

1 STATE OF MISSOURI
2 PUBLIC SERVICE COMMISSION
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6 TRANSCRIPT OF PROCEEDINGS
7 Hearing
8 May 18, 2007
9 Jefferson City, Missouri
Volume 4

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12 Gerald and Joanne Reiersen,)
)
13 Complainants,)
)
14 v.) Case No. SC-2005-0083
) et al.
15 Kenneth Jaeger and Blue Lagoon)
Sewer Corp.,)
16)
Respondents.)

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19 RONALD D. PRIDGIN, Presiding,
REGULATORY LAW JUDGE.

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21 LINWARD "LIN" APPLING,
COMMISSIONERS.

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24 REPORTED BY:

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

2 JUDGE PRIDGIN: Good morning. We're on the
3 record. This is Case No. SC-2005-0083, Gerald and Joanne
4 Reiersen vs. Kenneth Jaeger and Blue Lagoon Sewer
5 Corporation, and this has been consolidated with Case
6 No. SC-2005-0099, Robert M. Hellebusch versus the same
7 respondents.

8 I'm Ron Pridgin. I'm the Regulatory Law
9 Judge assigned to preside over this hearing. Its being
10 held on May 18th, 2007, in the Governor Office Building in
11 Jefferson City. The time is approximately 10:30 a.m.

12 I would like to begin by getting oral
13 entries of appearance, please, beginning with the General
14 Counsel's Office.

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

18 JUDGE PRIDGIN: Mr. Krueger, thank you.
19 Before I forget, let me remind everyone that, as you can
20 see the monitor up there, this is being broadcast on the
21 Internet for the benefit of the public and for
22 Commissioners or other staff members who are not able to
23 attend. So I'd ask that you speak into the microphone so
24 they can keep up with us.

25 Entries of appearance from the Office of

1 the Public Counsel, please.

2 MS. BAKER: Thank you, your Honor.

3 Christina Baker, P.O. Box 2230, Jefferson City, Missouri
4 65102, appearing for the Office of the Public Counsel and
5 the ratepayers.

6 JUDGE PRIDGIN: Ms. Baker, thank you. On
7 behalf of Kenneth Jaeger and Blue Lagoon Sewer
8 Corporation, please.

9 MR. LEMON: Yes, Judge. James Lemon. My
10 address is 119 South 10th Street. That's in Hannibal,
11 Missouri 63401.

12 JUDGE PRIDGIN: Mr. Lemon, thank you. If I
13 could get entries of appearance from -- I understand
14 Ms. Reierson is not going to be here today. Is that
15 correct, Mr. Reierson?

16 MR. REIERSON: That is correct.

17 JUDGE PRIDGIN: All right. Would you give
18 your name and address for the court reporter, please.

19 MR. REIERSON: Gerald Reierson. My address
20 is 43615 Blue Lagoon Place, Monroe, Missouri 63456.

21 JUDGE PRIDGIN: Mr. Reierson, thank you. I
22 apologize. I've been mispronouncing your name, and I'm
23 very sorry.

24 Mr. Hellebusch, your name and address,
25 please.

1 MR. HELLEBUSCH: Yes. My name is Robert
2 Hellebusch, 150 New Grange Pass, St. Charles, Missouri
3 63304.

4 JUDGE PRIDGIN: Mr. Hellebusch, thank you.
5 Let me give a few opening remarks, and I would normally do
6 this even without pro se litigants, but I think it's even
7 more important when we have folks here that aren't
8 representing -- aren't being represented.

9 In a moment we'll go off the record, we'll
10 mark exhibits, and then we'll proceed with opening
11 statements. And I have a proposed list of issues, order
12 of witnesses, order of cross and order of opening, and
13 we'll plan on going in that order unless somebody wants to
14 do something different.

15 The opening statement, of course counsel
16 knows this, but this is more your opportunity to lay out
17 your theory of the case. It's not giving evidence. It's
18 not testifying. It's simply your chance to say, I think
19 this is what this case is about, and I think this is what
20 the evidence will show. Okay. You're not required to
21 give an opening, but you're most welcome to, and that's
22 the kind of thing I would be looking for in an opening
23 statement.

24 We already have prefiled testimony from
25 Mr. Reierson, Mr. Hellebusch and Staff, and I understand

1 the company did not file any testimony, and the purpose of
2 these hearings is essentially more cross-examination.
3 We've already got direct that's filed. And so the purpose
4 of this hearing is more for counsel to cross witnesses and
5 for the Bench to ask any questions of the witnesses.

6 Of course, counsel already knows this, but
7 this is just kind of a quick refresher for you and also a
8 lesson more for the pro se litigants, and that is on
9 cross-examination your questions should normally be
10 leading. You should be suggesting the answer with your
11 question. And the proper answer to a leading question
12 will be such answers as yes, no and I don't know.

13 Anything more is probably unresponsive, and
14 if I could get an objection, I will likely strike that
15 additional response from the record, and if I don't get an
16 objection, I may do it anyway. If you ask a non-leading
17 question, you do so at your peril, and it probably harms
18 your case more than it helps it. It's ultimately up to
19 you. But I would advise against it.

20 Also, I will probably limit friendly cross
21 considerably. I understand Staff and OPC are aligned with
22 the litigant -- the pro se complainants rather on a lot of
23 issues. I'm not going to prevent you from crossing
24 altogether, but because it appears to me that you're on
25 the same side on most issues, I would want to limit that

1 cross-examination quite a bit.

2 Is there anything that the parties want or
3 need to bring to my attention before we go off the record
4 and mark exhibits?

5 MS. BAKER: Your Honor, as a preliminary
6 matter, the Public Counsel had filed a motion to amend the
7 issues list, and that has not been acted on.

8 JUDGE PRIDGIN: That's correct. I've not
9 ruled on that. And Mr. Lemon, any response to Ms. Baker's
10 motion?

11 MR. LEMON: Judge, I do not have an
12 objection to that motion in that regard. One other issue
13 that I would like to request, and obviously you may
14 overrule me, you had previously ruled on my motion for a
15 continuance. At this point I would like to make a verbal
16 motion that is somewhat in line with that but has -- is in
17 regard to a limited motion.

18 Basically -- and I don't mean to beat
19 around the bush. I just don't want to say too much that
20 you don't want me to say. But in regards to Issues 3
21 through -- well, 3 up, and I believe 7 was our top number,
22 we'd like to at this time do a further motion for a
23 continuance as to those issues, not as to Issues 1 and 2.

24 JUDGE PRIDGIN: All right. Well --

25 MR. LEMON: And I can articulate the

1 grounds for that now, or if you'd prefer me to wait and if
2 you're going to allow me to make that motion.

3 JUDGE PRIDGIN: I guess go ahead. I guess
4 I'm unsure why you'd want to proceed on just one issue and
5 not the other.

6 MR. LEMON: Well, Judge, it's our position
7 that because of the matters that are filed in Ralls
8 County, and those are -- and those are the issues of 3
9 through 7. 1 and 2 I don't believe can arguably be any
10 type of a conflict or would subject my client to double
11 jeopardy. However, depending upon your rulings here
12 today, I believe that the outcome of those Issues 3
13 through 7 could subject my client to double jeopardy and
14 could therefore interfere with his due process rights.

15 So at this time that's why I wanted to
16 request a motion for a continuance, in line with the
17 motion I had previously filed, to a date after that June
18 26 law date as to those Issues 3 through 7.

19 JUDGE PRIDGIN: And I understand your
20 objection, and I apologize for not being a little quicker.
21 I'm going to overrule the motion. It seems to make more
22 sense to me, judicial economy, especially since I believe
23 Mr. Reiersen is going to be out of the country for several
24 months, to go ahead and hear the entire case today.

25 You're free obviously to make any

1 objections and to have standing objections, and if counsel
2 believes that whatever happens on the June 26 law day up
3 in Ralls County would moot part or all of this out, you're
4 certainly welcome to let me know that in a motion or
5 pleadings or brief.

6 All right. Anything further before we go
7 off the record and mark exhibits?

8 MS. BAKER: I'm sorry. Were you going to
9 rule on my motion?

10 JUDGE PRIDGIN: I'm sorry. Your motion is
11 granted. Thank you.

12 MS. BAKER: Thank you very much.

13 JUDGE PRIDGIN: I'm sorry. Thank you for
14 reminding me. Anything further?

15 (No response.)

16 JUDGE PRIDGIN: All right. At this time we
17 will go off the record and mark exhibits.

18 (AN OFF-THE-RECORD DISCUSSION WAS HELD.)

19 (EXHIBIT NOS. 1 THROUGH 5 WERE MARKED FOR
20 IDENTIFICATION BY THE REPORTER.)

21 JUDGE PRIDGIN: We're back on the record.
22 At this time I will hear opening statements, and according
23 to the order of opening statements, Mr. Reiersen would
24 begin. Mr. Reiersen, first of all, do you have an opening
25 statement?

1 MR. REIERSON: Well, I'm having a little
2 trouble trying to collect my thoughts and concentrate on
3 what I should say. The only thing I have to say about all
4 this is that the reason I think we're here is to keep
5 Mr. Jaeger from having control of this sewer system.

6 He's shown over the years that he's not
7 been willing to do anything without being ordered by the
8 courts to do it. And just yesterday I observed him
9 spraying off the effluent and effluent being two inches
10 deep in one of the resident's yards and running across the
11 road headed towards a creek because they've got leaky
12 hoses all over the place.

13 So it's my feeling that this sewer system
14 should be put in somebody else's hands. That's about all
15 I have to say about it.

16 JUDGE PRIDGIN: And, Mr. Reierson, thank
17 you. I should have mentioned this earlier, but obviously
18 you gentlemen will -- you submitted testimony and you'll
19 be taking the stand for cross-examination, and I believe I
20 mentioned how the answers to those leading questions
21 should be pretty brief, like no or yes, and I should have
22 also told you you will have the opportunity afterwards to
23 explain your answers if you wish. It would be redirect
24 examination. And so if you'll keep your answers brief to
25 those questions, with the knowledge that you will later

1 have the chance to say, you know, to I guess refute what
2 you were asked on the stand, if that makes any sense.

3 All right. Mr. Hellebusch, any opening
4 statement, sir?

5 MR. HELLEBUSCH: Yes. I think the
6 proceedings, the purpose in my mind of the proceedings is
7 that Mr. Jaeger purposefully and willingly and knowingly
8 hooked up 31 homes to an illegal lagoon, charged sewer
9 services when he was not a legitimate sewer utility, and
10 that he should be -- that the sewer corporation should be
11 placed under the PSC or regulatory authority because of
12 his past performance.

13 JUDGE PRIDGIN: Mr. Hellebusch, thank you.
14 And to both you and Mr. Reiersen, that's really what I was
15 looking for in an opening statement. Those were both well
16 done. Thank you.

17 Mr. Krueger, anything for Staff?

18 MR. KRUEGER: Yes, your Honor.

19 JUDGE PRIDGIN: And for counsel, unless
20 you're directed otherwise, you may come to the podium or
21 sit where you are, where you're comfortable. Mr. Krueger.

22 MR. KRUEGER: Good morning. May it please
23 the Commission? My name is Keith R. Krueger and I
24 represent the Staff of the Missouri Public Service
25 Commission in this proceeding.

1 The evidence in this case will show that
2 Respondents Kenneth Jaeger and Blue Lagoon Sewer
3 Corporation have been providing sewer services to the
4 residents of Lost Valley Subdivision and others, that they
5 are providing these services for gain, that they do not
6 have a certificate of convenience and necessity to provide
7 such services for gain as required by law, and that they
8 are therefore subject to the jurisdiction of the
9 Commission, and that the services that they provide are
10 not safe and adequate.

11 Complainants Gerald and Joanne Reiersen
12 filed their complaint in Case No. SC-2005-0083 on
13 October 4, 2004. They sought the following relief: The
14 utility should either be regulated by the Commission or
15 should -- or should be transferred to a sewer district or
16 homeowners association.

17 Ten days later, on October 14th, 2004,
18 Complainant Bob Hellebusch filed his complaint in Case No.
19 SC-2005-0099. He sought essentially the same relief. The
20 system should be taken over by a district sewer system or
21 homeowners association or be regulated by the Commission.

22 More than two and a half years have passed
23 since they filed their complaints. The circumstances of
24 which they complain still have not been resolved.
25 Respondents Kenneth Jaeger and Blue Lagoon Sewer

1 Corporation own the sewer assets that are used to provide
2 sewer services to Complainants Reiersen and Hellebusch and
3 others.

4 Respondents have proposed to convey those
5 assets to either Cannon Water District No. 1 or to a
6 not-for-profit -- I'm sorry -- to a nonprofit sewer
7 corporation formed pursuant to Chapter 393, RSMo. That
8 might be okay if they could accomplish it, but so far
9 those efforts have gone on for a long time and have been
10 unavailing. The Respondents still own the sewer assets,
11 and there will be no evidence in this case that transfer
12 of the assets is imminent.

13 As a consequence, the Complainants are
14 still receiving sewer services from Respondents, the
15 services that the Complainants and others receive are
16 still unsafe and inadequate, and the Respondents still do
17 not have a certificate from the Commission.

18 The question for the Commission in this
19 case is what it should do to protect the interests of the
20 Complainants in this situation.

21 The principal relief that the Staff is
22 seeking in this case includes the following: A finding
23 that the Respondents are subject to the jurisdiction of
24 the Commission, and they have pretty much admitted that in
25 their statement of positions in this case, an order that

1 the Respondents must comply with all of the requirements
2 that Chapter 393 imposes upon sewer corporations and
3 public utilities, a finding that the services that the
4 Respondents are providing are not safe and adequate, an
5 order that Respondents provide safe and adequate services
6 to their customers, an order that Respondents construct
7 improvements to the sewer system as necessary to comply
8 with the orders of the Ralls County Circuit Court and to
9 bring the facilities into compliance with the Missouri
10 Clean Water Law, Chapter 644, RSMo, and the regulations
11 promulgated thereunder, and an order to prohibit the
12 Respondents from charging for the sewer services they
13 provide unless they first obtain the approval of the
14 Commission to do so.

15 The Staff's evidence will show that
16 Respondents have admitted in documents they filed in this
17 case that they qualify to be regulated by the Missouri
18 Public Service Commission, that they have sent bills to
19 the recipients of sewer services and have accepted
20 payments for those services, that the Commission has never
21 approved those charges, and that there was an unauthorized
22 release of effluent by their system and that they, quote,
23 were unable to upgrade the system in the manner required,
24 unquote.

25 The Staff will also show through the

1 testimony of Staff witness Martin Hummel, through the
2 testimony of Complainants Gerald Reiersen and Bob
3 Hellebusch, and through the orders entered in the Circuit
4 Court of Ralls County, that the services that the
5 Respondents provide to their customers do not comply with
6 the requirements of the DNR and are not safe and adequate.

7 If the Commission grants the relief that
8 the Staff requests, the Respondents will have to either
9 spend some money to bring their system into compliance
10 with DNR requirements or transfer the system to some
11 qualified operator, or perhaps both.

12 Furthermore, if the Commission finds that
13 Respondents are subject to the jurisdiction of the
14 Commission, the Respondents will have to obtain the
15 approval of the Commission for any transfer of assets,
16 even if they do not have a certificate of convenience and
17 necessity.

18 The list of issues in this case identifies
19 seven issues for the Commission to resolve. With regard
20 to Issue No. 5, the Staff does not believe that the
21 Commission has the legal authority to order the Respondent
22 to transfer its assets to the Cannon Water District No. 1,
23 so it will not seek that relief.

24 With regard to Issue No. 6, the Staff is
25 also not asking to seek penalties in this case, although

1 it may at some subsequent time file a complaint asking for
2 such authority. And with regard to Issue No. 7, the Staff
3 is not asking for authority to seek the appointment of a
4 receiver, although it may at some future time file a
5 complaint for that purpose.

6 Martin Hummel will testify on behalf of the
7 Staff this morning and will be pleased to answer your
8 questions. Thank you.

9 JUDGE PRIDGIN: Mr. Krueger, thank you.
10 Ms. Baker, any opening?

11 MS. BAKER: Thank you. May it please the
12 Commission? My name is Christina Baker, and I'm here
13 appearing for the Office of Public Counsel and on behalf
14 of the ratepayers.

15 Customers have the right to demand safe and
16 adequate service from their public utility. The primary
17 issue in this case is whether Blue Lagoon sewer system,
18 which is owned by Respondents, is subject to the
19 regulation of the Missouri Public Service Commission.

20 In its May 9th, 2007 position statement,
21 Respondents state that, and I quote, Respondents admit
22 that they qualify to be regulated by the Missouri Public
23 Service Commission, end quote. Therefore, it is the
24 position of all the parties that Blue Lagoon sewer system,
25 which is owned by Respondents, is subject to the

1 regulation by the Missouri Public Service Commission and
2 this issue is no longer in controversy.

3 Since Respondents have admitted that they
4 are a public utility and under the jurisdiction of the
5 Commission, as a public utility, Respondents are operating
6 without a certificate of convenience and necessity.
7 Respondents do not possess the required certificate, nor
8 have they applied for one. There are no approved tariffs
9 which dictate the fair and reasonable fees to be charged
10 for the sewer service.

11 Therefore, any fees or compensation
12 collected by the Respondents for the sewer service have
13 not been authorized by the Commission and have not been
14 found to be just and reasonable. Therefore, the
15 Commission should find that Respondents have been
16 operating without a certificate of convenience and
17 necessity.

18 A public utility is also required to
19 provide safe and adequate service to their customers, and
20 customers have the right to demand that safe and adequate
21 service. The evidence will show that the lagoon treatment
22 facility at this public utility is loaded beyond capacity
23 to the point that it can and has overflowed.

24 The Missouri Department of Natural
25 Resources through the Attorney General has filed suit

1 against Respondent Mr. Jaeger in the Circuit Court of
2 Ralls County to compel him to comply with the Department
3 of Natural Resources' regulations. The suit in Ralls
4 County continues with no resolution. Therefore, the
5 Commission should find that the Respondents have not
6 provided safe and adequate service.

7 The Commission has the power to order
8 improvements to Blue Lagoon's sewer system as will promote
9 the public interest, preserve the public health and
10 protect those using the sewer system. However,
11 Respondents' actions plainly show that Respondents are not
12 financially, managerially and technically capable of
13 operating Blue Lagoon's sewer system in compliance with
14 applicable statutory and regulatory standards for a public
15 utility. So Public Counsel is dubious as to whether
16 Respondents will comply with any Commission order in this
17 regard.

18 The Complainants have asked and it can be
19 argued that the best thing for the customers is for the
20 Commission to issue an order removing the sewer system
21 from Respondents' control. The Commission has the power
22 to do so, but only under certain circumstances.

23 If the Commission were to determine that
24 Respondents are in violation of statutory standards that
25 affect the safety and adequacy of the service provided by

1 Respondents or determine that it is not reasonable to
2 expect that Respondents will furnish safe and adequate
3 service and facilities in the future, the Commission has
4 the authority to order a capable public utility to acquire
5 Blue Lagoon sewer system from Respondents, subject to a
6 determination that the transfer is not detrimental to the
7 public interest.

8 The Commission also has the authority to
9 seek appointment of a receiver once a determination is
10 made that Respondents are unwilling or unable to provide
11 safe and adequate service or that Blue Lagoon sewer system
12 has been actually or effectively abandoned by the
13 Respondents.

14 However, no such determinations like these
15 have previously been made by the Commission, nor are these
16 determinations properly to be made in this case before the
17 Commission. Therefore, it is Public Counsel's position
18 that these actions can be sought in another Commission --
19 another complaint that may be filed in the future.

20 The statute gives the Commission authority
21 to seek penalties for violations related to operating the
22 public utility without a certificate of convenience and
23 necessity, as well as for failure to provide safe and
24 adequate service to its customers. The evidence and
25 testimony shows that Respondents are operating a public

1 utility without a certificate of convenience and
2 necessity. The evidence and testimony also will show that
3 Respondents have failed to provide safe and adequate
4 service to their customers.

5 Therefore, it is Public Counsel's position
6 that if the Commission finds in this case that Respondents
7 are operating without -- are operating a public utility
8 without service of convenience and necessity, and that
9 Respondents have failed to provide safe and adequate
10 service to their customers, that the Commission can and
11 should order its General Counsel to seek the imposition of
12 penalties. Thank you.

13 JUDGE PRIDGIN: Ms. Baker, thank you.
14 Mr. Lemon, any opening?

15 MR. LEMON: Yes, Judge. May it please the
16 Commission? My name is James Lemon. I represent Ken
17 Jaeger, doing business as Blue Lagoon Sewer Corporation.

18 I believe the evidence will show that the
19 Blue Lagoon Sewer Corporation is a not-for-profit
20 corporation which was formed by Mr. Jaeger in an attempt
21 to create a qualifying and continuing authority under the
22 law; however, that the sewer system has never been
23 effectively transferred to that not-for-profit
24 corporation, specifically for the reasons that that
25 not-for-profit corporation is not a 393 not-for-profit

1 sewer corporation, and that that was not deemed acceptable
2 by the Department of Natural Resources.

3 In regard to the issues that we are here to
4 consider today, it is Respondent's position that while he
5 may qualify to be regulated under the Public Service
6 Commission, that it was his belief that the fees charged
7 were voluntary fees aimed at maintenance and taking care
8 of the system, that he obtained no profit, and that it was
9 his understanding that he was a not-for-profit and he was
10 not obtaining profit from it.

11 Recognizing the fact that that may not be
12 what the law actually is and that ignorance of the law is
13 not an excuse, that is the Respondent's position in regard
14 to whether he operated a lagoon without first obtaining
15 authority.

16 The evidence will show that this lagoon is
17 not a lagoon that Mr. Jaeger built. It is a lagoon he
18 acquired when he purchased property that had been
19 foreclosed. Once again, through his ignorance, attached
20 to this lagoon various homes and did accept some types of
21 payments which he believed to be voluntary payments for
22 maintenance of the system.

23 Certainly the evidence will show that there
24 was an unauthorized issue of effluent on one occasion.
25 However, this system, the evidence will show, was a closed

6 The evidence will show that, however, since
7 that release of effluent occurred, the Department of
8 Natural Resources has allowed him to do spray-offs, that
9 each time he has done a spray-off, it has been done under
10 supervision, it has been done with prior notice to the
11 Department of Natural Resources, and has been done in
12 compliance with their directives.

20 The evidence will show that it is
21 Mr. Jaeger's intent and, in fact, he has been attempting
22 to transfer this property to the Cannon Water Supply
23 District No. 1, which would be in effect a continuing
24 authority.

1 allow, as rebuttal testimony I do have Mr. Maxwell here
2 who is the person who represented Mr. Jaeger in regard to
3 the Public Water Supply District and can perhaps shed a
4 little more light on the issues regarding the problems
5 there.

6 However, at no time, despite the fact that
7 this has taken a long time, has Mr. Jaeger ever said that
8 he does not want to convey the property to that public
9 water supply district. In fact, on every occasion he has
10 attempted to. They are somewhat reticent to take it, the
11 evidence will show; however, Mr. Jaeger continues to
12 attempt to get that transfer done.

13 In addition to that, the evidence will show
14 that Mr. Jaeger has, in fact, set up a 393 sewer
15 corporation, which, however, has not been filed, and that
16 that was at the direct request of the Missouri Attorney
17 General's Office who prefers, to protect the public, that
18 this property be transferred to the Cannon Water Supply
19 District.

20 However, that 393 not-for-profit sewer
21 corporation does stand ready to be filed, and it was
22 drafted at Mr. Jaeger's expense, and he drafted that in
23 order to attempt to comply with the law and to transfer
24 this system to an effective not-for-profit continuing
25 authority and, in effect, remove this property from the

1 Public Service Commission's jurisdiction so that that
2 continuing authority would take care of things.

3 In regard to whether Mr. Jaeger should be
4 charged penalties, he has taken no actions in his opinion
5 which were intentionally in violation of the law. The
6 evidence will show that, in fact, when this case was
7 initially filed, there was a meeting between Staff,
8 Mr. Jaeger and the Respondents in which it was discussed
9 that Mr. Jaeger could continue to charge the same rates
10 that he had been charging to keep things going, provided
11 that he used that money to maintain the system, and, in
12 fact, that is what he has done. He has not intentionally
13 operated this sewer corporation at any point after he was
14 made aware that what he was doing was in error in an
15 attempt to thwart the law.

16 In regard to trans-- ordering a transfer to
17 the Cannon Water Supply District, we concur with Staff's
18 opinion that the Cannon Water Supply District cannot be
19 forced to take it, and, in fact, we have been doing
20 everything we can to convince them that they should take
21 it, but we do not believe that that particular order would
22 be within the power of the Commission.

23 In regard to appointment of a receivership,
24 we believe that Mr. Jaeger has been complying with the
25 court in Ralls County, and while it is certainly the

1 position of Staff and probably Public Counsel that this
2 has been dragging on a very long time, I would point out
3 that there is a circuit judge in control of that case.
4 He has granted the continuances and has kept things moving
5 along in a fashion which he believes appropriate, which,
6 of course, brings me back to our underlying point, which
7 is we have serious concerns that this action may violate
8 Mr. Jaeger's due process rights in the fact that it may
9 subject him to double jeopardy as the bulk of the issues
10 list, 3 through 7, are matters which are under
11 contemplation by the Ralls County Court.

12 The Ralls County Court has issued orders in
13 that regard, and Mr. Jaeger is attempting to comply with
14 those orders. If at some point he should fail to comply
15 with those orders, at that point it may be appropriate for
16 the Public Service Commission to exercise some authority,
17 but at this point in time it would be our position that
18 the Ralls County Circuit Court has established
19 jurisdiction over those issues.

20 Thank you.

21 JUDGE PRIDGIN: Mr. Lemon, thank you.
22 We'll proceed with the first witness, and it looks like it
23 would be Mr. Reiersen, and if you'll come forward to be
24 sworn, sir.

25 (Witness sworn.)

1 JUDGE PRIDGIN: Thank you very much, sir.

2 If you'd please have a seat at the witness stand.

3 And, Mr. Krueger, if I could impose upon
4 you to ask those background questions that you would
5 normally ask of say your own witness that you would tender
6 for cross so that we could get some foundation.

7 GERALD REIERSON testified as follows:

8 EXAMINATION BY MR. KRUEGER:

9 Q. State your name and address for the record,
10 please.

11 A. Gerald Reiersen, 43615 Blue Lagoon Place,
12 Monroe, Missouri 63456.

13 Q. Did you prepare and cause to be filed in
14 this -- prefiled in this case the direct testimony of
15 Gerald L. Reiersen which has been marked for
16 identification as Exhibit 1?

17 A. Yes.

18 Q. Is all of the information in there true and
19 correct to the best of your knowledge and belief?

20 A. Yes.

21 Q. Do you have any corrections or changes to
22 make to that?

23 A. No.

24 Q. Are you then offering this exhibit to the
25 Commission and tendering yourself for cross-examination?

1 A. Yes.

2 JUDGE PRIDGIN: Thank you. Exhibit No. 1
3 has been offered. Any objections?

4 (No response.)

5 JUDGE PRIDGIN: Hearing none, Exhibit No. 1
6 is admitted.

7 (EXHIBIT NO. 1 WAS RECEIVED INTO EVIDENCE.)

8 JUDGE PRIDGIN: Mr. Krueger, thank you. I
9 appreciate it.

10 MR. KRUEGER: Thank you.

11 CROSS-EXAMINATION BY MR. KRUEGER:

12 Q. Mr. Reiersen, in the statement of position
13 that you filed, you said Respondents are charging for
14 service.

15 A. Yes.

16 Q. Did you say that?

17 A. Yes.

18 Q. Are they charging you for service?

19 A. They did in the beginning. I got bills.

20 Q. When did you receive those bills?

21 A. Two years ago.

22 Q. Have you received bills from them since
23 then?

24 A. No.

25 Q. Do you know why they are no longer charging

1 you for service?

2 A. I don't.

3 Q. Do you know if they are charging other
4 residents of the subdivision for sewer service?

5 A. Yes.

6 Q. How do you know that?

7 A. Through them telling me. I believe we have
8 some canceled checks.

9 Q. In your statement of position, you said
10 that Respondents failed to provide safe and adequate
11 service. Is that your belief?

12 A. Yes.

13 Q. In what way is the service that they
14 provide unsafe or inadequate?

15 A. There have been several sewer backups, and
16 the lagoon has overflowed on a couple of occasions,
17 running effluent through our yards. That's been about it.

18 Q. When did these backups occur?

19 A. I had a backup in my house about two --
20 let's see. Well, at the time I filed this case, about
21 three years ago, I guess.

22 Q. Anything more recently than that?

23 A. No.

24 Q. In your direct testimony you said that
25 pictures were attached. Am I correct to understand that

1 those pictures are on the seventh page of the attachments
2 to your direct testimony?

3 A. Yes.

4 Q. What I'm referring to is the page with
5 apparently three photographs on it.

6 A. Yeah.

7 Q. Did you take those photographs?

8 A. Yes, I did.

9 Q. Can you tell me what they depict?

10 A. The one with the rug there is a rug soaked
11 with effluent, and the entire floor of the house was. I
12 had to tear up all the flooring and remove it, baseboards,
13 and disinfect the house.

14 Q. And by the one of the rug, you're talking
15 about the one that's in the lower left corner of that
16 page?

17 A. Correct.

18 Q. What are the other pictures?

19 A. I don't recall.

20 MR. KRUEGER: May I approach, your Honor?

21 JUDGE PRIDGIN: You may.

22 THE WITNESS: The picture on the lower left
23 is the laminate flooring that was buckled from water, and
24 the one on the right shows all the flooring has been
25 removed from the house.

1 BY MR. KRUEGER:

2 Q. And was that a result of the backup that
3 you experienced?

4 A. Yes.

5 Q. Okay. Do you have the originals of those
6 photographs?

7 A. Yes, I do.

8 Q. Did you provide them to the Commission?

9 A. I don't recall.

10 Q. Do you have them with you?

11 A. No, I don't.

12 Q. You stated that this resulted from
13 improperly sized sewer lines, correct?

14 A. That's correct.

15 Q. What led you to that conclusion?

16 A. It was the four-inch sewer line running
17 down Main Street which became plugged with a rock,
18 probably about 100, 200 feet from my house, and the sewage
19 backed up into my house from there.

20 Q. Okay. In your testimony on page 1,
21 line 11, you state that Mr. Jaeger was negligent in
22 monitoring the condition of proper spray-off equipment,
23 correct?

24 A. Correct.

25 Q. What did you mean by that?

1 A. Leaky hoses, effluent running off into the
2 creek, the ground being saturated.

3 Q. Can you tell me what the spray-off
4 equipment is or what it's used for?

5 A. Pumping off the lagoon. He's got several
6 different types of hoses, which they've got holes in it,
7 leaking, and connections leaking. Connects into some PVC
8 pipe that go off into a spray-off field with spray-off
9 heads connected to it.

10 Q. Now, on the eighth page of the attachments
11 to your testimony are four pictures. That's the page
12 following the one that I showed you a minute ago. Do you
13 see that page?

14 A. Yes.

15 Q. Did you take those pictures?

16 A. Yes, I did.

17 Q. Can you tell me what they depict?

18 A. Top left shows a -- I'll call it a fire
19 hose. It's a hose of some sort, with the effluent
20 shooting directly out of it onto the ground. Top right is
21 effluent going off into the creek. Same thing with the
22 bottom left. And lower right just shows the same thing,
23 the hose just dumping effluent off into the ground.

24 Q. When were those pictures taken?

25 A. I can't recall the date.

1 Q. Can you give me an idea? Was it within the
2 last year, last two years?

3 A. Couple years ago.

4 MR. KRUEGER: That's all the questions I
5 have, your Honor.

6 JUDGE PRIDGIN: Mr. Krueger, thank you.
7 Ms. Baker?

8 MS. BAKER: No questions.

9 JUDGE PRIDGIN: Thank you. Mr. Lemon?

10 MR. LEMON: Yes, Judge.

11 CROSS-EXAMINATION BY MR. LEMON:

12 Q. Mr. Reiersen, a couple of questions about
13 your testimony. You testified that the reason for the
14 backup was because of undersized lines; is that correct?

15 A. Correct.

16 Q. But actually, it wouldn't have mattered if
17 the lines were undersized if someone had not put a rock
18 into the system, would it?

19 A. Well, if it had been an eight-inch line
20 instead of a four-inch line --

21 MR. LEMON: Objection, Judge. Move to
22 strike as nonresponsive.

23 JUDGE PRIDGIN: Could you also -- could you
24 ask the question again?

25 MR. LEMON: Certainly, Judge.

1 BY MR. LEMON:

2 Q. Mr. Reiersen, yes or no, it would not have
3 mattered that the lines were four-inch if someone had not
4 put a rock into the system, would it?

5 MS. BAKER: Objection, your Honor. This
6 goes beyond the direct testimony. This's no testimony
7 about this in Mr. Reiersen's direct, so it goes beyond.

8 JUDGE PRIDGIN: It's not in his prefiled,
9 but he certainly discussed it on the stand just now. So
10 I'll overrule.

11 THE WITNESS: Will you repeat the question
12 again. I don't understand whether I should go yes or no.

13 BY MR. LEMON:

14 Q. Yes, sir, I'll repeat it for you. My
15 question was, it would not have mattered whether the line
16 was four inches or larger if someone had not put a rock
17 into the system, would it, yes or no?

18 A. Yes, it would.

19 Q. So you believe that the -- actually, so
20 it's your testimony that the system would have backed up
21 without a rock, is that correct, yes or no?

22 A. The system would have backed up without a
23 rock?

24 Q. Yes, sir.

25 A. No.

1 Q. All right. Mr. Reiersen, in fact, pursuant
2 to DNR's instructions in the Ralls County case, Mr. Jaeger
3 has now replaced all those lines, hasn't he?

4 A. Yes.

5 Q. And I believe your testimony was you have
6 not had a backup since then, have you?

7 A. No.

8 Q. In regard to the photos that you took,
9 Mr. Reiersen, I believe you testified that was about two
10 years ago; is that correct?

11 A. Yes.

12 Q. Was that prior to your filing this
13 complaint or after?

14 A. After.

15 Q. Okay. And was it prior to the Ralls County
16 court case being filed or after?

17 A. I believe after.

18 Q. All right. In regard to spray-offs, isn't
19 it true that Mr. Jaeger was notifying the Department of
20 Natural Resources prior to each spray-off, yes or no?

21 A. I don't know.

22 Q. So you don't know if DNR was inspecting
23 those spray-offs?

24 A. No, I don't.

25 Q. Isn't it true that there's been only one

1 reported escape to the creek?

2 A. I don't believe so.

3 Q. Do you mean you don't know or you have some
4 reason to believe there was other -- some other reported?

5 A. I believe there were others.

6 Q. Do you have personal knowledge?

7 A. I don't recall.

8 MR. LEMON: Okay. I don't believe I have
9 any additional questions at this time.

10 JUDGE PRIDGIN: Mr. Lemon, thank you. Let
11 me see if we have any questions from the Bench.

12 Commissioner Appling?

13 QUESTIONS BY COMMISSIONER APPLING:

14 Q. Good morning, sir. How you doing?

15 A. Okay.

16 Q. Good. I just have two or three questions.

17 How long has it been since you filed this complaint? I

18 read the information, but it was a few days ago and I

19 don't recall that. But when did you file it?

20 A. I believe according to the testimony it was
21 about two years and seven months ago.

22 Q. Takes things a pretty long time to work
23 through government, doesn't it?

24 But anyway, how many homes are hooked up to
25 this lagoon? Do you recall or do you know or should I

1 be --

2 A. I'm not even sure the exact number, but I
3 believe I've read 31.

4 Q. 31. Is there other people complaining?

5 A. Yes.

6 Q. Okay. I had a few other questions. You're
7 not going to leave here too early today, are you?

8 A. No.

9 Q. Today is the last day of the session across
10 the road over there, so I've got an 11:30. If you don't
11 leave too early, I might get back and talk to you a little
12 bit more about it, but hopefully, hopefully -- I'm saying
13 this to the Staff and everybody else -- that we can get
14 some safe and adequate water and resolve this problem.
15 That's the issue that I would like to do here. So we'll
16 be back to talk about it. Okay?

17 A. All right.

18 COMMISSIONER APPLING: Thank you very much.

19 JUDGE PRIDGIN: Commissioner Appling, thank
20 you. I don't have any questions. Any recross based on
21 Bench questions?

22 MR. KRUEGER: Not from Staff, your Honor.

23 JUDGE PRIDGIN: Mr. Krueger, thank you.

24 Ms. Baker?

25 MS. BAKER: Not from Public Counsel.

1 JUDGE PRIDGIN: Mr. Lemon?

2 MR. LEMON: None, Judge.

3 JUDGE PRIDGIN: All right. Thank you.

4 Normally this would be the chance where you would be asked
5 questions by counsel. Since you're representing yourself,
6 is there anything that you wanted to add to the questions
7 that you've been asked?

8 THE WITNESS: No.

9 JUDGE PRIDGIN: All right. Thank you very
10 much. If there's nothing further, then, you may step
11 down.

12 Mr. Hellebusch, if you'll come forward to
13 be sworn, please.

14 (Witness sworn.)

15 JUDGE PRIDGIN: Thank you very much. If
16 you would please have a seat in the witness chair.

17 Mr. Krueger, again, if I could impose on
18 you to lay the foundation with this witness.

19 MR. KRUEGER: Certainly, your Honor.

20 ROBERT HELLEBUSCH testified as follows:

21 EXAMINATION BY MR. KRUEGER:

22 Q. State your name and address for the record,
23 please.

24 A. Name is Robert Hellebusch, 150 New Grange
25 Pass, St. Charles, Missouri 63304.

1 Q. Are you the Complainant in Case
2 No. SC-2005-0099, Hellebusch vs. Jaeger and Blue Lagoon
3 Sewer Corporation?

4 A. Yes, I am.

5 Q. Did you prepare and cause to be prefiled in
6 this case the direct testimony of Robert M. Hellebusch,
7 which has been marked for identification as Exhibit No. 2?

8 A. Yes.

9 Q. Do you have any corrections or changes to
10 make to that document?

11 A. No.

12 Q. Is all the information in there accurate
13 and correct?

14 A. Yes.

15 Q. If I asked you those same questions today,
16 would your answers be the same?

17 A. Yes.

18 Q. And do you offer Exhibit 2 and tender
19 yourself for cross-examination?

20 A. Yes.

21 JUDGE PRIDGIN: Mr. Krueger, thank you.
22 Exhibit No. 2 has been offered. Any objections?

23 MS. BAKER: No.

24 MR. LEMON: No, Judge.

25 JUDGE PRIDGIN: No objection. Exhibit

1 No. 2 is admitted.

2 (EXHIBIT NO. 2 WAS RECEIVED INTO EVIDENCE.)

3 JUDGE PRIDGIN: Mr. Krueger, any cross?

4 MR. KRUEGER: Yes, your Honor. Thank you.

5 CROSS-EXAMINATION BY MR. KRUEGER:

6 Q. In the statement of position that you
7 filed, you said Respondents charged fees for sewer
8 service. Did you say that?

9 A. Correct.

10 Q. Are they -- are the Respondents charging
11 you for sewer service?

12 A. They have.

13 Q. When did they charge you for sewer service?

14 A. In '04, when the -- started in like June,
15 and I paid through the end of December of '04. After the
16 PSC made a ruling that he was not authorized to collect
17 sewer services, I stopped. Wrote him a letter stating so,
18 why.

19 Q. Did you understand that you were making
20 those payments voluntarily?

21 A. No, not when you submit a payment book
22 which I submitted as evidence.

23 Q. And do you know if the Respondents are
24 charging other residents of the subdivision for sewer
25 service?

1 A. Yes.

2 Q. How do you know that?

3 A. I received e-mails from other residents.

4 I've also heard it verbally from other residents.

5 Q. In your statement of position, you said
6 Respondents have never built a proper spray-off system or
7 emergency spillway, correct?

8 A. Correct.

9 Q. Tell me what a spray-off system is.

10 A. Spray-off is a method where you can spray
11 the effluent off to a field to reduce the level of the
12 lagoon.

13 Q. Do you think that a spray-off system is
14 required?

15 A. Yes.

16 Q. By your statement, do you mean that they
17 never built a spray-off system or that it was not proper?

18 A. It was not proper.

19 Q. In what respect?

20 A. The spray-off system, maybe one or two
21 heads would work out of the whole system. They were
22 shabbily constructed. They were duct taped to poles that
23 you would use to hold up a fence. It was not -- if you
24 were to go out and hire to install a spray-off system,
25 this is not what you'd have. The hoses also leaked.

1 Q. Does that cause harm to you?

2 A. It causes harm since the effluent's running
3 to a creek that's behind my house.

4 Q. Do you think that an emergency spillway is
5 required?

6 A. Yes.

7 Q. And what makes you think so?

8 A. Because in January of, I believe it was
9 '05, when the effluent came over the lagoon, flooded the
10 subdivision, there's pictures of frozen water through the
11 subdivision.

12 Q. In your statement of position you said that
13 the Respondents are illegally hooking up houses to the
14 lagoon. What are you referring to when you say that?

15 A. What I'm referring to is the lagoon was
16 originally built for the, what they call the motel, the RV
17 campground and an opera house. That was the intent of it.
18 And after that, after Mr. Jaeger purchased it from the
19 court supposedly through a bankruptcy, then he connected,
20 illegally connected 31 homes to that lagoon, which had
21 never been approved in the first place.

22 Q. Do you know if they are still connecting
23 homes to the lagoon?

24 A. Are they presently?

25 Q. Yes.

1 A. No.

2 Q. Do you know how recently they did?

3 A. I guess the last home that would have been
4 connected would have been last year.

5 Q. Okay. In your statement of position, you
6 said that Respondents are letting the lagoon overflow into
7 the houses. Do you have personal knowledge of such
8 overflows?

9 A. Yes. I've seen it.

10 Q. Has it overflowed into your own house?

11 A. No, it has not.

12 Q. When did this overflow occur?

13 A. That overflow was back in, like I say, '05,
14 the winter of '05.

15 MR. KRUEGER: Thank you. That's all the
16 questions I have, your Honor.

17 JUDGE PRIDGIN: Mr. Krueger, thank you.

18 Ms. Baker?

19 CROSS-EXAMINATION BY MS. BAKER:

20 Q. In your testimony, you mentioned that you
21 had been paying based on a payment book; is that correct?

22 A. That's correct.

23 Q. Is a copy of that payment book what you
24 have had premarked as Exhibit No. 5?

25 A. Correct.

1 Q. And is this a payment of your own payment
2 book?

3 A. Correct.

4 MS. BAKER: Your Honor, I'd like to go
5 ahead and offer that as an exhibit.

6 JUDGE PRIDGIN: All right. No. 5 has been
7 offered. Any objections?

8 MR. LEMON: Judge, I would object in that I
9 have not reviewed that exhibit yet. I would like a chance
10 to review it before it's submitted.

11 JUDGE PRIDGIN: You have an opportunity
12 now.

13 MR. LEMON: If I may take it back to my --

14 JUDGE PRIDGIN: Certainly.

15 MR. LEMON: Judge, I would withdraw my
16 objection at this time.

17 JUDGE PRIDGIN: Very good. Exhibit No. 5
18 is admitted without objection.

19 (EXHIBIT NO. 5 WAS RECEIVED INTO EVIDENCE.)

20 JUDGE PRIDGIN: Ms. Baker, any further
21 questions?

22 MS. BAKER: No further questions.

23 JUDGE PRIDGIN: Thank you. Mr. Lemon?

24 MR. LEMON: Thank you, Judge.

25 CROSS-EXAMINATION BY MR. LEMON:

1 Q. Mr. Hellebusch, just a couple of questions.
2 You had some testimony just now regarding the original
3 intent of the lagoon. Do you recall that?

4 A. Yes.

5 Q. All right. Now, your knowledge regarding
6 the intent in the construction of the lagoon, that's all
7 based on things that other people have told you; isn't
8 that correct?

9 A. It's based on DNR letters.

10 MR. LEMON: Move to strike. It's
11 nonresponsive.

12 JUDGE PRIDGIN: I think it was responsive.
13 I'll overrule. He said what it was based on.

14 MR. LEMON: My question, Judge, was isn't
15 it true. That was my question, isn't it true.

16 JUDGE PRIDGIN: All right. You may ask
17 that question again. I'm not going to strike it. You may
18 answer the question again and see if you get the answer
19 you're wanting.

20 MR. LEMON: Sure, Judge.

21 BY MR. LEMON:

22 Q. Mr. Hellebusch, isn't it true that you have
23 no personal knowledge regarding the intent of the original
24 constructors of the lagoon, yes or no?

25 A. Can I ask a question?

1 JUDGE PRIDGIN: No, you may not.

2 THE WITNESS: No. No.

3 BY MR. LEMON:

4 Q. It isn't true that you have no --

5 A. I have no personal knowledge.

6 Q. You have no personal knowledge. So
7 anything that you told the court in that regard is
8 hearsay; isn't that true?

9 A. No.

10 MR. KRUEGER: Objection. Calls for a legal
11 conclusion.

12 JUDGE PRIDGIN: Sustained.

13 MR. LEMON: I'll move on.

14 BY MR. LEMON:

15 Q. Mr. Hellebusch, you testified regarding the
16 lack of bills sent to you after 2004 when the Public
17 Service Commission determined that Mr. Jaeger was not
18 allowed to charge for the sewer services. Do you recall
19 that?

20 A. I never said a lack of bills. I said I
21 stopped paying. So yes, I recall that.

22 Q. You indicated that you had sent a letter to
23 Mr. Jaeger along those lines; isn't that correct?

24 A. Yes.

25 Q. And what you're talking about in 2004, that

1 was the initial hearing that we all attended in this
2 building in the small hearing room; isn't that correct?

3 A. Correct.

4 Q. And you were in attendance at that hearing
5 and also at the meeting in the basement of this office,
6 weren't you?

7 A. Correct.

8 Q. And you were present when there was a
9 discussion regarding the allowing of Mr. Jaeger to
10 continue to collect voluntary payments; isn't that
11 correct?

12 A. I do not recall that.

13 Q. You don't recall being in the basement and
14 being at that meeting?

15 A. I do not recall that being discussed.

16 Q. Isn't it true that it was after that
17 meeting that you sent the letter to Mr. Jaeger saying, I
18 am not going to voluntarily send you any payments?

19 A. I sent a letter to Mr. Jaeger after the
20 Public Service Commission issued its findings in writing
21 to us, and at that time I sent him a letter.

22 Q. You were at that meeting, though, correct?

23 A. Which meeting?

24 Q. The meeting in the basement after the
25 initial hearing.

1 A. Yes.

2 Q. Are you denying that that discussion
3 occurred or are you saying you don't recall it?

4 A. I do not recall any discussions saying that
5 he had a right to collect any payments.

6 Q. All right. Mr. Hellebusch, you've also
7 been at, I believe, every hearing in the Ralls County
8 Court; isn't that correct?

9 A. Correct.

10 Q. So isn't it true that the Court and the
11 Department of Natural Resources have not yet allowed
12 Mr. Jaeger to build the emergency spillway system?

13 A. That's dependent upon the proceedings. Has
14 he been restrained from doing so? No, I don't think so.

15 Q. Well, sir, weren't you in court when the
16 judge ordered him to go ahead and apply for a construction
17 permit to construct that?

18 A. Yes.

19 Q. And it wasn't until this last court date
20 that that was instructed, was it?

21 A. I cannot truthfully answer that. I think
22 it was -- that has been brought up before by the DNR, that
23 he needed to have a spillway and a construction permit for
24 that.

25 Q. But wasn't that one of the subjects that

1 you heard in court at the last court date, sir?

2 A. Yes.

3 Q. Mr. Hellebusch, in regard to the spray-off
4 system, you testified quite a bit about what it looks
5 like. Do you recall that?

6 A. Yes.

7 Q. Isn't it true that that is not a permanent
8 spray-off system?

9 A. I would think it wouldn't be.

10 Q. Isn't it true that the intent of that is
11 just for an emergency spray-off while there is still some
12 discussion regarding what the ultimate status of this
13 system will be?

14 A. I wouldn't consider that an emergency
15 spray-off system.

16 Q. Isn't it true that there is no intent for
17 that to be the ultimate method of disposing of the waste?

18 MS. BAKER: I'll object to that. He can't
19 speak to the Respondent's intent.

20 MR. LEMON: I can lay framework for it,
21 Judge.

22 JUDGE PRIDGIN: All right. I'll sustain if
23 you can reframe the question.

24 BY MR. LEMON:

25 Q. Mr. Hellebusch, you have been at every

1 hearing in the Ralls County Court; isn't that true?

2 A. Correct.

3 Q. And the Missouri Attorney General's Office
4 has made you aware of every aspect of this case; isn't
5 that true?

6 A. What do you mean by that?

7 Q. Haven't they made you aware of what's going
8 on in their discussions with Mr. Jaeger in regards to the
9 upgrades of the system?

10 A. I have not had a copy of court documents
11 and things like that if that's what you're inferring.

12 Q. Has Mr. Harry Bozoian kept in contact with
13 you and made you aware of the discussions with Mr. Jaeger
14 regarding the upgrades to the system?

15 A. Mr. Bozoian has discussed with me what he
16 would like to have happen and what he's trying to propose
17 to have done.

18 Q. So the answer to my question is yes; is
19 that correct?

20 A. I would say no, it's not your answer.

21 Q. So you're saying that Harry Bozoian has not
22 kept you up to date regarding what the proposed upgrades
23 are?

24 A. He has kept me informed, but you made the
25 comment that I am totally informed of everything that has

1 happened in this case. The answer is no.

2 Q. Let's narrow it down, then, if that is your
3 area. Isn't it true that you have been kept informed by
4 the Missouri Attorney General's Office regarding the
5 status of proposed upgrades to this system?

6 A. Yes.

7 Q. And isn't it true that there are various
8 other systems under consideration for the ultimate
9 disposal of this waste coming from the system you're
10 attached to?

11 A. Yes.

12 Q. So isn't it true, then, that the system
13 that is there is just a temporary system until such time
14 as those systems can be established?

15 A. I don't know if you can call this a
16 temporary system. I would say this is just a makeshift,
17 what's happening right now. Are you going to call it
18 temporary? I believe if he had his way it would be
19 permanent.

20 Q. Understanding your belief, do you have any
21 grounds for believing that this is to be the permanent
22 system?

23 A. I have no way to answer that yes or no. I
24 don't know.

25 Q. So you don't have any personal grounds, do

1 you, sir?

2 A. As far as what?

3 Q. Any personal knowledge that this will be
4 the ultimate method of disposal of this waste?

5 A. No, I don't know.

6 MR. LEMON: I have no additional questions.

7 JUDGE PRIDGIN: All right. Thank you.

8 QUESTIONS BY JUDGE PRIDGIN:

9 Q. I think I have just a couple of questions.
10 And I apologize. I don't have the copy of your prefiled
11 with me. I gave it to the court reporter. So if you'll
12 remind me, did you mention in your prefiled testimony a
13 January 7, 2005 Commission order?

14 A. Was it submitted?

15 Q. First of all I'm asking, did you discuss
16 that in your prefiled testimony?

17 A. Yes.

18 Q. And is it part of your testimony?

19 A. Yes.

20 Q. Okay. Did you submit a copy of that order
21 with your testimony?

22 A. I believe so.

23 Q. Okay. Does somebody care to point that out
24 to me? Because I've looked frantically for it and never
25 found it.

1 MR. KRUEGER: A kind of which order?

2 JUDGE PRIDGIN: A copy of the January 7,
3 2005 order which is discussed in testimony. I can hand
4 you a copy of your testimony if you'd like to look for it.

5 THE WITNESS: I have confidence in the
6 folks looking. If it's there, they'll see it.

7 JUDGE PRIDGIN: I don't see it. If counsel
8 sees a copy --

9 MR. KRUEGER: I don't see a copy.

10 BY JUDGE PRIDGIN:

11 Q. Do you have a case number? Do you recall
12 what case number that was?

13 A. It was 2005-0093.

14 Q. All right. What do you recall that order
15 saying?

16 A. In the order, it was under -- I recall it
17 was in the second paragraph, okay, of a page that I can't
18 be specific which one it was, but in there it stated that
19 the Commission found that he does not qualify as a
20 legitimate utility and, therefore, he has no reason or no
21 way to collect sewer payments. I do have that with me,
22 Judge. I could find it for you.

23 Q. All right.

24 MR. KRUEGER: Your Honor, I think

25 Mr. Hellebusch may be referring to a Report of Staff

1 Investigation. I'm not positive about that. Is that it
2 (indicating)?

3 THE WITNESS: No, this is not what I was
4 referring to.

5 BY JUDGE PRIDGIN:

6 Q. Did you say you had a copy of that?

7 A. Yes, I can find it for you.

8 Q. When could you find it?

9 A. As soon as I get in the little case of that
10 much paperwork, I can find it for you.

11 Q. Is it with you today?

12 A. Yes, it is.

13 Q. Would you care to go look for it real
14 quickly?

15 A. Certainly. This is a copy of the case
16 (indicating).

17 Q. Do you have the entire document?

18 A. I'm sure I do somewhere in there.

19 Q. Is this part of this case? I'm sorry. Is
20 this in this case file?

21 A. I guess I don't understand the question.

22 Q. This looks like a pleading. This looks
23 like a Staff pleading rather than a Commission order, and
24 I'm asking, is this pleading from this very case?

25 A. Yes.

1 Q. Okay. If you could show that to opposing
2 counsel, because it appears you are referring to a portion
3 of a Staff pleading from this very case, in which case
4 we've already got record of that.

5 JUDGE PRIDGIN: And, Mr. Krueger, I don't
6 know if you filed that or not. If you could look at that,
7 because I'm trying to figure out the exact report that
8 he's talking about.

9 MR. KRUEGER: I think I have my entire EFIS
10 file, but it may take me a minute.

11 JUDGE PRIDGIN: Would this be your
12 January 7, 2005 Response to Order Amending Caption and
13 Directing Filing?

14 THE WITNESS: I believe it is, Judge.

15 JUDGE PRIDGIN: Now I understand what
16 you're talking about.

17 THE WITNESS: Okay.

18 JUDGE PRIDGIN: Is that correct,
19 Mr. Krueger?

20 MR. KRUEGER: Yes, it is.

21 JUDGE PRIDGIN: All right. Just so we're
22 clear, that when Mr. Hellebusch is talking about a
23 January 7, 2005 Commission order, it, in fact, is a
24 January 7, 2005 pleading from the Staff of the Commission
25 in this case. It's docket entry No. 16 in this very case,

1 just so everybody's clear on the document he's referring
2 to.

3 Okay. Thank you very much, and that
4 answers my questions. Will there be any
5 recross-examination based on my questions?

6 MR. KRUEGER: No, your Honor.

7 MS. BAKER: No, your Honor.

8 MR. LEMON: No, Judge.

9 JUDGE PRIDGIN: All right. This would
10 normally be the time where if you had counsel you would be
11 asked questions, but I'll give you the opportunity. Is
12 there anything else that you want to add in addition to
13 the questions you've been asked?

14 THE WITNESS: Yes. When Mr. Lemon was
15 referring to the DNR letter, he was saying that I had no
16 personal information. The information I have is from the
17 Department of Natural Resources. It's -- it's in print.
18 Okay. It states their findings, okay, as to what the
19 lagoon was originally intended for, and that he illegally
20 hooked up to 31 houses and that had never been approved.
21 So that's where I come with that information.

22 MR. LEMON: Judge, I would go ahead and
23 object. I understand that this litigant is pro se, but he
24 has just testified that that is therefore hearsay
25 evidence, and I would move to strike any of the testimony

1 regarding what that document is purported to have said.

2 JUDGE PRIDGIN: And I'll overrule. I
3 understand your objection. I'm sorry. Anything further?

4 THE WITNESS: Yes. When he -- when he
5 talked about other types of methods that are under
6 consideration besides the spray-off, he's talking about a
7 pump and haul, but he failed to state what a pump and haul
8 system would cost, and that they originally estimated like
9 100,000 gallons of effluent at \$3,500 a year for the
10 residents.

11 After the DNR got the information from
12 Cannon Water District, it was closer to a million. That
13 equates to \$35,000 a year for the residents in sewer
14 bills, not 3,500. So that's a point he didn't bring up
15 that I would like to bring up.

16 JUDGE PRIDGIN: Okay. If there's nothing
17 further?

18 THE WITNESS: That's all.

19 JUDGE PRIDGIN: All right. Thank you very
20 much. You may step down.

21 Looks like the final witness is Mr. Hummel,
22 and if you'll raise your right hand to be sworn, please.

23 (Witness sworn.)

24 JUDGE PRIDGIN: Thank you very much, sir.
25 If you would please have a seat. Mr. Krueger, when you're

1 ready.

2 MR. KRUEGER: Thank you, your Honor.

3 MARTIN HUMMEL testified as follows:

4 DIRECT EXAMINATION BY MR. KRUEGER:

5 Q. State your name and address for the record,
6 please.

7 A. My name is Martin Hummel. My address is
8 P.O. Box 360, Jefferson City, Missouri 65102.

9 Q. By whom are you employed and in what
10 capacity?

11 A. I'm employed by the Missouri Public Service
12 Commission as an engineer with the water and sewer
13 department.

14 Q. Did you prepare and cause to be prefiled in
15 this case the direct testimony of Martin Hummel that has
16 been marked for identification as Exhibit 3?

17 A. Yes.

18 Q. Do you have any corrections or changes to
19 that document?

20 A. No, I do not.

21 Q. If I asked you the same questions today,
22 would your answers be the same?

23 A. Yes, they would.

24 Q. Attached to your direct testimony as
25 Schedule 1 was a document entitled Report of Staff

1 Investigation. Did you participate in the preparation of
2 that document?

3 A. Yes, I did.

4 Q. Is all the information in that report true
5 and accurate to the best of your knowledge and belief?

6 A. Yes, it is.

7 MR. KRUEGER: Your Honor, I would offer
8 Exhibit 3 and tender the witness for cross-examination.

9 JUDGE PRIDGIN: Mr. Krueger, thank you.
10 Exhibit No. 3 has been offered. Any objections?

11 MR. LEMON: No, Judge.

12 MS. BAKER: No.

13 JUDGE PRIDGIN: Hearing none, Exhibit No. 3
14 is admitted.

15 (EXHIBIT NO. 3 WAS RECEIVED INTO EVIDENCE.)

16 JUDGE PRIDGIN: See if we have any
17 cross-examination. Mr. Reiersen, any questions for
18 Mr. Hummel?

19 MR. REIERSON: No.

20 JUDGE PRIDGIN: Thank you. Mr. Hellebusch?

21 MR. HELLEBUSCH: No.

22 JUDGE PRIDGIN: Thank you. Ms. Baker?

23 CROSS-EXAMINATION BY MS. BAKER:

24 Q. Good morning.

25 A. Good morning.

1 Q. Still morning. Mr. Hummel, you researched
2 Blue Lagoon Sewer Services and its owner, Ken Jaeger, in
3 preparation for your testimony, didn't you?

4 A. Yes.

5 Q. What did your research entail?

6 A. Well, over the -- it entailed me trying to
7 get an understanding of what was out in the field,
8 including what's the number of customers and the nature of
9 the customers and what -- what are the needs of the
10 service of the -- what are the needs as far as sewer
11 treatment service is concerned, trying to develop an idea
12 of what kind of facilities are there, when were they
13 constructed, what is their capacity, trying to develop an
14 understanding of what is the status with their compliance
15 with DNR regulations and with any of the requirements that
16 DNR might have.

17 Q. Okay. Thank you.

18 A. That's generally what I tried to do.

19 Q. Thank you. In your testimony you state
20 that the Staff has not yet seen a final engineering
21 report, and that the Staff understands that the integrity
22 of the lagoon seal has not been verified; isn't that
23 correct?

24 A. Yes, that's correct.

25 Q. Can you explain what engineering report you

1 are referring to?

2 A. Well, I'm referring to the engineering
3 report that I -- a final report that's never been done.
4 The latest version that I have a copy of is labeled as
5 Amendment No. 1 to a preliminary engineering report.
6 Basically, as far as I understand, Mr. Jaeger has never
7 come forward to DNR and said this is what I am going to
8 build and do that in the context of presenting something
9 that is an approvable under DNR regulations.

10 Q. And so in your research, you looked to see
11 documentation on whether the lagoon seal has been
12 verified; is that correct?

13 A. Right now, off the cuff, I can't say
14 specifically where that issue came up, but my
15 understanding at this time is that that had never been
16 done. And there is a statement, I guess, in one of the
17 engineering amendments to the -- to the preliminary
18 engineering report trying to address that and basically
19 saying, Mr. Jaeger, you need to go out and get a
20 geotechnical firm to verify that.

21 Q. So basically, as far as you are aware,
22 Staff has not been provided a copy of any final
23 engineering report; is that true?

24 A. Correct.

25 Q. And also as far as you are aware, the Staff

1 has not been provided documentation that the integrity of
2 the lagoon seal has been verified; is that correct?

3 A. Correct.

4 Q. In another location in your testimony, you
5 state that with regard to the proposed irrigation system,
6 the Staff does not have information to support the
7 assumption that the proposed application rate of
8 approximately 40 inches of wastewater per year on the
9 4.9 -- 4.95 acres is sustainable for anything but the
10 short term; is that correct?

11 A. That's correct.

12 Q. Can you explain that statement for the
13 Commission?

14 A. Yes. To just say that you can put
15 40 inches of water on a piece of property and expect that
16 to go down through the profile, that's a pretty -- very
17 broad, general statement. That doesn't say anything
18 specific about whether you're going to -- how much you're
19 going to apply per day, how much are you applying per hour
20 and how much are you applying during a week. There's a
21 lot of specifics that you have to address if you expect
22 this to be able to work even in the short term.

23 Furthermore, you're providing -- to apply
24 this wastewater on this site, it's highly likely that that
25 site's not going to be the same after the first year.

1 Let's talk about, when I have done some research on this,
2 I believe that that 40-inch figure is a default value in
3 the DNR regulations with the assumption that, first of
4 all, that the site can actually take 40 inches, and it's a
5 default value as a maximum rather than a minimum of what
6 can be applied. Now, this is my opinion of reading the
7 DNR regulations.

8 I am also familiar with the soil types to
9 the extent that I've been able to research those, and I
10 feel I am familiar with that particular soil. It's an
11 Armstrong-type soil. And I don't believe that that soil
12 is capable of taking 40 inches a year plus the normal
13 rainfall and having it go through that profile,
14 particularly if you aren't very careful in how you apply
15 that water.

16 So I have some -- I definitely have some
17 reservations about applying anything close to 40 inches.
18 And furthermore, I would expect it to entail applications
19 of at least -- on at least 20 different occasions to get
20 that to be able to do that on that site. You can't just
21 come in and apply that water on five different occasions
22 during the year and expect it to work. You're going to
23 have runoff.

24 Now, DNR, that's kind of a -- from DNR's
25 perspective, they're going to have everybody -- have

1 whoever's in charge of that sign off saying there will be
2 no runoff, with the idea that if that gets to be a
3 problem, you're going to deal with it. And if they
4 approve it, I would expect them to approve that with that
5 caveat.

6 Q. And so basically, as of today, you've not
7 been provided with any information that would change your
8 opinion on the proposal of 40 inches of wastewater per
9 year on 4.95 acres and it being sustainable?

10 A. That's correct. I have not seen anything
11 that would be of a technical nature that would relieve my
12 concerns about some attempt to try to even think that
13 you're going to get 40 inches a year through that soil
14 profile.

15 Q. And in your testimony you state that
16 physical -- that the physical facility -- that physical
17 I'm sorry. That's hard to say -- that physical facility
18 improvements are needed in order for Blue Lagoon or even
19 another sewer utility to be able to provide safe and
20 adequate service; isn't that correct?

21 A. That's correct.

22 MS. BAKER: No further questions.

23 JUDGE PRIDGIN: Ms. Baker, thank you.

24 Mr. Lemon?

25 MR. LEMON: Yes, Judge.

1 CROSS-EXAMINATION BY MR. LEMON:

2 Q. Mr. Hummel, just a few questions. Can you
3 tell me specifically what your training and expertise is,
4 sir?

5 A. Well, as is in my testimony, I have a
6 degree in science and education. So I have spent a lot of
7 time in college on science issues. I've also got a degree
8 in engineering. My specific degree is from the ag
9 engineering department at the University of Missouri with
10 a combination of civil engineering and agriculture
11 engineering, with a fairly strong focus on water and soils
12 as part of that, too. So that's -- that's the background
13 I have. And then I've also got a fair amount of other
14 experience with that over a number of years.

15 Q. All right. So now you're not a trained
16 soil geologist, though, are you?

17 A. I don't have a certificate that says I'm a
18 soils geologist.

19 Q. So your speculation regarding 40 inches of
20 rain is based upon your experience as an engineer and a
21 scientist rather than as a soil geologist; isn't that
22 true?

23 A. It's not speculation. My --

24 Q. Your conclusions --

25 A. My opinion on this --

1 JUDGE PRIDGIN: Mr. Hummel, I'm sorry. If
2 you could -- I think you answered the question.

3 BY MR. LEMON:

4 Q. I think you answered the question. You
5 believe it's not speculation, and perhaps I used an
6 offensive term in error, and that was not my intent. Your
7 conclusion --

8 A. Okay.

9 Q. -- would that be a fair statement? So your
10 conclusion is based upon your training as an engineer and
11 not as a soil geologist; isn't that correct?

12 A. Correct.

13 Q. Okay. Now, Mr. Hummel, isn't it true that
14 the upgrades to this system ultimately are going to have
15 to be approved by the Department of Natural Resources?

16 A. Correct, yes.

17 Q. And isn't it true that that process is an
18 ongoing process that, in fact, is going on right now?

19 A. It's been going on for a long time, yes.

20 Q. But it is continuing on; isn't that true?

21 A. It's always -- from my perspective, it's
22 always been going on.

23 Q. Okay. Have you had recent contact with the
24 Department of Natural Resources regarding where we are in
25 the process, sir?

1 A. Would you define recent?

2 Q. Well, actually, perhaps I should ask you a
3 better question. How recently have you spoken with DNR
4 regarding where we are in the process?

5 A. I don't know if I can nail that down
6 without going back and trying to look at records. It has
7 not been within the last month.

8 Q. Okay. And I'm not trying to ask a tricky
9 question. Maybe it would be better if I just went to the
10 issues and asked you if you were aware of them. Were you
11 aware that Mr. Jaeger had offered to dedicate another
12 4.9 acres for the spray-off area since the original offer
13 of dedication?

14 A. An additional 4.9?

15 Q. An additional 4.9. I'm sorry. An
16 additional --

17 A. Additional to what.

18 Q. An additional four acres in addition to the
19 initial acreage that had been contained in the original
20 engineering report.

21 A. Well, I'm not aware spec-- well, you're not
22 telling me what the initial acreage. Could you name me
23 the total, please?

24 Q. Well, and I'm talking about in the last, I
25 believe, week or two weeks that an additional four acres

1 was offered because of concerns such as yours regarding
2 that the proposed spray area would not adequately cover
3 the amount of effluent. Were you aware that an additional
4 four acres had been submitted to DNR in the last week or
5 two weeks?

6 MR. KRUEGER: Your Honor, I'd object to
7 counsel testifying.

8 JUDGE PRIDGIN: I think he's simply
9 asking -- I'll overrule. I think he's simply asking if
10 he's aware. And, Mr. Hummel, the answer's going to be
11 something like yes, no or I don't know.

12 THE WITNESS: I am not aware of any
13 specific proposals recently on how they're going to change
14 this.

15 BY MR. LEMON:

16 Q. All right. Sir, based upon your knowledge
17 and expertise, if the Respondent did, in fact, offer up
18 more ground, such as an additional four acres, is it
19 possible that would change your opinion regarding the
20 feasibility of the engineering studies that you have
21 already seen?

22 A. I presume you want me to say yes or no?

23 Q. Yes, yes or no.

24 A. A significant change in what's proposed
25 would be yes. I mean, if there's a possibility of that, I

1 would certainly hope so.

2 Q. And I understand it appears you have not
3 been told about that, so that's why I'm asking if it would
4 change your opinion.

5 You had some testimony, sir, regarding the
6 integrity of the lagoon seal. Do you recall that?

7 A. Yes.

8 Q. And you were cross-examined a bit on that
9 by the Office of Public Counsel. Do you recall that?

10 A. Yes.

11 Q. Now, sir, that is the issue regarding the
12 compaction during the construction of the lagoon; isn't
13 that true?

14 A. That is an issue of what is the status of
15 the lagoon now in terms of whether it leaks or not.

16 Q. Isn't it true, sir, that the original issue
17 with DNR was that they had no proof that proper compaction
18 studies had been done at the time of the completion of the
19 lagoon?

20 A. I don't know if that -- the issue is does
21 the lagoon leak or not. That's the issue.

22 Q. Okay. Let me ask you this, then. Isn't it
23 true that at least one of the issues which the Department
24 of Natural Resources raised in regard to that issue of the
25 lagoon seal was that they had no compaction reports at the

1 time when they had problems with that?

2 A. I would say the answer is yes.

3 Q. Okay.

4 A. Can I make a -- do you want a --

5 Q. Somebody's going to cross-examine you. If
6 you want to go ahead and -- at my peril, as the Judge
7 said, I'm going to go ahead and let you fill that in if
8 you want to.

9 A. If there was evidence that the -- on the
10 lagoon construction, and that was shown to be that it was
11 properly compacted and everything, they would use that to
12 get to the goal of does the lagoon leak or not.

13 Q. Right.

14 A. At this point, several years later, you'd
15 have to come up with that information or you come up with
16 a different way of verifying whether it leaks. There are
17 other ways.

18 Q. Were you made aware that the original
19 engineer who supervised the construction of the lagoon
20 provided that compaction certification to the Department
21 of Natural Resources? Did they tell you about that?

22 A. No. I don't have that information, nor is
23 it in this what's labeled as a preliminary engineering
24 report.

25 Q. I understand. So were you made aware by

1 the Department of Natural Resources that they have moved
2 past that issue regarding whether the lagoon leaks or not?

3 A. No, I have not been made aware of that, if
4 that is the case.

5 Q. All right. Now, ultimately, sir, isn't it
6 true that the Department of Natural Resources is
7 controlling this issue of lagoon upgrades through the
8 Ralls County Circuit Court case?

9 A. I can't speak to the issues of Ralls -- of
10 what's going on with the Ralls County court case.

11 Q. Are you not aware of what's going on in
12 that Ralls County court case?

13 A. That's not been an area of me, you know,
14 particularly staying with that and seeing what's really
15 going on, no.

16 Q. Have you been made aware that the Missouri
17 Attorney General's Office and the Department of Natural
18 Resources have been addressing that issue in that case?

19 A. I haven't looked at those specifics.
20 Ultimately, I work for the Public Service Commission, and
21 I've got to see safe and adequate service even that sort
22 of in some respect goes beyond what DNR approves. If they
23 approve something and I think it's going to fail, I need
24 to speak up.

25 Q. All right. So it would be your position,

1 then, that you believe that you should be holding
2 Mr. Jaeger to a higher standard than that which the
3 Department of Natural Resources holds him to?

4 A. No. What I'm saying is, if I saw something
5 that was an error or I thought there was something that
6 was being overlooked that would -- that would somehow
7 impact whether safe and adequate service was going to be
8 provided for these customers for the long term, then I
9 need to speak up.

10 Q. Sir, have you asked DNR to give you a
11 status report, to keep you aware of what's going on in the
12 case?

13 A. You mean with regard to the Ralls County
14 case?

15 Q. No. Just in regard to the upgrades and
16 their review of whether or not the upgrades proposed are
17 going to be effective. Have you been asking them to --

18 A. I've had communications with them where I
19 try to stay up with what is the status of things.

20 Q. But you're not certain how recently you've
21 done that; is that true?

22 A. The short answer is yes. I'm not certain
23 of the time.

24 Q. Okay.

25 JUDGE PRIDGIN: That short answer is fine.

1 Thank you.

2 BY MR. LEMON:

3 Q. And I don't mean to belabor a point, but if
4 there are new developments going on in that Ralls County
5 case regarding upgrades and the approval process by DNR,
6 isn't it true that those new developments since the last
7 time you spoke to them could change your opinion and your
8 testimony that you'd originally given?

9 A. Yes.

10 Q. Okay. Has anybody from the Department of
11 Natural Resources or the Cannon Water Supply District
12 discussed with you the three types of systems that have
13 been proposed to Cannon Water Supply District as a
14 possible method of disposing of the effluent?

15 A. Which three types are you suggesting or
16 referring to?

17 Q. Well, it's my understanding, and I don't
18 mean to testify and get crossways with counsel, but it's
19 my understanding that the types of system that have been
20 proposed to the Cannon Water Supply District were a pump
21 and haul, a fixed system or a monitor system, and that
22 those are under consideration by Cannon. Is that
23 something that you had been made aware of, I guess is what
24 I'm asking?

25 A. I have heard comments that at least with

5 Q. I understand.

8 Q. So if there had been new developments
9 regarding different types of systems that you had not yet
10 been made aware of, isn't it true that that could probably
11 affect your original testimony also?

14 Q. But what --

20 MR. LEMON: All right. Could I have one
21 quick second, Judge?

25 JUDGE PRIDGIN: Mr. Lemon, thank you. And

1 I don't have any questions, so there's no need for
2 recross. Any redirect?

3 MR. KRUEGER: No, your Honor.

4 JUDGE PRIDGIN: All right. Thank you.

5 Mr. Hummel thank you very much. You may step down.

6 That's the last witness that I have on the
7 list of witnesses. Is there anything else from counsel?

8 MR. KRUEGER: Yes, your Honor. I would ask
9 the Commission to take official notice of the contents of
10 its file in this case and specifically of the Respondents'
11 answer and the Respondents' statements of position. And I
12 would ask the Commission to take official notice of the
13 documents that have been filed in the Circuit Court of
14 Ralls County, Case No. CV805-12CC, which was marked as
15 Exhibit 4 and has been distributed to the Bench and to
16 counsel.

17 JUDGE PRIDGIN: The Commission can
18 certainly take judicial notice of its own file. I'm not
19 at all convinced we can take judicial notice of another
20 court's files, but it seems to have been labeled as an
21 exhibit. Is that something you wanted to offer into
22 evidence?

23 MR. KRUEGER: Yes, it is, your Honor.

24 JUDGE PRIDGIN: Any objections to Exhibit
25 No. 4?

1 MR. LEMON: Judge, we would have no
2 objection to that. We believe that's a public record and
3 would properly be considered in this case.

4 JUDGE PRIDGIN: All right. Thank you. No
5 objections, Exhibit No. 4 is admitted.

6 (EXHIBIT NO. 4 WAS RECEIVED INTO EVIDENCE.)

7 MR. LEMON: Judge, I did have one matter.
8 There have been -- since the original order directing
9 filing, as I believe the Court may have drawn from my
10 cross-examination, there have been new issues regarding
11 approval of Public Water Supply District and things which
12 have been submitted to the DNR.

13 I would like to request at this time that
14 the Court allow me to put Mr. Maxwell on the stand to
15 offer rebuttal testimony which -- for that purpose.

16 JUDGE PRIDGIN: Counsel?

17 MR. KRUEGER: Your Honor, I would object to
18 that. There's a order of the Commission setting
19 procedural schedule which was entered on January 29th,
20 2006, and it states that the Commission will require the
21 prefiling of testimony and mentions that this practice is
22 to avoid unnecessary objections and delays caused by
23 allegations of unfair surprise at the hearing. This is
24 the first I've heard of this. Mr. Lemon has not done
25 anything to make me aware of this before -- before this

1 morning. And I think this results in unfair surprise and
2 does not comply with the Commission's order.

3 JUDGE PRIDGIN: Ms. Baker?

4 MS. BAKER: Public Counsel would certainly
5 second that motion. We've not been told ahead of time.
6 There was a continuance in this, so there was certainly
7 enough time to be told of this ahead of time. So we do
8 second the Staff's motion.

9 JUDGE PRIDGIN: Mr. Lemon?

10 MR. LEMON: May I address that, Judge?
11 Judge, the motion for continuance which was originally
12 granted was based upon the fact that I had been previously
13 scheduled on a trial on the original hearing date. The
14 issues which we are talking about are things that have
15 come back -- come up after that and, quite frankly, they
16 were specifically addressed in my motion for a
17 continuance, and it was based upon that motion for a
18 continuance that I feel it's necessary to have Mr. Maxwell
19 testify.

20 Based on that motion for continuance which
21 set out those issues, I believe that counsel has had
22 adequate notice of the issues that I'm talking about.
23 While they don't know specifically what Mr. Maxwell is
24 going to testify to, quite frankly, I have to admit, I
25 don't know specifically either, other than just in general

1 the things which have come up just in the last week.

2 MR. KRUEGER: We don't know what he's going
3 to testify about. Mr. Lemon has not done anything to
4 inform us about this or to give us an opportunity to
5 prepare for this. In his motion for continuance which has
6 been overruled, he only spoke about the fact that
7 something might happen in the Ralls County Circuit Court
8 within the next six weeks or so, but he was not specific
9 about that, and I think it is unfair surprise to the
10 Staff.

11 JUDGE PRIDGIN: I'm going to sustain the
12 objections. He's not on the list of witnesses, and that
13 the company, in fact, has not filed any testimony and I
14 don't think counsel's had the chance to prepare for this
15 last-minute testimony.

16 You are certainly welcome in any briefs or
17 motions to point out anything that's happening in the
18 Circuit Court of Ralls County which you think may moot out
19 part or all of this case. And as I'll mention in a little
20 bit, I'll order briefs later. And even after the briefs
21 are filed and at any time up to the point that you still
22 have time available to you to file a motion for rehearing,
23 which would be after the Report and Order, you can
24 certainly file with this Commission any information you
25 think may change circumstances or offer late-filed

1 exhibits.

2 You're obviously free to talk to counsel to
3 see if circumstances have changed so radically where we
4 need to come back to the bench. But at this time I don't
5 think it's fair to counsel to have this done without
6 prefiled testimony.

7 MR. LEMON: Thank you, Judge.

8 MR. KRUEGER: I would just request, your
9 Honor, that if new documents from Ralls County Circuit
10 Court are provided to the Commission in this way, that
11 Staff be given an opportunity to respond to that.

12 JUDGE PRIDGIN: Oh, absolutely.
13 Absolutely. Same with the other parties. Absolutely.
14 All right. Anything else from the parties?

15 MR. KRUEGER: No, your Honor.

16 JUDGE PRIDGIN: All right. What I will do,
17 I will wait until I get the transcript in. It will
18 probably be roughly June 1st or so, and I will then issue
19 an order for briefs. And for Mr. -- I believe it was
20 Mr. Reiersen will be summering elsewhere, if I understand
21 correctly.

22 MR. REIERSON: I'll be in Canada.

23 JUDGE PRIDGIN: All right. Mr. Reiersen,
24 Mr. Hellebusch, what my order will probably do is it will
25 require counsel to file briefs. It will give you the

1 opportunity to file them, but you won't be required. So
2 I'll give you the chance to file briefs like everybody
3 else, but there will not be any kind of punishment for you
4 if you don't want to file a closing brief. I'll certainly
5 give you that chance.

6 Is there anything further from counsel
7 before we close?

8 MR. KRUEGER: No, your Honor.

9 MS. BAKER: No, your Honor.

10 MR. LEMON: No, Judge.

11 JUDGE PRIDGIN: Thank you very much. That
12 will close this hearing in Case No. SC-2005-0083. I will
13 issue an order directing filing for briefs after the
14 transcript has been submitted. Thank you very much.
15 We're off the record.

16 WHEREUPON, the hearing of this case was
17 concluded.

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