

In the Matter of:
CARL R. MILLS TRUST CERTIFICATE

WA-2018-0370 VOL. II

June 24, 2019



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BEFORE THE PUBLIC SERVICE COMMISSION

STATE OF MISSOURI

TRANSCRIPT OF PROCEEDINGS

Evidentiary Hearing

June 24, 2019

Jefferson City, Missouri

Volume 2

In The Matter Carl R. Mills Trust)
Certificate of Convenience and)
Necessity Authorizing It To Install,)
Own, Acquire- Construct, Operate,)File No. WA-2018-0370
Control, Manage And Maintain Water)
Systems In Carriage Oaks Estates)

JOHN CLARK, Presiding
REGULATORY LAW JUDGE
DANIEL HALL,
WILLIAM KENNEY,
MAIDA COLEMAN,
COMMISSIONERS.

REPORTED BY:
Lisa M. Banks, CCR
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FOR: Staff of the Missouri Public Counsel Commission

1 JUDGE CLARK: Good morning. Today is June
2 24th, 2019. The Commission has set aside this time today
3 for an evidentiary hearing in The Matter of Carl R. Mills
4 Trust Application for Certificate of Convenience and
5 Necessity Authorizing It To Install, Own, Acquire,
6 Construct, Operate, Control, Manage and Maintain a Water
7 System in the Carriage Oaks Estates. This is File Number
8 WA-2018-0370.

9 My name is John Clark. I'm the regulatory
10 law judge presiding over this hearing. Normally at this
11 point I'd have the parties enter their appearance, but what
12 I'm going to say is at the time this hearing was set the ten
13 o'clock agenda meeting had not yet been set. And given that
14 there has been some interest in observing this hearing, and
15 it's my preference not to stop the hearing in the middle of
16 somebody's opening or in the middle of a witness testifying,
17 what I'm going to do at this point is, if there is no
18 preliminary matters -- I intend to take up those -- but I
19 intend to recess until after the agenda meeting, which I
20 think should be around 10:30.

21 Are there any preliminary matters to take up
22 at this time?

23 MR. JOHNSON: The only thing may be exhibit
24 numbers, Judge. Is there a certain way we would like to do
25 those today?

1 JUDGE CLARK: Given the low number of
2 witnesses, did I specify -- let me ask a question: Did I
3 specify in my procedural order what the numbers would be?
4 And I have a copy of that I can reference. It appears that
5 Carl Mills is 1 through 99; Commission Staff is 100 through
6 199; the Office of the Public Counsel 200 through 299; and
7 the Interveners are 300 through 399. So it certainly would
8 be helpful to the court reporter if you're exhibits were
9 numbered and ready to go.

10 MR. JOHNSON: Thank you, Judge.

11 JUDGE CLARK: Are there any other
12 preliminary matters? All right. Then we're going to recess
13 until after the agenda meeting. Like I said, I expect that
14 to be around 10:30, but you know, I don't know exactly when
15 the agenda is going end. You're free to do what you like.
16 If you want to talk to each other, that's fine. If you want
17 to go get coffee, that's fine. So we'll recess until after
18 agenda.

19 (A recess was taken.)

20 JUDGE CLARK: Okay. It's now 10:30 a.m.
21 Let's go back on the record in the Matter of Carl R. Mills'
22 application for certificate of convenience of necessity. We
23 left off addressing preliminary matters. Are there any
24 other preliminary matters to address at this time? I see no
25 hands.

1 In that case, I'm going to go on and have
2 counsel for the parties introduce themselves starting with
3 Carl R. Mills.

4 JUDGE CLARK: Mr. Mills, you are
5 representing yourself. Correct?

6 MR. MILLS: Yes.

7 JUDGE CLARK: And can you pull your
8 microphone over so that --

9 MR. MILLS: How is that? Can you hear me?

10 JUDGE CLARK: I can. Thank you very much.
11 You are representing yourself; is that correct?

12 MR. MILLS: Yes, sir.

13 JUDGE CLARK: And just a second we will go
14 over opening statements. Because you were represented --
15 well, not because -- you were represented up until just a
16 few weeks ago by previous attorneys who have been handling
17 the case throughout this, you are free to represent yourself
18 since you are not personally a corporation. However, I am
19 going to hold you to the same standards that I hold the
20 other attorneys to. Do you understand that?

21 MR. MILLS: Okay.

22 JUDGE CLARK: All right. And counsel for
23 the commission staff?

24 MR. JOHNSON: Thank you, Judge. Appearing
25 on behalf of the Staff of the Missouri Public Service

1 Commission, Mark Johnson and Alexandra Klaus.

2 JUDGE CLARK: Thank you. And on behalf of
3 the Office of the Public Counsel?

4 MR. CLIZER: Good morning, Your Honor.
5 Appearing on behalf of the Office of Public Counsel, John
6 Clizer. My information has been provided to the court
7 reporter.

8 JUDGE CLARK: Thank you. And finally, on
9 behalf of the Intervenor?

10 MR. FINKENBINDER: Good morning, Your Honor.
11 Karl Finkenbinder as counsel for the Intervenors with Derald
12 Morgan -- John Derald Morgan present and also William and
13 Gloria Phipps as well.

14 JUDGE CLARK: Thank you. Is there anybody I
15 haven't called? I see no hands.

16 I need to advise everybody to silence their
17 cell phones if they haven't done so already.

18 Joining me now is Commissioner Hall. This
19 is live streaming so that other commissioners will have the
20 option to watch if they don't drift in and out. Are there
21 -- we've addressed preliminary motions.

22 I'm going to go over the witness list for
23 the day and based upon the order of witnesses put forth by
24 the parties, we will start with Mr. Mills. You will be your
25 own first witness. Then we have -- followed by Staff

1 witnesses, Amanda McMellen. Am I saying that right?

2 MS. MCMELLEN Correct.

3 JUDGE CLARK: Thank you. And James Merciel.
4 Finally, the Intervenor's witness Derald Morgan who was just
5 indicated as here today as well. And I will follow the
6 order of cross-examination as put forth by the parties.

7 Before we left off, I assume everybody has
8 numbered their exhibits and provided copies to the court
9 reporter, if not provide them at the time they're offered.

10 And the parties submitted and filed a joint
11 stipulation of undisputed facts and in regard to that I'm
12 going to make that Commission Exhibit 1. Are there any
13 objections to making that Commission Exhibit 1? I see no
14 hands.

15 Commission Exhibit 1 is admitted onto the
16 hearing record.

17 (WHEREIN; Commission Exhibit 1 was offered
18 and received into evidence.)

19 JUDGE CLARK: Okay. At this time we will
20 begin with opening statements. So Mr. Mills, do you have
21 opening statement you'd like to make? If you'd like to make
22 it, please come up to the podium.

23 MR. MILLS: Oh.

24 JUDGE CLARK: Opening statements are not
25 where you lay out your entire argument. Opening statements

1 are to give a preview of your position and any evidence you
2 think will be supporting -- will be offering that will be
3 supporting your position. Okay?

4 MR. MILLS: Okay. As I understand it, the
5 purpose of this commission meeting is to determine an
6 account that was rebuttal testimony of Mr. Morgan on behalf
7 of the Intervenors of the other three parties that he has
8 claims of my ability to be able to manage a water or sewer
9 treatment plant and whether or not we have safe water, I
10 think, is the primary thrust of this meeting today. That's
11 what I'm seeing from, I think -- that I was given from Carl
12 that -- I looked through the minutes of the things that he
13 was going to discuss. I'll be happy to answer anything that
14 he has with regard to that.

15 I think I'm here to substantiate the
16 feelings of Carriage Oaks Estates that we have a subdivision
17 that has been there for -- come Thanksgiving, will be 20
18 years now. And we've never had any -- any problems with
19 unsafe water, improper sewer treatment facilities not
20 working. On occasion there are pumps replaced, there are
21 things that happen. We do tests quarterly on the sewer
22 treatment plant. That's required by the Department of
23 Natural Resources. The well, on the other hand, is less
24 cumbersome in that it -- we can test that any time we want.
25 I have done it on average of about once or twice a year for

1 the past 20 years and we've never had a problem, but oddly
2 enough two weeks ago we had a problem that we had an E. Coli
3 factor popped up in one of the tests.

4 I addressed that issue and found out from
5 Lefty's Well, who installed our well 20 years ago, that in
6 order to do a real test it's best if you heat the hose
7 vehicle or the source that you're getting the collection of
8 water from. So make sure you sterilize that particular part
9 of -- I've always used a hydrant on the side of the house.
10 And he said simply just take a -- something that you would
11 start a barbecue pit fire with and put that on the hose bib
12 and heat it up so you can kill anything that's in and around
13 that and then turning the water on, turn it off, heat it
14 again and then take a test, would be the best way to do it
15 so that nothing could have climbed up next to the hose bib
16 in the interim time that you haven't been testing, something
17 could happen.

18 And I think maybe that is what happened in
19 this case because it was the first failure in 20 years. And
20 once I disinfected that hose bib and took another test
21 everything was fine on the second test a week later. So
22 they were correct. It's just another feature that we would
23 have to add anytime we want to do a test, we will
24 pre-disinfect that source that we are going to use before we
25 take a test. And that's been our source of trying to keep

1 and clean and pure water to drink.

2 We are not necessarily trying to protect
3 irrigation water that comes through hose bibs because it is
4 not going into your house. It is not going into your water
5 heaters or bathtubs or your drinking water. Irrigation
6 water should be fine. You can drink after your hose bib if
7 you want to. I think the water is probably just about as
8 safe, but we don't because if in fact we were chlorinating
9 water, which we have not done -- and that was based on the
10 recommendations of and/or the comments made from the
11 Department of Natural Resources that unless we had at least
12 15 houses or 25 people, they will not be after us to be
13 chlorinating the water. In their opinion it was not
14 necessary. So we gone with that statement from the
15 beginning, 20 years ago, and it has not been a problem.

16 We want clean water. Even if you're going
17 to irrigate with it, it is possible you can drink out of
18 your hose if you want to. People have probably done that
19 all of their lives, but -- and some of gotten sick because
20 of that possibly. But your irrigation water and your water
21 that you drink, we've only -- and I, as a developer, have
22 always recommended to the builders or the homeowners that
23 when they get their plumbing put into their house, they have
24 a filter put in and that is just for -- for safe purposes of
25 any kind. It blocks out any kind of rust that might be in

1 the well. According to Lefty's Well, there isn't a well he
2 ever drilled that didn't have a certain amount of rust
3 unless it was a perfect state of being that you could get
4 pure water without anything in it because you're going to
5 get some ground issues with some rust or whatever in water
6 in any well. They're not harmful necessarily, but this
7 would be the irrigation water we're talking about. But when
8 you put something into your house it's good if you put a
9 filter on your house.

10 I was in -- as a matter fact in the filter
11 business for about five years of my life. I worked for Fram
12 Corporation, which is a major automotive filter company
13 which also did household type filters. And I know the value
14 of filtration if anybody does because of that. And
15 especially drinking water, not just for motor oil and so
16 forth. Filtration is an important thing, but -- and if you
17 put it in your house it's just a safeguard that keeps your
18 family safe and anyone who is visiting.

19 There is not much to elaborate on I don't
20 think beyond that. If there is -- if there is concerns and
21 somebody wanted us to -- when we take tests to announce this
22 to the other homeowners, which has never been requested
23 ever, but if it was I would be more than happy to give any
24 -- any findings that we have from our water testing at any
25 time. I think the only time they got an ear full was when

1 we did have, two weeks ago, the first failure of E. Coli
2 show up, traces in the water and I immediately got on the
3 cell phone and advised everybody of the situation. And that
4 we would go after it and find out what caused it or
5 whatever. It turns out, I think it was my own water hose
6 that probably caused this particular failure, but once I
7 sanitized that faucet and used it to do the second test five
8 days later it was fine. So we're hopefully back to normal.

9 And outside of that, as far as being
10 qualified to be able to operate -- operating a sewer
11 treatment plant or a water well, I have brought sufficient
12 evidence that -- if I can bring that out later to show what
13 I have done during my duration of my working days as a
14 manufacturer of hydraulic and pneumatic equipment that was
15 used extensively in a lot of -- a lot areas and the
16 industries are almost limitless of where our products are
17 used. And I have not only catalogs, but photographs and so
18 forth to show these cases of what my company has done.

19 It was a company called Chicago Fluid Power.
20 It was brought about in the 1960s after I had worked for
21 another pneumatic and hydraulic company called Miller Fluid
22 Power in the Chicago area, Bensonville, Illinois. They were
23 probably the world's largest cylinder manufacturer in this
24 country and second only to Parker Hannifen, would be the
25 closest second at that time and that's where I learned the

1 skills in pneumatics and hydraulics and some three years we
2 started our own company called Chicago Fluid Power where we
3 manufactured cylinders, accumulators, valves, valve
4 actuation, and the like. And I have brought some of those
5 things if the court is interested to see what we did.

6 One of our components that I came up with
7 during that time was an accumulator. Interestingly enough
8 in our water well we have accumulators. We have six of them
9 in our water well at Carriage Oaks. But this is a much more
10 highly sophisticated accumulator that is used on aircraft
11 carriers, submarines, fighter jets, and even there's one on
12 Air Force One I was told. It is an accumulator that I had a
13 patent on from Chicago Fluid Power. I thought it was kind
14 of interesting to get a call from the Pentagon that they're
15 putting it on Air Force One. It was that good. It was --
16 it had some unique capabilities. It would announce to you
17 when it was about to fail before it failed. In their
18 opinion that was like gold. They said this kind of
19 information we cannot get and this will let us know that
20 that's going to happen.

21 Also it had a poppet piston, which was a
22 patented feature, which gave about a five time normal life
23 expectancy to that accumulator. This is a far more explicit
24 project than in a water well, where we're simply collecting
25 and water putting it under pressure and getting it ready for

1 irrigation and/or use. That's about the simplest
2 accumulator you will find it. These are bladder. They're
3 done with a bladder system rather than piston-type
4 accumulators.

5 And so at this point I think that I'm ready
6 to answer any questions that Mr. Morgan and -- or his
7 attorney has with regard to my capabilities of running a
8 sewer treatment plant or doing them safely. With that, I
9 guess -- the thrust I think is fine here.

10 JUDGE CLARK: Okay. Any questions from the
11 Commission?

12 COMMISSIONER KENNEY: I just have one. I
13 apologize. I came in a little late. You fired your
14 attorney?

15 THE WITNESS: No. No. No. I just asked
16 him to step down, coming up here, that I thought I could
17 present myself, my case of what I -- my background was
18 against the fact that I'm capable or qualified --

19 COMMISSIONER KENNEY: And so you -- you
20 still have retained an attorney?

21 THE WITNESS: He -- I haven't fired him. I
22 just told him to step down. It wasn't necessary to be here.

23 COMMISSIONER KENNEY: All right. Thank you.

24 JUDGE CLARK: Thank you. Mr. Mills, that
25 was a lot of information. Some of that information -- I'm

1 going to remind you that opening statements are not evidence
2 and so you may want to -- and it's up to you -- reiterate
3 some of that during your testimony. And you may go ahead
4 have a seat.

5 Opening statement from Staff?

6 MS. KLAUS: May it please the Commission.
7 Good morning commissioners, Judge. My name is Alexandra
8 Klaus. I'm here with Mark Johnson on behalf of Staff
9 regarding Mr. Mill's application for certificate of
10 convenience and necessity. The filing of the application
11 stems from the Commission's Report and Order in case
12 WC-2017-0037.

13 In that case the Commission concluded that
14 Mr. Mills is a water corporation as defined by statute and
15 is subject to Commission jurisdiction. As a part of that
16 case Mr. Mills was ordered to apply for CCN. He did so by
17 filing the application on June 7th, 2018. Staff filed its
18 recommendation and memorandum on October 11th, 2018. Staff
19 concluded that Mr. Mills's application met the Tarten
20 criteria and recommended that the CCN be granted along with
21 some reasonable and necessary conditions.

22 A request for an evidentiary hearing was
23 made by the Intervenors on November 13th, 2018. So we're
24 here today examining two issues; first, does the evidence
25 establish that the water system in Carriage Oaks Estates for

1 which Mr. Mills is seeking a certificate of convenience and
 2 necessity is necessary or convenient for the public service
 3 within the meaning of that phrase in Section 393.170; and
 4 second, if the Commission grants the CCN, what conditions,
 5 if any, should it impose as being reasonable and necessary.

6 As to the first issue, Staff recommends that
 7 the Commission grant the CCN as the Tarten criteria
 8 typically used to analyze these CCN applications have been
 9 met. The service is needed as exiting and potential future
 10 residential customers will have a desire and a need for the
 11 water service and no other water systems are readily
 12 available. Mr. Mills has provided safe and adequate water
 13 service for this service area in past years and is qualified
 14 through experience to provide the service.

15 Regarding the application's financial
 16 ability to provide the water service, Staff notes that
 17 upgrades and repairs that have required financial resources
 18 have been adequate in the past and that Mr. Mills has
 19 primarily used personal financial resources to address those
 20 upgrades and repairs.

21 As to the fourth Tarten factor, Mr. Mills's
 22 proposal to own and operate the water system is economically
 23 feasible based on observation that operations presently
 24 appear to support current expenses.

25 Finally, with the fifth factor is generally

1 a combination of the other four factors, positive findings
2 with respect to those four factors support Staff's
3 conclusion that the granting of the application for CCN will
4 promote the public interest.

5 As to the second issue regarding what, if
6 any, conditions the Commission should impose should the
7 Commission grant the CCN, Staff recommends that the
8 Commission impose the conditions set forth by Staff in Jim
9 Merciel's rebuttal testimony. More specifically, there are
10 16 recommendations or conditions, a few of which I will
11 highlight here. Approval of a quarterly flat rate for water
12 service of \$271.42 and extending the requirement that
13 Mr. Mills submit a rate case upon the issuance of the CCN to
14 submitting that case one year after the issuance of the CCN,
15 requiring Mr. Mills to submit information in this case file
16 showing that he owns the pertinent real estate and has
17 easement access within 30 days of the effective date of the
18 CCN, requiring Mr. Mills to distribute informational
19 brochures to customers within 30 days of the CCN's approval
20 and provide to the customer experience department a sample
21 of those three bills that come from the first billing cycle
22 after the effective date of the approval of the CCN, and
23 requiring Mr. Mills to complete certain water testing and to
24 provide those results to customers at least once a year.

25 These conditions along with others provided

1 in Mr. Merciel's rebuttal testimony are reasonable for the
2 Commission to impose. Additionally, today you may hear
3 about the potential for a contract operator. Staff has
4 provided testimony that joins in the encouragement of such a
5 contract operator and does have information about the impact
6 to quarterly rates should the contract be entered into.

7 Mr. Merciel is here today to answer more
8 specific questions that you may have. Staff auditor Amanda
9 McMellen is also here to answer your questions. We
10 appreciate you taking the time to consider this matter and
11 I'll do my best to answer any questions that you may have.

12 JUDGE CLARK: Any questions from the
13 Commission?

14 COMMISSIONER HALL: No questions. Thank
15 you.

16 JUDGE CLARK: Thank you.

17 MS. KLAUS: Thank you.

18 JUDGE CLARK: Office of the Public Counsel?

19 MR. CLIZER: Your Honor, the Office of the
20 Public Counsel will waive its opening arguments.

21 JUDGE CLARK: Thank you.

22 And for the Intervenors?

23 MR. FINKENBINDER: Good morning, Your Honor.
24 My name is Karl Finkenbinder. I'm counsel for the
25 Intervenors. And as Staff counsel pointed out today there

1 are two issues before the Commission. However, the
2 Intervenors disagree with the position that Staff has taken
3 and the applicant has taken with regard to the first issue
4 and then on the second does join with the Staff on a few of
5 the items that we would request and I'll go through those.

6 First of all, we believe on the first issue
7 that the evidence will establish that the water system in
8 Carriage Oak Estates for which Carl R. Mills is seeking this
9 Certificate of Convenience and Necessity is not necessary or
10 convenient for the public service within the meaning of that
11 phrase in 393.170, specifically as it relates to Carl R.
12 Mills as being the operator of the system.

13 And as Staff counsel pointed out in Tarten
14 Energy, the substantive requirements that were set forth we
15 believe that the applicant does not meet at least two of
16 those factors; the first being is, is that the applicant is
17 not qualified to provide the proposed service, which is the
18 second factor considered by Tarten. Specifically, he is not
19 mentally fit. We believe we've got evidence today that he
20 suffers from memory loss. He takes medication for that,
21 called Namenda, which is used for memory loss in conjunction
22 with dementia and Alzheimer's. He has erratic behavior.
23 That behavior is demonstrated with the firing counsel three
24 weeks before today's hearing and that type of behavior both
25 in and out of the proceedings.

1 He's also in the past even before this
2 commission made it apparent that he will not or is unable to
3 recognize the Commission's jurisdiction, specifically when
4 he has sent letters to the Commission stating that he is
5 going to seek legislation to remove this case and then he
6 will also present evidence that he has failed to abide by
7 previous orders of the Commission to -- where the Commission
8 has ordered that he is a regulated water utility. He has
9 failed so far to transfer the water system into his name.
10 It is still owed by a nonprofit.

11 Furthermore, he is continuing and even now
12 just recently sending out bills for water through a separate
13 Carriage Oaks Estates Homeowners Association, not through
14 himself or any water utility that the Commission has
15 approved. So that establishes that he is not mentally
16 capable.

17 He is also not physically capable as his
18 counsel filed in his pleadings in a motion for continuance
19 just a few weeks ago. We believe his physical capabilities
20 are limited. He's had recent heart surgeries and vascular
21 surgeries as stated by his counsel. We think that that
22 physical limitation since he is the one currently managing
23 day-to-day operations, that also contributes to some issues.

24 Also, we believe that he is incompetent.
25 That is demonstrated by what was a failed water test just

1 last week as you heard. There was new. I apologize for not
2 being able to make that part of the evidence that was
3 presented earlier through our pleadings, but that was a
4 recent issue so that will be part of today's discussion.
5 But that failed test was last week where E. Coli was present
6 in the system.

7 Mr. Mills stated in his opening testimony
8 that he's had multiple clean tests and that this is the
9 first failed water test that he has had, but in the evidence
10 we will be able to show that there were -- so far that that
11 was his only third test ever in the history of the system,
12 so he is now -- 33 percent of his water tests have failed.
13 We don't know if my clients have been drinking water that
14 has been contaminated or not because there is insufficient
15 water tests to prove otherwise.

16 Additionally, you will hear testimony from
17 my client that there have been other issues such as issues
18 with service such as bad pressure, large rocks present in
19 the water lines in the system, high iron content and
20 multiple pumps have been burning out because he will turn
21 off the system without notifying any of my clients and that
22 causes the pumps to burn out.

23 My clients have, despite what he stated in
24 his opening statements, made multiple complaints at those
25 Homeowners Association meetings and they have all -- those

1 complaints have been rebuffed or simply stated as not true.

2 The second issue is the service does not
3 promote the public interest, which is the fifth criteria of
4 Tarten. And we believe that the applicant, again, has bad
5 temperament for that. He fails, again as I stated, to
6 recognize this Commission's authority. And again, he
7 continues to bill the homeowners for the water system
8 through an entity, which this Commission has already stated
9 does not own the water system.

10 Additionally, he has no succession plan and
11 while Staff counsel pointed out he's not required to, I
12 would emphasize to the Commission that this is a little bit
13 different case as the Commission is more than familiar with
14 than even probably I am. Typically, your normal applicant
15 is a corporation of some kind where its nature is perpetual.
16 In this situation the applicant is an individual who has
17 health issues and we don't have any succession plan in the
18 event that he were to become anticipated or disabled and
19 within a matter of weeks or months we could be in a
20 situation where we have dangerous drinking water with no one
21 to fix it.

22 So in conclusion, what we will requesting
23 for the Commission with regard to the first issue is that
24 they deny the CCN that has been requested. And we are going
25 to request relief under 393.146, which allows the Commission

1 to order a public utility to acquire the water system when
2 there are no other alternatives. And the process is laid
3 forth in that statute for that. I agree that it is probably
4 an unusual process and one that is not done often. However,
5 this case is unique. The only alternative that we believe
6 to a separate third-party public water utility acquiring the
7 system would be to have Mr. Mills transfer that system to a
8 nonprofit that's run by every single member in the
9 community, that everyone in the community has an equal vote
10 and an equal say. We do recognize that the Commission
11 doesn't have the authority to order him to do that, but
12 perhaps through some encouragement that could be a potential
13 option that my clients are open to, but thus far the
14 applicant has been unwilling to do that.

15 In the event that the Commission does grant
16 the CCN and rules against the Intervenors on that first
17 issue, we would request certain conditions to be imposed and
18 I'll read through those very briefly. We would require that
19 a succession plan be incorporated into the CCN in the event
20 of the applicant's incapacity. As Staff pointed out, we
21 would also request that a third-party operator be required
22 to manage day-to-day operations of the water system so that
23 Mr. Mills is not the one responsible for those day-to-day
24 operations. We would require that also the Commission
25 require the applicant as part of that to install a chlorine

1 monitor on the tank, to install a water filter on the front
2 of the system to prevent debris and rocket from getting into
3 the system. Additionally, we would request that the
4 Commission order the third-party operator -- sorry -- order
5 the applicant through a third-party operator to conduct
6 tests every two weeks in light of the most recently failed
7 test and then conduct filter checks and cleanings every two
8 weeks, conduct chlorine tests every two weeks, flush the
9 lines four times per year, flush the water tank two times
10 per year, monitor the tank use to ensure storage doesn't
11 exceed the length of time the chlorine is active in the
12 system. And then finally, with regard to the cost of the
13 quarterly rate -- filed rate, we would ask that the amount
14 that Staff has proposed, that that be used but to take that
15 amount and reduce it by the depreciation expense that's been
16 included of \$646.84 and the billing expense of \$76.74.

17 The reason for that is the depreciation
18 expense while there are depreciation tables that are
19 typically used, in this situation it would be more
20 inadequate or unfair because this situation is where the
21 developer has financed the system through the sales of lots.
22 My clients have already financed and paid for in part,
23 subsidized, that water system through lots being sold to my
24 clients. My clients paying a lot of money for those lots
25 that went into the infrastructure for the system. If he

1 were allowed to then again bill my clients for the
2 depreciation, they'd be paying twice for the same system.

3 Additionally, the billing expense would be
4 inappropriate -- the billing expense would be inappropriate
5 because if the Commission were to order a third-party
6 operator to manage the system, they are already taking care
7 of billing and doing that as part of their proposal.

8 So in conclusion we again would request that
9 the Commission deny the request for the CCN or in the event
10 that it does grant CCN that it impose those factors with it.
11 Thank you.

12 COMMISSIONER KENNEY: Good morning.

13 MR. FINKENBINDER: Good morning.

14 QUESTIONS BY COMMISSIONER KENNEY:

15 Q. There are currently seven residents or the
16 -- there are 32 lots?

17 A. Yes, Your Honor.

18 Q. So there are seven residents?

19 A. Yes.

20 Q. What did your clients pay for those lots?

21 A. It varied, but they ran in the range of
22 about \$100,000, I believe.

23 Q. Okay. How big are they? I'm just curious?

24 A. They're -- it's a nice subdivision. I think
25 some of them --

1 Q. What size lots?

2 A. What size lots?

3 Q. Yeah.

4 A. They're less than an acre.

5 Q. Acre?

6 A. They are less than an acre.

7 Q. So the homeowners would like to take control
8 of the developer's system. Correct?

9 A. They would not like -- yes. They would like
10 to share in the input. They recognize that they can't force
11 the Commission to do that, but that would be an alternate.

12 Q. Is that a normal process where homeowners
13 take control of the developer's --

14 A. Yes.

15 Q. That is a normal process?

16 A. Yes, it is. Typically what happens in most
17 situations is that the developer -- in most situations those
18 systems are usually turned over to an HOA at some point in
19 the future.

20 Q. At some point. When is that?

21 A. Well, for example -- I know there's no
22 uniform act for residences -- like residential subdivisions,
23 but for example in a condo -- condominium there's a Uniform
24 Condominium Act which requires those systems be transferred
25 within six years. So that's just an example. But there is

1 no -- typically what I see --

2 Q. But you're just making an assumption.
3 Right? You don't have any idea what the -- I mean,
4 typically?

5 A. Yes, I do because I practice in the area.
6 Usually what happens is the developer conveys those systems
7 when they start to sell off their lots and they are done
8 with the subdivision.

9 Q. When they are done with the subdivision?

10 A. Typically.

11 Q. Typically?

12 A. Yes.

13 Q. So then there's still 25 lots to be sold.
14 Correct?

15 A. Correct. But he'll never sell them because
16 of the nature of the price of the lots.

17 Q. So they will never be sold?

18 A. I highly doubt it. Not as -- not as -- I'm
19 sorry? Is there something funny?

20 JUDGE CLARK: I'm actually going to agree.
21 I'm going ask for a little less input from the gallery.

22 MR. FINKENBINDER: I can't say that I --
23 BY COMMISSIONER KENNEY:

24 Q. Are you a real estate attorney too?

25 A. I am.

1 Q. Okay. So you familiar with area. Your
2 assumption is that those lots are overpriced for the area?

3 A. Yes, it is. Yes. Correct. Well, I can
4 only -- You're right. It's an assumption, but the
5 subdivision was originally -- I mean, this subdivision
6 existed since 1999. It's got seven homes on it.

7 Q. Obviously, yeah. I understand it's got some
8 issues and things.

9 A. Yeah. You're right. It's in part an
10 assumption.

11 Q. But in part just background, I guess?

12 A. Yes. Correct.

13 Q. All right.

14 A. I think it would be safe to assume that --
15 even if I -- I would probably be exaggerating to say that it
16 will never sell, but I don't think --

17 Q. I understand.

18 A. -- it is an exaggeration to say that it will
19 be a very long time before this neighborhood would mature to
20 the point where he would be willing to convey it to the
21 homeowners.

22 COMMISSIONER KENNEY: Okay. Thank you.

23 JUDGE CLARK: Are there any other Commission
24 questions?

25 COMMISSIONER HALL: No questions. Thank

1 you.

2 JUDGE CLARK: Thank you.

3 MR. FINKENBINDER: Thank you, Your Honor.

4 JUDGE CLARK: In just a second, I'm going to
5 allow Mr. Mills to call his witness. Before we do, that I'm
6 going to say that because this involves a small number of
7 landowners and you all know each other by name and such, at
8 least in regards to the confidentiality of who is and who
9 isn't a customer, I'm going to waive that in regard to the
10 Intervenors who are here today. If you going to mention
11 somebody's not here today by name, if you're going to
12 mention anybody including customers' hereby address, I
13 prefer to know in advance so that we can go in camera.

14 With that, Mr. Mills you may call your
15 first, which I assume is you.

16 MR. MILLS: Do you want me to go up here
17 or --

18 JUDGE CLARK: If you'll take the witness
19 box, please. If you have evidence that you're going to be
20 planning to offer you might want to bring that with you.

21 (Witness sworn.)

22 JUDGE CLARK: Okay. Please have a seat. Be
23 sure your microphone is on and that you're close enough that
24 everybody can hear.

25 THE WITNESS: Hello?

1 JUDGE CLARK: Now, Mr. Mills, since you are
2 your own first witness and -- as put forth in the order of
3 witnesses, and the order of direct and cross-examination
4 rather than really asking yourself questions, I'm going to
5 allow you to give a narrative answer. Kind of just tell the
6 Commission what you would like to tell the Commission and
7 present your evidence. As we go along if anybody says --
8 objects -- please stop until I've had an opportunity to rule
9 on the objection.

10 What would you like to tell the Commission?
11 CARL R. MILLS having been first duly sworn testified as
12 follows:

13 THE WITNESS Well, I -- I -- think the
14 primary thrust as I mentioned is the fact that I'm probably
15 not capable of running water and sewer treatment plant and a
16 water well is a little bit ludicrous given the history of
17 what I have done. The fact is that I have not had heart
18 surgery in 20 years and I don't know where that came from.
19 I mean, I -- it was announced by the defense attorney here
20 and I'm perfectly fine.

21 I had vascular surgery that was in the legs
22 and that had to do with losing circulation in my feet
23 because the blood was not -- the carotid arteries much like
24 your heart except it was in your legs, which cuts it off to
25 your feet and then your feet become like a block of wood. I

1 was told by Barnes Hospital that there is nothing they could
2 do. And then I found a local Springfield doctor that
3 cleared both legs and it was wonderful to get my feeling
4 back in my feet. And -- which doesn't say much. It just
5 tells you you need to get a second opinion if somebody tells
6 you you can't do something. But no, I'd had no heart
7 surgery in 20 years. I think I am fine as far as physically
8 fit. I work out during the week and I'm in good shape.

9 I've taken a -- I started my career back in
10 the 1960s. I started, as I said, a company that was --
11 started out locally within the Chicago area and grew
12 statewide and then ultimately nationwide and ultimately
13 worldwide. And it had to do with just about every industry
14 that you can think of. This first company was Chicago Fluid
15 Power and we manufactured, as you can see, different types
16 of tie rod cylinders, boosters and air to air cylinders.

17 This is an actual working catalog that an
18 the engineer would use. He would take it into his office
19 and sometimes he would call in the salesman to come in and
20 explain some of the issues of the products that he has.
21 They were done categorically by what kinds of cylinders they
22 were. They were light duty air, heavy duty, light duty
23 hydraulic, heavy duty hydraulic, whatever your problem calls
24 for. We also got involved in valve actuation, which was
25 this type of thing where our product was actually used, was

1 on valves. These valves were not an insignificant valves at
2 all. In fact, we've got some pictorial views in some of the
3 literature that show that this for instance is a main steam
4 isolation valve in a nuclear power plant.

5 JUDGE CLARK: Mr. Mills?

6 THE WITNESS: Yes?

7 JUDGE CLARK: Is this information included
8 in your prefiled testimony?

9 THE WITNESS I don't have any prefiled
10 testimony that -- you mean, what I did before?

11 JUDGE CLARK: Your attorney filed prefiled
12 testimony on behalf of you. Have you had an opportunity to
13 look at the testimony?

14 THE WITNESS Let's see here.

15 JUDGE CLARK: Filed a Mills direct, Mills
16 rebuttal, and Mills surrebuttal that were respectively filed
17 by your previous attorney on your behalf.

18 THE WITNES: Okay. I have a summary here.
19 PSC, this is something that the attorney gave me. It says
20 I've attached all of this filed testimony in case that you
21 would be -- would like to read it or -- in detail. Below is
22 a high-level summary of your testimony. Please let me know
23 if you have any questions. And this was all the indications
24 of things that were discussed, I think, in previous
25 testimony.

1 JUDGE CLARK: Did you read -- did you read
2 your testimony that your attorney filed on your behalf?

3 THE WITNESS These are categories of things,
4 but --

5 MR. FINKENBINDER: Your Honor, if I may. It
6 was included in his direct testimony. So on that basis I
7 would -- I'll go ahead and make an objection as redundant
8 and ask that the applicant move on to the next subject
9 because that was part of his testimony.

10 JUDGE CLARK: Well, I have a problem with it
11 being redundant if it hasn't been admitted onto the record.
12 I guess what I'm asking is, are there any objections to
13 admitting Mr. Mills testimony onto the record. Staff?

14 MR. JOHNSON: No objection.

15 JUDGE CLARK: The Office of Public Counsel?

16 MR. CLIZER: No.

17 JUDGE CLARK: And the Intervenors?

18 MR. FINKENBINDER: No objection.

19 JUDGE CLARK: In that regard, I'm going to
20 rule that because that is information that has been included
21 in your prefiled direct testimony you don't need to talk
22 about that any further. We have some background as to your
23 background and expertise.

24 THE WITNESS: So we don't need to discuss
25 any of the things that I have done at other companies that I

1 built or anything of that nature?

2 JUDGE CLARK: Well, the problem I have got
3 right now is you seem to be a little bit unfamiliar with
4 your direct testimony and your rebuttal testimony and your
5 surrebuttals. Without you knowing what's in there I don't
6 know exactly what is covered. I will give you some leeway
7 in terms of things you want to talk about but I don't want
8 to go into every technical detail about every valve you've
9 made unless it directly relates to this water system we are
10 discussing today.

11 THE WITNESS Okay. I understand, I think
12 you're main thrust here that we're talking about. All I
13 will say is that we had -- there were two companies; the one
14 with Chicago Fluid Power and another that's called Roto
15 Thrust and that was the steel mill industry. It was another
16 major industry in the United States. And we actually went
17 worldwide with our nuclear program, all the way to Japan and
18 China. We even built products for those countries. So
19 enough said about what Chicago Fluid Power and Roto Thrust
20 do. I think if you're interested we have catalogs anyway
21 you're welcome to look at.

22 I think what I would like to do is dwell on
23 the rebuttal testimony of Mr. Morgan on behalf of the
24 Intervenors of January 30th, 2019 when I read all of the
25 questions and answers -- I think this really is pertinent to

1 what we're trying to find out right now where he had
2 mentioned factual disputes. If I can just read the
3 testimony, the question he asked and the answer that
4 Mr. Morgan gave and the truthfulness of those answers.

5 I dispute highly the answers given in this
6 testimony were certainly not accurate -- and not even -- not
7 accurate in any shape, form, or fashion. This factual
8 rebuttal disputes -- for instance, as Mr. Mills testimony
9 made several false allegations regarding matters relating to
10 the operation of water system and made statements about
11 matters that are untrue and unproven. But he doesn't state
12 what I said was untrue or unproven. He just said that
13 anything that I said was untrue.

14 The next question was, which portions of
15 Mr. Mills' testimony do you dispute? Well, there are
16 several portions. But first Mr. Mills states that he filed
17 a certificate of convenience for the Commission, found that
18 they had jurisdiction. Mr. Mills would not need a
19 certificate had he turned over the systems to the HOA per
20 the covenants. And the covenants don't indicate that I am
21 turning the water and sewer over to them until at least
22 two-thirds of the lots have been sold. At that point
23 without cost I would turn over all of the water and sewer to
24 the homeowners after two-thirds of the lots were sold. I
25 think this question came up with Mr. Finkenbinder here.

1 When do you do this? In our deed restrictions it says that
2 we will do this after two-thirds of the lots are sold. And
3 at that point I would be relieved and felt that there was
4 enough money to retain the systems and the working systems
5 of the water and sewer treatment plan. There's ongoing
6 problems all the time. There are things that are done with
7 sewer treatment plant even this year. We've had changes in
8 pumps that had to be changed out in the system.

9 His further testimony he said he decided to
10 maintain all by control by transferring ownership taking out
11 of the control of the HOA. And the HOA never had control of
12 the water or sewer at any point. This action resulted in
13 the petition of the PSC, Mr. Mills has been offered ways to
14 return the system to the HOA control by not -- by a
15 not-for-profit water and sewer. Continued to avoid this
16 offer by any means. He said the homeowners wanted to buy it
17 from me. That's true. I had one of the -- one of the
18 owners of a house offer to buy on behalf of the Intervenor
19 the sewer system and I said why, I'm going to give it to
20 you. You don't have to buy it. Just as soon as two-thirds
21 of the lots are sold, I'll give it to you. So I guess that
22 was refusing the offer to sell it to the homeowners. Why
23 they would want to buy it, I really don't know. There's no
24 need.

25 And he continued to avoid the offer and any

1 means possible, engage illegal maneuvering, to avoid giving
2 up complete and absolute control of the water and sewer
3 system. Well, I guess it is absolute control if you own it,
4 but it's not to be devious in any way or to take advantage
5 of anybody cost wise. We have done this by way of
6 assessment as long as we have been in business from day one,
7 from the first lot that was sold. The only costs that were
8 incurred were that which cost to keep the system going. I
9 have even brought with me for the purpose of proof by way --
10 the thing that disturbs me most of all of the things that I
11 have heard, especially with Mr. Finkenbinder's statement
12 about things that I said or that I did or the things that
13 happened to me, none of those things even sounded remotely
14 like anything I have ever seen. And when -- no proof is
15 offered of any kind. It's just devastating for somebody to
16 say something that isn't true and they have no proof. They
17 just simply say it's so. And I -- anything that I have said
18 here I hope that somebody will say, show me. And that's the
19 logo of our state, I think. Don't tell me, show me. And I
20 have brought things by way of pictures, by way of proof that
21 -- if I go back to Mr. Morgan's testimony here that I am not
22 qualified, I have actual proof here, not just to tell you I
23 can, but to show you I can.

24 Let's just drop on down in reading
25 Mr. Mills' testimony. Did you observe any other

1 inaccuracies. Well, again Mr. Mills's recent filing of the
2 PSC has included a storage tank pumps and the cost of the
3 systems in his testimony filling test -- filing the
4 testimony he produced an invoice that shows that The Caring
5 Americans actually paid for the tank and pumps. I'm not
6 sure what he means by this. I do have a public charity
7 called Caring Americans Trust Foundation and it was -- it
8 will actually be taking over whatever -- anything happens to
9 Carriage Oaks will be in my trust, the Caring Americans will
10 take control of all the unsold lots. If there's sewer and
11 water involved, they will be in charge of that. But this is
12 the board of directors of a charitable organa-- the
13 501(c)(3) public charity that has gone on for -- since 2012.
14 And that way, if something does happens to me they will be
15 the recipient of all the assets that I have and all of the
16 money that goes from the lots will go into that charity.
17 And basically all Caring Americans is, is that -- their
18 motto is Caring Americans helps people who change lives.

19 We're not maybe good at getting people off
20 the street from alcohol or out of addiction drugs or
21 whatever, but we can help the people that do that. We
22 support other charities. That's what Caring Americans does.
23 It is a charity who helps charities. And that was kind of a
24 strange request when I called the federal government to get
25 our 501(c)(3). They said we never heard of a charity that

1 supports other charities. I said, well, this is why. We
2 don't personally do it, but we help the people who can that
3 are small and floundering. They do good work, they know
4 what they're doing, but they fail and fall apart before they
5 can get the job done they want. If they come to us and ask
6 for help, we will then in turn take a look at -- the board
7 of directors will look at that and see if we can fund them
8 money for that. And that is what that is for. Yes, they
9 would take over my holdings in Carriage Oaks if anything
10 happens to me, but that is going to be a board of directors
11 running that, not just an individual.

12 Do you believe Mr. Mills is qualified to
13 operate the water system. He is not qualified to operate
14 this system either by training, experience or temperament.
15 Well, I am not sure what that means. I have to go to school
16 to be able to operate a water system. I've done it by way
17 of permit for five-year intervals with the Department of
18 Natural Resources. They come out from time to time and
19 check all of the sewer treatment plant and/or the well and
20 they give me a five-year operating permit to do that. This
21 has gone on for three times. This would be the fourth
22 permit that I've had that they've just recently approved.
23 We're good to 2023 on this last permit.

24 Does Mr. Mills have the financing to operate
25 the water system? No. He has not presented any proof that

1 he has financial backing to maintain and operate the system.
2 Saying it is true is inadequate. We know he doesn't own his
3 home. Well, as a matter of fact that's true. I put my home
4 in the name of Caring American Trust Foundation so that if
5 anything happened, it wouldn't even have to go through the
6 trust. It automatically would be headquarters for Caring
7 Americans Trust Foundation and they would look over the
8 subdivision with the board of directors. This seemed to me
9 to be the most expedient thing I could do to take care of
10 the subdivision, put it in the hands of very professional
11 people.

12 He's working on a plan to estate management
13 and giving much in to charity he owns. His estate planning
14 does not include the financial backing of the water and
15 sewer system. Yes, it does. If it hasn't been turned over
16 to the homeowners it would be owned, along with all the
17 other unsold lots, but the stipulations and the deed
18 restrictions say that once two-thirds of the lots are sold
19 it will be given to them. And Caring Americans would honor
20 that just as well.

21 Moreover, Mr. Mills has not demonstrated a
22 succession plan in operation for the water system. Mr.
23 Mills is elderly -- an elderly individual and should he pass
24 away or become incapacitated there's no mechanism in place
25 to ensure that the maintenance and control of the water

1 system will pass to an entity qualified to provide water
2 systems. Yes, it is. Because one of the members of the
3 Caring Americans Trust Foundation is Jeremy Storment and
4 he's been through the water and waste water treatment
5 facility and received an operating permit so that he can
6 take over, which I don't even have a permit. But because I
7 built the system, they understood that I could manage it and
8 they allowed me that exemption of not having to have a
9 permit by way of going through the school that they allowed
10 me to operate it for 20 years because I had it built and was
11 instrumental in being part of building that through the
12 equipment that I had, dozers, backhoes, and the like that
13 help build the system. So they said I was qualified to
14 operate it.

15 Now, if that goes wrong, one of the people
16 that is on this board has been to their school and been
17 oper-- been given an operating permit himself. There's no
18 one else in the subdivision that could take over if
19 something happened to me. They would have to go to an
20 outside source in order to satisfy the Department of Natural
21 Resources. There's nobody there that is qualified. They
22 would have to turn it over to someone like Ozark Clean
23 Water, when we dabbled with here just a few months ago.

24 I tried to use them and let them do the
25 management part and look over some of the details of the

1 water and sewer and I think we had a base cost of \$365 per
2 month for that fee, which had nothing to do with repairs or
3 anything that goes wrong. That was simply to manage and
4 look after it. And if we were going to decide to read the
5 meters, that they would read the meters and they would send
6 the bills out and so forth. Whatever the PSC determined the
7 cost should be, they would embrace that and read the meters
8 and send them out accordingly. That part was part of the
9 contract. And this started out I think January, February,
10 March. And actually it went about two and a half months and
11 their fees began to exceed the \$365 a month part and they
12 started to do some maintenance work that was quite costly.

13 I said whoa, whoa, whoa. We're invading our
14 contract here. Your contract is for management only and not
15 for maintenance. If you want to tell us something is wrong
16 that is fine. We'll determine who is going to fix it and
17 what's it going to be.

18 We recently did something at the sewage
19 treatment plant that was quite expensive. We had some pumps
20 to replace down there and I asked Ozark Clean Water what
21 their price would be. Turned out to be \$2,500 to replace
22 one of the affluent pumps. And I said, okay, well, let me
23 go to some of my other sources. I went to the source that I
24 have been using for 20 years, which is Holliday Enterprises,
25 Steve Holliday and his costs came in at about a \$1050. So

1 if Ozark Clean Water had been there in terms of managing our
2 sewer treatment plant at that point, they would have used
3 their own system and cost 2500 when I could have got it for
4 1050. So the pumps were --

5 MS. CLAUS: Your Honor, may I please object
6 as to the relevancy on the sewer aspect of things. If we
7 could keep it to the water.

8 THE WITNES Okay. Fine.

9 JUDGE CLARK: It will be sustained.

10 THE WITNESS Let me go on with this --
11 utilities in general. Mr. Mills have you addressed any
12 issue that you had the quality of the water. He claims that
13 all homes are required to install paper filters. There was
14 no demand for anybody to install anything. I simply told
15 them that we're plumber plummed their house -- I have a
16 little background in plumbing because of my father was the
17 owner of American Plumbing and Heating in Springfield,
18 Missouri before he died in 1957 of a heart attack. Oh yes,
19 he was a master plumber and owned a plumbing company. So I
20 know a little bit about plumbing.

21 And I told him it would be a good idea if
22 you put filters on anything you plan to drink or use by the
23 way of clothes washing or food and beverages or anything
24 else for water. If you're going to irrigate your lawn,
25 don't worry about.

1 Mr. Morgan claims that I, Mills, he claims
2 that homes are required to install filters. They're not,
3 but it is very -- it is highly recommended. This is not
4 written anywhere in the covenants. No, it's not. And then
5 -- so that statement is not -- is true. In written response
6 to questions not one homeowner knew or was told that the
7 filter was required. Well, that is not true. I did
8 recommend that they put it in, but it was not mandatory.
9 Owners have installed them because their plumbers experience
10 has shown that there's a need for filters. This was his
11 statement right after I just said this. All of the plumbing
12 people that put them in recommended them also.

13 He states in his direct testimony that the
14 homeowners never complained about iron in the system, rocks,
15 et cetera. All of the Intervenors involved in this action
16 of PSC will tell you -- and many times we have complained in
17 meetings. There has been no homeowners meeting ever where
18 any person ever complained of rocks, of sediment of any
19 kind, rust or anything. It has never even come up, but he
20 claims that it has. He said unfortunately -- the
21 unfortunate part is that it was never put in writing. He
22 writes and edits -- he writes and edits his own minutes from
23 the homeowners. Well, that's absurd. We write what has
24 happened because they are recorded. We write them
25 accordingly. If any subject had come up about rocks or

1 sediment of any kind in the water, it would have come up and
2 it would have been in the meeting's minutes.

3 We can tell you that he told us in the
4 meeting he was not going to flush out the system because the
5 last time he tried to do it something blew up and he had to
6 call Lefty to fix it. That is the well driller. We really
7 don't understand what he told us with the exception that it
8 wasn't going to be -- he wasn't going to regularly flush the
9 system because he didn't know how to do it. This doesn't
10 speak well or claim that he is a qualified operator. That
11 was probably the most absurd part of the statement I've ever
12 heard in my life. Because yes, I do know how to blow down a
13 system. In fact, I have some photographs here of blowing --
14 I was actually blowing down the system. And if that's
15 presentable, if we can show things like that.

16 JUDGE CLARK: Are you wanting to submit
17 those as evidence?

18 THE WITNESS Sure.

19 JUDGE CLARK: Okay. We'll let the other
20 parties see them and offer any objections they may have. At
21 this point in time I'm going to say that I am titling Mills
22 Direct as Mills Exhibit 1. Mills Rebuttal as Applicant's
23 Exhibit 2, and Mills surrebuttal as Applicant's Exhibit 3,
24 which are admitted on to the hearing record as there were no
25 objections to that.

1 (WHEREIN; Mills Exhibit 1, 2, and 3 were
2 offered and received into evidence.)

3 JUDGE CLARK: So whatever he's offering now
4 will be marked as 4 if it's admitted. So why don't you
5 separate out what you would like to offer as evidence and
6 allow the other parties to have an opportunity to view it
7 and make their objections.

8 THE WITNESS: All right.

9 JUDGE CLARK: I know you said that, you
10 know, that we could ask you anything and you would show us.
11 Well, what you have that is kind of the opposite of the way
12 the process works here. You show us what you think most
13 supports your case.

14 THE WITNESS Okay. I have two photos right
15 here.

16 (WHEREIN; Mills Exhibit 4 was offered into
17 evidence.)

18 JUDGE CLARK: Show those to the other
19 parties before you show them to us.

20 THE WITNESS Okay. This is a --

21 JUDGE CLARK: It's customary to just give it
22 to them and they will pass them.

23 THE WITNESS If you know what that is, where
24 the water spout is coming up, there is a valve down below.
25 All you have to do is open that valve it shoots water just

1 like this, right into the air. And this is the low portion.
2 It was shooting up much higher than that. This is after the
3 accumulators had expired their pressure. This is the lowest
4 pressure you're going to see. That was an actual pump just
5 pumping water through the system. It has that much force
6 without the addition of the accumulators. And -- but it is
7 easily blown down. All you have to do is open a valve and
8 blow it for however much time you want.

9 JUDGE CLARK: Hold on just a second. I'm
10 going to ask that you -- you want to give a long
11 explanation. I understand you want to give a long
12 explanation. Just give me the one sentence what is each
13 picture.

14 THE WITNESS One picture is the valve that
15 contains the -- where you blow out the entire system at the
16 end of the line after it's been to all of houses. This is
17 very end of it.

18 JUDGE CLARK: Thank you. Next picture.

19 THE WITNESS: Okay. The next picture is
20 where it shoots the water up in the air so you can see if
21 there's any rust in it. You can see if there's anything in
22 it at all, which there's not.

23 JUDGE CLARK: Thank you.

24 THE WITNESS You let it go until -- there's
25 some rust will show up. You can wait until that rust is

1 gone.

2 JUDGE CLARK: If these pictures are
3 admitted, you'll have the opportunity to testify about them.
4 I just needed a description for the parties.

5 Are there any parties who have any
6 objections to I'm going to call Applicant's Exhibit 4?

7 THE WITNESS: This is Exhibit 4.

8 JUDGE CLARK: Any objection from Staff?

9 MR. JOHNSON: No objection, Judge. However
10 we would point out to the extent that this is going to be
11 continued surrebuttal testimony in essence understanding the
12 fact that Mr. Mills is representing himself, we would just
13 perhaps ask to maybe move it along as we do have prefiled
14 testimony as well.

15 JUDGE CLARK: I agree with that. But
16 anything that addresses safety I think the Commission will
17 want to hear.

18 MR. JOHNSON: Certainly.

19 JUDGE CLARK: Any objections to Applicant's
20 Exhibit 4 from The Office of Public Counsel? Have you had
21 an opportunity to see those?

22 MR. CLIZER: I have had an opportunity to
23 see them. I might other otherwise make an objection to
24 foundation, but if possible I would just like to know who
25 took the pictures or rather if you can verify that those

1 pictures are something you saw yourself.

2 JUDGE CLARK: Mr. Mills, did you take those
3 pictures?

4 THE WITNESS I didn't. I had took --
5 someone else took the pictures that I was with. It was --
6 because I had other pictures in here where I was doing it
7 and they were shooting a picture of me when this thing first
8 went off. I have that on my cell phone. But --

9 JUDGE CLARK: Were you there when those
10 pictures were taken?

11 THE WITNESS: I was -- I was here when these
12 pictures were taken. In fact, some of them I was actually
13 in them while the pictures were being taken.

14 JUDGE CLARK: But not those two?

15 THE WITNESS: Not these two.

16 SPEAKER IN THE AUDIENCE: You were there.

17 JUDGE CLARK: Okay. No comments. You are
18 not an attorney.

19 Any objection from The Office of Public
20 Counsel?

21 MR. CLIZER: No.

22 JUDGE CLARK: Any objection from the
23 Intervenors?

24 MR. FINKENBINDER: May I just inquire as to
25 when those photos were taken?

1 JUDGE CLARK: Go right ahead.

2 MR. FINKENBINDER: Mr. Mills, can you tell
3 me when the photos were taken?

4 THE WITNESS About two weeks ago.

5 MR. FINKENBINDER: With that, no objection.

6 JUDGE CLARK: Applicant Exhibit 4 is
7 admitted onto the hearing record. If you'll give those to
8 the court reporter to mark and wait just a minute before
9 going on with any further testimony. And I will allow you
10 to testify about those two photos.

11 (WHEREIN; Mills' Exhibit 4 was received into
12 evidence.)

13 JUDGE CLARK: Okay. Mr. Mills, you may
14 testify about those. What do want to tell the Commission
15 about those pictures?

16 THE WITNESS Well, I was reading the
17 testimony of Dr. Morgan when he was telling that we could
18 tell you in the meeting it was not going to flush out the
19 system. Actually, I flushed that system out usually twice a
20 year, sometimes maybe in June and again in December.
21 Roughly every six months I blow it down. And sometimes I
22 will see a trace of rust and sometimes I won't. But it's
23 only just to blow it down at the end of the line. Nothing
24 has blown up and hurt anybody. It's done twice a year. He
25 didn't know that. He didn't know that it had ever been

1 blown down.

2 We really don't understand why he told us
3 with the exception that he wasn't going to regularly flush
4 the system because he didn't know how to do it. That's an
5 absurd statement. That's why I am showing these -- the fact
6 that we have a system and it's flushed down twice a year.

7 It doesn't speak very well to claim he's a
8 qualified operator. Mr. Mills states that the home filter
9 will share all ills regarding iron deposits, gravel, and
10 water. Well, as a matter of fact being a former Fram
11 representative of Fram Filters, yes I would. I would state
12 that if you use filters you're very, very safe from water.
13 Theirs was used primarily in oil and filters, but they --
14 Fram made filters for every kind of drinking water and
15 everything else, industrial filters and whatever. So yes,
16 it is very important to get any -- any contaminants out of
17 water.

18 And then he goes on to say, this is not true
19 since all sprinkler systems take off the supply before the
20 home water filters and gravels will clog the system and in
21 fact, does. I don't even know how to respond to that
22 statement. You would indicate that there's so many rocks in
23 here it's going -- it's going to block your irrigation
24 system it's so full of rocks. That's an absurd statement.
25 He's saying this is not true. Again, take off the supply

1 before the home water filters or gravel will clog the
2 system. The system is not going to be clogged. There is
3 not going to be that much debris in the water at all. And
4 this is why you have a filter. You do not necessarily
5 filter the water that goes out for irrigation. There's no
6 reason for that. It is capable of being drank from that.
7 People drink from a water hose for a long time and it
8 doesn't hurt them, but we are not trying to purify the water
9 for irrigation. And he's saying that the filters will even
10 be clogged and in fact does get clogged. I've never heard
11 of anybody getting a clogged filter that they are irrigating
12 with. It just doesn't make any sense at all.

13 It says he states that he has met all the
14 water testing requirements for safe water with one or two
15 tests a year. Yes, that's true. Unless we have a problem
16 -- we could test it four times a year or eight times a year,
17 whatever the homeowners wish to do. It's a \$15 test. We
18 can do it as often as they would like. I don't have a
19 problem with that.

20 Said, this should be easy to prove that he
21 can produce the test results. He has never provided one
22 test report to the owners of the home of the subdivision
23 that I am aware of. Well, we don't necessarily give test
24 results when the tests are fine. There's no need to tell
25 anybody your water is okay three times, four times a year.

1 If there is a problem they know immediately. We get on the
2 phone and tell them you've got a problem. We're going to
3 have to watch -- we have some E. Coli here. We're going to
4 do something about it. And that actually happened here in
5 the last few weeks where we have that happen.

6 I was on the phone immediately. Don't drink
7 the water. We got to find out what happened. And then we
8 did. And we got it corrected and it was fine.

9 He has certainly never provided this to me.
10 I've done all of my own testing on occasion as have others.
11 Well, if they've done their own water test I would ask where
12 are they? Why did you do it? Were you thinking we are not
13 doing an adequate job? Why didn't you tell the Homeowner
14 Association that you want more water tests done and when you
15 want them done and we will do that. There is no problem
16 doing it. We'd be happy to. But to force that to happen as
17 though it should have been on regular basis unannounced is
18 what I'm actually hearing here.

19 He has certainly never provided one to me.
20 Well, I don't go around telling everybody your water's okay.
21 Drink it. Because I don't go to each house and do tests. I
22 do at the end of the line or I do it at the well house or
23 I'll do it in my own house. And I'll do it at the request
24 of anybody's house that wants it. We'll test it anywhere in
25 the system. It's probably a good idea that we did that, in

1 fact.

2 I had done my own testing occasionally as
3 have others. Well, if Mr. Morgan has done his own testing
4 he's never shared that with me. He's never given me any
5 test results. I daresay that if there was a problem he
6 would have told me, so he obviously didn't find anything
7 wrong with the water.

8 If he provided these tests to the Staff they
9 would have made it public. Why would they make it public?
10 I don't understand why would you say that everything is safe
11 every time you take a test. You tell them if there is a
12 problem, then they need to know. They don't need to know
13 every time you do a test that it was safe. I don't think
14 public water that is done in the city, they tell everybody
15 the water safe. They assume it is safe. They'll tell them
16 if it is not safe.

17 Do you have any other concerns about
18 Mr. Mill's testimony. Mr. Mills goes to great lengths to
19 explain how he's qualified to operate a water system safely.
20 He states that his company's involved in water and sewer
21 projects as well as nuclear power plants and other projects.
22 His company made a valve and/or actuator, a very small part
23 of a major project. Supplying a few components is nothing
24 to do with the actual system operation.

25 My goodness what a statement that is. Our

1 part in the so-called small systems was a main steam
2 isolation valve operator. Without that -- especially in a
3 nuclear power plant -- we were one in four companies in the
4 United States qualified to go inside containment of a
5 nuclear power plant. And that means that that product has
6 been qualified. I have pictures here that show the
7 qualification of one of those products, which took about a
8 year to do. Unbelievable environmental conditions involved.
9 It was 370 degrees live steam, that it had to function for
10 30 days. They thermally aged the product as if it were 40
11 years old before they could even test it.

12 JUDGE CLARK: Mr. Mills, Mr. Finkenbinder
13 previously objected to your qualifications already being
14 contained in your testimony.

15 THE WITNESS: Okay.

16 JUDGE CLARK: And I'm going to agree with
17 him that the qualifications -- you've have an opportunity to
18 answer that question already.

19 THE WITNESS: Okay. I just wanted to
20 satisfy that this was a claim against what I do. There's
21 more to operating a safe system other than water and selling
22 parts to companies than manufacturing a few items that you
23 sell. And it continues, Mr. Mills' claim is his knowledge
24 and able to operate a water -- that he is able to operate a
25 water system. Yet, for months he's failed to put chlorine

1 in the system after the tank was installed. Well, we
2 discussed that with the Department of Nature Resources and
3 they said it is not this necessary unless you have at least
4 15 houses or 25 people. If we're going to chlorinate water
5 that you're going to be irrigating your lawn with, that
6 seems a little redundant. It doesn't need it. We can't
7 chlorinate water and separate it from irrigation -- from
8 drinking water. If they wanted it for drinking water only,
9 we can't separate it once it goes into the system. So I
10 don't understand what his point is.

11 He's failed to chlorinate the system after
12 the tank was installed. Well, I put the chlorination system
13 in the well house, as separate, but it stayed there until --
14 for future use when we were ready to chlorinate. We had a
15 pump. We had a chlorination system and it was ready to go
16 as soon as we have the appropriate number of houses.
17 Otherwise, there was no need for chlorination, so it set
18 there.

19 Mr. Morgan brought this up one time. He
20 said, your pump is not even pumping chlorine. No. We don't
21 have to yet. We're not ready yet. He's upset with that
22 even though I have the system in place ready to go when we
23 are ready for. It's there.

24 When was this noted in the meeting. He
25 locked the box of chlorine and supplies so that none of us

1 could see that it was in operation. Well, it was -- we just
2 had a handle on it. All you had to do was open the handle
3 and go in and he could see there was no chlorine in the
4 tank. We're not chlorinating it. And we're not trying to
5 hide the fact. I just didn't want anybody in the cabinet so
6 I put a lock on it.

7 And as it turns out, I probably should have
8 put a lock the well house because in the last two weeks
9 someone -- someone got into that well house, pulled the
10 chlorine tube out off the line that it was plugged into to
11 chlorinate if we if we wanted to chlorinate. That thing was
12 pulled out and cut partially and then ripped out. Not only
13 that, the chlorination pump had been compromised and where
14 it was completely dead. It had been shorted out. It hadn't
15 even been used. I used it maybe six times over the last 20
16 years just to see if it worked. It worked every time. This
17 time it was completely dead and the chlorination line was
18 pulled out. This to me, just blew my mind enough that I
19 called the county sheriff to come out and witness this and
20 make a report.

21 We weren't using the chlorination system,
22 but we didn't want it vandalized and we didn't want the pump
23 destroyed. We replaced it with a new pump. Over \$500 to
24 replace it. Because when we did -- I didn't even think
25 about trying to do the pump if two days later we found it

1 had been fried. And so we don't know what happened. It's
2 strange, but it's repaired now. And for whatever reason
3 that caused this, we don't know but it was highly unusual.

4 Just to make a simple calculation of water
5 usage, he had to engagement an engineer to evaluate the
6 water usage. He then used the engineering report to justify
7 installing a storage tank. We had a civil engineer that
8 came out, but it had nothing to do with a storage tank. It
9 had to do with some problems that Mr. Morgan had with
10 rainwater getting dirt on his property and because there was
11 no vegetation on it, it couldn't hold the dirt and it
12 flushed off into his driveway. He was a highly irritated
13 and inflamed about this and was ready to take us to court.
14 I'm saying -- that water -- he said the water was improperly
15 -- the roads were done improperly. The water came across
16 the roads, flushed my dirt --

17 JUDGE CLARK: We're off subject as to the
18 water system.

19 THE WITNESS: Okay. Well, I'm just talking
20 about his -- what Mr. Morgan is claiming in his statement
21 here. We'll go on. He then began to harass the homeowners
22 for payment of the tank. Now we're talking about, I'm
23 assuming, the storage water tank, that we didn't need a
24 storage water tank. Well, when we talked about what are the
25 size of our lots. These are estate size lots. They're the

1 size literally of a football field. Most of them are 150 by
2 300 feet long. That is literally the size of a football
3 field. And they're irrigating these lawns and they were
4 doing it in a well house that had five accumulators. Those
5 accumulators had 50 percent of capacity. So if they were 50
6 gallon accumulators, they had 25 feet each of usable use.
7 So we had five of those. We had 150 gallons of usable
8 water. We have people with seven houses irrigating their
9 lawns. We had no storage tank except for the accumulators.
10 And that was between 40 and 60 psi. If it went to 60 they
11 stopped and then they would use the water until it dropped
12 to 40. That amounted to 150 gallons.

13 If you get two, or three, or four houses on
14 a sprinkler systems, 150 gallons will go in a heartbeat.
15 And you have to restore that 40 to 60 psi. The problem with
16 that is -- and I explained this to them in the homeowners
17 meeting, I said, folks you are going to burn up our deep
18 well pump because every time you try to irrigate your lawns
19 with these five accumulators -- we have 150 gallons of water
20 between 40 and 60 psi that the deep well pump has to come on
21 at 40 and kick off at 60. And then it gives you 150 gallons
22 of water in the process. Once you use that 150, it's back
23 to 40 and you kick it on again.

24 At 150 gallons of water when you have
25 several people watering lawns with sprinkler systems that

1 have maybe ten heads -- or lines that go out with five
2 sprinkler heads on each line and they're irrigating their
3 lawn, that water is going to go in a hurry. And this pump
4 is going to keep going on and off and on and off. I said we
5 are going to burn it up. And sure enough, within a year and
6 a half, two years later, it burned up the deep well pump and
7 motor. And it was about \$12,000 because we had to take out
8 600 feet of line, 600 feet of wire, replace the pump, the
9 motor and all for 150 gallons every time. I said we need a
10 storage tank.

11 We had a vote. I said, if we could get a
12 storage tank and surface mounted pumps in the well house
13 that could take the water out of that tank and pump it into
14 the line so we don't have to pull it 600 feet out of the
15 ground, we'll service very well because you can use all the
16 water you want and it will come from ground level with the
17 tank. They voted unanimously that we would spend about
18 \$40,000 to build a water tank and two surface mounted pumps
19 that would take it from that tank rather than from 600 feet
20 in the ground, 150 gallons at that time.

21 And they could do it -- as much water as
22 they wanted. So that allowed them all the irrigation water
23 that they wanted. We would pay for it over four years and
24 that was literally 2016. So they would be -- this thing
25 what would be paid for by now. And they're using all the

1 water they want because we have this -- now, the tank
2 installed with surface mounted pumps. Our deep well pump is
3 not endangered.

4 The only way I can relate to that would be
5 if you drove a car into a city that's 100 blocks and you had
6 a 100 stoplights and you went through each stoplight and
7 stopped and started your car, like that was 150 gallons, as
8 opposed to taking a bypass around the city and one stoplight
9 and you don't start and stop a 100 times. It's going to
10 last you -- your car is going to last a lot longer than
11 every time you go through a 100 stoplights versus one.
12 That's what we were doing with our well. We had surface
13 mounted pumps that didn't care how much water you used. It
14 took it from a tank that had 40,000 gallons of water. So
15 the problem was eliminated. This is one of the things that
16 was changed and it was voted on.

17 Mr. Morgan said I didn't vote for it, but he
18 wasn't at the meeting. He was the only one that didn't vote
19 because he wasn't there. His idea was, okay, well, that
20 should -- you should've hand that tank in the first place.
21 No, we shouldn't, because if we had had it in the first
22 place the Department of Natural Resources would have said
23 you need a tank to save this water. This system was meant
24 to work only after we had -- I think about 25 houses. They
25 said you probably start thinking about putting in a tank

1 because their form of irrigation was one hour a day. That's
2 it. I don't know if that meant a garden house with one
3 sprinkler for an hour or what, but they -- in their
4 calculations they used one hour per day of irrigation per
5 house. And that's the way they told us to design our
6 system.

7 This engineer that Mr. Morgan was talking
8 about that I hired was a civil engineer. I asked him to
9 take a look at Mr. Morgan's property and determine what
10 caused the failure of that dirt to go into his driveway and
11 he said that the road was perfectly balanced, that the water
12 should have gone down the road. He shouldn't have put it in
13 his road.

14 JUDGE CLARK: We're getting off track on to
15 erosion.

16 THE WITNESS: Let me get back to the water
17 again. He also evaluated our new system for the tank and
18 said that it would prolong the life of the system
19 tremendously by what we did. We voted to do that
20 unanimously, except for Mr. Morgan. And then after -- after
21 this they decided they didn't want to pay for it because
22 Mr. Morgan didn't think it was necessary. It should have
23 been put in the original system, when it is not required by
24 the DNR. We did what they asked. They give us a permit and
25 we started to operate our system.

1 We'll go into other things. He said, did
2 you bother to intervene -- the other intervenors ever
3 received copies of water tests purportedly done by
4 Mr. Mills. No. He states that the PSC stated he was
5 supplying safe water. Can we assume that he provided
6 chlorination tests to date with the PSC. Now, we haven't
7 because we didn't do chlorination. They didn't require it.
8 PSC along with other tests that he claims he did once or
9 twice a year. I don't know what other tests he's talking
10 about.

11 If so, would it not be expected to give a
12 good system operator that would provide a customer with
13 these tests. Again, I don't know what other tests we are
14 talking about others than safety tests for E.Coli or
15 anything that shouldn't be in there.

16 Would he not include this test data in
17 filing to show all interested parties that he had tested the
18 water and that it meets the standards of safe and clean
19 water. Again, I say why do we tell them you have good water
20 continually when we are testing it. We are only going to
21 tell you when it's not working safely and we need to do
22 something about it. But to give them reports incessantly
23 was superfluous, I think.

24 His solution is not to fill the tank at
25 certain times of the year. Well, the certain times of the

1 year, that is true. If we are going to have a large storage
2 tank, we don't need to fill it up. I've got a mercury bulb
3 that tells me the full length of the tank and I could only
4 put in -- if I want to put in 5,000 gallons or 10,000 and
5 not 40, I could do that so I can recirculate it more. And
6 it's simply done by a gauge that we have in the well house.
7 All we have to do is tilt the gauges and say we only want
8 this much water in the tank every time it pumps and let it
9 go with that. If we're going to be irrigating in the
10 summer, we put a lot more water in and allow the water to
11 run longer. But that's controlled by a valve system that we
12 have within the well house.

13 This of course will change the water
14 pressure. Oh, wow. This of course will change the water
15 pressure as pressure is the function of head. I'm not sure
16 what he's relating to here. It says flow is related to
17 pressure. But if there is -- there are restrictions like
18 pipe size changes and sediment then flow will follow. I'm
19 not sure what part of fluid power this is referring to
20 because being in the fluid power business for 30 years and
21 designing pump flow, for whether it's water fluid, oil, or
22 gas or any other media that goes through it, there's no
23 sediment in it whatsoever. And in this case he's talking
24 about the weight of water.

25 The water is 14.7 pounds as I know of per

1 foot, is what you're going to get on pressure. So if you
2 have a high water tower, that's what gets you pressure to
3 pull it down because you got several feet of pressure. But
4 it has nothing to do pressure and flow, yes. You have a
5 certain amount of pressure and a certain amount of flow, but
6 anytime you try to get more water through a pipe it's going
7 to increase the pressure. You have to increase it to get a
8 faster rate. These are standard things that are
9 commonplace. They're put in formulas and you know exactly
10 what water you're getting.

11 I'm not sure what his statement means by
12 saying flow is related to pressure.

13 JUDGE CLARK: Mr. Mills, you seem to want to
14 go through his testimony, his prefiled testimony and answer,
15 respond to each and every thing that he said and I've
16 allowed you to go on for a while.

17 THE WITNESS: Okay.

18 JUDGE CLARK: But you've had an opportunity
19 to do that. That opportunity was in your prefiled
20 testimony. So if there are some important things that you
21 would like to touch on, I will let you do that briefly.
22 Other than that, it's the opportunity of other people to ask
23 you questions because your previous attorney filed testimony
24 on your behalf.

25 THE WITNESS Okay. That's fine. I think my

1 biggest concern about the testimony that I have heard so far
2 with Mr. Finkenbinder when he was making testimony made a
3 lot of statements there just let Mr. Morgan made a lot of
4 statements in his -- in his rebuttal that there was no
5 evidence of any kind presented whatsoever. It was simply a
6 statement made that I am not doing something or that I am
7 doing something. But there was nothing provided like rocks
8 or anything that was in the water.

9 Where did they -- did they provide anybody
10 who did a check other than ourselves that they found rocks
11 in the water? I've never heard any such thing from any
12 homeowner ever that there's water, sand, or grit or
13 anything, fecal material he said was in it. That would take
14 an animal to do that, droppings and so forth. There was
15 nothing like that. If there was, where is the proof?
16 Nobody has presented anything in evidence that anything has
17 ever been in the water. It's just said, it's there, but
18 nothing has ever been presented to me to show me what they
19 saw in the water. They just said it. No proof. I don't
20 think that is right. If you are going to tell me something,
21 show me. Where did it -- where is it? What company did you
22 use to do did testing that gave you some results that
23 something is inferior. That's what I'm asking for. Show me
24 some that somebody has done that you hired that says this is
25 wrong.

1 I guess that's about as far as I can go to
2 say what you want? What does he want from me?

3 JUDGE CLARK: Well, you'll have an
4 opportunity to question him when he's testifying.

5 THE WITNESS: Okay.

6 JUDGE CLARK: Do you have any further
7 testimony at this time?

8 THE WITNESS If I've answered their
9 questions, I'm good. I'm just going over Mr. Morgan's
10 testimony that he gave that told me I wasn't qualified. I
11 was trying to highlight the things that I did. I have also
12 a lot of other things that are not related to water and
13 sewer that are violations of the homeowners but we won't
14 even get involved in those. We'll just talk about the water
15 only.

16 JUDGE CLARK: Okay.

17 THE WITNESS: We'll let it go with that.

18 JUDGE CLARK: I'm going to allow the order
19 of cross-examinations. Staff do you have any cross for
20 Mr. Mills?

21 MR. JOHNSON: Yes. Very briefly. Thank
22 you, Judge.

23 CROSS-EXAMINATION BY MR. JOHNSON:

24 Q. Mr. Mills, I believe this morning you
25 indicated that the water in your system was flagged for a

1 positive E. Coli test; is that correct?

2 A. Yes.

3 Q. And did you conduct any further testing of
4 the water after the positive E. Coli test?

5 A. After I received the notice from -- I forget
6 the company that did that for us, but there was -- the only
7 thing I could do was once I received an email, I think, from
8 the water people that there was a contamination in the
9 water, the only thing I could do was say, okay. What
10 happened from the source that I took it from. That
11 particular hydrant that I took it from, what do I do? And
12 when I talked to Lefty's Well the very next day, which was
13 on a Saturday -- this was Friday afternoon late that I got
14 the information because it was found in the system. And I
15 called most of the people and/or emailed them, said don't
16 drink your water until we find out what happened.

17 And then the next day Lefty was out there
18 actually to replace our chlorinating pump and replace the
19 line that had been ripped out. And I asked him what was
20 going on with the water and he said well, we've had quite a
21 few complaints in the last week that people have failed
22 because of a lot of rainwater had caused some contamination.

23 I said, well, what do recommend that we do
24 to take care of this thing. He said, if you want to put
25 your chlorinating system and activate, we could do that. He

1 said it can't hurt, but he said what you need to do is go
2 back to the source where you took the test and check that
3 out because anything can happen at any time to a hydrant.
4 It's exposed to the atmosphere. You could have used it for
5 20 years and never have a problem and all the sudden you
6 have a problem and it was just that one source only. So
7 that's when I went back and decontaminated by way of heat
8 with using a gas torch and heated up the valve hydrant where
9 it expels the water and then turned the water on, turn it
10 off, and heat it again.

11 When I took the test a second time that
12 disappeared, the problem that was caused disappeared. And
13 so there really was something on the rim of that that was
14 found in the test. And we got our test reports back, I
15 think, four days later. It's fine now. So -- and I haven't
16 -- only thing I could do is say is there any other houses in
17 this subdivision that would like to take a test at their
18 house. We'd be happy to do that. But we're going to have
19 to probably heat your faucet just so it doesn't do what it
20 did in mine because we don't know if bugs or something been
21 walking on your faucet that could leave contamination that
22 might get into the water during a test.

23 You disinfect it before you take a test.
24 That's one of the things I learned from Lefty because it is
25 the first failure we've actually had. And how to fix it,

1 disinfected and take it again.

2 JUDGE CLARK: Mr. Johnson?

3 MR. JOHNSON: Yes?

4 JUDGE CLARK: It's slightly after 12:00 now.
5 I know we just started your questioning, but I think it
6 might be a good time to take a break for lunch.

7 MR. JOHNSON: I do not intend do go on for
8 much further; one or two more questions.

9 JUDGE CLARK: Okay. Then why don't you go
10 ahead and complete your cross.

11 MR. JOHNSON: Okay. Thank you, Judge.

12 BY MR. JOHNSON:

13 Q. All right. Mr. Mills, I'm going to ask you
14 a question just to kind of summarize your response to
15 clarify. I'm looking for a yes or no answer. Would it be
16 safe to say that once you received notice of a positive
17 E. Coli test you retested the same source after sanitizing
18 the hydrant; would that be correct?

19 A. Yes. After I disinfected it.

20 Q. And at that point the test showed that the
21 water was --

22 A. Fine.

23 Q. -- clean?

24 A. Fine. The water was clean.

25 Q. Thank you. Mr. Mills, in your prefiled

1 testimony I believe earlier today you indicated the
2 potential of contracting with a third-party operator; is
3 that correct?

4 A. We did in fact take on a third-party
5 contractor for a while.

6 Q. Would you still potentially agree to
7 entering into a contract with a third party to operate your
8 system?

9 A. I would if I could find somebody that will
10 hold true to the contract. We had some problems and that's
11 why we split after two and a half months. Yes, I would love
12 to have somebody do it. I'm tired of running it, frankly.
13 I would love to have somebody run it, but there again when
14 you do this you have to get somebody who's qualified to do
15 it and it is going to be expensive. There's nobody in the
16 Homeowners Association that can do it so they are going to
17 have to have another outside party who is qualified to do
18 that. It's going to be much more experience than what I
19 have charged to do it in the past. Because I did a lot of
20 things that there was no charge for. That's not going to
21 happen if somebody else takes it over. We found that out
22 very quickly the first time I tried it.

23 The \$365 was just openers and that didn't
24 include any kind of repairs at all. So you have to consider
25 repairs as separate from just managing it.

1 Q. Understood. Thank you, Mr. Mills. Do you
2 understand, Mr. Mills, that even if you were to contract
3 with a third-party operator, you as the owner of the utility
4 would still be subject to the jurisdiction of this
5 Commission?

6 A. Well, as the owner, absolutely, I would be
7 because that would be my responsibility to pick the operator
8 I suppose.

9 Q. Thank you. Mr. Mills.

10 MR. JOHNSON: No further questions.

11 JUDGE CLARK: Okay. I think this is a good
12 time to break for lunch. Why don't we recess until 1:15.
13 We'll go off the record.

14 (OFF THE RECORD.)

15 JUDGE CLARK: Okay. We'll go back on the
16 record. It is 1:15. Mr. Mills, if you will come back up
17 and take the stand. I'm going to remind you that you are
18 still under oath. And it is the turn of the Office of The
19 Public Counsel to ask any cross-examination questions.

20 MR. CLIZER: Thank you, Your Honor.

21 CROSS-EXAMINATION BY MR. CLIZER:

22 Q. Good afternoon, Mr. Mills?

23 A. Good afternoon.

24 Q. A couple of quick questions. First of all,
25 you mentioned at one point having been under contract with

1 an operating company. I am not sure -- I think missed the
2 name of the company. Was that that Ozark Clean Water
3 operating company?

4 A. Yes, it was.

5 Q. And you stated that you ceased -- you
6 stopped using them as of two and a half months ago; is that
7 correct?

8 A. No, we used them for two and a half months.

9 Q. Okay. I'm sorry. When did you cease using
10 them?

11 A. I'm sorry?

12 Q. When did you stop --

13 A. It was probably about a month ago, three
14 weeks.

15 Q. And you are not currently under contract
16 with any other operator?

17 A. No.

18 Q. Okay. I'm going to paraphrase this. My
19 memory might be a little muddled because I just had lunch.
20 You described having a positive E. Coli test here recently
21 and the steps you took in response to that E. Coli test. I
22 believe you stated that you called your -- the well company?

23 A. Lefty's.

24 Q. I'm sorry. What was the name of that
25 company?

1 A. Lefty's Well.

2 Q. Lefty's Well.

3 A. And Welding.

4 Q. And they told you to essentially heat the --
5 I'm not sure if it was hose or spigot that you were drawing
6 your sample from?

7 A. Well, what they explained to me was whatever
8 you decide to draw it from, you should disinfect it first
9 before you even try to your test.

10 Q. And you disinfected it using -- by heating
11 it. Correct?

12 A. After they told me how to do this, I started
13 using what you'd use for a barbecue grill to start your
14 flames after you put something on it. It's perfect for
15 putting into a hose bib because you can get it hot and kill
16 any germs that are on it. And you turn the water on and
17 turn it off. Heat it again and from then on it should be
18 fine and it was.

19 Q. About how long -- or how much water did you
20 allow to run through the hose bib before you drew your
21 sample after heating it?

22 A. The first time?

23 Q. Sure?

24 A. The first time I ran it for about three
25 minutes, which didn't seem to matter. It still came out

1 positive for E. Coli. So something was on the rim that was
2 doing that. The second time was after I had talked to
3 Lefty's and said what is your experience on this because
4 they had taken tests themselves. They said, well, we
5 disinfect it first. I said, how did you do I. They said,
6 but fire on it. And I thought what can I use for fire. You
7 know, what they use for barbecue grills. We used that, so
8 we heated it up and ran some water out and heated it again.
9 And I said, okay, we will try to test now and that is what
10 they said they did and it worked fine.

11 Q. Okay. And you are currently seeking a CCN
12 as an individual. Correct?

13 A. Yes.

14 Q. Not -- you personally do not have title to
15 the water system at this point in time; is that correct?

16 A. Yes, I do.

17 Q. The entity that -- you do?

18 A. The water well and the sewer.

19 Q. Sure?

20 A. They are both in my name now.

21 Q. They are both in your name now? And when
22 was that transfer of property affected?

23 A. I think the recommendation of the PSC that
24 voided all of the other transfers and take it back to the
25 original, which was me, so I did that and those have been

1 back in my name ever since.

2 Q. Ever since the decision of the PSC?

3 A. Uh-huh.

4 Q. All right.

5 MR. CLIZER: That is all the questions I
6 have. Thank you.

7 JUDGE CLARK: Thank you. Intervenors?

8 MR. FINKENBINDER: Thank you, Your Honor.

9 CROSS-EXAMINATION BY MR. FINKENBINDER:

10 Q. Mr. Mills, you said that Lefty's had come
11 out there and instructed you on how to conduct the test; is
12 that correct?

13 A. No. They came to replace a pump that was
14 burnt up and replace the close of the chlorine that would
15 shoot into the water system that went into the tank. That
16 is why they came out.

17 Q. Okay. But while they were out there you
18 asked them some questions and they give you advice on how to
19 conduct --

20 A. Well, this was --

21 Q. -- test?

22 A. -- a day after I had a negative report.

23 Q. Understood.

24 A. I said have you people experienced this?
25 And they said we've had several. And it's been days that

1 have come out negative. I said, what are you doing about
2 it. Said, well typically we disinfected whatever it was and
3 do it again and see if it's -- how far spread it is. You
4 could go to every other house in the neighborhood and try
5 all of them if you want.

6 Q. Okay. It would be fair to say that prior to
7 last week when they told you that you did not know how to
8 conduct a water test?

9 A. I have done it the way I've done it for 20
10 years and they've all come out positive -- I mean not
11 positive, but negative of problems. They've all come out
12 well.

13 Q. Okay.

14 A. And that was basically taking a chance and
15 it still came out okay.

16 Q. You said that -- what was the name of your
17 company Chicago Fluid and Power?

18 A. Chicago Fluid Power.

19 Q. Did it ever manage or operate a water
20 system?

21 A. They weren't in that business.

22 Q. Okay. So your experience with that company
23 would be irrelevant as to it pertains to running a water --

24 A. Not necessarily because in fluid power you
25 get involved with water treatment plants on a very large

1 scale. We built water systems for the city of New York, Los
2 Angeles, Philadelphia, Miami --

3 Q. But you never managed --

4 A. We would work with these people --

5 Q. You didn't though?

6 A. -- with our products.

7 Q. You never managed a water system. That
8 would be after --

9 A. I -- not for a city, no.

10 Q. Okay. Or any -- you never managed any water
11 system in your history?

12 A. Until I built by own. I didn't have to.

13 Q. I understand.

14 A. I just worked with people that did engineer
15 them.

16 Q. I understand. You introduced pictures
17 earlier of you the flushing the system; is that right?

18 A. Yes.

19 Q. Okay. And you said that was two weeks ago?

20 A. I've done it a couple times, but -- in fact,
21 I've done it twice a year for the last 20 years.

22 Q. Do you have any evidence of that other than
23 those two pictures that you took two weeks ago?

24 A. Well, the evidence is that I built a vault
25 for the water to be able to be tested at the end of the line

1 after all the houses. All I have to do is open a valve. I
2 put a vault in the ground. It was put in there for that
3 very purpose.

4 Q. Do you have any invoices or other
5 pictures --

6 A. There's no invoices --

7 Q. -- to demonstrate --

8 A. -- to it. I just go down there, open it up
9 and watch it for about 15 minutes until the accumulators
10 have expired and is on its own pressure of whatever the pump
11 can put out and I'm watching it for rust and watching it for
12 anything I see come out of it. It only takes about ten to
13 15 minutes. I do that twice a year. It's not a big deal.

14 Q. Okay. You had mentioned as well that the
15 first system that you installed well burnt out; is the
16 right?

17 A. Excuse me?

18 Q. The first water system that you installed,
19 the well, the actual well burnt out because of overuse. Did
20 I understand your testimony correct?

21 A. What happened after about 12 years is
22 because we did not have any storage capacity except for the
23 accumulator, which is a mere 150 gallons between 60 and 40
24 psi. Once you -- once you blow that 150 gallons out, the
25 pressure goes from 60 to 40 in the well. The deep well pump

1 was kicking on, rising that water 600 feet in the air to
2 replace that 150 gallons. Meanwhile, people are irrigating
3 their lawns. Two, three, four, five houses irrigating the
4 lawns trying to use that water. So it did burn it up after
5 about 12 years, but it burned it up.

6 Q. So it would be fair to say that you
7 originally installed a system that was insufficient for --

8 A. It was installed under the auspices of the
9 Department of Natural Resources, told us exactly what to do.
10 And we did not -- I had Lefty drill the well and construct
11 it. I built the house around it and put all of our
12 electrical equipment in it. But they drilled the well. The
13 DNR said for what purpose you will build it. These are our
14 parameters. This is what we want.

15 Q. I'm not interested in DNR. I'm --

16 JUDGE CLARK: Mr. Mills, would you let
17 Mr. Finkenbinder finish his question --

18 THE WITNESS: Sure.

19 JUDGE CLARK: -- before you answer?

20 BY MR. FINKENBINDER:

21 Q. I not interested in DNR. I'm just simply
22 asking you would you admit that the system that you
23 installed originally was insufficient for the seven homes
24 that existed?

25 A. It was not insufficient.

1 Q. Okay.

2 A. It was being used improperly.

3 Q. Okay. When you said it was being used
4 improperly because people were sprinkling their yards?

5 A. Because of irrigation was allowed one hour
6 and they were --

7 Q. And you have and irri--

8 A. -- using it for hours.

9 Q. And you have an irrigation system; is that
10 correct?

11 A. Yes. We all do.

12 Q. And you have a swimming pool; is that
13 correct?

14 A. I do.

15 Q. Would it be fair to say that you're actually
16 the biggest user of water in your neighborhood?

17 A. There's other pools, or at least one other
18 pool. Mine is not even open. It hasn't ever been filled
19 this year.

20 Q. But historically you are the biggest user of
21 water in that subdivision; is that correct?

22 A. I don't know that I would be the biggest. I
23 don't know why I would be. We have other people that have a
24 pool and lawns to sprinkle.

25 Q. Okay. You were using a contract operator

1 Ozark Clean Water; is that right?

2 A. We did.

3 Q. And when did you -- you said you terminated
4 them three weeks ago?

5 A. I'd say about three weeks. Yes.

6 Q. Can you -- why did you terminate him?

7 A. Because he was exceeding what our agreement
8 was for his management purpose. He was there to manage only
9 and look at -- at the system to see if it was running
10 correctly, but not to do any maintenance or do any work
11 whatsoever, just manage and look it over. If we got to the
12 point where the PSC was going to determine that we would, in
13 the future, dispense water by way of meter then they would
14 read the meters and send the bills out to the people, but we
15 never got to that point. It wasn't made for that yet.

16 Q. So what specifically did he do to -- that
17 exceeded what you gave him authority to do?

18 A. The contract that I had with him was simply
19 to manage; to look at it, manage, tell us if there's
20 anything wrong. If you see anything wrong, let us know so
21 we can address the issue whenever that may be. That's all
22 they were supposed to do, and for a certain fixed amount
23 every month. They started to exceed that by making some --
24 doing some maintenance work, which was much more expensive
25 than if I had done it myself or even hired someone else to

1 do it.

2 Q. What maintenance work?

3 A. Excuse me?

4 Q. What maintenance work?

5 A. Well, they wanted to replace the pump. And
6 this wasn't on the well. This was on the sewer treatment
7 plant actually. They were doing both. They were managing
8 both properties.

9 Q. Okay. Well, I am not asking about the
10 sewer. I'm just asking about the water. What additional
11 services did they render with regard to the water that you
12 thought was --

13 A. The sewer treatment plant. They were
14 managing that as well. That was part of the deal.

15 Q. Okay. So I am not talking about that. Did
16 they do anything that exceeded your expectations with regard
17 to the water?

18 A. They didn't add anything to it, no. They
19 didn't do anything except --

20 Q. So it was not necessary then to terminate
21 their services for water?

22 A. No. No. Their job was to manage both water
23 and sewer. Manage it. Look for any problems and let us
24 know.

25 Q. Could you have continued using them to

1 manage the water system?

2 A. I saw no reason to do it for \$365 a month
3 because I wasn't charging that to the homeowners. That
4 would have been an additional charge.

5 Q. I understand.

6 A. So I basically said we will save the money.

7 Q. Okay.

8 A. Because it will come out of assessments if I
9 do that.

10 Q. All right. And when did you first -- when
11 did you first get notice that you had the failed water test?

12 A. I think it was about two weeks ago. It was
13 on a Friday. I know that. I got an email from the health
14 department that there was E. Coli noticed in the system. I
15 immediately contacted the homeowners and that was late
16 Friday afternoon.

17 Q. What specifically gave you the idea to take
18 a water test at that time?

19 A. There was no reason. I was just going to
20 take a water test.

21 Q. Okay. You are not on any like regular
22 schedule or anything?

23 A. No. I -- actually, I thought as long as we
24 were going to this Public Service Commission I might as well
25 go ahead and take a test and we will see what it is like

1 right now. There was no other specific reason other than to
2 say, okay, let's a fresh one.

3 Q. Okay. So you took a fresh one for the hopes
4 -- for the purposes of showing the Commission here today
5 that you --

6 A. Well, I took one to find out what we were
7 going to present and that was two weeks before this hearing.
8 And when we found out the results it was an experience that
9 had never happened before so we had to find out, okay, what
10 do we need to do now. A week later -- within a day or two
11 we already had disinfect what had happened and take it
12 again, so we did.

13 Q. You had mentioned that several times now
14 that you have taken multiple tests every year; is that
15 correct?

16 A. I said multiple. I said one or two tests a
17 year because that is all we've ever had to take and nothing
18 has ever happened.

19 Q. In this case you previously provided to
20 Staff only two previous test results; one from November of
21 2017 and one January 2018?

22 A. When you say Staff, who did I present
23 these --

24 Q. To Staff counsel with the PSC?

25 A. We've never presented Staff any inspections

1 of tests before ever until this time because we had this
2 failure. That is how it came up. We've never reported what
3 kind of test we had to the DNR or the PSC. There's no
4 reason that I know of to do that.

5 Q. You're now saying that you've never provided
6 test results to Staff?

7 A. I'm saying what?

8 Q. Are you now saying that you've never
9 provided any test results to Staff in this case?

10 A. Before this -- two weeks ago.

11 Q. Okay. Do you have -- let me ask you this:
12 Do you have today present with you any evidence of the tests
13 that you have ever taken including the test from November of
14 2017 or January of '18. Do you have evidence of any water
15 tests that you have taken?

16 A. Yes.

17 Q. Do you have those with you today?

18 A. Not with me today, but I have them.

19 Q. Okay. Just --

20 A. In my file -- I've got them in the DNR file.
21 I put all of my reports --

22 Q. And I am not talking about the sewer. You
23 keep mentioning DNR --

24 A. Well, DNR --

25 Q. I'm not talking --

1 A. It's both. So whatever I do, even water
2 tests, I would stick the water test in with other things
3 that go on with that as well. I have one file for the whole
4 sewer and water.

5 Q. So other than your testimony here today, you
6 don't have any proof or evidence of any previous water tests
7 that tested clean other than what you have already given?

8 A. I have found several in there ever since
9 then.

10 Q. But they are not here today?

11 A. Well, no. There's no reason why they -- to
12 bring them that I know of.

13 Q. And you took that water test last week for
14 the purposes of bringing it to the Commission in hopes that
15 it would test clean and it did not. Would that be fair to
16 say?

17 A. It just occurred to me that it would be an
18 appropriate time to take one if you've going to go up there.
19 Let's get a fresh one.

20 Q. I agree with that.

21 A. Okay.

22 Q. You admitted earlier, I believe -- let me
23 make sure -- that you currently don't use chlorine in the
24 system; is that correct?

25 A. Well, we are as of now in the last few days,

1 but no we had not until this whole thing happened.

2 Q. Okay. If you had been would that have
3 probably prevented the E. Coli from getting in the system?

4 A. I don't think so, not given what we found
5 out.

6 Q. And what was that?

7 A. We found it out it was because I had a hose
8 on my hose bib that had been out in the yard and everything
9 else. I took the hose off of it and used that to take the
10 hose bib -- to take the test as well. But I've done it
11 before and there was no problem. It just so happened that
12 something got into that because of the water, the rain,
13 whatever got into the hose and went into the hose bib and
14 infected it. When I took the hose off, I just let the water
15 run for three or four minutes. Well, it still wasn't enough
16 to get whatever was in that hose off of it.

17 Q. You have historically not used chlorine but
18 I'm going to have you looking at Exhibit 303. Do you
19 recognize this document?

20 A. It looks like it is Carriage Oaks Estates
21 homeowners expenses for 2016, 2017, '18, and so forth.

22 Q. If you will go down there on the expenses.
23 If you will look at Line 20.

24 A. Okay.

25 Q. It says water chemicals. It's misspelled,

1 but it says chlorine there. Do you see that?

2 A. I see Number 20, yes.

3 Q. It shows that you have been billing my
4 clients for 2017 and 2018 for chlorine. Do you see that?
5 400 for '17, and 420 for '18?

6 A. Well, I see something in here, but I didn't
7 put these particular ones in here because I wasn't --
8 actually, this is one of the other members of our Homeowners
9 Association that makes up this report. I don't recall us
10 putting \$400 worth of chemicals and I didn't -- I didn't
11 make this report. It was another person in the subdivision
12 that made this report.

13 Q. But this is the bill that you sent out?

14 A. Yes. I'm looking.

15 Q. So it would it be fair to say you are
16 charging my clients currently for items you are not even
17 using?

18 A. Well, I'm not -- the fact that we have these
19 -- I really don't know. I see 420 I see we had on one.
20 What I'd have to do is go back and look at all of them from
21 -- you're showing 2018 and 2017. I don't know if we've got
22 any -- let me see something for the heck of it here. I've
23 got -- if I've got anything in here for chlorine.

24 MR. JOHNSON: Your Honor, at this time I
25 would admit Exhibit 303 into evidence.

1 (WHEREIN; Intervenors Exhibit 303 was
2 offered into evidence.)

3 JUDGE CLARK: Any objections to admitting
4 Exhibit 303 into the hearing record?
5 Staff?

6 MR. JOHNSON: No objection, Judge.

7 JUDGE CLARK: Office of Public Counsel?

8 MR. CLIZER: Can I see a copy of it? That's
9 fine. No objections.

10 JUDGE CLARK: Mr. Mills, any objections?

11 THE WITNESS: What is 303, if I might ask?

12 MR. FINKENBINDER: I'm sorry.

13 THE WITNESS: What is 303?

14 MR. FINKENBINDER: The exhibit you are
15 looking at there.

16 THE WITNESS: Okay.

17 JUDGE CLARK: Mr. Mills, any objection to
18 admitting that onto the hearing record?

19 THE WITNESS: No. It's fine. You can admit
20 it. It's fine. I'm looking for any expense for chlorine
21 that is charged to the homeowners.

22 JUDGE CLARK: Exhibit 303 is admitted onto
23 the record.

24 (WHEREIN: Intervenors Exhibit 303 was
25 received into evidence.)

1 THE WITNESS: Well, this -- this is
2 something that was written up. It's not something that was
3 charged to the homeowners.

4 JUDGE CLARK: Mr. Mills, you haven't been
5 asked a question at this point.

6 THE WITNESS: Oh, sorry.

7 BY MR. FINKENBINDER:

8 Q. You recently -- or it was brought up that
9 you have asked your counsel to no longer be involved in
10 this case; is that correct?

11 A. No longer be involved in this case?

12 Q. Yes. You didn't require his services for
13 today's hearing; is that right?

14 A. Right.

15 Q. Okay. And you said -- when did you -- that
16 was approximately two weeks ago; is that right?

17 A. Probably closer to three now.

18 Q. Three? So would it be fair to say that you
19 fired your attorney and --

20 A. No.

21 Q. Hold on. Let me finish my question. Would
22 it be fair to say that you fired your attorney and Ozarks
23 Clean Water in the same week?

24 A. I don't think they were in the same week.

25 Q. You testified they both were three weeks

1 ago?

2 A. Well, I'm saying Ozark Clean Water was about
3 that time because it was a very specific event. The
4 specific even with Husch Blackwell was not a specific event
5 at all. I still talk to them on the phone and they're still
6 taking care of things for me.

7 Q. Was that --

8 A. Excuse me?

9 Q. Was that during the time when you were
10 having surgery?

11 A. What surgery?

12 Q. The vascular surgery?

13 A. The heart attack that you were talking
14 about?

15 Q. We'll get to that here in a minute. I'm
16 talking about the vascular surgery that you mentioned?

17 A. The vascular surgery has gone back -- I'm
18 sorry, can you remember Dr. Stewart, when I had the surgery?

19 MR. FINKENBINDER: Can you not --

20 JUDGE CLARK: You're going to have to
21 testify from your own memory Mr. Mills.

22 BY MR. FINKENBINDER:

23 Q. You can't remember when you had surgery?

24 A. I'm going to -- I'm going to say just by
25 memory probably a month ago was the last one I had and then

1 I had one four weeks before that on the other leg.

2 Q. Mister --

3 A. They waited four weeks between them.

4 Q. Mr. Mills, I'm sorry, I'm going to ask you
5 basic questions. Do you know what day it is today?

6 A. Do I know what day it is today?

7 Q. Do you know what the date is?

8 A. I'm guessing it'd probably be around the
9 24th.

10 Q. Of what?

11 A. June.

12 Q. Okay. Do you know what year it is?

13 A. 2019.

14 Q. Do you know who our President is?

15 A. What?

16 Q. Who the President of the United States is?

17 A. Donald Trump.

18 Q. Okay. I'm going to have you look at Exhibit
19 305. Do you recognize that?

20 A. Yes, I do.

21 Q. Can you explain to the Commission what that
22 letter is?

23 A. I'm reading it. Okay. What is your
24 question?

25 Q. Could you explain to the Commission what

1 this is?

2 A. Well, it was a possible delay in time.

3 Q. You wrote this letter. Right?

4 A. Yes.

5 Q. And this is a letter where you're asking for
6 a continuous for what purpose?

7 A. Well, I think the purpose was to find out if
8 we really -- was it necessary for a convenience -- a
9 certificate of convenience and necessity. I didn't really
10 understand truly what a CCN is all about and I wanted to
11 check into that to see a little bit more about it.

12 Q. Okay. So you admit that you don't know what
13 a CCN is about?

14 A. Well, I can't say I know every facet of it
15 but I'm gathering that what it means if you have a
16 certificate that they would like for you to operate your
17 water well with that so that there would be overlook from
18 the CNN (sic) -- by virtue of the CNN. That the PSC could
19 look over what we do. That's fine with me.

20 Q. In this letter though, you say that it
21 appears to you that this matter appears to be out of the
22 jurisdiction of the Missouri Public Service Commission. Do
23 you see that?

24 A. Well, I was thinking it was probably more in
25 the DNR because they are the engineering portion of it. But

1 if this has to do with regulating costs, it would not be the
2 DNR. It would be the PSC.

3 Q. Well, you would agree with me the Commission
4 does just more than regulate costs?

5 A. Well, I am assuming they have other
6 responsibilities, but I'm not sure what they all are.

7 Q. Fair enough.

8 A. I haven't dealt with them that much.

9 Q. Okay. Fair enough. That answers my
10 question. This is dated May 24th; is that right?

11 A. That is what it says. Yes.

12 Q. That's about four weeks ago; is that right?

13 A. It would be about a month ago. Yes.

14 Q. So would it be fair to say about one month
15 ago -- within a one-week period you were fir-- you let go of
16 your attorney, let go of Ozarks Clean Water system -- or
17 Clean Water Service and asked the Commission for a
18 continuance so that you could take this matter outside of
19 the Commission. That all happened within a week; is that
20 right?

21 A. Well, it would appear that all this had
22 happened within a month.

23 Q. Okay. I'm going to have you look at what
24 has been marked as Exhibit 306.

25 MR. FINKENBINDER: Your Honor, before I move

1 to 306, I'm going to move to admit Exhibit 305.

2 (WHEREIN; Intervenors Exhibit 305 was
3 offered into evidence.)

4 JUDGE CLARK: Any objections to admitting
5 Exhibit 305 on to the hearing record?

6 Staff?

7 MR. JOHNSON: No objection.

8 JUDGE CLARK: Office of Public Counsel?

9 MR. CLIZER: No.

10 JUDGE CLARK: Mr. Mills, do you have to any
11 objection to admitting 305 onto the hearing record?

12 MR. CLIZER: I don't even know what 305 is,
13 sir.

14 JUDGE CLARK: That would be the letter that
15 you're referencing. The letter that you wrote.

16 THE WITNESS: That's fine. I have no
17 objection.

18 JUDGE CLARK: The one he was just asking you
19 about.

20 THE WITNESS: Right. No objection.

21 JUDGE CLARK: Exhibit 305 is admitted onto
22 the hearing record.

23 (WHEREIN; Intervenors Exhibit 305 was
24 received into evidence.)

25 BY MR. FINKENBINDER:

1 Q. Do you see Exhibit 306 there in front of
2 you?

3 A. Yes.

4 Q. Okay. I'll represent to you that this is
5 just a page, Page 5 of your rebuttal testimony that has been
6 previously admitted. But I want to take this little bit.
7 Do you see a portion there that is highlighted by chance or
8 does your copy have that?

9 A. I don't see anything.

10 Q. Okay.

11 MR. FINKENBINDER: May I approach?

12 JUDGE CLARK: Yes.

13 BY MR. FINKENBINDER:

14 Q. Do you recognize the part there that is
15 highlighted?

16 A. Does the Stone County recorder still show
17 the water system -- excuse me -- of Carriage Oaks Estates
18 being held by Carriage Oaks not-for-profit water and sewer
19 corporation.

20 Q. And then what was your answer?

21 A. I don't know when this was taken. It says
22 yes. What date was this all --

23 Q. You can just answer my question.

24 A. It says yes.

25 Q. You just testified a minute ago that you had

1 always owned the system -- or that you have always owned the
2 system since the Commission ruled that you were required
3 that you could not previously transfer the system to the
4 not-for-profit. Do you remember that testimony just a
5 minute ago?

6 A. I remember a testimony where they refused to
7 acknowledge the sales of any -- any of the sales or
8 transfers of the water and sewer.

9 Q. And you testified that after they ruled that
10 you transferred the system back into your name. Do you
11 recall that?

12 A. At their request, yes.

13 Q. Yes. In this case in your surrebuttal
14 testimony you are stating here that the not-for-profit still
15 owns it?

16 A. They do not. I am not sure when this --

17 Q. It was filed in 2018?

18 A. 2018.

19 Q. I'm sorry. I believe it was filed in 2019,
20 the beginning of this year. Your surrebuttal testimony. It
21 was filed this year?

22 A. I'm not quite sure I am understanding what
23 your question between the yes and the no answer is to this.

24 Q. Mr. Mills, it's because you have given two
25 answers. I'm trying to understand the discrepancy between

1 your two answers. On one hand you are testifying that you
2 have owned the water system since the Commission ordered it
3 be transferred back. And now you testified -- I'm showing
4 to you where you testified in presubmitted testimony that
5 you had not done that.

6 A. We had not until -- I think it has been a
7 month ago that it was put back into my name.

8 Q. So now you are changing your testimony? You
9 are now testifying that you transferred it back into your
10 name a month ago?

11 A. I was advised to do that by Husch Blackwell
12 and I did that at that time. I'm not sure exactly what the
13 date was, but he said that the PSC requested that you put
14 these back in the original name and I said, okay.

15 Q. So you did it a month ago?

16 A. Whatever date that was I went over and had
17 it changed back into my name. I can't remember exactly
18 which week it was, but it's been fairly recently in a month
19 or so, six weeks. I don't know.

20 Q. Okay. That is not what you said earlier.
21 Earlier you had said when Staff had asked you -- I'm sorry
22 when the Public Counsel asked you, you testified that you
23 did it back when the Commission had ordered you to do so and
24 that it had been in your name ever since --

25 A. I thought I said I did it because of that,

1 not when but because they asked us to do that.

2 Q. Okay. But in any event, as of the date that
3 you filed your surrebuttal testimony at the beginning of
4 this year you did not own the system? You personally did
5 not own the system? Your nonprofit still did it in the
6 beginning of 2019; is that accurate?

7 A. I would have to have -- get the date and
8 there is some -- I have some information I think in my files
9 of the dates of what was actually sold and when it was sold.
10 If you got a minute, I'll look it up.

11 Q. No, I don't. Just answer my question. I'll
12 give you a date. As of January 1st, 2019, you did not own
13 the system; is that correct?

14 A. What I am trying to tell you is I have it
15 written in here when the transfers were taken place, I
16 believe. If we've got a minute we'll look at all of the
17 dates of the transformations of when, who owned it and on
18 what date.

19 Q. So without looking at those notes, you don't
20 recall whether or not you owned the --

21 A. There was --

22 Q. -- the system on January 1st?

23 A. -- about four transfers. I'm supposed to
24 remember all of those transfers and the dates?

25 Q. Yes, a normal person would. Not the exact

1 date, but they would remember a general timeframe.

2 A. When you're talking about something over a
3 20-year span?

4 Q. Do you have an idea of the month?

5 A. The month?

6 Q. Yes.

7 A. I don't even have an idea of which year it
8 was because it was eight or ten years.

9 Q. Okay.

10 A. I have it somewhere in writing, if you want
11 it. If it is that important.

12 Q. Your presubmitted testimony on next line
13 there says on the Question 9 it asks says why hadn't made
14 the transfer and you gave a reason. You said that you
15 feared the trans-- you're hesitant to make the transfer
16 because it might cause even more confusion or issues with
17 the current case. What confusion would that be?

18 A. Well, let me see if I can find out. Because
19 they had invalidated the transfers. That's when I had it
20 finally back into where it was officially, in my name and
21 the original owner. I figured that it may cause even more
22 confusion be-- well, if I didn't transfer it back in my name
23 it would have caused some more confusion, would it not.

24 Q. I agree. But that is not what this says.
25 You are saying that you didn't make the transfer back to

1 your name because it would cause confusion to do so?

2 A. Well, that was prior to when I did it. But
3 after I did it -- I did it because they requested me to do
4 it.

5 Q. A month ago? One month ago?

6 A. I don't know exactly when it was. I
7 remember having it done. But it hasn't been that long ago.
8 Are we talking four weeks? Six weeks? Which day was it?
9 No. I can't tell you which day it was a week or which week
10 it was within a six-week pattern.

11 Q. But you believe it was about a month ago?

12 MR. JOHNSON: Judge, I'm going to object to
13 this line of questioning. Mr. Mills has already stated that
14 he is unsure of the exact date at which he transferred the
15 property.

16 JUDGE CLARK: I agree. The question has
17 been asked answer to the best of Mr. Mills ability. So
18 that's sustained.

19 MR. FINKENBINDER: Your Honor, even though
20 the surrebuttal testimony was introduced, I'd still like to
21 introduce my Exhibit 306 because it's a highlighted portion
22 of that testimony.

23 (WHEREIN; Intervenors Exhibit 306 was
24 offered into evidence.)

25 JUDGE CLARK: And that's a portion of his

1 surrebuttal?

2 MR. FINKENBINDER: Yes, Your Honor.

3 JUDGE CLARK: Staff, any objection to
4 admitting Exhibit 306 onto the hearing record?

5 MR. JOHNSON: I would point out that I
6 believe this is actually a page of Mr. Mills' rebuttal
7 testimony and Staff would object as this is duplicative
8 evidence being submitted into the record. If there is a
9 certain line or sentence in Mr. Mill's testimony that
10 Mr. Finkenbinder would like to point out, he is more than
11 able to do with the current evidence in the record.

12 JUDGE CLARK: OPC?

13 MR. CLIZER: I would generally join Staff's
14 objection.

15 JUDGE CLARK: Do you have a response
16 Mr. Finkenbinder?

17 MR. FINKENBINDER: No. That's fine. I mean
18 I'll let the Commission rule on it.

19 JUDGE CLARK: I think it's been sufficiently
20 pointed out. I would ask just for clarification though,
21 because I do want to clarify on the record, is it
22 surrebuttal or rebuttal?

23 MR. FINKENBINDER: Rebuttal. My apologies.

24 JUDGE CLARK: Thank you.

25 BY MR. FINKENBINDER:

1 Q. I'm going to have you take a look at Exhibit
2 307.

3 A. Okay.

4 Q. Do you recognize this document?

5 A. Yes.

6 Q. And can you explain to the Commission what
7 this is?

8 A. Well, it is probably assessments that we
9 sent out for 2018. It was dated in April, 11th. Normally
10 we send those out January -- or in December of the prior
11 year, but this was five months after because all of the
12 activity that is going on. We've overlooked this -- did not
13 overlook it, but set it aside for the moment until something
14 could be determined by whatever was going to happen. This
15 is our normal course -- would have been our normal course to
16 send these out in December of the prior year. And they
17 would be due at the end of January of the succeeding year.
18 Like for example, 2017 -- or 2016 December was sent out for
19 assessments and they were due and payable at the end of
20 January 2017. The successive year would be the same year,
21 whatever 2017 will be paid in 2000 -- we were a year behind.

22 Q. Just answer my question. You are going
23 beyond that.

24 A. Okay.

25 Q. You explained what it is. It would be fair

1 to say -- did you prepare this document?

2 A. Yes.

3 Q. Okay. If you look at the last page. Did
4 you look at -- can you explain what this is? Just this one
5 sheet?

6 A. Well, you have three pages here. Which are
7 you talking about? This page or this page?

8 Q. The last one.

9 A. This one?

10 Q. Yes?

11 A. So this is the -- now, this one I did not
12 make up, no.

13 Q. So you did not prepare this yet you sent it
14 out to everybody in the subdivision; is that correct?

15 A. Well, it was sent out by the person who
16 sends it out every year. He puts all these figures together
17 and puts them into a budget and expense.

18 Q. Okay. If you will look in the far
19 right-hand column there it says 2019. Do you see that
20 column there?

21 A. 2019. What number on the left?

22 Q. The far right-hand column?

23 A. The 2019 column down?

24 Q. Yes?

25 A. Okay. What about it?

1 Q. Do you see where it says 2019; is that
2 right?

3 A. Yes.

4 Q. So this would be the budget for 2019; is
5 that right?

6 A. That would be supposedly what this is for.
7 This is a budget.

8 Q. Okay. And it's got \$9,240 in the total for
9 water and sewer cost. Do you see that?

10 A. That is what it shows, yes.

11 Q. And this is a bill being sent by Carriage
12 Oaks Estates HOA Inc; is that right?

13 A. No. This is the -- the ones that was sent
14 out by -- for the water maintenance and sewer -- was line 11
15 and 12. That would be the only bill that was sent now. We
16 had sewer calls. We had testing. We had other costs here
17 but I'm not sure what your -- what are you specifically
18 referring --

19 Q. What is the very first line of the top of
20 this?

21 A. Line 11?

22 Q. No, the very first thing. Does it not say
23 Carriage Oaks Estate HOA Inc. Expense?

24 A. Okay.

25 Q. Do you see that?

1 A. Expense for.

2 Q. So this is representing that this the
3 expenses for the HOA for 2019?

4 A. Well, the budget for 2019.

5 Q. Okay.

6 A. It is not expense. It is a budget.

7 Q. Okay. 9,240; is that correct?

8 A. That's what he had budgeted.

9 Q. Okay. And the it says for 2018 it has
10 \$14,630.81. Do you see that there?

11 A. I see that.

12 Q. Here is my question: Why is the HOA sending
13 bills for the water system?

14 A. Because we are on assessments and we been on
15 assessments for 20 years.

16 Q. That is your answer?

17 A. My answer is that all of the payments that
18 have come out of the water or the sewer have been paid from
19 the checking account of the Homeowners Association because
20 that's what we put our money in there for was to maintain
21 the water, the sewer, the roads, the gates, maintenance,
22 anything that goes into Carriage Oaks to maintain it
23 regardless of what it is, is either put in budgeted for the
24 new coming year or from past years would be what we actually
25 did spend it for.

1 Q. Okay.

2 A. And budget is what we think it's going to
3 be.

4 Q. Okay. So it's fair to say that you're still
5 running all expenses for the water system through the HOA?

6 A. We've -- that's the only way we've ever done
7 it. It's never been anything different.

8 MR. FINKENBINDER: All right. Your Honor,
9 at this time I'd like to admit Exhibit 307 into evidence.

10 (WHEREIN; Intervenors Exhibit 307 was
11 offered into evidence.)

12 JUDGE CLARK: Any objection to admitting 307
13 onto the hearing record?

14 MR. JOHNSON: No objection.

15 JUDGE CLARK: OPC?

16 MR. CLIZER: I would like to see a copy of
17 it. I have no objection.

18 JUDGE CLARK: Mr. Mills, do you have any
19 objection --

20 THE WITNESS: No problem.

21 JUDGE CLARK: -- to admitting the assessment
22 -- wait until I have asked the question -- to admitting the
23 assessment onto the hearing record?

24 THE WITNESS: I have no problem.

25 JUDGE CLARK: Okay. Thank you. Exhibit 307

1 is admitted onto the hearing record.

2 (WHEREIN; Intervenors Exhibit 307 was
3 received into evidence.)

4 BY MR. FINKENBINDER:

5 Q. Can you -- I'm going to show you what has
6 been marked as Exhibit 314. Do you see this here? It is an
7 email chain?

8 A. All I see is something from Mr. Morgan and
9 Karl Finkenbinder and FYI your information, I guess.
10 Outlook on android. Looks likes something from Derald to
11 me. Let me get this straight. Okay. I think I remember
12 this email, yes.

13 Q. Okay. If you look towards the bottom of the
14 page where it says, from Richard Mills to Bill and Gloria
15 Phipps and then it copies everybody in the subdivision. Do
16 you see that there?

17 A. Yes, I do.

18 Q. Okay. That little portion there, is that an
19 email from you to the homeowners?

20 A. It was meant to cover all homeowners, but I
21 because I had a specific one from Gloria I just I -- I used
22 her. There's no particular reason it kicked her out. It
23 was -- I just wanted to sent to everybody and hers had all
24 the other people already on the chain, so I just went ahead
25 and used it.

1 Q. Okay. That's fine. Is said it was sent
2 Thursday, June 20th. Does that sound right?

3 A. Well, that is what it says on here.

4 Q. Do you recall writing and sending this
5 email?

6 A. Yes.

7 Q. Okay. If you will flip to the second page
8 it says this in the third sentence: In speaking of
9 assessment several folks are seriously past due on the 2018
10 billing. Please get them in. I will not be in the free
11 loan business any longer and there will be services
12 interruption if the current money runs out. Do you see
13 that?

14 A. Yes. I see that.

15 Q. Are you threatening to turn off the water if
16 they don't pay an assessment?

17 A. No. What I'm referring to is what I have
18 had happen just recently and it shows up in -- in the
19 checkbook where I have loaned both in February and March and
20 then again in April. I loaned the Homeowners Association
21 \$2,000 each one of those times just to keep up with the
22 costs of the assessments and pay the assessment. We ran out
23 of money and I loaned it money and then when it got down to
24 the point where nobody had paid their assessments from 2018
25 to now, to today's date when they normally pay for them in

1 January and we have the money to work with, I was out of
2 money and I'd already loaned them \$4,000.

3 Q. So you are saying that if people don't pay
4 their Homeowners Association assessment that it's possible
5 you'll run out of money and will no longer be able to keep
6 the water system --

7 A. It's not that I'm gonna run out of money.
8 I've got plenty of money, but I'm not going to continue to
9 pay money to support all of the assessments when their
10 assessments are already out and expected to be paid.

11 Q. Do you understand that the Homeowners
12 Association doesn't have anything to do with the water
13 system at this point?

14 A. That has nothing to do with what I think
15 we're talking about here. They're using the water that we
16 provide, which is one of the things that costs money to
17 produce. Now, the money that we spend out of the
18 homeowners' checkbook is for anything that the homeowners
19 use because it is by way of assessment. We take the cost
20 out of there. I had to -- in order to stay up with this
21 year's assessments, 2019 -- we had no money because 2018 had
22 not even been paid. That was for last year's costs. And
23 I'm still working on 2019. Here we are in mid-2019, no
24 money in and I'm loaning money to the Association to keep
25 the bills paid and the water coming.

1 Q. But the HOA does not own the water system.
2 Correct?

3 A. That's fine. But they are using the water.

4 Q. Okay. You did write this email; is that
5 correct?

6 A. Yes, I did.

7 MR. FINKENBINDER: All right. Your Honor,
8 at this time I ask to admit Exhibit 314 into evidence.

9 (WHEREIN; Intervenors Exhibit 314C was
10 offered into evidence.)

11 JUDGE CLARK: Any objection from Staff?

12 MR. JOHNSON: No objection.

13 JUDGE CLARK: Any objection from the Office
14 of Public Counsel?

15 MR. CLIZER: The CC line on this email
16 contains the names of what I'm going to assume are all of
17 the individuals on the system. We don't object, but to the
18 extent that you might want to consider this to become
19 confidential. I am not sure -- in light of your previous
20 ruling regarding the names of other members on the system.

21 JUDGE CLARK: Can we mark that as 314C?

22 Mr. Mills, do you have any objection to
23 admitting that email onto the hearing record?

24 THE WITNESS: No, sir.

25 JUDGE CLARK: The email chain 314C is

1 admitted onto the hearing record with the confidential
2 designation.

3 (WHEREIN; Intervenors Exhibit 314C was
4 received into evidence.)

5 BY MR. FINKENBINDER:

6 Q. I'm going to hand you what's been marked as
7 Exhibit 316. Do you recognize that letter?

8 A. Yes, I do.

9 Q. And when is it dated?

10 A. It says February 16th, 2017.

11 Q. And is it from you to my client -- one of my
12 clients?

13 A. Yes.

14 Q. Okay. Can you read to the Commission the
15 highlighted portion that I have highlighted for you?

16 A. February 16, 2017. And then down to the
17 third paragraph. To remedy the violation, we demand that
18 you reroute your water lines and install a meter in
19 compliance with the requirements set forth by the developer.
20 And then below that it says, in the event you failed to
21 comply with either alternative we will have no choice but to
22 disconnect water lines to your lot.

23 Q. Thank you. So my question is: Is your
24 letter threatening to disconnect my clients water if he
25 didn't comply with your request; is that right?

1 A. You mean -- is it all right if I read the
2 rest of the content of the letter?

3 Q. You don't need to read it out loud. If you
4 need to read it to familiar with it, you can.

5 A. Okay. I will do that even. Okay. It says
6 it has been rerouted. I think this is where we had a -- we
7 had a reroute in two different places; one through a meter
8 and one through -- oh, through a meter.

9 Q. So my question is, now that you had a chance
10 to look at: You were threatening my client to disconnect
11 his water if he did not comply with your request; is that
12 correct?

13 A. What we were asking --

14 Q. It's a yes or no question.

15 A. I'm going to have to take this in context.

16 Q. No. It is a yes or no question. Either you
17 disagree with that statement or you do not?

18 A. I told him he can't fork his water and run
19 it two different places; part meter and part not metered.

20 Q. Okay.

21 A. That's what --

22 Q. And if he didn't do that, you were going to
23 turn off his water. Correct?

24 A. If he were to use two sources of water and
25 use one for metering and one for not metering then he would

1 -- in other words, he would not be accountable for what
2 everybody else will be accountable for. If they had a meter
3 -- they ran all their water through their meter, but he has
4 separate --

5 Q. Did you -- I understand.

6 A. Yes.

7 Q. So were threatening to turn off the water?

8 A. If he would do something nobody else was
9 doing, he was obviously trying to get water from a different
10 source and not pay for it and everybody else would be.

11 Q. Okay.

12 A. If we went to a meter system.

13 Q. So again, if he did not do it you said you
14 were going to shut off his water. Correct?

15 A. If he tried not to use his meter when
16 everybody was and reroute it somewhere else I would have
17 done that, yes.

18 Q. All right.

19 MR. FINKENBINDER: Your Honor, before I --
20 and I'm going to admit Exhibit 316, but I'm going to show
21 it. It's my only copy.

22 (WHEREIN; Intervenors Exhibit 316 was
23 offered into evidence.)

24 BY MR. FINKENBINDER:

25 Q. For the record though, you did prepare and

1 send that letter; is that right?

2 A. Yes. Obviously, I did.

3 Q. And that is a true and accurate copy of the
4 letter?

5 A. As far as I know.

6 JUDGE CLARK: Does Staff have any objection?

7 MR. JOHNSON: No objection, Judge.

8 JUDGE CLARK: And does OPC have any
9 objection?

10 MR. CLIZER: No, Your Honor.

11 JUDGE CLARK: Mr. Mills, do you have any
12 objection to --

13 THE WITNESS: No, sir.

14 JUDGE CLARK: -- admitting that onto the
15 hearing record?

16 THE WITNESS No.

17 JUDGE CLARK: Exhibit 316 is admitted onto
18 the hearing record.

19 (WHEREIN; Intervenors Exhibit 316 was
20 received into evidence.)

21 BY MR. FINKENBINDER:

22 Q. Mr. Mills, you have ever been diagnosed with
23 Alzheimer's?

24 A. No.

25 Q. Have you ever been diagnosed with dementia?

1 A. No.

2 Q. Have you been diagnosed with memory loss,
3 long-term memory loss?

4 A. No.

5 Q. Are you on medication for long-term memory
6 loss?

7 A. Well, I have some memory medicine that I
8 have been taking but it's more for short-term, not
9 long-term.

10 Q. Okay. When were you first diagnosed with
11 memory loss?

12 A. I don't know that I was diagnosed
13 necessarily. It just became obvious to me.

14 Q. Well, you are taking medicine for it.
15 Correct?

16 A. I asked for some medicine. And --

17 MR. JOHNSON: Judge, I'm going to object to
18 this line of questioning simply because this is of a
19 personal nature and medical records. I suggest perhaps we
20 would like to go to in camera for Mr. Mills to share any of
21 this.

22 JUDGE CLARK: I think that would be
23 appropriate.

24 (REPORTER'S NOTE: At this time an in-camera
25 session was held, contained in Volume 3, Page 134.)

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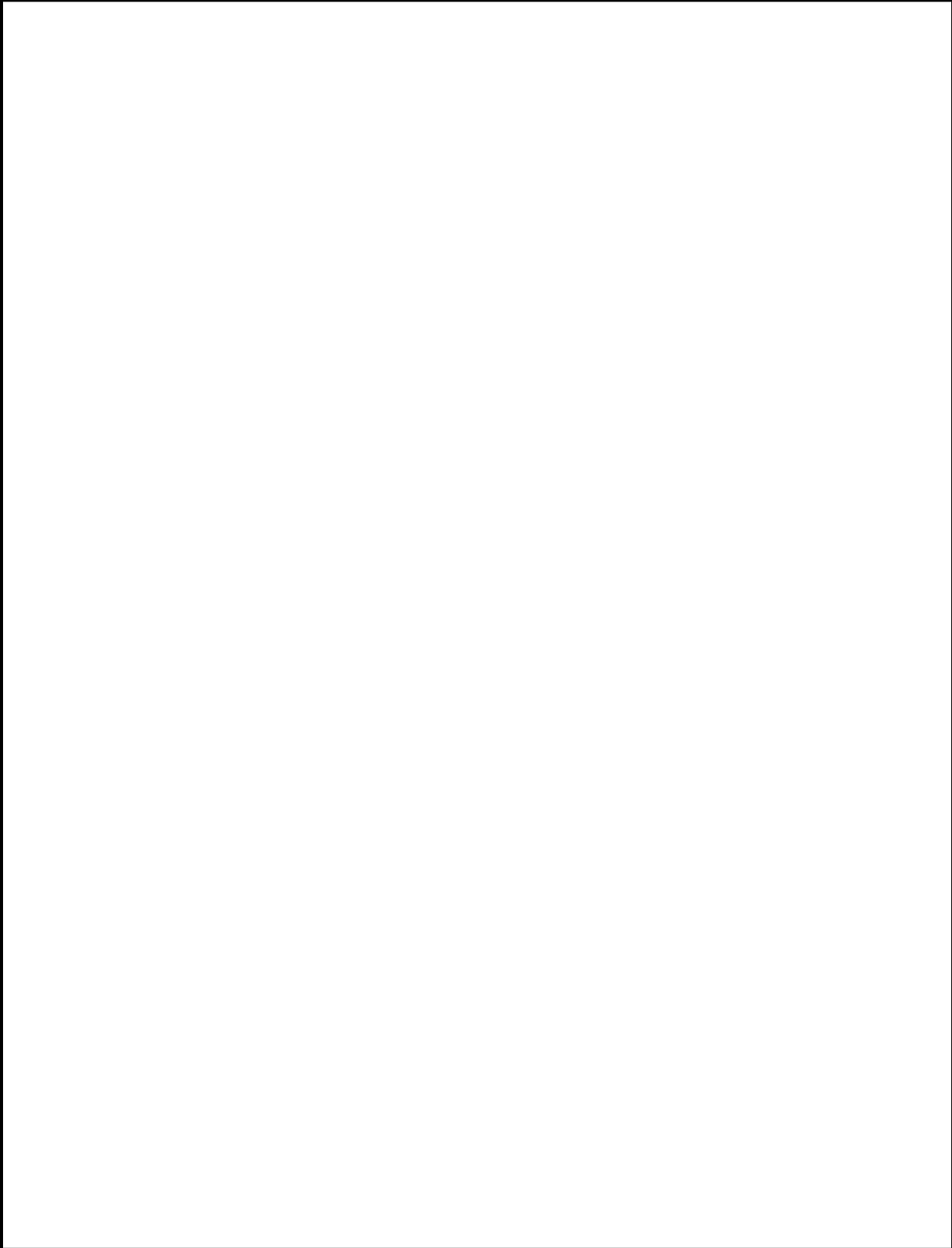
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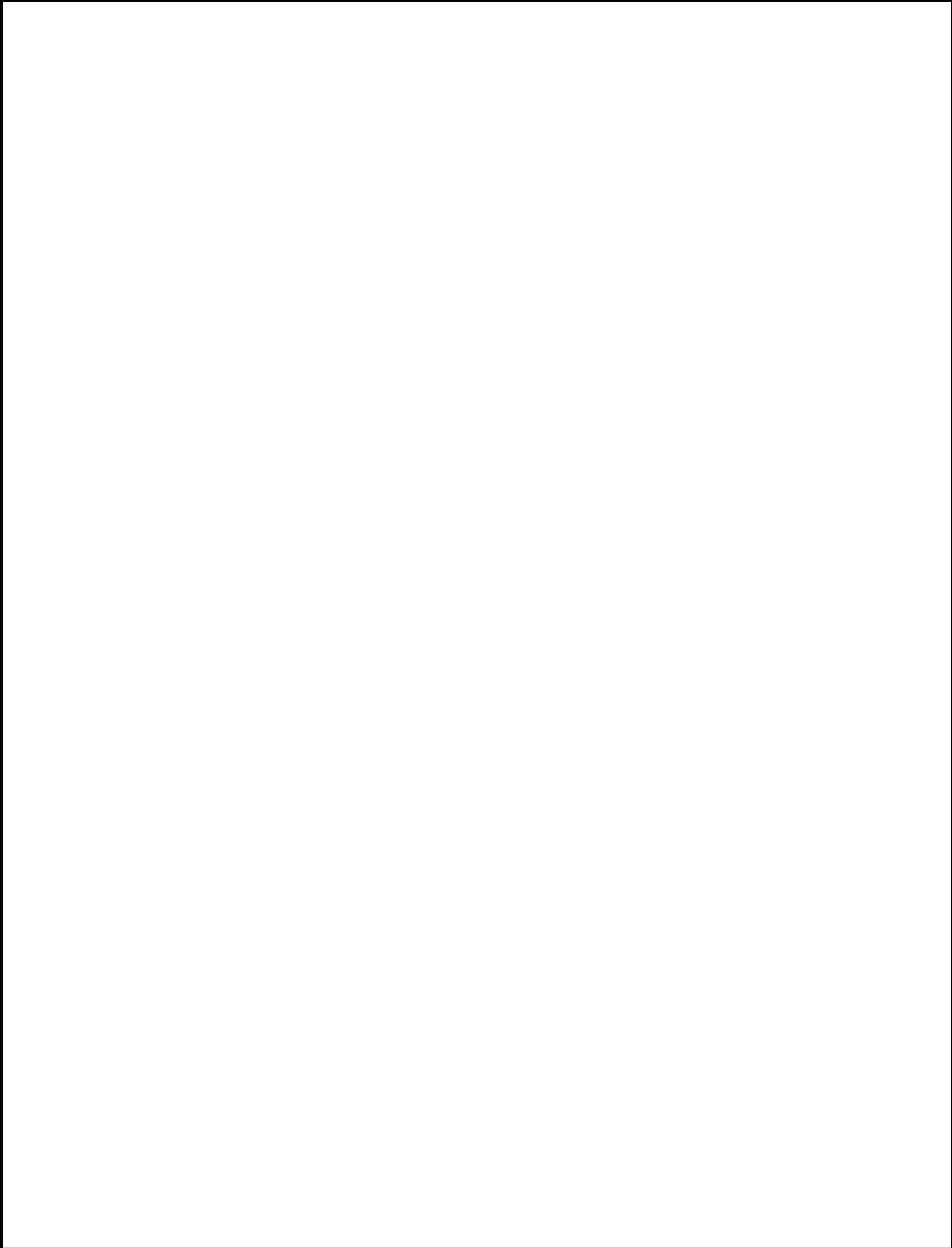
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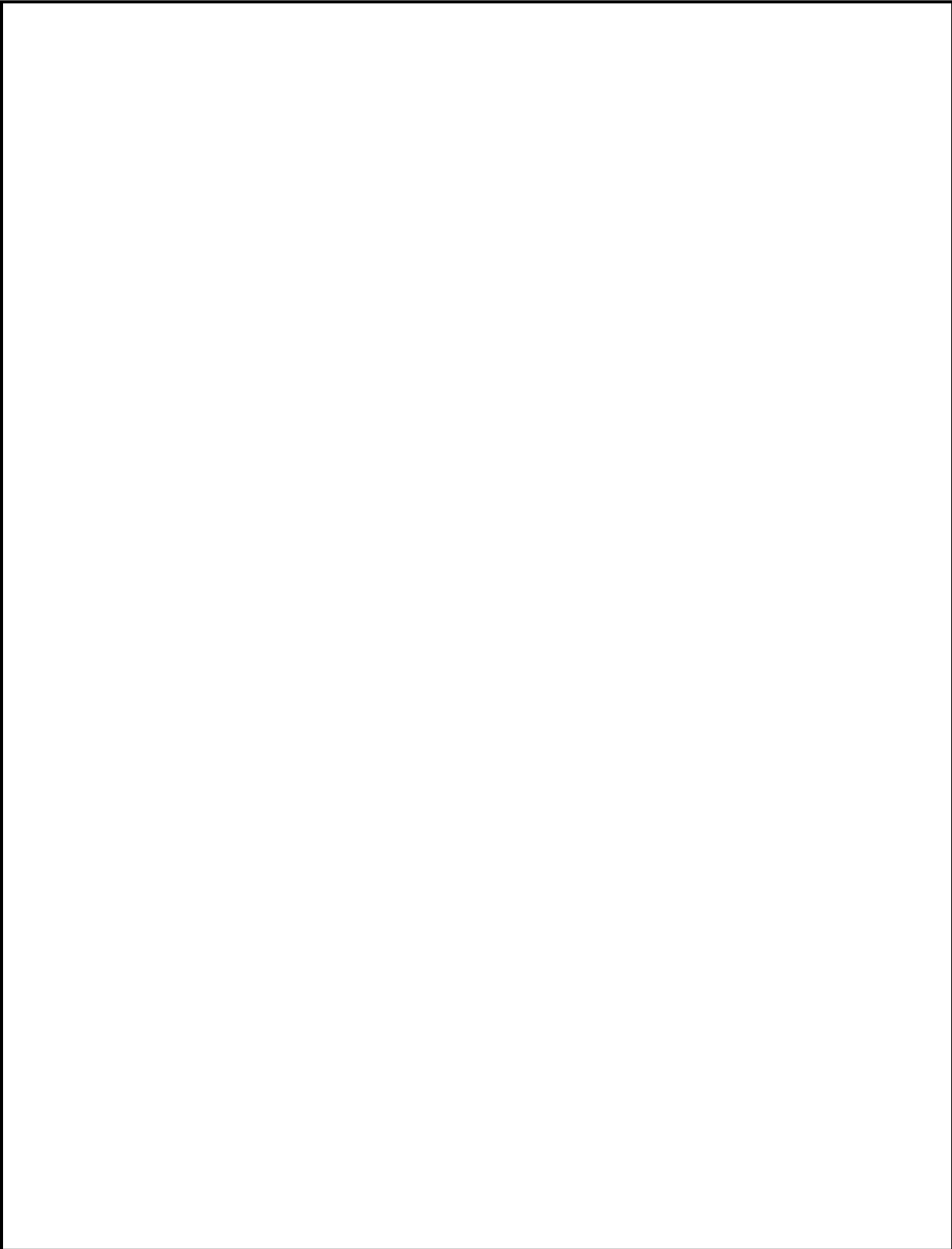
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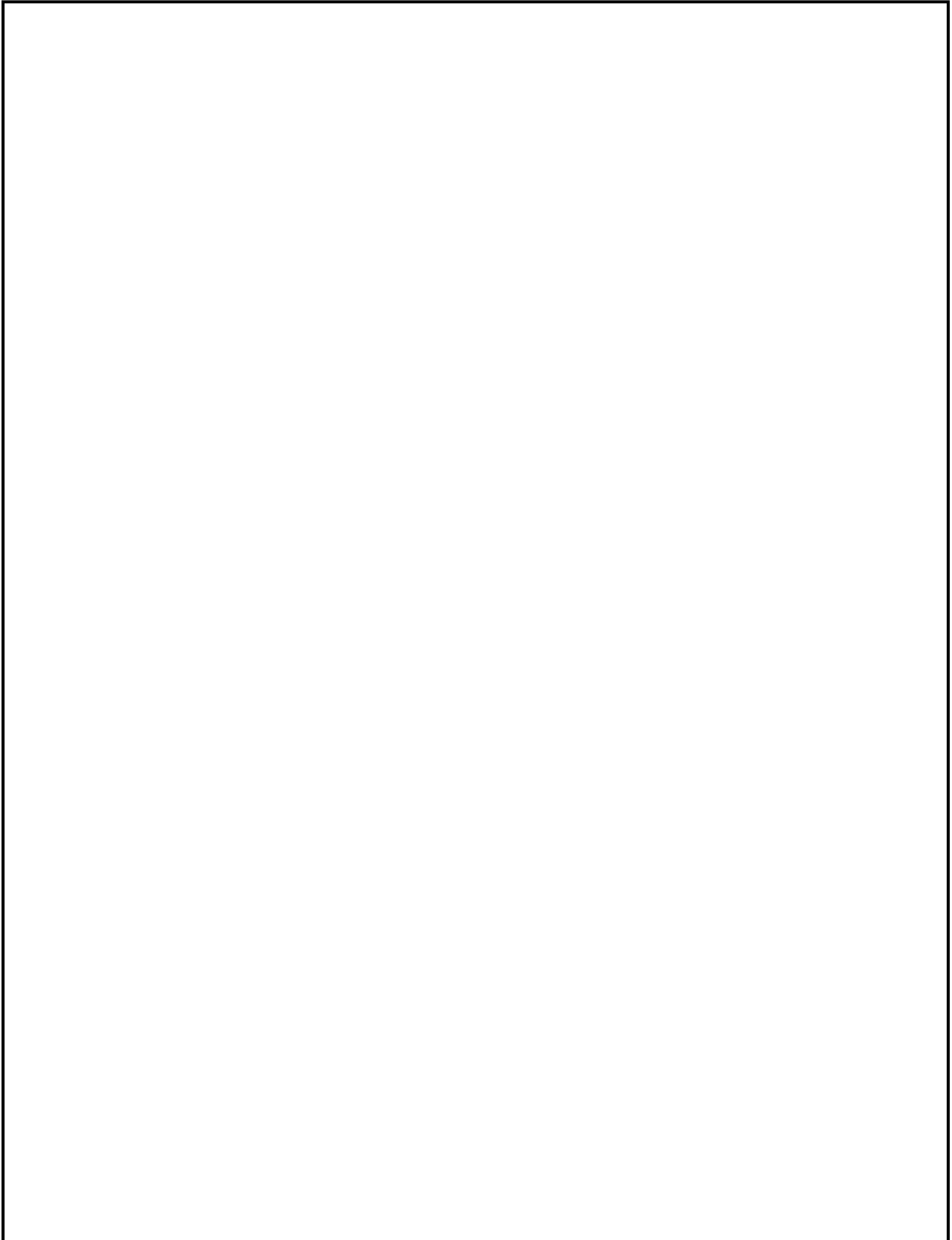
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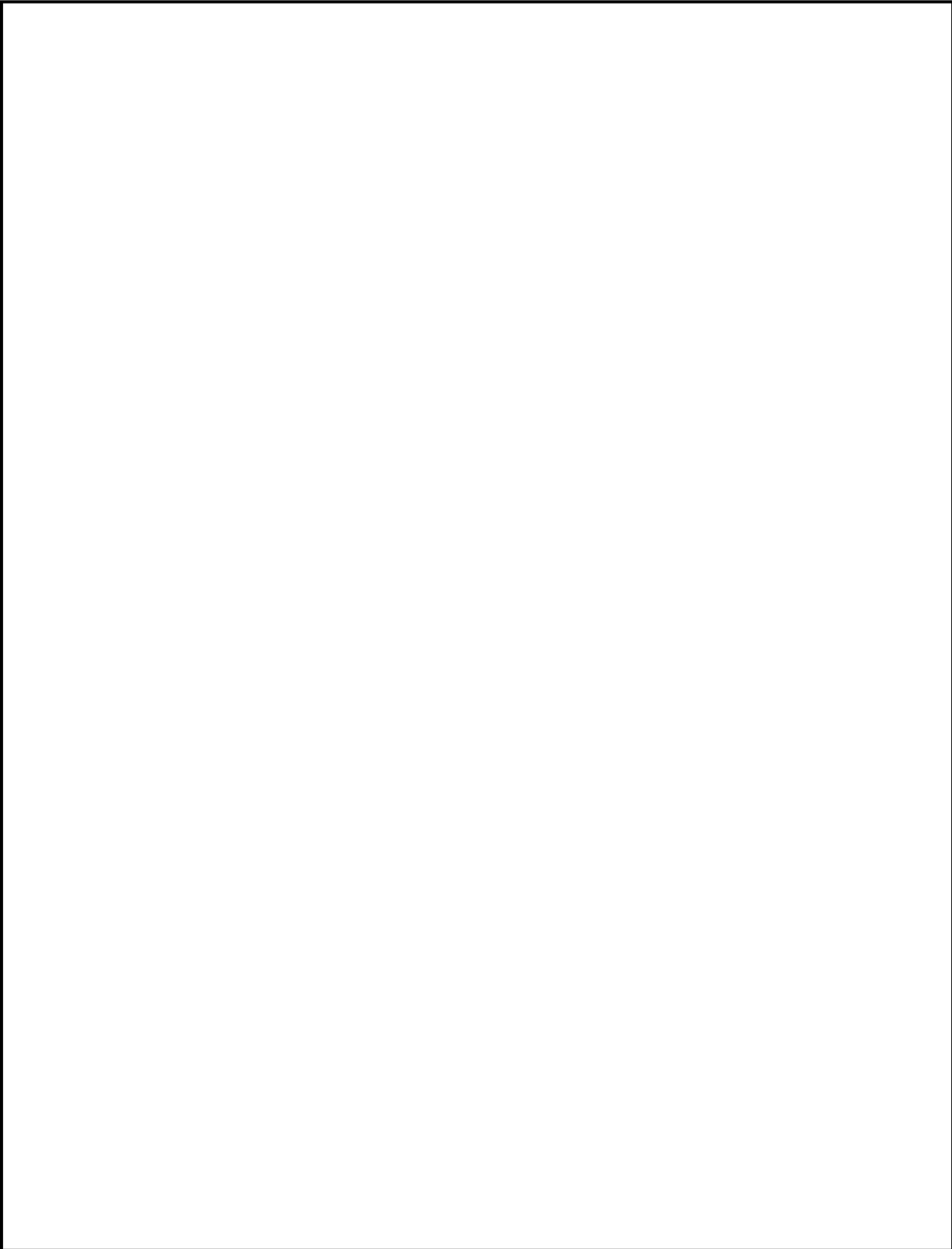
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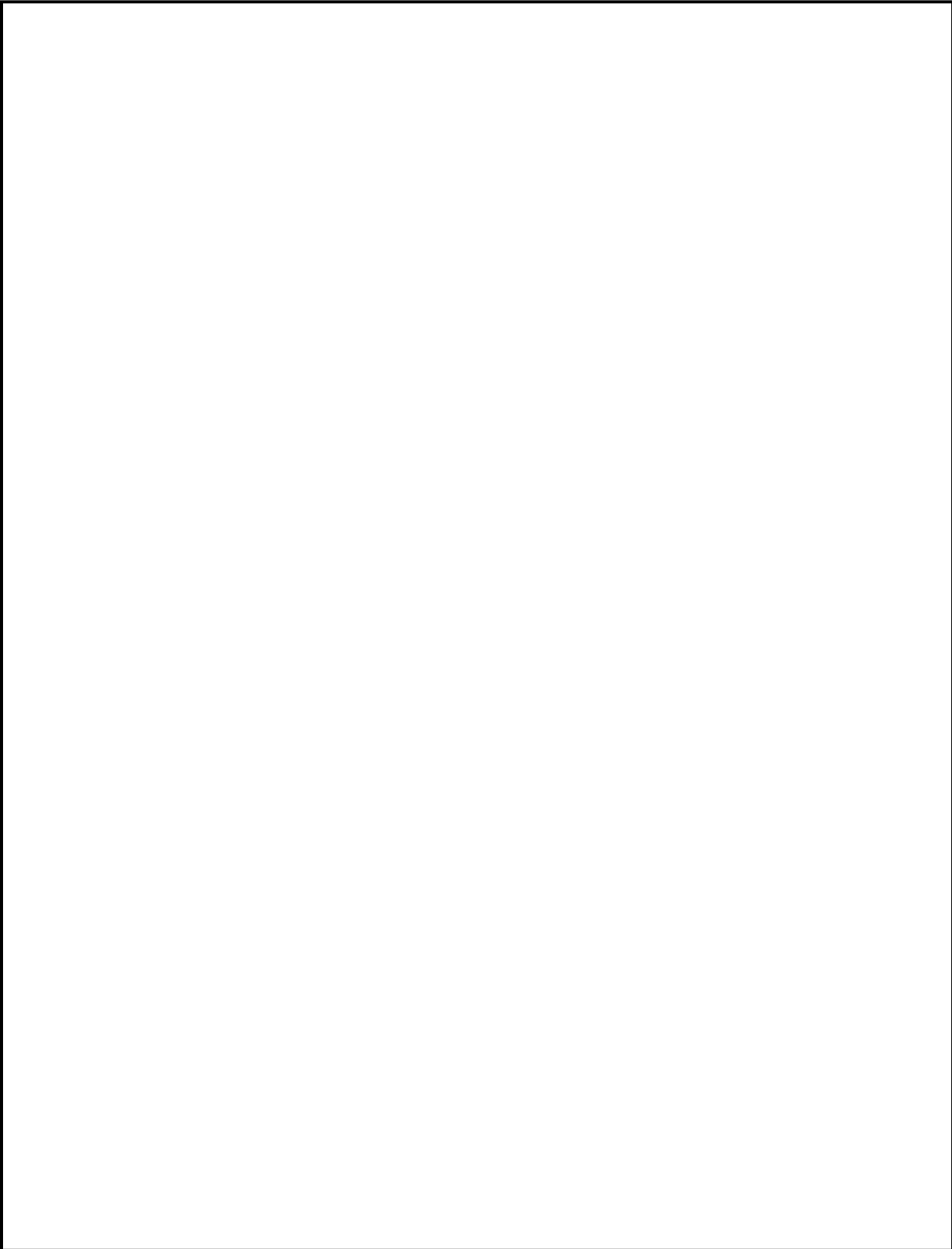
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1 (REPORTER'S NOTE: At this time, public
2 session was resumed.)

3 MR. FINKENBINDER: Your Honor, I have no
4 more questions at this time.

5 JUDGE CLARK: Any questions from the
6 Commission?

7 COMMISSIONER KENNEY: No questions.

8 COMMISSIONER COLEMAN: No questions. I do
9 have a question.

10 QUESTIONS BY COMMISSIONER COLEMAN:

11 Q. So Mr. Mills -- over here. Good afternoon.

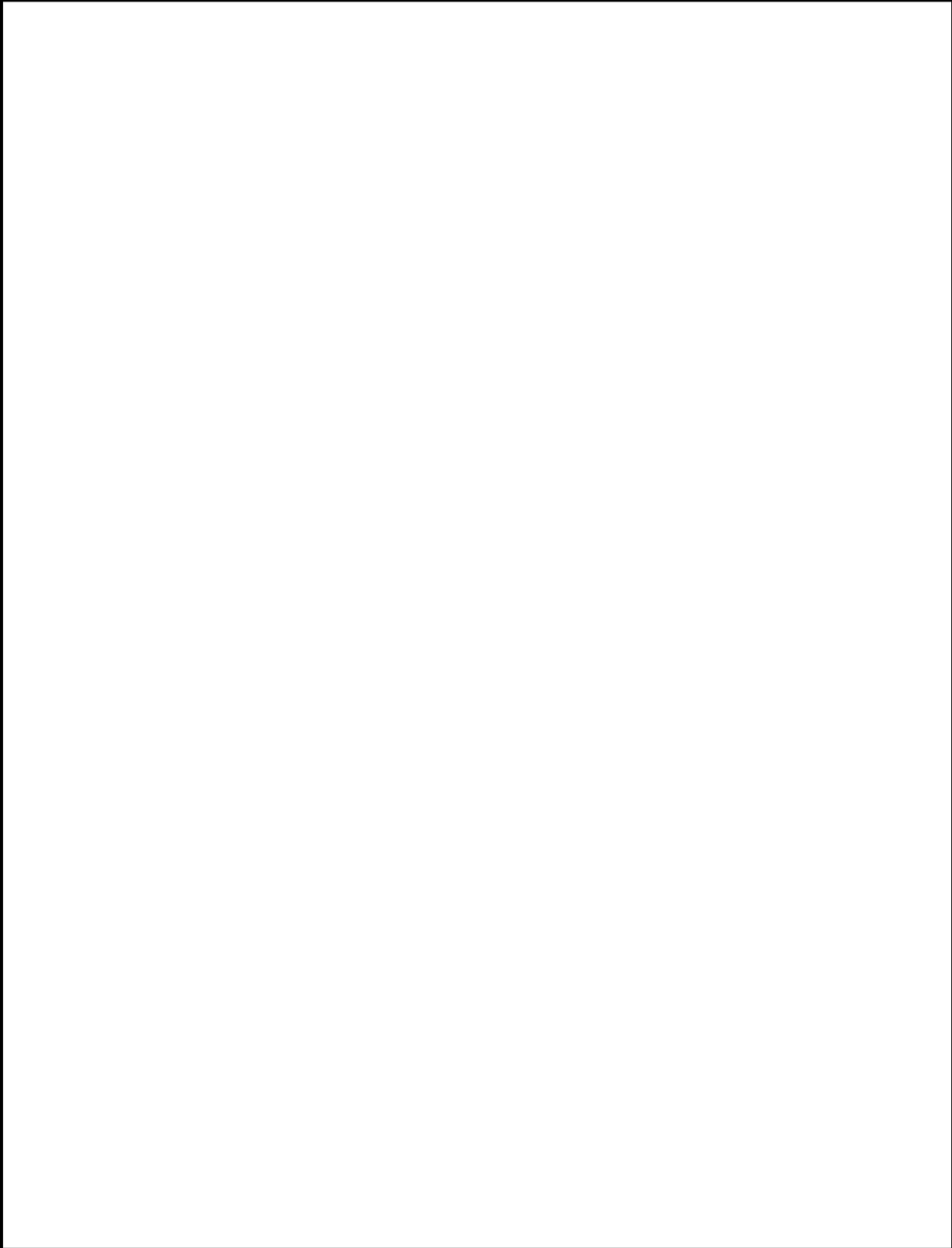
12 A. Good afternoon.

13 Q. So in that exchange there in the
14 conversations about your leg surgery, disagreement over
15 heart surgery or heart issues, would you tell me what your
16 impression of your -- well excuse me, I'm sorry. We do need
17 to go back into --

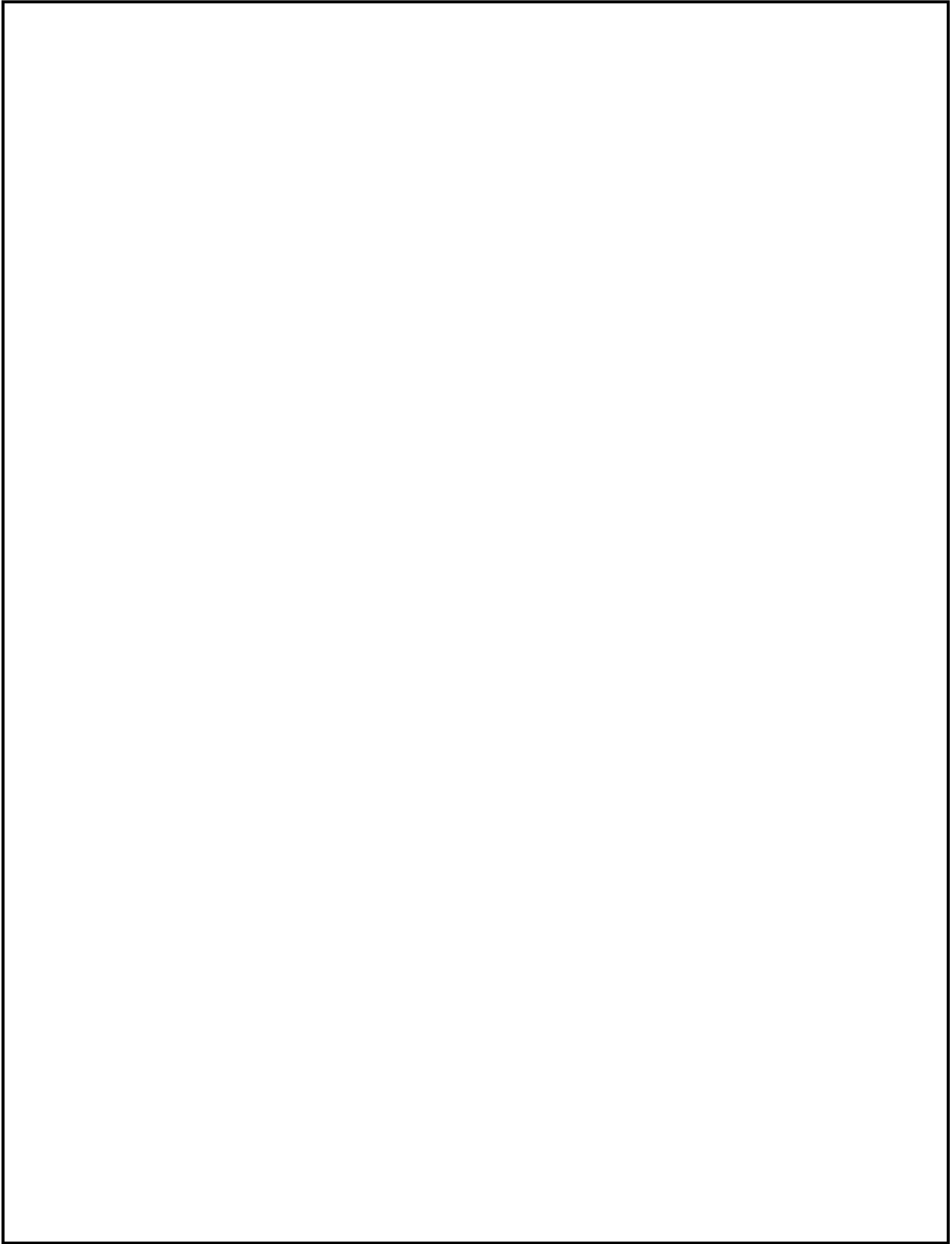
18 JUDGE CLARK: Yeah. We can go back into
19 camera now.

20 (REPORTER'S NOTE: At this time an in-camera
21 session was held, contained in Volume 4, page 146.)
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1 (REPORTER'S NOTE: At this point, public
2 record was resumed.)

3 JUDGE CLARK: Staff you can call your first
4 witness.

5 Mr. Mills, you may step down.

6 MS. KLAUS: Thank you, Judge. Staff calls
7 Amanda McMellen.

8 JUDGE CLARK: Please raise your right hand
9 to be sworn.

10 (Witness sworn.)

11 JUDGE CLARK: Go ahead, Staff.

12 AMANDA C. MCMELLEN having been first duly sworn testified as
13 follows:

14 DIRECT EXAMINATION BY MS. KLAUS:

15 Q. Good afternoon.

16 A. Good afternoon.

17 Q. Will you please state and spell your name
18 for the record?

19 A. It's Amanda McMellen. It's M-C-M-E-L-L-E-N.

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

22 A. I'm employed by the Staff of the Missouri
23 Public Service Commission as a utility regulatory auditor.

24 Q. Are you the same Amanda McMellen that caused
25 to be prepared certain testimony which has been marked as

1 Staff Exhibit 100, and it's your rebuttal testimony?

2 A. Correct.

3 Q. Do you have any changes or corrections to
4 your testimony?

5 A. No, I do not.

6 Q. Is your testimony true and correct to the
7 best of your belief and knowledge?

8 A. Yes, it is.

9 Q. If I asked you those same questions today,
10 would you give the same answers?

11 A. I would.

12 MS. KLAUS: I offer Exhibit 100 as evidence.
13 (WHEREIN; Staff Exhibit 100 was offered into
14 evidence.)

15 JUDGE CLARK: Any objection to Exhibit 100?
16 Office of Public Counsel?

17 MR. CLIZER: No, Your Honor. Thank you.

18 JUDGE CLARK: Mr. Mills?

19 MR. MILLS: No objection.

20 JUDGE CLARK: And just for Mr. Mills'
21 information, what is that exhibit?

22 MS. KLAUS: That is Amanda McMellen's
23 rebuttal testimony.

24 JUDGE CLARK: And Intervenors?

25 MR. FINKENBINDER: No objection.

1 JUDGE CLARK: Okay.

2 MS. KLAUS: Thank you. I tender the
3 witness.

4 JUDGE CLARK: What exhibit is that again?

5 MS. KLAUS: 100.

6 JUDGE CLARK: Exhibit 100 is admitted onto
7 the hearing record.

8 (WHEREIN; Staff Exhibit 100 was received
9 into evidence.)

10 JUDGE CLARK: Office of Public Counsel?

11 MR. CLIZER: I have no questions, Your
12 Honor. Thank you.

13 JUDGE CLARK: Mr. Mills, do you have any
14 questions for this witness?

15 MR. MILLS: No, sir.

16 JUDGE CLARK: Mr. Finkenbinder, do you have
17 any questions for this witness on behalf of the Intervenors?

18 MR. FINKENBINDER: Just a couple.

19 JUDGE CLARK: Go ahead.

20 CROSS-EXAMINATION BY MR. FINKENBINDER:

21 Q. Ms. McMellen, as part of your role did you
22 help create the -- first of all, excuse my ignorance. I'm
23 only a lawyer and I am not as familiar with what you do.
24 Others may be. As part of your role, did you prepare -- for
25 the lack of a better word, a budget for what would be -- end

1 up being the proposed flat-rate?

2 A. Correct.

3 Q. Okay. And in that budget there was a line
4 for what's called depreciation expense; is that right?

5 A. Correct.

6 Q. And that's part -- you don't -- that's
7 created from like a table?

8 A. Correct?

9 Q. In most rate cases would it be fair to say
10 the company that is seeking a rate for charging water when
11 they provide the system itself that one of the main ways
12 they recuperate the cost of the system is to charge that
13 depreciation expense?

14 A. Correct.

15 Q. Okay. In the cases that you handle in your
16 experience is it common for those people to also obtain
17 money or profits from selling lots to those same people or
18 would that be out of the ordinary?

19 A. I would say that is ordinary.

20 Q. Okay. And with regard to -- there was a
21 line item also for the billing -- a billing line item in the
22 amount of \$76.74. Do you recall that?

23 A. Yes, I do.

24 Q. Okay. Can you explain to me what that was
25 for so I can make sure I understand what that meant?

1 A. It included stamps and postage and envelopes
2 and paper for actually for them to bill out in the future.

3 Q. Okay. The actual bills that go out?

4 A. Correct.

5 Q. Okay. If they were going to hire a
6 third-party contract operator that took care of the billing
7 for them and the fee were included in that cost, would that
8 change your opinion as to whether or not that should be
9 charged?

10 A. If it was included in the contract that was
11 signed then we would exclude that in the rate.

12 Q. Okay.

13 MR. FINKENBINDER: Nothing further.

14 QUESTIONS BY COMMISSIONER KENNEY:

15 Q. Hello. How are you?

16 A. Good. How are you?

17 Q. As far as small, this a very small water
18 case?

19 A. Yes, it is.

20 Q. And looking at the amount over the last six
21 years we've come across a lot of distressed and a lot of
22 small water companies that are in disarray. Correct?

23 A. Correct.

24 Q. Would you say this rate, this quarterly rate
25 is near the average, below or above the average cost for

1 most of those cases over the last six years?

2 A. Based on my experience I think it is a
3 little high but that is because so -- there's so few
4 customers and such a big system.

5 Q. I might disagree with that because I think
6 I've noticed that we have had so many rate cases lately
7 where we've been increasing them, you know, in the 100, 200,
8 300 percent rate. Anyway -- I guess -- but I appreciate
9 your insight on that. Thank you very much.

10 A. You're welcome.

11 QUESTIONS BY COMMISSIONER COLEMAN:

12 Q. Ms. McMellen, relative to the commissioner's
13 question and comment about the increases of several hundred
14 percent, doesn't that also have something to do with the
15 amount of work that has to be done relative to
16 infrastructure or other issues with the water system?

17 A. Correct, it does. Each individual company
18 is different and what their infrastructure is and if they
19 haven't been in for a rate case in a long time and they
20 haven't replaced anything in a long time, then that means
21 the rate could go up.

22 Q. Thanks for the clarification.

23 A. You're welcome.

24 JUDGE CLARK: Any recross by the Office of
25 Public Counsel?

1 MR. CLIZER: No, Your Honor. Thank you.

2 JUDGE CLARK: Any recross by Mr. Mills?

3 Based upon the Commission's questions, is there anything you
4 wanted to ask?

5 RECROSS EXAMINATION BY MR. MILLS:

6 Q. There was one issue that Mr. Finkenbinder
7 asked me about relative to cost and I couldn't figure out
8 exactly what it was for that particular year, but I do now
9 recall what we had a \$400 cost.

10 JUDGE CLARK: Mr. Mills I'm asking if you
11 have any questions for this witness that would address the
12 questions asked by the commissioners or related to the --

13 MR. MILLS: No.

14 MR. FINKENBINDER: Your Honor, I hate to be
15 a stickler, but for the record I just want to make note that
16 it appears that the individual next to him is giving him
17 advice on how to testify before this commission and unless
18 she's a licensed lawyer I'm going to object to her making
19 comments to him on how to proceed.

20 JUDGE CLARK: I'm thinking about it.

21 MR. FINKENBINDER: I'm sorry.

22 JUDGE CLARK: This is not something that's
23 come up and I have noticed certainly while he's been on the
24 stand that she's been nodding or shaking her head side to
25 side vigorously. That has been noticed.

1 MR. FINKENBINDER: I guess to be specific
2 what I am requesting -- my specific request is, one I'd like
3 to make that note for the record; and two, I'd ask the
4 Commission or Your Honor, that admonish her not to give any
5 more legal advise to him on how to testify.

6 JUDGE CLARK: I don't know that she is
7 giving legal advise. I mean in regard -- he's already done
8 his testimony. I'll note for the record, as I said before,
9 that she was shaking and nodding vigorously related to
10 certain questions. I don't know how much of that he got.
11 That, you're asking me to speculate to. He's certainly
12 allowed to have somebody in the courtroom that he can
13 consult and I don't see anything that that person needs to
14 be an attorney. If that person was to ask a question or
15 offer something on the record, absolutely. But I think he's
16 allowed to have somebody here even if it is just for moral
17 support.

18 MR. FINKENBINDER: Sure.

19 JUDGE CLARK: I'm going to overrule your
20 objection, but I am going to note for the record that it at
21 least appears that she has been giving cues to Mr. Mills
22 while he was testifying.

23 MR. FINKENBINDER: Okay.

24 MR. MILLS: Your Honor, if I may make a
25 comment. She is my primary care physician and has been for

1 10 years. She's concerned about my health and no matter
2 what I do she's always after me, so this is not unusual.

3 JUDGE CLARK: Thank you. Okay. I can't
4 remember where I was at this point and that's a problem for
5 me.

6 I asked the applicant whether or not they
7 had any questions based upon commission questions.
8 Mr. Finkenbinder, do you have any questions based upon what
9 the Commission asked?

10 MR. FINKENBINDER: No, Your Honor.

11 JUDGE CLARK: And is there any redirect
12 based upon the Commission's questions?

13 MS. KLAUS: Hopefully, very briefly, Judge.
14 Thank you.

15 REDIRECT EXAMINATION BY MS. KLAUS:

16 Q. Ms. McMellen, you were asked by Intervenors
17 counsel some questions about budgets and this involving
18 rates in this most recent rate case. Can we first make
19 clear that this is not a rate case. Correct?

20 A. Correct.

21 Q. Okay. What type of case is this?

22 A. This is a CCN case.

23 Q. And how do you usually go about looking and
24 analyzing rates in a CCN case?

25 A. It's based on estimates and projections and

1 not concrete numbers.

2 Q. And is that what has been done in this case?

3 A. Yes, that's correct.

4 Q. And are you aware of any sort of Staff
5 recommendation about when a rate case should occur?

6 A. Within 1 year. It was in our Staff
7 recommendation memo.

8 Q. Thank you. You were asked about some
9 third-party operations and changes that might be made should
10 that contract come to fruition. Do you recall those
11 questions?

12 A. Yes, I do.

13 Q. And these changes if this contract is
14 entered into, is this something that you have given thought
15 to?

16 A. Yes.

17 Q. And have you put some thought down into what
18 one might call an updated attachment D-1?

19 A. Yes, I have.

20 Q. And do you have a copy of your updated
21 attachment D-1 with you?

22 A. Yes, I do.

23 Q. Please let me know once you've got that in
24 front of you.

25 A. Okay.

1 Q. I'll share this with the group if
2 Mr. Johnson wouldn't mind helping.

3 So it looks like we have about eight
4 categories starting with operations and maintenance, outside
5 services employed; is that correct?

6 A. Correct.

7 Q. Would you mind on your updated attachment
8 D-1 going through what the description is and the amount?

9 A. Okay. The first one is the operation and
10 maintenance, outside services employed for \$2,865;
11 maintenance estimate of \$300; billing quarterly of zero
12 dollars; chemical expense estimate of \$51.10; electricity
13 expense of \$2,882.67; PSC assessment if \$87.72; depreciation
14 expense of \$646.84; and the weighted return on rate base of
15 \$1,277.64.

16 Q. And that sums up to a total annual cost of
17 water service. Correct?

18 A. Correct.

19 Q. Could you read that amount to me?

20 A. It's \$8,110.96.

21 Q. And you made a calculation there. What is
22 the quarterly flat-rate based on your updated numbers?

23 A. It's \$289.68.

24 MS. KLAUS: Your Honor, I would like to move
25 to admit updated attachment D-1, which I would mark as Staff

1 Exhibit 102 to the record.

2 (WHEREIN; Staff Exhibit 102 was offered into
3 evidence.)

4 JUDGE CLARK: Any objection to admitting 102
5 onto the hearing record?

6 MR. CLIZER: I might have just missed this.
7 This is an update as to what -- what brings about this
8 update?

9 MS. KLAUS: Contemplating entering into
10 contract management.

11 MR. CLIZER: Okay. In that case, no
12 objection.

13 JUDGE CLARK: Any objection from the
14 Intervenors?

15 MR. FINKENBINDER: No objection.

16 JUDGE CLARK: Mr. Mills, any objection?

17 MR. MILLS: No, sir.

18 JUDGE CLARK: Exhibit 102 is admitted onto
19 the hearing record.

20 (WHEREIN; Exhibit 102 was received into
21 evidence.)

22 MS. KLAUS: Thank you, Judge. I have no
23 further redirect.

24 JUDGE CLARK: Okay. You're excused.

25 I think this is the appropriate time to take

1 a short recess between witnesses. Why don't we recess for
2 15 minutes. Everybody back at three o'clock.

3 (A recess was taken.)

4 JUDGE CLARK: Okay. We'll go back on the
5 record. And I have staff as having one more witness.

6 MR. JOHNSON: Yes.

7 JUDGE CLARK: You may call your next
8 witness.

9 MR. JOHNSON: Thank you, Judge.

10 Staff calls James A Merciel.

11 JUDGE CLARK: Mr. Merciel, raise your right
12 hand to be sworn.

13 (Witness sworn.)

14 JUDGE CLARK: Thank you. Go ahead.

15 JAMES A. MERCIEL, JR. having been first duly sworn testified
16 as follows:

17 DIRECT EXAMINATION BY MR. JOHNSON:

18 Q. Would you please state your name and spell
19 your last name for the record?

20 A. James A Merciel, Junior. Merciel is
21 M-E-R-C-I-E-L.

22 Q. And by whom are you employed and in what
23 capacity?

24 A. I'm employed at the Public Service
25 Commission in the water and sewer department. I'm assistant

1 manager, engineering.

2 Q. And are you the same James A Merciel, Jr,
3 who caused to be prepared certain testimony which has been
4 marked as Staff Exhibit 101?

5 A. Yes, I am.

6 Q. Do you any changes or corrections to that
7 testimony?

8 A. No.

9 Q. Is your testimony true and correct to the
10 best of your belief and knowledge?

11 A. Yes.

12 Q. And if I asked you those questions today
13 would you give the same answers?

14 A. Yes.

15 MR. JOHNSON: Judge, at this time I would
16 offer Staff Exhibit 101 into evidence.

17 (WHEREIN; Staff Exhibit 101 was offered into
18 evidence.)

19 JUDGE CLARK: Any objections from the Office
20 of Public Counsel?

21 MR. CLIZER: No, Your Honor. Thank you.

22 JUDGE CLARK: Any objection from Mr. Mills?

23 MR. MILLS: No.

24 JUDGE CLARK: Any objection from the
25 Intervenors?

1 MR. FINKENBINDER: No objection.

2 JUDGE CLARK: Exhibit 101 is admitted onto
3 the hearing record.

4 (WHEREIN; Staff Exhibit 101 was received
5 into evidence.)

6 MR. JOHNSON: Thank you, Your Honor. At
7 this time I would tender Mr. Merciel for cross-examination.

8 JUDGE CLARK: Office of Public Counsel?

9 MR. CLIZER: Hopefully, briefly.

10 CROSS-EXAMINATION BY MR. CLIZER:

11 Q. Good afternoon, Mr. Merciel.

12 A. Good afternoon.

13 Q. You are a professional engineer registered
14 with the state of Missouri. Correct?

15 A. Yes, I am.

16 Q. And you've worked in the water department
17 for quite some time. Correct?

18 A. Yes.

19 Q. So it would be fair to say that you're quite
20 familiar with the kind of testing that needs to be done for
21 small water utility system?

22 A. Yes. I'm familiar with it.

23 Q. With regard to testing -- well, were you
24 here in the courtroom today or otherwise listening in when
25 Mr. Mills described the methods he used to test the water

1 after he received, I think he referred to it a negative E.
2 Coli result, but it's actually a result indicating the
3 presence of E.Coli.

4 A. Actually positive result.

5 Q. Right. You were?

6 A. Yes, I was. Yes.

7 Q. All right. Would you agree that the method
8 that Mr. Mills described involved heating the source of the
9 water, the immediate output source of the water prior to
10 drawing a sample?

11 A. Yes. That is customary to do that for the
12 reasons that he gave. You want to disinfect the facility.
13 It's a water heater you are testing. And if you get a
14 contact with something on the faucet, for that matter of
15 your hand, you know, if you touch the inside of the
16 bottlecap or something like that, you can get a bad sample.

17 Q. And it is customary to use heat to disinfect
18 like that?

19 A. Yes, it is.

20 Q. How much time would you necessarily need to
21 have elapse between when you apply the heat and when you
22 collect your sample to have a accurate sample?

23 A. Oh, well, I don't know what the maximum
24 would be. You would do it right away. You know, as you are
25 ready to collect the sample you would heat it and then just

1 do it in a matter of seconds. I don't know. I guess you
2 could go minutes.

3 Q. Okay.

4 A. You would ordinarily wouldn't.

5 Q. All right. That was actually all of my
6 questions. Thank you.

7 JUDGE CLARK: Mr. Mills, do to have any
8 questions for this witness?

9 MR. MILLS: No.

10 JUDGE CLARK: Mr. Finkenbinder, do you have
11 any questions for this witness?

12 MR. FINKENBINDER: A couple.

13 JUDGE CLARK: Go right ahead.

14 CROSS-EXAMINATION BY MR. FINKENBINDER:

15 Q. I don't want to pronounce your last name
16 wrong. Mr. Merciel?

17 A. Merciel, that's correct.

18 Q. Mr. Merciel, as part of preparing your
19 testimony that you filed, is it accurate that you met with
20 Mr. Mills on site?

21 A. I did, yes. I met him on-site once.

22 Q. Okay. And did you also inspect what records
23 that he had as it pertained to the water system?

24 A. Well, not all of the records. I wasn't --
25 we had auditors who looked at the financial records. I

1 wasn't doing that. I did want to see the water system and I
2 might point out this was before we had any service
3 complaints or anything like that. I wanted to see what it
4 looked like. To be honest, primarily I wanted to go over
5 the service area because we needed to find a service area
6 for this utility. I needed to get it exactly right, where
7 the subdivision boundary was or what kind of a boundary we
8 were going to do.

9 Q. As part of that process, did you ever review
10 any test results, positive or negative?

11 A. We did later on. I have, let's see -- I
12 have copies of two test results that Mr. Mills had from the
13 -- probably won't say it exactly right. I think it was the
14 Stone County Health Department for water testing.

15 Q. So you've seen two water --

16 A. I've only seen the two. Yes.

17 Q. And who gave those to you?

18 A. We asked for it by data request. It would
19 have come from Mr. Mills through his attorney at the time.

20 Q. Okay. And those are the only two you
21 received?

22 A. Those are the only two I've seen, yes.

23 Q. And one -- correct me if I'm wrong, but one
24 was from November of 2017 and one was January 2018. Does
25 that sound right?

1 A. It could be. I would have to look at it to
2 verify the dates. That could be.

3 Q. Okay.

4 MR. FINKENBINDER: No further questions.

5 JUDGE CLARK: I have one, Merciel. Is it my
6 turn?

7 QUESTIONS BY JUDGE CLARK:

8 Q. The data request that got those two
9 responses, do you know how that data request is worded? Do
10 you know what it's requesting?

11 A. Well, no. I don't remember right offhand.
12 But we sent data requests -- this was after -- after the
13 information about service issues came up and we prepared
14 data requests to go to the customers. I guess I should say
15 to the Intervenor and to Mr. Mills. I'd have to look that
16 up to get the wording, but it was -- it was asking for
17 whether customers had contacted him regarding service issues
18 and we also requested any results of testing of the water
19 for water quality.

20 Q. Thank you.

21 A. And also I might say on the -- if you looked
22 in the records in the case, they initially sent us some test
23 records for the sewage treatment plant, so we had to correct
24 that. We subsequently got the records for the water system.

25 Q. Thank you.

1 A. Yes, sir.

2 JUDGE CLARK: Office of Public Counsel, any
3 questions based upon Bench questions.

4 MR. CLIZER: No. Thank you, Your Honor.

5 JUDGE CLARK: Mr. Mills, any questions based
6 upon the question I asked?

7 MR. MILLS: No, sir.

8 JUDGE CLARK: Intervenors, any questions
9 based upon questions I asked?

10 MR. FINKENBINDER: No.

11 JUDGE CLARK: Any redirect by Staff?

12 MR. JOHNSON: No redirect. Thank you, Your
13 Honor.

14 JUDGE CLARK: Okay. Mr. Merciel, you are
15 dismissed.

16 THE WITNESS: Okay.

17 JUDGE CLARK: So that's Staff's last
18 witness. Intervenors you may call your witness.

19 MR. JOHNSON: We call J. Derald Morgan to
20 the stand.

21 JUDGE CLARK: Mr. Morgan, would you raise
22 your right hand and be sworn.

23 (Witness sworn.)

24 MR. FINKENBINDER: May I inquire?

25 JUDGE CLARK: Yes.

1 J. DERALD MORGAN having been first duly sworn testified as
2 follows:

3 DIRECT EXAMINATION BY MR. FINKENBINDER:

4 Q. State your name for the record.

5 A. John Derald Morgan.

6 Q. All right. You go by Derald. Right?

7 A. I go by Derald.

8 Q. All right. Derald, I want to try to be -- I
9 don't want to be duplicative, but you previously filed
10 direct testimony, rebuttal testimony, and surrebuttal
11 testimony; is that correct?

12 A. Yes.

13 Q. And those were questions and answers that
14 were prepared by my office; is that correct?

15 A. Yes.

16 Q. And are those statements true and accurate
17 according to your best knowledge and belief?

18 A. Yes.

19 MR. FINKENBINDER: Your Honor, at this time
20 I would like to admit the Intervenors direct testimony,
21 rebuttal testimony and surrebuttal testimony as Exhibit 300.

22 (WHEREIN; Intervenors Exhibit 300 was
23 offered into evidence.)

24 JUDGE CLARK: All three of them as the same
25 exhibit?

1 MR. FINKENBINDER: Unless, Your Honor has a
2 different preference.

3 JUDGE CLARK: Does the Office of Public
4 Counsel have any objections?

5 MR. CLIZER: No, Your Honor.

6 JUDGE CLARK: Does Staff have any
7 objections?

8 MS. KLAUS: No objection.

9 JUDGE CLARK: And Mr. Mills, do you have any
10 objection?

11 MR. MILLS: No, sir.

12 JUDGE CLARK: Okay. Exhibit 300, the three
13 testimonies of Mr. Morgan are admitted onto the hearing
14 record.

15 (WHEREIN; Intervenors Exhibit 300 was
16 received into evidence.)

17 MR. FINKENBINDER: Okay. Thank you, Your
18 Honor.

19 BY MR. FINKENBINDER:

20 Q. What is your educational background?

21 A. Well, I have a bachelors and a masters and
22 PhD in electrical engineering. I'm a licensed engineer in
23 the state of Missouri, Illinois, Ohio, Alabama.

24 Q. Okay. So you are a professional engineer?

25 A. I am a professional engineer.

1 Q. Let's talk about -- I want to talk about,
2 briefly, since it has been brought up some of the water
3 quality issues that you have raised and then how those have
4 been raised.

5 MS. KLAUS: Your Honor, I'm going to have to
6 objective as this being supplemental testimony to what has
7 already been filed without cross-examination happening yet.

8 JUDGE CLARK: Response?

9 MR. FINKENBINDER: I would like to offer
10 testimony that contradicts what Mr. Mills has testified to
11 with regard to the issue -- specifically the issue of
12 whether or not water quality issues have ever been brought
13 up. So this would be brand new testimony, not testimony
14 that has already been offered into evidence.

15 JUDGE CLARK: Okay. I will allow it. Go
16 ahead.

17 BY MR. FINKENBINDER:

18 Q. You heard Mr. Mills testify earlier today
19 that no water issues, water quality issues have ever been
20 raised; is that correct? Did you hear that?

21 A. I did.

22 Q. Is that accurate?

23 A. No, it's not.

24 Q. Okay. And when have you or any of the other
25 homeowners --

1 A. I'd say virtually every meeting.

2 Q. When you say "meeting", what meeting?

3 A. HOA meetings, which are held at rather
4 random times.

5 Q. Okay. And in these meetings at least on
6 more than one occasion you have brought these to his
7 attention; is that correct?

8 A. Yes.

9 Q. And are the types of issues that -- well,
10 we've already testified as to what some of those issues are
11 in your testimony, but how did Mr. Mills respond to those
12 request to address --

13 A. Well, we usually get a long story about
14 something as to why it is a problem. And of course,
15 everybody gets worn out just like he normally testifies and
16 things just go off the rails and nothing ever happens.

17 Q. Okay. So with regard to the water issues
18 that have been mentioned, you have raised them all to him
19 prior to this hearing?

20 A. Yes.

21 Q. And prior to this case; is that correct?

22 A. Yes, absolutely.

23 Q. Has he ever attempted to correct or fix any
24 of the problems that you have brought to his attention?

25 A. No.

1 Q. Do you feel -- do you feel safe with
2 Mr. Mills operating the water system?

3 A. Absolutely not.

4 Q. And why is that?

5 A. Well, about six years ago I decided to put
6 in protection for my family. It includes a filter and I
7 just changed the filter and I'll show you a couple of rocks
8 that I just took out of my trash filter, if you're
9 interested in seeing them. I put a carbon filter and also
10 put in an ultraviolet light because I don't trust his
11 ability or his attention to the safety of the people in this
12 subdivision.

13 Q. And that is because your previous requests
14 have gone ignored; is that right?

15 A. That's correct.

16 Q. And it is fair to say that you have been in
17 disagreements with him on things other than the water
18 system; is that correct?

19 A. Oh, yes. He accused me of bypassing the
20 meter and he was wrong. He threatened to cut off my water
21 and he threatened to dig up my yard and he was wrong. He
22 didn't know what the hell he was doing. He didn't even know
23 how piping works I guess because anybody can look at it --
24 one of the neighbors came over, David came over, and he said
25 well, it's connected right.

1 Q. Okay. So you are also afraid that if there
2 is ever a disagreement out there between you two that he
3 will use his leverage as operator of the system to shut your
4 water off; is that correct?

5 A. I believe that. I believe he would do it.

6 Q. He's -- as a matter of fact he's already
7 threatened that; isn't that correct?

8 A. Sure. Several times.

9 Q. All right. Do you believe that he has --
10 that he has the competence to operate the system?

11 A. No, I don't.

12 Q. Do you believe that he will listen to the
13 authority or decision that the PSC -- or any ruling that the
14 Commission makes?

15 A. I think he has already ignored the
16 Commission on several cases.

17 Q. So you're also afraid that if the Commission
18 were to grant a CCN that any conditions they would oppose
19 that he would just ignore it?

20 A. If he gets a CNN (sic), I think we'll be in
21 here all the time with complaints.

22 Q. All right. There has been some evidence
23 presented as far as the cost of service goes and the
24 proposed rate introduced by Staff. Do you recall seeing
25 that?

1 A. Yes.

2 Q. Okay. And on that there was a line item for
3 depreciation expense?

4 A. Yes.

5 Q. Do you recall that?

6 A. Yes.

7 Q. Do you believe that it would be fair for you
8 to have to pay a depreciation expense?

9 A. No.

10 Q. And why is that?

11 A. Well, we've already paid for the system when
12 we bought our lot.

13 Q. So you believe that the applicant has
14 already profited -- or at least obtained back its cost for
15 infrastructures through selling lots?

16 A. He's recovered it in some way. He's
17 recovered in the cost of the lot and he's probably taken a
18 tax deduction on top of that.

19 Q. Okay. So you object -- in the event that
20 the CCN were granted, you would object to a depreciation
21 line item being included?

22 A. I certainly do. I think it ought to be
23 looked at very hard.

24 Q. Okay.

25 JUDGE CLARK: Mr. Finkenbinder, if you're

1 going to be doing these sort of supplements to direct, which
2 I've given you some leeway to do, I ask you to do that and
3 not cross-examination of your own witness.

4 MR. FINKENBINDER: Okay.

5 MS. KLAUS: Thank you, Judge.

6 MR. FINKENBINDER: I'm sorry?

7 MS. KLAUS: I said, thank you, Judge.

8 MR. FINKENBINDER: In light of that, I don't
9 have any other questions.

10 JUDGE CLARK: Office of Public Counsel?

11 MR. CLIZER: I have no questions. Thank
12 you, Your Honor.

13 JUDGE CLARK: Staff?

14 MS. KLAUS: No questions. Thank you.

15 JUDGE CLARK: Mr. Mills, do you have any
16 questions for this witness?

17 MR. MILLS: Yes, I think I do.

18 CROSS-EXAMINATION BY MR. MILLS:

19 Q. I would like to know why out of all the
20 accusations that you have made and the failures that I have
21 presented in your eyes, why has none of those ever been
22 brought to my attention in writing or at my house? Why are
23 you saying that they were brought up in every meeting when
24 they have never, ever been brought up in any of the written
25 testimony? Everything that was done in that meeting was

1 done recorded and done from the recording. Information you
2 asked about that you didn't get answers to.

3 MR. FINKENBINDER: Your Honor, I'm going to
4 object. It sounds like a multifaceted question. We may
5 limit it to just one question at a time.

6 JUDGE CLARK: It is and I agree. Mr. Mills,
7 you're asking a question that has many, many parts. If you
8 could break it down and ask those individual parts I will
9 allow it.

10 MR. MILLS: Okay.

11 BY MR. MILLS:

12 Q. Individually have you ever, ever asked me --
13 told me or showed me anything that you have claimed that has
14 come out of your system that you had any kind of a company
15 that has been requested to come out and do some sampling
16 that found anything that you have recorded? Has it ever
17 been reported to me?

18 A. You've been told in meetings. I have never
19 had a company come out and record it.

20 Q. So what you are telling me is I had to rely
21 on what you said verbally without even bringing me anything
22 to my person?

23 A. I have a picture I took here this last month
24 I'll show you, if you would like to see it, sir.

25 Q. Is this something that you claim that you

1 showed me before?

2 A. No. But I'll show you what -- I just
3 changed my filter last month and I took a couple pictures of
4 the rocks that came out of the filter. They're rather large
5 compared to a penny.

6 Q. Well, and you're saying it went through --

7 A. And we've talked about it --

8 Q. -- a filter?

9 A. You know, we have discussed this in the
10 meetings over, over and over.

11 Q. We have never discussed this in a meeting
12 that --

13 JUDGE CLARK: That's a statement, Mr. Mills.
14 I'm going to have to limit you to questioning. You are
15 welcome to ask questions of the witness. Likewise,
16 Mr. Morgan you're entitled to respond to those questions,
17 but it is not your turn to ask questions.

18 THE WITNESS: You're right.

19 BY MR. MILLS:

20 Q. I can only ask you, have you ever sent me
21 anything in writing after a meeting where you are saying
22 that something was brought up and nothing was in the meeting
23 about it and you objected? Was there anything ever sent to
24 me?

25 A. I don't understand your question.

1 Q. My question is you are saying that you've
2 told me many times in meetings and that it was never
3 conveyed in the minutes that were written up. And you have
4 never, ever come to me and said what I asked you was not in
5 these minute meetings, the written minutes. Have you ever
6 done that?

7 A. Yes. We've objected to the things that were
8 left out of minutes many times.

9 Q. You have? When? When have you ever
10 approached me and told me that something wasn't in a
11 meeting?

12 A. In another meeting when we had the minutes.
13 We've said --

14 Q. A year later?

15 A. -- this was discussed and it's not in the
16 minutes.

17 JUDGE CLARK: Mr. Mills, don't interrupt.

18 THE WITNESS: I recorded all the minutes.
19 Do you want to listen to all the minutes?

20 JUDGE CLARK: Mr. Morgan, wait.

21 Mr. Mills, don't interrupt the witness while
22 he's answering. Mr. Mills, don't interrupt me while I'm
23 talking, or Mr. Morgan.

24 Go ahead.

25 THE WITNESS: I have never written to you

1 about the meetings, but I have complained about it in the
2 meetings.

3 BY MR. MILLS:

4 Q. Then why was it not recorded in the meeting
5 minutes?

6 A. Well, now that's a good question, isn't it.

7 Q. Yes.

8 A. I'd like to know the answer to that, too.

9 Q. Well, I'm asking you.

10 A. I don't know the answer why you leave things
11 out of the minutes.

12 Q. Because they weren't recorded.

13 A. In your minutes. That's correct. Nobody
14 takes minutes while we're in the meeting.

15 Q. We record the meetings.

16 A. The last two -- the last two we did. I --

17 JUDGE CLARK: Mr. Mills, again, I'm going to
18 have to instruct you to -- this is your opportunity to ask
19 questions, but you keep making statements.

20 MR. MILLS: I'm guessing that I'm awed by
21 the fact that we haven't had any rebuttal from you in
22 writing or verbally after any meeting ever.

23 MR. FINKENBINDER: Objection, Your Honor. I
24 don't know -- is that a question?

25 JUDGE CLARK: No. That's --

1 MR. MILLS: It is a question. Right? Yes
2 or no?

3 JUDGE CLARK: Well, it was a statement. Can
4 you word it --

5 THE WITNESS: It was a statement.

6 JUDGE CLARK: -- in a way in which it is a
7 question?

8 MR. MILLS: Well, it's a statement that I am
9 making that you have never given me anything in writing or
10 verbally after any meeting.

11 JUDGE CLARK: Mr. Mills, is there a way that
12 you take that statement and word it as a question?

13 MR. MILLS: I don't know how else I can say
14 other than --

15 BY MR. MILLS:

16 Q. Have you -- do you claim that you have ever
17 even be anything?

18 A. Yes.

19 MR. FINKENBINDER: Objection; asked and
20 answered. The testimony is previously he's never -- he's
21 only complained it verbally in meetings.

22 JUDGE CLARK: Sustained.

23 THE WITNESS: I think that is not true. I
24 think if I go back through all my records I will find
25 something in writing, but I would have to go back maybe

1 eight years and we finally just gave up.

2 MR. MILLS: I don't see any need to further
3 review any of this. It doesn't make any sense. He's never
4 produced anything that I know of. And why not? You claim
5 you've had it for years?

6 JUDGE CLARK: Mr. Mills, I believe that
7 question has been asked and answered.

8 MR. MILLS: I think so. I have nothing
9 further to ask him.

10 JUDGE CLARK: Any questions from the
11 Commission?

12 COMMISSIONER COLEMAN: No. I guess not.

13 QUESTIONS BY JUDGE CLARK:

14 Q. Mr. Morgan, briefly. How are you billed for
15 your water?

16 A. I receive a bill through the HOA and most
17 recently I received a bill that included a lot of repairs on
18 the water system. And since he owns the system he supposed
19 to pay for the repairs and improvements on the water system,
20 not the HOA.

21 Q. Okay. So the answer is that you received
22 the bill through the HOA?

23 A. That's correct.

24 Q. Is the bill to you personally?

25 A. Yes.

1 Q. So each member of the community receives an
2 individual bill through the HOA?

3 A. That's correct. And it is calculated on the
4 basis of the report that he says he didn't write, that
5 someone else wrote. But he sends out a bill based upon
6 those prices that are on that sheet.

7 Q. Your house has a meter?

8 A. Yes.

9 Q. Does everybody's house have a meter?

10 A. Yes. He's been reading them for quite some
11 time.

12 Q. Okay. No more questions.

13 JUDGE CLARK: OPC, do you have any questions
14 based on bench questions?

15 MR. CLIZER: No, Your Honor. Thank you.

16 JUDGE CLARK: Staff, do you any questions
17 based upon bench questions?

18 MS. KLAUS: No, Judge. Thank you.

19 JUDGE CLARK: Mr. Mills, do you have any
20 questions based upon my question?

21 MR. MILLS: Yes, I do.

22 RECROSS-EXAMINATION BY MR. MILLS:

23 Q. You say that you received something other
24 than an assessment, a private bill other than in an
25 assessment?

1 A. I think that's what the judge was asking,
2 the assessment bill. It's a bill.

3 Q. Do you have a bill that has been sent to you
4 that you can show this court other than an assessment?

5 A. Yeah. We just submitted it as evidence. It
6 is a bill for things that you claim you paid.

7 Q. I've never seen a private bill sent to you
8 for anything.

9 A. You send one to everybody.

10 Q. It's an assessment once a year.

11 A. Okay.

12 Q. There is no private bills sent to anybody.

13 JUDGE CLARK: That is a statement,
14 Mr. Mills. Do you have any further questions about HOA
15 assessment that you wanted to ask Mr. Morgan?

16 MR. MILLS: The only thing I am objecting to
17 -- the only thing I have ever sent out to anyone was an
18 assessment. No private bills of any kind have ever been
19 paid. That's a statement. Are you objecting to that,
20 Mr. Morgan? Are you saying I sent something to you --

21 JUDGE CLARK: Okay. There is no objection
22 to statements. You don't get to make a statement saying you
23 object to the statement. You can ask a question and if
24 somebody objects to your question I will make a ruling on
25 it, but we've gone of gone a little far.

1 And I didn't mean to laugh. I'm sorry. It
2 just struck me as funny.

3 If you have a question about HOA assessments
4 -- I actually would like to clear this up myself if -- and
5 I'll allow an opportunity afterwards for anybody to follow
6 up with a question.

7 FURTHER QUESTIONS BY JUDGE CLARK:

8 Q. When you receive a bill through the HOA as
9 you put forth, is that the same bill that everybody
10 receives?

11 A. Yes.

12 Q. So everybody receives an identical bill?

13 A. Yes.

14 JUDGE CLARK: Mr. Mills, does that clear up
15 your question?

16 MR. MILLS: It's called an assessment.
17 That's the only one I know of.

18 JUDGE CLARK: Does that answer the question
19 you were trying to ask?

20 MR. MILLS: Yes. He answered the question.

21 JUDGE CLARK: Do you have any other
22 questions that you wanted to ask Mr. Morgan?

23 MR. MILLS: No. That's fine.

24 JUDGE CLARK: Any redirect Mr. Finkenbinder?

25 MR. FINKENBINDER: Yes. Just one.

1 REDIRECT EXAMINATION BY MR. FINKENBINDER:

2 Q. Mr. Morgan, I'm going to hand you what's
3 been previously introduced into the record Exhibit 307. Is
4 that the bill that you received?

5 A. Yes.

6 Q. And every year you get a letter with a bill;
7 is that correct?

8 A. Yes.

9 Q. And that's an example. That happens to be
10 -- the one you received this year, in 2018. Correct?

11 A. Yes. And for 2018, because we always pay
12 behind, he has in our bill \$5950 for improvements to the
13 water system.

14 Q. And we do have any idea what those are?

15 A. Huh?

16 Q. And do we have any idea what those are?

17 A. Six accumulators that he replaced.

18 Q. Okay. But you're receiving a bill from the
19 HOA?

20 A. Yes.

21 Q. For the water service?

22 A. That's correct.

23 Q. Okay. That's Exhibit 307?

24 A. That's correct.

25 Q. All right.

1 MR. FINKENBINDER: Nothing further, Your
2 Honor.

3 JUDGE CLARK: Okay. I believe that is our
4 last witness. Are there any final matters we need to
5 discuss at this time?

6 MS. KLAUS: Briefing deadlines and when we
7 may anticipate transcripts.

8 JUDGE CLARK: I think both of those are good
9 things to address. Why don't we start with the transcripts
10 before we discussed briefing.

11 Is Monday okay? Okay. Looks like the
12 transcript will be ready on Monday, July 1st. So let's talk
13 about briefs. How many rounds of briefs do people want to
14 do?

15 MS. KLAUS: Initial and reply.

16 JUDGE CLARK: That's generally standard. We
17 could do that. Sometimes people just want to do one round
18 of briefing, but if we want to do two rounds of briefing
19 where each party has an opportunity to respond.

20 Mr. Mills, you're not here with an attorney
21 so I will just tell you what is going on. What's going to
22 happen is I'm going to pick a date and that date is going to
23 be -- I'm going to pick two dates actually; for initial
24 briefs and one for reply briefs. The initial brief give you
25 an opportunity to do what would be done in a standard

1 closing argument in your case with more precise detail.
2 You'll have an opportunity to basically present your
3 argument as to why your position in the case is right and
4 what evidence you see that supports that position.

5 And then the other parties will have an
6 opportunity to respond with a reply brief and you'll have an
7 opportunity to respond to their briefs with your reply
8 brief. Do you understand?

9 MR. MILLS: Maybe not completely, but I can
10 -- I'm sure I can get filled in exactly what do you want.
11 And you're having a date that you want --

12 JUDGE CLARK: I'm going to be picking a date
13 for that and basically you'll just be -- a brief is like an
14 essay. It can be as long or as short as like. It
15 basically, as I said, explains why you think that your
16 position is the correct one. And in regard -- generally
17 it's addressed in terms of the issues that I'm going to put
18 forth. There are two issues that have been put forth here.
19 You can see those issues in the filings. That was actually
20 contained, I believe -- it was a Commission Exhibit 1 --
21 does the joint stipulation also contain the issues or is
22 that in the --

23 MR. FINKENBINDER: Yes. It contains the
24 issues.

25 JUDGE CLARK: No. I apologize. That is in

1 the joint list of issues an order of witnesses. In the
2 joint of issues and order of witnesses that will contain the
3 two issues. And just to go over them so you have heard
4 them, they were said at beginning. The issues are, does the
5 evidence establish that the water system in Carriage Oaks
6 Estates for which Carl R. Mills is seeking a Certificate of
7 Convenience and Necessary, a CCN, is necessary or convenient
8 for the public service within the meaning of that phrase in
9 Section 393.170 of the revised statutes of Missouri.

10 And the second issue is, if the Commission
11 grants Mr. Mills a CCN, what conditions, if any, should the
12 Commission deem reasonable and necessary to impose. I think
13 appropriate is two weeks. Does anybody object to two weeks
14 for initial briefs?

15 MR. CLIZER: Two weeks from transcripts?

16 JUDGE CLARK: Yes.

17 MR. CLIZER: No objection.

18 JUDGE CLARK: So that would place us on July
19 15th for initial briefs. Why don't we go to Tuesday, August
20 6th for reply briefs.

21 One final issue that I wanted to go over
22 first and that is -- I believe I can do it anyway, but I
23 would like to know if there's any objection anyway. I want
24 to take official notice of the report and order in
25 WC-2017-0037, the complaint case. Are there any objections

1 to the Commission taking official notice of that?

2 MR. JOHNSON: No objection, Judge.

3 JUDGE CLARK: Any objection, Mr. Mills, to
4 me taking notice of the report and order in the previous
5 complaint case?

6 MR. MILLS: No, sir. I don't think there's
7 any problem there.

8 MR. FINKENBINDER: No objection.

9 JUDGE CLARK: Okay. That will Commission
10 Exhibit 2.

11 (WHEREIN; Commission Exhibit 2 was offered
12 and received into evidence.)

13 JUDGE CLARK: Anything else I need to
14 address at this time?

15 MR. MILLS: Question, will there be minutes
16 recorded from this?

17 JUDGE CLARK: By minutes, what will happen,
18 there's a transcript.

19 MR. MILLS: Right.

20 JUDGE CLARK: And that will be -- that will
21 be published I guess on Monday. That be available to the
22 Commission. We will usually get those up in EFIS as soon as
23 possible and yes, you will have a complete copy of the
24 transcript. As a matter of fact, for briefing generally, I
25 like it when the parties reference the transcript. That is

1 very helpful.

2 Okay. Is there anything else? All right.
3 Seeing nothing, this evidentiary hearing is now adjourned.
4 Thank you all for your time today and we will go off the
5 record.

6 (OFF THE RECORD.)

7 (THE HEARING IS CONCLUDED.)

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CERTIFICATE OF REPORTER

I, Lisa M. Banks, CCR within and for the State of Missouri, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn by me; that the testimony of said witness was taken by me to the best of my ability and thereafter reduced to typewriting under my direction; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken, and further, that I am not a relative or employee of any attorney or counsel employed by the parties thereto, nor financially or otherwise interested in the outcome of the action.



Lisa M. Banks, CCR No. 1081

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