purchase price and
24 the rate base level at the time that the acquisition
25 was being considered, it would have been a premium of

1 \$244,345.

2 Q. Okay. And do you believe that fully
3 answers Commissioner Gaw's question?

4 A. I believe it does, yes.

5 MR. KRUEGER: Okay. No other questions,
6 your Honor.

7 JUDGE STEARLEY: Any cross-examination
8 of Mr. Johansen? Mr. England?

9 MR. ENGLAND: I hope I can do this with
10 one question. Excuse me.

11 FURTHER RECROSS-EXAMINATION BY MR. ENGLAND:

12 Q. What was the purchase price -- well,
13 excuse me, not the purchase price. I need the
14 original cost of plant to add that together with the
15 number you just gave to get the purchase price.

16 A. Oh, okay.

17 Q. I guess I could back into it if you gave
18 me the purchase price and subtract the acquisition
19 price.

20 A. I've got all three here if you want
21 them.

22 Q. That, I think, might be helpful to put
23 it in perspective.

24 A. Okay. The -- and again, I think I
25 referenced the case earlier, but this is Case

1 SM-2000-214. The proposed purchase price was
2 \$600,000. Central Jefferson's ratemaking rate base
3 at that time was \$355,655, and that results in the
4 premium of \$244,345.

5 MR. ENGLAND: Thank you, sir. I have no
6 other questions.

7 JUDGE STEARLEY: Commissioner Appling?

8 QUESTIONS BY COMMISSIONER APPLING:

9 Q. Good to see you again so quickly, Dale.
10 Do you support this transfer?

11 A. Yes.

12 Q. Do you have somebody -- did Mr. Meyer
13 describe the condition correctly?

14 A. He did. The one thing that I think I
15 mentioned in addition to the issues he mentioned
16 that -- and I think these are obvious and there
17 really isn't any disagreement among the parties, that
18 along with the commission's approval of this, two
19 basic assumptions are that the compliance agreement
20 between DNR, the sewer district and EMC will be
21 executed, and I would say in substantially the form
22 that they're in today. I know there's some minor
23 modifications left.

24 And secondly, that the operation and
25 maintenance agreement between the sewer district and

1 EMC is executed, again, substantially in the form
2 that they're in today with the exception of the issue
3 that we raised on the water commodity rate.

4 COMMISSIONER APPLING: Thank you, Dale,
5 and Merry Christmas to you.

6 THE WITNESS: Thank you.

7 JUDGE STEARLEY: Any recross based on
8 Commissioner Appling's questions?

9 (NO RESPONSE.)

10 JUDGE STEARLEY: Mr. Krueger, do you
11 have any redirect?

12 MR. KRUEGER: No, your Honor.

13 JUDGE STEARLEY: Okay. May this witness
14 be finally excused? I have heard that Mr. Gaw is
15 unavailable so -- Commissioner Gaw, so at this point
16 we will go ahead and excuse you, Mr. Johansen.

17 THE WITNESS: If that, what we just did,
18 didn't get to his question, we'll be glad to
19 supplement it later if needed.

20 JUDGE STEARLEY: All right. Thank you
21 for your testimony.

22 THE WITNESS: Thank you.

23 JUDGE STEARLEY: And at this time I
24 believe it's time for the Association to call its
25 witness.

1 MR. COMLEY: Your Honor, we'd call Fred
2 Rommel.

3 JUDGE STEARLEY: Mr. Rommel, if you'll
4 please state and spell your name for our court
5 reporter.

6 THE WITNESS: Frederick,
7 F-r-e-d-e-r-i-c-k, Rommel, R-o-m-m-e-l.

8 (The witness was sworn.)

9 JUDGE STEARLEY: You may proceed,
10 Mr. Comley.

11 MR. COMLEY: Yes, thank you, Judge
12 Stearley.

13 DIRECT EXAMINATION BY MR. COMLEY:

14 Q. I have a few background questions.
15 Mr. Rommel, please state your full name for the
16 record, please.

17 A. Frederick Rommel.

18 Q. What is your address?

19 A. 33 Jerry's Point, Hillsboro, Missouri
20 63050.

21 Q. Do you hold a position or office with
22 the Raintree Property Owners Association, Inc.?

23 A. Yes, I'm --

24 Q. And what position do you hold?

25 A. I was elected to the board this past

1 round and I am currently the chairman of the sewer
2 and water committee and the dam committee.

3 Q. Before we get to your committee
4 memberships, another background question: What is
5 your profession or occupation?

6 A. I've worked for DaimlerChrysler for 29
7 and a half years. Currently, I run the trim
8 department in the truck plant.

9 Q. And that would be located in Festus,
10 Missouri?

11 A. Fenton.

12 Q. Fenton, excuse me. Fenton, Missouri.

13 A. Yes.

14 Q. How long have you been a resident in
15 Raintree Plantation Subdivision?

16 A. Two years ago last May.

17 Q. You mentioned that you were on a
18 member -- you were a member of a committee. You
19 mentioned the sewer and water committee. How were
20 you appointed to that committee?

21 A. There was a -- at one of the initial
22 meetings immediately after the new board was voted
23 in, somebody, one of the other board members, had
24 issued a proposal and it was seconded and it passed.

25 Q. So you were elected at that point to the

1 membership of the committee?

2 A. Yes.

3 Q. Are you considered the chairman of that
4 committee?

5 A. Yes. There's also a cochair, Tom
6 Kennafic (phonetic spelling).

7 Q. What are the duties and responsibilities
8 of the sewer and water committee?

9 A. The sewer and water committee is -- is a
10 voice for the members of the Association. We've
11 got -- we've got several thousand members of the
12 Property Owners Association, and basically, we're
13 trying to get the problem, the current problem
14 resolved that we -- that we're experiencing with
15 sewer and water. Some of those problems we've heard
16 testimony about. I can go into those later if you
17 like, but --

18 Q. I take it that you did receive concerns
19 from members in the Association about the quality of
20 water and sewer service in the subdivision; is that
21 correct?

22 A. Both formally and informally. We've
23 had -- we've had people speak up at the property
24 owners' meetings on Monday nights. We've had people
25 just stopping in the clubhouse discussing one-on-one.

1 It's a close -- it's a close-knit community where
2 people communicate both formally and informally.

3 Q. As a consequence of the concerns raised
4 by your members, did the board see fit to intervene
5 in this case concerning the transfer of assets to
6 Jefferson County Public Sewer District?

7 A. Yes. The new board -- the new board
8 thought it was such an important aspect of the
9 community, it was such an important piece that, well,
10 we're incurring the expense of hiring yourself and --

11 Q. Which is a lot, isn't it, I'm sure?

12 A. I'm sure it's money well spent.

13 Q. Thank you very much. It's in the
14 record. All joking aside.

15 A. There's been quite a bit of time and
16 effort spent by many of the -- many of the residents
17 gathering information and sharing information with
18 the expected outcome of resolution.

19 Q. You've mentioned that the membership may
20 range in the thousands. Would you happen to have an
21 approximation of the number of members the board
22 represents?

23 A. I would approximate -- I would guess
24 about 2,300, although there's 3,000 lots. I recently
25 met a gentleman that owns 30 of them and he's not

1 even a home builder.

2 Q. Are there others that may own multiple
3 lots?

4 A. Yes, a couple months ago I heard of a
5 company out of Texas or someplace that had bought up
6 125 lots.

7 Q. And that company would be considered a
8 member of the Association itself?

9 A. Oh, yes. I don't know who it is. In an
10 unrelated matter. I was researching property tax
11 records and I found that half the lots on the street
12 that I live on are owned by a particular trust.

13 Q. Another background question for you:
14 Can you tell the Commission how many members are on
15 the board for Raintree Plantation Property Owners
16 Association?

17 A. There are nine board members.

18 Q. And are they elected or appointed?

19 A. They're elected.

20 Q. As part of the proceedings in this
21 matter, did Raintree Plantation prepare a statement
22 of its position on the issues?

23 A. Yes, they did, and I believe it was
24 submitted to the Commission.

25 Q. And is it the position of the

1 Association that the transfer of the company's water
2 and sewer assets would not be detrimental to the
3 public if the Commission were to impose certain
4 conditions on the transfer?

5 A. Yes, that is correct.

6 Q. And are those conditions set forth in
7 the statement of position?

8 A. Yes.

9 Q. I would like to go through those with
10 you, and although I will do it -- I will try to do it
11 very swiftly, I would like to have your explanation
12 of why the board considers those significant.

13 Beginning with the one that's lettered
14 A, it states, "The water and sewer rates proposed by
15 the district would not be effective until milestones
16 have been established and met; for example,
17 unscheduled improvements are in service and
18 operational.

19 "Furthermore, at the end of the
20 improvements phase, recurring monthly rates should
21 not exceed those proposed at \$37 per month for sewer
22 and \$6.30 per 1,000 gallons for water."

23 Would you explain to the Commission why
24 the board considers this a significant condition?

25 A. This has two significant aspects to it.

1 One is the milestones. The milestones that we refer
2 to are the issues that are important to us. We don't
3 consider getting a permit or getting an engineer to
4 look at something a milestone. We consider actually
5 achieving some sort of tangible benefit a milestone,
6 such as increased capacity or increased sewage
7 treatment center capacity, you know, water capacity
8 or sewage capacity. Those would be considered
9 milestones.

10 If we were to drill a new well and
11 abandon the one that has lead in it as an excessive
12 amount, that would be a milestone. We currently have
13 had our rates set, and the feeling of the community
14 is that we shouldn't have to pay for something until
15 we actually receive benefit from it.

16 Q. Let me direct you to the rates itself.
17 What is your comment about the rates and the rate
18 structure proposed?

19 A. The rate structure proposed, \$37 a month
20 and \$6.37 -- or \$6.30 per 1,000 gallons would be an
21 acceptable rate if -- if it were locked in for a
22 20-year period. We've -- we've heard many -- much
23 discussion today about how these rates were
24 determined.

25 We heard one gentleman use -- say it

1 was -- the rates were based on a 5,000-gallon-a-day
2 usage. We've also heard somebody -- the same person,
3 I think, said that they use a rule of thumb of 100
4 gallons a day which did not come out to the 5,000
5 gallons.

6 When we did an informal -- well, let me
7 back up a second. Today was the first time I'd
8 actually heard the exact way that our water was
9 charged to us.

10 Q. You mean under the approved tariff?

11 A. Under today's current tariff, it was --
12 I think it was the size of the pipe. You got charged
13 three dollars and some cents if you had this size
14 pipe. If you had that size pipe, you got charged
15 five bucks, and if you had a different size pipe, you
16 got charged \$8, and then your usage was on top of
17 that. So I did not have that -- that level of detail
18 before today.

19 But what we did was, we took samples
20 throughout the community of different individuals
21 because I didn't -- I also did not have the auditors'
22 report saying that the average usage was 6,250
23 gallons. That was news to me. I had no -- I had no
24 records to refer to except the people in the
25 community.

1 So what I did was I gathered information
2 from the people in the community -- well, Pat
3 gathered quite a bit of this information, and we put
4 it together in a -- into a matrix and showed where --
5 estimated our usage, then called around to Festus and
6 Herculaneum and Potosi and several other surrounding
7 communities to see where we stood in the overall
8 scheme of things.

9 Basically, we're gonna be going from one
10 of the cheapest to one of the most expensive. And if
11 we buy into the idea that we're gonna be the most --
12 the most expensive kid on the block, well, our
13 expectation is that it goes no higher and that
14 everything that that rate was based on, we get.

15 If somebody says they're gonna spend
16 \$1.8 million and the rate is based on spending that
17 \$1.8 million, we're gonna expect that that
18 \$1.8 million gets spent to our benefit.

19 Q. And I think there's another condition,
20 we'll get to before we get to that, with respect to
21 the second condition. The condition was, "Connection
22 fees including tap-on fees, future growth and the
23 real estate contract utility system connection fees
24 per agreement with the district and Raintree
25 Plantation, Inc., do not exceed \$3,000."

1 Explain the significance of that
2 condition to the Commission.

3 A. One of the other communities nearby
4 charges \$2,500, so we didn't feel that \$3,000 was out
5 of line. This \$3,000 would include a reserve fund
6 for the future so this doesn't happen again. The
7 connection fees, the tap-on fees, the reserve fees,
8 all that stuff would be -- would be included in --
9 within this maximum without any fine print, so to
10 speak, that would -- we feel that the \$3,000 would be
11 fair and equitable for those people that are -- that
12 are ready to build their homes, and this should take
13 care of everything that they -- it should take care
14 of everything they need to get taken care of to get
15 hooked up and also protect the community for future
16 growth.

17 Because when you do the arithmetic, the
18 compliance agreement said that this 400,000 gallons
19 of processing capability is going to support 1,600
20 homes, yet their break-even point or their profit
21 point was set at like 1,300 and some. And if we have
22 680 homes right now, you start looking at how much
23 money is set aside in these reserve funds, and I've
24 heard other conversation here about how much --
25 couple years ago they were gonna spend \$400,000 on

1 putting in another clarifier or whatever. These
2 funds would be more than adequate for future
3 expansions if it was properly tracked and set aside
4 without anybody muddying up the waters.

5 Q. You're proposing as well that those
6 would be adequately invested to earn interest
7 according to law?

8 A. Yes. What we would expect would be that
9 if the -- if the sewer district were to collect these
10 monies, that they would be maintaining these funds in
11 a separate line item, and the interest earned would
12 be also included in that separate line item because
13 we wouldn't want these funds nor the additional funds
14 they generate to be used for anything but its
15 intended purpose.

16 Q. Thank you. Let's go on to the next
17 condition under C, "Any portion of EMC's initial
18 investment of 1.8 million that is not used in or
19 needed for the expansion of the wastewater treatment
20 and potable water facilities shall be used to fund
21 the recommended improvements contained in the
22 sanitary sewer study and improvement plan that will
23 be completed by EMC following completion of the
24 expansion project." Explain why that is important to
25 the board.

1 A. The compliance agreement that several
2 people have mentioned has got a section in there
3 called the SSSIP which is basically an infrastructure
4 study that -- where they're obligated to hire a
5 professional engineer to evaluate the system and
6 correct any shortcomings.

7 There again, this \$1.8 million, if it
8 isn't spent as -- if it isn't spent immediately to
9 rectify the milestones that have been mentioned, such
10 as the capacity issues, the lead issue or the sewage
11 treatment issues, then this study -- we anticipate
12 that this study will more than likely uncover other
13 issues that are a result of either previous
14 underengineering or previous neglect, or just wear
15 and tear on the system that needs to be addressed.

16 And we need to feel confident that that
17 money is set aside as part of the -- if you're gonna
18 sign the compliance agreement that you're gonna do
19 this SSIP, then you have to fund it accordingly and
20 you have to set the money aside to do it.

21 Q. Let's go on to condition D, "Any
22 connection fees collected by the district on behalf
23 of Raintree Plantation shall be held in escrow
24 pending the results of the SSSIP, and shall be used
25 to fund as much as possible the cost of repairs and

1 improvements recommended in that plan."

2 Again, why is this important to the
3 board?

4 A. So we don't repeat -- we don't repeat
5 history. We want to -- we want to -- we want to fix
6 the problems we've got and look to the future without
7 having to repeat history and do this all over again.

8 Q. I notice that this also includes
9 developer, Raintree Plantation. Is there any reason
10 why the board would want Raintree Plantation's
11 participation in this -- in this improvements and
12 repairs?

13 A. Well, we feel that Raintree Plantation,
14 Inc., bears some responsibility in the situation
15 we're in right now. In addition to that, let's
16 say -- I'm gonna call it the way I see it. The same
17 people own this company as own that company. Okay.
18 There's no secret about that.

19 And they're stuck in a corner because
20 they can't -- they can't generate any more cash on
21 connection fees because they can't connect. So if
22 they give away the company and somebody out here is
23 going to invest \$1.8 million, and the good people of
24 Raintree Subdivision are gonna be paying these
25 increased rates to pay for that \$1.8 million, lo and

1 behold, the people that own this company all of a
2 sudden start collecting fees again? If they painted
3 themselves into corner, then they should help get
4 themselves out of that corner.

5 Q. All right. Section E of our statement:
6 "In the event funding above the initial investment of
7 1.8 million is needed to replace the wastewater
8 treatment plan premises and the recommendation of the
9 SSSIP, the district would intend -- and the district
10 intends to charge customers to obtain additional
11 funding, those charges would be designed to collect
12 the additional funds in phases, and not in a special
13 one-time charge, rate or assessment."

14 Again, what is the purpose for this
15 condition on the transfer?

16 A. The funds that would be required over
17 \$1.8 million, we would -- we believe would be a
18 short-term -- a relatively short-term issue, and we
19 would trust that the sewer district could graduate
20 these payments as a separate line item as a surcharge
21 on the bill so that they didn't get confused with the
22 20-year agreement, and that there would be an end to
23 it. So you know that when that amount of money is
24 paid off, we're up to speed with what we need and the
25 issues are then behind us.

1 Q. Next one is F, the condition is that:
2 "The Association and its members shall have the
3 ability to participate in the process by which the
4 district adjusts rates, fees and charges related to
5 water and sewer service."

6 MR. ENGLAND: Excuse -- excuse me a
7 second. I'm sorry. And I don't mean to cut
8 Mr. Rommel off if he wants to testify on these. Lord
9 knows he has the opportunity. He's been awfully
10 patient and waited this long.

11 But I was gonna suggest that I believe
12 Mr. Toma testified that items E through L were
13 acceptable from the district's perspective, and maybe
14 that would help shorten this.

15 MR. COMLEY: That is true, and I would
16 very much -- I appreciate the fact that that has been
17 done. My concern is that maybe the record should be
18 fleshed out with the support of that.

19 BY MR. COMLEY:

20 Q. And Mr. Rommel, with the understanding
21 that Mr. Toma has already mentioned at least
22 significant agreement, if not total agreement, with
23 some of the ones that we're gonna be visiting about
24 in the next few -- we might want to shorten your
25 explanations of each. But I'll leave that up to you.

1 The board should be able to flesh out as much as it
2 wants its explanation for the Commission.

3 A. Well, I agree with Mr. England that I've
4 been very patiently waiting and I should have my
5 chance to talk, thank you.

6 MR. ENGLAND: I may regret that comment,
7 Mr. Rommel.

8 THE WITNESS: I agree with you 100
9 percent. I've been sitting here for two days
10 listening to everybody else talk.

11 MR. ENGLAND: Fair enough.

12 BY MR. COMLEY:

13 Q. With that understanding let's go back to
14 condition F, and I'll not repeat it, but take a look.
15 Please explain the significance of that.

16 A. Well, Mr. Toma has Mr. Toma's slant on
17 it that he believes it's a function of electing the
18 right person to appoint who he wants. What the board
19 here is thinking, is that we understand that -- we
20 understand his position, that it's -- that the
21 elected officials get to pick who they want.

22 But what we would suggest is that
23 knowing that one board -- one of these persons is a
24 retired auto worker, one is a insurance salesman and
25 one is a printer, that we would think that the open

1 position that is waiting -- oh, and in addition to
2 that, Mr. Toma's testimony, he gave himself quite a
3 glowing testimony that the elected officials came to
4 him many times and valued his opinion and that they
5 were willing to go along with basically whatever
6 Mr. Toma suggested.

7 And I would -- I would take that and say
8 maybe Mr. Toma needs to suggest that the fourth
9 person that he -- that he suggests fill the open
10 position, maybe should have a little more at stake
11 than an insurance salesman, a retired auto worker and
12 a printer. Perhaps a resident of the subdivision
13 would serve well in this position.

14 Q. Very well. What about the participation
15 in the adjustment of rates? Does the board have an
16 idea of what kind of procedures it would prefer to
17 have in connection with participation in the
18 ratemaking process at the district level?

19 A. We would like to have better
20 notification that the -- concerning the meetings and
21 the agenda at those meetings. We'd like -- we would
22 like to be able to review the rates prior to them
23 being set and understand all the inputs.

24 For instance, when he's -- he's setting
25 rates at 5,000 gallons, and I hear testimony that

1 it's not a 5,000-gallon -- that they should be using
2 6,250, we need to -- we need to hear -- we need to
3 have other participation sooner than in this
4 environment here.

5 Q. Let's go on to condition G. Although
6 I know that Mr. Toma has expressed some agreement
7 with this, and we have talked about their rate
8 structure proposal, but the condition is, "EMC and
9 the district shall establish a schedule and funding
10 device under which wastewater treatment capacity
11 and water distribution and storage capacity are
12 increased to accommodate projected growth in
13 Raintree Plantation."

14 Is there anything else that we wish to
15 add about the significance of this condition?

16 A. I guess there's a concern above and
17 beyond. Another one of the committees that the
18 Association has is a planning committee, and EMC and
19 the district, when they're setting these capacity and
20 storage issues, we all need to be on the same page.
21 If it's --

22 Q. If I could help you, you're interested
23 in having some way of coordinating with the district,
24 the planning committees' findings and conclusions and
25 making sure the district understands them?

1 A. Yes, correct. There's -- there's many
2 aspects of this planning. For instance, the water
3 capacity and daily usages, we need to all be using
4 the same set of assumptions, the same daily rates,
5 the same overcapacity, undercapacity. Everybody
6 seems to be using their own numbers that fits their
7 own purposes, and the Association's getting tired of
8 it.

9 Q. Very well. Let's go on to condition H
10 and I, and I think all of us have accepted these as
11 rather self-explanatory, and also all -- they are
12 those that have to be in place. I'm gonna skip over
13 those. We're gonna go to J.

14 Letter J: "The potable water supply of
15 Raintree is increased to the capacity suggested in
16 the compliance agreement, and the lead content is
17 reduced to the minimal levels set by federal and
18 state regulation."

19 What is the board's purpose behind this
20 condition? And I think particularly with respect to
21 how well No. 1, the one well that is affected by lead
22 content, what is the board's position with respect to
23 that?

24 A. We don't have complete faith that well
25 No. 2 will run forever uninterrupted with -- at

1 maximum capacity. At some point in time, if a pump
2 fails -- by some of this previous testimony, we use
3 200,000 gallons of water a day. Our storage capacity
4 is 50,000 gallons, okay? So we don't -- we don't
5 have the capacity that the DNR says we should have
6 one day's worth of -- one day's worth of water in
7 storage and that's with 680 homes.

8 If we're projecting 13 or 1,600 homes,
9 we're gonna need a lot more capacity. And this --
10 this well that is producing water that is
11 unacceptable without -- without some remediation is
12 totally unacceptable by itself.

13 Q. If the well cannot be remediated, what
14 is the board's position respecting that well?

15 A. We need a new well, and there again,
16 that leads into the next. It's even been
17 mentioned -- it was the tri-party agreement or the
18 compliance agreement, I forgot which one, but it
19 talks about the location of the new well pump house.

20 And that question was asked by several
21 witnesses here that are signature to that agreement,
22 and nobody seems to answer where it's gonna go. And
23 all I'm asking for is to just -- you've got a map of
24 the place, put a pin where you expect to put the --
25 I'll give you the pencil, just color it in. But

1 nobody will tell you. But it talks about it in the
2 paperwork.

3 Q. And you're talking about the condition
4 we've asked for that the Association be allowed to
5 approve the location of the potable water pump house
6 and probably the new wells and storage tank?

7 A. Yeah. In a gated community -- in a
8 gated community aesthetics are important. Obviously,
9 previous testimony said that we were not eligible for
10 government help because we -- we didn't meet the
11 minimum requirements.

12 So you can imagine if you've never been
13 to our subdivision that it's a nice subdivision, and
14 to put a big ugly tank right where you don't want it,
15 or a pump house that takes away from somebody's
16 property value, I think it -- I think it's an issue
17 that needs to be talked about that nobody wants to
18 talk about.

19 Q. Now, the board is not saying they're
20 opposed to the construction of the storage tank,
21 they're just interested in where it's going to be
22 installed; is that correct?

23 A. Correct. We haven't opposed anything
24 because nothing's been proposed.

25 Q. All right. I think one of the

1 conditions that we've kind of skipped over was K,
2 "The expanded potable water and wastewater treatment
3 facilities would be designated for the exclusive use
4 of Raintree Subdivision's present and future
5 homeowners."

6 What is the reason for that condition?

7 A. Well, the reason for that is because
8 this is -- I believe that one of those agreements,
9 there again, states that the Property Owners
10 Association or the CJCUC has to purchase the land from
11 the POA in order to expand with the pump house and
12 the storage tanks. And if we're gonna be giving up
13 the -- giving up the assets, so to speak, then we
14 should derive the benefits.

15 Q. Would there be conditions under which
16 the board would consider donating that property to
17 the district?

18 A. Yes, if it were exclusive -- if it were
19 exclusive for Raintree, it would -- we would consider
20 donating it. If it's used for outside of Raintree,
21 we would expect some sort of compensation for it.

22 Q. The last condition we have is letter M.
23 This is one that applies to the Commission. That
24 would be, "The Commission would finally determine
25 that the district and EMC have the capabilities of

1 designing, constructing and operating the new water
2 and wastewater facilities and have the ability to
3 forecast with reasonable accuracy and prepare for the
4 subdivision's future potable water -- distribution of
5 wastewater collection and treatment requirements."

6 Again, would you explain why this is
7 important to the board?

8 A. Well, we put our faith in the people
9 that hold the positions. We assume that the DNR
10 knows what they're doing and we assume that the
11 Commission knows what they're doing, we assume that
12 the lawyers know what they're doing.

13 Q. I think you're going too far.

14 A. We're assuming that the -- we're
15 assuming that the district knows what they're doing
16 and we're assuming that the EMC knows what they're
17 doing. So the level of trust, we're basically at
18 everybody's mercy here because our level of control
19 is very diminished and all we can do is speak up.

20 MR. COMLEY: That's all I have -- those
21 are all my direct questions. Thank you.

22 JUDGE STEARLEY: Thank you, Mr. Comley.
23 We have cross-examination beginning with DNR.
24 Mr. Schmid?

25 MS. SCHMID: No questions.

1 JUDGE STEARLEY: Staff, Mr. Krueger?

2 MR. KRUEGER: Thank you, your Honor.

3 CROSS-EXAMINATION BY MR. KRUEGER:

4 Q. Good evening, Mr. Rommel.

5 A. Good evening.

6 Q. Is it your position that unless the
7 Commission imposes every one of those conditions,
8 that the transfer of assets would be detrimental to
9 the public interest?

10 A. Are you asking me to draw a line in the
11 sand?

12 Q. I'd just -- just try to answer the
13 question, please.

14 A. There are some -- there are some of
15 these that are more important to us than others. As
16 a spokesman for the community, I'm speaking basically
17 for 2,300 voices, and it's our -- it's our obligation
18 to bring those issues forward as best we can. These
19 are the issues. To make a -- to back me into a
20 corner where it would -- I would have to say yea or
21 nay, I would feel more comfortable with a board vote.

22 Q. Did you hear Mr. Toma's testimony
23 yesterday in which he said that he could accept
24 conditions F, G, H, I, J and K?

25 A. Yes, I heard what he said.

1 Q. If the Commission approved the asset
2 transfer and imposed just those conditions, would you
3 consider it detrimental to the public interest?

4 A. Rates are extremely important when
5 you're stuck with them for 20 years, so I'm sure that
6 the board would consider the items that directly
7 affect the rates and how the rates were calculated as
8 being more important than who would be temporarily
9 appointed onto a Commission.

10 Q. And by that you're referring to
11 condition A?

12 A. Yes.

13 Q. Okay. Do you think Central Jefferson is
14 a good provider of water and sewer utility service?

15 A. I think that they could have done more.
16 One of their failings is failure to communicate their
17 position. I think that they could have done a much
18 better job of keeping in touch with a customer and
19 earning their money.

20 Q. Okay. I want to ask you to assume now
21 that the Commission adopts the Association's position
22 and approves the asset transfer with all of your
23 conditions included, but that as a result of that,
24 one of the parties to the agreement decides that they
25 will not go through with the agreement. Do you think

1 that would be better than letting the transfer go
2 through but without all of your conditions?

3 A. The Association is in support of
4 resolving this issue and getting it behind us. We
5 want the transfer to go through.

6 MR. KRUEGER: Okay. Thank you. That's
7 all the questions I have.

8 JUDGE STEARLEY: Thank you, Mr. Krueger.
9 Cross-examination by OPC?

10 CROSS-EXAMINATION BY MS. BAKER:

11 Q. Good evening.

12 A. Hi.

13 Q. Before you came to the proceedings
14 yesterday and today, was the board notified of the
15 exact water and sewer rates that would take effect
16 after the transfer?

17 A. There was some informal discussions but
18 I don't think there is an official letter that was
19 issued.

20 Q. Did they give you an exact number?

21 A. I had heard that it was \$37 for sewer
22 and \$6.30 for water per 1,000, but at the hearing
23 yesterday is -- I guess that's when I really
24 understood that it was -- well, that the sewer
25 district was gonna be taking 50 cents and the others

1 was based on a 5,000-gallon usage.

2 Q. So now your impression is maybe that was
3 not quite so fixed?

4 A. Well, Martin has repeatedly said that
5 the rates are not fixed, have not been achieved yet,
6 but I'm given the impression that EMC is telling them
7 that's what they need to make the deal go. So in my
8 mind, it's -- it is fixed. But you know, you're just
9 playing a word game.

10 Q. Okay. I understand. Have the board
11 members been notified -- before the proceedings, have
12 the board members been notified that the sewer
13 district will be collecting money on behalf of
14 Raintree Plantation, Incorporated?

15 A. Did I know that before the hearing
16 started?

17 Q. Yes.

18 A. I can't remember if I knew that ahead of
19 time. There's so much I took in the last couple of
20 days.

21 Q. Okay.

22 A. I don't know -- I don't remember if I
23 knew that one or not.

24 Q. All right. Did you know ahead of time
25 that some of those fees will be for reimbursing

1 future attorney and professional fees of Raintree
2 Plantation, Incorporated?

3 A. That raised an eyebrow and that was a
4 note I made for myself because those -- I personally
5 feel that if they're collecting fees and just -- and
6 paying off, then they've not incurred any real
7 penalty, they're just shifting -- shifting from
8 pocket to pocket without ever having to bear the
9 brunt of the issue.

10 Q. Okay. Also before yesterday and today,
11 was the board members notified that water and sewer
12 service connection and/or disconnection would be
13 dependent upon paying fees that would go to Raintree
14 Plantation, Incorporated?

15 A. No. That was -- that -- in fact, that
16 doesn't quite sit well with me because it's my
17 understanding that CJCUC is the utility company and
18 Raintree, Inc. is a real estate company. And why the
19 sewer people are collecting real estate fees -- it's
20 just a matter of -- it doesn't smell right to me, you
21 know, because they were very careful in saying that I
22 got a company over here that does -- that does sewers
23 and I got a company over here that does real estate,
24 and never the two shall meet.

25 And then all of a sudden -- you know,

1 they're very careful to keep the two companies
2 separate, and then all of a sudden next year -- this
3 time next year I'm gonna look at my bill and I'm
4 gonna see, you know, that Raintree, Inc. is
5 collecting -- they were filtering money -- I don't
6 know if laundering money is the right term, but
7 shifting money from a sewer district into a real
8 estate company. Didn't make sense to me, but -- it
9 doesn't.

10 Q. Well, thank you. Is the board concerned
11 that after listening to testimony in the last two
12 days, that there are so many agreements --

13 A. Could I back up one second?

14 Q. Certainly.

15 A. Basically we're using the -- they'd be
16 using the sewer as a strong arm to collect their real
17 estate fees. If you don't pay me my real estate fee,
18 then you don't get your sewer. And, I don't know,
19 you're hiring a goon to do your collections for you,
20 basically. Next question.

21 Q. Okay. Given the information that you've
22 learned today and yesterday, is the board concerned
23 that there are so many agreements out there that are
24 not finalized, that will affect this transfer?

25 A. Yeah, there's a lot of stuff in the

1 tri-party agreement about disputes that nobody's
2 disputing. There's a lot of cloudy issues in there
3 that signatures to the case don't know anything about
4 that need to be clarified, and that's all gonna
5 affect the timeline.

6 Now, we as a group want this thing to go
7 through, and there's a -- there's people out here
8 that have got a lot of money tied up into getting
9 their homes built and property values affected, all
10 sorts of things, and we can't seem to get this past
11 the paperwork.

12 MS. BAKER: Thank you. No further
13 questions.

14 JUDGE STEARLEY: Thank you, Ms. Baker.
15 Cross-examination from Central Jefferson,
16 Mr. England?

17 MR. ENGLAND: Thank you, your Honor.

18 CROSS-EXAMINATION BY MR. ENGLAND:

19 Q. Good evening, Mr. Rommel.

20 A. Good evening.

21 Q. I want to make sure there's a -- we
22 understand each other. There's a distinction in my
23 mind between a current homeowner and a future
24 homeowner; would you kind of agree with me?

25 A. Yeah.

1 Q. And I think maybe you alluded to that at
2 your testimony at the public hearing down in
3 Jefferson County, that the existing homeowners are
4 obviously concerned with user rates, the rates they
5 pay on a monthly basis and the service they receive
6 for that; would you agree with me?

7 A. Yes.

8 Q. Okay. Connection fees, however,
9 whatever they may be, charged in the future by the
10 sewer district, would only apply to new homeowners,
11 people building new homes and connecting to the
12 system?

13 A. True.

14 Q. Okay. And it seemed to me, when I was
15 listening to some of the testimony at the local
16 hearing, that there's kind of maybe a friction
17 between the two. And I sense that maybe your
18 testimony today where you talk about trying to
19 represent the 2,300 members of your Homeowners'
20 Association, it's -- there are a lot of different
21 opinions and what's important to one group may not be
22 important to another and vice versa; is that a fair
23 characterization?

24 A. Yes. When you have 2,300 people, you're
25 gonna have 2,300 opinions. That's why we have more

1 than one Commissioner.

2 Q. So I mean, I appreciate the position
3 you're in. You're trying to cover everybody's bases?

4 A. Correct.

5 Q. Okay.

6 A. And that's why I think that our list of
7 issues was an umbrella list that covered pretty much
8 everybody's basic issues.

9 Q. Okay. And I understand that. Thank
10 you. Were you on the board when there was some
11 discussions, I believe, between your attorney, not
12 Mr. Comley, but Mr. Schnaare and Mr. Hockensmith,
13 about actually Central Jefferson County turning the
14 water and sewer utility over to the Property Owners
15 Association?

16 A. No, I have no knowledge about that.

17 Q. Okay. Well, let me propose a
18 hypothetical. If for some reason the deal with
19 Central Jefferson County -- or excuse me, the deal
20 with the Jefferson County Public Sewer District falls
21 through, would the Property Owners Association be
22 willing to enter into essentially the same agreement
23 where they just take over the facilities and assume
24 the debt on the water tower?

25 A. That could be a consideration at a

1 future board meeting and, in fact, anything's a
2 possibility. I wouldn't rule it out.

3 MR. ENGLAND: Thank you, sir. I have no
4 other questions.

5 JUDGE STEARLEY: Thank you, Mr. England.
6 Questions from the Commissioners. Commissioner
7 Applling?

8 QUESTIONS BY Commissioner APPLING:

9 Q. Fred, I don't have any questions but I
10 do have a comment and I'd like to make that so we can
11 move on and everybody go home tonight, okay? I'm
12 sorry that you had to wait so long to get in line. I
13 wish we'd have put you on first.

14 But I just want to tell you that I
15 appreciate straight-talking people and I respect
16 that, and I appreciate your comments here tonight. I
17 don't want you to rush back home and tell Mr. Toma
18 that I told you that, okay? He might hold up this
19 complete agreement.

20 I would like to see this agreement go
21 through and I know we have a lot of work to do to get
22 there, but I do appreciate your straight talk and
23 your interest in protecting the people that live
24 there. So with that said, Merry Christmas to you.

25 THE WITNESS: Merry Christmas.

1 Commissioner APPLING: Thank you.

2 JUDGE STEARLEY: Since Commissioner
3 Appling didn't actually ask a question, I assume
4 there will be no recross. Is there any redirect?
5 REDIRECT EXAMINATION BY MR. COMLEY:

6 Q. Very quickly. Mr. Rommel, Ms. Baker
7 asked you a series of questions and reminded you of
8 the number of agreements that are involved in this
9 case and some of the issues pertaining to conditions
10 in the tri-party agreement.

11 Now that you've heard testimony about
12 those things, has the board changed its position with
13 respect to any of the -- any of the conditions that
14 it's placed in the statement of position?

15 A. Are you referring to how hard we're
16 holding our position or is that -- that these are our
17 opinions and the way that we feel about -- this is
18 the way that we feel about the issues: There's no --
19 there's no disputing that. In the interest of time,
20 I'm cutting it a little short, but I --

21 Q. Well, let me change the question a
22 little bit. The testimony that you have heard
23 throughout the two days of hearing, has that changed
24 the central position of the board that it is
25 interested in seeing this transfer take place?

1 A. Our position is still that we want to
2 see the transfer take place. We want to work toward
3 the future and get this resolved.

4 Q. Mr. Krueger asked you questions
5 concerning the strength behind the conditions the
6 board has placed in the record. If the board should
7 be presented with a situation where one of its
8 conditions would be considered a material impediment
9 to closing on the transaction, what would be the
10 board's position?

11 A. The board's position is that we're gonna
12 discuss that and ask you to submit it in a brief.

13 MR. COMLEY: Thank you. That's all the
14 questions I have.

15 JUDGE STEARLEY: Thank you, Mr. Comley.
16 Mr. Rommel?

17 THE WITNESS: Yes.

18 JUDGE STEARLEY: I believe at this point
19 there are no further questions. You can finally be
20 excused and thank you for your testimony.

21 THE WITNESS: Thanks.

22 JUDGE STEARLEY: Now we have one witness
23 for OPC. Do you expect Mr. Robertson's testimony to
24 be long or --

25 MS. BAKER: I doubt that my section of

1 his testimony will go long.

2 JUDGE STEARLEY: Okay. We'll go ahead
3 and push forward and we'll gauge shortly if we need
4 to take any more breaks today.

5 MS. BAKER: Okay.

6 JUDGE STEARLEY: Mr. Robertson, if you'd
7 please state and spell your name for our court
8 reporter?

9 THE WITNESS: Ted Robertson, T-e-d,
10 R-o-b-e-r-t-s-o-n.

11 (The witness was sworn.)

12 JUDGE STEARLEY: Okay. You may be
13 seated. You may proceed, Ms. Baker.

14 MS. BAKER: Thank you.

15 DIRECT EXAMINATION BY MS. BAKER:

16 Q. Would you please state your name and
17 your business address?

18 A. My name is Ted Robertson. My business
19 address is PO Box 2230, Jefferson City, Missouri
20 65102.

21 Q. And by whom are you employed and in what
22 capacity?

23 A. I'm employed by the office of --
24 Missouri Office of the Public Counsel as a regulatory
25 accountant III.

1 Q. Can you please describe your educational
2 background and qualifications?

3 A. I have a bachelor of science degree in
4 accounting and I'm also a licensed CPA within the
5 state of Missouri.

6 Q. What is the nature of your current
7 duties while an employee of the Public Counsel?

8 A. Primarily, I do investigations and
9 audits of public utilities within the state of
10 Missouri in cases before the Public Service
11 Commission.

12 Q. Have you received specialized training
13 related to public utility accounting?

14 A. I have. I've been employed by the
15 Missouri Office of the Public Counsel for over 17
16 years, I've received training through NARUC, the
17 regulatory study in Michigan, and I've attended
18 numerous seminars and conferences regarding the
19 specialized field of regulatory ratemaking.

20 Q. Have you previously testified before the
21 Missouri Public Service Commission?

22 A. I have. I've filed numerous times --
23 filed testimony numerous times before the Public
24 Service Commission.

25 Q. And what is the purpose of your direct

1 testimony today?

2 A. To present the position of the Office of
3 the Public Counsel regarding the proposed transfer of
4 the utility to the sewer district.

5 Q. Are you familiar with Central Jefferson
6 County Utilities?

7 A. I am.

8 Q. How did you become familiar with Central
9 Jefferson County Utilities?

10 A. Most recently I was assigned to look
11 into the company's request for a rate increase, or
12 actually, the company requested a connection fee that
13 was -- that the Commission, Commission Staff tracked
14 as a tracking file, I guess. They did an earnings
15 review which is essentially an audit, and I was
16 assigned to review that audit.

17 Q. Okay. Do you have in front of you the
18 Staff audit that was identified as Exhibit 25?

19 A. I do not.

20 Q. Okay. Now do you have in front of you
21 Exhibit 25?

22 A. Yes.

23 Q. Okay. Is this the Staff audit that you
24 reviewed?

25 A. It is the -- essentially, it's the

1 summary pages. It's the summary financial pages that
2 show the results of what are all included.

3 Q. What is your conclusion regarding the
4 Staff audit of Central Jefferson County Utilities?

5 A. The result was that the Staff's audit
6 determined that both the water and sewer operation
7 were both overearning.

8 Q. What other documents have you reviewed
9 in this case?

10 A. As far as the transfer case is, we've
11 sent -- our office has sent numerous data requests
12 and we've reviewed those responses, we've reviewed
13 the agreements between -- I think they were responded
14 to in the data request, the agreements between
15 Raintree Plantation, Inc. and the sewer district, the
16 utility, Raintree and the sewer district, and the
17 sewer district, the utility and EMC.

18 Essentially, we've looked at all
19 documents and agreements that have been prepared in
20 relation to the proposed transfer, I believe.

21 Q. Okay. Have you reviewed what has been
22 marked as Exhibit No. 4 which is the draft pricing
23 proposal?

24 A. I did.

25 Q. Okay. Is Exhibit No. 4 the sewer

1 district rate study that you reviewed in this case?

2 A. It is the rate study but what I have a
3 copy of is the response that the company provided in
4 response to our data request 3,003, I believe.
5 What's been marked as the exhibit is not the complete
6 response that we got to the data request.

7 Q. Yes.

8 A. But yes, essentially, it's the same
9 thing.

10 Q. But these are -- Exhibit No. 4 are
11 documents that you reviewed from the data request?

12 A. That's correct.

13 Q. In your opinion how does this draft
14 pricing proposal compare to the Staff audit that you
15 also reviewed?

16 A. Well, we have a number of concerns. In
17 the Staff's audit, they came to the conclusion that
18 the amount of the -- the total amount of revenues to
19 operate both the water and sewer operations was
20 approximately \$273,822.

21 This rate study in Exhibit 4 shows that
22 the parties believe that they will need \$559,782 to
23 operate both the sewer and the water operations, and
24 even at that amount, we believe that amount of
25 revenues that identified is understated because of

1 the way they've calculated the average usage of
2 gallons per home.

3 Q. Is that the same issue that Dale
4 Johansen testified about?

5 A. It's the same issue in that -- the rate
6 study used is 5,000 gallons per home per month.
7 Mr. Johansen referenced the Staff's audit where I
8 believe they used 6,250 -- or excuse me, 250 gallons
9 per month.

10 By using the 5,000 gallons, the company
11 actually understates the amount of revenues that they
12 would recover if, in fact, 6,250 gallons are what's
13 actually used by the customers.

14 The additional problem we have with that
15 is that we had an additional page attached to our
16 data request response, in which this rate study was a
17 part of, that shows that during the year 2000 --
18 calendar year 2005, the average usage, actually, was
19 over 7,000 gallons per month, which means potentially
20 that's a great deal of additional revenues that the
21 parties will receive that are not identified in this
22 rate study.

23 Q. So it's your opinion that by using the
24 5,000, it greatly understates the amount of revenues
25 that they will potentially achieve?

1 A. That's correct. They've identified here
2 that they need or that they will collect
3 approximately \$559,000. By understating the amount
4 of the gallons per home per month that are utilized
5 by customers, they've understated the amount of
6 revenues that they will actually receive if a -- what
7 we believe a more normal level of monthly usage
8 occurs.

9 And based on the documents that I had
10 and have looked at in the Staff's audit and the
11 documents that were included with our data --
12 response to our data request, it shows that the
13 actual usage of gallons per month is higher than the
14 5,000 that's shown here.

15 Q. I understand.

16 A. So...

17 Q. Do you have any indication in Exhibit 4
18 or in any of the data request responses that gives
19 any supporting documentation for these numbers?

20 A. That's an additional problem we have
21 with this rate study. If you look at the study,
22 EMC -- basically the rate is determined based on what
23 the costs are based on what they're going to incur.
24 Once you get the costs, you can back into the rate.

25 EMC has included in here an O&M cost of

1 \$360,000, they've included an overhead amount of
2 \$22,000, and they've included an amount of almost
3 \$67,000 for profit. So those three numbers together
4 mean that EMC expects to collect approximately
5 \$449,000 for their services.

6 If you compare that to what Staff said
7 the current operations require, current revenues that
8 the operations require of 273,000, that's almost
9 \$175,000 increase that EMC states that they need to
10 operate this system, and that's before you factor in
11 the depreciation expense associated with the plant
12 that they propose they will build, the \$1.8 million.

13 And even at that, we've got a problem
14 because the claim -- or the equipment study that
15 they're going to build a capital investment of \$1.8
16 million, they've included an amortization amount of
17 \$9,000 as depreciation which is essentially the
18 1.8 million divided by 20 years, utilized over a
19 20-year period.

20 The company has already responded that
21 they're not actually going to spend up to \$20 million.
22 They're gonna spend something less because a portion
23 of that 1.8 is going to pay a bank note that the
24 current utility owns, a portion of it is going to go
25 to a 10 percent project manager's fee which may or

1 may not be reasonable. And a portion which we do not
2 know about is going to go to cover expenses that EMC
3 incurs related to these proceedings of this transfer,
4 and we don't know what that amount is.

5 So essentially, the 1.8 is not going to
6 be \$1.8 million of plant, and therefore, the
7 depreciation associated with whatever that resulting
8 amount is, is not gonna be the 90,000 that they've
9 included in this rate study; it will be somewhat
10 less, some number less and we don't know what that
11 is.

12 But if you factor that in, and allow
13 them to collect the 90,000 that they've identified
14 here, essentially, what they're asking for is about,
15 I believe, \$266,000 more to operate this system than
16 what Staff says is already -- is what's required to
17 operate the system currently, Staff's number being
18 274,000 and the difference.

19 Q. Okay.

20 A. So essentially, I guess the point I'm
21 trying to make is, EMC wants to raise the cost to run
22 the operation approximately 97 percent above what the
23 Commission Staff says is appropriate at the present
24 time based on their audit findings.

25 Q. Okay. And then did you also look at the

1 tri-party agreement between Central Jefferson Sewer
2 District and EMC?

3 A. I did.

4 Q. And with those documents that you have
5 reviewed, do you have an opinion whether this
6 transfer is detrimental to the public as presented?

7 A. We do believe that the transfer is
8 detrimental to the public as presented, yes.

9 Q. Okay.

10 A. Although, I want to state, as currently
11 structured. We believe with certain conditions, that
12 the transfer could probably proceed. But as
13 currently structured, we believe it's detrimental.

14 Q. Okay. What type of conditions do you
15 recommend that the Commission impose that would go
16 toward making the transfer be not detrimental?

17 A. Well, our review of the documents that
18 were presented to us and our understanding of what
19 the parties are asking for, our first concern was we
20 believe the utilities are already in an overearnings
21 mode, so we already believe the ratepayers are paying
22 too much.

23 When we look at the proposed -- or the
24 rate study that's been presented to us, even though
25 it's been identified as not yet finalized, it's the

1 only thing we have. It's the only basis we have to
2 rely on at the moment. We don't know what the
3 parties will ultimately end up as, and that's a real
4 concern for us because it presents something to the
5 Commission, and at the same time something may
6 change. So the Commission doesn't really know what
7 to rely on either.

8 But in any event, we believe the rates
9 are going to be immediately -- if the transfer
10 occurs, will be immediately increased to a
11 potentially excessive amount. A big concern is we
12 have -- that we have is the fact that as part of the
13 agreement between the sewer district and Raintree
14 Plantation, Inc., the sewer district has agreed to
15 collect a couple of what's been identified as lot
16 fees, an \$1,100 lot fee for lots where apparently
17 AquaSource is going to be liable to lay the pipe to
18 service those lots.

19 And then the second lot fee which
20 Raintree itself, Raintree Plantation, Inc. itself
21 will be allowed to receive for -- even though the
22 infrastructure is already there and they had the
23 agreement with the lot owners, they want to -- I like
24 the term that was used a while ago: They want to use
25 the strong arm of the utility to force the lot owners

1 to reimburse Raintree and AquaSource for those costs,
2 meaning that service to the utility will be
3 conditioned on a customer's paying lot fees for
4 contracts between two unregulated entities, the
5 unregulated Raintree Plantation, Inc. and then the
6 lot owners themselves. We're real concerned with
7 that.

8 We have concerns that the plans to
9 design and build the plant, the infrastructure needed
10 to serve the area appropriately, have not been
11 finalized and have not been completed, and there's
12 concern regarding not only the present operations but
13 future operations and future plant needed for the
14 future growth of the area.

15 And then, I guess the last thing we
16 really have concern with is that the compliance
17 agreement with the DNR -- the DNR and sewer district
18 and the EMC has not been finalized to my knowledge.

19 Q. Okay.

20 A. Those pretty much cover the entire
21 areas.

22 Q. So those are the concerns that Office of
23 Public Counsel has. What conditions do you propose
24 to alleviate some of those concerns?

25 A. Well, the first condition is, we think

1 the collection of the lot fees for AquaSource and
2 Raintree Plantation service should not be conditioned
3 on collection of those lot fees. Service to
4 ratepayers should only be related to the service of
5 the utility service itself. If Raintree wants to
6 have a contract with the lot owners to collect fees
7 from them, they have avenues, they have a contract,
8 they have other legal means to collect those.
9 they shouldn't be using a utility service of which
10 they are no part of as leverage to collect those
11 monies.

12 The second concern we have, second thing
13 is, we believe this rate study should be reviewed
14 and -- because the costs are not actually supported.
15 I mean, even though EMC has identified these costs as
16 what they think they're going to incur, we've seen no
17 evidence that's actually valid, that the numbers have
18 been verified or accurate or even reasonable.
19 There's been no documentation to actually support
20 that. They put the numbers on the sheet and that's
21 what they're alleging they're going to incur.

22 There needs to be a further review, a
23 further defining of what this rate study and how the
24 rates are developed, and that also includes the
25 amount of the monthly usage by the customers in the

1 area.

2 The third thing, to reiterate, is we
3 need to see some more definite, some more finalized
4 plans of what kind of plant is going to be put in,
5 when, how, and how it's going to meet the current
6 operation of growth, current operation of the
7 facility and future growth, and we also need to see
8 the compliance agreement with DNR be finalized.
9 Essentially, those are the four big ones.

10 Q. And with those conditions, would the
11 Office of Public Counsel support the transfer?

12 A. Yes, I believe we would.

13 MS. BAKER: I have no further questions.

14 JUDGE STEARLEY: Thank you, Ms. Baker.
15 Cross-examination, Mr. Schmid?

16 MR. SCHMID: No questions.

17 JUDGE STEARLEY: The Association,
18 Mr. Comley?

19 MR. COMLEY: No questions.

20 JUDGE STEARLEY: Staff, Mr. Krueger?

21 MR. KRUEGER: Thank you.

22 CROSS-EXAMINATION BY MR. KRUEGER:

23 Q. Good evening, Mr. Robertson.

24 A. Good evening.

25 Q. With regard to the public interest in

1 connection with the construction of the facilities,
2 should the goal be to spend the minimum number of
3 dollars or to construct the necessary improvements?

4 A. That's a subjective question. I think
5 what you would want to do is construct the facilities
6 that would meet the objective of service for the
7 ratepayers that's required.

8 Q. Wouldn't you agree that so long as the
9 necessary facilities are constructed, the fewer
10 dollars that have to be spent, the better?

11 A. I would agree with that statement, yes.

12 Q. Because if EMC can keep its cost down,
13 that would reduce the amount that the customers might
14 have to pay for their service, correct?

15 A. Potentially, yes.

16 Q. And Exhibit D to the tri-party agreement
17 describes the facility improvements that need to be
18 made at Raintree Plantation?

19 A. I'm sorry. Its been a long time since
20 I've looked at Exhibit D.

21 MR. KRUEGER: May I approach, your
22 Honor?

23 JUDGE STEARLEY: Yes, you may.

24 MR. KRUEGER: (Handed witness the
25 document.)

1 THE WITNESS: That is what it's titled:
2 "Facility Improvements."

3 BY MR. KRUEGER:

4 Q. Okay. Is that deficient in any way?

5 A. I'm sorry. I couldn't answer that
6 question.

7 Q. Okay. So you don't know whether
8 construction of facilities meeting those
9 specifications would be sufficient?

10 A. Other than what I've heard from the
11 other parties in this case, no.

12 Q. Okay. Do you believe that Central
13 Jefferson is a qualified utility operator?

14 A. I believe they hold the franchise, yes.

15 Q. You believe they're providing safe and
16 adequate service?

17 A. No, I do not.

18 Q. If the Commission does not approve this
19 transfer, do you have a recommendation on what the
20 Commission might do to compel Central Jefferson to
21 provide safe and adequate service?

22 A. I would say the Commission has that
23 within their power. If I have a specific proposal at
24 the moment, I do not.

25 Q. Okay. Are there other alternatives that

1 you would recommend such as sale to others, or what
2 solution might be achieved if this sale is not
3 approved?

4 A. I'd say there are different options out
5 there. You asked for a solution. I don't have the
6 solution.

7 MR. KRUEGER: That's all the questions I
8 have, your Honor.

9 JUDGE STEARLEY: Thank you, Mr. Krueger.
10 Cross-examination by Central Jefferson, Mr. England?
11 CROSS-EXAMINATION BY MR. ENGLAND:

12 Q. I think I've got enough gas left for one
13 last round, Mr. Robertson.

14 A. One more, huh?

15 Q. The -- I want to clean up something
16 because I think you misspoke. Not intentionally, but
17 you referred to a response to a data request 3,003,
18 and I think you said it was from the company, but I
19 believe it came from the sewer district. Could you
20 double-check for me?

21 A. I actually cannot -- I can't tell you
22 exactly who it came from. I have the reference
23 marked here that it was 3,003. I'd have to go back
24 and check further documentation.

25 Q. Was that essentially the same

1 information that was contained in that exhibit that
2 was put in earlier --

3 A. I believe so, yes.

4 Q. -- and I believe it was Exhibit No. 4?

5 A. Yes, that's correct.

6 Q. Okay. And hopefully, you heard the
7 testimony from Mr. Toma and Mr. Thomas that, I
8 believe, Mr. Thomas did it and Mr. Toma's reviewed
9 it?

10 A. And I believe that's correct, yes.

11 Q. Okay. The Staff exhibit that was put
12 into the record -- and I've lost my copy, but it's
13 essentially, your counsel had it put in the record --

14 A. 25?

15 Q. It was the results of the earnings
16 investigation.

17 MR. ENGLAND: May I approach to see
18 which one you're looking at?

19 BY MR. ENGLAND:

20 Q. Yes, I'm not sure I need to refer to it
21 specifically. I've got some foundation questions.
22 Essentially, this Exhibit 25 that's in this case is
23 the same exhibit that you attached to your testimony
24 in the complaint case, correct?

25 A. That is correct.

1 I may have sent Staff in St. Louis, and I'm not sure
2 if it was Mr. Meyer or one of the other auditors, and
3 Mr. Russo in Jeff City who's in the water and sewer
4 department, I may have sent them an e-mail asking
5 them for copies of their findings and their work
6 papers.

7 Q. That would have been after the report
8 was complete, if you will?

9 A. It would have been after I had
10 discovered that their audit was finalized.

11 Q. Okay. I'm interested in what
12 independent analysis you performed. Did you go
13 onsite at all?

14 A. I did not.

15 Q. Have you reviewed the company's books
16 and records?

17 A. Only in that those that are -- the
18 information that's included in the Staff work papers,
19 and that would encompass, I would believe, pretty
20 much the company's books and records.

21 Q. Did you issue any data requests during
22 that investigation to the company?

23 A. I would have to double-check on that. I
24 may have.

25 Q. If I understand, you went through a

1 bunch of numbers when you were comparing the Staff's
2 study to the EMC, we'll say, analysis?

3 A. Yes.

4 Q. Trying to get to the big picture, if I
5 understand what you're saying is, that it's your
6 professional opinion that the sewer district ought to
7 be able to operate this system on their revenues it's
8 receiving today as well as fund the 1.8 expansion it
9 needs to make in order to expand and improve the
10 facilities?

11 A. That's not what I said.

12 Q. Okay. Then fair enough. But that's
13 what I thought you said, so tell me what they need to
14 adequately run these facilities -- I'm talking about
15 the sewer district -- and make the investment that
16 needs to be made to upgrade and expand these
17 facilities.

18 A. Okay. First off, I didn't say anything
19 about the investment itself regarding what it would
20 take to create the investment. Excuse me. What I
21 stated was, the Staff's audit determined that the
22 current operations of the water and sewer operation
23 can be accomplished for approximately 274 million --
24 \$274,000 in revenue on an annual basis.

25 That does not include the -- the

1 capacity addition that the parties have been talking
2 about. What I then did is compared that amount to
3 the dollars that are shown in the rate study as EMC's
4 cost for operating the sewer and water system.

5 Q. And that number was?

6 A. Well, when you take into account -- and
7 let me reiterate also that these costs that EMC has
8 identified in this rate study, we've seen no support
9 for. They're just numbers that are listed on a page
10 as far as we know.

11 But they've got O&M cost titled as
12 including billing of 360,000 on an annual basis.
13 They've got EMC overhead of a little over \$22,000
14 which add to that, and then they've got an operating
15 profit of about \$67,000 also built in. That total
16 comes up to about \$449,000. I then compared that to
17 the 274,000 the Staff came up with in their audit.

18 Q. I'm sorry. You compared it to which
19 number?

20 A. To Staff's \$273,822 that they -- and
21 that represents the amount of revenues that Staff
22 believes, per their audit, it would take to operate
23 both the water and sewer operation.

24 Q. Let me ask you a quick question, if I
25 may.

1 A. Okay.

2 Q. Is it your opinion that this company can
3 operate on \$270,000 currently?

4 A. It's my opinion that, after reviewing
5 the audit, that it's reasonable.

6 Q. Okay.

7 A. Is a reasonable amount.

8 Q. Okay. Now, you compared the EMC amount,
9 which I believe you said was 449,000?

10 A. That's correct.

11 Q. With the Staff amount of 270?

12 A. Okay.

13 Q. And I cut you off, so keep going.

14 A. That's fine. But that also does not
15 include any costs associated with the plant addition
16 that you were talking about. The rate study then
17 shows that an additional \$90,000 per year is included
18 as a cost and that represents, my understanding, a
19 20-year amortization or depreciation of the
20 \$1.8 million that the company has apparently stated
21 it may spend on the new capacity, an amount which we
22 think is not really gonna be \$1.8 million, so...

23 Q. Well, if that 1.8 includes engineering
24 fees like the discussion I had with Mr. Meyer, they
25 are allowed a return on that even though it's not

1 hard facilities, right?

2 A. Engineering fees are a normal cost of a
3 plant construction, yes.

4 Q. And overhead costs incurred during
5 construction?

6 A. If they are determined to be prudent,
7 yes.

8 Q. Allowance for funds used during
9 construction, interest on money borrowed while they
10 go through the construction process?

11 A. That's correct.

12 Q. So there are a lot of costs that are
13 involved in the final project that aren't hard asset
14 cost, if you will. That's not unusual, is it?

15 A. You're referencing to a tangible product
16 is what you're saying?

17 Q. Right.

18 A. That is potentially possible, yes.
19 Likely even.

20 Q. Okay. So we've got 90,000 in
21 depreciation. What next?

22 A. Essentially that's it. That's the cost
23 that the company has in this rate study that they
24 need to recover, and so what that essentially
25 represents is the amount of revenues, and then the

1 rates that they've determined are based on those
2 revenues --

3 Q. Okay. Now --

4 A. -- in order to accomplish those revenue
5 levels.

6 Q. What I think you're saying is, that you
7 agree with Staff that they can run the company today
8 on \$270,000?

9 A. I think that's reasonable, yes.

10 Q. And then you'll give them 90,000
11 depreciation on the new plant?

12 A. I didn't say that.

13 Q. Okay. They're not gonna get
14 depreciation?

15 A. Has the plant been built?

16 Q. Yeah.

17 A. The new plant's been built?

18 Q. Right.

19 A. When?

20 Q. Whenever it comes online.

21 A. You're talking about something in the
22 future.

23 Q. Well, then, why are we talking a
24 appreciation expense?

25 A. Because the company's included in this

1 rate study for the rates they want to charge.

2 Q. Well, they're gonna build the plant.

3 A. But it's not built yet.

4 Q. Are you gonna give them 90,000 for the
5 plant or not? Let's look at a year out. The plant's
6 in service.

7 A. Okay.

8 Q. Are you gonna give them 90,000?

9 A. Is the cost supported?

10 Q. I'm asking the questions, Mr. Robertson,
11 and I think you have to answer. Are you gonna give
12 them a depreciation expense? And you never even
13 talked about return. Where is the return?

14 A. The return is built into the profit
15 level that they've identified here.

16 Q. No, no, no. We're starting with Staff
17 now. 270,000. No return, bare bones, today's
18 operation. What are you gonna give them for the new
19 plant?

20 A. Maybe I misunderstood. We're talking
21 about Staff's audit right now.

22 Q. It's your opinion. You said we can run
23 this -- we can run this business today for \$270,000.

24 A. That's correct.

25 Q. What are you gonna give us to build the

1 plant for return for depreciation once that plant
2 comes online?

3 A. We'll look at the costs that are
4 incurred and make that determination then.

5 Q. All right. You can't tell me when
6 that's gonna happen and when those rates are gonna
7 come into effect?

8 A. You can't tell me what the cost is.

9 Q. But you can agree with me that we'll
10 begin incurring costs tomorrow if we start building?

11 A. Every utility in this state is building
12 plants in some form or fashion. And once it's in,
13 they come in for a rate increase, we review the cost,
14 if they're reasonable and prudent, we build them into
15 rates.

16 Q. Well, let me ask -- I mean, let me ask
17 you this: What would it take for you to operate this
18 system, you personally to go out, hire the expertise
19 to run the system? You don't have a license, by the
20 way, to run a treatment plant or a water plant?

21 A. Actually, I don't.

22 Q. So you've got to hire an operator. By
23 the way, do you trench, can you put lines in, can you
24 repair?

25 A. Are you asking me personally if I can?

1 Q. Yeah.

2 A. I don't have the equipment or the
3 skills.

4 Q. So you're gonna have to go out and hire
5 that when you need it, right?

6 A. Okay.

7 Q. Okay. Gonna have to do billing and
8 collection, right?

9 MS. BAKER: Your Honor, I'm going to
10 object to this. This doesn't have any -- any line of
11 questioning towards what Mr. Roberts (sic) is here as
12 an expert on. He is not here as an expert on how to
13 build the plant, how to trench, how to hire people to
14 trench, so I'm going to object to that.

15 MR. ENGLAND: He's here offering an
16 opinion that we can run this utility, or for that
17 matter, the sewer district can run this utility on a
18 lot less money than they've told you they can. I'd
19 like to understand the basis for it, and then, as a
20 second step, once he tells me what we can run it for,
21 I'd like to offer it to him and see if he can do it
22 with that amount of money.

23 MS. BAKER: And that is not what he's
24 here for. He is not here to tell Central Jefferson
25 how much that they should be able to run the plant

1 for.

2 MR. ENGLAND: On the contrary, your
3 Honor. He's here trying to tell the sewer district
4 how much they need to run the plant once they take it
5 over.

6 JUDGE STEARLEY: I'm going to overrule
7 the objection and allow the questioning.

8 BY MR. ENGLAND:

9 Q. How much are you gonna give the sewer
10 district to run this, keeping in mind that if they
11 don't take it, you've got to do it?

12 A. Well, first off, I don't have to take
13 it. I don't do that. Second off --

14 Q. Well, then, and --

15 A. Can I finish my answer?

16 Q. Sure.

17 A. What I'm looking at are the costs that
18 the sewer district and EMC have stated they will
19 incur. What I'm telling the Commission and the
20 parties are, those costs haven't been supported.
21 Those costs are higher than what audited costs --
22 costs the result of the Staff audit have identified
23 as reasonable are. Outside of that, that's all I'm
24 telling you.

25 Q. So what you're telling this Commission

1 is that you don't believe what EMC is telling them,
2 but you don't have any better numbers to give them;
3 is that a fair statement?

4 A. I do have better numbers.

5 Q. Okay. Then give them to me.

6 A. I have the Staff's audit.

7 Q. And that's what the sewer district and
8 EMC need to run this operation?

9 A. On the current operations excluding the
10 next investment that you were referencing.

11 Q. Well, now, let's put a little skin in
12 the game and you do have to run that. Would you be
13 willing to do that to the current amount and run it?

14 A. I'm not in the business of doing it.

15 Q. Have you ever been in the business of
16 doing it?

17 A. Of running a sewer and water operation?

18 Q. Right.

19 A. No.

20 Q. How about any small business?

21 A. I've never even owned a business, no.

22 MR. ENGLAND: Thank you. No further
23 questions, your Honor.

24 JUDGE STEARLEY: Thank you, Mr. England.
25 Commissioner Appling?

1 Commissioner APPLING: No questions.

2 JUDGE STEARLEY: All right. Any

3 redirect, then, Ms. Baker?

4 REDIRECT EXAMINATION BY MS. BAKER:

5 Q. Just a couple of things. Did you review
6 the Staff work papers that were prepared for the
7 Staff audit?

8 A. I did.

9 Q. Did you find those work papers to be
10 reasonable?

11 A. My review of the Staff's audit work
12 papers from the case number, the tracking file
13 QS-2006-003, I looked at all the Staff work papers.
14 I went through those to identify how they calculated
15 the revenues and expenses and associated cost of the
16 water and sewer operations.

17 The way the Staff put the audit
18 together, is the way they always do it to build the
19 financials for the company. I found their
20 conclusions that I reviewed to be reasonable the way
21 they calculated the amortizations and the
22 normalizations and stuff and within reason and
23 reasonable, so, yes, I did.

24 MS. BAKER: No further questions.

25 JUDGE STEARLEY: Thank you, Ms. Baker.

1 Mr. Robertson, you may be excused and I thank you for
2 your testimony.

3 I believe that concludes our witnesses.
4 I'm gonna go over a couple of final details with the
5 attorneys here before we adjourn. I believe all our
6 evidence has been admitted except for a late-filed
7 exhibit Mr. Kolisch is going to file, and I will set
8 out an order giving him a deadline for that regarding
9 which particular lots were in question.

10 Our transcript is normally available in
11 two weeks; is that correct, ma'am?

12 THE COURT REPORTER: Ten working days,
13 your Honor.

14 JUDGE STEARLEY: Ten working days. Any
15 parties wishing to have transcripts expedited?

16 MR. ENGLAND: What's the normal
17 turnaround?

18 JUDGE STEARLEY: Normal would be ten
19 working days. Ten business days.

20 (DISCUSSION HELD OFF THE RECORD.)

21 JUDGE STEARLEY: All right. We are back
22 on the record and after a little bit of discussion,
23 we have agreed that the transcripts will be filed on
24 the regular schedule, ten business days, and we will
25 have briefs, post-hearing briefs from the parties,

1 due on January 15th -- 19th, I'm sorry. I'm not
2 trying to expedite things any more. Along with
3 proposed Findings of Facts and Conclusions of Law.
4 Are there any other matters that we need to address
5 before we adjourn today?

6 MR. ENGLAND: I think it goes without
7 saying, but my witnesses who were asked to stay
8 around in case there were some additional questions
9 are now fully released to go?

10 JUDGE STEARLEY: Yes, all witnesses are
11 fully released, and we certainly appreciate their
12 time and their testimony.

13 Well, if there's no other matters for us
14 to address, the hearing in Case Number SO-2007-0071,
15 In the Matter of the Application of Jefferson County
16 Utilities, Incorporated For an Order Authorizing
17 Transfer and Assignment of Certain Water and Sewer
18 Assets to Jefferson County Public Sewer District and
19 in Connection Therewith, Certain Other Related
20 Transactions, is adjourned.

21 (WHEREUPON, the hearing in this case was
22 concluded.)

23

24

25

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1			
2			
3	Exhibit No. 10 Agreement	397	400
4	Exhibit No. 11 Settlement Agreement		
5	and Amendment	400	402
6	Exhibit No. 12 Intrastate Exemption		
7	Statement	402	403
8	Exhibit No. 13 Central Jefferson		
9	County Utilities, Inc. Expansion Activities		
10	Timeline	465	466
11	Exhibit No. 14 AquaSource February 14,		
12	2000 letter to Mr. Nixon from Donald Clayton	466	467
13			
14	Exhibit No. 15 EMC December 18, 2006		
15	letter to Dana Hockensmith from		
16	Gene Thurman	490	491
17	Exhibit No. 16HC EMC a BOC Group Co		
18	Raintree for the month ended November 30,		
19	2006 Total Operating Expenses	493	499
20	Exhibit No. 17HC September 7, 2005		
21	"Reference to Raintree Wastewater Treatment		
22	Plant and Collection System"	522	529
23			
24	Exhibit No. 18 Email from Dale Johansen		
25	to Trip England dated 4/27/06	592	597

		MARKED	REC'D
1			
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3	Exhibit No. 19		
4	MO DNR Notice of Violation 9/27/04	623	625
5	Exhibit No. 20		
6	MO DNR Notice of Violation 8-4-05	625	626
7	Exhibit No. 21		
8	MO DNR Notice of Violation 10-26-05	626	627
9	Exhibit No. 22		
10	US EPA Background and Findings of Violation	629	630
11	Exhibit No. 23		
12	Compliance Agreement	633	634
13	Exhibit No. 24		
14	Memorandum dated June 7, 2005, to File from Jim Rhodes, Subject: Raintree Chronology	634	642
16	Exhibit No. 25		
17	Central Jefferson County Utilities - Water Sewer Connection Expense Schedule	673	676
19			
20			
21			
22			
23			
24			
25			

1 CERTIFICATE OF REPORTER

2 STATE OF MISSOURI)
3) ss.
4 COUNTY OF COLE)
5

6 I, PAMELA FICK, RMR, RPR, CSR, CCR #447,
7 within and for the State of Missouri, do hereby
8 certify that the witnesses whose testimony appear in
9 the foregoing hearing was duly sworn by me; that
10 the testimony of said witnesses were taken by me to
11 the best of my ability and thereafter reduced to
12 typewriting under my direction; that I am neither
13 counsel for, related to, nor employed by any of the
14 parties to the action to which this hearing was
15 conducted, and further that I am not a relative or
16 employee of any attorney or counsel employed by the
17 parties thereto, nor financially or otherwise
18 interested in the outcome of the action.
19

20 _____
21 PAMELA FICK, RMR, RPR, CSR, CCR #447
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23
24
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