

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

7 Hearing

8 December 19, 2006
9 Jefferson City, Missouri
Volume 3

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11

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

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

23

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

2 JUDGE STEARLEY: Let's go ahead and
3 bring this hearing to order. And good morning.
4 Today is Tuesday, December 19th. We're here for an
5 evidentiary hearing in Case Number SO-2007-0071,
6 et al, In the Matter of the Application of Central
7 Jefferson County Utilities, Incorporated for an Order
8 Authorizing the Transfer and Assignment of Certain
9 Water and Sewer Assets to Jefferson County Public
10 Sewer District and in Connection Therewith, Certain
11 Other Related Transactions.

12 My name is Harold Stearley, and I will
13 be the regulatory law judge presiding over this
14 hearing. Our court reporter this morning is Pam
15 Fick.

16 And for our court reporter's benefit, I
17 know this hearing room is set up a little bit
18 differently. We don't have a microphone system. If
19 we could all try, especially goes to myself, I
20 normally speak rather softly, if we can all try to
21 speak up loudly so that she can hear and be able to
22 record our testimony.

23 We will go ahead and begin by taking
24 entries of appearance and we will start with Central
25 Jefferson County Utilities.

1 MR. ENGLAND: Thank you, your Honor.

2 Let the record reflect the appearance of
3 W. R. England and Dean Cooper on behalf of the
4 applicant, Central Jefferson County Utilities, Inc.
5 Our mailing address is Brydon, Swearengen & England,
6 Post Office Box 456, Jefferson City, Missouri 65102.

7 JUDGE STEARLEY: Thank you, Mr. England.
8 And Jefferson County Sewer District, do they have
9 counsel representing them?

10 (NO RESPONSE.)

11 JUDGE STEARLEY: All right. Let the
12 record reflect that there's no counsel making an
13 appearance for Jefferson County Sewer District. For
14 Environmental Management Company?

15 (NO RESPONSE.)

16 JUDGE STEARLEY: Do we have counsel
17 representing them?

18 (NO RESPONSE.)

19 JUDGE STEARLEY: Okay. We'll let the
20 record reflect that there is no attorney making an
21 entry of appearance for Environmental Management
22 Corporation. Raintree Property Owners Association?

23 MR. COMLEY: Good morning, Judge
24 Stearley. Let the record reflect the entry of
25 appearance of Mark W. Comley, Newman, Comley & Ruth,

1 Post Office Box 537, Jefferson City, Missouri 65102.

2 Also let the record reflect the entry of
3 Stanley D. Schnaare, the Schnaare Law Firm, 321 Main
4 Street, P.O. Box 440, Hillsboro, Missouri 63050.
5 Mr. Schnaare entered his appearance early on in the
6 proceeding. He will not be appearing here today,
7 however. And that's the appearances for Raintree
8 Plantation Property Owners Association, Inc.

9 JUDGE STEARLEY: Thank you, Mr. Comley.
10 For Department of Natural Resources?

11 MR. SCHMID: Good morning, your Honor.
12 Please let the record reflect the entry of appearance
13 of Michael Schmid, Schreimann, Rackers, Francka &
14 Blunt, 2316 St. Marys Boulevard, Suite 130, Jefferson
15 City, Missouri 65109, for the Department of Natural
16 Resources.

17 JUDGE STEARLEY: Thank you, Mr. Schmid.
18 For the Staff of the Missouri Public Service
19 Commission?

20 MR. KRUEGER: Thank you, your Honor.
21 Keith R. Krueger for the Staff of the Missouri Public
22 Service Commission. My address is P.O. Box 360,
23 Jefferson City, Missouri 65102.

24 JUDGE STEARLEY: Thank you, Mr. Krueger.
25 The Office of the Public Counsel?

1 MS. BAKER: Good morning, your Honor.
2 Christina Baker, Office of Public Counsel, P.O. Box
3 2230, Jefferson City, Missouri 65102, appearing on
4 behalf of Office of Public Counsel and for the
5 public. Thank you.

6 JUDGE STEARLEY: And thank you,
7 Ms. Baker. A couple of preliminary matters. We will
8 go by the order of witnesses that you-all have
9 presented in your joint list of issues and order of
10 witnesses. And I understand Mr. Thomas who's here
11 for EMC today?

12 MR. ENGLAND: That is correct.

13 JUDGE STEARLEY: And Mr. Thomas, I
14 understand you're on a limited time schedule; is that
15 correct?

16 MR. THOMAS: Yes, sir.

17 JUDGE STEARLEY: Okay. And that you
18 need to leave today by 3:00 p.m.; is that correct?

19 MR. THOMAS: That's correct.

20 JUDGE STEARLEY: Okay. We will be
21 having you ordered as the first witness. However,
22 you won't be finally excused or the Commissioners may
23 kind of be coming and going as this is an agenda day
24 and there's another hearing going on in 310, and they
25 may wish to call you back to the stand if they

1 weren't present for your initial testimony.
2 Nonetheless, we will be sure and get you out of here
3 by 3:00 today.

4 MR. THOMAS: Thank you.

5 JUDGE STEARLEY: So thank you very much.
6 And I know we also have a number of members of the
7 public who are here today. There's been a protective
8 order granted in this case, and if the attorneys or
9 the witnesses are presenting matters which involve
10 highly confidential or proprietary information, the
11 members of the general public will have to be excused
12 from the room during that portion of any testimony
13 or -- so I just wanted to advise you of that, and the
14 attorneys will keep me posted if we are entering any
15 confidential matters so that we can clear the
16 courtroom.

17 I do believe we had a request from one
18 of the members of the public for tape recording
19 today's hearings, and that is not a problem because
20 this is a public hearing. However, if there is a
21 highly confidential matter being presented where I'm
22 asking you-all to clear the room, that means you will
23 take your tape recorders with you. We will not find
24 them laying in a chair back there somewhere, and just
25 so we all understand that.

1 Also as a preliminary matter, we had a
2 request for intervention that was filed last week
3 from Mr. John Kolisch. Is Mr. Kolisch present this
4 morning?

5 MR. KOLISCH: Yes, your Honor.

6 JUDGE STEARLEY: You can go ahead and
7 be seated, Mr. Kolisch. Your request has been taken
8 up by the Commission and this hearing, the notice
9 went out on it back in August and there was an
10 intervention deadline in early September. We had
11 our local public hearing November 6th in the matter,
12 and the Commissioners feel that there's been enough
13 notice that any request for intervention should have
14 come in at an earlier time.

15 Your request for intervention to
16 participate as a full party in this case will be
17 denied.

18 However, your testimony as just a
19 witness will be allowed and the Commission will try
20 to work you in here at a time when -- as I said,
21 the Commissioners are kind of coming and going
22 between different things today -- at a time where you
23 can present that testimony when they are present in
24 case they have questions for you.

25 So while you will not be able to

1 participate fully as a party in this case, you will
2 be allowed to give additional testimony.

3 Now, you did give testimony at the local
4 public hearing already, so we're gonna ask that your
5 initial direct testimony be brief. You will then be
6 subject to cross-examination by the attorneys and
7 some questions from the Commissioners.

8 MR. KOLISCH: Thank you.

9 JUDGE STEARLEY: All right. So I'm
10 gonna ask you to be patient because I can't exactly
11 tell you what order you're going to appear as a
12 witness, but you need to be present throughout the
13 day.

14 MR. KOLISCH: I understand.

15 JUDGE STEARLEY: All right. All
16 right. Do the parties have exhibits that need to be
17 marked?

18 MR. ENGLAND: We do, your Honor. We
19 were gonna take it up with each of the three
20 witnesses.

21 JUDGE STEARLEY: Okay.

22 MR. ENGLAND: Actually, I think we will
23 have most, if not all, of our exhibits marked by the
24 end of the second witness.

25 JUDGE STEARLEY: All right. So we'll

1 just do it in conjunction.

2 MR. ENGLAND: That was my plan, to take
3 it as we take their testimony.

4 JUDGE STEARLEY: All right, then. Are
5 there any other preliminary matters that we need to
6 address at this time?

7 (NO RESPONSE.)

8 JUDGE STEARLEY: Okay. Well, hearing
9 none, we will take a short recess while I advise
10 the Commissioners that we're getting ready for
11 opening statements, and we should start those in
12 about ten minutes in the order in which you-all have
13 agreed, unless there have been any change with
14 opening statements?

15 (NO RESPONSE.)

16 JUDGE STEARLEY: I've got the order
17 starting with Central Jefferson County Utilities,
18 Jefferson County Sewer District, and EMC not having
19 counsel, I assume we'll not be hearing opening
20 statements from them. So we'll jump to Staff,
21 Raintree Property Owners Association, DNR and OPC.

22 Okay. So with that, we'll briefly go
23 off the record here.

24 (DISCUSSION HELD OFF THE RECORD.)

25 JUDGE STEARLEY: We'll begin with

1 Central Jefferson County Utilities.

2 MR. ENGLAND: Thank you, your Honor.

3 May it please the Commission. I represent the
4 applicant, Central Jefferson County Utilities in this
5 matter. I'll try to be very brief.

6 We have filed an application with the
7 Commission, subsequently supplemented and amended,
8 for approval to transfer all of the water and sewer
9 facilities currently owned by Central Jefferson
10 County Utilities to the Jefferson County Public Sewer
11 District.

12 All of this is more particularly
13 described in the verified application supplement
14 thereto, and more particularly described in the tri
15 party purchase and sale agreement attached as an
16 exhibit which we will be offering later through a
17 witness.

18 If the transaction is approved, Central
19 Jefferson County Utilities will cease all operations
20 as a public utility, and is also asking, therefore,
21 that its certificate be canceled and that its tariffs
22 be canceled as well.

23 We believe, for the reasons set forth in
24 the verified application, that the transfer is not
25 detrimental to the public interest which is the

1 standard the Commission traditionally applies to
2 these types of applications. In fact, we would
3 submit that it is in the long-term best interest of
4 the customers of Raintree Plantation Subdivision that
5 this transfer take place and that a permanent and
6 financially and technically equipped entity such as
7 the sewer district and EMC, in conjunction with the
8 sewer district, accept and run these facilities in
9 the future.

10 We will be offering three witnesses in
11 support of the application today: Mr. Todd Thomas,
12 an employee of EMC, Mr. Martin Toma, with the
13 Jefferson County Public Sewer District, and finally,
14 Mr. Ken McClain with Central Jefferson County
15 Utilities. Thank you.

16 JUDGE STEARLEY: Thank you. Jefferson
17 County Sewer District and EMC, as I noted, do not
18 have counsel this morning, so we're moving on to
19 Staff.

20 MR. KRUEGER: Thank you, your Honor.
21 Good morning. May it please the Commission. My
22 name's Keith R. Krueger and I represent the Staff of
23 the Public Service Commission in this proceeding.

24 There have been a lot of agreements
25 between the various parties to this case and some

1 charges to customers that may not be well understood
2 or may be difficult to comprehend, and so I want to
3 talk just a little bit about the background to help
4 the Commission understand how we got to the point
5 where we are.

6 Raintree Plantation consists of about
7 3,400 lots, those developed by Raintree Plantation,
8 Inc. Central Jefferson County Utilities holds
9 certificates of convenience to provide sewer and
10 water service to this subdivision. The utility,
11 Central Jefferson, is owned by the same people who
12 own the developer, Raintree Plantation, Inc.

13 The developer has sold all or virtually
14 all of the lots in the subdivision. Some have been
15 sold to people who have built houses, some have been
16 sold to people who have not yet built but own
17 undeveloped lots and some have been sold to
18 developers.

19 There are presently about 670 houses in
20 the subdivision. These customers are served by
21 Central Jefferson. But there are serious problems
22 with the water and sewer service to the subdivision.
23 Over a period of years the DNR has noted many
24 complaints about the -- with violations of the Clean
25 Water Law and the Safe Drinking Water Law.

1 The two main problems with the water
2 facilities are a lack of adequate storage capacity
3 and an excessively high lead content in the water
4 from one of the wells. The main problem with the
5 sewer facility is that it's too small. It's not able
6 to adequately serve the customers who are already
7 there, much less to serve any new customers. In
8 fact, there's now a moratorium on new construction in
9 the subdivision until adequate wastewater facilities
10 are built.

11 Consequently, new homes can't be built
12 there and people who live there have a stranded
13 investment and they have seen their -- damage to
14 their property values. Additional facilities are
15 needed.

16 The owners of Central Jefferson are
17 unwilling to invest any additional funds in the
18 utility systems. They attempted to sell them a few
19 years ago to AquaSource but that transaction fell
20 through, and they have now made a new agreement to
21 sell these facilities, this time to Jefferson County
22 Public Sewer District.

23 The sewer district doesn't have
24 sufficient assets or bonding capacity to make the --
25 to construct the needed facilities at the present

1 time, so they've contracted with Environmental
2 Management Corporation to accomplish this.

3 Environmental Management Corporation, or
4 EMC, has agreed to invest \$1.8 million -- up to
5 \$1.8 million to construct the new facilities. It
6 will also operate and maintain the new facilities
7 once they're built. EMC will also handle customer
8 billing and will retain enough of the revenues to
9 compensate itself for the expenses that it incurs and
10 for a return on its investment, and will remit a
11 portion of the proceeds -- a portion of the revenues
12 to the sewer district for the sewer district's own
13 purposes.

14 The issue that the Commission will have
15 to decide in this case is whether this proposed
16 transaction is not detrimental to the public
17 interest, or, if it is detrimental to the public
18 interest as presently structured, whether conditions
19 might be imposed that would make it not detrimental.

20 One major point of contention in this
21 case is a connection fee that the developer, Raintree
22 Plantation, has required of people who bought lots in
23 the subdivision. The developer required these people
24 to pay \$700 for connection to the sewer utility and
25 \$300 for connection to the water utility plus perhaps

1 another \$100 for a hydrant charge.

2 This connection fee needed to be paid
3 not at the time that they signed the agreement to pay
4 it but prior to the time that they begin construction
5 of a home on the lot that they bought. Many of those
6 connection fees remain unpaid, and they're either
7 disputed or at least very much resented.

8 At the time that AquaSource agreed to
9 buy Central Jefferson's assets, AquaSource agreed to
10 construct the remaining sewer mains that were needed
11 in the subdivision. In exchange for this, Raintree
12 assigned its right to receive those connection fees
13 that I just talked about.

14 Water mains have been constructed to
15 serve all of the lots in Raintree, but there are
16 about 400 houses -- or 400 lots do not have access to
17 sewer mains, so this construction remains to be
18 completed.

19 In addition to the connection fees,
20 there are two other charges that customers out there
21 in Raintree must pay for water and sewer utility
22 service. These are the hookup fee and the regular
23 monthly utility bill. Under Central Jefferson's
24 present tariff, there is no hookup fee for sewer and
25 there's a \$200 hookup fee for water. In addition,

1 the customer must pay the connection fee that I
2 mentioned earlier in the amount of about \$1,100.

3 If the proposed transaction is approved
4 without change, and if agreements presently
5 contemplated by the parties are executed, new
6 customers would have to pay hookup fees totaling
7 \$2,500. Of this, \$1,500 would be paid to EMC, so EMC
8 could recover the cost of its investment in the new
9 facilities and \$1,000 would be set aside for a
10 reserve fund.

11 In addition, these new customers would
12 have to pay the connection fee that I mentioned in
13 the amount of \$1,100. So the total amount of
14 up-front costs that these people would have to pay
15 would go from \$1,300 at present to \$3,600 after the
16 proposed transfer.

17 The regular monthly utility rates would
18 also increase under the proposed transfer. The sewer
19 rates would go up to a flat rate of \$37 per month,
20 and the water rates would go to \$6.30 per thousand
21 gallons of usage which amounts to about \$31.50 for
22 usage of -- it's regarded as a typical usage of 5,000
23 gallons per month.

24 Unquestionably, the rates after the
25 transfer would be considerably higher than the rates

1 that exist now. But the customers would have the
2 benefit of the improved facilities and they should
3 receive much better service.

4 The question for the Commission is
5 whether the public interest would be served by
6 transferring these assets to the new provider, the
7 sewer district, even though the customers would have
8 to pay more for their utility service.

9 Dale Johansen will testify on behalf of
10 the Staff today and will be happy to answer any
11 questions that you may have. Thank you.

12 JUDGE STEARLEY: Thank you, Mr. Krueger.
13 Opening statement from Raintree Property Owners
14 Association?

15 MR. COMLEY: Commissioner Appling and
16 other members of the Commission, may it please the
17 Commission. I am Mark Comley. I have the privilege
18 of representing Raintree Plantation Property Owners
19 Association in this proceeding, and perhaps now would
20 be as good a time as any for a little bit of
21 housekeeping, I think.

22 The parties would appreciate it as we
23 progress through this proceeding that we'll just
24 refer to the Raintree Plantation Property Owners
25 Association as the Association. So that will

1 probably be the term I use throughout my remarks.

2 The residents and property owners of
3 Raintree Plantation Subdivision are the ones who have
4 been directly affected by and the most affected by
5 the quality of water and sewer service provided by
6 Central Jefferson Utilities. And they will also be
7 the ones who will be directly affected by and most
8 affected by the transfer of the operating assets to
9 Jefferson County Public Sewer District.

10 The Association has intervened in this
11 case to represent and provide for you a voice to the
12 collective position of its constituents, and there
13 are many. We have heard reference to approximately
14 600 or more homes built in this area. There are that
15 many people to contend with and to visit with about
16 this.

17 Promises were made by the developer when
18 lots were purchased that sewer and water facilities
19 to provide services to the entire plantation, some
20 3,400 lots, would be completed by no later than 1983,
21 yet the facilities in place are woefully inadequate
22 to meet the demands of the 627 or so homes that are
23 on about as many lots.

24 The evidence in this case is expected to
25 show that the inflow of wastewater, for instance,

1 into the treatment plant serving the Plantation has
2 exceeded the design capacity for that plant since
3 2000.

4 The plant was sized for a daily
5 wastewater inflow of 64,000 gallons. Inflow at this
6 time is approximately 100,000 gallons or more a day.
7 One of the community wells that supplies potable
8 water to the Plantation contains lead at a higher
9 level than federal and state minimum. These
10 components of the sewer and water service to the
11 Plantation are owned or operated by Central Jefferson
12 Utilities.

13 Central Jefferson is cited -- has been
14 cited by the Environmental Protection Agency for
15 violations of its discharge permit. There have been
16 occasions when active sludge has escaped from
17 treatment and entered the watershed's leading
18 streams.

19 The evidence will also show, and this
20 will be no surprise, it's been alluded to by
21 Mr. Krueger already, that environmental authorities
22 have imposed a moratorium on additional connections
23 to the wastewater system serving the subdivision.

24 In turn, this means that nonresident
25 property owners have been delayed in building on

1 their lots in times when construction and lending
2 cost continue to escalate. Absence of adequate water
3 and sewer facilities have made their investment at
4 Raintree Plantation less and less valuable.

5 The evidence is expected -- also
6 expected to show that the day-to-day services
7 supplied by Central Jefferson have been problematic.
8 The residents have been beset by repeated clogging in
9 the collection lines in the subdivision and leaks of
10 active sewage from some of the transfer or pumping
11 stations. These conditions have compromised the
12 pleasure and enjoyment which current residents are
13 entitled to with respect to their homes.

14 The Association and its members are very
15 anxious for these problems to resolve. They are
16 anxious for the facilities to be restored, repaired,
17 upgraded or added so that the moratorium will be
18 lifted so that operation and preventive maintenance
19 of the water and sewer system will be free of the
20 obstructed and backed-up lines and free of spillage.

21 They want the water system deficiencies
22 remedied and wells capped or a new well dug or the
23 old well improved. They want careful planning and
24 design for future growth so that the situation
25 confronting all of us now and the owners of those

1 facilities will not recur in the future.

2 That leads me to the Association's
3 position in this case: As you read the Association's
4 statement of position, you will see that on the
5 ultimate issues, the Association has made it plain
6 that without the Commission's imposition of certain
7 conditions, we believe that this transaction would
8 not be in the public interest. And what are those
9 conditions? And even though they are written out for
10 you on pages 2 and 3 of our statement of position, I
11 would like to highlight a few of them in my remarks
12 today.

13 The first one is the water and sewer
14 rates proposed by the sewer district should not be
15 effective until certain milestones have been achieved
16 by the district; for example, when scheduled
17 improvements are in service and operational.

18 Furthermore, at the end of the
19 improvements phase, the recurring monthly rate should
20 not exceed those that have been proposed. And
21 Mr. Krueger and -- has talked about them as being 37
22 per month flat rate for sewer, and the \$6.30 per
23 gallon variable rate for water.

24 You see, the property owners have been
25 paying a rate for service with the expectation that

1 the facilities have been sized and operated for
2 existing demand. Those rates should be adequate
3 while new facilities are being constructed. And when
4 those capacity additions or when the new well or
5 improvements to the well have been constructed, only
6 then should the rates increase.

7 Again, the rates, we understand, will be
8 37 for the flat rate sewer, \$6.30 per thousand
9 gallons of water. We would note that these rates are
10 comparable to, if not higher, than those charged in
11 the area and should not be adjusted upward at the
12 close of the improvements phase.

13 The second condition was the connection
14 fees including tap-on fees reserved for future
15 growth, and the real estate contract utility system
16 connection fee that's between -- in the agreement
17 between the developer, Raintree Plantation, Inc. and
18 the district do not exceed \$3,000. We've heard the
19 term -- we've heard the amount today at 3,600.

20 The Association believes that this
21 figure is higher than comparable connection fees in
22 the area but has taken into account the AquaSource
23 agreement, the amount that's involved in that, and
24 other considerations. The \$3,000 amount is a
25 maximum, and it's something that we would think could

1 be less.

2 The next condition would be that any
3 portion of EMC's initial investment of the
4 \$1.8 million that has been referred to already, so
5 much of that not used are needed for the expansion of
6 the wastewater treatment or potable water facilities
7 will be used to fund the recommended improvements
8 contained in a sanitary sewer study and improvement
9 plan which is part of a proposed compliance agreement
10 with the Department of Natural Resources. That plan
11 is to be completed by EMC following completion of the
12 expansion project, as we understand it.

13 In other words, if the sewer district's
14 rates have been designed to pay EMC its debt service
15 on \$1.8 million, then as long as those rates are
16 being paid at that rate, at that level, EMC should
17 make use of what it's being paid for. The sanitary
18 sewer study and improvement plan is mentioned again
19 in the draft of the compliance agreement that is
20 proposed between DNR and EMC.

21 The next condition would be any
22 connection fees collected by the district on behalf
23 of Raintree Plantation, the developer, should be held
24 in escrow pending the results of the study, the study
25 and improvement plan. And those should be used to

1 the extent possible to fund the cost of repairs and
2 improvement.

3 It's the Association's position that
4 many of the infrastructure problems that the
5 subdivision residents are facing can be laid at the
6 feet of the developer. As a consequence, in
7 fairness, the developer should pay a share of the
8 cost of placing the system in the condition it should
9 have been when it was first constructed.

10 The principle of fairness would be that
11 the developer should not be in a position of
12 profiting, while at the same time Association members
13 are paying for things they should have gotten a long
14 time ago.

15 The next condition that was in our list
16 was in the event funding above the initial investment
17 of 1.8 million is needed to complete the wastewater
18 treatment plant expansion and the recommendations of
19 the sewer study, and the district intends to charge
20 customers to obtain the additional funding, those
21 charges should be designed to collect additional
22 funds in phases rather than all at once. And the
23 idea would be to make it a special line item on the
24 billing rather than rolled into rates.

25 The Association understands that there

1 will be contingencies involved in any project, that
2 there may be overages in terms of getting these
3 facilities to the standard that they should be. The
4 issue for them is how they would be charged for that
5 service. They hope that no more would be -- no more
6 than \$1.8 million will be needed to improve it, but
7 if that is not enough, the Association thinks it's
8 fair and reasonable that the district agree to phase
9 in that charge to recover the additional funding.

10 The line item idea, for -- from the
11 Association's point of view, that line item is
12 something that can easily sunset. Once the amount
13 over 1.8 is recovered, that line item can go away.
14 It's an easy accountability for the Association.

15 Another issue, another condition that
16 they would like to have imposed would be that the
17 Association or its members shall have the ability to
18 participate in the process by which the district
19 adjusts rates, fees and charges related to the water
20 and sewer service.

21 When the transaction goes through, the
22 Association and its members will lose the voice that
23 they have had at this Commission over rate issues and
24 other charges. It is only fair that they have the
25 means of examining, evaluating and objecting to rate

1 adjustments before the district pursuant to its
2 procedures and practices.

3 Another condition would be that EMC and
4 the district join and establish a schedule and
5 funding device under which wastewater treatment
6 capacity and water distribution and storage capacity
7 are increased to accommodate the projected growth in
8 the subdivision. Without a condition such as this,
9 growth in the subdivision might mean generation of
10 inflows greater than the design capacity of the
11 facilities and a repeat of the current history of the
12 development, something which all of us would want to
13 avoid.

14 Two other conditions are
15 self-explanatory. We would want the transfer of
16 assets not to close until the compliance agreement
17 between DNR, the district and EMC is fully executed.

18 We would also say that there should not
19 be any closing on the transfer until the operation
20 and maintenance agreement between the district and
21 EMC is fully executed.

22 Moreover, this is something that the
23 Association has made plain to me that they would like
24 the Commission to ask. The terms of that operation
25 and maintenance agreement must cover some sort of

1 timely response to residential requests to remedy
2 blocked collection lines or any spillages that may
3 occur if they should happen after the upgrades.

4 The next condition would be that the
5 potable water supply of Raintree has increased to the
6 capacity suggested in the compliance agreement and
7 the lead content for well 1 is reduced to at least,
8 if not farther, than the minimal levels set by the
9 federal and state regulation.

10 My understanding is that the storage
11 capacity of water in the subdivision is at about 25
12 percent of what it should be according to state and
13 federal regulations. The storage capacity of 50,000
14 gallons should be increased to 200,000.

15 Regarding the lead in well 1, the water
16 from well 1 is combined with the water in well 2.
17 The combination apparently reduces the lead content
18 in well 1 to a limit that might be acceptable to
19 authorities, but the Association's position is that
20 if that could be eliminated, that is the best
21 approach.

22 The next condition that we sought the
23 Commission's help on would be the expanded potable
24 water and wastewater treatment facilities are
25 designated for the exclusive use of Raintree

1 Subdivision's present and future homeowners. We
2 recognize that the district will have statutory
3 duties. At the same time, the facilities that are
4 being upgraded through EMC's investment transferred
5 into district control were initially dedicated to the
6 subdivision. The residents and nonresident property
7 owners have endured a history of problems awaiting a
8 solution.

9 For the facilities expanded to be opened
10 up by the district to developers or sources outside
11 the subdivision would mean that the growth which has
12 been dormant in the subdivision itself will be
13 competing with growth that is late coming to the
14 problem.

15 Subdivision residents and property
16 owners, in fairness, should still be the only
17 subdivision served by these facilities. Just as
18 importantly, the area for expansion of the wastewater
19 treatment plant is sparse. Any capacity additions
20 for lots outside the subdivision will affect an
21 already declining aesthetic in the area of the
22 treatment facility already there, and, in turn, could
23 affect the marketability of the property in the
24 subdivision.

25 Another condition was the location of

1 the wastewater treatment plant expansion and the
2 additional potable pump house and water -- excuse me,
3 additional potable water pump house and storage tank.
4 They need to be approved by the Association; at least
5 that's our understanding. The Association owns the
6 property adjacent to the treatment plant where
7 capacity additions are likely to be installed. The
8 Association believes its own property should be used
9 to have the -- excuse me, it believes that its own
10 property will be where the storage tower and pump
11 house will be installed.

12 So far there has been no contact between
13 the district or EMC and the Association about the
14 acquisition of real property for these upgrades. We
15 feel like the Commission should intervene and make
16 certain that the parties do have the opportunity, not
17 just the opportunity, but the Association should be
18 in a position of approving the location of the new
19 capacity additions and other upgrades.

20 The final condition that we have asked
21 the Commission to consider would be that it must find
22 and determine that the district and EMC have the
23 capabilities of designing, constructing and operating
24 a new water and wastewater facility and have the
25 ability to forecast with reasonable accuracy and

1 prepare for the subdivision's future needs.

2 If the Commission approves the transfer
3 of the assets, the Association wants this to be the
4 end of the rash of service problems experienced by
5 the residents, and of course, a lifting for good of
6 any impediment to the development as planned to the
7 subdivision. The situation presenting itself now
8 should not be in the forecast for the future.

9 In a small way Churchillian with this
10 transaction, the Association hopes to witness the
11 beginning of the end of its worries. It does not
12 want it simply to be the end of the beginning of more
13 problems. That is why the experience and expertise
14 of this Commission is vital to the transaction, and
15 the Commission should only approve this when it is
16 satisfied about the ability of the transferee and its
17 contract -- contract work to adequately, safely and
18 reliably serve the subdivision now and for its future
19 growth.

20 I also want to point out, the
21 Association has commanded me to tell you that this is
22 not an exercise for them in recrimination about the
23 utility company. We are going to be engaging in what
24 we consider extensive information-gathering
25 throughout this proceeding. There are things that

1 the Association has not been cleared on, not
2 clarified about and that will be some of the
3 questions that I'm asking.

4 At the same time, I will tell you that
5 the Association is very pleased by the prospect that
6 this case presents for improved and complying
7 services in the future.

8 We will have one witness, Mr. Fred
9 Rommel, who is a member of the board of Raintree
10 Plantation Property Owners Association, and he will
11 be elaborating more about the conditions and their
12 importance to this Commission.

13 JUDGE STEARLEY: Thank you, Mr. Comley.

14 COMMISSIONER CLAYTON: Judge, may I ask
15 a question?

16 JUDGE STEARLEY: Certainly.

17 COMMISSIONER CLAYTON: Mr. Comley?

18 MR. COMLEY: Sir?

19 COMMISSIONER CLAYTON: Do you cite any
20 legal authority that would permit this Commission to
21 oppose any of these Commissions on the applicant --
22 applicant, considering that we don't have regulatory
23 authority after the fact.

24 MR. COMLEY: I think the Commission has
25 inherent authority in determining what would serve

1 the public interest. And in making sure the public
2 interest is served, it does have at least implied
3 authority to condition its approval. And the
4 conditions we have outlined here we believe are valid
5 considerations for the Commission to add. So it
6 would be this general authority. No, I have not put
7 any specific authority into our application to
8 intervene or anything like that.

9 COMMISSIONER CLAYTON: Or have you
10 looked for any prior cases where conditions were
11 imposed on a nonregulated entity following such a
12 transfer?

13 MR. COMLEY: I think the -- no, I don't
14 think there has been any case where a nonregulated
15 entity has been the subject of Commission conditions.
16 The conditions would be imposed on the regulated
17 entity.

18 COMMISSIONER CLAYTON: On the regulated
19 entity.

20 MR. COMLEY: Its authority would be
21 circumscribed by the conditions the Commission places
22 on its authority.

23 COMMISSIONER CLAYTON: And I guess
24 lastly, is it the position of your client that if we
25 do not approve this transfer -- or excuse me, if we

1 do not impose the conditions you request, that we
2 should not -- we should not transfer the property?
3 Your first choice is to transfer the property with
4 the conditions, I think is what you're saying. What
5 is your second? What's the next down on the list?
6 Would it be just not to grant the application and
7 regulate the utility?

8 MR. COMLEY: I think the way to answer
9 your question is this: Without these conditions or a
10 significant number of them, the Association would
11 consider that the transfer would not be in the best
12 interest of the subdivision.

13 COMMISSIONER CLAYTON: Which would mean
14 you want the regulated utility to keep it and we
15 impose regulations upon them or regulatory issues
16 associated with their ownership?

17 MR. COMLEY: That is the statement of
18 position we've supplied.

19 COMMISSIONER CLAYTON: Thank you. No
20 other questions, Judge.

21 JUDGE STEARLEY: Okay. Department of
22 Natural Resources, your opening statement.

23 MS. SCHMID: Good morning, your Honor,
24 Commissioners. May it please the Commission.
25 Central Jefferson County Utilities, the current owner

1 and operator of the drinking water and wastewater
2 treatment facility serving Raintree Subdivision has a
3 long history of noncompliance with this state's
4 environmental statutes and public drinking water
5 statutes resulting in numerous violations.

6 Should the assets be transferred to
7 Central Jefferson County Public Sewer District, the
8 district and its operator, EMC, will be subject to
9 monetary penalties for the existing violations. It
10 is our belief that the district and EMC will not
11 proceed with the transfer of Central Jefferson County
12 Utilities' assets if they are subject to these
13 monetary penalties.

14 However, to date, the district and EMC
15 have failed to enter into a compliance agreement
16 referenced by Mr. Comley in order to avoid said
17 penalties. This Commission should not approve the
18 transfer of assets until Jefferson County Public
19 Sewer District and EMC execute the compliance
20 agreement.

21 If this Commission were to determine
22 that a transfer of assets can proceed contingent upon
23 the execution of the compliance agreement, then the
24 department is neutral regarding the issue of possible
25 detriment to the public interest.

1 In order to protect the environment, the
2 department's interest is in having an owner and
3 operator who will upgrade and expand the drinking
4 water and wastewater treatment facilities to
5 adequately provide services to current and future
6 owners of property in the Raintree Subdivision, as
7 well as an owner and operator who will operate the
8 proposed assets to be transferred in accordance with
9 the state's environmental statutes and public
10 drinking water statutes.

11 The department will present one witness,
12 Lance Dorsey, for examination. Thank you.

13 COMMISSIONER CLAYTON: Judge, may I ask
14 a question --

15 JUDGE STEARLEY: Sure.

16 COMMISSIONER CLAYTON: -- because I know
17 we're gonna have to go upstairs. Sir, your initial
18 comments were regarding who would be responsible for
19 the penalties occurring in the past, but collectible
20 in the future; is that a correct recitation?

21 MS. SCHMID: Correct.

22 COMMISSIONER CLAYTON: And DNR would not
23 be satisfied with the liability staying with the
24 entity that allegedly caused the problems?

25 MS. SCHMID: DNR is satisfied if --

1 there will be liabilities somewhere. It's our
2 understanding that EMC and the district are only
3 interested in purchasing this property or getting --
4 being assigned the assets if they are not liable to
5 the possible monetary penalties. If they do not sign
6 a compliance agreement as the new owner and operator,
7 they will be liable, so -- but without that
8 compliance agreement, we don't think it's gonna go
9 through.

10 COMMISSIONER CLAYTON: Can you give me
11 an idea the amount of penalties that the evidence
12 will show will be potentially due?

13 MS. SCHMID: I believe the statutes
14 allow for \$10,000 per day per violation. Total
15 amount I -- there's a matrix and I do not have that
16 information offhand but I can --

17 COMMISSIONER CLAYTON: Can you just
18 shoot me a range? Can you give me a range of what
19 we're talking about? 10,000 a day. How many days
20 are we talking? I can do the math. Are we talking
21 100,000? Are we talking a million, two million?
22 What are you talking about here?

23 MS. SCHMID: Your Honor, at this
24 point -- at this point I do not have an exact range
25 for you.

1 COMMISSIONER CLAYTON: Could you get me
2 within five digits?

3 MS. SCHMID: I believe we're talking at
4 least \$50,000.

5 COMMISSIONER CLAYTON: Minimum 50.

6 MS. SCHMID: Minimum.

7 COMMISSIONER CLAYTON: Okay. Can you
8 give me a maximum?

9 MS. SCHMID: Again, I apologize, your
10 Honor. I do not have that information but I will be
11 sure to obtain that today.

12 COMMISSIONER CLAYTON: Okay. No other
13 questions. Thank you, Judge.

14 COMMISSIONER APPLING: What were your
15 comments that DNR will stay neutral if the transfer
16 is made between these two entities?

17 MS. SCHMID: We -- currently the
18 situation out there is not good. It needs to be
19 improved. The environment is being harmed, and so
20 something needs to be done. EMC has come forth, EMC
21 and the district have come forth and are trying to
22 improve the system. And an improvement is necessary.
23 But we do not take a position, really, as to whether
24 or not EMC and the district taking over owner and
25 operator of this facility will harm them -- be to the

1 detriment of the public interest.

2 COMMISSIONER APPLING: Okay.

3 COMMISSIONER CLAYTON: Judge, I want to
4 ask one other question. If we're able to identify --
5 well, I guess, will we be able to identify an exact
6 amount of penalties that would be due while this case
7 is pending? Can we nail that down and then figure
8 out where the liability would fall? Is that
9 possible? Or is this -- is this -- everything's
10 still in negotiation, it's, well, you know, a year
11 from now we'll sort it all out?

12 MS. SCHMID: As far as the violations
13 go, it's probably something that will be determined
14 later.

15 COMMISSIONER CLAYTON: It would be
16 helpful to have those numbers identifiable earlier
17 than later.

18 MS. SCHMID: Well, I can certainly
19 present numbers to the Commission. I assume
20 whichever party is faced with this liability will
21 probably -- will want a hearing to determine it, so
22 it will be -- there will be another proceeding in
23 order to finalize those penalties.

24 And so to give you an exact number right
25 now, I would not be able to do that. But I should be

1 able to get you a range that we are looking to
2 impose.

3 COMMISSIONER CLAYTON: It would be
4 helpful if DNR would recognize the limitations that
5 we have on our authority in the short-term so we can
6 try to address these things on a long-term basis.
7 This is very difficult having these big question
8 marks hanging over our heads for a case that has a
9 foreseeable end.

10 MS. SCHMID: I will provide you with an
11 answer.

12 COMMISSIONER CLAYTON: Yeah, thank you.

13 JUDGE STEARLEY: Thank you, Mr. Schmid.

14 MS. SCHMID: Thank you.

15 JUDGE STEARLEY: The Office of Public
16 Counsel?

17 MS. BAKER: May it please the
18 Commission. Christina Baker with the Office of
19 Public Counsel. It is -- it is no surprise from the
20 comments that have been given so far that these are
21 desperate owners within Raintree Plantation. They
22 have been dealing with environmental issues for a
23 number of years.

24 One of the dates that came back was in
25 the '80s when the Plantation -- when Raintree

1 Plantation Subdivision was being built, lots were
2 being sold. People bought those lots with the
3 expectation that they would have water and sewer and
4 that they would have that and it would be acceptable
5 with DNR, that they would not have to, in some cases,
6 clean out their own sewers as has been mentioned in
7 the public hearing.

8 So these are desperate people, and with
9 desperate people, sometimes it's easy to take
10 advantage of them. And the Office of Public Counsel
11 is very concerned with this transfer that, as it is
12 presented to the Commission, that it would be
13 detrimental to the public. There are too many
14 unanswered questions.

15 Certainly, as Commissioner mentioned,
16 there are players within this that are not brought
17 forward. The Department of Natural Resources itself
18 has violations and penalties pending. We don't know
19 who those will be attached to, we don't know how much
20 those will be, and so hanging over this -- this
21 transaction is a lot of interest that answers can't
22 be given at this time.

23 Removing this system from the Public
24 Service Commission oversight and giving it to the
25 sewer district raises a lot of questions with the

1 Office of Public Counsel and with the -- with the
2 owners within Raintree Plantation about how much of a
3 say they will have, how much protection they will
4 get.

5 And along with that, there is another
6 case that is pending from the Office of Public
7 Counsel's complaint that there's an overearnings
8 already in place within Central Jefferson. And so as
9 we go through and we're learning about what some of
10 the new prices will be, they are, of course, more
11 than what they are now. And so Office of Public
12 Counsel would -- would have a concern that if already
13 overearnings are alleged, then more on top of that is
14 even more of an overearnings issue for that.

15 Within the agreements there's no
16 indication of what the rates will be, how often the
17 rates will go up and what criteria will be used
18 exactly for what the rates will be. You've heard
19 some numbers coming across, \$37. That's not set in
20 stone. That is not a number that is given, and
21 there's no set agreement that says it will be this
22 much. That's only rate studies and you will see that
23 as it comes out in the evidence that it's a study
24 that was done that has no backing, no -- no numbers
25 behind it.

1 And so the -- the customers are set
2 there with an issue of -- of how much are they going
3 to pay? They don't know, they cannot be told. How
4 often are their rates going to increase? They don't
5 know, they can't be told.

6 The tri-party agreement, you've heard
7 the 1. million (sic) number coming out for the
8 capital improvements. But looking at the tri-party
9 agreement itself, the language states that the
10 maximum that EMC will be -- will be required to put
11 in is 1.8 million minus an amount that is for a debt
12 that's being taken over. But that is a maximum
13 number. 1.8 million is the most that they are
14 required to put in.

15 There is no indication of what the
16 minimum they are required to put in. They could put
17 in nothing and still meet the requirements of the
18 tri-party agreement. They would still -- EMC would
19 still get a security interest in all of the accounts
20 receivable. There's nothing in the agreement that
21 specifically states how much, how much of the minimum
22 EMC is required to put into this system.

23 You've heard that they need sewer
24 upgrades, they need water upgrades, but there's no
25 set amount of how much money will be spent on this.

1 And there's also the question of all the
2 different parties that are behind the scenes in this.
3 The agreement right now that's before the Commission
4 is between Central Jefferson, the sewer district and
5 EMC. But there are players behind the scenes who
6 have some rights that they feel need to be attached
7 to the water and sewer system.

8 You've heard the developer, Raintree
9 Plantation, Inc. and some fees that will be going to
10 them. There's no say in there how much exactly that
11 will be, why those are going to them and is it even
12 equitable that they get this money given the state of
13 the system as it stands today.

14 Mr. Kolisch, who we will hear from a
15 little bit later, has -- he feels that he has an
16 interest in this that is not reflected in the
17 tri-party agreement.

18 There is also a settlement or a
19 disagreement with AquaSource and they are a player
20 behind the scenes. Too many people behind the scenes
21 without having a direct set document that says how
22 are we going to deal with all of these people. How
23 is this transfer going to affect the customers and
24 what are they going to pay to these people behind the
25 scenes?

1 And with those people behind the scenes,
2 those agreements allow other people to have a say in
3 whether the water -- the water service is connected
4 or disconnected. There's money that's going to
5 Raintree Plantation, Inc., the developer. And there
6 are -- there are owners who are contentious about
7 whether they should have that. If an owner would --
8 would refuse to pay, they would not be allowed
9 service, they would not -- they would be disconnected
10 from the service. There is -- there are older
11 parties in this who are having a direct effect on
12 what the ratepayers pay.

13 Beyond that, there is also an agreement
14 between the sewer district and Raintree Plantation,
15 Inc. that includes things like attorney's fees and
16 professional fees for any -- anything that Raintree
17 Plantation does regarding the water and sewer system.
18 And it has items in there about reimbursing Raintree
19 Plantation for things dealing with state and federal
20 agencies.

21 Well, it doesn't take a lot of
22 imagination to think that well, since we're dealing
23 with Department of Natural Resources and we're
24 dealing with the Environmental Protection Agency,
25 would those violations and penalties be somehow

1 rolled back into the ratepayers? Those are questions
2 that are unanswered and are unclear and are certainly
3 plausible given the documentation.

4 So, you know, there is no doubt that the
5 owners at Raintree Plantation are desperate to have
6 their problems resolved. But the Office of Public
7 Counsel is concerned that these desperate people are
8 being taken advantage of. And while they may be
9 fixing potentially one problem, that a myriad of
10 problems are behind the scenes.

11 But we do -- we do know that as we are
12 moving with Raintree Plantation Subdivision, steps
13 need to be taken to move forward. This has to be
14 resolved. And so the Public Counsel would argue that
15 while the transfer, as it is given right now, is
16 detrimental to the public, that the Commission has
17 the authority to put conditions on that transfer that
18 could make it be less detrimental to the public and
19 could help to give what -- what the customers are
20 requesting, to help take care of their rights within
21 this.

22 You heard from the Association a myriad
23 of conditions, and the Public Counsel would back
24 those. Those are the conditions that the people
25 themselves feel are necessary for -- for their -- for

1 this transfer, and I'd like to reiterate a few of
2 those.

3 The collection of the fees for Raintree
4 Plantation are particularly contentious. They are --
5 they are contentious through the Association, through
6 Department of Natural Resources, and Public Counsel
7 is very concerned about money going back to the -- to
8 the developer who may have had a hand in the problems
9 that are here.

10 And so we would -- we would certainly
11 back the Association's statement that if money has to
12 be collected from that, that it go into an escrow
13 for -- for the customers themselves. The money was
14 being collected all along.

15 People were paying their rates, but they
16 were not getting the services that they deserve. And
17 so the money going to Raintree Plantation, Inc. maybe
18 would -- or would certainly be better served to the
19 customers by moving it into an escrow of theirs.

20 If -- if that can't be done, then
21 certainly the Public Counsel would say that any fees
22 that are collected for Raintree Plantation should be
23 separated completely from the water and sewer service
24 and billing. There should be no determination or no
25 basis of determining who gets connected and who gets

1 disconnected based upon the payment of those fees to
2 Raintree Plantation, Inc.

3 If Raintree Plantation, Inc. believes
4 they are owed fees, let them collect it themselves,
5 let them pay to go through the proper channels to
6 collect those fees themselves. And that also goes
7 for any of the fees that Raintree Plantation is
8 collecting on behalf of AquaSource. Again, if they
9 feel like that fees are owed, let them collect them
10 themselves, not let it be on the backs of the
11 customers.

12 And we would certainly highly recommend
13 that the Commission place conditions on the amount
14 and the timing of any of the rate increases.
15 Certainly, there should be no increase in the water
16 and sewer rates until EPA lifts the sewer connection
17 moratorium.

18 At this point there are no connections
19 being allowed, so no connection fees can be
20 collected. So the addition of water fees to allow
21 for collecting sewer connections is not going to
22 happen anyway. But the addition of how much they pay
23 per month for their water and sewer service will be
24 affected by that.

25 Given the fact that Office of Public

1 Counsel has alleged that there is an overearnings,
2 any monies that would be collected by EMC would cover
3 not only their cost but also help to recoup some of
4 their costs above and beyond just what it takes for a
5 new system. And any increase after that should be
6 phased in over a number of years, not an all-at-once
7 increase.

8 The -- the worry of rate shock within
9 the system is great because we are moving away from
10 the Public Service Commission controls. There's no
11 indication of how high the rates will go and what
12 these people will have to pay. And so a -- a
13 condition that limits how much can be increased at
14 one time would be very helpful for the public.

15 Again, there should be some sort of
16 minimum amount or percentage of the maximum that EMC
17 must spend on capital improvements. As the agreement
18 sits right now, there is no minimum amount. They can
19 spend nothing and still have a -- a right to the
20 water and sewer monies. So the Commission should put
21 at least a minimum amount that must be spent on this
22 system.

23 The Commission should require an
24 agreement to ensure that the sewer district will
25 continue to expand the capacity to meet all the

1 planned phases of Raintree Plantation. What is --
2 what is present at the moment is only a portion of
3 the planned development for Raintree Plantation
4 Subdivision. There are many more lots, many more
5 phases planned, and so right now the agreement is
6 just for what is there today.

7 But I would suggest that there be some
8 sort of an agreement to ensure that there are some
9 plans for what happens tomorrow so that we are not
10 back in this situation again where we knew that there
11 were more planned phases but the sewer capacity is
12 not there, so what do we do again.

13 And the Commission should certainly
14 impose a requirement that the sewer district and EMC
15 sign the compliance agreement with Department of
16 Natural Resources. It needs to be set who will be
17 responsible, who is -- who is to take care of all of
18 these upgrades, what upgrades are being required.
19 And this compliance agreement has been -- has been
20 out there, it's been looked at, but it has not been
21 signed. And frankly, as far as we can see, there's
22 no time frame on when it will be signed.

23 So the Commission needs to -- needs to
24 require that either the compliance agreement be
25 signed before the transfer, or that it be signed as

1 soon as the transfer is approved.

2 And then I just want to reiterate all of
3 the different conditions that the Association placed.
4 Those are the people who are being affected by this.
5 They know where their problems are, they know what
6 they need. And so I would -- I would back any of the
7 other -- other conditions that the Association gave,
8 and I would back any other conditions that the --
9 that the Commission would impose.

10 So, again, Office of Public Counsel,
11 while we do believe that the transfer as it -- as it
12 sits is detrimental, we do believe that the
13 Commission can impose the conditions to make it
14 nondetrimental. Thank you.

15 JUDGE STEARLEY: Thank you, Ms. Baker.
16 We will then proceed with Central Jefferson Utilities
17 Company calling its first witness.

18 MR. ENGLAND: Thank you, your Honor.
19 Let me call Todd Thomas to the witness stand.

20 JUDGE STEARLEY: Mr. Thomas, would you
21 please state and spell your name for our court
22 reporter?

23 THE WITNESS: My name is actually
24 Forrest Todd Thomas, F-o-r-r-e-s-t, T-o-d-d,
25 T-h-o-m-a-s.

1 JUDGE STEARLEY: And if you'll raise
2 your right hand, please.

3 (The witness was sworn.)

4 JUDGE STEARLEY: You may be seated.

5 THE WITNESS: Thank you, your Honor.

6 JUDGE STEARLEY: And you may proceed.

7 MR. ENGLAND: Thank you.

8 DIRECT EXAMINATION BY MR. ENGLAND:

9 Q. Would you please state your name for the
10 record, please?

11 A. Forrest Todd Thomas.

12 Q. Mr. Thomas, by whom are you employed and
13 in what capacity?

14 A. I'm employed by EMC which is
15 Environmental Management Corporation, and I'm
16 vice-president and general manager of the states of
17 Illinois and Missouri.

18 Q. Can you briefly describe the business of
19 EMC?

20 A. EMC does design, build, operation and
21 maintenance of primarily water and wastewater
22 systems. We also have contracts that do public works
23 as part of that, being streets and alleys.

24 Q. How long -- I'm sorry.

25 A. That's it.

1 Q. How long has EMC been in business?

2 A. EMC has been in business, I believe,
3 since 1982. Let's see, the first contract being in
4 St. Charles, Missouri.

5 Q. And how long have you personally been
6 with EMC?

7 A. I've been with EMC for five years.

8 Q. What are your duties and
9 responsibilities in your current capacity with EMC?

10 A. I have two duties, one of which is
11 business development, and the other duty -- that's
12 the vice-president portion of business development,
13 and I'm general manager of all the operations. So
14 the contracts where we have operations are in the
15 states of Illinois and Missouri.

16 Q. And are you authorized to testify in
17 this proceeding on behalf of EMC?

18 A. I am.

19 MR. ENGLAND: Your Honor, if I can have
20 an exhibit marked for purposes of identification.

21 JUDGE STEARLEY: Certainly.

22 (EXHIBIT NO. 1 WAS MARKED FOR
23 IDENTIFICATION BY THE COURT REPORTER.)

24 JUDGE STEARLEY: Do you want to move for
25 admission at this time?

1 MR. ENGLAND: Not at this time. I want
2 to have the witness identify it.

3 JUDGE STEARLEY: All right. Please
4 proceed.

5 MR. ENGLAND: Thank you.

6 BY MR. ENGLAND:

7 Q. Mr. Thomas, let me turn your attention
8 to a document I've handed you and has been marked for
9 purposes of identification as Exhibit 1. Do you have
10 that in front of you?

11 A. Yes, sir.

12 Q. It's a multi-page document, is it not?

13 A. Yes, sir.

14 Q. Could you please -- well, first of all,
15 do you recognize these documents?

16 A. I do. I do. These are documents of
17 which I gave you.

18 Q. Could you please describe these
19 documents, perhaps taking them page by page?

20 A. Sure. This first document which is just
21 a glossy brochure of which we utilize as a marketing
22 and business development tool to provide to
23 prospective clients. This highlights who EMC is, how
24 long we've been in business, the services we provide
25 and why communities may want to choose to do business

1 with EMC.

2 Q. Thank you. How about the next page?

3 A. The next page are some -- this page is
4 entitled "EMC Municipal Customers." These -- it's
5 just a small map that shows the different communities
6 where we have municipal customers.

7 Q. And then the next four pages, sir, what
8 are those?

9 A. Yeah. The next four pages is really a
10 breakdown of the map of that second page. It
11 provides in detail the different communities, the
12 city, the state, population, it gives the size of the
13 facilities, whether it's water, wastewater
14 collection, distribution, and it gives detail of the
15 scope.

16 Q. Thank you, sir. The next item appears
17 to be a resume?

18 A. Yes, sir, that is correct.

19 Q. Briefly describe that, please.

20 A. Just highlights the fact that I am
21 currently with EMC and my roles within EMC, gives a
22 background of my employment prior to EMC and my -- my
23 education.

24 Q. Continuing on, there appears to be
25 another resume for a Mr. William R. -- is it Faulds?

1 A. That is correct.

2 Q. Can you please describe who Mr. Faulds
3 is, please?

4 A. Mr. Faulds is the -- a senior project
5 manager with EMC. Mr. Faulds has been part of the
6 process of the development of that \$1.8 million
7 estimate, and he would be heavily involved with the
8 completion of those capital investments as the
9 project manager. That's planned at this time that he
10 would be that person.

11 Q. And then finally, I believe, I don't
12 mean to skip over anything but it appears the final
13 page and it's copied on both sides --

14 A. Yes.

15 Q. -- is entitled "EMC awards." Can you
16 briefly describe that, please?

17 A. Right. This is something that if I'm
18 talking to prospective communities or clients, I like
19 to highlight some of the fact our -- historically, we
20 have been very good stewards of the environment and
21 of safety, and this highlights some of the awards
22 we've received for the operations which we have.

23 Q. Is it fair to say that this exhibit was
24 prepared by you?

25 A. Yes.

1 Q. And is it also fair to say that to the
2 best of your knowledge the information contained
3 therein is true and correct?

4 A. That is correct. I -- I should
5 highlight that like on the map, since -- you know,
6 there's at least one facility that would -- that we
7 have that's new that is not on here, and there's
8 probably one that the contract has expired. So
9 there's some very minor inaccuracies, I should say.

10 MR. ENGLAND: Thank you, sir. Your
11 Honor, at this time I'd offer Exhibit No. 1 into
12 evidence, please.

13 JUDGE STEARLEY: All right. Any
14 objections to the admission of Exhibit 1?

15 MR. COMLEY: I notice that on the first
16 page, "EMC municipal customers," there's markings for
17 proprietary and confidential. I don't know if that
18 is important at this stage but I'd bring that to the
19 attention of counsel.

20 BY MR. ENGLAND:

21 Q. Mr. Thomas, since this is your exhibit,
22 do you consider this information proprietary or can
23 it be --

24 A. I can answer that by saying --

25 Q. -- released to the public domain?

1 A. -- since I commonly give this to
2 prospective clients, I'd say that it could be used
3 for public domain, yeah.

4 Q. Thank you.

5 MR. COMLEY: No objection.

6 JUDGE STEARLEY: Any other objection?

7 (NO RESPONSE.)

8 JUDGE STEARLEY: Hearing none, Exhibit 1
9 will be received into evidence.

10 (EXHIBIT NO. 1 WAS RECEIVED INTO
11 EVIDENCE AND MADE A PART OF THE RECORD.)

12 MR. ENGLAND: Your Honor, we have
13 another exhibit that, depending on your preference,
14 can be marked as two exhibits or one. It is the
15 verified application originally filed in this case,
16 and then the supplement and amendment to application
17 that was filed shortly thereafter.

18 JUDGE STEARLEY: Why don't we make that
19 as one exhibit.

20 MR. ENGLAND: That will be great. It
21 will take me a minute to collate them. And this will
22 be marked Exhibit 2; is that correct?

23 JUDGE STEARLEY: That's correct.

24 MR. ENGLAND: Thank you.

25 (EXHIBIT NO. 2 WAS MARKED FOR

1 IDENTIFICATION BY THE COURT REPORTER.)

2 JUDGE STEARLEY: You may proceed.

3 BY MR. ENGLAND:

4 Q. Mr. Thomas, let me now turn your
5 attention to what has been marked for purposes of
6 identification as Exhibit 2 which is the original
7 verified application filed in this case and a
8 supplement and amendment to that application. Do you
9 have that in front of you, sir?

10 A. Yes, sir.

11 Q. What I'd like to do is turn your
12 attention to appendix 1 to the original agreement.
13 You're gonna need to go back a few pages.

14 A. What page is that marked at the bottom,
15 or is it?

16 Q. It says "appendix 1" in the bottom
17 right-hand...

18 A. I'm fumbling here.

19 Q. For the record, it may not appear
20 appendix 1 on the copies that we've distributed.
21 It's the first exhibit, if you will, or attachment
22 behind the original application which was nine pages
23 long. And the appendix actually is entitled
24 "Tri-party Purchase and Sale Agreement." Do you see
25 that, sir?

1 A. I do.

2 Q. Do you recognize that document?

3 A. Yes, sir.

4 Q. And what is the transaction that is
5 generally described in that document to your
6 knowledge?

7 A. This agreement generally describes the
8 transfer of the -- of the water and sewer assets from
9 Central Jefferson to the Jefferson County Sewer
10 District and the considerations for that.

11 Q. Is EMC a party to that Tri-Party
12 Purchase and Sale Agreement?

13 A. Yes, sir.

14 Q. Does that agreement also call for the
15 construction of any improvements to the Central
16 Jefferson County water and sewer system?

17 A. Yes, it does.

18 Q. What generally do you understand those
19 improvements to be?

20 A. Those improvements are for the expansion
21 of the wastewater treatment facility, and for the
22 construction of additional storage for the water
23 facilities and the remediation of the lead issues
24 with the water.

25 Q. Can you be a little more specific and

1 describe the impact that these improvements will have
2 on the service of the water and sewer services in
3 that subdivision?

4 A. Certainly. Currently, as stated
5 previously today, the existing wastewater treatment
6 plant is undersized, it's not able to -- it does not
7 have the capacity to handle the number of homes that
8 are on it now. So the -- the construction of the
9 new -- or the upgraded wastewater treatment facility
10 will increase that to .4 million gallons a day which
11 will have adequate capacity to handle those homes and
12 future homes.

13 And as far as the water system goes, the
14 system -- the improvements that are planned, maybe
15 not directly stated in this agreement, are the
16 construction of 200,000 gallons of water storage, and
17 then the remediation of the lead content in the
18 particular well to levels within the -- of the water
19 guidelines.

20 Q. And what is EMC's commitment in regard
21 to these project improvements?

22 A. EMC's commitment is to invest
23 \$1.8 million of capital to make those improvements
24 and to provide ongoing operations and maintenance
25 services for those facilities.

1 Q. Is there a minimum amount of capital
2 that EMC must invest?

3 A. There's not a -- although it may not be
4 specified as a minimum, there is certainly estimates
5 that -- for the completion of that -- those
6 investments -- for the capital required -- the
7 estimates are that will take the \$1.8 million minus
8 that \$100,000 for the -- for payment of that water
9 tower debt that was previously there. Was that
10 understandable?

11 Q. We'll find out. Is your commitment
12 under that tri-party agreement a dollar amount or a
13 specified project, if you will?

14 A. The commitment is the specified project.

15 Q. Okay. That you've previously described?

16 A. That's correct.

17 Q. How will EMC finance the capital
18 necessary to construct these improvements?

19 A. It's internally financed through our
20 company.

21 Q. What other services does the tri-party
22 agreement -- or tri-party, excuse me -- contemplate
23 that EMC will provide?

24 A. I mentioned that there's the operation
25 and maintenance portion of it, but I did not mention

1 that we'll be doing billing and collection services
2 as well.

3 Q. Has EMC discussed an agreement with the
4 sewer district that will more specifically govern the
5 operation, maintenance, billing responsibilities --

6 A. Yes.

7 Q. -- that you've --

8 A. Yes, we have.

9 Q. And what is the status of those -- the
10 discussions?

11 A. I was hoping to have that agreement
12 signed with me today; however, I didn't get it, but
13 we are very close to having that agreement done.

14 Q. Generally, how will EMC provide the
15 operation of maintenance services on a go-forward
16 basis?

17 A. We'll provide full-time staff dedicated
18 solely to that -- to the system there as needed. We
19 will supplement from Staff from within the company,
20 you know, as situations arise, whether it be
21 operationally or through our more technical staff
22 engineers, accounting, information technology,
23 whatever, however that -- however the need presents
24 itself.

25 Q. Does the tri-party agreement address

1 what will be -- what will happen, excuse me, if the
2 needed improvements cost more than \$1.7 million that
3 has been estimated?

4 A. I don't believe that that's addressed in
5 the tri-party.

6 Q. How will that situation be addressed, to
7 your understanding?

8 A. That situation is addressed in the --
9 the -- I'll call it the operations and maintenance
10 agreement, capital operation maintenance agreement
11 with the sewer district.

12 Q. Can you generally describe how you
13 understand that to work?

14 A. Certainly. Generally, and I will
15 preface it that, you know, the agreement is not
16 complete, but the -- the intention at this time is
17 that if those costs exceed \$1.8 million, EMC will
18 provide additional capital funds to make the
19 necessary improvements, and we'll be able to recoup
20 those costs free of -- but if there's an increase
21 over the 1.8, EMC will not be able to allow profit or
22 margin or overhead on that -- on that additional
23 amount. And we will be able to recoup that over the
24 course of the 20-year agreement.

25 Q. The 20-year agreement being the

1 agreement you're negotiating with the sewer district?

2 A. That's correct, that's correct.

3 Q. Does EMC have a current relationship
4 with Central Jefferson County Utilities?

5 A. We do.

6 Q. And when did that relationship begin?

7 A. September of this year.

8 Q. What is the nature of that relationship?

9 A. The nature of the relationship is we are
10 currently -- and we refer to it, internally anyways,
11 as an interim operations agreement. The intention
12 was to be able to begin operating the system in
13 anticipation of the transfer so that all the startup
14 issues and familiarity issues will be addressed.
15 Once the transfer goes, we can very smoothly
16 transition into operating for the sewer district.

17 MR. ENGLAND: Your Honor, I have another
18 exhibit to be marked. It is proprietary, however.

19 JUDGE STEARLEY: All right.

20 (EXHIBIT NO. 3HC WAS MARKED FOR
21 IDENTIFICATION BY THE COURT REPORTER.)

22 JUDGE STEARLEY: Does a foundation need
23 to be laid for this? Do we need to be in-camera?

24 MR. ENGLAND: No, sir, I think I can do
25 that generally. I do have a couple of questions that

1 will require us to go in-camera, but I think as far
2 as identifying it for the record, laying the
3 foundation, I can do that here in open --

4 JUDGE STEARLEY: Let's go ahead and do
5 that.

6 MR. ENGLAND: -- hearing.

7 BY MR. ENGLAND:

8 Q. Mr. Thomas, would you take a look at the
9 document I've placed in front of you and that has
10 been marked for purposes of identification as
11 Exhibit No. 3?

12 A. Yes, sir.

13 Q. Do you recognize that document?

14 A. Yes, sir.

15 Q. Could you describe it for the record,
16 please?

17 A. This is the agreement between EMC and
18 Central Jefferson for the -- what I referred to
19 earlier as the interim operations and maintenance
20 leading up to the PSC transfer.

21 Q. And is EMC a party to that agreement?

22 A. Yes.

23 Q. And is that copy that I've handed you
24 and has been marked as Exhibit 3 an accurate copy of
25 the agreement?

1 A. It is.

2 MR. ENGLAND: Your Honor, I'd offer the
3 exhibit at this time, please.

4 JUDGE STEARLEY: All right. Are there
5 any objections to the admission of Exhibit No. 3?

6 MS. BAKER: I have no objection to it
7 being listed as proprietary. This was part of a data
8 request that we had. The document that came to us as
9 part of the data request was not marked as
10 proprietary on every page, and so it was not my
11 understanding that it would be proprietary.

12 MR. ENGLAND: Well, your Honor, the
13 front page, at least my copy and my copy of the data
14 request that was submitted to Public Counsel,
15 indicated that it was proprietary and confidential.

16 JUDGE STEARLEY: Well, we will --

17 MR. ENGLAND: And furthermore, my
18 understanding with Public Counsel and Staff, any
19 documents that they get in the course of their
20 investigation is to be maintained confidential
21 pursuant to statute as opposed to the proprietary --
22 or protective order that's issued in this case.

23 I don't think -- if for some reason we
24 neglected to identify that document as proprietary,
25 which I don't think we did, but if we did, I don't

1 think that precludes me at this point in time from
2 claiming privileged status or proprietary status for
3 purposes of this hearing.

4 JUDGE STEARLEY: The -- are there any
5 other objections? And I'll come back to that.

6 MR. KRUEGER: No objection.

7 JUDGE STEARLEY: All right. We will
8 admit this as being proprietary and confidential.

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

11 JUDGE STEARLEY: At a later time, if the
12 parties wish to discuss reclassifying it or move to
13 reclassify it, the Commission will consider that, but
14 at this point we will maintain its confidentiality.

15 MR. ENGLAND: Thank you, your Honor. I
16 do have some additional questions regarding that
17 document that would get into the terms and conditions
18 of that contract. So I would request that we go
19 in-camera.

20 JUDGE STEARLEY: All right. We will go
21 in-camera at this time. All those members of the
22 public -- and do we need to exclude other witnesses
23 as well, Counsel?

24 MR. ENGLAND: Only people that have not
25 signed the nondisclosure agreement.

1 JUDGE STEARLEY: Anyone present in the
2 room other than attorneys who have not signed a
3 nondisclosure agreements under our protective order
4 will be required to leave the room at this time.

5 (REPORTER'S NOTE: At this point, an
6 in-camera session was held, which is contained in
7 Volume 4, pages 83 through 93 of the transcript.)

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1 JUDGE STEARLEY: You may proceed,
2 Mr. England.

3 MR. ENGLAND: Thank you.

4 DIRECT EXAMINATION (RESUMED) BY MR. ENGLAND:

5 Q. Mr. Thomas, has EMC participated in
6 discussions with the Department of Natural Resources
7 and the Environmental Protection Agency in regard to
8 the future operations of these facilities?

9 A. Yes.

10 Q. And what is the status of those
11 discussions?

12 A. The discussions have been centered
13 around the compliance agreement that was mentioned
14 earlier, and it sounds like a recurring theme but
15 much like the O&M agreement between us and Jefferson
16 County, the compliance agreement. There is one
17 remaining item that is -- there's only one remaining
18 item, and based on a conversation that I had, along
19 with Martin Toma and Lance Dorsey, we believe that
20 remaining item we all agree on, we're just waiting
21 for a confirmation on that.

22 Q. Is EMC willing to enter into a
23 reasonable compliance agreement?

24 A. Yes, absolutely.

25 Q. And is EMC committed to operating and

1 maintaining these systems in the future in compliance
2 with all water quality and effluent standards of the
3 DNR and EPA?

4 A. Yes. You know, the agreement that we're
5 contemplating with Jefferson County is a 20-year
6 agreement. The compliance agreement that we're
7 talking about with the DNR, it has -- there's a
8 matrix that was mentioned earlier but it's
9 triggered -- it's, you know, trigger dates based on
10 when design needs to be completed, construction needs
11 to be completed, these upgrades need to be completed,
12 so we're willing to enter into those.

13 And if we're gonna operate a system for
14 20 years, we certainly are going to be in a situation
15 where you must live and, you know, operate and
16 maintain with what we're -- with what we're
17 proposing.

18 MR. ENGLAND: Thank you, sir. I have no
19 other questions.

20 JUDGE STEARLEY: All right.
21 Cross-examination, starting with Staff?

22 MR. KRUEGER: Thank you, your Honor.

23 CROSS-EXAMINATION BY MR. KRUEGER:

24 Q. Mr. Thomas, the specified project that
25 you referred to, is that the one that's described in

1 Exhibit D which was attached to the application -- or
2 actually attached to the tri-party agreement in this
3 case?

4 A. That is it, that's correct.

5 Q. And does that basically describe what
6 you will do as far as this construction is concerned?

7 A. It basically does. I must say it's
8 better -- it's more specifically described in the --
9 in the capital and operation maintenance agreement
10 that we're working out with us and Jefferson County
11 Public Sewer District.

12 Q. That provides that you will increase the
13 wastewater treatment plant capacity to a design flow
14 of .4 MGD; is that correct?

15 A. Yes, sir.

16 Q. And that's still accurate?

17 A. Uh-huh. Uh-huh.

18 Q. This also mentions the maximum design
19 parameters. What does that mean?

20 A. In any -- with any wastewater facility,
21 you have your standard average daily flow, but you
22 also have to design it for peak flows based on
23 maximum usage and other conditions.

24 Q. And what is the significance of the
25 influent BOD, influent TSS and influent TKM?

1 A. Typically, these type of influent you
2 see for domestic areas. If you have a heavy
3 industrial user or food packaging plant or something
4 like that, you might see higher -- higher BOD limits,
5 so then you have to design a plant to meet higher
6 limits.

7 Q. So am I correct to understand, then,
8 that you're designing the plant to handle an influent
9 with those characteristics or that that is the
10 maximum strength of the influent?

11 A. The plan's being designed on the basis
12 of these influent characteristics. And this is --
13 this design, I might add, is not -- has not been
14 altered from the one that was previously permitted by
15 the DNR.

16 MR. ENGLAND: Excuse me a second.
17 Mr. Thomas, can you speak up a little bit? We're
18 having a hard time.

19 THE WITNESS: I'm sorry. I was just
20 saying that this design as listed here has not been
21 modified for one that was previously permitted by the
22 Missouri Department of Natural Resources.

23 BY MR. KRUEGER:

24 Q. What happens to your agreement if the
25 influent characteristics exceed the ones that are

1 shown there?

2 A. What happens to the agreement is -- I'm
3 searching for the language. There's some -- in the
4 agreement that's contemplated between us and
5 Jefferson County Public Sewer District, if there's a
6 spike or an event where the BOD increases, if it
7 alters the -- if it's a long-term spike or increase
8 and it alters the -- the costs due to more power
9 consumption because you have to add additional
10 blowers or because there's more sludge from the
11 higher loading, then we can negotiate -- if we can
12 prove physical cost increases, we can negotiate an
13 increase.

14 Q. But it won't change your commitment to
15 designing and building the facility?

16 A. No.

17 Q. Only the cost?

18 A. The -- I think I understand your
19 question. The -- I don't think there is -- there's
20 not any expectation that as far as design goes that
21 those parameters are gonna change. Those are fairly
22 typical and standard for residential units in the
23 state of Missouri.

24 The only thing that would change is --
25 where I was answering the question is, once this

1 plant is built, if we actually see loadings that vary
2 from this, what would happen.

3 Q. Okay. What I was getting at is whether
4 a change in the characteristics of the influent would
5 be an excuse for not designing or building the
6 facility, and you're saying that's not -- that would
7 not be an excuse for that, correct?

8 A. A change in the influent characteristics
9 would be cause for, you know, some additional
10 discussion on plant design, but it would not be
11 looked upon as an excuse to exit the agreement.

12 Q. Okay. And it states there that you will
13 design, as specified below, to meet all state and
14 regulatory requirements?

15 A. Yes, sir.

16 Q. And that's what defines what your
17 obligation is with regard to the wastewater treatment
18 plant?

19 A. That's correct. Our obligation is, you
20 know, other than the proper care of the assets, we
21 also will meet all the state, local and federal regs.

22 Q. And then, similarly, with regard to the
23 water, it states that you will meet all state and
24 local regulatory requirements?

25 A. Yes, sir.

1 Q. And that describes what your task is
2 there?

3 A. One of the tasks, but from -- from a
4 water quality standpoint that describes it.

5 Q. And so when we're talking about the
6 minimum investment, the minimum investment that you
7 would make in the plant depends on what is necessary
8 to build this kind of facility?

9 A. That's one component of it. I mean,
10 certainly, there's -- you know, we're gonna be
11 operating this for a long time, so you could -- you
12 know, there's a level of expense that you can provide
13 in that capital at the time of engineering
14 construction that you can reduce your labor.

15 I mean, so there's a -- there's a --
16 it's -- the target is not just to minimally meet the
17 local state and federal; the target of the investment
18 is to meet those regulations and do the -- have the
19 best all around for operations and maintenance.

20 Since we are -- you know, since we have
21 both, we're not just a firm that's gonna be
22 constructing and leaving, we're a firm that's gonna
23 be constructing and staying and long -- you know,
24 providing long-term operations and maintenance. So
25 we have to factor in all of those decisions.

1 Q. What did you do to make the estimate of
2 the construction cost, how is that determined?

3 A. The basis was during the due diligence,
4 we were able to get the previous design and permit
5 that was approved by the Missouri DNR, find the
6 estimate that was performed for that, have our
7 project development people go through and look at
8 those estimates and apply any, you know, changes
9 necessary that we felt, any cost of living type
10 increases, price increases, things of that nature.

11 Q. How can the Commission be assured that
12 the \$1.8 million will be sufficient to construct the
13 facilities that you've committed to construct?

14 A. Well, I think that, based on EMC's
15 experience and resume, and I believe I did submit a
16 statement of qualifications at one point in time. I
17 forgot who that request was to, but we do have a
18 history and experience of doing these type of
19 projects. But also it was brought up in a question
20 earlier that if, for some reason, it does go beyond
21 the 1.8, there's some provisions there. But our
22 estimates are that the 1.8 should be satisfactory.

23 Q. What are the provisions if it does go
24 beyond the 1.8?

25 A. Well, as I stated earlier too, that

1 document is not complete, but the intentions that EMC
2 would be able to generate -- or come up with the
3 additional capital, we'd be able to recoup that over
4 the term of our agreement, but we would not be able
5 to apply any profit margin or overhead to that.

6 Q. Now, you talked a little bit about the
7 compliance agreement and a matrix there. Can you
8 tell me what that matrix is?

9 A. I've referred to it as a matrix after, I
10 believe, Mr. Schmid did, but essentially, there's two
11 parts of it. There's one that applies to the
12 wastewater, there's one that applies to the water,
13 and it talks about milestones or benchmarks that must
14 be achieved as far as design reporting, construction
15 startup, and it gives the time, the deadlines for
16 those.

17 Q. So that's essentially a timetable for --

18 A. For completion.

19 Q. -- for completion of these things?

20 A. Uh-huh.

21 Q. Now, is that one of the things that is
22 still under negotiation with regard to the compliance
23 agreement or have you agreed on that?

24 A. We've all -- we've agreed on that.

25 Q. Can you tell me what those -- what that

1 timetable is?

2 A. Did I get that compliance agreement?

3 Q. I have a copy if you'd like to refer to
4 that.

5 A. Yeah, if I have a copy of it, I could
6 tell you.

7 Q. This was the draft I was provided. I
8 don't know whether it's the most recent.

9 A. Sure. And so, again, since it's not
10 fully executed, as it's at least been agreed to
11 verbally and as it stands now, the first section,
12 matrix I'll call it, it's on page 5 of 12 and it
13 refers to the drinking water, "Submit a report
14 prepared by an engineer registered in Missouri for
15 the department's review, and approval on drinking
16 water systems needs to include source water treatment
17 and storage needs, and that is to be done within 60
18 days after the transfer of assets."

19 MR. ENGLAND: Excuse me a second. You
20 may be able to slow down a little bit for the court
21 reporter.

22 THE WITNESS: I'm sorry. Do you want me
23 to read the entire document? I'd be happy to do
24 that.

25 BY MR. KRUEGER:

1 Q. You don't need to read it all. Perhaps
2 you could summarize it a little bit.

3 A. Summarize? Okay. The second item is
4 submission to the department for review and approval,
5 the plans and specifications for the construction of
6 those water improvements, and that's within 90 days
7 of the approval of the engineering report.

8 The next step would be the completion of
9 the construction of the new well and storage or
10 versus a new well, any alternative that remediated
11 the lead issues. That would be that construction
12 would need to begin within 180 days after the
13 issuance of a construction permit but be completed
14 within 365 days of the issuance of that permit.

15 The next milestone is to submit the
16 as-built certificates on the new well or improved
17 well in storage within 30 days of the completion of
18 construction.

19 The next milestone would be submit a
20 revised application for permit to dispense water, and
21 that would -- at least 30 days prior to the new well
22 or improvements going on line.

23 And then finally, with regard to water,
24 work with Staff and the department, the regional
25 office in St. Louis, in completing a capacity

1 development review of the public water supply. And
2 that would begin within 60 days of the transfer of
3 assets.

4 Q. Okay. Now, if this schedule is adhered
5 to, approximately how much time would pass between
6 the time that the assets are transferred and water is
7 dispensed?

8 A. This allows for 60 plus 9150, plus a
9 year -- approximately two years, right?

10 Q. Okay. Thank you.

11 A. Worst case.

12 Q. Then with regard to the wastewater
13 facilities, can you briefly describe the timetable
14 that's specified there?

15 A. Sure. The first item is to submit to
16 the department for review and approval the plans and
17 specs and an application for the construction of the
18 new wastewater system, and that's to be done within
19 60 days of the transfer of assets.

20 The second item would be the completion
21 of the construction upgrades, and that's within 240
22 days of the department's issuance of the construction
23 permit.

24 Third would be to submit the engineer's
25 certification of work completion within 30 days of

1 the completion of that construction.

2 The next is submit an application which
3 is Form B for the modification of the MSOP to the
4 department. And this is at least 30 days prior to
5 the wastewater treatment facility receiving its -- or
6 the new facility receiving wastewater from the
7 subdivision.

8 And then finally, achieve compliance
9 with all the applicable permit effluent limits
10 contained, and that's within 45 days of the
11 wastewater treatment facility receiving wastewater
12 from the subdivision.

13 Q. And if this schedule is adhered to,
14 approximately how much time would transpire between
15 the transfer of the assets and the time when sewage
16 could be treated by that wastewater treatment plant?

17 A. Not including -- I'd say if you include
18 the department approval times that are not spelled
19 out in here, it's still gonna be probably one and a
20 half years.

21 Q. Okay. Thank you. You testified that
22 the operation and maintenance agreement is very close
23 to being signed, and does that include provisions
24 regarding compensation?

25 A. Yes, it does.

1 Q. And can you tell me what -- have -- have
2 you agreed with the sewer district on what the
3 compensation is to be?

4 A. That part is -- we've agreed to, yes.

5 Q. And can you tell me what -- what your
6 compensation would be under that operation and
7 maintenance agreement?

8 A. EMC's compensation and agreement would
9 be the -- the flat fee of 37 for sewer. Someone who
10 has that agreement, catch me if I get these wrong,
11 but I believe I'm correct, \$5.80 per 1,000 and a
12 tap-on fee of 1,500; is that correct? Yeah.

13 JUDGE STEARLEY: Mr. Thomas --

14 THE WITNESS: Yes, sir.

15 JUDGE STEARLEY: Can you repeat those a
16 little louder, please?

17 THE WITNESS: I'm sorry. \$37 flat fee
18 for sewer, \$5.80 per 1,000 for water and 1,500 for a
19 tap-on fee is what would be going to EMC.

20 BY MR. KRUEGER:

21 Q. And there's an agreement with the sewer
22 district on those terms?

23 A. There's verbal agreement, yes. Uh-huh.

24 Q. Now, will that -- the amount of that
25 compensation change over time?

1 A. The amount -- the way the agreement is
2 structured is that amount of compensation from the
3 district to EMC would not change unless some of
4 the -- like a question I started to answer
5 previously, if, for some reason the flows or loadings
6 would significantly change to alter costs, but it's a
7 fixed -- we've proposed a fixed cost for those years,
8 for the 20 years.

9 Q. And when would that compensation begin?

10 A. Upon -- as soon as possible. As soon --
11 it's upon the completion of the agreement -- well,
12 excuse me, upon completion of the transfer of assets,
13 I guess that would have to be, because we could
14 complete the agreement tomorrow and...

15 Q. Okay. Now, assuming -- I'm gonna ask
16 you to assume that the Commission would approve the
17 transfer of assets but impose a condition of limiting
18 the amount of the -- the amount that the sewer
19 district could charge and could pay you. What would
20 that do to your agreement?

21 A. At this point, you know, we're not
22 interested in that because of the fact that, you
23 know, we are currently losing money in the interim
24 agreement that we have right now, and the agreement
25 that we have with the fees that we just discussed,

1 that is only really an attractive deal for us if
2 the -- if there is development.

3 We're kind of -- we're -- we're -- we're
4 banking on this to be a good deal for EMC -- we're
5 banking on development to make this a good deal for
6 EMC, and we are operating a system right now that we
7 know needs some direct attention, some immediate
8 attention and maintenance and things of that nature.

9 So when you say altering, it -- it
10 just -- you know, it does not sound attractive to
11 EMC at this point in time because it would not be
12 providing -- my assumption would be it would not
13 provide adequate funds to do what needs to be in
14 the system now and in preparation of the
15 construction.

16 And also, it would be less attractive in
17 the sense that we are dependent upon other factors
18 like growth to make this a good deal for us. So
19 you're only, you know, further limiting what would
20 make this a good deal for us.

21 Q. So are you absolutely ruling out the
22 possibility of accepting any less compensation than
23 that, or are you just saying that that's something
24 you would have to think real hard about?

25 A. If you -- if you -- if you force me to

1 say yes or no right now, I will say no.

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

4 JUDGE STEARLEY: Cross-examination,
5 Mr. Comley, the Association?

6 MR. COMLEY: Thank you, Judge.

7 CROSS-EXAMINATION BY MR. COMLEY:

8 Q. I may duplicate a little bit of what
9 Mr. Krueger has said but -- and I've tried to follow
10 along with both of you, but forgive me if I do tend
11 to overlap some of his questions. And I'm not here
12 to try to confuse you, Mr. Thomas.

13 A. That's all right.

14 Q. I'm still -- as I mentioned to the
15 Commission, this is sort of an information gathering
16 exercise for the Association.

17 Is it fair to say that the rates for the
18 water and sewer that we will be seeing if the
19 district acquires the assets, are they based in part,
20 if not completely, on the investment that EMC is
21 prepared to make in the systems?

22 A. They're based primarily on the
23 investment and the ongoing cost of operations and
24 maintenance.

25 Q. Are there components that break out --

1 are certain parts of the rates devoted to the
2 internal financing you've talked about and then a
3 part for O&M?

4 A. They're not -- when you say "broken
5 out", I mean, you can certainly add up the parts to
6 come up with the rates, but it's -- it was not -- it
7 was an aggregate, it was not broken out that the
8 sewer will go to this, the water will go to this, the
9 hookup fees will go to this.

10 Q. You couldn't tell me, for instance,
11 whether 50 percent to 80 percent of the rate is
12 designed for recoupment of your internal investment
13 and the remainder is for O&M?

14 A. Not with the -- not with the information
15 that I have here.

16 Q. Is that information available to you?
17 Would you be able to find, for instance, from the
18 information you may be delivering to us later, how
19 those rates are divided into --

20 A. Uh-huh.

21 Q. -- debt retirement and existing O&M?

22 A. I have access to that and again, I would
23 want to ask -- I want to consult with my office
24 before I turn it over.

25 MR. COMLEY: Your Honor, if that is a

1 proprietary piece of information, we'll be happy to
2 submit that under the protective order, but I would
3 go along with Staff in thinking that we would -- I
4 would like to have that information to look at it.
5 So if it's possible for the witness to comply.

6 THE WITNESS: I think some of that
7 information was already submitted in a -- by the
8 district, actually, and -- in a prior question,
9 but...

10 MR. COMLEY: We may have to ask Mr. Toma
11 the same question.

12 THE WITNESS: Oh, okay.

13 BY MR. COMLEY:

14 Q. I want you to presume for the moment
15 that the entire \$1.8 million that you have dedicated
16 to the project will not be used in order to make the
17 upgrades compliant with state and federal
18 regulations. What will be done with the amount
19 that's not used in that \$1.8 million estimated
20 investment?

21 A. Well, I guess for sake of discussion,
22 you can make that assumption. The estimates that
23 we've performed, we believe that we will be spending
24 that much. I'll answer that in this fashion: As I
25 stated earlier, in order for this to be a good

1 investment for EMC, we are -- we are banking on the
2 fact that there will be some development in the
3 future.

4 If we can bring -- if EMC can bring in
5 those costs lower than the 1.8, you know, minus
6 100,000, 1.7, we would like -- we have the ability
7 now to retain those funds to offset project -- our
8 own project management costs, our internal costs, you
9 know.

10 And so during the discussion with
11 Jefferson County, if there were hard set provisions
12 on you must take any underage and put it over here,
13 then we will -- then we would want to start setting
14 more restrictions on developments, saying, okay,
15 well, then, if we don't reach a certain development
16 build-out by X number of years, then we want more
17 compensation to cover the lack of development. We
18 looked at this as a partnership where both sides are
19 taking some level of risk.

20 Q. So on that point, my understanding would
21 be that the way you have prepared your proposal to
22 the district is that it is a balanced sort of
23 proposal. You're balancing development against your
24 fixed amount of money each month and hoping that
25 between the two, you're going to be able to make a

1 profit?

2 A. We're developing the -- restate that so
3 I can --

4 Q. My understanding would be that your
5 proposal to the district is what I would call a
6 balanced proposal; one item does not stand alone to
7 recover apparently a certain amount of cost. You're
8 working each toward the other so that the cost of
9 development -- rather, the prospect of development is
10 going to offset what you may lose in operation and
11 maintenance costs?

12 A. Based on how I understand your question,
13 I would say that's correct, it's a balanced proposal.

14 Q. All right. You have established a
15 connection fee that the district would charge for
16 each -- and that would be for each new water and
17 sewer connection, or would that be divided into -- it
18 would be for either?

19 A. It's an aggregate.

20 Q. So for both?

21 A. For both.

22 Q. That \$1,500 fee is not divided so that
23 it would be half of 1,500 for the water, half of
24 1,500 for the sewer?

25 A. That's correct, it's not divided. We

1 did not contemplate a situation where if a home would
2 have only water or only sewer, so the assumption is
3 they will have both and there will be an aggregate
4 fee.

5 Q. Can you tell us how much development EMC
6 is banking on in Raintree Plantation?

7 A. We -- I believe -- I don't have those
8 figures and they may have already been submitted as
9 well. I'm not -- by another request that I saw,
10 so...

11 Q. Do you know offhand right now?

12 A. No, I do not have -- know offhand right
13 now.

14 Q. Do you know how many lots are left to
15 develop in Raintree Plantation yourself?

16 A. I do if there's -- roughly, if there's
17 roughly 3,000 or 3,200 and the -- and we're currently
18 at 680 homes, so 3,000 minus 680.

19 Q. Let's see. That will take us down to
20 2,300 or so. So you're looking at if that's the
21 number that's being used --

22 A. We're not -- we're not contem -- we're
23 not believing that over the 20-year life of the
24 agreement that those would all be built, but --

25 Q. Do you know what percentage you're

1 counting on?

2 A. I don't have it off the top of my head,
3 no, sir.

4 Q. Would it be over -- would it be over
5 50 percent of those lots?

6 A. You know, I'd be -- I'd be careless if I
7 didn't go back and look to see what those assumptions
8 are.

9 Q. Basically, is EMC looking for another
10 million dollars out of the development?

11 A. I don't understand. Are we looking
12 to -- are we looking to try to capitalize on the --
13 trying to get -- are we trying to earn another
14 million -- or earn a million dollars on the
15 development?

16 Q. Connection fee times lots.

17 A. No. I can't say that that was any of
18 the calculation. That thought process was not what
19 we used in determining our hookup.

20 Q. Okay. Tell me what the process was.

21 A. The process was -- and this is, I
22 believe, outlined in the document that was submitted
23 by the public sewer district, where we have said if
24 you have X amount of flat sewer, X amount of charge
25 for water, 37, \$5.80, there's a 1. -- well, then we

1 list -- at least at times zero what we believe the
2 estimate of our expenses would be, operation and
3 maintenance expenses including maintenance and
4 repair.

5 So if you take revenues, total revenues
6 from those, minus operation expenses and then you
7 look at the debt service or depreciation on that 1.8,
8 what the return would be, and that's anticipating
9 some growth. And I believe that document shows that
10 we're targeting -- trying to target to get like
11 6 percent return.

12 MR. ENGLAND: Your Honor, if I could
13 have a minute. We anticipated making an exhibit of
14 the rate calculation, making available with Mr. Toma
15 since he performed the rate calculation. But I
16 believe this witness is referring to some backup
17 information that was attached to that that was
18 submitted in data request responses.

19 THE WITNESS: Okay.

20 MR. ENGLAND: If it's all right in
21 trying to clear this up, is -- if we could go ahead
22 and mark that as an exhibit with the understanding
23 that Mr. Toma's gonna be the witness that sponsors
24 that to have to lay the foundation.

25 MR. COMLEY: I can wait until Mr. Toma

1 and you can qualify that with him.

2 MR. ENGLAND: Well, the problem -- it
3 finally occurred to me as you were asking questions,
4 while Mr. Toma did the top sheet, if you will, I
5 think Mr. Thompson had input into the backup sheets.
6 So I don't want to put Mr. Toma on and represent he's
7 gonna answer all the questions that you're asking
8 here.

9 MR. COMLEY: Do you have documents
10 available to you that would help refresh your memory
11 on how you and Mr. Toma arrived at the calculation
12 for the rate?

13 THE WITNESS: Just the one that
14 Mr. England has.

15 MR. COMLEY: Well, why don't we get
16 those in front of you.

17 THE WITNESS: Thanks.

18 JUDGE STEARLEY: We'll certainly mark
19 that.

20 MR. COMLEY: Judge Stearley, I don't
21 know when you plan to take a break, but this document
22 is new to me, I think to everyone. Would it be
23 appropriate to ask for a brief recess so that we
24 might look at that document before we continue
25 cross-examination?

1 MR. ENGLAND: Before we convene, I do
2 need to respond to that. This document should not be
3 new. It was provided in response to data requests
4 from, I believe, the Office of Public Counsel. We
5 submitted copies to all parties in response to a data
6 request.

7 MR. COMLEY: I'm sorry. I didn't get a
8 copy of it.

9 JUDGE STEARLEY: Well, I think it would
10 be appropriate to go ahead and take a short break at
11 this time anyway, so why don't we plan on a
12 ten-minute break and we'll go off the record. Is
13 that adequate time for you?

14 MR. COMLEY: Certainly.

15 JUDGE STEARLEY: All right. We'll be
16 off the record.

17 (A RECESS WAS TAKEN.)

18 (EXHIBIT NO. 4 WAS MARKED FOR
19 IDENTIFICATION BY THE COURT REPORTER.)

20 JUDGE STEARLEY: Please continue,
21 Mr. Comley.

22 MR. COMLEY: Thank you, your Honor.

23 BY MR. COMLEY:

24 Q. Mr. Thomas, during the break, I
25 understand that you've been given a copy of what's

1 been marked for identification as Exhibit 4?

2 A. I have.

3 Q. And for everyone here, it's a document,
4 the first page of which denotes itself as "Raintree
5 Plantation draft pricing proposal." Are we looking
6 at the same document?

7 A. We are.

8 Q. And I take it that this is information
9 that would help refresh your memory on how rates have
10 been calculated for the district?

11 A. Yes, sir.

12 Q. And those rates were calculated with
13 your participation; is that correct?

14 A. Yes.

15 Q. All right. And let me ask you, with
16 reference to this document, would it help you in
17 answering questions about the rate calculations for
18 the district and for EMC?

19 A. Yes.

20 MR. COMLEY: Your Honor, I'm going to
21 ask that Exhibit 4 be admitted into evidence.

22 JUDGE STEARLEY: Are there any
23 objections to admission of Exhibit No. 4?

24 MR. KRUEGER: No objection.

25 JUDGE STEARLEY: Hearing none, it will

1 be received and entered into evidence.

2 (EXHIBIT NO. 4 WAS RECEIVED INTO
3 EVIDENCE AND MADE A PART OF THE RECORD.)

4 BY MR. COMLEY:

5 Q. After review of this document, I think I
6 can narrow my questions a little bit. First of all,
7 with respect to the calculation of the water bill, we
8 had talked about a \$5.80 per 1,000 gallons, but we've
9 also heard that it will be raised to \$6.30 for the
10 charge to the customer. Can you tell me where that
11 other 50 cents is on your chart?

12 A. If you look at the front page on the
13 left-hand side starting at the top with "monthly
14 sewer bill 37, water \$5.80," below that, "JCPSD admin
15 charge of 50 cents," and if you then refer to the
16 last page down there at the bottom, the very bottom
17 where it says "JCPSD capital maintenance fund,"
18 opening -- there's the one on the left, "opening
19 balance water rate, surcharge 50 cents per gallon,"
20 there's where it appears again. And so it shows a
21 fund or a fund being built by the district.

22 Q. So I take it that this administrative
23 charge, as it's represented on the first page, is not
24 for ongoing administration of the district; it is
25 something that's placed in reserve; is that correct?

1 A. That's really not, I guess -- that
2 really will not be my question to answer, so much as,
3 I think, Mr. Toma in the future, because those are
4 not EMC's funds.

5 Q. Very well. Let's go down to the tap-on
6 fee. I think you said that the \$1,500 per new home
7 connection, which you think is an aggregate cost. So
8 it would be \$1,500 for each new water and sewer
9 connection; is that correct?

10 A. In total for the two.

11 Q. Then the tap-on fee for a capital
12 reserve fund, is that something that Mr. Toma was
13 helpful in determining or is that something that EMC
14 helped participate in?

15 A. When EMC produced this document, we
16 provided that tap-on fee-capital reserve fund as a
17 "what if" or "for instance" for the public sewer
18 district to contemplate on how they may want to do
19 things. It has nothing to do with the compensation
20 for EMC.

21 Q. But with respect to your duties under
22 your contract, you'll be billing this fee; is that
23 correct?

24 A. That's correct.

25 Q. So my understanding is that this has

1 been agreed to by the district that intends to
2 file -- intends to tap -- excuse me. It intends to
3 charge a tap-on fee per new home connection of
4 \$1,000?

5 A. What has -- in the capital -- in the
6 drafted capital and operation and maintenance
7 agreement with EMC, what we have in there is the 37
8 for the flat, the \$5.80 per thousand and the 1,500.
9 Anything beyond that is outside of our agreement and
10 you'll need to ask Mr. Toma about that.

11 Q. Under your agreement, when an applicant
12 for service comes to your office --

13 A. Uh-huh.

14 Q. -- will you be charging them \$2,500 or
15 \$1,500 --

16 A. That --

17 Q. -- under this analysis?

18 A. This -- this -- if you take those two,
19 1,500 and 1,000, you get 2,500. That, to my
20 knowledge -- or I am not aware of whether or not it
21 will be 1,500, 2,000, 2,500. The district will set
22 that rate. Now, when they set that rate, it will be
23 part of the EMC services to collect it.

24 Q. All right. There is an operating profit
25 of \$66,928 listed on the front page. Do you see

1 where I'm -- I am on the page?

2 A. Yes, I do.

3 Q. And then a 12 percent figure there. Is
4 that a 12 percent operating profit for EMC?

5 A. That is for -- that is a -- a targeted
6 or a proposed operating profit that we would try to
7 achieve, yes.

8 Q. And then there is an estimated interest
9 rate for the 20-year term of 6 percent. That
10 represents the interest that you think would be due
11 on the internal investment of the \$1.8 million we're
12 talking about?

13 A. As I reflected previously, that is not a
14 hard and fast because we would need -- and if you
15 look at the last page, we're showing a build-out
16 rate -- we really need to hit a certain build-out
17 rate to be able to achieve that.

18 So as we -- you know, you referred to it
19 as a balanced agreement or something of that nature.
20 We are -- we're taking some risk in this agreement
21 that we're gonna hit these build-out rates to be able
22 to get that return.

23 Q. If you do have a build-out rate as you
24 anticipate, am I looking at this correctly, your
25 operating profit plus the interest rate, these are

1 two components that could be added together under
2 your analysis for a total return?

3 A. We treat them -- I don't know that
4 they're added together. I think they're -- I think
5 you have to actually, in essence -- not accurate
6 math, but for sake of discussion, you probably have
7 to average the two.

8 Q. So if you average the two, you're
9 looking at perhaps a 9 percent return at a minimum?

10 A. A return -- there's two completely
11 different sets of risks when you look at operation
12 and maintenance versus a capital investment. That's
13 why I think it's more appropriate to separate the two
14 because they're two entirely different types of
15 risks.

16 Q. Nonetheless, the money would go to EMC
17 no matter what the --

18 A. That's correct.

19 Q. -- the income source?

20 A. Uh-huh.

21 Q. On the last page, let's go over the
22 expected build-out. I'm looking at the top of the
23 page -- the pages of the -- years, I think, had been
24 marked as phases; is that correct?

25 A. That's correct.

1 Q. And by the end of phase 10, which would
2 be, as I understand it, December of 2015?

3 A. That's correct.

4 Q. EMC is projecting that 1,331 homes would
5 be connected to the system?

6 A. Anticipating.

7 Q. With 1,331 homes on the system -- and
8 take me back. The capacity of the wastewater
9 treatment plant has been sized for how many homes?

10 A. The capacity of the wastewater treatment
11 plant is sized for .4 million gallons per day.

12 Q. Can you translate that into the number
13 of homes that might be connected, households?

14 A. Yeah. If you use -- I'll call them
15 generally accepted rules of thumb or just some rules
16 of thumb, two and a half persons per home, 100
17 gallons usage per day, that .4 million gallons a day
18 could get you 16 -- capacity ability for 1,600 homes.

19 Q. Is it your statement that you have
20 designed the system -- or for you to design the
21 system that would accommodate up to 1,600 homes on
22 the system?

23 A. Yes, based on those rules of thumb that
24 I use. And let me go back and tell you -- and I said
25 this earlier, that the design that we're proposing

1 was the one that prior to EMC being involved was
2 already once previously approved a construction
3 permit by the Missouri DNR. So -- and actually, when
4 we began this process at the request of the DNR,
5 we were building off of that prior design.

6 Q. Do you know if that was a permit --
7 construction permit -- a permit applied for by
8 Central Jefferson County Utilities?

9 A. I believe it was. I'm not certain but I
10 believe it was.

11 Q. Regarding the investment that EMC is
12 preparing to make, and I know it's 1.8 million less
13 the debt that it's going to overcome or assume, but
14 is that amount gauged to simply reach compliance with
15 DNR guidelines or are you looking to add capacity
16 above those guidelines?

17 A. I'll answer the question the way I think
18 I understood it. That -- that capacity, that .4
19 is -- that we're looking to build to is because of
20 the previous design that was out there. And at the
21 beginning of our involvement when -- our discussions
22 with DNR, we were asked to build off of that previous
23 design. And I -- and I do believe that there is some
24 letters from the DNR to Central Jefferson back in the
25 March time frame that had those levels -- that

1 recommended those levels of design.

2 Q. Did EMC undertake its own needs analysis
3 of the area before it agreed to do this commitment?

4 A. No.

5 Q. You had some questions from Mr. England
6 on the application and its appendix, and I wanted to
7 take you back to Exhibit D momentarily. We'll
8 probably refer to this exhibit again, but just for
9 the moment, I had a question about -- under
10 paragraph 1, on the maximum design parameters for the
11 wastewater treatment facility.

12 A. That's Exhibit 2, correct?

13 Q. Right, the larger --

14 A. Yes, okay.

15 Q. There's a maximum hourly flow set out at
16 800 million gallons per day. Can you explain that
17 for me? The plan is designed for 400,000 gallons a
18 day. How is the maximum hourly flow worked into that
19 plan?

20 A. Well, let me -- I'll preface the
21 question by saying these parameters were pulled
22 directly off of the construction permit that was --
23 you know, based on the design and that construction
24 permit.

25 Now, to answer that question, if, over

1 the course of time, course of a day, you have an
2 average flow of .4 MGD during certain portions of the
3 day where people shower or prepare food, those --
4 that flow spikes and there's peaks and valleys of
5 that. And dependent upon the amount of inflow --
6 infiltration system you have, then you have spikes on
7 that too. So not only do you have this average, but
8 there's, throughout the day, peaks and valleys of the
9 hourly -- the hourly flow going through that plant.

10 Q. So not only will the plant be sized for
11 an average of 400,000 gallons a day, it will be sized
12 so that it can carry peak loads of 800,000 gallons
13 during the cycles of usage during the day?

14 A. That's correct, that is correct.

15 Q. Has EMC gone to the next phase? Have
16 you started the design for all the improvements?

17 A. With the -- with the construction permit
18 that was previously run by the state, there's a
19 certain level of design that was done at that time to
20 be able to grant that permit. We are -- we have done
21 all the prework we can to be ready to start moving on
22 with the next phase of design, but we are not
23 spending any monies to do that.

24 Q. So getting back to the idea of phases,
25 there's a certain phase, ground work design has been

1 done already by an engineering firm --

2 A. Uh-huh.

3 Q. -- I suspect?

4 A. Yes.

5 Q. And you're going to build on that?

6 A. Correct.

7 Q. Do you know whether this preliminary
8 design is going to in any way shorten the deadlines
9 that are in the compliance agreement or shorten your
10 ability to meet those deadlines?

11 A. You know, when I was asked the questions
12 earlier about the timing, I mean, we certainly hope
13 and -- hope to shorten the ability on -- to -- you
14 know, shorten those deadlines on both the water and
15 the wastewater.

16 As you can see from the document we just
17 went through, we're certainly incented (sic) to try
18 to get homes on sooner from our standpoint. So I
19 believe it's our intention to try to make it
20 quicker -- sooner.

21 Q. Aside from the incentive for getting
22 homes connected, would you agree with me that if you
23 were paid the higher rate even though no new
24 facilities are constructed, EMC is really not giving
25 any push to put those facilities in service?

1 A. Oh, no, I -- I -- if I understand your
2 question correctly, I -- I disagree that there's no
3 push. We're gonna begin spending money
4 immediately -- spending monies for engineering and
5 design immediately.

6 And recall, this is -- we're
7 contemplating a 20-year agreement. A company doesn't
8 stay around for 20 years if you don't please the
9 homeowners, if you don't please the clients, and
10 that's how we build our business.

11 So not only from a financial aspect but
12 just from a service and wanting to stay in Jefferson
13 County and, you know, potential business around
14 Raintree, we will try to do our very best to make
15 everyone happy and make it as soon as possible.

16 Q. Your best effort notwithstanding, the
17 proposed compliance agreement with DNR would allow
18 you up to two years to put wastewater treatment
19 facilities in service while at the same time charging
20 the residents of Raintree Subdivision a higher rate;
21 isn't that correct?

22 A. All the while we're spending money --

23 Q. And I know that, but isn't what I said
24 correct?

25 A. What you said is correct.

1 Q. Mr. Thomas, would you happen to know how
2 the 1.8 million breaks out between the two services,
3 how much is going to be invested in the water plant
4 and storage and how much is in the sewer plant?

5 A. Without having the figures in front me,
6 I can give you -- the majority of it is on the
7 wastewater side of things, and it's in the
8 neighborhood of -- give me just a minute. That's in
9 the neighborhood of three quarters or 75 percent, in
10 that range, was for wastewater.

11 Q. And I think I may have given you a
12 question that was a little bit off base. I think
13 it's two years or so for the water system
14 improvements; is that correct? Do you recall?

15 A. I'd have to go back through my
16 compliance schedule and do the math.

17 Q. Look at that real quick. Let's make
18 sure I got that right.

19 MS. SCHMID: I think that was his prior
20 testimony, was two years for water.

21 BY MR. COMLEY:

22 Q. And then it was a year or a year and a
23 half for the sewer?

24 A. It was shortened for the sewer. So the
25 majority of the investment is gonna be required in a

1 shorter period of time based on that compliance
2 schedule.

3 Q. I think you were here during my opening
4 remarks; is that correct?

5 A. That's correct, uh-huh.

6 Q. I mentioned during the opening remarks
7 that there had been concerns by the Association about
8 the location of these facilities as improved. Do you
9 know whether there has been any locations established
10 for the capacity additions for the wastewater
11 treatment plant as well as the storage tank for the
12 water system?

13 A. As part of the -- as part of, I believe
14 it's the tri-party agreement, some contingencies in
15 there are the fact that the space for the wastewater
16 treat plant needs to be -- exact location space needs
17 to be identified and worked through. And I believe
18 that that is the responsibility of Central Jefferson.
19 So we have an area down near -- adjacent to the
20 existing plant that I believe is targeted for that,
21 but EMC is not directly involved with -- with
22 acquiring that space.

23 Q. Let's turn to Exhibit G of the appendix
24 attached to Exhibit 2. And that's the tri-party --
25 tri-party agreement. Paragraph 1 says, "A dispute

1 exists between Central Jefferson and Raintree
2 Plantation Property Owners Association regarding
3 where the location of existing and future water
4 treatment facilities are" --

5 A. Uh-huh.

6 Q. -- "and will be located as necessary
7 and -- as required." Do you know, did anyone explain
8 to you the nature of that dispute?

9 A. No, sir.

10 Q. With Mr. Krueger you visited a little
11 bit about the length of time you anticipate the rates
12 reflected on Exhibit 4, how long the rates reflected
13 on Exhibit 4 would be in effect. And my
14 understanding is that EMC -- EMC's expectation is
15 that these rates would be in effect for a 20-year
16 period?

17 A. For EMC's portion of those rates, yes.

18 Q. Absent something unforeseen about the
19 influent characteristics --

20 A. That is correct.

21 Q. -- or perhaps other improvements that
22 need to be made?

23 A. That's correct.

24 Q. We talked a little bit about the
25 proprietary agreement between you and the company on

1 present operation and maintenance of the system, and
2 again, I will do my best to keep from dealing with
3 proprietary information that may be in the terms of
4 that agreement, but right now are you doing anything
5 under the operation and maintenance agreement as part
6 of getting the systems into compliance with DNR?

7 A. We're not doing any engineering type
8 activities with that, but certainly, by day-to-day
9 operational practices, we are.

10 Q. How many employees are now on --
11 assigned to operation and maintenance of the system?

12 A. We have two dedicated full-time
13 employees onsite and we have been supplementing them
14 as needed.

15 Q. Can you briefly describe what the duties
16 of the two full-time employees are? Are they divided
17 between water and sewer or are they there for both
18 systems?

19 A. They're there for both systems.

20 Q. Do you know who's been assigned to
21 handle the combination of water from well 1 and
22 well 2 when that's necessary?

23 A. Well, specifically in our work force
24 there, the operator of record is a gentleman by the
25 name of Gene Thurman. He's our employee. He's the

1 top-rated, class A water -- licensed in the state,
2 and he has that -- he takes primary responsibility
3 for operating that water system.

4 Q. And again, he's a full-time employee?

5 A. He's a full-time employee.

6 Q. How would residents reach that person?

7 A. I believe there is a mailing that has
8 notified the residents of his number. They still
9 have the same number that they've always had for
10 Central Jefferson County Utilities to reach him by,
11 and he has, of course, business cards he's been
12 handing out with his cell phone and things of that
13 nature.

14 Q. As part of his assignment, does he have
15 access to equipment that would clear obstructions in
16 lines, that kind of thing, and would it be on a very
17 ready basis?

18 A. Well, there's -- the path, at least in
19 this interim basis, that we've chosen to utilize at
20 Central -- at Central Jefferson and Raintree is as
21 needed. He will be able to have access to -- you
22 know, to hire out a service or a jetting service or a
23 contractor if he needs to versus having EMC-owned
24 equipment onsite.

25 Q. After the transfer of assets and EMC

1 starts operating and maintaining the system pursuant
2 to the new agreement --

3 A. Uh-huh.

4 Q. -- can you tell me how will residents be
5 able to get in touch with the operating personnel
6 onsite? Will it be the same way?

7 A. Yeah, same way. Cell phones, you know,
8 we're on call 24/7 to handle emergency responses and
9 things of that nature through -- you know, if they
10 can't reach him by that means, there's corporate
11 office means. So many -- multiple means of which to
12 get ahold of him.

13 Q. Does EMC have an office nearby,
14 Hillsboro?

15 A. Our corporate offices are in O'Fallon,
16 Missouri, and we operate cities nearby, St. Charles,
17 Missouri, Rockwood School District, cities shown on
18 the map.

19 Q. Are the employees that you've assigned
20 now, are they local people or are they from
21 offices -- EMC offices in the outlying areas?

22 A. They're local people.

23 Q. Okay. I think interrupted you. How
24 many employees do you see as being fully assigned to
25 the operation and maintenance of these two systems

1 when you take it over?

2 A. I think that once a -- once a standard
3 level is achieved, the two full-time people will be
4 adequate is our anticipation.

5 Q. In the ramp-up phase, though, you
6 anticipate more. Do you know how many more?

7 A. No, I don't know -- I don't know how
8 many more but we'll just, you know, supply as needed.
9 And, you know, it's a hard -- to ask because you may
10 need, you know, multiple people one day for a
11 particular project but then you're back down to two
12 the next day. It's kind of more project-related and
13 event-related. But we have the resources available
14 to handle those needs.

15 Q. Has EMC done any independent studies
16 respecting infiltration and inflow into the
17 wastewater treatment facility?

18 A. No, not at this time.

19 Q. Have you reviewed any that have been
20 done in the past?

21 A. We have reviewed all the diligence that
22 was available, and I do believe there was a report
23 that was there in the past. I do not have personal
24 knowledge of that report.

25 Q. Would Mr. Faulds have reviewed that

1 report?

2 A. I believe he has.

3 Q. Do know whether the infiltration and
4 inflow study, its results, have influenced the amount
5 of investment that Raintree is prepared to invest in
6 the systems?

7 A. I do not believe they have.

8 Q. Do you know whether or not there has
9 been any reports from the people on duty now about
10 conditions of infiltration and inflow affecting the
11 system?

12 A. To my knowledge there have been no
13 formal reports.

14 Q. Now, are you the one that directly is
15 connected with the two gentlemen working at the
16 systems now?

17 A. There -- I am not. There's a director
18 of operations that fulfills that role.

19 Q. Have you inspected the system yourself?

20 A. I have toured the system. I have not
21 inspected the system myself.

22 Q. The report is that EMC has implemented a
23 policy of flushing the fire hydrants in Raintree.
24 That was a departure from an earlier policy, I
25 understand. Was that -- is that your understanding?

1 A. Well, the -- EMC will implement a -- if
2 they have not already -- a fire hydrant flushing
3 policy, a sewer jetting and cleaning policy. On our
4 standard maintenance and operations program, it's
5 just a cycle that you develop so that you flush all
6 those water lines and jet all the sewer lines on an
7 ongoing basis. So we are in the preliminary stages
8 of implementing all of those.

9 Q. On that issue, the report was that since
10 this was a looped system, that flushing the fire
11 hydrants was not necessarily required. Is that a --
12 why would EMC be flushing fire hydrants, then? Do
13 you know why?

14 A. I do not -- I don't know how much of the
15 system is looped and not looped personally. There's
16 also valve exercising that's associated with that
17 too, so that even though you may not be flushing, you
18 still have to exercise the equipment to make sure
19 it's in working and proper order.

20 Q. Capacity of the water storage tank,
21 let's confirm. Your design, the preliminary design
22 calls for a storage tank of 200,000 gallons?

23 A. That's correct, that's correct.

24 MR. COMLEY: I think that's all the
25 questions I have.

1 JUDGE STEARLEY: All right. Thank you,
2 Mr. Comley. Cross-examination, DNR?

3 MR. SCHMID: Yes, briefly.

4 CROSS-EXAMINATION BY MR. SCHMID:

5 Q. Mr. Thomas, are you aware of alleged
6 violations of state and federal laws currently
7 existing at the current treatment facility?

8 A. I'm aware of -- that there are some
9 alleged but I don't know in detail what they are.

10 Q. Okay. Pursuant to the tri-party
11 agreement in Exhibit 2, who's responsible for any
12 penalties for the alleged violations that are
13 currently existing?

14 A. Not EMC.

15 Q. Okay. So will EMC be indemnified by
16 Central Jefferson County Utilities should any
17 penalties be assessed from either DNR or the EPA?

18 A. I believe that's the case, yes.

19 Q. Okay. Is EMC interested in operating
20 the assets to be transferred if there is no
21 compliance agreement with the Department of Natural
22 Resources?

23 A. No.

24 Q. Okay. So just so I'm clear, should
25 there be no compliance agreement, you want nothing to

1 do with these assets?

2 A. That's correct. We are highly motivated
3 to complete that compliance agreement.

4 Q. And I want to touch on briefly some
5 topics that Mr. Comley had discussed regarding
6 upgrades to the wastewater treatment facility. After
7 the upgrades are complete, did you state that you
8 believe that 1,600 homes will be adequately serviced
9 by the new expansion?

10 A. Just based on those rules of thumb that
11 I utilized, which you could argue may or may not be
12 correct, but...

13 Q. And this goes through -- Exhibit 4 went
14 through 2015. I assume you believe that there'll be
15 further expansion beyond that date?

16 A. I would hope.

17 Q. Okay.

18 A. Yeah, I would certainly hope, but...

19 Q. Will -- is it your understanding that
20 the completed expansion of the wastewater treatment
21 facility will adequately meet the services -- the
22 service demands in Raintree Subdivision after the
23 moratorium is lifted?

24 A. I believe -- that is my understanding,
25 yes, that is my belief.

1 Q. Okay. Are there any plans for future
2 expansion beyond this current expansion to get the
3 1,600?

4 A. Not -- not at this time but certainly
5 our discussions with Jefferson County contemplate
6 that that planning -- that planning needs to be done.

7 Q. Okay.

8 A. And I think that draft proposal we
9 provided illustrates that, you know, that the idea is
10 out there that needs to be planned for.

11 Q. Assuming that a further upgrade to the
12 facilities are required, how will those be financed?

13 A. It will have to be determined at that
14 time, but at least, again, through contemplating that
15 they ought to be largely, in part, financed by -- by
16 a reserve fund.

17 Q. Okay. So --

18 A. But that's just -- that's really not
19 EMC's affair. It's more an affair of the sewer
20 district.

21 Q. But it's your understanding that the
22 capital reserve funds that is referenced throughout
23 Exhibit 4 is to possibly expand the wastewater
24 treatment facility as well as the drinking water
25 facilities in the future?

1 A. I'd certainly say that's an option for
2 it and that's probably more -- that's probably better
3 addressed by Mr. Toma.

4 Q. Okay. In looking at Exhibit 4 -- and
5 you will have to forgive my ignorance -- can you
6 explain the tap-on fee of \$1,500? Walk us through,
7 what are the residents paying for? What is this fee
8 for?

9 A. Well, I think we got into this earlier
10 when I was asked what portion of these fees is
11 directed toward what part of the cost, and my answer
12 at that time, it's really an aggregate.

13 If you set a flat sewer fee, if you set
14 a tap-on fee, if you set a water fee, you come up
15 with an aggregate revenue. And the balance was to
16 try to keep all of those three reasonable, but
17 generate the adequate revenue to provide monies for
18 the -- for the operations -- ongoing operations and
19 maintenance cost and the debt service.

20 Q. And I understand that, but are these for
21 physical improvements, is this to pay off debt, is
22 this --

23 A. No one component -- you cannot separate
24 the sewer, separate from the water, separate from the
25 tap-on fee and say that is for capital, that is for

1 operation expense. It's really an aggregate.

2 Q. Is part of that the aggregate of the
3 tap-on fee the construction of new sewer and water
4 lines to lots that currently have no development on
5 them?

6 A. No.

7 Q. So this fee does not contemplate the
8 laying of -- basically the laying of the physical
9 pipes in the ground?

10 A. I think there's -- as was made -- the
11 point that was made in one of the opening remarks is
12 there's approximately like 400 homes that are not
13 served, and there's a separate mechanism for that
14 that's outside the EMC agreement.

15 Q. That's my understanding, that there are
16 about 400 homes, but if we currently have 681 homes
17 and we're talking about 400 homes, would you expect
18 the build-out of 1,331, what happens to those
19 additional, let's say, 331 homes?

20 A. Let me make sure I understand your
21 question. Currently, of the home -- of the lots that
22 are there, not including the 400, there are sewer
23 lines that they have access to. There are -- there's
24 approximately 400.

25 Outside of the agreement with EMC, there

1 is -- and I think when future witnesses are called
2 upon, the -- the mechanism to get the fund -- the
3 additional run-in of those lines to those homes is
4 separate outside of this.

5 Q. Okay. So is it -- again, you'll have to
6 explain this to me. There are currently lines to the
7 681 homes, obviously, and you're saying the
8 AquaSource will take care of running lines to 400
9 additional homes on top of that?

10 A. That's correct, that's my understanding.

11 Q. Okay.

12 A. Yes.

13 Q. All right. Should there be any other
14 connections beyond those numbers? Are you saying
15 that there are already sewer lines -- sewer and water
16 lines out there or that someone else will take care
17 of that?

18 A. Yeah, starting at home 682, assuming
19 there's 681, the line is already laid in front of
20 that home.

21 Q. Uh-huh.

22 A. And the homeowner, when they build, will
23 lay the small service line, and then the connection
24 will be made.

25 Q. Okay.

1 A. Does that answer --

2 Q. Well, that answers for the homes that
3 are existing.

4 A. Yes.

5 Q. And then you had mentioned the
6 AquaSource agreement where there are going to be --
7 AquaSource will, I guess, put in the physical
8 improvements for 400 more lots, correct?

9 A. Only my understanding of that and I do
10 not have a detailed understanding of that.

11 Q. EMC -- okay. Will EMC take care of laying
12 any of the water or sewer pipes in the subdivision?

13 A. Well, I think the only pipes that -- the
14 new -- I think the only new service that needed to be
15 laid is to this approximately 400 homes. It is not
16 EMC's -- it is not within EMC's scope to lay any of
17 that pipe. In terms of any existing pipe that may
18 need -- you know, parts of it that may need to be
19 removed and replaced, that is within our scope.

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

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

25 MS. BAKER: Thank you.

1 CROSS-EXAMINATION BY MS. BAKER:

2 Q. In your agreement that you have right
3 now working with Central Jefferson there at Raintree,
4 have you become aware that some of the residents have
5 been having to clean out their own sewers?

6 A. I have -- people have mentioned that to
7 me, although I have not verified that.

8 Q. Has EMC begun a program of cleaning out
9 the --

10 A. Yes, we have.

11 Q. -- sewers themselves? How many have you
12 completed?

13 A. I don't know the answer to that. I was
14 having a discussion with one of the residents
15 earlier, but it's only anecdotal, I suppose. But
16 we're -- I don't know the answer to that question.

17 Q. Not even --

18 A. Several.

19 Q. Not even on a percentage basis?

20 A. I would be just -- I haven't verified it
21 myself, so I'm reluctant to say.

22 Q. And you are aware of the excess lead in
23 well No. 1?

24 A. Yes.

25 Q. What is EMC doing at this time to deal

1 with the excess lead in well No. 1?

2 A. In terms of engineering or
3 construction-related efforts, nothing. We won't do
4 anything until there's an agreement. In terms -- and
5 currently, because of the time of the year, the water
6 consumption is such that you don't -- it's really --
7 it's not an issue because we are not drawing from
8 that well.

9 When there comes a period of time, and
10 hopefully they'll be in agreement and, you know,
11 we'll be able to deal with it by then or a transfer,
12 but assuming we reach production months that require
13 that well to be turned on, then the blending will
14 occur of the waters -- from the two wells to keep the
15 lead levels below -- or within safe drinking levels.

16 Q. Okay. What percentage of your costs
17 that you are incurring now are going to be recouped
18 after the tri-party agreement and the transfer goes
19 into effect?

20 A. So of the -- of the costs that we
21 have -- that we're incurring now --

22 Q. Yes.

23 A. -- as I mentioned earlier that we're not
24 in a profit situation, you're asking me how much of
25 that will be recouped later?

1 Q. Yes.

2 A. None.

3 Q. None? So if you --

4 A. I mean, there's no mechanism in the
5 proposed agreement to go back and recoup any of that,
6 no.

7 Q. So if you buy a container of chemicals
8 that's not used until after the transfer goes into
9 effect, that will not be recouped through the new
10 agreement?

11 A. So in the instance of a container of
12 chemicals, our manager currently is doing the
13 ordering and when the bills come in, our manager's
14 approving that bill for payment. So we have direct
15 control of all that and that's -- but to answer your
16 question, no, we don't have a mechanism to -- you
17 know, should this end tomorrow and we part ways,
18 there's no mechanism to recoup the cost of that.

19 Q. There's no mechanism if you are in the
20 middle of a project and you complete the project
21 later that a portion of that cost will be attached to
22 the new --

23 A. Under this interim agreement, there are
24 not -- we are not anticipating any projects that we
25 would be involved in, and if there were any projects,

1 those would be at the cost of Central Jefferson.

2 Q. I'd like you to go to the -- to the
3 tri-party agreement, and I want you to look at
4 page 2, Section 2.1 C of the tri-party agreement.
5 And what I'd like you to do is to read that out loud,
6 2.1 C on page 2.

7 A. All right. "Sewer district shall enter
8 into a long-term operation maintenance and capital
9 improvement agreement with EMC" in parentheses, "the
10 O&M agreement, pursuant to which Empire District
11 Electric Company shall operate and maintain the
12 facility and perform certain capital improvements
13 thereto as more fully described on Exhibit D attached
14 hereto, not to exceed an amount equal to \$1,800,000,
15 less the amount of seller debt paid by EMC. Pursuant
16 to Section 2.1 B and Y, sewer district shall grant
17 EMC a security interest in the accounts receivable
18 owed to sewer district by customers of the facility
19 and in the proceeds thereof."

20 Q. Okay. So looking at this, this
21 agreement, what you have is EMC being required to put
22 in 1.8 million, minus the amount of seller debt.
23 What is that seller debt exactly?

24 A. I -- it's for an existing water storage
25 tower that's onsite.

1 Q. How much is that seller debt?

2 A. It's in the -- it's approximately
3 \$100,000. I do not know the exact sum.

4 Q. Okay. So the amount that EMC will
5 not -- is not to exceed, basically, for the capital
6 improvements, 1.7 million?

7 A. That's correct.

8 Q. Do you see anywhere in there that gives
9 a minimum amount --

10 A. No.

11 Q. -- of what EMC is required to get? But
12 EMC will be given the security interest in the
13 accounts receivable no matter what the minimum is?

14 A. And keep in mind there are also, you
15 know, there is also a compliance agreement where the
16 minimum obligations --

17 Q. But the compliance agreement is not
18 signed, correct?

19 A. That is correct.

20 Q. So --

21 A. The --

22 Q. -- the document that is before us that
23 is in finalized form is this one, and it says that
24 you will get a security interest no matter what the
25 minimum?

1 A. But I do believe there's several
2 contingencies in this agreement, one of which -- I
3 don't think the compliance agreement is mentioned in
4 here but an O&M agreement is mentioned in here as a
5 contingency, and the O&M -- in that O&M agreement
6 there is a contingency that this compliance agreement
7 must be met.

8 Q. But the compliance agreement is not
9 finalized?

10 A. Correct, that is correct.

11 Q. Of the \$1.7 million, how much of it will
12 be actual physical equipment?

13 A. I can't assign a direct dollar to it,
14 but, you know, I'll say probably in the -- I'll say
15 in the 90 percent level area -- region.

16 Q. 90 percent?

17 A. Yeah.

18 Q. And that --

19 A. Most, you know, by far.

20 Q. And --

21 A. And that is an estimate, right?

22 Q. If you say so.

23 A. Yeah.

24 Q. Okay. So it could be higher, could be
25 lower?

1 A. (Nodded head.) Yeah.

2 Q. Okay. Are there any time frames within
3 the tri-party agreement that EMC must meet?

4 A. I'd have to refresh the -- my memory. I
5 mean, there's some titling and some inspection and
6 some things like that. There probably is but I can't
7 tell you line for line what they are.

8 Q. Okay. All right. Read for me
9 Section D, 2.1 D, please.

10 A. Okay. 2.1 D?

11 Q. Yes, also on page 2.

12 A. I skipped ahead. "Sewer district will
13 approve an increase in the rates charged to customers
14 of the facility in the amount that the sewer district
15 and EMC agree will be sufficient to compensate EMC
16 for, i, repayment of the seller debt, ii, the
17 operation and maintenance services performed by EMC
18 pursuant to the O&M agreement, iii, repayment of the
19 cost incurred in respect of the capital improvements
20 made by EMC to the facility pursuant to the O&M
21 agreement, and item iv, the costs incurred by EMC in
22 connection with entering into the transactions
23 contemplated by this agreement and the O&M
24 agreement."

25 Q. So according to that, the rates will

1 increase?

2 A. Yes. From where they are today.

3 Q. From where they are today they will
4 increase?

5 A. (Nodded head.)

6 Q. Even before there's been any amount of
7 money that has been paid by EMC?

8 A. That is an assumption, I believe, on
9 your part, that I don't agree with.

10 Q. Okay.

11 A. I think from the onset of the -- of the
12 transfer, that monies will be spent, you know,
13 beginning very soon. I mean, I can't say day one,
14 but all the engineering and equipment purchase and
15 all those things need to begin in short order.

16 Q. But the document does allow for an
17 increase on day one?

18 A. After the transfer, yes.

19 Q. And you will not be adding any costs
20 from before the transfer, you said earlier?

21 A. No, that's correct.

22 Q. So on day one you're saying you probably
23 won't have costs?

24 A. I'm saying that right now we are ready
25 to begin hiring engineers and beginning with this

1 project. Also, as I mentioned today, we are not in a
2 profit situation. So we -- day one, at least we
3 would be able to recoup costs and be in a -- a nonlosing
4 situation to address the needs of that system right
5 now.

6 Q. So in other words, the rates can
7 increase on day one after the transfer?

8 A. I certainly believe the -- you know, I
9 hope so, I hope they do, yes. They need to for --
10 well, they need to.

11 Q. Will EMC be the party who is collecting
12 payments from the customers?

13 A. Yes, that's part of our scope,
14 collection and billing.

15 Q. Okay. We had mentioned the other 400
16 homes and an agreement with AquaSource which I know
17 will come out later.

18 A. Uh-huh.

19 Q. But a part of that agreement is that
20 AquaSource will be paid or will get \$1,100. Will you
21 be collecting the \$1,100 that will be given to
22 AquaSource?

23 A. Whatever rates the sewer district sets
24 we will be collecting. If that is part of that, then
25 by nature of that, we will be collecting.

1 Q. So if the -- if the sewer district comes
2 to you and says there's also an \$800 or \$500 fee to
3 be collected for Raintree Plantation, Inc., that
4 would be your duty to collect it?

5 A. It's part of our scope with the sewer
6 district to collect the rates that they establish.

7 Q. If a person refuses to pay the \$1,100 or
8 the 800, 500, whatever the sewer district tells you
9 to collect, will their service be disconnected?

10 A. We are authorized -- according to the
11 agreement, we will be authorized to do that.

12 Q. If they refuse to pay the tap-on or
13 connection fees, will they be denied connection?

14 A. I assume -- I'm trying -- my hesitation
15 is wondering whether or not that is within EMC's
16 agreement or not since we don't actually -- we won't
17 actually be performing the connections ourselves.
18 But we will -- as the contractor for the sewer
19 district, we will carry out their wishes in something
20 like that.

21 So if EMC has a part in it as a
22 contractor for the district, if we're authorized not
23 to -- if we're instructed not to allow it, we will
24 not allow it.

25 Q. Who will be performing the

1 disconnections?

2 A. As far as the -- you know, when you say
3 disconnection, I refer to it commonly as a shut-off,
4 and EMC will be performing shut-offs as part of our
5 scope.

6 Q. There was mention earlier of a previous
7 DNR permit that was obtained by Central Jefferson --

8 A. Uh-huh.

9 Q. -- and you said that you would be
10 following that basic permit in your upgrades?

11 A. That's the basis of the design, yes.

12 Q. What changes to that permit have you
13 made?

14 A. We have not made any.

15 Q. So what do you mean when you say as the
16 basic design?

17 A. As the basis of the design -- well, it's
18 not -- I indicated earlier that this is not the final
19 design, it's the basis for the parameters of the
20 wastewater treatment plant. Then, as your design
21 proceeds from more of a preliminary design to a final
22 design, you get more into details of orientation of
23 equipment, a brand of equipment, things of that
24 nature. So the design as it exists today is not
25 complete.

1 Q. So it will most likely not be the exact
2 design that was permitted?

3 A. That -- I don't know that that's an
4 accurate way to say it, because the way I described
5 it, it -- you know, there's nothing exact about
6 what's there. It's just the beginning that's there.
7 You have to finish the design. It's only -- it's
8 only at a very preliminary stage. I'm saying -- when
9 we say the basis, we will complete -- we will
10 complete the design.

11 Q. Okay. So let me see if I understand
12 this. You will take the DNR permit that was issued,
13 you will give it to engineers and they will come up
14 with their own plan?

15 A. There was a design, a preliminary design
16 that was submitted to the Department of Natural
17 Resources. Based on that design, a construction
18 permit was granted saying, yes, based on what you
19 have shown us, we agree that this will meet the
20 needs. Then we will take that preliminary design and
21 continue with it through its final stages and
22 construct the facility.

23 Q. What is the normal time frame for
24 getting -- or what is the normal -- what is the time
25 frame that you are expecting it to take to get the

1 DNR construction permit for the capital improvements?

2 A. I'm gonna refer to the compliance
3 agreement. I guess it's not specifically addressed
4 in here, and maybe you want to ask Michael too. I'll
5 say that the DNR -- I think the Department of Natural
6 Resources, as a guideline, says that they are not
7 bound to issue a permit any sooner than 180 days; is
8 that correct? Do you know that?

9 Q. Let's wait for the DNR witness to
10 answer.

11 A. Then let me say this: I cannot recall,
12 but actually the Department of Natural Resources has
13 a specified period that says once you submit your
14 application, they will give you a design in X number
15 of days. It's something like 90 or 180. I can't
16 recall.

17 Q. So what is a number of months --

18 A. It's a number of --

19 Q. -- that you're quoting?

20 A. Unless the DNR does a fantastic
21 turnaround and expedites it. I cannot predict.

22 Q. Okay. So what is EMC's expected time
23 for completing the capital improvements?

24 A. Our expected time? I think if you -- if
25 you base off of this, I would hope that we could

1 complete it in a period, I think I said earlier, of a
2 year and half. But there's a lot of steps and
3 approvals that we don't necessarily have control
4 over.

5 Q. So we've talked about the compliance
6 agreement with DNR. Who else has been a part of
7 those negotiations with yourself and DNR on the
8 compliance agreement?

9 A. It has been EMC, Jefferson County Public
10 Sewer District, Missouri Department of Natural
11 Resources and the Federal EPA.

12 Q. When are you expecting to sign the
13 compliance agreement?

14 A. I would have thought we would have had
15 it signed by now, but I'm waiting on a final
16 confirmation of -- from the DNR, and after that I
17 think we could -- after that confirmation, providing
18 that it's what we agree on, that could be done within
19 a matter of a couple weeks.

20 Q. You've already mentioned the deadline in
21 the compliance agreement. What are the monetary
22 penalties that are in the compliance agreement?

23 A. On page 6 of 12, I'll just read this
24 directly, "The department and the United States EPA
25 are entitled to seek \$10,000 and \$32,000,

1 respectively, per day per violation of the Clean
2 Water Act, but instead of these, have chosen in this
3 case to assess stipulated penalties for each day that
4 EMC and Jefferson County Public Sewer District fails
5 to meet any deadlines set forth in the compliance
6 schedule.

7 "EMC and Jefferson County Public Sewer
8 District agrees collectively to pay the following
9 stipulated amounts according to the following
10 schedule: A, \$250 per day for the first one through
11 30 days, \$500 per day for 30 to 90 days, and \$1,000
12 per day after 90 days." And I was looking to see --
13 that's it.

14 Q. Those penalties are based on missing
15 deadlines within the compliance agreement, correct?

16 A. That's correct.

17 Q. Is there anything within the compliance
18 agreement about penalties for previous violations
19 with Department of Natural Resources?

20 A. No.

21 Q. So EMC is not accepting any
22 responsibility for paying previous violations?

23 A. That is correct.

24 Q. There is an item in an agreement between
25 the sewer district and Raintree Plantation, Inc.

1 which I had mentioned earlier about collecting money
2 for Raintree Plantation, Inc. Even if a portion of
3 that money was to pay for the violations, previous
4 violations, if you were told by the sewer district to
5 collect those as rates and fees, you would be bound
6 to do so, correct?

7 A. That's correct.

8 Q. Okay. I'm gonna give you a document
9 that I know is a draft but if anyone has any
10 objections to answering in -- this -- this is an
11 ongoing...

12 A. Thank you.

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

14 A. It's the operation, maintenance and
15 capital improvement agreement draft between EMC and
16 the Jefferson County Public Sewer District.

17 Q. Have you seen this document before?

18 A. I have.

19 Q. Okay. Are you familiar with the draft
20 that's before you?

21 A. Yes. This is not the most up-to-date
22 draft.

23 Q. Okay. I'm gonna have you read a section
24 of it, and if it has changed dramatically from that,
25 would you enter into this -- a newer agreement for

1 the parties to look at?

2 A. I don't have that with me, but if
3 someone else has it, I would not be opposed to it.

4 MS. BAKER: This was the newest one that
5 came from the data request that we had. Okay. I
6 want to go ahead and enter this as an exhibit.

7 JUDGE STEARLEY: Let's go ahead and get
8 that marked.

9 (EXHIBIT NO. 5 WAS MARKED FOR
10 IDENTIFICATION BY THE COURT REPORTER.)

11 JUDGE STEARLEY: And were you going
12 ahead and offering that at this time?

13 MS. BAKER: Yes, please.

14 JUDGE STEARLEY: Are there any
15 objections to the admission of Exhibit No. 5?

16 MR. KRUEGER: No objection.

17 MS. SCHMID: No objection.

18 JUDGE STEARLEY: So No. 5 will be
19 received into evidence.

20 (EXHIBIT NO. 5 WAS RECEIVED INTO
21 EVIDENCE AND MADE A PART OF THE RECORD.)

22 BY MS. BAKER:

23 Q. Okay. What I need for you to do is to
24 go to Exhibit B and it's page B 1. Okay. I want you
25 to read No. 3.

1 A. "The improvement cost allowance shall be
2 reduced by all amounts incurred by EMC in the
3 acquisition of the Raintree utility, including, but
4 not limited to, any amounts paid by EMC at closing of
5 the utility assets acquisition agreement to acquire
6 the Raintree utility and any amounts paid to third
7 parties prior to such closing.

8 "EMC shall be permitted to include a
9 customary and reasonable fee of 10 percent for its
10 costs associated with the design, engineering,
11 project management, procurement, construction
12 management, permitting, insurance, general conditions
13 and any other associated -- any other costs
14 associated with the utility asset improvements."

15 JUDGE STEARLEY: Excuse me, Counsel.
16 What section was that again?

17 MS. BAKER: I'm sorry. It's page B 1,
18 Exhibit B, No. 3. It's in the back like an
19 attachment.

20 JUDGE STEARLEY: Thank you.

21 BY MS. BAKER:

22 Q. So basically, this is a -- this is
23 saying that the improvement cost allowance which is,
24 I'm assuming, the 1.8 million or 1.7 --

25 A. Seven, right. Uh-huh.

1 Q. -- right? Up to that? -- is going to
2 be reduced by all of these costs incurred by EMC?

3 A. That's correct.

4 Q. So again, it will not be 1.7 of actual
5 equipment that goes into the capital upgrades. It
6 will be 1.7 minus all of these things?

7 A. That's correct.

8 Q. And that is just a maximum. It could be
9 less than that, correct?

10 A. Yes, it could be.

11 MS. BAKER: I think that's all the
12 questions that I have.

13 JUDGE STEARLEY: Thank you, Ms. Baker.
14 We'll take questions from the Commissioners beginning
15 with Commissioner Appling.

16 QUESTIONS BY COMMISSIONER APPLING:

17 Q. Mr. Thomas?

18 A. Yes, sir.

19 Q. How are you doing today?

20 A. I'm doing good, thank you.

21 Q. Good. Mr. Comley this morning talked
22 about a long list of things the Association would
23 like to see done before we give approval to this
24 agreement. And you're estimating, I think,
25 \$1.8 million to do the improvement initially to get

1 this going?

2 A. Yes, sir.

3 Q. My question is, is 1.8, is that a good
4 estimate? Is that -- is this what you're going to do
5 with the 1.8 on this front page here, that's where
6 you're gonna spend the money, that's the way you're
7 gonna spend the money?

8 But my first question was, is the \$1.8
9 million, is that a good estimate? It seems a
10 little -- that all the things that I've heard here
11 this morning, 1.8 just doesn't seem to be enough.

12 A. We believe it is a good estimate.

13 Q. Okay. You think it is a good estimate.
14 And this is the way you're proposing to spend it or
15 is there another sheet of paper that lays out what
16 you're gonna do with the 1.8?

17 A. The sheet you have there is how the fees
18 collected from the homeowners would be spent.

19 Q. Okay.

20 A. The only -- the only reference to the
21 1.8 on that sheet is the -- is how it's capitalized
22 or amortized over the period.

23 Q. Okay. That is the capital investment --

24 A. Pardon?

25 Q. -- found in capital investment?

1 A. That's correct.

2 Q. I still have my thoughts about the 1.8.
3 The reason I say that is because in my previous job,
4 I ran all the state office buildings, dealing with a
5 lot of sewage and a lot of water. It gets to be a
6 little expensive at times.

7 But now that I've built my quarter
8 million dollar home and this residence down there,
9 and the plumbing is finished and they're saying that
10 you can turn on the water, this tap-on fee for
11 \$1,000, what do I get for that \$1,000?

12 A. Sir, I cannot speak to the 1,000. I can
13 speak to the --

14 Q. 1,500?

15 CHAIRMAN DAVIS: Judge, at this time I'm
16 gonna request someone who can speak to that \$1,000.
17 I want somebody subpoenaed. I'll sign it. Let's get
18 somebody here and answer that question.

19 JUDGE STEARLEY: Is Mr. Toma going to be
20 able to answer that question?

21 MR. ENGLAND: Mr. Toma is the next
22 witness.

23 JUDGE STEARLEY: So Mr. Toma can speak
24 to it?

25 THE WITNESS: Yes, sir.

1 BY COMMISSIONER APPLING:

2 Q. I'm just curious about it because my
3 house is ready to build. You're telling me I've got
4 to fork up \$1,000, and I have no idea what this
5 \$1,000 is for, and I don't have \$1,000.

6 A. As -- for purposes of this document, EMC
7 places on here as a reference of what could be going
8 to a reserve fund, but we do not have control over
9 anything beyond what's paid to us.

10 Q. Yeah, I'm just saying what is a reserve
11 fund for the water company? You're collecting the
12 fee from me every month which should be billed on a
13 monthly basis for me. But I'm saying I'm gonna put
14 \$1,000 into this, your account, so you can draw
15 interest and everything on it and I don't even know
16 what I'm putting it in there for? Of course, the
17 next guy's gonna clear that up for me, I'm hoping.

18 A. He should. Yes, sir.

19 COMMISSIONER APPLING: Okay. Thank you
20 very much.

21 JUDGE STEARLEY: Chairman Davis?

22 QUESTIONS BY CHAIRMAN DAVIS:

23 Q. All right. Mr. Thomas, have you been
24 out there and inspected this system yourself?

25 A. As I said earlier, I've toured the

1 system. I won't call it a full inspection but I have
2 seen the -- I have seen the system, yes.

3 Q. You've seen it?

4 A. And I --

5 Q. And I'm sorry because I've missed some
6 of your testimony and I know I can read it back in
7 the transcript again, but I'm gonna need you to just
8 briefly go through your -- what is your position
9 again with EMC?

10 A. I am vice-president and general manager
11 of the states of Illinois and Missouri. So...

12 Q. Okay. And are you an engineer by
13 training?

14 A. I am, yes, a civil engineer.

15 Q. You're a civil engineer?

16 A. Uh-huh.

17 Q. So you're qualified to speak on these
18 issues. And is it your testimony here today that
19 this system needs approximately \$1.8 million in
20 upgrades?

21 A. Yes, sir.

22 Q. Okay. As a condition precedent to
23 approving this transaction, would you feel
24 comfortable if this Commission were to limit that
25 amount to \$1.8 million and basically saying any cost

1 overruns over and above that \$1.8 million would have
2 to be borne by EMC or by -- or by the sewer district
3 or whoever else -- yeah, the sewer district?

4 A. I would not because I cannot control,
5 you know, world events that may affect prices of
6 steel, prices of equipment, all those things that may
7 happen.

8 Q. So it could be more than that?

9 A. It could be.

10 Q. Is it possible you could get in there
11 and find problems that you didn't know about?

12 A. It's possible.

13 Q. So there is a risk of substantial cost
14 overruns?

15 A. I -- I suppose there is a -- a risk.
16 Substantial is a relative term.

17 Q. Well, would you care to -- I mean,
18 you're a civil engineer. You've at least visibly --
19 you've visibly looked at the system. Could you
20 quantify that percentage of the likelihood that the
21 costs will exceed \$1.8 million to fix this system?

22 A. I don't -- I don't think I can do that.
23 I think I can say this: The diligence was done by
24 EMC. We have some -- we have some cost estimates
25 that were previously done. We took those cost

1 estimates, our project management people, and we --
2 we revisited the numbers, we updated those, we put
3 some -- some costs to consumer index factors in
4 there, we looked at the scope of the project to the
5 point where we are comfortable with that number.

6 Q. And you've probably already given this
7 testimony, but will you refresh for my recollection
8 why -- why do these upgrades need to be made again?

9 A. At the wastewater treatment facility,
10 it's currently undersized to meet the capacity of the
11 homes that exist there today. So the capacity must
12 be increased at the wastewater treatment facility.

13 On the water side of things, there is
14 inadequate storage and well capacity to meet peak
15 demand there now, or at least based on the guidelines
16 of the state, inadequate storage exists to meet the
17 guidelines of the State, and then there is a lead
18 issue with one of the wells.

19 Q. And these improvements need to be made
20 expeditiously?

21 A. Yes, sir.

22 Q. Right now?

23 A. Like yesterday.

24 Q. Like yesterday. So it's fair to say,
25 then, that these people have not been receiving

1 question that was asked and you can offer anything
2 you want to on redirect, Mr. England.

3 THE WITNESS: The driver -- you asked me
4 the drivers of the -- of the -- drivers for this
5 investment. The plant is undersized so it's -- the
6 environment is being harmed. The consumer isn't
7 necessarily being harmed because the plant is
8 undersized, the environment is being harmed.

9 I talked about -- with water about
10 guidelines for the State. At no time that I'm
11 knowledgeable of last summer when we became involved
12 were people not able to get adequate water when they
13 wanted it. But it's -- so I can't say that their
14 service was impaired, but the State guidelines in
15 terms of that storage is not being met.

16 Never were the lead levels violated in
17 the water because the blending was able to occur to
18 make that happen. So you asked the question about
19 have people not received adequate service. The
20 driver issues of the investment I talked about are
21 environmental and State guidelines in terms of
22 storage. I did not comment on the impact of the
23 service that the people received.

24 BY CHAIRMAN DAVIS:

25 Q. Okay. So let me paraphrase at least a

1 piece of what I heard there. You tell me if I've got
2 it right. So if what I heard you saying was correct,
3 then, the environment was being harmed but the
4 customers weren't being harmed?

5 A. As far as the upgrades at the wastewater
6 treatment facility that are required, when a customer
7 without -- by way of example, when a customer flushes
8 their toilet and it leaves their home, they have not
9 seen any -- they have not been -- their service has
10 not been impacted. However, where it goes and what
11 happens to the environment is another issue.

12 CHAIRMAN DAVIS: Okay. Judge, will we
13 have to go in-camera?

14 JUDGE STEARLEY: Yes, if you're going to
15 ask questions about that.

16 BY CHAIRMAN DAVIS:

17 Q. If I'm gonna ask questions about that
18 particular document. All right. Now, who's -- who's
19 writing the check to EMC? Who's paying you right
20 now?

21 A. Oh, currently?

22 Q. Yes.

23 A. Central Jefferson County Utilities.

24 Q. Central Jefferson County Utilities?

25 Okay. And who is your -- who is your contact person

1 for Central Jefferson County Utilities?

2 A. Dana Hockensmith.

3 COMMISSIONER DAVIS: Dana Hockensmith.

4 Judge, I don't have any further questions at this
5 time. Is this the witness that has to leave by three
6 o'clock today?

7 JUDGE STEARLEY: That's correct.

8 CHAIRMAN DAVIS: I may want him back at
9 some later time. I need to have time to look at some
10 of these documents.

11 JUDGE STEARLEY: Later today?

12 CHAIRMAN DAVIS: Tomorrow or whenever.

13 JUDGE STEARLEY: Do you have any
14 availability in terms of tomorrow?

15 THE WITNESS: I'll do what I need to do.

16 JUDGE STEARLEY: Are you finished,
17 Chairman Davis?

18 CHAIRMAN DAVIS: Yes, I'm finished.

19 JUDGE STEARLEY: Commissioner Appling?

20 COMMISSIONER APPLING: Two short
21 questions.

22 QUESTIONS BY COMMISSIONER APPLING:

23 Q. How long do you plan to operate this
24 system under your plan? Is that 20 years?

25 A. Yes, sir.

1 Q. Are you planning to recoup -- are you
2 gonna recoup the \$1.8 million during that period?

3 A. Eight million?

4 Q. \$1.8 million. At least you're hoping
5 to?

6 A. We're hoping to, right, and part of that
7 is based on development which is in the Exhibit 4
8 that you have. The very last page gives a build-out
9 of homes that we're anticipating that will aid to
10 offset that investment.

11 Q. Okay. My last question to you,
12 Mr. Thomas, is if this plan is approved and you start
13 whatever you're gonna do to develop that, phase one
14 through ten or whatever it is, how long is it gonna
15 take for the Association or the homeowners in the
16 Association to start recognizing some improvements
17 for what's taking place?

18 A. I am. I believe and it has been
19 reported to me that they're recognizing some
20 improvement today with our operation.

21 COMMISSIONER APPLING: Okay. Thanks,
22 Judge. That's all the questions I have.

23 JUDGE STEARLEY: Mr. Chairman?

24 CHAIRMAN DAVIS: Commissioner Appling, I
25 would point out that I believe there is testimony in

1 the record from the local public hearing that says
2 that the quality of service since EMC has started
3 managing the property is improved exponentially.

4 COMMISSIONER APPLING: Thank you.

5 THE WITNESS: Thank you.

6 CHAIRMAN DAVIS: I believe I read that
7 in a transcript.

8 QUESTIONS BY CHAIRMAN DAVIS:

9 Q. If Raintree Properties -- well, first of
10 all, are you familiar with the term "Kayak
11 contribution in aid of construction"?

12 A. I am not.

13 Q. You're not. But you understand the
14 concept that if someone were to put money into the
15 project, the \$1.8 million, I guess, proposal, that
16 would lower the cost -- that would lower your
17 \$1.8 million cost; that's projected that that would
18 lessen some of the rate shock to the customers?

19 A. That certainly sounds reasonable. I
20 have not been -- this is the first I've heard of any
21 discussion about that.

22 Q. Okay. So are you concerned about rate
23 shock for these customers at all?

24 A. I can only put myself in their position
25 as a homeowner and would I be happy if my rates

1 increased? No, but I would have to balance that with
2 understanding what I'm getting for it.

3 Q. Have you personally talked to any of
4 these homeowners?

5 A. Yes, a few who have attended -- either
6 here today or who have attended a board meeting.

7 Q. Can you give me your mental impression
8 summarizing those conversations? What's the mood of
9 the community?

10 A. Strictly my mental impression, correct?
11 I think that the residents are ready for a change. I
12 think that they'd like to see an outcome where EMC is
13 gonna be involved to provide that, and -- but they
14 want that level of service. That's the mood that I
15 have gotten. I have not -- I have not had any direct
16 discussions regarding rates and no one has brought
17 that to my --

18 Q. So you don't know anything about rate
19 design?

20 A. No, no. With residents, as far as --

21 Q. With residents?

22 A. -- in the discussions I've had, the
23 discussions have been provided around, yes, we're
24 ready for a change and yes, we want -- we're looking
25 forward to this, but no one has brought it to my

1 attention, "but those doggone," you know, "rates."

2 Q. So you've never had any discussions with
3 any of the homeowners about what the rates might be?

4 A. I have not, no.

5 Q. Okay. Now, looks like the -- is this
6 your --

7 A. Yes.

8 Q. Okay. The estimated monthly household
9 water and sewer charge is --

10 CHAIRMAN DAVIS: This isn't an HC
11 document, is it, Judge?

12 JUDGE STEARLEY: No.

13 BY CHAIRMAN DAVIS:

14 Q. -- would be \$68.50 based on an average
15 of 5,000 gallons per home per month?

16 A. Yes.

17 Q. Is that a fair statement?

18 A. Yes.

19 Q. So as a condition precedent to this deal
20 being approved, if this Commission would require
21 Central Jefferson Utilities to pay half of the
22 \$1.8 million in upgrades needed, do you think that
23 would be a benefit to those customers?

24 A. If half of the investment was required,
25 we would not need to charge as much, so we would not

1 charge as much, therefore, to the Jefferson County
2 Public Sewer District. So I can only assume, then,
3 they would charge less to their residents.

4 Q. Uh-huh. So it would be a benefit,
5 correct?

6 A. Based on what I just said, I'd say yes,
7 yeah.

8 CHAIRMAN DAVIS: Okay. No further
9 questions at this time, Judge.

10 JUDGE STEARLEY: Okay. I have just a
11 couple quick questions for clarity.

12 QUESTIONS BY JUDGE STEARLEY:

13 Q. We've had a lot of talk about different
14 numbers --

15 A. Yes.

16 Q. -- here today, and on your projections
17 in terms of the number of homes you'd be able to
18 accommodate, if I'm following you correctly, you're
19 looking at a total capacity of 1,600?

20 A. Approximately, yes, your Honor.

21 Q. Approximately by December of 2015?

22 A. That's, you know, EMC's anticipation. I
23 don't -- we don't have any way to accurately predict
24 that.

25 Q. And then there was some mention, though,

1 in terms of infrastructure about lines run by

2 AquaSource --

3 A. Yes, sir. Yes, your Honor.

4 Q. -- to 400 homes?

5 A. Yes, your Honor.

6 Q. And is that infrastructure in place now
7 for 400 additional homes or is that servicing current
8 homes?

9 A. Currently -- and I'll use round numbers.
10 Of the approximately 3,000 lots of which 681 have
11 homes on it, there are 400 lots that need lines laid
12 to them to be able to provide them service. That's
13 what the AquaSource agreement addresses.

14 Q. And you mentioned that \$1,100 connection
15 fee. In the reserve fund that you have here, who's
16 holding those monies? If EMC has the 1,500, who's
17 holding the 1,000 reserve?

18 A. In the event of a reserve fund, the
19 district, the sewer district will hold those funds.

20 Q. The district. And one final question:
21 You are familiar with the tri-party agreement?

22 A. Yes, sir. Yes, your Honor.

23 Q. I'm looking at paragraph 5.4 in
24 Article 5, "PSC approval contingency."

25 A. Let me find it. Yes, sir. Yes, your

1 Honor.

2 Q. And it states that there's approximately
3 a 180-day period following the effective date of this
4 agreement whereby which if PSC has not granted
5 approval for the transfer, EMC will no longer have
6 any obligation to follow through on this agreement;
7 is that correct?

8 A. Yes, your Honor.

9 Q. And if I'm calculating correctly, this
10 agreement was executed July 13th, 180 days would be
11 January 9th, 2007. So my question to you is, if PSC
12 takes a longer period of time to make its decision on
13 this transfer, how is EMC going to stand in terms of
14 this?

15 A. We understand -- EMC currently
16 understands that the decision is in a February time
17 frame, is what we're anticipating from -- whether or
18 not the transfer will be approved or not. So
19 mentally we're prepared for that. I did mention that
20 we're not in a profit situation, so our, you know --
21 we're not in a situation we want to be in.

22 And then, of course, there is the
23 agreement that we have with Central Jefferson and I
24 can't remember the terms, but the agreement we have
25 as far as the interim operating agreement is even

1 separate from that tri-party, and there's some number
2 of days of notice that we would give before we'd exit
3 that agreement.

4 So I guess it's a possibility that if we
5 were to be in a loss situation bad enough, we could
6 exercise that option to get out of there. But we
7 are -- we want to stay with it, so that we can be
8 part -- we can be in place when the transfer takes
9 place.

10 Q. Are you saying it would be harder for
11 you to stay past February?

12 A. It would be, yes, sir. Yes, your Honor.

13 JUDGE STEARLEY: Are there any other
14 questions for recross based upon questions from the
15 Commissioner?

16 MR. KRUEGER: Yes, your Honor.

17 RE CROSS-EXAMINATION BY MR. KRUEGER:

18 Q. Mr. Thomas, I think you testified
19 there's about 3,000 lots in Raintree Plantation
20 Subdivision?

21 A. (Nodded head.)

22 Q. Correct?

23 A. Yes, sir.

24 Q. And about 400 of those lots do not have
25 sewer mains in front of them; is that correct?

1 A. That is my understanding, yes.

2 Q. So there are 26 -- approximately 2,600
3 that do have mains in front of them?

4 A. Approximately, yes.

5 Q. And 680 houses are connected to the
6 mains; is that correct?

7 A. That is correct.

8 Q. And are there water mains throughout the
9 subdivision?

10 A. I believe there are.

11 Q. Okay. Does the \$1.8 million investment
12 that EMC will make, will that include any
13 improvements to the water distribution system or to
14 the sewer collection system that may be identified as
15 needed?

16 A. No. The 1.8 does not directly address
17 improvements to the distribution system. Those are
18 addressed more through the -- through our operation
19 maintenance portion where there's, you know,
20 maintenance and repair funds utilized for that.

21 Q. So that 1.8 million would be strictly
22 for improvements to the wastewater treatment -- or
23 expansion of the wastewater treatment facility and
24 improvements increasing the storage for the water
25 facility and for the lead remediation?

1 A. Yes, sir.

2 Q. Okay. You testified that the lead
3 levels from well No. 1 are above the maximum
4 permitted levels; is that correct?

5 A. I believe so, yes.

6 Q. But that that's controlled by mixing it
7 with water from well No. 2?

8 A. That's correct.

9 Q. What would happen if there was a problem
10 with well No. 2? Is there any provision for how
11 water would be supplied in the event that well No. 2
12 would not have service for some reason?

13 A. Not to my knowledge.

14 Q. Can the rate that EMC would charge of
15 \$37 per month for sewer or that -- that EMC would
16 collect, would that be changed over -- could that be
17 changed over the 20-year period due to increases in
18 labor rates?

19 A. No.

20 Q. Due to increases in just general
21 inflation?

22 A. No.

23 Q. Due to increases in chemical costs?

24 A. No.

25 Q. Or how about changes in treatment

1 standards issued by the Department of Natural
2 Resources?

3 A. Yes.

4 MR. KRUEGER: Thank you. That's all the
5 questions I have.

6 JUDGE STEARLEY: Any other recross? Any
7 further questions from the Commissioners?

8 QUESTIONS BY CHAIRMAN DAVIS:

9 Q. How many homes -- you testified, I
10 believe, on Mr. Krueger's examination that there are
11 680 homes that are actually connected to the sewer
12 system; is that correct?

13 A. That's correct, 681, I think.

14 Q. 681, okay. How many homes are there
15 that are actually constructed that do not have sewer
16 service? How many of those homes are you aware of?

17 A. I am aware of one.

18 Q. You are aware of one?

19 A. (Nodded head.)

20 Q. So for sure you've got one home out
21 there where the utility has an obligation to serve
22 that they are not serving, correct?

23 A. I -- some of your future witnesses will
24 be able to answer it better than I, but I believe
25 that restriction of adding that one was placed by the

1 Department of Natural Resources. But --

2 Q. Adding that one -- adding the one home
3 to the system at 681 or just having one home out
4 there that does not have sewer service?

5 A. Your future witnesses will be able to
6 answer this better, but there was a moratorium placed
7 on adding additional homes by the department, and I
8 believe that one home was not allowed to hook up
9 because of that moratorium.

10 Q. Okay.

11 A. That's my understanding. You --

12 Q. So you're not a lawyer, correct?

13 A. Obviously, right. No, I am not.

14 Q. So I guess it's your opinion that as an
15 engineer, that the obligation to serve was somehow
16 muted by the fact that you had an order from DNR
17 saying that no one else could be hooked up?

18 A. Not that EMC had that order, it would
19 be --

20 Q. Well, the utility?

21 A. That's my understanding.

22 Q. And what about lot owners, are there
23 any -- have you talked to any lot owners?

24 A. I have not directly, but I know that our
25 staff has been approached by lot owners who are eager

1 to begin development once the means are there.

2 Q. Is it fair to say that those people
3 wanted to build earlier? Is that your mental
4 impression, that these people have been wanting to
5 build for some time now but have been prohibited from
6 doing so because there is this order out there from
7 DNR saying you cannot expand any of the capacity on
8 this plant any further?

9 A. You'll have to excuse me, but me not
10 directly having had that discussion, I -- that would
11 only be speculation on my part.

12 Q. Okay. Speculation, but is it your
13 impression that there are people who have been
14 wanting to build homes there for some time?

15 A. Yes.

16 Q. Years?

17 A. I don't -- I'm not -- I have not been
18 involved with this long enough to be able to address
19 that question.

20 Q. How long have you been involved?

21 A. Since last April. We started work --

22 Q. That would be April of 2005?

23 A. Six.

24 Q. 2006?

25 A. Yes.

1 Q. Okay. So is it your -- you know, when
2 you got there in April of 2006, did it become readily
3 apparent to you that there were people who were
4 wanting to construct homes at that time?

5 A. Yes, yes.

6 Q. And before that time?

7 A. Perhaps.

8 CHAIRMAN DAVIS: Okay. No further
9 questions at this time, Judge.

10 JUDGE STEARLEY: Is there any additional
11 recross based upon Chairman's questions?

12 (NO RESPONSE.)

13 JUDGE STEARLEY: All right. I would
14 like to get to redirect but I'd like to ask the
15 parties at this time if you'd all like to break for
16 lunch and come back or would you like to go ahead and
17 try to finish?

18 MR. ENGLAND: May I make a suggestion?
19 It's my understanding that this witness will be
20 coming back tomorrow for some additional questions
21 from the bench which might prompt additional
22 questions from the other parties. May I just reserve
23 my redirect until all of the cross questions from the
24 bench have been asked, and we can release this
25 witness at least for today now and then break for

1 lunch?

2 JUDGE STEARLEY: Okay. Is that okay
3 with you, Mr. Chairman?

4 CHAIRMAN DAVIS: It's acceptable to me.

5 JUDGE STEARLEY: Okay. I think that's
6 acceptable to all of us. So we will go ahead and go
7 off the record and break for lunch. Before we do,
8 let me advise the parties that the hearing that was
9 being held in 310 earlier today is now concluded, so
10 when we come back for lunch we're going to resume in
11 310. We will resume about 2:10.

12 (THE NOON RECESS WAS TAKEN.)

13 JUDGE STEARLEY: All right. Let's go
14 ahead and go back on the record. Mr. England, I know
15 you're prepared to be calling your second witness at
16 this time.

17 MR. ENGLAND: That is correct, your
18 Honor.

19 JUDGE STEARLEY: I just wanted to ask a
20 quick question. We want to try and squeeze
21 Mr. Kolisch in somewhere today so he doesn't have to
22 return tomorrow. Do you think that your next two
23 witnesses, that we will be completed with them today?

24 MR. ENGLAND: I know that the questions
25 that I have for them they will be done today.

1 JUDGE STEARLEY: Okay.

2 MR. ENGLAND: But I can't guarantee it.

3 JUDGE STEARLEY: I hate to interrupt
4 your case-in-chief with your witnesses, but if it
5 looks like we're getting toward the end of the day
6 and we haven't completed with your witnesses, we may
7 try and squeeze Mr. Kolisch in prior to leaving
8 today.

9 MR. ENGLAND: Thank you.

10 JUDGE STEARLEY: I note we are back on
11 the record. We're now in hearing room 310. We
12 started our proceedings in 305 this morning. And
13 Mr. England, you may proceed.

14 MR. ENGLAND: Thank you, your Honor.
15 I'd like to call Mr. Martin Toma to the witness
16 stand.

17 JUDGE STEARLEY: Mr. Toma, will you
18 please state and spell your name for the court
19 reporter?

20 THE WITNESS: It's Martin, M-a-r-t-i-n,
21 Toma, T-o-m-a.

22 JUDGE STEARLEY: Martin, if you'll raise
23 your right hand, please.

24 (The witness was sworn.)

25 JUDGE STEARLEY: Mr. England, you may

1 proceed.

2 MR. ENGLAND: Thank you, your Honor.

3 DIRECT EXAMINATION BY MR. ENGLAND:

4 Q. Would you please state your name for the
5 record, please?

6 A. Martin Toma.

7 Q. And your address, please?

8 A. 9471 EZ Street, Hillsboro, Missouri.

9 Q. Mr. Toma, are you familiar with the
10 Jefferson County Public Sewer District?

11 A. I am.

12 Q. Do you hold any office with that
13 district?

14 A. I am the chairperson.

15 Q. The chair of what group, sir?

16 A. Jefferson County Public Sewer District.

17 Q. Is that a board or a --

18 A. It's the board of trustees.

19 Q. Okay. Thank you. And are you
20 authorized to speak in this proceeding on behalf of
21 the Jefferson County Public Sewer District?

22 A. Yes.

23 Q. Do you have any experience in the water
24 and sewer business, Mr. Toma?

25 A. Yes.

1 Q. Can you please describe that experience?

2 A. I was employed with Essex Contracting,
3 Incorporated, and among my responsibilities were
4 managing the Herculaneum Sewer Company, and the --
5 for a period of time the Central Jefferson County
6 Utility Company.

7 MR. ENGLAND: Okay. Thank you. Your
8 Honor, may I have another exhibit marked, please?

9 JUDGE STEARLEY: Yes, sir.

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

12 JUDGE STEARLEY: You may proceed.

13 MR. ENGLAND: Thank you.

14 BY MR. ENGLAND:

15 Q. Mr. Toma, I've handed you what has been
16 marked for purposes of identification as Exhibit 6;
17 do you have that in front of you?

18 A. Yes, I do.

19 Q. And are you familiar with that document?

20 A. Yes, I am.

21 Q. What is that document, please?

22 A. This is a resolution and order of the
23 Jefferson County Commission in June of 2000 by which
24 the Jefferson County Public Sewer District was
25 established.

1 Q. And is that copy accurate to the best of
2 your knowledge, information and belief?

3 A. Yes.

4 MR. ENGLAND: Thank you. Your Honor,
5 I'd offer Exhibit 6 into evidence at this time,
6 please.

7 JUDGE STEARLEY: All right. Are there
8 any objections to the admission of Exhibit 6?

9 MR. KRUEGER: No objection.

10 JUDGE STEARLEY: Hearing none, it will
11 be received into evidence.

12 (EXHIBIT NO. 6 WAS RECEIVED INTO
13 EVIDENCE AND MADE A PART OF THE RECORD.)
14 BY MR. ENGLAND:

15 Q. Mr. Toma, what body governs the
16 operations of the sewer district?

17 A. There's an appointed board of trustees.

18 Q. How many members of that board?

19 A. There should be five. There's currently
20 one vacancy.

21 Q. And how does a person become a member of
22 the board of trustees?

23 A. The Jefferson County Commission appoints
24 them.

25 Q. And how do the County Commissioners

1 obtain their position?

2 A. Two of the County Commissioners are
3 elected on districts, each representing approximately
4 half of the county, and the presiding County
5 Commissioner is elected at large.

6 Q. And the water and sewer properties that
7 we're talking about today are located within the --
8 this particular county; is that right?

9 A. Yes.

10 Q. And the people that reside there are
11 eligible to vote in the County Commission election?

12 A. People within the district's boundaries,
13 yes.

14 Q. Thank you. Does the district operate
15 under a set of bylaws?

16 A. The district has adopted a set of
17 bylaws.

18 Q. And when was the current set of bylaws
19 adopted, sir?

20 A. We revised the bylaws last month.

21 MR. ENGLAND: Your Honor, if I may have
22 another exhibit marked for purposes of
23 identification?

24 JUDGE STEARLEY: Certainly.

25 (EXHIBIT NO. 7 WAS MARKED FOR

1 IDENTIFICATION BY THE COURT REPORTER.)

2 JUDGE STEARLEY: You may proceed.

3 MR. ENGLAND: Thank you.

4 BY MR. ENGLAND:

5 Q. Mr. Toma, you should have Exhibit No. 7
6 in front of you; is that correct?

7 A. Yes.

8 Q. And do you recognize that document?

9 A. Yes.

10 Q. What is it, please?

11 A. It is the current version of the bylaws
12 for the Jefferson County Public Sewer District.

13 Q. And is that a true and correct copy to
14 the best of your knowledge, information and belief?

15 A. Yes, it is.

16 MR. ENGLAND: Thank you. I'd offer
17 Exhibit 7 into evidence at this time, please.

18 JUDGE STEARLEY: Any objections to the
19 offering of Exhibit 7?

20 MR. KRUEGER: No objection.

21 MS. BAKER: No objection.

22 JUDGE STEARLEY: Hearing none, the
23 exhibit will be received and entered into evidence.

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

1 BY MR. ENGLAND:

2 Q. Mr. Toma, I've handed you what has
3 previously been marked for purposes of identification
4 as Exhibit 2 which is the verified application filed
5 in this case and the supplement and amendment to that
6 application, and ask that you turn to appendix 1
7 which is the tri-party purchase and sale agreement to
8 that exhibit.

9 A. I'm there.

10 Q. Do you recognize that document?

11 A. Yes.

12 Q. What is it, sir?

13 A. It's a -- an agreement among three
14 parties: Jefferson County -- Central Jefferson
15 County Utilities, Incorporated, the Jefferson County
16 Public Sewer District and Environmental Management
17 Corporation relative to the sewer company, the
18 utility company transferring assets to the Jefferson
19 County Public School District and involving EMC for
20 the -- for an expenditure of funds to expand the
21 waste treatment facility, water storage and water
22 distribution system and to obligate them to operate.

23 Q. Okay. And did you execute that
24 agreement on behalf of the sewer district?

25 A. Yes, I did.

1 Q. There was some questioning earlier today
2 regarding the EMC's obligation to make capital
3 investment in the water and sewer properties down
4 there. Were you present for those questions and
5 answers?

6 A. Yes, I was.

7 Q. Let me ask you, what will happen in your
8 mind if needed improvements cost more than the 1.7 or
9 \$1.8 million called for under the agreement?

10 A. We have currently an unexecuted
11 operation and maintenance agreement, a provision of
12 which we've verbally agreed that EMC will first seek
13 the board of trustees' approval for any expenditure
14 in excess of \$1.8 million upon demonstration that
15 such expenditure is necessary to accomplish the
16 original goals of our agreement.

17 Second, to make those expenditures --
18 that expenditure and then to -- the district would
19 adjust the contractual payment to EMC to represent a
20 repayment of the excess capital expenditure above the
21 1.8 on terms that are commensurate with and
22 reasonable relative to the amount spent and the
23 effect that it has on customer rates so that we might
24 pay them back with an extra payment over 20 years.
25 They are to be paid back with no profit, overhead or

1 other margins.

2 Q. Is your answer consistent with the
3 understanding that was expressed earlier by
4 Mr. Thomas?

5 A. Yes, except he left out the part that it
6 requires prior approval of the board of trustees.

7 Q. Fair enough. And I believe that you
8 made reference to an operation and maintenance
9 agreement yet to be executed with -- between the
10 sewer district and EMC; is that correct?

11 A. Yes.

12 Q. I believe a draft of that has been made
13 an exhibit in this proceeding. I believe that's
14 Exhibit 5 and I'll give that to you at this point.
15 Do you have the Exhibit 5 in front of you, Mr. Toma?

16 A. Yes, I do.

17 Q. And is that, to the best of your
18 knowledge, information and belief, an accurate copy
19 of that agreement, at least as it existed as of the
20 date in the top right-hand corner?

21 A. Yes.

22 Q. I understand that it's still being
23 worked on and has not quite been completed?

24 A. Correct.

25 Q. Was Mr. Thomas's description of its

1 status accurate, that he testified to earlier today?

2 A. To the best of my knowledge.

3 Q. Okay. And do you, like Mr. Thomas,
4 expect to have that executed in the very near future?

5 A. Yes.

6 Q. Has the sewer district had the
7 opportunity to participate in discussions with the
8 Department of Natural Resources and the EPA in regard
9 to the future of the Central Jefferson County water
10 and sewer systems being acquired in this transaction?

11 A. Yes.

12 Q. And I believe that's the subject of a
13 compliance agreement that's been discussed in this
14 proceeding; is that your understanding?

15 A. That's correct.

16 Q. And is it also your understanding that
17 that agreement is in draft form at this time?

18 A. Yes.

19 Q. And does Mr. Thomas's earlier discussion
20 and testimony regarding that comport with your
21 understanding as well?

22 A. Yes.

23 Q. Is the sewer district committed to
24 entering into a reasonable compliance agreement with
25 DNR and EPA?

1 A. Yes.

2 Q. Has the sewer district had the
3 opportunity to assess what water and sewer rates it
4 will charge if the proposed transaction is completed?

5 A. The sewer district has not set rates,
6 and so any statement I make has to do with our review
7 of the facts that are before us to date and what has
8 been discussed in our public meetings relative to the
9 rates we anticipate. And so we have established what
10 we think, under that set of circumstances, what rates
11 would need to be established.

12 Q. And are those the rates that we've been
13 discussing earlier today and I believe are contained
14 in an Exhibit No. 4? And I'll bet you don't have
15 that, do you, sir?

16 A. No, but...

17 Q. Let me get it.

18 A. I now have Exhibit No. 4 and the answer
19 is yes.

20 Q. Thank you, sir. And I think you may
21 have answered my next question but just to make it
22 clear, these rates are preliminary and are subject to
23 change?

24 A. Yes.

25 Q. Were they also, even if they became

1 permanent changes -- excuse me, permanent rates,
2 would they be subject to change in the future?

3 A. Yes.

4 Q. And how would those rates be changed in
5 the future?

6 A. Well, the charge of the sewer district,
7 as we see it, is to protect the waters of the
8 district through providing water and wastewater
9 treatment services to the customers of the district,
10 the facilities for which we control. Our only goal
11 is to provide adequate treatment at the most
12 efficiently and best possible rates.

13 So it's possible that rates could go
14 down if circumstances were such that we could charge
15 less. Contrary to that, I can't anticipate 20 years
16 into the future, so it's possible that circumstances
17 might cause an increase in rates, all of which, if
18 the sewer district is meeting its obligations, will
19 be at the lowest possible level.

20 Q. And what procedures will you follow if
21 it becomes necessary to change rates in the future?

22 A. The statutes under which we operate,
23 Chapter 249, would require a public hearing.
24 Notwithstanding that, the district has discussed the
25 need to conduct its business in full public view. We

1 would probably hold a hearing if we weren't required.
2 And then the procedures for hearing are outlined in
3 our bylaws.

4 Q. Thank you, sir. Let me switch gears on
5 you. Has the sewer district also entered into an
6 agreement with Raintree Plantation, Inc., the
7 developer, concerning service fees?

8 A. Yes.

9 MR. ENGLAND: And may I have a moment to
10 have another exhibit marked, your Honor?

11 JUDGE STEARLEY: Certainly.

12 (EXHIBIT NO. 8 WAS MARKED FOR
13 IDENTIFICATION BY THE COURT REPORTER.)

14 JUDGE STEARLEY: You may proceed.

15 MR. ENGLAND: Thank you.

16 BY MR. ENGLAND:

17 Q. Mr. Toma, do you have in front of you
18 what's been marked for purposes of identification as
19 Exhibit 8?

20 A. Yes, I do.

21 Q. And do you recognize that document?

22 A. Yes.

23 Q. Could you please describe it for the
24 record?

25 A. It's entitled the Sewer and Water

1 Service Fee Agreement between Raintree Plantation,
2 Incorporated and the Jefferson County Public Sewer
3 District, and it relates to a fee that Raintree
4 Plantation, Inc. is entitled to for those who connect
5 to the sewer and water system at Raintree Plantation,
6 or from those.

7 Q. And did you sign this agreement on
8 behalf of the sewer district?

9 A. Yes.

10 Q. Is this copy a true and correct copy to
11 the best of your knowledge, information and belief?

12 A. Yes.

13 MR. ENGLAND: Thank you. I'd offer
14 Exhibit 8 into the record, your Honor.

15 JUDGE STEARLEY: Any objections to the
16 admission of Exhibit 8?

17 MR. KRUEGER: No objection.

18 JUDGE STEARLEY: Hearing none, it will
19 be admitted and received into evidence.

20 (EXHIBIT NO. 8 WAS RECEIVED INTO
21 EVIDENCE AND MADE A PART OF THE RECORD.)

22 BY MR. ENGLAND:

23 Q. Mr. Toma, at the public hearing that was
24 held in this matter, and I believe you were in
25 attendance, a Mr. John Kolisch appeared and described

1 potential refunds that he could receive if certain
2 connection fees -- or excuse me -- certain
3 connections were made to the line serving his
4 property; do you recall that testimony?

5 A. Yes, I do.

6 Q. Is Mr. Kolisch's situation addressed by
7 this particular agreement that we've just described,
8 Exhibit No. 8?

9 A. Yes, it is.

10 Q. And could you be more specific and tell
11 me the section?

12 A. In Article 5 it provides that Raintree
13 shall honor a previous commitment to pay John
14 Kolisch, his heirs, successors or assigns, \$799.83
15 related to sewer and water services for lots through
16 129 and 135 of Section 5 in Raintree Plantation, and
17 \$2,783.11 for lots 46 and 47 in Section 1.

18 MR. ENGLAND: Thank you, sir. Just give
19 me a second, your Honor. I think that's all the
20 questions I have for this witness on direct
21 examination. I think I've offered all of the new
22 exhibits that we have. I know I've referred to some
23 that are already in the record.

24 JUDGE STEARLEY: Mr. England, as I
25 recall, we marked Exhibit 2 but it has not yet been

1 offered.

2 MR. ENGLAND: You're correct, and I was
3 waiting, actually, until Mr. McClain took the stand
4 and I'll offer it at that time. Thank you for
5 pointing that out.

6 JUDGE STEARLEY: Okay. Then we'll move
7 on to cross-examination beginning with Mr. Krueger.

8 MR. KRUEGER: Thank you, your Honor.

9 CROSS-EXAMINATION BY MR. KRUEGER:

10 Q. Good afternoon, Mr. Toma.

11 A. Hi.

12 Q. I believe you testified the operation
13 and maintenance agreement has not yet been executed.

14 A. Yes.

15 Q. Is there agreement upon the services
16 that EMC will provide?

17 A. Yes.

18 Q. And is there agreement upon the
19 compensation that you will pay to EMC for those
20 services?

21 A. Yes.

22 Q. What will you pay for the wastewater and
23 sewer service fee?

24 A. \$37 per customer.

25 Q. And what will you pay for the water

1 service fee?

2 A. \$5.80 per 1,000 gallons of consumption
3 for water customers.

4 Q. What will you pay for customer
5 service -- customer tap service fee?

6 A. \$1,500.

7 Q. Okay. And will all of those costs be
8 passed along to the customers?

9 A. Yes.

10 Q. And in the case of the water service
11 fee, it's actually a little more than that; is that
12 correct?

13 A. Not -- not payable to EMC.

14 Q. Okay. No, I'm asking about what -- what
15 you would charge.

16 A. Well, we haven't set rates. The
17 prospectus that we reviewed and approved as being, we
18 thought reasonable for the district to adopt,
19 reflects our obligation to EMC. Any charges beyond
20 what -- that to which we would be contractually
21 obligated have yet to be set. This is what we expect
22 to do and we expect it to have an additional 50-cent
23 charge for -- per 1,000 gallons of water.

24 We've discussed establishing an
25 additional connection fee. That has not been

1 resolved but was calculated in this estimate for the
2 purposes of determining its effect on rates. And
3 presumably, we would act consistent with that, but
4 again, we haven't done that.

5 Q. But there is agreement with EMC on the
6 amount that you would pay them?

7 A. On -- yes, there is.

8 Q. Okay. And you mentioned the additional
9 connection fee. How much is that? How much is
10 proposed?

11 A. This proposes \$1,000.

12 Q. Okay. What is the purpose of that fee?

13 A. The board's position is that -- that
14 every new connection uses some of the treatment
15 capacity that is there and our ability to provide
16 water service, and that if we don't make some
17 provision for replacing that, we'll be in the same
18 position we are ten years from now that we are today.
19 So the sole purpose of that would be to go into a
20 fund that would be available to replace our capacity
21 as it's consumed by new users.

22 Q. Now, I understood that you would not use
23 this fund in the event that construction costs for
24 EMC goes over \$1.8 million; is that right?

25 A. We won't have those funds at that time,

1 so, no, that is correct.

2 Q. Okay. What steps must you follow in
3 order to decide what rates will be charged to the
4 customers?

5 A. We have to have a public hearing and
6 then we consider the evidence that is presented and
7 we have a vote of the board and the board will decide
8 by a majority rule whether the rates are adopted.

9 Q. Do you know when that will be done?

10 A. No, but as soon after the transfer of
11 assets is authorized as possible.

12 Q. You'll wait for the transfer of assets?

13 A. (Nodded head.)

14 Q. Okay. Do you have a copy of Exhibit 4
15 or...

16 A. Which is Exhibit 4? Yes, I have
17 Exhibit 4.

18 Q. Exhibit 4 is titled "Draft Pricing
19 Proposal." And did you provide the inputs, the data
20 inputs to that calculation?

21 A. I did not.

22 Q. Where did you obtain the input -- the
23 5,000-gallon-per-home-per-month figure that was used
24 on the -- that's shown there in the middle of the
25 first page?

1 A. Well, this was presented to the board by
2 Todd Thomas with EMC when we were discussing entering
3 into an agreement with them as one approach that they
4 thought was sufficient to warrant their involvement.
5 That 5,000 figure was just a planning figure based on
6 average consumption in the utility.

7 They provided us with some water
8 consumption information that they had achieved -- or
9 had obtained as a consequence of their involvement
10 with the utility company, but again, it was just a
11 planning number.

12 Q. Do you know if that is the average use?

13 A. No.

14 Q. You don't know?

15 A. Not without having the consumption data.

16 Q. But if the average use was 6,000 gallons
17 per month, the price -- the estimated monthly
18 household charge would be increased somewhat, would
19 it not?

20 A. Yes.

21 Q. Okay. On the second page of Exhibit 4
22 there's a listing of costs. Did you have anything to
23 do with the preparation of that document?

24 A. No.

25 Q. Do you know where those numbers came

1 from?

2 A. They were represented to be information
3 taken from the tax returns.

4 Q. The tax returns --

5 A. Or not the tax returns. I guess it was
6 from the Public Service Commission reports.

7 Q. Okay. And these were forms filed with
8 the Public Service Commission by Central Jefferson
9 County Utilities; is that right?

10 A. Yes, yes.

11 Q. Do you know if any audit was performed
12 on those?

13 A. No.

14 Q. Do you have any way of knowing whether
15 they're accurate?

16 A. No.

17 Q. Did Central Jefferson County Utilities
18 make any representation to you other than just the
19 fact that the forms were filed with the Commission?

20 A. They didn't present this to us. EMC
21 presented it to us --

22 Q. Okay.

23 A. -- as having come from Central Jefferson
24 County Utilities.

25 Q. Okay. So far as you know they just

1 relied on the form that was filed with the
2 Commission?

3 A. Yes.

4 Q. What assets does the sewer district
5 presently have?

6 A. We have about \$24,000 in cash.

7 Q. What sources of revenue does it have?

8 A. Currently has no source of revenue
9 except interest earned.

10 Q. Will it have any other sources of
11 revenue if and when this transfer of assets is
12 approved, other than from Raintree Plantation?

13 A. Yes. We have two other contracts with
14 subdivisions to own and operate their utility
15 systems, and we're currently -- we have currently
16 passed a resolution in favor of accepting another
17 system for a new subdivision that is yet to be
18 constructed.

19 Q. When will you start receiving those
20 revenues?

21 A. The agreements that we have with these
22 new subdivisions is that the developer will cover the
23 cost of operations, and that as soon as there are
24 customers, we will -- we would begin billing them.
25 Homes haven't been built in these subdivisions yet.

1 And that to whatever extent our receipts
2 fall short of the operating expenses that are
3 underwritten by the original developer, and at such
4 time as we break even, then the developer would be
5 released from their obligation. So I can't predict
6 the date, except to say as soon as a new home is
7 built and connected to the systems.

8 Q. Okay. Would the revenues from there
9 provide any source of funds to be used for part of
10 this contract with the EMC?

11 A. No.

12 Q. Okay. Is there any other source of
13 funds available to pay the contract price with EMC?

14 A. No.

15 Q. Now, if the Commission were to condition
16 its approval of the transfer of assets on holding
17 your -- the rates you charge at a lower level, would
18 there be any way for you to perform the agreement
19 with EMC?

20 A. There -- there would not be.

21 Q. Is there a possibility that you could
22 renegotiate the compensation to be paid to EMC?

23 A. There's always a possibility that we
24 could renegotiate compensation with EMC. However, I
25 don't think the district's in a position to negotiate

1 away its legislative responsibilities.

2 Q. What legislative responsibilities?

3 A. Rate setting.

4 Q. I want to ask you now some questions
5 about Exhibit 8 which is the sewer and water service
6 fee agreement between Raintree Plantation, Inc. and
7 the sewer district. What does the sewer district
8 receive from Raintree Plantation as a result of this
9 agreement?

10 A. Well, the first thing the sewer district
11 receives is the obligation of AquaSource to install
12 sewer lines to serve those lots that are currently
13 underserved in exchange for the payment of \$1,100.
14 We consider that a benefit because we believe that
15 were it not for Aquasource's involvement, the cost of
16 extending those sewer lines would be substantially
17 greater than the \$1,100 that would be paid to
18 AquaSource.

19 Then the sewer district has agreed to
20 pay \$800 of the \$1,100 to Raintree until such time
21 that certain predetermined and agreed upon expenses
22 related to engineering and legal fees associated with
23 the transfer of the asset and the design of the
24 treatment plant from which the district will benefit
25 if we're able to use those plans, is paid back.

1 At that time the sewer district, once
2 the payback occurs, the sewer district will receive
3 \$550 of the \$1,100 for a period of 15 years, after
4 which there's no further obligation to Raintree.

5 Q. Do you believe that AquaSource does not
6 have the obligation to construct the sewer mains,
7 except for this agreement?

8 A. I believe AquaSource has an obligation
9 to Raintree or to Central Jefferson County Utility.
10 My desire is to ensure that it survives the transfer
11 of assets, and I believe this secures that.

12 Q. So it doesn't create a new obligation
13 for AquaSource, it's just some -- requires --

14 A. Creates an obligation.

15 Q. -- Raintree to enforce; it is that --

16 A. That's correct.

17 Q. Now, what is the source of this \$800
18 that you had paid to the -- to Raintree?

19 A. It comes from the \$1,100 fees that
20 Raintree believes the purchaser and owners of lots
21 are required to pay it under their contract, their
22 sale contract to those lot owners.

23 Q. So this is not a new obligation -- new
24 or additional obligation for the lot owners?

25 A. No.

1 Q. It's the same obligation that we've
2 talked about before?

3 A. Yes.

4 Q. And so the sewer district would collect
5 \$1,100 and initially pay 800 of that to Raintree?

6 A. We'd either pay \$1,100 for those lots
7 that need to be served by AquaSource, so all of it
8 would go to Raintree to compensate AquaSource.

9 Q. And the amount paid to AquaSource would
10 be how much?

11 A. \$1,100.

12 Q. So it would just be a pass-through?

13 A. Yes. For lots other than those for
14 which AquaSource needs to extend sewer lines, the
15 split would be 800 and 300 until the expenditures
16 commensurate with the transfer of asset activities
17 and the design of the treatment plant have been
18 reimbursed. Then it would go to a 50/50 split for
19 15 -- the balance of the period for 15 years.

20 Q. The difference between the 1,100 and the
21 800 would just stay in the sewer district?

22 A. Yes, and that would -- that would be
23 pledged to the capital improvement fund based on our
24 preliminary conversations with the board.

25 Q. And then when it drops down to 550, that

1 would also be pledged to the capital improvement
2 fund?

3 A. Yes.

4 Q. Okay. If this asset transfer is
5 approved and the wastewater treatment plant is
6 expanded and the moratorium is lifted, would the
7 sewer district be able to decide who gets priority in
8 hooking up to the expanded system?

9 A. I am unaware and can't envision any
10 basis for setting priorities among the citizens who
11 desire services from the district. I believe we
12 would provide services to those who are entitled to
13 it and who apply, who would pay the appropriate fees
14 at the time that they make the request on a
15 first-come, first-served basis.

16 Q. Would you -- would you be able to have
17 any input into that?

18 A. Well, the board would establish that
19 policy. I, as a board member, would have some input.
20 But, once again, I will say that I think our
21 obligation is to serve all of our constituents
22 equally, and I can't envision a system that would
23 justify us treating one differently from another.

24 Q. Would persons not living in Raintree
25 Plantation have the right or ability to hook onto the

1 expanded wastewater treatment plant?

2 A. The sewer district has an obligation to
3 serve those who are desirous of service within the
4 district on terms that are feasible. We have
5 discussed the use of the expanded capacity of the
6 Raintree plant and we would be obligated, we believe,
7 to ensure that that capacity is available to the
8 property owners of Raintree exclusively.

9 That doesn't eliminate the possibility
10 that someone outside of Raintree may request service
11 that is achievable through revisions to the plant,
12 nor does it exclude the possibility that 15 years
13 from now there is a plan for piping the effluent to a
14 regional treatment facility downstream from us.

15 So I can envision, just kind of a wild
16 imagination, circumstances that might cause the sewer
17 district to serve customers outside of the confines
18 of Raintree, but it isn't a benefit that would be
19 available to anyone as a consequence of what's being
20 proposed here.

21 Q. Will the residents of Raintree have any
22 direct control over the management of the sewer
23 district?

24 A. The residents of Raintree will have the
25 same control over the management of the sewer

1 district that all citizens in the sewer district
2 have. We are volunteers who are appointed to the
3 board of trustees, we take our public service
4 responsibilities seriously, we're accountable to the
5 elected representatives of Jefferson County, and if
6 they desire for us to be removed for any reason,
7 citizens may make that appeal to the County
8 Commission and the County Commission may replace one
9 or all of us at their will.

10 Q. But your primary accountability and your
11 direct responsibility is to the County Commission and
12 not to the residents?

13 A. I think our primary responsibility is to
14 the citizens we serve. We serve at the will and
15 pleasure of the County Commission. If we displease
16 the citizens, we will likely be displeasing the
17 elected representatives of the county.

18 Q. Will the \$1,000 connection fee that you
19 mentioned that's collected for the sewer district be
20 put into a fund that cannot be used for any purpose
21 except to make future capital expenditures for
22 Raintree?

23 A. It is the intention of the sewer
24 district to set those funds aside for the purpose of
25 capital -- future capital expansion.

1 Q. You say it's the intention. Is it --

2 A. Until we've done it, I can't commit to
3 you. That is our intention.

4 Q. Now, you mentioned something about some
5 new subdivisions that will be served. Are any of
6 these subdivisions that you testified about in close
7 proximity to Raintree?

8 A. That was total speculation on my part.
9 I don't have any specific project in mind.

10 Q. I'm sorry. I was talking about -- I
11 think you testified a few minutes ago, probably ten
12 minutes ago, about --

13 A. Oh. One's five miles away, one's ten
14 miles, the other's seven miles.

15 Q. Are you aware of any customers in the
16 district that might utilize the Raintree assets?

17 A. I don't understand the question.

18 Q. Customers other than those living in the
19 subdivision?

20 A. Well, the utility company currently
21 serves three customers that are not within -- four
22 customers that are not within the confines of the
23 subdivision. They are the country club, the
24 condominiums, the Property Owners Association office
25 and Mr. Kolisch's building. I'm unaware of anyone

1 else who would be served by the system.

2 MR. KRUEGER: Thank you. That's all the
3 questions I have.

4 JUDGE STEARLEY: Cross-examination by
5 Raintree. Mr. Comley?

6 CROSS-EXAMINATION BY MR. COMLEY:

7 Q. Mr. Toma, I'm Mark Comley. We've talked
8 on the phone.

9 A. Yes, we have.

10 Q. And I represent Raintree Plantation
11 Property Owners Association in the case, as you know.
12 I want to take you back to questions that were raised
13 about the organization of the district, and it has
14 been organized since 2000; is that correct?

15 A. Correct.

16 Q. And my understanding is the authority is
17 not necessarily for wastewater operations but it can
18 also operate water systems; is that correct?

19 A. With the permission of the circuit
20 court.

21 Q. Have you made the approach to the
22 circuit court for an amendment to your decree?

23 A. Yes, we have related to one of the other
24 projects I mentioned, so that's already underway.

25 Q. And does it include the service area

1 that takes into account Raintree Plantation?

2 A. It's proposed for the entire district.

3 Q. And the entire district would be, what,
4 countywide or is there specific portions of it?

5 A. Well, it was originally established
6 countywide excluding incorporated municipalities and
7 other established sewer districts. However, the
8 southwestern portion of the county, the far
9 southwestern portion, was excluded by an amendment to
10 the district's boundaries about a year after we
11 organized.

12 And so it basically covers a broad swath
13 of the county from -- I don't know if you're familiar
14 with Jefferson County, but from the southeast corner
15 to the northwest corner, right through the middle of
16 the county.

17 Q. Would it be fair to say the development
18 in the southwest corner of it is not as intense as
19 that in the swath of the county you've just
20 described?

21 A. That was the justification for amending
22 the boundaries.

23 Q. Could you identify for us the other
24 members of the board of trustees?

25 A. Yes, I can. They are Clyde Pratt,

1 P-r-a-t-t; Loren, L-o-r-e-n Stuckmeyer,
2 S-t-u-c-k-m-e-y-e-r and Gary Strieder,
3 S-t-r-i-e-d-e-r.

4 Q. Could you give us a little biographical
5 information about Mr. Pratt?

6 A. Mr. Pratt is a resident of the district,
7 lives in a community known as Lake Wauwanoka. I
8 won't try to spell that. Do you want me to try and
9 spell that for you?

10 Q. No.

11 A. And Mr. Pratt is active in that
12 community and is on the board of their sewer company.

13 Q. Do you know if he's retired?

14 A. I believe he is retired.

15 Q. From what occupation?

16 A. I think he worked at Chrysler.

17 Q. Could you give us a brief biography of
18 Mr. Stuckmeyer?

19 A. Stuckmeyer.

20 Q. Stuckmeyer.

21 A. Mr. Stuckmeyer lives in the north --
22 northern -- northern part of the country. He owns an
23 insurance agency.

24 Q. Has he had any background in the
25 operation and maintenance of regional -- or I'll say

1 central collection sewer systems?

2 A. No, not to my knowledge.

3 Q. Would you give us a brief biography for
4 Mr. Strieder?

5 A. Mr. Strieder lives in the northern part
6 of the district and owns and operates a printing
7 company and advertising specialities company.

8 Q. Again, do you know whether he has any
9 background in engineering, operation or maintenance
10 of wastewater treatment facilities?

11 A. I do not.

12 Q. You do not know?

13 A. I don't know but I don't think so.

14 Q. You mentioned that there was a vacancy
15 on this board at this time; is that correct?

16 A. That's correct.

17 Q. Has the board considered a candidate for
18 filling that vacancy?

19 A. I have not been informed of their
20 consideration.

21 Q. As chairman, have you proposed a
22 nominating committee?

23 A. I have not.

24 Q. I think you were asked this, but forgive
25 me, I did not hear the answer. Can you tell me how

1 trustees on the board are removed?

2 A. The trustees serve at the pleasure of
3 the County Commission, and we were appointed --
4 actually, we were appointed for terms. So perhaps I
5 need to reconsider my statement that we could be
6 removed at will because we do have fixed five-year
7 terms.

8 Q. Are they staggered or do you all have
9 five-year terms that start and end at the same time?

10 A. They're staggered.

11 Q. How long is your term? Five years.
12 Excuse me. How long -- you have been on the board
13 how long?

14 A. I was on the original board in 2000.

15 Q. You were reappointed?

16 A. Yes.

17 Q. So your next term, your new term would
18 expire in 2010?

19 A. In December.

20 Q. Let me turn you to the set of bylaws
21 which were identified earlier in your testimony.
22 That would be Exhibit No. 7. The authority for your
23 bylaws comes from Chapter 249?

24 A. Yes.

25 Q. The trustees also have authorities to

1 promulgate rules and regulations for service; is that
2 correct?

3 A. Correct.

4 Q. At this time has the board promulgated
5 rules and regulations concerning applications for
6 service and discontinuance of service?

7 A. No.

8 Q. Do you have any drafts of those
9 documents in preparation now?

10 A. No.

11 Q. Have the board of trustees contracted
12 with a professional engineering firm or with a
13 planning agency in connection with your duties?

14 A. No.

15 Q. Do you know whether the board is going
16 to consider asking for an outside consultant to
17 assist it in connection with any of its organization,
18 any of its forecasts, any of its operations of these
19 systems?

20 A. We haven't discussed it, although we
21 have, at meetings, discussed the need to adopt rules
22 and regulations and I have been charged with the
23 responsibility of collecting from some area
24 jurisdictions comparable to the district rules and
25 regulations that are currently in effect for their

1 consideration. Whether we then choose outside
2 consultation relative to technical issues would be a
3 board decision, and I can't anticipate that decision.

4 Q. Let me direct your attention to Exhibit
5 No. 7. Do you have a copy of Exhibit 7 with you?

6 A. Yes.

7 Q. Let's go to the page where Article 5 is
8 set out about public hearings. After reading this,
9 I'll make the statement, is it fair to say that at
10 this time the board has not promulgated any more
11 extensive rules on hearings before the board
12 concerning contested rates, charges or fees?

13 A. That's correct.

14 Q. Does the board anticipate amending its
15 bylaws or preparing a set of rules and regulations
16 which would, for instance, allow customers of the
17 district to notice a -- proposed rate increases?

18 A. Yes, I think that's a reasonable
19 anticipation for our rules and regulations.

20 Q. Will the bylaws anticipate rules that
21 will allow citizens an opportunity to supply contrary
22 evidence to the rate proposed?

23 A. Yes, I think that would be consistent
24 with our obligation.

25 Q. Do you know whether the board would also

1 include rules and regulations giving citizens an
2 opportunity for appeals to the board or rehearings to
3 the board in the event they disagreed with the
4 decision for a rate increase? It would be an
5 internal appeal to the board; that's what I'm
6 referring to.

7 A. You know, again, without speaking for
8 the board, I can see no reason to deny someone that
9 right of appeal.

10 Q. You mentioned the other two subdivisions
11 that I understand you have agreements with; is that
12 correct?

13 A. Yes.

14 Q. But those are still rather in the
15 planning stage; is that correct?

16 A. The subdivisions are complete.

17 Q. They are complete?

18 A. Homes have not been constructed.

19 Q. So there has not been any water brought
20 to the district -- to the area, no active wastewater
21 is needed to be treated?

22 A. Correct.

23 Q. As far as you know?

24 A. Yes. As far as I know.

25 Q. As far as you know.

1 A. Well, they're both different situations.
2 There's -- different from Raintree in terms of the
3 waste treatment systems.

4 Q. There are other differences too, I would
5 think. Wouldn't you say that Raintree and the
6 residents in Raintree Subdivision will be the only
7 customers of the district for, I'll say the immediate
8 future if this transfer is approved?

9 A. And the immediate future is defined as?

10 Q. Within a year.

11 A. Yes.

12 Q. Raintree Plantation residents will also
13 be the principal source of revenue for the district
14 during that period of time, if not longer; isn't that
15 correct?

16 A. Correct.

17 Q. The rates charged to the Raintree
18 Plantation have not been set; is that correct?

19 A. They have not.

20 Q. Would the district object to a condition
21 on this transfer that would impose upon the district
22 the obligation to modify your bylaws to allow either
23 a board member from the Association or a member -- a
24 member of the Association to be appointed to the
25 trustees?

1 A. Well, it wouldn't be up to Raintree to
2 decide -- not up to Raintree -- up to the Jefferson
3 County Public Sewer District to decide -- decide who
4 gets appointed to its board of trustees.

5 Q. Would you consider a modification to
6 allow an advisory trustee in order to allow someone
7 from Raintree to engage you in discussions about the
8 future of that subdivision?

9 A. We would always be willing to consider
10 and have any representative of Raintree attend all of
11 our meetings and provide whatever meaningful input
12 they choose to provide.

13 Looking beyond the next two years,
14 however, it's inconceivable to me that we could
15 extend that privilege to every customer the
16 district -- or every community the district may serve
17 over the course of its existence. So I would be
18 reluctant to establish that as a policy because I
19 think it would be unwieldy in the long run.

20 Q. So I'm presuming, then, that your answer
21 would be no, that the district would not be willing
22 to modify the bylaws to have that additional form of
23 representation on the trustees?

24 A. Again, yeah, I think we would not want
25 to revise the bylaws to establish the right of a

1 representative from every community we may serve have
2 a position on the board. Establishing an advisory
3 position to me seems to achieve what we already have,
4 and that is the opportunity for citizens who are
5 served by the district or those who live in the
6 district to attend our public meetings and provide
7 their input.

8 Q. You would agree with me, wouldn't you,
9 that the district trustees now do not include a
10 resident or representative from Raintree?

11 A. No, I don't agree with that.

12 Q. There is one that is a resident?

13 A. Yes, yes.

14 Q. Which one is that?

15 A. By elimination, it's me.

16 Q. You are a member of the Raintree. You
17 mentioned that you, in your past experience, that you
18 worked for the Essex --

19 A. Contracting.

20 Q. -- Contracting?

21 A. (Nodded head.)

22 Q. And in that capacity, you had been
23 managing the Herculaneum Sewer District; is that
24 correct?

25 A. Sewer Company.

1 Q. Sewer Company. Were you employed by
2 that company?

3 A. I was employed by Essex. I was active
4 in managing the sewer company, and my time as an
5 Essex employee was billed to the company.

6 Q. You also had managerial relationships
7 with Central Jefferson County Utilities; is that
8 correct?

9 A. On the same basis.

10 Q. Can you explain to me the basis that
11 was, your -- your company Essex contracted with
12 Central Jefferson County for services?

13 A. The -- yes, my services were provided.
14 I wasn't privy to the contract, if indeed there was a
15 contract, for the management of those facilities.
16 And I would bill, I would report the time that I
17 spent on those two projects, two responsibilities,
18 and reimbursement would occur from either the
19 Herculaneum Sewer Company or Central Jefferson County
20 Utility Company to Essex Contracting for my time.

21 Q. When did you serve in that capacity for
22 Central Jefferson County?

23 A. Probably from 1983 to -- about ten
24 years, '93 maybe, '92.

25 Q. It was during that period of time that

1 many of the lots were developed; is that correct?

2 A. Lots were -- lots were developed and
3 sold from 1980, 1979, late 1979, 1980 to 1984, and
4 then again from 1985 to -- or 1987 to 1991.

5 Q. In that capacity, then, did you work
6 day-to-day with the principals of Central Jefferson
7 County Utilities or did you -- was your work
8 separated from them in some respects?

9 A. Well, two of the owners of Central
10 Jefferson County Utilities were the owners of Essex
11 Contracting.

12 Q. Mr. Krueger asked you about the proposed
13 rates that we're dealing with in this case, and my
14 understanding is that even though you have not set
15 those rates, those are the rates that you have been
16 discussing which EMC are inclined to approve; is that
17 correct?

18 A. Yes.

19 Q. For the record, my understanding is the
20 district would have an objection to a phase-in of any
21 of the proposed rates that may be based upon
22 achievements of certain construction schedules; is
23 that correct?

24 A. We don't have a specific objection to it
25 except to the extent that our agreement with EMC does

1 not provide for that. We feel that we would be
2 obligated to pay them for the work they will begin
3 under the contract as soon as the transfer of assets
4 occurs, and they will be entitled to a payment. The
5 source of that -- of the revenue to make that payment
6 would be the people who are using water and
7 wastewater treatment services at Raintree.

8 Q. Then I take it if the Commission were to
9 impose a condition upon the district, or rather
10 impose a condition upon the applicant in this case,
11 that the rates charged by the district would be
12 phased in, would you return to EMC and try to
13 renegotiate that portion of the agreement, the
14 operation and maintenance agreement?

15 A. Again, I think the district would resist
16 a condition that implies that it has given up its
17 ability to set rates. But I will tell you that the
18 district is not interested in charging the citizens
19 of Raintree any more than is necessary to improve the
20 services up to an acceptable standard and to meet its
21 obligations in the process of doing that.

22 If EMC is gonna charge less than that
23 which we have contracted or will contract under the
24 O&M agreement, then we have no reason to charge less
25 than -- whatever amount less it is costing us to

1 provide the service.

2 Q. So then, it's fair to say that the rates
3 you're proposing to charge the Raintree residents is
4 driven almost entirely by the EMC agreement?

5 A. That's correct.

6 Q. I have questions about the connection
7 fees. I'm still unclear about how this is going to
8 work. My understanding was this morning that the
9 district proposes to charge a \$1,500 tap-on fee per
10 the EMC agreement, that it would also charge a
11 \$1,000 -- or propose to charge a \$1,000 tap-on fee
12 designed to go into a reserve account, and I
13 understand it's a provisional idea, and also it would
14 be obligated to charge \$1,100 for lots that
15 AquaSource is required to extend mains to. Do I have
16 it right so far?

17 A. No. We would be obligated to charge the
18 \$1,100 for connections to -- well, we would be
19 obligated to pay \$1,100 for lots that AquaSource is
20 involved -- with which AquaSource is involved.

21 The -- the \$1,100 that we would collect
22 would then -- 800 of it would go to Raintree to the
23 extent that they are recovering costs associated with
24 this activity. Then it would be 550 from that point
25 forward.

1 Q. Would you -- did you have a copy of
2 Exhibit 8?

3 A. Yes.

4 Q. And maybe this will help clear this up
5 for me. But on page 2, there are two paragraphs:
6 One's titled "Fee For AquaSource Improvements." The
7 other paragraph says, "Fee for Existing
8 Improvements." I'm gonna -- my understanding of
9 subparagraph A is for any lot that is served by
10 improvements constructed by AquaSource under an
11 agreement with Raintree, then the sewer district is
12 going to pay Raintree \$1,100 for each lot at the time
13 it begins water and sewer service; is that a correct
14 understanding of the agreement?

15 A. Yes.

16 Q. Do you know how many lots may be subject
17 to that particular paragraph?

18 A. The number that has been estimated is
19 400 lots.

20 Q. About -- do you think that's accurate?
21 Have you made your own count?

22 A. The lots are attached as an exhibit to
23 the agreement.

24 Q. Has that exhibit changed in any material
25 respect that you know of?

1 A. No.

2 Q. So this is an accurate count on the
3 exhibit?

4 A. Yes.

5 Q. The fee for existing improvements on
6 subparagraph B.

7 A. Yes.

8 Q. My understanding of that provision was
9 that for each lot served by existing water and sewer
10 systems and facilities, those that Raintree has
11 already installed, the sewer district shall pay
12 Raintree a fee of \$800.

13 A. Yes.

14 Q. That would be the remainder of the lots
15 in the subdivision; is that correct?

16 A. Yes.

17 Q. So for AquaSource lots -- I'll just call
18 them AquaSource lots, there's an \$1,100 connection
19 fee that you have agreed to collect?

20 A. Yes.

21 Q. For lots already having mains extended
22 to them by Raintree, you're going to collect an \$800
23 connection fee for both water and sewer; is that
24 correct?

25 A. You need to read the next sentence of

1 that paragraph.

2 Q. And as I read that next sentence, that
3 amount of \$800 reduces to 550 when certain expenses
4 of Raintree's have met their ceiling?

5 A. Yes.

6 Q. So for the remainder of the lots, there
7 is an \$800 connection fee which is subject to
8 reduction later?

9 A. Correct.

10 Q. Let me see if I can itemize it again.

11 A. Okay.

12 Q. The EMC tap-on fee is \$1,500. That is a
13 tap-on fee you would be obliged to pay pursuant to
14 the new operation and maintenance agreement with EMC?

15 A. Correct.

16 Q. The district is considering a \$1,000
17 tap-on fee that would be used for reserves for
18 deferred maintenance or capital improvements?

19 A. Correct.

20 Q. For AquaSource improved lots, the ones
21 that AquaSource is obliged to extend mains to, you
22 would collect another \$1,100 connection fee?

23 A. Correct.

24 Q. So if I were to build on a lot
25 AquaSource was extending a main to, I would pay the

1 district a connection fee of \$3,600, again, provided
2 you are going to collect that \$1,000 tap-on fee for
3 the capital improvements?

4 A. Correct.

5 Q. For the lots that Raintree improved, the
6 connection fee the district would charge would
7 include the 1,500 the EMC charged, your own
8 provisional 1,000, and another \$800; is that correct?

9 A. Up to the point that the reimbursement
10 is satisfied.

11 Q. And then it would be reduced?

12 A. (Nodded head.) Yes.

13 Q. But initially we're dealing with \$800?

14 A. Yes.

15 Q. So there will be two connection fees
16 applicable in the area for new lot construction: One
17 for the AquaSource improved lots of 3,600, and the
18 ones that were improved by Raintree and that would be
19 \$3,300. Now, I didn't go to law school because I was
20 good at math, but I think I've got this right.

21 A. From the point of view of a home
22 builder, all of that will be viewed as a connection
23 fee.

24 Q. Are there any other connection fees that
25 you are proposing to charge that you know of? These

1 are the only fees that we're dealing with as far as
2 connection for new water and sewer connections?

3 A. Correct.

4 Q. Let me draw your attention to Exhibit 4
5 one more -- one more time. I know you've been
6 questioned about this. But let's go to the last
7 page. At the bottom of the page there is a rundown
8 of how the tap-on fee and the water rate surcharge of
9 50 cents per 1,000 gallons is added up. And again,
10 you were -- you were part of the group that put this
11 exhibit together?

12 A. EMC proposed this. I was part of the
13 group that reviewed it.

14 Q. All right. And you reviewed it with
15 questions -- you understand how this was done?

16 A. Well, I do understand how it was done.

17 Q. All right.

18 A. I'm not entirely sure I agree with all
19 of the characterization this morning as to what these
20 fees mean, but we can discuss that.

21 Q. Kind of as a back -- background, I think
22 I remember you said that the district is highly
23 interested in finding a way of having funds available
24 in the future for capacity additions that are
25 necessary for growth in the district and growth in

1 the subdivision?

2 A. Yeah, my only exception is that I
3 anticipate the district will have incidental
4 operating expenses that will need to be covered
5 during the course of this period of time so that
6 50 cents per 1,000 would be used partially for
7 covering its ongoing expenses, the balance of which
8 may be placed in a reserve account.

9 Q. That was a question too because it's
10 denominated as an administrative charge on the first
11 page --

12 A. Yes.

13 Q. -- and then it's grouped together as an
14 element to the capital maintenance funds charge on
15 the last page.

16 A. I agree. That's the -- the last page, I
17 think, is a bit of a misrepresentation of our
18 intended use.

19 Q. Well, so that we're clear, is it the
20 district's intention to use the water rate surcharge
21 of 50 cents per 1,000 gallons strictly as an
22 administrative charge to cover administrative costs?

23 A. It is the district's intention to use
24 that fund to cover its expenses to the extent
25 necessary. Any funds that we have that are not used

1 for the purpose of meeting our operating expenses
2 will then be dedicated to future expansion.

3 Q. On this exhibit I'm trusting that there
4 has not been any analysis done by someone who might
5 invest this for the district; is that correct?

6 A. That's correct.

7 Q. One of the conditions that the
8 Association has asked the Commission to consider
9 would be that connection fees under any circumstances
10 not be more than \$3,000. Is there sufficient
11 latitude in your provisional \$1,000 connection fee
12 such that the district might agree to that condition?

13 A. There is certainly latitude to the
14 district to set the fee at whatever they choose.
15 They will make that decision based on a projection of
16 what will be necessary as -- at the point at which
17 this capacity expansion is consumed.

18 Once again, I think the district will be
19 reluctant to accept as a -- as a sacrifice of its
20 legislative responsibility a Public Service
21 Commission directive to set any particular fee.

22 Q. There were also questions about the
23 district agreement with EMC if costs above
24 \$1.8 million are needed for the upgrades. Would you
25 go through the terms with EMC again? If there are

1 costs above 1.8 million to be incurred in order to
2 bring those facilities into compliance, tell me again
3 what the consideration or compensation would be for
4 EMC on that.

5 A. Well, the language that I have proposed
6 to which EMC has at least verbally consented, is that
7 if it becomes -- if they become aware of the fact
8 that funds in excess of \$1.8 million are needed to
9 complete the improvements to which they are committed
10 in our contract, they will come before the board and
11 demonstrate the need.

12 When the board is convinced of the need,
13 and that is that it isn't just something they'd like
14 to do in order to reduce their operating expenses,
15 but it's essential to the operation of the facility,
16 then we would say okay. They would make those
17 expenditures but we would then, before they make
18 them, negotiate an adjustment to our contract payment
19 that only allows them to recover their actual
20 expenses without profit or overhead, over some period
21 of time.

22 The board's concern -- and this is
23 stated in the language I proposed -- will be the
24 amount spent and the effect of recapturing that
25 amount has on the ratepayers. So we would be seeking

1 to minimize the impact on the ratepayers but allow
2 them to recapture their cost over some reasonable
3 period of time

4 Q. Impact on the ratepayers is a question I
5 have in that respect. If there is a situation where
6 the district concludes the fees and charges to the
7 residents in Raintree need to be adjusted, how would
8 you propose to collect the amount above and beyond
9 \$1.8 million as necessary to bring the facilities
10 into compliance?

11 A. Included in the language that I have
12 proposed to EMC is the statement that any such payment
13 would be treated as a surcharge, and that is it would
14 be a fixed dollar amount for a limited period of
15 time. When the amount is paid back, the surcharge
16 will be eliminated. I heard someone suggest today
17 that it be a separate item on the billing statement.

18 Q. I may have heard that myself.

19 A. I think that's consistent with the
20 expectations of the sewer district.

21 Q. Very well. This language you're talking
22 about, is that somewhere in the recent draft which I
23 think is Exhibit No. 5?

24 A. It is not, which is why that's not the
25 most recent draft. And frankly, there has not been a

1 draft. There would have been. They sent me the
2 document in a form that was write-protected, so
3 despite my efforts this weekend to amend it
4 reflecting the language that I had proposed, I was
5 unable to do so, so I just had to compose it in a
6 Word document and e-mail it to them so they could
7 make the change. And they made the change, but
8 Mr. Thomas couldn't get the signatures in time.

9 Q. All right. Those of us who are
10 computer-challenged would understand the problem.

11 A. Well, there's probably a way to do it
12 but I couldn't figure it out.

13 Q. Another question that comes to mind
14 about the districts, even though I realize the
15 district is about five years old, six years old, have
16 you had any time to plan for future growth,
17 population growth, within not only the Raintree area,
18 but the district in general?

19 A. Well, I don't know what you -- I'm not
20 sure what you're asking.

21 Q. Population growth and -- population
22 growth going -- the idea, perhaps, of qualifications
23 for federal or state grants?

24 A. Because of other activities in which I'm
25 involved, I'm familiar with the availability of

1 federal and state grants for wastewater treatment
2 issues. Certainly, the board is qualified for those
3 grants as a public entity to the extent they're
4 available. It is to the extent that they are
5 available that represents a problem.

6 Many of the areas in Jefferson County
7 that need such services have failed to qualify for
8 the funds that are available because most of them are
9 means-tested, and the communities that need central
10 sewer systems or improvements are populated by people
11 who don't meet the minimum income thresholds.

12 Q. Let me go back to really the focus of my
13 question and that was whether or not you've engaged
14 in any kind of comprehensive planning measuring
15 growth in the district, say, in the next five to ten
16 years?

17 A. Not specifically, the board has not.

18 Q. Let's turn to the tri-party agreement
19 which is attached to the application that was marked
20 as Exhibit 2 in the appendix there. Let's turn to
21 Exhibit -- or rather appendix -- excuse me, it may be
22 in Exhibit -- Exhibit G. And I asked Mr. Thomas
23 about this this morning.

24 It's about paragraph 1 that talks about
25 the existence of a dispute between Central Jefferson

1 and Raintree Plantation Property Owners regarding the
2 location of existing and future water treatment
3 facilities. Can you enlighten the Commission on the
4 nature of that dispute? Do you know what that is?

5 A. I don't know, other than that I know
6 there's some questions relative to the title to this
7 property, and that the owner is currently working
8 with a surveying company and title company to clarify
9 the bounds of the property that is considered to be
10 in ownership of Central Jefferson County Utility
11 relative to that which is owned by Raintree Property
12 Owners Association.

13 I don't think it's a dispute in the
14 sense that anyone is arguing about it. I think there
15 are just some questions as they have been pursuing
16 this in defining by meets and bounds, the limits of
17 the property that the sewer district has title to.

18 Q. Well, will have title to, you mean,
19 or -- do you have title --

20 A. They think they have title to it. We're
21 gonna require title insurance.

22 Q. I see.

23 A. And I think that work's being done.

24 Q. I'm thinking you may have mixed two of
25 them. You mentioned about an individual property

1 owner. Do you understand that the survey work is
2 being done with respect to the individual property
3 owner involved on this exhibit or --

4 A. No.

5 Q. -- is it with Raintree Plantation?

6 A. Raintree Plantation sewer plant is --
7 was part of what was the common ground, and when the
8 conveyance of the common ground went from the
9 developer to the Raintree Property Owners
10 Association, the utility portion was carved out. And
11 I think the question has to do with the definition of
12 that boundary.

13 Q. But you have not been involved in
14 negotiation --

15 A. I'm not personally involved in it, no.

16 Q. With Mr. Prader or anyone from the
17 Association about that?

18 A. No.

19 Q. Do you know whether EMC or -- well, I
20 think I asked this to Mr. Thomas. Excuse me. Has
21 the district selected the locations of the properties
22 where the upgrades will be located?

23 A. The district is aware of where the
24 treatment plant expansion, which Mr. Thomas referred
25 to earlier as having been previously approved for

1 construction by DNR, was proposed. It's a condition
2 of our agreement and the tri-party agreement that we
3 receive clear title to the property as part of the
4 transfer --

5 Q. That property is adjacent to the
6 existing treatment facility; is that correct?

7 A. Yes, which may be all or partially owned
8 by the Property Owners' Association.

9 Q. I'm gathering that -- from what you're
10 saying, that all the real estate -- all the
11 improvements and the fixtures that are going to be
12 part of those improvements are going to be on real
13 estate eventually titled in the district's name; is
14 that correct?

15 A. That's correct.

16 Q. You talked to Mr. Krueger about
17 subdivisions outside of Raintree. With respect to
18 the rates for those subdivisions, are you proposing
19 different rates for each subdivision the district may
20 own or control?

21 A. We're proposing the same
22 50-cents-per-gallon water consumption to be uniformly
23 applied to every customer within the district.

24 Q. That's the administration charge?

25 A. Yes. Beyond that, the rates will vary

1 based on type of the system, both the collection
2 system and the cost of operations. And the cost of
3 operations beyond that 50 cents will be a direct
4 pass-through to each of those.

5 Q. So you will use specific costs for each
6 subdivision wastewater treatment and water system and
7 those will be recovered in the rates charged to the
8 residents of those subdivisions?

9 A. Yes.

10 Q. Do you know of any subdivision
11 development or perhaps any individual that may have
12 an interest in connecting to the wastewater
13 facilities serving Raintree Plantation at this time?

14 A. I have no personal knowledge of that,
15 no. I'm sorry. Can I answer that question again?

16 Q. Certainly. I'll let you correct your
17 answer.

18 A. There is one property owner who owns
19 property adjacent to Raintree who is currently, I
20 believe, receiving water service from Raintree and
21 not sewer. Now, he has approached me relative to
22 connecting to the sewers at some point, but
23 obviously, I'm not in a position to make any
24 commitment to him.

25 And it would be a house and he has a

1 couple of lots that he has petitioned the board in
2 the past to accept into Raintree and subject to
3 Raintree's covenants and restrictions. So that would
4 be the only one I have any knowledge -- personal
5 knowledge of.

6 Q. If that would happen, my -- that person
7 who makes the connection would be subject to the same
8 connection fee structure we're talking about?

9 A. Yes.

10 MR. COMLEY: I have no other questions.

11 JUDGE STEARLEY: Thank you, Mr. Comley.

12 Cross-examination by DNR. Mr. Schmid?

13 MS. SCHMID: Thank you, your Honor.

14 CROSS-EXAMINATION BY MS. SCHMID:

15 Q. Mr. Toma, are you aware of any alleged
16 violations of state and federal laws currently
17 existing against the owners and operators of Central
18 Jefferson County Utilities?

19 A. I have seen reports to that effect.

20 Q. Okay. Pursuant to the tri-party
21 agreement in Exhibit 2, who is responsible for any
22 penalties for any of these alleged violations that
23 currently exist?

24 A. Central Jefferson County Utilities,
25 Incorporated.

1 Q. Okay. And will the district be
2 indemnified by Central Jefferson County Utilities
3 should there be any penalties assessed against the
4 district for the current -- for the current
5 violations?

6 A. The district doesn't intend to enter
7 into a transfer -- to accept a transfer of assets
8 under any conditions that would expose them to
9 liability for those transgressions if they're valid.

10 Q. Okay. So if I hear you correctly, the
11 district is interested in signing a compliance
12 agreement with the Department of Natural Resources?

13 A. Yes, we are.

14 Q. And if a -- if a compliance agreement is
15 not entered into, is the district interested in being
16 assigned these assets?

17 A. The district -- the district would
18 accept a commitment from DNR not to hold it
19 responsible for any violations that had been alleged
20 in the past or anything that occurs while it's
21 undergoing an expansion of the waste treatment
22 facilities. Now --

23 Q. But without -- I'm sorry. Continue.

24 A. DNR and EPA have chosen to characterize
25 that as a compliance agreement. That was not by my

1 choice or my preference, but I am willing to proceed
2 along those lines.

3 Q. Okay. Should there not be any agreement
4 with the Department of Natural Resources or EPA, is
5 the district still interested in obtaining possession
6 of these assets?

7 A. We would not be.

8 Q. Okay. I apologize if some of these
9 answers you've already given. I just want to make
10 sure I'm clear on some things.

11 Aside from the homes currently served by
12 the facilities and the AquaSource lots which we've
13 been referring to, do sewer and water pipes reach
14 every other lot in the subdivision?

15 A. Yes.

16 Q. Okay. And in reference to Exhibit 8,
17 when you were discussing the \$1,100 being paid to
18 AquaSource and the \$800 to be paid -- I'm sorry --
19 \$1,100 to be paid to Raintree from the AquaSource
20 improvements and the \$800 to be paid from -- to
21 Raintree for the existing improvements, is it -- I
22 just want to be clear on this, for the existing
23 improvements, is the district going to collect \$1,100
24 and just send 800 to Raintree or is the district only
25 going to collect 800?

1 A. Well, again, the district hasn't made a
2 decision on what it's going to collect. However, it
3 is our expectation that this agreement represents an
4 obligation that we would treat as a pass-through.
5 And so to the extent that we have to make these
6 payments, we want rates to be adequate to cover it,
7 particularly connection fees when it's no longer --
8 when it's not necessary and we don't have any
9 incentive to collect it.

10 Q. Okay. So you're not going to, then --
11 well, what -- what in your -- strike that. What is
12 your understanding of where these \$1,100 fees come
13 from?

14 A. I understood that when Raintree sold
15 lots to individuals, they purchased it under
16 contracts that called for them to pay Raintree \$1,100
17 when they connected to the sewer and water system.
18 It is -- that is the origin of the fee. Is that your
19 question?

20 Q. Yes.

21 A. Okay.

22 Q. Now, has that -- is that right to
23 collect the \$1,100 fee being assigned to the
24 district, and then with regard to the existing
25 improvements referenced in Exhibit 8 only 800 will go

1 back to the Raintree and the district is going to
2 keep 300?

3 A. The district hasn't decided what it's
4 going to do relative to that because we haven't set
5 our connection fee. It's possible we could. On the
6 other hand, I don't think it's consistent with what
7 we're trying to achieve here, so my vote would be
8 that we not collect it.

9 Q. But potentially, every lot out there
10 that has not been built upon may be charged in total
11 \$3,600 in fees?

12 A. I think if the -- every lot there could
13 be charged \$5,000. The question is whether the
14 appointed board of trustees is going to act
15 consistent with their charge to protect the public
16 interest.

17 And I don't -- I think it would be
18 irresponsible for the board to charge something in
19 excess of that which is necessary to provide water
20 and sewer services to its customers efficiently and
21 for the least cost possible. So all things are
22 possible, but unlikely in my opinion.

23 Q. And I'm just trying to clarify because
24 it's my understanding from your testimony that you
25 just provided to Mr. Comley, that some lot owners

1 would pay \$3,600 in fees and some would pay 3,300.

2 And I just want to make it -- make sure I'm not
3 confusing your testimony.

4 A. You're not confusing it.

5 Q. But now you're saying that potentially
6 that all lot owners could pay 3,600?

7 A. You're trying to put my statements in
8 the context of what is possible, and I'm telling you
9 that I don't want to say yes, that's possible,
10 because all things are possible.

11 I'm trying to say that the sewer
12 district has the public's interest as their only
13 consideration. So it isn't possible if they're going
14 to act consistent with protecting the public
15 interest. We think -- under this -- you may view
16 this -- this combination of these agreements as being
17 contrary to that, I don't know, but under this
18 agreement now, we have at least \$1,500, \$1,100 for
19 every lot that is served by AquaSource that will need
20 to be paid by the customers.

21 \$1,500 plus \$850 for every customer
22 thereafter, until Raintree has been compensated for
23 the agreed-upon direct expenses, at which point it
24 will be 11 -- \$1,500 plus 550 for the balance of the
25 lots that are served for the 15-year period. After

1 that it will be nothing extra.

2 Now, the board may say, as we have
3 talked about, well, that's all fine, that's what's
4 necessary to get this deal done. What's necessary to
5 ensure ten years from now we're not sitting on our
6 hands looking at each other saying, what are we gonna
7 do next?

8 And the answer to that question is, a
9 board-implemented connection fee, the sole purpose of
10 which is to be set aside for future expansion.
11 That's how I understand it.

12 Q. Okay. So what we have here is what is
13 necessary but it is at least feasible that the other
14 board members may decide to collect the \$1,100 fee
15 from everyone?

16 A. Yes.

17 Q. Okay. You were also discussing the
18 current disputes regarding the title to the property
19 where the new expanded facility's gonna go?

20 A. Yes.

21 Q. Is it your understanding that part of
22 this \$800 that is going to be sent back to Raintree
23 could go to pay legal expenses related to that
24 dispute?

25 A. Yes.

1 Q. Okay. Do you own any lots in Raintree
2 other than your own home?

3 A. I do not.

4 Q. Do any corporations, companies, LLC's
5 that you're affiliated with own any lots in Raintree?

6 A. No, that's why I had to think about it,
7 but no, I have no interest in any lots in Raintree
8 other than my home.

9 Q. Okay. And again, you may have already
10 mentioned this. With regard to the reserve fund that
11 the board's thinking about creating, should that
12 happen, would any of those funds be used on any of
13 the other facilities that the board will be
14 overseeing?

15 A. No. They would be pledged to the
16 capital expansion needs of Raintree.

17 MS. SCHMID: Okay. I have no further
18 questions.

19 JUDGE STEARLEY: Thank you, Mr. Schmid.
20 We have cross-examination by Office of Public
21 Counsel, Ms. Baker.

22 CROSS-EXAMINATION BY MS. BAKER:

23 Q. Hi, Mr. Toma. My name is Christina
24 Baker. I'm with the Office of Public Counsel. I
25 guess I want to begin with the tri-party agreement,

1 Exhibit No. 2, back a little bit further in the
2 exhibit. This is an agreement between the sewer
3 district, Central Jefferson, and EMC, correct?

4 A. Correct.

5 Q. Are there any -- or what utility assets
6 are being transferred by this agreement?

7 A. All of the physical infrastructure; that
8 is, the water and sewer lines, the wastewater
9 treatment facility, the ground upon which those sit,
10 their rights to access those through utility
11 easements and wells, well houses and any
12 appurtenances that they own such as lift stations,
13 pumps and equipment.

14 Q. Okay. From some of the testimony that
15 I've heard so far today, there are apparently some
16 other utilities, rights or assets that are not owned
17 by Central Jefferson including those by AquaSource
18 and those by Raintree Plantation, Inc.; is that
19 correct?

20 A. I can't agree with your characterization
21 of those things, but go ahead. No. No, I don't
22 think that's correct.

23 Q. Okay. What do you think that Raintree
24 Plantation, Inc. has that caused you to go into an
25 agreement with them regarding some of the utility

1 rights or assets?

2 A. They have, by virtue of a settlement
3 agreement, an obligation from AquaSource to construct
4 sewer lines to serve lots that are not currently
5 served at a per-lot dollar amount that is well below
6 what it would -- what it would cost if AquaSource
7 does not remain obligated to perform that work.

8 Q. Okay. So that is --

9 A. That's an asset maybe. Okay.

10 Q. That is an asset or a right that Central
11 Jefferson does not own?

12 A. That's my understanding and I may be
13 wrong because I wasn't a party to any of those
14 transactions.

15 Q. What exactly is Raintree Plantation,
16 Inc.?

17 A. It's a corporation that was formed in --
18 I don't remember what year -- late '70s as a land
19 development real estate developer -- or development
20 company.

21 Q. What is your understanding of their
22 relationship with Raintree Plantation Subdivision?

23 A. They developed Raintree Plantation
24 Subdivision.

25 Q. Okay. And so it's your understanding

1 that they have some rights to a certain amount of
2 money for some lines that they have?

3 A. It's my understanding that by contract,
4 when Raintree sold a lot to a consumer, the contract
5 obligated the consumer to pay Raintree Plantation,
6 Inc. \$1,000 for water and sewer and \$100 for fire
7 plugs, presumably as compensation for Raintree having
8 installed those improvements in the development.

9 Q. And so the sewer district is going to
10 collect payments on behalf of Raintree Plantation,
11 Incorporated?

12 A. To the extent outlined in the sewer and
13 water service fee agreement.

14 Q. Okay. Let's go to that agreement,
15 Exhibit 8. Who will be collecting the payments that
16 will go to Raintree Plantation, Inc.?

17 A. The Jefferson County Public Sewer
18 District.

19 Q. Okay. Will they be delegating out the
20 collection to EMC to actually do the collection of
21 the money?

22 A. EMC will be under contract for some
23 period of time to do that collection.

24 Q. Okay. So if -- if a homeowner were to
25 say, "I don't believe that Raintree Plantation, Inc.

1 deserves or is owed the \$800" and removes that from
2 their fees paid to EMC, will they be disconnected
3 from -- from the system?

4 A. It's a payment that precedes connection.

5 Q. These are for existing --

6 A. No.

7 Q. -- the 800?

8 A. No.

9 Q. What about -- okay. What about
10 connection; will they be allowed to be connected --

11 A. No.

12 Q. -- if they do not pay?

13 A. They would not.

14 Q. So these fees are directly connected to
15 the ratepayer and their ability to have service?

16 A. The fee would be part and parcel of the
17 Jefferson County Public Sewer District fee schedule
18 for Raintree Plantation. It will be necessary for us
19 to collect it in order to meet our contractual
20 obligation under the sewer and water service fee
21 agreement.

22 Q. Okay. I want you to read -- this is
23 Exhibit 8 still. I want you to read on page 3, the
24 No. 4. Let's just start with the No. 4. We'll go
25 through the individual letters but let's start with

1 No. 4. Can you read that for us?

2 A. No. 4 is entitled "Expenses of
3 Raintree." "Raintree has paid on behalf and will
4 continue to pay on behalf of the Central Jefferson
5 County Utilities, Inc. expenses related to the sewer
6 and water systems and facilities serving Raintree
7 Plantation Subdivision. Raintree shall be entitled
8 to receive the \$800-per-lot fee provided in paragraph
9 3 B until the expenses listed in this paragraph 4 are
10 reached."

11 Q. Okay. So that makes the \$800 that
12 Central Jefferson or -- I'm sorry. That the sewer
13 district or EMC will collect on behalf of Raintree
14 and their expenses?

15 A. Yes.

16 Q. Okay. Let's jump down to No. D. Can
17 you read that?

18 A. Letter D?

19 Q. Letter D, I'm sorry. Letter D.

20 A. "Any cost related to the closing and
21 complete transfer of possession and control to sewer
22 district of the sewer and water systems and
23 facilities serving Raintree Plantation Subdivision."

24 Q. Okay. If you are having the agreement
25 with Central Jefferson, what costs relating to the

1 closing and the transfer of possessions do Raintree
2 expect that they will have?

3 A. Raintree has expended, it's my
4 understanding, has paid for engineering and legal
5 expenses associated with getting to the point that
6 this transfer can occur. If they haven't, then they
7 wouldn't be entitled to anything under that -- under
8 that provision.

9 Q. Do you have an estimation of how much
10 that will be?

11 A. Item A estimates it to date.

12 Q. Item A is a separate one, though.

13 A. Well, I don't know what it would be in
14 addition to item A.

15 Q. Okay.

16 A. But it could be.

17 Q. Okay. Because I'm assuming since A is
18 by itself, that's a separate line. Let's read No. --
19 I'm sorry. Letter E.

20 A. "Cost of responding to investigative
21 inquiries and requests of federal, state and local
22 governmental entities initiated within five years
23 from the effective date of this agreement."

24 Q. Okay. This would include, let's say,
25 inquiries from Department of Natural Resources,

1 correct?

2 A. Yes.

3 Q. This would include inquiries from the
4 Environmental Protection Agency, correct?

5 A. Yes.

6 Q. So the ratepayers are being asked to
7 fund for Raintree Plantation, Inc. their inquiries to
8 two agencies that they have alleged violations with,
9 correct?

10 A. Certainly to those agencies. Whether
11 the amounts relate to defending against the
12 violations, remains to be seen.

13 Q. Okay. But that could include costs of
14 responding?

15 A. Well, if it did and the district found
16 it objectionable, then we wouldn't be obligated to
17 proceed.

18 Q. Okay. But you might not find it
19 objectionable either.

20 A. Well, that would be within the
21 discretion of the district.

22 Q. Well, let's go to letter F. Why don't
23 you read that as well.

24 A. "Current and future attorneys' fees and
25 other professional fees related to any of the above

1 are expenses of Raintree related to sewer and water
2 systems facilities servicing Raintree Plantation
3 Subdivision."

4 Q. Okay. So that could also include any
5 attorneys' fees that they spent fighting against
6 these alleged violations that are -- that are
7 connected with Raintree Plantation Subdivision,
8 correct?

9 A. Could, but only if the district are
10 willing to accept the payment of those fees.

11 Q. But you might?

12 A. You know, it's back to the what's
13 possible question. Yes, we possibly could, but it
14 would be inconsistent with our charge to protect the
15 public interest and I believe we would not.

16 Q. Do you have a list anywhere that gives
17 criteria for what your decisions will be based on?

18 A. No. We have an agreement in the
19 tri-party agreement that if there's virtually any
20 term or condition that we find objectionable, we
21 aren't obligated to proceed. And that language
22 relates directly to our protecting the interest of
23 the ratepayers.

24 Q. But there's no list that says what
25 protecting the interest of the ratepayers consists

1 of?

2 A. That decision falls with the board of
3 trustees who are appointed to protect their interest.

4 Q. So all of these are expenses in No. 4,
5 all of these are expenses that --

6 A. That they could --

7 Q. -- that Raintree will -- will --

8 A. Itemize.

9 Q. -- send to -- to the sewer district,
10 they will collect \$800 until all of these fees have
11 been paid?

12 A. There will be a dollar amount to which
13 we will agree, represents a reimbursement for costs
14 related to the process of transferring the assets.

15 Q. Is there a maximum amount for any of
16 these fees?

17 A. No.

18 Q. Or will they -- they will continue?

19 A. Until the --

20 Q. Into the future?

21 A. No.

22 Q. As in letter F?

23 A. They will stop.

24 Q. Current and future?

25 A. No. They will stop with the transfer of

1 assets.

2 Q. They will stop with the transfer of
3 assets. What do you mean by that?

4 A. If we receive the assets, we're going to
5 agree upon a dollar amount that they're entitled to
6 recapture.

7 Q. A maximum amount?

8 A. That amount will be the amount, the
9 maximum amount.

10 Q. But you do not have that agreement
11 today?

12 A. We haven't gotten there yet.

13 Q. Exactly what capital improvements is the
14 sewer district planning for Raintree Plantation?

15 A. Expansion of the treatment plant,
16 construction of an elevated storage -- well, of a
17 adequate storage facility, 200,000 gallons, and
18 the -- addressing the problem of lead in the water
19 supply. That may occur either by the construction of
20 a new well or by employing some technology that will
21 eliminate the lead from the existing well No. 1.

22 Q. Okay. What is the time frame for
23 beginning these capital improvements?

24 A. The capital improvements will presumably
25 begin as soon as we have the transfer of assets.

1 Q. What is your time frame for completion
2 of the capital improvements?

3 A. The time frame that is anticipated, at
4 least in terms of maximum time periods, is in the
5 proposed compliance agreement with DNR. And I'd have
6 to be looking at it, but we went over it this morning
7 and it's in evidence.

8 Q. Okay. All right. Going to the
9 compliance agreement with DNR that you mentioned, has
10 the sewer district approved a final version of the
11 compliance agreement?

12 A. No.

13 Q. Do you know when a final version is
14 expected?

15 A. In a conference call between Todd Thomas
16 with EMC, me and Lance Dorsey, we think we resolved
17 the last remaining question regarding the language of
18 that agreement. Mr. Dorsey was going to talk to
19 somebody and get back to us on changing the language
20 to reflect that understanding. As soon as that
21 occurs, the board will meet to review the agreement
22 and authorize a signature.

23 Q. Will it be signed before the transfer?

24 A. It's my anticipation it will be signed
25 before the transfer.

1 Q. There are set deadlines within the
2 compliance agreement and there are monetary penalties
3 that will be assessed if those deadlines are not met.
4 Who will be responsible for those monetary penalties?

5 A. The operation and maintenance agreement
6 transfer responsibility for failure to perform in
7 virtually any regard except the negligence --
8 negligent acts of the Jefferson County Public Sewer
9 District to EMC.

10 Q. So EMC will not be indemnified for those
11 monetary penalties by the sewer district?

12 A. They will not.

13 Q. You stated earlier that the sewer
14 district wants DNR -- a DNR commitment that there be
15 no violations or penalties before or during
16 construction. How does that correlate with the
17 compliance agreement and its deadlines and its
18 penalties?

19 A. I think the compliance agreement
20 specifically addresses that issue. I mean, it was --
21 that is -- in exchange for our commitment to meet
22 those construction deadlines, they've agreed to
23 forego what rights they may otherwise have to
24 prosecute us under the Clean Water Act. That's kind
25 of the quid pro quo of that agreement, so I'm not

1 sure I understand the question.

2 Q. I'm just going back through a statement
3 that you had said that you wanted the -- a DNR
4 commitment about no penalties?

5 A. Well, I only wanted the commitment, and
6 I would have taken it in whatever satisfactory form
7 they would provide it. Frankly, the only form in
8 which they would provide it was what is now called
9 the compliance agreement.

10 While I disagree with that, I think they
11 have -- they're asking of the district things that
12 exceed their normal regulatory authority. They
13 aren't asking us to do anything we wouldn't otherwise
14 be doing, they're just attaching penalties to our not
15 doing it. So in the long run, we didn't find it
16 objectionable.

17 Q. So the sewer district will accept that
18 there may be penalties if the deadline --

19 A. The sewer district and EMC is committing
20 to penalties if we fail to meet those deadlines.

21 Q. Okay. And will the cost of any
22 penalties that either EMC or the sewer district would
23 incur, would those be passed through as cost to the
24 ratepayers?

25 A. They would not be. The payment of

1 penalties is not an adequate justification under the
2 operation and maintenance agreement which we're
3 working on. But no -- none of the language relative
4 to what we have to pay them is what's being
5 considered for revision at this time.

6 So we're only obligated to pay them the
7 amounts under the agreement. There is no obligation
8 for anything beyond that, notwithstanding the fact
9 that they may end up paying penalties under a
10 separate agreement.

11 Q. But at the moment, you do not have a set
12 rate plan for the customers of Raintree Plantation,
13 correct?

14 A. The board has not adopted rates.

15 Q. So things are changing and are dynamic
16 at this point?

17 A. Yes, they are.

18 Q. And let's go to the rate study, Exhibit
19 No. 4. There are two numbers that I wonder about on
20 the first page near the bottom. It says "Operating
21 profit," and then it has 66,928 and 12 percent
22 underneath that. Whose profit is that?

23 A. EMC's.

24 Q. Okay. The very last line, "Estimated
25 interest rate, 20-year, 6 percent." Who is the

1 interest paid to?

2 A. EMC.

3 Q. So EMC, basically, is getting two
4 lines -- two lines of income beyond just rates;
5 they're getting a profit of 12 percent added into the
6 rates and they're getting an interest rate
7 of 6 percent added into the rates, correct?

8 A. Yes. We're proposing a 6 percent return
9 on their capital investment and that they be -- earn
10 12 percent on operations.

11 Q. Is there a -- a percentage of profit for
12 the sewer district that will be proposed?

13 A. The only revenue in excess of expenses
14 that the sewer district proposes is that 50-cent-per-
15 1,000-gallon water charge.

16 Q. And that will be for the expense of the
17 sewer district alone?

18 A. It will be for the district expenses of
19 the sewer district and anything that isn't spent for
20 that purpose would go to the capital improvement
21 fund.

22 Q. Okay. Do you see any place in this
23 draft pricing proposal that includes the \$1,100 for
24 AquaSource or the 800/550 for Raintree Plantation,
25 Inc.?

1 A. No. This was -- this was prepared by
2 EMC for consideration by the district without regard
3 to any obligations that the district may have beyond
4 its relationship with AquaSource -- I mean with EMC.

5 Q. So this is basically a planning
6 document, it has no bearing on what the actual costs
7 will be?

8 A. It is the -- yes, it is the document by
9 which we determined that the fees that were being
10 proposed were reasonable under the circumstances.
11 We -- you know, we will act consistent with what has
12 led us to this point, but until the transfer of
13 assets has occurred and we have a system for which we
14 are going to establish fees, we haven't established
15 them.

16 Q. Has EMC submitted any documentation for
17 the numbers that we see in this proposal?

18 A. You have what we reviewed.

19 Q. So you have no backing information
20 whatsoever?

21 A. Such as?

22 Q. Such as where the \$37 per home came
23 from, what that is meant to cover, why it is 37, why
24 is it not 12, any information like that?

25 A. Well, what we have looked at is what \$37

1 per home means in terms of revenue for the existing
2 customers and what it means in revenue if you project
3 it over the course of years with some growth. And so
4 we've looked at that prospectus, if that's what
5 you're referring to. But beyond that, I don't know
6 to what you refer.

7 Q. I'm just looking at what other backing,
8 where is the documentation? Beyond this one page
9 with numbers written on it, where is the
10 documentation that we can look at that says, yes,
11 this is a right number, yes, this is a proper number?

12 A. Proper number for what?

13 Q. An equitable number --

14 A. These are costs -- historic costs of
15 operations. Do you have that?

16 Q. Yes.

17 A. Okay. And if you come over here and you
18 look at the bottom third of the page here, you see
19 those costs of operations and you see depreciation
20 expenses and things, you know, added to it.

21 Q. Yes.

22 A. And you see it produces 66 in
23 operating -- so that's the income that can be
24 expected. Now, you're questioning whether those are
25 the costs that are expected --

1 Q. I guess that's my question. They're
2 expected based on what?

3 A. Based on historic cost of operation,
4 depreciation --

5 Q. Depreciation of what?

6 A. Depreciation of the equipment.

7 Q. Equipment that is to be built?

8 A. Yeah.

9 Q. So there is nothing to say this is what
10 it cost, this is what it is worth? It is not
11 existing yet.

12 A. No, it's not. But the assumption is
13 that it will be \$1.7 million.

14 Q. But it could be different than that as
15 well?

16 A. Could be.

17 Q. When will the rate increases go into
18 effect for the ratepayers?

19 A. The -- at the same time that the
20 district has an obligation to pay EMC, which is with
21 the transfer of assets.

22 Q. So a rate increase could go into effect
23 on day one?

24 A. Yes.

25 Q. Even before EMC has done any work per

1 the new agreement?

2 A. If EMC doesn't start doing work on day
3 one, they won't meet the obligations under the
4 compliance agreement and will be exposed to
5 liabilities associated thereto. So, possible? Yes.
6 Unlikely.

7 Q. But there will not be a large amount of
8 capital outflow on the first day.

9 A. No.

10 Q. But yet, there will be a fair amount of
11 a rate increase on the first day?

12 A. Yes.

13 Q. I've heard you mention yourself in a lot
14 of roles in this case. What again is your role with
15 the sewer district?

16 A. I'm the chairman of the sewer district.

17 Q. What is your role with Jefferson County
18 government?

19 A. I don't believe I've mentioned that but
20 I'd be glad to tell you.

21 Q. Okay.

22 A. I'm the director of the department of
23 land use development and code enforcement for
24 Jefferson County government.

25 Q. And tell us again what role you played

1 within Central Jefferson County Utilities.

2 A. For that period, about ten-year period,
3 I was managing the field work for Central Jefferson
4 County Utility. I wasn't doing billings or receipts
5 and -- I didn't do the accounting, although I helped
6 prepare the reports of the Public Service Commission
7 on an annual basis.

8 Q. And what role did you play with Raintree
9 Plantation, Inc.?

10 A. From 1987 to 1992 I was the project
11 manager of the sales program.

12 Q. And you've already stated that you own a
13 home within Raintree Plantation?

14 A. Yes, I did.

15 Q. And you said you do not own any other
16 lots beyond the home, correct?

17 A. Yes.

18 Q. Have your home property values been
19 affected by the problems in the sewer moratorium
20 within Raintree Plantation?

21 A. Well, I haven't tried to sell my home so
22 I can't speak from personal experience, although I
23 can tell you that I have been made aware through
24 associates of mine and friends of mine who are in the
25 real estate business that the average days on the

1 market for homes in Raintree has grown and is
2 continuing to grow, and that some sellers have been
3 providing discounts and seller participation in order
4 to get their homes sold, but I don't have any
5 personal experience with that.

6 Q. And you are already connected to the
7 water and the sewer utility?

8 A. Yes, I am.

9 Q. So have you already paid the \$800 that
10 Raintree Plantation, Inc. feels they are owed for
11 existing service?

12 A. I paid \$1,100.

13 Q. Who exactly is Essex -- is it
14 Contracting?

15 A. Essex Contracting, Incorporated is a
16 contracting company that specializes in municipal
17 utilities in subdivision development.

18 Q. And what was your role with Essex?

19 A. Vice-president.

20 MS. BAKER: I don't think I have any
21 further questions.

22 JUDGE STEARLEY: Thank you, Ms. Baker.
23 We'll have questions from the Commissioners.
24 Commissioner Clayton?

25 THE COURT REPORTER: Judge, could we

1 have a break?

2 JUDGE STEARLEY: Oh, okay. We have been
3 going for a little bit over two hours and our court
4 reporter needs a break. The rest of us probably
5 could too. So we'll take a ten-minute break and come
6 back and start up again with questions from the
7 Commissioners. Thank you.

8 (A RECESS WAS TAKEN.)

9 JUDGE STEARLEY: All right. I think
10 we're ready to go back on the record. We are back on
11 the record. Mr. Toma remains on the stand and we are
12 at the point where we'll have questions from the
13 Commissioners. Starting with Commissioner Clayton.

14 COMMISSIONER CLAYTON: Thank you, Judge.
15 QUESTIONS BY COMMISSIONER CLAYTON:

16 Q. Mr. Toma, is that how I pronounce your
17 name?

18 A. Yes.

19 Q. T-o-m-a?

20 A. T-o-m-a.

21 Q. T-o-m-a, great. Thank you very much for
22 appearing here today. I wanted to clarify a couple
23 of things. First of all, is -- is the sewer district
24 a party in this case?

25 A. The sewer district is a party in this

1 case but not at the sewer district's request.

2 Q. But it is a party and you-all are not
3 represented by counsel; is that correct?

4 A. We are not.

5 Q. Why did you-all not want to be a part of
6 this case?

7 A. Well, the sewer district has entered
8 into an agreement with the Central Jefferson County
9 Utility Company and EMC. We view ourselves as being
10 an agency or organization to act in the public
11 interest, and we are offering our services to
12 facilitate the solution of the problem at Raintree.

13 While we are desirous of helping solve
14 the problem, we really didn't see ourselves as being
15 the advocates of -- of this particular solution. We
16 are available, we are cooperating, we are
17 participating, and we will help facilitate the
18 solution as it may or may not occur at Raintree, but
19 that was -- we were just part of the process.

20 Q. We have a similar function in trying to
21 protect the public and address how best to resolve
22 problems as well. It's correct to say that the
23 district is not represented by an attorney and you
24 filed no pleadings in this case --

25 A. That's correct.

1 Q. -- is that correct? Okay. So there's
2 no official recitation of the sewer district's
3 position on the issues that have been raised by any
4 of the other parties?

5 A. That is correct.

6 Q. Okay. Are there conditions that the
7 sewer district will -- if conditions are imposed upon
8 the transfer of this property, is it your testimony
9 that the sewer district is not gonna acquire the
10 company?

11 A. No, I didn't make that statement.

12 Q. Okay. How do we -- how do we know what
13 conditions the sewer district is willing to accept or
14 not accept without statements of position from the
15 district?

16 A. If the Public Service Commission chooses
17 to establish conditions, then the board will consider
18 those conditions, and we will be glad to inform the
19 Public Service Commission prior to the rendering of
20 your final decision of whether we can accept all or
21 any portion of those.

22 Q. Okay. It wouldn't be more efficient to
23 do that ahead of time or during the hearing than
24 after we go through an entire hearing process to know
25 what you'll take and not take?

1 A. Well, our position right now is that our
2 proposal is on the table and it's unconditioned.

3 Q. It's unconditioned. Okay. You're aware
4 of the conditions that have been suggested by the
5 Raintree Plantation Property Owners Association?

6 A. Yes.

7 Q. You're aware of the conditions that
8 they've suggested that the sewer district comply with
9 upon this transfer; have you reviewed that document?

10 A. I have but I haven't committed it to
11 memory.

12 Q. Has the board reviewed the document?

13 A. We have not had a meeting to review that
14 document, no.

15 Q. Okay. Has the information been handed
16 out to board members?

17 A. Yes.

18 Q. Okay. So at least they've been given an
19 opportunity to review those conditions?

20 A. Yes.

21 Q. Okay. But the sewer district didn't see
22 fit to make a statement on whether or not any of
23 those conditions would be appropriate or not?

24 A. No.

25 Q. We'll basically issue an order and then

1 you'll get back to us; is that correct?

2 A. Well, yes. I mean, if you issue an
3 order that establishes what it is that you think is
4 required in order to approve this transfer of assets,
5 and that is your position, then we have to make a
6 decision whether those are conditions that we can
7 live with. If we can't, then we won't do the deal.
8 Now, if you're willing to receive our comments, if
9 there's some provision for that, we will provide
10 them.

11 Q. Well, it just seems like the time has
12 kind of passed for comments and now it feels like
13 we're kind of negotiating with the sewer district.
14 Now, we issue our order and then we have to wait to
15 see what you say about that and I just...

16 A. I understand your reservations.

17 Q. I'm glad that you understand those. It
18 makes me feel a whole lot better. You're not
19 elected, are you, Mr. Toma?

20 A. I am not.

21 Q. No, you're appointed by the County
22 Commission; is that correct?

23 A. That's correct.

24 Q. And you serve a district or are you a
25 county-wide appointment?

1 A. It's a district.

2 Q. It is a district?

3 A. Yes.

4 Q. Okay. And how many districts are there

5 that -- let me be clear on this: You are appointed

6 at large within the sewer district?

7 A. Correct.

8 Q. You don't have to represent a particular

9 subdivision within the district?

10 A. That's correct.

11 Q. Okay. How many people reside within the

12 sewer district?

13 A. I don't know.

14 Q. Do you have an approximation that you

15 could make for me?

16 A. The district is the middle third of

17 Jefferson County. Jefferson County has a population

18 just over 200,000 people. The northern portion of

19 the district would be the most populated area. If I

20 had to estimate the district population, I would put

21 it at 65,000.

22 Q. Okay. Now, did those 65,000 residents

23 vote to form the sewer district?

24 A. They did not.

25 Q. They did not. How was the sewer

1 district formed?

2 A. The sewer district was formed under a
3 provision of Chapter 249 whereby the County
4 Commission, having found the formation of the sewer
5 district was in the interest of the public, did so by
6 resolution.

7 Q. Okay. So the district was basically
8 formed by the County Commission and there is no --
9 there are no voting rights for any of the people who
10 live within that district other than for voting for
11 the County Commission?

12 A. That's correct.

13 Q. All right. How many commissioners are
14 there in Jefferson County?

15 A. Three.

16 Q. Three. Are they north and south
17 commissioners or east and west?

18 A. East and west and at large.

19 Q. Yeah. Presiding Commissioner, okay.
20 Okay. The -- the territory that is in question with
21 Central Jefferson County Utilities is not currently
22 located within the territory of the sewer district,
23 correct?

24 A. It is currently within the sewer
25 district.

1 Q. It is -- it is within the sewer
2 district?

3 A. Yes.

4 Q. Okay. And what is the population
5 served, what is the number of populations served by
6 the utility? Do you know how many customers, how
7 many residents -- I guess customers is what I'm more
8 interested in.

9 A. Central Jefferson County Utility, they
10 have currently 670 residences -- or customers, a
11 commercial customer -- or two commercial customers.

12 Q. Okay. Okay. Have you -- do you have in
13 front of you the statement of position of Raintree
14 Plantation Property Owners Association, Inc.?

15 A. I do not.

16 Q. Do not. Perhaps we could -- I'd ask
17 your attorney to give it to you but you don't have
18 one, so I don't know who to ask to give it to you.

19 MR. ENGLAND: He may not have an
20 attorney here today, but he is our witness. He's not
21 our client, but I can give him a copy.

22 BY COMMISSIONER CLAYTON:

23 Q. How many members of the board are there
24 again, Mr. Toma?

25 A. There are five board positions, four of

1 which are filled.

2 Q. And you are chairman?

3 A. Yes.

4 Q. Other than organizational purposes, does
5 the -- do you vote on issues that come before the
6 board or do you vote only if there's a tie?

7 A. No, I vote on issues that come before
8 the board.

9 Q. Okay. Do you have a copy of that
10 statement in front of you?

11 A. Yes, I do.

12 Q. Okay. I'd like you to turn to
13 paragraph 2, and then there are lettered paragraphs A
14 through M, and I'm not gonna read these statements
15 into the record. If anyone is listening or paying --
16 if anyone's paying attention, they can follow along.

17 Would you read paragraph A and tell me
18 whether or not -- well, I guess your position is that
19 the board hasn't taken a position on any of these and
20 so I'm gonna ask your opinion personally as a board
21 member. Can you provide your opinion on whether or
22 not the condition proposed in a paragraph would be
23 acceptable or not?

24 A. Well, the board has taken a position on
25 a few of these that were raised in conversations not

1 directly related to this document.

2 Q. Okay.

3 A. And I'll inform you of those.

4 Q. So there has been some statement of
5 position somewhere and you can speak to that position
6 on those issues?

7 A. Yes. Yes.

8 Q. Okay. Well, why don't you highlight the
9 paragraphs on this document on which the board has
10 said some position.

11 A. Well, in paragraph A we believe we are
12 obligated to make payments under our contracts the
13 day that we -- that they're triggered by the transfer
14 of assets, so we will need to charge a rate that
15 allows us to fulfill those contractual obligations
16 when the transfer of assets occurs. We don't believe
17 we can be or should be limited in the number B or
18 item B.

19 Q. Let's -- I'll ask you for an explanation
20 if I want one --

21 A. Okay.

22 Q. -- so for right now I just want to know
23 if it's acceptable or unacceptable. So why don't you
24 start with the ones that you know that the board is
25 not gonna accept.

1 A. A.

2 Q. A?

3 A. B, C.

4 Q. Okay.

5 A. D, E, L, but with an explanation, and M

6 doesn't relate to our discussion.

7 Q. All right. Well, that's a good step --

8 that's helpful. That's helpful.

9 A. Well, I'm glad.

10 Q. Now, does that mean that the items that

11 you -- that you have not identified as unacceptable,

12 does that mean that -- well, I guess, what does it

13 mean? Does it mean you ought to discuss them?

14 A. Either we haven't considered it or --

15 Q. Or they're okay?

16 A. -- or it doesn't relate at this time.

17 Q. Or it doesn't relate. Are there any of

18 them that we can mark as acceptable conditions?

19 A. The ones that I didn't identify.

20 Q. They are acceptable, then?

21 A. Yes.

22 Q. Oh, well, okay. So each of these has

23 been contemplated by the board? Because you've just

24 identified each of the ones that are unacceptable --

25 A. Each has been, yes.

1 Q. Each has been contemplated. Okay.

2 So -- so if, all things being equal, if the
3 Commission were to issue an order including
4 provisions of F, G, H, I, J, K, we'd all be okay,
5 correct?

6 A. With -- although, I think the question
7 will have to do with our interpretation of the
8 meaning of these words. So you might adopt an order
9 that I interpret to mean one thing and you thought it
10 meant something else. I believe we will establish
11 and have procedures whereby the Property Owners
12 Association and its members will have the ability to
13 participate in the process by which we set rates.

14 Q. Okay.

15 A. But whether our public hearing process
16 and public meeting voting process meets your test, I
17 can't say.

18 Q. Okay. I was here for some of the
19 questioning by the Department of Natural Resources
20 attorney. What is your -- what is the sewer
21 district's position with regard to environmental
22 issues and potential penalties? Other than I know
23 you don't want to pay any, I understand that. But
24 could you clarify what the sewer district's
25 expectation in association with DNR and environmental

1 compliance is?

2 A. Where we are today is that the
3 Department of Natural Resources and EPA have agreed
4 that the sewer district will not be held responsible
5 for alleged past violations of any federal or state
6 regulations.

7 Q. They've agreed to that with you?

8 A. With us.

9 Q. For past violations?

10 A. For past violations or those which may
11 occur during the time in which we are making the
12 improvements to the extent they were uncontrollable.
13 We'll still be liable for our negligence, but the --
14 in return for that, the district has agreed and EMC
15 has agreed to accept a schedule of penalties that
16 correlates to a performance schedule.

17 If we don't complete certain items of
18 work within the prescribed times, DNR may collect
19 under that agreement those penalties, in addition to
20 which it calls for the district and EMC to perform a
21 sewer system improvement analysis.

22 Q. Basically, you're describing the
23 compliance agreement or the compliance plan or
24 something?

25 A. That's what it is, correct.

1 Q. Okay. Okay. I understand that. Now,
2 this morning during opening statements, the DNR
3 attorney made some reference to worrying about what
4 penalties were gonna be paid and I thought DNR's
5 position was that those penalties were gonna flow
6 through the acquiring entity. Is that -- is that
7 contrary to what you said this morning, sir?

8 MS. SCHMID: That is -- sorry. That is
9 not contrary to what I said. The question was in
10 relation to if EMC and the district do not sign a
11 compliance agreement. The compliance agreement would
12 give the new operator and owner the ability to avoid
13 the past violations, the liability for the past
14 violations. But without the signing of that, then
15 we -- DNR would hold the current owner and operator,
16 which could be EMC, and the district liable for all
17 violations, past and current.

18 COMMISSIONER CLAYTON: I thought we were
19 talking about a minimum 50,000 in penalties that we
20 didn't know who were gonna pay those at opening
21 statements today. Now, I've worked on other things
22 in between so maybe I'm confused and I don't
23 understand what your opening statement was about today.

24 Where was that minimum 50,000 penalties
25 supposed to be applied? I thought you were trying to

1 get anybody to collect it. Now this gentleman tells
2 me that all they have to do is enter into the
3 compliance agreement and they don't have to pay it.

4 MS. SCHMID: The penalties are for what
5 DNR has alleged to be existing violations of the
6 environmental and public drinking water statutes. If
7 the district and EMC enter into a compliance
8 agreement, then they will not be held liable for
9 those penalties, but Central Jefferson County
10 Utilities may still be liable for those penalties.

11 COMMISSIONER CLAYTON: Okay. Thank you.

12 BY COMMISSIONER CLAYTON:

13 Q. So Mr. Toma, so that means that there
14 are no problems on the environmental side of this,
15 correct?

16 A. Correct.

17 Q. Okay. We're making progress here.

18 A. Good.

19 Q. We're all working for the public good.

20 A. I like to think so.

21 Q. Mr. Toma, what is the -- are you aware
22 of the circumstances around the proposed intervenor,
23 Mr. Kolisch?

24 A. I am.

25 Q. You are -- you are familiar with those

1 circumstances? Could you just briefly describe them
2 to me? Don't get into great detail but could you
3 tell me what you understand the issues are associated
4 with Mr. Kolisch?

5 A. Mr. Kolisch desired to build a
6 commercial building outside of Raintree Plantation's
7 property boundaries, and for reasons that I'm not
8 privy although he's told me, it was determined that
9 the best thing for him to do was to connect to the
10 Raintree system and have his building become a
11 customer of the Central Jefferson County Utilities
12 Company.

13 He did so -- in the process of doing so,
14 he entered into an agreement that is basically a
15 recoupment agreement which allows him to get
16 paid payments of \$1,100 on some lots and more money
17 on other lots to compensate him for the capital he
18 expended to create these -- this line which not only
19 he connected to, but property owners building on lots
20 in Raintree would also be able to connect to.
21 Mr. Kolisch is desirous of having that relationship
22 survive the transfer of assets.

23 Q. And what is the position of the district
24 with regard to that relationship and that contractual
25 arrangement?

1 A. We believe that our existing contract
2 with Raintree Plantation, Incorporated, known as the
3 sewer and water service fee agreement, addresses that
4 issue.

5 Q. Which is Exhibit No. 8 --

6 A. Exhibit 8.

7 Q. -- I believe? Now, I'm looking in here.
8 Tell me how paragraph 5 differs, if it does -- well,
9 does it differ from the arrangement that Mr. Kolisch
10 alleges to exist with Central Jefferson County
11 Utilities?

12 A. I don't think that it differs but, you
13 know, I'm not a party to that other agreement so I'm
14 relying on the attorney for Raintree to reflect the
15 accurate figures.

16 Q. Okay. So -- so if paragraph 5
17 accurately reflects Mr. Kolisch's agreement with the
18 utility, then that issue -- well, may be satisfied.
19 We -- but I think we're going to hear from -- are we
20 gonna hear from Mr. Kolisch?

21 JUDGE STEARLEY: Yes. Mr. Toma, if you
22 could please speak a little bit more into the
23 microphone for us, that will help us. Thank you.

24 COMMISSIONER CLAYTON: Okay. I don't
25 think I have any other questions. Thank you.

1 JUDGE STEARLEY: Commissioner Gaw, do
2 you have any questions for this witness?

3 COMMISSIONER GAW: Not at this time,
4 thank you.

5 JUDGE STEARLEY: Commissioner Appling?

6 COMMISSIONER APPLING: No questions,
7 Judge.

8 JUDGE STEARLEY: All right.
9 Mr. Chairman?

10 QUESTIONS BY CHAIRMAN DAVIS:

11 Q. I'm sorry, Mr. Toma, I was having a
12 memory lapse. Okay. Can you refresh for my
13 recollection -- we tossed around a lot of titles here
14 for your various occupations and employment history.
15 What is your current occupation?

16 A. I'm the director of the department of
17 land use development and code enforcement for
18 Jefferson County, Missouri.

19 Q. Okay. And how long have you had that
20 job?

21 A. Six years.

22 Q. So since 2000?

23 A. Yes.

24 Q. Okay. And where were you employed prior
25 to that?

1 A. Essex Contracting, Incorporated.

2 Q. Okay. Essex Contracting, Incorporated.

3 And how long were you employed there?

4 A. 18 years.

5 Q. Okay. And who owns Essex Contracting,

6 Incorporated?

7 A. During the time of my employment it was

8 owned by Norville McClain and Kenneth McClain.

9 Q. Norville McClain and Kenneth McClain.

10 And who did you report to?

11 A. Both of them.

12 Q. Okay. And now, at some -- now, you said

13 you worked for them for 18 years; is that correct?

14 A. That's correct.

15 Q. Why did you leave?

16 A. Well, my passion is public service. I

17 have a degree in public administration, and while I

18 was working for them I completed the course work for

19 a Ph.D. in public policy studies. I chose to return

20 to the public sector.

21 Q. Okay. Now, did I hear you testify

22 earlier that you also were employed by Jefferson

23 County Utilities?

24 A. No. What you heard me say is that while

25 employed by Essex Contracting, I was assigned the

1 responsibility of managing the utility system at
2 Raintree.

3 Q. Okay. And so who were your contact
4 people at Jefferson County Utilities?

5 A. The three owners of Central Jefferson
6 County Utility Company, which were Norville and
7 Kenneth McClain and Jeremiah Nixon.

8 Q. Okay. And now the owners -- do you know
9 the owners of Raintree Properties?

10 A. Yes.

11 Q. And who are those people?

12 A. Well, I assume you mean Raintree
13 Plantation, Incorporated?

14 Q. Yes, Raintree Plantation, Incorporated,
15 thank you.

16 A. That was Norville McClain, Ken McClain
17 and Jeremiah Nixon.

18 Q. Okay. And so you ran the operations of
19 Jefferson County Utilities up through 2000, correct?

20 A. No.

21 Q. No? What period -- what period did you
22 run --

23 A. From 1985 to 1992, maybe a little
24 earlier than '85.

25 Q. Okay. So 1992. What happened in 1992?

1 A. They -- during my period of employment
2 we contracted with licensed treatment plant operators
3 and they chose to hire a licensed treatment plant
4 treatment operator and give him the responsibilities
5 of day-to-day management.

6 Q. Okay. So if I understand that right,
7 they contracted with Essex and then Essex contracted
8 with the subcontractor to run it?

9 A. No.

10 Q. No?

11 A. Central Jefferson County Utility
12 contracted with the licensed treatment plant
13 operator.

14 Q. Uh-huh.

15 A. But his only function was the
16 maintenance of the physical plant.

17 Q. Uh-huh.

18 A. All of the administrative and
19 contractual issues were managed by me in consultation
20 with the owners.

21 Q. Okay. And so who performed -- who
22 started performing those functions, you know,
23 after -- do you know who started performing those
24 functions after -- after 1992?

25 A. The operating functions and --

1 Q. Yes.

2 A. Was a guy named Robert -- or Roger
3 Phibbs.

4 Q. Roger Phibbs. And is Mr. Phibbs still
5 in the area?

6 A. I believe he is.

7 Q. Okay. And so when you were employed
8 there, there were no environmental -- when you were
9 employed with Essex and you were in charge of, I
10 guess, superintending the work there or whatever your
11 capacity was, there were no environmental problems,
12 correct?

13 A. Correct.

14 Q. Okay. Now, how long have you lived in
15 what is it, Raintree Properties, is that the Raintree
16 Subdivision, how long have you lived there?

17 A. Since 1986, less a year when I was
18 living outside the subdivision.

19 Q. Okay. And then did you -- I mean,
20 obviously, it was the people who were -- you were
21 working for the -- is it fair to say that you were
22 working for the people who were developing that
23 subdivision?

24 A. Yes, but the -- in the second phase,
25 certainly. In the phase that was developed from 1980

1 to 1985, it was virtually developed by the time I
2 went to work for the company.

3 Q. Okay. And I'm sorry. When did you move
4 into the subdivision?

5 A. In 1987.

6 Q. Okay. Did you build a new house?

7 A. Actually, I acquired a house that was on
8 property that Raintree Plantation bought for
9 expanding the subdivision and first moved into that
10 house. Then I built a house and now I'm on my third
11 house.

12 Q. Okay. Did they give you a good deal on
13 that first house?

14 A. No. You'd have to see it to understand
15 that it wasn't a good deal.

16 Q. Okay. Did they give you a good deal on
17 the lot that you bought for your second house?

18 A. I didn't buy it from them.

19 Q. Okay. So -- okay. So you didn't buy --
20 you didn't buy the lot from them?

21 A. No.

22 Q. Okay. You've lived there the whole
23 time, right?

24 A. Yeah. Well, except for a year when I
25 lived in the city of Fenton.

1 Q. Okay. And do you still see the
2 McClains?

3 A. Norville McClain is deceased. I see
4 Kenny infrequently but occasionally.

5 Q. Okay. Are you aware of the testimony
6 that we heard at a local public hearing?

7 A. I was present.

8 Q. You were -- you were present. So
9 obviously you heard the complaints?

10 A. Yes.

11 Q. Have you heard those complaints before?

12 A. There had been some meetings with
13 Department of Natural Resources and EPA,
14 information-gathering hearings, and I heard some of
15 those complaints at that time, yes. Those were not
16 complaints that were heard while I was actively
17 involved in managing the system.

18 Q. Right. But obviously, you're aware that
19 some of your neighbors have had complaints now for
20 several years?

21 A. I am aware of that.

22 Q. Did you ever go to the owners of, what
23 is it, Central Jefferson Utilities, and say there's a
24 problem here?

25 A. Well, I didn't. I don't think it would

1 have been my place to identify the problem. The time
2 at which I was made aware of the problems, they and
3 their attorney were present. So there wouldn't have
4 been any role for me in that process.

5 Q. So you never heard any -- you never
6 heard anything about it before any of these public
7 meetings?

8 A. If you want -- care to be more specific,
9 I knew there were problems at the treatment plant.

10 Q. You knew there were problems at the
11 treatment plant but you never --

12 A. But --

13 Q. -- attempted to contact any of the
14 owners of Central Jefferson Utilities?

15 A. To do what?

16 Q. If you --

17 A. They were aware of the same problems
18 that --

19 Q. Okay.

20 A. -- that I was aware of.

21 Q. They were aware?

22 A. I believe so, yes.

23 Q. Okay. Did they ever attempt -- I mean,
24 to the best of your knowledge, did you ever observe
25 them trying to do anything to solve the problem, to

1 make the problem better?

2 A. Yes. I --

3 Q. What did you observe?

4 A. I have knowledge that they had plans
5 drawn, that they desired to expand the treatment
6 plant -- well, first, they sought a buyer for the
7 treatment plant that would bring to Raintree the
8 resources necessary to expand the facilities.

9 Failing that, they employed a
10 professional engineer to design a plant expansion.
11 They submitted it for approval, they had negotiations
12 with the Department of Natural Resources over the
13 design of that plant. They agreed eventually on a
14 design, submitted it and received a construction
15 permit for it.

16 Q. So what happened?

17 A. Someone else will have to testify to
18 that specifically. The event that occurred was one
19 of the partners, Norville McClain, died. Now, the
20 effect that had on their intentions is something that
21 I can't comment on. Obviously --

22 Q. Okay.

23 A. -- that plan did not proceed. I'm not
24 sure why.

25 Q. Okay. And when did -- and when did --

1 and when did he pass on?

2 A. I don't recall the date.

3 Q. Roughly, year, guess.

4 A. Two years ago.

5 Q. Two years ago. Okay.

6 A. A year ago. I have to kind of
7 reconstruct it.

8 Q. Now, was it before the end or -- I mean,
9 to the best of your recollection, do you recall any
10 complaints before that?

11 A. No, but, you know, I wasn't in a
12 position to hear them. Unless somebody just happened
13 to have pulled me aside to tell me their problems,
14 there wouldn't have been any reason for anyone to
15 inform me of their complaints.

16 Q. Okay. And how did you come -- how did
17 you, as a representative of the county sewer
18 district, come to be involved? Did someone ask you
19 to help solve this problem or did you just stand up
20 one day and say, "It's my civic duty to get involved
21 and try to find a solution to this problem"? Explain
22 to me how this all came about. And I'm sorry if I
23 missed that in your earlier testimony.

24 A. You did not miss it.

25 Q. Okay.

1 A. The -- as you pointed out and we have
2 discussed, I had knowledge of the problems that were
3 occurring as a consequence of the treatment plant not
4 being expanded, if not the complaints of individual
5 citizens who were having problems that were later
6 reported.

7 The sewer district, after it was formed,
8 proposed a bond authorization that was designed to
9 meet many of the treatment needs that we knew existed
10 within the district, Raintree included. It's a big,
11 diverse district as I've described and --

12 Q. When was that bond issue passed?

13 A. Pardon me?

14 Q. When was that bond issue passed?

15 A. It wasn't passed. That's the point.

16 The voters rejected the bonding authorization which
17 would have allowed the district to finance the
18 acquisition, if they chose to, of the -- of the
19 utility company and to fund, through its bonded
20 indebtedness, the improvements.

21 Failing that, I had chosen to stay
22 involved and to find other ways to, through the
23 district, address clean water needs within the
24 district boundaries. And I won't go into the variety
25 of things that I'm doing in that regard.

1 It was through the design engineer for
2 the treatment plant expansion, that was submitted and
3 approved but never implemented, that I -- I met the
4 representative from EMC, Todd Thomas who testified
5 earlier today.

6 Frankly, we just started talking about
7 ways to address the problem. It was he who proposed
8 the prospect that EMC, under the right set of
9 circumstances, would consider capitalizing the
10 improvements in return for which they would like to
11 get a long-term operating agreement.

12 Frankly, I thought -- I was suspicious
13 of the proposal and I didn't act on it. I didn't
14 call a board meeting and I didn't discuss it. Todd
15 was persistent and he started kind of providing me
16 with more information about how it could work. On
17 the basis of his explanation, I began to see that
18 there may be a role for the district in this.

19 So I called a sewer district board
20 meeting, I invited Todd Thomas to attend and for him
21 to explain to the board members his vision of how it
22 could work. They thought it had merit to the extent
23 that we could negotiate the items that we thought
24 were essential to protect the interest of the sewer
25 customers and ratepayers. We proceeded. We think we

1 have done that and that's reflected in the agreements
2 that you have before you now.

3 Q. Okay. In those agreements did you ever
4 seek any -- and if I'm getting into settlement
5 negotiations that you feel that you just can't
6 discuss, that's perfectly acceptable, I guess, but
7 during any of these discussions did you ever attempt
8 to get Central Jefferson Utilities to put forth some
9 cash to help solve some of these problems?

10 A. No, we didn't. We thought --

11 Q. So you never --

12 A. -- what we prevailed on them was to --
13 rather than getting paid for their assets, to donate
14 them.

15 Q. Uh-huh. Do you have any idea what the
16 value of those assets would be?

17 A. No.

18 Q. No, you don't?

19 A. Well, I mean, there's a procedure by
20 which you can evaluate the --

21 Q. You never --

22 A. -- inground assets but we haven't done
23 that.

24 Q. You never -- you never did that?

25 A. No.

1 Q. So it was never your intent to borrow
2 against any of those assets or anything?

3 A. No.

4 Q. No. But you also assumed the
5 liabilities, correct, or would that be EMC
6 assuming -- who assumes the liabilities?

7 A. Under the tri-party agreement, EMC has
8 agreed to assume all of the operating liabilities,
9 save any liability that may occur as a result of the
10 negligence of the board of trustees or other district
11 representatives, so they assume the liability.

12 Q. Okay. So they assumed liability for the
13 notes on the system, et cetera, correct?

14 A. The notes?

15 Q. Well, in their property that's
16 mortgaged, isn't there a water tower?

17 A. Yes, they're gonna -- they're gonna pay
18 that off.

19 Q. They're gonna pay that off?

20 A. And then they're gonna finance the
21 improvements through internal capital. They're not
22 gonna borrow anything.

23 Q. Okay. And I'm sorry. What is your
24 education? You have a Ph.D. in public
25 administration?

1 A. No, I have a master's degree in public
2 administration.

3 Q. Master's degree in public -- and I'm
4 sorry. What is your Ph.D. in?

5 A. I didn't write my dissertation, but had
6 I, it would have been in public policy
7 administration.

8 Q. Public policy administration?

9 A. Public policy studies.

10 Q. Right. And can you go back and tell me
11 a little bit more about -- characterize your
12 employment with Essex again?

13 A. I was vice president of the construction
14 company, the contracting company, so I had general
15 administrative responsibilities for the construction
16 activity of -- which basically covered water
17 distribution systems and wastewater systems,
18 subdivision development, roads, bridges, concrete
19 projects.

20 Beyond that, I was assigned to perform
21 administrative management of the Herculaneum Sewer
22 Company which had customers in Herculaneum, Missouri
23 where their office is located, and the Central
24 Jefferson County Utilities, Inc. system at Raintree.

25 Q. Okay. So if I were to ask you the

1 question of, you know, do you feel like the system,
2 you know, was -- was and is in need of repair, you
3 feel confident that you can sufficiently comment on
4 that, don't you?

5 A. To the extent of my personal knowledge
6 of deficiencies. I haven't -- it wouldn't be as a
7 consequence of my inspection of lift stations or
8 anything like that, but I could --

9 Q. You never -- you never looked at any of
10 the lift stations?

11 A. Oh, I'm intimately familiar with all of
12 the facilities at Raintree, but I stopped climbing
13 into manholes and into lift station pits when I was
14 no longer responsible for managing the assets.

15 Q. Right. Are you aware that there have
16 been people that have been climbing into manholes to
17 perform work because -- allegedly because they
18 couldn't get any employee from Central Jefferson to
19 perform the work?

20 A. I heard statements of a resident
21 neighbor of mine about cleaning a collection box.
22 That's comparable to a manhole, I suspect.

23 Q. Right. And was the local public hearing
24 the first time you'd heard that or --

25 A. First time I'd heard that.

1 Q. First time you'd heard it?

2 A. And that's a gentleman with whom I have
3 spent a lot of time.

4 Q. Right. And so he -- you've spent a lot
5 of time with him and you've never seen him going out
6 with --

7 A. Nor has he chosen to mention it to me at
8 the various social gatherings where we have been
9 together.

10 Q. Right. And like -- it's your impression
11 that he's been around for a long time and he knows
12 that you're probably someone that's acquainted with
13 the owners of the subdivision?

14 A. He's familiar with my history.

15 Q. He's familiar -- he's familiar with --
16 with your work history. Okay -- or that's -- that's
17 your impression. Okay. Mr. Toma, when you got this
18 job with the county, did you fill out a job
19 application?

20 A. I did not.

21 Q. You did not?

22 A. No.

23 Q. So how did you get hired?

24 A. The position that I have was vacant for
25 a year and a half.

1 Q. Uh-huh.

2 A. I had been approached by Commissioners
3 asking me to consider taking the position. I had
4 declined for a year and a half. I finally met with a
5 Commissioner who, frankly, I had no relationship with
6 other than we just had shaken hands at meetings
7 together, and he pulled me aside after a meeting and
8 said, "Everybody tells me that you're the guy for the
9 job. Why don't you take it?"

10 And I went down the list of reasons why
11 I wasn't interested in taking this particular
12 position. He kind of overcame my objections, as a
13 good salesman would.

14 Q. Uh-huh.

15 A. And put me kind of on the spot. I
16 didn't commit to him at that time, but several days
17 later after the other -- the two other Commissioners
18 called me and encouraged me to make a decision, I
19 made one.

20 Q. Okay. Do you have any other sources of
21 revenue or income besides your job?

22 A. Investments.

23 Q. Right.

24 A. I am a licensed real estate broker in
25 Missouri, and while I don't actively engage in

1 activities, I occasionally am involved in a real
2 estate transaction that produces income for the real
3 estate company. I don't take any personal income
4 from it.

5 Q. Okay. Do you have any other personal
6 business dealings with any of the owners of Central
7 Jefferson Utilities?

8 A. I do not.

9 Q. You do not. In your capacity with the
10 sewer district or with the county, have you ever
11 accepted any gratuities or any other form of
12 compensation from the owners of Jefferson County,
13 Central Jefferson Utilities or Raintree or any of
14 their affiliates?

15 A. They gave me a watch when I left the
16 company.

17 Q. Now, as someone who has all but their
18 dissertation in public policy, what do you think is
19 an appropriate outcome in this case?

20 A. Well, I think the first thing that the
21 Public Service Commission needs to do is recognize
22 that the board of trustees of the Jefferson County
23 Public Sewer District has no interest other than
24 solving the problem and providing the best level of
25 service to the customers at the most reasonable rate

1 possible.

2 So conditions or tying the hands of the
3 district has been suggested with having us commit to
4 rates forever seems to me to be contrary to that
5 conclusion. We, like you, are appointed by elected
6 individuals to serve the public interest. I think
7 the Jefferson County Public Sewer District board of
8 trustees is committed to that and will act in the
9 interest of the citizens of the district.

10 So a lot of the things that I hear and a
11 lot of the comments that have been made about what if
12 and isn't this possible and all of that presumes that
13 this appointed body is going to make decisions
14 against the interest of its customers.

15 If you take that presumption away, I
16 think the best outcome is to authorize the transfer
17 of assets. I think if you review the documents, if
18 you acknowledge that to which we are saying we have
19 committed, if not officially, at least verbally, and
20 require us to finalize those commitments, that you
21 will have acted appropriately and should be able to
22 conclude that this transfer of assets is not in the
23 disinterest of the citizens of Jefferson County
24 Public Sewer District or Raintree Plantation,
25 Incorporated. That's what I think would be the best

1 outcome.

2 Q. Okay. Assuming that this transaction is
3 in the best interest of the Raintree customers, and
4 assuming that this transaction -- it's in the best
5 interest of the customers and the board not to,
6 quote, tie the hands of the sewer board, do you have
7 any objections to this Commission placing conditions
8 on the owners of Central Jefferson Utilities
9 requiring them to possibly make whole some of these
10 customers who've alleged that they've been harmed?

11 A. Well, while I might personally argue
12 with the wisdom of that decision, it would not affect
13 Jefferson County Public Sewer District's willingness
14 to proceed.

15 COMMISSIONER CLAYTON: Thank you. No
16 further questions.

17 JUDGE STEARLEY: All right. Do we have
18 any recross-examination after questions by the
19 Commissioners? Mr. Krueger?

20 MR. KRUEGER: I think I have just two
21 questions.

22 RECROSS-EXAMINATION BY MR. KRUEGER:

23 Q. Mr. Toma, will the sewer district or EMC
24 be using the engineering designs that Central
25 Jefferson had performed for them?

1 A. As Mr. Thomas explained earlier, that is
2 not a complete design, but to the extent that it is
3 complete, they intend to use it, yes.

4 Q. Thank you. Who constructed the current
5 wastewater treatment plant?

6 A. Essex Contracting.

7 MR. KRUEGER: Thank you.

8 MR. COMLEY: I have just one and if I
9 could take it from here.

10 CROSS-EXAMINATION BY MR. COMLEY:

11 Q. Mr. Toma, when you have a vacancy filled
12 on the board, will your role as chairman change in
13 terms of your voting power?

14 A. No.

15 Q. And I understand that you do not follow
16 the rules of parliamentary procedure with a chairman
17 who votes only on a tie; you vote on every
18 initiative?

19 A. We have not adopted those procedures.

20 Q. So I take it when you do vote, every
21 single time action is taken?

22 A. Yes.

23 MR. COMLEY: Thank you.

24 MR. SCHMID: Should I approach or just
25 do it from here?

1 JUDGE STEARLEY: You can do it from
2 right there, Mr. Schmid.

3 RECROSS-EXAMINATION BY MS. SCHMID:

4 Q. Mr. Toma, how many years did you operate
5 the wastewater treatment facility at Raintree?

6 A. Eight or nine years.

7 Q. And when did that end?

8 A. I believe it was around 1992 but, you
9 know, I didn't commit the date to memory.

10 Q. As a real estate agent, I assume you
11 would know if lots were selling in a subdivision?

12 A. Yes.

13 Q. And were lots selling in the
14 subdivision?

15 A. When?

16 Q. During the time that you were the
17 operator?

18 A. Oh, yes.

19 Q. Okay. So obviously, as the lots sold,
20 you knew that more and more people would be
21 connecting to the sewer lines and would need
22 capacity, correct?

23 A. Yes.

24 Q. Okay. And as the operator, do you know
25 if any funds were being put aside by Central

1 Jefferson County Utilities in order to pay for
2 capital improvements, expansions, upgrades of the
3 facilities?

4 A. The extent of my involvement was
5 managing the physical plant. I was not involved in
6 the finance or accounting of the company.

7 Q. Well, certainly, you would have known
8 that capacity's increasing -- well, more and more
9 people are using the facilities and therefore, the
10 amount of capacity left in the plant would be
11 decreasing, correct?

12 A. Well, obviously. And you haven't asked
13 this question, but if you'll allow me, you cannot
14 build a treatment plant and should not build a
15 treatment plant in a project the size of Raintree
16 or -- beyond some reasonable projection of its usage
17 because an overplant (sic) built -- built plant
18 doesn't work well, and the Public Service Commission
19 wouldn't generally allow you to do so and build those
20 costs into your rates. So you have both a financial
21 and a practical constraint on how big the plant gets
22 built beyond its use.

23 Now, the plans for expanding it are
24 always something the ownership, you know, should
25 consider, and as I just described, at some point the

1 ownership of this plant did consider it.

2 Q. I thought you said they considered it in
3 2004.

4 A. Well, I don't know when they began
5 considering it, but we didn't discuss it while I was
6 operating the plant because the plant was meeting its
7 input. And what happened, frankly, was that there
8 was a spurt in -- in building at Raintree. It went
9 from 25, 30 homes a year to, I think one year almost
10 100 homes.

11 So it was kind of the St. Louis building
12 market caught up with the operation of the utilities
13 and it was at the point that that kind of building
14 surge occurred that I started hearing conversations
15 about the need to expand the treatment plant.

16 Q. During the time that you were operating
17 the facility, how many homes were being added to the
18 service of the plant per year?

19 A. This is a gross estimate because I
20 haven't done this -- any research on it, but 15, the
21 most would be 25 a year, but more on the order of 15
22 a year.

23 Q. So approximately 100 homes would have
24 been added during the time that you were operating
25 it?

1 A. That's -- at that time a fair
2 assessment, yes.

3 Q. And at the time you were operating it,
4 what was the capacity of the facility?

5 A. When I started operating, it was 32,000
6 gallons and then it was increased to 64,000 in
7 response to that absorption of the treatment
8 capacity.

9 Q. Okay. So it's your testimony that the
10 owners never discussed with you further expansion of
11 the plant?

12 A. I didn't have a conversation with them
13 nor would I necessarily be involved in those
14 conversations.

15 MR. SCHMID: Okay. I have no further
16 questions.

17 JUDGE STEARLEY: Ms. Baker?

18 RE CROSS-EXAMINATION BY MS. BAKER:

19 Q. You were saying that your relationship
20 ended at Central Jefferson Utilities in 1992?

21 A. Well, it ended when Roger Phibbs was
22 hired and I'm just recalling 1992, but I can't swear
23 to that.

24 Q. So would it surprise you that I have a
25 letter from Department of Natural Resources dated

1 August 12th, 1997, that is addressed to you,
2 Mr. Martin Toma, Central Jefferson County Utilities,
3 1519 McNutt Road, Herculaneum, Missouri 63048?

4 A. No.

5 Q. So that fits within your time frame of
6 what you think --

7 A. I don't know what the letter is.

8 Q. I was going to do this tomorrow with
9 this particular letter, but I'll go ahead and enter
10 it today. What I have is a DNR letter regarding the
11 well 1 issues.

12 (EXHIBIT NO. 9 WAS MARKED FOR
13 IDENTIFICATION BY THE COURT REPORTER.)
14 BY MS. BAKER:

15 Q. Do you see the date on that letter?

16 A. Yes.

17 Q. What is that date?

18 A. August 12th, 1997.

19 Q. Do you see the name that is just below
20 the date?

21 A. Yes.

22 Q. What is the name?

23 A. Martin Toma.

24 Q. And what is the company name just below?

25 A. Central Jefferson County Utilities,

1 Incorporated.

2 Q. So that would mean that at least as far
3 as Department of Natural Resources is concerned, you
4 were the contact person for Central Jefferson County
5 Utilities in 1997, correct?

6 A. It means as far as they were concerned,
7 I was.

8 MS. BAKER: All right. I'll wait to
9 enter it in as an exhibit later, I think.

10 JUDGE STEARLEY: All right. Thank you,
11 Ms. Baker. Any additional questions?

12 COMMISSIONER GAW: I have one, Judge.
13 QUESTIONS BY COMMISSIONER GAW:

14 Q. Mr. Toma, the date that was just read on
15 that letter, what was your affiliation with the
16 entity that that is the -- that is given as the
17 address for that in that letter?

18 A. My recollection is while I was still
19 employed by Essex Contracting at that address, that
20 the responsibilities for the day-to-day management of
21 that system were in the hands of Roger Phibbs.

22 Q. And who is that?

23 A. The licensed treatment plant and water
24 system operator Central Jefferson County Utility
25 hired, rather than paying under a contract, making a

1 contract payment to licensed operators and then
2 compensating Essex for my management time.

3 Q. So did you have any affiliation at that
4 point in time?

5 A. I was -- well, generally speaking, I was
6 housed in the same building, I had kind of the
7 institutional knowledge from my years of being
8 involved, and so I still had occasion to talk to
9 people about Central Jefferson County Utility
10 Company, but I wasn't billing my time anymore. Essex
11 wasn't being compensated, I don't -- based on my
12 recollection, and I would have turned this over to
13 the guy that was handling it.

14 COMMISSIONER GAW: Is DNR representing
15 that there was some -- something other than a letter
16 that went out here because your records are --
17 indicate -- indicating that Mr. Toma was affiliated?
18 I'm trying to understand what your point is.

19 MS. BAKER: I'm with the Office of
20 Public Counsel.

21 COMMISSIONER GAW: I'm sorry.

22 MS. BAKER: I'm sorry. Mr. Schmid can
23 answer a little bit more about that.

24 COMMISSIONER GAW: You used a letter
25 from DNR.

1 MS. BAKER: I did. I did. That was
2 part of a data request.

3 COMMISSIONER GAW: DNR is a party,
4 correct?

5 MS. BAKER: Yes.

6 COMMISSIONER GAW: So is someone from
7 DNR going to testify as to the authenticity of their
8 records in this case and how it's reflected on that
9 letter?

10 MS. BAKER: My intention was to use it
11 with the Central -- the witness from Central
12 Jefferson, and that's why I have not entered it in as
13 an exhibit but I certainly will if you would like.

14 COMMISSIONER GAW: Well, I don't think
15 it's probably appropriate at this point in time.

16 MS. BAKER: Right. That's -- I just
17 wanted to point out that the statements do not
18 reflect what the documentation from DNR in the data
19 request reflects.

20 COMMISSIONER GAW: Someone, I assume,
21 would have to verify whether those records were --
22 reflect a reality at some point in time from DNR.
23 Does DNR intend to do that?

24 MS. SCHMID: Your Honor, DNR had not
25 intended to introduce that specific letter, but we

1 will put a witness on the stand who, I believe, may
2 be able to authenticate that for the Office of Public
3 Counsel.

4 MR. ENGLAND: May I jump in here, your
5 Honor?

6 COMMISSIONER GAW: Yes, please. I'm a
7 little unsure about what the purpose of this is and
8 I'm trying to discern.

9 MR. ENGLAND: This document was provided
10 by, I believe, Central Jefferson County Utility in
11 response to a data request from Public Counsel. So
12 as far as the contents of the document, we don't have
13 a problem with that becoming an exhibit.

14 What I do have a problem with is an
15 attempt to -- an attempt to impeach Mr. Toma's direct
16 testimony that he was still involved directly with
17 Central Jefferson County Utilities based on a letter
18 that was addressed to him.

19 As you know from probably personal
20 experience, the Public Service Commission sends out
21 letters to representatives of utility companies that
22 sometimes are deceased, let alone no longer work for
23 them. So --

24 COMMISSIONER GAW: And I think we're
25 probably not the only governmental agency that might

1 have had that experience.

2 MR. ENGLAND: That would be my point.

3 And so if the document -- if the intent of the
4 document is, as I said, to impeach Mr. Toma's
5 testimony that he was no longer working for the
6 company at that time because this letter was
7 addressed to him, obviously, I'd object to that
8 purpose. But the contents of the letter -- you know,
9 otherwise I don't have a problem with it.

10 COMMISSIONER GAW: Okay. It doesn't --
11 it's not totally clear to me what the purpose is, but
12 it did seem feasible that that was one of the
13 purposes and I was trying to discern it. So maybe
14 that will be made more clear when you revisit the
15 letter again. Thank you.

16 JUDGE STEARLEY: All right. If there's
17 no more cross, Mr. England, do you have any redirect?

18 MR. ENGLAND: I do, and I'll try to be
19 brief.

20 REDIRECT EXAMINATION BY MR. ENGLAND:

21 Q. Mr. Toma, you had a number of questions
22 regarding your membership on the board of trustees.
23 Did I understand you to say that that is a volunteer
24 board?

25 A. Yes, it is.

1 Q. And how often does that board meet?

2 A. We meet on an as-needed basis. We
3 started off meeting monthly but after the bond issue
4 failed and there was no regular business for the
5 board, we began and continued to meet as needed.

6 Q. On average how often would you say you
7 meet?

8 A. Well, for a while there, we met every
9 quarter and recently we've been meeting a couple of
10 times a month.

11 Q. Okay. Let me direct your attention to
12 the exhibit that has the proposed rates on it.

13 A. Four?

14 Q. Yes, sir, it is Exhibit 4. And I note
15 in parentheses up at the top of the first page by the
16 monthly sewer bill, and I believe the total water
17 bill of \$6.30 per 1,000 gallons, there's a
18 parenthetical that says "20-year fixed rate." Can
19 you please comment on that, please?

20 A. Well, among the possibilities we
21 considered was whether to adopt a rate with -- not a
22 rate, but a contract payment to EMC that had
23 escalator clauses in it which would have produced a
24 lower initial rate for the sewer district but
25 would -- and for the customers, but which would have

1 exposed us to some potential rate increases, the
2 degree of which we could not anticipate because they
3 were tied to future events and indicators.

4 So we opted, and thought it was in the
5 best interest, to get this 20-year commitment from
6 EMC that would allow us to have a stable contract
7 payment to EMC under the operation and management
8 agreement for the life of the agreement.

9 Now, the agreement we have allows us,
10 number one, to disaggregate it so if there are
11 elements of service that we think we could more
12 efficiently provide through our own resources or
13 other resources, we can renegotiate. So if we want
14 to take over billings, for instance, we can reduce
15 our contract payment to EMC by an amount that
16 represents their historic cost of billings. They're
17 committed to us to provide us information on a
18 regular basis the actual cost of providing the
19 services based on a financial report that they'll
20 make to us.

21 So we'll always have the opportunity
22 during that 20-year period to re-evaluate our
23 position and decide if there's a more efficient way
24 to provide service to these customers and therefore
25 lower the rate. On the other hand, we'll always know

1 that our charge for operation and maintenance will be
2 \$37, \$580 and \$1,500 as outlined in the agreement --

3 Q. Thank you, sir.

4 A. -- unless we choose to change it.

5 MR. ENGLAND: Thank you, sir. I have no
6 other questions.

7 JUDGE STEARLEY: Any other questions
8 from the Commissioners?

9 (NO RESPONSE.)

10 JUDGE STEARLEY: All right. Mr. Toma,
11 at this time you may be excused. You're not finally
12 excused in case the Commissioners would have further
13 questions for you later. Thank you very much for
14 your testimony.

15 I note it's been a long day. We were
16 going to try to get Mr. Kolisch's testimony in,
17 though, here at the conclusion of the day so he
18 doesn't come back tomorrow. So if there are no
19 objections, I'm going to have Mr. Kolisch step
20 forward. He has promised to be brief because he has
21 given testimony prior to this at our local public
22 hearing.

23 If you'll please come forward and take
24 the witness stand. And Mr. Kolisch, if you'll please
25 state and spell your name for our court reporter.

1 MR. KOLISCH: John Kolisch,
2 K-o-l-i-s-c-h.

3 (The witness was sworn.)

4 JUDGE STEARLEY: You may be seated and
5 proceed with your direct testimony.

6 MR. KOLISCH: Well, as it was explained
7 during Martin Toma's time here, I had a commercial
8 building put up on the borders of the Raintree
9 property and some commercial property I acquired to
10 be able to build the building. I had to secure water
11 and sewer for the county; otherwise, permits wouldn't
12 have been granted. Jefferson -- Central Jefferson
13 County Sewer Company, being on the border of my
14 property, was the likely source to get that.

15 In July of 1990 we applied to the Public
16 Service through the sewer company to have an
17 extension which was granted, and part of the
18 agreement that I had to make with the sewer company
19 was that I would pay for sewer and water lines and
20 manholes from the edge of my property to where they
21 had left off in the Raintree property, which I did.

22 And for that, I would recover my cost
23 from my property line to the existing sewer line, and
24 that was going to be as hook-on fees. And I was very
25 pleased to hear with the tri-party agreement that was

1 struck here that my name was included and I would be
2 reimbursed.

3 However, I have two concerns I would
4 like to make known and have record of, and that is,
5 the number of lots that would be hooked on, such as
6 the sewer; there are eight lots still to be refunded.
7 It's \$2,783.11 per sewer hookup, and that, at eight
8 lots, comes to 22,264.88.

9 There are 11 water hookups at 799.83
10 which computes to 8,798.13. These two totals
11 together come out to a total of 31,062.01. That's
12 apparently, from what I heard of this tri-party
13 agreement, they're in agreement with the per-lot cost,
14 and those are the numbers that I have not received.

15 The other concern I have, unless I
16 missed it when it was read, I believe by Mr. Toma,
17 there was no -- no time put on to when this payment
18 would be made. It said at exiting the agreement with
19 Central Jefferson County and their tariff. I would
20 like to ask that there be some kind of a time frame
21 attached to the payment, be it 30 days after,
22 whenever the transfer goes through, or at least I
23 will know when I can expect to be reimbursed.

24 That's actually all I really have to say
25 at this point since the rest of it has been

1 addressed, and I do appreciate the fact that they did
2 put that in.

3 I realize it was probably done a day or
4 two ago, because I first saw mention of it in their
5 denial statements when I had asked to be part of the
6 case. So I do -- I will have to say I do appreciate
7 them at least addressing that point.

8 JUDGE STEARLEY: All right. Thank you,
9 Mr. Kolisch. Cross-examination starting with Central
10 Jefferson, by Mr. England.

11 MR. ENGLAND: Well, if -- if you would,
12 please, I'd like to go last since I suspect I'm the
13 most adverse.

14 JUDGE STEARLEY: All right. We will do
15 that. We'll start with Staff, then, Mr. Krueger.

16 MR. KRUEGER: Thank you, your Honor.

17 CROSS-EXAMINATION BY MR. KRUEGER:

18 Q. How many lots is there water service to
19 that you're needing to be reimbursed for?

20 A. On the water, I need reimbursement on 11
21 lots.

22 Q. Can you tell me which lots those are?

23 A. Yes. In the agreement that I have, they
24 are -- in the agreement there's lots ten -- oh, I'm
25 sorry. No, just a moment. That's the wrong

1 agreement. I wasn't ready for that but I'll be ready
2 in a moment here. Please bear with me, I'll find
3 that paper. At this time I'm not -- apparently not
4 able to locate it here.

5 The Public Service Commission had sent
6 the letters on those particular lots, so I know
7 that's in the file here somewhere with the
8 Commission.

9 Q. Okay. And how much reimbursement are
10 you seeking for per lot for water services?

11 A. Water services, 799.83.

12 Q. And how much reimbursement are you
13 seeking for sewer per lot?

14 A. 2,783.11.

15 MR. KRUEGER: Thank you. That's all the
16 questions I have.

17 MR. COMLEY: I have no questions for
18 this witness.

19 JUDGE STEARLEY: All right.

20 MS. SCHMID: DNR has no questions for
21 this witness either.

22 JUDGE STEARLEY: All right. OPC?

23 MS. BAKER: OPC has no questions. Thank
24 you.

25 JUDGE STEARLEY: Questions from the

1 Commissioners, starting with Commissioner Gaw.

2 MR. ENGLAND: May I have my turn now?

3 COMMISSIONER GAW: He thought you wanted
4 to be last.

5 JUDGE STEARLEY: The day is wearing on
6 us here.

7 MR. ENGLAND: Appreciate it.

8 CROSS-EXAMINATION BY MR. ENGLAND:

9 Q. Hi, Mr. Kolisch. You know I'm Trip
10 England or at least you know I'm the attorney for --

11 A. Yes, yes, I'm familiar.

12 Q. And you testified a little bit about
13 this at the local public hearing, did you not?

14 A. Yes, I did.

15 Q. The first thing I noticed a discrepancy
16 between the amount -- total amount you gave today of
17 some 31,000, and at the time of the local public
18 hearing I believe you gave an amount of \$29,438; do
19 you recall that?

20 A. I believe that was 29,425.51. Was that
21 give or take -- yes, that's correct. The difference
22 in the amounts, the Raintree Plantation office
23 building, otherwise known as the POA building, when
24 they hooked onto this system for sewer, they had paid
25 \$1,636.50.

1 Originally, when I gave my testimony, I
2 was under the impression that was part of these lots
3 that the Public Service Commission had deemed how
4 much was to be paid. But, in fact, that particular
5 hook-on is outside of Raintree Plantation. It is not
6 part of this agreement.

7 But the way I understand the Public
8 Service Commission's ruling on that is that if an
9 adjoining lot owner, other than inside of Raintree
10 Plantation, were to ask permission to hook on, they
11 would be granted. So that's why there is a
12 difference in that figure.

13 Q. Which figure, then, is the right one, at
14 least in your mind today?

15 A. Sir, the -- the right figure is not just
16 in my mind, but according to the agreement, is
17 \$31,062.01, and that is the eight sewer lots and the
18 11 water lots.

19 Q. Now, do you have an agreement between
20 you and Central Jefferson County Utilities?

21 A. Yes, I do.

22 Q. May I see that, please?

23 A. It is on file from the general meeting
24 that we had, but I do have one here if -- I do have
25 one.

1 Q. Well, would that be an exhibit that was
2 offered at the time of the local public hearing?

3 A. It's one of them. This looks like the
4 original proposal. Oh, I didn't see the back page here.
5 Oh, that's a letter from Jeremiah Nixon to Gerald Zika
6 (phonetic spelling) from the Raintree Property Owners.

7 That is not part of the agreement. As I
8 testified, the Raintree Property Owners paid 16 --
9 1,636.50. I have the same letter you have and I also
10 have a letter from the utility company from Linda
11 Dennis, who -- the letter says she is a
12 vice-president of the company.

13 And she writes in her letter -- she
14 writes in her letter that that hook-on fee would be
15 1,636.50, whereas Jeremiah Nixon, the following month
16 had sent to her that it should have been 2,783. I
17 have this -- I have copies of this if you haven't --
18 privy to that. That one was in March -- January of
19 '99.

20 Q. Okay. Thank you, sir.

21 A. Because this is --

22 Q. I guess --

23 A. -- a separate agreement from the
24 original.

25 Q. I guess what I'm missing, and I didn't

1 find it in the exhibits from the public hearing, is
2 the contract that you're referring to. May I see
3 that?

4 A. Yes, certainly. I do have that. I've
5 got them all in disarray here looking for something
6 else, but I do have the original contract. And I
7 will come up with it here. Just give me a sec.

8 This is the original order which may
9 have been what you showed me earlier. This is the
10 one that's dated July 30th, 1990 when the Central
11 Jefferson County Utility filed for application. Do
12 you have that, sir?

13 Q. I have a September 18th, 1990 but I
14 think it's -- I think we're just looking at different
15 dates. We have the same -- we have the same order
16 there.

17 If you can't find that contract, maybe
18 we can have you submit it later. As I understand,
19 you, at the time of requesting service, were outside
20 the certificated area of Central Jefferson County
21 Utilities?

22 A. Yes.

23 Q. And Central Jefferson County Utilities
24 came to the Commission and requested an extension of
25 its certificate in order to include you into its

1 certificated area?

2 A. Yes.

3 Q. And I believe that was the order that
4 you and I both have a copy of in Commission Case
5 WA-91-24 that you entered into or you gave as an
6 exhibit at the local public hearing.

7 A. Okay.

8 Q. Now, once you became part of the
9 certificated area, my understanding is that this
10 refund obligation -- well, excuse me. That the
11 obligation that you had to pay for the extension of
12 service was governed by the tariffs of Central
13 Jefferson County Utility which were on file with
14 and approved by the Missouri Public Service
15 Commission?

16 A. That's correct.

17 MR. ENGLAND: Okay. I'm gonna -- your
18 Honor, I'd like for the -- for you to take official
19 notice, take the sewer tariff first, please. It's
20 the Central Jefferson County Utilities' sewer tariff
21 for Raintree Plantation. Extensions are Rule 10,
22 beginning on sheet No. 10, original sheet No. 10,
23 going through original sheet 10.3.

24 JUDGE STEARLEY: The Commission will
25 take official notice of those tariffs.

1 MR. ENGLAND: I can provide copies later
2 as well.

3 BY MR. ENGLAND:

4 Q. Mr. Kolisch, I'd like for you to read
5 the paragraph that I have highlighted on sheet 10.1
6 of the company's sewer tariffs. Could you read that
7 into the record?

8 A. "Company shall divide the actual cost of
9 the extension by the number of lots abutting said
10 extension to obtain the per-lot extension cost..."

11 Q. May I stop you there? I want to make
12 sure that we've -- you've done that exercise, have
13 you not? You captured all the costs of extending the
14 line to your property and then divided it by the
15 intervening lots to come up with a per-lot cost?

16 A. No, sir.

17 Q. Okay. How --

18 A. I did not.

19 Q. Did the sewer company do that?

20 A. No, sir.

21 Q. Okay. How do we come up -- how did you
22 come up with a per-lot cost?

23 A. Public Service Commission, Mr. James --

24 Q. Merciel?

25 A. -- Merciel. He and a Mr. Smith -- are

1 you familiar with him, both of the Public Service --
2 they are the ones who came up with a cost for the
3 sewer extension and also the water. I did not.

4 Q. Okay. Is it your understanding that
5 they performed that type of exercise that you just
6 read?

7 A. I don't know how they came to the
8 conclusion.

9 Q. Okay.

10 A. But I do know that when this process was
11 in the process, that the problems that occurred with
12 the Central Jefferson County Sewer Company was such
13 that intervention by the Public Service Commission
14 was the only thing that solved the problem. I was
15 absolutely getting nowhere with the Central Jefferson
16 County Sewer.

17 Q. Okay. Could you read the rest of that
18 quote that I have highlighted, please?

19 A. Okay. Let me see where we stopped.
20 "...when counting corner lots which abut the existing
21 main shall be excluded. As additional customers are
22 directly attached to the extension, these additional
23 customers shall pay to the applicant the per-lot
24 construction cost for the lot being connected."

25 Q. Okay. Thank you. And that's the phrase

1 or the sentence I want to focus on because as I read
2 that, that requires the customers that hook onto that
3 extension you previously paid for to pay directly to
4 you their pro rata share or that per-lot amount that
5 has been calculated by the Staff of the Commission?

6 A. That's correct.

7 Q. And you do not get that money until they
8 actually connect to your system -- or connect to that
9 extension? Excuse me.

10 A. That's correct.

11 Q. And if they never connect, if for some
12 reason they don't build, you're not entitled to
13 reimbursement?

14 A. I agree.

15 Q. Okay. But yet you want to have that
16 payment accelerated as part of this transfer; is that
17 right?

18 A. The payments I view as a contract with
19 Central Jefferson County. It's not the obligation of
20 someone who may take that over. My concern is that
21 if it isn't satisfied, the Jefferson Commission,
22 Sewer Commission may just as well, as they have so
23 far today, not admitted wanting to take any of the
24 liabilities.

25 Q. If I read that -- reread that language

1 that you just read, it says, "As additional customers
2 are directly attached to the extension, these
3 additional customers shall pay to applicant the
4 per-lot construction cost for the lot being
5 connected." That to me, sir, suggests that it is the
6 applicant -- it is the additional customer, not the
7 utility company, that is obligated to pay you your
8 per-lot cost.

9 A. I agree, sir.

10 Q. Okay. But you want that to be an
11 obligation of the utility company now?

12 A. As -- as was read in the tri-party
13 agreement, apparently you as well do, sir.

14 Q. Well --

15 A. Because of the language that I heard
16 read, it said that that would be refunded as part of
17 the exiting of Central Jefferson County.

18 Q. First of all, I don't believe it's the
19 tri-party agreement, it's the sewer and water service
20 fee agreement between Raintree Plantation --

21 A. Okay. I stand corrected because I
22 wasn't privy to get that. I just had heard it here.

23 Q. I just wanted to make that clear for the
24 record.

25 A. Okay.

1 Q. Well, then, maybe I misunderstood you.
2 Are you okay -- if you'll accept that
3 characterization, are you okay with Raintree's
4 willingness to assume that obligation and pay you for
5 those lots pursuant to this provision?

6 A. As I stated in the beginning of my
7 testimony, yes, I was pleased with the concern --
8 that doesn't mention the number of lots or how many
9 are sewer, how many are water. It just simply says
10 that they will pay for the lots -- for the sewer lots
11 at the proper price, the water at the proper -- I'm
12 inserting the number of lots of each, and when you
13 add that up, you get the grand total that I had given
14 you.

15 Q. Okay. So your -- your dispute is not
16 with the per-lot amount but with the number of lots?

17 A. It's not a dispute. It's more of a
18 statement of exactly how many lots are involved. I
19 do not know that. Perhaps whoever wrote that may
20 think there may be only three or four lots since it
21 doesn't indicate the number of lots for the sewer
22 connection or the water connection.

23 Q. Let me show it to you because I think it
24 does indicate specific lots. And I realize you may
25 not have seen it and just heard it.

1 A. It says lots 129 through 135, Section 5,
2 and that's a sewer. And then lots 46 through 47,
3 Section 1 of Raintree Plantation, and that's
4 apparently for the water hookup. I don't have a
5 problem with the amounts. I just want to clarify how
6 many lots of each one there are because out of the
7 agreement, one total lot with the sewer and water has
8 come through in the last 16 years. One.

9 Q. And that's because only one customer has
10 connected in that period.

11 A. That's correct, yeah. So I do not have
12 a problem with what you have here. I'd like to see
13 the addition of the number of water and the number of
14 sewer and also some time frame because in this it
15 just simply says that it would -- it will be at
16 the -- well, I'm getting that off of this paper
17 here -- that it will be paid by the exit of Central
18 Jefferson County's tariff. I don't know when that
19 is.

20 Q. Now, under the current tariff you have
21 no time limit, do you, sir?

22 A. No.

23 Q. It's just --

24 A. No. But this doesn't give me one
25 either, and if this is gonna make the assumption that

1 I'm gonna be satisfied the amounts of monies, yes,
2 that's true, but I may never see this money according
3 to the way it's written.

4 Q. And you may never see that money under
5 the tariff if no one connects to the system?

6 A. That's probable.

7 Q. Okay. Thank you.

8 A. But I'm not objecting to what you have,
9 I'm just asking to add.

10 MR. ENGLAND: Your Honor, just to
11 complete the record, the similar provision is in the
12 water tariff and I can give you the citation to that.
13 That's Central Jefferson County Utilities' water
14 service tariff for Raintree Plantation, Rule 15
15 beginning on original sheet 15 going through sheet
16 15.3.

17 JUDGE STEARLEY: Okay. The Commission
18 will take official notice of the tariff provision in
19 its PSC Missouri¹, original sheet No. 15.

20 BY MR. ENGLAND:

21 Q. Mr. Kolisch, I don't want to hold you
22 any longer than I have to, but is it possible that
23 you can send us or submit late that agreement you
24 were talking about, that contract?

25 A. Which contract is that now, sir?

1 Q. The one we started out talking about.

2 A. It happens to be the one that you had
3 here. It's not the contract, it's the rule from the
4 Public Service Commission. There was no written
5 contract given to me other than through the Public
6 Service Commission. It's part of the rule that
7 applied.

8 Q. Okay. Good. Well, I'm glad I got that
9 taken care of because --

10 A. I didn't mean to mislead you that there
11 was some sort of a written contract.

12 Q. No, well, that -- and I just wanted
13 to -- and I'm glad we got that clarified because I
14 thought there was. I'm glad we got that clarified.
15 Thank you.

16 JUDGE STEARLEY: All right. Now,
17 Commissioner Gaw?

18 COMMISSIONER GAW: First of all, let me
19 ask if the document that you-all have been referring
20 to could be identified with an exhibit number just so
21 I can be clear on what that is.

22 MR. ENGLAND: I think it was marked in
23 the public hearing.

24 COMMISSIONER GAW: It is in the record.
25 It's Exhibit 1, I believe, from the --

1 MR. ENGLAND: Public hearing?

2 COMMISSIONER GAW: -- public hearing.

3 THE WITNESS: I have copies if that will
4 help.

5 COMMISSIONER GAW: That's okay. I'm
6 sure we have copies but I just wanted to make sure
7 that it was clear on the record.

8 QUESTIONS BY COMMISSIONER GAW:

9 Q. And again, all of your references,
10 Mr. Kolisch, in regard to an agreement is really a
11 reference to this Exhibit 1 from the public hearing?

12 A. Yes, to my understanding it's part of
13 the rule that covered the transaction.

14 Q. Okay. That's helpful too. And let
15 me -- thank you for your patience today before I ask
16 more questions because I appreciate the fact that
17 you've come down here, and I know several
18 Commissioners were interested in hearing more from
19 you today, so thank you for taking the time --

20 A. Thank you.

21 Q. -- in coming down. In regard to helping
22 me to clarify this issue of how many lots we're
23 referring to --

24 A. Uh-huh.

25 Q. -- you made several references to the

1 number of lots that are involved. What I would like
2 to ask you to clarify is whether or not the
3 particular lots that are mentioned in this agreement
4 that is Exhibit 8, I believe, between Raintree and
5 the sewer district in that paragraph No. 5, are the
6 same lots that you believe are an issue for you?

7 A. I don't believe I have the document
8 you're talking about, sir.

9 Q. Is that possible --

10 MR. ENGLAND: I've got an extra. I took
11 mine back from him. You have that.

12 COMMISSIONER GAW: Thank you,
13 Mr. England.

14 THE WITNESS: Thank you. It was
15 Section 5, sir?

16 BY COMMISSIONER GAW:

17 Q. And I think it's on page 4 if that's
18 helpful to you.

19 A. Yes, the numbers are the same as what
20 the other agreement was. It's lots 129 through 135.

21 Q. Okay. And that constitutes how many
22 lots?

23 A. Well, it would have to be six the way
24 that is written, yes.

25 Q. It could be seven, couldn't it, if you

1 counted --

2 A. It could be seven counting the 129,
3 yeah.

4 Q. 129, 130, 131, 132, 133, 134 and 135,
5 that's seven lots.

6 A. Uh-huh, uh-huh. Yes, sir.

7 Q. Okay. That's in Section 5. And then
8 in -- and then lots 46 and 47 in Section 1 are the
9 two lots, correct?

10 A. That's correct.

11 Q. Total of nine lots?

12 A. That's the nine lots of the sewer
13 hook-on.

14 Q. All right. Now, are there additional
15 lots that you're concerned about?

16 A. Not on the sewer hookups, no.

17 Q. Okay. Did you --

18 A. Now, I might add, sir, of those nine
19 lots, one of those has been paid.

20 Q. One of them has been paid?

21 A. Yeah. There's a remainder of eight.

22 Q. Okay. And that is in regard to the
23 sewer --

24 A. To the sewer.

25 Q. -- itself?

1 A. Uh-huh.

2 Q. All right. And you agree with the
3 numbers that are there, I believe you said, in regard
4 to the 799.83 for Section 5 lots, and the 2,783.11
5 for the Section 1 lots?

6 A. Yes.

7 Q. Okay. Now, someone needs to give me a
8 little direction here on the water issues. Is that
9 an issue in this case that we're supposed to be
10 dealing with?

11 A. The water hook-ons?

12 Q. Yes.

13 A. Yes.

14 COMMISSIONER GAW: All right. Now, is
15 there anything in this agreement that -- or any other
16 agreement that deals with the water issues? I'm
17 asking counsel if anyone knows.

18 MR. ENGLAND: Well --

19 COMMISSIONER GAW: And I'm sorry if I'm
20 a little confused as well.

21 MR. ENGLAND: I apologize. I didn't
22 write the agreement. I can read it like you can. I
23 think it addresses both sewer and water but I'm
24 having a hard time figuring out which ones are which.
25 I'm thinking --

1 COMMISSIONER GAW: I am too.

2 MR. ENGLAND: -- if the company -- the
3 representatives of the company get together with
4 Mr. Kolisch, we may be able to identify the exact
5 number of lots that pertain to water service versus
6 sewer service.

7 COMMISSIONER GAW: Okay.

8 BY COMMISSIONER GAW:

9 Q. Mr. Kolisch, I'll ask you while you're
10 on the stand, do all of the lots that are mentioned
11 here relate to sewer service?

12 A. The --

13 Q. I'm avoiding the water issue right now,
14 just all of the particular --

15 A. The one we just went over with the nine
16 lots --

17 Q. Yes.

18 A. -- those are subject with the sewer.

19 Q. Okay. And you said one of them you'd
20 already been reimbursed for. Do you know what number
21 that is?

22 A. I do not know the numbered lot.

23 Q. Okay. But that's something that could
24 be determined?

25 A. That could easily be determined.

1 Q. Okay. And then what about the water?

2 A. There are 11 on the water.

3 Q. Are they -- do they overlap with these
4 lots that are mentioned --

5 A. Some do but not all, and the reason that
6 happened was the sewer manhole where Raintree stopped
7 was a lesser distance than where they stopped with
8 the water.

9 Q. Okay.

10 A. They do not run parallel.

11 Q. Okay. But there should be -- would you
12 say that all of the -- would all of the lots that are
13 mentioned here that are mentioned that you said are
14 sewer issues, would all of those lots also have water
15 issues in regard to your reimbursement?

16 A. The -- no. The 11 lots could easily be
17 different than the -- than the nine.

18 Q. Okay. Now, how can we determine which
19 lots those are?

20 A. I have a -- I have an actual mapping of
21 the system that was made out by the engineering
22 company that I had to hire to do this.

23 Q. Okay.

24 A. And I believe that this -- I'm sorry I
25 don't have copies, but I can leave this with anyone

1 here who needs -- this will tell us the exact lot
2 numbers on both and we can probably solve that issue
3 right here and now.

4 Q. Perhaps.

5 A. If that's agreeable.

6 Q. First of all, I want you to identify
7 again what it is you're referring to.

8 A. I have the mapping that engineering plot
9 from GC Engineering and Surveying Company of Hot
10 Springs. It's dated 9/19/90, and it was the actual
11 layout of where the sewer, water and all the manholes
12 were to be put.

13 Q. Okay.

14 A. This is the size of the pipe, size of
15 the manholes, the whole nine yards that was done for
16 Central Jefferson County Utility Company so that this
17 project could go on.

18 Q. Are you able to identify off of that
19 which --

20 A. Yes, I am. It's quite easy because as
21 they drew the sewer line and the water line, the lots
22 are numbered around -- around where they have drawn
23 it on here.

24 Q. Okay. You would --

25 A. So it's not that hard.

1 Q. But you'd have to spend a little time to
2 do that, I assume. You can't --

3 A. I can sit here right now and tell you
4 which nine lots are represented in the sewer just by
5 looking at this. It's that simple.

6 Q. Okay. But would you -- can you do the
7 same for water?

8 A. Yes, I believe I can.

9 Q. All right. Why don't you just verify
10 for me, first of all, if the sewer lots that are
11 mentioned in paragraph 5 of Exhibit A which we've
12 been referring to earlier are the same numbers.

13 A. Okay. When the -- the sewer leaves my
14 property, it goes past lot 133, and then it goes to a
15 manhole and it turns down lot 134, goes to a circle
16 on Bull Run, crosses Bull Run to another manhole, and
17 that's at lot 130 and also lot 14 -- 130 and 129.
18 And then it goes to a manhole at lot 47 and it goes
19 parallel down -- that's not a lot number there. It
20 goes to a manhole on Lincoln Drive where it stops.

21 Q. Okay. Now, I didn't hear you mention
22 lot 46.

23 A. Let me go back and look on 45.

24 Q. Or 135 if I recall.

25 A. 46 -- 46 is the one that is adjacent to

1 48, and it would be to the -- to the left to the
2 circle on Bull Run would be lot 46.

3 Q. Perhaps, Mr. Kolisch, it might be better
4 if you could talk to the parties and try to see if
5 this could be figured out rather than me trying to
6 walk you through a document there.

7 A. Oh, sure.

8 Q. And you say you think you can do the
9 same -- that you can see something similar on this
10 document for water?

11 A. Yeah, I believe so, yes. The water and
12 sewer both are charted on this.

13 Q. I think that -- let me ask you this: In
14 regard to the water, what is your -- what's your
15 understanding in regard to the numbers on
16 reimbursement for water?

17 A. 799.83.

18 Q. Okay. And there were -- is there any
19 variation from that on water? There was on the
20 sewer.

21 A. I'm sorry. I don't understand.

22 Q. Well, on the sewer in Section 5 of the
23 agreement, it appears that that's 799.83 on -- and it
24 says sewer and water on that. And then on Section 1
25 it says 2,783.11.

1 A. Yeah. In Section 5 that I have in front
2 of me here, it says "799.83, related sewer and water
3 services," and it says, 2,783.11 for the sewer.

4 Q. Perhaps someone can give us some
5 guidance about what that -- what that all means
6 tomorrow if that's possible. Mr. Kolisch, I don't
7 know what your time frame is and schedule --

8 A. I can be here tomorrow if that's
9 necessary.

10 Q. I'm hoping that it wouldn't be necessary
11 that -- after we finish here, maybe you-all could
12 come to some understanding of what the -- what the
13 issues are on this particular part of the case.

14 But I will ask you if you could -- if
15 you could leave some sort of a copy of that plat, and
16 I'm not exactly sure how to get that done, but if
17 that -- if that proves helpful to Staff or to the
18 other parties, perhaps that could be, then, given to
19 the Commission if it's helpful in working through
20 these issues.

21 COMMISSIONER GAW: I hesitate to have
22 this marked as an exhibit at this point because I
23 don't know how helpful it is, but if you-all are
24 going to discuss this after we're done, perhaps it
25 could be given to the Commission tomorrow if it's

1 helpful to us, or if we even need to look at it any
2 further.

3 MR. ENGLAND: We'll attempt to try to
4 clarify that. The other thing I want to point out is
5 that this agreement that you-all -- that we have been
6 reading from with Section 5 payment to Mr. Kolisch,
7 that is conditioned on transfer of the properties.

8 COMMISSIONER GAW: Yes.

9 MR. ENGLAND: So I don't want to -- I
10 don't want to leave the impression that if for some
11 reason the transfer doesn't occur, this agreement
12 still survives. There is a specific condition
13 precedent that this is contingent upon transfer of
14 the property to the sewer district.

15 COMMISSIONER GAW: Now -- now, okay.

16 MR. ENGLAND: That's paragraph 13 on the
17 next page.

18 COMMISSIONER GAW: Tell me which
19 agreement you're referring to again. I'm assuming
20 it's Exhibit 8.

21 MR. ENGLAND: Exhibit 8.

22 COMMISSIONER GAW: Yes. Okay. So --
23 but there is a -- correct me if I'm wrong. There is
24 a distinction in Mr. Kolisch -- to Mr. Kolisch in
25 regard to whether this goes through. If this

1 agreement ends up being -- being respected and the
2 condition precedent is met and everything occurs,
3 would he get paid before he would otherwise have
4 gotten paid if the property was remaining in current
5 hands?

6 MR. ENGLAND: I don't know. I need
7 to -- that I need to confirm. I don't know that. I
8 do that --

9 COMMISSIONER GAW: It's not clear to me
10 either at this point. I thought I heard someone
11 suggesting earlier that he wouldn't be reimbursed
12 until all the lots themselves were sold, but I may
13 not be tracking this.

14 MR. ENGLAND: The tariffs do not -- let
15 me back up. The tariffs only require payment of a
16 pro rata compensation if a connection is made. And
17 if no connections are made, no payments are made.

18 COMMISSIONER GAW: Yes. Yes.

19 MR. ENGLAND: Once the transfer takes
20 place, you-all approve it, water and sewer tariffs
21 are canceled, certificates are canceled, Mr. Kolisch
22 raises a legitimate concern because his right to be
23 paid under the tariff goes away.

24 COMMISSIONER GAW: Yes.

25 MR. ENGLAND: As I understand, Raintree

1 is willing to assume that obligation to Mr. Kolisch.
2 What I don't understand -- what I haven't figured out
3 is, do we have an issue with respect to the number of
4 lots --

5 COMMISSIONER GAW: Yes.

6 MR. ENGLAND: -- because it doesn't
7 appear that we have an issue with respect to the
8 per-lot amounts for water and sewer.

9 COMMISSIONER GAW: Yes.

10 MR. ENGLAND: Do we have an issue with
11 respect to the per-lot -- the number of lots and the
12 timing of the payment? I don't know the answers to
13 that.

14 COMMISSIONER GAW: And that's something
15 you would know tomorrow probably?

16 MR. ENGLAND: Well, I hope so. We'll
17 work on it.

18 BY COMMISSIONER GAW:

19 Q. Mr. Kolisch, that being the case, it's a
20 little difficult for me to know how much farther to
21 take the questions with you at this point.

22 A. Uh-huh. I can understand.

23 Q. So I'm going to stop and -- with the
24 hope that tomorrow these questions will be answered.
25 And unfortunately, I don't know what that does as far

1 as the importance of whether you need to be here
2 tomorrow or not, and that's something that I suspect
3 will be left up to you.

4 COMMISSIONER GAW: I'm going to pass to
5 Commissioner Clayton at this point. Again, thank you
6 very much for coming.

7 THE WITNESS: Thank you.

8 QUESTIONS BY COMMISSIONER CLAYTON:

9 Q. I just wanted to ask one question,
10 Mr. Kolisch, on part of this topic here. You wanted
11 the payments contemplated under this paragraph 5 of
12 Exhibit 8 to be accelerated or you wanted an idea of
13 what the time frame ought to be --

14 A. Yes.

15 Q. -- or at least that it is a statement
16 that you made earlier. Are you asking that the
17 payments be made at -- prior to when those lots are
18 sold, or are you asking that the payments be made or
19 have the lots sold? I don't know if they have been
20 sold or not.

21 A. The lots are sold.

22 Q. They are sold?

23 A. Yes.

24 Q. Okay. And that's when that normally
25 payment would occur after their sale?

1 A. No. After a home is constructed and
2 they're all --

3 Q. Okay. So is there a home constructed on
4 the lots?

5 A. There is one home on one lot.

6 Q. Okay. So you're asking to continue
7 under that -- with that understanding, that when a
8 lot -- when a lot is sold and then the home is
9 constructed and connected, that's when you're
10 supposed to get paid?

11 A. No.

12 Q. No?

13 A. No. The understanding that I had, as he
14 had read through that agreement, that when the
15 transfer of companies were to take place, payment on
16 those lots that have not been paid for, that it would
17 occur -- it would occur but he -- it doesn't say when
18 it would occur. That was my concern.

19 Q. Okay. Well, if -- help me with this:
20 If the transfer was not occurring, your agreement --
21 or your understanding with the Public Service
22 Commission report and order was that you would be
23 paid these amounts at the time the lot is sold and
24 when a house is constructed. When they connect on
25 it, that's when you would get paid?

1 A. That's our original thoughts.

2 Q. Original agreement.

3 A. Yes.

4 Q. And you're suggesting that the agreement
5 has changed with the transfer of the utility company
6 that you're supposed to receive payment at a time
7 different than when a building is constructed on each
8 lot and they connect in?

9 A. Yes.

10 Q. Okay.

11 A. My concern is exactly that when the
12 transfer takes place, I will be left out in the cold,
13 I will get nothing ever, houses built or not.

14 Q. Okay. Where -- where is it listed that
15 the time frame would change from when you would be
16 paid? Is there a contract and agreement?

17 A. The agreement I had was with the Central
18 Jefferson County Sewer District, and that was through
19 the rules --

20 Q. I got that. I got that. But you're
21 saying that the time frame for when you're gonna be
22 paid is gonna change, correct? You're saying that
23 the time frame is not when the house is built but
24 sooner than when a house is built now with this
25 transfer going through?

1 A. With the transfer, I won't get paid at
2 all. That's the concern.

3 Q. That you're not gonna get paid at all?

4 A. Yes, correct.

5 Q. Okay. But if --

6 A. Because the tariff that that agreement
7 was will end when the company is transferred over.
8 There'll be no agreement.

9 Q. So this agreement doesn't -- you take no
10 comfort in this agreement, this Exhibit 8?

11 A. As long as Central Jefferson County
12 Utilities stays in business, yes, but if they
13 transfer out and they no longer exist, then I'm
14 feeling that that agreement is no good and I'll be at
15 a loss.

16 Q. Okay. You're not satisfied with the
17 promise made in this agreement by Raintree
18 Plantation, Inc.?

19 A. Oh, yes. The only dispute I had was the
20 numbers. They didn't list how many lots.

21 Q. And the time frame?

22 A. There is no time frame.

23 Q. That's what I'm trying to get at. What
24 do you think the time frame ought to be?

25 A. I would just like -- 30 days after the

1 transfer, within the 30-day period I feel that it
2 should be consummated. That would give any company
3 long enough. Without some time frame, my concern is,
4 yes, we owe you this money, but there's no assurance
5 that you're ever going to get it.

6 Q. I don't know if there's -- I think under
7 the report and order issued by the Commission, the
8 money isn't even owed you until a house is built and
9 they hook on, correct?

10 A. Correct.

11 Q. And you're saying now that you don't
12 want that to be the time period when payment comes to
13 you; you want it to just be within 30 days of the
14 close of -- if we agree to approve this transfer?

15 A. Because they'll no longer be houses
16 built that can pay me.

17 Q. Okay.

18 A. Because the agreement is no good once a
19 transfer takes place.

20 COMMISSIONER CLAYTON: Well, I'm not --
21 okay. Thank you.

22 JUDGE STEARLEY: Are there any
23 additional questions for Mr. Kolisch following the
24 Commissioners' questions?

25 (NO RESPONSE.)

1 QUESTIONS BY JUDGE STEARLEY:

2 Q. Mr. Kolisch, before you leave here, I
3 know you brought a number of documents with you; is
4 that correct?

5 A. Yes.

6 Q. Were there any of those that you wanted
7 to introduce into evidence at this time?

8 A. No, your Honor, there isn't. I thought
9 there might be opposition from the utility company on
10 paying, but they have agreed in all -- essentially
11 they have agreed in that particular agreement that he
12 had read that they would pay that, so there's no
13 need. It's just a mere matter of how many lots,
14 again, and the time frame.

15 Q. And you had mentioned in your testimony
16 you were trying to find an exhibit with the lot
17 numbers on it and you were having difficulty finding
18 it?

19 A. Yes, I just need to sit down and look at
20 all this.

21 Q. All right. When you find that agreement
22 would you file that with the Commission?

23 A. Oh, yes.

24 Q. It will be considered a late-filed
25 exhibit so we have a copy of that in the record

1 identifying the lots.

2 A. I will. It will just be the one for the
3 water because the sewer lots are already here.

4 Q. All right.

5 A. They're on record.

6 JUDGE STEARLEY: Mr. Kolisch will be
7 excused at this point or do any of the parties kind
8 of wish to call or ask questions of him tomorrow? I
9 was asking if Mr. Kolisch can be finally excused.

10 COMMISSIONER GAW: That's up to him as
11 far as I'm concerned. I think he'll know more after
12 he has discussions.

13 THE WITNESS: Am I excused?

14 JUDGE STEARLEY: Yes, you are excused,
15 Mr. Kolisch.

16 THE WITNESS: Thank you.

17 JUDGE STEARLEY: Yes, and we are
18 concluding for today. It's been a long day, I know,
19 for everyone. My understanding is we're going to be
20 starting tomorrow with Central Jefferson's third
21 witness, Mr. McClain?

22 MR. ENGLAND: That's correct, your
23 Honor.

24 JUDGE STEARLEY: And Mr. Thomas will get
25 here a little later in the morning and we'll probably

1 have him return to the stand for any further
2 questions from the Commissioners at that time. Is
3 there anything else we need to take up today before
4 adjourning?

5 MR. ENGLAND: I'm sorry. I was
6 conferring with Mr. Toma. What time are we
7 reconvening tomorrow morning?

8 JUDGE STEARLEY: 8:30.

9 MR. ENGLAND: Okay. Is it possible to
10 take Mr. McClain at that time?

11 JUDGE STEARLEY: Yes.

12 MR. ENGLAND: And I would ask, then,
13 that unless someone objects, I'm gonna tell
14 Mr. Thomas that he probably doesn't need to be here
15 before 9:30 unless people tell me otherwise.

16 JUDGE STEARLEY: If there's nothing else
17 we need to take up at this time, we'll be adjourned
18 for today.

19 (WHEREUPON, the hearing of this case was
20 recessed until December 20, 2006.)

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1 CERTIFICATE OF REPORTER

2 STATE OF MISSOURI)
3) ss.
4 COUNTY OF COLE)
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6 I, PAMELA FICK, RMR, RPR, CSR, CCR #447,
7 within and for the State of Missouri, do hereby
8 certify that the witnesses whose testimony appear in
9 the foregoing hearing was duly sworn by me; that
10 the testimony of said witnesses were taken by me to
11 the best of my ability and thereafter reduced to
12 typewriting under my direction; that I am neither
13 counsel for, related to, nor employed by any of the
14 parties to the action to which this hearing was
15 conducted, and further that I am not a relative or
16 employee of any attorney or counsel employed by the
17 parties thereto, nor financially or otherwise
18 interested in the outcome of the action.
19

20 _____
21 PAMELA FICK, RMR, RPR, CSR, CCR #447
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