

Application of Osage Utility Operating Company, Inc.

WA-2019-0185 VOL 2

September 17, 2019



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STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

TRANSCRIPT OF PROCEEDINGS
Evidentiary Hearing
September 17, 2019
Jefferson City, Missouri
Volume 2

In The Matter Of The)
Application Of Osage Utility)
Operating Company, Inc. To) File No.
Acquire Certain Water And) WA-2019-0185
Sewer Assets And For A)
Certificate of Convenience)
And Necessity)

NANCY DIPPELL, Presiding
SENIOR REGULATORY LAW JUDGE

RYAN A. SILVEY, Chairman,
WILLIAM P. KENNEY,
SCOTT T. RUPP
COMMISSIONERS

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P R O C E E D I N G S

1
2 JUDGE DIPPELL: We'll go ahead and go on the
3 record. All right. Good morning. This is September
4 17, 2019. We're here for an evidentiary hearing in Case
5 No. WA-2019-0185. My name is Nancy Dippell. I'm the
6 Regulatory Law Judge assigned to preside over this
7 matter. And we've, like I say, come here today. This
8 is In the Matter of the Application of Osage Utility
9 Operating Company, Inc. to Acquire Certain Water and
10 Sewer Assets and for a Certificate of Convenience and
11 Necessity.

12 We bifurcated this hearing. It was originally
13 involving both Osage Water and the Reflections Water and
14 Sewer Systems. We bifurcated the hearing to only
15 address the application with regard to the Osage Water
16 Company. Is Reflections present today or Great Southern
17 Bank? Okay. I just wanted to double check because I
18 had excused them, but it dawned on me that they may not
19 have wanted to be excused from this particular hearing.

20 So we'll begin then with entries of
21 appearance. Osage Utility Operating Company?

22 MR. COOPER: Thank you, Your Honor. Dean
23 Cooper and Jennifer Hernandez of the law firm of Brydon,
24 Swearngen & England, PC appearing on behalf of Osage
25 Utility Operating Company, Inc. The court reporter has

1 the address.

2 JUDGE DIPPELL: Commission Staff?

3 MS. PAYNE: Whitney Payne and Mark Johnson on
4 behalf of the Staff of the Missouri Public Service
5 Commission, and our information has been previously
6 provided to the court reporter.

7 JUDGE DIPPELL: Office of Public Counsel?

8 MR. HALL: Good morning, Judge. Caleb Hall
9 appearing on behalf of the Office of Public Counsel. My
10 contact information has also been previously provided to
11 the court reporter.

12 JUDGE DIPPELL: Public Water Supply District?

13 MR. ELLSWORTH: Good morning. Aaron
14 Ellsworth. I represent Public Water Supply District No.
15 5, Lake Area Wastewater Association, and Missouri Water
16 Association. I've also prefiled my information.

17 JUDGE DIPPELL: Cedar Glen Condominium Owners
18 Association?

19 MR. COMLEY: Thank you, Judge. Let the record
20 reflect the entry of Mark W. Comley and Newman, Comley &
21 Ruth on behalf of Cedar Glen Condominium Owners
22 Association. Like everybody else, our business address
23 has been supplied to the court reporter already.

24 JUDGE DIPPELL: And I previously asked and no
25 one for Great Southern or the Reflections Condominium

1 Owners Association is present. So initial remarks. If
2 all would please silence your electronic devices, that
3 would be very much appreciated. We previously before we
4 went on the record I assigned blocks of numbers to the
5 prefiled exhibits or to the parties for their exhibits.
6 We'll take those up as they're offered. I will assign a
7 specific number to those.

8 So we have some pending motions to strike.
9 Cedar Glen Condominium Owners Association filed a motion
10 to strike portions of the testimony of Todd Thomas and
11 Josiah Cox. Public Water Supply District and Lake Area
12 Wastewater Association and Missouri Water Association
13 filed motions to strike portions of Todd Thomas and
14 Josiah Cox's testimony. And there was a motion to
15 strike filed by Osage Utility Operating Company to
16 strike portions of testimony and limit the scope of the
17 proceeding. I am going to deny all of those motions to
18 strike. That's all I'm going to say about that. I'm
19 going to deny those.

20 With regard to the alternative motion for
21 leave to file testimony in response, obviously we're
22 here at the hearing. So I'm not going to delay the
23 procedural schedule to allow written testimony to be
24 filed. However, even though the normal proceeding is to
25 have surrebuttal and that be the final word besides

1 cross-examination, I think that the issues raised in
2 these cases, that being the qualifications of the
3 alternative bidders, or Joint Bidders, whether or not
4 there's a better alternative or an alternative that is
5 less detrimental to the public interest or more in the
6 public interest. I think those are important issues
7 that the Commission is going to need in making its
8 decision. So what I'm going to allow is on direct I'm
9 going to allow the intervenors to elicit testimony on
10 direct about that surrebuttal issue.

11 And again, this is unusual but this is an
12 unusual case. It's a case that with regard to Osage
13 Water Company is obviously a company well known to the
14 Commission, been in receivership for a long time, been
15 in bankruptcy, and I think that the Commission needs
16 every fact and every bit of information that it can to
17 make a good decision so that we can get this utility
18 taken care of.

19 Also, the Commission directed staff to file a
20 revised recommendation specifically wanting information
21 about the acquisition premium and the way that
22 bifurcating the hearing had affected that and Staff did
23 file supplemental testimony on Friday. And I'm going to
24 give the parties an opportunity, and I said so in the
25 Order, the Commission said in its Order that it would

1 give the parties an opportunity to present rebuttal to
2 that new information. So again on your direct testimony
3 I will allow direct testimony in rebuttal to that new
4 information that was provided by Staff. We're not going
5 to go down the road of rehashing the entire direct
6 testimony, but you will have an opportunity to respond
7 to the new information provided by Staff.

8 So are there any questions about that?

9 MR. ELLSWORTH: Your Honor, one question.
10 With respect to our alternative motion, there are a
11 number of documents that I requested through data
12 requests of Osage Utility Operating Company with respect
13 to the systems operated by Central States just basically
14 asking for their notices of violation as well. That
15 hasn't been produced yet. They needed additional time.
16 I understand that. I was in the same position
17 previously. I've also made a request, Sunshine request
18 to the Missouri Department of Natural Resources. I'd
19 ask permission to file those documents at a later date
20 as well when they are provided. I think they are
21 relevant in the fact that it will show -- they obviously
22 want to show we have notices of violation. I think it's
23 fair that we have the opportunity to show their notices
24 of violation as well.

25 JUDGE DIPPELL: Let's address that when we get

1 to cross-examination on that point. I don't want --
2 Like I say, I'm not going to delay the hearing waiting
3 on those.

4 MR. ELLSWORTH: Absolutely.

5 MR. COOPER: Yeah --

6 JUDGE DIPPELL: Go ahead, Mr. Cooper.

7 MR. COOPER: I'm sorry, Judge. The point that
8 we would make, too, is that time hasn't passed to
9 respond to those. We're not sitting here today because
10 the Company is late in responding to any data requests.

11 JUDGE DIPPELL: I understand. Let's address
12 that when we get to cross-examination on that topic. Is
13 there any other questions or preliminary?

14 MR. COOPER: I would ask for I think one
15 consideration given how you've outlined how we're going
16 to proceed today and that is perhaps after opening
17 statements and before we go to our first witness if we
18 could break for a few minutes just to talk about how we
19 want to handle that I would appreciate it.

20 JUDGE DIPPELL: We can take a break after
21 opening. Sounds reasonable. All right then. I think
22 we can go ahead and begin with those openings. So we'll
23 begin -- This is going to be a little complicated
24 because there are so many long-named parties and
25 acronyms and we're talking about Osage Water Company but

1 the applicant is Osage Utility Operating Company. So I
2 just want to make sure that everybody tries to be clear
3 so that the record reflects when you're talking about
4 Osage if you're talking about Osage Water Company or
5 Osage Utility and maybe we can come up with a better
6 reference for the applicant. If you'll try to be clear
7 about which entity you're actually questioning witnesses
8 about.

9 All right. Let's go ahead and begin then with
10 the Company, Osage Utility Operating Company.

11 MR. COOPER: Good morning. My name is Dean
12 Cooper. I'm representing Osage Utility Operating
13 Company, Inc. this morning in its application in this
14 case.

15 In this hearing, of course, we're going to
16 address OUOC's application to purchase certificates of
17 convenience and necessity and water and sewer assets of
18 Osage Water Company. Good thing we handed it out.
19 That's kind of small on the screen.

20 At present, Osage Water Company provides water
21 service to approximately 402 customers and sewer service
22 to approximately 420 customers in Camden County,
23 Missouri. This includes four service areas: The Cedar
24 Glen service area, which I'm sure you'll hear more about
25 today, which has approximately 216 water connections and

1 216 sewer connections, Chelsea Rose service that has
2 approximately 42 water connections and 38 sewer
3 connections, Cimarron Bay service area with about 110
4 water connections and sewer connections, and the Highway
5 KK service area which has two subdivisions, Eagle Woods
6 and Golden Glade. In Eagle Woods, there's currently 33
7 homes connected to the water system and wastewater
8 service is provided to 33 homes in that same subdivision
9 and 23 homes in the Golden Glade subdivision.

10 The Staff's recommendation, which is a part of
11 Ms. Dietrich's testimony in this case, describes these,
12 does a pretty nice job of describing these systems at a
13 high level.

14 Due to certain decisions by company
15 management, failure to properly construct, and failure
16 to properly maintain the water and sewer systems, there
17 are several compliance issues that need to be addressed.
18 Some of the facilities are operating without permits
19 from DNR; and at least one wastewater treatment system
20 is in such a state of repair that wastewater is
21 bypassing treatment processes.

22 Osage Water, as the judge alluded to, has had
23 a difficult past. It first obtained a CCN in 1989 to
24 operate as a water and sewer utility. It obtained a
25 variety of certificates after that. By December 10 of

1 2002, the Commission had issued a Report and Order
2 indicating this Osage had been effectively abandoned by
3 its owners and that it was unable or unwilling to
4 provide safe and adequate service to its customers.

5 Osage Water Company was placed into permanent
6 receivership in October of 2005 by the Camden County
7 Circuit Court. At that time in 2005, the Circuit Court
8 further directed the receiver to liquidate Osage Water
9 Company's assets as quickly as practical on terms that
10 protect the interests of the customers. So here we are
11 about 14 years later trying to work a sale.

12 In October of 2017, with permission from the
13 circuit court, Osage Water Company filed for Chapter 11
14 bankruptcy and a bankruptcy trustee was appointed.
15 Osage Water Company's assets were liquidated by the
16 bankruptcy trustee using a bidding procedure, and on
17 November 14 of 2018, the bankruptcy court issued an
18 order approving the sale of Osage Water Company's assets
19 and naming Central States Water Resources, the affiliate
20 of Osage Utility Operating Company, as the successful
21 bidder.

22 OUOC, or Osage Utility Operating Company, is
23 an affiliate, as I say, of Central States Water
24 Resources. Several Central States Water Resources
25 affiliates are public utilities authorized to provide

1 water and sewer service in Missouri subject to the
2 regulation of this Commission.

3 Those include Hillcrest Utility Operating
4 Company, Elm Hills Utility Operating Company, Raccoon
5 Creek Utility Operating Company, Indian Hills Utility
6 Operating Company and Confluence Rivers Utility
7 Operating Company. Central States affiliates have
8 purchased 22 wastewater treatment plants with associated
9 facilities. They have in Missouri designed, permitted,
10 and completed construction with Missouri DNR approval of
11 approximately \$5.1 million of sanitary sewer investments
12 since 2015.

13 On the drinking side, drinking water side of
14 the business, Central Water States Resources -- or
15 Central States Water Resources affiliated companies have
16 purchased 13 drinking water systems in Missouri and
17 Arkansas, and in Missouri that's included approximately
18 \$4.1 million of investments in drinking water systems
19 since 2015.

20 Osage Utility Operating Company has the
21 technical, managerial, and financial capability to own
22 and operate the systems and provide safe and adequate
23 service for the customers. The standard for us to
24 address today is the not detrimental to the public
25 standard, and it comes from a 1934 Missouri Supreme

1 Court case which recognized first that owners of
2 property have a constitutional right to determine
3 whether to sell their property or not and to deny them
4 that right would be to deny them an important -- an
5 incident important to ownership of property. A property
6 owner should be allowed to sell his property unless it
7 would be detrimental to the public.

8 Now, in further explaining that, the Court
9 pointed out that it is not the Commission's province to
10 insist that the public shall be benefited as a condition
11 to change of ownership but their duty is to see that no
12 such change shall be made as would work to the public
13 detriment. In the public interest in such cases can
14 reasonably mean no more than not detrimental to the
15 public.

16 We would assert that Osage Utility Operating
17 Company's acquisition of the identified assets is not
18 only not detrimental, it's of benefit to the systems,
19 customers, and public interest as compared to the status
20 quo. As described before, Osage Utility Operating
21 Company brings proven experience in the rehabilitation,
22 operation, management, and investment in small water and
23 sewer facilities. And in this case that would be to
24 systems that have been essentially treading water for
25 the last 14 years or so.

1 Osage Utility Operating Company would seek to
2 provide service after closing of the proposed
3 transaction under the same water and sewer tariffs
4 currently applicable to the Osage Water Company service
5 area and to charge the same rates currently applicable
6 to the Osage Water Company service area. Neither the
7 rates nor the tariff provisions may be changed in the
8 future without the approval of this Commission.

9 Osage Utility Operating Company has requested
10 a debt acquisition adjustment equal to the difference
11 between the total purchase price and the net original
12 cost for the Osage Water Company systems. This is in
13 accordance with the Commission's relatively new
14 nonviable utility acquisition rule.

15 We believe that it's not controverted that the
16 purchase agreement is the result of an arm's length
17 transaction between the parties, whereas it was the
18 result of an auction or bid conducted by the United
19 States Bankruptcy Court.

20 Osage is a viable utility and will not be
21 materially impaired by the acquisition of these systems
22 and the acquisition of all the Osage Water Company
23 utility systems, all requiring some level of investment
24 in improvements, is unlikely to occur without the
25 probability of obtaining an acquisition adjustment.

1 Within the Commission's Acquisition of
2 Nonviable Utilities Rules, the rule states in part that
3 if the Commission determines the request for an
4 acquisition incentive is in the public interest, it
5 shall grant the request. The Commission may apply an
6 acquisition incentive in the applicant's next general
7 rate proceeding following acquisition of a nonviable
8 utility if the Commission determines it will not result
9 in unjust or unreasonable rates.

10 We read this rule to mean that in this
11 proceeding the Commission need not specify a particular
12 dollar amount for this acquisition premium; that it is
13 enough for the Commission to look at the facts of the
14 case to find that an acquisition premium is in the
15 public interest given the condition of Osage Water
16 Company but that the amount can and ultimately should be
17 addressed, the amount I suppose if any, can and should
18 be addressed in the next rate case where the Commission
19 has before it the actual rate information and is
20 considering all relevant factors to determine what is or
21 isn't a just and reasonable rate at that time.

22 The Staff has proposed that the Commission
23 impose 14 conditions in conjunction with approval of the
24 proposed acquisition of the Osage Water Company assets.
25 Osage Utility Operating Company has no objection to

1 those conditions that have been proposed by the staff.
2 The opposition's arguments essentially are that this
3 Commission will not do its job in the future to ensure
4 that safe and adequate service is provided at just and
5 reasonable rates. Their solution to that identified
6 problem is that this Osage Utility Operating Company
7 application be denied in hopes that the Osage Water
8 Company properties will instead be purchased by
9 unregulated entities that have not been examined in this
10 proceeding for their technical, managerial, or financial
11 abilities. This is not a solution that should be
12 accepted by the Commission.

13 As was stated by the Office of the Public
14 Counsel in its position statement, there is no detriment
15 to the public interest when safe and adequate service is
16 provided at just and reasonable rates. Osage Utility
17 Operating Company's status as a regulated entity will
18 necessarily result in safe and adequate service at just
19 and reasonable rates because of the continued regulation
20 by this Commission.

21 Osage Utility Operating Company's acquisition
22 of the Osage Water Company utility assets and CCN should
23 be approved by this Commission subject to the conditions
24 proposed by the Staff of the Commission and a finding
25 from the Commission that an acquisition premium is in

1 the public interest. That's all I have.

2 JUDGE DIPPELL: Thank you. Are there any
3 questions for Mr. Cooper? Mr. Chairman?

4 CHAIRMAN SILVEY: Thank you. What can the
5 Commission consider or not consider when determining
6 what is not detrimental to the public interest?

7 MR. COOPER: Well, that's a broad question.
8 We certainly, of course, made a motion to strike
9 alleging that we think that what you should consider is
10 a comparison between the transaction that's proposed in
11 the application versus essentially status quo, will that
12 acquisition be not detrimental as compared to the world
13 as it exists today.

14 I know that the Commission has denied that
15 motion, because Judge Dippell told us that earlier
16 today, but I still think that your focus needs to be on
17 the actual transaction that's before you; that you have
18 in this case an application that asks you to approve an
19 agreement that's been ordered by the bankruptcy court.
20 It's the first, even though there will be other
21 allegations that there are backup bidders, that's true.
22 That is the deal that's before you here and that's the
23 deal that the bankruptcy court has identified and issued
24 an order approving at this point in time, and so I think
25 it's that transaction that should be the Commission's

1 focus.

2 CHAIRMAN SILVEY: Did the bankruptcy court
3 give a reason for selecting this bid over the other
4 bids?

5 MR. COOPER: Well, there was a process, and I
6 wasn't intimately -- I wasn't involved at all in the
7 bankruptcy court proceeding, but there certainly was a
8 process that led to the selection of this transaction.
9 I think it started by the fact that the only timely bid
10 received by the bankruptcy court was from Central States
11 Water Resources.

12 Later, after I think a bid was received late,
13 the Court reopened the process and established a
14 procedure for the bid based upon how that had sorted
15 out.

16 CHAIRMAN SILVEY: Did the bankruptcy trustee
17 or the bankruptcy court factor in the acquisition
18 premium recovery when considering these bids?

19 MR. COOPER: I don't know that they did. I'd
20 be surprised. Of course, in the end, whether Osage
21 Utility Operating Company buys the operation or assuming
22 that what's been referred to in the case in some places
23 as the Joint Bidders buy it, it appears that the price
24 will be the same. So whether you call a part of that an
25 acquisition premium or you don't, it seems like the

1 purchaser is going to have paid the same amount of money
2 for those assets.

3 CHAIRMAN SILVEY: That's all I have at this
4 time.

5 JUDGE DIPPELL: Are there any other Commission
6 questions?

7 COMMISSIONER KENNEY: I have no questions.
8 Thank you, Mr. Cooper.

9 JUDGE DIPPELL: Commissioner Rupp?

10 COMMISSIONER RUPP: Just following up on
11 Chairman Silvey's questions, so in the bankruptcy
12 bidding, Osage is the only one that had a timely bid,
13 then they reopened the bid process after other bids came
14 in late and then they still chose your company?

15 MR. COOPER: That's my understanding, yes.

16 COMMISSIONER RUPP: Thank you.

17 JUDGE DIPPELL: I just have one question I
18 wanted to clarify. You referred to Osage Utility
19 Operating Company as an affiliate of Central States
20 Water Resources. Can you explain that structure just a
21 little bit?

22 MR. COOPER: They have similar if not
23 identical ownership. Central States Water Resources is
24 the manager essentially of Osage, but the ultimate
25 parent is CSWR, LLC.

1 JUDGE DIPPELL: Okay. I just wanted to get
2 that clarified because it's a little confusing.

3 MR. COOPER: Before I finish, I would like to
4 go back for a second to Commissioner Rupp's question. I
5 do want to point out that in the testimony there's
6 testimony about the bidding procedures and how the
7 bankruptcy court got to where it got and something
8 called a stalking-horse procedure was used.

9 I don't want to leave you with the impression
10 that at the end of the day it was a simple choosing.
11 There was a lot more going on there.

12 JUDGE DIPPELL: Thank you, Mr. Cooper. We can
13 proceed then with Staff.

14 MS. PAYNE: Thank you. May it please the
15 Commission. Oftentimes when studying the law, it is
16 said that one should not lose sight of the forest for
17 the trees. It's very easy to find one's self in a case
18 such as this so focused on the details that the parties
19 have laid out in making their case that we lose sight of
20 that forest.

21 The application that has been placed before
22 this Commission by the Osage Utility Operating Company
23 asks for two things: Authorization to acquire the
24 assets and certificates of convenience and necessity of
25 the Osage Water Company. It also asks for an

1 acquisition premium under the provisions of the recently
2 implemented Commission Rule 10.085.

3 In regard to Osage Utility Operating Company's
4 request to acquire the assets of Osage Water Company,
5 Staff conducted its investigation in accordance with
6 normal practice for an acquisition case. In the case of
7 a presently regulated system such as Osage Water
8 Company, Staff considers whether the acquisition would
9 be detrimental to the public interest.

10 My policy witness Natelle Dietrich can explain
11 more about the standard, but it's been laid out by
12 Mr. Cooper in his opening. So I won't bore you with all
13 of the details of that again. I will suffice to say
14 that the Commission has utilized this standard since it
15 was laid out by the Supreme Court of Missouri when
16 considering all transfer of asset cases for water and
17 sewer systems.

18 Staff utilized the standard in this case and
19 has recommended Commission approval of the Company's
20 request based on our position that this acquisition
21 would not be detrimental to the public interest. In
22 fact, if you find that this is not detrimental to the
23 public interest, the same Supreme Court case that set
24 out this standard says that you must approve the request
25 for acquisition.

1 Staff in its recommendation has also included
2 several proposed requirements for the Company to comply
3 with, which the Company has agreed to, and which Staff
4 continues to support now. Staff's witness Scott Glasgow
5 of its customer experience department will be present to
6 discuss some of those recommendations and any other
7 concerns regarding the customer service considerations
8 that are at issue here.

9 When reviewing an application to acquire water
10 and sewer systems, Staff also considers the technical,
11 managerial, and financial capacity, as Mr. Cooper
12 explained earlier. It's further explained in Staff's
13 recommendation, along with the facts that Staff applied,
14 in order to come to its recommendation that this company
15 has met the technical, managerial, and financial
16 requirements. They originate from Section 640.115 and
17 are also included in the Code of State Regulations for
18 Safe Water Drinking Commission.

19 Staff recommends, as stated, that they have
20 met the technical, managerial, and financial standards
21 as evidenced by the affiliates to the Osage Utility
22 Operating Company and the facts of this case.

23 Several parties in this matter have attempted
24 to muddy the waters by arguing that the Commission might
25 consider alternative purchasers for the Osage systems.

1 However, the Commission has in the past provided
2 guidance as to the weight that should be given competing
3 proposals such as in In re Utilicorp United in which the
4 Commission stated the competing proposals in that case
5 were not relevant to the question of whether the
6 transaction at issue was detrimental to the public.

7 And Staff believes the same is true here.

8 The Commission is instilled with the authority
9 to review and come to a determination regarding an
10 application presented before it for the acquisition of
11 systems. The Commission should review only the entity
12 which filed to acquire the systems and whether that
13 acquisition would be detrimental to the public interest.

14 While arguments have also been raised by the parties
15 that the Commission should consider proposed
16 improvements and future potential rate increases, none
17 of those arguments are rooted in certainty at this
18 stage. What is rooted in certainty is that the Company
19 has agreed to Staff's conditions outlined in its
20 recommendation. That includes charging existing rates
21 for at least 24 months from the date of acquisition
22 prior to coming in for a rate case.

23 The Osage systems are historically in
24 disrepair which led to this Commission placing them in
25 receivership 14 years ago. Staff reviewed the

1 improvements proposed by the Osage Utility Operating
2 Company and generally believes them to be reasonable.
3 Staff's witness David Roos can comment on his
4 investigation of the system status at the time of
5 Staff's review for this case. Since appointing a
6 receiver, conditions at Osage have only worsened, which
7 led to the bankruptcy filing two years ago. Missouri's
8 courts have declared that a property owner has a
9 constitutional right to determine whether to sell their
10 property or not, and that right should not be denied
11 unless it would be detrimental to the public.

12 After 14 years of receivership, Staff stands
13 behind the recommendation that the bankruptcy auction
14 proceeded accordingly and that the Osage Utility
15 Operating Company should have the ability to acquire the
16 systems without being detrimental to the public
17 interest.

18 Now, the second issue that I referenced
19 earlier is to decide whether the Osage Utility Operating
20 Company should receive an acquisition premium in
21 conjunction with its purchase. The Commission
22 implemented Rule 10.085 in January of this year. No
23 entity has previously sought an acquisition premium
24 pursuant to the rule prior to this proceeding.

25 Staff reviewed the rule and applied each of

1 the criteria to the facts of this case and has
2 determined that the application here meets each of those
3 criteria. Section 393.145.1 explains that the procedure
4 for placing a water or sewer utility into receivership
5 as the Commission finding that the utility is unable or
6 unwilling to provide safe and adequate service or has
7 been actually or effectively abandoned by its owners.
8 Then it may petition a circuit court to place that
9 utility under the control and responsibility of a
10 receiver.

11 Osage Water Company has been in receivership
12 for 14 years. When it was placed in receivership, this
13 Commission said its debts totaled \$1.13 million and the
14 systems were teetering on the edge of an abyss. The
15 purpose of 10.85 is to encourage acquisition of
16 nonviable water or sewer utilities through an incentive
17 to utilities with the resources to rehabilitate the
18 nonviable utility in a reasonable time frame.

19 Osage Water Company is the perfect example of
20 such a nonviable utility that is contemplated by the
21 purpose of this rule. Some parties have argued that
22 Osage Utility Operating Company would have acquired the
23 Osage systems regardless of the opportunity for an
24 acquisition premium. Unfortunately there's no way to
25 know what might have happened in an alternate universe,

1 but Staff based its recommendation for approval on the
2 statement of Josiah Cox that absent approval of an
3 acquisition of premium his company would need to
4 reevaluate its position on purchasing the systems
5 included in this application. This statement is
6 supported by the history of the system regarding past
7 attempts of other entities to purchase the Osage Water
8 systems evidencing that the acquisition would not have
9 occurred without the provision of the acquiring entity
10 to obtain an acquisition premium.

11 Staff's witness Kim Bolin can comment further
12 on Staff's position regarding the acquisition premium
13 recommendation, and Staff witness James Busch worked on
14 Staff's amended recommendation and updated acquisition
15 premium pursuant to the order of this Commission. He
16 will be available this afternoon should anyone have any
17 questions regarding the updated recommendation
18 specifically.

19 In conclusion, there are certainly a lot of
20 considerations that this Commission is charged with
21 through law when considering the acquisition of one
22 entity by another, but it is important to remember that
23 before getting bogged down in various claims by the
24 parties the Commission is not being asked to approve a
25 rate increase or issue a decision regarding any proposed

1 improvements at this time. The Commission is just being
2 asked if approving the acquisition of Osage Water
3 Company's assets by Osage Utility Operating Company
4 would be detrimental to the public interest. Thank you
5 and I'm happy to answer any questions.

6 JUDGE DIPPELL: Thank you. Mr. Chairman?

7 CHAIRMAN SILVEY: Thank you. Just a few
8 questions. So you mentioned that the updates and
9 improvements are needed and you think are generally
10 reasonable. Do you think the cost estimates for those
11 improvements are prudent and reasonable as well?

12 MS. PAYNE: I mean, personally I'm not an
13 engineer and I don't know as far as that goes.
14 Certainly my witnesses can explain a little bit more. I
15 would say that we do not rely on estimates necessarily.
16 I mean, when it comes time to actually consider the
17 costs of the improvements, it would be in a rate case
18 and we would do a full prudency evaluation. So I think
19 that there's too much uncertainty in estimates, but
20 generally Staff has reviewed and agrees that the
21 improvements would be necessary and that the costs are
22 consistent with those necessary improvements.

23 CHAIRMAN SILVEY: Okay. And how much are the
24 Osage system assets worth?

25 MS. PAYNE: I am not sure what number you

1 would like me to put on there. I think they're worth
2 whatever a company is willing to buy them for. But
3 obviously my witness Kim Bolin can explain more about
4 the actual worth of the assets.

5 CHAIRMAN SILVEY: Can the Commission in a
6 future rate case determine that only the lower bids
7 should be recovered through rates?

8 MS. PAYNE: Certainly I think you could. I
9 haven't evaluated that specifically.

10 CHAIRMAN SILVEY: Do you know what the current
11 rate for customers are in Osage?

12 MS. PAYNE: I actually do not remember off the
13 top of my head.

14 CHAIRMAN SILVEY: Do you know how long it's
15 been since there's been an increase?

16 MS. PAYNE: Prior to the receivership, if I'm
17 not mistaken. I apologize. My witnesses are going to
18 be able to answer the specifics a little bit better than
19 me.

20 CHAIRMAN SILVEY: So that would be over 14
21 years ago --

22 MS. PAYNE: I believe so.

23 CHAIRMAN SILVEY: -- since they've had an
24 increase?

25 MR. COOPER: Chairman, I think closer to ten,

1 2009.

2 CHAIRMAN SILVEY: Ten?

3 MR. COOPER: Ten years.

4 CHAIRMAN SILVEY: So if the sale is approved,
5 how much do you anticipate customers' rates increasing
6 over the next five years?

7 MS. PAYNE: I mean, Staff has not done an
8 evaluation of rate increase at this time. That's not
9 what's being considered here. I think the Company has
10 given some projections and certainly other parties have
11 given some projections too.

12 CHAIRMAN SILVEY: Is it Staff's position that
13 an acquisition incentive is appropriate when there are
14 other intervenors and bidders in the bankruptcy court
15 who have submitted credible purchases?

16 MS. PAYNE: Staff's position is that this rule
17 was implemented specifically for cases such as this, to
18 our understanding, and that if a company meets the
19 elements of the rule it is proper to grant an
20 acquisition premium regardless of competing bids.

21 CHAIRMAN SILVEY: Okay. Thank you.

22 COMMISSIONER KENNEY: I have no questions.

23 JUDGE DIPPELL: Commissioner Rupp?

24 COMMISSIONER RUPP: How many times has
25 entities attempted to purchase these assets in the past

1 and those have failed?

2 MS. PAYNE: We have evidence of two
3 specifically previously, and we also believe that
4 there's at least a third time these were attempted for
5 purchase.

6 COMMISSIONER RUPP: And those failed because?

7 MS. PAYNE: I would not even begin to comment
8 on why another company backed out or why attempted
9 purchase failed, but I believe that it's probably the
10 extreme disrepair of the systems and the concern of any
11 business person that they would not be able to recoup
12 any kind of a reasonable return on them.

13 COMMISSIONER RUPP: So are these like
14 expressions of interest or were they actually walking
15 down the path towards purchasing the assets?

16 MS. PAYNE: My understanding is that in all
17 cases that they reached the contract portion.

18 COMMISSIONER RUPP: Thank you.

19 MR. JOHNSON: If I may. I know there is at
20 least one instance where I think Missouri-American filed
21 with the Commission to purchase a portion of the system
22 and in that instance it was decided that because it was
23 not the entire system being acquired it would be
24 detrimental to the public interest.

25 COMMISSIONER RUPP: Thank you.

1 JUDGE DIPPELL: I just had one question. You
2 cited that Utilicorp case as pointing to the Commission
3 not considering the other bidders. But in that case
4 weren't the bids withdrawn in that case?

5 MS. PAYNE: They were withdrawn in that case.
6 However, the Commission made the statement regardless of
7 the fact that they were withdrawn.

8 JUDGE DIPPELL: And isn't there also a court
9 case that says something to the effect that the
10 Commission can't -- can't not consider an acquisition
11 premium in making these kinds of decisions?

12 MS. PAYNE: Yes. There is a case that says
13 that -- I actually have it here and that was State ex
14 rel. Martiny Creek. It does say that the Commission can
15 consider an acquisition premium in the course of
16 determining whether something is or is not detrimental
17 to the public interest.

18 JUDGE DIPPELL: If the Commission must
19 consider the acquisition premiums, I believe there was a
20 case that was remanded to the Commission because it
21 didn't consider an acquisition premium. If I'm correct
22 on that, wouldn't it follow that the Commission should
23 also consider any rate increases that might take place
24 as a result of the transaction?

25 MS. PAYNE: I think the difference is an

1 acquisition premium is something that is affecting the
2 actual acquisition whereas a rate increase you won't
3 know what the potential rate impact is until after
4 improvements are completed. I think that's the
5 difference. Additionally, of course, our new
6 Acquisition Premium Incentive Rule has only recently
7 been implemented and a higher court hasn't had an
8 opportunity to consider that factor yet.

9 JUDGE DIPPELL: Okay. This will all be things
10 that I'll want everybody to be sure and include in your
11 briefs.

12 MS. PAYNE: Absolutely.

13 JUDGE DIPPELL: Okay. We can proceed then
14 with Office of Public Counsel.

15 MR. HALL: Good morning and may it please the
16 Commission. As I said in my introductions, my name is
17 Caleb Hall appearing on behalf of the Office of Public
18 Counsel. I should start my opening for the convenience
19 of the Commission and the court reporter to explain that
20 when I say "Central States," I'm referring to Central
21 States Water Resources which I'll refer to generally in
22 place of saying Osage Utility Operating Company since
23 they're affiliates. When I say the "Osage Company" or
24 "Osage Water Systems," I'm referring to the assets in
25 question, Osage Water Company. And when I say "Joint

1 Bidders," I'm referring collectively to Public Water
2 Supply District No. 5, Missouri Water Association, and
3 Lake Area Wastewater Association. That way then it's
4 all conveniently put together.

5 Public Counsel stands here today asking you
6 for two things. One, to deny the transfer of the CCN
7 from the Osage systems to Central States because it's a
8 detriment to the public interest. Secondly,
9 notwithstanding our first ask to deny an acquisition
10 incentive for Central States acquisition of the Osage
11 systems.

12 Public Counsel's point as to the CCN's
13 transfer is premised on the public interest. Approving
14 a CCN transfer is detrimental to the public interest
15 when it forecloses other efficiently available water
16 operators that can provide the same safe and adequate
17 service at a more efficient cost. Central States'
18 argument that it's the best utility to service the Osage
19 systems is premised on this Commission ignoring all
20 other options. When other parties presented those
21 options to this Commission, Central States filed motions
22 to strike that testimony. They want you to ignore any
23 other alternatives you have.

24 Thankfully Missouri case law is clear that
25 this Commission is free to consider alternatives, and

1 here are the options you have in this case. Option A.
2 Central States, a company with a history of acquiring
3 failing water utility companies and then repairing them
4 to such a level that result in rates in exponentially
5 raise in part because the company has historically used
6 a cost of debt as high as nearly 14 percent.

7 Central States in this case is also proposing
8 over \$2 million in repairs for the Osage systems and
9 requesting an acquisition incentive on top of the return
10 it would get in the future. Option B. You have three
11 currently viable operators, the Joint Bidders. They are
12 asking to take on the system at the same purchase price
13 that Central States has requested. However, without an
14 acquisition incentive, with repairs that are far less
15 than estimates, at sometimes depending on the system 200
16 percent less and with bond financing to repair the
17 systems at 3.5 percent. The customers of Cedar Glen
18 portion of the Osage systems have also come in support
19 of the Joint Bidders' proposal and OPC joins them at
20 this time as we see it as a far more efficient
21 alternative.

22 I invite you to ask OPC witness Kerri Roth to
23 explain what potential ramifications any of these two
24 options will have on customers in the future.

25 Again, Commission, consider that if safe and

1 adequate service can be provided at a more efficient
2 cost, then it's incumbent upon just and reasonable
3 principles for this Commission to foster that efficient
4 cost.

5 In this case you've been presented with
6 differing repair estimates and differing options going
7 forward. Let's look in the actual record. You have
8 Central States' argument. You have five parties on one
9 side and Staff's recommendation that did not consider
10 other potential operators when considering the CCN
11 transfer and admitted that it considered Central States
12 repair estimates as just conceptual. They have not
13 voiced any opinion otherwise on the repair estimates.
14 When you have five versus one, you have a clear record
15 in favor of one option over the other, and we ask this
16 Commission consider that at this time.

17 As for OPC's second point, the acquisition
18 incentive rule reads that an incentive can only be
19 granted to a company if the acquisition would be
20 unlikely to occur without the probability of obtaining
21 that incentive. All the evidence in this record will
22 show that the acquisition is actually highly likely to
23 incur without the acquisition incentive.

24 Consider what is the evidence supporting
25 Central States' argument that it would not buy the

1 system but for the acquisition incentive. The only
2 evidence so far in this record is Josiah Cox's statement
3 to that effect and the testimony of one Staff witness
4 Kim Bolin who merely relied upon Josiah Cox's statement.

5 What's the evidence to the contrary though?
6 First consider Central States' express business model.
7 This is a company with a well known history of
8 purchasing failing water systems to then repair them for
9 the promise of future returns.

10 Besides the several that have already been
11 purchased in Missouri, Central States has already moved
12 into Arkansas, Kentucky, Tennessee, and Louisiana
13 amounting to over a hundred pending and acquired
14 systems. You can go to their website right now and read
15 their statement, their policy statement. This is their
16 business model.

17 The great thing about business models is you
18 don't need to incentivize them to follow them. As the
19 libertarian adage goes, the way you get a business model
20 to follow through is government gets out of the way.
21 Then consider the alternative -- or I'm sorry, not the
22 alternative. Consider the timeline.

23 In 2015, Central States first offered to
24 purchase the Osage systems for a far less price than the
25 800,000 they settled on now. Then they came back in

1 2017 and tried to purchase the system again for even
2 less than the 2015 offer. Central States then formed
3 the current holding company that is the current
4 applicant in this case for, as Staff's recommendation
5 states, for the explicit purpose of purchasing and
6 acquiring the Osage Water Company.

7 Central States then took the effort and due
8 diligence to negotiate its position as the
9 stalking-horse bidder during the bankruptcy auction
10 ensuring that it would win by default in the event of a
11 matching bid. During the bankruptcy auction, you had
12 Missouri-American Water and the Joint Bidders who
13 participated as well. However, Central States continued
14 to raise the bid price by matching those bids until the
15 final purchase price was nearly double what the initial
16 offer was which again was an offer that Central States
17 had negotiated by becoming the stalking-horse bidder.

18 Then this Commission can also consider that
19 Central States initially brought this action by having
20 two joined utility systems, Osage and Reflections. When
21 Reflections sought to leave this proceeding because the
22 Reflections' assets had been sold to some of the Joint
23 Bidders, Central States not only opposed their removal
24 from this proceeding before this Commission. They've
25 now run to the Camden County Circuit Court and have

1 demanded that an unwilling seller divest its property to
2 Central States. I find this kind of ironic considering
3 we just saw a presentation from Central States' counsel
4 talking about how property owners have a constitutional
5 right to divest their property as they see fit. This
6 seems to be a running theme for this company.

7 Central States has another pending case before
8 this Commission, Port Perry, where Central States is
9 asserting a right to own and operate a water system
10 despite what the residents have voiced at the public
11 hearing. Bear in mind that public -- that the Joint
12 Bidders already have an outstanding contract to purchase
13 the Osage Water Company systems.

14 If this CCN transfer is denied, they have an
15 outstanding contract to then receive the systems without
16 the acquisition incentive. Clearly this acquisition
17 would occur without the probability of an acquisition
18 incentive.

19 At this time actually I would like to address
20 one of Commissioner Silvey's questions. You had asked
21 about the bankruptcy proceeding that I just went through
22 had considered the acquisition incentive. I think it's
23 worth noting that the Acquisition Incentive Rule hadn't
24 even been codified at that time. So you had Central
25 States that was undergoing these bankruptcy bid

1 procedures without the Acquisition Incentive Rule even
2 being technically available for the Company to request.

3 With this record in mind, Public Counsel asks
4 that this Commission deny the CCN transfer and
5 notwithstanding our first request otherwise deny the
6 acquisition incentive requested by Central States. I'm
7 available for questions at this time. Otherwise, if
8 there are more technical matters, I believe my witness
9 can provide a much more coherent response. Thank you.

10 JUDGE DIPPELL: Mr. Chairman, did you have
11 questions?

12 CHAIRMAN SILVEY: I do. Thanks. The system
13 is in dire need of upgrade; is that right?

14 MR. HALL: Yeah, there's no dispute that
15 repairs are most certainly needed. There's a dispute as
16 to what repairs are needed to achieve safe and adequate
17 service at that level.

18 CHAIRMAN SILVEY: So it's not currently
19 providing safe and adequate service?

20 MR. HALL: That's what this Commission has
21 determined in prior proceedings, yes.

22 CHAIRMAN SILVEY: So if the Commission denies
23 this application, how long would it realistically take
24 for the bankruptcy court to approve another bid, the
25 Commission to have a new hearing, decide to grant a CCN

1 to the backup bidders and then for the Joint Bidders to
2 actually build the upgrades?

3 MR. HALL: That is a very good question,
4 Commissioner. As for how long it would take for the
5 bankruptcy proceedings to move forward, I believe that
6 question would actually be better posited towards the
7 Joint Bidders who are more intimately involved in that
8 process. As for how this can proceed further, I think
9 the Commission can also consider that the Joint Bidders
10 are a nonregulated entity. If they are able to then
11 enact on their contract to purchase the system, based on
12 their testimony, it seems like safe and adequate service
13 could be acquired post haste. As to any specific
14 questions as to what repairs could be made, I offer that
15 you ask my witness Kerri Roth on that point.

16 CHAIRMAN SILVEY: But if we deny the current
17 application, there's no question that there would be
18 delay over approving it and moving forward?

19 MR. HALL: I think that is a consideration,
20 but I would invite that there's also opportunity cost
21 involved. If CCN requests are simply approved for the
22 first company that comes in, that forestalls
23 consideration of what is actually in the public interest
24 and what's in the best interest of the customers
25 involved.

1 If you grant the CCN transfer for Central
2 States, you have foreclosed other potential
3 opportunities for safe and adequate service to be
4 provided at a much more efficient cost.

5 CHAIRMAN SILVEY: So your position is that
6 customers are not currently receiving safe and adequate
7 service and it is not detrimental to them to continue
8 delaying safe and adequate service?

9 MR. HALL: Our position is that safe and
10 adequate service should be achieved at the most just and
11 reasonable rates possible, and a just and reasonable
12 rate is achieved at an efficient cost. There is nothing
13 in the record to suggest that if you delay at this time
14 there are people in imminent threat of bodily or health
15 harm. So we're looking at opportunity cost. Do we
16 approve what Central States is asking, give them
17 everything they want, give them more money on top of the
18 request out of the desperation that you get safe and
19 adequate service immediately or do we consider all other
20 options and deliberate on how safe and adequate service
21 can be achieved within a reasonable time frame with some
22 possible delay but yet still have the best end result
23 for Missouri's customers.

24 CHAIRMAN SILVEY: No further questions at this
25 time.

1 JUDGE DIPPELL: Commissioner Kenney?

2 COMMISSIONER KENNEY: Yeah, just briefly.

3 Regarding the -- you mentioned that the other bidders
4 have a list of estimated repairs that are much less than
5 Central States. Are you saying that Central States'
6 estimates are not prudent?

7 MR. HALL: What I'm saying is that Central
8 States has every incentive to put in as much repairs as
9 possible to then receive a future return on the
10 investments that are made. The options that this
11 Commission should consider are you have Central States
12 with a vested interest to support whatever repair
13 interests are made and then you have people on the
14 ground actually living in these systems that are
15 supporting different estimates.

16 I cannot speak to prudence at this time.
17 However, the Commission should consider that those
18 vastly different estimates will have vastly different
19 impacts on rates.

20 COMMISSIONER KENNEY: Sure, but wouldn't that
21 be determined in a rate case?

22 MR. HALL: You know, normally that would have
23 been the procedure, Commissioner. Unfortunately in this
24 proceeding that Central States has asked for a
25 single-issue ratemaking issue and that is the

1 acquisition incentive.

2 COMMISSIONER KENNEY: But that's not what I
3 mentioned. I was talking about the prudence of the
4 repairs, the prudence of the system, and you would have
5 a chance to argue in a rate case that those were not
6 prudent, wouldn't you?

7 MR. HALL: Yes, we would at that time.

8 COMMISSIONER KENNEY: Regarding the
9 acquisition premium, in this case are we setting a
10 dollar amount?

11 MR. HALL: That would depend on an order from
12 the Commission.

13 COMMISSIONER KENNEY: I thought we were
14 setting -- the decision was whether or not we would
15 allow an acquisition incentive or premium but that that
16 would be set in a rate case, the amount.

17 MR. HALL: Well, the Commission is free to
18 make an order -- issue that order as it sees fit. You
19 have Staff's recommendation which has presented a dollar
20 number. I imagine that that is the dollar number that
21 would have some leverage coming into a next proceeding.
22 As to whether --

23 COMMISSIONER KENNEY: But that would be
24 determined in the next proceeding, right? I mean, in a
25 rate case?

1 MR. HALL: Yes.

2 COMMISSIONER KENNEY: Okay. Thank you.

3 JUDGE DIPPELL: I just had a couple for you.
4 So the Joint Bidders haven't actually -- they don't have
5 a pending application to transfer these assets or
6 anything like that, right?

7 MR. HALL: Yes, Your Honor, and they don't
8 have to.

9 JUDGE DIPPELL: They don't have to have an
10 application to transfer the assets?

11 MR. HALL: No, Your Honor. Central States has
12 presented this case. Central States has the burden of
13 proof to prove that its requested transfer is in the
14 public interest, and that standard is determined by
15 looking at other possible alternatives.

16 JUDGE DIPPELL: Right. But you're arguing
17 that the Commission should consider that these other
18 bidders are out there, and I'm just clarifying that
19 while there is -- according to the testimony so far,
20 there does seem to be a bidder in the bankruptcy court
21 but here as it stands we don't -- the Commission doesn't
22 have an application for that transfer before it.

23 MR. HALL: Yes, I think that's a fair
24 observation, Your Honor. I would posit, not to try to
25 avoid your question, but simply say that as to the

1 strategies of how the Joint Bidders would go to actually
2 finalize an acquirement, I think their counsel and their
3 witnesses would be a better person to ask on that point.
4 I honestly don't know about the -- I'm unfamiliar with
5 the different procedures that would be involved since
6 we're dealing with a nonprofit public water system
7 organized under Chapter 393 versus a water corporation
8 which is Central States organized under Chapter 386.

9 JUDGE DIPPELL: And then the other point you
10 were making was that Central States has a history of
11 raising rates and they can't raise the rates without the
12 Commission determining that those rates are just and
13 reasonable first, correct?

14 MR. HALL: Yes, that's correct. They have no
15 unilateral power to raise rates.

16 JUDGE DIPPELL: So even if their history is
17 acquiring companies and raising rates, those rates are
18 just and reasonable because the Commission has
19 determined that to be so, correct?

20 MR. HALL: As determined by those Commission
21 orders. However, it's a question as to not just
22 opportunity costs but efficiency costs. I can give you
23 a Toyota Camry that won't break down for 20 years and
24 that is a just and reasonable ride to get me to my
25 commute day in and day out, or we can say that a Pontiac

1 GT, I'm honestly not familiar with car models, top end
2 muscle car, that's the just and reasonable. They both
3 function the same purpose of getting me back and forth
4 to work but there's a different efficiency cost and a
5 different opportunity cost that's lost depending on the
6 option you take.

7 JUDGE DIPPELL: You know I drive a Toyota
8 Camry that's about 20 years old, right?

9 MR. HALL: They're a good vehicle. I have a
10 Prius myself and I don't think it will fail anytime
11 soon.

12 JUDGE DIPPELL: The last thing is you talked
13 about a CCN transfer, and I've seen that in the
14 testimony and arguments CCN transfer, but what we're
15 really talking about is a new CCN, correct?

16 MR. HALL: You know, that's an interesting
17 point, Your Honor. I see this as sort of like a
18 semantics argument. It depends on how you look at it.
19 There's an existing CCN that if Central States is
20 granted it they'll have a new CCN under a new
21 certificate but it will be transferred from an old
22 certificate authority. The Staff recommendation has
23 taken the position that there's two different standards
24 versus a transfer versus a certificate. We don't
25 necessarily agree. However, we've adopted that language

1 for the benefit of the Commission to seek consistent
2 arguments and at the end of the day the Commission is
3 still free to consider other alternatives as directed by
4 the courts.

5 JUDGE DIPPELL: Okay. Thank you very much.
6 I'm sorry. Mr. Chairman?

7 CHAIRMAN SILVEY: Thank you. Just a quick
8 follow up. You've mentioned opportunity costs a couple
9 of times. I guess my question is if your water had been
10 deemed not safe and adequate, would you be concerned
11 about returning it to safe and adequate or more
12 concerned with opportunity costs?

13 MR. HALL: I would -- I admit that's a really
14 pointed question, Commissioner. I would want the people
15 representing me to consider all possible alternatives to
16 ensure that my water is brought back to the safe levels
17 it necessarily meets. Keep in mind that safe and not
18 safe does not mean the difference between safe and
19 impending death. I would simply want a fair and
20 thorough deliberation on the matter so that people are
21 not left with the most -- the least -- are not left with
22 a detrimental choice.

23 CHAIRMAN SILVEY: So then your position is the
24 current level of unsafeness, if I can make up that word,
25 is acceptable in exchange for opportunity costs?

1 MR. HALL: No, Commissioner, politely. It is
2 not that we are satisfied with the current level of
3 service. It is that we all agree repairs need to be
4 made. It's a question of how we go about doing it.

5 CHAIRMAN SILVEY: But not a question of
6 timing?

7 MR. HALL: As to immediacy between right now
8 this second versus future deliberations in the future,
9 no.

10 CHAIRMAN SILVEY: So delay is acceptable in
11 your position?

12 MR. HALL: A relatively small amount of delay
13 would be acceptable for future potential benefits that
14 vastly outweigh that cost, yes.

15 CHAIRMAN SILVEY: What is your threshold for
16 relatively small delay?

17 MR. HALL: That would have to depend on the
18 different circumstances of each case involved. It would
19 depend on the systems in questions. I'm afraid I can't
20 give you a categorical answer to that question. I think
21 that's a really good point, though, Commissioner. I
22 invite you to ask our witness, Mrs. Roth, on what
23 potential ramifications these could have for the
24 customers and what considerations the Commission could
25 consider on that point.

1 CHAIRMAN SILVEY: Okay. Thank you. No
2 further questions.

3 JUDGE DIPPELL: Thank you, Mr. Hall. Cedar
4 Glen?

5 MR. COMLEY: May it please the Commission. My
6 name is Mark Comley. I represent Cedar Glen Condominium
7 Owners Association in this matter. Picking up on
8 something that Judge Dippell mentioned in the
9 preliminary remarks today, this is a different
10 application for you and the one before you in my
11 experience at least is different than you've ever seen
12 before. It has similarities to the typical application
13 to acquire utility assets that has been joined with the
14 request for certificates of need and convenience, but
15 those similarities in when considering there are in this
16 docket a historically distressed regulated water and
17 sewer utility, Osage Water Company, which even in
18 receivership, as pointed out by Judge Silvey, has failed
19 to achieve required service standards. It has continued
20 to do that for 14 years. There is oversight of a
21 bankruptcy trustee, and has been noted before there are
22 two qualified potential purchasers of those assets.

23 One is Osage Utility Operating Company and for
24 brevity I'll probably refer to that as OUOC and the
25 other is the Joint Bidders. The Joint Bidders are under

1 contract. They're under contract to buy those assets.
2 They've committed themselves to buy those assets. They
3 are the same assets at the same price bid by the
4 applicant. The Joint Bidders' contract is still in
5 force and effect.

6 Also in this entity -- also in this
7 application rather the entity, which owns the assets
8 offered for sale, is not the applicant. Osage Water
9 Company did not file for authority to sell its assets.
10 A potential buyer of those assets has filed the
11 application. I understand that the Commission has
12 entertained applications of this nature before. So this
13 may not be unusual. In my experience, this is the first
14 time I've seen it.

15 Even so, Osage Water Company is not a party to
16 this case. Technically it is not subject to the orders
17 issued by the Commission in this case. But again, you
18 do have two of the parties that are under contract to
19 purchase the Osage Water Company assets.

20 Additionally, OUOC is not yet a public utility
21 and it has not requested certificates of convenience and
22 necessity to serve Osage Water Company's customers as
23 Office of Public Counsel has pointed out. Rather, it
24 has asked that it be allowed to purchase those
25 certificates.

1 OUOC is affiliated with a company that owns
2 certificated public utility companies, but OUOC is a new
3 creation. It enjoys independent existence from its
4 parent under law. Should it independently qualify for
5 certificates of service for the area? Because of the
6 prevalence of public water districts in Camden County,
7 something I will mention in my remarks later, and the
8 growing popularity of the nonprofit water and sewer
9 entities who have intervened in this case, I think one
10 could justifiably question whether it is still necessary
11 or convenient for a public utility, a regulated rate of
12 return public utility, to serve the Osage Water Company
13 customers.

14 So in multiple ways this application is far
15 different from any the Commission has considered before.
16 Because this application and the relationship with the
17 parties before you are quite dissimilar from what is
18 customary, I submit too that the standard of review you
19 should apply should be appropriately tailored. And
20 repeatedly you have been told that your rules and case
21 authority on sale of assets would require that you
22 approve the sale if it is not detrimental to the public
23 interest. Stated maybe a little differently but maybe
24 in a sharper lens, will the proposed sale work a
25 detriment to the public. That has been an expression of

1 the standard as well I think as was pointed out by
2 Mr. Cooper.

3 Yet there are two qualified potential buyers
4 of the assets in front of you. Unlike other cases where
5 alternative purchase offers, and I'll emphasize offers,
6 may have been raised for comparison in an asset purchase
7 docket, here there are two rival potential purchasers
8 both considered qualified by the bankrupt seller and
9 already under written contract to buy the property for
10 the same price. The only credential that separates OUOC
11 from the Joint Bidders is OUOC matched the Joint
12 Bidders' last bid.

13 Truly the question before the Commission is
14 which of these two qualified potential buyers of the
15 Osage Water Company assets will better serve the public.
16 You have considerable discretion in elaborating on the
17 factors involved in the public interest. Harm to
18 ratepayers is definitely one of those factors.
19 Efficiency and economy in the use of facilities devoted
20 to public use is certainly another.

21 Indirectly I represent 216, half or more of
22 the approximate 420 to 424 customers of Osage Water
23 Company. I should add that there are 202 unit owners at
24 Cedar Glen but they represent 216 of Osage Water
25 Company's customer accounts. Those unit owners in turn

1 constitute the greatest segment of the public served by
2 Osage Water Company and the greatest segment of the
3 public which will be directly affected by the outcome of
4 this case. And one of the Joint Bidders, Public Water
5 Supply District No. 5, has offered to provide water and
6 wastewater service to Cedar Glen unit owners. Its bid,
7 which is part of the joint bid, is exclusively for the
8 Osage Water Company water distribution and wastewater
9 facilities currently serving the condominiums.

10 Extending District No. 5's services to Cedar
11 Glen has been discussed between the managing boards of
12 each of these entities. It's also been discussed with
13 the unit owners. Currently Cedar Glen Condominiums are
14 outside the District No. 5 service territory, but the
15 boundary of the district is not more than 1,100 feet
16 away. Annexing Cedar Glen is part of District No. 5's
17 plans to expand.

18 If the district is permitted to purchase the
19 Osage Water Company assets, the Cedar Glen Board of
20 Directors has agreed with the district to voluntarily
21 annex the condominiums into the district. Mr. Ken
22 Hulett, who is the current president of the Board of
23 Directors for Cedar Glen, has observed in his rebuttal
24 testimony that approving a public utility at this hour
25 to serve Cedar Glen will effectively superimpose a new

1 regulated company over what the district plans to serve
2 in the future.

3 These annexation plans are known to the Cedar
4 Glen unit owners as I have mentioned and as you will see
5 reflected in the 70 or so public comments that are filed
6 in this case. They know about this. They know about
7 the expansion. And I have a sampling of those public
8 comments. I only have three. I will not read all of
9 them. I thought they would be illustrative for you to
10 hear.

11 Mr. Ron Darling writes, and they have
12 different names for parties in these comments but I'm
13 going to read them verbatim. I am deeply concerned with
14 the pending purchase of the Cedar Glen water and sewer
15 system by Central States Water Resources. It appears
16 they overbid and would seek a quicker return on their
17 debt load by their investors. I would prefer the
18 purchase by PW Supply No. 5. They are local, know their
19 customer base, would not overestimate repair costs and
20 know the local contractors for any work necessary. Our
21 costs would be more reasonable over time.

22 Dianne Blake writes, I feel the best option
23 for Cedar Glen Condos would be Public Water Supply No.
24 5. This would be in our best interest as they are local
25 and not a private company looking to use our complex to

1 increase profits and to remedy problems with other
2 systems such as the KK system and make money for
3 investors. We have unfairly compensated for these other
4 systems for many years rather than focus on our own
5 water supply. Please help us keep our rates reasonable.

6 Finally, Allan Poole writes, please do not
7 allow the takeover of Osage Water by Osage Utility Water
8 Company. Public Water Supply District No. 5 is much
9 preferred. It is local and nonprofit. The Osage
10 Utility Water Company is not local and is operated for
11 profit which virtually guarantees big rate increases
12 over the coming years. Cedar Glen residents, all 200
13 units, strongly urge you to reject Osage Utility Water
14 Company.

15 The other comments on file they voice similar
16 themes. The district is favored because it is not
17 profit, is local and will have more reasonable rates
18 over time than a regulated utility. While the
19 receivership of Osage Water Company was running its
20 course, the water distribution and wastewater services
21 provided by public water supply districts in Camden
22 County served more and more customers. The Commission
23 has approved sales of previously regulated water and
24 sewer assets to Public District No. 4 of Camden County,
25 for instance.

1 For example, in June of 2015, the Commission
2 approved in File No. WM-2015-0231 the sale of the assets
3 of Ozark Shores Water Company to District 4, a sale
4 which involved service to approximately 1,860 water
5 customers. In April of 2017, the Commission approved
6 File No. WM-2017-018 the sale of the assets of Lake
7 Region Water and Sewer Company to District No. 4. That
8 sale involved 683 water customers and 925 sewer
9 customers.

10 Cedar Glen is going to offer the testimony of
11 two witnesses today. Mr. David Krehbiel is a consulting
12 engineer and serves as a consulting engineer for
13 District No. 5. Among other matters, he will discuss
14 the location of the District 5 service territory and its
15 proximity to Cedar Glen. He will also talk about the
16 benefits of district water and sewer services to Cedar
17 Glen and in particular how interconnection of the water
18 systems can be achieved and how that solves an emerging
19 issue concerning a secondary water source for Cedar Glen
20 and I think to some extent for the district. He also
21 responds to several points in the direct testimony of
22 OUOC's witnesses and I think the Staff.

23 Ken Hulett, who I've mentioned already, is
24 Cedar Glen's second witness. He is the president of the
25 Condominium Owners Association and he testifies to the

1 association's strong interest in obtaining services from
2 the district and how the unit owners will be best
3 served.

4 The evidence in this case will show that the
5 detriments to the public which would result from OUOC's
6 acquisition of water -- of Osage Water Company's water
7 distribution and wastewater systems outweigh any
8 benefits of that acquisition and its application should
9 be rejected.

10 JUDGE DIPPELL: Are there Commission
11 questions?

12 CHAIRMAN SILVEY: Thank you. I'll ask you the
13 same question I asked the Company. What do you think
14 that this Commission can consider when determining what
15 is not detrimental?

16 MR. COMLEY: What is not detrimental? I think
17 it was the AG Processing case, Judge Dippell, that we
18 were trying to grasp at. The Supreme Court has
19 indicated that one of the elements that you can consider
20 and you should consider is the impact on the ratepayer
21 and you can do that now in an asset purchase case.

22 The issue I think in that case was an
23 acquisition premium. But now there's another factor
24 here and that is there are two competing qualified
25 entities under contract to buy these assets. That I

1 think is a factor in itself on which of these would do
2 more good than harm.

3 CHAIRMAN SILVEY: So if we were to deny this
4 acquisition and it were to go back to the bankruptcy
5 court, can the bankruptcy court reject the Joint
6 Bidders' application or can the Joint Bidders withdraw?

7 MR. COMLEY: My understanding is that the
8 Joint Bidders are on the hook. If this application is
9 rejected, the trustee is going to point right at them
10 and say you're next, you've got to buy these assets at
11 that price and that price is still open. I don't think
12 there will be any delay. No, there won't be an
13 opportunity to withdraw. The trustee will enforce that
14 agreement. And I think the terms are fairly identical.
15 Staff would have copies of each of those agreements.
16 But with the exception of how they are phased, they are
17 identical agreements.

18 CHAIRMAN SILVEY: Do you have any indication
19 of how long that process would take?

20 MR. COMLEY: No, I don't.

21 CHAIRMAN SILVEY: Okay. And do you have
22 authority to speak on behalf of all of the owners of
23 Cedar Glen in stating their opposition?

24 MR. COMLEY: Well, not necessarily. And I
25 mentioned I indirectly represent them. I represent the

1 Homeowners Association. The voice of the association I
2 would say is Mr. Hulett. But given the extent of the
3 comments --

4 CHAIRMAN SILVEY: You read us three. How many
5 did you receive?

6 MR. COMLEY: I think there's over 70 and that
7 would represent I think close to 17 percent of the
8 entire customer base of Osage Water Company and pretty
9 close to 33 percent of the people that live at Cedar
10 Glen. I'm not sure whether the Commission has ever seen
11 that much response from customers in public comments.
12 It would certainly be a record. If there were that many
13 in a KCP&L case, I'm trying to think 10 percent would be
14 8,000. So there's been a big response to this. The
15 unit owners I think -- I think it's fair to say that in
16 bulk the unit owners would prefer to be served by the
17 district in the future.

18 CHAIRMAN SILVEY: Okay. No further questions
19 at this time. Thank you.

20 MR. COMLEY: May I answer a question that you
21 posed to the Office of Public Counsel? I think we need
22 to keep in mind that Cedar Glen residents, as well as
23 the residents in Chelsea Rose, Eagle Woods, Cimarron
24 Bay, they have all been putting up with less than the
25 best service throughout the course of this receivership.

1 I don't think they're going -- I will speak for them. I
2 don't think they're going to worry about increased delay
3 if they can get their rates at the same rate that
4 everybody else pays in that area. And there's going to
5 be evidence in the record -- I'm presuming there will be
6 evidence in the record showing the district rates are 78
7 bucks combined. We may face increases twice that much
8 for this utility company. There would be that much
9 discrepancy in the rates in this area. And I think -- I
10 would submit to you that Cedar Glen unit owners don't
11 want that to happen.

12 CHAIRMAN SILVEY: Thank you.

13 JUDGE DIPPELL: Any other Commission
14 questions?

15 COMMISSIONER KENNEY: No, thank you.

16 JUDGE DIPPELL: Thank you, Mr. Comley. Lake
17 Area, MO Water and Public Water Supply District?

18 MR. ELLSWORTH: Good morning, Commissioners,
19 Judge Dippell, Chairman. My name is Aaron Ellsworth. I
20 represent the Joint Bidders we'll call them. That's
21 Public Water District No. 5, Lake Area Wastewater
22 Association and Missouri Water Association. I have to
23 admit I'm a late guy. I think it's appropriate to say
24 I'm a fish out of water at PSC hearings. This is not
25 what I typically do, right.

1 A year or two ago I agreed to represent a
2 sleepy little sewer district down in Camden County and
3 now I'm here. The issues brought are very interesting
4 before the Commission. The entities I represent are all
5 nonprofit. With respect to the Public Water District,
6 I'm not sure they even get paid. They all live within
7 the district. With respect to Lake Area Wastewater
8 Association and Missouri Water Association, they have
9 members. Those members form the board and they
10 determine what salaries are. These are all nonprofit
11 organizations.

12 So, you know, the application about, the one
13 you guys are hearing today, is about profit. I mean,
14 you will see levels of built in profit for Osage Utility
15 Operating Company. It's how they operate. It's not
16 bad. I mean, we live in the capital society. When
17 there are other alternatives, I ask you to keep in mind
18 the consumer. The consumer will be the biggest loser
19 here if we approve the application. They will face
20 rates that will be two or three times higher. It hasn't
21 been pinned down in their data requests. It probably
22 won't be pinned down in their testimony at exactly what
23 will they be coming back on a rate increase and asking
24 for in a couple years.

25 I will tell you from my review it appears that

1 they're intending to make improvements to these systems
2 that aren't required. Chairman Silvey, earlier you
3 talked about these systems being in dire need of repair.
4 Potentially, you know, could there be potential harm to
5 the consumer currently. In the Staff's recommendation,
6 the DNR reported no unsatisfactory conditions at Cedar
7 Glen currently. Now, I agree that over the last 10, 14
8 years Osage Water Company has not reinvested money into
9 those systems. They've let them kind of limp along.

10 Do they need repairs? Yes. Is it dire at
11 this point to the effect that we should worry about the
12 delay? Of course, we don't want delay. I don't think
13 it's a dire situation. And I think the evidence will
14 show that. We do have four systems. It appears that
15 there are not DNR reports on the other ones but there
16 doesn't seem to be any type of health or imminent harm
17 to the user currently that I'm aware of or that I've
18 seen in any of the documents.

19 There were a couple other things that were
20 brought up. One other point, too, is that even with
21 respect to the Cedar Glen water, it appears to be fine
22 in those reports as well. What is unfortunate in this
23 process and I have a little bit more history and
24 background on it because I was involved in the
25 bankruptcy proceeding. There was some mention of a

1 delay in application. The process was the same for
2 everybody.

3 We started in circuit court, multiple bids
4 multiple times. The question was asked why didn't
5 anybody purchase it before. All the offers were always
6 contingent on giving me clear title. You don't want to
7 buy something that has a judgment against it. That's
8 what we had. So circuit court didn't have the power to
9 grant clean title. So the only option was, and they
10 fought for years over the judgments and who was going to
11 get paid if these went through, and they're still
12 fighting about it in bankruptcy court and they'll
13 probably fight for it long after this proceeding is
14 over. But that was the issue in the circuit court
15 proceeding. Ultimately the judge decided who can give
16 clear title, let's put it in bankruptcy.

17 Bankruptcy judge can give us clear title. He
18 can wipe away all the judgments. Only person that has
19 the authority to do it. So that's why we wound up in
20 bankruptcy court. Multiple bids in circuit court.
21 Those will be part of the evidence today.

22 Bankruptcy court, multiple bidders. We all
23 appear at the bankruptcy auction. The terms were the
24 same for everybody. They negotiated the stalking-horse
25 purchaser, Central States, Osage Utility Operating

1 Company, and they put out the first bid. It was
2 \$465,000. And then everybody had to -- I think maybe
3 they were 455. We had to match that. We all had to
4 deposit 40 grand to come to the auction. We all go to
5 the auction. They continue to match it so they get
6 preferential treatment. If it was the other way around,
7 we're here today saying give us, you know, approve our
8 application. With respect to the application, if it
9 needs to be filed we'll have that filed immediately. I
10 don't have a contract. I have a contract that's
11 contingent upon their application not being granted.

12 What I'm hoping the Commission will hear today
13 and gather from the evidence is that I think you guys
14 have a general ability to consider all factors that will
15 be relevant to what is in the public's interest and
16 certainly harm to a ratepayer. I think this is the
17 biggest one before you today. But also consider the
18 proposal that Osage Utility has.

19 The application should state the purchase
20 price and financial terms. We haven't pinned down the
21 financial terms of this. What's the loan? Some of the
22 exhibits shows that we have a \$1.7 million loan. It
23 appears it's going to be at 9 percent. Over how many
24 years? That interest is a loan from a parent company.
25 They're building in all these levels of profit. It's a

1 guaranteed loan. You have a trapped consumer base that
2 will be paid.

3 So the other things that should be considered
4 are the proposed improvements and are they necessary.
5 That really hasn't been addressed in my opinion. They
6 say what they wanted to do. Is it necessary? That's
7 not in the Staff recommendation. How will the
8 improvements improve or correct deficiencies? I don't
9 see that in the recommendation. I don't see that in the
10 application. In fact, it appears that what is required
11 and what they're proposing are very different.

12 And then obviously public interest. So at the
13 end of the day I want you guys to consider all the
14 relevant factors in determining that this application
15 approval will be against public interest and denying it.

16 JUDGE DIPPELL: Do you have any questions?

17 COMMISSIONER KENNEY: I have a question.

18 JUDGE DIPPELL: Commissioner Kenney?

19 COMMISSIONER KENNEY: Good morning.

20 MR. ELLSWORTH: Good morning.

21 COMMISSIONER ELLSWORTH: Is it your
22 understanding that if we deny this application then your
23 group of bidders would be granted the contract and then
24 they would, they, the group, would come back to us?

25 MR. ELLSWORTH: It's a fact that we have a

1 binding contract. In fact, we had to sign an amendment
2 to extend it beyond the closing date and it's in
3 perpetuity. We still have 40 grand sitting with the
4 trustee. If you deny the application, she's calling me
5 and say you're next up, I'm going to the bankruptcy
6 court, which I think the bankruptcy court, don't hold me
7 to it, but I think they've approved both contracts if I
8 understand how it was, but I did not participate in that
9 proceeding.

10 We're on the hook. We can't walk away. We
11 have to buy it. And plus, I think our presence here
12 today indicates we want to follow through on the
13 contract.

14 COMMISSIONER KENNEY: Thank you.

15 JUDGE DIPPELL: Mr. Chairman?

16 CHAIRMAN SILVEY: Just to clarify, you said
17 you have to buy it?

18 MR. ELLSWORTH: Yes. We'd be breaching the
19 contract if we didn't.

20 JUDGE DIPPELL: All right then. Thank you.

21 MR. ELLSWORTH: Thank you.

22 JUDGE DIPPELL: Okay. I think that concludes
23 our opening statements then, and I promised to give you
24 all a break before we began with the first witnesses.
25 So it's not quite 10:35. Is 15 minutes long enough or

1 20?

2 MR. COOPER: If it's the normal Commission
3 15-minute break, I think it will be.

4 JUDGE DIPPELL: Okay. We'll take 20 minutes
5 and we will begin at five till. Thank you. We can go
6 off the record.

7 (Off the record.)

8 JUDGE DIPPELL: Let's go ahead and go back on
9 the record. We're back on the record after our break,
10 and we are ready to go ahead and begin with our first
11 witness. So Mr. Cooper?

12 MR. COOPER: Yes, Judge. Do you want us to
13 talk our way through the exhibit numbering first or go
14 ahead and call Mr. Cox to the stand first?

15 JUDGE DIPPELL: You can go ahead and do the
16 exhibits. That's fine.

17 MR. COOPER: Okay. Mr. Cox has direct and
18 surrebuttal testimony. However, there are three
19 schedules within his direct that are confidential. So
20 we're going to mark those separately which results in
21 Exhibit No. 1 being Josiah Cox Direct, Exhibit 2P and 2C
22 being his Direct Schedule JC-2C in a public and a
23 confidential version. Exhibit 3P and 3C will be Mr. Cox
24 Direct Schedule JC-3C again in a public and confidential
25 version. Exhibit 4P and 4C will be Mr. Cox Direct

1 Schedule JC-13C in both a public and a confidential
2 version. And Exhibit No. 5 will be Mr. Cox's
3 Surrebuttal Testimony.

4 JUDGE DIPPELL: I'm just going to clarify for
5 those that didn't have the benefit of our conversation
6 with the court reporter earlier. Basically the Direct
7 Testimony is Exhibit 1. That's everything in the public
8 version. The Exhibits 2, 3 and 4 are the schedules from
9 Mr. Cox's direct testimony that are marked as
10 confidential. That's correct?

11 MR. COOPER: Correct.

12 JUDGE DIPPELL: I'm saying that right? Okay.
13 And then, of course, 5 is the Surrebuttal. So
14 Mr. Cooper is going to provide -- because the 2, 3 and 4
15 are basically entirely confidential schedules, he's
16 going to go ahead and provide a public version which
17 will basically just be a sheet that says this is
18 confidential in its entirety. But when it goes into our
19 electronic filing system, that will show up so that if
20 someone from the public is trying to access that exhibit
21 they will see that they're not able to access it because
22 it's confidential in its entirety. So this is the way
23 Mr. Cooper proposed doing this. So we're going to give
24 it a try, but don't think that you have to change your
25 numbering to match this if you have proposed to do it

1 another way. All right.

2 MR. COOPER: At this time then, Judge, we
3 would call Mr. Josiah Cox to the stand.

4 (Witness sworn.)

5 JUDGE DIPPELL: Thank you. All right, Mr.
6 Cooper, you can go ahead.

7 JOSIAH COX, being sworn, testified as follows:

8 DIRECT EXAMINATION BY MR. COOPER:

9 Q. Please state your name.

10 A. My name is Josiah Cox.

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

12 A. I'm employed by CSWR, LLC. I'm the president
13 of the company.

14 Q. Have you caused to be prepared for the
15 purposes of this proceeding certain direct and
16 surrebuttal testimony in question and answer form?

17 A. I have.

18 Q. Is it your understanding that that testimony
19 has been marked as Exhibits 1 through 5 for
20 identification?

21 A. Yes.

22 Q. Do you have any changes that you would like to
23 make to that testimony at this time?

24 A. No.

25 Q. If I were to ask you the questions that are

1 contained in Exhibits 1 through 5 today, would your
2 answers be the same?

3 A. They would.

4 Q. Are those answers true and correct to the best
5 of your information, knowledge and belief?

6 A. Yes, they are.

7 MR. COOPER: Your Honor, I would offer
8 Exhibits 1 through 5 into evidence.

9 MR. COMLEY: Your Honor, with respect to
10 Exhibit 5, the surrebuttal testimony of Mr. Cox, Cedar
11 Glen renews its motion to strike select portions of his
12 testimony, his surrebuttal testimony, and so as not to
13 burden the transcript I would ask the Regulatory Law
14 Judge, Judge Dippell, if you would permit us simply to
15 note the filing of that motion and let it speak for
16 itself instead of going through with the record today.

17 MR. ELLSWORTH: The Joint Bidders would join
18 in Mr. Comley's motion.

19 JUDGE DIPPELL: All right. I will overrule
20 your objection and notes the motion that was previously
21 filed is the objection. Are there any other objections
22 to Exhibits 1, 2 both public and confidential, 3 both
23 public and confidential, 4 both public and confidential
24 and Exhibit No. 5? Seeing no other objections, then I
25 will receive those into evidence.

1 (COMPANY EXHIBITS 1, 2P, 2C, 3P, 3C, 4P, 4C
2 AND 5 WERE RECEIVED INTO EVIDENCE AND MADE A PART OF
3 THIS RECORD.)

4 MR. COOPER: Thank you, Your Honor. We would
5 tender Mr. Cox for cross-examination.

6 JUDGE DIPPELL: Just one second. Okay. And I
7 forgot to say at the very beginning that we would follow
8 the proposed order of witnesses and order of
9 cross-examination, and so forth. Again, for the benefit
10 of those that don't practice here regularly, we usually
11 do direct and then cross-examination in the order, we
12 have questions from the Commission, we allow further
13 cross-examination based on questions from the bench and
14 then we do a redirect at the end.

15 Because we had -- Because I'm allowing
16 additional information based on Staff's recommendation,
17 when we do the direct you will have the opportunity to
18 put in a little more than you might normally do in a
19 Commission proceeding. So you didn't have anything
20 further at this time, Mr. Cooper, with regard to
21 response to Staff's recommendation?

22 MR. COOPER: Its revised recommendation, no,
23 we do not.

24 JUDGE DIPPELL: Okay. Then let's go ahead
25 with cross-examination from the Staff?

1 MS. PAYNE: Thank you, Judge. Good morning,
2 Mr. Cox.

3 THE WITNESS: Good morning.

4 CROSS-EXAMINATION BY MS. PAYNE:

5 Q. Has Osage Utility Operating Company requested
6 approval of any financing for this acquisition?

7 A. They have not.

8 Q. And has the Company obtained engineering
9 reports or any other evidence or documentation of the
10 proposed improvements that were made in its application?

11 A. We do not have final engineering reports for
12 any of those proposed improvements, to my knowledge.

13 Q. Have you seen any engineering reports or other
14 documentation of any other improvements proposed by any
15 other parties to this matter?

16 A. I have. I've read the joint applicants, some
17 of their comments on what they think the improvements
18 should be or repairs.

19 Q. Do you agree with those proposed improvements?

20 A. I do not.

21 Q. Thank you. Is it your understanding that a
22 federal bankruptcy court has ruled that Central States
23 Water Resources was the winning bidder of the bankruptcy
24 auction regarding the Osage Water Company assets?

25 A. Yes, ma'am. I was at the bid myself.

1 Q. Is Central States Water Resources the only
2 bidder that's authorized to purchase the assets by that
3 federal bankruptcy court at this time?

4 A. That is correct, currently at this time.

5 Q. Okay. And are you aware of the other bidders
6 to that bankruptcy auction?

7 A. I am. It's called the joint applicants, or
8 what are we calling those guys, the lake area -- the
9 Joint Bidders, sorry, excuse me, the Joint Bidders, yes.
10 They're the other people who have tried to bid it I
11 guess.

12 Q. Are they the only other bidders?

13 A. They are not the only other bidder. There was
14 another bidder that was present there at the auction
15 that would be Missouri-American Water.

16 Q. Okay. Thank you. And is your application in
17 the public interest in your opinion?

18 A. I absolutely believe our application is public
19 interest especially given the state of the systems that
20 we're attempting to purchase.

21 Q. Would you say it's not detrimental to the
22 public interest?

23 A. I don't know how you could be any more
24 detrimental than the current state of affairs at Osage
25 Water just due to the state of disrepair and

1 dilapidation that's going on. So absolutely is not
2 detrimental for our firm to buy these assets.

3 MS. PAYNE: Thank you. I have no further
4 questions.

5 JUDGE DIPPELL: Are there questions from Cedar
6 Glen?

7 MR. COMLEY: Thank you, Judge.

8 CROSS-EXAMINATION BY MR. COMLEY:

9 Q. Mr. Cox, I understand that in 2005 or so you
10 formed an LLC called Trumpet, LLC; is that correct?

11 A. Yes, sir.

12 Q. Are you still affiliated with Trumpet, LLC?

13 A. No, sir.

14 Q. Let me ask you this. Are you a professional
15 engineer?

16 A. No, sir.

17 Q. On page 3 of your direct, I think I have your
18 testimony correct, you're an administrator for a rural
19 sewer district; is that correct?

20 A. Yes, sir.

21 Q. I am assuming it's a Missouri rural sewer
22 district?

23 A. Yes, sir.

24 Q. Where is that? Where is it?

25 A. It's Selma Village Sewer District.

1 Q. Can you spell that?

2 A. S-e-l-m-a Village.

3 Q. I'm unaware where that Selma Village is
4 located. Is that on the east side?

5 A. That is correct. Near Crystal City, Missouri.

6 Q. Thank you. In your position as administrator,
7 I suspect you've become familiar with the manner in
8 which the rates are set by that rural sewer district?

9 A. Yes, sir.

10 Q. Is it true that the rates are set without any
11 consideration of profit?

12 A. Yes, sir.

13 Q. Now, I understand that there's some surplus
14 that's involved in those rates. Would that be a correct
15 statement?

16 A. That is correct.

17 Q. But that surplus is allowed not for
18 distribution to shareholders or to customers; is that
19 correct?

20 A. That is correct.

21 Q. I'm assuming that there's an elected board
22 that manages the district?

23 A. Appointed board.

24 Q. Appointed board. Are ratepayers given a
25 chance to voice how the board is elected or appointed?

1 A. I don't know the technical answer to that
2 question, sir.

3 Q. Ms. Payne asked you about the auction process
4 at the federal level. Regarding that process, isn't it
5 true that Central States Water Services matched the bid
6 that was supplied by the Joint Bidders?

7 A. That is correct.

8 Q. Would you also agree that if Osage Utility
9 Operating Company is not able to close on the Osage
10 Water Company assets the trustee has an agreement to
11 sell those assets to the District No. 5 and the two
12 nonprofit associations, the Joint Bidders?

13 A. I'm not familiar enough with the bankruptcy
14 process. I understand that our contract, my contract
15 stipulates that we had to put a deposit down and so if
16 we didn't close on the transaction barring certain
17 stipulations in the contract, then we would either be
18 forced to give up our deposit or consummate the
19 contract.

20 Q. Let me direct you to page 7, line 10 of your
21 surrebuttal for a moment. It's going to take me a
22 minute to get there too. Forgive me.

23 A. What was the page again, sir?

24 Q. It's page 7, line 10. Reading there I have
25 further, should OUOC not be able to close on the Osage

1 Water Company assets, the trustee has authority to sell
2 the assets to District 5, Lake Area Wastewater
3 Association and Missouri Water Association, the first
4 backup bidders, subject to receiving all necessary
5 regulatory approval. Is that a correct reading of your
6 testimony?

7 A. Yes, sir.

8 Q. I understand that if OUOC is approved by the
9 Commission that the Company intends to charge the same
10 rates as Osage Water Company; is that correct?

11 A. That is correct.

12 Q. And during the time those rates are in effect,
13 OUOC would be undertaking the improvements that you and
14 Mr. Thomas had described in your respective testimonies?

15 A. Yes, sir. Our typical standard practice we
16 would have to -- we have to engage a third-party
17 professional engineer, we have to do final engineering
18 design plans, we have to process those final engineering
19 design plans with the Missouri Department of Natural
20 Resources to get construction approval before we can
21 construct those. So there would be a time period in
22 which we are getting the plans permitted by DNR before
23 the actual improvements the process would change.

24 Q. I suspect you've anticipated that there would
25 be an estimated time in which all those approvals would

1 be obtained. Would that be correct?

2 A. Yes, we have a range of times that we're
3 accustomed to.

4 Q. Would that range of time be within 12 to 24
5 months?

6 A. Yes, that is correct. We anticipate it to be.

7 Q. After those improvements are made, at some
8 point you will come to the Commission for purposes of a
9 rate increase reflecting the cost of those improvements?

10 A. That is correct. Any improvements we made we
11 will seek recovery for before the Commission.

12 Q. In the rate case as well you would seek
13 recovery of the costs of the assets?

14 A. That is -- yes, sir.

15 Q. If my math is correct, the total amount of
16 your investment in the systems and your improvements
17 would be in the range of \$3 million; is that correct?

18 A. That is our current estimate.

19 Q. Is that a preliminary estimate or is that
20 something that is considered accurate?

21 A. It's a preliminary estimate since we don't
22 have final engineering plans done.

23 Q. During that rate increase request you would be
24 expecting a return on your investment, would that be
25 correct?

1 A. Yes, sir.

2 Q. You've asked for a debit incentive -- a debit
3 acquisition incentive in this case; is that correct? I
4 think I've got the right terminology. Forgive me if I
5 don't.

6 A. What we've agreed, what we've asked for I
7 guess in the summation of this is the purchase price be
8 recognized as rate base.

9 Q. So if that's approved, you would want to have
10 that purchase price considered -- a rate of return on
11 that particular item?

12 A. Obviously subject to Commission approval we
13 would look for that.

14 Q. We've talked a little bit about the debt you
15 might incur on this. It's not going to be obtained on
16 the commercial market; would that be correct?

17 A. That's not correct yet. We're still in the
18 process of looking at obtained debts on the commercial
19 market.

20 Q. On the commercial market?

21 A. Correct.

22 Q. Are you also looking with respect to private
23 lenders?

24 A. We are.

25 Q. Would you expect the private lenders' rates to

1 be as competitive as the commercial markets?

2 A. It's all about the risk adjusted return that
3 the individual lenders want to loan us to. I can't
4 speak to how the individual private lenders, you know,
5 create their debt costs.

6 Q. Have you incurred debt at 10 percent or above
7 in the past?

8 A. I have.

9 Q. Are you anticipating that that debt might be
10 at that interest rate?

11 A. Can I correct? I have not. We have as a
12 company.

13 Q. You have as a company?

14 A. Correct.

15 Q. I understood that's what you meant. Excuse
16 me. As a for-profit entity, OUOC would not qualify for
17 any kind of tax exempt financing; is that correct?

18 A. Not that I'm currently aware of.

19 Q. With respect to the amount of money that you
20 would want to borrow at this point, you have not advised
21 the Commission or the parties about how much you might
22 borrow; is that correct?

23 A. That is correct.

24 Q. So you're anticipating that there would be
25 capital infusions from the members in the OUOC company

1 or shareholders in the OUOC company?

2 A. Yeah, there would be capital infusion from
3 Central States Water Resources, CSWR, LLC.

4 Q. And that capital infusion, would that be based
5 on a loan or would that be on a grant?

6 A. That would be an equity infusion.

7 Q. When the equity infusion that would be given a
8 preference in terms of returns?

9 A. No, sir. It's purely an investment. Then the
10 return comes from asking for a future rate consideration
11 for investments made in the systems.

12 Q. I have a few questions about Cedar Glen. I
13 wanted to confirm with you, and I think it's in the
14 Staff's recommendation, but just to make sure I have it
15 correctly and I've said it in my opening statement that
16 your understanding is that there are 216 customer
17 accounts at Cedar Glen; would that be correct?

18 A. There's some discrepancy between water and
19 wastewater I think in those counts, but I believe 216 is
20 close.

21 Q. Okay. And all of these customer accounts are
22 located within the condominium project; would that be
23 fair to say?

24 A. Yes, sir, I believe that is true.

25 Q. I think Mr. Cooper said there are about 420

1 Osage Water Company customers, correct me if I'm wrong,
2 Mr. Cooper.

3 MR. COOPER: I think 420 on one side and 402
4 on the other side.

5 BY MR. COMLEY:

6 Q. So Cedar Glen would represent a little more
7 than half of the customer base for Osage Water Company;
8 would that be correct?

9 A. Approximately.

10 Q. Do you think it's fair to say that the cost of
11 serving those 216 customers at Cedar Glen let's say for
12 water service would be less per customer than it would
13 be per customer for the other Osage Water Company
14 service areas?

15 A. No, I do not believe that's true.

16 Q. The cost of service would be the same for
17 those 216?

18 A. It potentially could be more for Cedar Glen
19 than for the rest of the systems depending on the final
20 improvements that are required. Cedar Glen is one of
21 the few -- is the only system inside the group of Osage
22 Water systems that has a population over 500. Over 500
23 population actually requires two sources of drinking
24 water and groundwater storage, boosters, pumps and also
25 need a disinfection, backup disinfection.

1 Q. I think that's been an issue between Mr.
2 Thomas and Mr. Krehbiel on whether or not that secondary
3 source, is that correct, I think there's been some
4 dispute about that in the testimony?

5 A. You know, I'm just going by Missouri state
6 minimum design guidelines.

7 Q. Thank you. Let me give you an example,
8 though. Wouldn't density of population at a particular
9 site influence the economy of scale in preparing a rate
10 for service?

11 A. It all depends on the amount of improvements
12 on a per customer basis.

13 Q. Would I be correct to say that OUOC would not
14 have a rate that's specific to the Cedar Glen residents
15 if it is approved to acquire the assets?

16 A. Since we're adopting the existing tariff, the
17 answer is no, there's a single tariff regardless of
18 where the customer is.

19 Q. In the future, would you anticipate that there
20 would be a region specific tariff that would cover the
21 Cedar Glen residents?

22 A. It would just depend on what the final
23 improvements are and what the makeup of the entire
24 company was at that point.

25 Q. One of the companies that Central States Water

1 Resources is affiliated with is the Hillcrest Utility
2 Company, as I understand?

3 A. That is correct, sir.

4 Q. And it was a distressed company as well, am I
5 correct?

6 A. Yes, sir. When we purchased Hillcrest, they
7 were in the middle of a nine-week boil order because the
8 exhaust vent in the water tower had rusted out so there
9 was fecal matter in the drinking water system. The
10 wastewater lagoons were under an Attorney General
11 enforcement action. In fact, I don't think Fannie Mae
12 and Freddie Mac were doing mortgages to the homes in
13 that community due to the distressed nature of the
14 lagoon system as well.

15 Q. Do you recall what the rates were for
16 Hillcrest at the time you took over the assets?

17 A. I'm sorry, sir, I don't know off the top of my
18 head.

19 Q. Do you know what the rates are now?

20 A. I don't know the exact rate off the top of my
21 head.

22 Q. Hillcrest came to the Commission for rate
23 relief; is that correct?

24 A. I don't understand your question.

25 Q. After you acquired the company and you

1 operated for awhile, did you come to the -- did
2 Hillcrest come to the Public Service Commission and
3 acquire a rate increase?

4 A. Yes. After all the improvements were
5 constructed in Hillcrest, it came before the Commission
6 for rate increase.

7 Q. So there is a case that has been filed with
8 the Commission for that rate relief; is that correct?

9 A. That is true, sir.

10 Q. Do you have any recollection of the results
11 and approvals in that case?

12 A. I have general recollections. Obviously I
13 participated in that case.

14 Q. Do you know what the request for rate relief
15 was? Can you tell us what that is? Don't worry about
16 it. I'll get the case.

17 A. I don't remember the numbers, sir.

18 Q. All right. I'm going to skip to your direct
19 just for a moment. On page 18 of your direct, page 18
20 of your direct, line 20. I think I'll wait until you're
21 there. Are you there?

22 A. I am, sir.

23 Q. Your testimony there is there is no treatment
24 or disinfection of water in the Cedar Glen system, and
25 my question would be are you saying that disinfection of

1 that water is required?

2 A. No, sir, I'm just saying there is no
3 disinfection currently.

4 Q. It is not required, is it?

5 A. It's not required unless there's an ecoli test
6 positive in the system.

7 Q. Do you know whether or not this is a
8 recommendation from Mr. Thomas?

9 A. I don't know if that's a recommendation of
10 Mr. Thomas or not.

11 MR. COMLEY: Your Honor, I have some questions
12 concerning one of the confidential schedules that
13 Mr. Cox attached to his direct testimony, and because of
14 that I would ask that the Commission schedule some sort
15 of an in-camera proceeding for all of us if we do all
16 have questions about it.

17 JUDGE DIPPELL: Are you saying you want to
18 hold that and do that --

19 MR. COMLEY: I'll leave it up to you. I'm
20 happy to do it right now.

21 JUDGE DIPPELL: Will there be other -- Does
22 anyone at this time know they will have other questions
23 about confidential schedules?

24 MR. ELLSWORTH: It will depend on what
25 Mr. Comley covers, but I do intend to have questions

1 about it. He may cover them before I do.

2 JUDGE DIPPELL: We could go ahead I think then
3 and just cover that now and I can allow any other
4 cross-examination --

5 MR. COMLEY: Thank you.

6 JUDGE DIPPELL: -- while we're in camera on
7 that. Well, then at this time we will go in camera. If
8 there are people in the room that are not able to hear
9 an in-camera proceeding, I'll count on the attorneys to
10 point that out and ask those people to leave the room.

11 I'm assuming that they have exited the room.
12 I can't tell. Thank you. Heard the door.

13 (REPORTER'S NOTE: The hearing went into an
14 in-camera proceeding.)

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1 (REPORTER'S NOTE: At this point, public
2 session resumed.)

3 JUDGE DIPPELL: So we're back on the public
4 session then and we will resume with the
5 cross-examination from Cedar Glen.

6 MR. COMLEY: Thank you, Your Honor. I have no
7 other questions for Mr. Cox.

8 JUDGE DIPPELL: Okay. Is there
9 cross-examination then from the Public Water Supply
10 District, et al.?

11 MR. ELLSWORTH: Yes, Your Honor. The Joint
12 Bidders would have cross-examination.

13 CONTINUED CROSS-EXAMINATION BY MR. ELLSWORTH:

14 Q. Mr. Cox, on behalf of my clients I previously
15 submitted some data requests to you. One was state the
16 amount of the purchase price being financed and you
17 referenced the Company. I just want to clarify. Who is
18 First Round CSWR?

19 A. That was incorrect. It's CSWR, LLC. It was
20 formerly named First Round.

21 (REPORTER'S NOTE: At the request of Judge
22 Dippell, page 105, line 21 through 106, line 10 was
23 placed in the in-camera proceedings.)
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(REPORTER'S NOTE: End of in-camera.)

MR. COOPER: Judge, I think this was precisely the numbers that were a part of the in camera discussion that we were supposed to be having.

JUDGE DIPPELL: I assume that those data requests were marked confidential?

MR. HALL: If I can speak on that.

JUDGE DIPPELL: Yes.

MR. HALL: The particular number was marked confidential with the two asterisks.

JUDGE DIPPELL: Okay. Do we need to go back in camera to discuss?

MR. ELLSWORTH: I'm going to apologize to you, Judge Dippell and the Commissioners. As I said, I'm a fish out of water here. This confidential stuff is new to me. I apologize. I didn't realize what has been

1 marked confidential. Yes, that is marked confidential.

2 JUDGE DIPPELL: I can make the part of the
3 recording confidential and I can make that part of the
4 in camera session, the questioning on the transcript.
5 So I can't, you know, take back from the air the words
6 that were said, but I will do my best to make the record
7 -- make that confidential on the record from here
8 forward. Are there -- Do you want to go back in camera
9 then and ask those questions? Do you have further
10 questions about the numbers?

11 MR. ELLSWORTH: No, Your Honor, that will be
12 fine. We don't have to go back in.

13 JUDGE DIPPELL: Okay. I wasn't sure you
14 actually got an answer.

15 MR. ELLSWORTH: I didn't I understand, but I
16 think he had testimony previously. I'll just move on
17 for the sake of my own embarrassment.

18 JUDGE DIPPELL: I guess just as a general rule
19 of thumb if you're about to talk about a number, it's
20 usually the numbers that are confidential.

21 MR. ELLSWORTH: Thank you. Now I'm afraid to
22 ask questions to try to remember what's confidential and
23 what's not.

24 BY MR. ELLSWORTH:

25 Q. Mr. Cox, in your direct testimony I believe

1 that of you and Mr. Thomas you talk about different
2 improvements you propose to make to the Osage Water
3 Company assets?

4 A. Yes, sir.

5 Q. You proposed a well monitoring system, an
6 electronic well monitoring system?

7 A. Remote monitoring system.

8 Q. Remote monitoring?

9 A. Correct.

10 Q. Do you know what the cost of that is?

11 A. It depends on the exact setup, but it ranges
12 between 5 and \$10,000.

13 Q. Why is it necessary to have the remote
14 monitoring system?

15 A. We use a remote monitoring system to ensure
16 safe and reliable service. Central States Water
17 Resources, our standard business practice is is when we
18 go buy an asset, we do surveys of the entire asset and
19 we geotag those so we know every single utility asset
20 that's associated with every system, and then we use
21 remote monitoring to be able to make sure that they are
22 performing so we're able to see plant production, well
23 production, that kind of thing simultaneously. That way
24 we're able to do preventative maintenance to prevent a
25 loss of service to customers.

1 Q. Where does the monitoring actually take place?
2 Is that in St. Louis?

3 A. No. It feeds into -- We have a computerized
4 maintenance management system that's in the cloud. So
5 all our monitoring goes to that. We use Utility Cloud
6 is the system we use. That's able to directly alert
7 both us and our contract operators simultaneously.

8 Q. Is that in addition to a physical monitoring
9 or routine physical monitoring of the systems?

10 A. That is true. It's in addition to the routine
11 physical monitoring.

12 Q. Is this electronic monitoring necessary?

13 A. I believe it's necessary for providing safe
14 and reliable service, gives us a double safety to make
15 sure that consumers are continuing to receive water and
16 sewer service that's safe.

17 Q. Have you reviewed the Staff recommendation?

18 A. I have.

19 Q. Do you agree with me that on page 8 --

20 JUDGE DIPPELL: Are you looking at the revised
21 recommendation or the original?

22 MR. ELLSWORTH: I'm sorry. I'm looking at the
23 original.

24 JUDGE DIPPELL: Okay. Just so it's clear.

25 THE WITNESS: I don't believe I have a copy of

1 that in front of me.

2 BY MR. ELLSWORTH:

3 Q. Did you review the DNR sewer inspection
4 reports for Cedar Glen?

5 A. I did previously.

6 Q. Do you recall the DNR sewer inspection report
7 states no unsatisfactory conditions at Cedar Glen?

8 A. I don't remember that, but I've been to Cedar
9 Glen. Cedar Glen is a failing wastewater plant. The
10 walls are failing, the media is failing. We did
11 independent tests. They failed the tests as well.
12 That's a system that has been neglected for years and
13 years. I've gone there multiple times over the years,
14 and everytime I've seen more and more systemic neglect.
15 The idea that that plant can perform to meet modern DNR
16 standards, it's not possible. We've got a ton of
17 experience with sand plants all over the country. For
18 the most part, sand plants cannot treat for ammonia
19 removal, you know, much less phosphorus removal in the
20 future. The disinfection system there was severely
21 undersized. There are a number of issues there.

22 Q. That's why you propose installing the MBBE or
23 R?

24 A. The MBBR. It's a moving bed bio reactor.

25 Q. And you're proposing to install that at Cedar

1 Glen?

2 A. Based on final engineering, you know,
3 permitting, we have to go through all that. We believe
4 that's the most cost effective solution in order to
5 bring that system in compliance currently. That's
6 subject to future review.

7 Q. Do you know what the estimated cost of that
8 is?

9 A. I don't remember what it is off the top of my
10 head.

11 Q. And the total preliminary proposal for
12 improvements and repairs to Cedar Glen you have a --
13 your company has approximately \$650,000? Do you know?

14 A. That sounds close to correct. I have to look
15 at the testimony directly.

16 Q. Over all the systems your proposal is to
17 repairs that are approaching \$2 million, correct?

18 A. I believe it's 1.7 and change. Maybe it's \$2
19 million. I don't have the exact number in front of me.

20 Q. Mr. Cox, the applicant had previously taken
21 the position, tell me if I'm wrong, but I believe the
22 applicant previously took the position that a second
23 well was not necessary at Cedar Glen?

24 A. You're talking about that we previously took
25 the position?

1 Q. Yes.

2 A. We were evaluating whether that was possible
3 or not. We don't know currently.

4 Q. Today you said if we have more than 500 users
5 a second well is required?

6 A. Well, that is minimum design guides right
7 there. So it's a question of how many residents are
8 actually in the condos themselves. There's the question
9 that we have to answer at a future date and get approval
10 from the Missouri Department of Natural Resources.

11 Q. You don't have that figured out as we sit here
12 today?

13 A. We do not have that completely figured out as
14 we sit here today.

15 Q. But there are guidelines that say this is how
16 many users per three-bedroom condo, this is how many per
17 two-bedroom condo, correct?

18 A. There are -- Those are actually new
19 construction estimates. You can actually use flow rates
20 as well as a proxy for that. Either one is possible.

21 Q. Do you agree with me in your direct testimony
22 that you -- you or Mr. Thomas' direct testimony that you
23 calculated the customers to be 432 which was two times
24 the 216 users in Cedar Glen?

25 A. Yeah. The total customer count would be water

1 and sewer customers. That's where that number comes
2 from.

3 Q. Did you include the cost of a second well in
4 your \$650,000 improvements and repairs to Cedar Glen?

5 A. I don't remember, sir.

6 Q. So if you didn't, it could be -- what's the
7 cost of a second well there, 200,000?

8 A. I don't believe so. Probably \$100,000 is what
9 I expect to drill a deep water well in Camden County.

10 Q. So your estimate could be as much as, I
11 understand this is preliminary, without being an
12 engineer, it could be 750,000 instead of 650,000?

13 A. If we didn't include that original on the
14 original estimate, I don't remember.

15 Q. If you did include it in the original
16 estimate, would you have included that in your direct
17 testimony -- in your rebuttal testimony, because you
18 listed out the improvements you intended to make,
19 correct, your company intended to make?

20 A. If you give me a second I'll turn to the
21 pages.

22 Q. I'll try to help you find them.

23 A. Yeah, that would be great. No, I believe I
24 state I say that our company proposes to invest in
25 upgrades and make the water system viable and maintain

1 compliance with MDNR upgrades. So we didn't list any
2 specific improvements there.

3 Q. Can you tell me what page you're looking at?

4 A. It's page 18, 21 through 23.

5 Q. Mr. Comley had asked you about Hillcrest
6 rates. In that case the public was also upset about
7 Central States coming in and taking over their system?

8 A. No, sir. When we took over the system,
9 everyone recognized there were problems that needed
10 remedied.

11 Q. They were upset about the rates. If you don't
12 have knowledge, that's fine.

13 A. There were people, there were some people that
14 were upset by the rate increases, yes, I agree.

15 Q. You agree nobody likes to pay more, right, we
16 want to pay less?

17 A. No one likes to pay more, I agree with that,
18 sir.

19 Q. Do you agree with me that Hillcrest rates are
20 currently \$152?

21 A. I don't remember what their exact rates are.

22 Q. Is that approximate?

23 A. I don't remember, sir.

24 Q. Do you provide them water and sewer?

25 A. We do provide water and sewer.

1 Q. On Elm Hills, were the users there were they
2 upset about the rates charged by Central States?

3 A. Elm Hills adopted existing tariffs. There's
4 never been a rate increase at Elm Hills.

5 Q. Do you know what the rates are there? Are
6 they \$140?

7 A. No, sir. I don't know if they are, but
8 they're significantly less than that. One of those
9 systems is a receivership system very similar to Osage,
10 been abandoned for probably 10 years. Another system
11 State Park Village, they were an active polluter in a
12 state park. We had to do an agreement on consent
13 abatement order to bring that system back in compliance
14 which we've done.

15 Q. When did that operating company acquire Elm
16 Hills? Do you recall?

17 A. I don't remember, sir.

18 Q. Was it less than two years ago?

19 A. I don't remember.

20 Q. Mr. Cox, earlier you testified that you said
21 that you were present when the bankruptcy judge approved
22 the Central States purchase of the Osage Water Company
23 assets?

24 A. That's correct. I was there at the auction
25 myself.

1 Q. Do you understand the difference between being
2 at the auction and then -- We were both present at the
3 auction, right?

4 A. Correct.

5 Q. But there was no bankruptcy judge there,
6 right?

7 A. You know, sir, that bankruptcy proceeding is
8 above my pay grade. I don't know exactly how federal
9 bankruptcy works. I know I was at the auction and
10 participated in the auction.

11 Q. We participated in the auction with the
12 trustee present and their attorneys who sold the asset,
13 correct? You're still not sure?

14 A. Can you say that again? I didn't understand
15 the question.

16 Q. Present that day was the trustee Jill Olsen,
17 right?

18 A. Yes, I remember her being there.

19 Q. And then her attorney Spencer Fane?

20 A. I do remember Spencer Fane as well, sir.

21 Q. Do you recall there being a bankruptcy judge
22 there?

23 A. I don't recall how they did the auction. I
24 didn't know if there was a judge there or not.

25 Q. Do you know if following the auction if then

1 Jill Olsen, the trustee, through her attorney Spencer
2 Fane went to bankruptcy court to get approval of the
3 auction results?

4 A. Yes, the auction results were approved by the
5 federal bankruptcy judge.

6 Q. You weren't present when they approved the
7 results; you weren't at the bankruptcy proceeding?

8 A. No, I was not at the bankruptcy proceeding.

9 Q. You don't know whether or not that order
10 approves both your first stalking-horse purchaser bid
11 and the Joint Bidders' bid?

12 A. I don't understand the legal technical part of
13 that. So I don't know how to answer your question
14 there.

15 Q. Well, that's what I want to clarify because
16 earlier you did state that the bankruptcy judge approved
17 it that day at the auction?

18 A. Approved my bid?

19 Q. Just your company's purchase of the assets.
20 It didn't occur at the auction is my point, right?

21 A. You understand that process better than I do,
22 sir. I don't understand the differentiation you're
23 trying to make there.

24 MR. ELLSWORTH: That's fair enough. No
25 further questions.

1 JUDGE DIPPELL: All right. Are there any
2 cross-examination from Public Counsel?

3 MR. HALL: Absent any questions from the
4 Commission, Public Counsel withholds any questions at
5 this time.

6 JUDGE DIPPELL: All right. Are there
7 questions from the Commission? Chairman Silvey?

8 CHAIRMAN SILVEY: Thank you.

9 QUESTIONS BY CHAIRMAN SILVEY:

10 Q. Is the acquisition premium or the existence of
11 an acquisition premium a necessary part of your bid?

12 A. In this scenario, yes.

13 Q. So it was stated earlier in the proceeding
14 that this process, including I believe your initial bid,
15 predated the existence of an acquisition premium rule?

16 A. There were multiple bids over the course of
17 Osage Water that we participated in. So, you know,
18 you'd have to give me the time frame. The bid --

19 Q. When was your first bid?

20 A. I don't remember, sir. The previous receiver
21 put this -- the whole set of systems, Osage Water, out
22 to bid. We were the only one in that original bid
23 process that were willing to purchase all the assets.
24 So it goes back to a previous statement I think one of
25 the attorneys made that American-Water maybe ten years

1 ago tried to buy all these systems. They only tried to
2 buy Cedar Glen. They didn't want all of the other
3 smaller outlying systems and so they were rejected from
4 their purchase. Don't quote me on that, but I believe
5 that's what I heard earlier. For us we were continually
6 the only company that was willing to buy all the systems
7 simultaneously. Back to a comment that was made
8 earlier, this has been a very difficult process. So we
9 couldn't get clear title. So the bankruptcy proceeding
10 was all about giving clear title so anyone could
11 purchase the system because there were multiple
12 judgments against it.

13 Q. So going back to my question, if you could
14 ballpark for me, when did you first bid on acquiring the
15 system?

16 A. I really don't remember, but I would say
17 probably '17 we originally bid on it. We bid -- I don't
18 remember what we bid at that point. Yes, that's
19 correct.

20 Q. So prior to January of 2019?

21 A. That is correct. Prior to the bankruptcy
22 proceedings and the ability to get clear title.

23 Q. Okay. So if the rule for the acquisition
24 premium came into existence in January of 2019 -- I
25 believe that's correct. I'm sure someone will correct

1 me if I'm wrong. -- and yet your initial bid was in
2 2017, 2018, somewhere at least a year prior to that, why
3 is the acquisition premium now a necessary part of your
4 bid?

5 A. Yeah. That goes back to being able to get
6 clear title. When we originally bid the system, we
7 thought we were going to be able to obtain clear title
8 at net book value. Since then it went into the
9 bankruptcy process and while we participated, Central
10 States Water Resources, in the rulemaking for that
11 incentive programs, we obviously knew it was progressing
12 through and knew the rules would be promulgated in
13 January. So we went to the bankruptcy proceeding. We
14 realized hey, we can participate in this. We know
15 there's an incentive rule and that will allow us to be
16 able to buy this system with clear title.

17 CHAIRMAN SILVEY: No further questions at this
18 time.

19 JUDGE DIPPELL: Commissioner Kenney, do you
20 have any questions?

21 COMMISSIONER KENNEY: Just briefly.

22 QUESTIONS BY COMMISSIONER KENNEY:

23 Q. On the bidding process, I'm trying to
24 understand. I heard someone say you set the bid. Was
25 that the statement I heard?

1 A. I believe that's what you heard. Really how
2 that worked is they did an initial bid for all the
3 systems. We were the only entity to submit a bid and
4 then a late bid came in after the bid that was closed
5 and then from that point that's when the bankruptcy
6 trustee said hey, we're going to reopen this up for bid,
7 which we consented to, and our bid that we put in for
8 the system was then the stalking-horse bid, so the
9 minimum bid.

10 Q. Explain stalking-horse to me. That's not a
11 term I am familiar with.

12 A. I'm not a bankruptcy expert. My limited
13 exposure here is that stalking-horse is you have the
14 right to match a bid because you've got the base bid.
15 So the bankruptcy trustee walks into the auction knowing
16 that they will get at least what the stalking-horse's
17 original bid was before it goes to auction.

18 Q. Was that granted because you were the only
19 bidder originally?

20 A. That is correct. Only bidder in time.

21 Q. They'll have a chance to redirect in time.
22 And then so I guess the bankruptcy court can do whatever
23 they want. They decide they got a late bid so then they
24 reopen it?

25 A. That is correct. That's my understanding.

1 Q. What was your original bid?

2 A. I believe it was 465.

3 Q. Somewhere in that range?

4 A. Yes, sir.

5 Q. And then when it was reopened, other entities,
6 other bidders joined in?

7 A. That is correct.

8 COMMISSIONER KENNEY: All right. Thank you.

9 JUDGE DIPPELL: Commissioner Rupp?

10 COMMISSIONER RUPP: Thank you.

11 QUESTIONS BY COMMISSIONER RUPP:

12 Q. So following up on Commissioner Kenney's
13 comment, you did not go into the bid process seeking to
14 be the stalking-horse; that was just because you were
15 the only ones to submit a bid on time and then was that
16 a decision that when they reopened it that they granted
17 that or did you have to seek that?

18 A. No, they granted that because they wanted a
19 fallback price is the way I understood it. So again,
20 not a bankruptcy attorney but since we were the only
21 ones to make a bid in time, then when they reopened it
22 when saw that there was additional bidders, that's when
23 they used us as the base bid if you will.

24 Q. So you did seek that on your initial bid?

25 A. No. I didn't know what a stalking-horse was

1 when I got into this.

2 COMMISSIONER RUPP: Several of us didn't.

3 Thank you.

4 JUDGE DIPPELL: I just have one question for
5 you.

6 QUESTIONS BY JUDGE DIPPELL:

7 Q. And this relates to what you were talking
8 about with regard to how many residents or how many,
9 yeah, I guess it's how many residents versus how many
10 customers at Cedar Glen. So you're trying to buy it and
11 you've made bids in bankruptcy court. You're going to
12 ask for an acquisition premium but you haven't figured
13 out how you are supposed to provide safe and adequate
14 service?

15 A. No, ma'am. We just know there's a range of
16 ways. So when we take over systems, our standard
17 practice is we triage the systems immediately, right.
18 So all these systems have big existing issues that need
19 to be rectified immediately just to make sure the public
20 is not at risk, right. If you go through the various
21 systems inside Osage, they've got failing disinfection
22 systems, they have a lack of monitoring at all, we've
23 got exposed wiring. You've got a bunch of kind of
24 immediate fixes that you would go in in an attempt to
25 make sure we maintain even basic provision of service.

1 Then from there we finalize the engineering. So we know
2 there's a range here of improvements.

3 In fact, over the first couple months of
4 operation of these systems we try and narrow that range
5 down because after we have some experience operating
6 them oftentimes we can say hey, the engineers originally
7 estimated X, Y, Z, we only need X and Y it turns out to
8 be able to meet minimum Missouri design standards. You
9 know, we know exactly what it's going to take in general
10 to bring all these systems into compliance. Obviously
11 we have a done of experience with this. We've done it
12 multiple times with systems in the same state of
13 disrepair. So that's where you're here.

14 So for example, in your Cedar Glen example,
15 specifically we know for sure the ground storage has to
16 be added to that because they don't have 24-hour backup
17 storage. That's a minimum design standard. Regardless
18 if they're above the 500, we know they're going to need
19 booster pumps and hydromatic storage because that's kind
20 of minimum design standards. We know those things right
21 out of the gates. And then whether or not we drill a
22 second well will be determined what we think the
23 population equivalent is. So that's what you heard us
24 talking about. So population equivalent can be given
25 even from the Missouri Department of Natural Resources

1 designation by housing class or it can actually use flow
2 rates and infer what the population is.

3 Q. So even if there is technically more than 500
4 residents, if the flow rates show that it's equivalent
5 to less than 500, you could get it permitted or not have
6 the extra well?

7 A. Yeah, that's a good question. You can never
8 tell how many actual residents are in a condo
9 association in particular. So yeah, we use a flow rate
10 to try to infer what that is.

11 JUDGE DIPPELL: That was all. Commissioner
12 Rupp, do you have any additional questions?

13 COMMISSIONER RUPP: Yeah, I did. Thank you,
14 Judge.

15 FURTHER QUESTIONS BY COMMISSIONER RUPP:

16 Q. So your initial bid you said was roughly,
17 what, 2017, somewhere in that ballpark?

18 A. I believe that's true, sir.

19 Q. And then did your organization incur any costs
20 while it was going through the whole bankruptcy issue to
21 get clear title?

22 A. Oh, yes. So we had to hire a bankruptcy
23 attorney to understand that process. We had to, you
24 know, retain outside counsel to get us through the
25 process. There was absolutely costs as we were going

1 through the bankruptcy proceeding.

2 Q. At that time in 2017, were there any other
3 bids put in for the system?

4 A. There may have been a bid for Cedar Glen. I
5 don't remember, sir. We were the only one to bid all
6 the assets, if I recall correctly. American-Water may
7 have but I don't remember that. So I apologize. I
8 don't remember the exact. I believe we were the only
9 bidder.

10 Q. I can ask this of the other parties but if you
11 know the answer, the other parties that started making
12 competing bids that you were matching in the
13 stalking-horse, when did those come in? Like what year?

14 A. It's not -- So it went to federal bankruptcy.
15 And then in the summer of '18 or maybe early fall is
16 when we made our initial bid in time. And then late
17 bids came in. Then they named us a stalking-horse. I
18 believe it was end of October is when the actual auction
19 took place. So the parties were all at the auction.
20 You weren't submitting remotely. You were sitting
21 around a table at a federal bankruptcy auction is how
22 that process worked.

23 Q. So I'm trying to wrap my head around this
24 timeline here where you said initially you started this
25 process roughly in 2017. Who else was involved? Were

1 the other parties involved in 2017 or were just your
2 organization? When did the other parties enter into the
3 process?

4 A. My recollection is we were the only party that
5 bid this originally and that was back when the receiver
6 was trying to dispose of the assets and the issue was
7 that no one could clear get clear to the assets because
8 there were so many judgments and lawsuits back and
9 forth.

10 Q. That's what I'm trying to get to. So the fact
11 that you eventually can get clear title the value of the
12 system went up dramatically?

13 A. Absolutely.

14 Q. And so prior to there being a clean title,
15 were you the only participants seeking these systems?

16 A. I'm the only person that I remember talking --
17 I mean the receiver was Gary Cover at that time and he
18 went out to bid a couple times. I remember being the
19 only person that wanted to purchase them all. I can't
20 quote if there was someone else. I was the only person
21 he was dealing with on an ongoing basis as far as I
22 remember. That may not be true.

23 Q. Fast forward to when you're sitting around the
24 table with the trustee and you're doing the bid. So the
25 bid -- So was your initial bid made public so that when

1 the late bidders came in they knew where your bid was?

2 A. No, it was -- not that I remember. I think it
3 was the late bidders came in and they realized there was
4 an opportunity to bid it. But then at the auction, if I
5 remember correctly, our bid was the base bid. So it's
6 the starting bid price is how that auction worked.

7 Q. So in effect they would know what your bid was
8 if it was the base bid?

9 A. Everyone knew what the base bid was, exactly
10 right.

11 Q. Which would have been your bid because you
12 were the stalking-horse?

13 A. That is correct.

14 COMMISSIONER RUPP: Thank you.

15 JUDGE DIPPELL: All right. Is there further
16 cross-examination based on questions from the Commission
17 and myself? From Staff?

18 MS. PAYNE: Yes, thank you, Your Honor.

19 FURTHER CROSS-EXAMINATION BY MS. PAYNE:

20 Q. Okay. I'm going to attempt to clear up the
21 timeline a little bit here if you'll bear with me since
22 there were several Commission questions.

23 A. Thank you.

24 Q. Would you agree with me that the bankruptcy
25 was filed in October of 2017? Does that sound

1 memorable?

2 A. Potentially.

3 Q. And a trustee would have been appointed later
4 that month?

5 A. I don't remember the timeline. Work on a
6 bunch of stuff here. I apologize. The exact dates -- I
7 believe you go through the records you may be correct.

8 Q. Okay. And so then the official -- the
9 \$465,000 bid that you referenced, that was made in
10 August of 2018; does that sound right?

11 A. That is correct, ma'am.

12 Q. Okay. And then at the same time in October of
13 2018, there was a final order of rulemaking that was
14 authorized in Case No. AX-2018-0240, and that would go
15 on to be what we now know as Rule 10.085?

16 A. That is correct. We participated in those
17 workshops as well.

18 Q. So you were familiar with that rule at the
19 final order of rulemaking?

20 A. Very familiar.

21 Q. Okay. And then the final bankruptcy auction
22 that is now the subject of what we are discussing here
23 today produced what we know as the purchase price in
24 this case would have been in October of 2018?

25 A. That is correct.

1 Q. Okay. So if the final order of rulemaking was
2 October 4 and then the auction was October 24, you bid
3 that final purchase price aware of the final order of
4 rulemaking in that docket?

5 A. Absolutely.

6 MS. PAYNE: Could I ask the Commission to take
7 official notice of that rulemaking docket AX-2018-0240.

8 JUDGE DIPPELL: AX-20 --

9 MS. PAYNE: 18-0240.

10 THE WITNESS: Can I correct something I said
11 earlier based on time frames you just gave me? That
12 would mean that it was '16 that we were originally the
13 only ones who was willing to buy -- the only entity
14 willing to buy all the assets from the original receiver
15 when we could not get clear title which then forced it
16 to the bankruptcy proceeding just to be clear.

17 JUDGE DIPPELL: So your point in taking notice
18 of that case is to point out the timeline, right?

19 MS. PAYNE: That's correct.

20 JUDGE DIPPELL: It's not that you want the
21 comments and the proposed rules and all of that stuff to
22 come into this record?

23 MS. PAYNE: No, I ask only that we take notice
24 of the filing dates that were made in that docket.

25 JUDGE DIPPELL: Would there be any objection

1 to the Commission taking notice of those dates?

2 MR. COMLEY: No objection.

3 MR. ELLSWORTH: No objection.

4 MR. HALL: None, Your Honor.

5 JUDGE DIPPELL: All right. The Commission
6 will take notice of that docket in its files.

7 MS. PAYNE: Thank you.

8 BY MS. PAYNE:

9 Q. And then additionally there have been several
10 discussions of the minimum design standards in
11 questioning. I know that there was some discussion with
12 Commissioner Rupp regarding that. When you are
13 referencing that, are you referencing the minimum design
14 standards for the Missouri community water systems that
15 was effective in December of 2013, issued by the
16 Missouri Department of Natural Resources?

17 A. I believe that's what I'm referencing, yes.

18 Q. Okay. And if I were to hand you a copy of
19 that, could you read a portion of it for me?

20 A. Absolutely.

21 MS. PAYNE: Judge, would you like me to hand
22 out these for reference at this time?

23 JUDGE DIPPELL: Sure.

24 THE WITNESS: Yes. This is the document,
25 you're correct, because I recognize the front now.

1 BY MS. PAYNE:

2 Q. Lovely picture that the Department of Natural
3 Resources chose for us. Would you please turn to page
4 28 of that document. There should be a highlighted
5 portion under 3.2.1.2 number of sources?

6 A. I see that.

7 Q. And is that highlighted section, which should
8 be highlighted for the benefit of everyone in the room
9 now, the section you're referring to that requires
10 additional sources of water depending on the number of
11 customers?

12 A. That is exactly what we've been talking about
13 in terms of minimum design standards.

14 Q. Okay. Thank you. These standards, do they
15 apply to any improvements to existing systems as well as
16 construction of new systems?

17 MR. HALL: Objection, lack of foundation. Mr.
18 Cox has testified that he's not an engineer. Asking him
19 as to engineering specifications is not proper.

20 MS. PAYNE: I was just asking him about the
21 application of these standards. He's referenced them
22 several times in his answers to the Commissioners'
23 questions. I thought that that would be applicable.

24 MR. HALL: These standards are engineering
25 standards. He has testified that he cannot speak to

1 them.

2 JUDGE DIPPELL: I'm going to overrule the
3 objection. His qualifications will go to the weight.

4 THE WITNESS: Can you repeat your question?

5 BY MS. PAYNE:

6 Q. Is it true that these standards are designed
7 to apply to construction on any existing water systems
8 as well as construction of any new systems?

9 A. That is my understanding. Any upgrades
10 requires to meet minimum design standards.

11 MS. PAYNE: Thank you. Your Honor, I would go
12 ahead and offer this as an exhibit at this time.

13 JUDGE DIPPELL: Can you explain to me again,
14 Ms. Payne, this is -- so it's titled Minimum Design
15 Standards for Missouri Community Water Systems and it's
16 a publication by the Missouri Department of Natural
17 Resources. Is this incorporated in a rule or?

18 MS. PAYNE: It is considered their guidelines
19 for the operators of community water systems in the
20 state of Missouri. My witness David Roos will take the
21 stand later and he can offer a little bit more insight
22 into the use of this document. If you would prefer I
23 wait and offer it for admission at that time, I can.

24 JUDGE DIPPELL: Yeah, let's wait unless it's
25 going to be needed in cross-examination of other

1 witnesses?

2 MS. PAYNE: No, no, I was strictly wanting to
3 -- I had it ready to go and I thought it might assist
4 everyone since it had been referred to several times
5 throughout Mr. Cox's testimony.

6 JUDGE DIPPELL: Do you have a clean copy of it
7 to offer to the court reporter?

8 MS. PAYNE: The portions that have been
9 highlighted are actually just for reference because I
10 knew a 200-page document would be a lot to review and so
11 Staff has utilized the portions that have been
12 highlighted and flagged in the document. We can
13 absolutely get a clean one for the court reporter for
14 submission.

15 JUDGE DIPPELL: Okay. Let's hold off on the
16 offer of that document until Mr. Roos is on the stand
17 then.

18 MS. PAYNE: I will go ahead and mark it as
19 Exhibit 106 at this time if that's okay.

20 JUDGE DIPPELL: We can go ahead and mark that
21 as Exhibit 106 for identification purposes.

22 MS. PAYNE: Thank you. It has quite a lengthy
23 title.

24 JUDGE DIPPELL: I guess since you've offered
25 it I might as well -- are there any objections to this

1 coming into the record at this time?

2 MR. ELLSWORTH: No.

3 MR. HALL: No.

4 JUDGE DIPPELL: I'll just go ahead and admit
5 it at this time, but I will ask you to give a clean copy
6 to the court reporter.

7 (STAFF EXHIBIT 106 WAS RECEIVED INTO EVIDENCE
8 AND MADE A PART OF THIS RECORD.)

9 MS. PAYNE: I absolutely can after the next
10 break.

11 JUDGE DIPPELL: All right. Thank you.

12 MS. PAYNE: Thank you. With that I have no
13 further questions.

14 JUDGE DIPPELL: All right. Were there any
15 additional questions from Cedar Glen based on
16 Commissioner and myself questions?

17 FURTHER CROSS-EXAMINATION BY MR. COMLEY:

18 Q. I'd like for Mr. Cox to turn to one of the
19 pages of the minimum design standards that have been
20 admitted, if I can find it very quickly here. There's a
21 Table 1 that talks about occupancy per unit. It's on
22 page 3. On my copy Ms. Payne has highlighted that in
23 pink.

24 A. I see.

25 Q. Are you there?

1 A. I am there.

2 Q. And your understanding would be that this is a
3 way in which people can determine design capacities for
4 public water system wells and the requirement for other
5 wells based upon the per unit table; is that correct?

6 A. Yes, sir. And also you can see the other
7 methodology we talked about down in Section F.

8 Q. There's also --

9 A. One.

10 Q. -- peak flow you say?

11 A. Yes, which is really the standard design
12 you're moving towards. So that's where you get your
13 historical data on the public system if available in the
14 water system.

15 Q. The absence of that information, the
16 justification, DNR would expect you to go ahead and use
17 the per unit table; is that correct?

18 A. That's correct. If you don't use the master
19 meter readings on a per monthly basis, then you would
20 use the table.

21 MR. COMLEY: That's all I have.

22 JUDGE DIPPELL: Is there any further questions
23 from the Joint Bidders?

24 MR. ELLSWORTH: Yes, Your Honor.

25 FURTHER CROSS-EXAMINATION BY MR. ELLSWORTH:

1 Q. Mr. Cox, this peak flow, have you obtained any
2 data what the peak flow is at Cedar Glen?

3 A. I don't know the answer to that question.

4 Q. Have you ever operated a system in a second
5 home resort type community like Lake of the Ozarks?

6 A. Yes, we have.

7 Q. You understand that we have busy weekends,
8 July 4, Labor Day weekend, stuff like that, right?

9 A. Absolutely. We've experienced that in a
10 number of systems we own and operate.

11 Q. On the history of the bids for the system, you
12 actually submitted your first bid back in 2015; would
13 that be more accurate?

14 A. I don't even remember. I've been around the
15 system for quite a bit.

16 MR. ELLSWORTH: I don't know what the
17 Commission prefers. I can mark these as exhibits or ask
18 to take notice of Camden County. It's a circuit court
19 case No. 26V010200965. In that case the receiver, we've
20 talked about Mr. Cover in this hearing, he submitted
21 reports of various bids over time for the Osage Water
22 Company assets. So I don't know what the preference is.
23 I can do it either way. I can mark it as exhibits.

24 JUDGE DIPPELL: I would want it marked as an
25 exhibit. And so explain to me one more time. This is a

1 filing from that docket?

2 MR. ELLSWORTH: These are reports of receiver
3 the first being filed on December 14, 2015. It's a
4 report of the various bids by various parties on Osage
5 Water Company's assets. Likewise, there's another
6 report of receiver as we've discussed, we're trying to
7 figure out how to clear title to this system over time.
8 There's been bids submitted -- the report was submitted
9 on May 12, 2017 and filed in that case. I can bring
10 those forward to be marked.

11 MR. COOPER: Judge, the only suggestion I
12 guess I would make is that Mr. Cox's direct testimony, I
13 think it's Schedule JC-7, includes one of the trustee
14 motions in the bankruptcy case. I think that the events
15 that Mr. Ellsworth is kind of outlining are noted in
16 there.

17 JUDGE DIPPELL: Well, would you have any
18 objection to him admitting those documents even if
19 they're repetitious?

20 MR. COOPER: Even if they're cumulative? No.

21 JUDGE DIPPELL: Then we'll go ahead -- I think
22 we'll go ahead and mark them and I'll take an official
23 offer for those.

24 MR. ELLSWORTH: I would offer the two reports
25 of receivers as Exhibits 402 and 403.

1 JUDGE DIPPELL: Is there a distinction between
2 Exhibit 402 and 403?

3 MR. ELLSWORTH: Yes, Your Honor. 402 I will
4 mark the December 24, 2015 report of receiver and I will
5 mark the December -- I'm sorry, the May 12, 2017 report
6 of receiver as 403.

7 JUDGE DIPPELL: Do you have copies of those
8 for the other attorneys and the Commission?

9 MR. ELLSWORTH: I believe I may have.

10 JUDGE DIPPELL: If you don't have at this
11 time, I'll ask you to get that by the end of the
12 hearing.

13 MR. ELLSWORTH: I can do that.

14 JUDGE DIPPELL: All right. Then I have a
15 December 24, 2015 report of receiver and a May 12, 2015
16 report of receiver in that circuit court case. Is there
17 any objection to Exhibits 402, 403? Seeing none, I will
18 receive those into the record.

19 (JOINT BIDDERS EXHIBITS 402 AND 403 WERE
20 RECEIVED INTO EVIDENCE AND MADE A PART OF THIS RECORD.)

21 MR. COMLEY: Your Honor, one more observation.
22 There was a letter addressed to Ms. Payne from Eric
23 Johnson of Spencer Fane, and I think the timeline and
24 the chronology of the auction, I think it's accurately
25 discussed there in that letter and it's part of the

1 Staff recommendation. So if anything, I would also
2 direct the Commissioners at their leisure to review that
3 letter for any clarity it may need on the timeline.

4 JUDGE DIPPELL: Yes, thank you, Mr. Comley.
5 Okay then.

6 MR. ELLSWORTH: May I proceed?

7 JUDGE DIPPELL: Yes. You have additional
8 questions?

9 MR. ELLSWORTH: I do.

10 BY MR. ELLSWORTH:

11 Q. As Mr. Comley brought up, we have a letter
12 that's attached to the Staff recommendation. Mr. Cox,
13 have you reviewed that letter from Spencer Fane?

14 A. I don't remember seeing specifically. I may
15 have. I don't have a copy in front of me.

16 Q. I'm just going to -- I think you'll agree with
17 me on this thing. In there the trustee -- find the
18 language.

19 MR. HALL: Counselor, not to interrupt but if
20 it's at all help we have copies of that letter if that
21 would be helpful at this time.

22 MR. COOPER: If Mr. Cox is going to be asked
23 about the letter, he ought to have it in front of him.

24 MR. HALL: Your Honor, may I approach?

25 JUDGE DIPPELL: Yes.

1 THE WITNESS: Thank you, sir.

2 BY MR. ELLSWORTH:

3 Q. Mr. Cox, my question was simple. On page 4 of
4 this letter it's the third full paragraph down.

5 Mr. Johnson, who was the attorney for the trustee of the
6 bankruptcy proceeding, states that the stalking -- the
7 bankruptcy court found the stalking-horse APA and the
8 trustee's selection of the stalking-horse to be fair,
9 reasonable, appropriate, and designed to maximize the
10 value of the bankruptcy estate. Do you agree that the
11 trustee did maximize the amount that will be paid for
12 Osage Water Company?

13 A. I'm not a trustee nor am I a bankruptcy expert
14 so I can't answer that.

15 Q. Your opening bid was \$465,000 and we ended at
16 \$800,000, right?

17 A. That is correct.

18 Q. And you've stated a few times that you were
19 selected as stalking-horse purchaser because other bids
20 were late. You don't have any personal knowledge of
21 bids being late, do you?

22 A. I believe --

23 Q. My question is, did somebody tell you that?

24 A. -- the trustee. So the trustee had to call us
25 to reopen the bid process to allow it. She could have

1 got it ordered, I believe, but I had to agree initially
2 for that for the auction to happen. That was the way I
3 remember it. So I'm not a bankruptcy attorney.

4 Q. That's the way you recall it?

5 A. That's correct.

6 Q. And the trustee called to tell you this,
7 right?

8 A. That's correct.

9 Q. You weren't collecting the bids and saying
10 these were on time, these were late, correct?

11 A. That is correct.

12 Q. So the trustee would have the superior
13 knowledge as to what was timely and what was late and
14 how this auction procedure was conducted, right?

15 A. I assume so.

16 Q. Have you had any conversations with the
17 trustee as to why they're not a party to this
18 application or present for the hearing?

19 MS. PAYNE: Objection. I think we've exceeded
20 the scope of the Commissioner questions at this point.

21 JUDGE DIPPELL: I'm going to allow it. I
22 think it's still within the realm of some of the
23 questions that the Commission and myself were asking.

24 THE WITNESS: Can you repeat your question?

25 MR. ELLSWORTH: No. I can ask a very similar

1 one.

2 BY MR. ELLSWORTH:

3 Q. My question was, have you had any
4 conversations with the trustee as to why they're not
5 present for this hearing today?

6 A. I have not had any conversations with the
7 trustee at all.

8 Q. Do you know why they were not part of the
9 application process?

10 A. I do not know that with technical reasons that
11 is.

12 Q. And educate me on this. Typically a seller
13 selling their CCNs would apply to transfer those,
14 wouldn't they?

15 A. No, not all the time. We purchase systems all
16 the time where we're the only petitioner that the other
17 group is not a petitioner in the case.

18 MR. ELLSWORTH: Fair enough. Thank you.

19 JUDGE DIPPELL: Do you still have additional
20 questions?

21 MR. ELLSWORTH: No, I do not. Thank you.

22 JUDGE DIPPELL: All right. Are there further
23 cross-examination questions from Public Counsel?

24 MR. HALL: Yes, briefly. Mr. Cox, good
25 afternoon.

1 THE WITNESS: Good afternoon.

2 FURTHER CROSS-EXAMINATION BY MR. HALL:

3 Q. You were asked questions from Chairman Silvey
4 regarding the acquisition incentive that's pending in
5 this case. Did you review Staff's revised
6 recommendation that was filed last week?

7 A. I did.

8 Q. Do you recall the part of Staff's revised
9 recommendation where they remarked that they have
10 altered their recommendation for the acquisition
11 incentive?

12 A. I did see that.

13 Q. Did you see the part where Staff posited that
14 the differential in value between the initial bid and
15 the final purchase price may include a valuation to
16 Central States of, quote, any additional economic value
17 of establishing a presence in the Lake of the Ozarks
18 area?

19 A. I don't remember that exact comment, but I
20 believe it's in there.

21 Q. Okay. So I'll posit to you that the
22 recommendation remarks that there may be some additional
23 economic value of establishing a presence in the Lake of
24 the Ozarks. Do you disagree with that?

25 A. You know, from our perspective as a company,

1 having a presence in the state is all that matters. As
2 you can see from previous applications, having an
3 individual presence in any part of the state doesn't
4 matter very much. We can buy systems and operate them
5 remotely from anywhere. We've kind of proven that
6 because we're in multiple states at this point.

7 Q. Mr. Cox, I don't mean to be rude but just for
8 the clarity of the record was that a yes or no to my
9 question?

10 A. That's a no.

11 MR. HALL: Thank you. No further questions.

12 JUDGE DIPPELL: Is there any redirect?

13 MR. COOPER: There will be, yes.

14 JUDGE DIPPELL: Is there substantial redirect?

15 MR. COOPER: There will be several questions,
16 yes, Your Honor.

17 JUDGE DIPPELL: We're at 12:25. We're into
18 the typical lunch hour. I was trying to decide will
19 there be more redirect if we break now?

20 MR. COOPER: Well, in my experience, I've seen
21 it work both ways. Sometimes it's less if we break.

22 JUDGE DIPPELL: Let's go ahead for awhile and
23 we'll take a late lunch. Proceed with your redirect.

24 MR. COOPER: Thank you, Your Honor.

25 REDIRECT EXAMINATION BY MR. COOPER:

1 Q. It's been awhile since you've gotten some of
2 these questions. I'll try to work my way back through
3 them. I think you were asked a question early on by
4 Staff about financing and whether there was financing as
5 a part of the application and just kind of want to clear
6 that up. Will there be any financing necessary to close
7 on the transaction that's the subject of this
8 application?

9 A. No, there will be no financing attached to
10 closing of this transaction.

11 Q. And that's because, and I think you answered
12 it in response to a different question, but that's
13 because the dollars necessary to close the transaction
14 will be provided by a capital infusion?

15 A. That is correct.

16 Q. In the form of equity from the owners,
17 correct?

18 A. That is correct.

19 Q. You talked about the estimates for repairs I
20 think at Cedar Glen and even more generally along the
21 way. And I know you talked about the fact that, you
22 know, experience will impact those, the permitting
23 process with DNR will impact those, those sort of
24 things, and I don't remember did you also discuss how
25 you go about selecting the contractors to actually

1 perform those repairs?

2 A. No. So after we do final engineering and we
3 get that permitted, we create a bid package which is
4 administered by a third-party engineer. We bid the
5 construction contract to local contractors is typically
6 what we use.

7 Q. So a competitive bid to local contractors, and
8 are these, this kind of follows up on a different
9 question you got, are these true third parties, they're
10 not affiliated companies?

11 A. That is correct. We don't do any construction
12 at Central States.

13 Q. There were some questions about future
14 financings that might be necessary. If there is a
15 future financing, is it your understanding that you'll
16 have to come back to the Commission for approval of
17 such?

18 A. Yes. I understand for any financing to
19 encumber utility assets we have to come before the
20 Commission.

21 Q. Is it your experience that even when
22 financings are approved that ultimately in a rate case
23 the Commission will relook at that financing?

24 A. I have direct experience that the Commission
25 will do ratemaking separate than the financing approval.

1 Q. You were asked some questions about the cost
2 to serve Cedar Glen. And I guess what struck me about
3 those questions and your response is is that -- well,
4 let me back up. Would you agree that ultimately those
5 sort of questions come into play in a rate case when
6 you're dealing with rate design?

7 A. Yes. Any question on how the customers are
8 billed, tariff structure all comes out in a rate case
9 from my experience.

10 Q. Currently I guess Osage Water Company is what
11 you would refer to maybe as a single tariff rate?

12 A. That's the way we refer to it internally.
13 It's a single tariff for multiple systems.

14 Q. But ultimately how it gets broken out if you
15 purchase the system and/or systems plural and it ends up
16 in a rate case, that would be a question of rate design
17 for the Commission at that time?

18 A. Yes.

19 Q. You were asked some questions about Hillcrest
20 Utility Operating Company. Do you remember that?

21 A. Yes, sir.

22 Q. I think you were asked about the rate case
23 that took place after it became a CSWR company, correct?

24 A. Yes.

25 Q. Do you remember how long it had been prior to

1 that since rates had been changed for Hillcrest?

2 A. I mean, it was over 30 years as far as I
3 remember.

4 Q. Okay. You don't have anything with you I
5 suppose that would refresh your recollection as to
6 precise dates, do you?

7 A. I don't. I don't know if I do or not. So I
8 do have notes on that. So that would be '89. So 25
9 years since rates have been increased approximately.

10 Q. You were also asked questions about Elm Hills
11 Utility Operating Company. Do you remember that?

12 A. I do.

13 Q. And I think you answered that there hasn't
14 been no rate increase at Elm Hills since CSWR has owned
15 those properties, correct?

16 A. That is correct.

17 Q. And do you have notes that would indicate when
18 at least some of those properties were purchased?

19 A. When we purchased the properties?

20 Q. Yes.

21 A. Yes, we purchased the initial systems Missouri
22 Utilities which was another Missouri receivership system
23 and State Park Village which was an unregulated sewer
24 district in October of '17.

25 Q. And there's no rate case on file for Elm

1 Hills, is there?

2 A. No, there's not.

3 Q. Now, I'm going to try to ask this question
4 without the need to go in camera, but Mr. Comley asked
5 you to do some math on your calculator based upon the
6 pro forma statements that were filed in this case,
7 correct?

8 A. Yes.

9 Q. And in doing that, I guess there was some
10 rough equivalent of a revenue requirement that you
11 utilized, correct?

12 A. That is correct.

13 Q. Would that revenue requirement assume all
14 improvements that have been identified so far?

15 A. I believe it would, yes.

16 Q. At whatever the current estimate is for those
17 improvements?

18 A. That is correct.

19 Q. Would it include all of the acquisition
20 premium being included?

21 A. Yes, I believe it would.

22 Q. And would it also -- It includes your own
23 estimate, I suppose, as to return on equity ultimately?

24 A. That is true.

25 Q. And it includes I think you testified a high

1 finance charge in it as well?

2 A. That's correct. The highest we know is
3 potentially possible.

4 Q. Ultimately the revenue requirement would be
5 decided by the Commission in a rate case, correct?

6 A. That is correct.

7 Q. And ultimately it would take into account
8 other factors that might reduce that number are what you
9 talked about before your experience with operating the
10 companies that perhaps reduce what repairs you do
11 ultimately, correct?

12 A. That is correct.

13 Q. The impact of competitive bidding on the
14 ultimate repair cost; is that correct?

15 A. That is correct.

16 Q. Ultimately what the Commission decides to do
17 with acquisition premium I suppose as well, right?

18 A. That is correct.

19 Q. And your ability to in the first instance to
20 get cheaper financing than what you built in, correct?

21 A. Correct.

22 Q. Or, as we just talked about, the Commission's
23 decision as to what they'll allow you to include in
24 rates for financing, correct?

25 A. That is correct. There's one other factor

1 also purchasing additional customers inside Osage.

2 Q. Correct. So sitting here today we don't
3 necessarily know what the customer count would be in a
4 future rate case?

5 A. That's exactly correct. We'd like to buy
6 Public Water Supply District No. 5.

7 Q. In response to I think it was Judge Dippell's
8 question you talked about the repair process and what
9 would be done immediately and then this sort of bidding
10 process and getting to know the system and some of those
11 things. When you close on a system, setting aside
12 agreements on consent or anything else, is the purchaser
13 immediately liable for any violations there might be for
14 that system?

15 A. Yes, they are.

16 MR. HALL: Objection. Calls for legal
17 conclusion.

18 BY MR. COOPER:

19 Q. Is it your understanding that you're
20 responsible for the operation of that system from day
21 one?

22 A. Yes. I'm responsible to meet DNR standards
23 attached to those from day one.

24 Q. Is there a way that you are able to mitigate
25 that exposure?

1 A. Yes, there are two ways. One we can enter
2 into an agreement on consent with the Missouri
3 Department of Natural Resources. That agreement on
4 consent sets forth a time frame in which we have to
5 submit design construction plans, permit those and
6 construct them.

7 Q. And would a sophisticated party make use of
8 that agreement on consent process if they're able to
9 negotiate such a document with Department of Natural
10 Resources?

11 A. Absolutely. All the major utilities I'm aware
12 of utilize that same process.

13 MR. COOPER: That's all the questions I have,
14 Judge.

15 JUDGE DIPPELL: Since I didn't actually rule
16 on Mr. Hall's objection, I'll go ahead and sustain that
17 since Mr. Cooper also rephrased it. So I hate to do
18 this but I have one question and I forgot to ask you,
19 Mr. Cox.

20 THE WITNESS: Yes, ma'am.

21 FURTHER QUESTIONS BY JUDGE DIPPELL:

22 Q. Because the Commission did bifurcate the
23 Reflections systems out and your application was
24 originally for both systems, is Osage Utility Operating
25 Company intending to purchase Osage Water Company

1 regardless of whether the Commission also approves the
2 purchase of the Reflections company?

3 A. Yes, ma'am.

4 JUDGE DIPPELL: Okay. Are there any
5 additional cross-examination questions based on that
6 question?

7 MR. COMLEY: No questions.

8 JUDGE DIPPELL: I'm not seeing any. Is there
9 any further redirect based on that question?

10 MR. COOPER: No, Your Honor.

11 JUDGE DIPPELL: All right. Okay. With that
12 then I believe, Mr. Cox, your testimony is completed.

13 THE WITNESS: Thank you, ma'am.

14 JUDGE DIPPELL: You may step down.

15 (Witness excused.)

16 JUDGE DIPPELL: We will take a lunch break.
17 It is 12:37 by my computer clock. Let's take a break
18 until 1:45. We can go ahead and go off the record.

19 (Off the record.)

20 JUDGE DIPPELL: If everybody is ready, we can
21 go ahead and get started again. So let's go ahead and
22 go back on the record. We've returned from our lunch
23 break and our next witness is raring to go already at
24 the witness stand. So I'll just go ahead and swear you
25 in.

1 (Witness sworn.)

2 JUDGE DIPPELL: All right. Mr. Cooper, you
3 may go ahead.

4 MR. COOPER: Ms. Hernandez.

5 JUDGE DIPPELL: Ms. Hernandez.

6 MS. HERNANDEZ: Thank you. Good afternoon.

7 TODD THOMAS, being sworn, testified as follows:

8 DIRECT EXAMINATION BY MS. HERNANDEZ:

9 Q. Can you please state your name for the record?

10 A. Todd Thomas.

11 Q. And by whom are you employed?

12 A. CSWR.

13 Q. And in what capacity?

14 A. I am responsible for business development and
15 engineering.

16 Q. Have you caused to be prepared for the
17 purposes of this proceeding certain testimony in
18 question and answer form?

19 A. Yes.

20 Q. And is it your understanding that that
21 testimony has been marked as Exhibit 5 and 6 for
22 identification -- I'm sorry -- 6 and 7 for
23 identification?

24 A. Yes.

25 Q. And do you have any changes that you would

1 like to make to your testimony?

2 A. No.

3 Q. If I asked you the questions which are
4 contained in Exhibit 6 and 7 today, would your answers
5 be the same?

6 A. Yes.

7 Q. Are those answers true and correct, to the
8 best of your information, knowledge and belief?

9 A. Yes.

10 MS. HERNANDEZ: Your Honor, at this time I
11 offer Exhibit 6 and 7 into evidence and we'll tender the
12 witness for cross-examination.

13 MR. COMLEY: Your Honor, let me renew the
14 motion to strike portions of Mr. Thomas' surrebuttal
15 testimony that were noted in the filed written motion to
16 strike. Again, without trying to burden the transcript,
17 I would ask that the motion speak for itself and be
18 considered on the record here.

19 JUDGE DIPPELL: Is there a joint in that
20 motion?

21 MR. ELLSWORTH: Yes, there is, Judge. The
22 Joint Bidders would join in that motion.

23 JUDGE DIPPELL: All right. That motion is
24 noted and taken notice of the written document that was
25 previously filed and that motion -- or that objection is

1 overruled. And just to clarify, Exhibit No. 6 is the
2 Direct Testimony of Todd Thomas and Exhibit No. 7 is the
3 Surrebuttal Testimony of Todd Thomas?

4 MS. HERNANDEZ: Correct. Thank you.

5 JUDGE DIPPELL: That has been offered. Are
6 there any other objections to those documents, that
7 testimony? Seeing none, I will admit those into the
8 record.

9 (COMPANY EXHIBITS 6 AND 7 WERE RECEIVED INTO
10 EVIDENCE AND MADE A PART OF THIS RECORD.)

11 JUDGE DIPPELL: And the witness has been
12 tendered. Is there any cross-examination from Staff?

13 MS. PAYNE: Yes, thank you. Good afternoon,
14 Mr. Thomas.

15 THE WITNESS: Good afternoon.

16 CROSS-EXAMINATION BY MS. PAYNE:

17 Q. Have you reviewed the improvements that were
18 proposed by the Joint Bidders in their testimony?

19 A. Yes.

20 Q. In your opinion, are those sufficient to
21 provide safe and adequate service to the Osage Water
22 customers?

23 A. No.

24 Q. Do you believe the improvements are sufficient
25 to meet the DNR requirements?

1 A. No.

2 Q. And you are also familiar with the minimum
3 design standards that were handed out earlier?

4 A. I sleep with a copy. Not exactly but yes, I
5 am familiar.

6 Q. So suffice it to say that you do not believe
7 that the improvements that have been proposed by the
8 Joint Bidders meet those standards?

9 A. I do not.

10 Q. Okay. Thank you. Could you tell me what
11 bypassing is?

12 A. Bypassing is when in the case of wastewater
13 where you have a portion of the wastewater that is being
14 treated, it's bypassed treatment process and goes out to
15 the state waters.

16 Q. When you say it goes out to the state waters,
17 what does that mean in attorney terms?

18 A. Well, in this particular case it would go to
19 the lake, Lake of the Ozarks.

20 Q. Okay. Would you see that as being a potential
21 threat to public health?

22 A. Yes.

23 Q. Why would you say that?

24 A. If it's untreated, it could have ecoli, for
25 instance, which can cause an illness.

1 Q. When you say to the lake, you referred to the
2 Lake of the Ozarks?

3 A. Yes.

4 Q. Popular vacation spot?

5 A. Correct.

6 Q. Okay. Thank you. Do you know if bypassing
7 occurs at any of the Osage sewage treatment plants?

8 A. Yes. I witnessed a bypass as recent as last
9 week at one of those facilities.

10 Q. Can you tell me which facility that was?

11 A. It was the wastewater treatment facility at
12 Eagle Woods.

13 Q. Okay. And have you observed bypassing or have
14 you noticed a risk of bypassing at any of the other
15 systems?

16 A. Well, I guess in the sense of bypassing, at
17 Chelsea Rose there is sludge actually in the chlorine
18 contacts chamber which will be then released directly to
19 the lake in a form that as well.

20 MS. PAYNE: Thank you. I have no further
21 questions at this time. Thank you.

22 JUDGE DIPPELL: Thank you. Is there
23 cross-examination from Cedar Glen?

24 MR. COMLEY: Yes, Your Honor.

25 CROSS-EXAMINATION BY MR. COMLEY:

1 Q. Mr. Thomas, I have a few questions about the
2 estimated costs. This is kind of following up on
3 Whitney Payne's cross-examination. But the estimated
4 cost of improvements that you testified about in your
5 direct testimony, do you consider your estimates to be
6 reliable forecasts of the costs of those improvements?

7 A. I consider our estimates to be reliable in
8 understanding what we may have to do if we get
9 acquisition of these facilities. So what we do, and
10 we're very consistent in the way we do that, in the case
11 of water we begin with this minimum guideline. In the
12 case of wastewater, we look at the permit. We take that
13 and I should say we use a licensed third-party Missouri
14 professional engineer to do this. We look at all the
15 requirements to meet those minimum guidelines. Based on
16 those estimates are created. And then as was mentioned
17 earlier we have this agreement on consent so that if we
18 do acquire the facility we have a period of time to
19 operate those before we take action on any of those
20 items that we found just to make sure that we're not
21 under or over designing.

22 And then as was also mentioned, we use
23 third-party contractors to do those installations.
24 Those are bid out. So they're competitively bid. And
25 of course, all this has to be permitted through the

1 Missouri DNR. And of course, ultimately it's the PSC
2 that determines whether or not it was prudent and
3 necessary.

4 Q. We have talked about the total of the
5 estimates. And now that you bring this up what you do,
6 can you tell the Commission and us what are the total
7 costs of the improvements you've estimated for the Osage
8 Water Company assets?

9 A. I mean, I could go in here and add them up. I
10 don't do the pro forma. I look at the sites on their
11 individual basis. So I have not totaled them.

12 Q. You haven't totaled them up?

13 A. No, sir.

14 Q. Have you and Mr. Cox had a chance to discuss
15 the time frame within which the improvements could be
16 constructed after you -- presumably after you are
17 approved?

18 A. So have Mr. Cox and I discussed it directly?
19 Yes, I'm sure we have, but more importantly the engineer
20 who's responsible for dealing with the facilities who
21 works for CSWR, he's the one that works with the
22 Missouri DNR to get the agreements on consent and
23 negotiates a prudent period of time again for us to
24 operate it on an interim basis but then also do those
25 improvements as quickly as possible. So again if

1 acquisition is approved, we have a lot of that work done
2 to a certain point in time so we can act fast. We have
3 to confirm what we're doing is prudent and correct.

4 Q. When you say a prudent period of review under
5 the consent feature you're talking about, how long do
6 you anticipate a prudent period of review might be in
7 your experience?

8 A. Well, the agreement on consent gives us
9 typically a year or 18 months, somewhere around that
10 range, and it varies from site to site to get everything
11 done and in use and usable. Typically that operational
12 period is somewhere around three months.

13 Q. With your period of consent, would it vary
14 with the systems that you have within the Osage Water
15 Company asset base or would you have to go back to DNR
16 and negotiate more consent type features for a prudent
17 period of review?

18 A. I'm not certain I completely understood your
19 question, but I'll answer it like this.

20 Q. Let me rephrase it.

21 A. Okay.

22 Q. Does the consent cover any kind of system
23 central water -- any the company might acquire?

24 A. No, it's not a blanket consent. It's
25 negotiated on an individual basis on a site for site

1 basis.

2 Q. Do you have any expectations that the costs
3 may exceed your estimates?

4 A. I don't have any expectations of that. Could
5 something happen -- could we find out something in that
6 trial period? Certainly.

7 Q. Do you know whether there's a contingency
8 amount set forth in your cost estimate so that there's a
9 contingency budget involved in your estimate?

10 A. All our estimates typically have 10 percent
11 contingency.

12 Q. Do you have any expectation that the estimates
13 will be above the actual costs of improvements?

14 A. What I can tell you that we try to accomplish
15 is to get all the improvements and achieve compliance in
16 the lowest cost means possible and ensure that quality
17 and safe and a reliable service.

18 Q. Is it fair to say that in your experience with
19 other systems that your cost estimates have been
20 exceeded by actual cost?

21 A. I don't have any personal recollection of
22 that.

23 Q. Would you turn with me to page 15 of your
24 surrebuttal on line 5?

25 A. Which page?

1 Q. Page 15 of your surrebuttal. I may have lost
2 track of the exhibit number.

3 A. I'm here.

4 Q. It's line 5, and I'm reading that the Cedar
5 Glen system lacks a second well; is that a correct
6 reading of your testimony?

7 A. There is no second well.

8 Q. It lacks a second well. I was going to check
9 with you to see are you now saying that Cedar Glen needs
10 that second well?

11 A. No, I'm not. I can tell you that based on all
12 the testimony we've heard previously if it is determined
13 either by means of the number of people that are
14 serviced there or by the flow data that it exceeds the
15 500 person equivalent, then it will either need a well
16 or some secondary source of water.

17 Q. So initially your testimony does not include
18 the cost of a second well; is that correct?

19 A. My initial estimate does not include the cost
20 of a second well, that is correct.

21 Q. Did you undertake a separate calculation to
22 determine whether or not a second well was needed?

23 A. I mean, from my experience in the industry, I
24 certainly know in the ballpark of what that well may be;
25 but until as I talk about with our process we use the

1 minimum guidelines, we determine an estimate and then if
2 we're granted acquisition we go ahead and confirm all
3 the information we've assembled and get the permitting
4 from Missouri DNR before we take any action. So I don't
5 necessarily know what you're driving at but you could
6 have this discussion about many other items as well.

7 Q. What I'm saying, you didn't use the table of
8 per unit occupancy to come up with whether or not the
9 second well was needed?

10 A. I did not use that table, no.

11 Q. Wouldn't it be true that if there were 500 or
12 more persons served by that system at Cedar Glen that
13 minimum design requirements would be a second well would
14 be required?

15 A. That would be true. I understand also by
16 Mr. Krehbiel, your engineer's testimony that he's saying
17 that there's \$39,000 worth of improvements that would be
18 needed to get everything in compliance. So if you're
19 arguing that my estimate is too low, I don't understand.

20 Q. You may have been misreading Mr. Krehbiel's
21 testimony. I think you were talking about David Stone's
22 testimony about Cedar Glen sewer service.

23 A. Where Mr. Krehbiel references that, yes.

24 Q. Have you reviewed the Missouri Department of
25 Natural Resources compliance and operational inspection

1 reports for the Cedar Glen water system?

2 A. Repeat that question.

3 Q. Have you had a chance to review the Missouri
4 DNR compliance and operational inspection reports for
5 the Cedar Glen water system?

6 A. I reviewed the Lake Area Water, the Missouri
7 Water Association, PWSD 5, and I don't remember out of
8 all those which ones were specifically Cedar Glen.

9 Q. Do you have a copy of Mr. Cox's surrebuttal
10 testimony?

11 A. I do not.

12 MR. COMLEY: Mr. Cooper, could I impose on
13 you?

14 MR. COOPER: Yes. Surrebuttal?

15 MR. COMLEY: Yes, surrebuttal.

16 THE WITNESS: Thank you.

17 BY MR. COMLEY:

18 Q. Would you turn to his Schedules JC-S3 that is
19 at the rear of his surrebuttal testimony?

20 A. I'm here.

21 Q. These purport to be compliance and operational
22 inspection reports from an inspector for DNR. On the
23 one dated February 5, 2015, can you read what is beside
24 the item numbered 208?

25 A. Okay. So get me to the exact document again.

1 Q. It's Schedule JC-S3. It's a combined
2 schedule. And the first one that appears is dated
3 February 5, 2015?

4 A. Page 1 in the lower right-hand corner?

5 Q. Page 1 is the lower right-hand corner.

6 A. Okay, I'm here.

7 Q. The system name is Jim Hepler, operator -- or
8 rather Jim Hepler, operator, was interviewed. There's
9 an item 208. Can you read what that says?

10 A. PWS needs a second well (serves more than 500
11 people.)

12 Q. There's another one that's dated August 24,
13 2017. If you can turn there with me.

14 A. I'm here.

15 Q. Could you read the first entry under comments
16 and recommendations for corrections?

17 A. 208?

18 Q. Yes, sir.

19 A. PWS needs a second well (serves more than 500
20 people.)

21 Q. Thank you. On page 16 of your surrebuttal,
22 top of the page, you discuss the design standards
23 requiring an emergency generator that will supply power
24 to booster station pumps. Turn with me there if you'd
25 like.

1 A. Which line?

2 Q. I think it's the top of the page.

3 A. I see it, yes.

4 Q. And you said that the generator would cost
5 between, the range would be between 40 and \$50,000; is
6 that a correct reading of your testimony?

7 A. That's a correct reading.

8 Q. I understand that you served in a technical
9 capacity for Public Water District No. 2 in St. Charles
10 County?

11 A. Only on an advisory committee.

12 Q. Only on an advisory committee. Do you know
13 whether Public Water Supply District No. 2 is a member
14 of the Missouri Rural Water Association?

15 A. I do not know that.

16 Q. Do you know if generators are available from
17 any association on a complimentary basis?

18 A. I don't know that.

19 Q. On page 17 of your surrebuttal, lines 7
20 through 8 --

21 A. What I do know, though, is on the Missouri
22 guideline it clearly states that emergency generation is
23 required if there's over 100 connections.

24 Q. It may be required. The issue would be
25 whether it's free or not. So all right. On page 17 of

1 your surrebuttal, lines 7 to 8, you state there are a
2 number of expenses associated with the interconnection
3 between District No. 5's water system and Cedar Glen's
4 water system as Mr. Krehbiel has testified to that.

5 A. I don't recall seeing any dollars from
6 Mr. Krehbiel's testimony in terms of costs for a
7 connection.

8 Q. You state that the interconnection would be --
9 another expense for interconnection would be related to
10 decommissioning and plugging the well. Can you tell me
11 why the well would need to be plugged? I take that
12 back. Wouldn't plugging the well be an option for Cedar
13 Glen?

14 A. Show me where I say that.

15 Q. Oh, sorry. Page 17, line 7. After the
16 connection, the system would have to deal with the cost
17 of decommissioning the existing well site and
18 components. Wouldn't it be an option for Cedar Glen to
19 close that well?

20 A. Yes.

21 Q. It would be necessary; is that correct?

22 A. It would not necessarily be necessary.

23 Q. In fact, by interconnecting the well with
24 Cedar Heights, as Mr. Krehbiel discusses, wouldn't that
25 eliminate the need for the second well that DNR has said

1 is needed there?

2 A. It may eliminate the need of the second well,
3 but there's been no dollars and cents provided to show
4 what that cost of that interconnection would be and it
5 would not eliminate the other upgrades to that Cedar
6 Glen water treatment facility that are still required.

7 Q. I think Mr. Cox testified that costs of a
8 second well at Cedar Glen may cost \$100,000?

9 A. It could, yes.

10 Q. And by interconnecting, are you saying that
11 the interconnection could be in excess of that?

12 A. Certainly.

13 Q. At least we can agree that if there is an
14 interconnection there won't be the necessity of finding
15 property and digging a second well at Cedar Glen?

16 A. That could be a true statement, yes.

17 Q. I visited with Mr. Cox a little bit about the
18 need for disinfection of the water system at Cedar Glen.
19 I know you were here. Do you recall that I visited
20 about that with him?

21 A. I do, yes.

22 Q. Is it true that you have not included a cost
23 for any kind of disinfection equipment for installation
24 at Cedar Glen water system?

25 A. That is true.

1 Q. On page 25 of your surrebuttal, let me see if
2 I can direct you to the line, but I want to talk about
3 that moving bed bio reactor. In your direct you
4 testified that the cost of improvements to the Cedar
5 Glen sewer system would be around \$282,000 or a net
6 range. Is the cost of the MBBR in that estimate?

7 A. Yes.

8 Q. How much does an MBBR cost?

9 A. It depends. It depends upon the size of the
10 system, the number of people being served.

11 Q. What kind of size did you have for Cedar Glen
12 that's included in your estimate? Do you know?

13 A. It's not like -- they don't necessarily come
14 in small, medium and large. It's just based on design
15 calculations and the volume you need, and I don't have
16 that.

17 Q. You don't have that number with you?

18 A. That number with me, no.

19 MR. COMLEY: Excuse me just a minute. I have
20 no other questions.

21 JUDGE DIPPELL: Thank you. Is there any
22 questions from the Joint Bidders?

23 MR. ELLSWORTH: Yes.

24 CROSS-EXAMINATION BY MR. ELLSWORTH:

25 Q. Mr. Thomas, you stated that a lot of the work

1 has already been done, I think you're referring to the
2 in-house engineer at Central States Water?

3 A. Just the preliminary work so that upon
4 acquisition we're not starting from ground zero.

5 JUDGE DIPPELL: Mr. Ellsworth, can I get you
6 to somehow -- I know the microphone is stationary, but
7 if you can move closer to it.

8 MR. ELLSWORTH: Okay. I can speak up too.

9 JUDGE DIPPELL: That would help the court
10 reporter hear you.

11 BY MR. ELLSWORTH:

12 Q. Did the engineer that has done some of the
13 preliminary work, did he not pick up on the DNR
14 requirements that the second well was needed?

15 A. You're talking about the second well at Cedar
16 Glen?

17 Q. Yes.

18 A. So it goes back down to what we discussed
19 before whether or not there is the -- you exceed the 500
20 people or if you exceed the flow.

21 Q. Okay. But you have a DNR report that you
22 reviewed that's connected to the direct testimony,
23 surrebuttal testimony that says it's needed and there's
24 500 people. So why was it not included in the cost?

25 A. There's -- you certainly must verify all the

1 information you receive, right. So we have to verify
2 that that exceedance exists so that second well is
3 required.

4 Q. Speaking of verifying information, let's look
5 at your page 7, line 18 of your surrebuttal. Do you
6 have that in front of you still, Mr. Thomas?

7 A. I'll get there. Page 7, line 18?

8 Q. Yes, sir.

9 A. Yes.

10 Q. That references a Schedule TT-S6. I guess I
11 need to make sure that's not -- that's attached. So
12 let's look at TT-S6 as well, please, in connection with
13 that. There's a number of documents under that exhibit.
14 But I would like you to turn to the notice of violation
15 dated September 26, 2016, to Minnow Brook HOA.

16 A. The page number?

17 Q. You didn't number the pages. It's part of
18 Schedule TT-S6. It's a notice of violation for Minnow
19 Brook HOA.

20 A. Let me look at a different document. Forgive
21 me. I'll get there.

22 Q. That's okay. No problem.

23 A. S2, S3, S4, S5. When you have this many
24 violations, it's hard to sort through all of them to
25 find them. Okay. I'm here.

1 Q. Did you verify that one of the Joint Bidders
2 was operating the system at that time? You said we had
3 so many violations.

4 A. Did I verify that one of the Joint Bidders was
5 operating this system?

6 Q. Yeah, Minnow Brook HOA.

7 A. We submitted a DR, a data request, asking for
8 the information for the stuff that they own and operate
9 for the last five years and if they gave it to us that
10 must mean that they own it and operate it because that's
11 what we asked for.

12 Q. Did you verify it? You said you verified
13 information.

14 A. If we asked them for their information and
15 they gave it to us, why would I need to do that?

16 Q. Let's turn back to the notice of violation for
17 Molokai Pointe Estates August 31, 2015. It's a few
18 pages behind that, Mr. Thomas. Ask you the same
19 question. Did you verify that Molokai Pointe Estates
20 was owned, operated, had any association with any of my
21 clients before filing your testimony?

22 A. I guess my response is the same.

23 Q. So you didn't verify it. You got the records
24 and you assumed that my clients were operating them
25 because it was responsive to your request?

1 A. Because they gave them to me, yes.

2 Q. And you filed these with the purposes of
3 making my clients look like they're unable or not
4 capable of maintaining Osage Water Company assets,
5 right?

6 MS. HERNANDEZ: Objection, argumentative.

7 JUDGE DIPPELL: I'll let you rephrase your
8 question. I'll sustain the objection.

9 BY MR. ELLSWORTH:

10 Q. What was the purpose of filing these notices
11 of violation?

12 A. I guess it's to verify the fact that PWSO had
13 17 violations, Lake Area Water had 86, Missouri Water
14 had 10. That's what they gave to us and then we did our
15 own Sunshine request of the systems that they operate
16 and there was 13 more provided during the Sunshine
17 request. That's just from a small sampling of a very
18 large stack of information.

19 Q. Did you file any of the letters of compliance
20 following these notices of violation with the
21 Commission?

22 A. We filed what we received.

23 Q. And the numbers you just gave, I don't have
24 them memorized, but the numbers you just gave, that was
25 based solely upon the information you received from DNR

1 as a result of your Sunshine records request?

2 A. No. The primary -- the first set of numbers
3 is what I received in our data request from Lake Area
4 Water, Missouri Water Association and PWS 5, the
5 information they gave me. In addition to that, we
6 supplemented that with a Sunshine request, got more
7 records and found out that they had not fully disclosed
8 all of their violations and there's more.

9 Q. And did you -- each one -- you filed, what, a
10 thousand pages with your surrebuttal, a thousand plus
11 maybe?

12 A. I don't know. A lot.

13 Q. It broke my printer and I think it broke
14 somebody else's in the room.

15 A. Two binders.

16 Q. Did you verify each of those notices of
17 violation occurred at a time that one of my clients
18 operated the systems that were subject to the violation?

19 A. If your client gave them to us as part of our
20 DR, we believed that they were giving them to us because
21 they operated and they owned it.

22 Q. What about the ones you added to your numbers
23 from the DNR? Did you verify those?

24 A. We verified those on our own. We took -- also
25 I mentioned it as part of our recent due diligence, we

1 took samples in those facilities, those sand plants, and
2 they all violated for pneumonia and TSS and other things
3 too.

4 Q. You sampled all of the systems my clients
5 operates?

6 A. No. Just the ones that we're looking at
7 buying.

8 Q. Osage Water Company?

9 A. Yes. Excuse me, I see your point.

10 Q. But my clients don't operate --

11 A. I understand.

12 Q. Mr. Thomas, please turn to Schedule TT-S8, if
13 you would, please.

14 A. I'm here.

15 Q. Again, this is attached, this is a schedule to
16 your surrebuttal testimony. Did you verify that
17 Bentwood Condos was operated by my clients, any of my
18 clients?

19 A. I received this from your client as part of a
20 DR.

21 Q. You did not -- Do you have a recollection you
22 didn't receive this from the Missouri Department of
23 Natural Resources?

24 A. None of what's in these exhibits is what we
25 received as part of our Sunshine request. There's a

1 supplemental exhibit but it's named differently.

2 Q. Is it possible that my clients would have
3 historical notices of violation maintained in their
4 files that would not be from a period of time they
5 operated the systems?

6 A. I can't guess about your client's ability to
7 record keep or understand their processes or
8 capabilities.

9 Q. Fair enough. How many notices of violation
10 has Central States or any of its subsidiaries,
11 affiliates, received in the last five years?

12 A. Two. One of them was for after there was a
13 newly started up plant. There was not an exceedance --

14 Q. Mr. Thomas, I don't have a question pending if
15 you don't mind. If there's only two, then when I sent
16 my data request why was it such an onerous task to give
17 me the two violations?

18 A. I don't know the answer to that.

19 Q. That wasn't part of your scope of work, right?

20 A. That's correct.

21 MR. ELLSWORTH: I don't have any further
22 questions.

23 JUDGE DIPPELL: Is there cross-examination
24 from Public Counsel?

25 MR. HALL: Yes. Mr. Thomas, good afternoon.

1 THE WITNESS: Good afternoon.

2 CROSS-EXAMINATION BY MR. HALL:

3 Q. So I'll preface this by usually my standard is
4 to print off multiple copies for the witness and
5 opposing counsel to have. I nearly killed our office's
6 printer printing off all of your schedules. Do you have
7 a copy of the schedules you attached to your surrebuttal
8 testimony in front of you?

9 A. I have.

10 Q. Thank goodness. Okay. I printed off all
11 thousand some -- or I'm positing to you is about a
12 thousand some pages attached to your surrebuttal. Do
13 you agree with me that most of these papers do not show
14 unsafe or inadequate service on the part of the parties?

15 A. Do I agree with you that most do not show? I
16 think that that's not necessarily -- I don't think you
17 can make that kind of statement because they vary with a
18 lot of different items, right.

19 Q. Well, if you don't mind, let's just walk
20 through.

21 A. If you're trying to say if you have one
22 thousand documents --

23 Q. Mr. Thomas, I do not have a question pending
24 to respond. Mr. Thomas, the first page you scheduled
25 TT-S1, I'm looking this is a letter. It has the

1 letterhead from the department of DNR, correct?

2 A. Let me get there. Wrong book. I'm here.

3 Q. The front of this -- Like I said, it has a
4 letterhead from DNR, correct?

5 A. Yes.

6 Q. This letter to Ms. Henry, the president of
7 Camden County Public Water Supply District 5 from Maher
8 Jaafari, Chief Engineer from the Public Drinking Water
9 branch of DNR it looks like?

10 A. Yes.

11 Q. And Mr. -- I do apologize. I know he's not in
12 the room. I don't mean to mispronounce his name. --
13 Jaafari noted that the requested extension was granted
14 in this letter?

15 A. That appears to be what it says, yes.

16 Q. Okay. And if I turn the page, then it's a
17 receipt for laboratory services, correct?

18 A. That's correct.

19 Q. And then the next page following on the same
20 schedule is a copy of what looks like DNR's rules in the
21 CSR, correct?

22 A. That's correct.

23 Q. And then the next page was an e-mail looks
24 like a gmail account of one Bonnie Burden. It looks --
25 am I interpreting this correctly this is an

1 advertisement for an inspection service that was
2 available, correct, or solicitation rather than
3 advertisement?

4 A. I'd have to read it thoroughly to understand.

5 Q. The next page in Schedule 1 was another, looks
6 like another solicitation of inspection services from
7 Ozark Applications, LLC?

8 A. Okay.

9 Q. Okay. And that all continues onto the next
10 page of Schedule 1. What is it within Schedule TT-S1?
11 What page specifically shows a violation?

12 A. So these documents are the information we
13 received during the data request. We had to go through
14 and sort out through all these documents and look at the
15 documents to find those violations. And if you look at
16 the schedules, they're noted on the date and who's the
17 owner and what the type of violation was but they're in
18 here.

19 Q. Mr. Thomas, I repeat my question again, you
20 sponsored these schedules. What page within just one
21 TT-S1 can you point to that shows a violation?

22 A. I'd have to go through and find them but
23 they're in here.

24 Q. Would you please jump ahead to Schedule TT-S4.

25 A. I'm here.

1 Q. The first page of TT-S4 it looks like a copy
2 of the actual data request questions, correct?

3 A. Yes.

4 Q. Turn the page. These look -- am I seeing
5 these correctly? It's several series of microbiological
6 analysis reports from DNR?

7 A. That's what it appears to be, yes.

8 Q. There's various different assets that are
9 named in all these different ones. On this particular
10 page I'm looking at which is the second page of TT-S4,
11 this looks like a sampling done of a swimming pool
12 restroom done on June 3, 2019?

13 A. Yes.

14 Q. Then when I see A for coliform and fecal
15 ecoli, the A is for absent, correct?

16 A. That's correct.

17 Q. At the bottom of the page there's a checkmark
18 for monitoring violation yes or no, correct?

19 A. That's correct.

20 Q. The DNR marked no?

21 A. That's correct.

22 Q. And there's another checkmark for MCL
23 violation yes and no?

24 A. That is correct.

25 Q. And DNR marked no?

1 A. That's correct.

2 Q. On the next page of TT-S4 I see a very similar
3 page same type of swimming pool, or not same, this may
4 be a different swimming pool. My point is simply to say
5 this is another monitoring of another pool done on a
6 different date that's substantially the same form as the
7 prior page we discussed where there's a checkmark at the
8 bottom denoting whether there was a monitoring violation
9 or MCL violation, correct?

10 A. Yes.

11 Q. And in both instances DNR marked there was no
12 violation, correct?

13 A. That's correct.

14 Q. This pattern continues throughout most of
15 TT-S4, doesn't it?

16 A. As I said earlier, these are the documents
17 that were supplied to us. We had to go through them and
18 look at them individually to do the analysis that we
19 provided in the tables.

20 Q. Pardon the delay. I'm simply trying to grasp
21 all the papers in hand. So in my hand I'm holding the
22 entirety of TT-S4. You started TT-S5 is another
23 schedule you attached. This was a spreadsheet that you
24 created, correct, using Microsoft Excel it looks like?

25 A. That Central States created, yes.

1 Q. This was not created by DNR?

2 A. That was not created by DNR, no.

3 Q. Could you please turn to Schedule TT-S6.

4 A. I'm here.

5 Q. This is a letter to Mr. Kelly Goss with the
6 Missouri Water Association from DNR with the same DNR
7 letterhead, correct?

8 A. Yes.

9 Q. This first page of the schedule is a cover
10 sheet and then the actual DNR report follows. Do you
11 agree with me?

12 A. Yes.

13 Q. Would you please turn to what's noted as page
14 3 of the actual report that was attached to the schedule
15 where there's a subheading in bold called unsatisfactory
16 findings?

17 A. I'm here.

18 Q. Can you follow along with me the paragraph
19 that starts with the numeral 1. Am I reading this
20 correctly that the public water system in question
21 failed to obtain written authorization from the
22 department prior to construction, alteration or
23 extension of the water system. Did I read that
24 correctly?

25 A. Yes.

1 Q. And that was what DNR saw was a violation?

2 A. In this particular case, yes.

3 Q. DNR noted in the next sentence that the water
4 operator constructed a chlorination system was installed
5 since the last inspection?

6 A. That's correct.

7 Q. And the required action following this
8 violation was to submit engineering reports within 180
9 calendar days. Am I reading that correctly?

10 A. That's correct.

11 Q. Please turn to the next following paragraph
12 starting with II. Am I reading this correctly the
13 violation here was the public water system has not
14 transferred a permit to dispense water from the prior
15 owner to the new operator?

16 A. Where are you?

17 Q. Same page, simply the paragraph that starts
18 with II.

19 A. The number II, yes, go ahead.

20 Q. II. The public water system has not
21 transferred a permit to dispense water to the public, to
22 the new owner as required. Am I reading that correctly?

23 A. Yes.

24 Q. And the required action that DNR prescribed
25 following that violation was to complete an enclosed

1 application. Am I reading that correctly?

2 A. Yes.

3 Q. Do you agree with me that completing
4 applications and filing engineering reports is the
5 textbook definition of paperwork?

6 A. If you look at our tables that we provided,
7 there's effluent limit violations.

8 Q. Mr. Thomas, that was not my question. My
9 question was as to these two violations I've denoted,
10 would you agree that those are paperwork?

11 A. They're necessary.

12 Q. That wasn't the answer to my question.

13 A. They're paperwork, yes.

14 Q. Thank you. Your Schedule T-S7 -- TT-S7,
15 pardon me, this was another Excel spreadsheet that you
16 created, correct?

17 A. That Central States created, yes.

18 Q. So again for the purpose of the record I'm
19 positing to you we went through TT-S1. Here is TT-S4
20 all the way through 7. Would you agree with me that
21 this represents a substantial chunk of what you put in
22 the record as your full schedules?

23 A. Yes.

24 Q. I ask my question again. Do you agree that
25 the majority of the schedules you filed do not show

1 violations?

2 A. I think it's one of those things on how you're
3 asking the question. Do those by the fact that most of
4 the papers in that are not direct violations, does that
5 represent that there are not issues with violations? I
6 do not agree with that. If you're asking me on a
7 strictly math basis if the number of those pages in
8 those documents are not violations, that is correct.

9 MR. HALL: Thanks. No further questions.

10 JUDGE DIPPELL: Are there questions from the
11 Commission? Mr. Chairman, do you have any questions?
12 Commissioner Kenney?

13 COMMISSIONER KENNEY: No questions. Thank
14 you.

15 JUDGE DIPPELL: Commissioner Rupp?

16 COMMISSIONER RUPP: No, thank you.

17 JUDGE DIPPELL: I just have one.

18 QUESTIONS BY JUDGE DIPPELL:

19 Q. At one point during questioning you were asked
20 about -- that's when Mr. Ellsworth was questioning you.
21 You were asked about did you verify these things on your
22 own and your answer to most of the questions was that
23 these were the documents that were presented to you in
24 data requests?

25 A. Yes.

1 Q. At one point he asked when you said that you
2 had gotten the Sunshine requests from DNR and you said
3 you had verified those on your own?

4 A. That's correct.

5 Q. What do you mean by that? What did you do?

6 A. So when we did the Sunshine request for
7 Missouri DNR, we gave them the specific facilities that
8 we had verified that are operated by the Lake Area Water
9 and Missouri Water Association and PWS 5 and so those
10 are the records we got when we requested those.

11 Q. That was verified as of -- that they operated
12 those as of the date of the request or as of the date of
13 the violation?

14 A. That was as of the date of the request.

15 JUDGE DIPPELL: Okay. All right. That's all
16 the questions I have. Are there any further
17 cross-examination questions based on my questions? From
18 Staff?

19 MS. PAYNE: No, thank you.

20 JUDGE DIPPELL: Sorry. I just thought of one
21 more.

22 BY JUDGE DIPPELL:

23 Q. In the tables that Central States created or
24 that you created that were attached to your testimony,
25 the summary tables that was TT-S7 and maybe TT-S2, at

1 least on TT-S7 the last column says source and gives a
2 lot of letters, numbers. I'm not sure. What is that?
3 What does that refer to?

4 A. Which one is that?

5 Q. It's TT-S7.

6 A. So the Missouri DNR has a very specific filing
7 system for electronic files, which I won't attempt to
8 tell you how it works, but specifically that source and
9 it was just in the printout of the way -- we have the
10 other sources on the other ones. When we printed this
11 out, it was just a different format. Those are the
12 exact Missouri DNR files where these can be located.

13 Q. Okay. So that's a records number from DNR?

14 A. That's correct.

15 JUDGE DIPPELL: Okay. Okay. Now based on my
16 questions are there further cross-examination from
17 Staff?

18 MS. PAYNE: No, thank you.

19 JUDGE DIPPELL: From Cedar Glen?

20 MR. COMLEY: No questions.

21 JUDGE DIPPELL: From the Joint Bidders?

22 MR. ELLSWORTH: Just as a follow up to Judge
23 Dippell's questions.

24 FURTHER CROSS-EXAMINATION BY MR. ELLSWORTH:

25 Q. Mr. Thomas, what was the request you submitted

1 to DNR? Did you make the request yourself?

2 A. I did not make the request myself.

3 Q. Was it a general request in which you asked
4 DNR for records for the last five years for each of
5 these systems?

6 A. You know, I don't have the exact request with
7 me but it's similar.

8 Q. You didn't request the DNR records for the
9 period during which my clients owned the systems; is
10 that true?

11 A. I don't know the answer to that actually.

12 MR. ELLSWORTH: So nothing further.

13 THE WITNESS: I know there's a certain number
14 of years we requested.

15 JUDGE DIPPELL: Thank you. Is there anything
16 further from Public Counsel based on my questions?

17 MR. HALL: Public Counsel defers from asking
18 further questions at this time.

19 JUDGE DIPPELL: Is there any redirect?

20 MS. HERNANDEZ: Yes. Thank you.

21 REDIRECT EXAMINATION BY MS. HERNANDEZ:

22 Q. Let's start at some of the questions you
23 received from OPC. Can you turn to your Schedule 4,
24 TT-S4.

25 A. I'm here.

1 Q. All right. And you were asked about some of
2 these monitoring reports. Do you recall the question
3 from the Office of Public Counsel on that?

4 A. Yes.

5 Q. I believe they stated that there's several of
6 those monitoring reports in your Schedule 4. Do you
7 remember that --

8 A. Yes.

9 Q. -- line of questioning. Okay. And then
10 pointing you to the sample results, in particular the
11 total coliform and the fecal ecoli. Do you remember?

12 A. I do.

13 Q. Okay. Look at that chlorine residual column.

14 A. I see it.

15 Q. Is that indicating anything to you on this
16 document?

17 MR. HALL: I would simply ask for
18 clarification as to which page number that counsel is
19 looking at. There are hundreds of these forms filed.
20 None of them are page numbered. Just some type of
21 clarification for the record would be appreciated.

22 MR. ELLSWORTH: Also clarification as to what
23 system we're talking about, the date.

24 BY MS. HERNANDEZ:

25 Q. I was trying to go off the same document that

1 OPC was using. It's Bates stamped at the bottom
2 MWA1.17-000101 and the collection point it says swimming
3 pool outside. You see the chlorine residual column?

4 A. I do, yes.

5 Q. Does that chlorine level indicate anything to
6 you?

7 A. It's less than .02.

8 Q. And in terms of chlorine and water, is there a
9 standard that DNR -- is there a DNR standard for?

10 A. There's a standard and I believe it's .5. I
11 could be wrong but I think it's .5.

12 Q. All right. So in terms of these documents,
13 when you included them in your schedule, were you trying
14 to refer to something besides the sample results for
15 total coliform or fecal ecoli?

16 MR. ELLSWORTH: I just want to pose an
17 objection. There's no relevance. There's no foundation
18 to tie this -- We don't even know what swimming pool
19 this is. This could have been a pool --

20 THE WITNESS: This is not actually a swimming
21 pool. This is the water sample tap where they take the
22 test. It's not actually the swimming pool. It's a tap
23 at a pool.

24 JUDGE DIPPELL: Mr. Thomas, let me rule on the
25 objection.

1 MR. ELLSWORTH: It goes a little further than
2 that as well. We don't know where this is taken.

3 JUDGE DIPPELL: I appreciate your objection
4 but we have already admitted these and so the Commission
5 will --

6 MR. ELLSWORTH: True.

7 JUDGE DIPPELL: -- take that with the weight
8 of the evidence when it reviews it. Go ahead with your
9 question.

10 BY MS. HERNANDEZ:

11 Q. I believe I'd asked what this chlorine
12 residual level means to you.

13 A. This does denote a violation. Whether or not
14 we used this one in the table or not, I don't know. I'd
15 have to go back and cross check, cross reference.

16 Q. So the collection point you had mentioned that
17 -- well, it states swimming pool outside. Do you know
18 what collection point -- what are they referring to
19 there?

20 A. I've never been there but typically they refer
21 to either like a faucet in the bathroom or at the pool
22 deck or something like that. There's just different
23 location points for every system the DNR references for
24 collection points for water samples.

25 Q. Okay. And for drinking water, correct?

1 A. Yes, correct.

2 Q. So the analysis report is showing the level of
3 chlorine in drinking water?

4 A. That's correct.

5 Q. Why is chlorine in drinking water important?

6 A. For disinfection.

7 Q. All right. And let's just go back one page,
8 the first page of Schedule TT-S4 and DR 1.17.

9 A. I'm here.

10 Q. All right. And what documents did you request
11 in this DR?

12 A. Please provide the last two years of sampling
13 reports for each of the water systems listed in the
14 response to DR 1.16.

15 Q. The documents in TT-S4, you received these
16 documents in response to the data request that was
17 submitted to Missouri Water Association?

18 A. That's correct.

19 Q. All right. Let's go to your Schedule 6,
20 TT-S6.

21 A. I'm here.

22 Q. All right. Do you recall the line of
23 questioning essentially from the Office of Public
24 Counsel stating that these were not -- these were mere
25 paperwork violations versus safe and adequate service?

1 A. I do.

2 Q. All right. Can you explain why a company
3 maintaining appropriate records might be necessary?

4 A. It's absolutely necessary. Otherwise, how
5 else are you going to prove that you provided safe and
6 reliable service.

7 Q. Do you have any opinion on why DNR has
8 standards for submission of paperwork?

9 A. So they can completely understand and keep up
10 to date with how each system is running their -- how
11 each owner is running their systems and making sure
12 they're in compliance.

13 Q. Do you recall a question from Mr. Ellsworth to
14 the effect that he had asked a data request for notices
15 of violation from the applicant?

16 A. Yes.

17 Q. And you had mentioned that there were two
18 violations and I think Mr. Ellsworth commented something
19 to the effect that shouldn't have been so time consuming
20 to get that information?

21 A. I recall.

22 Q. Was there anything else asked for in that DR
23 request?

24 A. I don't recall. I don't recall.

25 Q. Do you recall whether the request also asked

1 for discharge monitoring reports?

2 A. It did. For NOVs, discharge monitoring
3 reports, and there was one other element but I can't
4 recall.

5 Q. How often does the company generate a
6 discharge monitoring report?

7 A. It depends upon the system and whatever the
8 permit requires but monthly on some, quarterly on
9 others.

10 Q. All right. So you would be collecting a
11 report, a monthly report for how many systems under this
12 DR?

13 A. Gosh, many. Over 20 probably.

14 Q. So more paperwork than just gathering two
15 violations?

16 A. Oh, certainly, yes.

17 Q. You mentioned there were two violations. What
18 were they and when?

19 A. Both of them have to do with Raccoon Creek.
20 One of them was a, I believe a failure to report by a
21 prior contract operator who is not working for us any
22 more due to lack of performance. The other one was on
23 the start up of a new plant there were no exceedance
24 violations but there was some pin floc noted in the
25 creek. And that was associated with the start up, a

1 plant start up.

2 Q. I'll have you jump around a little bit. Let's
3 go to your Schedule 10.

4 A. I'm here.

5 Q. All right. And you remember a line of
6 questioning about whether you verified whether the
7 systems were owned by Lake Area Wastewater Association
8 or Missouri Water Association or Public Water Supply
9 District at the time these DNR correspondence letters
10 were generated?

11 A. I do.

12 Q. All right. What is your schedule -- What is
13 Schedule TT-S10?

14 A. It's a list of the Lake Area Water systems by
15 facility name and the status of who is the owner and
16 operator.

17 Q. All right. Let's go to your Schedule 12.

18 A. I'm here.

19 Q. You were asked a line of questions about
20 verifying, essentially verifying what the documents said
21 that we were provided in a data request, rely on that.

22 A. Yes.

23 Q. Do you recall that line of questioning?

24 A. Yes.

25 Q. How did you generate Schedule TT-S12?

1 A. We had to review each document that was
2 provided by us through the DR and read it and understand
3 if there's a violation and what the violation is and the
4 nature of the violation.

5 Q. Did you do that same process for Missouri
6 Water Association and the Public Water Supply District?

7 A. Yes.

8 Q. And you included those in your schedules as
9 well?

10 A. Yes.

11 Q. Do you still have Schedule S3 of -- from
12 Josiah Cox in front of you?

13 A. I don't recall.

14 Q. There was a line of questioning where you were
15 being asked or Mr. Ellsworth was pointing to a DNR
16 document that said a second well was needed to serve
17 more at Cedar Glen?

18 A. I recall that, yes.

19 Q. Do you recall whether you had those documents
20 in front of you when you were developing your estimates
21 included in your testimony?

22 A. I do not recall, no. I don't think we did.

23 Q. You don't believe you did have those in front
24 of you?

25 A. It was the third-party engineer that did the

1 basis of that, and I can't say whether or not he did.

2 Q. You were asked a question about page 17 of
3 your surrebuttal, line 7 through 8.

4 A. What page again?

5 Q. Page 17.

6 A. I'm here.

7 Q. All right. And line 7 through 8 there was a
8 line of questioning about interconnection costs?

9 A. Yes.

10 Q. Have you seen any reports that would indicate
11 any estimates for interconnection costs?

12 A. You know, I recall seeing an engineering
13 report that was done by PWS D 5 a couple years ago where
14 they were looking at three options on whether or not to
15 connect Cedar -- I can't remember the name of the two
16 systems they own -- whether or not to connect one of
17 those, one of those or two of those together or even I
18 think Old Kinderhook and as part of that there was, yes,
19 some interconnection costs.

20 Q. Do you recall what those interconnection costs
21 were?

22 A. I mean, there were multiple parts in the
23 estimates. There's the estimates of what they have to
24 do with the facilities themselves and then below I
25 recall the interconnection costs, but I mean I can't

1 recall the exact numbers. There was the purchasing of
2 the easement, there's the DOT permits, there's the
3 boring, the laying of the lines. They were relatively
4 expensive but I don't remember the number.

5 Q. But more than zero?

6 A. Oh, certainly.

7 Q. There was a line of questioning asking you
8 about your estimates and your testimony being only
9 preliminary. Do you recall?

10 A. I recall, yes.

11 Q. Can you discuss I guess what will occur if the
12 Commission allows the applicant to acquire this system
13 in terms of refining those estimates?

14 A. Assuming that we get the AOCs or the
15 agreements on consent to operate those facilities for a
16 period of time, which we typically do, we'll operate
17 those facilities for a period of months and verify, you
18 know, all the items of the estimate and verify that they
19 need to be done. The other thing we'd certainly verify
20 is the -- specific to Cedar Glen is the number of
21 residents that are there or the flow rate and determine
22 which way DNR wants us to go with regard to storage or
23 additional well there.

24 Q. Hopefully my last question. Do you recall
25 some questions from staff regarding I guess what they

1 call SSOs or sewage overflows?

2 A. I recall one about a bypass.

3 Q. Bypass. Thank you. And you had mentioned
4 that you had been to some of the facilities here
5 recently?

6 A. I have. Actually had some pictures from my
7 recent tours, visits last week. I actually have a
8 picture of the bypass.

9 MS. HERNANDEZ: I want to pass out another
10 document.

11 THE WITNESS: Little harder to pass out but I
12 have a video of that too.

13 MS. HERNANDEZ: Should we just mark this for
14 identification as Exhibit 8?

15 JUDGE DIPPELL: We'll mark that for
16 identification purposes as Exhibit 8, and this is
17 pictures of Cedar Glen. I guess it's more --

18 MS. HERNANDEZ: I'll ask the witness.

19 JUDGE DIPPELL: Okay. I just wanted to give
20 it a title.

21 MS. HERNANDEZ: Sure, that's fine. Osage
22 Water facilities.

23 JUDGE DIPPELL: Okay. Go ahead.

24 BY MS. HERNANDEZ:

25 Q. You had mentioned that you witnessed a bypass?

1 A. Yes.

2 Q. Could you indicate what pictures show what you
3 observed that day?

4 A. By my packet --

5 MR. ELLSWORTH: I'm sorry, Judge. I'm going
6 to object from testifying to a document that hasn't been
7 admitted. There's no foundation for these pictures.
8 They were not previously provided to any counsel. I've
9 never seen these previously.

10 JUDGE DIPPELL: Would you like to lay a
11 foundation for these before you --

12 MS. HERNANDEZ: Sure.

13 BY MS. HERNANDEZ:

14 Q. Mr. Thomas, can you look through the packet of
15 information that's been provided to you?

16 A. Yes.

17 Q. All right. And what is this document?

18 A. These are pictures taken last week of the
19 Osage Water facilities or water and wastewater
20 facilities.

21 Q. Are these pictures that you took yourself?

22 A. I took them personally, yes.

23 Q. And are they an accurate representation of
24 what you viewed that day at each of these facilities?

25 A. Yes.

1 MS. HERNANDEZ: And with that I would offer
2 Exhibit 8.

3 JUDGE DIPPELL: Would there be an objection to
4 Exhibit 8?

5 MR. COMLEY: What is the purpose of the
6 photographs? Is it for purposes of his redirect after
7 the questions from staff or I think that would be with
8 Eagle Woods bypass. That's all. Only one of the
9 photographs I think shows Eagle Woods.

10 MS. HERNANDEZ: It goes to certainly the
11 bypass question but also to all the questions about
12 whether there are violations or issues at each of these
13 facilities that the cross questions were indicating that
14 the documents did not show.

15 MR. HALL: Public Counsel must also cite an
16 objection. The questions that were posited to him
17 bringing these pictures were up were about the bypass.
18 These pictures seem to document more than that. This
19 seems like a blatant attempt to inflate surrebuttal
20 testimony with exhibits that could have been filed at
21 the time when they were to be filed.

22 JUDGE DIPPELL: Is anyone contesting that
23 there are issues with these systems? What is the
24 relevance of these pictures?

25 MS. HERNANDEZ: The documents, it's not that

1 there's issues. I think the cross was trying to contest
2 that the documents included in surrebuttal don't contain
3 all the violations that Mr. Thomas says are summarized
4 in those tables included in his schedules as well. So I
5 think this is to show the current condition that there
6 are these situations at these facilities and also to go
7 specifically to the question asked about the bypass.

8 MR. COMLEY: I'm thinking that there are
9 photographs of systems that were not referred to by OPC.
10 I think OPC was talking about systems that were
11 purportedly operated by the Missouri Water Association
12 and the Lake Area Wastewater Association and the
13 district. These are not. If anything, it's cumulative
14 for the surrebuttal testimony has already been shown.
15 These photographs are already in the surrebuttal.

16 JUDGE DIPPELL: I'm going to sustain the
17 objections and not admit these photographs. I mean, the
18 time for direct has long passed and I don't see how
19 these are relevant to the redirect.

20 MS. HERNANDEZ: No further questions. Thank
21 you.

22 JUDGE DIPPELL: Mr. Thomas, I believe that
23 concludes your testimony and you may step down.

24 (Witness excused.)

25 JUDGE DIPPELL: We've only been in here about

1 an hour and 15 minutes. I'm tempted to take a
2 ten-minute break before we begin with Staff's witnesses.
3 I see at least one nod. Let's go ahead and take a ten,
4 twelve-minute break and come back at 3:15. While you're
5 on break, I would like to know when you get back like do
6 we think that there's any chance if we stay a little
7 late we could get through all the witnesses today or
8 should we just plan on coming back in the morning?
9 Think about that while you're on break. I'll see you at
10 3:15.

11 (Off the record.)

12 JUDGE DIPPELL: Let's go ahead and go back on
13 the record. We're back on the record after our break
14 and we're ready to begin with Staff's witnesses.

15 MS. PAYNE: Staff would call its witness
16 Natelle Dietrich to the stand.

17 (Witness sworn.)

18 NATELLE DIETRICH, being sworn, testified as follows:

19 DIRECT EXAMINATION BY MS. PAYNE:

20 Q. Would you please state and spell your name for
21 the court reporter?

22 A. Natelle, N-a-t-e-l-l-e, Dietrich,
23 D-i-e-t-r-i-c-h.

24 Q. And by whom are you employed and in what
25 capacity?

1 A. I'm employed by the Public Service Commission
2 as Commission Staff Director.

3 Q. And did you prepare or cause to be prepared
4 testimony that's been marked in this case as Exhibit
5 100, the Direct Testimony of Natelle Dietrich
6 confidential and public as Exhibit No. 101, the
7 Surrebuttal Testimony of Natelle Dietrich and Exhibit
8 No. 105, the Supplemental Testimony of Natelle Dietrich
9 confidential and public?

10 A. I did.

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

13 A. Yes. To the direct testimony, what is
14 identified as confidential Schedule ND-D2, which is
15 Staff's recommendation, in the cover pleading that goes
16 with the Staff recommendation it mentions the letter
17 from Spencer Fane and it says that the letter is marked
18 as Attachment B. When it was filed it was marked as
19 Attachment A. So the letter from Spencer Fane should be
20 Attachment B to Staff's recommendation.

21 And then on the supplemental testimony that
22 was filed, we filed red line and clean versions of
23 Staff's updated memorandum and as part of doing that
24 process there was some additions added to the Staff
25 memorandum that we determined were not responsive to the

1 order to just make adjustments based on Reflections and
2 a couple of those did not get deleted. So on the red
3 line version of the Staff memorandum on page 6 of 26,
4 the end of the first paragraph where it's talking about
5 water and sewer systems, there's a red line that says
6 and through the DNR website. That additional language
7 should be stricken as not applicable to Reflections.

8 On page 8 of 26, there's what looks like it
9 could be a third paragraph that's all red lined. It
10 starts with on September 1, 2019, DNR terminated Cedar
11 Glen, so on and so forth. That paragraph should be
12 deleted as not applicable to Reflections.

13 And then the last one is actually the opposite
14 where it was language that somehow got deleted and
15 should not have been. That's on page 25 of 26. The end
16 of the first paragraph on that page where it's talking
17 about a sample letter was provided, on the original
18 Staff memorandum there was a sentence after that that
19 said these -- that's the wrong sentence. I'm sorry.
20 It's the paragraph that's publicity and customer notice
21 which is at the top of page 25 of 26 of the red line
22 version. The sentence that was inadvertently deleted
23 from the original Staff recommendation says as of the
24 date of this report, zero public comments have been
25 entered in the Commission's Electronic Filing

1 Information System concerning this case. That statement
2 should still be in the Staff memorandum because it was
3 not updated as a result of Reflections. And then --

4 JUDGE DIPPELL: I'm sorry. Can you tell me
5 again where that sentence was omitted?

6 THE WITNESS: Yes. At the bottom of page 24
7 of 26 of the red line version, it's publicity and
8 customer notice. At the very end of that section after
9 the words upgrades of these water and wastewater
10 systems.

11 JUDGE DIPPELL: Okay.

12 THE WITNESS: And then those same changes
13 would be made in the clean version of the Staff
14 memorandum which was also attached. And on the clean
15 version the first change is on page 5 of 21 and it's the
16 end of the paragraph starting with the water and sewer
17 systems. The language and through DNR website should be
18 deleted. On page 7 of 21, it's what looks like a second
19 full paragraph. Starts on September 1, 2019, DNR
20 terminated. That paragraph should be deleted. And
21 again the adding of the language would be on page 20 of
22 21 at the end of the first full section publicity and
23 customer notice.

24 BY MS. PAYNE:

25 Q. And given those corrections, if I were to ask

1 you the same questions contained in that testimony
2 otherwise, would you have the same answers?

3 A. Yes.

4 MS. PAYNE: All right. Then with that I go
5 ahead and offer Exhibit No. 100C and P, 101 and 105C and
6 P into the record.

7 JUDGE DIPPELL: 100 is the Direct Testimony,
8 101 is the Surrebuttal Testimony and 105 is the
9 Supplemental Testimony?

10 MS. PAYNE: Correct.

11 JUDGE DIPPELL: And there are confidential
12 versions of 100 and 105?

13 MS. PAYNE: Correct.

14 JUDGE DIPPELL: Would there be any objection
15 to those exhibits? Seeing none, then I will receive
16 those into the record.

17 (STAFF'S EXHIBITS 100C, 100P, 101, 105C AND
18 105P WERE RECEIVED INTO EVIDENCE AND MADE A PART OF THIS
19 RECORD.)

20 MS. PAYNE: Then I will tender this witness
21 for cross.

22 JUDGE DIPPELL: All right. Is there any
23 cross-examination by OUOC?

24 MR. COOPER: Yes, Your Honor. Thank you.

25 CROSS-EXAMINATION BY MR. COOPER:

1 Q. The Staff has not performed an examination of
2 the Public Water Supply District No. 5, Missouri Water
3 Association or the Lake Area Wastewater Association as
4 to their technical, managerial and financial capability
5 to own and operate water and wastewater systems in
6 Missouri in this case, has it?

7 A. That's correct.

8 Q. And is that because an application requesting
9 permission for transfer to the Water District, MWA and
10 LAWWA is not before the Commission?

11 A. That's correct, after that was discussed with
12 Staff Counsel's office as to how to address that.

13 Q. And Osage Water Company, to your knowledge, is
14 still currently considered a public utility, isn't it?

15 A. Yes, it is.

16 MR. COOPER: That's all the questions I have.

17 JUDGE DIPPELL: Is there any cross-examination
18 by Cedar Glen?

19 MR. COMLEY: Yes, Your Honor.

20 CROSS-EXAMINATION BY MR. COMLEY:

21 Q. Ms. Dietrich, on page 16 of your revised
22 memorandum, I think that's where it is. Forgive me.
23 I'm a little confused about some of the changes. If
24 there's been a change on this, let me know.

25 A. Okay.

1 Q. There's a statement in the second paragraph
2 that Staff also considers -- well, for its reviews in
3 connection with cases like this my understanding is
4 Staff also considers whether or not other utility
5 entities are available to provide similar service?

6 A. That statement is applicable to Reflections.
7 That's applicable to entities that are not currently
8 regulated by the Commission.

9 Q. So you were saying this statement would be
10 whether Reflections was able to provide similar service
11 to the customers?

12 A. No. As part of the Reflections -- Osage
13 Operating Company's application to acquire Reflections,
14 we would have considered whether there were other
15 entities that would be able to provide service because
16 Reflections was not a Commission regulated entity.

17 Q. I see. You would not consider other available
18 public entities in the area that would serve the Cedar
19 Glen area; is that what you're saying?

20 A. Correct.

21 Q. So then I understand the Staff knew that Cedar
22 Glen had bid on these assets years ago. Would that be
23 correct?

24 A. Had been on them?

25 Q. Had bid on them.

1 A. Oh, bid on them. I'm not familiar with that.
2 Other staff members may be.

3 Q. It was in the letter from Eric Johnson that
4 you attached to your Staff recommendation. I thought
5 well, that was something you reviewed in advance.

6 A. Correct, yes.

7 Q. Eric Johnson's letter points out that Cedar
8 Glen itself had bid on those assets at one time; is that
9 correct?

10 A. That's correct.

11 Q. Even though the Staff knew that that had
12 happened, Staff did not try to contact any of the Cedar
13 Glen customers to find out preferences that they would
14 prefer -- excuse me for the word play, their
15 preferences?

16 A. Staff considered the application that was
17 before the Commission.

18 Q. And of course, I mean, the district and
19 Missouri Water Association and Lake Area Wastewater
20 Association are not applicants in this case?

21 A. That's correct.

22 Q. One more question just to make clear. No
23 member of the Staff contacted the president of the
24 homeowners association at Cedar Glen to find out what
25 its preferences might be in connection with this

1 application?

2 A. Not that I'm aware of, but we typically would
3 not do that because there was not an application from
4 that entity before the Commission.

5 Q. If you had, it would probably have been
6 referred to in your memorandum, I'm assuming?

7 A. Correct.

8 Q. Would it be fair to say the Staff did not
9 independently estimate the cost of any of the
10 improvements that OUOC has said are needed for these
11 systems?

12 A. No. Staff reviews what is put before it, and
13 then as far as the actual dollar amounts that would be
14 part of a rate case review.

15 Q. Later. But right now none of the Staff
16 reviewed it, in fact, accepted those estimates for
17 purposes of your memorandum?

18 A. Staff did not review and Staff has not
19 accepted them, no.

20 Q. Okay. There's been no effort to confirm those
21 estimates are within range; is that correct?

22 A. Not at this stage of the process, no.

23 MR. COMLEY: I have no other questions.

24 JUDGE DIPPELL: Is there questions from the
25 Joint Bidders?

1 MR. ELLSWORTH: Yes, Your Honor.

2 CROSS-EXAMINATION BY MR. ELLSWORTH:

3 Q. Just briefly as a follow up. Did the Staff
4 evaluate the necessity of the repairs proposed?

5 A. I'm not sure what you mean by necessity
6 because the standard for this particular application is
7 not detrimental to the public interest. Necessity is a
8 different standard. So perhaps it's a --

9 Q. In your Staff recommendation you did mention
10 some of the repairs that were proposed to be made to the
11 four systems by Osage Water Company, correct?

12 A. Correct.

13 Q. And you did state that you didn't agree or
14 disagree with whether or not those were necessary,
15 didn't you, if I can find the exact language? What I'm
16 recalling specifically is with respect to Cedar Glen, if
17 I find your language. In the Staff recommendation, you
18 did go over the proposed improvements or repairs to the
19 systems?

20 A. Staff reviewed what Osage Utility Operating
21 Company was suggesting might need to be repaired as far
22 as the systems, yes.

23 Q. And there was no real comment on whether those
24 were necessary?

25 A. Correct. What was throwing me was your use of

1 the word necessity.

2 Q. Okay. I understand. But you did comment that
3 you did contact the operator of the systems Lake of the
4 Ozarks Water and Sewer?

5 A. Correct. Standard process when we have an
6 application for acquisition or transfer of assets, those
7 types of things, we go out, we do inspections of the
8 facilities, we meet perhaps with the management, those
9 types of things.

10 Q. And with respect to the Cedar Glen facility,
11 Lake -- we call them LOWS at the lake, L-O-W-S, they
12 stated that the current treatment plant would meet the
13 ammonia limits and no new construction will be needed;
14 is that true?

15 A. That would probably be better addressed to
16 Mr. Roos is the technical expert.

17 Q. Okay. Also it was noted in the recommendation
18 that a DNR sewer inspection report there's no
19 unsatisfactory conditions?

20 A. Same thing, Mr. Roos would be better able to
21 answer that.

22 Q. Would that be -- If I asked you similar
23 questions on the other systems, would that be the same
24 answer, talk to Mr. Roos?

25 A. Yes. I'm the policy witness and he's more the

1 technical.

2 Q. With respect to the policy then, correct me if
3 I'm wrong, the standard of review for the application
4 for sale of assets when you're submitting an application
5 for acquisition incentive, is that the Code of State
6 Regulations 240-10.085 subsection 4? Does that state
7 the standard of review for the sale of assets where an
8 acquisition incentive is part of the application?

9 A. Yes.

10 Q. And I have to ask that because I don't know.
11 So I want to make sure we're on the same page.

12 A. Just to clarify, the Commission has moved to
13 the Department of Commerce and Insurance and our rule
14 numbers have changed. So now instead of 4 CSR
15 240-10.085 it would be 20 CSR 4240-10.085.

16 Q. Thank you for adding to my confusion. So
17 we're on the same page I believe with the standard of
18 review. Would you agree with me that under that
19 standard of review one of the elements the Staff needs
20 to look at is the purchase price in the financial terms
21 of the acquisition and make sure that they're fair and
22 reasonable and have been reached at arm's length
23 negotiation. Is that one of the elements?

24 A. Yes. On a subpart 4D says the purchase price
25 and financial terms of the acquisition are fair and

1 reasonable and have been reached through an arm's length
2 negotiation. That's what the application has to
3 demonstrate.

4 Q. And just to clarify, the application filed by
5 Osage Utility, there is part of that includes an
6 acquisition incentive or incentives, right?

7 A. That's correct.

8 Q. What did the Staff find out with respect to
9 the financial terms of the acquisition?

10 A. We had discussions when the application was
11 first submitted and, of course, at that time it included
12 Reflections. We've since had additional discussions
13 removing Reflections where we looked at what the
14 financial transaction was, whether it was arm's length
15 or not, whether we thought they meaning Osage Utility
16 Operating Company met all of the requirements of section
17 4.

18 Q. Okay. But the application itself doesn't
19 include any of the financial terms, right, the interest
20 rate, the term of the loan, who the lender is, that type
21 of stuff, right?

22 A. That's correct. It was not a financial or a
23 finance application.

24 Q. Okay. Under 4E, any plant improvements
25 necessary to make the utility viable will be completed

1 within a reasonable period of time. Does this require
2 you to determine whether or not the repairs and
3 improvements stated in the application are necessary?

4 A. I don't read that as requiring the Commission
5 to make a determination as to whether the improvements
6 are necessary. The application needs to include that
7 information as to any improvements that it deems
8 necessary to make the utility viable. They have to
9 propose how they plan on doing that or within what
10 period of time.

11 Q. So your emphasis on that is more the period of
12 time to make sure the repairs are made when reviewing
13 that application, right?

14 A. Correct.

15 Q. And is it your position that on the next to
16 last element the acquisition is in the public interest.
17 Does the Staff take into consideration the effect on the
18 ratepayer increase of rates?

19 A. In this particular type of acquisition, the
20 standard is not detrimental to the public interest. So
21 the Staff looks at the application as compared to status
22 quo, if you will, and makes a recommendation as to
23 whether Staff thinks that the transaction is detrimental
24 or not. That would include things such as what they're
25 proposing to do, whether there is a need for

1 improvements. In this particular case an entity that's
2 been in receivership has filed bankruptcy. So those are
3 the types of things that are considered.

4 Q. Did the Staff make a determination with
5 respect to the last element that the acquisition would
6 be unlikely to occur without the probability of
7 obtaining an acquisition incentive?

8 A. Again, I don't think the rule requires Staff
9 to make that finding. It's a statement that needs to be
10 included in the application as to whether the
11 acquisition would be unlikely to occur without the
12 probability of obtaining an acquisition incentive.

13 Mr. Cox indicated in his testimony that the transaction
14 would not occur absent the acquisition incentive. Staff
15 had no reason to doubt that statement. We have no way
16 of independently verifying that though.

17 Q. But in this case you had the letter from
18 Spencer Fane attached to all of the contracts and you
19 knew that there was a backup bidder ready, or appeared
20 to be a backup bidder ready to close this transaction
21 upon the same terms and conditions without incentives,
22 right?

23 A. But my reading of the rule is not are there
24 other alternatives that the acquisition would happen.
25 My reading of the rule is the acquisition before the

1 Commission would be unlikely to occur without the
2 probability of the incentive.

3 Q. So your reading is that the applicant would be
4 -- the applicant's acquisition would be unlikely to
5 occur?

6 A. That's correct.

7 Q. The acquisition in general of the system?

8 A. That's correct.

9 MR. ELLSWORTH: No further questions.

10 JUDGE DIPPELL: Thank you. Is there anything
11 from Public Counsel?

12 MR. HALL: Yes, Your Honor. I'll attempt to
13 be brief. Good afternoon, Ms. Dietrich.

14 THE WITNESS: Good afternoon.

15 CROSS-EXAMINATION BY MR. HALL:

16 Q. Dietrich, right?

17 A. Yes.

18 MR. HALL: Your Honor, may I approach?

19 JUDGE DIPPELL: Yes.

20 BY MR. HALL:

21 Q. Ms. Dietrich, you were asked some questions
22 from counsel for Cedar Glen about the acquisition
23 incentive?

24 A. Yes.

25 Q. I've also just handed you a document that for

1 demonstrative purposes I'd like to consider this as OPC
2 Exhibit 200. Do you recognize the document I've just
3 handed you?

4 A. Yes.

5 Q. This is a data request from this docket that
6 was sent by Ms. Roth to Staff, correct?

7 A. That's correct.

8 Q. And you supplied the answer for this data
9 request, correct?

10 A. The answer was provided by myself and Jim
11 Busch.

12 Q. The question was regarding Staff's position as
13 to whether Osage Utility Operating Company, Central
14 States in this case, would be unlikely -- whether the
15 acquisitions requested by Central States would be
16 unlikely to occur without the probability of obtaining
17 the incentive, correct?

18 A. Correct.

19 Q. And your answer in the first sentence of your
20 response was that Staff does not take a position on
21 whether the acquisitions would be unlikely to occur
22 without the probability of obtaining acquisition
23 incentives; am I reading that answer correctly?

24 A. That's what the answer says, yes.

25 Q. Ms. Natelle, were you in the hearing room

1 during opening statements?

2 A. Yes.

3 Q. And you heard the opening statement provided
4 by your counsel, Ms. Payne?

5 A. Yes.

6 Q. So you heard her assert that Staff argued
7 today that the acquisition would not be likely to occur
8 without the acquisition incentive. Do you recall that?

9 A. I remember her discussion. I don't remember
10 her exact words.

11 Q. You're familiar with one Kim Bolin, correct?

12 A. Yes.

13 Q. She's another Staff member. She's filed
14 testimony in this case as well?

15 A. That's correct.

16 Q. You reviewed her testimony for this case?

17 A. Yes.

18 Q. She's also supplied testimony speaking to the
19 acquisition incentive, correct?

20 A. That's correct.

21 Q. And she supports -- let me rephrase that. Her
22 testimony is that the acquisition may not be likely to
23 occur without the probability of obtaining an
24 acquisition incentive, correct?

25 A. Could you point me to where she says that?

1 Q. Of course. Please turn to page 4 of Kim
2 Bolin's surrebuttal testimony.

3 A. Okay.

4 Q. Maybe it's not fair to put words when she's
5 not here in her mouth, but the answer that she gave on
6 lines 6 through 10 was that just because a company has
7 purchased other distressed systems does not mean it will
8 necessarily purchase every distressed system no matter
9 the circumstance and then she quotes Josiah Cox's
10 testimony where he says -- where he posited that the
11 acquisition is unlikely to occur without the probability
12 of obtaining the acquisition incentive; am I presenting
13 that accurately?

14 A. Correct. As you said, she's quoting Mr. Cox.

15 Q. Is Kim Bolin then taking -- Do you believe Kim
16 Bolin is taking a position as to whether the acquisition
17 would be unlikely to occur?

18 A. No, I do not.

19 MR. HALL: Your Honor, at this time I would
20 move for the admission of Exhibit 200 at this time since
21 it's been authenticated by the witness as an answer
22 given by her.

23 JUDGE DIPPELL: Would there be any objection
24 to Data Request No. 0023 coming into the record? Seeing
25 none, I will admit that.

1 (OPC EXHIBIT 200 WAS RECEIVED INTO EVIDENCE
2 AND MADE A PART OF THIS RECORD.)

3 MR. HALL: Your Honor, may I approach again?

4 JUDGE DIPPELL: Yes.

5 MR. HALL: You'll have to pardon the delay.
6 I'm trying to find sufficient copies for the other
7 parties.

8 JUDGE DIPPELL: I think you gave me a few
9 extra.

10 MR. HALL: Thank you.

11 BY MR. HALL:

12 Q. For demonstrative purposes, I would like to
13 treat this as Exhibit 201. Ms. Dietrich, given my
14 delay, have you had sufficient time to review the
15 document I handed you?

16 A. Yes.

17 Q. Do you recognize this document?

18 A. Yes.

19 Q. This was another data request from OPC witness
20 Ms. Roth to Staff, correct?

21 A. That's correct.

22 Q. This is No. 25. You supplied the answer to
23 this as well, correct?

24 A. Myself and Jim Busch, yes.

25 Q. This question was as to a particular page

1 within Staff's initial memorandum and recommendation,
2 correct?

3 A. Yes.

4 Q. In response to that, Ms. Roth asked whether
5 Staff considered other potential operators for the Osage
6 Water Company systems and then asked is it Staff's
7 position that the Joint Bidders would also be available
8 to provide similar service. Am I paraphrasing that
9 question accurately?

10 A. That's what the question says, yes.

11 Q. And your answer as to the initial Staff
12 recommendation was that the quoted language of page 19
13 of that initial recommendation, quote, is in regards
14 specifically to the applicable criteria for
15 investigation into the application for the acquisition
16 of Reflections, correct?

17 A. Correct. The language that she cites in this
18 data request is related to Staff's recommendation on
19 Reflections in our Staff memorandum.

20 Q. That language was, quoting verbatim, for its
21 reviews Staff also considers whether or not other
22 utility entities are available to provide similar
23 service, end quote. Did I read that accurately?

24 A. In the question?

25 Q. Yes.

1 A. Yes.

2 Q. Ms. Dietrich, do you have the revised
3 recommendation in front of you?

4 A. I do.

5 Q. Let me verify the page number. I'm looking at
6 the red line version so that alters the page numbers
7 slightly. Could you please turn to page 20 of 26?

8 A. Okay.

9 Q. So with this red lined version I see that a
10 sentence was taken out at the end of the second full
11 paragraph on the page. Are you following me?

12 A. Yes, uh-huh.

13 Q. That sentence that was stricken is
14 specifically referring to Reflections?

15 A. That's correct.

16 Q. Two sentences up I see the sentence for its
17 review Staff also considers whether or not other utility
18 entities are available to provide similar service. Am I
19 reading that correctly?

20 A. I think you said two sentences up. It's about
21 halfway between in that paragraph, yes, it says that.

22 Q. That was the same quoted text that Ms. Roth
23 identified in her data request, Data Request 25,
24 correct?

25 A. That's correct, but I would point out that

1 that paragraph begins with when considering a request
2 for a new CCN, which would be Reflections, not Osage's
3 purchase of Osage Water Company.

4 Q. For clarity sake then, Staff is not taking the
5 position that Central States' request to operate the
6 Osage Water Company systems -- Let me rephrase that. I
7 lost myself. Staff's position is that the request to
8 operate the Osage Water Company systems is not a new CCN
9 but a request for a CNN transfer?

10 A. That's correct.

11 Q. So this paragraph that was left in the revised
12 recommendation, this is not applicable to the Osage
13 Water Company systems?

14 A. No. The reason we didn't red line the whole
15 paragraph was just a general explanation of how we
16 review CCNs, and it clearly states that when it's a new
17 CCN. So we didn't red line the entire paragraph.

18 Q. Fair enough. But then Staff did not use this
19 analysis for a new CCN to judge the acquisition of the
20 Osage Water Company systems, correct?

21 A. That's correct.

22 MR. HALL: Thank you. At this time, Your
23 Honor, I would move for the admission of Exhibit 201
24 since it's been authenticated as an accurate response
25 given by the witness.

1 JUDGE DIPPELL: Would there be any objection
2 to Data Request 0025, Exhibit No. 201, coming into the
3 record?

4 MR. JOHNSON: Judge, Staff would object for
5 relevance purposes, this DR request in regard to the
6 Reflections systems, we would question the relevance of
7 this matter.

8 MR. HALL: It's relevant as to the credibility
9 consistency of Staff's recommendation.

10 JUDGE DIPPELL: I'm going to overrule the
11 objection. If for nothing else, it explains Staff's
12 position in their memorandum. I'm going to -- Are there
13 any other objections? Seeing none, I will admit that.

14 (OPC'S EXHIBIT 201 WAS RECEIVED INTO EVIDENCE
15 AND MADE A PART OF THIS RECORD.)

16 Mr. HALL: Thank you. I have no further
17 questions of this witness.

18 JUDGE DIPPELL: All right then. Are there any
19 questions for Ms. Dietrich from the Commission?

20 CHAIRMAN SILVEY: Yes.

21 JUDGE DIPPELL: Mr. Chairman?

22 CHAIRMAN SILVEY: Thank you.

23 QUESTIONS BY CHAIRMAN SILVEY:

24 Q. Does Staff agree with the comments made in the
25 opening statements of the Joint Bidders that if the

1 Commission denies OUOC's application in this case the
2 Joint Bidders will be approved by the bankruptcy court
3 as the next viable bid?

4 A. That's my understanding and then they would be
5 the entity that would come before the Commission.

6 Q. Okay. Can the Commission consider the likely
7 rate impacts on customers when determining what is not
8 detrimental to the public interests?

9 A. The Commission in my opinion could consider
10 whatever it deems important, but it doesn't have all the
11 information before it to consider the effect of the rate
12 impact because we don't have all relevant factors that
13 you would have in a rate case.

14 Q. So would you say the rate impact between OUOC
15 and the Joint Bidders would likely be the same?

16 A. Well, I don't know that we know that. I mean,
17 from the information that's been provided in testimony
18 we have two different proposals as to what improvements
19 are needed. Some of the numbers are very far apart. So
20 I don't know at this time that the Commission would have
21 enough information to determine that one number is
22 correct over another or, you know, to be able to make
23 the determination as to what improvements are necessary
24 based on the information that it has before it.

25 Q. Is it your understanding that the Joint

1 Bidders would get the acquisition premium or would seek
2 the acquisition premium?

3 A. No.

4 Q. They would not?

5 A. I don't think they would be able to because
6 they would not be a regulated entity before the
7 Commission.

8 Q. So would that be a likely difference in
9 potential rate impact?

10 A. That would be one difference. I think the
11 larger difference would be the actual improvements that
12 need to be made to the system and then, of course, you
13 have Osage Utility Operating Company would be a
14 regulated entity and the Commission would be reviewing
15 its rate requests whereas the Joint Bidders would be a
16 nonregulated entity and there would be no oversight of
17 those rates.

18 CHAIRMAN SILVEY: Okay. No further questions
19 at this time.

20 COMMISSIONER KENNEY: No questions. Thank
21 you.

22 COMMISSIONER RUPP: No questions.

23 JUDGE DIPPELL: Are there any additional
24 cross-examination questions based on the Chairman's
25 questions from the Company?

1 MR. COOPER: Just one. I shouldn't promise
2 that.

3 FURTHER CROSS-EXAMINATION BY MR. COOPER:

4 Q. Ms. Dietrich, you were asked about whether
5 there would be an acquisition premium for the Joint
6 Bidders to acquire the Osage Water Company facilities,
7 correct?

8 A. Correct.

9 Q. And I think your answer was that it's really,
10 to use a phrase that's probably overly used, but it's
11 kind of apples and oranges, isn't it, because they're
12 not a regulated entity so the significance of net
13 original cost versus some other number that might be in
14 rate base is just -- it's not really applicable to the
15 Joint Bidders' situation; is that correct?

16 A. That's correct. I was understanding the
17 question more from the standpoint of under the rule
18 would they be requesting acquisition incentive.

19 Q. But in the end it's your understanding, isn't
20 it, that the purchase price would be the same, correct?

21 A. Correct.

22 Q. And ultimately if they borrow the dollars for
23 that purchase price, they're going to have to collect
24 enough from their ratepayers to pay that back, correct?

25 A. They meaning the Joint Bidders?

1 Q. They being the Joint Bidders.

2 A. I would assume so, yes.

3 Q. So whether you call it an acquisition premium
4 or not, they're going to have to reimburse someone for
5 the money they borrowed to make that purchase at
6 \$800,000, correct?

7 A. Correct.

8 MR. COOPER: That's all the questions I have.

9 JUDGE DIPPELL: Is there any further
10 cross-examination from Cedar Glen?

11 MR. COMLEY: Yes, just a few.

12 FURTHER CROSS-EXAMINATION BY MR. COMLEY:

13 Q. Ms. Dietrich, would you agree with me that
14 rates structured by a public water supply district or a
15 rural sewer district, they are governed by statute, do
16 you know?

17 A. Not that I know of.

18 Q. So there's no statutory restriction on how
19 those districts can make their rates?

20 A. Not that I'm aware of.

21 Q. So they can charge anything they want?

22 A. Well, I don't know.

23 Q. You don't know. Okay. Would you agree with
24 me that they are subject to governmental accounting
25 principles?

1 A. I don't know.

2 Q. Would you agree with me that they're subject
3 to state audit?

4 A. I would assume so, yes.

5 Q. Would you agree with me that they would be
6 entitled to use tax exempt securities?

7 A. I don't know.

8 MR. COMLEY: That's all I have.

9 JUDGE DIPPELL: Is there any further
10 cross-examination from the Joint Bidders?

11 MR. ELLSWORTH: Yes, Your Honor, briefly.

12 FURTHER CROSS-EXAMINATION BY MR. ELLSWORTH:

13 Q. Ms. Dietrich, you stated earlier that not all
14 the relevant factors were before this Commission with
15 respect to rates?

16 A. That's correct.

17 Q. What other information would be necessary in
18 this application or this hearing to determine that?

19 A. When the Commission sets rates, it looks at
20 what's called all relevant factors, all the costs, all
21 the expenses, all the revenues, revenue requirement,
22 rate base. So there's several factors that go into it,
23 not just this is what it costs to purchase the entity.

24 Q. Let's talk about what information is before
25 the Commission today. I mean, you agree that the

1 projections provided by the applicant show revenue of a
2 little over a million dollars, right, and after like
3 year two like that was?

4 JUDGE DIPPELL: Let's not get into specific
5 numbers, not that that was very specific.

6 MS. PAYNE: I might also object for outside
7 the scope of the Commissioners' questions.

8 JUDGE DIPPELL: I'm going to overrule your
9 objection. I think he's still in his line of questions
10 about what the Commission should consider.

11 MS. PAYNE: Okay. I mean, we didn't get into
12 specifics on purchase price.

13 MR. ELLSWORTH: May I rephrase the question?

14 JUDGE DIPPELL: Yes.

15 BY MR. ELLSWORTH:

16 Q. Ms. Dietrich, the applicant did -- before the
17 Commission did state amount of anticipated revenue in
18 year two?

19 A. I know there were balance sheets and things
20 like that associated with that. I didn't dig into all
21 of that. Ms. Bolin may be able to answer those
22 questions.

23 Q. So that's Ms. Bolin. Were you present earlier
24 for the testimony of Mr. Cox?

25 A. I was.

1 Q. And did you hear his testimony as to what he
2 calculated the anticipated rates that would be charged
3 to the end users at the Osage Water Company assets?

4 MR. COOPER: I object to the form of the
5 question, because I don't think that's what happened
6 with Mr. Cox. I think Mr. Cox performed a mathematical
7 exercise based upon some numbers, but I don't think he
8 indicated that those were rates.

9 And in fact, I think he further testified that
10 there were all sorts of other things that would impact
11 revenue requirement.

12 JUDGE DIPPELL: I'm going to sustain that
13 objection and ask you to rephrase.

14 BY MR. ELLSWORTH:

15 Q. Ms. Dietrich, you were present earlier when
16 Mr. Cox did his mathematical calculation on what the
17 potential projected rates would be for the Osage Water
18 Company customers?

19 A. Yes.

20 Q. And if you compare that number to what the
21 Joint Bidders have stated in their testimony as to what
22 their rates would be, would you agree that that is
23 significantly higher?

24 A. I would agree that the hypothetical number is
25 significantly higher than what was put in the testimony.

1 Q. And what is the total amount of acquisition
2 incentive that the applicant is seeking?

3 A. I believe that might be confidential.

4 JUDGE DIPPELL: I think that is --

5 MR. ELLSWORTH: That's probably confidential.

6 JUDGE DIPPELL: -- beyond the scope of the
7 Commissioner's question and also in the testimony so
8 Commissioners can refer to that.

9 BY MR. ELLSWORTH:

10 Q. Ms. Dietrich, do you do any calculations with
11 respect to the costs of the financing or would I direct
12 those to Ms. Bolin as well?

13 A. I did not. I'm not sure that Ms. Bolin did
14 either in the context of this case.

15 MR. ELLSWORTH: Okay. No further questions.
16 I'm sorry. I do have one more. I apologize.

17 JUDGE DIPPELL: Go ahead.

18 BY MR. ELLSWORTH:

19 Q. We continually say that the Joint Bidders are
20 not regulated, but the truth is they're just not
21 regulated by the PSC; is that right?

22 A. Correct, not Commission regulated.

23 Q. Not Commission regulations, but they're still
24 regulated by the Missouri DNR and they're subject to
25 Missouri statutes, correct?

1 A. Correct.

2 MR. ELLSWORTH: No further questions.

3 JUDGE DIPPELL: Is there any further
4 cross-examination based on the Commission questions from
5 Public Counsel?

6 MR. HALL: No further questions at this time.

7 JUDGE DIPPELL: Is there redirect from Staff?

8 MS. PAYNE: Yes, thank you.

9 REDIRECT EXAMINATION BY MS. PAYNE:

10 Q. Ms. Dietrich, Mr. Cooper was asking you some
11 questions about the purchase price of the systems. When
12 Staff is recommending rate base in a rate case, does it
13 normally recommend more than the net book value for
14 inclusion in rates?

15 A. Not generally.

16 Q. Do you know what the net book value of the
17 systems has been calculated at this time?

18 A. It's in our Staff recommendation. I believe
19 it was --

20 Q. If you don't have the specific number in front
21 of you, that's okay.

22 A. I would have to dig through to find it.

23 Q. Okay. And Chairman Silvey was asking you some
24 questions about the rate impact. You mentioned we
25 consider all relevant factors; is that correct?

1 A. The Commission does, yes.

2 Q. And do we have all relevant factors before us
3 now?

4 A. We do not.

5 Q. Okay. And Mr. Hall was asking you some
6 questions about the Office of the Public Counsel's DR
7 23. Was Staff's recommendation based on a statement
8 from the Company that the acquisition would not occur
9 without the acquisition incentive?

10 A. Could you rephrase that?

11 Q. What did Staff base its recommendation
12 regarding the acquisition incentive in its
13 recommendation?

14 A. On all the various criterias that we had
15 discussed earlier in the rule subsection 4. There's
16 various things that the application has to demonstrate.

17 Q. Did Staff base a recommendation on the
18 Company's statement that the acquisition would not have
19 occurred without the acquisition incentive?

20 A. Staff did not make a determination on its own.
21 Whether the acquisition would have occurred or not,
22 Staff accepted Mr. Cox's statement.

23 Q. Okay. So when OPC asked for a position, did
24 Staff have a statement of its own regarding whether or
25 not the acquisition incentive affected the decision to

1 purchase?

2 A. I'm sorry. Could you repeat that?

3 Q. Yeah, that was incredibly complicated. Did
4 Staff have an independent position statement as far as
5 whether or not the acquisition would occur regardless of
6 the acquisition incentive?

7 A. No. Staff did not and does not have a
8 position on that.

9 Q. Thank you. All right. Mr. Ellsworth was
10 asking you some questions about what exactly happens in
11 an acquisition case regarding proposed improvements.
12 Does Staff make any prudency reviews when it's
13 considering an acquisition case?

14 A. No, that's not part of an acquisition case.
15 That would be part of a subsequent case, for instance, a
16 rate case.

17 Q. Okay. And for some clarification, there was
18 some questions about the request for an acquisition
19 incentive specifically from Mr. Ellsworth under 10.085.
20 To be clear, the Osage Utility Operating Company has
21 submitted a request for an acquisition incentive?

22 A. That's correct. The way the rule is
23 structured the request would be made in the acquisition
24 application and then the Commission would either
25 consider that, maybe authorize is the right word, and

1 then in the rate case would actually look at the details
2 and determine the amount and whether it should go
3 forward or not.

4 Q. So the Commission is not setting a dollar
5 amount in this case?

6 A. No, it's not.

7 Q. Okay. Thank you. Mr. Ellsworth also asked
8 you some questions about the standard not detrimental to
9 the public interest. Is that a balancing test?

10 A. I would consider it a balancing test balancing
11 the application or the detriments to the benefits of the
12 acquisition and in this case -- not in this case but in
13 the not detrimental standard the standard would be that
14 there would be no greater harm to the customers or to
15 the ratepayers by the acquisition than, say, for
16 instance, status quo.

17 Q. Okay. So benefits outweigh negatives?

18 A. No.

19 Q. Okay. Thank you. Are there any other
20 applications to acquire the Osage Water Company assets
21 before the Commission right now?

22 A. No.

23 Q. And going back to some of your questions from
24 Mr. Comley, does Staff consider different criteria in a
25 request for a new certificate as opposed to an

1 acquisition of an existing certificate?

2 A. Yes.

3 Q. And could you elaborate on what those are?

4 A. That was the discussion I was having with
5 Mr. Hall with reference to the Staff recommendation
6 where we talk about the Tartan criteria versus the TMF
7 criteria and also whether there is another entity in the
8 area capable of providing service.

9 Q. And did we consider that in regards to the
10 Osage Water Company?

11 A. Which one?

12 Q. Did we consider other entities?

13 A. Not related to Osage Water Company, no.

14 Q. Okay. Continuing on, is there a requirement
15 by law for Staff to check into alternative offers when
16 it's considering a request for an acquisition?

17 A. Not that I'm aware of, no.

18 Q. Is it staff's standard policy to do something
19 like that?

20 A. No.

21 Q. Did Staff do a review of the proposed
22 improvements that were suggested by OUOC when it was
23 considering whether or not the application was
24 detrimental to the public interest?

25 A. I guess it depends on what you mean by a

1 review. Staff reviewed the application. Staff went out
2 and looked at the systems. But as far as making a
3 determination as to whether they were appropriate or
4 not, no.

5 Q. And does Staff normally consider in an
6 acquisition case whether proposed improvements are
7 appropriate or not?

8 A. No.

9 Q. Would it do that in a rate case?

10 A. Yes.

11 MS. PAYNE: No further questions. Thank you.

12 JUDGE DIPPELL: Thank you. I believe that
13 concludes your testimony then, Ms. Dietrich. You may
14 step down.

15 THE WITNESS: Thank you.

16 (Witness excused.)

17 JUDGE DIPPELL: Staff like to call its next
18 witness?

19 MS. PAYNE: I apologize. Staff would call its
20 witness David Roos to the stand.

21 (Witness sworn.)

22 MS. PAYNE: Good afternoon.

23 DAVID ROOS, being sworn, testified as follows:

24 DIRECT EXAMINATION BY MS. PAYNE:

25 Q. Could you please state and spell your name for

1 the court reporter?

2 A. David Roos, R-o-o-s.

3 Q. And did you prepare or cause to be prepared
4 testimony in this proceeding that has been marked as
5 Exhibit 104?

6 A. I did.

7 Q. And do you have any changes or corrections to
8 make to that testimony at this time?

9 A. I do not.

10 Q. And if I were to ask you the same questions
11 contained in that testimony now, would your answers be
12 the same?

13 A. Yes.

14 MS. PAYNE: All right. Then I would offer
15 Staff's Exhibit 104.

16 JUDGE DIPPELL: Would there be any objection
17 to Exhibit 104? Seeing none, I will enter that into
18 evidence.

19 (STAFF'S EXHIBIT NO. 104 WAS RECEIVED INTO
20 EVIDENCE AND MADE A PART OF THIS RECORD.)

21 BY MS. PAYNE:

22 Q. Just for clarification purposes, did you also
23 sponsor portions of Staff's recommendation which was
24 attached to the direct testimony of Natelle Dietrich
25 that's been marked as Exhibit 100 in this case?

1 A. I did.

2 Q. Thank you. Do you have any changes or
3 corrections to make to any of that?

4 A. I do not.

5 MS. PAYNE: Thank you. Then I would tender
6 this witness for cross.

7 JUDGE DIPPELL: Is there any cross-examination
8 by OUOC?

9 MR. COOPER: Yes, Your Honor.

10 CROSS-EXAMINATION BY MR. COOPER:

11 Q. Mr. Roos, if you know, I think it was
12 mentioned -- well, let me ask this. I think it was
13 mentioned in an earlier question that Lake Ozark Water
14 and Sewer is the current operator of the Osage Water
15 Company facilities; is that correct, to your knowledge?

16 A. I don't know.

17 Q. You don't know?

18 A. No.

19 MR. COOPER: That's all the questions I have.

20 JUDGE DIPPELL: Anything from Cedar Glen?

21 MR. COMLEY: Yes.

22 CROSS-EXAMINATION BY MR. COMLEY:

23 Q. Mr. Roos, I think it was Ms. Dietrich that
24 confirmed that as part of your duties in connection with
25 rate and acquisition cases that you will perform system

1 inspections in connection with those cases?

2 A. Yes. I inspected the conditions of both the
3 water systems and the sewer systems.

4 Q. So you would be the Staff member who went out
5 and inspected the Cedar Glen's systems?

6 A. That's correct.

7 Q. In your surrebuttal you had mentioned
8 Mr. Thomas' proposal to add a moving bed bio reactor to
9 the Cedar Glen sewer system. Is that a correct
10 interpretation of your testimony?

11 A. Yes, it is.

12 Q. Are you familiar with this device?

13 A. Yes, I am.

14 Q. It has some disadvantages; isn't that correct?

15 A. It could have some disadvantages.

16 Q. Would one of them be that you have to have a
17 more highly trained operator?

18 A. I think that depends on how automated the
19 system is.

20 Q. Isn't it also true that there has to be a
21 regular taking of samples and analyze them in a lab by
22 hand to ensure that the bacteria is alive and healthy?

23 A. I think that's possible.

24 Q. And there is the cost; is that correct? It's
25 not inexpensive?

1 A. I don't know what the cost of the MBBR is.

2 Q. All right. You have not costed one in your
3 experience?

4 A. I have not.

5 Q. There's an expense for additional power, isn't
6 there? It has to be energized?

7 A. Additional power in addition to what's already
8 out there, yes.

9 Q. Right, right. I think Mr. Cooper may be
10 talking about page 7 of the Staff's revised
11 recommendation. If you can find that in your file.

12 A. Okay.

13 Q. The second -- the first full paragraph up
14 there, the second sentence says based upon a letter to
15 DNR dated June 8, 2018, from the contract operator for
16 the system, Lake of the Ozarks Water and Sewer, the
17 current treatment plant will meet the ammonia limits and
18 no new construction will be needed. Were you
19 responsible for this part of the memorandum?

20 A. Yes.

21 Q. And were you -- Did you receive that letter?
22 Is that part of what you did in connection with
23 preparing the memo?

24 A. I received that letter as part of a Sunshine
25 request from DNR.

1 Q. Okay. All right. There's another statement
2 there. A DNR sewer inspection report notes no
3 unsatisfactory conditions. Is that something that you
4 added to the memorandum yourself?

5 A. I think you're referring to DNR conducted an
6 inspection of the Cedar Glen water system?

7 Q. I think it says there, yes.

8 A. At that time Cedar Glen was found to be in
9 compliance with the safe drinking water law.

10 Q. Okay. And what about the sewer inspection?
11 That's what I was referring to on page 7. There's a
12 statement there that a DNR sewer inspection report notes
13 --

14 A. I'm sorry. I've got the old report. That
15 would be on page 8 of the old report.

16 Q. All right. All right.

17 A. Could you repeat the question, please?

18 Q. Well, I just wanted to confirm what your
19 finding was that a DNR sewer inspection report noted no
20 unsatisfactory conditions?

21 A. That's true.

22 Q. Regarding -- I'm going back to the MBBR and I
23 have highlighted in the revised recommendation the
24 bottom of the page there on page 7, Staff notes that the
25 MBBR that OUOC proposes for additional treatment would

1 primarily be used for additional ammonia removal. This
2 proposal is inconsistent with statements made by the
3 current operators of the system. Is that a correct
4 reading of your memo?

5 A. That is correct.

6 Q. Finally, Staff understands that OUOC's
7 proposal is preliminary but further details and
8 justification will be necessary if the Company seeks
9 inclusion of the MBBR upgrade in rates during its next
10 rate case. Would that be correct still?

11 A. That's correct.

12 Q. Had the Company given you any indication that
13 it's anything but preliminary at this stage?

14 A. I'm sorry. Could you repeat?

15 Q. Has the Company -- Has OUOC given you any
16 indication that the proposal is anything but preliminary
17 at this stage?

18 A. They have not.

19 MR. COMLEY: That's all. Thank you.

20 JUDGE DIPPELL: Is there anything from the
21 Joint Bidders?

22 MR. ELLSWORTH: Briefly.

23 CROSS-EXAMINATION BY MR. ELLSWORTH:

24 Q. Mr. Roos, in your surrebuttal testimony filed
25 in this case it appears you also spoke with LOWS, or

1 Lake of the Ozarks Water and Sewer, with respect to
2 Cedar Glen?

3 A. I did not speak with LOWS.

4 Q. In your statement -- Or in your testimony, I'm
5 sorry, it says this proposal -- I'm sorry. Look at page
6 4, that first paragraph lines 1 to 10. You note that
7 the applicant has proposed an MBBR and you said this
8 proposal is inconsistent with statements made by the
9 current operators of the system, Lake of the Ozarks
10 Water and Sewer, in a July 8, 2018 letter that the
11 system meets effluent limitations. So it is a letter
12 that communicated this to you?

13 A. That's right. That's the same letter that I
14 received in a DNR Sunshine request.

15 Q. Was that letter from DNR to LOWS?

16 A. That letter was a letter from Lake of the
17 Ozarks to DNR.

18 Q. Okay. Do you have any reason to disagree with
19 the statement made by LOWS to DNR regarding that the
20 systems there meet effluent limitations without further
21 upgrades?

22 A. I do.

23 Q. Okay. What's that?

24 A. The same type of letter was submitted to DNR
25 for other sewer systems at Osage and those systems have

1 now shown to be exceeding permit limits.

2 Q. When you say "Osage," could you -- I've heard
3 that a couple times now. What's Osage?

4 A. The current systems, the Osage.

5 Q. Osage Water Company?

6 A. Osage Water Company.

7 Q. So are you referring -- So you have to be
8 referring to the Chelsea Rose, the Eagle Woods or
9 Cimarron Bay; is that right?

10 A. I'm referring to the Cedar Glen, the Cimarron
11 Bay and the Eagle Woods.

12 Q. Have you done any testing of the effluent from
13 these systems, independent testing?

14 A. I have not.

15 MR. ELLSWORTH: No further questions.

16 JUDGE DIPPELL: Is there anything from Public
17 Counsel?

18 MR. HALL: Just -- Good afternoon, Mr. Roos.

19 THE WITNESS: Good afternoon.

20 CROSS-EXAMINATION BY MR. HALL:

21 Q. Just to clarify, are you a professional
22 engineer?

23 A. No, I am not.

24 MR. HALL: Thank you. No further questions.

25 JUDGE DIPPELL: Are there any questions from

1 the Commission?

2 CHAIRMAN SILVEY: Thank you.

3 QUESTIONS BY CHAIRMAN SILVEY:

4 Q. Thank you, Mr. Roos. Ms. Dietrich mentioned
5 the differential between the cost of the proposed
6 improvements of the Company versus the Joint Bidders
7 being fairly substantial. Would you agree with that?

8 A. Yes, I would.

9 Q. Would the interconnections and proposed
10 improvements to the system by the Joint Bidders be
11 sufficient to provide safe and adequate service?

12 A. I don't know.

13 Q. Did Staff look at that?

14 A. I looked at what was in testimony. I did not
15 do a thorough review of their proposal.

16 Q. Did you do a thorough review of the other
17 proposal?

18 A. I did not.

19 Q. So you wouldn't be able to say whether either
20 proposal would be adequate to provide safe and adequate
21 service?

22 A. I think at present they're preliminary
23 proposals and there's several steps that need to be
24 taken with DNR, and I think only after those steps are
25 taken could I know if things are safe and adequate.

1 Q. So if the Commission is looking at two
2 different proposals, would Staff be able to tell us at
3 this point even preliminarily which one is better than
4 the other or if one solves the problem and the other
5 doesn't or is Staff not able to give us that
6 information?

7 A. I think the proposal provided by the applicant
8 is a complete preliminary proposal with cost estimate.
9 I don't think what's been proposed other than that is a
10 complete proposal or a complete cost estimate.

11 COMMISSIONER RUPP: He didn't answer your
12 question.

13 CHAIRMAN SILVEY: I agree with the
14 Commissioner here. I don't think you answered my
15 question.

16 BY CHAIRMAN SILVEY:

17 Q. So you haven't really analyzed either
18 proposal?

19 A. I did look -- I did analyze the proposals. I
20 did look at the proposals.

21 Q. But neither proposal is fleshed out enough for
22 you to tell us whether it would result in safe and
23 adequate service?

24 A. I think that the applicant has provided a
25 proposal that is a good road map for safe and adequate

1 service. I think there's going to be some changes along
2 the way.

3 CHAIRMAN SILVEY: I don't think I have any
4 further questions at this time. I feel like I didn't
5 really get the answer, but I'll let other Commissioners
6 ask questions if they have them.

7 JUDGE DIPPELL: If something comes up, let me
8 know.

9 COMMISSIONER RUPP: I have a question.

10 QUESTIONS BY COMMISSIONER RUPP:

11 Q. To follow up on Chairman Silvey's questions,
12 so from what I heard you say and tell me if I'm stating
13 this correctly, I don't want to put words in your mouth,
14 is that you believe the application put forth by the
15 Company seeking the approval is a road map of which
16 would result in safe and adequate service?

17 A. That is correct.

18 Q. Okay. The joint applicants in their proposed
19 upgrades, can you make that -- can you speak to that?

20 A. I don't feel as confident about their proposal
21 that I do with the applicant's proposal.

22 COMMISSIONER RUPP: Thank you.

23 QUESTIONS BY JUDGE DIPPELL:

24 Q. The Staff has recommended several conditions
25 be put on the certificate, and one of those is to

1 resolve -- is No. 13 in the original, I don't think it
2 changed, resolve all issues regarding noncompliance with
3 Missouri Department of Natural Resources regulations for
4 all water and sewer systems. Do you know what issues
5 with noncompliance there are? Is that what has been
6 listed in Staff's report? Is that what that's referring
7 to?

8 A. That is referring to part of what's in Staff's
9 report.

10 JUDGE DIPPELL: Okay. All right. Are there
11 any further cross-examination questions based on
12 questions from the bench from OUOC?

13 MR. COOPER: No, Your Honor.

14 JUDGE DIPPELL: Cedar Glen?

15 MR. COMLEY: Thank you, Judge.

16 FURTHER CROSS-EXAMINATION BY MR. COMLEY:

17 Q. With respect to questions from Commissioner --
18 from Chairman Silvey, would it be your testimony, Mr.
19 Roos, that you don't know whether the cost estimates for
20 improvements to the Osage Water Company assets set out
21 in the testimony of OUOC are too high?

22 A. That's correct.

23 Q. And conversely you wouldn't know whether or
24 not the estimate for I think the Cedar Glen Sewer
25 Company improvements provided by Mr. Stone in his

1 testimony, his prefiled testimony, are too little?

2 A. I think it's incomplete, because I don't know
3 what the cost of running the pipeline and connecting the
4 system would be.

5 Q. You're talking about the interconnection
6 between the water systems, correct?

7 A. That's correct.

8 Q. All right. With respect to the -- and perhaps
9 you don't know the testimony, but I think his testimony
10 was about the improvements or needed improvements to the
11 Cedar Glen sewer system. Let's just deal with that.
12 You would not know based upon your review whether any
13 proposal made by the Joint Bidders for improvements to
14 the Cedar Glen sewer system are too low?

15 A. I don't know.

16 MR. COMLEY: That's all I have.

17 JUDGE DIPPELL: Anything from the Joint
18 Bidders based on the Commission questions?

19 MR. ELLSWORTH: No.

20 JUDGE DIPPELL: Anything from Public Counsel?

21 MR. HALL: Briefly.

22 FURTHER CROSS-EXAMINATION BY MR. HALL:

23 Q. Mr. Roos, the Chairman asked you about
24 determining which option could provide safe and adequate
25 service. Did Staff send a request to the Joint Bidders

1 or Cedar Glen to determine if their option could provide
2 safe and adequate service?

3 A. No.

4 MR. HALL: No further questions.

5 JUDGE DIPPELL: Is there redirect from Staff?

6 MS. PAYNE: Yes. Thank you, Your Honor.

7 REDIRECT EXAMINATION BY MS. PAYNE:

8 Q. Mr. Roos, Mr. Comley was asking you some
9 questions regarding the proposed improvements. Do you
10 believe the proposed improvements of the Osage Utility
11 Operating Company are reasonable?

12 A. Yes, I do.

13 Q. Can we state with certainty about any proposed
14 improvements at this stage in the proceeding regarding
15 the Osage Water Company?

16 A. No, we can't.

17 Q. The judge was asking you about what you
18 consider some of the necessary improvements might be at
19 the Osage Water Company systems. Did you look -- review
20 the systems for concerns regarding repairs, any health
21 concerns, anything along those lines?

22 A. Yes, I did.

23 Q. Did you notice concerns?

24 A. I did have concerns. I saw some bypassing and
25 at the Chelsea Rose subdivision sanitary sewer there

1 were visible signs of activated sludge on the ground.

2 Q. Okay. And then Commissioner Rupp was asking
3 you about some questions about the Joint Bidders and
4 some of the testimony that they have given in this
5 proceeding. Did they submit an application before the
6 Commission?

7 A. They did not.

8 Q. Did Staff have time to review their testimony
9 as it did the application of the Osage Utility Operating
10 Company?

11 A. No.

12 Q. So did we apply the same type of review
13 procedure to their statements as we were able to for the
14 Osage Utility Operating Company's application?

15 A. I did not.

16 Q. Okay. And then Chairman Silvey was asking you
17 some questions about balancing the competing statements
18 that have been made in this case. When we review a
19 case, are we charged with determining what is the best
20 proposal for a system?

21 A. No.

22 Q. If two competing applications were put before
23 Staff, could we say that both of them were not
24 detrimental to the public interest?

25 A. It might be possible. I don't know.

1 Q. Have we had such a situation?

2 A. Not that I'm aware of.

3 Q. Does Staff generally review potential costs in
4 an acquisition case?

5 A. Yes.

6 Q. Does Staff review -- determine costs in a rate
7 case?

8 A. We use actual costs in a rate case.

9 Q. Because they're determined at that time?

10 A. That's correct.

11 Q. Okay. You were asked several questions
12 regarding the moving bed bio reactor plant that's being
13 proposed. What's your understanding of why that might
14 be preferential as opposed to a sand filter treatment
15 plant?

16 A. The existing recirculating land filter was
17 constructed about 15 or 20 years ago and wasn't designed
18 to meet the effluent standard or the discharge limits
19 that are now in place. And that particular technology,
20 it's sort of hit or miss whether they're going to meet
21 those standards. Adding the MBBR would ensure that the
22 system would meet permit limits.

23 Q. So is an MBBR, as well as other improvements,
24 is this consistent with what Staff has seen from other
25 regulated water and sewer treatment systems?

1 A. It is.

2 Q. Okay. And then all the way back to the
3 beginning, Mr. Comley had asked you some questions about
4 what Staff investigated. Did you get an opportunity to
5 independently verify the letters that we received from
6 the Sunshine request of DNR?

7 A. I did not.

8 Q. Is it commonplace for Staff to do so?

9 A. No.

10 Q. You were also asked about the MBBR system
11 potentially having disadvantages. Do you recognize
12 disadvantages in other types of systems?

13 A. Yes.

14 Q. Is it safe to say that there could be
15 disadvantages to any type of treatment system?

16 A. There could be disadvantages in running the
17 current system as it is, because it may not be
18 continually meeting discharge limits.

19 MS. PAYNE: Thank you. I have no further
20 questions.

21 JUDGE DIPPELL: Thank you. I believe that
22 concludes your testimony, Mr. Roos. You may step down.

23 (Witness excused.)

24 JUDGE DIPPELL: After he gets himself gathered
25 up, you can call your next witness, Staff. Given that

1 it's 4:30, we still have at least half our witnesses,
2 I'm not seeing us wrapping up today. I'm just going to
3 call that one now. Let's go ahead with Staff's next
4 witness.

5 MS. PAYNE: All right. Staff would call its
6 witness Kim Bolin to the stand.

7 (Witness sworn.)

8 JUDGE DIPPELL: Go ahead.

9 KIMBERLY BOLIN, being sworn, testified as follows:

10 DIRECT EXAMINATION BY MS. PAYNE:

11 Q. Would you please state and spell your name for
12 the court reporter?

13 A. My name is Kimberly Bolin, and Bolin is
14 spelled B-o-l-i-n.

15 Q. Thank you, Ms. Bolin. By whom are you
16 employed and in what capacity?

17 A. I'm employed by the Missouri Public Service
18 Commissioner as a utility regulatory auditor.

19 Q. And did you prepare surrebuttal testimony
20 that's been marked as Exhibit 102 in this matter, as
21 well as sponsored portions of Staff's recommendation
22 that's been attached to the direct testimony and
23 supplemental testimony of Natelle Dietrich marked as
24 Exhibits 100 and 105 in this matter?

25 A. Yes, I did.

1 Q. Do you have any changes or corrections to make
2 to any of that testimony at this time?

3 A. No, I do not.

4 Q. If I were to ask you the same questions that
5 are contained in that testimony today, would your
6 answers be the same?

7 A. Yes, they would.

8 MS. PAYNE: All right. Then at this time I
9 will offer Exhibit 102, the surrebuttal testimony of Kim
10 Bolin.

11 JUDGE DIPPELL: Is there any objection to
12 Exhibit 102? Hearing none, I will admit that into
13 evidence.

14 (STAFF'S EXHIBIT 102 WAS RECEIVED INTO
15 EVIDENCE AND MADE A PART OF THIS RECORD.)

16 MS. PAYNE: And I will tender this witness for
17 cross.

18 JUDGE DIPPELL: Is there cross-examination by
19 OUOC?

20 MR. COOPER: Yes, Your Honor.

21 CROSS-EXAMINATION BY MR. COOPER:

22 Q. Ms. Bolin, would you agree that the rate case
23 or the rate base figures or net original cost figures
24 that Staff computes during the course of an acquisition
25 case are essentially estimates at that point in time?

1 A. Yes, they are.

2 Q. And so ultimately if you get to a rate case,
3 that's where the Staff does its analysis and takes a
4 final position in terms of ratemaking as to what those
5 numbers should be, correct?

6 A. That is correct.

7 MR. COOPER: That's all the questions I have.

8 JUDGE DIPPELL: Are there any questions from
9 Cedar Glen?

10 MR. COMLEY: Thank you, no.

11 JUDGE DIPPELL: Anything from the Joint
12 Bidders?

13 MR. ELLSWORTH: Yes.

14 CROSS-EXAMINATION BY MR. ELLSWORTH:

15 Q. Ms. Bolin, were you present for Mr. Cox's
16 testimony earlier?

17 A. Yes, I was.

18 Q. And did you hear his testimony with respect to
19 the estimates of rates?

20 A. I heard him calculate some numbers.

21 Q. Did you hear the ultimate number he calculated
22 as the estimate for water and sewer rates within the
23 Osage Water Company systems?

24 A. I don't know if those were exactly rates, but
25 I heard the estimates he calculated.

1 Q. Correct. I mean, I agree that they're
2 estimates as well. We can all agree to that. Have you
3 reviewed the estimates of the Joint Bidders with respect
4 to the rates they would charge -- they anticipated they
5 would charge for the Osage Water Company in this case?

6 A. No, I have not.

7 Q. So you wouldn't have an opinion as to whether
8 there would be a significant harm to the ratepayer if
9 the application was approved?

10 A. I have not reviewed the details behind Osage
11 Utility Operating Company's rates and I have not
12 reviewed the details behind the Joint Bidders' rates.

13 Q. Without getting into any confidential
14 questions, have you reviewed what was Exhibit JC-J3; are
15 you familiar with that?

16 A. I have looked at it briefly, but I did not get
17 into the details. Usually when we as auditors with the
18 Public Service Commission determine rates we look at --
19 we don't just take the Company's word on numbers. We
20 look at invoices, we look at bids.

21 Q. Okay. Do you look --

22 A. We look at reasonableness.

23 Q. Do you look at the reasonableness of
24 financing?

25 A. We have a department that does that, yes.

1 Q. Do you compare the potential financial terms
2 associated with the costs of making -- purchasing and
3 making repairs?

4 A. They look at the different loans and
5 financing.

6 Q. Okay. But that's not something you do?

7 A. I do not do that, no.

8 MR. ELLSWORTH: All right. No further
9 questions. Thank you.

10 JUDGE DIPPELL: Thank you. Is there
11 cross-examination from Public Counsel?

12 MR. HALL: Yes. Good afternoon, Ms. Bolin.

13 THE WITNESS: Good afternoon.

14 CROSS-EXAMINATION BY MR. HALL:

15 Q. Were you in the room when I was questioning
16 Ms. Dietrich?

17 A. Yes, I was.

18 Q. Since I was asking her about your testimony, I
19 guess it's only fair I ask you about your testimony.
20 Could you please turn to page 4 of your surrebuttal?

21 A. I'm there.

22 Q. Just for the purpose of the record I'm looking
23 at lines 1 through 10 as to -- this was a Q&A written as
24 to whether or not Central States Water Resources would
25 have purchased the Osage systems but for the probability

1 of the acquisition incentive. Am I seeing that
2 correctly?

3 A. I was relating this to their purchasing of any
4 distressed system.

5 Q. Ms. Dietrich had remarked that she did not
6 perceive this Q&A to present an endorsement of the view
7 that Central States Water Resources wouldn't have bought
8 the Osage Water system but for the acquisition
9 incentive. Do you recall her saying that?

10 A. Yes, I do.

11 Q. Do you agree with that assessment?

12 A. I agree with it. I am quoting his testimony.

13 Q. And so you would not characterize your
14 testimony as supporting the conclusion that the
15 acquisition would not occur but for incentive?

16 A. I am simply stating that is what he said using
17 a reasoning behind the thought of they're not going to
18 purchase -- somebody -- just because someone purchases a
19 troubled or failing system in the past does not mean
20 that they have to in the future without the acquisition.

21 Q. And in response to a question from counsel for
22 the Joint Bidders, you remarked that, correct me if I'm
23 wrong, but you said something to the effect we don't
24 just take the Company's word on numbers?

25 A. That is correct. We look at invoices, we look

1 at bids, we look at reasonableness to cost.

2 Q. Just like in that same thought of trust and
3 verify, we shouldn't just take the Company's word on
4 this issue then?

5 A. I think that's the only thing we have right
6 now to use.

7 MR. HALL: Thank you. No further questions.

8 JUDGE DIPPELL: Any questions from the
9 Commission? Mr. Chairman?

10 CHAIRMAN SILVEY: Thank you.

11 QUESTIONS BY CHAIRMAN SILVEY:

12 Q. We'll stay on that page actually of your
13 surrebuttal testimony. I'm curious right after that
14 exchange starting on line 11 the question kind of goes
15 off in one direction and then finishes with a completely
16 different question. I'd like to look at line 11. It
17 says on page 13 of OPC Witness Roth's rebuttal she
18 states, quote, the fact that there were multiple bidders
19 for the system willing to purchase the system at a lower
20 price is a clear indication that the sale would have
21 occurred without the probability of obtaining an
22 acquisition adjustment, end quote. Then it asks a
23 question about how long they've been under the guidance
24 of receiver, which has nothing to do with the first part
25 of that question. So I'm interested in the first part

1 of that question. What is your take on that statement?
2 Do you agree with that statement or do you disagree with
3 that statement?

4 A. I think because we're strictly looking at this
5 acquisition by Osage Utility Operating Company and their
6 statement that the likelihood of them purchasing the
7 system without an incentive is what I'm trying to get at
8 there. We weren't looking at the fact that there were
9 multiple bidders.

10 Q. You're aware of the fact there were multiple
11 bidders?

12 A. There were multiple bidders, yes.

13 Q. So in your opinion does the fact that there
14 were multiple bidders show that the incentive is
15 necessary or not necessary?

16 A. Well, it's interesting. The multiple bidders
17 all bid over net book value. For some reason the system
18 they were going to buy it above net book value, the
19 other bidders.

20 Q. Okay. So you say we don't take the Company's
21 word for it, but all we have is the Company's word --

22 A. On this that is correct.

23 Q. -- in light of additional facts?

24 A. Correct. I don't know that those -- that that
25 -- the multiple bidders affects this acquisition.

1 Q. But they were multiple bidders on this
2 acquisition?

3 A. To buy the system but we were strictly looking
4 at Osage Utility Operating Company buying the system.

5 Q. So we don't -- we just ignore the rest of
6 that. We just ignore that there were other people
7 bidding for it as well?

8 A. I don't know that that would impact Osage
9 Utility Operating Company's willingness to buy the
10 system. They have said they would have to reevaluate
11 this purchase if they do not get the incentive.

12 Q. Okay. You also mentioned that the Joint
13 Bidders aren't regulated and would not be required to
14 consider net book value when setting rates; is that
15 correct?

16 A. That is correct.

17 Q. Why does that matter?

18 A. They may be able to, in determining their own
19 rates may be able to use the purchase price, the
20 800,000. So basically they would be getting an
21 acquisition incentive.

22 Q. Is that what statute allows?

23 A. I don't know exactly how they determined their
24 rates. I've never determined rates for a non-Commission
25 regulated system.

1 Q. So you don't know that that is the case; you
2 just don't know that it's not the case?

3 A. That is correct.

4 Q. Do you think it would be better or worse for
5 customers to have the Joint Bidders acquire the system?

6 A. I'm not sure. I did not evaluate their case.

7 CHAIRMAN SILVEY: Quick question for you,
8 Judge. If I were to ask about that, does that need to
9 be --

10 JUDGE DIPPELL: Well, let me just -- Is the
11 estimated annual increase to the revenue requirement, is
12 that a confidential number?

13 MR. COOPER: I think, yes, it would be, if
14 you're talking about the difference between the year
15 one, year two numbers that we looked at previously in
16 that confidential schedule.

17 JUDGE DIPPELL: I think that's a number in
18 Staff's recommendation. Is that where that number came
19 from?

20 MR. JOHNSON: In the revised memo.

21 JUDGE DIPPELL: Do you want to go in camera to
22 ask about that number specifically?

23 CHAIRMAN SILVEY: Yeah, if we could.

24 JUDGE DIPPELL: Let's go off the record for
25 just a second and let me look this up and make sure.

1 MR. HALL: We were just going to posit we
2 don't believe it is. If you're to go off the record to
3 determine that.

4 JUDGE DIPPELL: Let me go off the record just
5 to see if this is, in fact, a confidential number.

6 (Off the record.)

7 JUDGE DIPPELL: Let's go ahead and go back on
8 the record. Yeah, I found that number is not highly
9 confidential and it is in Staff's recommendation as
10 such.

11 MR. COOPER: A revenue requirement number? I
12 didn't remember any revenue requirement numbers.

13 JUDGE DIPPELL: I'm looking on page 24 of 26
14 of the red lined version of Staff's.

15 MR. COOPER: I don't have the red lined
16 version. I've got the revised.

17 JUDGE DIPPELL: It's in the section called
18 Request for Acquisition Incentives.

19 MS. PAYNE: If I can clarify, it might help.
20 The number that is red lined is confidential. The
21 number that is after it we do not -- the actual -- the
22 revenue requirement that's listed is not.

23 JUDGE DIPPELL: The sentence I'm looking at it
24 says the estimated annual increase to revenue
25 requirement associated with the acquisition premium is

1 approximately and has a number but it's not designated
2 as confidential.

3 MS. PAYNE: Right. That was not considered
4 highly confidential. I mean, I defer to the Company as
5 to what discussed or not.

6 MR. COOPER: That's not -- I don't view that
7 as a total revenue requirement number, right?

8 JUDGE DIPPELL: Right.

9 MR. COOPER: It's a revenue requirement
10 associated with Staff's proposed acquisition premium
11 which is what was throwing me off.

12 JUDGE DIPPELL: Okay. I apologize,
13 Mr. Chairman, but we have determined you can go ahead
14 and ask your question.

15 CHAIRMAN SILVEY: I can ask my question.

16 MR. HALL: Actually, Your Honor, part of my
17 neglect to bring this up earlier. While looking at page
18 24, the suggested acquisition premium number is
19 confidential. I note that that -- So it was
20 confidential in the previous recommendation because the
21 acquisition price for Reflections was confidential.
22 Since that number is calculated based on the purchase
23 price number of 465 put on page 23 and the rate base
24 value on page 22, I don't see why the Staff's
25 recommended acquisition premium number is confidential

1 and actually I make a standing motion at this time to
2 make it nonconfidential.

3 JUDGE DIPPELL: I'm seeing Mr. Cooper.

4 MR. COOPER: Yeah, we're okay with that.

5 JUDGE DIPPELL: Okay. So that number is also
6 located on page 24 of 26 of the red lined version of
7 Staff's supplemental report, and other places where it
8 is located I will make as no longer confidential because
9 it has since become public.

10 Now, Mr. Chairman, you may ask your question
11 if you can remember it.

12 CHAIRMAN SILVEY: Okay. Luckily I have it
13 written down.

14 BY CHAIRMAN SILVEY:

15 Q. Okay. How did Staff calculate in its revised
16 memo in the request for acquisition incentive section
17 the estimated annual increase to the revenue requirement
18 to be \$17,516 for the acquisition incentive?

19 A. You want the mechanics of it or do you want
20 how we determined the 465 -- 465,000 is the price to
21 use?

22 Q. So the 465 is then broken down. Is that why
23 we have 17,000 annually?

24 A. What I do is I compared the 465 to net book
25 value as of December 31 and used a rate of return that

1 was based on the Company's last -- not the Company but
2 CWSR's affiliate Indian Hills last order rate of return
3 and determined that is the amount of revenue required,
4 plus I also did an amortization of 2.76 percent which is
5 roughly the composite depreciation rate of that amount
6 annually.

7 Q. Okay. And the reason for using an in-house?

8 A. It was the most recent affiliate that had a
9 rate case in front of us and it was an ordered rate of
10 return.

11 Q. Okay.

12 A. We might see that similar -- I'm not sure if
13 we would see the same rate of return in the next case
14 but that was a good estimate to use and these are
15 estimated based on several factors that could change.

16 CHAIRMAN SILVEY: Okay. Thank you, Judge.
17 That was all my questions for now.

18 JUDGE DIPPELL: Thank you. Commissioner
19 Kenney, did you have questions?

20 COMMISSIONER KENNEY: No.

21 JUDGE DIPPELL: Commissioner Rupp?

22 COMMISSIONER RUPP: I do have a question but I
23 kind of forgot it. I had a question before we did all
24 that other stuff. I'm going to just start talking and
25 see if it comes to my head. If you feel like you can

1 answer something that I throw at you, please do.

2 QUESTIONS BY COMMISSIONER RUPP:

3 Q. So getting back to the question of what the
4 Company was asking for, would they have purchased or put
5 in the application without the application premium.
6 Going back to their original bid before there was a
7 clear title and it was initially much lower?

8 A. Before the clear title, no, it was not.

9 Q. So there were initially when they started the
10 process was the same amount that they're purchasing at
11 now?

12 A. From what I've been able to tell, the multiple
13 bids that were done, one was done January 14, 2015 and
14 they had a bid of 479,000.

15 Q. Correct. And that is much lower --

16 A. Lower than the 800,000, that is correct.

17 Q. So is the question that -- So when the Company
18 made that bid, there was no rule for acquisition
19 premium?

20 A. That is correct. That was in January of 2015.

21 Q. So the question -- Is it better to frame the
22 question that the Company wouldn't make the purchase
23 without an acquisition premium or is it the Company
24 wouldn't pay the winning bid price without the
25 acquisition premium because they put in a bid it was

1 much lower before there was a thing. Is that what we
2 should be looking at?

3 A. I'm not sure. I'm not sure behind the
4 Company's reasoning on why they went to 800,000.

5 Q. So if the Company has stated they would not
6 proceed with the purchase without the acquisition
7 premium, we could then deduce that the reason they
8 wanted to match the bid was due to the opportunity to
9 get the acquisition premium to help recoup their cost?

10 A. Possibly.

11 CHAIRMAN SILVEY: Okay. Thank you.

12 QUESTIONS BY JUDGE DIPPELL:

13 Q. Ms. Bolin, in Staff's revised recommendation,
14 and again I'm looking at the red line version, on page
15 23 under the request for acquisition incentives, can you
16 explain to me how Staff's opinion changed or didn't
17 change because of the Commission bifurcating the
18 Reflections portion out?

19 A. I think that would be better addressed to Jim
20 Busch.

21 JUDGE DIPPELL: Okay. Okay. Are there any --

22 COMMISSIONER RUPP: Is he a witness?

23 JUDGE DIPPELL: I'm sorry. Mr. Busch has been
24 added because he sponsored these parts of the Staff
25 report. If there are questions for him, he will be

1 available.

2 Is there any further cross-examination based
3 on questions from the bench from OUOC?

4 MR. COOPER: Yes, thank you, Your Honor.

5 FURTHER CROSS-EXAMINATION BY MR. COOPER:

6 Q. Ms. Bolin, you were asked about whether you I
7 think compared rates between OUOC and the Joint Bidders.
8 Can you say with any certainty what rates will be two
9 years from now if OUOC is authorized to acquire the
10 assets?

11 A. No, I cannot.

12 Q. Can anyone?

13 A. I don't think so.

14 Q. Why not?

15 A. We don't have all of the expenses and the
16 final plant improvements and any prudence adjustments,
17 any disallowances of cost. We don't know those yet.

18 Q. Would your answer be the same as to the rates
19 of the Joint Bidders if they were to acquire the assets?

20 A. I'm not sure how they develop their rates.

21 Q. You were asked some questions from the
22 Chairman about this Q&A that starts on line 11 of page 4
23 of your testimony. It starts off talking about I think
24 that the multiple bidders and then it ultimately asks
25 how long the Company has been under the guidance of a

1 receiver. Would you agree that during the 14 years or
2 so that the Osage Water Company systems were under the
3 control of I guess first an interim receiver and then a
4 permanent receiver, the receiver was never able to sell
5 those systems?

6 A. That is correct.

7 Q. And the opportunity or the bidders that are
8 being referred to in this question, they came about in
9 the bankruptcy proceeding, correct?

10 A. The sale came out of a bankruptcy proceeding,
11 yes.

12 Q. And ultimately at a time when the Commission's
13 nonviable utility acquisition rule is in effect,
14 correct?

15 A. I don't know that -- It was effective January
16 31. However, it was I think the final rulemaking order
17 happened before the auction.

18 Q. We're sitting here. It's in effect today
19 though, correct?

20 A. It's in effect today.

21 MR. COOPER: That's all the questions I have.

22 JUDGE DIPPELL: Any further cross-examination
23 from Cedar Glen?

24 MR. COMLEY: I have no questions.

25 JUDGE DIPPELL: Is there cross-examination

1 based on Commission questions from the Joint Bidders?

2 MR. ELLSWORTH: No further questions.

3 JUDGE DIPPELL: Public Counsel?

4 MR. HALL: No further questions.

5 JUDGE DIPPELL: Is there redirect?

6 MS. PAYNE: Briefly, Your Honor.

7 REDIRECT EXAMINATION BY MS. PAYNE:

8 Q. You were asked several questions about Rule
9 10.085. Is there any kind of a test included in the
10 rule for Staff to utilize to know whether or not an
11 acquisition would occur without an acquisition
12 incentive?

13 A. No, there's not.

14 Q. Do we have any prior guidance from the
15 Commission regarding this rule?

16 A. This is the first case. So no, we do not.

17 Q. Okay. If the Commission approves an incentive
18 acquisition in this case, would that be determined now?

19 A. The amount of the acquisition?

20 Q. Correct.

21 A. No, it would not. It could be determined
22 later.

23 Q. Could the Commission determine that an
24 acquisition incentive is inappropriate in a future rate
25 case?

1 A. It is possible.

2 Q. And finally, has Staff been asked to review
3 any proposed rates at this time? I'm sorry. Let me
4 rephrase. Is it proper for Staff to review the proposed
5 rates at this time?

6 A. It is not because we don't have all the known
7 and measurable items to determine rates.

8 Q. It's more appropriate to wait for a future
9 rate case?

10 A. Yes, it is.

11 MS. PAYNE: No further questions. Thank you.

12 JUDGE DIPPELL: Thank you. Ms. Bolin, that
13 concludes your testimony and you may step down.

14 (Witness excused.)

15 JUDGE DIPPELL: Seeing that it is two minutes
16 until five o'clock, I think this is a good place to
17 break for the day and we will return tomorrow at 8:30 to
18 finish up our witnesses hopefully before the
19 Commission's agenda at noon.

20 MS. PAYNE: Judge, I would ask Staff's witness
21 Scott Glasgow is the last one that's on our list of
22 issues. I'm not sure if anyone has questions for him.
23 Would it be possible to determine that at this time so
24 we could know if he would be released for tomorrow's
25 hearing?

1 JUDGE DIPPELL: We can certainly ask. Does
2 anyone know of questions for Staff's witness or know
3 that you don't have questions?

4 MR. COOPER: We do not have questions.

5 MR. HALL: Public Counsel has no questions for
6 Mr. Glasgow.

7 MR. COMLEY: Cedar Glen has no questions.

8 MR. ELLSWORTH: I have no questions.

9 JUDGE DIPPELL: All right. I don't believe
10 the Commissioners have any questions for Mr. Glasgow.

11 MS. PAYNE: If it would be okay, I would offer
12 his testimony at this time. It's been marked as Exhibit
13 103.

14 JUDGE DIPPELL: All right. Would there be any
15 objection to Exhibit 103?

16 MR. COMLEY: No objection.

17 JUDGE DIPPELL: Seeing no objections, I will
18 admit that.

19 (STAFF'S EXHIBIT 103 WAS RECEIVED INTO
20 EVIDENCE AND MADE A PART OF THIS RECORD.)

21 JUDGE DIPPELL: Commissioner, did you want to
22 ask questions of Mr. Busch? You seemed intrigued --

23 COMMISSIONER RUPP: No. He wasn't on my list.
24 It was on my iPad so I didn't update it.

25 JUDGE DIPPELL: Is Mr. Busch available

1 tomorrow if I should decide I want to ask him my
2 question?

3 MS. PAYNE: I'm sure we could make him
4 available if we need to.

5 JUDGE DIPPELL: All right. Then we will just
6 wait for that until tomorrow.

7 MS. PAYNE: Thank you, Judge.

8 JUDGE DIPPELL: Is there anything else before
9 we go off the record? Okay. Then we can go off the
10 record.

11 (Off the record.)

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