

1 STATE OF MISSOURI
2 PUBLIC SERVICE COMMISSION
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6 TRANSCRIPT OF PROCEEDINGS
7 On-the-Record Presentation
8 March 16, 2005
9 Jefferson City, Missouri
Volume 2

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

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KENNARD L. JONES, Presiding,
16 REGULATORY LAW JUDGE.

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18 JEFF DAVIS, Chairman,
CONNIE MURRAY,
19 STEVE GAW,
LINWARD "LIN" APPLING,
20 COMMISSIONERS.

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

2 JUDGE JONES: We're here for the
3 on-the-record presentation of the agreement regarding
4 disposition of small company rate increase between the
5 Staff of the Commission and Mill Creek Sewers. Style of
6 the case is in the matter of the small company rate
7 increase request of Mill Creek Sewers, Inc., Case
8 No. SR-2005-0116.

9 At this time we'll take entries of
10 appearance, beginning with the Staff of the Commission.

11 MR. SNODGRASS: Yes. Good morning, Judge.
12 My name is Cliff Snodgrass. I represent the Staff here
13 today. My formal business address is Governor's Office
14 Building, Suite 800, 200 Madison Street, P.O. Box 360,
15 Jefferson City, Missouri 65102.

16 JUDGE JONES: Thank you, Mr. Snodgrass.
17 And from Mill Creek?

18 MS. KRESYMAN: Jamis Kresyman for Mill
19 Creek Sewers. My office is 301 South Bemiston in Clayton,
20 Missouri 63105.

21 JUDGE JONES: Thank you, Ms. Kresyman. And
22 from the Office of the Public Counsel?

23 MS. O'NEILL: Good morning, your Honor.
24 I'm Ruth O'Neill from the Office of the Public Counsel.
25 Our address is P.O. Box 2230, Jefferson City, Missouri

1 65102.

2 JUDGE JONES: Thank you, Ms. O'Neill. And,
3 Mr. Snodgrass, can you give a brief overview of what the
4 agreement is comprised of for us?

5 MR. SNODGRASS: Yes. If it please the
6 Commission, I'd like to start with a little bit of a
7 procedural timeline in this case and move forward. Would
8 that be acceptable?

9 JUDGE JONES: Yes.

10 MR. SNODGRASS: All right. In this
11 particular matter, the company, Mill Creek, filed a small
12 company rate increase request back in February of 2000.
13 On October 27 of 2004, the company filed proposed tariff
14 sheets connected with the agreement that was finalized
15 between the company and the Commission Staff. On
16 October 29th of 2004, the Staff filed a notice of this
17 agreement and placed it into EFIS as a record of the
18 agreement between the company and Staff.

19 Now, of note, the company initially asked
20 for a revenue increase of about \$43,700 in its total
21 annual sewer service operating cost, and as a matter of
22 fact, this company serves approximately 75 homes or
23 customers.

24 Now, the agreement ultimately reached in
25 terms of money, in terms of a Phase 1 increase, which is

1 important for the Commission to note here today, is that
2 the rate increase would amount to \$22,301. That includes
3 the current revenues that the company's taking in at this
4 point in time, which is about \$4,470, that would be added
5 onto that amount 22,301.

6 Bottom line, this particular proposed
7 increase changes the customer rates in Phase 1 of the
8 agreement from about \$5 a month to \$30.11 per month. When
9 the company then filed these proposed tariffs with the
10 initial increase to \$30.11, the Commission suspended the
11 tariffs and a local public hearing was held in January of
12 this year.

13 I think it's important to note for the
14 Commission that the proposed rate of \$30.11 per month does
15 not give Mill Creek Sewer a return on its plant
16 investment, nor does it provide recovery of related income
17 taxes. In Staff's view, all this proposed increase does
18 is provide recovery of the cost of service to operate the
19 system and serve the customers until hopefully the system
20 can be transferred to another buyer. And those buyers of
21 interest are the homeowners association and the
22 Metropolitan Sewer District of St. Louis.

23 Now, I understand that counsel for the
24 company can provide us with a little bit of information
25 about the interest level of Metropolitan Sewer District of

1 St. Louis in acquiring this system. It's my understanding
2 that they are interested in acquiring it. And if the
3 Commission would examine the disposition agreement here
4 that we filed, if they haven't already, the transfer price
5 of this system is \$1.

6 Should the Commission wish to go further
7 into the agreement, there's a Phase 2 which assumes that
8 the system is not transferred to anyone through no fault
9 of the company. At that point in time, the rates would
10 move from \$30.11 a month to \$51.25 per month, and if you'd
11 note at page 3 of the disposition agreement, Item 12, the
12 additional rate increase would be \$18,766, and that does
13 include a rate of return on plant investment for rate base
14 in this particular case.

15 And that would be my overview of the case
16 at this time. I have several Staff witnesses who can
17 respond to accounting ROE issues and other matters the
18 Commission might feel is important in this matter.

19 JUDGE JONES: Thank you, Mr. Snodgrass.
20 Ms. Kresyman, do you have any opening remarks you'd like
21 to make?

22 MS. KRESYMAN: My opening remarks would be
23 pretty much the same as Mr. Snodgrass, again to stress
24 that this is only to ask for an increase of the rate for
25 the cost of operating the plant, and that I did speak with

1 Paul DeFord, the attorney for MSD, yesterday afternoon,
2 and he again affirmed to me that MSD is very interested in
3 obtaining this property, that they are in the process of
4 negotiating with DNR at this time. And it will be after
5 they have completed those negotiations that they would be
6 then looking at obtaining this property, but I do not have
7 any timeline at all.

8 JUDGE JONES: Thank you. And Ms. O'Neill?

9 MS. O'NEILL: Thank you, Judge. Public
10 Counsel's been very concerned about this case and,
11 frankly, in somewhat of a quandary about how to proceed in
12 this matter since the agreement between the company and
13 the Staff of the Commission was reached.

14 During our contacts with -- primarily with
15 the Staff during the investigation and audit regarding
16 this company, a couple of things were clear. One is that
17 Mill Creek was required to make some improvements that did
18 require some capital investment, a significant degree of
19 capital investment. That was due, however, primarily to
20 the fact that they were required to do those things by the
21 DNR.

22 The other thing was that Public Counsel's
23 been concerned about this service because we have heard
24 from customers over the years, but the other thing that
25 was our understanding while this case was processing

1 through toward an agreement was that there might have
2 been -- there were two possible entities who appeared at
3 that time to be willing to take over operation of this
4 system from Mill Creek. One was the homeowners
5 association, which is no longer interested, it's my
6 information now, and Metropolitan Sewer District.

7 Because we believe that a transfer would be
8 fairly quick once the first phase of rates went into place
9 that was proposed, we were not going to file an
10 opposition. However, we did get so much feedback from the
11 customers once they found out about the proposed rate
12 increase that we did request a public hearing and which
13 was -- I believe that Chairman Davis was at that hearing
14 and it was quite lively. And I was not able to attend,
15 but I've read the transcript.

16 One of the things that my office has
17 considered in the past regarding this system is whether or
18 not a receivership would be appropriate, but the
19 receivership process as we've experienced it in the last
20 couple of times that we've been involved in those cases,
21 there were a couple of reasons why we weren't sure that
22 was a good way to go at the time. For one thing, that
23 process was likely to delay any transfer of assets, and we
24 thought that there was some viable candidates for taking
25 the system over in the near future, and we hope that that

1 continues to be the case with MSD.

2 The other one is that a defense that can be
3 issued in receivership cases, that the reason our service
4 is inadequate is our rates are inadequate, and the \$5 a
5 month that's currently being charged would probably open
6 up a receivership petition to that sort of challenge. And
7 so looking at the cost of providing service at least for
8 this first step regarding the rate increase, we think that
9 raising the rates to some degree, whether that amount or
10 some lesser amount, would help with any type of concerns
11 about that type of challenge to the receivership.

12 And I think finally in the end Public
13 Counsel's just not going to take a position about that
14 first step of the proposed rate increase. We do oppose
15 that second-step increase. The cost of service analysis
16 on the two steps is such that the first step would cover
17 the day-to-day operating expenses of the system, would not
18 provide a return on equity to the owners of Mill Creek,
19 and frankly, given the situation and the problems that
20 have been out there, that's not a big concern of ours at
21 this point.

22 We do believe that denying the second step
23 or having some sort of final date for some sort of
24 transfer of assets so that the Commission can keep an eye
25 on the progress in this matter would be important. We

1 would suggest that should the Commission allow a first
2 step increase to Mill Creek, that it be given 'til a date
3 certain to convey its operations to MSD or some other
4 entity. We would suggest about six months to the middle
5 of September for a review of this matter, and if service
6 has not improved and the transfer has not occurred, I
7 believe Public Counsel may consider an application for a
8 receivership at that time. But we are concerned about the
9 ability to cover day-to-day operation on the current rate
10 of 5 bucks a month per customer.

11 JUDGE JONES: Thank you, Ms. O'Neill. Now
12 we'll have questions from the Commission.

13 Ms. Kresyman, did you have something you
14 wanted to add?

15 MS. KRESYMAN: No.

16 JUDGE JONES: Okay. Chairman Davis?

17 CHAIRMAN DAVIS: Mr. Snodgrass, this is the
18 same Stip & Agreement that we had the public hearing back
19 in -- I can't remember when the public hearing was.

20 MR. SNODGRASS: It was in January, sir.

21 CHAIRMAN DAVIS: So nothing else has
22 changed, correct?

23 MR. SNODGRASS: That is correct.

24 CHAIRMAN DAVIS: Is somebody from MSD here?

25 MR. SNODGRASS: No, sir.

1 CHAIRMAN DAVIS: Okay. And so,
2 Mr. Snodgrass, it's -- it's your belief that MSD is
3 willing to acquire the property and Mill Creek Sewer,
4 Mr. Afshari, is willing to sell the property assuming that
5 MSD can get things worked out with DNR?

6 MR. SNODGRASS: That would be my
7 understanding, your Honor. I think from what I've
8 understood with conversations with counsel for the company
9 here is the stall here or the rub is to make sure there's
10 no liability that follows that transfer to MSD.

11 CHAIRMAN DAVIS: Ma'am, is that correct?

12 MS. KRESYMAN: Yes, sir, that's my
13 conversation with Mr. DeFord yesterday.

14 CHAIRMAN DAVIS: Mr. Snodgrass, are you
15 aware, is there any mechanism where we could make the
16 increase conditional on the transfer of the property to
17 MSD?

18 MR. SNODGRASS: I think you could impose
19 that condition as a reasonable condition under the
20 circumstances of this case. I'm not aware of a mechanism
21 that prohibits you from doing that.

22 CHAIRMAN DAVIS: Ms. O'Neill, how would you
23 feel about that?

24 MS. O'NEILL: I believe the Commission can
25 set interim rates and -- subject to reduction. I believe

1 they've done that in the past. I think they did that with
2 Osage Water Company once. We would not be opposed to
3 that.

4 CHAIRMAN DAVIS: Okay. Counsel for Mill
5 Creek?

6 MS. KRESYMAN: The only concern that I
7 would have would be any kind of a time limitation because
8 MSD, the company is not in a position to force MSD to take
9 this property and we are at their mercy as to what their
10 time limits are, and they have expressed an interest, but
11 they have not committed to any time.

12 CHAIRMAN DAVIS: Mr. Snodgrass, have you
13 had any conversations with either the Attorney General or
14 representatives from the Department of Natural Resources
15 concerning this matter?

16 MR. SNODGRASS: No, I have not,
17 Commissioner, but Mr. Johansen may have.

18 CHAIRMAN DAVIS: Mr. Johansen has had some
19 conversations?

20 MR. SNODGRASS: That would be correct.

21 CHAIRMAN DAVIS: Can we ask Mr. Johansen to
22 approach, Judge? Do you want to swear him in?

23 (Witness sworn.)

24 JUDGE JONES: Thank you. You may step to
25 the mic.

1 MR. JOHANSEN: Yes, Chairman Davis, I've
2 been working with representatives of the Attorney
3 General's Office regarding this matter for several months
4 now. The information that's been conveyed today regarding
5 the status is consistent with my understanding and
6 discussions with them. I think another issue here that is
7 important to note is that this not only involves
8 negotiations between the Attorney General and DNR with
9 Metropolitan Sewer District, but it also involves initial
10 negotiations regarding this transfer proposal between the
11 Staff, Mill Creek and the Attorney General's Office.

12 And that has to do with the fact that the
13 Attorney General's Office on behalf of DNR has received a
14 court judgment allowing them to pursue collection of
15 certain civil penalties from Mill Creek for past
16 violations regarding the operation of this system. One of
17 the resolutions of that initial case was the court ordered
18 construction of the new treatment plant that we're dealing
19 with here, but there are also certain stipulated penalties
20 that the court awarded.

21 One of the things that we have discussed
22 with the Attorney General's Office and Mr. Afshari as the
23 owner of the company would be that if this transfer could
24 be affected, that the Attorney General's office would
25 favorably consider not pursuing further collection of

1 those stipulated penalties basically in exchange for the
2 system being conveyed to either the MSD or a possible
3 customer base not for profit for the price of \$1. And
4 that's really -- those initial discussions that we had
5 were the basis for the disposition agreement that we
6 entered into with the company that reflects the transfer
7 at the price of a dollar.

8 CHAIRMAN DAVIS: Okay. Mr. Johansen,
9 what -- refresh for my recollection here. What was your
10 impression of their -- of their disposition regarding if
11 we get this thing transferred -- if we get Mill Creek
12 transferred to MSD, that they wouldn't keep pursuing the
13 property? Are they going to pursue MSD or the property or
14 what?

15 MR. JOHANSEN: Well, I think that's one of
16 the issues that MSD is dealing with now. And fortunately
17 or unfortunately, we also have experience with another
18 situation like this involving Warren County Water and
19 Sewer Company.

20 CHAIRMAN DAVIS: Right.

21 MR. JOHANSEN: One of the issues there that
22 Missouri-American Water Company was dealing with was the
23 fact that that was a situation where there were several
24 pending enforcement actions against Warren County Water
25 and Sewer. There were penalties pending against Warren

1 County Water and Sewer. Missouri-American wanted to --
2 wanted assurance from the Department of Natural Resources
3 that those prior liabilities, if you will, would not
4 transfer to it as the acquiring company.

5 CHAIRMAN DAVIS: Right.

6 MR. JOHANSEN: And they were able to work
7 out an agreement with Department of Natural Resources and
8 the Attorney General's Office that basically said in
9 essence, Missouri-American, if you provide us with an
10 acceptable plan of improvement, you continue with that in
11 compliance with that plan of improvements, we will forego
12 transfer of any of those prior liabilities or prior
13 enforcement actions.

14 My understanding, that is a similar
15 agreement as to what MSD is now working on obtaining from
16 DNR and the Attorney General's Office.

17 CHAIRMAN DAVIS: Mr. Snodgrass, do you
18 think that you and our Staff could be helpful to DNR and
19 the Attorney General's Office by offering up the technical
20 expertise of Mr. Johansen as well as whatever legal
21 resources you have at your disposition to help expedite a
22 transfer of service between these parties?

23 MR. SNODGRASS: We would be glad to do that
24 and to expend that effort.

25 CHAIRMAN DAVIS: And you'll be glad to file

1 weekly status reports with us and let us know every week
2 what's happening until something gets done?

3 MR. SNODGRASS: Absolutely.

4 CHAIRMAN DAVIS: Then, Mr. Johansen, how
5 long have you worked here?

6 MR. JOHANSEN: I've worked at my current
7 position a little over 9 years, and I've worked at the
8 Commission basically 23 years total.

9 CHAIRMAN DAVIS: Okay. 23 years at the
10 Commission. Are you aware how long these complaints with
11 Mill Creek Sewer go back?

12 MR. JOHANSEN: In my current position,
13 which is when I would have been involved in these
14 situations, going back even further than when I started in
15 this position, I believe there was a rate review done back
16 in the mid '90s.

17 And I know that some of the problems from
18 the standpoint of the DNR enforcement actions and
19 attempting to get the old lagoon system taken out of
20 service and a new treatment plant put into service dates
21 back to the late '90s at least. And, in fact, I believe
22 it was either probably sometime in the year 2000 that the
23 DNR's enforcement action resulted in the judge's order
24 directing the company to install the new facility. It
25 goes back somewhere in the neighborhood of ten years.

1 CHAIRMAN DAVIS: So would you understand
2 why at least one Commissioner here in particular feels a
3 sense of urgency about getting something done and
4 resolving this issue once and for all?

5 MR. JOHANSEN: Absolutely. And quite
6 honestly, we feel the same urgency on the part of the
7 Staff.

8 CHAIRMAN DAVIS: So can I infer that Staff
9 will be contacting DNR and the Attorney General's Office
10 every day to make sure that we keep the ball moving and
11 that this thing doesn't fall through the cracks?

12 MR. JOHANSEN: We will do that. As a
13 matter of fact, we've been in -- I'd say over the last two
14 or three months we've been in at least weekly contact with
15 them anyway, and I think now that it's clear -- that it's
16 more clear today that MSD is very serious about this, I
17 think that that certainly adds to the -- to my interest in
18 making sure that that process is moving forward, and even
19 so far as to directly work with MSD based on my knowledge
20 of the Missouri-American agreement and offer that to them
21 as an example of how this kind of situation can be
22 resolved.

23 CHAIRMAN DAVIS: Mr. Snodgrass, is there
24 any deadline for us to approve this Stipulation &
25 Agreement?

1 MR. SNODGRASS: We don't believe there's a
2 specific deadline involved in this particular case for the
3 Commission to go forward, but there are operating expense
4 issues that the company absorbs until tariffs are put into
5 effect.

6 MR. JOHANSEN: Mr. Chairman, if I might
7 also, the current tariff that's pending in front of the
8 Commission has been suspended, I believe, until April
9 14th. I think the Commission -- my understanding of the
10 process would be that the Commission has the ability to
11 further suspend that tariff if it desires to do so. As
12 far as the issue of the pending tariff that's in front of
13 us right now, April 14th is in essence a deadline.

14 MR. SNODGRASS: The deadline I show in the
15 Staff pleading, just for correction purposes, is
16 April 12th.

17 CHAIRMAN DAVIS: So Mr. Snodgrass, can you
18 infer that that's your deadline to get something worked
19 out with DNR and the Attorney General and everyone else?

20 MR. SNODGRASS: I think that inference is
21 perfectly clear, Commissioner.

22 CHAIRMAN DAVIS: No further questions.

23 JUDGE JONES: Thank you. Commissioner
24 Murray, do you have questions?

25 COMMISSIONER MURRAY: Thank you, Judge.

1 Ms. Kresyman, do you have any information about what are
2 the pending actions by DNR, MDNR against your client?

3 MS. KRESYMAN: Are you speaking of the
4 matter in the Circuit Court in St. Louis where there were
5 penalties that were assessed?

6 COMMISSIONER MURRAY: I'm speaking about
7 any pending actions that -- any Notices of Violation,
8 anything that's pending.

9 MS. KRESYMAN: No, there is nothing pending
10 other than that lawsuit which the judge made a final
11 judgment. It was appealed to the appellate court and the
12 appellate upheld the circuit court's decision. A motion
13 for transfer to the Supreme Court has been filed and has
14 not been ruled on. But other than that, there is nothing
15 pending.

16 COMMISSIONER MURRAY: What were the
17 penalties in that case?

18 MS. KRESYMAN: They were --

19 COMMISSIONER MURRAY: 558,000?

20 MS. KRESYMAN: -- 558,000, yes. And of
21 that, it was about 77,000 has been collected.

22 COMMISSIONER MURRAY: So the judgment has
23 not been stayed pending appeal?

24 MS. KRESYMAN: That was correct. That was
25 collected through sale of other property that they had a

1 lien on. Mr. Afshari?

2 MR. AFSHARI: That was before --

3 COMMISSIONER MURRAY: This witness hasn't
4 been sworn.

5 JUDGE JONES: Mr. Afshari, you'll need to
6 share the mic for one with Ms. Kresyman. Secondly, can
7 you raise your right hand, please?

8 (Witness sworn.)

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

11 MR. AFSHARI: That was before we filed the
12 appeal. When they got the judgment, they went ahead, took
13 \$77,000 from one of my property closings and that they
14 still have in their possession. Then we had to go ahead
15 and file that appeal, get a bond and appeal.

16 COMMISSIONER MURRAY: So are you saying
17 that there are no current violations of Missouri
18 environmental laws that are -- that are occurring today?

19 MR. AFSHARI: We -- we had approval from
20 them when we dried the lagoon. When we dismantled the
21 lagoon, closing it, they sent us a compliance, and we have
22 the generators are running and the electric bill is paid.
23 I'm paying a lot of the stuff out of my pocket, and sludge
24 hauled out of there. We don't have any money really. We
25 don't have any money to operate.

1 MS. KRESYMAN: But there are -- but there
2 are no further violations.

3 COMMISSIONER MURRAY: All right. Thank
4 you.

5 Mr. Snodgrass?

6 MR. SNODGRASS: Yes, ma'am.

7 COMMISSIONER MURRAY: The suggestion that
8 Ms. O'Neill made about having -- as a condition of the
9 first step having a date certain for the transfer of the
10 assets, what is your position on that?

11 MR. SNODGRASS: Well, I think that's kind
12 of a difficult question to respond to, Commissioner. I
13 sympathize in some respects with the company's statements
14 that they really cannot force MSD to move forward with
15 this transaction, that they're going to move at their own
16 pace and protect their interests.

17 COMMISSIONER MURRAY: Let me qualify my
18 question, because I wouldn't make it contingent upon it
19 transferring necessarily to MSD.

20 MR. SNODGRASS: I see. Could you rephrase
21 the question for me, then?

22 COMMISSIONER MURRAY: Well, just making
23 it -- making a condition that there -- a transfer take
24 place by a date certain.

25 MR. SNODGRASS: Staff would not be opposed

1 to that, Commissioner.

2 COMMISSIONER MURRAY: With the rates being
3 subject to refund at that time if that transfer did not
4 take place or with Staff considering an application for
5 receivership at that time, or do you know how you would
6 handle it if that contingency were not met?

7 MR. SNODGRASS: Commissioner, if you don't
8 mind, I'd like to have Mr. Johansen speak to that, if we
9 can call upon him again. I'm very good at passing the
10 football to this particular player.

11 JUDGE JONES: Mr. Johansen, I'll remind you
12 that you remain under oath.

13 MR. JOHANSEN: Yes, sir. I think at a
14 point where -- if it becomes clear that a transfer is not
15 going to occur under the proposal, if you will, that the
16 company and the Staff have agreed on, I certainly think at
17 that point we would need to revisit the situation,
18 possibly even to the extent of the Commission considering
19 whether the interim rates should or should not continue.

20 One of the problems I think here is that if
21 a transfer to MSD does not happen for some reason, my
22 discussions with several of the customers after the local
23 public hearing in January was that their preference
24 certainly is for the MSD transfer to occur.

25 If it becomes clear that that will not

1 happen, my information in talking with the customers, that
2 they are willing to go to the effort of forming a
3 not-for-profit sewer corporation under Chapter 393 of the
4 statutes so that there would be a customer-owned entity
5 available to accept the system. But again, that adds more
6 time to the process. They do not want to go to the time
7 and effort and expense of initiating the formation of that
8 company until they know for sure if MSD is not going to be
9 involved.

10 So I think that any time limit or time
11 frame that's put on this from the standpoint of a transfer
12 to MSD, that's possibly Step 1 in the process. And I
13 think you might have to at that point make sure that the
14 customer-based organization is a real possibility and then
15 allow additional time from that point for that situation
16 to occur.

17 And again, it's -- I think putting some
18 type of time constraints to some degree is appropriate. I
19 think it emphasizes the urgency of the situation to
20 everyone involved, including those entities that are not a
21 party to the proceedings here at the Commission.

22 COMMISSIONER MURRAY: And the tariff that
23 is before us is for the interim rate only?

24 MR. JOHANSEN: That's correct. The only
25 tariff that's been filed is what we're calling Phase 1,

1 which provides recovery of the operating expenses and
2 depreciation expenses related to the new facility. There
3 has not been a filing made that -- for the Phase 2 rate,
4 which would include the return on the investment for the
5 company, and basically the agreement is that that filing
6 will not be made so long as progress is being made towards
7 the transfer.

8 COMMISSIONER MURRAY: And the agreement
9 that -- Staff has entered into an agreement with the
10 company; is that correct?

11 MR. JOHANSEN: Correct.

12 COMMISSIONER MURRAY: And that agreement
13 provides that if the transfer does not take place, that
14 Staff is in support of the Phase 2 rate?

15 MR. JOHANSEN: Basically what it said is
16 that if the transfer does not occur through no fault of
17 the company, that the Staff agrees that the company should
18 be allowed to file for the second phase of the increase.

19 COMMISSIONER MURRAY: Then is it Staff's
20 opinion that the customers are receiving safe and adequate
21 service?

22 MR. JOHANSEN: Well, I think that that is
23 certainly an issue that we need to deal with still. I --
24 Steve Loethen, who's one of my staff members, he's not
25 able to be here today, he's out in the field on inspection

1 work, but I did receive an e-mail from him last night
2 about the current situation.

3 I think there are things that we still need
4 to address from the standpoint of the operation of the
5 facility, some things we would certainly want to make sure
6 that are taken care of or are not problems before we would
7 recommend that a second phase go into effect.

8 I think there's a distinction here between
9 the agreement that the company can request that second
10 increase and whether or not based on the current
11 conditions the Staff would recommend that that second
12 phase be approved. There's certainly things that we will
13 want to review before we would recommend the Phase 2 go
14 into effect.

15 COMMISSIONER MURRAY: Okay. So it does
16 contemplate further investigation and further negotiation?

17 MR. JOHANSEN: Yes, it does. As a matter
18 of fact, I think everyone needs to be aware, the Phase 2
19 information that's currently in the record, in preparing
20 for today's activities, we have found a couple of things
21 in the calculations regarding the rate of return revenue
22 requirement that are going to have to be corrected, No. 1,
23 mainly because of the additional passage of time, so
24 there's some additional work that we need to do on the
25 Phase 2 issue with the company anyway.

1 But again, I want to make the distinction
2 clear that the agreement is that the company could ask for
3 that second phase if the transfer doesn't occur through no
4 fault of its own, but that does not address the issue of
5 whether the Staff would recommend that second phase go
6 into effect without certain things being taken care of.

7 COMMISSIONER MURRAY: So is it your opinion
8 that there are definite items that must be taken care of
9 if this company is to continue ownership and operation of
10 this facility?

11 MR. JOHANSEN: Based on my -- on the
12 information I received from Mr. Loethen, I think there's a
13 couple of issues regarding the operation of the plant that
14 would need to be addressed. There apparently are some
15 electrical problems regarding the manner in which the
16 blowers are functioning or not functioning. I think
17 there's some problems there.

18 We would also want to make sure that
19 there -- as time passes, there are no issues with DNR
20 regarding the operation of the plant. And I will say that
21 my information is consistent with what the company
22 presented, that we are not aware of any existing Notices
23 of Violations that have been issued. Certainly, though,
24 as time passes we would want to work with DNR to make sure
25 that that continues to be the case.

1 is it your opinion that it would be to your benefit to
2 transfer this facility, particularly if doing so would
3 involve some kind of an agreement that DNR would not
4 pursue those penalties or --

5 MR. AFSHARI: That's my understanding. I
6 have \$270,000 invested of my money, hard-earned money in
7 that plant, and they have a \$558,000 judgment which we are
8 appealing. My agreement was with Mr. Johansen that I give
9 the plant away for \$1 and they will drop their -- which
10 was that most extreme biggest fine that Judge Blackwell
11 made in the state of Missouri for a little bitty lagoon
12 that we get \$200 a month income from it. It doesn't make
13 sense.

14 COMMISSIONER MURRAY: I think it's more
15 than the monetary nature of what's involved when we're
16 talking about environmental damage.

17 MR. AFSHARI: We didn't have any damage as
18 far as environmental. They wanted us to dredge the lagoon
19 or build the facility, and we did build the facility.
20 There wasn't anything overflowing or this and that. We
21 met all their requirements. Everything is on the record
22 and all the delays was caused by getting easements,
23 getting a right of title check, getting the grading done
24 20 feet down the hill. The plant lies 20 feet grade,
25 20 percent grade. We had all that planned on the hill.

1 We had to dry the lagoon. DNR told us
2 siphon the lagoon. We have to end up pumping it. There
3 was a lot of obstacles in our way before we finished this
4 project, and there wasn't called to have that final
5 meeting.

6 MS. KRESYMAN: I would just like to point
7 out that the penalties that were assessed were not for any
8 violations that he had, but rather for the delays in the
9 compliance with the changeover. And the delays were, as
10 Mr. Afshari mentioned, things that were beyond his
11 control. So it was the delay in time without having gone
12 back and asked for additional time is what the penalties
13 were for.

14 MR. AFSHARI: May I add to this? I made a
15 history of the Mill Creek Sewer as I took over it 'til
16 now, which is 35 years almost, 1969, I presented to
17 Mr. Johansen. And if you wish to have a copy, we have a
18 copy available. If you read this, you can see that the
19 amount of money that these people paid wouldn't even pay
20 for postage and a person to answer the phone.

21 JUDGE JONES: Mr. Afshari, we're unable to
22 hear you clearly. You need to speak in the microphone or
23 if you like, you can approach the podium.

24 MR. AFSHARI: The amount of money that we
25 receive from the public for this 72 houses and this

1 lagoon, two-acre lagoon wasn't enough to pay for mailing
2 and answering the phones and going visiting the site, and
3 on top of that we had to pay for all the tests and
4 everything we done.

5 At the first beginning of it earlier they
6 asked us to put a chlorinator in. We did put it in.
7 Later on they told us take the chlorinator off. We did
8 it. We followed up everything DNR asked us to do. And I
9 had to sell my property that I have for my retirement,
10 half the price, to go ahead and build this plant. This is
11 unreasonable, this is unjust, what they done to me.

12 COMMISSIONER MURRAY: Mr. Afshari, we can't
13 do anything about that, but I'd like to ask you if
14 you're -- your intention here as I understand it is to
15 make all the efforts that you can to get this property
16 transferred for \$1. Is that correct?

17 MR. AFSHARI: I made that agreement with
18 Mr. Johansen. I'll stick to it, yes.

19 COMMISSIONER MURRAY: Okay. As soon as
20 possible?

21 MR. AFSHARI: I'm ready any time as long as
22 the judgment is dropped.

23 COMMISSIONER MURRAY: That's all I have.

24 JUDGE JONES: Thank you. Commissioner Gaw,
25 do you have questions?

1 COMMISSIONER GAW: Thank you, Judge. I
2 have a few questions. This may have already been brought
3 up. I don't know. Mr. Johansen, what are the rates in
4 MSD?

5 MR. JOHANSEN: I was asking Mr. Meyer. He
6 happens to be an MSD customer. Usage, they base their
7 rates on water usage for the three winter months, I
8 believe, of December, January and February. They probably
9 on an average are around 17.50 a month. My understanding
10 is that as part of this process that those rates would --
11 similar rates would be the rates that MSD would apply if
12 they do take this system over.

13 COMMISSIONER GAW: They would be the same
14 rates or similar?

15 MR. JOHANSEN: Well, the process of what
16 the rates -- how the rates would be set would be the same
17 as they do for their other customers. It would simply --
18 it might not be 17.50 a month. It would vary by customer
19 based on the water usage.

20 COMMISSIONER GAW: But it would be the same
21 rate as other MSD customers?

22 MR. JOHANSEN: That's my understanding,
23 yes. And we can certainly confirm that as part of our
24 updates.

25 COMMISSIONER GAW: What expenses are going

1 to be paid if this interim increase were granted?

2 MR. JOHANSEN: The ratemaking income
3 statement that was included with the disposition agreement
4 has a summary of that. Basically it covers salary for
5 plant operation force, having a licensed operator involved
6 with the operation of the plant.

7 COMMISSIONER GAW: Is there one now?

8 MR. JOHANSEN: Yes. Administrative
9 expenses for billing.

10 COMMISSIONER GAW: Excuse me for
11 interrupting. Does it increase the amount that he's
12 being -- he or she is being paid for that work if there's
13 an increase here?

14 MR. JOHANSEN: No. What we're reflecting
15 in the -- in the rates that are currently pending is an
16 annualized expense of what the company's current expenses
17 are. This plant has actually been in operation for well
18 over a year, maybe close to two years, so we do have good
19 information regarding what the annual costs are.

20 COMMISSIONER GAW: Okay.

21 MR. JOHANSEN: O&M-type salaries,
22 administrative expenses such as billing, secretarial
23 services for taking customer calls. It reflects the new
24 DNR permit fees for the new facility versus the old
25 lagoon. That alone is a \$3,000 annual expense. They now

1 have sludge hauling expenses. The electric expense for
2 the new mechanical plan is substantially higher obviously
3 than for the lagoon system. Testing fees, the routine
4 testing fees, grounds maintenance, equipment maintenance,
5 the Commission's assessment, and then postage expense for
6 billing purposes, property taxes. And then this proposed
7 Phase 1 rate would also include the appropriate
8 depreciation expenses related to the plant. And finally
9 it includes a ten-year amortization of the money spent by
10 the company to close the lagoon.

11 COMMISSIONER GAW: Okay. That's a ten-year
12 amortization, did I hear you?

13 MR. JOHANSEN: Yes.

14 COMMISSIONER GAW: And 5,240 depreciation?

15 MR. JOHANSEN: Correct.

16 COMMISSIONER GAW: Is that lagoon closing
17 expense, has that already been paid?

18 MR. JOHANSEN: Yes, it has. That was one
19 of the requirements that DNR and the Staff both imposed on
20 the company. DNR for their permitting processes for the
21 new plant, as part of that process the company was
22 required to submit a closure plan for the lagoon and
23 complete that prior to the time that DNR issued their
24 final permit for the new plant.

25 The Staff also took the position in our

1 rate case process that that had to be completed before the
2 Staff would enter into the disposition agreement for the
3 rate increase. So that -- that project is completed, has
4 been paid for.

5 COMMISSIONER GAW: And I guess I have to
6 assume based on what you're saying that there were no net
7 salvage values built into the depreciation prior to this?

8 MR. JOHANSEN: I don't believe so. I think
9 that's right.

10 COMMISSIONER GAW: I'd like a clearer
11 answer on that sometime. I don't believe so isn't good.

12 Is it -- I've got to say this. I don't
13 know how -- how I can personally, speaking for myself, go
14 along with this without having heard from the Attorney
15 General's Office in their capacity representing DNR and
16 MSD. It strikes me that we need them all in here. I
17 don't like leaving this open-ended, not knowing what the
18 chances are of this closing in the near future.

19 But I'm just speaking for myself here
20 because if others feel the same way, they might -- or
21 differently, they might want to say, but that's --

22 CHAIRMAN DAVIS: Mr. Johansen, I've got a
23 question for you.

24 MR. JOHANSEN: Okay.

25 CHAIRMAN DAVIS: Now, I have not reviewed

1 the transcript since the hearing, and please bear in mind
2 that I need to do that, but correct me if I'm wrong, but
3 it was my impression from that hearing that none of the
4 people present said, oh, yes, service has improved in the
5 last year or two. I do not recall any mention or any
6 acknowledgement of that. Maybe it's in there and, of
7 course, maybe we didn't ask the questions either.

8 But, you know, I definitely remember
9 hearing from the couple who felt like their property had
10 been trespassed upon or homesteaded by the new water
11 facility or whatever.

12 But do you recall any testimony that said
13 that service is improved? I mean, my impression was that
14 the attitude of the ratepayers was that, you know, make
15 the improvements and then we'll pay more.

16 MR. JOHANSEN: Well, and I think generally
17 that impression is accurate. I think one of the problems
18 we have here is that the construction of the new plant,
19 which was required, which has been completed, that in and
20 of itself is not going to provide any clear evidence of
21 enhanced service to the customer.

22 And it's definitely a quandary that we have
23 when we're evaluating situations like this when we -- when
24 we go from a situation where you've got a relatively
25 inexpensive lagoon system providing treatment and the

1 service to the customer is, you know, they have sewer
2 service available.

3 There's several hundred thousand dollars
4 expended due to the environmental situation, the
5 environmental regulations. There's not a clear
6 improvement of the service to the customer that they
7 directly see and that they can directly measure.

8 I think the other issue with the current
9 operation of the new facility is that the customers
10 certainly have concerns as to whether that facility is
11 being operated in the manner in which it should be.
12 Those are issues that the DNR is continually monitoring.
13 It is issues that my staff is continually monitoring.

14 And that goes a great extent to some of the
15 discussion I had with Commissioner Murray about if we
16 would at some point get to consideration of the Phase 2
17 rate increase, that before that goes into effect we would
18 certainly need to make sure that any and all concerns
19 regarding that issue have been identified and addressed.

20 I also have to be very honest and say that
21 it's very difficult for a company to properly operate a
22 system where its day-to-day operating expenses and other
23 expenses far exceed the existing revenues that it's
24 receiving.

25 CHAIRMAN DAVIS: Mr. Johansen, how

1 difficult do you think it's been for the people of this
2 subdivision for the last ten years? Do you think those
3 people are really concerned about it? I mean, I know
4 they're concerned about their service. Do you think
5 they're concerned about Mill Creek's hardships or
6 Mr. Afshari?

7 MR. JOHANSEN: I doubt that many of them
8 are.

9 CHAIRMAN DAVIS: I don't have any more
10 questions.

11 JUDGE JONES: Okay. Commissioner Gaw, did
12 you have any further questions?

13 COMMISSIONER GAW: Yes. I guess back to my
14 initial concern, it would be helpful for me to have them
15 come in at some point or to know what they're doing, but I
16 would prefer that they be here where we can inquire of
17 them.

18 Let me say this or ask this question, I
19 guess. Was there any thought given to the rate increase
20 being conditioned on the alternative of transfer to MSD or
21 some other acceptable provider or consented to a receiver?

22 MR. JOHANSEN: The agreement is
23 initially -- and I have to point out that the original
24 disposition agreement has some timeframes in it where we
25 are either past or quickly approaching those timeframes.

1 I think we need to recognize that there's some extension
2 of those timeframes that we're going to have to deal with.
3 I don't believe that's a problem.

4 The original concept was -- that the
5 agreement is based on is that if a transfer to MSD does
6 not occur, then the other alternative that is potentially
7 available is for the customers to form a not-for-profit
8 sewer corporation which would then be the entity that
9 would take over the system under the same concerns that
10 the transfer would occur to MSD.

11 COMMISSIONER GAW: Well, except that you're
12 still -- okay. You're still in the same position of
13 having to deal with DNR?

14 MR. JOHANSEN: That's correct. That would
15 not go away.

16 COMMISSIONER GAW: The receivership doesn't
17 give you that issue?

18 MR. JOHANSEN: That would be correct, I
19 think.

20 COMMISSIONER GAW: Was that -- and I don't
21 want to get into your negotiations very far here, but is
22 that just not acceptable?

23 MR. JOHANSEN: We did not discuss that
24 specifically, and the main reason that we didn't is that
25 in the receivership process you basically still have to

1 have a permanent solution available to you, and --

2 COMMISSIONER GAW: Well, part of what I'm
3 talking about here is whether or not it makes me
4 comfortable to authorize a rate increase. I know what
5 your arguments are about why to do it, but I'd kind of
6 like to have some idea that we're moving off of the square
7 that we've been on for however many years. You-all
8 mentioned earlier that it had been there.

9 MR. JOHANSEN: And I think one of the
10 things that I can certainly offer to do, as I mentioned
11 earlier, we've been having discussions with DNR and the
12 Attorney General's Office quite frequently over the last
13 few months. We've had some conversations with MSD to at
14 least partially address your concerns about knowing for
15 sure what the status of those discussions are.

16 I'm certainly more than happy to arrange a
17 meeting with the folks that need to be involved there and
18 provide a report back to the Commission in this case
19 regarding the result of that meeting to give you a little
20 more definitive update and status check. It doesn't go as
21 far, I think, as probably what you would like, which would
22 actually be to have MSD and the Attorney General standing
23 here talking to you, but it might go --

24 COMMISSIONER GAW: You're right, it doesn't
25 go as far as I wanted.

1 MR. JOHANSEN: Right.

2 COMMISSIONER GAW: But that would be up to
3 everybody as a group. So that's all I have, Judge.

4 JUDGE JONES: Ms. Kresyman, it looks like
5 you have a response you'd like to make to some things that
6 have been said. Do you?

7 MS. KRESYMAN: Well, I would just like to
8 say that there is -- it's clear that there's a need for
9 this rate increase as far as the expenses go. What I'm
10 hearing is that there's a concern with Mill Creek Sewers,
11 and that Mill Creek Sewers has been doing everything they
12 can to get this property -- the sewers transferred to MSD
13 and/or the customers if they would agree to do that.

14 We would love to be in that position,
15 and -- but that in the meantime these expenses continue,
16 and that they need to be paid for and be covered. And we
17 can certainly do some kind of agreement where the rate
18 would be increased but that there would be a requirement
19 that there would be a transfer, and at that time if there
20 was no transfer it would be reviewed. But there needs to
21 be some benefits, I mean, some payments made on these
22 expenses.

23 JUDGE JONES: Okay. Thank you.
24 Commissioner Gaw?

25 COMMISSIONER GAW: Counsel, and you don't

1 have to respond to this because I understand if you don't
2 want to, but if my question is the same as it was earlier
3 but directed to you would be, would your client consent to
4 someone else being in charge of the company as a voluntary
5 receivership in the interim if these rates -- as a
6 condition of these rates being implemented?

7 MS. KRESYMAN: It has not been discussed.
8 I mean, that we've discussed it at all, but I do not think
9 it would be objected to and we would need to work any way
10 we could to resolve this situation.

11 COMMISSIONER GAW: Okay. That's helpful
12 for me. If you could confirm that, and I don't want to
13 try to rush you into that, but we've got an opportunity to
14 do that if the other Commissioners see that as something
15 they want to pursue. I don't want to go down a road here
16 by myself. Thanks.

17 JUDGE JONES: Mr. Chairman?

18 CHAIRMAN DAVIS: I just wanted to chime in
19 to the Chairman Emeritus that I would be very supportive
20 of a voluntary receivership. I think that would alleviate
21 a lot of the concerns regarding any potential
22 opportunities for mischief. And we've been down this road
23 a few times before.

24 JUDGE JONES: Commissioner Gaw, is that all
25 you had?

1 COMMISSIONER GAW: Yes.

2 JUDGE JONES: Commissioner Appling?

3 COMMISSIONER APPLING: Mr. Snodgrass,
4 before you get up and run away --

5 MR. SNODGRASS: I'm not running. I'm not
6 running. For a change I'm not running, Judge. I want to
7 talk to my client, but go ahead.

8 COMMISSIONER APPLING: I kind of echo the
9 same feelings. I have no questions of any witness or
10 yourself, but I just echo the same feelings that my
11 colleagues expressed here. It would seem to me that we
12 have an owner who is willing to transfer this company, and
13 he's testified here this morning that he doesn't have any
14 more money in his pocket. So even if we -- if the
15 Attorney General and DNR say you've got to cough up
16 something, he doesn't have it, so we need to get this
17 thing transferred. And we need to get in the room with
18 DNR and try to work out something as soon as possible.

19 I know that's the way you're moving, and I
20 think that's what should be done rather than spend a lot
21 of other time doing other things to try to get this done,
22 so the customers out there can get the service which they
23 deserve. End of message. Thank you, sir.

24 MR. SNODGRASS: I understand, Commissioner.

25 JUDGE JONES: Are there any other questions

1 from the Commission?

2 (No response.)

3 JUDGE JONES: Seeing none, I just have one
4 question. MSD's reluctance to purchase the system seems
5 to be tied to the deficiencies in the system or rather the
6 penalties assessed from DNR which were tied to the
7 deficiencies in the system; is that true?

8 MS. KRESYMAN: May I address? The
9 penalties were based on the time it took the company to
10 put the new plant into place. They are not based on --
11 the penalties are not based on any deficiencies. They're
12 just based on the time delays.

13 JUDGE JONES: Are there any deficiencies in
14 the system now?

15 MS. KRESYMAN: I think that's a question of
16 the Staff who has been monitoring this plant continuously,
17 as Mr. Johansen testified that there --

18 JUDGE JONES: There are no deficiencies
19 now?

20 MR. JOHANSEN: If I might, Judge, my -- a
21 review of my information from DNR and conversations I've
22 recently had with the DNR regional office in St. Louis is
23 that there are currently no pending Notices of Violation
24 regarding the operation of the new plant from DNR's
25 standpoint. As I mentioned, I think there's a few

1 operational issues that we've identified separate and
2 apart from the environmental issues that DNR looks at that
3 we want to make sure get corrected. I don't think they're
4 serious by any means.

5 I think MSD's concern is making sure
6 basically that there isn't something like that there that
7 they're going to need to correct that if they don't
8 correct then DNR is going to hold them responsible for not
9 correcting it. I don't think their concern is that
10 there's a lot of pending violations out there that they
11 don't want the responsibility to be transferred to them.
12 I think their interest is in seeing that, being aware of
13 whether or not there's anything there that may lead to
14 violation problems in the future.

15 JUDGE JONES: Okay. Thank you,
16 Mr. Johansen. Does anyone have anything further they'd
17 like to add?

18 (No response.)

19 JUDGE JONES: Seeing nothing, then we will
20 go off the record and conclude this hearing. Thank you
21 all for attending.

22 WHEREUPON, the on the record presentation
23 was concluded.

24

25