

1 BEFORE THE PUBLIC SERVICE COMMISSION

2 STATE OF MISSOURI

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4 TRANSCRIPT OF PROCEEDINGS

5 HEARING

6 April 23, 2007

7 Jefferson City, Missouri

8 Volume 2

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10 In the Matter of Jason Becker,)
11 Becker Development Company,) Case No. Sc-2007-0044
 Complainant,)
12 v.)
 Aqua Missouri, Inc.,)
13 Respondent.)

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16 _____
17 MORRIS L. WOODRUFF, Presiding
 DEPUTY CHIEF REGULATORY LAW JUDGE.
18 CONNIE MURRAY,
 LINWARD "LIN" APPLING,
19 COMMISSIONERS.
20 _____

21 REPORTED BY:
22 LISA M. BANKS, CCR
23 MIDWEST LITIGATION SERVICES
24
25

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

2 JUDGE WOODRUFF: All right. Let's go
3 ahead and get started.

4 Welcome everyone to Monday morning.
5 This is Case No. SC-2007-0044, et al., Jason Becker and
6 Becker Development versus Aqua Missouri, Inc. My name
7 is Morris Woodruff. I'll be the regulatory law judge
8 today. And we're going to start today by taking
9 entries of appearance, beginning with for Jason Becker.

10 MR. WENZEL: Keith Wenzel for Jason
11 Becker and Becker Development LLC, with the law firm of
12 Hendren and Andrae, 221 Bolivar Street, Jefferson City,
13 Missouri.

14 JUDGE WOODRUFF: Thank you, sir. And
15 for the Staff?

16 MR. THOMPSON: Kevin Thompson for the
17 Staff of the Public Service Commission, Post Office
18 Box 360, Jefferson City, Missouri.

19 JUDGE WOODRUFF: And for the Office of
20 Public Counsel?

21 MS. BAKER: Christina Baker, P.O.
22 Box 2230, Jefferson City, Missouri 65102, appearing for
23 the Office of Public Counsel and the ratepayers.

24 JUDGE WOODRUFF: And Aqua Missouri?

25 MR. ELLINGER: Marc Ellinger, with the

1 firm of Blitz, Bardgett and Deutsche for Aqua Missouri,
2 308 East High, Suite 301, Jefferson City, Missouri
3 65101.

4 JUDGE WOODRUFF: And before we get
5 started, I believe, Ms. Baker, you had a statement you
6 wanted to make?

7 MS. BAKER: Yes, Judge. Public Counsel
8 has no witnesses and doesn't plan any cross in this
9 evidentiary hearing; therefore, Public Counsel would
10 like to ask leave to be excused from the evidentiary
11 hearing?

12 JUDGE WOODRUFF: Any party object to
13 Public Counsel being excused?

14 MR. THOMPSON: No objection.

15 MR. WENZEL: No objection.

16 MR. ELLINGER: No objection.

17 JUDGE WOODRUFF: You're excused.

18 One other announcement. You need to
19 make sure you turn off your cell phones and
20 Blackberries. Putting it on vibrate is not enough,
21 because the signal interferes with the web cast of this
22 hearing, as well as the public address system, and
23 that's a hardship for most attorneys these days.

24 All right. We'll start today by
25 taking -- hearing opening statements from the parties,

1 but before we do that, we'll take a few minutes off the
2 record to go ahead and mark exhibits. So at this point
3 we're off the record.

4 (OFF THE RECORD.)

5 (EXHIBITS NOS. 1 THROUGH 8 WERE MARKED
6 FOR IDENTIFICATION.)

7 JUDGE WOODRUFF: Let's go back on the
8 record, then, and we'll begin with the opening
9 statements, beginning with Mr. Becker.

10 MR. WENZEL: Judge Woodruff,
11 Commissioner Appling, my name is Keith Wenzel. I'm
12 with the law firm of Hendren and Andrae here in
13 Jefferson City, and I represent Becker Development
14 Company LLC and Jason Becker, a managing member of that
15 LLC, in a complaint we have filed with the Public
16 Service Commission.

17 Becker Development Company owns several
18 residential lots in the Lake Carmel Estates subdivision
19 here in Cole County, Missouri. Aqua Missouri owns and
20 services the water and sewer service in the Lake Carmel
21 development subdivision.

22 Becker Development Company LLC has been
23 attempting for several years to secure service to the
24 unimproved residential lots it owns in Lake Carmel but
25 those attempts have been made without success. We have

1 met on several occasions with representatives of Aqua
2 Missouri Inc., the Public Service Commission and the
3 Department of Natural Resources in an attempt to secure
4 the service. All of this is outlined in our testimony
5 that has been filed. We are here simply asking for
6 relief.

7 JUDGE WOODRUFF: Thank you. For Staff?

8 MR. THOMPSON: May it please the
9 Commission, this case has been a very frustrating one
10 for everyone involved. There have been repeated
11 attempts to reach a settlement short of litigation,
12 which have been unsuccessful. Staff is involved,
13 really, as kind of a bystander. The testimony you will
14 hear from Mr. Merciel will suggest that although Aqua
15 Missouri has, in fact, obeyed their tariff as written
16 and approved by this Commission, we believe the tariff
17 requires revision in order to make it easier for
18 development to occur. Thank you.

19 JUDGE WOODRUFF: Thank you. And for
20 Aqua Missouri?

21 MR. ELLINGER: May it please the
22 Commission, I'm Marc Ellinger, representing Aqua
23 Missouri. It's a very -- relatively straightforward
24 case here, Judge. The situation we have is Aqua
25 Missouri operates a treatment facility in the Lake

1 Carmel subdivision, which is in Cole County, Missouri.
2 It has complied with all regulatory requirements both
3 underneath the tariff that which it operates and also
4 underneath the various regulations that sewer companies
5 fall under.

6 Mr. Becker has sought to add an
7 unplatted extension onto the treatment facility. Under
8 the existing tariff, growth must pay for growth; in
9 other words, an extension or an addition by a developer
10 and the additional capacity that is required must be
11 paid for by the developer. There's really no dispute
12 in this matter.

13 As the testimony will bear out, that
14 there is not a sufficient capacity at the plant
15 currently to allow the expansion and the number of lots
16 that Mr. Becker's company is seeking to have added onto
17 the treatment facility, and accordingly, under the
18 tariff, it is clear Mr. Becker must pay the cost of any
19 capacity expansion that is required.

20 With respect to the Public Service
21 Commission's position that the tariff ought to be
22 changed, while the tariff may have various questions
23 within it currently, Aqua Missouri is following the
24 tariff and the tariff does provide protection for
25 ratepayers, that being that a developer must pay for

1 expanding capacity, as opposed to the company paying
2 for expanded capacity and then either having to settle
3 the existing ratepayers with a large increase in rates
4 or the company having to suffer untold consequences
5 with excess capacity pending those lots being built
6 out.

7 In either event, since the developer is
8 ultimately the person who profits by the sale of the
9 lots, they ought to incur the potential burden of
10 increasing capacity to provide treatment for those
11 lots. For those reasons, we believe that the relief
12 requested in this case should be denied by the
13 Commission.

14 Thank you.

15 JUDGE WOODRUFF: Thank you.

16 All right. Then I believe we're ready
17 for our first witness.

18 MR. WENZEL: Your Honor, I would like to
19 call Jason Becker.

20 JUDGE WOODRUFF: All right. Raise your
21 right hand.

22 (WITNESS SWORN.)

23 JUDGE WOODRUFF: You may be seated. You
24 may inquire.

25 JASON E. BECKER testified as follows:

1 DIRECT EXAMINATION BY MR. WENZEL:

2 Q. Would you please state your name for the
3 record?

4 A. Jason E. Becker.

5 Q. And are you the complainant in this
6 action pending before the Public Service Commission?

7 A. Yes, I am.

8 Q. And did you file direct testimony on
9 December 1st with the Commission?

10 A. Yes, I did.

11 Q. And is all that information still
12 accurate and correct?

13 A. Yes, it is.

14 MR. WENZEL: No further questions.

15 JUDGE WOODRUFF: All right. And for
16 cross-examination, any questions from Staff?

17 MR. THOMPSON: Yes, your Honor. Thank
18 you.

19 CROSS-EXAMINATION BY MR. THOMPSON:

20 Q. Good morning, Mr. Becker.

21 A. Good morning.

22 Q. I wonder if you might tell me how many
23 lots you currently own in the Lake Carmel subdivision.

24 A. Sixty-five.

25 Q. And of those 65 lots, how many are

1 presently served with sewer facilities?

2 A. Thirteen.

3 Q. Of those 13, are there homes either
4 completed or under construction on any of those lots?

5 A. No.

6 JUDGE WOODRUFF: Mr. Becker, if you
7 would, move the microphone closer.

8 MR. THOMPSON: No further questions.
9 Thank you, Mr. Becker.

10 JUDGE WOODRUFF: Cross from Aqua
11 Missouri?

12 MR. ELLINGER: Thank you, Judge.

13 CROSS-EXAMINATION BY MR. ELLINGER:

14 Q. Good morning, Mr. Becker.

15 A. Good morning.

16 Q. I notice in your direct testimony that
17 you indicated that you submitted three plans to Aqua
18 Missouri. With respect to those three plans, you have
19 not offered and to pay in full for any of those plans,
20 have you?

21 A. No.

22 Q. You want to hook on a number of new lots
23 or buildings to the existing treatment facility; isn't
24 that correct?

25 A. Yes.

1 Q. And you're asking aqua Missouri to pay
2 the expenses that would be required to increase
3 capacity to allow those buildings to be attached; is
4 that correct?

5 A. Yes, only for the lots that have sewer
6 mains on them currently.

7 Q. And you have, to date, refused to sign a
8 development agreement; is that correct?

9 A. Yes.

10 Q. And that agreement is contained in Aqua
11 Missouri's tariff, are you aware of that?

12 A. Yes.

13 Q. And you have refused to sign the form
14 agreement that is contained in those tariffs; is that
15 correct?

16 A. Yes.

17 Q. Aqua Missouri has offered to amend those
18 agreements; is that correct?

19 A. Yes.

20 Q. And you have refused to sign the
21 proposed amended agreements; is that correct?

22 A. Yes.

23 Q. Each of those amended agreements would
24 have required you to pay for the cost of the upgrade;
25 is that correct?

1 A. Yes.

2 Q. And that's the reason you refused to
3 sign those agreements?

4 A. It is.

5 Q. Are you aware that the existing
6 treatment facility was to be expanded based upon the
7 original plans as additional development occurred at
8 the Lake Carmel subdivision?

9 A. I am now.

10 Q. Have you, as the developer, constructed
11 any of those planned facility expansions?

12 A. No.

13 Q. In 2005, you approached Aqua Missouri
14 requesting a connection for a completed home; is that
15 correct?

16 A. Yes.

17 Q. At that time, there was a meeting
18 between yourself and Aqua Missouri; is that correct?

19 A. Yes.

20 Q. And Aqua Missouri asked to have an
21 amended developer agreement signed by you; is that
22 correct?

23 A. Yes.

24 Q. And in return, Aqua Missouri was willing
25 to allow you to connect that home; is that correct?

1 A. It did.

2 Q. And did Aqua Missouri allow you to

3 connect that home?

4 A. Yes.

5 Q. And did you sign the developer

6 agreement?

7 A. No.

8 Q. And that was in March of 2005; is that

9 correct?

10 A. Yes.

11 MR. ELLINGER: No further questions.

12 JUDGE WOODRUFF: All right.

13 Commissioner Appling, did you have any questions for

14 this witness?

15 COMMISSIONER APPLING: Yes. Thanks,

16 Judge.

17 QUESTIONS BY COMMISSIONER APPLING:

18 Q. Good morning, Mr. Becker.

19 A. Good morning.

20 Q. I have four or five questions I would

21 like to ask you, and hopefully you can clear up a few

22 things for me. Sit back in your chair there and

23 explain to me in a very small snapshot, what are you

24 seeking here this morning?

25 A. I am trying to be able to use the lots

1 that I have available with sewer and water service on
2 them at Lake Carmel so that I can further the
3 development of that area, in hopes that during that
4 process, we can come up with some sort of plan on how
5 to serve the unplatted or undeveloped areas of the Lake
6 with sewer and water service for the future.

7 Q. What do you see would need to be done
8 out there in order for you to get back on track and
9 start building homes out there?

10 A. There needs to be some sort of agreement
11 or resolution to the engineering problems that we're
12 having. I can't seem to get anything that the company
13 would like to accept. I can't get any -- I don't know
14 what you want to say -- point of view or any direction
15 to go what they think would be the best means to
16 improve their system, how I should proceed with that,
17 what I should have my engineers look at to do. I
18 received no support from them in that area at all.

19 Q. Did you send Aqua Missouri material
20 about a septic tank fishing or pumping system from --
21 did you send that to them?

22 A. Yes, I did.

23 Q. What was the results of that?

24 A. We got no response.

25 Q. Okay. What was the estimated cost of

1 such a system to serve 150 homes?

2 A. I believe it was around 140 or \$145,000

3 at the time.

4 Q. And how long ago was this?

5 A. Approximately 18 months.

6 Q. Okay. If you did the work yourself,

7 what is the estimated cost to extend water and sewage

8 lines to serve your development?

9 A. Around \$180,000.

10 Q. Did Aqua agree to offer to let you

11 construct an extension?

12 A. No.

13 Q. Are you willing able to make those main

14 extensions?

15 A. Yes.

16 Q. Are there other portions of land in

17 Aqua's service area that are suitable for development

18 if Aqua Missouri had capacity to serve them?

19 A. Yes.

20 Q. How many in your development are ready

21 for building right now?

22 A. Thirteen.

23 Q. Except for the water and sewage?

24 A. Well, 13 have water and sewer on them

25 right now, ready to build.

1 Q. But you can't build on them --

2 A. Right.

3 Q. -- because you don't have the capacity?

4 Whose responsibility is it for the

5 capacity of this?

6 A. Aqua Missouri.

7 Q. Okay. Who owns the dam located near the
8 lagoon that seems to be overflowing the --

9 A. The Lake Carmel Homeowners Association.

10 Q. Do you have any knowledge of whether
11 there is water running from this dam into that sewage?

12 A. I don't have direct knowledge of water
13 running from the dam into the sewage, although I know
14 that the dam has a leak.

15 Q. Okay. And it is leaking into the --

16 A. The leak that I know of is being
17 controlled with a French drain and is being directed to
18 the county stormwater drainage ditch alongside the Old
19 Fords Road.

20 Q. Okay. Again, I'm going to ask you and
21 just capitalize it, what do you need in order to get
22 started again building homes?

23 A. I need to be able to hook to the
24 existing sewer that has been in place since 1998, so I
25 can continue to develop that last phase that we had

1 started and be able to move forward with a new
2 extension and expansion of the treatment facility to
3 handle the final lots at Lake Carmel.

4 Q. And how many lots are you talking about
5 in that?

6 A. It would be 52.

7 Q. What do you have right now that you
8 would like to be able to hook up in order to get
9 started?

10 A. It would be 13.

11 COMMISSIONER APPLING: Thirteen.
12 Sixty-two. Thank you very much, Mr. Becker, that's all
13 the questions I have. Judge.

14 QUESTIONS BY JUDGE WOODRUFF:

15 Q. Mr. Becker, how many homes are in the
16 Lake Carmel subdivision right now?

17 A. Forty-four.

18 Q. Did you build all those or --

19 A. No, I did not.

20 Q. Did you build any of them?

21 A. Yes, I did.

22 Q. How many?

23 You don't have to check numbers.

24 A. I believe it's 13, 12 or 13.

25 JUDGE WOODRUFF: That's all the I have.

1 COMMISSIONER APPLING: Judge, one more
2 question.

3 JUDGE WOODRUFF: Go ahead.

4 FURTHER QUESTIONS BY COMMISSIONER APPLING:

5 Q. Have you and your engineers have in mind
6 a proposed solution to get this taken care of with --

7 A. We do.

8 Q. -- least amount of cost and --

9 And what does your solution cost? How
10 much money are we talking about?

11 A. The last solution that I had proposed
12 was an aeration system to serve the areas that I could
13 put in with the gravity-fed sewer only without the use
14 of a lift station. The proposal was \$14,414 for the
15 equipment. I had the power, was going to be brought
16 over at no charge from the electric co-op, and we were
17 looking at probably somewhere around \$10,000 in labor,
18 equipment time and a little bit of concrete to secure
19 the aerators.

20 Q. And what happened to the proposal?

21 A. Nothing.

22 COMMISSIONER APPLING: Okay. Thank you
23 very much.

24 JUDGE WOODRUFF: Recross based on
25 questions from the Bench, begin with Staff?

1 MR. THOMPSON: Thank you, your Honor.

2 RE-CROSS-EXAMINATION BY MR. THOMPSON:

3 Q. Mr. Becker, in response to a question
4 from Judge Woodruff, you indicated that there are
5 presently 44 homes in the Lake Carmel subdivision; is
6 that correct?

7 A. Correct.

8 Q. Is that 44 occupied homes?

9 A. Yes.

10 Q. I mean, at least some part of the year,
11 they're occupied?

12 A. Yes. There's actually 45 homes in the
13 subdivision, one of which I own is not hooked up to a
14 sewer, nor does it have a sewer main in front of it?

15 Q. Is that home occupied?

16 A. No, it's not.

17 Q. So it's constructed, it's not hooked up
18 and that's why it's not occupied?

19 A. Correct.

20 Q. And do you happen to know how many
21 persons reside in the Lake Carmel subdivision?

22 A. I do not. I asked that the Staff of the
23 Public Service Commission and Aqua Missouri conduct a
24 survey and nothing was ever taken action on that
25 either.

1 Q. Okay. And do you happen to know the
2 figure that the Missouri Department of Natural
3 Resources uses in estimating the number of persons per
4 home?

5 A. 3.7.

6 Q. Do you happen to know how many persons
7 the waste treatment plant has been rated for by the
8 Department of Natural Resources?

9 A. I think it's 119, according to the
10 permit, somewhere in that area.

11 Q. Okay. But that is the permit; is that
12 correct?

13 A. I believe it's listed on the permit.

14 MR. THOMPSON: No further questions.
15 Thank you.

16 JUDGE WOODRUFF: All right. Recross
17 from Aqua Missouri?

18 MR. ELLINGER: Yes, thank you, Judge.

19 RE-CROSS-EXAMINATION BY MR. ELLINGER:

20 Q. With respect to Commissioner Appling's
21 question regarding the tank system, a STEP system, are
22 you familiar with that system that you presented?

23 A. I am.

24 Q. And you submitted that to the Department
25 of Natural Resources; is that correct?

1 A. We did.

2 Q. And at that time, you were purporting
3 that the homeowners association would put in that
4 system; is that correct?

5 A. No. We had actually gone through the
6 process of setting up a not-for-profit organization to
7 handle the sewer system, called the Lake Carmel
8 Development Sewer Association.

9 Q. Okay. So you were not asking Aqua
10 Missouri to build and operate that system, you were
11 trying to do that independently; is that correct?

12 A. Yes.

13 Q. With respect to the aeration system, you
14 indicated that -- a number of different costs related
15 to that system. Were those costs ever formalized and
16 submitted to Aqua Missouri?

17 A. The cost for the equipment was. We
18 never got to the point to where we had to take -- we
19 took any bids on the actual installation of that
20 system.

21 Q. And were those costs to be borne solely
22 by your company?

23 A. No.

24 Q. The 13 lots you've indicated you're
25 ready to build on now, were those lots originally

1 platted to be part of the Phase 1 sewer facility?

2 A. I couldn't answer that question. I
3 didn't plat those lots.

4 MR. ELLINGER: No further questions.

5 JUDGE WOODRUFF: All right. Any
6 redirect?

7 MR. WENZEL: No, your Honor.

8 JUDGE WOODRUFF: All right. And do you
9 wish to offer Exhibit No. 6?

10 MR. WENZEL: Yes, your Honor.

11 JUDGE WOODRUFF: Exhibit 6 has been
12 offered into evidence. Is there any objection to its
13 receipt?

14 MR. ELLINGER: No objection.

15 JUDGE WOODRUFF: Hearing no objections,
16 it will be received into evidence.

17 (EXHIBIT NO. 6 WAS RECEIVED INTO
18 EVIDENCE.)

19 JUDGE WOODRUFF: Mr. Becker, you may
20 step down.

21 Call your next witness.

22 MR. WENZEL: Your Honor, I would like to
23 call Thomas P. Wells.

24 (WITNESS SWORN.)

25 JUDGE WOODRUFF: You may be seated. You

1 may inquire.

2 THOMAS P. WELLS testified as follows:

3 DIRECT EXAMINATION BY MR. WENZEL:

4 Q. Mr. Wells, would you state your name for
5 the record, please?

6 A. Thomas Phillip Wells.

7 Q. And did you prepare rebuttal testimony
8 and have it filed with the Public Service Commission on
9 January 5, 2007?

10 A. Yes, I did.

11 Q. And did you also prepare surrebuttal
12 testimony and have it filed with the Public Service
13 Commission on February 2nd, 2007?

14 A. Yes.

15 Q. Is the information contained in the
16 rebuttal and surrebuttal testimony still accurate?

17 A. Yes, it is.

18 JUDGE WOODRUFF: All right. For cross,
19 then, we'll start with Staff.

20 MR. THOMPSON: No questions.

21 JUDGE WOODRUFF: All right. From Aqua
22 Missouri?

23 MR. ELLINGER: No questions.

24 JUDGE WOODRUFF: All right. Then we'll
25 come up for questions from the Bench.

1 Commissioner Murray, do you have any
2 questions?

3 COMMISSIONER MURRAY: I'll pass right
4 now.

5 JUDGE WOODRUFF: Commissioner Appling?

6 QUESTIONS BY COMMISSIONER APPLING:

7 Q. Mr. Wells, good morning.

8 A. Good morning.

9 Q. How you doing?

10 A. I'm doing fine, sir.

11 Q. Give me a little background. I read
12 your testimony some time ago, but I done forgot about
13 your qualifications. Would you describe that a little
14 bit for me this morning?

15 A. My personal qualifications?

16 Q. Yeah, for engineering and all that.

17 A. I am a registered professional engineer
18 in the states of Missouri and Michigan both.

19 Q. Get closer to the mic if you would, sir.

20 A. My background is in civil and
21 environmental engineering and also in structural
22 engineering.

23 Q. All right. How long have you been
24 affiliated with the Becker project?

25 A. I got involved with Mr. Becker, I

1 believe, in late 2005 to do a preliminary report based
2 on practicality of service for his existing lots and
3 what sort of upgrades or expansions might be needed for
4 future lots.

5 Q. I have a few definitions, a few acronyms
6 that I want you to define for me, and then we'll get
7 into the two or three questions that I want to ask you.

8 First of all, what do ADF mean?

9 A. Average daily flow.

10 Q. That was pretty simple. I should have
11 been able to figure that out, being an engineer from
12 the Army. What does BOD mean?

13 A. That's biochemical oxygen demand.

14 Q. What is that?

15 A. That is a measure of how much oxygen
16 uptake is required in order to allow organisms to
17 process, or basically eat, the waste or organic
18 components in wastewater.

19 Q. What does TSS mean?

20 A. Total suspended solids.

21 Q. And your calculation on the lagoon
22 capacity as 1,108,000 -- I'm sure you don't remember
23 quite these numbers, but that was 1,108,468 gallons.
24 Mr. Gaebe calculated lagoon capacity as 666,099
25 gallons. That's about 5 percent difference in your

1 calculation, you two engineers. Why is the difference
2 in the volume so much greater?

3 A. Well, I can't speak for Mr. Gaebe. We
4 did some follow-up after some of this came to light,
5 and the fact that probably there was considerable
6 sludge built up in the lagoons. We had one of
7 our technicians visit the lagoons and perform some
8 depth probes and calculations using GPS equipment to
9 accurately determine his position within the lagoon and
10 also the depth of the water at certain points.

11 Based on that, we developed a sludge
12 profile across the bottom and used that for our volume
13 calculations. I can't speak to the other firm's
14 calculations.

15 Q. Give me your feelings about the sludge
16 and what the GPS system tell you about the sludge that
17 is in that lagoon.

18 A. Well, we have a facultative aerobic
19 lagoon that has been in service for a number of years
20 and you will get sludge buildup within the cells.
21 Also, I have no knowledge of what the construction of
22 these lagoons entailed originally, and I don't know how
23 accurate the depths were created during constructions
24 that were intended to be there.

25 What I have is the permit documents that

1 state a daily flow of 12,600 gallons as the maximum. I
2 also have area calculations that would indicate
3 possibly a slightly increased amount would be available
4 if depths were proper; however, you have to go with the
5 permit -- the permitted approval, which was 12,600.

6 Q. And that's from DNR?

7 A. Yes.

8 Q. If the volume on the lagoon is
9 1,801,000 gallons, could the system handle additional
10 homes?

11 A. It depends largely on the number of
12 actual persons present and on the on the amount of flow
13 per person per day. Based on what we found, we felt,
14 No. 1, that some work might be needed to raise the
15 berms and create additional capacity, but also that,
16 based on the water use records from Aqua Missouri, that
17 the domestic flow was such that with minimal work,
18 approximately four of the new lots that Mr. Becker
19 wishes to develop could be served, but after that,
20 there would have to be some upgrades.

21 Q. You was talking about building a berm on
22 the top of the existing berm that surrounds it at the
23 present time?

24 A. That's correct.

25 Q. And how much are we talking about

1 building it up, 18 or 20 inches or so?

2 A. Roughly, yes, sir.

3 Q. How many more houses could this system
4 handle by raising the lagoon berm, you said about four
5 or so?

6 A. That's about it.

7 Q. And then we'd really have to do some
8 dredging there and some other work that would need to
9 be done?

10 A. Yes. And we had suggested some
11 different improvements, I believe, in past reports.

12 Q. How much would raising the berm to hook
13 up those other four or five homes, how much would that
14 cost, your estimate?

15 A. That would depend on the total amount of
16 earth work, and really I have not gone into the
17 calculation of that at this point.

18 Q. Okay. Do the infiltration into the
19 system increase or decrease the capacity?

20 I'm talking about, I read some
21 information in some of the testimony about there's a
22 dam that is leaking into the lagoon itself.

23 A. Okay. I don't have any direct evidence
24 that the dam is leaking into the lagoon. The only
25 thing I know is what Mr. Becker stated, which is that

1 the visible leakage is being routed to the drainage
2 course of the county. I know that there was some flow
3 record issued, and that was part of my submittal, I
4 believe, my thoughts on that.

5 Q. Have you kind of walked or taken a look
6 at the dam and -- I'm really trying to get the distance
7 from the dam to the lagoon itself?

8 A. I have not personally done that. Our
9 field person was out there and did that.

10 Q. All right. Do the infiltration -- what
11 you saw out there, did that suggest a safety problem
12 with this dam or with the lagoon or anything else? Did
13 you see anything else that strike you as safety?

14 A. Again, I did not personally inspect the
15 dam myself.

16 Q. Okay.

17 A. The -- anytime you have leakage from a
18 Lake dam, that falls, I believe, under the Dam Safety
19 Program and should be investigated and looked at.

20 Q. Mr. Wells, if you can -- and this is the
21 last question -- if you can describe for me, what do
22 you see as the engineer out there that is a fix for
23 this, and give me some feel, if you have a feel for it,
24 of the cost of that.

25 But you were out there, and Mr. Becker

1 wants to get back, and I'm sure the company want to
2 resolve this problem, too, but what do you see as a fix
3 out there? Would you describe that for us, please?

4 A. In terms of near term, I believe that
5 work to restore what I believe to be the intended
6 capacity of the lagoons is to bring them back into
7 basic compliance with what the permit conditions are
8 would be needed. That could include raising the berms.
9 It can also include a program to remove sludge and land
10 apply it under current Missouri regulations. Either
11 one would serve to increase the available flow capacity
12 of the lagoons.

13 The practical limitation for the amount
14 of waste load that can be contributed to those lagoons
15 is governed by the area of the first cell, even if you
16 do these other improvements, and that will get you just
17 a little bit over the 12,600 current permit issue, but
18 not much. The kind of improvements I'm talking about
19 here would allow Mr. Becker to do those few lots he
20 wishes to do immediately. If he's going to do more
21 lots in the future, the rest of his existing 13 and the
22 52 he discussed, there would have to be some
23 significant upgrade of capacity.

24 And that would involve perhaps provision
25 of aeration systems within the lagoon to allow an

1 increase. Another option, which I believe I discussed
2 within the engineering reports I issued for Mr. Becker,
3 was land application of treated wastewater for a zero
4 discharge system. Each of those is going to cost
5 anywhere between 100,000 to \$175,000, depending on how
6 you do it, so it is not an insignificant outlay of
7 funds.

8 COMMISSIONER APPLING: Thank you very
9 much. I think that finalized the question that I have,
10 Judge.

11 JUDGE WOODRUFF: Commissioner Murray, do
12 you have any questions?

13 COMMISSIONER MURRAY: Just one or two.

14 QUESTIONS BY COMMISSIONER MURRAY:

15 Q. Good morning.

16 A. Good morning.

17 Q. What are you saying was the intended
18 capacity?

19 A. Well, the intended capacity, I think we
20 can only go back at this point to the permit. The
21 permitted capacity is 12,600 gallons per day.

22 Q. And you're saying that the work on the
23 berm would bring it back to intended capacity. Is that
24 what you're saying?

25 A. Yes.

1 Q. Because that would only be an additional
2 four hookups to what are currently hooked up?

3 A. That is where we are at this point.

4 Q. And would that create any overcapacity
5 situation in times of peak usage?

6 A. It should not. You are looking at
7 average use, peak use. What you have the here is a
8 lagoon system, facultative aerobic, and you are
9 considering a flow-through time of 120 days. That
10 generally does not cause an upset in treatment from
11 momentary peaks.

12 Q. But that would not solve a problem here,
13 as you understand it?

14 A. That is correct.

15 COMMISSIONER MURRAY: All right. Thank
16 you.

17 JUDGE WOODRUFF: Okay. Any recross
18 based on questions from the Bench?

19 MR. THOMPSON: Yes, your Honor.

20 JUDGE WOODRUFF: Go ahead.

21 MR. THOMPSON: Thank you.

22 RE-CROSS-EXAMINATION BY MR. THOMPSON:

23 Q. Mr. Wells, when you investigated the
24 lagoon, you concluded that, in fact, it's only
25 currently treating 9,237 gallons per day; is that

1 correct?

2 A. That is correct.

3 Q. And that is approximately three-quarters
4 of its rated or design capacity; is that correct?

5 A. That is based on flow, yes, sir.

6 Q. I understand. And that design capacity,
7 according to the permit, is expressed not only in terms
8 of flow per day, but also in terms of a design
9 population; isn't that correct?

10 A. Yes, sir.

11 Q. And would you agree with me that the
12 design population is 126?

13 A. Yes, I would.

14 Q. And did you hear Mr. Becker testify that
15 the figure used by DNR in calculating the number of
16 persons per structure is 3.7.

17 A. Yes.

18 Q. Would you agree that that's accurate?

19 A. I agree that that is the figure that DNR
20 proposes.

21 Q. Well, in the absence of an actual
22 census, that's the figure that you're required to use,
23 is it not?

24 A. It is when you are submitting for new
25 permits, yes, sir.

1 Q. Okay. What about when you're
2 determining capacity of an existing facility?

3 A. You work from existing population and
4 you work from existing flows.

5 Q. Okay. And you heard Mr. Becker testify
6 that there are 44 homes in the subdivision that are
7 occupied now?

8 A. Yes, sir.

9 Q. And would you agree with me that if you
10 multiply 44 by 3.7, you get 162.8?

11 A. I would agree that that's accurate if
12 that's what you do, sir.

13 Q. That's what I got. It may be accurate.
14 In that case sir, would you agree with me that in view
15 of the fact that the population has risen significantly
16 the design population and because the lagoon has lost
17 efficiency due to sludge buildup, would you agree with
18 me that the facility today is, in fact, beyond
19 capacity?

20 A. Without knowledge of the number of
21 persons actually served and in light of the fairly low
22 amount of flow, I could not completely agree with you.
23 The flow figures for rural sewage contribution are
24 generally anywhere from 60 to 70 gallons per person per
25 day. The water use records from Aqua Missouri kind of

1 bear out the flow figures that we have for the lagoon,
2 and depending on how you interpret that, you could take
3 that to mean that there was a lesser population at the
4 site.

5 It's very difficult to determine with
6 any great degree of accuracy what you're looking at for
7 population without an actual head count, but you have
8 to go back to flow when you're looking at that.

9 Q. Okay. And do you know if any tests have
10 been done to determine whether the output of the system
11 is acceptable in terms of its contents?

12 A. I am not privy to any direct testing on
13 it. I believe Aqua Missouri and their testing people
14 could testify to that much better than I could.

15 Q. I believe there are some flow figures,
16 are there not?

17 A. There are flow figures, I believe, that
18 were contained in some testimony by another engineer.

19 Q. What would it mean to you if daily flows
20 are recorded that are in excess of 15,000 gallons?

21 A. It all depends on how the monitoring was
22 done. The monitoring in outfall of the lagoon can tell
23 you what the daily flows are, provided that you have
24 calibrated your instrumentation properly, and I do not
25 know what that calibration is. And I also note that in

1 that same set of data, there was another month where
2 the flow varied widely from that. So I really don't
3 know.

4 Q. Assuming that the flow meter was
5 calibrated correctly, could those figures mean that the
6 system, as of today, is over capacity.

7 A. It could mean that there is a
8 significant infiltration problem or inflow problem,
9 meaning water other than sewage getting into the
10 lagoon.

11 Q. What effect does that have on the
12 processing of the sewage?

13 A. Well, it actually, in a sort of a
14 perverse way, it has a -- it has a good effect on the
15 quality of the effluent because what you're doing is
16 you're diluting that waste stream. You're providing a
17 clean water to mix the dirty water with and providing
18 less of a problem in terms of treating the waste. It
19 does produce a hydraulic overflow or overload of the
20 system, so in one way you're overloading and one way
21 you're augmenting capacity.

22 Q. So if I understand you correctly, sir,
23 this system is currently able to handle the number of
24 people than are using it only because the dam is
25 leaking into the sewage system?

1 A. I don't know that we know that the dam
2 is leaking into the sewage system, number one. Number
3 two, with a flow of 9200 gallons per day, you would
4 have to go back to the number of persons actually
5 connected. And, as I believe was previously stated,
6 there has been nothing done to actually verify that at
7 this point.

8 Q. You spoke earlier of 60 to 70 gallons
9 per person per day in a rural setting. Those aren't
10 the figures that DNR uses in its regulations, are they?

11 A. No, they are not.

12 Q. What is the figure that DNR uses?

13 A. The DNR uses 100 gallons per person per
14 day. And that is a design figure.

15 MR. THOMPSON: Thank you. No
16 further questions.

17 JUDGE WOODRUFF: All right.
18 Recross from Aqua Missouri?

19 MR. ELLINGER: Yes, please, Judge.
20 Thank you.

21 RE CROSS EXAMINATION MR. ELLINGER:

22 Q. Mr. Wells, have you ever personally
23 visited and -- and taken measurements at the lagoons at
24 Lake Carmel?

25 A. I have not personally taken

1 measurements, no, sir.

2 Q. You indicated that people from your
3 company have been there twice to take measurements; is
4 that correct?

5 A. They took measurements of the depths and
6 the profile of the lagoons.

7 Q. And that was two different occasions?

8 A. That was one different -- that was one
9 occasion.

10 Q. They've only been there one time?

11 A. They've been there twice. They only
12 took measurements of the facility once. The first time
13 was for investigation of the actual geometry.

14 Q. Okay. So the first time, they were
15 investigating the geometry?

16 A. The layout of the system, the position
17 of the lagoons.

18 Q. Okay. Was there an Aqua Missouri
19 representative with them at the time they did that?

20 A. No, sir.

21 Q. Was there an Aqua Missouri
22 representative with you the second time when they took
23 measurements?

24 A. No, sir.

25 Q. Did your employees receive permission

1 from Aqua Missouri to go on to their private property
2 prior to accessing for the measurements?

3 A. This was a permitted facility and new
4 measurements were needed to support Mr. Becker's case.

5 Q. Is that a yes or no?

6 A. No.

7 Q. You indicated that there was some
8 minimal -- I believe that was your term -- minimal work
9 needed to allow four extra homes to connect; is that
10 correct?

11 A. That's correct.

12 Q. And then you indicated that would entail
13 raising the berms by approximately 18 inches; is that
14 correct?

15 A. Yes.

16 Q. And you understand that, by regulation,
17 there must be at least two foot of free board; is that
18 correct?

19 A. That is correct.

20 Q. Do you know what the cost would be to
21 raise the berm by 18 inches and to ensure that there
22 are two feet of free board?

23 A. The 18 inch raise was to assure two feet
24 of free board, Number one. Number two, I don't have
25 the exact earth work figures present, so I don't know.

1 Q. And do you know if Mr. Becker was going
2 to pay for that increase or not?

3 A. I do not know.

4 Q. You also talked about potentially
5 dredging the lagoons; is that correct?

6 A. Yes, sir.

7 Q. Do you know how much it would cost to
8 dredge the lagoons?

9 A. I do not know without quantification of
10 the sludge and estimates from a company that does such
11 work?

12 Q. Have you had experience previously with
13 dredging of lagoons?

14 A. Yes, sir.

15 Q. And do you have an idea what the cost
16 has been in previous cases?

17 A. We are currently working on one for the
18 City removing approximately 4,300 cubic yards and
19 that's about \$180,000. That's a larger system.

20 Q. Where do you put the sludge?

21 A. It's land applied and that is regulated
22 under Missouri Department of Natural Resources. You
23 have to have proper testing permission from landowners,
24 proper type of soil, and then that is reported to the
25 State of Missouri during the January following

1 application.

2 Q. Are you aware of any contacts that were
3 made to find someone to accept the sludge?

4 A. No.

5 Q. Do you know if Mr. Becker contacted
6 anyone?

7 A. No.

8 Q. Did you contact anyone?

9 A. No.

10 Q. And your understanding is that these
11 lagoons are at least 20 years old; is that correct?

12 A. That's correct.

13 Q. And if there were any repairs, such as
14 increasing the berm height, would those repairs require
15 DNR approval?

16 A. Yes, they would.

17 Q. You talked earlier in response to
18 Commissioner Appling's questions something about BOD
19 and TSS. Do you recall those questions?

20 A. Yes, I do.

21 Q. Have you tested the BOD loading of the
22 lagoon?

23 A. No, I have not.

24 Q. Have you tested the TSS loading of the
25 lagoon?

1 A. No, I have not.

2 Q. You also talked about looking at billed
3 usage; is that correct, for water?

4 A. Yes.

5 Q. Do you know if that was billed usage as
6 what went through water meters to houses or whether
7 that was the total amount pumped out of the well?

8 A. My understanding is that is billed usage
9 that went through the meters, that was sales.

10 Q. Are you aware that those meters have
11 been upgraded and replaced for the first time?

12 A. No, I'm not.

13 MR. ELLINGER: No further questions,
14 Judge.

15 JUDGE WOODRUFF: Any redirect?

16 MR. WENZEL: No, your Honor.

17 JUDGE WOODRUFF: All right, then,
18 Mr. Wells, you may step down.

19 THE WITNESS: Thank you.

20 JUDGE WOODRUFF: That concludes Becker,
21 and we'll move on to Staff.

22 MR. THOMPSON: Staff calls James
23 Merciel.

24 JUDGE WOODRUFF: Mr. Merciel, if you'd
25 please raise your right hand.

1 (WITNESS SWORN.)

2 JUDGE WOODRUFF: You may be seated.

3 JAMES A. MERCIEL testified as follows:

4 DIRECT EXAMINATION BY MR. THOMPSON:

5 Q. State your name, please.

6 A. James A. Merciel, Jr.

7 Q. Thank you.

8 A. And Merciel is spelled M-e-r-c-i-e-l.

9 Q. How are you employed, Mr. Merciel?

10 A. I'm assistant manager, engineering, in
11 the water and sewer department at the Missouri Public
12 Service Commission.

13 Q. Are you the same James A. Merciel, Jr.,
14 that prepared or caused to be prepared rebuttal
15 testimony that has been marked Exhibit 1?

16 A. Yes, I am.

17 Q. Do you any corrections to that
18 testimony?

19 A. No.

20 Q. And if I were to ask you those same
21 questions today, would your answers be substantially
22 the same?

23 A. Yes.

24 Q. And are they true and correct to the
25 best of your knowledge?

1 A. Yes.

2 MR. THOMPSON: At this time, your Honor,
3 I would move the admission of Exhibit 1.

4 JUDGE WOODRUFF: Exhibit 1 has been
5 offered. Are there any objections to its receipt?

6 MR. ELLINGER: No objection.

7 JUDGE WOODRUFF: It will be received
8 into evidence.

9 (EXHIBIT NO. 1 WAS RECEIVED INTO
10 EVIDENCE.)

11 JUDGE WOODRUFF: Before we go on, I want
12 to go back and take care of Mr. Wells' rebuttal and
13 surrebuttal also. Did you wish to offer those?

14 MR. WENZEL: Yes, I do, your Honor.

15 JUDGE WOODRUFF: 7 and 8 have been
16 offered into evidence. Is there any objection to their
17 receipt?

18 MR. THOMPSON: No objection.

19 MR. ELLINGER: No objection.

20 JUDGE WOODRUFF: Hearing none, they will
21 be received.

22 (EXHIBIT NOS. 7 AND 8 WERE RECEIVED INTO
23 EVIDENCE.)

24 MR. THOMPSON: I would tender
25 Mr. Merciel for cross-examination at this time.

1 JUDGE WOODRUFF: Okay. And for
2 cross-examination, we begin with Becker.

3 MR. WENZEL: I have no questions.

4 JUDGE WOODRUFF: Aqua Missouri?

5 MR. ELLINGER: No questions, Judge.

6 JUDGE WOODRUFF: All right. We'll come
7 up for questions from the Bench. Commissioner Murray?

8 QUESTIONS BY COMMISSIONER MURRAY:

9 Q. Good morning, Mr. Merciel.

10 A. Good morning.

11 Q. I have a tariff in front of me that's
12 attached to Ms. Hale-Rush's testimony or surrebuttal.
13 Do you have that testimony?

14 A. Yes, I do. At least I hope I have all
15 the same pages you do.

16 Q. I'm looking at Sheet 24, and I want to
17 ask you, it has Rule 11 as extension of collecting
18 sewers.

19 A. I'm sorry. I've got the wrong sets of
20 pages here.

21 Q. Sheet 24, extension of collecting
22 sewers, do you have that sheet?

23 Actually, this is the Ascension Resorts
24 tariff, which I believe is the one that was -- is now
25 the tariff that is controlling for Aqua America; is

1 that right, or Aqua Missouri?

2 A. Not Ascension Resorts, no.

3 Q. It's not. Okay. This tariff that is in
4 the surrebuttal testimony of the company's witness, do
5 you know -- well, let me ask you this: Is Aqua
6 Missouri tariff in evidence, the current tariff?

7 A. Well, I believe in Ms. Hale-Rush's
8 rebuttal testimony, the pertinent pages are at the very
9 end here. It probably has an attachment number.

10 Q. I'm sorry. I read this last week, and
11 I'm rusty already.

12 A. Yes. There is -- the name on the tariff
13 is Capital Utilities, which is Aqua's tariff now. It's
14 Sheet No. SE-6, 7, 8, 9, 10 -- well, that's the
15 developer agreement. That's not actually an extension
16 of the rule.

17 Q. So it would be in the rebuttal testimony
18 and it's --

19 A. Well --

20 Q. There is an extension agreement.

21 A. The extension agreement is in there, but
22 I'm not sure if the extension rule itself is in there.
23 I thought it was in the case somewhere, but I'm not
24 sure.

25 COMMISSIONER APPLING: Would that be

1 Rule No. 12?

2 THE WITNESS: Probably, yeah.

3 MR. THOMPSON: Your Honor, that tariff
4 is on file with the Commission. I would ask that the
5 Commission take notice of it and we'll provide a copy
6 of it at the first break.

7 JUDGE WOODRUFF: That would be fine.
8 When we get the copy, we'll go ahead and mark it and
9 give it a number.

10 MR. THOMPSON: Judge, what number would
11 that be?

12 JUDGE WOODRUFF: That will be No. 9, a
13 to mark it right now. No. 9 Will be the next number.

14 MR. THOMPSON: It is indeed Rule 12, to
15 answer commissioner's question.

16 COMMISSIONER MURRAY: All right. And
17 that will be provided at the break?

18 MR. THOMPSON: Yes, your Honor.

19 BY COMMISSIONER MURRAY:

20 Q. Mr. Merciel, since I don't have it in
21 front of me, I can't really question -- it looks like
22 Commissioner Appling has it in front of him.

23 And now I have it in front of me. And
24 you have a copy?

25 A. Yes, Ma'am. I found one.

1 Q. All right. I see in Rule 12B-1 under
2 extension of collecting sewers and acquisition of
3 existing sewer systems, it states that the developer
4 shall contribute said sewer collection treatment
5 systems to the company with a detailed accounting of
6 the actual cost of construction; is that correct?

7 A. Yes, it is.

8 Q. What does that mean to you in terms of a
9 situation like the present one, where to meet the
10 developer's need, an extension would be required?

11 A. Well, I guess I would answer the
12 question from my own personal experience with this
13 company. And my answer is, in the past this company
14 has acquired facilities, even new facilities when
15 subdivisions were developed, a complete new
16 subdivision. And it was common that a treatment plant
17 be constructed along with the subdivision.

18 And it was not unusual, in fact, it was
19 normal in many cases in this area for the developers to
20 construct the treatment plant while they're doing the
21 rest of the subdivision work, and then the treatment
22 plant, along with the sewers would be contributed to
23 the utility company. So that is really what is
24 contemplated, it is a subdivision and a treatment plant
25 go along with it, which is fairly simple and works

1 fairly well.

2 Q. Where there is an existing treatment
3 plant like there is here that does not have the
4 capacity to serve the subdivision that the developer is
5 developing, does anything different apply?

6 A. Well, as we find here, it's a little bit
7 more complicated. This rule, this same rule would
8 apply in that situation, at least I believe that, and I
9 think everybody involved would agree with that. But it
10 certainly gets more complicated when a developer such
11 as Mr. Becker has to come in and evaluate an existing
12 facility that the company already owns and try to
13 upgrade it to the company's satisfaction.

14 I mean, in theory it sounds like it
15 would work, but in reality, we're finding it's quite
16 difficult to do that. And I might point out, in not
17 only Mr. Becker's situation. There are other
18 situations in this company's service area where there
19 are similar problems, including another formal case
20 that is pending before the Commission here.

21 Q. Now, this tariff that we're looking at
22 is the tariff that is currently in effect. Correct?

23 A. Correct.

24 Q. And it has been approved by this
25 Commission; is that correct?

1 A. It has been approved, that's correct.

2 Q. And an approved tariff has the force and
3 effect of law, does it not?

4 A. Yes.

5 Q. So I don't see that there's any choice
6 other than following the terms of this tariff, do you?

7 A. I would agree with that, yes.

8 Q. And, in your opinion, the terms of this
9 tariff require the developer to contribute a system
10 that is required for the upgrade?

11 A. Yes. Yes. I would agree with that.
12 However, I would want to go on to say that I don't
13 believe these rules are working well, and that's the
14 problem that I have.

15 Q. Nonetheless, they are in effect?

16 A. They are in effect. They are in effect.
17 And I have testified that I don't believe the company
18 is violating the rules as such. The question of
19 violation has come up informally in this situation, and
20 I don't believe there's a violation involved. I think
21 it's just a matter of rules that are not working well
22 for this situation.

23 Q. And this tariff allows for the developer
24 to actually do the work but be approved by the company;
25 is that correct?

1 A. Yes.

2 Q. Does it also allow for the company to do
3 the work with the developer agreeing to pay for it?

4 A. I don't know that this rule specifically
5 says that. A lot of companies do it that way, but I
6 don't think this one actually says that.

7 Q. Well, there is an extension development
8 clause -- extension agreement clause, rather, and it
9 looks like the -- and I'm on Sheet SE-6.

10 A. Yes, that's the developer agreement.

11 Q. Whereas the developer has requested the
12 company to extend or expand its system. And then,
13 whereas the company is willing to make such an
14 extension upon the terms and conditions hereinafter set
15 forth and the developer is willing and desires to
16 assist in the installation of such extension and
17 desires to bear the cost thereof.

18 A. Yes. That would seem to be saying that
19 the developer could go to the company and the company
20 would do all work and the developer pays for the work.

21 Q. Or the developer might assist with the
22 work, but will bear the cost of the work regardless.

23 A. Yes.

24 Q. Now, it does provide on Sheet SE-7,
25 clause 3 that the amount required for deposit may be

1 reduced by the construction costs provided by the
2 developer. Well, that would be -- that means that the
3 developer itself would be bearing -- the developer
4 would still be bearing the cost, just by doing the
5 work?

6 A. But he's directly incurring the cost,
7 right.

8 COMMISSIONER MURRAY: Okay. I think
9 that's all. Thank you.

10 JUDGE WOODRUFF: Thank you.

11 I just have a general question.

12 QUESTIONS BY JUDGE WOODRUFF:

13 Q. If you could just give me a brief
14 explanation of how a sewer lagoon of this type is
15 supposed to work.

16 A. How a sewage lagoon works?

17 Q. Yes.

18 A. Okay. It's basically a pond -- either a
19 pond or series of ponds of water. In this case, there
20 are three cells, and the sewage flows into the first
21 cell. It's a natural biological action. You have the
22 sewage and there are bacteria and algae and various
23 microorganisms, some which breathe oxygen and some
24 which do not breathe oxygen. That's the septic type,
25 when you have the septic tank or sulfur type of smell.

1 That's the non-oxygen-breathing bacteria. They reside
2 in the bottom parts of the lagoon.

3 But in the top, you have the
4 air-breathing bacteria. You do have the surface of the
5 water and the wind action that that introduces oxygen
6 into the water and allows the bacteria to breathe.
7 They break down the sewage, thereby treating the
8 sewage. In this case, the sewage would go into the
9 second cell, and then the third cell, so there are
10 three stages of treatment.

11 Q. And how does it flow from one cell to
12 the next cell?

13 A. There are pipes interconnecting it. The
14 pipe from the subdivision comes into the first cell,
15 and then there's a dike and the second cell is right
16 next to it. There is a pipe going through the dike,
17 goes into the second cell, another pipe from the second
18 cell going into the third cell, and then there's a
19 discharge structure and a pipe going out to the creek.

20 Q. Okay. And what happens when there's too
21 much water coming into it?

22 A. Well, in a lagoon, you just have a lot
23 of flow going through it. You could have some reduced
24 sewage treatment, since the water is flowing through a
25 lot faster than what is anticipated. It's -- lagoons

1 are so big as compared to a treatment plant. If you
2 have a treatment plant, it's a similar process, but
3 you're introducing oxygen and usually with blowers or
4 some kind of mechanical equipment.

5 And the volume is much less, and you do
6 have some solids in the treatment plants. If you have
7 a lot of flow coming through the plant, you can wash
8 the solids out and get a pretty strong discharge, much
9 higher than your discharge permit. If that's the case,
10 you have sludge out in the creek that you can see.

11 Q. And that's not a problem with the
12 lagoons?

13 A. Not as much of a problem. It could be a
14 problem, but not as much as with treatment plants.

15 JUDGE WOODRUFF: Okay. Well, that's
16 all the questions I have then. For recross beginning
17 with --

18 COMMISSIONER APPLING: Would you give me
19 a chance?

20 JUDGE WOODRUFF: Sure. Oh, I'm sorry.

21 COMMISSIONER APPLING: That's all right.

22 JUDGE WOODRUFF: I was thinking you gone
23 ahead of Commissioner Murray, so I'm sorry. Go ahead,
24 Commissioner.

25 COMMISSIONER APPLING: I'm always

1 respectful of Commissioner Murray.

2 QUESTIONS BY COMMISSIONER APPLING:

3 Q. Mr. Merciel, let's pick up where the
4 Judge asked you the last question. You mentioned that
5 the water flows through much faster than anticipated.

6 A. Uh-huh.

7 Q. What is causing that?

8 A. Well, it's -- I don't know exactly
9 what's causing it. It could be several things. You
10 could have stormwater being introduced or rainwater
11 being introduced into the sewer. It can flow in
12 manholes. Some people can have foundation drains or
13 downspouts in their house, houses connected.

14 With cases like that, you would often
15 see a surge during and after a rainfall. Okay. You
16 can also have basically leaking sewers, you know, bad
17 joints or leaking pipes and you can get groundwater.
18 In this case, there's a lake in the subdivision. It's
19 very possible, maybe even likely, that there's some
20 lake water infiltrating into the sewer pipelines, in
21 which case you'd have lake water coming into the pipe
22 along with the rest of the sewage.

23 Also we're talking about this leaking
24 dam. I don't know if anybody knows, but it's possible
25 that the dam leaks and some of the water may go into

1 the road ditch, but it could also flow under the road
2 through the ground and flow directly into the lagoon
3 through the berm. So that's basically the extra water
4 problems that we could be seeing.

5 Q. Under the DNR regulation, who is
6 responsible for checking to make sure that capacity and
7 flow is correct?

8 A. Well, that's really the company's
9 responsibility. They own and operate the treatment
10 facility, and if there is a problem with it, it's
11 really up to the company to diagnose and correct the
12 problem to the extent that is necessary, or perhaps
13 they can live with the problem. So even though there's
14 a lot of flow, it doesn't seem to have any ill effect
15 on the discharge, so they've been able to live with the
16 problem so far.

17 Q. To your knowledge, do you know whether
18 the company or anyone else has checked the flow? Not
19 the flow, but the minor water that's going into the
20 lagoon and causing the flow?

21 A. Well, I believe the company has checked
22 the discharge. I don't think they really measured
23 what's coming in through the pipeline, but as far as I
24 know, the company meters or they have metered what's
25 going out through the discharge.

1 Q. So you don't have know of anyone who's
2 checked to find out whether there's an additional flow
3 from rainwater from the dam or from any other place
4 that is going into that?

5 A. To my knowledge, nobody knows for sure
6 where that water is coming from.

7 Q. From your knowledge in being around
8 lagoons and lakes and being that close, does that
9 propose a safety problem in any way?

10 A. Not from the standpoint of the sewer
11 system. If you're talking about dam safety, I don't
12 have any experience with dams, so I can't speak to
13 that.

14 Q. I understand that. You know, I asked
15 Mr. Wells this morning about the cost estimate for
16 raising the berm 18 inches. Do you agree with his
17 estimate as far the cost is concerned?

18 A. I don't have any reason to doubt it. I
19 haven't really studied the cost of that, so I don't
20 have a strong opinion. I will say raising the berms
21 and increasing the depth, that would be one option on
22 how to improve this facility, so it is a plausible type
23 of improvement.

24 Q. How many -- if the lagoon was dredged
25 and the berm was built up for 18 inches, how much

1 capacity would that add on to it? Could Mr. Becker
2 hook up -- how many houses additionally could he hook
3 up if that was done?

4 A. Again, I'm not in a good position to
5 quantify it, but you certainly could not only restore
6 original capacity, but by removing sludge and building
7 it up, you could add capacity.

8 With an increased depth, the lagoon
9 might need aerators, mechanical -- you know, there are
10 different types of aerators. One type, it floats on
11 the water, it's a motor and it sprays water and you can
12 introduce oxygen.

13 With deep lagoons, some lagoons are
14 designed for mechanical aeration in addition to the
15 natural aerating process. So that might be a
16 necessity. That's all part of the design. Again, it
17 can be done.

18 Q. Mr. Merciel, in your working with the
19 company and Mr. Becker and DNR, has there been a
20 recommended solution to this lagoon area down there to
21 get Mr. Becker back on track for building homes and
22 doing what he needs to do down there?

23 Has there been a recommendation for
24 fixing this problem that's been out there at least
25 two-plus years?

1 A. It has been out there a long time. I've
2 not seen a proposal that everyone can agree on, and
3 again, that's my conceptual problem with developers
4 upgrading facilities. I think -- I believe this
5 company needs to use its own design team to figure out
6 what to do with the facility.

7 It may need to make a charge to
8 developers, new customers or use its own funds as rate
9 base, maybe a combination. That's what other companies
10 do. They don't rely on developers to upgrade
11 facilities. The companies take care of it themselves.

12 Q. But even if Mr. Becker closed his
13 business today and said, I'm not going to build another
14 house down there, which I don't think he will say that,
15 but however, sooner or later the company is going to
16 have to do something about this lagoon; is that
17 correct?

18 A. Probably so, particularly if individuals
19 build homes. And again, that's another thing that's
20 been pointed out in the tariff. If you didn't have
21 Mr. Becker here or some other developer, if you had
22 individuals connecting one by one, at some point the
23 lagoon would be overloaded with poor discharge and the
24 company, on its own, would need to come in and do the
25 improvements and fund the improvements. There would

1 not be a developer to help pay for it.

2 Q. This morning, Mr. Thompson's opening
3 statement indicated there was some rewrite that needed
4 to be done to the tariff, specifically for Aqua and
5 specifically for this location. Can you comment on
6 that?

7 A. Yes, well, it's not really limited to
8 this location. It's a company-wide problem, in my
9 opinion. I believe this company needs to -- well,
10 this is all possibility. I think the company might
11 want to consider creating a contribution in aid of
12 construction charge, CIAC is what we call it,
13 applicable to any new customer connecting, it can be an
14 individual, might be a developer with multiple lots,
15 and use those funds in combination of its own funds to
16 fund the construction of treatment facilities.

17 And when anyone, developer or
18 individual, requests connection, they might need to
19 extend a pipeline, but they're able to get a
20 connection. This company is telling people, we can't
21 connect you because we don't have the capacity, and I
22 think that's unacceptable for a utility to say that.
23 The utility needs to provide the capacity. Developers
24 and individuals need to worry about the pipeline in
25 front of their houses, not the treatment facility.

1 Q. So what is Staff going to do about this?

2 A. Well, we've talked to the company a
3 number of times and I consider the dialogue still open,
4 both with the local people and also with the company
5 executives. We have a dialogue regarding upgrading the
6 tariff and trying to fix this problem on the big
7 picture, not this specific situation as such, but just
8 the concept of how treatment plants are built, so we do
9 have an ongoing dialogue with the company in that
10 regard. The company so far as been rather resistant to
11 doing it, but we don't consider it a closed matter.

12 Q. Some time ago here, not too long in the
13 distance here, this company was in for a rate increase;
14 is that correct?

15 A. Yes, sir.

16 Q. Did the Public Service award them a rate
17 increase?

18 A. Yes, I believe there was an increase
19 granted.

20 COMMISSIONER APPLING: That's all the
21 questions that I have.

22 COMMISSIONER MURRAY: Judge, I have a
23 couple of questions.

24 JUDGE WOODRUFF: Go ahead, Commissioner.

25 FURTHER QUESTIONS BY COMMISSIONER MURRAY:

1 Q. Mr. Merciel, is the tariff that is in
2 effect for Aqua America similar to tariffs that are in
3 effect for other water companies in the state or are
4 their tariffs different in terms of extensions?

5 A. Actually, they're not substantially
6 different. I think the real difference is the activity
7 that this company is conducting and the way the tariffs
8 are being applied. This is a company that operates in
9 a large service area. Sometimes we call that a
10 watershed type service area, as opposed to many of the
11 regulated companies only have maybe a single
12 subdivision as a service area, and they don't deal with
13 various developers in having to expand a plant for
14 another developer.

15 Q. How about -- what is Missouri American's
16 tariff in terms of extensions. It is similar to Aqua?

17 A. It is -- well, actually -- well, yes,
18 it's similar. The wording is different. Missouri
19 American has really one service area of the three.
20 They have three sewer service areas. One is a single
21 subdivision, one is a large subdivision in which they
22 are constructing the treatment plant on their own, and
23 one, it used to be Cedar Hill Utility Company.

24 That does serve a watershed. They do
25 have a CIAC charge that applies to new customers in

1 that service area, and there are multiple developers.
2 There has been any expansion since Missouri American
3 has owned it, but Cedar Hill Utility Company did
4 construct treatment facilities for new customers.

5 Q. And does their tariff provide for CIAC?

6 A. Cedar Hills does, yes.

7 Q. Whereas Aqua's --

8 A. Aqua does not.

9 Q. -- does not provide for CIAC?

10 A. Right.

11 Q. And so to your knowledge, is this the
12 only company in Missouri that is operating under this
13 tariff language?

14 A. I'm sorry. You mean --

15 Q. The tariff language Aqua has.

16 A. It's the only company operating in the
17 method that they're operating in having developers do
18 any work on existing facilities. That's the only
19 company that I've ever dealt with that does that.

20 Q. Okay. And my question is about the
21 tariff. They have a tariff in effect to do that, to
22 operate as they are operating?

23 A. Yes.

24 Q. They're not in noncompliance with their
25 tariff; is that correct?

1 A. That's correct.

2 Q. And are they the only company in the
3 state that has that tariff language?

4 A. My answer is no, I think there are other
5 tariffs that have similar language. In fact, I know
6 there are. Many of the small companies have the
7 language, but I don't believe there are any companies
8 that are actually applying it in this manner.

9 Q. And those are smaller companies that
10 really are not dealing with multiple developers; is
11 that --

12 A. Either dealing with multiple developers
13 or they use the option, if there is a developer
14 involved, the company will not ask the developer to do
15 the work, like on the extension agreement where there
16 was a choice, either the developer does the work or the
17 company does the work, the companies do the work. They
18 wouldn't ask the developer to --

19 Q. Would the companies charge the
20 developer?

21 A. Yes, if the tariff required. Yes.
22 There could be a CIAC or if a developer just paid for
23 it, yes, they would.

24 Q. Has Aqua America -- or Aqua Missouri
25 offered to do the work if the developer would pay the

1 charge?

2 A. I remember one meeting where we almost
3 left the meeting with Aqua America going away
4 intending to commence some work with the intention
5 that Mr. Becker would pay for it. We didn't end the
6 meeting there because that's a difficulty. This
7 situation, Mr. Becker has already expended a lot of
8 money in doing a lot of engineering, and I wasn't
9 comfortable with the company just starting fresh and
10 basically having Mr. Becker write a blank check for the
11 company starting out with some design work.

12 Q. So are you saying the company should use
13 Mr. Becker's design?

14 A. Well, that's difficult to answer. In
15 this particular situation. I'm not sure how to resolve
16 that in this particular situation. I think -- I think
17 there's probably some engineering work that the company
18 could start with and do some design work and construct
19 a facility. Whether Mr. Becker needs to pay for the
20 whole thing or his share or the company just needs to
21 put it in a rate base in consideration of the expense
22 Mr. Becker's already incurred --

23 Q. If they don't use that design, that's
24 not to their benefit, is it?

25 A. Well, that would be true.

1 Q. How could they -- that doesn't sound
2 logical to me.

3 A. Well, I understand that, but you know,
4 this company's also asked Mr. Becker to go out and
5 solve the capacity problem and he's -- you know, he's
6 made attempts to do that. And here we are, nothing has
7 become of it.

8 Q. So --

9 A. It's -- both parties are in a -- in a
10 poor situation. Mr. Becker's expended, you know, some
11 money and the company, you know, they still don't have
12 a design that they can use, so -- so that's our
13 dilemma.

14 Q. Refresh my memory, if you would, in
15 terms of the design studies proposal that Mr. Becker
16 has done. Did the company request that Mr. Becker come
17 back with the design?

18 A. Well, yes. That's the premise from the
19 beginning, is Mr. Becker can have service if he solves
20 the capacity problem.

21 Q. Solves the capacity problem.

22 A. That's basically the Rule B-1 of the
23 tarrieff that we were reading. The developer's
24 responsible for the treatment plant construction and
25 upgrades.

1 Q. And then what happened after the design
2 was presented? I presume it was presented to the
3 company?

4 A. Yes. And to be honest, I don't remember
5 all of the details. It's been many years and there
6 have been two or three different engineers working on
7 it. But Mr. Becker has had various designs and the
8 company's not agreed to any of them.

9 Q. And Mr. Becker was willing to go ahead
10 and do the work at his cost in accordance with that
11 design; is that correct?

12 A. Basically. I think some of them might
13 have involved some cost sharing.

14 Q. Proposals by the developer for cost
15 sharing?

16 A. Yes.

17 Q. And did any of them involve compliance
18 with this tariff where the developer to cover the
19 costs?

20 A. Well, again, that's difficult.
21 Mr. Becker is not responsible for providing service to
22 the existing customers. And whatever we're doing here,
23 the existing -- it's hard to draw the line between
24 what's being done for new development and what's being
25 done to improve service for new customers. So that's

1 why I think the company just needs to do this. The
2 developer should not be involved with upgrading a
3 treatment facility because it's difficult to draw the
4 line what's being done and who should be bearing the
5 cost.

6 Q. If the design that was proposed by
7 Mr. Becker were implemented, would that provide service
8 to -- are you saying that would provide service to more
9 than the lots than Mr. Becker has developed?

10 A. Well, we're talking about improving an
11 existing facility, so --

12 Q. Is that a -- well, okay. But we've had
13 testimony today, I believe, that the existing facility
14 is adequately serving those customers to whom it is
15 currently connected and the new customers are the
16 developers customers, are they not?

17 A. Yes.

18 Q. So it appears that there is not a need
19 to upgrade the facility for the existing customers that
20 are currently connected?

21 A. Well, I went through this in my
22 testimony, the choices are upgrade the facility,
23 construct a second parallel facility, scrap completely
24 what's there and construct a brand new facility for the
25 whole place.

1 Q. And your recommendation is -- I mean --

2 A. Well --

3 Q. Tell me about constructing a second
4 facility. What is -- is that part of your
5 recommendation or is that --

6 A. It is part of my recommendation as a
7 possibility. Leave the lagoon there as it is and
8 construct another facility either plant or another
9 facility. And you would have to split the flow and you
10 know, use two different --

11 Q. Sorry, you would have to what?

12 A. I'm sorry. Split the flow. The
13 sewage. If you built a second complete facility, you
14 would have to split the flow. Some would go to the
15 existing lagoon and some flow would need to go to the
16 new facility.

17 Q. Why would you have to send some to the
18 existing lagoon?

19 A. If it's going to remain in service.

20 Q. Okay. I'm not -- then we're not talking
21 on the same --

22 A. Are you -- okay. Maybe I missed --

23 Q. I'm thinking when you said construct a
24 second facility, that you meant continued use of the
25 first facility --

1 A. Right. Right.

2 Q. -- for the existing customers, construct
3 a second one that would serve the developers.

4 A. Well, but we're using the same pipeline.
5 The pipeline that's coming to the lagoon would be in
6 use for Mr. Becker's new customers. We're not talking
7 about a separate -- a complete separate sewer system.
8 We still have the same collection system and
9 Mr. Becker's houses are on existing pipelines and would
10 be using existing pipelines, which presently go into
11 the lagoon. And to leave that -- I'm sorry go ahead.

12 To leave that lagoon in tact and
13 construct another facility to be in use in addition to
14 the lagoon, you would need to take the flow that's
15 coming through the pipeline and some would continue
16 going to the lagoon and some would have to be diverted
17 to the new treatment facility and both facilities would
18 be in use. There wouldn't be a second pipeline coming
19 through.

20 Q. Okay. But some of the flow from the
21 newly constructed connections would go to the old
22 lagoon; is that correct?

23 A. It -- yes, it would be, just along with
24 the rest of the subdivision. There would be no
25 separation of the flow from the new customers.

1 Q. But if -- I mean it appears that that
2 would be a way in which the cost could clearly be
3 delineated between the existing customers who are
4 currently having their needs met and the developer's
5 customers who need an upgrade. The current customers
6 don't need that second facility. Correct?

7 A. Correct.

8 Q. So why wouldn't the construction of the
9 second facility be purely at the developer's cost?

10 A. Well, it would be. What you described,
11 if that were undertaken, that would do that. It
12 would -- you would have a second facility, the
13 developer builds it and it would be exactly what you're
14 saying. That would be a cost that the developer could
15 incur.

16 Q. And that would be in accordance with the
17 tariff, would it not?

18 A. It would.

19 Q. And the design proposal that the
20 developer has come up with, was that the proposal? Or
21 was the proposal to do something with the existing
22 facility?

23 A. To my recollection, the proposals
24 basically involved improving the existing facility, so
25 there it would still be a single facility but modified

1 from its present condition.

2 Q. And it is your understanding -- and I
3 want to clarify this, that customers that are currently
4 connected have an adequate treatment facility right
5 now; is that correct?

6 A. That's correct based on -- based on the
7 discharge meeting its limits. There are no -- to my
8 knowledge, there are no pollution problems. The
9 company does have the water infiltration problem.
10 That's another separate issue that may or may not need
11 be addressed.

12 Q. It hasn't raised any red flags with DNR
13 or anyone at that the --

14 A. So far, it has not. Correct.

15 Q. And we're talking about a need here to
16 connect -- to make new connections all of which are
17 connections caused by the developer; is that correct?

18 A. Yes. That is -- that is the immediate
19 need here. Yes. I do want to just make one thing
20 clear: I'm not sure how much real estate is available
21 at the lagoon site or there may be a need for a pump
22 station to pump to some other site where a facility is
23 being constructed. That's an issue that would need to
24 be resolved. If a second facility is to be built,
25 where's it going to be. That's obviously a problem

1 that could be solved, I just don't know what the answer
2 to that is.

3 Q. Now, assume that a second facility is
4 built and its capacity is greater than what the
5 developer needs. Or is it possible to build a second
6 facility that is just exactly what the developer needs
7 for his entire build out?

8 A. It would be possible to do that. And
9 from the developer's perspective, that would be all
10 that he's required to do. It does leave the question
11 of what about individual customers that might connect,
12 the ones that Mr. Becker doesn't sell a lot to. There
13 are some empty lots. What if -- what if, say, ten or
14 15 individuals decide to build, there would be the
15 company's responsibility to deal with them.

16 Q. And that's unrelated to the present
17 situation. That's the company's problem if there are
18 individuals who try to attempt to connect.

19 A. Correct. It's not Mr. Becker's problem.
20 It's unrelated to this case, but it's something the
21 company may need to deal with. Again, which is why I
22 believe the company needs to have a control over what
23 kind of facility it builds.

24 Q. So if there's an upgrade, the -- I can
25 understand that if you're talking about an upgrade to

1 the current system. And that -- wouldn't that be the
2 reason that the tariff reads that the developer -- or
3 that the company has to approve the developer's plans
4 before the developer goes ahead and makes those
5 changes?

6 A. Yes. It is. The company is responsible
7 for operation, so it needs to know what it's getting.
8 If the developer's going to build it, the company needs
9 to agree to what's going to be built and what it is
10 that it's going to be operating. With what we've been
11 talking about with the second facility, you know, keep
12 in mind we have two facilities, not just one. Now,
13 they're right next door to each other, so you know,
14 with one trip the operator would go to both of them.

15 But you know, there might be some
16 inefficiencies in operating two facilities as opposed
17 to doing an upgrade and operating one facility. That's
18 all part of the feasibility when you look at a
19 treatment plant increases and upgrades.

20 Q. The bottom line here, the disagreement
21 is -- is the disagreement purely on who pays for the
22 upgrade or is it a combination of a disagreement about
23 what the upgrade should be and who pays for it?

24 A. I'd say it's more of a disagreement on
25 what the upgrade is going to be. Who's going to pay

1 what may be part of it that's coming into the equation
2 here. Because I don't think -- I don't think they
3 really settled on who's going to be responsible for it.

4 Q. Okay. In terms of the proposal that was
5 put forth by the developer, has Staff looked at that
6 proposal and the company's reasons for not accepting
7 the proposal or not being -- not thinking that that is
8 one that they want to operate?

9 A. Well, to be honest, the Staff, we
10 haven't really gotten into a detailed review of the
11 proposals. Our attitude is not only the company needs
12 to agree to it, but also the Department of Natural
13 Resources has to approve it. So we pretty much left it
14 to the three parties. If all three parties are
15 satisfied, then we'd be happy with it.

16 Q. So under the tariff, if the company is
17 not pleased with the proposal, there has to be one that
18 the company can approve?

19 A. Yes.

20 Q. Is that correct?

21 A. Yes.

22 Q. And I believe you indicated that the
23 company should have that control over its own
24 facilities?

25 A. I think the company needs to make

1 decisions on what to do with the facilities. It needs
2 to determine the cost of it and the trade off between
3 capital costs and operating cost. That should be the
4 company's responsibility.

5 Q. And is your position that there was a
6 plan presented by the developer that the company has
7 rejected that the company should do its own engineering
8 study and go forward and make the -- get the agreement
9 from the developer that the developer will pay for it,
10 for even if -- I don't know -- whether there is a
11 provision for paying up front or anything like that.
12 But is that your position that the company should go
13 forward and do it at the developer's cost?

14 A. Well, it's -- it's hard to ask the
15 company to do that and ask the developer to pay for it
16 at this point considering the history. In hindsight, I
17 think that should have happened from the beginning. I
18 am just hesitant to recommend that the developer pay
19 for starting fresh with the design and construction
20 considering the effort he's put into it thus far.

21 Q. But you don't know what potentially is
22 wrong with the design that was proposed from the
23 company's perspective?

24 A. Correct. I don't really have a
25 recommendation or I'm not been involved in the review

1 of it, so I don't have an opinion on that.

2 COMMISSION MURRAY: Thank you.

3 JUDGE WOODRUFF: Commissioner Appling,
4 do you have any more questions?

5 COMMISSIONER APPLING: The more I listen
6 to it, the more I become confused about what's going on
7 in the Camel.

8 FURTHER QUESTIONS BY COMMISSIONER APPLING:

9 Q. But anyway, this whole system was owned
10 by Capital prior to Aqua purchasing it. Correct?

11 A. Yes, it was. And it was another company
12 before that, but yes.

13 Q. What year did Aqua purchase this? Was
14 it '06? '05?

15 A. It would have been probably in the
16 mid-'90s sometime.

17 Q. Aqua?

18 A. Oh, I'm sorry. Well, no. I was talking
19 about Capital Utilities. Aqua purchased -- acquired
20 Capital Utilities late '90s. I don't remember exactly.
21 '98. '99, probably. That's a matter of record, of
22 course too. But I don't remember off the top of my
23 head.

24 Q. Mr. Merciel, looking at this whole
25 situation -- and you have a pretty good feel because

1 you have been working on this for some while. I know
2 the company would like to resolve this problem and so
3 would the contractor. In your best mind, would you
4 describe for me to try and clear me up here so I can
5 get to a point that I can make a recommendation, a
6 decision on this case? What are your thoughts this
7 morning, would be a fair and legal solution to this
8 problem?

9 A. Well, again, I'm -- I'm having a
10 difficult time trying to judge who should be paying for
11 what at this point considering the history. But I'm
12 inclined to say that this company should go out and
13 figure out what to do with this facility considering
14 the growth that it expects. And to the extent the
15 company expends money doing design construction, it
16 would be considered rate base.

17 And frankly, I'm not clear just how much
18 Mr. Becker should be paying in additional to what he's
19 already expended. I wish I had a good recommendation
20 on that, but I really don't. He, of course, had done a
21 lot of engineering work. He hasn't done any
22 construction work on the facility, so they're probably
23 should be capacity some that he pays for with the
24 construction.

25 Q. And is it your professional thought that

1 the tariff really doesn't fit this situation?

2 A. That is my opinion. I don't -- I don't
3 believe the tariff works well -- maybe I should say, I
4 don't think the company's policy works well when it
5 relies on somebody else to figure out what to do with
6 its facilities. That's the fundamental problem that I
7 have with situation.

8 Q. So what Aqua wants Mr. Becker to do is
9 fix their facility, turn it over to them and then pay
10 for it?

11 A. That's correct. Again, I've heard it not
12 only in this situation but with others. You know, this
13 company will tell -- will tell developers and maybe in
14 some cases customers, We can't provide you the service
15 because don't have the capacity. You fix the capacity
16 and we can provide the service. And I don't think they
17 should be saying that. I think the company needs to
18 provide the capacity, let the developers and customers
19 worry about the pipelines in front of the houses.

20 COMMISSIONER APPLING: Thank you very
21 much, Mr. Merciel.

22 JUDGE WOODRUFF: All right. Recross based
23 on questions from the Bench, then, beginning with
24 Becker?

25 MR. WENZEL: No, your Honor.

1 JUDGE WOODRUFF: Aqua Missouri?

2 MR. ELLINGER: Yes, Judge. Thank you.

3 RECROSS-EXAMINATION BY MR. ELLINGER:

4 Q. Mr. Merciel, you talked in long
5 discussion about the tariff and how it operates and how
6 you don't think it's a proper fit for the current
7 situation; is that correct?

8 A. Yes.

9 Q. The existing tariff provides that before
10 the company should expend any money they ought to have
11 a developer agreement signed; is that correct?

12 A. Yes, does.

13 Q. Do you know whether a developer
14 agreement was presented to Mr. Becker?

15 A. Yes, I do.

16 Q. Did he sign that agreement?

17 A. It is my understanding he did not.

18 Q. And relying upon your professional
19 opinion here, if a developer refuses to sign a
20 development agreement, what further role should a
21 company have in adding excess capacity for that
22 developer?

23 A. Well, I do agree there needs to be a
24 developer agreement before the company proceeds. I do
25 agree with that. The problem is how the company is

1 going to proceed and I think that's the underlying
2 problem and the course that would be taken after that.

3 Q. And is this case really where the best
4 intentions of the company have backfired on it, it
5 tried to work with the developer to come up with a
6 fixed prior agreement?

7 A. I would agree with that. I think the
8 company has expended some effort to try and get it
9 done. I -- you know -- but it just hasn't worked.
10 It's that's simple.

11 Q. And where a developer refuses to fund
12 construction costs, is there anyway to get the
13 capacity, additional capacity for that developer under
14 a tariff?

15 A. Well, I agree with you. If a developer
16 doesn't sign the agreement and doesn't agree to fund
17 the cost, that is a problem and that would hold up the
18 project. But I don't think that is the problem in this
19 case. I still think the tariff and how it is being
20 applied and the company's policies and how it deals
21 with developers is the main underlying problem.

22 Q. And the fact that Mr. Becker has refused
23 on numerous occasions to sign a developer agreement is
24 not part of a problem in this matter?

25 A. It's a part of the problem, but again, I

1 don't think that's the underlying problem.

2 Q. Would this matter have been solved much
3 more simply, in your opinion, had upon Mr. Becker's
4 refusal to sign a developer agreement, Aqua Missouri
5 refuses to speak with him again?

6 A. I'm sorry. I lost you.

7 Q. Would, in this matter -- well, the case
8 that's in front of us, Mr. Becker came to Aqua Missouri
9 and was presented with a developer agreement; is that
10 correct?

11 A. Yes.

12 Q. Is it your opinion that this matter
13 would have best been resolved that once Mr. Becker
14 refused to sign that agreement, that the company stop
15 dealing with Mr. Becker?

16 MR. THOMPSON: Objection; calls for
17 speculation.

18 JUDGE WOODRUFF: I'll overrule the
19 objection. You can go ahead and answer.

20 THE WITNESS: Okay. You -- the company
21 may have been justified to cease negotiations, so I
22 guess the answer to your question is yes. But I still
23 believe that -- having gone through many of the motions
24 as if he did sign the agreement -- I mean, you know, we
25 did have lots of meetings, lots of information sharing

1 and a lot of work has been done. Even if he had signed
2 the agreement, I'm not sure we would have anything
3 resolved. Not having signed the agreement, is not the
4 problem in the case.

5 Q. But you would agree that the company has
6 expended time and resources working at trying to
7 resolve this issue?

8 A. I would agree with that, yes.

9 Q. Another issue I'm a little unclear on
10 your recent testimony with the commissioners, deals
11 with the capacity. DNR, Department of Natural
12 Resources, regulates sewage treatment facilities based
13 upon effluent levels; is that correct?

14 A. Yes. Effluent specifications, the flow
15 and other measures, yes.

16 Q. And they basically monitor on a
17 violation type of process, don't they?

18 A. Well, they monitor by reviewing what
19 companies, or what utilities submit. They also take
20 their own samples from time to time. So yes, that's
21 how they monitor it.

22 Q. And when they look for the samples to
23 determine compliance, they don't look at flow levels,
24 do they?

25 A. Oh, they might. They might look at flow

1 levels.

2 Q. Don't they look at BOD levels?

3 A. Yes. That's what I said. There are
4 other measures; the BOD, and suspended solids. That's
5 really the main thing, you know, from a pollution stand
6 point.

7 Q. And any kind of significant change to
8 the existing facility would require DNR approval, would
9 it not?

10 A. Yes, it would.

11 Q. You referenced other companies do not
12 have a similar structure with respect to developers as
13 Aqua Missouri; is that correct?

14 A. Well, I think I said the other companies
15 do not require developers to upgrade and improve
16 existing treatment facilities.

17 Q. But other developers -- excuse me, other
18 companies do require developers to sign developer
19 agreements?

20 A. Yes. They would have developer
21 agreements and there would be funding from developers,
22 yes.

23 Q. And that would be prior to construction
24 that those agreements would be signed?

25 A. Yes.

1 Q. Have there been other companies that
2 have had complaints filed against them because they had
3 these terms in their tariff?

4 A. Not that I can recall offhand.

5 Q. You also talked about adding cost to the
6 rate base. Do you recall those comments you made?

7 A. Yes, I did.

8 Q. If Aqua Missouri were to increase the
9 capacity of the system, would the Staff in your
10 opinion, or would you make your -- strike that. Let me
11 rephrase that question.

12 Would you make a recommendation, as a
13 member of the PSC Staff, if an expansion was done by
14 Aqua Missouri that it would be able to recover the full
15 amount of cost in its rate base?

16 MR. THOMPSON: Object; that calls for
17 speculation again, your Honor.

18 JUDGE WOODRUFF: Could you repeat the --
19 I'll have the court reporter read back the question.

20 (THE COURT REPORTER READ BACK THE
21 REQUESTED PORTION OF THE TRANSCRIPT.)

22 JUDGE WOODRUFF: It's asking him to make
23 his -- offer his opinions as to what his recommendation
24 would be, which doesn't call for speculation. If it
25 were asking what the Commission would do with his

1 recommendation, then I think it would be speculation.

2 MR. THOMPSON: Well, your Honor, a staff
3 recommendation isn't the result of a single staff
4 member.

5 JUDGE WOODRUFF: I understand.

6 MR. THOMPSON: We're talking about an
7 addition to rate base, there's an entire accounting and
8 auditing in staff that would have a large say in that.
9 so I suggest that this in deed speculative, when asked
10 of Mr. Merciel, who is an engineer.

11 MR. ELLINGER: And Judge, I would
12 respond that this is asking for his professional
13 opinion as what his professional opinion to make --
14 what his recommendation would be. And second of all,
15 he is the one that opened this door on this by
16 specifically saying the expansion ought to be put into
17 rate base. And to allow an expansion to a rate base
18 and a company to incur cost there needs to be a
19 guarantee or a reasonable assurance that they are going
20 to be able to recover those costs.

21 JUDGE WOODRUFF: As long as this
22 question is understood that it is relating only to
23 Mr. Merciel's opinion and not the opinion of the
24 Commission, or the Commission staff in general, I'll
25 overrule the objection.

1 THE WITNESS: Okay. If Aqua spends
2 money any capital funds it expends is -- I would
3 recommend as -- I would recommend that Aqua would be
4 able to earn a return on that investment subject to
5 prudence and subject to, let's say -- just for
6 simplicity, I'll say subject to tariff rules. If Aqua
7 spends money where somebody was suppose to pay a fee
8 and they didn't bother to collect a fee, that would be
9 a problem. Also the prudence, if just because -- just
10 because money is spent, doesn't mean it was spent well.

11 MR. ELLINGER: Right. I understand.

12 THE WITNESS: So that's the
13 qualification of my answer.

14 BY MR. ELLINGER:

15 Q. Mr. Becker had indicated he has 65 other
16 lots out there. Did you hear that testimony
17 previously?

18 A. Yes, I did.

19 Q. And in your opinion, if Aqua Missouri
20 were to build an expansion to allow all 65 lots to
21 connect, would you recommend they would be able to
22 immediately place the entire cost into rate base?

23 A. There again, that's where it gets into
24 tariff subject. Of the existing tariff, I don't think
25 it's prudent for Aqua to expend its own funds to serve

1 the developer. The developer does have some
2 responsibility under the existing tariff.

3 Q. So I don't want to put words in your
4 mouth, so please make sure that I'm accurate in saying
5 this.

6 A. Okay.

7 Q. It is the developer's responsibility to
8 pay for any excess capacity that's needed for any of
9 his lots?

10 A. That is correct.

11 Q. You also mentioned CIAC charges that are
12 in certain tariffs. Do you recall that reference?

13 A. Yes.

14 Q. Can you identify any tariffs that do
15 contain specifically a CIAC charge for expansion for
16 developers?

17 A. Well, the -- well, first of all, there
18 are a number of companies have a CIAC charge. Some of
19 them to pipe pipelines, but there are about four or
20 five companies that have a CIAC charge that applies to
21 treatment plants. And it really doesn't delineate
22 whether it's developer or individual. If there is a,
23 let's say, residential lot that was being connected,
24 then the CIAC charge would apply. It might be an
25 individual, it might be a developer, but it's funds

1 that the company can use for the construction of the
2 treatment capacity.

3 Q. But the majority of the tariffs do not
4 contain that language; is that correct?

5 A. Probably the majority don't because the
6 plants were built, you know, either contributed or the
7 plants are invested by the company. You know, many
8 companies just simply fund and construct treatment
9 plants, even if it is for a developer. You know, they
10 do construct it and do it as rate base.

11 Q. Okay. In the course of this matter
12 going forward and the various meetings you have been
13 involved in, is it your understanding that Aqua
14 Missouri has allowed individuals to connect to the
15 facility?

16 A. It has allowed individuals to connect.

17 Q. And it did allow Mr. Becker to connect
18 onto the facility also, did it not?

19 A. Yes.

20 Q. You had some discussions about proposals
21 and designs. Do you recall that discussion?

22 A. Yes.

23 Q. Do you recall, has a formal design ever
24 been presented?

25 A. A formal design?

1 Q. Yes.

2 A. I -- well, I'm not sure how to answer
3 that. There have been --

4 MR. THOMPSON: I'm going to object, your
5 Honor. I don't think this witness has any idea what
6 this man means by formal design.

7 MR. ELLINGER: I'll rephrase the
8 question, Judge.

9 BY MR. ELLINGER:

10 Q. Have you ever seen a stamped and sealed
11 design presented by Mr. Becker?

12 A. I personally haven't seen one, but I
13 thought there were some proposals that got submitted to
14 the Department of Natural Resources. Again, as I
15 answered the question before, I haven't been involved
16 with specific designs, but --

17 Q. But you have not seen a stamped and
18 sealed design?

19 A. I have not seen any or reviewed any. If
20 I can clarify, I don't -- I don't think any projects
21 have gotten as far as a full-fledge design. I think
22 most of them have been like engineering reports. There
23 have not been any plans or specifications of a specific
24 treatment plant.

25 Q. And you had seen some sales brochures

1 that have been passed around also?

2 A. Oh, maybe sales brochures, but there are
3 I think -- some of the engineers have written like
4 verbal and conceptual proposals.

5 Q. But you can't commence construction or
6 get DNR approval on verbal proposals as sales
7 brochures, can you?

8 A. Well, you can -- you can get DNR to
9 agree with what you have to go forward with additional
10 planning. But right, an engineering report does not --
11 you're not ready to do any construction.

12 Q. And throughout the course of those
13 designs and the meetings that you have had, have you
14 ever heard Mr. Becker personally or on behalf of this
15 company ever say that he would pay the full cost of the
16 additional capacity?

17 A. Not the full cost. There is an issue of
18 some lots that are in front of any existing sewer. And
19 Mr. Becker has stated that he believes there should be
20 reserved capacities for those lots. So --

21 Q. Have you ever reviewed the plans of the
22 Lake Carmel treatment facility?

23 A. I don't believe I've ever reviewed
24 plans. I'm not sure I've ever seen actual plans of it.

25 Q. Okay. You had made a suggestion on how

1 you thought -- what you thought a fair solution would
2 be to this matter. Do you recall that discussion?

3 A. Yes.

4 Q. And I think you had said that something
5 about fixing the situation, some words to that effect.
6 The fix of this situation is to add additional
7 capacity; is that correct?

8 A. I agree there needs to be additional
9 capacity some how.

10 Q. And addition capacity is developer's
11 responsibility under the existing tariff?

12 A. Yes.

13 MR. ELLINGER: No further questions,
14 Judge.

15 JUDGE WOODRUFF: Commissioner Murray,
16 did you have some additional questions?

17 COMMISSIONER MURRAY: I have a couple
18 more questions, Mr. Merciel.

19 FURTHER QUESTIONS BY COMMISSIONER MURRAY:

20 Q. I believe you just stated a few moments
21 someone who is responsible under the tariff for paying,
22 that those costs should not go into rate base; is that
23 correct?

24 A. Yes. I did say that.

25 Q. So under the current tariff that Aqua

1 Missouri is operating under, they did not -- if they
2 put any capital expenditures into upgrading for the
3 developer, none of that could go into rate base. Is
4 that your understanding?

5 A. Well, for the developer, the answer is
6 yes. But you know, one possibility would be -- let's
7 say for example, if -- if this lagoon were abandoned
8 and a new -- one new treatment plant were built for the
9 entire subdivision, then a portion of that -- a portion
10 of that treatment plant capacity would be used for
11 existing customers, which I think Aqua would need to --
12 need to pay for and it would be rate base, and a
13 portion of it would be for new customers, Mr. Becker's
14 construction customers.

15 And those, to that extent, Mr. Becker
16 would need to pay for that portion of the capacity.
17 There could be situations where there is a rate base.

18 Q. Wouldn't Staff be likely to most
19 vociferously argue that abandoning the current lagoon
20 would be imprudent and the company should not recover?

21 A. If we thought it wasn't prudent to do
22 that. Then that's what needs to be determined, what is
23 the most prudent course of action on increasing
24 capacity. That is one possibility, whether it's
25 prudent or not, I don't know today.

1 Q. But it is a real possibility that none
2 would be recovered in rate base?

3 A. Yes. It is a possibility.

4 Q. And I think in the most recent
5 questioning, it became a little more clear about what
6 plans the developer has offered. There's been no
7 actual plans submitted; is that correct?

8 A. I believe that's correct. I don't think
9 there's been any plans and specifications as far as
10 treatment plant. It's been more a concept in the form
11 of engineering reports, which is common. And that goes
12 to the Department of Natural Resources. Usually the
13 first thing that happens is there will be an
14 engineering report stating what's the concept of the
15 project and you know, some variations on how it's going
16 to be undertaken. It's more of a concept plan. And
17 then if that meets with everybody's approval and
18 Department of Natural Resources is happy with it, then
19 they would go ahead with the plans and specifications
20 for an actual treatment plant.

21 Q. And in terms of these reports, has DNR
22 weighed in at all?

23 A. I believe they have. And I don't -- I
24 don't believe -- I could be wrong, but I don't think
25 the Department of Natural Resources has yet given its

1 okay to go ahead.

2 Q. So there's really nothing that the
3 company has rejected at this point; is that -- I mean,
4 there isn't any plan to have rejected?

5 A. Well, I think the engineering report --
6 it's not just the Department of Natural Resources.
7 It's also the company that -- that would review it and
8 state whether it thinks, you know, this is a plausible
9 project too. So I don't think that's quite accurate.
10 I think the company has not accepted any reports as
11 well.

12 Q. Have they said they're not plausible?
13 Or there just hasn't been an agreement about how to go
14 forward?

15 A. Yeah. I think there just hasn't been
16 agreement. I'm not sure exactly what's really been
17 stated, that I've heard. There have been some meetings
18 that the Staff wasn't involved with, so I'm not sure of
19 all the dialogue that had gone on.

20 Q. So if the reports that the developer has
21 had done so far, the expenditures that you say that he
22 has made to this point, were to be used going forward,
23 at least to some extent, maybe even if even if it had
24 to modified but they were used, would you still be of
25 the opinion that the developer should not comply with

1 the tariff and pay all of the cost involved?

2 A. Well, I think the developer should pay
3 the cost of construction and preparation of plans. To
4 the extent that there's been some planning that can be
5 used that is useful, I think that should be taken into
6 consideration. Does that answer your question? I mean
7 Mr. Becker has expended some funds for engineering. It
8 hasn't resulted in something to go forward with
9 construction yet. But there has some -- there has been
10 some planning work done.

11 Q. Well, I'm not sure if that answers my
12 question because there will be -- there will be a total
13 of cost involved as some point and that total will
14 include all of the engineering plans. It may include
15 that have been developed and have been discarded for
16 some reason or other. But there is still a total cost
17 and that total cost is to be borne by the developer, as
18 I understand it under the tariff.

19 A. Yes. That is true. I think I
20 understand your question. There would be more
21 engineering to do, particularly in the form of final
22 plans and then of course the construction costs of
23 whatever is done. And the developer should pay for
24 his -- all of it if it's entirely for the new customers
25 or at least his portion of the capacity.

1 Q. And if the company were going to go
2 ahead and doing it and not requiring the developer to
3 pay for the company would simply have to absorb that
4 and could not claim that in rate base because they
5 wouldn't be complying with the tariff; is that --

6 A. That is correct unless we have some
7 special order out of the Commission, you know, in
8 consideration of this particular case. But ordinarily,
9 the company would investing rate base into the capacity
10 for the developer.

11 COMMISSIONER MURRAY: Thank you.

12 JUDGE WOODRUFF: Commissioner Appling?

13 FURTHER QUESTIONS BY COMMISSIONER APPLING:

14 Q. Mr. Merciel, maybe we will get done with
15 the questioning pretty soon but there's a couple of
16 times that there has been some conversation that
17 Mr. Becker has already expended a considerable amount
18 of money in trying to get to maybe a proposal that
19 would be accepted by the company.

20 A. Uh-huh.

21 Q. And I think there was some conversation
22 this morning, and I read in his testimony that there
23 they could agree on what was to be done. Now, there's
24 two sides to every coin. Has the company put anything
25 on the table at anytime during this discussion as a

1 proposal that would move this project forward? Have
2 you seen a proposal or recommendation from this company
3 to try and resolve this problem?

4 A. Right now, to my knowledge the company
5 has not presented any proposals or concepts or
6 certainly no plans.

7 Q. So what they are doing is laying down on
8 the tariff and saying we'll do what need to, but you,
9 Mr. Becker are responsible for putting this all
10 together. Put they have made no offer to try and
11 resolve this situation?

12 A. I believe that is correct. I believe
13 that answer to that is yes, they have not put any
14 proposal forward.

15 COMMISSIONER APPLING: Thank you very
16 much.

17 JUDGE WOODRUFF: Any additional recross
18 based on those further questions from the Bench?

19 MR. WENZEL: No, your Honor.

20 MR. ELLINGER: No further questions.

21 JUDGE WOODRUFF: And redirect?

22 MR. THOMPSON: Why yes, your Honor.

23 Thank you.

24 REDIRECT EXAMINATION BY MR. THOMPSON:

25 Q. With respect to safety and adequacy

1 Mr. Merciel, does a utility have any obligation to its
2 customers?

3 A. Yes. The utility is obligated -- the
4 utility is obligated to provide service under its
5 tariff.

6 Q. Okay. What about safety and adequacy?
7 Is it possible that a utility can be in compliance with
8 its tariff and yet the services may not be safe and
9 adequate?

10 A. Considering this case, I think the
11 answer is yes.

12 Q. And you told Commissioner Murray that
13 that it's your opinion that the system is presently
14 adequate for the customers it's serving; isn't that
15 right?

16 A. For existing customers.

17 Q. Okay.

18 A. Yes. That was not for new customers.

19 Q. And were you here for the testimony of I
20 believe it was Mr. Wells -- yeah.

21 A. Uh-huh.

22 Q. Okay. Did hear that in fact the volume
23 of these cells when he examined them is in fact only at
24 three-quarters of its rated capacity --

25 A. Yes. I did hear that.

1 Q. -- because of sludge buildup?

2 A. Yes.

3 Q. And you heard from Mr. Becker the number

4 of homes that are presently in the subdivision that are

5 occupied, did you not?

6 A. Yes.

7 Q. And you heard the number of persons per

8 home that the DNR regulations require one to use for

9 planning purposes when the actual population isn't

10 known; isn't that right?

11 A. Yes.

12 Q. And based on those two numbers it would

13 appear that the population at the subdivision is in

14 excess of the design population; is that right?

15 A. Yes.

16 Q. And there's been a lot of talk about

17 infiltrations, hasn't there?

18 A. Yes.

19 Q. And you're familiar with some flow

20 readings, are you not, that suggest that the daily flow

21 is in excess of the rated flow?

22 A. Yes.

23 Q. Now, based on that information, isn't it

24 possible, Mr. Merciel, that the facility is not safe or

25 adequate at all as of this minute?

1 MR. ELLINGER: Objection; that calls for
2 a conclusion he's not qualified to give. That is a DNR
3 decision dealing with safety and adequacy. And he is
4 not qualified by testimony to give that opinion.

5 MR. THOMPSON: Your Honor, if I may
6 respond, this Commission is solely and exclusively
7 charged by law with regulating public utilities,
8 ensuring that they're services and facilities are safe
9 and adequate. DNR regulates sewage facilities for a
10 different purpose, and that purpose does not overlap or
11 impinge upon the statutory obligations and authority of
12 this commission.

13 It is for this Commission to determine
14 whether or not that facility is safe and adequate as it
15 exists today. And Mr. Merciel, an engineer, the
16 assistant manager of the commission's water and sewer
17 department is eminently qualified to offer an opinion
18 on that fact.

19 JUDGE WOODRUFF: Mr. Ellinger?

20 MR. ELLINGER: Yes, Judge. The
21 questions presented by Mr. Thompson relates to the DNR
22 permit, the numbers that are promulgated by DNR in
23 their regulations. It deals with DNR testing, DNR
24 permitting, DNR approvals, DNR regulation, DNR
25 compliance. Those are the issues that the question is

1 being asked to Mr. Merciel to give an opinion on. The
2 Commission has obviously the right to administer the
3 rules and regulations and statutes, but they do not
4 relate to flow data, they do not relate to suspended
5 solids, they do not relate to effluent as a general
6 term. They relate to business operations and ensuring
7 that the customers protected.

8 This question does not relate to whether
9 the customers are protected. This relates to the down
10 field, capacity level, the flow into streams and things
11 of that nature, which is solely and exclusively the
12 province of the Department of Natural Resources.
13 Therefore, I renew my objection.

14 MR. THOMPSON: Your Honor, I asked
15 Mr. Merciel simply to consider the evidence that's been
16 presented today and offer an opinion.

17 JUDGE WOODRUFF: I'll overrule the
18 objection. You can go ahead and answer.

19 THE WITNESS: Okay. Well, there are
20 some problems at this treatment facility. And the
21 question is there safe and adequate service here? As
22 we discussed before, there are no DNR violations to my
23 knowledge. No -- there's not effluent that results in
24 any what we would call pollution generally.

25 I have studied flow date. They're from

1 the various aspects, other's measuring the treatment
2 facility effluent and I've also studied the water
3 usage, actually rather the pump records of the water
4 system serving the subdivision and there is a hydraulic
5 capacity problem. There are some problems at this
6 facility.

7 BY MR. THOMPSON:

8 Q. I understand that DNR is happy, but my
9 question has to do with whether or not the system as it
10 exists today is acceptable from your point of view of
11 the Public Service Commission. For example, can new
12 customers readily hook on to the system?

13 A. I think the consensus is this plant's
14 pretty well at capacity, so the answer to that would be
15 no. Even if we're not talking about developers, you're
16 talking individuals, there would be a capacity problem.

17 Q. You testified earlier, I believe, that
18 the company is telling people that they're at capacity,
19 people can't hook up; isn't that right?

20 A. Yes.

21 Q. Now, as far as you know, in exchange for
22 a monopoly service area, isn't a public utility
23 authorized to serve everyone who asks for their
24 service?

25 A. Yes.

1 Q. And this utility can't do that, can it?

2 A. Well, again, that gets under that
3 tariff. It needs to that under the terms of the
4 tariff.

5 Q. Forget about the tariff for a minute.
6 Think about the law. Can this utility serve anyone who
7 requests service as of today?

8 A. I'm not sure the best way to answer.

9 Q. Well, let me help you.

10 A. Okay.

11 Q. Let me give you a hypothetical. Let's
12 say I win the lottery and I buy a lot in the Lake
13 Carmel subdivision. You testified earlier that there
14 are some lots that are not owned by Mr. Becker.
15 Correct?

16 A. Yes.

17 Q. Let's say I buy one of those lots and I
18 build a palatial home on it. Would I be able to hook
19 my palatial home up to the sewer system in the Lake
20 Carmel subdivision?

21 MR. ELLINGER: Objection, your Honor.
22 This calls for speculation on the basis that
23 Mr. Merciel's not qualified to testify. Only a company
24 representative can make an affirmative statement as to
25 whether a person could connect or not connect today.

1 MR. THOMPSON: Well, we're going to ask
2 the company representative when she gets on the stand,
3 Mr. Ellinger. Right now I want to hear what Staff has
4 to say about that.

5 MR. ELLINGER: Well, again that would --
6 I would say that that is speculative because
7 Mr. Merciel has no ability to issue that approval, to
8 know what the standards are for the issuance of it.
9 And in fact, I think that that is a question properly
10 presented to the company representative, not PSC Staff.

11 JUDGE WOODRUFF: I'll sustain the
12 objection.

13 BY MR. THOMPSON:

14 Q. So when you monitor water and sewer
15 utilities to determine term whether or not they're
16 discharging their obligations under the law, do you not
17 look to see whether or not they serve new customers
18 when requested?

19 A. Well, we do and that comes up more in
20 the form of complaints rather than actively looking at
21 it, but yes, we do.

22 Q. Okay. So that's within the ambit of
23 what the PSC does. Right?

24 A. Yes.

25 Q. Now, here's another hypothetical:

1 If, in fact, this system is not safe and adequate, who
2 has to pay to make it safe and adequate?

3 A. If we're talking individual customers it
4 would be the company. And again, I'm going back to the
5 tariff.

6 Q. Forget about Mr. Becker.

7 A. Right. I'm not talking about
8 Mr. Becker, but even looking at the tariff for
9 individuals -- if individuals -- if you win the lottery
10 and you build a house, if the person next door to that
11 lot builds a house, you have a number of people
12 building houses in that subdivision, it would be the
13 company's responsibility to provide the treatment
14 capacity for those customers.

15 MR. THOMPSON: Thank you. No further
16 questions.

17 JUDGE WOODRUFF: All right. And with
18 that then, Mr. Merciel, you can step down.

19 And we are due for a break. And I
20 believe there are some documents that need to be
21 copied. Let's take about a 20 -- let's say a 25-minute
22 break and come back at 11:10.

23 MR. THOMPSON: Thank you, you Honor.

24 (A RECESS WAS TAKEN.)

25 JUDGE WOODRUFF: All right. Let's

1 come to order please. We're back from break and,
2 Mr. Thompson, I believe you had some documents you
3 wanted to go ahead and mark and distribute?

4 MR. THOMPSON: I do, your Honor. If I
5 may approach?

6 JUDGE WOODRUFF: You may.

7 MR. THOMPSON: This is Exhibit B,
8 Extension Agreement Developer. And I don't know what
9 number --

10 JUDGE WOODRUFF: This would be No. 9.

11 (EXHIBIT NO. 9 WAS MARKED FOR
12 IDENTIFICATION.)

13 MR. THOMPSON: No. 9. And that's a
14 portion of the tariff. It is --

15 MR. ELLINGER: Actually, that particular
16 exhibit that you're marking is also included in the
17 surrebuttal testimony, or is it rebuttal? Rebuttal
18 testimony as Exhibit -- let me find it real quick.

19 The rebuttal testimony of Tena Hale-Rush
20 as part of Exhibit X.

21 JUDGE WOODRUFF: Okay. We'll go ahead
22 and mark it as a separate exhibit also, since we've
23 been referring to it.

24 (EXHIBIT 10 WAS MARKED FOR
25 IDENTIFICATION.)

1 MR. THOMPSON: And this, then, would be
2 Exhibit No. 10, which is Rule 12 from their tariff,
3 extension of collecting sewers and acquisition of
4 existing sewer systems. These are sheets from the
5 official Aqua Missouri tariff that is maintained by the
6 Commission in its tariff room, and I suggest that the
7 Commission take notice of it.

8 JUDGE WOODRUFF: All right. The
9 Commission will probably do that as well, but since
10 they've been marked as exhibits, I'll ask if there are
11 any objections to the admission of those documents into
12 evidence?

13 MR. ELLINGER: No objection.

14 JUDGE WOODRUFF: Hearing no objection,
15 they will be received into evidence.

16 (EXHIBIT NOS. 9 AND 10 WERE RECEIVED
17 INTO EVIDENCE.)

18 JUDGE WOODRUFF: Okay. We finished with
19 Mr. Merciel before the break, so we're ready for Aqua
20 witnesses. Mr. Gaebe will be the first one?

21 MR. ELLINGER: Mr. Gaebe, would you
22 please come forward.

23 JUDGE WOODRUFF: Good morning,
24 Mr. Gaebe.

25 MR. Gaebe: Good morning.

1 (Witness sworn.)

2 JUDGE WOODRUFF: You may be seated.

3 ROBERT OLIVER GAEBE testified as follows:

4 DIRECT EXAMINATION BY MR. ELLINGER:

5 Q. Would you please state your name for the
6 record.

7 A. Robert Oliver Gaebe.

8 Q. Are you the same Robert O. Gaebe who has
9 previously filed direct and surrebuttal testimony in
10 this case?

11 A. Yes, I am.

12 Q. Have you filed that testimony on behalf
13 of Aqua Missouri?

14 A. Yes.

15 MR. ELLINGER: May I approach the
16 witness, your Honor?

17 JUDGE WOODRUFF: You may.

18 BY MR. ELLINGER:

19 Q. And I would ask you to take a look at
20 the documents in front of you which is marked as
21 Exhibit 2 and 3. Do you have those, sir?

22 A. Yes. Yes, I do.

23 Q. And are these copies of your direct and
24 surrebuttal testimony?

25 A. They look to be very much. Yes, as far

1 as I can tell.

2 Q. And are all of the answers contained in
3 both the direct and surrebuttal testimony true and
4 accurate?

5 A. To the best of my knowledge, they are.

6 Q. If I were to ask you the same questions
7 today, would you respond with the same answers?

8 A. Yes.

9 MR. ELLINGER: I would tender this
10 witness for cross-examination.

11 JUDGE WOODRUFF: Do you wish to offer
12 these documents?

13 MR. ELLINGER: I would like to offer
14 Exhibits 2 and 3.

15 JUDGE WOODRUFF: 2 and 3, any objections
16 to their receipt?

17 MR. THOMPSON: No objection.

18 MR. WENZEL: No objection.

19 JUDGE WOODRUFF: All right. They are
20 received.

21 (EXHIBIT NOS. 2 AND 3 WERE RECEIVED INTO
22 EVIDENCE.)

23 JUDGE WOODRUFF: For cross-examination?

24 MR. THOMPSON: No questions.

25 JUDGE WOODRUFF: For Becker?

1 MR. BECKER: No questions.

2 JUDGE WOODRUFF: All right, then, we're
3 up for questions from the Bench. Commissioner Appling?

4 COMMISSIONER APPLING: You guys are
5 moving too fast this morning. We're not going to let
6 you off that easy.

7 QUESTIONS BY COMMISSIONER APPLING:

8 Q. I want you to define two things for me:
9 A sewer collection and a sewer treatment facility. A
10 collection facility, is there a difference in the two?

11 A. Well, the collection is usually the
12 piping, the sewer lines, and the treatment is the part
13 that we're discussing now that processes the sewage.

14 Q. So the collection is getting it to the
15 treatment plant?

16 A. Yes, that's correct.

17 Q. Okay. I have a few other questions
18 here, so bear with me, okay? I'm an old country boy
19 and I don't have all of the means that all of these
20 great lawyers in this room have here, but let's run
21 down a few questions, okay?

22 If the volume of the lagoon is
23 1 million -- and these are some of the questions you've
24 already heard. I just want to get you on record of
25 what your answer is. We're calculating a lagoon

1 capacity as 1,000,108 plus gallons, but you calculate
2 the lagoon capacity as 666. You heard me talk to the
3 engineer this morning for Staff.

4 A. Uh-huh.

5 Q. Your service area calculations are only
6 about 5 percent difference between you and the engineer
7 for Staff that testified to this morning. Why is the
8 difference in volume so big?

9 A. Well, I noticed two items. One were the
10 depths that were found between myself and the other,
11 and the other would be affected because there seem to
12 be --

13 Q. I didn't mean the witness from Staff,
14 but the engineering that --

15 A. Yes.

16 Q. Okay.

17 A. And if you -- in my exhibit --

18 Q. How did you measure?

19 A. Okay. Vertically we went out with the
20 boat and took -- I was concerned about sinking into the
21 muck, so we took a rake with a large, flat surface, and
22 we attached a measurement to it, or actually, we marked
23 off measurement on the rake handle, and went down and
24 measured to the surface. And that's so we didn't sink
25 in any extra depth at various points.

1 The other points were rough, and I
2 mentioned that I had a certain amount of error in my
3 measurements, I said I think of up to 15, 20 percent
4 possibly in the overall volume.

5 Q. Right.

6 A. Because I estimated distances out to
7 where I had the depths, and that's how I did it.

8 Q. And what were your findings there?

9 A. I found that the existing facility was
10 not as big as the original design, which was no
11 surprise. It's an old facility.

12 Q. If the volume of the lagoon was
13 1.1 million gallons, could the system handle additional
14 homes?

15 A. Oh, mind if I check my figures?

16 Q. I would love for you to do that.

17 A. I can remember some stuff, but not all
18 the numbers. Well, I'll have to do some conversions.
19 I have cubic feet rather than gallons, and I would have
20 to do some division here by --

21 Q. In the matter of time, why don't we skip
22 around a bit here and we'll come back to that specific
23 question.

24 A. I'm sorry about that.

25 Q. I'll get back to you. Please look at

1 your system flow data, if you would.

2 A. Uh-huh.

3 Q. Why is there multiple measures for each
4 thing?

5 A. Multiple measures? Oh, well, am I --
6 multiple measurements for each depth?

7 Q. Yes. For each day that you have it,
8 multiple measures on it that I took from your
9 testimony. Maybe I'm not asking the question right.

10 A. I'm not sure that I understand.

11 Q. I'm looking at your system flow data.

12 A. Okay.

13 Q. Why are there multiple measures for each
14 day?

15 A. Oh, I'm sorry. Yeah. We had two
16 different times that were done by Aquasource, and using
17 a Flodar (ph.) measuring device, which measures the
18 actual flow in the pipe. And I believe they used two
19 different locations. One was, if I'm correct,
20 downstream from the outflow, and the other was at the
21 very last manhole before they went into the lagoon.

22 And the reason there's differences is
23 because they were done at different times -- I assume
24 because of different times of the year. The first one,
25 I think, March, I believe it was, it was very wet. The

1 lake was full, spring action was coming of the dam.

2 We'd had a lot of rain. We had very high flow rates.

3 The latter part was at six months of the

4 year, which is June, and it had been dry for a while.

5 The dam was down and I did not see any spring action

6 coming out of the dam. And that's consistent with

7 other areas of my experience with flows of collection

8 systems.

9 Q. Look at your direct testimony, okay. Do

10 you have that with you? For the date of your flow

11 measurement.

12 A. Oh, yeah.

13 Q. Can you look at your direct testimony

14 that you have? And also at the precipitation report on

15 that day at which you measured or the days in which you

16 measured.

17 A. Uh-huh.

18 Q. And I think you just touched on it just

19 a minute ago and I have a duplication of it here on my

20 question. What happens to the system flow on and

21 immediately after the days when it rains. You just

22 said that a few minutes ago, that you had a lot of

23 water left. Correct?

24 A. Yes.

25 Q. Overflow? What do you estimate of the

1 daily flow from system customer, excluding infiltration
2 volume.

3 A. Well, that's on the low side, but within
4 reasonable limits for other facilities that I've seen.

5 Q. I guess what I'm trying to get at is,
6 does the infiltration into the system increase or
7 decrease its capacity?

8 A. The infiltration decreases one aspect of
9 the capacity. Lagoons have several criteria. One is
10 the surface area and the other is the volume. The
11 120-day detention is one of the factors that is
12 required and that has to do with the volume and the
13 quantity going in. Right now that is being exceeded,
14 and that is because of infiltration because --

15 Q. And would that cause any concern for
16 DNR's permitted flow? Would that have any concerns?

17 A. Yes.

18 Q. Okay. Does the infiltration cause the
19 content -- concentration for the DNR EPA standards to
20 change by any chance, if you measured it on those days.
21 It would be a difference, wouldn't it?

22 A. Yes.

23 Q. How far from the lagoon is the dam?
24 Have you been out there?

25 A. I've been out there. It's on the other

1 side of the road. I'd guess several hundred feet, 300,
2 400 feet. There's a county road separating the two.

3 Q. Did you come to an agreement in your own
4 mind how additional water is getting into the lagoon?
5 Is it from rain, runoff or whatever?

6 A. My opinion, and the most likely is that
7 it's infiltration into the collection system, most
8 likely around manholes, existing manholes. It's been
9 my experience that that is a weak link.

10 Q. Because of the lay of the land down
11 there of the Lake, probably?

12 A. Uh-huh.

13 Q. Does the infiltration suggest a safety
14 problem from your profession with the dam?

15 A. It depends on the situation or the
16 whole -- downstream would be the only place where it
17 would be a safety issue and that would be if there was
18 any problems with the biological, the activities could
19 hurt the quality of the downstream water. And a lot of
20 that depends on -- I know that the DNR looks at -- does
21 a stream analysis and they consider the quality of the
22 water, the use of the water, a lot of things are looked
23 at. What's safe in one situation may not be safe in
24 another. A lot depends on the stream. I didn't look
25 in large detail at that, but it's certainly possible.

1 Q. You heard Mr. Becker's testimony this
2 morning that he has at least 56 -- or 50 to 56 more
3 lots out there to be hooked up, if he can ever get
4 jumpstarted to do that again.

5 A. Uh-huh.

6 Q. What is -- what do you see is the
7 capacity that is needed to hook up another 50 homes
8 under this system. What would you think needs to be
9 done out there in order to accommodate more homes?

10 A. Well, financially you couldn't, in my
11 opinion -- you couldn't practically expand the existing
12 facility. Expanding will do -- other than the good
13 idea of raising the berm somewhat, is I've found to be
14 impractical financially. You need an additional system
15 for that kind of an increase.

16 Q. Okay. I think have the other answers to
17 the question, but the last question I have is -- and
18 maybe you've already answered and I just didn't pick it
19 up. What is the sludge -- what would you estimate is
20 the sludge in that lagoon, the present lagoon that we
21 have.

22 A. Oh. I really didn't calculate that. At
23 the time, I was asked to figure out the capacity.
24 It's -- and I don't recall the design depth, but I know
25 is shallower than that. But it's been 20 years. I'd

1 imagine there's a foot or maybe two of sludge in there,
2 possibly more. But I -- to be honest, I did not come
3 up with the calculation of how much sludge there is.
4 But I -- there's got to be some.

5 Q. Last question. Collection system versus
6 a treatment system. The collection system is the path
7 that gets the sewage to the treatment system. Right?

8 A. Yes.

9 COMMISSIONER APPLING: Thank you very
10 much. That's all the questions I have.

11 JUDGE WOODRUFF: Commissioner Appling,
12 I believe that you had some -- a document that you
13 wanted to refer to? The climatological observations I
14 believe you mentioned in one of your questions, those
15 have not been marked as exhibits. Did you want to mark
16 those exhibits?

17 COMMISSIONER APPLING: I think so. I
18 would like to have those entered into the record, if
19 you would. Do you have copies?

20 JUDGE WOODRUFF: Parties would not have
21 copies of these.

22 COMMISSIONER APPLING: But you could
23 furnish them copies?

24 JUDGE WOODRUFF: I'm going to go ahead
25 and mark them as Exhibit 11.

1 MR. ELLINGER: Judge, can we have the
2 opportunity to review those before the end of this
3 testimony in case there's something wrong with it?

4 JUDGE WOODRUFF: Yes. We'll go off the
5 record.

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

7 (EXHIBIT NO. 11 WAS MARKED FOR
8 IDENTIFICATION.)

9 JUDGE WOODRUFF: I have marked this --
10 this exhibit has been marked as No. 11. It's a record
11 of climatological observations.

12 Commissioner Appling, can you explain
13 what this is?

14 COMMISSIONER APPLING: I think I'm going
15 to leave it where it is at this time.

16 JUDGE WOODRUFF: Well, just for the
17 record, let me explain that it appears to be obtained
18 NOAA government offices showing precipitation data for,
19 it looks like, March of 2006 and June of 2006, showing
20 how much rain fell in the Jefferson City observation
21 area. And I believe there was some questions to the
22 witness about the effect of rain on infiltration into
23 the system.

24 And I assume that the witness has a copy
25 of this at this point. Have you received a copy of

1 this Exhibit 11?

2 THE WITNESS: I don't -- I might have.
3 It's been a while. I did some checking into this
4 originally to try to -- but it's been quite a few
5 months and it wasn't part of my report and I didn't
6 review it.

7 QUESTIONS BY JUDGE WOODRUFF:

8 Q. Do you have a copy of Exhibit 11 right
9 now?

10 A. No.

11 Q. Anyway, it shows various amount of rain
12 at different times, and it certainly looks like March
13 of 2006 was a fairly rainy --

14 A. Uh-huh.

15 Q. -- fairly rainy month, and there were a
16 couple events of rain in June of 2006 as well. Did you
17 look at this kind of data when you were making your
18 study of infiltration rates?

19 A. I remember looking at it somewhat, but
20 the main thing I looked at was the condition of the
21 dam. The water was low in the dam on the sixth month
22 of the year.

23 Q June.

24 A. June, and the ground was dryer, whereas
25 the dam was full on the first one, which would indicate

1 quite a bit of rain over a large period. And that
2 would tie in with the groundwater. The higher the
3 water in the dam, the more the groundwater is going to
4 be in the surrounding areas.

5 Q. Okay. And when you were doing your
6 observations, when the measurements were being taken,
7 and I guess it was -- you said the measurements were
8 being taken by Aqua Missouri. Right?

9 A. Uh-huh.

10 Q. And I forget the name of the place you
11 indicated.

12 A. It's Flodar, and that's a brand name.

13 Q. Okay. And that just sits in the pipe
14 measures --

15 A. Actually, it uses a laser, I believe,
16 that measures both the depth of the flow, which is
17 common for most devices, but in addition, it records
18 the velocity, so it's kind of got a built-in internal
19 check for the measurements.

20 Q. And does that take continuous
21 observations throughout the month?

22 A. Yes, over periodic recordings. The
23 thing is over -- it depends on how many observations
24 are taken, but they have a 10-day, 11-day collection
25 period. I'd have to check, but thereabouts.

1 Q. Okay.

2 A. And was it every 15 minutes or half an
3 hour? I'd have to look and double check that, too.
4 But, yes, it does a very good sampling on a
5 24-hour-a-day-basis over a period of time, and it's
6 important to do it over at least a week, because of
7 fluctuations in people's habits.

8 Q. Okay. And during the course of your
9 evaluation, did you note a variation whether or not
10 there was rain, precipitation? Did that have an
11 effect?

12 A. That always has an effect to one degree
13 or another, sometimes very quickly, or over a longer
14 period of time.

15 Q. Anything unusual about this system
16 compared to the --

17 A. I didn't think so. In fact, on the
18 lower amount when it was dryer and you still had
19 groundwater, the figures that I came up with the flow
20 were around 17 or 18, and for the design using 100
21 gallons a day per person and 3.7 people per household,
22 and that 100 gallons a day per person also takes into
23 account some infiltration. It's just a generic figure.

24 And they were very close, closer than I
25 would have expected. It was coincidental, to be

1 perfectly honest, I think, and -- because of the
2 greater fluctuation in the earlier ones, when it was
3 wetter. And you can see, I had some minimums and
4 maximums, and there's quite a bit of difference. Of
5 course, that's due to a part not only infiltration, but
6 the water usage during the day, different times you'll
7 have higher peak usage.

8 But the main thing is getting the
9 average over a period of time. And it's -- well, it's
10 assuming the accuracy of the meters and assuming the
11 accuracy of the Flodar measuring device, assuming
12 they're both equal, but the measurements from the sewer
13 lines are superior because they are closer to the
14 source. Whereas water is a good measurement and I have
15 used it myself, but it's not as good as the actual
16 measurements of the sewage.

17 JUDGE WOODRUFF: I don't have any other
18 questions about that. Commissioner Appling has offered
19 Exhibit 11. Does anyone have any objections to its
20 receipt?

21 MR. WENZEL: No objections.

22 MR. ELLINGER: No objections.

23 JUDGE WOODRUFF: Hearing no objections,
24 it will be received into evidence.

25 (EXHIBIT NO. 11 WAS RECEIVED INTO

1 EVIDENCE.)

2 JUDGE WOODRUFF: Commissioner Murray,
3 have you had a chance to question yet?

4 COMMISSIONER MURRAY: I haven't.

5 JUDGE WOODRUFF: Do you have any
6 questions?

7 COMMISSIONER MURRAY: I have a couple.

8 QUESTIONS BY COMMISSIONER MURRAY:

9 Q. Good morning.

10 A. Good morning.

11 Q. It's my understanding that the excess
12 volume that results from the infiltration is not as
13 serious a problem as it would be if the BOD and the
14 suspended solids levels were in excess of the allowed
15 amounts; is that correct?

16 A. That's true. In fact -- this is quite a
17 long time ago that used to be the standard way of
18 treating sewage was to dilute, but not anymore.
19 There's far too much sewage to deal with.

20 Q. And you recommended further
21 investigation into locating and removing the sources of
22 the groundwater infiltration prior to adding anybody
23 else to the system. Correct?

24 A. What I'd like to see is, we've got the
25 water usage and that's well within the capacity of the

1 permit. And I think the facility, as it exists now, is
2 reasonably within the design, original design,
3 considering the age of the facility. So, yes, I'd like
4 to -- we've got a lot of infiltration, far more than
5 you would expect from -- well, normal calculations for
6 infiltration.

7 I think that should be eliminated. And
8 they have done some of that already between the first
9 measurements and the latter measurements. They have
10 sealed off some areas where water was coming into the
11 sewage system. And I think more could be done. If we
12 could lower that, then we would be more able to deal
13 with the existing sewage, rather than, you know, having
14 the dilution become a factor. Yes, I would much rather
15 do that.

16 Q. And in terms -- if you were able to
17 reduce the infiltration, practically eliminate it,
18 let's say, just hypothetically, what would that do to
19 the capacity of the system in terms of additional
20 connections?

21 A. Right now -- well, based on the flow
22 rates, we're still borderline, because even with lower
23 quantities of liquid, you still have the BOD, the
24 biological, biochemical oxygen demand. You've got so
25 much, it tends to be developed, it tends to be a little

1 bit stronger. There's a lot of variety in people's
2 habits, so when you're getting borderline, like we are,
3 theory tends to fall apart and you have to almost get
4 down to practice and find out what you've got and then
5 what you can do.

6 And that's why I say fix all of the
7 infiltration you can, then you can take some
8 measurements which will reflect the condition of the
9 sewage, and that will tell you right then what you can
10 do.

11 Q. Okay. So once you get the dilution
12 down, then accurate measurement of the BOD and TSS
13 would give you an indication of whether or not it's
14 near capacity?

15 A. Yes, if you're within the design
16 parameters of the -- both the organic loading and the
17 liquid loading of the plant, then you would know. You
18 could tell if you get another -- what you couldn't tell
19 is if an old couple that hardly used any water moved
20 out and another couple that had ten kids moved in, you
21 know, that's always a possibility.

22 Q. And do you have any sense of what it
23 would cost and whether it's even possible to eliminate
24 or virtually eliminate the infiltration.

25 A. Well, I've never heard of -- I'm sure

1 there's some cases, but I have never seen a case where
2 there's been absolutely no infiltration. There's
3 always been a leak or two somewhere.

4 Q. And it's my understanding from what
5 you've indicated here that this has an excessive
6 infiltration.

7 A. Higher than you would normally expect,
8 yes.

9 Q. And what would be involved cost-wise in
10 reducing it?

11 A. Well, so far it would -- like I say, the
12 most likely place where they've addressed it is right
13 at the manholes. You can do a certain amount of
14 repairs to the manhole just between manholes. You can
15 do some patching of the actual connection, and quite
16 often, that's enough. If the whole system is broken
17 down, which I don't know about, I haven't looked at
18 data of that expense, then it could be a major cost.
19 It could be rerunning all of the whole sewer systems.
20 I don't have enough data, but so far there seems to be
21 a significant improvement between the first test and
22 the last test, but again, that can be, to a large
23 degree influenced by the weather conditions and the
24 groundwater.

25 Q. Okay. Do you have any --

1 A. I don't know for sure.

2 Q. All right. Do you have a sense of how
3 many additional connections could be achieved by
4 reducing the infiltration and assuming the BOD and TSS
5 test levels are still good? Like water range, for
6 example?

7 A. Well, if you took that water range and
8 that was three-quarters, and they were able to treat
9 the organics, which is a big if, then by a stretch of
10 the imagination, you could get an extra 25 percent or
11 33 percent or what would it be -- anyway, a third, if
12 it's three-quarters, yeah, an extra 25 percent added to
13 that, which would be what is it, 40-some houses, it
14 would be 10, 12 houses, but I find that I that
15 unlikely. That would be stretching it to the max.

16 Q. And even if you eliminated a large part
17 of the infiltration, if there were heavy rain, would
18 that still affect it?

19 A. Well, if you seal off the pipes,
20 theoretically, if you have a completely sealed system
21 and you don't any leaks, then you could be underwater
22 and it wouldn't affect anything. Well, actually, you
23 are kind of underwater, because of the groundwater.
24 You've got some deep pipes there.

25 COMMISSIONER MURRAY: Okay. Thank you.

1 THE WITNESS: Is that it?

2 JUDGE WOODRUFF: No. You've got a
3 couple more opportunities for people to question you
4 beginning with recross from questions from the Bench.
5 And so we will begin with Staff.

6 MR. THOMPSON: Thank you, your Honor.

7 RECROSS-EXAMINATION BY MR. THOMPSON:

8 Q. Good morning, Mr. Gaebe.

9 A. Good morning.

10 Q. I'm looking here at your direct
11 testimony, and I see that most of that consists of a
12 report that you do; is that correct?

13 A. Pretty much, yes.

14 Q. Okay.

15 A. I have some calculations and a report
16 concerning those calculations.

17 Q. I'm looking at page 1 of the report,
18 which I guess is exhibit ROG-2. Down at the very
19 bottom, you have a paragraph labeled existing
20 condition. Do you see that?

21 A. Yes.

22 Q. And in the second to the last sentence,
23 I wonder if you could read that sentence.

24 A. The second to the -- these flow
25 measurements also show that the design capacity is the

1 existing 12,000 gallon per day -- the existing lagoon,
2 12,000 gallons per day, is exceeded.

3 Q. Thank you. And then I'm looking at the
4 next page, page 2 of two, and you have a paragraph
5 labeled as-built condition. Do you see that?

6 A. Uh-huh.

7 Q. And you have a sentence there speaking
8 about the reverse calculated daily flow.

9 A. Uh-huh.

10 Q. And what is that number there?

11 A. Reverse calculated daily flow based --
12 5,554 gallons per day.

13 Q. What exactly does that number mean?

14 A. It's just a -- it could mean something
15 as a point of view, but it's not anything you'd have in
16 design. If this was a brand new facility and the top
17 of the sludge was the bottom of the lagoon as a new
18 facility, that would be the design capacity.

19 Q. So this is what's called a retained
20 sludge lagoon; is that correct?

21 A. Yes.

22 Q. And so isn't it the case that over time,
23 as the lagoon is operated, in fact, the capacity
24 shrinks?

25 A. Yeah. Well, there's -- to an extent,

1 yeah. You've got a certain amount of safety factor
2 built into it, but yes, eventually there is a life
3 capacity of a lagoon, yes.

4 Q. How much of a safety factor is built
5 into it?

6 A. I'm not exactly sure of what the safety
7 factor is. You've got certain limits you can reach,
8 and I believe the DNR has minimums of, I think, three
9 foot in depths. And the actual final limits, I'd have
10 to do an actual study and need to review the documents
11 and consult DNR.

12 Q. Is that why the effluent here is still
13 within acceptable bounds, even though the design
14 population has been significantly exceeded and the
15 original volume has significantly shrunk?

16 A. Yes, to a large degree.

17 Q. But that safety zone is being eroded, is
18 it not?

19 A. Yes.

20 Q. And eventually a point will be reached
21 where it is exceeded; isn't that correct?

22 A. Yes. Assuming --

23 Q. What happens then?

24 A. Well, like anything that wears out, it
25 needs to be replaced eventually.

1 Q. So even if no other customers are ever
2 added to this system, the existing system in time will
3 become inadequate to meet the load that it currently
4 has?

5 A. Unless there was maintenance to the
6 facility. Sludge removal is a consideration, but yes,
7 it is filling up gradually.

8 Q. Assume no maintenance.

9 A. Yes.

10 Q. Okay. Do you have any way of guessing
11 or estimating when that would be?

12 A. Not that I would trust.

13 Q. Okay. In other words, you can't from
14 the flow and the number of households determine how
15 much sludge is deposited per year?

16 A. I could probably come up with something,
17 but I haven't tried.

18 Q. And this process, in fact, has been
19 alleviated by the dilution provided accidentally by the
20 infiltration; isn't that correct?

21 A. Correct.

22 Q. So that, in fact, the very leakiness of
23 the system may extend its life?

24 A. Possibly, yes.

25 Q. But that's not a good thing, is it?

1 A. To me, I don't think so.

2 Q. Okay. Now, is it -- hydraulic
3 conditions vary a great deal during the course of the
4 year, do they not?

5 A. Yes.

6 Q. There are wet periods, aren't there?

7 A. Uh-huh.

8 Q. And also dry periods?

9 A. Yes.

10 Q. During a dry period, would you be
11 concerned that this facility -- that this facility's
12 effluent might surpass permitted levels.

13 A. I really hadn't thought about it. The
14 standard practice is to take regular testing and that's
15 got to be checked throughout the whole period of time,
16 and if I was operating it, yes, but if I was operating
17 the facility, I'd be taking regular tests anyway and
18 I'd know that.

19 Q. Well, let's assume that regular tests
20 are being made and that the effluent is in compliance.
21 Nonetheless, as an operator, is it not during the dry
22 season that you would be most concerned?

23 A. I would think that it would be higher
24 concentrations during periods of less infiltration and
25 pollution, yes.

1 Q. So the closer we get to the end of that
2 safety margin you talked about earlier, the more
3 possibility that the safe levels could be exceeded
4 during a dry period exist; isn't that true?

5 A. True, yes.

6 MR. THOMPSON: Okay. No further
7 questions. Thank you very much.

8 JUDGE WOODRUFF: For Becker?

9 MR. WENZEL: Nothing.

10 JUDGE WOODRUFF: Any redirect?

11 MR. ELLINGER: Just a couple of
12 questions.

13 REDIRECT EXAMINATION BY MR. ELLINGER:

14 Q. Mr. Gaebe, is the existing system at
15 Lake Carmel safe for the customers of the system?

16 A. For the customers, yes.

17 Q. If there are higher BOD or TSS loads,
18 that would present an issue for DNR, would it not?

19 A. They regulate that. They take the tests
20 that the company makes and reviews them, and if they
21 exceed, yes.

22 Q. And the treatment facility at Lake
23 Carmel will eventually at some point fill up and not be
24 capable wouldn't that be the case with all treatment
25 facilities?

1 A. Anything -- anything wears out.

2 MR. ELLINGER: No further questions.

3 JUDGE WOODRUFF: Then, Mr. Gaebe, you

4 may step down.

5 THE WITNESS: Thank you.

6 JUDGE WOODRUFF: You can all your next

7 witness.

8 MR. ELLINGER: I call Tena Hale-Rush.

9 JUDGE WOODRUFF: All right. Good

10 morning. Please raise your right hand.

11 (WITNESS SWORN.)

12 JUDGE WOODRUFF: You may be seated. You

13 may inquire.

14 MR. ELLINGER: Thank you, Judge.

15 TENA HALE-RUSH testified as follows:

16 DIRECT EXAMINATION BY MR. ELLINGER:

17 Q. Would you state your name for the

18 record, please?

19 A. Tena Hale-Rush, T-e-n-a, H-a-l-e,

20 hyphen, R-u-s-h.

21 Q. And are you employed by Aqua Missouri?

22 A. Yes, I am.

23 Q. And what is your position with Aqua

24 Missouri?

25 A. Regional manager.

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4 A. Yes, I am.

5 MR. ELLINGER: May I approach the
6 witness, Judge?

7 JUDGE WOODRUFF: You may.

8 BY MR. ELLINGER:

9 Q. Ask you to take a look at the two
10 documents which I have presented in front of you, which
11 are Exhibits 4 and 5. Do you have those in front of
12 you?

13 A. Yes, I do.

14 Q. And are these copies of your rebuttal
15 and surrebuttal testimony?

16 A. Yes, they are.

17 Q. And are the answers contained therein
18 true and accurate to the best of your knowledge?

19 A. Yes, they are.

20 Q. And if I were to ask you the same
21 questions today, would you give me the same answers?

22 A. Yes.

23 MR. ELLINGER: Then I would tender this
24 witness for cross-examination.

25 JUDGE WOODRUFF: Are you offering 4 and

1 5?

2 MR. ELLINGER: And ask -- yes. I was
3 going to say, and ask that Exhibit 4, the rebuttal
4 testimony of Tena Hale-Rush, and 5, the amended
5 surrebuttal testimony of Tena Hale-Rush be admitted as
6 exhibits into evidence in this record.

7 JUDGE WOODRUFF: Exhibits 4 and 5 have
8 been offered. Any objection to their receipt?

9 MR. THOMPSON: No objection.

10 JUDGE WOODRUFF: Hearing none, then they
11 will be received.

12 (EXHIBIT NOS. 4 AND 5 WERE RECEIVED INTO
13 EVIDENCE.)

14 And for cross-examination, we can begin
15 with Staff.

16 MR. THOMPSON: Thank you, your Honor.

17 CROSS-EXAMINATION BY MR. THOMPSON:

18 Q. Good morning, Ms. Hale-Rush.

19 A. Good morning.

20 Q. When you say you're the regional
21 manager, exactly what's the region?

22 A. We have several facilities throughout
23 the state of Missouri, so my region would be anything
24 that they own in the state of Missouri.

25 Q. So the entire state of Missouri?

1 A. Anything that Aqua owns inside of it.

2 Q. And how many facilities are there that
3 Aqua owns inside the state of Missouri?

4 A. They have 57 -- approximately
5 57 facilities locally and approximately 12 water
6 systems in southwest Missouri, and then we have a
7 system near Sedalia, Missouri, and a water system near
8 Warsaw, Missouri.

9 Q. If I were to ask you how many sewer
10 customers Aqua Missouri has in Missouri, ballpark
11 figure, would you be able to give me an answer?

12 A. Yes.

13 Q. How many?

14 A. Approximately 1,700.

15 Q. Okay. And how many customers do you
16 have at Lake Carmel?

17 A. Forty-nine.

18 Q. When you say 49, does that mean 49 homes
19 that are connected to the system?

20 A. No, it does not.

21 Q. What does it mean?

22 A. It means that we currently bill 46 water
23 and wastewater customers and we have -- the other
24 customers are water only at this time. They do not
25 have sewer service, but they do have water service and

1 they have have made application for service to our
2 company.

3 Q. So you have 46 sewer customers at Lake
4 Carmel?

5 A. They are being billed by the records of
6 our billing systems, yes.

7 Q. Okay. Do you know how many homes there
8 are in Lake Carmel that are currently connected to your
9 sewer system?

10 A. At this time, I physically do not know.
11 I rely on billing records telling me that there are 46.

12 Q. Okay. And do you know how many persons
13 reside in the Lake Carmel subdivision?

14 A. No, I do not.

15 Q. Who's Ed Storey?

16 MR. ELLINGER: Judge, I'm going to
17 object. I don't know what the relevance to Ed Storey
18 is. He's never been referenced to any matter in this
19 case, whatsoever.

20 JUDGE WOODRUFF: If the witness doesn't
21 know, she can say, I don't know. I'll overrule the
22 objection.

23 THE WITNESS: Ed Storey is a developer
24 of another subdivision. I've had no dealings with him
25 with Lake Carmel.

1 BY MR. THOMPSON:

2 Q. But have you had dealings with him with
3 Aqua Missouri?

4 A. Yes, I have.

5 MR. ELLINGER: Again, I'm going to renew
6 an objection to this line of questioning. This is not
7 relevant to the existing complaint in this case.

8 JUDGE WOODRUFF: What is the relevance,
9 Mr. Thompson?

10 MR. THOMPSON: Ed Storey is a developer
11 who is also bringing a complaint or has brought a
12 complaint against Aqua Missouri for many of the same
13 reasons as Mr. Becker, and I think it is very relevant
14 to the inadequacy of the tariff, which Mr. Merciel has
15 testified about extensively.

16 MR. ELLINGER: And I think that the
17 complaints that have been filed have not been
18 consolidated nor do they have the same factual
19 backgrounds or underpinnings. The fact that there is
20 another complaint that may have been filed is not
21 relevant to the resolution -- the issues is in this
22 case.

23 MR. THOMPSON: Well, your Honor, I think
24 it might be of interest to the Commission in
25 determining what action to take in this case.

1 JUDGE WOODRUFF: I'll allow it to go
2 forward at this point and I'll overrule the objection.
3 He can ask another question or -- I'm not sure where
4 we're at, if your last question was answered.

5 MR. THOMPSON: I'm not sure either, so
6 I'll ask another one. Thank you, your Honor.

7 BY MR. THOMPSON:

8 Q. As far as you know, is there a dispute
9 presently between Mr. Storey and Aqua Missouri?

10 MR. ELLINGER: I'm going to renew my
11 objection, Judge.

12 JUDGE WOODRUFF: Again, it's overruled.

13 THE WITNESS: As far as I know, yes, we
14 have received documentation that Mr. Storey has filed.

15 BY MR. THOMPSON:

16 Q. And do understand what the basis of the
17 dispute is?

18 MR. ELLINGER: Again, Judge, can I
19 just renew my objection and make this a continuing
20 objection --

21 JUDGE WOODRUFF: Yes.

22 MR. ELLINGER: -- to all questions
23 related to Ed Storey or any complaint filed outside of
24 the complaint filed in this matter?

25 JUDGE WOODRUFF: I'll take that as a

1 standing objection.

2 MR. ELLINGER: Thank you, your Honor.

3 BY MR. THOMPSON:

4 Q. My question was, do you know what the
5 basis of the dispute with Mr. Storey is?

6 A. I would say to you that we have not
7 sat down and reviewed this or prepared for it to come
8 here today, so I would say that all the company
9 documentation has not been yet reviewed, that I could
10 not give you an adequate answer until I've reviewed the
11 documentation.

12 Q. Okay. In the past year, have any
13 persons applied for service, sewer service at Lake
14 Carmel?

15 A. Yes, they have.

16 Q. How many?

17 A. Two.

18 Q. And have those persons been hooked up?

19 A. They have filled out applications and
20 have it on file and been granted access to hook to us,
21 at which time they will.

22 Q. What about the year before? Did any
23 persons apply for sewer service at Lake Carmel?

24 A. I currently do not have those records in
25 front of me. I'm not able to answer that.

1 Q. To your knowledge, have you ever refused
2 to give sewer service to any person at Lake Carmel?

3 A. An individual customer?

4 Q. I think I said any person.

5 A. An individual, to my knowledge, has not
6 been denied, unless the customer service department
7 has. The customer service is not handled outside of
8 Jefferson City, Missouri, so I could not answer to what
9 maybe they were given answers through our customer
10 service department. But I do know that the
11 applications are received, they are on file there in
12 our office in Jeff City that we did take and we did
13 approve for such time they decide to build their homes.

14 Q. So do I understand you to say that the
15 information is in your office, but you just don't know
16 it?

17 A. I do. I even know the two customers.
18 They are Amanda Burnhardt and Curt Lepper. I don't
19 have knowledge of any others that have applied
20 recently, no.

21 MR. THOMPSON: Thank you. No further
22 questions.

23 JUDGE WOODRUFF: All right. Then for
24 Becker?

25 MR. WENZEL: I have no questions.

1 JUDGE WOODRUFF: All right. We'll come
2 up for questions from the Bench then. Commissioner
3 Murray?

4 Commissioner Appling, then?

5 QUESTIONS BY COMMISSIONER APPLING:

6 Q. Good morning, ma'am.

7 A. Good morning.

8 Q. How are you today?

9 A. Fine.

10 Q. I've got a few questions to run down
11 with you, if you don't mind. My first one is, does
12 Aqua Missouri currently have sufficient capacity at
13 Lake Carmel to add additional homes to the system? Do
14 you have the capacity?

15 A. At this time, Aqua Missouri is looking
16 into the situation at Lake Carmel. We are not denying
17 individual customers to hook into it. We are taking
18 the responsibility of how we are currently operating
19 the lagoon with the Department of Natural Resources.

20 Q. Okay. How often does Aqua Missouri
21 inspect the system to ensure that it complies with DNR
22 and EPA standards. Do you have a policy of how often
23 you do that?

24 A. This facility is visited by a certified
25 operator three times per week, or more if maintenance

1 or other type of things we deem necessary.

2 Q. What does a certified inspector do?

3 Does he just go there and check to see if you have
4 enough chlorine or whatever in the water, or does he
5 inspect the lagoon itself?

6 A. He physically looks around the lagoon
7 and we look for, you know, animals that have
8 infiltrated our system. We also take field testing, we
9 do the temperature, pH, BOD. We do do field testing
10 when we go there daily, when they are visited there
11 three times during the week, during their visit. That
12 is part of it.

13 Q. When did Aqua Missouri become aware of
14 the groundwater infiltration into the system at Lake
15 Carmel?

16 A. We did smoke testing over the course of
17 the past two to three years, and we found out during
18 the course of the smoke testing the I&I that we had and
19 we did address all of it, and we have repaired
20 manholes. The current I&I that we have left that we
21 are not able to completely address is across the dam,
22 and we have had the lines cameraed and our regional
23 engineering department out of Kankakee, Illinois is
24 currently reviewing that to come up with a solution, or
25 non-solution -- I'm not sure what they will come up

1 with -- in how to handle the I&I, but it is only now
2 existing across the dam and the manholes that are on
3 the dam. The rest of it has been fixed throughout the
4 system.

5 JUDGE WOODRUFF: If I can interrupt, you
6 used an acronym, and I want to make sure it's clear on
7 the record. I&I?

8 THE WITNESS: Inflow and infiltration.

9 JUDGE WOODRUFF: All right. Thank you.
10 Sorry, Commissioner.

11 BY COMMISSIONER APPLING:

12 Q. And have you-all done any investigation
13 on or estimated the capacity needed to adequately serve
14 your customers at Lake Carmel? Do you have that on
15 record of what capacity your lagoon will need in the
16 future in order to serve the capacity or the number of
17 people that might move to that location?

18 A. I do not currently have that. Our
19 regional engineering department located in Kankakee has
20 most recently taken that up.

21 Q. Okay. Has Aqua Missouri estimated
22 customer growth? Do you-all have anything to talk
23 about in record? Mr. Becker says he has approximately
24 50 more lots he could develop. Do you-all have any
25 feel for what your capacity and what you would do about

1 it as we move forward with this?

2 A. As far as his lots, being developer
3 lots, we would work with him under the current tariffs
4 for getting a developer agreement and addressing those
5 issues under that.

6 Q. Has Aqua Missouri removed sludge from
7 the lagoon? How often do you do it? Have you -- have
8 any taken place at Lake Carmel or any other lagoons in
9 the state of Missouri?

10 A. No. We currently have not ever dredged
11 Lake Carmel. We did do some bidding in the last two
12 years. And we do have another facility that is called
13 Monticello lagoon, and we decided that the price of
14 that and the -- just to do the first cell of that,
15 which is comparable in size, was over \$100,000 and \$.09
16 a gallon to deliver it to the City of Jefferson, if we
17 were not able to find land to land apply it.

18 Q. Okay. Do you have an estimate of how
19 much it would cost to dredge a lagoon?

20 A. I have not had Lake Carmel estimated.

21 Q. Okay. How is your budget set? Do
22 you-all have money in your budget for setting such --
23 to look into those kind of areas? How is your budget
24 set?

25 A. Our budget is set at the corporate

1 level. We have the corporate engineering capital
2 department, and they send the regional engineer out.
3 He goes through our system and makes the reviews and
4 makes recommendations on behalf of Aqua Missouri.

5 Q. Do you ever make recommendations
6 yourself to your corporate headquarters about what may
7 be used or needed in the state of Missouri?

8 A. I'm allowed to make those
9 recommendations to the regional engineer, and I have
10 done so.

11 Q. Ms. Hale, do you have a copy of your
12 tariff? We were using it this morning, I think it was
13 Rule 12 that we were using this morning.

14 A. I do not have it in front of me.

15 Q. Would you ask your attorney to furnish
16 you a copy of it please?

17 MR. ELLINGER: Is there a copy that's in
18 the record, I think?

19 JUDGE WOODRUFF: Yes. Exhibit 10.

20 MR. ELLINGER: It's Exhibit 10, I
21 believe.

22 COMMISSIONER APPLING: I wanted her to
23 refer directly to this tariff.

24 BY COMMISSIONER APPLING:

25 Q. Do you have a copy of it now?

1 A. Yes.

2 Q. This morning, you heard Mr. Gaebe -- we
3 asked extended questions to him on several things
4 concerning the -- I specifically asked him on
5 collecting sewer system and treatment system, which is
6 two distinct different things. And I think he defined
7 the treatment system -- or the collection system as
8 getting it from the home to the treatment system. Do
9 you hear him saying that earlier?

10 A. Yes.

11 Q. Okay. The treatment plant is the
12 facility that treated. I'm going to give you a few
13 minutes just to glance over your tariff and I would
14 like for you -- no place that I can see in your tariff
15 where it requires the customer or the developer to add
16 treatment capacity. There's nowhere in this that
17 mentioned that. So if you could help me out and show
18 me where in your tariff it says that, then that will be
19 helpful to me.

20 It speaks a lot to collection, and it is
21 my understanding that the collection is from -- and
22 certainly I will ask Staff to help me out with that
23 definition, because I am having some problem with
24 collection versus treatment.

25 A. I'll address each page, if that's okay?

1 Q. That's fine.

2 A. Okay. B-1 would say that developer may
3 construct said collecting sewers to meet the
4 requirements of all governmental agencies and the
5 company's rules and regulations, including the
6 company's technical specifications. The developer
7 shall contribute such collection/treatment system to
8 the company.

9 Q. It says collection or treatment.

10 A. Slash, it says slash. It says,
11 collection, slash, treatment system.

12 Q. Go ahead. That doesn't mean the same
13 thing to me, but we can discuss that. Go on to the
14 next page.

15 A. Okay. I'll scan the next page.
16 I find the next page just to refer to the size and
17 specifications.

18 Q. Uh-huh.

19 A. It refers that the company shall have
20 the right to refuse ownership or responsibility for the
21 sewers until they have met the constructional
22 obligations as B-1. And when you go back to B-1, that
23 is the collection system/sewer treatment -- or that is
24 the collection/treatment system that it refers back to.

25 C-1 says the developer/owner should

1 negotiate, enter into a contract for the transfer of
2 ownership of the existing system with the company, and
3 it describes the sewer system. It doesn't describe
4 individuals. It just describes sewer system, in my
5 opinion, which would mean the whole system, collection
6 and treatment.

7 Q. Well, if you go back and read 12,
8 Ms. Hale, you will see it doesn't say anything other
9 than collection sewer. It doesn't say anything about
10 treatment.

11 A. Well, I see collection, slash, treatment
12 system, at B-1.

13 Q. You and I have a different
14 interpretation of that, but certainly your attorney can
15 help straighten me out here before the day is over.

16 COMMISSIONER APPLING: Go ahead. Thank
17 you.

18 JUDGE WOODRUFF: Commissioner Murray do
19 you have any questions?

20 While Commissioner Murray is collecting
21 her thoughts, I do have something that just struck me
22 here, not particularly relevant to this case.

23 QUESTIONS BY JUDGE WOODRUFF:

24 Q. Are there such things as pressurized
25 sewer systems?

1 A. Yes, there are.

2 Q. How does that work?

3 A. They have to be lifted or pushed by
4 pump, so they have to be lifted by pumps. They are not
5 able to gravity. You have to lift them up over the
6 hill.

7 Q. But it's not like a pressurized gas line
8 where -- okay. I just had awful images of what could
9 happen with a pressurized sewer system.

10 A. They're not pleasant to fix.

11 JUDGE WOODRUFF: Okay. Commissioner
12 Murray?

13 QUESTIONS BY COMMISSIONER MURRAY:

14 Q. Would you refer to Exhibit S in your
15 testimony, please?

16 A. Is it in the rebuttal or surrebuttal?

17 Q. It's in your rebuttal.

18 A. Exhibit S?

19 Q. S, as in Sam.

20 A. Okay. Yes.

21 Q. Okay. That letter is to Mr. Becker from
22 you; is that correct?

23 A. Yes.

24 Q. Dated December 22nd, 2005. And the
25 purpose of that letter was to confirm a conversation, a

1 telephone conversation that you and he had had the
2 previous day; is that correct?

3 A. Correct.

4 Q. And I'm trying understand, really, the
5 meaning of this. When you say, in a sentence, by using
6 this lower number, the engineer feels through added
7 aeration and additional upgrades, the current lagoon
8 can be upgraded to hold up to 100 single-family homes?

9 A. Uh-huh.

10 Q. And the next sentence, this would
11 prevent any addition facilities being constructed in
12 this area for additional growth you currently have
13 planned. What do you mean by those two sentences?

14 A. I am restating back to him what he --
15 this information came from him. I'm restating back to
16 him to clarify that that is what I understood him to
17 say to me.

18 Q. Okay. Because his engineer had told him
19 that?

20 A. Correct.

21 Q. And you're stating here that he
22 indicated to you on the telephone that he would not
23 submit a proposal because Aqua Missouri was not going
24 to be putting any money to into the upgrades; is that
25 correct?

1 A. Correct.

2 Q. And then your last sentence, you asked
3 him to notify you when your engineer has something that
4 we can review?

5 A. Correct.

6 Q. And then what happened following that?
7 Did you receive any response from Mr. Becker after
8 that?

9 A. No, I did not.

10 Q. Have you ever?

11 A. Not on this particular letter, no.

12 Q. Okay. So during the -- there were
13 discussions following that, is that correct,
14 discussions between yourself and Mr. Becker?

15 A. There have been several meetings and
16 several discussions between all of us, involving all of
17 us.

18 Q. Including the Staff of the Commission?

19 A. Yes. I would believe the timeline and
20 the things in my testimony kind of outlined step by
21 step when they occurred. The next thing that I did
22 receive then would have been January 25th, '06, and it
23 was from DNR. And my contact would have been from DNR
24 next.

25 Q. And that contact from DNR indicated to

1 you that there was an engineering report submitted?

2 I'm sorry. Where are you in your testimony, what page?

3 A. Exhibit T.

4 Q. Well, in your testimony itself, where
5 you're outlining the time frame.

6 A. Correct. Where I'm at? January 25th.

7 Q. Okay. But I'm asking you, in your
8 testimony, the statements in your testimony, you
9 outlined it there.

10 A. Okay. In the front.

11 Q. Okay. I guess it would be on page 9.

12 A. Yeah, I'm looking for it.

13 Q. And that letter to Mr. Becker from DNR,
14 what did that indicate to you?

15 A. It indicated to me that he had sent
16 something into DNR for them to take a look at it, but
17 they said that the current information, they cannot
18 complete the review of the recommendation, and then
19 they list items. And one of those that they listed was
20 a letter of acceptance which are required from the
21 continuing authority, which was Aqua Missouri, and it
22 indicated to me that I had not seen his design or plan.
23 It went straight to DNR, so I wasn't able to see it.
24 And Mr. Becker had not contacted me to sign an
25 agreement to enter into any review or development of

1 the project.

2 Q. Okay. And then what was your next
3 contact with Mr. Becker following that letter that you
4 saw from DNR?

5 A. Well, there were several meetings. Let
6 me refer to page 10.

7 Q. Is that a February 16th meeting?

8 A. Would be a letter from February 6th to
9 Jason from MDNR. And then we responded with DNR,
10 January 16th, an employee of MDNR, Missouri Department
11 of Natural Resources, investigated a land disturbance
12 at Lake Carmel. And they found that Mr. Becker could
13 not continue construction. The land disturbance had
14 occurred by him. And DNR requested that he coordinate
15 with Aqua Missouri on a way to update the wastewater
16 treatment facility.

17 Q. Okay. So he actually began
18 construction?

19 A. I'm not aware of if he was homebuilding
20 or what type of -- I'm not aware of what Mr. Becker had
21 intended to construct.

22 Q. But MDNR told him he couldn't continue
23 construction; is that --

24 A. Yes. That's in the report, which is
25 attached as an exhibit also.

1 Q. Okay. And again, indicating that there
2 had to be coordination with Aqua Missouri and with MDNR
3 on the upgrade to the wastewater treatment facility?

4 A. Correct. It's Exhibit B of DNR
5 documentation.

6 Q. And so who initiated the February 15th
7 meeting at the Public Service Commission offices?

8 A. I am not sure if I remember who
9 initiated, if we did it or Staff did. There were
10 several meetings initiated by both us, Mr. Becker and
11 Staff, but I'm not able to recall which of the three of
12 us initiated this one.

13 Q. And you say, at that meeting we were
14 informed that the proposal previously sent Aqua
15 Missouri and reviewed by Mr. Bates was no longer
16 Mr. Becker's current proposal; is that right?

17 A. Correct. We acquired Mike Bates to do a
18 review of what was presented to us to see if it was
19 something the company thought feasible and that we
20 could follow through with. So we did acquire
21 Mr. Bates, he did so. When we attended the meeting,
22 Mr. Bates was prepared to give his review of it and
23 what he thought of the proposal and we had spent this
24 time and money with Mr. Bates to exert what we thought
25 was what we were reviewing, and in the meeting we found

1 out that it had been changed and we had not been given
2 a copy of the change. So he had been reviewing the
3 wrong document.

4 Q. But the other document had been sent to
5 MDNR?

6 A. And not us. Correct.

7 Q. Now, what did you receive from
8 Mr. Becker after that?

9 A. We were supposed to receive the
10 revision.

11 Q. And when did you receive that revision?

12 A. That revision was given to our attorney,
13 Marc Ellinger.

14 Q. When?

15 A. We are waiting. What this says, we
16 sent -- Marc Ellinger sent a letter dated June 30th to
17 Keith Wenzel restating that we can't take any further
18 action until we received the developer agreement. So
19 according to this -- I'm looking to see when we
20 received the next -- it does not appear by the timeline
21 that we physically received one.

22 Q. Okay. So your last indication to the
23 developer was that you would not proceed any further
24 until there was a developer agreement and a deposit in
25 accordance with your tariff; is that correct?

1 A. We told him that until he signed a
2 developer agreement, that we would not proceed.

3 Q. So you've never received a finalized
4 plan or a developer agreement; is that correct?

5 A. We have not received a finalized design
6 or have we received a signed developer agreement.

7 Q. And have you ever informed Mr. Becker
8 that Aqua Missouri would not require the developer to
9 pay for the needed expansion?

10 A. I believe your question was, have we
11 told him we would not require?

12 Q. Yes.

13 A. No. We have not told him that we would
14 not require him to pay.

15 Q. So what was the latest -- it appears
16 that some parties are saying there have been several
17 negotiations -- I guess all parties are saying that --
18 and attempts to come up with some solution, but there
19 really has never been a proposal that you were all
20 looking at at the same time; is that correct?

21 A. In the early 2000s, when Mr. Becker
22 first came to me, I did, in conjunction with I
23 believe -- I'm going to say my opinion to believe his
24 first engineer Rick Muldoon and myself and Keith Forck
25 in the early 2000s did go out and did physically put in

1 and look at a lot of the lagoon, do testing in what we
2 thought would be a fix at that time in the early 2000s,
3 and at that time, according to the DNR regulation.

4 And I did agree with Mr. Muldoon and
5 Mr. Forck. However, when he went back and he gave that
6 to Mr. Becker, we told him that that was probably
7 something that we could move forward on, but he would
8 not sign a developer agreement and he would not agree
9 to pay for it. Sometime later, he did bring some sales
10 brochures into our office on a STEP system, a septic
11 tank system, and he was proposing a separate outfall
12 for it from our treatment plant.

13 And then later on, when he did submit
14 that to DNR, which we've seen it submitted -- many
15 things we've seen submitted through DNR, we learned
16 from them by letters from DNR, we understood then that
17 he was not going to work with Aqua Missouri, but he
18 wanted us to waive our right to operate his facility,
19 and he wanted to do his own sewer company, to operate
20 it.

21 Since then, there have been various
22 methods of proposals. Again, things to be done to the
23 current lagoon. He did talk of building his own
24 separate wastewater, mechanical treatment plant
25 stand-alone, which Aqua Missouri had no objection to,

1 as long as he was to build and pay for it himself.

2 There have been various types. I
3 even -- one day, there was a meeting with Mr. Appling
4 upstairs. I looked at him as part of maybe taking part
5 of our pipes and him going one way with another system
6 and us going another or different sides of the Lake.
7 As you can tell, it's been endless. We've looked at
8 endless proposals with him and we have made endless
9 suggestions ourself. And we have hired engineers to
10 look at it.

11 Q. And I'm assuming the company has
12 expended a certain amount of money to date looking at
13 the need to expand the system for the developer's
14 purposes, yes?

15 A. For the developer's purposes, yes. We
16 have expended time, employee staff, engineering.

17 COMMISSIONER MURRAY: All right. I
18 think that's all I have. Thank you.

19 THE WITNESS: Thank you.

20 JUDGE WOODRUFF: All right. Recross
21 based on questions from the Bench beginning with Staff?

22 MR. THOMPSON: Thank you, your Honor.

23 RE-CROSS-EXAMINATION BY MR. THOMPSON:

24 Q. I'd like to go back to the first
25 question that Commissioner Appling asked you, which I'm

1 not sure you answered. And this is a yes or no
2 question. Do you now have capacity at Lake Carmel to
3 add additional homes to your sewer system?

4 A. And I answered, we have an I&I problem,
5 so we're not actually sure what the accurate capacity
6 is.

7 MR. THOMPSON: I object, your Honor, and
8 please instruct the witness to answer yes or no.

9 JUDGE WOODRUFF: I believe the witness
10 is entitled to give a responsive answer. If she can't
11 answer yes or no, I'm not going to require her to
12 answer yes or no.

13 BY MR. THOMPSON:

14 Q. Very well. Are you able to answer that
15 question yes or no?

16 A. I would say until the I&I are fixed and
17 the studies that we are currently under, I cannot
18 answer your question yes or no.

19 Q. Thank you. Turning now to your tariff,
20 Rule 12, and is it Rule 12-B that you rely upon for
21 Mr. Becker's obligation to fund the expansion of the
22 treatment facility?

23 A. I believe inuring also into that the
24 attached agreement, which I don't have in front of me,
25 does say that the developer will put up a deposit and

1 bear the cost, which is an attachment to this
2 extension.

3 Q. Okay. I wonder if you might read
4 paragraph B of Rule 12.

5 A. This rule should govern the construction
6 of new treatment facilities and/or extension of new
7 collecting sewers requested by developer in areas
8 within the company's certified service area where the
9 company currently does not serve.

10 Q. Okay. Do you see the word upgrade in
11 that paragraph anywhere?

12 A. I do not see the word upgrade.

13 Q. Do you see the word expand in that
14 paragraph anywhere?

15 A. I do not see the word expand.

16 MR. THOMPSON: Thank you. No further
17 questions.

18 JUDGE WOODRUFF: All right. And from
19 Becker?

20 MR. WENZEL: Nothing, your Honor.

21 JUDGE WOODRUFF: Any redirect?

22 MR. ELLINGER: Just a couple of
23 questions, Judge.

24 REDIRECT EXAMINATION BY MR. ELLINGER:

25 Q. You have in front of you what's been

1 marked as Exhibit 10, which is Rule 10 -- or excuse
2 me -- Rule 12-B. Do you see that?

3 A. Yes.

4 Q. And that does reference a developer's
5 agreement, does it not?

6 A. Yes, it does.

7 MR. ELLINGER: And I would ask the court
8 reporter to hand you Exhibit 9.

9 BY MR. ELLINGER:

10 Q. Do you have Exhibit 9?

11 A. Yes.

12 Q. Is that the developer agreement
13 referenced in Rule 12-B and also you've been discussing
14 during your testimony today?

15 A. Yes.

16 Q. And Exhibit 9 entails extension or
17 expansion of a sewer system. Right?

18 A. Correct.

19 Q. And what components does an extension or
20 expansion entail?

21 A. An extension or expansion would be
22 anything that would be required for the developer to
23 add his customers, in my opinion, whether that be
24 collection or treatment. It would be in the premises
25 of the sewer system.

1 Q. Mr. Thompson asked you a couple of
2 questions about upgrade or expansion. Do you remember
3 those question?

4 A. Yes, I do.

5 Q. When you read Exhibit 10, which is
6 Rule 12-B, do you see anything in here that specifies
7 that the company shall upgrade or expand facilities for
8 developer's purposes?

9 A. Not in 12-B, I do not.

10 Q. Okay. And based upon the language of
11 12-B and your understanding of it, it is within the
12 discretion of the company if the developer wishes to
13 add on additional facilities to require a new facility
14 to be constructed. Correct?

15 A. Correct.

16 MR. ELLINGER: No further questions.

17 JUDGE WOODRUFF: Okay. This witness can
18 step down.

19 Commissioner Appling, you wanted to ask
20 a question of Mr. Merciel?

21 COMMISSIONER APPLING: I think so.

22 JUDGE WOODRUFF: If Mr. Merciel would
23 retake the stand.

24 COMMISSIONER APPLING: Mr. Merciel,
25 would you bring that copy of the tariff with you that

1 talks about B and B-1?

2 MR. MERCIEL: Sure.

3 JAMES MERCIEL, having been previously sworn, testified
4 as follows:

5 QUESTIONS BY COMMISSIONER APPLING:

6 Q. Would you point out to me in 12-B,
7 paragraph B or either one, where that paragraph that
8 hold Mr. Becker responsible for anything except a
9 collection of sewer? Would you please clear me up on
10 that?

11 A. I don't believe in 12-B or 12-B1, I
12 don't believe it does talk about expansion of treatment
13 facilities. It specifically talks about new treatment
14 facilities and it talks about collection systems. It
15 does not get into expansion of existing company-owned
16 facilities.

17 Now, it is true when you go to
18 Exhibit -- well, Sheet No. SE-6, it's Exhibit B of the
19 extension rule, that's the example developer agreement.
20 That does discuss treatment plant expansions, but the
21 rule itself, B-1 does not.

22 Q. What hold Mr. Becker responsible, the
23 exhibit or the tariff itself?

24 A. Well, the exhibit is part of the tariff
25 so I can't speak strictly by law, because I'm not a

1 lawyer, but we interpret this to apply in such a
2 situation. It's not contemplated that the company
3 expend the funds for the expansion for developers.

4 Q. Right. But if you go back to B-1 and
5 down at the bottom there, that last line says
6 collection or treatment, it seems to me it's very clear
7 that it talks about new treatment and collection
8 plants, and Lake Carmel is not a new plant. It's an
9 old plan that was there long before Mr. Becker showed
10 up.

11 A. That is true, and I agree with you, in
12 paragraph B it's talking about new facilities.

13 COMMISSIONER APPLING: Thank you.

14 JUDGE WOODRUFF: Anyone wish to recross
15 based on the questions from the Bench?

16 MR. WENZEL: No.

17 MR. ELLINGER: No questions.

18 JUDGE WOODRUFF: Any redirect based on
19 questions from the Bench?

20 MR. THOMPSON: No, your Honor.

21 JUDGE WOODRUFF: All right. Thank you,
22 Mr. Merciel.

23 I believe that concludes all of the
24 evidence in this case, or all the testimony.

25 MR. ELLINGER: That does on behalf of

1 the company.

2 JUDGE WOODRUFF: Okay. I show all the
3 exhibits, 1 through 11, have been offered and received.

4 Go off the record for a moment.

5 (OFF THE RECORD.)

6 JUDGE WOODRUFF: All right. We're back
7 on the record. The only thing that's remaining then is
8 a schedule for post-hearing Briefs. What I anticipate
9 would be a round of Briefs filed 20 days after the
10 transcript is filed, and since I don't know exactly
11 when the transcript will be filed, once it comes in, I
12 will send out a notice to parties specifying the date
13 when the post-hearing Briefs will be filed.

14 Do the parties wish to file a second
15 round of reply Briefs?

16 I don't see anybody clamoring for that,
17 so we'll just go with a single round.

18 MR. ELLINGER: Judge, if I could ask one
19 thing?

20 JUDGE WOODRUFF: Sure.

21 MR. ELLINGER: Not knowing when the
22 transcript will be filed, there is a conflict that I
23 will have in late June. I don't know how long the
24 court reporter will take to prepare the transcript, but
25 I have to be at national emergency management training

1 in Maryland. We meet the last week in June. If that
2 turns out to be the week that Briefs are --

3 JUDGE WOODRUFF: It shouldn't be that
4 long. The standard is 10 working days for the filing
5 of the transcript, so we'd be looking at the transcript
6 around the first of May, so probably the end of May.

7 MR. ELLINGER: That would be fine.
8 Thank you, Judge.

9 JUDGE WOODRUFF: Anything else anybody
10 wants to bring up while we're on the record?

11 Hearing nothing, then, we are adjourned.
12 Thank you all very much.

13 (WHEREUPON, the hearing was adjourned at
14 12:32 p.m.)

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