

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

TRANSCRIPT OF PROCEEDINGS

Evidentiary Hearing

February 25, 2010
Jefferson City, Missouri
Volume 1

In the Matter of the Petition for)
an Interim Receiver and for an)
Order Directing the General)
Counsel to Petition the Circuit)Case No. SO-2010-0237
Court for the Appointment of a)
Receiver for Mill Creek Sewers,)
Inc.,)
)

DANIEL JORDAN, Presiding
REGULATORY LAW JUDGE
ROBERT CLAYTON, III, Chairman,
Commissioner

REPORTED BY: Monnie S. Mealy, CCR, CSR, RPR
Midwest Litigation Services
3432 W. Truman Boulevard, Suite 207
Jefferson City, MO 65109
(573) 636-7551

For Staff of the Missouri Public Service Commission:

For Office of Public Counsel and the Public:

Ms. Christina Baker, P.E., J.D.
Office of the Public Counsel
200 Madison Street
P.O. Box 2230
Jefferson City, MO 65102
(573) 751-5565

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

2 JUDGE JORDAN: Good afternoon, everyone. The
3 Missouri Public Service Commission calls Case No.
4 SO-2010-0237, which Is Staff of the Missouri Public
5 Service Commission versus Mill Creek Sewers, Incorporated.

6 We'll begin with entries of appearance. We'll
7 start with the Petitioner, Staff.

8 MS. HERNANDEZ: Good afternoon. Thank you. My
9 name is Jennifer Hernandez, and I represent the Staff of
10 the Missouri Public Service Commission. I also have with
11 me here Shelly Brueggemann. Our address is P.O. Box 360,
12 Jefferson City, Missouri, 65102.

13 JUDGE JORDAN: Thank you. And for the Office of
14 the Public Counsel?

15 MS. BAKER: Thank you, your Honor. Christina
16 Baker, P.O. Box 2230, Jefferson City, Missouri, 65102,
17 appearing on behalf of the Office of the Public Counsel
18 and the customers.

19 JUDGE JORDAN: Thank you. And I will ask if
20 there is any representative here for Mill Creek Sewers,
21 Inc.? And I'm not hearing a response, and I'm not seeing
22 anyone. Does Staff have something they can tell us about
23 this?

24 MS. BRUEGGEMANN: Your Honor, we have checked
25 the lobby and the other hearing room to see if anyone is

1 wandering around outside. That hasn't happened. We
2 haven't seen a representative from Mill Creek.

3 JUDGE JORDAN: Okay. And has someone also
4 checked Room 305? Yes. I'm seeing heads nodding yes.

5 MS. HERNANDEZ: If I may just add, I did go and
6 check my phone messages, and there's no indication on my
7 voice mail that Mr. Stroud was having difficulty getting
8 here or left any messages.

9 JUDGE JORDAN: Okay. Thank you. Does Office of
10 Public Counsel have anything to add to that?

11 MS. BAKER: No, your Honor.

12 JUDGE JORDAN: Okay. Thank you. Well,
13 according to the clock on the wall, it is about 11 or 12
14 minutes past 1:00, which means we are 11 or 12 minutes
15 past the time scheduled for this hearing to begin. So I
16 will go ahead and begin with Staff's case in chief. Do
17 you have any preliminary matters before you begin
18 presenting?

19 MS. HERNANDEZ: I -- I just had -- I do have a
20 short opening, summary of the case that I would like to
21 give

22 JUDGE JORDAN: I'll hear that.

23 MS. HERNANDEZ: I don't believe we have anything
24 else. Go ahead?

25 JUDGE JORDAN: Yes.

1 MS. HERNANDEZ: Okay. Thank you.

2 OPENING STATEMENT

3 MS. HERNANDEZ: Good afternoon. May it please
4 the Commission. We're here today for a hearing on Section
5 393.145, which is the receivership statute. I think the
6 key words for us to keep in mind this afternoon are
7 inability, unwillingness and effective abandonment.

8 This afternoon the staff will provide testimony
9 that Mr. Stroud is owner and manager of Mill Creek Sewers,
10 Inc., is unable, unwilling and has effectively abandoned
11 the sewer system, placing safe and adequate service in
12 jeopardy for its customers.

13 REPORTER'S NOTE: At this point, an in-camera session was
14 held, which is contained in Vol. 2, pages 6 through 8, as
15 requested by Judge Jordan at the end of the hearing.

16

17

18

19

20

21

22

23

24

25

1 CONTINUED OPENING STATEMENT

2 BY MS. HERNANDEZ:

3 MS. HERNANDEZ: You'll also hear testimony of
4 numerous attempts by Staff to contact the company and
5 offer our assistance in aiding the company in whatever
6 concerns were given to the Staff.

7 I know this company has a long history in the
8 SR-2005-016 -- 0116 case. The Commission is well aware of
9 the -- the problems that have been experienced from this
10 company. And I won't go into that -- that background.

11 But with the new owner, Mr. Stroud, who took
12 over in early 2009, the system has not improved. And,
13 again, I would just like to state that it is placing safe
14 and adequate service in question for the customers. Thank
15 you.

16 JUDGE JORDAN: You're welcome. Will OPC have an
17 opening statement?

18 MS. BAKER: No, your Honor.

19 JUDGE JORDAN: Okay. Thank you. And Mill Creek
20 is still not here. So I understand that Staff wants to
21 begin with the testimony of Jason Williamson; is that
22 correct?

23 MS. HERNANDEZ: Yes, your Honor.

24 JUDGE JORDAN: Mr. Williamson, are you still
25 there?

1 MR. WILLIAMSON: I'm still here. Thank you.

2 JUDGE JORDAN: Very good. I'd like to ask --
3 I'd like to ask you to raise your right hand.

4 MR. WILLIAMSON: Okay.

5 JUDGE JORDAN: And I will swear you in. No.
6 The court reporter will swear you in.

7 MR. WILLIAMSON: Okay.

8 JASON WILLIAMSON,
9 being first duly sworn to testify the truth, the whole
10 truth, and nothing but the truth, testified as follows:

11 DIRECT EXAMINATION

12 BY MS. HERNANDEZ:

13 JUDGE JORDAN: Proceed.

14 MS. HERNANDEZ: Thank you.

15 Q (By Ms. Hernandez) Good afternoon,
16 Mr. Williamson.

17 A Good afternoon.

18 Q Can you hear me okay?

19 A I can.

20 Q Okay. Great. Can you state and spell your name
21 for the record, please?

22 A Jason Williamson, W-i-l-l-i-a-m-s-o-n.

23 Q And where are you employed?

24 A I'm representing Heartland Utilities, LLC.

25 Q Okay.

1 A And my address is 5825 East Tennessee Avenue
2 Suite 547, Denver, Colorado, 80224.

3 Q And relevant to Staff's Petition, what are your
4 qualifications in terms of sewer system operation?

5 A Right. I have been operating, managing and have
6 been involved in ownership of both small water and small
7 sewer systems for approximately 15 years.

8 Q Have you ever been Court-appointed as a receiver
9 for a system?

10 A We have. I was named receiver of the Gladlow
11 Water & Sewer Company, which is in Rolla, Missouri, in
12 March of 2009.

13 Q Okay. Have you ever appeared in any other
14 actions before this Commission?

15 A I have not.

16 Q Can you summarize your qualifications in terms
17 of billing and management for the companies you've been
18 receiver for?

19 A Sure. At present, we are the receiver for
20 Gladlow Water & Sewer and are managing that customer
21 database, including the billing management and all the
22 accounts receivable, accounts payable.

23 We also did -- we also managed the physical
24 plant operations, including the contracting of -- and
25 subcontracting of the operations, physical plant

1 operations, both the water and sewer side, and have been
2 doing that now for coming up on a year in this particular
3 case in Rolla, Missouri.

4 Q Okay. If appointed interim receiver, what would
5 the fee be that you're requesting?

6 A We're requesting a fixed monthly fee of \$800 per
7 month.

8 Q And that would be for the billing and management
9 of the company?

10 A Correct. That would be for the billing and
11 management of the facilities.

12 Q And you're -- you're aware of Mill Creek Sewers,
13 Inc.?

14 A Yes. I have read the updates that the Staff has
15 provided quarterly and the Court documents that were
16 provided by -- to me prior to this hearing.

17 Q And you're willing to serve as an interim
18 receiver and possibly as a Court-appointed receiver for
19 Mill Creek Sewer, Inc.?

20 A Yes. And to clarify, the receiver would be
21 Heartland Utilities as Heartland Utilities was the
22 receiver for Gladlow, not myself individually.

23 Q Okay. Do you believe that you could competently
24 operate the and take over the duties of billing and
25 management?

1 A I do.

2 MS. HERNANDEZ: I believe that's all the
3 questions I have. Thank you, Jason.

4 MR. WILLIAMSON: Sure.

5 JUDGE JORDAN: Any questions from the Office of
6 Public Counsel?

7 MS. BAKER: No, your Honor.

8 JUDGE JORDAN: Mr. Williamson, I have a few
9 questions for you.

10 MR. WILLIAMSON: No problem.

11 CROSS-EXAMINATION

12 BY JUDGE JORDAN:

13 Q First, now, let me make sure which entity would
14 be -- which entity is which. You mentioned Heartland
15 Utilities, LLC. Is that the correct name?

16 A That's -- that's correct. That's the Missouri
17 LLC that we've established to provide these receiverships.

18 Q Okay. And your position at Heartland is what?

19 A I'm the sole owner of Heartland Utilities.

20 Q Sole owner. Okay. And do you have an office
21 like President or Chairman or something like that as well?

22 A No. That would -- it's just the single --
23 single owner LLC.

24 Q Right. Okay. That's fine. Let's see. Okay.

25 So you're -- you're suggesting that the LLC be the

1 receiver in this case?

2 A That's correct.

3 Q Okay. Let's see. Now, you've examined the
4 Petition and other documents sent to you by Staff; is that
5 correct?

6 A That's correct.

7 Q And looking at the financial situation as
8 alleged in the Petition and the other documents that you
9 received, do you think that you'll be able to collect
10 enough to run the system and still -- will you be able to
11 collect enough to run the system?

12 A Well, based on the information I've been
13 provided, it appears that the amounts uncollected from
14 past billings approximately equate to the amount
15 outstanding as being owed to the various vendors that were
16 mentioned in the opening statement.

17 Now, whether or not we could collect a hundred
18 percent of that, I'm doubtful. But I believe that over
19 time we will be able to at least get these bills as close
20 to caught up as possible. And our plan would be in the
21 near term to -- once we get our feet under us a bit to
22 file a rate case with the Commission.

23 Q Okay. Thank you. So you believe you'll be able
24 to keep the system operating and providing safe and
25 adequate service to the customers?

1 A I do.

2 Q All right. And your fee of \$800, will that be
3 per month if asked for? I take it that will be adequate
4 for you to operate the system; is that correct?

5 A That's correct. That would be the -- the
6 monthly fee for the standard -- you know, the functions
7 that we provide in terms of managing and operating these
8 types of facilities. There will be additional costs
9 incurred, direct fees for things like rate case expense
10 that would be billed separately. But that's outside of
11 the standard contract.

12 Q Okay. So what -- we're talking about running
13 the sewer company according to its current tariffs is what
14 we're saying?

15 A That's correct.

16 JUDGE JORDAN: Okay. I think that's all the
17 questions that I have. Any questions from the Commission?

18 COMMISSIONER CLAYTON: I have no questions.
19 Thank you, Judge.

20 JUDGE JORDAN: Okay. Any redirect?

21 MS. HERNANDEZ: No, thank you, your Honor.

22 JUDGE JORDAN: All right, then. Thank you,
23 Mr. Williamson. We have no more questions for you. You
24 may stay on the line if you wish. Otherwise, I'll ask
25 Staff, since it is Staff's witness, may Mr. Williamson be

1 excused?

2 MS. HERNANDEZ: He may.

3 JUDGE JORDAN: Okay. Thank you. Thank you,
4 Mr. Williamson, you may -- you may stay on the line if you
5 wish, or you can sign off now.

6 MR. WILLIAMSON: Okay. Thank you very much.

7 JUDGE JORDAN: You're entirely welcome.

8 Next witness?

9 MS. HERNANDEZ: Staff would now call Lisa
10 Hanneken to the stand.

11 JUDGE JORDAN: I see that our reporter has no
12 microphone, so I will do the swearing in. Please raise
13 your right hand.

14 LISA HANNEKEN,
15 being first duly sworn to testify the truth, the whole
16 truth, and nothing but the truth, testified as follows:

17 DIRECT EXAMINATION

18 BY MS. HERNANDEZ:

19 JUDGE JORDAN: Thank you. Please state your
20 name and spell it for our reporter.

21 MS HANNEKEN: It's Lisa Hanneken, L-i-s-a
22 H-a-n-n-e-k-e-n.

23 MS. HERNANDEZ: I do have some exhibits that
24 Staff intends to introduce, so I'll hand those to the
25 court reporter at this time and --

1 JUDGE JORDAN: Please do.

2 MS. HERNANDEZ: -- and then the witness may
3 reference these documents. All of the exhibits have
4 stickers on the bottom. There's eight of them. Yes. May
5 I approach, your Honor?

6 JUDGE JORDAN: You may.

7 MS. HERNANDEZ: I do have copies of the exhibits
8 for you to reference while we're going through them. I
9 apologize for that delay.

10 Q (By Ms. Hernandez) You previously stated and
11 spelled your name for the record?

12 A Yes.

13 Q Where are you employed, Ms. Hanneken?

14 A With the Missouri Public Service Commission.

15 Q And how long have you been employed with the
16 Commission?

17 A Almost ten years.

18 Q And what is your title?

19 A Utility Regulatory Auditor.

20 Q And your duties as an auditor?

21 A I look over the books and records of Missouri
22 utility companies for rate-making purposes.

23 Q And do the books and records include accounts
24 payable and receivable, invoices, billing and check
25 registers --

1 A Yes.

2 Q -- items such as that?

3 A Yes.

4 Q Okay. Are you familiar with Mill Creek Sewer
5 Company?

6 A Yes, I am.

7 Q And how are you familiar with that company?

8 A Approximately two years ago, I was assigned as
9 Lead Auditor in the previous rate case No. SR-2005-0116 to
10 continue the quarterly status reports as ordered by the
11 Commission.

12 Q Okay. And how many audits have you conducted on
13 companies comparable in size to Mill Creek?

14 A Between seven to ten.

15 Q And are you familiar with the books and records
16 of Mill Creek?

17 A Yes.

18 Q And when was your last review of the books and
19 records of the company?

20 A January 19th of this year.

21 Q Okay. And what is your findings on this date of
22 Mill Creek's records based on your January 19th, 2010,
23 review?

24 A They are quite disorganized. They have either
25 been misplaced or lost. They're very sketchy at best.

1 Q All right. And you have the exhibit in front of
2 you?

3 A Yes, I do.

4 Q Can you refer to Exhibit 1, which is marked
5 Highly Confidential?

6 A Yes.

7 Q Do you recognize that document?

8 A Yes. This is the billing register from Mill
9 Creek Sewer.

10 Q And what does the billing register indicate?

11 A It indicates that 2008, they had fairly good
12 records of customers, checks received. And then in 2009,
13 it looks to be that Mr. Stroud had used a new format for
14 the records.

15 And you can see where he started in January and
16 February of '09 to fill this out. And we actually
17 received this the beginning of March. So I would not
18 expect the rest of the months to be filled out.

19 And the next set of them is beginning in July of
20 '09, and you can clearly see that there is a period from
21 March to June missing. As well, I know that this one was
22 obtained in January, so the periods of October, November
23 and December also appear to be missing for most of the
24 customers.

25 When I inquired as to the missing pieces from

1 Mr. Stroud, he indicated he would provide those to Staff.
2 However, I have not received those to date.

3 Q Okay. So the billing register indicates what
4 months were not billed for customers again?

5 A As far as I can tell from the registers and
6 conversations with customers, Mr. Stroud did not bill the
7 customers for service periods of February, March and April
8 of 2009 as well as September, October, November and
9 December of 2009 in addition to January of 2010.

10 Q And you stated the books -- the billing register
11 for 2008 was in pretty good order. Who managed the
12 company at that time?

13 A Up until approximately September of 2008,
14 Mr. Jim Holmes managed the company. He resigned at that
15 time. And Mr. Affshari (ph.) took over the management for
16 approximately a month.

17 And then he hired a bookkeeper, Ms. Marilyn
18 Wyatt, to take over from the period of approximately the
19 middle of October through the end of December where she
20 was terminated by Mr. Stroud.

21 Q Okay. And can you clarify who Mr. Affshari is?

22 A Mr. Joseph Affshari is the previous owner to
23 Mill Creek sewer, which was involved in the last rate
24 case, SR-2005-0116. So he was the previous owner who sold
25 the company to Mr. Stroud.

1 Q And when did that sale occur?

2 A I'm -- the actual sale negotiations began in
3 December of 2008. The agreement sale contract actually
4 went into effect in March of 2009.

5 Q You indicated there was missing information from
6 the billing register. Have we asked the company to
7 provide missing information?

8 A Yes, we have. I have not received it to date.

9 Q Okay. Can you summarize since Mr. Stroud's
10 purchase of the company and becoming owner and manager the
11 attempts that Staff has made at seeking information from
12 the company and what the company's response has been?

13 A Yes. Beginning in December of 2008 when
14 Mr. Stroud started having an interest in the company, we
15 had visited with him and got some preliminary information.
16 And that continued through January of 2009.

17 He provided us everything that we requested.
18 Most of that information had been done by Ms. Wyatt, so he
19 was just basically giving us what she had performed in her
20 duties.

21 And then in March of 2009, we did visit with
22 Mr. Stroud for purposes of gathering information for the
23 status report that was due in March of '09. At that time,
24 when we visited with him, he was missing information. And
25 it took him about two weeks to provide that information

1 after several phone calls and e-mails requesting that
2 information.

3 And then in May, I requested a meeting with him
4 for a Q status report. It took approximately two weeks
5 for him to return my calls and e-mails.

6 At that time, he sat up a meeting for June 5th.
7 Approximately an hour and a half before the meeting, he
8 e-mailed me and said he had to cancel because he was not
9 prepared for the meeting.

10 We rescheduled the meeting for June tenth. He
11 e-mails me about 45 minutes after the meeting was to take
12 place stating that, sorry, he couldn't make the meeting.
13 So we again said, okay, that was fine. He said, well, I
14 will get back with you later today to reschedule.

15 After that, it took several e-mails and calls.
16 And I did not get any contact with him until July 31st,
17 which was basically six weeks later. And at that point,
18 we had refiled a status report stating that we could not
19 contact the company.

20 At that time, he stated that he was frustrated
21 with the company and that if we were to place the company
22 in receivership, he would not have a problem with that.

23 On August 5th, Staff requested that we have a
24 meeting with him to discuss the status of the company. We
25 did have that meeting on August 28th. And there were some

1 items that Mr. Stroud was to provide and some actions to
2 be taken.

3 However, after that meeting, we were unable to
4 contact him again. Then at the end of October, we sent a
5 demand letter to the company requesting contact as we had
6 several months without contact. He was to respond to us
7 by about mid November. He failed to do so.

8 I believe he contacted Staff counsel at the end
9 of December. And at that time, we set up another meeting
10 with him for January 4th, which did take place with Staff.
11 And subsequent to that, I set up a meeting as Auditor to
12 review his books and records on January 19th.

13 Q In terms of that November 13th date, do you
14 remember what Mr. Stroud was to respond to by that date?

15 A I believe, as far as I'm aware, he was just to
16 contact the company to discuss a plan for addressing the
17 information required by Staff and review the status of the
18 company.

19 Q Was -- was the letter to address concerns the
20 Staff was having in lieu of placing the company into a
21 receivership?

22 A Yes. I believe it was stated in the demand
23 letter that if no contact was made that Staff would take
24 -- the necessary steps to start the receivership
25 proceedings.

1 Q Okay. You mentioned several months without
2 billing. What's the revenue amount that Mill Creek could
3 have collected if the bills had been sent out for those
4 periods in 2009 and early 2010?

5 A It's close to \$18,000.

6 Q And would that amount bring Mill Creek current
7 with its vendors?

8 A It would cover all the outstanding vendor
9 amounts for the daily operations of the company, yes.

10 Q Okay. All right. If you could just turn to
11 Exhibit 2 now marked Staff's Exhibit 2. I believe that's
12 the demand letter that you were referencing.

13 A Yes.

14 Q Since we discussed that, we won't go into too
15 much more detail. Are you aware if Mr. Stroud or when
16 Mr. Stroud replied to that October 23rd letter?

17 A I believe it was the end of December, possibly
18 like the 30th or 31st of December.

19 Q And are you aware, is that -- had Staff filed a
20 Petition for a receiver at that point?

21 A I believe -- I believe we had filed a
22 receivership filing.

23 Q Okay. And when did Staff set up a meeting to
24 discuss compliance issues with Mr. Stroud in lieu of the
25 receivership?

1 A It was the January 4th meeting.

2 Q And what did Mr. Stroud convey during that
3 January 4th, 2010 meeting?

4 A He conveyed that he was very interested in
5 continuing the ownership and management of Mill Creek. He
6 wished to comply with the items that Staff had concerns
7 with, and he was willing to set up some time lines by
8 which certain items would be met.

9 Q Okay. And a verbal agreement was reached
10 between the Staff and the company requiring certain
11 corrective action by specific dates?

12 A Yes.

13 Q And can you detail those requirements?

14 A Yes. I think there is an e-mail that kind of
15 outlines those items. But, basically --

16 Q Would it help if I --

17 A Yes. That would be help.

18 Q -- let you look at the e-mail?

19 MS. HERNANDEZ: May I approach, your Honor?

20 JUDGE JORDAN: You may.

21 MS. HERNANDEZ: Thank you.

22 Q (By Ms. Hernandez) And can you explain what
23 that document is, please?

24 A This is an e-mail from Staff's counsel to
25 Mr. Stroud dated January 12th, 2010. The subject is draft

1 agreement terms, privileged settlement discussions. It
2 was the draft of the agreement that we were to enter into
3 with the company in lieu of receivership proceedings.

4 Q Okay. And can you summarize the -- the
5 requirements within that e-mail that Mr. Stroud had
6 conveyed that he was willing to comply with?

7 A Yes. He had -- stated that he was willing to,
8 by February 1st of this year, develop and implement
9 slightly revised customer billing statement with a payment
10 stub attached and things like that.

11 That by January 15th, he would deposit all
12 customer checks that he had in his possession that had
13 been undeposited for several months, that he would
14 back-bill his customers during the February and April --
15 or February, March and April 2010 monthly billings so he
16 would catch up on his billings.

17 By January 19th, he was to submit the proper DNR
18 ownership change applications so that they would have the
19 proper records on file. Also by that date, he was to meet
20 with individuals with the St. Louis County Tax Division
21 regarding his personal property taxes and dispute of them.

22 By January 19th, he was also supposed to put in
23 place payment -- payment plans for his vendors to become
24 current with them. January 25th, he was supposed to have
25 provided information to Staff as to what the details of

1 those payment plans would be.

2 By January 19th, he was supposed to have
3 reliable cell phone service with an active account so that
4 his customers and vendors may contact the company in case
5 of an emergency or if they had concerns with their
6 billings. I believe as of yesterday, that phone had been
7 disconnected.

8 On January 19th, he was also supposed to change
9 the cell phone voice mail message so that an emergency
10 contact number would be placed on it as the customers did
11 not have that number.

12 By the February 2010 billing, he was to have
13 given customer notification letters to the customers so
14 that they were aware of the back-billing, the status of
15 the company and the contact information should they need
16 to contact the company.

17 And, also, by February 1st this year, he should
18 have developed like an application for new customers, a
19 company brochure, door hangers, standard customer
20 documentation that most companies have for their
21 customers.

22 In addition, he was to provide written status
23 reports weekly beginning January 15th. I believe I
24 received one of those when -- immediately after the
25 meeting. And that was all I have received on that.

1 By January 25th, he was to provide the proper
2 documentation to the Auditing Department so that we may
3 complete and file an accurate status report with the
4 Commission. And part of that information was provided on
5 January 19th, but the remainder has not been provided to
6 date.

7 And he was to meet with Staff at least one week
8 prior to the due date of each quarterly status report to
9 give the proper documentation and records required for
10 such a report.

11 And, finally, on January 19th, he was to have
12 contacted the operating company, which is Testing Analysis
13 & Control, Incorporated. Also, we refer to it as TAC. So
14 schedule a sludge hauling. And -- excuse me -- any
15 necessary repairs to the plant as they had previously
16 indicated there were things that needed to be taken care
17 of. And both of those items were to have occurred no
18 later than January 31st.

19 To date, it's, to my knowledge, they have not
20 been done. And that's all.

21 JUDGE JORDAN: Counselor, will you be having
22 that marked and putting it into evidence?

23 MS. HERNANDEZ: I hadn't intended to, but,
24 certainly, I can if you believe that will be of
25 assistance. I guess I would have to mark that No. 9.

1 JUDGE JORDAN: That would make it 9.

2 MS. HERNANDEZ: Okay. If it's okay, I'll
3 reserve offering all of the exhibits till the end, your
4 Honor.

5 JUDGE JORDAN: No. That's fine.

6 Q (By Ms. Hernandez) Okay. Let me ask you, at
7 the -- at the January 4th meeting that Staff conducted
8 with Mr. Stroud, were there any indications about payments
9 made to vendors and what those payments might have been?

10 A He had indicated that he had written the check
11 to TAC, the operating company, as well as set up a payment
12 plan with them.

13 In addition, he had said he had paid for the
14 electric bill to AmerenUE. And he was trying to either
15 pay or catch up with other vendors but had not stated
16 specifically other checks being written.

17 Q Are you aware if a payment was made to TAC?

18 A As of yesterday when I spoke with Judy, the
19 account manager at TAC, she had still not received a check
20 from him.

21 Q Was TAC aware of a payment arrangement, or did
22 they enter into a payment arrangement with Mr. Stroud?

23 A She indicated that Mr. Stroud had contacted her
24 in the early part of January, I believe, and set up a
25 payment plan that he was to pay the normal monthly charge,

1 and in addition to that, pay \$400 per month until the
2 arrears was current.

3 Q And we'll discuss the account status a little
4 bit later. But I also wanted to ask you about -- also
5 during that January 4th meeting, did Charlie indicate
6 customer bills had been sent out for any periods around
7 December 30th, 2009?

8 A Yes. He had stated that he had billed the
9 customers, and he had said that he had back-billed them.
10 So he had billed them for service periods of October,
11 November and December of 2009. So he had billed them for
12 three months is what he had said.

13 Q Was the Staff able to verify that?

14 A No, we were not. Given the documentation that
15 he provided to us on January 19th, in addition to
16 contacting the customers numerous times over the last two
17 months, there seems to be no bill sent to customers, any
18 of the customers.

19 Q Are you of the opinion that the statements made
20 by Mr. Stroud to the Staff on January 4th were truthful
21 statements?

22 A Given the documentation and conversations I have
23 had with customers and vendors, I believe the statements
24 he made were not truthful.

25 Q Since Mr. Stroud began managing the system, has

1 communication -- how has communication been with -- by
2 phone or e-mail with the Staff?

3 A It's been very difficult. On e-mails, at the
4 earliest would be responded to in maybe a week. Voice
5 mails left on the company cell phone, which is to be
6 checked frequently during the day, would, again, not be
7 responded to.

8 On several occasions, I actually had to call the
9 previous owner, and he now resides in California, to have
10 him prompt Mr. Stroud to respond to my calls.

11 MS. HERNANDEZ: I'd now like to discuss Staff
12 Exhibit 3, and that's also marked HC. That has some
13 confidential customer information -- customer account
14 information. I don't know if we need to go off camera
15 right now so that that information -- in camera so that
16 information is not disclosed.

17 JUDGE JORDAN: Do you need to discuss the
18 customer -- do you need to account customer accounts?

19 MS. HERNANDEZ: I'm sorry, your Honor.

20 JUDGE JORDAN: Do you need to -- do you need her
21 discussion to include information identifiable to customer
22 accounts?

23 MS. HERNANDEZ: We won't indicate the -- the
24 invoice number or the account numbers, but there will be
25 information on how much is owed by the company to TAC.

1 JUDGE JORDAN: Well, refresh me on what
2 information needs to be highly confidential. I'm pretty
3 familiar with customer account information. But is vendor
4 information also highly confidential?

5 MS. HERNANDEZ: I -- I did mark all the company
6 information that contained its invoice numbers with the
7 amounts Highly Confidential to protect the company's
8 account information. But if it's your --

9 JUDGE JORDAN: Because it's financial
10 information; is that correct?

11 MS. HERNANDEZ: Correct.

12 JUDGE JORDAN: Okay. Then we will do that. We
13 will go in-camera.

14 MS. BRUEGGEMANN: Your Honor?

15 JUDGE JORDAN: Yes.

16 MS. BRUEGGEMANN: One question. Did -- sorry.
17 One. This is Shelly Brueggemann. Is Jason Williamson
18 still on the phone?

19 JUDGE JORDAN: Mr. Williamson, are you still on
20 the phone, or have you left as you said you would?

21 MR. WILLIAMSON: I am here.

22 MS. BRUEGGEMANN: Okay. I think if we go
23 in-camera that we have to mute the phone so that he -- as
24 he's not a party yet and he hasn't been appointed
25 receiver --

1 MR. WILLIAMSON: I actually was going to drop
2 off here in a minute anyway, Shelley, so I can do that
3 right now.

4 MS. BRUEGGEMANN: Okay. I'm sorry. Thank you.

5 MR. WILLIAMSON: Bye.

6 JUDGE JORDAN: Thank you, Mr. Williamson. Okay.
7 Okay. Anything else that we need to do before we mute?

8 MS. HERNANDEZ: I don't believe so, your Honor.

9 JUDGE JORDAN: Okay. Let's see. Find my mute
10 button. All right. Then we'll go -- let's see. Okay.
11 All right. I believe -- and we are muted.

12 MS. HERNANDEZ: Okay. Thank you.

13 REPORTER'S NOTE: At this point, an in-camera session was
14 held, which is contained in Vol. 2, pages 34 through 40.

15

16

17

18

19

20

21

22

23

24

25

1 CONTINUED DIRECT TESTIMONY OF LISA HANNEKEN

2 BY MS. HERNANDEZ:

3 JUDGE JORDAN: And we are out of chambers. You
4 may resume.

5 MS. HERNANDEZ: Thank you.

6 Q (By Ms. Hernandez) Turning to Staff Exhibit 8,
7 do you recognize this document?

8 A Excuse me. Yes. This is a copy of the record
9 and account for Mill Creek sewer with the St. Louis County
10 Personal Property Tax Authority.

11 Q And, again, this is a public document. But how
12 much does it indicate the balance is?

13 A Currently, as of February 23rd, 2010, the
14 company owes \$7,885.39.

15 Q And are you aware of what actions accounting can
16 take to receive payment for this amount that's owed?

17 A When I last discussed it with them, they were
18 intending to put it on -- up for sale. Basically, put it
19 on the courthouse steps.

20 Q Okay. And did Mr. Stroud agree to any action on
21 January 4th in regard to this property tax amount?

22 A Yes. He agreed to actually go to the taxing
23 authority and discuss with them the amount. There was
24 some dispute as to whether it is a correct amount and/or
25 in addition to that discuss payment arrangements with the

1 County.

2 Q Can you identify for the record attempts that
3 Staff has made to assist Mr. Stroud with certain issues,
4 either recognized by the Staff or brought to our
5 attention?

6 A Staff has made numerous attempts to assist
7 Mr. Stroud in getting acc -- acclimated to the company as
8 well as becoming familiar with the vendors and customers
9 of the company.

10 We have assisted Mr. Stroud with preparation of
11 the annual report to the Commission, Secretary of State
12 filings, filings for the taxing authorities. We have even
13 provided Mr. Stroud with a customer historical billing
14 register that Staff has actually put together from the
15 records of the company.

16 And as of January, it was current. And all
17 Mr. Stroud needed to do was input the amount that he
18 billed the customer and the amount received from the
19 customer.

20 However, I don't believe he kept that file up to
21 date. We had numerous phone calls with Mr. Stroud to
22 assist him, e-mails and as well on-site visits with
23 Mr. Stroud to assist him with the -- the company.

24 And that's auditing Staff. I know that Staff
25 here in the Jefferson City office with the Engineering &

1 Management Services Department, the Water & Sewer
2 Department, the General Counsel's office all also offered
3 their assistance to Mr. Stroud.

4 Q To your recollection, has Mr. Stroud ever
5 expressed an unwillingness to manage the company?

6 A There were two instances that I'm personally
7 aware of. In the one, he stated that he believed the
8 receivership would probably be the best outcome for the
9 company. And in the other one, he stated that he was so
10 frustrated that he became angry and just stopped
11 performing his management duties for several months.

12 Q And can you give, for the record, a reference to
13 time when those statements were made?

14 A Yes. For the receivership statement, that was
15 on July 31st of 2009. And the statement concerning his
16 frustration and ceasing his management duties, he made
17 that statement on January 4th of 2010 during the meeting
18 with Staff. And he was actually referring to the time
19 period of March through June of 2009.

20 Q Okay. How can a customer contact Mr. Stroud if
21 they are -- have a question about any service issue that
22 they're encountering?

23 A Currently, if a customer has a question about a
24 bill, service issues or an emergency sewer back-up, there
25 is no way to contact Mr. Stroud. He -- the Mill Creek

1 cell phone has been disconnected. There is no actual
2 physical address, business address for the company other
3 than Mr. Stroud's home. But the customers are not aware
4 of that address. Most of them are not aware of his name.

5 Q Okay. And in your opinion, is Charlie -- excuse
6 me -- Mr. Stroud unwilling or unable to provide safe and
7 adequate service for the -- for the system's customers?

8 A Given the documentation and information that I
9 have from vendors and customers and -- and the information
10 provided by Mr. Stroud himself, I believe so.

11 Q Okay. Are you aware of any other party having
12 difficulty contacting Mr. Stroud?

13 A Customers have -- when I have spoken with
14 customers, they actually -- one of them actually flagged
15 down the operator from TAC, asking me, Hey, where can I
16 send my payment? Mr. Allgire from TAC did not know that
17 information because he himself could not get a hold of
18 Mr. Stroud.

19 JUDGE JORDAN: And can you spell the name
20 Allgire for the court reporter?

21 A I'm sorry?

22 JUDGE JORDAN: Can you spell the name of
23 Allgire?

24 A Mr. Allgire is A-l-l-g-i-r-e. His first name is
25 Tim. He's the operator assigned to Mill Creek by TAC.

1 JUDGE JORDAN: Thank you.

2 A In addition, I know that I spoke with a customer
3 yesterday, and he had recently been contacted by AmerenUE.
4 They were requesting information to find out where to
5 contact the company in regards to past due balance on the
6 electric.

7 Q (By Ms. Hernandez) Okay. And is it your
8 opinion that a receiver is the best option for the company
9 at this point in time?

10 A I believe so. Yes.

11 Q And are you aware with who the Staff recommended
12 to the Commission to be an interim receiver?

13 A I believe it is Mr. Jason Williamson.

14 Q Okay. And in your opinion, is the rate of \$800
15 per month recommended by the Staff a just and reasonable
16 rate for Mr. Williamson's service as a receiver?

17 A As a receiver and given the other receiver
18 amounts in the state, I believe it is.

19 MS. HERNANDEZ: All right. I -- at this time, I
20 would like to move to have Staff's Exhibits 1 through 9
21 admitted.

22 JUDGE JORDAN: Okay. We did have 9 marked,
23 didn't we?

24 MS. HERNANDEZ: May I approach the witness? She
25 may still have No. 9 in her possession.

1 JUDGE JORDAN: Please do. Please do.

2 MS. HERNANDEZ: This I did not originally intend
3 to enter, so it doesn't have a sticker. But I can label
4 that with a pen or however the court reporter --

5 JUDGE JORDAN: The reporter will do that.

6 MS. HERNANDEZ: You can label it? Okay. And
7 the witness will give her stack of exhibits to the
8 reporter. You have a copy.

9 JUDGE JORDAN: Okay.

10 MS. BAKER: Except for No. 9.

11 MS. HERNANDEZ: Let me --

12 MS. BAKER: Can you give me a copy some other
13 time?

14 MS. HERNANDEZ: Do you want to review it prior
15 to admission?

16 MS. BAKER: No.

17 MS. HERNANDEZ: Okay. And if I could, just for
18 the record, Exhibits 1, 3, 4, 5, 6 and 7 have Highly
19 Confidential information and are marked as such.

20 JUDGE JORDAN: And that's 1, 3, 4, 6 and 7; is
21 that correct?

22 MS. HERNANDEZ: 1, 3, 4, 5, 6, 7, correct.

23 JUDGE JORDAN: 5, 6 and 7. All right. Let me
24 know when Exhibit 9 is marked, please.

25 THE COURT REPORTER: It is.

1 JUDGE JORDAN: Okay. Then -- and you've moved
2 all those into evidence, correct, 1 through 9?

3 MS. HERNANDEZ: Yes.

4 JUDGE JORDAN: Any objection?

5 MS. BAKER: No, your Honor.

6 JUDGE JORDAN: Not hearing any objection, so
7 they're admitted into the record.

8 (Exhibit Nos. 1 through 9 were offered and
9 admitted into evidence.)

10 MS. HERNANDEZ: Okay. I believe that's all I
11 have for this witness.

12 JUDGE JORDAN: Okay. Office of Public Counsel,
13 any cross-examination?

14 MS. BAKER: No, your Honor.

15 CROSS-EXAMINATION

16 BY JUDGE JORDAN:

17 Q I have a few questions to get some things
18 straight to make sure I understand, and it mostly has to
19 do with sequence of events. You mentioned Mr. Holmes who
20 once owned Mill -- let's start -- let's start this way.

21 Throughout the events that you've discussed, the
22 entity providing sewer service has been Mill Creek Sewers,
23 Incorporated; is that correct?

24 A Correct.

25 Q Okay. You mentioned Mr. Holmes who now lives in

1 California.

2 A Actually, it's Mr. Joseph Affshari that lives in
3 California.

4 Q Okay.

5 A He was the previous owner.

6 Q Okay. Who is this Holmes person?

7 A Mr. Jim Holmes was the previous manager of the
8 company hired by Mr. Affshari to manage Mill Creek. So he
9 actually did the billing and accounts payable and -- and
10 that type of clerical work, so to speak.

11 He would also, if there were plant issues, would
12 get with Mr. Allgire at TAC and discuss whether they
13 should repair a pump or whatever. But he basically ran
14 the day-to-day operations of the company for Mr. Affshari.

15 Q Okay. Mr. Affshari owned the -- owned this
16 company when?

17 A I -- I do not know how far back. I believe it
18 was 1970-something he actually originally put in the
19 system.

20 Q So -- so he's the original owner. Okay. And
21 let's see. If I recall, the Petition says that the
22 company's held the certificate of -- held the certificate
23 since 1973 or '72. So it would go back around there is
24 what you're saying?

25 A Yes. I believe he started the development a

1 couple, three years prior to that.

2 Q Okay. And then he transferred ownership of the
3 company to --

4 A Correct. He sold the company to Mr. Stroud.

5 Q -- to Stroud, Mr. Stroud?

6 A The effective date was sometime in March of
7 2009.

8 Q 2009 or 2008?

9 A It was 2009.

10 Q 2009.

11 A Mr. Stroud -- actually, he does other work for
12 Mr. Affshari.

13 Q Okay.

14 A And knowing that he was looking at buying the
15 company, he began the management duties such as Mr. Holmes
16 had performed for the company --

17 Q Okay.

18 A -- beginning late December of '08 --

19 Q Okay.

20 A -- and kind of managed the company to get a feel
21 for it before the sale went through in March.

22 Q Okay. Okay. I'm just -- I'm just checking my
23 notes. So right now, Mr. Stroud -- is that Charles
24 Stroud? Is that correct?

25 A Correct.

1 Q Okay. He is the sole owner of Mill Creek
2 Sewers, Incorporated; is that correct?

3 A Yes.

4 Q Okay. All right. Okay. Okay. That looks like
5 all I wanted to clear up --

6 A Okay.

7 Q -- as to this.

8 JUDGE JORDAN: So I don't have any more
9 questions.

10 MS. HERNANDEZ: Neither do I.

11 MS. BAKER: No.

12 JUDGE JORDAN: Okay. Then you may be excused.

13 MS. HANNEKEN: Thank you, your Honor.

14 JUDGE JORDAN: May this witness be excused?

15 MS. HERNANDEZ: Yes. She may be dismissed.

16 JUDGE JORDAN: Okay. All right. Thank you.

17 MS. HANNEKEN: Thank you.

18 JUDGE JORDAN: Your next witness?

19 MS. HERNANDEZ: Yes. Staff will now call
20 Mr. Steve Loethen.

21 JUDGE JORDAN: I'll be doing the swearing in
22 again. Please raise your right hand.

23 STEVE LOETHEN,
24 being first duly sworn to testify the truth, the whole
25 truth, and nothing but the truth, testified as follows:

1 DIRECT EXAMINATION

2 BY MS. HERNANDEZ.

3 Q And can you state and spell your name for the
4 record, please?

5 A Steve Loethen, L-o-e-t-h-e-n.

6 Q And where are you employed?

7 A Missouri Public Service Commission.

8 Q And what is your title with the Commission?

9 A Utility Operations Technical Specialist.

10 Q And how long have you held that position?

11 A Since -- as of January, ten years.

12 Q Okay. And what does your position, duty-wise,
13 include?

14 A One of the major duties I perform is inspections
15 on water and sewer companies that we regulate. We also
16 work with -- when the rate case is filed for, we do
17 inspections -- or investigations on complaints.

18 We offer assistance with the operations and
19 maintenance and various items with the companies to help
20 them perform their duties.

21 Q And prior to working for the Commission, what
22 did you do?

23 A I worked for a regulated company called Aqua
24 Missouri for eight years.

25 Q Okay. And what were your duties there?

1 A I was Manager of New Operations. Through my
2 eight years, I done everything from operations, help
3 design, build, operate, troubleshoot, rehab water and
4 wastewater systems similar to this one.

5 Q Do you possess any certifications or training
6 for the operation of plants?

7 A I have an A certification in wastewater, C
8 certification in water and a DS-3 certification in water.

9 Q And what does A, C and -- you'll have to -- I
10 apologize. I can't remember the other abbreviation.

11 A The four levels are A, B, C and D, A being the
12 highest level.

13 Q Okay. Are you familiar with Mill Creek?

14 A Yes, I am.

15 Q And how many customers does Mill Creek currently
16 have?

17 A Around 76, I think, somewhere around that.

18 Q Okay. How are you familiar with Mill Creek?

19 A I've performed the inspections, the yearly
20 inspections for probably six or eight years now, somewhere
21 around there.

22 Q Okay. How many systems similar to Mill Creek
23 have you in total operated or been involved in operations
24 while here at the Commission or during your prior
25 employment?

1 A With my prior employment, we operated and
2 maintained approximately 40 systems similar to this. Here
3 at the Commission, I have done inspections on
4 approximately 60 systems similar to this.

5 Q And what is your understanding of Mill Creek's
6 compliance with DNR's permitted levels for the National
7 Pollutant Discharge Elimination System standards?

8 A I requested information from TAC the last year
9 samples -- the sample results. And currently, there are
10 no violations as far as the discharge.

11 Q Okay. And with you having more expertise in
12 that area, what does -- can you just give a laymen's term
13 about the NPDES system? What does DNR use that for?

14 A It's a -- discharge monitoring reports have to
15 be filed with the Department of Natural Resources. A
16 sample has to be taken out of what's called the affluent
17 or the discharge of the wastewater treatment facility.

18 That sample is taken to a lab and tests are ran
19 on it. The results are regulated by the Department of
20 Natural Resources as to what those parameters or limits
21 that they can exceed.

22 Q Okay. And you previously stated that they were
23 in compliance all of 2009?

24 A Operationally, yes.

25 Q And what do you contribute that compliance to?

1 A TAC doing the operations.

2 REPORTER'S NOTE: At this point, an in-camera
3 session was held, which is contained in Vol. 2, pages 44
4 through 45 as requested by Judge Jordan at the end of
5 hearing.

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 CONTINUED DIRECT EXAMINATION OF STEVE LOETHEN

2 BY MS. HERNANDEZ:

3 Q I apologize. From that testimony, is it your
4 opinion that that company could terminate its service at
5 any time?

6 A Yes.

7 Q And regarding the electric bill that was --
8 there was testimony earlier about its delinquency. Do you
9 remember that testimony?

10 A Yes, I do.

11 Q And does this -- does Mill Creek sewer use
12 electricity?

13 A Yes, it does.

14 Q And how -- how was electricity used?

15 A The treatment process is done with a -- an
16 aerobic bacteria. They need oxygen to live. If the --
17 the electric meter run pumps that pump air into the
18 system. Without the electricity, the aerobic bacteria
19 would die and the plant would become septic and pollute
20 the waters of the state.

21 Q Okay. And are there currently any operating
22 issues with the plant?

23 A It needs sludge hauled very badly. Sludge has
24 to be hauled periodically out of the wastewater treatment
25 plant, sludge build-up. It essentially fills up -- if the

1 plant fills up with sludge, it will lose it into the creek
2 which will be a violation and pollute the waters of the
3 state.

4 Q Okay. And is it your understanding that the
5 Staff and Mr. Stroud had talked about arranging sludge
6 hauling during its January 4th --

7 A Yes.

8 Q -- discussion?

9 A He was supposed to have -- make arrangements to
10 have sludge hauled. Or contact TAC and have them have
11 sludge hauled. It's my understanding that payment has to
12 be made up front because of past due delinquencies, so --
13 before they can actually haul the sludge or call somebody
14 out there.

15 Q And the payment has to be made up front to -- to
16 the person -- can you just clarify -- I'm sorry. Can you
17 clarify that?

18 A TPCMTS, they're the sludge haulers.

19 Q Okay. If TAC was to discontinue its service for
20 the plant, in your professional opinion, how long can the
21 plant operate before either environmental or service
22 quality issues arise?

23 A It could operate for some time. But without --
24 without an operator there, many things can happen. Sludge
25 can clog. Electric can -- you can throw a breaker because

1 of an electric charge or the belts can come off the
2 motors. Air filters can clog. Numerous things can
3 happen. And without an operator checking on it and fixing
4 those problems, the plant could malfunction and pollute
5 the waters of the state.

6 Q Do you remember the testimony Ms. Hanneken gave
7 earlier about Mill Creek's phone being disconnected?

8 A Yes, I do.

9 Q And what is your understanding of the
10 alternative ways customers can notify the company of
11 service issues?

12 A The only ways I was aware of is through mail or
13 through the cell phone. But it's my understanding that
14 he's not checking his mail or receiving mail, and the cell
15 phone is disconnected.

16 Q In your experience, what are common problems a
17 collection system might encounter?

18 A You can have back-ups in collection systems.
19 And immediate response is needed to remedy those problems.

20 Q What would happen if -- what's the result for
21 the customer if there is no response?

22 A It can result in their home or basement filling
23 up with sewer.

24 Q And what's -- what's the necessary response
25 time?

1 A There's no exact -- but, you know, within a
2 couple hours. The customer should at least be contacted
3 to find out what the problem is and the severity of the
4 problem.

5 Q Are you aware of assistance the Water & Sewer
6 Department has offered Mr. Stroud in the past year?

7 A I, along with others in the Water & Sewer
8 Department and the Management Services and other
9 departments here at the Commission, have offered
10 assistance in several different areas.

11 The Water & Wastewater Department, we've offered
12 to go out and help him map the system, walk the system,
13 learn -- learn the collection system and look in --
14 actually look in the man holes and see what kind of issues
15 are out there.

16 We've also offered to help -- there's quite a
17 few delinquent accounts out there. We've offered
18 assistance in how to do the rules of the tariff, enforce
19 the disconnection policy and also talk to him with
20 possibly getting an arrangement with Missouri American,
21 the water provider, to disconnect the water.

22 There's contracts that can be done to disconnect
23 the water in order to get the customers to pay the
24 delinquent accounts.

25 Q And is it your opinion that the system is

1 currently in need of placement with the receiver?

2 A Yes. I believe so.

3 Q And are you aware of who the Staff has
4 recommended?

5 A Jason Williamson, who is Heartland Utilities.

6 Q Are you familiar with his background?

7 A I've worked with him on the Gladlow receivership
8 case.

9 Q And do you think he would serve as a competent
10 receiver for Mill Creek Sewers, Inc.?

11 A Based on my knowledge on the work he's done at
12 Gladlow, he's done a very good job there and -- and
13 already fixed several ongoing problems that we've had
14 there for years, so, yes, I believe he would do a good job
15 here, too.

16 MS. HERNANDEZ: Okay. I believe that's all the
17 questions I have, your Honor.

18 JUDGE JORDAN: Any cross-examination from the
19 Office of Public Counsel?

20 MS. BAKER: No, your Honor.

21 JUDGE JORDAN: I have no questions. So may this
22 witness be excused?

23 MS. HERNANDEZ: Yes, your Honor.

24 JUDGE JORDAN: Okay. You are excused. Thank
25 you.

1 MR. LOETHEN: Thank you.

2 JUDGE JORDAN: Anything else from Staff?

3 MS. HERNANDEZ: I do have a few matters, your
4 Honor. I did reference a couple of numbers in my opening.
5 And then, also, in Mr. Loethen's direct, I did ask a
6 question that had a number included. I would just ask
7 that those portions of the transcript be marked Highly
8 Confidential. Or in a -- however the matter your Honor
9 believes is most appropriate.

10 JUDGE JORDAN: Let's go off the record for
11 discuss this procedure for just a second. Hang on, if you
12 will, and I will put this camera in the proper place, and
13 we'll go off the record for just a minute.

14 (Break in proceedings.)

15 JUDGE JORDAN: We are back on the record.

16 MS. HERNANDEZ: Yes, your Honor. I just have a
17 few matters to take care of. In terms of the exhibits
18 that were entered, if -- the exhibits that were previously
19 marked Highly Confidential, it appears from further review
20 of the rules that they should be marked properly as
21 Proprietary information, and so those would be No. 3, 4,
22 5, 6, and 7 would be the ones that we're requesting change
23 and designation for.

24 JUDGE JORDAN: Okay. So Exhibits 3, 4, 5, 6 and
25 7, how do you want those designated?

1 MS. HERNANDEZ: They were previously designated
2 as HC. It appears they should be marked as Proprietary
3 instead.

4 JUDGE JORDAN: Okay. And Exhibit 1?

5 MS. HERNANDEZ: Highly Confidential --

6 JUDGE JORDAN: All right.

7 MS. HERNANDEZ: -- for customer information.

8 JUDGE JORDAN: Okay. Anything else about those
9 exhibits that you feel you need to tell me right now?

10 MS. HERNANDEZ: Also, in my opening and in
11 questioning Mr. Loethen, there was some information about
12 certain accounts that I would ask that the Commission and
13 the court reporter place those items in-camera and give it
14 the appropriate treatment that way.

15 JUDGE JORDAN: All right. And anything else?

16 MS. HERNANDEZ: If I may do just a short closing
17 addressing what remedy the Staff is seeking?

18 JUDGE JORDAN: Sure. I will go ahead and grant
19 your motions, and you can proceed to your closing
20 argument.

21 MS. HERNANDEZ: Thank you, your Honor.

22 CLOSING ARGUMENT

23 BY MS. HERNANDEZ:

24 MS. HERNANDEZ: I'll just bring your attention
25 and, also, that of the Commissioners back to the Petition

1 that was filed by the Staff requesting that under 393.145
2 that the Commission grant an interim receivership giving
3 -- being Mr. Williamson as interim receiver and then
4 allowing the General Counsel to Petition the Circuit Court
5 of whatever county it determines is most appropriate to
6 have a hearing on placing Mill Creek in full receivership.

7 I'm sorry. I still referred to Mr. Williamson,
8 but it should be Heartland Utilities as Mr. Williamson's
9 testimony did identify that's how he would like to be
10 identified.

11 I believe that the testimony that was given by
12 the witnesses today shows that not only through actions,
13 but Mr. Stroud's own words, that he is unwilling, unable
14 and has effectively abandoned the system.

15 There are concerns about past accounts being
16 overdue where certain very critical services to the system
17 could be discontinued at any time placing the service to
18 the customers at great risk. Also, concerns of the
19 customer's health and welfare and, also, that of their
20 property. There's concerns there based on the operation
21 of the company.

22 And so, again, I would just like to reiterate
23 that under 393.145, we believe the testimony shows such
24 that Mr. Stroud has abandoned, is unwilling and unable to
25 manage the system even through efforts of the Staff to

1 assist in doing so. And we would ask for interim receiver
2 and, also, the General Counsel to have the appropriate
3 authority to petition as it sees fit in the Circuit Court.

4 JUDGE JORDAN: Okay.

5 MS. HERNANDEZ: I appreciate your time this
6 afternoon.

7 JUDGE JORDAN: Thank you. Thank you. Anything
8 else from Staff, then?

9 MS. HERNANDEZ: No. I believe that's all.

10 JUDGE JORDAN: Anything from the Office of the
11 Public Counsel?

12 MS. BAKER: Public Counsel would say that the
13 testimony today does show that Mr. Stroud is unwilling and
14 unable to operate Mill Creek sewer system and the actions
15 of Mr. Stroud are those of one who has abandoned the
16 system.

17 The testimony also showed that the customers are
18 in danger of losing their utility service and having a
19 negative effect on their health and safety. Therefore,
20 Public Counsel would -- would join with -- or would not
21 object to Staff's motion to ask for a receiver of -- of
22 Heartland utilities and, also, to seek a permanent
23 receiver as well.

24 JUDGE JORDAN: Okay. Anything else from the
25 Office of Public Counsel?

1 MS. BAKER: No, your Honor.

2 JUDGE JORDAN: Okay. And I want the record to
3 reflect that Mill Creek Sewers, Incorporated. Still has
4 not appeared for this hearing today. And with that, we
5 will go off the record. Thank you.

6 (The proceedings were concluded at 2:50 p.m. on
7 February 25, 2010.)

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 REPORTER'S CERTIFICATE

2

3 STATE OF MISSOURI)
)ss.
4 COUNTY OF OSAGE)

5

6 I, Monnie S. Mealy, Certified Shorthand Reporter,
7 Certified Court Reporter #0538, and Registered
8 Professional Reporter, and Notary Public, within and for
9 the State of Missouri, do hereby certify that I was
10 personally present at the proceedings as set forth in the
11 caption sheet hereof; that I then and there took down in
12 stenotype the proceedings had at said time and was
13 thereafter transcribed by me, and is fully and accurately
14 set forth in the preceding pages.

15

16

17

18

19

20

21 _____
Monnie S. Mealy, CSR, CCR #0539
22 Registered Professional Reporter

23

24

25

1	I N D E X	
2		PAGE
3	Opening Statement of Ms. Hernandez	5
4	Opening Statement In-Camera, Vol. 2	6
5	Continued Opening Statement	9
6		
7	WITNESS: JASON WILLIAMSON	PAGE
8	Direct Examination by Ms. Hernandez	10
9	Cross-Examination by Judge Jordan	13
10		
11	WITNESS: LISA HANNEKEN	PAGE
12	Direct Examination by MS. Hernandez	16
13	In-Camera Direct Examination by Ms. Hernandez (Contained in Vol. 2)	34
14	Continued Direct Examination by Ms. Hernandez	41
15	Cross-Examination by Judge Jordan	47
16		
17	WITNESS: STEVE LOETHEN	PAGE
18	Direct Examination by Ms. Hernandez	51
19	In-Camera Direct Examination by Ms. Hernandez (Contained in Vol. 2)	55
20	Continued Direct Examination by Ms. Hernandez	57
21		
22	Closing Argument by Ms. Hernandez	63
23	Reporter's Certificate	67
24		
25		

E X H I B I T S

EXHIBIT	DESCRIPTION	OFFERED	ADMITTED
1-HC	Billing Register	47	47
2	10/23/09 Letter to Mill Creek	47	47
3-P	Testing Analysis & Control, Inc. Bill to Mill Creek	47	47
4-P	Testing & Operation Agreement	47	47
5-P	AmerenUE Account Activity Statement	47	47
6-P	AmerenUE Disconnection Notice	47	47
7-P	DNR Invoice to Mill Creek	47	47
8	Personal Property Information for Mill Creek	47	47
9	E-Mail	47	47