

1 STATE OF MISSOURI
2 PUBLIC SERVICE COMMISSION
3 TRANSCRIPT OF PROCEEDINGS
4 Hearing
5 July 23, 2014
6 Jefferson City, Missouri
7 Volume 3
8 Summit Investment, LLC)
9)
10 Complainant,)
11) File No. SC-2014-0214
12) File No. WC-2014-0215
13 vs.)
14)
15 Osage Water Company)
16)
17 Respondent.)
18)
19 KIM S. BURTON, Presiding
20 REGULATORY LAW JUDGE
21
22 ROBERT S. KENNEY, Chairman
23 WILLIAM P. KENNEY,
24 DANIEL Y. HALL,
25 COMMISSIONERS
26
27 REPORTED BY: S. DENISE BALLARD

1 A P P E A R A N C E S

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For the Complainant:

3

Ms. Jeffrey E. Green
Kay, Green & Associates, LLC
4558 Osage Beach Parkway, Suite 106
Osage Beach, MO 65065-2372
(573) 348-0122

6

7 For the Respondent:

8

Mr. Gary V. Cover
Cover & Weaver, LLC
137 West Franklin
P.O. Box 506
Clinton, MO 64735
(660) 885-6914
garycover@earthlink.

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For the Staff of Public Service Commission:

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Mr. Kevin A. Thompson
Public Service Commission Staff
Counsel
P.O. Box 360
Jefferson City, MO 65102

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Court Reporter:

19

S. Denise Ballard, RPR
Missouri CCR #702
Illinois CSR #084-004355
Midwest Litigation Services
711 North Eleventh Street
St. Louis, Missouri 63101
(314) 644-2191
1-800-280-DEPO

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1 PROCEEDINGS

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3 (Starting time of the local public
4 hearing: 11:45 a.m.)

5 JUDGE BURTON: Good morning, everyone.

6 It's currently 11:44 and today is July 23, 2014.

7 We're going to go on the record for the hearing for
8 files number SC-2014-0214 and file number
9 WC-2014-0215 in the matter of Summit Investment, LLC
10 vs. Osage Water Company. At this point, I would ask
11 That the parties enter their appearance for the
12 record.

13 MR. GREEN: I'm Jeff Green. Attorney
14 for Osage -- or Summit Investment Company.

15 JUDGE BURTON: Mr. Green, could you
16 please pull the mike down a little bit? Thank you.

17 MR. COVER: My name is Gary Cover,
18 C-O-V-E-R. I'm the Court-Appointed receiver and
19 attorney for Osage Water Company.

20 JUDGE BURTON: All right. Thank you.

21 MR. THOMPSON: Kevin Thompson for the
22 Staff of Missouri Public Service Commission.

23 JUDGE BURTON: Thank you. And the
24 Office of Public Counsel has submitted notice that
25 they will not be participating in today's hearing.

1 Now, I know that we have received a copy of the list
2 of issues as presented by Osage Water Company and
3 Summit Investment, as well as stipulated facts that
4 was addressed as -- a Partial Stipulations of Facts,
5 which included, I believe, some exhibits with that
6 as well. At this point, I'm going to ask if the
7 parties have any objections to the admission of the
8 Partial Stipulations of Facts and the exhibits that
9 are attached.

10 MR. GREEN: None on behalf of the
11 complainant, Summit Investments.

12 MR. COVER: None on behalf of Osage
13 Water Company.

14 MR. THOMPSON: None on behalf of staff.

15 JUDGE BURTON: Okay. In that case, I
16 know that we have the exhibits that are attached to
17 the Partial Stipulations of Facts marked already as
18 Exhibits A through R. I'm going to go ahead and
19 enter those as exhibits, A, B, C, D, E, F and O, G,
20 H, I, J and K, L, M, N, P, Q and R. And I'm going
21 to admit the Partial Stipulations of Facts, the
22 original document, as -- why don't we do that as AA,
23 Exhibit AA, for the record so that it's easier to
24 identify. We also have a copy of the affidavit of
25 Ron Westenhaver that was submitted last Friday. Are

1 there any objections to the admission of that
2 affidavit?

3 MR. GREEN: No objection.

4 MR. COVER: No objection by Osage Water
5 Company.

6 JUDGE BURTON: All right then. In that
7 case, I'm going to go ahead and mark that as Exhibit
8 S for the record. Are there any other exhibits for
9 the record?

10 MR. GREEN: Not on behalf of the
11 complainant, Summit.

12 MR. THOMPSON: There was a Staff
13 Investigation Report that was filed in the case and
14 parties, I believe, have no objection to that being
15 received as an exhibit.

16 JUDGE BURTON: Okay. Then, we'll go
17 ahead and admit that as Exhibit R. I believe I have
18 a copy of all those exhibits. If that's sufficient,
19 I can go ahead and have that provided to be stamped
20 and marked for the court reporter. Are there any
21 other exhibits while we're thinking about it?

22 MR. GREEN: None that I'm aware of.

23 MR. COVER: None that I'm aware of.

24 JUDGE BURTON: Okay. Since it doesn't
25 appear right now that we have any witness testimony

1 to be offered, what I was going to propose is that
2 we just start with opening statements. Treat this
3 as if they're arguments for motions for summary
4 determination. Is that fine with the parties? Then
5 I would say, let's start with Summit Investment,
6 followed by Osage Water Company and then for -- and
7 then finishing up with the Staff of the Public
8 Service Commission. Okay? In that case, Mr. Green,
9 why don't you go ahead and proceed; and we'll just
10 have you stand at the podium, please.

11 MR. GREEN: My name is Jeff Green on
12 behalf of Summit Investment Companies. To give you
13 a brief overview, in 1998, 1999 Summit Investment
14 Companies was a developer down at the Lake of the
15 Ozarks putting in residential housing. At the same
16 time -- with the subdivision called Eagle Woods. At
17 the same time, a gentleman was developing a
18 neighboring subdivision. His name was Mr. Williams.
19 And the two of them decided that it probably made
20 more sense for them to work together for sewer and
21 water for their subdivisions. They entered into a
22 contract in 1999, wherein Mr. Westenhaver and Summit
23 Investment Company provided an existing well system
24 and agreed to install all of the infrastructure for
25 the water in the Eagle Woods Subdivision, as well as

1 all of the sewer infrastructure in the Eagle Woods
2 Subdivision. Provided all of that pursuant to the
3 terms of the contract to Osage Water Company, which
4 was owned at that point in time by Mr. Williams. In
5 exchange for receiving services from Osage Water
6 Company for hook-ups for both water and sewer for
7 all 53 of their lots in the Eagle Wood Subdivision,
8 Osage Water Company proceeded to build a partial
9 plant for sewer processing; and, in fact, gave Eagle
10 Woods some of the connections that it needed and
11 some of the connections it needed for water as well.

12 Their relationship broke down, I guess
13 is the best way to say it, at some point in time and
14 Osage Water Company began to struggle and never was
15 able to complete the project to provide sewer and
16 water for all the rest of Summit's lots that he had.
17 Summit Investment Company actually applied at one
18 point in time for their own permit to complete the
19 plant for his own subdivision, which was in fact
20 turned down in order for him to move on. This was
21 in about 2004. Since that time, Summit Investment
22 Company has 25 lots that remain that he is unable to
23 develop because of the fact he has no sewer and
24 water hook-ups available. Now, it's important to
25 understand, which is one thing that's been confusing

1 for the last ten years, was that the infrastructure
2 is there for the hook-ups. All of the water lines
3 and all of the sewer lines are run through the
4 subdivision. The biggest problem from the water
5 perspective is capacity. And from the sewer, the
6 plant's not big enough to handle the additional 25
7 lots. So there needs to be construction in addition
8 to that sewer facility.

9 In 2006, Osage Water Company, through a
10 number of other issues that it had, a receiver was
11 appointed, which is Gary Cover, who will speak after
12 me. Since that time, nothing has happened.

13 Mr. Westenhaver has asked repeatedly for connections
14 for both sewer and water, and it has not occurred.

15 We did file a lawsuit in approximately 2004 against
16 Osage Water Company which ended up being dismissed.

17 The lawsuit was reinstated in about 2010, I believe,
18 which is still pending. And that case has been

19 currently put on hold pending a hearing from the PSC
20 on resolution, if any. Mr. Westenhaver and Summit

21 Investments has for ten years been unable to develop
22 the rest of his lots, has no other authority to get
23 sewer and water from anybody else, and feels like he
24 has, he's kind of stuck doing nothing.

25 Of course, one of the questions that

1 might come up is to why hasn't he filed a complaint
2 to the PSC many, many years ago, which is a question
3 I asked him, when we decided to file this complaint;
4 and he said, because I didn't know I had to. He's
5 talked to people at the DNR, he's talked to people
6 in PSC, he's worked with a number of people
7 throughout the entire period; and I guess the
8 thought of actually filing a complaint with the PSC
9 never came up. I believe that there are no, if you
10 look at the stipulated facts and the issues, there
11 are really no facts in dispute. There is a valid
12 contract in place. The services were not provided
13 by OWC. OWC's position at this point, I believe, is
14 that they're in a receivership and don't have the
15 ability to expand the plant for the sewer or the
16 water. And Summit's Investment -- Summit
17 Investment's position is that in fact that's not
18 true. He's there to simply continue to manage the
19 business that's there and prepare it for sale or
20 other disposition. And all we're asking for is the
21 ability to have water and sewer so he can complete
22 his subdivision.

23 JUDGE BURTON: Thank you. Any
24 questions, Chairman?

25 CHAIRMAN KENNEY: I have a couple.

1 EXAMINATION

2 QUESTIONS BY CHAIRMAN KENNEY:

3 Q. This is just really a procedural
4 question. Why did you guys not file a Motion For
5 Summary Determination?

6 A. I don't have an answer for you. We
7 just didn't. Probably should have in hindsight.

8 Q. So there's a court order -- there's an
9 order from the Court, relative to the receivership,
10 right, that specifies the authority of the receiver
11 to add additional customers; is that correct?

12 A. I don't believe it addresses the issue
13 of adding, adding or holding things in place. I
14 think it's much more simpler than that.

15 Q. What's your interpretation of the
16 language that I'm referring to?

17 A. My interpretation of the language is
18 that the receiver was appointed to simply take over
19 business operations. Because the operation that was
20 there was not adequate. I don't believe that
21 there's any restriction on expanding the plant,
22 sewer plant, or the water plant for that matter. I
23 didn't see any language in the judgment at all that
24 said there was a restriction on expanding the plant.
25 Especially in light of the fact he was under,

1 arguably, under contractual obligation to do so.
2 Now, did he have authority to go out and add other
3 facilities and other, create other obligations? I
4 don't think it addressed that either, but I would
5 say that's probably beyond the scope probably of a
6 receiver. But in a situation where we've got a
7 contract in place to provide services, I think
8 that's well within the purview of the receiver to
9 fulfill those obligations.

10 **Q. So, if there is case law that talks**
11 **about the receiver being limited in his or her**
12 **ability to act outside of the court order appointing**
13 **him as receiver, is it your legal position that the**
14 **contractual obligation would supercede any common**
15 **law limits on a receiver's ability to expand or take**
16 **action outside of the court order?**

17 A. No. No, I think, in fact, if there is,
18 you know, if there's law out there that says the
19 receiver has no ability to expand the business, so
20 to speak, and does not have to meet his current
21 legal, otherwise legal obligations, I would say, no.
22 I have not seen that law because of the fact that,
23 you know -- the difference in this case is that
24 there is an existing contract that was in place when
25 the receiver took over. This is not a situation

1 where he was trying to expand the business beyond
2 what the obligation was at the time he took over.

3 Q. So in the absence of any case law to
4 the contrary then -- just putting that, my
5 hypothetical aside -- the receiver is bound by the
6 contract when he became, when he took over the
7 receivership, he's obligated to perform under that
8 contract?

9 A. That's our position, yes.

10 Q. I may have some additional questions,
11 but not right now.

12 JUDGE BURTON: Okay. Commissioner
13 Kenney.

14 MR. KENNEY: I just have one, thank
15 you.

16 EXAMINATION

17 QUESTIONS BY COMMISSIONER KENNEY:

18 Q. How long have you been the attorney for
19 the -- Mr. -- for Eagle Woods Subdivision?

20 A. For Summit? Myself or my firm have
21 been dealing with him since 2000.

22 Q. Okay. Because you mention that the
23 home association at one time tried, requested a
24 permit for themselves, they put an application to
25 get a permit, a construction permit, but they were

1 denied by MDNR. And they were denied because they
2 never got an authority waiver from Osage. Was Osage
3 still operating at that time in 2000 -- March 25,
4 2003?

5 A. Yes, they were. And it's my
6 understanding that the reason it was denied is
7 because Osage was supposed to provide the service.

8 Q. The department says they denied it
9 because you never got a continuing authority waiver
10 from Osage Water Company. So that was just dropped
11 too or something?

12 A. I'm going to say yes. Unfortunately, I
13 was not handling the case at that time, so I don't
14 have a real good answer for you.

15 Q. So this thing's been going on for a
16 long time.

17 A. A long time.

18 Q. All right. Thank you.

19 JUDGE BURTON: Commissioner Hall.

20 EXAMINATION

21 QUESTIONS BY COMMISSIONER HALL:

22 Q. So, it's your position, it's your
23 client's position, that it's fully performed under
24 the contract?

25 A. Correct.

1 **Q. And that, I believe you said was**
2 **undisputed; is that correct?**

3 A. I believe that's correct, yes.

4 **Q. Okay. What is the relief that you are**
5 **requesting here?**

6 A. Well, you know, in reality, what we
7 would like is for, to make it clear to Osage Water
8 Company and probably the receiver, because I know
9 there's some confusion on this part, as to whether
10 he has an obligation to, in fact, expand the plant
11 to fulfill the obligations that they have under the
12 contract. We're really just looking for --

13 **Q. Is it under the contract or under the**
14 **tariff and the certificate? Because I think we**
15 **might have some ability to order, to make a**
16 **determination under the tariff and under the**
17 **certificate. I don't know if we have the power to**
18 **interpret the contract and order performance under**
19 **the contract.**

20 A. And I would agree with you. It would
21 be under the tariff. I mean, I don't think this
22 forum has control of the contract. Unfortunately,
23 they get closely tied because the problem is, if
24 he's got -- if Summit's only authority to obtain
25 sewer and water is under the terms of the contract

1 with OWC and they're the only provider, yet the
2 terms of the existing tariff don't provide for that,
3 I don't know where they go. Which is one of the
4 reasons why we have a lawsuit pending to maybe help
5 resolve it as well. But, you know, it's, to some
6 degree, it's a chicken and the egg thing. Which one
7 comes first? And I don't know that answer. That's
8 why we're here. So we can get at least some
9 answers.

10 **Q. And it is your position, or your**
11 **client's position, that under the certificate, Osage**
12 **Water is required to provide service to the**
13 **subdivision.**

14 A. Yes.

15 **Q. And you said that -- well, tell me**
16 **again -- and I'm sorry, I didn't quite get this --**
17 **what is the infrastructure needed for the water and**
18 **what is the infrastructure needed for the sewer to**
19 **provide services to that additional 25 lots?**

20 A. The water infrastructure would be, at
21 most, it's a capacity issue. All the -- like I
22 said, all of the lines and everything are there.
23 There may need to be an additional well established
24 to provide enough capacity to all of the lots. On
25 the sewer end, a similar situation except the

1 reverse side. On the sewer end, all the lines and
2 everything are in, again, there. The only thing
3 which is needed -- which I understand is a big
4 expense, so I don't mean to over simplify -- but is
5 the capacity of the processing plant needs to be
6 expanded to handle the additional fluid that would
7 come from the sewers from those lots.

8 **Q. I'm not sure this is really relevant to**
9 **our ultimate determination, but I'm going to ask**
10 **anyway, do you have any idea what the cost is for**
11 **those? For that infrastructure?**

12 **A.** I could throw out some numbers, but I
13 don't want to because I'm not sure they're even
14 accurate.

15 **Q. Okay.**

16 **A.** I know that we have worked together to
17 some degree, and I don't know where we are with the
18 latest estimates that have been attempted to be
19 retrieved to find out what those costs actually
20 would be.

21 **Q. My understanding is that there is a DNR**
22 **permit that limits the number of lots that can**
23 **receive service. What is the maximum under the**
24 **current permit? Do you know?**

25 **A.** I don't know. I believe it's

1 fulfilled, though, under the current permit. I
2 don't think there is -- I don't believe there are
3 any additional lots available under the current
4 permit.

5 Q. So it would be your position that if
6 the tariff and the contract require Osage Water to
7 provide service, that it needs to do whatever is
8 necessary to get the permitted authority to do that?

9 A. Yes.

10 Q. That the permit is not a shield to your
11 attempt to get service. This is one more thing that
12 the utility needs to deal with in order to provide
13 service.

14 A. That's right. And let me explain one
15 other thing that might not be clear. There have
16 been several permits issued -- or I shouldn't say
17 several, a couple -- over this period of time; and
18 one of the complaints, which comes back to a
19 contractual issue I understand, but one of the
20 complaints that Summit has is, when those permits
21 were issued there was plenty of permits to satisfy
22 all the lots that Summit Investment had requested.
23 And, in fact, in one or two of those permits, it, in
24 fact, stated that they should be covered. What
25 occurred, and this was before Mr. Cover was

1 involved, but what occurred was some of those lots
2 were in fact deferred to Golden Glade, the
3 neighboring subdivision. Which is a subdivision
4 which was owned by Greg Williams, which is the owner
5 of OWC. So some of the complaint and the issue here
6 is the permits were there, everything was in place
7 to do that, they were in fact deferred to the other
8 subdivision as opposed to going to Summit
9 Investment.

10 **Q. Thank you.**

11 JUDGE BURTON: I just have a few
12 questions.

13 EXAMINATION

14 QUESTIONS BY JUDGE BURTON:

15 **Q. You stated before, talking about the**
16 **sewer system, that there will be needed additional**
17 **capacity in order to provide service for those**
18 **additional 25 lots?**

19 **A. Right.**

20 **Q. So, how does that correlate with the**
21 **Court ordered on October 24, 2005 in the**
22 **receivership case where the Court specifically said**
23 **the receiver was to continue to -- was to insure**
24 **that customers continued to receive utility service**
25 **from the assets that had been put in place?**

1 A. I make a distinction with that being
2 they wanted to make sure because at that time when
3 things were going on, there were problems with
4 service to the existing customers to the homes that
5 were there. There were problems with the water and
6 sewer that were there at that point in time. And I
7 believe it was the Court's intention with that
8 language to make sure we don't interrupt that flow.
9 Because there were a number of complaints from home
10 owners that said, I don't have adequate water, we're
11 having sewer problems, you know, so on and so forth.
12 There were potential discharges going on because of
13 it. So, it's my belief and position that in fact,
14 that order was to address that and to make sure all
15 of those people were satisfied. Because after all,
16 those people were living there and using the
17 services. I don't think that that in any way
18 prevented them to continue the obligation for the
19 lots that weren't yet developed that had people
20 living on them.

21 Q. Okay. You also -- that sort of ties
22 into the next question then. You address the fact
23 that this contract precedes the receivership. So
24 wasn't the issue with this contract and your client
25 not being able to get service, prior to this 2005

1 order, wasn't the Court and the receivership aware
2 of that issue then? And if he chose not to
3 acknowledge that in the court order for the
4 receiver, doesn't that mean that that was
5 intentional because he was aware of the receivership
6 issue? Or I mean, excuse me, he was aware of the
7 contract issue?

8 A. I think that's a fair presumption, but
9 I think it's important to understand that Osage
10 Water had several other issues that it was dealing
11 with in addition to this subdivision. At least I
12 believe they were. In addition to this subdivision.
13 This was not the only part of the receiver. In
14 fact, it was not this subdivision that forced this
15 thing into receivership. It was some of the other
16 matters that Osage Water was dealing with. So, I
17 don't believe, right or wrong, that Summit
18 Investment was even involved directly in that court
19 order when it came up. I don't believe they were
20 represented there. I don't think they had any input
21 into that discussion. Whether they should have or
22 not, might be a different story; but I don't believe
23 they were involved.

24 Q. Okay. There's a breach of contract
25 case that is going through the Camden County court

1 **system as well as receiver, excuse me, a**
2 **receivership case, correct?**

3 A. Yes.

4 **Q. What impact does this commission's**
5 **hearing of this complaint have on those cases or**
6 **vice versa?**

7 A. I'm not going to speak to the
8 receivership because I don't know that answer. As
9 far as the pending cases we have there in Camden
10 County, the feeling is that that case was put on
11 hold because the belief is this commission needs to
12 issue an order or finding or something first before
13 they can proceed there because this commission has
14 sole decisions to make or sole authority to make
15 those decisions. I think pending whatever comes out
16 of this commission will help determine whether or
17 not that case continues or whether it's dismissed or
18 resolved.

19 **Q. Okay. Thank you. Any other questions**
20 **from the Commission?**

21 CHAIRMAN KENNEY: Nothing here.

22 JUDGE BURTON: Thank you, Mr. Green.

23 A. Thank you.

24 MR. COVER: Hi there. My name is Gary
25 Cover and I'm the attorney and court-appointed

1 receiver for Osage Water Company. I'm sorry. I've
2 got to move that out of my face just a little bit.
3 I don't disagree with anything that Mr. Green has
4 said; and again, we've put in there that stipulation
5 of facts, which basically outlines the issues that
6 I'm aware of. I've got a -- but, I want to give you
7 just a little other perspective of this. Okay, I've
8 got a really bad drawing here, okay, which I
9 recognize is really poor, okay. I take nothing but,
10 I'm just -- this just gives you a little perspective
11 about what the issues are. And this -- at the
12 bottom is KK -- down at the -- and it's just a
13 little ways past Tan-Tar-A, which I think kind of
14 puts it in perspective for most of us. So this
15 subdivision, the subdivisions that we're talking
16 about would be just a little bit, I don't know,
17 east, west, down there, because I get confused. But
18 it would be a little further down KK. Down the road
19 past Tan-Tar-A just a little bit.

20 The first of the two subdivisions you
21 come to is Eagle Woods, and then the second one you
22 come to is Golden Glade. There is a road that
23 divides, basically, these two subdivisions. At the
24 bottom of the road is the waste water plant. To
25 give you again a little history, at the time I was

1 appointed receiver of the company, the water for
2 both Golden Glade and Eagle Woods came from a well
3 that was located on Golden Glade. Disagreements
4 occurred between, I guess, myself for lack of a
5 better word, on behalf of the company and
6 Mr. Williams who owns and controls the Golden Glade
7 area. And basically -- and I got a letter from him
8 one day in about 2009 or ten or something like that
9 that said, hey, effective 30 days, I'm not going to
10 supply you anymore water.

11 Well, at that point, all of the water
12 for Eagle Woods' existing customers came from this
13 well. So one of the things that I had to do was to
14 find an alternative source. Which I did. I
15 re-energized an existing well that had some pretty
16 limited capacity to be fair. But we were able to
17 make an agreement, we got the well re-energized. I
18 have a tank here. I'm not an engineer; but, you
19 know, a storage tank, pressure tank whatever they
20 are, a little of both, here. And since that time,
21 then that has been supplying water to Eagle Woods.
22 Which kind of then brings me back around, I guess,
23 it has been my position, right or wrong, as
24 receiver, that my primary job was twofold.

25 First and foremost, make sure the

1 customers of Osage Water Company were served their
2 water and sewer. And I think that we've, generally
3 speaking, been able to accomplish that. At the time
4 I was appointed, my understanding is that there were
5 lots and lots of complaints about the company, so on
6 and so forth. And I think that's long since been
7 eliminated, most of those complaints. But, I've
8 also kind of been under the impression -- and again,
9 there is nothing -- I've got my court order here
10 that appointed me, and it talks about the existing
11 system, and it talks about the customers. To be
12 fair, at least in the court order, excuse me, at
13 least to be fair in the court order, I don't think
14 there's anything definitively one way or another
15 that says, you know, you can expand, you can't
16 expand. Okay. I think what it talks about, I know
17 what it talks about, in the court order, basically,
18 it says, you know, your first job is to make sure
19 that these people have safe and adequate service.
20 And then your second job is to figure out how to
21 liquidate this thing and move it on into some other
22 category.

23 At this point, we do have -- we are on
24 schedule to wind up the receivership at this point.
25 The schedule would call for it to be for the end of

1 this year. And so, basically, where I've been, and
2 again, this has not been exactly what I would call
3 an adversarial relationship with Mr. Green or his
4 client. It's just a matter of twofold. Number one,
5 by the nature of the case, when I took over the
6 company, it had no money. Okay. It doesn't have a
7 lot of money today. It's in a lot better shape than
8 it was financially and the items itself, the tanks,
9 the wells, the pumps, the lines, all of those things
10 have been maintained and replaced if necessary. So,
11 I mean the system itself is in substantially better
12 shape than it was when I took over, but it still
13 doesn't have a lot of money. So, basically, I have,
14 I've been reluctant to do anything for
15 Mr. Westenhaver from Summit Investments, again,
16 basically, for two reasons.

17 Number one, not having money and number
18 two, not really sure that was within my purview or
19 -- questioning whether or not that was within my
20 purview or authority to expand the system. But
21 that's kind of -- as far as acknowledging the
22 contract -- and I also don't have any personal
23 knowledge of anything that happened, you know, we've
24 put some of those stipulated facts in there; but,
25 obviously, I don't have any personal knowledge of

1 anything that occurred prior to my appointment. So,
2 that's kind of where I'm at. Answer any questions.

3 JUDGE BURTON: Thank you, Mr. Cover.
4 Chairman?

5 EXAMINATION

6 QUESTIONS BY CHAIRMAN KENNEY:

7 Q. Thank you. Why did you question your
8 authority to expand?

9 A. Well, there's -- the court order, which
10 is exhibit, let's see, Exhibit N is the court order
11 that appoints me. And it kind of starts on page
12 three, and then in the middle of it, it says, and
13 I'm going to kind of skip around, but it kind of
14 starts on page three. In the middle, it says, by
15 reason of the refusal of the Commission to approve
16 the contract sale, appointment of a receiver is
17 necessary to, quote, promote the best interest of
18 the customers of the company and to insure that the
19 customers of the company receive safe adequate water
20 and service. Okay. So again, the way I interpret
21 that particular line is the existing customers.
22 Okay. So, that kind of answers the first part of
23 that.

24 Then it goes on. Basically, page four
25 talks about, it's directing me to negotiate with

1 someone that does the actual hard work of
 2 maintaining the system and, you know, regulations
 3 and so on and so forth. And in the first part of
 4 page four, the latter part of page four talks about
 5 me liquidating the system. And so, I guess, in
 6 summary, I view that particular language as
 7 referring to the existing customers, and I don't
 8 think there's anything in there specifically that
 9 says, if you want to or if you deem it appropriate,
 10 or if you deem it necessary, I don't think there's
 11 anything in that language that says its okay to
 12 expand. To be fair, I don't think there's anything
 13 in there that specifically prohibits it either.

14 **Q. Okay. That was my next question.**

15 **Okay. That's all the questions I have.**

16 JUDGE BURTON: Thank you. Commissioner
 17 Kenney.

18 MR. KENNEY: Thank you Judge.

19 EXAMINATION

20 QUESTIONS BY COMMISSIONER KENNEY:

21 **Q. Is it Cover or Colbert?**

22 A. It's Cover. C-O-V-E -- it's like cover
 23 but I pronounce it cover.

24 **Q. Okay. Mr. Cover, so you became -- back**
 25 **in March of 2004, is that the date you became**

1 receiver or not?

2 A. October 2005.

3 Q. Okay. October 2005. Okay. I'm going
4 back to your drawing.

5 A. Yes, it's really bad.

6 Q. As the father of a daughter who went to
7 the Chicago Art Institute, you're right, you don't
8 draw very well.

9 A. Yeah, I recognize it's not my forte.

10 Q. But then again, I'm the father, and my
11 wife was the artistic one, so I don't draw very well
12 either. But, I'm trying to understand this now.
13 When you took over as receiver in 2005 for Osage,
14 now, that well is not owned by Osage? That one well
15 that you said Mr. Williams said he's not going to
16 give you more water?

17 A. That's correct. Again, at the risk of
18 getting into some real old history, the well is
19 owned by Greg Williams or a Greg Williams subsidiary
20 of some kind. And again, at the time for prior to
21 October 2005, Osage Water Company was also a Greg
22 Williams, in essence, subsidiary. So, it was kind
23 of one in the same.

24 Q. Yeah, I understand that. But when you
25 became receiver somehow he said, well, he kept that

1 well, or because it was in a different -- I'm just
2 curious, I would have assumed that the well was part
3 of the water service, but he contracted --

4 A. Well, I did too at first. I would have
5 -- that's what I thought too. But, you know,
6 basically, rather than litigate ownership of the
7 well which was clearly on his real estate, okay. So
8 that really wasn't the issue. The well is clearly
9 on real estate that Mr. Williams owns and still
10 owns. Okay. Rather than --

11 Q. Take him to court.

12 A. Yeah, rather than litigate that issue,
13 what I chose to do, again, in concurrence with Staff
14 of the Public Service Commission, was file a lawsuit
15 to stay him for awhile while I got an alternative
16 available for the customers. So, that's what I did.

17 Q. Okay.

18 A. And, also, let me just tell you I think
19 that, and I don't even know if Jeff knows this,
20 maybe he does; but at the time, the water came out
21 of that original well -- well, actually it did, that
22 water was bad. It smelled, it smelled like sulphur,
23 it was ugly. Okay. And so, the people weren't
24 happy with it. All right. I actually saw, you
25 know, how they've got the filter in their house and

1 so on and so forth. So that water was bad. Now, as
2 it turns out, fortunately, and again I'm not a, you
3 know, water engineer guru by any stretch. But as it
4 turns out, the water from the well that we
5 re-energized has made all of those customers at
6 Eagle Woods very happy because it is good, clean,
7 non-smelling substantially -- well, it's just, it's
8 just good normal clean water. So, as it turns out,
9 certainly for the customers of Eagle Woods, that
10 turned out to be a good thing.

11 **Q. What's the current break up between the**
12 **two subdivisions, and number of customers?**

13 A. There's about 50 in each, would be my
14 guess.

15 **Q. How many in each?**

16 A. About 50.

17 **Q. You don't know the exact number of your**
18 **clients? Of your customers?**

19 A. I don't know the exact numbers in Eagle
20 Woods, no. Eagle Woods is one part of the system.
21 Okay. And I think I've got probably 30 customers in
22 Eagle Woods. To answer your question, no, I don't
23 know for sure.

24 **Q. And how many in Summit, or the other**
25 **subdivision? Whatever it was?**

1 A. As far as water is concerned, I don't
2 have any customers in Golden Glade. I don't serve
3 Golden Glade's water. Okay. I do provide -- not I,
4 the company. The company does provide the waste
5 water systems for Golden Glade; but again, to be
6 candid, collecting it has been difficult and
7 sporadic. Because, again, as you all know, most of
8 the sewer bill comes from a water bill. Okay. And
9 so, I don't have the water and I have never been
10 able to get appropriate access to the records of the
11 ownership or anything else to be able to properly
12 bill the folks at Golden Glade for the sewer.
13 That's another issue, but --

14 **Q. All right. I have no more questions.**

15 JUDGE BURTON: Thank you. Commissioner
16 Hall.

17 EXAMINATION

18 QUESTIONS BY COMMISSIONER HALL:

19 **Q. So, you received a letter from**
20 **Mr. Williams cutting off your water supply around**
21 **2009, is that what you said? Is that correct?**

22 A. That's roughly correct. Yeah, that's
23 roughly the time frame, yes.

24 **Q. So is it your, is it your legal**
25 **position that that was essentially a change in**

1 circumstances that somehow voided your contractual
2 obligation to Summit? What is the basis for -- what
3 is your legal -- I know your factual basis, you
4 don't have the money to do it. But there has to be
5 a legal basis as well. So, are you asserting that
6 there's a change in circumstance of voiding your
7 contractual obligation?

8 A. No, I think it's -- I guess from a
9 legal standpoint it would be twofold, okay. I mean,
10 first of all, I think at this point, I think that
11 the statute's run on enforcing that contract. From
12 a legal standpoint. The statute of limitations.
13 So, I think that they are past time on dealing with
14 some of that issues. So, that's number one. Number
15 two, I don't -- again, I just -- I guess I just come
16 back to again the language in the --

17 Q. In the receiver order?

18 A. The receivership order.

19 Q. So, you think that trumps the
20 contractual obligation?

21 A. Yes. At least it does from my
22 perspective.

23 Q. If -- my understanding of the tariff
24 that requires you to provide service to the
25 certificated territory is that there has to be a

1 contractual obligation or a contract between the
2 customer and the company. That it's not
3 self-effectuating. That there has to be a contract.
4 Is that correct?

5 A. Yeah, I believe so.

6 Q. Okay. And I'm probably going to ask
7 the same question of staff when they come up. So,
8 if there is no contract, if you are ultimately
9 successful on proving that there is no contract or
10 no contractual obligation, then is it your position
11 that then the tariff doesn't require you to provide
12 service?

13 A. Yes.

14 Q. I have no further questions.

15 JUDGE BURTON: Thank you.

16 MR. COVER: Thank you.

17 MR. THOMPSON: May it please the
18 Commission. Unfortunately, I don't have that tariff
19 here with me. So, I don't know if I can answer your
20 question or not. Staff's position is that Osage
21 Water Company has the certificate of convenience and
22 necessity, and Eagle Woods is part of it's service
23 area. Therefore, it has the obligation, because it
24 has that certificate, to serve any member of the
25 public who requests service up to the limit of its

1 capacity. And that's kind of where things get
2 cloudy.

3 Staff's engineering appreciation of the
4 situation is that some new customers could be added,
5 some new water customers could be added, some new
6 sewage treatment customers could be added. How
7 many, that's not clear. And staff makes no
8 representation as to what position DNR would take
9 about adding new water or new sewage treatment
10 customers to the existing system. But staff
11 believes as a practical matter, some number of new
12 customers could be added. Okay? Legally, staff
13 believes that Osage Water, as I said, has the
14 obligation to serve. It's been granted a monopoly
15 certificate. It's the only source. So it has the
16 obligation of serving the public within its service
17 area. I looked at the court order that has been
18 referred to and it's silent. Doesn't say you can,
19 doesn't say you can't. I looked at the tariff, and
20 my view of the tariff is that Mr. Westenhaver must
21 pay the cost of whatever additional facilities are
22 required to serve his additional lots to the extent
23 that the cost exceeds the contribution he's already
24 made.

25 As you've heard, there's an existing

1 contract, some existing infrastructure that
 2 Mr. Westenhaven had was turned over to Osage Water,
 3 and I believe some cash was turned over to Osage
 4 Water. In exchange, he was supposed to get a
 5 certain amount of the available capacity from that
 6 sewage treatment plant that Greg Williams built for
 7 Osage Water Company. Whether he got all the
 8 connections he paid for is a question for you or
 9 perhaps for Camden County Circuit Court to decide.
 10 But fundamentally, staff believes Osage Water
 11 Company needs to provide the service that perhaps
 12 Mr. Westenhaven -- is that his name?

13 MR. GREEN: Westenhaver.

14 MR THOMPSON: Westenhaver. Thank you.
 15 Needs to provide some money, and that's what staff
 16 believes the Commission's decision should be. With
 17 respect to the astonishing confusion over who owns
 18 what, I can tell you this has been a saga that maybe
 19 should be recorded in a novel or a movie. The
 20 Commission has been dealing with Osage Water and
 21 Mr. Williams and as you put it, his subsidiaries,
 22 for as long as I've been here and I think even
 23 before that, and I came here in 1999. The reason
 24 that the Eagle Woods well did not go to Mr. Cover is
 25 because it had never been deeded over to Osage Water

1 Company. The well was instead owned by Greg and
2 Debra Williams, husband and wife. And today it is
3 -- they operate a utility, Environmental Utilities
4 it's called, and it provides water to the Golden
5 Glades Subdivision and it's regulated by this
6 commission. We brought a complaint against another
7 one of his subsidiaries called Hurricane Deck, which
8 is actually a realty company, because it sent out
9 bills for water. Thereby, crossing the line and
10 making itself a utility company. And they were
11 penalized to the extent of \$20,000 for sending out
12 that bill. There's a Circuit Court case upholding
13 the penalty.

14 So, Mr. Williams continues to be
15 involved in water and sewer activities down at the
16 lake. He has litigation against the receivership.
17 When he controlled the company, he hired himself to
18 do legal work for the company and the legal bills
19 have never been paid. And he is now seeking to
20 recover the value of his legal services, which I
21 think were exorbitant in terms of the size of the
22 bills. As well as being a residuary claimant, when
23 the receivership is wound up and the owners are
24 paid, if there's anything left, well, he's a
25 residuary claimant there as well. Whether there are

1 any other shareholders left on Osage Water, frankly,
2 I don't know. And I'm happy to do my best to answer
3 whatever questions you might have.

4 JUDGE BURTON: Thank you. Chairman.

5 CHAIRMAN KENNEY: I don't have any
6 questions, Mr. Thompson. Thank you.

7 A. Thank you, Mr. Chairman.

8 JUDGE BURTON: Commissioner Kenney.

9 EXAMINATION

10 QUESTIONS BY COMMISSIONER KENNEY:

11 Q. Mr. Williams is a real class act, isn't
12 he? He's a player.

13 A. He has been a player, yes.

14 Q. Okay. I have a question. What was --
15 back when the Commission denied the sale to American
16 Water, do you remember what that reasoning was?

17 A. Absolutely. It was because there was a
18 cloud on the title of part of the system. The
19 system had been built in bits and pieces. And it
20 wasn't all contiguous either. It didn't all connect
21 to each other. But it was in here, a little bit
22 here, a little bit there, a little bit over here.
23 So there was a cloud on the title of some of it.
24 And so at that time, it was not possible for
25 American Water to get all of it. And so the

1 Commission chose not to go forward because they
2 didn't want to leave any of it in Mr. Williams'
3 hands.

4 Q. Thank you.

5 JUDGE BURTON: Commissioner Hall.

6 EXAMINATION

7 QUESTIONS BY COMMISSIONER HALL:

8 Q. Well, from my perspective, the issue is
9 that there is a certificate that obligates the
10 utility to provide service to a geographic area that
11 includes the subdivision at issue. What I am
12 struggling with is whether or not that service
13 obligation is contingent upon a contract. And if
14 so, whether subsequent events have either voided the
15 contract or voided the contractual obligation. Is
16 there anything wrong with that analysis?

17 A. Nothing at all. The tariff provides
18 for and allows for contracts that it required. I
19 think to the extent it's talking about extensions of
20 service, rather than just hook-ups of individual
21 users, I think probably contracts are required. I
22 think its contemplated that the developer is going
23 to fund the extensions.

24 Q. So, you said that, that the contract
25 requires the subdivision to pay for the connections

1 if the company has paid up to what is required under
2 the contract.

3 A. If the cost exceeds what's already been
4 paid, and part of it was in the form of contributed
5 infrastructure, and part of it was in the form of
6 cash, if it exceeds the value of the contributions,
7 then I believe Mr. Westenhaver is obligated to pay
8 the excess.

9 Q. And do we know? Or do you have a
10 position as to whether the contributions are --
11 whether the costs exceed that --

12 A. I can't say that I know, but I can tell
13 you that my guess is that they do.

14 Q. So then that would mean that the
15 subdivision would be required, that Summit would be
16 required to pay those additional costs?

17 A. That's correct. But there's an
18 underlying question, which is whether Summit ever
19 got what it paid for in the first place. Whether it
20 ever got all of what it paid for in the first place.
21 And, frankly, I'm not sure. I mean, there was an
22 original deal where infrastructure and money went to
23 Mr. Williams, and Mr. Westenhaver was supposed to
24 get a certain number of connections out of that
25 deal. And I don't know that he ever got all the

1 connections he was supposed to get originally.

2 Q. Was he supposed to get 53?

3 A. Yes. He was supposed to get 53
4 connections. He did not.

5 Q. So he's 25 short?

6 A. He's 25 short.

7 Q. So then, we know that he hasn't gotten
8 everything that he --

9 A. I concede, yes.

10 Q. So, is it staff's position that because
11 he hasn't received what he bargained for under the
12 contract, that he doesn't have the obligation to pay
13 additional costs for additional connections?

14 A. I don't know that the work was ever
15 done that would have supported all of the
16 connections that he wanted in the first place, you
17 see.

18 Q. Uh-huh.

19 A. I'm sure the money is gone. The money
20 went -- who knows where the money went. So, the
21 thorny question then to determine is, how many
22 connections did Mr. Westenhaver pay for? Well, I
23 guess he paid for 25 more than he got. Was the
24 amount that he paid originally, was that sufficient
25 to support all of those connections? I don't know

1 the answer to that. And how much would it cost to
2 make whatever improvements are necessary to make
3 those connections today? I don't know the answer to
4 that either. It probably is going to cost more to
5 make them now, then it would have cost when they
6 originally made the contract.

7 JUDGE BURTON: Mr. Cover, can you
8 clarify?

9 MR. COVER: Well, yeah, and I've been
10 talking with Jeff. And, again, this all predates me
11 but I think to provide you a little perspective of
12 what occurred, it's my understanding that there were
13 -- that DNR had said, okay, you've got X number of
14 connections and Mr. Westenhaver was expecting so
15 many of them. But in the meantime, for lack of a
16 better word, Mr. Williams used those over in Golden
17 Glade. So then, as we sit here today, I think that
18 the DNR permit is basically maxed out essentially.
19 Okay. And so the connections that Mr. Westenhaver
20 expected, I think to be fair, probably ended up over
21 in Golden Glade. And, again, that all predates me;
22 but I think, I think Jeff agrees with me. So it's
23 not like they just never were anywhere. I think
24 that's where they went.

25 COMMISSIONER HALL: I don't have any

1 further questions, thank you.

2 JUDGE BURTON: I actually have a
3 question for Mr. Cover then. Or perhaps Mr. Green.

4 MR. COVER: Do you want me to go up
5 there?

6 JUDGE BURTON: I think you're fine.
7 We'll stay where everyone is. Does Osage Water
8 Company, are you, or have any positions or thoughts
9 about what staff's thoughts are about whether or not
10 Summit Investment needs to provide any additional
11 funds under the terms of the tariff for service? Or
12 the contract?

13 MR COVER: I guess to be fair, I've
14 never really given that a position one way or
15 another. If -- I mean, there have been some
16 negotiations. I can tell you that. That throughout
17 -- that in the past, there have been some
18 negotiations between myself and Mr. Westenhaver, and
19 I think Jeff has been involved in the latter stages
20 of them. His predecessor was involved in that.
21 There were efforts, I don't want the -- this is kind
22 of important to bring out, there were efforts at
23 trying to find a resolution to this, you know,
24 without being before the Commission.

25 And as we pursued these things, I

1 think, and I'm not saying he was wrong. Okay. But,
2 for example, I had proposed at one time to
3 Mr. Westenhaver, hey, let's, you know, let's first
4 of all, let's spend about, I think as I recall the
5 figure was \$5000. Let's spend some money together,
6 and try to figure out exactly what we're fighting
7 about. Okay. What is it going to cost to get this
8 fixed? Okay. Because one of the things that I
9 think that we're even here today, is I don't think
10 we know exactly for sure what the fight is that
11 we're fighting about and what's it going to cost?
12 And I guess to be fair, and again, I think this
13 predates Jeff, it was Mr. Westenhaver's position --
14 and, again, I'm not suggesting he's wrong, or he's
15 right or wrong -- but it was his position that, no,
16 he didn't, you know, he had paid all he was going to
17 pay and didn't get what he thought he should get and
18 he wasn't going to pay anymore. And he didn't want
19 to, you know, he didn't want to contribute any money
20 to try to fund a study. So, I guess to answer your
21 question, I never really, I've never really gotten
22 past that point to then say, well, okay, it's 100
23 percent his responsibility, or whatever. I never
24 really got there. So, I know that doesn't answer
25 your question very well, but it answers it the best

1 I can.

2 JUDGE BURTON: Okay. Mr. Green, did
3 you have anything to add on that point?

4 MR. GREEN: No. The only thing I would
5 want to emphasize, which is what really occurred
6 here and what makes Mr. Westenhaver so upset, is
7 that all of the funding that went to establish the
8 plant that is there currently, supplying sewer
9 services really, to both Golden Glade and Eagle
10 Woods was put in by Summit. He spent that money.
11 Williams didn't have the money to do it. He spent
12 that money to put it in and then when the
13 connections came through, they were guided towards
14 Golden Glade which is why Mr. Westenhaver is still
15 left with 25 lots not served. And that's why he's
16 struggling with spending anymore money to do
17 anything else because he feels like he's provided
18 all the money to put this all in place to begin with
19 and now is not getting service.

20 JUDGE BURTON: Okay. Anything else
21 from the Commission? Okay. I want to clarify. I
22 think I may have referred to the Staff's
23 Investigation Report as Exhibit R, but that would be
24 Exhibit T. And how long are we -- before we see the
25 transcripts?

1 COURT REPORTER: For the transcript, I
2 have a due date of August 6.

3 JUDGE BURTON: Okay.

4 COURT REPORTER: Is that okay?

5 JUDGE BURTON: Yes, that's fine. Would
6 the parties like to prepare briefs after the
7 transcript is available?

8 MR. COVER: Sure, yes. No, I mean I'm
9 not trying to -- yes or no, whatever.

10 MR. GREEN: We'd love to.

11 JUDGE BURTON: All right. Thank you.
12 Why don't we then --

13 MR. COVER: If he's in, I'm in. If
14 he's out, I'm out.

15 CHAIRMAN KENNEY: I think so.

16 JUDGE BURTON: Why don't we say, to
17 give you enough time, and I'm sorry, what was the
18 date again?

19 COURT REPORTER: August 6.

20 JUDGE BURTON: August 6. Would two
21 weeks be sufficient turn around time? Okay, so why
22 don't we say --

23 MR. GREEN: If I may, can we have three
24 weeks because that week of August 6, I'm going to be
25 on vacation.

1 JUDGE BURTON: Okay. Then, why don't
2 we say that initial briefs are due on August 27, any
3 reply briefs are going to be due on September 3.
4 And I would just ask, gentlemen, for you to address
5 some of the issues that you've heard brought up from
6 the Commission today.

7 MR. GREEN: Okay.

8 JUDGE BURTON: All right. And also the
9 issues with the certificate of service and the
10 tariffs and the implications for the contract. All
11 right, if there is nothing further, then we'll go
12 ahead and go off the record. Thank you very much.

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1	I N D E X	
2		Page
3	Opening Statement by Mr. Green	32
4	Examination by Chairman Kenney	36
5	Examination by Commissioner Kenney	38
6	Examination by Commissioner Hall	39
7	Examination by Judge Burton	44
8	Opening Statement by Mr. Cover	47
9	Examination by Chairman Kenney	52
10	Examination by Commissioner Kenney	53
11	Examination by Commissioner Hall	57
12	Examination by Judge Burton	68
13	Opening Statement by Mr. Thompson	59
14	Examination by Commissioner Kenney	63
15	Examination by Commissioner Hall	64
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

1	EXHIBITS		
2		Marked	Received
3	Exhibit A	30	30
4	Exhibit B	30	30
5	Exhibit C	30	30
6	Exhibit D	30	30
7	Exhibit E	30	30
8	Exhibit F	30	30
9	Exhibit G	30	30
10	Exhibit H	30	30
11	Exhibit I	30	30
12	Exhibit J	30	30
13	Exhibit K	30	30
14	Exhibit L	30	30
15	Exhibit M	30	30
16	Exhibit N	30	30
17	Exhibit O	30	30
18	Exhibit P	30	30
19	Exhibit Q	30	30
20	Exhibit R	30	30
21	Exhibit S	31	31
22	Exhibit T	31	31
23	Exhibit AA	30	30.
24	(Exhibits retained by the Commission.)		
25			

1 CERTIFICATE OF REPORTER

2 STATE OF MISSOURI)

) ss.

3 COUNTY OF ST. LOUIS)

4 I, S. Denise Ballard, a Certified Court

5 Reporter (MO), Certified Shorthand Reporter (IL),

6 Registered Professional Reporter, do hereby certify

7 that the testimony appearing in the foregoing

8 hearing was taken by me to the best of my ability

9 and thereafter reduced to typewriting under my

10 direction; that I am neither counsel for, related

11 to, nor employed by any of the parties to the action

12 in which this deposition was taken, and further that

13 I am not a relative or employee of any attorney or

14 counsel employed by the parties thereto, nor

15 financially or otherwise interested in the outcome

16 of the action.

17

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19 _____
S. Denise Ballard

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<p>A</p> <p>AA 30:22,23 74:23</p> <p>ability 35:15,21 37:12,15,19 40:15 75:8</p> <p>able 33:15 45:25 49:16 50:3 57:10,11</p> <p>absence 38:3</p> <p>Absolutely 63:17</p> <p>access 57:10</p> <p>accomplish 50:3</p> <p>accurate 42:14</p> <p>acknowledge 46:3</p> <p>acknowledging 51:21</p> <p>act 37:12 63:11</p> <p>action 37:16 75:11,16</p> <p>activities 62:15</p> <p>actual 53:1</p> <p>add 36:11 37:2 70:3</p> <p>added 60:4,5,6 60:12</p> <p>adding 36:13,13 60:9</p> <p>addition 34:7 46:11,12</p> <p>additional 34:6 36:11 38:10 41:19,23 42:6 43:3 44:16,18 60:21,22 65:16 66:13,13 68:10</p> <p>address 45:14,22 72:4</p> <p>addressed 30:4 37:4</p> <p>addresses 36:12</p> <p>adequate 36:20 45:10 50:19 52:19</p> <p>admission 30:7 31:1</p>	<p>admit 30:21 31:17</p> <p>adversarial 51:3</p> <p>affidavit 30:24 31:2</p> <p>ago 35:2</p> <p>agree 40:20</p> <p>agreed 32:24</p> <p>agreement 49:17</p> <p>agrees 67:22</p> <p>ahead 30:18 31:7 31:17,19 32:9 72:12</p> <p>allows 64:18</p> <p>alternative 49:14 55:15</p> <p>American 63:15 63:25</p> <p>amount 61:5 66:24</p> <p>analysis 64:16</p> <p>answer 36:6 39:14 41:7 47:8 52:2 56:22 59:19 63:2 67:1 67:3 69:20,24</p> <p>answers 41:9 52:22 69:25</p> <p>anybody 34:23</p> <p>anymore 49:10 69:18 70:16</p> <p>anyway 42:10</p> <p>appear 31:25</p> <p>appearance 29:11</p> <p>appearing 75:7</p> <p>application 38:24</p> <p>applied 33:17</p> <p>appointed 34:11 36:18 49:1 50:4 50:10</p> <p>appointing 37:12</p> <p>appointment 52:1,16</p> <p>appoints 52:11</p> <p>appreciation</p>	<p>60:3</p> <p>appropriate 53:9 57:10</p> <p>approve 52:15</p> <p>approximately 34:15</p> <p>area 49:7 59:23 60:17 64:10</p> <p>arguably 37:1</p> <p>arguments 32:3</p> <p>Art 54:7</p> <p>artistic 54:11</p> <p>aside 38:5</p> <p>asked 34:13 35:3</p> <p>asking 35:20</p> <p>asserting 58:5</p> <p>assets 44:25</p> <p>Associates 28:4</p> <p>association 38:23</p> <p>assumed 55:2</p> <p>astonishing 61:17</p> <p>attached 30:9,16</p> <p>attempt 43:11</p> <p>attempted 42:18</p> <p>attorney 29:13 29:19 38:18 47:25 75:13</p> <p>August 71:2,19 71:20,24 72:2</p> <p>authority 34:22 36:10 37:2 39:2 39:9 40:24 43:8 47:14 51:20 52:8</p> <p>available 33:24 43:3 55:16 61:5 71:7</p> <p>aware 31:22,23 46:1,5,6 48:6</p> <p>awhile 55:15</p> <p>a.m 29:4</p> <p>B</p> <p>B 30:19 74:4</p> <p>back 43:18 49:22 53:24 54:4</p>	<p>58:16 63:15</p> <p>bad 48:8 54:5 55:22 56:1</p> <p>Ballard 27:20 28:19 75:4,19</p> <p>bargained 66:11</p> <p>basically 48:5,23 49:7 50:17 51:1 51:13,16 52:24 55:6 67:18</p> <p>basis 58:2,3,5</p> <p>Beach 28:4,5</p> <p>began 33:14</p> <p>behalf 30:10,12 30:14 31:10 32:12 49:5</p> <p>belief 45:13 47:11</p> <p>believe 30:5 31:14,17 34:17 35:9,13 36:12 36:20 40:1,3 42:25 43:2 45:7 46:12,17,19,22 59:5 61:3 65:7</p> <p>believes 60:11,13 61:10,16</p> <p>best 33:13 52:17 63:2 69:25 75:8</p> <p>better 49:5 51:7 51:11 67:16</p> <p>beyond 37:5 38:1</p> <p>big 34:6 42:3</p> <p>biggest 34:4</p> <p>bill 57:8,8,12 62:12</p> <p>bills 62:9,18,22</p> <p>bit 29:16 48:2,16 48:19 63:21,22 63:22</p> <p>bits 63:19</p> <p>bottom 48:12,24</p> <p>bound 38:5</p> <p>Box 28:9,15</p> <p>break 56:11</p> <p>breech 46:24</p> <p>brief 32:13</p>	<p>briefs 71:6 72:2,3</p> <p>bring 68:22</p> <p>brings 49:22</p> <p>broke 33:12</p> <p>brought 62:6 72:5</p> <p>build 33:8</p> <p>built 61:6 63:19</p> <p>Burton 27:15 29:5,15,20,23 30:15 31:6,16 31:24 35:23 38:12 39:19 44:11,14 47:22 52:3 53:16 57:15 59:15 63:4,8 64:5 67:7 68:2,6 70:2,20 71:3,5 71:11,16,20 72:1,8 73:7,12</p> <p>business 35:19 36:19 37:19 38:1</p> <p>C</p> <p>C 28:1 30:19 74:5</p> <p>call 50:25 51:2</p> <p>called 32:16 62:4 62:7</p> <p>Camden 46:25 47:9 61:9</p> <p>candid 57:6</p> <p>capacity 34:5 41:21,24 42:5 44:17 49:16 60:1 61:5</p> <p>case 30:15 31:7 31:13 32:8 34:18 37:10,23 38:3 39:13 44:22 46:25 47:2,10,17 51:5 62:12</p> <p>cases 47:5,9</p> <p>cash 61:3 65:6</p>
--	---	--	---	---

<p>category 50:22 CCR 28:19 certain 61:5 65:24 certainly 56:9 certificate 40:14 40:17 41:11 59:21,24 60:15 64:9 72:9 75:1 certificated 58:25 Certified 75:4,5 certify 75:6 Chairman 27:16 35:24,25 36:2 47:21 52:4,6 63:4,5,7 71:15 73:4,9 change 57:25 58:6 Chicago 54:7 chicken 41:6 chose 46:2 55:13 64:1 Circuit 61:9 62:12 circumstance 58:6 circumstances 58:1 City 27:6 28:15 claimant 62:22 62:25 clarify 67:8 70:21 class 63:11 clean 56:6,8 clear 40:7 43:15 60:7 clearly 55:7,8 client 45:24 51:4 clients 56:18 client's 39:23 41:11 Clinton 28:10 closely 40:23 cloud 63:18,23</p>	<p>cloudy 60:2 Colbert 53:21 collecting 57:6 come 35:1 42:7 48:21,22 58:15 59:7 comes 41:7 43:18 47:15 57:8 commission 27:2 28:12,14 29:22 32:8 47:11,13 47:16,20 52:15 55:14 59:18 61:20 62:6 63:15 64:1 68:24 70:21 72:6 74:24 Commissioner 38:12,17 39:19 39:21 53:16,20 57:15,18 63:8 63:10 64:5,7 67:25 73:5,6,10 73:11,14,15 COMMISSIO... 27:18 commission's 47:4 61:16 common 37:14 Companies 32:12,14 company 27:11 29:10,14,19 30:2,13 31:5 32:6,23 33:3,6 33:8,14,17,22 34:9,16 39:10 40:8 48:1 49:1 49:5 50:1,5 51:6 52:18,19 54:21 57:4,4 59:2,21 61:7,11 62:1,8,10,17,18 65:1 68:8 complainant 27:9 28:2 30:11 31:11</p>	<p>complaint 35:1,3 35:8 44:5 47:5 62:6 complaints 43:18 43:20 45:9 50:5 50:7 complete 33:15 33:18 35:21 concede 66:9 concerned 57:1 concurrence 55:13 confused 48:17 confusing 33:25 confusion 40:9 61:17 connect 63:20 connections 33:10,11 34:13 61:8 64:25 65:24 66:1,4,13 66:16,22,25 67:3,14,19 70:13 construction 34:7 38:25 contemplated 64:22 contiguous 63:20 contingent 64:13 continue 35:18 44:23 45:18 continued 44:24 continues 47:17 62:14 continuing 39:9 contract 32:22 33:3 35:12 37:7 37:24 38:6,8 39:24 40:12,13 40:18,19,22,25 43:6 45:23,24 46:7,24 51:22 52:16 58:11 59:1,3,8,9 61:1 64:13,15,24 65:2 66:12 67:6</p>	<p>68:12 72:10 contracted 55:3 contracts 64:18 64:21 contractual 37:1 37:14 43:19 58:1,7,20 59:1 59:10 64:15 contrary 38:4 contribute 69:19 contributed 65:4 contribution 60:23 contributions 65:6,10 control 40:22 controlled 62:17 controls 49:6 convenience 59:21 copy 30:1,24 31:18 correct 36:11 39:25 40:2,3 47:2 54:17 57:21,22 59:4 65:17 correlate 44:20 cost 42:10 60:21 60:23 65:3 67:1 67:4,5 69:7,11 costs 42:19 65:11 65:16 66:13 counsel 28:14 29:24 75:10,14 County 46:25 47:10 61:9 75:3 couple 35:25 43:17 course 34:25 court 28:18 31:20 36:8,9 37:12,16 44:21 44:22 46:1,3,18 46:25 50:9,12 50:13,17 52:9 52:10 55:11</p>	<p>60:17 61:9 62:12 71:1,4,19 75:4 Court's 45:7 court-appointed 29:18 47:25 cover 28:8,8 29:17,17 30:12 31:4,23 34:11 43:25 47:24,25 52:3 53:21,22 53:22,23,24 59:16 61:24 67:7,9 68:3,4 68:13 71:8,13 73:8 covered 43:24 create 37:3 crossing 62:9 CSR 28:20 curious 55:2 current 37:20 42:24 43:1,3 56:11 currently 29:6 34:19 70:8 customer 59:2 customers 36:11 44:24 45:4 49:12 50:1,11 52:18,19,21 53:7 55:16 56:5 56:9,12,18,21 57:2 60:4,5,6 60:10,12 cutting 57:20 C-O-V-E 53:22 C-O-V-E-R 29:18</p> <hr/> <p style="text-align: center;">D</p> <hr/> <p>D 30:19 73:1 74:6 DANIEL 27:17 date 53:25 71:2 71:18 daughter 54:6</p>
---	--	---	---	---

<p>day 49:8 days 49:9 deal 43:12 65:22 65:25 dealing 38:21 46:10,16 58:13 61:20 Debra 62:2 decide 61:9 decided 32:19 35:3 decision 61:16 decisions 47:14 47:15 Deck 62:7 deeded 61:25 deem 53:9,10 deferred 44:2,7 definitively 50:14 degree 41:6 42:17 denied 39:1,1,6,8 63:15 Denise 27:20 28:19 75:4,19 department 39:8 deposition 75:12 determination 32:4 36:5 40:16 42:9 determine 47:16 66:21 develop 33:23 34:21 developed 45:19 developer 32:14 64:22 developing 32:17 difference 37:23 different 46:22 55:1 difficult 57:6 directing 52:25 direction 75:10 directly 46:18 disagree 48:3</p>	<p>Disagreements 49:3 discharges 45:12 discussion 46:21 dismissed 34:16 47:17 disposition 35:20 dispute 35:11 distinction 45:1 divides 48:23 DNR 35:5 42:21 60:8 67:13,18 document 30:22 doing 34:24 draw 54:8,11 drawing 48:8 54:4 dropped 39:10 due 71:2 72:2,3</p> <hr/> <p style="text-align: center;">E</p> <hr/> <p>E 28:1,1,3 30:19 73:1 74:7 Eagle 32:16,25 33:1,7,9 38:19 48:21 49:2,12 49:21 56:6,9,19 56:20,22 59:22 61:24 70:9 easier 30:23 east 48:17 effective 49:9 efforts 68:21,22 egg 41:6 either 37:4 53:13 54:12 63:20 64:14 67:4 Eleventh 28:21 eliminated 50:7 emphasize 70:5 employed 75:11 75:14 employee 75:13 ended 34:16 67:20 enforcing 58:11 engineer 49:18</p>	<p>56:3 engineering 60:3 enter 29:11 30:19 entered 32:21 entire 35:7 Environmental 62:3 Especially 36:25 essence 54:22 essentially 57:25 67:18 establish 70:7 established 41:23 estate 55:7,9 estimates 42:18 events 64:14 exact 56:17,19 exactly 51:2 69:6 69:10 Examination 36:1 38:16 39:20 44:13 52:5 53:19 57:17 63:9 64:6 73:4,5,6,7,9,10 73:11,12,14,15 example 69:2 exceed 65:11 exceeds 60:23 65:3,6 excess 65:8 exchange 33:5 61:4 excuse 46:6 47:1 50:12 exhibit 30:23 31:7,15,17 52:10,10 70:23 70:24 74:3,4,5 74:6,7,8,9,10 74:11,12,13,14 74:15,16,17,18 74:19,20,21,22 74:23 exhibits 30:5,8 30:16,18,19 31:8,18,21 74:1</p>	<p>74:24 existing 32:23 37:24 41:2 45:4 49:12,15 50:10 52:21 53:7 60:10,25 61:1 exorbitant 62:21 expand 35:15 37:15,19 38:1 40:10 50:15,16 51:20 52:8 53:12 expanded 42:6 expanding 36:21 36:24 expected 67:20 expecting 67:14 expense 42:4 explain 43:14 extensions 64:19 64:23 extent 60:22 62:11 64:19</p> <hr/> <p style="text-align: center;">F</p> <hr/> <p>F 30:19 74:8 face 48:2 facilities 37:3 60:21 facility 34:8 fact 33:9,19,23 35:17 36:25 37:17,22 40:10 43:23,24 44:2,7 45:13,22 46:14 facts 30:3,4,8,17 30:21 35:10,11 48:5 51:24 factual 58:3 fair 46:8 49:16 50:12,13 53:12 67:20 68:13 69:12 far 47:9 51:21 57:1 father 54:6,10 feeling 47:10</p>	<p>feels 34:23 70:17 fight 69:10 fighting 69:6,11 figure 50:20 69:5 69:6 file 27:9,10 29:8 34:15 35:3 36:4 55:14 filed 31:13 35:1 files 29:8 filing 35:8 filter 55:25 financially 51:8 75:15 find 42:19 49:14 68:23 finding 47:12 fine 32:4 68:6 71:5 finishing 32:7 firm 38:20 first 41:7 47:12 48:20 49:25 50:18 52:22 53:3 55:4 58:10 65:19,20 66:16 69:3 fixed 69:8 flow 45:8 fluid 42:6 folks 57:12 followed 32:6 forced 46:14 foregoing 75:7 foremost 49:25 form 65:4,5 forte 54:9 forth 45:11 50:6 53:3 56:1 fortunately 56:2 forum 40:22 forward 64:1 four 52:24 53:4,4 frame 57:23 Franklin 28:9 frankly 63:1 65:21</p>
---	--	---	---	--

Friday 30:25 fulfill 37:9 40:11 fulfilled 43:1 fully 39:23 fund 64:23 69:20 fundamentally 61:10 funding 70:7 funds 68:11 further 48:18 59:14 68:1 72:11 75:12	47:7 49:9 52:13 54:3,15 59:6 64:22 67:4 69:7 69:11,16,18 71:24 72:3 Golden 44:2 48:22 49:2,3,6 57:2,3,5,12 62:4 67:16,21 70:9,14 good 29:5 39:14 56:6,8,10 gotten 66:7 69:21 granted 60:14 Green 28:3,4 29:13,13,15 30:10 31:3,10 31:22 32:8,11 32:11 47:22 48:3 51:3 61:13 68:3 70:2,4 71:10,23 72:7 73:3 Greg 44:4 54:19 54:19,21 61:6 62:1 guess 33:12 35:7 49:4,22 53:5 56:14 58:8,15 65:13 66:23 68:13 69:12,20 guided 70:13 guru 56:3 guys 36:4	63:2 hard 53:1 heard 60:25 72:5 hearing 27:4 29:4,7,25 34:19 47:5 75:8 help 41:4 47:16 hey 49:9 69:3 Hi 47:24 hindsight 36:7 hired 62:17 history 48:25 54:18 hold 34:19 47:11 holding 36:13 home 38:23 45:9 homes 45:4 hook-ups 33:6,24 34:2 64:20 house 55:25 housing 32:15 Hurricane 62:7 husband 62:2 hypothetical 38:5	initial 72:2 input 46:20 install 32:24 Institute 54:7 insure 44:23 52:18 intention 45:7 intentional 46:5 interest 52:17 interested 75:15 interpret 40:18 52:20 interpretation 36:15,17 interrupt 45:8 Investigation 31:13 70:23 Investment 27:8 29:9,14 30:3 32:5,12,13,23 33:17,21 35:16 43:22 44:9 46:18 68:10 Investments 30:11 34:21 51:15 Investment's 35:17 involved 44:1 46:18,23 62:15 68:19,20 issue 36:12 41:21 43:19 44:5 45:24 46:2,6,7 47:12 55:8,12 57:13 64:8,11 issued 43:16,21 issues 30:2 34:10 35:10 46:10 48:5,11 58:14 72:5,9 items 51:8	68:19 69:13 Jefferson 27:6 28:15 Jeffrey 28:3 job 49:24 50:18 50:20 Judge 27:15 29:5 29:15,20,23 30:15 31:6,16 31:24 35:23 38:12 39:19 44:11,14 47:22 52:3 53:16,18 57:15 59:15 63:4,8 64:5 67:7 68:2,6 70:2,20 71:3,5 71:11,16,20 72:1,8 73:7,12 judgment 36:23 July 27:5 29:6
<hr/> G G 30:19 74:9 Gary 28:8 29:17 34:11 47:24 garycover@ea... 28:11 generally 50:2 gentleman 32:17 gentlemen 72:4 geographic 64:10 getting 54:18 70:19 give 32:12 48:6 48:25 54:16 71:17 given 68:14 gives 48:10 Glade 44:2 48:22 49:2,3,6 57:2,5 57:12 67:17,21 70:9,14 Glades 62:5 Glade's 57:3 go 29:7 30:18 31:7,16,19 32:9 37:2 41:3 61:24 64:1 68:4 72:11 72:12 goes 52:24 going 29:7 30:6 30:18,20 31:7 32:1 39:12,15 42:9 44:8 45:3 45:12 46:25	<hr/> H H 30:20 74:10 Hall 27:17 39:19 39:21 57:16,18 64:5,7 67:25 73:6,11,15 handle 34:6 42:6 handling 39:13 hands 64:3 happened 34:12 51:23 happy 55:24 56:6	<hr/> I idea 42:10 identify 30:24 IL 75:5 Illinois 28:20 impact 47:4 implications 72:10 important 33:24 46:9 68:22 impression 50:8 improvements 67:2 included 30:5 includes 64:11 individual 64:20 infrastructure 32:24 33:1 34:1 41:17,18,20 42:11 61:1 65:5 65:22	<hr/> J J 30:20 74:12 Jeff 29:13 32:11 55:19 67:10,22	<hr/> K K 30:20 74:13 Kay 28:4 Kenney 27:16,17 35:25 36:2 38:13,14,17 47:21 52:6 53:17,18,20 63:5,8,10 71:15 73:4,5,9,10,14 kept 54:25 Kevin 28:13 29:21 KIM 27:15 kind 34:24 48:13 49:22 50:8 51:21 52:2,11 52:13,13,22 54:20,22 60:1 68:21 KK 48:12,18 know 30:1,16 35:4 37:18,23 40:6,8,17 41:3 41:5,7 42:16,17

42:24,25 45:11 47:8 48:16 49:19 50:15,16 50:18 51:23 53:2 55:5,19,25 56:3,17,19,23 57:7 58:3 59:19 63:2 65:9,12,25 66:7,14,25 67:3 68:23 69:3,10 69:16,19,24 knowledge 51:23 51:25 knows 55:19 66:20	line 52:21 62:9 lines 34:2,3 41:22 42:1 51:9 liquidate 50:21 liquidating 53:5 list 30:1 litigate 55:6,12 litigation 28:20 62:16 little 29:16 48:2,7 48:10,13,16,18 48:19,25 49:20 63:21,22,22 67:11 living 45:16,20 LLC 27:8 28:4,8 29:9 local 29:3 located 49:3 long 38:18 39:16 39:17 50:6 61:22 70:24 look 35:10 looked 60:17,19 looking 40:12 lot 51:7,7,13 lots 33:7,16,22 34:7,22 41:19 41:24 42:7,22 43:3,22 44:1,18 45:19 50:5,5 60:22 70:15 Louis 28:21 75:3 love 71:10	matter 29:9 36:22 51:4 60:11 matters 46:16 maxed 67:18 maximum 42:23 MDNR 39:1 mean 40:21 42:4 46:4,6 51:11 58:9 65:14,21 68:15 71:8 meet 37:20 member 59:24 mention 38:22 middle 52:12,14 Midwest 28:20 mike 29:16 Missouri 27:1,6 28:19,21 29:22 75:2 MO 28:5,10,15 75:5 money 51:6,7,13 51:17 58:4 61:15 65:22 66:19,19,20 69:5,19 70:10 70:11,12,16,18 monopoly 60:14 morning 29:5 Motion 36:4 motions 32:3 move 33:20 48:2 50:21 movie 61:19	necessity 59:22 need 41:23 needed 33:10,11 41:17,18 42:3 44:16 needs 34:7 42:5 43:7,12 47:11 61:11,15 68:10 negotiate 52:25 negotiations 68:16,18 neighboring 32:18 44:3 neither 75:10 never 33:14 35:9 39:2,9 57:9 61:25 62:19 67:23 68:14 69:21,21,23 new 60:4,5,5,9,9 60:11 non-smelling 56:7 normal 56:8 North 28:21 notice 29:24 novel 61:19 number 29:8,8 34:10 35:6 42:22 45:9 51:4 51:17,17 56:12 56:17 58:14,14 60:11 65:24 67:13 numbers 42:12 56:19	37:14 38:2 40:10 45:18 58:2,7,20 59:1 59:10,23 60:14 60:16 64:13,15 66:12 obligations 37:3 37:9,21 40:11 obtain 40:24 obviously 51:25 occurred 34:14 43:25 44:1 49:4 52:1 67:12 70:5 October 44:21 54:2,3,21 offered 32:1 Office 29:24 okay 30:15 31:16 31:24 32:8 38:12,22 40:4 42:15 45:21 46:24 47:19 48:7,8,9 50:16 51:6 52:20,22 53:11,14,15,24 54:3,3 55:7,10 55:17,23 56:21 57:3,8 58:9 59:6 60:12 63:14 67:13,19 69:1,7,8,22 70:2,20,21 71:3 71:4,21 72:1,7 old 54:18 opening 32:2 73:3,8,13 operate 62:3 operating 39:3 operation 36:19 operations 36:19 opposed 44:8 order 33:20 36:8 36:9 37:12,16 40:15,18 43:12 44:17 45:14 46:1,3,19 47:12 50:9,12,13,17
<hr/> L <hr/> L 30:20 74:14 lack 49:4 67:15 lake 32:14 62:16 language 36:16 36:17,23 45:8 53:6,11 58:16 latest 42:18 law 27:15 37:10 37:15,18,22 38:3 lawsuit 34:15,17 41:4 55:14 leave 64:2 left 62:24 63:1 70:15 legal 37:13,21,21 57:24 58:3,5,9 58:12 62:18,18 62:20 Legally 60:12 letter 49:7 57:19 let's 32:5 52:10 69:3,3,4,5 light 36:25 limit 59:25 limitations 58:12 limited 37:11 49:16 limits 37:15 42:22	<hr/> M <hr/> M 30:20 74:15 maintained 51:10 maintaining 53:2 making 62:10 manage 35:18 March 39:3 53:25 mark 31:7 marked 30:17 31:20 74:2	<hr/> N <hr/> N 28:1 30:20 52:10 73:1 74:16 name 29:17 32:11,18 47:24 61:12 nature 51:5 necessary 43:8 51:10 52:17 53:10 67:2	<hr/> O <hr/> O 30:19 74:17 objection 31:3,4 31:14 objections 30:7 31:1 obligated 38:7 65:7 obligates 64:9 obligation 37:1	

52:9,10 58:17 58:18 60:17 ordered 44:21 original 30:22 55:21 65:22 originally 66:1 66:24 67:6 Osage 27:11 28:4 28:5 29:10,14 29:19 30:2,12 31:4 32:6 33:3 33:5,8,14 34:9 34:16 39:2,2,7 39:10 40:7 41:11 43:6 46:9 46:16 48:1 50:1 54:13,14,21 59:20 60:13 61:2,3,7,10,20 61:25 63:1 68:7 outcome 75:15 outlines 48:5 outside 37:12,16 overview 32:13 OWC 35:13 41:1 44:5 OWC's 35:13 owned 33:4 44:4 54:14,19 62:1 owner 44:4 owners 45:10 62:23 ownership 55:6 57:11 owns 49:6 55:9 55:10 61:17 Ozarks 32:15	Parkway 28:4 part 40:9 46:13 52:22 53:3,4 55:2 56:20 59:22 63:18 65:4,5 partial 30:4,8,17 30:21 33:8 participating 29:25 particular 52:21 53:6 parties 29:11 30:7 31:14 32:4 71:6 75:11,14 pay 60:21 64:25 65:7,16 66:12 66:22 69:17,18 penalized 62:11 penalty 62:13 pending 34:18,19 41:4 47:9,15 people 35:5,5,6 45:15,16,19 50:19 55:23 percent 69:23 perform 38:7 performance 40:18 performed 39:23 period 35:7 43:17 permit 33:18 38:24,25,25 42:22,24 43:1,4 43:10 67:18 permits 43:16,20 43:21,23 44:6 permitted 43:8 personal 51:22 51:25 perspective 34:5 48:7,10,14 58:22 64:8 67:11 pieces 63:19 place 35:12 36:13	37:7,24 44:6,25 65:19,20 66:16 70:18 plant 33:9,19 35:15 36:21,22 36:22,24 40:10 42:5 48:24 61:6 70:8 plant's 34:6 player 63:12,13 please 29:16 32:10 59:17 plenty 43:21 podium 32:10 point 29:10 30:6 33:4,13,18 35:13 45:6 49:11 50:23,24 58:10 69:22 70:3 poor 48:9 position 35:13,17 37:13 38:9 39:22,23 41:10 41:11 43:5 45:13 49:23 57:25 59:10,20 60:8 65:10 66:10 68:14 69:13,15 positions 68:8 possible 63:24 potential 45:12 power 40:17 practical 60:11 precedes 45:23 predates 67:10 67:21 69:13 predecessor 68:20 prepare 35:19 71:6 presented 30:2 Presiding 27:15 pressure 49:19 presumption 46:8	pretty 49:15 prevented 45:18 primary 49:24 prior 45:25 52:1 54:20 probably 32:19 36:7 37:5,5 40:8 56:21 59:6 64:21 67:4,20 problem 34:4 40:23 problems 45:3,5 45:11 procedural 36:3 proceed 32:9 47:13 proceeded 33:8 PROCEEDIN... 27:3 29:1 processing 33:9 42:5 Professional 75:6 prohibits 53:13 project 33:15 promote 52:17 pronounce 53:23 properly 57:11 propose 32:1 proposed 69:2 provide 33:15 37:7 39:7 41:2 41:12,19,24 43:7,12 44:17 57:3,4 58:24 59:11 61:11,15 64:10 67:11 68:10 provided 31:19 32:23 33:2 35:12 70:17 provider 41:1 provides 62:4 64:17 proving 59:9 PSC 34:19 35:2,6 35:8 public 27:2 28:12	28:14 29:3,22 29:24 32:7 55:14 59:25 60:16 pull 29:16 pumps 51:9 pursuant 33:2 pursued 68:25 purview 37:8 51:18,20 put 34:19 38:24 44:25 47:10 48:4 51:24 61:21 70:10,12 70:18 puts 48:14 putting 32:15 38:4 P.O 28:9,15
<hr/>				
Q				
<hr/>				
question 35:2 36:4 45:22 52:7 53:14 56:22 59:7,20 61:8 63:14 65:18 66:21 68:3 69:21,25 questioning 51:19 questions 34:25 35:24 36:2 38:10,17 39:21 44:12,14 47:19 52:2,6 53:15,20 57:14,18 59:14 63:3,6,10 64:7 68:1 quite 41:16 quote 52:17				
<hr/>				
R				
<hr/>				
R 28:1 30:18,20 31:17 70:23 74:20 real 39:14 54:18 55:7,9 63:11				

reality 40:6 really 35:11 36:3 40:12 42:8 48:8 48:9 51:18 54:5 55:8 68:14 69:21,21,24 70:5,9 realty 62:8 reason 39:6 52:15 61:23 reasoning 63:16 reasons 41:4 51:16 recall 69:4 receive 42:23 44:24 52:19 received 30:1 31:15 57:19 66:11 74:2 receiver 29:18 34:10 36:10,18 37:6,8,11,13,19 37:25 38:5 40:8 44:23 46:4,13 47:1 48:1 49:1 49:24 52:16 54:1,13,25 58:17 receivership 35:14 36:9 38:7 44:22 45:23 46:1,5,15 47:2 47:8 50:24 58:18 62:16,23 receiver's 37:15 receiving 33:5 recognize 48:9 54:9 record 29:7,12 30:23 31:8,9 72:12 recorded 61:19 records 57:10 recover 62:20 reduced 75:9 referred 60:18 70:22	referring 36:16 53:7 refusal 52:15 Registered 75:6 regulated 62:5 regulations 53:2 REGULATORY 27:15 reinstated 34:17 related 75:10 relationship 33:12 51:3 relative 36:9 75:13 relevant 42:8 relief 40:4 reluctant 51:14 remain 33:22 remember 63:16 repeatedly 34:13 replaced 51:10 reply 72:3 Report 31:13 70:23 REPORTED 27:20 reporter 28:18 31:20 71:1,4,19 75:1,5,5,6 representation 60:8 represented 46:20 requested 38:23 43:22 requesting 40:5 requests 59:25 require 43:6 59:11 required 41:12 60:22 64:18,21 65:1,15,16 requires 58:24 64:25 residential 32:15 residuary 62:22 62:25	resolution 34:20 68:23 resolve 41:5 resolved 47:18 respect 61:17 Respondent 27:12 28:7 responsibility 69:23 rest 33:16 34:22 restriction 36:21 36:24 retained 74:24 retrieved 42:19 reverse 42:1 re-energized 49:15,17 56:5 right 29:20 31:6 31:25 36:10 38:11 39:18 43:14 44:19 46:17 49:23 54:7 55:24 57:14 69:15 71:11 72:8,11 risk 54:17 road 48:18,22,24 ROBERT 27:16 Ron 30:25 roughly 57:22,23 RPR 28:19 run 34:3 58:11 <hr/> S S 27:15,16,20 28:1,19 31:8 74:21 75:4,19 safe 50:19 52:19 saga 61:18 sale 35:19 52:16 63:15 satisfied 45:15 satisfy 43:21 saw 55:24 saying 69:1 says 37:18 39:8 50:15,18 52:12	52:14 53:9,11 schedule 50:24 50:25 scope 37:5 SC-2014-0214 27:9 29:8 second 48:21 50:20 see 36:23 52:10 66:17 70:24 seeking 62:19 seen 37:22 self-effectuating 59:3 sending 62:11 sense 32:20 sent 62:8 September 72:3 serve 57:2 59:24 60:14,22 served 50:1 70:15 service 27:2 28:12,14 29:22 32:8 39:7 41:12 42:23 43:7,11 43:13 44:17,24 45:4,25 50:19 52:20 55:3,14 58:24 59:12,22 59:25 60:16 61:11 64:10,12 64:20 68:11 70:19 72:9 services 28:20 33:5 35:12 37:7 41:19 45:17 62:20 70:9 serving 60:16 sewage 60:6,9 61:6 sewer 32:20 33:1 33:6,9,15,23 34:3,5,8,14,23 35:15,21 36:22 40:25 41:18,25 42:1 44:16 45:6	45:11 50:2 57:8 57:12 62:15 70:8 sewers 42:7 shape 51:7,12 shareholders 63:1 shield 43:10 short 66:5,6 Shorthand 75:5 side 42:1 silent 60:18 similar 41:25 simpler 36:14 simplify 42:4 simply 35:18 36:18 sit 67:17 situation 37:6,25 41:25 60:4 size 62:21 skip 52:13 smelled 55:22,22 sole 47:14,14 sorry 41:16 48:1 71:17 sort 45:21 source 49:14 60:15 speak 34:11 37:20 47:7 speaking 50:3 specifically 44:22 53:8,13 specifies 36:10 spend 69:4,5 spending 70:16 spent 70:10,11 sporadic 57:7 ss 75:2 St 28:21 75:3 staff 28:12,14 29:22 30:14 31:12 32:7 55:13 59:7 60:7 60:10,12 61:10 61:15
---	--	--	---	--

staff's 59:20 60:3 66:10 68:9 70:22 stages 68:19 stamped 31:19 stand 32:10 standpoint 58:9 58:12 start 32:2,5 Starting 29:3 starts 52:11,14 STATE 27:1 75:2 stated 43:24 44:15 Statement 73:3,8 73:13 statements 32:2 statute 58:12 statute's 58:11 stay 55:15 68:7 stipulated 30:3 35:10 51:24 stipulation 48:4 Stipulations 30:4 30:8,17,21 storage 49:19 story 46:22 Street 28:21 stretch 56:3 struggle 33:14 struggling 64:12 70:16 stuck 34:24 study 69:20 subdivision 32:16,18,25 33:2,7,19 34:4 35:22 38:19 41:13 44:3,3,8 46:11,12,14 48:15 56:25 62:5 64:11,25 65:15 subdivisions 32:21 48:15,20 48:23 56:12	submitted 29:24 30:25 subsequent 64:14 subsidiaries 61:21 62:7 subsidiary 54:19 54:22 substantially 51:11 56:7 successful 59:9 sufficient 31:18 66:24 71:21 suggesting 69:14 Suite 28:4 sulphur 55:22 summary 32:3 36:5 53:6 Summit 27:8 29:9,14 30:3,11 31:11 32:5,12 32:13,22 33:17 33:21 34:20 35:16 38:20 43:20,22 44:8 46:17 51:15 56:24 58:2 65:15,18 68:10 70:10 Summit's 33:16 35:16 40:24 supersede 37:14 supply 49:10 57:20 supplying 49:21 70:8 support 66:25 supported 66:15 supposed 39:7 61:4 65:23 66:1 66:2,3 sure 42:8,13 45:2 45:8,14 49:25 50:18 51:18 56:23 65:21 66:19 69:10 71:8	system 32:23 44:16 47:1 50:11 51:11,20 53:2,5 56:20 60:10 63:18,19 systems 57:5 <hr/> T <hr/> T 70:24 74:22 take 36:18 37:15 48:9 55:11 60:8 taken 75:8,12 talked 35:5,5 talking 44:15 48:15 64:19 67:10 talks 37:10 50:10 50:11,16,17 52:25 53:4 tank 49:18,19,19 tanks 51:8 Tan-Tar-A 48:13 48:19 tariff 40:14,16,21 41:2 43:6 58:23 59:11,18 60:19 60:20 64:17 68:11 tariffs 72:10 tell 41:15 55:18 61:18 65:12 68:16 ten 34:1,21 49:8 terms 33:3 40:25 41:2 62:21 68:11 territory 58:25 testimony 31:25 75:7 thank 29:16,20 29:23 35:23 38:14 39:18 44:10 47:19,22 47:23 52:3,7 53:16,18 57:15 59:15,16 61:14 63:4,6,7 64:4	68:1 71:11 72:12 thereto 75:14 thing 33:25 41:6 42:2 43:11,15 46:15 50:21 56:10 70:4 things 36:13 45:3 49:13 51:9 60:1 68:25 69:8 thing's 39:15 think 36:14 37:4 37:7,17 40:14 40:21 43:2 45:17 46:8,9,20 47:15 48:13 50:2,6,13,16 53:8,10,12 55:18 56:21 58:8,10,10,13 58:19 61:22 62:21 64:19,21 64:22 67:11,17 67:20,22,22,23 68:6,19 69:1,4 69:9,9,12 70:22 71:15 thinking 31:21 Thompson 28:13 29:21,21 30:14 31:12 59:17 61:14 63:6 73:13 thorny 66:21 thought 35:8 55:5 69:17 thoughts 68:8,9 three 52:12,14 71:23 throw 42:12 tied 40:23 ties 45:21 time 29:3 32:16 32:17 33:4,13 33:18,21 34:12 38:2,23 39:3,13 39:16,17 43:17	45:2,6 48:25 49:20 50:3 54:20 55:20 57:23 58:13 63:24 69:2 71:17,21 title 63:18,23 today 29:6 51:7 62:2 67:3,17 69:9 72:6 today's 29:25 transcript 27:3 71:1,7 transcripts 70:25 Treat 32:2 treatment 60:6,9 61:6 tried 38:23 true 35:18 trumps 58:19 try 69:6,20 trying 38:1 54:12 68:23 71:9 turn 71:21 turned 33:20 56:10 61:2,3 turns 56:2,4,8 two 32:19 43:23 48:20,23 51:16 51:18 56:12 58:15 71:20 twofold 49:24 51:4 58:9 typewriting 75:9 <hr/> U <hr/> ugly 55:23 Uh-huh 66:18 ultimate 42:9 ultimately 59:8 unable 33:22 34:21 underlying 65:18 understand 33:25 42:3 43:19 46:9 54:12,24
---	--	--	--	---

understanding 39:6 42:21 50:4 58:23 67:12 undisputed 40:2 Unfortunately 39:12 40:22 59:18 upholding 62:12 upset 70:6 users 64:21 Utilities 62:3 utility 43:12 44:24 62:3,10 64:10	34:14,16,23 35:16,21 36:22 39:10 40:7,25 41:12,17,20 43:6 45:5,10 46:10,16 48:1 48:24 49:1,10 49:11,21 50:1,2 52:19 54:16,21 55:3,20,22 56:1 56:3,4,8 57:1,3 57:5,8,9,20 59:21 60:5,9,13 61:2,4,7,10,20 61:25 62:4,9,15 63:1,16,25 68:7 way 33:13 45:17 50:14 52:20 68:14 ways 48:13 WC-2014-0215 27:10 29:9 Weaver 28:8 week 71:24 weeks 71:21,24 wells 51:9 went 54:6 65:22 66:20,20 67:24 70:7 weren't 45:19 55:23 west 28:9 48:17 Westenhaven 61:2,12 Westenhaver 30:25 32:22 34:13,20 51:15 60:20 61:13,14 65:7,23 66:22 67:14,19 68:18 69:3 70:6,14 Westenhaver's 69:13 we'll 31:16 32:9 68:7 72:11 we're 29:7 31:21 35:20 40:12	41:8 45:10 48:15 69:6,9,11 we've 37:6 48:4 50:2 51:23 wife 54:11 62:2 WILLIAM 27:17 Williams 32:18 33:4 44:4 49:6 54:15,19,19,22 55:9 57:20 61:6 61:21 62:2,14 63:11 64:2 65:23 67:16 70:11 wind 50:24 witness 31:25 Wood 33:7 Woods 32:16,25 33:1,10 38:19 48:21 49:2,12 49:21 56:6,9,20 56:20,22 59:22 61:24 70:10 word 49:5 67:16 work 32:20 53:1 62:18 66:14 worked 35:6 42:16 wound 62:23 wrong 46:17 49:23 64:16 69:1,14,15	\$20,000 62:11 \$5000 69:5 # #084-004355 28:20 #702 28:19 1 1-800-280-DE... 28:22 100 69:22 106 28:4 11:44 29:6 11:45 29:4 137 28:9 1998 32:13 1999 32:13,22 61:23 2 2000 38:21 39:3 2003 39:4 2004 33:21 34:15 53:25 2005 44:21 45:25 54:2,3,13,21 2006 34:9 2009 49:8 57:21 2010 34:17 2014 27:5 29:6 23 27:5 29:6 24 44:21 25 33:22 34:6 39:3 41:19 44:18 66:5,6,23 70:15 27 72:2 3 3 27:7 72:3 30 49:9 56:21 74:3,3,4,4,5,5,6 74:6,7,7,8,8,9,9 74:10,10,11,11 74:12,12,13,13 74:14,14,15,15 74:16,16,17,17	74:18,18,19,19 74:20,20,23,23 31 74:21,21,22,22 314 28:22 32 73:3 348-0122 28:5 36 73:4 360 28:15 38 73:5 39 73:6 4 44 73:7 4558 28:4 47 73:8 5 50 56:13,16 506 28:9 52 73:9 53 33:7 66:2,3 73:10 57 73:11 573 28:5 59 73:13 6 6 71:2,19,20,24 63 73:14 63101 28:21 64 73:15 644-2191 28:22 64735 28:10 65065-2372 28:5 65102 28:15 660 28:10 68 73:12 7 711 28:21 8 885-6914 28:10
--	---	--	---	--