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A P P E A R A N C E S

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PROCEEDINGS

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

JUDGE BURTON: Good morning, everyone.

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

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

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

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

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

JUDGE BURTON: All right. Thank you.

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

JUDGE BURTON: Thank you. And the Office of Public Counsel has submitted notice that 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 Westenhaber 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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CERTIFICATE OF REPORTER

STATE OF MISSOURI )  
 ) ss.  
COUNTY OF ST. LOUIS )

I, S. Denise Ballard, a Certified Court Reporter (MO), Certified Shorthand Reporter (IL), Registered Professional Reporter, do hereby certify that the testimony appearing in the foregoing hearing was taken by me to the best of my ability and thereafter reduced to typewriting under my direction; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken, and further that I am not a relative or employee of any attorney or counsel employed by the parties thereto, nor financially or otherwise interested in the outcome of the action.

\_\_\_\_\_  
S. Denise Ballard

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