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STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

TRANSCRIPT OF PROCEEDINGS

Public Hearing
January 24, 2005
Florissant, Missouri

Volume 1

In the Matter of the Small Company)
Rate Increase Request of Mill Creek)Case No. SR-2005-0116
Sewers, Inc.)

KENNARD L. JONES, Presiding Regulatory Law Judge
JEFF DAVIS, Chairman

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24 REPORTED BY:

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25 Jacquelyn S. Williams, RPR, CCR, CSR (11)

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

2 JUDGE JONES: Good afternoon. Thanks for coming
3 out. My name is Kennard Jones. I am the presiding
4 judge over this matter and this is a local public
5 hearing for case No. SR 2005-0116. Seated to my right
6 is Chairman Jeff Davis, one of five commissioners
7 appointed by the governor.

8 AUDIENCE MEMBER: Can't hear you back here.

9 JUDGE JONES: Oh, I'm sorry. I was asking the
10 Chairman if he had anything he would like to add. I
11 will try to speak up. Can you hear me now?

12 AUDIENCE MEMBER: Yes, sir.

13 JUDGE JONES: Okay.

14 CHAIRMAN DAVIS: I just want to thank everyone for
15 coming. Obviously I've been on the Commission for
16 eight months. This is probably the fourth or fifth
17 public hearing we've had since I've been on the
18 Commission. This is by far our largest turnout so
19 obviously you have some very strong feelings and we are
20 looking forward to hearing a little bit more about
21 those here in just a few minutes.

22 JUDGE JONES: Thank you, Mr. Chairman. The
23 purpose of this hearing is to give you an opportunity
24 to voice your comments in this rate case. This is an
25 official hearing of the Commission. The hearing will

1 be transcribed and made a part of the official record.
2 Accordingly, all of your remarks will be made under
3 oath. Because there are a number of matters in which
4 commissioners must attend, all of the commissioners are
5 not present here today as you can see. However,
6 because the record is being made, all of the
7 commissioners will have an opportunity to review your
8 comments and take them into consideration when making a
9 determination in this case.

10 In addition to this local public hearing, there will
11 be a hearing regarding the agreement and I'm sure you all
12 probably heard about between our Commission staff and Mill
13 Creek Sewer and that hearing is a public hearing in
14 Jefferson City. If you're able to, you're welcome to
15 attend.

16 The procedure of this hearing will be as follows. I
17 see there are eight names on this list here of persons who
18 desire to come up and speak. When I call your name I will
19 ask you to approach the podium. I'll ask you to restate
20 your name and spell it for the court reporter. I will also
21 ask what your address is. After you're finished speaking,
22 there may be questions from myself or Chairman Davis. I
23 should have -- did they get to meet you?

24 CHAIRMAN DAVIS: Yes.

25 JUDGE JONES: The Office of Public Counsel. There

1 may be questions from the general counsel of the
2 Commission Mr. Cliff Snodgrass, so please don't step
3 away from the microphone until I excuse you and all of
4 your concerns have been addressed.

5 At this time do any of you have questions about the
6 procedure of the hearing tonight, of myself? If you do
7 just raise your hand. Seeing none then we will go ahead
8 and get started.

9 The first name on the list is -- last name is Breeze I
10 believe. I can't read the first name.

11 MS. BREEZE: Shirley.

12 JUDGE JONES: Ms. Breeze, will you please restate
13 your name for the court reporter.

14 MS. BREEZE: Shirley Breeze, B-R-E-E-Z-E.

15 JUDGE JONES: And your address is?

16 MS. BREEZE: 138 Kings Drive.

17 JUDGE JONES: Thank you, Ms. Breeze. You may
18 proceed.

19 MS. BREEZE: There are a number of issues here
20 before us. I'm just going to talk about a couple very
21 briefly. We have as users on the Mill Creek system
22 been extremely concerned about the maintenance factor
23 and the billing procedures.

24 The maintenance has been erratic if not nonexistent
25 for years from the lagoon to the plant. The billing

1 system, that has been expressed before. Sometimes you
2 would get a bill every five years. Sometimes you would get
3 a bill two a year. They were frequently incorrect. There
4 were late charges on bills that had not even been received.
5 Just completely erratic operation, completely erratic
6 maintenance; not professional in any way.

7 If we are getting a rate increase and not taking the
8 system over or having MSD take it over in March and we are
9 to continue under this system, there has to be some kind of
10 monitoring or a different approach to operating the Mill
11 Creek system.

12 JUDGE JONES: Ms. Breeze, just a moment.

13 MS. BREEZE: Sorry.

14 JUDGE JONES: One thing I neglected to do was
15 swear you in. I will have you raise your right hand.

16 (Witness sworn)

17 JUDGE JONES: Are there any questions from Office
18 of Public Counsel?

19 MR. DANDINO: Yes, Your Honor. Thanks Ms. Breeze
20 for coming out. How long have you lived in the
21 subdivision?

22 MS. BREEZE: Fifteen years probably, 16.

23 MR. DANDINO: These problems, have they
24 intensified in the last few years?

25 MS. BREEZE: They certainly have.

1 MR. DANDINO: And I take it the ultimate solution
2 is you'd like to have MSD take over the system.

3 MS. BREEZE: We certainly would, yes.

4 MR. DANDINO: That's all, Your Honor.

5 JUDGE JONES: Any questions from the staff
6 commission or general counsel?

7 MR. SNODGRASS: Yes. Just briefly, ma'am.

8 Ms. Breeze, when you say that the billing has been
9 erratic, in your experience what has it meant to you?

10 MS. BREEZE: Well, my biggest concern is that Mill
11 Creek is probably not getting half of the money that
12 they are owed because of this procedure. Many people
13 just ignore the bills when they come because they're
14 wrong or they're late or they're whatever. So he's not
15 getting the money that he's owed number one.

16 MR. SNODGRASS: No further questions. Thank you.

17 JUDGE JONES: Chairman Davis.

18 CHAIRMAN DAVIS: Okay. Ms. Breeze, you are on the
19 Mill Creek Users Committee. Is that correct?

20 MS. BREEZE: And I'm a trustee, yes.

21 CHAIRMAN DAVIS: Okay. Now, it's my understanding
22 that is it your preference that MSD take it over.

23 MS. BREEZE: It certainly is, yes.

24 CHAIRMAN DAVIS: Not the trustees of the sub.

25 MS. BREEZE: Right. That's correct.

1 CHAIRMAN DAVIS: Okay. And then does anybody
2 know, I mean, has there been any discussions with MSD?

3 MS. BREEZE: There have been preliminary
4 discussions.

5 CHAIRMAN DAVIS: Okay. Thank you, ma'am.

6 JUDGE JONES: You may step down, Ms. Breeze. The
7 next name on the list, I can't read it all but the
8 address is 166 Duke I believe.

9 MR. OUGHTON: That's me.

10 JUDGE JONES: Sir, will you please step up to the
11 microphone and state your name.

12 MR. OUGHTON: My name is Henry Oughton,
13 O-U-G-H-T-O-N. I reside at 166 Duke Drive, Florissant,
14 Missouri.

15 JUDGE JONES: And Mr. --

16 MR. OUGHTON: My wife and I.

17 JUDGE JONES: Just a moment. Will you please
18 raise your right hand.

19 (Witness sworn)

20 JUDGE JONES: Thank you, sir. You may proceed.

21 MR. OUGHTON: My wife and I came into Castlereagh
22 subdivision in November of 1978. When we got there I
23 thought the Metropolitan Sewer District was for the
24 subdivision, for the homeowners, the lot owners and any
25 property owners. Well, as the years passed I started

1 going to our subdivision meetings and I found out that
2 the owner is a corporation. Mill Creek Sewers Company
3 or Incorporated, whatever. As the years went by,
4 particularly in year 2000, I started getting incorrect
5 billings and I've documented several of them that are
6 here tonight from Mill Creek Sewers.

7 The final invoice is dated February the 13th, 2002 and
8 my letters are dated December the 15th, 2001, March the
9 9th, 2002. There's incorrect billings.

10 JUDGE JONES: Is this something you want me to
11 take for the record, Mr. Oughton?

12 MR. OUGHTON: Yes. Prior to that, in April of
13 2001 I filed a written complaint with Metropolitan
14 Sewer District, excuse me. With the Better Business
15 Bureau indicating that I was getting incorrect billings
16 which are documented here. Those billings kept, they
17 just kept coming. I would write a letter, write a
18 letter and get no response. I hope today it's correct.

19 As we move on into year 2002 we had the subdivision
20 letter addressed to Ruth O'Neill, Office of the Public
21 Counsel in which six points of interests were submitted for
22 their consideration. Rather than read all six points I
23 will just briefly state what's in it.

24 Mill Creek Sewers has a long history of collecting
25 fees but failing and refusing to perform the required

1 maintenance of the lagoon and sewer lines that compromise
2 the system. They refuse to comply with government
3 requirements despite repeated demands by the Clean Water
4 staff or Court Order. Mill Creek has indicated filed
5 bankruptcy in 1997. All residents signed a petition in
6 1998 and requested information on the sewer district. Then
7 it goes on with comments. Then it goes on with the
8 position with the state of Missouri and then it goes on
9 with the findings of fact dated 16 April 1998. I won't
10 continue reading this but the rest of the points are there
11 and they're submitted here. That's still 2002.

12 May 1st, 2002 I addressed a letter to the Missouri
13 Public Service Commission, Water and Sewer Department, PO
14 Box 360, Jefferson City, Missouri. Gentleman, I'm happy to
15 hear that this Company's books are being investigated. You
16 can't find out any information where the money is going,
17 what it's being spent for, why aren't the repairs being
18 made.

19 It looks like Mill Creek Sewer is changing their
20 billing cycle and has now added a 10 percent late fee
21 charge. This is in May of 2002. Now I received the
22 proposed 984 rate increase for added return of an auction,
23 a new plant which was included in that rate increase. I
24 think. I don't know. And then I asked what is Mill Creek
25 doing. Nothing is explained if they're going to do this or

1 they're going to do that.

2 When we moved in I thought that sewer district was for
3 the homeowners and then later on I found it it's a
4 corporation. You can't get information out of a
5 corporation. The only way you get it you have to have FFC
6 and get the documents that they filed with them. That was
7 basically what was in that letter there.

8 It's obvious that the homeowners are being faced with
9 increase in rates whether you like it or not. We'll agree
10 to that. The question is how much and what for. If we
11 know what it's for -- I'd like to talk to the people back
12 here too, Jackie. If we know what it's for it solves half
13 the problem right there theoretically.

14 Other than that I'd like to finish and say thank you
15 very much, gentlemen, ladies, Commission, members,
16 everybody. I don't know everybody's name but I thank you
17 for coming tonight. It took two or three letters to get
18 you here. Thank you.

19 JUDGE JONES: Before you sit down, Mr. Oughton,
20 are there any questions from the Office of Public
21 Counsel?

22 MR. DANDINO: No, I don't have any questions of
23 Mr. Oughton.

24 MR. OUGHTON: I have some of you.

25 JUDGE JONES: Any questions from staff Commission?

1 MR. SNODGRASS: I have no questions, but sir, the
2 staff has informed me they're certainly willing to
3 discuss with you after the hearing any expense
4 inquiries that you may have regarding this particular
5 system.

6 MR. OUGHTON: Okay. Your voice is low. I have a
7 little problem.

8 MR. SNODGRASS: I'm sorry. I'm having a little
9 problem speaking. I apologize.

10 MR. OUGHTON: Thank you.

11 MR. DANDINO: I think if staff is prepared to talk
12 about an audit then maybe we should swear him in and
13 have him tell the whole audience as opposed to just
14 talking to Mr. Oughton.

15 JUDGE JONES: I think he wanted to talk to
16 Mr. Oughton about his particular bills. Is that your
17 understanding, staff?

18 MR. DANDINO: I think Mr. Oughton's question --
19 well, Mr. Oughton has issues with his particular bills
20 but if I also heard Mr. Oughton correctly, he wants to
21 know what Mill Creek Sewer and what Mr. Ashari or
22 Afshari or whatever his name is have been doing with
23 the money they have received. Is that correct, Mr.
24 Oughton? Do you want to know where the money has gone
25 that you paid in?

1 MR. OUGHTON: There is a question out there of
2 that that was mentioned earlier back here from one of
3 the homeowners. In other words, so much money was
4 being spent. Today's inflation, EPA, we're going to
5 have more costs so we're at this level here and if
6 we're at this level here what's the money being spent
7 for. Is it being spent for materials, labor,
8 chemicals, a new pump or what. I don't know that. I
9 don't think the homeowners know that either even now
10 and in the future. It was no different then at the \$6
11 rate or the \$60 rate than it is today at the \$60 rate.

12 JUDGE JONES: So it sounds as if you're saying if
13 there's going to be an increase you want to know why;
14 what's the money for.

15 MR. OUGHTON: That's correct. Now theoretically
16 there was -- I guess there was. What I read there was
17 an audit performed.

18 JUDGE JONES: Right.

19 MR. OUGHTON: Right. And in that audit there
20 should be a review of expenses, depreciation, costs,
21 chemicals and everything else that goes with it, land,
22 land improvement, improvement of road down there and
23 everything else. I don't know that. The homeowners
24 don't know that either is all I'm saying. We don't get
25 any information theoretically.

1 I asked our president of our associaton. She says
2 well, we're checking into that. We can't find this out or
3 whatever it may be. Information, sir. A little detailing.
4 Costs would help.

5 MR. DANDINO: Okay.

6 JUDGE JONES: All right. Thank you, Mr. Oughton.
7 For the record, you can go ahead and have a seat now.

8 MR. SNODGRASS: Judge, I have a couple of
9 questions for Mr. Oughton if it's permissible.

10 JUDGE JONES: Go right ahead.

11 MR. SNODGRASS: Mr. Oughton, will you go back to
12 the stand, please? Mr. Oughton, you were present when
13 Mr. Johansen indicated to you that the staff did an
14 audit of this company.

15 MR. OUGHTON: Yes.

16 MR. SNODGRASS: And he indicated that any
17 information you needed would be available to you in the
18 reports and the staff filings in this case. Did you
19 hear him say that?

20 MR. OUGHTON: When, what day, what time?

21 MR. SNODGRASS: Did he indicate to you that he
22 would make that information available to you or you
23 could get it in the files of the information that's
24 already been filed in this case? Do you recall him
25 saying that?

1 MR. OUGHTON: Yes, but I didn't hear what day and
2 what time of when I can get it. I mean, be a little
3 more specific. It's just saying like a \$60 increase.
4 Increase for what.

5 MR. SNODGRASS: Well, we're willing to put a
6 witness on the stand at this time if that would be
7 helpful. I have no further questions.

8 JUDGE JONES: Okay. It may be helpful. You may
9 have a seat. Are there any other questions for Mr.
10 Oughton before he sits down? Go ahead and have a sit.
11 And staff, why don't you go ahead and talk for a
12 moment.

13 I will introduce these exhibits. Mr. Oughton, I have
14 submitted four exhibits. I have marked as Exhibit 1 a
15 letter to Mr. Oughton from Mill Creek Sewers dated
16 December 15th, 2001 and it appears to be an accounting of
17 his service and payments made by him. I've marked as
18 Exhibit 2 a Consumer Complaint Form from the Better
19 Business Bureau serving Eastern Missouri and Southern
20 Illinois. I've marked as Exhibit 3 a letter dated May 10,
21 2002 to the Office of the Public Counsel from looks like
22 Robert Palmer, Don Baird, B-A-I-R-D, Shirley Breeze, Rose
23 Crofford, C-R-O-F-F-O-R-D, Ted I believe it's Dachroeden,
24 D-A-C-H-R-O-E-D-E-N, Connie Morehead and Robert Murray. I
25 have marked as Exhibit 4 a letter dated May 1, 2002 from

1 Mr. Henry Oughton copied to the Office of the Public
2 Counsel and it's to the Missouri Public Service Commission.
3 Okay. If staff has a witness you may step forward now.
4 Will you please state and spell your name for the record?

5 MR. JOHANSEN: Dale Johansen, J-O-H-A-N-S-E-N.

6 JUDGE JONES: Will you raise your right hand,
7 please?

8 (Witness sworn)

9 JUDGE JONES: Mr. Johansen, you may proceed.

10 MR. JOHANSEN: I think one thing that we want to
11 make clear is that there is quite a bit of information
12 that has already been filed in the case file for this
13 case. The docket for this case was established on
14 October 27th, 2004 when Mill Creek Sewer filed their
15 tariffs to implement a rate increase. On October 29th,
16 2004 the staff filed what we call the disposition
17 agreement between the company and the staff on which
18 those tariffs were based. That agreement sets out a
19 brief history of the request, when it started, the
20 various items that staff has reviewed and also includes
21 a detailed list of the items that the company and staff
22 have agreed on which resulted in the tariff filing on
23 October 27th.

24 One of the arrangements in that agreement was that
25 there would be a notice sent to the customers regarding the

1 agreement. A little bit unusual in this case, staff
2 actually agreed to take it upon itself to send out that
3 customer notice rather than requiring the company to do it.
4 That customer notice was sent out on November 1 of 2004 and
5 a copy of that notice has been filed in the case papers and
6 I don't have the exact date of that, but it was somewhere
7 around November 1st or 2nd when that actually hit the case
8 file.

9 In anticipation of this public hearing tonight, the
10 staff made an additional filing in the case last Thursday I
11 believe which again includes quite a bit of information
12 about the case. Both the filing on October 29th and the
13 filing that was made last Thursday includes what we call
14 the staff rate making income statement which includes a
15 line item summary of all of the operating expenses that go
16 into the staff's calculations of what Mill Creek Sewers
17 operating expenses are. We did that for this case
18 consistent with the agreement that calls for a two phase
19 increase. Phase one being a rate that would not include in
20 the company's cost of service return on the investment in
21 the new treatment facility. It includes depreciation
22 expense and operating expenses related to the day-to-day
23 operation of the company.

24 Phase two of the increase would include a return to
25 the company's owner and the related incomes taxes. We did

1 this in two phases in this situation in the anticipation
2 that the system may actually be transferred to a new owner
3 before the second phase of the increase would go into
4 effect.

5 The staff has had conversations with Metropolitan
6 Sewer District regarding the possibility of MSD taking over
7 the system. MSD is still reviewing that. Has not made a
8 final decision as to whether they are in fact interested in
9 doing this.

10 I received a letter -- actually I didn't bring that up
11 here. Hang on just a second. The staff sent a letter
12 actually to two parties that was dated December 13th, 2004.
13 One to the Metropolitan Sewer District and one to the Mill
14 Creek Users Committee asking both of those entities to
15 indicate to us if they were interested in taking the system
16 over. Part of the agreement in this case that Mr. Afshari
17 as the company's owner has agreed to is if that one of
18 these entities will agree to take the system over, he will
19 transfer it to them for a sale price of \$1. He basically
20 is interested in getting out of this business and for
21 reasons related to enforcement actions, past enforcement
22 actions with the Department of Natural Resources is willing
23 to transfer this system to a new owner. We're still
24 working with MSD and potentially with the Users Committee
25 on the possibility of the system being transferred to them.

1 We did discuss in the public portion of the meeting
2 here tonight several pieces of the information that are in
3 this case file, specifically regarding what the operating
4 expenses for the system are with and without depreciation
5 expenses and with and without the rate of return and we've
6 advised the folks here tonight how to access all of the
7 information that's in the case file through our web site,
8 through IFS or Information Filing System. So we just
9 wanted to clarify for the record what information is in the
10 file and what discussions have been taking place.

11 JUDGE JONES: Thank you, Mr. Johansen. Are there
12 questions from the Office of Public Counsel?

13 MR. DANDINO: No questions, Your Honor. Thank
14 you.

15 JUDGE JONES: Chairman Davis, questions.

16 CHAIRMAN DAVIS: Mr. Johansen, is Mr. Afshari, is
17 he the only shareholder of Mill Creek Sewer
18 Incorporated or are there others?

19 MR. JOHANSEN: I believe he's the sole
20 shareholder.

21 CHAIRMAN DAVIS: He is the sole shareholder.
22 Mr. Johansen, would you be willing to work with the
23 staff counsel to possibly draft some legislation that
24 would make it a felony for someone like Mr. Afshari to
25 operate a sewer company in this manner and maybe we

1 could -- that would be another means of helping
2 Mr. Afshari expedite the sewer business.

3 MR. JOHANSEN: Well, we're certainly willing to
4 work on any legislative directives that we receive from
5 the Commission. That's obvious. I would note too that
6 part of the agreement here that we have with
7 Mr. Afshari regarding the transfer of the system to a
8 new owner relates to enforcement activities that the
9 Department of Natural Resources and the Attorney
10 General's office have taken on behalf of Natural
11 Resources in regard to clean water violations.

12 CHAIRMAN DAVIS: Can you point me to where the \$1
13 transfer is located?

14 MR. JOHANSEN: Yes.

15 CHAIRMAN DAVIS: I think I have the file here but
16 I don't see that necessarily. Here it is.

17 MR. JOHANSEN: If you have the notice of agreement
18 regarding disposition of small company rate request.

19 CHAIRMAN DAVIS: Page 3 of 6 Item No. 11. That is
20 the transfer of the company's assets discussed in these
21 agreement occurs under the conditions contemplated in
22 these agreements. That company agrees to a sale price
23 of \$1 to the entity to which the assets will be
24 transferred.

25 MR. JOHANSEN: Correct. That is the part of the

1 disposition agreement that the staff and the company
2 entered into in this case and that was part of the
3 filing that was made on October 29th, 2004.

4 CHAIRMAN DAVIS: Mr. Johansen, are you rock solid
5 certain that if the Commission were to hypothetically
6 grant, you know, what I would call the first part of
7 the increase, you know, does that get this property
8 transferred?

9 MR. JOHANSEN: Not necessarily. The transfer is
10 actually premised number one on there being an entity
11 out there willing to take it.

12 CHAIRMAN DAVIS: Right.

13 MR. JOHANSEN: The two that are obvious are
14 Metropolitan Sewer District and the Users Committee.
15 What's a little unusual here is that this system serves
16 portions of two different subdivisions, so there's not
17 currently a common association that the company can
18 deal with. If the transfer to MSD doesn't happen, the
19 customers of the company will actually have to form a
20 not-for-profit sewer corporation in order for there to
21 be a legal entity to which the system can be
22 transferred. That's one of the complicated matters
23 here.

24 CHAIRMAN DAVIS: Let me ask you this. Does
25 Mr. Afshari have a representative here this evening?

1 MR. JOHANSEN: Yes, he is here and I believe he is
2 represented by counsel.

3 CHAIRMAN DAVIS: Has he considered the prospects
4 of a voluntary receivership?

5 MR. JOHANSEN: We have not discussed that with
6 him, no.

7 CHAIRMAN DAVIS: We can ask those questions later.
8 I don't have anything else.

9 MR. JOHANSEN: The other thing just to clarify,
10 the real impetus behind the transfer agreement is are
11 the enforcement actions and penalties that DNR has
12 against the corporation for the environmental
13 violations. Those penalties related to those
14 violations actually exceed the value of the plant. In
15 discussions with the Attorney General's office and the
16 Department of Natural Resources, they have indicated a
17 willingness under circumstances satisfactory to them to
18 forgo any further collection actions on those penalties
19 for the environmental violations in consideration of
20 Mr. Afshari transferring the system to a new owner
21 basically at no cost.

22 So we not only have our agreement with Mr. Afshari but
23 we're also working through an agreement in principal with
24 the Attorney General's office and the DNR regarding the
25 conditions under which the transfer would be acceptable not

1 only to Mr. Afshari, the staff, the public counsel, the
2 Commission, but also the Attorney General's office and the
3 Department of Natural Resources.

4 CHAIRMAN DAVIS: Okay. Thank you.

5 JUDGE JONES: Before you leave let me be sure. I
6 didn't know that Mr. Afshari had a representative here.
7 Are you his attorney?

8 MS. KRESYMAN: Yes.

9 JUDGE JONES: And your name is?

10 MS. KRESYMAN: Jamie Kresyman. K-R-E-S-Y-M-A-N.

11 JUDGE JONES: And while Mr. Johansen is here do
12 you have questions of him?

13 MS. KRESYMAN: No.

14 JUDGE JONES: There have been two other persons
15 that have spoken tonight. Did you want to ask them
16 questions?

17 MS. KRESYMAN: Not at this time.

18 JUDGE JONES: Okay. Well, do you believe you will
19 have questions for any of those?

20 MS. KRESYMAN: I may.

21 JUDGE JONES: I'll ask you at the appropriate
22 time. Thank you. Mr. Johansen, you may be seated.

23 MR. JOHANSEN: Sure.

24 JUDGE JONES: Next on the list is Mr. Gary Steyer.
25 Will you please approach the podium and will you please

1 state and spell your last name?

2 MR. STEYER: Gary Steyer, S-T-E-Y-E-R.

3 JUDGE JONES: And will you raise your right hand?

4 (Witness sworn)

5 JUDGE JONES: Thank you, sir. You may proceed.

6 MR. STEYER: I'll try to stick to the facts
7 because this is a very emotional issue. I have resided
8 at 168 Duke for 13 years with my family. I regularly
9 attend the annual counsel rate subdivision meetings
10 that are held in May. Many discussions, many events
11 from the residents, from political representatives and
12 other interested parties during the 13 years I have
13 lived in Castlereagh are not only appalling, they're
14 astounding; that somebody can get away, violate the
15 law, be in contempt of court and still require us
16 homeowners to pay our annual fees. Our fees cannot be
17 put into some kind of escrow account. They go to a
18 corporation to be spent any way they see fit and yet
19 year after year I have walked down to the lagoon system
20 and I see little maintenance, if any, has been done.
21 Some of the homeowners have taken it upon themselves to
22 try to keep the lagoon system working during these 13
23 years.

24 I'm asking you how can so many people including the
25 state government, our judicial system, agree that Mill

1 Creek, Inc. is failing in its responsibilities and yet the
2 noncompliance continues. Why are we paying and have no
3 rights yet this corporation can continue to operate.

4 I encourage the Public Service Commission to postpone,
5 if not delay, if not eliminate the rate increase requested
6 by Mill Creek Sewer until all provisions in the PSC are
7 enforced, all of the sewer guidelines are met and verified;
8 that all state and local litigation is resolved and that
9 the concerns that have been presented to the PSC on
10 numerous occasions are addressed.

11 Our trustees represent our subdivision and I think
12 adequately represent the feelings of most. How can a rate
13 increase be granted to a company who is in bankruptcy and
14 has filed for bankruptcy since 1997. There are a lot of
15 mitigating factors that I believe are being ignored at this
16 time that a rate increase would even be thought about.

17 Billing issues. In 1989 I got a sewer assessment from
18 Mill Creek Sewers to make my payments to 2700 West
19 Florissant, Missouri. This is when I first visited the
20 lagoon and saw the disarray and lack of maintenance. The
21 water was stagnant. There was a lot of overgrown
22 vegetation. Less than one year later I get another billing
23 notice. Make my check payable to Castlereagh Sewer
24 District, 11737 St. Charles Rock Road, Bridgeton, Missouri.
25 A few years later I get another billing. Make my check out

1 to Mill Creek Sewers, Inc. in care of Afshari Enterprises
2 at 3156 Pershal Road and on this letter it states please be
3 advised that due to management changes all payments for the
4 sewer services are to now be made to Mill Creek and I ask
5 what management changes were there.

6 July 15th, 1994 Mill Creek Sewers in care of Afshari
7 Enterprises filed for an increase in the current sewer
8 rates in accordance with the Missouri Public Service
9 Commission Small Company Rate Procedures. To my knowledge
10 that rate increase was denied. I believe the same factors,
11 the same circumstances that led to the denial of that rate
12 increase still apply today if not more so.

13 April 9th, 1997 initial hearing was held in the US
14 Bankruptcy Court on the request by Mill Creek Sewer Company
15 to file from bankruptcy in Chapter 7. I have yet to hear
16 the outcome of that bankruptcy proceedings.

17 April 22nd, 1997 a letter from MSD cosigned by Senator
18 John Schneider. Senator Schneider requested the Missouri
19 Attorney General and the Missouri Department of Natural
20 Resources filed suit against Mill Creek Sewer and a
21 separate action against the owner, Joseph Afshari for
22 violating positions of the Missouri Clean Water Act.
23 Another violation.

24 On January 28th, 1998 a letter from MSD they were
25 granted permission by the owner of Mill Creek Sewer to

1 inspect all the lines in the system in the lagoon.

2 April 13th, 1998 in the Circuit Court of St. Louis
3 County, state of Missouri, Cause 611261, the Honorable
4 Carol M. Blackwell and these are excerpts from that
5 document.

6 Item No. 7. For a period of years Defendants Joseph
7 Afshari and Mill Creek have failed and refused to invest
8 the time or capital resources necessary to accomplish said
9 compliance. Why has he refused to comply for years.

10 Item 8. Defendant Joseph P. Afshari knew of and
11 personally participated in the violation of laws noted
12 herein. Defendant Afshari managed the financial and
13 day-to-day affairs of Mill Creek and personally directed
14 the corporation's activity in the manners described herein.
15 Mill Creek has no employees and all of its operations and
16 activities are conducted by Afshari.

17 Item No. 12 in the document. Despite numerous
18 notices, directives and requests by both the Missouri
19 Department of Natural Resources and the Missouri Public
20 Service Commission, no routine maintenance has been
21 conducted on this facility and it continues in a state of
22 disrepair causing inadequately treated waste water to be
23 charged into Mill Creek.

24 There was a company document from this judge. Item
25 No. 1. Defendants Mill Creek Sewers and Joseph P. Afshari

1 shall upgrade the waste water treatment facility to enable
2 it to meet final influent limitations for lawful discharge
3 in according with the following schedule.

4 Item 3. The performance of the terms of this judgment
5 by the defendant is not conditional on the receipt of any
6 federal or state grant or loan funds or the acquisition of
7 any particular form or source of funding. He is to do this
8 regardless of where the money is coming from. In addition,
9 performance is not excused by the unavailability of any
10 federal or state grant funds or any particular form or
11 source of funding.

12 Item No. 8. The judgment shall terminate when
13 construction of this improvement set forth herein have been
14 completed, when defendants have achieved compliance with
15 the final influent limitations for its waste water
16 treatment facility for a period of one year and apply
17 payment of all outstanding penalties.

18 I've lived in my house for nine years. I continue to
19 pay assessments along with other effected homeowners and no
20 maintenance was performed on the lagoon. Then finally a
21 lawsuit was filed.

22 June 16th, 1998 Metropolitan St. Louis Sewer District
23 held a public meeting at the Blackjack Fire Protection
24 District, Firehouse No. 2 and the findings of the MSD
25 investigation of the Mill Creek Sewer Company serving

1 Castlereagh homeowners was discussed but there was no
2 conclusion.

3 February 20th, 2002 Afshari submitted a request for a
4 permanent increase under its current sewer rates. May the
5 8th I sent a personal letter to the Missouri Public Service
6 Commission recommending denial of the rate increase. You
7 have the letter dated May 10th from the trustees expressing
8 the same concerns.

9 In summary, Joseph P. Afshari is solely responsible
10 for Mill Creek Sewer, Inc. He willfully violated the
11 required compliance of the sewer and influent discharge.
12 He willfully placed Castlereagh Estates homeowners with
13 undue risk through the lack of maintenance on the lagoon.
14 He willfully placed Sioux Passage Park visitors at health
15 risk from the influent overflow. He willfully placed
16 Missouri residents at health risk from the sewage overflow
17 going into Mill Creek and into the Missouri River. Joseph
18 P. Afshari through his action or better defined as lack of
19 action, demonstrates a significant inability to manage an
20 investor owned sewer system in the state of Missouri. He
21 has negatively effected the economic value of properties
22 serviced by the homeowners.

23 There have been numerous articles in local and state
24 newspapers about the debacle that we have in our
25 subdivision. Joseph P. Afshari continually and willfully

1 violates the mission statement as stated in the Missouri
2 Public Service Commission. I ask you to look at the
3 enforcement side before any consideration of granting a
4 rate increase.

5 JUDGE JONES: Thank you, Mr. Steyer. Are there
6 any questions from the staff Commission, Office of
7 Public Counsel?

8 MR. DANDINO: No questions. Thank you, judge.

9 JUDGE JONES: Kresyman. Did I pronounce your name
10 correctly. Kresyman?

11 MS. KRESYMAN: I would like to ask Mr. Steyer if
12 there are these continuing violations or if he has
13 complied with the court orders? Is there a new plant?

14 MR. STEYER: I have not heard back anything that's
15 been already sent to me.

16 MS. KRESYMAN: Is there a new plant? Is the
17 lagoon still operating?

18 MR. STEYER: I would say that there's a new plant,
19 yes.

20 MS. KRESYMAN: And do you know if he has complied
21 with the court orders?

22 MR. STEYER: You would have to tell me that,
23 counselor.

24 MS. KRESYMAN: Well, you stated that he has not.

25 MR. STEYER: Can I ask you a question? Have the

1 fines stopped?

2 MS. KRESYMAN: Yes, they have.

3 MR. STEYER: And when did they stop?

4 MS. KRESYMAN: And the new plant is operating,
5 correct? And that plant has costs.

6 MR. STEYER: Is it operating all the time?

7 MS. KRESYMAN: Yes.

8 JUDGE JONES: Before you get into a back and
9 forth, just let her ask the questions and go ahead and
10 answer them.

11 MS. KRESYMAN: What is the rate that you're paying
12 now, do you know?

13 MR. STEYER: Five dollars a month.

14 MS. KRESYMAN: And on \$5 a month needs to operate
15 the plant and maintain it and keep up all the
16 maintenance everyday.

17 MR. STEYER: My response --

18 JUDGE JONES: Is that a rhetorical question or --
19 it is a rhetorical question? Don't answer that.

20 MS. KRESYMAN: That's all I have.

21 JUDGE JONES: Are there any other questions from
22 the Commission?

23 CHAIRMAN DAVIS: Yes, sir. Assuming that this
24 Commission were able to facilitate a transfer of the
25 Mill Creek sewer system to MSD or another entity with

1 the expertise to properly run a sewer system, would it
2 be acceptable to you personally if a rate increase was
3 granted before all of the necessary improvements were
4 made?

5 MR. STEYER: No, it would not be acceptable to me.
6 For over ten years we have continued to pay \$5 a month
7 with no seen benefit. A sewer system is a public
8 utility and where I look to our government
9 representatives, elected representatives to take care
10 of those kinds of issues.

11 Why the sewer system was allowed to have more houses
12 hooked into it is a question I raise to the Public Service
13 Commission. Why it's taken so long for action to be taken
14 I ask again why. Why it takes the Court so long to take
15 action when to me it appears to me personally some of the
16 issues are so obvious. I would like to see someone take
17 over the system that is qualified and will follow the law
18 and its regulations and preventions to ensure that under
19 the Clean Water Act and any other legislation that is done
20 properly, but I see no reason why an increase should be
21 granted until all the past sins have been corrected.

22 CHAIRMAN DAVIS: Okay. To the best of your
23 knowledge have there been any improvements at all in
24 the last year or two?

25 MR. STEYER: I will say there's been changes from

1 the lagoon system to the treatment plant. I've gone by
2 the treatment plant. I heard the loud humming noises
3 from the street as I walk and many other times I hear
4 nothing. I understand there's issues with whether it's
5 the motors or there's something wrong with the
6 execution. Whether it's too much volume. I don't know
7 all the details but listening to the homeowners that
8 live around the treatment plant and others involved,
9 we've taken a step forward but it's a very small step.

10 CHAIRMAN DAVIS: Okay. Thank you.

11 JUDGE JONES: Thank you, Mr. Steyer. Next we'll
12 have Rose. Forgive me if I pronounce your last name
13 incorrectly but is it Crawford or Crofford?

14 MS. CROFFORD: Crofford.

15 JUDGE JONES: You may step forward. Will you
16 please state and spell your name?

17 MS. CROFFORD: It's Rose Crofford,
18 C-R-O-F-F-O-R-D.

19 JUDGE JONES: Will you raise your right hand?

20 (Witness sworn)

21 JUDGE JONES: You may proceed.

22 MS. CROFFORD: Okay. My husband and I happen to
23 be one of the two lucky homeowners whose property this
24 was used and destroyed to build the new plant, so some
25 of the things that you've heard about noise and all

1 that we face firsthand everyday, but I just want to
2 briefly tell you some of the damages but then my
3 concern because of those is what I really want you to
4 focus on.

5 He tour down trees of ours that were 80-foot tall that
6 had nothing to do with putting in the new plant. He stole
7 dirt. He forged our name to Ameren UE to dig a trench to
8 run electricity which they contacted us on. They realized
9 it was a forged document and he went ahead and trenched
10 300-foot of our property anyway that was private property.
11 He ran a water line down our property, another part of our
12 property and tried to hook into County Water which he had
13 no permission to do from County Water and they would not
14 hook him into the main. My husband had to remove all the
15 stuff himself to do that. As a result we paid thousands of
16 dollars in dirt and landscaping and trees and sod and tried
17 to get money back from him and couldn't. So that's just
18 the history that I just want to lay that down.

19 Because of that though if there is a rate increase my
20 appeal to you all is that if our money could be -- first of
21 all, let me go back a minute. The new plant. We're the
22 ones when it quits running that hear the motors quit
23 running and we try to call the office and get no answer or
24 we'll get an answering machine and get no return phone
25 call. My neighbor has put money out of his pocket and had

1 a company come and replace motors himself and that's
2 usually between us and our neighbors who report when the
3 plant has not been operating since it's been rebuilt and we
4 usually -- it's not run for weeks, a month at a time before
5 somebody comes out to look at it.

6 So we know firsthand that it's not being maintained
7 because the road is right on our property that goes down to
8 it and we hear it and see it but because of that we just
9 want to make sure if there is an increase that there could
10 be some kind of escrow account and an outside maintenance
11 company to ensure that number one, our money is used to
12 take care of the plant and number two, that when there is
13 an issue 24 hours a day somebody can be reached and
14 somebody will respond. I'm assuming if we called MSD if
15 they were our sewer company they would come out to fix it
16 like the electric company does and Bell Telephone and all
17 the other people. That's not the case here.

18 The noise was an issue. My husband and a couple
19 neighbors built a house around it and not at Mr. Afshari's
20 expense to try to keep the noise down which has helped but
21 he had nothing to do with that. That's basically all is
22 the escrow account, an outside company to make sure if
23 there's some way we can ensure we're going to get a
24 response call if there's a problem. I mean, that to me is
25 what -- otherwise we're paying like we have been and we're

1 paying more and there's no one that fixes it and it still
2 goes unmaintained and keeps having problems like we are
3 experiencing now.

4 JUDGE JONES: Any questions from the staff?

5 MR. SNODGRASS: None.

6 JUDGE JONES: Any questions from the Office of
7 Public Counsel?

8 MR. DANDINO: Yes, Your Honor. I take it and I
9 don't want to put words in your mouth but you really
10 want some assurance that if there is a rate increase
11 that you're going to see some benefits from it.

12 MS. CROFFORD: That's exactly my point.

13 MR. DANDINO: And if you could have the assurance
14 that the money would be used exactly for the
15 maintenance of the sewer and that, how would you feel
16 about that rate increase then?

17 MS. CROFFORD: Just what I said and what you just
18 said. If there's assurance you get value for your
19 dollar then I understand \$5 a month is cheap, okay.
20 However, we've gotten nothing for it either except for
21 when there's been a neighbor who has went down and
22 checked the chemicals but they had nothing to do with
23 everything else on the plant and I mean, he has his
24 story too, but I understand \$5 is cheap. The issue is
25 value for your dollar and if we pay the same company

1 we've been paying the \$5 to more money, I will drive
2 down the street and throw it out the window on the
3 highway and feel better about it.

4 MR. DANDINO: And if there was some arrangement
5 where this could be done and it would facilitate the
6 transfer to somebody who is going to do the job that
7 would be in your interest, would you support that?

8 MS. CROFFORD: That's correct.

9 MR. DANDINO: And just kind of -- those problems
10 that you had about the damage and the destruction, have
11 you made a claim file or filed a suit?

12 MS. CROFFORD: Yes, we have. We had a restraining
13 order against Mr. Afshari too because we were afraid to
14 go to work because we would go to work and come home
15 and lose a tree that had nothing to do with what he was
16 doing or we had one day a semi tractor trailer, you
17 would have to see the house and I'm laughing now but it
18 really wasn't funny. A semi tractor trailer drove
19 through our front yard after it had rained because it
20 couldn't back up down this little driveway he had and
21 we had put trenches in our front yard and I mean, you
22 know, nothing was ever taken care of by him and it was
23 all like we're sorry. So we were afraid to leave in
24 the morning for what you would come home to at night.

25 MR. DANDINO: You don't expect that you're going

1 to get in the rate increase, that in the proposed rate
2 increase that you would receive reimbursement out of
3 that or are you looking to?

4 MS. CROFFORD: I have questions of how much he
5 owes us before we owe him but that's another issue.

6 MR. DANDINO: It's really a simple matter and
7 you're not joining those.

8 MS. CROFFORD: Correct.

9 MR. DANDINO: That's all I have. Thank you.

10 JUDGE JONES: Ms. Kresyman, do you have questions?

11 MS. KRESYMAN: No.

12 JUDGE JONES: Chairman Davis.

13 CHAIRMAN DAVIS: No, no questions.

14 JUDGE JONES: Thank you, Ms. Crofford. You may be
15 seated.

16 MS. CROFFORD: Thank you.

17 JUDGE JONES: Next we have Curt Esker. Will you
18 please state and spell your name?

19 MR. ESKER: My name is Curt Esker, E-S-K-E-R.

20 JUDGE JONES: Will you please raise your right
21 hand?

22 (Witness sworn)

23 JUDGE JONES: Thank you. You may proceed.

24 MR. ESKER: All right. Actually what I have to
25 say is probably pretty anticlimactic after what

1 Ms. Crofford said and Mr. Steyer had to say, but on a
2 more of -- by the way, thank you, both of you for what
3 you said. Very informative and enlightening.

4 Mine is more, you know, my small personal experiences
5 a lot of which we have already heard similar situations
6 about and I'm going to read for the most part from a letter
7 I've already submitted to the Public Service Commission and
8 Office of Public Counsel but just for the benefit of the
9 people who are here, I feel like I have to share this.

10 I've lived in the subdivision for the past six and a
11 half years and during that time the billings have been
12 extremely inconsistent which has been stated already. At
13 one point we weren't billed for over a year and a half.
14 Usually it's at least six months between billing cycle. We
15 actually got one this past week to let us know that we had
16 this public hearing. I think the only reason we got a bill
17 is because it was a public hearing.

18 So, you know, obviously I would like to see something
19 changed there. In March 2004, so this is since the new
20 treatment facility and this is really unrelated to that but
21 it is since, you know, I think Mill Creek has been under
22 more scrutiny than it has been in the past. There was a
23 blockage on the main sewer easement on my property and raw
24 sewage was coming up through the manhole cover in the
25 backyard and flowed across my yard and into the sewer. My

1 wife called Mill Creek Sewers and no one answered the
2 phone. So then she called MSD because, you know, given
3 proven past track record we didn't really expect anything
4 from Mill Creek anyways. MSD came out and cleared the line
5 as a courtesy. The next day she was able to get someone at
6 Mill Creek and she was told that someone would be out to
7 clean up the mess in my backyard. She asked that she be
8 contacted when someone was there, was coming out so that
9 she could be there when it happened. She was never
10 contacted and no one ever came out. She called repeatedly
11 for a week and a half. Eventually a strong rain took care
12 of the mess.

13 A month prior to that I had a technician come out to
14 clear a clog in my line. He had just been out a week
15 previous to clear a line, clear the line as well and I
16 asked him how could it happen that here it's just a week
17 later and here's the clog again and he suggested that
18 sometimes it happens when the line, the main line backs up
19 it leaves a clog in your lateral. I have no way of telling
20 what's causing the clogs but I've had seven clogs. In my
21 letter it was six but I've had another clog since this just
22 last, I don't know, a month or two ago and I feel like Mill
23 Creek may be responsible for some of these. I really don't
24 know. Not once when I've had them cleared have they pulled
25 back roots.

1 I would like to say I'm very strongly in favor of
2 having MSD take over the sewer system. It sounds to me it
3 might be difficult for homeowners to put together a
4 nonprofit organization to do this especially by the date
5 that is being proposed and I guess, you know, as far as the
6 rate increase, you know, we all understand that \$5 is, you
7 know, penance considering what's being done but there has
8 been no service. There was no service for me when I needed
9 someone out there and from the sounds of it, there's never
10 been any service and I think really, you know, especially
11 regarding the second rate increase it seems incredibly
12 unwarranted and frankly it's pretty insulting considering
13 the past track record of Mill Creek Sewers.

14 I guess as far as, you know, there was a little
15 discussion about MSD's position regarding whether or not
16 they might take over the system and I guess I'd like to
17 find out if there's any way we can get more clarity on
18 where they really stand on. They're considering it but do
19 we know what really that means and I guess I'm also curious
20 to know given the issue with the lack of decision from MSD
21 and the fact that it might be difficult for the homeowners
22 association to put together an organization to take over
23 the system, is there any chance that the 31 March date
24 might be deferred until we have something like in place to
25 take over the system? That's all I have.

1 JUDGE JONES: Questions for the staff?

2 MR. SNODGRASS: No questions.

3 JUDGE JONES: Office of the Public Counsel?

4 MR. DANDINO: No questions. Thank you, sir.

5 JUDGE JONES: Ms. Kresyman?

6 MS. KRESYMAN: No, Your Honor.

7 THE COURT: Councilman Davis?

8 CHAIRMAN DAVIS: No questions of this witness.

9 JUDGE JONES: Thank you for your testimony. We
10 will have Robert Selke. Mr. Selke, will you please
11 state and spell your name for the record?

12 MR. SELKE: My name is Robert Selki. It's spelled
13 R-O-B-E-R-T S-E-L-K-E.

14 JUDGE JONES: And will you please raise your right
15 hand.

16 (Witness sworn)

17 JUDGE JONES: Thank you, sir. You may proceed.

18 MR. SELKE: Thank you for giving me this chance to
19 speak. I have been a homeowner in Castlereagh Estates
20 since December 1998. I have attended the annual
21 subdivision meetings in May of each year. This is
22 where I was informed of the problems with the Mill
23 Creek Sewer District.

24 First the system was a lagoon originally built in the
25 late 60's, early 70's for approximately 30 homes but was

1 not expanded or upgraded to accommodate the 72 plus homes
2 that are currently on it and was not properly maintained
3 through the years to keep the lagoon operating properly.

4 Then the Department of Natural Resources after 2000
5 stepped in and was requiring Mill Creek to finally upgrade
6 the system by closing the lagoon and setting up an aeration
7 system to process the sewage but this system according to a
8 person that was at the meetings, the annual May meetings.
9 If I can, I would like to say his name is Ron Ferris. He
10 was informing us of these problems that this system was
11 having and Ron was saying at these meetings that he would
12 voluntarily inspect and test and maintained the system the
13 best that he could.

14 When the pumps were running continuously and burning
15 up, then he was taking money out of his own pocket in order
16 to replace these motors that do the aeration on the new
17 system and when he submitted these bills to Joe Afshari
18 Mill Creek Sewer Incorporated, he wasn't paid for any of
19 the maintenance or repairs to the system. He was being
20 ignored basically by his requests to help out the
21 homeowners and his volunteering was going unnoticed. I
22 would like to say that I think he should be renumerated.
23 He should be paid for what he did and for any repairs or
24 parts that he had installed on this system.

25 The next problem is that the Mill Creek sewer system

1 does not appear to be properly run if they can't even send
2 our bills in a timely or regular manner to myself. Instead
3 the bills sometimes say Robert and Laurie Selke or Bob
4 Selke and finally lately they've been coming up saying
5 occupant or current resident.

6 When I received my notice from the Missouri Public
7 Service Commission that the rates were proposed to
8 increase, at least that Commission got my name right and my
9 address right which is Robert Selke, not current resident
10 or occupant. At which time, this was in November of 2004,
11 I spoke with a Mr. Dale Johansen about my concerns with the
12 system, with Mill Creek Sewer Incorporated owned by Joe
13 Afshari.

14 I would really appreciate it if Mr. Afshari would take
15 care of his responsibilities in this matter because if this
16 system would have been properly built and not allowed to be
17 overloaded, it would be in my opinion still operating at
18 proper performance meeting the Department of Natural
19 Resources requirements for which it was originally designed
20 of approximately 32 homes, not 72 plus homes. Thank you,
21 Your Honor, for giving me a chance to speak.

22 JUDGE JONES: Thank you, Mr. Selke. Are there any
23 questions from the staff?

24 MR. SNODGRASS: None.

25 JUDGE JONES: How about the Office of Public

1 Counsel?

2 MR. DANDINO: No questions.

3 JUDGE JONES: Ms. Kresyman?

4 MS. KRESYMAN: No.

5 CHAIRMAN DAVIS: Just one question and this may be
6 more of a rhetorical question, judge but, okay. Are
7 you aware that we are not a Court of Equity and do not
8 have the ability to award remuneration?

9 MR. SELKE: I understand that. I understand this
10 is a meeting to effect the rate increase but this is
11 the first time I've had a chance to even voice my
12 opinion on it other than speaking with Dale Johansen in
13 November of 2004.

14 JUDGE JONES: Thank you, Mr. Selke.

15 MR. SELKE: You're welcome.

16 JUDGE JONES: And next Mr. Carl Seegers.

17 MR. SEEGER: I'll pass. Everything has been
18 covered as far as I'm concerned.

19 JUDGE JONES: Thank you, Mr. Seegers. Ralph and
20 Sheila Ballard. Is it Ralph here or?

21 MS. BALLARD: I'm right here. I wasn't aware that
22 I was signing up to speak. However, I would like to
23 make one comment.

24 JUDGE JONES: Go ahead and step to the podium,
25 please.

1 MS. BALLARD: Sheila Ballard.

2 JUDGE JONES: Please raise your right hand.

3 (Witness sworn)

4 JUDGE JONES: Ms. Ballard, you may proceed.

5 MS. BALLARD: My husband and I have lived in
6 Castlereagh subdivision for only two years so we're
7 newcomers to the sewage issues than are all the
8 residents based out here.

9 The only comment that I have to make is regarding the
10 rate increase, especially the second rate increase. I'm
11 failing to understand why the Public Service Commission
12 would grant an increase to an individual that by your own
13 records and accounting you've stated on the second increase
14 would give him a profit of 11 percent for failing to comply
15 with regulations of the Commission and the courts and
16 failing at even at this present time to have a system that
17 is adequately maintained for the residents in Castlereagh
18 subdivision.

19 I don't think there is a resident out here, certainly
20 not my husband and I who would disagree that a rate
21 increase is necessary for proper maintenance of the system,
22 but I think that everybody in this room has a real problem
23 with granting a rate increase to a corporation and to an
24 individual who has failed to live up to his
25 responsibilities.

1 JUDGE JONES: Are there any questions from the
2 staff Commission?

3 MR. SNODGRASS: None.

4 JUDGE JONES: Questions from Office of Public
5 Counsel?

6 MR. DANDINO: No questions, Your Honor. Thank
7 you, Ms. Ballard.

8 JUDGE JONES: Ms. Kresyman, do you have questions?

9 MS. KRESYMAN: I have one and that is would she be
10 willing to have MSD take this property over, the sewer?

11 MS. BALLARD: Yes. My major concern is that we as
12 homeowners have someone who is going to maintain the
13 system and we personally do not feel that Mr. Afshari
14 wants to maintain the system or has any intention of
15 maintaining the system regardless of whether or not he
16 gets a rate increase.

17 MS. KRESYMAN: But you would approve of MSD taking
18 over.

19 MS. BALLARD: Yes, I would approve of MSD taking
20 it over as long as the homeowners are not again
21 overburdened with additional charges due to deficits or
22 defaults on the existing system that MSD may not be
23 aware of.

24 I mean, I realize that we're saying that the
25 Department of Natural Resources is going to forgo any

1 collection efforts on penalties if a new entity takes over
2 the operation of the sewer but none of us knows whether or
3 not there won't be additional deficits or defaults within
4 the system itself that are not foreseen that has not been
5 uncovered by any type of audit which would result in MSD
6 coming back to the homeowners at some later date and saying
7 we now have to do additional upgrades to the system. We
8 have to do this, we have to do that and the end result is
9 going to be an increase cost to the homeowners and again,
10 I've heard from the Public Service Commission tonight that
11 tells us that won't happen but I don't have a
12 representative from MSD in this room that number one is
13 saying absolutely we're willing to take over the system and
14 I certainly don't have a representative from MSD who is
15 speaking knowledgeably that can say that under no
16 circumstances will there be any additional cost increase to
17 the homeowners other than an increase in fees which we're
18 all willing to pay for the maintenance of a well-kept
19 system.

20 JUDGE JONES: Are there any questions from the
21 Chair?

22 CHAIRMAN DAVIS: I'm just trying to think of how
23 to phrase this. No, no questions at this time.

24 JUDGE JONES: Thank you, Ms. Ballard. We have
25 gone through the list of persons who have signed up to

1 speak. Are there any other comments? You may step to
2 the podium.

3 MS. FOX: Is it too late to sign the list?

4 JUDGE JONES: Well, you don't have to sign up.
5 Just step up and state your name.

6 MS. FOX: My name is Theo Fox, T-H-E-O F-O-X.

7 JUDGE JONES: Will you raise your right hand?

8 (Witness sworn)

9 JUDGE JONES: Thank you. Go ahead, Ms. Fox.

10 MS. FOX: I live at 130 Kings Drive for 36 years.
11 I bought the lot from Joe Afshari. I had him build my
12 house. It's an excellent house. I have lived there
13 all of those years. I do have a lateral to the main
14 sewer line and approximately 20 years ago I had a
15 blockage of some sort. I had gotten home around 10:30
16 at night and my house smelled like a sewer. I tried to
17 get in touch with Mill Creek. I got no answer. I
18 called MSD at approximately 11 o'clock that night.
19 They had a man out there around midnight. Worked on it
20 for about an hour or so and the man's comment to me was
21 there looks like there's been no maintenance on this at
22 all. We simply unblocked the block and my question or
23 statement is when is the shoe going to fall because if
24 that's 20 years ago and if there has been no
25 maintenance on that main sewer line, surely it's going

1 to get clogged up again and who do I call and who can I
2 call at midnight or 2 am?

3 So I'm in favor of MSD or at least have somebody in
4 Mr. Afshari's office who can answer that phone and get some
5 help to me as soon as possible because it's terrible when
6 that water is rising in your finished basement and you have
7 things ruined.

8 As a matter of fact, I called Mr. Afshari's office the
9 next day and he sent a man out some time later on in that
10 week and he assessed the damage to my property and that was
11 the last I saw of him and I didn't pursue it because I just
12 didn't. I just knew it would be fighting a corporation. I
13 still have the final sheets in my finished basement curling
14 around the edges and that's all I have to say.

15 JUDGE JONES: Thank you, Ms. Fox.

16 MS. FOX: I would just like some maintenance as
17 soon as possible.

18 JUDGE JONES: Questions from staff?

19 MR. SNODGRASS: No questions.

20 JUDGE JONES: Questions from the Office of Public
21 Counsel?

22 MR. DANDINO: No questions, Your Honor.

23 JUDGE JONES: Do you have questions, Mr. Chairman?

24 CHAIRMAN DAVIS: No. Did you ask Ms. Kresyman if
25 she had any questions for the witness?

1 JUDGE JONES: No, she doesn't.

2 CHAIRMAN DAVIS: Okay. No, I have no questions.

3 JUDGE JONES: Is there anyone else who would like
4 to speak? Please step forward. Will you please state
5 your name, sir?

6 MR. MURRAY: My name is Robert Murray. Last name
7 is M-U-R-R-A-Y.

8 JUDGE JONES: And will you raise your right hand.

9 (Witness sworn)

10 JUDGE JONES: Thank you, sir. You may proceed.

11 MR. MURRAY: I have lived in Castlereagh for nine
12 and a half years. I have my own billing stories to
13 relate although I think that's mostly been covered and
14 we also sent a summary of those problems to the Office
15 of Public Counsel so I think that's part of the record
16 for this.

17 I also want to speak on behalf of the sewer Users
18 Committee of which I am one of the members. The chairman
19 of that Committee couldn't be here tonight and we mainly
20 wanted to reiterate the fact that we fervently hope that
21 MSD can take over ownership of this sewer system. It would
22 be very difficult for us to set up a corporation. We're
23 not even sure how we would legally come up with the money
24 to start the legal process of forming a corporation. The
25 lawyers' fees would be quite a bit. That would have to

1 come out of all our pockets. We don't know how we could
2 get that money collected and that would just be the
3 beginning of the expenses before we would have any revenue
4 coming in. So that's really all I wanted to say.

5 JUDGE JONES: Questions from staff for Mr. Murray?

6 MR. SNODGRASS: No questions.

7 JUDGE JONES: Any questions from the Office?

8 MR. DANDINO: No questions.

9 JUDGE JONES: Ms. Kresyman, do you have questions?

10 MS. KRESYMAN: No.

11 JUDGE JONES: Chair, do you have any questions?

12 CHAIRMAN DAVIS: No questions.

13 JUDGE JONES: All right. Thank you. You may be
14 seated.

15 MR. MURRAY: Thank you.

16 JUDGE JONES: Mr. Steyer, you wanted to say
17 something. I remind you that you are under oath.

18 MR. STEYER: Yes, Your Honor. Just a comment that
19 in the hopes that some kind of arrangement could be
20 made from Mill Creek to another entity, I think it
21 would be worthwhile, if possible, that some kind of
22 bond be set up, cash only bond for Mill Creek Sewer if
23 they have any assets in case in investigating the
24 installation of the treatment plant that it was done
25 incorrectly or if there are faulty issues in the design

1 or implementation of that, that it could be rectified
2 because I would hate for the Commission to make an
3 assumption that the treatment plant is up and working
4 fine and everything is working accordingly without some
5 kind of independent audit of the system and also the
6 lateral lines.

7 JUDGE JONES: Thank you, Mr. Steyer. Is there
8 anyone else who would like to give testimony this
9 evening?

10 CHAIRMAN DAVIS: Judge, I have a couple more
11 questions for Mr. Johansen.

12 JUDGE JONES: Mr. Johansen, will you please step
13 forward and I will remind you that you remain under
14 oath.

15 CHAIRMAN DAVIS: Mr. Johansen, as part of the stip
16 and agreement that you signed with Mr. Afshari, were
17 preclosing liabilities contemplated at all?

18 MR. JOHANSEN: It was contemplated that the
19 facilities would be -- if the transfer happened that
20 the facilities would be transferred with clear title.
21 So if that's what you're talking about then yes, it was
22 contemplated.

23 JUDGE JONES: So the seller will not be assuming
24 any preclosing liabilities.

25 MR. JOHANSEN: That's correct. That's our

1 assumption that the agreement that it be done with
2 clear title. That it would be done --

3 CHAIRMAN DAVIS: Is that in writing anywhere in
4 here or is that just sort of a --

5 MR. JOHANSEN: I'm not sure that it is but I don't
6 see it right offhand. I know we have had those
7 discussions. I don't find it in here right now. We
8 can certainly address that with Mr. Afshari to make any
9 adjustments that are necessary.

10 CHAIRMAN DAVIS: Where did the March 31st deadline
11 come from?

12 MR. JOHANSEN: When the tariffs were originally
13 filed to start the case, with the normal suspension
14 periods that occur, we anticipated that for in regard
15 to the potential effective date of starting the process
16 for the phase two tariffs filing that we would need to
17 have something resolved by March 31st so that we would
18 know whether to proceed with phase two of the increase
19 or not.

20 With the action that's been taken with the
21 Commissions' suspension of the tariffs for the 120 days,
22 the March 31st date is much less critical in the overall
23 process because I believe that the phase one tariffs even
24 were suspended for 120 days from October 27. So that
25 certainly gives us far more time than what we contemplated

1 originally.

2 CHAIRMAN DAVIS: Okay. And Mr. Johansen, the
3 staff, are you telling me that staff is supportive of
4 "phase two increase".

5 MR. JOHANSEN: The phase two increase would
6 reflect the additional cost related to a return on
7 equity and related income taxes. The agreement was
8 that if the transfer did not occur through no fault of
9 the company, that we agreed that the company could file
10 the tariffs to implement that second increase. We did
11 not specifically say that we would not object and quite
12 honestly with regard to that phase two, in regard to
13 some orders that the Commission has recently issued in
14 other cases, I think quite honestly we want to revisit
15 that with Mr. Afshari and make sure that he understands
16 that just because we agreed that we would file them and
17 pursue it, it doesn't necessarily mean we agree with
18 it.

19 CHAIRMAN DAVIS: And the phase two recommendation
20 is predicated on did I hear correctly an 11 percent
21 ROE?

22 MR. JOHANSEN: That's going on my memory from the
23 work. I don't have the specific work papers with me
24 but I believe that is correct.

25 CHAIRMAN DAVIS: Can you tell me what staff person

1 did the ROE recommendation?

2 MR. JOHANSEN: It was either David Murray or Matt
3 Barnes. I'm not sure which because this was done after
4 I believe after Mr. Bible had already left on active
5 duty on the military. So it would have been Mr. Murray
6 or Mr. Barnes.

7 CHAIRMAN DAVIS: Okay. I mean, Mr. Johansen, are
8 you familiar that in our electric utility rate cases,
9 are you familiar with what staff's ROE recommendations
10 were in those cases at all?

11 MR. JOHANSEN: I am not, no.

12 CHAIRMAN DAVIS: Would it surprise you to learn
13 that in the Missouri Gas Energy case that was a gas
14 distribution gas that the staff's recommendation was
15 somewhere I believe between 8.5 and 9 percent ROE?

16 MR. JOHANSEN: That would not surprise me, no.
17 Quite honestly it would not surprise me in conjunction
18 with the recommendation or the recommended rate of
19 return of 11 percent for a small company like this
20 because it has a great deal to do with the size of the
21 company and the risk contemplated from that ROE. It's
22 normally 150 to 200 base points higher for small
23 companies than it is for large companies. That would
24 not surprise me if that amount of difference existed.

25 CHAIRMAN DAVIS: Okay. No further questions.

1 JUDGE JONES: Ms. Kresyman, do you have questions
2 of Mr. Johansen?

3 MS. KRESYMAN: No, I do not.

4 JUDGE JONES: Question from the Office of Public
5 Counsel?

6 MR. DANDINO: No questions, Your Honor. Thank
7 you.

8 JUDGE JONES: You may be seated. Is there anyone
9 else who would like to give testimony tonight? Well
10 seeing no one I would like to thank you all for coming
11 out. Believe me your comments are being heard. Are
12 there any closing comments from the staff of the
13 Commission?

14 MR. SNODGRASS: Nothing further.

15 JUDGE JONES: Office of Public Counsel?

16 MR. DANDINO: Just wanted to thank you for coming
17 out tonight and of course our office will take your
18 comments from the public hearing into consideration and
19 what our deliberation is and of course this record is
20 part of the record of the case which is something that
21 the Commission will decide. Thank you very much.

22 JUDGE JONES: And Ms. Kresyman, do you have any
23 closing remarks?

24 MS. KRESYMAN: No.

25 JUDGE JONES: Chairman Davis?

1 CHAIRMAN DAVIS: I want to thank everyone for
2 coming out tonight for taking the time out of their
3 busy schedules. I know this is a very important issue
4 to each and every one of you. We do appreciate your
5 comments and we will act accordingly. Also, I think I
6 need to state for the record that today I did receive a
7 phone call from state representative Tom George who
8 represents this area and although I informed
9 Mr. George, representative George that I could not
10 discuss the case with him, he did inform me that he had
11 been working on this issue for approximately eight
12 years and it was -- he expressed that he could not be
13 here personally this evening because he was required to
14 be in Jefferson city. They were apparently having some
15 votes in the house this afternoon.

16 JUDGE JONES: Thank you, Mr. Chairman. With that
17 then we will conclude the hearing and I thank you all
18 again.

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