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1 STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

2
3 HEARING

4 March 25, 2002
5 Jefferson City, Missouri
Volume 4
6
7

8 In the Matter of the Application)
9 of Environmental Utilities, LLC,)
10 for Permission, Approval, and a)
11 Certificate of Convenience and)
Necessity Authorizing It to) Case
12 Construct, Install, Own, Operate,) No. WA-2002-65
Control, Manage and Maintain a)
13 Water System for the Public)
Located in Unincorporated)
14 Portions of Camden County,)
Missouri (Golden Glade)
15 Subdivision))

16 BEFORE:

17 MORRIS L. WOODRUFF, Presiding,
18 SENIOR REGULATORY LAW JUDGE.
KELVIN SIMMONS, Chair,
SHEILA LUMPE,
BRYAN FORBIS,
19 COMMISSIONERS.
20

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0328

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

2 (Written Entries of Appearance filed.)

3 JUDGE WOODRUFF: We're here today for a
4 continuation of the hearing in Case No. WA-2002-65.

5 And before we go ahead and get Mr. Merciel
6 back on the stand, are there any questions or matters
7 that need to be brought up?

8 MR. LORAIN: Judge, Tom Loraine on behalf
9 of Dave Hancock.

10 Your Honor, I'm -- I'm at this time
11 wondering if -- if there is any set order for the
12 remaining witnesses? You know, for example, I don't
13 see Dale Johansen, and I was under the impression he
14 would be here on behalf of Staff. So what's the
15 court's preference on these remaining witnesses?

16 JUDGE WOODRUFF: I believe after
17 Mr. Merciel, we have two more witnesses for Staff and
18 then two for Hancock. I don't care what order they go
19 in.

20 MR. KRUEGER: I'm sure we agreed upon an
21 order of witnesses. I can't remember whether
22 Mr. Johansen is supposed to go first or Mr. Hummel. I
23 do recall that --

24 MR. LORAIN: I think the order of witnesses
25 was agreed on, but I don't think Johansen was -- was

0330

1 originally -- at the last hearing he was -- he was
2 substituted for some engineering issues.

3 MS. O'NEILL: No, that's not correct, your
4 Honor.

5 Mr. Johansen has been on the order of
6 witnesses. He is scheduled to go after James Merciel
7 and before Martin Hummel.

8 JUDGE WOODRUFF: That's what's on my list.

9 MR. LORAIN: That's fine.

10 JUDGE WOODRUFF: Do the parties want to --

11 MR. LORAIN: That's all I wanted to know.
12 Thank you.

13 JUDGE WOODRUFF: Okay. And there was a
14 question earlier about what exhibit would be next.
15 And the last exhibit I have is 20, so 21 will be next.

16 MR. LORAIN: Thank you.

17 JUDGE WOODRUFF: And let's go ahead and
18 bring Mr. Merciel up to the stand then.

19 And, Mr. Merciel, you were sworn back in
20 January, so you are still under oath.

21 THE WITNESS: Yes, sir.

22 JUDGE WOODRUFF: You may be seated.

23 And when we left off last time, Commissioner
24 Lumpe was asking questions, so I'll turn it over to
25 her.

0331

1 QUESTIONS (RESUMED) BY COMMISSIONER LUMPE:

2 Q. Good morning, Mr. Merciel.

3 A. Good morning, Commissioner.

4 Q. I tried to go back and look at some of the
5 questions I had asked earlier, and I may repeat some
6 of those just to refresh my memory.

7 As I understood you, you agree there is a
8 need for water in this area; is that correct?

9 A. Yes, that is correct.

10 Q. All right. And you had some concerns, I
11 think, in the transcript about a licensed operator,
12 and my understanding from going back again was that a
13 test was to be given.

14 Subsequently, do you have any information on
15 whether that operator passed that test?

16 A. Yes. The latest information I have is the
17 operator passed the test and also the owner of the
18 Company. In fact, I believe both owners of the
19 Company passed the test. And so far as I know, the
20 operator issue is really no longer an issue.

21 Q. No longer an issue.

22 Okay. And you had some concerns about
23 documented costs. Do you still have those concerns?

24 A. That might have been Jim Russo's issue.

25 Q. Mr. Russo?

0332

1 A. Yes, the accountant, our accountant.

2 Q. And those documented costs would have been
3 in relation to --

4 A. I don't remember. I think there were
5 some -- might have been an issue to the -- to the cost
6 of the well.

7 Q. Okay.

8 A. There is an issue as to an overhead charge
9 that the Company wanted to cost. That's not so much a
10 documentation issue as an issue of principle.

11 Q. All right.

12 A. There may have been some other ones, and if
13 there were, I'd have to admit I'm not aware of them at
14 this point.

15 Q. All right. Do you have any evidence that --
16 that Osage Water will not become a wholesale buyer?
17 Is that still a concern?

18 A. Yes, ma'am. It is still a concern. I don't
19 have -- I don't have any evidence that indicates they
20 will not, but I also don't have any evidence that they
21 will. There is no proposed contract. You know, they
22 just say that's what they want to do, and that's
23 really -- really all we have right now.

24 Q. So that's still a concern?

25 A. It is still a concern.

0334

1 slang term, it's kind of a shoestring operation, at
2 least at the beginning here. They pretty much need
3 all of the customers they can get to get this
4 operation going. And if there's a few customers that
5 don't want to connect, it could be critical to this
6 Company being able to get the revenue they need.

7 Q. And the Company would probably have to take
8 those customers maybe to court to observe the
9 restrictions that are on their deeds or --

10 A. That might be a possibility. I'm not sure
11 how desirable that is, but I suppose that could
12 happen.

13 Q. If the customer absolutely refused, that
14 would be a last -- plausible last resort?

15 A. It could be a possibility, yes.

16 Q. Do you think a homeowners' association is
17 preferable? Does DNR?

18 A. Traditionally, DNR's attitude has been a
19 homeowners' association is not preferable. And some
20 of the reasons are it's hard to get people to serve on
21 the directors, and when they do, they serve without
22 pay and take the complaints and phone calls, and they
23 get tired of it after a while. So sometimes
24 homeowners' associations are not run as well as they
25 probably should be.

0335

1 Q. Does our Staff have a position on a
2 preference, one way or the other?

3 A. Well, sometimes -- sometimes we do. I guess
4 our preference, if we had one, might be a little bit
5 biased because we don't have to deal with homeowners'
6 associations, whereas we do have to deal with
7 companies. The Department of Natural Resources would
8 have to deal with them either way.

9 So it would be easy for us to say, you know,
10 we don't mind if a homeowners' association goes into
11 effect because we won't have to regulate it.

12 Q. Would you look on page 8 of your testimony,
13 Mr. Merciel?

14 A. Okay. I'm there.

15 Q. Sort of -- I think it's at the top there
16 where it talks about then all of the tariff matters
17 may be able to be worked out informally.

18 What tariff matters are we talking about?

19 A. Okay. Well --

20 Q. And while you're at it, what is your
21 objection to a flat rate?

22 A. Okay. Well, I don't really have an
23 objection to a flat rate, but I have an objection to
24 the one that the Company proposed because what they
25 proposed is equal to a -- a metered rate for the

0336

1 average amount of water. And the reason I have a
2 problem with that is it costs less to provide service
3 on a flat rate than it does a metered rate.

4 You don't have to replace meters. You don't
5 have to read meters by sending the meter reader out
6 there. You don't -- you don't have -- well, your
7 billing problems are reduced, you know, like misreads
8 or -- or maybe computer error, math error. You don't
9 have those kinds of problems if you have a flat rate.
10 So I contend that a flat rate should be a lower cost
11 than a -- than a metered rate.

12 Q. And your objection is that -- how did they
13 determine a meter rate if they don't have meters?

14 A. Well, you wouldn't. If you have meters,
15 then you would use a metered rate.

16 Q. Okay.

17 A. And, normally -- normally, all customers
18 would have a metered rate. The only reason you would
19 even want to have a flat rate in my opinion is if the
20 Company takes over an existing system where you have a
21 lot of customers out there without meters. And even
22 then it's desirable to go in and install meters on
23 those customers, but sometimes that's just not
24 practical or it might take you some period of time,
25 like a year, to get all of the meters installed. And

0337

1 so that might be practical just to use a flat rate
2 until that gets worked out. Sometimes there isn't
3 even a good place to put meters in.

4 Q. Your objection, then, is to the amount of
5 the flat rate, not --

6 A. Yes.

7 Q. -- not to having a flat rate?

8 A. Yes. The amount -- and if I may add
9 something else to my answer, I would also like part of
10 this rate to encourage the Company to install flat
11 rates. In other words, I don't want this company to
12 go in and allow a developer to put a project in and
13 not put meters in. Oh, we have flat rates, and that
14 will give me the same amount of revenue.

15 So I want this company to be encouraged to
16 install meters.

17 Q. So you do prefer meters to a flat rate?

18 A. Yes, I do.

19 Q. Okay. That's what I was trying to --

20 A. Yeah.

21 Q. And in that sense, that's the tariff issue
22 that --

23 A. Well, on the flat rate portion on sheet 8, I
24 think that's the bullet No. 1 where I'm talking about
25 a flat rate there. That's the issue on that one.

0338

1 Q. Right.

2 A. There are some other tariff issues, but
3 as -- and I'm afraid I don't see the wording that's
4 referred to, but I recognize it. I know it's in here
5 somewhere to where I said we could work out most of
6 the tariff issues informally. Some of the language --
7 this company is a little bit unique in serving
8 condominiums. You know, most of our small companies
9 serve in subdivisions where you have residential
10 houses, and this one has condominiums. And, you know,
11 the service line rules we have to -- we're finding we
12 have to treat a little bit differently.

13 It might have a service line going into the
14 condominium unit or the condominium building and then
15 each unit has a meter inside. And that's a little --
16 little different than the typical small company.

17 Q. In this -- in this development there will be
18 condominiums, or are there just houses?

19 A. Okay. Well, let me back up on that too.

20 In this development, there are houses.

21 Q. I thought that was the case. I was
22 concerned -- wondering what the condominium issue was.

23 A. Well, the reason I was pushing for that
24 issue is this company could easily be serving
25 condominiums. For one thing, it's related to Osage

0339

1 Water Company, and Osage Water Company does serve a
2 lot of condominiums. And my thinking is that if
3 Environmental Utilities, if they all of a sudden have
4 some condominium customers by a certificated
5 expansions or an acquisition or, for that matter, if
6 they do get built in their service area, I would like
7 to see the rules in place. And since we're writing
8 the tariff, I think we ought to go ahead and take care
9 of that.

10 Q. But at this point, the subdivision that's
11 suggested and -- are all houses. Right?

12 A. Yes. That's what's proposed at this point
13 in time.

14 Q. So you're looking down the road to potential
15 expansion and whatnot; is that right?

16 A. Yes, I am.

17 Q. Okay. On the issue of meters again, do all
18 of the small companies have meters, or are you
19 encouraging all small companies to do meters?

20 A. We do encourage them all. Not all companies
21 have meters. There are a few that -- that have
22 strictly flat rates, and -- oh, there's -- there's
23 reasons for worrying about it and reasons not to worry
24 about it. They have plenty of water and there are no
25 problems with flat rates, and sometimes we don't push

0340

1 it.

2 Sometimes there are issues with part-time
3 customers versus full-time customers. Part-time
4 customers, obviously, are not at their residences as
5 much as full-time. Maybe they are seasonal, and the
6 question, is, Well, how much less should they pay than
7 full-time customers, so that gets a little bit more
8 difficult to handle.

9 Q. I think on page 10, the last sort of tariff
10 sheet, I guess, that you were talking about, it's
11 issue 12, it looks like, sheet 32. Do you see that
12 there on page 10?

13 A. Yes. Yes, I see that.

14 Q. Are small water companies or any water
15 companies required to provide fire protection?

16 A. It's my understanding from our regulations
17 and talking to lawyers, nobody is required at least on
18 the state level to provide fire protection. That's
19 usually more of a -- might be a fire district, you
20 know, local requirement, or if that's what the
21 customers want. You know, if the customers want fire
22 protection, then the Company can provide it, provided
23 they can construct and have the facilities available
24 to do it.

25 Q. Are you suggesting this company should

0341

1 provide fire protection?

2 A. Let's see. I have to remember what we did
3 here.

4 I think I -- I believe this company
5 proposed -- I can't remember now if it was a -- I
6 think -- if I recall, what they proposed in the tariff
7 was that if somebody requests fire protection that
8 that customer pay the entire cost to upgrade the water
9 system. That could be a larger tank, upgrading the
10 size of the water mains, and I don't really have a
11 problem with that, except if one customer pays for all
12 of that, you could have another customer coming on and
13 wanting fire protection, and they don't have to do any
14 upgrades because it's already there. So you get one
15 customer that gets to pay for everything and other
16 customers get the benefit of it.

17 Q. Would it be appropriate to wait until
18 someone does ask for that until we address that tariff
19 issue, or should that tariff issue be addressed now?

20 A. Well, if we -- if we waited until somebody
21 requests it, then the Company might have to come back
22 here to get a rule change or get a rate, and you might
23 have a customer sitting out there wanting to maybe
24 build a commercial building, let's say, where their
25 insurance requires fire protection and they may not be

0342

1 able to get appropriate water service. It could hold
2 up, you know, somebody going into business or
3 occupying some premises. I suppose that could happen.

4 Q. Are there any commercial proposed in this
5 subdivision?

6 A. Well, there again, there aren't right now.
7 I think I've heard some word about a bed and
8 breakfast. I don't know if they require fire
9 protection or not. But, of course, it was -- it's not
10 my propos-- it's not my proposal to have fire
11 protection language in the tariff. That was the
12 Company's proposal. And I do have that problem that
13 it could be inequitable.

14 Q. So we could --

15 A. It's --

16 Q. It could be eliminated?

17 A. In my opinion, based on what's proposed
18 initially, we probably could just eliminate it and
19 worry about it later on.

20 Q. All right. Let's see. And I may be going
21 back to Mr. Russo again here.

22 I'm looking on the transcript now, going
23 back where I think he testified that the records are
24 adequate for an audit. Would that be Mr. Russo?

25 A. Okay. That probably would have been

0343

1 Mr. Russo. I really can't testify to that.

2 Q. Do you agree with that?

3 A. I haven't reviewed accounting records.

4 Q. Okay.

5 A. I'm afraid I can't testify on that.

6 Q. So whether they are sufficient for a rate
7 base calculation, you wouldn't testify on that either?

8 A. That's correct. I would rather rely on the
9 auditor to testify on that.

10 Q. The issue of the 10 percent, you would not
11 testify on that either?

12 A. Well, that's really Mr. Russo's issue, but I
13 have an opinion on it. To my knowledge we don't go
14 through with any other regulated utility, and
15 overheads are usually the actual cost.

16 If the Company -- it's intended to cover --
17 you might hire a contractor, but the Company people
18 still need to manage it and, you know, deal with the
19 contractor and write checks. I don't -- I'm not
20 doubting that there are overheads, but, normally,
21 the -- you know, there's allocations of time, and the
22 actual expenses would be capitalized.

23 Q. So if they were to document those as opposed
24 to a flat 10 percent, that could be considered as
25 opposed --

0344

1 A. Yes.

2 Q. Is that right?

3 A. Yes. That's a more appropriate way to do
4 it.

5 Q. Okay. So if there was documentation?

6 A. Yes.

7 Q. Okay. The well. There was some testimony
8 there that's suggesting that -- and I think it was
9 maybe Commissioner Murray talking with you about
10 giving the well to Osage Water. Do you recall that?
11 That might be in the transcript.

12 A. Okay.

13 Q. Let me look.

14 A. Yeah. I'm afraid I don't remember that
15 specifically.

16 We -- we might have been -- there could have
17 been some questioning by Mr. Loraine regarding the
18 well. At one time it was proposed that Osage Water
19 Company would be the provider in the subdivision
20 rather than Environmental Utilities. That might be
21 what you're referring to, but I'm not really sure.

22 Q. Let me see if I can find it.

23 Okay. Well, I don't seem to be able to find
24 it.

25 Okay. It's on page 309, and it's line 17.

0345

1 "And wouldn't it make more sense for Osage
2 Water Company to provide the service in this area as
3 well?"

4 And the answer, I believe, you gave was,
5 "That would be correct. It would make sense in my
6 opinion."

7 Do you see that?

8 A. Yes, I do see it.

9 Q. Okay. Are you still of that position,
10 Mr. Merciel?

11 A. Well --

12 Q. Let me preface that I'm somewhat puzzled by
13 that, because did not Staff oppose the various
14 certificates that the Commission gave to this company
15 practically since 1997 actually, and then to suggest
16 that they should then give the well to this -- the
17 Company that Staff has opposed all of our certificates
18 for just puzzles me.

19 A. Okay. Well, on that issue, yes, the Staff
20 did oppose -- let me think. We had a sewer
21 certificate for I guess it was Golden Glade and Eagle
22 Woods which we opposed, but was granted. And there
23 was a water certificate for Eagle Woods that was
24 granted to Osage Water Company which we opposed, but
25 it was granted.

0346

1 So, I mean, even though it was opposed, in
2 fact, the certificate was granted, so, you know, the
3 Staff will accept that, and we'll move forward from
4 there.

5 In getting to this question, would it --
6 would it make sense -- the question was make more
7 sense for Osage Water Company to provide the service?
8 I would certainly agree it would make sense for Osage
9 Water Company to provide the service if Osage had
10 filed for that area.

11 I guess what I'm saying is, it's kind of a
12 management decision whether it's Osage or a different
13 company. Given that Osage already had a certificate
14 in Eagle Woods, Eagle Woods was relying on the Golden
15 Glade well to get its service. I think at this point
16 it makes sense for either Osage to get the certificate
17 for Golden Glade or another company that can work with
18 Osage for wholesale service.

19 I think where we're getting at here is
20 that -- is it simpler to have the same company do it
21 instead of have wholesale service? Yes, it is
22 simpler. I think that's -- I think that's what we're
23 saying here. I hope my answer makes sense. I rambled
24 on there a little bit.

25 Q. Well, it just puzzles me that while Staff

0347

1 disapproved of our certificates, then all of a sudden
2 to say, well, we should give this well to a company
3 who Staff disapproves of.

4 A. Yeah. Well --

5 Q. And that puzzled me and somewhat confused me
6 also.

7 And, secondly, what power would we have to
8 order someone to give a well to another company?

9 A. Well, that's a good point there. Back to
10 your first point, I think I mentioned this, but once
11 Osage was granted the certificate for Eagle Woods,
12 we -- I think Staff needs to take that into
13 consideration.

14 We're just not unilaterally rejecting
15 everything this company wants to do. We're trying to
16 look at it on a reasonable basis. And given that
17 certificate is there, then I think we need to deal
18 with that.

19 However, we do still have the concerns as
20 expressed in this case over some of the current
21 matters with Environmental Utilities.

22 Q. Would you say that again?

23 A. We still -- still do have the concerns that
24 we've already expressed with Environmental Utilities,
25 so it's -- we're not -- how should I say it? We're

0348

1 not opposing Environmental Utilities just because
2 we've been opposing things that Osage Water Company
3 wanted to do. We have our reasons for expressing our
4 concerns.

5 But if those concerns are met, I think it is
6 important that Osage Water Company in its Eagle Woods
7 service area, that company needs a source of supply
8 and they don't have one right now.

9 Q. And did you -- I think, also, it's in the
10 transcript, if you remember, that the owner of
11 Environmental Utilities said they would stipulate that
12 they would meet your conditions?

13 A. I believe they --

14 Q. Do you recall that?

15 A. I don't specifically recall it. They may
16 well have said that. And they have been saying that
17 informally to the Staff.

18 Q. So if they were to meet your conditions,
19 what further concerns would you have?

20 A. Well, I think if our conditions are met, we
21 would recommend a certificate.

22 Q. Okay. There are two items, and maybe you
23 can speak to them. One is, we have offered management
24 assistance to new companies coming on as well as to
25 some of our more troubled companies.

0349

1 Have we offered that assistance to this new
2 company?

3 A. I don't know that this company is
4 participating in the program that's been started.

5 Q. My understanding is that all new companies,
6 we would be -- this management assistance would be
7 available to them --

8 A. Okay. Yeah.

9 Q. -- or actually almost maybe required.

10 A. Yeah. As far as the program, I don't know
11 that we've necessarily taken any action. We do --
12 probably the auditors have worked with this company in
13 the context of Osage Water Company rate cases.

14 Informally, we do have a speaking
15 relationship with this company. Personally, I
16 converse with them regularly. I call them or they
17 might call me about various issues that are going on,
18 and I certainly don't have any problem with providing
19 any assistance that we can do. My answer is we are
20 doing that.

21 Q. And the Memorandum of Understanding with
22 DNR, we're following -- since this is a new company,
23 again, we're following those procedures that we had
24 put in our Memorandum; is that correct?

25 A. Yes. Yes, we are. Yes. We converse with

0350

1 the Department of Natural Resources, both the Regional
2 Office and the Drinking Water Program.

3 Q. All right. And there was some concern that
4 they were providing water without charging, but that
5 they did not have a permit to dispense from DNR. Is
6 that still the case?

7 A. The permit. I'm going to defer to Martin
8 Hummel on the permit.

9 Q. Mr. Hummel will know that?

10 A. Yes. He's going to testify. And he's been
11 really following the permit a little closer than I
12 have, so I better not say any more about that.

13 COMMISSIONER LUMPE: All right. I think,
14 Mr. Merciel, that's all I have. Thank you.

15 THE WITNESS: You're welcome.

16 JUDGE WOODRUFF: Commissioner Forbis, do you
17 have any questions for Mr. Merciel?

18 COMMISSIONER FORBIS: I'm trying to think.
19 I came in a little bit late.

20 QUESTIONS BY COMMISSIONER FORBIS:

21 Q. Good morning. How are you doing?

22 A. Good morning, Commissioner. I'm doing fine.

23 Q. Good. It's a Monday morning.

24 A. Yes.

25 Q. I came in a little late, so hopefully I'm

0351

1 not going to ask the same question twice.

2 A. That's fine.

3 Q. You're -- in your testimony you mentioned
4 the waiver process and that there were customers, I
5 think, of -- was it Osage Water -- well, they either
6 can get waivers and continue to maintain their own
7 well and not hook into one of the central water
8 systems?

9 A. Okay. There is really not a waiver to do
10 that. I think what I was saying is, if customers are
11 getting water from a well that's sitting out here
12 maybe on their property, they may choose to continue
13 to do so if they can. It's not really a waiver. They
14 might just do it instead of looking up to the central
15 system.

16 Q. Okay. And if that happens and not enough
17 customers move over, then there would be a problem for
18 EU?

19 A. Yes. In my opinion there could be a revenue
20 deficiency if they don't get the customers that are
21 being proposed here.

22 Q. Do we have any sense that that could happen?

23 A. Well, my answer is, I think it could happen.
24 The Company's position is that all of the customers
25 are willing to connect, and, you know, they're telling

0352

1 us that it's not going to be a problem, and maybe it
2 won't. I simply don't know. But since I don't know,
3 I just express that as a concern.

4 Q. Okay. I had one other question, too.

5 There's some other testimony about Osage
6 Water and other witnesses are going to be testifying
7 about the -- the difficulty that the Company will have
8 maintaining solvency because of loss of customers to
9 the City and the debt load, and that if Osage Water
10 does not retain viability, that will be a real problem
11 for Environmental Utilities.

12 A. Well, it -- it -- I guess it could but not
13 necessarily. If Environmental Utilities can stand
14 with the customers it has and -- it really has two
15 relationships with Osage Water Company. One would be
16 if it has a wholesale arrangement, assuming Osage
17 Water Company is able to pay its -- pay its water bill
18 on the wholesale arrangement. The other one is shared
19 resources, like the Company's office, the employee,
20 vehicles, things like that, that was all located
21 between Osage and this proposed company.

22 So my answer is if Osage Water Company,
23 whatever, goes out of business or something like that
24 happens, then it -- I think it could impact
25 Environmental Utilities. It's hard to predict how

0353

1 that might happen, but it could.

2 COMMISSIONER FORBIS: Okay. Thank you.

3 THE WITNESS: Yep.

4 JUDGE WOODRUFF: Commissioner Simmons, do

5 you have any questions for this witness?

6 COMMISSIONER SIMMONS: I do.

7 QUESTIONS BY COMMISSIONER SIMMONS:

8 Q. Good morning, sir.

9 A. Good morning, Commissioner.

10 Q. I'm going to just follow up on a quick line
11 of questioning that Commissioner Lumpe had in terms of
12 DNR MOU.

13 A. Uh-huh.

14 Q. I think you made reference to that.

15 In this particular case, could you brief me
16 or give me an example on how that DNR MOU came into
17 play? In other words, where does DNR come into play
18 in terms of their interaction with our Staff, and how
19 is that process a part of this case?

20 A. Okay. I might also point out this case was
21 filed before the current MOU was -- was signed between
22 us and DNR. There was a previous one which had
23 expired, so I guess we could refer -- refer to it.

24 But, basically, Department of Natural
25 Resources approves the technical aspects of the water

0354

1 system and that includes technical -- through
2 Environmental Protection Agency regulations. There is
3 technical, managerial, and financial capacity that new
4 water systems are required to have.

5 And those regulations are -- are now --
6 they're new regulations that the Department of Natural
7 Resources has that somewhat overlaps with what we want
8 to do with our certificate cases. And the generic
9 term, I guess, is viability. You know, we want to --
10 we want our regulated companies to be viable.

11 So -- so we basically work with Department
12 of Natural Resources. They send us listings of their
13 permit applications so we can see, Well, there is
14 somebody out here that maybe should be regulated. We
15 might follow up on that.

16 And we send them copies of certificate cases
17 that are filed here so they can see, Well, okay, if
18 this company filed, then -- then at least they are
19 aware of it, and if there is some problem with
20 complying with DNR regulations, we can communicate
21 with each other.

22 Q. So in this case you've got an overlapping of
23 the past MOU versus the present MOU. And is there any
24 noticeable difference there in terms of --

25 A. The real difference has to do with -- with

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1 the newer regulations, the technical, managerial, and
2 financial. Before it was -- well, basically, just
3 sharing information. You know, we had -- we had
4 exchanged the list, the Commission's orders, and they
5 sent us construction permits. It was basically a
6 mechanism to make sure we were talking to each other.

7 Q. Okay.

8 A. And it's gotten a little more detailed with
9 the new regulations.

10 COMMISSIONER SIMMONS: That's the only
11 questions I have. Thank you, sir.

12 THE WITNESS: You're welcome.

13 COMMISSIONER SIMMONS: Thank you, Judge.

14 JUDGE WOODRUFF: Let's go to recross, and
15 we'll begin with Public Counsel.

16 MS. O'NEILL: Thank you.

17 Your Honor, is this bench supposed -- is
18 this supposed to be here?

19 JUDGE WOODRUFF: Yes, it is.

20 MS. O'NEILL: Okay.

21 JUDGE WOODRUFF: The idea is that you will
22 be on camera this way.

23 MS. O'NEILL: Okay. Just -- it was a
24 different arrangement when I walked in this morning.

25 JUDGE WOODRUFF: Yes.

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1 RECROSS-EXAMINATION BY MS. O'NEILL:

2 Q. Okay. Mr. Merciel, you -- you testified in
3 response to some of Commissioner Lumpe's questions
4 that you're not aware of whether or not there is
5 actually a contract to provide wholesale water between
6 Osage and Environmental Utilities; is that right?

7 A. That's correct. I've never seen a proposed
8 contract.

9 Q. You haven't even seen a proposed contract?

10 A. No, I have not.

11 Q. Okay. As part of the analysis of whether or
12 not Environmental Utilities meets the conditions for
13 the granting of a certificate, is financial ability
14 one of those criteria?

15 A. Is it? Yes, it is.

16 Q. And would that contract have an effect on an
17 assessment of financial ability by the Staff?

18 A. It would in my opinion because it's proposed
19 to serve customers in Eagle Woods, and without such a
20 contract, those customers would not be served by
21 Environmental Utilities, and -- and that would be
22 quite a -- quite a revenue impact.

23 Q. Okay. Now, you also asked -- answered some
24 questions regarding Staff's position regarding
25 homeowners' associations versus regulated utility

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1 companies and -- do you recall that?

2 A. Yes, I do.

3 Q. In -- with this particular subdivision, with
4 Golden Glade, isn't it true that the same people will
5 control the water system whether it's a regulated
6 utility or a homeowners' association?

7 A. That is my understanding based on -- based
8 on what we've looked at in this case.

9 Q. And that was what was Exhibit 13 that we
10 admitted the last time?

11 A. Okay. I don't remember the exhibit number,
12 but I do remember there was some work on that, so
13 that's probably right.

14 Q. You remember there was an exhibit --

15 A. Yes.

16 Q. -- that was Golden Glade property owners?

17 A. Yes, I do.

18 Q. And you had indicated that DNR doesn't like
19 homeowners' associations as well because sometimes
20 they don't comply with record-keeping and that sort of
21 thing as well as they should?

22 A. Generally, that's true, based on my
23 interactions with Department of Natural Resources,
24 yes.

25 Q. And this Commission has some record-keeping

0358

1 requirements that it imposes on its regulated
2 companies; is that correct?

3 A. Yes.

4 Q. And are those -- are those record-keeping
5 requirements generally beneficial to the customers of
6 a utility?

7 A. Yes.

8 Q. And if there were to be a certificate
9 granted, I think you've already testified you would
10 want conditions on that.

11 Would there be specific financial
12 record-keeping conditions that you believe the
13 Commission should impose if there was a certificate in
14 this case?

15 A. Well, on -- actually, the conditions that
16 we're talking about so far today were conditions that
17 I think need to be met in order for a certificate to
18 be granted. However, you are correct. If a
19 certificate is granted, there are things this company
20 should do.

21 I would rather just testify generally as far
22 as financially. They need to follow the Uniform
23 System of Accounts.

24 Q. Okay.

25 A. If there were specific matters, I would

0359

1 rather the auditor provide testimony on those matters.
2 Q. Okay. You had some discussion with
3 Commissioner Lumpe regarding tariff issues if a
4 certificate was granted in this case and talking about
5 whether those matters could be handled informally.

6 Do you recall that?

7 A. Yes, I do.

8 Q. And one of the concerns that you expressed
9 specifically with this 10 percent contractor charge
10 was lack of documentation; is that correct?

11 A. Well, again, that's more an auditor's
12 question. But, in principle, to my knowledge,
13 regulated utilities don't have just some -- some flat
14 overhead. It's an allocation based on other -- other
15 expenses the company already has, management,
16 salaries, employee salaries, and that sort of thing.
17 It's not just some overhead over and above all of the
18 rest of the expenses the company has.

19 Q. And if rates for -- if rates were agreed
20 upon or determined in some fashion in a review process
21 after a certificate was granted for this company, the
22 Commission would have the ability to review and
23 require -- review the expenses and expenditures that
24 the Company is seeking recovery for; is that right?

25 A. That would be correct.

0360

1 Q. And the Commission Staff would require
2 proper documentation of those expenses and costs and
3 expenditures?

4 A. We would want the -- the Staff would want to
5 see that, yes.

6 Q. And the Staff has the ability to disa-- or
7 has the -- let me see if I can rephrase that.

8 The Staff could disallow some proposed items
9 if there was not sufficient documentation; is that
10 correct?

11 A. Could be expenses; could be allocations,
12 yes.

13 Q. Could you describe briefly the management
14 assistance program that the Staff has for small
15 companies?

16 A. Well, we -- there are record-keeping forms
17 that the Staff has available to companies. We can
18 work with the companies one on one as necessary to
19 keep such things as plant records, show them how to
20 keep records. That includes financial records such as
21 your plant investment, day-to-day expenses, tracking
22 vehicle logs. It might be company-owned or it could
23 be individually owned vehicles that are being
24 employment for company use, all of those kinds of
25 expenses, customer records, complaints, just keeping

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1 your customer accounts, how to keep that
2 documentation.

3 I guess the bottom line is, you need to do
4 that if you're going to file a rate case, and if
5 you're going to justify all of these expenses, that
6 documentation needs to be there. And, basically,
7 we're wanting to work with the companies and make sure
8 they know what they're doing and keep on top of their
9 business. We see companies that they will get a
10 certificate and then operate for 20 years and then
11 come in for a 300 percent increase, and it's nice to
12 avoid that.

13 Q. In the situation with Environmental
14 Utilities, Debra Williams is -- has testified that she
15 will be primarily responsible for the management of
16 this utility; is that correct?

17 A. That's my understanding, yes.

18 Q. And given Ms. Williams' admitted lack of
19 familiarity with some of these procedures, would you
20 recommend that she participate in this management
21 assistance program if a certificate is granted in this
22 case?

23 A. Yes. I -- I think education is good.

24 Q. One of the things that you just testified to
25 was included in that program regards proper allocation

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1 of different items; is that correct?

2 A. Yes.

3 Q. And in the case of Environmental Utilities,
4 because there is another company, Osage Water Company,
5 that we've also talked about that is -- that has some
6 affiliation with the -- between the ownership and also
7 as regarding some shared resources, would allocation
8 issues be very important for Environmental Utilities
9 to keep track of and keep records on?

10 A. Yes, in my opinion it would be very
11 important.

12 Q. Are there conditions that you believe would
13 be important if a certificate was granted in this case
14 regarding accounting for how different resources are
15 allocated between those companies and then perhaps
16 between any other unregulated business interests that
17 Mr. and Mrs. Williams have?

18 A. Yes. Some of them I mentioned when we
19 started talking about the assistance program, office
20 expenses, telephone, or perhaps there is a separate
21 telephone line for the company, but if there isn't,
22 you know, there is a shared office, shared vehicles,
23 shared employees, shared management, other equipment
24 such as backhoes and bobcats, that sort of thing. I
25 might be forgetting one or two.

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1 Q. Okay. We've heard some testimony about the
2 kind of volatile business situation that Osage Water
3 Company has been in the past year anyway.

4 A. Yes.

5 Q. And are there any concerns that that gives
6 you regarding Environmental Utilities and its
7 financial ability or its viability as a regulated
8 company if they got a certificate?

9 A. Well, I think I would be answering your
10 question to say that the way Osage Water Company
11 operates, I would envision the same -- that
12 Environmental Utilities would be operating the same
13 way because it's generally the same people involved.

14 I know there has been some changes in Osage
15 Water Company. The Company has been stressing that,
16 and there is some truth to it, but it's still -- there
17 is still a lot of the -- a lot of same thing. And I
18 would expect that whatever Osage Water Company is
19 capable of doing, I would expect to see the same thing
20 out of Environmental Utilities.

21 Q. And do you think that despite whatever
22 conditions the Commission might be able to impose in
23 this proceeding that the risk is still there for
24 Environmental Utilities to operate and accumulate the
25 same problems Osage Water has had?

0364

1 A. Well, the honest answer is, I think with any
2 company there is always that risk. There is a risk
3 with any business. And so, yeah, the risk is
4 absolutely there.

5 Maybe -- maybe if -- whether there is a
6 greater risk or not with this company as opposed to
7 other utilities, perhaps there is. That's why I have
8 a concern about this company being able to gain the
9 customers that it's proposing. It's -- it's -- well,
10 I used the term shoestring before. If they get all of
11 the customers that they are proposing, it's still kind
12 of a tight situation.

13 Q. If the Company management does participate
14 in the management training and assistance program, do
15 you think that would help alleviate some of those
16 problems or address some of those issues?

17 A. It would help. Frankly, I think some of
18 the -- some of the issues might be also getting into
19 customer relations and business relations with
20 developers. And I'm not sure our program really gets
21 into that, so that's the -- the truth is, that's part
22 of it too.

23 Q. Okay. Now, if this Commission doesn't grant
24 a certificate, would Environmental Utilities be able
25 to take advantage of the Staff's customer or

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1 management assistance programs?

2 A. I suppose formally, the program, it would
3 not since it wouldn't be a regulated company.
4 Informally, I answer my telephone. Anybody that's got
5 a question, I'm willing to talk to them, and I talk to
6 people from cities and, you know, people asking
7 questions all of the time. So I don't mind talking on
8 the telephone to somebody, and that would be true of
9 other people on the Staff too.

10 Q. Okay. But as far as being -- any kind of
11 hammer or anything hanging over the Company's
12 collective heads, there -- you wouldn't have the same
13 kind of enforcement power if they weren't a regulated
14 utility?

15 A. If it's not regulated, that would be true.

16 MS. O'NEILL: I don't have anything further.

17 Thank you.

18 JUDGE WOODRUFF: Okay. And for Hancock.

19 MR. LORAIN: May it please the court and
20 the Commission, please?

21 JUDGE WOODRUFF: Go head.

22 RE-CROSS-EXAMINATION BY MR. LORAIN:

23 Q. Good morning, sir.

24 A. Good morning, Mr. Lorain.

25 Q. Mr. Merciel, several questions. I'd like to

0366

1 take the last one that was addressed by Public Counsel
2 for a moment because I think it highlights a lot of --
3 lot of issues.

4 The question was -- is if this EU,
5 Environmental Utilities, was not granted a
6 certificate, would they, "they" management, get -- or
7 be able to glean the information of how to run a
8 company from you or from this program operated by your
9 agency.

10 Did you understand that to be generally the
11 question?

12 A. Yes. Yes, it was.

13 Q. And my question to you is, haven't these
14 same people been available -- hasn't all of that
15 information been available to these same people
16 through OWC for many years?

17 A. It has, yes, sir.

18 Q. So granting another certificate to the same
19 people isn't going to help them learn any more than --
20 than they learned before with OWC; isn't that true?

21 A. Well, as I testified before, to a great
22 extent, this company is an extension of OWC. I would
23 have to agree with you.

24 Q. And wouldn't you also agree that EU is being
25 managed and -- primarily by Debra Williams, according

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1 to her testimony? Isn't that what she said?

2 A. That is what she said, yes.

3 Q. And isn't it also true that OWC -- didn't
4 she also testify that she's primarily managing that
5 company?

6 A. I believe she testified to that. She
7 stepped in at a fairly recent time.

8 Q. Last July, I think it was, or something,
9 wasn't it?

10 A. Probably about right.

11 Q. Okay. So, I mean, as far as granting EU
12 something to educate the management, I mean, that
13 seems futile, if, in fact, the same people have
14 been -- that same program has been available to them
15 through OWC. Wouldn't you agree with that?

16 A. Well, yes, generally, I would agree.

17 Q. All right. And if we could, now, I would
18 like to go back to several other things.

19 It goes back to Commissioner Lumpe's
20 questions about -- about the -- some of the opposition
21 that Staff has had in the past to -- I believe she
22 couched it in terms of opposition from Staff to
23 granting certificates for OWC.

24 Isn't all of the same logic applicable to
25 that question also?

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1 A. To an extent, it is, yes.

2 Q. In other words -- in other words, if you had
3 some problems from OWC from Staff, to the extent that
4 the people remain the same, you're still going to have
5 the same problem with Environmental Utilities?

6 A. That -- that would be true. I don't think
7 it's quite that simple. I think there are some other
8 factors.

9 Q. Well, Mr. Mitchell is gone?

10 A. That's one. There are some -- there are
11 some changes. Some things are the same and some
12 things are different. And as I said, there is a
13 relationship here where Osage Water Company is
14 depending on this source of supply. That's been the
15 plan, you know, for a long time. And in my opinion,
16 that's a factor.

17 Q. And wouldn't we also say -- I mean, we
18 criticize Mr. Williams quite a bit here, I guess, but
19 we -- in the old days when we were talking about OWC,
20 Mr. Williams (sic) was the bright star that -- he was
21 the guy that had the laboratory analysis and had the
22 engineering skills, and he was a plus and an asset to
23 OWC in the past; isn't that true?

24 A. Probably true on the technical side, yes.

25 Q. Yes.

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1 A. On the technical side.

2 Q. Yeah. So, if anything, EU would be weaker
3 now on the technical side than OWC was with
4 Mr. Mitchell's absence in the new company, EU?

5 A. Well, I don't know that I would say that.
6 They are still a licensed operator and consultants are
7 available.

8 Q. So in other words they are going to have to
9 go out and purchase that?

10 A. It's a little bit different.

11 Q. They will have to go out and purchase that
12 kind of knowledge now?

13 A. Well, yes. I mean, there's a cost either
14 way, you know, whether it's a Company employee or
15 Company owner. I mean, it was -- it was an expense in
16 rates too before. That's really what I'm saying.
17 There is an expense. It may be handled differently.

18 Q. And that expense in rates would have been
19 whatever -- whatever the stockholders or equity
20 holders would have taken home out of OWC is what you
21 make reference to?

22 A. No. I'm really making reference to lab
23 expenses --

24 Q. Oh.

25 A. -- and the operators that are working for

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1 Mr. Mitchell's business.

2 Q. Right. And Mr. Mitchell had -- had access
3 to a number of employees as opposed to the new company
4 going out and hiring one helper or two helpers? I
5 mean, he had a whole company, a water analysis
6 company, didn't he?

7 A. He did. I think a number of employees was
8 kind of variable over different periods of time.

9 Q. Right.

10 A. But, yes, there were generally one or more
11 available.

12 Q. So other than -- now, if I could continue
13 this thought, is there any question in your mind that
14 OWC owns that Golden Glade well? Is there any
15 question in your mind about that?

16 A. Now, wait a minute. OWC, it's my
17 understanding, does not own the Golden Glade well.

18 Q. Who do you think owns it?

19 A. What's been testified to is that Greg and
20 Debbie Williams own the well, but it's proposed to
21 become property of Environmental Utilities.

22 Q. Do you have any knowledge about the prior
23 testimony that was -- that was given in past cases
24 whereas OWC would be the owner of that same well?

25 A. When Osage Water Company applied for the

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1 certificate for Eagle Woods, it was proposed that at
2 some point in the future -- back then it was proposed
3 that at some day Osage Water Company would expand into
4 Golden Glade and own that system and be the owner of
5 the well. That was what was proposed originally.

6 Q. And in fact --

7 A. That has not happened, of course.

8 Q. -- certificates were granted in other cases
9 with that supposition going to happen; isn't that
10 true?

11 A. I would say yes on that. Yes.

12 Q. So in other words this Commission relied on
13 the fact that those representations were made by
14 Mr. Mitchell in past testimony in granting other --
15 other applications, and that's what -- that's what you
16 mean by, yes, that's true?

17 A. Yes. It's one application. It was one for
18 Eagle Woods.

19 Q. Right.

20 A. There's really only been the one.

21 Q. And Eagle -- in fact, there was --
22 Commissioner Murray had -- had made some comments
23 about OWC not being very good in their record-keeping,
24 et cetera and so forth, during that case, didn't she?

25 A. I believe she did, yes.

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1 Q. So the fact of the matter is -- is this
2 record-keeping inability of OWC may have been
3 inherited by Environmental Utilities. Would you agree
4 with that?

5 A. To an extent, I would.

6 Q. And, in fact, have you seen the 1999 OWC
7 audit that -- pardon me -- annual report that has
8 come?

9 A. I've not reviewed it. No, I haven't.

10 Q. Okay. That was, I believe, the question I'd
11 asked you many months ago and that was deferred to
12 Mr. Johansen?

13 A. I believe so. You were asking some
14 accounting questions.

15 Q. It was on NARUC and --

16 A. Yes.

17 Q. Is that a correct statement that that's
18 where we were going?

19 A. I believe it was, yes.

20 Q. Okay. The question was asked by one of the
21 Commissioners, and I believe it was Commissioner Lumpe
22 here today, What are the -- what are the local
23 residents -- I mean, how do we know how they feel? I
24 mean, will they join in on this new project, et cetera
25 and so forth? I think that was roughly the paraphrase

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1 that I understand her to ask.

2 Do you remember a question of that nature?

3 A. Yes, I do.

4 Q. You haven't had -- there has not been a
5 public hearing out there in that regard, has there?

6 A. I don't believe so.

7 Q. In fact -- in fact, there was some
8 question -- some suggestion that a public hearing
9 should be held in this very case; isn't that true?

10 A. In the context of this case, yes.

11 Q. Yeah. And it was never held, was it?

12 A. Not in the context of this case.

13 Q. So in other words --

14 A. I believe there was on Eagle Woods back --
15 back whenever, a few years ago.

16 Q. And I'll digress back to that.

17 In fact, there were very unhappy people at
18 the Eagle Woods hearing, weren't there?

19 A. I think I recall that some did have some
20 concerns.

21 Q. So it would be fair to say we don't know
22 today, this Commission doesn't know and the Staff
23 really doesn't know, what the position of the people
24 as far as service and whether they will -- they will
25 hook up or be happy with Environmental Utilities. We

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1 can't really make a statement to that effect, can we,
2 personally?

3 A. Probably not positively make a statement.

4 Q. We would have to rely on what Greg and
5 Debbie Williams have told us in that regard, wouldn't
6 we?

7 A. Or other informal comments which there
8 hasn't been much.

9 Q. Hasn't been much?

10 A. Right.

11 Q. Now, there has been some question about the
12 record-keeping requirements, and I believe -- I
13 believe some issue was made on -- I believe the quote
14 was, Record-keeping requirements of the PSC is
15 beneficial to customers of the utility company. That
16 was -- I think Public Counsel quoted that to you,
17 didn't she?

18 A. Yes.

19 Q. And you would agree with that, wouldn't you?

20 A. Yes, I would, because good records makes for
21 a -- well, a healthy company, and I think they can
22 provide good, efficient service by keeping good --
23 well, keeping good records helps provide good,
24 efficient service.

25 Q. In fact, good records -- wouldn't it be true

0375

1 that good records really is the whole basis and the
2 reason for this Commission? I mean, because don't you
3 need records before you can really ever give fair
4 rates?

5 A. Well, in my opinion, it's -- it's necessary,
6 yes. That probably can extend to any other business
7 too.

8 Q. Yeah.

9 A. But certainly for regulatory purposes,
10 it's -- you know, I can tell you it's pretty hard for
11 us to do our jobs with companies that don't have good
12 records. You have to make a lot of guesses and
13 probably leave things out that the Company ought to be
14 collecting, but they can't document it.

15 Q. And, in fact, that makes -- that makes
16 Staff's job and it makes this Commission's job much,
17 much harder?

18 A. It does.

19 Q. And you would admit that OWC and
20 Mr. Williams' involvement has been just well-known
21 throughout the history of that company, hasn't it?
22 You know about his --

23 A. I would ask what you mean by that?

24 Q. Well, hasn't he been involved in OWC for
25 many, many years?

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1 A. Okay. You're talking about both
2 Mr. Mitchell and Mr. Williams?

3 Q. Mr. Williams I'm talking about right now.

4 A. Okay. Yes, he has.

5 Q. And Mr. Williams had a partner, a couple of
6 them originally, but Mr. Hancock was one of them and I
7 think Mr. Mitchell's father was a member of
8 Mr. Mitchell's company before Mr. Williams was
9 involved, so, I mean, we go back in history.

10 A. Yeah. Mr. Mitchell's father actually
11 started the company.

12 Q. That's right. So my question is -- is that
13 the historical -- the one thing that remains -- the
14 one common thread that remains throughout OWC's
15 history seems to be Mr. Williams. Would you agree
16 with that?

17 A. To the extent he goes back many years, yes,
18 I would.

19 Q. '94?

20 A. Not at the very beginning but quite a'ways
21 back.

22 Q. 1994, you would agree?

23 A. Yes. Maybe a little bit before then.

24 Q. All right. And, now, the record-keeping --
25 and I know you asked me to talk to Mr. Johansen about

0377

1 the NARUC stuff, but just -- just in general terms, if
2 record-keeping is adequately done, is there a role for
3 engineers in actual auditing of plant and material,
4 physical material like that for a company?

5 A. Is there a role? Yes.

6 Q. In other words, if I'm as -- if I'm as an
7 accountant and I read the word "capacity," I mean, I -- I
8 might read "capacity" differently than an engineer
9 would read it. Wouldn't that be true?

10 A. Well, that might be true. But I think
11 probably the answer to your question is the engineers
12 do get involved with audits, and we certainly answer
13 questions for the accountants. In most cases,
14 inspection of the facilities, you know, to see what's
15 out there. We generally know for a lot of the
16 companies, but, you know, we do field investigations
17 too.

18 Q. And, in fact, field investigations -- I
19 can't imagine -- I can't imagine why an accountant
20 would be able to hardly learn anything from a field
21 inspection. It would really be an engineer that would
22 understand the plant, how it works, the size of the
23 plant, the physical description of the plant, the
24 location of the plant, and things of that nature?

25 A. Engineers do have that involvement, yes,

0378

1 sir.

2 Q. And that's always true?

3 A. Yes.

4 Q. Without adequate NARUC accounts, engineers
5 can't know what that plant is, where it's at, or any
6 description of it; isn't that true?

7 A. You're talking about for bookkeeping
8 purposes?

9 Q. Yes.

10 A. Well, yes. Without -- without plant
11 records, it's -- well, relating it to the company's
12 investment when you're going into the audit, if he
13 that's what you're getting at -- is that what you
14 mean?

15 Q. Yes, sir.

16 A. Yes. Yeah.

17 Q. So in other words, we couldn't have a proper
18 audit if we really didn't know what equipment and
19 where the equipment was and a description of that
20 equipment and its location and its capacity and its
21 ability to perform? We wouldn't be able to judge
22 anything? We wouldn't be able to even get to rate
23 base unless we understood all of that from an
24 engineering standpoint?

25 A. Inadequate records makes it more difficult

0379

1 to do it accurately.

2 Q. And there has been -- in this Environmental
3 Utility application, there is now a -- there is now a
4 representation by Debbie Williams in her application
5 that that well that's in question is now owned by Greg
6 and her and that they are going to donate it to
7 Environ-- or I guess -- what's that word, CIAC? Is
8 that it, or --

9 A. I don't believe it's going to be
10 contributed. I believe it's going to be a company
11 investment.

12 Q. All right. It's going to be a company
13 investment.

14 A. It will be sold to Environmental Utilities.

15 Q. And they would get back stock or something
16 of that nature for that, or a promissory note, or
17 cash, I guess?

18 A. Well, I -- I suppose it would be cash
19 because I believe this company is proposed to be an
20 equity investment.

21 Q. All right.

22 A. So I suppose -- it guess it would be cash
23 that's paid.

24 Q. All right. So the question is -- is -- that
25 proposal is in her application that she and Greg own

0380

1 that well and that they are now going to give the well
2 to Environmental Utilities?

3 A. Well, transfer it.

4 Q. Transfer it.

5 A. Yeah.

6 Q. Wrong word.

7 A. Yeah.

8 Q. For value?

9 A. Yes. It would be sold or transferred,
10 right.

11 Q. Okay. Now, admittedly, back in the other
12 case we were talking about with Eagle Woods, that same
13 representation was made that it was owned -- it was
14 going to be directed to OWC, and that was true, too,
15 wasn't it? Same well?

16 A. That was the proposal at that time.

17 Q. And that's what --

18 A. That was the proposal. I mean, it wasn't --
19 it wasn't specifically proposed that that would be
20 done. That was the projection that that would happen
21 in the future. The plans changed.

22 Q. Did you hear testimony from -- or are you
23 aware of any testimony from Mr. Mitchell to that
24 effect that the Commission relied on?

25 A. I don't -- well, I don't specifically

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1 remember the testimony, but that's probably right.
2 Mr. Mitchell or the Company, Osage Water Company, did
3 propose that at some point they would expand into
4 Golden Glade. That was the proposal, and the Eagle
5 Woods certificate was -- it was based on that proposal
6 that the well would eventually be the one in Golden
7 Glade.

8 Q. And it would be owned by OWC?

9 A. At that time it was proposed. As I say,
10 that's the plan that's changed.

11 Q. It was changed by Mr. Williams?

12 A. Yes.

13 MR. LORAIN: That's all I have for this
14 witness, your Honor. Thank you.

15 JUDGE WOODRUFF: Thank you.

16 MR. LORAIN: Thank you, sir.

17 JUDGE WOODRUFF: Environmental Utilities,
18 please.

19 MR. WILLIAMS: Thank you, your Honor.

20 May it please the Commission?

21 JUDGE WOODRUFF: You may.

22 RECROSS-EXAMINATION BY MR. WILLIAMS:

23 Q. Now, Mr. Merciel, you're aware that the
24 water system in Golden Glade has been interconnected
25 with the water system at Eagle Woods; is that correct?

0382

1 A. That's my understanding, yes.

2 Q. And that was done with DNR's permission?

3 A. Yes, due to a well failure, as I recall.

4 Q. Okay. So the issue of whether at some point
5 in time that would happen, it has, in fact, happened
6 at this point in time; is that your understanding?

7 A. There has been an interconnection. I'm
8 afraid I don't know what customers are getting water
9 from that well and what customers might still have a
10 temporary well.

11 Q. Okay.

12 A. I don't know that we talked about that at
13 the time. It was a matter of getting customers --
14 getting water to customers that were out of water.

15 Q. Now, Mr. Merciel, can you think of any
16 reason why the customers at Golden Glade should be
17 subjected to problems arising from Osage Water
18 Company's loss of customers in Osage Beach?

19 A. Can I think of any reason why they should?

20 Q. Is there any good reason why the Commission
21 would want that to happen?

22 A. Well, no. We wouldn't want that to happen.

23 Q. But Osage Water Company is having problems
24 because of the City of Osage Beach. You would agree
25 with that?

0383

1 A. I wouldn't agree that's the only reason, but
2 Osage Water Company is having some problems.

3 Q. Okay. Now, would you also agree that no
4 matter what happens to Osage Water Company that the
5 people residing in Eagle Woods are still going to be
6 there and are still going to need water?

7 A. That would be true.

8 Q. And so if there is a supply from the Golden
9 Glade well to the Eagle Woods system, the need for
10 that supply isn't going to go away depending on what
11 happens to Osage Water Company, is it?

12 A. That would be true.

13 Q. So we don't have an issue about whether or
14 not there will be a continuing need for water service
15 in Eagle Woods?

16 A. If you're focusing just on Eagle Woods, that
17 need is there no matter what happens to Osage Water
18 Company.

19 Q. And wouldn't you agree that there's no legal
20 authority for a homeowners' association to provide
21 water utility service outside of the boundaries of the
22 subdivision that it serves?

23 A. Since you put the word "legal" in there, I
24 probably shouldn't answer that.

25 Q. Well, are you aware of any?

0384

1 A. Generally --

2 MR. LORAIN: I'm going to object to that,
3 Judge. That calls for a conclusion of expertise on
4 the part of this witness, and it's really a matter of
5 law.

6 JUDGE WOODRUFF: I'm going to overrule the
7 objection. You can go ahead and answer.

8 THE WITNESS: Okay. It's my understanding
9 that if there is going to be an association providing
10 water, it should provide water to its members. And
11 if -- in the case you're talking about, if Eagle
12 Woods -- if the people in Eagle Woods are not a member
13 of the association that's in Golden Glade, I think
14 that would be a poor situation as far as getting water
15 to them.

16 BY MR. WILLIAMS:

17 Q. In fact, you participated in a court case
18 that involved a not-for-profit corporation called the
19 Miller County Water Authority trying to sell water to
20 nonmembers; isn't that correct?

21 A. Yes. It had a lot to do with the service
22 area of the water district as well in that case.

23 Q. And so you are familiar with some of the
24 legal proceedings that have gone on on that issue?

25 A. Well, yes, somewhat. And I do have a little

0385

1 bit of experience working with homeowner associations.
2 Q. Okay. So in this situation if there is no
3 certificated water utility at the Golden Glade system,
4 then the water supply in Golden Glade would not
5 legally be available to provide service to people in
6 Eagle Woods; isn't that correct?

7 MR. KRUEGER: I object. That calls for a
8 legal conclusion.

9 JUDGE WOODRUFF: I'll sustain that objection
10 because you're asking for a legal conclusion. He's
11 not a lawyer.

12 MR. WILLIAMS: Very good. Thank you.

13 BY MR. WILLIAMS:

14 Q. Let's move on to a different topic.
15 On the flat rate issue, is your concern
16 whether or not there is a flat rate in the tariff or
17 the dollar amount of flat rate?

18 A. It's the dollar amount of the flat rate.

19 Q. You would agree that a flat rate would be
20 useful in situations, for example, where a meter could
21 not be installed the first month or two of service due
22 to some conditions or where someone has made an
23 unauthorized connection and you have to assess them
24 for the value they have received?

25 A. Yes.

0386

1 Q. So having a flat rate in the tariff, whether
2 it's the primary rate you intend to use or not, is a
3 good thing. Would you agree with that?

4 A. I would agree with that. In situations such
5 as -- such as this company's where they're taking over
6 water systems, I don't object to a flat rate being in
7 the tariff.

8 Q. And do you have any recommendation to the
9 Commission as to what the flat rate should be other
10 than what the Company has proposed?

11 A. Well, there are a couple of ways we could do
12 it. One would be to use the minimum charge, and
13 another way would be to take an average water use and
14 back out expenses associated with metered rates. That
15 would be meter investment to the extent there is some,
16 and the billing costs that are attributable to meter
17 reading, meter number handling. I don't have a
18 quantification of that off the top of my head.

19 Q. Okay.

20 A. I would suspect it would be probably a few
21 dollars a month.

22 Q. A few dollars a month?

23 A. A few dollars per month.

24 Q. Different or the --

25 A. Less.

0387

1 Q. Less.

2 A. Uh-huh. The flat rate would be -- would
3 have to be several dollars per month less than the
4 average metered rate.

5 Q. And the flat rate that's proposed is one
6 that was developed by Staff in connection with Osage
7 Water Company's most recent rate case; is that
8 correct?

9 A. I believe that's right, based on the
10 situation with Osage Water Company. That's not what I
11 agree with for this company, though.

12 Q. Okay. But you don't have a specific number
13 to tell the Commission today?

14 A. Well, in my opinion, the simplest way to do
15 it is use the minimum charge. As I said, the other
16 reason for having the lower flat rate is I want to
17 encourage the Company to make sure meters get
18 installed on the customers.

19 Q. And having the minimum charge would do that,
20 but what about the situation where someone does an
21 unauthorized connection and takes water for a month,
22 two months, or more, and you have to come up with a
23 fair charge for them? Do you think the minimum rate
24 is a fair charge in that circumstance?

25 A. Well, that brings up some other issues such

0388

1 as stealing water, whether the customer should be
2 disconnected. It's not just a matter of whether to
3 charge them some flat rate in my opinion.

4 Q. Okay. But how do you assess the fair value
5 of the water service taken if all you have is a flat
6 rate as a minimum?

7 A. Well, probably the flat rate is maybe the
8 only dollar amount you may have to go on, but, as I
9 say, there are some other issues that -- that come
10 into play --

11 Q. Okay.

12 A. -- such as stealing water, paying legal
13 expenses.

14 Q. Okay. And, generally, the tariff doesn't
15 provide for the person who steals water to pay legal
16 expenses, does it?

17 A. My understanding, based on talking to our
18 Legal Department, that would be a civil matter, not a
19 utility matter.

20 Q. Okay. Let's move on to a different topic.

21 Commissioner Lumpe asked a question, and I
22 didn't hear you give a straight answer to that. Maybe
23 we just moved on. But what power --

24 MR. LORAIN: Your Honor, I'm going to
25 object, that that be struck from the -- that's a

0389

1 comment from -- a closing argument from Mr. Williams.
2 It should be struck from the record and the -- there
3 be actually no value to that.

4 JUDGE WOODRUFF: You're talking about the --

5 MR. LORAIN: The comment he had --

6 JUDGE WOODRUFF: -- comment about the
7 straight answer?

8 MR. LORAIN: Yes.

9 JUDGE WOODRUFF: Okay. Would you like to
10 rephrase your question?

11 MR. WILLIAMS: Certainly, your Honor. I
12 didn't mean to imply he was avoiding the question,
13 simply that I didn't hear an answer, and I think maybe
14 there was a subsequent question before the answer was
15 given.

16 BY MR. WILLIAMS:

17 Q. What power does the Public Service
18 Commission have to order someone to give a well to a
19 regulated utility? And, specifically, in this
20 instance, what power would the Commission have to
21 order the Golden Glade well to be given to Osage Water
22 Company? Are you aware of any?

23 A. To order the well to be given to somebody?

24 MR. WILLIAMS: Yes.

25 MR. LORAIN: I object to that, Judge. That

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1 calls for a legal conclusion on the part of the
2 witness, once again.

3 JUDGE WOODRUFF: I'm going to overrule that
4 objection.

5 You can go ahead and answer, if you can.

6 THE WITNESS: Okay. I'm not aware of any
7 authority the Commission has to do such a thing.

8 BY MR. WILLIAMS:

9 Q. Okay. A different topic.

10 You've testified more than once that --
11 describing the budget for Environmental Utilities as a
12 shoestring budget.

13 A. Yes.

14 Q. Would you agree that the PSC rate process is
15 basically designed to result in a very tight or
16 shoestring budget for operation of a utility company,
17 where what's left over is enough to pay a return on
18 capital?

19 A. Well, that is how rates are designed, but
20 the reason I referred to it in this case is in order
21 to meet the expenses based on the rates that are
22 proposed, this company needs to get all of the
23 customers that are being proposed, and that's --
24 that's the concern I have.

25 If those customers are not -- are not

0391

1 actually connected and Environmental Utilities does
2 not get the revenue, then it's not going to be able to
3 meet the expenses.

4 Q. You would agree, though, that if this
5 Commission and its Staff does its job in every rate
6 case, that every utility is basically operating on a
7 very tight or shoestring budget in order to provide a
8 return to investors?

9 A. Well, it is.

10 Q. Okay.

11 A. As I say, that's not the way I was using the
12 term. But what the problem is -- is, using that
13 shoestring budget, if this company doesn't get all of
14 the customers, it might have to come in and we might
15 have to double the rates or a 50 percent increase or
16 some large increase in order for the company to be
17 able to meet its expenses, and I don't -- I don't look
18 for that to happen.

19 Q. Okay. Now, let's go back.

20 And Mr. Loraine asked you a lot of questions
21 about records and so forth. And wasn't Jim Russo the
22 person on Staff who came down and examined the
23 record-keeping that Environmental Utilities has been
24 doing?

25 A. Yes, he was.

0392

1 Q. And he had specific knowledge of the scope
2 and extent of those records?

3 A. He would have, yes.

4 Q. And didn't he say those records are adequate
5 for regulatory purposes?

6 A. Frankly, I don't remember if he did.

7 Q. It's been a few months?

8 A. Yes. I'm afraid I don't remember. He may
9 have.

10 Q. But you didn't examine these records?

11 A. I did not review the records.

12 Q. So you can't personally give any criticism
13 or approval of the record-keeping of Environmental
14 Utilities?

15 A. That's correct, not personally.

16 Q. So your answers to Mr. Loraine's questions
17 were based on hypothetical events rather than your
18 direct, personal, knowledge of those records; is that
19 correct?

20 A. Either hypothetical or -- or contacts with
21 our auditors in the past, including past annual
22 reports.

23 Q. Well, Environmental Utilities has no past
24 annual reports?

25 A. Well, Environmental Utilities hasn't.

0393

1 You're correct.

2 Q. And you are aware that Mr. Mitchell was the
3 principal operator for Osage Water Company? Is that
4 correct?

5 A. It's my understanding Mr. Mitchell was the
6 operator. He was one going out, running the wells,
7 and doing the field work.

8 Q. Keeping the records?

9 A. I don't know whether he was or not.

10 Q. Okay. You have no personal knowledge?

11 A. I'm sure he's keeping some. I don't have
12 personal knowledge of whether he was keeping all of
13 it.

14 Q. Did you never examine his records
15 personally?

16 A. Not personally.

17 Q. Okay. Now, moving on to the issue of
18 homeowners in Golden Glade that are existing, whether
19 they will connect or not connect, you are aware that
20 in the application there was a list of all of the
21 residents of Golden Glade; is that correct?

22 A. Yes.

23 Q. In fact, the Commission's rules say list
24 ten, but there is only eight because there were only
25 eight?

0394

1 A. Yes.

2 Q. And so you've had an opportunity to have
3 their names and addresses and any contact that you
4 felt was necessary, you've been able to make; is that
5 correct?

6 A. We could have chosen to do that. We did
7 not.

8 Q. Okay. So your concern is based on a lack of
9 knowledge; is that correct?

10 A. I could say yes to that.

11 Q. And so the issue of whether those people
12 would connect or not was not important enough for you
13 to actually contact each of those people and find out;
14 is that correct?

15 A. I don't want to do the Company's job in
16 processing the application. I can do an
17 investigation, but it's the Company's job to show that
18 it can -- it can do the work that's being proposed.
19 That's my opinion.

20 Q. And the Company's presented testimony --

21 A. My comments have been based on -- there was
22 a customer -- and I don't know the name. I didn't
23 handle the call. But there was a customer that
24 expressed some concern over having spent some money on
25 the well, and that's what I based my comment on, that

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1 there could be some customers that -- that do not wish
2 to connect.

3 Q. Okay. And --

4 A. I did not take it upon myself to go do a
5 survey to try to justify the case that the Company
6 filed.

7 Q. So you're telling the Commission that there
8 is one customer that's contacted Staff?

9 A. I believe there was in the past, yes.

10 Q. Any more than one?

11 A. Not on that issue.

12 Q. And can you identify that customer for the
13 Commission?

14 A. I'm afraid I can't. I didn't take the call,
15 and I don't know who it was.

16 Q. Okay.

17 A. And to be honest, I don't know that the
18 customer -- I'm not even saying that the customer
19 definitely will not connect. I'm not saying that.

20 It was a concern that was expressed at the
21 time, and that raised a red flag to me, you know,
22 thinking, Well, these customers already have water
23 service.

24 Generally, if customers have service, they
25 are not going to go spend the money to connect to a

0396

1 new system and pay a higher rate if they're happy with
2 what they have, and that's what my position is based
3 on.

4 Q. And maybe I've missed something in the
5 testimony that you-all filed here.

6 Is there somewhere a list of conditions that
7 Staff is recommending that the Commission impose in
8 granting a certificate? I know we had one from the
9 Office of Public Counsel.

10 Has Staff put together a comprehensive list
11 somewhere?

12 A. I'm afraid I don't remember, but I think I
13 listed some concerns in my testimony. And one was
14 about the operator, which I've already said I believe
15 that's resolved.

16 The customer list was a concern. I think it
17 still is. The wholesale contract with Osage Water
18 Company in order to provide service to the customers
19 in Eagle Woods, that's still a concern.

20 Q. Well, on that topic, wouldn't you agree that
21 the tariff approved by this Commission is a contract
22 under the State of Missouri between the utility and
23 its customers?

24 MR. LORAIN: I'm going to object to that.
25 That calls for a legal conclusion on the part of the

0397

1 witness. It's a legal -- it's a court matter.

2 JUDGE WOODRUFF: I'll sustain that

3 objection. It does call for a legal conclusion.

4 BY MR. WILLIAMS:

5 Q. Okay. All right. Well, we don't have just
6 a sheet of paper that has, These are a list of things
7 that Staff is concerned about. Would you agree with
8 that?

9 A. You may not have. I don't have one to show
10 you.

11 Q. Well, I'm unable to find it, because I was
12 going to go down it with you.

13 A. Well, we probably don't have one then,
14 because I don't have it.

15 Q. So Staff has concerns, and we'll just have
16 to pick them out of the testimony. Is that where
17 we're at?

18 A. We are now. We've talked about all of that
19 in previous conversations too.

20 Q. Okay. Mr. Merciel, I believe I heard you
21 say in answer to Commissioner Lumpe's questions that
22 you agree that there is a need for water utility
23 service in the Golden Glade service area?

24 A. I answered yes to that. I also said in my
25 testimony that even though customers may have service

0398

1 with individual wells, I think it's desirable to have
2 a central water system. Generally, that's -- in my
3 opinion, that's preferable.

4 Q. So the Company and the Staff can agree that
5 there is a need for service?

6 A. I believe we can.

7 Q. And I believe the Staff can also agree that
8 the financial ability as far as the ability to obtain
9 the capital to provide that service, the Company also
10 has that. Would you agree?

11 A. I believe we can agree to that.

12 Q. Okay. And as far as the economic
13 feasibility, you've given some pre-conditions as far
14 as customers actually connection -- connecting, and,
15 particularly, in your testimony you addressed whether
16 Eagle Woods would connect.

17 And now that it has, do you -- and you've
18 done an economic analysis of this, do you agree that
19 the proposal is economically feasible?

20 A. When you talk about Osage Water Company and
21 Environmental Utilities, I still don't see a proposed
22 contract for wholesale service. It may be physically
23 connected, but I don't -- I don't think we're assured
24 that the customers in Eagle Woods are going to be
25 receiving water service from this well. For example,

0399

1 if you sold this company or Osage Water Company was
2 sold, there is -- there is no contract to keep a
3 connection there.

4 Q. Okay.

5 A. And that's my concern.

6 Q. Is there any other concern with economic
7 feasibility other than this contractual arrangement?

8 A. Just the customers and the wholesale
9 contract.

10 Q. But the proposal in terms of the operating
11 costs of the system and the anticipated revenues, you
12 would agree that if all of the customer counts work
13 out that this is an economically feasible operation;
14 is that correct?

15 A. Yes.

16 Q. And as far as qualifications to provide the
17 service, you would agree that there's managers
18 available to run the Company?

19 A. Yes, managers are there.

20 Q. And there is staff there to do the billing?

21 A. As far as I'm concerned, the staff is there.

22 Q. And there's a licensed operator out in the
23 field to handle field operations?

24 A. There is a licensed operator now. That
25 hasn't always been the case, but now it's my

0400

1 understanding there is.

2 Q. And the necessary equipment is available on
3 a contract basis to do repairs and maintenance?

4 A. So far as I know, it is.

5 Q. Are there any other concerns that you would
6 have with the Company's qualifications to provide the
7 service?

8 A. I don't have any that I could express at
9 this time.

10 Q. So you would agree, basically, that the
11 Company as proposed to the Commission is qualified to
12 provide water utility service to Golden Glade?

13 A. With the conditions we've said, yes.

14 Q. Okay. And is there any reason why a
15 company that meets those other Tartan energy
16 criteria, giving it a certificate would not be in
17 the public interest?

18 A. Not that I can see right now.

19 MR. WILLIAMS: Okay. I don't believe I have
20 any further questions.

21 JUDGE WOODRUFF: Thank you.

22 Then redirect?

23 MR. KRUEGER: Thank you, your Honor.

24 REDIRECT EXAMINATION BY MR. KRUEGER:

25 Q. Good morning.

0401

1 A. Good morning, Mr. Krueger.

2 Q. Mr. Loraine asked you a question about
3 the -- I think what he called the bright star of
4 Osage Water Company and having something to do with
5 Water Lab and loss of engineering expertise with
6 the -- with this person leaving the company. Do you
7 recall that question?

8 A. Yes, I do.

9 Q. I believe he said -- the name that he
10 mentioned then was Williams. Would that be correct?

11 A. Actually, the name would be Mr. Mitchell.

12 Q. Okay. Thank you.

13 There were some questions about the Small
14 Company Assistance Program and a Memorandum of
15 Understanding between the Commission and the DNR.

16 Is there anyone on the Staff who is a
17 witness in this case that would be able to provide
18 additional information on these subjects if there are
19 additional questions?

20 A. Mr. Johansen could.

21 Q. Okay. And he will be testifying later
22 today?

23 A. Yes.

24 Q. Okay. You're also -- you also filed some
25 testimony and answered questions about the quality

0402

1 of service that the -- that Osage Water Company had
2 been providing since July of 2001. Do you recall
3 those --

4 A. Yes.

5 Q. -- that testimony and those questions?

6 A. Yes.

7 Q. And you said that the quality of service had
8 improved since July of 2001?

9 A. I did say it has improved, yes.

10 Q. Are you satisfied with the quality of
11 service that Osage Water Company has provided since
12 then?

13 A. I would have to say there still are some
14 problems. The Company would say it's a misinterpre--
15 or not a misinterpretation. It's a different
16 interpretation of the tariff. I think it's a
17 misapplication of the tariff.

18 There is an informal complaint that we're
19 dealing with right now, and I don't think it's a
20 matter that should have to be dealt with. It's pretty
21 straightforward to me.

22 Q. And that's an unresolved complaint?

23 A. Yes, it is.

24 Q. Now, in your Direct Testimony on page 8, you
25 listed specific comments regarding the tariff sheets,

0403

1 and number two was in regard to sheet No. 5.

2 Is that what that comment pertains to?

3 A. It is, yes. This -- this comment is an
4 attempt to clarify the tariff to reflect the way
5 connection charges and charges for setting a meter --
6 yeah, that's exactly the issue.

7 Q. That has arisen in this -- in this informal
8 complaint that you're now trying to resolve?

9 A. Yeah. With Osage Water Company, yeah.

10 Q. Okay. Thank you.

11 Commissioner Lumpe asked you some questions
12 about the well. Is it your understanding that that
13 well is to provide service for both Golden Glade and
14 Eagle Woods?

15 A. Yes, it is.

16 Q. Now, do you have any assurances that that --
17 that it will do so?

18 A. Physically, it is capable of doing so. The
19 concern that I've expressed is, since you do have two
20 different companies, Environmental Utilities, which is
21 proposed to own the well, and Osage Water Company,
22 which has some of the customers and part of the
23 distribution system, there is no -- no provision to
24 assure us that there is going to be a connection and
25 there is going to be an arrangement.

0404

1 Q. And do you -- I'm sorry.

2 A. Well, I was going to say, right now there
3 is common ownership with those two companies, but
4 that could change instantly. And if Osage Water
5 Company went some different direction, then those
6 customers are gone and the revenue is gone. That's
7 my concern.

8 Q. And do you think it's important for the
9 Commission to have that assurance in making its
10 decision on whether to grant a certificate in this
11 case?

12 A. Yes, I do.

13 MR. KRUEGER: That's all of the questions I
14 have.

15 JUDGE WOODRUFF: Thank you.

16 You may step down then.

17 And it's time for a break, and I believe
18 we'll be changing court reporters.

19 We'll come back at 10:20.

20 Thank you.

21 (KRISTAL R. MURPHY WAS REPLACED BY
22 STEPHANIE L. KURTZ MORGAN AS COURT REPORTER.)

23

24

25

1 MS. O'NEILL: Your Honor, I just -- I know
2 that -- that there's some experimentation going on with
3 the cameras, but I note -- noticed that -- especially
4 during the break that the cameras very clearly include
5 the contents of counsel's table, especially for Public
6 Counsel.

7 And it's probably not gonna be a major issue
8 in this case, but we have cases where there's a lot of
9 highly confidential information. And I note that one
10 of the screens broadcasts into the room, and the place
11 where the Staff witnesses are sitting right now is
12 often filled with company attorneys.

13 And I don't know what the resolution is and
14 can be on this camera, but I am concerned that this
15 configuration could cause highly confidential
16 information to be revealed. And, frankly, the context
17 of -- during a case we can't always be careful of, you
18 know, what HC is on the table and what's off the table.

19 And --

20 JUDGE WOODRUFF: As you're looking at it.

21 MS. O'NEILL: And I think that that's
22 something that -- that may be -- that's probably
23 something for the Judges and the Commissioners to talk
24 about. But that's just a concern that I thought I
25 would raise now, since this is a case where we can go

1 ahead and go for forward.

2 JUDGE WOODRUFF: Okay. We'll certainly keep
3 that in mind. As I said, this is an experimental
4 situation and we're trying to -- to work out the bugs
5 on it and --

6 MS. O'NEILL: Other than --

7 JUDGE WOODRUFF: We're not trying to spy on
8 you, so --

9 MS. O'NEILL: Well, and -- and I know that.

10 JUDGE WOODRUFF: Okay.

11 MS. O'NEILL: I am concerned that that could
12 come up. And then, for example, if we have a case
13 where there's more than one company in here, like a
14 phone case, and there's an HC Southwestern Bell
15 document on Public Counsel table and CompTel is sitting
16 over where Mr. Merciel is that there may be some
17 concerns about information that -- especially if
18 there's a witness, not just an attorney, sitting over
19 there who might be able to see some of the content of
20 that HC.

21 JUDGE WOODRUFF: All right. Let's go ahead
22 and get started then. I believe Mr. Johansen is on the
23 stand.

24 Would you please raise your right hand.

25 (Witness sworn.)

1 JUDGE WOODRUFF: You may be seated and you may
2 inquire.

3 MR. KRUEGER: Thank you, Your Honor.

4 DALE JOHANSEN testified as follows:

5 DIRECT EXAMINATION BY MR. KRUEGER:

6 Q. State your name and address for the record,
7 please.

8 A. Dale Johansen. My business mailing address is
9 Post Office Box 360, Jefferson City, Missouri 65102.

10 Q. By whom are you employed and in what capacity?

11 A. I work for the Missouri Public Service
12 Commission, and I'm the manager of the Lawrence Sewer
13 Department in the Utility Operations Division.

14 Q. Did you prepare and cause to be pre-filed in
15 the -- in this case the rebuttal testimony of Dale W.
16 Johansen, which has been marked as Exhibit No. 6?

17 A. I did.

18 Q. Do you have any corrections or changes to make
19 to that testimony at this time?

20 A. I don't have any corrections or changes. I
21 would like to make one clarification.

22 If you would refer to page 2, line 20, I cite
23 there what I refer to as the Intercon criteria for the
24 criteria that the Staff normally uses in service area
25 certificate cases. And I'd just like to clarify that

1 the criteria I'm citing there are the same as what most
2 people refer to as the Tartan energy criteria.

3 Q. Okay. Thank you.

4 All right. Are there any other corrections or
5 changes?

6 A. No.

7 Q. If I asked you the same questions as are in
8 your testimony today, would your answers to the
9 questions be the same?

10 A. Yes, they would.

11 MR. KRUEGER: I would offer Exhibit 6 and
12 tender the witness for cross-examination.

13 JUDGE WOODRUFF: Okay. Exhibit 6 has been
14 offered into evidence, are there any objections to its
15 receipt?

16 MS. O'NEILL: No.

17 MR. WILLIAMS: No objection.

18 JUDGE WOODRUFF: All right. Hearing none,
19 then, it will be received into evidence.

20 (EXHIBIT NO. 6 WAS RECEIVED INTO EVIDENCE.)

21 JUDGE WOODRUFF: We can move to
22 cross-examination beginning with Public Counsel.

23 MS. O'NEILL: Thank you.

24 CROSS-EXAMINATION BY MS. O'NEILL:

25 Q. Good morning, Mr. Johansen.

1 A. Good morning.

2 Q. You kept me from having to ask you my first
3 question. I'm so glad.

4 I do want to ask you a couple of questions
5 about the Intercon or Tartan criteria --

6 A. Uh-huh.

7 Q. -- however.

8 One of the criteria for that is that the
9 service must pro-- promote the public interest; is that
10 correct?

11 A. That's correct.

12 Q. And for purposes of evaluating that interest,
13 who does Staff consider the public to be?

14 A. It would be the customers that would be
15 receiving service by the company who is requesting the
16 certificate.

17 Q. Okay. And is one of the purposes of
18 regulation to protect the interests of the utilities'
19 customers?

20 A. Yes.

21 Q. In this particular -- would -- would this
22 particular application from Environmental Utilities --
23 do you have information that suggests that the owners
24 of Environmental Utilities are going to operate this
25 system whether or not the certificate is granted?

1 A. My understanding is that the covenants and
2 restrictions for this particular subdivision provide
3 that the developers, which are, in fact, the same
4 people as the owners of Environmental Utilities, would
5 control the operation of the homeowner's association
6 until substantially -- if not all, substantially, all
7 of the lots in that subdivision are sold.

8 Q. So for the foreseeable future Mr. and
9 Mrs. Williams would control this water system whether
10 or not the certificate is granted?

11 A. That's my understanding, yes.

12 Q. Okay. Now, at the time that you filed your
13 rebuttal testimony, you stated that Staff had some
14 continuing concerns about the company's ability to --
15 to meet the Tartan or the Intercon criteria; is that
16 right?

17 A. Yes.

18 Q. Have any of those concerns been resolved?

19 A. I -- I believe they have from testimony this
20 morning. I -- I believe that one of the subissues, if
21 you will, had to do with the company's operation of the
22 system being done by a licensed operator. I think that
23 concern has been taken care of.

24 I also believe in the initial day of hearing
25 in this case that company counsel did go on record as

1 stating that they would be willing to adhere to the
2 conditions that Public Counsel and Staff both propose
3 in the case.

4 Q. And do those -- do those pieces of information
5 reduce your concerns about whether the certificate
6 should be granted in this case?

7 A. To some extent they do. And -- and I would
8 say that -- that one of the issues that the Staff has
9 regarding a conditional certificate, which I discuss to
10 some degree in my rebuttal testimony and we further
11 discussed in our Staff position statement, is that we
12 believe that these conditions in most part should be
13 met not only as a condition of the certificate, but
14 that they should be met prior to the time that the
15 certificate is actually granted.

16 And -- and the reason for that basically is
17 that we -- we have experienced situations in the past
18 with -- with several companies where conditions are
19 placed on a certificate, the company is allowed to go
20 into operation, and then those conditions aren't met.

21 So to -- to the extent feasible, our position
22 would be that -- that any condition that can be met
23 prior to service actually being initiated should be
24 done in that fashion.

25 Q. And are you aware that Public Counsel also

1 had -- some of those conditions were things that Public
2 Counsel was recommending be completed prior to?

3 A. Yes.

4 Q. As far as those types of conditions, the
5 conditions that Staff and Public Counsel both believe
6 need to be met before a certificate can go into effect,
7 are you aware of a mechanism that the Commission can
8 use, such as time limits or anything like that that
9 would ensure that those were met before the certificate
10 would take effect?

11 A. I would certainly think the Commission has
12 broad enough authority to do so, yes. And, in fact,
13 that has been utilized in the past where conditions are
14 set out and -- and there's a -- there's a time frame
15 put on it, a sunset provision, if you will.

16 And if something is not done by a certain
17 point in time, then the granted cer-- certificate is
18 basically revoked.

19 Q. And to revoke a certificate where those
20 things -- those conditions weren't complied with, would
21 we need to start a new case or would that happen
22 automatically?

23 A. The one situation that I'm thinking of in
24 particular involves a company on the eastern side of
25 the state. And my recollection there is that the

1 company was to do certain things from the standpoint of
2 installing new facilities prior to the certificate
3 going into effect. Those were not done.

4 So by the terms of the Commission's order
5 itself, the certificate did not go into effect.
6 Perhaps revoke was the improper reference there, but
7 we're -- what we're talking about is whether or not
8 that certificate actually does go into effect --

9 Q. Okay.

10 A. -- to start with.

11 Q. So until the certificate takes effect, then,
12 the regulated utility is not allowed to provide
13 service; is that correct?

14 A. That's correct.

15 Q. Okay. And at Golden Glade right it's -- the
16 certif-- the subdivision still has a lot of unsold
17 lots?

18 A. That's my understanding, yes.

19 Q. And there are only a few houses that would be
20 eligible to connect right away; is that your
21 understanding?

22 A. I believe -- at least at the time the
23 certificate was -- the application was filed, excuse
24 me, that there were eight residents in the subdivision.
25 Quite honestly, I don't know how many additional

1 residents there are currently.

2 Q. Would Mr. Hummel have more up-to-date
3 enter-- information regarding the current status of
4 that?

5 A. He might have.

6 Q. It's been a while, but do you recall
7 what's -- what conditions were discussed by other
8 members of the Staff and by Ms. Bolin regarding things
9 that you recommend be imposed?

10 A. Yes. As I mentioned, in Staff's position
11 statements, which were filed December 19th, 2001
12 regarding Issue No. 7, which was stated as follows: If
13 a certificate is granted, should conditions be imposed
14 on the applicant? And if I might, I'll just go ahead
15 and read what the Staff's response to that was.

16 Q. Thank you.

17 A. First, the Staff's position regarding this
18 issue is that any Commission order granting a
19 conditional certificate should clearly state that to
20 the extent feasible the conditions must be met prior to
21 the applicant providing service.

22 Regarding possible conditions to be imposed,
23 the Staff believes that conditions consistent with
24 those proposed by the Office of Public Counsel in its
25 rebuttal testimony would re-- would be reasonable and

1 the following additional conditions would also be
2 reasonable.

3 First, a showing that the applicant has
4 obtained the services of a licensed operator that meets
5 the applicable MDNR requirements, which I mentioned
6 earlier, I think now has been satisfied.

7 Two, a showing that the applicant has entered
8 into an agreement for wholesale service to Osage Water
9 Company related to OWC's Eagle Wood Service area.

10 Three, a showing that the facilities necessary
11 to serve OWC as a wholesale customer have been
12 installed.

13 Four, a showing that all necessary
14 MDNR permits or approvals related to the construction
15 of the supply and distribution system have been
16 received.

17 And, five, a showing that the applicant has
18 applied for the required MDNR permit to dispense.

19 Q. Okay. And as far as you know, the -- the
20 first of those has been met, you don't know about the
21 others at this point; is that right?

22 A. I know -- as I mentioned earlier --

23 Q. Uh-huh.

24 A. -- I believe the first one has been met, based
25 upon information that was provided this morning

1 earlier. The issue of the wholesale service agreement
2 I do not believe we still have anything in writing, so
3 to speak, on that one.

4 I believe from the standpoint of the
5 facilities being installed to serve the Eagle Wood
6 subdivision as a wholesale customer -- my understanding
7 is that those, in fact, have now been installed, so I
8 believe that one has been met.

9 And from the standpoint of the permits and
10 approvals, I believe the initial construction permits
11 were issued as they needed to have been. From the
12 standpoint of the necessary Department of Natural
13 Resources -- Resources permit to dispense, I'm not sure
14 of the status of that.

15 Q. Okay. Now, as far as the conditions that you
16 would recommend be complied with before the
17 certificate -- certificate would take effect, would you
18 also anticipate that the company would have an ongoing
19 obligation to make sure that those conditions stay in
20 compliance with those conditions?

21 A. Oh, certainly.

22 Q. So you're not contemplating a short-term water
23 supply contract; for example, this would be something
24 that would go for -- be on on ongoing -- going-forward
25 basis?

1 A. Yes.

2 Q. And the other conditions that have been
3 discussed previously either in testimony at the
4 evidentiary hearing or -- or in pre-filed testimony,
5 those would also be ongoing requirements; is that
6 right?

7 A. Absolutely.

8 Q. And the Commission has the ability to enforce
9 those conditions; is that your understanding?

10 A. My understanding is that they do, yes.

11 Q. And has the Commission in the past taken steps
12 to enforce conditions on certificates against
13 companies?

14 A. Certainly.

15 Q. If the homeowner's association were to operate
16 this water utility instead of a regulated utility
17 company, would the Commission be able to enforce any
18 conditions on the homeowner's association?

19 A. Actually it would -- it would depend in part
20 on whether or not the association would be limiting its
21 services to its members.

22 If there was some desire for the provision of
23 service on a wholesale basis con-- to continue for the
24 Eagle Wood subdivision, for example, by the Golden
25 Glade Association, I think that would put us back into

1 a situation where the Staff at least would argue that
2 the association should be regulated, because they would
3 be providing service to persons who are not members of
4 the association. And we have done that in the past in
5 other situations similar.

6 If you're limiting it strictly to service in
7 Golden Glade by the association, I would say that the
8 Commission would not have jurisdiction.

9 MS. O'NEILL: Okay. Thank you. I don't have
10 any further questions at this time.

11 JUDGE WOODRUFF: All right. Then for Hancock?

12 MR. LORAIN: May it please the Court and
13 Commission.

14 CROSS-EXAMINATION BY MR. LORAIN:

15 Q. Good morning, sir.

16 A. Good morning.

17 Q. The Public Counsel just asked you essentially
18 the Tartan criteria under a different name, but with
19 your explanation, I believe it's the same?

20 A. Yes.

21 Q. Does Staff really believe that the -- this is
22 economic (sic) feasible as proposed for these eight
23 homes to be served by a public water system?

24 A. Well, again, if I could -- if I could refer
25 you back to our position statement, and I believe it's

1 also basically -- has been summarized by Mr. Merciel,
2 there are several things that have to happen in order
3 for the Staff to believe or have the position that this
4 is an economic project.

5 And as I mentioned, it's -- it's -- those are
6 listed in response actually to Issue 3 in the Staff's
7 position statement, which starts on page 2. And also I
8 believe most of those items were covered by Mr. Merciel
9 in his pre-filed testimony, as well as his testimony
10 here on the stand.

11 Q. So you're not telling this Commission that
12 these eight homes are gonna sustain an -- any kind of
13 an economic feasibility on -- on -- on this -- digging
14 this well and putting in distribution lines, are you?

15 A. No, we are not.

16 Q. Okay. There is a question on one of the
17 criteria about the qualifications of the applicant to
18 provide the services. And getting into that, don't we
19 have to examine the recordkeeping?

20 A. I think so, yes.

21 Q. And -- and would you -- would you tell -- tell
22 the Commission and for the record, what is the standard
23 that's recognized by the State of Missouri for
24 recordkeeping in -- in even C and D companies?

25 A. The Commission has adopted accounting

1 recordkeeping standards for all classes of water
2 companies -- well, all classes of all types of
3 utilities that the Commission regulates. They are
4 standards that are written by the National Association
5 of Regulatory Utility Commissioners, which we normally
6 shorten down to the acronym NARUC.

7 They are denominated as the uniform system of
8 accounts. And those have been adopted by rule by the
9 Commission.

10 Q. All right. And that -- when you say they've
11 been adopted, not only do the rules adopt them, but the
12 rules tell applicants how to get hold of these, they --
13 they tell you where to write for the National
14 Association rules -- they give you an address right in
15 the rules themselves, don't they?

16 A. I believe so, yes.

17 Q. And these NARUC USOA accounting systems,
18 you're -- you're very familiar with those, aren't you?

19 A. I am familiar with them to a great degree,
20 yes.

21 Q. All right. And, in fact, NARUC accounting
22 is -- is much more than just some kind of accounting
23 procedure, it's a -- it's -- it's a procedure whereby
24 audits can -- can go out in the field and be
25 meaningful, aren't they?

1 A. Yes.

2 Q. And, in fact, without that ability, how -- how
3 can the Staff do its job?

4 A. Basically if records are not maintained either
5 in accordance with those particular standards that have
6 been adopted or at least in some fashion that -- that
7 approaches those standards, the Staff basically is put
8 in a position of having to go out and reconstruct a
9 company's books and records to determine what should be
10 allowed from the standpoint of the company recovering
11 certain expenses and investments through their rates.

12 Q. And if the com-- if the Staff had to do with
13 with -- with every utility that you regulate, I mean,
14 you -- you don't have the Staff to do that, do you?

15 A. Well, unfortunately with our small companies
16 we do do that quite often, and it does place a burden
17 on the audit staff. There's no question about that.

18 Q. Okay.

19 A. To the extent that the -- the records are
20 maintained in -- in a fashion that's consistent with
21 those accounting standards and recordkeeping standards,
22 whether or not they're in full compliance with them, it
23 certainly makes the audit job a lot easier.

24 Q. And -- and that section that you dealt with
25 for the NARUC regulations, the -- the actual word NARUC

1 is -- is just plain contained right in that -- I mean,
2 it says, you've got to go to the NARUC regulations and
3 they apply to all books of accounts and other records
4 prepared by the water utilities.

5 It pro-- it provides for the protection and
6 storage of records in use of life of records and their
7 medium. That -- that is actually right in your -- your
8 rules, isn't it?

9 A. Yes.

10 Q. Now, historically we know that this is --
11 Environmental Utilities is a new company and it's a new
12 application?

13 A. That's correct.

14 Q. And -- and we've been through the history,
15 but -- but suffice it to say that to -- to -- history
16 is the study of the past, so maybe we can understand
17 the future, you would agree with that definition,
18 wouldn't you?

19 A. Sure.

20 Q. And one of the things we could do here to get
21 an idea of whether Environmental Utilities might --
22 might be able to qualify as an applicant under your
23 Tartan criteria would be to look at -- at the past for
24 OWC; wouldn't that be a fair statement?

25 A. That's certainly one of the things that we are

1 doing, yes.

2 Q. Okay. And the history of -- of recordkeeping
3 in -- in accordance with NARUC so that proper audits
4 can be made with OWC, would it be fair to say it's very
5 poor to dismal?

6 A. Dismal is the word I was going to use. Thank
7 you.

8 Q. That -- so it's -- it's Class 2 of -- I gave
9 you two choices and you went to the lowest class, and I
10 appreciate that.

11 You believe that to be true?

12 A. Yes.

13 Q. So in looking at this qualification, if you
14 will, of these -- of this particular applicant, it is
15 proper to examine this history of OWC, in your opinion?

16 A. In my opinion, it is, yes.

17 Q. And -- and that really goes to another
18 criteria, which -- which -- which, I guess, would be
19 called the service must promote the public interest.
20 If we don't have -- if we don't have good plant records
21 and -- and -- and we can't get good rate, then we're
22 not really promoting the public interest to give the
23 public the proper rate base; would you agree with that?

24 A. It -- it certainly leads you in that
25 direction. I would not disagree with that at all.

1 And -- and I think historically the -- the Staff's
2 position has been that if they're basically -- if I can
3 back up a moment -- there's basically five criteria
4 that are set out in the Intercon and Tartan cases.

5 And the fifth of those is the service must
6 promote the public interest. And as I stated in -- in
7 my testimony, the Staff has historically taken the
8 position that an applicant satisfying the first
9 four criteria also satisfies the public interest
10 criteria.

11 And I think we -- we also state in -- in our
12 position statement document that if those first
13 four criteria are not met, then the fifth criteria
14 would not be met as well.

15 Q. Okay.

16 A. So if -- if there are concerns about the first
17 four, we certainly have concerns about the public
18 interest standard.

19 Q. All right. So we know that we've got concerns
20 about the economic feasibility, and -- and, I guess, we
21 would say that we have some concern about the
22 qualification, certainly in the recordkeeping category;
23 you would agree with that?

24 A. Yes.

25 Q. So it seems to me that -- that at least two of

1 those would be that No. 5 comes into play?

2 A. Yes.

3 Q. All right. Now, over and above what we are
4 talking about here, you would agree that the public --
5 public interest is best served by proper rate base
6 being established?

7 A. Yes.

8 Q. And to establish rate base, one would have to
9 know the actual expenses of the company?

10 A. Yes.

11 Q. And -- and -- and -- and not just expenses of
12 collateral co-- matters or but the expenses of the
13 actual utility company?

14 A. Correct.

15 Q. And -- and then we'd have to know what
16 depreciation there might be on -- on their plant?

17 A. Correct.

18 Q. And then we'd have to know what is their
19 plant?

20 A. Correct.

21 Q. Okay. And in knowing what their plant is,
22 wouldn't we -- sir, wouldn't we have to know certain
23 things about that -- that -- that engineers can help
24 with?

25 A. Certainly.

1 Q. And what would they be, in your opinion --
2 what would that be an example -- what -- what would
3 that -- what would an engineer -- how would an engineer
4 help an accountant to -- to examine a NARUC statement
5 that had come in un-- under, what is that, W-5 on the
6 annual reporting schedule, I believe?

7 A. I -- it may be. I'm not sure.

8 Q. All right. I'll give you this -- I'll give
9 you one later, but I think it's W-5.

10 A. Well, basically one of the things, I think as
11 Mr. Merciel mentioned earlier today -- one of the
12 things that -- that our Staff does from the water and
13 sewer department perspective in assisting in audits is
14 assisting the auditors in -- in actually identifying
15 what plant is in service; does it physically exist; is
16 it in service; is it used and useful, is the term we
17 normally use.

18 We assist them in evaluating whether or not
19 the value of the plant that is on the company's books
20 is reasonable and appropriate and should be included as
21 an item to be recovered through customer rates.

22 We also -- beyond that we do inspections to
23 make sure that the plant is -- is being operated
24 properly. So there are certainly things that --
25 that -- that my staff does from an operations and

1 engineering perspective that do, in fact, tie into the
2 appropriateness of customer rates.

3 Q. And -- and I -- I -- I think you mentioned it,
4 but I'm gonna -- I'm gonna get back. In fact, on the
5 bottom of your annual reports, doesn't it also ask for
6 the original costs of -- of the equipment?

7 A. Yes.

8 Q. And -- and it also asks for the location of
9 the equipment?

10 A. I believe it does.

11 Q. And it asks for the physical -- physical
12 description of the actual plant itself?

13 A. Yes.

14 Q. So we've got to know where it is, how much it
15 costs and what it looks like and whether it's
16 functioning right, and -- and we've got to know what
17 its capabilities -- whether it's being operated
18 properly and we've got to know all of these things so
19 we can go back and -- and -- and factor that factor
20 into the expenses and into the depreciation to come up
21 with what is the rate that ought -- this company ought
22 to be able to make for its -- its shareholders and its
23 officers and -- and what rate the com-- the --t he
24 people ought to pay?

25 A. Those things are certainly all part of the

1 equation, yes.

2 Q. And that's public interest, isn't it?

3 A. Certainly.

4 Q. Now, in that regard, Mr. Johansen, in -- in
5 examining the history of OWC, I would like to -- I
6 would like to -- to chat with you a little bit about
7 that.

8 There was a Staff recommendation that was
9 entered into in -- in the matter of the annual report
10 of the Osage Water Company for the calendar year ending
11 1999. Are you aware of that?

12 A. Yes.

13 Q. Now, there has been some discussion previously
14 in this case by some of the witnesses that have come on
15 that -- that recordkeeping has gotten, in fact, better.
16 Do you remember that --

17 A. Yes.

18 Q. -- testimony?

19 A. Yes.

20 Q. And Debra Williams testified that she thought
21 she was doing a better job with her Peachtree
22 accounting system, I believe it was?

23 A. I believe that's a correct reference.

24 Q. And would -- would it be fair to say that if I
25 went back and examined the -- the annual report for the

1 last few years, that at least the '99 report has an
2 attachment to the W-5 and it -- and it talks about more
3 details and it's got a Peachtree software package that
4 apparently has classified things. Do -- do you -- are
5 you aware of what I'm saying?

6 A. I -- I'm aware of the documents you're talking
7 about.

8 Q. All right.

9 A. As far as the details of that, I'm not that
10 familiar with it, but that -- that document is attached
11 to their annual report, yes.

12 Q. All right. Now, in the Staff's recommendation
13 they -- they did -- were critical nevertheless in -- in
14 certain -- in certain ways on this annual report of
15 Osage Water Company for the year 1999, weren't they?

16 A. Yes.

17 MR. LORAIN: And I'm gonna show you what's
18 been marked as Plaintiff's Exhibit -- pardon me --
19 Exhibit 21. That's correct, Your Honor?

20 JUDGE WOODRUFF: That would be the next
21 number, yes.

22 BY MR. LORAIN:

23 Q. All right. And you -- you may use that. I
24 have my own copy here, sir.

25 For the purposes of -- of that recommendation

1 there were some items that was discussed on page 1 of
2 that Staff's recommendation. And they -- they
3 basically had four primary complaints at the bottom of
4 No. 4. You see the little -- the little numbers.
5 Would you --

6 A. Yes.

7 Q. -- agree with my assessment?

8 A. Yes.

9 Q. And one of the No. 1 of that 4- -- of No. 1
10 says, in the '98 annual report there is a December 31st
11 year-of-end amount that should match the January 1st,
12 beginning year amount of the '99 annual report, and no
13 explanation was given?

14 MR. WILLIAMS: Your Honor, I'm gonna object to
15 the witness reading the contents of the document, which
16 has not been admitted into evidence.

17 JUDGE WOODRUFF: Do you want to offer it into
18 evidence?

19 MR. LORAIN: I'll be happy to. Would like to
20 move for the admission of Exhibit 21 into evidence.

21 JUDGE WOODRUFF: You need to have copies then.

22 MR. LORAIN: Copies are there, Mr. -- Judge,
23 I've got a series of these and I would make a
24 suggestion to the -- to the Court that I would be more
25 than happy to file these so as not to take time while I

1 go through this, but if there's someone that would like
2 to have a copy, Counsel, we have -- we have them back
3 here. But I have the appropriate numbers.

4 MS. O'NEILL: Your Honor, I think it would be
5 appropriate that if Mr. Loraine wants to introduce that
6 into evidence, he do it to the Commission.

7 MR. LORAIN: All right.

8 MS. O'NEILL: It's not that much more time
9 consuming to do it that way.

10 MR. WILLIAMS: I'm gonna say the same thing.
11 I mean, one of my concerns is we have a witness reading
12 a document I haven't seen, which this witness may or
13 may not be the author of, which may or may not contain
14 hearsay. And I -- I simply don't know how to even
15 follow the testimony without the document being
16 offered.

17 MR. LORAIN: Judge, I'll withdraw my -- my
18 suggestion and I'll be happy to -- to -- to do it this
19 way.

20 JUDGE WOODRUFF: Let's go ahead and do it that
21 way then.

22 MR. LORAIN: All right. Do you want to hand
23 them out, Bill, or do you want me to do it?

24 The witness has the other marked one.

25 JUDGE WOODRUFF: I've actually got a couple

1 extra if you need them.

2 (EXHIBIT NO. 21 WAS MARKED FOR
3 IDENTIFICATION.)

4 MR. LORAIN: Okay. May I proceed, Your
5 Honor?

6 JUDGE WOODRUFF: You may.

7 MS. O'NEILL: What's the number on this?

8 JUDGE WOODRUFF: This is 21.

9 MR. LORAIN: 21.

10 MS. O'NEILL: Okay. And have you offered it
11 or are you getting ready to?

12 MR. LORAIN: I will now.

13 MS. O'NEILL: Okay.

14 MR. LORAIN: I offer 21 into evidence.

15 JUDGE WOODRUFF: All right. You'll offer 21
16 into evidence at this point?

17 MR. LORAIN: I do.

18 JUDGE WOODRUFF: Okay. Exhibit 21 has been
19 offered into evidence, are there any objections to its
20 receipt?

21 MR. WILLIAMS: Yes, Your Honor. Lack of
22 foundation.

23 JUDGE WOODRUFF: Okay. Why don't you go ahead
24 and establish a foundation.

25 BY MR. LORAIN:

1 Q. Sir, are you familiar with this document, the
2 Staff recommendation?

3 A. Yes.

4 Q. And, in fact, your staff prepared it?

5 A. It was prepared by the Staff of the
6 Commission. I was aware of its preparation at the time
7 it was being done. I was not directly involved in the
8 preparation of it, but I am aware of it, yes.

9 Q. And you're aware of the contents of it?

10 A. Yes.

11 Q. And it occurred in WE-2002-240, did it not?

12 A. That's correct.

13 Q. And that case is still pending before this
14 very Commission, isn't it?

15 A. It is.

16 Q. And, in fact, this -- Mr. Hancock made an --
17 an attempt to intervene in that matter and was denied.
18 Do you re-- do you know that?

19 MR. WILLIAMS: I'm gonna object. That
20 question has nothing to do with the relevancy to any
21 issue in this case.

22 JUDGE WOODRUFF: I'm gonna sustain the
23 objection. There is no relevance.

24 BY MR. LORAIN:

25 Q. You understand this document, sir?

1 A. Yes.

2 MR. LORAIN: All right. I move for the
3 admission in -- into -- into exhibit -- of Exhibit 21
4 into evidence.

5 MR. WILLIAMS: Your Honor, I am going to
6 continue to object to the document. It appears to be
7 a -- a copy.

8 JUDGE WOODRUFF: Mr. Williams, if -- if you
9 would bring your microphone over.

10 MR. WILLIAMS: I'm sorry, Your Honor.

11 JUDGE WOODRUFF: I'm having a real hard time
12 hearing you.

13 MR. WILLIAMS: I'm gonna object to the
14 document. It appears to contain a written letter,
15 which is unsigned from a person who is not this
16 witness. There's been no testimony that this witness
17 personally participated in either the review of the
18 Osage Water Company annual report or the letter that's
19 attached thereto.

20 He states that he is aware of this pleading,
21 but did not participate in its preparation. I don't
22 think that's sufficient foundation for this witness to
23 do anything other than incorporate hearsay into this
24 record, which is objectionable, and we do object to
25 this document on that basis.

1 JUDGE WOODRUFF: Mr. Loraine, any response?

2 MR. LORAIN: Yes, Judge. It's -- he is aware
3 of it and -- and I think that's the attempt of voir
4 dire before I -- what I was attempting to do.

5 But I think he -- his staff has participated
6 in -- in this -- in the recommendation in this --
7 before the Commission on -- and this -- on this issue.
8 And, in fact, this is the Staff recommendation on
9 page -- page 2, isn't it?

10 THE WITNESS: Yes.

11 JUDGE WOODRUFF: Any other objections from any
12 other parties?

13 MR. WILLIAMS: Your Honor, I -- I do
14 have -- I'm sorry. You asked for someone else.

15 JUDGE WOODRUFF: And it -- go ahead,
16 Ms. O'Neill.

17 MS. O'NEILL: Your Honor, may I voir dire the
18 witness on one question, and then I'll tell you
19 whether I have an ob-- able to give you that.

20 JUDGE WOODRUFF: You may.

21 MS. O'NEILL: Mr. Johansen, as the supervisor
22 of the water department, did you review the work of
23 Ms. McMellen, who prepared the letter on this matter?

24 THE WITNESS: No.

25 MS. O'NEILL: Okay. I'm not gonna take a

1 position on this, Your Honor.

2 JUDGE WOODRUFF: Mr. Williams, do you have
3 anything further to add?

4 MR. WILLIAMS: No, Your Honor. I believe
5 it -- it's an attempt to get this into the record and
6 that is objectionable and I do raise that objection.

7 JUDGE WOODRUFF: I'm gonna go ahead and
8 overrule the objection. The exhibit will be admitted
9 into evidence.

10 (EXHIBIT NO. 21 WAS RECEIVED INTO EVIDENCE.)

11 BY MR. LORAIN:

12 Q. Sir, in -- in reference to Exhibit 21, your
13 staff recommended four items basically on the bottom of
14 page 1. It -- it -- would -- would you agree with
15 that?

16 A. If I -- and -- and I know this is confusing.

17 Q. Well, give --

18 A. The Staff --

19 Q. -- bring it on out.

20 A. The Staff of the Commission filed this
21 recommendation. My staff, that staff being the Water
22 and Sewer Department, did not create this
23 recommendation. This -- this was initiated through a
24 review that was conducted by the accounting department
25 staff.

1 I was aware that the document was being
2 prepared. I reviewed the pleading itself. And as I
3 mentioned to Ms. O'Neill, I did not, however, directly
4 participate in the review of the work that went in to
5 the creation of the document or that -- that's behind
6 the document.

7 So with that qualification, yes, this is the
8 Staff's recommendation.

9 Q. And you were aware of it?

10 A. I was aware of it, yes.

11 Q. All right. In -- in that regard, I would like
12 you to review Item 1 -- 4/1. And does it not say, as I
13 started to say a while ago, that there was some
14 criticism in regards to a certain sentence No. 1 there.
15 Do you see that?

16 A. Yes.

17 Q. Do you -- do you -- it says in -- the 1999
18 annual report should match the January 1st
19 beginning-of-the-year amount in the annual report and
20 no explanation is given. That -- that's pretty clear,
21 isn't it?

22 A. Yes.

23 Q. All right. No. 2, information provided in
24 previous years, such as the number of pumps, wells,
25 meters necessary to conduct business, is not included.

1 That -- that's certainly in keeping with the needs of
2 NARUC, isn't it?

3 A. Yes.

4 Q. We need -- we need to have that?

5 A. Yes.

6 Q. No. 3, amounts in the 1999 annual report are
7 significantly different, higher or lower, when compared
8 to previous years with no explanation given?

9 A. That's what it says, yes.

10 Q. No. 4, required explanations as in every
11 annual report are not completed. Now, that appears to
12 be the -- the sum and substance of -- of some criticism
13 in -- in regards to the Staff's recommendation on the
14 '99 annual report?

15 A. Correct.

16 Q. Now, we would -- we would agree, wouldn't we,
17 that these would be -- I believe, someone has
18 characterized these as minor discrepancies?

19 A. I -- I have not heard that term used.
20 They're -- we identify it in the Staff recommendation
21 as being discrepancies. I --

22 Q. All right.

23 A. So --

24 Q. And -- and the discrepancies, which should be
25 handled in -- in a proper -- a proper report, shouldn't

1 it?

2 A. Yes.

3 Q. So -- so would it be fair to say that at least
4 the report that was two years old when it was filed, or
5 at least a couple years behind time; you'd agree with
6 that?

7 A. Yes.

8 Q. When it was filed, it -- it -- it comes up
9 lacking; is that true?

10 A. Yes.

11 MR. LORAIN: All right. Now, sir, in -- in
12 that regard, there's some criticism about opening and
13 closing balances. I'd like to show you --

14 And, Judge, I'm gonna go through a series of
15 these things, so I know no easy way to do it now that
16 we're going through. So, Bill, would you get
17 Exhibit 22? Would be the 1998 annual report -- be
18 Exhibit 22.

19 Give me the -- just give me the two yellow
20 copies over there for her and then the rest, if you
21 could pass them around.

22 (EXHIBIT NO. 22 WAS MARKED FOR
23 IDENTIFICATION.)

24 BY MR. LORAIN:

25 Q. Sir, I'm gonna hand you what's been marked as

1 Exhibit 22. Now, Mr. Johansen, on 22 can you identify
2 what -- what this appears to be? It's a cover letter
3 from Mr. Williams and attached to it is -- is a page of
4 the annual report; is that true?

5 A. Yes.

6 Q. And that annual report was filed according to
7 Public Service Commission records on September 3rd,
8 1999?

9 A. Yes.

10 Q. And it's for the calendar year 1998?

11 A. Correct.

12 Q. If you would look at the -- at page W-5 that's
13 been reproduced here.

14 A. Okay.

15 Q. Do you see that there's no pumping plant
16 mentioned here? Do you see that? Look at line 14,
17 category 320 through 328.

18 A. That's -- that's correct. There are no
19 entries on those lines.

20 Q. So that if one would look at this, one would
21 say well, Util-- Osage Water Company doesn't have any
22 pumping plant, wouldn't one?

23 A. Not necessarily.

24 Q. That -- the indication is there's no reporting
25 on it?

1 A. Correct.

2 Q. Would you also agree that the water treatment
3 lines of land and rights there -- there certainly seems
4 to be some -- some other blanks on this page?

5 A. Yes, there are several blanks on the page.

6 Q. All right. Now, would it be fair to say that
7 NARUC accounting -- the actual NARUC accounting is the
8 numbers that we're talking about on W-5 here, 301, 302,
9 303, et cetera, and so forth?

10 A. Yes. The -- the -- if you're looking at this
11 document under the column that is headed accounts --

12 Q. Yes.

13 A. -- in each subdivision there, there are
14 further breakdowns. For example, the -- the first line
15 in that column is intangible plant. There are
16 three categories there and each of those are followed
17 by a number in parentheses. Those numbers in
18 parentheses do tie back to the USOA accounts.

19 Q. Yes. And -- and that's the account that's
20 recognized in Missouri so that reporting is -- is done
21 in that fashion?

22 A. Yes.

23 Q. So that if we don't have anything for 320,
24 321, 322, et cetera, and so forth, on down to -- down
25 to 328, that certainly means that this -- this page is

1 not in accordance with NARUC for at least the pumping
2 plant; would you agree with that?

3 A. Maybe. It depends on whether or not the
4 company has any of those facilities in service.

5 Q. Right.

6 A. They're -- you're gonna look at any annual
7 report and see a lot of blanks on it, simply because
8 the company has no entries for that account; and, in
9 fact, should not have any entries for that account.

10 Q. Because they don't have a pumping plant?

11 A. Right.

12 Q. Okay.

13 A. It certainly brings that issue into question.

14 Q. And -- and do you believe for one minute that
15 there's no pumping plant for Osage Water Company?

16 A. I'm trying to figure out if that's a positive
17 answer or a --

18 Q. That's a yes --

19 A. -- negative answer.

20 Q. That's a yes or no.

21 A. Okay. I believe they do have pumping
22 equipment.

23 Q. Okay. I'm sorry. I confused you.

24 A. I couldn't -- yeah.

25 Q. I didn't mean to do that.

1 A. I -- I couldn't figure out whether or --
2 Q. I -- I -- I'm sorry. I can't figure it out --
3 A. Okay.
4 Q. -- either. I'm sorry.
5 A. Okay.
6 Q. The question is, is, yes, you believe they do
7 have a pumping plant?
8 A. Yes.
9 Q. Why would that be eng-- from an engineering
10 standpoint?
11 A. Well, you have --
12 Q. Why would --
13 A. -- normally have pumping equipment installed
14 in wells to pump the water out of the ground.
15 Q. And if you don't have them, you can't serve
16 water?
17 A. Correct.
18 Q. Okay. So if we can, we have to -- we know
19 that if -- if you were to do a field audit, one of the
20 things an engineer would do would be go out there
21 and -- and -- and find that out so we could go to some
22 rate base, wouldn't we, if we thought they did have a
23 pump plant?
24 A. Oh, certainly.
25 Q. So we'd have to go out and find them?

1 A. Which we do routinely.

2 Q. Right. And -- and -- and so this really not
3 in compliance -- this '98 -- '98 report filed in '99,
4 it's not in compliance with NARUC, is it?

5 A. I would be surprised if it is.

6 Q. Okay.

7 A. As -- as we've just discussed regarding
8 the -- the example you gave on pumping plant.

9 Q. All right. Now, also on that page we've got
10 a -- a total water utility plant estimate of
11 \$1,242,879.30. Do you see that at the bottom?

12 A. Yes.

13 Q. Would -- would that mean this is what they're
14 calling plant?

15 A. That is what the company has on their books as
16 total plant and service.

17 Q. And that would be something that you would
18 want to know as a Staff member as -- particularly as an
19 engineer; and you are an engineer, aren't you?

20 A. Yes.

21 Q. And you'd want to know that so that you could
22 do rate base, right?

23 A. Oh, certainly.

24 Q. So it's necessary?

25 A. It -- it is necessary -- it does not equate to

1 rate base, but it provides a starting point for the
2 determination of rate base.

3 Q. Well, I think we talked about this, but maybe
4 we didn't. Expenses, plant and depreciation, any --
5 anything else that you've got to have for rate base?

6 A. Well, rate base as a component of the overall
7 cost of service is plant and service adjusted for
8 depreciation reserve, adjusted for contributions, so on
9 and so forth.

10 Q. So --

11 A. So this would be a number that we would start
12 out with in evaluating what the rate base is.

13 Q. So, in other words, we would take this -- if
14 this Commission would say \$1,242,879.30 is certainly a
15 starting point and -- and that's a very important
16 starting point because this is what they're reporting
17 as their total plant for Osage Water Company?

18 A. That's what they're reporting on their books,
19 yes.

20 Q. Yes.

21 Now, do you believe that that's an accurate
22 number?

23 A. I don't know.

24 Q. And it's important to know, isn't it? It's
25 important to know for -- for your job as -- as --

1 A. That particular number is -- as I mentioned,
2 is a starting point. The number that we develop as the
3 company's actual rate base is the important number when
4 you come down to calculating customer rates.

5 Q. And shouldn't their numbers conform
6 with -- with your numbers at some time so we can have
7 an agreement as to what the rate base is?

8 A. Not necessarily. There will be many times
9 when company records plant on its books that the Staff
10 will not recognize and the Commission ultimately may
11 not recognize as rate base that they're allowed to
12 return to earn a return on.

13 That doesn't mean that their books are
14 misstated. It simply means that there are certain
15 adjustments that are made to those plant balances that
16 don't flow through to rate base. So there may very
17 well be discrepancies.

18 Q. And -- and to -- and to identify those
19 discrepancies by accurate reporting as to location,
20 capability, function, costs -- the original costs and
21 all of the things we just talked about, that's a
22 function of your agency and your -- more specifically
23 your division and more specifically an engineer in your
24 division?

25 A. That in great part is true, yes.

1 Q. Okay. So we want to get to the bottom line
2 and we've got to do that with proper reporting, don't
3 we?

4 A. We have to do it with proper recordkeeping.

5 MR. LORAIN: All right. Now, sir, I'm gonna
6 show you -- Bill, 23, please. That's the '97 report.
7 The annual report of Osage Water Company for the year
8 '97 -- also turning you -- I'm gonna direct your
9 attention, if I may --

10 May I proceed, Judge, just to get these
11 records in -- may I proceed while we're doing that?

12 JUDGE WOODRUFF: Yes -- well, why don't you
13 wait while he's doing that --

14 MR. LORAIN: Okay.

15 JUDGE WOODRUFF: -- so it's not distracting.

16 (EXHIBIT NO. 23 WAS MARKED FOR
17 IDENTIFICATION.)

18 MR. LORAIN: Mark 23 on that, if you will,
19 please.

20 THE WITNESS: Okay.

21 BY MR. LORAIN:

22 Q. Sir, in directing your attention to
23 Exhibit 23, you -- you recognize this to be an annual
24 report of the Osage Water Company for the year '97?

25 A. That's what the first page says, yes.

1 Q. And do you recognize the second page to be
2 Mr. Williams' signature, and you recognize W-5 to be
3 the W-5 page for that particular report?

4 A. Based on the -- what's listed at the top of
5 the page identifying it as for the year ended
6 December 31st, 1997, I assume that's correct, yes.

7 MR. LORAINE: Move for the admission, Judge,
8 of -- of this particular Exhibit 23 into evidence.

9 JUDGE WOODRUFF: 23 has been offered into
10 evidence, are there any objections?

11 (No response.)

12 JUDGE WOODRUFF: Hearing none, it will be
13 received into evidence.

14 (EXHIBIT NO. 23 WAS RECEIVED INTO EVIDENCE.)

15 BY MR. LORAINE:

16 Q. If I may, sir, direct your attention to
17 pumping plant locations on '97?

18 A. Yes.

19 Q. Same comments we made on the last one would be
20 applicable here on '97, wouldn't they?

21 A. Correct.

22 Q. We note that there's a change in the bottom
23 figure from '97 to '98. Apparently the company says
24 that they have acquired additional plant, if you will.
25 Their total, it seems to be less in '97 than it was in

1 '98, would you agree to that?

2 A. Yes.

3 Q. Minor discrepancies, appears to be, as far as
4 the dollar amount difference?

5 A. Well, there's -- there are differences, and
6 I -- I think. And not sitting here and trying to add
7 all the numbers up --

8 Q. Right.

9 A. -- in my head, if you do notice on the '98
10 W-5 sheet -- and there are additions shown -- what
11 would be the third column -- additions during year.
12 Assuming those exceed the numbers in the next column,
13 which is retirements, I would expect the bottom numbers
14 to be different.

15 Q. Absolutely. We're in agreement.

16 Once again, no reference as to any pumping
17 plants, do you agree with that?

18 A. There are no entries on those lines, that's
19 correct.

20 Q. All right. Now, sir, I'd like to move
21 forward, if I may, and ask you: Did Staff ever audit
22 between '97 and '98 and '99 -- did Staff ever audit
23 this particular company, Osage Water Company?

24 A. Yes.

25 Q. And do -- do -- are -- were you -- were you

1 familiar with that audit?

2 A. More so than I would like to have been.

3 Q. All right. And would the -- would -- the
4 audit that was performed by Staff, would it have
5 differed materially from what the company reports in
6 '97 and '98 on -- on the bottom line?

7 A. It -- it could, yes, from the standpoint of
8 the rate base numbers that we calculated and proposed
9 for use in the company's rate case. Those numbers
10 compared to the total plant and service numbers
11 recorded on the company's books, there could be
12 significant differences. That -- that is not unusual.

13 Q. And wouldn't it be desirable to start getting
14 the reports in conformance with NARUC so that we can
15 start determining what these differences are from year
16 to year?

17 A. That would certainly be helpful.

18 Q. So we -- we know that they were not in
19 compliance in '97 or '98 with NARUC, don't we?

20 A. There are entries missing from these documents
21 that I would expect to be there, yes.

22 MR. LORAIN: Okay. That's fair.

23 Now, I would like to show you what's been
24 marked previously audit -- the --

25 MR. KRUEGER: Staff audit.

1 MR. LORAIN: -- Staff audit, please. This
2 would be marked as Exhibit 25, Your Honor.
3 MS. O'NEILL: 24.
4 JUDGE WOODRUFF: 24 would be next.
5 MR. LORAIN: I'm sorry. Let -- let's leave
6 it 25. I can come back to 24, if I may. I've got
7 another document.
8 JUDGE WOODRUFF: All right.
9 MR. LORAIN: Make it be Exhibit 25.
10 (EXHIBIT NO. 25 WAS MARKED FOR
11 IDENTIFICATION.)
12 BY MR. LORAIN:
13 Q. I'm gonna hand you what's been marked as 25,
14 sir.
15 MR. LORAIN: Bill, you gave me the wrong one.
16 MR. COCHRAN: That's a -- no, you're right.
17 No, it's the Staff log.
18 BY MR. LORAIN:
19 Q. Sir, do you have what's been marked as Staff
20 accounting schedules?
21 A. Yes.
22 Q. And this was a report by the Staff that came
23 in between the '98 and '99 report, didn't it?
24 A. Let me check the dates here. Yes, that's
25 correct.

1 Q. And, of course, they were -- they were filed
2 delinquently, the '98 and '99 reports?

3 A. Yes.

4 Q. All right. And if -- if I can understand
5 Staff on page 3, the total rate base for the Staff
6 found only to be \$243,976; is that true?

7 A. Yes.

8 Q. So there is a substantial discrepancy in
9 the -- about a million dollars or so, would you agree,
10 from what's being reported and what Staff actually
11 audited?

12 A. There's a difference in the rate base that
13 Staff calculated for the rate case and the total plant
14 and service entries reported in the company's annual
15 report.

16 Q. And, in fact, on page 3 -- and -- and that's
17 about a million dollars, give or take -- a million-one,
18 I believe, isn't it?

19 A. Actually it's basically a million.

20 Q. All right.

21 A. Just --

22 Q. All right. Now, if you look at 3 -- page 3-2
23 on your -- on the Staff's report, the total plant and
24 service -- they didn't even agree with the total plant
25 and service on those -- on those -- not even rate base,

1 I'm talking about total plant and service -- they only
2 show \$246,740 according to the Staff audit, don't they?
3 A. Yes, the -- page -- what's the --
4 Q. 3-2.
5 A. 3-2 at the bottom right-hand corner?
6 Q. Right.
7 A. Total plant and service under the column what
8 we call adjusted jurisdictional is 260,805.
9 Q. Back on the total company 246, 740?
10 A. Right. And -- and those are numbers that the
11 Staff generated --
12 Q. Right.
13 A. -- itself.
14 Q. Right.
15 A. They -- they are not reflective technically of
16 what's on the company's books.
17 Q. And -- and that -- we would -- we would hope
18 that the Commission would base rate base on -- on -- on
19 what the Staff's audits indicated, rather than what the
20 company's reporting, wouldn't we?
21 A. Yes. That's what -- that's what is done.
22 Q. And so we have approximately, you know, give
23 or take a million dollars reported on the reports
24 versus what Staff has physically -- gone out physically
25 located on their own and physically identified to be

1 somewhere in the neighborhood of 240 to 260, according
2 to these figures?

3 A. Again, from the standpoint of rate base versus
4 the company's report or total plant and service, that
5 is correct.

6 Q. All right. And we would -- that's not a small
7 discrepancy, is it?

8 A. It's a large difference in those two numbers,
9 yes.

10 Q. Okay. And that wasn't mentioned in
11 the -- the -- at -- in -- in a criticism of that
12 earlier report, was it?

13 A. That's because we're talking about
14 two different numbers. We're -- in one case -- in one
15 situation we're talking about Staff's calculated level
16 of rate base that should be allowed to be collected
17 as -- as a component of the company's rates.

18 The other numbers we're talking about are
19 total plant bookings that exist on the company's books.
20 They're -- they're not going to match up.

21 Q. I agree with you. But they shouldn't be a
22 million dollars apart, should they?

23 A. I can think of at least one other situation
24 with a relatively small company where we have a
25 disagreement of a half a million dollars. Is

1 that -- it's very unusual, but it's -- it's not unheard
2 of.

3 Q. It's not unheard of because you've got one
4 other example of a half-of-million-dollars discrepancy,
5 but this is a million-dollar discrepancy. It is the
6 worst, isn't it?

7 A. Yes.

8 Q. Now, sir, if we could, I'd like to ask you
9 based on -- is -- is it true that -- and you're
10 probably familiar with this park -- Parkview Bay issue.
11 I -- I know we've gone way back on that one?

12 A. Yes.

13 Q. Do you remember that?

14 A. Yes.

15 Q. Is that property included in rate base any
16 longer for this Commission?

17 A. It is not reflected in Staff's rate base
18 numbers in these accounting schedules.

19 Q. So --

20 A. It's probably still reflected on the company's
21 books. It's not included -- my recollection is it is
22 not included in Staff's rate base calculations for this
23 most recent rate case.

24 Q. And that's based on your recollection,
25 which -- which I'll rely on; is that true?

1 A. Yes.

2 Q. But -- but nevertheless, if we examine the
3 company's records, we'll find in '97, '98 and '99 --
4 all the reports that we have we'll find reference to
5 Parkview Bay and it's plant, won't we?

6 A. It is plant that is -- and properly --
7 probably properly recorded on the company's books as
8 company plant. It is not plant that is recognized in
9 rate base for the purpose of setting company rates.

10 Q. And wouldn't that be because it's not used and
11 useful for this purpose for this Commission; isn't that
12 the reason?

13 A. That's correct.

14 MR. LORAIN: All right. Now, if I were to
15 ask you and -- and if you'll with me -- if I was to ask
16 you to locate --

17 I'm missing an Exhibit, Judge. You said it
18 was 25?

19 JUDGE WOODRUFF: This Staff audit that was
20 just presented was 25. 24 has not been --

21 MR. LORAIN: Okay. 24.

22 BY MR. LORAIN:

23 Q. One of the issues about this recordkeeping has
24 created a -- lots problems in the past and -- and it
25 culminated, did it not, in Case No. 2000-557 in what is

1 known as a agreement regarding disposition of a small
2 company rate increase request?

3 A. Yes.

4 Q. Do you remember that document?

5 A. Yes.

6 MR. LORAIN: And I just happen to have a copy
7 of that document here. Bill, would you get me -- let's
8 mark that 27 for the record so I can try to keep these
9 numbers straight.

10 JUDGE WOODRUFF: Let's get 26.

11 MS. O'NEILL: Yeah, we still don't have a 24.

12 MR. LORAIN: And we may not, ma'am. We may
13 not.

14 (EXHIBIT NO. 27 WAS MARKED FOR
15 IDENTIFICATION.)

16 BY MR. LORAIN:

17 Q. 27 -- I'm gonna hand you what's been marked
18 No. 27, sir.

19 A. Okay.

20 MR. LORAIN: Give me one, Bill.

21 MR. COCHRAN: You want a yellow one?

22 MR. LORAIN: No, I don't want -- I don't want
23 a yellow one.

24 MR. COCHRAN: They're all yellow.

25 MR. LORAIN: Fine. Just give me one.

1 MR. COCHRAN: Here you are.

2 BY MR. LORAINÉ:

3 Q. Be 27. Sir, in -- in looking at Exhibit 27 --

4 JUDGE WOODRUFF: Well, why don't you wait
5 until the exhibits are out to the attorneys.

6 MR. LORAINÉ: May it please the Court?

7 JUDGE WOODRUFF: You may proceed.

8 BY MR. LORAINÉ:

9 Q. Exhib-- when looking at Exhibit 27,
10 Mr. Johansen, would it be fair to say that you're very
11 familiar with this document?

12 A. Yes.

13 Q. In fact, you -- your group and your agency and
14 your Staff pretty much authored this; isn't that a fair
15 statement?

16 A. That's correct.

17 Q. And coun-- Public Counsel asked you earlier if
18 it might be helpful to do some kind of a document
19 to -- to -- you called it a sunset document, and I
20 believe there were some others about keeping these
21 utilities in line. You had some authority to do that?

22 A. Yes.

23 Q. Do you remember that discussion?

24 A. Right.

25 Q. Wasn't this an effort to keep OWC in

1 line? Wasn't that what this was?

2 A. Well, the document itself is a -- a settlement
3 agreement document that the Staff and company reached
4 to resolve the company's rate case. Several of the
5 provisions included in this document are, in fact,
6 agreements between the company and the Staff as to what
7 is going to be done on a going-forward basis.

8 And, in fact, we have filed some follow-up
9 reports in this particular case and the 2000-557 case
10 regarding the company's compliance. If I'm not
11 mistaken, I think we have another report due regarding
12 that.

13 So, yes, the provisions of the document itself
14 were intended to get the company to correct some of the
15 problems that we believe that they had.

16 Q. And if you will, sir, turn to page 19-2 on
17 your schedule and look at No. 3.

18 MR. WILLIAMS: Your Honor, I'm gonna object to
19 the witness testifying to any portion of the document
20 until the document has been offered into evidence.

21 MR. LORAIN: Judge, I'd like to move for the
22 admission of this document into evidence.

23 JUDGE WOODRUFF: Is that Exhibit 27?

24 MR. LORAIN: Yes, Judge.

25 JUDGE WOODRUFF: Exhibit 27 has -- has been

1 offered into evidence, are there any objections to its
2 receipt?

3 MR. WILLIAMS: Yes, Your Honor, I do have
4 objection to the receipt of the document. In looking
5 at the document, it starts on page 2 with a series of
6 numbered paragraphs which go through 1 through 5 on
7 page 3. It's -- continues, then, with paragraphs 15,
8 16, 17 and 18.

9 It's unclear from looking at this document
10 whether it's complete -- that it appears to be
11 incomplete. And I think if we're going to bring these
12 documents into evidence, then we need all the evidence
13 before the Commission and not just part of it.

14 MR. LORAIN: Judge, for my purposes, I don't
15 need any other thing -- other than 19-2, and this -- I
16 think you'll be able to recognize this 19-2 as -- as
17 one of the conditions imposed by -- by his division on
18 this company.

19 My question about this document really can be
20 limited to -- to that particular page, and -- and, of
21 course, the signature page, 19-5, which is all I care
22 about.

23 With that -- that admonition and -- and,
24 Judge, may I inquire of this witness?

25 JUDGE WOODRUFF: Well, go back again and tell

1 me which document you're referring to.

2 MR. LORAIN: I -- I just want 19-2, and I
3 just want to see who signed it, 19-5.

4 JUDGE WOODRUFF: Okay.

5 MR. LORAIN: Those are the two relevant pages
6 of this. The rest are identification only.

7 JUDGE WOODRUFF: Mr. Williams, do you have any
8 further response?

9 MR. WILLIAMS: Your Honor, I think the record
10 should clearly reflect this is not the disposition
11 agreement. It may be some pages excerpted therefrom.

12 JUDGE WOODRUFF: Okay.

13 MR. WILLIAMS: That's not what was represented
14 to Osage Water Company.

15 JUDGE WOODRUFF: Ms. O'Neill, do you have
16 something?

17 MS. O'NEILL: Your Honor, if -- if -- if this
18 is offered as portions of the proposed agreement in
19 this case number, I don't have an objection. But I
20 think the record should clearly -- I agree with
21 Mr. Williams in that I think the record should clearly
22 reflect that this was an agreement proposed for
23 disposition of this case.

24 And if that's the case, I don't have an
25 objection. And that its portions of that

1 agreement -- of that proposed agreement.

2 JUDGE WOODRUFF: Yes. It is my understanding
3 it is portions of the proposed agreement; is that --

4 MR. LORAIN: That's right.

5 JUDGE WOODRUFF: With that understanding, it
6 will be received into evidence.

7 (EXHIBIT NO. 27 WAS RECEIVED INTO EVIDENCE.)

8 BY MR. LORAIN:

9 Q. 19-2, page -- paragraph 3, sir.

10 A. Yes.

11 Q. Was this agreement finalized at -- this
12 portion of this agreement finalized and, No. 3, was it
13 applicable to Osage Water Company?

14 A. I believe it was, yes. I -- and I say that
15 without having a copy of the Commission's order in
16 front of me. But if I recall correctly, the
17 Commission's order regarding the resolution of the case
18 was that the provisions of this agreement would be
19 adopted by the Commission and -- and -- and, therefore,
20 subject to compliance by the company.

21 Q. And No. 3 in particular was important to you
22 and to your staff, wasn't it?

23 A. Yes.

24 Q. Could you read that into the record?

25 A. That the company will maintain its books and

1 records in a manner whereby all revenues, expenses and
2 plant balances will be properly assigned to each of the
3 company's separate certificated service areas.

4 Q. And, sir, what that essentially says when it
5 says in a manner, that means NARUC by definition of
6 your Commission, doesn't it?

7 A. Well --

8 Q. That's -- that's a yes or no.

9 A. Well, no, it isn't --

10 Q. All right.

11 A. -- actually.

12 Q. Well, explain it to me. Then explain it to
13 me.

14 A. Okay. What we're talking about here is a
15 company that has several physically separated operating
16 systems. One of the things we were interested in as
17 part of the resolution of the rate case was that
18 company information be maintained separately for each
19 of those operating areas.

20 Now, the basis of that would be that the
21 company essentially would establish a system whereby
22 the -- the general accounts that they keep, which
23 should be in conformance with USOA, would be subdivided
24 or segregated in such a way that we could identify
25 those particular items on an operating area basis.

1 So the -- the basic premise behind it is the
2 books and records are maintained for total plant and
3 service, total expenses, so on and so forth -- we
4 wanted those further subdivided by operating area.

5 Q. So you could know with -- what physical plant
6 went with what physical certificate and make some kind
7 of a reasonable determination of whether adequate rate
8 base was there?

9 A. Yes.

10 Q. All right. And -- and that was important to
11 you in this disposition agreement, wasn't it?

12 A. Yes, it was.

13 Q. And this '99 report was filed after this,
14 wasn't it?

15 A. It --

16 Q. It was filed after this disposition agreement?

17 A. That's correct.

18 Q. So would you consider a disposition agreement
19 a -- a serious matter for a -- a regulated company? I
20 mean, you're serious as a heart attack, aren't you,
21 when you ask for something with a disposition
22 agreement?

23 A. Oh, yes, that -- that's the document that
24 establishes the basis for the eventual Commission order
25 in a small company rate case.

1 Q. So we know as of at least the '99 report when
2 it was filed this year -- we -- we know that it -- they
3 still aren't complying with that disposition agreement
4 totally?

5 A. This particular item that we're discussing
6 under the disposition agreement would not be reflected
7 in the company's annual report, because they re--
8 and -- and those -- on sheet W-5, for example, in the
9 annual report, they are reporting total company numbers
10 total plant and service, total pumping equipment, you
11 know, all the breakdowns there.

12 What we would be looking at for this company
13 to maintain, in addition to that information that they
14 report to the Commission through the annual reporting
15 form, are subaccounts breaking out those entries by
16 operating area.

17 I -- I would not expect to see that breakdown
18 reflected in the company's annual report. Now, that
19 doesn't go to the issue of whether the annual report is
20 correct on a total company basis. I'm just saying that
21 I would not expect to see this particular item
22 reflected in the annual report that the company files
23 with the Commission, because it's total company.

24 Q. But we nevertheless have already gone through
25 that the '97, '98 and '99 reports are inadequate for

1 NARUC -- we already talked about that because they
2 don't have any pumping plants?

3 A. Yes, we did discuss that.

4 Q. Okay.

5 A. I -- I just wanted to clarify --

6 Q. Yes.

7 A. -- that what we would expect to see in the
8 annual report in relation to this particular item.

9 Q. You don't believe that the company has
10 maintained their records in -- in total compliance with
11 this -- with this disposition agreement, do you, at
12 this time?

13 A. Quite honestly since the in-- since the
14 agreement was entered into, I -- I'm not fully aware of
15 what follow-up audit work has been done to -- to know
16 whether or not, for example, their -- they've split
17 their books out by operating area. I -- I simply don't
18 know.

19 Q. Well, if we look at part of the '99 report,
20 and I'll -- I'll get you there in a minute then. Okay.
21 Suffice it to say that this Commission and this Staff
22 has found it necessary on the same -- well, would
23 the -- would the change of Mr. Mitchell only -- and, by
24 the way, Mr. Mitchell signed the '99 report that was
25 filed in 2001 on behalf of this company, didn't he?

1 A. I believe he did, yes.

2 Q. Okay. And Mr. Williams submitted it?

3 A. Yes.

4 Q. So we know that this company has had to be

5 told pestiferously in -- in the form of this --

6 repeated comments about Commissioner Murray and, in

7 fact, even this agreement having been entered into to

8 try to keep this company doing the right thing on their

9 recordkeeping?

10 A. Osage Water Company?

11 Q. That's right.

12 A. Yes.

13 Q. So now, what makes you believe if -- if I can

14 ask you this question, what makes you believe that a

15 sunset provision or some kind of this special provision

16 by this Commission as a proviso will, in fact, solve

17 the problem of recordkeeping with Environmental

18 Utilities, given the management personnel would be the

19 same?

20 A. I -- I think that's a good point that you

21 raise. I think that is a question. I think we have

22 stated that that's a question -- a -- a -- a con--

23 concern that we have.

24 Q. It's a --

25 A. I --

1 Q. -- serious one?

2 A. Yes, it is. I would agree with that.

3 Q. All right.

4 A. I would also say that based on Mr. Russo's
5 testimony in this case regarding the records that have
6 been initiated by Mrs. Williams for Environmental
7 Utilities that there are -- there are better records
8 out there related to the facilities pertaining to this
9 particular application in Environmental Utilities.

10 Now, does that solve all of our concerns,
11 probably not. I think it goes -- it -- it does go some
12 portion of that distance.

13 Q. So it would be appropriate to say hope springs
14 eternal; we're hoping that they'll do a better job,
15 aren't we?

16 A. We have already seen that they are --
17 they -- we have seen that the records that have been
18 initially constructed for Environmental Utilities are
19 better than the records that we have historically seen
20 for Osage Water Company. And --

21 Q. And yet they still don't comply with NARUC?

22 A. They?

23 Q. Even the new records that were filed -- they
24 being the management team of Osage Water Company in
25 their most recent '99 report?

1 A. The Osage Water Company records still do not.
2 I believe that's accurate.

3 Q. Now, sir, in reference to, if you will -- do
4 you believe that -- there was a loan and I'd like to
5 direct your attention, if I may, to a -- to a report
6 that was filed in an earlier case. And it was -- in
7 fact, it was a Janet (sic) Fischer testimony.

8 It was rebuttal testimony of Janet (sic)
9 Fischer in Case 98-236/WC-98-211. Do you
10 remember -- that's the case we made earlier reference
11 of Parkview Bay problems?

12 A. Yes.

13 Q. Sir, I'm gonna hand you for a moment just for
14 identification purposes 34 --

15 A. Okay. 34.

16 Q. -- which would be rebuttal testimony of Janis
17 Fischer.

18 JUDGE WOODRUFF: If I -- if I can interrupt,
19 we're -- we're having lots of problems with coming out
20 of sequence here.

21 MR. LORAIN: I understand that, Judge.
22 And -- and -- and the reason we are is I -- I tried to
23 expedite this in some fashion, but --

24 JUDGE WOODRUFF: Yeah, I understand, but --

25 MR. LORAIN: As long as the records identify

1 which numbers they are -- I've had to pre-mark some
2 and, you know, some exhibits I won't use. But, you
3 know, as long as the record finally indicates what ones
4 came in and what ones didn't -- and I'm hoping that
5 that's where we're at on this.

6 JUDGE WOODRUFF: And you might not go back in
7 and fill in all of these other ones?

8 MR. LORAIN: May not, Judge.

9 JUDGE WOODRUFF: Right.

10 MR. LORAIN: May not. Because they're -- you
11 know, testimony does style --

12 JUDGE WOODRUFF: Right.

13 MR. LORAIN: It does change as you go through
14 something, and something may be alleviated. But I've
15 pre-marked these things, and as you know, there's
16 17 copies and I've pre-marked one -- and so that's the
17 reason for -- for that problem.

18 JUDGE WOODRUFF: All right. Well, I -- I'd
19 rather keep these in some sort of numerical order so
20 we -- we skipped over 24. That's -- I -- go ahead and
21 mark this as 24.

22 MR. LORAIN: Well, I -- I can go ahead and
23 put 24 in and -- if that'd help you.

24 JUDGE WOODRUFF: That would help.

25 MR. LORAIN: But --

1 JUDGE WOODRUFF: So long as you're referring
2 it to -- with the witnesses as 24, it should be clear.

3 (EXHIBIT NO. 24 WAS MARKED FOR
4 IDENTIFICATION.)

5 BY MR. LORAIN:

6 Q. I'm going to hand you what's now been marked
7 as 24, which is the Janet (sic) Fischer testimony. Do
8 you have that?

9 A. I have a copy of that.

10 Q. Are you familiar with that testimony?

11 A. To some degree, yes.

12 Q. To the -- to the extent that she worked under
13 your supervision in this case, are you familiar with
14 it?

15 A. Well, she did not work under my supervision
16 this -- in this case. She's in the accounting
17 department. She works under the supervision of
18 accounting department supervisors.

19 Q. She testified --

20 A. We were -- she testified in this case, and I
21 was involved in the case as well.

22 Q. All right. Are you familiar with who she is
23 and what she did and what this testimony is about?

24 A. Yes.

25 Q. All right. If you will, sir, I'd like you to

1 look on -- on Schedule 2.

2 MR. WILLIAMS: Your Honor, I'm gonna object
3 again for the witness to read anything from the
4 contents of the documents, which has neither been
5 offered nor admitted into evidence.

6 MR. LORAIN: I -- I just asked him to look at
7 it, Greg. I -- I haven't even -- just asked him to
8 look at it. Is that premature, sir?

9 JUDGE WOODRUFF: The objection will be
10 overruled. He can look at the document.

11 BY MR. LORAIN:

12 Q. Would you do so?

13 A. Yes.

14 Q. I'd like you to just look at the document and
15 Account 224.1?

16 A. Okay. I have that.

17 MR. LORAIN: Now, sir, I'll move for the
18 admission of Exhibit 24 into evidence.

19 MR. WILLIAMS: Your Honor, I do have an
20 objection to it and I'd like to voir dire this witness.

21 JUDGE WOODRUFF: All right. You may.

22 MR. WILLIAMS: Mr. Johansen, have you -- did
23 you participate in the preparation of the document
24 that's in front of you?

25 THE WITNESS: No.

1 MR. WILLIAMS: Are you personally familiar
2 with the contents of that document?

3 THE WITNESS: No.

4 MR. WILLIAMS: Do you have any knowledge of
5 that document other than what is written on the
6 document itself?

7 THE WITNESS: I have some general knowledge of
8 why it was produced and the context in which it was
9 produced, but where the actual numbers came from, no.

10 MR. WILLIAMS: I would object, Your Honor, to
11 this witness testifying to the contents of the document
12 that he is not familiar with, he did not participate in
13 the preparation of.

14 It's clearly an attempt to introduce testimony
15 from Janis Fischer into this case. She is not here to
16 be cross-examined today and there's no opportunity to
17 probe the veracity of the information, why it should
18 appear, what it purports to state.

19 Also I note that this document again is
20 excerpts apparently from a longer document such that
21 the excerpts may not reflect accurately all of the
22 information of the original document contained. For
23 that reason, I'd ask the Court to exclude it from
24 evidence in this case.

25 JUDGE WOODRUFF: Response?

1 MR. LORAIN: Your Honor, the only thing
2 that's important is this is filed rebuttal testimony,
3 so page 1 is important only from that standpoint. The
4 only thing else that's important for what I'm going to
5 talk about is page -- page 1, which is a
6 schedule -- it's listed as Schedule 12.

7 And one specific account, which I've
8 identified as 224.1 -- and it is Commission-filed
9 rebuttal testimony in the Case 98-236/WC-98-211. I
10 think the Court could take notice of it.

11 MR. WILLIAMS: Your Honor, Mr. Loraine
12 certainly can't talk about that information as long as
13 he has a witness who knows something about it.
14 I -- that's the whole point here.

15 JUDGE WOODRUFF: Your point is this witness
16 doesn't know anything?

17 MR. WILLIAMS: This witness know nothing about
18 this document. He's handed him the piece of paper and
19 wants now to have this witness adopt it for some
20 purpose of testimony when the witness has already
21 stated he knows nothing about it.

22 MR. KRUEGER: Your Honor, I join in the
23 objection for all of the reasons stated. I -- it
24 sounds like Mr. Loraine is asking Mr. Johansen to
25 testi-- to testify to the accuracy of numbers that are

1 contained in the document.

2 I'd also point out that it looks like we're
3 going pretty far afield. And I think this is -- this
4 evidence is tending to be cumulative and -- and a waste
5 of the Commission's time.

6 MS. O'NEILL: I would also join in the
7 objection.

8 JUDGE WOODRUFF: I'm gonna sustain the
9 objection. Exhibit 24 will not be admitted into
10 evidence.

11 MR. LORAIN: Thank you, Judge.

12 BY MR. LORAIN:

13 Q. Would you agree, Mr. Johansen, that it would
14 be difficult to -- to no-- know whether or not the
15 Parkview Bay is -- is still part of this rate base
16 in -- in Osage Water Company's case --

17 MR. WILLIAMS: Your Honor.

18 BY MR. LORAIN:

19 Q. -- Based on the records that -- that they are
20 filing.

21 MR. WILLIAMS: Your Honor, I'm gonna object to
22 this line of questioning on the relevancy and
23 certificate application for Golden Glade subdivision on
24 behalf of Environmental Utilities. I think that we've
25 all been very indulgent in letting Mr. Loraine

1 introduce this type of evidence.

2 But we're simply very far afield and this has
3 nothing to do with the issues before the Commission.

4 JUDGE WOODRUFF: What is the relevance of
5 this?

6 MR. LORAIN: Judge, it goes to one of the
7 Tartan criteria. In fact, this witness himself has
8 said that it -- it -- it goes to whether or not the
9 people that are managing this Environmental Utilities
10 and the same people that have managed OWC are, in fact,
11 qualified to keep appropriate records.

12 And -- and the appropriateness of these records --
13 this -- according to this witness is that it ultimately
14 leads to rate base, which, of course, is the basic
15 reason for this Commission to be in existence.

16 So I think it couldn't be more relevant, but I
17 understand that that's my position.

18 JUDGE WOODRUFF: Any further response?

19 MR. WILLIAMS: No.

20 JUDGE WOODRUFF: I'm gonna sustain the
21 objection that this appears to be cumulative to
22 evidence that has already been presented. The
23 objection is sustained.

24 MR. LORAIN: Thank you, Judge.

25 BY MR. LORAIN:

1 Q. Now, Mr. Johansen, you have -- you've talked
2 about the fact that the -- the '99 report has -- has
3 some additional information that has been provided on
4 it for OWC. Some -- one of your wit-- one of the
5 witnesses under your supervision has said that there's
6 some improvement, do you agree with that?

7 Has there been some improvement in OWC's
8 recordkeeping in the '99 report?

9 A. I -- I quite honestly don't recall that
10 testimony. I think what the testimony in this case is,
11 is that the records that were seen initially being
12 constructed by Environmental Utilities --

13 Q. Okay.

14 A. -- is an improvement -- are -- excuse me --
15 are an improvement over the records historically main--
16 maintained by Osage Water.

17 Q. And -- and -- and, of course, Environmental
18 Utilities hasn't filed their annual report yet and we
19 don't know what their NARUC accounts are; isn't that
20 true?

21 A. They don't exist technically, so they won't
22 even have an annual report that's due to be filed this
23 year.

24 Q. So where have the improvements been
25 indicated? Was it on the application?

1 A. Mr. Russo testified that his audit of the
2 records that are related to Environmental Utilities are
3 an improvement over and above those historically
4 maintained by Osage Water Company. That's -- I can
5 give you a cite in a transcript, if you'd like it.

6 Q. No. But my point is, is what's that based on?

7 A. Mr. Russo's audit of those records and his
8 testimony in this case.

9 Q. And that's based on how many months of
10 existence from E -- Environmental Utilities, EU?

11 A. Well, I -- probably about six.

12 Q. Okay.

13 A. I -- that's a --

14 Q. Six months?

15 A. -- good guess.

16 Q. And -- and -- and what we have talked about in
17 the inadequate recordkeeping is -- in OWC is -- is
18 10 years more?

19 A. It's several years.

20 Q. More than 15?

21 A. Several --

22 Q. More than 10?

23 A. Probably.

24 Q. All right. You're aware, sir, that there's
25 been some discussion about Environmental Utilities

1 obtaining or sharing some kind of equipment, bobcats,
2 other types of equipment with Environmental Utilities;
3 are you aware of that?

4 A. Well, there was certainly the -- the
5 assumption going into this that because of the joint
6 ownership, at least, partially of Osage Water and
7 Environmental Utilities, that there would likely be
8 sharing of equipment, as well as employees and other
9 resources between the two companies, so in that
10 context, yes.

11 Q. And you haven't seen any agreements that have
12 been presented to show what the terms will be much like
13 we haven't gotten an agreement on the sharing of the
14 water well out at Eagle -- at the Eagle subdivision; is
15 that right?

16 A. We have not seen any specific documentation
17 regarding those arrangements. I do believe, however,
18 as part of the feasibility study that was filed in this
19 case and that was subsequently reviewed and updated by
20 Mr. Merciel, there were allocations made of certain
21 operating costs, which are premised on that very
22 sharing of -- of resources that we're talking about.

23 I mean, that's -- that was the first
24 indication to us that there would be, in fact, be
25 sharing of such things.

1 Q. And -- and -- and it -- and to the extent that
2 that's undocumented, that leaves you with a -- a
3 question mark about some of the viability of EU to be
4 able to conduct what they say their business is gonna
5 be out here?

6 A. Well, yes. And I think we specifically said
7 that in the testimony. That one of the things that had
8 to happen to show that this company -- that they -- was
9 going to be economically feasible, but those types of
10 sharing arrangements would need to be in place.

11 That -- that's one of the premises that I
12 believe we set out that -- that said we're basically
13 making -- you know, you have to make that assumption
14 that it's going to happen. No. 1, because it makes
15 sense for the companies to share just from the
16 standpoint of both of their costs of service. But
17 I -- I believe -- and if you could give me a second I
18 can draw you right to that.

19 Q. No, I think I -- I understand what you're
20 saying and I don't think I -- you need to take the time
21 on it. But let me just ask you this: Wasn't your
22 comment primarily directed to the joint water use
23 agreement or the lack thereof? Wasn't that where that
24 comment was primarily directed to?

25 A. Well, no, actually I think -- I -- I think

1 we'd addressed it in two different manners. I think
2 the --

3 Q. Okay.

4 A. -- contract -- the wholesale arrangement was
5 an item by itself. The issue of other cost sharings
6 was an item separate and apart from that.

7 Q. And your comment there was essentially to make
8 sure you keep the things separate and -- and -- and
9 make sure that they're accounted for in -- in separate
10 categories, so some day, appropriate rate base
11 can -- can come about?

12 A. Yes. Yeah.

13 Q. And we haven't seen any move towards how that
14 arrangement is going to be handled?

15 A. There aren't any formal documents to -- at
16 least to my knowledge that exist that -- that set out
17 how resources are going to be shared, that is correct.

18 Q. And if, in fact, OWC would lead to some kind
19 of eventual demise, then that equipment and personnel
20 wouldn't be available, we take it, to be shared with
21 Environmental Utilities?

22 A. From a sharing standpoint, that's correct.

23 Q. Okay. Those are all criteria that should be
24 appropriately dealt with under the Tartan criteria,
25 aren't they?

1 A. Well, and I think those -- those particular
2 issues we're talking about right now -- and I -- I have
3 found this, so I'll just give a quick reference to it.
4 Again, referring back to Staff's position statements of
5 December 19th, 2001, Issue 3 on page 2, we talk about
6 the economic feasibility of this project.

7 And we basically say this, based upon the
8 following premises being true, Staff believes the
9 applicant's proposal would be economically feasible.
10 And we go through a list of six items there that we
11 think -- basically what we're saying, if these things
12 happen, this is an economic project -- it's an
13 economically feasible project.

14 One of those things is the wholesale water
15 agreement between the two service areas. One of those
16 things -- the last one, Item 6 cost sharing occurring
17 between the applicant and OWC. So those all tie into
18 the Tartan criteria.

19 Q. And, of course -- and, of course, the last
20 thing would be proper -- most properly documented with
21 a very complete and adequate NARUC accounting of what
22 material is being used, where and where it's located
23 and what it looks like and all of that information,
24 wouldn't it?

25 A. That would certainly be appropriate, yes.

1 Q. And without it, we won't get fair tariffs
2 here?

3 A. Well, I -- I wouldn't say that. Because what
4 we're going to do from an audit standpoint, we're going
5 to go out and -- and evaluate how that eq-- let's say
6 equipment, for example. If -- if there's equipment
7 that's jointly owned by the two companies, we're going
8 to go out and evaluate how that equipment is used, what
9 the -- what the breakdown in use is and we're going to
10 assign operating expenses of that equipment, we're
11 going to assign the value of the equipment to each
12 company based on our evaluation of how it's actually
13 being used. I mean, that's -- that's part of a routine
14 audit.

15 Q. All right. Well, and -- and in that respect,
16 we -- we know that, for example, the bobcat and the
17 excavator were OWC equipment and we now know they
18 show -- they show up in Environmental Utilities -- we
19 know that, don't we?

20 A. No, we don't.

21 Q. You don't know that?

22 A. They are not currently on Environ--
23 Environmental Utilities' books. My understanding --
24 and again, I think this goes back to the testimony
25 that's been proffered before -- that equipment is now

1 held in the name of Greg and Debra Williams personally.

2 It is not owned by Environmental Utilities.

3 Q. And -- and that even adds a third dimension to
4 what we're talking about. Now we've got equipment
5 owned by Greg and his wife that used to be owned by
6 OWC and -- and it may -- it's gonna be used and is
7 being used in -- in Environmental Utilities, wouldn't
8 that be a fair statement?

9 A. Yes.

10 Q. Complicated for recordkeeping and complicated
11 for NARUC?

12 A. Complicates it more.

13 MR. LORAIN: All right. Judge, I
14 believe -- I believe that is all. If I could have
15 two minutes of time just to double check my -- my -- my
16 records and I'll -- I believe I'll be turning this
17 witness over.

18 JUDGE WOODRUFF: Oh, and while you're doing
19 that, I -- I don't show that the 22 or 25 were ever
20 offered into evidence.

21 MR. LORAIN: I move for their admission,
22 Judge.

23 JUDGE WOODRUFF: Exhibits 22 and 25 have been
24 offered into evidence, are there any objections to
25 their receipt?

1 MS. O'NEILL: Your Honor, I don't object as
2 long as they're categorized as portions of what
3 they're -- Mr. Lane -- or Loraine has described them
4 as. I don't think either of -- either of those are
5 complete documents.

6 JUDGE WOODRUFF: I believe that's correct, is
7 it not, Mr. Loraine?

8 MR. LORAIN: Pardon me, sir?

9 JUDGE WOODRUFF: These are both portions of
10 the documents -- of the larger document?

11 MR. LORAIN: That's right. They are, Judge.

12 JUDGE WOODRUFF: Okay.

13 MS. O'NEILL: With that explanation, I have no
14 objections.

15 JUDGE WOODRUFF: Any other objections?

16 MR. WILLIAMS: Your Honor, may I voir dire the
17 witness with respect to Exhibit 25?

18 JUDGE WOODRUFF: You may.

19 MR. WILLIAMS: Mr. Johansen, with respect to
20 the Staff accounting schedules that have been offered
21 here as Exhibit 25, did you personally participate in
22 the preparation of those?

23 THE WITNESS: In the physical preparation of
24 these sheets, no.

25 MR. WILLIAMS: Are you familiar with the

1 contents of the numbers or the matter -- manner in
2 which the numbers therein were -- were calculated or
3 prepared?

4 THE WITNESS: Yes.

5 MR. WILLIAMS: And did you participate in that
6 preparation?

7 THE WITNESS: Not in the audit directly. I
8 participated in review of various records that led to
9 the creation of these documents. I am familiar with
10 the audit process that was followed to create the
11 documents.

12 MR. WILLIAMS: Okay. And who actually
13 prepared these documents?

14 THE WITNESS: It would have been either Jim
15 Russo or -- or Amanda McMellen.

16 MR. WILLIAMS: Do you have any knowledge of
17 the numbers set forth in these documents other than
18 what you see on the pages before you today?

19 THE WITNESS: I have knowledge of the
20 background information that was utilized to prepare
21 these documents, yes.

22 MR. WILLIAMS: Are you -- well, are you
23 personally familiar with the numbers contained in these
24 documents other than what you see before you today?

25 THE WITNESS: No.

1 MR. WILLIAMS: Okay. Your Honor, I'm gonna
2 object for lack of foundation. It appears to be this
3 is evidence that perhaps would come in better under
4 Mr. Russo's testimony than Mr. Johansen.

5 JUDGE WOODRUFF: I'm gonna overrule the
6 objection. Of course, you can always -- well,
7 Mr. Russo has passed, but it's overruled.

8 MR. LORAIN: Your Honor, would -- would the
9 court's records indicate that the -- I had marked
10 Exhibit 25 as being the '99 report. Did -- did
11 I -- did I get that moved into this Court?

12 JUDGE WOODRUFF: The 1999 annual report is
13 No. 21. No. 25 is this Staff accounting schedules from
14 WR-2000-557. And I -- '98 -- or Exhibit 22 and
15 Exhibit 25 have been offered into evidence. There was
16 objection to 25 that was overruled. And 22 and 25 will
17 be admitted into evidence.

18 (EXHIBIT NOS. 22 AND 25 WERE RECEIVED INTO
19 EVIDENCE.)

20 MR. LORAIN: Thank you, Judge. I have
21 nothing further.

22 JUDGE WOODRUFF: All right. Thank you.

23 It's twelve o'clock, so it's time for lunch.
24 Let's come back at one o'clock.

25 (A RECESS WAS TAKEN.)

1 JUDGE WOODRUFF: All right. Let's go ahead
2 and go back on the record. We're back from lunch and
3 Mr. Johansen is still on the stand. And I believe it's
4 Environmental Utilities turn to inquire.

5 MR. WILLIAMS: Thank you, Your Honor.

6 May I proceed?

7 JUDGE WOODRUFF: You may proceed.

8 CROSS-EXAMINATION BY MR. WILLIAMS:

9 Q. Mr. Johansen, I believe on cross-examination
10 you were asked some questions about a page out of the
11 annual report form from Osage Water Company that was --
12 listed some assets, evaluations and that. Do you
13 recall that?

14 A. Yes.

15 Q. Does that list of assets show the company's
16 equity in those assets or simply the company's booked
17 cost in those assets?

18 A. It initially I -- I believe on the page that
19 we were talking about it shows the company's booked
20 cost of the assets.

21 Q. And if the -- those assets had been
22 contributed by others to the company, they would not
23 show as equity and be included in rate base; is that
24 correct?

25 A. That's correct.

1 Q. So some of the difference between what's shown
2 as book cost and what's shown on the rate base analysis
3 would have to do with what was contributed capital; is
4 that right it?

5 A. That's one of the things that certainly would
6 effect it, yes.

7 Q. And you weren't given those pages out of the
8 annual report that would show contributions or anything
9 like that?

10 A. The only ones that -- the only page that was
11 attached to the exhibit this morning was W-5, which, I
12 believe, is the full cost plant service.

13 Q. Okay. Now, Mr. Johansen, in some of the
14 pre-filed testimony for witnesses that have not yet
15 testified there are some allegations that you are
16 biased in this proceeding. Do you recall reading that
17 pre-filed testimony?

18 A. Yes.

19 Q. Mr. Johansen, that seemed to have to do with
20 your involvement as a consultant for Osage Water
21 Company prior to your employment with the Commission;
22 is that correct?

23 A. Yes.

24 Q. And to -- it had to do with Osage Water
25 Company not paying you some money that was owed; is

1 that correct?

2 A. Yes.

3 Q. Now, so the record is clear, are you biased in
4 favor or against the principles of the applicant in
5 this case, Environmental Utilities, based on your
6 involvement as a consultant for Osage Water Company
7 prior to the time that you became employed by this
8 Commission?

9 A. No.

10 Q. Are you biased either in favor or against the
11 principles of Environmental Utilities based on your
12 participation in case before the Commission involving
13 Osage Water Company or other issues between Osage Water
14 Company and the Staff of the Commission?

15 A. Well, I don't think biased would be the right
16 word, but I think it certainly does have an impact on
17 the Staff's overall view of things.

18 Q. And what impact is that?

19 A. Well, I think when you're -- when you're
20 looking at one of the issues of the -- the applicant's
21 general qualifications. I -- I think history of
22 participants in both companies certainly comes into
23 play. And I think that's the basis for some of the
24 Staff's stated concerns regarding the applicant in this
25 case.

1 Q. Would that be because the company has
2 generally or has from time to time not agreed with
3 Staff's position in different cases?

4 A. That would be -- that would be one item.
5 I -- I think actually the -- more of the history would
6 have to do with compliance issues versus disagreements
7 on positions.

8 Q. Okay. And would you agree with me that the
9 manager of Environmental Utilities, Debra Williams, has
10 not participated in Osage Water Company's management
11 prior to last summer?

12 A. That's correct.

13 Q. And so you don't have any history of that
14 management?

15 A. Not as much as we do with other people, that's
16 correct.

17 Q. And Mr. Mitchell you had extensive history
18 with?

19 A. Yes.

20 MR. WILLIAMS: I don't think I have any
21 further questions.

22 JUDGE WOODRUFF: Thank you. Then we'll come
23 up to questions from the Bench.

24 Commissioner Lumpe?

25 QUESTIONS BY COMMISSIONER LUMPE:

1 Q. Yes. Mr. Johansen, this is not an Osage Water
2 rate case, is it?

3 A. No, it is not.

4 Q. All right. This is an Environmental Utilities
5 certificate case?

6 A. That's --

7 Q. -- isn't that correct?

8 A. That's correct.

9 Q. All right. The management program that
10 the -- I -- I mentioned earlier and -- and I think
11 Mr. Loraine talked about that, was set up perhaps last
12 fall -- late summer, last fall when some of the
13 Commissioners thought that it would be a good idea, as
14 we do for small telephone companies, to set up some
15 management assistance for small water and sewer
16 companies; is that correct?

17 A. Yes, ma'am, that's correct. The -- the
18 program -- the parameters of the program and the offer,
19 if you will, to some of our small water and sewer
20 companies to participate in the program was initiated
21 in July of last year.

22 Q. All right. And I think it was sort of asked
23 who the first applicants might be that the -- the Staff
24 would be offering it to. And among the first 10, I
25 don't think I saw Osage Water in that list.

1 A. I believe you're correct, but I -- I do have
2 some paperwork here if I could look for a moment.
3 Basically what we did as -- as I'm looking here for
4 that. What we basically did we initially sent out an
5 invitation, if you will, to 10 companies to voluntarily
6 participate in the program.

7 And as I'm looking at my list here, Osage
8 Water Company was not on that list initially. And if I
9 recall correctly, the main reason for that was that we
10 were -- we were participating in the audit of the
11 company's rate increase request.

12 And this program sort of overlapped those
13 two things happening. And -- and that's why we -- we
14 didn't focus in on them initially.

15 Q. Okay.

16 A. Unfortunately the companies that we invited to
17 particip-- participate in the program we did not get
18 any takers on that.

19 Q. And they were supposed to be the most troubled
20 companies -- that list was -- if my recollection is it
21 said give us your most troubled companies --

22 A. That --

23 Q. -- and so those first 10 were to be the most
24 troubled companies that you have?

25 A. That's correct.

1 Q. All right. So the other thing that I
2 was -- there's been a lot of discussion about
3 allocation because -- and again, this is Osage, not
4 UE -- or EU -- pardon me -- wrong -- wipe that out.

5 EU is near the -- there was a discussion we
6 had at one time about affiliate transactions and those
7 sorts of things, and my recollection was you requested
8 that we not do affiliate transactions with water
9 companies?

10 A. That's basically correct. We -- we did
11 develop a proposed rule at the same time that the other
12 members of the Staff from the other departments were
13 developing proposed affiliated transaction rules for
14 the electric and -- and gas companies, for example.

15 And -- and really one of the reasons that I
16 think the ultimate decision was made not to pursue a
17 water or sewer affiliate transaction rule was that most
18 of the companies we deal with in that arena are small
19 companies.

20 They may not have the extent of affiliate
21 transactions that larger companies have. And, for
22 example, the -- what is now the one large water company
23 that we have, they have a history of coming in for rate
24 cases on a fairly frequent basis.

25 And we simply felt that a rule would not be

1 necessary for -- for that particular industry, because
2 we're -- we're dealing with rate cases on a routine
3 basis with the large company. We felt we could deal
4 with the affiliate issues in the context of the rate
5 cases.

6 And with the smaller water and sewer companies
7 with -- with some exceptions, there's just not that
8 many affiliate transactions that take place.

9 Q. And you felt that you were capable of -- of
10 allocating without such a -- an affiliate transaction
11 rule?

12 A. Yes, ma'am.

13 Q. Okay. There's been a lot of discussion about
14 whether the records are adequate and -- and I think you
15 have the same page I do, the 257, in the transcript
16 where Mr. Russo says -- and the type of records that
17 are kept, are they adequate to meet the requirements?
18 And Mr. Rue says, at this point in time, yes.

19 And was the information that was kept
20 sufficient to allow the classification of the
21 expenditures under the NARUC systems of accounts? Yes.
22 And were those recordkeeping sufficient to do a rate
23 base calculation for the company, and he says, yes.
24 And you concur with those --

25 A. Yes, ma'am.

1 Q. -- statements?

2 A. It -- taken in proper context when we're
3 talking about the initial records that are being
4 established that -- that would be utilized by
5 Environmental Utilities if this certificate is granted,
6 I believe that's the context Mr. Russo was -- was
7 speaking in, and I would certainly agree with that.

8 Q. All right. Do you know of any authority that
9 the Commission has that it could force an owner to give
10 a well to another company or to give an owner's
11 equipment to another company or force them to share
12 that equipment?

13 A. I am not aware of -- of any authority that the
14 Commission would have to do that.

15 Q. Would there not be some problem -- problem of
16 the nature of a takings if we were to order that?

17 A. I would assume there would be, yes.

18 Q. All right. It -- it seems to me that as I've
19 listened to both Mr. Merciel and you that the
20 issue -- the major issue is the wholesale agreement.
21 And, secondly, perhaps whether there is a permit to
22 dispense water. Those -- those are the two things that
23 I hear you keep saying that -- that are still
24 concerns --

25 A. Those --

1 Q. -- is that correct?

2 A. Those are certainly two of the major issues
3 that we still have, yes.

4 Q. All right. Now, if -- and -- and the concern
5 is that there is no contract with Osage to provide that
6 water; is that correct?

7 A. Yes, ma'am. It -- that's -- that's one of the
8 issues. Also I have reviewed the proposed tariffs that
9 were a part of this application. And my understanding
10 of those tariffs is that it only applies to customers
11 who are located in Environmental Utilities' service
12 area taking service. That's the rates that are
13 proposed that are currently available.

14 I -- I believe a -- a contract for such
15 wholesale service and a recognition in the tariff of
16 Environmental Utilities, that they are available -- or
17 that -- that service is available for persons outside
18 their service area. I believe both of those things
19 would be needed here.

20 Q. Okay. And -- and if -- if -- if the -- the
21 current people that are still trying to keep Osage
22 Water going, I'm assuming -- if they were to abandon it
23 and Osage went bankrupt -- I'm sure you're not recommending
24 they abandon it, are you?

25 A. No.

1 Q. All right. If it were to go -- but if they
2 did and it went bankrupt, what happens then?

3 A. Well, unfortunately we have a little bit of
4 experience in -- in such situations. Basically if it's
5 done in the context of a bankruptcy proceeding, the
6 bankruptcy court steps in and appoints what is in
7 effect a receiver to operate the assets of the company
8 that is in bankruptcy.

9 And that receiver basically is responsible
10 to -- in a utility situation responsible for -- to the
11 extent that they have the capabilities to do so, make
12 sure that that -- those assets are still used to
13 provide utility service and that the utility service
14 continues until such time as that proceeding is
15 resolved.

16 And then there would -- there is an eventual
17 transfer of those assets to some other entity for
18 the -- for the continuation of the operation of the
19 utility assets.

20 Q. Is it conceivable that the developer who owned
21 it in the first place could be the receiver?

22 A. That's one possibility. It -- it -- it really
23 depends on the situation at the time that the
24 bankruptcy proceeding is initiated. I -- I would think
25 that the -- that a developer could be appointed as a

1 receiver.

2 If there is a viable and -- and operating
3 homeowner's association, they might be willing to step
4 in and -- and act as a receiver in that situation,
5 because those are the folks whose interests are really
6 there or -- or the people living in that area.

7 Q. Okay. Part of your concern or -- or -- as I
8 understood it, was that there are currently only
9 eight homes there. What is the full development
10 supposed to be, some -- a hundred or -- is that -- or
11 am I way over?

12 A. I believe for this subdivision itself --
13 excuse me -- it's approximately -- it's somewhere
14 around 40 or 50.

15 Q. 40 or 50.

16 A. Now, one of the key things that ties into this
17 is that as part of the feasibility studies that have
18 been conducted as part of this application is that
19 there -- there is an assumption that service will be
20 provided in some fashion also to those folks living in
21 the -- in the adjacent Eagle Woods subdivision.

22 And that is what generates our concern about
23 the relationship between the two companies for that
24 wholesale water service to be provided between the
25 two subdivisions.

1 Q. Are -- are you saying that even if all 50 lots
2 were developed, it still wouldn't be feasible?

3 A. If I remember the -- the studies correctly
4 as -- as they've been developed from -- since the time
5 the application was filed, I think if the rates that
6 are proposed in this application, that the economic
7 feasibility of the project does, in fact, turn on
8 that -- a wholesale arrangement or some similar type of
9 arrangement being in place.

10 Those customers are assumed to be part of the
11 eventual customer base.

12 Q. All right. So -- so the 50 are considered in
13 the feasibility. Now you still would need the Eagle
14 Woods customers?

15 A. That's correct.

16 Q. Okay. Is -- is Mr. Mitchell still the
17 president of Osage?

18 A. I believe he is still an officer of the
19 company. Whether or not he is president or vice
20 president or -- I -- I'm really not sure. But my
21 understanding is, is that he still is an officer of the
22 company. He's still a shareholder of the company.

23 The dispute that actually arose back in
24 the -- I believe in July last year was what role he was
25 going to continue to play as far as system operations

1 and -- and general day-to-day operation issues.

2 Q. My -- my understanding was that there was to
3 be a board of directors' meeting or something of that
4 nature, which I assume occurred between the last
5 hearing and this hearing. Do we have any further
6 information on his status?

7 A. I -- I believe you're correct. My
8 understanding is that -- is that a board meeting was
9 held and that Mr. Mitchell and Mr. Williams as part of
10 that meeting both agreed to continue in their current
11 roles as officers of the company -- of Osage Water
12 Company until such time that further resolution
13 of -- of some of their issues are -- are -- are
14 determined.

15 Q. So still -- your concern would be this
16 contract between Osage and EU to provide water, that
17 that's still a key issue?

18 A. Yes, ma'am.

19 Q. All right. Who kept -- who was the
20 recordkeeper for Osage?

21 A. I believe up until July of last year
22 Mr. Mitchell was basically directly involved. He
23 and -- and others -- people of his staff and some other
24 companies that he owned were in -- were directly
25 involved in the day-to-day bookkeeping and

1 recordkeeping customer-billing-type information as far
2 as Osage Water is concerned.

3 So I -- I believe Mr. Mitchell was probably
4 directly involved in that, or at least people that
5 worked for him in -- in other capacities were
6 responsible for much of that.

7 Q. So if Mr. Mitchell was the recordkeeper for
8 Osage and Ms. Williams is the recordkeeper for EU,
9 what's -- why should I be concerned?

10 A. Well, I -- I think at this point the -- the
11 issue really is that, as I mentioned earlier, one of
12 the issues with Mr. Mitchell was his continued
13 participation in the day-to-day operations of Osage
14 Water Company. I believe that that is one of the
15 things that he basically has said he wants to get out
16 of.

17 And at that point -- and I believe somewhat
18 recently that Mr. Mitchell and Mr. Williams have agreed
19 that Mrs. Williams will assume the general day-to-day
20 management duties, if you will, of Osage Water Company,
21 as well as she will have those duties for Environmental
22 Utilities going forward if a certificate is granted.

23 Q. So the activity of '99 or '98 or recordkeeping
24 back then was Mr. Mitchell's responsibility, and since
25 he's not involved with EU, again, and Ms. Williams is,

1 why should I be concerned about what happened in the
2 past?

3 A. Well, I think part of it has to do with --
4 while Mr. Mitchell may have been involved more in -- in
5 the day-to-day operations and day-to-day bookkeeping
6 responsibilities, quite frankly I think there was some
7 responsibility on Mr. Williams' behalf to ensure that
8 things were being done as they should have.

9 And as an officer of the company and as the
10 officer of the company who submitted the annual
11 reports, I -- I quite honestly believe there
12 was -- while not as direct as Mr. Mitchell, there was
13 some responsibility there on his part to make sure that
14 things were -- were being done and being reported the
15 way they should have been.

16 Q. And we -- we have evidence that he wasn't
17 taking --

18 A. No, I think --

19 Q. -- taking issue with Mr. Mitchell
20 or --

21 A. I -- I --

22 Q. -- anything like that?

23 A. I don't know that we have any evidence that he
24 was not taking issue with it. I think the --
25 the -- the annual report filing delinquencies, the --

1 the discrepancies that we've identified both lead to
2 the fact that there was some oversight that maybe
3 should have been there that wasn't.

4 Direct evidence of -- of any controversy
5 between the two, I'm not aware of.

6 Q. I just have maybe one more comment for you.
7 Let me make sure here.

8 Mr. Hummel is going to address permits; is
9 that correct?

10 A. I believe so, yes.

11 Q. Okay. And will he also then address the
12 quality of the well and that sort of thing?

13 A. Yes, ma'am.

14 COMMISSIONER LUMPE: Okay. Yes, I have
15 one -- one thing just -- and this is a comment. This
16 is not to you, Mr. Johansen.

17 That the Commission had refused to consolidate
18 in this case the various things that Mr. Loraine
19 kept -- kept entering this morning, and so I'm
20 just -- I -- I'm a little concerned about that.

21 It -- it's either that -- I get a sense that
22 he just maybe disrespects the Commission's order, but I
23 think it was inappropriate, so -- thank you.

24 JUDGE WOODRUFF: All right. Commissioner
25 Murray is not here today as you may have noticed. She

1 did list -- leave some questions for here to ask -- for
2 me to ask, so I'm gonna go ahead and ask those
3 questions on her behalf. Some of them have been
4 answered. We'll go through here.

5 QUESTIONS BY JUDGE WOODRUFF:

6 Q. This may be a better question for Mr. Hummel
7 also, but do you know if the Missouri Clean Water
8 Commission currently has any complaints going against
9 Osage Water?

10 A. There was a compliance issue -- excuse
11 me -- that was referred to that commission somewhat
12 recently. I'm not sure what the status of that is at
13 this point, but I -- I --

14 Q. Mr. -- so Mr. Hummel would have more
15 information on that maybe?

16 A. Possibly. I'm not sure.

17 Q. I'll ask him then.

18 A. Okay.

19 Q. The other questions concern the 1999 annual
20 report. How late was the report when it was actually
21 filed?

22 A. I'm trying to find something here that would
23 have dates on it. The 1999 annual report would have
24 been due April 15th of 2000. And I believe it was
25 actually submitted to the Commission through a

1 motion -- motion for leave to file delinquent annual
2 report, yes, on November 28th, 2001. So the difference
3 between April 15th in 2000 and November of 2001.

4 Q. Okay. And can you tell from the 1999 annual
5 report whether any -- any assets had been improperly
6 transferred between Osage Water and Environmental
7 Utilities? Would that be something that you could see
8 from the report?

9 A. That would be not -- that would not be
10 something we would see the 1999 report actually. I
11 doubt if that would even be reflected in the 2000
12 report. Anything that -- that may have taken place
13 like that, which we are not aware of by the way, would
14 actually have probably taken place in calendar year
15 2001. And that report's not due until April of this
16 year.

17 Q. Okay. Can you think -- can you think of any
18 credible reason that the information missing in the
19 1999 report would be unavailable or that the
20 discrepancies noted could not have been corrected?

21 A. I think it might go back to an issue of
22 whether or not all of the records that were at
23 one point maintained by Mr. Mitchell were, in fact,
24 transferred over to the Williamses. That certainly
25 could be one issue there.

1 It -- it may very well be also that there are
2 simply some -- some, you know, other documents and
3 documentation of activities that should be reflected
4 there were simply not properly recorded initially.

5 Q. Okay. If information was not recorded, it's
6 not gonna show up in the report, is that --

7 A. That's correct.

8 Q. Okay. Has Osage Water Company filed its 2000
9 annual report?

10 A. No, it has not.

11 Q. That's past due at this point also?

12 A. Yes, it is.

13 Q. It would have been due?

14 A. April of this year.

15 Q. Of 2002?

16 A. I'm sorry. April of 2001.

17 JUDGE WOODRUFF: Okay. That's all the
18 questions I have. And so we'll go to recross,
19 beginning with Public Counsel.

20 MS. O'NEILL: Thank you.

21 RE CROSS-EXAMINATION BY MS. O'NEILL:

22 Q. Mr. Johansen, Commissioner Lumpe asked you
23 some questions about affiliate transaction rules --

24 A. Uh-huh.

25 Q. -- do you recall that?

1 A. Yes.

2 Q. The fact that there was a recommendation that
3 a formal rulemaking for affiliate transactions wasn't
4 necessary in the water arena -- and I think you've
5 touched on this before, that -- that doesn't mean that
6 the water department and other parties in cases
7 involving water companies don't look at affiliate
8 transactions?

9 A. Oh, absolutely not. That's -- with -- with
10 what is now our largest company, which prior to that
11 was -- was three different companies, affiliate
12 transactions were certainly a major issue in their last
13 rate case that was resolved in part in that case much
14 as if a rule had been in place.

15 And -- and we also -- like I mentioned, we
16 deal with those kind of issues on a case-by-case basis
17 with the small companies as they come in for rate
18 increases.

19 Q. So where you see an affiliate-transaction-type
20 relationship -- those same general principles of -- of
21 affiliate transaction that you might find in the rules
22 gov-- governing, like, electric and gas companies, some
23 of those principles transfer over to water; is that
24 correct?

25 A. Absolutely.

1 Q. And whether or not the Commission has the
2 authority to order two affiliated con-- companies to
3 share resources if the companies are do -- are sharing
4 resources, can the water department when they're doing
5 their audit look at those as affiliate transactions and
6 assign allocated time of -- of those resources to the
7 different companies in the different functions?

8 A. Well, that's -- that's normally -- from the
9 standpoint of making those kind of allocations and
10 adjustments, that is certainly something that -- that
11 the Staff does.

12 Q. Okay.

13 A. Who does it, who sponsors an adjustment. It's
14 oftentimes a function of -- of an auditor and someone
15 from our department sitting down and figuring out who's
16 using what, how they're using it, and then -- and then
17 reaching an allocation factor between the two
18 companies.

19 We deal with it not only between affiliated
20 companies, but also, for example, an owner that has a
21 vehicle that he uses for utility business, it's not
22 titled in the -- in the utility company so it's not
23 considered as part of their rate base, but there are
24 expenses related to the use of that vehicle for utility
25 purposes.

1 And we -- you know, we do an allocation, if
2 you will, between the owner's private use and the
3 utility-related use. That's -- that's common practice.

4 Q. Okay. And even within a utility, a small
5 company, who may have water and sewer operations your
6 department routinely allocates various resources
7 and -- and costs among the -- the two functions; is
8 that --

9 A. Oh, yes, we do.

10 Q. So that's something that -- that your people
11 are very familiar with doing?

12 A. That the -- my folks are, as well as the audit
13 staff that -- that goes out into the field and -- and
14 does the audits. We do it quite frequently when it
15 comes to joint water and sewer services.

16 Q. Okay. And without getting too far into the
17 whole issue of Osage Water Company, at -- just to
18 clarify, Mr. Williams has been an officer of both Osage
19 Water and is a principle of Environmental Utilities; is
20 that right?

21 A. Correct.

22 Q. And it's your understanding, or at least your
23 belief, based on what you know about Osage Water
24 Company that he -- he has some actual knowledge of the
25 operation of Osage Water Company or should have the

1 ability to have some management knowledge regarding
2 that company; is that correct?

3 A. Yes.

4 Q. And it is a similarity in ownership which is
5 what the Staff and we other parties have looked at
6 regarding concerns we may have about Environmental
7 Utilities?

8 A. That's one of the things, yes.

9 Q. Okay. There are -- and there are others?

10 A. Yes.

11 Q. And al-- again, some of the things that are
12 concerns under the Tartan energy factors -- while there
13 may be some indication that some of those things are
14 addressed, it would be important to have conditions on
15 any certificate to make sure that those things are
16 addressed on an ongoing fashion?

17 A. Yes, ma'am.

18 MS. O'NEILL: Okay. Thank you. Nothing
19 further.

20 JUDGE WOODRUFF: All right. For Hancock
21 Construction?

22 MR. LORAIN: May it please the Court --

23 JUDGE WOODRUFF: Very well.

24 MR. LORAIN: -- and the Commission as well.

25 JUDGE WOODRUFF: You certainly may.

1 RE CROSS-EXAMINATION BY MR. LORAINÉ:

2 Q. Sir, the question was asked you as to whether
3 or not you knew what position Mr. Mitchell still held?

4 A. Yes.

5 MR. LORAINÉ: Sir, I'm gonna -- I'm gonna show
6 you what -- Judge, I know I have a missing number. I'd
7 like to fill that blank in.

8 JUDGE WOODRUFF: It'd be 26.

9 MR. LORAINÉ: 26?

10 JUDGE WOODRUFF: Yes.

11 (EXHIBIT NOS. 26A AND 26B WERE MARKED FOR
12 IDENTIFICATION.)

13 BY MR. LORAINÉ:

14 Q. Sir, I'm gonna show you what's been marked
15 26A and 26B and just -- just look at it for a minute
16 while I --

17 A. Okay.

18 Q. -- just to see if you can identify it.

19 A. What is marked as 26A appears to be a filed
20 stamped copy -- excuse me -- of the Osage Water
21 Company's motion for leave to file delinquent annual
22 report, which was assigned Case No. WE-2002-240 here at
23 the Commission.

24 And 26B has the same (sic) -- same filed date
25 on it of November 28th, 2001. And that appears to be a

1 copy of the cover page of that 1999 annual report for
2 Osage Water Company.

3 Q. All right. And there is a schedule -- on
4 26B would be a schedule page 10?

5 A. Yes.

6 Q. And 26A would be just merely -- would be
7 W-5 -- the W-5 portion of the -- of the report? It's
8 the upper left-hand corner -- underneath -- near the
9 staple?

10 A. Yes.

11 MR. LORAIN: Judge, I'd move for the
12 admission of 26A and B into evidence, because it has
13 some information requested by the Commission.
14 Commission questions answered -- asked by the Court
15 from Connie Murray.

16 MS. O'NEILL: Your Honor, if I could see a
17 copy of the proposed exhibits, I'd be able to give you
18 an indication of whether or not I object.

19 MR. LORAIN: Here's 26A and 26B.

20 MS. O'NEILL: Do you have copies of that?

21 MR. LORAIN: How about if I give you this
22 just for your purpose now.

23 MR. KRUEGER: I'm gonnna want to look at it
24 too.

25 MR. WILLIAMS: I have the same issue. I want

1 to see it.

2 MR. LORAIN: Absolutely.

3 JUDGE WOODRUFF: Is the purpose of this
4 exhibit to indicate to -- who the officer of what --

5 MR. LORAIN: That would be one of the
6 purposes. That would be one of the purposes. And the
7 other purpose would be -- there was a question that
8 was -- talked about the transfer of assets or -- or,
9 et cetera and so forth, if there was any way to tell
10 about that.

11 JUDGE WOODRUFF: Okay.

12 MR. LORAIN: That was the other question.

13 JUDGE WOODRUFF: Do you have copies for the
14 Bench?

15 MR. LORAIN: I -- I'm getting them ready,
16 Judge.

17 MR. WILLIAMS: Your Honor, briefly stated, I
18 don't have objection to use of these documents for the
19 purposes which Mr. Loraine just stated to show who the
20 officer is and to describe whether there's any
21 information that's transferred on the books and that
22 that was within the scope of the cross-examination for
23 the Bench.

24 To the extent that these might be utilized for
25 any other purpose that would exceed the scope of

1 cross-examination, I would object to the use for that
2 purpose.

3 JUDGE WOODRUFF: Since that we haven't had any
4 further cross-examination, I really can't rule on that
5 at this point. If you find that during the process of
6 the cross-examination that there is something going
7 beyond the scope, make your objection at that time.

8 MR. WILLIAMS: I will do so. Thank you.

9 JUDGE WOODRUFF: Do you have additional copies
10 for the Commissioners?

11 MR. LORAIN: Yes.

12 MR. KRUEGER: Do you need this back?

13 MR. LORAIN: Yeah, I'd like to have it back.
14 Let's see. We need six up there, don't we, Judge?

15 JUDGE WOODRUFF: Yes. We already have one.

16 MR. LORAIN: Two, three.

17 JUDGE WOODRUFF: All right. You may proceed
18 with cross-examination. Actually I guess I haven't
19 ruled on the admissibility of these documents.

20 MR. LORAIN: Move -- move for the admission
21 of 26A and 26B, Your Honor.

22 JUDGE WOODRUFF: All right. 26A and 26B have
23 been offered into evidence, are there any objections to
24 their receipt?

25 MS. O'NEILL: Subject to the same caveat

1 voiced by Mr. Williams, I don't have any objection.

2 JUDGE WOODRUFF: Okay. And it's previously
3 indicated that he'd raise that specific objection when
4 it becomes relevant.

5 All right. 26A and 26B will be admitted into
6 evidence.

7 (EXHIBIT NOS. 26A AND 26B WERE RECEIVED INTO
8 EVIDENCE.)

9 BY MR. LORAIN:

10 Q. Sir, look at the -- the cover letter of 26A.
11 It is a motion filed by Mr. Williams, is it not?

12 A. Yes.

13 Q. As general -- as the counsel for the company?

14 A. Yes.

15 Q. And he -- if you'll turn to the verification
16 page, I believe it will indicate Mr. Mitchell's present
17 position as of this -- filing of this document?

18 A. Yes, it does. It indicates --

19 Q. Could you read it into the record?

20 A. Yes. It indicates that William P. Mitchell,
21 which is who we refer to Pat Mitchell, is president of
22 Osage Water Company. And his signa-- what I assume is
23 his signature appears on that same page. And then it
24 is notarized by Mr. Williams.

25 Q. And that was filed, sir -- do you have a -- a

1 notice on that?

2 A. Yes. It was received and stamp filed here at
3 the Commission on November 28th, 2001.

4 Q. And regarding -- if you will, regarding the
5 documents -- or the page on -- on the back, which
6 account -- it says account 2000 balance, 2000 change a
7 '99, '99 change and '98 balance. Do you see that?

8 A. Yes.

9 Q. Is that for identity purposes? Is that
10 different than what is -- what we've been referring to
11 as the W-5 page, which appears two pages in front of
12 that?

13 A. I believe what -- what that spreadsheet is, is
14 a further breakdown or further detail regarding some of
15 the entries at least, maybe all of the entries on W-5.
16 I'm -- I'm really not that familiar with this document.

17 Q. Okay. They appear to be subaccounts broken
18 down by some kind of a digit -- digits that precede the
19 accounts; is that right?

20 MS. O'NEILL: Your Honor, at this time I'm
21 gonna object, because I don't have copies of the
22 exhibit so I'm not sure where we're going with this.

23 MR. LORAIN: Well, I -- I'm sorry. I thought
24 you had one. Did -- did I not give you one?

25 MS. O'NEILL: No, you did not give me one.

1 MR. KRUEGER: May I also have a copy, please?

2 MR. LORAIN: Sure.

3 MR. KRUEGER: Thank you.

4 JUDGE WOODRUFF: All right. You may proceed.

5 MR. LORAIN: May it please the Court, Your

6 Honor.

7 BY MR. LORAIN:

8 Q. Sir, my question was, if you look at
9 the -- what appears to be the broke down -- breakdown
10 of -- or what you call the further breakdown of account
11 description. If you'll go two pages in front of that,
12 that appears to be something other than the W-5
13 requirements under NARUC, would you agree to that?

14 MR. WILLIAMS: Your Honor, I'm going to object
15 to this line of questioning. Mr. Lorain said that
16 this was to show who the officer was and to show
17 transfers of assets.

18 This line of questioning has nothing to do
19 with either topic and he's exceeding the scope of the
20 cross-examination on recross, and that's simply
21 improper procedure and delaying this proceeding
22 further.

23 JUDGE WOODRUFF: I'm gonna sustain that
24 objection.

25 MR. LORAIN: I have nothing further.

1 JUDGE WOODRUFF: All right. And for further
2 recross from Environmental Utilities.

3 MR. WILLIAMS: Thank you, Your Honor.

4 RECROSS-EXAMINATION BY MR. WILLIAMS:

5 Q. Mr. Johansen, just briefly, did you receive a
6 copy of the minutes of the shareholder's meeting of
7 Osage Water Company for the year 2001?

8 A. I believe we did, yes.

9 Q. And have you seen that?

10 A. I have seen the document. I quite honestly
11 have just glanced through it. I've not really sit down
12 and read it and analyzed it.

13 Q. But it was provided to you at your office?

14 A. Yes. Actually I think it was sent directly to
15 Mr. Merciel's attention and we circulated copies among
16 our staff people in the department.

17 MR. WILLIAMS: Your Honor, what's our current
18 number?

19 JUDGE WOODRUFF: For exhibits?

20 MR. WILLIAMS: Yes.

21 JUDGE WOODRUFF: We're up to 28.

22 (EXHIBIT NO. 28 WAS MARKED FOR
23 IDENTIFICATION.)

24 BY MR. WILLIAMS:

25 Q. And let me hand you, if I may, Exhibit 28, and

1 ask whether or not you recognize that as those minutes.

2 A. Yes. This appears to be a copy of what I was
3 referring to.

4 MR. WILLIAMS: Okay. I would then offer
5 Exhibit 28 into evidence. Is it three to the reporter
6 and six to the -- the Bench?

7 JUDGE WOODRUFF: Yes.

8 MR. WILLIAMS: I'm a little short on copies
9 for the Bench, but I'll make some more before the end
10 of the day.

11 I have no further questions for this witness.
12 I would offer that into evidence.

13 JUDGE WOODRUFF: All right. Exhibit 28 has
14 been offered into evidence, are there any objections to
15 its receipt?

16 MS. O'NEILL: No objection.

17 MR. LORAIN: No objection.

18 JUDGE WOODRUFF: Hearing none, it will be
19 received into evidence.

20 (EXHIBIT NO. 28 WAS RECEIVED INTO EVIDENCE.)

21 JUDGE WOODRUFF: All right. Then for
22 redirect?

23 MR. KRUEGER: Thank you.

24 REDIRECT EXAMINATION BY MR. KRUEGER:

25 Q. Mr. Johansen, you were asked a number of

1 questions this morning regarding discrepancies between
2 amounts shown on the page W-5 of the various annual
3 reports that have been filed and the rate base that was
4 determined in that -- the company's last rate case.

5 Do you recall those questions?

6 A. Yes.

7 Q. There was -- the testimony centered around
8 discrepancies. Is there a reason why -- strike that.

9 Assuming that records were properly maintained
10 regarding the plant, would it be possible for the
11 amounts recorded on the page W-5 to differ from the
12 amount that's included in rate base?

13 A. Oh, certainly.

14 Q. Can you tell me why that would be?

15 A. Well, basically the information recorded on
16 this particular page double 5 -- W-5 of the annual
17 report form is the plant and service -- cost base plant
18 and service based numbers that the company records when
19 it -- when it installs plant.

20 That can differ significantly from an amount
21 of plant that is allowed in rate -- what we call rate
22 base for purposes of calculating a -- a customer's
23 rates. There may be differences of opinion regarding
24 the -- the amounts that are recorded on the company's
25 books versus the amounts that Staff's audit determines

1 as being the -- the proper amount.

2 There may be a difference between the amount
3 shown on the company's books as the total gross cost
4 plant and service, if you will, versus the amount
5 that's re-- allowed in rate base because of
6 contributions that the company has received from
7 customers or developers to offset that original total
8 plant cost.

9 So, I mean, there are various reasons why the
10 information on -- on W-5 in the annual report could and
11 most likely will differ from comparable rate base
12 numbers.

13 Q. So if there were contributions in aid of
14 construction or CIAC, would that be included on page
15 W-5?

16 A. I don't believe it is. I -- I believe there
17 is additional pages in the annual report that show what
18 contributions are. And when you get down to actually
19 calculating what we call net plant and service, which
20 more closely equates to rate base, that would be one of
21 the adjustments you might be making.

22 Q. In regard to Osage Water Company, do you know
23 what specific items may have contributed to the
24 difference between the information that was reported on
25 page W-5 and the amount that was included in rate base?

1 A. Well, the -- I -- I know there are three major
2 items that I can give at least some approximate values
3 to. One of those has to do with the amount that the
4 company has recorded in accounts 301 and 302, which are
5 franchise and certificate expense accounts -- or
6 accounts -- not necessarily expense accounts.

7 There is a significant difference in the
8 amount that the company has recorded on its books and
9 what the Staff believed was appropriate to be recovered
10 through customer rates. For the purposes of the last
11 rate case, that was approximately somewhere around
12 250 to \$300,000. So that's --

13 Q. I'm sorry. The difference was 250 to
14 \$300,000?

15 A. Yes.

16 Q. Okay.

17 A. Another example of the difference between the
18 company's books and the numbers that would -- would be
19 reflected on sheet W-5 in the annual report and what is
20 included in Staff's rate base calculation has to do
21 with a certain plant that was installed in Osage
22 Beach -- installed, in fact, by Mr. Hancock's
23 construction company.

24 The -- there wasn't really any disagreement
25 between the company and the Staff as to the amount of

1 that plant, how it should be recorded on the company's
2 books. But when it came time to establishing rates in
3 the rate case, the Staff did not include in rate base
4 that -- that plant.

5 We instead included as a cost of service the
6 payment on the debenture between Osage Water Company
7 and Mr. Hancock. That's somewhere around, again, 250
8 to \$300,000. A third item that's a significant amount
9 of money has to do with the Parkview Bay facilities
10 that the company installed. I believe that's -- we've
11 discussed that before already.

12 There again, the amounts recorded on the
13 company's books for that plant may very well be
14 properly recorded, but it is not included in Staff's
15 calculation of rate base when it comes down to
16 calculating customer rates.

17 Right offhand, I'm thinking that's probably
18 somewhere in the neighborhood of -- of 50 to \$100,000.
19 So, you know, there -- there's a lot of differences in
20 rate base and the amounts recorded in plant accounts on
21 the company's books. And quite honestly, that's not
22 unusual at all.

23 Q. So with regard to those three items that you
24 just described, it would -- it's your testimony that it
25 would not be improper to include them on page W-5?

1 A. That's correct.

2 Q. Okay. You also answered some questions
3 concerning an item that was included in the disposition
4 agreement in the company's last rate case. That was
5 Exhibit 27. And on the second page of that there's a
6 reference to how the company will maintain its books
7 and records regarding the separate certificated service
8 areas.

9 Do you remember that discussion?

10 A. Yes.

11 Q. Now, was that item included in the -- in the
12 disposition agreement to cor-- to correct some kind of
13 improper behavior on -- that the company had engaged in
14 in the past?

15 A. No, it really wasn't. The main reason we
16 wanted the company to separate the information on its
17 books and records by certificated service area quite
18 honestly goes back to a decision that was rendered by
19 the Commission in a most recent Missouri American
20 company rate case -- water company rate case.

21 In that case it was decided that rather than
22 using companywide uniform customer rates, that rates
23 would be established for each operating district based
24 on that operating district's cost of service.

25 At the point we were working with Osage Water

1 Company on their rate case, we had at this point -- we
2 still do right now -- uniform companywide rates. The
3 reason we didn't look at service area specific rates or
4 district pricing as its become to -- to be known, is
5 that we simply didn't have the information.

6 That's why we wanted the company to maintain
7 that information on a going-forward basis. So at some
8 point in the future if we determined that there was a
9 large discrepancy and cost of service between
10 districts, we would have the information available to
11 develop the district rates.

12 Q. Do you recall when that Missouri American rate
13 case was decided?

14 A. Well, since it's back here, I'm not sure it is
15 yet, but --

16 Q. The initial decision by the Commission.

17 A. I don't right offhand.

18 Q. Okay.

19 A. But it's -- it was about at the -- at the time
20 I know that -- that we were looking at -- at other
21 similar companies of what we were gonna do about it. I
22 can get that information for you, if you'd like it.

23 Q. Prior to the decision in that Missouri
24 American rate case, though, you had not requested that
25 the company maintain its records in this manner --

1 A. That's correct --

2 Q. -- is that right?

3 A. -- we had not.

4 Q. Now, did the disposition agreement contain any

5 provisions, to your knowledge, that would require the

6 company to file its 1999 annual report in the manner

7 that was described in that paragraph?

8 A. No, I don't believe it did.

9 MR. KRUEGER: Okay. Thank you.

10 That's all my questions.

11 JUDGE WOODRUFF: And you may step down.

12 THE WITNESS: Thank you.

13 (Witness excused.)

14 JUDGE WOODRUFF: And I believe Mr. Hummel is

15 the next witness.

16 Please raise your right hand.

17 (Witness sworn.)

18 JUDGE WOODRUFF: You may inquire.

19 MARTIN HUMMEL testified as follows:

20 DIRECT EXAMINATION BY MR. KRUEGER:

21 Q. State your name and address for the record,

22 please.

23 A. My name is Martin Hummel at P. O. Box 30--

24 360, Jefferson City, Missouri.

25 Q. By whom are you employed and in what capacity?

1 A. I'm employed by the Missouri Public Service
2 Commission as an engineer with the water and sewer
3 department.

4 Q. Did you prepare and cause to be pre-filed
5 rebuttal testimony of Martin L. Hummel, which has been
6 marked as Exhibit No. 5 in this case?

7 A. Yes, I did.

8 Q. Do you have any corrections or changes to make
9 to that testimony?

10 A. I have one correction, which is on page 2,
11 line 10. At the time the testimony was filed it was a
12 correct statement, but there has been a change in terms
13 of the certified operator being now with the company --
14 or the individual has obtained certification since the
15 previous portion of this hearing.

16 Q. So, then, would a correct answer to that
17 question be yes?

18 A. Yes. That -- that would be correct now.

19 Q. At the present time.

20 Does that answer need any explanation or would
21 just yes alone be sufficient?

22 A. I think, yes, and -- I think yes would be
23 sufficient for now.

24 Q. Okay. Are there any other corrections or
25 changes to this testimony?

1 A. No.

2 Q. If I asked you the same questions at this
3 time, would your answers be the same?

4 A. Yes.

5 MR. KRUEGER: I would offer Exhibit No. 5 and
6 tender the witness for cross-examination.

7 JUDGE WOODRUFF: Okay. Exhibit No. 5 has been
8 offered into evidence, are there any objections to its
9 receipt?

10 MR. WILLIAMS: No, Your Honor.

11 JUDGE WOODRUFF: Hearing none, it will be
12 received into evidence.

13 (EXHIBIT NO. 5 WAS RECEIVED INTO EVIDENCE.)

14 JUDGE WOODRUFF: And for cross-examination
15 we'll begin with Public Counsel.

16 MS. O'NEILL: Thank you.

17 CROSS-EXAMINATION BY MS. O'NEILL:

18 Q. Good afternoon, Mr. Hummel.

19 A. Good afternoon.

20 Q. I was wondering if you could turn to page --
21 to page 2 of your testimony, I have a couple questions
22 and that's where I'll start. Excuse me.

23 Now, starting at the answer to the ques-- you
24 have a question at line 6 and the answer to that you --
25 you indicate some concerns that Environmental Utilities

1 won't have enough customers and revenue to be a
2 stand-alone operation. Do you see that?

3 A. Yes.

4 Q. Can you explain a little bit about what you
5 mean by that?

6 A. The certificated area that's being applied for
7 is for simply Golden Glade subdivision. And the number
8 of customers -- the potential number of customers, is
9 therefore, rather limited to that subdivision as
10 it's -- as it's presently stated in the application.

11 When we have looked at feasibility on this,
12 then, of course, there have been other customers that
13 have been looked at besides those in Golden Glade.

14 Q. Would those include the Eagle Woods
15 subdivision as a wholesale customer of this company?

16 A. One way or the other as a wholesale customer
17 or some other arrangement.

18 Q. Okay. And you also -- I believe you testified
19 that you considered the fact that some labor and
20 equipment resources are gonna be shared with the
21 affiliated company, Osage Water; is that the proposal?

22 A. That is my understanding.

23 Q. Okay. And does that help as far as the
24 economic fis-- feasibility of this application goes?

25 A. I would presume that that would help.

1 Q. Okay. Because instead of having to pay all of
2 the costs of a salary, they're paying just for the
3 portion of the time that the person puts in for this
4 company, is that correct, for example?

5 A. In theory, yes, that's my -- that's what I
6 would expect.

7 Q. And you would -- you would want to make sure
8 that the company understood that -- that that was what
9 the Staff was gonna expect from them as far as the way
10 they were gonna operate if they had a certificate; is
11 that fair to say?

12 A. If we're looking at this as being only -- a
13 certificate only for Golden Glade --

14 Q. Uh-huh.

15 A. -- yes. I mean, you have the -- you have the
16 application simply for Golden Glade, but yet the -- the
17 feasibility does include providing service to Eagle
18 Woods.

19 Q. At least in some fashion?

20 A. In some fashion.

21 Q. Okay.

22 A. And the main component of this service, being
23 water service, is a well. And that well, as far as we
24 understood in the past and still currently, is set up
25 to provide water service to customers both in Golden

1 Glade and in Eagle Woods.

2 Q. Okay. Right now Eagle Woods is provided with
3 water service by Osage Water; is that right?

4 A. They are in a certificated area of Osage
5 Water. I'm not exactly clear on who is being billed
6 and the source of the water may have recently changed,
7 so I'm not real clear on how it is being handled.

8 Q. Okay. Now, are you aware of a plan that would
9 have been maybe shown to the Staff prior to the summer
10 of 2001 where Osage was gonna obtain water from a well
11 that was gonna be built in Golden Glades (sic)?

12 A. Yes, that is the -- that's the original
13 understanding I had from the very first time I -- well,
14 from a previous case when the water cer-- certificate
15 was granted for Eagle Woods.

16 Q. And at that time -- I don't think I did that.

17 JUDGE WOODRUFF: I don't think so.

18 MR. KRUEGER: Sorry.

19 MS. O'NEILL: I'm sorry.

20 MR. KRUEGER: It happens when --

21 MS. O'NEILL: Was it something I said?

22 MR. KRUEGER: -- when you're at the podium
23 though.

24 BY MS. O'NEILL:

25 Q. Now, I've lost my place. At -- at -- when

1 the -- the -- the well that was being built over in
2 Gold-- Golden Glades (sic) was first discussed, was
3 there an original understanding that Osage Water was
4 gonna try and serve Golden Glades (sic) and Eagle Woods
5 and provide water for both subdivisions off of that
6 well?

7 Do you recall that?

8 A. There was nothing official at that point that
9 said we're gonna provide service to Golden Glade,
10 because initially the certificate request was simply
11 for water for Eagle Woods.

12 Q. Okay.

13 A. But there wi-- was the understanding in the
14 matter of practicality that -- for someone looking at
15 it from an operational and engineering perspective,
16 that that well was going to serve that area, which was
17 Golden Glade -- Golden Glade and Eagle Wood are
18 immediately -- adjoining each other.

19 Q. Okay. So it wasn't a formal application, it
20 was just kind of an understanding that people who were
21 working on the case kind of had, based on the
22 feasibility from an engineering point of view?

23 A. Well, I -- definitely from an engineering --

24 Q. Uh-huh.

25 A. -- perspective, but may have also been that --

1 that understanding may also have included from a --
2 just simply an accounting and from other perspectives
3 too.

4 Q. Okay. So at that time Staff was aware that a
5 company that was owned in part by Greg Williams was
6 involved in -- in developing a water supply for both of
7 these subdivisions; is that right?

8 A. Yeah, it would be a correct understanding.
9 Yes.

10 Q. Okay. And Osage Water is partly owned by
11 Mr. Williams; is that correct?

12 A. Yes.

13 Q. And Environmental Utilities is partly owned by
14 Mr. Williams?

15 A. Yes.

16 Q. And the Golden Glade subdivision is being
17 developed by Mr. and Mrs. Williams; is that correct?

18 A. That is my understanding, yes.

19 Q. And are you also aware of the provisions of
20 the homeowner's association in Golden Glades (sic)?

21 A. Yes, I'm aware that there is a provision in
22 their subdivision restrictions that speaks to the issue
23 of hooking on to a -- a central system. I -- I
24 don't -- I'm not quoting this correctly, but --

25 Q. Sure.

1 A. I am aware that there is a provision in the
2 restrictions that speaks to that issue.

3 Q. There's a restriction in the subdivision that
4 although we may not have the exact language here today,
5 requires those homeowners to eventually hook on to a
6 central water system once there is a central system; is
7 that right?

8 A. That is my understanding along with the
9 situation simply that there's eight customers there
10 already that were allowed to bypass that restriction.
11 And they were allowed to bypass it, as far as I
12 understand, by the same person that wrote the
13 restriction. So I'm not sure how that restriction
14 would really apply.

15 Q. Okay. But you know that there's one out there
16 somewhere?

17 A. Yes.

18 Q. Okay. And the well in Golden Glade, that's
19 been built now; is that correct?

20 A. Yes.

21 Q. And it was built by Mr. and Mrs. Williams?

22 A. That is my understanding, yes.

23 Q. And that was built with the intent that it was
24 gonna provide water service in Golden Glade and
25 possibly other places; is that your understanding as

1 well?

2 A. That would be my understanding. That --
3 that's what would make sense.

4 Q. Now, if the Commission decided not to grant a
5 certificate in this case, one option for providing
6 water service out there in Golden Glades (sic) would be
7 a homeowner's association; is that your understanding?

8 A. Yes. That would be one -- one possibility.

9 Q. Okay. And you're aware that there's a Golden
10 Glade homeowner's association that was set up by the
11 developers of Golden Glade?

12 A. I -- I'm aware that there is a homeowner's
13 association set up there, or at least I've seen
14 something in writing to that effect.

15 MS. O'NEILL: Okay. And -- if I may have a
16 moment?

17 JUDGE WOODRUFF: Uh-huh.

18 BY MS. O'NEILL:

19 Q. Mr. Hummel, I've just handed you a copy of
20 what's already in evidence as Exhibit 13. And is that
21 a document that you're familiar with regarding Golden
22 Glade subdivision?

23 A. I presume this is the one that I have at some
24 point in time seen.

25 Q. In fact, I think I have the -- the other copy

1 that I got from you, but that's the one that's in
2 evidence.

3 And does that document -- and you've reviewed
4 that document in the past; is that correct?

5 A. Yes. It has been a little while, though. I'm
6 sure the --

7 Q. Sure.

8 A. -- details I don't remember.

9 Q. Do you recall whether or not Mr. and
10 Mrs. Williams would have control over that homeowner's
11 association for quite some period of time?

12 MR. WILLIAMS: Your Honor, with -- with all
13 due respect and Office of Public Counsel, this line of
14 questioning has been covered with at least one other
15 witness prior to -- on today's date and, I believe, was
16 covered extensively at the last hearing. Can we move
17 on to something that hasn't been covered yet?

18 JUDGE WOODRUFF: Do you have a response?

19 MS. O'NEILL: It is a little bit cumulative,
20 but he is actually the first person who first received
21 this document from the Staff, and that's why I wanted
22 to ask him to -- I'm not gonna dwell on it at length.

23 JUDGE WOODRUFF: I'll go ahead and overrule
24 the objection. You can answer the question.

25 THE WITNESS: Would you please repeat the

1 question?

2 BY MS. O'NEILL:

3 Q. Oh, I will try. To paraphrase the previous
4 question, does that homeowner's association contemplate
5 that Mr. and Mrs. Williams will have a controlling
6 interest in the homeowner's association for a
7 significant period of time?

8 A. That is my understanding when I get such an
9 issue is that I know I'm dealing with legal issues and
10 I just read them and go on.

11 Q. But there are some provisions in there that
12 you recall --

13 A. Yes.

14 Q. -- is that correct?

15 Okay. And were those provisions discussed
16 with other members of the water department in
17 preparation in this case in determining that
18 you -- your position?

19 A. I'm sure there was some discussion because of
20 just the central issue of what are the different
21 possibilities if the certificate is not granted; and,
22 therefore, we would have been interested in looking at
23 this situation of the homeowner's association and
24 whether or not that would even fit.

25 Q. Okay. I'm -- I am gonna move on. Now, you're

1 aware that Osage Water Company's currently being man--
2 managed by Mrs. Williams; is that right?

3 A. Yes, that's my understanding.

4 Q. And how long has she been involved in the
5 management of Osage Water Company?

6 A. My understanding is since last June, perhaps,
7 or -- I -- I'm not exactly clear on the dates,
8 but early last summer.

9 Q. Since the time period when Mr. Mitchell
10 stopped managing Osage Water and Mrs. Williams took
11 over the management duties, have there been
12 improvements in that company's relationships with its
13 customers that you're aware of?

14 A. My perception is that there has been an
15 improvement in terms of dealing with customers on the
16 phone and so forth.

17 Q. Okay. Despite those improvements, are there
18 still concerns that the Staff has regarding Osage Water
19 Company's management?

20 A. Yes, I'm sure there is. I mean, until all the
21 problems are solved there will be.

22 Q. And Mrs. Williams is the manager of
23 Environmental Utilities or will be if there's a
24 certificate granted?

25 A. That's my understanding, yes.

1 Q. Okay. Now, regardless of whether or not the
2 Commission grants a certificate in this case, it's
3 likely that -- well, let me -- let me rephrase that.

4 If -- if the Commission were to grant a
5 certificate in this case, do you believe it would be
6 important to have conditions on that certificate that
7 the company would have to comply with?

8 A. Yes. I'm -- I'm not sure if I can mention
9 them all off the cuff. The first thing that comes to
10 mind in terms of providing safe and adequate service is
11 to have it clear that that well is dedicated to
12 provision of public water service for both Eagle Wood
13 and Golden Glade.

14 Q. And were you here when Mr. Johansen was
15 discussing some other conditions that he believed would
16 be appropriate in this case earlier this -- this
17 morning?

18 A. Yes, I was here. I --

19 Q. Okay. Do you concur in -- in those
20 recommendations as well?

21 A. To the extent that I could recall them, yes.
22 I -- I concur.

23 MS. O'NEILL: Okay. Thank you. I have
24 nothing further.

25 JUDGE WOODRUFF: All right. And for Hancock

1 Construction.

2 MR. LORAIN: May it please the Court, Your
3 Honor.

4 CROSS-EXAMINATION BY MR. LORAIN:

5 Q. Mr. Hummel, sir, you sat in here earlier
6 during the testimony of cross-examinations and the
7 testimony of Dale?

8 A. Yes, I did.

9 Q. You, therefore, heard the discussion about
10 Exhibit 24 being the 19 (sic) annual report and the
11 information contained on Exhibit 26, which was the
12 Staff audit report?

13 A. There were several submissions there. I'm --
14 yes, I'm sure I --

15 Q. You heard some of the discussion?

16 A. Heard some of the discussion, yes.

17 Q. There -- the -- the -- did -- did you see
18 those exhibits?

19 JUDGE WOODRUFF: I'm sorry to interrupt, but
20 you mentioned Exhibit 24, I believe. What -- what
21 exhibit are you referring to? 24 was the Fischer
22 rebuttal that was not admitted into evidence.

23 MR. LORAIN: I'm sorry. The annual -- annual
24 report, Judge. The 198-- 1998 annual report.

25 JUDGE WOODRUFF: 1998, that was 22.

1 MR. LORAIN: Thank you.

2 BY MR. LORAIN:

3 Q. Stand corrected on that. The annual report of
4 1998 that was -- that -- that had a provision -- a W-5
5 on it.

6 MR. LORAIN: May I have -- may I approach the
7 witness for a moment, Judge?

8 JUDGE WOODRUFF: Yes, you may.

9 BY MR. LORAIN:

10 Q. Sir, this would be -- his Honor has just
11 corrected me from 24 to 22. The 1988 (sic) annual
12 report and a W-5 page. Do you know what I'm talking
13 about now?

14 A. Yes. I have it here in front of me.

15 Q. All right. And there was a discussion about
16 the annual -- the total plant listed at the bottom of
17 that at \$1,242,879.30; isn't that true?

18 A. Yes, I see that number.

19 Q. Sir, I'm gonna also show you while I'm here
20 Exhibit 26, which was the -- for the record, the Staff
21 accounting schedules. You're familiar with that?

22 A. I haven't -- I'm not very familiar with this.
23 This is not something that I've spent much time on
24 recently. And all of these exhibits that were
25 submitted here this morning, I -- I have not seen

1 copies of them as you submitted them or as they were
2 submitted before the Commission today.

3 Q. I understand. You know what I'm talking about
4 the Staff accounting schedules?

5 A. Yes.

6 Q. Have you seen that before coming in here
7 today?

8 MR. KRUEGER: Your Honor, I -- I'd object to
9 these questions about the Staff accounting schedules.
10 It wasn't a subject of Mr. Hummel's testimony and he
11 hasn't established foundation for the testimony on this
12 subject.

13 JUDGE WOODRUFF: Well, thus far all he's asked
14 is if he's seen them and if he's familiar with them.
15 I'm gonna go ahead and allow that tes-- you can answer
16 that question.

17 If you have further objection later on, go
18 ahead.

19 THE WITNESS: Could you repeat the question?

20 BY MR. LORAIN:

21 Q. Sir, I'm just asking you if you've seen
22 Exhibit 26 prior to coming in here today, Staff
23 accounting schedules?

24 A. I presume I have seen that at some point in
25 time, because I've looked at a lot of different records

1 for Osage Water Company. But it -- it hasn't been --
2 it hasn't been recent that I've looked at this
3 particular document.

4 Q. Have you worked on this particular document at
5 all as Staff for the Staff accounting schedules?

6 A. No.

7 Q. Are you familiar enough to be able to
8 understand anything about this document, Staff
9 accounting schedules?

10 A. On -- for this particular document -- I'm not
11 familiar with this particular document. I -- I know
12 some things in general, but not -- I'm not familiar
13 with this document in terms of having to actually work
14 with it.

15 Q. Do you understand from a Staff position what
16 total plant and service means?

17 A. Yes, I do.

18 Q. Sir, I'd like to turn, if I may, to page 3-2.

19 A. Yes.

20 Q. And -- and I -- it says total plant and
21 service for Osage Water Company?

22 A. Yes.

23 Q. And it's dated December 31st, 1999 --

24 A. Yes.

25 Q. -- do you agree?

1 The number -- the number that's at the
2 bottom --

3 MR. WILLIAMS: Your Honor?

4 JUDGE WOODRUFF: There -- there's been an
5 objection.

6 MR. WILLIAMS: I'm gonna object to this line
7 of questioning. As Commissioner Lumpe has previously
8 pointed out, the Commission specifically did not
9 consolidate annual report issues for Osage Water
10 Company with this proceeding.

11 The line of questioning is outside the scope
12 of the issues raised by the certificate application of
13 the Environmental Utilities in this case. And further,
14 the issue -- the testimony being given here is
15 cumulative to that that's already been presented by
16 other Staff witness on cross-examination.

17 Let's move on to something that has something
18 to do with this case.

19 JUDGE WOODRUFF: Your response?

20 MR. LORAINE: My response is that the last
21 question that was asked Mr. Johansen was misleading.
22 And I'm -- in -- in the respect that there was a -- a
23 comment made about total -- not total plant and
24 service, but total rate base.

25 My questioning was about total plant and

1 service. I'm just trying to define whether or not this
2 witness has any knowledge to know what the difference
3 is.

4 MS. O'NEILL: Your Honor, I'd also add to
5 Mr. Williams' objections that he's asking this witness
6 to testify about something he doesn't have personal
7 knowledge about it. This is not his document that he's
8 prepared.

9 He's testified he's not familiar with it. And
10 this is not the appropriate witness by which to elicit
11 this information.

12 MR. LORAIN: May respond to that, Judge?

13 JUDGE WOODRUFF: Yes, you may.

14 MR. LORAIN: Judge, this does not require
15 special knowledge. This -- it requires special
16 knowledge only as an engineer and as a Staff member to
17 tell the Court a difference, if, in fact, one exists,
18 between total plant and service and total rate base,
19 which is on the Staff -- both of them are on the Staff
20 accounting schedules.

21 JUDGE WOODRUFF: Okay.

22 MR. LORAIN: I don't think --

23 JUDGE WOODRUFF: Mr. Hummel, can you answer
24 that question about the difference between the
25 two accounts.

1 MR. KRUEGER: I'm sorry. I've forgotten what
2 the question was.

3 JUDGE WOODRUFF: Well, I'm not sure. I think
4 the question just changed and I -- I'm gonna sustain
5 the objection to the question that was originally
6 asked. And I'll ask you to answer the question that
7 was asked in the explanation about the difference
8 between the two accounts. If you can explain that,
9 I'll let you answer that.

10 THE WITNESS: I would prefer not to even try
11 to. I mean, I didn't prepare these and these are
12 accounting documents. I can -- I can -- obviously
13 since I've worked with some of these things, in my own
14 mind, I might look at some of this stuff and come to
15 some kind of conclusion about a difference between
16 plant and service and total and -- and what's
17 considered rate base.

18 But I'm not familiar enough with the purpose
19 of the creation of these documents in this particular
20 case to be able to do a proper job of operating -- of
21 answering questions on this.

22 JUDGE WOODRUFF: Okay. That's outside your
23 area of specialty -- outside your expertise?

24 THE WITNESS: Particularly --
25 yes, particularly since I'm not familiar with what was

1 done here.

2 JUDGE WOODRUFF: Okay. You can move on then.

3 MR. LORAIN: I have no further questions,
4 Judge.

5 JUDGE WOODRUFF: All right. Thank you.

6 And then we'll go to move on, then, to
7 Environmental Utilities.

8 MR. WILLIAMS: Thank you, Your Honor.

9 CROSS-EXAMINATION BY MR. WILLIAMS:

10 Q. Mr. Hummel, some of the other witnesses have
11 indicated you would be the man to answer questions
12 about permits and things of that sort. Is that
13 something that you've been tracking in this case?

14 A. I have at times been trying to stay up to
15 speed on that.

16 Q. Okay. You are aware that a construction
17 permit was issued by the Department of Natural
18 Resources for the Golden Glade water system and well;
19 is that correct?

20 A. That is correct.

21 Q. And you're aware that the construction was
22 substantially completed and certified by an engineer to
23 that effect; is that correct?

24 A. Yes, I'm aware that --

25 Q. And you're aware that the Department of

1 Natural Resources, in particular Stephen Jones, along
2 with yourself and Mr. Krueger came down and did a final
3 inspection of the well; is that correct?

4 A. We were down there for an inspection. I'm not
5 sure if that was the final inspection or not.

6 Q. But -- but you have --

7 A. Yes.

8 Q. -- inspected the well since the time that
9 construction was completed?

10 A. Correct.

11 Q. And you can tell the Commission that, in fact,
12 the construction has been completed?

13 A. Yes, it has been.

14 Q. Would you describe the -- the type of
15 construction that you observed there as satisfactory?

16 A. Yes.

17 Q. Any problems with the water well as you
18 observed it?

19 A. I am not aware of any problems. The
20 construction looks to be sound.

21 Q. And with respect to the issue -- one of the
22 things that Staff has -- has stated is that
23 Environmental Utilities must get a permit to dispense
24 for that water system and so you're aware of that --

25 A. Yes.

1 Q. -- position of Staff?

2 Wouldn't you agree that in order for the
3 Department of Natural Resources to issue a permit to
4 dispense to a public utility company first have to have
5 a certificate for that area?

6 A. Yes, that has to come about in conjunction
7 with --

8 Q. So just so the record is clear, this
9 Commission must issue an order granting the certificate
10 that would then be conditioned on the company taking
11 that order and getting a permit to dispense in its own
12 name; is that correct?

13 A. Yes.

14 Q. That'd be the best way for that to happen?

15 A. Yes.

16 Q. Probably the only way for it to happen?

17 A. I -- I can't speak for DNR.

18 Q. All right. Now, in your testimony you make
19 mention to a discharge line of Cimarron-based sewer
20 system operated by Osage Water Company is not
21 functioning properly?

22 A. Correct.

23 Q. Are you aware whether or not that's been
24 resolved?

25 A. It has not been resolved.

1 Q. When's the last time you checked?

2 A. My recollection would be somewhere between
3 four and eight weeks ago. Some DNR -- DNR personnel
4 were going to take a look at that, because the customer
5 had called their office.

6 We did take a look at that. Nothing's ever
7 been done with that to really resolve what the problem
8 is. As it turns out, the day we were there, we -- I
9 don't know if you want to go into the detail of -- of
10 the problem.

11 Q. I -- I think we've covered that enough here.
12 But your last information would be four to eight weeks
13 ago; is that correct?

14 A. Four to eight weeks ago and the -- the problem
15 has not been --

16 Q. Okay.

17 A. The -- the physical problem that exists has
18 not been taken care of.

19 Q. And did you also within the past few months
20 since July of 2001 have an opportunity to examine the
21 water and sewer lines installed by Osage Water Company
22 for the Harbor Bay project where a backhoe was out
23 there to actually excavate those lines so you could
24 inspect them?

25 A. I presume you're referring to excavation to

1 ascertain 10-foot separation?

2 Q. Yes. And did you find any water and sewer
3 lines installed in the same ditch when you did that
4 investigation?

5 A. I wasn't particularly doing the investigation
6 myself. That was the public drinking water -- that was
7 DNR doing that investigation. And I'm not sure what
8 their conclusion was in terms of --

9 Q. Well --

10 A. -- the proximity of the water --

11 Q. -- without regard --

12 A. -- and sewer lines.

13 Q. -- their conclusion, the question I'm asking
14 you specifically is, whether you observed any water and
15 sewer lines in the same ditch?

16 A. Well, I'm trying to remember exactly what I
17 did observe. And if -- if my memory serves me
18 correctly, there was still an issue of whether or not
19 there was 10-foot separation between the two lines.

20 Q. And that'd be a different issue of whether
21 they were in the same ditch or not, wouldn't it?

22 A. I don't know if the issue was whether they --
23 they were in the same ditch to start with.

24 Q. Well, I -- I'm asking you specifically, did
25 you observe any of them in the same ditch? It's a yes

1 or no answer.

2 A. I -- I -- your characterization of it being in
3 the same ditch -- this is after these -- these lines
4 are -- have been in the ground and then now we're
5 re-excavating them. The ditch isn't there anymore and
6 the -- the issue was simply a question of separation of
7 10 feet.

8 Q. Well, did you see any water and sewer lines
9 that were installed in the same trench at the time of
10 installation or were they separated by several feet
11 already?

12 MR. LORAIN: Multiple -- multiple questions,
13 Judge. I -- I -- I'd object to the form of that
14 question.

15 JUDGE WOODRUFF: The form is objectionable, if
16 you want to rephrase it.

17 MR. WILLIAMS: Okay. I think we'll move on.
18 I think I've confused the witness, Your Honor.

19 JUDGE WOODRUFF: Okay.

20 MR. WILLIAMS: And I don't have any further
21 questions for him.

22 JUDGE WOODRUFF: Then we'll come up to
23 questions from the Bench. And there are no
24 Commissioners here, but they did leave me some
25 questions.

1 QUESTIONS BY JUDGE WOODRUFF:

2 Q. First of all, do you know if there are any
3 current complaints against Osage Water from the
4 Missouri Clean Water Commission?

5 A. I am not completely up to speed on what the
6 status of that would be, although we did have the
7 complaint that was just mentioned with regard to water
8 surfacing in the yard. And I don't know that that has
9 been corrected yet.

10 Q. Okay. What I'm particularly interested in is
11 something involving Golden Glade subdivision and
12 wastewater holding tanks; the collection system for
13 Osage Water Company and KK Treatment Plant without
14 authorization?

15 A. There has been some recent work with regard to
16 the wastewater facility at Golden Glade. There has
17 been some significant progress made in terms of putting
18 some adequate tankage and another plant in place. I
19 can't really say, though, that I am up to speed on
20 the -- just the current status.

21 Q. Okay. The Staff have any concerns with the
22 quality of the water that's coming out of the Golden
23 Glade well?

24 A. I don't have any reason to suspect at this
25 time that there'd be any problem with the quality of

1 the water at the Golden Glade well. The construction
2 does seem to be sound construction and -- and we
3 haven't specifically looked at that issue, but I had --

4 Q. Okay.

5 A. -- don't have any problem with that.

6 Q. Is Osage Water Company an affiliate of
7 Environmental Utilities or vice versa? And this is
8 Commissioner Lumpe's question. I'm assuming she's
9 talking about --

10 A. I would definitely say they're affiliated.

11 Q. Okay. Because of common ownership?

12 A. Yes, com-- common ownership, com-- common
13 management, maybe common use of equipment.

14 Q. Okay.

15 A. Same operator.

16 JUDGE WOODRUFF: Okay. That's all the
17 questions I have then. So we'll go back to -- for
18 recross, beginning with Public Counsel.

19 MS. O'NEILL: I don't have any questions.

20 JUDGE WOODRUFF: Okay. And for Hancock?

21 MR. LORAIN: Just one or two, Judge.

22 RE-CROSS-EXAMINATION BY MR. LORAIN:

23 Q. Mr. Hummel, the question Mr. Williams was
24 asking you involved two parts. I would like to
25 separate them. There was a complaint, I understand,

1 about the separation of water and sewer lines by more
2 than they should be separated by more than 10 foot; is
3 that -- is that true?

4 A. That --

5 MR. KRUEGER: Your Honor -- Your Honor, I
6 object to this question because I think he's limited to
7 question -- based on questions from the Bench at this
8 time.

9 JUDGE WOODRUFF: That is correct. You are
10 in -- this is recross based on questions from the
11 Bench, so you're limited to questions that I asked.

12 MR. LORAINE: Then -- then that question
13 is -- it was asked by Mr. Williams.

14 JUDGE WOODRUFF: Okay.

15 MR. LORAINE: That's where I questioned it.
16 I have nothing further.

17 JUDGE WOODRUFF: All right. Thank you. And
18 then for Environmental Utilities?

19 MR. WILLIAMS: No questions.

20 JUDGE WOODRUFF: Redirect?

21 REDIRECT EXAMINATION BY MR. KRUEGER:

22 Q. Ms. O'Neill asked you a couple questions about
23 the conditions on service. Do you recall those
24 questions?

25 A. Conditions on --

1 Q. Condi-- I'm sorry. Conditions on granting the
2 application.

3 A. Yes.

4 Q. And you said that you generally were in
5 agreement with them, but you didn't remember them all
6 specifically?

7 A. Yes. I -- I haven't looked at -- recently
8 looked at any kind of listing or something that we had
9 come up with.

10 Q. Okay. One of the -- one of the conditions
11 that Mr. Johansen testified about that was in the
12 statement of positions was that the current and future
13 residents of the proposed service area become customers
14 of the applicant.

15 Do you remember hearing that testimony?

16 A. I think so.

17 Q. And do you agree with that condition on the
18 granting of a certificate or do you have an opinion on
19 that?

20 A. I presume we're -- we're talking about whether
21 or not there's gonna be enough customers to make things
22 feasible, and, yes, you have to have the -- the current
23 and future residents participate in this in order
24 for -- for it to work.

25 Q. Have you done any investigation to determine

1 whether current and future residents will become
2 customers of the company?

3 MR. WILLIAMS: I'm gonna object to the
4 question. It's exceeding the scope of the
5 cross-examination in this case. There was no
6 cross-examination about any investigation by Mr. Hummel
7 regarding customers.

8 MR. KRUEGER: There were questions concerning
9 the Staff's statement of positions and the issues that
10 were -- were contained in there, and this is in
11 response to that, Your Honor.

12 JUDGE WOODRUFF: I'll overrule the objection.
13 You may answer.

14 THE WITNESS: If I understand the question,
15 early on in -- with this application I did make some
16 contacts with present customers -- or the eight homes
17 that are listed in order to -- at the time to try to
18 figure out what is their source of water and are
19 they -- this is -- even preceded me knowing there was
20 subdivision restrictions or -- and I was wanting to
21 establish how are these customers getting water? Are
22 they satisfied with it? Do they want a central system?
23 That's the kind of thing that I had in mind
24 when I was -- made so-- made some contacts. And it
25 might have been that one of those cust-- customers had

1 contacted me too. I'm not -- it's been a while since
2 that was done.

3 BY MR. KRUEGER:

4 Q. What did these customers tell you about their
5 willingness to connect to the system?

6 MR. WILLIAMS: Objection, hearsay.

7 JUDGE WOODRUFF: Response?

8 MR. KRUEGER: The issue is whether
9 the -- whether the customers have expressed a
10 willingness to -- to connect to the system, and whether
11 they will connect to the system is -- is an important
12 part of the Staff's determination on whether the cer--
13 the certificate should be granted.

14 MR. WILLIAMS: Your Honor, in addition to the
15 objection of hearsay, I'm going to further object that
16 if there was this testimony to be proffered it could
17 certainly have been put in the pre-filed testimony so
18 that responses thereto could be made.

19 At this point we are on redirect with
20 presumably no opportunity for further
21 cross-examination, no opportunity to present any
22 additional evidence in rebuttal thereto. And I don't
23 think it was within the scope of the cross-examination.

24 And he's trying to throw the door wide open
25 and inject some new issues at this late part of the

1 case and that's simply not proper procedure. I have no
2 idea what the answer to the question will be, but I
3 object to bringing the whole issue up at that time
4 point in time.

5 JUDGE WOODRUFF: Your objection is well taken
6 and -- and it is sustained.

7 MR. KRUEGER: That's all the questions I have,
8 Your Honor.

9 JUDGE WOODRUFF: Thank you.
10 You may step down then.

11 (Witness excused.)

12 JUDGE WOODRUFF: And I believe the next
13 witness will be for Hancock Construction. Mr. Hancock,
14 I believe, was next on the list.

15 MS. O'NEILL: Uh-huh.

16 JUDGE WOODRUFF: Please raise your right hand.
17 (Witness sworn.)

18 MR. LORAIN: Sir, what is your name?

19 THE REPORTER: I'm sorry. Just a minute.

20 MR. LORAIN: Oh, I'm sorry, ma'am.

21 THE REPORTER: I'm sorry. I need to change my
22 paper real quick.

23 MR. LORAIN: I didn't see you.

24 May it please the Court, Your Honor.

25 JUDGE WOODRUFF: Yes, you may.

1 DAVID HANCOCK testified as follows:

2 DIRECT EXAMINATION BY MR. LORAIN:

3 Q. Sir, what is your name for the record?

4 A. My name is David Hancock.

5 Q. You're the same David Hancock that was
6 originally involved in Osage Water Company many years
7 ago?

8 A. That's correct.

9 Q. Mr. Hancock, you filed some pre-filed rebuttal
10 testimony in this case?

11 A. Yes.

12 Q. Did you read that testimony?

13 A. Yes.

14 Q. Was it your testimony reduced to writing?

15 A. Yes, it is.

16 Q. Did you have any changes on that pre-filed
17 testimony?

18 A. Only one change of the -- where I attended
19 high school is Holden, Missouri, rather than
20 Warrensburg, Missouri.

21 Q. All right. Other than that change noted, any
22 other changes, sir?

23 A. That's it.

24 MR. LORAIN: I have no -- I -- I tender at
25 this point, Judge -- I did file previously at the last

1 hearing Exhibit 9, is my understanding, and I tender
2 this witness for cross-examination.

3 JUDGE WOODRUFF: All right. Exhibit 9 has
4 been offered into evidence, are there any objections to
5 its receipt?

6 MR. KRUEGER: Yes, Your Honor, I have a couple
7 of objections. First of all, to the testimony
8 beginning on page 1, line 18 and continuing to page 2,
9 line 11. I don't believe that's relevant to any issue
10 in this case.

11 It pertains to payments that Mr. Hancock made
12 several years ago on another matter. It does not
13 affect Environmental Utilities.

14 JUDGE WOODRUFF: Which pages was that?

15 MR. KRUEGER: Page 1, line 18; page 2,
16 line 11.

17 JUDGE WOODRUFF: Okay. And this concerns
18 payments to Mr. Johansen for which he was subpoenaed by
19 notification of the Osage Beach Fire Protection
20 District; is that right?

21 MR. KRUEGER: Correct, Your Honor.

22 JUDGE WOODRUFF: Okay. And --

23 MR. LORAIN: May I -- I respond to that,
24 Judge?

25 JUDGE WOODRUFF: Yes, you may.

1 MR. LORAIN: All right. Judge, that was a
2 matter of credibility. There was -- Mr. Johansen was
3 his -- he was -- there was a contention that he was a
4 biased witness. And the significance of that is
5 Mr. Johansen is still on this case and still testifying
6 on behalf of the same -- same parties that -- that --
7 that's why that was relevant in this particular
8 proceeding.

9 JUDGE WOODRUFF: Okay. So it's challenging
10 the credibility of -- of Staff witness?

11 MR. LORAIN: Actually, yes, as to bias,
12 Judge. And --

13 JUDGE WOODRUFF: And you --

14 MR. LORAIN: And that would be in favor of
15 OWC as opposed to what Mr. Williams said, Your Honor.

16 JUDGE WOODRUFF: Okay. And you had -- but
17 Mr. Johansen has already testified and you haven't --
18 you didn't cross-examine him about this.

19 MR. LORAIN: No, I di-- well, we -- we
20 filed -- we filed --

21 JUDGE WOODRUFF: You filed pre-filed
22 testimony?

23 MR. LORAIN: Pre-filed testimony, yes.

24 JUDGE WOODRUFF: Wouldn't this be extrinsic
25 evidence to -- to prove the bias of the witness?

1 MR. LORAIN: No, I -- I think it's credible
2 information as to -- as to what he testified to. And I
3 think -- I think -- I also think there's information in
4 Mr. Han-- Mr. Cochran's testimony to that -- to that
5 effect also.

6 JUDGE WOODRUFF: Okay. Staff have any further
7 comments?

8 MR. KRUEGER: I will be objecting to
9 Mr. Cochran's testimony on the same subject as well. I
10 think as someone pointed out this morning the argument
11 on this seems to be that because Mr. Johansen had
12 difficulty collecting monies that he claimed were owing
13 to him from Osage Water Company that this might cause
14 him to be more favorable toward -- might testify for
15 favorably towards Osage Water Company or now
16 Environmental Utilities. And I think that's a -- a
17 difficult stretch. I don't think it goes to prove that
18 point.

19 MR. LORAIN: Judge, the -- the -- the
20 testimony in that case was, in fact, that he had
21 received approximately \$20,000 during the time when he
22 was employed by the Commission from -- half from
23 Mr. Hancock and half from Mr. Williams.

24 And the two were not talking on behalf of the
25 Osage Water Company on a bill that was earned, if you

1 will, prior to Mr. Johansen taking place with the
2 government. But he collected the money during the time
3 that he actually --

4 JUDGE WOODRUFF: I --

5 MR. LORAIN: That's --

6 JUDGE WOODRUFF: I've read the testimony.

7 MR. LORAIN: That's what the issue was.

8 JUDGE WOODRUFF: I am -- I am familiar with
9 it.

10 MR. WILLIAMS: Your Honor, if I may --

11 JUDGE WOODRUFF: Yes, Mr. Williams.

12 MR. WILLIAMS: -- I would like to join with
13 Mr. Krueger in his objection. I would also like to
14 state for the record that what Mr. Loraine just
15 described in the testimony in WC-98-211 and WA-98-296
16 was not an accurate rendition of the evidence in that
17 case.

18 And I think that further -- for further
19 objection I would simply ask this Court to limit the
20 testimony in this case to issues that are actually
21 relevant to the decision that the Commission must
22 reach. And Mr. Johansen's payments from individuals or
23 companies years ago simply has no basis or bearing in
24 this case.

25 JUDGE WOODRUFF: I'm going to sus-- sustain

1 the objection and strike the testimony, because I don't
2 believe it's -- this testimony is relevant to any issue
3 in this case. That was page 1, line 18 through page 2,
4 line 11, is that correct -- correct, Mr. Krueger?

5 MR. KRUEGER: Yes, it is, Your Honor.

6 JUDGE WOODRUFF: All right.

7 MS. O'NEILL: Your Honor, I would also object
8 to admitting into evidence attached to Exhibit 9,
9 pages -- Schedule 4-1, 4-2, 5-1 and 5-2, which are
10 excerpts from transcripts, which I believe are attached
11 in support of that portion of the testimony, which I
12 think you're strike -- or -- or excluding from
13 evidence.

14 MR. WILLIAMS: Your Honor, I believe it's
15 Schedules 1 through 5 that are supportive of the
16 testimony and all of which should be stricken in
17 connection with striking that portion testimony.

18 MR. KRUEGER: I agree.

19 MS. O'NEILL: Actually that's fine too.

20 MR. KRUEGER: I agree, Your Honor. They are
21 all apparently attached for this purpose and should be
22 stricken.

23 JUDGE WOODRUFF: Okay. Schedule 1 through 5,
24 which shows amount paid to Johansen for payment history
25 summary for Dave Hancock promissory note, promissory

1 note paid for the transcript of proceedings on a page
2 from Greg Williams' deposition; is that what we're
3 talking about?

4 MS. O'NEILL: Yes.

5 MR. WILLIAMS: Yes, Your Honor.

6 JUDGE WOODRUFF: We're looking at the
7 schedules, which it leaves Schedules 6 and 7 untouched
8 with debenture and scheduled payments to David Hancock?

9 MS. O'NEILL: Yes.

10 MR. KRUEGER: That's correct, Your Honor.

11 JUDGE WOODRUFF: Yes, Schedules 1, 2, 3, 4 and
12 5 will also be stricken.

13 All right. With those changes to the
14 testimony or deletions from the testimony, are there
15 any further objections to the exhibit?

16 MR. KRUEGER: Your Honor, I also object to
17 page 3, lines 6 to 8, which is pure speculation
18 concerning what will happen in certain circumstances.

19 JUDGE WOODRUFF: That's concerning what will
20 happen to the debenture?

21 MR. KRUEGER: That's correct, Your Honor.

22 JUDGE WOODRUFF: Okay. Response?

23 MR. LORAIN: Well, my response would be that
24 it's -- there was an exhibit filed today, which is
25 Exhibit 28, which pretty much is the same scenario. I

1 don't -- I don't see it's any more speculation

2 than -- than this, Judge. It's a -- it's a fact.

3 JUDGE WOODRUFF: I'll -- I'll overrule that
4 objection.

5 Any further objections for this document?

6 MS. O'NEILL: No.

7 JUDGE WOODRUFF: Hearing none, with those
8 deletions previously indicated, the exhibit will be
9 admitted into evidence.

10 (EXHIBIT NO. 9 WAS RECEIVED INTO EVIDENCE.)

11 JUDGE WOODRUFF: Okay. For cross-examination,
12 then, we will begin with -- with Staff.

13 MR. KRUEGER: I have no questions, Your Honor.

14 JUDGE WOODRUFF: For Public Counsel?

15 MS. O'NEILL: Just a couple, Your Honor.

16 CROSS-EXAMINATION BY MS. O'NEILL:

17 Q. Mr. Hancock, you applied to intervene in this
18 case in part because your construction company is a
19 creditor of Osage Water; is that correct?

20 A. That is correct.

21 Q. And also because you and/or your construction
22 company are involved in litigation ongoing with Osage
23 Water Company and/or Mr. Williams; is that correct?

24 A. You want to know why I intervened in the case?

25 Q. I want to know whether or not that's also an

1 accurate statement.

2 A. Well, somewhat.

3 Q. Okay. You have lawsuits pending in which you

4 are a party and Mr. Williams is a party?

5 A. That's correct.

6 Q. And is that -- are those lawsuits between you

7 and Mr. Williams personally or between companies that

8 you own, or is there a combination thereof?

9 A. Companies that I own.

10 Q. Companies that you own?

11 A. Uh-huh.

12 Q. And companies that he owns?

13 A. Uh-huh.

14 Q. Okay. How many lawsuits are pending?

15 A. Pending. You mean --

16 Q. How many are -- how many are open?

17 A. -- got a court date set or --

18 Q. How many are open right now?

19 A. One that I know of that --

20 Q. Okay.

21 A. -- has a court date.

22 Q. How many are filed, but -- but don't have

23 court dates?

24 A. I'm not sure. I'd have to ask my attorney.

25 We've got two of them.

1 Q. So there's -- there's about three cases that
2 are ongoing right now?

3 MR. LORAIN: There's two.

4 THE WITNESS: No, two.

5 BY MS. O'NEILL:

6 Q. There's two?

7 A. Uh-huh.

8 Q. Okay. And do either of those lawsuits address
9 this debenture that you've testified about?

10 A. Yes.

11 Q. How many of them?

12 A. I believe all of them were about the
13 debenture -- the assets that I'm trying to recover.

14 Q. Okay. And other than your relationship to
15 Osage Water Company as a creditor, did you formally or
16 presently have an ownership interest in the company?

17 A. Yes, I did.

18 Q. Okay. Are you presently an owner of Osage
19 Water Company?

20 A. I have some -- some stock.

21 Q. Okay. Is it the same ownership in-- interest
22 you've had all along or has it changed over the years?

23 A. Same -- same ownership, just -- I don't have
24 any title in the company now. Well, if -- if the
25 debenture is good, which there's some question as to

1 whether it is by Mr. Williams, I'd -- I won't have an
2 ownership in it.

3 Q. Okay. But you're not involved in the
4 day-to-day management of Osage Water Company?

5 A. No, not at all.

6 Q. Does -- do you have a position on whether
7 Golden Glades (sic) should be provided water service by
8 a regulated utility or not?

9 A. I believe the regulated utility company is a
10 good thing, but I think just to acquire a territory
11 is -- is not. Eight customers start a new utility
12 company doesn't -- doesn't seem quite right to me.

13 Q. Okay. You don't have any ownership interest
14 in Golden Glades (sic), do you?

15 A. No, I don't.

16 Q. And do you have any creditor relationship to
17 Golden Glades (sic)? Do they owe you any money?

18 A. Golden Glade specifically, no.

19 Q. So your main concern is that these
20 eight customers and this new company might hurt your
21 chances of collecting on your debenture; is that why
22 you're in this case?

23 A. That's correct.

24 MS. O'NEILL: No further questions.

25 JUDGE WOODRUFF: All right. For Environmental

1 Utilities?

2 MR. WILLIAMS: Thank you, Your Honor.

3 CROSS-EXAMINATION BY MR. WILLIAMS:

4 Q. Mr. Hancock, it would be true that both you
5 and your company do not own any property within the
6 boundaries of the proposed service area near the Golden
7 Glade project; isn't that right?

8 A. At Golden Glade, that's correct.

9 Q. It would also be true that neither you nor
10 your company have done any construction work in the
11 Golden Glade project; is that fair?

12 A. That's correct.

13 Q. And it would all -- further be true that
14 neither you nor your company have paid any of the costs
15 for the Golden Glade water system; isn't that correct?

16 A. Myself or my company has not.

17 Q. Okay. And you are not an officer or director
18 of Osage Water Company at that time -- at this time; is
19 that correct?

20 A. That's correct.

21 Q. And you have not been authorized by the board
22 of directors of Osage Water Company to appear here on
23 its behalf, have you?

24 A. That's correct.

25 Q. And you haven't produced for the Commission

1 any records that would show that Osage Water Company
2 paid any part of the cost of the Golden Glade water
3 system, have you?

4 A. I believe that -- I'm -- I'm sorry. Say that
5 again, please.

6 Q. You have not produced for the Commission any
7 records, checks, documentation or anything that would
8 show that Osage Water Company paid any part of the
9 costs for the Golden Glade water system, have you?

10 A. I believe we have produced some information to
11 that effect.

12 Q. Is that attached to your testimony here?

13 A. The entire testimony is in this -- in this
14 meeting we've had. I'm speaking of the bobcat and
15 excavator that used to be owned by Osage Water.

16 Q. Well, I believe the evidence was that it was
17 leased by Osage Water Company, do you -- do you
18 disagree with that?

19 A. It was owned by Osage Water Company.

20 Q. Did you write the check for that?

21 A. How would I write the check for it?

22 Q. Okay. Would you admit that you have no
23 interest in this proceeding other than your desire to
24 collect money from Osage Water Company and cause harm
25 to the principles of Osage and Environmental Utilities?

1 MR. LORAIN: Object to that.

2 THE WITNESS: No.

3 MR. LORAIN: Object -- I object to that
4 because it's argumentative to him. He's got no right
5 to badger this witness.

6 JUDGE WOODRUFF: Objection; sustained.

7 BY MR. WILLIAMS:

8 Q. Okay. Now, Mr. Hancock, wouldn't you agree
9 that you personally took water and sewer utility
10 service from Osage Water Company for your personal
11 residence from September of 1998 until June of 2001
12 without paying for it?

13 A. That's correct.

14 Q. And that in order to prevent Osage Water
15 Company from disconnecting service to your personal
16 home you installed a concrete slab over the meter pit?

17 A. That's correct. Which you've been paid
18 for -- Osage Water has been paid for those things.

19 Q. Osage Water Company filed a lawsuit and
20 collected that money from you; is that correct?

21 A. Yeah, they -- they collected that money.

22 Q. By lawsuit, correct?

23 A. Well, it didn't get to a lawsuit.

24 Q. Well, wasn't a lawsuit filed?

25 A. I believe there was, yeah.

1 Q. And Mr. Loraine was hired as your attorney?
2 A. Uh-huh.
3 Q. And you paid the bill?
4 A. That's right.
5 Q. And, Mr. Hancock, didn't your company receive
6 over \$2 million from the City of Osage Beach for
7 constructing water lines within areas certificated by
8 the Public Service Commission and Osage Water Company?
9 A. I don't see what that's got to do with what
10 I'm doing here today.
11 Q. Well, I'm not sure why you're here today and I
12 think the Commission needs to know, so --
13 A. Well, anything with my company is not a matter
14 here.
15 Q. Well, how about payments from the City of
16 Osage Beach, did you rec-- did your company receive
17 over \$2 million for constructing water lines?
18 A. I received payments from Osage Beach.
19 Q. About that amount?
20 A. I'd have to look and see.
21 Q. Okay. And those were within areas
22 certificated by the Public Service Commission and Osage
23 Water Company; isn't that correct?
24 A. I don't know.
25 Q. You don't know that.

1 And you were a shareholder of Osage Water
2 Company?

3 A. Was.

4 Q. Well, you said you still have stock?

5 A. Still -- still have some stock, yeah.

6 Q. And haven't you written letters to the
7 Department of Natural Resources claiming that Osage
8 Water Company has constructed water and sewer lines in
9 the same ditch?

10 A. That's correct.

11 Q. And did you actually see those lines in the
12 same ditch?

13 A. Yes, I did.

14 Q. Did that letter disclose that you had a
15 personal interest in Osage Water Company when you sent
16 it to the Department of Natural Resources?

17 A. That I had a personal interest in Osage Water,
18 I'd have to review the letter.

19 MR. WILLIAMS: Do we have a current number?

20 JUDGE WOODRUFF: We're up to No. 29.

21 MR. WILLIAMS: Bad copies. We'll skip that
22 one.

23 JUDGE WOODRUFF: Okay.

24 BY MR. WILLIAMS:

25 Q. So you're here today so -- asking the

1 Commission to help you collect money from Osage Water
2 Company; is that correct?

3 A. I'm here to monitor what Osage Water Company
4 is going to do with the assets that I helped build some
5 five, six years ago that I've not been paid for.

6 Q. Well, Mr. Hancock, if the Commission grants
7 this application, will that have any effect directly on
8 you?

9 A. Grants the application of --

10 Q. Of Environmental Utilities?

11 A. Yes, it would.

12 Q. What effect would it have on you?

13 A. The people operating Osage Water Company will
14 be the same people operating EU essentially. And when
15 you take your efforts away from Osage Water to operate
16 EU, your efforts are not -- you're not looking after
17 Osage Water and its best interests.

18 And according to the Schedule 28 you just gave
19 us today, looks to me like you're selling out Osage
20 Water and -- and yet acquiring -- trying to acquire
21 something for -- for EU.

22 Q. Well, Mr. Hancock, are you paying any of the
23 expenses of Osage Water Company today?

24 A. Daily.

25 Q. What expenses are you paying?

1 A. The interest.

2 Q. What interests are you paying for --

3 A. Interest --

4 Q. -- for Osage Water Company?

5 A. Interest on the money that you've owed me

6 for -- \$250,000 you owed me for five years.

7 Q. Well, are you writing any checks out of your

8 pocket or are you just not collecting money?

9 A. To pay myself, no.

10 Q. Okay.

11 A. You're not writing any either, are you?

12 MR. WILLIAMS: I don't believe I have any

13 further questions, Your Honor.

14 JUDGE WOODRUFF: All right. Thank you.

15 And I have no questions from the Bench, so

16 there'll be no -- no recross. So we'll go to redirect.

17 Mr. Loraine?

18 REDIRECT EXAMINATION BY MR. LORAIN:

19 Q. The stock is preferred stock of 150 shares,

20 isn't it, sir?

21 A. Yes.

22 Q. Do you believe that the continued payment of

23 Parkview Bay note by OWC is costing you money out of

24 your pocket?

25 A. Yes, I do. It's not being paid to me.

1 MR. WILLIAMS: Your Honor --

2 THE WITNESS: I haven't been paid in some
3 time.

4 MR. WILLIAMS: -- I'm gonna object to this
5 line of questioning. It's outside the scope of
6 cross-examination in this case. I don't believe there
7 was any cross-examination regarding Parkview Bay.

8 JUDGE WOODRUFF: There was cross-examination
9 concerning payment on the interest, and I assume that's
10 what we're getting into here?

11 MR. LORAIN: Yes, it is.

12 JUDGE WOODRUFF: Now, I'm gonna overrule the
13 objection. You can go ahead.

14 BY MR. LORAIN:

15 Q. That money that is being paid -- the interest
16 to the bank by OWC is -- is going to the bank regularly
17 according to the records?

18 A. That's what it appears, yes.

19 Q. And it's been a reduction of some \$20,000 --

20 MR. WILLIAMS: Your Honor, again --

21 BY MR. LORAIN:

22 Q. -- on --

23 MR. WILLIAMS: -- this is outside the scope of
24 the cross-examination in this case. He's trying to
25 inject new issues, which there'll be -- not an

1 opportunity for further cross-examination.

2 MR. LORAIN: Judge, it's -- it's merely the
3 interest issue that Greg has raised. It's merely that.
4 He's asked how -- this man how -- how it has affected
5 him on the continued payment and -- and that's one
6 question. I've got one more question about it.

7 JUDGE WOODRUFF: I -- I would ad-- admonish
8 to -- to refer to counsel as -- as Mr. Williams, rather
9 than Greg. I don't think there was anything malicious
10 intended in that, but it --

11 MR. LORAIN: No.

12 JUDGE WOODRUFF: It's inappropriate. I'm
13 gonna go ahead and again overrule the objection, on the
14 assumption that this is related to the
15 cross-examination regarding interest paid.

16 So go ahead.

17 BY MR. LORAIN:

18 Q. You may answer.

19 A. I'm sorry. Ask the question again, please.

20 Q. The question was essentially -- I -- I'm
21 sorry.

22 Ma'am, could I ask you to read that question
23 back? Could you do -- do you have that capability?

24 (THE COURT REPORTER READ BACK THE REQUESTED
25 PORTION.)

1 THE REPORTER: Your question was interrupted
2 by the objection.

3 BY MR. LORAINE:

4 Q. The -- the question was that it's been
5 apparently under -- the records that you've reviewed
6 been a \$20,000 or thereabouts reduction in the last
7 two years on the '90 -- and that's from the '98 and
8 '99 report, which is all the information you have?

9 A. That's what I understand.

10 Q. And your understanding is that that's not
11 authorized before the Commission any longer -- that's
12 no longer a part of the rate base of Osage Water
13 Company?

14 MR. WILLIAMS: Your Honor, I'm gonna object --

15 THE WITNESS: That's my understanding.

16 MR. WILLIAMS: -- of what this witness's
17 understanding might or might not. It's not proper
18 for -- this witness has neither been qualified as an
19 expert nor --

20 JUDGE WOODRUFF: I -- I'll sustain that
21 objection.

22 MR. WILLIAMS: Thank you.

23 MR. LORAINE: I have nothing further, Judge.

24 JUDGE WOODRUFF: All right. Thank you.
25 You may step down.

1 (Witness excused.

2 JUDGE WOODRUFF: Go ahead and call

3 Mr. Cochran.

4 Please raise your right hand.

5 (Witness sworn.)

6 JUDGE WOODRUFF: You may be seated.

7 MR. LORAINE: Your Honor, may I approach the
8 Bench?

9 JUDGE WOODRUFF: Yes, you may.

10 WILLIAM COCHRAN testified as follows:

11 DIRECT EXAMINATION BY MR. LORAINE:

12 Q. Are you the -- the Mr. Cochran that -- that
13 filed rebuttal and surrebuttal?

14 A. Yeah -- yes, sir.

15 Q. And that was in, I believe, in Exhibit 10 and
16 10 -- and 11; is that true?

17 A. Rebuttal is 10 and surrebuttal is 11.

18 Q. And do you have any corrections to those
19 pre-filed testimony?

20 A. The only corrections I could possibly have to
21 11 is -- is to -- to say that if I made any statements
22 about the 1999 annual report not being filed on
23 December 5th, that that supplemental information was
24 available on November the 28th and I was unaware of it.

25 Q. And -- and that -- that you're talking in

1 reference to the 1999 report?

2 A. 1999 report. Excuse me.

3 Q. Other than that correction, do you have any
4 other corrections?

5 A. No, I do not.

6 MR. LORAIN: All right. Your Honor, I'd move
7 for the admission of those two exhibits.

8 JUDGE WOODRUFF: Rebuttal and the --

9 MR. LORAIN: Surrebuttal; 10 and 11 into
10 evidence at this time.

11 JUDGE WOODRUFF: Exhibits 10 and 11 have been
12 offered into evidence, are there any objections?

13 MR. KRUEGER: Yes, Your Honor. I object to
14 Exhibit 10 --

15 JUDGE WOODRUFF: The rebuttal.

16 MR. KRUEGER: -- from -- from page 12
17 beginning at line 17 and continuing to page 16,
18 line 20. The basis for this objection is the same as
19 the basis for my objection to portions of Mr. Hancock's
20 testimony, that it is not relevant to any issue in this
21 case and pertains to the same transactions.

22 And with one additional interesting factor,
23 it's stated that this involved a gratuity paid to
24 Mr. Johansen by Hancock Construction Company, which is
25 entity on whose behalf Mr. Cochran is speaking.

1 JUDGE WOODRUFF: Can you give me those -- the
2 numbers again?

3 All right. Page 12?

4 MR. KRUEGER: All right. Page 12, line 17.

5 JUDGE WOODRUFF: And it's the question, Can
6 you point out?

7 MR. KRUEGER: That's correct, Your Honor.

8 JUDGE WOODRUFF: Okay. To where?

9 MR. KRUEGER: To page 16, line 20.

10 JUDGE WOODRUFF: Any response?

11 MR. LORAIN: Yes, Your Honor. This goes to
12 the credibility of the company. Essentially what the
13 company did was -- or what the allegations are that the
14 company did was commit various rule violations.

15 And one of the rule violations that
16 Mr. Cochran has submitted in his testimony is
17 the -- this proposed -- or this -- this -- this
18 referenced section that deals with Mr. Hancock and the
19 circumstances surrounding the receipt of the cash from
20 Osage Water Company, once again, while he was in the
21 employ of the agency.

22 This is not a matter of credibility. At this
23 point for this witness this is a matter of -- of rule
24 violation for OWC, which is credible -- has something
25 to do with the issues -- in fact, a great deal to do

1 with the issues of this case.

2 MR. KRUEGER: Your Honor, I don't believe that
3 the testimony there talks about a rule violation by
4 OWC. It talks about a payment that was made by Hancock
5 Construction Company and that -- which characterizes as
6 a gratuity. It does not talk about Osage Water Company
7 as making any kind of payment that was a rule
8 violation.

9 And it -- it does not mention anything about
10 Environmental Utilities or Mr. Williams personally, I
11 don't believe.

12 MR. WILLIAMS: Your Honor, I would concur with
13 Staff's objection in this matter.

14 MS. O'NEILL: I would -- I would as well. And
15 I also would ask if you exclude this that you exclude
16 whether -- whatever schedules that are attached to the
17 testimony that may relate to this issue.

18 MR. KRUEGER: And I would join in that. I
19 intended to do that. I thank you for mentioning that.

20 MS. O'NEILL: Sure.

21 JUDGE WOODRUFF: Okay. Let's -- you want
22 Schedule 7B?

23 MS. O'NEILL: I believe it starts with -- but
24 I've been wrong before.

25 MR. KRUEGER: I believe it's 8, 9 and 10 at

1 least.

2 MS. O'NEILL: And it probably starts at 3 --

3 yeah, 3.

4 MR. WILLIAMS: Definitely 7.

5 JUDGE WOODRUFF: Looks like Schedule 7 it

6 concerns a letter from Johansen to Dave Hancock; is

7 that the --

8 MR. KRUEGER: Yeah, 7 would be included, Your

9 Honor.

10 MS. O'NEILL: I think that's where we start,

11 yeah.

12 JUDGE WOODRUFF: And run it to there.

13 MS. O'NEILL: 8 through -- 7 through 11; is

14 that it?

15 JUDGE WOODRUFF: 7 through 11?

16 MS. O'NEILL: I believe so, Your Honor.

17 MR. KRUEGER: Yes, Your Honor.

18 JUDGE WOODRUFF: I'm gonna go ahead and

19 sustain the objection and strike beginning on

20 page 16 -- oh, I'm sorry -- beginning on page 12, I

21 believe, it was line 17 through page 16, line 20.

22 MR. KRUEGER: Thank you, Your Honor.

23 JUDGE WOODRUFF: So stricken.

24 Any other oxes to this exhibit or the other

25 exhibit that was offered?

1 MR. KRUEGER: No, Your Honor.

2 JUDGE WOODRUFF: All right. Hearing none,
3 with that change, Exhibits 10 and 11 will be admitted
4 into evidence.

5 (EXHIBIT NOS. 10 AND 11 WERE RECEIVED INTO
6 EVIDENCE.)

7 JUDGE WOODRUFF: And for cross-examination
8 we'll begin with Staff.

9 CROSS-EXAMINATION BY MR. KRUEGER:

10 Q. Good afternoon, Mr. Cochran.

11 A. Good afternoon, sir.

12 Q. I just have a couple of questions. In your
13 surrebuttal testimony, I think, there were several
14 places where you referred to contributions of -- in aid
15 of construction that had been included in Osage Water
16 Company's rate base. I can cite them specifically
17 unless --

18 A. Yes, sir.

19 Q. -- you'll just agree that you have so stated?

20 A. Would you -- would you take me to those?

21 Q. Page -- this is your surrebuttal testimony.

22 A. Yes, sir. I'm there.

23 Q. Page 5, lines 6 to 10.

24 A. I've got it.

25 Q. And you te-- do you agree that you testified

1 there that the contributions in aid of construction was
2 treated as part of OWC's rate base?

3 A. Contributions and aids of construction to OWC
4 rate base, I agree I said that.

5 Q. Okay. Now, is it your testimony that
6 contributions in -- in aid of construction are included
7 in rate base?

8 A. No, that's account 271. They're -- they are
9 not -- they are gifts, such as Parkview Bay or -- and I
10 thought Golden Glade at the time I -- I filed this
11 testimony was also a gift.

12 And you don't include gifts in the rate base,
13 because you don't -- it doesn't cost you any money
14 to operate -- or to have those facilities as capital or
15 your capital structure.

16 Q. So if you said anywhere else in your testimony
17 the contributions in aid of construction were included
18 in rate base, that would be erroneous as well?

19 A. That would be a misstatement. And I ident--
20 identified them as a Comp 271.

21 MR. KRUEGER: Okay. Thank you.

22 That's all the questions I have.

23 JUDGE WOODRUFF: Okay. And for Public
24 Counsel?

25 MS. O'NEILL: No questions.

1 JUDGE WOODRUFF: Environmental Utilities?

2 MR. WILLIAMS: I have no questions.

3 JUDGE WOODRUFF: Okay. Then I have no
4 questions from the Bench. So no recross. Any
5 redirect?

6 MR. LORAIN: None, Your Honor.

7 JUDGE WOODRUFF: All right. Mr. Cochran, you
8 may step down.

9 THE WITNESS: Thank you, sir.

10 (Witness excused.)

11 JUDGE WOODRUFF: I believe that concludes all
12 the testimony today. Any other -- any other matters
13 anyone wants to bring up?

14 MR. WILLIAMS: None for the company, Your
15 Honor.

16 JUDGE WOODRUFF: All right. There is one
17 other matter and that's the matter of post-trial
18 briefs. The transcript should be ready within
19 10 working days, I believe, is the standard. That
20 would make it due on the 9th of April. 20 days
21 appropriate for the initial brief?

22 MR. WILLIAMS: I think so.

23 MS. O'NEILL: Yes.

24 JUDGE WOODRUFF: Okay. And that puts it -- be
25 on the 29th of April for initial brief. And if we go

1 15 days after that, we'd be talking about May 7th for
2 reply briefs.

3 MR. KRUEGER: 15 days?

4 JUDGE WOODRUFF: I believe that's what I said,
5 yes.

6 MR. KRUEGER: That would be later than
7 May 7th.

8 JUDGE WOODRUFF: That -- that would be, later
9 then, wouldn't it?

10 MR. WILLIAMS: Your Honor, I have a general
11 objection to filing of briefs on a Monday. Would it be
12 possible to move that to the 30th of April instead of
13 the 29th?

14 JUDGE WOODRUFF: I don't have any problem with
15 that. So April 30 for initial. And that'd be May 14,
16 I guess, for the reply brief.

17 Okay. And I'll issue a written order or a --
18 a written notice indicating to the parties that those
19 are the dates for them -- for the briefs.

20 Any other matters anyone wants to bring up
21 while we're on the record?

22 (No response.)

23 JUDGE WOODRUFF: All right. With that, then,
24 we are adjourned.

25 Thank you all very much.

1 WHEREUPON, the hearing of this case was
2 concluded.
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I N D E X

STAFF'S EVIDENCE:		
JAMES A. MERCIEL, JR.:		
Questions by Commissioner Lumpe (Resumed)	331	
Questions by Commissioner Forbis	350	
Questions by Commissioner Simmons	353	
Recross-Examination by Ms. O'Neill	356	
Recross-Examination by Mr. Loraine	365	
Recross-Examination by Mr. Williams	381	
Redirect Examination by Mr. Krueger	400	
DALE JOHANSEN:		
Direct Examination by Mr. Krueger	407	
Cross-Examination by Ms. O'Neill	408	
Cross-Examination by Mr. Loraine	418	
Cross-Examination by Mr. Williams	488	
Questions by Commissioner Lumpe	491	
Questions by Judge Woodruff	505	
Recross-Examination by Ms. O'Neill	507	
Recross-Examination by Mr. Loraine	512	
Recross-Examination by Mr. Williams	519	
Redirect Examination by Mr. Krueger	520	
MARTIN HUMMEL:		
Direct Examination by Mr. Krueger	527	
Cross-Examination by Ms. O'Neill	529	
Cross-Examination by Mr. Loraine	541	
Cross-Examination by Mr. Williams	548	
Questions by Judge Woodruff	554	
Recross-Examination by Mr. Loraine	555	
Redirect Examination by Mr. Krueger	556	
HANCOCK CONSTRUCTION COMPANY'S EVIDENCE:		
DAVID HANCOCK:		
Direct Examination by Mr. Loraine	561	
Cross-Examination by Ms. O'Neill	568	
Cross-Examination by Mr. Williams	572	
Redirect Examination by Mr. Loraine	578	
WILLIAM COCHRAN:		
Direct Examination by Mr. Loraine	582	
Cross-Examination by Mr. Krueger	587	

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EXHIBIT INDEX (CONTINUED)

	MARKED	RECEIVED
Exhibit No. 26B * Cover page of 1999 Annual report	512	516
Exhibit No. 27 Disposition agreement for Case No. WR-2000-557	457	462
Exhibit No. 28 Shareholder's meeting minutes for Osage Water Company, January 8, 2002	519	520

* Exhibits 26A and 26B were retained by Counsel for
Hancock Construction Company.