

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

HEARING

January 7, 2002
Jefferson City, Missouri
Volume 3

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

BEFORE:

MORRIS L. WOODRUFF, Presiding,
SENIOR REGULATORY LAW JUDGE.
CONNIE MURRAY,
SHEILA LUMPE,
BRYAN FORBIS,
COMMISSIONERS.

REPORTED BY:

KRISTAL R. MURPHY, CSR, RPR, CCR
ASSOCIATED COURT REPORTERS
714 West High Street
Post Office Box 1308
JEFFERSON CITY, MISSOURI 65102
(573) 636-7551

1 APPEARANCES:

2

3 GREGORY D. WILLIAMS, Attorney at Law
4 Highway 5 At 5-33
5 Post Office Box 431
6 Sunrise Beach, Missouri 65079
7 573.374.8761

8 FOR: Environmental Utilities, LLC.

9 THOMAS E. LORAIN, Attorney at Law
10 The Law Office of Loraine & Associates
11 4075 Highway 54
12 Suite 300
13 Osage Beach, Missouri 65065
14 573.348.8909

15 FOR: Hancock Construction Co.

16 M. RUTH O'NEILL, Legal Counsel
17 P.O. Box 7800
18 Jefferson City, Missouri 65102
19 573.751.1304

20 FOR: Office of Public Counsel and the Public.

21 VICTORIA KIZITO, Assistant General Counsel
22 P.O. Box 360
23 Jefferson City, Missouri 65102
24 573.751.6434

25 FOR: Staff of the Missouri Public Service
Commission.

26

27

28

29

30

31

32

33

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

2 (Written Entries of Appearance filed.)

3 JUDGE WOODRUFF: Welcome to this morning's
4 hearing.

5 My name is Morris Woodruff. I'm going to be
6 the Regulatory Law Judge today. This is Case
7 No. WA-2002-65. This concerns the application of
8 Environmental Utilities for a Certificate of
9 Convenience and Necessity to operate a water system in
10 the Golden Glade Subdivision in Camden County,
11 Missouri.

12 We're going to start today by taking entries
13 of appearance, and we'll begin with Environmental
14 Utilities.

15 MR. WILLIAMS: Thank you.

16 Gregory Williams, P.O. Box 431, Sunrise
17 Beach, Missouri, 65079, for the Applicant,
18 Environmental Utilities, LLC.

19 JUDGE WOODRUFF: And for the Staff?

20 MS. KIZITO: Good morning, your Honor.

21 My name is Victoria Kizito. I'm here on
22 behalf of the Staff of the Missouri Public Service
23 Commission. My address is P.O. Box 360, Jefferson
24 City, Missouri 65102.

25 JUDGE WOODRUFF: And for Public Counsel?

1 MS. O'NEILL: Good morning.
2 My name is Ruth O'Neill representing the
3 Office of Public Counsel and the public. Our address
4 is P.O. Box 7800, Jefferson City, Missouri, 65102.
5 JUDGE WOODRUFF: Thank you.
6 And is anyone here for Hancock Construction?
7 (No response.)
8 JUDGE WOODRUFF: Mr. Loraine had entered an
9 appearance. Has anyone heard from him?
10 MR. WILLIAMS: I spoke to him last week.
11 There was no indication he didn't intend to appear.
12 JUDGE WOODRUFF: Okay. Well, it is after
13 8:30. We'll go ahead and get started and see if he
14 shows up later then.
15 And are there any preliminary matters anyone
16 wants to bring up while we're on the record?
17 MR. WILLIAMS: I don't believe so.
18 JUDGE WOODRUFF: What we'll do then is we'll
19 take a short break. During that time we'll go ahead
20 and mark exhibits. I'll let the Commissioners know
21 that it's time to come down, and we'll get started
22 with opening statements.
23 We're off the record at this time.
24 (A recess was taken.)
25 (EXHIBIT NOS. 1 THROUGH 7 WERE MARKED FOR

1 IDENTIFICATION.)

2 JUDGE WOODRUFF: And while we were gone, I
3 see Mr. Loraine has arrived. Before you arrived, sir,
4 we did entries of appearance, so if you would enter
5 your appearance now.

6 MR. LORAIN: My name is Tom Loraine. I am
7 representing Hancock Construction Company.

8 JUDGE WOODRUFF: Okay. And do you have any
9 exhibits to premark?

10 MR. LORAIN: Not at this point, Judge.

11 JUDGE WOODRUFF: You do have prefiled
12 testimony, I believe.

13 MR. LORAIN: Oh, yes, prefiled. Yes.

14 JUDGE WOODRUFF: The practice is to go ahead
15 and mark that. And we'll go off the record in order
16 to let that be marked.

17 (EXHIBIT NOS. 8 THROUGH 11 WERE MARKED FOR
18 IDENTIFICATION.)

19 JUDGE WOODRUFF: We'll go back on the record
20 then.

21 And at this point we'll start with opening
22 statements. And we'll begin with Environmental
23 Utilities.

24 MR. WILLIAMS: Thank you.

25 Do we use the podium?

1 JUDGE WOODRUFF: Yes, please.

2 MR. WILLIAMS: Good morning, Commissioners,
3 Judge Woodruff.

4 This is a application by a newly formed
5 limited liability company for a Certificate of
6 Convenience and Necessity to provide water utility
7 service to a newly developed subdivision on State
8 Route KK at the Lake of the Ozarks under the name of
9 Golden Glade. The purpose of the application, again,
10 is to obtain a Certificate of Convenience and
11 Necessity to provide water utility service.

12 I believe the evidence here will show that
13 the application is for a company that has qualified
14 personnel with which to provide the service, the
15 financial ability to provide the service, that the
16 proposed service is economically feasible and will
17 promote the public interest.

18 We would therefore be asking the Commission
19 to approve the certificate as requested.

20 JUDGE WOODRUFF: Thank you.

21 And for Public Counsel?

22 MS. O'NEILL: Good morning, your Honor,
23 Commissioners, Counsel.

24 Public Counsel find itself in a rather
25 unusual situation in this case, unusual because it is

1 not our usual place in the lineup, so to speak, to be
2 recommending approval of a certificate, although
3 conditionally in this case, in a case where the Staff
4 is recommending that the certificate not be granted.

5 And to be perfectly frank with you, this
6 decision was not arrived at without a lot of
7 consideration of all the factors before us in this
8 matter. In fact, we started in Public Counsel's
9 Office pretty much at the position that Staff states
10 in their Statement of Positions that you have before
11 you, and reviewing the Intercon factors regarding the
12 certificate, we came down to that last factor pretty
13 much along the line of where Staff was, and that last
14 factor on the list, although we don't think the last
15 in importance, is what best promotes the public
16 interest in this case.

17 And in order to answer that question, Public
18 Counsel takes a different view usually than Staff.
19 It's not merely do the other four factors have a "yes"
20 answer and then five has a "yes," too, which is what I
21 believe the testimony will show in this case from
22 Staff. Rather, we also look -- we look at not only
23 those factors but what is really going on.

24 And what is really going on in this case is
25 that Golden Glade is a subdivision that is in the

1 process of being developed by the same people who own
2 Environmental Utilities who is the Applicant in this
3 case, and that's Greg and Debra Williams.

4 Greg and Debra Williams have connection to
5 another small water company in the same area which
6 this Commission is familiar with, and that's Osage
7 Water Company. And to the extent that the operations
8 of Osage Water Company are relevant to determining
9 whether those other factors in Intercon are met. I
10 believe this Commission can consider that information
11 as it comes before you in this hearing today.

12 There are concerns that Public Counsel has
13 about the ability of this newly formed limited
14 liability corporation to adequately operate a public
15 utility, and that's why we have proposed a number of
16 conditions and would be open to further conditions
17 such as the conditions that the Staff set forth in its
18 Positions Statement and what other conditions this
19 Commission may want to impose to make sure that the
20 customers of the water service provider in Golden
21 Glade are protected.

22 This Commission has the obligation to see
23 that customers of a regulated utility receive safe and
24 adequate service at just and reasonable rates. If
25 this Commission denies the certificate, the net effect

1 of that is that the Williamses will operate a water
2 system in Golden Glade without the Commission's
3 oversight and without the Commission's surveillance to
4 make sure that they comply with that standard.

5 And so after weighing all of those issues,
6 especially the fact that the real choice in this case
7 is whether this Commission will decide that the people
8 in Golden Glade will receive water service from the
9 Williamses as a regulated utility company or in an
10 unregulated fashion, we are recommending conditional
11 approval of the certificate.

12 Thank you.

13 JUDGE WOODRUFF: Thank you.

14 For Staff?

15 MS. KIZITO: Good morning, Commissioners,
16 Judge Woodruff.

17 For the Commission to grant Environmental
18 Utilities' application for a Certificate of
19 Convenience and Necessity the Commission must find
20 that the granting of such certificate is in the public
21 interest. In this case, the Staff demonstrates
22 substantial concerns regarding the company's proposed
23 service according to the Tartan case criteria and the
24 corresponding Missouri Department of Natural Resources
25 standards.

1 The Staff shows that it has not been able to
2 recommend approval of Applicant's certificate because
3 of its concerns regarding all of the criteria in
4 question, namely the need for this applicant to
5 provide the proposed service, the applicant's
6 qualifications, financial ability, and to provide the
7 proposed service -- I'm sorry -- financial ability and
8 the economic feasibility of the water project.

9 Most importantly, Staff shows that there is
10 a good chance that Environmental Utilities will not
11 develop as the feasibility study predicts.
12 Environmental Utilities has not been able to
13 adequately assure Staff that it can secure the number
14 of customers necessary to support the Golden Glade
15 project. This could result in a serious lack of
16 adequate day-to-day revenue.

17 The viability of Environmental Utilities
18 also depends on the questionable future relationships
19 with other developers. Environmental Utilities'
20 viability also depends on the sharing of costs and
21 work functions with Osage Water Company, and the
22 evidence shows that the future of Osage Water Company
23 itself is in question.

24 Staff has also pointed out its concerns with
25 Applicant's qualifications to construct, own, and

1 operate the proposed water system. The principals of
2 Environmental Utilities, Greg and Debra Williams,
3 which are also the principals of Osage Water Company,
4 have a history of failing to satisfy regulatory
5 requirements such as annual reports, PSC assessments,
6 and keeping required books and records.

7 Also Environmental Utilities has not shown
8 that it has a sufficient arrangement with an
9 adequately licensed operator, and, finally, Staff
10 believes that it is important to address the proposed
11 tariff attached to Environmental Utilities'
12 application.

13 For these reasons, Staff cannot recommend
14 the approval of Environmental Utilities' certificate
15 application; however, if the Commission chooses to
16 grant the certificate, the Staff shows that while
17 conditions cannot meet all of the concerns of Staff
18 because of problems in this case that have developed
19 over many years by Environmental Utilities' owners,
20 that certain conditions attached to the granting of
21 certificate would be necessary.

22 Thank you.

23 JUDGE WOODRUFF: Thank you.

24 For Hancock Construction?

25 MR. LORAIN: Good morning, Judge. Good

1 morning, Commissioners.

2 It is the position of Hancock Construction
3 Company as an intervenor in this matter that the CCN
4 should not be granted as applied for by the
5 Environmental Utilities. The reason we don't believe
6 it's in the public interest for this to occur is, I
7 think, a historical approach that has to be looked at,
8 and OWC is the model to be examined.

9 OWC was a company that was formed by
10 Mr. Mitchell's family, Mr. Pat Mitchell. Greg
11 Williams was the attorney for that company and an
12 officer in that company, and, of course, more
13 recently, Greg's wife has become manager of that
14 company.

15 That company has had a very bad track record
16 before the Commission. It's been criticized. I know
17 Commissioner Murray has criticized some of the
18 activities and the failure to do the things that the
19 Commission has requested in prior rulings.

20 I know that the Environmental Utilities is a
21 successor. I believe according to the evidence that
22 we believe has been before this Commission, or will be
23 before this Commission, it will indicate to you that
24 it's a siphoning off of Osage Water Company's
25 remaining assets. Basically, that horse has been

1 ridden as far as it can go, and it's time to get on a
2 new horse and, that's basically what Mr. Williams is
3 doing.

4 This Osage Water Company has had failures in
5 reporting requirements. The NARUC reporting
6 requirements have been consistently requested by
7 Staff. They have been consistently asked for by
8 auditors of this Commission. The NARUC accounting
9 systems have never been instituted, not since day one,
10 and it continues.

11 The annual reports are delinquent. The
12 reports even as of this date right now, there are two
13 of them missing. The last two are missing. And not
14 from 2001. I believe it is '99 and 2000. I believe
15 probably 2001 is now delinquent.

16 We have no reason to believe that there will
17 be any better track record. The only party that's
18 missing is Mr. Mitchell from the new company, and
19 Mr. Mitchell, of course, was the engineer, the Water
20 Laboratory part of the old Osage Water Company. He
21 was the technical advisor.

22 It is my belief that, if anything, the new
23 utility company that's being requested to get this CCN
24 will be weaker than OWC was. Certainly, it has less
25 financial backing before. We had -- historically,

1 Hancock was originally involved in Osage Water
2 Company. He was -- he departed. Mitchell's family
3 was involved in it. They are now essentially out of
4 the running of the OWC. I believe that financially
5 it's going to be more difficult for this new company
6 to exist than historically with Osage Water Company.

7 There are other alternatives to allowing
8 this CCN. The alternatives, the evidence will
9 indicate that there is a homeowners association that
10 can do this. Osage Water Company is a certificated
11 sewer company in the exact same subdivision. There is
12 a water well that exists that Environmental Utilities
13 claims is their water well from which they will be
14 drawing. There is very controverted evidence as to
15 whether or not this water well has been referenced in
16 other Commission findings as being property of OWC. I
17 believe the evidence would indicate that, in fact, it
18 has been -- it has been referred to as an asset of OWC
19 before.

20 I don't know how that -- what ownership
21 exists. I just know what the references have been and
22 what the promises have been before this Commission.
23 And I believe the Commission has indicated in granting
24 a certificate -- a prior certificate in this area to
25 the Osage Water Company, there has been

1 representations that that well definitely belonged to
2 OWC. So I don't know what the contract arrangement
3 between OWC and Environmental Utilities would be in
4 reference to that. I think that would be something
5 the Commission would really want to look at.

6 The parties -- there is -- the position that
7 Mr. Williams' company has taken is that there is no --
8 there is no need for you-all to examine anything that
9 exists about OWC in this case, that they can protect
10 themselves from being competed with with this new
11 utility.

12 Well, of course, we all know that if OWC
13 is -- I mean, I would think that if anybody else owned
14 OWC, they would be in here complaining because they
15 would say this new utility company is infringing on
16 their area. Well, they are not here because they
17 chose not to be here because Mr. Williams is wearing
18 two hats.

19 The difficulty with this -- this situation
20 is it's not going to be able to be regulated. We do
21 not believe that conditions can be presented by this
22 Commission that would allow for anybody to reasonably
23 expect Environmental Utilities with the same history
24 that OWC has had of providing or meeting expectations.

25 We would ask when it's all said and done

1 that this be denied. There are many other
2 alternatives that can be arrived at, and I don't think
3 you're stuck with the alternative that these people
4 will not have water in the subdivision. That's just
5 not a valid consideration.

6 Thank you.

7 JUDGE WOODRUFF: Thank you.

8 All right. Let's then move on to testimony.

9 And beginning with Environmental Utilities,
10 if you would call your first witness.

11 MR. WILLIAMS: Thank you.

12 Call Debra Williams to the stand.

13 JUDGE WOODRUFF: If you would please raise
14 your right hand.

15 (Witness sworn.)

16 JUDGE WOODRUFF: You may be seated.

17 You may inquire.

18 DEBRA J. WILLIAMS testified as follows:

19 DIRECT EXAMINATION BY MR. WILLIAMS:

20 Q. Would you state your full name for the
21 record?

22 A. Debra J. Williams.

23 Q. And are you the managing member of
24 Environmental Utilities, the Applicant in this case?

25 A. Yes, I am.

1 Q. And did you participate in the preparation
2 of the prefiled Direct and Surrebuttal Testimony that
3 have previously been marked as Exhibit 1 and Exhibit 2
4 in this case?

5 A. Yes, I did.

6 Q. And is the information contained there true
7 and accurate to the best of your knowledge,
8 information, and belief?

9 A. Yes, it is.

10 MR. WILLIAMS: Then I'd offer Exhibits 1 and
11 2 into evidence, your Honor.

12 JUDGE WOODRUFF: Okay. Exhibits 1 and 2
13 have been offered into the evidence. Are there any
14 objections to their receipt?

15 (No response.)

16 JUDGE WOODRUFF: Hearing none, they will be
17 received into evidence.

18 (EXHIBIT NOS. 1 AND 2 WERE RECEIVED INTO
19 EVIDENCE.)

20 MR. WILLIAMS: I have no further questions
21 of the witness at this time, and would tender the
22 witness for cross-examination.

23 JUDGE WOODRUFF: Thank you.

24 And for cross-examination, we'll begin with
25 Staff.

1 CROSS-EXAMINATION BY MS. KIZITO:

2 Q. Good morning, Ms. Williams.

3 A. Good morning.

4 Q. To get -- just let me know if you can't hear
5 me.

6 To get started, I would like to refer you to
7 your prefiled Surrebuttal Testimony. Do you have a
8 copy of that in front of you?

9 A. Yes.

10 Q. And is that what is in evidence marked as
11 Exhibit No. 2?

12 A. I think so.

13 Q. Okay. Okay. If you could please open to
14 page 4 of your Surrebuttal Testimony, in response to
15 the third question on page 4, you discuss
16 Environmental Utilities' request for a general
17 contractor's fee of 10 percent for the cost of
18 construction of water supply system; is that correct?

19 A. Yes.

20 MS. KIZITO: Just a moment.

21 JUDGE WOODRUFF: Ms. Williams, when you
22 testify, if you could speak up a little bit. We're
23 having a hard time hearing you.

24 THE WITNESS: Sorry.

25 BY MS. KIZITO:

1 Q. Okay. I'd like to read from your answer.

2 It states, "The project involved here is
3 more than \$50,000 and less than \$100,000, and a
4 general overhead allowance of 10 percent is customary
5 and reasonable for a project of that size."

6 Have I stated that correctly?

7 A. Yes.

8 Q. What is your basis for your statement that
9 10 percent is a standard utility charge for a project
10 of that size?

11 A. We are in the development business, and
12 10 percent is customary in construction in general in
13 our area.

14 Q. Are you aware of any other cases where a
15 utility was able to charge 10 percent or where the
16 Commission has approved such a 10 percent charge?

17 A. No, ma'am.

18 Q. Have you documented these general overhead
19 costs?

20 A. Documented how?

21 Q. Have you made any kind of accounting for the
22 individualized costs that are accrued for that?

23 A. For the construction project, you mean?

24 Q. For the 10 percent charge that you intend to
25 include in rate base.

1 A. It's 10 percent of the total construction
2 cost. We took a summary of our construction costs,
3 and 10 percent.

4 I don't understand your question. I'm
5 sorry.

6 Q. Whether that 10 percent has been accounted
7 for, have you made an accounting of the individual
8 costs that comprise that 10 percent?

9 A. I'm sorry. I don't understand your
10 question.

11 Q. Just a moment?

12 A. We have an accounting of what we've spent,
13 and it is my understanding that we are asking to be
14 compensated 10 percent for the oversight of the work
15 that we've done on our projects.

16 Q. Okay.

17 A. Does that answer your question?

18 Q. Have you made a record of the costs for the
19 oversight?

20 A. Are you asking me how much time we've spent
21 overseeing the project?

22 Q. That would be part of it, yes.

23 A. Yes. That would be included in our time
24 sheets.

25 Does that answer your question? I'm sorry.

1 We account for our time.

2 Q. You have accounted for your time?

3 A. Yes.

4 Q. All right. Thank you.

5 What is your current estimation of the
6 organizational costs for setting up Environmental
7 Utilities and for legal and other costs of obtaining
8 the certificate in this case to be included in rate
9 base?

10 A. I believe it's in my testimony on page 4 --

11 Q. Of your --

12 A. -- of the testimony.

13 Q. -- Surrebuttal?

14 A. Yes.

15 Q. Surrebuttal.

16 A. At the very top of the page, the attorney --
17 are you asking me about attorney's fees? Was that the
18 question?

19 Q. That is part of it, yeah.

20 A. \$500 for forming the limited liability
21 company; the filing fee was \$105, so we're asking for
22 \$605.

23 Q. Okay. And at the time of your Surrebuttal
24 Testimony, you stated in your third answer on
25 page 4, excuse me, that it will be not possible to

1 give the total amount of those costs until this
2 proceeding is concluded.

3 And I wonder if you at this time have an
4 updated estimate of the total costs?

5 A. I do not.

6 Q. Okay.

7 A. A lot of that depends on how long we take
8 here today.

9 Q. Okay. I would like to refer you to your
10 Direct Testimony. Do you have that in front of you?

11 A. Yes, ma'am.

12 Q. Okay. And is that what is in evidence
13 marked as Exhibit No. 1?

14 A. I'm not sure.

15 Q. All right. I think the record will reflect
16 that it is.

17 Could you please open to page 16 of your
18 Direct Testimony.

19 Under the heading of financial ability, I'd
20 like to read from your first answer. You state, "The
21 water system has been constructed by the project
22 developer, Gregory D. Williams and Debra J. Williams,
23 and will be conveyed upon completion or granting of a
24 certificate to Environmental Utilities."

25 Have I stated that correctly?

1 A. Yes, ma'am.

2 Q. Okay. Just a moment, please.

3 And is that an accurate statement that the
4 water system has been constructed by the developers,
5 by you and Mr. Williams as developers?

6 A. Yes, ma'am.

7 Q. Do you recall writing and sending a letter
8 to Eagle Woods' customers about who and what entity
9 constructed the well you're referring to?

10 I'm sorry. Could you answer the question?

11 A. Would you repeat it, please?

12 Q. Sure. Do you recall writing and sending a
13 letter to Eagle Woods' customers about who or what
14 entity constructed the well you are referring to?

15 A. I'm not sure which letter you're referring
16 to.

17 Q. Would it help refresh your memory if I
18 showed you a copy of such letter?

19 A. Yes. I've written several letters.

20 MS. KIZITO: I understand.

21 Your Honor, I would like to have this
22 exhibit marked.

23 JUDGE WOODRUFF: Go ahead.

24 (EXHIBIT NO. 12 WAS MARKED FOR
25 IDENTIFICATION.)

1 BY MS. KIZITO:

2 Q. Have you had an opportunity to review this
3 document?

4 A. Yes, I have.

5 Q. Can you please identify that for me? Could
6 you tell me what this document is?

7 A. It's a letter to Eagle Woods' customers,
8 from me --

9 Q. It is a letter?

10 A. -- as manager of Osage Water Company.

11 Q. Okay. And that's -- and did you send this
12 letter out to Eagle Woods' customers?

13 A. Yes, ma'am, I did.

14 Q. And the date of this letter is
15 November 27th, 2001; is that correct?

16 A. That's right.

17 Q. I'm going to read the second sentence of the
18 letter. It should be highlighted on your copy.

19 It says, "OWC," or Osage Water Company, "has
20 acquired the necessary state permits, expanded its
21 Golden Glade treatment plant, and drilled a new well
22 to accommodate Eagle Woods residents."

23 Have I read that accurately?

24 A. Yes, ma'am.

25 Q. Now, who actually drilled the new well and

1 paid for it? Was it you and Mr. Williams as the
2 developers as in the testimony, or Osage Water Company
3 as in the letter?

4 A. I understand your confusion on this letter.

5 In reality, Greg and I paid for the well
6 that is serving the customers. We're in a
7 complicated, difficult situation in -- as developers
8 at this point. We did not create Osage Water Company.
9 We did not own Osage Water Company. And we did not
10 operate Osage Water Company until July 9th of 2001.

11 We felt like when the company was abandoned
12 on our doorstep on July 7th, 4th of July weekend last
13 summer, that we had a responsibility to all of our
14 customers, all 400 customers, that Osage Water Company
15 had served. When the company was abandoned, we
16 immediately began forming Environmental Utilities in
17 an effort to save our customers at Eagle Woods
18 Subdivision from the problems that have plagued Osage
19 Water Company's customers as a result of the actions
20 of the City of Osage Beach --

21 Q. Ms. Williams, I'm going to direct you back
22 to my questions.

23 A. Okay.

24 Q. Thank you.

25 Is it a correct statement -- is your

1 testimony correct as -- that you as developers
2 constructed the water well or is the letter correct?

3 A. We did. My statement is correct that we
4 paid for the well.

5 Q. You and in what capacity?

6 A. Greg and I paid for the well that is serving
7 Golden Glade and Eagle Woods' customers, the new
8 well -- the new well on the corner by red barn -- by
9 the red barn. Greg and I paid for that because the
10 water company did not have the funds to pay for it.

11 Q. And why did you tell Eagle Woods customers
12 that Osage Water Company has drilled the well for
13 Eagle Woods?

14 A. Because sometimes it's difficult for me.
15 I'm not an attorney. I am a person who was handed a
16 huge responsibility, unprepared, in July, and since --
17 we are trying not to confuse our customers. We try to
18 give them enough information where they do understand
19 the minimum of what's going on, but it seems like the
20 more we tell them, legally, the more confused they
21 get.

22 This is not legally correct that Osage Water
23 Company drilled a new well. Osage Water Company had
24 no money to drill a new well and acquire the necessary
25 permits. And my sentence structure was not good.

1 Q. Do you think it helps Eagle Woods' customers
2 to help their understanding of the legalities to
3 misstate --

4 A. I think that they would not be able to
5 understand that if I'm sending them a bill on Osage
6 Water Company letterhead but that Greg and I really
7 paid for the well and we're trying to form a new LLC
8 to straighten out the problems from the water company,
9 I don't think they would understand that. So for
10 simplicity I was trying to keep it simple, something
11 that our customers could understand.

12 Legally, this is not correct. They did
13 not pay for the new well.

14 Q. Thank you, Ms. Williams.

15 I would like to move on to my next question.

16 Does Osage Water Company or Environmental
17 Utilities have a permit to dispense from the public
18 drinking water program for Eagle Woods?

19 A. I'm not sure.

20 Q. Okay. I'd like to refer you back to that
21 letter that you sent to Eagle Woods' customers.

22 In that letter you said that Osage Water
23 Company has acquired the necessary state permits to
24 expand its Golden Glade treatment plant and to
25 accommodate Eagle Woods residents.

1 Has Osage Water Company obtained all of the
2 necessary permits for that?

3 A. I think that we have.

4 Q. Okay. You're proposing that Environmental
5 Utilities sell Osage Water Company -- I'm sorry --
6 sell Osage Water Company -- let me start over on that.

7 You're proposing that Environmental
8 Utilities sell to Osage Water Company water on a
9 wholesale basis for Osage Water Company's customers in
10 Eagle Woods; is that correct?

11 A. That's correct.

12 Q. And has such a contract been drafted?

13 A. I'm not sure. I don't know.

14 Q. Have any kind of arrangements already been
15 made?

16 A. Not to my knowledge. I don't know.

17 Q. Okay. Staff's position on this issue is
18 that -- just a moment.

19 Is a part of the problem with the water
20 project building out as proposed in the feasibility
21 study is that the relationship for the Eagle Woods
22 Subdivision is very important to that? And if you
23 don't have a contract drafted at this point or some
24 kind of arrangement made, how can we be assured that
25 that kind of arrangement is going to happen in the

1 future?

2 A. There may be a contract. I'm not sure at
3 this moment if there is or not.

4 Q. Do you intend to form such a contract?

5 A. Absolutely. I understand your question --

6 Q. Okay.

7 A. -- and your concerns.

8 Q. Okay. Now, I'd like to refer you to some of
9 the tariff provisions in your application for
10 Certificate of Convenience and Necessity.

11 Do you have a copy of the application in
12 front of you?

13 A. No. No, I do not.

14 MR. KIZITO: Just a moment.

15 Your Honor, I think I can ask you to take
16 judicial notice of the original application that was
17 filed in this case.

18 JUDGE WOODRUFF: It's already part of the
19 file. It is my understanding it is part of the
20 record. It doesn't need to be separately filed.

21 MS. KIZITO: Do you and the Commissioners
22 need a copy of that?

23 JUDGE WOODRUFF: I don't believe so.

24 MS. KIZITO: Okay.

25 BY MS. KIZITO:

1 Q. Okay. To start off, I'd like to refer you
2 to sheet No. 4 of the proposed tariff. That's
3 schedule of rates, rate schedule W-2.

4 You're proposing a flat rate of \$26.81 per
5 month for unmetered water customers; is that correct?

6 A. I'm sorry. I'm not with you yet. I've got
7 sheet number 4 on W-1.

8 Q. Schedule of rates, that's the whole page,
9 and halfway down is rate schedule W-2.

10 A. Can you show me what it looks like?

11 Q. Sure.

12 A. Sorry. Okay.

13 Q. Okay. You're proposing a flat rate of
14 \$26.81 per month for unmetered water customers; is
15 that correct?

16 A. Yes.

17 Q. In the case of flat rate water customers,
18 does the company incur any expenses for keeping track
19 of meter readings, for checking meter reading areas,
20 or handling high bill complaints or other kinds of
21 expenses associated with meters?

22 A. We track everything. Our field supervisor
23 keeps track of all of his time where he responds to
24 that. We have a complaint log in our office that our
25 secretary maintains for us.

1 Q. Okay. And those expenses that you're

2 logging, are those for metered customers or --

3 A. We log them for everyone.

4 Q. What kind of expenses do you incur for flat
5 rate customers?

6 A. Our -- I don't think our expenses are any
7 different for them than our metered customers. We
8 take care of all of our customers the same, whether
9 they are metered or flat.

10 Q. Isn't it true if you have an unmetered
11 customer or a flat rate customer that you wouldn't
12 have some of the --

13 A. Well, we wouldn't read their meters.

14 Q. Right. And you don't have any of the costs
15 associated with reading their meters and with dealing
16 with bills and questions?

17 A. Interior meter readings, true.

18 Q. Okay. So how do you arrive at that \$26.81
19 per month for unmetered customers?

20 I might follow up on that.

21 Isn't that based on an average usage of
22 4,700 gallons per month?

23 A. I don't know.

24 Q. Okay. If I were to tell you that the \$26.81
25 flat rate charge -- flat rate charge would be the same

1 charge as for a customer with a meter that used
2 \$4,700 -- 4,700 gallons per month, would you agree
3 with that?

4 A. I don't know. I don't have my calculator.
5 I don't know.

6 Q. Let me ask you more generally then.

7 If flat rate customers don't cause you to
8 have all of the charges as metered customers, wouldn't
9 you agree that a flat rate customer should not be
10 paying the same level of rates as a metered customer?

11 A. That makes sense. Yes.

12 Q. Okay. I'll move on.

13 When a condominium is built, would you agree
14 that each condominium unit needs a meter?

15 A. Yes.

16 Q. Would it be reasonable to encourage builders
17 to construct plumbing in condominium buildings so they
18 are ready for meter installation? And by that I mean
19 that the builder would go ahead and install the yokes
20 and the proper fittings so the water company doesn't
21 have to?

22 A. Absolutely.

23 Q. Okay. Do all builders construct the
24 plumbing so that -- so that the plumbing is ready for
25 a meter to be installed by the water company?

1 A. Unfortunately, not.

2 Q. Shouldn't the tariff include, therefore, a
3 separate and cheaper installation charge when the
4 builder has already installed yokes and the proper
5 fittings for the meter?

6 A. I don't understand the question.

7 Q. Let me explain.

8 If some condominiums are built with the
9 plumbing ready for meter installation and others are
10 not, and the water company only incurs a charge --
11 only incurs costs for one of those situations,
12 shouldn't there be a separate tariff provision for
13 each situation?

14 A. It's reasonable.

15 Q. Next I would like to refer you to sheet
16 No. 5 of the proposed tariff. If you look at the
17 third charge down, it's called new inside meter
18 installation.

19 Are you following me?

20 A. Yes.

21 Q. Okay. The \$150 charge makes the assumption
22 that all inside meters require a remote meter reading
23 device; is that correct?

24 A. Yes.

25 Q. Would you agree that if the meters are in a

1 condominium -- I'm sorry.

2 Would you agree that if the meters in a
3 condominium building are already accessible to the
4 company for meter reading, that customers do not need
5 to pay for a remote meter reading device?

6 A. Yes.

7 Q. Shouldn't there be a separate charge in the
8 tariff for the situation where a remote meter reading
9 device is not necessary?

10 A. Possibly. I'm not sure. I don't understand
11 your question because, to my knowledge, if the meter
12 is inside the unit, we do not have access to it and we
13 need a remote reader. So I'm not sure how you can
14 have a meter inside the unit that's readable. So I
15 don't understand your question.

16 They are either inside the unit where we
17 can't read them or they are remote where we can.

18 Q. Okay. Again, this is a situation where you
19 have one charge of \$150 that would cover both of those
20 situations.

21 Would it be reasonable to have a separate
22 charge for the individual situation out there?

23 A. It would seem confusing to me. We think
24 they should all be the same and they should all be
25 remote, and there should be one cost in an ideal

1 situation, and that if we try to tailor our charges to
2 each and every individual oversight by the developer
3 that it will get too confusing to implement, and
4 that's what we're trying to avoid. We're trying to
5 establish an average cost that will cover our costs
6 and be fair to our customers.

7 So, yes, we could have seven different rate
8 structures, but it would be extremely hard to train
9 our staff and explain it to our customers, and that's
10 how we feel about it.

11 Q. Do you believe \$150 is the average cost?

12 A. Yes, ma'am, I do.

13 Q. Is Environmental Utilities proposing a
14 charge for reader wiring installation?

15 A. I don't understand your question.

16 Do you mean the remote readers?

17 It is my understanding that the \$150 should
18 cover the complete cost of the remote reader
19 installation and cost, one charge.

20 Q. Just a moment, please.

21 A. Okay. I'm not real --

22 Q. Okay. What I'm talking about here is a
23 reader wiring charge for when the water company has to
24 come in after the structure is built and do the
25 wiring.

1 A. And your question is --

2 Q. Is Environmental Utilities proposing a
3 charge for that?

4 A. I'm not sure. I don't see it on this page.

5 Q. It's not on that page.

6 Are you aware that Environmental Utilities
7 has discussed with Staff a \$25 charge?

8 A. No, I was not.

9 Q. Okay. Let me go on to -- if you could turn
10 to sheet No. 29. I would like to refer you to
11 rule 15, subsection D. If you would like to review
12 that and let me know when you've read that.

13 A. I've read it.

14 Q. Okay. Why are refunds not allowed after one
15 year?

16 A. I don't know. I did not write this, and I
17 do not understand it.

18 Q. Okay. Let's go on to sheet No. 32, rule 17,
19 water for fire protection.

20 If a customer pays -- are you familiar with
21 this rule?

22 A. No.

23 Q. Let me go ahead and ask my question then?
24 If you don't know the answer, that's all right.

25 If a customer pays for the cost of fire

1 protection, wouldn't subsequent customers benefit from
2 fire protection without incurring any costs?

3 A. I don't know.

4 MS. KIZITO: Okay. Thank you, Ms. Williams.

5 I have no further questions.

6 JUDGE WOODRUFF: Counselor, you had
7 Exhibit 12 marked. Do you wish to offer that into
8 evidence?

9 MS. KIZITO: Yes, I do.

10 JUDGE WOODRUFF: Exhibit 12 has been offered
11 into evidence. Are there any objections to its
12 receipt?

13 MS. O'NEILL: No objection.

14 JUDGE WOODRUFF: Hearing none, it will be
15 received into evidence.

16 (EXHIBIT NO. 12 WAS RECEIVED INTO
17 EVIDENCE.)

18 MS. KIZITO: Thank you.

19 JUDGE WOODRUFF: And we'll move to Public
20 Counsel.

21 MS. O'NEILL: Thank you.

22 Could I have just a moment, your Honor? I'm
23 looking for something.

24 CROSS-EXAMINATION BY MS. O'NEILL:

25 Q. Good morning, Ms. Williams.

1 A. Good morning.

2 Q. I must admit that when I saw Exhibit 12 this
3 morning for the first time and heard the discussion of
4 it, it created some more questions for me. I thought
5 I would try to get those taken care of before we move
6 on to some other issues.

7 Do you still have a copy of Exhibit 12 in
8 front of you?

9 A. Yes, ma'am.

10 Q. And who is Summit Investment Company, LLC?

11 A. It's Ron Westenhaver's limited liability
12 corporation.

13 Q. Okay.

14 A. He is the developer of Eagle Woods and
15 Harbor Ridge.

16 Q. And is there any connection between Summit
17 Investment Company and you, Debra Williams?

18 A. No, other than our contracts with him
19 regarding water and sewer service --

20 Q. Okay.

21 A. -- because our subdivision is adjacent to
22 him. That is our only relationship.

23 Q. And you do have contracts with Summit
24 Investment to provide water and sewer service?

25 A. Yes, ma'am.

1 Q. And when I say "you" --
2 A. Well --
3 Q. -- we've had some confusion here.
4 As a developer, do you have a development
5 company?
6 A. Greg and I have developed Golden Glade on
7 State Route KK as individuals.
8 Q. Okay.
9 A. And we do not have -- Greg and I do not have
10 contracts with Ron Westenhaver. Osage Water
11 Company --
12 Q. Okay. Excuse me. But the question I asked
13 you was, do you have a development company?
14 A. We do have a development company.
15 Q. And what's the name of the development
16 company?
17 A. Hurricane Deck Holding Company.
18 Q. And is Hurricane Deck involved in any way
19 with Golden Glade?
20 A. No.
21 Q. And you also have an interest in Osage Water
22 Company?
23 A. Yes, ma'am.
24 Q. And you're a shareholder of that company; is
25 that correct?

1 A. Yes.

2 Q. And you're also a director of that company?

3 A. No.

4 Q. Are you not a director?

5 A. I am a director.

6 Q. Okay. And you also serve as general manager
7 currently of Osage Water Company?

8 A. Yes.

9 Q. And in relationship to Environmental
10 Utilities, you are an owner/member of Environmental
11 Utilities?

12 A. Yes, ma'am.

13 Q. And you are the managing member; is that
14 correct?

15 A. Yes.

16 Q. And what does the managing member do?

17 A. Well, Environmental Utilities, of course,
18 hasn't been officially formed. That's why we're here
19 today. So it is my understanding that I'm acting as
20 managing member of Osage Water Company until we get
21 Environmental Utilities approved. How could I manage
22 something that hasn't been approved? I'm confused.

23 Q. Well, so am I now, because if you look at
24 your Direct Testimony, Exhibit 1, on page 2 --

25 A. Right. I am the managing member, but I

1 don't have anything to manage yet because it's all in
2 Osage Water Company or still in Greg and Debbie
3 Williams.

4 Q. Okay. So you have no duties currently as
5 managing member of Environmental Utilities?

6 A. No, not to my knowledge.

7 Q. Okay. And when -- with all of these
8 different management responsibilities that you have,
9 how do you prevent commingling of assets and time and
10 other things between those various entities?

11 A. We keep records.

12 Q. Okay. And you keep records that are
13 separate for each --

14 A. Yes, ma'am.

15 Q. -- operation that you have?

16 A. Yes, ma'am. Of course, I -- yes, I do.

17 Q. And it would be fair to say that Osage Water
18 did not drill the well in Golden Glade?

19 A. Absolutely.

20 Q. Was Osage Water at one time contemplated to
21 be the entity that would drill that well to your
22 knowledge?

23 A. I don't know. By whom are you referring?

24 Q. By Osage Water Company.

25 A. I don't know.

1 Q. How long have you been a director of Osage
2 Water?
3 A. Since 1996, I believe.
4 Q. And prior to becoming general manager of
5 Osage Water, what were your duties related to Osage
6 Water?
7 A. I didn't have any.
8 Q. Did you attend meetings?
9 A. I went to the annual meeting once a year,
10 but I did not have duties with the company. It was
11 managed completely by Pat Mitchell.
12 Q. Okay. And only by Pat Mitchell?
13 A. Well, his -- he had other people helping
14 him.
15 Q. But you didn't have anything to do with the
16 entity?
17 A. No, ma'am, not until July 9th.
18 Q. And your husband didn't have anything to do
19 with them?
20 A. No, ma'am. He was the attorney. We had
21 nothing to do with operations.
22 Q. The other member of Environmental Utilities
23 is your husband, Greg Williams?
24 A. Yes, ma'am.
25 Q. And to your knowledge, does he have

1 experience managing a water utility?

2 A. Not until July 9th. We have six months'
3 experience. He did -- he was -- let's see. He was
4 president from 1996 to 2000, and I'm not real sure
5 what his precise duties were at that time, but it was
6 not management of the company.

7 Q. Okay. Now, you had indicated -- I want to
8 go back to Exhibit 12 for just a second, and then I'll
9 move on.

10 You had indicated you don't know whether or
11 not there is a contract between UE and either you and
12 your husband or any other entity regarding this water;
13 is that correct?

14 A. I'm not sure.

15 Q. And as manager of Osage Water Company,
16 who -- would you be the person who would sign a
17 contract on behalf of Osage Water?

18 A. I'm not sure. I'm really confused at this
19 time.

20 Q. And I understand -- I understand the
21 confusion. As -- if you were not the person who
22 signed a contract as general manager of Osage Water,
23 who would sign the contract?

24 A. With --

25 Q. Any contract Osage Water entered into right

1 now.

2 A. Well, I would think it should be the
3 president. I'm not sure. I don't know.

4 Q. And is that Greg?

5 A. No.

6 Q. Who is the president?

7 A. The president is Pat Mitchell.

8 Q. Okay. And who, if anyone, would sign
9 contracts on behalf of Environmental Utilities at this
10 point?

11 A. That would be Greg or I.

12 Q. Now, you're the managing member. Would that
13 mean you would be the most likely person to sign a
14 contract if there was one?

15 A. I don't know.

16 Q. What's the difference between the managing
17 member and the other member or members?

18 A. I don't know. I would have to ask my
19 attorney. I don't know. Greg does the legal work.

20 Q. Okay. And you have no duties at present; is
21 that correct?

22 A. That's right.

23 Q. And does any other member have duties at
24 present?

25 A. Not to my knowledge. We're here trying to

1 get a permit before we can do anything.

2 Q. Are you personally managing Osage Water, or
3 is Environmental Utilities managing Osage Water?

4 A. I am personally.

5 Q. Can you describe your current duties in
6 regard to management related to Osage Water?

7 A. Yes, ma'am. I handle the deposits. I
8 handle accounts payable. I manage the secretary,
9 oversee billing, the assessments, the -- I oversee the
10 field supervisor, deal with the regulatory people who
11 come. I handle some customer complaints, taxes,
12 insurance, and just basic office administration.

13 Q. Who is your field supervisor?

14 A. Jeffrey Smith.

15 Q. And are you a licensed operator of water
16 plants?

17 A. No, ma'am.

18 Q. Or sewer plants?

19 A. No, ma'am, I am not.

20 Q. Is Jeffrey --

21 A. Jeffrey takes his test tomorrow, and he is
22 not.

23 Q. He is not currently an operator.

24 Is there a licensed operator that is
25 contracted with Osage Water or Environmental Utilities

1 or you?

2 A. There is not at the current time.

3 Q. Or is there any licensed operators that you
4 have any understandings with or do business with on a
5 noncontractual basis?

6 A. There are several in the area we have been
7 using. We have applied for our grandfathering permits
8 from the Department of Natural Resources and those are
9 pending, and then Jeffrey is taking his test tomorrow.
10 So we've taken all of the steps that we know are
11 necessary to fulfill those requirements.

12 Q. And do you know when the results of that
13 test will be made available?

14 A. I don't know how long it takes.

15 Q. And other than Jeffrey, do you have any
16 other people who oversee the operations of the utility
17 properties that you manage currently?

18 A. No.

19 Q. And is he full-time?

20 A. He is part-time.

21 Q. Part-time on operations.

22 What else does he do?

23 A. He works for Greg and I personally the rest
24 of the time.

25 Q. What does he do for you the rest of the

1 time?

2 A. He built the Golden Glade system for us, the
3 distribution lines. We kept him busy out at Golden
4 Glade when the water company wouldn't -- couldn't pay
5 him.

6 Q. Okay. Now, the well at Golden Glade has
7 been constructed; is that correct?

8 A. Yes, ma'am.

9 Q. It's complete?

10 A. Yes, ma'am.

11 Q. The distribution system has been
12 constructed?

13 A. Yes, ma'am.

14 Q. Is it complete at this time?

15 A. I believe so.

16 Q. Okay. And I'm going to talk to you for a
17 couple of minutes about this issue of this 10 percent.

18 Jeffrey built the distribution system for
19 you and Greg; is that your testimony?

20 A. Yes.

21 Q. So are you and Greg the general contractor?

22 A. Yes.

23 Q. And were you and Greg the general contractor
24 involved in the construction of the well as well?

25 A. Yes.

1 Q. And as far as -- let me do this: Let me
2 refer you to -- back to pages 4 and 5 of your
3 Surrebuttal Testimony, which is Exhibit 2.

4 Are you there?

5 A. Yes, ma'am.

6 Q. And there you discuss a general overhead
7 allowance of 10 percent; is that right?

8 A. Yes.

9 Q. And then is that the same 10 percent that
10 you refer to in your Direct as a general contractor's
11 fee.

12 A. Yes.

13 Q. And that fee would be paid to you and your
14 husband; is that correct?

15 A. Yes.

16 Q. And the reason you were requesting this fee
17 has to do with your experience in development --

18 A. Yes, ma'am.

19 Q. -- as opposed to regulation?

20 A. Yes, ma'am.

21 Q. Because you are not aware of any regulatory
22 body that's given that kind of a fee in rates?

23 A. No, ma'am. We're developers.

24 MS. O'NEILL: Just a minute. I would like
25 to have an exhibit marked?

1 JUDGE WOODRUFF: You may.

2 (EXHIBIT NO. 13 WAS MARKED FOR
3 IDENTIFICATION.)

4 BY MS. O'NEILL:

5 Q. Ms. Williams, let me show you a copy of
6 what's -- I've given you a copy of what's been marked
7 as Exhibit 13 and which I previously distributed to
8 counsel prior to the hearing, and I'll ask you if you
9 could take a look at that for a moment.

10 Have you had a chance to at least glance
11 through that document, ma'am?

12 A. Yes.

13 Q. Now, ignoring for a moment the two e-mail
14 address blocks at the top of the document, do you
15 recognize the rest of the content of this document?

16 A. Yes.

17 Q. And what is the rest of this document?

18 A. Declaration of Restrictions for Golden Glade
19 Subdivision.

20 Q. And are you familiar with the Declaration of
21 Restrictions for Golden Glade Subdivision?

22 A. Somewhat.

23 Q. Okay. And at the very top of what's been
24 marked as 13, there is a line that says Cinnamon
25 Hollow Restrictions. Do you see that?

1 A. No.

2 Q. Maybe it's not at the top of yours.

3 A. Yes. Yes, I do.

4 Q. Would it be safe to say these are actually
5 Golden Glade restrictions and not Cinnamon Hollow
6 restrictions?

7 A. Yes, ma'am.

8 Q. And in the e-mail address blocks, in the
9 second block does it indicate where the original
10 message came from?

11 A. Yes.

12 Q. And where did it come from?

13 A. From Greg Williams.

14 Q. And is that Greg Williams' correct e-mail
15 address?

16 A. Yes, it is.

17 Q. Now, based -- and I realize you haven't had
18 a chance to read the whole thing carefully, but does
19 it appear to be a complete and accurate copy of the
20 Declaration of Restrictions for Golden Glade
21 Subdivision?

22 A. I really don't know. It's got all of the
23 page numbers marked. Yes.

24 Q. Okay. And referring to the second page of
25 that document, about three quarters of the way down

1 the page there is a Roman numeral three of the
2 association. Do you see that?

3 A. Yes.

4 Q. And is there currently at Golden Glade a
5 homeowners or landowners association?

6 A. I believe there is.

7 Q. And how was that formed?

8 A. I don't know. Greg did it.

9 Q. And as a developer of that property, are you
10 on the board of that association?

11 A. I don't know.

12 Q. Is Greg on the board of that association?

13 A. I don't know.

14 Q. I'll refer you to section 2 under that Roman
15 numeral 3, formation of the association. Would you
16 read that, please?

17 A. "The developer shall form the association
18 within a reasonable time after the sale of the first
19 lot but at least no later than the sale of 100 percent
20 of the lots in the development. Until the formation
21 of the association, the developer shall act on behalf
22 of the association and shall have the same powers and
23 duties of the association as set forth in this
24 declaration."

25 Q. So if the association has not been formed,

1 then you and Greg have the same powers as the
2 association; is that correct?

3 A. That's my understanding.

4 Q. Okay. And section 3 begins at the bottom of
5 that second page and goes into page 3. If you would
6 just read that to yourself for a moment, and let me
7 know when you're finished.

8 Have you had a chance to read that?

9 A. Yes, ma'am.

10 Q. And does that section, section 3 regarding
11 membership, describe two classes of membership for the
12 association?

13 A. Yes, it does.

14 Q. And class B membership, this provides, shall
15 be the developer; is that correct?

16 A. That's what it says.

17 Q. And that would be you and Greg?

18 A. Right.

19 Q. And also according to class B, class B shall
20 be entitled to a vote equal to 66 2/3 percent of all
21 of the votes in all classes of members. Do you see
22 that?

23 A. Yes.

24 Q. And 66 2/3 percent would be well over a
25 majority vote; is that correct?

1 A. Yes.

2 Q. So the developer, the class B members of the
3 board, would have controlling interest of the board as
4 long as class B members exist; is that correct?

5 A. I presume.

6 Q. Okay. And class B members shall -- there
7 are three conditions under which class B membership
8 would end; is that correct?

9 A. That's what it says.

10 Q. And what are those conditions?

11 A. "When 100 percent of the lots within the
12 development, either in its present form or including
13 annexed properties, shall have been sold by the
14 developer; B, on January 1st, 2010; and, C, voluntary
15 dissolution of the class B membership and conversion
16 to class A membership by the developer."

17 Q. And how many lots are on Golden Glade,
18 approximately, available for sale?

19 I refer you, if you're not sure, to page 14
20 of your Direct.

21 A. It looks like 15 are still available.

22 Q. Fifteen are still available. The project is
23 designed, however, to contain 100 lots; is that
24 correct?

25 A. Right. Are you asking me platted or --

1 Q. How many does it contain?

2 A. Twenty-eight lots are platted.

3 Q. Does your answer read, The project is

4 designed to contain 100 lots?

5 A. Yes.

6 Q. Is that an accurate statement?

7 A. Yes.

8 Q. Okay. And of the ones that have been

9 platted, less than half have been sold; is that right?

10 A. Correct.

11 Q. And also in that testimony you anticipate

12 that the build-out time for this project would be

13 approximately five to ten years?

14 A. We hope.

15 Q. Is that your statement in your testimony?

16 A. Yes.

17 Q. So until 100 percent of the lots in the

18 development are sold, or this date, or some other

19 thing happens, you and Greg would have controlling

20 interest over the homeowners or landowners

21 association; is that correct?

22 A. That's correct.

23 Q. And you and Greg, not as a corporate entity,

24 but personally currently maintain ownership of the

25 water well and the distribution system; is that

1 correct?

2 A. Yes, ma'am.

3 Q. And I want to refer you to page -- the
4 bottom of page 11 and top of page 12 of your Direct
5 Testimony, Exhibit 1.

6 The last question on page 11 is, "What will
7 happen to the central water system for the project if
8 the Commission does not grant a certificate to
9 Environmental Utilities?" Do you see that?

10 A. Yes, ma'am.

11 Q. And the answer to that question is at the
12 top of page 12; is that right?

13 A. Yes.

14 Q. And what's the answer to that question.

15 A. "My husband and I will retain ownership of
16 the water system and lease it to Golden Glade
17 Landowners Association, Inc., a not-for-profit
18 homeowners association provided for in the subdivision
19 restrictions of the project for operation, maintenance
20 and repair. It will pass its costs and expenses on to
21 the residents of Golden Glade as homeowners'
22 assessments."

23 Q. And under that circumstance, who would
24 continue to own the system?

25 A. My husband and I.

1 Q. Not as part of any corporate entity, just
2 you would personally own it; is that correct?

3 A. I'm not sure.

4 Q. Okay. This doesn't contemplate that you and
5 your husband personally would sell it to any
6 corporation?

7 A. No.

8 Q. Okay. And who would be responsible for
9 executing the lease on behalf of the landowners
10 association?

11 A. I don't know.

12 Q. Do you know what the terms of that lease
13 would be?

14 A. No.

15 Q. Has that lease been drafted as a contingency
16 in this matter?

17 A. Not to my knowledge.

18 Q. Is it your intention that that water
19 distribution system and well will be used to serve
20 Golden Glade customers, whether or not the Commission
21 grants a certificate?

22 A. Yes, ma'am.

23 Q. Are you aware that Public Counsel's support
24 of granting Environmental Utilities a certificate in
25 this case is subject to a number of conditions?

1 A. Yes, ma'am.

2 Q. And have you reviewed the conditions that
3 are contained in Kimberly Bolin's prefiled testimony?

4 A. Briefly.

5 Q. Okay. Do you know whether or not any of
6 those pre-certificate conditions she has proposed have
7 been met at this time?

8 A. I would have to see that testimony.

9 Q. Okay. Let me ask you about a couple of
10 things. I'm not going to go through the whole list.

11 But have the books been set up for
12 Environmental Utilities in anticipation of becoming a
13 regulated utility?

14 A. We've had no economic activity, so I've been
15 working hard on Osage Water Company's books to bring
16 them into compliance with the regulatory --

17 Q. In your work with Osage Water Company's
18 books, have you become familiar with the Uniform
19 System of Accounts?

20 A. Somewhat, yes.

21 Q. And is it your plan that records connected
22 to Environmental Utilities will comply with the
23 Uniform System of Accounts?

24 A. Absolutely.

25 Q. Do you recall seeing anything in the

1 pre-certificate conditions that Ms. Bolin proposed,
2 anything that was objectionable to Environmental
3 Utilities?

4 A. I would have -- I don't remember.

5 MS. O'NEILL: May I approach the witness?

6 JUDGE WOODRUFF: You may.

7 BY MS. O'NEILL:

8 Q. Let me show you what's been marked but is
9 not in evidence as Exhibit 3 attachment KKB-2. And if
10 you would ignore the handwritten notes.

11 Could you take a look at that list for me?

12 A. Sure. Well, I don't understand the first
13 one, so --

14 Q. Okay.

15 A. -- I would question that.

16 Q. In review of KKB-2, other than the fact that
17 you have -- you don't really understand one of them,
18 does it appear that those are things that
19 Environmental Utilities is willing to comply with if
20 they were terms of your certificate? And I'm
21 referring right now to the first page.

22 A. Oh, the first page.

23 Some of those have already been done, and
24 the rest are okay except for the first one that we
25 don't understand.

1 Q. But you would be willing to comply with

2 any --

3 A. Yes, ma'am.

4 Q. -- similar conditions?

5 A. Sure.

6 Q. I would ask you to turn to I believe -- it's

7 either the second page of KKB-2 or KKB-3, the next

8 page.

9 And if you take an opportunity to look at

10 those, is there anything on that -- you've seen those

11 before; is that correct?

12 A. I'm not sure.

13 Q. Is there anything on that page that

14 Environmental Utilities would object to having

15 included as a condition of their certificate?

16 A. I'm not sure about that last one regarding

17 billing under contract management agreements. I'm not

18 sure about that last one.

19 Q. Is that because you don't understand the

20 provision, or is that because you have -- you believe

21 that's in conflict with the business practice that you

22 would like to implement?

23 A. I don't really -- I don't understand it.

24 Q. Okay. If the Commission was to grant a

25 certificate subject to conditions, would Environmental

1 Utilities comply with all conditions imposed by the
2 Commission?

3 A. Are you referring to these?

4 Q. I'm asking you if they grant you a
5 certificate, but it's subject to conditions, will you
6 comply with the conditions?

7 A. As long as they are reasonable, we will. I
8 think we would have to know what those conditions are
9 to know if we could afford to comply with them
10 financially.

11 Q. Okay. But if the Commission's Report and
12 Order did contain those conditions, you would at least
13 attempt to comply with them?

14 A. Absolutely, if we can afford to.

15 MS. O'NEILL: At this time, I would offer
16 Exhibit 13 into evidence.

17 JUDGE WOODRUFF: Thirteen has been offered
18 into evidence. Is there any objection to its receipt?

19 MR. WILLIAMS: No objection for the company.

20 JUDGE WOODRUFF: Hearing none, it will be
21 received into evidence.

22 (EXHIBIT NO. 13 WAS RECEIVED INTO EVIDENCE.)

23 MS. O'NEILL: I have no further questions.

24 Thank you.

25 JUDGE WOODRUFF: Let's move over to Hancock

1 Construction then.

2 CROSS-EXAMINATION BY MR. LORAINÉ:

3 Q. Hello, Ms. Williams.

4 A. Hello.

5 Q. Mrs. Williams, in preparing your testimony,
6 your prefiled testimony, did you prepare the testimony
7 yourself or did Greg prepare it for you?

8 A. Greg helped me.

9 Q. And in preparing that testimony, I noted you
10 filed a Surrebuttal Testimony; is that true?

11 A. Yes.

12 Q. And part of that Surrebuttal Testimony
13 criticizes Mr. Cochran's Rebuttal Testimony. Do you
14 recall that part of the testimony?

15 A. Yes.

16 Q. And during that period of your testimony,
17 you suggested -- it's my recollection you suggested
18 that Mr. Cochran had opinions but he didn't provide
19 any kind of a basis for it. Do you recall that
20 testimony?

21 A. Yes, I do.

22 Q. And, in fact, do you have that before you
23 there?

24 A. Yes, I do.

25 Q. Could you read that section to the

1 Commission?

2 A. "His testimony appears to consist of various
3 opinions and conclusions that he has formed regarding
4 Osage Water Company, its management, and its financial
5 condition. He has not supported his opinions and
6 conclusions with any factual information."

7 Q. All right. And when you -- did Greg prepare
8 that, or did you, that statement?

9 A. Greg and I prepared this together.

10 Q. Did you read any of his schedules that he
11 applied?

12 A. Whose schedules?

13 Q. Mr. Cochran's.

14 A. Yes, I did.

15 Q. Did you read them all?

16 A. I believe I did.

17 Q. Did Greg read them?

18 A. We both read them.

19 Q. Okay. Did you read them independently for
20 yourself?

21 A. Yes.

22 Q. And do you know how many schedules there
23 were?

24 A. Not off the top of my head, I don't.

25 Q. Would -- the schedules were some 19 to 20

1 schedules that supported his testimony and 23 pages.

2 Would that be about correct?

3 A. I don't have them in front of me.

4 Q. But nevertheless, you believe that he didn't
5 provide anything other than just opinions?

6 A. I didn't -- that's correct.

7 Q. So whether some of that documentation was
8 testimony and other hearings or whether -- whatever it
9 was, you considered it not supportive of his position?

10 A. I'm not sure what you're referring to. I
11 don't have it in front of me.

12 Q. Well, you did have it in front of you. And
13 all I'm asking you is at the time that you wrote
14 that -- that statement that it was -- it had no basis,
15 his complaint?

16 A. I couldn't follow his testimony.

17 Q. All right. You do -- you did see those
18 number of --

19 A. Yes.

20 Q. -- exhibits though?

21 A. Yes, I did.

22 Q. All right. And in preparing your
23 application, did you prepare the application in this
24 case or did Mr. Williams prepare that?

25 A. Greg helped me.

1 Q. When you -- did you review it prior to
2 filing it?

3 A. Yes.

4 Q. And you did sign the application?

5 A. Yes, I did.

6 Q. All right. And in your testimony earlier
7 you said that this -- basically this company OWC was
8 abandoned by Mr. Mitchell in July of 2001.

9 A. That's correct.

10 Q. And, basically, you and your husband had
11 some six months, therefore, of prior experience with
12 water companies prior to filing this application or
13 being in here to testify today?

14 A. It was filed August 6th. We took over the
15 company July 9th. That's one month.

16 Q. So you have six months as of today?

17 A. Correct.

18 Q. All right. Now, you're not -- you're not
19 going to tell this Commission and this judge that
20 Mr. Williams didn't have substantial knowledge and
21 information and had a lot to say about the way OWC
22 practiced over the years, are you?

23 A. I will.

24 Q. You will say that?

25 A. Without hesitation.

1 Q. All right. And -- but nevertheless, you
2 found it necessary in your -- in your application that
3 you filed before the Commission for the Environmental
4 Utilities, LLC to make the following statement, didn't
5 you...

6 MR. LORAIN: Your Honor, I would ask --
7 this matter has been taken -- this is the application
8 that you took judicial notice of.

9 May I approach the witness?

10 JUDGE WOODRUFF: You may.

11 BY MR. LORAIN:

12 Q. I would like you to read a portion of your
13 application, if you will, that I have in blue. It
14 appears on -- on the first page.

15 A. You want me to read what you've highlighted?

16 Q. You can read it off yours. No. Just look
17 at yours and confer. Make sure it's the same.

18 Okay. Are you satisfied that they are the
19 same?

20 A. Yes.

21 Q. Okay. Would you please read what you put in
22 this application for this Commission to consider?

23 MS. O'NEILL: For the record, could we have
24 the page citation for that?

25 MR. LORAIN: It's the first page of the

1 application.

2 THE WITNESS: It's the Environmental
3 Utilities feasibility study, page 2.

4 MS. O'NEILL: Okay.

5 THE WITNESS: It's like -- it's right
6 behind...

7 BY MR. LORAIN:

8 Q. You may proceed.

9 A. "The principals of the company have been
10 engaged in the water and sewer utility business since
11 1991 in connection with their ownership and management
12 of Osage Water Company, a regulated water and sewer
13 utility company." That's paragraph 1.

14 Q. Now, you found that of some assistance to
15 this Commission in establishing your credentials,
16 didn't you?

17 A. Yes.

18 Q. And you'll stand by your application
19 provision, won't you?

20 A. Yes.

21 Q. You-all have been involved actively in the
22 management of the water company since 1991. Is that
23 what that says?

24 A. We have been involved.

25 Q. Engaged?

1 A. Engaged. Yes, we've been engaged.

2 Q. Okay. And, further -- further, I believe,
3 in three or four paragraphs down, it says,
4 "Mr. Williams provides general legal representation
5 for the company on a contract basis and represents the
6 company or oversees representation of the company on
7 regulatory matters. Mr. Williams also serves as
8 director and corporate secretary of Osage Water
9 Company."

10 A. That's correct.

11 Q. So that telling us that you have been in the
12 business for six months is -- which you would prefer
13 us to believe, I suppose, that it's been since 1991
14 for the purpose of the application, wouldn't you?

15 A. What are you asking me?

16 Q. Which is true, six months or since 1991?

17 A. That we've been doing what?

18 Q. In the water business.

19 A. We've been in the business, that's correct,
20 since 1991.

21 Q. All right. Now, Mrs. Williams, the
22 statement in your application that Mr. Mitchell
23 abandoned Osage Water Company, can you tell us a
24 little bit more about that?

25 Did he abandon his stock? Did he give you

1 his stock back?

2 A. No.

3 Q. Did he resign his position as an officer

4 with the corporation?

5 A. No.

6 Q. Did he resign his directorship?

7 A. No.

8 Q. Did he turn over the responsibilities of

9 testing the water to you?

10 A. That was unclear.

11 Q. Okay. His company -- it was the -- what was

12 the name of his company that he managed?

13 A. Water Laboratory.

14 Q. And, in fact, that service has no longer

15 been available to you since he turned over those reins

16 in July of 2001; is that true?

17 A. No.

18 Q. Okay. So does he continue doing that

19 service for you?

20 A. He did last month for us, yes.

21 Q. Was that last month because you requested

22 it, or --

23 A. Yes.

24 Q. Was it continuous from July through that

25 time?

1 A. No.

2 Q. All right. Did he continue to do
3 engineering for you from July until the present time?

4 A. No.

5 Q. His secretarial staff for those two
6 companies have been unavailable to you, to Osage Water
7 Company, from July to present?

8 A. That's correct.

9 Q. So he has abandoned those responsibilities,
10 hasn't he?

11 A. Yes.

12 Q. Were you regularly -- was Osage Water
13 Company regularly paying Mr. Mitchell for those
14 services prior to July?

15 A. I'm not sure.

16 Q. Now, in reference to the reporting
17 requirements, are you familiar with -- with the filing
18 requirements before the Commission and the annual
19 report that's necessary for a water company?

20 A. I am aware that an annual report is
21 necessary, yes.

22 Q. And are you current with the -- with Osage
23 Water Company with this Commission at this time?

24 A. No, we are not.

25 Q. And can you tell the Commission the years of

1 delinquency?

2 A. 2000 and 2001.

3 Q. Have you filed 1999 as of today?

4 A. Yes, sir.

5 Q. When was that filed?

6 A. November, October.

7 Q. Of this past year?

8 A. Of 2001, yes.

9 Q. So it was --

10 A. Since we took over management.

11 Q. It was also delinquent, wasn't it?

12 A. Yes.

13 Q. Are you familiar with the NARUC, the term

14 "NARUC"?

15 A. No. The accounting system?

16 Q. Yes.

17 A. Yes.

18 Q. And are you presently keeping your books

19 in -- under the NARUC system?

20 A. I have been informed by PSC Staff that we

21 are and have been for some time.

22 Q. How long have you been doing that?

23 A. I'm not sure when we fully came into

24 compliance. I was not -- I'm not sure what date it

25 happened.

1 Q. Was that recently?

2 A. Yes. In the last six months.

3 Q. So would it be fair to say that prior to the

4 last six months Osage Water Company did not keep their

5 books in conformance with the NARUC system?

6 A. I don't know.

7 Q. And whose obligation did you consider that?

8 A. Mr. Mitchell's.

9 Q. And did Greg tell you that it was

10 Mr. Mitchell's, or did Mr. Mitchell tell you that it

11 was his responsibility, or did you just assume that?

12 A. Well, we didn't have control over the

13 checkbook or any of the finances, so I don't know how

14 we could have prepared it. I guess I just assumed.

15 Q. Okay. Are you familiar or do you know

16 that -- as to whether or not Mr. Williams has ever

17 claimed that responsibility to be his own?

18 A. I know he has worked on them and has filed

19 some of them, but I don't believe he felt that it was

20 his responsibility to do that.

21 Q. All right. Ma'am --

22 MR. LORAIN: I'd like to approach the

23 witness, Judge, if I may.

24 JUDGE WOODRUFF: You may.

25 BY MR. LORAIN:

1 Q. Ma'am, I would like to show you some
2 transcript of a hearing that I've -- that occurred on
3 October 26, 1998 before the Public Service Commission
4 of the state of Missouri, in Case No. 98-236, 98-211.

5 On page 65, I would like to have you read
6 along with me.

7 "Mr. Williams, do you know what the NARUC
8 system of accounting generally refers to?

9 Answer: "Generally, yes. Previously, no."

10 Question: "In accounting certain items that
11 you might have in your ownership to concern accounts,
12 isn't it generally an account given from NARUC and
13 suggested that a certain item be placed in a certain
14 account number? Is that generally the idea?"

15 Answer: "It is an account code
16 classification system, yes."

17 Question: "And as I understand it, you are
18 the one that's responsible in Osage Beach Water
19 Company to make those classifications?"

20 Answer: "Yes, I do."

21 Question: "And you're certain as I hear
22 your testimony as to those classifications at this
23 time?"

24 Answer: "I've been given a book by the
25 Staff that lists out the account codes and what they

1 are supposed to be in them. I've done my best to
2 comply with them. I've asked the Staff if I have any
3 significant errors. They have not indicated any to me
4 at this point in time.

5 "To the best of my knowledge, we keep our
6 accounts and books and records in conformance with the
7 NARUC accounting system and no one has ever told me
8 differently."

9 Question: "Did Mr. Cochran tell you
10 differently in his testimony?"

11 Answer: "Mr. Cochran has written all sorts
12 of things and he seems to think it doesn't comply with
13 NARUC, but I don't necessarily agree with him."

14 Did you -- were you aware of this testimony
15 in '98?

16 A. No.

17 Q. Do you believe that Greg had some
18 responsibility in -- back as far as -- at least as of
19 '98?

20 A. I don't know.

21 Q. October of '98.

22 A. He said he did. I don't know.

23 Q. All right. There has been some testimony or
24 at least some -- a position paper filed by your
25 company that Mr. Hancock is an improper intervenor

1 because he has no interest in this matter.

2 Do you recall those papers that were filed,
3 your position papers?

4 A. Yes.

5 Q. Are you aware that Osage Water Company has
6 issued a debenture in the amount of \$240,000 payable
7 to Mr. Hancock? Are you aware of that?

8 A. Yes, I am.

9 Q. And are you aware that Osage Water Company
10 has not -- is presently delinquent in payments?

11 A. Yes, I am.

12 Q. And, in fact, there is a lawsuit going on in
13 the Circuit Court of Camden County to that effect,
14 isn't there?

15 A. Yes, several.

16 Q. And there is other lawsuits by Osage Water
17 Company back against Mr. Hancock; isn't that true?

18 A. That's correct.

19 Q. And some of the -- are you aware that that
20 debenture was issued by Osage Water Company?

21 A. Yes, I am.

22 Q. And it was issued in settlement of some
23 certain matter between them back in '98; isn't that
24 true?

25 A. Yes.

1 Q. And are you aware that -- that that
2 debenture has been -- actions have been taken by the
3 Staff of the Public Service Commission to render some
4 kind of rate relief on the basis of that particular
5 indenture (sic) --
6 A. No.
7 Q. -- that debenture. Are you aware of that?
8 A. No.
9 Q. Do you take the position that that debenture
10 is a valid debt of Osage Water Company's?
11 A. I don't know.
12 Q. Very well. And have you been made privy to
13 the fact that Mr. Krueger has prepared an affidavit to
14 the extent that in his opinion it is a valid debenture
15 of Osage Water Company? Are you aware of that?
16 A. I remember seeing that.
17 Q. And it was done in conjunction with an
18 examination of the actual debenture; is that true?
19 A. I don't know.
20 Q. Have you seen that document, the affidavit?
21 A. I remember seeing an affidavit from
22 Mr. Krueger regarding that, yes.
23 MR. LORAIN: May I approach the witness?
24 JUDGE WOODRUFF: You may.
25 BY MR. LORAIN:

1 Q. Out of a prior deposition, I would like to
2 hand you what was marked at that time Exhibit No. 1.

3 Does that appear -- does this appear to be
4 Mr. Krueger's affidavit that you've seen?

5 A. I don't know.

6 Q. Would you look at it?

7 A. It says he signed it.

8 Q. All right. And do you see a debenture
9 associated with that?

10 A. Yes.

11 Q. Do you recognize that debenture as --

12 A. Yes.

13 Q. -- signed by your husband?

14 A. Yes, I do.

15 MR. LORAIN: Your Honor, I had this
16 previously marked as Deposition Exhibit 1. I would be
17 happy to remark this at this time if it would be all
18 right with the court. Would that be 14?

19 JUDGE WOODRUFF: That would be 14. I know
20 I've seen it somewhere in the record. Is it attached
21 to somebody's testimony?

22 MR. LORAIN: It's attached to some
23 testimony.

24 JUDGE WOODRUFF: Is there any need to remark
25 it?

1 MR. LORAIN: I would just ask the Court to
2 take notice of the fact, and I would like to move for
3 its introduction into evidence.

4 JUDGE WOODRUFF: Well, it's attached to
5 another document which I assume you're going to offer
6 later.

7 MR. LORAIN: Yes.

8 JUDGE WOODRUFF: I'm just asking if there is
9 any need to have it marked separately.

10 MR. LORAIN: I would like to mark it
11 separately, Judge, only for housekeeping purposes
12 because of this testimony at this time.

13 JUDGE WOODRUFF: That will be fine. That
14 will be 14.

15 (EXHIBIT NO. 14 WAS MARKED FOR
16 IDENTIFICATION.)

17 MR. LORAIN: Fourteen. I would move for
18 its admission, your Honor.

19 MS. O'NEILL: Your Honor, for clarification,
20 is that the same document that is --

21 MR. LORAIN: It is.

22 MS. O'NEILL: -- Schedule 17-1?

23 MR. LORAIN: Is that Mr. Cochran's --
24 pardon me. Mr. Hancock's -- it is. It is marked --
25 it is. For the record, that is correct.

1 JUDGE WOODRUFF: Okay. You'll need to
2 provide copies of it to -- appropriate copies to the
3 clerk and then six copies up here for the Bench.

4 MR. LORAIN: All right.

5 JUDGE WOODRUFF: And since we are due for a
6 break, we can deal with that after break.

7 Let's -- before -- I assume all of the other
8 counsel have seen this or know what it's talking
9 about, so at this time 14 has been offered into
10 evidence. Is there any objection to its receipt?

11 (No response.)

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

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

15 MR. LORAIN: Is it the Court's intention to
16 take a break at this time, Judge?

17 JUDGE WOODRUFF: We will take a break at
18 this time. We'll come back at 10:45.

19 (A recess was taken.)

20 JUDGE WOODRUFF: We're back on the record.

21 Ms. Williams is on the stand.

22 BY MR. LORAIN:

23 Q. Ms. Williams, there have been some
24 discussions about the -- about whose well appears on
25 this tract of property.

1 I believe it's my understanding that you've
2 testified that you and your husband personally paid
3 for the drilling of that well?

4 A. Yes, we did.

5 Q. And how much did you pay? We're talking
6 about the Golden Glade well.

7 A. I believe it's around 76,000.

8 Q. What is the -- when you say you believe, can
9 you tell me what you are basing that on?

10 A. Well, as of the time of my testimony, on
11 December 5th, it was \$76,115.48. There may be some
12 additional bills that have been paid since then.

13 Q. On the well itself?

14 A. Yes.

15 Q. So the well is not paid for?

16 A. Yes.

17 Q. It is totally paid for?

18 A. Yes.

19 Q. And when was it totally paid for?

20 A. Sometime in November/December.

21 Q. You provided me with cancelled checks in a
22 data information request form. Do you recall that?

23 A. Yes, I do.

24 Q. Were those all of the bills that were
25 associated with that, or have there been more since?

1 A. I believe that was all up to last week.

2 Q. December 20th is the last check, 2001.

3 Would that be right?

4 A. There was one check that hadn't cleared our
5 bank yet when those were due to you. It was a check
6 to AmerenUE for approximately \$6,000.

7 MR. LORAIN: May I approach the witness?

8 JUDGE WOODRUFF: You may.

9 BY MR. LORAIN:

10 Q. This is a data information request No. 1,
11 and I believe it's signed by Greg but says, "See
12 attached photocopies of checks." That's the amount of
13 the -- is this the document that we're talking about
14 here?

15 A. You're talking.

16 Q. All right. These are the checks.

17 Did you prepare this exhibit?

18 A. Yes, I did.

19 Q. The total was 56,318.41; is that true?

20 A. Whose total is this?

21 Q. That's what I -- what the total is. I think
22 it came on the check, but I don't know. I can't tell
23 you that. I'm not under oath, though, but I'll ask
24 you that.

25 Did you prepare a total when you sent it

1 over?

2 A. I don't believe I did, no.

3 Q. Okay. Do you believe that total to be

4 incorrect?

5 A. I don't know. I don't have my calculator.

6 These are the checks I sent you.

7 Q. Okay. Are they all of the checks that you

8 know of?

9 A. The Ameren check is missing I know for sure.

10 Q. You would agree with me that there's eight

11 checks that you attached to this --

12 A. That's correct.

13 Q. -- exhibit?

14 There's eight categories on this receipt,

15 one, two, three, four, five, six, seven, eight?

16 A. There are eight entries there, yes.

17 Q. You believe that; is that correct?

18 A. There are eight numbers there, yes.

19 Q. All right. And so the total would comprise

20 that if these entries are correct in the amounts; is

21 that true? Without either of us having a calculator

22 right now, wouldn't that be the assumption?

23 A. I don't know.

24 Q. All right. You're telling me there is one

25 check missing?

1 A. At least one check missing. We didn't have
2 time -- we didn't get our bank statement.

3 Q. So what is the Commission to rely on, the
4 56,318.41 as a price plus the UE check, or more?

5 A. It would be some more.

6 Q. But you don't have the basis for that
7 additional at this point?

8 A. I don't have it in front of me.

9 Q. Do you have it anywhere?

10 A. Yes.

11 Q. In any case, that has -- as of the date of
12 reporting to me, the sum of 56,318.41 was paid by
13 either yourself or Greg personally for the drilling of
14 this well?

15 A. That's right. The checks are in there.
16 Yes.

17 Q. Okay. Now, how long has that well been in
18 existence?

19 A. You've got the date of the check there where
20 we paid the bill.

21 Q. Who would that have been --

22 A. Moreland.

23 Q. Moreland Drilling?

24 A. Yes. There's two checks to Moreland.

25 Q. November 9th is the check. Was it on the

1 same date?

2 A. There were two checks to Moreland. It would
3 have been just prior to the last check.

4 Q. There is one July 24th, 2001, 24,000. Is
5 that --

6 A. It would be just prior to the most recent
7 check.

8 Q. So they asked you to pay some money in July
9 of 2001?

10 A. That's correct.

11 Q. 24,000?

12 A. That's correct.

13 Q. And that was before the well was drilled?

14 A. That's probably when he started.

15 Q. Okay. And then the other one was
16 November 9th?

17 A. Correct.

18 Q. 15,000. So sometime you think around
19 July 24th is when he started and he finished in
20 November?

21 A. I don't know why we wrote it. I don't know
22 how long it took him. I don't know why we wrote that
23 one in July, but I know he finished it right around
24 the first week of November.

25 Q. Okay. The -- I asked you in a data

1 request --

2 MR. LORAIN: May I approach the witness
3 again?

4 JUDGE WOODRUFF: You may.

5 BY MR. LORAIN:

6 Q. On data request information No. 3 I asked
7 you for a letter from Greg Williams to Ron Westenhaver
8 regarding the sewer facilities installed at Golden --
9 I think it says, "We are unable to identify this
10 document."

11 Have you been able to identify that
12 document?

13 A. No.

14 Q. And, as I understand it, there are no liens,
15 to the best of your knowledge, against this Golden
16 Glade well at this time?

17 A. That's correct.

18 Q. Can you tell me, do you recall Osage Water
19 Company entering into a contract to provide water with
20 Mr. Ron Westenhaver?

21 A. Did Osage Water Company?

22 Q. Yes.

23 A. I believe so.

24 Q. And it was also in conjunction with sewer,
25 wasn't it?

1 A. I was not involved in that.

2 MR. LORAIN: All right. I would like to
3 approach the witness again, Judge.

4 JUDGE WOODRUFF: You may.

5 BY MR. LORAIN:

6 Q. Ma'am, I'm showing you a contract signed the
7 12th day of January, it appears to be 1999, between
8 Mr. Greg Williams, president for Osage Water Company,
9 and Ron Westenhaver, manager of Summit Investments,
10 LLC.

11 Is that your husband's signature?

12 A. Yes.

13 Q. Do you know of the existence of this
14 contract?

15 A. Well, there it is.

16 Q. Did you know prior to me showing it to you?

17 A. I think I've seen it.

18 Q. All right. Do you believe that to be
19 Mr. Westenhaver's signature?

20 A. I don't know.

21 Q. On page 1 of this agreement, under "water
22 supply," what does it say?

23 A. "OWC agrees to construct and install a water
24 main from OWC's water well site located in Golden
25 Glade Subdivision on Lake Road KK-33 to the northwest

1 property line of developer's property at OWC's
2 expense."

3 Q. Do you believe that to be the same well that
4 we're talking about here?

5 A. I don't know.

6 Q. Okay. Ma'am, I'm showing you a contract
7 dated the 14th of May of '99 between Harbor Ridge and
8 Greg Williams, OWC.

9 Is that your husband's signature?

10 A. Yes, it is.

11 Q. And Harbor Ridge is different from the other
12 location which we were talking about, Eagle Woods?
13 They are different projects, or do you know?

14 A. They are different names in the same area.

15 Q. Do you know if they are different projects?

16 A. No, I do not know.

17 Q. Okay. In any case, there is a separate
18 contract on No. 2 for the Harbor Ridge contract?

19 A. Uh-huh.

20 Q. Read what it says there.

21 A. It says, "OWC agrees to construct and
22 install a water main from OWC's water well site
23 located in Golden Glade Subdivision on Lake Road KK-33
24 to the project and all distribution lines within
25 developer's project at developer's expense."

1 Q. Do you believe that to be the same water
2 well that we're talking about in this discussion?

3 A. OWC never paid for a well site.

4 Q. Nevertheless, the contract does exist for
5 OWC water well to --

6 A. Yes.

7 Q. -- provide water, does it not?

8 A. Yes, it does.

9 Q. Ma'am, I'm going to show you what's been
10 graphicly portrayed in color.

11 Do you agree with these outlines as to
12 locations of these various subdivisions when we're
13 talking about the location of Harbor Ridge, Golden
14 Glade, Eagle Woods I and II, Eagle Woods III and IV
15 and the park? Are you able to agree with this
16 configuration?

17 A. I'm not familiar with Mr. Westenhaver's
18 subdivision, no.

19 Q. Do you know as to the general whereabouts of
20 the subdivision as it relates to yours, assuming yours
21 is yellow?

22 A. Yes.

23 Q. Do you agree that they are on both sides and
24 the park is right next to you?

25 A. It's behind us.

1 Q. Do you believe that to be an accurate
2 representation?

3 A. Yes, possibly.

4 MR. LORAIN: What number am I at, Judge?

5 JUDGE WOODRUFF: This would be No. 15.

6 MR. LORAIN: Your Honor, I would like to
7 mark this as Exhibit 15 for the record.

8 (EXHIBIT NO. 15 WAS MARKED FOR
9 IDENTIFICATION.)

10 MR. LORAIN: Your Honor, I move for the
11 admission of 15 into evidence. I think it's just for
12 the location of these various entities. I think it
13 might be helpful to the Commission.

14 JUDGE WOODRUFF: It's color-coded based on
15 the different developments?

16 MR. LORAIN: Yes, it is.

17 JUDGE WOODRUFF: You will need to make
18 copies.

19 MR. LORAIN: I will make copies.

20 JUDGE WOODRUFF: All right. Exhibit 15 has
21 been offered into evidence. Is there any objection to
22 its receipt?

23 MS. O'NEILL: Could we see the exhibit,
24 please?

25 Perhaps -- I don't know whether this is

1 included in any other filing?

2 MR. LORAIN: I don't think it is.

3 MS. O'NEILL: No objection.

4 We would like a copy though.

5 MR. LORAIN: Pardon me?

6 MS. O'NEILL: We would like a copy.

7 MR. LORAIN: As soon as I find my copy
8 machine.

9 JUDGE WOODRUFF: Everyone has had a chance
10 to see it now. Is there any objection to Exhibit 15?

11 (No response.)

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

14 (EXHIBIT NO. 15 WAS RECEIVED INTO EVIDENCE.)

15 MR. LORAIN: Thank you, Judge.

16 BY MR. LORAIN:

17 Q. In looking at this color-coded exhibit,
18 No. 15, Mrs. Williams, would it be reasonable to
19 assume these areas that are adjacent to each other
20 surrounding this park area, they might provide the
21 basis, if one had all of these, for some sort of a
22 working cost-effective water service project, would
23 they not?

24 A. Yes.

25 Q. And in looking at your Exhibit No. 12 that

1 you wrote awhile ago that someone brought to your
2 attention, when you wrote this letter, Exhibit 12, you
3 were discussing the fact that OWC had water and sewer
4 service to Eagle Cove -- Eagle Woods, and it was out
5 of the Golden Glade -- this was the same well that
6 we've been talking about? And I've heard your
7 explanation that you paid for it and OWC has it, but
8 that's what you were talking about in this agreement,
9 wasn't it?

10 A. Yes.

11 Q. And it's the same well that's been talked
12 about in these two agreements that I showed you with
13 Mr. Westenhaver, isn't it?

14 A. Yes.

15 Q. Okay. And you believe that if OWC had all
16 of these areas and was able to provide it service, do
17 you think it would be a cost-effective situation for
18 OWC?

19 A. It would be for anyone.

20 Q. Even for your new company, wouldn't it?

21 A. It would be for anyone.

22 Q. Okay. Now, you have made some plans, I
23 believe you told the Commission here in evidence
24 today, to replace the water services of Mr. Mitchell's
25 company, the laboratory and the engineering. Have

1 you -- but you haven't actually entered into any kind
2 of written contract for that service yet; is that
3 true?

4 A. True.

5 Q. You've talked with someone, though, have
6 you?

7 A. Yes.

8 Q. And who is that someone?

9 A. Well, we talked with Michael McDuffy who has
10 performed the services from July to December for us.
11 At that time, then, in December, Mr. Mitchell
12 performed the waste water lab results for us and our
13 field supervisor collected the water samples and took
14 them to Jefferson City himself.

15 Q. So as far as the new company, how many
16 employees do you really have?

17 A. What new company?

18 Q. Your Environmental Utilities company?

19 A. We don't have any --

20 Q. Okay.

21 A. -- employees.

22 Q. So is Osage Water Company performing this
23 function at this point, or is it the new company?

24 A. We are performing it for Osage Water Company
25 until we get approval of our application.

1 Q. In fact, you're doing other things for Osage
2 Water Company, aren't you?

3 A. Other things --

4 Q. Other than this particular project?

5 A. I don't understand your question.

6 Q. Well, are you under contract with Osage
7 Water Company to provide services for them somewhere
8 else?

9 A. No. I don't understand your question.

10 Q. So that -- are you under contract with Osage
11 Water Company in this particular location, the Golden
12 Glade area?

13 A. Do we have a contract with ourselves? Is
14 that what you're asking me?

15 Q. Yes, with Osage Water Company.

16 A. I don't know.

17 Q. And you're sort of treating all of these
18 little entities as yourself, aren't you? I mean, they
19 are all just kind of little entities that you-all have
20 some kind of control over, Environmental and Osage
21 Water and you and Greg and your development company.
22 You kind of treat them all as -- on leashes that you
23 can control them? Is that the way you look at this or
24 you view these entities?

25 A. I never looked at it like that, no.

1 Q. All right.

2 A. We --

3 Q. But it's just "ourselves"? That's your
4 word.

5 A. I guess I don't understand your question.

6 Q. Well, when you say, Do we have contracts
7 with ourselves, I'm a little puzzled, so I'm asking
8 you to straighten me out.

9 A. Does Golden Glade have a contract with Osage
10 Water Company? Is that what you're asking me?

11 Q. Well, does it?

12 A. Not to my knowledge.

13 Q. Does Osage Water Company have a contract
14 with Environmental --

15 A. No.

16 Q. -- the LLC?

17 A. No. We don't have an -- we don't have a
18 permit so we don't have contracts.

19 Q. But you do have a corporation, don't you?
20 Environmental Utilities company has been formed?

21 A. Yes, and there is nothing in it.

22 Q. Okay. Now, you do admit, do you not, that
23 the record-keeping was so bad on Osage Water Company
24 that there actually had to be a disposition agreement
25 entered into requiring Osage Water Company to keep

1 better records. Do you remember that?

2 A. Yes, I do.

3 Q. And that had something to do with
4 Commissioner Murray's dissent, didn't it?

5 A. I don't remember specifically.

6 Q. Well, it certainly -- there was some real
7 question about the record-keeping of Osage Water
8 Company and --

9 A. Yes.

10 Q. -- it's historically documented?

11 A. Yes.

12 Q. Now, there has been -- you do view the
13 services of Mitchell as -- the ones he provided OWC as
14 vital services that someone else is going to have to
15 provide both Osage Water Company and the new company;
16 isn't that true? Those services have to be provided
17 now?

18 A. Which services?

19 Q. Well, the water laboratory services, the
20 engineering services, and the secretarial staff
21 support?

22 A. Yes.

23 Q. Those will all have to be augmented in some
24 fashion?

25 A. Yes.

1 Q. Do you know if --
2 MR. LORAIN: Just a minute, Judge. I
3 believe I'm going to scratch that last statement.
4 I believe I'm done, but I would like to view
5 my notes here just for a second.
6 JUDGE WOODRUFF: Take the time you need.
7 MR. LORAIN: I believe that's all I have.
8 JUDGE WOODRUFF: All right. Thank you.
9 MR. LORAIN: Thank you.
10 JUDGE WOODRUFF: Then we'll come up for
11 questions from the Bench, beginning with Commissioner
12 Murray.
13 COMMISSIONER MURRAY: Thank you, your Honor.
14 QUESTIONS BY COMMISSIONER MURRAY:
15 Q. Good morning. Do you prefer Ms. or
16 Mrs. Williams?
17 A. Mrs., please.
18 Q. Mrs. Williams, is this the first time that
19 you have testified in a regulatory proceeding?
20 A. Yes, ma'am.
21 Q. And what is your position with Osage Water
22 Company?
23 A. I am the operations manager.
24 Q. Since --
25 A. July 9th, 2001.

1 Q. And your position with Environmental
2 Utilities, LL--
3 A. C.
4 Q. --C?
5 A. Would be the same.
6 Q. Who is currently supplying sewer service to
7 Golden Glade Subdivision?
8 A. We are.
9 Who is "we"? Osage Water Company is, I
10 believe.
11 Q. You believe. You're not sure?
12 A. Well, I'm confused because I know Osage
13 Water Company has the certificates, but Greg and I
14 pa-- paid for the plant, so I don't know the correct
15 answer to your question. Legally, it's Osage Water
16 Company.
17 Q. Now, Osage Water Company bills the customers
18 for the service that they provide; is that correct?
19 A. That's right. That's right.
20 Q. And they bill according to tariffs that are
21 on file --
22 A. That's right.
23 Q. -- with this Commission?
24 And those tariffs were based on numbers that
25 Osage Water Company supplied to this Commission?

1 A. Right.

2 Q. And they included items that were included

3 in rate base --

4 A. Right.

5 Q. -- and expenses --

6 A. Right.

7 Q. -- revenue needed --

8 A. Right.

9 Q. -- that kind of thing. Right?

10 A. Right.

11 Q. And you billed in accordance with the

12 tariffs?

13 A. Right.

14 Q. Okay. Who is supplying -- who is currently

15 supplying water to the customers of Golden Glade

16 Subdivision?

17 A. Well, the builder who built the houses

18 originally drilled his own wells prior to us receiving

19 our permits, so I believe there are four private wells

20 that were built without our knowledge or permission

21 that are still serving the residents in Golden Glade

22 while we're waiting for our permits.

23 Q. How many residents are there?

24 A. There are -- I think there are around 14.

25 Is that right? I can't find it.

1 Q. Is it pretty accurate to say around 13 or
2 14?

3 A. I think that's fair. Close.

4 Q. Now, the letter that was marked as
5 Exhibit 12 that was dated November 27th to the --

6 A. Eagle Woods.

7 Q. -- Eagle Woods customers signed by you as
8 manager of Osage Water Company --

9 A. Right.

10 Q. -- it stated that Osage Water Company had
11 drilled a new well and had -- had acquired all of the
12 necessary state permits to expand its Golden Glade
13 treatment plant; is that right?

14 A. That's right.

15 Q. Now, is that a water treatment plant?

16 A. No. That's a sewage treatment plant I was
17 referring to.

18 Q. Okay. And Osage Water Company currently
19 supplies both water and sewer to the Eagle Woods
20 Subdivision; is that right?

21 A. Yes. We took over Mr. Westenhaver's wells
22 for those customers. I know this is confusing.

23 Q. Now, the wells that were built by the
24 builder in Golden Glade Subdivision, who was the
25 builder?

1 A. That was -- his name was Mike Vogel, and I
2 cannot remember the name of his company.

3 Q. And you said those wells are currently
4 serving the residents while Environmental Utilities is
5 waiting for the permit?

6 A. Yes.

7 Q. Now, they are serving all of the customers?

8 A. In Golden Glade?

9 Q. Yes.

10 A. Yes.

11 Q. And is there a central facility that they
12 are served by?

13 A. No. They are connected with distribution
14 lines.

15 Q. Okay. And who built those distribution
16 lines?

17 A. We built -- I believe we -- I believe --

18 Q. I'm sorry. You're going to have to define
19 "we."

20 A. I know I am.

21 I believe Greg and I built them in
22 preparation -- when we went through -- prior to
23 construction when we purchased the property and
24 platted it, the first thing we do is go in and lay
25 distribution lines so we don't disrupt people's

1 property after they build so that the lines are in
2 place.

3 Q. And that was as the developer of the
4 subdivision that you did that?

5 A. Yes, yes.

6 Q. Would you look at the application that you
7 filed in this proceeding? Do you still have that in
8 front of you?

9 A. I do.

10 Q. And I think I heard you answer earlier that
11 you and Mr. Williams both prepared this application?

12 A. Yes.

13 Q. Is that correct?

14 I see that the application references
15 several exhibits, Exhibit A through Exhibit F, is that
16 correct, on the first two pages of the application?

17 A. Yes.

18 Q. Okay. Can you tell me where Exhibits A
19 through D would be found?

20 A. Well, A is the Certificate of Organization.

21 Q. Can you point to it in the application? It
22 says --

23 A. A-1 through --

24 Q. Okay. That's marked as Exhibit A, the
25 pages 1 through 5; is that correct?

1 A. Yes. Then B starts with the map of the
2 service area.

3 Q. All right.

4 A. B-1, B-2, B-C -- just B-1 and -2.

5 Q. And then C is the feasibility study?

6 A. Is the feasibility study.

7 Q. And, specifically, where is Exhibit D?

8 A. I believe it's the -- I believe it should be
9 this document (indicated).

10 Q. Now, on page -- let me see. You're showing
11 me a document that says Eagle Woods and Golden Glade
12 at the top; is that right?

13 A. Yes.

14 Q. It has several columns, Golden Glade water
15 system --

16 A. Yes.

17 Q. -- and then the years 2002, 2004, 2006 under
18 those columns?

19 A. Yes, ma'am. I believe that should be marked
20 Exhibit D.

21 Q. Now, look at page 1 of the application, if
22 you would, under item 6, and does it not reference
23 Exhibit D there in that paragraph?

24 A. Yes.

25 Q. And what does it say Exhibit D is?

1 A. The construction permit.

2 Q. A copy --

3 A. That's not it.

4 Q. -- of the construction permit issued by the
5 Missouri Department of Natural Resources Public
6 Drinking Water Program is attached hereto as
7 Exhibit D, is that it?

8 A. That is. And it is not.

9 Q. That is not attached. Has it been filed in
10 this proceeding?

11 A. I don't know.

12 Q. I haven't seen it.

13 MR. WILLIAMS: May it please the Commission,
14 it appears those have been omitted. I do have those,
15 and I will mark them as exhibits.

16 COMMISSIONER MURRAY: Would counsel please
17 make copies and put that in the record since that was
18 to be part -- an integral part of the application?

19 MR. WILLIAMS: Absolutely.

20 COMMISSIONER MURRAY: And would counsel let
21 me see a copy of that at this point, please?

22 MR. WILLIAMS: Certainly.

23 There are two separate permits that have
24 been issued.

25 BY COMMISSIONER MURRAY:

1 Q. Mrs. Williams, your husband has just handed
2 me two letters from the Department of Natural
3 Resources to Mr. Gregory Williams, and attached to
4 those letters are -- I'm going to have to -- I'm not
5 going to question about these because it's going to
6 take some time to review them to really understand
7 what I see.

8 A. I understand.

9 COMMISSIONER MURRAY: You can pick these up
10 when you would like. And please make copies and get
11 it to us this morning so we can review them.

12 JUDGE WOODRUFF: Mr. Williams, if you would
13 like to come forward and get those.

14 MR. WILLIAMS: Certainly.

15 COMMISSIONER MURRAY: And, your Honor, those
16 would be marked -- those would be exhibit --

17 JUDGE WOODRUFF: They have not been marked
18 yet. Do you wish us to mark them now?

19 MR. WILLIAMS: I think that would be
20 appropriate, yes.

21 JUDGE WOODRUFF: Are they going to be two
22 separate ones or one together?

23 MR. WILLIAMS: Let's make them one together.

24 JUDGE WOODRUFF: They would be 16.

25 (EXHIBIT NO. 16 WAS MARKED FOR

1 IDENTIFICATION.)

2 BY COMMISSIONER MURRAY:

3 Q. Now, Mrs. Williams, in the Positions
4 Statement that Osage -- that Environmental Utilities
5 filed for this proceeding, you said earlier, I
6 believe, that you helped prepare that also?

7 A. The Positions Statement?

8 Q. Yes. It was filed on December 21st.

9 A. Could you show me?

10 Q. It was a document in this case that all of
11 the parties had to file, a Positions Statement stating
12 their position on the issues.

13 A. Okay. I don't have that with me. I'm
14 sorry.

15 Q. Maybe you can answer this without having it
16 in front of you.

17 And the pages aren't numbered, but the issue
18 about whether Environmental Utilities and its
19 principals, by seeking a Certificate of Convenience
20 and Necessity, as requested in its application, will
21 contribute to the nonprofitability of Osage Water
22 Company hereby causing Osage Water Company to be less
23 culpable of paying its valid debts (Hancock debenture)
24 as authorized in prior rate base cases, that your
25 position that's stated included the statement that

1 Osage Water Company has not sought to intervene in
2 this proceeding.

3 Is that -- do you recall that that would
4 have been a part of your position, that Osage --

5 A. Well, to my knowledge it had not.

6 Q. Okay. Who would have made that -- who would
7 make that decision if Osage Water Company were to
8 intervene? Who would make the decision whether or not
9 to intervene?

10 A. I don't know. Perhaps Mr. Mitchell. I
11 don't know.

12 Q. Mr. Mitchell?

13 A. The president.

14 Q. I thought he had abandoned Osage Water
15 Company?

16 A. He abandoned operations.

17 Q. But he is still making decisions for the
18 company?

19 A. I don't understand your question. He's not
20 made any decisions that we are aware of. He did not
21 intervene in this proceeding to my knowledge.

22 Q. And you think that would have been his
23 decision to make, whether Osage Water Company would
24 intervene in this proceeding?

25 A. I don't know who would have made it. It

1 would -- it would either be he or Mr. Hancock.

2 Q. But not Mr. Williams?

3 A. I don't understand why Mr. Williams would
4 intervene or why it would be his job to intervene.
5 I'm sorry. I'm not following your question.

6 Q. What is Mr. Williams' position with Osage
7 Water Company?

8 A. He is, I believe, the vice-president now.

9 Q. Okay. And your position, as you said
10 earlier, is you are the operations manager?

11 A. Yes.

12 Q. And you've been in that position since --

13 A. July 9th.

14 Q. On the last issue on the Positions
15 Statement, the issue being whether the customers of
16 Osage Water Company are being properly served by
17 allowing its assets to be used by a competing utility
18 in an adjacent area, the position of Environmental
19 Utilities is that this is not relevant to the
20 Commission's determination. Do you see that?

21 A. I see the issue here.

22 Q. Okay. And my question to you is, since this
23 Commission has issued Certificates of Convenience and
24 Necessity and approved tariffs for Osage Water
25 Company, doesn't the Commission have an obligation --

1 some obligation to the customers of Osage Water
2 Company?

3 A. Yes, I believe so.

4 Q. Now, on -- oh, who wrote your testimony?
5 Who wrote your testimony?

6 A. Greg drafted it. We went over it together.
7 We wrote it together. I signed it.

8 Q. He drafted it, you reviewed it and signed
9 it?

10 A. Yes.

11 Q. Okay. Now, you were asked earlier, I
12 believe, by Office of Public Counsel if the Commission
13 were to grant a certificate to Environmental
14 Utilities, would you comply with all of the conditions
15 that the Public Service Commission imposed.

16 Has Osage Water Company complied with any
17 conditions that have been imposed upon it by this
18 Commission?

19 A. Well, yes, we have.

20 Q. Okay. And our records, if we reviewed them,
21 would substantiate that?

22 A. Well, I don't know what your records say,
23 but I know I'm familiar with the disposition agreement
24 and we've worked extremely hard the last six months,
25 Greg and I have, to fulfill those requirements in

1 terms of accounting and metering, and all of the
2 requirements we've worked very hard to fulfill.

3 Q. And you're totally in compliance, or do you
4 know?

5 A. I know -- I know that the annual reports are
6 not current, and we are, to my knowledge, 60 days
7 behind in our assessments. But other than that,
8 without having them in front of me, I thought that we
9 were.

10 Q. Okay. And would -- you would be the one who
11 would know that if you were or were not, wouldn't you?
12 Wouldn't you as the managing -- the operator --
13 operations manager be aware of whether or not you were
14 in compliance?

15 A. I should, yes.

16 Q. Okay. Your answer earlier about whether
17 Environmental Utilities would comply is that you would
18 if they were reasonable, if the conditions of the
19 Public Service Commission imposed were reasonable.

20 Now, assume that the Commission were to
21 grant this certificate and you did not think that the
22 conditions imposed were reasonable. I'm assuming you
23 would not comply. Is that what we could infer from
24 your answer.

25 A. No. The word I should have used is

1 "feasible," economically and physically possible,
2 because we have attempted to complete every
3 requirement that we've been given and have done so
4 within our physical and financial abilities.

5 Q. Okay.

6 A. But some have been given to us that are
7 beyond our physical and financial abilities and those
8 we just haven't been able to comply with. And it's
9 not a matter of -- of not wanting to comply, but it's
10 ability.

11 Q. Is that a part -- do you think that is a
12 part of the reason why when we grant a certificate to
13 a company to provide service to customers that we are
14 supposed to look at and determine whether or not they
15 are financially able to comply with any requirements
16 that we would impose?

17 A. Sure. Sure.

18 Q. And the company making the application is
19 responsible for showing us and meeting the burden of
20 proof that that is the case; is that right?

21 A. That's right.

22 Q. Are you the only witness that is being
23 offered today in support of this application?

24 A. I believe so. I am.

25 Q. Now, I just want to be sure. Is -- in terms

1 of the water that is currently being supplied to the
2 customers of Golden Glade, is anybody currently
3 billing for that?

4 A. Our secretary accidentally billed for
5 customers last two -- two weeks ago while we were on
6 vacation, and we have apologized to them and removed
7 the charges.

8 Q. How did your secretary know what to bill?

9 A. I don't know. We've had trouble with our
10 secretary understanding all of the complex situations
11 that we're involved in here.

12 Q. And you've had trouble understanding the
13 complex situations?

14 A. Yes, ma'am, I have.

15 Q. And you have several companies?

16 A. Yes, ma'am.

17 Q. And you and your husband are principals in
18 all of those?

19 A. We have -- well, we have our development
20 company and the law office and then we've got involved
21 with the water company, yes.

22 Q. And you understand that when customers are
23 served by a public utility that they are to be billed
24 only for the things that actually apply to their
25 service?

1 A. Yes, ma'am.

2 Q. And you understand that when a company owns
3 several other companies, that it is incumbent upon
4 that company to show this Commission how it allocates
5 all of the expenses and how it keeps separate all of
6 its billing --

7 A. Yes, ma'am.

8 Q. -- so that this Commission can be certain
9 that customers are billed only for what they use?

10 A. I do understand that.

11 Q. And yet you don't understand the
12 complexities of these companies that you are the
13 operating manager for and your secretary does not
14 understand. You've stated both of those.

15 And who are the other employees that we
16 could then rely upon to see that these allocations
17 were appropriately made?

18 A. Well, we knew immediately as soon as our
19 secretary billed them that it was an error and we
20 immediately took care of the error.

21 Q. Okay. And how are you making all of
22 these -- keeping all of these records for later review
23 by the Public Service Commission and by the Office of
24 Public Counsel?

25 A. We keep a copy of each statement that's

1 mailed out in a binder by month so that the auditors
2 can come in and see exactly what has happened. In
3 addition to our phone call log, we're keeping exact
4 records of bill records as well, a paper copy.

5 Q. And expense records, how are you allocating
6 the expenses?

7 A. On computer.

8 Q. Okay. That's -- most people do things by
9 computer today, but you have to have input into the
10 computer. What are you inputting into the computer?

11 A. Well, we write our checks on the computer
12 and the computer keeps track based on categories that
13 we were given by PSC Staff.

14 Q. And you've talked about your office. Whose
15 office is that?

16 A. Well, Greg and I own it.

17 Q. Greg and you as what?

18 A. Greg and I --

19 Q. Which entity?

20 A. Greg and I own the office property,
21 individually, own the office, and we are using our
22 building to run the water company.

23 Q. Which water company?

24 A. Osage Water Company.

25 Q. Are you going to be using the same office

1 for Environmental Utilities, assuming you get
2 approval?

3 A. Yes, ma'am.

4 Q. And how are they -- the office expenses for
5 those two companies allocated?

6 A. Which two companies?

7 Q. Osage Water Company and Environmental
8 Utilities?

9 A. Are you asking about office expenses?

10 Q. Yes.

11 A. Well, Osage Water Company buys its own
12 postage. We keep track of the copies we make on
13 Greg's copier. We track our faxes going out. And
14 then everything else is just absorbed. We do not
15 charge rent to the water company. We did purchase a
16 computer in August -- July.

17 Q. Who owns the computer?

18 A. The water company owns the computer.

19 Q. Which water company?

20 A. Osage Water Company owns the computer
21 system.

22 Q. And how do you allocate -- okay. Will
23 Environmental Utilities use that computer system?

24 A. No. No. We have computers of our own, but
25 we bought a water company computer.

1 Q. That will only be used for Osage Water
2 Company?

3 A. We haven't got that far. We're applying for
4 an application, and that's as far as we've gotten.

5 Q. You haven't figured out how you're going to
6 allocate these things yet?

7 A. I don't have time to think about things that
8 might happen. I have enough -- I have a lot to do
9 right now.

10 Q. So does the Commission.

11 A. I know.

12 Q. And the Commission has a big responsibility,
13 and when a company applies for an application to serve
14 customers, it is that company's responsibility to come
15 to this Commission and prove to this Commission that
16 it is capable financially, technically, managerially,
17 that it has the resources that it will serve those
18 customers well, and we have to have something to rely
19 on.

20 When a witness, the only witness, who comes
21 to us to present an application for a certificate
22 cannot even answer simple questions about how
23 allocations are going to be made, how operations are
24 run, it's very difficult for this Commission to say,
25 yes, it's in the public interest to grant this company

1 a certificate.

2 And what I'm trying to determine is what
3 evidence do we have that Environmental Utilities can
4 provide service to these customers and that it would
5 be in the public interest for us to grant you a
6 certificate to do that?

7 A. Well, could I point to our -- to our
8 performance in the last six months on the water
9 company?

10 Q. Of Osage Water Company?

11 A. Of Osage Water Company.

12 Q. And what do you think is exemplary or
13 noteworthy about that performance? You may if you
14 like.

15 A. Well, I think it's been evident to the Staff
16 members who have entered our office and gone into the
17 field with us that there have been a lot of
18 improvements since July since we took over,
19 improvements in customer service, in bookkeeping, in
20 record-keeping. We can put our hands on anything they
21 ask for when they walk in. And I don't feel like I
22 should be having to tell you this because I think it's
23 the Staff members -- it should come from them
24 because --

25 Q. But Mrs. Williams you are the witness. It

1 is not Staff's responsibility to prove that you should
2 have the certificate. It is the company's
3 responsibility --

4 A. I understand.

5 Q. -- who is applying for that certificate.

6 A. I understand. I'm simply suggesting if I'm
7 doing a good job managing Osage Water Company, to me,
8 in my mind, the only difference is it's a different
9 set of books, it's a different -- it's a different
10 name. It's the same job. It's different customers,
11 maybe a different computer, if necessary. Whatever
12 the requirements are we're willing to do it.

13 What we're not willing to do is give a
14 \$90,000 water system to a company that has not been
15 successful and continue to affiliate ourselves with
16 people who managed the company in a way that was not
17 satisfactory to our customers or to the Commission,
18 and that's the entire purpose of this application.

19 Q. Is to avoid having it under the name of
20 Osage Water Company?

21 A. Or be affiliated with the people therein,
22 yes, ma'am. It's not just the name. It's the people.
23 We want to disassociate ourselves with people who we
24 do not want to be affiliated with anymore.

25 Q. And what do you plan to do with the areas

1 that Osage Water Company currently serves?

2 A. We -- you mean different than what we're
3 doing now?

4 Q. Well, you want to disassociate yourselves
5 from Osage Water Company. Is that -- I thought I
6 heard you say that.

7 A. Right. We would love to do that, but we
8 feel like we have an obligation to our 400 customers,
9 some of whom are in our own subdivisions. We have
10 made a substantial investment in the company with zero
11 return.

12 Osage Water Company is at a point where it
13 has to borrow money. We need a cash infusion of money
14 to survive. When we have approached the partners in
15 Osage Water Company to go to the bank and borrow the
16 money necessary to bring all of their debts current,
17 no one was willing to do that. And Greg and I are not
18 willing to borrow any more money or infuse any more
19 money into the Osage Water Company, including our --
20 including our Golden Glade systems.

21 If we're doing all of the work and infusing
22 all of the money, we're not going to -- we're not
23 going to do that anymore. We're not going to give
24 them the system that we paid for, this system.

25 Q. Give them. Give who?

1 A. Right. We're not going to give Osage Water
2 Company our Golden Glade water system.

3 Q. And you're not going to do that for what
4 reason?

5 A. Because they can't afford it. They can't
6 pay us for it.

7 Q. They -- and when you say "they," who do you
8 mean?

9 A. Osage Water Company.

10 Q. But break it down.

11 A. Well, there is no money.

12 Q. Break down Osage Water Company. Who are you
13 referring to?

14 A. Osage Water Company.

15 Q. They can't pay us. "They" who?

16 A. Right.

17 Q. You and Greg are part of the water company.

18 A. The water company, right.

19 Q. And who are the parts of the company that
20 can't pay you and Greg?

21 A. It would be Pat, Dave, customers. There is
22 no --

23 Q. Customers are not paying their bills?

24 A. No. There is no extra money. There is no
25 money left over at the end of the month to pay anyone,

1 Dave, Pat, or us --

2 Q. So --

3 A. -- because we're behind -- because we're --

4 Osage Water is saddled with debt. That's what I'm

5 trying to say.

6 Q. So what are you going to do with Osage Water

7 Company?

8 A. I don't know.

9 Q. All right. So you don't know what's

10 going --

11 A. But we do not want to put our Golden Glade

12 well into it for that reason.

13 Q. You want another company to be started.

14 A. We want to protect our investment.

15 Q. Now, you began being the operations manager

16 for Osage Water Company in July of 2001?

17 A. That's right. That's correct.

18 Q. I get the notices from the Missouri Clean

19 Water Commission about their meetings, and the notice

20 that the Missouri Clean Water Commission sent out

21 for -- I'm sorry. Not the notice. But their agenda,

22 the Missouri Clean Water agenda for December 19, 2001.

23 I found it extremely interesting that part

24 of their agenda was the Golden Glade Subdivision. And

25 I'm just going to read to you from the Missouri Clean

1 Water Commission's agenda on September 19, 2001.

2 You were operations manager at that time.

3 Correct?

4 A. Yes, ma'am.

5 Q. "This subdivision consists of two platted
6 phases. Sewer service to the first phase of the
7 subdivision is provided by waste water holding tanks
8 which have been connected to the collection system for
9 the Osage Water Company KK treatment plant without
10 authorization."

11 Do you know anything about that?

12 A. I know -- yes, ma'am. I know the builder
13 did connect those without our permission.

14 Q. And the builder there was --

15 A. Mike Vogel, V-o-g-e-l.

16 Q. Okay. And that was without your permission.

17 Whose permission would the builder have
18 needed?

19 A. I would think he should have made
20 arrangements with us as the developers.

21 Q. Do you know, does Osage Water Company -- did
22 Osage Water Company have a permit for provision of
23 sewer service to that subdivision?

24 A. I'm not sure. At what time are you --

25 Q. In September of this year.

1 A. I'm not sure.

2 Q. Would you have any reason to doubt that in
3 Case No. SA-99-268 a certificate was granted to Osage
4 Water Company to provide sewer service to the Golden
5 Glade Subdivision on October 14, 1999?

6 A. No.

7 Q. Then I'm going to go on and read the rest of
8 the agenda on that item.

9 "Gregory Williams is the developer of Golden
10 Glade Subdivision, the president, chairman, and
11 secretary of the homeowners association, and he was
12 the president of Osage Water Company until January
13 2001."

14 Do you have any reason to dispute those
15 statements -- that statement?

16 A. No. I don't remember when he changed
17 offices exactly.

18 Q. But he was the president of Osage Water
19 Company?

20 A. At one time he was.

21 Q. Okay. The next sentence in the agenda on
22 that item is, "Mr. Williams' current affiliation with
23 Osage Water Company is as secretary of the
24 corporation."

25 You would agree with that; is that right?

1 A. Yes. I think I said vice-president earlier.

2 Q. Okay. But it --

3 A. I think it should be secretary.

4 Q. All right. "In his duties as developer of
5 Golden Glade Subdivision..."

6 He was the developer of Golden Glade
7 Subdivision?

8 A. Yes, ma'am.

9 Q. "...Mr. Williams is supposed to pump and
10 haul from the holding tanks to prevent them from
11 overflowing."

12 You're not aware of that?

13 A. No.

14 Q. "The tanks are also not supposed to be until
15 such time as the treatment plant is expanded to serve
16 Golden Glade Subdivision."

17 A. Right.

18 Q. You're aware of that?

19 A. Right.

20 Q. "At this time, the Osage Water Company KK
21 treatment plant is only permitted to serve 25 lots in
22 the Eagle Woods Subdivision, phases I and II."

23 A. I think that's right.

24 Q. "Staff will request referral of this matter
25 to the Office of the Attorney General for litigation."

1 Do you know the status of that?

2 A. No, I do not. But I believe Mr. Vogel was
3 doing his own pumping.

4 Q. And you think that Osage Water Company had
5 no responsibility?

6 A. I know we never authorized or approved him
7 to build the houses or put the systems in, so I'm not
8 sure what our responsibility should have been.

9 Q. Who would have known? Who would know what
10 your responsibilities would have been?

11 A. I imagine Gregory would.

12 Q. But as the attorney, Mr. Williams is not
13 here as a witness; is that correct?

14 A. Right.

15 Q. Now, the -- some of the statements that you
16 made I find a little distre-- well, more than a little
17 distressing.

18 For example, when you were questioned about
19 the letter that went to the customers of Eagle Woods
20 and you stated that Osage Water Company had gotten all
21 of the permits and --

22 A. Uh-huh.

23 Q. -- you said that your customers wouldn't
24 understand so you sent it out like -- really under one
25 name when it should have been another so the customers

1 would understand.

2 A. Uh-huh.

3 Q. Do you think it is better to deceive the
4 customers than to try to tell them the truth about
5 what's happening?

6 A. No, ma'am, I do not, and this was not
7 intended as a deception.

8 Q. Now, you had also indicated that you think
9 you -- you think you -- and I guess you're talking
10 about Environmental Utilities -- has acquired all of
11 the necessary state permits; is that right?

12 A. I'm not sure where we are on the permitting
13 process.

14 Q. Do you think the permitting process is
15 important?

16 A. Well, yes.

17 Q. Do you think that it's important to not
18 proceed with anything until you are permitted to do
19 so?

20 A. Yes, ma'am, I do.

21 This letter -- could I make a -- clarify
22 this letter?

23 This was not sent to all Eagle Woods'
24 customers. We had a list of people we sent this to.

25 Q. And why would you only have sent it to a

1 few?

2 A. Well, because this has to do with the --
3 it's very complicated.

4 This has to do with ten residents in Eagle
5 Woods who were still being billed by Summit
6 Development, because even though he transferred his
7 water and sewer systems over to us in March of 2000 --

8 Q. You're speaking of Mr. Westenhaver?

9 A. Mr. Westenhaver.

10 Because he had not received his permits for
11 his subdivision, the DNR denied him the ability to
12 connect those ten houses to our treatment plant and he
13 was pumping those ten houses. Are you following me?

14 Q. No, I'm not. And I generally don't follow a
15 lot of what Osage Water has done.

16 A. It's very complicated.

17 Q. It is very complicated.

18 A. This was Mr. Westenhaver. This has -- he
19 built all of his houses without permits in Eagle
20 Woods.

21 Q. Built the houses without permits to build
22 the houses?

23 A. No. Permits for water and sewer for the
24 Department of Natural Resources.

25 Q. Did you build the water and sewer for those

1 houses?

2 A. Yes, ma'am. Right. And then he contracted
3 with Osage Water Company for us to take them over, and
4 we got the permits. Osage Water Company did receive
5 the permits to serve Eagle Woods.

6 But from March of 2000 until this letter he
7 continued to bill ten of those customers because the
8 Department of Natural Resources would not allow him to
9 turn on the lift station to put it into our treatment
10 plant that we paid for and prepared for him because he
11 had violated the regulations.

12 Q. Mr. Westenhaver --

13 A. Westenhaver.

14 Q. -- had violated them?

15 A. Yes, ma'am.

16 Q. Osage Water Company had not?

17 A. No. This was -- no. We were in compliance
18 and trying to turn his customers into our billing
19 system. And what happened was he would bill them at
20 the beginning of the month for sewer, and then we
21 would bill -- because we billed in -- ahead, a month
22 ahead, for the month ahead, and we billed in arrears.
23 We billed for the month prior.

24 And what I was trying to do with this letter
25 was explain to the customers as simply as possible

1 that we had taken over the system and would start
2 billing them as new customers.

3 Q. That "we," Osage Water Company?

4 A. "We," Osage Water Company. Everything I've
5 done for the last six months has been Osage Water
6 Company except for my applications for EU. I've
7 worked full-time for Osage Water Company.

8 Q. Okay. I would like to ask you some
9 questions about the testimony that you filed, your
10 Direct Testimony on page 4. And your lines are not
11 numbered, so I'm going to have to just count down.
12 Count down to line 9. The sentence that
13 begins, "I directed."

14 A. Yes, ma'am.

15 Q. "I directed," and I assume "I" is you; is
16 that correct?

17 A. Yes.

18 Q. "I directed Jeff Smith to divert the
19 effluent away from their properties until the problem
20 could be completely diagnosed and repaired."

21 Now, there you're talking about the Cimarron
22 Bay?

23 A. Yes, ma'am.

24 Q. Okay. Before you directed Jeff Smith to
25 divert the effluent away from the properties, was the

1 Missouri Department of Natural Resources consulted?

2 Did you consult them?

3 A. I met with Martin Hummel and Steve Jones
4 both at the site.

5 Q. Before you directed Jeff Smith to divert the
6 effluent?

7 A. Yes.

8 Q. Now, it says, "The customers are greatly
9 relieved at this interim solution to the problem which
10 was not particularly expensive or time consuming."

11 What does it actually mean that you
12 diverted -- directed him to divert the effluent? What
13 happened to the effluent?

14 A. It was directed down the hill away from any
15 habitation. It was -- it was diverted --

16 Q. So it was just --

17 A. -- out of their yards.

18 Q. -- sewage directed, effluent?

19 A. Effluent, yes.

20 Q. When you talked to Mr. Hummel -- and I can't
21 remember who the other Public Service Commission
22 person --

23 A. Steve Jones is with the Department of
24 Natural Resources.

25 Q. Steve Jones. What did they say about

1 directing effluent that way?

2 A. Well, they treated it as a temporary
3 solution to the problem by getting it out of their
4 yards and off their property until we could get it
5 fixed.

6 Q. Is that just surface -- effluent running
7 along the surface?

8 A. No. It's more complicated than that.
9 Somehow, as -- I'm not real technical at
10 this, but I understand there is some type of a
11 blockage in the lines. The treatment plant sits on
12 top of the hill in rock, and the lines go down the
13 hill and under the roadway in Cimarron Bay. And there
14 is a blockage somewhere in those lines that would
15 require hours and hours of shovel digging to find the
16 leak or the blockage.

17 Q. And is that work being done now?

18 A. That work has not been done yet. We have
19 done some testing and some digging, but we have not
20 yet found the problem.

21 Q. And when you say "we," you're talking about
22 Osage Water Company?

23 A. Yes, Osage Water Company's field person,
24 Jeff Smith, has been working on it, monitoring
25 closely, digging when he can, trying to find the

1 blockage.

2 Q. And that's been being done for how long?

3 A. Since we took over in July.

4 Q. And what would you say -- how much progress
5 would you say has been made at this time?

6 A. Well, we have not, to my knowledge, found
7 the source of the blockage, so the only progress that
8 I could document would be getting the effluent out of
9 our customers' yards.

10 Q. Where is that effluent going?

11 A. I believe it's going down the other side of
12 the hill into the woods, if there is any at all.

13 We've had it checked and, basically, the problem
14 mainly occurred in the summer months when our
15 customers are in full usage. On the off season, from
16 fall to spring, it doesn't surface to my knowledge.

17 Q. So it's just less effluent at that time?

18 A. I haven't had any calls at all or reports of
19 any since fall, but we are concerned about spring,
20 about having it fixed by spring.

21 Q. The calls you were receiving, was it because
22 of odor?

23 A. It was water standing in their yards and --
24 not so much odor, but water in their yards.

25 Q. On page 5 of your Direct Testimony, the

1 answer -- this is under the qualifications, and it's
2 in your second answer. You state that -- and you're
3 speaking about your husband and yourself.

4 "We originally applied to the Commission for
5 a Certificate of Convenience and necessity for a
6 company we formed under the name of Sunrise Water
7 Company to provide water and sewer service to our
8 development project in what is now known as the
9 Chelsea Rose Service Area for Osage Water Company."

10 Were you personally involved in the Sunrise
11 Water Company?

12 A. Personally involved?

13 Q. It says "a company we formed," and I assume
14 since the previous statement was referring to your
15 husband and yourself --

16 A. I'm sure I was -- I'm sure I was involved.
17 I can't remember how much I did or what.

18 Q. But you remember that you did it because you
19 put it in your testimony?

20 A. Well, yes.

21 Q. Okay.

22 A. I understand the question.

23 Q. What has happened to Sunrise Water Company?

24 A. Nothing. It's just -- it's just a
25 corporation.

1 Q. It's not doing anything?
2 A. No, ma'am.
3 Q. Does it still -- is it -- but it's still
4 incorporated?
5 A. I think so.
6 Q. Who are the officers of the corporation?
7 A. I don't know without having it in front of
8 me.
9 Q. Okay. How many companies total, if you
10 know, have you and your husband formed?
11 A. I think this would be the fifth.
12 Q. And they would be Sunrise Water Company --
13 Hurricane Deck Holding Company.
14 Q. Okay.
15 A. We didn't form Osage Water Company, so take
16 that one off. Osage Water Company was Pat Mitchell's
17 company since 1987. That's not our company.
18 Q. Were you involved in it from the beginning?
19 A. No.
20 Q. At what point in time did Mr. Williams
21 become involved in it?
22 A. Let's see. He got involved in 1992 as the
23 attorney.
24 Q. Was he an officer?
25 A. He became an officer, I believe -- I don't

1 remember if he became an officer in '92 or not.

2 Q. Okay. What are the other companies you and
3 your husband have formed?

4 A. I have a real estate corporation called
5 Sunrise -- well, actually it's registered under
6 Westside Management Property, Incorporated. And then
7 Environmental Utilities.

8 Q. And where is your real estate office?

9 A. It's in the same building. We have a very
10 small building in Sunrise Beach at Highway 5 and Lake
11 Road 533.

12 Q. And are you the person who would file any
13 documents that Sunrise Water Company would be filing,
14 if it's still in existence?

15 A. File documents with --

16 Q. Well, if you have to file any with the
17 Secretary of State or any tax documents or anything
18 like that?

19 A. I fill out forms and send them in every
20 year. They are the same every year.

21 Q. Okay. So you are the one who takes care of
22 the documents for all of these companies?

23 A. Pretty much. Are you talking about
24 corporate papers?

25 Q. Yes.

1 A. Yes.

2 Q. On page 6 of your Direct you indicate that
3 Environmental Utilities was formed to provide an
4 alternative provider to OWC.

5 Now, what do you mean by an "alternative
6 provider?" Are you talking about a provider in some
7 of the areas that Osage Water Company currently
8 provides service?

9 A. No. As an alternative to Osage Water
10 Company.

11 Q. And that's what I'm asking you. An
12 alternative in what way?

13 A. A different provider.

14 Q. So --

15 A. Someone not associated with Osage Water
16 Company.

17 Q. Okay. So you may -- you mean those
18 customers who are currently served by Osage Water
19 Company, give them an alternative?

20 A. No. No. I meant it as someone other than
21 Osage Water Company, for new customers to have an
22 alternative to someone other than Osage Water Company.

23 Q. But still be served by you and Mr. Williams?

24 A. Yes. We are not all there is to Osage Water
25 Company.

1 JUDGE WOODRUFF: Commissioner Murray, if I
2 could interrupt, it's time for lunch.

3 COMMISSIONER MURRAY: Time flies when you're
4 having fun.

5 JUDGE WOODRUFF: We will break for lunch now
6 and come back at 1:00.

7 (A recess was taken.)

8 JUDGE WOODRUFF: Ms. Williams is still on
9 the stand, and questions from Commissioner Murray.

10 COMMISSIONER MURRAY: Thank you, your Honor.

11 BY COMMISSIONER MURRAY:

12 Q. On page 7 of your Direct Testimony,
13 Mrs. Williams, you indicate in the answer to the last
14 question that you're answering on that page that
15 Environmental Utilities also owns a mini-excavator and
16 a bobcat.

17 Were those two items formerly owned by Osage
18 Water Company?

19 A. They were.

20 Q. They were. And when were they transferred
21 to Environmental Utilities?

22 A. They were repossessed in February 2001.

23 Q. By whom?

24 A. By either Forklifts of Central Missouri -- I
25 believe it was Forklifts of Central Missouri or -- the

1 company we were purchasing the -- Osage Water Company
2 was purchasing them from.

3 Q. All right. And then what happened?

4 A. Then Greg and I went directly to the company
5 and bought them back with our personal funds and
6 hauled them back on a truck because neither of them
7 were operable. Both of them needed a lot of
8 mechanical repairs, which my father-in-law performed
9 on them. We got them back up and running again and
10 have used them in our Golden Glade development to dig
11 the water and sewer lines.

12 Q. In Golden Glade?

13 A. In Golden Glade.

14 Q. You testified earlier that Moreland drilled
15 the well but Moreland did not do the lines?

16 A. Right.

17 Q. Now, you say Environmental Utilities also
18 employs Frances North as secretary and receptionist.
19 Is Frances North employed by anyone other than
20 Environmental Utilities?

21 A. Frances North is Osage Water Company's
22 secretary.

23 Q. Anybody else employ her?

24 A. Does anyone else employ her?

25 Q. Uh-huh.

1 A. Not to my knowledge.

2 Q. And she works out of the same office that is
3 the law office, the real estate office, the Osage
4 Water Company office, and the Environmental Utilities
5 office?

6 A. That's correct.

7 Q. And how is her time allocated between Osage
8 Water Company and Environmental Utilities?

9 A. It is 100 percent Osage Water Company.

10 Q. Okay. So what do you mean in your testimony
11 when you say Environmental Utilities also employs
12 Frances North?

13 A. It should say --

14 Q. Let me ask you this: Has Frances North done
15 any work for Environmental Utilities such as --

16 A. She did prepare --

17 Q. -- prepare any documents, typing, that sort
18 of thing?

19 A. She did type the summary of our expenses for
20 us, but I believe that's all.

21 Q. Okay. And how was that time charged? To
22 whom was it charged?

23 A. To Environmental Utilities.

24 Q. Okay. But you said she's 100 percent
25 employed by Osage Water Company?

1 A. Until that, she was. I believe that's her
2 only job for EU.

3 Q. Okay. And does she keep a time log?

4 A. She does. Well, she does not for Osage
5 Water Company, no. But we do know that she did this
6 one job for us.

7 Q. Did Environmental Utilities pay her for that
8 job?

9 A. We have not.

10 Q. Did Osage Water Company?

11 A. No.

12 Q. On page 8 of your testimony you talk
13 about -- and this is in answer to the first question
14 that is stated on that page -- an operation -- that
15 Environmental Utilities has an operation and testing
16 agreement with Mike McDuffy of Lake of the Ozarks?

17 A. Uh-huh.

18 Q. How long has -- well, let me go on and
19 finish that sentence because it says, "...under the
20 terms of which he provides regular operation and
21 testing of all Osage Water Company's water supplies
22 and sewage treatment facilities."

23 How long has Mr. McDuffy been providing
24 operation and testing of OWC facilities?

25 A. He provided July, August, September,

1 October, and November. When our contract with him
2 ceased and we contracted -- then we sent the water --
3 I'm sorry -- waste water samples to Mr. Mitchell to
4 Water Lab and took the water samples to Jeff City
5 ourselves. We could no longer afford his services.

6 Q. Okay. And is this the same Mr. Mitchell
7 that you're trying to disassociate from?

8 A. Yes.

9 Q. And then you go on to speak about Jeffrey
10 Smith who has applied for an MDNR license under the
11 grandfathering provision of MDNR's licensing
12 regulations; is that correct?

13 A. Yes.

14 Q. And did I understand you to say he has not
15 yet been granted that license?

16 A. That's correct.

17 Q. And in the last sentence to that answer you
18 say, The company will be able to provide the
19 systems -- I'm sorry -- to operate the systems
20 directly once Mr. Smith is licensed, which will reduce
21 the costs incurred in operating the water system.

22 Which systems are you saying that the
23 company will be able to operate directly, and which
24 company are you speaking about?

25 A. Well, it would really apply to either

1 company. If he is a licensed operator, we could
2 contract with him to operate all of our systems, any
3 system that -- that we chose.

4 I believe specifically in this application,
5 this testimony, that it would apply to the Golden
6 Glade well that we're referring to.

7 Q. Okay. Assume with me for a minute, if you
8 would, just hypothetically, that a violation of either
9 the Missouri Department of Natural Resources laws or
10 rules or the Missouri Public Service Commission rules
11 occurred in the Golden Glade Subdivision area in the
12 operation of its water system after the permit --
13 after a Certificate of Need hypothetically was granted
14 to Environmental Utilities and a tariff was approved.

15 What would be your position in terms of that
16 violation? Who would be in violation of the -- either
17 the Missouri Department of Regulation -- Missouri
18 Department -- I'm sorry -- Missouri DNR or the
19 Missouri PSC? And I'm just asking you, in your
20 opinion, who would be in violation if Environmental
21 Utilities were cited a violation?

22 A. You mean what person or what people would be
23 responsible for?

24 Q. What person, what entity?

25 A. Well, if EU had the application approved and

1 the certificate, then EU would be responsible.

2 Q. And assuming you had contracted as an
3 operator, would it be your testimony that it would
4 still be EU?

5 A. I'm still fairly inexperienced. I'm not
6 going to pretend that I have a lot of experience in
7 this area, but from the last six months of operating
8 Osage Water Company, it was my understanding that the
9 principals were responsible, the people running the
10 company were responsible for any violations, and we
11 worked with the operator.

12 I know we did have one, say, a bad water
13 test when we had problems at Cedar Glen, and we worked
14 with Mr. McDuffy. He advised us on how to resolve
15 those problems, both in terms of repairing the system
16 and in terms of the appropriate actions with the
17 regulatory agencies. So we worked through it
18 together, but I felt like it was our ultimate
19 responsibility to the state regulatory agencies --

20 Q. Okay.

21 A. -- as principals of the company.

22 Q. You would not attempt to deny, then, that it
23 would be Environmental Utilities' responsibility?

24 A. No, that's not my understanding.

25 Q. On page 9 you state in answer to a question

1 that, a modified version of the Water and Sewer
2 Department's model water tariff was filed with the
3 application herein. The company is currently
4 reviewing Staff comments and suggestions regarding
5 revisions thereto.

6 What is the status of the company's review
7 of those suggestions?

8 A. Greg's been handling that so I'll have to --
9 maybe later in the testimony -- I know he's been
10 dealing with Mr. Merciel on that, and I'm not --

11 Q. You don't know?

12 A. I don't know.

13 Q. On page 10 of your testimony, in answer to
14 the first -- actually, it's the second question on
15 that page, and then that question said, "Is there a
16 current need for sewer utility service within the
17 proposed service area? And you answer yes.

18 Is that a typo? Aren't you applying for
19 water service here?

20 A. Yes. It looks like a typo.

21 Q. And Osage Water Company is currently
22 providing the sewer utility service; is that correct?

23 A. Yes.

24 Q. On page 12 of your Direct, in the first
25 answer there on that page, "My husband and I will

1 retain ownership of the water system and lease it to
2 Golden Glade Landowners Association, the
3 not-for-profit homeowners association."

4 Has Osage Water Company ever operated the
5 water system at Golden Glade?

6 A. No one has ever operated the water system at
7 Golden Glade.

8 Q. Okay. And this -- okay. I'm sorry. I
9 should have read the question before I read the answer
10 because this would have reminded me that I wanted to
11 ask you that question.

12 It was in answer to what will happen to the
13 central water system if the Commission does not grant
14 the certificate, and that is what would happen
15 according to you; is that correct?

16 A. Uh-huh, yes.

17 Q. Okay. And on the bottom of that page,
18 you're talking about Eagle Woods being a part of an
19 area certificated for water and sewer utility to Osage
20 Water Company; is that correct?

21 A. Yes.

22 Q. When was Osage Water Company granted that
23 certificate? Do you recall?

24 A. No, I don't.

25 Q. Do you know how many homes are occupied

1 there?

2 A. I have it in the records, but I don't have
3 it with me up here, I don't believe.

4 Q. Do they have -- does Eagle Woods have a
5 homeowners association?

6 A. I believe they do.

7 Q. Who was the developer of Eagle Woods?

8 A. Ron Westenhaver.

9 Q. So you and your husband would not be the --

10 A. Incorporators.

11 Q. -- you would not have control of that
12 homeowners association?

13 A. No, we do not.

14 Q. On page 13, the first line, "OWC is in the
15 process of establishing water utility service to all
16 customers in that area." Let me see what you're
17 referring to, which area.

18 All right. In that answer you are talking
19 about a wholesale distribution arrangement between
20 Environmental Utilities and Osage Water Company to
21 provide additional water supply to Eagle Woods as
22 contemplated if the Commission grants the certificate
23 here.

24 Has there been any preliminary work done to
25 establish an arrangement between Environmental

1 Utilities and OWC for the Eagle Woods area?

2 A. No, ma'am, not to my knowledge.

3 Q. And Harbor Ridge, are there any homes
4 occupied there?

5 A. I believe so.

6 Q. And how are they currently being served?

7 A. We're not sure.

8 Q. And does Osage Water Company have anything
9 to do with Harbor Ridge?

10 A. We entered into -- I believe Osage Water
11 Company had a contract to provide services pending
12 their DNR permits which have never been issued.

13 Q. Do you know why?

14 A. It is my understanding that there were fines
15 to be addressed for those violations that have not
16 been satisfied.

17 Q. And were those vio-- did those violations
18 occur when Osage Water Company was operating it, or --

19 A. No. Osage Water Company has never assumed
20 operation of Harbor Ridge systems.

21 Q. Never actually operated them?

22 A. No, ma'am. We did not connect their lines
23 to our system.

24 Q. On page 14 you're talking about the status
25 of the development and overall development plan at

1 Golden Glade, and you say that the project is designed
2 to contain 100 lots but may contain slightly more or
3 less.

4 When was the development designed?

5 A. I think it was designed around -- in the
6 year 2000 or just shortly after we purchased the
7 property. Greg did that.

8 Q. So when did you purchase it?

9 A. I don't remember.

10 Q. And you and Greg --

11 A. Exactly.

12 Q. And you and Mr. Williams personally --

13 A. Yes, ma'am.

14 Q. -- purchased it?

15 When were the lots platted? Do you know?

16 A. No, I don't have that with me. I know there
17 have been two phases. We just platted the cul-de-sac,
18 which is phase II, I believe, in the spring of 2001.

19 Q. Were phase I and II fairly equal in size, in
20 other words, 50 lots on each one?

21 A. No. Phase I was, I believe, 19 lots and
22 phase II was only seven.

23 Q. So there are several more phases planned?

24 A. Hopefully.

25 Q. Can you tell me -- can you list the

1 shareholders for Osage Water Company?

2 A. No.

3 Q. Do you have any idea?

4 A. Well, I know it's Greg and Pat and maybe me.

5 I'm sorry.

6 Q. Do you have any idea of percentages?

7 A. No.

8 Q. Shareholders of Environmental Utilities?

9 A. Would be Greg and I.

10 Q. And on the bottom of that page, the

11 question, "Is there a plan for the transfer of the

12 ownership of OWC assets to Environmental Utilities in

13 the future?" And your answer is that you and your

14 husband think it would be a positive move but haven't

15 submitted such a transfer to either OWC's board of

16 directors or shareholders for their consideration and

17 approval.

18 Who are OWC's board of directors?

19 A. That would be -- I believe that's

20 Mr. Mitchell and Mr. Williams and myself.

21 Q. So two out of the three directors think it's

22 a positive move and you've not submitted it to the

23 third?

24 A. Our annual meeting is scheduled for

25 tomorrow.

1 Q. January 8th -- 9th -- 8th.

2 A. 8th, I think.

3 Q. On page 19 you're talking about Osage Water
4 Company, and you say that their systems have been
5 adversely affected by problems with other systems, the
6 customers served by Osage Water Company. Let me start
7 on page 18.

8 The statement there, "We believe that it is
9 in the interest of the customers served by Osage Water
10 Company that some of its systems be transferred to
11 another utility company as their systems have been
12 adversely affected with problems of other systems."

13 Exactly which systems have been affected
14 adversely with problems of other systems?

15 A. Well, our Osage Beach systems are being
16 taken away by the City of Osage Beach.

17 Q. You mean the customers are transferring to
18 Osage Beach; is that right?

19 A. That's right. They are connecting to the
20 City as they lay the lines down Highway 54, so that's
21 creating a financial problem with Osage Water Company,
22 which has an adverse effect on all of its customers.

23 In addition, we had a developer at the
24 Cimarron Bay condominium development that did not
25 carry through with his contract with the company,

1 which also affected all of Osage Water Company's
2 customers and created a lot of debt that's plaguing
3 the company.

4 Q. Now, the customers that are transferring to
5 the Osage Beach system, now, that's in an area that
6 was just recently certificated, is that right, within
7 the last year or so?

8 A. To Osage Water Company?

9 Q. Yes.

10 A. No. No. That was -- let me think.

11 Q. Which -- which subdivision are you talking
12 about?

13 A. I'm sorry. I thought you said Osage Beach.
14 We have an Osage Beach North and an Osage Beach South
15 certificated area that was certificated back in '97,
16 '96.

17 Q. Okay. But you've had another area in Osage
18 Beach recently certificated where customers are
19 transferring to the City; is that correct?

20 A. Well, you may be referring to Parkview Bay
21 Condominiums, but that's been three -- three years.

22 Q. I thought there was one more recent than
23 Parkview.

24 A. I don't believe so.

25 Q. All right. On page 21 of your Direct

1 Testimony under whether the service will promote the
2 public interest, the last question there says, Would
3 you -- why would service by OWC better promote the
4 public interest than service by a homeowners
5 association?

6 Do you think the service by OWC would better
7 promote the public interest than service by a
8 homeowners association?

9 A. Just for the reasons stated in the answer.
10 I think that's the reason the Public Service
11 Commission promotes for public systems over the
12 homeowner systems in that in terms of the operating
13 costs, long-term, major repairs, replacements of the
14 distribution lines and public water supply.

15 Q. And because Osage Water Company is a
16 regulated system, it would be -- customers would be
17 better served by that than an unregulated homeowners
18 association; is that right?

19 A. Possibly.

20 Q. On page -- on the attachment to your Direct
21 Testimony that is -- oh, it begins Eagle Woods and
22 Golden Glade, and it's not labeled. It just has
23 page 1. Do you see that at the back of your
24 testimony, a chart?

25 A. Are you looking at my October testimony or

1 December?

2 Q. It's your Direct Testimony that was filed on
3 October 31. It's the very last page and it's attached
4 to that testimony.

5 A. I don't have it on mine. I'm sorry.

6 Okay.

7 Q. I just -- I need some explanation because I
8 don't understand the document.

9 First of all, in the first -- it's actually
10 the second column, the one that contains numbers, the
11 first number there is by six-inch water well and has
12 the number one and the next line is meters and has the
13 number eight.

14 What do those numbers designate?

15 A. I believe it means one water well, eight
16 meters, one certificate --

17 Q. Okay.

18 A. -- 41 customers.

19 Q. Okay. What one certificate are you showing
20 there?

21 A. I will be honest with you. I don't know
22 what those numbers are. I did not prepare this.

23 Q. It was attached to the application. I think
24 this is what you called Exhibit D, what you thought
25 was Exhibit D, which was really supposed to be a copy

1 of the permit, and it's also attached to your Direct
2 Testimony.

3 A. Okay.

4 Q. Do you know why it would have been attached
5 to your testimony or included in the application?

6 A. Well, without going back and reading it all,
7 I'm not real sure why or where it should be.

8 Q. Take your time and read it.

9 A. It is projections.

10 Q. Take your time and look over it.

11 A. Those are the numbers, one water well, eight
12 meters to begin with going up to 53 meters in 2006,
13 one certificate to begin with, two certificates by
14 2004.

15 Q. And what is the -- is this for just the
16 water system; is that right?

17 A. Yes, Golden Glade water system.

18 Q. So the one certificate in the first column
19 is designating the certificate you're currently
20 applying for; is that right?

21 A. I believe that's correct.

22 Q. And you plan to apply for another
23 certificate before the year 2004?

24 A. I'm not real sure of all of the regulatory
25 requirements, but I believe that another certificate

1 would be necessary.

2 Q. Okay. Then the second column over where the
3 first number there is 60,000, what does that
4 designate?

5 A. I believe it's the cost of the well itself.

6 Q. Is that the same well that you said cost
7 79,000 earlier, that you and your husband had paid, I
8 think, 79,000?

9 A. Well, we included the well house in that
10 cost.

11 Q. So which number is --

12 A. I'm not sure why this number is different.
13 I don't know.

14 Q. You don't know which numbers you would like
15 us to use in trying to determine a revenue
16 requirement?

17 A. I don't know what this -- I don't know what
18 this means. I know how much we spent on the well and
19 that's the number I gave you earlier. So I'm sorry.
20 I'm not sure about this particular form.

21 Q. Go on down in that same column, under
22 "general overhead," in the year 2002, it shows
23 9 percent, and then you go over to 2004, it shows 13
24 percent; you go over to 2006, it shows 17 percent.

25 Where did you get those percentages? How

1 did you arrive at overhead percentages?

2 A. I did not prepare this. I'm sorry. I
3 cannot answer that question.

4 Q. Okay. But you are the witness for the
5 company. You are the only witness, so if you can't
6 answer them, they can't be answered?

7 A. Well, I can't lie to you.

8 Q. I appreciate that.

9 So you can't support the document?

10 A. I'm not -- I would have to -- I would have
11 to consult with my accounting person.

12 Q. Okay. Well, you can't support the document
13 then; is that what you're saying?

14 A. Sorry.

15 Q. Okay. Let's go to your Surrebuttal
16 Testimony.

17 On page 2, in answer to that question
18 about -- this is under "Surrebuttal to James Russo" --
19 this is your testimony that you filed on December 5th
20 on page 2. Under the heading "Surrebuttal to James
21 Russo" in the first answer you say that, "My husband
22 and I have already paid for the water well and
23 distribution system from the Golden Glade project from
24 our personal funds and have a complete accounting for
25 those costs available. That accounting is attached

1 hereto as schedule EU-2."

2 Now, if you would go to schedule EU-2 at the
3 back of your testimony, that shows vendor total paid
4 on the first page of that schedule, \$79,323; is that
5 right?

6 A. Right.

7 Q. And the general contractor's fee of
8 \$7,932.30?

9 A. Correct.

10 Q. And the general contractor is --

11 A. My husband.

12 Q. Okay. And on the other pages to that
13 schedule, you list several vendors, and Jackson
14 Engineering -- Jackson Engineering has worked for
15 Osage Water Company; is that correct?

16 A. That's correct.

17 Q. And is going to be doing work for
18 Environmental Utilities; is that right?

19 A. I'm not -- we have not committed, no.

20 Q. And who -- who is associated with Jackson
21 Engineering?

22 A. That would be Pat Mitchell, William P.
23 Mitchell.

24 Q. The same man that you're trying to
25 disassociate from? Is that the same man you testified

1 about earlier?

2 A. It's William P. Mitchell.

3 Q. And what did you just say this is?

4 A. Pardon me?

5 Q. Who did you just say this is?

6 A. William P. Mitchell.

7 Q. The same man?

8 A. I'm sorry. The same man as -- our partner

9 in Osage Water Company? Yes.

10 Q. Okay. And on page 3 of that document it

11 shows Osage Water as a vendor for \$2,000. Can you

12 tell me what that was?

13 A. Without the receipts in front of me, by my

14 memory, I'm sorry, I cannot.

15 Q. How about Jeff Smith, what was that for,

16 \$616.50?

17 A. I'm sure it was for labor.

18 Q. And Water and Sewer Supply on page 4, is

19 that a company?

20 A. Yes, ma'am.

21 Q. What do they supply? What do they provide?

22 A. They sell meters and pits and loops and

23 pipe.

24 Q. Okay. Back on page 4 -- page 2, rather, of

25 this testimony of yours, you faulted Mr. Russo, I

1 believe, for not -- apparently not being aware that
2 you and your husband had already paid all of this from
3 your personal funds and you indicated that this
4 accounting in this schedule EU-2 demonstrated that.

5 My question to you is -- in looking at that
6 schedule, all I see is a list, and I don't know how
7 Mr. Russo would be able to determine that any or all
8 of those had been paid and by whom.

9 How would that document demonstrate that to
10 Mr. Russo or anyone else?

11 A. First of all, we didn't fault Mr. Russo. We
12 think he does a fabulous job. And I'm not sure why he
13 wasn't aware -- I know all of this happened about the
14 same time, and it took us awhile to get our records in
15 order and make the copies of the checks and prepare
16 our file on it, so I guess I don't -- maybe I don't
17 understand your question.

18 Q. Well, you say that accounting is attached
19 hereto as schedule EU-2, and that's the schedule we
20 just went over. I don't see anything on that schedule
21 other than a listing that anybody could have prepared
22 and basically listed anything. I don't see any proof
23 of anything in that schedule. I don't see any proof
24 that it was paid by whomever it was paid by, and I
25 just don't know what that -- how that supports --

1 A. Are you asking me a question?

2 Q. Yes. I'm asking you -- because you stated
3 that Mr. Russo's testimony contained factual errors
4 and you went on to say apparently he was not aware at
5 the time of the preparation of his testimony that you
6 and your husband had already paid for the water well
7 and distribution system.

8 A. Oh.

9 Q. And then you point to EU-2 to demonstrate
10 that, and I'm just asking you, how does EU-2
11 demonstrate that you and your husband --

12 A. Well, he came to our office and went through
13 our entire file. There is more to our records than
14 EU-2. He went through everything, including cancelled
15 checks, I believe.

16 Q. Okay.

17 A. And we opened everything to him for access.

18 Q. All right.

19 A. At that time -- I'm sorry. The date is --
20 oh, here. November 29th. He did come and review all
21 of the supporting accounting records.

22 Q. And his testimony was filed after that or
23 before that?

24 A. His testimony, I believe, was filed before
25 that.

1 Q. What date did you say he reviewed them?

2 A. November 29th.

3 Q. His testimony was filed November 21st.

4 So you're not saying that this document EU-2
5 provides the proof of the cost of the well and
6 distribution system and the proof that you and your
7 husband have paid it all?

8 A. Well, no. It's a list of what we paid.

9 Q. Okay.

10 A. The proof that he paid it is in our file
11 that Mr. Russo was allowed to view.

12 Q. And it's not in evidence here in this
13 proceeding, is that right, to your knowledge?

14 A. I don't know. Most of the checks were
15 attached to the data requests that I gave Mr. Loraine
16 on Friday.

17 Q. On page 3 of that same testimony, you were
18 asked if you agree -- you were asked if you agree
19 with Mr. Russo's recommendation that the Commission
20 wait 18 months to initiate a complete rate case and
21 make a determination as to the allowable rate base of
22 Environmental Utilities, and you answer no and go on
23 to say, "It is important to Environmental Utilities
24 and its investors that a determination of its
25 investment allowable into rate base be made at or

1 before the time the ownership of those assets is
2 transferred to Environmental Utilities."

3 And those investors of Environmental
4 Utilities are --

5 A. My husband and I.

6 Q. And it's your testimony that there is
7 evidence in this record to support a determination of
8 what should be allowed in rate base?

9 A. I don't know what you need here today.
10 That's my attorney's job, is to make sure that
11 everything gets in that you need to make your
12 decision, and Mr. Russo presents what he was able to
13 determine. I'm simply testifying based on the
14 knowledge that I have, so --

15 Q. Okay. On page 6 of that same testimony,
16 about the fourth line down, you say, "If the
17 Commission grants the certificate requested herein,
18 Osage Water Company will be readily able to contract
19 with Environmental Utilities to provide a wholesale
20 supply of water from a community water system enabling
21 it to operate the Eagle Woods system as a single water
22 distribution system and to eliminate the existing
23 noncommunity wells"; is that right? Is that what you
24 said?

25 A. Yes, ma'am.

1 Q. So that's saying Osage Water Company would
2 be the supplier?

3 A. It's saying that Environmental Utilities, if
4 granted a certificate, would supply wholesale water to
5 Osage Water Company which is supplying Eagle Woods so
6 that everyone is on the good well, the new, good well,
7 and we could eliminate the seven or eight existing
8 wells that are out there --

9 Q. Okay.

10 A. -- privately owned.

11 Q. So the contract would be for Environmental
12 Utilities to provide wholesale water to Osage Water
13 Company?

14 A. Correct. That's my understanding.

15 Q. On page 8, I think you're talking about
16 Osage Water Company there, but I have to read this for
17 a minute first.

18 Is this Jeffrey Smith that you're referring
19 to there the same one that has applied for a license
20 and hasn't been granted it yet?

21 A. Yes, the grandfathered license.

22 Q. And he would, if he got that license, be
23 employed by both Osage Water Company and by
24 Environmental Utilities; is that right?

25 A. Potentially.

1 Q. The plan is to have him operating all of
2 them?

3 A. Yes. We've applied for all systems for
4 Jeff.

5 Q. I just noticed he's scheduled to take his
6 license exam --

7 A. Tomorrow.

8 Q. -- the same day as your annual meeting.

9 A. Yes, he is.

10 Q. Page 11 of that testimony, about -- oh, it's
11 one, two, three, four, five, six, seven -- the
12 sentence begins seven lines down in your first answer
13 there. "In addition," the sentence begins, "as a
14 result of confusion in filing of the water tariff
15 pages, OWC is faced with a reduction in its revenues
16 during January, February, and March of this year."

17 Do you see that statement?

18 A. Yes, ma'am.

19 Q. You filed this testimony on December 5th.
20 Right?

21 A. Yes.

22 Q. Okay. At that time, did you intend for
23 credits to begin in December or in January?

24 A. We were asked to credit for the month of
25 December's bill, which is measured at the end of the

1 month and billed at the end of the month for the prior
2 month. That's how our billing system works. We
3 measure the water used and bill at the end of the
4 month for that month's usage.

5 Q. So that December would have been a reduction
6 in January revenue, is what you're saying?

7 A. Correct.

8 Q. What is your billing date?

9 A. We bill -- we try to bill at the very end --
10 the very last day of the month.

11 Q. Try to. How often do you --

12 A. Well, it depends on where the weekend falls.

13 Q. And have any of those credits begun?

14 A. Yes, ma'am.

15 Q. At -- at the last date of December?

16 A. Yes. They went out around the 1st of
17 January.

18 Q. On page 15, the question was posed, "Do you
19 agree with Mr. Cochran's assertions" -- it's the last
20 question on the page -- "that the financial demise of
21 OWC is imminent?" And your answer goes on to say that
22 there is no question but that OWC is financially
23 challenged, and you go on to the last sentence on that
24 page, "OWC is at present meeting its day-to-day
25 operating expenses, is providing safe and adequate

1 service to all of its customers in all of its service
2 areas, and is expanding its customer base in areas
3 outside the City of Osage Beach."

4 Where is OWC expanding its customer base?

5 A. Our systems at Harbor Bay and Cedar Glen
6 continue to build condos, so that does not mean new
7 systems. It means additional units in the existing
8 system we have and in Golden -- in our KK area as
9 houses are built.

10 Q. Okay. Would you say there is a net --
11 continuing to be a net increase or net decrease in the
12 total number of customers served by Osage Water
13 Company?

14 A. Well, the company lost 50 customers this
15 month to the City of Osage Beach, and we only added
16 about five.

17 Q. So that would be a substantial loss?

18 A. I would call it a substantial loss.

19 Q. I'm trying to move along quickly, but
20 sometimes it takes awhile.

21 I believe you spoke earlier about a review
22 that the Staff was doing and that there had been --
23 Staff was pretty pleased with significant improvements
24 on the company since Osage Water since you took over
25 management?

1 A. That's my understanding from at least one
2 member of Staff.

3 Q. Okay. The Staff did file its report of an
4 investigation regarding quality of service monitoring
5 that they had done, and I guess you were aware that
6 they were going to be filing a report with us; is that
7 right?

8 A. Yes, ma'am.

9 Q. Part of what Staff said was that "Under
10 facility operation and management, while there appears
11 to be some recent improvement with regard to the
12 attention paid to the matter of facility operation and
13 maintenance, this continues to be an area where the
14 company expends only the minimum effort that is
15 required to keep its facilities operating."

16 And then it goes on to say, "However, it
17 should be noted that the company currently has only
18 one field person who is taking care of not only
19 facility operation and maintenance but also new
20 construction, construction inspections, response to
21 abnormal system problems, and the reading of water
22 meters."

23 Is that one field person to be shared with
24 the Environmental Utilities?

25 A. I don't know. I would think so.

1 Q. So that --

2 A. We would like to. But, you see, we've only
3 got him funded as part-time for Osage Water Company.
4 Staff recommended a part-time field person for Osage
5 Water Company, so we've been using him part-time for
6 Osage Water Company and the other part-time to finish
7 out our systems at Harbor Bay and Golden Glade because
8 the funds aren't there in the water company currently
9 to fund him full-time for Osage Water Company anyway.

10 So what -- the time we're using currently --
11 that we've been using for building the Golden Glade
12 system would be freed up to maintain the Golden Glade
13 system and other systems too.

14 Q. You've been using that same field person
15 for --

16 A. To build the Golden Glade --

17 Q. -- to build Golden Glade?

18 A. -- system, yes, ma'am. Which is complete.
19 It's completed.

20 Q. Who is that field person?

21 A. Jeff Smith. He's amazing.

22 Q. Okay. And he's been getting paid by --

23 A. Well, part-time by Osage Water Company and
24 part-time by Greg and I personally. We've been trying
25 to keep him on the payroll full-time so we don't lose

1 him.

2 Q. And is there documentation in this
3 proceeding --

4 A. You bet.

5 Q. -- that shows what he's been paid?

6 A. In this proceeding? I haven't seen all of
7 the exhibits. I mean, I didn't see all of the
8 exhibits going in.

9 Q. So you don't know? I mean, it's okay to
10 answer you don't know if you don't know.

11 A. I don't know for sure. I know that
12 information is available in our office. He keeps very
13 careful account of who he works for.

14 Q. And, by the way, in your application you
15 stated that Golden Glade is a new subdivision; is that
16 right?

17 A. Yes, ma'am.

18 Q. And when did Osage Water Company start
19 providing sewer service to Golden Glade Subdivision?

20 A. I'm not sure I have the exact date in my
21 material here.

22 Q. I have the application to provide sewer
23 service to Golden Glade that was filed by Osage Water
24 Company, and that was in Case No. WA-99-268, and that
25 was filed on December 11, 1998. And it stated that --

1 I believe that application called it a new
2 subdivision.

3 Do you still consider it a new subdivision?

4 A. To me that's new, yes.

5 Q. I think I'm getting close to the end.

6 A. We've been on our other subdivision for
7 thirteen years, so to me that's relatively new.

8 COMMISSIONER MURRAY: I believe that's all I
9 have, your Honor. Thank you, your Honor.

10 Thank you, Mrs. Williams.

11 JUDGE WOODRUFF: Okay. Commissioner Lumpe?

12 QUESTIONS BY COMMISSIONER LUMPE:

13 Q. Ms. Mitchell (sic), we're talking about
14 Golden Glade only. Right? Golden Glade is where
15 you're asking for this --

16 A. I would like to talk about that, yes.

17 Q. All right. Are there any condominiums
18 proposed for Golden Glade?

19 A. No, no condominiums.

20 Q. So the idea of there needing to be these
21 individual meters in condos really does not refer to
22 Golden Glade; is that correct?

23 A. Correct.

24 Q. All right. And we're only talking about
25 water, is that correct, not --

1 A. That's correct.

2 Q. All right. The sewer system is already in

3 place --

4 A. I believe.

5 Q. -- and certificated; is that correct?

6 A. Yes, ma'am.

7 Q. And where is the well? Is the well in

8 Golden Glade?

9 A. Yes, ma'am.

10 Q. All right. So it's not a well that's in

11 some other subdivision that you're bringing over to

12 Golden Glade?

13 A. No, ma'am.

14 Q. Okay. And my understanding is you own it;

15 is that correct?

16 A. Yes, ma'am.

17 Q. All right. And the difference in the

18 numbers that Commissioner Murray was talking about,

19 whether it's 79 or 60, could the -- were those numbers

20 developed at different times, or --

21 A. No. Something I should have said earlier

22 that I didn't was that Mr. Mitchell, Pat Mitchell, was

23 not paid in cash for his engineering work. We deeded

24 him a lot in the subdivision in exchange for that

25 engineering work. So we counted that value of that

1 lot in our cost --

2 Q. Okay.

3 A. -- of building the well.

4 Q. So that might allow for the difference
5 between the 60,000 cost that you have in that document
6 that's --

7 A. Oh, that document. I'm still confused about
8 that document.

9 Q. Okay.

10 A. But it would answer the question that
11 Mr. Loraine was getting to earlier about the
12 difference between -- his numbers didn't add up to
13 76,000 on the checks that I sent him because the
14 Ameren check was another 6,000 and I did not have the
15 dollar amount on the warranty deed that we transferred
16 for the engineering.

17 Q. All right. You're not proposing fire
18 protection in Golden Glade, are you, or will fire
19 protection be part of --

20 A. I don't think you're required to provide
21 fire protection.

22 Q. I was just curious whether you were.

23 A. I'm not real familiar with the fire
24 protection codes.

25 Q. So to your knowledge, you're not providing

1 fire protection as part of this water system?

2 A. I really don't know. Honestly, I don't
3 know.

4 Q. All right. And on the issue of allocations,
5 did I hear you correctly that you are using allocation
6 procedures that the Staff suggested?

7 Is there a model that they suggested or a
8 computer program that they suggested that would
9 disperse these allocations?

10 A. I'm not sure about that either.

11 Q. Okay. Just a couple more here.

12 I think there was some discussion on Harbor
13 Ridge, but tell me, what is your activity in Harbor
14 Ridge, if any?

15 A. Nothing. He's not permitted.

16 Q. Okay. And that's Mr. Westenhaver's --

17 A. Right.

18 Q. -- operation, not yours?

19 A. Right.

20 Q. Okay. The issue of a regulated company --
21 and it seems to me that one of the reasons Public
22 Counsel is suggesting is that they would prefer a
23 regulated company because it does provide some
24 oversight, et cetera.

25 Are you aware -- in the Department of

1 Natural Resources, they sort of have a hierarchy also
2 and their preference is for public water districts or
3 regulated districts and their second tier is
4 homeowners associations. Are you aware of that? In
5 other words, they have a preference -- DNR has a
6 preference for regulated or public districts as
7 opposed to -- to homeowners associations.

8 A. I know they prefer it, yes.

9 Q. Because I think they have it either
10 somewhere in their rules or at least I've seen it
11 somewhere where their preference is established that
12 way.

13 Okay. And there have been some questions
14 about the wholesale possibilities. Will this become
15 more evident, perhaps, after you've had your annual
16 meeting --

17 A. Well, I would hope so.

18 Q. -- whether those possibilities exist or
19 not --

20 A. I would hope so.

21 Q. -- because they may be significant to this?

22 A. I would hope so.

23 COMMISSIONER LUMPE: Thank you.

24 That's all I have.

25 JUDGE WOODRUFF: Commissioner Forbis?

1 COMMISSIONER FORBIS: Thank you, Judge.

2 QUESTIONS BY COMMISSIONER FORBIS:

3 Q. Hi. Good afternoon.

4 One question, and we'll go back to this
5 letter we've talked about a lot to the Eagle Woods
6 customers. It just -- it prompted something in my
7 mind.

8 You were talking about the letter. You
9 mentioned that you sort of stated some things sort of
10 simplistic because the customers maybe wouldn't
11 understand all that's going on, and that's certainly
12 understandable to me.

13 So I'm just curious, what's your sense of
14 what the customers do understand about the process,
15 both in Eagle Woods and in Golden Glade? Have you
16 spoken with them? Have there been informational
17 sessions, other memos?

18 A. There have been some phone conversations
19 when they call in to ask questions. They call in to
20 ask us, Why is Mr. Westenhaver still pumping? We
21 thought you were taking over. And we've tried to
22 explain to them that we've been waiting for him to get
23 his permits without discrediting him to his buyers,
24 his homeowners in his subdivision.

25 It's a very delicate issue because there

1 have been so many violations and so much confusion.
2 We've just tried to keep it to a minimum but still
3 make the transition over as smoothly as possible and
4 get them on our billing system so we can pay for these
5 systems we bill.

6 Q. Is that Eagle Woods?

7 A. These are Eagle Woods customers.

8 Q. And then the Golden Glade -- potential
9 customers are also --

10 A. Well, we haven't really communicated a lot
11 with Golden Glade customers other than telling them
12 we're waiting for permits.

13 Q. Okay. The feedback has been nominal at this
14 point?

15 A. Yes.

16 Q. Okay.

17 A. There's some people very unhappy with
18 Mr. Westenhaver, but I've personally worked very hard
19 to communicate with each customer to explain as much
20 as I can on a level that they would understand to just
21 ask them to wait until everything gets resolved, and
22 that's pretty much -- they've been very cooperative to
23 us, and -- but this -- I understand that this has
24 caused some confusion the way it was worded, and it
25 shouldn't have been worded this way.

1 COMMISSIONER FORBIS: Thank you.

2 JUDGE WOODRUFF: Go ahead. Commissioner
3 Lumpe?

4 FURTHER QUESTIONS BY COMMISSIONER LUMPE:

5 Q. I'm trying to find -- I think it's in your
6 response to Ms. Bolin, the Public Counsel, and if I'm
7 reading correctly here on page 9, I believe it is, you
8 say, "The company plans to implement all of those
9 practices." And I'm assuming those are the conditions
10 Ms. Bolin has laid out; is that correct?

11 And you say the company plans to implement
12 all of those practices and procedures whether the
13 Commission requires it to do so or not with the
14 possible exception of separate meters. And the issue
15 of -- since there will be no condominiums needing
16 separate meters, it would appear that you're saying
17 you would meet all of those other conditions; is that
18 correct?

19 A. That's right.

20 COMMISSIONER LUMPE: Thank you.

21 JUDGE WOODRUFF: I have a couple of
22 questions.

23 QUESTIONS BY JUDGE WOODRUFF:

24 Q. I'm trying to determine what is the current
25 status of Osage Water Company.

1 Is there any litigation going on now or
2 contemplated between yourself and your former -- your
3 partners in that --

4 A. Yes.

5 Q. -- venture?

6 A. Yes. We have two different lawsuits with
7 Dave Hancock, to my knowledge, and then one other
8 lawsuit with the City of Osage Beach regarding our
9 Parkview Bay system.

10 Q. Okay. And Dave Hancock left Osage Water
11 Company several years ago; is that correct?

12 A. That's my understanding.

13 Q. Okay. I'm sorry. I'm drawing a blank on
14 the name right now, but the gentleman who just left in
15 July or stopped being involved?

16 A. Mr. Mitchell.

17 Q. Mr. Mitchell, yes.

18 Any litigation with Mr. Mitchell?

19 A. No.

20 Q. Any contemplated?

21 A. No.

22 Q. Are you still discussing things with him?

23 A. Absolutely.

24 Q. Okay. Now, it's my understanding that you
25 and your husband are currently the owners of the

1 Golden Glade Subdivision? You own the land.

2 A. That's correct.

3 Q. And you are subdividing it?

4 A. Right.

5 Q. So I assume that means you're going to be

6 selling lots --

7 A. Yes.

8 Q. -- to potential home builders?

9 A. Yes.

10 Q. The people who are going to be buying lots,

11 are they concerned about where their water supply is

12 going to be coming from?

13 A. They don't seem to be.

14 Q. They don't seem to be?

15 If they come in and say, I'm looking --

16 first of all, do they ask, Where is the water going to

17 come from?

18 A. Well, not to my knowledge, no.

19 Q. Do you sell these through an agent or --

20 A. Some of -- all of the homes so far -- we've

21 sold three ourselves and one to Pat and the rest were

22 sold through agents.

23 Q. Okay.

24 A. And as we said, the agent, the one agent

25 that sold them all, drilled his own wells and did not

1 wait for our permits to go through.

2 Q. Did you approve of him --

3 A. Absolutely not. We asked him to stop. He
4 kept building. He kept selling. He bought a block of
5 lots up-front.

6 Q. Would that have been permitted under the
7 restrictions of the --

8 A. No.

9 Q. -- subdivision?

10 A. We would have had to file civil litigation
11 to stop him, and we had so many other lawsuits going,
12 we did not do that.

13 Q. Okay. In your opinion, would it make any
14 difference to potential buyers of the lots whether the
15 land is being -- excuse me -- whether the water is
16 being provided by a homeowners association rather than
17 a regulated utility?

18 A. That's hard to say. I've been in the real
19 estate business at the Lake for twelve years. The
20 more educated buyers prefer a central system that's
21 regulated. The less educated want a well in their
22 back yard. It depends on who's buying.

23 Q. I have just one more question about this map
24 that was marked as Exhibit 15.

25 There is a large green area which is listed

1 as park. Now, is that actually a park, or is that a
2 subdivision called "Park"?

3 A. No. It's a -- it's called the Mansfield
4 State Forest donated by the Mansfield family. It
5 belongs to the State, Department of Conservation, I
6 think.

7 Q. That's been in the news recently?

8 A. Yes. They tried to sell it, and the family
9 rose up and protested, and I don't believe it will be
10 sold.

11 Q. Okay. So at this point, it's going to be
12 remaining a park?

13 A. Yes.

14 JUDGE WOODRUFF: I believe that's all of the
15 questions I have, so we'll go back to recross,
16 beginning with Staff.

17 MS. KIZITO: None for Staff.

18 JUDGE WOODRUFF: Pardon me?

19 MS. KIZITO: We don't have any further
20 questions.

21 JUDGE WOODRUFF: Public Counsel?

22 MS. O'NEILL: Thank you.

23 RECROSS-EXAMINATION BY MS. O'NEILL:

24 Q. Good afternoon.

25 This morning when you were answering

1 questions from Commissioner Murray, you had a
2 discussion about whether or not the existing houses in
3 Golden Glade were all served by private wells. Do you
4 recall that questioning?

5 A. Yes.

6 Q. Okay. I'm a little -- I'm hoping that you
7 can clarify some confusion for me.

8 If you'll look at your Surrebuttal Testimony
9 at page 6, toward the middle of the page there, there
10 is some discussion about where the water source is for
11 the existing houses in Golden Glade. Can you find
12 that answer?

13 A. Yes.

14 Q. It's the first full question and answer on
15 the page.

16 A. Yes.

17 Q. And in that answer you indicate that five of
18 the houses have no water supply other than the central
19 system; is that correct?

20 A. Correct.

21 Q. Are those houses occupied right now?

22 A. I believe two of those are occupied.

23 Q. Okay. And so there are only six single
24 family homes in the subdivision that actually take
25 water from wells; is that correct?

1 A. I believe so.

2 Q. Where do the other houses get their water?

3 A. The two that are on the central system?

4 Q. Yeah.

5 A. From the central system.

6 Q. And that's the central system that you and

7 your husband built personally?

8 A. I'm not sure, but I believe they are.

9 Q. Okay. So they are being served from the

10 system now?

11 A. I believe they just moved in and they are

12 being served. They are not being charged.

13 Q. You also had a discussion with Commissioner

14 Murray about some billing issues with Eagle Woods

15 residents as the reason why that letter, Exhibit 12,

16 went out?

17 A. Right.

18 Q. Do you recall that?

19 Is it your testimony that Osage Water was

20 billing those Eagle Woods residents for sewer service?

21 A. No. We've never billed them for sewer

22 service. We will not bill them for sewer service

23 until Mr. Westenhaver quits.

24 Q. Okay. So you're not sending them bills?

25 A. We're trying to get him to stop so we can.

1 Q. Okay. So there is not a double billing
2 situation going on?

3 A. No. Well, there was one month because we
4 warned him that we were going to bill and he billed
5 anyway. He billed.

6 Q. In the event that Environmental Utilities
7 receives its certificate and begins operation, is it
8 your intent that Frances North will have her time
9 allocated between Environmental Utilities and your
10 other operations?

11 A. I would like to see that happen if that's
12 agreeable.

13 Q. Okay. Is that what you intended when you
14 discussed Frances North being an employee of
15 Environmental Utilities in your testimony?

16 A. We did up-front when we hired her, yes.

17 Q. And in your testimony, that's why that's in
18 your testimony?

19 A. Yes, ma'am.

20 Q. You had some discussions with, I believe,
21 Commissioner Murray also regarding the debt situation
22 of Osage.

23 Do you know what the current level of
24 long-term debt is for Osage?

25 A. I believe our back taxes are around 40,000,

1 and we owe another, I think, twenty on the Harbor Bay
2 Construction project.

3 Q. Do you know what the debt to equity ratio
4 for Osage Water Company is right now?

5 A. No.

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

7 JUDGE WOODRUFF: Thank you.

8 And for Hancock?

9 MR. LORAIN: Judge, what's my next exhibit
10 number?

11 JUDGE WOODRUFF: The next exhibit number
12 would be 17.

13 RECROSS-EXAMINATION BY MR. LORAIN:

14 Q. Ma'am, when we were talking, I believe,
15 Commissioner Murray asked you about the contract
16 between Harbor Ridge and Summit Investments and Osage
17 Water.

18 A. Yes.

19 Q. Those were the two that I had talked with
20 you about during my discussion with you; is that true?
21 Do you remember me giving you these?

22 A. I saw two contracts.

23 Q. Pardon me?

24 A. There were two contracts.

25 MR. LORAIN: All right. At this time,

1 Judge, for marking purposes, I would like to go ahead
2 and put the whole contract in for whatever purpose.

3 JUDGE WOODRUFF: Okay.

4 MR. LORAIN: But do you want me to mark
5 them 15?

6 JUDGE WOODRUFF: It would be 17 and 18.

7 MR. LORAIN: Seventeen and 18, or 17-A
8 and --

9 JUDGE WOODRUFF: They would be 17 and 18.

10 MR. LORAIN: Okay. Thank you.

11 JUDGE WOODRUFF: Which is which?

12 BY MR. LORAIN:

13 Q. I'm going to hand you the Harbor Ridge
14 contract again, so -- that's the one I showed you
15 previously, isn't it? It says Harbor Ridge?

16 A. Yes.

17 Q. And it's the one that says, "Ozark Water
18 Company agrees to construct and install the water main
19 from Osage Water Company's water well site located in
20 Golden Glade Subdivision." That's the one we read.
21 Right?

22 A. I don't know.

23 Q. Pardon me?

24 A. I don't know.

25 Q. All right. Well, do you think it is or --

1 yes or no?

2 A. I don't know. It might be.

3 Q. Well, is that the one I showed you
4 previously?

5 A. Well, you showed me two.

6 Q. All right. I'll show you the other one
7 then.

8 Let me show you the other one too. Is this
9 the one from Summit Investment signed by your husband
10 and also signed by Ron Westenhaver?

11 A. Yes.

12 Q. So would that constitute the two that we
13 talked about?

14 A. I don't know. Is there another one?

15 Q. No.

16 A. Okay.

17 MR. LORAIN: Thank you.

18 Judge, it was 17 and 18?

19 JUDGE WOODRUFF: Yes.

20 MR. LORAIN: So 17 would then be the Harbor
21 Ridge.

22 JUDGE WOODRUFF: Seventeen is Harbor Ridge.

23 MR. LORAIN: Eighteen would be Eagle Woods,
24 and I have the copies here.

25 (EXHIBIT NOS. 17 AND 18 WERE MARKED FOR

1 IDENTIFICATION.)

2 MR. LORAIN: Judge, I move for the
3 admission of 17 and 18 into evidence.

4 JUDGE WOODRUFF: Have other counsel been
5 able to see these?

6 MR. LORAIN: Yes.

7 MS. O'NEILL: I don't know that I've
8 received a copy of those.

9 MR. LORAIN: They are in --

10 MS. O'NEILL: Are they contained somewhere
11 else?

12 MR. LORAIN: I believe so, but I will give
13 you one right now.

14 Do you have another Harbor Ridge there
15 judge?

16 JUDGE WOODRUFF: Which was that?

17 MR. LORAIN: Seventeen.

18 Now --

19 JUDGE WOODRUFF: Okay. I have to -- you've
20 offered it. I haven't asked.

21 MR. LORAIN: Sorry.

22 JUDGE WOODRUFF: Exhibits 17 and 18 have
23 been offered into evidence. Are there any objections
24 to their receipt?

25 MS. O'NEILL: No, your Honor.

1 JUDGE WOODRUFF: Hearing none, they will be
2 received into evidence.

3 (EXHIBIT NOS. 17 AND 18 WERE RECEIVED INTO
4 EVIDENCE.)

5 BY MR. LORAIN:

6 Q. Mrs. Williams, these were the two contracts
7 that pertained to this well on the Golden Glade
8 property; isn't that true?

9 A. I didn't get a copy.

10 Q. Well, I can't just keep manufacturing these
11 things, but I know there is three of them right here
12 in front of me. Let me get those. I'm sorry.

13 Here is a 17 and here is an 18.

14 A. Thank you.

15 Q. It takes a paper mill to operate there. I'm
16 sorry.

17 You've seen those prior to coming in here
18 today, haven't you?

19 A. I haven't really read them.

20 Q. You've seen them, haven't you?

21 A. No, I haven't seen them.

22 Q. You knew about them?

23 A. I knew that OWC's attorney entered into
24 contracts with Summit Investments.

25 Q. And with Harbor Ridge?

1 A. This is a Summit Investments contract too.
2 Summit Investments owns Harbor Ridge and Eagle Woods.

3 Q. Right. And so the answer to the question
4 is, yes, I knew that they existed and these are them;
5 is that correct?

6 A. I don't know. I didn't prepare them. I
7 didn't execute them.

8 Q. Are they signed by your husband, both of
9 those two documents?

10 A. Yes.

11 Q. Thank you.

12 Mrs. Williams, these -- if these lots that
13 are served and all of the lots that you've been
14 talking about could be served, I believe your
15 testimony was earlier that they could be a viable
16 source of income for your new company?

17 A. Yes.

18 Q. And is it also true that they could be a
19 viable source of income for OWC?

20 A. Yes.

21 Q. And to that end -- and I heard the
22 cross-examination of Commissioner Murray, and I want
23 to reiterate my thinking on this.

24 There are -- two out of three directors are
25 represented by yourself and Mr. Williams out of OWC.

1 True?

2 A. I believe that's true.

3 Q. Mr. Mitchell is the other one?

4 A. Yes.

5 Q. Okay. Now, if OWC wanted to intervene in
6 this matter, two of the three directors could vote yes
7 or no, couldn't they?

8 A. I guess.

9 Q. Okay.

10 A. Yes.

11 Q. If OWC wanted to supply the water for this
12 as opposed to Environmental Utilities, two out of the
13 three directors could vote for that, couldn't they?

14 A. Yes.

15 Q. And, in fact, the reason you want to
16 disassociate yourself from Mr. Mitchell -- he's the
17 other two out of the three -- he's the one out of the
18 three. Correct?

19 A. Yes.

20 Q. The reason you want to do that is not so
21 much that you don't want to use his services --
22 because you've already used his services since he's
23 disassociated. Right?

24 A. Right.

25 Q. So the real reason is that there is debt

1 there, isn't there, in OWC that needs to be paid?

2 A. That's one reason, yes.

3 Q. That's a big reason. Isn't there a
4 debenture to my client that has to be paid?

5 A. There's debts to all three partners that
6 need to be paid, yes.

7 Q. Okay. And, in fact, they are in the form of
8 preferred stock, aren't they?

9 A. Yes.

10 Q. And there's promissory notes to back those
11 preferred stocks up?

12 A. Yes. We'd all like to get paid.

13 Q. I'm sure they would.

14 And it would be helpful in getting them paid
15 if OWC did this work instead of bringing this new
16 company in here before the Commission. It would help
17 OWC make those payments, wouldn't it?

18 A. Well, yes. If we took things we paid for
19 and put it in, it would help them, yes.

20 Q. It would certainly help OWC, wouldn't it?

21 A. Yes.

22 Q. Okay. Now, your testimony, as I understand
23 it, was that there would be a shareholders meeting and
24 board of directors meeting tomorrow --

25 A. Yes.

1 Q. -- for OWC?

2 A. Yes.

3 Q. Along those lines, two out of the three
4 directors could have repaired the mini-excavator and
5 the bobcat for the use of OWC. True?

6 A. Yes.

7 Q. But instead they were repaired and used for
8 Environmental Utilities?

9 A. They have been used for both companies.

10 Q. But they are now owned by Environmental
11 Utilities?

12 A. Yes.

13 Q. They were owned by OWC?

14 A. They were being purchased under contract by
15 OWC who could no longer make the payments.

16 Q. And two out of the three directors made that
17 decision to let them go back to --

18 A. No. Mr. Mitchell was in charge of
19 operations, and we did not know that they were going
20 back.

21 Q. Nevertheless, they have been repaired and
22 they are back in use, and they've dug subdivision
23 ditches, haven't they?

24 A. Yes, paid for by Greg and I.

25 MR. LORAIN: I don't believe I have

1 anything further.

2 JUDGE WOODRUFF: Thank you.

3 We will go to redirect.

4 MR. WILLIAMS: Thank you.

5 REDIRECT EXAMINATION BY MR. WILLIAMS:

6 Q. The intervenor in this case, Hancock
7 Construction, and its principal, Dave Hancock, do they
8 own any property within the proposed service area,
9 within Golden Glade Subdivision?

10 A. No.

11 Q. Has Hancock Construction done any of the
12 construction work on the utility systems within the
13 subdivision?

14 A. No.

15 Q. To your knowledge, does Hancock Construction
16 own anything or have any claim on any property within
17 the proposed service area?

18 A. Not to my knowledge.

19 Q. Okay. Now, you answered in response to
20 Mr. Loraine's questions that a comprehensive water and
21 sewer utility company out on KK that served all of
22 these subdivisions would be more desirable than having
23 it split up among several entities. But wouldn't such
24 an entity have to have the capital to pay all of the
25 capital costs required for those systems?

1 A. Yes, it would.

2 Q. Are you familiar with the current bank
3 balance for Osage Water Company?

4 A. Painfully.

5 Q. Would it have the ability to pay \$70,000 or
6 \$80,000 for another water well?

7 A. Absolutely not.

8 Q. So it would have to issue some kind of
9 financing?

10 A. Yes.

11 Q. Are you willing to extend credit to Osage
12 Water Company?

13 A. No.

14 Q. Do you know anybody that will?

15 A. No, I do not.

16 Q. Okay. And let's see. Also in response to
17 Mr. Loraine, he asked some questions about who was in
18 charge of the books and records of Osage Water
19 Company. Has that changed from time to time during
20 the company's history?

21 A. Yes, it has.

22 Q. Who has been responsible since 1998 through
23 July of 2001 for record-keeping for Osage Water
24 Company?

25 A. Pat Mitchell.

1 Q. Okay. And did Mr. Mitchell have general
2 control of day-to-day operations?

3 A. Yes, he did.

4 Q. And with respect to the other officers and
5 directors, was there a regular meeting, monthly
6 accounting reports, and anything of that sort that
7 took place during that time frame?

8 A. Not to my knowledge.

9 MR. WILLIAMS: What's our current exhibit
10 number?

11 JUDGE WOODRUFF: We would be up to 19.

12 (EXHIBIT NO. 19 WAS MARKED FOR
13 IDENTIFICATION.)

14 BY MR. WILLIAMS:

15 Q. Let me hand you what I've marked as
16 Exhibit 19, and ask you if you can identify this for
17 the Commission?

18 A. It's a photograph of the company records
19 that were placed on the porch of our locked office on
20 July 7, 4th of July weekend, while we were away from
21 the office.

22 Q. Does that exhibit consist of two
23 photographs?

24 A. Yes.

25 Q. And what do the boxes that are shown in that

1 photograph consist of?

2 A. It's all of the financial records of Osage
3 Water Company.

4 MR. WILLIAMS: I offer Exhibit 19 into
5 evidence.

6 THE WITNESS: Financial/regulatory.

7 BY MR. WILLIAMS:

8 Q. Now, these boxes that were left on your
9 doorstep, was this part of a prearranged plan?

10 A. No.

11 Q. Who left those boxes there?

12 A. Mr. Mitchell.

13 Q. Did he call in advance and say he wanted to
14 turn over operations of the company to you?

15 A. No, he did not.

16 Q. Were you surprised to find them there?

17 A. Extremely.

18 Q. And were the boxes well organized such that
19 it was easy then to take them and put together the
20 records of the company?

21 A. Well, I don't think taking over a company
22 with 400 customers is easy overnight no matter what
23 condition the records are in. They were in file
24 folders and binders, but it -- it was a very difficult
25 task.

1 Q. Has Mr. Mitchell participated in any way in
2 the day-to-day operations of Osage Water Company since
3 the date he left those boxes of records on your
4 doorstep?

5 A. No.

6 Q. Now, at the time that those boxes were left
7 on your doorstep, what was the status of filing of
8 annual reports with the Public Service Commission?

9 A. The last report that was filed was 1997. Is
10 that right? 1997.

11 Q. Would it have been 1998?

12 A. We had just filed '99, so it would have been
13 '98. I'm sorry.

14 Q. And since the time that you got those
15 records, have you been able to update any of the
16 annual reports that are due with the Commission?

17 A. Yes. We've been working on that.

18 Q. And has any of them been filed?

19 A. We filed '99's this fall.

20 Q. All right. And with respect to the status
21 of the Commission's assessments, PSC assessments, what
22 was the status of those whenever you received those
23 boxes of records? Were they delinquent?

24 A. Yes. I'm trying to remember how far back.
25 Really far.

1 Q. More than a year?

2 A. Yes.

3 Q. More than two years?

4 A. Yes.

5 Q. And since the time that you've taken over
6 operations of the company, what's been the change in
7 the status of the delinquency of those assessments?

8 A. We are current to October of 2001.

9 Q. Okay. With respect to the conditions of the
10 company's water systems, what was the condition of the
11 Cedar Glen water system at the time the box was left
12 on your doorstep?

13 A. Well, I soon discovered that there were
14 frequent water outages at Cedar Glen Condominiums,
15 which is a complex of around 100 units.

16 Q. Please explain to the Commission what you
17 mean by "frequent"?

18 A. Every week we would get a call and the
19 entire condo complex was out of water.

20 Q. Did you take any steps to have that problem
21 diagnosed and repaired?

22 A. I immediately did. I called the electric
23 company. I called McDuffy, who is a licensed
24 operator. I had him look at it. I had Kevin Hawthorn
25 look at it with E.P. Sales. I called in Mr. Gilbert

1 who is an electrician. I had it assessed. I asked
2 some of the PSC Staff members to look at it.

3 And we determined that it needed some wiring
4 corrections, so we ordered that work done and paid for
5 it, and we have not had any more water outages since.

6 Q. Okay. Any other systems that had problems
7 at the time that you were given operation?

8 A. Well, Cimarron Bay, of course, had the
9 sewage problem that we resolved at least temporarily
10 and interacted directly and frequently with the
11 customers to let them know we were doing everything we
12 could afford to do to help them with this problem that
13 we have.

14 Q. Were there any problems with customer
15 relations that had occurred prior to the time that the
16 boxes were dropped off?

17 A. We had a whole lot of very, very unhappy
18 customers who claimed they had frequent water outages,
19 that they were being treated with disrespect when they
20 called in, that no one responded to their calls, and
21 we have worked very hard to improve those customer
22 relations.

23 Q. Okay. Do you have a lot of calls with
24 customer complaints at this time?

25 A. We do not.

1 MR. WILLIAMS: I don't believe I have any
2 further questions at this time.

3 JUDGE WOODRUFF: There's a couple of
4 exhibits we need to deal with. No. 19, the photos,
5 you offered but we hadn't asked for objections yet.

6 So any objections to 19?

7 (No response.)

8 JUDGE WOODRUFF: Nineteen will be received
9 in evidence.

10 (EXHIBIT NO. 19 WAS RECEIVED INTO EVIDENCE.)

11 JUDGE WOODRUFF: There is also the
12 Exhibit 16.

13 MR. WILLIAMS: Yes, I would offer Exhibit 16
14 as Commissioner Murray had requested.

15 JUDGE WOODRUFF: Exhibit 16 has been offered
16 into evidence. Are there any objections to its
17 receipt?

18 (No response.)

19 JUDGE WOODRUFF: Hearing none, it will be
20 received into evidence.

21 (EXHIBIT NO. 16 WAS RECEIVED INTO EVIDENCE.)

22 JUDGE WOODRUFF: And you may step down.

23 (Witness excused.)

24 JUDGE WOODRUFF: And at this time we'll go
25 ahead and take a break. We'll come back at five

1 minutes until three, 2:55.

2 (A recess was taken.)

3 JUDGE WOODRUFF: We're back on the record.

4 It looks like Ms. Bolin has taken the stand.

5 If you would raise your right hand.

6 (Witness sworn.)

7 JUDGE WOODRUFF: All right. You may

8 inquire.

9 KIMBERLY K. BOLIN testified as follows:

10 DIRECT EXAMINATION BY MS. O'NEILL:

11 Q. Can you state your name for the record,
12 please?

13 A. Kimberly K. Bolin.

14 Q. And how are you employed?

15 A. I'm employed as an auditor with the Office
16 of the Public Counsel.

17 Q. And have you been involved in Public
18 Counsel's work regarding the case that we're here on
19 today?

20 A. Yes, I have.

21 Q. And as part of the work that you've done,
22 have you prepared and caused to be filed in this case
23 Rebuttal Testimony of Kimberly K. Bolin which has been
24 marked in this case as Exhibit No. 3?

25 A. Yes, I have.

1 Q. And have you also prepared and caused to be
2 filed in this case Surrebuttal Testimony of Kimberly
3 Bolin, which is marked as Exhibit No. 4?

4 A. Yes, I have.

5 Q. And is the information contained within your
6 Rebuttal and Surrebuttal Testimony accurate to the
7 best of your knowledge?

8 A. Yes, it is.

9 Q. And are there any changes or additions or
10 corrections you would like to make at this time?

11 A. No, there is not.

12 Q. Are there any other matters that you would
13 like to add to your testimony regarding conditions at
14 this time?

15 A. Yes, there is.

16 Q. What is that?

17 A. In Staff's Position's Statement, on page 4,
18 they listed some conditions on issue No. 7 that they
19 would like to say adopted, and we support them and
20 also wish that these conditions be adopted.

21 Q. Are there any other conditions that you now
22 believe should be included in your recommendation that
23 are not contained in those?

24 A. No, there are not.

25 MS. O'NEILL: Okay. At this time I would

1 move for admission of Exhibit 3 and Exhibit 4.

2 JUDGE WOODRUFF: Okay. Exhibits 3 and 4
3 have been offered into evidence. Any objections to
4 their receipt?

5 (No response.)

6 JUDGE WOODRUFF: Hearing none, they will be
7 received.

8 (EXHIBIT NOS. 3 AND 4 WERE RECEIVED INTO
9 EVIDENCE.)

10 BY MS. O'NEILL:

11 Q. And, Ms. Bolin, if I were to ask you the
12 questions contained in Exhibit 3 and Exhibit 4 today,
13 would your answers be substantially the same today as
14 they were at the time that this information was filed?

15 A. Yes, they would.

16 MS. O'NEILL: I would tender the witness.

17 JUDGE WOODRUFF: Thank you.

18 And for cross-examination, we will begin
19 with Staff.

20 MS. KIZITO: None for Staff.

21 JUDGE WOODRUFF: For Hancock?

22 MR. LORAIN: None, your Honor.

23 JUDGE WOODRUFF: For Environmental
24 Utilities?

25 MR. WILLIAMS: None, your Honor.

1 JUDGE WOODRUFF: Then we'll come up here for
2 questions from the Bench.

3 Commissioner Murray?

4 COMMISSIONER MURRAY: Thank you, your Honor.

5 That was much faster than I expected.

6 QUESTIONS BY COMMISSIONER MURRAY:

7 Q. I have a few questions for you, Ms. Bolin.

8 First of all, is it true that the Office of
9 Public Counsel has concerns with the Applicant in
10 terms of being able -- the Applicant's ability and
11 resolve to provide safe and adequate service?

12 A. We do have concerns based on their prior
13 history they have in operating Osage Water Company.
14 However, our -- we felt that it would be better to
15 provide a regulated utility service to the customers
16 than nonregulated in hopes that the regulated utility
17 would provide more -- that the ratepayers would be
18 able to get more remedy or recourse for bad customer
19 service.

20 Q. Let me ask you this: In terms of the
21 history of Osage Water Company which has been a
22 regulated utility, and this Commission has granted
23 several Certificates of Convenience and Necessity,
24 some over, I believe, the objection of the Staff and
25 the Office of Public Counsel, if my memory serves me,

1 has that experience with Osage Water Company as a
2 regulated utility proven to be beneficial to the
3 customers?

4 A. I think -- I do believe some of the
5 customers it has benefited. There's still a lot of
6 work that needs to be done.

7 Q. Did you hear the testimony today and read
8 some of the testimony that has been filed about the
9 fact that the Applicant is not willing to infuse any
10 more money into Osage Water Company and help it out of
11 its financial problems but is willing to infuse
12 capital into a new entity? Were you here during that
13 testimony?

14 A. Yes, I was.

15 Q. And do you have concerns that if
16 Environmental Utilities were to also run into
17 financial problems that these same principals might
18 then decide to turn their back on Environmental
19 Utilities and go into a new corporate structure?

20 A. I had not thought of that possibility yet,
21 but it is possible. That is a worry.

22 Q. Okay. Let me ask you, in your opinion, does
23 granting a certificate to a company that has not
24 proven its ability and/or resolve to provide safe and
25 adequate service to customers, doesn't that lend

1 legitimacy to that company in a way that might portray
2 to customers that we think that this is a legitimate
3 enterprise and that we are overseeing their safe and
4 adequate service?

5 A. I can see your concern, but I'm really
6 worried these people will operate it in an unregulated
7 fashion and it will be even worse than what it would
8 be under a regulated.

9 Q. If there were to be violations, well, as
10 there have been with Osage Water Company, in reality,
11 how much does the Commission actually do to improve
12 that situation?

13 A. Sometimes the Commission sends in a manage
14 audit team -- management audit team. Our office has
15 filed complaints against different water and sewer
16 operators.

17 Q. Okay. Would you agree, though, that we have
18 an obligation to -- before we grant a certificate --
19 let's put it this way: Would you agree that when we
20 grant a Certificate of Convenience and Necessity we
21 are saying, This company has proven to us that they
22 meet the requirements, that we believe in doing so, it
23 serves the public interest in that it is a way to
24 provide safe and adequate service to the customers and
25 that -- well, first of all, is that part of what we're

1 saying when we grant a certificate?

2 A. According to the Tartan Energy rule, most of
3 the times, yes.

4 Q. Now, if we were to grant a certificate not
5 really believing that that were the case, wouldn't we
6 be doing a disservice?

7 A. No. I think we would be protecting the
8 customers, because these customers do not have any
9 recourse with any other entity or any -- if they
10 weren't regulated.

11 Q. Well, when this developer goes out and sells
12 more lots in the subdivision, if we grant the
13 certificate, this developer can then accurately state
14 that they have a certificate to provide both water and
15 sewer service and that they have met all of the
16 regulatory requirements, can they not?

17 A. Unfortunately, yes.

18 Q. Isn't that a bit misleading?

19 A. In a way it is, but I still go back to the
20 leaving it unregulated versus regulated, and I think
21 regulated would protect the customers.

22 Q. There are apparently about 14 or 15
23 customers out of 100 that there are expected to be?

24 A. Yes, I think that's correct.

25 Q. So, really, you're looking more at

1 protecting the 14 or 15 as a higher priority than
2 protecting the potential 85 or 86 that are left to
3 become customers; is that correct?

4 A. I think those other customers will be
5 protected in the long run with the regulation just as
6 the 14 or 15 will be protected.

7 Q. But if we approve a company that doesn't
8 meet the requirements, how can we do anything to say,
9 Okay, we've approved you. You haven't met the
10 requirements, but we approve you anyway. Now meet the
11 requirements? Isn't it toothless?

12 A. You could grant a conditional certificate
13 and see if they would happen to meet these
14 requirements, and --

15 Q. And if they don't, then what do we do? Do
16 we say we would cancel their certificate and leave the
17 customers without -- you know, having to seek out
18 another option at that time, or is it better for us
19 not to get involved in legitimizing it in the first
20 place?

21 A. I'm still worried about the nonregulated
22 versus regulated. I see where you're coming from, and
23 our office is in a quandary too on this decision, and
24 it took quite a bit of discussion in our office to
25 come up with this position.

1 Q. And I appreciate that, and I appreciate the
2 time you've put into it.

3 Do you know -- and excuse me if it's in your
4 testimony, but I haven't reviewed your testimony in
5 the last day or so.

6 In terms of the customers -- the current
7 customers of the Golden Glade Subdivision, are they
8 aware that there is this application pending for the
9 provision of their water service?

10 A. I'm not sure on that. I know that -- I
11 think that was one of our conditions. We wanted a
12 letter sent to all of the customers. I don't know if
13 it has been sent. I can't recall seeing one.

14 Q. And I -- in your testimony on page 6 of your
15 Rebuttal you -- let's see. "In lieu of a public
16 hearing," and that's at line 12, "Public Counsel
17 requests that the company send this letter to each of
18 the current residents in Golden Glade Subdivision
19 informing the residents of Environmental Utilities'
20 application. Public Counsel requests that the
21 Commission give residents ample time to express their
22 views before the Certificate of Convenience and
23 Necessity is granted."

24 And you didn't request a local public
25 hearing because there are only approximately a dozen

1 customers that will currently be affected; is that
2 right?

3 A. That's correct.

4 Q. But you don't know whether a letter was
5 actually sent?

6 A. Not yet. I've not been made aware of that.

7 Q. And is -- does Osage Water Company have a
8 history of complying with conditions that the
9 Commission imposes on their regulated entities? Do
10 you know?

11 A. I know we have had conditions applied in
12 their last rate case. I know they have met some, and
13 some are still needing to be met.

14 Q. And you have an issue with the costs of
15 obtaining a certificate; is that right?

16 A. Yeah. With tariff sheet -- tariff rule
17 No. 16, yes.

18 Q. And that is because costs -- costs recorded
19 in account 301, organization, would be eligible for
20 recovering in a later rate case. Is that --

21 A. The problem with rule 16 is it's asking for
22 prospective customers to pay up front for
23 Environmental Utilities to go out and get the
24 certificate. These are not even people that are in
25 their service territory. And it doesn't outline what

1 the cost would be or any estimates.

2 Q. Now, would it be accurate to say that you
3 don't -- even if the certificate is granted that you
4 don't think the tariff should be approved?

5 A. That's correct.

6 Q. Have you followed the sewer service that the
7 customers in Golden Glade Subdivision receive from
8 Osage Water Company?

9 A. I'm not -- I haven't had direct knowledge of
10 it, if it's poor service or good service.

11 COMMISSIONER MURRAY: I believe that's all I
12 have.

13 Thank you.

14 JUDGE WOODRUFF: Commissioner Lumpe?

15 QUESTIONS BY COMMISSIONER LUMPE:

16 Q. Ms. Bolin, you mentioned, I think, that --
17 in talking with your attorney that you support all of
18 Staff's conditions.

19 Are any of those duplicative of your
20 conditions?

21 A. No. I believe theirs -- well, the ones at
22 issue No. 7 are more along the lines of operational
23 as --

24 Q. And if I look at yours, it looks like about
25 the first eight have to do with recording and --

1 A. Yes, with accounting.

2 Q. -- the accounts and that sort of thing; is

3 that correct?

4 A. Yes, that's correct.

5 Q. And then the other four look like they

6 pertain more to allocation systems?

7 A. That's correct also, with accounting and

8 being able to -- for the auditors to look at the books

9 and perform an easier audit.

10 Q. All right. And then the ones Staff has you

11 say are mostly operations, and they don't duplicate

12 any of the conditions that you have?

13 A. No, they do not.

14 Q. All right. In looking at the need for a

15 system, do you -- do you support a central system as

16 opposed to wells in everyone's back yard?

17 A. I -- I know DNR probably does. I'm not sure

18 on that. I hadn't given much thought to that.

19 Q. So you don't have an opinion on whether --

20 A. No.

21 Q. -- a central system is better than --

22 A. No, I don't. I'm not an engineer.

23 Q. Do you think there is a need for water in

24 this area?

25 A. There probably is. I mean -- I believe DNR

1 is always asking to have central sewer systems and
2 central water systems.

3 Q. And are you aware of any other entity that
4 would be providing water to Golden Glade?

5 A. Through the homeowners association.

6 Q. Other than the homeowners association, you
7 don't know if some entity is out there saying, I want
8 to supply water to Golden Glade?

9 A. I've not been made aware of any.

10 Q. You talk about work that needs to be done
11 still. Are you referencing Osage Water?

12 A. Yes.

13 Q. All right.

14 A. The rate case.

15 Q. All right. So when you're talking about
16 work still needing -- you're not talking about Golden
17 Glade. You're talking about Osage Water?

18 A. That's correct.

19 Q. All right. Would you -- would you be
20 suggesting that the other principals ought to also
21 abandon Osage Water and that it just be out there on
22 its own?

23 A. No.

24 Q. So you do think that there is some merit in
25 the two principals that are there still operating the

1 system as they exist and trying to run it?

2 A. Yes.

3 Q. If they meet the criteria that are
4 established under the Tartan, can we deny the
5 certificate?

6 A. I'm not sure. I'm not sure on that.

7 Q. You're not an attorney?

8 A. I'm not an attorney.

9 Q. You can't make a decision on it?

10 A. No.

11 Q. Okay. You mentioned a number of companies,
12 so if I interpret that correctly, you're not
13 suggesting that OWC is the only problem water company
14 in the state of Missouri?

15 A. No, it is not.

16 Q. All right. Now, you said you objected to
17 the tariff. Do you object to the entire tariff or
18 just some of the rules, the one you particularly
19 talked about?

20 A. Rule 16. I think I also -- Staff also
21 disagreed with 15.

22 Q. I remember reading testimony about -- I
23 think it was 15, 16, and 17, or something like that.

24 A. Yeah. And I also supported Staff on the
25 other two, but rule 16, I disagree with.

1 Q. And they support rule -- the rule 16, but
2 you don't support all of 16 -- 15, 16, and 17, or
3 whatever those three are?

4 A. Yeah. That's correct.

5 Q. All right. So it isn't the entire tariff.
6 It's those particular pieces of the tariff?

7 A. That's correct.

8 Q. Okay. Ms. Bolin, I think that's -- oh, you
9 commented on the -- and you've written a letter that
10 you think the company should send out, but you say
11 you're not aware whether that letter has actually gone
12 out.

13 A. That's correct.

14 Q. Okay. And do you think that if it had that
15 you might have been informed of it or should be
16 informed of it?

17 A. Usually, we're sent a copy, our office.

18 Q. Saying this letter has gone out.

19 A. Yeah.

20 Q. And to your knowledge, you have not been --

21 A. No, I have not seen it.

22 Q. -- made aware of it?

23 COMMISSIONER LUMPE: That's all I have.

24 JUDGE WOODRUFF: Commissioner Forbis?

25 COMMISSIONER FORBIS: No questions.

1 JUDGE WOODRUFF: I have no questions, so
2 we'll go to recross, beginning with Staff.

3 RECROSS-EXAMINATION BY MS. KIZITO:

4 Q. Just briefly, Ms. Bolin.

5 This question goes to Commissioner Murray's
6 question about this Commission lending some kind of
7 legitimacy to a water company by granting a
8 certificate and the expectation of the home buyer when
9 they purchase a home in a subdivision.

10 Do you think that the home buyers are aware
11 enough of the regulatory versus the nonregulatory
12 scheme to have the question of who provides water to
13 be part of their decision to buy a home in a
14 subdivision?

15 A. I'm not sure if they do or not.

16 Q. Okay. And my next question, do you believe
17 that this homeowners association that would run the
18 water system without a Certificate of Convenience and
19 Necessity would be a strong enough organization to
20 operate a water system? And along those lines, do you
21 know if they have authority to offer any other
22 facilities such as a road or swimming pool, clubhouse,
23 et cetera?

24 A. I'm not sure on that. I'm not sure.

25 MS. KIZITO: Okay. Thank you.

1 JUDGE WOODRUFF: All right. And for
2 Hancock?
3 MR. LORAIN: I have nothing further, Judge.
4 JUDGE WOODRUFF: And for Environmental
5 Utilities?
6 MR. WILLIAMS: No questions, Judge.
7 JUDGE WOODRUFF: Okay. Then redirect.
8 REDIRECT EXAMINATION BY MS. O'NEILL:
9 Q. Ms. Bolin, what's Public Counsel's
10 concern -- primary concern with the homeowners
11 association which would fall in to provide service in
12 this case as opposed to a homeowners association in
13 some other hypothetical case?
14 A. Our concern is the principals are the same
15 principals for Environmental Utilities, and the
16 controlling board right now would -- the control of
17 the board would be with the same principals.
18 Q. And those principals -- and what you mean by
19 that is that the Golden Glade homeowners association
20 would be controlled by Greg and Debra Williams?
21 A. That's correct.
22 Q. And you're familiar with what's in evidence
23 as Exhibit 13, the Golden Glade restrictions?
24 A. Yes.
25 Q. And do you have a copy of that?

1 A. I think I do. Yes, I do.

2 Q. And does information contained in Exhibit 13
3 bolster your concern about the fact that the Williams
4 have controlling interest of that homeowners
5 association?

6 A. Yes, it does.

7 Q. And what is that concern? Does that have to
8 do with the voting percentages?

9 A. Yes.

10 Q. Okay. And in this case, then, is there
11 really a true option regarding who will provide water
12 service to Golden Glade?

13 A. The Williams will be providing it regulated
14 or nonregulated.

15 Q. And if the Applicants in this case were not
16 already the owners of the system, the Williamses were
17 not already the owners of the system, and if they were
18 not planning to provide service to Golden Glade with
19 or without a certificate, would we be recommending
20 granting a conditional certificate at this time in
21 this case?

22 A. We probably would not.

23 Q. And is that because of the concerns
24 regarding the qualification factors under the Tartan
25 case?

1 A. Yes, it is.

2 Q. Now, if a conditional certificate is granted
3 in this case, would Public Counsel continue to
4 carefully review any and all applications for any
5 additional certificates that Environmental Utilities
6 my apply for?

7 A. Yes.

8 Q. And would that include applications by
9 Environmental Utilities or Osage Water?

10 A. Yes, it would, both.

11 Q. And would that be the same policy and
12 procedure we use for every certificate that comes
13 through the office?

14 A. Yes, it would be.

15 Q. Ms. Bolin, are you aware of whether or not
16 the Commission Staff has any kind of programs to
17 assist companies, especially small companies,
18 regarding management of public utilities?

19 A. I know the Water and Sewer Department does
20 quite a bit to help, and they also have a management
21 audit services.

22 Q. Okay. And do you believe that it would be
23 appropriate in this instance and with this new
24 company, especially given the inexperience of at least
25 one of its members, for those staff management

1 assistance services to come into play with a
2 certificate?

3 A. Yes, it would.

4 Q. In your testimony -- attached to your -- I
5 think it's your Rebuttal Testimony you have a number
6 of conditions you think the certificate should
7 contain, and some of those are conditions which you
8 believe need to be completed before Environmental
9 Utilities is allowed to provide service; is that
10 correct?

11 A. That's correct.

12 Q. And do you think it would be appropriate for
13 the Commission to condition the certificate taking
14 effect on compliance with those and perhaps even other
15 conditions?

16 A. Yes.

17 Q. And do you think that that procedure would
18 provide some further protection to the eventual
19 customers of Environmental Utilities?

20 A. I believe it would.

21 Q. If a certificate is granted in this matter,
22 is it important that the allocations between the
23 various Williams business operations be clearly
24 identified?

25 A. Yes. It's very important.

1 Q. And why is that?

2 A. So when the audit -- when they come in for a
3 rate case, the Staff and Public Counsel is able to do
4 the audit completely, track costs. There is also a
5 nonregulated entity involved here with the
6 construction company, and I think it would just make
7 the small rate case procedure which they fall under
8 more practical.

9 Q. Would it be -- are you familiar with the
10 term "arm's length transaction"?

11 A. Yes, I am.

12 Q. And what's an arm's length transaction?

13 A. It's one that involves the same parties.

14 Q. And is the purpose of an arm's length
15 transaction to make sure that the parties that are
16 involved with each other don't do anything to unfairly
17 disadvantage their customers?

18 A. Yes.

19 Q. And would it be very important in your
20 opinion that any transactions between Environmental
21 Utilities and any other business enterprise that the
22 Williamses own be subjected to scrutiny regarding
23 arm's length transactions?

24 A. Yes, it would.

25 Q. Now, you've heard some discussion about

1 certain people being -- having been alleged to have
2 abandoned Osage Water Company in various respects.

3 Are you advocating that anybody abandon
4 Osage Water Company?

5 A. No, I'm not.

6 Q. And do you believe that the Office of Public
7 Counsel will continue to monitor the level of
8 compliance that Osage Water Company and possibly
9 Environmental Utilities, depending on this case, the
10 level of compliance that Commission orders?

11 A. Yes, I do.

12 Q. And to your knowledge, has the Office of
13 Public Counsel ever instituted a complaint if it
14 believed that a water company is not in compliance
15 with Commission orders?

16 A. Yes.

17 Q. And by sitting here today saying that
18 granting a certificate is the best of a couple of not
19 real favorable options, perhaps, does that mean that
20 Public Counsel would not scrutinize Environmental
21 Utilities to make sure that if a complaint needed to
22 be filed, it would be filed?

23 A. No. We would scrutinize.

24 Q. And, if necessary, would we file a
25 complaint?

1 A. Yes, we would.

2 Q. Now, regarding the various tariffs that have
3 been filed, would it be fair to say that we share with
4 Staff's concerns and we would support any of the
5 modifications that Staff witness Merciel has proposed
6 regarding tariffs other than tariffs in rule 16?

7 A. That's correct.

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

9 JUDGE WOODRUFF: All right then. You may
10 step down, Ms. Bolin.

11 (Witness excused.)

12 JUDGE WOODRUFF: And we'll move over to
13 Staff's first witness.

14 MR. WILLIAMS: Judge, prior to going on with
15 another witness, I would like, for the record, to
16 advise the Commission that the company is not opposed
17 either to the conditions recommended by the Office of
18 Public Counsel or to those listed in issue 7 in the
19 Staff's Positions Statement being included in any
20 certificate that's granted, so further
21 cross-examination and testimony on those points is
22 simply not necessary. The company agrees with those.

23 JUDGE WOODRUFF: Okay. From Staff then?

24 And you are Mr. Russo, I believe?

25 THE WITNESS: Yes.

1 JUDGE WOODRUFF: Please raise your right
2 hand.

3 (Witness sworn.)

4 JUDGE WOODRUFF: You may inquire.

5 JAMES M. RUSSO testified as follows:

6 DIRECT EXAMINATION BY MS. KIZITO:

7 Q. Mr. Russo, please state your name for the
8 record.

9 A. James M. Russo.

10 Q. What is your business address?

11 A. P.O. Box 360, Jefferson City, Missouri,
12 65102.

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

15 A. I'm a regulatory auditor with the Missouri
16 Public Service Commission.

17 Q. Did you prepare the prefilled testimony in
18 this case that has been marked as -- and I need to
19 refer to my exhibit list.

20 Sorry. I don't have the exhibit number.

21 MS. O'NEILL: It's 8.

22 MS. KIZITO: Eight. Thank you.

23 THE WITNESS: Yes, I did.

24 BY MS. KIZITO:

25 Q. All right. Okay. That's marked as

1 Exhibit 8, the Rebuttal Testimony of James Russo. You
2 did prepare that prefiled testimony. Correct?

3 A. Correct.

4 Q. Okay. Do you have any corrections to make
5 to your testimony?

6 A. Not any corrections. There is a change.

7 At the time of filing the testimony, I was a
8 Regulatory Auditor III with the Accounting Department
9 in the Utilities Services Division. I am now a
10 Regulatory Auditor IV in the Energy Department in the
11 Utility Operations Division.

12 Q. Do you have any further corrections or
13 changes?

14 A. No, I do not.

15 Q. Are the answers in your Rebuttal Testimony
16 provided true and accurate to the best of your
17 knowledge and belief?

18 A. Yes, they are.

19 Q. If I were to ask you the same questions
20 today, would your answers be substantially the same?

21 A. Yes.

22 MS. KIZITO: Your Honor, I offer the
23 testimony marked as Exhibit No. 8 into the record, and
24 tender the witness for cross-examination.

25 JUDGE WOODRUFF: Okay. Exhibit 8 has been

1 offered into evidence. Are there any objections to
2 its receipt?

3 (No response.)

4 JUDGE WOODRUFF: Hearing none, it will be
5 received into evidence.

6 (EXHIBIT NO. 8 WAS RECEIVED INTO EVIDENCE.)

7 JUDGE WOODRUFF: And for cross-examination,
8 we will begin with Public Counsel.

9 CROSS-EXAMINATION BY MS. O'NEILL:

10 Q. Good afternoon.

11 A. Good afternoon.

12 Q. I'm glad you got your promotion.

13 Congratulations.

14 A. Thank you.

15 Q. Which is probably off the subject.

16 If you would turn to pages 2 and 3 of your
17 Rebuttal Testimony --

18 A. Okay.

19 Q. -- you express some concerns about financing
20 arrangements, or the lack thereof, for Environmental
21 Utilities.

22 Has the company provided you with any
23 information which would resolve those concerns?

24 A. No. That concern is still out there. I
25 believe that if the company had to go out and get

1 financing today that they do not have it. They have
2 no guarantee.

3 Q. Have you received information from the
4 company regarding whether there is -- whether the
5 plant that they are seeking to place in service under
6 Environmental Utilities has been paid for -- have been
7 paid for by the builders?

8 A. Yes. I have reviewed documents at the
9 office of the company.

10 Q. And does that appear to be the case?

11 A. Yes. Our number was a little bit different
12 from their number, but, essentially, yes.

13 Q. Their number is somewhat higher than the
14 number you came up with?

15 A. Yes, it is. We, of course, eliminated that
16 10 percent.

17 Q. Okay. I note that you did express some
18 concern about this 10 percent general contractor's fee
19 that Mrs. Williams proposed in her Direct Testimony.

20 Have you gotten any further information from
21 them that would justify including that amount in
22 rates?

23 A. No, I have not.

24 Q. Okay. And do you have -- were you able to
25 discover what that 10 percent consisted of other than

1 just an add-on charge?

2 A. It's an add-on charge basically, yes.

3 Q. And the fact that the system developers are
4 also the principals of Environmental Utilities, that
5 add-on charge or overhead charge would just go to
6 them, is that correct, if it's allowed?

7 A. Yes, and any return on that would obviously
8 go to them too.

9 Q. So it's kind of a return on return that
10 they're asking for?

11 A. Possibly, yes.

12 Q. And you're not aware of that sort of request
13 being granted in any other rate cases?

14 A. No, I'm not.

15 Q. If the Commission decides to grant a
16 certificate in this case, do you believe that that
17 certificate should be conditional?

18 A. Yes.

19 Q. And we've had a little bit of testimony
20 about some conditions that the company said would be
21 acceptable. Are there any further conditions that you
22 think would be important to impose?

23 A. From the Accounting Department, we feel that
24 there should still be an 18-month review.

25 MS. O'NEILL: Okay. I don't have any

1 further questions.

2 JUDGE WOODRUFF: Thank you.

3 And for Hancock?

4 CROSS-EXAMINATION BY MR. LORAIN:

5 Q. Sir, do you believe that the nonsupport of
6 OWC is in any fashion by these principals indicative
7 of what we might expect in the -- this Environmental
8 Utilities company should the need arise for additional
9 finances?

10 A. I have no idea.

11 Q. You're aware of the history of failures to
12 comply with this Commission and the Staff's
13 requirements on OWC under the directorship of these
14 same principals, aren't you?

15 A. I'm familiar with OWC, yes, sir.

16 Q. And with the failures?

17 A. Yes. Some of them, yes, sir.

18 Q. All right. You have no opinion as to
19 whether or not there will be a future certificate case
20 maybe in the foreseeable future on some of the other
21 Osage Water property cases maybe being picked up by
22 Environmental Utilities company?

23 A. I have no opinion, no.

24 Q. Do you expect to see that?

25 A. I have no expectations.

1 MR. LORAIN: Thank you.

2 I have nothing further.

3 JUDGE WOODRUFF: Thank you.

4 And for Environmental Utilities?

5 MR. WILLIAMS: Thank you.

6 CROSS-EXAMINATION BY MR. WILLIAMS:

7 Q. Mr. Russo, I believe you indicated you
8 audited the records of the cost of construction of the
9 well and the water system?

10 A. I have reviewed those records, yes, sir.

11 Q. And that consists of a review of the actual
12 invoices that are listed on the accounting that's
13 attached to Surrebuttal Testimony in this case?

14 A. Yes.

15 Q. And you also looked at the actual banking
16 records to verify if payment, in fact, had occurred?

17 A. For -- yes, as far as reviewing the check
18 register and reviewing the checks that were returned
19 from the bank at that point in time. Not all checks
20 had cleared at that point in time.

21 Q. Do you have any question in your mind as to
22 whether or not the water well at Golden Glade was, in
23 fact, paid for by the principals of Environmental
24 Utilities?

25 A. No. They did pay for it, yes.

1 Q. Okay. And the type of records that were
2 kept, are they adequate to meet the requirements for a
3 regulatory audit by the Public Service Commission?

4 A. Yes. At this point in time, yes.

5 Q. And were the -- was the information that was
6 kept sufficient to allow a classification of those
7 expenditures under the NARUC systems of accounts?

8 A. Yes.

9 Q. And were those record-keepings sufficient to
10 do a rate base calculation for the company?

11 A. Yes.

12 Q. So you would say that generally the records
13 that you observed were sufficient to meet the
14 requirements of this Commission?

15 A. Yes, I would.

16 Q. Okay. And have you had an opportunity to
17 observe office operations with respect to Osage Water
18 Company systems since July 7th of 2001?

19 A. Yes. I have been in the Sunrise Beach
20 office probably on four different occasions.

21 Q. And based on your time in that office, do
22 you have an opinion as to whether those operations are
23 satisfactory with respect to the resolution of
24 customer questions and issues?

25 A. Yes. I would say yes.

1 Q. And what would your opinion be?

2 A. I noticed a great reduction in the number of
3 phone calls coming into the company in terms of --
4 well, just the phone ringing. I noticed a great
5 reduction in what would be perceived as customer
6 complaints.

7 On the four different visits there was only
8 one customer problem that had to do with water losses,
9 and that was, I believe, over at Chelsea Rose on the
10 Hewlett property. The reaction of your staff -- the
11 company's staff, I should say, Osage Water's staff,
12 they were very professional in their dealing with the
13 customers and the phone calls.

14 Q. And, Mr. Russo, when you say a reduction,
15 are you referring to a reduction during the period
16 from July 7th forward, or in comparison to your
17 experience with Osage Water Company prior to July 7?

18 A. It would be with my experience prior to
19 July 7th.

20 Q. Okay. Do you consider what you've observed
21 with respect to office operations for Osage Water
22 Company since July 7th to be satisfactory to meet the
23 regulatory requirements of the Commission?

24 A. With what I have observed, yes.

25 Q. Okay. Now, in talking about this general

1 overhead allowance and the construction cost of the
2 water well, do you believe that including only cash
3 payments for specific components of the water system
4 accurately reflects the actual cost of assembling
5 those components and administering the construction of
6 the project?

7 A. I prefer -- or I believe all action should
8 be properly documented, and then those actions can be
9 included in rate base. In other words, if office
10 personnel spent time, if management spent time, that
11 time should be properly documented, and then Staff
12 could consider including that.

13 Q. So your concern is not with the general
14 overhead allowance, but, rather, calculating it as a
15 percentage of the job rather than as a set of numbers
16 to be added together?

17 A. My concern is there is no documentation for
18 the 10 percent.

19 Q. Okay. Let's see. Now, in your testimony
20 you made a discussion regarding the ability or
21 commitment for financing from Central Bank of Lake of
22 the Ozarks. Is that the same thing as financial
23 ability to carry out the project, or are those two
24 different things?

25 A. Those are two different things.

1 Q. Okay. And your concern with the letter from
2 Central Bank is that it's not what you would call a
3 firm loan commitment for a specific amount; is that
4 correct?

5 A. That is correct.

6 Q. Do you -- could you identify at this point
7 in time any specific need for financing of any
8 specific amount that Environmental Utilities would
9 need in order to place this system in operation?

10 A. I am not aware of any.

11 Q. So the company does not need additional
12 financing at this point in time?

13 A. At this point in time, they do not.

14 Q. But it does have a positive statement from a
15 bank indicating a willingness to consider future
16 needs; is that correct?

17 A. They are willing to consider, yes.

18 Q. And any such financing would, of course,
19 require the approval of this Commission if it was to
20 be for more than one year duration; is that correct?

21 A. That is correct.

22 Q. With respect to the bobcat and the excavator
23 that's been testified about today, did you have an
24 opportunity to review the documents pertaining to
25 repossession of that from Osage Water Company and by

1 the leasing company and subsequent purchase and repair
2 of the equipment by the principals of Environmental
3 Utilities from their personal funds?

4 A. Yes, I did.

5 Q. And do those documents exist?

6 A. Yes, they do.

7 Q. And they would support what Mrs. Williams
8 testified earlier that the equipment was repossessed
9 and then paid off with personal funds?

10 A. Yes. The only difference is I believe
11 Mrs. Williams may have indicated they were property of
12 Environmental Utilities. It's my understanding it is
13 Mr. and Mrs. Williams' personal property, or the
14 development company's property. And in terms of when
15 you look at that schedule that was attached to -- for
16 the plant with the cost basis, you'll see bobcat
17 charges on there,

18 Q. Okay.

19 A. -- and that was the hourly rate that the
20 development company would charge to use that
21 equipment.

22 Q. Okay. But those could be transferred to
23 Environmental Utilities at a subsequent time?

24 A. I would say yes.

25 Q. If a certificate was granted?

1 A. Yes.

2 Q. A company without a certificate wouldn't
3 need those assets, would it?

4 A. Correct.

5 Q. All right. And have you also had an
6 opportunity -- there has been some allegations in some
7 of the prefiled testimony that assets of Osage Water
8 Company have been transferred to Environmental
9 Utilities in terms of a direct transfer.

10 Have you had an opportunity to review the
11 books and records to determine whether or not any of
12 those transfers have taken place?

13 A. I have not seen any transfers take place.

14 Q. You found no records that would indicate
15 such a transfer has occurred?

16 A. That is correct.

17 Q. Now, Mr. Loraine asked you a question about
18 nonsupport of Osage Water Company by the principals of
19 Environmental Utilities.

20 Have you observed the principals of
21 Environmental Utilities participating in carrying on
22 the business of Osage Water Company?

23 A. Yes, I have.

24 Q. Have you seen a general support in the
25 operation and maintenance and repair of the Osage

1 Water Company systems by the principals of
2 Environmental Utilities?

3 A. I am aware that things have been going on.
4 I can't say I personally observed any repairs or
5 anything, no.

6 Q. All right. Does that indicate to you a lack
7 of support of Osage Water Company?

8 A. No, it does not.

9 MR. WILLIAMS: Okay. I have no further
10 questions.

11 JUDGE WOODRUFF: Thank you.

12 Up for questions from the Bench, and
13 Commissioner Murray.

14 COMMISSIONER MURRAY: Thank you, your Honor.

15 QUESTIONS BY COMMISSIONER MURRAY:

16 Q. Good afternoon, Mr. Russo.

17 A. Good afternoon, Commissioner.

18 Q. I think I just have a couple of questions
19 for you.

20 The 10 percent that you talked about, that
21 was something that Staff would want to have
22 disallowed; is that correct?

23 A. That is correct.

24 Q. And would you explain why that is?

25 A. At this point, it's just an add-on. For

1 sake of discussion, let's say plant was 70,000, and
2 that was the documented amount that we could see going
3 into plant, the well. What the proposed company is
4 asking for is that they get another \$7,000 on top of
5 that 70,000 and -- as a general contractor's overhead,
6 I believe, is the term they used. And it is Staff's
7 opinion there is no basis for that. There is no real
8 cost there.

9 Q. Okay. The documentation of the cost of the
10 distribution system --

11 A. Yes.

12 Q. -- you feel that documentation is complete
13 at this time?

14 A. Probably close to 95 percent. There may
15 have been a few things that they still had out there.
16 I looked at their records toward the end of November.
17 I think it was November 29th, and there may have been
18 a few things that may have come through early December
19 that we were unaware of. There would be nothing
20 substantial out there.

21 Q. The issue about financing being available
22 through Central Bank of Lake of the Ozarks, you
23 attached schedule 2 to your testimony which was the
24 letter from Central Bank; is that right?

25 A. Yes.

1 Q. And it -- the letter reads, Dear
2 Mr. Williams. This letter is to acknowledge your
3 investigation into possible financing for
4 Environmental Utilities, LLC. Central Bank would look
5 favorably in extending credit to your company for the
6 operation and expansion of the utility company. As in
7 all cases, our interest will be conditioned upon the
8 status of your company at the time of the request,
9 including the sufficiency, and that's supposed to be
10 "of," current and protected earnings, collateral,
11 margin, and proper approval from the Missouri Public
12 Service Commission.

13 And it closes by saying, Please do not
14 hesitate to contact me when you are considering a new
15 project. We would like the opportunity to provide the
16 required financing.

17 As you read that, that does not indicate any
18 kind of a commitment; is that right?

19 A. No. The way I read it, it's like anything
20 you get in the mail from any credit card company or
21 anybody else. You are pre-approved if, so it's --

22 Q. It's a big "if," isn't it?

23 A. Possibly.

24 COMMISSIONER MURRAY: I believe that's all I
25 have.

1 Thank you.

2 JUDGE WOODRUFF: Thank you.

3 JUDGE WOODRUFF: Commissioner Lumpe?

4 QUESTIONS BY COMMISSIONER LUMPE:

5 Q. Mr. Russo, on page 3, I believe it is, you
6 talk about capital structure. You also talk about
7 sort of deferring any recommendation on that.

8 Is it important that you have a capital
9 structure right now?

10 A. Not at this point. At this point they are
11 100 percent equity.

12 Q. They are 100 percent, so there really is
13 no -- other than that, that is the capital structure
14 at this point. Right?

15 A. That is correct, Commissioner.

16 Q. And it would only be at some point where
17 they incurred debt that then you might be concerned
18 about the capital structure for them?

19 A. Yes.

20 Q. And what that debt to equity ratio might be;
21 is that correct?

22 A. That is correct.

23 Q. Okay. And if I understood you correctly, it
24 wasn't that you were not willing to consider various
25 fees that might have occurred I would assume such as

1 legal fees or hearings or whatever like that as long
2 as they were documented. It was the flat 10 percent
3 that you objected to?

4 A. That is correct.

5 Q. So if there were documentation that along
6 with the construction of this we had these fees and
7 those permits, et cetera, et cetera, you would
8 consider those?

9 A. Staff would review them, and if they were
10 reasonable, sure.

11 Q. Okay. And I believe that I heard you
12 correctly that you answered that if the company were
13 to require a loan of some sort, they would need to
14 come to the Commission for approval of that if it were
15 a loan going beyond one year; is that correct?

16 A. That is correct, yes.

17 Q. So we would have some further oversight of
18 any long-term financing?

19 A. Yes, you would.

20 Q. And on the issue of the loan and the letter
21 there, basically, since they are not seeking
22 financing, that would become important at the point
23 they did seek financing?

24 A. That is correct, if the need arose, yes.

25 COMMISSIONER LUMPE: Okay. Thank you.

1 That's all I have.

2 THE WITNESS: Thank you.

3 JUDGE WOODRUFF: Commissioner Forbis?

4 COMMISSIONER FORBIS: No.

5 JUDGE WOODRUFF: I have a quick question.

6 QUESTIONS BY JUDGE WOODRUFF:

7 Q. Is there any need for the Commission to
8 establish rates in this case, or can that wait for a
9 subsequent rate case?

10 A. I'm sorry, Judge. Could you -- are you
11 talking about rate base itself?

12 Q. Yes, the rate base.

13 A. I think the Commission could direct Staff to
14 come up with a number and that Staff could do so
15 within a reasonably short period of time, 60 days or
16 less. We have a number out there. It's -- I believe
17 it's -- 69,190 is the number we -- that Mr. Merciel is
18 using at this point, and I believe that that number is
19 fairly close.

20 Q. Okay. So that would establish the rate
21 base. The rates would flow from that then?

22 A. That -- yes.

23 Q. Okay. And there is no reason to wait to do
24 that?

25 A. No.

1 JUDGE WOODRUFF: That's all of the questions
2 I have, then, so we'll go to recross beginning with
3 Public Counsel.
4 MS. O'NEILL: No further questions, your
5 Honor.
6 JUDGE WOODRUFF: Hancock?
7 MR. LORAIN: None.
8 JUDGE WOODRUFF: Environmental Utilities?
9 MR. WILLIAMS: None.
10 JUDGE WOODRUFF: Any redirect?
11 MS. KIZITO: None, your Honor.
12 JUDGE WOODRUFF: Okay. Mr. Russo, you can
13 step down.
14 (Witness excused.)
15 JUDGE WOODRUFF: Call your next witness.
16 MS. KIZITO: I would like to call James
17 Merciel to the stand.
18 JUDGE WOODRUFF: Please raise your right
19 hand.
20 (Witness sworn.)
21 JUDGE WOODRUFF: You may be seated.
22 You may inquire.
23 JAMES A. MERCIEL, JR. testified as follows
24 DIRECT EXAMINATION BY MS. KIZITO:
25 Q. Mr. Merciel, please state your name for the

1 record.

2 A. James A. Merciel, Junior.

3 Q. What is your business address?

4 A. 200 Madison Street, Jefferson City,
5 Missouri.

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

8 A. I am employed by the Public Service
9 Commission. My title is Assistant Manager,
10 Engineering. I work in the Water and Sewer
11 Department.

12 Q. Did you prepare the prefiled testimony in
13 this case that has been marked as Exhibit No. 7, the
14 Rebuttal Testimony of James Merciel?

15 A. Yes, I did.

16 Q. Do you have any corrections or updates to
17 make to your testimony?

18 A. Yes, I do. I have an update.

19 In the testimony, I think it's the very last
20 page -- well, before the affidavit, is schedule 1.
21 And I have revised schedule 1. I think counsel has
22 some copies to distribute. I've made a --

23 Q. Just a moment.

24 MS. KIZITO: Should I have this marked as an
25 exhibit?

1 JUDGE WOODRUFF: Yes.

2 JUDGE WOODRUFF: The next number will be No.
3 20.

4 (EXHIBIT NO. 20 WAS MARKED FOR
5 IDENTIFICATION.)

6 THE WITNESS: I was going to point out what
7 the change is on the revised schedule 1. Up toward
8 the top about the third line it says, "well," and the
9 new number is \$69,190. On the old one, it was 60,000.
10 That was an estimate.

11 The 69,190 reflects the actual cost which I
12 got from Mr. Russo who just testified to that number.
13 It does not include the 10 percent overhead. It has
14 no other documented overhead costs, but it is an
15 actual cost to date per the auditors. If there are
16 additional legitimate costs, I guess that number could
17 still go up, but that's what we have right now.

18 The other change, two lines down from that
19 is an organization cost, and we had \$3,500. I've
20 increased -- and this one is an estimate \$17,280.
21 That is based on a number in Mrs. Williams' testimony,
22 \$605 for corporation and organizational expenses.

23 And then the Staff took a number based on
24 this company's last two -- or I think it is the last
25 two certificate cases. Based on the two cases, we

1 took half of that number, which is \$16,675 for a
2 contested case. And if you add those numbers
3 together, you get the \$17,280 that's reflected there.

4 I made those changes. That does affect some
5 of the expenses on down. It affects the allocated
6 rate base in the next section down from there. Let's
7 see. It does not affect revenue. I think on the
8 expenses the only one it affects is the return, down
9 toward the bottom, return on capital since there is
10 more rate base involved. And then, of course, it
11 affects the bottom line, the total operating expenses
12 and the over- or underearnings.

13 BY MS. KIZITO:

14 Q. Okay. Do you have any other corrections or
15 comments on that?

16 A. No. That would be it.

17 Q. Are the answers in your Rebuttal Testimony
18 provided true and accurate to the best of your
19 knowledge and belief?

20 A. Yes.

21 Q. And if I were to ask you the same questions
22 today, would your answers be substantially the same
23 besides the updates that you have mentioned?

24 A. Yes.

25 MS. KIZITO: Your Honor, I would like to

1 have that exhibit entered into evidence.

2 JUDGE WOODRUFF: It would be Exhibit 20.

3 Exhibit 20 has been offered into evidence.

4 Are there any objections to its receipt?

5 (No response.)

6 JUDGE WOODRUFF: Hearing none, it will be
7 received into evidence.

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

9 JUDGE WOODRUFF: And are you also offering
10 Exhibit 7 at this time then?

11 MS. KIZITO: Yes, I am.

12 JUDGE WOODRUFF: All right. Exhibit 7 has
13 been offered into evidence. Any objections to its
14 receipt?

15 (No response.)

16 JUDGE WOODRUFF: Hearing none, it will be
17 received into evidence.

18 (EXHIBIT NO. 7 WAS RECEIVED INTO EVIDENCE.)

19 MS. KIZITO: And Staff tenders the witness
20 for cross-examination.

21 JUDGE WOODRUFF: Okay. And for Public
22 Counsel?

23 MS. O'NEILL: Thank you.

24 CROSS-EXAMINATION BY MS. O'NEILL:

25 Q. Good afternoon.

1 A. Good afternoon. How are you?

2 Q. I'm fine.

3 Since we have your revised schedule 1,
4 Exhibit 20, I want to ask you a couple of questions
5 about that.

6 How did you arrive at the revised amount for
7 the well?

8 A. That was based on the audit that Mr. Russo
9 conducted, based on the company's records on the cost
10 of construction.

11 Q. Okay.

12 A. As I think I said, less that 10 percent that
13 the company requested.

14 Q. Okay. And you said that the organizational
15 amount is an estimate; is that correct?

16 A. Yes, ma'am. That's correct.

17 Q. And that's based on some contested rate
18 cases that you had received information on costs of;
19 is that right?

20 A. Yes, that's correct.

21 Q. On your original schedule 1, you have
22 organizational expenses of \$3,500. Is that amount a
23 common amount for a certificate case in a company this
24 size?

25 A. Yeah, I would say it is. Most small

1 companies it costs a few thousand dollars to get a
2 certificate.

3 Q. And would that amount normally change
4 that -- as dramatically as you have here in the event
5 that there was a hearing on the certificate?

6 A. Oh, yeah. It certainly can. I guess you
7 could justif-- or you could ask whether such a large
8 amount is justified, but there certainly is time spent
9 when you have a contested case.

10 Q. What effect would it have on your net over-
11 or underearnings in Exhibit 20 if the organizational
12 allocation either remained at \$3,500 or was only
13 increased marginally from that amount? Would that
14 have an effect on the net over- or underearnings that
15 you have listed here?

16 A. Okay. It would -- let's see. Yes, it would
17 have an effect. It would -- I guess the best way to
18 say it, it would decrease the underearnings. And
19 maybe we can point to an example here.

20 On the original schedule 1, the first --
21 well, the year 2002, that's one column where we
22 have -- it shows an overearnings of 947, \$947, that
23 first year. With the changes I made, it shows
24 underearnings of \$841 and some cents.

25 Q. Okay. So -- and a significant part of that

1 change is attributable to the organization cost; is
2 that fair to say?

3 A. Well, yes, and since we increased the cost
4 of the well. So there is some additional rate base
5 and then the amortization of the organization cost.

6 Q. Okay. So it is a combination of those two?

7 A. Yes, ma'am. It's both.

8 Q. Okay. Now, going to your Rebuttal Testimony
9 in Exhibit 7, beginning at page 2, you expressed some
10 concerns about the viability of the company for
11 technical and financial reasons; is that correct?

12 A. Yes.

13 Q. And have any of your technical concerns been
14 addressed?

15 A. Yes, I think they have. I guess I might say
16 at least where we seem to be making progress.

17 Q. Okay. Can you give us some examples about
18 how you're making some progress?

19 A. There does seem to be progress. We were
20 concerned about having a licensed operator, and
21 although it would have been nice to have that resolved
22 by now, it isn't, but we seem to have some progress.

23 The company's employee is taking his
24 license. I hope he does well. We seem to -- Martin
25 Hummel from our Staff has met him before, and I've not

1 myself, but no reason to believe that he shouldn't be
2 able to pass such a test. So that's progress.

3 This -- well, the principals of this company
4 have, indeed, completed construction. They seem to be
5 well on their way for getting permits from the
6 Department of Natural Resources. That process is
7 really not completely finished, but that seems to be
8 on its way, so, yeah, I think we have made a lot of
9 progress.

10 Q. Do you think that those matters could be
11 addressed before the certificate would be allowed to
12 be in effect and would be conditions precedent to the
13 certificate being granted, that that would help with
14 your technical concerns in this case?

15 A. Yes, I do.

16 Q. And you had also indicated you had some
17 financial concerns. Have any of those concerns been
18 addressed?

19 A. Yes, to an extent. And Mr. Russo just
20 talked about that. Again, the fact that the well has
21 indeed been completed. I do still have concerns about
22 ongoing financial needs, and we can perhaps look at
23 Osage Water Company. They will illustrate that. As
24 any business goes on, you have to do repairs and make
25 replacements, and there is -- there is a seemingly

1 constant need for additional capital expenditures.

2 So, you know, there is -- that's why there is a need
3 for financial resources.

4 Q. Okay. And do those continue to be concerns
5 that you have about the viability of this company as a
6 regulated utility?

7 A. It is a concern.

8 Q. Now, if Mr. and Mrs. Williams were to
9 operate this water system as an unregulated entity
10 through the homeowners association or as personal
11 owners of the plant, would those concerns still exist?

12 A. As a homeowners association, I guess it
13 wouldn't exist for us, because it wouldn't be
14 regulated.

15 Q. Would it exist for the customers?

16 A. It -- it -- well, yes, but if it's a
17 homeowners association, then they are really
18 responsible for their own financial backing, either
19 for the customers to put their own money in or for
20 their organization to get a loan. They would have to
21 take on the responsibility. The concern is still
22 there.

23 Q. Are you aware of the provisions for voting
24 and control of the Golden Glade landowners
25 association?

1 A. Yes, I've -- yes, I am.

2 Q. You're aware, then, that Mr. and
3 Mrs. Williams have controlling operational interest in
4 that association until either all of the lots are sold
5 or until 2010?

6 A. Yes, which it's not really run as a
7 homeowners association the way it ought to be in my
8 opinion.

9 Q. So in other words it's not a true homeowners
10 association?

11 A. Exactly. The homeowners really aren't the
12 ones with the control.

13 I might point out the Commission addressed
14 this matter in a distant case in the past involving a
15 company named Rocky Ridge Ranch. I could give you the
16 case number if you like. I don't have it on the tip
17 of my tongue. I have it in my notes right here. I
18 won't get into it unless you want to.

19 Q. Perhaps I can get it. Rocky Ridge was the
20 name of the case?

21 A. Rocky Ridge Ranch, correct.

22 Q. And were there problems associated with
23 that, not really a homeowners association running
24 this --

25 A. Yes.

1 Q. -- running the utility?

2 A. Yes, ma'am.

3 Q. And was it more difficult for the Commission
4 to supervise that quasi, shall we say, homeowners
5 association than it would have been a regulated
6 utility?

7 A. Yes. There was some difficulty. Actually,
8 it was a regulated utility that sold to the homeowners
9 association, and the homeowners had to make some
10 modifications before the Commission would approve the
11 sale.

12 Q. And you're aware that the -- under the quasi
13 homeowners association that would be in effect in this
14 matter that that association could automatically
15 increase homeowners assessments every year; is that
16 correct?

17 A. I suppose they could, yes.

18 Q. Are you familiar with the restrictions from
19 the Golden Glade development that's Exhibit 13?

20 A. I haven't studied it very closely. I know
21 we have it. I've seen it, but -- and I know generally
22 what it says.

23 Q. Okay. Generally, are you aware that there
24 is a provision for assessments to increase for
25 improvements in plant or property --

1 A. Yes.

2 Q. -- being held?

3 A. Okay.

4 Q. And those would not be subject to Commission
5 oversight if this was not a regulated utility?

6 A. That's correct.

7 Q. Now, I want to refer you to page 5 of your
8 testimony, beginning at line 12. You have a sentence
9 there that says, "OWC recently has experienced changes
10 in its day-to-day management which appears to be an
11 improvement."

12 Can you explain that statement, please?

13 A. Yes. Let's see. Yeah. Well, that refers
14 to what's already been discussed here, the resignation
15 of Mr. Pat Mitchell and the, I guess we could say,
16 acquisition of day-to-day operation by Mrs. Williams
17 and perhaps more involvement by Mr. Williams.

18 And we do see improvement in record-keeping.
19 I've -- I won't say we haven't gotten any customer
20 complaints, but -- well, complaints about how the
21 company handles its affairs are not as bad as what we
22 seem to have had before.

23 Q. And if a certificate was granted in this
24 case, would your department be available to assist
25 Mrs. Williams and Mr. Williams in becoming more

1 familiar with the day-to-day operations of a water
2 utility?

3 A. Oh, absolutely. We've been working with
4 them.

5 Q. And would you continue to work with them?

6 A. Sure.

7 Q. Now, you also expressed some concerns about
8 some of the proposed tariffs in your testimony. Have
9 any of those concerns been addressed by the company?

10 A. I would have to say no. I don't think we've
11 really made too much progress on tariffs.

12 Q. Do you believe that further progress can be
13 made regarding those tariffs if the certificate is
14 granted?

15 A. I think we could. I think we can work out
16 most of the problems even if we have to do it
17 informally after this hearing.

18 MS. O'NEILL: Thank you. I don't have
19 anything further.

20 JUDGE WOODRUFF: Thank you.

21 Anything for Hancock?

22 CROSS-EXAMINATION BY MR. LORAIN:

23 Q. Mr. Merciel.

24 A. Hi, Mr. Loraine.

25 Q. How are you, sir?

1 A. I'm doing fine. And you, sir?

2 Q. Fine.

3 You're a professional engineer?

4 A. Yes, I am.

5 Q. And in that capacity, you would be that
6 member of the Staff that might look at plant. Would
7 that be a correct statement?

8 A. Look at it, you mean as in doing field
9 inspections?

10 Q. Yes. And maybe some follow-up work as to
11 whether the plant has been given the appropriate
12 dollar amount as a possible rate base?

13 A. Yes, I'm one person who might do that.

14 Q. And in this particular case, I believe you
15 have ascertained -- between you and the other witness
16 who just testified, I believe you have maintained that
17 there is some kind of a plant out there at Golden
18 Glade; is that true?

19 A. Yes, that's true.

20 Q. The question about the well that exists on
21 that property, are you aware that that plant has been
22 mentioned in other cases before this Commission?

23 A. Yes, I am.

24 Q. Could you tell the Commission, to the best
25 of your knowledge, when that plant was mentioned and

1 at that time who it was mentioned as being owned by?

2 A. Okay. I believe it was in 1998, and I don't
3 have the case number in front of me, but Osage Water
4 Company filed a certificate for the Eagle Woods
5 Subdivision, and I believe that's already been
6 mentioned here. The case number may be in the record.

7 Q. 437?

8 A. Okay. It sounds right. There's more to
9 that case number though. It's probably WA, maybe
10 ninety -- I don't know -- WA-97 or 98. If you have it
11 there, it would be helpful.

12 Q. I'll find it, but go ahead.

13 A. Well, anyway, Osage Water Company filed a
14 certificate for the Eagle Woods Subdivision, and part
15 of the plan was that this well that we're talking
16 about in the Golden Glade Subdivision would be the
17 well that provides service to Eagle Woods, only Golden
18 Glade was not included in the certificate at that
19 time.

20 That's the purpose of this case. It was
21 contemplated that at some point in the future the
22 company would file the certificate for the Golden
23 Glade area.

24 Well, since then, the owners have decided to
25 form this new company, Environmental Utilities, so I

1 see that as the successor to Osage Water Company as
2 far as certificating the subdivision and being the
3 owner of that well and the provider of water to the
4 Eagle Woods Subdivision.

5 Q. Would it be fair to say that --

6 MR. LORAIN: May I approach the witness?

7 JUDGE WOODRUFF: You may.

8 BY MR. LORAIN:

9 Q. I'm going to show, I believe, the rest of
10 that number, an application before the Public Service
11 Commission. Does that refresh your memory on that?

12 A. Okay. Yeah. The case number is WA-99-437.

13 Q. All right.

14 A. And it doesn't say on here, but I'm sure
15 this is the Eagle Woods case.

16 Q. And, in fact, the contract that I was
17 referring to earlier today between Mr. Williams'
18 company at that time, OWC, and Summit Investment, LLC,
19 was referenced in that deal -- in that particular
20 case, wasn't it?

21 A. That would be correct, yes.

22 Q. And I'm going to show you part of that
23 construction -- pardon me -- part of that application.
24 If you'll look at D-2, which is a schedule, is that
25 the same contract that we've talked about when I was

1 cross-examining Mrs. Williams?

2 A. Well, I assume it was. I know you were
3 talking about -- I'm sure it's the same contract. I
4 didn't see it at the time you showed it to her.

5 Q. That would be Exhibits 17 and 18?

6 A. Well, what you have here is indeed attached
7 to the application.

8 Q. Right.

9 A. It is signed by Greg Williams.

10 Q. And Mr. Westenhaver?

11 A. Yes, that's correct.

12 Q. And at that particular time, the
13 obligation -- if I can refresh your memory, D-2,
14 schedule D-2, actually dealt with the water supply,
15 and it read that "OWC agrees to construct and install
16 a water main from OWC's water well located in the
17 Golden Glade Subdivision on Lake Road KK-33", did it
18 not?

19 A. That's what it says there.

20 Q. And, in fact, at that time we all thought
21 that that was going to be the well that OWC owned,
22 didn't we?

23 A. Yes, we did.

24 Q. It appears that OWC made representations in
25 WA-99-437 that culminated -- at least some of the

1 representation was made that they were going to own
2 that well, and, in fact, they got -- they were awarded
3 a CCN in that case, weren't they?

4 A. To Eagle Woods, yes.

5 Q. I wonder -- the query is, I wonder if they
6 would have been -- if that would have been awarded if
7 they hadn't owned that well or hadn't promised that
8 they owned that well?

9 A. Well, I guess I view Environmental Utilities
10 as a -- as a successor, so Environmental Utilities is
11 now doing what Osage had represented back at that
12 time.

13 Q. And that would be -- that seems to be the
14 march, if you will, historically of what is occurring.
15 Would you agree with that?

16 A. I didn't quite understand --

17 Q. Well, that --

18 A. -- that statement.

19 Q. -- that OWC will, in fact, evolve into
20 Environmental Utilities. Is that what you're
21 expecting?

22 A. Well, there has been some talk about that.
23 I don't know if you can deduce that from this case.

24 Q. You did see the application that
25 Mrs. Williams filed, suggesting that OWC was near

1 demise and that they were performing some of their
2 obligations. Did you see that part?

3 A. Well, yes. I know that the principals of
4 Environmental Utilities are -- are taking the
5 responsibility to run Osage Water Company, and I've
6 heard some of the comments about the direction of
7 Osage Water Company are -- I should say the
8 uncertainty of Osage Water Company.

9 Q. Did this cause confusion, at least in your
10 mind, as to whether the water well was, in fact, owned
11 ever by Osage Water Company, the past history that
12 we've just dealt with?

13 A. Well, no, I wouldn't say I was confused
14 about it. I was pretty clear who owned it, and who --
15 and what the proposal is now.

16 Q. In 437 you were pretty convinced that OWC
17 was going to own the well?

18 A. Well, yes, sir. At that time. At that time
19 that was the plan, yeah.

20 Q. It has changed.

21 A. But there was no confusion then about that.
22 It's simply that the plan has changed since then.

23 Q. The -- you're familiar with NARUC, the term
24 that -- as far as the accounting systems. Are you
25 familiar?

1 A. I'm familiar with the term. I'm not an
2 accountant, but I think you're talking about the NARUC
3 uniform system of accounts?

4 Q. USOA, yes.

5 A. Yes, I'm familiar with that.

6 Q. Are they now keeping their accounts in that
7 fashion, or do you know?

8 A. I don't know, sir. I haven't done an audit,
9 and I'm not an auditor, so I couldn't answer that
10 question.

11 Q. Would you agree that that has been requested
12 to be done by OWC from as early as 1998 in a case by
13 the Commission?

14 A. Well, yes. It's actually been requested
15 since before then. Utilities are required to file
16 that system of accounts, and that would have been done
17 back in '91, or whenever Osage Water Company went into
18 business.

19 Q. So for all intents and purposes, we've been
20 waiting almost twelve years for them to start doing
21 NARUC accounting. Wouldn't that be fair?

22 A. I really can't answer that. I would have to
23 have an auditor address how they've been keeping their
24 books. I've never done an audit of this company.

25 Q. And, in fact, you suggested in your direct

1 filed testimony -- I believe you said that you never
2 did an audit of this company, but that you had relied
3 for some of your conclusions on the most recent audit.
4 Do you recall those words?

5 A. I may have, although I don't know where it
6 is.

7 Q. Let me direct your attention, if I can.
8 Maybe I misled you a little bit.

9 In your position -- in the position paper of
10 Staff, do you have that available to you?

11 A. I don't have that with me, sir.

12 MR. LORAIN: All right, sir.

13 May I approach the witness, Judge?

14 JUDGE WOODRUFF: You may.

15 BY MR. LORAIN:

16 Q. Page 5 of 8, it appears -- it appears that
17 you're discussing -- or Staff is discussing
18 intervenor's proposed additional issues, issue No. 1,
19 and there is a reference in here to most recent audit
20 of OWC and follow-up field audit work.

21 Do you see that?

22 A. Yes, I do.

23 Q. Were you part of this -- formation of this
24 particular position answer for Staff?

25 A. No, I was not.

1 Q. Okay. Are you aware of what Staff would
2 have been talking about as far as a recent audit?

3 A. Yes.

4 Q. What case would that have been in?

5 A. Well, the company had a case, a rate case
6 recently -- and, I'm sorry, I don't know the case
7 number. It actually would have started with what we
8 call a file number. It was an informal or a small
9 company rate procedure.

10 Q. All right. Would that have been WR-00-557
11 which would have been in the matter of Osage Water
12 Company request for rate increase for water service
13 pursuant to Public Service Commission small company
14 rate increase procedure?

15 A. That's probably it.

16 Q. All right. And did you have an opportunity
17 to review the -- I believe it was Wendell Hubbs'
18 statement out of that case in his testimony?

19 A. Well, the truth is I probably read it. I
20 was not heavily involved in that rate case.
21 Mr. Hubbs, now that you mention it, he's the -- I'm
22 one of the assistant managers. He's the other
23 assistant manager in our department, and he does the
24 rate cases. And I don't really review his work as
25 such.

1 Q. Do you -- do you know that he found -- that
2 Staff found that there was confusion about many of
3 OWC's books and records regarding which ones pertain
4 to the PSC regulated system and which ones pertain to
5 non-PSC regulated system or services. OWC agreed with
6 this assessment, and has, thus, agreed to start
7 maintaining books and records for PSC jurisdictional
8 systems separate and apart from the books and records
9 for its nonregulated system and service. Do you know
10 that that was part of his testimony?

11 A. Well, sir, if you're reading that, that may
12 well say that, but I really wasn't involved in it and
13 I'm really not in a position to speak to it.

14 Q. Well, the only thing, I think, that concerns
15 me is that there has been reference in the position
16 paper to a most recent audit, and this seems to be a
17 statement from Mr. Hubbs out of that audit that he
18 wasn't very happy.

19 Do you agree with my assessment? Would you
20 like to read this?

21 MR. LORAIN: May I approach the witness,
22 Judge?

23 JUDGE WOODRUFF: You may approach.

24 BY MR. LORAIN:

25 Q. This is Direct Testimony of Wendell Hubbs,

1 Case No. 2000-557. Just read that --

2 MS. KIZITO: Excuse me. I have an
3 objection.

4 These questions are continuing to go down a
5 line of issues that Mr. Merciel doesn't have knowledge
6 of.

7 JUDGE WOODRUFF: He has testified he doesn't
8 have knowledge about this. Are there any other
9 witnesses that would have more knowledge about this,
10 then, that are still to come?

11 I see Mr. Johansen is raising his hand.

12 I'm going to sustain the objection in that
13 Mr. Merciel has indicated he does not have any
14 knowledge about this area. You can ask Mr. Johansen
15 when he comes to the stand.

16 MR. LORAIN: All right, your Honor.

17 One more question along those lines, if he
18 has knowledge.

19 BY MR. LORAIN:

20 Q. Were you aware that in Case WR-00-557 -- did
21 anybody tell you that Commissioner Murray filed a
22 dissenting opinion and castigated concerning this
23 company's failure to keep the proper financial
24 information? Did you know about that?

25 A. I'm aware of Commissioner Murray's dissent,

1 yes.

2 Q. So you're aware of that?

3 A. I'm aware of that.

4 Q. And this is the same company that at that
5 time, that is OWC, is the precursor of this
6 Environmental Utilities as you've stated?

7 A. Precursor.

8 Q. Choose your word.

9 A. I'm sorry. I didn't follow where you're
10 coming from in that question.

11 Q. The question is, this was the statement
12 Commissioner Murray on the dissenting opinion had --
13 was made in regards to Osage Water Company? That is
14 the company we've been talking about here?

15 A. Okay. Yes.

16 Q. Do you agree with that?

17 A. Yes.

18 Q. All right. There has been comments about
19 the -- about this company being granted this CCN with
20 some conditions. Are you in agreement with the
21 statements that conditions do need to be imposed?

22 A. I am. I think if there are conditions, the
23 conditions need to be met before customers are served
24 as opposed to -- in fact, Commissioner Murray said
25 something like this before.

1 If a certificate is granted, and customers
2 are served under the authority of that certificate,
3 it's pretty difficult to cancel the certificate, so
4 conditions don't really mean much if you're going to
5 do that.

6 Now, if we -- if the Commission imposes the
7 condition and the company can meet that, and when the
8 conditions are met, then they have the authority to
9 exercise their certificate, that would be -- that
10 would be, I think, a legitimate way to do it.

11 Q. Do you have any feel for -- I mean, is there
12 any doubt in your mind that OWC is ideally -- since
13 they have the sewer on this case -- CCN on the sewer
14 on this same subdivision area, wouldn't it seem
15 logical that they would be the best one to serve this
16 particular area as a matter of fact? I mean, wouldn't
17 that be the best scenario here?

18 A. It would certainly be a legitimate scenario.
19 I'm not sure I would go so far as to say the best. I
20 think you can do it with a different company such as
21 this one. It's maybe a little more difficult
22 accounting-wise. You've got two companies instead of
23 one. You have some allocations to do. I do agree
24 that it would make sense for Osage Water Company to
25 provide this service.

1 Q. And it would be -- it would be good for
2 Osage Water Company because if Mrs. Williams is
3 correct that this map -- you saw the map that I
4 presented earlier --

5 A. Yes, I did.

6 Q. If all of these areas could be served with
7 one water company, it seems like that would deal with
8 one of the primary mandates of the Tartan criteria,
9 wouldn't it, and make it feasible?

10 A. I agree one water company would make sense.
11 I agree with that.

12 Q. And but for two-thirds of the directors, it
13 seems to me there is no reason why Osage Water Company
14 couldn't do this. Do you have any disagreement with
15 that?

16 A. Not really, except I would need to see an
17 application if they filed it. You know, we would have
18 to review it.

19 Q. Right.

20 A. And Osage Water Company would need to meet
21 the same criteria any other -- for any other
22 certificate expense, subject to that.

23 Q. And, in fact, if there were -- we talked
24 about arm's length transactions earlier.

25 A. Yes.

1 Q. You were here during that testimony?

2 A. Yes, sir.

3 Q. If a different group of people -- I would
4 like to ask you a hypothetical question.

5 Let's say you and I owned Osage Water
6 Company, and we had a CCN, and we had a CCN for doing
7 water and we had a CCN for doing sewer and we were
8 right in this area, wouldn't we be in here objecting
9 on behalf of OWC? Wouldn't that be a logical thing
10 for us to do so we could keep the competition down and
11 make it all feasible? Wouldn't that be a good thing
12 to do?

13 A. You would think so, yes.

14 MR. LORAIN: I don't think I have any
15 further questions.

16 JUDGE WOODRUFF: Thank you.

17 Environmental Utilities?

18 MR. WILLIAMS: Thank you.

19 CROSS-EXAMINATION BY MR. WILLIAMS:

20 Q. Mr. Merciel, just to follow up on this water
21 company that you and Tom are going to form here, now
22 wouldn't you need some money in order to get involved
23 in this Golden Glade application?

24 A. Absolutely. You need capital resources.

25 Q. And if you didn't have the capital

1 resources, it wouldn't be a good idea to come into the
2 Commission and spend a lot of money to complain about
3 somebody else doing the project, would it?

4 A. That's probably right.

5 Q. Okay. Now, is there any reason you can
6 think of to subject water customers at Golden Glade to
7 problems arising from Osage Water Company's loss of
8 customers in Osage Beach?

9 A. Could I ask you to restate -- just repeat
10 the question, please?

11 Q. Sure. I have it written down. That's easy.

12 A. Good.

13 Q. Is there any reason you can think of to
14 subject water customers of Golden Glade to problems
15 arising from Osage Water Company's loss of customers
16 in the City of Osage Beach?

17 A. Well, I would like to not subject the
18 customers, but I think they are subject to that event,
19 anyway, even with the formation of Environmental
20 Utilities, because the feasibility of Environmental
21 Utilities relies on Osage Water Company for two
22 reasons. Number one, the operations are combined with
23 Osage Water Company, and, number two, it relies on a
24 wholesale -- wholesale arrangement to Osage Water
25 Company so that Osage Water Company can serve its

1 customers in Eagle Woods. And I think the health of
2 Osage Water Company is pretty much contingent on this
3 certificate. At least that's my opinion.

4 Q. You mean the viability of Environmental
5 Utilities is contingent upon the continued existence
6 of Osage Water?

7 A. Yes, sir, and the health of Osage Water,
8 yes.

9 Q. Okay. But is there any reason to directly
10 subject customers to those problems if it can be
11 avoided?

12 MR. LORAIN: Your Honor, I'm going to
13 object to that. That's just badgering him. He's
14 already asked that question.

15 JUDGE WOODRUFF: I don't think I
16 characterize it as badgering, but he has asked the
17 question.

18 I'll go ahead and sustain the objection.

19 BY MR. WILLIAMS:

20 Q. Is there any reason why Environmental
21 Utilities couldn't supply wholesale water to the Eagle
22 Woods project with Eagle Woods being operated by Osage
23 Water Company?

24 A. Well, sir, I don't know. That's part of our
25 problems here. One answer might be yes, Environmental

1 Utilities certainly could provide wholesale water to
2 Osage Water Company, but I'm not sure there is going
3 to be such a contract. That's one of the issues we
4 brought up. And even after hearing testimony today,
5 we're not sure who at Osage Water Company could enter
6 into such a contract. There is no draft, no letter of
7 intent. We don't know who has authority at Osage
8 Water Company to enter such a contract, and that's one
9 of the problems I have here.

10 Q. Okay. You didn't hear the stipulation on
11 the record that the company would agree that that
12 could be placed as a condition on the certificate
13 though?

14 A. Yes, as a condition. Yes, that would not be
15 a problem.

16 Q. And does that resolve your concerns at this
17 point in time?

18 A. It would resolve that concern, yes.

19 Q. Okay. And you're aware at this point, your
20 testimony seemed to indicate or contemplate that the
21 Eagle Woods water system had not been transferred to
22 Osage Water Company. You're aware that has occurred
23 at some time in the past?

24 A. That's information I received, right, since
25 then.

1 Q. So your testimony on that issue would be
2 somewhat incorrect?

3 A. Somewhat. I think there are still some
4 issues regarding billing customers and who's really
5 taking responsibility. I'm still not sure about that.

6 Q. And you also raised an issue with regard to
7 a proposed flat rate of \$26.81 in the proposed tariff;
8 isn't that correct?

9 A. Yes.

10 Q. Isn't that the rate that Randy Hubbs
11 developed in Osage Water Company's most recent rate
12 case as a flat rate?

13 A. I think he did, although some things have
14 happened since then. I have a slightly different
15 opinion as well.

16 Q. But that's a change in your opinion and
17 something that the company wouldn't necessarily be
18 aware of. It is something that Staff has put forward
19 in the past; isn't that correct?

20 A. Yeah, that's probably correct.

21 Q. Okay. And that flat rate really wouldn't be
22 important if all of the customers are metered, would
23 it?

24 A. That's correct.

25 Q. The proposal that's in front of the

1 Commission calls for all metered customers; is that
2 correct?

3 A. For what's been proposed to be served at
4 this time, that's correct.

5 Q. Okay. Now, looking at Exhibit 20, this is
6 basically your rework of the feasibility study in this
7 case; is that correct?

8 A. Yes, that's correct.

9 Q. And what you've done here is you've taken
10 the anticipated capital costs, and then you have done
11 a per-customer allocation so that the entire amount of
12 capital would be considered to be in rate base, but it
13 would only be added into rates as customers are
14 actually brought on the system; is that correct?

15 A. That's correct. Its proportional customers
16 based on 100 customers.

17 Q. And then down here where you've calculated
18 certain percentages, for, say general overhead, office
19 staff and management staff, you've taken a ratio
20 between the proposed customers shown on this
21 application and the total customers from Osage Water
22 Company to come up with those percentages?

23 A. That's correct. And I might say it's
24 actually your calculation more than mine. I really --
25 to develop this I really started with your feasibility

1 study that you filed.

2 Q. So that's a refinement of the one that was
3 included in the application? Is that what you
4 describe it as?

5 A. Yes, that would be correct. The number that
6 was used was 400 customers for Osage Water Company, so
7 these percentages reflect whatever customers that
8 Environmental Utilities has as compared to 400 Osage
9 Water Company customers.

10 Q. And when you get down to the bottom, you
11 would conclude basically that under your analysis the
12 company would be profitable but may not attain the
13 desired or targeted rate of return of 12 percent on
14 capital; is that correct?

15 A. Yes. Yes.

16 Q. For example, you're showing in the year 2002
17 a \$5,214 profit; is that correct?

18 A. I prefer to call it return on investment,
19 but, yes, it is \$5,214.

20 Q. It's profit above and beyond a return on
21 investment?

22 A. Right, that's the return that the company
23 would be authorized to earn, but the company would not
24 realize quite that much. They are \$841 short of that
25 amount.

1 Q. Correct. But it does -- it is a positive
2 number, not a negative number?

3 A. That's correct.

4 Q. But it does not provide what I would call an
5 economic problem where it's going to make more than a
6 rate of return on investment; is that correct?

7 A. That's correct.

8 Q. So if you took this system and threw it into
9 Osage Water Company overall, all it would do is really
10 pay back the cost of capital for the system; is that
11 correct?

12 A. Pretty much.

13 Q. It's not going to make Osage Water Company a
14 more financially healthy company --

15 A. No.

16 Q. -- by contributing to other costs; is that
17 correct?

18 A. That's correct. It would not do that.

19 Q. So, therefore, Osage Water Company really
20 wouldn't be any better off for doing this project in
21 its name, wouldn't it?

22 A. It wouldn't be better off, no.

23 MR. WILLIAMS: Okay. I have no further
24 questions.

25 JUDGE WOODRUFF: Thank you.

1 I'll come up to questions from the Bench,
2 and Commissioner Murray.

3 COMMISSIONER MURRAY: Thank you.

4 QUESTIONS BY COMMISSIONER MURRAY:

5 Q. Good afternoon, Mr. Merciel.

6 A. Good afternoon, Commissioner Murray.

7 Q. How long have you been with the Public
8 Service Commission?

9 A. Twenty-four years.

10 Q. Have you had experience with the principals
11 of this company over -- how many years, would you say?

12 A. Okay. Yes, I have. With Mr. Mitchell since
13 probably in the late '80s. I'm wanting to say, like,
14 '87 or '88. It actually started out with his father,
15 and Pat came in along the line.

16 And then Mr. Williams became involved
17 sometime in the early '90s, probably '91 or '92. The
18 company expanded, and he became involved about that
19 time.

20 Q. And have you participated in most of the
21 certificate cases?

22 A. Either directly or as a supervisor, I have,
23 yes.

24 Q. Okay. I'd like you to look at your
25 Exhibit 20 for a minute. And you show there the

1 average water bill of \$27.97; is that right?

2 A. Yes.

3 Q. And that's what the average customer would
4 pay for water service alone on a monthly basis? Is
5 that right, a monthly basis?

6 A. That's correct. That's -- that's based on
7 an assumption of my part of 5,000 gallons per month.
8 I think -- go ahead.

9 Q. I'm sorry.

10 A. I was going to say, I think the company gave
11 me a number of 4700 gallons per month is what their
12 average is, which is pretty close.

13 Q. All right. And are you also familiar with
14 the sewer service that is provided to the customers of
15 Golden Glade Subdivision?

16 A. Yes.

17 Q. Do you recall approximately how much they
18 pay for sewer service to Osage Water Company every
19 month?

20 A. It's -- it's on the order of \$26 per month.
21 It's about the same amount.

22 Q. So we're really talking well over \$50 a
23 month for water and sewer service to those customers,
24 average customers; is that right?

25 A. Yes, that would be correct.

1 Q. Does that seem fairly high? How does that
2 compare to --

3 A. Well, it's not really what I would say out
4 of line. We see this level of rates in other
5 companies. It's probably on the high end, not the
6 highest. We have companies that have higher rates,
7 but companies that have lower as well.

8 Q. And you're talking about, I assume, small
9 water companies having these higher rates; is that --

10 A. For the most part. Actually, one that comes
11 to mind that has higher rates, they have -- there is
12 really a story about it involving the level of rate
13 base that the company invests. I might say I've also
14 seen some rural water districts -- of course, we don't
15 regulate them, but I've seen some water districts that
16 have rates that are substantially higher than this.

17 Q. Okay. Can you tell me, in arriving at that
18 average bill based upon the revenue requirements that
19 you calculated from the feasibility study that was
20 presented by the company, how many customers are you
21 assuming for the year 2002 would be charged that
22 amount in order to come up with the net underearnings
23 of \$841?

24 A. Okay. On the customer level, if I could
25 call your attention to -- to the next section below

1 where you're looking, it says capital investment
2 allocations.

3 Q. Yes.

4 A. There is a heavy line that says allocator
5 rate base. Okay. There is a heading called customers
6 and rate base allocation, and you might see the
7 numbers 41 and 16.

8 Q. Yes.

9 A. Okay. The 16 is the number of customers of
10 Golden Glade, which would be the customers of
11 Environmental Utilities. And the 41 is -- is total
12 customers that receive water from this well.

13 If you take the 41 and subtract 16, that
14 would be the number of customers in Eagle Woods. They
15 are actually customers of Osage Water Company, but
16 they are getting water from this well.

17 These rates that are being proposed are the
18 same rates as Osage Water Company, so the customers
19 are all paying the same rate.

20 Q. Okay. So in order to arrive at anything
21 close to a break-even, the customers of Eagle Woods
22 that are currently served by Osage Water Company make
23 up 41 out of a total of 57?

24 A. Well, the 41 is the total, so the
25 difference -- I think what you're getting at, the

1 Golden Glade customers are probably -- well, at that
2 stage a little bit less than half of the customers.
3 If you go on, 31 to 60, so it's about half. It's
4 almost half and half.

5 Q. Is that why you've expressed some concern
6 about -- that the viability of Osage Water Company --
7 continued viability of Osage Water Company is very
8 critical to the continued viability of Environmental
9 Utilities?

10 A. Yes. Yes, it is because they need the
11 customers. If -- Environmental Utilities might be
12 okay if you look some more years down the future and
13 some more expansion. You get customers elsewhere.
14 But for purposes of this case, in my opinion, we need
15 to rely on the availability of the Osage Water Company
16 customers.

17 Q. And wouldn't it make more sense for Osage
18 Water Company to provide the service in this area as
19 well, and there wouldn't be any question, I suppose,
20 about the wholesale -- about the customers of Eagle
21 Woods also obtaining service?

22 A. There would be correct. It would make sense
23 in my opinion for Osage Water Company to be filing
24 this certificate and asking for the service area. And
25 you're correct. It would be all Osage Water Company

1 customers. We wouldn't have to worry about a
2 wholesale arrangement. It would just all be Osage
3 Water Company.

4 Q. So for the customers of Golden Glade
5 Subdivision to continue to receive water service and
6 for the customers of Eagle Woods to continue to
7 receive water service, it might be more likely if they
8 were both served by Osage Water Company than by a
9 newly formed company under a different name?

10 A. That's probably correct. It may be more
11 stable with one company.

12 Q. You heard Ms. Bolin testify earlier, I
13 think?

14 A. I was here for most of it. I missed the
15 first part.

16 Q. Well, I think you're aware of the position
17 that Public Counsel was taking that it would be -- it
18 is more in the public interest for customers to be
19 served by a regulated entity than it is for those
20 customers to be served by the same principals who are
21 nonregulated when there is a question about the
22 competencies, the ability, whatever, of the
23 principals. Is that kind of what you understand?

24 A. That's -- yes, it is, and I pretty much
25 agree with that.

1 Q. Now, let me ask you this, because taking
2 that argument one step further, it seems to me that
3 any time a developer were to set up a homeowners
4 association similarly to the way this one has been set
5 up, and main-- and retained a majority of the voting
6 rights and put in a water system, that then that
7 developer could come to this Commission and say, Grant
8 me a certificate, and this Commission would buy that
9 argument but simply because if the Commission didn't
10 grant the certificate that developer would continue to
11 provide water service nonregulated.

12 Now, doesn't that provide an incentive for
13 people to develop properties in this manner?

14 A. I think it would, yes.

15 Q. And wouldn't that be a disservice to the
16 public?

17 A. Yes. Yes, it would. I don't think -- as
18 you know, we don't have jurisdiction over homeowners
19 associations, but I don't think this is set up the way
20 a homeowners association should be. It's just what
21 you said. The developer is really the one running the
22 association, not the customers.

23 Q. And if we, in fact, grant a certificate when
24 we -- when the company has not proven -- has not met
25 the burden to show that they meet the qualifications

1 to have the certificate and base that grant on the
2 fact that it's better to have those customers served
3 by a regulated entity than to have them served by the
4 same people unregulated, aren't we kind of promoting
5 that idea?

6 A. I would agree with you. Yes, we are.

7 Q. Then you mentioned Rocky Ranch -- the Rocky
8 Ridge Ranch case, which I'm not familiar with. Can
9 you briefly tell what the situation was there?

10 A. Yes. Rocky Ridge Ranch Utilities was a
11 regulated company. They come in and got a certificate
12 and operated for several years, and the homeowners
13 association decided to acquire the assets. They made
14 a deal with the developer to -- it was the developer
15 that owned the water company in that case. And the
16 homeowners association decided to buy it.

17 The problem was, not all of the people that
18 lived there and had water service were members of the
19 association. In other words, membership was optional.
20 So we had -- we had three points that were developed.
21 I think I can get them from memory. If you have an
22 association -- I may not have them in order -- all of
23 the water customers should be members of the
24 association, and the association should only serve the
25 members of the association; in other words, not go out

1 and serve third-parties, and -- I'm sorry. I can't
2 remember the third one, but there was another point we
3 had.

4 Q. All right. This was a situation where the
5 developer had come in -- or conveyed it to another --
6 to a company that came in for a certificate?

7 A. Yes. The developer of the subdivision
8 formed a water company and became regulated, and he
9 probably set up the association as well. I'm not
10 really sure about that.

11 But at some point later on the association
12 acquired the water system from the water company, from
13 the developer-owned water company, only, again, in
14 that case, the Commission agreed that it really wasn't
15 a legitimate association because not all of the water
16 customers were represented.

17 So the Commission would not relinquish
18 jurisdiction until the association fixed their bylaws
19 so that all customers were equally represented and all
20 of them were members of the association, which they
21 did finally.

22 Q. You said earlier that you have -- you
23 wouldn't say you hadn't gotten any complaints when
24 you've been back looking at Osage Water Company and
25 the changes that have been made, but they were fewer.

1 What complaints are you still hearing?

2 A. Well, currently -- in fact, it's still
3 open -- we have a complaint regarding -- it's
4 regarding a connection charge, or actually a charge
5 for setting a meter, and the Staff views it as a
6 dispute over interpreting the tariff. So that's one
7 we're handling right now.

8 As opposed to -- we have had complaints in
9 the past over some of the water outages and other
10 things that have happened, but some of the complaints
11 involved, like, the person answering the phone being
12 rude or phone calls not being returned. I guess I
13 might well just say it bluntly. Some of the office
14 people in Water Lab and Mr. Mitchell and Mr. Williams,
15 I've had complaints over just how they handle the
16 business, how they deal with their people.

17 Q. I think we've heard some of those at local
18 public hearings?

19 A. Yes, I think you've heard them before.

20 But that's what I was referring to. That
21 situation seems to have improved. Now, it's been,
22 whatever, six months, so, you know, time will tell if
23 that continues, but so far it looks better than what
24 it did before.

25 Q. Now, if this Commission were to grant the

1 certificate and with the conditions, those conditions
2 being -- having to be met prior to service being
3 provided, do you think that there would be a means to
4 enforce -- that service wasn't provided until the
5 conditions were met?

6 A. Well, yes. I think that's what should be
7 done. In effect, I think -- I think you wouldn't be
8 granting a certificate until the conditions are met.

9 Q. What if the company went ahead and provided
10 service anyway?

11 A. Well, I suppose that's a legal matter. In
12 my opinion, they would be doing that with no authority
13 to do so, and I suppose subject to penalties if -- if
14 the Commission decided to seek penalties.

15 Q. Is it your understanding from Mrs. Williams'
16 testimony earlier today -- I thought I heard her say
17 that there were some customers being served by the
18 central water system?

19 A. I heard her say that, and that was the first
20 I heard about it. As far as I knew, the well was
21 running, but it wasn't connected to anything. Maybe
22 it is connected to somebody's pipeline now. I don't
23 know. I don't know that first-hand.

24 Q. And if they were being served, is that a
25 problem?

1 A. Well, she also said that they weren't
2 charging, so if they are not charging for service,
3 then I don't think it is a problem.

4 Q. So they could serve indefinitely as long as
5 they didn't charge?

6 A. Yes. I'm not sure that -- it may be a
7 problem with the Department of Natural Resources. If
8 they don't have the permit to dispense water, I'm not
9 sure they have authority to pipe that water to
10 anybody.

11 Q. Do you know if they have a permit to
12 dispense water?

13 A. It's my understanding that they don't. I'm
14 not clear on the reasons why they don't, but that's --
15 that's what I'm hearing from Department of Natural
16 Resources.

17 Q. Do you know if they have all of the -- if
18 they have all of the construction permits in place and
19 have complied up to the point where they may not be in
20 compliance now if they're serving without a permit?

21 A. As far as I know, the construction permits
22 were in order and it was constructed. The Department
23 of Natural Resources along with Mr. Hummel in our
24 office did a -- did a final -- what they call a final
25 inspection. There may need to be some follow-ups on

1 that final inspection before the permit to dispense is
2 issued.

3 Q. Now, if you were telling the Commission what
4 would be the best thing to do here, what would you
5 suggest?

6 A. Well, that's the big question.

7 Q. Are there any good alternatives? Let's put
8 it that way. Are there any good choices?

9 A. I don't know of any good alternatives that
10 we can get through. I do agree it would be better for
11 a certificated company to serve this area. I think
12 there clearly is a need for water service, and whether
13 it's this company or another one, I think either
14 company or if there were to be a water district or a
15 city, which we don't have, but those would be other, I
16 guess, theoretical alternatives.

17 For the reasons we've talked about, I would
18 rather not see a homeowner association, especially
19 since it's really the developer that controls the
20 association, so that's got a good alternative unless
21 they change the bylaws.

22 Of course, as has been stated, the Staff has
23 concerns about a certificate which may or may not get
24 resolved by some conditions that might be placed on a,
25 whatever, conditional certificate.

1 So what's the answer? I don't really have a
2 good answer, but I would -- I would -- I can't bring
3 myself to recommend that we err on the side of
4 granting a certificate. In other words, I just can't
5 bring myself to recommend that a certificate be
6 granted when we're not comfortable with the company.
7 If they can meet all of the conditions we have, then I
8 would say go with it. But unless that's done -- and
9 part of my problem is, as I said before, the health of
10 Osage Water Company, and I'm not sure how that's going
11 to be resolved. If -- you know, because it does
12 depend on Osage Water Company from sharing resources
13 and because of the wholesale arrangement.

14 So if they can show us that Osage Water
15 Company or some successor is going to be available and
16 continue to operate, then I don't think we would have
17 so much of a problem with it.

18 Q. Okay. But it's your position that you would
19 not grant the certificate prior to at least a whole
20 set of conditions being met prior to a certificate
21 being granted; is that correct?

22 A. That's correct.

23 COMMISSIONER MURRAY: Thank you,
24 Mr. Merciel.

25 JUDGE WOODRUFF: Commissioner Lumpe?

1 QUESTIONS BY COMMISSIONER LUMPE:

2 Q. Mr. Merciel, did I hear you say that
3 Mr. Mitchell had resigned from Osage Water?

4 A. If I said that, I don't think I meant to use
5 that word. I think he -- or I might have said
6 resigned from --

7 Q. From being president. Is he still the
8 president?

9 A. Well, I think -- I probably meant to say he
10 resigned from doing the day-to-day operations --

11 Q. All right.

12 A. -- which is what --

13 Q. But to your knowledge he is still the
14 president?

15 A. As far as I know. I really haven't looked
16 at that, but as far as I know, he's still involved
17 with the company in some fashion, just not doing the
18 work at this time.

19 Q. Okay. And then the question you were asked
20 about how long have you known the principals in this
21 company, and I think you referenced Osage Water, not
22 this company.

23 A. Okay.

24 Q. How long have you known the principals of
25 this application?

1 A. Okay. The ones of Environmental, I've known
2 them since they got involved with Osage Water Company,
3 and that was in approximately 1991, maybe 1992.

4 Q. Mr. Mitchell is not involved in this
5 company. Right?

6 A. That's correct.

7 Q. So he would not -- you would not have gone
8 back to that?

9 A. Well, I mentioned him because his father was
10 the one that started Osage Water Company.

11 Q. Right.

12 A. But "this company" meaning --

13 Q. But we're talking about EU, not Osage Water?

14 A. Correct. Talking about that company,
15 Mr. Mitchell is not involved.

16 Q. All right. And I think I heard you say
17 there is a need. You just have differences of
18 opinions on how that need should be met; is that
19 correct?

20 A. Yes, Commissioner, that's correct.

21 Q. Okay. And I look at your page 2,
22 Mr. Merciel. Down towards the bottom you say, "From a
23 management standpoint, I believe EU has managers who
24 can handle most situations, but there may be
25 shortcomings regarding negotiations with developers."

1 What do you mean there? Because the well is
2 built. Right? So what negotiations with developers
3 are we talking about?

4 A. Well, I'm talking about these people dealing
5 with other developers. Now, of course, this well --
6 Environmental Utilities and the developers of the
7 subdivision, Golden Glade, they are the same people,
8 so that's not an issue, of course. But in dealing
9 with other developers such as Mr. Westenhaver, with
10 Osage Water Company there are other developers, and
11 we've had experience with, you know, other developers,
12 other subdivisions, and it seems like there's always a
13 story. There's always some problem, and --

14 Q. And, again, you're referencing Osage Water.
15 Right?

16 A. The experience has been with Osage, yes,
17 Commissioner.

18 Q. So, basically, you have said here that from
19 the management standpoint, they have managers who can
20 handle this; is that correct? I mean, that's your
21 testimony here. Are you changing it?

22 A. Well, no. No, ma'am, I'm not changing my
23 testimony.

24 Q. Okay.

25 A. I think I said the managers can handle most

1 situations. There may be shortcomings regarding
2 negotiations.

3 Q. With other developers, but we're not talking
4 about other developers?

5 A. And Mr. Williams has been involved with
6 negotiations with developers in the context of Osage
7 Water Company, and that's what I'm getting at with
8 this testimony.

9 Q. Okay. Again, I know we're getting late
10 here, but I've got a lot of questions for you.

11 A. Okay.

12 COMMISSIONER LUMPE: If -- do you want to
13 quit and start tomorrow?

14 JUDGE WOODRUFF: Well, we're not scheduled
15 for tomorrow.

16 COMMISSIONER LUMPE: Well, we'll need to
17 reschedule.

18 JUDGE WOODRUFF: It's apparent that we're
19 not going to be able to finish with all of the
20 witnesses today, and, apparently, we're not going to
21 finish with Mr. Merciel, as well.

22 So, Mr. Merciel, you can go ahead and step
23 down.

24 We will need to reschedule another day to
25 continue this hearing, and I don't have a date in

1 mind. And I'm sure no one has their calendar all that
2 handy at this moment either.

3 So what I'm going to ask the parties to do
4 is go ahead and send me an e-mail at my address. I
5 think you-all have it. If not, let me know. Send me
6 an e-mail tomorrow or as soon as possible giving me
7 your exclusion dates, the dates you're not available.

8 MR. LORAINE: Over what period, your Honor?

9 JUDGE WOODRUFF: Over the next 90 days. And
10 I don't know what is available on the calendar. I'll
11 try to slip this in as soon as possible. Again,
12 that's going to depend on people's exclusion dates.

13 Does anybody have any questions at this
14 time?

15 MR. WILLIAMS: What's your e-mail?

16 It's mwoodruf -- just like my last name
17 except you have to leave off the last "F" --
18 .mail.state.mo.us.

19 At this point, then, we are recessed until a
20 date to be determined.

21 WHEREUPON, the hearing of this case was
22 continued to a date to be fixed by the Commission.

23

24

25

1	I N D E X	
2		
	Opening Statement by Mr. Williams	33
3	Opening Statement by Ms. O'Neill	33
	Opening Statement by Ms. Kizito	36
4	Opening Statement by Mr. Loraine	38
5	ENVIRONMENTAL UTILITIES' EVIDENCE:	
	DEBRA J. WILLIAMS:	
6	Direct Examination by Mr. Williams	43
	Cross-Examination by Ms. Kizito	45
7	Cross-Examination by Ms. O'Neill	64
	Cross-Examination by Mr. Loraine	88
8	Questions by Commissioner Murray	122
	Questions by Commissioner Lumpe	195
9	Questions by Commissioner Forbis	200
	Further Questions by Commissioner Lumpe	202
10	Questions by Judge Woodruff	202
	Recross-Examination by Ms. O'Neill	206
11	Recross-Examination by Mr. Loraine	210
	Redirect Examination by Mr. Williams	219
12	OFFICE OF PUBLIC COUNSEL'S EVIDENCE:	
13	KIMBERLY K. BOLIN:	
	Direct Examination by Ms. O'Neill	227
14	Questions by Commissioner Murray	230
	Questions by Commissioner Lumpe	237
15	Recross-Examination by Ms. Kizito	242
	Redirect Examination by Ms. O'Neill	243
16	STAFF'S EVIDENCE:	
17	JAMES M. RUSSO:	
	Direct Examination by Ms. Kizito	250
18	Cross-Examination by Ms. O'Neill	252
	Cross-Examination by Mr. Loraine	255
19	Cross-Examination by Mr. Williams	256
	Questions by Commissioner Murray	263
20	Questions by Commissioner Lumpe	266
	Questions by Judge Woodruff	268
21	JAMES A. MERCIEL, JR.:	
22	Direct Examination by Ms. Kizito	269
	Cross-Examination by Ms. O'Neill	273
23	Cross-Examination by Mr. Loraine	282
	Cross-Examination by Mr. Williams	297
24	Questions by Commissioner Murray	305
	Questions by Commissioner Lumpe	319
25		

1	E X H I B I T S I N D E X		
2		Marked	Received
3	Exhibit No. 12	50	64
4	Letter to Eagle Woods Customer		
5	from Debbie Williams, dated		
6	November 27, 2001		
7	Exhibit No. 13	76	87
8	Declaration of Restrictions for		
9	Golden Glade Subdivision		
10	Exhibit No. 14	104	105
11	Affidavit of Keith R. Krueger		
12	Exhibit No. 15	115	116
13	Color-coded map		
14	Exhibit No. 16	130	226
15	Two DNR permits		
16	Exhibit No. 17	212	214
17	Water and sewer supply contract		
18	for Harbor Ridge		
19	Exhibit No. 18	212	214
20	Water and sewer supply contract		
21	for Eagle Woods		
22	Exhibit No. 19	221	226
23	Photocopy of two photographs		
24	Exhibit No. 20	271	273
25	Revised Schedule 1 to the Rebuttal		
	Testimony of James A. Merciel, Jr.		