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STATE OF MISSOURI

PUBLIC SERVICE COMMISSION

TRANSCRIPT OF PROCEEDINGS

Evidentiary Hearing

May 9, 2013

Jefferson City, Missouri

Volume III

In The Matter Of The Request  
For An Increase In Sewer  
Operating Revenues of  
Emerald Pointe Utility Company

File No.: SR-2013-0016

MORRIS L. WOODRUFF, Presiding  
CHIEF REGULATORY LAW JUDGE  
ROBERT S. KENNEY, Chairman  
WILLIAM P. KENNEY, Commissioner  
TERRY M. JARRETT, Commissioner

1 APPEARANCES

2 PUBLIC SERVICE COMMISSION:

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4 Ms. Amy Moore

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7

8 OFFICE OF THE PUBLIC COUNSEL:

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11 Jefferson City, MO 65102

12

13 EMERALD POINTE UTILITY COMPANY:

14 MR. DEAN COOPER

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20 and

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2 (Whereupon, the hearing began at 8:35 a.m.)

3 JUDGE WOODRUFF: This is case number  
4 SR 2013-0016 and, which is regarding the small  
5 utility rate increase request of Emerald Pointe  
6 Utility Company.

7 We'll start today by taking entries of  
8 appearance beginning with Emerald Pointe.

9 MR. COOPER: Thank you, Your Honor.

10 Dean Copper from the law firm of  
11 Brydon, Swearngen & England, PC, PO Box 456,  
12 Jefferson City, Missouri, 65102 appearing on behalf  
13 of Emerald Pointe Utility Company.

14 Also appearing today on behalf of  
15 Emerald Pointe is Vincent O'Flaherty.

16 MR. O'FLAHERTY: And my address is 2  
17 Emmanuel Cleaver Boulevard, Suite 445, Kansas City,  
18 Missouri 64112.

19 JUDGE WOODRUFF: Thank you.

20 And for Staff?

21 MR. THOMPSON: Good morning Your  
22 Honor. Kevin A. Thompson and Amy Moore for the  
23 staff of the Missouri Public Service Commission,  
24 Post Office Box 360, Jefferson City, Missouri  
25 65102.

1 JUDGE WOODRUFF: And for Public  
2 Counsel?

3 MS. BAKER: Thank you, Your Honor.  
4 Christine A. Baker, PO Box 2230, Jefferson City,  
5 Missouri 65102 appearing on behalf of the Office of  
6 the Public Counsel and the customers.

7 JUDGE WOODRUFF: Thank you.

8 And we have 10 issues identified with  
9 multiple witnesses for each issue. I anticipate  
10 handling this the way we would for a larger rate  
11 case where we just go by distinct issues, bring the  
12 party, or bring the witnesses up each time to  
13 answer questions on that issue.

14 Is that the way everybody saw it would  
15 go?

16 Mr. Copper?

17 MR. COOPER: That's consistent with  
18 our expectation, yeah.

19 JUDGE WOODRUFF: Very good.

20 And of course as we get to the ninth  
21 and 10th issue if you can tell me beforehand that  
22 you don't have any questions we don't have to  
23 parade them back and forth, if you know that.

24 Okay. As far as marking exhibits I  
25 think we'll just as they're presented we'll mark

1    them and give them numbers at that time rather than  
2    trying to pre-file anything at this time and we're  
3    ready for opening statements, we'll begin with  
4    Emerald Pointe.

5                   MR. COOPER: Thank you, Your Honor.

6                   Emerald Pointe Utility Company is  
7    a small water and sewer corporation serving over  
8    380 water customers and over 360 sewer customers  
9    near Branson, Missouri. This case was initiated as  
10   a small company rate case. The main driver for the  
11   Company request was the recent completion of a new  
12   pipeline through which sewage is transported  
13   through the City of Hollister for treatment and the  
14   corresponding elimination of the company sewage  
15   treatment plant. Prior to construction the  
16   pipeline project was the subject of a certificate  
17   case before this Commission. Staff acknowledged in  
18   that certificate case that the pipeline project had  
19   several benefits such as elimination of the  
20   existing treatment facility that was operating near  
21   capacity, elimination for a need for any future  
22   treatment facility construction and the elimination  
23   of a discharge of the effluent from the then  
24   existing sewage treatment facility in to Table Rock  
25   Lake. The cost of the sewer pipeline project was

1 over \$1 million, it has resulted in significant  
2 increase to the Company sewer rate base and a  
3 significant new expense for the treatment of the  
4 sewage through the wholesale contract with  
5 Hollister. However, given the options available to  
6 Emerald Pointe staff additionally indicated in the  
7 certificate case the pipeline project was  
8 reasonable and cost effective from a capital cost  
9 standpoint.

10 Two major subjects have developed for  
11 the hearing in this case. One, what rates are just  
12 and reasonable for the Company to charge on a going  
13 forward basis, the traditional rate case question,  
14 and two, what treatment should be given a sewer  
15 commodity rate that was charged by Emerald Pointe  
16 from the conclusion of its last rate case, SR  
17 2000-595 until May of last year. As to the rate  
18 case Emerald Pointe is largely aligned with the  
19 Commission's staff. Emerald Pointe supports the  
20 Staff position as to the capital structure, rate of  
21 return, return on equity, CIAC reserve, customer  
22 fees and the plant related balance update period.  
23 As to legal fees and rate case expenses it's the  
24 Company's position that these expenses should be  
25 updated as contemporaneously as possible to the

1 conclusion of this case.

2           The Hollister treatment expense issue  
3 concerns how much expense to build in to the rate  
4 for sewer treatment. Emerald Pointe is built by  
5 Hollister, based on the actual gallons treated by  
6 Hollister. Based upon a comparison of metered  
7 water usage versus gallons treated by Hollister in  
8 the initial month of operation the Company is  
9 proposing an increase in this expense from what is  
10 built in to the Staff rate, run at this time.

11           The background concerning the sewer  
12 commodity charge issue begins with the Company's  
13 last rate case as I said, SR-2000-595. That was a  
14 small company rate case Emerald Pointe undertook  
15 without the assistance of counsel or a consultant.  
16 Emerald Pointe had a sewer commodity charge prior  
17 to the 2000 case in the amount of \$5.83 per  
18 thousand gallons and proposed to increase that  
19 charge when it initiated the 2000 small company  
20 rate case. By letter dated May 7, 2000 the  
21 commission later provided proposed financial  
22 agreements and associated rate sheets for Emerald  
23 Pointe's water and sewer operations. The sewer  
24 rate tariff prepared by the Commission staff and  
25 served on Emerald Pointe with the sewer disposition



1 agreement included a sewer commodity charge in the  
2 amount of \$3.50 per thousand gallons. Gary Snadon  
3 on behalf of Emerald Pointe signed the disposition  
4 agreement agreeing to this tariff and filed it with  
5 the Commission, when he returned it to the  
6 Commission in accordance with the Commission's  
7 instructions. A sewer tariff sheet without a  
8 commodity charge was later found to exist in the  
9 Commission records. Mr. Snadon never received this  
10 tariff sheet. At the conclusion of SR 2000-595  
11 Emerald Pointe reduced its sewer commodity charge  
12 to the 3.50 per thousand gallons to which it  
13 agreed. The 3.50 commodity charge was utilized by  
14 Emerald Pointe until May of 2012 and was expressly  
15 identified on each monthly customer bill during  
16 that time frame.

17 As a result of the conduct of the  
18 Company and the Commission it is Emerald Pointe's  
19 position that it was authorized to collect a sewer  
20 commodity charge in the amount of 3.50 per thousand  
21 gallons during this interim period.

22 Of further interest to this question  
23 is the fact that the sewer rate including the 3.50  
24 sewer commodity charge did not recover the revenue  
25 requirement that had been identified by the Staff

1 in its initial calculations in SR 2000-595. The  
2 Staff revenue requirement reflected a need for an  
3 amount increase of approximately \$42,700. The  
4 increase that would have been granted but that 3.50  
5 charge or that sewer commodity rate would have been  
6 about \$2,500. To recover as much revenue as the  
7 initial Staff run had reflected there would have  
8 had to have been a sewer commodity charge of  
9 approximately \$7.92 per thousand gallons.

10 A review of the Company revenues over  
11 the period the sewer commodity charge was utilized  
12 shows that there was no over earning. The owners  
13 took no dividends or salaries during that period of  
14 time and in fact the owners were required to fuse  
15 cash in order to continue to provide safe and  
16 adequate service. But for the sewer commodity rate  
17 expenses would have further exceeded revenues and  
18 Emerald Pointe would have been required to file for  
19 a rate increase many years ago. Moreover, during  
20 the period the sewer commodity charge was utilized  
21 Emerald Pointe participated in certification in  
22 2004 and 2005. Staff was ordered to review Emerald  
23 Pointe's rates within two years of the effective  
24 date of the order in one of those cases. The staff  
25 further worked with the Company during this time

1 period to address revenues and expenses for the  
2 purposes of the Company's annual reports. At the  
3 conclusion of the annual report process the Staff  
4 stated that having worked with the Company  
5 regarding its books and records and the preparing  
6 of the revised annual report the Staff is satisfied  
7 that the Company records are reasonably correct and  
8 the annual report accurately reflects the Company's  
9 revenues and expenses. No mention is made in this  
10 report of an improper billing arrangement. Staff  
11 alleges, however, that \$257,250 should be refunded  
12 as a result of this sewer commodity charge that  
13 consists of about 187,000 in over charges plus  
14 69,000, almost 70,000 in interest. They want this  
15 refunded over 45 months and it's based upon only  
16 looking back five years, at five years of  
17 overcharges. The Public Counsel alleges that  
18 \$503,000 and some change should be refunded which  
19 consists of 346,000 in overcharges plus 156,000 in  
20 interest and the Public Counsel wants this amount  
21 refunded over 24 months based on a look back all  
22 the way to 2000. All of the dollars sought to be  
23 refunded were used in the first instance to provide  
24 safe and adequate service to Emerald Pointe's  
25 customers.

1                   The interest that I referred to is a  
2 related issue as to a couple issues in this case  
3 and Emerald Pointe specifically does not agree that  
4 there is any authority for the addition of such  
5 interest to the sewer commodity charge late fees,  
6 reconnect fees refund. No such provision is found  
7 in statute, rule or tariff applying to those items,  
8 therefore no interest should be ordered or sought  
9 at a minimum.

10                   The potential impact of the proposed  
11 refunds on the Company's finances can be quickly  
12 seen. The total sewer revenues currently called  
13 for by the Staff accounting run is around \$322,000.  
14 Even if the proposed refunds were spread over time  
15 the revenues would not be sufficient to support the  
16 over \$1 million of debt associated with the new  
17 pipeline which will require payments totalling over  
18 \$83,000 per year to pay the Company's expenses  
19 which in addition to its other costs of operation  
20 will include at least \$75,000 a year to be paid to  
21 Hollister for the treatment of sewage and still run  
22 the Company. For an example if proposed by the  
23 public, as proposed by the Public Counsel the  
24 company will require to refund 503,000 over two  
25 years or roughly \$250,000 per year, there would

1 only be \$70,000 left in sewer revenues, that  
2 \$70,000 would neither cover the pipeline debt  
3 payment nor would it cover the treatment expense  
4 and certainly would not have anything left over for  
5 any other expense required to separate the sewer  
6 utility. Accordingly if ordered to make the  
7 proposed refunds Company bankruptcy would be likely  
8 if not required under the circumstances.

9 Thank you.

10 JUDGE WOODRUFF: Opening for Staff.

11 MR. THOMPSON: Thank you, Judge.

12 May it please the Commission. This is  
13 an unusual case. It began as a small company rate  
14 increase case. As the Commission is aware a small  
15 company rate increase case is designed so that the  
16 Company need not retain counsel. It proceeds after  
17 the Company notifies Staff that it would like an  
18 increase by letter that need not be mailed by a  
19 lawyer, staff does an audit and then negotiations  
20 begin between the company and the staff and then  
21 also the Office of the Public Counsel who's a  
22 participant throughout. The theory is that an  
23 agreement will be reached and that the new rates  
24 will therefore go in to effect essentially by  
25 agreement. There will be a stipulation and

1 agreement, there will be no need for the Company to  
2 hire an attorney, in many cases a financial burden  
3 a small water or sewer company can not sustain.  
4 But this case took an unusual turn. It's my  
5 understanding it was in fact the attorney for the  
6 Company who noticed that the tariff on file with  
7 the Commission did not include the \$3.50 per 1,000  
8 gallon sewer commodity charge. He immediately  
9 brought this to the attention of all the parties, I  
10 believe, and the Company ceased charging that  
11 charge. At that point Staff added a requirement  
12 for a refund to its position in the case,  
13 necessarily that meant that Staff and the Company  
14 could not reach an agreement. In addition Public  
15 Counsel who also wanted the refund, and I'm sure  
16 she'll explain her position much more thoroughly  
17 and clearly than I can, Public Counsel also did not  
18 agree with many of the aspects of the rate case  
19 resolution that Staff and the Company were in  
20 agreement on.

21 So this case becoming to you in an  
22 unusual fashion contains some unusual issues even  
23 though it's a small case involving a small company.  
24 But as the Company's attorney told you just a  
25 moment ago it includes an issue that could be the

1 death of the Company. Under the time line that has  
2 developed and used by the Staff to process a small  
3 company rate increase procedure on the 150th day a  
4 disposition agreement is required to be filed,  
5 that's 150 days after the case is commenced. That  
6 was extended in this case by 60 days and perhaps  
7 extended further because of the inability to reach  
8 agreement that controlled when this overcharge  
9 issue became part of the case. Because of that it  
10 went in to the contested case format which brings  
11 us to this hearing this morning. The time line was  
12 very compressed for the development and filing of  
13 testimony.

14                   So again let me repeat, this case  
15 comes to you in an unusual stance from an unusual  
16 commencement. Of the 10 issues in front of you  
17 three involve refunds. The first is the sewer  
18 commodity fee refund issue. Staff and Public  
19 Counsel are agreed that an unlawful charge  
20 occurred, Staff would like 60 months worth of this  
21 amount refunded, Public Counsel seeks a refund of  
22 all the revenue collected under that charge, Staff  
23 and Public Counsel are agreed that a six percent  
24 simple interest rate should be applied, Staff would  
25 refund the money over 45 months, Public Counsel

1 over 24 months and you heard the Company tell you  
2 there was no unlawful charge, there is no basis for  
3 interest but if you order it 45 months would be the  
4 figure rather than 24.

5                   The second refund issue has to do with  
6 improperly collected late fees and reconnection  
7 fees. The Company I believe does not deny that it  
8 collected the wrong amount for those items. The  
9 Company would agree to make a refund of those  
10 amounts with no interest over 24 months. Staff and  
11 Public Counsel ordinarily would like to see six  
12 percent interest and to see the refund within 90  
13 days of the resolution of the case.

14                   The third issue has to do with  
15 customer deposits. As you know it's not uncommon  
16 to seek a deposit from customers in the utility  
17 industry but those are generally refunded when the  
18 customer has established a record of timely  
19 payment. And in fact that's what's called for by  
20 the tariff of this Company. The Company, however,  
21 did not follow its tariff, it retained all deposits  
22 and its practice was to return those when the  
23 customer left the system. Again the Company I  
24 believe is in agreement to return the money but  
25 seeks to do so over 24 months, Staff and Public



1 Counsel would like to see that returned in 90 days.

2 And let me note there is no disagreement on  
3 interest in the area of customer deposits because  
4 the tariff calls for interest on customer deposits.

5 Hollister's sewage treatment expense.

6 Staff based on the test year would like to put  
7 \$75,939 in to revenue requirement. The Company  
8 going outside the test year and looking at an  
9 unexpectedly high bill for January of 2013 would  
10 like to put \$91,127 in to revenue requirement. In  
11 other words the Company is fearful that its actual  
12 cost of the Hollister sewage treatment agreement is  
13 going to be higher than the test year reflects.  
14 Public Counsel it is my understanding takes the  
15 position that the agreed rate design will yield  
16 enough money to cover those expenses.

17 On the issue of legal fees Staff  
18 proposes to put \$772 in to revenue requirement and  
19 it is my belief that OPC and the Company both agree  
20 with that figure at this time.

21 CHAIRMAN KENNEY: What was the figure  
22 again, I'm sorry?

23 MR. THOMPSON: \$772. This is a small  
24 company. There are no zeros after that.

25 For rate case expense Staff wants to

1 cut off the period for considering rate case  
2 expense as of the date when it can consider all  
3 factors, that is necessarily prior to the date when  
4 the Company is going to receive the last invoice  
5 from its attorneys. Staff wants to put \$3,912 in  
6 to revenue requirement for that, OPC agrees with  
7 the Staff position, the Company position as I  
8 understand it is that all rate case expense needs  
9 to go in to revenue requirement regardless of when  
10 the invoices are tendered.

11 For capital structure it is Staff's  
12 position that Emerald Pointe Utility Corporation is  
13 a Missouri general business corporation that offers  
14 two utility services, water service and sewer  
15 service but it is a single corporation. As such it  
16 has a single capital structure like any  
17 corporation. Public Counsel wants to use a  
18 hypothetical capital structure based on separating  
19 out water and sewer. Why is that? Because there  
20 is a very large debt associated with the pipeline  
21 recently constructed to pump sewage to the City of  
22 Hollister for treatment and the corresponding  
23 removal of the Company's old sewage treatment  
24 plant. That debt which the corporation has was  
25 entirely incurred because of the need of improving

1 its sewer system. Public Counsel would like to  
2 segregate the sewer debt away from the water  
3 company but hypothesizing two capital structures as  
4 though there were two corporations. There's only  
5 one corporation, there's only one capital  
6 structure. And on that point the Company aligned  
7 with Staff.

8 Return on equity. Always one of the  
9 most troublesome issues in any rate case. Staff is  
10 proposing a return on equity of 13.26 percent and  
11 that figure is reached by taking an average, three  
12 month average yield on B plus rated 30 year public  
13 utility bonds which was 9.26 percent, and adding to  
14 that a four percent risk premium. So it is a  
15 variety of risk premium analysis. It is not based  
16 on this Company's capital structure or cost of  
17 debt. It is based on this Company's level of  
18 business risk and financial risk. Public Counsel  
19 on the other hand proposes the figure of 9.35  
20 percent which is derived, I believe, by adding the  
21 four percent risk premium to this Company's actual  
22 cost of debt which is 5.35 percent.

23 There is a subordinate issue on return  
24 on equity which has to do with what method or what  
25 methodology should be used, David Murray has filed

1 testimony explaining the methodology that Staff  
2 uses to estimate return on equity for small water  
3 and sewer companies.

4           The last two issues have to do with  
5 CIAC and the plant balance update. Those are  
6 accounting issues. CIAC is Contributions In Aid Of  
7 Construction. This is a category that is,  
8 generally looms large with small water and sewer  
9 companies. When customers provide the money for  
10 capital utilities by a utility then it is not  
11 appropriate for the customer to pay a return to the  
12 shareholders on that part of the utility property  
13 and service because after all the shareholders did  
14 not fund it, it's not their money, they don't have  
15 a right to a return of and a return on that money.  
16 With a sewer company there is generally a  
17 connection fee, if I'm a new customer, I build a  
18 house on a lot, I want to be connected to this, I'm  
19 going to have to pay a fee which is set by the  
20 tariff. That fee is calculated to essentially  
21 balance the actual cost the company will incur in  
22 making the connection, putting the meter in place.  
23 So the fee is recorded as CIAC contribution instead  
24 of construction which is a negative number in the  
25 rate base, it reduces the amount of rate base. The

1 cost of installing the connection is added to rate  
2 base as a positive number so you can see there's a  
3 wash.

4 Staff discovered that this Company  
5 had been incorrectly booking the actual cost of  
6 installing connections. It had been booking the  
7 cost of the materials used to utility plant and  
8 service but it was not booking the labor. As a  
9 result there was a mismatch between the connection  
10 fees paid by the customers and the amount of  
11 utility plant going in to service. So there was  
12 not a wash, instead the CIAC account if you put all  
13 that in to CIAC, all of those fees, it will use the  
14 amount of plant in service because it's not  
15 balanced. It will have the effect of understating  
16 the rate base. For this reason Staff believes that  
17 the excess CIAC should be discarded and treated  
18 instead as miscellaneous revenue in a past year.  
19 It's not going to be part of revenue requirement on  
20 an ongoing basis because it's not going to happen  
21 anymore. The ongoing effect would be to be keep  
22 rate base at the proper level by not booking the  
23 excess CIAC to the CIAC account. That is not a  
24 treatment that Public Counsel agrees with.

25 Finally there's the plant balance

1 update. Staff believes the plant balance cutoff  
2 should be February 28 whereas Public Counsel  
3 believes it should be brought down as close as  
4 possible to the effective date of rates. Why does  
5 Staff believe it should be February 28th? Because  
6 that is the latest date that Staff believes it can  
7 consider all relevant factors and present them to  
8 the Commission.

9 Thank you very much.

10 CHAIRMAN KENNEY: I have a question.

11 Mr. Thompson, thank you. I just have  
12 a quick question regarding the calculation of ROE  
13 versus capital structure for calculating the  
14 revenue requirement. Just so I can understand  
15 Staff's position.

16 MR. THOMPSON: Yes, sir.

17 CHAIRMAN KENNEY: Just so I can  
18 understand Staff's position.

19 Staff's position is that for purposes  
20 of calculating the ROE it's okay and permissible to  
21 use a hypothetical capital structure?

22 MR. THOMPSON: Staff believes it's  
23 permissible to use a hypothetical capital structure  
24 if the debt is in excess of 75 percent. Let me  
25 point out that in this case Staff did not use a

1 hypothetical capital structure for capital  
2 structure.

3 CHAIRMAN KENNEY: Well, I know. That  
4 brings me to my next question. So why is it  
5 appropriate for purposes of calculating the ROE but  
6 inappropriate to do it for purposes of calculating  
7 the overall revenue requirement and setting the  
8 capital structure?

9 MR. THOMPSON: Staff believes that the  
10 measure that it has adopted more accurately  
11 reflects the cost of capital for small companies.  
12 It's much more difficult for small companies to  
13 obtain capital and I think there is ample testimony  
14 in this case regarding the difficulty that this  
15 Company had in getting the capital necessary to do  
16 the Hollister sewage treatment plant capital  
17 improvement. It required the shareholders to  
18 guaranty the debt and to hypothecate all of their  
19 own property to the bank in support of the debt.  
20 So if you give one of these companies a low ROE it  
21 simply makes life on an ongoing basis more  
22 difficult for the Company. It is more difficult  
23 then for them to acquire capital. I should also  
24 point out that there is a small company risk factor  
25 that's well recognized in the financial analysis

1 community, small companies are riskier than large  
2 companies. So if you're going to give Missouri  
3 American an ROE of 10, I think it was slightly  
4 below that, somewhere between 9 and 10, then a  
5 small company should get something higher because  
6 it is necessarily more risky, particularly a  
7 company like this that has a poor credit rating and  
8 has close to 75 percent debt to equity.

9 CHAIRMAN KENNEY: So in other words  
10 it's appropriate to use a hypothetical capital  
11 structure if it more accurately reflects the  
12 reality of a small company's financial risk?

13 MR. THOMPSON: Yes. Staff believes  
14 that. And Staff has many times advocated  
15 hypothetical capital structures, it's not something  
16 that Staff has a black letter prohibition on, it's  
17 a case by case basis.

18 CHAIRMAN KENNEY: So then would it be  
19 appropriate for the Commission to accept and  
20 acknowledge OPC's position that it's appropriate to  
21 use a hypothetical capital structure to more  
22 accurately reflect the separation of the debt  
23 incurred by the sewer company as opposed to by the  
24 water company or the water enterprise, because  
25 they're all one company.



1 MR. THOMPSON: Right.

2 CHAIRMAN KENNEY: I mean doesn't their  
3 proposal more accurately reflect the reality that  
4 the debt was incurred for a particular purpose?

5 MR. THOMPSON: It certainly does  
6 reflect that and certainly the Commission can do  
7 that if it's the Commission's determination that  
8 this serves the public interest in some way better  
9 than Staff's position which is the same position  
10 the Company takes. But I would suggest to you that  
11 it does not serve the public interest in this case.

12 CHAIRMAN KENNEY: Because?

13 MR. THOMPSON: Because it is actually  
14 only one company. It is one company, the money  
15 whether it's coming in for water service or sewer  
16 service goes in to one bank account.

17 CHAIRMAN KENNEY: But if that's the  
18 argument for using the actual capital structure for  
19 purposes of calculating the overall revenue  
20 requirement why isn't that argument equally as  
21 applicable to calculating the ROE?

22 MR. THOMPSON: Because the public  
23 interest in Staff's opinion is better served by  
24 using the hypothetical cost of debt in the  
25 calculation of return on equity.

1                   CHAIRMAN KENNEY: Because it more  
2 accurately reflects reality.

3                   MR. THOMPSON: Exactly.

4                   CHAIRMAN KENNEY: But your argument  
5 with respect to why we shouldn't use a hypothetical  
6 capital structure is just because it's one company.

7                   MR. THOMPSON: It's one company --

8                   CHAIRMAN KENNEY: Not whether the  
9 public interest is served or not just that it's one  
10 company.

11                  MR. THOMPSON: Staff doesn't see that  
12 it would make any particular difference that would  
13 benefit anyone.

14                  CHAIRMAN KENNEY: So segregating the  
15 debt by using a hypothetical capital structure  
16 would do, what would it do to the overall revenue  
17 requirement?

18                  MR. THOMPSON: Well, you would have to  
19 calculate two revenue requirements because you're  
20 essentially acting as though there's two companies.  
21 So it would have an effect on what the rates were  
22 for sewer versus the rates for water. And these  
23 are --

24                  CHAIRMAN KENNEY: Which may or may not  
25 be in the public interest, we just don't know.

1 MR. THOMPSON: Right. But I think you  
2 can certainly ask those questions of Staff's  
3 financial analysis witnesses.

4 CHAIRMAN KENNEY: Fair enough. Thank  
5 you.

6 MR. THOMPSON: Thank you.  
7 Any other questions?

8 JUDGE WOODRUFF: Opening for Public  
9 Counsel.

10 MS. BAKER: Thank you.

11 Actually before I begin I will make a  
12 correction to Mr. Thompson's statement about  
13 whether the Company came to Public Counsel to tell  
14 them about their findings of overcharge, they did  
15 not. They went strictly to Staff, they did not  
16 discuss it with Public Counsel even though they  
17 knew perfectly well that it was the customers who  
18 paid this money so I wanted to make that  
19 correction.

20 May it please the Commission. In this  
21 case the Commission has the opportunity to make it  
22 clear that protecting the customers is an  
23 exceedingly high priority. Every issue before the  
24 Commission affects the customers directly. The  
25 issues allow the Commission to make it clear that

1 customers are to be provided rates that are just  
2 and reasonable. The customers are facing an  
3 increase that could potentially exceed 300 percent.  
4 The basic issues of return of investment and  
5 expenses have mainly been agreed to by the parties  
6 before this hearing. A rate design method has been  
7 agreed to and most of the issues that are left for  
8 the Commission to decide revolve around money that  
9 is owed to the customers due to Emerald Pointe not  
10 following its approved tariffs in the rates that  
11 were charged to those customers and not knowing the  
12 rules for customer deposits.

13                   The evidence will show that the  
14 customers were charged a commodity charge for sewer  
15 service even though this was not an approved charge  
16 in Emerald Pointe's tariff. The evidence will show  
17 that from May 10th, 2000 until March 1, 2012,  
18 approximately the time when Emerald Pointe knew it  
19 was going to face the Commission on this rate case  
20 and a companion financing case customers were  
21 wrongly charged for sewer service in an amount that  
22 exceeds \$346,000. For almost 12 years Emerald  
23 Pointe had free use of the customer's money. This  
24 money could have been used by the customers and a  
25 return on that money would have increased the value

1 for those customers adding what the evidence will  
2 show is a reasonable six percent compound interest.  
3 The value of the overcharge money is now well over  
4 \$500,000. Customers were inappropriately deprived  
5 of that half a million dollars and now they're  
6 facing the possibility that approximately half of  
7 that or over a quarter million dollars if not every  
8 penny of it if the Company has their say will be  
9 lost to them forever.

10           The Commission has the opportunity to  
11 make a definitive statement that customers are not  
12 to be treated that way. The Commission has the  
13 discretion to say that all of the money related to  
14 the sewer commodity charge should be returned to  
15 the customers. The Commission should not be afraid  
16 by the fear mongering that the Company will attempt  
17 to do today and has attempted to do while they are  
18 holding the customer's money. Unlike other utility  
19 services there's a time limit on the amount of  
20 overcharges that are due to the customers, the  
21 Commission has complete discretion to say that  
22 sewer customers deserve to be made completely whole  
23 going back to May 10th, 2000. For the protection  
24 of the customers that is what the Commission should  
25 do. And it is imperative that the customers be

1 made whole soon.

2                   The evidence shows again that the  
3 customers are facing an increase of over 300  
4 percent in their rates while being owed a  
5 significant amount of money from inappropriate  
6 charges by the Company. The Commission has the  
7 discretion to order an aggressive payback period  
8 for the sewer commodity overcharges to help  
9 alleviate the rate shock the customers are facing.

10                   Additionally, the evidence will show  
11 that the 24 month overall time for payback of these  
12 overcharges as opposed to the 45 month overall  
13 payback period suggested by Staff will reduce the  
14 interest burden on the Company significantly but as  
15 it turns out the sewer commodity charge is not the  
16 only overcharge that was done by the Company.  
17 Emerald Pointe also charged for late fees and  
18 reconnection fees in violation of their tariff.  
19 Again Emerald Pointe had free use of the customer's  
20 money, this money could have been used by the  
21 customers and a return on that money could have  
22 increased that money and its value for the  
23 customers. And again the Commission has complete  
24 discretion to say that customers deserve to be made  
25 completely whole as soon as possible but adding

1 what the evidence will show is a reasonable six  
2 percent compound interest rate and ordering  
3 repayment within 90 days of the effective date of  
4 an order in this proceeding. And if that's not  
5 enough the evidence will show that Emerald Pointe  
6 also did not follow the rules of the Commission  
7 regarding the proper use of customer deposits.  
8 Customers are owed over \$30,000 in inappropriately  
9 held customer deposits. Once again Emerald Pointe  
10 had inappropriate use of the customer's money and  
11 once again the Commission has the complete  
12 discretion to say that customers deserve to be made  
13 completely whole as soon as possible by ordering  
14 repayment within 90 days of the effective date of  
15 an order in this proceeding.

16 It is important that the customers get  
17 the benefit of everything that they pay for. The  
18 evidence will show that the customers paid \$17,579  
19 of miscellaneous revenue CIAC based on the \$400 new  
20 water customer fee that was charged to the  
21 utility's customers which is not being accounted  
22 for in Staff's estimation of the utility's plant  
23 because the associated plant was equal to or less  
24 than the contributions obtained from the  
25 ratepayers. It is also not being accounted for in

1 the miscellaneous revenues as Mr. Thompson  
2 suggests. Ratepayers paid the \$17,579 and deserve  
3 to have this payment reflected. Similarly, if the  
4 evidence shows that it is just that the Company  
5 expenses such as reasonable legal fees and  
6 reasonable rate case expense be updated to a time  
7 nearer to this rate case, to the end of this rate  
8 case, the evidence shows that it's reasonable that  
9 plant changes such as additions, retirements,  
10 depreciation, et cetera, should also be updated as  
11 close to the date of this evidentiary hearing as  
12 possible. For example the evidence will show that  
13 the customers should get the benefit of updated  
14 depreciation reflected in rates if expenses are  
15 going to be added to those rates at a time nearer  
16 to the end of the rate case for rate case expense.

17 At the end of the day the Commission's  
18 charge is to set just and reasonable rates. Part  
19 of that determination is to set affordable rates  
20 that are not detrimental to the utility but are not  
21 detrimental to the customers. The US Supreme Court  
22 in Bluefield and Hope case has determined that a  
23 reasonable return on equity is one, adequate to  
24 meet, adequate to attract capital at reasonable  
25 terms thereby enabling the utility to provide safe



1 and reliable service, that's two, sufficient to  
2 ensure the utility's financial integrity and three,  
3 is commensurate with return on investments in  
4 enterprises having corresponding risks.

5           While small water and sewer systems  
6 are not publicly traded and have unique  
7 characteristics compared to larger systems the  
8 Commission must still ensure that these factors are  
9 taken in to account when deciding on a reasonable  
10 return on equity. The evidence will show that the  
11 appropriate cost of equity for each utility is 9.35  
12 based on actual debt of the company of 5.5 percent  
13 secured indebtedness associated with the  
14 construction of a sewer line and to eliminate the  
15 existing wastewater treatment facility and to  
16 convert it to a lift station and the 3.1 percent  
17 loan from White River Valley Electric Cooperative  
18 and Public Counsel does recommend adding a four  
19 percent risk factor to that.

20           The evidence will show that to that  
21 avoid subsidization between the water and the sewer  
22 systems by a nonuniform customer base and to more  
23 accurately reflect the reality that the debt that  
24 has been incurred is for the sewer system, not the  
25 water system. Each utility's actual capital

1 structure should be utilized in the determination  
2 of its weighted rate of return. As a result the  
3 evidence will show that including a 9.35 return on  
4 equity in the weighted rate of turn analysis with  
5 Company's actual capital structure yields a  
6 reasonable weighted rate of return before income  
7 tax of 6.14 percent for the sewer operation which  
8 holds the debt and 9.35 for the water operation  
9 which does not.

10 In closing I would like to reiterate  
11 that the Commission has the opportunity to make it  
12 clear that protecting customers is an exceedingly  
13 high priority. While the customers are facing an  
14 increase that could potentially exceed 300 percent  
15 Public Counsel asks that the Commission utilize its  
16 discretion to find the customers must be made  
17 completely whole in the face of unapproved charges,  
18 must get the benefit of everything they pay for and  
19 must have rates that are based on a reasonable and  
20 in this case an actual capital structure and return  
21 on equity.

22 Thank you.

23 JUDGE WOODRUFF: Thank you.

24 Let's go ahead then and to go our  
25 first issue which is the sewer commodity charge and

1 I believe according to my list first witness is Mr.  
2 Busch.

3 (Whereupon, the witness was sworn)

4 JUDGE WOODRUFF: You may inquire.

5 MR. THOMPSON: Thank you Judge.

6 DIRECT EXAMINATION

7 QUESTIONS BY MR. THOMPSON:

8 **Q. We heard you state your name. How are**  
9 **you employed Mr. Busch?**

10 A. I am the regulatory manager of the  
11 water and sewer unit at the Missouri Public Service  
12 Commission.

13 **Q. And did you prepare or cause to be**  
14 **prepared one piece of direct testimony and one**  
15 **piece of surrebuttal testimony in this matter?**

16 A. I did.

17 **Q. And do you have any corrections for**  
18 **that testimony at this time?**

19 A. Not at this time.

20 **Q. And if I asked you the same questions**  
21 **today would your responses be the same?**

22 A. Yes, they would.

23 **Q. And is everything included in your**  
24 **testimony true and correct to the best of your**  
25 **knowledge and belief?**

1           A.       It is.

2                   MR. THOMPSON:   So I would request  
3   that we designate Mr. Busch's direct testimony as  
4   Staff Exhibit 1 and his surrebuttal testimony as  
5   Staff Exhibit 2.

6                   JUDGE WOODRUFF:   All right.

7                   Off the record for a moment to let the  
8   court reporter mark the documents.

9                   (DISCUSSION HELD OFF THE RECORD)

10                  MR. THOMPSON:   With that Your Honor I  
11   would offer Staff Exhibits 1 and 2 and tender the  
12   witness for cross examination.

13                  JUDGE WOODRUFF:   All right.   Let me  
14   clarify.   We're only going to use Exhibit 1 and 2  
15   and that we'll only use numbers rather than Staff  
16   or Public Counsel.

17                  MR. THOMPSON:   Very good.

18                  JUDGE WOODRUFF:   So Exhibits 1 and 2  
19   have been offered.   Any objection to their receipt?

20                  MR. O'FLAHERTY:   Yes.

21                  JUDGE WOODRUFF:   What's your  
22   objection?

23                  MR. O'FLAHERTY:   On behalf of Emerald  
24   Pointe.   May I approach, sir?

25                  JUDGE WOODRUFF:   Certainly.

1 MR. O'FLAHERTY: May it please the  
2 Commission, Vince O'Flaherty on behalf of Emerald  
3 Pointe.

4 There are a number of legal  
5 conclusions, or objections, legal conclusions, we  
6 typed it up and we thought we'd put a sticker on  
7 that and then offer that for purposes of the  
8 record.

9 JUDGE WOODRUFF: Okay. We'll mark  
10 that as number 3.

11 Do you have copies for the bench?

12 MR. O'FLAHERTY: Yes, sir. We would  
13 offer on behalf of Emerald Pointe Exhibit 3 for  
14 purposes of the record that contains our objections  
15 to the direct testimony of James Busch and  
16 surrebuttal testimony of James Busch. It also  
17 includes prospective objections to other witnesses  
18 in the case. So here's a copy for you and for the  
19 Commissioners too.

20 JUDGE WOODRUFF: It looks like there's  
21 an objection to both direct and surrebuttal of Mr.  
22 Busch. And it's about the legal conclusions about  
23 protective tariffs, is that correct?

24 MR. O'FLAHERTY: Yes, sir.

25 JUDGE WOODRUFF: All right.

1                   Staff, Public Counsel -- actually  
2 Staff I guess I'll ask first, do you have any  
3 response?

4                   MR. THOMPSON: I certainly do, thank  
5 you Judge.

6                   Staff plays a number of roles here at  
7 the Commission, one of those roles is to provide  
8 expert analysis and expert testimony as Mr. Busch  
9 is doing this morning but another role is a  
10 regulatory role, you might even call it a law  
11 enforcement role. Mr. Busch's conclusions  
12 expressed in his testimony are no different than  
13 the conclusions of a police officer who has stopped  
14 a speeder. That officer makes a determination that  
15 the law has been breached and the officer testifies  
16 to as much if there's a trial. Sure, it's a legal  
17 matter, it's for the Commission to decide but  
18 nonetheless in his regulatory and enforcement  
19 capacity as manager of the water and sewer  
20 department Mr. Busch makes determinations of this  
21 sort every day in every case he touches. So I  
22 suggest to you that it is competent testimony and  
23 that the objection goes only to the weight.

24                   Thank you.

25                   JUDGE WOODRUFF: Public Counsel wish

1 to be heard?

2 MS. BAKER: I do agree with Mr.  
3 Thompson's statements. These are common statements  
4 in the regulatory whelm. I notice that there were  
5 similar comments about the witnesses for Public  
6 Counsel and so I do, do not agree with this  
7 objection.

8 JUDGE WOODRUFF: All right.

9 The objections are noted for the  
10 record, they would be overruled. Exhibits 1 and 2  
11 will be received. As far as Exhibit 3 which has  
12 also been offered I think it would probably be  
13 appropriate to delay ruling on that until Ms. Roth  
14 is on the stand so we'll defer ruling on that until  
15 then, that point.

16 All right. Mr. Thompson did you  
17 tender him for cross?

18 MR. THOMPSON: Yes, I did. Thank you  
19 Judge.

20 JUDGE WOODRUFF: For cross examination  
21 then we begin with Public Counsel.

22 MS. BAKER: Thank you.

23 CROSS EXAMINATION

24 QUESTIONS BY MS. BAKER:

25 Q. Good morning Mr. Busch.

1 A. Good morning Ms. Baker.

2 Q. You are quite familiar with dealing  
3 with small water and sewer customers and the  
4 companies, correct?

5 A. Yes, I am.

6 Q. In the dealings that you've had with  
7 small water and sewer companies, and especially  
8 troubled water and sewer companies as has been  
9 alleged today is it your experience that small  
10 water and sewer companies are able to afford two  
11 attorneys and outside experts in their rate cases?

12 A. Very seldom do we see a small water  
13 and sewer case hire one attorney let alone two  
14 attorneys.

15 Q. And it's more common than not that  
16 they're not able to hire any attorneys and that was  
17 the reason for the small water and sewer rate case  
18 rule?

19 A. It is very difficult for them to have  
20 the funds available to hire attorneys and that is  
21 one reason why the small case rule is, was created  
22 the way it was, to prevent that expense going to  
23 companies, yes.

24 Q. You are aware that the customers are  
25 facing an increase of more than 300 percent from



1 what they're paying today.

2 A. Yes. I don't know the exact percent  
3 but it's a substantial.

4 Q. And you would not be surprised if it  
5 were --

6 A. It's close to 300 percent, right.

7 Q. And for your testimony you reviewed  
8 the Company's currently approved water and sewer  
9 tariffs including the approved rates and charges?

10 A. Yes, I have.

11 MS. BAKER: I have two exhibits.

12 JUDGE WOODRUFF: Okay. We'll be up to  
13 4 and 5.

14 MS. BAKER: Okay. I have a schedule  
15 of water service rates that we'll give 4 and then I  
16 have a schedule of sewer rates that I will give 5.

17 Q. (BY MS. BAKER) Did you also review  
18 the March 20th, 2000 filing letter and attached  
19 agreement regarding the disposition of the small  
20 case rate increase request and the tariff sheet  
21 that was connected in Emerald Pointe's last sewer  
22 rate case, SR 2000-595?

23 A. Yes, I reviewed information from that  
24 case.

25 MS. BAKER: And I have another exhibit

1 to enter. This will be 6, I believe.

2 JUDGE WOODRUFF: Yes.

3 Q. (BY MS. BAKER) Looking at what's been  
4 marked as Exhibit 6, the agreement that's attached  
5 to the filing letter. You agree that it was signed  
6 on behalf of Emerald Pointe by Mr. Gary Snadon who  
7 is scheduled to appear today as a witness for  
8 Emerald Pointe?

9 A. Yes, it is.

10 Q. And you would also agree that it was  
11 signed on behalf of the Public Service Commission  
12 staff by Mr. Dale Johansen who is also scheduled to  
13 appear today as a witness for Emerald Pointe?

14 A. Yes, it is.

15 Q. From looking at the tariff sheet  
16 that's connected to that filing letter in Exhibit 6  
17 and the agreement that was used to open Emerald  
18 Pointe's last sewer rate case you would agree that  
19 it matches the final approved tariff for the sewer  
20 utility, Exhibit 5?

21 A. Yes.

22 Q. And you would agree that there is no  
23 sewer commodity charge listed in either the tariff  
24 sheet, Exhibit 5, or the tariff sheet that's  
25 attached to the filing letter in Exhibit 6?

1           A.       That is correct. There's no  
2 commodity charge.

3           **Q.       And you agree that based on its**  
4 **approved sewer tariff, Exhibit 5, Emerald Pointe**  
5 **inappropriately charged a sewer commodity charge**  
6 **between May 10, 2000 and March 31, 2012?**

7           A.       That is my belief.

8           **Q.       At what point was Staff informed that**  
9 **the Company had been inappropriately charging the**  
10 **sewer commodity charge?**

11          A.       I believe it was spring of 2012,  
12 shortly before the Company filed its rate request.  
13 It might have been March or April.

14          **Q.       Okay. Would you agree that that is**  
15 **most likely close to the time that they stopped**  
16 **charging the sewer charge?**

17          A.       Yes. We were, we had the meeting  
18 with counsel for the Company and were informed that  
19 there might be an overcharge and then as we  
20 investigated it seemed that that was correct and we  
21 asked them to stop charging at that time.

22          **Q.       And when you say we had a meeting**  
23 **with the counsel for the Company, Public Counsel**  
24 **was not part of that meeting, is that correct?**

25          A.       At that meeting, no. It was just

1 myself, counsel and the counsel for the Company,  
2 that is correct.

3 Q. Did you ask why Public Counsel was  
4 not involved in the meeting?

5 A. I did not ask why.

6 Q. You did understand that it affected  
7 overcharges of the customers that are represented  
8 by Public Counsel?

9 A. Yes.

10 Q. You agree that Commission Rule 13.025  
11 does not apply to sewer utilities, correct?

12 A. That is correct.

13 Q. And you agree that there is no rule  
14 which says that customers can not be repaid for the  
15 entire time frame of an inappropriate sewer charge.

16 A. I'm not aware of any rule, no.

17 Q. Were you present at the local public  
18 hearing that was held for this case?

19 A. I was.

20 Q. So you're aware that, of the  
21 testimony by the customers at the local public  
22 hearing stating that they were very concerned about  
23 the overcharges?

24 A. Yes.

25 Q. And that they were very concerned

1 about the amount of money that would be repaid?

2 A. Yes.

3 Q. And that they were very concerned  
4 about the time frame over which they would be  
5 repaid?

6 A. That was a discussion, yes.

7 Q. And would you agree that it was the  
8 request of the customers that the entire  
9 overcharged time frame with interest back to May  
10 10th, 2000 be given back to the customers as soon  
11 as possible?

12 A. Could you repeat the first part of  
13 that question, I'm sorry?

14 Q. Would you agree that it was the  
15 request of those customers that the entire sewer  
16 overcharge for the time frame back to May 10, 2000  
17 with interest be given back to the customers as  
18 soon as possible?

19 A. There were some who made that  
20 request, yes.

21 Q. And would you agree that it is  
22 completely within the Commission's discretion to  
23 grant that request for the customers?

24 MR. THOMPSON: I object because that  
25 calls for a legal conclusion.

1 MR. O'FLAHERTY: I join.

2 MS. BAKER: I'll rephrase.

3 JUDGE WOODRUFF: Okay.

4 Q. (BY MS. BAKER) If there is no rule  
5 that says that sewer charges, inappropriate sewer  
6 charges can not be repaid back to the customers is  
7 there anything that you're aware of that prohibits  
8 the Commission from ordering that to be repaid?

9 MR. THOMPSON: Objection, same.

10 MS. BAKER: I'm just asking his  
11 knowledge of the rules. He's using the rules in  
12 his testimony, he can tell me what the rules say.

13 JUDGE WOODRUFF: I'll overrule the  
14 objection.

15 You can answer.

16 A. I don't believe I'm aware of anything  
17 that prevents the Commission from doing that.

18 MS. BAKER: That's the end of the  
19 questions that I have and I ask that Exhibits 4, 5  
20 and 6 be admitted.

21 JUDGE WOODRUFF: 4, 5 and 6 have been  
22 offered, any objection to their receipt?

23 Hearing none they will be received.

24 MS. BAKER: Thank you.

25 JUDGE WOODRUFF: Then for Emerald

1 Pointe.

2 MR. O'FLAHERTY: Yes, sir.

3 CROSS EXAMINATION

4 QUESTIONS BY MR. O'FLAHERTY:

5 Q. Sir, in your discussions about  
6 Emerald Pointe being a small utility you would  
7 agree that Emerald Pointe's entitled to be given  
8 the benefits that are intended by the small rate  
9 utility procedures.

10 A. Yes.

11 Q. Now, with respect to this particular  
12 matter going back to the year 2000 which is the  
13 period in time that the sewer commodity issue is  
14 first to have risen, is it fair to say that you  
15 personally did not participate on behalf of the  
16 Commission in how the original sewer tariff was  
17 established?

18 A. That is true.

19 Q. And you did not participate on behalf  
20 of the Commission in the rate increase case that  
21 was part of the matter in 2000.

22 A. That is correct.

23 Q. Then fast forward a couple years to  
24 2004. Is it correct, sir, you did not participate  
25 in, on behalf of the Commission in 2004 when the

1     **Company was notified of a deficiency in its annual**  
2     **reports?**

3             A.     That is correct.

4             Q.     **And in 2004 and 2005 you are aware**  
5     **that the Company filed applications for a**  
6     **certificate of convenience and necessity for new**  
7     **water and service areas?**

8             A.     I think they have.

9             Q.     **When those applications were made you**  
10    **did not participate in that, did you, sir?**

11            A.     I did not.

12            Q.     **Now, you're familiar with the fact**  
13    **that Emerald Pointe Utility is owned by a gentleman**  
14    **named Gary Snadon and his wife Patsy Snadon?**

15            A.     That's my understanding.

16            Q.     **And you will agree that at no point**  
17    **in time from when the utility was created in 1996**  
18    **up to the present is the Staff or the Commission**  
19    **aware of Mr. Snadon or Mrs. Snadon receiving any**  
20    **dividends from the Company?**

21            A.     I have zero knowledge of whether or  
22    not they've received any dividends or not.

23            Q.     **And you have no knowledge that they**  
24    **received any salaries from the Company, right?**

25            A.     They may have and they may not have,



1 I have no idea.

2 Q. Well, have you seen any evidence that  
3 they ever did receive salaries?

4 A. No.

5 Q. And to the extent Mr. Snadon would  
6 testify he received no salary you have no reason to  
7 disagree with that, do you?

8 A. No.

9 Q. Are you aware of the fact that the  
10 utility has operated at a shortfall and that the  
11 ownership has had to put money in to the utility  
12 over all these years?

13 A. Nope.

14 Q. Do you have any reason to disagree  
15 with Mr. Snadon's testimony on that?

16 A. I haven't done a review of the  
17 records for all those years so I have no idea.

18 Q. Do you have any facts that at any  
19 point in time the sewer utility or the Company,  
20 that side of the Company, ever over earned?

21 A. I have no idea if they've over earned  
22 or not.

23 Q. Now sir, let's go to 2012. You were  
24 asked questions about, and let me just tell you up  
25 front I'm going to jump around a little bit on the

1     **dates so I'll try to tell you when I'm moving to a**  
2     **different date, okay?**

3             A.       Uh-huh.

4             Q.       But we're in 2012, you've been asked  
5     **questions about what I call the Company self**  
6     **reporting this issue of the commodity charge, do**  
7     **you recall that testimony?**

8             A.       I do.

9             Q.       You and the Commission are not aware  
10    **of any customer of the utility before 2012 ever**  
11    **complaining or raising any issue about the**  
12    **commodity charge.**

13            A.       I don't have knowledge of that.

14            Q.       And you have no knowledge of any  
15    **customer at any point before 2012 complaining about**  
16    **the level of service from the sewer utility or the**  
17    **water utility for the Company.**

18            A.       I personally do not.

19            Q.       Are you aware of the Staff or the  
20    **Commission having any records with any complaints**  
21    **from any customer?**

22            A.       I don't know, we might, we might not.

23            Q.       Now we're at one of these breaking  
24    **points, sir, I'd like to go to 2000.**

25            A.       Okay.

1           Q.       All right? You've testified and have  
2       been presented documentation that you believe the  
3       utility collected what you refer to as an  
4       un-tariffed rate for sewer commodity charge or  
5       usage fee of \$3.50 per 1,000 gallons, is that  
6       right?

7           A.       That's correct.

8           Q.       Would you agree that before 2000 the  
9       company's tariff sheet on file and effective with  
10      the Commission included a sewer commodity charge  
11      and usage fee of \$5.83 per 1,000 gallons?

12          A.       I don't know the exact number, it's  
13      been a while since I looked at that tariff but I  
14      believe there was a commodity charge.

15          Q.       Sir, I'm going to place before you an  
16      exhibit that was attached to Mr. Snadon's  
17      testimony, it's schedule GWS-2 which is an August  
18      13th, 1999 letter and my question to you, sir, is  
19      does that refresh your recollection that Emerald  
20      Pointe's tariff sheet did include a sewer commodity  
21      charge of \$5.83 per thousand gallons?

22          A.       That's what the letter claims, yes.

23          Q.       And at the time that letter that  
24      you're looking at was prepared Emerald Pointe was  
25      not represented by counsel or a consultant in the

1 rate increase case that that letter was prepared  
2 for, right?

3 A. I have no idea.

4 Q. Have you seen any evidence that  
5 Emerald Pointe was represented by a lawyer or a  
6 consultant back in 1999?

7 A. I don't have, I haven't seen any  
8 evidence.

9 Q. Assuming Emerald Pointe was not  
10 represented by a lawyer or consultant your  
11 understanding of the procedures of Staff and  
12 Commission back in 1999 is that letter with the  
13 rates on it would have been prepared by Staff?

14 A. Back in '99 I don't know if it would  
15 have been prepared by Staff.

16 Q. Back in 2000, sir, are you familiar  
17 with the fact that a gentleman by the name of  
18 Wendell Randy Hubbs was responsible on behalf of  
19 the Staff for handling Emerald Pointe Utility's  
20 case?

21 A. I believe he was probably the case  
22 coordinator.

23 Q. Were you aware of the fact that back  
24 in 2000 Mr. Hubbs's title was assistant manager  
25 rates, water and sewer department with the

1 Commission?

2 A. That sounds right.

3 Q. Back in 2000, sir, would you agree  
4 that the Company and Mr. Snadon as president of the  
5 Company was entitled to rely upon statements and  
6 documents prepared by Mr. Hubbs as part of their  
7 case?

8 MR. THOMPSON: Objection, calls for a  
9 legal conclusion.

10 JUDGE WOODRUFF: I'll sustain that  
11 objection. You might want to rephrase.

12 Q. (BY MR. O'FLAHERTY) Sir, back in  
13 2000 when the case was proceeding on behalf of the  
14 Company if Mr. Hubbs was the gentleman in charge of  
15 handling that particular case on behalf of the  
16 Staff and the Commission would you agree that he'd  
17 be preparing documents and making statements to the  
18 Company as a part of that work?

19 A. I don't know exactly what Mr. Hubbs  
20 did back in 2000 since I wasn't a part of the  
21 Public Service Commission Staff at that time so I  
22 don't know exactly what he would have done but I  
23 know there's a lot of correspondence between the  
24 Company and Staff.

25 Q. Now, just to be fair here in this

1 case in your testimony though, while you say you  
2 don't know what Mr. Hubbs did.

3 A. Uh-huh.

4 Q. You are offering testimony as to  
5 Staff's belief or speculations as to what did in  
6 fact happen back from 2000, correct?

7 A. Yes.

8 Q. All right. And would you agree, sir,  
9 that in March of 2000 based on the records you  
10 reviewed as part of your testimony Mr. Hubbs did in  
11 fact write a letter dated March 7th of 2000 to the  
12 Company that included the proposed rate sheet for  
13 the tariff?

14 A. I know there was a letter that went  
15 back, I don't know the exact date of that letter  
16 but March I think there was a letter that went  
17 back.

18 Q. Let me help you here. Again attached  
19 to Mr. Snadon's testimony as schedule GWS-3 is the  
20 March 7th letter.

21 A. (Reviewing document). Okay.

22 Q. Have you had a chance to see that  
23 letter before today?

24 A. Yes.

25 Q. And did you review that March 7th,

1 2000 letter as part of preparing your testimony in  
2 this case?

3 A. Yes. It was reviewed, yes.

4 Q. And that letter was prepared by Mr.  
5 Hubbs on behalf of Staff and the Commission, right?

6 A. Yes.

7 Q. And would you agree that attached to  
8 that March 7th, 2000 letter were several documents?

9 A. Yes.

10 Q. All of those documents were prepared  
11 by Mr. Hubbs on behalf of the Commission, right?

12 A. On behalf of the Commission staff.

13 Q. All right. The documents that are  
14 attached to the March 7th, 2000 letter were not  
15 prepared by the Company, would you agree with that?

16 A. It doesn't appear to be, no.

17 Q. Now, could you identify for the  
18 members of the Commission in the March 7th letter  
19 that's before you the three documents that are  
20 attached to that letter that were prepared by Mr.  
21 Hubbs on behalf of Commission staff?

22 A. There's the letter to Mr. Snadon, the  
23 next looks to be a letter that Mr. Snadon would  
24 send to the Commission regarding the small company  
25 rate increase request, it looks like there's also

1 the agreement regarding disposition of the small  
2 company rate increase request. And then there is  
3 the schedule of water rates and then the next one  
4 would be the same letter for the Company to file  
5 with the Commission with the sewer case, the  
6 agreement regarding disposition for the sewer case  
7 and then a sewer tariff sheet.

8 Q. And I apologize, I may have misspoke.  
9 There were three letters prepared on the water side  
10 of the case, or three documents prepared on the  
11 water side of the case and three documents prepared  
12 on the sewer side of the case that were attached to  
13 that March 7th, 2000 letter, correct, sir?

14 A. Yes.

15 Q. Now I want to just focus on the sewer  
16 documents that are attached on March 7th. Would  
17 you agree that Mr. Hubbs on behalf of the  
18 Commission staff instructed Mr. Snadon as to what  
19 to do with those documents?

20 A. Yes.

21 Q. Mr. Hubbs on behalf of the Commission  
22 staff in March of 2000 told the Company that  
23 enclosed is a draft letter for your use in filing  
24 the rate case settlement agreements and the  
25 proposed tariff sheets, right?



1           A.       You're referring to the March 7th  
2 letter?

3           Q.       Yes, sir.

4           A.       Yes, that March 7th letter.

5           Q.       And Mr. Hubbs on behalf of the  
6 Commission staff told Mr. Snadon to sign these  
7 documents and return them to him, correct?

8           A.       Yes.

9           Q.       And then Mr. Hubbs told Mr. Snadon in  
10 writing that upon signing that he would then file  
11 those documents with the Commission, right?

12          A.       He was supposed to, yes.

13          Q.       And would you agree based upon your  
14 review of the documents of that March 7th, 2000  
15 letter Mr. Snadon on behalf of the Company did in  
16 fact sign each and every one of those documents and  
17 agreements as instructed by Mr. Hubbs on behalf of  
18 the Commission staff?

19          A.       It appears that he signed the March  
20 7th documentation, yeah.

21          Q.       Now, with respect to the tariff sheet  
22 for the sewer commodity that's in that exhibit that  
23 was attached to Mr. Snadon's testimony in this case  
24 could you turn to that tariff sheet for me for the  
25 sewer?

1 A. For the sewer?

2 Q. Yes, sir, I think it's the last page.

3 A. Yes. I'm there.

4 Q. In this tariff sheet that was  
5 provided Mr. Snadon on March 7th of 2000 by Mr.  
6 Hubbs on behalf of the Commission staff would you  
7 agree that that tariff sheet included a commodity  
8 charge or what is referred to as a usage fee of  
9 \$3.50 per 1,000 gallons?

10 A. Among other things, yes.

11 Q. Would you agree, sir, that it was  
12 that tariff sheet that included the commodity  
13 charge of \$3.50 per 1,000 gallons that Mr. Snadon  
14 did in fact agree to and sent back to Mr. Hubbs as  
15 instructed for filing?

16 A. I would agree at that time but I  
17 don't know what happened subsequent to that before  
18 the actual tariff was filed.

19 Q. And would you agree that the only  
20 document and letter of transmittal of a tariff  
21 sheet by Mr. Snadon to Commission staff that you  
22 have found in the records of the Commission is this  
23 March 7th, 2000 letter that includes a tariff sheet  
24 for the sewer utility that permitted a commodity  
25 charge of \$3.50 per 1,000 gallons?

1           A.       I have not found another letter, that  
2 is correct.

3           Q.       Have you not found anywhere in the  
4 records of the Commission a letter from Mr. Hubbs  
5 to Mr. Snadon submitting a sewer tariff sheet that  
6 did not include a commodity charge of \$3.50 per  
7 1,000 gallons?

8           A.       A letter, no.

9           Q.       You've not found any transmittal of  
10 any service, of any tariff sheets that did not  
11 include that commodity charge of \$3.50 per 1,000  
12 gallons, is that correct?

13          A.       That is correct.

14          Q.       Now staying in 2000, sir, it's your  
15 testimony, I believe in surrebuttal, that the  
16 tariff sheet that's attached to this March 7th,  
17 2000 letter for the sewer utility that includes the  
18 \$3.50 usage fee per 1,000 gallons contains a  
19 typographical error.

20          A.       I believe so.

21          Q.       Correct statement, sir, that you're  
22 speculating as to whether that's a typographical  
23 error?

24          A.       Based upon my review of all the case  
25 work I believe it's a typographical error.

1           **Q.**       But again that's speculation because  
2       you weren't there when it happened, were you, sir?

3           **A.**       I was not there when it happened.

4           **Q.**       You have no personal knowledge  
5       yourself as to how or why the tariff sheet that Mr.  
6       Snadon was provided, the only one he was provided  
7       that includes the \$3.50 uniform fee on 1,000  
8       gallons was changed.

9                   MR. THOMPSON: I object, the question  
10       assumes facts not in evidence, namely that that was  
11       the only one provided to Mr. Snadon. This witness  
12       has no idea what was provided to Mr. Snadon.

13                   JUDGE WOODRUFF: I'll overrule the  
14       objection.

15                   You can answer.

16           **A.**       I have no idea what was provided to  
17       Mr. Snadon.

18           **Q.**       **(BY MR. O'FLAHERTY)** Are you  
19       familiar, sir, with a statute 386.490, Revised  
20       Statutes of Missouri, concerning how orders of the  
21       Commission are served on utility companies?

22           **A.**       Not off the top of my head.

23           **Q.**       Sir, would you agree that if in fact  
24       the Commission changed the tariff sheet after Mr.  
25       Snadon had signed and approved the one with the

1     **\$3.50 usage fee per 1,000 gallons, that if that was**  
2     **in fact changed by the Commission the Commission**  
3     **had a statutory duty to serve that and give Mr.**  
4     **Snadon notice of that change?**

5             A.       I'm not aware --

6             MR. THOMPSON:  Objections.  Calls for  
7     a legal conclusion.

8             JUDGE WOODRUFF:  I'll sustain that  
9     objection.

10            MR. O'FLAHERTY:  Your Honor may I be  
11    heard on that?

12            JUDGE WOODRUFF:  Go ahead.

13            MR. O'FLAHERTY:  You've overruled my  
14    objections on what was the approved tariff not  
15    being a legal conclusion.  I'm entitled, and we  
16    also had objected when this witness was asked  
17    questions about the regulation out of Chapter 13  
18    and he was able to testify as to what those  
19    regulations say and included.  I'm entitled to ask  
20    this witness if he knows, it's not a legal  
21    conclusion, if he knows of anything as to the  
22    Commission's duty to serve notices on the Company.

23            JUDGE WOODRUFF:  I think that's  
24    slightly different than the question you asked and  
25    I think the question as you've rephrased it is

1 appropriate.

2 Do you have an objection to the  
3 rephrased question?

4 MR. THOMPSON: I think he can ask  
5 whether he knows if the Commission did serve this  
6 on Mr. Snadon and the Company but I object to him  
7 asking about the Commission's duty. That's the  
8 legal conclusion. The fact to which he can testify  
9 if he knows is whether or not service occurred.

10 JUDGE WOODRUFF: Well I think that's a  
11 different question, one you can feel free to ask.

12 I think if the question is limited to  
13 this witness's knowledge as to what the  
14 Commission's duty is which I think is what your  
15 rephrased question, I think it's an acceptable  
16 question and I'll overrule that objection.

17 MR. THOMPSON: Then let me object  
18 further that Mr. Busch has already testified that  
19 he has no knowledge of Section 386.490.

20 JUDGE WOODRUFF: He can answer it in  
21 that way.

22 MR. THOMPSON: Thank you Judge.

23 MR. O'FLAHERTY: Let me see if I can  
24 rephrase this.

25 Q. (BY MR. O'FLAHERTY) Let's forget

1 about 386.490, let's just talk big picture here,  
2 sir. Would you agree that the Commission has a  
3 responsibility and has in the past served and  
4 delivered tariff sheets on utility companies?

5 A. I don't quite understand what you're  
6 asking. Do you mean Commission, do you mean the  
7 Commission staff? What exactly are you asking me,  
8 who served what to who?

9 Q. Let's start with the Commission  
10 staff.

11 A. Uh-huh.

12 Q. Okay. It's been your practice that  
13 the Commission staff serves and delivers tariff  
14 sheets on utilities?

15 A. Well we don't serve them, we would  
16 work with the company to tell, you know, to write  
17 up the tariff and make sure that they would review  
18 it and how they have to submit that to the  
19 Commission.

20 Q. And on this small utility, I know you  
21 weren't there back in 2000, it was the Commission's  
22 staff that prepared the tariff sheet and sent it to  
23 the Company, right?

24 A. Probably, yes.

25 Q. And it's been your practice that

1 those tariff sheets in order to be approved by the  
2 Company should be delivered either by mail, by text  
3 or e-mail to the Company.

4 A. Generally speaking, yes.

5 Q. You have seen nowhere in the files of  
6 the Commission any evidence or proof that the sewer  
7 commodity sheet without the \$3.50 charge was ever  
8 delivered by mail or other form to the Company?

9 A. Looking at the dates when it gets to  
10 that late of a time there's not a big record so I  
11 don't have any proof but I don't have any proof  
12 that it wasn't either.

13 Q. But you have no proof that it was.

14 A. Right.

15 Q. Now, sir, I'm going to change gears  
16 here for a second. We're going to talk about your  
17 examination by the Office of Public Counsel  
18 regarding regulation 240 dash 13.025.

19 A. Okay.

20 Q. Do you recall being asked questions  
21 about whether that applies to sewer utilities or  
22 not?

23 A. Yes.

24 Q. Now, do you agree though, sir, that  
25 that particular regulation does apply to electric,



1 water and small gas utilities?

2 A. Yes, I do.

3 Q. And do you agree that in this case as  
4 Staff's counsel said in opening statement, there's  
5 only one company, Emerald Pointe Utility, right?

6 A. There is.

7 Q. And that one company is both a water  
8 utility and a sewer utility, right?

9 A. Yes.

10 Q. Even though 13.025 does not  
11 specifically refer to sewer utilities do you agree  
12 that Commission staff finds it reasonable to cut  
13 that regulation when dealing with overcharges for  
14 sewer utilities?

15 A. We utilize Chapter 13 for sewer  
16 companies as a reasonable guide, yes.

17 Q. And you use it as a reasonable guide  
18 to determine levels of refund that might be  
19 required, right?

20 A. We do.

21 Q. And it helps resolve disputes with  
22 sewer utilities, right?

23 A. It has in the past.

24 Q. And you believe it to be Chapter 13 a  
25 common sense approach to help resolve disputes for

1 sewer utilities.

2 A. I do.

3 Q. Do you agree that nowhere in Chapter  
4 13 does it state that interest should be added to  
5 overcharging?

6 A. I agree with that.

7 Q. You're not aware, are you, sir, of  
8 any statute or regulation that exists in the state  
9 of Missouri that permits interest on a sewer  
10 commodity overcharge?

11 A. No, I just know it's a common sense  
12 thing.

13 Q. Now, sir, would you agree that if  
14 instead of a sewer utility it was a water utility  
15 that it overcharged on the commodity interest would  
16 not be allowed to be recovered?

17 A. I don't know if it would not be  
18 allowed.

19 Q. Even though Chapter 13.025 does not  
20 specifically refer to sewer utilities are you aware  
21 of any characteristic of a sewer utility that  
22 suggests that it should be treated different than a  
23 water utility or electric utility with respect to  
24 overcharges and refunds?

25 A. No, I think that's why we utilized

1 Chapter 13.

2 Q. Sir, in your testimony, your written  
3 testimony, you have testified that you believe the  
4 Company has a responsibility to charge the  
5 appropriate rate.

6 A. I do.

7 Q. Would you agree also, sir, that a  
8 small utility like Emerald Pointe can rely upon  
9 documents prepared by the Commission staff?

10 A. Yes.

11 Q. And would you agree that if a company  
12 charges a rate on a tariff sheet for a sewer  
13 utility that was prepared by Commission staff that  
14 included a \$3.50 usage fee per 1,000 gallons you  
15 would agree that the company fulfilled its  
16 responsibility to charge an appropriate rate.

17 MR. THOMPSON: Objection, calls for a  
18 legal conclusion.

19 MR. O'FLAHERTY: His direct testimony  
20 is what the responsibility is, I'm entitled to  
21 cross examine him on that.

22 JUDGE WOODRUFF: I'll overrule the  
23 objection.

24 A. Can you repeat the question?

25 Q. (BY MR. O'FLAHERTY) Sure.

1                   With respect to fulfilling  
2                   responsibilities you would agree that to the extent  
3                   the Company charged a rate on the tariff sheet,  
4                   sewer utility tariff sheet, that was provided by  
5                   the Commission staff and provided to the Company  
6                   and told that upon signing it would be filed with  
7                   the Commission that by charging that rate the  
8                   Company did fulfill its responsibility to charge an  
9                   appropriate rate.

10                  A.           I don't know what the last  
11                  communication between the Company and the Staff was  
12                  prior to the effective tariff came in to effect.

13                  Q.           You've also mentioned in your direct  
14                  testimony that errors in the tariff sheet could  
15                  have been discussed over the phone or in person  
16                  with the Company, right?

17                  A.           That is correct.

18                  Q.           You have seen no documents, notes or  
19                  any evidence showing any conversations were held  
20                  between Commission staff and members of the Company  
21                  regarding a change in the tariff sheet from the one  
22                  that was provided to Mr. Snadon with the \$3.50  
23                  usage fee per 1,000 gallons.

24                  A.           I've seen no notes, no.

25                  Q.           Now, sir, we're getting close to the

1 end, help you out here. We're now going to go to  
2 2004 and 2005.

3 A. Okay.

4 Q. We've been in 2000 now we're going to  
5 go to 2004. Are you aware of the fact that the  
6 Commission's file shows that Emerald Pointe filed  
7 two applications for new water and service areas in  
8 2004 and 2005, and I'll identify them for the  
9 record as WA 2004 dash 0581, WA 2004-0582 and then  
10 WA 2005-0306 and WA 2005-0307.

11 Are you aware of when those  
12 applications were made?

13 A. I have not reviewed those.

14 Q. Were you aware that anyone from the  
15 Commission in 2004 and 2005 ever advised the  
16 Company that the sewer usage fee of \$3.50 per 1,000  
17 gallons should not be charged?

18 A. I have not reviewed what happened on  
19 those two cases, those four cases.

20 Q. Did you have a chance to review the  
21 actual transcribed on the record Commission  
22 transcript or proceedings from October 19th of  
23 2004?

24 A. I have not.

25 Q. Are you aware of the fact that the

1 Commission at that time recommended that the  
2 Company's rates be reviewed within two years?

3 A. I think I read that in somebody's  
4 testimony but I'm not aware of that.

5 Q. You're not aware of the Staff or the  
6 Commission reviewing the Company's rates in 2006 or  
7 any time thereafter until the Company itself came  
8 for this rate case.

9 A. Since I've been around in 2008 we  
10 have not reviewed this company.

11 Q. Sir, also in 2004 are you aware of  
12 the fact that the Company was notified that its  
13 only reports were deficient?

14 A. No.

15 Q. Do you know a gentleman by the name  
16 of Bill Nichols?

17 A. I'm aware of Mr. Nichols.

18 Q. Were you aware of the fact that Mr.  
19 Nichols on behalf of the Staff came to Branson,  
20 Missouri and audited the Company's records as part  
21 of that review of the annual reports?

22 A. I'm not aware of what he did at that  
23 time frame.

24 Q. And have you reviewed the  
25 supplemental recommendation prepared by the Staff

1 in November 2004 in which they found the Company's  
2 records reasonably and correctly reflected revenues  
3 and expenses?

4 A. I have not reviewed that.

5 Q. Now, sir, leaving 2004 now just  
6 coming to a few concluding questions.

7 During the 12 year period that the  
8 Office of Public Counsel is seeking refund, 2000 to  
9 2012, do you agree that in all those years even  
10 with collecting the \$3.50 usage fee per 1,000  
11 gallons that the Company operated at a loss on its  
12 sewer services?

13 A. I have no idea if the Company  
14 operated at a loss or not.

15 Q. Do you agree that, assuming that's  
16 correct, that the Company even with collecting the  
17 usage fee operated at a loss would you agree that  
18 the Company received no benefit by collecting the  
19 fee other than to operate its own system?

20 A. Under that hypothetical I think they  
21 received the benefit of the customer's money.

22 Q. And what it did with that money that  
23 it received of \$3.50 per 1,000 gallons was used to  
24 operate the sewer system, right?

25 A. I have no idea what they used that

1 money for.

2 Q. At least you've been presented no  
3 documentation by anyone at Staff that showed that  
4 the Company used the monies collected for the  
5 commodity fee other than for operating the sewer  
6 system.

7 A. I haven't been given any information  
8 that says what they used that money for.

9 MR. O'FLAHERTY: If I could have just  
10 one second.

11 JUDGE WOODRUFF: Sure.

12 Q. (BY MR. O'FLAHERTY) Sir, Emerald  
13 Pointe's a corporation isn't it?

14 A. I believe so.

15 Q. And a corporation in order to appear  
16 before this counsel, before this Commission must be  
17 represented by counsel, they can't do that pro se,  
18 can they?

19 MR. THOMPSON: I object, that calls  
20 for a legal conclusion.

21 JUDGE WOODRUFF: Again I'll overrule  
22 the objection. The witness can offer what he knows  
23 about the law.

24 A. It's my understanding that to get in  
25 front of the Commission for certain things you need



1 an attorney for sure.

2 Q. (BY MR. O'FLAHERTY) Do you have any  
3 knowledge as to how this small utility would have  
4 the sources and ability to pay \$500,000 over  
5 several years?

6 A. I think they could utilize some of  
7 the operating, the revenues that it built in to the  
8 rate case, i.e. depreciation expense, return on  
9 equity dollars, those monies would be utilized.  
10 The Company and the owner have the ability to sell  
11 shares of stock to raise money, they can go to a  
12 bank. There are many ways that a company can raise  
13 funds.

14 Q. And it's the Staff's recommendation,  
15 however, in this case that a \$500,000 refund is  
16 inappropriate, right?

17 A. I think it's our recommendation that  
18 they should go back five years at about \$257,000.

19 Q. So the Question as asked by the  
20 Office of Public Counsel for a refund of \$500,000  
21 the Staff disagrees with, right?

22 A. Yes.

23 Q. I have no further questions. Thank  
24 you, sir.

25 JUDGE WOODRUFF: All right.

1 Questions from the bench.

2 Chairman Kenney?

3 EXAMINATION

4 QUESTIONS BY CHAIRMAN KENNEY:

5 Q. Good morning Mr. Busch.

6 A. Good morning Chairman.

7 Q. I just have a couple of quick  
8 questions. And do you have an opinion one way or  
9 the other as to whether the Company's collection of  
10 the \$3.50 surcharge on the sewer side was a mistake  
11 or a willful violation?

12 A. I believe it was a mistake.

13 Q. And then there was some discussion  
14 about the rules applicable to gas, electric and  
15 water companies versus sewer companies. Would  
16 Staff be asking for interest on this overcharge if  
17 we were dealing with a water company or a gas or  
18 electric company?

19 A. That would be my recommendation.

20 Q. Okay. So it doesn't have anything to  
21 do with whether it's a sewer company or not.

22 A. That's correct.

23 Q. All right.

24 I don't think I have any other  
25 questions. Thank you.

1 JUDGE WOODRUFF: Commission Kenney?

2 COMMISSIONER KENNEY: Thank you.

3 EXAMINATION

4 QUESTIONS BY COMMISSIONER KENNEY:

5 Q. Mr. Busch when you said in your  
6 testimony on page 6 that you just discussed  
7 earlier, you said unfortunately the change was  
8 missed by the Company. How do you base that  
9 assumption?

10 A. Are you referring to my surrebuttal?

11 Q. Yeah, your surrebuttal page 6 you  
12 were talking about it's your belief there was a  
13 typographical error and once it was noticed the  
14 commodity price was removed from the sewer system,  
15 unfortunately the change was missed by the Company.

16 A. Yes.

17 Q. How do you base that assumption?

18 A. I base it on the fact that as we  
19 discussed this morning that there was a letter that  
20 had that \$3.50 commodity charge and then there is,  
21 if you review the Company's file that was actually  
22 filed in the case for the Commission's approval,  
23 that \$3.50 wasn't there.

24 Q. Right.

25 A. So I believe that there was, as I

1 reviewed the work papers from the Staff at the time  
2 that when you calculate what the actual increase  
3 should have been, the 2005 \$100 increase you can't  
4 get there with the commodity charge. You can only  
5 get there with the approved customer charges that  
6 were in the tariff. So I think upon review and you  
7 look at the water tariff had the exact same \$3.50  
8 that it was mistakingly included in that letter  
9 that was sent to the Company initially, was caught,  
10 was changed and then it was approved by the  
11 Commission without the commodity charge.

12 **Q. You just don't have the documentation**  
13 **that it was ever received.**

14 A. Right. I have no documentation of  
15 any correspondence after the March 7th letter to,  
16 prior to the March 20th when it was all filed to  
17 the Commission.

18 **Q. So there's no other signatures on the**  
19 **acceptance of the --**

20 A. Unfortunately that is correct.

21 **Q. So whether it was never sent or**  
22 **whether it was never received or whether it was**  
23 **ignored or bypassed, we have no knowledge.**

24 A. Right.

25 **Q. Okay. Thank you.**

1 JUDGE WOODRUFF: Mr. Busch I just have  
2 a couple of questions.

3 EXAMINATION

4 QUESTIONS BY JUDGE WOODRUFF:

5 Q. To take you back to the way the  
6 system worked in 2000. Did the Commission have an  
7 electronic filing system in 2000?

8 A. I was at OPC at the time, I know  
9 EFIS, I don't know. I can't remember when EFIS was  
10 rolled out.

11 Q. Right.

12 A. Close.

13 Q. It's my understanding under EFIS as  
14 it exists, that's the electronic filing system of  
15 the Commission, the Company could look at their own  
16 tariffs at any time, is that correct?

17 A. It's much easier today for the  
18 Company to review the tariffs than it probably was  
19 in 2000.

20 Q. Again assuming 2000 is pre EFIS what  
21 would the Company have to do to actually see the  
22 tariffs that were on file at the Commission?

23 A. I think the Company could have easily  
24 called up the records department to request what  
25 was actually filed.

1           **Q.       And the records department would send**  
2 **them a copy of the tariff.**

3           A.       It's my understanding that whenever  
4 the Commission would make its approval the records  
5 department would stamp a copy and put it in to the  
6 actual file and would send another stamped copy to  
7 the Company. That's my understanding.

8           **Q.       That's all the questions I have then.**

9           JUDGE WOODRUFF: Recross based on  
10 questions from the bench.

11                   Beginning with Public Counsel?

12           MS. BAKER: No questions, thank you.

13           JUDGE WOODRUFF: For Emerald Pointe?

14           MR. O'FLAHERTY: No, sir.

15           JUDGE WOODRUFF: All right. Redirect.

16           MR. THOMPSON: Thank you, Judge.

17                   REDIRECT EXAMINATION

18           QUESTIONS BY MR. THOMPSON:

19           **Q.       Now I believe you were asked a**  
20 **question as to whether you knew or whether you were**  
21 **aware of anything that would prevent the Commission**  
22 **from awarding interest on a refund of sewer charge**  
23 **overpayments if in fact the Commission ordered such**  
24 **a refund. Is that correct?**

25           A.       I believe so.

1 Q. Okay. Now, you're not an attorney  
2 are you Mr. Busch?

3 A. I am not.

4 Q. So if in fact there was some legal  
5 provision that would prevent it you would not be  
6 aware of that, would you?

7 A. I'm not aware of any.

8 Q. Now there were a lot of questions  
9 from Mr. O'Flaherty about things that occurred in  
10 2000 and 2004 and 2005. Do you recall those  
11 questions?

12 A. Most of them.

13 Q. What date did you become the manager  
14 of the water and sewer department?

15 A. February 1st, 2008.

16 Q. And who was the manager of the water  
17 and sewer department before you?

18 A. Mr. Dale Johansen.

19 Q. Mr. Dale Johansen who is here to  
20 testify today?

21 A. The same.

22 Q. As far as you know was he the manager  
23 of the water and sewer department in 2000?

24 A. I believe that is correct.

25 Q. Now, you were also asked questions

1 about whether or not the Commission ever  
2 transmitted an official copy of the approved, the  
3 time approved tariff sheet in 2000. Do you recall  
4 that?

5 A. Yes.

6 Q. Okay. If you know what part of the  
7 Commission would be responsible for doing that?

8 A. The official?

9 Q. That's correct.

10 A. I believe it would be the records  
11 department.

12 Q. The records department.

13 A. Yes.

14 Q. Is that part of the water and sewer  
15 department that you're the manager of?

16 A. No, it is not.

17 Q. It is not. Who was Dale Hardy  
18 Roberts, if you know?

19 A. I believe he was executive secretary.

20 Q. If you know was Dale Hardy Roberts in  
21 charge of the records department in 2000?

22 A. I think he was.

23 Q. Were you in charge of the records  
24 department in 2000?

25 A. I was not.



1 Q. If you know was Mr. Johansen?

2 A. I don't believe so.

3 Q. Okay.

4 MR. THOMPSON: That's all the  
5 questions I have. Thank you.

6 JUDGE WOODRUFF: All right.

7 Mr. Busch you can step down.

8 Let's go ahead and take Ms. Ross as  
9 the next witness.

10 MR. THOMPSON: That would be fine but  
11 I would suggest we take a break at this time.

12 JUDGE WOODRUFF: Will her testimony be  
13 extensive?

14 MR. THOMPSON: I have no idea what  
15 cross is planned for Ms. Ross.

16 JUDGE WOODRUFF: All right. Let's go  
17 ahead and take a break then and we'll, let's come  
18 back at 10:45.

19 MR. THOMPSON: Thank you Judge.

20 (RECESS TAKEN BY PARTIES)

21 JUDGE WOODRUFF: Let's come to order  
22 please and we're back from break and I believe Ms.  
23 Ross will be our first witness for this session.

24 Do you want to come forward?

25 (Whereupon, the witness was sworn)

1 JUDGE WOODRUFF: You may inquire.

2 MR. THOMPSON: Thank you Judge.

3 DIRECT EXAMINATION

4 QUESTIONS BY MR. THOMPSON:

5 Q. State your name please.

6 A. Leslie Ross.

7 Q. And how are you employed?

8 A. I'm a utility regulator, regulatory  
9 auditor for the Public Service Commission.

10 Q. And did you prepare or cause to be  
11 prepared a direct testimony and surrebuttal  
12 testimony for this case?

13 A. I did.

14 MR. THOMPSON: And Your Honor we'll  
15 designate those as Exhibit 7 and Exhibit 8  
16 respectively.

17 Q. (BY MR. THOMPSON) And are you also  
18 sponsoring Staff's accounting schedules?

19 A. I am.

20 Q. And there are separate accounting  
21 schedules for the sewer case and for the water  
22 case, is that correct?

23 A. Correct.

24 MR. THOMPSON: And we will designate  
25 those as Exhibits 9 and 10 Your Honor.

1           **Q.       (BY MR. THOMPSON) Now, with respect**  
2 **to the accounting schedules there have been**  
3 **extensive corrections, isn't that the case?**

4           A.       There have been some corrections,  
5 yes.

6           **Q.       So today Staff has a substitute set**  
7 **of accounting schedules for both water and for**  
8 **sewer, is that correct?**

9           A.       Correct.

10           JUDGE WOODRUFF: You want to mark  
11 those as 11 and 12 or how do you want to do those?

12           MR. THOMPSON: Well I was going to  
13 offer these instead of the ones that were pre-filed  
14 so I was going to make these 9 and 10 but of course  
15 it's up to you Your Honor.

16           JUDGE WOODRUFF: Anybody want to be  
17 heard on that?

18           Mr. Cooper?

19           MR. COOPER: No Your Honor, I think  
20 we're okay with what Mr. Thompson proposes.

21           JUDGE WOODRUFF: Public Counsel?

22           MS. BAKER: Substitutes are fine.

23           JUDGE WOODRUFF: Okay.

24           **Q.       (BY MR. THOMPSON) And before we go**  
25 **any further do you also have corrections to your**

1 **direct or surrebuttal testimony?**

2 A. I have a correction to my surrebuttal  
3 testimony.

4 Q. I believe you've written that  
5 **correction out, isn't that correct?**

6 A. Yes, it is.

7 Q. **Where does it go exactly in your**  
8 **testimony?**

9 A. It goes on page 10. Line 4 through  
10 8.

11 Q. **Page 10, line 4 through 8. Could you**  
12 **please read the corrected lines 4 through 8 for**  
13 **page 10?**

14 A. Yes. It should say yes, Staff has  
15 updated its accounting schedules to reflect the  
16 updates previously made to its work papers but  
17 inadvertently omitted from the accounting  
18 schedules. Legal invoices related to the Company's  
19 certification case are included in Staff's current  
20 rate case expense amounts and are being normalized  
21 over a five year period.

22 Q. **Thank you. Is that the only**  
23 **correction you have to your direct or surrebuttal**  
24 **testimony?**

25 A. Yes, it is.

1           **Q.       And with respect to the changes to**  
2     **the accounting schedules they are I understand**  
3     **numerous.**

4           A.       There are several, six to 10 perhaps  
5     combined on both.

6           **Q.       Is it your opinion that they are**  
7     **material?**

8           A.       No.

9           **Q.       Do they have an effect on revenue**  
10    **requirement?**

11          A.       Yes, but a very, very small effect.

12          **Q.       Could you give us a ball park on how**  
13    **big the effect?**

14          A.       For the sewer it raised the revenue  
15    requirement by \$610. And then for the water it  
16    raised the revenue requirement by \$420.

17          **Q.       Okay. If I were to ask you these**  
18    **same questions today would your responses be the**  
19    **same including the corrections you just made?**

20          A.       Yes.

21          **Q.       And to your knowledge is the**  
22    **information contained in this testimony as**  
23    **corrected true and correct to the best of your**  
24    **knowledge and belief?**

25          A.       Yes.

1 Q. Okay.

2 MR. THOMPSON: I would offer Exhibits  
3 7 and 8 and I'm going to hand out the substitute  
4 accounting schedules and then I'm going to go ahead  
5 and offer 9 and 10 as well.

6 JUDGE WOODRUFF: All right. Exhibits  
7 7 and 8 have been offered. Any objections to the  
8 receipt?

9 Hearing none they will be received.

10 And we'll go off the record while the  
11 court reporter marks the exhibits.

12 (DISCUSSION HELD OFF THE RECORD)

13 JUDGE WOODRUFF: We're back on the  
14 record.

15 Did you offer the tendered witness?

16 MR. THOMPSON: We've got 7, 8, 9 and  
17 10 all offered and received?

18 JUDGE WOODRUFF: I'm sorry. 7 and 8  
19 have been offered and received. 9 and 10 have now  
20 been offered --

21 MR. THOMPSON: I will offer 9 and 10  
22 at this time.

23 JUDGE WOODRUFF: All right. Any  
24 objections to their receipt?

25 Hearing none they will be received.

1 MR. THOMPSON: With that I will tender  
2 the witness.

3 JUDGE WOODRUFF: Thank you very much.  
4 And for cross examination, will this be a rate case  
5 issue I guess, with this witness?

6 MS. BAKER: It's a refund issue.

7 JUDGE WOODRUFF: I'm sorry, it's still  
8 refund.

9 Public Counsel.

10 CROSS EXAMINATION

11 QUESTIONS BY MS. BAKER:

12 Q. Good morning Ms. Ross.

13 A. Good morning.

14 Q. Before we begin I just want to verify  
15 that Staff is proposing six percent compound  
16 interest to the date that the money from the sewer  
17 commodity charge is returned?

18 A. Yes.

19 Q. Okay. And is it your understanding  
20 that OPC agrees with Staff's recommendation for  
21 compound interest?

22 A. Yes.

23 Q. You would agree that Emerald Pointe  
24 has and continues to have free use of the  
25 customer's money from the sewer commodity charge

1 back to May 10, 2000?

2 A. As far as I know.

3 Q. And you would agree that this money  
4 could have been used by the customers and a return  
5 on that money could have increased the value for  
6 the customers?

7 A. Correct.

8 Q. And you agree that six percent  
9 compound interest is just and reasonable and is, is  
10 just and reasonable to repay the customer for their  
11 lost use and value of that money?

12 A. Yes.

13 Q. And you're aware that the customers  
14 are facing an increase of more than 300 percent  
15 from what they're paying today?

16 A. Yes.

17 Q. You would agree that the Commission  
18 and rules that apply show that the Commission has  
19 the ability to find that the customer should be  
20 repaid for the sewer commodity charges for the  
21 entire time frame of May 10, 2000 through March 1,  
22 2012?

23 MR. O'FLAHERTY: Objection Your Honor,  
24 legal conclusion.

25 JUDGE WOODRUFF: Overruled.



1 A. I don't know any of the rules.

2 Q. (BY MS. BAKER) You would agree that  
3 Public Counsel has calculated the total amount of  
4 the sewer commodity charge, overcharge, including  
5 interest for the time frame of May 10, 2000 through  
6 March 31, 2012 exceeds \$500,000?

7 A. Yes.

8 Q. And you're aware that Public Counsel  
9 is recommending a 24 month payback period instead  
10 of the 44 month payback period recommended by  
11 Staff?

12 A. Yes.

13 Q. On page 4, line 25 through page 5,  
14 line 4 of your surrebuttal, I'll let you get there.

15 A. Yes.

16 Q. You discuss the possible strain on  
17 Emerald Pointe if it had to pay back customers for  
18 inappropriately charging a sewer commodity rate as  
19 recommended by Public Counsel. Do you agree?

20 A. Yes.

21 Q. Did you give any consideration as to  
22 the strain on the customers having to pay an  
23 increase that could potentially exceed 300 percent  
24 while at the same time knowing that they were owed  
25 almost half a million dollars due to

1 **inappropriately charged commodity rate?**

2 A. We did. That's why we chose a 45  
3 month payback period because we wanted to get the  
4 customers paid back as quick as possible with still  
5 allowing the Company to have some cash flow.

6 Q. Okay.

7 A. From their operations.

8 Q. **And you'll agree that between Public**  
9 **Counsel's 24 month payback period and Staff's 45**  
10 **month payback period additional interest would be**  
11 **owed by the Company?**

12 A. Yes.

13 Q. **Did you give any consideration of the**  
14 **extra strain on the Company due to the increased**  
15 **interest burden it faces with Staff's longer 45**  
16 **month payback period?**

17 A. No.

18 MS. BAKER: No further questions.

19 JUDGE WOODRUFF: All right.

20 For Emerald Pointe.

21 CROSS EXAMINATION

22 QUESTIONS BY MR. O'FLAHERTY:

23 Q. **Good morning. I understand you**  
24 **started with the Commission in 2012, right?**

25 A. Correct.

1 Q. So you have no knowledge as to how  
2 the original tariff --

3 A. Correct.

4 Q. Issue came to be, right?

5 A. Correct.

6 Q. Now if you could go to page 8 of your  
7 report please.

8 A. My surrebuttal?

9 Q. Yes, your surrebuttal, thank you.  
10 You indicate that it's generally Staff's practice  
11 to include an interest calculation when determining  
12 the amount to be refunded to customers in order to  
13 recognize the time value of the customer's money,  
14 is that right?

15 A. Yes.

16 Q. What if there had been an under  
17 charge by the utility? And by that I mean if the  
18 utility charged something less than the tariffed  
19 rate, would it be Staff's practice to allow  
20 interest to be back billed to the customers for  
21 that under charge?

22 A. I don't know.

23 Q. Would you agree that the amounts the  
24 company collected for customer deposits, late  
25 payment fees and reconnection fees were used to pay

1 ordinary operating expenses of the Company?

2 A. I can't say. I don't know.

3 Q. Again at page 8 of your surrebuttal,  
4 specifically line 6, you state a common example of  
5 a situation which interest is included in the  
6 refund amount is customer deposits, right?

7 A. Correct.

8 Q. Would you agree, however, that  
9 interest on customer deposits is required both by  
10 the tariff and the Commission's rules regarding  
11 deposits?

12 A. I know that it's, or I know that it's  
13 approved for tariff, for the tariff, I'm not sure  
14 what is approved for the Commission.

15 Q. Yet the tariff in this particular  
16 matter is silent and contains no provision for  
17 interest on refunds for overcharge, right?

18 A. Correct. As far as I know.

19 Q. And you're unable to point to any  
20 rule of the Commission that permits or provides or  
21 requires interest be paid on refunds for  
22 overcharges.

23 A. Correct.

24 MR. O'FLAHERTY: I have no further  
25 questions.

1 JUDGE WOODRUFF: All right. Questions  
2 from the bench?

3 Chairman Kenney?

4 CHAIRMAN KENNEY: I don't have any  
5 questions. Thank you.

6 JUDGE WOODRUFF: Mr. Kenney?

7 MR. KENNEY: No, thank you.

8 JUDGE WOODRUFF: I have no questions  
9 so no need for recross.

10 Any redirect?

11 MR. THOMPSON: No redirect. Thank  
12 you.

13 JUDGE WOODRUFF: Ms. Ross you can step  
14 down.

15 MR. THOMPSON: Your Honor I did forget  
16 to give the reporter copies of 7 and 8, may I do  
17 that now?

18 JUDGE WOODRUFF: You certainly may.

19 MR. THOMPSON: Thank you.

20 JUDGE WOODRUFF: Then we'll move on to  
21 Ms. Roth for Public Counsel.

22 (Whereupon, the witness was sworn)

23 JUDGE WOODRUFF: You may inquire.

24 MS. BAKER: I believe we will be on  
25 11.

1 JUDGE WOODRUFF: 11 is correct.

2 MS. BAKER: Okay. So we'll mark her  
3 rebuttal and surrebuttal as 11 and 12.

4 JUDGE WOODRUFF: Okay.

5 DIRECT EXAMINATION

6 QUESTIONS BY MS. BAKER:

7 Q. Good morning Ms. Roth.

8 A. Good morning.

9 Q. Please state and spell your name for  
10 the court reporter.

11 A. Keri Roth, K-E-R-I, R-O-T-H.

12 Q. By whom are you employed?

13 A. The Missouri Office of the Public  
14 Counsel.

15 Q. And what position do you hold with  
16 the Office of the Public Counsel?

17 A. I am a public utility accountant 1.

18 Q. Are you the same Keri Roth who filed  
19 rebuttal and surrebuttal testimony in this case?

20 A. Yes.

21 Q. Do you have any changes, corrections  
22 or updates to your testimony?

23 A. I do have some corrections and  
24 updates.

25 Q. Okay. Beginning with your rebuttal

1 **testimony.**

2 A. Yes.

3 MS. BAKER: I'll take this opportunity  
4 to give it to the court reporter.

5 JUDGE WOODRUFF: All right.

6 **Q. (BY MS. BAKER) Go ahead with your  
7 change for your rebuttal testimony.**

8 A. The first update I have is on page 3,  
9 line 17 and the dollar amount should state \$1,956.

10 **Q. And what is that update from? Is  
11 that from Staff's newest accounting schedules that  
12 were given out as Exhibits 9 and 10?**

13 A. That's correct.

14 **Q. And any other updates or changes?**

15 A. The second update is on page 10, line  
16 2 and the percentage rate that is listed there  
17 should read 305.04 percent which is also from  
18 Staff's updated schedules that were just handed  
19 out.

20 **Q. Okay. Any others?**

21 A. And the last one is a correction on  
22 page 15, line 12, and the dollar amount should read  
23 \$503,091.71.

24 **Q. Any other updates or corrections to  
25 your rebuttal?**

1 A. That's it.

2 Q. Okay. Any corrections or updates to  
3 your surrebuttal?

4 A. No.

5 Q. And with those updates and  
6 corrections in mind is the testimony true and  
7 accurate to the best of your knowledge and belief?

8 A. Yes, it is.

9 Q. And again with those updates and  
10 corrections in mind if asked the same questions  
11 today would the answers be essentially the same?

12 A. Yes.

13 MS. BAKER: I would like to move for  
14 the admission of Roth rebuttal and Roth  
15 surrebuttal, Exhibits No. 11 and 12.

16 JUDGE WOODRUFF: All right.

17 MS. BAKER: And tender the witness for  
18 cross examination.

19 JUDGE WOODRUFF: Thank you.

20 11 and 12 have been offered, any  
21 objections?

22 MR. O'FLAHERTY: Yes, sir. Contained  
23 on our Exhibit 3 that we've marked.

24 JUDGE WOODRUFF: All right. Once  
25 again those objections are going to be overruled.



1 And the documents will be received.

2 That brings the question of what to do  
3 with Exhibit 3. It's my understanding this does  
4 not intend to be evidence or anything, it's just an  
5 indication for the Commission's benefit of what  
6 your objections are, is that correct?

7 MR. O'FLAHERTY: Yes, sir.

8 JUDGE WOODRUFF: All right. Well 3  
9 has been marked, I assume it's not actually being  
10 offered in to evidence?

11 MR. O'FLAHERTY: No and my practice is  
12 we were just offering it for the record, not as  
13 evidence.

14 JUDGE WOODRUFF: Right. It's in the  
15 record, it's not as evidence, I think that takes  
16 care of it.

17 Then for cross examination we begin  
18 with Staff.

19 MR. THOMPSON: No questions. Thank  
20 you.

21 JUDGE WOODRUFF: All right. And for  
22 Emerald Pointe?

23 MR. O'FLAHERTY: Yes, sir.

24

25

1 CROSS EXAMINATION

2 QUESTIONS BY MR. O'FLAHERTY:

3 Q. Good morning.

4 A. Morning.

5 Q. I understand you came to work at the  
6 Public Counsel's office after 2011, is that right?

7 A. That's correct.

8 Q. You did not participate on behalf of  
9 the Office of Public Counsel with respect to any of  
10 the original sewer tariff work that was done in the  
11 early 2000 period, right?

12 A. No, I did not.

13 Q. If you could go to your rebuttal  
14 testimony, page 5 please.

15 You make reference to regulation 240  
16 dash 13.025, correct?

17 A. Correct.

18 Q. And it's your testimony that that  
19 regulation does not apply to sewer utilities,  
20 right?

21 A. Correct.

22 Q. Are you aware of any rule or  
23 regulation in Missouri that establishes guidelines  
24 for billing adjustments in the event of an alleged  
25 overcharge by a sewer utility?

1 A. No, I am not.

2 Q. If instead it was a sewer utility in  
3 this case, it was a water utility that had  
4 overcharged customers you would agree under 13.025  
5 that the Company would only be responsible to  
6 refund overcharges shown to exist for no more than  
7 60 consecutive months from the date of discovery.

8 A. Yes.

9 Q. And under that hypothetical situation  
10 the Office of Public Counsel would have to agree  
11 that only a 60 month period could be sought for  
12 refunds as opposed to the 144 month period that's  
13 being sought in this case.

14 MS. BAKER: Objection, legal  
15 conclusion on Public Counsel's position.

16 JUDGE WOODRUFF: Overruled.

17 A. As far as I know, yes.

18 Q. (BY MR. O'FLAHERTY) You agree that  
19 the Company in this case is both a water utility  
20 and a sewer utility?

21 A. Yes.

22 Q. And are you able to identify any fact  
23 or characteristic about this Company's sewer  
24 utility that suggests it should be treated  
25 differently than a water utility, an electric

1 utility or a small gas utility in regard to  
2 liability for alleged overcharges?

3 A. Can you repeat that one more time?  
4 I'm sorry.

5 Q. Sure. I'm just asking you with  
6 respect to this case being a sewer utility is there  
7 anything about a sewer utility that makes it  
8 different from a water utility or a gas, small gas  
9 utility for purposes of refunds, is there anything  
10 different about a sewer utility?

11 A. Not that I'm aware of.

12 Q. You would agree that the position  
13 taken by the Office of Public Counsel in this case  
14 is punishing the Company because it is a sewer  
15 utility.

16 A. I don't agree that it's punishing the  
17 Company.

18 Q. Well, it's a more significant and  
19 larger amount of refund that the Office of Public  
20 Counsel's seeking against this sewer utility than  
21 it would have sought if it was a water utility,  
22 right?

23 A. But the Chapter 13 rule does not  
24 apply to sewer so that's why we are going further  
25 back than the 60 month period.

1           **Q.       And you agree that going further back**  
2 **is punishing this sewer utility.**

3           A.       I don't, I don't agree it's  
4 punishing.

5           **Q.       Do you agree that Chapter 13's often**  
6 **used by the Commission staff in resolving billing**  
7 **disputes with sewer utilities?**

8           A.       Can you repeat the first part?

9           **Q.       Sure. Do you have any knowledge or**  
10 **would you agree that the Commission Staff uses**  
11 **Chapter 13 and specifically 13.025 to help resolve**  
12 **billing disputes with sewer utilities?**

13          A.       That's my understanding from reading  
14 testimony, yes.

15          **Q.       But in this case the Office of Public**  
16 **Counsel's choosing not to use Chapter 13 as a**  
17 **resource in this dispute, right?**

18          A.       Correct.

19          **Q.       I have no further questions. Thank**  
20 **you.**

21                    JUDGE WOODRUFF: All right.

22                    Questions from the bench?

23                    Chairman Kenney?

24                    CHAIRMAN KENNEY: I don't have any  
25 questions. Thank you.

1 JUDGE WOODRUFF: Commissioner Kenney?

2 COMMISSIONER KENNEY: Yes, I have one  
3 question.

4 EXAMINATION

5 QUESTIONS BY COMMISSIONER KENNEY:

6 Q. Ms. Roth, on page 6 of your rebuttal  
7 testimony when you were talking about the sewer  
8 surcharge, I'm just trying to understand how you, a  
9 question that was put to you and you answered, the  
10 question was did Company witness Mr. Johansen  
11 himself sign the March 20th, 2000 settlement  
12 agreement on behalf of the Staff along with Mr.  
13 Gary Snadon which was filed with the Commission  
14 March 23rd. You put yes he did, please refer to  
15 surrebuttal schedule.

16 Now, I'm trying to understand that  
17 question. Was it, did Mr. Johansen sign on behalf  
18 of, was it your belief that he signed on behalf of  
19 Staff and Mr. Snadon or he signed on behalf of  
20 Staff and Mr. Snadon signed it also?

21 A. It's my understanding that he signed  
22 on behalf of Staff and Mr. Gary Snadon signed on  
23 behalf of the Company.

24 Q. Okay. So that, because when we were  
25 discussing, so that document exists that shows the

1 letter of March 23rd that Mr. Snadon signed the  
2 agreed new tariff.

3 A. Correct.

4 Q. Okay. Thank you.

5 JUDGE WOODRUFF: Any recross based on  
6 the questions from the bench?

7 MR. O'FLAHERTY: Yes, sir.

8 MR. THOMPSON: I think I get to go  
9 first but I have none.

10 JUDGE WOODRUFF: All right.

11 My question was intended to be broad.

12 RECROSS EXAMINATION

13 QUESTIONS BY MR. O'FLAHERTY:

14 Q. With respect to Commissioner Kenney's  
15 question would you agree you have no idea as to  
16 what actual tariff was attached to the letter that  
17 Mr. Snadon signed?

18 A. I did not see the letter that he did  
19 sign, I'm only going off of what was attached to  
20 the letter that was in EFIS.

21 Q. So you have no reason to doubt or  
22 challenge Mr. Snadon's testimony as to what tariff  
23 was attached to the letter he signed, right?

24 A. Correct.

25 Q. Okay.

1                   **MR. O'FLAHERTY: Nothing further.**

2                   JUDGE WOODRUFF: Redirect?

3                   MS. BAKER: Yes, I'm going to  
4 approach.

5                   REDIRECT EXAMINATION

6                   QUESTIONS BY MS. BAKER:

7                   **Q. In response to Commissioner Kenney's**  
8 **question there is Exhibit No. 6. Is that the**  
9 **exhibit that you reference in your rebuttal**  
10 **testimony?**

11                  A. Yes, it is.

12                  **Q. Okay. And from looking at that and**  
13 **the agreement that's attached is that the signature**  
14 **of Mr. Snadon on behalf of Emerald Pointe that you**  
15 **were discussing in your testimony?**

16                  A. Yes, it is.

17                  **Q. And again is that the signature of**  
18 **Mr. Johansen on behalf of the Public Service**  
19 **Commission staff that you were discussing in your**  
20 **testimony?**

21                  A. Yes.

22                  **Q. Okay. And that attached to that as**  
23 **well is the tariff sheet that you were discussing**  
24 **in your testimony and in the cross examination by**  
25 **the Company?**



1 A. Yes.

2 Q. And you don't believe that it is  
3 punishing the company by following the Commission's  
4 rules?

5 A. No, I do not.

6 Q. And Staff's use of a particular rule  
7 or a position in a case is not necessarily Public  
8 Counsel's position in your experience, is that  
9 correct?

10 A. Yes.

11 MS. BAKER: No further questions.

12 JUDGE WOODRUFF: And you may step  
13 down.

14 A. Thank you.

15 JUDGE WOODRUFF: Then we'll move to  
16 Emerald Pointe's. Mr. Snadon.

17 (Whereupon, the witness was sworn)

18 DIRECT EXAMINATION

19 QUESTIONS BY MR. O'FLAHERTY:

20 Q. Would you state your full name  
21 please, sir?

22 A. Gary Snadon.

23 Q. Where do you reside Mr. Snadon?

24 A. Branson. Hollister, Missouri.

25 Q. By whom are you employed and in what

1     **capacity?**

2             A.       I'm self employed.  Primarily own the  
3     Shepherd Of The Hills in Branson and that's my  
4     company and our company is Shepherd Of The Hills  
5     and Emerald Pointe and of course Emerald Pointe  
6     Utility Company.

7             **Q.       With respect to Emerald Pointe**  
8     **Utility, sir, have you prepared rebuttal testimony**  
9     **in this matter?**

10            A.       Yes, I have.

11                    MR. O'FLAHERTY:  And Your Honor I  
12     believe we're going to mark that as Exhibit 13.

13                    JUDGE WOODRUFF:  Okay.  That was  
14     rebuttal?

15                    MR. O'FLAHERTY:  Yes, sir.

16             **Q.       (BY MR. O'FLAHERTY)  Sir, is Exhibit**  
17     **13 your rebuttal testimony along with exhibits that**  
18     **were attached to that, sir?**

19            A.       Yes, it is.

20             **Q.       Do you have any changes that you'd**  
21     **like to make to that testimony at this time?**

22            A.       No, I do not.

23             **Q.       If I had asked you here before the**  
24     **Commission the same questions that are contained in**  
25     **Exhibit 13 would your answers be the same?**

1 A. Yes, they would.

2 Q. And are the answers given in Exhibit  
3 13 to the questions that were asked true and  
4 correct to the best of your information, knowledge  
5 and belief?

6 A. Yes, they are.

7 MR. O'FLAHERTY: Your Honor I'd offer  
8 Exhibit 13 in to evidence.

9 JUDGE WOODRUFF: 13 has been offered,  
10 any objections to its receipt?

11 Hearing none it will be received.

12 MR. O'FLAHERTY: And we would tender  
13 Mr. Snadon for cross examination.

14 JUDGE WOODRUFF: Okay. Beginning with  
15 Staff.

16 CROSS EXAMINATION

17 QUESTIONS BY MR. THOMPSON:

18 Q. Mr. Snadon have you ever had an  
19 opportunity or cause to examine the tariff records  
20 maintained by the Commission?

21 A. No, I have not.

22 Q. So you would have no reason to  
23 disagree with the assertion that's been made that  
24 the tariff sheet maintained on file by the  
25 Commission for the sewer rates established in 2000

1 **did not include the commodity charge.**

2 A. No. I could not agree with that  
3 because the tariff sheet that I signed and sent  
4 back and the letter from Mr. Hubbs said it would be  
5 filed contained the tariff charge or the commodity  
6 charge.

7 **Q. But you have not examined the actual**  
8 **tariff sheet maintained on file by the Commission,**  
9 **correct?**

10 A. No, I have not.

11 MR. THOMPSON: I have no further  
12 questions. Thank you.

13 JUDGE WOODRUFF: All right. Public  
14 Counsel.

15 CROSS EXAMINATION

16 QUESTIONS BY MS. BAKER:

17 **Q. Good morning Mr. Snadon.**

18 A. Good morning.

19 MS. BAKER: I'm going to approach.

20 **Q. (BY MS. BAKER) I'm going to hand you**  
21 **what's been marked as Exhibit 6.**

22 A. Yes, ma'am.

23 **Q. And looking at the filing letter that**  
24 **is the first and I believe second page of Exhibit**  
25 **6, is that your signature on behalf of Emerald**

1     **Pointe?**

2             A.     Yes, it is.

3             **Q.     Okay.  And looking at the agreement**  
4 **that is also attached to Exhibit 6, is that your**  
5 **signature on behalf of Emerald Pointe?**

6             A.     Yes, it is.

7             **Q.     All right.**

8                     **And then I am going to approach and**  
9 **hand you what's been marked as Exhibit 5.  And**  
10 **comparing Exhibit 5 to the tariff that is attached**  
11 **to Exhibit 6 you would agree that, that it matches**  
12 **between those two documents, that that is the same?**

13             A.     As far as these documents are  
14 concerned these sheets agree.  It is not the tariff  
15 sheet that I signed and sent back with the  
16 documents.  And I would ask that with this that we  
17 include the cover letter from Mr. Hubbs because I  
18 think it makes it more meaningful.

19             **Q.     Actually that particular document**  
20 **came from the case file in EFIS for SR 2000-595 and**  
21 **I would ask that the Commission take notice of the**  
22 **case file in EFIS.**

23                     JUDGE WOODRUFF:  Is that document in  
24 EFIS or was it pre EFIS?

25                     MS. BAKER:  No, it is available in

1 EFIS right now, yes.

2 JUDGE WOODRUFF: Okay.

3 MS. BAKER: And that is the, that was  
4 printed directly from EFIS, Exhibit No. 6 is what  
5 I'm talking about, was printed directly from EFIS  
6 as the number one document opening that particular  
7 case.

8 JUDGE WOODRUFF: Does anyone have any  
9 objection to taking administrative notice of the  
10 file in that case?

11 MR. THOMPSON: No objection.

12 JUDGE WOODRUFF: Company?

13 MR. O'FLAHERTY: Yes, I object.  
14 There's lack of foundation that this document, when  
15 it went in to EFIS. So there's a lack of  
16 foundation as to what she's trying to prove on this  
17 particular document. Yes it's in the record but  
18 there's a lack of foundation as to when it went in  
19 to the electronic record is my objection, lack of  
20 foundation.

21 JUDGE WOODRUFF: Okay. I'm assuming  
22 the document would be in the Commission's official  
23 file which would have been pre EFIS.

24 MS. BAKER: Yes. It has filing stamps  
25 on it from the Commission on that particular date,

1 it is what is reflected in EFIS as the official  
2 case file for SR 2000-595.

3 JUDGE WOODRUFF: That number is a pre  
4 EFIS number.

5 MS. BAKER: Yes.

6 JUDGE WOODRUFF: So my understanding  
7 the official case file for the Commission is the  
8 paper documents at the time that are down on  
9 microfilm downstairs.

10 MS. BAKER: Uh-huh.

11 JUDGE WOODRUFF: And if the Commission  
12 takes administrative notice of the official file  
13 the documents on the microfilm downstairs, does  
14 that take care of your objection?

15 MR. O'FLAHERTY: Yes, sir.

16 MS. BAKER: That is fine with me.

17 JUDGE WOODRUFF: We'll take care,  
18 we'll take administrative notice of the case file  
19 as it is the official file for the Commission.

20 MS. BAKER: Perfect. That's fine.

21 JUDGE WOODRUFF: Okay.

22 A. Ma'am, for clarity of my testimony  
23 could I say something?

24 Q. (BY MS. BAKER) No, you can answer  
25 whenever your attorney asks you on recross.

1 A. Okay.

2 Q. Or redirect rather.

3 And you would agree that there is no  
4 sewer commodity charge shown on either the tariff  
5 sheet in Exhibit No. 5 nor the tariff sheet that is  
6 attached to Exhibit number 6 that you have in your  
7 hand.

8 A. There's no commodity charge shown on  
9 these sheets but I --

10 Q. No --

11 A. I didn't send this back in.

12 Q. That was not the question.

13 MS. BAKER: And I would like for that  
14 to be struck because that's not part of the  
15 question.

16 JUDGE WOODRUFF: All right.  
17 Nonresponsive portion of the response is struck.

18 Q. (BY MS. BAKER) Do you agree that  
19 based on the approved sewer tariff that Emerald  
20 Pointe inappropriately charged a sewer commodity  
21 charge between May 10th, 2000 and March 31, 2012?

22 A. No, I do not.

23 MR. O'FLAHERTY: Excuse me Your  
24 Honor, I'd object to the reference approved sewer  
25 tariff as calling for a legal conclusion.



1 MS. BAKER: And we've gone through  
2 with all of the other testimony. It's the same  
3 objection that was overruled before for Ms. Roth's  
4 testimony doing an approved sewer tariff.

5 MR. O'FLAHERTY: That's not right. My  
6 objection has been consistent with respect to what  
7 is the official tariff, whether it's approved or  
8 not, by whom it's approved calls for a legal  
9 conclusion from this witness and it's  
10 inappropriate.

11 JUDGE WOODRUFF: I think one of the  
12 issues in the case is what was approved by the  
13 Commission and so you're really objecting to the  
14 question, I'll sustain the objection, you can  
15 rephrase.

16 MS. BAKER: Okay.

17 Q. (BY MS. BAKER) You agree that Emerald  
18 Pointe did charge a sewer commodity charge between  
19 May 10, 2000 and March 31, 2012.

20 A. Yes, we did.

21 Q. And you would agree that Emerald  
22 Pointe had use of the customer's money from that  
23 customer charge going back to May 10, 2000.

24 A. The money was used to operate the  
25 Company and provide the service we provided.

1 Q. Okay. So your answer is yes.

2 A. Yes, we used it for operation.

3 Q. And you would agree that this money  
4 could have been used by customers and a return on  
5 that money could have increased the value for the  
6 customers if they hadn't had to pay that sewer  
7 charge?

8 A. I don't think there's a customer that  
9 would complain about the charge and the service --

10 Q. That's not, again I would like that  
11 to be struck, that was not my question.

12 JUDGE WOODRUFF: The answer is  
13 nonresponsive. Just answer the question she asks.  
14 So the nonresponsive portion is struck.

15 Q. (BY MS. BAKER) So your answer is yes,  
16 you would agree that customers would have had use  
17 of their money if they had not paid the sewer  
18 charge.

19 A. The sewer charge was a charge that  
20 was there.

21 Q. Again, yes or no or I'm going to ask  
22 that it be struck again.

23 A. Would they have had use of the money  
24 if it hadn't been charged?

25 Q. Yes.

1 A. Well, yes.

2 Q. No further questions.

3 JUDGE WOODRUFF: All right. Questions  
4 from the bench.

5 Chairman Kenney?

6 CROSS EXAMINATION

7 QUESTIONS BY CHAIRMAN KENNEY:

8 Q. Good morning, sir. How are you?

9 A. Good morning. Thank you.

10 Q. Good to see you.

11 Do you have a copy of your testimony  
12 and the schedules attached?

13 A. Yes, I do.

14 Q. Your schedule GS-3, GWS-3, I'm sorry.

15 A. GWS-3.

16 Q. That's attached to your testimony.

17 A. Yes, sir.

18 Q. I'm not sure which page it is but  
19 it's the schedule of sewer rates that is the last  
20 page in my schedule GWS-3.

21 A. Well, sorry I'm not finding it, I'm  
22 not used to doing this every day.

23 Q. That's okay, take your time.

24 A. GWS-3, yes. Go ahead, sir.

25 Q. The very last page it's PSCMO number

1 1, it's the first revised sheet number 4 cancelling  
2 PSCMO number 1 original sheet number 4, it's the  
3 schedule of sewer rates.

4 A. Yes, sir, I have it now.

5 Q. And it reads usage charge for all  
6 usage greater than 2000 gallons per month \$3.50 per  
7 1,000 gallons.

8 A. Yes, that's true.

9 Q. That's the tariff sheet that you  
10 thought you were implementing.

11 A. Yes, that's the tariff sheet that was  
12 included with the signed documents that I sent back  
13 to Mr. Hubbs.

14 Q. The sheet immediately prior to that  
15 also bears your signature.

16 A. Yes, that's correct.

17 Q. And then off to the side it says Dale  
18 W. Johansen, manager, et cetera, et cetera? To the  
19 right of your signature.

20 A. The sheet that I had GWS-3 doesn't  
21 show Dale's signature because that was in our files  
22 and I sent it back and then he signed it.

23 Q. Did you get a copy of that signed by  
24 him?

25 A. No.

1 Q. How do you know he signed it?

2 A. Because I've been given the copy of  
3 what he signed since they've been, since this came  
4 out.

5 Q. Okay. So you have a copy of the  
6 agreement regarding disposition of small company  
7 rate increase request, Emerald Pointe Utility  
8 Company, tariff file, et cetera, and in parenthesis  
9 it says sewer and it's a two page document. You  
10 have a copy of that document signed by yourself and  
11 signed by Mr. Johansen?

12 A. Yes, I do.

13 Q. But there's no reflection or  
14 attachment to the signed but countersigned copy of  
15 which tariff sheet was attached?

16 A. When I signed it and sent it back the  
17 tariff sheet that was attached is GWS-3 which has  
18 the 3.50 per 1,000. I never received anything  
19 else.

20 Q. You never received anything else so  
21 you subsequently saw the document signed by Mr.  
22 Johansen?

23 A. Only now.

24 Q. Only today.

25 A. Well, not today, before, I mean when

1 this came up and we have been getting these files  
2 and getting the other rate.

3 **Q. You never received a signed copy back**  
4 **from them some time in 2000?**

5 A. No.

6 **Q. Okay. And who prepared the schedule**  
7 **of sewer rates that indicates the \$3.50 per 1,000**  
8 **gallons, who prepared that sheet?**

9 A. Mr. Hubbs, I believe.

10 **Q. Okay.**

11 A. If I could add the only reason that I  
12 say that is because if you'll look at the cover  
13 letter that I received from Mr. Hubbs he says  
14 there's a draft letter used for the case and if I  
15 would sign it back he would file the tariff that  
16 was enclosed. So that was what I did.

17 **Q. And who prepared the agreement**  
18 **regarding disposition of small company rate**  
19 **increase, who prepared that?**

20 A. Disposition --

21 **Q. That's the two page document bearing**  
22 **your signature but not Mr. Johansen's signature, it**  
23 **says the agreement is effective as of the 10th day**  
24 **of March.**

25 A. Are you referring to GWS-3, that

1 agreement?

2 Q. Yes, sir.

3 A. It was prepared by the Public Service  
4 Commission and came with the documents I received  
5 with the letter from Mr. Hubbs.

6 Q. Okay. You may or may not know the  
7 answer to this, but that document sets forth a  
8 settlement between your company and the PSC staff  
9 at the time, right?

10 A. That's right.

11 Q. And it references an increase of  
12 \$2,500, approximately seven and a half percent and  
13 it allows for a bad check charge and late payment  
14 charge. Do you know why the usage charge wouldn't  
15 have been reflected in this document?

16 A. Which document now are you referring  
17 to?

18 Q. The disposition agreement that we  
19 were just discussing.

20 A. GWS-3?

21 Q. Yes, sir.

22 A. I have no idea.

23 Q. You didn't prepare it.

24 A. I didn't prepare it.

25 Q. You didn't have it reviewed by an

1 attorney at the time?

2 A. No, I didn't. At that time, and I  
3 don't know why but the Public Service Commission  
4 was encouraging small companies to do rate  
5 increases without the use of an attorney.

6 Q. Sure.

7 A. And that's what happened.

8 Q. Well, let me ask you about that  
9 statement you just made. Was it your decision not  
10 to consult an attorney was because of the PSC  
11 staff's recommendation in that regard?

12 A. We wanted a rate increase and we were  
13 encouraged by the staff not to use, you know, it  
14 wasn't necessary, I wouldn't say they encouraged us  
15 not to use it but they said it wasn't necessary,  
16 that we could certainly do it.

17 Q. And the tariff sheet and the  
18 disposition agreements were prepared by PSC staff  
19 as far as you're aware.

20 A. Yes, certainly.

21 Q. You had been charging a customer, a  
22 usage charge rather prior to this anyway, correct?

23 A. That is correct.

24 Q. I don't have any other questions.

25 Thank you, sir.



1 JUDGE WOODRUFF: Commissioner Jarrett?

2 EXAMINATION

3 QUESTIONS BY COMMISSIONER JARRETT:

4 Q. Good morning, sir, how are you? I'm  
5 Commission Jarrett, I'm sorry, I walked in late.

6 One of the issues in this case is the  
7 six percent interest rate on a possible refund.

8 Have you been in the hearing room all morning and  
9 listened to some of the testimony and arguing about  
10 that?

11 A. Yes, I have.

12 Q. My question is where does the company  
13 keep their funds? Do they keep it in a bank, do  
14 they keep it in a checking account, in a money  
15 market account, a CD, where is the money kept?

16 A. The money's kept in the bank,  
17 certainly no money market accounts or that type of  
18 account because there's no profit in the company.

19 Q. Okay. So is it a checking account?

20 A. Yes.

21 Q. And does that checking account bear  
22 any interest?

23 A. No.

24 Q. It's a non-interest bearing account?

25 A. Yes.

1           **Q.       Okay. That's the only question I**  
2 **have. Thank you, sir.**

3                   JUDGE WOODRUFF: Commissioner Kenney?

4                   COMMISSIONER: No questions. Thank  
5 you.

6                   JUDGE WOODRUFF: All right. Back for  
7 recross based on questions from the bench. And  
8 beginning with Staff?

9                   MR. THOMPSON: No questions. Thank  
10 you.

11                   JUDGE WOODRUFF: For Public Counsel?

12                   MS. BAKER: No questions. Thank you.

13                   JUDGE WOODRUFF: Redirect?

14                   MR. O'FLAHERTY: Yes, sir.

15                   REDIRECT EXAMINATION

16                   QUESTIONS BY MR. O'FLAHERTY:

17           **Q.       Attached to your testimony, sir,**  
18 **exhibits attached to that there were three**  
19 **exhibits, right, sir?**

20           A.       Yes.

21           **Q.       If you could go to GWS-3.**

22           A.       Yes.

23           **Q.       Is this the only letter that you**  
24 **received from the Public Service Commission**  
25 **transmitting or delivering to you a tariff sheet on**

1 **the sewer utility?**

2 A. That's the letter from Mr. Hubbs?

3 Q. **Yes.**

4 A. Yes, that's correct.

5 Q. **You were shown Exhibits 5 and 6.**

6 A. Yes.

7 Q. **Do you still have those in front of**  
8 **you?**

9 A. Yes, I do.

10 Q. **Were those ever delivered or served**  
11 **upon the Company to your knowledge?**

12 A. No they were not and I spoke too  
13 quickly because she asked me if these were  
14 identical, the one that is attached to the letters  
15 does not have the time stamp on it and this one  
16 does and I just wondered why.

17 Q. **But with respect to Exhibits 5 and 6**  
18 **as the president of Emerald Pointe Utility you have**  
19 **seen nothing in your records that show Exhibits 5**  
20 **and 6 were ever delivered or served on the company.**

21 A. Absolutely not.

22 Q. **And the only records in your files**  
23 **that show delivery of a sewer tariff sheet is the**  
24 **sewer tariff sheet that was sent to you in March of**  
25 **2000 with the \$3.50 per 1,000 usage fee, correct?**

1 A. That is correct.

2 **Q. I have nothing further. Thank you.**

3 JUDGE WOODRUFF: All right. Mr.  
4 Snadon you can step down. We're done.

5 MR. SNADON: Thank you.

6 JUDGE WOODRUFF: And I believe the  
7 next witness for Emerald Pointe is Mr. Pittman.

8 (Whereupon, the witness was sworn)

9 DIRECT EXAMINATION

10 QUESTIONS BY MR. O'FLAHERTY:

11 **Q. Would you state your name please?**

12 A. Larry Pittman.

13 **Q. And Mr. Pittman what's your position**  
14 **with Emerald Pointe Utilities?**

15 A. I'm the controller.

16 **Q. And for how long have you been the**  
17 **controller?**

18 A. Since June of 2002.

19 **Q. Sir, have you caused to be prepared**  
20 **for purposes of this proceeding certain rebuttal**  
21 **testimony in question and answer form?**

22 A. I have.

23 **Q. And is it your understanding that**  
24 **testimony has been marked as Exhibit 14 for**  
25 **identification?**

1 A. Yes.

2 Q. Do you have any changes, revisions or  
3 additions that you'd like to make to that testimony  
4 at this time?

5 A. No.

6 Q. If I asked you the same questions  
7 which are contained in Exhibit 14 today would your  
8 answers be the same?

9 A. Yes.

10 Q. And are the answers to the questions  
11 that you gave that are contained within Exhibit 14  
12 true and correct to the best of your information,  
13 knowledge and belief?

14 A. They were.

15 MR. O'FLAHERTY: Your Honor I'd offer  
16 Exhibit 14 in to evidence.

17 JUDGE WOODRUFF: That was rebuttal  
18 testimony?

19 MR. O'FLAHERTY: Yes, sir.

20 JUDGE WOODRUFF: Exhibit 14 has been  
21 offered. Any objections to its receipt?

22 MR. THOMPSON: No objections.

23 JUDGE WOODRUFF: Hearing no objection  
24 it would be received.

25 MR. O'FLAHERTY: I tender the witness

1 for cross examination.

2 JUDGE WOODRUFF: All right. Beginning  
3 with Staff.

4 MR. THOMPSON: I have no questions of  
5 this witness.

6 JUDGE WOODRUFF: Public Counsel?

7 MS. BAKER: No questions.

8 JUDGE WOODRUFF: We'll come up for  
9 questions from the bench then.  
10 Chairman Kenney?

11 CHAIRMAN KENNEY: I don't have any  
12 questions. Thank you.

13 JUDGE WOODRUFF: Mr. Jarrett?

14 COMMISSIONER JARRETT: Good morning,  
15 sir. I don't have any questions either. Thank you  
16 for your testimony.

17 MR. PITTMAN: Thank you.

18 JUDGE WOODRUFF: Commissioner Kenney?

19 COMMISSIONER KENNEY: No.

20 JUDGE WOODRUFF: No questions from the  
21 bench so no need for recross and there was no cross  
22 so no need for redirect and you can step down.

23 MR. PITTMAN: Thank you.

24 JUDGE WOODRUFF: Next witness then is  
25 Mr. Johansen.

1 MR. O'FLAHERTY: I have a procedural  
2 issue Your Honor.

3 JUDGE WOODRUFF: Okay.

4 MR. O'FLAHERTY: We ask for Mr. Snadon  
5 to be excused either now or after the lunch break.

6 JUDGE WOODRUFF: Any objection to Mr.  
7 Snadon being excused?

8 You're free to go.

9 MR. O'FLAHERTY: Same with respect to  
10 Mr. Pittman.

11 JUDGE WOODRUFF: Any objections?

12 Again free to go.

13 (Whereupon, the witness was sworn)

14 MR. COOPER: Your Honor I believe that  
15 Mr. Johansen has three pieces of testimony, direct,  
16 rebuttal and surrebuttal. They'll be marked 15, 16  
17 and 17. Is that correct?

18 JUDGE WOODRUFF: That would be  
19 correct.

20 DIRECT EXAMINATION

21 QUESTIONS BY MR. COOPER:

22 Q. Will you state your name for the  
23 record?

24 A. Dale Wayne Johansen.

25 Q. By whom are you employed and in what

1     **capacity?**

2             A.        I'm the owner of Johansen Consulting  
3     Services and for the purposes of this case I'm  
4     employed by Emerald Pointe Utility Company.

5             **Q.        Have you caused to be prepared for**  
6     **the purposes of this proceeding certain direct,**  
7     **rebuttal and surrebuttal testimony in question and**  
8     **answer form?**

9             A.        Yes.

10            **Q.        Is it your understanding that that**  
11     **testimony has been marked as Exhibits 15, 16 and 17**  
12     **for identification?**

13            A.        Yes.

14            **Q.        Do you have any changes that you**  
15     **would like to make to that testimony at this time?**

16            A.        I have one to the rebuttal testimony,  
17     and if I could get a copy of what was actually  
18     filed so I'm referring to the right page and line  
19     number.

20            **Q.        Rebuttal did you say?**

21            A.        Yes.

22                    MR. COOPER: I have handed the  
23     witness Exhibit 16 Your Honor.

24            A.        Okay. On page 6 of 10 of the  
25     question and answer pages on line 10 the



1     parenthetical where it currently says this letter  
2     was filed with the Commission on March 23rd, 2000,  
3     that should be changed to this letter was submitted  
4     to the Commission records department on March 23rd,  
5     2000.

6                     And that's the only change.

7             **Q.       (BY MR. COOPER)  If I were to ask you**  
8     **the questions which were contained in Exhibits 15,**  
9     **16, 17 today would your answers as changed be the**  
10    **same?**

11             A.       They would.

12             **Q.       Are those answers true and correct to**  
13    **the best of your information, knowledge and belief?**

14             A.       They are.

15                     MR. COOPER:  Your Honor, I would offer  
16    Exhibit 15, 16 and 17 in to evidence and tender  
17    the witness for cross examination.

18                     JUDGE WOODRUFF:  Exhibit 15 which I  
19    believe is the direct, 16 is the rebuttal and 17 is  
20    surrebuttal have been offered.  Any objection to  
21    the testimony?

22                     MR. THOMPSON:  No objection.

23                     JUDGE WOODRUFF:  Hearing none they  
24    would be received.

25                     And for cross examination we begin

1 with Staff.

2 MR. THOMPSON: Thank you, judge.

3 CROSS EXAMINATION

4 QUESTIONS BY MR. THOMPSON:

5 Q. Mr. Johansen, you were were you not  
6 the manager of the Commission's water and sewer  
7 department in the year 2000?

8 A. I was.

9 Q. And so that department's processing  
10 of the small company rate case for Emerald Pointe  
11 was ultimately your responsibility, was it not?

12 A. It was.

13 Q. And you're familiar with the packet  
14 that we've seen attached to various pieces of  
15 testimony including a letter of March 7th?

16 A. Yes.

17 Q. You're familiar with that?

18 A. Yes.

19 Q. And did you see that before it went  
20 out back in 2000?

21 A. Probably but I can't say for certain  
22 that I did.

23 Q. You have no specific memory.

24 A. No specific memory, but.

25 Q. Okay. Did Randy Hubbs -- do you know

1 who Randy Hubb is?

2 A. Yes.

3 Q. And did he work under your  
4 supervision?

5 A. He did.

6 Q. And did you in fact personally  
7 supervise him and the work he did on this case in  
8 2000?

9 A. Yes.

10 Q. And you're also familiar with a  
11 letter and packet dated March 20th, correct?

12 A. Yes.

13 Q. In fact that was the subject of your  
14 correction just now was it not?

15 A. Yes, it was.

16 Q. Now in the normal course of business  
17 of the department that you managed in the year 2000  
18 that would have been mailed out to Emerald Pointe,  
19 would it not?

20 A. The letter, the filing packet of  
21 March 20th?

22 Q. Yes.

23 A. No.

24 Q. It would not have been mailed out.

25 A. No.

1           Q.       Now you'll agree with me that the  
2       tariff sheet in the March 20th packet is different  
3       from the tariff sheet in the March 7th packet, is  
4       that correct?

5           A.       It is.

6           Q.       And which of the two, if you know,  
7       was ultimately approved by the Commission?

8           A.       I believe the one that was --

9                   MR. COOPER: I object Your Honor, that  
10       goes back to the objections we've made previously.  
11       I'm not sure that Mr. Johansen can make a legal  
12       determination as to what was or wasn't approved by  
13       the Commission.

14                   JUDGE WOODRUFF: Is the question  
15       calling for a legal determination Counselor?

16                   MR. THOMPSON: Absolutely not. It's  
17       calling for him to tell me which of the two tariff  
18       sheets was submitted to the Commission for its  
19       agenda in late March of 2000 and then came out of  
20       that agenda as the official approved tariff sheet.

21                   JUDGE WOODRUFF: All right. That is a  
22       different question than what was asked earlier.

23                   MR. THOMPSON: Then let me substitute  
24       that for the one I asked earlier.

25                   MR. COOPER: It also begs the question

1 I guess who submitted, but.

2 JUDGE WOODRUFF: You can inquire on  
3 that later.

4 Q. (BY MR. THOMPSON) Can you recall the  
5 question as corrected?

6 A. I believe so. The tariff sheet that  
7 was attached to the March 20th filing packet if you  
8 will is different than the tariff sheet that was  
9 sent to the company via the March 7th letter.

10 Q. Okay. If you know which of those two  
11 tariff sheets went to the Commission?

12 A. The one attached to the March 20th  
13 letter.

14 Q. Okay. Now, what did your department  
15 do, if anything, with respect to tariff sheets that  
16 had gone to the Commission and been approved? Did  
17 it come back to your department?

18 A. No.

19 Q. Where did it go, if you know?

20 A. Once they were approved by the  
21 Commission it's my understanding a copy was put in  
22 to the tariff book that was maintained by the  
23 Commission's records department.

24 Q. Okay. And if you know did the  
25 records department send a copy of that to the

1     **Company?**

2             A.       In this particular case I do not  
3 know.

4             **Q.       You do not know. Okay. If you know**  
5 **was it the general practice that a copy would be**  
6 **sent to the Company?**

7             A.       That's my understanding.

8             **Q.       But that was done by the records**  
9 **department.**

10            A.       Yes.

11            **Q.       Okay. And that was, was the records**  
12 **department under your supervision in 2000?**

13            A.       No.

14            **Q.       Now, if you know did discussions**  
15 **occur between Mr. Hubbs or yourself or anyone else**  
16 **in the water and sewer department under your**  
17 **supervision between March 7th and March 23rd with**  
18 **respect to the institution of the tariff attached**  
19 **to the March 20th packet for the tariff attached to**  
20 **the March 7th packet?**

21            A.       Not to my knowledge.

22            **Q.       So if they occurred you were not**  
23 **involved in them.**

24            A.       That's correct.

25            **Q.       Okay. And you have no personal**

1 knowledge that any such conversations occurred.

2 A. That's correct.

3 Q. But you know what the general  
4 operating practice of your department was at that  
5 time, isn't that correct?

6 A. Yes.

7 Q. What would have been the standard or  
8 general operating practice of your department in  
9 the year 2000 with respect to the belated  
10 substitution of a tariff sheet?

11 A. If there was a different tariff sheet  
12 that was to be submitted to the records department  
13 there would have been normally some type of  
14 conversation or most likely even written  
15 correspondence between the Staff and the Company  
16 about that.

17 Q. Okay. Now, you haven't found any  
18 such written correspondence with respect to this  
19 case, have you?

20 A. I have not.

21 Q. And you've already said you have no  
22 personal knowledge that any verbal communication  
23 occurred.

24 A. That's correct.

25 Q. But do you know for a fact that it

1 did not occur?

2 A. I do not.

3 Q. That's all the questions I have.

4 Thank you.

5 JUDGE WOODRUFF: Then for Public  
6 Counsel?

7 MS. BAKER: Thank you.

8 CROSS EXAMINATION  
9 QUESTIONS BY MS. BAKER:

10 Q. Good morning Mr. Johansen.

11 A. Good morning.

12 Q. It had already been established that  
13 you were the manager of the water and sewer  
14 department for the Public Service Commission's  
15 water, Public Service Commission's staff.

16 A. Correct.

17 Q. And you also have experience as a  
18 receiver for some of the water and sewer systems  
19 who are troubled in Missouri.

20 A. I do.

21 Q. And during your experience in either  
22 being the manager of the water and sewer department  
23 or as a current receiver, dealing with the small  
24 water and sewer companies is somewhat different  
25 than a large company. You would agree with that?



1 A. Yes.

2 Q. All right. And one of the main  
3 differences is that there is a special rate  
4 procedure that's been set up for small water and  
5 sewer systems to go through that's a more expedited  
6 procedure. You would agree?

7 A. That's correct.

8 Q. And part of that is to save the  
9 systems money so that they do not have to have an  
10 attorney to go through a rate case procedure,  
11 correct?

12 A. That's part of the reason for the  
13 rule, yes.

14 Q. And you would agree that most of the  
15 small water and sewer companies that are out there  
16 and certainly the troubled ones do have two  
17 attorneys and an outside expert who come in to the  
18 case, they can't afford something like that,  
19 correct?

20 A. That's normally correct.

21 Q. You and I worked on several cases  
22 under the old small rate case rule, is that  
23 correct?

24 A. Yes.

25 Q. I want to go through the procedures

1 of that and make sure that my recollection of that  
2 is the same as yours.

3 A. Okay.

4 Q. All right. Under the old small rate  
5 case proceeding basically the company came in and  
6 requested a rate increase, they did give a specific  
7 number of the increase that they were requesting,  
8 is that correct?

9 A. Either a specific number or in some  
10 cases they would ask for a percentage increase over  
11 existing revenues.

12 Q. Okay. And under the old procedure  
13 they were held to that number, is that correct?

14 A. Correct.

15 Q. Under the new procedure that's not  
16 the case.

17 A. That's correct.

18 Q. But in the old procedure if they came  
19 in and they asked for \$1,000 and even if Staff's  
20 audit or Public Counsel's audit showed that they  
21 needed \$4,000 they were held to the \$1,000.

22 A. Correct.

23 Q. But they had the opportunity to file  
24 a rate case immediately asking for that additional  
25 \$3,000. Correct?

1 A. Correct.

2 Q. And in the old small rate case rule  
3 and even in the one that exists today you would  
4 agree that there is a large amount of  
5 correspondence between Staff and the Company,  
6 Public Counsel and Staff?

7 A. Yes, there is.

8 Q. And you would also agree that at that  
9 time under the old rule a formal case only began  
10 after an agreement was made between at least the  
11 Company and the Staff.

12 A. Generally, yes. The only exception  
13 to that would be if the Company and the Staff  
14 couldn't reach an agreement the Company had the  
15 option of filing under the normal procedure for a  
16 rate increase but under the rules specifically  
17 that's correct.

18 Q. Okay. So let me see if I can clarify  
19 that. So they had the opportunity to file a  
20 general rate case, not a small rate case.

21 A. Correct.

22 Q. All right. And Public Counsel is a  
23 party to all of these cases, is that correct?

24 A. Yes.

25 Q. And so as we stated a large amount of

1 the correspondence went back and forth, it is  
2 assumed that every party to the case reviews those,  
3 those documents, makes changes and then maybe  
4 another round of correspondence would come.

5 A. Yes.

6 Q. In a case where there is an agreement  
7 only between the Company and Staff in the old rate  
8 case the Company could then file their small rate  
9 case, formal case with the Commission, correct?

10 A. Well, if there was an agreement  
11 between the Company and the Staff but not Public  
12 Counsel.

13 Q. That's correct.

14 A. The procedure basically at that point  
15 was that there would be an agreement signed by the  
16 Company and the Staff, there would be tariff sheets  
17 developed normally by the Staff to reflect the  
18 terms of that agreement, it would set out the  
19 rates, that agreement and tariff sheet would be  
20 submitted to the records department, once that  
21 submission was made at that point the rate case was  
22 opened.

23 Q. Okay. And there could be several  
24 things that happened at that point, Public Counsel  
25 could not oppose and those tariff sheets would go

1 in to effect if the Commission approved them.

2 A. Yes.

3 Q. And Public Counsel could oppose and  
4 more correspondence would go back and forth,  
5 correct?

6 A. Yes.

7 Q. And if that, if changes were made  
8 because of Public Counsel's opposing then the  
9 tariff sheets that ultimately got approved by the  
10 Commission could be different than the ones that  
11 were filed by the Company.

12 A. Correct.

13 Q. In this particular case are you aware  
14 of -- well, I'm going to hold that question for a  
15 second, I'm going to approach.

16 I'm going to hand you what's been  
17 marked as Exhibits 4, 5 and 6. And looking at  
18 Exhibit 6 and the agreement that's attached to the  
19 filing letter.

20 A. Okay.

21 CHAIRMAN KENNEY: What's Exhibit 6  
22 again?

23 MS. BAKER: Exhibit 6 is the filing  
24 letter, the agreement and the tariff which started  
25 case SR 2000-595.

1 Q. (BY MS. BAKER) You would agree with  
2 that Mr. Johansen?

3 A. Yes.

4 Q. All right. Again looking at the  
5 agreement is that your signature on behalf of the  
6 Public Service Commission staff?

7 A. It is.

8 Q. And you also see a signature from the  
9 company there as well.

10 A. Yes.

11 Q. You do not see a signature from  
12 anyone from Public Counsel, is that correct?

13 A. Correct.

14 Q. All right. So in this particular  
15 case if this is the filing letter that opened SR  
16 2000-595 it was an agreement only between the  
17 Company and Staff.

18 A. That's correct.

19 Q. Are you aware of whether Public  
20 Counsel opposed this agreement or didn't oppose it  
21 at that time?

22 A. I don't recall and I have not  
23 reviewed the official case file recently to know  
24 whether they did or not.

25 Q. Okay. If you look at what I gave

1     **you, the sewer tariff, I think it is Exhibit 5.**

2             A.     Okay.

3             **Q.     And if you compare that to the tariff**  
4     **that is attached to Exhibit 6, never mind the**  
5     **filing stamps but looking at the number and the**  
6     **text of the document you will agree that those are**  
7     **the same.**

8             A.     Yes.

9             **Q.     So in this particular case it appears**  
10    **that Public Counsel did not oppose and so the**  
11    **tariff that was filed is the one that was**  
12    **ultimately approved.**

13            A.     That's --

14                    MR. COOPER:  Objection, Your Honor, it  
15    kind of goes back to the issues we've raised  
16    previously, you know, what was or wasn't filed I  
17    think is a critical issue in this case and I think  
18    that Ms. Baker's question kind of assumes facts  
19    that aren't in evidence or even an issue that  
20    hasn't been decided yet by the Commission.

21                    MS. BAKER:  I'll change my question,  
22    that's fine.

23                    JUDGE WOODRUFF:  Clarify.

24             **Q.     (BY MS. BAKER)  Looking at those two**  
25    **documents and your experience in the previous small**

1 rate case procedures if the filing document  
2 including the letter and the agreement and the  
3 tariff matches the one that is ultimately approved  
4 by the Commission then it's most likely that there  
5 were no changes that were made because of Public  
6 Counsel.

7 A. That's correct.

8 Q. And you would agree that looking at  
9 Exhibit 6 and Exhibit 5, the two tariffs, that  
10 there is no sewer commodity charge listed on either  
11 of those documents.

12 A. That's correct.

13 Q. And you would agree that Emerald  
14 Pointe did charge a sewer commodity charge from May  
15 10, 2000 to March 31, 2012.

16 A. That's my understanding, yes.

17 MS. BAKER: No further questions.

18 JUDGE WOODRUFF: All right. Then  
19 we'll go to questions from the bench.

20 Chairman Kenney?

21 EXAMINATION

22 QUESTIONS BY CHAIRMAN KENNEY:

23 Q. Mr. Johansen, thank you for being  
24 here, I've got a few questions for you.

25 You've seen, it's attached to Mr.



1 Snadon's testimony, GWS-3, it's the tariff sheet  
2 with the \$3.50 usage charge?

3 A. Yes, I have seen that.

4 Q. Okay. Who prepared that tariff  
5 sheet?

6 A. Randy Hubbs.

7 Q. Who is Mr. Hubbs, do you know?

8 A. He's retired for several years from  
9 the Commission.

10 Q. Is he still around in the state  
11 somewhere?

12 A. He physically lives in Jefferson  
13 City.

14 Q. Okay. You've seen this sheet though  
15 -- well, let me ask it a different way. Would you  
16 have seen this tariff sheet with the sewer usage  
17 charge at the time it was prepared?

18 A. Probably but I don't specifically  
19 recall.

20 Q. All right. Do you specifically  
21 recall whether it was the understanding between the  
22 PSC staff and Emerald Pointe that Emerald Pointe  
23 would be allowed to charge a sewer usage charge of  
24 \$3.50?

25 A. I think it would have been the

1 Company's assumption when they got that tariff  
2 sheet that that was the case, yes.

3 Q. So you don't have any doubt that the  
4 Company received the tariff sheet prepared by our  
5 Staff with the usage charge of \$3.50?

6 A. I have not found anything that would  
7 indicate otherwise.

8 Q. All right. And so looking back at  
9 the GWS, schedule GWS-3, there's the disposition  
10 agreement that's signed by Mr. Snadon, there's a  
11 disposition agreement signed by Mr. Snadon but not  
12 signed by you. Have you seen that one?

13 A. Yes.

14 Q. Do you know whether the disposition  
15 agreement with your signature affixed would have  
16 been sent back to Mr. Snadon? The fully executed  
17 document.

18 A. As far as --

19 Q. Actually before you answer let me ask  
20 you a different question.

21 A. Okay.

22 Q. Because I'm going to ask two  
23 different questions.

24 Do you know whether in fact a fully  
25 executed agreement was sent back to Emerald Pointe?

1           A.       I do not.

2           **Q.       Do you know whether it would have**  
3 **been the PSC's practice to have sent a fully**  
4 **executed document back to Emerald Pointe?**

5           A.       As far as the water and sewer  
6 department goes once we got the agreement signed by  
7 the Company back from the Company that is when I  
8 affixed my signature when the filing packet was put  
9 together and submitted to the records department,  
10 the water and sewer department would not  
11 necessarily have sent that packet back to the  
12 Company.

13          **Q.       I see. Okay. So once it was a fully**  
14 **executed disposition agreement there's no reason to**  
15 **believe that Mr. Snadon and Emerald Pointe would**  
16 **have received a copy of the fully executed**  
17 **agreement?**

18          A.       It would not have been the standard  
19 practice for them to have received that, that's  
20 correct.

21          **Q.       So the only document Mr. Snadon would**  
22 **have received then is the disposition agreement as**  
23 **it's reflected in his schedule and the tariff sheet**  
24 **that includes the usage charge of \$3.50 per 1,000**  
25 **gallons.**

1           A.       That would have been the normal  
2 procedure, yes.

3           Q.       Okay. Do you offer or do you know,  
4 and I'm going to ask you to speculate, do you have  
5 any reason, do you have any guess as to why Mr.  
6 Snadon would have received a tariff sheet with the  
7 usage charge but then there's also this other sheet  
8 without the usage charge, how do you explain the  
9 difference in the two tariff sheets?

10          A.       I have been racking my brain for  
11 several months about that. I don't have an  
12 explanation for it.

13          Q.       Has anybody talked to Mr. Hubbs to  
14 your knowledge?

15          A.       I have not, I know that. I don't  
16 know if anyone else has or not.

17          Q.       Okay. Let me ask you this: Just  
18 based upon your review of the case file today,  
19 because you've reviewed it in your role as a  
20 consultant for the Company.

21          A.       Yes.

22          Q.       Does it make sense and is it logical  
23 that Emerald Pointe would not have wanted to charge  
24 a \$3.50 usage charge, given the fact that they had  
25 already been charging one and given the fact that

1    **they then thereafter were operating at a net loss**  
2    **is there any reason to believe that they would not**  
3    **have charged the \$3.50 usage charge?**

4           A.       I haven't found anything from the  
5    standpoint of what the Company would have, had  
6    received, physically received that would indicate  
7    any reason for them not to charge it.

8           **Q.       Back in 2000 how would a company**  
9    **review its tariff as it appeared on file with the**  
10 **Commission?**

11          A.       Normally they would have received --  
12 well let me back up.

13                   The tariff book that is maintained by  
14 the Commission, any time there are changes to any  
15 of the sheets that go, that are actually in that  
16 tariff book the normal practice my understanding  
17 was was that once a change was approved that  
18 company would have been provided a copy of the new  
19 tariff sheet or the revised tariff sheet. So they  
20 should have had copies of any revisions that were  
21 made. Physically if they did not retain a copy at  
22 their offices they would have had to have asked for  
23 and got a copy from the Commission.

24          **Q.       Let me ask you this then: So we've**  
25 **established that the tariff sheet with the \$3.50**

1 usage charge is what Mr. Snadon had in his  
2 possession, right?

3 A. I know he had that in his possession  
4 and based on his testimony I would agree with that.

5 Q. And I think it was your testimony  
6 that once the disposition agreement was signed by  
7 the Company and sent back to you and then fully  
8 executed by you that wouldn't have been sent, that  
9 package wouldn't have been sent back to Emerald  
10 Pointe.

11 A. That was not standard practice, no.

12 Q. So it's logical to assume therefore  
13 that the only tariff sheet that would have been in  
14 possession of Emerald Pointe and Mr. Snadon is the  
15 one that includes the \$3.50 sewer usage charge.

16 A. From the standpoint of what the  
17 Company would have received from the water and  
18 sewer department.

19 Q. Right.

20 A. That is correct.

21 Q. All right. Can you think of any  
22 reason that the Company would have had reason to  
23 randomly check on the status of its tariff?

24 A. From the standpoint of --

25 Q. I guess what I'm asking if he's got

1 this tariff sheet and he thinks it's the approved  
2 tariff sheet is there any reason why the Company  
3 would somewhere down the road call up the Public  
4 Service Commission and say can I get another copy  
5 of my tariff sheet?

6 A. No, I don't think that would be  
7 something that they would have done.

8 Q. If you know, you may not know the  
9 answer to this question, do you know why Mr. Hubbs  
10 wasn't asked to testify in this case?

11 A. I don't know.

12 Q. All right. Let me ask you one more  
13 question. You were asked some questions about the  
14 disposition agreement itself and Public Counsel's  
15 position with respect to it. Do you have a copy of  
16 the disposition agreement, the fully executed one  
17 that appears in Exhibit -- what exhibit is this?

18 MS. BAKER: 7.

19 Q. (BY CHAIRMAN KENNEY) Exhibit 7?

20 MS. BAKER: I'm sorry, 6.

21 A. 6. Yes, I do have that.

22 Q. (BY CHAIRMAN KENNEY) So you have a  
23 copy that's signed by Mr. Snadon and by you.

24 A. Correct. Page 2 of two pages.

25 Q. Do you see the paragraph that begins

1    **this agreement is only between the Company and the**  
2    **Staff?**

3           A.       Yes, I do.

4           **Q.       What's the next sentence read?**

5           A.       However, the office of the Public  
6    Counsel, paren, OPC, end paren, has verbally  
7    notified the Staff that it did not oppose the  
8    increase.

9           **Q.       Do you know how that verbal**  
10   **notification would have taken place?**

11          A.       That would have been a conversation  
12    between most likely Mr. Hubbs and someone that  
13    worked at the Office of the Public Counsel. Most  
14    likely counsel.

15          **Q.       PSC Staff prepared this document**  
16   **though, right?**

17          A.       Yes. Correct.

18          **Q.       And Mr. Snadon wouldn't have had any**  
19   **input in to its preparation?**

20          A.       He would have had input in to the  
21    preparation but the physical preparation is done by  
22    the Staff.

23          **Q.       Okay. And the tariff sheet that**  
24   **contains the \$3.50 usage charge, that would have**  
25   **been prepared by Mr. Hubbs as well?**



1 A. Correct.

2 Q. This is a slightly different question  
3 but it's similar to the question I've already asked  
4 you. I asked you if you knew why Mr. Hubbs hadn't  
5 been called to testify. Do you know if anybody  
6 made any attempt to contact him, anybody, made any  
7 attempt to contact him with respect to this case?

8 A. Not to my knowledge.

9 Q. Do you think his testimony would be  
10 helpful? I'm just asking your opinion.

11 A. If his memory was better than mine  
12 possibly.

13 Q. I was thinking the same thing.

14 All right. Thanks for your time, sir.

15 JUDGE WOODRUFF: Mr. Jarrett?

16 EXAMINATION

17 QUESTIONS BY COMMISSIONER JARRETT:

18 Q. Good morning Mr. Johansen, how are  
19 you doing?

20 A. Good.

21 Q. I think Chairman Kenney asked several  
22 good questions regarding the attachment and  
23 disposition agreement so I don't have any questions  
24 about that but I do want to explore one area that  
25 Ms. Baker touched on when she was cross examining

1 you.

2 Do you recall during her examination  
3 she asked you a lot of questions about your  
4 experience in small water and sewer rate cases?

5 A. Yes.

6 Q. Do you recall that? At what time did  
7 you work, what's your time frame for working at the  
8 Commission on those small water and sewer rate  
9 cases?

10 A. June of 1995 through August of 2007.

11 Q. So about 12 years?

12 A. Yes.

13 Q. And can you estimate, I know it's  
14 probably tough, but estimate how many small water  
15 and sewer rate cases you might have been involved  
16 in during the time you were employed at the PSC?

17 A. I will guess probably 10 to 15 per  
18 year maybe. Maybe somewhat less than that, but.

19 Q. A lot.

20 A. A lot.

21 Q. Okay. And since you've left the PSC  
22 you're now consulting, is that correct?

23 A. Yes.

24 Q. And I know that you have been  
25 appointed as a receiver in at least one case here

1 at the Commission, have you been involved as a  
2 receiver in other cases involving small water and  
3 sewer rate cases other than the one that's  
4 currently I guess pending before the Commission?

5 A. No.

6 Q. Okay.

7 A. Or maybe more appropriately not yet.

8 Q. Not yet. And have you consulted,  
9 you're consulting, have you consulted with any  
10 other small water and sewer rate cases on their  
11 rate case?

12 A. Emerald Pointe is the only other one.

13 Q. Okay. In your experience I guess  
14 mainly as an employee here dealing with small water  
15 and sewer rate cases were there times when the  
16 Companies had an attorney?

17 A. There were times when they did, yes.  
18 It was not the norm.

19 Q. Okay.

20 A. There are a couple of cases that I  
21 could recall that normally, you know, retained,  
22 either retained counsel specifically for this or  
23 used their regular corporate attorneys as part of  
24 the process.

25 Q. And would it be safe to say that, and

1 this is again drawing on your experience, that  
2 there are some cases where in your view it might  
3 not be necessary for a company to have an attorney  
4 or have attorney representation but in some cases  
5 there might be reason to have an attorney?

6 A. Well I think that's true simply  
7 because the, you know the type of company, the size  
8 of the company, specific issues that might come up  
9 during an audit might, certainly might dictate the  
10 need for, you know, outside counsel.

11 Q. All right. So I guess getting to the  
12 crux of my question, given your experience in this  
13 case do you know why the Company wanted attorneys  
14 to represent them?

15 A. Well, I -- no.

16 Q. Okay. And do you see any issues in  
17 this case given your experience that you would  
18 think the company might need an attorney to  
19 represent them?

20 A. Well, I think the sewer commodity  
21 overcharge issue certainly necessitates that.

22 Q. Okay.

23 I don't have any further questions.

24 Thank you Mr. Johansen for your testimony.

25 JUDGE WOODRUFF: Mr. Kenney?

1 COMMISSIONER KENNEY: Thank you Judge.

2 EXAMINATION

3 QUESTIONS BY COMMISSIONER KENNEY:

4 Q. Good afternoon.

5 A. Good afternoon.

6 Q. Would you consider a quarter million  
7 dollars a large amount of money for a small water  
8 and sewer district?

9 A. Well generally speaking, yes.

10 Q. Is that a substantial amount of  
11 money?

12 A. Yes.

13 Q. Would that lead you to believe why  
14 you might need to have representation, dealing with  
15 a large amount of money?

16 A. Certainly.

17 Q. I have a question for you regarding  
18 the letter dated March 7th, 2000 from, to Gary  
19 Snadon from Mr. Hubbs, it's telling him what to do.

20 A. Okay.

21 Q. And having the tariff sheets that are  
22 attached to it on the GWS-3 document showing the  
23 \$3.50 surcharge and then the letter that, March  
24 20th which is Exhibit 6, Mr. Snadon following  
25 instructions and sending the letter back to Mr.

1 Roberts and then attached to that are tariff sheets  
2 similar to 5 and 6 we talked about, they don't show  
3 the surcharge.

4 A. Correct.

5 Q. During your time from June of '95  
6 until 2007 if it was noted that there was a mistake  
7 made for a tariff sheet sent out to a company would  
8 it have been common practice to put something in  
9 writing to that company to point out that mistake?

10 A. Yes.

11 Q. Okay. Do we have any documentation  
12 that there was anything, have you seen any  
13 documentation pointing out something in writing to  
14 show that mistake?

15 A. I have not found anything that would,  
16 that points that out.

17 Q. Okay. So as far as you know there's  
18 no documentation that there's ever, that Emerald  
19 Pointe was ever notified that there was going to be  
20 a change in the tariff sheets that they say they  
21 were given.

22 A. As far as I know that's correct.

23 Q. Okay. Thank you.

24 JUDGE WOODRUFF: I just have one  
25 clarification question.

1 EXAMINATION

2 QUESTIONS BY JUDGE WOODRUFF:

3 Q. When Ms. Baker was questioning you  
4 you talked extensively about the old small rate  
5 case rule and the new rate case rule. I just want  
6 to clarify, the old rule was in effect in 2000?

7 A. Yes, it was.

8 Q. Okay. That's the only question I  
9 have.

10 JUDGE WOODRUFF: Any recross based on  
11 questions from the bench?

12 MR. THOMPSON: Thank you, Judge.

13 RECROSS EXAMINATION

14 QUESTIONS BY MR. THOMPSON:

15 Q. I'd like to clarify the line of  
16 questions that Chairman Kenney asked you and also  
17 that was touched on by Commissioner Kenney if I  
18 may.

19 Would you agree with me that under the  
20 old small company rate case rule and as occurred in  
21 this case that when the executed packet that you  
22 put your signature on, when you reached that point  
23 and submitted that to the records room that the  
24 water and sewer department had finished its job  
25 with respect to that case?

1           A.       Well from the standpoint of the  
2 formal case being initiated that would be correct.

3           Q.       I mean there's been a number of  
4 questions about whether or not the fully executed  
5 disposition agreement with the tariff that went to  
6 the Commission attached ever went out to the  
7 Company and I think if I'm not mischaracterizing  
8 your testimony you indicated that the water and  
9 sewer department at least would not have sent it.

10          A.       That's correct.

11          Q.       But is it possible that there was  
12 some other component of the Commission that in the  
13 normal course of events would have sent it?

14          A.       What I have been calling the file  
15 packet?

16          Q.       Yes.

17          A.       I don't know.

18          Q.       Okay.

19                    I think you testified earlier that  
20 whatever the Commission actually approved you  
21 believe would have been sent by the records room to  
22 the Company.

23          A.       It's my understanding that was the  
24 normal practice.

25          Q.       And in fact there would have been at



1 least two items, isn't that correct, one of them  
2 would have been an order and one of them would have  
3 been a tariff.

4 A. That's my understanding, yes.

5 Q. In this case in fact two tariffs, a  
6 water tariff and a sewer tariff.

7 A. Two orders actually.

8 Q. Two orders.

9 A. Because they were separate cases.

10 Q. Thank you. So there would have been  
11 in each of two cases an order and a tariff,  
12 correct?

13 A. That's my understanding, yes.

14 Q. And it's your understanding and the  
15 normal course of events those items would have been  
16 sent to the Company by the Commission's records  
17 department.

18 A. Correct.

19 Q. Which you had nothing to do with.

20 A. Correct.

21 Q. Okay. So if there was a failure on  
22 the part of the records department it had nothing  
23 to do with water and sewer, isn't that right?

24 A. Correct.

25 Q. Okay. But you do not know for a fact

1 that there was any failure by the records  
2 department, do you?

3 A. I personally do not know that.

4 Q. Okay. Now, you've testified that the  
5 tariff sheet would also have gone in to the book  
6 maintained by the records department, correct?

7 A. Correct.

8 Q. Okay. And you've testified that you  
9 do not know whether or not the executed disposition  
10 agreement itself would have been sent to the  
11 Company by the records department or not.

12 A. That's correct.

13 Q. You just don't know that.

14 A. I do not know that.

15 Q. Okay. But in the normal course of  
16 events if the Company had received these two orders  
17 and two tariff sheets from the records department  
18 and if the Company had examined those items would  
19 the Company have noticed as far as you know that  
20 the commodity charge for sewer was not included on  
21 the sewer tariff?

22 A. I would have been very surprised if  
23 they had not noticed that.

24 Q. Okay. And let's talk about Mr. Hubbs  
25 and what events did or did not occur leading to the

1 tariff substitution.

2 A. Okay.

3 Q. If we can call it that.

4 You testified earlier that the normal  
5 practice would have been for there to be  
6 conversation between the water and sewer department  
7 and the Company with respect to that substitution,  
8 isn't that correct?

9 A. Yes.

10 Q. Let me ask you a final question then.  
11 Would you be surprised if that did not occur in  
12 this case?

13 A. Yes.

14 Q. Thank you.

15 MR. THOMPSON: No further questions.

16 JUDGE WOODRUFF: Before we go to  
17 Public Counsel Commissioner Jarrett had one more  
18 question.

19 EXAMINATION

20 QUESTIONS BY COMMISSIONER JARRETT:

21 Q. And I apologize and, Mr. Thompson  
22 will have a chance to recross. But along the lines  
23 that Chairman Kenney asked about Mr. Hubbs, do you  
24 know who worked in the records department around  
25 that time?

1           A.       I believe Dale Roberts was the  
2       secretary of the Commission. As far as who was the  
3       manager if you will of the records department  
4       itself I don't recall.

5           Q.       Okay. But at least Mr. Roberts was  
6       the secretary and was the custodian of records at  
7       that time.

8           A.       I believe that's correct, yes.

9           Q.       All right. And Mr. Roberts does live  
10      here in Missouri, do you know?

11          A.       The last I knew he lived in Columbia.

12          Q.       All right. Do you know did anybody  
13      attempt to contact Mr. Roberts and talk to him  
14      about this?

15          A.       Not that I know of.

16          Q.       Okay.  
17                    That's all the questions I had.

18                    Wait, another question. You think it  
19      would be helpful to talk to Mr. Roberts about this?

20          A.       I don't know that it would be simply  
21      because, you know, as someone who had oversight of  
22      that department whether he would have specific  
23      knowledge of what happened in every case, I don't  
24      know.

25          Q.       But to the extent he might have seen

1 the document and might recall, recall it, it might  
2 be helpful?

3 A. Yes.

4 Q. Okay.

5 I don't have any further questions.

6 CHAIRMAN JARRETT: Sorry for  
7 interrupting. Thanks.

8 MR. THOMPSON: Thank you Commissioner.  
9 If I could follow up just a little bit.

10 JUDGE WOODRUFF: Go ahead.

11 RECROSS EXAMINATION

12 QUESTIONS BY MR. THOMPSON:

13 Q. If I was to tell you that Nila  
14 Haggemeyer was the manager of the records  
15 department in 2000 would you have any reason to  
16 disagree?

17 A. No.

18 Q. And if you know, Nila Haggemeyer is  
19 also retired from the Commission at this time,  
20 isn't that correct?

21 A. I believe that's correct, yes.

22 Q. Okay. And since we're going to go  
23 down memory lane would you be surprised if I  
24 reminded you that the Staff counsel on this case in  
25 2000 was Keith Kruger?

1 A. No, that would not surprise me.

2 Q. And would you be surprised to learn  
3 that the judge on this case in 2000 was Louis R.  
4 Mills, Jr.?

5 A. No.

6 Q. Thank you.

7 MR. THOMPSON: I have no further  
8 questions.

9 JUDGE WOODRUFF: All right. Public  
10 Counsel?

11 MS. BAKER: No further questions.

12 JUDGE WOODRUFF: Redirect?

13 MR. COOPER: Thank you Your Honor.

14 REDIRECT EXAMINATION

15 QUESTIONS BY MR. COOPER:

16 Q. I think you answered a question a  
17 couple minutes ago that you would be surprised if  
18 there was no conversation between the Staff and the  
19 Company if a tariff was changed, correct?

20 A. Yes.

21 Q. I think you also testified earlier  
22 that you would expect there to be evidence of that  
23 through copies of correspondence, correct?

24 A. Yes.

25 Q. And in this case have you had the

1 opportunity to check the water and sewer department  
2 file as part of the discovery process?

3 A. I checked the, what I believe in my  
4 testimony called the work file that the department  
5 has and I did not find anything.

6 Q. The Exhibit 6 which is the March 20  
7 letter, I think you talked about it would have been  
8 provided to the records section. Who would have  
9 provided it to the records section?

10 A. Randy Hubbs.

11 Q. Where would the Commission have been  
12 located in 2000? Would they have still been over  
13 at the Truman building?

14 A. I think the Truman building, yes.

15 Q. There was some discussion about how  
16 the tariffs were maintained prior to EFIS. Do you  
17 remember what the official tariff looked like in  
18 the pre EFIS days when the Commission was at the  
19 Truman building?

20 A. They were normally a large, in a  
21 large three ring binder. Loose leaf by page.

22 Q. And maintained in a record room there  
23 at the Commission, correct?

24 A. Yes.

25 Q. And was it something that you walked

1 off the street and looked at? Or would you have  
2 had to have gone past a receptionist and various  
3 other folks?

4 A. Well, yes. Someone coming in as a  
5 member of the public and saying I would like to see  
6 Emerald Pointe Utility's tariff there would have  
7 been a receptionist and then they would have been  
8 directed to someone in the records department and  
9 then the tariff book would have been provided.

10 Q. And at some point that three ring  
11 binder pulled off the shelf, that's how you  
12 actually would have accessed those tariff sheets,  
13 correct?

14 A. Yes. Correct.

15 MR. COOPER: That's all the questions  
16 I have Your Honor.

17 JUDGE WOODRUFF: All right.

18 Mr. Johansen you can step down.

19 A. Thank you.

20 JUDGE WOODRUFF: And that brings us to  
21 the end of the morning session, it's now 12:25,  
22 we'll take a break for lunch and we'll come back at  
23 1:30 with the next issue.

24 (LUNCHEON RECESS TAKEN BY PARTIES)

25 JUDGE WOODRUFF: Let's come to order



1 please. And Mr. O'Flaherty had something he wanted  
2 to do?

3 MR. O'FLAHERTY: Yes, sir. With  
4 respect to the refund issue, the live testimony is  
5 done but we have for purposes of the Company I  
6 request that the Commission take judicial notice of  
7 and admit for purposes of the record the transcript  
8 of proceedings from October 19th, 2004 in the  
9 matter of the application of Emerald Pointe Utility  
10 Company in case number WA 2004 dash 0581. And I'll  
11 be glad to mark this.

12 JUDGE WOODRUFF: Yeah. This is the  
13 transcript from that hearing?

14 MR. O'FLAHERTY: Yes, sir. And I have  
15 copies for the Commissioners too.

16 JUDGE WOODRUFF: We did an on the  
17 record at that time?

18 MR. O'FLAHERTY: Yes, sir.

19 MR. THOMPSON: You were evidently the  
20 judge.

21 JUDGE WOODRUFF: Evidently. I just  
22 saw my name. I'm glad I'm not testifying because I  
23 don't remember much.

24 Let's go ahead and mark this.

25 MR. O'FLAHERTY: So we've moved an

1 offer of admission of Exhibit 18.

2 JUDGE WOODRUFF: Exhibit 18 has been  
3 offered, any objections to its receipt?

4 MR. THOMPSON: No objection from  
5 Staff.

6 MS. BAKER: Is it being offered just  
7 for notice?

8 JUDGE WOODRUFF: What is the purpose  
9 of offering it?

10 MR. O'FLAHERTY: Yes, for purposes of  
11 notice to the record and for the Commission to take  
12 judicial notice of these transcripts, these  
13 proceedings.

14 JUDGE WOODRUFF: Okay. How is it  
15 relevant?

16 MR. O'FLAHERTY: It's relevant because  
17 within this testimony is the statements by the  
18 Staff that the Staff would review within two years  
19 the Company's rates which I had asked Mr. Busch  
20 about and he didn't have knowledge of that so I'm  
21 putting this in to establish that for the record.

22 JUDGE WOODRUFF: Okay.  
23 Objection?

24 MS. BAKER: Not for notice, I mean.  
25 It is what it is for that, but. The truth of the

1 statements, none of us were there to verify.

2 JUDGE WOODRUFF: Okay. So exactly --  
3 I'm not clear what is being presented to the  
4 Commission here. I see a transcript here and we've  
5 got an objection as to the truth of it so what is  
6 available to us, what can we use this for?

7 MR. O'FLAHERTY: Well you can use it  
8 for any purpose because it's a transcribed  
9 proceeding and we're offering it for purposes of  
10 judicial notice --

11 JUDGE WOODRUFF: Administrative  
12 notice.

13 MR. O'FLAHERTY: Administrative  
14 notice. For purposes of the proceedings did take  
15 place and to establish the fact that testimony by  
16 the Staff as I said was that the Company's rates  
17 would be reviewed every two years.

18 MR. THOMPSON: Do you have a page and  
19 a line where that is?

20 MR. O'FLAHERTY: It's in multiple  
21 places, yes, sir.

22 MR. THOMPSON: I will note Judge that  
23 the transcript states it's a transcript of an on  
24 the record presentation and very often at an on the  
25 record presentation counsel will make

1 representations but often there are no, there is no  
2 testimony under oath. So I don't know if the  
3 provisions he's pointing to are simply  
4 representations by counsel or statements under oath  
5 by a witness or what they are.

6 MR. O'FLAHERTY: So at page 5 counsel  
7 beginning at line 1 Judge Woodruff told everyone to  
8 be seated then James Marcell testified as follows,  
9 then there were questions by Commissioner Murray  
10 beginning at line 4 through line 16. Then page 7,  
11 well actually all of page 6 put everything in  
12 perspective. Page 7, you'll see beginning at line  
13 3 there's discussion about the rate review.

14 JUDGE WOODRUFF: And this was sworn  
15 testimony from Marcell?

16 MR. O'FLAHERTY: Yes, sir.

17 And then beginning on page 15, I  
18 believe there's other reference to the rate review  
19 but then at page 15, really beginning at line 1,  
20 that whole page.

21 JUDGE WOODRUFF: Okay. Well again  
22 brings me back to the question of what, can the  
23 Commission rely upon this as competent and reliable  
24 evidence and that's what I'm getting at.

25 MR. O'FLAHERTY: And my answer is yes

1 you can by taking judicial notice of this sworn  
2 testimony that that did in fact happen. And this  
3 was the testimony given at that time.

4 JUDGE WOODRUFF: Ms. Baker?

5 MS. BAKER: I don't have a problem  
6 with you taking administrative notice of it but it  
7 coming in as an exhibit we don't have a foundation  
8 for it, we don't have Marcell here to say that this  
9 is his testimony, that it's true, that kind of  
10 thing. I mean I think if you want to put it in to  
11 the record as notice that's, that would be fine.

12 CHAIRMAN KENNEY: Notice of what?

13 JUDGE WOODRUFF: Exactly. Notice of  
14 what?

15 CHAIRMAN KENNEY: That's what I was  
16 going to say, notice of the existence of the  
17 proceeding?

18 MR. O'FLAHERTY: I'm sorry  
19 Commissioner, you may not have heard my earlier  
20 statement but it's to take judicial notice that  
21 Staff recommended back in 2004 that the Commission  
22 review the rates of the Company within two years.

23 CHAIRMAN KENNEY: So you want us to  
24 take administrative notice of the truth of the  
25 matter, not administrative notice of the existence

1 of the proceeding.

2 MR. O'FLAHERTY: Well.

3 CHAIRMAN KENNEY: So then the question  
4 is can we take administrative notice of hearsay.

5 Sorry.

6 JUDGE WOODRUFF: That's all right.  
7 I'm inclined to say no. Since there's an objection  
8 to it as being offered for the truth of the matter  
9 and it is hearsay and that no one's here to say  
10 about what happened in that proceeding. I don't  
11 think I can rely upon this competent and  
12 substantial evidence so I don't want to mislead you  
13 to purporting to take administrative notice of it.

14 MR. O'FLAHERTY: Well. You rule as  
15 you deem appropriate, every matter that you ask the  
16 court to take administrative or judicial notice of  
17 is hearsay, I'm entitled to offer an official  
18 record and ask you to take judicial notice of it  
19 and that's what I'm asking you to do. I marked it  
20 so we knew what we were talking about.

21 JUDGE WOODRUFF: All right. It's in  
22 the record for the proceeding, I'm not going to  
23 take administrative notice of it so I'll deny your  
24 request and then if it becomes an issue and you  
25 want to take it up then it's in the record.

1 MR. O'FLAHERTY: Thank you.

2 JUDGE WOODRUFF: All right. Thank  
3 you.

4 MR. O'FLAHERTY: Final thing is with  
5 respect to the first issue may I be excused from  
6 further proceedings?

7 JUDGE WOODRUFF: You certainly may.

8 MR. O'FLAHERTY: Thank you.

9 JUDGE WOODRUFF: Okay, I believe we're  
10 ready to move on to our next issue.

11 MR. THOMPSON: Yes, sir.

12 JUDGE WOODRUFF: Which would be Mr.  
13 Busch on late fee and reconnect fee charges.

14 Mr. Busch you've previously testified  
15 and you're still under oath.

16 You've may inquire.

17 MR. THOMPSON: Mr. Busch's exhibits  
18 have already been entered and admitted so I will  
19 tender the witness for cross examination.

20 JUDGE WOODRUFF: All right. And that  
21 brings up the question then this would be a rate  
22 case issue or is this again still refund issues?

23 MS. BAKER: Still refund.

24 JUDGE WOODRUFF: For Public Counsel  
25 then.

1 CROSS EXAMINATION

2 QUESTIONS BY MS. BAKER:

3 Q. Good afternoon.

4 A. Good afternoon Ms. Baker.

5 Q. Do you have in front of you Mr.

6 Snadon's rebuttal testimony?

7 A. I do not.

8 Q. I will also give you copies of  
9 Exhibit 4, 5 and 6. Since that's being used as  
10 well.

11 A. I've got 4, 5 and 6.

12 Q. All right. Then I'll give you his  
13 rebuttal.

14 A. Thank you.

15 Q. Looking at Mr. Snadon's rebuttal,  
16 I'll be looking at his schedules in the back, the  
17 schedules that include a water tariff and a sewer  
18 tariff.

19 A. Exactly which schedule, is it GWS-3?

20 Q. Yes, I believe that's right. You  
21 have my copy.

22 A. Okay. Yes.

23 Q. Okay. And then looking at those two  
24 pages from Mr. Snadon's rebuttal schedules and  
25 comparing that to Exhibits 4 and 5 your or Staff's



1 review of the Company determined that the Company  
2 was charging a 10 percent late fee rather than two  
3 percent or \$3 which is in their tariff, is that  
4 correct?

5 A. That is correct.

6 Q. And the Company was also charging a  
7 \$40 fee for water connection or reconnection fees  
8 rather than \$30. Is that correct?

9 A. That is correct.

10 Q. And you heard the testimony earlier  
11 of Mr. Snadon and you've reviewed his testimony I'm  
12 sure stating basically that these were the tariffs  
13 that he thought he was supposed to follow that were  
14 attached to his rebuttal testimony. Would that be  
15 fair?

16 A. I think that's what he testified to.

17 Q. Okay. Looking at the, let's start  
18 with the water tariff in his schedules. Do you see  
19 the charge in there for the late fees?

20 A. Yes, I do.

21 Q. Okay. Does it include a 10 percent  
22 late fee or does it include a two percent or \$3  
23 late fee?

24 A. I believe it states a charge of \$3 or  
25 two percent per month times the unpaid balance.

1 Q. Okay. And then looking at the  
2 exhibit of that same water tariff do you see any  
3 \$10 late fee?

4 A. \$10 late fee, I do not.

5 Q. So really it doesn't matter whether  
6 you're looking at the tariffs that were approved  
7 which is Exhibits 4 and 5 or the tariffs that Mr.  
8 Snadon said he was going to follow, he didn't  
9 follow them. Is that your understanding?

10 A. That seems to be the case.

11 Q. And then I know that in rebuttal  
12 testimony he did not attach the page that has the  
13 reconnect fees on it but if you look at the back of  
14 4 and 5 do you see a \$40 reconnect fee?

15 A. I see the -- no, I do not see a \$40  
16 reconnect fee.

17 Q. Do you see a \$30?

18 A. On the water I do.

19 Q. On the water side, that's correct.  
20 So again it really doesn't matter which tariff you  
21 look at, he didn't follow either one as far as late  
22 fees are concerned.

23 A. It does not appear so.

24 Q. And by charging the incorrect late  
25 fee and the incorrect reconnect fee Emerald Pointe

1 once again had free use of the customer's money, is  
2 that correct?

3 A. They collected more money than they  
4 were supposed to collect and they could do with  
5 that money as they pleased.

6 Q. Okay. And with that money that they  
7 over collected that money could have been used by  
8 the customers and again a return on that money  
9 could have increased the value for those customers.

10 A. If the customers had not paid that  
11 extra amount that money would have remained in  
12 their possession.

13 Q. And they could have invested it and  
14 reaped the benefit of that, correct?

15 A. They could have done that, yes.

16 MS. BAKER: No further questions.

17 JUDGE WOODRUFF: Okay. For Emerald  
18 Pointe?

19 EXAMINATION

20 QUESTIONS BY MR. COOPER:

21 Q. Mr. Busch in your mind is there any  
22 disagreement in this case about the basic refund  
23 amount that Staff proposed for late fees or  
24 reconnect fees?

25 A. I don't believe there's any dispute

1 at this time over those basic charges.

2 MR. COOPER: That's all the questions  
3 I have.

4 JUDGE WOODRUFF: All right. Open up  
5 for questions from the bench.

6 Mr. Chairman?

7 CHAIRMAN KENNEY: No questions. Thank  
8 you.

9 JUDGE WOODRUFF: Mr. Jarrett?

10 COMMISSIONER JARRETT: No questions.  
11 Thank you.

12 JUDGE WOODRUFF: Mr. Kenney?

13 COMMISSIONER KENNEY: No questions.  
14 Thank you.

15 JUDGE WOODRUFF: All right.  
16 No questions from the bench so no need  
17 for recross. Any redirect?

18 MR. THOMPSON: No redirect. Thank  
19 you.

20 JUDGE WOODRUFF: Mr. Busch you can  
21 step down.

22 And we'll bring up Leslie Ross. And  
23 Ms. Ross you are will still under oath.

24 MS. ROSS: Yes.

25 JUDGE WOODRUFF: You may inquire.

1 MR. THOMPSON: I will tender the  
2 witness for cross examination.

3 JUDGE WOODRUFF: All right.

4 Any from Public Counsel?

5 MS. BAKER: I just have a few  
6 questions so I'll stay here.

7 CROSS EXAMINATION

8 QUESTIONS BY MS. BAKER:

9 Q. Ms. Ross you would agree that Emerald  
10 Pointe has and continues to have free use of the  
11 customer's money by overcharging for late fees and  
12 reconnection fees, correct?

13 A. Yes.

14 Q. And you would agree that this money  
15 could have been used by the customers and a return  
16 on that money could have increased the value for  
17 the customers.

18 A. Yes.

19 Q. And you agree that a six percent  
20 compound interest is just and reasonable to repay  
21 the customers for their lost use and value of that  
22 money?

23 A. Yes.

24 MS. BAKER: No further questions.

25 JUDGE WOODRUFF: All right. Then for

1 Emerald Pointe?

2 MR. COOPER: Yes, Your Honor. Thank  
3 you.

4 CROSS EXAMINATION

5 QUESTIONS BY MR. COOPER:

6 Q. Ms. Ross I think on page 8 of your  
7 surrebuttal you refer to a, on a couple of case  
8 numbers having to do with Roy L. Utilities, don't  
9 you?

10 A. Yes.

11 Q. Would you agree with me that those  
12 cited cases were not litigated before the  
13 Commission?

14 A. I do not know.

15 Q. So you wouldn't know whether they  
16 were resolved by agreement between the Company and  
17 the Staff?

18 A. Correct. I'm not sure.

19 Q. And do you know whether Roy L.  
20 Utilities was represented by counsel in those  
21 cases?

22 A. I do not.

23 Q. Now I think your testimony talks  
24 about the six percent interest rate being  
25 appropriate because it would provide, make up for

1 or address the time value of money, correct?

2 A. Correct.

3 Q. Did you do any analysis to show that  
4 over this period of time six percent was the right  
5 interest rate to use to provide for that time value  
6 of money during the period from whatever the start  
7 time would be, 2000 to 2012?

8 A. I did not. We used six percent  
9 because it was deemed appropriate and put in the  
10 tariff for the customer deposits so we felt it was  
11 a fair rate to use for other refunds.

12 Q. But there was no independent analysis  
13 of whether that was the right number at this point  
14 in time or would have been the right number over  
15 this entire period of time.

16 A. Correct.

17 MR. COOPER: That's all the questions  
18 I have.

19 JUDGE WOODRUFF: Questions from the  
20 bench then.

21 Mr. Chairman?

22 CHAIRMAN KENNEY: No questions. Thank  
23 you.

24 JUDGE WOODRUFF: Mr. Jarrett?

25 COMMISSIONER JARRETT: No questions.

1 Thank you.

2 JUDGE WOODRUFF: MR. Kenney?

3 COMMISSIONER KENNEY: No questions.

4 Thank you.

5 JUDGE WOODRUFF: No need for recross.

6 Any redirect?

7 MR. THOMPSON: No redirect. Thank

8 you.

9 JUDGE WOODRUFF: Ms. Ross you can step  
10 down and we'll bring up Keri Roth.

11 And Ms. Roth you are also still under  
12 oath.

13 You may inquire.

14 MS. BAKER: We've already admitted her  
15 testimony so I will tender her for cross  
16 examination.

17 JUDGE WOODRUFF: Okay. For cross then  
18 we begin with Staff?

19 MR. THOMPSON: No questions. Thank  
20 you.

21 JUDGE WOODRUFF: Emerald Pointe?

22 MR. COOPER: No questions.

23 JUDGE WOODRUFF: How about questions  
24 from the bench?

25 Mr. Chairman?



1 CHAIRMAN KENNEY: No. Thank you.

2 JUDGE WOODRUFF: Mr. Jarrett?

3 COMMISSIONER JARRETT: No questions.

4 JUDGE WOODRUFF: Mr. Kenney?

5 COMMISSIONER KENNEY: No questions.

6 JUDGE WOODRUFF: And no questions from  
7 the bench so no recross or redirect and you can  
8 step down.

9 MS. ROTH: Okay.

10 JUDGE WOODRUFF: All right then.

11 Bruce Menke for Emerald Pointe.

12 MR. COOPER: Yes, we call Bruce Menke.

13 (Whereupon, the witness was sworn)

14 JUDGE WOODRUFF: You may inquire.

15 MR. COOPER: Your Honor, we will have  
16 rebuttal and surrebuttal from Mr. Menke, I believe  
17 we're up to 19 and 20, would that be correct?

18 JUDGE WOODRUFF: That is correct.

19 MR. COOPER: And Mr. Menke also has a  
20 highly confidential schedule, may I mark that as  
21 20HC?

22 JUDGE WOODRUFF: Schedule to his  
23 surrebuttal?

24 MR. COOPER: To his surrebuttal.

25 JUDGE WOODRUFF: Let's make it 21HC.

1 EXAMINATION

2 QUESTIONS BY MR. COOPER:

3 Q. Please state your name.

4 A. Bruce Menke.

5 Q. By whom are you employed and in what  
6 capacity?

7 A. I'm the chief entertainment officer  
8 for Shepherd Of The Hills Entertainment Group which  
9 includes Emerald Pointe Utility Company.

10 Q. Have you caused to be prepared for  
11 purposes of this proceeding certain rebuttal and  
12 surrebuttal testimony in question and answer form?

13 A. Yes.

14 Q. Is it your understanding that that  
15 testimony has been marked as Exhibits 19, 20 and  
16 then your schedule to the surrebuttal testimony as  
17 Exhibit 21HC?

18 A. Yes.

19 Q. Do you have any changes that you  
20 would like to make to that testimony at this time?

21 A. No.

22 Q. If I were to ask you the questions  
23 which are contained in Exhibits 19, 20 and 21HC  
24 today would your answers be the same?

25 A. Yes it would.

1           **Q.       Are those answers true and correct to**  
2 **the best of your information, knowledge and belief?**

3           A.       Yes they are.

4           MR. COOPER: Your Honor I would offer  
5 Exhibits 19, 20 and 21HC and tender the witness for  
6 cross examination and I will give the documents to  
7 the court reporter.

8           JUDGE WOODRUFF: All right. Do you  
9 have copies of 21HC for the rest of us or is it  
10 something that was pre-filed.

11          MR. COOPER: It was pre-filed Your  
12 Honor.

13          JUDGE WOODRUFF: It was. Okay.

14          All right, 19, 20 and 21HC have been  
15 offered, any objections to their receipt?

16          Hearing none they would be received.

17          And for cross examination begin with  
18 Staff.

19          MR. THOMPSON: Thank you Judge.

20                    CROSS EXAMINATION

21          QUESTIONS BY MR. THOMPSON:

22           **Q.       Very briefly Mr. Menke.**

23                    **As I understand it your disagreement**  
24 **with Staff is to the application of interest.**

25          A.       Correct.

1 Q. And also to the time period over  
2 which the refunds would be made?

3 A. That's correct.

4 Q. Thank you very much. No further  
5 questions.

6 JUDGE WOODRUFF: Public Counsel?

7 CROSS EXAMINATION

8 QUESTIONS BY MS. BAKER:

9 Q. Mr. Menke. You will agree that  
10 Emerald Pointe has and continues to have free use  
11 of the customer's money from overcharges to late  
12 fees and reconnect fees?

13 A. I don't believe I would agree with  
14 that.

15 Q. And in what way do you not agree?  
16 The company charged, you would agree that the  
17 Company charged a 10 percent late fee rather than a  
18 two percent or three percent.

19 A. That's correct.

20 Q. And you would agree that they charged  
21 \$40 for water reconnect fees rather than \$30.

22 A. That's correct.

23 Q. And that is collecting more money  
24 than what was allowed in the tariff, you would  
25 agree?

1 A. We have agreed with that, correct.

2 Q. All right. And so you would then  
3 agree that Emerald Pointe has and continues to have  
4 if they haven't given it back customer's money.

5 A. I will agree with that, I disagree  
6 with the term free use of the money.

7 Q. You have not paid any interest to the  
8 customers for their money, correct?

9 A. That's correct.

10 Q. You didn't pay them anything else to  
11 charge them more than what the tariff gave,  
12 correct?

13 A. That's correct.

14 Q. Why --

15 A. Because the Company did not make any  
16 money and so --

17 Q. That's not my question. My question  
18 is free use. You were allowed to use --

19 MR. COOPER: Your Honor I would object  
20 to the question, I think it's argumentative, I  
21 think Mr. Menke's answered all the factual  
22 questions that have been asked of him here.

23 MS. BAKER: He's disagreeing that he's  
24 had free use of the money.

25 MR. COOPER: I think use of the term

1 free use is argumentative and ambiguous.

2 MS. BAKER: I disagree with that. But  
3 if you want me to move on I will move on.

4 JUDGE WOODRUFF: Please move on. I'll  
5 sustain the objection.

6 Q. (BY MS. BAKER) You would agree that  
7 this money could have been used by the customers  
8 and a return on that money could have increased the  
9 value for those customers, correct?

10 A. I agree with that.

11 MS. BAKER: No further questions.

12 JUDGE WOODRUFF: All right. Questions  
13 from the bench.

14 Mr. Chairman?

15 CHAIRMAN KENNEY: No thank you.

16 JUDGE WOODRUFF: Mr. Jarrett?

17 COMMISSIONER JARRETT: No thanks.

18 Thanks for your testimony.

19 JUDGE WOODRUFF: Mr. Kenney?

20 COMMISSIONER KENNEY: No.

21 JUDGE WOODRUFF: No need for recross,  
22 any redirect?

23 MR. COOPER: No Your Honor.

24 JUDGE WOODRUFF: All right. Mr. Menke  
25 you can step down.

1                   We're ready to move on to the next  
2 issue, number 3 is customer deposits and once again  
3 we'll bring up Mr. Busch.

4                   MR. THOMPSON: Before we start with  
5 Mr. Busch I wonder if I might bring to your  
6 attention an error on the joint list of issues and  
7 witness list which lists Leslie Ross for an  
8 additional Staff witness for issue number 3, in  
9 fact she is not a witness for issue number 3.

10                  JUDGE WOODRUFF: I will not call on  
11 her then.

12                  MR. THOMPSON: Thank you, Judge.

13                  JUDGE WOODRUFF: And again you are  
14 still under oath.

15                  MR. THOMPSON: I tender the witness  
16 for cross examination.

17                  JUDGE WOODRUFF: All right. Beginning  
18 with Public Counsel?

19                                CROSS EXAMINATION

20                                QUESTIONS BY MS. BAKER:

21                   **Q. In Staff's investigation of the**  
22 **system in the rate case you would agree that Staff**  
23 **found that Emerald Pointe did not follow the rules**  
24 **of the Commission regarding the proper use and**  
25 **return of customer deposits?**

1 A. That is correct.

2 Q. And you would agree that Emerald  
3 Pointe had inappropriate use of over \$30,000 of the  
4 customer's money due to these customer deposits?

5 A. I think the deposits we come up with  
6 about \$11,000.

7 Q. Subject to check.

8 A. That's what I have in my testimony,  
9 so. If that number has been changed that's fine.

10 Q. Okay. And you would agree that the  
11 rules do allow for the Commission ordering that the  
12 customers be made whole as soon as possible by  
13 ordering repayment of these within 90 days of an  
14 order in this proceeding?

15 A. I think that's what my testimony  
16 says, they should be refunded back within 90 days.

17 Q. So that is Staff's recommendation.

18 A. That is my recommendation, yes.

19 Q. And you feel that that is just and  
20 reasonable.

21 A. Yes, I do

22 MS. BAKER: No further questions.

23 JUDGE WOODRUFF: All right.

24 For Emerald Pointe?

25 MR. COOPER: No questions.



1 JUDGE WOODRUFF: Questions from the  
2 bench.

3 Commissioner Jarrett?

4 EXAMINATION

5 QUESTIONS BY COMMISSIONER JARRETT:

6 Q. Just one Mr. Busch. Can you just  
7 explain, expound upon why you think it's just and  
8 reasonable?

9 A. For 90 days?

10 Q. Yes.

11 A. The Company was supposed to refund  
12 that money as quickly as it possibly can, once  
13 their conditions were met. Since they've held this  
14 money for so long that money should be available to  
15 the Company to give it back to the customers as  
16 quickly as possible. That money should already be  
17 there, it was money given to the Company as part of  
18 service and it should be there.

19 Q. All right. And would returning the  
20 money within 90 days, how would that affect the  
21 Company's financial position? Would they be able  
22 to continue to operate and provide safe and  
23 adequate service?

24 A. I believe so.

25 Q. Okay. Thank you.

1 JUDGE WOODRUFF: Commissioner Kenney?

2 COMMISSIONER KENNEY: No questions.

3 Thank you.

4 JUDGE WOODRUFF: All right. Recross

5 based on questions from the bench.

6 Public Counsel?

7 MS. BAKER: No questions. Thank you.

8 JUDGE WOODRUFF: Emerald Pointe?

9 MR. COOPER: No.

10 JUDGE WOODRUFF: Any redirect?

11 MR. THOMPSON: None. Thank you.

12 JUDGE WOODRUFF: Mr. Busch you can

13 step down again.

14 Ms. Roth. And you are still under

15 oath.

16 MS. ROTH: Yes.

17 MS. BAKER: I will tender the witness

18 for cross examination.

19 JUDGE WOODRUFF: Okay. And beginning

20 with Staff?

21 MR. THOMPSON: I have no questions.

22 Thank you.

23 JUDGE WOODRUFF: Emerald Pointe?

24 MR. COOPER: No questions.

25 JUDGE WOODRUFF: All right. And we'll

1 come up for questions from the bench then.

2 Commissioner Jarrett?

3 COMMISSIONER JARRETT: No questions.

4 Thank you.

5 JUDGE WOODRUFF: Commissioner Kenney?

6 COMMISSIONER KENNEY: No questions.

7 Thank you.

8 JUDGE WOODRUFF: No recross and no

9 redirect. You can step down.

10 And we call Mr. Menke. And you are

11 also still under oath.

12 MR. MENKE: Yes, sir.

13 MR. THOMPSON: I'm sorry, I have no

14 questions.

15 JUDGE WOODRUFF: All right. He hasn't

16 been tendered yet.

17 Do you tender the witness?

18 MR. COOPER: Sure. We call Mr. Menke

19 and we point out that he's been sworn and his

20 testimony has been admitted. He's tendered for

21 cross.

22 MR. THOMPSON: I still have no

23 questions.

24 JUDGE WOODRUFF: Public Counsel?

25 MS. BAKER: No questions either.

1 JUDGE WOODRUFF: All right.

2 Commission Jarrett?

3 COMMISSIONER JARRETT: No questions.

4 Thank you.

5 JUDGE WOODRUFF: Commissioner Kenney?

6 COMMISSIONER KENNEY: Batting 100.

7 No.

8 JUDGE WOODRUFF: No recross and no  
9 redirect. You can step down.

10 Issue 4 is the Hollister sewage  
11 treatment expense.

12 MR. COOPER: Emerald Pointe would call  
13 Mr. Johansen.

14 JUDGE WOODRUFF: All right.

15 MR. COOPER: And when he arrives at  
16 the witness stand I'm tendering him for cross.

17 JUDGE WOODRUFF: Thank you.

18 And Mr. Johansen you are still under  
19 oath.

20 MR. JOHANSEN: Yes.

21 JUDGE WOODRUFF: For cross we begin  
22 with Staff?

23 MR. THOMPSON: Thank you.

24

25

1 CROSS EXAMINATION

2 QUESTIONS BY MR. THOMPSON:

3 Q. Mr. Johansen, the Company and Staff  
4 are in disagreement as to what amount to put in to  
5 revenue requirement for this expense, isn't that  
6 correct?

7 A. Yes.

8 Q. And the Company's position is based  
9 in part on a bill tendered this past January, isn't  
10 that correct?

11 A. That's correct.

12 Q. Now, was that outside the test year?

13 A. I'll be real honest with you, I'm not  
14 sure.

15 Q. Okay.

16 A. I think it was.

17 Q. Okay. And if you know was the bill  
18 amount in January, was that larger than any other  
19 single month bill for this expense that the  
20 Company's received?

21 A. Well it's the first bill they  
22 received for this expense.

23 Q. It's the very first bill.

24 A. Yes.

25 Q. I see. And if you know was the

1     **Company surprised at the size of the bill?**

2             A.     I believe they were, yes.

3             **Q.     Okay. And that led to the Company**  
4     **requesting a somewhat larger amount in to revenue**  
5     **requirement, isn't that right?**

6             A.     Yes.

7             **Q.     Okay. Now, is it possible that the**  
8     **January bill was unusually large for various**  
9     **extraneous reasons, that it was what they call an**  
10    **outlier?**

11            A.     It could be, yes.

12            **Q.     Could be. So the average over a year**  
13    **of operation might still fall within the figure**  
14    **that Staff has proposed, isn't that true?**

15            A.     It could, yes.

16            **Q.     Okay.**

17                    MR. THOMPSON: I have no further  
18    questions. Thank you very much.

19                    JUDGE WOODRUFF: Public Counsel?

20                                CROSS EXAMINATION

21    QUESTIONS BY MS. BAKER:

22            **Q.     Mr. Johansen you're aware that there**  
23    **was an agreement in this case between the parties**  
24    **for rate design mechanism, correct?**

25            A.     Yes.

1           **Q.       And you are aware that a part of that**  
2 **rate design mechanism anticipates a variable sewer**  
3 **volume by including a volumetric charge for sewer?**

4           A.       Yes.

5                   MS. BAKER: No further questions.

6                   JUDGE WOODRUFF: All right. Questions  
7 from the bench then.

8                   Mr. Jarrett?

9                   COMMISSIONER JARRETT: No questions.  
10 Thank you.

11                   JUDGE WOODRUFF: Commissioner Kenney?

12                   COMMISSIONER KENNEY: No, thank you.

13                   JUDGE WOODRUFF: No need for recross,  
14 any redirect?

15                   MR. COOPER: Yes Your Honor.

16                               REDIRECT EXAMINATION

17                   QUESTIONS BY MR. COOPER:

18           **Q.       Mr. Johansen, will that variable**  
19 **sewer charge that Ms. Baker referred to address the**  
20 **issue that at least you saw after the first**  
21 **billing?**

22           A.       I don't believe it will, no.

23           **Q.       Why not?**

24           A.       The, one of the major components of  
25 the variable rate, the commodity rate for sewer is

1 the amount of the Hollister treatment expense and  
2 at this point that is a fixed amount so if, if that  
3 fixed amount proves out to be lower than what it  
4 should be which the Company believes is indicated  
5 at least at this point then the recovery will be  
6 insufficient for that fixed amount that's built in.

7 MR. COOPER: That's all the questions  
8 I have.

9 JUDGE WOODRUFF: Mr. Johansen you can  
10 step down.

11 MR. JOHANSEN: Thank you.

12 JUDGE WOODRUFF: We call Mr. Busch.  
13 And of course you are also still under oath.

14 MR. THOMPSON: I tender the witness  
15 for cross Judge.

16 JUDGE WOODRUFF: Okay. And this would  
17 be a rate case issue, correct? So Emerald Pointe  
18 goes first.

19 MR. COOPER: No questions Your Honor.

20 JUDGE WOODRUFF: Public Counsel?

21 MS. BAKER: All right.

22 CROSS EXAMINATION

23 QUESTIONS BY MS. BAKER:

24 Q. Mr. Busch you would agree that having  
25 to pay Hollister for treatment of sewage is a new



1 charge for Emerald Pointe.

2 A. Yes.

3 Q. And you would agree that the volume  
4 of sewage sent to Hollister for treatment is  
5 variable from month to month.

6 A. Yes.

7 Q. And you would agree that if the fixed  
8 amount in this particular rate case after having  
9 several bills to determine, if it turns out to be  
10 insufficient the Company can certainly file another  
11 rate case.

12 A. Absolutely.

13 MS. BAKER: No further questions.

14 JUDGE WOODRUFF: All right. Questions  
15 from the bench.

16 Commissioner Jarrett?

17 COMMISSIONER JARRETT: No questions.

18 Thank you.

19 JUDGE WOODRUFF: Commissioner Kenney?

20 COMMISSIONER KENNEY: No, thank you.

21 JUDGE WOODRUFF: No recross. Any

22 redirect?

23 MR. THOMPSON: No redirect. Thank

24 you.

25 JUDGE WOODRUFF: Thank you.

1 Ms. Roth. Of course you are still  
2 under oath as well.

3 MS. ROTH: Yes.

4 MS. BAKER: And I tender for cross  
5 examination.

6 JUDGE WOODRUFF: Okay. And for cross  
7 examination we begin with Staff?

8 MR. THOMPSON: No questions. Thank  
9 you.

10 JUDGE WOODRUFF: Emerald Pointe.

11 MR. COOPER: No questions.

12 JUDGE WOODRUFF: Questions from the  
13 bench.

14 Commissioner Jarrett?

15 COMMISSIONER JARRETT: No questions,  
16 thank you.

17 JUDGE WOODRUFF: Commissioner Kenney?

18 COMMISSIONER KENNEY: No, thank you.

19 JUDGE WOODRUFF: No recross or  
20 redirect and you can step down.

21 Which moves us on to the next issue of  
22 legal fees.

23 MR. THOMPSON: Your Honor I'm not sure  
24 there's any dispute remaining between the parties  
25 on issue number 5.

1 JUDGE WOODRUFF: Is that correct  
2 everyone?

3 MR. COOPER: Yes, I believe that's  
4 correct.

5 JUDGE WOODRUFF: Ms. Baker?

6 MS. BAKER: I believe that's correct.

7 JUDGE WOODRUFF: All right. Then we  
8 won't do legal fees.

9 Rate case expense. Mr. Johansen.

10 MR. COOPER: Your Honor we'll tender  
11 Mr. Johansen for cross examination.

12 JUDGE WOODRUFF: Okay. And for cross  
13 we begin with Staff.

14 MR. THOMPSON: Thank you.

15 CROSS EXAMINATION

16 QUESTIONS BY MR. THOMPSON:

17 Q. Mr. Johansen this is an area where  
18 Staff and the Company are not in agreement, isn't  
19 that correct?

20 A. I believe so, yes.

21 Q. And the disagreement really has to do  
22 with how long the record's going to be held open in  
23 order to determine exactly what the amount of rate  
24 case expense is, isn't that correct?

25 A. I think that's the main portion of

1 the disagreement, yes.

2 Q. I mean Staff hasn't said you  
3 shouldn't get it, Staff's just said well after a  
4 certain date it's just not practical for us to  
5 process it, isn't that right?

6 A. I believe so.

7 Q. Okay. Now, if you know do you expect  
8 Emerald Pointe to get invoices for rate case  
9 expense after today for example?

10 A. Yes, I know they would.

11 Q. Okay. And pursuant to Staff's  
12 position would those invoices be included?

13 A. I'm not really sure.

14 Q. Not really sure. Okay.

15 No further questions. Thank you very  
16 much.

17 JUDGE WOODRUFF: Public Counsel.

18 EXAMINATION

19 QUESTIONS BY MS. BAKER:

20 Q. Just to go along with that, that  
21 Emerald Pointe is asking to update the rate case  
22 expense to the end of the case, and the reason  
23 behind this is because Emerald Pointe feels that  
24 it's just and reasonable for all of its rate case  
25 expenses to be updated to the most current time

1 **when rates go in to effect?**

2 A. Yes.

3 MS. BAKER: No further questions.

4 JUDGE WOODRUFF: Questions from the  
5 bench.

6 Mr. Jarrett?

7 COMMISSIONER JARRETT: No, thank you.

8 JUDGE WOODRUFF: Commissioner Kenney?

9 COMMISSIONER: No thank you, sir.

10 JUDGE WOODRUFF: I'll go ahead and ask  
11 a question.

12 EXAMINATION

13 QUESTIONS BY JUDGE WOODRUFF:

14 Q. **Part of the bills coming in would be**  
15 **your bills.**

16 A. Correct.

17 Q. **Do you have an estimate of how much**  
18 **your bill would be?**

19 A. I just submitted an invoice last  
20 week, I think that's reflected in the update that  
21 the Staff provided today, as far as, and that went  
22 through May the 3rd. As far as what it's going to  
23 be from that point forward through today and  
24 whenever, other involvement I might have I would  
25 guess it might be \$1,000.

1           **Q.**       **Okay. And attorney fees for**  
2       **appearing today, would that be included in that**  
3       **update as well that you're proposing?**

4           A.       Yes.

5           **Q.**       **Okay.**

6                    JUDGE WOODRUFF: All right. That's  
7       all I have.

8                    Any recross based on questions from  
9       the bench?

10                   Staff?

11                   MR. THOMPSON: No further questions,  
12       thank you.

13                   JUDGE WOODRUFF: Public Counsel?

14                   MS. BAKER: No questions.

15                   JUDGE WOODRUFF: Redirect?

16                   MR. COOPER: Yes, Your Honor.

17                                REDIRECT EXAMINATION

18       QUESTIONS BY MR. COOPER:

19           **Q.**       **In response to the Judge's question**  
20       **you made a comment that attorney's fees would be**  
21       **included in the update. By that did you mean --**  
22       **what did you mean by that? What update were you**  
23       **referring to?**

24           A.       Well, if the expense is to be updated  
25       close to the end of the case there would obviously

1 be additional expense that could be captured and  
2 provided to the Staff for their review to see what  
3 was appropriate to be included.

4 Q. But in terms of the update that the  
5 Staff presented this morning, that would not have  
6 any time associated or any fees associated with  
7 today's activities, would it?

8 A. That's correct, yes.

9 Q. And in your experience does a  
10 substantial amount of work associated with a rate  
11 case happen in preparing for a hearing, conducting  
12 a hearing, briefing a case?

13 A. Yes.

14 MR. COOPER: That's all the questions  
15 I have.

16 JUDGE WOODRUFF: All right.

17 Mr. Johansen you can step down.

18 And Leslie Ross is shown as a witness.

19 And Ms. Ross you are also still under oath.

20 MR. THOMPSON: I will tender Ms. Ross  
21 for cross examination.

22 JUDGE WOODRUFF: For Emerald Pointe?

23 MR. COOPER: No questions.

24 JUDGE WOODRUFF: Public Counsel.

25

1 EXAMINATION

2 QUESTIONS BY MS. BAKER:

3 Q. And so again Staff's recommendation  
4 is to update rate case expense to near the end of  
5 the case, is that correct?

6 A. Yes.

7 Q. And you would agree with Mr. Johansen  
8 that there will probably be a bill for his services  
9 added to this rate case?

10 A. Correct.

11 Q. And you have had previous attorney  
12 fees that you've included so far in this case?

13 A. Correct.

14 Q. And that has been for one attorney so  
15 far?

16 A. Yes.

17 Q. And you're aware that today we now  
18 have two attorneys?

19 A. I was not aware of that until today,  
20 but yes.

21 Q. So it's most likely that there will  
22 now be two attorney's fees to have to add.

23 A. Yes.

24 Q. To this. And the reason behind  
25 updating this is because Staff believes it's just



1 and reasonable for all of Emerald Pointe's  
2 reasonable rate case expense to be updated to the  
3 most current time possible?

4 A. Correct.

5 Q. And would you agree that updating  
6 rate case expense to near the end of the case is  
7 beneficial to Emerald Pointe?

8 A. Yes.

9 MS. BAKER: No further questions.

10 JUDGE WOODRUFF: All right. Questions  
11 from the bench then.

12 Mr. Chairman?

13 CHAIRMAN KENNEY: No questions. Thank  
14 you.

15 JUDGE WOODRUFF: Mr. Jarrett?

16 COMMISSIONER JARRETT: No questions.

17 Thank you.

18 JUDGE WOODRUFF: Mr. Kenney?

19 COMMISSIONER KENNEY: No questions,

20 thank you.

21 JUDGE WOODRUFF: All right. No need

22 for recross.

23 Any redirect?

24 MR. THOMPSON: No redirect. Thank

25 you.

1 JUDGE WOODRUFF: All right. Then you  
2 may step down.

3 And Ms. Roth. And you are still under  
4 oath.

5 MS. BAKER: I tender the witness for  
6 cross examination.

7 JUDGE WOODRUFF: Okay. And beginning  
8 with Staff?

9 MR. THOMPSON: Thank you.

10 EXAMINATION

11 QUESTIONS BY MR. THOMPSON:

12 Q. Ms. Roth if you know is there a  
13 tariff effective date in this case?

14 A. I do not know.

15 Q. Okay. Do you know what that phrase  
16 means?

17 A. No.

18 Q. Okay. Have you been involved in  
19 working on a general rate case such as the Ameren  
20 rate case or KCPL case or Laclede case now ongoing?

21 A. I'm working on the Laclede case.

22 Q. Okay. And if you know would you  
23 agree that there's something called a true up in a  
24 general rate case often?

25 A. Yes.

1 Q. And do you know what a true up is?

2 A. I think so.

3 Q. Okay. Would you agree with me it's  
4 bringing certain crucial and material figures,  
5 updating them often after the hearing has occurred?

6 A. Yes.

7 Q. Okay.

8 MR. THOMPSON: I have no further  
9 questions. Thank you.

10 JUDGE WOODRUFF: Okay. And then for  
11 Emerald Pointe?

12 MR. COOPER: No questions Your Honor.

13 JUDGE WOODRUFF: Okay. We'll come for  
14 questions from the bench.

15 Mr. Chairman?

16 CHAIRMAN KENNEY: No questions. Thank  
17 you?

18 JUDGE WOODRUFF: Mr. Jarrett?

19 COMMISSIONER JARRETT: No questions.

20 Thank you.

21 JUDGE WOODRUFF: Mr. Kenney?

22 COMMISSIONER KENNEY: No questions.

23 Thank you.

24 JUDGE WOODRUFF: No need for recross.

25 Any redirect?

1 MS. BAKER: Just one question off of  
2 Mr. Thompson's statement.

3 EXAMINATION

4 QUESTIONS BY MS. BAKER:

5 Q. You are aware that this started as a  
6 small rate case procedure and that there were  
7 additional time added to it and now we're sort of  
8 off of a normal rate case procedure?

9 A. Yes.

10 MS. BAKER: No further questions.

11 JUDGE WOODRUFF: All right. Then you  
12 can step down.

13 And then we move on to the next issue  
14 which is capital structure.

15 MS. BAKER: Your Honor I need to get  
16 Mr. Robertson, he's in a Laclede meeting so could  
17 we take a short break while I get him?

18 JUDGE WOODRUFF: We're about due for  
19 that, let's come back at 2:30.

20 MS. BAKER: Thank you very much.

21 (RECESS TAKEN BY PARTIES)

22 JUDGE WOODRUFF: We're back from break  
23 and the next issue is capital structure. First  
24 witness for Staff is Zephania Marevangepo.

25 (Whereupon, the witness was sworn)

1 JUDGE WOODRUFF: You may inquire.

2 MR. THOMPSON: Thank you Judge.

3 DIRECT EXAMINATION

4 QUESTIONS BY MR. THOMPSON:

5 Q. Mr. Marevangepo, how are you  
6 employed?

7 A. Utility regulatory auditor of the  
8 Missouri Public Service Commission.

9 Q. Okay. And are you the same Zephania  
10 Marevangepo who prepared or caused to be prepared a  
11 piece of testimony designated surrebuttal  
12 testimony?

13 A. Yes.

14 MR. THOMPSON: And what number are we  
15 up to Judge?

16 JUDGE WOODRUFF: That would be number  
17 22.

18 MR. THOMPSON: Okay, thank you.

19 Q. (BY MR. THOMPSON) And Mr. Marevangepo  
20 do you have any corrections?

21 A. Yes, I do.

22 Q. Okay. What is your first correction?

23 A. On page 3, table 1, the common equity  
24 percent of capital I do have 29.80, it's supposed  
25 to be 29.79 percent and for the debt percent of

1 capital I have 70.20, it should be 70.21. And for  
2 the common equity weighted cost I have 3.9515, it  
3 should be 3.9497. Then for the debt weighted cost  
4 I have 3.7574, it should be 3.7581. Then for the  
5 total weighted cost I have 7.709, it should be  
6 7.7078.

7 Q. 7.7078?

8 A. 7.7078.

9 Q. Okay. Thank you.

10 A. Then on page 7.

11 Q. Page 7.

12 A. Yes, sir. Line 21, the percentage  
13 figure I have 70.20, it should be 70.21. And the  
14 next one 29.80, it should be 29.79.

15 Q. Very good.

16 A. Then line 24, the dollar amount I  
17 have 15,198.47, it should be 15,195.51. Then line  
18 26 I have the dollar amount 4,529.87, it should be  
19 4,526.91, and the next dollar amount which is  
20 15,198.47, it should be 15,195.51.

21 Q. Okay. Do you have other corrections?

22 A. Yes, on page 17. Line 7.

23 Q. Yes.

24 A. The percentage 70.20, it should be  
25 70.21. And the next one 29.80, it should be 29.79.

1 Q. Does that conclude the corrections?

2 A. Yes.

3 Q. Okay. Thanks.

4 And with those corrections in mind if  
5 I asked you the same questions today would your  
6 answers be the same?

7 A. Yes.

8 Q. And is everything in your testimony  
9 true and correct to the best of your knowledge and  
10 belief?

11 A. Yes.

12 MR. THOMPSON: At this time I would  
13 offer Exhibit 22.

14 JUDGE WOODRUFF: 22 has been offered,  
15 any objection to its receipt?

16 Hearing none it will be received.

17 MR. THOMPSON: And I will hand the  
18 reporter a copy with the corrections and tender the  
19 witness for cross examination.

20 JUDGE WOODRUFF: All right. For cross  
21 examination then we begin with Emerald Pointe.

22 MR. COOPER: No questions Your Honor.

23 JUDGE WOODRUFF: Public Counsel.

24

25

1 CROSS EXAMINATION

2 QUESTIONS BY MS. BAKER:

3 Q. Good afternoon.

4 A. Good afternoon.

5 Q. I'm going to be looking at your  
6 surrebuttal, page 11, line 4.

7 A. Yes.

8 Q. Okay. And on that you state that it  
9 appears that a majority of the debt proceeds were  
10 used for sewer operations. Is that correct?

11 A. Yes.

12 Q. Is it your understanding that all of  
13 the current debt for Emerald Pointe was incurred  
14 for its sewer operations?

15 A. That's correct.

16 Q. And to your knowledge does Emerald  
17 Pointe have any debt associated with its water  
18 operation?

19 A. No.

20 Q. So in fact 100 percent of the debt  
21 proceeds were used for the sewer operations,  
22 correct?

23 A. That's correct.

24 Q. And are you aware that there is a  
25 nonuniform customer base between the sewer utility



1 and the water utility?

2 A. Not exactly. But.

3 Q. Not exactly, you're not aware of it  
4 or there's not exactly the same customers?

5 A. They are the same customers but  
6 they're receiving two services.

7 Q. Okay. So in your understanding the  
8 exact same customers for the water and for the  
9 sewer?

10 A. That's my understanding.

11 Q. Subject to check?

12 A. Sure.

13 MR. THOMPSON: Objection, he answered  
14 what he answered.

15 Q. (BY MS. BAKER) Are you aware -- I'm  
16 sorry, same one.

17 Under your current capital structure  
18 proposal what is the amount of total revenue  
19 requirement for the water operation?

20 A. I don't know the number off the top  
21 of my head.

22 Q. Do you know the total amount of  
23 revenue requirement for the sewer system?

24 A. No.

25 Q. If the water operation were treated

1 as a stand alone system with no debt all other  
2 things being equal would its revenue requirement  
3 increase be higher than under your proposal?

4 A. For the water?

5 Q. For the water, yes.

6 A. It would be less.

7 Q. Okay. So under Public Counsel's  
8 proposal the revenue requirement for the water  
9 utility would be higher given that Public Counsel  
10 recommends a capital structure of 100 percent  
11 equity?

12 A. It would be higher.

13 Q. If the sewer operation were treated  
14 as a stand alone system including all the current  
15 debt of Emerald Pointe all other things being equal  
16 is the amount of its total revenue requirement the  
17 same as under your proposal?

18 A. I'm not sure, I would have to examine  
19 the number.

20 Q. Okay.

21 MS. BAKER: No further questions.

22 JUDGE WOODRUFF: All right. And for  
23 Emerald Pointe? Or did -- I asked you already  
24 didn't I?

25 MR. COOPER: I think we've already

1 passed.

2 JUDGE WOODRUFF: Come up for questions  
3 from the bench.

4 Mr. Chairman?

5 CHAIRMAN KENNEY: I don't have any  
6 questions. Thank you.

7 JUDGE WOODRUFF: Mr. Jarrett.

8 COMMISSIONER JARRETT: No questions,  
9 thanks.

10 JUDGE WOODRUFF: Mr. Kenney?

11 COMMISSIONER KENNEY: No, sir. Thank  
12 you.

13 JUDGE WOODRUFF: No recross, any need  
14 for redirect?

15 MR. THOMPSON: No questions, thank  
16 you.

17 JUDGE WOODRUFF: All right. Then you  
18 can step down.

19 MR. MAREVANGEPO: Thank you.

20 JUDGE WOODRUFF: And next witness is  
21 Mr. Robertson for Public Counsel.

22 (Whereupon, the witness was sworn)

23 JUDGE WOODRUFF: Good morning, or good  
24 afternoon.

25

1 DIRECT EXAMINATION

2 QUESTIONS BY MS. BAKER:

3 Q. Please state and spell your name for  
4 the court reporter.

5 A. Ted Robertson, T-E-D,  
6 R-O-B-E-R-T-S-O-N.

7 Q. By whom are you employed?

8 A. I'm the chief accountant for the  
9 Missouri Office of the Public Counsel.

10 Q. Are you the same Ted Robertson who  
11 filed rebuttal testimony in this case?

12 A. I am.

13 Q. And do you have any changes or  
14 corrections to your testimony?

15 A. No, I do not.

16 Q. Is the testimony true and accurate to  
17 the best of your knowledge and belief?

18 A. Yes, it is.

19 Q. If asked the same questions today  
20 would your answers be essentially the same?

21 A. Yes, they would.

22 MS. BAKER: I would like to move for  
23 admission of what's been marked as Robertson  
24 Rebuttal Exhibit No. 23 and tender the witness for  
25 cross examination.

1 JUDGE WOODRUFF: 23 has been offered,  
2 any objections to its receipt?

3 Hearing none it will be received.

4 Cross examination we begin with Staff.

5 MR. THOMPSON: Thank you.

6 CROSS EXAMINATION

7 QUESTIONS BY MR. THOMPSON:

8 Q. Now you're testifying at the moment  
9 about capital structure, is that right?

10 A. Capital structure and return on  
11 equity, weighing cost of debt.

12 Q. Well return on equity is next, isn't  
13 it?

14 A. Okay, I'll take your word for it.

15 Q. I'm just trying to understand.  
16 In the area of return on equity  
17 you're not an expert financial analyst, are you?

18 A. I think so.

19 Q. You do think so. What's that opinion  
20 based on?

21 A. I'm a CPA, licensed CPA and had a  
22 great deal of training to become an accountant  
23 including both financial analysis similar to what  
24 Mr. Murray and his department does.

25 Q. I see. And so you have testified as

1 a witness on return on equity before?

2 A. In some small cases.

3 Q. In small cases. Okay. Well with  
4 respect to capital structure you will agree with me  
5 would you not that Emerald Pointe is a Missouri  
6 general business corporation?

7 A. I would agree.

8 Q. And it offers water service and sewer  
9 service?

10 A. Yes.

11 Q. And that corporation has a single  
12 capital structure reflecting its capitalization,  
13 isn't that correct?

14 A. I don't know what you're getting at.

15 Q. Well, I think we can agree that all  
16 of the debt that the corporation currently has has  
17 to do with its recently completed sewer project,  
18 isn't that right?

19 A. That's correct.

20 Q. But the entity that is liable on that  
21 debt is the Emerald Pointe Utility Corporation,  
22 isn't that true?

23 A. That is correct.

24 Q. Okay. So is the -- now am I correct  
25 in understanding that it is your belief that the

1 sewer customers of Emerald Pointe are not  
2 completely identical to the water service  
3 customers?

4 A. They are not completely identical.  
5 There are a number of customers, they don't exactly  
6 match, it's not 100 percent water, 100 percent  
7 sewer.

8 Q. Do you know how many water customers  
9 are not also sewer customers?

10 A. I've heard the number and I have seen  
11 the number in the work papers, for some reason I  
12 think it's around 94 but that's subject to check.

13 Q. Around 94. Okay. But you're not  
14 sure.

15 A. Not as I sit here but we do have work  
16 papers that can show that and Staff does too.

17 Q. Okay. And would I be correct in  
18 understanding that your recommendation that the  
19 Commission use two hypothetical capital structures,  
20 one encumbered with debt for the sewer system and  
21 one that is debt free for the water system is in  
22 fact a matter of intercustomer equity?

23 A. Actually that's not correct. First  
24 off we didn't use a hypothetical capital structure,  
25 Staff did in the original filing. Now they did

1 subsequently modify that in their surrbo but our  
2 capital structure or the capital structure I'm  
3 recommending for the water sewer utility is based  
4 on the rate base that have come out of the audit.

5 **Q. Okay. So in other words the sewer**  
6 **rate base versus the water rate base?**

7 A. That's exactly right.

8 **Q. Okay. And what benefit, what public**  
9 **interest benefit do you believe your approach if**  
10 **adopted by the Commission would allow?**

11 A. Well, the reason we took the position  
12 is recognizing that the Emerald Pointe Utility  
13 Company owns both the water operation and the sewer  
14 operation. The sewer operation has all the debt,  
15 \$1,000,066,000, the water utility has none. Since  
16 their rate, their capital structure is essentially  
17 their rate base and we give you that between how  
18 much debt is associated with each of the  
19 operations, of course the water utility has no  
20 debt, the sewer company has all the debt so  
21 primarily the reason I went with that position was,  
22 is because the water utility, and rates are made  
23 for the customers of each utility so your equity  
24 between customers is a side issue of course but a  
25 primary issue. The water utility had 100 percent



1 equity. By doing it under Staff's original  
2 hypothetical and then subsequently their modified  
3 position our position would give the shareholders  
4 of the water utility more equity, more return  
5 versus where on the sewer utility since they had  
6 the debt we believed it only fair that they be the  
7 ones, those customers of that utility be the ones  
8 to be responsible for supporting the cost of the  
9 debt and the resulting cost of service and the  
10 rates that are created from it.

11 **Q. Does it make any difference that the**  
12 **shareholders on either side are the same?**

13 A. The shareholders are the same but  
14 we're talking about two different utilities. I  
15 mean one company owns them but one is a water  
16 operation, one is a sewer operation and the cost of  
17 service to the ratepayers depends on not only the  
18 reasonable operating expense but the return on the  
19 rate base.

20 **Q. Now I heard you refer to Staff's**  
21 **modified position. Would you agree with me that**  
22 **Staff's position as filed is based on an actual**  
23 **capital structure?**

24 A. Staff's original position was  
25 hypothetical. Based on their analysis and their

1 belief if the Company has higher than 75 percent  
2 debt they go 75 percent debt, 25 percent equity.  
3 After a further analysis, and they got some  
4 additional numbers on the actual cost of debt that  
5 the Company incurred, they moved to a single  
6 capital structure that incurred, that included all  
7 those debt costs and took them below 75 percent so  
8 we used the actual, so yes. Short answer is yes.

9 **Q. Thank you, I appreciate you getting**  
10 **to that short answer.**

11 A. Just trying to make it clear where  
12 they were at and where they came to.

13 **Q. Mr. Robertson I appreciate it. With**  
14 **that I have no further questions.**

15 JUDGE WOODRUFF: For Emerald Pointe.

16 MR. COOPER: Yes, Your Honor.

17 CROSS EXAMINATION

18 QUESTIONS BY MR. COOPER:

19 **Q. Mr. Robertson would you agree with me**  
20 **that the debt that we, that you were discussing is**  
21 **secured by both water and sewer assets?**

22 A. It is. It is actually secured by all  
23 the assets of Emerald Pointe Utility Company and of  
24 course they own both the water and sewer  
25 operations.

1 Q. So it includes both, correct?

2 A. It does.

3 Q. Would it surprise you to find that  
4 there's a lot less than 94 customers difference  
5 between the water and sewer?

6 A. As I said that was off the top of my  
7 head. I don't recall exactly.

8 Q. And if we wanted a more accurate  
9 count would you agree to look to Mr. Russo's  
10 testimony?

11 A. That would be fine if I had it.

12 Q. He'd be likely to have better numbers  
13 than you in terms of the customer numbers?

14 A. We have work papers also and I've  
15 looked at those but like I said it's been a while.  
16 If there's fewer, you know, I'm not going to argue  
17 that. It is what it is.

18 MR. COOPER: That's all the questions  
19 I have.

20 JUDGE WOODRUFF: I do want to clarify  
21 something. I don't see any testimony from Mr.  
22 Russo.

23 MR. COOPER: Mr. Russo's filed  
24 testimony, it's my hope I suppose that it will be  
25 offered at some point, but.

1 JUDGE WOODRUFF: Okay.

2 MR. THOMPSON: We prepared testimony  
3 for Mr. Russo on rate design and also for Mr. Rice  
4 as far as that goes on depreciation but those  
5 issues dropped out.

6 JUDGE WOODRUFF: Okay. So I think  
7 it's part of the stipulation agreement they were  
8 probably admitted in to the record.

9 A. For many of the issues regarding plan  
10 are issues I had, Staff once they made the run they  
11 dropped out as Mr. Thompson says.

12 JUDGE WOODRUFF: Okay. I just was  
13 looking at my list and didn't see Mr. Russo as a  
14 witness.

15 MR. COOPER: And it may be Your Honor  
16 that those customer numbers are elsewhere in the  
17 record.

18 MR. THOMPSON: I think we have an  
19 agreement among counsel that the testimony of Mr.  
20 Russo and Mr. Rice that Staff prepared would be  
21 received in to the record.

22 JUDGE WOODRUFF: All right.

23 Any objection Public Counsel?

24 MS. BAKER: No.

25 JUDGE WOODRUFF: If we didn't already

1 do that when we approve the stipulation agreement  
2 the testimony of Mr. Rice and Mr. Russo will be  
3 admitted in to the record.

4 MR. THOMPSON: Thank you Judge.

5 JUDGE WOODRUFF: Thank you.

6 Then we'll come up for questions from  
7 the bench.

8 Mr. Chairman?

9 EXAMINATION

10 QUESTIONS BY CHAIRMAN KENNEY:

11 Q. Hello.

12 A. How are you doing?

13 Q. Doing well, thanks. Just a couple.

14 So in determining the capital  
15 structure the reason we're doing that so that you  
16 can determine the weighted overall cost of capital,  
17 right?

18 A. Correct.

19 Q. And then that number becomes a part  
20 of the overall revenue requirement, right?

21 A. That's correct. It's applied to the  
22 net rate base to see what the base should be.

23 Q. What's the difference in the revenue  
24 requirement applying OPC's hypothetical structure  
25 versus Staff's actual capital structure?

1           A.       I can't tell you exactly and the  
2     reason I can't tell you is because Staff has made  
3     changes. As I said we had a number of issues and  
4     they made changes. Apparently they gave some new  
5     accounting schedules today, I believe, I'm not sure  
6     if those are the ones, the last version they gave  
7     us, or if these are new ones with additional  
8     changes. The ones they filed may have had  
9     additional changes. I can put you in ball park of  
10    what it was prior to those. I don't think any of  
11    those changes were real material dollar wise but in  
12    my testimony, I believe it's on page, it's not a  
13    big difference but of course you've got to  
14    recognize this is a small company.

15           **Q.       Sure.**

16           A.       Actually in my rebuttal testimony at  
17    the bottom of page 22, starting with line 17 I talk  
18    about the total cost municipal water and sewer for  
19    revenue requirement would be about 124,848 for the  
20    Staff whereas under my recommendation it would be  
21    like 110,971. I recognize there's been some  
22    changes so those numbers aren't exactly, so there's  
23    only a difference of less than \$14,000 but, now  
24    under the written requirement for a small company,  
25    I mean.

1           **Q.       What would that do, actually that**  
2 **\$14,000 debt do to the average consumer's bill?**

3           A.       It probably wouldn't be a large  
4 amount. You simply divide by the customer numbers  
5 to get a rough, it's 12.

6           **Q.       So it's like 13,877 and with Staff's**  
7 **new numbers you don't think it's changed that much**  
8 **from that.**

9           A.       I doubt that it has but I can't  
10 honestly tell you for sure because I haven't seen  
11 what their new revenue requirement is.

12          **Q.       Okay.**

13          A.       I don't even know what the changes  
14 were that they did based on the one they gave to  
15 the Commission today. Those are apparently brand  
16 new. First we had heard of it.

17          **Q.       Do you offer an opinion about the**  
18 **general proposition that Staff has applied to small**  
19 **company rate increase that if it's greater than 75**  
20 **percent debt that you should apply a hypothetical**  
21 **capital structure, if it's less than 75 percent**  
22 **then you should apply an actual?**

23          A.       Yeah.

24          **Q.       Do you have an opinion on whether**  
25 **that's a good or bad method?**

1 A. I've got a strong opinion.

2 Q. Would you care to share it?

3 A. Basically most of the utilities in  
4 this state, the small water and sewer utilities are  
5 very small and what the capital structure once  
6 they're 100 percent equity it puts them in a small  
7 versus some of them that have a lot of debt. What  
8 Staff is attempting to do is take an analysis based  
9 on large publicly traded companies that had access  
10 to actual sources of financing, bonds, you know,  
11 large banks, large institutions where they can get  
12 money like that. These people don't, these small  
13 utilities the only way they get money is it comes  
14 out of the shareholder's pocket invested in the  
15 utility or he gets a commercial loan, it's  
16 essentially his only option. To compare them to a  
17 large publicly traded copy like American Water,  
18 Missouri American Water or their parent company or  
19 somebody like that or even Ameren I think makes  
20 little sense because it's a totally different  
21 animal just by the size and the capabilities they  
22 have. These small utilities, they operate mom and  
23 pop operations and so the cost of the debt that  
24 they can get that is their cost of financing and  
25 that's what we include in my recommendation. They



1 were able to get debt, 5.5 percent they got some  
2 additional debt from some lift station equipment  
3 for like 3.15 I believe, pretty low rates but we're  
4 in a low rate environment right now, okay. We  
5 weighted averaged that and on that we actually  
6 added a risk premium as Staff does in this  
7 analysis, we went to 44 percent, Staff says they go  
8 usually between 3 and 4 percent depending on the  
9 company, well we want and added 44 percent, took us  
10 up to 9.35. You know 9.35 is not insignificant, it  
11 is pretty good money in this rate environment.  
12 This company is not a publicly traded company,  
13 doesn't have stocks that they're selling on a trade  
14 exchange, that is the cost of the debt they can  
15 obtain. They got it, went about it, we have the  
16 documentation for it and we think 9.35 percent is a  
17 pretty reasonable return given if they were to take  
18 the money and put it in a bank CD they're not going  
19 to get anywhere near that. You know, rate return,  
20 return on equity and that kind of thing is kind of  
21 a, it's a field where it's not an exact science,  
22 you make estimates based on what you think it  
23 should be, who knows if that's really what it is.  
24 There is law about you have to be comparable to  
25 other utilities to support it, but in this late

1 environment we think 9.35 percent is just based on  
2 the actual cost of debt they can obtain is  
3 reasonable. Where Staff's, the original question  
4 was where Staff's analysis is based on large  
5 publicly traded corporations and the debt that they  
6 could possibly obtain for a surrogate entity that  
7 would have a business risk profile and a financial  
8 risk profile is what this small utility has.  
9 So I don't want to sound like I'm too hard on  
10 Staff, I think they're trying to reach a point to  
11 decide and provide the Company with a return that's  
12 reasonable, I just think it doesn't make sense  
13 because you look at an elephant and then a mouse.

14 **Q. Got you.**

15 **All right. That's helpful. Thank**  
16 **you.**

17 CHAIRMAN KENNEY: And I don't have any  
18 other questions.

19 JUDGE WOODRUFF: Commissioner Jarrett?

20 COMMISSIONER JARRETT: I don't have  
21 any questions. Thank you Mr. Robertson.

22 JUDGE WOODRUFF: Mr. Kenney?

23 COMMISSIONER KENNEY: No questions,  
24 thank you.

25 JUDGE WOODRUFF: All right. Any

1 recross based on questions from the bench beginning  
2 with Staff?

3 EXAMINATION

4 QUESTIONS BY MR. THOMPSON:

5 Q. Well we kind of wandered away from  
6 capital structure and in to return on equity here  
7 which of course is the Commission's prerogative.

8 CHAIRMAN KENNEY: That was not my  
9 intention.

10 Q. (BY MR. THOMPSON) What if I told you  
11 Mr. Robertson that there were in fact 389 water  
12 service customers and 364 sewer service customers  
13 and thus only 25 water service customers who are  
14 not also sewer service customers. If I told you  
15 that would you have any reason to disbelieve that?

16 A. No reason at all.

17 Q. Okay. Now you told me that you  
18 consider yourself an expert financial analyst or  
19 expert at financial analysis so would you agree  
20 with me that return on equity is based on risk?

21 A. I would agree that return on equity  
22 is based on a number of risks.

23 Q. A number of risks. Okay. And you  
24 would agree with me that in fact that is the  
25 instruction of the Supreme Court in the Hope and

1 Bluefield cases that are always referred to in  
2 cases of this sort.

3 A. That's true. That and comparable  
4 returns with other peers.

5 Q. Right. In fact there's a principle  
6 of the comparable return, correct?

7 A. That's my understanding, yes.

8 Q. And that to paraphrase would you  
9 agree with me is something along the lines of that  
10 the return of the subject company should be  
11 approximately the same as other enterprises with  
12 similar risks?

13 A. I agree.

14 Q. Okay. So in the world of financial  
15 analysis would you agree there is a concept  
16 referred to as small company risk?

17 A. There is.

18 Q. And would you agree with me that  
19 small company risk says that a small company all  
20 things being equal is more risky, has more business  
21 risk than a large company?

22 A. I would agree except I think there's  
23 also literature out there that says if the small  
24 company is a rate regulated entity that risk may or  
25 may not exist.

1 Q. Okay. So in other words, but let's  
2 say we're comparing that small company to large  
3 rate regulated companies.

4 A. Uh-huh.

5 Q. Would you agree that the small rate  
6 regulated company is likely to have more business  
7 risk than the large rate regulated company?

8 A. I think the way I would answer that  
9 is on a company specific basis we'd have to look  
10 and see what the company looks like so as far as  
11 saying generically they all would I would not agree  
12 with that. To say that some would possibly, to say  
13 that some wouldn't, possibly.

14 Q. Okay. Okay. So it's kind of a  
15 partial yes.

16 A. I think it's a company specific yes.

17 Q. A company specific yes. Okay. Well  
18 let's talk about this specific company, let's talk  
19 about financial risk.

20 Would you agree with me that this  
21 company has more financial risk than the typical  
22 large rate regulated company?

23 A. I would say that its sewer operation  
24 does.

25 Q. And this company in fact is facing a

1 possible \$500 refund, isn't that correct?

2 A. I don't know what the actual refund  
3 is per person.

4 Q. \$500,000, the company.

5 A. OPC has recommended a return of  
6 around 500,000, yes.

7 Q. Okay. So would you agree with me  
8 that that's a significant risk?

9 A. That is something I don't view as  
10 being the, and since the risk associated with the  
11 development was capital structure or the return on  
12 equity, that's a risk of the company that in  
13 violation of its tariff charged customers monies  
14 that they shouldn't have charged them and so the  
15 shareholders, the owners of that company need to  
16 give that money back to ratepayers.

17 Q. How do you think that the sources of  
18 capital would view that risk? Banks and investors?

19 A. They probably would wonder why the  
20 fellow overcharged ratepayers.

21 Q. Okay. Do you think they would be  
22 moved to invest in the concern?

23 A. They probably would have concerns  
24 about it, yes.

25 Q. Okay.

1           A.       Not knowing how it was going to be  
2 paid back and when.

3           MR. THOMPSON: No further questions,  
4 thank you.

5           JUDGE WOODRUFF: For Emerald Pointe?

6                    CROSS EXAMINATION

7           QUESTIONS BY MR. COOPER:

8           **Q.       Mr. Robertson you were talking to**  
9 **Chairman Kenney about the debt amounts I guess,**  
10 **what you had referred to as actual debt amounts for**  
11 **Emerald Pointe Utility Company and you referred to**  
12 **one loan at 3.14 percent, is that correct?**

13          A.       I thought I said 3.15 but I can check  
14 that also.

15          **Q.       Do you know who the lender is on**  
16 **that?**

17          A.       I believe it's Three Rivers --

18          **Q.       Maybe White Rivers?**

19          A.       White River, yeah. It's an  
20 electrical association.

21          **Q.       Let's back up. It would be your**  
22 **understanding that that's an electrical**  
23 **cooperative, correct?**

24          A.       It is.

25          **Q.       And not an entity in the common**

1 **business of loaning funds.**

2 A. I agree.

3 **Q. And that that, it is your**  
4 **understanding that that loan was specifically**  
5 **attached to the installation of generators at lift**  
6 **stations?**

7 A. I believe that's correct.

8 **Q. And so not money that would be**  
9 **available for any purpose that a utility might**  
10 **have, correct?**

11 A. It was equipment specific. But they  
12 were able to paint it at 3.15 percent or so.

13 **Q. And you also refer to a loan at 5.5**  
14 **percent, correct?**

15 A. That's correct.

16 **Q. And earlier we talked about the fact**  
17 **that that loan's secured by both sewer and water**  
18 **plant for the utility, correct?**

19 A. That, actually I think the better way  
20 to phrase it, maybe it's semantics as far as  
21 secured. The collateral is the water and sewer  
22 plant but there is also a separate security by Mr.  
23 and Mrs. Snadon for unlimited.

24 **Q. Is that AHC?**

25 A. No, not that part.



1 Q. While we are -- actually it is on our  
2 AHC document, that's why I didn't give you any  
3 numbers or anything.

4 Q. The general structure is not how it  
5 counts.

6 A. Okay.

7 Q. Another way of saying that in terms  
8 of the water and sewer plant would be that all the  
9 water and sewer plant is encumbered by that loan?

10 A. Yes, it is.

11 Q. And then as you referenced in  
12 addition to that Mr. Snadon and his wife had to  
13 personally guaranty that loan, correct?

14 A. They did.

15 Q. And then in addition to that they had  
16 to pledge some non-utility assets as well as  
17 collateral for that loan, correct?

18 A. I don't recall that there was any  
19 specific assets identified. I recall subject to  
20 check that it was just unheld security by Mr. and  
21 Mrs. Snadon. If there were assets listed I don't  
22 recall those assets.

23 Q. But if there were they'd be listed on  
24 the loan documents, correct?

25 A. If they were specific ones, yes.

1 Q. Okay.

2 MR. COOPER: That's all the questions  
3 I have.

4 JUDGE WOODRUFF: Redirect?

5 REDIRECT EXAMINATION

6 QUESTIONS BY MS. BAKER:

7 Q. You were asked about whether you had  
8 used a hypothetical capital structure because you  
9 divided out capital structure between the water and  
10 sewer system. In this particular case it's quite  
11 obvious that there is an actual water capital  
12 structure and an actual sewer capital structure and  
13 that they are not the same.

14 A. I believe that's correct.  
15 Essentially what Staff has done even though they  
16 done it on a basis of treating both utilities as  
17 one entity our proposal just uses the rate basis of  
18 each to see what the capital structure is and the  
19 way you get to that is simply you take the rate  
20 base minus the debt associated with the entity and  
21 that gives you the equity. Staff does it in one  
22 lump, we separate it out between the water and  
23 sewer operation thereby giving you the capital  
24 structure.

25 Q. And Mr. Thompson in response to

1 **Chairman Kenney's questions talked to you about the**  
2 **risk of the small water systems and the small sewer**  
3 **systems. What risk premium did Staff apply to**  
4 **their analysis?**

5 A. I believe they applied the same risk  
6 premium I did which essentially really I calculated  
7 them. They applied four percent, their analysis  
8 that they used they say they usually use three to  
9 four percent risk premium on top of the bond cost  
10 that they come up with, I added four percent also  
11 as a risk premium.

12 **Q. So in reality you're not far apart**  
13 **from Staff on the risk portion of the numbers.**

14 A. The difference between Staff and us  
15 on the risk premium is there is no difference, the  
16 difference in the numbers otherwise are what the  
17 cost of debt is, whether they used utilities cost  
18 of debt or used these large company surrogate as  
19 the cost for the debt.

20 MS. BAKER: That's all the questions I  
21 have. Thank you.

22 JUDGE WOODRUFF: All right. Then you  
23 can step down.

24 And we'll move on to our next issue  
25 which is rate of return and return on equity. And

1 well start with Mr. Menke for Emerald Pointe.

2 MR. COOPER: Thank you Your Honor, we  
3 tender Mr. Menke for cross examination.

4 JUDGE WOODRUFF: Mr. Menke you are  
5 still under oath as well.

6 For cross we begin with Staff.

7 MR. THOMPSON: I have no questions for  
8 Mr. Menke. Thank you.

9 JUDGE WOODRUFF: Public Counsel?

10 MS. BAKER: Thank you Mr. Menke.

11 CROSS EXAMINATION

12 QUESTIONS BY MS. BAKER:

13 Q. Was Emerald Pointe Utility able to  
14 obtain debt to finance a new sewer connection line  
15 and lift station plant?

16 A. I will have to qualify my answer with  
17 a yes, but. For the Emerald Pointe utility case,  
18 no.

19 Q. Okay. Who in particular?

20 A. Emerald Pointe Utility Company and  
21 Gary and Patsy Snadon and other collateral of Gary  
22 and Patsy Snadon.

23 Q. But it was on behalf of Emerald  
24 Pointe Utility and that's where all the benefit of  
25 that goes?

1 A. Correct.

2 Q. And the actual debt for Emerald  
3 Pointe sewer includes 5.5 percent secured  
4 indebtedness associated with the construction of  
5 the sewer line and to eliminate the existing  
6 wastewater treatment facility and to convert it to  
7 a lift station?

8 A. In part.

9 Q. And it also includes a 3.15 percent  
10 loan from White River Valley electric cooperative,  
11 correct?

12 A. In part.

13 MS. BAKER: No further questions.

14 JUDGE WOODRUFF: Then we'll come for  
15 questions from the bench.

16 Mr. Jarrett?

17 COMMISSIONER JARRETT: No questions.

18 Thank you, sir.

19 JUDGE WOODRUFF: Mr. Kenney?

20 COMMISSIONER KENNEY: Thank you Mr.

21 Chairman.

22 EXAMINATION

23 QUESTIONS BY COMMISSIONER KENNEY:

24 Q. When you say other collateral can you  
25 be more specific on that?

1 MR. COOPER: Commissioner I think it  
2 was the listing of specific collateral that was  
3 confidential.

4 COMMISSIONER KENNEY: That's fine.  
5 And I have that sheet. Okay.

6 Q. (BY COMMISSIONER KENNEY) But the  
7 only, are you saying that the only way that that  
8 loan was delivered to Emerald Pointe was if it had  
9 a cosigner in Mr. Snadon?

10 A. That's correct. We had contacted a  
11 number of conventional banks, Small Business  
12 Administration, we looked at NEDs, SEDs, TIFs, we  
13 looked at every avenue, no one, I personally have  
14 nearly a 30 year career, I've retired from the  
15 banking industry, I would not have loaned money to  
16 Emerald Pointe Utility Company by itself.

17 Q. So you couldn't do a NED, couldn't do  
18 a SED, you couldn't do, no way to fund it other  
19 than conventional loan which then it was a five and  
20 a half percent fixed for 20 years?

21 A. No, sir. It's five and a half fixed  
22 for five years.

23 Q. A balloon, that's right.

24 A. It's a 20 year amortization.

25 I would like to clarify on the cost

1 of that loan or the cost of the financing on both  
2 of those loans on strictly the interest rate. For  
3 example the loan with Hawthorne Bank has a one  
4 percent \$10,000 loan fee. You factor that in to  
5 the yield and it's significantly more than five and  
6 a half percent.

7 **Q. In today's market that's not a very**  
8 **good loan.**

9 A. Correct.

10 **Q. That's a very high dollar loan is**  
11 **what I would consider it in certain construction**  
12 **costs right now.**

13 A. Uh-huh.

14 **Q. Okay. Thank you very much.**

15 JUDGE WOODRUFF: All right. Any  
16 recross based on questions from the bench?

17 Public Counsel?

18 RECROSS EXAMINATION

19 QUESTIONS BY MS. BAKER:

20 **Q. Just coming along with Commissioner**  
21 **Kenney's question about the loan fees and interest,**  
22 **all of that is going in to rates, that's not what's**  
23 **being discussed today.**

24 A. No, I was clarifying that five and a  
25 half percent is the cost of the loan.

1 Q. Right.

2 A. The cost of the loan was five and a  
3 half percent plus \$10,000 loan fee plus other costs  
4 plus Mr. and Mrs. Snadon's personal guaranty plus  
5 other collateral of Mr. and Mrs. Snadon.

6 Q. I do understand that but all of the  
7 loan costs are going in to rates, that is something  
8 that the ratepayers are paying, that's not, when  
9 we're dealing with rates of return it is above and  
10 beyond that so we're not, it's correct that we're  
11 not talking about whether or not those loan fees  
12 are going in, the customers are paying them,  
13 correct?

14 A. We're talking about the cost of  
15 obtaining the financing is five and a half percent.

16 Q. Right. But the cost of the loan, the  
17 interest, the loan fees, all of that are being  
18 bourn by the customers through the rates?

19 A. I can't confirm that.

20 MS. BAKER: No further questions.

21 JUDGE WOODRUFF: All right.

22 Redirect?

23 MR. COOPER: No thank you, Your Honor.

24 JUDGE WOODRUFF: Okay. And Mr. Menke  
25 you can step down.



1 MR. THOMPSON: Mr. Marevangepo.

2 JUDGE WOODRUFF: All right.

3 And you are also still under oath.

4 MR. MAREVANGEPO: Yes, sir.

5 MR. THOMPSON: I will tender the  
6 witness for cross examination.

7 JUDGE WOODRUFF: Okay. And beginning  
8 with Emerald Pointe?

9 MR. COOPER: No questions Your Honor.

10 JUDGE WOODRUFF: Public Counsel?

11 CROSS EXAMINATION

12 QUESTIONS BY MS. BAKER:

13 Q. Just to clarify Staff is recommending  
14 a consolidated return on equity of 13.26 percent  
15 and a consolidated rate of return of 7.71 percent  
16 for Emerald Pointe, is that correct?

17 A. That's correct.

18 Q. Is Emerald Pointe a publicly traded  
19 utility?

20 A. No.

21 Q. Is it regulated by the Securities and  
22 Exchange Commission?

23 A. No.

24 Q. Does it have any investors other than  
25 Mr. and Mrs. Snadon?

1 A. Not that I know of.

2 Q. And looking at your surrebuttal  
3 testimony on page 8.

4 A. Yes.

5 Q. You state on line 27, you state that  
6 it's unreasonable to assume the Company can support  
7 its operations with greater than a 75 percent debt,  
8 is that correct?

9 A. That's correct.

10 Q. To your knowledge has Emerald Pointe  
11 Utility filed for bankruptcy?

12 A. Not that I know of.

13 Q. Do you know if and when it will ever  
14 file for bankruptcy?

15 A. No.

16 Q. Didn't the Commission recently  
17 approve the Company's request to issue debt for the  
18 installation of the new sewer connection line to  
19 the city of Hollister?

20 A. Yes, they did.

21 Q. In your opinion would the Commission  
22 have authorized such a request if it or Staff  
23 believed the debt would force the utility in to  
24 bankruptcy?

25 A. They would have not.

1 Q. Did you meaning staff recommend  
2 approving the assumption of the new debt in that  
3 case?

4 A. We reviewed the information, yes.

5 Q. Did staff issue a recommendation to  
6 approve?

7 A. Yes, we did.

8 Q. Okay. Going back to your surrebuttal  
9 on page 9, line 21, you discuss troubled small  
10 utilities in Missouri. To your knowledge is  
11 Emerald Pointe a troubled small utility?

12 A. I guess if you complete the whole  
13 sentence, yes.

14 Q. You do believe that Emerald Pointe is  
15 a troubled small utility.

16 A. Yes.

17 Q. Do you know when or if Emerald  
18 Pointe, or do you know when Emerald Pointe became a  
19 troubled small utility?

20 A. By virtue of their size, I don't know  
21 when.

22 Q. And what do you base that observation  
23 on, them being troubled?

24 A. Mr. Ted Robertson, I think he pretty  
25 much mentioned some of the reasons when he talked

1 about the Company being small and capital resources  
2 I think they just come from the owners and maybe  
3 from a few lenders who are willing to give money to  
4 Emerald Pointe and that in of itself is called  
5 business risk and then if you look at bigger  
6 companies they don't have that problem.

7 **Q. Okay. So you're saying that small**  
8 **companies because they're small and because they**  
9 **have issues with business risk every single one of**  
10 **them is considered troubled?**

11 A. Because they are small and they are  
12 privately held and they have limited sources of  
13 capital, that's what makes them troubled.

14 **Q. Okay. But if you compare Emerald**  
15 **Pointe to say one of our other small systems can**  
16 **you think of any other small system that has been**  
17 **able to go out and get \$1 million in money?**

18 A. I cannot think of any right now.

19 **Q. But Emerald Pointe was able to obtain**  
20 **debt to finance the new sewer connection line and**  
21 **the lift station plant, correct?**

22 A. Emerald Pointe and the owners, not  
23 just Emerald Pointe.

24 **Q. But yes, they did get, those two**  
25 **together did get financing.**

1 A. Yes.

2 Q. Looking at page 12, line 6 of your  
3 surrebuttal. You discuss Emerald Pointe's  
4 commercial loans as being more restrictive than a  
5 larger utility that can issue directly to investors  
6 or public or private. Do you see that?

7 A. Yes.

8 Q. Okay. Can you name one small water  
9 or sewer utility company in the state of Missouri  
10 that you know issued long term debt such as bonds  
11 with a maturity of 20 or 30 years?

12 A. I cannot think of any right now.

13 Q. And isn't it correct that many if not  
14 all small water and sewer utility companies in the  
15 state of Missouri rely on commercial loans and/or  
16 loans from the shareholders to finance their  
17 investments?

18 A. That's true to some extent.

19 Q. And please explain to me how the debt  
20 or return cost of large publicly traded utilities  
21 are relevant to the actual debt obtainment options  
22 of a small water or sewer utility in Missouri.

23 A. It's not a part of say how they are  
24 relevant to the small water or sewer company, it's  
25 a situation where we were trying to come up with a

1 market driven cost of equity for small water and  
2 sewer companies and we, I guess after reviewing so  
3 many options we realized that using the public  
4 utility bonds as a proxy is the most appropriate  
5 way to undermine the cost of equity.

6 Q. And to your knowledge what is the  
7 current highest rate of return on bank issued  
8 certificates or CD, a shareholder of a small water  
9 or sewer company in the state of Missouri can  
10 obtain?

11 A. I don't know.

12 Q. Going to page 12, line 12 of your  
13 surrebuttal.

14 A. Yes.

15 Q. You say that the Company's debt does  
16 not have an observable yield to maturity and  
17 therefore is appropriate for estimating its cost of  
18 equity?

19 A. That's correct.

20 Q. Is that because it has a five year  
21 balloon requirement, because it doesn't, does have  
22 a stated yield rate until the end of five years?

23 A. That's correct. It's five years  
24 based on 20 amortization and the regular, or the  
25 standard long term debt that we see and we know

1 there will be a 20 year loan or 30 year loan based  
2 on 20 year or 30 year maturity.

3 Q. Okay. And do you know with absolute  
4 certainty that the Company will not be able to  
5 refinance the remaining balance of the sewer  
6 connection line debt at the end of five years at a  
7 rate that's similar to the current financing?

8 A. I wouldn't know, if I give an answer  
9 that's highly speculative.

10 Q. So you don't know with certainty?

11 A. I don't know.

12 Q. In the event that a refinancing  
13 occurs of the remaining balance at the end of the  
14 five years at a rate not as favorable as the  
15 current financing would the company have the option  
16 to come in for a rate case to reflect the new  
17 financing costs?

18 A. I'm sure they'd be able to come back  
19 in.

20 Q. And beginning on page 10, line 2 of  
21 your surrebuttal you discuss capital structures and  
22 credit ratings, do you see that?

23 A. Page 10, line 2?

24 Q. Yes. Do I have the wrong page?  
25 I can move on from that.

1                   **What is the Company's credit rating?**

2           A.       We assigned a B plus.

3           **Q.       Back to page 10, line 10, see if this**  
4 **one is correct. You discuss the Company's debt**  
5 **service payments?**

6           A.       That will be line --

7           **Q.       Page 10, line 10.**

8           A.       Okay.

9           **Q.       Okay. Will the revenue requirements**  
10 **supported by your proposal be able to fund the debt**  
11 **payment for the Company?**

12          A.       What are recommended, yes, I believe  
13 so.

14          **Q.       And beginning on page 15, line 9 of**  
15 **your surrebuttal you discuss assessing business**  
16 **risk profiles for small water and sewer companies**  
17 **using their actual experience attracting debt and**  
18 **that that is subjective, is that correct?**

19          A.       That's correct.

20          **Q.       Please explain how using the risk**  
21 **profiles of large publicly traded utilities that**  
22 **have almost nothing in common with small water and**  
23 **sewer utilities in the state of Missouri is even**  
24 **more subjective.**

25          A.       That would be subjective.



1           Q.       And again Staff is recommending a  
2 consolidated return on equity of 13.26 percent,  
3 correct?

4           A.       That's correct.

5           Q.       And you believe that that is  
6 reasonable?

7           A.       That's reasonable.

8           Q.       Did you utilize the Staff methodology  
9 for estimating a rate of return for small water and  
10 sewer companies as described by Mr. Murray in his  
11 testimony?

12          A.       Yes.

13          Q.       So basically you utilized that  
14 methodology and whatever number comes out is  
15 Staff's recommendation?

16          A.       That's correct.

17          Q.       Is there a protocol in Staff's  
18 methodology for a reasonableness or a common sense  
19 check of the number that comes out?

20          A.       We do not have a standard set but we  
21 pretty much look at what is being recommended for  
22 large companies, like return on equity that is  
23 being recommended to charge utility companies and I  
24 guess the most recent recommendations were pretty  
25 much 7, 9, 8 and we believe small water and sewer

1 companies should get more than that.

2 Q. So if the number came out, was 20  
3 percent would you consider that to be reasonable  
4 because that's what Staff methodology came up with?

5 A. If it's based on the methodology  
6 whatever number we get that's what we support.

7 Q. How about 50 percent?

8 MR. THOMPSON: I'm going to object, I  
9 don't think there's any showing that Staff's  
10 methodology could produce a number that high.

11 MS. BAKER: He's saying whatever  
12 number comes out is the number that they use and  
13 that's based on --

14 MR. THOMPSON: And you have not given  
15 any foundation as to whether or not the method can  
16 produce a number as high as the one you're asking  
17 about.

18 MS. BAKER: All I'm asking is if the  
19 number that came out was --

20 MR. THOMPSON: Is there a ruling  
21 Judge?

22 JUDGE WOODRUFF: Yes, I'll overrule  
23 the objection.

24 MR. THOMPSON: Thank you.

25 Q. (BY MS. BAKER) Back to my last

1 question. How about 50 percent? If Staff's  
2 methodology came up with 50 percent.

3 A. Yes. I will use that.

4 Q. Are you aware that Staff has recently  
5 filed a Company Staff agreement for a small water  
6 system named Woodland Manor Water Company in case  
7 FWR 2013-0326 that contains a recommended return on  
8 equity of 8.02 percent?

9 A. I think I remember that.

10 Q. And are you aware that Staff recently  
11 filed a Company Staff agreement for a small water  
12 and sewer system that's currently under the control  
13 of a receiver name Gladblow Water and Sewer  
14 Company, Inc. in case numbers SR 2013-0258 and WR  
15 2013-0259 that only contains a recommended return  
16 on equity of 10.21 percent?

17 A. I think I have seen that case.

18 Q. And you would agree with me that a  
19 water and sewer company that's under a receiver is  
20 quite risky?

21 A. I can say whenever we assign credit  
22 ratings to these companies and recommend, whatever  
23 we end up recommending is based on the specifics of  
24 that company and in this case I don't know all  
25 specifics.

1           **Q.       Okay. Are you aware of Staff**  
2       **recommending a return on equity of more than 13**  
3       **percent in any other small water and sewer case?**

4           A.       I think there's one case right now  
5       that is under review. Lincoln County Water and  
6       Sewer.

7           **Q.       And that case has not been finalized,**  
8       **is that correct?**

9           A.       That's correct.

10          **Q.       And do you know if Public Counsel has**  
11       **weighed in on that particular case?**

12          A.       No.

13                   MS. BAKER: No further questions.

14                   JUDGE WOODRUFF: We'll come up for  
15       questions from the bench then.

16                   Mr. Jarrett?

17                   COMMISSIONER JARRETT: No questions.

18       Thank you.

19                   JUDGE WOODRUFF: Mr. Kenney.

20                   COMMISSIONER KENNEY: No questions.

21       Thank you.

22                   JUDGE WOODRUFF: No need for recross,  
23       any redirect?

24

25

1 REDIRECT EXAMINATION

2 QUESTIONS BY MR. THOMPSON:

3 Q. Mr. Marevangepo, how familiar are you  
4 with Staff's methodology?

5 A. I pretty much helped develop the  
6 methodology.

7 Q. Would you expect that methodology to  
8 produce a recommendation of 50 percent for a return  
9 on equity?

10 A. Absolutely not.

11 Q. Would you expect it to produce a  
12 figure of 20 percent?

13 A. No.

14 Q. Do you have any idea what the highest  
15 figure you would expect to see would be?

16 A. Based on the cases that we have  
17 worked on so far we are talking about 13 percent.

18 Q. So for example this case.

19 A. This case, yes.

20 Q. Might very well be at the highest  
21 level you would expect to see.

22 A. I believe so.

23 Q. Okay.

24 MS. BAKER: That's all I have. Thank  
25 you.

1 JUDGE WOODRUFF: All right. You can  
2 step down.

3 And next witness is David Murray.  
4 (Whereupon, the witness was sworn)

5 JUDGE WOODRUFF: You may inquire.

6 DIRECT EXAMINATION

7 QUESTIONS BY MR. THOMPSON:

8 Q. MR. Murray how are you employed?

9 A. I'm employed as a utility regulatory  
10 manager in the financial analysis unit.

11 Q. And are you the same David Murray  
12 that prepared or caused to be prepared a piece of  
13 surrebuttal testimony in this case?

14 A. I am.

15 MR. THOMPSON: What number are we up  
16 to Judge?

17 JUDGE WOODRUFF: 24.

18 Q. (BY MR. THOMPSON) This we will mark  
19 as Exhibit 24 for identification.

20 Mr. Murray do have you any corrections  
21 to that testimony?

22 A. I do not.

23 Q. If I asked you those same questions  
24 today would your answers be the same?

25 A. They would.

1 Q. As far as you know to the best of  
2 your knowledge and belief is all of the information  
3 contained in that testimony true and correct?

4 A. Yes.

5 MR. THOMPSON: At this time I will  
6 offer Staff's Exhibit 24.

7 JUDGE WOODRUFF: 24 has been offered.  
8 Any objections to its receipt?

9 Hearing none it will be received.

10 MR. THOMPSON: I will tender Mr.  
11 Murray for cross and I will provide a copy of the  
12 testimony to the reporter.

13 JUDGE WOODRUFF: All right. And for  
14 cross we begin again with Emerald Pointe.

15 MR. COOPER: No questions.

16 JUDGE WOODRUFF: Public Counsel.

17 MS. BAKER: No questions.

18 JUDGE WOODRUFF: Then we'll come up  
19 for questions from the bench.

20 Mr. Jarrett?

21 COMMISSIONER JARRETT: No questions.

22 Thank you.

23 JUDGE WOODRUFF: Mr. Kenney?

24 COMMISSIONER KENNEY: No, thank you,  
25 sir.

1 MR. MURRAY: Thank you.

2 JUDGE WOODRUFF: No recross, no  
3 redirect and you can step down.

4 MR. MURRAY: Thank you.

5 JUDGE WOODRUFF: Mr. Robertson.

6 MS. BAKER: I will tender the witness  
7 for cross examination.

8 JUDGE WOODRUFF: Okay. And begin with  
9 Staff.

10 MR. THOMPSON: Thank you, Your Honor.  
11 We've already talked to you about  
12 return on equity, haven't we?

13 MR. ROBERTSON: I think we have.

14 MR. THOMPSON: Okay.

15 I don't think I have any questions for  
16 Mr. Robertson. Thank you.

17 JUDGE WOODRUFF: Okay. For Emerald  
18 Pointe?

19 MR. COOPER: No questions.

20 JUDGE WOODRUFF: Questions from the  
21 bench.

22 Commissioner Jarrett?

23 COMMISSIONER JARRETT: No questions.

24 JUDGE WOODRUFF: Commissioner Kenney?

25 COMMISSIONER KENNEY: No questions.



1 JUDGE WOODRUFF: No need for recross  
2 or redirect and you can step down.

3 And then we'll move on to the next  
4 issue number then CIAC reserve and customer fees  
5 and Ms. Hanneken.

6 (Whereupon, the witness was sworn)

7 JUDGE WOODRUFF: You may inquire.

8 MR. THOMPSON: Thank you Judge.

9 DIRECT EXAMINATION

10 QUESTIONS BY MR. THOMPSON:

11 Q. Are you the same Lisa Hanneken that  
12 prepared or caused to be prepared a piece of direct  
13 testimony and a piece of surrebuttal testimony in  
14 this case?

15 A. Yes, I am.

16 Q. Your direct testimony which we'll  
17 mark for identification as Exhibit 25, your  
18 surrebuttal testimony we'll mark for identification  
19 as Exhibit number 26. Do you have any corrections  
20 to either of those pieces of testimony?

21 A. Yes, I do.

22 Q. Okay.

23 A. On my surrebuttal testimony on page  
24 4, lines 13 and 14.

25 Q. Yes.

1           A.       I would like to change that to read  
2     the cost of meters in the plant accounts and not  
3     any of the other materials or later costs incurred  
4     to install meters which should have been reflected  
5     in the plant balances as well.  The, and that's the  
6     end of the line.

7           **Q.       Okay.  So I wonder if you could read**  
8     **the corrected line with the correction?**

9           A.       That is the correction.

10          **Q.       Okay.**

11          A.       Yes.

12          **Q.       Do you have any other corrections?**

13          A.       No, I do not.

14          **Q.       So with those corrections in mind if**  
15     **I asked you the same questions today would your**  
16     **answers be the same?**

17          A.       Yes, they would.

18          **Q.       And to the best of your knowledge is**  
19     **your corrected testimony true and correct to the**  
20     **best of your knowledge and belief?**

21          A.       Yes.

22          **Q.       Okay.**

23                   MR. THOMPSON:  With that I will offer  
24     Exhibits 25 and 26 and tender the witness.

25                   JUDGE WOODRUFF:  All right.  25 and 26

1 have been offered. Any objections to their  
2 receipt?

3 Hearing none they will be received.

4 For cross examination we begin with  
5 Emerald Pointe.

6 MR. COOPER: No questions Your Honor.

7 JUDGE WOODRUFF: Public Counsel.

8 EXAMINATION

9 QUESTIONS BY MS. BAKER:

10 Q. Good afternoon.

11 A. Good afternoon Ms. Baker.

12 Q. You're aware that in Mr. Robertson's  
13 rebuttal he identified \$1,579 of CIAC which was  
14 collected by the utility?

15 A. Yes.

16 Q. And was that actually collected by  
17 the utility in your review?

18 A. To the best of my knowledge, yes.

19 Q. Did Staff include the \$17,579 in  
20 CIAC?

21 A. Included in this case?

22 Q. In this case.

23 A. It included it in its review and it  
24 sort of fell out when we did our annualization of  
25 miscellaneous revenues.

1           **Q.       Okay. Did Staff actually in this**  
2 **case include \$17,579 in its miscellaneous revenues**  
3 **annualization?**

4           A.       As part of its review of  
5 annualization, yes. On an ongoing level, no,  
6 because they are no longer incurring that type of  
7 mismatch between plant and CIAC.

8           **Q.       Looking at your surrebuttal on page**  
9 **4. Looking at lines 12 through 16.**

10          A.       Yes.

11          **Q.       This may be part of your update, or**  
12 **your corrections as well, you state that for a**  
13 **number of years labor costs were not capitalized in**  
14 **the plant balances although, you know, with the**  
15 **costs to install the meter?**

16          A.       Right. And I have corrected that to  
17 say that other material besides the meter, the  
18 other materials, the pit and connection and things  
19 as well as the labor was not correctly identified  
20 as plant.

21          **Q.       And the CIAC that was charged to the**  
22 **ratepayers represented the cost of both materials**  
23 **and the labor costs?**

24          A.       Yes, it was meant to cover all the  
25 costs to install the meter.

1 Q. Based on your knowledge of the  
2 Company's bookkeeping and problems you've  
3 encountered with it are you absolutely sure that  
4 the labor costs you mentioned are not being  
5 recorded in the plan balance?

6 A. Not with the records I have seen.

7 Q. Are total labor payroll costs  
8 normally included in the development of a company's  
9 cost of service and therefore rates?

10 A. Unless they are left out for capital  
11 items.

12 Q. So if there's any labor that's  
13 attached to a capital item it will not be included  
14 in the expense side but it will therefore be  
15 included in the plant side of a rate case.

16 Q. Okay. And if labor costs are not  
17 capitalized to plant as you said they're booked in  
18 the, in where, which section would they be booked?

19 A. In expense.

20 Q. In expense. Does capitalizing labor  
21 costs mean that those costs will be recovered over  
22 the life of the plant to which they are booked?

23 A. Yes.

24 Q. If labor costs are not accurately  
25 capitalized to plant doesn't that mean that labor

1 costs not capitalized are merely passed through as  
2 an expense in the actual year incurred?

3 A. Yes.

4 Q. So the Company actually recovered the  
5 labor costs?

6 A. I can not state that. I do not know  
7 how their rates were set in the last case, I don't  
8 know what labor levels were set in the last case.

9 Q. Okay. Those labor costs could have  
10 been incurred or could have been reflected in the  
11 previous rates, you're just unsure of that?

12 A. Yes.

13 Q. And it's possible that it recovered  
14 those costs in its rates sooner than that it would  
15 have had the labor cost appropriately capitalized?

16 A. It's possible.

17 Q. So the CIAC dollars at issue consist  
18 of monies collected from ratepayers which though  
19 not capitalized properly represent labor costs  
20 which the utility has in fact, could possibly have  
21 recovered in their current rates.

22 A. In addition it would also cover other  
23 materials such as the pit and connections and such  
24 that were required to set the meter.

25 Q. Okay. When a connection charge is at

1 issue -- I'm sorry, let me start again.

2 When the connection charges at issue  
3 are collected by the utility isn't it appropriate  
4 to book the monies as a debit to the miscellaneous  
5 revenues and the credit to the CIAC?

6 A. Well, I mean how the company books  
7 them is separate from how we look at them for a  
8 rate case. Typically, yes, they would sort of be  
9 filtered through the revenues as accounts  
10 receivable and then they would flow in to the plant  
11 as CIAC.

12 Q. And did the utility book the \$17,579  
13 at issue to CIAC?

14 A. No. They did not.

15 Q. So the issue is not whether the  
16 utility actually collected the \$17,579 in CIAC  
17 because it did?

18 A. It did collect it it just didn't  
19 appropriately understand how to book the expense  
20 related to setting meters and how to appropriately  
21 counterbalance that with the monies collected.

22 Q. Okay. So it's not the issue of  
23 whether the \$17,579 should have been booked to  
24 CIAC, it should have been?

25 A. Well, it depends, it should have been

1 if they had appropriately also booked all of the  
2 plant costs. The purpose of CIAC is to show the  
3 amount of money that the customers pay for a plant  
4 item. In this case that money was earmarked or put  
5 in to rates to cover a meter installation. A meter  
6 installation includes meters, pits, labor and such,  
7 the excavation and all the components. The Company  
8 I guess did not totally understand what should be a  
9 capitalized plant item, what would be just normal  
10 expense item and how to handle a CIAC transaction  
11 so therefore they did correctly book the meter  
12 itself as a plant item but the rest of the items  
13 they left flow through their expenses and you know  
14 they just took in the money from the customers.  
15 They didn't necessarily correctly book it against  
16 the plant. So when I looked at the books and  
17 records I could not verify all of those plant items  
18 because the records were not there, I did have  
19 something to show me what the amounts should be, I  
20 just couldn't verify those amounts so in essence if  
21 I were able to verify those amounts I would have  
22 correctly placed those items in to plant and would  
23 have correctly or, I mean there's two methodologies  
24 you can use to deal with the connection fees but if  
25 I'm putting the plant in then I would want to put



1 the offsetting CIAC in with the plant as a close a  
2 match as possible.

3 **Q. At the end of the day if the**  
4 **customers paid \$17,579 you would agree that they**  
5 **should get the benefit of having paid that.**

6 A. I think they did as land offset as  
7 they were being used as revenues for that time  
8 period it was offsetting the expenses that were not  
9 being booked to plant so they did sort of get that  
10 match at that time, it's just not in the rate base.  
11 I mean if you were just to put that CIAC in at this  
12 time there would be a mismatch and an  
13 understatement of rate base because the plant  
14 related to that CIAC is being recognized.

15 **Q. You do believe that in your**  
16 **recommendation the customer's getting the benefit**  
17 **of the \$17,579 that they paid.**

18 A. In the sense that those revenues  
19 collected during that time period did offset the  
20 expense incurred during that time period.

21 MS. BAKER: No further questions.

22 JUDGE WOODRUFF: Okay. Now we'll come  
23 up for questions from the bench.

24 Mr. Jarrett?

25 COMMISSIONER JARRETT: No questions,

1 thanks.

2 JUDGE WOODRUFF: Mr. Kenney?

3 COMMISSIONER KENNEY: No questions.

4 JUDGE WOODRUFF: No need for recross,  
5 any redirect?

6 MR. THOMPSON: No redirect. Thank  
7 you.

8 JUDGE WOODRUFF: All right. You can  
9 step down.

10 Mr. Robertson once again.

11 MS. BAKER: I will tender for cross  
12 examination.

13 JUDGE WOODRUFF: Beginning with Staff.

14 MR. THOMPSON: No questions, thank  
15 you.

16 JUDGE WOODRUFF: Emerald Pointe?

17 MR. COOPER: No questions.

18 JUDGE WOODRUFF: Come up for questions  
19 from the bench.

20 Mr. Jarrett.

21 COMMISSIONER JARRETT: No questions.

22 JUDGE WOODRUFF: Mr. Kenney?

23 COMMISSIONER KENNEY: No questions.

24 Thank you.

25 JUDGE WOODRUFF: No recross or

1 redirect, you can sit down again.

2 And come on back Ms. Hanneken.

3 MR. THOMPSON: I will tender Ms.  
4 Hanneken for cross examination.

5 JUDGE WOODRUFF: Beginning with  
6 Emerald Pointe?

7 MR. COOPER: No questions.

8 JUDGE WOODRUFF: Public Counsel.

9 MS. BAKER: And I think I will get us  
10 out of here today.

11 JUDGE WOODRUFF: Okay.

12 CROSS EXAMINATION

13 QUESTIONS BY MS. BAKER:

14 Q. Are you aware that Staff's  
15 recommendation is to update rate case expense and  
16 legal fee expense to the end of the case?

17 A. I believe it's Staff's recommendation  
18 that we will update rate case expense, not  
19 necessarily general legal fees.

20 Q. All right. And are you aware of the  
21 testimony by Ms. Ross for Staff that the reason  
22 behind this is Staff believes it's just and  
23 reasonable for all of Emerald Pointe's rate case  
24 expense to be updated to the most current time when  
25 rates go in to effect?

1           A.       I believe it's, I did hear that  
2 testimony, I believe it's Staff's position that we  
3 will consider rate case expense up to the, you  
4 know, practical point at the end of this case.

5           **Q.       Would you agree that if it's just and**  
6 **reasonable that expense be updated it is also just**  
7 **and reasonable that plant related balances that**  
8 **affect rates be updated as well?**

9           A.       No.

10          **Q.       But you would agree that plant**  
11 **additions, plant requirements and plant**  
12 **depreciation affect rates.**

13          A.       Yes.

14          **Q.       And you would agree that updating**  
15 **rate case expense to the end of the case is**  
16 **beneficial to Emerald Pointe?**

17          A.       Yes.

18          **Q.       And would you not agree that updates**  
19 **in say plant depreciation to the end of the case**  
20 **would provide benefit to customers?**

21          A.       Yes but it would not adhere to the  
22 matching principle.

23          **Q.       So Staff is recommending an update**  
24 **for something that will benefit Emerald Pointe but**  
25 **is not recommending an update to something that**

1     **might update, might benefit customers, correct?**

2             A.     To avoid not adhering to matching  
3 principle.

4             **Q.     But my statement is correct, you are**  
5 **not updating something that might benefit**  
6 **customers.**

7             A.     It has not been our policy and we do  
8 not wish to violate the matching principle.

9             **Q.     I'll take that as a yes.**

10            A.     You can take that as a yes.

11                    MS. BAKER: No further questions.

12                    JUDGE WOODRUFF: Questions from the  
13 bench.

14                    Mr. Jarrett?

15                    COMMISSIONER JARRETT: No questions.

16 Thank you.

17                    JUDGE WOODRUFF: Mr. Kenney?

18                    COMMISSIONER KENNEY: No questions.

19 Thank you.

20                    JUDGE WOODRUFF: No recross. Any

21 redirect?

22                    MR. THOMPSON: Yes, thank you.

23                                REDIRECT EXAMINATION

24 QUESTIONS BY MR. THOMPSON:

25             **Q.     With respect to the rate case**

1 expenses which you've indicated Staff is willing to  
2 update as late as practical does that represent a  
3 violation of the matching principle?

4 A. No. It's, generally it's acceptable  
5 to make exception for rate case expense given the  
6 nature of the expense itself and the fact that the  
7 case itself is the cause of those expenses.

8 Q. Thank you very much.

9 MR. THOMPSON: No further questions.

10 JUDGE WOODRUFF: All right. Then you  
11 can step down.

12 MS. HANNEKEN: Thank you.

13 JUDGE WOODRUFF: And welcome back Mr.  
14 Robertson.

15 MR. ROBERTSON: Thank you, sir.

16 MS. BAKER: I will tender for cross  
17 examination.

18 JUDGE WOODRUFF: Okay. And beginning  
19 with Staff.

20 MR. THOMPSON: I have no questions.

21 JUDGE WOODRUFF: Emerald Pointe?

22 MR. COOPER: I have the same. No  
23 questions.

24 JUDGE WOODRUFF: All right. Any  
25 questions from the bench?

1 Commissioner Jarrett?

2 COMMISSIONER JARRETT: No questions.

3 JUDGE WOODRUFF: Mr. Kenney?

4 COMMISSIONER KENNEY: I have one quick  
5 question.

6 EXAMINATION

7 QUESTIONS BY COMMISSIONER KENNEY:

8 Q. Public, or Public Counsel says that  
9 they would like to have their direct, effective  
10 change date as close to the change as possible,  
11 right?

12 A. That's correct.

13 Q. And then Staff caps it at like  
14 February 28, 2013.

15 A. They do.

16 Q. What kind of dollars does that mean,  
17 do you have any idea?

18 A. No, I don't. Essentially what it is  
19 it's an update of the depletion expense for the  
20 March, April, probably about as far as you could  
21 probably really go is May, end of May.

22 Q. It's money but it's probably pretty  
23 minor.

24 A. Well, you're talking about rate base,  
25 they've got a rate base of well over a million,

1 what was it, 1.5 million on the sewer, I'm not  
2 quite sure what the water is so average  
3 depreciation rate may be somewhere between 3 and 5  
4 percent.

5 **Q. I don't know if it's that high, but**  
6 **some of it is, yes.**

7 A. It's easy to calculate, it's simple  
8 to do but for a company this size it depends what  
9 you call significant.

10 **Q. I understand.**

11 A. I think it would be a sum of money,  
12 yes.

13 **Q. But your concern is just the fixed**  
14 **date.**

15 A. Initially when I filed this Staff's  
16 plant balances didn't balance, they had stopped  
17 recording stuff back in November of 2012 and then  
18 some balances they had recorded in February 2013,  
19 they subsequently after I sent some DR stuff they  
20 updated those balances and filed new ones so they  
21 got everything tied up to February.

22 **Q. Okay.**

23 A. But I thought that at the time  
24 February was, you know, the cutoff was probably a  
25 little too soon given the fact this case I don't



1 think has an effective law date but my  
2 understanding is probably wouldn't be resolved  
3 until some time in late July.

4 Q. Okay.

5 A. So.

6 Q. Great. Thank you very much.

7 JUDGE WOODRUFF: Any recross based on  
8 questions from the bench?

9 Staff?

10 MR. THOMPSON: No recross. Thank you.

11 MR. COOPER: Real briefly Your Honor.

12 RECROSS EXAMINATION

13 QUESTIONS BY MR. COOPER:

14 Q. Mr. Robertson your proposal to carry  
15 really the plant records forward a little further  
16 would it also pick up additional plant investment?

17 A. It sure would. If there was any,  
18 yes.

19 Q. And also any retirements I guess.

20 A. Yes. We're not trying to be  
21 selective, just trying -- I mean that's the  
22 biggest, a big cost for these companies.

23 JUDGE WOODRUFF: Redirect?

24 MS. BAKER: Done Your Honor. Thank  
25 you.

1 JUDGE WOODRUFF: All right. And Mr.  
2 Robertson you can step down.

3 MR. ROBERTSON: Thank you.

4 JUDGE WOODRUFF: And I believe that  
5 concludes all the witnesses and the evidence. I  
6 don't see anything that we haven't dealt with so at  
7 this point we already have, a briefing schedule was  
8 previously established I believe and we are  
9 adjourned.

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11 (Whereupon, the hearing concluded at 3:53 p.m.)

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REPORTER CERTIFICATE

I, SUZANNE BENOIST, Certified Shorthand Reporter, do hereby certify that there came before me at the Missouri Public Service Commission, 200 Madison Street, Room 310, Jefferson City, MO the above-referenced parties, that the proceeding was translated and proofread using computer-aided transcription, and the above transcript of proceedings is a true and accurate transcript of my notes as taken at the time of said event.

I further certify that I am neither attorney nor counsel for nor related nor employed by any of the parties to the action in which this examination is taken; further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto or financially interested in this action.

\_\_\_\_\_  
SUZANNE BENOIST, RPR, CCR, CSR-IL

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