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STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION  
  
TRANSCRIPT OF PROCEEDINGS  
  
Evidentiary Hearing  
  
August 13, 2008  
Jefferson City, Missouri  
Volume 3

In the Matter of the Joint )  
Application of Stoddard County )  
Sewer Co., Inc., R.D. Sewer Co., )  
L.L.C. And the Staff of the )  
Missouri Public Service Commission )  
For an Order Authorizing Stoddard )  
County to Transfer Its Assets To )  
R.D. Sewer, L.L.C. And For An )  
Interim Rate Increase )

HAROLD STEARLEY, Presiding,  
REGULATORY LAW JUDGE

JEFF DAVIS, Chairman,  
CONNIE MURRAY,  
TERRY JARRETT,  
KEVIN GUNN,  
COMMISSIONERS.

REPORTED BY:  
  
KELLENE K. FEDDERSEN, CSR, RPR, CCR  
MIDWEST LITIGATION SERVICES

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APPEARANCES:

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FOR: Staff of the Missouri Public  
Service Commission.

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P R O C E E D I N G S

(EXHIBIT NOS. 1 THROUGH 4 WERE MARKED FOR IDENTIFICATION BY THE REPORTER.)

JUDGE STEARLEY: Good morning. We are going on the record. Today is Wednesday, August 13, 2008, and we're here for an evidentiary hearing in Case No. SO-2008-0289, in the matter of the Joint Application of Stoddard County Sewer Company, Incorporated, R.D. Sewer Company, LLC and Staff of the Missouri Public Service Commission for Order authorizing Stoddard County Sewer Company, Incorporated to transfer its assets to R.D. Sewer Company, LLC, and for an interim rate increase.

My name is Harold Stearley. I'm the presiding officer over this hearing today. Our court reporter is Kellene Feddersen. And we will begin by taking entries of appearance, starting with the Staff of the Missouri Public Service Commission.

MR. KRUEGER: Keith R. Krueger for the Staff of the Public Service Commission. My address is P.O. Box 360, Jefferson City, Missouri 65102. Also Steve Reed for the Staff.

JUDGE STEARLEY: Thank you, Mr. Krueger. For Stoddard County Sewer Company and R.D. Sewer Company?

MR. ALLEN: My name is Terry Allen. I'm an attorney here in Jeff City, Allen Law Office, Bar No.

1 19894. My address is 314 Monroe, P.O. Box 1702,  
2 Jefferson City, 65102. I'm here on behalf of Stoddard  
3 County Sewer Company, R.D. Sewer Company, LLC.

4 JUDGE STEARLEY: Thank you, Mr. Allen. The  
5 Office of Public Counsel?

6 MS. BAKER: Christina Baker, P.O. Box 2230,  
7 Jefferson City, Missouri 65102. Also appearing with me is  
8 Mike Dandino, and we are here for the Office of the Public  
9 Counsel and the ratepayers.

10 JUDGE STEARLEY: Thank you, Ms. Baker.  
11 Initially I need to, as usual, sounding like an airplane  
12 stewardess, must instruct you all to please shut off all  
13 your cell phones, Blackberries and other electronic  
14 devices because those devices can interfere with our  
15 recording and webcasting of the proceeding.

16 Taking up a few preliminary matters, it was  
17 my understanding from the witness list that was filed by  
18 the parties that there might be a Joint Stipulation of  
19 Undisputed Facts being filed in this case. Is that still  
20 happening?

21 MR. KRUEGER: Yes, your Honor. We do have  
22 a stipulation. Only one copy was signed. Do you want  
23 that or should I give that to the court reporter?

24 JUDGE STEARLEY: Why don't you give that  
25 one to the court reporter?

1 (EXHIBIT NO. 5 WAS MARKED FOR  
2 IDENTIFICATION BY THE REPORTER.)

3 JUDGE STEARLEY: Thank you, Mr. Krueger.  
4 In reviewing the record, I don't believe we have on file  
5 the Asset Transfer Agreement that was executed back in  
6 2002 between Ms. Bien and R.D. Sewer, and I don't know if  
7 you have that with you, but I was going to say, if not, it  
8 could be filed as a late-filed exhibit.

9 MR. KRUEGER: What I have, your Honor, is  
10 photocopies of an Assignment of Interest. It's not an  
11 agreement. It's actually the assignment.

12 MR. ALLEN: Judge, if I may, I have a copy  
13 of the Assignment, but I also have the Assignment of  
14 Interest signed by the Probate Court and the receipt of  
15 the assignment, which is more of a complete document than  
16 what he gave you if you prefer to have that.

17 JUDGE STEARLEY: We would certainly like to  
18 have that, Mr. Allen.

19 (EXHIBIT NOS. 6 AND 7 WERE MARKED FOR  
20 IDENTIFICATION BY THE REPORTER.)

21 JUDGE STEARLEY: One other preliminary  
22 matter. There is a pending Motion to Dismiss right now  
23 from the Office of the Public Counsel. That was filed  
24 very shortly prior to commencement of this hearing, and we  
25 know the parties were preparing for litigation. The

1 Commission is going to take that motion with the case, and  
2 we will allow the parties the opportunity to address that  
3 in their post-hearing briefs.

4 MS. BAKER: I would still go ahead and  
5 raise an objection to -- to this proceeding because of the  
6 lack of jurisdiction.

7 JUDGE STEARLEY: So noted, Ms. Baker. And  
8 just running through our witness list quickly here this  
9 morning, the Commission is going to be calling Mr. Randall  
10 Shepard and Mr. Rodger G. Williams. They will be  
11 appearing by phone. It's my understanding that Stoddard  
12 County is going to offer Mr. Owens. Is he appearing by  
13 phone or in person?

14 MR. ALLEN: Your Honor, he is -- he will  
15 appear by person. I told him to come over about ten  
16 o'clock. If you need him sooner, I can reach him by cell.

17 JUDGE STEARLEY: I think that should  
18 probably be adequate. And then Mr. Owens will be followed  
19 by Mr. Merciel and Mr. Rackers from the Staff and then  
20 Mr. Robertson from the Office of the Public Counsel; is  
21 that correct?

22 MS. BAKER: Yes.

23 JUDGE STEARLEY: All right. And are there  
24 any other preliminary matters that need to be resolved?

25 MS. BAKER: I guess at this time I would go

1 ahead and renew my objection and the objections that I  
2 brought up in the Motion in Limine, which I know that an  
3 Order went out about that yesterday, but just for the  
4 record and to make a clear record in this case, I'll go  
5 ahead and renew my concerns that the Commission is  
6 improperly bringing witnesses from Bonadio and from  
7 Smith & Company Engineers. They were not witnesses that  
8 were brought by any party to this case. They were brought  
9 specifically by the Commission.

10 And so I would renew the objections from my  
11 Motion in Limine and would also ask that these  
12 testimonies, reports, any documents from them be excluded.

13 JUDGE STEARLEY: As was issued with the  
14 written Order yesterday, your motion has been overruled,  
15 denied.

16 And with that, I understand we're going to  
17 have opening statements in the order of Stoddard County  
18 and R.D. Sewer, Staff, followed by Public Counsel. Before  
19 we begin opening statements, are there any other matters  
20 we need to take up at this time?

21 (No response.)

22 JUDGE STEARLEY: Hearing none, we shall  
23 begin with opening statements, starting with Stoddard  
24 County Sewer Company, R.D. Sewer. Mr. Allen.

25 MR. ALLEN: Thank you, Judge. Would you

1 prefer that I stand or may I sit? Or do you want me to  
2 come to the podium, I guess?

3 JUDGE STEARLEY: Your choice, Mr. Allen.

4 MR. ALLEN: Okay. Probably just be easier.  
5 Again, my name is Terry Allen, and I represent Stoddard  
6 County Sewer Company, Inc., and R.D. Sewer Company, a  
7 limited liability company here in Missouri in Stoddard  
8 County.

9 I think it's clear what this is and what's  
10 before the Commission today, an application for transfer  
11 of all the assets of Stoddard County Sewer to R.D. Sewer  
12 Company, LLC unencumbered, and for an interim rate  
13 increase.

14 And I think it might be helpful by way of  
15 opening statement to remind everyone that Stoddard County  
16 Sewer Company was authorized by the Commission to operate  
17 in 1979, a family of a couple named the Biens, Carl Bien  
18 and his wife.

19 And in the course of events, they ran this  
20 company without filing reports, without rate increases,  
21 'til approximately 2002 or so when Mr. Bien had passed  
22 away. Kind of a mom and pop shop, although Mr. Bien  
23 really, I think the testimony will show, was kind of  
24 engaged in many activities in the bootheel, business  
25 activities, and this was just one of them.



1                   When Mr. Bien died, and I think as  
2                   evidenced in part you'll see from the assignment, and from  
3                   the records in the Probate Court of Stoddard County, his  
4                   estate was administered through a public administrator,  
5                   Ms. Wilson, and Mrs. Bien really didn't want to run this  
6                   company. She really didn't want to have anything to do  
7                   with it.

8                   But to keep it going and to serve the  
9                   public, the public administrator figured the best way to  
10                  get this done, if you will, and to serve the interests of  
11                  the public was to get an assignment of the interests of  
12                  the stock to Rodger Owens, or at least in this case to  
13                  R.D. Sewer Company, LLC, which the owner -- the sole owner  
14                  is Rodger Owens.

15                  Now, how did Rodger Owens come into this  
16                  picture? Well, when Carl died, it seems that he was  
17                  contacted by a member of the Staff of the PSC named Arlie  
18                  Smith who encouraged him to operate this. Mr. Owens is  
19                  licensed and is well known in the bootheel, and I think he  
20                  has a pretty good reputation for operating water companies  
21                  and sewer companies. And he was contacted and he was told  
22                  several things. They wanted to get him to operate this.

23                  Seems like nobody else had an interest in  
24                  this, nobody else wanted this, and he wanted to help out.  
25                  So at the urging of Mr. Smith, he became the -- or at

1 least his LLC became the assignee of the stock in the  
2 sewer company and he continued to operate it.

3                   When he started operating, then he started  
4 getting reports, PSC starting getting its reports. But  
5 again, he was told that in the long run it would be likely  
6 there would be a rate increase because the rates were not  
7 adequate to really service what he was doing, what the  
8 sewer company was doing for its customers.  
9 He's had to repair, patch, paste, glue equipment back  
10 together.

11                   He's operated at a loss. The operating  
12 expenses, and he will testify to this, for example last  
13 month, you're going to find that the electricity bill was  
14 more than the receipts he got from the customers.

15                   There's several issues that arise from  
16 this. There's no penalty if a customer doesn't pay on  
17 time. They pay yearly. The -- I think the evidence will  
18 be, and I think it will be clearly that this is an  
19 unmanageable situation that someone took on, and he's done  
20 really a good job doing it, and even at the public  
21 meetings he didn't have any criticism of his operation,  
22 and he's here now with hat in hand and joint -- jointly  
23 with the Staff of the Commission asking that there is a  
24 formal transfer so we can get on with the business at hand  
25 so we can continue to protect and serve the public, so

1 that we have safe and adequate service.

2                   Again, no one else seems to be interested  
3 in this business down there for whatever reason. The  
4 Staff audited the 2002 -- the statements, the financial  
5 statements and what will be hopefully in evidence in this  
6 case of 2006, 2007, supported by the Bob Deer report to  
7 tell part of the story, and I think Rodger will be able to  
8 tell you the rest of the story.

9                   The independent analysis supports the  
10 unusual request to have an interim rate with a provision  
11 for a refund, which he doesn't object to. The billing  
12 needs to be monthly with some teeth to be able to stop and  
13 serve for -- have some teeth in it to be able to have  
14 people pay their bills so he can operate and operate  
15 effectively.

16                   His goal is to serve the public and what is  
17 in the public's interest. Without adequate resources, it  
18 is unreasonable to expect to fully provide safe and  
19 adequate services. It is true that last month, as I said,  
20 the situation occurred as I described, and this has been  
21 ongoing. So we would urge that the matter be carefully  
22 considered and we will present our evidence to support the  
23 application. Thank you.

24                   JUDGE STEARLEY: Thank you, Mr. Allen.

25 Opening statements from Staff?

1                   MR. KRUEGER: Thank you, your Honor. Good  
2 morning. May it please the Commission? My name is Keith  
3 R. Krueger and I represent the Staff of the Missouri  
4 Public Service Commission in this proceeding.

5                   This is an asset transfer case, which seeks  
6 approval of the transfer of the assets of Stoddard County  
7 Sewer Company to R.D. Sewer Company, Inc. The Staff is  
8 actually one of the joint applicants in this case.

9                   It's highly unusual if not unique for the  
10 Staff to be an applicant in such a case. This is a very  
11 unusual case, which demands a creative solution, and so  
12 the Staff stepped forward and joined in the application.  
13 The Staff joined in this application in order to provide a  
14 solution so the customers of Stoddard County Sewer Company  
15 can continue to receive safe and adequate service.

16                   I want to first describe the problem and  
17 then tell how the Staff proposes to solve it. As the  
18 Commission well knows, the regulation of small water and  
19 sewer companies is problematic. It's fraught with many  
20 unusual and difficult problems.

21                   This is because small water and sewer  
22 companies are different in many respects from the other  
23 utilities that the Commission regulates. They're much  
24 smaller than the other utilities the Commission regulates,  
25 often serving only 100 or 200 customers or a subdivision

1 or sometimes even as few as 10 or 20. They're often owned  
2 by an individual or by a very small group of owners who do  
3 not have a clear, well thought out succession plan. They  
4 require a large amount of infrastructure and capital,  
5 which makes it especially important that there not be a  
6 duplication of services by more than one provider.

7                   As a result, the situation that you have is  
8 that the best way to provide the services is through a  
9 regulated monopoly, these entities being owned by a single  
10 individual who has a limited life span and is without the  
11 ability to provide the service forever.

12                   Sometimes the owner of a small company dies  
13 or becomes disabled or goes bankrupt or has financial  
14 reverses of one sort or another, perhaps in other  
15 unrelated businesses, and as a result of that becomes  
16 unable or unwilling to provide safe and adequate service.  
17 Stoddard County Sewer Company is a good example of the  
18 kinds of problems that the Commission faces in regulating  
19 small water and sewer companies.

20                   Stoddard County Sewer Company obtained a  
21 Certificate of Convenience and Necessity in 1978. At that  
22 time Carl Bien was the sole owner of the company. The  
23 Commission decided that this corporation that he owned was  
24 qualified to provide the service and issued a certificate.  
25 The Commission also established the rates for the company

1 to charge, which were \$11.40 per month flat rate for  
2 residential customers.

3                   Mr. Bien operated the company capably for  
4 many years, but Stoddard County Sewer Company was not his  
5 only business. He never sought or obtained a rate  
6 increase. He suffered financial reverses in other  
7 business ventures, and it eventually became difficult for  
8 Stoddard Company -- Stoddard County Water and Sewer  
9 Company -- I'm sorry, Stoddard County Sewer Company to  
10 provide safe and adequate service.

11                   In 2000 Mr. Bien died. Although he thought  
12 his son would take over the business, ultimately that did  
13 not turn out to be the case and he didn't have any  
14 successor to take over the operation of the company. The  
15 company was essentially worthless. He didn't have a will  
16 and there was no other provision for succession. His  
17 widow and other family members had no interest in  
18 operating the company, and she did not want to even accept  
19 ownership of the stock.

20                   There was literally no one to take over the  
21 ownership and operation of the company. The system was  
22 an orphan. Stoddard County Sewer Company was  
23 administratively dissolved by the Secretary of State. The  
24 company failed to pay assessments to the Commission and  
25 failed to file annual reports at the time of and shortly

1 after the death of Mr. Bien.

2                   When Mr. Bien's estate was being probated,  
3 the county public administrator assumed the duties of  
4 managing the company and did, in fact, seek a rate  
5 increase from the Commission, but that request was finally  
6 dismissed because the corporation had been dissolved and  
7 had not paid its Commission assessment and filed its  
8 annual reports as required.

9                   Eventually Rodger Owens stepped forward.  
10 This then was the situation that Mr. Owens stepped into.  
11 Mrs. Bien was not willing to accept -- to operate the  
12 company, no other operator could be identified, and no  
13 buyer could be identified. There was literally no one to  
14 operate the facilities that the customers of the company  
15 depended upon for sewer service.

16                   Mr. Owens was willing to accept the  
17 ownership of the stock of Stoddard County Sewer Company  
18 and to operate the company, but he did not want to acquire  
19 assets that were encumbered to the extent that the  
20 indebtedness on them was greater than the value of the  
21 assets, and he did not want to use his own funds to pay  
22 the debts that had been incurred prior to the time that he  
23 took over operation of the company.

24                   After some negotiating, Mrs. Bien agreed to  
25 accept distribution of the stock from the public

1 administrator, but not the company's assets, provided that  
2 she could then immediately transfer the stock to the  
3 corporation that Mr. Owens was forming.

4                   Stoddard County Sewer Company could not get  
5 a rate increase because R.D. Sewer Company was not willing  
6 to invest the money needed to pay the past due  
7 assessments, not willing or not able, and did not have the  
8 information that it needed to prepare the annual reports  
9 for the years prior to the time that Mr. Owens took over  
10 operation of the company. As a result, the rates for  
11 service remained at \$11.40 per month for single family  
12 residence, just as when the company was initially  
13 established in 1978.

14                   Stoddard County Sewer Company did, however,  
15 pay the current Commission assessments from 2002 to the  
16 present, filed annual reports with the Commission from  
17 2002 to the present, and provided sewer services to the  
18 customers of the company from 2002 to the present.

19                   Stoddard County's facilities require improvement.  
20 Smith & Company, the engineering firm that the Commission  
21 hired to evaluate Stoddard County's facilities, prepared a  
22 report that indicates that significant improvements must  
23 be made. But neither Stoddard County nor R.D. Sewer  
24 Company has the funds to do so, and they have no way to  
25 generate the funds unless there is a rate increase and



1 they can see the opportunity to receive these revenues  
2 from the customers ultimately.  
3 And Stoddard County cannot obtain a rate increase because  
4 of the corporate status, again, as I had mentioned, the  
5 unpaid assessments and the unfiled annual reports.

6                   So this is the situation we are in today.  
7 Stoddard County can't make the improvements that it needs  
8 to make. Mr. Bien is dead. There's no other potential  
9 owners in sight. It's a difficult dilemma. So where do  
10 we go from here? How can we solve this problem?

11                   The Staff and the applicants propose a  
12 solution. R.D. Sewer is willing to operate the facilities  
13 and to provide safe and adequate service, but only if it  
14 can charge just and reasonable rates. The applicants'  
15 proposal, I should say the private applicants, Stoddard  
16 County and R.D. Sewer, their proposal is to transfer the  
17 assets to R.D. Sewer Company, to issue a certificate of  
18 convenience and necessity to R.D. Sewer Company, to remove  
19 any clouds on the title of the assets, if possible, to  
20 establish new and adequate rates as soon as possible, and  
21 to make provision for the necessary improvements to the  
22 facilities as required by the Department of Natural  
23 Resources as soon as possible.

24                   The present rates are a flat \$11.40 for  
25 residential customers, the same as in 1978. That's simply

1 inadequate. The applicants seek to increase this rate to  
2 a reasonable level as soon as possible through the  
3 imposition of an interim -- an interim rate increase. To  
4 protect the customers, R.D. Sewer is willing to make this  
5 interim rate increase subject to refund based upon a  
6 subsequent -- an audit and a subsequent rate case.

7 R.D. Sewer is willing to request a rate  
8 increase within 30 days after the effective date of the  
9 Order that the Commission issues in this case and will  
10 prosecute that case to conclusion regardless of whether it  
11 results in an increase or a decrease in the rates that  
12 they're able to charge, and again, the -- it is -- the  
13 interim rate would be subject to refund based upon that.

14 Stoddard County finds itself in a difficult  
15 position. Staff and the joint applicants will show that  
16 their proposal is the best solution and in the best  
17 interests of not only the applicants but also the  
18 customers and the Commission. Thank you.

19 JUDGE STEARLEY: Thank you, Mr. Krueger.  
20 Opening statement, the Office of the Public Counsel?

21 MS. BAKER: May it please the Commission?  
22 The Office of the Public Counsel is not opposed to the  
23 transfer that has been proposed in this case. We are very  
24 concerned with the encumbrances that were apparently  
25 attached to the assets of the sewer system without

1 approval by the Commission. And Public Counsel is not  
2 even opposed to an interim rate increase as long as it is  
3 subject to refund and in a reasonable amount.

4                   Before the Commission gives an interim rate  
5 increase, it must determine that the company is operating  
6 at a deficit and that to allow the company to continue to  
7 operate it in a deficit would impede safe and adequate  
8 service. But beyond the requirement of giving safe and  
9 adequate service is that the rates need to be at a  
10 reasonable rate.

11                   Numbers that are based on a 2002 Staff  
12 audit in a case that did not go forward is not reasonable  
13 today. Having the Commission bolster its knowledge  
14 through bringing in unqualified experts who have no  
15 experience in Missouri public utility regulation or  
16 operation is also unreasonable.

17                   Public Counsel is very concerned with R.D.  
18 Sewer's statement in its position statement saying that if  
19 it does not get the full amount of the 2002 audit, that it  
20 will not accept this transfer. Public Counsel is gravely  
21 concerned when a company comes before the Commission  
22 holding its customers hostage and attempting to sway the  
23 Commission into granting an increase that is not  
24 reasonable in a time frame that is six years beyond when  
25 the original audit was done.

1                   Public Counsel will give evidence today of  
2 what a reasonable interim rate increase subject to refund  
3 will be, and for that I will have Ted Robertson here who  
4 will answer questions on Public Counsel's proposal.

5                   And so again I say that the Public Counsel  
6 does not oppose this transfer, and we do not oppose an  
7 interim rate increase subject to refund, but it has to be  
8 a reasonable amount given the situation.

9                   Thank you.

10                  JUDGE STEARLEY: Thank you, Ms. Baker. At  
11 this time the Commission is going to call its first  
12 witness, Mr. Randall Shepard, and he's appearing today by  
13 phone. Mr. Shepard, are you linked up with us?

14                  THE WITNESS: Yes, I am, your Honor.

15                  JUDGE STEARLEY: Although we can't see you  
16 in our hearing room, we're going to ask you to raise your  
17 right hand and I will swear you in.

18                  THE WITNESS: Okay.

19                  (Witness sworn.)

20                  JUDGE STEARLEY: All right. Thank you.  
21 And Mr. Shepard, I'm going to ask you some initial  
22 introductory questions, and then we'll proceed with giving  
23 the Commissioners a chance to ask you some introductory  
24 questions. We will allow the other parties' counsel to  
25 then cross-examine you, and then the Commission may have

1 some final questions for you.

2 MS. BAKER: Your Honor, may I ask at this  
3 time that Public Counsel be allowed to voir dire the  
4 witness ahead of Commissioners' questions?

5 JUDGE STEARLEY: Certainly, Ms. Baker.

6 MS. BAKER: Thank you.

7 JUDGE STEARLEY: Mr. Shepard, the Office of  
8 the Public Counsel has made a request to do what's called  
9 a voir dire of you before you start your testimony. We're  
10 going to allow her to ask you some questions first, and  
11 then we will pick up with our questioning.

12 THE WITNESS: Okay.

13 RANDALL SHEPARD testified as follows:

14 VOIR DIRE EXAMINATION BY MS. BAKER:

15 Q. Mr. Shepard, can you give to the Commission  
16 your job title, please?

17 A. I'm an Audit Principal at the Bonadio  
18 Group, which is a non-equity partner in the partnership.

19 Q. And how long have you been in that  
20 position?

21 A. 11 years.

22 Q. Were there other people from the Bonadio  
23 Group who worked on the report that you provided?

24 A. Yes, there were.

25 Q. And who were those people?

1           A.       The first individual was Monisha Nabar, who  
2 is also a non-equity partner, a principal in the firm.  
3 She's a charter accountant as well as a certified fraud  
4 examiner. And Mark Laskoski, who was a staff level  
5 consultant who assisted me in accumulating data while  
6 onsite at the attorneys' offices.

7           Q.       Do you have any specific regulated utility  
8 operation or ratemaking education?

9           A.       No, I do not.

10          Q.       Do you have any specific regulated utility  
11 operation or ratemaking training?

12          A.       No, I do not.

13          Q.       Are you aware of whether Ms. Nabar or  
14 Mr. Laskoski has utility operation or ratemaking education  
15 or training?

16          A.       They also do not have specific training in  
17 that regard.

18          Q.       Have you or Ms. Nabar or Mr. Laskoski ever  
19 written or given oral testimony in a federal or state  
20 regulated utility case before?

21          A.       No, we have not.

22          Q.       Have you received any formal regulated  
23 utility operation or regulatory ratemaking theory or  
24 concept education?

25          A.       No, I have not.

1           Q.       Do you consider yourself, Ms. Nabar or  
2 Mr. Laskoski to be well versed in Missouri statutes and  
3 Missouri Public Service Commission rules and regulations  
4 that govern the operation and ratemaking of regulated  
5 utilities in the state of Missouri?

6           A.       I would say no in that regard.

7           Q.       Do you have any knowledge of the common  
8 practices in Missouri or other states as to the use of  
9 cash or accrual basis accounting for utilities of this  
10 size?

11          A.       No. It's all dependent upon the  
12 organization's specific operations, I would imagine.

13          Q.       So your answer to that is no?

14          A.       Based on the way you asked the question,  
15 the answer would be no.

16          Q.       Then none of the Bonadio employees,  
17 yourself, Ms. Nabar or Mr. Laskoski, who participated in  
18 this limited review could possibly be a regulated utility  
19 ratemaking expert, could they?

20          A.       No. I don't believe we were hired to do  
21 that.

22                   MS. BAKER: At this time I would object to  
23 Mr. Shepard's testimony as not being a qualified expert in  
24 regulated utilities, and so therefore his testimony and  
25 report should be excluded.

1                   JUDGE STEARLEY: Your objection shall be  
2 overruled.

3 QUESTIONS BY JUDGE STEARLEY:

4           Q.       Now, Mr. Shepard, I will come back with my  
5 foundational questions for you. Ms. Baker actually asked  
6 a couple of them for me already. I'll try not to be  
7 repetitive, but if I am, please bear with me.

8                   And I don't know if I asked, did I get you  
9 to state and spell your name for our record? I want to  
10 make sure we have that clear with our court reporter.

11           A.       Yes. Randall R. Shepard, R-a-n-d-a-l-l,  
12 Shepard, S-h-e-p-a-r-d.

13           Q.       Thank you, Mr. Shepard. And you described  
14 earlier what your current occupation is and that you've  
15 been employed in that occupation for 11 years; is that  
16 correct?

17           A.       That's correct.

18           Q.       Can you tell us about your prior employment  
19 history?

20           A.       Prior to Bonadio Company, I worked as a  
21 financial analyst for a local hospital in New York, and  
22 prior to that I was in college.

23           Q.       Thank you. And could you tell us about  
24 your educational background?

25           A.       Yes. I have a bachelor of science degree



1 in accounting from the State University of New York at  
2 Geneseo, and I am a CPA, licensed to practice in the state  
3 of New York.

4 Q. And in addition to your CPA, do you hold  
5 any other professional licenses?

6 A. I am a Fellow in the Health Care Financial  
7 Management Association.

8 Q. All right. And do you have any other  
9 professional certifications?

10 A. No, sir.

11 Q. All right. And as a part of your  
12 profession, do you complete continuing education?

13 A. Yes, sir. We have stringent requirements  
14 on annual, biannual and triennial basis for AICPA as well  
15 as New York state licensure purposes.

16 Q. What do your current career duties involve?

17 A. I'm responsible for overseeing any type of  
18 engagement from audits to compilations reviews, consulting  
19 engagements, and I will be an assigning partner and  
20 therefore taking responsibility for those engagements for  
21 municipalities, public authorities, including water and  
22 sewer utilities, as well as not-for-profit or other  
23 organizations.

24 Q. All right. And can you give the Commission  
25 a ballpark figure of how many audits you've conducted?

1           A.       I would probably say 2- to 300.

2           Q.       And I'm assuming that's been a variety of  
3 types of businesses; would that be a correct statement?

4           A.       That's correct.

5           Q.       Could you describe some of those businesses  
6 for us that you would be providing audits for?

7           A.       Yes.  As I said, for counties in the state  
8 of New York, towns in the state of New York, public  
9 authorities, which include transportation authorities,  
10 water and sewer funds, not-for-profit organizations,  
11 including nursing homes, hospitals, public -- or I'm  
12 sorry, health and human service type organizations, as  
13 well as commercial organizations such as regional  
14 professional organizations such as a baseball team and  
15 those types of engagements.

16          Q.       All right.  And do you have any other  
17 qualifications in your area of expertise that you haven't  
18 mentioned to us yet?

19          A.       No, sir.

20          Q.       And how did you get involved in this case,  
21 Mr. Shepard?

22          A.       We were solicited to submit a request for  
23 proposal and proposal in this case through a, I believe it  
24 was a link through our firm's website.  We reviewed the  
25 requirements of the case and submitted a proposal which

1 outlined our qualifications to perform the duties  
2 requested and submitted that information to the Commission  
3 for their review.

4 Q. Okay. And what was the specific request  
5 for you to provide?

6 A. I'm just pulling out the RFP right now.  
7 The way it was worded was an independent expert witness to  
8 approve -- or I'm sorry, to review the facts associated  
9 with the -- a current rate increase for the case.  
10 Neutral independent and objective accounting analysis of  
11 the present financial condition of Stoddard County Sewer.

12 Q. And is it correct that you did prepare such  
13 a report?

14 A. Correct.

15 Q. And you submitted that to the Commission;  
16 is that correct?

17 A. Yes, I did.

18 Q. And what materials did you review in  
19 producing that report?

20 A. We performed an onsite review at the office  
21 of Steven Holden, who are the attorneys for the Owens' and  
22 for Stoddard County, for R.D. Sewer. They provided to us  
23 all of the supporting documentation, such as invoices,  
24 annual reports submitted to the Commission, check  
25 registers, the ledger cards from their customers.

1                   And from that we interviewed both Rodger  
2 Owens and LaDawn Owens in terms of the expenses that they  
3 incurred, what was appropriate, inappropriate, as well as  
4 some budget information or projected information they felt  
5 was appropriate given their operation of the company over  
6 the past number of years.

7                   Q.       Okay. And were there any other materials  
8 or records available for your review that you were not  
9 given access to?

10                  A.       There were a few things that we had  
11 requested for additional information but did not receive  
12 before we finished our report.

13                  Q.       Had you received those items since your  
14 report was issued?

15                  A.       No, sir.

16                  Q.       Do you know if the items were, in fact,  
17 even available?

18                  A.       They -- I think they could have been, but  
19 based on what we asked from the information we had, they  
20 weren't material to our issuance of the report, so it was  
21 not from our perspective critical that we have those to  
22 provide the report to the Commission.

23                  Q.       Okay. And without giving specifics, what  
24 type of general information is included in your audit?

25                  A.       In terms of what -- how my report is

1 written?

2 Q. Yes.

3 A. Basically what we tried to do was summarize  
4 the current financial condition of the organization,  
5 analyze the increases that the current operators felt were  
6 appropriate in the matter, and compared that to what we  
7 felt was appropriate based on the information provided and  
8 our knowledge and used that to develop a rate increase  
9 based on the -- the revenue base, customer base and  
10 expenditures that were known to have occurred.

11 Q. And in preparing your audit, did you apply  
12 what would be considered the generally accepted accounting  
13 methods of your profession?

14 A. Yes, I did.

15 Q. And you'd already identified the other  
16 persons who assisted you with this. Are you the primary  
17 author of the report you submitted?

18 A. Yes, I am.

19 Q. Did you draft it in its entirety yourself  
20 or did you have help in drafting it?

21 A. No. Monisha helped in drafting the report,  
22 but I reviewed and have -- take responsibility for all the  
23 material within that report.

24 Q. Did the Commission direct you in any way  
25 with regard to reaching any particular outcome when you

1 prepared this report?

2 A. No, sir.

3 Q. Did the Commission ask you to revise your  
4 report in any way after you submitted it?

5 A. No, sir.

6 Q. And I believe you stated you reviewed the  
7 entire report for its accuracy and correctness; is that  
8 correct?

9 A. That's correct.

10 Q. And did you provide a statement, in fact,  
11 verifying the contents of the report to the Commission?

12 A. Yes, I did.

13 Q. And are the analysis and the conclusions  
14 you render in your report a product of your work and  
15 review?

16 A. I'm sorry. Can you repeat that?

17 Q. Are the analysis and the conclusions that  
18 you've rendered in your report, that is a product of your  
19 work and review, is it not?

20 A. Yes, it is.

21 Q. Do you need to make any changes with regard  
22 to the report that you filed?

23 A. No, I do not.

24 Q. Okay. And Mr. Shepard, let me ask you, do  
25 you have computer access to the Missouri Public Service

1 Commission's web page before you at this time?

2 A. Yes, I do.

3 Q. And are you able to access the Missouri  
4 Public Service Commission's home page?

5 A. Yes, I am.

6 Q. And on that page, are you able to access a  
7 link to Public Service Commission's electronic filing and  
8 information system known as EFIS?

9 A. Yes, sir.

10 Q. And on that page, there's a link to case  
11 filings and specific docket sheets, are you able to access  
12 that for this Case No. SO-2008-0289?

13 A. Yes, sir.

14 Q. And on that page, are you able to access  
15 EFIS entry No. 25?

16 A. Yes, sir.

17 Q. And is that, in fact, the report you  
18 submitted to the Commission?

19 A. Absent -- let's see. Yes. The only thing  
20 that's missing is the actual cover page to the report.  
21 However, all that does is state the name of the case and  
22 the date that we submitted it. Otherwise, the report is  
23 as we submitted it.

24 Q. All right. And you've already stated that  
25 you don't believe you need to make any changes to your

1 report. If the Commission had retained you today asking  
2 you to prepare this report, and if the information was the  
3 same as you reviewed, would your report be substantially  
4 the same as it is right now?

5 A. I would say given all the facts and  
6 circumstances being equal, yes.

7 Q. And did you prepare responses to the Office  
8 of the Public Counsel's Data Request Nos. 1002, 1003,  
9 1004?

10 A. Yes, I did.

11 Q. And did those Data Requests involve  
12 producing resumes or background information about  
13 yourself, Monisha Nabar and Mark Laskoski?

14 A. Yes, they did.

15 Q. Did you prepare a Statement of Verification  
16 regarding your report?

17 A. Yes.

18 Q. And did you file those documents I just  
19 named off to you with the Commission?

20 A. Yes, I did.

21 Q. In looking at your docket sheet, are you  
22 able to access EFIS docket entry No. 32?

23 A. Yes, I am.

24 Q. And are those the items you filed with the  
25 Commission?



1           A.       Once they open, I will confirm that.

2           Q.       Okay.

3           A.       Yes, these are the documents that I  
4 submitted.

5           Q.       Okay. I have had our court reporter mark  
6 your report as Exhibit No. 1 in this case and your second  
7 filing of your Statement of Authentication and the DR  
8 request responses as Exhibit No. 2. Do you have any other  
9 items that need to be offered to the Commission at this  
10 time, Mr. Shepard?

11          A.       No, I do not.

12                    JUDGE STEARLEY: And with that, the  
13 Commission is offering into evidence Exhibits No. 1 and 2.  
14 Are there any objections to their admission?

15                    MS. BAKER: Public Counsel objects for one  
16 because this is an unqualified expert and, therefore, his  
17 testimony and reports and filings are those of an  
18 unqualified expert and should be excluded. And two, I  
19 would renew the motion -- or the objections from my Motion  
20 in Limine in that this is an improper witness who's  
21 brought by the Commission itself and not by a party to the  
22 case and, therefore, his testimony and exhibits should be  
23 excluded.

24                    JUDGE STEARLEY: Any other party wish to  
25 weigh in?

1                   MR. KRUEGER: Your Honor, I think the  
2                   qualifications of the witness as an expert are amply  
3                   demonstrated. Any concerns that the Public Counsel has  
4                   about the qualifications go to weight, not admissibility,  
5                   and I think that he should be -- the testimony should be  
6                   admitted.

7                   JUDGE STEARLEY: The objection shall be  
8                   overruled. Exhibits 1 and 2 are admitted and received  
9                   into evidence.

10                   (EXHIBIT NO. 1 AND 2 WERE RECEIVED INTO  
11                   EVIDENCE.)

12                   JUDGE STEARLEY: At this time the  
13                   Commissioners will have an opportunity to ask any  
14                   additional direct questions they may have of this witness,  
15                   and then the Commission will tender him for  
16                   cross-examination. Commissioner Murray, any questions for  
17                   this witness at this time?

18                   COMMISSIONER MURRAY: Just a few. Thank  
19                   you, Judge.

20                   QUESTIONS BY COMMISSIONER MURRAY:

21                   Q.           Good morning, Mr. Shepard.

22                   A.           It's very difficult to hear you,  
23                   Commissioner. I apologize.

24                   Q.           I'll move a little closer to the  
25                   microphone. Is that better?

1           A.       Yes, it is.

2           Q.       In looking at your report, Exhibit No. 1,  
3 on Item C regarding repairs, you indicated there that you  
4 find that \$2,400 is a reasonable cost for repairs. Is  
5 that the total number, the total amount that you have  
6 observed as being necessary for repairs at this time?

7           A.       Yes, based on -- and we relied, obviously  
8 because we're not engineers in the matter, we relied on  
9 the information provided by the engineering expert in  
10 terms of what would be an appropriate annual repair cost  
11 and utilized that information in our analysis.

12          Q.       All right. And then under subsection D,  
13 utilities, higher fuel costs were estimated there, and  
14 that just was an increase of a little over a thousand  
15 dollars; is that correct?

16          A.       Yes.

17          Q.       Okay. And going back up to operator fees,  
18 your estimation of a reasonable fee for the owner/manager  
19 of this utility, that's based upon the system being in  
20 good working order with the repairs having been made; is  
21 that correct?

22          A.       That as well as I think some significant  
23 capital improvements that will be required to the system.  
24 You know, based on the interviews that I had with the  
25 Owens' as well as looking at the materials, there are a --

1 significant weaknesses in the system and how it currently  
2 operates that would necessitate, you know, higher annual  
3 repairs.

4                   However, if the needed improvements are  
5 made to the system, this is -- would be a more  
6 representative figure for what an annual maintenance cost  
7 would be.

8           Q.       And you address those capital expenditures  
9 in your very last paragraph of your report; is that  
10 correct?

11           A.       Correct. And that was -- again, that  
12 wasn't what we were hired to review. That was looking at  
13 the information provided by the engineering firm in terms  
14 of their estimated costs of what the repair might -- or  
15 improvements, excuse me, would cost.

16           Q.       All right. And in terms of estimating  
17 reasonable operator fees, you indicated that only a  
18 limited amount of time would be required if these capital  
19 expenditures were made and the repairs were made. What --  
20 what is your estimate of time that would be required?

21           A.       For a fully, you know, a well-run system, I  
22 would think there would be a few days a week in terms of  
23 observation and reviewing information. If there's -- any  
24 kind of leaks obviously would be on top of that. But  
25 again, based on looking -- the bulk of what I provided

1 there was based on the engineering estimate, the cost for  
2 that component of the operations, so I did not discuss  
3 specifics with the engineering firm in that respect.

4 Q. So was there any kind of an hourly rate  
5 plugged into that?

6 A. I do not know what their process for coming  
7 up with that figure was.

8 COMMISSIONER MURRAY: All right. I believe  
9 that's all of my questions. Thank you, Mr. Shepard.

10 THE WITNESS: Thank you.

11 JUDGE STEARLEY: Commissioner Jarrett?

12 QUESTIONS BY COMMISSIONER JARRETT:

13 Q. Good morning, Mr. Shepard.

14 A. Hello.

15 Q. I have just a couple of questions. As  
16 someone who's not even close to being a financial expert,  
17 can you give me an executive summary as to what is the  
18 financial condition of the company as you observed it?

19 A. Sure. Basically, it's operating at a loss  
20 situation from my perspective. The -- the current  
21 financial figures that are actually being produced I don't  
22 feel are indicative of what the true cost of operation are  
23 based on the way in which the accounting is being done.  
24 So I think that -- well, there needs to be some analysis  
25 or some additional work done in that area to make sure

1 that -- and that's what this analysis attempted to do was  
2 pull out what the true cost of operation is.

3                   You know, it's clear with the cost being  
4 based on a 1970 rate that it's not indicative of what the  
5 true cost of operations are. I think that's borne out in  
6 the annual reports that are kind of there and the analysis  
7 that this provides.

8                   Q.       You mentioned a little bit about the type  
9 of accounting that they were doing. Can you talk about  
10 that? Was -- how was their accounting? Was it good? Was  
11 it average, poor?

12                   A.       Essentially what -- because of the nature  
13 of their operation, they've got a number of systems that  
14 they operate, and cash flow in those systems vary greatly  
15 based on the payment streams. So bills are paid not  
16 really based on the company to which the bill relates but  
17 the company which has the cash available to make that  
18 payment.

19                               So when we looked at invoices, we would  
20 oftentimes see a month with no telephone bill, for  
21 example, and then two months later we see a telephone  
22 bill, and we can see on there documentation how they  
23 allocated across the different systems.

24                               COMMISSIONER JARRETT: Okay. Thank you,  
25 Mr. Shepard. I have no further questions.

1 JUDGE STEARLEY: Commissioner Gunn?

2 COMMISSIONER GUNN: I don't have any.

3 JUDGE STEARLEY: All right. Very well.

4 The Commission will tender Mr. Shepard for cross beginning  
5 with Stoddard County/R.D. Sewer. Mr. Allen?

6 MR. ALLEN: Yes. Thank you, your Honor.

7 CROSS-EXAMINATION BY MR. ALLEN:

8 Q. Mr. Shepard, my name is Terry Allen, and  
9 I'm here on behalf of the sewer companies.

10 A. Okay.

11 Q. I just have really one question. Are the  
12 costs that you identified in your report, do you view  
13 those as reasonable?

14 A. Yes, I do.

15 MR. ALLEN: That's all the questions I  
16 have.

17 JUDGE STEARLEY: Thank you, Mr. Allen.

18 Cross from Staff?

19 MR. KRUEGER: Thank you, your Honor.

20 CROSS-EXAMINATION BY MR. KRUEGER:

21 Q. Good morning, Mr. Shepard. My name is  
22 Keith Krueger. I represent the Staff.

23 A. Good morning, Keith.

24 Q. You mentioned something about the number of  
25 systems they operate in answer to a question. Who were

1 you referring to when you said they?

2 A. I apologize. Mr. Owens has three other  
3 systems in addition, I believe, to R.D. -- or the Stoddard  
4 County system.

5 Q. Does R.D. Sewer Company operate those  
6 systems or is it Mr. Owens?

7 A. It's Mr. Owens, based on my information.

8 MR. KRUEGER: Thank you. That's the only  
9 questions I have.

10 JUDGE STEARLEY: Very well.

11 Cross-examination, Office of the Public Counsel?

12 MS. BAKER: Thank you.

13 CROSS-EXAMINATION BY MS. BAKER:

14 Q. Mr. Shepard, you've not been subpoenaed to  
15 give testimony in this case, have you?

16 A. Not an official subpoena, no, ma'am.

17 Q. So you are appearing voluntarily?

18 A. Yes, that's correct.

19 Q. Were you paid by the Missouri Public  
20 Service Commission to appear today?

21 A. I am being paid for the time that I -- that  
22 I -- that I do provide testimony.

23 Q. Did you perform an audit with the purpose  
24 of issuing an unqualified opinion of this utility's  
25 operations?



1 A. No.

2 Q. So what you actually performed was a  
3 limited review of this utility; is that correct?

4 A. That's correct.

5 Q. And the limited review is not as detailed  
6 an investigation as a full audit of a company, is it?

7 A. I'm sorry. Can you repeat that question?

8 Q. A limited review is not as detailed an  
9 investigation as a full audit of a company is, is it?

10 A. That's correct. It is not in the same  
11 detail as an audit would be.

12 Q. And since you did not perform an audit and  
13 did not produce or issue an unqualified audit report, was  
14 your preparation of the utility's financial statements on  
15 an accrual basis required by GAAP or any federal or  
16 Missouri regulatory body?

17 A. It would not -- GAAP would be related to an  
18 issuance of an unqualified opinion. There was no guidance  
19 whether to use cash or accrual in the analysis. Based on  
20 my expertise, accrual accounting is the only method that  
21 would give you a true picture of what the costs are on an  
22 annual basis.

23 Q. All right. Let's go through the specific  
24 numbers from your report. Let's begin with the operator  
25 fees. Do you have that in front of you?

1           A.       Yes.

2           Q.       Did your limited review include comparison  
3 of other operating costs for similar sized regulated  
4 utilities operating in southeast Missouri?

5           A.       I requested information from the Commission  
6 to -- because they have access to that information as well  
7 as, as I said, relying on the work of the engineering firm  
8 in that respect. The information that I reviewed led me  
9 to the conclusion of the 13,800 provided by the consulting  
10 firm was appropriate.

11          Q.       Okay. And so you said that you contacted  
12 the Public Service Commission. Who exactly did you speak  
13 to?

14          A.       I believe I spoke with Jim Merciel.

15          Q.       And he is with the Staff of the Public  
16 Service Commission; is that correct?

17          A.       That's correct.

18          Q.       Did your limited review include a  
19 comparison of operator salary costs for similar sized  
20 regulated utilities operating in southeast Missouri?

21          A.       We attempted to, but unfortunately the  
22 nature of this system compared to other systems in the  
23 area or in the state, there's not much comparison in that  
24 regard. The mechanical system that this is and the size  
25 is not really easily comparable to other systems.

1           Q.       The work papers that you provided to the  
2 Data Request from the Office of the Public Counsel  
3 indicate that you were given four utilities to look at as  
4 far as what costs for those utilities were; is that  
5 correct?

6           A.       Correct.

7           Q.       And who gave you those four utility  
8 numbers?

9           A.       As I mentioned, Jim Merciel provided that  
10 information.

11          Q.       Did you independently verify the accuracy  
12 and the correctness of the salary costs Mr. Merciel  
13 provided to you?

14          A.       No, I did not.

15          Q.       Did any of the comparison companies  
16 provided by Mr. Merciel include both sewer and water  
17 operations?

18          A.       I believe that one of them was a water and  
19 sewer operation. The others were sewer -- I believe sewer  
20 only operations.

21          Q.       Actually, from looking at your work papers,  
22 is it correct that actually two of those were water and  
23 sewer?

24          A.       SK&M was water and sewer. LW Sewer,  
25 Millcreek Sewer.

1 Q. And I see one in your work papers named  
2 Foxfire; is that correct?

3 A. Sorry. I don't recall. I'm not sure  
4 whether that one was a water and sewer based on what I'm  
5 looking at right now.

6 Q. Okay. What I'm looking at is the work  
7 papers that were provided.

8 A. Oh, I'm sorry. I apologize. I do see  
9 that.  
10 That does indicate that they're a water system as well.

11 Q. And you were aware that Stoddard County  
12 Sewer is sewer only?

13 A. Correct.

14 Q. Are you aware that water companies usually  
15 require more testing and, as such, are more labor  
16 intensive to operate than sewer operations?

17 A. Yes, I would believe that to be true.

18 Q. So whenever you developed your answer to  
19 this expense, you basically developed a range based on the  
20 four companies' salaries provided by Mr. Merciel, two of  
21 which also include water service, and then chose the high  
22 end of the range as your reasonable number; is that  
23 correct?

24 A. That's correct. It's a very mechanical  
25 system, of which requires more labor and intensive

1 personnel.

2 Q. And again, did you compare that higher  
3 number with any other Missouri regulated utilities to  
4 verify that that was a comparable number?

5 A. No. My analysis was based on the work  
6 papers that you're reviewing.

7 Q. You're aware that Mr. Merciel works for the  
8 Staff of the Public Service Commission, correct?

9 A. I am aware of that.

10 Q. And you are -- are you also aware that the  
11 Staff of the Public Service Commission is a party to this  
12 case?

13 A. Yes, I am.

14 Q. And you are aware that the Office of the  
15 Public Counsel is also a party to this case, aren't you?

16 A. Yes.

17 Q. But you did not contact the Office of the  
18 Public Counsel for its input into what reasonable operator  
19 fees would be, did you?

20 A. No, I did not.

21 Q. Let's move on to the repairs. In your  
22 testimony and in the work papers that you provided, you  
23 stated that this information was received from Smith &  
24 Company Engineering; is that correct?

25 A. Yes.

1 Q. Did you verify the figures that were  
2 provided by Smith & Company Engineering?

3 A. I had no reason to doubt their  
4 authenticity.

5 Q. So you did not verify?

6 A. No, I did not.

7 Q. Did you compare the figures provided by  
8 Smith & Company Engineering with figures for comparable  
9 Missouri utilities?

10 A. No, I did not.

11 Q. And you also did not contact the Office of  
12 the Public Counsel regarding what it believed was the  
13 reasonable figures for repairs, did you?

14 A. No, I did not.

15 Q. Moving on to utilities, your work papers do  
16 not give any indication of where this information came  
17 from. Was it provided by the company?

18 A. Yes, it was, by looking at invoices  
19 available in the company records.

20 Q. And I see that in your work papers by  
21 adding the number for the various utilities you came up  
22 with an actual cost of \$8,236; isn't that correct?

23 A. Correct.

24 Q. But then you subjectively and without  
25 support rounded that number to 8,500, didn't you?

1 A. Yes, I did.

2 Q. Did you verify the figures that were  
3 provided by the company?

4 A. I looked at specific invoices to obtain  
5 that information.

6 Q. Did you compare the figures provided by the  
7 company with figures of comparable Missouri utilities?

8 A. I didn't feel that was necessary.

9 Q. Did you contact the Office of the Public  
10 Counsel regarding what it believed was the reasonable  
11 figures for utilities?

12 A. No, I did not.

13 Q. Moving on to sludge hauling, again, your  
14 work papers state that this information was provided -- or  
15 was obtained from Smith & Company Engineering; is that  
16 correct?

17 A. Correct.

18 Q. Did you verify these figures provided by  
19 Smith & Company Engineering?

20 A. Again, I didn't have reason to do so.

21 Q. Did you compare these figures provided by  
22 Smith & Company Engineering with figures for comparable  
23 Missouri utilities?

24 A. No, I did not.

25 Q. And again, you did not contact the Office

1 of the Public Counsel regarding what it believed the  
2 reasonable figures for sludge hauling would be?

3 A. No, I did not.

4 Q. The next item is effluent testing, and your  
5 work papers do not give any indication for where this  
6 information came from. Was it provided by the company?

7 A. It was provided by the company in a notice  
8 directly from their effluent testing provider.

9 Q. Did you review the notice from the  
10 supplier?

11 A. Yes, I did. I indicate that in my report  
12 on page 3.

13 Q. Did you compare the figures that were given  
14 by the company and by this supplier as being comparable  
15 with other Missouri utilities?

16 A. I did not deem it necessary to do so.

17 Q. Did you contact the Office of the Public  
18 Counsel regarding what it believed was the reasonable  
19 figures for testing?

20 A. I did not -- I did not do so.

21 Q. For mowing, your work papers again do not  
22 give any indication of where this information came from.  
23 Did it come from the company?

24 A. It was based on reviewing quotes provided  
25 by the company.



1 Q. Was this information given to you in  
2 written form?

3 A. I believe it was, but I don't believe I  
4 retained a copy of that information.

5 Q. Do you recall who the quotes were from?

6 A. I do not recall the name of the company.

7 Q. Were any of the quotes from family members  
8 of the Owens'?

9 A. Not to my knowledge, no.

10 Q. Did you verify the figures that were  
11 provided by the company?

12 A. In terms of verifying it to what?

13 Q. Did you compare -- I guess I'll rephrase.  
14 Did you compare the figures provided by the  
15 company with figures for comparable Missouri utilities?

16 A. No, I did not.

17 Q. Did you contact the Office of the Public  
18 Counsel regarding what it believed was the reasonable  
19 figures for mowing?

20 A. No, I did not.

21 Q. The next item is billing expenses. Your  
22 work papers state that you spoke with Mr. Krueger of the  
23 Missouri Public Service Commission; is that correct?

24 A. Yes, it does.

25 Q. And that Mr. Krueger provided a figure of

1 \$1.55 per bill from the 2000 rate case; is that correct?

2 A. Correct.

3 Q. Looking at your work papers, in your  
4 calculations you rounded that figure up from \$1.55 to  
5 \$2.00; is that correct?

6 A. That's correct.

7 Q. And that's how you came up with the number  
8 4,128, correct?

9 A. Correct.

10 Q. Then what I assume is a verification, you  
11 estimated ten hours per week or 520 hours per year for  
12 billing and multiplied that by an hourly rate of \$8.00 to  
13 get another estimate of \$4,160; is that correct?

14 A. That's correct.

15 Q. Then you compared the 4,128 number with the  
16 4,160 number and subjectively and without support used the  
17 highest number; is that correct?

18 A. I had support based on the analysis, so it  
19 wasn't entirely subjective. I used the 4,160 based on my  
20 calculation.

21 Q. What was your calculations of the estimated  
22 hours per week based on?

23 A. Based on the size of the system and what I  
24 feel in my professional opinion it would take to do the  
25 billing and bookkeeping related to that entity.

1 Q. And where did the amount of \$8.00 per hour  
2 come from?

3 A. Again, based on my knowledge of what rates  
4 for services of that nature would require.

5 Q. Did you compare your knowledge and your  
6 estimated rates with other estimated rates in Missouri for  
7 comparable Missouri utilities?

8 A. No. I didn't know that that would  
9 necessarily provide support or a deterrent against that  
10 figure.

11 Q. For the \$1.55 figure that Mr. Krueger  
12 provided to you, did you verify the figures that  
13 Mr. Krueger provided?

14 A. Well, they were in filed documents provided  
15 by the Commission, so I obtained -- I looked at the actual  
16 work papers provided in that case, which I believe were  
17 admitted into evidence and that were available to all  
18 parties. So that's the figure that I used, so that's the  
19 verification process I obtained.

20 Q. Did you compare those figures with other  
21 comparable Missouri utilities?

22 A. No. That seemed like a reasonable basis.

23 Q. Did you review -- or do you know what  
24 support the Staff relied upon to get that \$1.55 number?

25 A. I do not recall at this time.

1 Q. Did you contact the Office of the Public  
2 Counsel regarding what it believed was reasonable figures  
3 for billing expenses?

4 A. No, I did not.

5 Q. The next item is postage or office  
6 supplies.

7 A. Okay.

8 Q. Your work papers again do not give any  
9 indication of where this information came from. Was it  
10 provided by the company?

11 A. Yes, it was.

12 Q. Did you review any documentation provided  
13 by the company or was it given to you orally?

14 A. It was a combination thereof.

15 Q. Looking at your work papers, you added the  
16 number of -- that was given to you for the postage and the  
17 various office supplies to come up with an actual cost of  
18 3,065; is that correct?

19 A. That's correct.

20 Q. But then you subjectively and without  
21 support rounded that number to 3,100, correct?

22 A. Correct.

23 Q. Did you verify the figures provided by the  
24 company?

25 A. Based on looking at invoices, I would

1 consider that verifying.

2 Q. Did you compare the figures provided by the  
3 company with figures for comparable Missouri utilities?

4 A. No, I did not.

5 Q. Did you contact the office of the Public  
6 Counsel regarding what it believed was reasonable figures  
7 for postage and office supplies?

8 A. No, I did not.

9 Q. The next item is telecommunications. Your  
10 work papers do not give any indication of where this  
11 information came from. Was it provided by the company?

12 A. In the report it indicates that it was  
13 through review of specific invoices provided by the  
14 company.

15 Q. And the numbers are -- looking at your work  
16 papers, the numbers you list include a charge for Internet  
17 and cable; is that correct?

18 A. That's correct.

19 Q. Did you question the reasonableness of  
20 including Internet and cable charges in a regulated  
21 utility rate?

22 A. Yes, I did, ma'am, and actually the reason  
23 is, in that area it's impossible or not able to separate  
24 the cable from the Internet package provided by their --  
25 from their service provider. And the need for Internet is

1 so they have an online method for receiving e-mail  
2 questions related to their sewer operations. So I  
3 thought it was absolutely appropriate to have both  
4 telecommunication as well as online access to information  
5 based on today's society.

6 Q. Did you prorate out the cable charges from  
7 the Internet charges?

8 A. No, I did not. I would not have had any  
9 basis by which to do that. I don't have an expertise in  
10 Internet or cable allocations.

11 Q. Did you request any documentation of the  
12 Internet cable bills to determine what portion of it was  
13 Internet and what portion of it was cable?

14 A. No. In my opinion, it would have been  
15 negligible to the analysis.

16 Q. Your work papers indicate that the numbers  
17 include a cell phone for someone named LaDawn; is that  
18 correct?

19 A. That's correct.

20 Q. Did you question the reasonableness of  
21 including a cell phone for LaDawn in a regulated utility  
22 rate?

23 A. Yes, I did. Yes, I did, ma'am. The  
24 rationale was that she assists Rodger in operations.  
25 She's the one that does the billing. So if there's

1 instances where she may receive a call into the home  
2 office or while she's out, she can contact Rodger, who may  
3 be at a different location, to assist or otherwise address  
4 the matter that might be at hand. There are emergency  
5 situations that occur that they need to be able to be in  
6 constant communication.

7 Q. Did you question whether any of the  
8 telecommunications were ever used for personal use as well  
9 as for business use?

10 A. I did not.

11 Q. So you did not allocate out any of the  
12 costs for personal use?

13 A. I do believe they were fixed fees, fixed  
14 fee lines as opposed to hourly -- or I'm sorry, minute by  
15 minute purchases.

16 Q. Your work papers state that you divided the  
17 total by four systems to get the figure for Stoddard  
18 County; is that correct?

19 A. That's correct.

20 Q. Did you verify the amount of time that is  
21 spent on each utility?

22 A. No. I believe that that effort would --  
23 you know, in a function like a phone, it would be more  
24 appropriate to allocate that by number of systems as  
25 opposed to minutes or other kind of usage.

1 Q. And again, you did not allocate out any  
2 personal use of the phones?

3 A. Correct. The telephone, the main telephone  
4 line would be a business line.

5 Q. Have you done -- ever performed any cost  
6 allocations for regulated utilities?

7 A. No, I have not.

8 Q. Did you verify the figures provided by the  
9 company with other comparable Missouri utilities?

10 A. No. Again, these were based on actual  
11 expense incurred by that company, so it wasn't necessary  
12 to compare it to other systems.

13 Q. Did you contact the Office of the Public  
14 Counsel regarding what it believed was reasonable figures  
15 for telecommunications?

16 A. No, ma'am.

17 Q. Were the figures for telecommunications  
18 actual costs or accrual costs?

19 A. They would have been actual costs based on  
20 12 months of expenditures.

21 Q. Okay. Let's go on to the next item, which  
22 is rent. Your work papers do not give any indication of  
23 where this information came from. Was it provided by the  
24 company?

25 A. That was provided by looking at -- yes, the



1 information provided by the company and what would be a  
2 reasonable cost for rental and other overhead costs.

3 Q. Did you verify the figures provided by the  
4 company?

5 A. To the extent they were based on invoices,  
6 yes.

7 Q. And what extent of those numbers were not  
8 based on invoices?

9 A. I would say, I mean, just the general  
10 overhead piece of that or other utilities at the house  
11 itself, again, because you've -- the full house and I  
12 think they have a, what's called an outbuilding where they  
13 perform most of these functions for their sewer companies.

14 Q. Did you compare the figures provided by the  
15 company with figures for comparable Missouri utilities?

16 A. No, I did not.

17 Q. Did you contact the Office of the Public  
18 Counsel regarding what it believed were the reasonable  
19 figures for rent?

20 A. No, I did not.

21 Q. The next item is insurance. Your work  
22 papers indicate that these figures are based on verbal  
23 information provided by LaDawn; is that correct?

24 A. Yes, it is.

25 Q. So you did not get the information by

1 reviewing the insurance policies themselves, correct?

2 A. We looked at invoices for insurance costs  
3 that they -- that they had historically, which is what  
4 that -- I believe that 1,350 in the work papers  
5 represents, and then that's how I backed into what would  
6 be a reasonable figure based on the verbal information  
7 provided by LaDawn.

8 Q. So you looked at the costs for the  
9 insurance. Did you look at the policies themselves to see  
10 what they included?

11 A. In terms of what vehicles and what -- yes,  
12 I did.

13 Q. Your work papers indicate that the  
14 information provided to you included insurance for four  
15 personal vehicles and a camper; is that correct?

16 A. Well, actually, it was five vehicles and a  
17 camper. That's what the policies indicated, yes.

18 Q. Five vehicles. Okay. Your calculations  
19 came up with an average cost of \$415 per vehicle, and you  
20 assume that one of the vehicles was required for the  
21 utility; is that correct?

22 A. Correct.

23 Q. Then you subjectively and without support  
24 rounded up that number to \$500 in your calculation, didn't  
25 you?

1           A.       I don't believe that in my work papers say  
2 a figure -- oh, I'm sorry. 500 is correct.

3           Q.       Did you compare the figures provided by the  
4 company with figures for comparable Missouri utilities?

5           A.       No, I did not.

6           Q.       Did you contact the Office of the Public  
7 Counsel regarding what it believed was reasonable figures  
8 for insurance?

9           A.       No, I did not.

10          Q.       The next item is outside services. Again,  
11 your work papers do not give any indication for where this  
12 information came from. Was it provided by the company?

13          A.       That was, yes, basically provided by the  
14 company, and with, you know, knowledge of what I thought  
15 the costs would be for that service.

16          Q.       Did you verify the figures provided by the  
17 company?

18          A.       Verify them to my expertise and experience,  
19 yes.

20          Q.       Did you compare the figures provided by the  
21 company or your own experience with figures for comparable  
22 Missouri utilities?

23          A.       No. They may not be indicative of what  
24 would be required of this system.

25          Q.       Did you contact the Office of the Public

1 Counsel regarding what it believed were the reasonable  
2 figures for outside services?

3 A. Again, no, I did not.

4 Q. The next item is regulatory commission.  
5 Your work papers indicate that this information was  
6 provided by Mr. Merciel and a Ms. Davis also of the Public  
7 Service Commission; is that correct?

8 A. That's correct.

9 Q. Did you verify the figures that were  
10 provided by Mr. Merciel and Ms. Davis?

11 A. Because they are at the source of the  
12 charge for that -- for those fees, I did not do anything  
13 other than take their information. I believe at this  
14 point they were in the process of finalizing their rates,  
15 probably would have a document available that would have  
16 been sent to the Owens' or available to the Commission  
17 that would support that amount.

18 Q. Did you see that document directly?

19 A. Based on the timing of when this report was  
20 required to be filed, I relied on the information provided  
21 verbally from the two individuals.

22 Q. Did you contact the Office of the Public  
23 Counsel regarding what the reasonable figures for  
24 regulatory commission fees would be?

25 A. No, because they don't set that fee.

1 Q. The next item is the Department of Natural  
2 Resources or DNR fees. Your work papers do not give any  
3 indication for where this information came from. Was it  
4 provided by the company?

5 A. It was provided by -- I think it's standard  
6 information available to the public on the Internet or  
7 through contact with Department of Natural Resources.

8 Q. Did you speak to anyone in particular at  
9 the Department of Natural Resources?

10 A. No, I did not.

11 Q. Did you get a printout or a document that  
12 you reviewed?

13 A. No. I didn't retain that. I believe I  
14 viewed it and it was supported by other costs that I saw  
15 that they were being charged on an annual basis, so I  
16 thought -- I felt that that was appropriate.

17 Q. Did you verify the fees based on the size  
18 of the sewer plant at Stoddard County?

19 A. That was an historical charge that they had  
20 been given, so I did not verify to anything other than  
21 that.

22 Q. Are you aware that DNR fees are based on  
23 the permitted design capacity of a sewer plant?

24 A. Yes, I am.

25 Q. Are you aware that there is an error in the

1 permitted design capacity for Stoddard County Sewer  
2 causing the DNR fees to be higher than what they would be  
3 if the permit was corrected?

4 A. No. I was not involved in that analysis  
5 nor hired to do that analysis.

6 Q. Did you compare the figures that you found  
7 for comparable Missouri utilities?

8 A. No, I did not.

9 Q. Did you contact the Office of the Public  
10 Counsel regarding what it believed the reasonable figures  
11 for DNR's fees would be?

12 A. No, I did not.

13 Q. The next item is property tax. Your work  
14 papers do not give any indication where this information  
15 came from. Was it provided by the company?

16 A. They were provided by the company.

17 Q. Did you verify the figures provided by the  
18 company?

19 A. Based on historical expenditures, yes.

20 Q. Did you compare the figures provided by the  
21 company with figures for comparable Missouri utilities?

22 A. No. Their rates may be different based on  
23 their location.

24 Q. Did you contact the Office of the Public  
25 Counsel regarding what it believed was the reasonable

1 figures for property tax?

2 A. No, I did not.

3 Q. The next item is depreciation, and your  
4 work papers indicate that this figure is based on  
5 depreciation from annual reports and knowledge of  
6 additions made or to be made; is that correct?

7 A. That's correct.

8 Q. Are you aware that R.D. Sewer has paid  
9 nothing for the Stoddard County Sewer plant?

10 A. Yes.

11 Q. Did you verify the information from the  
12 annual reports or the knowledge of additions made or to be  
13 made?

14 A. No. I reviewed the information through the  
15 annual reports based on the inventory that they would  
16 have -- or fixed assets inventory that they claim to have  
17 held.

18 Q. Did you compare the information from the  
19 annual report with figures for comparable Missouri  
20 utilities?

21 A. Well, again, they may not be comparable  
22 being that their systems may be different and the assets  
23 they house may be different.

24 Q. Did you contact the Office of the Public  
25 Counsel regarding what it believed was the reasonable

1 figures for depreciation?

2 A. No, ma'am.

3 Q. The next item is corporate registration,  
4 and your work papers do not give any indication for where  
5 this information came from. Was it provided by the  
6 company?

7 A. It was provided based -- essentially by the  
8 company and looking at the rate setting documents from the  
9 2002 rate setting case.

10 Q. Did you verify the figures provided by the  
11 company and in the 2002 case?

12 A. No, ma'am, I did not.

13 Q. Did you look into the basis for the numbers  
14 from the 2002 case?

15 A. No, I did not.

16 Q. Did you compare the figures provided by the  
17 company and in the 2002 case with figures for comparable  
18 Missouri utilities?

19 A. No, because they would depend on each  
20 utility's ownership structure.

21 Q. Did you contact the Office of the Public  
22 Counsel regarding what it believed was the reasonable  
23 figures for corporate registration?

24 A. No, I did not.

25 Q. The next item is return on plant. Your



1 work papers indicate that information regarding an  
2 appropriate rate of return of 11 percent was provided by  
3 Mr. Merciel; is that correct?

4 A. That's correct.

5 Q. Did you verify the information provided by  
6 Mr. Merciel?

7 A. I did not deem it necessary.

8 Q. Did you compare the information with other  
9 Public Service Commission approved rates of return for  
10 comparable Missouri regulated utilities?

11 A. I believe that to be the rate that they use  
12 within the Commission to determine that figure.

13 Q. Did you look at any other Public Service  
14 Commission cases to review and compare the rate of return  
15 that was given to you by Mr. Merciel?

16 A. No, I did not.

17 Q. Did you contact the Office of the Public  
18 Counsel regarding what it believed the reasonable return  
19 on plant would be?

20 A. No, I did not.

21 Q. Before I asked you if you knew that R.D.  
22 Sewer did not pay for the Stoddard County Sewer plant and  
23 you said that you knew that they did not; is that correct?

24 A. It was based on my reviewing materials, I  
25 knew they had not paid any money to acquire or obtain the

1 assets of the company.

2 Q. In your financial experience, would you  
3 expect a return on plant for which no investment was made?

4 A. The presumption would be that they would  
5 take over the assets that existed, that it was an asset  
6 transfer and, therefore, would generate a return on the  
7 assets that they're -- that they're responsible for  
8 operating.

9 Q. In a regulated environment, would you still  
10 expect that -- that there would be a return on plant for  
11 investment for which no investment was made?

12 A. In order to continually reinvest in the  
13 system, it's necessary to generate some profit.  
14 Otherwise, the system would just continue to go in  
15 disrepair and not be serving the public interest.

16 Q. Are you aware of any Missouri Public  
17 Service Commission case where a return on plant was given  
18 when there was no investment?

19 A. I'm not aware of that.

20 Q. The next item is uncollectible accounts.  
21 Your work papers indicate that this figure is based on  
22 Bonadio and Company experience; is that correct?

23 A. That's correct.

24 Q. Did you verify the reasonableness of your  
25 own figure?

1           A.       There was no need to do so.

2           Q.       Did you compare that figure with figures  
3 for comparable Missouri utilities?

4           A.       Again, it wouldn't be necessarily  
5 indicative of this system's experience.

6           Q.       Did you contact the Office of the Public  
7 Counsel regarding what it believed was the reasonable  
8 figures for uncollectible accounts?

9           A.       No, I did not.

10          Q.       The last item is other, and your work  
11 papers do not give any indication where this information  
12 came from. Was it provided by the company?

13          A.       That one I believe is something that we put  
14 on there based on the fact that these numbers are not  
15 exact sciences and that there are things that may have  
16 been missed in the analysis, and we put that in there as a  
17 consideration for that.

18          Q.       Did you verify the figures that you found  
19 reasonable with other comparable Missouri utilities?

20          A.       No, I did not.

21          Q.       Did you contact the Office of the Public  
22 Counsel regarding what it believed was the reasonable  
23 figures for other charges to be?

24          A.       No, I did not.

25          Q.       Your answers throughout going through each

1 item in your report indicates that Public Counsel was  
2 never contacted regarding what the reasonable charges  
3 should be; is that correct?

4 A. That's correct.

5 Q. And you stated before that you were hired  
6 to give a limited review that was neutral, independent and  
7 objective; is that correct?

8 A. That's correct.

9 Q. Knowing that the input of one party was  
10 completely omitted, do you believe that your limited  
11 review was a neutral, independent and objective accounting  
12 analysis as stated in your testimony?

13 A. I believe it to be.

14 MS. BAKER: No further questions.

15 JUDGE STEARLEY: Thank you, Ms. Baker.

16 FURTHER QUESTIONS BY JUDGE STEARLEY:

17 Q. Mr. Shepard?

18 A. Yes, sir.

19 BY JUDGE STEARLEY:

20 Q. On a couple of items of Ms. Baker's walk  
21 through, she prefaced some of her questions with the  
22 terminology that you, quote, subjectively and without  
23 support rounded certain numbers. Do you recall her using  
24 those terms?

25 A. Yes, I do.

1           Q.       And three specific examples I can give you  
2 is when she was going through the billing expenses, office  
3 supplies and insurance expenses. And I believe you  
4 answered in the affirmative on those, but I wanted to be  
5 sure that you understood the way she was phrasing her  
6 question. Did you mean to say that when you were rounding  
7 up figures in your audit, that you were doing so without  
8 support?

9           A.       I was, based on the fact that these aren't  
10 exact science and that's common in terms of analysis of  
11 this nature to round certain figures that are not exact  
12 figures.

13          Q.       Okay. So with regard to those specific  
14 questions, I just wanted to be sure you understood her  
15 questioning.

16          A.       Yes, I do.

17                   JUDGE STEARLEY: All right. Very good. Do  
18 any of the other Commissioners have any questions for  
19 Mr. Shepard at this time?

20                   COMMISSIONER MURRAY: You asked the only  
21 question I had. Thank you, Judge.

22                   JUDGE STEARLEY: Commissioner Jarrett?

23                   COMMISSIONER JARRETT: No questions.

24                   JUDGE STEARLEY: Commissioner Gunn?

25                   COMMISSIONER GUNN: I just have one or two.

1 QUESTIONS BY COMMISSIONER GUNN:

2 Q. Would the allocation or split between an  
3 Internet/cable bill, if you had done that analysis, would  
4 it have had any material impact on your conclusions?

5 A. I don't believe it would have had a  
6 material impact on the bottom line result.

7 Q. How about for a cell phone?

8 A. The cell phone either. I just -- I don't  
9 think in my opinion that there would be a material  
10 difference in the result to the figures.

11 Q. And property taxes are what they are,  
12 correct?

13 A. Say that again.

14 Q. Property taxes are what the property taxes  
15 are, correct?

16 A. Exactly.

17 Q. Is there any reason to inquire to any other  
18 party as to whether those property taxes are reasonable or  
19 not?

20 A. Based on the figure of what those property  
21 taxes were, I did not deem it necessary to confirm any  
22 other information.

23 COMMISSIONER GUNN: Thank you. I don't  
24 have any other questions.

25 JUDGE STEARLEY: All right. Mr. Shepard, I

1 believe that's going to conclude your testimony. I'd like  
2 to thank you for your appearance today, and you are going  
3 to be released at this time from the Commission.

4 THE WITNESS: Thank you very much. If  
5 there's anything further I can provide, don't hesitate to  
6 contact me.

7 JUDGE STEARLEY: Before you hang up, let me  
8 ask -- I heard a tone on our phone line a little bit ago.  
9 Mr. Williams, have you joined the phone contact?

10 MR. WILLIAMS: Yes, sir, I have.

11 JUDGE STEARLEY: All right. I just wanted  
12 to be sure you were on the line. We're going to take  
13 about a ten-minute break at this time. When we come back,  
14 we will pick up with your testimony, Mr. Williams. So  
15 please hang on, and I did want to ask you a question  
16 during the break as well.

17 (A BREAK WAS TAKEN.)

18 JUDGE STEARLEY: We're going to go back on  
19 the record at this time. We are back on the record, and  
20 the Commission is calling Mr. Rodger G. Williams, II to  
21 the stand. Mr. Williams, I know we can't see you because  
22 your appearance is by telephone today. Would you please  
23 raise your right hand and I will swear you in.

24 THE WITNESS: Yes, sir.

25 (Witness sworn.)

1 RODGER G. WILLIAMS, II testified as follows:

2 QUESTIONS BY JUDGE STEARLEY:

3 Q. Would you please state and spell your name  
4 for the record.

5 A. Rodger, R-o-d-g-e-r, Williams,  
6 W-i-l-l-i-a-m-s, II.

7 Q. Thank you, Mr. Williams. And Mr. Williams,  
8 would you please tell the Commission what your occupation  
9 is and how you're currently employed?

10 A. I'm a professional engineer employed with  
11 SH Smith & Company, engineering company in Poplar Bluff,  
12 Missouri.

13 Q. And how long have you been employed with  
14 Smith & Company?

15 A. Six years.

16 Q. And could you please tell us about your  
17 educational background?

18 A. I have a degree in civil engineering  
19 through Arkansas State University in Jonesboro, and then I  
20 have my professional engineering license through the State  
21 of Missouri.

22 Q. All right. And you just mentioned license  
23 I believe there. What are -- what professional licenses  
24 do you hold?

25 A. Professional engineer in the state of



1 Missouri.

2 Q. Do you have any professional certifications  
3 in addition to that?

4 A. No, sir.

5 Q. And as part of your profession, do you  
6 complete continuing education?

7 A. Yes, we do.

8 Q. And would you please describe what type of  
9 continuing education you complete?

10 A. Basically seminars and refresher courses on  
11 water and wastewater primarily.

12 Q. All right.

13 A. Have to have 30 hours every two years.

14 Q. 30 hours every two years. Okay. And would  
15 you tell us about your job experience and your job  
16 history?

17 A. I work basically in water and wastewater  
18 designing plants, rehabbing plants, coming up with  
19 preliminary engineering reports to obtain funding for  
20 various municipal utility companies.

21 Q. Prior to working for Smith & Company, could  
22 you tell us about your employment?

23 A. Could you repeat that?

24 Q. I probably asked that a little weird. If  
25 you could please give us your employment history prior to

1 you coming to work for Smith & Company.

2 A. I came to work straight out of college for  
3 Smith & Company.

4 Q. And are there any other qualifications that  
5 you have in your area of expertise besides those you've  
6 told us about?

7 A. No, sir.

8 Q. And how did you get involved in this case,  
9 Mr. Williams?

10 A. Our office was contacted by the Public  
11 Service Commission and requested us to prepare a report  
12 analysis on the existing conditions of the wastewater  
13 treatment system for Stoddard County Sewer Company.

14 Q. Were you responding to a request for  
15 proposals?

16 A. Yes.

17 Q. And what exactly did the Commission retain  
18 you to do?

19 A. To prepare an engineering report explaining  
20 existing and the proposed conditions of the wastewater  
21 treatment facility.

22 Q. And you did, in fact, prepare such a report  
23 and file it with the Commission, did you not?

24 A. Yes, sir.

25 Q. And that report involved your engineering

1 analysis of the Stoddard County Sewer Company, correct?

2 A. Yes, sir.

3 Q. And what materials did you review to  
4 prepare your report?

5 A. We obtained files from the Department of  
6 Natural Resources, as well as anything we could obtain  
7 through the Stoddard County Sewer Company.

8 Q. And did you also do an onsite inspection?

9 A. Yes, sir, we did.

10 Q. Were there any other materials or records  
11 available for your review that you did not utilize?

12 A. No, sir, I don't believe so.

13 Q. Were there any other records or materials  
14 that you would have requested to review that you were not  
15 provided with?

16 A. The only things, we could not get a  
17 detailed drawing or schematic of the existing sewer lines.

18 Q. Do you feel you had all necessary materials  
19 that you required in order to prepare your analysis?

20 A. Yes, sir.

21 Q. And using those materials, you prepared  
22 your audit and analysis of the company; is that correct?

23 A. Yes, sir.

24 Q. Without giving specifics, what types of  
25 information is included in your engineering analysis?

1           A.       Descriptions of the existing plant,  
2 recommended alternatives to upgrade it to meet DNR  
3 requirements, as well as cost analysis of what our company  
4 feels are accurate estimates based on previous projects  
5 that we have done as well as other engineering firms have  
6 completed in the state.

7           Q.       Okay. And the methods that you employed in  
8 preparing your engineering analysis, is it fair to say  
9 those are the methods that are generally accepted in your  
10 profession?

11          A.       Yes, sir.

12          Q.       And as part of your report, you included  
13 some pictures; is that correct?

14          A.       Yes.

15          Q.       And how were those pictures taken?

16          A.       With a digital camera.

17          Q.       So they did not require any developing?

18          A.       Could you repeat that?

19          Q.       So those pictures did not require any type  
20 of photo processing?

21          A.       No, sir.

22          Q.       They were just digital --

23          A.       Yes.

24          Q.       -- and you included those with your report?

25          A.       Yes.

1 Q. And did any other individuals assist you in  
2 any way with the preparation of your report?

3 A. Yes, senior engineer Dan Molloy in our  
4 office, and then junior engineer Jacob Ortega.

5 Q. Are you the primary author of the report?

6 A. Yes, sir.

7 Q. Did you draft it in its entirety or did you  
8 have some assistance from the other individuals you named?

9 A. No. I had assistance from Jacob Ortega.

10 Q. However, you have reviewed your report for  
11 its accuracy and correctness, have you not?

12 A. Yes.

13 Q. And you have, in fact, provided a statement  
14 verifying to the Commission the contents of the report?

15 A. Yes, I have.

16 Q. And the analysis and conclusions you render  
17 in your report are a product of your work and review; is  
18 that correct?

19 A. Yes.

20 Q. Did the Commission direct you in any way  
21 with regard to reaching any type of particular result when  
22 you prepared your report?

23 A. No, sir.

24 Q. Did the Commission ask you to revise your  
25 report in any way once you filed it with the Commission?

1 A. No, they did not.

2 Q. Do you need to make any changes or  
3 corrections to the report you filed?

4 A. No, sir.

5 Q. All right. And if you were retained today  
6 by the Commission and had the same information available  
7 to you today to produce this report, would this report be  
8 the same substantially as you have submitted it to the  
9 Commission?

10 A. Yes.

11 Q. Is all the information in your report true  
12 and correct to the best of your knowledge, information and  
13 belief?

14 A. Yes.

15 Q. All right. Mr. Williams, I would like to  
16 direct you at this time to the Commission's web page,  
17 because it's my understanding you do have Internet access  
18 in your office?

19 A. That's correct.

20 Q. And you are able to access the Commission's  
21 web page; is that correct?

22 A. Yes, sir.

23 Q. On that page there's a link to the  
24 Commission's electronic filing and information system, and  
25 you are able to access that; is that correct?

1 A. Yes.

2 Q. And from that page, have you been able to  
3 access the docket sheet for this particular case?

4 A. Yes, I have.

5 Q. And I would refer you on that docket sheet  
6 to go to item No. 26 and open that document up if you  
7 would.

8 A. Okay.

9 Q. Is that an accurate copy of your  
10 engineering report as filed?

11 A. Yes.

12 Q. I would also direct you to EFIS entry  
13 No. 41 on that docket sheet.

14 A. Okay.

15 Q. And the document you find there, does that  
16 include a statement, your statement of verification of the  
17 report?

18 A. Hang on just one second. Yes, it does.

19 Q. Does that also include the resumes of  
20 yourself, Mr. Molloy and Mr. Ortega?

21 A. Yes.

22 Q. Are there any -- is there any need to make  
23 any changes to any of those documents?

24 A. No, sir.

25 Q. Are there any other documents or exhibits

1 that you wish to file with the Commission?

2 A. No.

3 JUDGE STEARLEY: Very well. Having  
4 authenticated your documents, I have marked those as  
5 Exhibits No. 3 for your engineering report and Exhibit  
6 No. 4 for your statement of verification and resumes, and  
7 the Commission offers Exhibits 3 and 4 into evidence. Are  
8 there any objections?

9 MS. BAKER: Your Honor, before we get to  
10 the objections, may I voir dire this witness as well?

11 JUDGE STEARLEY: Certainly. Mr. Williams,  
12 just so you understand, attorney Baker from the Office of  
13 Public Counsel has made a request to do what's called a  
14 voir dire, so she's going to ask you a series of  
15 questions.

16 THE WITNESS: Okay.

17 JUDGE STEARLEY: And please answer those  
18 questions for her.

19 You may proceed, Ms. Baker.

20 MS. BAKER: Thank you.

21 VOIR DIRE EXAMINATION BY MS. BAKER:

22 Q. Mr. Williams, you stated that yourself,  
23 Mr. Ortega and Mr. Molloy participated in the review of  
24 the Stoddard County Sewer system; is that correct?

25 A. Yes.



1           Q.       In your response to OPC Data Request 1007,  
2 you stated that neither Mr. Ortega nor Mr. Molloy has had  
3 any specific regulated utility operation or ratemaking  
4 education or training; is that correct?

5           A.       Yes.

6           Q.       In response to OPC Data Request 1008, you  
7 stated that you have not received any formal regulated  
8 utility operation or regulatory ratemaking theory or  
9 concept education; is that correct?

10          A.       Yes.

11          Q.       Have you, Mr. Ortega or Mr. Molloy ever  
12 provided written or oral testimony in a federal or state  
13 regulated utility case?

14          A.       No.

15          Q.       Do you consider yourself, Mr. Ortega or  
16 Mr. Molloy to be well versed in Missouri statutes and  
17 Missouri Public Service Commission rules and regulations  
18 that govern the operation and ratemaking of regulated  
19 utilities in the state of Missouri?

20          A.       Yes.

21          Q.       You would not say that yourself or  
22 Mr. Ortega or Mr. Molloy were experts in a -- were experts  
23 in regulated utility ratemaking; is that correct?

24          A.       Could you repeat that?

25          Q.       Maybe I'll rephrase it a little bit better.



1                   Good morning, Mr. Williams.

2                   THE WITNESS: Good morning.

3                   COMMISSIONER MURRAY: I'm sorry. I don't  
4 know why I thought it wouldn't come to me this quickly, so  
5 I'm a little bit slow here. Just give me a moment.  
6 Judge, I'm going to pass.

7                   JUDGE STEARLEY: Commissioner Jarrett?

8 QUESTIONS BY COMMISSIONER JARRETT:

9                   Q. Good morning, sir.

10                  A. Good morning.

11                  Q. I just have a quick question. Can you --

12                  A. Yes, sir.

13                  Q. -- I guess in layman's terms kind of give  
14 me a summary of the condition of the current plant there?

15                  A. The current plant needs several upgrades  
16 made to it at this time. The plant was designed for  
17 25,000 gallon per day. It's receiving larger flows than  
18 that at this time, and, I mean, it just needs to be  
19 repaired. There's several, several deficiencies.

20                  Q. Can you just set out for me a few of those?

21                  A. I mean, there's only one blower. It is  
22 designed for two blowers with a backup. There's only one  
23 in operation right now with no backup. So if it goes  
24 down, the plant's down. Several of the pipes are in very  
25 bad shape as far as rust and numerous things.

1           Q.       And would it take a pretty -- would it be a  
2 pretty extensive job to fix all of the problems?

3           A.       Yes, sir.

4           Q.       And would that entail a pretty good chunk  
5 of money to do that?

6           A.       Yes.  There's actually a cost estimate  
7 included in my report.

8           Q.       Thank you.  Thank you, sir.

9           A.       Yes.

10           COMMISSIONER JARRETT:  No further  
11 questions.

12           JUDGE STEARLEY:  Commissioner Gunn?

13           COMMISSIONER GUNN:  I don't think I have  
14 anything right now, Judge.

15           JUDGE STEARLEY:  Commissioner Murray?

16           COMMISSIONER MURRAY:  Thank you.

17           QUESTIONS BY COMMISSIONER MURRAY:

18           Q.       Mr. Williams, it appears from your resume  
19 that you have a great deal of experience with water and  
20 sewer systems; is that correct?

21           A.       Yes, ma'am.

22           Q.       And you have actually been in -- involved  
23 in the design and rehabilitation of sewer systems?

24           A.       Yes, I have.

25           Q.       And you gave in your report that was

1 submitted in this case I believe it was three, three  
2 alternatives for this specific system?

3 A. Yes.

4 Q. And then you recommended alternative No. 2,  
5 which was an upgrade of the system versus a -- an  
6 installation of an entire new system; is that correct?

7 A. Yes, it is.

8 Q. And your reason for choosing the second  
9 alternative which would just involve updating the current  
10 system, was that based primarily on cost?

11 A. Cost and Missouri Department of Natural  
12 Resources' regulations. The existing system with a few  
13 upgrades can meet the DNR requirements.

14 Q. All right. And how important is it that  
15 the system meet the DNR requirements?

16 A. I mean, it's essential to the existence of  
17 the system.

18 Q. And it's your professional opinion that  
19 without at least doing what you set out in your  
20 Alternative No. 2, that this system would not meet  
21 Missouri DNR requirements?

22 A. That is correct.

23 Q. And in terms of the immediate future,  
24 repairs that need to be made immediately, how did -- where  
25 did you determine that in your report, or did you separate

1 out the most immediate needs from the longer term updating  
2 of the system?

3 A. No, ma'am. What we did, I mean, basically  
4 everything that we put in the report is stuff that needs  
5 to be accomplished very soon.

6 Q. All right. So the estimate -- cost  
7 estimate that you gave for Alternative No. 2, \$297,500,  
8 that is what you think includes all of the capital  
9 improvements that need to be made at the system, on the  
10 system at this time?

11 A. Yes, based on the information provided to  
12 us.

13 Q. And at that point, after those upgrades  
14 were made and completed, what kind of shape do you think  
15 the system would be in at that time?

16 A. If the upgrades included in Alternative 2  
17 were completed, then, I mean, the system would be I would  
18 say at 95 percent efficient.

19 Q. In your opinion, would that allow the  
20 provision of safe -- safe and adequate service?

21 A. Yes.

22 Q. And in your analysis, you took into  
23 consideration all of the requirements for BOD and TSS  
24 effluent levels; is that correct?

25 A. Yes.

1           Q.       And in your professional opinion, if there  
2 were no changes made to the system, what would be the  
3 result?

4           A.       They would be in violation of the  
5 Department of Natural Resources' regulations.

6                   COMMISSIONER MURRAY: All right. Thank  
7 you.

8                   JUDGE STEARLEY: Mr. Chairman, any  
9 questions for Mr. Williams?

10                  CHAIRMAN DAVIS: No questions.

11                  JUDGE STEARLEY: Mr. Williams, a couple  
12 quick follow-ups and then I'm going to tender you for  
13 cross-examination.

14 FURTHER QUESTIONS BY JUDGE STEARLEY:

15           Q.       When you mentioned these repairs needed to  
16 be made soon, are you able to give the Commission your  
17 opinion on what type of time frame?

18           A.       In the previous cases that we've been  
19 working on with Department of Natural Resources, they're  
20 realistic in the time frame. They usually give, best case  
21 scenario is a three-year window as to which you have to  
22 get plans submitted to DNR and then actually get  
23 construction completed within that three years.

24           Q.       All right. And if these upgrades aren't  
25 done soon, you said they would not be in compliance with

1 DNR. Would they be able to provide safe and adequate  
2 service to their customers?

3 A. No, sir.

4 JUDGE STEARLEY: Thank you, Mr. Williams.  
5 I'm going to tender you for cross-examination now,  
6 beginning with counsel for Stoddard County and R. D.  
7 Sewer, Mr. Allen.

8 MR. ALLEN: I have no questions.

9 JUDGE STEARLEY: All right. Staff of the  
10 Public Service Commission, Mr. Krueger?

11 MR. KRUEGER: Just one or two, your Honor.

12 CROSS-EXAMINATION BY MR. KRUEGER:

13 Q. Mr. Williams, you talked about DNR's  
14 typical time frame, mentioning approximately three years;  
15 is that right?

16 A. Yes, sir.

17 Q. Is that generally covered by what is called  
18 a compliance agreement?

19 A. Yes.

20 Q. Have you talked with the DNR about a  
21 compliance agreement in regard to this specific case?

22 A. I have not.

23 MR. KRUEGER: Thank you. That's all the  
24 questions I have.

25 JUDGE STEARLEY: Cross-examination, Public



1 Counsel. Ms. Baker?

2 MS. BAKER: Thank you.

3 CROSS-EXAMINATION BY MR. BAKER:

4 Q. Mr. Williams, you've not been subpoenaed to  
5 give testimony today, have you?

6 A. No.

7 Q. So you are appearing voluntarily?

8 A. Yes, ma'am.

9 Q. Were you paid by the Missouri Public  
10 Service Commission for your reports and your testimony  
11 today?

12 A. Yes, I am.

13 Q. Did you provide costs to Bonadio for  
14 repairs and sludge hauling?

15 A. I provided our professional opinion of the  
16 operation and maintenance costs based on the information  
17 supplied to us from the company.

18 Q. So all of those -- all of the information  
19 for repairs and sludge hauling you got from the company;  
20 is that correct?

21 A. Could you restate that?

22 Q. The costs that you gave to Bonadio for  
23 repairs and sludge hauling, those came from the company,  
24 correct?

25 A. Yes, they did.

1 Q. Did you independently verify the  
2 information that was provided by the company?

3 A. We compared it to several projects that  
4 we've done in the past couple of years, and they seemed  
5 right in line, so we really didn't feel that we needed to  
6 verify them.

7 Q. Did you compare those numbers with  
8 regulated Missouri public utilities?

9 A. Yes.

10 Q. Did you contact the Office of the Public  
11 Counsel regarding what it believed was reasonable figures  
12 for repairs and sludge hauling?

13 A. No, ma'am.

14 Q. Do you know what a regulated public utility  
15 is?

16 A. Yes.

17 Q. Which companies did you compare the costs  
18 for the repairs and sludge hauling?

19 A. I do not have that information in front of  
20 me.

21 Q. And those that you compared the cost to  
22 were regulated by the Missouri Public Service Commission?

23 A. I believe so.

24 Q. In your work papers that were given to the  
25 Office of the Public Counsel for the various alternatives,

1 you list that information was provided by Rodger Owens; is  
2 that correct?

3 A. On the various alternatives?

4 Q. Yes, that some of the information was  
5 provided by Rodger Owens; is that correct?

6 A. Some of it was, yes.

7 Q. The cost information is what I'm talking  
8 about --

9 A. No, the cost was not.

10 Q. -- in your work papers, like for  
11 electricity?

12 A. Oh, yes, the operation and maintenance cost  
13 was, yes. Correct.

14 Q. All right. Did you verify that information  
15 as being correct?

16 A. No.

17 Q. Did you compare that information with any  
18 other Missouri regulated public utility?

19 A. No.

20 Q. Some of the other costs I see in your work  
21 papers were provided by Monisha Nabar of the Bonadio  
22 group; is that correct?

23 A. Yes, they were.

24 Q. Did you verify that information as being  
25 correct?

1           A.       No. We did not feel it necessary. That's  
2 what they were hired to do.

3           Q.       Did you compare that information with other  
4 regulated utilities in Missouri?

5           A.       No.

6           Q.       For the Department of Natural Resources,  
7 did you review the permit that was issued for the sewer  
8 system?

9           A.       Yes, I did.

10          Q.       Did you find an error on the permit where  
11 it lists the plant at 75,000 gallons per day when it is  
12 actually 25,000 gallons per day?

13          A.       Yes, I did.

14          Q.       Did you find any indication that the  
15 company had attempted to correct that permit?

16          A.       No.

17          Q.       The alternatives that you gave in your  
18 report, these alternatives have not been implemented at  
19 this time, correct?

20          A.       Correct.

21          Q.       And are you aware that Missouri public  
22 utility ratemaking does not include costs which have not  
23 been incurred in current rates?

24          A.       Yes.

25                   MS. BAKER: I have no other questions, but

1 I do want to reiterate my objection to this witness and  
2 his testimony in that it is a witness that's brought by  
3 the Commission and not by a party to the case.

4 JUDGE STEARLEY: Very well. They have  
5 already been overruled. Thank you, Ms. Baker. Any  
6 additional questions from the Commission, starting with  
7 Commissioner Murray?

8 FURTHER QUESTIONS BY COMMISSIONER MURRAY:

9 Q. Just a question regarding what you were  
10 asked about costs for repairs and sludge handling, and you  
11 were asked if you had compared those costs to those of a  
12 regulated utility. Would the costs for repairs and/or  
13 sludge handling, sludge hauling rather, differ, the costs  
14 themselves differ whether a company were regulated or  
15 unregulated?

16 A. No, ma'am, they would not.

17 COMMISSIONER MURRAY: Thank you. That's  
18 all I have.

19 JUDGE STEARLEY: Commissioner Jarrett?

20 COMMISSIONER JARRETT: No questions.

21 JUDGE STEARLEY: Commissioner Gunn?

22 COMMISSIONER GUNN: No questions.

23 JUDGE STEARLEY: Chairman Davis?

24 CHAIRMAN DAVIS: No questions.

25 JUDGE STEARLEY: Mr. Williams, I thank you

1 for your testimony. We have no further questions for you,  
2 and you will be excused as a witness at this time.

3 THE WITNESS: Okay. Thank you very much.

4 JUDGE STEARLEY: Thank you, sir. And I  
5 believe that concludes all of our witnesses appearing by  
6 phone and concludes the Commission's witnesses, and I  
7 believe Mr. Allen, we are up for you to call Mr. Owens if  
8 he has arrived.

9 MR. ALLEN: He's here. We can do that.

10 JUDGE STEARLEY: You may proceed.  
11 Mr. Owens, if you'd please raise your right hand.

12 (Witness sworn.)

13 JUDGE STEARLEY: Thank you. You may be  
14 seated, and Mr. Allen, you may proceed.

15 RODGER OWENS testified as follows:

16 DIRECT EXAMINATION BY MR. ALLEN:

17 Q. State your name for the record, please.

18 A. It's Rodger Owens, R-o-d-g-e-r, O-w-e-n-s.

19 Q. And Mr. Owens, where do you live?

20 A. I live in Bernie, Missouri.

21 Q. Are you the primary owner of R.D. Sewer  
22 Company, LLC, one of the joint applicants in this case?

23 A. I am the -- actually, I am the owner, I  
24 guess. I own --

25 Q. You have 100 percent ownership --

1 A. Yes.

2 Q. -- in the LLC --

3 A. Yes.

4 Q. -- right?

5 Okay. Now, by way of background, would you  
6 tell the Commission what do you do for a living? What's  
7 your business?

8 A. I run water and own -- run and own water  
9 and wastewater systems. I -- that's pretty well what I  
10 do.

11 Q. And how long have you done that?

12 A. I've been -- I started back in 1976,  
13 working for the City of Bernie, putting in water lines and  
14 sewer lines. Also put in water lines in Texas down in  
15 San Antone. I also put in sewer lines and French drains  
16 in Denver, Colorado. Then I -- when I left there, I'd  
17 come back and went to work for Bernie, City of Bernie in  
18 '81. I was maintenance foreman for ten years, city  
19 manager for a year. I've been licensed since 1986, C  
20 license in water and C license in wastewater and DS-3 in  
21 distribution.

22 Q. In addition to the R.D. Sewer Company, LLC,  
23 what other companies or operations do you run?

24 A. I run other -- other than water and sewer  
25 or --

1 Q. Let's stick with water and sewer.

2 A. Okay. I run -- I own Oakbriar Water  
3 Company. I own Lakeland Heights Water Company and  
4 Whispering Hills Water Company of Wappapello, Missouri.

5 Q. Now, with regards to this particular matter  
6 here today, how did you get involved in this matter back  
7 in, I think it was 2002, was it not?

8 A. Yes.

9 Q. Would you describe that to the Commission?

10 A. I'd got a phone call. I was -- as a matter  
11 of fact, it was November. I was out in the deer woods  
12 hunting, and I got a call on my cell phone. Mr. Arlie  
13 Smith had asked me if I would be interested in running a  
14 wastewater plant for a while, because I am licensed with  
15 it. And I said, well -- as a matter of fact, he had come  
16 out and seen me after the call. He had come out and seen  
17 me, and I said, well, let me see it and we can talk about  
18 it, and we did, and I said, yes, I'll -- I'll run it. You  
19 know, he said until we can get somebody or until it gets  
20 straightened out because Mr. Carl Bien, the previous owner  
21 had passed away. They had turned it over to the public  
22 administrator and the judge, and she didn't know nothing  
23 about it. She just --

24 Q. She being his wife?

25 A. No. No.



1 Q. Or --

2 A. No. She was the public administrator there  
3 in Bloomfield or in Stoddard County. And --

4 Q. By the way, just stop you here. Tell the  
5 Commission who Arlie Smith is.

6 A. Arlie Smith is, I guess was the field  
7 representative of the Public Service Commission. He's the  
8 one that done my inspections and stuff.

9 Q. So he approached you?

10 A. Yes.

11 Q. And you indicated you had this conversation  
12 and you agreed to try to help him run it; is that correct?

13 A. Right. Right. Yes.

14 Q. And in the course of it, did you consider  
15 the condition of the -- when you say run it, this is the  
16 Stoddard County Sewer Company, right?

17 A. Right. Yes.

18 Q. Did you familiarize yourself with the  
19 condition of the sewer company and its assets and its  
20 plant?

21 A. Yes. Carl Bien's brother-in-law was  
22 running it at the time. He was on medication. He was  
23 disabled, pretty well disabled, and he just -- Arlie just  
24 told me that he just wasn't -- couldn't run it no more,  
25 that it was really dangerous for him to be around it like

1 that. So I agreed to take over. I took over running it  
2 in January of '02, and I got ahold of Mr. Siebold and they  
3 had told me there was a rate increase.

4 Q. Who told you, when you say they?

5 A. Arlie Smith had told me that there was a  
6 rate increase in the process. At that time I had talked  
7 to Brenda Wilson, and she was doing the rate increase,  
8 the -- getting ready for the audit and stuff for the rate  
9 increase.

10 Q. Now, Brenda Wilson was public  
11 administrator?

12 A. Public administrator, yes.

13 Q. And she was going to ask for a rate  
14 increase but that fell through?

15 A. Right.

16 Q. Okay. Now, for the purposes of operating  
17 Stoddard County Sewer Company, is it correct that this is  
18 when you, through Mr. Steve Holden, an attorney in Dexter,  
19 formed the R.D. Sewer Company, LLC?

20 A. Right. I went and I'd talked with Steve.  
21 At the time he was not that familiar with PSC regulations,  
22 and anyway, he agreed to help me. I believe the first one  
23 I talked with was Ms. Detring, I believe, of Farmington, I  
24 believe, and then she couldn't help me.

25 So I went to Steve Holden, attorney. So I

1 asked Steve, I said, now, you know, being's R.D. Sewer is  
2 no longer a corporation -- now this is my understanding.  
3 I've no -- I have no training or nothing in Public Service  
4 Commission affairs or corporations or nothing like that,  
5 but just what I've learned since I've been in this, what I  
6 understand, in other words, is that R.D. -- that Stoddard  
7 County Sewer Corporation had been dissolved since '99,  
8 from what I had read, some of the records and stuff. I  
9 had filed no corporation status on it since I've been  
10 there.

11 Q. So this R.D. Sewer Company --

12 JUDGE STEARLEY: Excuse me, Mr. Owens. I  
13 don't mean to interrupt, but we had our microphone pointed  
14 down for the people appearing by phone. Could you please  
15 raise that up to you and talk a little bit more into the  
16 microphone for us? Thank you.

17 BY MR. ALLEN:

18 Q. So the R.D. Sewer Company, LLC was formed,  
19 and the major purpose was to operate what was Stoddard  
20 County Sewer Company, right?

21 A. Right. The major purpose of it was to  
22 protect me on it if anything had come back on this because  
23 they was -- there was a lot of stuff involved with  
24 Stoddard County Sewer Company, and I didn't want to  
25 personally get sued or lose my license or --

1 Q. You wanted some kind of legal entity to  
2 protect you or insulate you from individual liability?

3 A. Right. Yes.

4 Q. Now, so this was organized, and then you  
5 received, and I think it's of record, a transfer, an  
6 assignment of Mrs. Bien's entire stock interest in the  
7 Stoddard County Sewer Company; is that right?

8 A. Yes.

9 Q. And when we say you did, that actually --  
10 was that transferred to R.D. Sewer?

11 A. Yes. It was transferred to R.D. Sewer.  
12 When I had taken over -- when I had taken over -- or when  
13 I had started operating and in the process of taking over  
14 Stoddard County Sewer, like I said, the public  
15 administrator had had it, and she -- she actually didn't  
16 want nothing else to do with it. So she assigned it back  
17 over to Ms. Ruth Bien, Carl Bien's wife, and so she didn't  
18 want to have nothing to do with it, but anyway, she had  
19 went on and signed the stock over to R.D. Sewer Company.

20 Q. And I think you told me that Mr. Bien  
21 actually had other businesses besides this one?

22 A. Yes. He had a whole bunch of other  
23 businesses.

24 Q. So this was just one of his sidelines?

25 A. Right.

1           Q.       Let's stop there. Okay. Now, at this  
2 present time, when you made this application and to date,  
3 does R.D. Sewer have any pending actions or final  
4 unsatisfied judgments or decisions against it from any  
5 federal or state agencies or courts that involve customer  
6 service or rates that occurred within three years prior to  
7 the date of filing the application?

8           A.       No, sir, as far as I know.

9           Q.       Would you -- again, let's address for the  
10 Commission at least at this point when you took -- when  
11 R.D. Sewer Company, Ltd, or LLC, took over SCS, Stoddard  
12 County, what was the condition of the assets and plant? I  
13 asked you that, and I don't think you addressed that.

14          A.       The conditions were the grinder pumps that  
15 was in -- that was in Grants Apartments there, there  
16 originally, they were the original pumps in 1980. They  
17 were wore out. They had been repaired and repaired.  
18 There was electrical box and all that was setting back  
19 in -- setting back in the rental building that had -- I  
20 have no idea how long it had actually been there that  
21 hadn't been put up. There was another pump that was there  
22 that needed repairs.

23                       So when I had taken over, I'd collected  
24 enough money to repair them, put the box up and get things  
25 going the best that I could. There's another pump up on

1 the hill up from it, a grinder pump, same size pump, it  
2 was wore out.

3                   The blowers at the plant, I'd been there  
4 probably three months, the blower at the plant had went  
5 out. They had actually put too small a blower in there.  
6 It had burned up. I ordered another one because I was not  
7 familiar with the system at that time of the blowers and  
8 stuff like that.

9                   I ordered another one just like it. It was  
10 so loud that people were complaining around there, that  
11 it -- it was actually a four-inch line that come in, and  
12 they used a two-inch line that put out a real high noise.  
13 And I tried to -- I tried to take and work it to where  
14 that pump was less RPMs to get less noise. That didn't  
15 work.

16                   That pump had went out or the blower went  
17 out. It was run by 15 horse electric motor. I had called  
18 the company, and luckily it was still under warranty, so I  
19 got with the representative of the company and told him my  
20 situation, and they did not have a motor that -- the  
21 blower that size, so I said give me one bigger. I want a  
22 four-inch line coming in. They did. That's been five  
23 year ago, and I had put it in and it's still in operation  
24 and it's quiet. I mean, it's not hardly any noise at all  
25 on it.

1           Q.       Do you have continual problems with upkeep  
2 and need for capital improvements from then to now? Has  
3 that been a continual problem for you?

4           A.       Yes.

5           Q.       And you -- would you just describe  
6 generally what those problems are and what those problems  
7 are today?

8           A.       The problems I have is some of the manholes  
9 that were put in, they're in low lying areas that needs to  
10 be raised. Some of the cleanout stations, some of the  
11 lines that crosses -- crosses the creeks are not covered  
12 or not braced like they should be.

13                    The plant itself for years, and I have no  
14 knowledge how long, but for years they was using a  
15 settling agent that was settling out the sludge to the  
16 bottom, which was not very good at all, but I had quit  
17 using that to get all of that stuff out, to try to get it  
18 to work back right. It's still not is because I do have  
19 effluent coming in at places. I haven't actually had the  
20 time to trace everything down.

21                    As far as the blowers, I only have one  
22 blower, one blower motor. Well, I have two electric  
23 motors. One I had repaired. I repaired both of them.  
24 I've had them repaired. I need another blower. The house  
25 that it contains, the building, it's about ready to fall

1 down. It needs to completely be redone. My lab, my  
2 little building out there, the termites had both the  
3 buildings almost eat up. But I did get a new roof and  
4 siding to put on them, but they need to be repaired.

5 Q. Now, did you -- you heard Mr. Williams  
6 testify earlier, did you not?

7 A. Uh-huh.

8 Q. Would you say yes?

9 A. Yes.

10 Q. Thank you. And do you agree with his  
11 testimony as you understand it with regard to the  
12 improvements and the problems and issues that he addressed  
13 and the cost analysis that he did?

14 A. So far, yes, I do.

15 Q. Are there other things, when you say so  
16 far?

17 A. Well, right at this moment, I don't really  
18 know, is because there's never been -- there's never been  
19 a flow, an actual flow in the effluent of seeing how many  
20 gallons comes through that system. I don't know exactly  
21 if the upgrade on that, you know, would -- I know it  
22 would -- we would need it, but, you know, as far as right  
23 now, it's -- I'll just say yes, as far as I know right  
24 now.

25 Q. So you would basically agree with his



1 testimony?

2 A. Right. Yes.

3 Q. Then there was some testimony earlier, and  
4 it kind of escaped me who said this, but the question was  
5 asked from Public Counsel of one of the witnesses with  
6 regard to, you know, what takes more work, you know, sewer  
7 or water?

8 A. Sewer takes a lot more work.

9 Q. How's that?

10 A. The water, I go by, I run my test, I have  
11 a -- I have a -- wastewater, I have a test, two or three  
12 tests a year. I have bac-t test once a month. My  
13 wellhouse, I just -- I've just got to go in and run my --  
14 run my chlorine sample on it. I can do that -- I can do  
15 that within probably 30 minutes three times, four times a  
16 week.

17 My systems now, my systems I run, to  
18 start -- from the start point and run all my systems and  
19 come back to my office is actually a little over 100 mile,  
20 is what I run on that.

21 Okay. The wastewater plant, it's an every  
22 day deal. I have to be there every day. It's because the  
23 stuff that comes in stops up my clarifiers. When it stops  
24 up my clarifiers, then I have a problems with my BOD and  
25 my suspended solids of coming out. So I have to keep it

1 clean. I'm averaging I'd say on the average of two to  
2 three hours a day, seven days a week.

3 Q. And I understand that you take calls or at  
4 least through your wife LaDawn with -- from customers when  
5 they have problems or if you have problems generally with  
6 regard to the operation of this particular sewer system?

7 A. Yes, sir. Yes, I do.

8 Q. Now, how many people do you-all serve out  
9 there?

10 A. We serve 100 -- I believe 117 residential  
11 and 57 apartments, it's -- in apartments.

12 Q. And I think you indicated to me earlier  
13 that you're familiar with the tariffs currently on this  
14 sewer system?

15 A. Right. Yes.

16 Q. And the area that it covers?

17 A. Right. Yes.

18 Q. Is it correct that there's no agreement or  
19 contract of sale regarding the transfer of the assets in  
20 this case that you know of?

21 A. No.

22 MR. ALLEN: Now, there was an Attachment C  
23 that I'd like to have marked, Judge, and ask him about,  
24 just a couple general questions.

25 JUDGE STEARLEY: All right. We are up to

1 Exhibit No. 8.

2 (EXHIBIT NO. 8 WAS MARKED FOR  
3 IDENTIFICATION BY THE REPORTER.)

4 MR. ALLEN: This was Exhibit 8; is that  
5 right?

6 JUDGE STEARLEY: Yes.

7 BY MR. ALLEN:

8 Q. I've asked -- I've handed to you Exhibit 8  
9 that is referred to as Attachment C, and it contains --  
10 would you identify what this is, please?

11 A. This is a balance sheet and income  
12 statement of the year of annual report of 2006 and 2007.

13 Q. For whom?

14 A. For Stoddard County Sewer.

15 Q. And this report was prepared by your  
16 office; is that correct?

17 A. This report -- this report was prepared by  
18 H&R Block.

19 Q. But you're familiar with the costs that are  
20 reflected in this report?

21 A. Yes. Yes, I am. I make out -- we have  
22 a -- well, my mind's slipping me. All of our -- all of  
23 our income, is what I'm trying to say, is we put down on  
24 ledger sheets out of every one of my systems. Of every  
25 one of the systems, I have different ledger sheets for

1 each system.

2 Q. So these are the costs? These aren't  
3 monkeyed with, these are actually the costs?

4 A. These are actual costs. These are the  
5 check -- these are the check numbers, the actual income  
6 from the people and the actual money that goes back in to  
7 the -- goes back in to the checking account, and I have a  
8 checking account for each system. I do not have nothing  
9 combined in any of these systems.

10 Q. And this is the report you submit to the  
11 Public Service Commission each year?

12 A. Yes, sir.

13 Q. And you're the one that signs off on it,  
14 reviews it and approves it?

15 A. Yes, sir, I am.

16 MR. ALLEN: I'd like to offer Exhibit 8.

17 JUDGE STEARLEY: Any objections to the  
18 offering of Exhibit No. 8?

19 MR. KRUEGER: No objection.

20 MS. BAKER: Public Counsel has objections  
21 to this in that this is information that is unverified and  
22 not reviewed by the Public Counsel.

23 JUDGE STEARLEY: Not reviewed, did you say?

24 MS. BAKER: Has not been reviewed by the  
25 Public Counsel for its accuracy. We've not been given any

1 foundation for what the numbers are, where they came from,  
2 what they were based upon.

3 JUDGE STEARLEY: Mr. Allen, your response?

4 MR. ALLEN: Well, he testified they come  
5 from ledger sheets from his operations. He personally  
6 reviews them. They come -- you know, they're not gimmick  
7 numbers. They're the actual costs associated. The actual  
8 balance sheets are the costs and receipts of Stoddard  
9 County Sewer Company from January 1st through  
10 December 31st of 2006 that's filed with this Commission.  
11 In fact, I would ask the Commission to take administrative  
12 notice of this file. It's out of their records.

13 JUDGE STEARLEY: I believe also if I'm not  
14 incorrect, you can correct me, isn't Attachment C part of  
15 the joint application?

16 MR. ALLEN: Yes, it is.

17 JUDGE STEARLEY: So all parties have had it  
18 since day one?

19 MR. ALLEN: That's correct.

20 JUDGE STEARLEY: Your objections will be  
21 overruled. Exhibit 8 will be received and admitted into  
22 evidence.

23 (EXHIBIT NO. 8 WAS RECEIVED INTO EVIDENCE.)

24 MR. ALLEN: This is 9.

25 (EXHIBIT NO. 9 WAS MARKED FOR

1 IDENTIFICATION BY THE REPORTER.)

2 JUDGE STEARLEY: You may proceed.

3 BY MR. ALLEN:

4 Q. Okay. Mr. Owens, identify Exhibit 9 for  
5 the Commission, please.

6 A. Exhibit 9 is a balance sheet, water and  
7 sewer operations assets for Stoddard County Sewer.

8 Q. For what period?

9 A. For the period of 2006 and 2007.

10 Q. Was it prepared in the ordinary course of  
11 business?

12 A. Yes, sir, it was.

13 Q. And you reviewed it?

14 A. Yes, sir.

15 Q. Are the figures in there accurate?

16 A. As far as my knowledge, yes.

17 Q. And you actually sign off on this and file  
18 it with the Missouri Public Service Commission, did you  
19 not?

20 A. Yes, sir, I do.

21 MR. ALLEN: I'd like to offer Exhibit 9.

22 JUDGE STEARLEY: Any objections to the  
23 offering of Exhibit No. 9?

24 MR. KRUEGER: No objection.

25 MS. BAKER: No, your Honor.

1                   COMMISSIONER MURRAY: Judge, may I ask just  
2 one clarifying question --

3                   JUDGE STEARLEY: Certainly.

4                   COMMISSIONER MURRAY: -- regarding this  
5 exhibit? I believe you indicated it was for '06 and '07.  
6 Is that an accurate representation?

7                   MR. ALLEN: Ms. Commissioner, I understood  
8 that this is for '07. 8 is for '06.

9                   THE WITNESS: Yes, ma'am, '07.

10                  COMMISSIONER MURRAY: I just wanted to  
11 clarify the record on that.

12                  MR. ALLEN: That may have been my fault. I  
13 may have confused you. If I did, I apologize.

14                  JUDGE STEARLEY: Hearing no objections,  
15 Exhibit No. 9 will be received and admitted into evidence.

16                  (EXHIBIT NO. 9 WAS RECEIVED INTO EVIDENCE.)

17 BY MR. ALLEN:

18                  Q. Now, since R.D. Sewer Company, LLC took  
19 over this operation of SCSC, you've always on behalf of  
20 R.D. Sewer filed the annual reports and the assessments  
21 and did everything you're supposed to do at the PSC; is  
22 that right?

23                  A. Yes, sir. Yes, sir.

24                  Q. And you're aware that Stoddard County for a  
25 period of time, based on your personal knowledge, from

1 approximately 1996 through 2000 did not file annual  
2 reports or pay the Commission assessments; is that right?

3 A. Yes, sir.

4 Q. At issue, as you know, are the need for  
5 adequate rates. Are the rates adequate to do what you  
6 need to do out there to provide safe and adequate service  
7 to the customers?

8 A. No, sir, they're not.

9 Q. Have the rates basically been the same  
10 since 1979 to date?

11 A. As far as I know, they've been the same.

12 Q. And I take it you're personally aware that  
13 Stoddard County, since it's out of business, it's  
14 administratively dissolved, has no assets which -- to  
15 cover the past assessments or anything of that nature, do  
16 they?

17 A. No, they don't.

18 Q. And is it also true that certainly Stoddard  
19 County has no way to successfully continue the operations  
20 of this particular sewer operation?

21 A. No, they don't. They couldn't afford an  
22 operator. I guess that's the reason I've operated all  
23 these years without -- pretty well without pay.

24 Q. And, you know, I'm asserting on your behalf  
25 there's no objection if the Commission so finds to grant



1 an interim rate increase in a sufficient amount to provide  
2 for safe and adequate service and do what you need to do  
3 to a provision, a refund provision in the event that  
4 whatever rate you get, the receipts exceed what you need;  
5 is that right? You have no problem with that?

6 A. No problem.

7 Q. And you're asking the Commission to -- that  
8 the request from Stoddard County and through R.D. Sewer  
9 Company is that the certificates of convenience and  
10 necessity be canceled of Stoddard County and that it be  
11 relieved of all its rights and obligations thereunder and  
12 that the assets be transferred to R.D. Sewer Company, LLC;  
13 is that right?

14 A. Yes, sir.

15 Q. And your company is willing to accept the  
16 assets of Stoddard County and to operate Stoddard County  
17 Sewer System, but you don't want to be -- your company  
18 doesn't want to be held liable for any obligations that  
19 SCSC may have incurred before the acquisition of the  
20 stock, right?

21 A. No.

22 Q. That's what you're asking? Do you believe,  
23 given reasonable and adequate rates, that R.D. Sewer  
24 Company will be able to provide safe and adequate service  
25 at just and reasonable rates to the customers now served?

1 A. Yes, sir.

2 Q. In the application -- if I may just be  
3 permitted to show this to him?

4 JUDGE STEARLEY: You may approach.

5 MR. ALLEN: Thank you so much.

6 BY MR. ALLEN:

7 Q. And if you-all will look at the  
8 application, 42, 43, this, if I may, describes, does it  
9 not, Mr. Owens, the assets of Stoddard County Sewer  
10 Company that you're asking to be transferred?

11 A. Yes, sir.

12 Q. Okay. And both those paragraphs. Now, the  
13 assets in 42 and 43 that you're asking to be transferred,  
14 they have been continuously in place ever since you --  
15 R.D. Sewer's been operating this system, right?

16 A. As far as in place, you mean on the  
17 premises or you mean in the company?

18 Q. In service?

19 A. In service, yes, sir.

20 Q. And they're part of the franchise and works  
21 or system of Stoddard County Sewer Company?

22 A. Yes, sir, they are.

23 Q. And they're necessary or useful in the  
24 performance of Stoddard County's obligation to provide  
25 sewer service to the public; is that right?

1           A.     Yes, sir.

2           Q.     Also there's been some indication that some  
3 people have tried to put liens on some of these assets or  
4 on the sewer company, right?

5           A.     Yes, sir.

6           Q.     And you're asking the Commission to  
7 consider that and void those liens?

8           A.     Yes, sir.

9           Q.     And you also have stated in your petition  
10 that the applicants do not have to provide any  
11 governmental approvals before the committee grants the  
12 requested certificate, and that's your understanding, is  
13 it not?

14          A.     Yes.

15          Q.     And by the way, in Exhibit 8 on the back of  
16 it, there was attached, and it's also referenced in the --  
17 in the application on paragraph 37, the list of names of  
18 ten people who reside in the area to be served. That's  
19 attached to that exhibit, is it not, on 8? I think it's  
20 the back page. Right.

21          A.     Yes.

22          Q.     Okay. Other than this sewer system that  
23 you have and this sewer service, is there any other  
24 service out there that's currently available in the  
25 requested service area under the tariff from any other

1 entity regulated or unregulated that you know? Is anybody  
2 else out there to provide this service?

3 A. No. No.

4 Q. Okay. Now, are the facilities of Stoddard  
5 County Sewer Company necessary for the operation of the  
6 sewer system, they already exist and are in operation, are  
7 they not?

8 A. Yes, sir.

9 Q. And you, R.D. Sewer Company, has operated  
10 these facilities as the sole owner of the stock of  
11 applicant Stoddard County since 2002; is that right?

12 A. Yes, sir.

13 Q. And do you believe that R.D. Sewer Company,  
14 based on your experience and background and just all these  
15 years of which you've done, has demonstrated that it has  
16 the technical, managerial and financial skills necessary  
17 to operate this sewer system?

18 A. Yes, sir.

19 Q. And just to be absolutely clear, there is  
20 no question in your mind that you need literally  
21 100 percent increase in the rates to provide adequate and  
22 safe service --

23 A. Yes.

24 Q. -- from your experience out there?

25 A. Yes, sir.

1 Q. You're not trying to strongarm the  
2 Commission into it. I mean you've just got to have it,  
3 don't you?

4 A. True. Yes, sir. Yes, I do. The whole  
5 time that I've run this system, it's set me back on a lot  
6 of other stuff. My job, I enjoy my job. I like my work,  
7 and I'm out there to serve the people. I've done it in  
8 the middle of the night. I've done it in snowstorms.  
9 I've done it when tornados went through and knocked stuff  
10 down and -- that's my purpose. If it was for money, I  
11 sure wouldn't be messing with this system.

12 Q. And certainly in your judgment the current  
13 rates are not sufficient to cover the costs --

14 A. No, sir, they are not.

15 Q. -- to the current customers, right?

16 A. Right.

17 Q. Now, one of the things you told me, and I  
18 kind of promised this in opening statement, you may or may  
19 not have been here, is it true that last month your  
20 electric bill exceeded your revenues?

21 A. Yes, sir. My -- my income on that was a  
22 little over \$700, and my electric bill was \$963.

23 Q. And sometimes is it correct that people are  
24 a little late in getting their bills paid?

25 A. Yes, sir. And since this had started in

1 the last two or three months, it seems to me like people  
2 are waiting on -- to see what's going to happen. I don't  
3 know if maybe they've got the knowledge somewhere for  
4 something that their rates might be cheaper or that  
5 they're just going to pay the same rates or their rates  
6 might be higher. They -- they -- my knowledge, they don't  
7 know what's going to go. I don't know what's going to  
8 happen.

9 Q. Nobody knows what's going to happen?

10 A. Nobody knows, and it's really putting the  
11 hurt on me.

12 Q. It's up to these goods folks. Now, in  
13 terms of complaints, did you attend the public hearings?

14 A. Yes, I did.

15 Q. Okay. Did you have any complaints about  
16 service at the public hearings that you recall?

17 A. I never heard one complaint. I did hear  
18 that they didn't want to pay 100 percent. A couple of  
19 them wanted to pay maybe 50 percent.

20 Q. So there was some concerns about rates,  
21 which is normal; is that right?

22 A. Yes.

23 Q. And in terms of since the public hearings,  
24 have you had a lot of people griping about your service?

25 A. I've had nobody. I've had people come up

1 and help me of doing things, but I've had nobody griped  
2 about it. I've had a few people saying that you actually  
3 need a rate increase, and I have had people come up and  
4 help me mow the plant and stuff when I'd get behind.

5 Q. And you would like for the Commission to  
6 provide, if they so choose or desire, a provision or grant  
7 a provision to -- for late fees in the event someone's  
8 late paying; is that right?

9 A. Yes, sir. Yes, sir. There's nothing in  
10 there showing that they can either pay the first of the  
11 month or the last of the month.

12 Q. And also, do you collect these on a monthly  
13 or on a yearly basis?

14 A. I collect both. I collect them on a  
15 monthly, six months and year, three months. Some people  
16 will pay three months ahead.

17 Q. Does the tariff provide for how it's paid?  
18 I don't know. I'm just asking.

19 A. Not to my knowledge of how it's paid. When  
20 I started, I went from the yearly -- from the yearly  
21 payment book to monthly cards. I didn't know about the  
22 tariff in there of what it had stated on that because I  
23 had talked to some people and they said it's a lot easier  
24 if you send us a card out and we get it in the mail then  
25 and we can send the bill in, instead of putting their

1 payment book up somewhere and forgetting. I was having  
2 fairly good results on that, and then Arlie had showed it  
3 to me, said no, you can't not do that. It's got to be  
4 with the payment book. So I went back to the payment  
5 book, and it got bad.

6 Q. So if it's appropriate to provide some  
7 place in an order or tariff that it's on a monthly basis,  
8 you would like that done?

9 A. I would like it to be either one if it's  
10 possible, because some people --

11 Q. Preferably monthly?

12 A. Yes. Yes.

13 MR. ALLEN: I don't have any other  
14 questions.

15 THE WITNESS: It does put more work on us  
16 doing that.

17 MR. ALLEN: I don't have any other  
18 questions, Judge. Thank you so much.

19 JUDGE STEARLEY: Thank you, Mr. Allen.

20 Cross-examination beginning with Staff?

21 MR. KRUEGER: Thank you, your Honor.

22 CROSS-EXAMINATION BY MR. KRUEGER:

23 Q. Mr. Owens, you testified about assets you  
24 placed into service since 2002?

25 A. Yes, sir.



1 Q. Do you know how much you paid for those  
2 assets?

3 A. I've never paid nothing. I've never paid  
4 nothing for the assets, other than my labor.

5 Q. How were you able to acquire the assets  
6 that -- like the blowers that you mentioned?

7 A. It was -- when -- when I had started in on  
8 putting the card out, still a year, yearly cards, people  
9 had got to paying, and I had got a little bit of money in  
10 there to -- to pay for them.

11 Q. So you paid it out of the revenues you  
12 received?

13 A. At the start, yes, I'd pay it out of the  
14 revenue that was income from other stuff.

15 Q. Do you know how much you paid for those  
16 assets?

17 A. Are you talking about the blower?

18 Q. Yes.

19 A. Okay.

20 Q. The improvements that you made to the  
21 plant.

22 A. Yes. \$1,800 was paid -- was paid for the  
23 first blower, and then when it had went out and it was  
24 still under warranty, I believe the other blower was a  
25 little bit more expensive, so it was probably -- just off

1 the top of my head, it was probably around \$2,100 for the  
2 blower, for that right there.

3                   As far -- as far as -- as the grinder pumps  
4 and the wet wells, I had the Maco, I'd asked Maco  
5 Company -- now, I did have the money -- we did have one  
6 pump that was rewound in the shop, in the shed, and then I  
7 had one that was not, and when that -- when the pump had  
8 went out, I put the one that was rewound in it. This had  
9 lasted pretty well a little over a year between that one,  
10 and the income, I had got enough income in to go ahead and  
11 repair the other one.

12                   But as the years went by and as the rate --  
13 as everything, the cost of living went up and stuff like  
14 that, which I put a lot of miles on my vehicle, I had to  
15 get somebody to help me, so Maco said they would come in.  
16 And I told them, I said if this rate increase had come  
17 through, I'll pay you back, but I've got to have -- I've  
18 got to have these motors repaired, and they've been good  
19 enough to come in and help me repair them.

20                   They even paid the electrician to come in  
21 and help me -- help me pull them, because one man can't  
22 pull them by himself. You got to have somebody help you  
23 pull that motor. They weigh about 150 pound, and one of  
24 them's about 20 foot down. The other one's about 12 foot  
25 down.

- 1 Q. So have you paid anything to Maco?
- 2 A. No, sir, I haven't.
- 3 Q. Do you owe money to Maco?
- 4 A. Yes, sir.
- 5 Q. How much do you owe them?
- 6 A. A little over \$17,000. They did just buy a  
7 new motor about three months ago.
- 8 Q. They, who?
- 9 A. Maco.
- 10 Q. And that's in addition to the 17,000?
- 11 A. No. That's -- that's in with the -- in  
12 with the --
- 13 Q. Included in the 17,000?
- 14 A. Included in the 17,000.
- 15 Q. So that's \$17,000 of additional equipment  
16 that has been put into the -- into the plant?
- 17 A. Yes. Also, I have out of the income of the  
18 Stoddard County Sewer have paid for some repairs, minor  
19 repairs on some of the motors, if they wasn't burned up,  
20 if they just needed just like \$3- or \$400 at different  
21 times.
- 22 Q. Okay. You say you paid. You mean the  
23 company?
- 24 A. The company. The company.
- 25 Q. The company did?

1 A. Yes.

2 Q. Have you taken any assets out of service  
3 since 2002?

4 A. No, sir.

5 Q. So everything that you had at that time is  
6 still in use?

7 A. Yes, sir.

8 Q. Do you know how many customers you had in  
9 2002?

10 A. Same amount, same as at -- as it was a  
11 while ago, 117 and 56.

12 Q. Okay.

13 A. I do -- let me take this back on an out of  
14 commission -- or out of operation, I do have two grinder  
15 pump motors that's laying in the shop over at the electric  
16 company right now that's -- totally cannot be repaired. I  
17 have one up on top of the hill that's just about gone out  
18 on me. I have a person, electrician now doing what he can  
19 do. I've called -- I've called Qulin Mayer. I talked to  
20 him. He said he might have a couple of pumps back there  
21 that -- that I could get from him to keep this thing  
22 going.

23 And that's what I do. I do -- I help  
24 people, people help me, just back and forth. As far as  
25 money -- me putting money personally into it, no, but as

1 far as me doing work with my backhoe and my other stuff  
2 with the electrician, with the electric company, with  
3 different people of keeping this stuff going, yes.

4 Q. Thank you. Are you familiar with the  
5 Commission's small company rate increase procedure?

6 A. Not really.

7 Q. Do you know that you can request a rate  
8 increase?

9 A. Well, I tried that six year ago. I mean,  
10 you know, that it was in -- in the process. Only thing I  
11 know on this is what's just been going on over the six --  
12 you know, over the years of requesting. Yes, I know that  
13 you can request, but how to do it, I'm not familiar with  
14 it, because my other companies, my water companies  
15 definitely need a rate increase. I've been waiting on  
16 this for six year to get it, though, so I can maybe go to  
17 that and get a little bit more familiar with how to do it,  
18 but I don't know.

19 Q. Are you willing to request a rate increase?

20 A. Yes, sir.

21 Q. And are you willing to do that within 30  
22 days after the Commission issues its Order in this case?

23 A. Yes, sir.

24 Q. And prosecute that request to its  
25 conclusion?

1 A. Yes, sir.

2 Q. And even if that results in rates that are  
3 lower than the Commission initially establishes?

4 A. Well, I can't hardly answer that. I don't  
5 know exactly how much lower than -- you mean -- you mean  
6 lower than if there's a rate increase going on now, lower  
7 than what I'd be get --

8 Q. Are you willing to accept the rates that  
9 the Commission establishes as a result of this rate case  
10 as the just and reasonable rates?

11 A. Yes, sir.

12 Q. Now, you have an oral agreement to acquire  
13 these assets, oral agreement between R.D. Sewer and  
14 Stoddard County Sewer?

15 A. Yes, sir.

16 Q. Under the terms of that agreement, will you  
17 pay any money to Stoddard County Sewer?

18 A. No, sir.

19 Q. Or to the previous owners of the stock of  
20 Stoddard County Sewer Company?

21 A. To the previous owners?

22 Q. To the previous owners.

23 A. N, sir.

24 Q. Do you know if Stoddard County Sewer  
25 Company's current facilities meet the requirements of the

1 DNR?

2 A. Do they meet the requirements --

3 Q. Department of Natural Resources?

4 A. No, sir.

5 Q. And do you know if improvement will have to

6 be made?

7 A. Yes, sir.

8 Q. Are you willing to make those improvements?

9 A. Yes, sir.

10 Q. Mr. Owens, in Exhibit 8, which was the one

11 that was marked as Attachment C, do you have that there in

12 front of you?

13 A. Yes, sir.

14 Q. I'd like you to look at the sixth page of

15 that document. At the bottom it says page S1. Near the

16 top, actually the second line, it says salaries and wages.

17 My copy's hard to read, but it looks like 200 some

18 dollars.

19 A. Yes, sir.

20 Q. Is that money that was paid to you?

21 A. That was money that was paid to me and my

22 wife.

23 Q. How was that amount determined?

24 A. Just whatever little bit they have left

25 over. If there's enough left over that maybe we can pay

1 me for some gas or pay for this and that, that's usually  
2 what it is.

3 JUDGE STEARLEY: Excuse me. Mr. Krueger,  
4 could you use your microphone a little bit more directly  
5 and help us with our recording?

6 MR. KRUEGER: I was trying to.

7 JUDGE STEARLEY: Thank you. It's easy to  
8 slip away from it.

9 BY MR. KRUEGER:

10 Q. And then also in regard to -- call your  
11 attention to Exhibit 9. Do you have that in front you?

12 A. Yes.

13 Q. And I believe it's the fifth page of this  
14 document. Can you find that? It's also marked page S1 at  
15 the bottom.

16 A. Yes.

17 Q. And the second line there says salaries and  
18 wages, \$1,162.69, I believe?

19 A. Yes, sir.

20 Q. And how is that amount determined?

21 A. The same way, sir. Just whatever's left  
22 that we can squeeze out of it, I guess, keep everything  
23 else up.

24 Q. Have you received the Commission's  
25 assessment for Stoddard County Sewer Company, the most



1 recent one?

2 A. I don't believe I have.

3 Q. Do you know how much the current assessment  
4 is?

5 A. No.

6 Q. Okay. You testified that your revenues  
7 were \$700 last month. I assume that's July 2008, correct?

8 A. Yes, sir.

9 Q. But you mentioned that some people pay  
10 monthly and some pay annual, correct?

11 A. Yes, sir.

12 Q. Is July an unusually low month or, I mean,  
13 is it typical for July receipts to be less than they are  
14 for other months?

15 A. No, sir.

16 Q. So generally you would expect the revenues  
17 to be about the same every month?

18 A. Yes, sir. Yes, except at the end of the  
19 year when people pay yearly.

20 Q. How much do you receive on a yearly basis  
21 from people that pay yearly?

22 A. I couldn't tell you. My wife usually  
23 handles -- pretty well handles most of that, but right  
24 offhand I couldn't.

25 Q. Do most people pay monthly?

1 A. Yes. Yes.

2 Q. Just a few pay yearly?

3 A. Just a few pay yearly, yes.

4 MR. KRUEGER: Okay. You honor, I believe  
5 we provided to the Commission copies of documents  
6 regarding the assignment of the interest of Stoddard  
7 County Sewer Company, Stoddard County Sewer, Inc., and --  
8 but I don't think that has been marked as an exhibit; is  
9 that right?

10 JUDGE STEARLEY: The assignment that you  
11 provided was marked as 6, and the assignment and the  
12 probate court information that Mr. Allen gave us was  
13 marked as Exhibit No. 7.

14 MR. KRUEGER: Okay. May I approach?

15 JUDGE STEARLEY: You may.

16 BY MR. KRUEGER:

17 Q. Mr. Owens, I'm going to show you a document  
18 that's been marked for identification as Exhibit 7. Do  
19 you see that?

20 A. Yes, sir.

21 Q. Can you tell me what that is?

22 A. This right here is when Ruth Bien assigned  
23 the stock over to R.D. Sewer Company.

24 Q. And when was that done?

25 A. That was done in 11th day of June. It's on

1 it, but down here -- it's 11th or 12th because there's two  
2 different dates on it.

3 Q. Of what year?

4 A. Of '02. 2002.

5 Q. And that's the document that you received  
6 to evidence your ownership --

7 A. Yes, sir.

8 Q. -- of Stoddard County Sewer Company?

9 A. Yes, sir.

10 MR. KRUEGER: Your Honor, I'd offer  
11 Exhibit 7.

12 JUDGE STEARLEY: Do you also want to offer  
13 Exhibit 6?

14 MR. KRUEGER: I believe Exhibit 6 is --

15 JUDGE STEARLEY: It's kind of encompassed  
16 within it.

17 MR. KRUEGER: -- actually just the first  
18 page of this Exhibit 7. Probably isn't necessary.

19 JUDGE STEARLEY: Since we went ahead and  
20 marked it, we'll go ahead and take the offering of both.  
21 Any objections to the offering of Exhibits 6 and 7?

22 MS. BAKER: No, your Honor.

23 JUDGE STEARLEY: Hearing none, they'll be  
24 admitted and received into evidence.

25 (EXHIBIT NOS. 6 AND 7 WERE RECEIVED INTO

1 EVIDENCE.)

2 MR. KRUEGER: That's all my questions,  
3 your Honor.

4 JUDGE STEARLEY: Very well. Questions from  
5 the Bench, Commissioner Murray?

6 COMMISSIONER MURRAY: Thank you.

7 QUESTIONS BY COMMISSIONER MURRAY:

8 Q. Good morning.

9 A. Good morning.

10 Q. I just have a few questions for you. Are  
11 any of the other water and wastewater treatment systems  
12 that you own and operate regulated by the PSC?

13 A. Yes, ma'am. This is the only wastewater  
14 system that I have. The other three water, yes, are  
15 regulated by the PSC.

16 Q. All right. And you indicated that you --  
17 did you indicate that you have not gone through the rate  
18 increase application process for any of those?

19 A. No, ma'am, I haven't. All of them's  
20 probably pretty well over 15, 20 year old. I haven't had  
21 a rate increase. I haven't tried. What I said a while  
22 ago, I was waiting to see what this done because I just  
23 work in the field. I'm not really, you know, familiar  
24 with this, but as far as things that has really increased,  
25 it's -- well, I definitely need a rate increase on all of

1 them. But, you know, it's -- I just been waiting. I know  
2 I should have done it a long time ago.

3 Q. Have you worked over the years with the  
4 Staff of the Public Service Commission in terms of getting  
5 advice about your system and operations or financially, in  
6 any way like that?

7 A. Yes, ma'am, I have. Arlie Smith, he's told  
8 me over the years that I need to put in for a rate  
9 increase. He's the one that has inspected me every year  
10 on it. I get inspected every year by Department of  
11 Natural Resources and Public Service Commission. And he's  
12 been really been good, him and Mr. Merciel. If I have any  
13 problems, I can call either one of them and they have  
14 really helped.

15 Q. So what would you attribute the cause of  
16 not coming in for rate increases to, lack of time, lack of  
17 knowledge?

18 A. Lack of knowledge.

19 Q. Have you approached the Staff at all in  
20 terms of help in learning how to go through the process?

21 A. No, ma'am, I haven't. In the past I was  
22 running other systems. I had a system outside of  
23 Bloomfield that I was running also with what I have, and  
24 it was a pretty good income, so I was pretty well paying  
25 for my own gas, my own transportation and all of that, but

1 up until two year ago I no longer run that on it.

2 Q. And that was a city system, did you say?

3 A. No, ma'am. It was a community right  
4 outside of the city.

5 Q. All right. Then was that a Public Service  
6 Commission --

7 A. No, ma'am.

8 Q. -- regulated? All right.

9 You answered a question earlier from your  
10 counsel, and I just want to clarify the record because  
11 I -- the way it was asked and answered, I'm not sure it  
12 will be clear in the record. You were asked is it correct  
13 that there is no agreement for a contract of sale  
14 regarding the assets, and your answer was no.

15 A. True.

16 Q. Is it correct or is it not correct?

17 A. It's correct. There was no sale of assets.

18 Q. Okay. I just want to make sure your answer  
19 no was that --

20 A. Yes, ma'am.

21 Q. -- no, that is not correct. And then have  
22 you -- okay. You've been licensed since 1986?

23 A. Yes, ma'am.

24 Q. And you've been owning and operating water  
25 and wastewater systems since that time?

1           A.       No, ma'am. I started owning and operating  
2 water systems in '95. I was working for the City of  
3 Bernie prior to that.

4           Q.       And what is your history with the systems  
5 that you have owned and operated as far as compliance with  
6 Missouri Department of Revenue -- Natural Resources?

7           A.       I have been in compliance. I've been in  
8 good standing with them the whole time on all the systems.  
9 I know them pretty well out at Poplar Bluff. If I have  
10 any problems, I call them up and they'll be glad to help  
11 me.

12          Q.       Are you aware of any Notices of Violation  
13 that you have received?

14          A.       No, ma'am, other than maybe a bad bac-t  
15 sample of which we have to follow up with repeat samples,  
16 other than that, no, ma'am, I don't.

17          Q.       Other than what did you say that was,  
18 back --

19          A.       Bac-t samples. Chlorine test or bac-t  
20 samples for every month that we have to take.

21          Q.       And have they been corrected if you've had  
22 a -- an effluent that exceeded the levels, have they been  
23 corrected immediately?

24          A.       Yes, ma'am. Yes. We have to follow up  
25 with it within that month with repeat samples. I have to

1 take like five repeat samples to get in compliance with  
2 the bad bac-t sample.

3 Q. Have you talked to any of the customers  
4 directly about this application?

5 A. No, ma'am, I haven't.

6 Q. Have you talked to any of the customers  
7 about the rate increase?

8 A. I've talked to one person that lives back  
9 behind us. He's the one that helps mow and helps me take  
10 care of the plant. He works on a riverboat and he's on 30  
11 and off 30 days, and with nothing to do, he said I'll come  
12 and help you, so he helps me mow at different times when  
13 he's got time.

14 Q. Have you talked to him about a rate  
15 increase?

16 A. I had -- we had talked over since '02,  
17 since the rate increase of '02, and he said yes, you know,  
18 that he knowed -- he knowed Carl Bien and Carl Bien's  
19 brother-in-law personally, and he had even talked with  
20 Carl Bien about rate increases in the past on it. I don't  
21 know if Carl Bien went on with the rate increase in the  
22 past or tried to get one, but he had told me they had  
23 talked about it a long time ago.

24 Q. All right. And the other systems that you  
25 operate, that you own and operate, with rates that were



1 set many years ago, are those systems in a state where --  
2 well, never mind. I withdraw that question.

3                   Would it be accurate to say that this  
4 Stoddard County Sewer System needs more capital  
5 improvements and more repairs than any other system that  
6 you own and operate?

7           A.       Yes, ma'am. The other systems that I  
8 operate, ma'am, are up to good standings -- good  
9 standards, but I guess the biggest problem that I have now  
10 is the increase of gas. When I started on this, it was  
11 like 98 cents a gallon, and diesel's \$4.49 a gallon. So  
12 that makes a difference when you're traveling that many  
13 miles.

14          Q.       I'm sure it does. And you're aware that  
15 there was a recommendation filed in this case for a  
16 revenue increase that was filed by the Bonadio Group. I'm  
17 trying to remember that witness' name.

18                   JUDGE STEARLEY: Mr. Shepard.

19                   COMMISSIONER MURRAY: Mr. Shepard.

20 BY COMMISSIONER MURRAY:

21          Q.       Are you aware of that?

22          A.       Yes, ma'am, I am.

23          Q.       And do you have any problem with the  
24 recommendation that was filed by either Mr. Shepard or  
25 Mr. Williams?



1 Thank you.

2 JUDGE STEARLEY: I just have a couple  
3 questions for you, Mr. Owens.

4 QUESTIONS BY JUDGE STEARLEY:

5 Q. The Department of Natural Resources filed  
6 at the request of the Commission a compliance report with  
7 the Commission listing the violations that exist with  
8 Stoddard County. Have you reviewed that document or is  
9 that -- has your counsel shared that with you?

10 A. Yes, sir. Over the years I have got  
11 reports back. What I do, I know -- I know what my -- one  
12 of my problems is with it, and it has to do with my BOD  
13 and my suspended solids that I'm in violation with, and  
14 one of the problems, and I've explained to them when I  
15 send off my report, there's remarks over at the side, and  
16 I explained to them why, you know, that they're high at  
17 different times. One of them is I have two grinder pumps,  
18 one in line with the other, and when things really get  
19 ground up, they tend to suspend in the water itself and  
20 it's really hard to get it out when it goes over the wear  
21 on that.

22 And other one is I do have infiltration  
23 come in because there's a lot of kids around in there, and  
24 they see a cleanout, they want to put a rubber ball or a  
25 toy or they want to knock the top off from it, you know,

1 and get it stopped up and stuff. But yes, sir, I'm  
2 familiar with it.

3 Q. In that compliance statement, they say that  
4 the Missouri's, I believe their operating license has  
5 expired and they're not able to renew that until you're  
6 able to get in compliance; is that correct?

7 A. Yes, sir, it is.

8 Q. Even with the expired license, though, you  
9 indicate that you're still filing reports with them?

10 A. Yes, sir, I'm still filing reports with  
11 them, every month, sir.

12 Q. It's my understanding you're engaged in  
13 negotiations at this time to put together a compliance  
14 schedule?

15 A. Yes, sir.

16 Q. And is that compliance schedule dependent  
17 upon what the Public Service Commission does in this case?

18 A. Yes, sir.

19 Q. Your ability to make that schedule?

20 A. Yes, sir.

21 Q. With regard to the security interests that  
22 have been issued on the property, did you know when you  
23 took over operation that the prior owners had issued  
24 security interest?

25 A. No, sir. At first I did not. Then when I

1 did find out, I went -- Mr. Steve Holden had helped me,  
2 and the only one that I knew of that was from our  
3 understanding was holding the stock on this was a Mr. Ray  
4 Clinton. And I had talked with Steve, and his attorney,  
5 Mr. Burns, said if I pay him \$20,000, that they would do  
6 away with that.

7                   And I had went to the bank and I had  
8 borrowed the 20,000 and I had give it to Mr. Holden, my  
9 attorney, to give to him. And it had dawned on me that  
10 the office when I -- when I had taken this over, the  
11 office in Dexter, I noticed some different stuff on the  
12 desk and kind of went through some files and stuff, and I  
13 had noticed that they were really some letters from  
14 Internal Revenue, different things in there.

15                   And I had decided right then, I called  
16 Steve up and told him I was not interested in buying this  
17 until I found out what was going on. And if I'd have went  
18 on, I'd have lost the 20,000, I'm sure.

19                   Q.       Have any of the parties involved in those  
20 interests approached you and tried to collect payment from  
21 you?

22                   A.       No, sir, they haven't.

23                   Q.       And with regard to the loan you received  
24 from Maco, did you give a security interest in the assets  
25 of the company for that loan, or is that just a personal

1 loan?

2 A. Sir, that was just a verbal. There was no  
3 agreements or anything. It's just my word that I told  
4 them I'd pay them back.

5 JUDGE STEARLEY: All right. Recross based  
6 on questions from the Bench, beginning with Staff?

7 MR. KRUEGER: Thank you, your Honor.

8 RE-CROSS-EXAMINATION BY MR. KRUEGER:

9 Q. Mr. Owens, you testified that you own three  
10 Commission regulated water companies?

11 A. Yes, sir.

12 Q. What are the names of those companies?

13 A. Oak Briar Estates.

14 Q. Oak Briar?

15 A. Oak Briar Estates. Lakeland Heights Water  
16 Company, and Whispering Hills Water Company.

17 MR. KRUEGER: Thank you. That's all the  
18 questions I have.

19 JUDGE STEARLEY: Ms. Baker, it seems I have  
20 missed you in cross.

21 MS. BAKER: I believe you have.

22 JUDGE STEARLEY: I apologize. You should  
23 have spoke up sooner. By all means, cross-examination.

24 CROSS-EXAMINATION BY MS. BAKER:

25 Q. R.D. Sewer was formed specifically take the

1 Stoddard County stock; is that correct?

2 A. Yes, ma'am.

3 Q. And do you know if anyone received  
4 Commission approval before the transfer of the Stoddard  
5 County stock to R.D. Sewer?

6 A. No, ma'am.

7 Q. It has been mentioned before in some of the  
8 questions, but the system, the Stoddard County Sewer  
9 system is in negotiation with the Attorney General's  
10 Office due to the violation of the regulations; is that  
11 correct?

12 A. Yes, ma'am. Yes.

13 Q. Going back to the case in 2002, you were  
14 involved in the rate increase request in 2002?

15 A. No, ma'am, I was not.

16 Q. You did not request a rate increase?

17 A. No, ma'am, I did not. That was before I  
18 had taken over when Mr. Carl Bien had passed away. The  
19 public administrator and the Public Service Commission had  
20 went through and checked and seen that there was no -- not  
21 enough income to even, I guess, hire an operator, and so  
22 they decided to go ahead and put a rate increase through  
23 this to get it up to par, and -- and my understanding,  
24 they had it pretty well taken care of.

25 Then when I had made it R.D. -- when I had

1 made it R.D. Sewer Company, LLC, the public administrator  
2 handed everything over to me, there was a little cash in  
3 the bank, and I asked her -- or she said, well, there's  
4 some money in the bank, and she called the judge and asked  
5 him. He said, well, give him the money, too. So when  
6 they did, they give me a check for \$80, also an electric  
7 bill for about 700.

8 Q. So going back to the 2002 rate case, whose  
9 decision was it not to go forward with the rate case?

10 A. I have no idea, ma'am.

11 Q. So basically you've taken no action in the  
12 six years since that 2002 time frame whenever you took  
13 over the system?

14 A. Yes, ma'am. I had -- when I had taken over  
15 R.D. -- or when I'd made the R.D. Sewer Company, me and  
16 Mr. Steve Holden had talked with Mr. Merciel on getting  
17 this rate increase through, and seems like we'd always run  
18 up against a brick wall every time we would try to get it  
19 through.

20 Q. Okay. But now with this case, you have  
21 determined that you cannot wait a few months to get a  
22 proper audit and a proper rate case through this  
23 Commission?

24 A. No, ma'am. I have -- I have motors down.  
25 I actually need three motors right now that runs about



1 \$5,000 apiece or there's going to be sewer down in Grants  
2 Apartments, which had happened before on this, and we  
3 actually did get it going again. But there's only been  
4 one pump bought in the whole six years. That's just a few  
5 months back.

6 Q. You do understand that if R.D. Sewer takes  
7 over Stoddard County, that R.D. Sewer would be a PSC  
8 regulated utility, correct?

9 A. Yes, ma'am. Yes, ma'am.

10 Q. And you do understand that whenever you are  
11 dealing with a PSC regulated utility, that only costs that  
12 have already been incurred are put into customer rates?

13 A. I don't understand your question.

14 Q. My -- my question is, do you understand  
15 that when rates are set with the Public Service  
16 Commission, they include costs that have already been paid  
17 for by the utility, they are not looking forward costs?

18 A. So -- so the cost -- what you're trying to  
19 tell me, ma'am, is the costs that I am needing now goes  
20 into this. Like, I need these pumps that they've got, but  
21 I've got to run out and buy them right quick for this to  
22 be --

23 Q. What I'm asking you is, do you understand  
24 that a regulated public utility, the rates are based on  
25 costs that you have already paid, not on costs that you

1 are going to pay? Did you understand that?

2 A. Yes, ma'am, I understand, but these rates,  
3 was it for '02, if they'd have been done in '02, I would  
4 have probably been in real good standing right now.

5 Q. Right. But you have waited six years.

6 A. No, ma'am. Public Service Commission  
7 waited six years.

8 Q. You had the ability to come in at any time  
9 and ask for a rate increase; is that correct?

10 A. I was going by the '02 rate increase,  
11 ma'am, that was already put in.

12 Q. But you had the ability to come in and open  
13 a case and bring a rate increase request at any time,  
14 correct?

15 A. I didn't know that, ma'am.

16 Q. I want to look at your Exhibit 8 that you  
17 have in front of you, and I want to go back to that, I  
18 believe it was like the sixth page, the page S1. Are you  
19 there?

20 A. Yes, ma'am.

21 Q. Let's look at the very last line that says  
22 net income and then in parentheses loss. What is the  
23 number that is to the right?

24 A. \$4,895.63.

25 Q. And is that a loss?

1           A.       As far as my understanding, yes, ma'am, it  
2 is.

3           Q.       So according to your records in 2006, the  
4 company had a net loss of \$4,895.63; is that correct?

5           A.       Yes, ma'am.

6           Q.       And then let's go to Exhibit No. 9, and see  
7 the same S1 page, and in this one what is the net income  
8 loss on the last line?

9           A.       \$3,200.60.

10          Q.       In the application, you are requesting an  
11 increase based on the 2002 audit; is that correct?

12          A.       Yes, ma'am.

13          Q.       And that amount is somewhere near \$24,000;  
14 is that correct?

15          A.       Yes, ma'am.

16          Q.       How do you say that a \$24,000 increase is  
17 reasonable when your own income statements show losses of  
18 only 3 or \$4,000?

19          A.       It is because I have been -- other than  
20 what, like, Maco company, other than what I owe them, the  
21 17-- over \$17,000, ma'am, I have done work for the  
22 electric for electricians. I have done work for my  
23 attorney. I have done work for different people for them  
24 to come in and do work for me because there's no money in  
25 there, ma'am, to pay it. So it don't show up on this

1 because it's tradeout.

2 Q. So those -- those things are not put into  
3 your income statements, they are not reported to the  
4 Public Service Commission, correct?

5 A. Yes, ma'am, they're not -- I was not really  
6 familiar with that, ma'am.

7 Q. So basically the 2006 Exhibit 8, and the  
8 2007 Exhibit 9 are not correct statements that you have  
9 provided today?

10 A. As far as -- as far as what the company  
11 itself put out in -- put out, yes, ma'am. As far as what  
12 I've put out, no, ma'am. If I would have been charging my  
13 rate to what I would charge somebody to run a system, it  
14 would probably be a lot, a lot more in the hole, because  
15 if you'll -- if you'll look at -- if you'll look at S1 on  
16 the operating expenses on '07, you'll see about \$1,100,  
17 \$1,100, what me and my wife both had got out of this as  
18 payment, and this is for her doing all the billing, doing  
19 the secretary work, and me doing all the field work.

20 MS. BAKER: I have no further questions.

21 JUDGE STEARLEY: Just to be sure,  
22 Ms. Baker, I want to be sure I give you a chance to get  
23 all your cross-examination.

24 MS. BAKER: That's all that I have. Thank  
25 you.

1                   JUDGE STEARLEY: I didn't mean to overlook  
2 you earlier. Redirect?

3                   MR. ALLEN: I have none, Judge. Thank you.

4                   JUDGE STEARLEY: Mr. Owens, I thank you for  
5 your testimony. You may step down at this time and you  
6 are excused as a witness.

7                   THE WITNESS: Thank you, sir.

8                   JUDGE STEARLEY: And somehow I've manage to  
9 come out almost straight up on noon, so I guess we'll  
10 break at this time for lunch. Start back up with Staff's  
11 witnesses, I believe. Let's reconvene about 1:15.

12                   (A BREAK WAS TAKEN.)

13                   JUDGE STEARLEY: All right. We are back on  
14 the record, and it is time for Staff to call its  
15 witnesses.

16                   MR. KRUEGER: Staff calls Jim Merciel.

17                   (Witness sworn.)

18                   JUDGE STEARLEY: Thank you. You may be  
19 seated, and Mr. Krueger, you may proceed.

20                   MR. KRUEGER: Thank you, your Honor.

21 JAMES A. MERCIEL, JR. testified as follows:

22 DIRECT EXAMINATION BY MR. KRUEGER:

23                   Q. State your name and address for the record,  
24 please.

25                   A. James A. Merciel, Junior. Business address

1 is 200 Madison Street, Jefferson City, Missouri 65102 --  
2 109, I guess, 102.

3 Q. I vote for 102.

4 A. Okay. We'll go with that one. Sorry.

5 Q. By whom are you employed and in what  
6 capacity?

7 A. Employed by the Public Service Commission.  
8 I work in the water and sewer department. My title is  
9 assistant manager - engineering.

10 Q. And how long have you been employed in that  
11 capacity?

12 A. Approximately 31 years. Well, at the  
13 Commission, not always with that title, but always in the  
14 water and sewer department.

15 Q. How long have you been assistant manager -  
16 engineering?

17 A. Probably about 28 or 29 years.

18 Q. Okay. Are you familiar with Stoddard  
19 County Sewer Company?

20 A. Yes, I am.

21 Q. How did you become familiar with it?

22 A. Well, it was -- it became certificated  
23 shortly after I came to work here. I didn't really work  
24 on the certificate case, but I was aware of it going on.  
25 And I've dealt with the owner of the company over the

1 years. And the inspector who's done most of the field  
2 work, Arlie Smith, his name has been mentioned several  
3 times. I supervised Arlie during most of this time, and  
4 just had activity on and off with this company. More  
5 recent years, I've talked to Mr. Owens a number of times  
6 and been involved with some of the negotiations and  
7 activities that led to where we are today.

8 Q. You said you dealt with the owner. Whom  
9 are you referring to?

10 A. Mr. Bien, Carl Bien. He was the original  
11 owner of this company.

12 Q. Okay. And do you know when the company  
13 became certificated?

14 A. Yeah. There's an exact date. It was -- I  
15 believe it was in 1978. I don't know the exact date off  
16 the top of my head.

17 Q. And how long did Mr. Bien remain the owner?

18 A. Until he died in 2000 -- and I don't  
19 remember that date either. I'm sorry.

20 Q. And whom have you dealt with subsequently?

21 A. Well, after Mr. Bien died, his  
22 brother-in-law was taking care of the system for a while.  
23 His name is Glen Grubb. I think he was mentioned earlier  
24 in testimony, although I don't think it was by name. And  
25 I dealt with Ms. Brenda Wilson, the public administrator,

1 while she had Mr. Bien's assets after -- after he died,  
2 and then, of course, Mr. Owens since he's been taking care  
3 of the system.

4 Q. And how long has that been?

5 A. Probably since 2002 or so.

6 Q. Okay. And working with the company, have  
7 you identified problems with Stoddard County Sewer  
8 Company?

9 A. Yes.

10 Q. What type of problems have you identified?

11 A. Well, the problems are -- are -- well,  
12 mainly the problems are at the treatment plant. It's over  
13 capacity. There is a -- kind of a story about that.  
14 Department of Natural Resources classified this plant as a  
15 75,000 gallon per plant -- per day treatment plant for a  
16 while. It's really only a 25,000 gallon treatment plant.  
17 I don't know exactly how or why that came about. But the  
18 bottom line is nobody seemed to worry about capacity for  
19 several years there. And now we find it is operating over  
20 capacity.

21 Even so, it had been operating fairly well  
22 for a long time. There had been some Notices of  
23 Violation, a few things that happened. Mr. Bien had some  
24 problems with -- we never -- nobody ever figured out  
25 exactly what it was. A meth lab was suspected, but there



1 was either strong waste or toxic substance coming in and  
2 causing some problems with the treatment process.

3 Q. When was that?

4 A. This was in the late '90s, maybe '98 or  
5 '99. I think one or two of those events might have caused  
6 one of the Notices of Violation. But that was -- I  
7 remember being on the phone quite a bit during the time  
8 some of those things were going on.

9 As for problems, it still has the capacity  
10 problem. That was addressed in the SH Smith report, and  
11 there's really no mystery about that, although we don't  
12 know exactly what the flow is at this plant.

13 I did look at one month of water usage  
14 provided by the water district. I actually got the  
15 information through Mr. Owens. And I relied completely on  
16 that information, but that -- what I had, I believe there  
17 was about a -- maybe a 32 or 33,000 gallon per day average  
18 flow during the month of April this year, April in 2008.

19 Q. You said 32 to 33,000 gallon per day  
20 average flow in April?

21 A. Right.

22 Q. That's water or --

23 A. Well, that's water sold to the sewer  
24 customers. So that's water that the sewer district sold  
25 to those customers.

1           Q.       How would the inflow to the sewage  
2 treatment plant compare with that?

3           A.       In April, I would say there would be --  
4 there could be some outside water use but probably not  
5 very much. So most of the usage would be inside the house  
6 usage, kitchen and bathroom and so -- showers, that sort  
7 of thing, so most of the water would be going to the sewer  
8 system.

9           Q.       What about infiltration and inflow?

10          A.       Well, that would be added to it. I don't  
11 have a way to measure that, but there could be additional  
12 flow from infiltration.

13          Q.       But you believe that the design capacity  
14 presently is 25,000 gallons per day regardless of what the  
15 DNR permit says?

16          A.       Yes. Well, that is what the permit says  
17 today.

18          Q.       Oh, it does say that?

19          A.       Yes. I should continue with other  
20 problems. One immediate problem this company has is its  
21 mechanical facilities, the treatment plant has a blower  
22 system. It's an aerated plant. It should have two  
23 blowers. It only has one. And then it has two lift  
24 stations. Each should have two pumps in them. Each one  
25 only has one.

1                   And the purpose of the dual -- dual  
2 facilities, if one fails, then you still -- you can still  
3 operate on the second one. In the case of the lift  
4 station, and it has happened, if you have a single pump  
5 and it fails, then you end up with an overflow.

6           Q.       And how is that remedied?

7           A.       Well, if you only have a single pump and it  
8 fails, then you have to take the time to replace and  
9 repair the pump.

10          Q.       Leaving it out of service?

11          A.       Leaving it out of service for a short time,  
12 yes.

13          Q.       Have you attempted to identify any  
14 potential buyers for this facility and these assets?

15          A.       Yes. Well, I first want to mention that  
16 Mr. Bien believed that his son was going to take it over.  
17 Back when he was still alive, you know, in the late '90s,  
18 his son was working with him a little bit on the business,  
19 and we thought that come the day Carl retired or passed  
20 on, that his son would operate it. So we kind of believed  
21 that for some time.

22          Q.       And that's what you understood as well?

23          A.       Yes. Yes. And that's from talking with  
24 Mr. Bien himself. I think I did meet his son once, but  
25 mostly dealing with Mr. Bien. He told me that a number of

1 times. After Mr. Bien died, nobody was really sure what  
2 to do.

3                   The financier, again, he was mentioned  
4 earlier in testimony, his name is Ray Clinton. Mr. Bien  
5 had gotten some kind of financing for some reason that we  
6 don't know what it is, but anyway, Mr. Clinton had a lien  
7 on Stoddard County Sewer Company and some other assets.  
8 We worked with him and, his attorney. In fact his  
9 attorney was one of the ones who got this turned over to  
10 the public administrator. But Mr. Clinton was considering  
11 being the owner of the company for a while.

12                   There is a sewer district in the area that  
13 was getting formed about that time, and at that time back  
14 in the -- in 2000, 2001, I was in contact with the  
15 engineer for the sewer district.  
16 The sewer district did get formed, but it's my  
17 understanding that the Stoddard County service area is not  
18 included in the sewer district service area. And I can't  
19 explain the hows and whys, but however the voters approved  
20 the sewer district, somehow it was excluded. So that  
21 option is now off the table at the moment.

22                   Mr. Grubb, I don't -- I guess we considered  
23 him to be a potential owner, but he didn't really have the  
24 health to run the business and take care of everything, so  
25 that was never really a realistic option.

1                   Mr. Schultz, the engineer for the sewer  
2 district, is also a contract operator. He was considering  
3 being an owner/operator for a short while there, but he  
4 finally backed out of it. And I think -- I think that's  
5 everybody. I don't -- I don't -- I don't know of anybody  
6 else, and I don't think there was anybody else that we had  
7 ever identified to consider.

8           Q.       Are there any potential buyers at the  
9 present time?

10          A.       None that I'm aware of.

11          Q.       Other than R.D. Sewer Company?

12          A.       Other than R.D., and maybe some day the  
13 sewer district, but that's not an immediate option.

14          Q.       Have you visited the -- these facilities?

15          A.       Yes, I have.

16          Q.       When was your most recent visit?

17          A.       My most recent visit was the day we had the  
18 local hearing down there. I think that was June 6th of  
19 this year. I'd gone down earlier in the day and visited  
20 with Mr. and Mrs. Owen and went out to the system.

21          Q.       Can you describe generally the condition of  
22 the facilities?

23          A.       It's -- well, it's in a rundown condition.  
24 It's operating. It seemed to be operating pretty well  
25 that day, but again, it only has one blower in the -- for

1 the treatment plant. So if it fails, then we're out of  
2 air. That means the plant wouldn't be operating.

3 The building that houses the blower is --  
4 oh, it had some siding missing. You could just crawl  
5 through it. It had had some, I guess, fairly recent wind  
6 damage. It's kind of an older structure, and it certainly  
7 needs some repairs. I looked at the lift stations, and  
8 again, they just have the one motor in each one. They  
9 should have two.

10 Q. Are you familiar with the revenues and  
11 expenses of Stoddard County Sewer?

12 A. I'm familiar to the extent I've reviewed  
13 our work papers from the rate case that occurred in 2002.

14 MR. KRUEGER: May I approach, your Honor?

15 JUDGE STEARLEY: You may.

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

18 JUDGE STEARLEY: We are up to Exhibit  
19 No. 10.

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

22 BY MR. KRUEGER:

23 Q. Can you identify that document that I've  
24 just handed you?

25 A. Yes. This is -- it has a cover sheet that

1 says rate design work papers. This is a document that was  
2 prepared by somebody in the water and sewer department,  
3 Randy Hubbs. He was the assistant manager for rates.  
4 It -- the purpose of this document is to determine the  
5 monthly rates that are going to be charged. It also has a  
6 list of some of the expenses, well, all the expenses that  
7 we would have found in the audit. Mr. Hubbs didn't  
8 actually do the audit, but he would have taken the  
9 auditor's numbers and put it on this document to determine  
10 monthly rates.

11 Q. So this was done in connection with the  
12 2002 rate case?

13 A. That is correct.

14 Q. And are these records that are regularly  
15 maintained by the Commission?

16 A. As far as I know. Well -- well, I don't  
17 think these were ever submitted in the rate case because  
18 the rate case was ultimately withdrawn, so I don't know  
19 that -- I don't think these were actually filed in the  
20 small company rate case. I believe this just comes out of  
21 our department's files.

22 Q. Okay. My question is whether you maintain  
23 them in the files of the water and sewer department?

24 A. Okay. The water and sewer department does  
25 maintain files, that would be correct.

1 Q. And that's where this came from?

2 A. Yes. That's correct.

3 Q. Okay. And is this an accurate copy of the  
4 document that was in the water and sewer department files?

5 A. Yes, it is.

6 Q. I believe you testified that Randy Hubbs  
7 prepared this?

8 A. Yes.

9 Q. And he is no longer with the Commission; is  
10 that correct?

11 A. That's correct.

12 Q. Do you know when that document was  
13 prepared?

14 A. Well, it has the date August 22nd, 2002.  
15 So I'm sure that's the date that he prepared it.

16 Q. Was that at or near the time of the  
17 Stoddard County rate company audit?

18 A. Yes.

19 Q. Was it prepared in a standard format that  
20 the water and sewer department uses for its rate design  
21 work papers in small company cases?

22 A. I would say yes. This is a -- Mr. Hubbs'  
23 particular design, but this is something that -- he would  
24 have done this with other cases. They would look like  
25 this.



1 Q. Calling your attention to the second page  
2 of that document, can you tell me what that page  
3 represents?

4 A. You mean page 2 of 5?

5 Q. I mean page 1 of 5. It's actually the --

6 A. Okay. The second of the -- gotcha. The  
7 one behind the cover sheet. Okay. That's the one with  
8 the list of the company's expenses, and toward the bottom  
9 it says total cost of service, \$48,074. That would be the  
10 revenue that the auditor believed was justifiable. It  
11 also has some then existing revenue that the company had,  
12 and it shows what amount with the amount of the increase  
13 would be needed.

14 Q. And current revenues is shown as how much?

15 A. Well, let's see.

16 Q. On the right-hand side near the middle.

17 A. Yeah. You're right. On the right-hand  
18 side, it says current revenues, \$22,093.

19 Q. And proposed increase?

20 A. Yeah, proposed increase, that would have  
21 been what Stoddard County Sewer Company asked for. And  
22 when you add what they asked for to the current revenues,  
23 it adds up to \$45,349.

24 Q. Now, why does that cost of service  
25 recovered number differ from total COS just below it?

1           A.       Only -- only because the 23,256 is what was  
2 asked for, and Mr. Hubbs would have included the requested  
3 rate increase, not necessarily the total that the auditor  
4 found. In this case the auditor found they could have  
5 justified more revenue, but we would have gone with what  
6 the company asked for.

7           Q.       Now, what is the purpose of rate design?

8           A.       Rate design takes expenses and allocates  
9 them. It's pretty simple with a sewer company like this,  
10 a flat rate, and it also takes classes of customers, in  
11 this case residential and apartment customers, and you  
12 take the expenses and divide by the customers and you end  
13 up with monthly rates, which are on the next page, page 2  
14 of 5.

15          Q.       Are you able to determine from this  
16 document what revenue the Staff's rate design was intended  
17 to recover?

18          A.       Yes.

19          Q.       How much is that?

20          A.       The amount is \$45,349. That's what the one  
21 appears on the right-hand side in that middle square, and  
22 also on page 2, total sewer cost of service, the very top  
23 number there.

24          Q.       Page 2 of 5?

25          A.       Yes.

1 Q. Being the third page of the document?

2 A. Third page of the document.

3 MR. KRUEGER: Okay. Thank you. Your  
4 Honor, I'd offer Exhibit 10.

5 JUDGE STEARLEY: Any objections to the  
6 admission of Exhibit 10?

7 MS. BAKER: No, your Honor.

8 MR. ALLEN: None.

9 JUDGE STEARLEY: Hearing none, it shall be  
10 admitted and received in evidence.

11 (EXHIBIT NO. 10 WAS RECEIVED INTO  
12 EVIDENCE.)

13 BY MR. KRUEGER:

14 Q. Have you discussed with Mr. Owens the  
15 possibility of seeking a rate increase?

16 A. I probably have talked to him about it from  
17 time to time, but it would have been in the context of  
18 this situation with Stoddard County being a company not in  
19 good standing and in the process of trying to get all this  
20 turned over to R.D. Sewer Company. I don't believe  
21 Mr. Owens as owner of R.D. has ever really been in a  
22 position to file a rate case.

23 Q. Not eligible to, you mean?

24 A. Correct.

25 Q. Have you been able to observe the ability

1 of Mr. Owens to manage and operate the sewer system?

2 A. Yes, really firsthand just by my visit down  
3 there and also talking on the telephone a number of times,  
4 but also through our inspector, and --

5 Q. Talking to your inspector, which is Arlie  
6 Smith?

7 A. Correct, Arlie Smith.

8 Q. Okay. And --

9 A. And -- well, I was going to say, we have  
10 observed him, you know, making needed repairs. We've  
11 observed Mr. Owens making needed repairs, and most of them  
12 were the ones that were absolutely necessary. There are  
13 things we would like for him to do but the money just  
14 isn't there, but we're talking about if a blower does go  
15 down, you know, something really absolutely needs to be  
16 done, he takes care of it.

17 Also in the context of the other water  
18 companies that he owns, he had mentioned those, and we  
19 deal with him regularly with those companies, and those  
20 companies are not -- I mean, they're small water  
21 companies, but they don't need a lot of attention. They  
22 run and we haven't had any problems with those particular  
23 companies.

24 Q. Those being Oak Briar and Lakeland Heights  
25 and Whispering Hills?

1 A. Correct.

2 Q. And so they are being run well; is that  
3 right?

4 A. Yes.

5 Q. And leaving the financial considerations  
6 aside, are you able to form a judgment on Mr. Owens'  
7 ability to operate this system?

8 A. It appears -- it appears to me he can do  
9 what's necessary and get things done. Some of these  
10 things I don't know how he does it. He was talking about  
11 trading time with some of these other people that he deals  
12 with. I don't know anything about that, but he seems to  
13 be able to get the job done.

14 Q. Were you here this morning when Mr. Shepard  
15 was questioned by Public Counsel about the operator costs  
16 for the report that he prepared?

17 A. Yes, I was.

18 Q. I believe that he mentioned SK&M, LW Sewer,  
19 Mill Creek and Foxfire. Is that your recollection?

20 A. Yes. There should be a total of five of  
21 them.

22 Q. Do you remember what the fifth one was?

23 A. Mill Creek, Foxfire, SK&M, LW. I'm sorry,  
24 I don't.

25 Q. I don't have it either.

1           A.       Well, there were five of them.

2           Q.       Can you tell me how those companies were  
3 chosen?

4           A.       Yes. They were chosen by me. Randy  
5 Shepard had been asking from the Staff just -- and  
6 probably maybe elsewhere, I don't know where he was  
7 asking, but trying to get information on this company and  
8 also just how to -- how to -- you know, what -- he was  
9 trying to land on some expenses to put together.

10                    On that particular issue, the question came  
11 to me, what are some reasonable operator expenses, you  
12 know, that have been used? We, of course, had the one for  
13 Stoddard County that we used for our rate case, and I told  
14 them that I could -- well, also Mr. Schultz, the engineer  
15 for the sewer district had given a bid to Brenda Wilson,  
16 the public administrator, on operating the Stoddard County  
17 Sewer Company. So I sent him that. I had a copy of the  
18 letter from that. I sent Mr. Shepard a copy of that  
19 letter, and then I told him I would look through our rate  
20 files and try to see if I could pick some companies that  
21 are similar size and similar operations and pull the  
22 operator salaries out of the rate case information.

23                    So that's what I did. I just went through  
24 our files and picked out companies that are similar,  
25 meaning one mechanical treatment plant and about the same

1 number of customers.

2 Q. Okay.

3 A. And I might mention that the information I  
4 gave to him physically came out of our files, but it was  
5 information that would have been submitted in the rate  
6 cases for those companies, so it would be public  
7 information.

8 Q. So that would have been current information  
9 as of the time of their rate case?

10 A. Of whenever each one of those companies  
11 filed their rate cases, correct.

12 Q. And did all of those companies have recent  
13 rate cases?

14 A. Yeah. I think I picked a number like ten  
15 years. I was looking for a company that had a rate case  
16 within the last ten years or so.

17 Q. Do you recall if -- if these rate cases  
18 were resolved by stipulation and agreement with the  
19 company?

20 A. Well, strictly speaking, probably wouldn't  
21 have been a stipulation. They would have been the small  
22 company procedure.

23 Q. Okay. A disposition agreement?

24 A. Yes.

25 Q. Do you know if those were unanimous

1 agreements or only agreements between the company and the  
2 Staff -- I mean the -- yeah, company and Staff?

3 A. I think the procedure is the company and  
4 the Staff agrees, and Public Counsel either agrees or  
5 states no objection to it. And meaning -- meaning the  
6 rate cases for these companies, I don't know that they  
7 were particularly controversial. We probably would have  
8 had some discussions and negotiations while it was going  
9 on, but it didn't go to a contested -- contested  
10 proceeding.

11 Q. Okay. There was also testimony this  
12 morning about some information I had given to Mr. Shepard  
13 about a \$1.55 per bill.

14 A. Yes.

15 Q. Did you hear that testimony?

16 A. Yes, I did.

17 Q. Do you know where I got that information?

18 A. Well, you got the information from me.

19 Q. Next question, where did you get it?

20 A. Yeah, the \$1.55, that came from the  
21 auditor's work paper on our Stoddard County Sewer Company  
22 rate case. The -- there was a note in the adjustments,  
23 the \$1.55 was stated in our adjustment note, and I don't  
24 know where the auditor got it from, but that is what was  
25 used for Stoddard County Sewer Company. And that's about



1 the amount that we see on contract operations. You know,  
2 years ago I remember using an even dollar per bill, and  
3 where we -- like I say, I don't know exactly how we landed  
4 on the \$1.55, but that's what was used in this case, and  
5 that's a plausible amount that I think is probably close.

6 Q. So the auditor determined at the time of  
7 that rate case in 2002 that that was a reasonable amount?

8 A. That's correct.

9 Q. Do you know if Stoddard County has at any  
10 time transferred any of its utility assets to another  
11 party?

12 A. To my knowledge, Stoddard County Sewer  
13 Company has never transferred any assets.

14 Q. Or given a security interest in any of the  
15 assets?

16 A. Well -- well, I guess Stoddard County Sewer  
17 Company did do that, but it was not in the context of a --  
18 approval by the Commission which was probably necessary.

19 Q. Okay. My question is, next question is, do  
20 you know if Stoddard County ever secured from the  
21 Commission any Order authorizing it to give a security  
22 interest in its assets?

23 A. I don't think Stoddard County Sewer  
24 Company's ever done that.

25 MR. KRUEGER: That's all the questions I

1 have.

2 JUDGE STEARLEY: Thank you, Mr. Krueger.

3 Cross-examination beginning with Stoddard County/R.D.

4 Sewer, Mr. Allen?

5 CROSS-EXAMINATION BY MR. ALLEN:

6 Q. Just to be clear, Mr. Merciel, what  
7 happened to the 2002 rate case?

8 A. That was an informal rate case that was  
9 dismissed by the Staff, which is part of the possible  
10 procedure. And the reason was, was the Staff didn't want  
11 to proceed unless Stoddard County Sewer Company was  
12 willing to get reinstated, get its corporate status and  
13 take care of all the past due annual reports and  
14 assessments and all that.

15 If there was some plan to take care of all  
16 that, we could have proceeded with it, but that was not  
17 moving ahead, so the Staff finally recommended that the  
18 case be dismissed.

19 Q. So if I understand, at that time Stoddard  
20 County Sewer Company had lost its corporate charter and  
21 was at least administratively dissolved by the Secretary  
22 of State Corporation Division, State of Missouri, right?

23 A. That is correct. In fact, that had  
24 actually happened before the case was filed. Stoddard  
25 County Sewer Company did file and receive a waiver from

1 the Commission to even file the rate case. Our rules say  
2 that -- well, that actually wasn't because of the  
3 corporate status, but that was because of past due annual  
4 reports and assessments. Normally that has to be up to  
5 date for a company to file, and it wasn't with Stoddard  
6 County, so they obtained the waiver.

7 Q. Ms. Bien wasn't going to file it, was she?

8 A. That's probably correct.

9 Q. And Ms. Wilson wasn't going to file it, was  
10 she?

11 A. That's correct. She didn't really have the  
12 information to be able to do it.

13 Q. So you didn't have anybody to file it?

14 A. Right.

15 MR. ALLEN: No questions.

16 JUDGE STEARLEY: Cross-examination, Public  
17 Counsel?

18 MS. BAKER: Thank you.

19 CROSS-EXAMINATION BY MS. BAKER:

20 Q. You stated that you were involved in the  
21 2002 case, correct?

22 A. I was somewhat involved, right.

23 Q. You stated that you reviewed but did not  
24 perform the audit; is that correct?

25 A. That's correct.

1 Q. So did you have the opportunity to verify  
2 the accuracy of the auditor's work?

3 A. I guess I had the opportunity.

4 Q. Did you --

5 A. I don't know if I'd actually did anything  
6 at that time. I remember being involved with some  
7 discussions at the time, but I didn't actually do any work  
8 on verifying what the auditor found.

9 Q. Okay. Were you aware from your review of  
10 the auditor's work that some of the auditor's work was  
11 based on costs that were older than 2002?

12 A. Yeah, I believe I was aware of that. This  
13 company's records and annual reports were out of date.  
14 Actually, Mr. Bien kept pretty good records during the  
15 time he was actively involved in his businesses, but in  
16 the later years after probably '98 or '99, I think things  
17 started slipping, and I think we did have to go back and  
18 reassemble some of the expenses and plant balances and  
19 things like that. So yeah, there probably is some older  
20 information.

21 Q. So it would be fair to say that the audit  
22 done in 2002 as compared to today is based on numbers that  
23 are well in excess of six years old?

24 A. Well, some could be. Some could be.

25 Q. Do you know who the auditor was if Randy

1 Hubbs was not the auditor?

2 A. I do. The auditor was Leasha Teel, who was  
3 an auditor who worked out of our St. Louis office. She's  
4 no longer employed here.

5 Q. When did she leave service of the Staff?

6 A. I really don't know. Maybe -- obviously  
7 sometime after this was done, probably a few years later.  
8 She's been gone several years now, I think.

9 Q. And the 2002 audit, because it was done  
10 before R.D. Sewer took over operations of Stoddard County,  
11 does not reflect any costs that would be pertaining to  
12 R.D. Sewer as well, correct?

13 A. That would be correct. The audit then and  
14 the paper here reflecting the audit does not include  
15 anything that R.D. Sewer Company did.

16 Q. Going back to the testimony of the amount  
17 of work that is required for this sewer system, is it fair  
18 to say that the sewer system takes more work because it is  
19 not well maintained and not updated?

20 A. Well, the -- the overloaded treatment plant  
21 probably takes a little more work, a little more operator  
22 time. It's a biological process, and sewage treatment  
23 plants do take some labor anyway, and they can get touchy  
24 when they're overloaded.

25 As for older and broken down equipment,

1 that probably adds some to it. Of course, maintenance of  
2 this is kind of ongoing; pumps usually last about ten  
3 years, but it's not -- it's not that unusual for an  
4 operator to have to go and repair or replace a pump. For  
5 this facility, I guess they have a total -- or should have  
6 a total of six devices, you know, four pumps and two  
7 blowers. So in theory, once every, what, year and a half  
8 or so one is likely to fail.

9 Q. Do you believe that the results of the 2002  
10 audit are valid today?

11 A. I -- well -- well, taking into the context  
12 that the time and the information that's available right  
13 now, I think it's the best we have to go on. No, it's not  
14 completely accurate. There have been some changes.  
15 There's been more investment. There's been depreciation  
16 that's occurred since this time. Just changes in  
17 operations. Now we have Mr. and Mrs. Owens operating the  
18 company rather than either Mr. Bien or the public  
19 administrator.

20 So there are some changes, and certainly a  
21 new rate case I think would be appropriate, but we also  
22 need to work with what we have so we can proceed and get  
23 this place on track. It's not even on track and moving  
24 right now.

25 Q. Do you believe that the depreciation has

1 exceeded the amount that's been invested in the plant in  
2 the six years since the 2002 audit?

3 A. You mean depreciation that's been collected  
4 since then?

5 Q. Yes.

6 A. Well, I don't know. I believe the  
7 depreciation during that time has been about \$25,000.  
8 That's based on a -- that expense, depreciation expense is  
9 one of them on here. It's on the -- page No. 1, second  
10 page of the document, in the list of expenses, it's the  
11 second to last one, and it's \$4,150 per year. So multiply  
12 that by six, whatever you get, it's about \$25,000. I  
13 don't know what Mr. Owens has spent on the system. Could  
14 be more.

15 Q. Have you been given any documentation as  
16 far as the amount of money that's been invested by  
17 Mr. Owens?

18 A. Not documentation. I've heard him talk and  
19 he testified to some dollars, and I've heard some of that  
20 over the telephone, but I don't have it recorded or I have  
21 seen no documentation, but no audit of anything like that.

22 Q. Are you aware of any cases with the Public  
23 Service Commission where Staff has recommended rates based  
24 on an audit that's in excess of six years old?

25 A. To my knowledge, there's never been any

1 case handled like this one is being handled.

2 MS. BAKER: No further questions.

3 JUDGE STEARLEY: Thank you, Ms. Baker.

4 Questions from the Bench, Commissioner Murray?

5 COMMISSIONER MURRAY: I don't believe I  
6 have any. Thank you.

7 JUDGE STEARLEY: Commissioner Jarrett?

8 COMMISSIONER JARRETT: I don't think I have  
9 any either. Thanks, Mr. Merciel.

10 JUDGE STEARLEY: Commissioner Gunn?

11 COMMISSIONER GUNN: Just one quick one.

12 QUESTIONS BY COMMISSIONER GUNN:

13 Q. Do you think that costs would have gone  
14 down from the audit in 2002?

15 A. Overall, probably not. I guess some of  
16 them -- some of the costs could have. Maybe property tax,  
17 it's possible, some could have gone down. But I think  
18 some of the costs have gone up as well, and there's  
19 probably been some investments between mechanical  
20 equipment, legal fees. There's probably been some, you  
21 know, additional costs that have come up. But as far as  
22 day-to-day operating expenses, I doubt if the total would  
23 be any less.

24 COMMISSIONER GUNN: All right. Thank you.

25 JUDGE STEARLEY: Chairman Davis?



1 QUESTIONS BY CHAIRMAN DAVIS:

2 Q. Good afternoon, Mr. Merciel.

3 A. Good afternoon, Mr. Chairman.

4 Q. Mr. Merciel, when you were looking at  
5 people to possibly manage this system, did you ever  
6 consider Office of Public Counsel?

7 A. To actually run it?

8 Q. Uh-huh.

9 A. I think that slipped my mind. I'm sorry.

10 Q. Would you consider it in the future? If  
11 Ms. Baker goes out and gets an operator's license, would  
12 you consider it?

13 A. I guess they need to meet the technical,  
14 managerial and financial criteria that we usually use and  
15 the Tartan Energy criteria.

16 Q. Okay. But if they could do that, would you  
17 be interested?

18 A. I would consider the possibility, sir.

19 CHAIRMAN DAVIS: Thank you. No further  
20 questions, Mr. Merciel.

21 QUESTIONS BY JUDGE STEARLEY:

22 Q. Mr. Merciel?

23 A. Yes, sir.

24 Q. Have you had an opportunity to review the  
25 reports that were filed by the Commission's witnesses in

1 this case?

2 A. Yes, I have.

3 Q. Do you have an opinion as to those reports?

4 A. Well, yes. Not so much on the financials.

5 Not being an auditor and accountant, I'm not going to

6 speak too much on that.

7 On the engineering report, I largely agree

8 with the engineering report. I agree with its

9 conclusions. They had three alternatives; do nothing,

10 alternative No. 2 was to do some improvements and

11 expansion on the plant. That was their preference, and I

12 agree with it. Alternative No. 3 is construct a brand-new

13 plant. That would work, but it would be the most

14 expensive.

15 I do think alternative No. 2, there

16 probably could be some variations. They proposed

17 converting -- the entire plant right now is a concrete

18 structure, and the aeration chambers and clarifiers are

19 all within that concrete structure, .they propose using

20 that structure for an aeration basin and constructing two

21 separate clarifiers. So it would take some construction,

22 and that would expand the capacity of the plant. That

23 would certainly work. Nothing wrong with that.

24 There probably are some things that could

25 be done, like construct a second plant; in other words,

1 use the existing plant as it is but construct a second  
2 plant to operate and be in parallel, some sewage goes to  
3 the existing plant, some would go to the new plant.  
4 Converting the existing plant to a holding tank or septic  
5 tank and then using a sand filter might be another option.

6                   You know, somebody would have to look at  
7 the costs and feasibility of doing all that. But my point  
8 is there could be some variation on Smith's alternative  
9 No. 2. The only other thing I -- well, also on  
10 alternative No. 1, there -- they showed that option as  
11 doing nothing, and I would like to modify that to do  
12 nothing meaning taking the existing facility and operating  
13 it as it is. I don't think doing nothing is at all  
14 practical. They at least need to do some reconstruction  
15 or repairs, fixing up, such as the second pumps and second  
16 blower, repairing the building. That's as close as I  
17 would say they could come to doing nothing.

18                   And finally on their -- on the operations  
19 expenses, the day-to-day expenses, I think that Smith  
20 might have come up with some numbers that I would consider  
21 a little bit high. They're higher than what we show in  
22 our audit, and maybe that's -- somewhere between what they  
23 have and what we had back in 2002 might be appropriate  
24 today. Just struck me that might be a little bit high,  
25 not -- not radically high, just a little bit. Those are

1 really my only comments. I thought it was a good report.

2 JUDGE STEARLEY: All right. Thank you,  
3 Mr. Merciel. Recross based on questions from the Bench,  
4 Stoddard County/R.D. Sewer, Mr. Allen?

5 MR. ALLEN: We have none, thank you.

6 JUDGE STEARLEY: Public Counsel?

7 MS. BAKER: None, your Honor.

8 JUDGE STEARLEY: Redirect?

9 MR. KRUEGER: Just one or two, your Honor.

10 REDIRECT EXAMINATION BY MR. KRUEGER:

11 Q. Mr. Merciel, you testified that the  
12 depreciation that would have accrued since 2002 was about  
13 \$25,000?

14 A. Yes, I did.

15 Q. Now, if the new investment in the plant was  
16 also \$25,000, would the rate base change?

17 A. Well, the existing rate base that was in  
18 2002 would go down by the 25,000, but new investment would  
19 bring the rate base back up. So I guess the answer to  
20 your question is if we had \$25,000 depreciation, and if  
21 they put \$25,000 into it, then rate base today would be  
22 the same as it was in '02.

23 Q. And if they put more than 25,000 new  
24 investments in it and depreciation was 25,000 in the last  
25 six years, how would that affect rate base?

1           A.       Rate base would be a little more, not  
2 counting any depreciation on the new stuff if they put  
3 something in in 2003 that would have depreciated a little  
4 bit.

5                   MR. KRUEGER: Thank you. That's all the  
6 questions I have.

7                   JUDGE STEARLEY: Thank you, Mr. Merciel.  
8 You are finally excused.

9                   And Mr. Krueger, I believe we were going to  
10 try to get Mr. Rackers by phone. Is that something we  
11 could do quickly or do you need a short recess?

12                   MR. KRUEGER: Well, I have the number.  
13 It's 314-554-2414.

14                   JUDGE STEARLEY: I believe we've got our  
15 phone set up on the witness stand if you want to --

16                   MR. KRUEGER: You want me to dial?

17                   JUDGE STEARLEY: Yes. You actually  
18 literally get to call your witness today.

19                   MR. KRUEGER: Steve, this is Keith Krueger  
20 calling. Are you available to testify at this time?

21                   THE WITNESS: Yes.

22                   JUDGE STEARLEY: Mr. Krueger, if you'd put  
23 the microphone down closer to the phone. Mr. Rackers, can  
24 you hear us all right?

25                   THE WITNESS: Yes.



1 another auditor the office. So what office are you  
2 referring to?

3 A. The Commission's St. Louis office.

4 Q. Okay. Do your duties include conducting  
5 audits of small company rate increase requests?

6 A. Yes, they do.

7 Q. Do your duties include the supervision of  
8 those audits?

9 A. Yes, they do.

10 Q. Does the Staff maintain records of the  
11 audits in those cases?

12 A. Yes.

13 Q. Where are those records maintained?

14 A. We have a file room in the St. Louis office  
15 where records are maintained, and they're also maintained  
16 online.

17 Q. So you have custody or control of those  
18 records?

19 A. Yes.

20 Q. Did the St. Louis office conduct an audit  
21 of Stoddard County Sewer Company in 2002?

22 A. Yes.

23 Q. And did your office maintain records  
24 concerning its findings during that audit?

25 A. Yes, they did.

1 Q. Do you have in front of you a document  
2 consisting of five pages, the first one entitled audit  
3 work papers, that I sent to you yesterday?

4 A. Yes, I do.

5 Q. And the second page --

6 MR. KRUEGER: Well, I'd like to have this  
7 exhibit marked, your Honor.

8 JUDGE STEARLEY: We're at Exhibit No. 11.

9 (EXHIBIT NO. 11 WAS MARKED FOR  
10 IDENTIFICATION BY THE REPORTER.)

11 BY MR. KRUEGER:

12 Q. The second page of that document bears in  
13 the upper left-hand corner the heading Stoddard County  
14 Sewer Company, Inc., Income Statement Sewer Informal Rate  
15 Case. Do you see that?

16 A. Yes, I do.

17 Q. And there are three more pages, then, the  
18 first of which is entitled Stoddard County Sewer  
19 Adjustments.

20 A. Yes.

21 Q. Can you identify that document, please?

22 A. That is a standard calculation of revenue  
23 requirement that the auditors put together for an informal  
24 water and sewer case in 2002.

25 Q. Now, was that specifically for Stoddard



1 County Sewer?

2 A. Yes, it is.

3 Q. Have you compared that, the document, to  
4 the audit work papers maintained in your office for that  
5 audit?

6 A. Yes, I have.

7 Q. And is this an accurate copy of those work  
8 papers?

9 A. Yes, it is.

10 Q. Did you prepare those work papers?

11 A. No, I did not.

12 Q. Do you know who did?

13 A. An auditor who is no longer with us by the  
14 name of Leasha Teel.

15 Q. Do you know who directly supervised  
16 Mr. Teel -- Ms. Teel in the preparation of these work  
17 papers?

18 A. Again, an auditor who is no longer with us,  
19 Mr. Greg Meyer.

20 Q. Was this document prepared in the normal  
21 course of business for the St. Louis office of the  
22 Commission?

23 A. Yes, it was.

24 Q. And do you know when it was prepared?

25 A. Other than I believe sometime around

1 2000 -- during 2002.

2 Q. Was it prepared at or near the time of the  
3 audit?

4 A. Yes.

5 Q. I'd like to call your attention now to the  
6 second page, the one that we talked about a little bit  
7 ago. There are three columns of numbers there near the  
8 right-hand side of the page. Do you see those?

9 A. Yes, I do.

10 Q. And one of them is headed Staff. Do you  
11 see that?

12 A. Yes.

13 Q. What do the numbers in that column  
14 represent?

15 A. That would have been Staff's determination  
16 based on its audit of the associated expenses that you see  
17 entitled to the left in the very first column.

18 Q. For Stoddard County Sewer Company in 2002?

19 A. For Stoddard County Sewer Company.

20 Q. Near the bottom of that page there's a line  
21 entitled cost of service. Do you see that?

22 A. Yes.

23 Q. And what number is shown there?

24 A. 40,074.

25 Q. 48,074?

1           A.     Yes.

2           Q.     And what does that number represent?

3           A.     That's the total expenses that Staff would  
4 have been recommending.

5           Q.     The next line says --

6           A.     Or -- I'm sorry. Excuse me. That's --  
7 that's the total expenses plus the return on investment  
8 that the Staff would have been recommending.

9           Q.     Okay. The next line says less current  
10 revenues. Do you see that?

11          A.     Yes.

12          Q.     What number's written there in the column  
13 for Staff?

14          A.     That would have been Staff's calculation of  
15 the level of revenues based on current rates.

16          Q.     And what is the amount there?

17          A.     22,094, or 93. The copy I have's not very  
18 good.

19          Q.     The next line says net revenue requirement.  
20 Do you see that?

21          A.     Yes.

22          Q.     And what number is written there?

23          A.     25,901.

24          Q.     And what does that represent?

25          A.     That's the additional revenues that Staff

1 would be recommending in this case that Stoddard County be  
2 authorized to collect.

3 MR. KRUEGER: Your Honor, I'd offer  
4 Exhibit 11.

5 JUDGE STEARLEY: Any objections to the  
6 offering of Exhibit 11?

7 MS. BAKER: No objections.

8 JUDGE STEARLEY: Hearing none, it shall be  
9 received and admitted into evidence.

10 (EXHIBIT NO. 11 WAS RECEIVED INTO  
11 EVIDENCE.)

12 MR. KRUEGER: I'd like to mark another  
13 exhibit, your Honor.

14 JUDGE STEARLEY: Exhibit 12.

15 (EXHIBIT NO. 12 WAS MARKED FOR  
16 IDENTIFICATION BY THE REPORTER.)

17 BY MR. KRUEGER:

18 Q. Mr. Rackers, do you also have in front of  
19 you a one-page document with a header in the upper  
20 left-hand corner reading Stoddard County Sewer Company,  
21 Inc., Revenue Requirement Calculation?

22 A. Yes, I do.

23 Q. Can you identify that document?

24 A. That was a comparison that I made based on  
25 Staff's revenue requirement calculation that we just

1 discussed and a document that I had from the current  
2 proceeding that was prepared by Mr. Bonadio, where he  
3 calculated revenue requirement that appears in the far  
4 right-hand column, and then he also had a compilation of  
5 what Stoddard County had come up with as a revenue  
6 requirement. That's in the first column of numbers.

7 Q. When did you prepare this document?

8 A. I think it was approximately two weeks ago.

9 Q. The numbers in that middle column there  
10 that's headed Staff, those are the same ones as appeared  
11 in the audit that -- audit work papers we just talked  
12 about?

13 A. Yes, they are.

14 Q. And the numbers in the right-hand column  
15 are the ones that Bonadio recommended; is that right?

16 A. That's my understanding.

17 Q. And in the left-hand column is what the  
18 company was requesting?

19 A. That's correct.

20 Q. Based on these documents, are you able to  
21 determine whether the Staff reached a conclusion as to  
22 what Stoddard County Sewer Company's revenue requirement  
23 was in 2002?

24 A. Yes. I believe that Staff came to the  
25 conclusion that Stoddard County -- Stoddard County's rates

1 should be increased by \$25,981.

2 MR. KRUEGER: Your Honor, I'd offer  
3 Exhibit 12.

4 JUDGE STEARLEY: Any objections to the  
5 offering of Exhibit 12?

6 MS. BAKER: No objections.

7 JUDGE STEARLEY: Hearing none, it shall be  
8 received and admitted into evidence.

9 (EXHIBIT NO. 12 WAS RECEIVED INTO  
10 EVIDENCE.)

11 MR. KRUEGER: That's all the questions I  
12 have for Mr. Rackers.

13 JUDGE STEARLEY: Cross-examination,  
14 starting with Stoddard County and R.D. Sewer?

15 MR. ALLEN: We have no questions. Thank  
16 you, Judge.

17 JUDGE STEARLEY: Office of Public Counsel?

18 MS. BAKER: Thank you. I do have a few  
19 questions.

20 CROSS-EXAMINATION BY MS. BAKER:

21 Q. I'd like to look at the Exhibit 12 again  
22 that you had prepared.

23 A. Okay.

24 Q. In the second column is listed Bonadio  
25 Attachment A Company?

1 A. Yes.

2 Q. And then in the fourth column is Attachment  
3 B Bonadio as well?

4 A. Yes.

5 Q. Is it your understanding that the second  
6 column entitled Bonadio Attachment A Company is  
7 information that the company supplied to Bonadio?

8 A. That's my understanding.

9 Q. And this -- is it your understanding that  
10 this is not information that was requested from the  
11 Commission?

12 A. I'm not sure I understand your question.

13 Q. In the second column, did the company ask  
14 the Commission to recover these amounts?

15 A. I don't know.

16 Q. Okay. The current rates for Stoddard  
17 County Sewer have been in place for quite some time,  
18 correct?

19 A. That's my understanding.

20 Q. With your experience in how the rates are  
21 set, would you say that it is likely that the current  
22 rates for Stoddard County when they were put into place  
23 included a return on plant?

24 A. Yes.

25 Q. Would you say that it's likely that when

1 they were put into place, they included a salary for the  
2 operator?

3 A. For the operator? Yes.

4 Q. Would you also say that it's likely that  
5 the current rates include depreciation?

6 A. Yes.

7 Q. Does the Commission allow return on plant  
8 when the company has no investment in that plant?

9 A. No.

10 Q. And is it the standard procedure for Staff  
11 to ask for a rate increase based on audit results that are  
12 in excess of six years old?

13 A. I'm not familiar with the situation in  
14 which that's happened before, but I understand that with  
15 regard to this company and this case, these are very  
16 special circumstances that required what's perhaps not our  
17 standard procedure.

18 MS. BAKER: I have no further questions.

19 JUDGE STEARLEY: Thank you, Ms. Baker.

20 Questions from the Bench, beginning with Commissioner  
21 Murray?

22 COMMISSIONER MURRAY: I have no questions.

23 Thank you.

24 JUDGE STEARLEY: Commissioner Jarrett?

25 COMMISSIONER JARRETT: Yes, I just have one



1 question.

2 QUESTIONS BY COMMISSIONER JARRETT:

3 Q. You talked about the special circumstances  
4 in this case requiring this to be handled in a nonstated  
5 situation -- nonstandard way; is that correct?

6 A. Yes.

7 Q. Would you say that the way that it is  
8 being -- being approached and handled, is it appropriate  
9 or inappropriate?

10 A. I believe it's appropriate.

11 COMMISSIONER JARRETT: Thank you. That's  
12 all I have.

13 JUDGE STEARLEY: Commissioner Gunn?

14 COMMISSIONER GUNN: I don't have any  
15 questions. Thank you.

16 JUDGE STEARLEY: Chairman Davis?

17 CHAIRMAN DAVIS: Mr. Rackers, thanks for  
18 phoning it in today. No questions.

19 JUDGE STEARLEY: All right. Recross based  
20 on questions from the Bench?

21 MR. ALLEN: I have none.

22 MS. BAKER: I have none.

23 JUDGE STEARLEY: Hearing none, Mr. Rackers,  
24 that concludes your testimony, and you are finally  
25 excused.

1 THE WITNESS: Okay. Thank you.

2 JUDGE STEARLEY: Thank you very much.

3 We're at our last witness, Mr. Robertson, Public Counsel.

4 (Witness sworn.)

5 JUDGE STEARLEY: You may be seated, and you  
6 may proceed, Ms. Baker.

7 MS. BAKER: Thank you.

8 TED ROBERTSON testified as follows:

9 DIRECT EXAMINATION BY MS. BAKER:

10 Q. Can you state and spell your name for the  
11 record, please.

12 A. Ted Robertson, T-e-d, R-o-b-e-r-t-s-o-n.

13 Q. What is your address?

14 A. P.O. Box 2230, Jefferson City, Missouri  
15 65102, I believe.

16 Q. And who is your employer?

17 A. Missouri Office of the Public Counsel.

18 Q. What is your job title?

19 A. I'm a Regulatory Accountant III with the  
20 Missouri Office of the Public Counsel.

21 Q. Can you describe your experience, please?

22 A. I've been employed by the Public Counsel  
23 for -- since July of 1990. I have a BS degree in  
24 accounting, licensed CPA in the state. I've attended  
25 numerous seminars and training conferences in the area of

1 regulatory ratemaking and accounting, and I've also  
2 participated in numerous cases before this Commission.

3 Q. Can you tell us your involvement in the  
4 Stoddard County Sewer case?

5 A. My involvement in the case happened when I  
6 guess the company and Staff jointly filed an application  
7 to institute the change of ownership and the -- and the  
8 request for interim rates. I reviewed what the company --  
9 what the Staff and company had put together, reviewed the  
10 audit that they were attempting to have the interim rates  
11 based on.

12 I reviewed the work papers supporting that  
13 audit. I reviewed actually most of the information that  
14 was given to me by Staff regarding the history of the  
15 utility, what had occurred, Mr. Bien's other businesses,  
16 the liens, his death, and the events that occurred  
17 subsequent to that.

18 Q. Would you describe your review of the  
19 financial information and audit?

20 A. I reviewed the audit, the work papers that  
21 Staff had produced. I also reviewed the report and the  
22 work papers that Mr. Shepard, Bonadio's group put  
23 together, and I reviewed the report and work papers that  
24 Mr. Williams put together also.

25 Q. Were you involved in the 2002 rate case?

1           A.       No, I was not.

2           MS. BAKER:  I have an exhibit.

3           JUDGE STEARLEY:  We're up to Exhibit

4 No. 13.

5                       (EXHIBIT NO. 13 WAS MARKED FOR

6 IDENTIFICATION BY THE REPORTER.)

7 BY MS. BAKER:

8           Q.       Are you familiar with what's been marked as

9 Exhibit 13?

10          A.       I am.  I prepared this document.

11          Q.       And can you describe what this document is?

12          A.       It's a comparison of a cost of service I

13 put together for the company when compared to three

14 separate scenarios, Bonadio's limited review cost

15 structure they put together, the Staff's 2002 audit which

16 they are basing the request for the interim rates on, and

17 then the third comparison to the far right is with what

18 the company put together.

19                       But what that really represents are numbers

20 that the company gave Mr. Bonadio in -- when he asked him

21 what he thought it would take to run the company.  The

22 company hasn't requested rates be based on this cost

23 structure.  It's just information provided as I understand

24 it, verbally, to Mr. Bonadio during his limited review or

25 the company's, Bonadio's limited review.

1           Q.       You were present this morning during the  
2 testimony of Mr. Shepard from Bonadio, correct?

3           A.       I was.

4           Q.       Going through the expenses that you see  
5 described on -- on the left side, are these the same  
6 expenses that Mr. Bonadio -- or that Mr. Shepard from  
7 Bonadio included in his report?

8           A.       They are. This is the cost structure that  
9 he determined -- or his company, Bonadio company  
10 determined. I also developed a cost structure under a  
11 limited review scenario, and the third column of that  
12 comparison tries to show the difference between  
13 Mr. Shepard's and my cost structure.

14          Q.       Let's go through each of these costs and  
15 explain how you came up with the OPC numbers.

16          A.       Okay. Starting with the billing expense,  
17 Mr. Shepard has an amount a little over \$4,000. I put in  
18 zero. The reason I did that is essentially when I made a  
19 determination of what a proper operator expense should be,  
20 which is the next row, I determined that the billing  
21 expense should be included with that. And so, therefore,  
22 I set the billing expense at zero.

23                   The operator expense I set at \$8,749, and  
24 what I based that on was in Mr. Shepard's work papers, he  
25 had received information from Mr. Jim Merciel from the

1 Staff regarding some operator costs for actually four  
2 companies, not five. The four companies were -- just bear  
3 with me a moment.

4                   As Mr. Shepard testified, the four  
5 companies were Foxfire, LW Sewer, Mill Creek Sewer, SK&M  
6 Water and Sewer. Two of those company, Foxfire and SK&M,  
7 both had water and sewer operations. I won't go through  
8 Mr. Shepard's calculation, but since he used companies  
9 that had both water and sewer operations in the  
10 comparison, I thought that was a little bit unfair since  
11 in my belief the testing requirements for water operations  
12 are a little more complicated, a little more -- they occur  
13 more often than they do for sewer operations.

14                   And so, therefore, I chose to look at the  
15 two sewer company costs and the payroll associated with  
16 those. LW Sewer had the higher payroll with \$8,749, and  
17 that's what I put in.

18                   And I would like to emphasize in the cost  
19 structure I put here, this is not an audit. This is not  
20 an audit we would have done had we went in and did it in a  
21 small rate case procedure or any other type situation.  
22 This is just a limited review where we took the  
23 information we had, which would have been the 2007 annual  
24 report and the work papers of this -- this Bonadio firm,  
25 and then tried to develop under a limited review scenario

1 what the cost structure should be.

2 Q. And the reason why you performed the  
3 limited review is because at this time there has been no  
4 audit of Stoddard County Sewer in connection with this  
5 case, correct?

6 A. In connection with this case, at the  
7 current -- based on the current cost structure for this  
8 time frame. So essentially what I did is I went in and  
9 looked at each cost, looked at Bonadio's work papers.  
10 Based on my knowledge of small rate case procedures and  
11 the recent cases and the 2007 annual report, I then  
12 developed the cost structure.

13 And if you look at it actually, there's not  
14 a lot of difference except in a few categories. Most of  
15 the dollar differences between me and Bonadio are very  
16 small, except for a few categories. The biggest part is  
17 labor. There's some -- there's some difference in the  
18 testing, some difference in the repairs and maintenance.  
19 There's a depreciation difference. There's a return on  
20 plant difference because the company has not paid anything  
21 for the plant, doesn't have a basis in it.

22 Most of the other differences -- and we can  
23 go through each one if you want to -- are really small and  
24 maybe even immaterial. The biggest difference are --  
25 biggest differences are the plant, the depreciation and

1 most of the labor and repair costs. Do you wish to  
2 continue?

3 Q. No. That's fine. Go down to the net  
4 revenue requirement row near the bottom, and can you say  
5 what your reasonable net revenue requirement for Stoddard  
6 County Sewer would be?

7 A. Based on this limited review, as I said, it  
8 is a limited review, it could vary somewhat, and I would  
9 expect it to vary somewhat if we -- when we go into a full  
10 ratemaking audit. I wouldn't expect it to vary  
11 significantly, certainly not to the level that Staff's  
12 proposed, which is nearly three times as high.

13 But we believe the company is incurring a  
14 deficit of approximately \$8,000, and if you look at the  
15 fact at what Mr. Owens has in his payroll for his  
16 2006/2007 annual report which is a very small amount  
17 of salary and wages that he's booked, if you put in a  
18 salary, which I have of approximately of almost \$9,000 in  
19 for him, that would be the primary difference.

20 The -- it pretty much boils down to that  
21 payroll situation, that salary situation. The rest of the  
22 operating costs of the company for the most part are being  
23 met by the current revenues, and the current revenues are  
24 approximately 22, 23, a little over \$22,000.

25 Q. So you were here this morning during



1 Mr. Owens' testimony showing his filings with the  
2 Commission of his loss of about 3- to \$4,000, 3-, \$4,000  
3 during 2006 and 2007?

4 A. That's correct.

5 Q. Okay. Do you feel that your numbers are  
6 reasonable as compared to his statements of loss?

7 A. I do. In his 2006 annual report filed with  
8 the Commission, he had a loss of a little over \$3,000, I  
9 believe. In 2007 he had a net income loss of a little  
10 over \$4,000, which essentially meant all the operating  
11 costs were being covered as far as what he had filed with  
12 the Commission as being true and accurate, except for  
13 about \$4,000.

14 And the primary -- I think in my view is  
15 that's a very narrow range, but I still think even at  
16 that, he wasn't really receiving enough salary, even  
17 though the current tariffs include salary. That salary  
18 was probably built in back in 1979, and that cost  
19 structure isn't relevant now. So therefore, under my  
20 analysis, we included in a salary for him, and we believe  
21 it takes him up to a loss or net revenue requirement that  
22 he needs of almost \$8,000.

23 I guess the point I'm really trying to make  
24 is the company revenues are providing or meeting or  
25 satisfying current operating costs except for salary for

1 Mr. Owens. If you include a salary in for -- or a more  
2 appropriate salary in for it, a more reasonable salary, it  
3 is underearning by about \$8,000.

4 Q. So in your opinion, what would a reasonable  
5 interim increase subject to refund be for this company?

6 A. I certainly think based on this, and I do  
7 like to qualify it, it is a limited review, I certainly  
8 think that somewhere in the 8- to \$10,000 range would be a  
9 reasonable interim rate to include, with the caveat that  
10 he comes in under the small rate case procedure and has an  
11 audit in a relatively soon fashion so that we can make  
12 this more accurate to determine what the actual cost  
13 structure is.

14 I think it's unreasonable that Staff is  
15 asking for the Commission to authorize the interim rate  
16 increase -- rate increase case, rate increase of almost  
17 \$23,000, which is about three times that amount. I have  
18 my own personal belief that that's very far excessive  
19 based on what the current cost -- current cost structure  
20 actually is, and I have a real fear that that extra  
21 two-thirds of difference from what we've got would just  
22 simply be money that the company could use to put  
23 investment in the plant or in the company for which  
24 ratepayers wouldn't be given credit.

25 MS. BAKER: That's all the questions that I

1 have. I tender for cross-examination.

2 JUDGE STEARLEY: Cross-examination,  
3 beginning with Staff?

4 MR. KRUEGER: Thank you, your Honor.

5 CROSS-EXAMINATION BY MR. KRUEGER:

6 Q. What is the basis for your conclusion that  
7 the operating costs for water facilities are greater than  
8 sewer facilities?

9 A. My experience and my knowledge that I've  
10 worked on these small companies for numerous years, and I  
11 know reading the DNR requirements and the permits, the  
12 requirements for testing, to my knowledge of sewer  
13 operations, and I believe this one to be also correct, the  
14 testing requirements are quarterly. They have labor  
15 associated with them. They have mowing costs. They have  
16 operating costs, billing costs and so on.

17 But then when you compare that to the water  
18 utilities in general, water utility testing requirements  
19 are, in many cases, daily, and the requirements depending  
20 on the permitting could be monthly and quarterly. They  
21 have more testing requirements and I believe rules and  
22 regulations to follow to operate the water companies.

23 Q. Were you here this morning when Mr. Owens  
24 testified about this?

25 A. I was.

1 Q. And did you hear him say that the operating  
2 costs for sewer facilities is greater than for water?

3 A. I did hear him say that, yes.

4 Q. And you disagree with that?

5 A. I think that's a good reason for this  
6 company to come in for an audit, an actual small rate case  
7 procedure very soon so that we can verify those  
8 statements.

9 Q. What are the weekly sampling requirements  
10 for sewer?

11 A. I'm sorry. I don't have the permit with  
12 me.

13 Q. What are the weekly sampling requirements  
14 for water?

15 A. Normally it would be chlorine testing and  
16 other mic -- other testing requirements to see what's in  
17 the water. I don't have the specific permits with me for  
18 that either.

19 Q. Do you know how much time is required for  
20 that testing?

21 A. It would depend on the company, and we've  
22 had those arguments many times with the various companies.  
23 For the chlorine testing, the checking the pumps and that  
24 kind of thing in a water system, it could vary, depending  
25 on who's asking for it, anywhere from 15 minutes to two

1 hours, probably, and it does vary by company, of course,  
2 as you would know.

3 Q. Now, you testified a little bit about the,  
4 I guess, profit and loss statements that were admitted as  
5 Exhibits 8 and 9 from the 19 -- I mean from the 2006 and  
6 2007 annual reports?

7 A. I did.

8 Q. You think that the expenses that are shown  
9 there is all that's required for the operation of this  
10 company to provide safe and adequate service?

11 A. I don't understand the question.

12 Q. Do you think that the numbers that are  
13 shown on that form represent enough to pay all of the  
14 operating costs and all the costs of a sewer plant or is  
15 it just what remains after the -- out of the revenue that  
16 the company receives?

17 A. I still don't understand the question, but  
18 the 2000 annual report -- 2006 annual report, 2007 annual  
19 report show essentially the plant, the investment, the  
20 operations, the revenues and costs, that's what it takes  
21 to operate the company. I don't guess I know what you're  
22 asking.

23 Q. Do you have any reason to believe that  
24 there was any more money available to operate the company?

25 A. The revenues that are reported in the

1 report are supposed to be true and accurate. If you take  
2 them at their face value, those are the revenues that the  
3 company has.

4 Q. That's the checks being paid, correct?

5 A. That I don't know.

6 Q. And did you hear Mr. Owens testify that  
7 repairs are needed and additional -- and additional pumps  
8 and blowers are required?

9 A. He did discuss the need for additional  
10 investment, which normally owners provide --

11 Q. Okay.

12 A. -- not ratepayers.

13 Q. And those would not be reflected in there?

14 A. If they have not been made yet, no.

15 Q. Okay. You showed \$584 for legal and  
16 professional expense. How did you arrive at that figure?

17 A. I looked at the annual report, and he  
18 incurred -- he reported costs of approximately \$552 for  
19 H&R Block in taxes, and then I adjusted that amount from  
20 the -- the annual reports are normally filed, I believe,  
21 around March or April of the following year, but anyhow,  
22 then I adjusted that amount up for the CPI for the  
23 difference between the CPI in December 2007 and June 2008.

24 Q. Do you think that the company should be  
25 allowed to recover any of the costs of presenting this

1 case to the Commission, the legal fees and professional  
2 fees incurred in presenting this case?

3 A. Actually, since we haven't reviewed the  
4 cost, I couldn't answer that question. I could tell you  
5 that in an audit we would look at those costs and, if  
6 determined to be reasonable and prudent, we would request  
7 that they be recovered.

8 Q. Okay. You think they should be allowed to  
9 recover reasonable and prudent legal expenses incurred in  
10 presenting this case?

11 A. I didn't say that. I said not this case.  
12 I said we would look at the costs, and if they're  
13 determined to be reasonable and prudent cases, rate cases,  
14 or any other case before the Commission, we would then  
15 recommend they be allowed. I didn't say specific to this  
16 case. I don't know. I don't know what the costs in this  
17 case have been.

18 Q. But the costs that are incurred in  
19 presenting this case would be relevant to the  
20 determination of how much the legal and professional  
21 expense ought to be?

22 A. Absolutely.

23 Q. Okay. And you show zero for depreciation  
24 expense. Why is that?

25 A. That's correct. Because Mr. Owens has no

1 investment in the company, we don't believe he should earn  
2 a return on the plant and, therefore, he shouldn't earn  
3 depreciation on it either.

4 Q. Are you familiar with the concept of an  
5 acquisition premium?

6 A. I am.

7 Q. Can you tell me what that is?

8 A. An acquisition premium is a -- and/or  
9 acquisition discount is when a utility is purchased by  
10 another entity and the purchase price is either above or  
11 below the book value of the plant book value of the  
12 company being purchased or sold.

13 Q. Do you know if buying companies generally  
14 recover the acquisition premium in their -- from their  
15 ratepayers?

16 A. Not in the state of Missouri.

17 Q. And what about an acquisition discount?

18 A. That's correct, and usually in the state of  
19 Missouri the -- the book value is what the company is  
20 allowed a return on or allowed to earn on.

21 Q. And the book value being what?

22 A. The book value of the utility being bought  
23 or sold.

24 Q. Okay. So that would be the value of the --  
25 of the asset as when it was first placed in public service



1 less depreciation?

2 A. That's correct.

3 Q. Okay.

4 A. Under a purchase or sell scenario.

5 MR. KRUEGER: Thank you. That's all the  
6 questions I have.

7 JUDGE STEARLEY: Cross-examination,  
8 Stoddard County and R.D. Sewer?

9 MR. ALLEN: Just got a couple, Judge.

10 CROSS-EXAMINATION BY MR. ALLEN:

11 Q. And I know you and I talked earlier,  
12 Mr. Robertson. You're from down in Malden, Missouri, as I  
13 recall?

14 A. That is correct.

15 Q. So in this case, did you have an  
16 opportunity to go back home to Stoddard County and that  
17 area and take a look at this sewer company?

18 A. Actually, you won't believe this, but I did  
19 go down there. My son lives in Dexter about a mile from  
20 the utility.

21 Q. Did you go over there?

22 A. I did not. I fully intended to, but I was  
23 down for a family reunion and didn't make it by.

24 Q. So other than what you put in in terms of  
25 these figures and stuff, you've never really seen the

1 problems they had or have down there with regard to this  
2 facility?

3 A. I guess referencing -- I don't know what  
4 problems you're talking about.

5 Q. Well, you heard the testimony this morning?

6 A. Based on -- based on the testimony whether  
7 there were problems or not problems, I don't know if they  
8 exist or not. If they do, that's fine. If they don't, I  
9 don't have personal knowledge.

10 Q. You don't dispute the testimony of  
11 Mr. Owens as to the condition of the assets, condition,  
12 the need for pumps or blowers or anything like that?

13 A. Without an actual audit, I neither support  
14 nor reject.

15 Q. But you have then at this point no way to  
16 dispute that absent an audit, right?

17 A. That is correct.

18 Q. And you would take his word for it, I  
19 assume, as a gentleman under oath but for some audit,  
20 correct?

21 A. Not likely.

22 Q. Not likely. Okay.

23 A. I'm a firm believer that what I see I  
24 believe.

25 Q. Have you ever operated a sewer --

1 A. I have not.

2 Q. -- company?

3 Have you ever operated a water company?

4 A. I have not.

5 Q. Okay. So other than what you see in  
6 documents that come to you with regard to the number of  
7 tests that either one has, do you have any way to really  
8 judge the difficulty of one or the other in terms of its  
9 operation?

10 A. I have -- I have reviewed, have been on  
11 site to numerous operations and walked with the owners,  
12 operators through the operations numerous times. So yes,  
13 I do have some experience in that, in watching them do the  
14 work that they perform.

15 Q. But not this one?

16 A. Not this one.

17 Q. Now, another thing that I was curious about  
18 this morning, because Ms. Baker kept asking Mr. Shepard  
19 about contact from Bonadio -- I guess that's the way you  
20 pronounce it -- personnel with the Public Counsel's  
21 office. Do you remember that line of inquiry?

22 A. I do.

23 Q. I'm a little concerned about that, so I  
24 just wanted to ask you, did anyone deny you access to  
25 Bonadio personnel with regard to their study and ultimate

1 report?

2 A. After they finalized it, we received  
3 copies.

4 Q. Okay. But you knew, did you not, that  
5 there had been a bid on the street, if you will, or  
6 request for proposal for some company to come in and  
7 examine the issues in this case and make some kind of  
8 report? You knew that?

9 A. Yes.

10 Q. And were you aware that Bonadio Company was  
11 the one that was given that contract, if you will, they  
12 won the bid?

13 A. I think just prior to the report coming  
14 out. I'm not sure that I knew -- what time I knew they  
15 won the RFP, but somewhere in that time. It was very  
16 quick. It was like within a month that they put it  
17 together.

18 Q. Well, again, the question had suggested to  
19 me that they hadn't come to you. But what I'm concerned  
20 about is if Public Counsel and you know that this business  
21 is going on with Bonadio in studying these things, what  
22 would keep you-all from asking them to have some input  
23 into it?

24 A. That's a very good question, and the reason  
25 for that is they were supposed to provide an independent,

1 neutral review of the cost structure of the company. I  
2 didn't know they were contacting the company or Staff's  
3 personnel and receiving information from them that was not  
4 verified for accuracy or reasonableness, nor even compared  
5 to other utilities operating in this state.

6 I would not have contacted that company  
7 personally. The only contact I would have agreed to,  
8 being that they were suppose to be independent and  
9 neutral, which I don't believe they were, would have been  
10 if they had contacted me and requested the information,  
11 and if they had, I would have contacted Staff to let them  
12 know.

13 Q. So you just don't think you could have done  
14 it, then, other than them coming to you; is that correct?

15 A. Not with the view that the company was  
16 supposed to provide an independent, neutral review of the  
17 operations of the utility, which I don't believe they did,  
18 in addition to the fact they know nothing about regulatory  
19 ratemaking.

20 Q. It wasn't an audit, though, within the  
21 context of what you described as an audit?

22 A. From what I reviewed, it was barely  
23 anything from an accounting perspective.

24 Q. And then let me be clear. You heard  
25 Mr. Owens talk about the time and effort that he's put in

1 to R.D. Sewer Company in operating this facility. You  
2 heard, that, right?

3 A. I did.

4 Q. Do you have any way to dispute that?

5 A. Outside of actually going and doing an  
6 audit, I do not.

7 MR. ALLEN: Just one moment, Judge, and I'm  
8 just about through. You're very nice to put up with me.

9 BY MR. ALLEN:

10 Q. Public Counsel in a filing has indicated  
11 that currently SCS/R.D. Sewer Company is not or are not  
12 providing safe and adequate service through this facility  
13 with consumers. Do you agree with that statement?

14 A. If that's what we've -- if counsel has  
15 stipulated to it, I wouldn't dispute it.

16 Q. You don't dispute that statement?

17 A. Not if that's what our counsel stipulated  
18 to.

19 Q. And you do agree, as I understand it, it's  
20 just a matter of how much, that there ought to be some  
21 interim rate increase to -- in this case, you're just  
22 talking about the amount; is that fair?

23 A. I don't like to generalize it that much.  
24 Our office has told the Commission that we believe an  
25 interim rate increase would be reasonable or be

1 appropriate, subject to refund, subject to the company  
2 just coming in under the small rate case procedure very  
3 soon.

4                   We've put together a limited review to say  
5 what that number should be. We think it's about a third  
6 of what the Staff has requested of the Commission. We  
7 think our number's based on more current information,  
8 particularly the 2007 annual report, where Staff's basing  
9 an audit on numbers that could be as old as 1999. It far  
10 exceeds any zone of reasonableness for the cost structure  
11 of this company.

12               Q.       You would agree, would you not, this is  
13 kind of an unusual case overall given all the factual  
14 circumstances that you heard this morning?

15               A.       The unusual part I think relates -- in my  
16 opinion, the unusual part relates to the -- the -- the  
17 encumbrances and the liabilities associated with the  
18 company. The rate case part could have been taken care of  
19 very easily under a small rate case procedure a lot  
20 quicker, with a lot less trouble, but were it for the  
21 legal problems associated with the company, which of  
22 course I'm not an attorney and I can't address that.

23                   MR. ALLEN: Okay. I don't think I have any  
24 other questions. I can probably think of many, but I'm  
25 going to let it go at that.

1 JUDGE STEARLEY: Thank you, Mr. Allen.

2 Questions from the Bench, commissioner Murray?

3 COMMISSIONER MURRAY: Thank you.

4 QUESTIONS BY COMMISSIONER MURRAY:

5 Q. Good afternoon, Mr. Robertson.

6 A. Good evening, your Honor.

7 Q. I have a few questions for you, mainly  
8 because I'm very confused about what Public Counsel's  
9 position in this case is. And I was just wondering if you  
10 could briefly summarize, what is Public Counsel's position  
11 on this case?

12 A. Let me try. Okay.

13 Q. All right.

14 A. Don't ask me too much about the liability  
15 and encumbrances issue because I don't quite know where  
16 that's going to go.

17 MR. ALLEN: Can we get you to speak in that  
18 microphone in front of you? Thank you.

19 THE WITNESS: Sure. How's this? Public  
20 Counsel supports the transfer, as I understand. We also  
21 support the Commission, if they so choose to allow an  
22 interim increase in rates subject to refund, subject to  
23 the requirement that the company come in within 30 days or  
24 so to begin the small rate case procedure so we can see  
25 what the actual accurate reasonable cost structure of this



1 company is.

2                   The only thing we really dispute is the  
3 amount of that interim increase that you allow. We went  
4 and looked at the cost structure of the company based on  
5 more current costs, 2000 annual report, 2008 other costs.  
6 When you compare that to what Staff has done, when their  
7 audit is based on numbers that are in excess of six years  
8 old, and maybe as old as nine years old, which is not a  
9 reasonable period to try to define costs on, we think ours  
10 is more reasonable.

11                   We think ours is more reasonable based on  
12 what the 2006-2007 annual reports show the operating  
13 losses as, it's a little over 3,000 in 2006, over 4,000 in  
14 2007. If you take that into fact -- into account and the  
15 fact that Mr. Owens was not receiving much of a salary, we  
16 believe the range of about \$8,000 as an interim increase  
17 would be appropriate.

18                   When you compare our numbers also to what  
19 Mr. -- the firm Bonadio's did, now, I'm maybe on the verge  
20 of insulting the Commission, which I don't mean to do, but  
21 they were supposed to perform an independent, neutral  
22 analysis of the company's cost structure. I don't think  
23 they did that.

24                   But even having said that -- which is my  
25 opinion, of course. Even having said that, they know

1 nothing about regulatory ratemaking or how utilities'  
2 costs are determined or cost structures. As we went  
3 through their individual costs, I think we showed the  
4 Commission some of the mistakes they made in that they  
5 didn't even compare the costs, didn't verify their  
6 accuracy or their reasonableness.

7                   So having said that, we think an interim  
8 rate increase should be approved, but I think surely only  
9 in the 8,000 to \$10,000 range.

10           Q.       All right. So it's not Public Counsel's  
11 position that we should not be entertaining this case?

12           A.       No.

13           Q.       And it is not Public Counsel's position  
14 that we should be dismissing?

15           A.       Well, now you've taken it somewhere that  
16 maybe I'm not the best person to discuss it. I believe  
17 you're talking about the recent filing where the legality  
18 of the transfer from Mrs. Bien to R.D. Sewer. I'm not an  
19 attorney, so I can only tell you what I think about that.

20           Q.       All right. But you, as the witness, the  
21 sole witness for Office of the Public Counsel, are here in  
22 support of the transfer; is that correct?

23           A.       Yes. Yes, I am with the cav --

24                   MS. BAKER: I guess I have to add a little  
25 caveat to this. The only reason why we've gone through

1 this case so far today is because the Commission has  
2 determined not to deal with our Motion to Dismiss and take  
3 it with the case. And so if we had taken up the Motion to  
4 Dismiss before, we would not have to sit here and answer  
5 these questions.

6 Mr. Robertson is not here giving legal  
7 opinions. He's not here trying to justify our -- our  
8 filings in this case, and so we're giving this testimony  
9 because this is what the Commission has determined is  
10 necessary to do.

11 COMMISSIONER MURRAY: All right. Thank  
12 you.

13 BY COMMISSIONER MURRAY:

14 Q. And then, Mr. Robertson, do you believe  
15 that the Commission in consideration of basically any  
16 transfer or any rate increase request, that we should  
17 consider whether the company is providing safe and  
18 adequate service?

19 A. I do, and let me add another caveat to  
20 that, too. At least in this case I think that's a very  
21 important criteria, what your -- my personal opinion, what  
22 your -- what your position is, to provide safe and  
23 reasonable service for ratepayers.

24 There's been some testimony in this case by  
25 Mr. Owens that he may need some additional plant in order

1 to do that. As you well know, it's the plant owner's  
2 responsibility to put that investment in and then be  
3 allowed to earn either recovery or return on that. To  
4 build in a rate which effectively would force ratepayers  
5 to fund that plant without recognition that they did that  
6 I think would not be appropriate.

7                   And to just sit there and say, ratepayers,  
8 the owner abdicated his responsibility and ratepayers have  
9 to fund it so the Commission can meet that requirement of  
10 their position, I don't think is fair or reasonable.

11               Q.       All right. In the opening statements, your  
12 counsel suggested that before we determine that any rate  
13 increase, any interim increase is justified, that we must  
14 determine that the company's operating at a deficit. Is  
15 it your opinion that the company is currently operating at  
16 a deficit?

17               A.       Based on a limited review that I've done, I  
18 do believe they do, they are, by a -- it's not a large  
19 amount, but for a small company, it is material. \$8,000  
20 for a company this small can be, you know, the difference  
21 between safe and reasonable service and service that's  
22 not.

23                   Of course, now, let me add to that also,  
24 the revenues are meeting in my view the current operating  
25 costs of the utility. They're just not doing that and

1 also being able to pay Mr. Owens a salary, a more  
2 reasonable salary.

3 Q. And do you think an owner/operator of a  
4 small water company has the obligation to provide labor  
5 without compensation and borrow money personally to keep  
6 the equipment running so that the customers continue to  
7 receive service? Do you think that the owner/operator has  
8 that obligation?

9 A. Let me take it in two steps. One, I don't  
10 think an owner/operator should work for nothing, for zero,  
11 and that's why I think the -- an interim rate increase at  
12 the level we propose is reasonable. I don't think the  
13 cost structure set back in the 1970s is valid now, so I  
14 don't think he's -- Mr. Owens is receiving an appropriate  
15 salary. I do think he's recovering enough to provide  
16 operating costs.

17 The second part of your question, should he  
18 borrow money to provide safe and reasonable service, if  
19 that's what it takes to -- in extremely small companies  
20 like this, that sometimes it has to be on a personal note.  
21 If that's what it takes to buy the plant which he then  
22 puts in the utility, which we then allow him to earn  
23 return and recovery of, return on, I think that is  
24 appropriate, yes.

25 I mean, for example, he -- Mr. Owens

1 described that he essentially needed some backup blowers  
2 and pumps. He had single pumps, and he needed backup in  
3 case of failure, with is only reasonable in my view. But  
4 as the owner, if he becomes the owner, or however it works  
5 out legally, under -- as you know, under regulatory  
6 ratemaking it is the owner's responsibility to put that  
7 equipment into place and then ask for a return of it and  
8 recovery on it, which as long as it's reasonable and  
9 prudent, neither -- certainly the Public Counsel wouldn't  
10 deny it, and I doubt that Staff would.

11                   And in some instances, the ratepayers have  
12 been requested to fund the investment in smaller  
13 utilities, but as long as they're given recognition of  
14 that and, therefore, that the owners won't get a return on  
15 it or recovery of it, that's fine. That happens in some  
16 instances also.

17                   Q.       The question came to mind when I was  
18 listening to Mr. Owens explaining some of the things that  
19 he has put into this to date, he was talking about money  
20 that he's invested in blowers and that he was talking  
21 about \$17,000 that he still owes on motors that have been  
22 repaired, and -- and I was wondering, do you think that  
23 when a company acquires equipment that does not -- at the  
24 time it's acquired is not allowed to go into rate base  
25 because it's contributed or for some -- or was obtained

1 without any cost to obtain it, if there is money put into  
2 that equipment to refurbish it, to make it workable, is  
3 that something, then, that would allow an increase in rate  
4 base in your opinion?

5 A. Okay. Let me make sure I understand your  
6 question. First off, if they have no money in the  
7 equipment, they didn't pay anything for it, I certainly  
8 believe they shouldn't earn a return on it, shouldn't  
9 recover depreciation. It's a cash flow from it.

10 If they then put money into it to make it  
11 operable, useful for the service, you're going to be  
12 looking at two scenarios: One, whether it's a repair, an  
13 operating expense to get it back and running or whether  
14 it's actually considered an investment, a plant item. One  
15 would be expense. One would be a plant.

16 Q. Operating expense or capital?

17 A. Yeah. Expense versus capital, and that  
18 would probably be dependent on -- there would be some  
19 threshold cost kind of scenario. At times that's changed  
20 over the years. It used to be couple hundred dollars.  
21 Then it went to \$500, then \$1,000. It varies between the  
22 companies.

23 The threshold of the cost would probably  
24 determine whether it was plant or an expense. If it's  
25 expense, we have a certain amount of repairs built into

1 operation, the maintenance expense, and based on their  
2 2007 level, and then updated for CPI.

3                   If it's a plant item, I certainly think --  
4 and it's reasonable and prudent that they did that, yes,  
5 they should be allowed to earn a return on it and recover  
6 depreciation of it.

7                   The only caveat to that, as you know, is  
8 the -- only the owners can come in and ask for that rate  
9 increase. They need to do that, and then under the small  
10 rate case procedure which was recently adopted, I think  
11 the time frame for it, it's like five months. If that had  
12 occurred -- although I know this case is kind of unusual  
13 because of that -- the legal situation regarding  
14 encumbrances and liabilities. If that had occurred back  
15 in April, this case would be almost over from the rate  
16 increase scenario.

17                   I just think this company needs to come in  
18 for an audit as soon as possible so we can determine what  
19 the actual costs are, and until that time, I do think an  
20 interim increase would be appropriate. I just don't think  
21 the level the Staff has is appropriate because it's almost  
22 three times higher than what I believe the current cost  
23 structure to be.

24                   Q. All right. I'd like to ask you a question  
25 about your Exhibit 13.



1 A. Yes, ma'am.

2 Q. Under miscellaneous repairs and  
3 maintenance, you have a figure that you determined there  
4 that's -- well --

5 A. Where the company has 2,400 for  
6 Mr. Bonadio, or the firm, Bonadio has 2,400?

7 Q. Correct. And you have a thousand.

8 A. And then I've got a little over a thousand.

9 Q. I know you're a CPA, and you have the  
10 financial qualifications. What is your qualification to  
11 determine what the cost for repairs and maintenance of  
12 sewer equipment should be?

13 A. Let me tell you a little background on this  
14 first. That \$2,400 that Bonadio put in there, they didn't  
15 do any audit or review to get it. They got it from Smith  
16 and Company Engineering. Mr. Williams of Smith and  
17 Company provided a response to my Data Request stating  
18 they didn't do anything to get that number; they got it  
19 verbally from Mr. Owens. They have no support, no  
20 invoices, nothing to actually verify that that \$2,400 was  
21 a reasonable number.

22 So what I did and what -- based on my  
23 background in accounting, I went to the 2007 annual report  
24 filed with the Commission by the utility. Now, those  
25 numbers are supposed to be true and correct to the best of

1 the knowledge of the owner/operators that filed those. In  
2 the 2007 annual report, they had repairs that total \$975.  
3 So what I did, and based on the limited review scenario --  
4 this is not an audit, of course -- I adjusted that by the  
5 CPI -- the change in the CPIs from December 2007 to June  
6 2008 from 975 to that number of a little over 1,000.

7                   So that's -- I think my accounting  
8 background is -- qualifies me to do something such as  
9 that. Can I tell you that's the exact amount that repairs  
10 would be going forward? I can tell you I believe within a  
11 reasonable zone it is based on the fact if you believe the  
12 2007 annual report was correct, and that's assumption also  
13 because we didn't audit those numbers either.

14               Q.       All right. And then in terms of  
15 depreciation expense, why is it that your figure is zero?

16               A.       Because the -- Mr. Owens has received this  
17 company essentially as a gift. He paid nothing for it.  
18 He paid nothing for it. He had no investment in it.

19               Q.       Zero rate base?

20               A.       Zero rate base. If you've got zero rate  
21 base, essentially there is no dollar amount in rate base,  
22 therefore, you can't earn a return on it. And also the  
23 plant depreciation, in a way it would be like you've got  
24 rate base but then you had to contribute capital of the  
25 same amount that equals zero, but it will offset to zero

1 rate base. And then when you go to the expense side, you  
2 would have depreciation but the amortization of the CIAC  
3 would offset that to zero, is the way the accounting's  
4 done. But --

5 Q. All right. Then as to operator expense,  
6 how did you estimate what operator expense should be?

7 A. Okay. Well, as I said earlier, as  
8 Mr. Shepard testified, he actually didn't do any audit  
9 either of those numbers. What he did was he asked Mr. Jim  
10 Merciel of the Staff essentially what -- if he could give  
11 him some comparables. Mr. Merciel provided information  
12 for those four utilities we told you about; Foxfire, LW  
13 Sewer, Mill Creek Sewer, SK&M Sewer. Foxfire and SK&M are  
14 both water and sewer companies. Mr. Merciel gave  
15 Mr. Shepard those numbers.

16 Mr. Shepard did no audit, no comparables,  
17 did not verify their accuracy. He just accepted Staff's  
18 provision of those numbers. Another reason I had problems  
19 with his audit -- his review being actually independent  
20 and neutral. He then took those -- the pay associated  
21 with those four utilities and he developed a range based  
22 on the average cost per customer. He accepted the higher  
23 end of that range, which turned out to be 13,800,  
24 approximately 13,800 and that's what he said should be the  
25 operator expense, 13,800.

1                   I then went and looked at what he did in  
2 his work papers, and since Foxfire and SK&M Water and  
3 Sewer both had sewer and water operations, I thought their  
4 cost structure, based on my experience, would be a little  
5 higher than what a -- just a plain small sewer company.  
6 The only two sewer companies he was showing there was LW  
7 Sewer and Mill Creek Sewer. LW's payroll was \$8,749 for  
8 the year. Mill Creek Sewer was \$4,356.

9                   Well, we just recently finished a case, I  
10 believe it was Royale, that had a customer number that was  
11 slightly higher than LW Sewer's, and the amount that we  
12 allowed in for salary for that company and for billing was  
13 just slightly less than that 8,700 that LW Sewer was  
14 getting, so I thought in my limited review that that would  
15 be a more appropriate number. It's just comparable to  
16 that Royale Company where we just reached a settlement.

17                Q.       And is your calculation, in your comparison  
18 with LW Sewer, did that take into consideration any of the  
19 problems that are having to be dealt with here or is that  
20 assuming that everything's up and running properly and  
21 it's just general operating?

22                A.       All these costs are based on the current  
23 operating structure of the company.

24                Q.       With all of the problems?

25                A.       With the problems as situated. The stuff

1 that Smith Engineering Company proposes to do to the plant  
2 investment to resolve the problems, the overflow, has not  
3 occurred, and so neither Bonadio's nor mine, and certainly  
4 not Staff's based on numbers six to nine years old, have  
5 taken that into account. You can't really take that into  
6 account until the investment actually is put into the  
7 company.

8                   And I think if the Commission was to  
9 authorize or require the company to come in for a small  
10 rate case audit fairly soon, we could see what the company  
11 needs and we could set up a situation where they would  
12 resolve that situation, put the investment in that needs  
13 to be put in, get it paid for the way it needs to be paid  
14 for and set up a cost structure based on that scenario.

15               Q.       And with -- from your experience and  
16 testifying in cases that involve sewer companies, how many  
17 hours do you think that \$8,749 would represent, how many  
18 hours of work?

19               A.       Of course it's going to vary by utility. I  
20 really can't give you a specific number. It's like I told  
21 you, we just finished a small rate case, small rate case  
22 procedure on Royale Sewer Company. They had a slightly  
23 larger customer base, not by much, 25, 30 customers, and  
24 the amount we included for salary for that company  
25 approximated what we put in for -- what I put in for this

1 company.

2 Q. Where are fuel expenses, the driving of the  
3 truck back and forth, that kind of thing, what item  
4 includes those?

5 A. Well, it's my understanding that under the  
6 utilities scenario, where the line utilities is where  
7 Bonadio put basically electric and gas purchases and  
8 things like that, and so I just followed through with  
9 that.

10 Q. Automobile gasoline purchases as well?

11 A. That was my understanding, yes.

12 Q. And then in terms of the other expenses,  
13 and I won't go through them individually, but did you do  
14 your calculation for those the same way you did for  
15 repairs and maintenance, by taking 20007 annual report  
16 and --

17 A. Not all of them.

18 Q. -- extrapolating?

19 A. I did not. The CPI adjustments I did for  
20 repairs and -- repairs and sludge hauling because Bonadio  
21 accepted those numbers from Smith Engineering, who  
22 accepted those numbers verbally from Mr. Owens without any  
23 verification of their reasonableness or accuracy. I did  
24 it with the utilities, which I believe included the gas  
25 cost or the diesel fuel costs that you're talking about.

1 I did it with the testing, and then I did it with  
2 insurance and legal and professional fees. The insurance,  
3 because Bonadio -- I believe the company or Mr. Owens has  
4 not only company vehicles and campers on his insurance  
5 policy, he has personal vehicles on it, and Mr. Bonadio I  
6 don't believe did an audit of the actual policies and  
7 separated out the individual costs. The legal and  
8 professional fees, the same scenario, he came up with just  
9 \$1,000 and with no support where he got it. I then did it  
10 with -- actually, that's it. That's all the CPI  
11 adjustments I did.

12                   If you have any other questions about any  
13 of the other costs ,I'll answer those, but I've talked  
14 about the payroll and we've talked about the other two big  
15 ones, the return and depreciation.

16                   I will tell you that the DNR fees, they had  
17 3,000. I put 2,500. That's because the DNR witnesses  
18 have stated the company was paying \$3,000, but their  
19 permit was incorrectly -- it had an error in it because it  
20 was a 25,000 gallon plant. They had it permitted for more  
21 than that, and they were paying more than that, but the  
22 actual fee for the 25,000 gallon tank is only \$2,500.

23                   Most of the other numbers are relatively  
24 small. I even accepted several numbers such as the  
25 mowing.

1           Q.       Let me ask you about mowing. In that there  
2 was testimony that some of the customers have helped  
3 voluntarily with mowing, do you have reason to believe  
4 that those costs would be greater than that?

5           A.       Well, first off, let me state the support  
6 by Mr. Bonadio was limited.

7           Q.       I'm sorry. Was what?

8           A.       Is limited, for the number he put in. He  
9 put \$750 in based on quotes. He said quotes, but he  
10 didn't provide any information what those quotes were.  
11 Based on that recent audit I told you about Royale, a  
12 company of a similar size, I think, if I remember  
13 correctly, the mowing we built in for them was somewhere  
14 between 7-, \$800. So I thought the 750 would be in the  
15 reasonable range, and if it was anything different, it  
16 would not be much more one way -- or much less one way or  
17 the other.

18                   I did the same thing essentially with the  
19 rent, with the property tax, with the corporate  
20 registration, and with the other miscellaneous costs, all  
21 small dollars, not really material. Most cases somebody  
22 would say, well, why do you deal with them, but with a  
23 small company, every dollar counts, so --

24           Q.       Just one more question, I think. On the  
25 PSC assessment, why did OPC take the higher number, higher



1 than Staff's number for the PSC assessment? Am I reading  
2 that correctly?

3 A. The Staff -- the -- remember now, the Staff  
4 audit is based on the 2002 and older numbers. It's not  
5 current. Bonadio has the \$2,219 built in. That's the  
6 current PSC assessment. I checked with the department,  
7 Dan Redel's department and Helen Davis and got the correct  
8 amount, and Bonadio had done the same thing.

9 Q. All right.

10 A. So that number is correct. Staff's number  
11 is -- the cost structure Staff has is based on an audit in  
12 2002 for costs that occurred as much as three years prior  
13 to that.

14 COMMISSIONER MURRAY: Okay. Thank you.  
15 That's all my questions.

16 JUDGE STEARLEY: Commissioner Jarrett, any  
17 questions?

18 COMMISSIONER JARRETT: Yes.

19 QUESTIONS BY COMMISSIONER JARRETT:

20 Q. Good afternoon, Mr. Robertson.

21 A. Good afternoon.

22 Q. I guess my first question, in looking at  
23 the parties in this case, the one that's wanting the  
24 transfer is R.D. Sewer Company, LLC; is that your  
25 understanding?

1           A.       That's my understanding.

2           Q.       LLC, is that -- that's limited liability  
3 company?

4           A.       I believe so.

5           Q.       So R.D. Sewer Company, LLC is not a stock  
6 corporation?

7           A.       If it's an LLC, not that I know of. I  
8 mean, there could be -- my knowledge, limited liability  
9 companies could be some allocation how the shares go, but  
10 it would probably be in some kind of document rather than  
11 specific stock share or something like that.

12          Q.       But an LLC is not a corporation?

13          A.       Not as far as I know.

14          Q.       You'd said -- qualified many of your  
15 answers saying that you've only done limited review of the  
16 numbers; is that correct?

17          A.       That is correct. Bonadio did a limited --  
18 what they termed as limited review. I --

19          Q.       That was my next question.

20          A.       They did. I felt that we had to present  
21 something to the Commission based on the current cost  
22 structure based on what we knew at the current time, and  
23 using the 2007 annual report, Bonadio's work papers and  
24 our knowledge of the utilities, we put together something  
25 similar, yes.

1           Q.       And then Staff used an audit from 2002. Is  
2 it a full audit?

3           A.       I believe it would have been considered a  
4 small rate case type audit, full audit. Of course, it was  
5 done in 2002 from my review of the work papers, the  
6 limited amount of work papers, I might add. There was not  
7 very many. Some of the numbers that they based it on  
8 were -- could be as far back -- some of the costs, I mean,  
9 they based it on could be as far back as 1999 and  
10 certainly 2000.

11          Q.       But even though the numbers are, you would  
12 term, outdated or old numbers, the only verifiable numbers  
13 we have before us then are Staff's; would you agree with  
14 that?

15          A.       No, I would not. I would not agree with  
16 that. I don't think they're verifiable at all. They're  
17 based on a foundation --

18          Q.       Staff's isn't?

19          A.       They're based on costs that existed six to  
20 nine years ago. There's no way you could verify those  
21 numbers.

22          Q.       I'm not asking about today, but they're  
23 verified in terms of a full-blown audit was done?

24          A.       At a cost structure of that time frame.

25          Q.       At that time?

1           A.       And even at that, you don't know how valid  
2 it was. It was just Staff's interpretation. They weren't  
3 challenged. They were --

4           Q.       All right. Would you say normally an audit  
5 is more verifiable than a limited review?

6           A.       If it's done in the same time frame, the  
7 same -- every company's dynamic. Costs change. I just  
8 don't believe there's any way you could look at costs that  
9 are six to nine years old and then look at cost structure  
10 based on a 2007 annual report in several instances and  
11 today's cost structure and say that something -- that the  
12 six to nine-year-old costs are more reasonable, more  
13 verifiable or more valid. To me, that makes absolutely no  
14 sense at all.

15          Q.       All right. I believe you said in talking  
16 about -- I don't know if you were referring to both  
17 reports, the Bonadio report and the Smith and Company  
18 Engineers report, I don't know if you were referring to  
19 both of them or not, but you said that they were not  
20 independent and verifiable. Were you referring to both  
21 reports?

22          A.       Both reports in that -- and I'm only  
23 referencing the costs. Bonadio's report includes a set of  
24 costs, a cost structure for the company that I don't  
25 believe was put together independently in a neutral stance

1 and was verified for reasonableness or accuracy or  
2 comparable costs for any utility in this state.

3                   The Smith Company costs, even though the  
4 Smith Company did not set them up for a -- determining of  
5 what a proper interim rate increase should be, they just  
6 took the costs directly, verbally from Mr. Owens, from  
7 Ms. Nadar from Bonadio and from Mrs. Owens. They verbally  
8 got those amounts from them without verifying whether  
9 they're reasonable or accurate. So --

10           Q.       All right. Well, what evidence do you have  
11 that they weren't independent?

12           A.       Independent being -- Bonadio being  
13 independent, now, independent only refers to them, because  
14 it's my understanding they were to do an independent,  
15 neutral examination.

16           Q.       Let's just take independent first. What  
17 evidence do you have that they were not independent?

18           A.       When you review their work papers, they  
19 contacted Staff members for cost data. They took that  
20 cost data, they built it into their run without checking  
21 those numbers to see whether they were reasonable or even  
22 accurate, and I believe -- they didn't contact us at  
23 Public Counsel, didn't ask for our input and, therefore,  
24 they essentially were not independent of all the parties,  
25 all the adversarial parties in the case.

1 Q. And what evidence do you have that Staff  
2 gave them inadequate numbers or gave them biased numbers?

3 A. The biased depends on whether you agree the  
4 numbers were actually accurate or not. I have the  
5 company's work papers where they have noted --

6 Q. All right. What evidence do you have that  
7 they weren't -- that they weren't?

8 A. That they weren't accurate or verifiable?

9 Q. Right, that they weren't accurate.

10 A. I don't.

11 Q. Okay. Let's go to neutral. What evidence  
12 do you have that they weren't neutral?

13 A. The same -- the scenario there is -- or the  
14 belief there is that Staff is an adversarial party in this  
15 case. They oppose our position on the case. We oppose  
16 theirs. Therefore, Mr. Shepard and his team went in, got  
17 those numbers from Staff, accepted them, did not compare  
18 them, did not check them for accuracy or reasonableness  
19 and put them into their runs.

20 Q. All right. And now you said that when you  
21 did your limited review you looked at financial papers  
22 that were provided or filed by Mr. Owens, is that correct,  
23 2006/2007?

24 A. The annual reports to the Commission?

25 Q. Correct.

1 A. Yes.

2 Q. Okay. And those were prepared by  
3 Mr. Owens, correct?

4 A. By the company, that's correct.

5 Q. What did you do to independently go out and  
6 verify those numbers?

7 A. The -- did not. The 2006-2007 annual  
8 reports are supposed to be true and accurate  
9 representations of the company as presented by the owners.

10 Q. So Bonadio's supposed to go out and  
11 independently verify numbers, but you don't have to?

12 A. I don't see the same comparison.

13 COMMISSIONER JARRETT: No further  
14 questions.

15 JUDGE STEARLEY: Commissioner Gunn?

16 COMMISSIONER GUNN: I just have a few  
17 questions.

18 QUESTIONS BY COMMISSIONER GUNN:

19 Q. I'm a little bit confused here, too, about  
20 where Public Counsel's coming from, because everybody  
21 seems to agree that the asset transfer -- and let's put  
22 aside the jurisdictional issues. Everybody seems to agree  
23 that the transfer of assets is okay, assuming there's  
24 jurisdiction for those purposes, that there they're  
25 supportive of the asset transfer, right?

1 A. Yes, I believe so.

2 Q. And they believe that an interim rate  
3 increase -- a reasonable interim rate increase is  
4 appropriate?

5 A. I believe.

6 Q. We might disagree on what reasonable is,  
7 but we'll all agree that reasonable -- and there doesn't  
8 seem to be any concern on anybody's part that the interim  
9 rate increase be subject to refund?

10 A. That's correct.

11 Q. Both from -- from the statements by  
12 everybody?

13 A. That's correct.

14 Q. And if we -- if -- if we approve an interim  
15 rate increase subject to refund, then doesn't that require  
16 then the company to file a rate case with us?

17 A. You actually -- I think you'd have to order  
18 them to file the rate case, put it in as a requirement.

19 Q. So if we order them -- if we order them  
20 to -- but those are interim rate increases, so that  
21 assumes there's going to be a rate case pretty close in  
22 the future?

23 A. I agree.

24 Q. And at that time we get a full audit?

25 A. I agree.



1           Q.       So your problems with the limited review  
2 that you may have had in not being able to do this and  
3 whatever criticism you have of Bonadio are solved in that  
4 rate case when we do a full audit?

5           A.       Yes.

6           Q.       And if we make a mistake, if we made a  
7 mistake on where we go, the rates get refunded back to the  
8 customers?

9           A.       Well, I'm not sure where you're going with  
10 this. I think you're saying no matter what amount you do  
11 with the interim would be adjusted back.

12          Q.       I'm just trying to figure out where  
13 everybody is.

14          A.       Okay.

15          Q.       Because it seemed we've spent a lot of time  
16 here arguing about stuff that we don't necessarily need to  
17 be arguing about, and it seems to me that it may have been  
18 a big waste of time to go through a lot of this stuff if  
19 we agree on that basic framework, that if these interim  
20 rates are subject to a refund and we make a mistake, then  
21 those amounts are refunded back to the ratepayers.

22          A.       Therein lies the problem, the refunding  
23 back, assuming the money's still there to refund back. I  
24 mean, rates are supposed to be set on a reasonable return  
25 or return on investment and reasonable cost service.

1 Q. But if the rate case comes back and shows that  
2 there was excessive, then they have to be -- then the  
3 money has to be returned, whether it's there or not. We  
4 can assess penalties. We can do whatever we can to return  
5 the money, so there would be a judgment against the  
6 company.

7 A. In theory, you could do that.

8 Q. So we all agree on that?

9 A. In theory.

10 Q. So let's go back to this Bonadio report as  
11 opposed to your report. You mentioned something in your  
12 testimony that you thought that there are only a few  
13 categories that you guys really disagree on?

14 A. That is true, a few major categories.

15 Q. So does that mean that their -- that their  
16 general methodology appeared to match your general  
17 methodology in arriving at some of these numbers? Because  
18 you guys were pretty spot on in some of these things.

19 A. Well, the cost structure of the company's,  
20 yes. I mean, what costs exist, yes.

21 Q. So there's not a huge criticism of these  
22 guys' methodology?

23 A. Maybe you need to clarify for me what you  
24 mean by methodology.

25 Q. Let me take a step back. You'll agree that

1 this -- that this is part art and part science?

2 A. Oh, absolutely.

3 Q. So there is disagreements about -- about  
4 where -- things on the margin, if you will, about whether  
5 you take, like -- for example, let's take legal and  
6 professional things. You took previous ones from an  
7 invoice from H&R Block as the single legal and  
8 professional expense, adjusted it for CPI and said, well,  
9 that might be a recurring expense. Let's give the  
10 inflation, and that's all you included?

11 A. Okay. And let's also understand that it's  
12 not just purely subjective. That's the reason you do the  
13 audit. That's the reason you look at the invoices.

14 Q. I understand, but neither one of you did an  
15 audit. Neither one of you did an audit. There wasn't  
16 time to do an audit, and an interim rate increase is not  
17 necessarily appropriate to do -- to do a full audit, if  
18 circumstances don't warrant, if circumstances warrant to  
19 handle the case a little bit differently than you normally  
20 would?

21 A. And that's the purpose of an interim  
22 process.

23 Q. Right. Right. So let's -- so you -- you  
24 for -- and I'm just pulling one out here.

25 A. Sure.

1 Q. You took that and you adjusted it for CPI?

2 A. That's correct.

3 Q. You didn't include any legal fees in that  
4 adjustment?

5 A. No.

6 Q. So someone that had experience, even though  
7 there wasn't any legal fees incurred in the last year or  
8 in 2006 or 2007, might say, well, you know there may be  
9 some legal fees involved in that, so instead of adjusting  
10 the number to 584, I'm going to -- and knowing what  
11 lawyers charge, I'm going to put in two hours worth of  
12 lawyer fees into this number and adjust it upwards  
13 slightly, just in case they have a contract to review or  
14 were involved in an asset transfer, so there might be some  
15 legal fees involved?

16 A. There certainly could be.

17 Q. So the \$1,000 number that Bonadio came to  
18 on the legal/professional wouldn't necessarily be an  
19 unreasonable number? It may disagree with yours, but it's  
20 not -- it's not -- it's not necessarily unreasonable?

21 A. It's unreasonable because there's nothing  
22 to base it on. There's no kind of market to base it on.

23 Q. But you've based some of your adjustments  
24 on your own experience, so --

25 A. And also the company's 2007 annual

1 report --

2 Q. Sure.

3 A. -- which is supposed to be a true and  
4 accurate document.

5 Q. Absolutely. But what I -- under my  
6 scenario, someone may assume that there might be, even  
7 though they didn't have any legal fees in 2007, that the  
8 only legal and professional fees that they would incur may  
9 not just be an H&R Block based on their experience and  
10 what they did, there might be other legal fees involved,  
11 and really for legal fees \$416 isn't a whole lot.

12 A. And for a small company, that probably is a  
13 whole lot because most small companies do not incur --

14 Q. But my point is that -- is that based on  
15 someone else's experience, the adjustments wouldn't  
16 necessarily -- as you've done in several of these cases,  
17 the adjustment wouldn't necessarily be unreasonable?

18 Q. And I would agree with you, except for one  
19 caveat, whether the person making the adjudgment actually  
20 has experience in regulatory ratemaking versus someone who  
21 does not. If you just have a layperson doing that --

22 Q. How does -- how --

23 A. -- the amount that you include in could  
24 vary based on their experience and knowledge.

25 Q. And you said that, but how -- I'll be

1 honest. In my experience with other companies, people  
2 have ongoing legal fees every year that are substantially  
3 greater than \$400.

4 A. I agree.

5 Q. And I don't think that matters whether  
6 you're a regulated utility or whether you're not a  
7 regulated utility.

8 A. You see, I think it does on a small  
9 utility. Most small utilities don't have much at all in  
10 the way of legal expenses, very seldom and very little.

11 Q. \$400, maybe?

12 A. In most cases, nothing.

13 Q. Even when they're involved with --

14 A. That's why we have small -- that's one of  
15 the major reasons we have small rate cases, see --

16 Q. I understand.

17 A. -- is to avoid those costs.

18 Q. Well, we're talking about -- we're talking  
19 about a company that has -- that is currently in  
20 negotiations with the Attorney General's Office and  
21 currently in negotiations with the Department of Natural  
22 Resource to deal with violations.

23 A. I understand.

24 Q. You didn't take that into account?

25 A. Most of those small company people, the

1 owners/operators, they do the negotiations theirself,  
2 without attorneys.

3 Q. But --

4 A. It's because they're so small.

5 Q. Company's being represented by an attorney  
6 here, right?

7 A. In this instance, that's right.

8 Q. Okay.

9 A. But as a general rule, no.

10 Q. I understand. My point is, is that  
11 although there might be categories in which you disagree,  
12 there are numbers on here in the Bonadio report that are  
13 reasonable, even though they might be disagreeing -- they  
14 might have disagreed or deviated slightly from what you're  
15 talking about?

16 A. Probably 50, maybe even 60 percent of those  
17 different line items are -- I would consider reasonable or  
18 were just a few dollars off.

19 Q. Right.

20 A. Relatively a few dollars.

21 Q. So the -- so the basic methodology, and  
22 let's -- let's take out the not being expert in a rate  
23 case or ratemaking. Their basic methodology has at least  
24 come up with right answers 50 or 60 percent of the time?

25 A. I would sit here and say they have come

1 within the ballpark on certain of the smaller costs, yes.

2 Q. All right. So let's move -- I want to move  
3 on here. Let's look at salary. You put in -- most of the  
4 loss you're saying is salary or that was included in terms  
5 of the deficit?

6 A. Salary.

7 Q. You don't believe that --

8 A. Depreciation, a return on plant and some of  
9 the repair costs were probably the biggest, there -- I  
10 mean, you can look at the comparison there --

11 Q. Would you --

12 A. -- and see difference.

13 Q. Would you -- and you were in here -- I know  
14 you were in here for the testimony. When you heard him  
15 talk about how he was performing a lot of the -- some  
16 repairs and using his equipment and things like that,  
17 would that cause your salary adjustment to increase or did  
18 you take that into account when you came to your salary?

19 A. When I came to my salary is -- I looked at  
20 the information that had been provided to Mr. Shepard by  
21 Mr. Merciel --

22 Q. Right.

23 A. -- and like I said, and I fully put it out  
24 there. It's a limited, just quick and dirty review, based  
25 on our experience and what we know to try to show. I saw



1 what Mr. Merciel had provided Mr. Shepard. I saw that he  
2 had provided him at least two companies that should not  
3 have been there because they had both water and sewer  
4 operations, in my opinion.

5 I looked and saw that he had two sewer  
6 companies. One of them was more customers, I mean, by  
7 almost double, maybe more than double, and they had a  
8 certain salary level built in. I looked at that and  
9 compared to a recent company of a similar size that I just  
10 finished a couple months ago, and it was in the same  
11 ballpark.

12 So for a limited review purposes, I went  
13 with the one number that Mr. Merciel provided him just on  
14 a limited review. Am I going to tell you that's  
15 completely reasonable or is the amount he should actually  
16 earn? No, but I can tell you that I think it's in the  
17 ballpark based on my experience with a recent case for a  
18 similar sized company.

19 Q. Okay. Right. Let me ask my question  
20 again. Try to get an answer from you.

21 Did you -- you heard him testify some of  
22 the things that he was doing on his own to repair some of  
23 these things?

24 A. Sure.

25 Q. Was that taken into your account and within

1 your number, and if it wasn't, would your number be  
2 adjusted upwards based on some of those statements made  
3 today, or do you think that the number -- based on the  
4 statements today, that number is still reasonable?

5 A. I think the number is reasonable, and I  
6 think my answer to your question is, did I take it into  
7 account? Yes, because that number represents in my view  
8 what it would take to operate that utility, no matter what  
9 he had to do to do it, whatever labor he put into it,  
10 whatever time, when he went to review it, when he went to  
11 change out a motor or to unclog a drain or to mow the  
12 grass. Yes, I think that that represents what his time  
13 would be on an annual basis for a small company such as  
14 this. Yes.

15 Q. Okay.

16 A. Now, you're completely right, this is part  
17 art, part science, but --

18 Q. And I'm not --

19 A. -- if you're going to do a full audit of a  
20 small rate case audit, we get more -- we'll get closer to  
21 it.

22 Q. Absolutely. And that's part of what I'm  
23 trying to figure out, because I don't think anybody here  
24 is disagreeing that we should perform a full audit.

25 A. And I agree, and I agree 100 percent with

1 you, but what I think is that if we give them an interim  
2 rate increase, it should be based somewhat on what the  
3 cost structure of the company is.

4 Q. Absolutely.

5 A. And without padding.

6 Q. Part of my point is that basically we've  
7 got a company number, we've got a Staff number, and we  
8 have your -- OPC's number.

9 A. Well, look where you got those numbers  
10 from.

11 Q. I understand that. I understand that.  
12 And -- and those numbers are the only disputes and how we  
13 got to those numbers are the only disputes that are really  
14 at issue in this case?

15 A. For the interim increase portion of the  
16 case.

17 Q. Well, and I haven't heard any testimony  
18 from OPC on encumbrances, and you appear to be the only  
19 witness, so I don't know what that issue is. But let's  
20 just -- so what's disappointing to me is that before we  
21 sat through all day, that the parties couldn't come  
22 together, as parties do every day, and take those three  
23 numbers and come to a number that everybody's comfortable  
24 with, especially, especially since the rate increase is  
25 subject to refund.

1           A.       I think the only thing I can probably tell  
2 you is we tried.

3           Q.       Well, maybe you didn't try hard enough.  
4 And I will also note that we had no indication -- or the  
5 Commission had no indication that there was a problem with  
6 this case until it was mentioned in an agenda session very  
7 shortly before -- there wasn't even going to be a hearing  
8 in this case. So we, the Commission had no indication  
9 that -- that -- and from the statements, if you read the  
10 statement positions, it seemed like everybody was  
11 basically on the same page factually here, that the  
12 underlying facts were basically agreed to. And so I'll  
13 let that -- that's not a question, so I probably shouldn't  
14 -- I shouldn't say that. I'll stop there.

15                   I just want to clarify something. I think  
16 you're right, but -- on a question I want to ask, but --  
17 so if a -- if a -- if -- if you have a small water company  
18 and a guy goes to -- a pump goes out, and a guy goes to  
19 the junkyard and finds a -- finds a pump and the guy says,  
20 yeah, you can take it, and he refurbishes it and puts it  
21 into -- using parts he has lying around and puts it into  
22 the plant, since he didn't pay anything for it, that would  
23 not -- that -- that improvement, if you will, does not --  
24 can't go into rate base, is that -- is that right?

25           A.       I don't think we've discussed that kind of

1 scenario. Most of the time --

2 Q. Well, you said basically that he received  
3 this entire system as a gift?

4 A. He has.

5 Q. So he doesn't have --

6 A. No cost.

7 Q. He has zero rate base?

8 A. Zero rate base.

9 Q. Any improvements to it that were donated or  
10 done by his own hand --

11 A. Well, let me answer that question first if  
12 I can. If he got the materials, the goods, and repaired  
13 it and he had no money into the parts, no money into the  
14 pump, he had no cost into it other than his own labor,  
15 now, his labor's going to be taken care of in his salary  
16 built into rates.

17 Q. Right.

18 A. So he's going to recover that, or he's  
19 going to have the opp -- there's always the opportunity.

20 Q. Right.

21 A. He's going to have the opportunity to  
22 recover his salary. Would he get a return on that plant?  
23 Well, I don't know a scenario where that's ever happened.  
24 It may have. If he had no cost into it, he would not be  
25 allowed a return on it, no.

1 Q. He would be allowed --

2 A. Why would he? He has no money into it, but  
3 he's being reimbursed for his time he spent putting it  
4 together.

5 Q. No, I don't disagree with you. I'm just  
6 trying to clarify.

7 A. I mean, actually --

8 Q. And I think it's a little -- you know, we  
9 talk about -- the reason why I asked the question is  
10 because I think you're right, but it's -- it's -- it's --  
11 you know, this -- Mr. Owens has taken over this system,  
12 you know, at the behest of a public administrator, and if  
13 he hadn't have done it, we would have been in a whole lot  
14 worse shape than we would be today. I don't think anybody  
15 disputes that.

16 A. We don't dispute that either. We think  
17 he's probably an excellent operator given what he has to  
18 work with, but even at that you've got the ratepayers to  
19 consider, too.

20 Q. Absolutely. Absolutely.

21 A. And the statutes and Commission rules are  
22 that they're allowed to earn a return on their investment  
23 plus recover reasonable operating expenses, and that is  
24 what they get.

25 Q. And I don't -- I don't disagree with you.

1 I just -- there's a little bit of -- you know, the tension  
2 is there, the dichotomy is there, is when you have good  
3 operators out there that are really in a lot of ways doing  
4 people a favor by -- by -- by taking on some of these  
5 systems, and they get -- they're basically --

6 A. But also consider some of these systems are  
7 pretty small and there's some problems. You've heard the  
8 testimony here, but if you built it in, a reasonable  
9 salary based on market values, we think he'll be fairly  
10 compensated for the time he spends doing it, given the  
11 system is extremely small. I mean, it's not a large  
12 multi-million-dollar corporation where he's getting paid  
13 hundreds of thousands dollar salary. That's not  
14 what -- that's not what they can support.

15 Even though we're often seen as taking an  
16 adversarial position supposedly against these companies,  
17 we're not. We're just as concerned about them being  
18 operated without problems as anybody else.

19 Q. No. I agree.

20 A. But we think -- but we don't think throwing  
21 money at the situation is always -- is a cure.

22 Q. And I agree with you, and I think that your  
23 position statements bear that out. That's why I'm --  
24 that -- that -- basically everybody's been on the same  
25 page for a long time here, and that's why I can't -- it's

1 a little puzzling to me why we've spent all this time  
2 trying to figure out a number. But I understand it. I  
3 know it's necessary. So thank you for your time and your  
4 patience, and I don't have any other questions. Thank  
5 you.

6 JUDGE STEARLEY: Chairman Davis?

7 CHAIRMAN DAVIS: Good afternoon,  
8 Mr. Robertson.

9 THE WITNESS: Good afternoon, Chairman.

10 CHAIRMAN DAVIS: Judge, I think all my  
11 questions have been exhausted. Thank you.

12 JUDGE STEARLEY: Thank you, Mr. Chairman.  
13 Mr. Robertson, I have a couple more for you.

14 QUESTIONS BY JUDGE STEARLEY:

15 Q. I believe in the -- answering the  
16 Commissioners' questions regarding what's a reasonable  
17 salary, you stated it's difficult to determine what an  
18 hourly salary should be for these positions; is that  
19 correct?

20 A. Let me -- it is, but let me tell you this:  
21 When we look at these small companies in a rate case  
22 procedure -- a small rate case procedure, I spend hours  
23 and hours looking at the market, and there's information  
24 out there on the Internet. I spend a great deal of time  
25 on the Internet in other rate cases in Missouri and



1 other -- it's particularly -- whatever the area that  
2 utility's in, we usually try to look for the market  
3 they're in and see what the market rate is, what the  
4 market's paying for those salaries.

5                   And based on that, we usually try to make a  
6 proposal based on what a salary is for that same or  
7 equivalent position in that area, times whatever time it  
8 takes them to do the work they're doing, and sometimes  
9 that's how many hours they put in on an annual basis. It  
10 varies by utility. It may vary year to year, and it  
11 probably does. We try to make a reasonable -- just  
12 reasonable decision or estimate on what that is and then  
13 come up with an annual salary, and we do that in almost  
14 every small rate case procedure.

15                   It's not because information doesn't exist.  
16 Information exists out in the market, and we try to find  
17 that and try to associate that with the utilities, and  
18 therefore, we think that evidence substantiates what we  
19 recommend. If the market's paying that, that's probably  
20 what those owners should receive. We want them to receive  
21 at least a market rate.

22                   Q.       Is it reasonable to assume that if you have  
23 a system that's in decline and disrepair, that it's going  
24 to require more labor hours to maintain and keep that  
25 system running?

1           A.       That is a possibility, yes.

2           Q.       It's reasonable to assume that?

3           A.       Absolutely.  It depends on what kind of  
4 level of disrepair you're in.  I really don't know on this  
5 system.  I don't know that anybody knows exactly what it's  
6 at in this system.  It may take more hours to do it.  
7 Would it be a material number of hours?  It's a very small  
8 system.  I would say probably not, unless there was some  
9 kind of overflow, and that hasn't -- I don't believe  
10 that's occurred in a while.

11          Q.       When the 2002 audit was prepared by Staff,  
12 and that was more of a full audit I believe we  
13 established, although it was based on numbers existing  
14 back in 2002 --

15          A.       Or earlier, and plus I don't think that  
16 case -- those numbers were ever filed, and so they were  
17 never -- had the -- the opportunity to question them.

18          Q.       All right.  Well, here's an opportunity for  
19 you to question one of those numbers.

20          A.       Absolutely.

21          Q.       They have an operator expense of 15,000 and  
22 a billing expense of 1,200 --

23          A.       That's right.

24          Q.       -- from the year 2002.  I would assume that  
25 Staff based that upon some type of market analysis, yet

1 it's come in higher than both your recommendation and  
2 Bonadio's recommendations in 2008, some six years later,  
3 where you would think relative salaries, expenses, et  
4 cetera, would increase.

5 A. I point out two things there. One, I don't  
6 think they did a market review. Two, I believe those  
7 numbers came from one engineering firm that the public  
8 administrator had asked for costs to operate on, and  
9 three, those costs were never reviewed for their accuracy  
10 or reasonableness either. They were just adopted by  
11 Staff, is my understanding.

12 Q. I was trying to get some kind of  
13 perspective on how that number could be so much high in  
14 2002.

15 A. But it wasn't based on -- I'm relatively  
16 confident that it wasn't based on the actual operation of  
17 the utility itself.

18 Q. Okay. And have you reviewed the DNR  
19 compliance report in this case?

20 A. I have read some DNR reports, and I  
21 honestly couldn't tell you very much about them 'cause I  
22 didn't spend much time on that.

23 Q. So when you said that you didn't think  
24 there's been an overflow situation, it's not based on you  
25 actually reviewing what Notices of Violation have been

1 filed?

2 A. Actually, I said recently. I think I did  
3 see in some of those reports, or probably was one -- the  
4 last one I recall was like 2005, and I may be wrong about  
5 that. Seems like I -- seems like I read one where it said  
6 2005, and there may have been one a couple years earlier  
7 than that.

8 Q. The most recent I have is September 28,  
9 2007.

10 A. Okay.

11 Q. January 2006 prior to that. Do you know,  
12 on the DNR operating permit fee that's been brought up,  
13 there was an error which accounts for your cost adjustment  
14 on that operator's fee?

15 A. Uh-huh.

16 Q. Is your cost adjustment based upon, like  
17 Mr. Merciel testified today, they believe that in April  
18 they had a 33,000 gallon situation there that time, is  
19 that based on that number? What number --

20 A. DNR permit fees are based on the plant  
21 capacity. Mr. Merciel testified that there was an error  
22 in the permit. He's testified it's been corrected. The  
23 company is, it's my understanding, is a 25,000 gallon per  
24 day plant. The fee for that is the amount that I put in  
25 my cost structure. The \$3,000 fee was the fee that was

1 being charged under the permit that was -- had the  
2 problem, had the incorrect capacity in it.

3 Q. So would the fee be higher if it's  
4 determined their flow is actually 33,000?

5 A. My understanding is that the fee is based  
6 on the flat capacity. It doesn't matter what flow occurs,  
7 either above or below.

8 Q. And in -- with regard to legal and  
9 professional fees, give you a hypothetical which might  
10 sound familiar. If you have a sewer company with  
11 outstanding issues of ownership that has multiple  
12 violations with Department of Natural Resources, that has  
13 an invalid or nonrenewed permit with the Department of  
14 Natural Resources, and you have to somehow effectuate a  
15 transfer of assets, a rate determination, a compliance  
16 schedule, isn't it reasonable to be hiring legal counsel  
17 to navigate those troubled waters? You see from your  
18 earlier testimony you said many of these companies handle  
19 these things, just the owner handles it.

20 A. That's correct, they do. The -- my  
21 experience has been DNR and the Commission Staff will try  
22 to work with these utilities and they usually work with  
23 the individual. It -- usually it's just a small  
24 businessman or woman that run these entities, and try to  
25 work with them to resolve the problems. You have to

1 understand also to resolve the problems is actually their  
2 responsibility to put the plant in to fix the problems if  
3 that's what it requires. It's the owner/operator's  
4 problems.

5 Q. I understand the relative responsibilities,  
6 but given the complexities of the legal issues and the  
7 hypothetical that's not so hypothetical, do you think it's  
8 reasonable to hire -- for a small company like this to  
9 hire legal counsel?

10 A. First off, let me answer, I think you're  
11 correct. In certain times legal costs need to be included  
12 in. What that amount is is subject to debate,  
13 determination of reasonableness and prudence. And also,  
14 no matter what those costs come out to be in total, you  
15 would -- you would normalize them over a period of time.  
16 So you may have -- let's say you had -- let's say you had  
17 \$1,000 worth of legal costs. The company doesn't come  
18 in -- these small companies don't come in -- when's the  
19 last time this one came in?

20 But even if you set a more reasonable  
21 period, let's say five or ten years, and you analyze that,  
22 normalize that over five or ten years, you'd only be  
23 talking 100, \$200 on an annual basis. Don't get me wrong,  
24 100 to \$200 can be important money to a small utility and  
25 we recognize that. Every dollar matters.

1           Q.       You've stated that a number of times, that  
2 every dollar counts.

3           A.       Every dollar counts, and we understand  
4 that. We want them to earn what they should be allowed to  
5 earn.

6                    JUDGE STEARLEY: Okay. Thank you,  
7 Mr. Robertson.

8                    Recross based on questions from the Bench,  
9 beginning with Staff?

10                   MR. KRUEGER: Thank you, your Honor. Due  
11 to the lateness of the hour, I'll try to keep it brief.

12 RECROSS-EXAMINATION BY MR. KRUEGER:

13           Q.       Mr. Robertson, we talked a little bit about  
14 an interim rate subject to refund. You remember that  
15 discussion?

16           A.       Several of them, yes.

17           Q.       Now, let's assume just for the sake of  
18 assumption that the Commission would set the interim rate  
19 at -- the revenue increase at \$16,000 and it turned out  
20 that the subsequent audit showed that the increase should  
21 only have been \$8,000. Is it your understanding that the  
22 company would then have to refund \$8,000 per year for  
23 however long that period is?

24           A.       It's my understanding that they would be  
25 ordered to refund \$8,000. My experience with these small

1 companies and their cash flow situations are that I fear  
2 the 8,000 would not be there, and therefore, if you set it  
3 at a more perfect cost structure --

4 Q. I think you answered my question. Now, I  
5 want to ask the converse question. Let's say that the  
6 Commission established the interim increase at \$8,000,  
7 which is about the number that you have suggested, and it  
8 turned out that the audit revealed that 16,000 would have  
9 been justified. Is there any way for the company to  
10 recover that other 8,000?

11 A. No.

12 Q. Okay. So in one way they would have to  
13 take a risk, and in another way there isn't any reward  
14 for --

15 A. Well, if they had plant, that would be what  
16 the return on equity and the return would cover, the risk  
17 of operations, but since they have no plant that gives  
18 them zero return, they're still at risk for the recovery  
19 of reasonable operating costs.

20 Q. You testified about the operating costs for  
21 Royale. That's a sewer company?

22 A. I believe so.

23 Q. Do you know what kind of a plant they have?

24 A. Actually, I don't.

25 Q. You don't know whether it's mechanical?



1           A.       It's a lagoon situation.

2           Q.       Okay.

3           A.       I know that.

4           Q.       And the ones that Mr. Merciel gave  
5 information about to Mr. Shepard were Foxfire, LW, Mill  
6 Creek and SK&M. Do you know what kind of systems they  
7 had?

8           A.       Their actual plant systems?

9           Q.       Yes, whether they were mechanical or  
10 lagoon?

11          A.       No.

12          Q.       Okay. And you also testified about the  
13 difference between when it's just a sewer utility and one  
14 that's sewer and water. Do you know if Mr. -- the  
15 information Mr. Merciel gave to Mr. Shepard for one of  
16 them that's a water and sewer company, is it total cost  
17 for operating the water and sewer facility or only the  
18 sewer facility?

19          A.       It's listed in the work papers as water and  
20 sewer, so I take it at face value that it's talking about  
21 for both of them, both operations.

22          Q.       You understand that it's water and sewer?

23          A.       Based on what's in the work paper, that's  
24 my assumption, yes.

25          Q.       But you don't know?

1           A.       Based on what's in work papers, that's all  
2 I can tell you.

3           MR. KRUEGER:   That's all the questions I  
4 have.

5           JUDGE STEARLEY:   Thank you, Mr. Krueger.  
6 Recross, Stoddard County/R.D. Sewer Company?

7           MR. ALLEN:   I have no questions, Judge.

8           JUDGE STEARLEY:   Redirect, Public Counsel?

9           MS. BAKER:   Thank you.

10 REDIRECT EXAMINATION BY MS. BAKER:

11          Q.       We've talked a lot about these four systems  
12 that have been put into the work papers that were given by  
13 Mr. Merciel to Bonadio.   Basically, the decision that you  
14 made was two of these systems are sewer systems only,  
15 correct?

16          A.       That is correct.

17          Q.       And so, therefore, it's logical to look at  
18 those systems as opposed to systems that have water and  
19 sewer?

20          A.       I believe that is correct.   That's the  
21 reason I just excluded the systems that had sewer and  
22 water, plus the fact that the L -- LW Sewer was  
23 approximately the same size as the recent sewer I just  
24 worked on, recent sewer case.

25          Q.       You were also asked about Bonadio's numbers

1 and whether they were independent or not?

2 A. That is correct.

3 Q. From your review of the work papers, would  
4 it be safe to say that Bonadio's numbers were largely  
5 dependent upon Staff and the company?

6 A. For many of the cost items, that is  
7 correct. They got their numbers from Staff and the  
8 company through verbal -- verbal statements and just  
9 accepted them at face value without any independent  
10 review.

11 Q. Going to the issue of safe and adequate  
12 service, is it your opinion that a violation of the  
13 regulations of the Department of Natural Resources  
14 indicates that the customers are not receiving safe and  
15 adequate service?

16 A. My knowledge is a little limited there. I  
17 would sit there and say the violations exist but the  
18 operation continues to operate. So if it was dangerous, I  
19 imagine they would do something drastic if it's still  
20 operating and they haven't done anything, the assumption  
21 would be that service is at least tolerable.

22 Q. Would something drastic be something like  
23 bringing in the Attorney General's Office?

24 A. I think it could be.

25 Q. You were asked about R.D. Sewer being an

1 LLC. Is it true that R.D. Sewer may be an LLC but it  
2 accepted stock?

3 A. That's my understanding, it did.

4 Q. We talked about the legal fees. Would any  
5 legal fees for the troubled system that was posed to you  
6 be taken into account in any rate case procedure or audit  
7 that is done with that rate case?

8 A. They would be reviewed and analyzed, and  
9 determinations would be made if they're reasonable and  
10 prudent. The reason I did not include them in my numbers  
11 were that my review of the 2007 report, I don't believe  
12 the company actually incurred any, and I -- you know, I  
13 accepted those numbers at face value, but they are what  
14 they are.

15 Q. Your limited review did not close the door  
16 on there ever being legal fees attached?

17 A. Absolutely not. If we did an audit, we  
18 would look at all costs, legal and otherwise, and  
19 scrutinize those costs and make determinations whether  
20 they should be -- whether we think they should be  
21 recovered in rates or not.

22 Q. And we talked a little bit about the risk  
23 the company would face from rates subject to refund, but  
24 would you agree that rates subject to refund, the risk is  
25 really moved on to the customer?

1           A.       I firmly believe that. I think if we -- if  
2 the Commission so determines that an interim increase  
3 should be allowed, it should be -- approximate what the  
4 current cost structure of the company is, and of course we  
5 just have some limited reviews to show that, but I believe  
6 the numbers we've put together represents better what the  
7 current cost structure is in this time frame versus a  
8 Staff audit that's several years old and a nonregulated  
9 accounting entity with no regulated experience including  
10 those numbers.

11           Q.       And you were given the example of if it  
12 came out that the interim rates subject to refund was set  
13 at 16,000 and then it turned out to be 8,000, that the  
14 customers would get 8,000 back. Do you remember that?

15           A.       The assumption is on the parties are that  
16 customers would get that 8,000 back. It's my belief that  
17 if they never had to pay it in, they wouldn't have to  
18 worry about trying to recover it down the road from a  
19 company that may or may not have the money.

20           Q.       Would you also agree that the customers  
21 have lost the use of \$8,000 of their very own money during  
22 this time frame?

23           A.       They would lose the use of that cash for  
24 whatever purposes they -- they might have for it. In this  
25 day and time, I'm sure most of those customers could use

1 it.

2 Q. Are customers given back any interest for  
3 the use of their money?

4 A. Not that I know of.

5 MS. BAKER: I have no further questions.  
6 But I do want to take this opportunity, because I know  
7 that the Commission is confused as to the Motion to  
8 Dismiss, and so I would like to take the opportunity to  
9 discuss this just a little bit.

10 JUDGE STEARLEY: Right. I don't mean to  
11 interrupt, but if Mr. Robertson's testimony is over,  
12 though, I'd like to excuse him from the stand, and then we  
13 can move on to some cleanup matters, and -- thank you,  
14 Mr. Robertson.

15 MR. ALLEN: Can we take just a brief five  
16 minutes maybe before we continue?

17 JUDGE STEARLEY: Yes. I think that's a  
18 good suggestion, Mr. Allen. Why don't we take a  
19 ten-minute break and reconvene at four o'clock.

20 We still have two exhibits that have not  
21 yet been entered into evidence.

22 MS. BAKER: I will go ahead and take this  
23 opportunity to -- I wanted to go ahead and offer  
24 Exhibit 13.

25 JUDGE STEARLEY: We've got one other to

1 offer. It still needs to be offered, the stipulation that  
2 you marked earlier. If you want, I'll take them both up  
3 right now.

4 MR. ALLEN: That will be fine.

5 JUDGE STEARLEY: Any objections to the  
6 offer of Exhibit Nos. 5 or 13?

7 MR. KRUEGER: No, your honor.

8 MR. ALLEN: None.

9 JUDGE STEARLEY: Hearing none, they'll both  
10 be admitted and received into evidence. And we are in  
11 intermission.

12 (EXHIBIT NOS. 5 AND 13 WERE RECEIVED INTO  
13 EVIDENCE.)

14 (A BREAK WAS TAKEN.)

15 JUDGE STEARLEY: All right. We are back on  
16 the record, and we've got a couple housekeeping matters to  
17 take up, and we're going to give Public Counsel an  
18 opportunity to address the Commission here shortly.

19 I believe just prior to going on break we  
20 now have all 13 exhibits offered and admitted into  
21 evidence per my list, and I want to make sure I'm not  
22 missing anything here. And just before we went on recess,  
23 Ms. Baker, you requested to address the Commission with  
24 regard to the Motion on Dismissal for lack of  
25 jurisdiction?

1                   MR. KRUEGER: Your Honor, is the evidence  
2 closed at this point?

3                   JUDGE STEARLEY: Evidence is closed.

4                   MR. KRUEGER: Thank you.

5                   MS. BAKER: I just wanted to take the  
6 opportunity to address the Commission because I know that  
7 the Commission is confused as to Public Counsel's position  
8 in all of this, and I just wanted to explain a little bit  
9 or give a little bit of background for the Motion to  
10 Dismiss. This is something that just came up within the  
11 past couple of days. Public Counsel was not aware that  
12 there might be an issue as far as the transfer of the  
13 stock from Mrs. Bien to R.D. Sewer, and so, like I said,  
14 that just came up. As an officer of the court, we felt  
15 that it was our duty to bring it to the court's attention,  
16 and so that is why the Motion to Dismiss came in.

17                   JUDGE STEARLEY: All right. In coming in  
18 at such a late stage, which is why the Commission is  
19 taking it with the case, I'm going to give all the parties  
20 an opportunity to brief that in your post-hearing briefs.  
21 And I had anticipated having post hearing briefs in lieu  
22 of closing arguments, but I'll go ahead and ask the  
23 parties now, is there anyone who wants to make a closing  
24 argument, because I'll give you the opportunity to do both  
25 if you wish?



1                   MR. KRUEGER: I don't need an argument if I  
2 get the brief.

3                   MS. BAKER: Briefs are fine for Public  
4 Counsel.

5                   MR. ALLEN: Brief's fine, Judge.

6                   JUDGE STEARLEY: Generally our transcripts  
7 will be due in ten business days, approximately two weeks.  
8 Post-hearing briefs, you'll be given 20 days to file after  
9 transcripts are filed, and once the actual transcripts are  
10 filed, I usually send out an Order naming a date specific  
11 for the deadline on post-hearing briefs. We're going to  
12 have one round of briefing, no reply briefs, no page  
13 limits though in the briefing. Are there any other  
14 matters we need to take up?

15                   MR. ALLEN: Are they simultaneous briefs;  
16 is that what it is?

17                   JUDGE STEARLEY: Yes.

18                   MS. BAKER: I just want to go ahead and  
19 renew the objections that I've had all during the day  
20 about the testimony for Bonadio and for Smith and Company  
21 Engineers. I just wanted to renew those objections.

22                   JUDGE STEARLEY: And the Commission hasn't  
23 changed its position on those and your objections are  
24 overruled.

25                   And with that, we will go ahead and

1 adjourn. The evidentiary hearing in Case No. SO-2008-0289  
2 is hereby adjourned. Thank you all very much.

3 WHEREUPON, the hearing of this case was  
4 concluded.

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## 1 C E R T I F I C A T E

2 STATE OF MISSOURI )  
3 COUNTY OF COLE ) ss.  
4 )

5 I, Kellene K. Feddersen, Certified  
6 Shorthand Reporter with the firm of Midwest Litigation  
7 Services, and Notary Public within and for the State of  
8 Missouri, do hereby certify that I was personally present  
9 at the proceedings had in the above-entitled cause at the  
10 time and place set forth in the caption sheet thereof;  
11 that I then and there took down in Stenotype the  
12 proceedings had; and that the foregoing is a full, true  
13 and correct transcript of such Stenotype notes so made at  
14 such time and place.

15 Given at my office in the City of  
16 Jefferson, County of Cole, State of Missouri.

17 \_\_\_\_\_  
18 Kellene K. Feddersen, RPR, CSR, CCR  
19 Notary Public (County of Cole)  
20 My commission expires March 28, 2009.  
21  
22  
23  
24  
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