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BEFORE THE PUBLIC SERVICE COMMISSION

STATE OF MISSOURI

TRANSCRIPT OF PROCEEDINGS

HEARING

May 12, 2004

Jefferson City, Missouri

Volume 2

| | | |
|--------------------------------|---|-----------------------|
| The Staff of the Missouri |) | |
| Public Service Commission, |) | |
| |) | Case No. TC-2004-0390 |
| Petitioner, |) | |
| |) | |
| vs. |) | |
| |) | |
| Heartland Health System, Inc.) |) | |
| |) | |
| Respondent. |) | |

RONALD D. PRIDGIN,
REGULATORY LAW JUDGE.
STEVE GAW, Chair
CONNIE MURRAY,
ROBERT CLAYTON, III
COMMISSIONERS.

REPORTED BY:
TRACY L. THORPE, CSR, CCR

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A P P E A R A N C E S

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

2 JUDGE PRIDGIN: We're on the record. Good
3 afternoon. This is the hearing in Case No. TC-2004-0390,
4 the Staff of the Missouri Public Service Commission versus
5 Heartland Health Services, Incorporated.

6 I am Ron Pridgin. I'm the regulatory law
7 judge assigned to preside over this hearing. It's being
8 held on May 12th, 2004 at the Hotel Governor Office Building
9 in Jefferson City, Missouri. The time is one o'clock in the
10 afternoon.

11 At this time I would like to get oral entries
12 of appearance from counsel beginning with Staff, please.

13 MR. BATES: Thank you, Judge. Bruce H. Bates
14 appearing for the Staff of the Missouri Public Service
15 Commission. My address is Post Office Box 360, Jefferson
16 City, Missouri 65102-0360.

17 JUDGE PRIDGIN: Mr. Bates, thank you.

18 On behalf of Heartland Health Services
19 Incorporated, please.

20 MR. WRIGHT: Seth C. Wright on behalf of
21 Heartland Health. Address is 3101 Frederick Avenue,
22 St. Joseph, Missouri 64506.

23 JUDGE PRIDGIN: All right. Mr. Wright, thank
24 you.

25 I don't recall there being any pending

1 motions. Is there anything counsel wants to bring to my
2 attention before we take opening argument?

3 MR. BATES: Your Honor, shouldn't we have
4 exhibits marked at this time?

5 JUDGE PRIDGIN: I was also going to ask that
6 as well, and we can certainly do that now. Mr. Bates, any
7 exhibits you've like to have premarked?

8 MR. BATES: Yes. I have the Direct Testimony
9 of Janis E. Fischer.

10 (Exhibit No. 1 was marked for identification.)

11 JUDGE PRIDGIN: And I'll label as Exhibit
12 No. 1 for identification purposes the pre-filed Direct
13 Testimony of Janis Fischer.

14 Mr. Bates, any further exhibits?

15 MR. BATES: No, thank you.

16 JUDGE PRIDGIN: Mr. Wright, any exhibits?

17 MR. WRIGHT: Yes. I have the Rebuttal
18 Testimony of Helen V. Thompson.

19 (Exhibit No. 2 was marked for identification.)

20 JUDGE PRIDGIN: All right. I will have
21 labeled as Exhibit No. 2 for identification purposes the
22 pre-filed testimony of Helen Thompson.

23 Mr. Wright, any further exhibits?

24 MR. WRIGHT: No, your Honor.

25 JUDGE PRIDGIN: All right. Thank you.

1 Anything else before we take opening?

2 All right. Hearing nothing, Mr. Bates, if you
3 have an opening argument, would you please approach the
4 podium?

5 MR. BATES: Thank you, Judge. I'll be brief.
6 As the Commission and parties know, the Staff is alleging a
7 violation of the Commission's statutes relating to annual
8 report filings by Heartland Health System, Incorporated.

9 Basically, Respondent is a telecommunications
10 company and a public utility as defined in Section 386.020
11 RSMo and is subject to the Commission's jurisdiction. The
12 Commission granted this company a certificate of service
13 authority to provide share tenant services in 1994.

14 According to Section 392.210.1 RSMo,
15 telecommunications companies must file an annual report with
16 the Commission at a time and covering the yearly period
17 fixed by the Commission. The Commission's Rule 4 CSR
18 240-3.540(1) requires all telecommunications companies to
19 file their annual reports on or before April 15th of each
20 year.

21 On February 3rd, 2003, the executive director
22 of the Commission sent all regulated utilities, including
23 this Respondent, a letter notifying them of the requirement
24 to file an annual report covering the calendar year 2002
25 together with the appropriate form for the company to

1 complete and return to the Commission and instructions on
2 how the company might compete -- complete its filing
3 electronically.

4 The letter was sent to the address that was
5 current in the Commission's electronic filing system at that
6 time and the letter was not returned. The company never
7 returned a completed form, nor did it file its annual report
8 electronically. It did finally late file that report on
9 March 4th of this year.

10 Section 392.210.1 RSMo provides that if any
11 telecommunications company shall fail to make and file its
12 annual report as and when required or within such extended
13 time as the Commission may allow, such company shall forfeit
14 to the State the sum of \$100 for each and every day it shall
15 continue to be in default with respect to that report.

16 Staff is requesting that after all the
17 evidence is received in this hearing, that it find that
18 Heartland Health System, Incorporated failed to file its
19 2002 annual report with the Commission in a timely manner as
20 required by Missouri statute and Commission orders.

21 And, further, that it issue an order
22 authorizing its general counsel's office to bring a penalty
23 action against the company in circuit court as provided in
24 Section 386.600 for an amount at this time that we calculate
25 of \$32,300. Thank you very much.

1 JUDGE PRIDGIN: Mr. Bates, thank you.
2 Mr. Wright, on behalf of Heartland Health
3 System, please.

4 MR. WRIGHT: Thank you, your Honor.

5 Heartland Health's position is simple. Our
6 position is we timely filed our 2002 annual report by mail
7 in April of 2003. Heartland did not receive any notice from
8 the Commission that it did not receive its 2002 annual
9 report until the filing of the notice of this action.
10 Heartland was unaware that the Staff of the PSC had never
11 received its 2002 annual report.

12 If we had received notice, we would have
13 re-filed our annual report, which is evidenced by the fact
14 of what we did. Once we received our notice of complaint,
15 we immediately re-filed our annual report on March 4, 2004.

16 There's no malice or no -- Heartland Health is
17 not trying to dodge or avoid the regulations that they're
18 supposed to comply with. There's no willful or wanton
19 conduct. Our position is somewhere somebody made a mistake
20 and we don't know who that is. The burden of proof is on
21 the PSC Staff to prove that we didn't file our report.

22 I'll let you know Heartland has taken some
23 steps to remedy this problem going forward, that they are in
24 the -- they have taken steps and are in the process of
25 taking steps to make sure that their annual reports from now

1 on are timely filed.

2 Heartland's a good hospital. They service the
3 entire northwest Missouri community. And I understand that
4 this is a new type of hearing, the enforcement of these
5 types of delinquent filings. And, in my opinion, this is
6 not the type of enforcement of these penalties that was
7 anticipated. Heartland has filed its 2002 annual report.
8 It did not intentionally withhold its filing. As stated, we
9 filed it by mail in April of 2003.

10 After all the evidence, we would respectfully
11 request that the Commission find that Heartland did timely
12 file its 2002 annual report and not authorize the general
13 counsel to bring a penalty action, or in the alternative,
14 we'd request that the Commission waive any penalties
15 Heartland may be liable for. Thank you.

16 JUDGE PRIDGIN: Mr. Wright, thank you.

17 All right. I believe I have in the proposed
18 order of opening statements and order of witnesses that
19 Staff would present its witnesses first.

20 Mr. Bates, are you ready to proceed?

21 MR. BATES: Yes, your Honor. We would call
22 Janis Fischer.

23 JUDGE PRIDGIN: Ms. Fischer, if you would,
24 please step forward to be sworn.

25 (Witness sworn.)

1 JUDGE PRIDGIN: Thank you very much. Please
2 have a seat.

3 Mr. Bates, whenever you're ready, sir.

4 JANIS FISCHER testified as follows:

5 DIRECT EXAMINATION BY MR. BATES:

6 Q. Would you state your full name for the
7 Commission, please?

8 A. Janis, J-a-n-i-s, E. Fischer, F-i-s-c-h-e-r.

9 Q. And what is your business address, please?

10 A. 200 Madison Street, Jefferson City, Missouri.

11 Q. Okay. And what is your position?

12 A. I'm a regulatory auditor in the auditing
13 department.

14 Q. Ms. Fischer, did you prepare and cause to be
15 filed in this matter Direct Testimony that has been marked
16 for purposes of identification as Exhibit No. 1?

17 A. Yes.

18 Q. Are there any corrections, changes or
19 additions to that testimony which you would like to make at
20 this time?

21 A. No, there are not.

22 Q. If I ask you the same questions today, would
23 your answers be substantively the same?

24 A. Yes, they would be.

25 Q. Are your answers true and correct to the best

1 of your information, knowledge and belief?

2 A. Yes, they are.

3 MR. BATES: Your Honor, at this point I ask
4 that Exhibit No. 1 be received into evidence.

5 JUDGE PRIDGIN: Any objections?

6 MR. WRIGHT: No objections.

7 JUDGE PRIDGIN: With no objections, Exhibit
8 No. 1 is admitted into evidence.

9 (Exhibit No. 1 was received into evidence.)

10 MR. BATES: And I tender this witness for
11 cross-examination.

12 JUDGE PRIDGIN: Mr. Bates, thank you.

13 Mr. Wright, any cross?

14 MR. WRIGHT: Yes, your Honor.

15 CROSS-EXAMINATION BY MR. WRIGHT:

16 Q. Good afternoon, Ms. Fisher.

17 A. Good afternoon.

18 Q. Is it possible that Heartland mailed its 2002
19 annual report to the Commission in April of 2003?

20 A. Yes, it's possible.

21 Q. But for some reason unknown to anyone, the PSC
22 Staff did not receive Heartland's 2002 annual report; is
23 that correct?

24 A. I believe that's possible. I don't believe
25 that the US mail system is infallible.

1 Q. There could be any number of reasons besides
2 the mail that the Staff never received Heartland's 2002
3 annual report, aren't there?

4 A. I'm not sure what other -- I guess I'm not
5 clear as to what you would be referring to.

6 Q. By "any number of reasons," I mean it could
7 have been simply lost in the mail, it could have been
8 received by the Staff and filed incorrectly, could have been
9 lost in the paper shuffle, anything along those lines?

10 JUDGE PRIDGIN: I'll let her answer the
11 question, Mr. Wright, but I mean, can we just assume that a
12 lot of possibilities and conjecture and speculation exist
13 and can we get to what Ms. Fischer does and does not know?

14 THE WITNESS: I believe anything's possible,
15 yes. I also know though that Staff takes great care in
16 tracking annual reports as they come in, so I don't think
17 it's likely, but, yes, it would be possible.

18 MR. WRIGHT: That's all the questions I have.
19 Thank you.

20 JUDGE PRIDGIN: Mr. Wright, thank you.

21 See if we have any questions from the Bench.
22 Chairman Gaw?

23 CHAIR GAW: Thank you, Judge.

24 QUESTIONS BY CHAIR GAW:

25 Q. Ms. Fischer, what format was this report that

1 the Respondent claims that they mailed, what format was it
2 in?

3 A. Are you referring --

4 Q. Have you been told what format it was
5 supposedly in?

6 A. Paper.

7 Q. Was it in paper or electronic? Has anyone
8 ever told you?

9 A. Well, in reading the testimony of Heartland's
10 witness, I believe it mentions that it was mailed. So I
11 presume it would be the paper copy then rather than an
12 electronic version.

13 Q. All right. And do you have anything -- any
14 information at all that -- let me ask you this. Have you
15 looked through to see whether there's any evidence of any
16 kind within the files of the Commission that would indicate
17 that anything was ever received on this annual report?

18 A. Well, my understanding of the process last
19 year, and I came into it not at the very beginning, but I
20 was involved in the process later on, is that the annual
21 reports come into the mail room here at the Commission and
22 then they're delivered to the Data Center.

23 And last year we began processing them in a
24 fashion where the Data Center then places the annual reports
25 in a certain file cabinet and the auditing department then

1 retrieves those documents before they review them. Then the
2 auditing department returns them to the Data Center where
3 they're then scanned into EFIS and given a designation
4 number, a DMAR number.

5 My involvement in the process -- and we also
6 maintain a spreadsheet in the auditing department where we
7 track every annual report that we review and I have no
8 indication that we -- anyone reviewed the annual report.
9 The Data Center doesn't log the reports in when they receive
10 them from the mail room, so I can't 100 percent say that it
11 wasn't somehow misplaced, but I just don't believe that
12 that's likely because of the process that we have in place.

13 Q. And explain that a little bit for me, why you
14 think that would not be likely.

15 A. When an annual report comes in the Data
16 Center, they're easily recognizable from other types of
17 submissions or filings because the cover of the annual
18 report plainly states that it's an annual report and it
19 lists the name of the company.

20 Then their process is to stamp as received on
21 the date and then to place it in the file cabinet and then
22 it comes upstairs and we review it. I guess that's the
23 process that we use. They're only -- the auditing
24 department is on the fourth floor in a suite. We maintain
25 those documents in that office space. They're not removed

1 from the building.

2 We have at times had auditors from our
3 satellite office -- offices come in and work in the work
4 room on the second floor where they will just spend the day
5 reviewing annual reports, but we -- we keep track of them
6 by -- they pretty much stay on our desks or in our work area
7 rather than having them out where the public could pick them
8 up or they could be intermingled with other documents.

9 Q. Let me ask you this. Have you had other
10 complaints or suggestions that Staff may have lost an annual
11 report once it came in; and if so, how many and when and --

12 A. Well, this year our process has been a little
13 different in that we've sent out letters after the 15th of
14 April to companies that we had not received an annual report
15 for 2003. And I have received -- I haven't actually kept
16 track of it, but maybe two, three, four calls where
17 companies indicated that they thought that they had mailed
18 it and they would tell me approximately the time frame, but
19 we had no record of receiving it.

20 And they've then submitted it again, but --
21 so, yes, I have heard of a couple other companies that have
22 said that they submit it -- or mailed it and that we didn't
23 receive it.

24 Q. You did receive an annual report at some point
25 in time from this company, is that correct, in this case?

1 A. Yes. After we filed the complaint, we
2 received the 2002 annual report in March.

3 CHAIR GAW: Let me ask the Judge, is that in
4 the record?

5 JUDGE PRIDGIN: It is in the pleadings. I
6 don't know if it's been filed in EFIS, but it is -- I can
7 check real quickly.

8 THE WITNESS: I believe the BMAR number is
9 2004-0130, so I believe it has been submitted into EFIS as a
10 non-case related filing.

11 CHAIR GAW: I just don't have a copy. Do you
12 have a copy of it, Judge, the report that they did file?

13 JUDGE PRIDGIN: I do not.

14 THE WITNESS: I have a copy.

15 MR. BATES: May I approach the witness?

16 JUDGE PRIDGIN: You may.

17 THE WITNESS: I think it's clean. I don't
18 think anything has been marked.

19 CHAIR GAW: Could it be marked, Judge?

20 JUDGE PRIDGIN: Certainly.

21 CHAIR GAW: So everyone knows what we're
22 dealing with.

23 JUDGE PRIDGIN: Let me call this Exhibit No. 3
24 for identification purposes. And this is what was filed on
25 March 9th, 2004 here at the Commission. And it looks to be

1 Heartland Health System Incorporated's annual report for the
2 year 2002. And let me see if we have any objection to that
3 coming in?

4 MR. BATES: None, your Honor.

5 MR. WRIGHT: No, your Honor.

6 JUDGE PRIDGIN: We'll call this Exhibit No. 3
7 and have that admitted into evidence.

8 (Exhibit No. 3 was received into evidence.)

9 BY CHAIR GAW:

10 Q. This annual report that was filed with you

11 CHAIR GAW: That was marked as -- is it 1 did
12 you say, Judge?

13 JUDGE PRIDGIN: Exhibit 3.

14 BY CHAIR GAW:

15 Q. Exhibit 3, pardon me. Exhibit 3. This is a
16 copy of the report that you have on file here at the
17 Commission --

18 A. Yes.

19 Q. -- for the year in question, period ending
20 December 31st, 2002. Correct?

21 A. Yes.

22 CHAIR GAW: You want to hand that back to her,
23 Judge?

24 Thank you, Commissioner Murray.

25 BY CHAIR GAW:

1 Q. Tell me when the signature was on that report.
2 What's the date of the signature?

3 A. The signature -- well, the notary signed and
4 dated the affidavit February 26th, 2004.

5 Q. Okay. And when was it received, if you know?

6 A. We received it on March 4th. It was filed
7 actually into EFIS on March 9th. The five days represents
8 the time it took for it to be reviewed and go back down to
9 the Data Center.

10 Q. Okay. And have you received a copy of the
11 report that the company alleges was sent to the Commission?

12 A. Originally?

13 Q. Yes.

14 A. No.

15 CHAIR GAW: Let me ask the attorney for the
16 company. Have you provided a copy of that -- a copy of that
17 report that was supposedly mailed to the Commission?

18 MR. WRIGHT: We have not. We do not have a
19 copy. When we looked in our file, there was not a signed
20 copy. I believe -- if I'm speaking wrong, tell me -- that
21 we had the information contained in the file, but not an
22 actual copy of the report. And we used that information to
23 complete the new report that was re-filed.

24 CHAIR GAW: That's all I have. Thank you,
25 Judge.

1 JUDGE PRIDGIN: Thank you, Mr. Chairman.

2 Commissioner Murray?

3 QUESTIONS BY COMMISSIONER MURRAY:

4 Q. A couple of questions. Good afternoon.

5 A. Good afternoon.

6 Q. The Staff now has a process of sending out a
7 letter how long after the report is --

8 A. Well, we don't actually have a date set in
9 stone. We -- the problem is in when the 15th falls and
10 giving a few days -- although technically we're supposed to
11 have the reports in hand, some companies have assumed that
12 means postmarked, so we waited probably a week and a half.
13 I believe it may have been April 26th when we sent out the
14 letters.

15 Q. And what did you use to determine that the
16 letter had actually been mailed to this company on
17 February 3rd of 2003?

18 A. Well, we -- at the time the 2002 annual
19 reports were sent, there was a query or a software program
20 designed by the Commission's IS department to extract a list
21 in Excel format of all the I believe certificated and active
22 companies in Missouri which included their business address.
23 And that list that was used to create the mailing labels for
24 the 2002 annual report mailing was maintained.

25 So I reviewed that address on that list and

1 compared it to our current list. And my assumption then is
2 that they were mailed to -- an annual report was mailed to
3 Heartland at the correct address.

4 Q. So in addition to printing the labels at the
5 time in February of '03, the program printed a list. Is
6 that what you said?

7 A. Yes. Yes.

8 Q. So you actually had a list you referred to to
9 show all of the companies for whom mailing --

10 A. Yes.

11 Q. -- labels were --

12 A. That's correct.

13 Q. And just for my own information I want to go
14 through with you again when a report comes into the mail
15 room, it's then delivered to the Data Center?

16 A. Yes.

17 Q. And is it stamp filed before or after it's
18 reviewed?

19 A. The Data Center uses two different stamps.
20 The first one when they actually receive it from the mail
21 room and they first open it, they stamp it "received." And
22 then my understanding is then as it is reviewed and goes
23 back down to the Data Center to be entered into EFIS, it's
24 then stamped "filed" so that you can tell the length of time
25 it took from when it was received to when it actually became

1 part of the EFIS system.

2 Q. And in terms of considering whether something
3 is timely or not, I'm assuming if the review reveals no
4 deficiencies, that if something was stamped received by the
5 due date, it would have been considered filed timely; is
6 that right?

7 A. Yes. We go by the received date.

8 Q. Okay. And the reason it's not stamped filed
9 until after the review is that there may be some
10 deficiencies and it may not actually be a report that you
11 can accept; is that right?

12 A. Well, in my experience, even an annual report
13 that has some deficiencies we will either send a letter or
14 an e-mail to the company notifying them of the deficiency.
15 We will track the date that we actually send that to them
16 and we will go ahead then and submit the annual report and
17 the deficiency e-mail or letter into EFIS and EFIS will
18 still record the receipt of the annual report as of that
19 stamped received date even if there are some deficiencies.

20 Q. Okay. And the annual report that was received
21 from Heartland on 4/2004, when you did receive it, were
22 there deficiencies?

23 A. No, there were not.

24 COMMISSIONER MURRAY: I think that's all I
25 have. Thank you.

1 JUDGE PRIDGIN: Commissioner Murray, thank
2 you.

3 Commissioner Clayton?

4 QUESTIONS BY COMMISSIONER CLAYTON:

5 Q. I just have a couple of hopefully very quick
6 questions. If a party sends in -- well, first of all, now
7 can a party still file the hard copy or is it all done
8 electronically now?

9 A. They have the choice of either way. And I
10 would say the majority, probably in excess of 90 percent,
11 still are paper copies mailed in.

12 Q. If a party or a company were to send in the
13 report with a self-addressed stamp envelope and a cover
14 page, can they get a file stamped copy returned to them?

15 A. Yes. We have some companies that do that
16 currently.

17 Q. Okay. So you all do have the actual stamp
18 down there to --

19 A. Yes. Uh-huh.

20 Q. -- stamp it filed?

21 A. And we will send back a copy for them to know
22 or if they send it registered, we would sign that we had
23 received it.

24 Q. For this company does the file indicate
25 whether annual reports have been properly filed or

1 improperly filed for the years prior to the year in
2 question?

3 A. I have access to information going back to
4 1997. And I believe the Data Center maintains a spreadsheet
5 for each year that indicates when annual reports are
6 received.

7 In reviewing the annual reports from
8 Heartland, we had received annual reports 1997 through the
9 year 2000, but we never received one for the year 2001, in
10 addition to the 2002 that we're discussing today.

11 Q. So the 2002 was missing, the 2001 was missing?

12 A. Yes.

13 Q. But for the years prior to that back to '97,
14 the annual report had been filed?

15 A. Yes.

16 Q. And was it my understanding that now the
17 system will allow for the Commission to notify companies
18 that have not complied with the annual report being filed at
19 the right time? Did I understand that correctly?

20 A. Yes. This year we began a process where we
21 notify the companies -- I don't want to say within two
22 weeks, but within a short amount of time after the
23 April 15th deadline so that if a situation arises where they
24 believe they've sent it or they've somehow neglected to do
25 it, it's a reminder. And we've had pretty good response

1 with that.

2 Q. I guess let me just ask the question. Why was
3 that policy changed or why do you all send out notifications
4 now? Is that something we decided or something that you
5 decided or that the Data Center decided?

6 A. I think it was a discussion between different
7 departments within the Staff including the Data Center, the
8 general counsel's office, auditing, some division directors.

9 Q. Was it in response to a particular problem
10 or -- I mean, is this a regular occurrence where there's a
11 miscommunication -- or alleged miscommunication between a
12 company and the Data Center?

13 A. Could you repeat that one more time?

14 Q. Is this change in policy as a result of a
15 problem in other annual reports being filed?

16 A. I don't think it's -- I don't think it's a
17 problem with the reports being filed. I think it's more
18 because of the process where we have gone to the complaint
19 cases. We realize how important it is that the companies be
20 given every opportunity to meet the requirements and we felt
21 that it would be prudent on our part to try to notify them
22 and give them the opportunity to get the report in.

23 I don't think it -- because in my experience,
24 and that was just last year and this year, there are a
25 number of companies that don't file by the 15th, even ones

1 beyond the ones that request an extension. This year we
2 sent out approximately 140 letters, so there are a number of
3 companies that don't comply.

4 Q. Okay. So I guess let me restate this. You
5 tell me if my understanding of it is correct or incorrect.
6 That the change in the policy for notifying companies that
7 have not filed their annual reports was due to the
8 Commission's taking a more involved interest in whether
9 these reports have been filed and seeking penalties rather
10 than multiple problems of companies saying they filed their
11 annual report and that it wasn't supposedly received by the
12 Data Center?

13 A. Yes, that's correct.

14 Q. Okay. Are you aware of whether or not we
15 notify companies if they have failed to pay their
16 assessments in a similar way?

17 A. I've discussed this with Helen Davis, who
18 is --

19 Q. If you don't know it personally, I mean, I
20 don't want you to --

21 A. I know they do, but I couldn't tell you their
22 time line as to when they first start notifying companies of
23 that. I know they do send out notices for non-payment of
24 assessments.

25 Q. Is that after -- I think they can be paid

1 quarterly that --

2 A. And that's where I'm not sure what their
3 policy is. I just know that they do at some point send out
4 notices.

5 COMMISSIONER CLAYTON: Okay. I had one other
6 question and it's completely falling out of my mind, so I'll
7 call it there. Thank you.

8 JUDGE PRIDGIN: Commissioner Clayton, thank
9 you.

10 I don't believe I have any questions.

11 Mr. Bates -- I'm sorry, Commissioner Murray?

12 FURTHER QUESTIONS BY COMMISSIONER MURRAY:

13 Q. When a company mails its annual assessment, is
14 that ever mailed along with the annual report or is that
15 done separately?

16 A. This year the Commission sent the annual
17 report form and the statement of revenue report form in the
18 same packet that we mailed January 15th. Are you referring
19 more to when the company submits it back to the Commission?

20 Q. Yes.

21 A. I'm not really sure because I only see the
22 annual reports. If it comes to the Data Center, they would
23 be the ones that would know if they have to split out and,
24 you know, hand over the statement of revenue to Helen versus
25 the annual report to us.

1 Q. Okay. So you don't know the process for
2 handling the assessments once they get here --

3 A. No.

4 Q. -- is that right?

5 A. No.

6 Q. But this year the letter regarding the annual
7 report went along in the same mailing with the notice of
8 assessment?

9 A. Yes

10 COMMISSIONER MURRAY: Okay. Thank you.

11 JUDGE PRIDGIN: Commissioner Murray, thank
12 you.

13 Commissioner Clayton?

14 FURTHER QUESTIONS BY COMMISSIONER CLAYTON:

15 Q. I remembered it, so you're not off the hook
16 yet.

17 A. Okay.

18 Q. Is there a way for a company to access the PSC
19 website to determine whether they've complied with the
20 annual report or paying assessment? I mean, can they come
21 in and check the system to see if it's been properly filed?

22 A. Yes. They would have access to the PSC's
23 Internet site and would be able to have access to EFIS if
24 they -- it's somewhat self-explanatory, but they could
25 always also pick up the phone and call and ask.

1 Q. Well, I understand that. That's not my
2 question though.

3 A. Okay.

4 Q. I know that internally we have the ability to
5 review what companies, for example, have not paid their
6 assessment in a given year. I don't know if that's
7 available to the outside.

8 I'm not aware of internally is there a way for
9 us inside the Commission to determine what companies have
10 not filed their annual report. And can we, I guess is my
11 first question? And then the second question is, can the
12 company for their own circumstances just get online and go
13 to the PSC website and see whether or not they've done it or
14 not?

15 A. Yes, they can.

16 Q. They can?

17 A. Yes.

18 Q. Okay. Can we?

19 A. Yes, we can.

20 Q. How do you do that?

21 A. Well, you go in -- if you know --

22 Q. I'll tell you what. Instead of putting it in
23 the record, I'll just get the Judge to show me. I believe
24 you.

25 A. Yes. It's not that hard really.

1 JUDGE PRIDGIN: Commissioner Clayton, thank
2 you.

3 I don't see any further questions from the
4 Bench.

5 Mr. Bates, any redirect?

6 MR. BATES: Thank you, a few.

7 REDIRECT EXAMINATION BY MR. BATES:

8 Q. Ms. Fischer, I believe in response to a
9 question from Commissioner Murray you referred to the
10 Commission's IS department. Just for the record, would you
11 explain what IS means?

12 A. Information systems or services. I'm not
13 really quite sure what that -- those are the individuals
14 that maintain our computer network and our computer systems
15 within the Public Service Commission.

16 Q. Thank you.

17 And in response to a question from
18 Commissioner Gaw, I believe that you'd stated that there
19 were several companies that contacted you stating that they
20 had mailed in their annual reports but that we had not
21 received them and so they mailed them in again; is that
22 correct?

23 A. Yes.

24 Q. On the occasion when they mailed it in again,
25 did they all arrive?

1 A. Yes.

2 Q. Okay. And, finally, I think in response to a
3 question from Commissioner Clayton, he asked you about past
4 annual reports and you stated that this company had not --
5 or that we had not received a 2001 annual report as well
6 from this company; is that right?

7 A. That's correct.

8 Q. Do you know whether or not the PSC received a
9 statement of revenue for fiscal year 2003 which would
10 correspond to that year 2001?

11 A. I inquired of Helen Davis about the status of
12 the statement of revenue to see how they compared to the
13 annual report. And she responded to me that they had not
14 submitted the statement of revenue for the year -- for the
15 fiscal year 2003, which would correspond to the calendar
16 year 2001, because she was required then to estimate what
17 that was, but that they also then, in turn, paid the
18 estimated assessment. So we were only missing the report,
19 not the actual dollars.

20 Q. What significance, if any, would the fact that
21 the PSC did not receive a statement of revenue for fiscal
22 year 2003 from this company have?

23 A. Well, the impact of that on estimating versus
24 actually knowing the revenue, to me it was kind of an
25 indication that maybe there was a change in management or

1 duties at Heartland.

2 Q. And I probably asked that poorly. Do I
3 understand then that the reason there had to be a
4 calculation made by the Staff was because there was -- the
5 Commission did not have an annual report for that year?

6 A. No. The calculation is based upon the
7 statement of revenue and that wasn't received.

8 Q. Okay. What, if any, then is the significance
9 to the fact that the PSC did not receive a statement of
10 revenue for fiscal year 2003 which would correspond to
11 calendar year 2001? Does it have any significance at all
12 regarding the 2002 annual report, the 2001 annual report?

13 A. It would only indicate that their -- that the
14 2002 annual report not being received was not the only
15 incidence of us not receiving a document from Heartland.

16 Q. Okay. Thank you for clearing that up for me.

17 MR. BATES: Thank you very much.

18 JUDGE PRIDGIN: Mr. Bates, thank you.

19 Mr. Wright, anything further?

20 MR. WRIGHT: No, your Honor.

21 JUDGE PRIDGIN: I don't see any further
22 questions from the Bench. I don't believe I have any
23 further questions.

24 Ms. Fischer, thank you very much. You may
25 step down.

1 Mr. Bates, any further witnesses?

2 MR. BATES: No, your Honor.

3 JUDGE PRIDGIN: All right. Mr. Wright, any
4 witnesses?

5 MR. WRIGHT: Yes, your Honor. We'd call Helen
6 V. Thompson.

7 JUDGE PRIDGIN: Ms. Thompson, if you would,
8 please come forward and be sworn.

9 (Witness sworn.)

10 JUDGE PRIDGIN: Thank you very much. If you
11 would, please have a seat.

12 And, Mr. Wright, when you're ready sir.

13 HELEN V. THOMPSON testified as follows:

14 DIRECT EXAMINATION BY MR. WRIGHT:

15 Q. Please state your full name for the record.

16 A. It's Helen Virginia Thompson.

17 Q. And what's your business address?

18 A. 5325 Faraon Street, St. Joseph, Missouri
19 64506.

20 Q. And what is your position?

21 A. I'm the chief information officer for
22 Heartland Health.

23 Q. Did you prepare and cause to be filed in this
24 matter Rebuttal Testimony that has been marked for purposes
25 of identification as Exhibit No. 2?

1 A. Yes.

2 Q. Are there any corrections, changes or
3 additions to that testimony which you would like to make at
4 this time?

5 A. No.

6 Q. If I asked you the same questions today, would
7 your answers be substantively the same?

8 A. Yes.

9 Q. Are your answers true and correct to the best
10 of your information, knowledge and belief?

11 A. Yes.

12 MR. WRIGHT: Your Honor, I move the admission
13 of Exhibit No. 2.

14 MR. BATES: No objection.

15 JUDGE PRIDGIN: Hearing no objection, Exhibit
16 No. 2 is admitted into evidence.

17 (Exhibit No. 2 was received into evidence.)

18 MR. WRIGHT: I tender this witness for
19 cross-exam.

20 JUDGE PRIDGIN: Mr. Wright, thank you.

21 Mr. Bates, any questions?

22 MR. BATES: Yes. Thank you.

23 CROSS-EXAMINATION BY MR. BATES:

24 Q. Ms. Thompson, good afternoon.

25 A. Good afternoon.

1 Q. I believe you testified that you are the chief
2 information officer for Heartland Health?

3 A. That's correct.

4 Q. How long have you held that position?

5 A. For two years.

6 Q. Okay. Would you have been holding that
7 position at the time that the 2002 annual report would have
8 been filed with the Commission?

9 A. Yes, I would have.

10 Q. Okay. Would you be the person in charge of
11 filing that report?

12 A. At that time, I was not.

13 Q. Okay. Do you recall who that was?

14 A. The responsible party at that time was
15 Mr. Larry Coke, our chief technology development officer,
16 who has since retired and I have assumed his
17 responsibilities in the area of telecommunications.

18 Q. When going back and looking and preparing for
19 this hearing, did you discover whether or not you had any
20 record as to whether or not your company had filed the
21 annual report with the Commission?

22 A. In looking back through the files, we found
23 the paper -- the draft documents used to create the official
24 reports that were then mailed to the Commission for the year
25 2002.

1 Q. Did you have a copy of the actual document?

2 A. No, I did not have a copy of the final
3 documents.

4 Q. Would it have been normal for there to have
5 been a copy of that document in the file?

6 A. Under -- under normal circumstances, yes.

7 Q. Can you explain why there wasn't in this case?

8 A. In this particular case, there was a hand-off
9 between two secretaries and the final affidavit has to be
10 signed by our CEO. That was asked to be done and the -- the
11 packet mailed and she mailed it without making us a copy.
12 It was just a clerical oversight.

13 Q. Did she make a copy of the affidavit?

14 A. No, she did not.

15 Q. Would there have been a notarized statement
16 that went along with the report and the affidavit or would
17 the affidavit itself, I assume, have been notarized?

18 A. Yes. The affidavit was notarized.

19 Q. Did you check with the notary to see if she
20 kept a record of whether or not she'd notarized this
21 document?

22 A. I did check and she did not have a record.

23 Q. Okay. Did she have records covering that
24 period of time?

25 A. Yes, she did.

1 Q. So she had a record that she had notarized
2 other documents during that time, but not this one?

3 A. I think I need to go back and clarify. She
4 had a record of having notarized the document, she did not
5 have a copy of the document for us.

6 Q. Okay. Do you have any other documentation at
7 all that would prove that you mailed the document?

8 A. No, sir.

9 Q. Do you happen to know whether you would have
10 mailed it certified or in any way where you would have
11 gotten a receipt back?

12 A. This one did not go out certified mail --

13 Q. Okay. How can you --

14 A. -- unfortunately.

15 Q. -- be sure of that?

16 A. We had no records of the -- normally if I mail
17 something certified mail, I keep a copy of the receipt and
18 then when I receive the notification that the recipient has,
19 in fact, received the document, we also keep that.

20 Q. Okay. So I understand, the only evidence --
21 and I don't believe it's in evidence here other than your
22 testimony, which I concede I'm sure is truthful, but that
23 there was such a document was you do have a record by a
24 notary that she notarized that document?

25 A. Yes.

1 Q. Did she tell you on what date she notarized
2 it?

3 A. It would have been on or about the 4th of
4 March of that year.

5 Q. Okay. Did you check with your mail room to
6 see if there was any sort of record there?

7 A. There is -- we do not keep those kind of
8 records in our mail room.

9 Q. Okay. And for whatever reason, there was
10 never a copy made of the actual document?

11 A. It was just a clerical oversight.

12 MR. BATES: I think that's all I have right
13 now. Thank you.

14 THE WITNESS: Thank you.

15 JUDGE PRIDGIN: Mr. Bates, thank you.

16 Let me see if we have questions from the
17 Bench. Mr. Chairman?

18 CHAIR GAW: Thank you.

19 QUESTIONS BY CHAIR GAW:

20 Q. Ms. Thompson, I need to understand something
21 about this issue of the copy not being in your file.

22 A. Uh-huh.

23 Q. Do you normally keep a copy of these kinds of
24 documents when you mail them?

25 A. Yes.

1 Q. And did you go back and look through your
2 files on these annual report filings over the years that --

3 A. Yes.

4 Q. -- you have?

5 A. I have a copy for every year except for 2002,
6 the original. We have no copy of the 2002 filed report that
7 we filed in 2004.

8 Q. Yes. But you have no copy of this one --

9 A. No.

10 Q. -- that's in issue?

11 A. The original -- there is no copy of the
12 original filing.

13 Q. Now, help me out here. You said there's
14 something that your notary -- a notary there supposedly had
15 some documentation. I didn't understand what you were
16 saying.

17 A. When a notary notarizes a document, they keep
18 a log of what documents they've notarized and --

19 Q. Is that something that you've brought here to
20 put into evidence?

21 A. No.

22 Q. Do you have any -- is that notary present here
23 today or will they be present?

24 A. No, sir.

25 Q. Does that person work for your company?

1 A. Yes, he -- yes, she does.

2 Q. Who is that?

3 A. It is Ms. -- Ms. Kelly Walker.

4 Q. Kelly Walker. And is she still a notary?

5 A. Yes.

6 Q. But she's not available for us today. Is

7 that --

8 A. No.

9 Q. -- my understanding?

10 Who actually does the mailing for annual

11 reports in your office? Is that you or someone else for

12 you?

13 A. It is my admin assistant. Debbie Parker

14 actually does the mailing for me and she generates the

15 report along with our telecommunications coordinator.

16 Q. All right. And is she available today?

17 A. No, sir.

18 Q. Would it have been her responsibility to make

19 a copy of this document?

20 A. Yes. It would have normally been her

21 responsibility.

22 Q. She still works for your company as well?

23 A. Yes she -- yes, she does.

24 Q. Do you handle the assessments for your company

25 in regard to the assessments to the --

1 A. Yes.

2 Q. -- Public Service Commission?

3 A. The assessments come to my office and then we

4 request the check and the payment.

5 Q. Do you mail that out yourself?

6 A. Debbie does for me, yes.

7 Q. And have you paid your assessments over the

8 last several years in a timely fashion?

9 A. Yes.

10 Q. All right. And there have not been any

11 assessments that were not paid in a timely fashion since the

12 inception --

13 A. Not that I'm aware of.

14 Q. -- of the certificate?

15 Did you hear the rest of my question before

16 you --

17 A. I'm sorry.

18 Q. -- before you answered?

19 Since the issuance of your certificate, there

20 have been no times when your assessments have been paid late

21 or not paid at all?

22 A. Not that I'm aware of.

23 Q. Would you be aware of it if they -- if they

24 were paid late or if they were not paid at all?

25 A. Yes, I would. We would have the copy in the

1 file.

2 Q. So I take you not being aware of any that
3 weren't in compliance as an indication that you believe that
4 the company was in compliance with their annual assessment
5 payments --

6 A. Yes.

7 Q. -- in all the years since the certificates
8 were issued?

9 A. Yes.

10 Q. So as far as -- you would not have personally
11 mailed this document if it were mailed; is that correct?

12 A. No, sir.

13 Q. The person who would have is not here?

14 A. That's correct.

15 CHAIR GAW: That's all I have. Thank you,
16 Judge.

17 JUDGE PRIDGIN: Thank you, Chair.

18 Commissioner Murray?

19 QUESTIONS BY COMMISSIONER MURRAY:

20 Q. Good afternoon.

21 A. Good afternoon.

22 Q. Who was the CEO who would have signed the
23 affidavit?

24 A. Lowell Kruse, our current CEO.

25 Q. So he's still at the company also?

1 A. Yes.

2 Q. Is he here to testify?

3 A. No, ma'am.

4 Q. The person who would have done the mailing is
5 also still at the company; is that right?

6 A. Yes, she is.

7 Q. And she's not here?

8 A. No, ma'am, she's not.

9 Q. And you were not at the company at the time;
10 is that right?

11 A. At the -- at the time that the 2002 report
12 would have been -- should have been filed would have been --
13 or was filed, I was with the company.

14 Q. But you were not in the position of CIO; is
15 that correct?

16 A. Actually, I was in the position of CIO. The
17 responsibility for mailing this report did not lie with my
18 office at that time.

19 Q. Okay. Which office did it lie with?

20 A. It lied with the office of the chief
21 technology development officer, Larry Coke at that time.

22 Q. Okay.

23 A. Those responsibilities were merged back into
24 mine in December of 2003 --

25 Q. All right.

1 A. -- when Larry retired.

2 Q. So you didn't personally observe or have
3 anything to do with the 2002 filing; is that right?

4 A. That is right.

5 Q. You said you did check the records for the
6 other annual reports and you found a copy of every one
7 except the year 2002; is that correct?

8 A. What we found -- we found a copy for every
9 year since we have been a provider. What I found in the
10 2002 file was a draft copy, a pencil written copy of the
11 report that was used to create the typewritten report.

12 Q. Is it possible that that written copy was
13 prepared and then the actual preparation of the report
14 itself was never completed?

15 A. Well, anything would be possible. I have my
16 staff that tells me that the report was mailed.

17 Q. Which staff is that?

18 A. Debbie Parker is now -- who was then doing
19 this work for Larry Coke is now doing this work for me.

20 Q. Did you speak to the current CEO, the one who
21 had signed the affidavit?

22 A. About this issue specifically?

23 Q. Yes.

24 A. No. Other than to update him on where we were
25 at with it.

1 Q. So do you know if it is his position that he
2 did indeed sign the affidavit for the 2002 report?

3 A. I have not asked him that question.

4 Q. Did you ask him if he knew if that report had
5 been sent?

6 A. No, I did not ask him that question. He
7 would, in the myriad of things that he signs day to day, not
8 remember this specific event. But I did not specifically
9 ask him.

10 Q. When you checked for the other copies of the
11 other annual reports, did you find one for the year 2001?

12 A. Yes, there was one in the file for 2001.

13 Q. And has that ever been submitted to the
14 Commission?

15 A. It was my knowledge -- to my knowledge, it was
16 submitted in a timely fashion to the Commission and our
17 payment made.

18 Q. Did you ever receive any notice that it was
19 not?

20 A. No, ma'am. There is no indication of any
21 notice that we have not filed our 2001 report.

22 Q. Do you prepare or have anything to do with the
23 payment of the assessments -- the annual assessments?

24 A. My office does the check request.

25 Q. And is the assessment mailed with the annual

1 report or separately?

2 A. I believe they are mailed together.

3 Q. And do you know how long that has been the
4 case?

5 A. No, I don't specifically know the answer to
6 that question.

7 Q. So if the 2002 assessment had been mailed with
8 the annual report, that assessment would not have been
9 received; is that right?

10 A. I would assume that if the report hadn't been
11 mailed, the assessment would not have reached the
12 Commission.

13 Q. Well, if the report had reached the
14 Commission, wouldn't the -- the assessment and the report
15 together, if they had been mailed together, would have
16 reached the Commission; is that right?

17 A. As far as I know, yes.

18 Q. And if they had been mailed separately, you
19 wouldn't be able to know?

20 A. Right.

21 Q. And what was the first year that you took over
22 the duties of the assessment and the annual report?

23 A. I took over those responsibilities January 1
24 of 2004. It was my office that filed the -- that received
25 the notice of complaint and subsequently re-filed our 2002

1 report as well as filing our 2003 report.

2 COMMISSIONER MURRAY: All right. Thank you.

3 JUDGE PRIDGIN: Commissioner Murray, thank
4 you.

5 Commissioner Clayton?

6 COMMISSIONER CLAYTON: No questions.

7 JUDGE PRIDGIN: All right. And I don't
8 believe I have any questions.

9 Mr. Wright, any redirect?

10 MR. WRIGHT: Yes, your Honor.

11 REDIRECT EXAMINATION BY MR. WRIGHT:

12 Q. Ms. Thompson, I believe it's unclear on what
13 all happened in response to the question from Commissioner
14 Gaw on the mix-up that happened, why the report was not
15 filed. So let's go back.

16 A. Okay.

17 Q. There's a hard copy in the file?

18 A. A hard paper copy.

19 Q. Paper copy?

20 A. Yes.

21 Q. That's hand penciled in, all the information
22 is written in?

23 A. That's correct.

24 Q. And that was prepared and a typewritten copy
25 was prepared from that?

1 A. That is correct.

2 Q. And then that was sent to Lowell Kruse, who's
3 the CEO of Heartland to sign?

4 A. That report and the affidavit that must
5 accompany it was sent to Lowell for signature.

6 Q. And who prepared the report?

7 A. Debbie Parker, my administrative assistant,
8 actually prepared the report.

9 Q. Okay. And she sent it over to Lowell's
10 office; to Mr. Kruse's office?

11 A. That's correct.

12 Q. And Mr. Kruse, he was on vacation; is that
13 correct?

14 A. He was on vacation and a Ms. Kelly Walker was
15 holding it for his signature. He was going to be back in
16 that one day and we were going to be out of the office. So
17 Debbie had Kelly ensure that the documents -- the affidavit
18 was signed and then subsequently mailed.

19 Q. And there's a notary log that Mr. Kruse
20 signed?

21 A. It's not -- Mr. Kruse did not sign the notary
22 log.

23 Q. That he signed the document. There's a
24 notary --

25 A. He just -- yeah, he just signed the document.

- 1 Q. Okay. And then Ms. Walker mailed the report?
- 2 A. That's correct.
- 3 Q. But she didn't make a copy?
- 4 A. That's also correct.
- 5 Q. And that's because she's not typically the one
6 who would do that? That's the discrepancy for the past --
7 the difference of why all the other years there is a copy in
8 the file, this one year there's not?
- 9 A. That's correct.
- 10 Q. Typically after Mr. Kruse signs, the report
11 would go back to Debbie Parker who would make a copy, file
12 it and make sure it was timely filed?
- 13 A. That is correct.
- 14 Q. And I believe Ms. Parker turned those duties
15 over because she was going to be on vacation around that
16 time as well?
- 17 A. That's correct.
- 18 Q. Okay. As a result of this complaint, did you
19 do an internal investigation?
- 20 A. Yes, I did.
- 21 Q. And you spoke to all these people?
- 22 A. All of them.
- 23 Q. And you're the designated representative from
24 Heartland?
- 25 A. Yes, I am.

1 Q. Okay. If Heartland had received a notice a
2 couple weeks after the 2002 -- a couple weeks after
3 April 15, 2002 -- or 2003, I'm sorry, that their 2002 annual
4 report had not been filed, what would they have done?

5 A. We -- we would have immediately re-filed the
6 report.

7 Q. So in no way was Heartland trying to avoid
8 compliance with the administrative regulations?

9 A. No. We -- we are supportive of the Commission
10 and file our reports in a timely fashion with -- there's
11 never been any intention to not pay our payments or not file
12 our reports. It was simply a clerical oversight.

13 Q. And, in fact, to the best of your knowledge,
14 the Commission has always received payment of the assessment
15 from Heartland; is that correct?

16 A. That's correct.

17 MR. WRIGHT: No further questions.

18 JUDGE PRIDGIN: Mr. Wright, thank you.

19 Mr. Bates?

20 MR. BATES: Thank you.

21 RE-CROSS-EXAMINATION BY MR. BATES:

22 Q. Ms. Thompson, do you know of your own
23 knowledge whether or not the assessment and report would
24 have been mailed together?

25 A. The assessment and the report mailed together?

1 Q. Yes.

2 A. Do I know for certain?

3 Q. Yes.

4 A. No.

5 Q. Okay. And I understand that while you do have
6 the notary's log in this case, you don't have any actual
7 evidence that the report was mailed; is that right?

8 A. That's correct.

9 MR. BATES: Thank you.

10 JUDGE PRIDGIN: Mr. Bates, thank you.

11 Mr. Chairman?

12 CHAIR GAW: Actually I have questions of
13 counsel, so I'll --

14 JUDGE PRIDGIN: All right. Thank you.

15 Commissioner Murray?

16 COMMISSIONER MURRAY: No more, thank you.

17 JUDGE PRIDGIN: Thank you. And I don't
18 believe I have any questions.

19 Ms. Thompson, thank you very much for your
20 testimony. You may step down.

21 THE WITNESS: Thank you.

22 JUDGE PRIDGIN: I'm sorry, Mr. Wright. I
23 don't think I asked you, did you have any redirect of that
24 witness?

25 MR. WRIGHT: No, your Honor.

1 JUDGE PRIDGIN: Mr. Wright, any further
2 evidence?

3 MR. WRIGHT: No, your Honor.

4 JUDGE PRIDGIN: Thank you.

5 I don't believe I have any further evidence
6 from either party; is that correct

7 MR. BATES: That's correct.

8 JUDGE PRIDGIN: Mr. Bates, anything in
9 closing?

10 MR. BATES: I'll waive closing.

11 JUDGE PRIDGIN: All right. Thank you.

12 Mr. Wright, anything in closing?

13 MR. WRIGHT: I'll waive closing as well.

14 JUDGE PRIDGIN: All right. Thank you.

15 CHAIR GAW: I have questions of counsel just
16 for clarification purposes. I'm just trying to make sure I
17 understand this.

18 First of all, the issue of whether or not
19 there was an assessment paid, I want to understand whether
20 or not assessments for any of these years were paid late.
21 I'm not clear about what that issue is. If counsel can
22 answer the questions. Does counsel for company know?

23 MR. WRIGHT: I do not know, your Honor.

24 Sorry.

25 CHAIR GAW: I mean, there have been some

1 questions here about the mailings being the same -- at the
2 same time and there's -- I'm not clear on it. I just -- for
3 the record that we have, is it in the record about whether
4 or not the assessments were --

5 MR. BATES: No, your Honor.

6 CHAIR GAW: -- paid on a timely basis?

7 MR. BATES: I believe that was all in
8 testimony. It does appear from our records the assessments
9 were paid on time. I think the question was whether or not
10 the assessments and the report were mailed at the same time,
11 because if we had received the assessments, then logically
12 we would have received the annual report also. But as
13 Ms. Thompson testified, she doesn't know whether they were
14 or not.

15 CHAIR GAW: I just want to make sure that I'm
16 clear that there's no issue about the assessments not being
17 paid on time?

18 MR. BATES: There's not.

19 CHAIR GAW: There's no issue there?

20 MR. BATES: There's no issue.

21 CHAIR GAW: I'd like to know what the law is
22 in regard to the mailing of things of this sort. I'm sure
23 there's case law out there, not necessarily dealing with
24 this agency, about the law and presumptive receipt on
25 mailing on one hand and the standards that are generally

1 accepted practice with the Internal Revenue Service and
2 Missouri Department of Revenue, other agencies that require
3 the filing of documents as to who has the burden of proof of
4 receipt. And I don't know what -- I don't know what counsel
5 was anticipating providing us in that regard.

6 MR. BATES: I'm sure we can provide anything
7 the Commission would like.

8 CHAIR GAW: Well, I think it would be helpful
9 to know that.

10 And I'm not clear on how much weight the
11 Commission can give the hearsay testimony that we had on the
12 record today. Obviously there was a significant amount of
13 it and so I'm not sure what that -- how that impacts the
14 evidence that we have in the record, Judge. I'll leave that
15 up to you.

16 I don't know if there needs to be any
17 discussion of that, but the issue of who has the burden of
18 establishing something in regard to mailing or whether
19 the -- is important to me, so if you could do that.

20 I would say this, that -- Judge, you might
21 correct me if I'm wrong. I noticed in the pleadings that
22 there's some suggestion that the Commission would be making
23 a finding of a particular amount of penalty in our findings
24 of this case.

25 And my understanding is that that would not be

1 the case, that what we would be making a finding of is
2 whether or not there should be a pursuit of penalties in a
3 circuit court matter. And so I just want to clarify that
4 because if there's some perception by the parties that that
5 may be part of the result of what we're doing today, I
6 thought it might be better to clear that up.

7 JUDGE PRIDGIN: Mr. Bates?

8 MR. BATES: Yes. The Commissioner is right.
9 I was simply citing the section that stated how much the
10 Commission could ask for if it directed its general
11 counsel's office to seek penalty in circuit court.

12 CHAIR GAW: That's fine. I didn't know if
13 company was aware of that one way or the other and I just
14 wanted to clarify it.

15 MR. WRIGHT: No. My understanding was that
16 you'd just make a finding on whether we filed the report or
17 not.

18 CHAIR GAW: Okay. That's fine.

19 I think that's all -- oh, one other question.
20 The company's pleadings -- in the affirmative defense, the
21 company alleged that the document had been filed, but when
22 it made the allegation in its affirmative defense, it said
23 either that it either had been filed I think -- I don't know
24 the exact -- in writing or electronically. And I'm curious
25 as to why that answer was as general as it was because

1 obviously now you're claiming that it was done specifically
2 by mail.

3 MR. WRIGHT: The reason for that was once we
4 received this -- it took about two weeks from the time we
5 received the filing until I actually received it on our
6 desk. And so we had not done an internal investigation
7 before I prepared the answer.

8 So I kept it general because we just had a
9 preliminary discussion. No one really knew whether we had
10 filed it electronically or by mail. After we had
11 completed -- after the filing of the answer and completed
12 our internal investigation did we learn that it had been
13 filed by mail and not electronically. So I just wanted to
14 make sure we were covered on our answer.

15 CHAIR GAW: Okay. And I'm accepting the use
16 of the word "filed" as a position rather than a fact, so
17 thank you, Judge.

18 JUDGE PRIDGIN: Mr. Chairman, thank you.

19 All right. Any further questions or issues
20 from the Bench?

21 What I would like to do is order a briefing
22 schedule from the Bench. I see today is May 12th and a
23 Wednesday. I think I would normally order a 10 and 10
24 schedule because it looks like the 10th day would fall on a
25 Saturday. What would make more sense is, Staff, if your

1 brief could be in by May 24th. That would be a Monday --
2 the following Monday, which would actually give you 12 days.
3 And then, Mr. Wright, I would expect your brief in 10 days
4 thereafter, which I show on my calendar being June 3rd.

5 MR. BATES: And, your Honor, I take it in the
6 brief as well as addressing the other questions of the case,
7 we would be answering the questions that Commissioner Gaw
8 raised here?

9 JUDGE PRIDGIN: Absolutely. Absolutely.
10 So we're clear, May 24th for Staff, June 3rd
11 for Heartland.

12 MR. WRIGHT: Can I ask one clarification
13 question?

14 JUDGE PRIDGIN: Yes, sir.

15 MR. WRIGHT: Is that received on June 3rd?

16 JUDGE PRIDGIN: Yes, sir.

17 CHAIR GAW: Judge, is that actually received?

18 JUDGE PRIDGIN: Actually, physically here.

19 Anything further from counsel?

20 Seeing nothing, that will conclude this
21 hearing. We are off the record. Thank you very much.

22 (Exhibit No. 3 was marked for identification.)

23 WHEREUPON, the hearing was adjourned.
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| 1 | I N D E X | |
| 2 | Opening Statement by Mr. Bates | 11 |
| | Opening Statement by Mr. Wright | 13 |
| 3 | STAFF'S EVIDENCE | |
| 4 | JANIS FISCHER | |
| 5 | Direct Examination by Mr. Bates | 15 |
| | Cross-Examination by Mr. Wright | 16 |
| 6 | Questions by Chair Gaw | 17 |
| | Questions by Commissioner Murray | 24 |
| 7 | Questions by Commissioner Clayton | 27 |
| | Further Questions by Commissioner Murray | 31 |
| 8 | Further Questions by Commissioner Clayton | 32 |
| | Redirect Examination by Mr. Bates | 34 |
| 9 | HEARTLAND'S EVIDENCE | |
| 10 | HELEN THOMPSON | |
| 11 | Direct Examination by Mr. Wright | 37 |
| | Cross-Examination by Mr. Bates | 38 |
| 12 | Questions by Chair Gaw | 42 |
| | Questions by Commissioner Murray | 46 |
| 13 | Redirect Examination by Mr. Wright | 51 |
| | Recross-Examination by Mr. Bates | 54 |
| 14 | | |
| 15 | | |
| 16 | | |
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| 18 | | |
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| | EXHIBITS | Marked | Rec'd |
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| 1 | | | |
| 2 | Exhibit No. 1 | | |
| | Direct Testimony of Janis Fischer | 10 | 16 |
| 3 | | | |
| | Exhibit No. 2 | | |
| 4 | Rebuttal Testimony of Helen Thompson | 10 | 38 |
| 5 | | | |
| | Exhibit No. 3 | | |
| | Shared Tenant Services Carrier Annual Report | 61 | 22 |
| 6 | | | |
| 7 | | | |
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