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STATE OF MISSOURI

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PUBLIC SERVICE COMMISSION

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AGENDA DISCUSSION

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September 15, 2005
Jefferson City, Missouri

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12 In the Matter of the)

Small Company Rate)

13 Increase Request of)

Mill Creek Sewers, Inc.)

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KENARD JONES, Presiding,
DEPUTY CHIEF REGULATORY LAW JUDGE

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22 REPORTED BY:

23 PAMELA FICK, RMR, RPR, CCR #447, CSR

MIDWEST LITIGATION SERVICES

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

2 JUDGE JONES: Lisa, do you want to

3 start?

4 MS. LANGENECKERT: Sure. Lisa
5 Langeneckert, L-a-n-g-e-n-e-c-k-e-r-t on behalf of
6 Mill Creek Sewers. I'm with the Stolar Partnership,
7 S- as in Sam, T- as in Tom, o-l-a-r Partnership, 911
8 Washington Avenue, St. Louis, Missouri 63101.

9 MR. WHEATLEY: Your Honor, my name is
10 Mark Wheatley. I'm Senior Public Counsel for the
11 Office of the Public Counsel, Post Office Box 2230,
12 Governor's Office Building, Suite 650, Jefferson
13 City, Missouri 65102.

14 CHAIRMAN DAVIS: All right. We now have
15 counsel for the staff here. Representing staff is
16 Dan Joyce; is that correct?

17 MR. JOYCE: Yes.

18 CHAIRMAN DAVIS: Dan, could you give
19 your office information for the court reporter here?

20 MR. JOYCE: It's Dan Joyce, Missouri
21 Public Service Commission Staff, Post Office Box 360,
22 Jefferson City, Missouri 65102.

23 CHAIRMAN DAVIS: Judge, those are all
24 the parties in this case, correct?

25 JUDGE JONES: That's correct.

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1 CHAIRMAN DAVIS: So everyone here is
2 represented by counsel?

3 JUDGE JONES: Everyone here is
4 represented by counsel.

5 CHAIRMAN DAVIS: So Judge, you've given
6 us a memo, but can you briefly restate where we're at
7 in this case here?

8 JUDGE JONES: Well, I think the most
9 important thing to note is that the tariff, which has
10 been suspended twice, has an operation of law date of
11 October 12, and before us is an agreement between all
12 the parties as to an increase in those rates. That's
13 subject to our approval or rejection.

14 Mill Creek, since this case has began,
15 has been cooperating, at least from what I've seen in
16 the filings of staff's reports that have been filed
17 weekly, has been cooperating with the Commission in
18 trying to get a system up and operational.

19 Steve Layton has played probably the
20 largest role in that. He's effectively been
21 operating the system from afar, and now it's up and
22 operational and the last thing I've heard is that
23 Mill Creek has hired -- or contracted, I should
24 say -- with someone to operate his system.

25 MS. LANGENECKERT: That is correct.

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1 CHAIRMAN DAVIS: So Lisa, let me ask you
2 this: What -- I mean, what is the -- the ownership
3 status of Mill Creek? At one time we were told that
4 Mr. Afshari, the owner of Mill Creek, was seeking to
5 sell it to MSD for a dollar, that he would -- I think
6 he even went so far as to say he would be willing to
7 enter into a voluntary receivership to get someone
8 else in to manage the property. Where are we at with
9 that?

10 MS. LANGENECKERT: Mr. Afshari has
11 actually hired us to hope to transfer the property to
12 MSD and there were a few matters that needed to be
13 handled before we thought MSD might be interested in
14 it, and we believe that we've taken care of the
15 matters.

16 We've had several conversations with
17 MSD, as has Dale Johansson from my understanding of
18 the status reports, and they seem to be not in any
19 great rush to go over this sewer system.

20 I've spoken to MSD. They appear to try
21 to be making arrangements with DNR and the Attorney
22 General for other agreements that they wanted to
23 procure, and it seemed as if they were using this as
24 one of the hooks that they were going to try to get
25 the other things that they wanted taken care of.

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1 I understand now -- I was not made aware
2 of this directly, but through status reports -- now
3 Missouri American Water may also be interested in
4 taking over the sewer system. Mr. Afshari is ready
5 to turn it over to whoever would like to take care of
6 it. I think that he's decided that maybe his
7 feelings are not necessarily best done in the sewer
8 business, and he is willing to turn it over, but at
9 this point, I don't think MSD or Missouri American
10 Water has agreed to take it over.

11 CHAIRMAN DAVIS: So you personally
12 haven't had any conversations with anyone from
13 Missouri American Water?

14 MS. LANGENECKERT: I have not talked to
15 anyone from Missouri American Water. I would be
16 happy to do so if there was a particular person. I
17 know a few people over there from our rate cases with
18 them for the large industrials. So if there's a
19 contact name that the Commission has or the staff has
20 that they would like for me to talk to, I'd be happy
21 to do that as I'm sure would Mr. Afshari.

22 CHAIRMAN DAVIS: Well, I guess I would
23 just refer you to Martin Kerckhoff, their General
24 Counsel.

25 MS. LANGENECKERT: Okay.

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1 CHAIRMAN DAVIS: And I don't know -- I
2 don't have his contact information, but I'm sure he
3 would probably be the right person to put you in
4 contact with the right people.

5 MS. LANGENECKERT: Okay. Yeah, I can
6 just call Missouri American Water.

7 CHAIRMAN DAVIS: Right. In terms -- and
8 Lisa, I just want to -- so Mr. Afshari would be
9 willing to enter into a voluntary receivership; is
10 that correct?

11 MS. LANGENECKERT: He has not given me
12 those exact words, but as he had previously made that
13 statement, he has not told me he is ready to rescind
14 it.

15 CHAIRMAN DAVIS: Okay. And how long
16 have you been representing Mill Creek?

17 MS. LANGENECKERT: We started
18 representing them I'd say about four months ago.

19 CHAIRMAN DAVIS: Okay. And so you were
20 present representing Mill Creek at the local public
21 hearing?

22 MS. LANGENECKERT: I was not. There was
23 a woman named Janice Priceman, I believe.

24 CHAIRMAN DAVIS: Okay. Does anyone else
25 have any questions for Mill Creek? Don't all jump at

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1 once.

2 COMMISSIONER MURRAY: My question was
3 fairly, I guess, asked, and I'm not sure it was fully
4 answered, and that was whether Mr. Afshari would be
5 willing to enter into an agreement for a voluntary
6 receivership whereby the receiver would have the
7 authority to dispose of the assets.

8 If the Commission were to determine that
9 we could be granted a rate increase as long as it was
10 conditioned upon voluntary receivership and the
11 authority to transfer the assets.

12 MS. LANGENECKERT: He has agreed to
13 transfer the assets for a dollar. He is under the
14 understanding that there would be a connection
15 between the transfer of those assets for a dollar and
16 the lifting of the current Attorney General fine that
17 has been -- that was imposed on him a few years ago.
18 And I know that there is no written agreement to that
19 effect, but I believe that his agreement for
20 transferring it is conditioned upon that. I don't
21 believe that he would be willing to --

22 CHAIRMAN DAVIS: On release of the fine?

23 MS. LANGENECKERT: Right. And there
24 were some references in past documents before we got
25 involved where I had seen some memorandums of

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1 agreement between the staff and also reference in
2 various public hearings and I think in a
3 prehearing -- matters to that effect, but there has
4 been no written agreement with the Attorney General's
5 office, and when I -- and DNR, and when I spoke to
6 them about it, they said that they were willing to
7 work with Mr. Afshari on that. But there has been
8 nothing in writing that has been done thus far.

9 CHAIRMAN DAVIS: So should we join DNR
10 as a party to this case?

11 MS. LANGENECKERT: This was MO DNR. I'm
12 sure you're aware of that --

13 CHAIRMAN DAVIS: Yes.

14 MS. LANGENECKERT: -- but I just want to
15 make that clear.

16 CHAIRMAN DAVIS: Commissioner Clayton,
17 did you have a question?

18 COMMISSIONER GAW: You go ahead.

19 COMMISSIONER CLAYTON: Well, just for
20 clarification, I suppose we need to know whether he
21 would be willing to take the first step of moving the
22 company into a receivership status on an interim
23 basis or a temporary basis. I wasn't clear on
24 whether you said that he was willing to do that or
25 not. You said he hasn't rescinded a prior statement,

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1 but could you elaborate on that?

2 MS. LANGENECKERT: I was not aware that
3 he had made -- referring to an actual receivership
4 arrangement.

5 COMMISSIONER CLAYTON: Well, and that --

6 MS. LANGENECKERT: So if -- if he
7 truly -- if he did make that statement, which it
8 appears that you-all are aware of, then I -- he has
9 not indicated to me that he has changed his mind and
10 is no longer willing to do that. He has indicated
11 that he's willing to sell -- to sell it for a dollar,
12 but he did not say the actual receivership language
13 to me.

14 CHAIRMAN DAVIS: Okay. And that may
15 have just been a mental impression that I may have
16 had from that local public hearing that we had.

17 COMMISSIONER GAW: Why don't we just
18 read the transcript.

19 CHAIRMAN DAVIS: Well, we pulled the --

20 COMMISSIONER GAW: Do we have the
21 transcript?

22 COMMISSIONER CLAYTON: We pulled from
23 the on-the-record -- this is -- this is from the Mill
24 Creek Sewer's small rate -- small company rate case
25 increase on-the-record presentation dated March 16,

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1 2005. I read from page 40, question from
2 Commissioner Gaw:

3 "Counsel -- and you don't have to
4 respond to this because I understand if you don't
5 want to. But if my question is the same as it was
6 earlier but directed to you would be, would your
7 client consent to someone else being in charge of the
8 company as a voluntary receivership in the interim if
9 these rates -- as a condition of these rates being
10 implemented, question mark.

11 Ms. Kressyman or Kreisman responds:

12 "It has not been discussed. I mean that
13 we've discussed it at all, but I do not think it
14 would be objected to and we would need to work any
15 way we could to resolve this situation."

16 MR. LANGENECKERT: Right. And I have a
17 copy of that transcript and that language.

18 COMMISSIONER CLAYTON: Okay. If it
19 would move the process forward in terms of the
20 overall transfer of the property, is that something
21 you could find out, whether he would be willing to
22 agree to a -- an interim or temporary receivership?

23 MS. LANGENECKERT: Oh, certainly. I
24 could find -- I could check with Mr. Afshari and find
25 out and get back to the Commission.

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1 that Dale Hermeling of our office just joined me.
2 He's the partner in charge of this case, and his last
3 name, for the court reporter's knowledge, is
4 H-e-r-m-e-l-i-n-g.

5 MR. HERMELING: I'm sorry. By the
6 receiver you mean to take control of the facility; is
7 that the question?

8 COMMISSIONER CLAYTON: Yeah. I don't
9 know if you-all have thought about any potential
10 candidates to act as a receiver, if that were to come
11 up. You may not have talked about it, and that
12 answer's okay.

13 MR. HERMELING: No, we have not.

14 COMMISSIONER CLAYTON: Okay. Who was
15 the operator that's actually running the business?
16 It's my understanding that someone else is actually
17 operating Mill Creek at this time.

18 MS. LANGENECKERT: It's a company called
19 T- as in Tom, a-c as in cat, which stands for
20 Testing, Analysis and Control, and I have a copy of
21 the contract which I would be willing to share with
22 you. I have sent a copy to the staff, and I can also
23 give you the name of the person who is the one who's
24 actually doing the work.

25 COMMISSIONER CLAYTON: What is the -- is

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1 it -- that's obviously a company, but is it one
2 person that's on the scene or...

3 MS. LANGENECKERT: There is one
4 gentleman who is responsible for this particular
5 location. He is not the only person in the company.
6 He is the operations manager. I believe he's a Class
7 A operator even though a Class C was necessary. And
8 his name is Tim Allgire, A-l-l-g-i-r-e. And there's
9 a licensed operator in the contract by the name of
10 Brian Bowman and they even give his Social Security
11 number.

12 COMMISSIONER CLAYTON: Thank you. I
13 don't have any other questions.

14 CHAIRMAN DAVIS: Commissioner Gaw?

15 COMMISSIONER GAW: I don't think I have
16 any questions, Mr. Chairman. I just believe -- I
17 think -- I think we've got to bring this thing
18 finally to a resolution. And I think we need -- I
19 think they agreed in March to a voluntary receiver
20 and we're still sitting here, and I'm not sure where
21 we need to move at this point with this tariff about
22 ready to run, but I have been, from the beginning,
23 unwilling to move forward on a rate increase unless
24 we had somebody else in charge of this company.

25 CHAIRMAN DAVIS: Right.

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1 COMMISSIONER GAW: And so I have not
2 changed my position on that. I think we need to get
3 somebody else in charge, and I think it needs to
4 happen right away at this stage, so what I would like
5 to see is for there to be some immediate response
6 back from the owner in regard to this temporary
7 receiver issue and some sort of an immediate
8 recommendation from staff about who could act in that
9 capacity as a temporary receiver.

10 And then if that can be done very
11 quickly, then we can make some sort of move on
12 whether or not we're gonna accept -- whether or not
13 we're gonna reject the tariff.

14 CHAIRMAN DAVIS: Right.

15 COMMISSIONER GAW: And I think the
16 window on that, obviously, is a very narrow path. So
17 that's why I'm...

18 CHAIRMAN DAVIS: I concur with you,
19 Commissioner Gaw. I'm very hesitant to grant any
20 sort of rate relief until there's a whole sale change
21 in ownership. Just, you know, based on the
22 horrendous testimony that we heard at that local
23 public hearing three or four months ago.

24 COMMISSIONER MURRAY: Mr. Chairman, if
25 there is the insistence that in order to have an

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1 agreement that DNR agree to something -- I mean, we
2 don't have the authority to tell DNR to do something.

3 COMMISSIONER GAW: That's true. There
4 are two different issues here, though. One is -- one
5 is whether or not there's a sale, and the other --
6 but the first one I'm discussing is whether or not
7 there's a temporary receiver in control and I am --

8 CHAIRMAN DAVIS: That would help.

9 COMMISSIONER GAW: I am, at least on the
10 immediate front, willing to consider transfer of
11 control as a part of whether or not we do something
12 on the rates. So I agree with what you're saying,
13 Commissioner Murray, in regard to transfer for sale
14 purposes. I think we ought to bring DNR in in some
15 fashion and we need to find out what's necessary in
16 order to help facilitate transfer of the assets, but
17 I don't necessarily tie that into the question of
18 whether or not this tariff goes into effect. To me,
19 that has more to do, from my personal standpoint,
20 about who is in control.

21 COMMISSIONER CLAYTON: The key on the
22 rate increase is -- is tracking the money. I mean,
23 it's -- there's gonna be an increase of funds coming
24 in and it's making sure the money gets used in a
25 proper way. A receiver who will account for the

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1 money -- primarily that's the responsibility is to
2 handle the books and write the checks, that type of
3 thing -- can account for those funds subject to
4 audit. And that would make me feel much more
5 comfortable.

6 In the meantime, we could haggle over
7 the -- the whole DNR situation. I don't know what
8 powers they have to either waive or give up on fines
9 or -- I'm not sure what the legality of that is. But
10 the receivership would enable someone to account for
11 the funds coming in, it would relieve Mr. Afshari, at
12 least temporarily, of having to deal with that aspect
13 of the business.

14 The receiver can continue in this --
15 adopt the contract if the receiver so sees fit of
16 TAC, so someone will physically be there to actually
17 handle the operation of the facility. So it seems to
18 me what we need -- we need to see if Mill Creek is
19 willing to consent to this interim receivership, at
20 least maybe for a certain amount of time because of
21 this rate increase pending, and if that's the case
22 then come to a -- maybe come to an agreement on the
23 actual receiver.

24 MS. LANGENECKERT: I have a question on
25 the receivership. Currently, Mr. Afshari is charging

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1 five dollars a month to -- and if they all paid, that
2 would be \$4400 a year. He has spent a lot of his own
3 funds into this sewer company to keep it going.
4 Currently the expenses for 2005 have topped \$10,000.
5 So if there is a receivership and there aren't
6 sufficient funds to cover the expenses, how would the
7 receiver be able to make these payments without
8 having Mr. Afshari give additional personal funds, or
9 would that be something that would be an expectation?
10 COMMISSIONER CLAYTON: I guess I would
11 ask the question if the rate increase were to go into
12 effect, how would that affect the revenue? They
13 would go to, what, 30 bucks?
14 JUDGE JONES: Right. \$30 and eleven.
15 COMMISSIONER CLAYTON: That's six times.
16 So that would increase the income up to \$24,000 a
17 year, right?
18 MS. LANGENECKERT: So this is assuming
19 the rate increase goes into effect. Okay.
20 COMMISSIONER CLAYTON: Right.
21 MS. LANGENECKERT: I would think for --
22 thinking immediate and without the rate increase in
23 effect and only a \$4400 --
24 COMMISSIONER CLAYTON: Well, without
25 prejudging the case, without making a decision, I

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1 mean, I think most people would say five dollars is
2 not adequate to cover the costs, I would think. But
3 it's more than just dealing with the rate increase,
4 where the money is gonna go, how it's gonna be spent.
5 That's my perspective.

6 COMMISSIONER GAW: The only other issue
7 I hesitate to raise because I don't know if it's an
8 issue now and if I raise it, it might become one.
9 But my question -- my question is whether or not if
10 we granted a rate increase, whether or not DNR could
11 attach and increase revenues to pay the fine, or if
12 it's at that stage -- because I do not want to see
13 these people pay more money just to pay off a fine
14 that they didn't cause to begin with.

15 CHAIRMAN DAVIS: Right. The fine should
16 follow the owner, not the rate payers.

17 COMMISSIONER GAW: That's kind of my
18 point, and I don't know what the status of that is.
19 And I don't want to raise it too much here, I just
20 want to know -- it's something we ought to consider.

21 COMMISSIONER APPLING: The question I
22 have, Commissioner, is the rate here having anything
23 jointly, do you know whether it has anything to do
24 with the receivership people are not saying that I
25 want to take this on because it's five dollars, and

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1 if the rate would increase that there would be
2 someone out there biting off a lot more than they are
3 now.

4 JUDGE JONES: I don't think that
5 anyone's been approached to receive the company. I
6 think it's a safe assumption no one would want to
7 receive it when five dollars a month is what the rate
8 is. That's a loss. But I don't think anyone's been
9 approached about that.

10 COMMISSIONER APPLING: I think my
11 question is, just for an old country boy, what in the
12 hell is people waiting on? Doesn't somebody need to
13 ask that question?

14 JUDGE JONES: What question?

15 COMMISSIONER APPLING: Whether
16 somebody's willing to take this on. It would seem to
17 me that --

18 COMMISSIONER GAW: My expectation was
19 when I asked that question back in March that there
20 would be follow-up to it. We're now however many
21 months it is afterwards and we're still asking the
22 same question.

23 COMMISSIONER CLAYTON: MSD, they were
24 involved in the discussions on that legislation.
25 They wanted to be excluded and we worked with them

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1 and oh yeah, we're looking into -- we're looking into
2 Mill Creek, we'll get back to you, and that was in
3 March. So it's been six months and it's not moved.
4 So obviously they're not interested so...

5 CHAIRMAN DAVIS: Right. And I would
6 just -- my mental impressions based on what I read in
7 the newspapers and everything else, is MSD has
8 financial problems and they're trying to get their
9 own ship in order, so to speak, and I think they
10 would be very concerned about taking on a troubled
11 property that DNR would want them to integrate into
12 their system.

13 COMMISSIONER CLAYTON: All they need to
14 do is say no. You know, all they've got to do is say
15 we're not interested and move on, but we're just
16 floating around.

17 CHAIRMAN DAVIS: Does Office of Public
18 Counsel have any thoughts, questions, suggestions?
19 What's in the best interest of the people with Mill
20 Creek Sewer?

21 MR. HERMELING: Well, I agree with you
22 that getting some decision -- I don't know how we
23 can -- certainly are in touch with them --

24 THE COURT REPORTER: Sir, you're cutting
25 out. I can't understand what you're saying.

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1 MR. HERMELING: What I was saying is
2 that we cannot -- we're not in a position to make MSD
3 make a decision, although I think everybody would
4 like to know one way or the other whether they are
5 interested in taking this or whether they are not.
6 If you continue to be in touch with them to try to
7 determine what their status is or where they are in
8 their process relative to that decision. We have not
9 taken this --

10 THE COURT REPORTER: You're cutting out
11 again, sir.

12 MR. HERMELING: We believe that that
13 transition would be much better facilitated taking it
14 to MSD rather than taking it to the homeowners. We
15 can certainly go to the homeowners at this point to
16 determine their interest and advise the Commission of
17 where they are on it.

18 MS. LANGENECKERT: Now that Missouri
19 American Water has also indicated an interest and I
20 can call Marty Kerckhoff and see whether it's an
21 accurate interest or true interest, or whether it was
22 just something they threw out that...

23 CHAIRMAN DAVIS: Well, I guess the other
24 thing we could do is we could notice this thing up
25 for Tuesday and I could send MSD a subpoena and ask

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1 them to come in.

2 COMMISSIONER GAW: Mr. Chairman, I've
3 been asking for that for quite sometime and I'd be
4 very supportive of that concept.

5 CHAIRMAN DAVIS: Well, since we're
6 getting ready to file a lawsuit against them on
7 another matter --

8 MR. HERMELING: I didn't hear that
9 comment.

10 CHAIRMAN DAVIS: It's irrelevant.

11 MS. LANGENECKERT: I heard the word
12 "lawsuit" and that got us nervous.

13 COMMISSIONER GAW: I wasn't referring to
14 you.

15 CHAIRMAN DAVIS: Does staff have any
16 comments, thoughts, suggestions as to how we can
17 solve this matter?

18 MR. JOYCE: Well, on the legal side, I
19 would note to the Commission that in order to put
20 into play a possible legal -- possible receivership,
21 whether it be voluntary or involuntary, staff would
22 have to initiate a receivership action here with the
23 Commission to at least get that on the table, and
24 then if the owner is willing, that can be processed
25 fairly quickly. And if the concern is having someone

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1 handle the financial piece, that may be more easily
2 achieved than getting an operator involved.

3 MS. LANGENECKERT: I'm sorry. That may
4 be more easily achieved than --

5 MR. JOYCE: Than bringing in an
6 operator.

7 MS. LANGENECKERT: Okay. Well, the
8 operator that the Mill Creek has contracted with for
9 a year would not be an operator that you feel would
10 be appropriate?

11 MR. JOYCE: Well, if a receiver was
12 brought in to handle the financials, and would just
13 merely maintain the contract for operation, that -- I
14 think that may be a lot more easily accomplished
15 than, for example, bringing in an MSD-type operator
16 that would do everything; collect the money and run
17 the facility. But in order to get that option
18 moving, the staff would have to get a case before the
19 Commission to make that happen.

20 MR. HERMELING: We're not getting much
21 here.

22 CHAIRMAN DAVIS: Can you step forward
23 here and briefly restate yourself?

24 COMMISSIONER GAW: Say who you are too
25 if you can.

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1 MR. JOYCE: This is Dan Joyce, counsel
2 for staff. In order to allow the voluntary or
3 involuntary receivership option, staff would need to
4 get a receivership case before the Commission, and
5 then if the owner is willing to agree to transfer the
6 company the receivership, that could be processed
7 fairly quickly. There wouldn't -- that process
8 wouldn't drag out.

9 And then if the receiver would be a
10 financial person, an attorney or someone that handles
11 the financials and collects the money, finding that
12 type of receiver may be easier than getting someone
13 who would take on the whole kit and caboodle of
14 running, operating and collecting and dispensing the
15 money. But we -- you know, the staff would have to
16 investigate that.

17 COMMISSIONER MURRAY: Mr. Chairman, why
18 would that be a necessary step when it seems to me
19 the Commission could approve the tariff filing
20 contingent upon an agreement to appoint a receiver?
21 Why do we have to have the staff open something?

22 COMMISSIONER CLAYTON: Well, I thought
23 about that. I was thinking, you know, you could
24 probably, just by having a motion inside of the rate
25 case, maybe you could just do it that way. And I

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1 don't know if that's possible or not. But there's
2 another component to this, and that's if -- I mean,
3 MSD's not interested, it certainly appears, and we
4 can't force them to take it and -- but we can force
5 somebody to take it.
6 And that does require some sort of
7 action. And I don't know if we want to go down that
8 path. It seems to me for right now we need to get
9 some sort of filing from Mill Creek stating whether
10 or not they're willing to agree to an interim
11 receiver concept, because the problem right now with
12 time is dealing with this rate increase which in this
13 tariff which takes effect on October 12, so we need
14 to get an idea under what circumstances, or if any
15 circumstances at all, at the very least put the
16 company in a receivership type of status and
17 negotiate on who that person would be; get that
18 filing from Mill Creek.
19 In the meantime, staff could file
20 another case that would establish that interim
21 receiver with the second component which would be
22 possibly forcing the transfer to another entity.
23 Now, before we get into forcing that, I mean, I think
24 we'd have to have additional conversations. You
25 know, rate base isn't gonna be one dollar. You know,

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1 there are other considerations that go with that, but
2 that will get the process moving and figure out --
3 you know, there's already an operator. I haven't
4 heard anyone say that the operator in place, that
5 this TAC -- I suppose they're doing a good job.

6 We'd have to get a filing from staff to
7 say whether the operator is adequate, and then the
8 receiver would just handle the funds and do an
9 accounting job and just kind of monitor the
10 day-to-day dollar transfers while Missouri American
11 has a chance to look at it.

12 MS. LANGENECKERT: Would Mill Creek be
13 required to pay the receiver to do this type of work?
14 I'm afraid I'm not that familiar with receiverships
15 to know exactly.

16 CHAIRMAN DAVIS: It would have to either
17 be paid through rates or by Mill Creek.

18 MS. LANGENECKERT: We pick rates.

19 COMMISSIONER CLAYTON: It would be my
20 assumption that with the increased revenue from the
21 rate increase, that there would be additional funds
22 available and I would assume that -- I don't know
23 without reviewing it, but that it would be through
24 the rates. But these are things that need to be
25 worked out.

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1 CHAIRMAN DAVIS: Counsel for staff, I
2 see Dale Johansen shaking his -- shaking is head back
3 there. Is there something that he wishes to add?

4 MR. JOHANSEN: If I could. Dale
5 Johansen. I'm the manager of the Water and Sewer
6 Department. I think one of the things we need to
7 keep in mind here is that the rate increase that is
8 currently in front of the Commission is simply to
9 cover the day-to-day operating expenses of the
10 facility. It does not include a rate of return and
11 income taxes on the company's investment.

12 So from the standpoint of going down the
13 track of are there additional funds to compensate a
14 receiver, I would say the answer to that, initially
15 without looking at the numbers, is no. Because the
16 rate increase that the company's agreed to pursue
17 today is simply to cover the day-to-day operating
18 expenses. They're basically --

19 COMMISSIONER CLAYTON: There's a second
20 component though, isn't there? Isn't there a second
21 component --

22 MR. JOHANSEN: Yes.

23 COMMISSIONER CLAYTON: -- to the rate
24 increase that once the transfer is made effective to
25 whoever, that the rates would go to a different

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1 level?

2 MR. JOHANSEN: Now, actually the phase
3 two, the potential for a second increase is tied to
4 whether a transfer does not happen through no fault
5 of Mill Creek. If a transfer doesn't happen through
6 no fault of Mill Creek -- the original agreement was
7 that Mill Creek would have the right to come back and
8 ask for a rate that did include a return on its
9 investment in the facility.

10 So the -- a transfer to a new owner does
11 not kick in phase two of the rates. It's actually if
12 a transfer doesn't happen as contemplated by the
13 original agreement through no fault of Mill Creek,
14 then Mill Creek would have had the right to come and
15 ask for a rate that allows it to earn a return on its
16 investment.

17 COMMISSIONER CLAYTON: But under the
18 section that allows for us to, for lack of a better
19 term, force this company on another company to
20 acquire it, we can deal with rates and expenses
21 through that mechanism, can we not?

22 MR. JOHANSEN: We could, yes.

23 COMMISSIONER CLAYTON: Yeah. And
24 receivership expenses that would then be the
25 liability of the new owner could be part of those

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1 expenses, correct?

2 MR. JOHANSEN: They could, yes.

3 COMMISSIONER CLAYTON: Yeah. So problem
4 solved.

5 MS. LANGENECKERT: As Mr. Johansen said,
6 as I look at the rate-making income statement that
7 was filed with the initial rate increase, it shows a
8 total cost of service of 26,700 and a rate increase
9 needed of 22,000. When I look at the sludge hauling
10 fees and some of the other fees that are listed in
11 here on an annual basis, I can tell you that the
12 sludge hauling so far this year has been almost
13 \$6,000, and that's just through July, 2,700 listed on
14 this list.

15 So it's my belief that the amount in
16 this initial rate case will barely cover the actual
17 cost of operating the plant, not including the
18 receiver, and this also doesn't include the 670 a
19 month to the Class C operator. Right now the O&M
20 salary for the plant operation is only \$4,300, but at
21 \$670 a month it would be almost \$9,000 for an annual
22 operation. So I don't know if there's gonna be a
23 whole lot of funds left for a receiver, but...

24 COMMISSIONER CLAYTON: We can handle
25 that if it's Missouri American.

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1 CHAIRMAN DAVIS: Does the Office of
2 Public Counsel have any comments to add, any
3 suggestions as to how we might best serve the
4 customers of Mill Creek?

5 MR. WHEATLEY: Well, Mr. Chairman, this
6 is Mark Wheatley. We agree with the theory that --
7 of the staff's comments and recommendations that the
8 action dates should be just moved forward with the
9 filing of the tariff.

10 Now, this is the first opportunity we've
11 had to consider the concept of a receivership in
12 this -- in this case. Based upon what I've heard
13 from Mr. Johansen, I'm not sure that funds would be
14 available for that.

15 So it seems that the best solution might
16 be to have the tariff approved as currently posted
17 with the -- in order to increase the revenues for the
18 company in order to allow them to then pursue the
19 receivership.

20 CHAIRMAN DAVIS: Thank you,
21 Mr. Wheatley.

22 MS. LANGENECKERT: May I suggest that --
23 the possibility of having additional public hearings?
24 I believe that a lot of circumstances have changed
25 since the January 24th public --

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1 CHAIRMAN DAVIS: Well, I would sincerely
2 hope so.

3 COMMISSIONER GAW: Can we have the
4 senator from that area come and testify,
5 Mr. Chairman?

6 CHAIRMAN DAVIS: Yes. I did -- I did
7 receive a communication from one state senator, Tim
8 Green, last week who, in a public hearing at the
9 State Capitol, expressed his extreme dismay with this
10 Commission for our inability to bring this case to
11 some sort of resolution, and as he aptly pointed out,
12 this situation has been boiling for approximately
13 eight years. The first correspondence in our file is
14 from former state representative Lauri Donovan who,
15 as many of us know, hasn't been a state
16 representative since the mid to late '90s.

17 MS. LANGENECKERT: So does that mean you
18 want a public hearing or you don't?

19 CHAIRMAN DAVIS: I just don't know what
20 purpose it would serve.

21 MS. LANGENECKERT: Well, it seems that
22 there's a concern by the Commission which just may be
23 justified considering past practices, that if
24 Mr. Afshari is granted this -- I don't know if I'd
25 call it -- it's an increase in his rates, but it's

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1 obviously not any additional income for him, if he is
2 granted that, that he will not manage the funds or
3 that he'll take off with the 22 grand and not keep
4 his sewer plant running.

5 I believe that the customers' rate may
6 indicate that they are more pleased with their
7 service than they were back in January when the
8 public hearing was last held and I think what is the
9 basis for your consternation. And I haven't talked
10 to the customers so I may be, you know, doing the
11 grave error of asking a question that I don't know
12 the answer to.

13 CHAIRMAN DAVIS: Right.

14 MS. LANGENECKERT: It may be that
15 they're all still upset and want to hang him from the
16 highest tree. I don't know.

17 CHAIRMAN DAVIS: Well, counselor, I
18 would advise you to go back and look at the
19 transcript from the last public hearing.

20 MS. LANGENECKERT: I have.

21 CHAIRMAN DAVIS: I don't know that -- I
22 don't know that three months of good service could
23 take away from close to a decade of apathy. It's
24 just a mental impression of someone who was there at
25 that hearing. But we will take that under advisement

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1 and we will consider it accordingly.

2 MR. HERMELING: I think part of the
3 difficulty that I'm -- I'm having is this
4 receivership contest, is this is the first time that
5 I have heard about the receivership contest and that
6 I do believe that there are improvements in the
7 operation of the facility.

8 Now that we have those improvements,
9 we're kind of at a line that now is the time that we
10 could be considering putting it in receivership now
11 that I think it's up and running in a more favorable
12 manner. And I'm having a little trouble
13 understanding the need to proceed with the
14 receivership because -- and I think the staff would
15 support this, things have certainly improved there.

16 COMMISSIONER CLAYTON: Well, your client
17 has indicated that he wants to get rid of the
18 company. Now why do we want to keep him in charge?

19 CHAIRMAN DAVIS: Especially given his
20 long track record of not running a very good sewer
21 company.

22 MR. HERMELING: Well, we're talking
23 about a temporary -- we're talking about a temporary
24 receivership, right?

25 CHAIRMAN DAVIS: A temporary

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1 receivership with the ends of someone actually
2 effectuating the sale of the property because it
3 doesn't appear that there's been a lot of zealous
4 efforts on the part of the owner to do so.

5 MS. LANGENECKERT: Well, we were under
6 the impression that MSD was truly interested in this,
7 and if they're not, then I think they do need to tell
8 us that, so that reference has been made. But we do
9 not understand that we were ever charged with going
10 out and finding a buyer.

11 CHAIRMAN DAVIS: Well, that's because
12 Mr. Afshari changes lawyers like some people change
13 clothes, three or four times a day.

14 MS. LANGENECKERT: He's trying to save
15 the best for last so we're hoping we can get this
16 matter taken care of. If you want us to talk to him
17 about a voluntary receivership and -- but we want to
18 be able to give him for disclosure. If he's going to
19 have to pay for this or if the rate payers are gonna
20 pay for it, I think that that's something that he and
21 they would need to know.

22 MR. HERMELING: And what the scope of
23 the receivership would be. Are you talking about
24 only the financial -- financial accounting?

25 COMMISSIONER CLAYTON: We're talking

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1 about Mill Creek, period, the sewer company. Maybe
2 you could file something that indicates what your
3 concerns are, and then maybe we can try and address
4 those concerns.

5 MR. GAW: Mr. Chairman, I don't know how
6 we're gonna get all this done before these tariffs
7 are supposed to go into effect by operation of law if
8 we're gonna have all this continuation of discussion.

9 CHAIRMAN DAVIS: Well, at some point,
10 you know, with all due respect, Lisa, I mean, you
11 know, we've heard that MSD is interested, they're
12 waiting on this, they're waiting on that. You know,
13 at some point, you know, either they have to say yes
14 or no.

15 MS. LANGENECKERT: Right. I've talked
16 to their general counsel and Susan Meyer who's
17 apparently been involved in this case, and everybody
18 is doing a whole lot of fancy footwork, but nobody's
19 saying yea or nay. I thought maybe once they got
20 their recent removal from the requirement that their
21 sewer facilities meet up to the waterway standards of
22 DNR, that they would be a little more amenable to the
23 idea. I thought maybe that's what they were holding
24 out for, but I still have not gotten any response
25 that they are willing to go any further than they

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1 already have.

2 COMMISSIONER MURRAY: Mr. Chairman, if
3 we were to address the tariff with the contingency
4 that we would prove a certain rate increase
5 contingent upon voluntary receivership and we've
6 spelled out some specificity as to what that
7 receivership involves for the owner, would that not
8 be one way to proceed here, put it in the owner's
9 ballpark?

10 CHAIRMAN DAVIS: That would appear to me
11 to be a logical way to proceed. I mean, that's the
12 only way I see -- that's the only resolution I see at
13 this point.

14 MS. LANGENECKERT: So the owner would be
15 charged with finding a receiver?

16 COMMISSIONER CLAYTON: No, no, no, no,
17 no.

18 COMMISSIONER MURRAY: I'm saying that if
19 we issued an order, something like approving a rate
20 increase contingent upon a voluntary agreement to a
21 receivership and spelled out the specificity as to
22 what that receivership would involve for the owner,
23 then that gives the owner the opportunity to accept
24 that or reject it. I'm just throwing that out as a
25 possibility.

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1 CHAIRMAN DAVIS: All right.

2 COMMISSIONER CLAYTON: Is there a
3 downside to directing our general counsel to
4 instigating proceedings under Senate Bill 462 for
5 both the receivership component and the forced
6 takeover provision? Because even if he doesn't agree
7 to -- doesn't agree to do the receivership, then, I
8 guess theoretically, we'd reject the tariff and then
9 we'd be right back where we started.

10 So, I mean, we have to force the issue
11 of this change in ownership which Mr. Afshari has
12 indicated he's interested in and that would set up a
13 frame of a case to at the very least deal with these
14 issues. And we can work through them. I don't think
15 there's any -- they can file something, set out their
16 concerns or problems with this, and we'll do -- we
17 can do our best to deal with them. But is there a
18 downside to directing Dan to get started on that?

19 COMMISSIONER MURRAY: You mean to bring
20 a new proceeding?

21 COMMISSIONER CLAYTON: Uh-huh.

22 COMMISSIONER MURRAY: Why -- why do we
23 have to approach it that way?

24 COMMISSIONER CLAYTON: Because it sounds
25 like they're not agreeing to a receivership.

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1 COMMISSIONER MURRAY: But we don't know
2 that.

3 MS. LANGENECKERT: We haven't talked to
4 our client at all. It may be that our client is
5 willing to agree to a receivership. Our concern is
6 that he would have to pay for this out of his own
7 personal funds, and the sewer obviously has become
8 quite a money pit for him. He's paying much more
9 than he's receiving.

10 And I realize that his past practices
11 are part of the cause of his not being able to
12 receive a rate increase.

13 COMMISSIONER CLAYTON: I understand that
14 and that's why, I think, a filing on his part would
15 clear up a number of those. But what I'm saying is
16 we've only got three weeks until this tariff issue
17 comes through, and I think a rate increase is gonna
18 be important for anyone who would acquire the
19 company.

20 MS. LANGENECKERT: I can't imagine
21 anyone would acquire it at \$4,400 a year.

22 COMMISSIONER MURRAY: And that's why I'm
23 suggesting approaching it in the context of this rate
24 increase, and I'm suggesting that it would be very
25 beneficial if the owner would agree to the

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1 receivership in conjunction with a rate increase.

2 MS. LANGENECKERT: We will bring that to
3 him. And would you like a formal filing as to his
4 response, or just a telephone call? We will do
5 whatever it is that you would like for us to do.
6 Just tell us what that is.

7 CHAIRMAN DAVIS: Well, I think one of
8 the things that we probably need to do is we need to
9 see if we can't get DNR and the Attorney General in
10 here next week to find out what their intentions are
11 in terms of how they're gonna seek -- seek their --
12 these fines that have been levied against
13 Mr. Afshari; if they're gonna try to garnish it, or
14 exactly what the situation is.

15 COMMISSIONER CLAYTON: These are all
16 valid points that I think need to be addressed. I
17 mean, we can't fix everything today. I think the
18 question is in terms of moving forward with the rate
19 increase, we have to deal with this receivership
20 question.

21 CHAIRMAN DAVIS: Lisa, in your
22 conversations with the Attorney General's office, has
23 there been any particular assistant attorney general
24 that you've worked with over there?

25 MS. LANGENECKERT: We have worked -- and

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1 Dale Johansen could confirm this. We've worked
2 mainly with -- I believe his last name is pronounced
3 Bindbeutel and also Bindbeutel.

4 Joe Bindbeutel. You think with a name
5 like mine I'd appreciate these names, but I don't.

6 CHAIRMAN DAVIS: All right. Any further
7 comments from OPC, staff or counsel for Mill Creek?

8 MR. JOYCE: Mr. Chairman, staff would
9 note that if Lisa and counsel for the company would
10 be willing to work out -- you know, we've been using
11 the term "receivership" which implies, I think,
12 broader powers than what are needed to proceed with
13 the -- with this case and the new tariffs.

14 Staff would be willing to perform the
15 financial -- the fiscal piece knowing that the
16 contractor's there to do the operation piece. And if
17 we could present to the Commission a stipulation
18 probably involving the DNR now, because of their
19 action, that the company would acquiesce to staff
20 assuming fiscal control as the fiscal receiver, so to
21 speak, and present that to the Commission by means of
22 a stip, then the Commission would have that to go
23 forward with Commissioner Murray's proposal.

24 MS. LANGENECKERT: Okay. We will
25 definitely take that to Mr. Afshari. And what's

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1 your -- again, my concern is that I need to offer to
2 him the cost that there may be imposed upon him for
3 this. Do I understand that I believe these costs
4 could be taken out of the rate cases currently -- for
5 on tariffs, or do you think that there's going to be
6 more costs involved and that he would have to outlay
7 additional funds for the staff to do this?

8 MR. JOYCE: Could Mr. Johansen answer
9 that?

10 CHAIRMAN DAVIS: Mr. Johansen?

11 MR. JOHANSEN: I think what we're
12 talking about at this point is the staff monitoring
13 the company's activities with regard to its receipts
14 and disbursements of the increased revenues that
15 would be generated by the rate increase to ensure
16 that those revenues are, in fact, being used for the
17 operation of the company.

18 MS. LANGENECKERT: Okay.

19 MR. JOHANSEN: And so from that
20 perspective, I don't see any increased cost if that
21 was the approach that was taken.

22 MR. HERMELING: Is that a monthly report
23 to the staff?

24 CHAIRMAN DAVIS: I don't know.

25 MR. JOYCE: No. Staff would -- staff

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1 would do it in a hands-on.

2 CHAIRMAN DAVIS: I sense a high level of
3 low enthusiasm from some of my fellow Commissioners
4 regarding this suggested course of action. But I
5 guess, Lisa, in response to your question, I am not
6 really concerned about what it costs Mr. Afshari and
7 if it does cost him more money, I mean, that's -- you
8 know, at some point -- you know, this thing has drug
9 on for years now, and it has to be brought to
10 resolution one way or the other. And this is the
11 only stick we have.

12 MS. LANGENECKERT: I will talk to
13 Mr. Afshari about the possibility of a receivership.
14 And how would you like me to respond?

15 CHAIRMAN DAVIS: By Monday, if possible.

16 MS. LANGENECKERT: To you, Chair Davis,
17 or to staff?

18 CHAIRMAN DAVIS: I would file some sort
19 of pleading or something of that nature.

20 MS. LANGENECKERT: Okay. We will do
21 so.

22 COMMISSIONER DAVIS: And then if -- I'll
23 instruct the judge to see if maybe we can get DNR to
24 appear on Tuesday.

25 MS. LANGENECKERT: Okay. Tuesday you

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1 want to have a hearing?

2 CHAIRMAN DAVIS: Well, I don't know
3 exactly, and I may -- you're gonna be in town on
4 Monday; is that correct?

5 MS. LANGENECKERT: I will not be there
6 on Monday, actually. We don't have much concern on
7 the gas weatherization matter, and I believe that
8 Morris Brubaker will be there.

9 CHAIRMAN DAVIS: Okay. All right.
10 Well, we will -- we'll probably look at -- if I can
11 pull it together, we may try to look at reconvening
12 on Tuesday at a time that would be convenient for all
13 the parties.

14 MS. LANGENECKERT: All right.

15 CHAIRMAN DAVIS: All right.

16 MS. LANGENECKERT: Thank you very much,
17 Commissioners.

18 CHAIRMAN DAVIS: Thank you. All right.
19 Any final thoughts on Mill Creek?

20 JUDGE JONES: Should we stay on the
21 record or go off the record?

22 CHAIRMAN DAVIS: We'll go off the
23 record.

24 (WHEREUPON, the procceding were
25 concluded.)