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BEFORE THE PUBLIC SERVICE COMMISSION

STATE OF MISSOURI

TRANSCRIPT OF PROCEEDINGS

HEARING

February 19, 2003

Jefferson City, Missouri

Volume 6

In the Matter of the Application of)
Environmental Utilities, LLC, for)
Permission, Approval, and a Certificate)
of Convenience and Necessity) Case No. WA-2002-65
Authorizing It to Construct, Install,)
Own, Operate, Control, Manage and) Tariff No.
Maintain a Water System for the Public) JW-2003-0238
Located in Unincorporated Portions of)
Camden County, Missouri (Golden Glade)
Subdivision)

BEFORE: _____
MORRIS L. WOODRUFF, Presiding
SENIOR REGULATORY LAW JUDGE.

REPORTED BY:
TRACY L. CAVE, CSR, CCR
ASSOCIATED COURT REPORTERS

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21
22
23
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1 JUDGE WOODRUFF: We're here on Case
2 No. WA-2002-65, which is the application of Environmental
3 Utilities for a certificate of convenience and necessity.
4 And we'll begin by taking entries of
5 appearance and beginning with Environmental Utilities.
6 MR. WILLIAMS: Gregory Williams, P.O. Box 431,
7 Sunrise Beach, Missouri 65079 for the applicant,
8 Environmental Utilities, LLC.
9 JUDGE WOODRUFF: And for Staff?
10 MS. KIZITO: Victoria Kizito on behalf of the
11 Staff of the Missouri Public Service Commission, P.O.
12 Box 360, Jefferson City, Missouri 65102. Also appearing for
13 Staff is Keith Krueger.
14 JUDGE WOODRUFF: Thank you.
15 For Public Counsel?
16 MS. O'NEILL: Yes. Ruth O'Neill appearing for
17 the Office of Public Counsel and the public. Our address is
18 P.O. Box 7800, Jefferson City, Missouri 65102.
19 JUDGE WOODRUFF: Thank you.
20 And I don't see anyone here for Hancock
21 Construction.
22 All right. And we'll begin today with giving
23 a chance to make an opening statement, if you wish.
24 MR. WILLIAMS: Company has no opening
25 statement, your Honor.

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1 JUDGE WOODRUFF: Pardon me?

2 MR. WILLIAMS: Company does not have an
3 opening statement.

4 JUDGE WOODRUFF: And Staff?

5 MS. KIZITO: The Staff doesn't really have an
6 opening statement, as such. The testimony filed in this
7 case by the Staff and Office of Public Counsel is brief and
8 no testimony was filed by Environmental Utilities or the
9 Intervenor. That's all I have to say.

10 JUDGE WOODRUFF: Okay. Public Counsel?

11 MS. O'NEILL: We don't have an opening
12 statement, your Honor.

13 JUDGE WOODRUFF: All right. Let's go ahead
14 and proceed with evidence then. Let's start with Staff
15 witness.

16 (Witness sworn.)

17 JUDGE WOODRUFF: And you may proceed.

18 DALE W. JOHANSEN testified as follows:

19 DIRECT EXAMINATION BY MS. KIZITO:

20 Q. Mr. Johansen, please state your name for the
21 record.

22 A. Dale Johansen, J-o-h-a-n-s-e-n.

23 Q. And what is your business address?

24 A. Post Office Box 360, Jefferson City, Missouri
25 65102.

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

2 A. I work for the Missouri Public Service
3 Commission, and I'm the manager of the water and sewer
4 department.

5 Q. Did you prepare and cause to be filed the
6 Supplemental Direct Testimony of Dale W. Johansen --

7 A. Yes.

8 Q. -- in this case?

9 Okay. I don't have any -- let's see. Well,
10 it hasn't been marked as an exhibit yet so I'll do that in a
11 moment.

12 Did you also prepare and cause to be filed
13 Supplemental Rebuttal Testimony of Dale W. Johansen?

14 A. We chose not to file Rebuttal Testimony in
15 this case.

16 Q. I'm sorry.

17 Do you have any corrections to make in your
18 testimony?

19 A. No.

20 Q. Are the answers in your Direct Testimony
21 provided true and accurate, to the best of your knowledge
22 and belief?

23 A. Yes, they are.

24 Q. And if I were to ask you the same questions
25 today, would your answers be substantially the same?

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1 A. Yes.

2 MS. KIZITO: Your Honor, I would offer the

3 testimony labeled as Direct Testimony of Dale W. Johansen in
4 this case.

5 JUDGE WOODRUFF: Okay. We'll mark it as
6 No. 1.

7 (EXHIBIT NO. 1 WAS MARKED FOR IDENTIFICATION.)

8 MR. WILLIAMS: Your Honor, I do have an
9 objection with respect to the testimony on page 3, lines 14
10 through 20 in that it appears to call for a legal opinion or
11 conclusion from this witness and there's no foundation which
12 would allow the witness to render such an opinion.

13 However, if we're allowed to conduct
14 cross-examination on the basis and factual information upon
15 which that opinion is based, I have no objection to the
16 testimony being admitted.

17 However, if we're going to get the objection
18 in connection with cross-examination that we're asking for
19 legal opinions or conclusions from the witness, I would
20 object to that testimony being allowed. So one way or the
21 other we'd want it in or allow us to cross-examine.

22 JUDGE WOODRUFF: We'll certainly allow you to
23 cross-examine. You're talking about the question and answer
24 concerning Osage Water being administratively dissolved
25 prevents it from entering into a contract?

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1 MR. WILLIAMS: Exactly right.

2 JUDGE WOODRUFF: If that was an objection to

3 the admission of the testimony, it will be overruled and
4 we'll deal with cross-examination when it comes up.

5 Any other objections to the admission of
6 Exhibit 1?

7 MS. O'NEILL: No.

8 JUDGE WOODRUFF: It will be received into
9 evidence.

10 (EXHIBIT NO. 1 WAS RECEIVED INTO EVIDENCE.)

11 JUDGE WOODRUFF: Then for cross-examination,
12 Public Counsel?

13 MS. O'NEILL: No questions.

14 JUDGE WOODRUFF: All right.
15 You may inquire.

16 MR. WILLIAMS: Thank you, your Honor.

17 MS. KIZITO: Your Honor, if I could just add
18 that the reason the Staff included the testimony regarding
19 the corporate status is only because the Commission asked to
20 have that answered in the testimony.

21 JUDGE WOODRUFF: I understand.

22 MS. KIZITO: And that was the best way that
23 the Staff could provide that information.

24 JUDGE WOODRUFF: Thank you.

25 MS. KIZITO: I should add that the Staff would

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1 be glad to brief that issue. It doesn't necessarily have to
2 be in the testimony as far as the Staff is concerned. That
3 could be an issue for the briefs.

4 JUDGE WOODRUFF: And it may very well be.

5 Mr. Williams?

6 MR. WILLIAMS: Thank you, your Honor.

7 CROSS-EXAMINATION BY MR. WILLIAMS:

8 Q. Good morning, Mr. Johansen.

9 A. Good morning.

10 Q. Mr. Johansen, I take it that you have
11 discussed at length with your legal counsel the effect of an
12 administrative dissolution of a corporate charter in
13 connection with how that affects the corporation's ability
14 to contract and its obligations to provide public utility
15 service. Would that be an accurate statement?

16 A. That's correct, I have.

17 Q. And you've also been the manager of the water
18 and sewer department for a number of years?

19 A. Yes.

20 Q. And prior to that time, held the position
21 actually higher in the administrative chain of the Public
22 Service Commission; is that correct?

23 A. Yes, it is.

24 Q. So you've had extensive experience with the
25 provision of utility service and its interrelationship with

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1 legal requirements. Would that be an accurate statement?

2 A. Yes, it is.

3 Q. And in your testimony when you give a

4 conclusion as cited on page 3, lines 14 through 20, are you
5 basing that on your experience with corporations and the
6 Public Service Commission?

7 A. That, and discussions with counsel.

8 Q. All right. Now, in connection with your
9 experience then, would it be your opinion that Osage Water
10 Company's obligation to provide water service at Eagle Woods
11 terminated when it was administratively dissolved, or did it
12 continue past the administrative dissolution of the company
13 such that it still exists today?

14 A. Regarding their obligation to provide service,
15 that would have continued.

16 Q. So it would be your opinion that Osage Water
17 Company today continues to have an obligation to provide
18 public water utility service to customers at Eagle Woods
19 Subdivision even though its charter's been administratively
20 dissolved?

21 A. Yes.

22 Q. Now, would it be necessary for Osage Water
23 Company to have access to a public water supply constructed
24 according to the Missouri Department of Natural Resources
25 standards in order to provide water utility service to Eagle

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1 Woods?

2 A. Yes.

3 Q. So it would be your opinion that Osage Water
4 Company's required to provide service and would also be

5 required under the law to have access to a public water
6 supply?

7 A. Yes.

8 Q. Now, Mr. Johansen, do you know of any other
9 public water supply that Osage Water Company has access to
10 other than the one that is in issue in this case for
11 Environmental Utilities to operate and sell water to Osage
12 Water Company?

13 A. From a standpoint of a supply that is of
14 sufficient capacity to provide service to Eagle Woods, no.

15 Q. All right. So, to the best of your knowledge,
16 there's no alternative lawful source of water for Eagle
17 Woods; is that correct?

18 A. Not today. There certainly are options that
19 could be pursued.

20 Q. Okay. And what options will those be?

21 A. Well, there could be additional source of
22 supply constructed in the Eagle Woods Subdivision, for
23 example. There is currently one well there that, as I
24 understand it, is a state-approved well.

25 There's a second well that is also present.

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1 It's our understanding that it may not be what we call a
2 state-approved well, but -- and so those are two other
3 options that are available. And then there's also the
4 option of drilling a well that would be of sufficient

5 capacity.

6 Q. Mr. Johansen, tell me about the state-approved
7 well that currently exists in Eagle Woods.

8 A. Well, it's our understanding that the
9 developer of Eagle Woods initially constructed two wells in
10 the subdivision. And those were, as part of the contractual
11 relationship between Osage Water and Mr. Westenhaver -- or
12 Summit Investments is the developer, were conveyed to the
13 company, at least one of them was. There's some -- been
14 some discussion as to whether both were.

15 The wells do not have sufficient capacity to
16 serve the subdivision as it would be fully developed, is our
17 understanding.

18 Q. Now, Mr. Johansen you used the word
19 "state-approved" with respect to the well. Is it a public
20 water supply which has basically the ability to serve more
21 than 15 connections or 25 people or is it a multifamily well
22 that's limited to less than 15 connections or 25 people?

23 A. It was initially constructed, I believe --
24 both wells were initially constructed as multifamily wells.
25 When I use the term "state-approved" --

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1 Q. That covers several different categories,
2 doesn't it?

3 A. Yes, it does.

4 Q. Whereas, the well in Golden Glade would be
5 defined as a public water supply under the DNR regulations?

6 A. Yes.

7 Q. And may serve more than 25 residents?

8 A. Correct.

9 Q. Or more than 15 connections?

10 A. Correct.

11 Q. So when you talk about an existing

12 state-approved well, that would be a well of limited

13 capacity with the limited ability to serve homes; is that

14 correct?

15 A. Yes.

16 Q. And we'd all agree there's more than 15 homes

17 in Eagle Woods at this point in time?

18 A. Yes, there is.

19 Q. So that well couldn't be used to serve all the

20 houses in Eagle Woods?

21 A. That's correct. And that's the reference in

22 the testimony to not having a sufficient supply currently.

23 Q. Maybe we've covered this, but it would be your

24 opinion that Osage Water Company is required to provide

25 water service, that it needs access to a public water supply

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1 and that would be necessary for it in order to provide

2 service?

3 A. Yes.

4 MR. WILLIAMS: May I approach the witness,

5 your Honor?

6 JUDGE WOODRUFF: You may.

7 BY MR. WILLIAMS:

8 Q. Mr. Johansen, I'd like for you to look with
9 me, if you would, at this printout of Section 351.476 from
10 the Missouri Revised Statutes on corporations that outlines
11 the effect of a dissolution. I'd like you to look
12 particularly at the two paragraphs there that have an
13 asterisk by them and read those, if you would, to yourself.

14 A. Okay.

15 Q. Now, Mr. Johansen, with respect to the first
16 asterisked paragraph, that basically says that a dissolved
17 corporation continues to exist; is that right?

18 A. Yes.

19 Q. And then the subparagraph 5 that's under it
20 says that the corporation may do every other act necessary
21 to wind up and liquidate its business and affairs; is that
22 right?

23 A. Yes.

24 Q. In interpreting that statute and applying it
25 to the facts in this situation, you've already testified

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1 that it's necessary for Osage Water Company to have access
2 to a public water supply?

3 A. Correct.

4 Q. And would it then not be appropriate for Osage
5 Water Company to contract to have access to a public water
6 supply if it's required to provide service through a public

7 water supply?

8 A. That's one option it would have to secure that

9 supply, yes.

10 Q. Okay. Mr. Johansen, to your knowledge, are

11 all Osage Water Company's customers receiving water and

12 sewer utility service today?

13 A. So far as we know, they are, yes.

14 Q. And, to the best of your knowledge, is

15 Environmental Utilities managing Osage Water Company's water

16 and sewer systems?

17 A. That's our understanding, yes.

18 Q. To your knowledge, has a receiver been

19 appointed for Osage Water Company?

20 A. One has not.

21 Q. Okay. In your testimony you made reference to

22 an injunction suit against Osage Water Company with respect

23 to Eagle Woods. Do you recall that?

24 A. Yes.

25 Q. To your knowledge, has any injunction been

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1 entered in that lawsuit?

2 A. It has not yet, no.

3 Q. So this Commission could not look to the

4 circuit court's decision as to in what manner Osage Water

5 Company should continue to provide water utility service to

6 Eagle Woods; is that correct?

7 A. Regarding that particular case you're
8 referring to, that's correct.

9 Q. All right. Is there any other case that the
10 court -- or the Commission could refer to that would answer
11 the question as to how Osage Water Company should continue
12 to provide water utility service?

13 A. I don't believe so, no.

14 Q. Now, Mr. Johansen, would you recommend to the
15 Commission denying Environmental Utilities' application to
16 serve Golden Glade if doing so would eliminate the only
17 legal source of water for Eagle Woods' residents?

18 A. No. And, as a matter of fact, we believe that
19 this arrangement is what should happen. It's just -- it
20 really comes down to the question of whether or not Osage
21 Water has legal capacity to enter into the agreement -- or
22 rather enter into an amended agreement that meets the terms
23 that the Staff believes are appropriate for that contract.

24 Q. All right. Now, if Osage Water Company's
25 obligation to provide service continues after administrative

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1 dissolution, then that would clearly be part of its winding
2 up and liquidating its affairs. Would you agree with that?

3 A. Yes.

4 Q. And if obtaining a source of water is
5 necessary in order to satisfy that obligation, then that
6 would be part of winding up its business affairs as well,
7 would it not?

8 A. Yes.

9 Q. Would it then be your opinion that
10 administrative dissolution does not prevent Osage Water
11 Company from entering into an agreement to do something that
12 you believe it's required to do by the Public Service
13 Commission?

14 A. It doesn't prevent it from obtaining a water
15 supply sufficient to provide the service it needs to
16 provide. The question is whether or not it's prevented from
17 entering into that contractual arrangement for that supply
18 or whether it has to exercise another option.

19 Q. And what other options would it have?

20 A. Well, as I mentioned earlier, there's
21 constructing a supply in Eagle Woods sufficient to provide
22 its service.

23 Q. Okay. Do you think that the construction of
24 new capital assets is consistent with winding up and
25 liquidating the affairs of the corporation?

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1 A. I don't know.

2 Q. All right. We've reached the limits of what
3 you know on this topic?

4 A. We've probably exceeded them.

5 Q. Very good.

6 MR. WILLIAMS: I don't believe I have any
7 further questions for the witness.

8 JUDGE WOODRUFF: Thank you. I have some
9 questions from the Bench.
10 QUESTIONS BY JUDGE WOODRUFF:
11 Q. First of all, what is the current status of
12 the Staff's suit for seeking appointment of a receiver for
13 Osage Water Company?
14 A. The petition has been filed in Camden County
15 Circuit Court. I believe the -- that was served on the
16 company around January 20th, so I believe the answer to that
17 is due somewhere around February 20th. I believe it's
18 30 days after that.
19 Q. Okay. So obviously there's no trial date set
20 yet at this point?
21 A. That's my understanding, there is not.
22 Q. And is Staff requesting any sort of expedited
23 hearing or procedural schedule on that?
24 A. Quite honestly, I'm not sure exactly what has
25 been done in the circuit court other than getting the

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1 petition filed and having it served and now waiting for the
2 answer.
3 Q. Okay. Now, I believe you testified that Osage
4 Water is currently still serving the residents of Eagle
5 Woods?
6 A. Yes.
7 Q. Okay. And what source are they drawing their
8 water from at this point?

9 A. They are currently obtaining water from what
10 we call the Williams well, which is the well located in the
11 Golden Glade subdivision that would eventually be
12 transferred to Environmental Utilities from the Williamses.

13 Q. Okay. At this point it's still owned by the
14 Williamses?

15 A. Correct.

16 Q. And it's my understanding the Williamses are
17 not being paid for that water. Is that still the case?

18 A. That's my understanding, yes.

19 Q. Okay. Now, you mentioned there are other
20 alternatives for Osage Water to obtain its water supply for
21 Eagle Woods. Now, I know you mentioned the possibility of
22 drilling another well on their own -- on Eagle Woods'
23 property?

24 A. Correct.

25 Q. Okay. Do you have any idea how much that

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1 would cost?

2 A. Not really. And, quite honestly, I think the
3 alternative that is being pursued here through the
4 contractual arrangement is the one that makes the most
5 sense.

6 Q. Okay.

7 A. It's just that, you know, if that is
8 precluded, there are other options.

9 Q. As I recall from testimony from another case
10 the Williams' well cost 70 or 80,000 dollars. Is that about
11 right?

12 A. Yes. Something in that range, yes.

13 Q. And another well in the Eagle Woods area would
14 cost something similar to that?

15 A. It would probably be somewhat less than that
16 simply because it would not need to be constructed to the
17 capacity that would serve both subdivisions.

18 I think the original intent when the well in
19 the Golden Glade subdivision was built was that it would in
20 some fashion provide water to both subdivisions. So there
21 would be some cost savings, but probably not significant.

22 Q. Now, are there any other alternatives for
23 Eagle Woods aside from building their own well or taking
24 water from the Williams' well?

25 A. Well, the two wells that were originally

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1 constructed as multifamily wells by the developer, there
2 possibly could be something to be done to enhance the
3 capacity of those wells and receive DNR approval for use of
4 those wells as part of a public drinking water system rather
5 than as multifamily wells, but again, we're not -- we're not
6 sure what that might cost. That is another option.

7 Q. Okay. Are there any other outside sources of
8 water for Eagle Woods aside from the Williams' well? Could
9 they hook up to the City of Osage Beach or something?

10 A. I don't believe Osage Beach has water out that
11 far, no. I think basically you have to look to sources in
12 that area.

13 MR. WOODRUFF: Okay. I believe that's all the
14 questions I have.

15 THE WITNESS: Okay.

16 JUDGE WOODRUFF: Any recross based on
17 questions from the Bench?

18 MR. WILLIAMS: Yes.

19 JUDGE WOODRUFF: We'll let Public Counsel go
20 first, if she wishes.

21 MS. O'NEILL: I have just a couple.

22 RE CROSS-EXAMINATION BY MS. O'NEILL:

23 Q. Good morning, Mr. Johansen.

24 A. Good morning.

25 Q. In discussing alternatives with Judge Woodruff

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1 here a minute ago, alternatives are a big issue because of
2 this corporate status issue. Isn't that one of the problems
3 that the contract presents in its current form --

4 A. Yes.

5 Q. -- the corporate status of Osage?

6 But as you've already testified, Osage Water
7 Company, as some sort of entity, is out there providing
8 water and sewer service right now?

9 A. That's correct.

10 Q. Although it's not a legal corporation right
11 now, Osage still has owners; is that right?

12 A. Correct.

13 Q. And do you know whether or not the owners of
14 Osage Water Company in a non-corporate capacity can enter
15 into a contract with the Williamses for water service?

16 A. I do not know that.

17 Q. Okay. And the concern about this dissolved
18 status of the corporation goes to concerns about whether or
19 not this contract would be valid and enforceable; is that
20 correct?

21 A. Yes.

22 MS. O'NEILL: No further questions.

23 JUDGE WOODRUFF: All right. Mr. Williams?

24 MR. WILLIAMS: Thank you, your Honor.

25 RECROSS-EXAMINATION BY MR. WILLIAMS:

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1 Q. Mr. Johansen, let's back up to something that
2 Judge Woodruff was asking you about. You testified that the
3 capacity of the existing Eagle Woods wells could be enhanced
4 and somehow MDNR approval to use those as part of a public
5 water supply could be obtained?

6 A. That's a possibility. I'm -- I'm not sure if,
7 in fact, that could happen. That's a possibility that
8 certainly I think would be looked at. We have not pursued
9 that with DNR directly as to whether or not -- what their
10 position would be on that. I'm simply saying that is

11 something else that could be looked at and considered.

12 Q. And if John MacEachen said that couldn't be
13 done, would it still be your opinion it could be done?

14 A. Not if John MacEachen said that, no.

15 JUDGE WOODRUFF: Let's clarify. Who is John
16 MacEachen?

17 BY MR. WILLIAMS:

18 Q. John MacEachen -- could you tell the
19 Commission who that is?

20 A. He's a staff person in the Public Drinking
21 Water Program for DNR and works in the permitting area.

22 Q. Wouldn't he, in fact, be in charge of
23 enforcement of DNR regulations for the Public Drinking Water
24 Program?

25 A. For public drinking water, yes, he is also in

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1 enforcement.

2 Q. Okay. Have you ever seen DNR approve the use
3 of an existing multifamily well for conversion as part of a
4 public drinking water supply system?

5 A. I'm not aware of any situation where they've
6 done that where we've been directly involved in it. It may
7 have happened, but we're not aware of it.

8 Q. Okay. So when you were telling the Judge that
9 that was an option, that was pretty much speculation on your
10 part as to something that from a technical standpoint could

11 be done, but from a legal standpoint may or may not be
12 permitted to be done?

13 A. Right. It's an option that could be pursued.
14 Whether or not it would be successful, I don't know.

15 Q. So from an engineering standpoint, you are an
16 engineer, that's something you believe could be done from a
17 technical standpoint?

18 A. Correct.

19 Q. All right. But you can't speak as to whether
20 or not a DNR permit could be obtained for that type of a
21 system?

22 A. I cannot, that's correct.

23 Q. Now, Mr. Johansen, as an administratively
24 dissolved corporation, can Osage Water Company raise capital
25 either through the issuance of debt or through the issuance

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1 of new equity obligations?

2 A. I don't know.

3 Q. Very well. And wouldn't either of those
4 activities require a proceeding in front of the Commission?

5 A. Yes, they would.

6 Q. And would those proceedings be allowed to
7 occur by the Commission when the corporation is
8 administratively dissolved?

9 A. I don't know.

10 Q. Okay. Now, Mr. Johansen, the concern about
11 the enforceability of this contractual arrangement, as

12 expressed by Ms. O'Neill, is it that Environmental Utilities
13 will refuse to honor the contract later because Osage Water
14 Company was administratively dissolved when it was signed?

15 A. That's one possibility.

16 Q. Okay. And what basis would you have for
17 saying that that's a concern?

18 A. Well, I don't know that it's a -- an
19 overwhelming concern, but it is a possibility and -- as well
20 as several other questions regarding the legality of the
21 contract.

22 Q. Okay. Well, setting legality aside, let's
23 look at the practical aspects. Is your concern that
24 Environmental Utilities wouldn't be able to sue Osage Water
25 Company for non-payment for water?

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1 A. That's not a concern I would have. It might
2 be a concern that Environmental Utilities would have.

3 Q. Well, we would all agree that Environment
4 Utilities is a legal entity and in good standing at this
5 point in time; isn't that correct?

6 A. Yes.

7 Q. And so if it enters into a contractual
8 obligation, it's contractually obligated; is that correct?

9 A. If the party that it enters the contract with
10 has the authority to enter into the contract, I would --

11 MS. KIZITO: Your Honor, I object to this

12 question. It calls for a legal conclusion.

13 JUDGE WOODRUFF: Overruled.

14 You can go ahead and give your explanation of
15 what you believe -- what your understanding is. I
16 understand that you're not an attorney and Staff's not bound
17 by your legal opinion.

18 THE WITNESS: Okay. I think the question may
19 be whether or not -- okay. Let me back up a little bit.

20 Environmental Utilities certainly is at this
21 point -- has the right and is capable of entering into this
22 contract.

23 BY MR. WILLIAMS:

24 Q. Okay.

25 A. What is in question is whether or not the

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1 other party has this same capacity, if you will, to do so.

2 Q. Well, wouldn't that affect whether or not
3 Environmental Utilities could enforce the contract against
4 Osage Water Company?

5 A. I think it would affect that as well as affect
6 whether or not you -- excuse me -- Environmental Utilities
7 would be obligated to live up to its part of the contract.

8 Q. Okay. And in your research and consultation
9 with counsel did you find any statutes or case law that
10 would indicate that Environmental Utilities would not be
11 obligated to live up its obligations?

12 MS. KIZITO: Again, your Honor, I'm going to

13 object to this. This calls for legal conclusions.
14 JUDGE WOODRUFF: It's overruled again.
15 MR. WILLIAMS: Thank you, your Honor.
16 THE WITNESS: That aspect of it, I don't
17 recall that we specifically looked at that.
18 MR. WILLIAMS: All right. I don't believe I
19 have any further questions. Thank you.
20 JUDGE WOODRUFF: Redirect?
21 MS. KIZITO: None from Staff.
22 JUDGE WOODRUFF: All right. Then,
23 Mr. Johansen, you can step down.
24 THE WITNESS: Thank you.
25 JUDGE WOODRUFF: Does Public Counsel wish to

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1 call its witness?
2 MS. O'NEILL: Yes. We call Kimberly Bolin.
3 (Witness sworn.)
4 JUDGE WOODRUFF: You may inquire.
5 MS. O'NEILL: Thank you.
6 KIMBERLY K. BOLIN testified as follows:
7 DIRECT EXAMINATION BY MS. O'NEILL:
8 Q. Can you state your name for the record?
9 A. Yes. Kimberly Bolin.
10 Q. And, Ms. Bolin, did you prepare and cause to
11 be filed in this case some testimony that I think is titled
12 Supplemental Direct Testimony?

13 A. Yes, I did.

14 Q. And was that in response to an order from the

15 Commission in this case?

16 A. Yes, it was.

17 Q. And are there any changes, corrections to that

18 testimony that you would like to make at this time?

19 A. Yes, there is.

20 Q. And could you give us that?

21 A. Yes. On page 2, line 16, the sentence reads,

22 That case does not address the issue of water service to

23 Eagle Woods.

24 The sentence should read, That case does also

25 address the issue of water service to Eagle Woods.

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1 Q. Other than that correction, is your

2 testimony -- and having made that correction, is that

3 testimony true and correct, to the best of your knowledge?

4 A. Yes, it is.

5 Q. And if I asked you those questions today,

6 would your answers be the same today as they were in your

7 testimony?

8 A. Yes, they would.

9 MS. O'NEILL: Your Honor, I would offer -- I

10 believe it's been marked as Exhibit 2; is that correct?

11 JUDGE WOODRUFF: It would be No. 2, yes.

12 MS. O'NEILL: -- into evidence.

13 I have no further questions.

14 (EXHIBIT NO. 2 WAS MARKED FOR IDENTIFICATION.)

15 JUDGE WOODRUFF: All right. Exhibit 2 has
16 been offered into evidence. Are there any objections to its
17 receipt?

18 Hearing none, it will be received into
19 evidence.

20 (EXHIBIT NO. 2 WAS RECEIVED INTO EVIDENCE.)

21 JUDGE WOODRUFF: And for cross-examination
22 we'll begin with Staff.

23 MS. KIZITO: No questions from Staff.

24 JUDGE WOODRUFF: Then for Environmental
25 Utilities?

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1 MR. WILLIAMS: No questions from the company,
2 your Honor.

3 JUDGE WOODRUFF: All right. I don't believe I
4 have any questions from the Bench, so no recross or no
5 redirect.

6 Your testimony is very simple today and you
7 can step down.

8 THE WITNESS: Thank you.

9 JUDGE WOODRUFF: I believe that's all the
10 evidence that's been pre-filed. At this time then we'll be
11 looking at post-hearing briefs. I assume everyone wants an
12 opportunity to present those legal arguments.

13 We should have the -- let me bring my calendar

14 up here. If we're looking at getting the transcript around
15 the 1st of March, how about the 18th of March for briefs?
16 And I think one round would be sufficient. Is that
17 acceptable to anyone or did anyone have any comments on
18 that?

19 I don't hear any comments.

20 MS. O'NEILL: I don't have any problem with
21 that. I don't know if we need quite that much time
22 actually, but I don't know what the other parties -- what
23 their schedules are.

24 MR. WILLIAMS: Your Honor, I do note that I do
25 have a trial setting on March 18th in the PSC injunction

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1 suit with respect to Eagle Woods, so I'd like to pick a
2 different day. I would concur with Ms. O'Neill that we
3 probably don't need quite that much time for the limited
4 issues presented in this hearing, so --

5 JUDGE WOODRUFF: Okay. Let's say March 11th,
6 move it up a week?

7 MS. O'NEILL: That's fine.

8 MR. WILLIAMS: How about the 12th?

9 JUDGE WOODRUFF: Twelfth would be fine.

10 MS. O'NEILL: Twelfth is good for me too.

11 JUDGE WOODRUFF: I will issue a notice to go
12 out over the system to establish briefs due on March 12th.

13 Anything else while we're on the record?

14 MS. O'NEILL: No, your Honor.

15 JUDGE WOODRUFF: With that then this hearing
16 is adjourned. Thank you all very much.

17 WHEREUPON, the hearing was adjourned.

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