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BEFORE THE PUBLIC SERVICE COMMISSION

STATE OF MISSOURI

TRANSCRIPT OF PROCEEDINGS

HEARING

October 31, 2002

Jefferson City, Missouri

Volume 4

The Staff of the Missouri)
Public Service Commission,)
) Case No.
Complainant,) WC-2003-0134
)
vs.)
)
Osage Water Company,)
)
Respondent.)

BEFORE: _____

MORRIS L. WOODRUFF, Presiding,
SENIOR REGULATORY LAW JUDGE.

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

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1 JUDGE WOODRUFF: We're back on the record
2 then. And as I recall from yesterday, Martin Hummel was on
3 the stand. Would you please come forward again? And
4 Mr. Williams is cross-examining. And you may proceed.
5 MR. WILLIAMS: Thank you, your Honor.
6 MARTIN HUMMEL, having been previously sworn, testified as
7 follows:
8 CROSS-EXAMINATION BY MR. WILLIAMS:
9 Q. Mr. Hummel, as we were closing out the day
10 yesterday, we were talking about the budget that the Staff
11 came up with in the last rate case and the funding that was
12 allowed in there for operators. Do you recall that?
13 A. I recall that as an issue, yes.
14 Q. Okay. And you indicated something to the
15 effect that there wasn't enough money for more than one
16 operator in that budget. Is that your recollection?
17 A. My recollection is that in my observation of
18 the facilities and how they are operated, I recognize that
19 there needs to be more operations time applied to those
20 facilities.
21 Q. And that would be more than one person could
22 provide; is that correct?
23 A. At -- at this present time, that would be the
24 case. Now, the dilemma in this is that when you're
25 operating mechanical systems or constructing mechanical

1 systems, it takes more time and money to operate them in the
2 wrong way than it does to operate them correctly.

3 And in this circumstance, we've got a lot of
4 operation and construction that has been done in the wrong
5 way and so obviously it's going to take a lot more time.

6 Q. And was that also the case back in 1999 when
7 the company initiated the rate case?

8 A. Yes, it was.

9 Q. Okay. And during that rate case, did you or
10 other members of the Staff recommend operational changes to
11 the company that would have included increasing field staff?

12 A. You're going to have to repeat that question.
13 I'm --

14 Q. Okay. Well, Mr. Hummel --

15 MR. WILLIAMS: If I may approach the witness,
16 your Honor.

17 JUDGE WOODRUFF: You may.

18 BY MR. WILLIAMS:

19 Q. Let me hand you the Commission's regulation on
20 small company rate increases, which is found at 4 CSR
21 240-2.200. And I've highlighted some language in that and
22 I'd like you to read that, if you would.

23 A. Read the highlighted language?

24 Q. Yes.

25 A. Highlighted language is, The Commission Staff

1 shall notify the company, and there's other words, and of
2 any recommended operational changes. And then there's other
3 language and so forth. And then you get down to Item No. C
4 and it is, And any other matters pertaining to the company's
5 operations, including responses to customers' concerns.

6 MS. O'NEILL: Your Honor, could we have a copy
7 of that, please?

8 JUDGE WOODRUFF: Would you show her a copy?
9 BY MR. WILLIAMS:

10 Q. Well, Mr. Hummel, you would agree with me that
11 in a small company rate case, the Staff is supposed to make
12 recommendations as to operational changes, wouldn't you?

13 A. If the Staff is aware of things that are
14 needed in the operation of the utility service, to the
15 extent that it has had the opportunity to become aware of
16 those things, it would make sense that they would comment on
17 those and bring those to the -- to the table to try to make
18 sure things are corrected.

19 Q. Well, Mr. Hummel, if I understood your
20 testimony a few moments ago correctly, wasn't there an issue
21 about the adequacy of field operations in 1999 when the
22 company initiated its small company rate increase?

23 A. I'm -- from my perspective, certainly. From
24 my observations of the facilities, there's been issues of
25 operations of those facilities for quite some time.

1 Q. Okay. And do you know if the company made any
2 requests for additional staff in 1999 to be included in the
3 rate case budget?

4 A. I'm not -- I don't recall the specifics of
5 that. I am pre-- I mean, that's almost always a question in
6 a small company rate case is the -- what is the level of
7 time and operator -- not just time, but operator capability
8 that's needed to operate the facilities.

9 And as I just stated, if you're going to
10 operate them in the wrong way, it's going to take more time
11 and more money to operate them that way. And then the Staff
12 and the Commission is faced with that dilemma of what is the
13 appropriate cost.

14 Q. Mr. Hummel, let me --

15 MR. WILLIAMS: If I may, your Honor.

16 JUDGE WOODRUFF: You may.

17 BY MR. WILLIAMS:

18 Q. Let me hand you this document and ask you if
19 you are familiar with the company's original request for a
20 rate increase in what was subsequently docketed as
21 WR-2000-557?

22 MS. O'NEILL: Your Honor, I'm going to object
23 to this line of questioning again. Mr. Hummel has
24 previously testified that he's an engineer and not an
25 accountant and these questions seem to be going to the

1 auditing function of the Staff rather than the engineering
2 function of the Staff.

3 The Staff, I believe, has witnesses available
4 who are going to testify in this proceeding regarding this
5 audit, or at least would be knowledgeable about the audit
6 and they would be the better people to direct these
7 questions to.

8 JUDGE WOODRUFF: Response?

9 MR. WILLIAMS: Absolutely, your Honor. The
10 company's -- or one of the complaints that the Staff has
11 raised in its pleading in this matter is that the company is
12 devoting inadequate time and resources towards maintenance
13 and operations of its facilities, an issue that Mr. Hummel
14 talked about on direct.

15 It is appropriate to inquire how that came to
16 be and why the Staff has not done anything about it and
17 whether the company made any requests of Staff to change
18 that and whether Staff agreed. And that's what we're here
19 to talk about today. And I think that's -- I mean, it's
20 right at the heart of the complaint we're talking about
21 here.

22 JUDGE WOODRUFF: I'm going to overrule the
23 objection.

24 You can answer, if you can. If it's beyond
25 your expertise, please say so.

1 THE WITNESS: Where are we at in terms of the
2 question that you want asked -- answered?

3 BY MR. WILLIAMS:

4 Q. The question is, are you familiar with the
5 request that the company made and do you recognize that as
6 being the company's request back in 1999 in connection with
7 the small company rate case?

8 A. Well, I would have a difficult time
9 recognizing this as the specific request at that particular
10 time, because this has been an ongoing issue with this
11 company for some time that -- just the issue of properly
12 operating and maintaining their facilities.

13 Q. And has the company ever told you or, to your
14 knowledge, told Staff that it does not want to hire more
15 operators to put in the field?

16 A. I don't specifically recall that kind of
17 speech, but it -- I don't always pay attention to speech.
18 It's more a question of looking what's going on and what the
19 company is actually doing.

20 Q. All right. And, Mr. Hummel, do you think the
21 company should spend more money than it derives from its
22 revenues from customers on operation and maintenance of the
23 company?

24 A. I think the company should go out and find the
25 expertise necessary to provide the services that they

1 promised they would provide. And it's -- it shouldn't be
2 put on the Commission to guarantee that they won't lose
3 money.

4 Q. I see. So it's okay for the company to spend
5 more money than it gets from its customers on service. Is
6 that your opinion you're giving this Commission?

7 A. If they've made promises to provide those
8 services, then they should deliver.

9 Q. I see. And the Commission has no duty to make
10 sure that the company recovers those expenses. Is that your
11 opinion?

12 A. The Commission has a responsibility to assure
13 that that company will recover appropriate costs for the
14 services that are delivered. The Commission does not have
15 control over how that company goes about delivering those
16 services.

17 Q. So is it your opinion that the company is
18 wasting money?

19 A. Yes.

20 Q. How?

21 A. By not having capable operation and
22 maintenance personnel, by not actually doing such things as
23 checking the mask meters on their wells on the -- at the
24 very least, a weekly basis and at the same time checking the
25 output of that well at the very least by simply using their

1 watch and checking to see what the gallon per minute out of
2 that well is and recording that information down so they can
3 see whether or not that well is getting into trouble and
4 about to fail.

5 Q. And on what is that -- what factual
6 information do you have that the company doesn't do that?

7 A. I've made observations of the systems in Osage
8 Beach with company personnel and was faced with the dilemma
9 of them saying, We're losing our customers in Osage Beach
10 and we're not going to spend another dime on this -- on any
11 of this. We're going to do this on the bare minimum. That
12 is part of the evidence.

13 The other part of the evidence is the
14 condition of the facilities and then the result of what took
15 place, which was an outage at Broadwater Bay. And, also, as
16 we later learned after -- after the fact, was the loss of
17 water pressure at the High Point service area, which
18 included Little Rizzo's.

19 Q. Well, let's get back to the first question, is
20 how is the company -- is the company expending money on some
21 activity that you think is improper, or is the company
22 simply not expending money on -- or additional monies on
23 things that you think it should be spending money on?

24 A. I guess my perception would be that in some
25 cases the company simply doesn't know what it's doing.

1 Q. Okay. And has the company ever refused your
2 assistance when you've offered it?

3 A. I -- I can't say that they've ever refused it.
4 I've got a limited amount of time. I can't spend all my
5 time with Osage Water Company, although there's times when I
6 think that's all I'm getting done.

7 Q. Now, Mr. Hummel, in connection with the last
8 rate case and the small company rate case, which the
9 Commission's rule stated the Staff will recommend changes in
10 operation, did you specifically make any recommendations for
11 changes in operation to be placed into rates that the
12 company could recover from customers to pay for those
13 changes?

14 A. I'm not sure if I can very directly answer the
15 full scope of that question, but I've been looking for some
16 solutions to this for quite some time. And it's
17 sometimes -- it's a matter of trying to make a
18 recommendation to how -- on how do you give recommendations
19 to somebody that has got everything in a big mess to start
20 with?

21 It's -- it's difficult to know just what
22 recommendations to give, although I -- when I have seen
23 things that needed to be corrected, I have said something to
24 the company. And I have told the -- said to the company,
25 You've got to do something about keeping some operation and

1 maintenance records on your water systems and on your sewer
2 system. That is a particular concern of mine for not just
3 OWC, but for any of the water and sewer systems that I have
4 a chance to look at.

5 Q. That was a long answer, but I don't think you
6 answered the question I asked, which was, in the last rate
7 case, what changes in operations of the company did you
8 recommend and recommend that the cost thereof be put in the
9 rate analysis? Would the answer --

10 A. I wouldn't -- I guess the answer is I don't
11 know what changes I recommended in that last rate case.

12 Q. Would it be your recommendation at this point
13 in time that the company be allowed to recover sufficient
14 revenues from its customers to put more field service
15 personnel out or better trained field service personnel?

16 MS. O'NEILL: Objection, your Honor. This is
17 a rate case question. This isn't a rate case.

18 JUDGE WOODRUFF: Overruled. Go ahead and
19 answer the question.

20 THE WITNESS: I think this company is already
21 receiving enough revenue. Since you want to ask me that
22 particular question, I think this company already does
23 receive enough revenue to put adequate operation personnel
24 out there.

25 This company is receiving rates that few other

1 companies are receiving. I can think of a lot of other
2 companies that don't have the \$3.87 a thousand gallons for
3 water that you simply have to pump out of the ground and you
4 don't even have to put any chlorination to it or anything
5 that electrical cost isn't much any -- much more than
6 20 cents a thousand gallon. And, yes, I think this company
7 already receives enough revenue that they should be able to
8 get the job done.

9 BY MR. WILLIAMS:

10 Q. And what would be entailed in getting the job
11 done, in your opinion? How many people do you need in the
12 field or what should their qualifications be?

13 A. As I stated to start with, this is a very
14 difficult issue. You've already got a big mess out there.
15 And the problem with any of these mechanical systems is if
16 you're going to operate them in the wrong fashion, it's
17 going to take more time and money to do it. And the real
18 issue is how much time does it take to operate these systems
19 if you're going to do it properly.

20 Q. Yes. That's the issue I'm asking you about.
21 Can you tell the Commission that answer?

22 A. If these systems were in proper operating
23 condition, you would be at the point where one operator
24 would be able to handle them, but you couldn't have that
25 operator also doing construction and doing these operations.

1 Q. So are you saying it would take one person
2 full-time just to do operation and maintenance of the water
3 wells and treatment plants?

4 A. I am saying that as a -- you're asking me to
5 answer a question that really should have some detailed look
6 at it to come up with a good answer. But to the extent that
7 you want me to give you a quick answer, I can tell you that
8 I would expect one operator to operate the six service areas
9 that the currently -- that the company currently operates in
10 if he can simply dedicate himself to simply operating those
11 systems.

12 Q. And it would take other people to do other
13 things besides operation and maintenance?

14 A. If you have -- if the person is working
15 possibly for the developer and putting in sewer lines, you
16 probably better get somebody else. If the person is also
17 doing construction for the company that's going to go into
18 plant accounts, perhaps you better get another person or a
19 contractor to do that.

20 Q. So how many people does it take to do all the
21 jobs for the utility company?

22 A. Would you please specify what you want -- as I
23 said, if you want an answer in terms of the man hours that
24 it's going to take to operate the systems, we're going to
25 have to be very specific about all the systems. And I doubt

1 if I'm going to give you a good answer sitting here on this
2 stand without putting the -- some information down on a
3 piece of paper to try to come up with a sound answer.

4 Q. Wasn't that the question the company asked
5 when it filed its rate case in 1999?

6 A. And what was my answer at that time then?

7 Q. Well, my understanding from your answer is you
8 didn't recommend any changes in operation of the company.

9 A. I didn't recommend any changes in the
10 operation? You're saying that I thought the operation was
11 okay?

12 Q. Well, Mr. Hummel, I don't want to get
13 argumentative with you, but my understanding of your
14 testimony -- I asked you what changes in operation of the
15 company did you recommend be put into the rate structure in
16 connection with the 1999 rate case and you said none. Are
17 you saying that's not your testimony?

18 A. If you want me to -- I can't sit here on this
19 stand and give you all these details about past events that
20 go back to that rate case without going back and reviewing
21 some of that information.

22 Q. Do you have that information with you here
23 today?

24 A. No, I do not.

25 Q. How long would it take you to get that

1 information?

2 A. Depends on what all information -- you're the
3 one that's defining the information. I need to know what
4 information it is you want me to review, specific documents
5 that you want me to review.

6 Q. Well, I really just want to know if your
7 answer is that you didn't recommend any changes in
8 operations in connection with the 1999 rate case?

9 MS. O'NEILL: Objection, asked and answered.

10 JUDGE WOODRUFF: It's been asked. I don't
11 think it's been answered.

12 Go ahead and just try and answer that narrow
13 question, if you can.

14 THE WITNESS: Repeat that question, and I'm
15 going to try to focus in on it to make sure I give you a
16 good answer.

17 MR. WILLIAMS: I'll ask the court reporter to
18 read it back to you then.

19 THE COURT REPORTER: "Question: Well, I
20 really just want to know if your answer is that you didn't
21 recommend any changes in operations in connection with the
22 1999 rate case?"

23 THE WITNESS: Any changes in operations in
24 connection with the '99 rate case. Now, in my mind, that's
25 a very broad question, because we've got --

1 MR. WILLIAMS: Your Honor --
2 THE WITNESS: -- whether we're talking
3 about --
4 JUDGE WOODRUFF: Mr. Hummel, just a moment,
5 please.
6 MR. WILLIAMS: I'm going to ask you again to
7 instruct the witness to answer the question asked. Simply
8 he did or he didn't.
9 JUDGE WOODRUFF: That sounds like a yes or no
10 question, if you can. Did you make such a recommendation in
11 the rate case?
12 THE WITNESS: I'm not sure how to answer that
13 question.
14 JUDGE WOODRUFF: Okay. That's an answer.
15 BY MR. WILLIAMS:
16 Q. Can I have my papers back, please?
17 A. Sure.
18 Q. Mr. Hummel, would you agree that you have told
19 customers of Osage Water Company who newly connected to the
20 company's systems not to pay new connection fees during the
21 company's tariff?
22 A. I have told customers that they should pay
23 their monthly rate amount, but that the connection fee was
24 still an unsettled issue, that the Water and Sewer
25 Department staff disagrees with the company on the

1 application of that fee to condominium units.

2 Q. So you would agree you told them not to pay
3 that fee?

4 A. I don't precisely come out and tell a customer
5 not to pay a fee. I just let them know what the status is
6 of that issue from the perspective of the Water and Sewer
7 Department staff.

8 Q. Mr. Hummel, has the Water and Sewer Department
9 staff filed any complaints with the Commission with respect
10 to the company's charges of new connection fees to
11 condominium unit customers?

12 A. No.

13 Q. And how long have you considered that to be an
14 outstanding issue?

15 A. Since the first time it came up.

16 Q. At least a year?

17 A. I would say so.

18 Q. Mr. Hummel, does the company have the ability
19 to file a complaint against the Staff in front of the
20 Commission?

21 MS. O'NEILL: Objection, calls for --

22 MR. KRUEGER: Objection, calls for a legal
23 conclusion.

24 BY MR. WILLIAMS:

25 Q. If you know.

1 JUDGE WOODRUFF: I'll overrule the objection,
2 if you know.

3 THE WITNESS: Now, the question is, does the
4 company have the ability to file a complaint against the
5 Staff?

6 MR. WILLIAMS: That's the question.

7 JUDGE WOODRUFF: And if you don't know, you
8 can answer, I don't know.

9 THE WITNESS: I don't know the specifics of
10 the legal -- the legal procedure and so forth that would be
11 involved with that.

12 MR. WILLIAMS: I don't think I have any
13 further questions for this witness, your Honor.

14 JUDGE WOODRUFF: All right. Thank you. I
15 believe that concludes all the cross-examination. We'll
16 come up for questions from the Bench.

17 QUESTIONS BY JUDGE WOODRUFF:

18 Q. And I want to get into a little bit about the
19 last topic of conversation here about your apparently having
20 discussions with various Osage Water customers about whether
21 or not they should pay these connection fees.

22 A. Yes.

23 Q. How did that arise? Did that come up through
24 customer calls or how did you first come to give that
25 advice?

1 A. It comes to me oftentimes with a customer
2 calling me --

3 Q. They call you directly?

4 A. -- directly. At least after some time, some
5 of them would call me directly, because one customer finds
6 out that -- that I have worked with Osage Water Company and
7 then sometimes they call me directly.

8 Other times it comes through consumer service
9 and the consumer services people refer that to me or they
10 simply may refer it to Water and Sewer Department and then
11 it comes to me. And it sort of depends on who is available
12 at the time. Both myself and Jim Merciel have answered
13 questions with regard to these connection fees.

14 Q. Okay. Now, who is your supervisor in the
15 organization?

16 A. In -- Jim Merciel would be my immediate
17 supervisor, and then Dale Johansen above that.

18 Q. Did you talk to Mr. Merciel and Mr. Johansen
19 about your responses to these questions?

20 A. Yes, I did.

21 Q. And you told them that's -- what did they tell
22 you?

23 A. Well, we've discussed this on more than one
24 occasion because when we originally were faced with this
25 issue, we had a very thorough discussion. And based on that

1 discussion, then I sent the letter to the company about
2 charging these fees to customers that were condominium unit
3 owners.

4 And then since then, we have on occasion again
5 brought up the issue, Well, where do we stand on this? What
6 are we -- what is the thing to tell the customers if they
7 call in? Because over time the customers have called in
8 about this issue.

9 One of the ways that we thought this was going
10 to get resolved was simply that the same party was starting
11 Environmental Utilities and was going to create a tariff for
12 Environmental Utilities.

13 We were not opposed to them having a charge,
14 if it was necessary for establishing service within
15 condominiums, but we were opposed to them just simply taking
16 the connection charge that was supposed to apply to a
17 residential home and just applying it to condominium units.

18 So one of -- what we thought would be a
19 solution to this would simply be to discuss with the company
20 an appropriate charge for condominium units and if we had
21 that resolved within the context of the tariff that was
22 going to be used for Environmental Utilities, then the next
23 step would simply be to get a change made to the tariff for
24 Osage Water Company that specifies a charge for condominium
25 units.

1 That is what we thought would take place.
2 That has never come to fruition to the -- to the point that
3 we resolved this issue.

4 Q. Okay.

5 A. And obviously we've had customers that haven't
6 just called in once. They've called in and then two months
7 later called in and said, Okay, what's the status of this
8 issue.

9 And we've had to tell them the same answer,
10 that this issue is not resolved, that the Staff still
11 disagrees with the use of connection charges that we know
12 were created -- at least our review -- from our review, they
13 were created for the use for residential homes and we don't
14 agree that that should be applied to condominium units.

15 Q. Okay. And these connection charges are in
16 Osage Water's current tariff; is that correct?

17 A. There are connection charges in OWC's tariff
18 for residential homes. And there is a conflict in that
19 tariff inasmuch as there's actually two connection charges.

20 One connection charge would be that the
21 company would invest \$250 in that connection. The other
22 connection charge, depending on whether the connection was
23 established by the customer or established by the company,
24 would either mean a \$100 connection charge to cover the cost
25 of the meter and -- I don't know if I should quote it,

1 it's -- we try to be fairly specific in these -- any of
2 these service charges in terms of what they are paying --
3 being used for.

4 The connection charges were established -- one
5 of the primary ones -- reasons was for an inspection, where
6 the company goes out and looks at the service connection and
7 the connection onto their main before the trench is covered
8 back up.

9 Now, obviously there's a different cost
10 there -- if the company is doing the work and providing the
11 backhoe, then there's more cost. And so, consequently,
12 there's a connection charge that says specifically \$150 plus
13 backhoe time.

14 Q. Okay. So Staff is basically just disagreeing
15 about the interpretation of the tariff, is that -- to sum it
16 up?

17 A. Yes. I think that gets fairly close to it.
18 As a matter of fact now, we do have -- we've made copies of
19 the tariff sheets that are current for OWC and -- that show
20 these service charges and we've also made some copies of the
21 sheets to show the definition of a service connection.

22 Q. I'm sure your attorney will bring that up on
23 redirect.

24 A. Well, we just wanted --

25 Q. I understand.

1 A. Okay.

2 Q. Did Staff ever consider bringing a complaint
3 against Osage Water over these issues?

4 A. I'm not exactly sure where we had gotten on
5 that discussion as far as actually bringing a complaint. I
6 think our main focus was simply to work this out with the
7 company.

8 As a matter of fact, I think the company
9 indicated to us that this was not a big issue when we were
10 discussing the tariff for Environmental Utilities and that
11 we could simply work out the language in that tariff. And
12 our impression was that we were going to get to a resolution
13 of this through that process.

14 JUDGE WOODRUFF: Okay. That's all the
15 questions I have then.

16 We'll go to recross based on those questions
17 from the Bench beginning with Public Counsel.

18 MS. O'NEILL: No questions.

19 JUDGE WOODRUFF: Hancock?

20 RE CROSS-EXAMINATION BY MR. LORAIN:

21 Q. Mr. Hummel, my understanding was that you
22 thought this OWC issue of tariffs on these condominium
23 hook-ups would be solved in some other forum other than OWC.
24 Is that a correct assessment?

25 A. Well, we thought that we would address the

1 issue within the context of Environmental Utilities and
2 knowing we were speaking to the same people anyhow. And we
3 wanted to address this issue not just for OWC or
4 Environmental Utilities. We need to address the issue and
5 deal with it for all of our companies, any companies that
6 are going to get involved with putting in condominiums.

7 Q. And I understand and would agree with that,
8 but I guess my question is directed to the issue of why
9 would you deal with an OWC matter in the Environmental
10 Utilities? I mean, I guess I'm having some problems with
11 that. So can you explain that to me?

12 A. Because Environmental Utilities is, in effect,
13 a sister company -- these are my words. You might consider
14 Environmental Utilities to be a sister company to OWC. I
15 mean, it's got some of the same people running it. As a
16 matter of fact, when we're talking to the operator, I'm not
17 always sure, you know, is the operator working for
18 Environmental Utilities? Is the operator working for OWC?
19 It's not always a clear picture on that.

20 Q. Mr. Hummel, didn't Mr. Hancock try to
21 intervene in that last case where EU came to be? And didn't
22 he tell you and Staff -- didn't he tell you through
23 testimony that these guys were sister companies and there
24 was going to be a lot of confusion? And didn't Staff go
25 ahead and allow that to go anyway? I mean, you all made --

1 MS. O'NEILL: Objection, argumentative.
2 BY MR. LORAINÉ:
3 Q. Did you make a recommendation --
4 MS. O'NEILL: Objection, argumentative.
5 MR. LORAINÉ: I withdraw the question.
6 JUDGE WOODRUFF: All right.
7 THE WITNESS: I'll --
8 BY MR. LORAINÉ:
9 Q. The question I'm asking you now is, did Staff
10 have a recommendation against the formation of EU to this
11 Commission?
12 A. I don't know that the Staff came out with a
13 specific recommendation against the formation of
14 Environmental Utilities. We have to look at various issues
15 whenever we have a certificate case.
16 Q. So that was a no, sir?
17 A. I don't think I can answer that question very
18 directly. You're asking if the Staff specifically
19 recommended to the Commission that Environmental Utilities
20 not be granted a certificate?
21 Q. Yes, sir. That's what I'm asking you.
22 A. As I'm trying to answer that question, I'm
23 trying -- it really comes down to a specific item that is a
24 matter of record. I mean, I appreciate -- are you asking me
25 what's on the record as far as recommendations that we gave

1 to the Commission?

2 Q. I'm asking you, did you recommend against the
3 formation -- the CCN of Environmental Utilities given these
4 complex questions that you're now raising?

5 MS. O'NEILL: Objection, your Honor. I don't
6 believe that Mr. Hummel was responsible for making
7 recommendations in that case.

8 JUDGE WOODRUFF: He was asked what Staff
9 recommended.

10 Mr. Hummel, if you know, you can answer. If
11 you don't know, just say, I don't know.

12 THE WITNESS: I'm not sure I can give you the
13 clear answer that you're wanting. I know Staff had various
14 discussions about how this would work because of our concern
15 of whether or not service is going to get to the customers
16 and so forth.

17 And the Staff was of the opinion -- I mean, I
18 can't -- I think the record shows what our actual
19 recommendation was to the Commission, but I know one of the
20 issues that was discussed was that we're dealing with two
21 subdivisions that are right next to each other, we're
22 dealing with a situation where the same well was previously
23 presumed to be the source of supply for Eagle Woods as well
24 as Golden Glade and we did have a strong tendency to think
25 that this could simply be one service area.

1 BY MR. LORAIN:

2 Q. All right. So that the granting of a CCN to
3 Environmental Utilities, all that could possibly do is tend
4 to complicate OWC's life. Would you agree with that?

5 A. If you're asking for me -- from my --

6 Q. Yes. I'm asking your personal opinion.

7 A. In my opinion, yes, I think that that is true.
8 That that simply -- that complicated the situation from the
9 perspective of OWC.

10 Q. And it certainly would have an impact on OWC's
11 viability if it has a competing utility company sitting next
12 to it, wouldn't it?

13 MS. O'NEILL: Objection, calls for a legal
14 conclusion.

15 MR. WILLIAMS: Your Honor, I'm going to join
16 in that objection. I believe that the question has been
17 asked and answered by the Commission in Environmental
18 Utilities' application and it would not be a proper comment
19 for an employee of the Commission to disagree with the
20 Commission's answer in that case.

21 JUDGE WOODRUFF: I'm going to sustain the
22 objection because I don't believe it's relevant to the
23 proceedings here today. That question was presented to the
24 Commission in an earlier case and resolved at that time.
25 It's not relevant at this time. So the objection is

1 sustained. You can move on to your next question.

2 BY MR. LORAIN:

3 Q. Would you agree with me that Mr. Hancock is

4 not one of the parties that you said they're the same

5 parties, OWC and EU? Would you agree that Mr. Hancock has

6 got nothing to do with Environmental Utilities?

7 A. Absolutely.

8 Q. Do you believe that the formation, therefore,

9 of this competing CCN company could have been to the

10 detriment of Mr. Hancock's interests?

11 MR. WILLIAMS: Your Honor, I'm going to object

12 to this question.

13 JUDGE WOODRUFF: Sustained again. It's the

14 same question.

15 MR. LORAIN: I have nothing further.

16 JUDGE WOODRUFF: Okay. Thank you. Then for

17 Osage, recross?

18 MR. WILLIAMS: Thank you, your Honor.

19 RE CROSS-EXAMINATION BY MR. WILLIAMS:

20 Q. Mr. Hummel, just a couple of questions based

21 on the Judge's questions.

22 You indicated that you believed that the

23 service connection issue could be resolved simply by

24 changing some tariff pages; is that correct?

25 A. I think that would be a safe way of saying it,

1 inasmuch as that's the source of the problem, the
2 interpretation of the tariff sheets.

3 Q. Then let me ask you. Wouldn't that be
4 single-issue rate-making?

5 MR. KRUEGER: Objection, calls for a legal
6 conclusion.

7 JUDGE WOODRUFF: Sustained.

8 BY MR. WILLIAMS:

9 Q. Okay. Mr. Hummel, in your viewpoint, does the
10 Public Service Commission regulate the company and its
11 behavior or does the Commission regulate the relationship
12 between the company and its customers?

13 A. You're going to have to repeat that.

14 Q. Okay. From your viewpoint, does the
15 Commission regulate the company and its behavior or does it
16 regulate the relationship between the company and its
17 customers?

18 A. I don't see how that -- I don't -- in trying
19 to evaluate that question, I don't see how the Commission
20 can regulate a company's behavior. They can't control that.

21 Q. Would it be your opinion then that if the
22 Commission entered an order that the company was not to
23 charge connection fees to condominiums, that the company
24 would do that anyway? Is that what you're saying?

25 A. It wouldn't surprise me that the company might

1 try, but the problem is that the customers call in and force
2 the Staff to have to make a statement as to whether or not
3 the Commission has approved that charge.

4 Q. So you're saying that the company -- the
5 customers forced the Staff to take a position. Is that your
6 testimony?

7 A. No. The customers call in and they want an
8 answer. And the Staff has no choice but to give them -- to
9 give them the best answer that they can see in it.

10 Q. Couldn't the Staff file a complaint to get
11 that answer from the Commission?

12 A. There are a number of different ways to
13 resolve this kind of an issue. And perhaps that is one way
14 to do it, but in -- the Staff would be certainly concerned
15 about doing this in a fashion that didn't cause a lot more
16 legal activity. We've only got 300 customers trying to
17 support all this.

18 MR. WILLIAMS: No further questions, your
19 Honor.

20 JUDGE WOODRUFF: All right. Redirect?

21 MR. KRUEGER: Thank you, your Honor.

22 REDIRECT EXAMINATION BY MR. KRUEGER:

23 Q. Mr. Hummel, you were asked some questions
24 about the conversations you had with Osage Water Company
25 customers regarding connection fees. Do you recall those

1 questions?

2 A. Yes.

3 Q. Now, before you had those conversations with
4 the customers, did you discuss this matter with other
5 members of the Staff?

6 A. Yes, I did.

7 Q. And in these discussions, did you talk about
8 the company's tariffs?

9 A. Yes, we did.

10 Q. And how those tariffs applied to the question
11 that was presented?

12 A. Yes.

13 MR. KRUEGER: I'd like to have an exhibit
14 marked, your Honor.

15 JUDGE WOODRUFF: You may. This will be
16 No. 27.

17 MR. KRUEGER: There are a number of pages,
18 your Honor, and it hasn't been stapled. I don't know if
19 there's a stapler we could use to fasten them.

20 JUDGE WOODRUFF: I actually have one.

21 MR. KRUEGER: Thank you.

22 (EXHIBIT NO. 27 WAS MARKED FOR
23 IDENTIFICATION.)

24 MR. KRUEGER: What exhibit number is this?

25 JUDGE WOODRUFF: This is 27.

1 BY MR. KRUEGER:

2 Q. Mr. Hummel, I've handed you a copy of what's

3 been marked as Exhibit 27. Do you have that in front of

4 you?

5 A. Yes, I do.

6 Q. Can you identify that document, please?

7 A. These are sheets taken from the Osage Water

8 Company tariff.

9 Q. It's not the complete tariff, is it?

10 A. No, it is not the complete tariff. This is

11 specific -- all of these sheets are out of the Osage Water

12 Company water tariff. We don't have any of the sheets in

13 here from the sewer tariff.

14 Q. Okay. And what sheets are there included in

15 that Exhibit 27?

16 A. Sheet No. 5, which is a rate sheet; Sheet

17 No. 6, which shows a schedule of service charges; Sheet

18 No. 6A, which shows a schedule of water service charges;

19 Sheet No. 7, 8 -- No. 7 and 8, which are definitions which

20 show the definition of a service connection; Sheet No. 26,

21 27 and 28, which cover Rule No. 11, which is meters and

22 meter installations.

23 Q. Now, in responding to these inquiries from

24 customers, did you review these tariff sheets in particular?

25 A. Yes, we did.

1 Q. I call your attention then to the second page
2 of this exhibit, which is identified as Rules Governing
3 Rendition of Water Service, Second Revised Sheet 6. I'd ask
4 you to read the first -- and it's a schedule of service
5 charges; is that correct?

6 A. Yes, that is correct.

7 Q. I'd ask you to read the first two entries
8 there.

9 A. The first entry is, A construction inspection
10 charge per connection where connection is made by customer,
11 \$100.

12 The next item is, A new service connection by
13 company includes inspection and meter. Backhoe charges
14 additional as necessary, \$150 plus backhoe time.

15 Q. Okay. Now, calling your attention to Sheet 7,
16 that's entitled Rule 1, Definitions; is that right?

17 A. Yes.

18 Q. Would you read paragraph F of that rule?

19 A. Paragraph F, A, in quotes, service connection
20 is the pipeline connecting the main to the customer's water
21 service line at the property line or outdoor meter setting
22 including all necessary appurtenances.

23 Q. Does that continue on the next page?

24 A. Yes. Excuse me. This service connection will
25 be installed, owned and maintained by the company. If the

1 property line is in the street -- in a street, the said
2 service connection shall be deemed to end at the edge of the
3 street abutting the customer's property.

4 Q. Now, I'd like to ask you also to read
5 paragraph E of Rule 1.

6 A. Paragraph E is, A, in quotes, customer's water
7 service line, end quote, is a pipeline with appurtenances
8 installed, owned and maintained by the customer used to
9 conduct water to the customer's unit from the property line
10 or outdoor meter setting including the connection to the
11 meter setting. If the property line is in a street, then
12 the said customer's water service line shall be deemed to
13 begin at the edge of the street abutting the customer's
14 property.

15 Q. Now, in reviewing these tariff sheets, did you
16 form an opinion as to whether the connections to condominium
17 units that Mr. Williams questioned you about are service
18 connections or not?

19 A. The service connection, according to these
20 definitions, would be a service connection from the street
21 to the building. And there is one service connection then
22 for a condominium building, not multiple service
23 connections.

24 Q. Okay. I'd like to ask you to give a graphic
25 representation of this, if you can. Could you use the dry

1 erase board and show a few of these things that I ask you to
2 draw up there?

3 First of all, show something to indicate where
4 the service would be provided, just a building. Can you
5 draw that on the board?

6 A. I'm not sure how this -- we didn't practice
7 what was supposed to happen here.

8 JUDGE WOODRUFF: I don't know how that's
9 supposed to work either, so you might want to just give
10 verbal descriptions then.

11 MR. KRUEGER: That's harder. Okay.

12 JUDGE WOODRUFF: There is a paper board over
13 there.

14 THE WITNESS: Certainly. Do you have a magic
15 marker?

16 JUDGE WOODRUFF: I've got a marker up here.
17 Staplers and markers all provided.

18 BY MR. KRUEGER:

19 Q. Okay. Just draw something to indicate where
20 water service might be provided. Just a box or something.

21 A. I'm going to give you -- I'll give you what
22 would be a plan view. And we're going to say this is the
23 street, we're going to say this is the building and we're
24 going to say there's a main -- as often is the case, the
25 main may be right -- when I say this is the street, this is

1 edge of street, but the pavement's more in the center and
2 the water main may be running down in the street itself
3 (indicating). That would be the water main.

4 The line going to the house -- well, first of
5 all, the service connection -- well, I'll place the meter
6 here, first. The meter is going to be placed generally
7 right close to this property line where the street ends
8 (indicating). That would be the top of the lid of the meter
9 or the meter box.

10 The service connection is the line that comes
11 from the main to the meter. That's the service connection.
12 The service line is -- which is then the customer's
13 responsibility, would be from this meter into the house
14 (indicating).

15 Q. Okay. Thank you. Now, I'm going to read to
16 you again the definition you read of service connection. A
17 service connection -- or a part of it.

18 A service connection is the pipeline
19 connecting the main to the customer's water service line at
20 the property line. Could you -- I'm sorry. I'll continue.
21 At the property line or outdoor meter setting, including all
22 necessary appurtenances.

23 On your diagram, where would the service
24 connection be?

25 A. On this diagram, the service connection is

1 just this portion right here (indicating).

2 JUDGE WOODRUFF: You're showing the connection
3 between the road -- the main and the meter?

4 THE WITNESS: Yes. From the main to the
5 meter.

6 MR. KRUEGER: Thank you, your Honor.

7 BY MR. KRUEGER:

8 Q. Now, I'm going to read the definition of a
9 customer's water service line, which is, A pipe with
10 appurtenances installed, owned and maintained by the
11 customer used to conduct water to the customer's unit from
12 the property line or outdoor meter setting, including the
13 connection to the meter setting.

14 Now, where would that be on the diagram you
15 have drawn?

16 A. That would be from the point of what -- the
17 edge of the street, and generally the meter is placed very
18 close to that, all the way to the house. Now, there are
19 cases where the meter may be not exactly on this property
20 line, it may be back here somewhere (indicating).

21 But normally what -- what's expected is that
22 the company is responsible for this service connection that
23 comes from this main in the street at least to the property
24 line (indicating). And this becomes a very significant
25 issue, particularly if you have leaks and repairs that need

1 to be made.

2 Q. And who is responsible for the line from the
3 property line or from the meter to the building?

4 A. That is the customer's responsibility.

5 Q. Now, does the situation change with respect to
6 condominium units in any way?

7 A. It changes -- you want me to try to draw
8 something there that indicates that?

9 Q. I think that would be helpful.

10 A. If I have a building that is divided up into
11 condominium units where each of the occupants -- each one of
12 these six squares that I have placed here is a separate
13 condominium unit with separate ownership by the individuals
14 that claim them or -- the main is still out here in the
15 street, the property around this building is likely owned in
16 common by these condominium owners (indicating).

17 And now the question is, which part is the
18 service connection and which part would be the service line?
19 And it is somewhat unique and that's partly why you need to
20 perhaps address it uniquely in the tariff.

21 You still have a service connection that is
22 the -- from the point of the main to the property line. In
23 this case, the meters -- assuming this is the way it's set
24 up, that the meters are likely to be in the units. So you
25 have six meters inside the building, inside the units.

1 In this case, the service connection is from
2 the main to the street -- to the edge of the street or to
3 the property line and then you have a line that goes from --
4 depending on how this is built, this line may go underneath
5 the building and then come up to these meters (indicating)
6 and you have the issue of what is the service line.

7 In -- as I'm understanding most of the
8 condominium situations that we are aware of, this line from
9 the -- that is on the property of the Condominium
10 Association -- well, that gets to be an issue, who owns that
11 line, who's to maintain that line? It's -- the question is,
12 is that the service line. And, as I would understand as --
13 and -- in this particular situation, that would be a service
14 line from that property line on.

15 Q. Okay. Thank you. And I want to get back to
16 the definition of water service line. Customer's water
17 service line is a pipe with appurtenances installed, owned
18 and maintained by the customer used to conduct water to the
19 customer's unit from the property line or outdoor meter
20 setting, including the connection to the meter setting.

21 Now, where would that be on the diagram that
22 you've made for condominiums? Can you show what would be
23 the customer's water service line there?

24 A. The way -- to the extent that the customer is
25 a condominium unit owner --

1 Q. Well --

2 A. -- it's --

3 Q. I'm sorry. I don't want you to talk about

4 ownership of the units and so forth. I'd like you to just

5 try to help understand this definition of customer's water

6 service line. It's a pipe with appurtenances installed,

7 owned and maintained by the customer used to conduct water

8 to the customer's unit from the property line or outdoor

9 meter setting.

10 A. One of the problems with using that definition

11 is that definition is specifically set up for standard

12 residential service, but -- and that becomes the real part

13 of the question in making these interpretations of the

14 tariff is that this customer doesn't own anything outside of

15 this wall except as part of an association. But -- so he

16 has control over the line when it comes through the wall.

17 And that -- I think that illustrates part of

18 the problem in -- in -- in defining specifically what is the

19 service line, but for this customer that service line, he is

20 only -- he only has control over what's right there in his

21 unit.

22 Q. Okay. And the service connection is the

23 pipeline connecting the main to the customer's water service

24 line at the property line or outdoor meter setting,

25 including all necessary appurtenances. Where would that be

1 on this diagram?

2 A. On this diagram, that service connection would
3 be simply from this main to this -- to the property line
4 right here (indicating). This is that -- one of the those
5 exceptions where the meter is not placed at the property
6 line.

7 Q. Okay. Thank you. I think I'm finished with
8 the diagram.

9 Based then on that understanding of the
10 company's tariff, did you tell customers who inquired
11 whether the Staff believed they had an obligation to pay the
12 amount that -- to pay an amount for the service connection?

13 A. We considered this whole matter an issue in
14 dispute. And until that was settled, we felt that the
15 customers would be okay in responding to that bill by --
16 with a note back to the company simply saying that until
17 this matter is resolved, you wouldn't necessarily have to
18 pay it. We've got several different situations out here.
19 We've also got customers who have paid it and want their
20 money back.

21 Q. Has the Staff filed a complaint against the
22 company over that?

23 A. The Staff not -- has not, as of this time,
24 filed a complaint against the company on this matter.

25 Q. Does the company have any obligation to

1 maintain that portion of the line that extends from the
2 property line on your diagram there to the exterior of the
3 condominium unit building?

4 A. I can't answer that very specifically, because
5 that is somewhat complicated with the contract between the
6 developer and the company. And I'm not -- I mean, that may
7 become the -- the guide on who has responsibility for that.

8 Q. I believe that in answer to a question from
9 Mr. Williams, you said the Commission cannot regulate the
10 company's behavior. I'd like to ask you some questions
11 about that. Can the Commission direct the company to take
12 actions to improve their service?

13 A. Yes. They can give direction to that, yes.

14 Q. Can they set rates that the company may
15 charge?

16 A. Yes.

17 Q. Can they approve tariffs?

18 A. Yes.

19 Q. Can they resolve customer complaints?

20 A. Yes.

21 Q. So why would you say then that the Commission
22 cannot regulate the company's behavior?

23 A. The Commission can give direction, but they
24 can't actually control the execution that the company uses
25 to -- the company may take certain actions that -- you know,

1 how they accomplish the goal is somewhat up to the company.

2 Q. You mean they can tell them what to do, but
3 the company may not do it?

4 A. That's true.

5 Q. Or the company has the right to control how it
6 is done so long as it does what the Commission tells them to
7 do?

8 A. That is correct.

9 MR. KRUEGER: May I approach, your Honor?

10 JUDGE WOODRUFF: You may.

11 BY MR. KRUEGER:

12 Q. Mr. Williams showed you some of the provisions
13 of Rule 4 CSR 240-2.200 and he asked you to read from that.
14 And I'd like to show you the piece of paper that he handed
15 you with the highlighting that he has on it.

16 And, first of all, I'd call your attention
17 to -- I believe that's paragraph 1C near the bottom of the
18 second column of the page there and ask you to read the
19 entire first sentence of that paragraph.

20 A. Okay. This is Item 1, in parenthesis, C, in
21 parenthesis. If the conference between the Commission
22 Staff, the company and Public Counsel results in an
23 agreement concerning additional revenue requirements and any
24 other matters pertaining to the company's operation,
25 including responses to customer concerns, the agreement

1 between the Commission Staff, the company and the Public
2 Counsel shall be reduced to writing.

3 Q. Thank you. So it says that if the conference
4 results in agreement, the agreement shall be reduced to
5 writing; is that correct?

6 A. Yes, that is correct.

7 Q. Okay. Thank you.

8 Mr. Hummel, you are an engineer?

9 A. Yes.

10 Q. Are you involved in the auditing function --
11 auditing or accounting functions of a rate case?

12 A. Only to the extent that I might help the
13 accountants understand the facilities that are in the field.

14 Q. Do you know whether a rate case is a budgeting
15 process or not?

16 A. To the -- my understanding, it would be a -- I
17 would qualify that as a budgeting process, but I'm -- again,
18 I'm not an accountant. That's my perspective on it.

19 Q. Have you offered to assist the company in
20 finding a leak at Broadway Bay?

21 A. Yes, I have.

22 Q. And when was that done?

23 A. I'm not sure on which -- all the occasions
24 that I might have offered to do that, but I had offered that
25 assistance through Jeff Smith when I had occasion to be

1 there, I think it was August 22nd. I also explored that
2 whole issue with Mr. Mitchell at the pre-hearing conference
3 on October 15th in anticipation of trying to figure out what
4 equipment and other information I would need in order to
5 make a very planned effort in finding that leak.

6 Q. And so did you offer assistance at that time,
7 at the pre-hearing conference on October 15th?

8 A. Yes, we did.

9 Q. And did the company accept your offer of
10 assistance?

11 A. I guess -- Mr. Mitchell didn't refuse it. I
12 don't know that there was particularly an acceptance or
13 rejection. We just discussed the issue. And I had asked
14 him whether he wanted me to even let him know if I had
15 talked to Mr. Smith and was going to be there, and I got the
16 impression that he didn't care whether I told him or said
17 anything to him about it.

18 Q. Did he seem interested in finding a solution
19 to the problem that -- of the leak out there?

20 A. He was -- he didn't seem to be too concerned
21 about it.

22 MR. KRUEGER: Okay. That's all the questions
23 I have.

24 JUDGE WOODRUFF: All right. Just stay on the
25 stand for a moment. Commissioner Murray is tied up in

1 agenda, but she did send me some questions she wanted me to
2 ask of Mr. Hummel, so I'm going to ask them at this time
3 even though it's out of order and I'll give everybody a
4 chance to do questions after that. I'll read them off my
5 screen.

6 FURTHER QUESTIONS BY JUDGE WOODRUFF:

7 Q. Do you think that the operational and safety
8 problems that you've observed at the OWC facilities are
9 caused only by financial problems, or do you think there are
10 also problems with management and operational competency and
11 willingness to provide safe and adequate service?

12 A. I don't think they are caused by financial
13 problems. I think they are caused by poor management and
14 capability and so forth.

15 Q. Okay. In your contacts with the company, have
16 you experienced a cooperative attitude and a willingness to
17 kindly address problems?

18 A. Generally, I have experienced a cooperative
19 attitude, although I have on enumerable occasions simply
20 been told, Well, we don't have enough money.

21 Q. And who would tell you that?

22 A. I've been told that by -- I think by Debra
23 Williams and by Greg Williams and by Pat Mitchell.

24 Q. Okay. Has it been easy for you to know who to
25 contact? Is it apparent to you who is responsible for the

1 OWC systems?

2 A. In many occasions it is not exactly clear who
3 to actually contact, particularly here recently when it was
4 unclear who was actually running -- who -- who was actually
5 the manager or who was actually running the company.

6 JUDGE WOODRUFF: Okay. That's all the
7 questions I have.

8 Does anyone want to do any recross based on
9 those questions?

10 MR. KRUEGER: No questions, your Honor.

11 MS. O'NEILL: No questions, your Honor.

12 MR. WILLIAMS: I do have some additional
13 cross-examination.

14 JUDGE WOODRUFF: Come up for recross then.

15 MR. WILLIAMS: Your Honor, if I may, I have
16 some questions about Exhibit 27 that Mr. Hummel testified
17 about on redirect, if that's acceptable.

18 JUDGE WOODRUFF: That wouldn't be proper at
19 this time. This is only recross based on those additional
20 questions I asked.

21 MR. WILLIAMS: Then I guess I don't have
22 questions.

23 JUDGE WOODRUFF: Okay. Mr. Hummel, you may
24 step down.

25 And, Staff, you can call your next witness.

1 MR. KRUEGER: Jim Merciel.

2 JUDGE WOODRUFF: Before we begin with

3 Mr. Merciel, there's one question from yesterday I wanted to

4 bring up and that's addressed to Mr. Williams.

5 Mr. Williams, did you bring that agreement

6 that was discussed?

7 MR. WILLIAMS: Yes, your Honor.

8 JUDGE WOODRUFF: Okay. We'll deal with that

9 later as appropriate. I just wanted to make sure that it

10 had been brought.

11 (Witness sworn.)

12 JUDGE WOODRUFF: You may be seated. You may

13 inquire.

14 MR. KRUEGER: Thank you, your Honor.

15 JAMES A. MERCIEL, having been sworn, testified as follows:

16 DIRECT EXAMINATION BY MR. KRUEGER:

17 Q. Good morning, Mr. Merciel.

18 A. Good morning, Mr. Krueger.

19 Q. State your name and address for the record,

20 please.

21 A. James A. Merciel, Jr. Address is Post Office

22 Box 360, Jefferson City, Missouri 65102.

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

24 A. Employed by the Missouri Public Service

25 Commission in the Water and Sewer Department. I'm assistant

1 manager, engineering.

2 Q. What do your duties as assistant manager,
3 engineering, include?

4 A. Well, I supervise some of the people in the
5 Water and Sewer Department in doing our work. We review
6 certificate cases, investigate informal complaints as well
7 as formal complaints. I do work on rate cases. We do
8 routine inspections. That's our own department work, it's
9 informal. Inspections of the utilities we regulate.

10 Q. What is your educational background?

11 A. I have a bachelor of science degree in civil
12 engineering and -- well, that's my educational background.

13 Q. Would you please briefly describe your
14 professional experience?

15 A. I am a registered professional engineer. I've
16 worked at the Commission here since 1977 --

17 MR. LORAIN: Your Honor, I would move to
18 stipulate that this man is qualified as an engineer and as
19 an expert witness for the Public Service Commission.

20 JUDGE WOODRUFF: Any objection from any of the
21 other parties?

22 MR. WILLIAMS: As long as it's as an engineer,
23 your Honor. If he wants to be qualified as something else,
24 I think we need additional information, but I'm aware he's a
25 PE.

1 JUDGE WOODRUFF: Is that acceptable?
2 MR. KRUEGER: That's fine.
3 JUDGE WOODRUFF: He'll be considered as an
4 expert as an engineer.
5 BY MR. KRUEGER:
6 Q. Do your duties require to you work with small
7 water and sewer companies?
8 A. Yes.
9 Q. In this capacity, have you ever worked with
10 Osage Water Company?
11 A. Yes.
12 Q. Are you familiar with the company's record of
13 service to its customers?
14 A. Yes.
15 Q. Are you familiar with the interruption of
16 water service that occurred at Broadwater Bay Subdivision in
17 Osage Beach in August about which there was testimony
18 earlier in this hearing?
19 A. Yes, I am.
20 Q. How did you become aware of that problem?
21 A. Well, I first became aware on -- I forgot if
22 it was August 8th or August 9th. I think it was the 9th. I
23 got a courtesy call from Greg Williams who informed me that
24 the Pizza -- what we call the Pizza Hut well over in
25 Broadwater Bay, he said the well had failed and it was a

1 mechanical failure and there was an electrical fire
2 associated with it.

3 He also said that they had, I believe it was
4 just that day, entered a contract -- 10-day contract with
5 the City of Osage Beach for a temporary connection so that
6 the customers would have water. And I don't remember now.
7 They might have been out of water for a short period, but
8 basically, you know, the problem was addressed by the
9 temporary connection.

10 He did say they -- as we hear from most small
11 companies when there's a well failure, you always hear
12 grumbling about money because it's expensive to fix. So
13 there was really no surprise there, but he did say they
14 weren't sure how they were going to fund the repairs.

15 He said they were considering other options
16 such as transferring the system to the City because as has
17 been talked about here, there is a concern about the City
18 acquiring the customers anyway. So that was -- there were
19 several alternatives in the works at the time in resolving
20 the problem.

21 So, frankly, I -- I logged it on our system as
22 an outage, but I closed it right away. I didn't really
23 think it was going to be a significant problem at the time.
24 Okay. So that was on the 8th or 9th.

25 When the contract was going to be terminated

1 after the 10 days, on August 19th, I started hearing from
2 customers and we also contacted the company. There still
3 was no resolution of the problem, but the temporary
4 disconnect was scheduled to be terminated by the City, which
5 this did happen.

6 The company still was not -- there were some
7 communications with the City on -- on some options, but none
8 of them were really -- really agreeable by the parties.
9 There was no -- the company had no plans to -- to actually
10 perform repairs. They had looked into some possibilities,
11 but there was no plan to go ahead with repairs of the
12 system. And so the water was turned off and customers were
13 out of water.

14 I think it was testified here they were out of
15 water three days, but I think it was a little longer than
16 that. I have an e-mail that was dated approximately
17 August 30th when the company discovered that they had
18 insurance money that was going to pay for the repairs.

19 And it was -- when they made that discovery,
20 they were able to enter into a 60-day agreement with the
21 City -- 60-day agreement with the City for wholesale water,
22 which promptly resulted in another connection. So the
23 customers were back on the water. So I think they were out
24 more like -- more like 11 days rather than 3 days.

25 And then subsequently, the well was repaired

1 and with bacteriological testing and some of the details
2 that go along with it, it is back in service today.

3 Q. During the time that this initial temporary
4 connection with the City was maintained, first of all, how
5 long was that connection, do you recall?

6 A. The temporary connection?

7 Q. How long was that maintained?

8 A. Ten days.

9 Q. Okay. During that time, did you talk with
10 company personnel about their plans?

11 A. Not much during that time. We had the initial
12 courtesy call. And then toward the end of the period, we
13 did have some discussions including there was -- Mr. Meyer
14 testified about a conversation.

15 Mr. Meyer and I both talked to Greg Williams
16 together about -- that conversation was about special --
17 well, I guess it was either special funding or special
18 depreciation, or, you know, special accounting treatment on
19 the repair of that facility.

20 And I don't recall how many conversations I
21 had with the company. Probably -- besides that one, there
22 were a couple others, probably two or three or four
23 additional conversations. I recall talking to Mrs. Williams
24 on at least one occasion.

25 Q. And during this time did they discuss how they

1 would permanently resolve the problem?

2 A. Well, there was -- there was no resolution in
3 place. The company was willing to resolve it if somebody
4 else was going to pay for it basically. Including the
5 company had talked to customers -- and I've gotten this, you
6 know, from customer contacts that I had, that customers were
7 informed that they could buck up for the repairs if they saw
8 fit to do so.

9 Q. Did you say that the company indicated it was
10 not going to make the repairs itself?

11 A. Yes. I -- I think I can say accurately that
12 the company pretty much came out and said it. At the very
13 least, that was my impression, the company was not going
14 to -- was not going to pay for repairs unless it was funded
15 somehow.

16 Q. Did they discuss how it might be funded?

17 A. Well, if -- if we could tell them that there
18 was some special accounting treatment, that might have
19 worked, such as assured recovery.

20 Part of the problem was the company's afraid
21 that they might make the repair and then the City would be
22 taking over the customers within some short time, let's say
23 a year, a couple of years or some shorter time than what
24 the -- what the depreciation rate would be on that system,
25 which would be 10 years. And the company basically wanted

1 assured they would get their money back.

2 Q. Did you ever give them that assurance, that

3 they would get their money back?

4 A. We did not.

5 Q. And how did they respond?

6 A. Basically, the response was without the

7 special treatment, they weren't going to fund the repair.

8 Q. Do you know if they made any arrangements with

9 contractors to repair the facility prior to the time of

10 discovering the insurance that you mentioned?

11 A. During that period of time -- during that

12 10-day period, they -- they very likely had discussions with

13 one or more contractors. They didn't give anybody the

14 go-ahead to do it.

15 They did have Flynn eventually do the repair

16 and Flynn might have been standing by to -- you know, they

17 might have said that they're ready to do it when they got

18 the go-ahead, but they did not get the go-ahead during that

19 10-day period.

20 Q. Did you have any opportunity during this time

21 to observe the company's relationships with its customers?

22 A. During that time?

23 Q. Yes.

24 A. Yes. With the customer contacts that I had.

25 Q. What kind of customer contacts did you have?

1 A. I had some customers call in. I think I
2 talked to maybe about six customers, one of those was a
3 husband and wife both. And they -- they were basically mad
4 not only because they were out of water, but there was no
5 resolution in sight.

6 And, you know, the company had told them that
7 it's the City's fault that the problem exists. And -- and,
8 you know, they were a little bit put out that they might
9 have to -- that they were asked to fund the repair.

10 Q. Did the customers indicate that they were
11 satisfied with the company's explanations?

12 A. They were not satisfied. That was the
13 indication.

14 Q. Were you able to form an opinion of whether
15 the company's relationship with its customers was good?

16 A. Well, I would say the company's relationship
17 with customers is not so good based not only on that, but I
18 mean, I've had similar experiences previous to that too. So
19 that was -- that part is really not particularly news.

20 Q. Can you briefly mention previous experiences
21 that you had that led you to the conclusion that the
22 company's relationships with its customers are not good?

23 A. Oh, yeah. There would be a number of previous
24 experiences including Harbor Bay, which has been mentioned
25 here. That was a subject of formal complaint.

1 Cedar Glen is a condominium development. Much
2 of Mr. Hummel's testimony was about Cedar Glen Condominiums.
3 I've had contact with customers there. Not only the
4 connection matters, but there have been water outages where
5 the company -- where it was difficult to contact the
6 company. Various complaints along those -- those lines over
7 the years -- over the 10 years or so this company's been
8 operating.

9 Q. So you're basing it on complaints received
10 from customers?

11 A. Yes. Primarily.

12 Q. In your duties with the Staff, do you have an
13 opportunity to observe the relationships of other companies
14 with their customers?

15 A. Yes.

16 Q. How does the relationship between Osage Water
17 Company and its customers compare with the relationship of
18 other small water and sewer companies with their customers?

19 A. Well, I would classify Osage Water Company as
20 a problem company and it's not the only one. There are
21 several others that we deal with. But there are companies
22 that they -- they -- obviously everybody has problems,
23 there's always things that happen in the utility business,
24 but there's some companies that we simply never hear from
25 the customers.

1 They might even have an outage and maybe the
2 customers are out of water for a day while the well is
3 getting repaired, but if the company is out there taking
4 care of it and telling the customers what's going on and
5 they see the work's getting done and then it gets fixed as
6 the company promises, then a lot of times we never hear
7 about it.

8 Q. You mentioned a complaint in regard to Harbor
9 Bay. Was that a formal complaint?

10 A. It was.

11 Q. Can you tell me how that arose?

12 A. Yes. Harbor Bay is also a condominium
13 development. It's -- it gets both water and sewer service.
14 We call it the Shawnee Bend service area. There's another
15 nearby development called Cimmaron Bay and we refer to those
16 facilities as Cimmaron Bay facilities,.

17 But Harbor Bay had -- oh, let me think. Well,
18 there was -- either one or two buildings were already
19 constructed, but the problem really was -- pertained to one
20 building where units are sold, customers were living there.
21 There was another building under construction where the
22 developer was just starting to sell the units and customers
23 were wanting to move in.

24 And there was a dispute between the developer
25 and the company, which as far as I can tell, is a legitimate

1 dispute. It involved expansion of the facilities and the --
2 you know, what the developer paid for and what the company
3 was doing.

4 But the bottom line is the company was going
5 to disconnect that new building. In doing so, the only
6 way -- just to make a long story short, the only way they
7 could do it was to disconnect part of their water main that
8 would disconnect the building where customers were
9 occupying. And the company went ahead and did it.

10 Mr. Mitchell was the one that physically did
11 it. He had -- actually, I think he gave a courtesy call to
12 Dale Johansen, who was not in the office. He left a voice
13 mail message. But we knew about it, Department of Resources
14 knew about it.

15 I personally talked to Pat -- or to
16 Mr. Mitchell about it. He had contacted Greg Williams who,
17 as I recall, was on vacation out of state, but he was
18 involved with it too. And we advised, no, you should not be
19 turning off innocent customers, but they went ahead and did
20 it anyway. And we subsequently filed a formal complaint
21 over that action.

22 Q. Did you hear Mr. Hummel's testimony in regard
23 to the connection fees?

24 A. Yes, I did.

25 Q. Did you participate in the Staff's discussions

1 regarding whether these connection fees were authorized by
2 the company's tariffs?

3 A. Yes, I did.

4 Q. And what conclusion did you reach?

5 A. Well, I -- I -- the conclusion I think
6 Mr. Hummel adequately explained, and I am in agreement with
7 it. Our conclusion is the connection charges are really
8 written and designed for single-family residences or at
9 least a building, you know, where you have one service line,
10 you know, one connection to the building.

11 The issue is this particular company meters
12 individual condominium units. I contend each unit does not
13 have a connection. Now, they may have their own meter,
14 they're all metered separately, but they don't have -- those
15 are not individual connections to the company's water
16 system.

17 To expand a little bit on that, we did have a
18 meeting with the company and I failed to record the date,
19 but it was about the time Mrs. Williams became involved. I
20 would say it was probably a little over a year ago. And
21 obviously, as we concluded here, the Staff and the company
22 did not agree on the interpretation of the tariff.

23 We did agree that we could work on some
24 modified tariff languages and tariff charges to address the
25 matter. That would not fix the past problem, you know,

1 customers that had already paid and that sort of thing, but
2 as far as charges to set a meter in a condominium unit where
3 we do not think that's addressed in the tariff, there could
4 be a charge created to address that matter.

5 The question was asked did we consider filing
6 a formal complaint. Yes, that's always been a
7 consideration. At the time we had this meeting, if I
8 recall, the rate case was either getting started or going on
9 and -- and, of course, the Staff doesn't just run out and
10 file formal complaints over every little thing anyway, but
11 we did talk to the company and say, Well, we don't have any
12 desire to do this formally, you know, let's try to resolve
13 it.

14 And at the time Environmental Utilities was
15 also going on. We agreed to write Environmental Utilities
16 with what everybody thought was adequate tariff language for
17 condominium connections, which has since been done. And as
18 I recall at the time, the idea was either Environmental
19 Utilities might be operating Osage Water Company's assets or
20 Osage Water Company could later on file tariffs identical to
21 what we worked out for Environmental Utilities. That has
22 not been done.

23 Q. In your discussion with the companies, did
24 they ever tell you that they wanted you to file a formal
25 complaint?

1 A. No. The company never wanted us to file a
2 formal complaint that I recall.

3 Q. You said that you discussed modifying the
4 tariff sheets; is that correct?

5 A. Yes.

6 Q. When did you have these discussions?

7 A. Well, those discussions started with this
8 meeting that occurred whenever it was, a little over a year
9 ago. And then there have been ongoing discussions in the
10 context of Environmental Utilities in actually working out
11 such tariff language. So there have been numerous
12 discussions and e-mails and did result in an Environmental
13 Utilities' tariff.

14 Q. But the company has not filed a subsequent
15 tariff sheet?

16 A. Correct. Osage Water Company has not filed
17 those kind of tariff sheets.

18 Q. You testified that these tariff sheets that
19 we've been talking about regarding water service were
20 designed for single-family residences. What leads you to
21 that conclusion?

22 A. Well, what leads me to that conclusion is this
23 tariff is patterned after what we call our Water and Sewer
24 Department example water -- well, we have water and sewer
25 tariff. We're talking about water here. Which for the most

1 part small companies or subdivisions with single-family
2 residences or at least most companies do not individual --
3 meter individual condominium units, so this company has, you
4 know, started out with that tariff.

5 Also, this company started out -- they did
6 have an apartment complex, but they didn't have condominiums
7 that were individually metered. This kind of -- this
8 concept has kind of developed as this company has grown.

9 Q. At the time the tariff was originally filed,
10 they didn't have condominiums. Is that what you said?

11 A. Correct.

12 Q. But they did serve --

13 A. Well, I should clarify that. At the time the
14 company filed its original tariff, it didn't have
15 condominiums. Now, some of the rate sheets and some of the
16 service charges that we're talking about, there were
17 condominiums in existence.

18 I think there's a history on that too though.
19 That involves -- Mr. Hummel mentioned for a while this
20 company was -- had a connection charge to where the company
21 invested the first \$250 in each customer connection and --
22 and any additional amounts, like if you have to excavate
23 rock or have backhoe charges any additional amount over 250,
24 the customer would pay for.

25 And, in my opinion, that amount would easily

1 cover installation of a meter in a -- in a condominium unit.
2 So I would not have seen this to be an issue in the -- in
3 some of the earlier days.

4 Q. Is that tariff sheet that you mentioned still
5 in effect?

6 A. It is.

7 Q. Can you explain that?

8 A. Well, actually I can't explain it. There --
9 something didn't work right in the way we -- we handled this
10 particular tariff filing. Somehow, you know, this company
11 had the tariff on file and the company filed -- I can look
12 at it. It's the one with the \$150 charge, if I could see
13 that.

14 Okay. The \$250 investment on the company's
15 part, that would be Sheet 6A and was -- it was submitted
16 here on October '94. Okay. And -- and that sheet is still
17 in effect.

18 Well, the company also submitted what's on
19 here as Second Revised Sheet 6 on -- in September of '98. I
20 think they probably intended for that sheet to replace 6A,
21 but it didn't. And for reasons that I simply can't explain,
22 I simply don't know, this sheet -- this tariff sheet was
23 filed here and it was not reviewed by the Staff. Whether --
24 whether we didn't get a copy -- I simply can't explain what
25 happened.

1 Q. I'm sorry. Which sheet was filed and not
2 reviewed by the Staff?

3 A. Sheet 6, the one with the \$100 charge, that's
4 the first one at the top here. It was filed by the company
5 and for some reason, the Staff didn't review it and the
6 tariff sheet ended up going into effect.

7 Q. When was that Sheet 6 filed?

8 A. When was it filed? September 4th, 1998.

9 Q. And no amendment or revision to that tariff
10 sheet has been filed since then?

11 A. That's correct.

12 MR. KRUEGER: Okay. That's all the questions
13 I have, your Honor.

14 JUDGE WOODRUFF: All right. For cross, we'll
15 begin with Public Counsel.

16 MS. O'NEILL: Your Honor, would this be a good
17 time to take our morning break?

18 JUDGE WOODRUFF: All right.

19 MS. O'NEILL: Please.

20 JUDGE WOODRUFF: We'll come back at 10:25.

21 (A RECESS WAS TAKEN.)

22 JUDGE WOODRUFF: Okay. It's now 10:30, past
23 the time when I said we'd get started, so we'll go ahead and
24 proceed. And I believe we were ready for cross-examination
25 from Public Counsel.

1 MS. O'NEILL: Thank you.

2 CROSS-EXAMINATION BY MS. O'NEILL:

3 Q. Good morning, Mr. Merciel.

4 A. Good morning, Ms. O'Neill.

5 Q. You indicated you got a call on Broadwater

6 Bay. And who did you say you got that call from?

7 A. Initially from Mr. Williams.

8 Q. And did he call you in his role as company

9 lawyer, company director, company agent or did he indicate?

10 A. Well, he indicated -- or didn't indicate. And

11 I wouldn't have really thought about it at the time. I

12 would consider that more of a call from -- from the company

13 as a management type or an officer that would --

14 Q. When --

15 A. That would be my answer.

16 Q. Previously anyway to September 3rd of this

17 year when you dealt with Mr. Williams on matters related to

18 Osage County -- or Osage Water Company, excuse me, did you

19 deal with him in connection with regulatory matters that

20 management would handle?

21 A. Sometimes. Sometimes it would be legitimate,

22 you know, legal matters, but I'd say most of the time it's

23 something that we might ordinarily call any other company

24 owner, you know, or company president or sometimes just the

25 operator.

1 Q. And you testified that you have dealings with
2 a lot of water utility companies and sewer utility companies
3 in the state of Missouri. Right?

4 A. Yes, we do.

5 Q. And while all companies are going to have some
6 problems, you also referred to Osage Water as a problem
7 company. Can you tell us a little bit about why you
8 consider this a problem company as opposed to just an
9 ordinary company with some problems?

10 A. Well, I just kind of use the term "problem
11 company" just I guess as a term I use. It's one that seems
12 to always have dilemmas, problems with customer service. We
13 got fairly frequent complaints.

14 We have lots of contact with the company and
15 seem to spend a lot of time on the company, which spending
16 the time is -- I mean, we're here to work with utilities,
17 so -- but, I mean, as I said before, there's some companies
18 that we don't have to spend a lot of time with and some
19 companies that we do have to spend a lot of time with.
20 Sometimes just -- with just what seem to be impossible
21 problems.

22 Q. And are they problems that are out of the
23 ordinary in their nature for this kind of a company, or are
24 they just more than the usual company or is it maybe a
25 combination of those?

1 A. I guess a combination. Oh, some things have
2 certainly been out of the ordinary, such as I've only had
3 one other company that -- that simply would not repair a
4 well when customers were out of water. That was -- I've
5 termed it before as one of the worst companies that I've
6 ever had to deal with, and so this is a second occasion with
7 that type of a situation.

8 What I call blatant disconnection of innocent
9 customers, that's certainly out of the ordinary. That just
10 doesn't happen, but it did with this company.

11 And then one thing I've noticed dealing with
12 developers, you could probably argue that a development
13 around the Lake area in a way it's similar to other
14 communities, but it probably has its own ways and, you know,
15 developers probably have their ways.

16 This company does not deal with developers
17 very well. If there is a good way to address some of the
18 water and sewer matters and dealing with developers, I've
19 finally come to the conclusion this company is not the
20 solution to it. Time and again, developer after developer,
21 we've seen problems with this particular company.

22 Q. Does the company seem to have more problems in
23 those subdivisions that were not developed by one of the
24 company's owners than it does with those other developers?
25 I mean, is there a difference or are there problems in all

1 the systems?

2 A. I guess that's a little bit broad.

3 Problems -- oh, I -- problems with all the systems. There
4 probably have been problems with all the systems at one
5 point or another, but I was re-- in my previous answer I was
6 really referring to relations between the company and
7 developers.

8 Q. And developers who aren't owners of the
9 company?

10 A. Yes, that would be correct.

11 Q. Okay. And the way Osage Water Company
12 operates, does it primarily served individual subdivisions
13 or does it have large areas of service territory that it
14 serves maybe a number of subdivisions?

15 A. Actually, both. A couple of service areas are
16 pretty much individual subdivisions. That would be like
17 Chelsea Rose and Cedar Glen, one is a housing development
18 and one's a condominium development. That's -- that's --
19 actually without reviewing, there may be additional areas
20 besides just those subdivisions, but that's really all that
21 served.

22 Then you have other ones like the KK service
23 area. That's two entirely different subdivisions. And
24 then, of course, you have Osage Beach North, which is a
25 commercial shopping center, which is a little bit different

1 than subdivision.

2 Q. Right. And the KK area is the Eagle Woods and
3 Golden Glade area; is that right?

4 A. That's correct.

5 Q. Okay. Now, this developer problem, is that
6 generating a lot of litigation costs for Osage Water Company
7 from what you've been able to see?

8 A. Yeah. I would -- I would say -- I would say,
9 yes, either it has or it's -- it's going to.

10 Q. Okay.

11 A. It's not all resolved. Probably need to
12 expand on that. Some of the litigation costs have involved
13 the City of Osage Beach, which involved a development. I
14 don't know that the developer was necessarily the problem on
15 that, but, you know, that's where the company was not able
16 to get along with the City as far as I can tell.

17 Q. Okay. And when you look at systems on behalf
18 of the Commission and as part of your duties with the Staff,
19 this company, would you say, as far as small companies go,
20 it's of average size for a small company, is it a little bit
21 bigger, a little bit smaller?

22 A. I don't know. I suppose I'd say maybe average
23 size, average to somewhat larger. I guess -- well, I'll
24 quantify that a little bit. We have a -- we have tiny
25 companies that might have, like, 11 or 12 customers. A lot

1 of subdivisions might be on the order of 100 customers.

2 Then you have larger subdivisions and some of the larger
3 companies, maybe 700 or 800 customers, 1,000 customers.

4 Q. Okay.

5 A. And then you get into some of the communities
6 and larger ones. So 350, it would be, I don't know,
7 somewhere in the middle probably.

8 Q. Okay. And the Commission has some -- at least
9 when it comes to setting rates, has some special rules
10 relating to companies that are considered small water and
11 sewer companies; is that correct?

12 A. Yes. That is correct.

13 Q. Okay. I want to talk to you a little bit
14 about Broadwater Bay and some things that you said earlier.
15 You were kind of kept updated on the ongoing situation
16 between Broadwater -- between Osage and the City of Osage
17 Beach during that outage; is that right?

18 A. Yes.

19 Q. And was that primarily from the company or was
20 that something that you took the initiative to try and find
21 out about because of the customers?

22 A. Well, after the outage, after the 19th when
23 the 10-day contract was terminated, I did have -- primarily
24 the calls from customers were to -- you know, because they
25 wanted to know what was going on, they were looking for

1 answers as we all were.

2 But, we were talking to both the company
3 and -- at that point we were talking to the City as well.
4 And there was some communication between the company and the
5 City. So without remembering all the dates, it was -- it
6 was basically the company and the City.

7 Q. Okay. And when the shut-off happened after
8 the first 10 days of the water from the City, that was
9 because there were negotiation problems between the City and
10 the company; isn't that right? They hadn't been able to
11 agree to the terms under which they would continue to supply
12 the water?

13 A. Well, it was a 10-day contract to begin with.
14 The disconnect was -- that was scheduled, that was part of
15 the agreement.

16 Q. Okay.

17 A. It would have been a 10-day contract. So I
18 wouldn't -- I wouldn't say the disconnect occurred because
19 of any problem. It was scheduled. The idea was to give it
20 the time -- give time to the company to, you know,
21 accomplish some repair or some arrangement where service
22 could be permanently provided.

23 Q. So when there was a 10-day contract, one might
24 expect the company to know we've got 10 days to do something
25 to get service back to these customers. Would that be fair

1 to say?

2 A. Exactly. And that was my expectation when I
3 got the call on -- whenever it was, August 9th. And that's
4 why I didn't put a lot of concern into it. It was -- you
5 know, it was a mechanical failure of a well, those happen
6 all the time -- or relatively frequently. And, you know, it
7 never occurred to me that this was going to be an extended
8 outage for customers.

9 Q. So if the company had taken those 10 days and
10 done something with the well and the well pump so that
11 service could be restored within the 10 days, you would have
12 considered that unfortunate, but these things do happen and
13 they fixed the problem?

14 A. Yes.

15 Q. Okay.

16 A. Yeah. Ordinarily, you know, repairing a
17 well -- even though this one had some electrical work,
18 pulling a well pump and replacing it, that might be a day
19 job. I've seen some of them go for, you know, maybe three
20 or four days with unusual circumstances.

21 In this case, they had some electrical repairs
22 so it was quite a bit of work to do, but I -- you know,
23 10 days should have been adequate to do it if they would
24 have actually gotten started on the work right away. Now,
25 if you're sitting around trying to figure out how to pay for

1 it and trying to get customers to pay for it and with the
2 dealings with the City, that's what all the time was spent,
3 doing that.

4 Q. Do you know whether or not any actual repair
5 work was done on the well pump during that 10-day period?

6 A. To my knowledge, none was actually done. Now,
7 that's not to say -- as was testified, there might have
8 been -- some technicians or service people might have gone
9 in to look at it, but there was no -- to my knowledge, there
10 were no actual repairs taking place until after the company
11 received word they were going to have insurance pay for it.

12 Q. Once that 10-day period expired, do you know
13 whether or not the City was willing to enter another
14 agreement to provide water to those customers?

15 A. The City was, but they had given the company a
16 special rate -- this is my understanding just from
17 talking -- I've researched the City's rate structure and
18 that sort of thing, but it's my understanding the 10-day
19 contract had a -- had a special rate, more what the City
20 administrator might be terming a bulk rate or a wholesale
21 rate.

22 The -- the contract they were willing to enter
23 into later had the same commodity rate that of the customers
24 of the City would pay, so there were some different terms.
25 And -- and the company had some -- some concessions they

1 wanted the City to make. That involved maybe the City being
2 obligated to purchase the system from them at some point in
3 the future, things that the City was not willing to agree
4 to.

5 Q. If the company's primary concern would be to
6 continue to supply service to their customers, would you
7 expect a company to want to have special concerns about
8 selling the system those customers are on to their emergency
9 supplier in order to get the water back on?

10 A. I can understand the company wanting that, but
11 that's the time when you got to do what you got to do to
12 keep the service on. And -- and it's not a bargaining
13 position.

14 I find that most companies go ahead and take
15 the attitude that you spend the money -- in this case, it
16 would have been a capital investment. You recover that and
17 return a rate base at -- that goes into the -- in this case,
18 the electrical pumping equipment. It goes into the account
19 and it gets depreciated like all the rest of the same type
20 of equipment does.

21 Q. And certainly the company could have made the
22 repairs, paid temporarily the commodity charge the City
23 wanted and then get these people back on their system even
24 if they, down the road, wanted to further negotiate a sale
25 to the City?

1 A. Yes.

2 Q. And they could have done that without trying
3 to hold this water service at bay for their customers while
4 they were doing their negotiations?

5 A. That would be correct

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

7 JUDGE WOODRUFF: Hancock Construction?

8 MR. LORAIN: May it please the court.

9 JUDGE WOODRUFF: Please go ahead.

10 CROSS-EXAMINATION BY MR. LORAIN:

11 Q. Hello, Mr. Merciel.

12 A. Hello, Mr. Loraine.

13 Q. How are you today, sir?

14 A. I'm doing fine.

15 Q. Mr. Merciel, prior to this hearing, I asked
16 you at my request to review some prior testimony that you
17 rendered under oath before this very judge in case
18 WA-2002-65. That is in Re: The Matter of Application of
19 Environmental Utilities. Do you remember that?

20 A. Yes, I do.

21 Q. And I believe you told me that your testimony
22 hadn't changed?

23 A. Yes. That's correct.

24 Q. So that if I may, the question I asked you
25 then and I'm asking you now is, do you have knowledge as to

1 whether or not the Golden Glade well was represented to be
2 included in OWC's assets to this Commission by Mr. Williams
3 and Mr. Mitchell?

4 A. Okay. The answer is yes. Not in the context
5 of the case that you just said, it was a previous case.

6 Q. I'm sorry. What case was that?

7 A. Well, I think you mentioned -- well, I thought
8 you mentioned the case number associated with Environmental
9 Utilities, if I got the number straight. Maybe I should ask
10 you to repeat the number.

11 Q. Maybe I said the wrong number. The fact is
12 that a representation was made that the Golden Glade well
13 would be contributed to OWC and it would become part of
14 their asset base?

15 A. Okay. The answer is yes. Maybe I can help
16 clear that up. That would have been said in what we
17 sometimes call the Eagle Woods case. And I think the Case
18 No. was WA-99-437, I think.

19 Q. Right. And would it be true that if this
20 matter were to go to a receiver, that that's an issue that
21 at least ought to be revisited?

22 MR. WILLIAMS: Your Honor, I'm going to
23 object. That calls for an opinion from this witness that is
24 outside the scope of the qualifications for which he has
25 been established as an expert. It's simply opinion

1 testimony and it's not admissible as factual evidence in
2 this case.

3 MR. LORAINE: Well, it goes, your Honor -- if
4 I may. It goes to this witness's testimony consistent with
5 Staff's position on the ownership of that well. And I think
6 we're dealing with that very issue, all the assets of OWC at
7 this point. So I realize the court may find differently.

8 JUDGE WOODRUFF: It's certainly beyond his
9 expertise as an expert as an engineer; however, I believe it
10 is within his experience as a representative of the Staff --

11 MR. LORAINE: Staff member.

12 JUDGE WOODRUFF: -- and, therefore, I'm going
13 to allow the question on that basis. The objection's
14 overruled.

15 MR. WILLIAMS: I will also object then if it
16 has to do with the ownership of the well because that is a
17 question decided by the Commission in WA-2002-65 and is not
18 a proper question of collateral attack in this proceeding.

19 JUDGE WOODRUFF: I agree it's not a subject of
20 collateral attack in this proceeding. I don't think the
21 specific question that was asked is making a collateral
22 attack. It's asking his opinion on what might happen in the
23 future case. I'm going to allow the question. If there are
24 further questions in this area, I'll entertain further
25 objections.

1 THE WITNESS: Okay. If I understand your
2 question correctly, I hope this answers it. There -- I do
3 have a concern with the Golden Glade well. And it -- it
4 applies not only to receivership, but it's a concern that --
5 that we have presently. It was expressed in the
6 Environmental Utilities case.

7 And that is that Osage Water Company because
8 of the -- what was said in the -- in the Eagle Woods
9 certificate case, Osage Water Company relies on that well
10 for water service to its customers.

11 It's a state-approved well that -- that was
12 the intent in the certificate case, that that state-approved
13 well was going to supply water to Osage Water Company to its
14 Eagle Woods customers. Even though there is -- there are
15 two other wells in Eagle Woods, those are not state-approved
16 wells. They were never constructed and they were never
17 intended to be a permanent supply for Eagle Woods.

18 So the Golden Glade well is necessary for
19 Osage Water Company. With the absence of Environmental
20 Utilities, Osage Water Company's use of that well is a
21 problem. And with receivership, particularly since
22 Environmental Utilities is not -- that case is not finished
23 yet, I do see that as a problem.

24 BY MR. LORAIN:

25 Q. In fact, it has something to do with the

1 agreement that we were going to be presented with, that
2 water agreement -- the water usage agreement between the two
3 companies, doesn't it?

4 A. I'm afraid I'm not understanding quite how
5 that relates.

6 Q. If OWC isn't in existence anymore, we really
7 don't -- I mean, and it's going to be put into receivership,
8 isn't that a material fact that you'd be interested in?
9 There was an operating agreement between --

10 A. I understand the operating agreement, yeah.
11 I'm with you there.

12 Q. What happens if OWC is not in existence
13 anymore? Pipes are in the ground that belong to them, don't
14 they?

15 A. To OWC?

16 Q. Yes.

17 A. Yes. But with that agreement, you would --
18 I'm sorry for my confusion. You're asking if we have a
19 receiver operating Osage Water Company?

20 Q. I'm saying what happens if they sell off the
21 assets? We don't have pipes that belong to EU, EU can't --
22 OWC or its successor doesn't have the well. It seems to me
23 it's not a package deal. The whole thing has to be together
24 to serve someone water. You would agree with that?

25 A. I -- I don't think so. I don't think I agree

1 with that. Maybe to answer it, let's assume Environmental
2 Utilities completes its certificate. To do that, we need a
3 legitimate wholesale contract between Environmental
4 Utilities -- I'm talking about the wholesale water contract
5 between Environmental Utilities and Osage Water Company.

6 What Environmental Utilities filed did not
7 have -- among the problems that I saw with it, that contract
8 did not have provision for successors and assigns. In other
9 words, it was simply Environmental Utilities and Osage Water
10 Company. If either one of those entities changes, that
11 contract would be gone.

12 MR. WILLIAMS: Your Honor, I'm going to object
13 at this point that the question is delving into issues that
14 are presently pending for the Commission's decision in
15 another case and are simply not related to the issues in the
16 complaint in this case.

17 MR. LORAIN: If I may, your Honor.

18 JUDGE WOODRUFF: You may.

19 MR. LORAIN: Judge, it is relative because if
20 we were going to go to some type of receiver and whether
21 he's going to sell it off -- he or she is going to sell it
22 off or whether they're going to try to operate this company
23 is beyond what we're doing here, I realize.

24 But one of the assets and one of the
25 problems -- the problems need to be explored so that the

1 Commission in making their decision knows what are the
2 issues. And that's all I'm exploring here. So I think it
3 is relevant.

4 JUDGE WOODRUFF: That's a difficult call here,
5 because I don't want to spend a lot of time going into --

6 MR. LORAINE: And I don't plan on going any
7 further.

8 JUDGE WOODRUFF: -- details on what is
9 properly an issue in WA-2002-65, which is also my case. And
10 I believe briefs will be submitted shortly on those issues,
11 so we don't need to go into those details.

12 On the other hand, there is certainly a reason
13 to be concerned about what will happen if a receiver is
14 appointed. So I'm going to go ahead and allow the question
15 at this time to proceed.

16 So you can go ahead and answer the question.
17 Again, feel free to make further objections if you feel it's
18 going further than it needs to.

19 THE WITNESS: I'm going to try to be brief
20 with my answer. If Environmental Utilities is operating and
21 if there's a wholesale contract to where Environmental
22 Utilities sells to Osage Water Company and if the contract
23 has provisions for successors and assigns, then Osage Water
24 Company, in my way of thinking, could sell its assets to
25 some other entity and the other entity would be a successor

1 and the contract would continue. And in that way, the well
2 would still be available for use for -- for Eagle Woods
3 customers. Absent that, there is a problem.

4 BY MR. LORAIN:

5 Q. Okay.

6 A. And we don't have it yet. That contract is
7 not -- not filed and that case is not finished, so what I
8 just said is not in place yet.

9 Q. I understand. Regarding the issue that
10 Mr. Hummel was testifying, and I believe it's still located
11 on this board -- and I'm not sure that that drawing is going
12 to be part of this record, but I think we can recreate that
13 if we have to.

14 It seems to me, Mr. Merciel, if you'd look at
15 Drawing No. 2, which purports to be the condo project, you
16 would agree that if one of those units -- let's just, for
17 example, I put an X on that box. If that particular box,
18 that resident doesn't pay their water bill and if --
19 obviously if they got a meter, we can do something -- the
20 utility can do something about that. They can shut them
21 off?

22 A. Yes.

23 Q. If they don't have a meter there, there's not
24 much we can do except shut off the other five people that
25 would also be on the meter; isn't that true?

1 A. Well, yes, but I don't really see that as
2 happening. Should I expand on that answer a little bit?
3 Q. Please do.
4 A. If you're metering the individual units, you
5 can consider each one of these units a customer, as that's
6 what the company's doing. And, yeah, you can control it at
7 the meter. But you do have the water service line, which
8 runs from the property line up to the building. It -- these
9 customers individually really don't control that. That's
10 yet another entity, that's the Condominium Association.
11 Q. Right.
12 A. What -- without the meters in the individual
13 units, the other way to do this -- and I might say what most
14 companies might do -- would be to put one meter in front of
15 the building out here by the street and the Condominium
16 Association is the customer.
17 You don't have to worry about who owns those
18 units or if anybody's there or who they are or whether
19 they're buying or selling or coming and going. You have one
20 meter, one customer and they pay for the water. If they
21 want to sub-meter it, they can do that, but you don't have
22 to worry about all these individual owners.
23 Q. Well, and I understand and appreciate what
24 you've just said.
25 Under that scenario, if you had one meter out

1 there, out in the street and somebody in Unit X didn't pay
2 their bill, the only resort that the utility company would
3 have would be to cut off the entire building?

4 A. But --

5 Q. You aren't going to allow that, are you?

6 A. But the utility -- they wouldn't be paying a
7 bill to the utility. If you have one meter out in the
8 street and the association is the customer, then the
9 association's paying the water bill.

10 Q. Have you --

11 A. You don't have individual owners paying the
12 bills.

13 Q. Have you looked at the bylaws and the condo
14 decs that underlie these things for how's that money
15 collected and whether it's received in advance? Have you
16 done any of that search?

17 A. On condominium --

18 Q. Yes.

19 A. -- agreements? No, I haven't.

20 Q. Let me just say this to you. What happens if
21 that condo dec says, well, we'll collect the money as it's
22 needed and there's limitations on how much that utility -- I
23 mean, that Condo Association can charge its people just up
24 front. I mean, they normally would address each individual
25 and ask for contributions.

1 So under our scenario, if the declarations
2 were like that and Unit X did not pay its bill, there's no
3 money in reserve for that particular service, therefore, the
4 Condo Association wouldn't pay its bill to the utility
5 company. What happens then if we only have one meter out in
6 front?

7 A. If you boil all that down and the Condominium
8 Association doesn't pay the bill, then the building would be
9 subject to disconnection.

10 Q. And really everybody else other than X might
11 not be the problem in there and we would have five people
12 complaining to the Public Service Commission about the
13 actions of their own organization which they only had one
14 vote in and there's multiplicity of buildings, etc., and so
15 forth?

16 A. Well, they might do that, but in that scenario
17 if they called up here, our answer would be their complaint
18 is with the Condominium Association because that entity did
19 not pay the bill.

20 Q. I guess that would get the job done very
21 quick.

22 A. They might have issues about how they assess
23 their own members, you know, and of course it might be more
24 than water service. They maintain the yards and everything
25 condominiums do. And they may well have issues with

1 collecting money from their members, but my point is, as far
2 as the utility and the water utility, if -- if this whole
3 building is one customer, then either the customer's paying
4 the bill or it's not paying the bill.

5 Q. Okay.

6 A. Now, you got -- if it was going to be
7 disconnected, we would want the company to notify those
8 individual owners. You don't just send a notice to the
9 association there. There might be door hangers, you know.
10 We would want those people to know what's going on.

11 Q. That could easily result in X being hung or
12 stoned to death?

13 A. Exactly. And that happens. You know, we see
14 that.

15 JUDGE WOODRUFF: Hopefully not literally.

16 BY MR. LORAIN:

17 Q. It might. There's some pretty mad people down
18 there.

19 A. Okay. I never have seen a stoning, so -- but
20 yeah, that is an issue with apartments and condominiums or
21 commercial properties, you know. If you have individuals
22 that are -- that are causing a problem for everybody, then
23 it can happen.

24 Q. Okay. Well, I was just curious to see what
25 Staff's position would be on that situation. Thank you.

1 MR. LORAINE: I have nothing further of this
2 witness, Judge.

3 JUDGE WOODRUFF: Okay. Then for Osage Water?

4 MR. WILLIAMS: Thank you, your Honor.

5 CROSS-EXAMINATION BY MR. WILLIAMS:

6 Q. Morning, Mr. Merciel.

7 A. Good morning, Mr. Williams.

8 Q. You testified about you had some experience
9 with other water companies that refused to repair a water
10 well. Do you have a lot of regulated water utilities who
11 are in a competitive environment where there's another water
12 supplier competing for customers?

13 A. We see it once in a while.

14 Q. Is that a common occurrence?

15 A. Not real often, but it's -- it happens.

16 Q. Does it cause special problems for a regulated
17 utility?

18 A. It can.

19 Q. And does your department or the Commission, in
20 general, adopt a different form of regulation of the utility
21 when there's a competitive market or you kind of have one
22 cookie cutter that fits all?

23 A. Well, it's -- it's difficult to deal with.

24 In -- we do have one large utility. It's Missouri American
25 Water Company. They have a competitive situation in

1 St. Charles County. And they modified some extension rules
2 that more -- well, I guess they -- it allows them to compete
3 with the cities and water districts that they're competing
4 with, you know, for new customers and how the extensions are
5 done. We -- so we have done that.

6 Q. And, Mr. Merciel, I believe you testified you
7 received a contact from myself on behalf of the company
8 asking for some kind of a special accounting treatment
9 because of the competitive environment with respect to the
10 Broadwater Bay well failure?

11 A. Yes.

12 Q. You recall that?

13 A. Yes.

14 Q. And your indication was that no such special
15 treatment would be available. Is that your recollection?

16 A. It is. That really came from Mr. Meyer. I
17 was on the phone and -- but Mr. Meyer was actually the
18 one -- I consulted him because it was more of an accounting
19 question.

20 Q. Okay. But you would agree that an inquiry was
21 made and there was no answer that special treatment would be
22 recommended by Staff?

23 A. Correct.

24 Q. Okay.

25 A. That was special treatment on -- on

1 depreciation. That's a little different than the extension
2 policy I just described.

3 Q. And, Mr. Merciel, do you know of any other --
4 what you have described as a -- what I would say may be a
5 large small company that is involved in the competitive
6 marketplace like Osage Water?

7 A. Well, let me -- let me think for a minute. I
8 can -- I can recall one company that -- that finally went
9 out of business because a water district over built and took
10 them over. They lost customers one by one and, as I recall,
11 finally they just either -- either gave the rest of what
12 they had to the district. I don't remember exactly what
13 happened. I'm not thinking of any other good examples right
14 offhand. There may be some.

15 Q. Okay. Did that competitive environment result
16 in service problems?

17 A. It did.

18 Q. Were you able to adopt any special rules or
19 accounting treatments or other operational ideas that
20 alleviated those service problems, or was it one little
21 cookie cutter fits all?

22 A. There wasn't much we could do.

23 Q. Okay.

24 A. I guess my comment on that is if -- you know,
25 in that case it was a customer that started out with

1 somewhere in the order of 250 or 300 customers. For a while
2 they were operating with about 150 customers with the same
3 facilities.

4 You know, if it's a -- it's a relatively small
5 drop in number of customers, you can address it with rates,
6 but it gets to the point when you lose enough customers,
7 you're getting to where you only have a few customers
8 supporting the facilities and it gets out of hand.

9 Q. Okay.

10 A. So my answer would be the company needs to
11 make some deal or get out of the business there -- sometimes
12 there are things you can do and sometimes there aren't.

13 Q. But you don't think the Commission should do
14 anything different when there's a competitive marketplace?

15 A. Well -- well, competing for customers, as I
16 say we did with American, that was addressed with extension
17 rules.

18 Q. For new customers?

19 A. We're talking about competing to get new
20 customers. If -- if you have somebody -- -- well, now
21 American does -- they do deal with a certain amount of over
22 building, but for their service area, that's a relatively
23 small thing. You know, if they -- if they lose 20 customers
24 or something, that's not that big of a deal to an operation
25 like that.

1 But if -- you know, when a -- when another
2 utility is coming in and taking customers away, it's pretty
3 tough to deal with, no doubt about it.

4 Q. And you have no alternatives. Is that
5 basically what you're telling the Commissioners here?

6 A. That's correct.

7 Q. Okay. Have you ever investigated the
8 possibility of regulated competition versus regulated
9 monopoly for competitive water situations?

10 A. Regulated competition? I'm not sure what you
11 mean by that.

12 Q. Okay. That's fine. So I guess your answer
13 would be no?

14 A. I guess it would be no.

15 Q. All right. Now, Mr. Merciel, you participated
16 in Osage Water Company's last rate case, WR-2000-557?

17 A. Not much. I didn't do very much work on the
18 rate case at all.

19 Q. All right. Are you familiar with the
20 requirement of the Disposition Agreement in that case that
21 the company make sure that all of its condominium customers
22 were separately metered?

23 A. What I recall from it was you had customers
24 that were unmetered and we wanted all the customers to be
25 metered. I don't know that the Staff necessarily required

1 individual units to be metered. Maybe I should say if that
2 was a requirement, that didn't come from me.

3 Q. Okay.

4 A. I don't -- I don't recall that the Staff
5 specifically wanted individual units metered.

6 Q. Okay.

7 A. That's never been advocated, to my knowledge.

8 Q. So --

9 A. Now, we do say customers need to be metered,
10 you know. To have metered customers as opposed to flat rate
11 customers, customers do need to be metered. And that we did
12 advocate.

13 Q. Mr. Merciel, let me show you what's previously
14 been marked as Exhibit 16 in this case, direct your
15 attention to a reference there in that Staff report,
16 Disposition Agreement 14. Does that refresh your
17 recollection as to the requirement of individually metering
18 condominium units?

19 A. Well, it says the company -- the company will
20 require the installation of meters for all individual
21 condominium units in the Cedar Glen and Harbor Bay
22 Condominium developments, and then it goes on from there.

23 I think my best answer is the company was
24 metering individual condominium units and we found that you
25 had units without meters. You hooked up condominiums and

1 had no meters whatsoever.

2 Q. And it was required that the company install
3 meters?

4 A. It was required that the customers be metered.
5 Now, had you had either installed the meters in the units or
6 if you would have installed a meter out in front of the
7 building, we would not have had an argument with that.

8 Q. Now, Mr. Merciel, where's the property line in
9 a condominium unit?

10 A. The unit or the building? I think there's two
11 property lines.

12 Q. In the unit. I think there are also. You
13 would agree with me that with a condominium unit, the
14 customer owns at the wall of the unit?

15 A. I -- my understanding, that would be correct.

16 Q. And there's a property line there?

17 A. And the building is on a piece of property and
18 there's -- oh, okay. If you're still talking about the
19 unit. I'm sorry.

20 Q. There's a property line --

21 A. You got the unit --

22 Q. -- at the wall of the unit?

23 A. At the wall. Okay. I agree with that.

24 Q. Okay. And let me hand you what your counsel
25 has marked as Exhibit 27. You would agree with me here in

1 paragraph F, A service connection is the pipeline connecting
2 the main to the customer's water service line at the
3 property line; is that correct?

4 A. That's what it says, that's correct.

5 Q. Okay. And in a condominium unit, the property
6 line's at the boundary of the unit?

7 A. You're leaving out a piece.

8 Q. You would agree that in a condominium unit,
9 the property line's at the boundary of the unit?

10 A. Not for purposes of that rule.

11 Q. I understand that's your interpretation of the
12 rule.

13 A. Because the company does not maintain that
14 service line up to the customer's wall. The company does
15 not do that.

16 Q. So the issue isn't about whether or not
17 there's a service connection at the wall. The issue is
18 about who's responsible for the line between that service
19 connection and the main out at the street, as Mr. Hummel
20 described it?

21 A. That's -- that would be a good part of it.
22 That's not necessarily all of it, but yeah, that's primarily
23 it. I would argue that the individual unit does not have a
24 connection. The individual condominium unit does not have
25 its individual connection.

1 Q. But you would agree there's a point where the
2 water line comes across the property line of the unit and
3 into the unit and that the company meters the water where it
4 enters the unit?

5 A. I don't agree with your first part. The part
6 where the company meters the water at that point I agree
7 with.

8 Q. Okay.

9 A. But the company does not deliver the water up
10 to the wall of the unit. That's not the point of delivery.

11 Q. So your concern is with who's responsible for
12 the line between the main and the wall of the unit?

13 A. That's part of the concern, yes.

14 Q. But you would agree that there is a connection
15 to that line inside the unit where the meter is placed?

16 A. If there's a connection, the customer is
17 connected to his association's water facilities, not the
18 company's.

19 MR. WILLIAMS: I don't believe I have any
20 further questions for this witness.

21 JUDGE WOODRUFF: Okay. Thank you.

22 QUESTIONS BY JUDGE WOODRUFF:

23 Q. Now, Mr. Hummel [sic], Commissioner Murray
24 asked me to ask a few questions. I'm not sure if they
25 should be directed to you or a subsequent witness. I'll ask

1 you --

2 A. I'll do my best, Judge.

3 Q. She's concerned about rate-making issues.

4 Would that be someone else other than you, or can you answer

5 that?

6 A. I could -- I could do my best.

7 Q. Would somebody else coming up later might do

8 better?

9 A. Mr. Johansen's testifying. He -- without

10 knowing the questions, probably either he or I could answer.

11 Q. All right. Well, why don't I run them past

12 you?

13 A. I'll do my best. If I want to defer them --

14 Q. If you want to defer them, okay.

15 A. -- I'll do that.

16 Q. And this concerns suggestion that a rate

17 increase would solve Osage Water's problems. Do you think

18 Osage Water's problems are only caused by financial

19 problems?

20 A. I do not. I believe it comes into management

21 and their -- that's my answer. I think it's not just

22 financial.

23 Q. Okay. And next question concerns legal

24 expenses that have been suggested as debts for Osage Water.

25 Has Osage Water ever presented legal invoices or other

1 evidence of legal expenses for evaluation by this Commission
2 for rate-making purposes, if you know?

3 A. Okay. I don't know about to the Commission.
4 The Staff has seen some documentation on legal expenses and
5 I have not reviewed them myself. To the best of my
6 knowledge, Mr. Meyer has spent the most time reviewing those
7 documents.

8 Q. Okay. I believe he testified to some extent
9 about that.

10 A. I think he did testify and I think he touched
11 on those, yes.

12 Q. Is it true that Staff would recommend
13 disallowance of any legal expenses that were not supported
14 by evidence and that were considered imprudent?

15 A. I think that would be true. If it's -- if we
16 don't think it's a legitimate legal expense, then the Staff
17 would recommend disallowance.

18 Q. Okay. Is it, therefore, accurate to say that
19 the legal debt of approximately 564,000 that Mr. Williams
20 claims has never been approved by this Commission for
21 inclusion in rates?

22 A. I would probably be better off not to answer
23 that question. I don't know.

24 Q. Okay. And talking about capitalizing the
25 legal fees. Under what circumstances are legal fees

1 capitalized rather than expensed?

2 A. We typically capitalize legal expenses on
3 initial set-up, like formation of a company for a
4 certificate case expense -- well, for a certificate case,
5 legal expenses are often capitalized. Other ones, ongoing
6 legal matters, most of them would be expensed as a
7 day-to-day operating expense.

8 Q. Okay. And is it true that they're neither
9 capitalized nor expensed if they're first deemed to be
10 imprudent?

11 A. That would be correct. They would simply be
12 disallowed.

13 Q. Okay. How would you make a determination that
14 a legal expense is imprudent?

15 A. Possibly if we thought it was excessive, not
16 necessary, perhaps if we thought the company was creating
17 its own legal problems. If -- if we see -- I guess one way
18 I might describe it, we see companies that are owned by
19 attorneys tend to have high legal expenses. Companies that
20 are owned by engineers tend to have high engineering
21 expenses and soon and so on.

22 As you know, we've seen companies owned by
23 professionals and they'll -- if they're acting as a company
24 owner or a company manager, you know, even talking to us on
25 the phone about maybe a billing matter, they'll bill it as

1 their professional expertise.

2 And, you know, that's why we have officer
3 salaries. If a company president is acting as a company
4 president, he's -- he shouldn't be charging legal expenses
5 to it or engineering expenses or any of those.

6 Q. Okay. She asks, is it also true the remainder
7 of Osage Water Company's indebtedness -- I assume she's
8 talking about -- well, those indebtedness would be
9 capitalized or expensed. Do you know?

10 A. I'm sorry. How would it be?

11 Q. How would you determine whether OWC's
12 indebtedness would be capitalized or expensed and would you
13 first look at for prudence, the indebtedness?

14 A. Yeah. I think we would have to look at it and
15 break it down on what constitutes, you know, like individual
16 billing records. I don't see how you could do it other than
17 going through each individual component, first determining
18 whether it's prudent, whether it's really necessary and then
19 you'd have to determine whether expenses are capitalized.
20 You'd have to see what it's for.

21 Q. A repair to the well would generally be
22 expensed and digging a new well would be capitalized. Is
23 that fair?

24 A. Are you talking about legal expenses or
25 just --

1 Q. I'm talking general expenses.

2 A. Okay. Well, many repairs are capitalized.
3 For example, a repair to a well, you might be replacing the
4 well pump and that -- that is a capital item. It's -- it
5 might go in the electrical pumping equipment account. A
6 repair might be a main break and dig it up and put a clamp
7 on it. That would be a repair and that would be an expense.

8 Q. But if you replace the main, it would be --

9 A. Replacing a section of pipe would usually be
10 capitalized.

11 Q. All right. This next question concerns rates.
12 And she asks, in your opinion, if Osage Water were
13 successful in convincing the Commission that all of the
14 operational expenses and the indebtedness that they have
15 testified to are allowable in rates, what would be the
16 approximate amount of rate increase necessary to provide
17 safe and adequate service? I don't know if you've looked at
18 that or not, but --

19 A. Well, I'd have a hard time relating that to
20 rates, but I -- I don't see why this company the way it is
21 now -- the way it is set up now with rates and expenses, why
22 they can't be providing safe and adequate service.

23 Q. Okay. I believe Mr. Williams testified
24 yesterday that he thought if they doubled the sewer rate,
25 that would provide adequate return. Have you looked into

1 that issue at all?

2 A. Well, I haven't looked at that, but their --
3 their sewer rate is already on the upper end of what we
4 typically see.

5 Q. Okay.

6 A. I -- I would -- I think they ought to have
7 plenty of money to be operating.

8 Q. Okay. Would there be a need to include
9 additional salaries and monies for timely maintenance and
10 repairs? And I think you've talked about that a little bit
11 earlier.

12 A. Yeah. Again, we haven't really done an
13 analysis on exactly what they -- what they ought to be using
14 personnel-wise.

15 My best answer to that issue is if the company
16 is operating adequately, whatever people they have that it
17 takes to do it, we would -- we would consider including in
18 rates. Now, if you see excess work, that would be one
19 thing, but, you know, if they have two people and we see
20 that those two people are busy and doing their job, then I
21 don't think we would have a problem recommending those two
22 people be included in rates.

23 Q. As an expense?

24 A. As an expense, right. Yeah. Not expense as
25 far as operating. As Mr. Hummel testified, if those people

1 are doing construction work and some of the things that
2 aren't capitalized, that gets into a different matter.
3 You're allocating time spent on other things.

4 Q. This is kind of a long question so ask me to
5 clarify it or repeat it if I need to. If the Williamses
6 were successful in getting the assets transferred to their
7 new entity, Environmental Utilities, and the transfer
8 included an assumption of the debt, would the new company be
9 able to argue -- assuming it was granted a certificate of
10 necessity and convenience for all of Osage Water's
11 territories, would they be able to argue that the only way
12 customers would be able to continue service was to assume
13 the debt of the former owner and, therefore, all such
14 assumed debts would be included in rates?

15 In other words, would the new company be able
16 to argue that the prudence of the expenses incurred by Osage
17 Water should not be considered because those expenses were
18 not incurred by EU and only the prudence of EU in making the
19 purchases subject to the indebtedness should be considered
20 for setting rates for Environmental Utilities? Did you get
21 that?

22 A. I -- I'm not -- I didn't quite follow it. I
23 think I heard if Environmental Utilities gets everything,
24 does the debt go with it.

25 Q. That's the gist of it, yes.

1 A. Okay. And I -- I really don't know the answer
2 to it. Usually -- I will say this. Usually debt in rate
3 base goes along with utility assets. You know, the plant --
4 you know, to the extent this company has a large debt with
5 legal expenses, some -- some past debt, a lot of which
6 appears to be capital items that -- you know, that appears
7 that -- the legal debt I don't know about. I don't know if
8 that would legitimately go with it or not.

9 Q. I suppose it would depend upon how the
10 transfer was structured, wouldn't it?

11 A. It probably would.

12 Q. If, for example --

13 A. But expenses -- debt for expenses probably
14 would not go with it. That usually does not -- you know,
15 once the expenses are incurred, they're gone if you have a
16 debt. But if it's capital, if somebody built a facility and
17 you didn't pay them, well, that would technically be an
18 asset that you have, but the capital expense hasn't really
19 been paid. I could see that debt going along with a
20 subsequent owner.

21 Q. Okay. What if it had been transferred through
22 the foreclosure just taking over the assets? Would that
23 make a difference on how that debt -- whether that debt
24 would transfer as well?

25 A. I -- I don't know if that really makes a

1 difference or not. I think from a regulatory viewpoint, I
2 don't know that we would necessarily treat it any
3 differently, but I guess if it went through foreclosure, I
4 don't know if a court would do anything differently with it
5 or not. I don't know about that. I don't know enough about
6 foreclosures.

7 Q. I assume it would just depend upon what the
8 company asked for as well as when they came in for their
9 rate?

10 A. It may well. It may well come to whatever's
11 studied in the next rate case.

12 Q. And I suppose the Commission could make a
13 decision on that at the time it's considering the
14 application for certificate? Would that be appropriate?

15 A. I think the Commission could. And I think
16 any -- even any debt that goes along, the Commission could
17 always make a determination at any time whether that debt is
18 legitimate or not. If it does, in fact, go with the
19 company, I think the Commission can always step back and
20 look at it.

21 Q. Okay. Next question is on similar lines. If
22 the assets were transferred to Environmental Utilities and
23 Environmental Utilities obtained a valid certificate, in
24 your opinion, would a rate increase similar in size that
25 would be necessary for Osage Water be necessary for

1 Environmental Utilities to cover expenses and provide safe
2 and adequate service? Do you understand?

3 A. I think I understand. It sounds like the
4 question is would there be any difference in rates whether
5 it was Environmental Utilities versus Osage Water Company
6 keeping everything. But I don't really see any
7 difference -- or I should say I don't see much difference
8 between Environmental Utilities and Osage Water Company.

9 Q. I suppose it would depend upon, again, if
10 those debts were transferred?

11 A. Probably depends on debts and -- but the --
12 but the companies are operated largely by the same people.
13 I understand Mr. Hancock and Mr. Mitchell are not involved
14 with Environmental Utilities, but the Williamses are, the
15 same guy would be operating the facilities.

16 Q. That would be would be Jeff Smith?

17 A. Right. So I don't see that much difference.

18 JUDGE WOODRUFF: Okay. That's all the
19 questions I have then. And so we'll go to recross again
20 beginning with Public Counsel.

21 MS. O'NEILL: No questions.

22 JUDGE WOODRUFF: Okay. And then for Hancock?

23 RECROSS-EXAMINATION BY MR. LORAIN:

24 Q. Good recross afternoon.

25 A. Good recross to you.

1 Q. Thank you, sir.

2 Regarding your last testimony, am I to

3 understand that as a Staff engineer that looks at these

4 costs, you would be analyzing the purpose of the

5 expenditures in deciding whether they were expenses or

6 whether they were capitalization issues?

7 A. I think you would have to, yes.

8 Q. So, for example, Mr. Hancock's debenture has

9 been approved, is that true, by this Commission?

10 A. That's my understanding, yes.

11 Q. And that debt has been allowed in the amount

12 of \$1,000 a month?

13 A. That's my understanding. Perhaps "recognized"

14 might be a better term than approved.

15 Q. Recognized.

16 A. Yeah.

17 Q. And that was for construction projects?

18 A. Yes. That's my understanding.

19 Q. That would be under what the scenario I

20 understood you to say, correct me if I'm wrong, would that

21 be likely to be passed on with EU should they take over the

22 assets of OWC?

23 A. In my opinion, it would. I think you're

24 correct, it would be a capital item --

25 Q. All right.

1 A. -- or maybe representing capital item.

2 Q. Whereas, the question of whether or not the
3 attorney fees were treated in the same fashion, do you have
4 an opinion on that?

5 A. Well, I think -- I think on the attorney fees,
6 we're going to find some of it is related to capital expense
7 and some of it is not.

8 Q. All right.

9 A. Some of it may not be a -- you know, what the
10 Staff would consider an allowable expense. I think you
11 would see all of it.

12 Q. All right. And might be the same thing for
13 Mr. Mitchell then? Do you know what the basis of his
14 expense -- his costs are?

15 A. Yeah. Of course, that wouldn't be legal
16 expenses. I think that would be a question of whether it's
17 day-to-day operating expenses versus capital expense.
18 Mr. Mitchell may well have some funds involved that were --
19 that were for capital project.

20 Q. All right. Can you tell me why there has been
21 no presentation of legal bills in the total to this
22 Commission? Have you ever had that explained to you?

23 A. No. I've never asked the question, it's never
24 been explained to me. I -- I don't even know that it hasn't
25 been presented -- well, not necessarily to the Commission,

1 but -- but I don't know what the Staff auditors have looked
2 at.

3 Q. Who would we find that out from?

4 A. Well, Mr. Meyer would be one. Dana Eaves, I'm
5 not sure if he's testifying here in this proceeding, but
6 he's worked on this company.

7 Q. Would Mr. Johansen know that?

8 A. He may. Mr. Johansen is the case coordinator
9 and worked on the rate case. He's not an auditor, but he
10 may have knowledge of it.

11 MR. LORAIN: All right. Thank you, sir.

12 JUDGE WOODRUFF: For Osage Water?

13 MR. WILLIAMS: A couple questions, your Honor.

14 JUDGE WOODRUFF: Okay.

15 RE-CROSS-EXAMINATION BY MR. WILLIAMS:

16 Q. Mr. Merciel, you testified in response to a
17 question from the Bench that from your viewpoint the
18 company's current sewer rate is at the upper end of the
19 scale, I guess is the word --

20 A. Yes.

21 Q. -- I wrote down.

22 A. Something to that effect.

23 Q. That's what you said?

24 A. Yeah.

25 Q. Okay. How many sewer companies does the

1 Commission regulate that have newly constructed sand filter
2 pipes of wastewater facilities?

3 A. Oh, newly constructed, probably not that many.
4 My guess is three or four.

5 Q. And what --

6 A. One company --

7 Q. -- would those companies be?

8 A. -- might have a number of facilities. Aqua
9 Source has something on the order of 35 or 40 facilities.
10 Some of them are sand filters, some of them are newly
11 constructed.

12 Q. And do you know -- with respect to Aqua
13 Source, it acquired those facilities rather than provided
14 the capital for them; is that right?

15 A. Well, some acquired, some -- there are new
16 facilities that might have been acquired by developers, you
17 know, Aqua Source was the original owner, constructed by a
18 developer. Aqua Source is not -- not constructing
19 facilities. Their money is going into improvements.
20 They're reconstructing.

21 Q. And would the original capital cost of those
22 facilities, the total construction cost be in Aqua Source's
23 rate base or would it be simply be whatever portion they
24 actually paid a developer for?

25 A. Most of it's -- most of it's contributed by

1 developers.

2 Q. And that would make a big difference on what
3 rate would be required to pay operating costs and to
4 generate a return on the capital involved in constructing a
5 facility, wouldn't it?

6 A. It makes some difference, sure.

7 Q. And are you familiar with sewer rates for
8 municipalities and other non-regulated utilities? When you
9 said --

10 A. Yeah.

11 Q. -- upper end of the scale, is that just in
12 your little world here at the Commission or does it cover
13 all types of service areas?

14 A. Well, I was really talking about the regulated
15 utilities. I think when you look at cities -- I don't have
16 much experience looking at city rates, I think you'll find
17 they'll over the place too. You'll have high ones and low
18 ones and, of course, some systems are built by government
19 money with grants, so you even have some other contribution
20 methods.

21 Q. And that would affect, again, what they need
22 to charge?

23 A. That could affect, it, yes.

24 Q. You recall testimony in some of Osage Water
25 Company's cases with respect to the KK service area, that

1 the City charges -- Osage Beach charges some \$36 a month for
2 service?

3 A. Yeah. I'd have to say I don't remember that
4 rate. I know there was testimony and that -- if you say so,
5 that may well be.

6 Q. So in terms of upper end of the scale, that
7 would be upper end of the scale that you are familiar with
8 but does not include all sewer systems out there?

9 A. I -- I'll just try to quantify it. I consider
10 upper end of the scale to be in the 20s -- upper 20s and
11 maybe even into the 30s as opposed to -- you know, we have
12 companies that still have the \$8, \$10 rates, you know. That
13 would be the lower end.

14 Q. And what type of treatment facilities are they
15 using at the lower end?

16 A. Some of them are lagoons or they're older
17 facilities, not much rate base. And sometimes you have --
18 even though a small company, if you have 100 customers on
19 one facility, you know, that's -- that's a pretty good
20 amount of revenue just to operate one facility.

21 Q. So being able to allocate over more
22 customers --

23 A. Right.

24 Q. -- for a single facility --

25 A. Right.

1 Q. -- helps on rates?

2 A. Exactly.

3 Q. So it's fairly complicated and the

4 Commission's traditional approach is to look at actual cost

5 of capital and cost of operating; is that correct?

6 A. Sure. For each company you look at the actual

7 expenses that it takes for that company to operate.

8 Q. Now, Mr. Merciel, there were some questions

9 from the Bench asking about how the relationship of debt

10 rate base analysis and so forth would translate in the event

11 of a sale of assets, in the event of a foreclosure of

12 assets. Are you trained in any special legal training to

13 understand how a foreclosure would affect that?

14 A. I don't have any kind of legal training. And,

15 as I said, I'm not that familiar with foreclosure. I was

16 speaking in terms of how we usually see debt and so forth.

17 You know, obviously utilities do transfer frequently. We

18 see that all the time. And I think the way I answered the

19 question whether it's handled any differently with a

20 foreclosure, that's what I don't know.

21 Q. All right. Very well.

22 MR. WILLIAMS: I think that's all my

23 questions, your Honor.

24 JUDGE WOODRUFF: Thank you. Redirect?

25 MR. KRUEGER: Thank you, your Honor.

1 REDIRECT EXAMINATION BY MR. KRUEGER:

2 Q. Mr. Merciel, do you know how municipal utility
3 rates are set?

4 A. I suspect if you look at it, you would see
5 them set all kinds of different ways. Some of them are cost
6 of service, similar to how we do regulated utilities. Some
7 cities subsidize with other city funds. Some cities use
8 utility revenue to subsidize other city operations. And
9 I've -- I've heard about all kind of different things going
10 on out there on city rates.

11 Q. Thank you.

12 Do you have Exhibit 27 in front of you?

13 A. No. I don't have it in front of me.

14 MR. KRUEGER: May I approach, your Honor?

15 JUDGE WOODRUFF: You may.

16 BY MR. KRUEGER:

17 Q. I'd like to call your attention to the second
18 page of that document.

19 A. Okay.

20 Q. Would you read the first entry there in the
21 scheduled rates?

22 A. Okay. This is second page, Second Revised
23 Sheet 6. You mean the first entry? Do you mean the first
24 charge on here?

25 Q. The first charge.

1 A. Okay. That's construction inspection charge
2 per connection where connection is made by the customer and
3 the charge is \$100.

4 Q. Now, in the case of a condominium unit, what
5 construction would there be for the company to inspect?

6 A. That construction would be what Mr. Hummel
7 identified as the service connection. It's from the water
8 main, which is out in the street somewhere, to the property
9 line, the real estate property line of the building.

10 Q. Would there be any construction for the
11 company to inspect inside the individual condominium units?

12 A. Not inside the units except for in the case if
13 they do meter settings. They might inspect meter settings
14 in a set meter. They would -- they would do that.

15 Q. Now, the second entry on there -- could there
16 be charges for both the first and second entries on that
17 schedule?

18 A. No. It's a one or the other type thing. The
19 second entry is a new service connection by the company. It
20 includes inspection in the meter. Backhoe charges are
21 additional as necessary and the charge is \$150 plus backhoe
22 time.

23 Q. So the first charge is if the customer does
24 the construction and the second is if the company does it?

25 A. That's correct.

1 MR. KRUEGER: Okay. Thank you. That's all
2 the questions I have.

3 JUDGE WOODRUFF: All right. Mr. Krueger,
4 while you're still there, I noticed that 27 has never been
5 offered. Do you want to offer it?

6 MR. KRUEGER: I do, your Honor. Well, and I'd
7 also -- I also think I'll probably want to offer the drawing
8 on the board for the benefit of the Commission, but --

9 JUDGE WOODRUFF: Okay. Let's deal with 27
10 first.

11 MR. LORAIN: No objection, Judge.

12 JUDGE WOODRUFF: 27 has been offered. I hear
13 no objections. It will be received into evidence.

14 (EXHIBIT NO. 27 WAS RECEIVED INTO EVIDENCE.)

15 JUDGE WOODRUFF: As to what to do with the
16 drawing, I don't suppose we really want to have an exhibit
17 that large. I would suggest that you have your witness
18 redraw it onto a standard size piece of paper and we can
19 offer that in.

20 MR. KRUEGER: Or perhaps we can photocopy it,
21 reduce it.

22 JUDGE WOODRUFF: If you can do that, that's
23 fine. I just want it to get into a size that will fit in a
24 file.

25 MR. LORAIN: Judge, if we're going to do

1 that, I would like to have it numbered in some fashion so we
2 can identify it.

3 JUDGE WOODRUFF: Certainly.

4 MR. LORAIN: Would it be a separate number?

5 JUDGE WOODRUFF: We'll give it a separate
6 number and we'll deal with it at the time you want to offer
7 it. Okay.

8 MR. KRUEGER: I would like to offer that at
9 the present time.

10 JUDGE WOODRUFF: Let's go ahead and give it
11 No. 28 then. And you indicate that you can in some way
12 reduce it to a size -- which I think is actually what that
13 high technology board is supposed to do, but nobody's told
14 me how to use it yet.

15 MR. KRUEGER: Nor me.

16 JUDGE WOODRUFF: Exhibit 28, which is the
17 drawing that you see before you, has been offered into
18 evidence. Are there any objections to its receipt?

19 MR. LORAIN: I have none.

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

22 (EXHIBIT NO. 28 WAS RECEIVED INTO EVIDENCE.)

23 JUDGE WOODRUFF: All right. And were you
24 finished with this witness?

25 MR. KRUEGER: I am, your Honor.

1 JUDGE WOODRUFF: All right. Then you may be
2 excused, Mr. Merciel.

3 Staff, who's your next witness going to be?

4 MR. KRUEGER: Dale Johansen.

5 JUDGE WOODRUFF: Before he comes up to the
6 stand, I do want to deal with one other thing and that was
7 the agreement that Mr. Williams indicated he would be
8 providing. I would like to be able to get a copy of that
9 before lunch time so that the Commission could take a look
10 at it and see if they had any questions for Mr. Williams.
11 So I'm not sure how you want to do that.

12 MS. O'NEILL: Your Honor, Public Counsel would
13 also like a copy. Maybe we could just have copies provided
14 as if it were an exhibit.

15 JUDGE WOODRUFF: Then we'll deal with it as an
16 exhibit later on this afternoon.

17 MR. LORAIN: Your Honor, I have another
18 matter.

19 JUDGE WOODRUFF: Yes.

20 MR. LORAIN: Mr. Williams provided me with a
21 document called OWC Debts, October 30th, 2002.

22 JUDGE WOODRUFF: Yes.

23 MR. LORAIN: And apparently there's been one
24 amendment made to that. I have enough copies to give to
25 everybody over lunch. I'd like to have a number ascribed to

1 it and perhaps move -- I realize it's out of order, but I
2 don't really think I need to put Mr. Williams back on the
3 stand for that and I'm certainly not going to ask
4 Mrs. Williams to come back. So if you give me a number for
5 that --

6 JUDGE WOODRUFF: That would be No. 29.

7 MR. LORAIN: Judge, I'd move for the
8 admission of Exhibit 29 into evidence.

9 JUDGE WOODRUFF: Exhibit 29 has been offered
10 into evidence. Are there any objections to its receipt?

11 MS. O'NEILL: I'm sorry. What is 29?

12 JUDGE WOODRUFF: It's a list of debts. I'll
13 wait a few minutes so you can see what they're talking
14 about.

15 MS. O'NEILL: I don't have any objection.

16 MR. KRUEGER: No objection, your Honor.

17 MS. O'NEILL: Your Honor, I do have a question
18 maybe you can address with Mr. Williams. And that is that
19 the copy of this agreement that he's given me has "draft"
20 stamped on it and it's not a copy of a signed agreement.
21 Maybe he can clarify whether or not this was also the final
22 signed agreement.

23 JUDGE WOODRUFF: Okay. We may need to bring
24 him back on the stand to do that.

25 MR. LORAIN: The last page, Judge, has that

1 answer.

2 MR. WILLIAMS: You asked yesterday both for
3 the draft and --

4 MS. O'NEILL: Thank you. Never mind.

5 JUDGE WOODRUFF: For clarity sake then, I'm
6 going to ahead and assign a number to the oper-- well, let
7 me first of all rule on 29, if I haven't already. I'm
8 losing my mind, I think.

9 29 has been offered. There were no
10 objections, it is received into evidence.

11 (EXHIBIT NO. 29 WAS RECEIVED INTO EVIDENCE.)

12 JUDGE WOODRUFF: Let's go ahead and for the
13 Operation and Maintenance Agreement that was provided by
14 Osage Water, we'll assign that No. 30. And I'm not going to
15 ask that it be offered at this time, we'll deal with that
16 this afternoon. But it will be No. 30.

17 MR. WILLIAMS: Your Honor, I have one more
18 thing. Commissioner Murray had asked for this yesterday
19 while I was testifying and I told her I would bring that.

20 JUDGE WOODRUFF: This is the Missouri Rural
21 Water Association Rate Survey, and we'll make that 31.

22 All right. I assume you wish to offer 31 at
23 this time then?

24 MR. WILLIAMS: Your Honor, I wish to make
25 Commissioner Murray satisfied that I've done what she asked

1 for. And if you want to put it in evidence, that's just
2 fine.

3 JUDGE WOODRUFF: This will be 31 then.

4 MR. LORAIN: What was 30, Judge?

5 JUDGE WOODRUFF: The Operation and Maintenance
6 Agreement, which has not been offered yet. We'll deal with
7 that this afternoon.

8 For now 31 has been offered into evidence.
9 Does anyone have any objection to its receipt?

10 Hearing none, it will be received into
11 evidence.

12 (EXHIBIT NO. 31 WAS RECEIVED INTO EVIDENCE.)

13 JUDGE WOODRUFF: Okay. And, Staff, if you
14 want to go ahead and call your next witness.

15 MR. KRUEGER: Call Dale Johansen.

16 (Witness sworn.)

17 JUDGE WOODRUFF: You may be seated and you may
18 inquire.

19 MR. KRUEGER: Thank you.

20 DALE JOHANSEN, having been sworn, testified as follows:

21 DIRECT EXAMINATION BY MR. KRUEGER:

22 Q. Good morning.

23 A. Good morning.

24 Q. State your name and address for the record,
25 please.

1 A. Dale W. Johansen, J-o-h-a-n-s-e-n. My
2 business mailing address is Post Office Box 360, Jefferson
3 City, Missouri 65102.

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

5 A. I work for the Missouri Public Service
6 Commission and I'm the manager of the Water and Sewer
7 Department in the utility operations division.

8 MR. KRUEGER: Your Honor, I would ask some
9 questions to qualify Mr. Johansen as an expert on
10 engineering issues, but the parties have indicated a
11 willingness to stipulate to that in the past.

12 JUDGE WOODRUFF: Is that agreeable to the
13 parties?

14 MR. LORAIN: It is from Hancock.

15 MS. O'NEILL: Yes.

16 MR. WILLIAMS: Your Honor, my understanding is
17 Mr. Johansen is not a professional engineer and with that
18 limitation, I would agree he's an engineer, but not a
19 professional engineer.

20 JUDGE WOODRUFF: He will be allowed then to
21 testify as an engineer.

22 BY MR. KRUEGER:

23 Q. What are your duties in your current position?

24 A. I have general administrative and supervisory
25 duties for the overall operation of the Water and Sewer

1 Department. I also directly participate in water and sewer
2 utility cases before the Commission on both technical and
3 policy matters. And I also act in most cases before the
4 Commission involving water and sewer utilities as the
5 Staff's case coordinator.

6 Q. Do your duties with the Commission include
7 initiating complaints against water and sewer companies that
8 are subject to the Commission's jurisdiction?

9 A. Yes, they do.

10 Q. Has the Staff ever initiated any formal
11 complaints against Osage Water Company?

12 A. Yes.

13 Q. How many?

14 A. Two that I am aware of in addition to this
15 particular case.

16 Q. When were those complaints filed?

17 A. Case Number -- the complaint in Case
18 No. WC-2001-195 was filed September 21st of 2000. And the
19 complaint in Case No. WC-2003-0067 was filed on August 23rd
20 of this year.

21 Q. Did you participate in those complaint cases?

22 A. Yes, I did.

23 Q. What was the nature of the complaint in Case
24 No. WC-2001-195?

25 A. That complaint basically involved a situation

1 where the company discontinued service to several water
2 service customers that resided in a condominium complex at
3 Harbor Bay development.

4 The situation that resulted in that
5 discontinuance actually had to do with a dispute between the
6 company and the developer regarding service to a building
7 that was not occupied by the affected customers.

8 And it was our opinion that the discontinuance
9 of service to the affected customers should not have
10 occurred because they were not involved in the dispute
11 between the company and the developer. And, additionally,
12 the discontinuance to those affected customers occurred even
13 after the Staff specifically advised the company that we did
14 not think it was appropriate for them to disconnect the
15 building where the affected customers resided.

16 Q. Has that complaint now been resolved?

17 A. Yes, it has.

18 Q. And how is it resolved?

19 A. That complaint was resolved through a
20 settlement agreement that was executed by the Staff and the
21 company. And that agreement came about as a result of
22 mediation of the complaint.

23 Q. What were the terms of that settlement?

24 A. I don't have that available with me right now,
25 but I believe that settlement agreement has been offered as

1 Exhibit 12 in the case.

2 MR. KRUEGER: May I approach, your Honor?

3 JUDGE WOODRUFF: You may.

4 BY MR. KRUEGER:

5 Q. Okay. I've shown you Exhibit 12. Does that
6 refresh your recollection of the terms of that settlement?

7 A. Yes. This is a copy of the notice of
8 settlement agreement and motion for dismissal regarding this
9 complaint. And attached to that is the settlement agreement
10 itself.

11 That settlement agreement goes through some
12 basic background of the case, states that we had settled the
13 issues connected with the complaint and offered this
14 agreement as a resolution of the complaint to the
15 Commission.

16 Basically, what the settlement agreement
17 called for was the company to draft and send a letter to the
18 affected customers, which were in what was referred to as
19 Condominium B located in the Harbor Bay development.

20 Basically, that letter was to tell the
21 customers what happened, essentially why it happened, what
22 the company had attempted to do to resolve the dispute
23 initially.

24 The other portion of the agreement was
25 regarding emphasis that the company was going to make with

1 its personnel on required record-keeping responsibilities.
2 And it also included a provision where the Staff was going
3 to send a letter to the company regarding required
4 record-keeping responsibilities. And we also offered to
5 provide assistance to the company for training of its
6 personnel in customer service.

7 Q. Did the company agree to restore service to
8 the affected customers as the Staff requested?

9 A. Yes. Actually, the service discontinuance was
10 resolved the day after it occurred.

11 Q. What was the most critical aspect of that
12 complaint from the point of view of the Staff?

13 A. Well, basically that we were put in the
14 position where we felt it was necessary to file the
15 complaint in the first place.

16 It was a situation, as I mentioned, where
17 the -- there was discussion regarding the situation, the
18 company personnel had basically advised us what they planned
19 to do. We told them we didn't think it was appropriate and
20 they did it anyway. And that's why we felt it was necessary
21 to file the complaint.

22 Q. Now, regarding the complaint in the other
23 case, Case No. WC-2003-0067, what's the nature of that
24 complaint?

25 A. That complaint revolves around the

1 discontinuance of service that recently occurred at the
2 Broadwater Bay subdivision in Osage Beach.

3 Again, this complaint was filed because the
4 Staff did not believe the company reacted as it should have
5 to the loss of its source of supply for the affected area.
6 And also affecting our decision on the filing of the
7 complaint was the fact that the company chose not to
8 continue a temporary supply agreement until its supply of --
9 source of supply was restored.

10 Q. What relief did the Staff request in that
11 complaint?

12 A. We specifically asked that the Commission
13 issue an order directing Osage Water to take whatever
14 actions were necessary to provide water service to the
15 Broadwater Bay subdivision, and we also asked the Commission
16 for authority for the general counsel to seek civil
17 penalties in circuit court.

18 Q. Has that case been resolved?

19 A. No, it has not.

20 Q. What's the status of that complaint case?

21 I believe it was on October 15th, 2002. But subsequent to
22 that pre-hearing, there has not been any further activity
23 scheduled.

24 Q. Do your duties with the Commission include
25 work on small company rate increase cases?

1 A. Yes.

2 Q. Has Osage Water Company ever submitted a small
3 company rate increase request?

4 A. Yes, it has.

5 Q. And were you involved in that one?

6 A. Yes.

7 Q. When did it file its most recent rate increase
8 request?

9 A. That rate increase request was submitted to
10 the Commission on October 12th, 1999 under the provisions of
11 the Commission's small company rate increase procedure,
12 which is found at 4 CSR-240-2.200 of the Commission's rules.
13 And that request involved requests on the part of the
14 company for increases in both its water service rates and
15 its sewer service rates.

16 Q. And do you know the case numbers for those
17 cases?

18 A. Yes. That -- those requests were eventually
19 assigned Case No. WR-2000-557 for the water case and the
20 sewer case was assigned SR-2000-556.

21 Q. Have those cases been resolved?

22 A. Yes, they were.

23 Q. How were they resolved?

24 A. Well, in essence, the cases were resolved
25 based upon a settlement agreement that was executed between

1 the company and the Staff, one for each service. There were
2 hearings held in the case, which included the filing of
3 written testimony by the Staff, the company and the Office
4 of Public Counsel, but the end result of the cases revolved
5 around those settlement agreements.

6 Q. Did you participate in the negotiation of
7 those settlement agreements?

8 A. Yes.

9 Q. Was there an agreement reached in those cases
10 between the Staff and the company regarding the company's
11 rate base for its water and sewer services?

12 A. There was not a complete agreement reached on
13 the company's rate base pertaining to either its water or
14 sewer services. There were some areas related to the rate
15 base determination basically upon which the company and the
16 Staff agreed to disagree and to continue to a later date.

17 Q. What agreement was reached between the Staff
18 and the company on that issue?

19 A. Well, for the purpose of settling the rate
20 cases, the Staff and the company agreed on the level of rate
21 base for each service that was used in calculating the
22 company's potential return on its investment and related
23 income taxes. And the Staff and the company further agreed
24 that those areas upon which an agreement could not be
25 reached would be dealt with at a later time.

1 Q. Was there any agreement made in regard to
2 including Mr. Williams' legal fees in the rate base?

3 A. As I recall, there were no dollars related to
4 those legal fees included in the rate base calculation.
5 There was a recognition of the fact that those expenses did
6 exist in that there was a recognition in the tariff that
7 \$1 per customer per month would go towards offsetting those
8 expenses, which I believe had been recorded by the company
9 in Accounts 301 and 302 which deal with franchise and
10 certificate expenses.

11 Q. But it was not specifically included in rate
12 base?

13 A. That's correct, it was not.

14 Q. How are the agreed-upon rate base figures used
15 in the rate case?

16 A. Well, basically, again, using the rate base
17 levels that we did agree on, the company's potential return
18 on its investment and related income taxes were incorporated
19 into the company's overall cost of service. And those cost
20 of service figures for each case were then used in the
21 design of the company's customer rates for each service.

22 Q. Do you know when the settlement agreement was
23 reached in that case?

24 A. I don't. The copy I have doesn't happen to
25 have a date on it.

1 Q. Do you recall approximately when it may have
2 been?
3 A. I really don't offhand.
4 Q. Okay. Do you know when the new rates became
5 effective?
6 A. There was a different timing on those rates.
7 The sewer rates became effective fairly soon after the case
8 was resolved. The water rates became effective on an
9 interim basis soon after the Commission issued its Report
10 and Order in that case and then they became effective on a
11 permanent basis at a later date. And, once again, I don't
12 have the document with me that would have those dates on it.
13 I'm sorry.
14 Q. Okay. Has the company sought a new rate
15 increase since these rates went into effect?
16 A. No.
17 Q. Did the company obtain authority to increase
18 its rates then for water and sewer services as a result of
19 those rate cases?
20 A. Yes, it did.
21 Q. Do you know how much those rate increases
22 amounted to?
23 A. Yes. The water rates were designed with the
24 intent of increasing the company's annual water service
25 operating revenues by approximately \$54,300. And the rates

1 were designed for sewer service with the intent of
2 increasing the company's annual sewer service operating
3 revenues by approximately \$3,960.

4 Q. Has the company implemented those new rates?

5 A. Yes, they have.

6 Q. Were there any problems with the company's
7 implementation of its new rates?

8 A. From the standpoint of the sewer rates, there
9 were no problems. They were implemented according to
10 standard procedure. There were some problems with the
11 implementation of the water service rates.

12 Q. Can you tell me what those problems were with
13 the water service rates?

14 A. Basically, the main problem was that the
15 company implemented its new rates under the tariff that it
16 had filed prior to the time that the Commission had actually
17 issued an order approving that tariff revision.

18 That resulted in charges to customers for a
19 period of approximately three months under those new rates
20 when those rates had not yet been approved by the
21 Commission. That was the main problem with regard to the
22 water rates.

23 Q. Did the Commission take any action in response
24 to those overcharges?

25 A. Yes, it did.

1 Q. What did the Commission do?

2 A. It issued an order requiring the company to

3 refund the overcharges to the customers that were affected

4 by the overcharges. And eventually it was directed that the

5 refunds were to be done over a period of approximately three

6 months, which, again, was basically equivalent to the time

7 that the increased rates were charged by the company to the

8 customers absent Commission approval of the tariff revision.

9 Q. Do you recall when those overcharges occurred,

10 the dates when they occurred?

11 A. I don't have that information with me right

12 now. I can certainly get that during the lunch break.

13 Q. Okay. Do you recall when the refunds were

14 made?

15 A. No. Not right now.

16 Q. Did the company refund the overcharges as

17 directed by the Commission?

18 A. Yes, they did.

19 JUDGE WOODRUFF: Mr. Krueger, if I could

20 interrupt, it is almost twelve o'clock so it is time to take

21 a lunch break. And we'll take a break and come back at one

22 o'clock.

23 (A RECESS WAS TAKEN.)

24 JUDGE WOODRUFF: Looks like we don't have a

25 witness at the moment.

1 MR. WILLIAMS: I'd move for dismissal for
2 failure to prosecute.

3 JUDGE WOODRUFF: Motion will be denied. We'll
4 just wait patiently for him then. If you can find him --

5 MR. KRUEGER: I'll run upstairs and --

6 JUDGE WOODRUFF: Thank you.

7 MR. KRUEGER: He may have thought it was to be
8 at 1:15.

9 JUDGE WOODRUFF: You are still under oath and
10 you can inquire.

11 BY MR. KRUEGER:

12 Q. Good afternoon.

13 A. Good afternoon.

14 Q. Have you done any investigation to determine
15 whether a receiver for the company can be found?

16 A. Yes, we have.

17 Q. What did you do?

18 A. Well, first of all, at any time when the Staff
19 is even considering this action, one of the first things
20 that we do is basically sit down and talk among ourselves
21 about why it's necessary, whether it's necessary.

22 And one of the critical matters in that regard
23 is whether or not we think there is a likely receiver
24 available. We essentially don't want to go into a process
25 like this without some level of comfort that if we're

1 successful in pursuing a receiver, that we will have one to
2 recommend not only to the Commission, but most certainly to
3 the circuit court judge.

4 Based on those discussions among our Staff,
5 which essentially was myself, Martin Hummel and Jim Merciel,
6 we did come to a conclusion in this situation that a
7 possible receiver did exist.

8 Q. Whom did you talk to?

9 A. The first person that I spoke to about this,
10 again, based on our internal discussions was Mr. David
11 Abernathy of Missouri American Water Company. And we
12 discussed with him the possibility of Missouri American
13 acting as a receiver, if, in fact, it came to that.

14 Q. And based on these conversations, were you
15 able to form an opinion as to whether a receiver can be
16 found?

17 A. Yes, we were. And we believe that -- Missouri
18 American has indicated to us that they would be willing to
19 serve in that capacity. And we still believe today that if
20 it -- the situation arises to where a receiver is appointed,
21 that they would act.

22 Q. And is it your belief that they would be
23 qualified to so act?

24 A. Oh, certainly.

25 Q. On what occasions did you talk to

1 Mr. Abernathy about Missouri American serving as a receiver?

2 A. I -- the first conversation I had with him
3 regarding this was at an unrelated meeting that we were both
4 attending, which was on September 12th of this year.

5 Subsequently, on October 7th, I sent him an
6 e-mail regarding this advising him that we were going
7 forward with a complaint and to ask him to confirm if they
8 were still willing to act as a receiver.

9 And then, again, we had a teleconference with
10 Mr. Abernathy, another member of Missouri American staff on
11 October 10th.

12 Q. You have reason to believe that Missouri
13 American is still interested in serving as a receiver?

14 A. Yes.

15 Q. What makes you think so?

16 A. On all occasions that I've talked with
17 Mr. Abernathy, he has indicated that willingness and he has
18 subsequently not told me anything different.

19 Q. Was he present in the hearing room last
20 Thursday?

21 A. Yes, I believe he was.

22 Q. Did you talk to him at that time?

23 A. I did not talk to him specifically. I think
24 some other members of the Staff did.

25 Q. Do you know why he was here?

1 A. He'd indicated to me earlier that -- that he
2 was coming to the hearing to basically observe the initial
3 portions of the hearing and to get a better understanding of
4 the situation that was being considered in this complaint.

5 Q. But you haven't talked to him since then?

6 A. I have not.

7 Q. Okay. Have you done any investigation
8 regarding the possible liquidation of the company's assets?

9 A. Not specifically, no.

10 Q. Have you been involved in any conversations
11 about this matter?

12 A. I've been involved in conversations with other
13 people regarding this when they have raised the issues. I
14 have not specifically initiated any discussions with anyone
15 regarding the possible liquidation of the company's assets.

16 Q. With whom have you talked about this?

17 A. Well, initially at the September 12th meeting
18 that I mentioned earlier with Mr. Abernathy, he broached
19 that subject with me indicating that --

20 MR. WILLIAMS: Your Honor, I'm going to object
21 to the witness testifying as to hearsay as to what -- his
22 initial testimony, as I understood it, is that he did not
23 initiate any conversations with regard to this matter. And
24 I think it's improper hearsay for him to testify to what
25 someone else may have told him on that matter.

1 JUDGE WOODRUFF: I'll sustain the objection.

2 BY MR. KRUEGER:

3 Q. Based upon your conversations with these

4 people that you talked to, were you able to form an opinion

5 as to whether others are interested in purchasing all or

6 part of the company's assets?

7 MR. WILLIAMS: Your Honor, I'm going to object

8 to that as calling for opinion or conclusion from this

9 witness, which is outside the scope of the engineering

10 expertise to which he was qualified as an expert.

11 MR. KRUEGER: This doesn't require expert

12 testimony, your Honor. It's a question of whether he's

13 formed an opinion on whether there were people that are

14 interested in purchasing the company's assets.

15 MR. WILLIAMS: Your Honor, I think the witness

16 can testify to facts. Facts are admissible. The Commission

17 may draw its own conclusions and opinions as the decider,

18 but his opinion in an area that is not as an expert is not

19 evidence and it is objectionable and I do object.

20 JUDGE WOODRUFF: I'm going to overrule the

21 objection considering that this is an administrative hearing

22 and the standard of proof is -- or excuse me -- the

23 admission of evidence is a little bit more relaxed.

24 Commission will want to hear this testimony, so I'm going to

25 allow it. You can answer the question.

1 BY MR. KRUEGER:

2 Q. Do you recall the question?

3 A. I think so. Based on information that has
4 been conveyed to me by other people during conversations
5 I've had with them, I believe there are --

6 MR. WILLIAMS: Your Honor, I'm going to object
7 then to his testimony as being an opinion based on hearsay
8 and the hearsay not being in evidence because it has been
9 objected to. I think this is simply an attempt to
10 circumvent the fact that this gentleman does not know and
11 cannot tell this Commission anything other than his opinion
12 of what someone else might have said and that's not evidence
13 at all.

14 JUDGE WOODRUFF: I'm going to overrule the
15 objection. Go ahead and answer.

16 THE WITNESS: As I mentioned, based on
17 information provided me by other people that I've been
18 involved in conversations with, I believe there are parties
19 who would be interested in purchasing all or part of the
20 company's assets.

21 BY MR. KRUEGER:

22 Q. Do you support the eventual liquidation of the
23 company's assets in receivership?

24 A. Yes.

25 Q. Do you think that such a liquidation would

1 have to be conducted by a sale of the company as a unit or
2 do you think it could be possibly sold in parcels or sliced
3 up, to use Mr. Williams' terms?

4 A. Well, I certainly think from an overall
5 standpoint it would be preferable if the sale -- if the
6 liquidation did occur in whole. I certainly think that
7 because of the nature of the company's various service
8 areas, that it could occur on a piecemeal basis.

9 Q. Do you know if company officials have ever
10 discussed breaking up the company into its component parts?

11 A. Yes, they have.

12 Q. What knowledge do you have of that?

13 A. I reviewed minutes from I believe a
14 January 8th, 2002 board meeting where that topic was
15 discussed. And I -- I believe those minutes have been
16 entered into the record as an exhibit.

17 Q. Did you hear Mr. Williams' testimony, I
18 believe it was yesterday, in regard to him mentioning to the
19 Staff the possibility of foreclosure upon the assets of
20 Osage Water Company?

21 A. Yes.

22 Q. Did he talk with you about the possibility of
23 foreclosing on those assets?

24 A. He did, yes.

25 Q. Did you tell him -- what was your response to

1 his inquiry?

2 A. Well, my recollection of the conversation was
3 basically that there were, in essence, three different
4 options discussed; one of which was foreclosure, one of
5 which was bankruptcy, and one of which was a receivership
6 action.

7 Q. Did you give a reaction to any of those
8 proposals or did you tell him whether you favored them or
9 not?

10 A. I don't recall that I did, no.

11 Q. I believe Mr. Williams testified that he had
12 sent to the Staff the Management Services Agreement between
13 Osage Water Company and Environmental Utilities. Have you
14 ever seen that agreement?

15 A. I have not seen it. Quite honestly, that
16 doesn't mean that it has not been sent either. I have
17 reviewed my various files and as well as the other Staff
18 members. We do not find it, but that's -- we don't find it.

19 Q. What kind of files did you review? Mail that
20 you received?

21 A. Yes. I reviewed my incoming mail that I've
22 received over the last couple of weeks. I reviewed my
23 incoming e-mails to see if possibly it was transmitted
24 electronically. And I also asked Mr. Merciel to do the
25 same. And we -- we do not find it.

1 Q. Okay. I asked you some questions this morning
2 about dates that I think you were not able to provide. Do
3 you have that information now?

4 A. I think so.

5 Q. Okay. The questions I believe pertained to
6 the company's small company rate increase case.

7 A. Yes.

8 Q. Do you know when that case was settled?

9 A. The disposition agreement between the company
10 and the Staff for both the water and sewer cases was signed
11 by Mr. Williams on October 30th of 2000. It was signed by
12 me as the Staff representative on November 1, 2000.

13 And then along with the tariff filings that
14 the company made regarding the company/Staff agreement, the
15 agreement was submitted along with those tariff revisions
16 and that filing was made on November 14th, 2000.

17 Q. And do you know when the rates that resulted
18 from that case became effective?

19 A. Yes. The sewer rates became effective for
20 service on and after April 1, 2001.

21 The water rates, as I believe I mentioned this
22 morning, there was -- there was some confusion regarding the
23 effective of those. The tariff revision was originally
24 submitted to the Commission on April 16th, 2001. Because of
25 various problems that I mentioned this morning, that tariff

1 actually was not approved by the Commission until July 26th,
2 2001.

3 Q. And it became effective on July 26th, 2001?

4 A. That's correct.

5 Q. Do you know the dates of the overcharges about
6 which you testified this morning?

7 A. Yes. In reviewing various files regarding
8 WR-2000-557, the overcharges occurred essentially during the
9 months of May, June and July of 2001. The subsequent
10 refunds that were ordered by the Commission covered the
11 period December 2001 and then January and February of 2002.

12 Q. Okay. Thank you.

13 Did you hear the testimony this morning about
14 whether it was proper for the company to charge connection
15 fees for connections to condominium units?

16 A. I heard most of that, yes.

17 Q. Were you involved in responding to the
18 complaints from customers concerning these charges?

19 A. Yes, I was.

20 Q. You had discussions with members of the Staff?

21 A. I did.

22 Q. And as a result of those discussions, what
23 conclusion did you reach?

24 A. My conclusion was the same as that of
25 Mr. Merciel and Mr. Hummel. And, in fact, the letter that

1 went out under the signature of Mr. Hummel to the company
2 regarding this issue was sent subsequent to my approval of
3 the letter.

4 MR. KRUEGER: I'd like to have an exhibit
5 marked, your Honor.

6 JUDGE WOODRUFF: We're up to Exhibit 32.

7 (EXHIBIT NO. 32 WAS MARKED FOR
8 IDENTIFICATION.)

9 BY MR. KRUEGER:

10 Q. I've handed you a document that's been marked
11 as Exhibit 32, and I'd ask if you could identify that
12 document?

13 A. Yes. This is Original Sheet No. 11 and
14 Original Sheet No. 13 from Osage Water Company's tariff,
15 rules governing rendering of sewer service.

16 MR. KRUEGER: May I approach, your Honor?

17 JUDGE WOODRUFF: You may.

18 BY MR. KRUEGER:

19 Q. Calling your attention to the first page of
20 Exhibit 32, would you read the first line under the schedule
21 of service charges, please?

22 A. Yes. Construction inspection charge per
23 connection where connection is made by customer, \$100.

24 Q. And would you read the second entry there?

25 A. New service connection by company includes

1 inspection and shut-off. Backhoe charges additional as
2 necessary, \$150 plus backhoe time.

3 Q. Now, is it your understanding that there would
4 be -- that there could possibly be both of these charges
5 imposed on a connection?

6 A. No. I don't believe so. It would be one or
7 the other.

8 Q. Okay. And this is for connection to sewer
9 service; is that correct?

10 A. Correct.

11 Q. What construction would there be for the
12 company to inspect on a connection to a condominium unit?

13 A. Well, for sewer service there would basically
14 be a single lateral running from the collecting sewer to the
15 building. And I believe that is what this construction
16 inspection charge is intended to be for, would be the
17 connection of the lateral to the building where it connects
18 to the company's collecting system.

19 Q. And in the connection to a condominium unit,
20 would there be anything for the company to inspect?

21 A. Other than that connection of the lateral line
22 from the building to the main, no.

23 Q. Are those tariff provisions for the sewer
24 service substantially the same as the tariff provisions for
25 connections to water service?

1 A. I believe they are, yes.

2 Q. You can refer to Exhibit 27 if it would help.

3 A. Regarding the two that we were just

4 discussing, the only difference is that on the new service

5 connection by company for the sewer, it refers to includes

6 inspection and shut-off where on the water it says, includes

7 inspection and meter. And that's simply a difference

8 between the types of system. Other than that, they are the

9 same.

10 Q. With regard to Exhibit 32, on the second page

11 would you read the definition of service connection, please?

12 A. Yes. A service connection is the connection

13 of a service sewer to the company collecting sewer either at

14 the bell of a Y branch or the bell of a saddle placed on the

15 barrel of the collecting sewer and that portion of the pipe

16 to the customer's property line.

17 MR. KRUEGER: Thank you. That's all the

18 questions I have, your Honor.

19 JUDGE WOODRUFF: All right. For cross then,

20 we'll go to Public Counsel.

21 MS. O'NEILL: Thank you.

22 JUDGE WOODRUFF: I'm sorry. Did you want to

23 offer 32?

24 MR. KRUEGER: I do, your Honor.

25 JUDGE WOODRUFF: 32 has been offered into

1 evidence. Are there any objections to its receipt?

2 MR. LORAIN: I have none, Judge.

3 JUDGE WOODRUFF: Hearing none, it will be

4 received into evidence.

5 (EXHIBIT NO. 32 WAS RECEIVED INTO EVIDENCE.)

6 CROSS-EXAMINATION BY MS. O'NEILL:

7 Q. Good afternoon.

8 A. Hello.

9 Q. Mr. Johansen, in regard to the water rate case

10 557, you gave us some dates regarding the agreement that

11 Staff and the company entered into, actually, the Report and

12 Order in that case following a hearing that was primarily

13 regarding problems of customer service. Was that March 29th

14 of 2001? Does that sound right?

15 A. Yes. That's correct. The issue date of the

16 Report and Order was March 29, 2001.

17 Q. And there were a number of conditions that the

18 company was going to be required to meet in order to make

19 that water rate increase permanent; is that right?

20 A. That's correct.

21 Q. Do you recall that there was a time frame that

22 the Commission originally contemplated for a report back

23 from the company and by Staff verifying compliance with

24 those conditions?

25 A. Yes. There -- there were provisions in the

1 order regarding reports from the company regarding its
2 compliance and then provisions for responses on the part of
3 the Staff regarding the company's compliance report.

4 Q. And do you recall that -- do you recall the
5 time frame for that?

6 A. Yes.

7 Q. What was that?

8 A. Order -- paragraph 6 of that order states
9 this, That if Osage Water Company has not filed a pleading
10 discussed in paragraph 4 by September 28th, 2001, Staff of
11 the Commission shall file a report on the progress of Osage
12 Water Company for completing the conditions.

13 So basically I took that to mean that the
14 company's report was due on or before September 28th and
15 then our response was due subsequent to that.

16 Q. And, in fact, the Staff did file a report --
17 or the company did file a report and the Staff filed a
18 response, is that correct, in the fall of 2001?

19 A. Yes. And then in addition to that, there was
20 a second report filed by the company and a second response
21 filed by the Staff. And I believe the second Staff
22 report -- or Staff's response to the company's second report
23 is basically where those filings ended.

24 Q. Okay. And in October of 2001 when the Staff
25 filed its first response to the company's first report,

1 isn't it true that Staff was not able -- reported that the
2 company had not fully complied with the conditions that the
3 Commission imposed on it?

4 A. That's correct.

5 Q. And it was shortly after that that there was
6 some litigation regarding these overcharges that you've
7 already testified to?

8 A. Correct.

9 Q. And then later on there was another report
10 filed and then the Staff was able to file a response to that
11 in approximately May of this year?

12 A. That's correct, yes.

13 Q. Do you have a copy of Exhibit 16 with you?

14 A. I do not.

15 Q. Okay.

16 A. Or if I do, I'm not sure that it's Exhibit 16.

17 Q. Okay.

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

19 JUDGE WOODRUFF: You may --

20 BY MS. O'NEILL:

21 Q. I've handed you what is a copy of Exhibit 16,
22 which is both a pleading regarding Staff's second report
23 regarding company compliance with the provisions of the rate
24 case Disposition Agreement and attached to that a copy of a
25 report prepared by you; is that correct?

1 A. Yes, it is.

2 Q. And your report is dated May 17th, 2002

3 approximately?

4 A. That is correct, yes.

5 Q. And that is over a year after the Report and

6 Order came out?

7 A. Yes.

8 Q. And it was at this point in time that the

9 Staff believed that the company had complied to the extent

10 it was capable of doing so with the conditions that the

11 Commission had imposed?

12 A. That's correct.

13 Q. I want to refer you to page 4 of 5 of your

14 report, which is part of that exhibit.

15 A. I'm there.

16 Q. There was some testimony earlier today in

17 response to questions from Mr. Williams regarding metering

18 of condominiums. And were you aware of that testimony from

19 this morning?

20 A. Yes.

21 Q. Okay. If you look at the top of that page 4

22 of 5 of your report in that exhibit. When it discusses

23 Disposition Agreement, paragraph 14, is there an indication

24 that the individual metering of condominiums at Cedar Glen

25 and Harbor Bay was required by the written agreements

1 between the company and the developer?

2 A. Yes, there is.

3 Q. And is it your understanding that that written
4 agreement between the company and the developer occurred
5 prior to the disposition of the rate case?

6 MR. WILLIAMS: Your Honor, I'm going to object
7 to this witness testifying to his understanding of documents
8 which are not in evidence in this case. The documents would
9 speak for themselves.

10 JUDGE WOODRUFF: Response?

11 MS. O'NEILL: There was a requirement that the
12 Staff recommended regarding these individual meters.
13 There's some testimony that was elicited on
14 cross-examination by the company this morning about whether
15 individual meters were a good idea or along those general
16 lines. And I'm just trying to clarify that one of the
17 reasons for this condition was that the company had already
18 obligated itself to individual meter these condominium
19 units.

20 MR. WILLIAMS: Your Honor, again, I think
21 counsel's explanation brings squarely into question the
22 contents of the documents which are not in evidence and
23 which are pretty far afield from the essence of the
24 complaint that this Commission is hearing. I'm going to add
25 an objection of relevancy to my objection that the witness

1 is being asked to testify to contents of documents which are
2 not in evidence.

3 JUDGE WOODRUFF: Mr. Loraine, you would like
4 to speak?

5 MR. LORAIN: Yes. I would like to be heard
6 on that.

7 Your Honor, it's basically -- this is an
8 opinion question that's being asked of this witness who's
9 been amply qualified as to a certain element. And I see no
10 reason -- expert opinions many times are based on all kinds
11 of -- even in circuit court or federal court, it's based on,
12 if you would say, hearsay or other peoples' opinions as long
13 as it's just something he considered and he can form his own
14 opinion. So I don't think it's a -- I don't think it's a
15 valid objection, your Honor.

16 JUDGE WOODRUFF: I'm going to overrule the
17 objection. You can go ahead and answer.

18 THE WITNESS: Could you repeat your question,
19 please?

20 BY MS. O'NEILL:

21 Q. I can try. Maybe I can paraphrase it.

22 Did the written agreement requiring individual
23 meter installation on condominiums between the company and
24 the developers at Cedar Glen and Harbor Bay happen before
25 the disposition of the rate case 557?

1 MR. WILLIAMS: Your Honor, I'm going to raise
2 the same objection.

3 JUDGE WOODRUFF: Same result, it's overruled.

4 THE WITNESS: I believe the written agreements
5 regarding that issue between the company and the two
6 developers did pre-date the Disposition Agreement.

7 BY MS. O'NEILL:

8 Q. Okay. And, in fact, that would be a reason
9 why it would be -- it would make sense that that be a
10 condition that they comply with that agreement as a term of
11 the interim rates being made permanent?

12 A. Yes. I don't think we would require them to
13 comply with an agreement that didn't exist.

14 Q. Okay. And, as a practical matter, because of
15 continued difficulties between the company and the developer
16 at Harbor Bay, the Staff considered that the company had
17 complied with this condition in paragraph 14 even though
18 there were still some ongoing dispute about meters at one of
19 the buildings at Harbor Bay, is that correct, based on
20 what's contained in Exhibit 16?

21 A. Yes. That's correct.

22 Q. So the Staff recommended that the rates be
23 made permanent based on the amount of compliance that it
24 felt the company was able to meet regarding the Commission
25 order; is that right?

1 A. Well, it -- if I may, I'll just read our
2 recommendation.

3 Q. Sure.

4 A. As set out above, the Staff has concluded that
5 the company is now in compliance with all the subject
6 provisions of the rate case Disposition Agreement. As a
7 result, the Staff recommends that the company be allowed to
8 remove the condition statements from its rate tariff sheet
9 which are, in effect, what makes the company's rate increase
10 interim and subject to change.

11 Q. Okay. You participated in the rate case that
12 ended up being 556 and 557; is that correct?

13 A. Yes, ma'am.

14 Q. And that was a request for rate increases
15 filed under the small company rate procedure. I think we've
16 already had testimony about that; is that --

17 A. Correct.

18 Q. In the small company rate case procedure,
19 that's a more informal way of determining a company's
20 revenue requirement and recommending whether there should be
21 an increase in rates, is that correct, as opposed to a
22 formal rate case?

23 A. It's -- it's informal from the standpoint that
24 a case is not established when the request is initially
25 submitted. It's -- certainly the process itself is somewhat

1 similar to a rate audit that is -- that is conducted if a
2 company files under the formal procedure, but -- it's really
3 only informal from the standpoint that a case is not
4 required to be established when the request is first
5 submitted.

6 Q. The Staff still audits the books and records
7 of the company; is that correct?

8 A. Correct.

9 Q. And the Staff attempts to determine what the
10 appropriate revenue requirement for the company is?

11 A. That's correct.

12 Q. And they do that by determining what the
13 actual cost of service is for the company?

14 A. Correct.

15 Q. And they do that by reviewing the books and
16 records of the company --

17 A. Yes.

18 Q. -- is that correct?

19 And they look at various expenditures and make
20 a decision whether to recommend that certain amounts be
21 allowed or disallowed from the revenue requirement based on
22 prudence; is that correct?

23 A. Correct.

24 Q. And is it unusual for the Staff to disallow an
25 expenditure if it's caused by an imprudent action by the

1 company?

2 A. No.

3 Q. And that's whether the case is a formal or
4 informal rate case?

5 A. It makes no difference.

6 Q. Now, if a company were to have plant in
7 service that was constructed poorly and then ask for
8 additional personnel to service that problem plant, would
9 the Staff consider whether or not the manner of the initial
10 construction was imprudent in deciding whether or not the
11 expenditure for the amount of personnel needed for
12 maintenance was appropriate?

13 A. That's certainly an item that we could look
14 at. I -- I don't recall offhand any situations where we
15 have specifically done that, but it's certainly -- from the
16 standpoint of costs that are going to be recovered regarding
17 particularly maintenance and repairs in facilities, the
18 initial construction quality is certainly pertinent to that
19 issue, probably more so than the day-to-day operating
20 expenses.

21 Q. Okay. So it would be one of the several
22 factors of all the relevant factors that the Staff would
23 consider when they're doing the audit and trying to
24 determine what the appropriate cost of service is?

25 A. Yes.

1 Q. And even though there are a lot of single
2 factors, they are not looked at all by themselves, they're
3 looked at in the totality of everything?

4 A. That's correct, yes.

5 Q. Now, when looking at determining the cost of
6 service and making allocations for what the Staff believes
7 would be appropriate for inclusion in rates, does Staff look
8 at what would be a reasonable level of different types of
9 expenses?

10 A. We look at -- certainly look at the
11 reasonableness of the dollars that are being spent. In some
12 instances, all we simply need to look at is, you know, what
13 expenses are being incurred by the company.

14 For example, a good example of that is
15 personnel. If the company employs one person to do a
16 certain function, that's probably what the rates are going
17 to reflect. We -- we look at this from the standpoint of
18 using historical information to -- basically to try to set
19 the rates the best we can on a going-forward basis, but we
20 do look at actual expenses.

21 Q. So it's the actual expenses of an individual
22 company, not some formula that you pull out and try to make
23 one size fits all for these small companies?

24 A. Absolutely not. We look at each individual
25 company, their cost of providing service.

1 Q. Okay. And the Staff would also, in a rate
2 case I presume, make a determination of what to include --
3 what type of plant to include in the rate base?

4 A. Correct.

5 Q. And under current Commission policy, even with
6 small companies, it would be fair to say that the Commission
7 Staff is concerned with plant that's actually in service and
8 that's used and useful?

9 A. Oh, absolutely.

10 Q. Now, we had a little bit of testimony earlier
11 about water companies serving in competitive territories.
12 We don't have a whole lot of that in Missouri right now
13 other than like on the edges of some territories; is that --

14 A. That's basically correct, yes.

15 Q. When a water company is serving customers in a
16 competitive territory, do you know whether or not they
17 attempt to deal with that competition by increasing their
18 rates?

19 A. Well, normally they look at it more from the
20 standpoint of what rate they would need to charge to
21 continue to be competitive.

22 Q. And so they would have to factor in what a
23 potential customer would pay elsewhere in determining what
24 kind of rates to seek. Would that be one of their --

25 A. That's a possibility.

1 Q. Okay. Have you been involved in any cases
2 where a utility company has wanted to waive connection fees
3 or other types of fees because they're in a competitive
4 area?

5 A. There have been some situations where --
6 connection fee policies, I believe Mr. Merciel mentioned
7 this morning, extension policies have been modified
8 specifically to address that issue.

9 Q. Does Osage Water Company have competition in
10 all of its service areas?

11 A. No.

12 Q. Now, do you believe that all of Osage Water
13 Company's problems are financial in nature?

14 A. Not all of them, no.

15 Q. Do you believe that some of the problems are
16 managerial in nature?

17 A. Yes.

18 Q. Do you believe that they continue to have
19 service problems even after the last rate case?

20 A. From the standpoint of operation and
21 maintenance of their facilities, they certainly do continue
22 to have problems, yes.

23 Q. Okay. You had some discussion with
24 Mr. Krueger about the possibility of liquidating the
25 company's assets if a receiver is appointed. Do you recall

1 that?

2 A. Yes.

3 Q. Now, if the company went into the control of a
4 receiver and was liquidated under the provisions of 393.145,
5 could that sale of the company be as a complete unit or
6 would it have to be individual pieces or service
7 territories, as far as you know?

8 A. It could be either one. I think it really
9 makes a difference whether or not the company's service area
10 is, you know, one contiguous service area or whether it is
11 geographically dispersed.

12 Q. And with this particular company, its service
13 areas are geographically dispersed, at least somewhat?

14 A. For the most part, yes.

15 Q. So it would be possible that the receiver
16 would have some flexibility as far as how to liquidate the
17 assets if it comes to that?

18 A. It would have more flexibility in this
19 situation than it would in most, yes.

20 Q. And, to your knowledge, is there anything --
21 any legal provisions or Commission regulations that would
22 prevent the Commission from reviewing any of those transfers
23 pursuant to a liquidation to make sure that they were at
24 least not detrimental to the public interest?

25 A. Well, my understanding is that even if a

1 liquidation under receivership is taking place, the sale of
2 those assets still has to be approved by the Commission. So
3 the Commission would be reviewing the sale whether it's
4 being conducted by a receiver pursuant to a court order in
5 the receivership or whether it's being done today by the
6 company.

7 Q. So the only thing that would change with a
8 receiver would be the person conducting the sale, not the
9 requirement that the Commission approve any sale?

10 A. That's correct.

11 Q. Do you recall any time when you may have told
12 Mr. Williams or anybody at Environmental Utilities or Osage,
13 for that matter, that the Staff would support this
14 foreclosure sale that was attempted this summer?

15 A. As I mentioned earlier I believe to
16 Mr. Krueger, there were discussions about that being one of
17 the options. As far as a statement of saying, yes, that's a
18 good idea, no, it's not a good idea, I do not believe the
19 discussions went to that extent.

20 Q. So as far as your recollection, there was no
21 indication that there would be probable approval?

22 A. No.

23 MS. O'NEILL: No further questions.

24 JUDGE WOODRUFF: For Hancock?

25 CROSS-EXAMINATION BY MR. LORAIN:

1 Q. Mr. Johansen.

2 A. Good afternoon.

3 MR. LORAIN: May it please the court, Judge.

4 JUDGE WOODRUFF: You may.

5 BY MR. LORAIN:

6 Q. The question Public Counsel just asked you,

7 I'd like to go a little further on it. Who did those

8 discussions occur between, if you know?

9 A. Which -- I'm sorry. Which discussion?

10 Q. The last question counsel asked you in

11 reference to this judicial foreclosure on these deeds of

12 trust -- pardon me -- this non-judicial foreclosure on these

13 deeds of trust down in Camdenton. That was presented to you

14 at some point by Mr. Williams?

15 A. There was a draft of the application that was

16 eventually filed that was provided to the Staff ahead of the

17 filing, yes. And Mr. Williams and I discussed that this was

18 one of the avenues that was potentially available for sale

19 of the company, liquidation of the assets, whatever you want

20 to -- whatever term you want to use to describe that.

21 Q. Did you or any member of your Staff lead

22 Mr. Williams to the conclusion that you would support that?

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

24 Q. And, in fact, this draft -- do you retain that

25 draft still in your records anywhere?

1 A. It was submitted to me as an attachment to an
2 e-mail from Mr. Williams. I am guessing that that e-mail is
3 probably still in my in-box of my e-mail system. I'm not
4 sure, but I would be surprised if it's not still there.

5 Q. And would you be able to provide that today
6 after you're off the stand?

7 A. I can check on break to see if that particular
8 message and the attachment are still there, yes.

9 Q. All right. To the best of your knowledge and
10 belief, did you make any recommendations back to him by
11 e-mail or in writing or otherwise?

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

13 Q. Did you discuss that issue with other members
14 of the Staff?

15 A. Yes. It was discussed specifically with
16 Mr. Krueger and I believe Ms. Kizito.

17 Q. Did any member of the Staff -- was any member
18 of the Staff or anyone else advised by Mr. Williams that
19 this would essentially close out Mr. Hancock's interest,
20 this foreclosure?

21 A. I don't think that was specifically addressed
22 as far as any conversations that -- it was not addressed in
23 any conversations I had with Mr. Williams. In reviewing the
24 draft of the application, I think we drew our own
25 conclusions that this process would probably result in -- or

1 could result in some creditors not being paid. I do not
2 recall any specific conversation or any references to
3 Mr. Hancock's situation.

4 Q. And, as I recall, Staff's position was against
5 this foreclosure, as I recall; is that correct?

6 A. That's correct, yes.

7 Q. In fact, Staff recommended I believe to
8 general counsel of the Commission to actually institute a
9 foreclosure -- an injunction -- or TRO and preliminary
10 injunction to stop such a foreclosure; is that true?

11 A. The Staff initiated a process whereby the
12 Commission was asked to grant authority to the general
13 counsel's office to make that filing. And that filing was,
14 in fact, made, yes.

15 Q. And you testified at that court, didn't you?

16 A. I testified in one or two of those
17 proceedings. Quite honestly, I don't remember which one it
18 was, but I was involved in the process, yes.

19 Q. And involved in a Camden County matter?

20 A. Yes.

21 Q. That was subsequently granted by the judge and
22 the foreclosure was stopped on the deed of trust that was
23 filed by Mr. Williams in which Mrs. Williams was the trustee
24 given by OWC?

25 A. Correct.

1 Q. Do you remember the date that deed of trust
2 was filed? I'd like to -- and I would, for the purpose of
3 that, direct your attention, I believe it's in evidence
4 here, to Exhibit 7. Do you have that?

5 A. I don't.

6 Q. I'm sorry.

7 MR. LORAIN: May I approach the witness?

8 JUDGE WOODRUFF: You may.

9 BY MR. LORAIN:

10 Q. I'm sorry. I thought you had a copy of that.

11 A. Okay. The deed of trust was first entered
12 into on February 15th, 2001.

13 Q. All right. And a promissory note that
14 accompanied that signed by Mr. Mitchell, I'm handing you
15 what is also in evidence here as Exhibit 8. What date does
16 that show?

17 A. Also the 15th of February, 2001.

18 Q. All right. Thank you. And on or about that
19 time, do you have any recollection what was occurring before
20 the PSC on or about the 15th or 20th day, to be specific,
21 of -- pardon me -- 14th day of February of 2001?

22 A. I don't remember anything specific. I know at
23 that point we were -- we were in the process of getting the
24 rate case wrapped up. There was -- the Commission orders
25 were issued shortly after that, there was some tariff

1 filings going on. Other than the rate case related matters,
2 I don't recall anything.

3 Q. And that rate case related matters you're
4 talking about would have been litigation that was occurring
5 at or near the same time in the PSC?

6 A. If I could take a moment to --

7 Q. Certainly.

8 A. -- find a couple documents.

9 Q. Let me direct your attention, if you will, to
10 a report that -- an audit and I believe it's your close
11 of -- your deadline for submission of some data to the PSC.

12 A. From the standpoint of the rate case, the -- I
13 believe I mentioned this earlier, but I'll reiterate it.
14 The issue date of the Report and Order in the sewer case was
15 March 22nd, 2001. The issue date of the Report and Order in
16 the water case was March 29th.

17 So there was probably not a lot of hearing
18 activity going on, you know, in early February at the same
19 time, because these orders were -- you know, it takes some
20 time to produce them. So I don't recall anything particular
21 going on in February 2001.

22 Q. All right. Were you made aware at any time
23 during your audit procedure in that February or January that
24 the note was going to be entered into and filed of record at
25 Camden County for these attorney fees of Mr. Williams?

1 A. I was not made aware of that, no.

2 Q. And that's really what this future advance
3 deed of trust and security agreement that was filed that I
4 showed you, No. 7 and No. 8, the promissory note, attached
5 thereto, that's what this \$500,000 was all about, was
6 attorney fees, wasn't it?

7 A. That's my understanding, yes.

8 Q. Did Mr. Williams or OWC at any time prior to
9 the date of filing of this document known as a future
10 advance deed of trust, did he at any time ask your
11 consideration of \$500,000 worth of attorney fees to be
12 included in the rate base of OWC?

13 A. At the time that we were conducting the audit
14 for the rate cases, we were presented with information
15 regarding Mr. Williams' services to the company. At that
16 point in time, if I recall correctly, speaking in round
17 numbers, that number was around \$390,000.

18 The documents that we had and reviewed as part
19 of our audit in the rate case, it was not up to that level
20 yet, but if I remember correctly it was around \$390,000.
21 And we did review a substantial amount of information
22 regarding that as part of our rate case audit.

23 Q. And what was your Staff's conclusion in
24 regards to the \$390,000 request that was being made of you
25 concerning those attorney fees?

1 A. Well, as far as the final disposition of that
2 issue --
3 Q. I'll get to that in a minute.
4 A. Okay. The -- our review of that information,
5 we reached a conclusion that -- and, again, speaking in
6 terms of round numbers because I don't have the exact
7 numbers in front of me, we reached a conclusion that
8 approximately \$90,000 of the \$390,000 that we -- we felt it
9 was -- it would be justified to include that as one of the
10 many factors of the company's cost of providing service.
11 Q. All right. And that was based on all the
12 records that supported the \$390,000 that Mr. Williams had
13 submitted to you?
14 A. Correct.
15 Q. And, therefore, there was a disagreement
16 between Staff and Mr. Williams and Mr. Mitchell and OWC?
17 A. That's correct.
18 Q. Was there any form of compromise that was at
19 that time entered into on behalf of -- between the competing
20 parties?
21 A. That is one of the areas regarding the
22 disposition of the rate case that -- as I've put it
23 previously, that the company and the Staff agreed to
24 disagree on. And there was no resolution of that issue.
25 And I believe, as I mentioned earlier this

1 morning, in recognition of the fact that we -- we did
2 recognize that there were costs that should be included in
3 the rates.

4 Q. To-wit, the 90,000?

5 A. Yes. Even though we couldn't reach an
6 agreement on an exact number, we took the position that we
7 would basically set that issue aside, but as part of the
8 recognition that there were costs there to be recovered, we
9 agreed with the company to add \$1 a month per customer for
10 each service in recognition of the fact that there were
11 dollars out there that should be collected.

12 And basically what we did, we added \$1 to the
13 customer charge for each customer. And those monies, as
14 collected, were to be offset against the balances in those
15 two accounts until such time that an agreement or a
16 Commission determination was made on the amount of dollars
17 in those two accounts that should be recovered.

18 Q. So if I understand what you just characterized
19 your testimony to be, is that you could not arrive at an
20 agreement even by negotiations? You were 90,000 versus
21 \$390,000 in round terms, but you did try not to be unfair
22 and you tried to give Mr. Williams some relief at least for
23 the foreseeable future perhaps up to and including that
24 \$90,000. Would that be a correct assessment?

25 A. Yes.

1 Q. And it was to be determined in the future, the
2 exact dollar amount, upon further study by both this Staff
3 and the Commission?

4 A. The thought at the time was that this would be
5 an issue that would eventually be put before the Commission
6 for their determination, yes.

7 Q. All right. And it has never -- there's never
8 been a follow-up inquiry or rate proposal based on those by
9 Mr. Williams or OWC?

10 A. That's correct. There has not been another
11 rate increase request submitted by the company to where that
12 issue would normally be considered.

13 Q. Would you have thought that -- if you were
14 under consideration in January and February on these
15 matters, would you have thought that something like this
16 before the final audit came out -- wouldn't you have thought
17 that that future advance in the amount of \$500,000 that was
18 recorded in Camden County would have been presented to you
19 for your consideration of that?

20 A. Well, I think in general the issue was
21 presented to us and was considered as part of our rate
22 audit.

23 Q. And you rejected it?

24 A. It's just that the dollars had changed from
25 the time of our audit until February of 2001. That general

1 issue had been reviewed and discussed and considered as part
2 of the rate case.

3 Q. And --

4 A. The --

5 Q. -- as I understand it, rejected in the amount
6 of 390,000?

7 A. Well, there was not an agreement reached
8 between the company and the Staff as to what amount of that
9 390,000 should be included in the company's rates other than
10 \$1 a month customer charge.

11 Q. Right. Do you believe, in your opinion,
12 drawing upon your expertise in what you've -- in reviewing
13 these various utility companies over the years, do you
14 believe that a transfer of all the essential assets of a
15 company by a deed of trust should have been run by the Staff
16 and the Commission before such was entered into?

17 A. Yes.

18 Q. No doubt in your mind about that, is there?

19 A. No.

20 Q. And that was not done?

21 A. That's correct.

22 Q. Were you aware that simultaneous to that same
23 deed of trust, there was a question concerning the fees of
24 Mr. Mitchell that was also outstanding? Were you aware of
25 that?

1 A. No.

2 Q. No is the answer?

3 A. No, we were not.

4 Q. In fact, in the rate case Mr. Mitchell's fees,
5 whatever they were at the time, were not even brought up for
6 discussion?

7 A. They were not raised in a manner similar to
8 Mr. Williams' fees, that is correct. We did review, as part
9 of our overall audit, the expenses that the company incurred
10 for Mr. Mitchell's services from the standpoint of testing,
11 operation, whatever he was involved in at the time. From
12 the standpoint of having a similar compilation of unpaid
13 charges, if you will, presented to us regarding
14 Mr. Mitchell's services, we did not have that.

15 Q. Were you aware that Mitchell's claiming,
16 according to Exhibit 29, which is in evidence in this
17 matter -- I don't know if you've seen that yet. Have you?

18 A. I have not.

19 MR. LORAIN: May I approach the witness,
20 Judge?

21 JUDGE WOODRUFF: You may.

22 BY MR. LORAIN:

23 Q. Second item.

24 A. Okay.

25 Q. Second item there defines Mr. Mitchell's debts

1 to OWC in the approximate amount of I believe it says
2 \$360,000. Is that what that says?
3 A. Yes, it is.
4 Q. So were you aware of these kind of demands at
5 any time or even a lesser amount anywhere near that amount
6 that was owed from OWC to Mr. Mitchell in February of 2001?
7 A. No.
8 Q. Were you aware that Mr. Mitchell has two
9 companies that he works with, one called Jackson Engineering
10 and one called Water Lab Company? Are you aware of those?
11 A. Oh, yes. We're fully aware of those
12 companies.
13 Q. And I showed you down in circuit court in
14 Camden County two other future advance deeds. Do you
15 remember that?
16 A. Yes.
17 Q. And were they -- I'm going to show you, first
18 of all --
19 MR. LORAIN: Judge, I'd like to approach him.
20 JUDGE WOODRUFF: Certainly.
21 BY MR. LORAIN:
22 Q. I'd like to show you what's been shown as a
23 deed of -- future deed of trust that was dated -- what date
24 was that dated I'm showing you?
25 A. The 15th day of February, 2001.

1 Q. And that was used in the evidence at the
2 circuit court in Camden County under Exhibit 9A, wasn't it?
3 A. Yes.
4 Q. And what is that date that that was entered
5 into?
6 A. The court date?
7 Q. No. The date on the deed of trust.
8 A. Oh, February 15th, 2001.
9 Q. So that was the same day that Mr. Williams
10 filed his deed of trust?
11 A. That's the same day that they were executed,
12 yes.
13 Q. Okay. Executed. Sir, I'm going to show you
14 what was marked in the circuit court of Camden County as
15 Exhibit 9 and ask you if you've seen that before?
16 A. Yes.
17 Q. What was that all about?
18 A. It is also a future advance deed of trust and
19 security agreement dated again February 15th, 2001. This
20 one between Osage Water Company and Water Laboratory
21 Company, which is another of Mr. Mitchell's companies.
22 Q. So both of those, 9A and 9, that you're
23 showing there as marked in circuit court in Camden County,
24 both of those are future advance deeds of trust payable to
25 Mr. Mitchell's various corporations?

1 A. Yes. One to Jackson Engineering, Inc. and one
2 to Water Laboratory Company.

3 Q. All right. Were you aware, sir, at the rate
4 audit or any time before the Commission made their decision
5 in March of 2001 of the existence of either this future
6 advance deed of trust to Water Lab or the one to Jackson
7 Engineering?

8 A. I was not aware of those until you presented
9 them to me in the circuit court case in Camden County.

10 Q. All right.

11 A. We had heard that they existed, but that was
12 the first time that I'd actually seen the documents.

13 Q. Were you aware that this deed of trust --
14 future advance deed of trust that was the subject of the
15 foreclosure action in Camden County -- No. 7 there --

16 A. That's the one you took back.

17 Q. -- that we've described as Exhibit 7 in this
18 case, were you aware that that was subsequently conveyed or
19 transferred, assigned from Mr. Williams personally to
20 another company?

21 A. That's my understanding, yes.

22 Q. And I'm going to show you what has been marked
23 as Exhibit 24 in this matter. You probably haven't seen
24 that yet, but let me show you that. Have you seen that?

25 A. I have not seen this document before, no.

1 Q. All right. And what does it purport to be,
2 sir?

3 A. Assignment of note and deed of trust. And it
4 appears to be an assignment from Gregory D. Williams to
5 Environmental Utilities.

6 Q. What is the date on that?

7 A. If I'm reading the stamp correctly, it was
8 recorded August 15th, 2002.

9 Q. And what was occurring on or about August 15th
10 of 2002?

11 A. The -- Environmental Utilities was preparing
12 and did, in fact, then file their application before the
13 Commission regarding the foreclosure of the Osage assets.

14 Q. And what --

15 A. That --

16 Q. -- was the date on that?

17 A. That was docketed as Case No. WA-2003-0065.
18 It was transmitted by a letter dated August 16th, 2002. And
19 it was received and stamped filed here at the Commission on
20 August 23rd, 2002.

21 Q. A couple days after this assignment?

22 A. Correct.

23 Q. And you were not aware of that assignment of
24 that deed of trust either, were you?

25 A. No.

1 Q. Now, in reference to -- I've been over this
2 before and I'm going to try to do it briefly with you.

3 You are aware that the Commission and Staff
4 was aware of Mr. Hancock's debenture and it was recognized
5 as debt service expense and was made a part of the tariff
6 with OWC; is that true?

7 A. The payment that was due under the debenture
8 was recognized as part of the company's cost of service in
9 the rate proceeding and was one of the inputs to calculate
10 the company's cost of service, which in effect, means it is
11 inherent in the customer rates.

12 Q. And that was in the amount of \$1,000 a month
13 or \$12,000 a year towards the payment of that debenture?

14 A. That's correct.

15 Q. In other words, after that rate case,
16 Mr. Williams' corporation and Mr. Mitchell's corporation,
17 OWC, was allowed to charge customers towards the payment off
18 of Mr. Hancock in the amount of \$1,000 a month?

19 A. One of the components of the customer rates is
20 the \$1,000 per month.

21 Q. And to make it simple for the record, that
22 would be yes; is that correct?

23 A. Basically.

24 Q. Okay. And as to whether or not Mr. Williams
25 and Mr. Mitchell and OWC paid Mr. Hancock that \$1,000 a

1 month, you wouldn't know? At least at that time you
2 wouldn't know?

3 A. Well, we were aware of the fact that there --
4 at the time we were doing the audit, there were payments
5 being made under the debenture.

6 And, again, this was an area where we
7 basically agreed with the company to do something a little
8 different than normal. And basically what we did, rather
9 than include the plant that had been constructed by
10 Mr. Hancock in rate base, we agreed with the company that we
11 would include the \$1,000 payment under the debenture as a
12 separate cost of service item.

13 So we were aware that the payment requirement
14 was there and had -- and at that point in time at least, we
15 were aware that some payments had been made.

16 Q. And you were aware that the customer was being
17 charged that and the theory would have been that it would
18 have been paid out to Mr. Hancock?

19 A. That's the theory, correct.

20 Q. We've subsequently learned, have we not, that
21 that was not the case, that they were not paid \$1,000 a
22 month -- Mr. Hancock, do you know that?

23 A. That's my understanding, yes.

24 Q. And, in fact, that culminated in a judgment in
25 Camden County for non-payment. Do you recall that?

1 A. Yes.

2 Q. Do you agree that the basis of Mr. Hancock's
3 debenture was hired services provided to OWC? What I mean
4 by hired services, materials put in the ground, dug up and
5 that kind of capital expenditure.

6 A. It was related to construction of water mains,
7 yes.

8 Q. Okay. You have been requested -- or at least
9 your division here, your staff, has been requested to go out
10 and find the various assets of OWC. Do you have any
11 recollection of that?

12 A. I -- not the way you put it, no.

13 Q. Well, I'm sorry. I probably inartfully asked
14 that question. Do you know what I'm driving at?

15 A. Not really.

16 Q. All right. There was a Commission request
17 that these assets of OWC be discovered and listed by Staff.

18 A. Okay. Now I know what you're referring to.

19 Q. And what is that --

20 A. Yes.

21 Q. -- what was that called?

22 A. Well, the Commission issued an order in a
23 separate case regarding -- asking the Staff to provide
24 information regarding the company's service areas, regarding
25 the facilities that are located in those service areas and

1 certain other matters. And that culminated in the filing of
2 a Staff report in that case. I don't have those references
3 with me right now, but I can certainly get those at break
4 time and provide them to you.

5 Q. Would you be able to provide that along with
6 that e-mail at some point today before we adjourn?

7 A. Yes.

8 Q. Thank you.

9 Do you know, as you sit here, whether that
10 Staff report was ever completed?

11 A. Yes.

12 Q. And can you tell me what -- do you remember
13 what case that was in? And if you don't, you'll provide
14 them later so I just wanted to know if you knew.

15 A. I believe it's WO-2002-165. I'm not sure.
16 That's one of the things that I will confirm.

17 Q. All right. There was a question asked on
18 direct about the overcharges that occurred after July of
19 2001 for OWC's customers. Do you recall that testimony?

20 A. Yes.

21 Q. And that occurred after Debbie Williams took
22 over the management of that company, didn't it?

23 A. If I could refer back to a document here.

24 Q. Please.

25 A. Actually, the implementation of the rates that

1 came about as a result of the rate case, the overcharges
2 actually occurred May, June and July of 2001, which was
3 actually prior to the time that Ms. Williams became directly
4 involved.

5 Q. Or at least May and June was?

6 A. Yes.

7 Q. So there may have been some overlap in July?

8 A. About two weeks overlap.

9 Q. All right. Did Mrs. Williams add a new
10 dimension to the management team that you hadn't seen
11 before?

12 A. I believe she did, yes.

13 Q. And it was positive, wasn't it?

14 A. Yes, it was.

15 Q. Before that, how would you characterize the --
16 based on your supervision of OWC -- and let me ask you as a
17 prerequisite, how many years have you been supervising OWC
18 and their conduct with the PSC?

19 A. Well, I've been a manager of the Water and
20 Sewer Department for a little over seven years. And from
21 that standpoint, I have had direct involvement not only with
22 this company but all the water and sewer companies that we
23 regulate for that amount of time.

24 Q. And how would you characterize the management
25 problems that may or may not have existed with OWC?

1 A. Well, I think one of the things that we
2 experienced that did change once Mrs. Williams became
3 involved was a higher level of customer relations. She
4 seems to be -- and the people working with her, quite
5 honestly, seem to be much better at dealing with customers
6 than prior management.

7 And that was really one of the main complaints
8 we had from customers was -- was simply the customer
9 relations were very poor. And that is one example of
10 something that I can say, in my opinion, for certain has
11 improved.

12 Q. And how else would you characterize their past
13 management problems? Poor customer relations prior to
14 Debbie coming on. What else would you -- how would you
15 characterize it?

16 A. Oh, I think in general they had problems
17 similar to other small water and sewer companies.
18 Certainly, you know, they -- most of the companies or many
19 of the companies we regulate certainly have problems from
20 the standpoint of having the level of expertise that they
21 need on their staff. They have some lack of ability to go
22 out and -- and procure services for situations where they
23 don't have that expertise in-house.

24 And I really don't think their problems were
25 that abnormal overall. You can certainly point to, you

1 know, specific situations that -- that are evidence of those
2 problems, but they're not terribly unusual.

3 Q. Other small companies that would be similar to
4 OWC, did you ever see any kind of legal fees the way they
5 seem to amass them at OWC?

6 A. Generally speaking, no. But I think also
7 there are very few of the other small water and sewer
8 companies that we regulate that were in the business, if you
9 will, of expanding their service areas.

10 A great deal of the costs associated with the
11 legal services and even some of the engineering services
12 that Osage Water had were related to those certificate
13 cases. And that's not the norm with other small companies.

14 Q. You would call this company -- would you
15 characterize it as litigious?

16 A. Well, not particularly. I mean, the fact that
17 they're looking -- that they were looking to expand their
18 business and were required to file certificate cases doesn't
19 make them litigious, no.

20 Q. Let me ask you this question. When you did
21 review these legal fees, did you see time tickets and
22 billings?

23 A. Yes.

24 Q. And, as I understand it, you basically allowed
25 about 25 cents on the dollar? Roughly speaking, that's what

1 you were willing to accept after reviewing -- that's what
2 Staff was willing to accept after reviewing these bills?

3 A. At the point in time when we reviewed them
4 during the rate case process, that's correct.

5 Q. All right. I don't believe I have anything
6 further of you. I did ask you for two matters and did you
7 make a note of those?

8 A. I am right now, thank you.

9 MR. LORAIN: All right, sir. Thank you,
10 Judge.

11 JUDGE WOODRUFF: Thank you.

12 For Osage Water?

13 MR. WILLIAMS: Thank you, your Honor.

14 CROSS-EXAMINATION BY MR. WILLIAMS:

15 Q. Good afternoon, Mr. Johansen.

16 A. Good afternoon.

17 Q. Let's work backward from where Mr. Loraine
18 left off. With respect to legal fees incurred by a
19 regulated utility company, you would agree with me, would
20 you not, that some of those fees, as you've testified, would
21 be pertaining to certificate cases and would be capitalized
22 and allowable in rate base. Correct?

23 A. Correct.

24 Q. Some of the fees would pertain -- for example,
25 if the company had a lawsuit with an entity such as

1 Mr. Hancock to rectify a problem where he had tampered with
2 a meter and the company incurred expenses in court enforcing
3 its tariff rules, those would not be capitalized, they would
4 be expensed; is that correct?

5 A. Correct.

6 Q. And when you testified earlier that Staff's
7 position was that some \$90,000 was includable in rate base,
8 that doesn't mean it's not a legitimate company expense,
9 that's just what you would say is a capital expenditure?

10 A. My recollection of the review that we did,
11 that would be accurate.

12 Q. Okay.

13 A. We basically were looking at it at that point
14 in time with -- with the main intent of determining the rate
15 base factors.

16 Q. So when you say 90,000 was included, that was
17 what -- you said, well, those numbers we see the value as
18 being a capital expense that could be put in rates?

19 A. That could have been, yes.

20 Q. All right.

21 A. But the company did not agree to doing that.

22 Q. And at that point in time the company had
23 incurred significant expenses with respect to its Park View
24 Bay certificate area; is that correct?

25 A. I would imagine so, yes. I'm not remembering

1 the dates exactly, but that's probably true.

2 Q. And wasn't a part of the reason for setting
3 aside attorney's fees that no final decision had been
4 reached in that as to whether that would end up being
5 capitalized or expended?

6 A. No.

7 Q. No, you don't think that was part of it?

8 A. It wasn't on our part.

9 Q. Not from the Staff's part?

10 A. Right.

11 Q. At that point in time Staff had a position on
12 that issue?

13 A. At that point in time the issue wasn't
14 resolved so there wasn't anything to decide as far as what
15 costs would be included and what wouldn't.

16 Q. Okay. But you would agree at that point in
17 time that some of the legal expenses that you testified
18 about, \$390,000 would have been attributable to Park View
19 Bay litigation?

20 A. They probably were, yes.

21 Q. Okay. Now, does the Staff ever make a
22 determination whether or not a utility company owes an
23 obligation, or does it simply make a determination whether
24 those obligations are going to be included in rate base or
25 excluded from rate base?

1 A. Both.

2 Q. And when would you make a determination on
3 what a company owes?

4 A. Well, we look at expenses that the company has
5 incurred as part of our evaluation of determining what their
6 cost of service is. So if -- if there's not an expense that
7 has been incurred, there's nothing for us to consider for
8 inclusion, so --

9 Q. All right. Let me rephrase the question. If
10 the company's incurred an expense, does the Staff ever
11 decide that the company is not obligated to pay that expense
12 or does the Staff simply say you may have incurred it, but
13 it's not going in our rate analysis?

14 A. We certainly do the latter.

15 Q. All right.

16 A. Probably not the former.

17 Q. Very good. Mr. Johansen, you testified about
18 receiving an e-mail from me regarding the proposal to
19 foreclose on Osage Water Company. Correct?

20 A. Yes.

21 Q. Let me hand you a file stamped copy of the
22 answer in this case, direct your attention to Exhibit D1
23 attached thereto, ask you if that's that e-mail?

24 A. That's just what I was looking for on my copy
25 and I believe it is, yes.

1 Q. Very good. Do you have your copy there handy?

2 A. I have it. It's -- how handy it is is another

3 point. Yes, I do. Thanks.

4 Q. And, Mr. Johansen, would you agree with me

5 that prior to the time that you received this application,

6 there was a telephone conversation with you regarding

7 potential options on Osage Water Company, including a

8 foreclosure?

9 A. That's correct, yes.

10 Q. So that would have occurred prior to the date

11 of this, August 14th?

12 A. Correct.

13 Q. And would you read for the Commission the text

14 of the e-mail you received?

15 A. Yes. It says, Dale, attached is a draft of a

16 possible application to bring before the Commission approval

17 of the transfer of the assets of OWC by foreclosure with the

18 anticipated successful bidder being Environmental Utilities.

19 I am copying Keith Krueger and Ruth O'Neill for their input

20 and comment as well.

21 As we discussed in light of the recent MDNR

22 AGO lawsuit, which would be Department of Natural Resources

23 and Attorney General's office, against OWC for activities of

24 Pat Mitchell in Sedalia unrelated to the legitimate business

25 of OWC, it is probably past time to close out OWC and put

1 its problems behind all of us so that we can focus on
2 systems that work and resolving problems with them and
3 providing safe and adequate service to customers.

4 Obviously this isn't the type of transaction
5 that any of us have any experience with, so any comments,
6 suggestions or ideas would be welcome. GDW.

7 Q. Okay. Mr. Johansen, did you make any
8 comments, suggestions or ideas in response to that e-mail?

9 A. I don't believe that I had any further
10 correspondence or discussions with you between the time I
11 received it and the time the application was filed.

12 Q. Very good. Now, I believe you testified that
13 in the conversation prior to receiving that e-mail, there
14 was discussion about different options, there could be a
15 foreclosure, there could be a bankruptcy, there could be a
16 receivership?

17 A. Correct. Those are the three that I
18 specifically remember being discussed.

19 Q. Do you know of any other possible resolutions
20 for Osage Water Company's problems?

21 A. A sale of its assets outside any of those
22 three avenues.

23 Q. And you testified earlier that you believe
24 there's some people out there who would be interested in
25 buying the company's assets?

1 A. If not in total, at least part, yes.

2 Q. And who would those people be?

3 A. I specifically have been advised that the City
4 of Osage Beach is interested in the assets that are in and
5 around the city. You testified earlier in this case that
6 you'd been approached by I believe the Cedar Glen Homeowners
7 Association about purchasing that system.

8 You and Mr. Mitchell specifically discussed in
9 your January 8th, 2002 board meeting the fact that you were
10 going to split the company up and that you were going to buy
11 certain assets and that he was going to buy certain assets.
12 So those are the ones that come to mind.

13 Q. And, Mr. Johansen, have you had any
14 discussions with the City of Osage Beach or have you had any
15 indication that they will pay money for any of Osage Water
16 Company's assets?

17 A. I have not discussed anything to that level of
18 detail with them.

19 Q. Okay. You know they'd be glad to have them,
20 but you don't know if they'd pay for them. Is that where
21 you're at with them?

22 A. I've been advised they're interested in owning
23 them. That's the extent of the discussions I've had.

24 Q. All right. In the complaint -- did you
25 participate in preparation of the complaint itself?

1 A. Yes.

2 Q. Paragraph 45, if you would look at that with
3 me on page 16.

4 A. If I can find my copy, I'd be glad to.

5 MR. KRUEGER: Did you find it?

6 THE WITNESS: No. Thanks. I'm sorry. Which
7 paragraph?

8 BY MR. WILLIAMS:

9 Q. Paragraph 45, page 16.

10 A. Okay. I have that.

11 Q. In that paragraph Staff has alleged that
12 representatives of the City, various homeowner associations
13 and other entities have spoken to members of Staff about
14 either operating or purchasing the assets of the company
15 upon liquidation.

16 You've testified to the City, you've testified
17 that I testified to Cedar Glen, which would be a homeowners
18 association. Are there others, or was that simply not an
19 accurate statement in the complaint?

20 A. Well, from my perspective of the input to this
21 paragraph, what we've just discussed --

22 Q. That's everything you know?

23 A. -- that's everything I know of.

24 Q. Would there be someone else on Staff that
25 would know of other people?

1 A. I would not be surprised if that topic had
2 been raised to both Mr. Merciel and Mr. Hummel. I don't
3 know that it has. I would not be surprised.

4 Q. Did they participate also in preparation of
5 this complaint or was that your job?

6 A. They participated to some extent. Certainly
7 not to the extent I did. I don't recall personally asking
8 them for input to this -- this particular paragraph. They
9 were given the opportunity to review the whole document as
10 it was being prepared, so I would assume if they had input,
11 they would have provided it. I don't have personal
12 knowledge of that.

13 Q. All right. Now, Mr. Johansen, you testified
14 on direct that you have been in contact with a
15 representative of Missouri American Water Company with
16 respect to serving as a receiver in this matter?

17 A. Correct.

18 Q. Did you have any discussions as to what that
19 might cost?

20 A. No. We have not gone that far with them.

21 Q. Do you have any reason to think that it would
22 cost less than the operating costs that are currently being
23 incurred by the company?

24 A. I don't have any reason to believe it would be
25 more, less, the same or anything at this point. We simply

1 have not discussed that matter with them to be able to make
2 a determination on that issue.

3 Q. All right. Would you have any reason to
4 believe it would cost less than the current gross revenue of
5 the company for Missouri American to serve as receiver?

6 A. I don't know what the company's current gross
7 revenue is, so I don't know.

8 Q. Okay. So basically we have an unknown expense
9 that could be incurred if a receiver is appointed. Is that
10 where we're at at this point in time?

11 A. That's basically correct, yes.

12 Q. You would agree with me that Missouri American
13 is not anticipating to do this for free?

14 A. I would assume they're not planning on doing
15 it for free. They haven't told me that they won't.

16 Q. Okay. And would you agree with me that there
17 would be no advantage to the customers of the company or to
18 the company itself for a receiver to be appointed who's
19 operating cost is going to be substantially more than what
20 the company receives in revenues?

21 A. Well, if it would exceed the revenues, I think
22 that's obvious.

23 Q. Obviously it would not be to anybody's
24 advantage if that occurred?

25 A. Well, it wouldn't be to the receiver's

1 advantage because you can't get more than what's there, so
2 they would be operating at a loss. It wouldn't make any
3 sense for them to do it either.

4 Q. Let's explore that statement a little bit. If
5 the receiver were to incur operating costs in excess of
6 revenues and, subsequently liquidated assets, would it be
7 entitled to recover those excess expenses out of the
8 proceeds of sale?

9 A. I believe it would, yes.

10 Q. So that would decrease whatever net recovery
11 other creditors of Osage Water Company might otherwise
12 receive. Would you agree with that?

13 A. I believe it would, yes.

14 Q. Okay. And if the receiver for some reason
15 needed to operate the company for a long period of time,
16 would it be entitled to come into this Commission and ask
17 for an increase in rates to cover its operating expenses?

18 A. Yes.

19 Q. Has that happened before in receivership
20 proceedings?

21 A. Yes.

22 Q. And did the Commission approve those rate
23 increases?

24 A. I believe it did, yes.

25 Q. So potentially the appointment of a receiver

1 in the past has resulted in rate increases and could again
2 in this instance since we do not know what the receiver
3 might cost?

4 A. It could, yes.

5 Q. Any reason to think that it wouldn't?

6 A. No reason to think that it would.

7 Q. Well, answer my question first.

8 A. Is there reason to believe that that won't
9 happen?

10 Q. Yes.

11 A. I have -- I have -- yes.

12 Q. Okay. Tell us the reason.

13 A. I'm not sure that they can't operate it at the
14 current revenues. They may very well be able to go in there
15 and operate the company with the revenues that are
16 available. I'm not quite sure why that's not happening
17 today so I'm not quite sure why a receiver couldn't do it.

18 Q. Okay. Mr. Johansen, the company received its
19 approved rate increase when? Do you recall when the tariff
20 actually became effective?

21 A. The tariff on the sewer case became effective
22 April 1, 2001. The water tariff became effective July 26th,
23 2001.

24 Q. And, subsequently, the company was ordered to
25 credit customers back for the increase that it had received

1 for another three-month period; is that correct?

2 A. The company refunded charges that it collected
3 before the tariff was approved by the Commission. It wasn't
4 a situation where the refund had to do with any monies that
5 the company didn't collect. It had to do with monies that
6 the company collected prior to the tariff being approved.

7 Q. Mr. Johansen, does the company get a whole lot
8 more money under the new rates than it did under the old
9 ones, or do you know?

10 A. Based on the information that existed at the
11 time those rates were designed, they were designed to
12 increase the company's annual water operating revenues by a
13 little over \$54,000 and the company's sewer operating
14 revenues by about \$4,000.

15 Q. Mr. Johansen, are you familiar with the
16 Staff's accounting schedules from the rate case?

17 A. Yes.

18 Q. Do you have a copy of them with you?

19 A. I do not.

20 Q. All right. I'm going to hand you the --

21 MR. WILLIAMS: May I approach, your Honor?

22 JUDGE WOODRUFF: You may.

23 BY MR. WILLIAMS:

24 Q. And while you're looking at that, I also want
25 you to look at another document, which is the original

1 company request --

2 A. Okay.

3 Q. -- in the small company rate case. And I've

4 highlighted on that a particular statement. Are you

5 familiar with that original rate increase letter?

6 A. Yes.

7 Q. And would you tell the Commission what that

8 highlighted portion of that letter says?

9 A. Well, the paragraph that it's within is

10 talking about the reasons for the requested increase. And

11 the highlighted portion says, To allow for full and

12 part-time staff to be employed directly by the company

13 rather than provided on a contract basis from affiliates.

14 Q. And, Mr. Johansen, had that been a discussion

15 of a desirable operational change prior to the time that the

16 rate increase letter had been submitted to your office

17 between you and the company representatives?

18 A. I believe it was, yes.

19 Q. And looking at the accounting schedule,

20 Schedule 9-1 that's in that little red book you've got

21 there --

22 A. Okay.

23 Q. -- if you look down to line 12 on that, it has

24 several columns. It starts out with Water Testing, has a

25 dollar expenditure of \$17,626. Do you see that number?

1 A. I'm sorry. Which page are you on?

2 Q. Accounting Schedule 9-1. I believe it was the

3 page I had it flipped open to a moment ago.

4 A. Okay.

5 Q. See the line that starts out Water Testing?

6 A. Yes. Line 14.

7 Q. And would the number that's in Column B there,

8 the 17,626 reflect the company's 1999 expenditures for that

9 service?

10 A. I believe that's correct, yes. '99 was the

11 test year that we used.

12 Q. And that would have been expenditures incurred

13 principally to Water Laboratory Company for its services,

14 kind of the package deal in contract management?

15 A. Probably so, yes.

16 Q. And then in Column C there's an adjustment

17 negative 14,626. Correct?

18 A. Correct.

19 Q. And that would have been a decrease that says

20 there Total Company Adjustment. That would have been taken

21 out of what the company had actually incurred because the

22 company's going to hire its own employees. Correct?

23 A. To best answer that, if I could refer you back

24 in that document to accounting Schedule 10-1, which is

25 the -- that's the number that's at the bottom right-hand

1 corner of the page I'm looking at.

2 Q. Yes.

3 A. That's the summary of the adjustments.

4 Q. Yes.

5 A. That particular adjustment was adjustment S-2.

6 The description says as follows, Reduce water testing

7 expense to company's proposed amount.

8 Q. Correct.

9 A. Okay. That's --

10 Q. But you would agree that was because they're

11 no longer going to be a contract management with Water

12 Laboratory Company? It's not that the company was going to

13 quit doing water testing?

14 A. Right. I think that's probably correct.

15 Q. All right. Now, if you look up then on

16 line 3, Salaries O and M --

17 A. Yes.

18 Q. -- \$11,277?

19 A. Correct.

20 Q. That's what the company had incurred in 1999;

21 is that correct?

22 A. Probably.

23 Q. Now, we took money out because we're not

24 getting contract operators. Can you tell us where we put it

25 back in for the additional employees for the company?

1 A. Well, there's two areas here. The O and M
2 salaries is one of them. Quite honestly, I believe -- and
3 this is going on memory of a few years ago.

4 Q. Sure.

5 A. My recollection is that at that time there was
6 a transition basically that occurred to where the company
7 had, in fact, hired an operator. And my recollection,
8 again, is that the O and M salary as part of that
9 consideration was the fact that that person had been hired.
10 And that was different than the contractual arrangement that
11 had existed before.

12 Q. Okay. So you're saying that Column B is not
13 actual costs incurred by the company?

14 A. It is the booked costs as audited by the Staff
15 to reflect the ongoing expense related to that item, which
16 is based on historical experience. Now, whether it was the
17 fact that you had O and M expenses for the entire year or
18 whether it's the fact that we knew you had, in fact, hired
19 an O and M employee on December 1 and then we're recognizing
20 that and annualizing that going forward, that may very well
21 be the case. I do not recall.

22 Q. Well, if you would -- I apologize. I don't
23 have the exact same copy you do. If you would look with me
24 at these two schedules, one being in the water case and one
25 being in the sewer case.

1 A. Uh-huh.

2 Q. If, in fact, this column is the actual
3 expenditures, you'd agree with me it totals some \$133,000
4 expended on operations?

5 A. The total of Column B on the water income
6 statement schedule is 133,235, yes.

7 Q. And then the jurisdictional adjustment would
8 be the amount that the Commission Staff recommended be put
9 in the rates; is that correct?

10 A. That's reflective of the company and Staff
11 agreement on that issue, yes.

12 Q. Can you tell from those tables whether as much
13 was put in as had been previously incurred?

14 A. No.

15 Q. You don't know the answer to that?

16 A. I don't know.

17 Q. All right. Now, Mr. Johansen, do you consider
18 this complaint action to be a pretty serious matter?

19 A. Absolutely.

20 Q. And you would agree that it's very important
21 that the allegations of the complaint be true, accurate and
22 complete?

23 A. I do.

24 Q. Mr. Johansen, would you agree that
25 Mr. Mitchell continues to be an officer and director of

1 Osage Water Company?

2 A. Based on everything I've seen, I would agree
3 with that.

4 Q. Okay. Mr. Johansen, at the time this
5 complaint was prepared, would you agree that service to
6 Broadwater Bay subdivision had been restored and the
7 company's water pump and well was back in service?

8 A. At that time, yes.

9 Q. Would you agree with me that paragraph 9 of
10 the complaint does not advise the Commission that the water
11 pump is back in service?

12 A. Well, the last sentence says, The company
13 restored service after the Commission authorized general
14 counsel, so on and so forth. So it does say that the
15 company finally restored service.

16 Q. Okay. Do you think that it's sufficient basis
17 for the appointment of a receiver that interruption in
18 service occurred for a period of time?

19 A. Not that isolated incident, no.

20 Q. Okay. And with respect to paragraph 10 of the
21 complaint, it goes on at length about the water well and the
22 wholesale agreement between Environmental Utilities and
23 Osage Water Company. At the time you prepared this
24 complaint, had you seen a wholesale water agreement between
25 the two entities?

1 A. I had seen an agreement. I have not seen one
2 that has been approved by the Commission.

3 Q. But one has been submitted to the Commission?

4 A. It has been submitted. It has not been
5 approved.

6 Q. Okay. Do you have any reason to believe that
7 it would not be approved based on solely the terms of the
8 agreement?

9 A. Prior to the --

10 MR. LORAIN: Judge, I'm going to object to
11 that. That calls for a legal conclusion. That's a matter
12 pending before the Public Service Commission and it's the
13 subject of a heated debate.

14 JUDGE WOODRUFF: I'm going to sustain the
15 objection.

16 BY MR. WILLIAMS:

17 Q. Has Staff taken a position with respect to
18 whether that agreement should be approved with respect to
19 the terms of the agreement?

20 A. We have.

21 Q. And what position would that be?

22 A. The agreement as initially submitted, we
23 recommended that it not be approved.

24 Q. And the --

25 A. There have been amendments made to the

1 agreement. And I believe actually a copy of the amended
2 agreement was recently attached to a pleading in the
3 reference case. Our opinion is that the amendments made to
4 the agreement satisfy our concerns expressed in the original
5 recommendation. We have not formally filed a recommendation
6 yet, but --

7 Q. Well, if the Commission approved that
8 agreement, would it resolve the concerns that Staff has
9 expressed in paragraph 10 of the complaint?

10 A. It would result in water service being
11 available on a long-term basis. The fact that -- it
12 wouldn't resolve the fact that it's taken so long to get to
13 where they should have been a long time ago.

14 Q. Okay. But would it resolve the issues raised
15 in paragraph 10 of the complaint?

16 A. It would not resolve the issue of the fact
17 that it's taken two and a half years to get to where they
18 should have been two and a half years ago. It gets to the
19 point where there is water service supply, yes.

20 Q. Time is your concern?

21 A. Absolutely.

22 Q. All right. In paragraph 11 of the complaint,
23 you make reference to the formal complaint in Case
24 No. WR-2001-195?

25 A. Yes.

1 Q. Why didn't you tell the Commission that that
2 had been settled on terms satisfactory to the Staff?

3 A. Well, the record in the case is the record in
4 the case and it's there.

5 Q. You find it significant to -- it's important
6 to advise the Commission of complaints without telling the
7 Commission that they've been resolved?

8 A. I think, as I mentioned early this morning,
9 the important thing about that complaint was the fact that
10 we had to file it to start with. The fact that it was
11 resolved through mediation and to the satisfaction of both
12 parties is a matter of record.

13 Q. I see. Mr. Johansen, is it your opinion that
14 Environmental Utilities is a competing utility with Osage
15 Water Company?

16 A. I think to some degree it is, but from the
17 standpoint of proposing to provide like services in like
18 service areas, it is not.

19 Q. That would be impossible without the
20 Commission approving it; isn't that correct?

21 A. In theory, yes.

22 Q. Okay. So you would agree that -- and it has
23 not requested nor, to your knowledge, is it providing
24 competing services in the same area; is that true?

25 A. That's correct.

1 Q. So it really doesn't compete with Osage Water
2 Company?
3 A. From that aspect of competition, it does not.
4 Q. And with respect to potential competition for
5 future customers in other areas, that would be really not
6 competition in business, but competition for Commission
7 approval, wouldn't it?
8 A. It would be competition for business subject
9 to Commission approval.
10 Q. So it would be up to the Commission to decide
11 we're going to pick A or we're going to pick B or we're
12 going to let them both serve; isn't that --
13 A. Correct.
14 Q. Mr. Johansen, what customer or customers of
15 Osage Water Company are in imminent danger of losing their
16 water or sewer service?
17 A. I'm not aware of any today.
18 Q. Were you aware of any on October 7th of 2002?
19 A. I personally wasn't, no.
20 Q. Do you know any other member of Staff who was
21 or who might have such knowledge and participated in the
22 participation of the complaint in this action and not
23 conveyed that knowledge to you?
24 A. The people that I am aware of that were
25 directly involved in preparing the complaint were

1 Mr. Krueger, Ms. Kizito, myself, Jim Merciel and Martin
2 Hummel.

3 I don't have, as I mentioned, any personal
4 knowledge. Regarding the question you asked, whether they
5 have personal knowledge or not is their personal knowledge.

6 MR. WILLIAMS: I don't believe I have any
7 further questions, your Honor.

8 JUDGE WOODRUFF: All right. It's time to come
9 up for questions from the Bench, but we'll take a break
10 before we do that.

11 MR. LORAIN: Your Honor, just as a matter of
12 procedure, I have a short witness in rebuttal. I don't know
13 what the Court's plans are going to be, but he's from the
14 DNR and he won't be very long. I mean, short, you know --
15 short in time, duration. And I asked Mr. Krueger if I could
16 take him temporarily out of order for that person's
17 convenience. He has requested that. I would ask the Court
18 to consider that issue.

19 JUDGE WOODRUFF: I will certainly consider
20 that. And I want to ask the parties in general as well what
21 is left in this case. How many witnesses are we facing and
22 is there any prospect of finishing it today? Mr. Krueger,
23 how many more witnesses do you have?

24 MR. KRUEGER: The Staff plans to call one more
25 witness, Pat Mitchell. I don't think it will take a long

1 time for him to testify, but I've consistently misjudged
2 that in this case.

3 JUDGE WOODRUFF: Okay. And Public Counsel?

4 MS. O'NEILL: Your Honor, we have one witness,
5 Kim Bolin and I expect that that will not -- that her
6 testimony will not take a long time.

7 JUDGE WOODRUFF: For Hancock?

8 MR. LORAIN: Judge, I have Mr. Hancock, which
9 I don't believe will be very long. I have Mr. Jones, who
10 I've just talked with you about, which will be a very short
11 in duration witness. Expert Witness Cochran will be --
12 might be on a little while on direct, but last time he
13 testified nobody asked him any questions on cross, so I
14 don't know.

15 JUDGE WOODRUFF: Okay. And then Mr. Mitchell
16 will be testifying for Staff already.

17 And for Osage Water?

18 MR. WILLIAMS: Your Honor, I'm certain
19 Mr. Mitchell will be testifying for the company. We may or
20 may not cover his testimony while he's on the stand for
21 Staff.

22 I have not heard all of the evidence in this
23 case. I may have Rebuttal Testimony beyond that that I have
24 not yet identified. I would have potential of calling
25 Mr. Jeffery Smith, recalling Debra Williams to the stand and

1 potential of calling Chris Koram to the stand.

2 JUDGE WOODRUFF: Well, that sounds like a lot
3 to do in the next two hours.

4 MR. WILLIAMS: I don't think there's any
5 reasonable likelihood you're going to get it done in the
6 next two days.

7 JUDGE WOODRUFF: As I understand it, there's
8 already a conflict for tomorrow. Looking at the
9 Commission's calendar, next Wednesday, Thursday and Friday
10 are available. And during the break, if you'd discuss
11 amongst yourselves and let me know what days you all will be
12 available. We are now adjourned until 3:15.

13 (A RECESS WAS TAKEN.)

14 JUDGE WOODRUFF: Did you have any discussion
15 about dates for tomorrow?

16 MR. KRUEGER: We did. Not very successful,
17 I'm afraid.

18 JUDGE WOODRUFF: Okay. What do we have?

19 MR. WILLIAMS: I don't think anyone has any
20 dates next week, your Honor.

21 JUDGE WOODRUFF: Okay. I know the 14th, 15th
22 and 19th are also available.

23 MS. O'NEILL: I'm available on the 14th and
24 15th. I'm not sure about the 19th. I have a hearing
25 sketched in, but I'm not sure what it is, so I don't know if

1 it's still on.

2 JUDGE WOODRUFF: Okay.

3 MS. O'NEILL: But the 14th and 15th I have.

4 MR. KRUEGER: I would be available on those

5 dates.

6 MR. WILLIAMS: Your Honor, I'm available on

7 the 14th and 15th, but not the 19th.

8 JUDGE WOODRUFF: Mr. Loraine, are you

9 available?

10 MR. LORAIN: No.

11 JUDGE WOODRUFF: You're not available?

12 MR. LORAIN: I have no idea, your Honor. I'd

13 have to get back with you tomorrow. If you all can get two

14 dates together, I'd be happy to try, but I don't know. I

15 did not bring my calendar.

16 JUDGE WOODRUFF: Okay. Well, then there's the

17 other matter of taking Mr. Loraine's witness out of order.

18 I propose we go ahead and do that now if he's available.

19 MR. LORAIN: He's here.

20 JUDGE WOODRUFF: Mr. Johansen, you can go

21 ahead and have a seat in the back for awhile and we'll bring

22 this other witness up.

23 MR. JOHANSEN: I need to get all my stuff from

24 up here, so it doesn't confuse him.

25 JUDGE WOODRUFF: Certainly.

1 (Witness sworn.)
2 JUDGE WOODRUFF: You may be seated.
3 MR. LORAINE: May it please the court, your
4 Honor.
5 JUDGE WOODRUFF: Pardon me?
6 MR. LORAINE: May it please the court.
7 JUDGE WOODRUFF: Yes.
8 STEVE JONES, having been sworn, testified as follows:
9 DIRECT EXAMINATION BY MR. LORAINE:
10 Q. Sir, for the record would you please state
11 your name.
12 A. Steve Jones, J-o-n-e-s.
13 Q. Mr. Jones, you're employed with the Public
14 Drinking Water as unit chief with the DNR; is that true?
15 A. No, I'm not. I'm currently employed as an
16 environmental engineer with the Public Drinking Water
17 Program in charge of the state revolving fund.
18 Q. All righty. Were you employed in the capacity
19 I indicated to you May 13th of 2002?
20 A. Yes.
21 Q. And at that time, sir, you were -- I believe
22 you had some correspondence with Mr. Williams and some
23 discussions with Mr. Greg Williams and your reference was
24 Golden Glade water systems. Do you know what I'm talking
25 about?

1 A. Yes, I do.

2 Q. And there's been an exhibit I showed you

3 before coming in here. It's marked as Exhibit No. 11.

4 MR. LORAIN: May I approach the witness,

5 Judge?

6 JUDGE WOODRUFF: You certainly may.

7 BY MR. LORAIN:

8 Q. You've had an opportunity to review that prior

9 to coming in here?

10 A. Yes, I have.

11 Q. And what was your purpose in writing this

12 letter to Mr. Williams, sir?

13 A. That particular correspondence was follow-up

14 to a telephone conversation with Mr. Williams that he said

15 he had one of the wells in Eagle Woods water system that was

16 out of service and he was under emergency operating

17 conditions where he needed to hook on to Golden Glade water

18 in order to serve his customers over on Eagle Woods side.

19 Q. All right. And the sole purpose of this was

20 for that purpose and that purpose alone?

21 A. Right.

22 Q. Was it your understanding that when the Golden

23 Glade -- pardon me -- when the well was in repair, that he

24 would otherwise comply with the state's regulations? Was

25 that your understanding?

1 A. Well, the understanding was that he would
2 repair the well and return Eagle Woods to a multi-family
3 operated water system.

4 Q. And take it off the Golden Glade well?

5 A. Right. Or either submit documentation for
6 approval for remaining hooked on to the Golden Glade water
7 system.

8 Q. And that would have been following the
9 regulations of the state of Missouri --

10 A. Right.

11 Q. -- DNR and PSC?

12 A. Right.

13 Q. You didn't, by any means, mean to surpland the
14 process that goes on at the Public Service Commission by
15 this letter, did you?

16 A. No.

17 Q. And, in fact, all you were doing is responding
18 to an emergency phone recall --

19 A. Right.

20 Q. -- call to you?

21 A. Right.

22 MR. LORAIN: I have nothing further of this
23 witness, Judge.

24 JUDGE WOODRUFF: Okay. Then for
25 cross-examination we'll begin with Staff.

1 MR. KRUEGER: No questions, your Honor.
2 JUDGE WOODRUFF: For Public Counsel?
3 MS. O'NEILL: No questions, your Honor.
4 JUDGE WOODRUFF: For Osage?
5 MR. WILLIAMS: Thank you, your Honor.
6 CROSS-EXAMINATION BY MR. WILLIAMS:
7 Q. Good afternoon, Mr. Jones. You have a copy of
8 this letter with you?
9 A. I --
10 Q. Or read it recently?
11 A. I've just read it.
12 Q. You would agree that this letter was actually
13 written some time after the emergency interruption of
14 service occurred?
15 A. I believe. I believe so, yes.
16 Q. And in paragraph 2 of that letter you
17 establish certain conditions that the department wanted to
18 have complied with in order for a permanent connection
19 between Eagle Woods and Golden Glade to remain in place; is
20 that correct?
21 A. That is correct.
22 Q. To your knowledge, did the company submit
23 engineering plans and specifications regarding Eagle Woods?
24 A. They did submit documentations regarding Eagle
25 Woods.

1 Q. And that was received by your department?

2 A. Yes.

3 MR. WILLIAMS: I have no further questions.

4 JUDGE WOODRUFF: And I have no questions from

5 the Bench, so there will be no recross.

6 Any redirect?

7 MR. LORAIN: Yes, Judge.

8 REDIRECT EXAMINATION BY MR. LORAIN:

9 Q. That means that that was put in -- that

10 portion of that letter was put in there so there's no

11 mistake that he had to follow state regulations if this

12 emergency condition wasn't resolved immediately?

13 A. That -- that's right. If Mr. Williams wanted

14 to pursue permanent connections, he would have to pursue

15 approval to remain connected. And that's the documentations

16 he submitted.

17 Q. And no question in your mind that he has not

18 received any permission from your agency to have a permanent

19 connection there?

20 A. That is correct. It's still under review.

21 MR. LORAIN: Thank you.

22 JUDGE WOODRUFF: Thank you. And, Mr. Jones,

23 thank you for coming. You can step down. You are excused.

24 MR. LORAIN: May he be excused then, Judge?

25 JUDGE WOODRUFF: Yes.

1 MR. LORAIN: Thank you, Mr. Jones.

2 JUDGE WOODRUFF: All right. Let's bring

3 Mr. Johansen back to the Bench -- or excuse me, back to the

4 box.

5 DALE JOHANSEN, having been previously sworn, testified as

6 follows:

7 QUESTIONS BY JUDGE WOODRUFF:

8 Q. And I do have some questions --

9 A. Okay.

10 Q. -- from the Bench. Has there been any

11 interest at all that you've been aware of anyone buying the

12 company as a whole and operating all of its units?

13 A. Not to my knowledge, no.

14 Q. Okay. Missouri American is not interested in

15 that?

16 A. Mr. Abernathy has indicated to me that they

17 have had some discussions about that, but he has not gone so

18 far as to say that they are seriously considering that.

19 Q. Is that because some of the units are

20 profitable and other units are not?

21 A. I really can't speak to that. I don't know.

22 Q. Okay. So it sounds like from your perspective

23 then a break up of the company's operating units would be

24 necessary?

25 A. Well, I don't know that it would -- it would

1 be necessary if it came to the point where the company's
2 assets were actually for sale formally. I certainly think
3 that is a possibility, yes.

4 Q. Okay. Is there a possibility that if the
5 assets are broken up in that way, that the profitable pieces
6 will be purchased by viable operators? Is there a danger
7 that some systems will be orphaned, that no one will want to
8 buy them?

9 A. Well, that's certainly a concern that the
10 Staff would have. And I think, as I mentioned earlier, the
11 preference would be to see the assets sold as a whole.
12 Simply -- and one of the reasons for it is the very purpose
13 of that question.

14 Q. What would you expect a receiver to do in that
15 situation where profitable assets are gone, unprofitable
16 left? They'd have to continue operating at a loss?

17 A. That would certainly be a possibility, or they
18 would have to be disposed of at a -- at a loss or liquidated
19 at a loss.

20 Q. And how do you liquidate it? I mean,
21 obviously customers are still going to want to get water and
22 sewer service.

23 A. Correct. That's -- that's a definite serious
24 problem and a possibility. And that's -- you know, that's
25 one of the reasons we would certainly prefer to see that it

1 would be sold in total.

2 Q. Okay. Now, if a receiver were to come in and
3 take over the operations of Osage Water, they would take
4 over those operations still subject to all the debts of
5 Osage Water, would they not?

6 A. The debts would not go away, that's correct.
7 Basically, what a receiver would do is come in and operate
8 the company in place of the current owners and they would
9 operate under the same rate structure that currently exists.

10 There would not be a resolution of any of the
11 outstanding debts, as I understand it, until such time that
12 the assets were, in fact, liquidated. And at that point the
13 debts would be satisfied to the extent they could be from
14 the liquidation.

15 Q. The receiver could face the prospect of
16 multiple lawsuits then, is that correct, from various
17 creditors attempting to make collection?

18 A. I -- I assume they would be subject to that,
19 but I'm really not sure because they would be acting under
20 direction of the court. And I -- I really don't know, you
21 know, how that might play out.

22 Q. Okay. And presumably then they could have
23 legal costs of their own to be incurred on behalf of the
24 company?

25 A. That's a possibility, yes.

1 JUDGE WOODRUFF: Okay. Okay. I don't believe
2 I have any other questions, so we'll go to recross based on
3 questions from the Bench. And beginning with Public
4 Counsel?

5 MS. O'NEILL: Thank you.

6 RECROSS-EXAMINATION BY MS. O'NEILL:

7 Q. Mr. Johansen, does the receivership statute
8 have any requirement in it that potential buyers for
9 liquidated assets be identified before a receiver can be
10 sought, to your knowledge?

11 A. Before a receiver can be sought?

12 Q. Can even be sought?

13 A. No, I don't believe it does.

14 Q. And certainly, as you've previously testified,
15 any sale of the assets of the company, whether it's the
16 company as a going concern or parcels of service territories
17 would have to be approved by the Commission. Correct?

18 A. That's my understanding, yes.

19 Q. And the Commission would have the same
20 standards it has for any other transaction like that?

21 A. I would assume so, yes.

22 MS. O'NEILL: No further questions.

23 JUDGE WOODRUFF: For Hancock?

24 MR. LORAIN: One question.

25 RECROSS-EXAMINATION BY MR. LORAIN:

1 Q. Have you ever heard of a proceeding called an
2 interpleader proceeding, sir?

3 A. No.

4 MR. LORAIN: All right. I can't ask him any
5 more questions then, Judge.

6 JUDGE WOODRUFF: Okay. And for Osage?

7 MR. WILLIAMS: Thank you, your Honor.

8 RE CROSS-EXAMINATION BY MR. WILLIAMS:

9 Q. Mr. Johansen, do you have your copy of the
10 complaint there?

11 A. I -- yes, somewhere.

12 Q. Would you --

13 A. I do.

14 Q. Would you look with me on page 10, paragraphs
15 22 and 23?

16 A. I have that.

17 Q. Would you agree with me that Staff has taken
18 the position in this case that Osage Water Company retains
19 the legal authority to liquidate its own assets and wind up
20 its affairs?

21 MR. KRUEGER: Your Honor, I'd object to this.
22 I don't believe it was covered by any questions from the
23 Bench.

24 JUDGE WOODRUFF: I'm going to overrule the
25 objection.

1 THE WITNESS: It -- I don't know of anything
2 that would keep it from doing that at this point.

3 BY MR. WILLIAMS:

4 Q. So appointing a receiver to liquidate would
5 not give the receiver any powers that the company doesn't
6 already have; is that correct?

7 A. Basically, yes.

8 Q. It would just mean that somebody else is doing
9 it. And if this Commission were to decide that the best
10 interest of the public were to be served by Osage Water
11 Company being liquidated through sale of its assets, it
12 could simply order the company to do that, couldn't it?

13 A. I'm not sure if it could or not, honestly.

14 Q. But if the company indicated it was willing to
15 wind up its affairs and liquidate its assets and that's
16 essentially what the Staff contemplates would happen in a
17 receivership, there's no reason why the Commission shouldn't
18 just tell the company to go ahead and do that, is there?

19 A. Well, as I said, I'm not sure the Commission
20 has the authority to direct the owners of the company to
21 sell its assets.

22 Q. Okay. But my question was, if the company
23 asks the Commission for authority to liquidate its assets,
24 is there any reason why the Commission couldn't just
25 authorize the company to do that as opposed to appointing a

1 receiver through a circuit court proceeding to do the same
2 thing?

3 A. Oh, there's -- if there was an application
4 before the Commission on behalf of the company to do that,
5 the Commission could certainly act on that application. And
6 that would potentially be an option to going through the
7 full receivership process and achieving the same thing.

8 MR. WILLIAMS: Then, your Honor, for the
9 record, the company would advise the Commission that it
10 would be its desired request that if this Commission should
11 decide that the liquidation of its assets is something that
12 is desirable and in the public interest, the company would
13 request the Commission to direct the company to liquidate
14 its own assets as opposed to appointing a receiver.

15 MR. LORAIN: Furthermore, Judge, for the
16 record, if we're making statements, Mr. Hancock would be
17 happy to liquidate the corporation if that's chosen to do so
18 and he'd be happy to do it under the supervision and
19 direction of the PSC.

20 JUDGE WOODRUFF: And he's speaking as a
21 shareholder of the corporation?

22 MR. LORAIN: A debtor and preferred
23 shareholder. He is not a common shareholder.

24 JUDGE WOODRUFF: I understand.

25 MR. LORAIN: Yes. And he is the second

1 largest debtor, I believe.

2 JUDGE WOODRUFF: Okay. Any redirect then?

3 MR. KRUEGER: Yes, your Honor. Thank you.

4 REDIRECT EXAMINATION BY MR. KRUEGER:

5 Q. You testified about the small company rate
6 increase case. Do you recall that testimony?

7 A. Yes.

8 Q. And you said that the settlement agreement was
9 designed to produce an increase in water revenues of \$54,000
10 so; is that correct?

11 A. Correct.

12 Q. And an increase in sewer revenues of about
13 \$4,000?

14 A. Correct.

15 Q. So that would be a total increase in revenues
16 of about \$58,000 per year?

17 A. That's correct.

18 Q. Which is roughly \$5,000 per month?

19 A. Correct.

20 Q. Did you hear Mrs. Williams testify that the
21 company's revenues now are approximately \$15,000 per month?

22 A. I do not recall that, no.

23 Q. Okay. Do you know what the company's current
24 revenues are?

25 A. I do not.

1 Q. And do you know what the revenues were prior
2 to the rate increase case?

3 A. The accounting schedules that I was referring
4 to earlier would show what the company's annualized revenues
5 were based on that test year. What that number is, I don't
6 recall right off the top of my head.

7 Q. Do you know approximately how much of a
8 percentage increase in the company's revenues resulted from
9 the settlement of this rate case?

10 A. I may have that number. The -- on the sewer
11 operation, the Disposition Agreement reflects that the
12 increase of \$3,960 is approximately 8.77 percent increase in
13 the annual sewer operating revenues.

14 And for the water system, the Disposition
15 Agreement reflects that the increase is approximately --
16 well, as stated in the agreement, was approximately
17 116.35 percent. That number is actually -- would be a
18 little bit different than that because of the increase that
19 was -- that was actually approved, but it would be probably
20 still somewhere in the area of 110 percent.

21 Q. Thank you.

22 Mr. Williams asked you some questions about
23 some accounting schedules that he showed me -- he showed
24 you. I did not see them, but I want to ask you a couple of
25 questions about that. In order to -- the accounting

1 schedules that he showed you, was one of them pertaining to
2 water operations and the other for sewer operations?

3 A. I believe he showed me both, yes.

4 Q. So in order to determine the total effect on
5 the company, you'd have to look at both of those together;
6 is that right?

7 A. Yes.

8 Q. So a dollar that was spent for some purpose
9 would not show up on both schedules, but it would be on one
10 or the other?

11 A. It -- I believe it would be on one or the
12 other, yes.

13 Q. Do you know if the accounting schedules that
14 he showed you and that you discussed with him were the final
15 accounting schedules on which the settlement of that case
16 was based?

17 A. I believe they were. They appeared to be
18 copies of the accounting schedules that were, in fact, filed
19 by the Staff in the case.

20 Q. With regard to the wholesale agreement --

21 A. Yes.

22 Q. -- between Environmental Utilities and Osage
23 Water Company, you have seen that agreement?

24 A. Yes.

25 Q. And it has been submitted to the Staff?

1 A. The original agreement was actually filed in
2 the case as part of the case papers by the company.
3 Subsequently, there has been a modification to that
4 agreement. That was provided to the parties at the
5 pre-hearing conference about a week or so, maybe two weeks
6 ago now. And, subsequently, that modification was attached
7 to a pleading and filed in the case.

8 Q. Mr. Williams asked you some questions about
9 the contents of the complaint. Do you understand that the
10 complaint is not evidence in this case?

11 A. That's my understanding, yes.

12 Q. Do you know if the complaint was verified?

13 A. Based on what I consider verified, the way I
14 file -- if I file pre-filed testimony with an affidavit,
15 which makes it a verified document, I don't believe it was.

16 Q. Just as the company's answer is not evidence
17 and is not verified; is that correct?

18 A. That's correct.

19 Q. It's just a pleading?

20 A. Correct.

21 Q. Nonetheless, did you attempt in helping to
22 prepare this complaint to make it as accurate as possible?

23 A. Certainly.

24 Q. But the evidence in this case is presented in
25 this hearing?

1 A. That's correct.

2 Q. Has the complaint been offered as evidence in
3 this case?

4 MR. WILLIAMS: Your Honor, I'm going to object
5 to counsel, in essence, making some kind of argument on the
6 record through a question and answer session with this
7 witness. This is not a factual inquiry that he's making.
8 It appears to be more designed to elicit a position
9 statement of some sort.

10 JUDGE WOODRUFF: Mr. Loraine?

11 MR. LORAIN: Judge, he's entitled to ask
12 questions off of the complaint just like Mr. Williams is.
13 There's nothing wrong with introducing pleadings into the
14 evidence and discussing them.

15 MR. KRUEGER: The question is whether the
16 complaint has been offered as an exhibit in this case.
17 That's a factual question. It's the only question before
18 the Commission at this time. And I will inform the
19 Commission that this is the last question along this line
20 that I have.

21 JUDGE WOODRUFF: I'm going to overrule the
22 objection. You can answer the question.

23 THE WITNESS: I don't believe it has.

24 BY MR. KRUEGER:

25 Q. Did you hear the testimony of Martin Hummel

1 this morning in regard to the services that the company
2 provides?

3 A. Most of it, yes.

4 Q. Did you hear him testify about the operating
5 conditions of the company's facilities?

6 A. Yes.

7 Q. And did he testify about whether the operating
8 conditions of the facilities placed at risk the company's
9 ability to continue to provide safe and adequate service to
10 its customers?

11 A. I believe he did, yes.

12 MR. KRUEGER: Thank you. That's all the
13 questions I have, your Honor.

14 JUDGE WOODRUFF: All right. And,
15 Mr. Johansen, you may step down.

16 And, Staff, you can call your next witness.

17 MR. KRUEGER: Pat Mitchell.

18 MR. LORAIN: Judge, a procedural matter. I
19 had asked Mr. Hancock subject to recall to provide me with a
20 document --

21 JUDGE WOODRUFF: You mean Mr. Johansen?

22 MR. LORAIN: I'm sorry. Yes. If it's here,
23 if we can mark them, I won't go through talking with him
24 anymore. I just want to mark them.

25 JUDGE WOODRUFF: Come on forward and we'll

1 mark those documents then.

2 MR. LORAIN: Thank you, Judge. Your Honor,
3 what are the next two numbers, please?

4 JUDGE WOODRUFF: 33 and 34.

5 MR. LORAIN: Your Honor, for the record, I
6 would move for the admission of Exhibit 33, which is the
7 e-mail and the response that Mr. Johansen made reference to.

8 And Exhibit 34 is the third Staff report,
9 which we talked about. And Mr. Johansen said he did refer
10 to the wrong case number and that the proper case number is
11 2002-163.

12 With those matters, I would move for the
13 admission of 33 and 34 into evidence. And I do not have any
14 other copies. I just was handed one.

15 JUDGE WOODRUFF: You can provide copies later.

16 MR. LORAIN: Thank you.

17 MS. O'NEILL: Can I see the proposed exhibits,
18 please?

19 MR. LORAIN: Your Honor, for the record, I
20 would be moving for those admissions as soon as counsel is
21 done with them.

22 JUDGE WOODRUFF: Yes.

23 MS. O'NEILL: We have no objection, your
24 Honor.

25 JUDGE WOODRUFF: All right.

1 MS. O'NEILL: We would like copies provided.
2 JUDGE WOODRUFF: Certainly. Exhibits 33 and
3 34 have been offered into evidence and there's been no
4 objection. They will be received into evidence and if you'd
5 provide us with copies as soon as possible.
6 (EXHIBIT NOS. 33 AND 34 WERE MARKED FOR
7 IDENTIFICATION AND RECEIVED INTO EVIDENCE.)
8 (Witness sworn.)
9 JUDGE WOODRUFF: You may be seated and you may
10 inquire.
11 MR. KRUEGER: Thank you, your Honor.
12 WILLIAM P. MITCHELL, having been sworn, testified as
13 follows:
14 DIRECT EXAMINATION BY MR. KRUEGER:
15 Q. Good afternoon, Mr. Mitchell.
16 A. Good afternoon.
17 Q. State your name and address for the record,
18 please.
19 A. My name is William P. Mitchell. My mailing
20 address is P.O. Box 816, Linn Creek 65052.
21 Q. Are you the person that has been referred to
22 from time to time during this hearing as Pat Mitchell?
23 A. Yes.
24 Q. Are you a shareholder of Osage Water Company?
25 A. Yes.

1 Q. What kind of stock do you own?
2 A. Common and preferred.
3 Q. How much of that -- which of that stock is
4 voting stock?
5 A. Common.
6 Q. How much voting -- how much common stock do
7 you own?
8 A. Half.
9 Q. 50 percent of the voting stock?
10 A. Yes.
11 Q. And the other 50 percent being owned by
12 Mr. Williams?
13 A. Yes.
14 Q. Are you an officer of the company?
15 A. Yes.
16 Q. What office do you hold?
17 A. President.
18 Q. How long have you been president?
19 A. Since January this year.
20 Q. January 2002?
21 A. I believe so, yes.
22 Q. And what are your duties as president?
23 A. Generally, the duties of the president of the
24 corporation have always been to preside over the meetings
25 and deal with issues outside the corporation; in other

1 words, acquiring new customers as -- or new territories and
2 that sort of issues. Does not really deal with the
3 day-to-day operation of the system.

4 Q. Where are those duties delineated? Is it in
5 the bylaws or in some other documents?

6 A. No. It's just a tradition. It's just the way
7 the company's always been operated.

8 Q. By agreement among the shareholders?

9 A. Agreement among the board and the
10 shareholders, yes.

11 Q. Are there any other officers of the company?

12 A. Not at the present time.

13 Q. Are you a director of the company?

14 A. Yes.

15 Q. How long have you been a director of the
16 company?

17 A. Since its inception.

18 Q. In 1987, I believe?

19 A. I believe.

20 Q. Are there other directors?

21 A. Not at the present time.

22 Q. Were you the president of the company on
23 July 7th, 2001?

24 A. Yes.

25 Q. What were your duties to the company at that

1 time?

2 A. As well as being the president, I was also the
3 president of Water Laboratory Company who owned the
4 operational maintenance contract for the company. And Water
5 Laboratory Company performed all the operational maintenance
6 duties. I was also a licensed operator for the company,
7 both water and sewer.

8 Q. Did you have any responsibilities with regard
9 to billing customers?

10 A. That was part of the operational maintenance
11 that Water Laboratory performed for the company, yes.

12 Q. And paying bills?

13 A. Yes.

14 Q. Maintaining the company's systems?

15 A. Yes.

16 Q. Any other duties?

17 A. Chief cook and bottle washer.

18 Q. So when you say "chief cook and bottle
19 washer," I assume you mean you were doing many of the
20 day-to-day functions of the company?

21 A. Pretty much.

22 Q. Did the company have employees at that time?

23 A. No.

24 Q. No employees?

25 A. None.

1 Q. Since that time, does the company have
2 employees?
3 A. Yes.
4 Q. Do your duties involve supervision of those
5 employees?
6 A. No.
7 Q. How does the company verify whether these
8 employees are discharging their duties to the company? Is
9 there somebody that they report to?
10 A. Debbie Williams.
11 Q. The employees report to Debbie Williams?
12 A. Yes.
13 Q. And what is the source of Debbie Williams'
14 authority?
15 A. She works for -- today she works for
16 Environmental Utilities, who is the contract operator for
17 Osage Water Company.
18 Q. And she has no duties to Osage Water Company?
19 A. She's not an officer or director.
20 Q. Does she have any duties at all?
21 A. She administrates the contract that -- for
22 Environmental Utilities that is in effect with Osage Water
23 Company.
24 Q. Does anyone have any duties to Osage Water
25 Company to perform what Osage Water Company has to do other

1 than the duties that you described that you have as
2 president?

3 A. I don't understand the question.

4 Q. You testified about the duties that you have
5 to Osage Water Company as president, which I understand were
6 to preside at meetings --

7 A. Uh-huh.

8 Q. -- and to conduct affairs with outside parties
9 such as in the acquisition of territories and so forth --

10 A. Uh-huh.

11 Q. -- but you're not responsible for day-to-day
12 operation?

13 A. Right.

14 Q. Is there anybody else in the company that has
15 any duties to do anything on behalf of Osage Water Company?

16 A. All of the day-to-day operations are
17 administrated by contract. And a part of one of the duties
18 of the president is to administrate the contracts, be
19 something that's done with an outside party.

20 Q. So everything that's done day-to-day is done
21 by an outside party through a contract?

22 A. At this point, yes.

23 Q. And your only duty with regard to that is to
24 administer that?

25 A. Right. I volunteer, you know, help if there's

1 extraordinary circumstance and they need some -- some prior
2 knowledge that I have on a system that might be special to
3 help them out. I'm not bashful about volunteering that, but
4 it's -- there's no set routine or anything where I supervise
5 the day-to-day operation of the system.

6 Q. So you provide services when asked?

7 A. Right.

8 Q. But you don't routinely do anything for the
9 company other than preside at the meetings?

10 A. Represent the corporation in legal
11 proceedings.

12 Q. You're not an attorney though, are you?

13 A. That's correct.

14 Q. Okay.

15 A. I can't do both.

16 Q. Did you hear Mrs. Williams' testimony last
17 week on Thursday at the hearing here?

18 A. I believe so.

19 Q. You were present at the hearing?

20 A. On Thursday I was, yeah.

21 Q. And did you hear her testify that you
22 deposited the company's records at the office of Mr. and
23 Mrs. Williams on July 7th of 2001?

24 A. That's correct.

25 Q. And did you do that?

1 A. You bet.

2 Q. With a note that said, I believe, I'm tired
3 and broke, you want all the assets, you get the headaches?

4 A. That was a small piece of the two-page letter,
5 yes.

6 Q. Was it two pages or one page?

7 A. I believe there was two pages. There wasn't a
8 whole lot on the second page, but there was a paragraph on
9 the second page.

10 Q. Okay. Did you do that as part of an agreement
11 with Osage Water Company, return these documents to the
12 Williamses? Was that part of an agreement?

13 A. I don't understand the question.

14 Q. Did you agree with Osage Water Company that
15 you would deliver these documents to the Williamses at that
16 time?

17 A. Did I agree with Osage Water Company?

18 Q. Had you talked with Osage Water Company about
19 dumping the --

20 A. I was doing the operational maintenance and
21 was the president. So did I ask myself if I was going to
22 dump the documents on the attorney's front door?

23 Q. Were you the only officer at that time?

24 A. No. There was -- Debbie Williams was the
25 secretary. I did call the Williamses and ask for an

1 appointment, said I would be up shortly after lunch. They
2 said they would be there. I got there, nobody was there. I
3 left the records.

4 Q. So did you have the authority at that time to
5 act on behalf of Osage Water Company?

6 A. I was acting on behalf of Water Laboratory
7 Company. Water Laboratory Company rescinded its operational
8 maintenance contract, which includes storage of all the
9 records. I delivered the records to the secretary of the
10 corporation.

11 Q. So is it your testimony that you individually
12 did not have any duties to Osage Water Company at that time
13 prior to July 7th?

14 A. I don't understand the question.

15 Q. I understood that you said that you returned
16 these records on behalf of Water Laboratory; is that right?

17 A. Water Laboratory Company did not want to store
18 the records any longer.

19 Q. Is that the only function that Water
20 Laboratory was providing with regard to these records,
21 storage?

22 A. No. It generated quite a few of the records.

23 Q. Okay. Did you personally have any obligation
24 with regard to the record keeping?

25 A. Me, personally?

1 Q. You personally as distinguished from Water
2 Laboratory.
3 A. Or Osage Water Company?
4 Q. I'm asking whether you had a duty at that time
5 personally to do anything to keep and maintain these records
6 of Osage Water Company?
7 A. Are you asking me as the president of the
8 corporation or are you asking me personally?
9 Q. I'm asking whether you had an obligation --
10 whether you, William P. Mitchell, had an obligation to keep
11 and maintain records for Osage Water Company prior to the
12 time that you delivered them to the Williams' office in any
13 capacity as --
14 A. Did I --
15 Q. Whether you had the obligation in any
16 capacity, but I'm not asking whether Water Laboratory did.
17 Just whether you personally had the obligation.
18 A. The corporation has an obligation to keep its
19 own records.
20 Q. And who discharges that obligation?
21 A. The corporation decides amongst itself on how
22 to comply with the various requirements to keep records.
23 Q. And what decision did the corporation decide
24 among itself to do on July 7th?
25 A. What did the corporation decide to do?

1 Q. Yes.

2 A. The corporation didn't have a meeting on

3 July 7th.

4 Q. Well, you said that the corporation decides

5 among itself how to discharge its duties to maintain

6 records. And I'm asking whether a decision was made about

7 that on or prior to July 7th?

8 A. Well, Water Laboratory Company had been

9 keeping the records for the corporation -- some of the

10 records. Some of the records were kept in Mr. Williams'

11 office. Corporate minutes and all that sort of stuff was

12 all there. And Water Laboratory Company returned the

13 records that it had in its possession to the corporate

14 office of record.

15 Q. And did Osage Water Company ever agree to have

16 the records returned in this way?

17 A. I don't understand the question.

18 Q. Was this just something that you did on your

19 own because you were fed up?

20 A. It's something that I did as president of the

21 Water Laboratory Company.

22 Q. Because Water Laboratory was fed up?

23 A. No. It was broke.

24 Q. Did you have any expectation at that time how

25 the records would be kept and maintained after you delivered

1 them to the Williams' office?

2 A. I -- I expected the Williams to be there and
3 that the corporate office would accept the records.

4 Q. And who was the corporate office then?

5 A. It's -- the secretary was maintaining an
6 office. That's where the official address of the company
7 was kept with the Secretary of State.

8 Q. A moment ago I asked you a question about
9 whether you had any agreement with Osage Water Company and
10 you said, Did I agree with myself. I understood that to
11 mean that you thought that you were Osage Water Company
12 because you were the president. Was that not so?

13 A. The corporation does not vest with any one
14 person.

15 Q. Does it invest -- does it vest in anybody?

16 A. No. It's operated by people, but it is a
17 person just like anybody else.

18 Q. Who is it operated by?

19 A. Officers and directors.

20 Q. And on July 7th, 2001, who was it operated
21 by -- prior to July 7th?

22 A. Water Laboratory Company was doing the
23 operational maintenance of the facilities, also doing the
24 billing work for the corporation.

25 Q. After July 7th?

1 A. After July 7th, the corporation was doing its
2 own operational maintenance and billing as directed by
3 Mrs. Williams.

4 Q. Did you talk to Mrs. Williams about that?

5 A. On the morning of July 7th, I requested a
6 meeting. She declined to attend.

7 Q. So you left the records at their office
8 assuming that it was their problem then?

9 A. There was no assumption on my part.

10 Q. Meaning?

11 A. The Water Laboratory Company was all done.

12 Q. And so were you?

13 A. If you'll read the letter that I left, I did
14 not resign the presidency or my directorship, but I was no
15 longer going to work as an operator for Osage Water Company.

16 Q. You were willing to continue to serve as
17 president as long as it didn't require you to do anything?

18 A. The duties of the president are much more
19 limited than that of the operational maintenance or the --
20 or supervision thereof. That's probably 99 percent of all
21 the work a utility company does. That's -- there's only one
22 person that runs Missouri American, but there's thousands of
23 employees that do the operational maintenance.

24 Q. But who did you expect to do the operational
25 maintenance on July 8th?

1 A. I expected Water Laboratory Company to not do
2 the operational maintenance on July the 8th.

3 Q. Who did you expect to do it?

4 A. I expected the corporation to do its own
5 operational maintenance or to hire a different contract
6 operator.

7 Q. Did you hear Mrs. Williams' testimony that
8 between July 7th of 2001 and January 7th of 2002, you took
9 no part in managing Osage Water Company?

10 A. I heard that, yes.

11 Q. Do you agree with that?

12 A. There was a meeting in August. After that,
13 there was no official duties that I was aware of that needed
14 to be done. I had no contacts with people on the outside
15 that were looking for new sewer service in areas or water
16 service until the annual meeting in January.

17 Q. So you think the only thing you needed to do
18 for Osage Water Company was to attend that one meeting?

19 A. I would assume that Mrs. Williams would tell
20 me if there was something else that -- that came to her
21 attention that, as an officer of the company, that I needed
22 to turn my attention to. Besides, I've been on call
23 24 hours a day, 7 days a week for 15 years and I was due
24 just a little vacation time.

25 Q. Did you hear Mrs. Williams testify that she

1 and Mr. Williams do not want to associate with you?

2 A. I heard that, yes.

3 Q. Does that make it difficult to operate Osage

4 Water Company?

5 A. I don't operate Osage Water Company.

6 Q. Are you doing anything on behalf of Osage

7 Water Company now?

8 A. I'm here today.

9 Q. Pursuant to subpoena?

10 A. Yes, you did subpoena me, but I was coming

11 anyway. Too good of entertainment.

12 Q. Do you have -- do you want to associate with

13 Mr. and Mrs. Williams?

14 A. We have different philosophies in -- on

15 several areas of business that it -- it is just not fun

16 anymore.

17 Q. Can I record that as a no? Do you want to

18 associate with Mr. and Mrs. Williams?

19 A. That's a pretty blanket broad statement, and I

20 wouldn't go quite that far.

21 Q. How far would you go? How far are you willing

22 to associate with Mr. and Mrs. Williams?

23 A. We do water testing for systems that they're

24 associated with, companies that they own. There are other

25 situations where I might be interested in Mr. Williams'

1 advice that were completely outside the Osage Water Company,
2 Environmental Utilities field, hypothetically speaking.
3 That sort of thing.

4 Q. Okay. Am I correct to understand that you
5 don't want to associate with them together in any business
6 venture where you work together as distinguished from a
7 contractual relationship?

8 A. This particular business arrangement we both
9 have some differing objectives and interests that have some
10 conflict to them, so that it's not easy to come to agreement
11 all the time on what needs to be done.

12 Q. Do you find that the fact that you and
13 Mr. Williams each own 50 percent of the stock to be an
14 impediment to the company carrying out its business?

15 A. Well, that's true in any situation where you
16 have two equal owners that are at 50 percent. It's -- it --
17 it's tough to get a -- there's no such thing as a majority
18 decision. It's either unanimous or not at all. So when
19 it's unanimous it's great, but when it's not, it's not.

20 It would be similar -- if you get into some
21 things, areas that are gray or where somebody has some
22 vested interest outside the company, then it becomes more of
23 a tug of war problem.

24 Q. So you sometimes disagree?

25 A. Well, we're two different people.

1 Q. And do you disagree on what is necessary to
2 provide safe and adequate service for your customers?

3 A. Sometimes.

4 Q. Do you discuss what's necessary to provide
5 safe and adequate service for your customers?

6 A. Of course.

7 Q. Is Osage Water Company able to pay its bills?

8 A. It's not able to pay incurred costs from
9 before the last rate increase on many legal construction or
10 operation expenses that it incurred.

11 Q. What do you mean by "incurred costs"?

12 A. Well, it cost money to do business before the
13 rate increase just as much as it cost to do it after the
14 rate increase. And it costs money to do things. There was
15 not money available to do that with generated by the company
16 itself. So somebody from outside the company either had to
17 pay the expense for the company or do the work for the
18 company in exchange for a future payment.

19 Q. Does the company need additional cash in order
20 to do its job properly?

21 A. You can always do a better job with more cash.
22 There are things that can be -- you can hire people with
23 more experience, you know, who are going to need more salary
24 to attract that sort of a person to the job. You can always
25 have physically more people so that you can go out to

1 24 hour a day, 365 day operation. You're able to cover the
2 off hours in a more timely fashion. So there -- it's not a
3 black and white issue, but shades of gray.

4 Q. Does the company need additional cash in order
5 to provide safe and adequate service?

6 A. Today?

7 Q. Yes.

8 A. It's barely safe and barely adequate.

9 Q. Are the company's customers at risk of not
10 being able to continue to receive safe and adequate service?

11 A. Well, the New Madrid earthquake could happen
12 any time and disrupt all the pipes in central Missouri and
13 that's one scenario that's a possibility. So they're always
14 at risk of losing service.

15 There's no insurance available for earthquakes
16 and buried pipes. The company has the best insurance it can
17 for any kind of a disaster that might happen, but there are
18 still some situations in small systems that are -- have a
19 negative cash flow and a short life span with competitors
20 over building them where there may not be enough capital
21 available -- fresh capital available for the company to
22 repair the system if it breaks.

23 And all the systems have moving parts, so
24 there's an isolated chance that, yes, something might
25 happen, but I wouldn't expect it on a normal day-to-day type

1 of problem.

2 Q. You testified that the company's facilities
3 are barely safe. And in what respect are they barely safe?

4 A. Well, there's -- Mr. Hummel testified that he
5 would like to see more operator involvement, more operator
6 time. So would I. The money's not in the budget for it.
7 It's not there.

8 Even consuming all the depreciation and all of
9 the budget amounts for the capital return to the
10 shareholders, the O and M, you know, is just holding its own
11 and could use some -- some other back-up. I mean, it could
12 use some inventory and things like this that it has to
13 struggle to get sometimes.

14 Q. Does the condition of the company's facilities
15 place the customers at risk of not being able to continue to
16 receive safe and adequate service?

17 A. There's things that could be done to make some
18 of the facilities safer. Most of those are facilities that
19 are within the city limits of Osage Beach. And due to the
20 short time frame, it's difficult to do the capital recovery
21 into a capital investment into any of that stuff.

22 Q. I believe you testified that you need more
23 money to get adequate operators or operators --

24 A. I would like to see more operators of a higher
25 skill level employed.

1 Q. And you testified that you're unable to do
2 that because of cash constraints; is that correct?

3 A. That's correct.

4 Q. Does the company require now an infusion of
5 capital to provide the service that you would like to see?

6 A. Capital's not -- you know, it's been my
7 experience that, you know, if you expend the money for
8 expenses, it's not a capital improvement. Therefore, if you
9 put capital into the company and buy more operators with it,
10 the Staff won't allow it in the rates, it's not going to
11 help anything other than you might get a rate increase some
12 time in the distant future, at which time the company will
13 go broke again waiting for it.

14 Q. Okay. I'm not interested now in what the
15 Staff of the Commission will allow. I'm interested in
16 knowing whether additional cash is required in order to
17 operate the company the way you think it needs to be
18 operated.

19 A. If the rates were raised so that the long-term
20 cash flow would allow hiring of another operator, that would
21 increase the safety and reliability of the systems.

22 Q. But if the rates aren't raised, you are not
23 willing to take those actions; is that right?

24 A. I don't have the wherewithal to invest money
25 into the company to wait for some future return that might

1 not happen.

2 Q. Mrs. Williams testified that the company needs
3 a cash infusion in order to survive. Would you agree with
4 that statement?

5 A. That's a different question. And a cash
6 infusion would allow it to reorganize its debts and convert
7 some of that to capital, which may allow the company to
8 survive.

9 Q. Are you willing to infuse any cash into the
10 company?

11 A. I don't have any. There's a difference.

12 Q. Do you know of anyone else who is willing to
13 infuse additional cash into the company?

14 A. No.

15 Q. Is the company willing to borrow money in
16 order to improve its operations?

17 A. Yes.

18 Q. Are you making attempts to borrow money?

19 A. We have in the past. I haven't recently.
20 It's tough to do when you're in a proceeding such as this.

21 Q. Does Osage Water Company owe you money?

22 A. Yes.

23 Q. Do you know approximately --

24 A. Through my particular companies.

25 Q. That being Water Lab and Jackson Engineering?

1 A. Yes.

2 Q. Do you know the amount that is owed to Water
3 Lab?

4 A. Not exactly.

5 Q. Can you tell me approximately?

6 A. The face value of the note that was presented
7 here, plus I believe there's another note for 110,000 to
8 Water Laboratory Company. I did not look up the amounts
9 before the hearing today.

10 Q. And to Jackson Engineering?

11 A. There's the face value of a note. Those notes
12 were effective as of, what, February 2001. There's some
13 small additional amounts in both accounts after that, but
14 not much -- not enough to amount to much.

15 Q. The company gave you those notes in
16 February of 2001?

17 A. That's correct.

18 Q. And also gave you a deed of trust at that
19 time?

20 A. That's correct.

21 Q. And did you seek approval of the Commission
22 for that deed of trust?

23 A. No.

24 MR. KRUEGER: I'd like to have an exhibit --
25 it's already been marked. I'm sorry.

1 JUDGE WOODRUFF: Okay.

2 MR. KRUEGER: May I approach the witness, your
3 Honor?

4 JUDGE WOODRUFF: You may.

5 BY MR. KRUEGER:

6 Q. I'd like to show you Exhibit 30 -- what's been
7 marked as Exhibit 30 and ask if you're familiar with this
8 document?

9 A. Yes.

10 Q. That appears to be actually two different
11 documents. The first one is three pages stapled together
12 entitled Operation and Maintenance Agreement and Contract
13 for Wholesale Water Purchase; is that right?

14 A. That's what it says.

15 Q. Okay. And at the top there is stamped the
16 word "draft" correct?

17 A. That's correct.

18 Q. Is that document signed?

19 A. No.

20 Q. Has it ever been signed as a --

21 A. Absolutely not.

22 Q. Okay. Now, the second document then is just a
23 one-page document. Correct?

24 A. Yes.

25 Q. And that's entitled Operation and Maintenance

1 Agreement?

2 A. That's what it says.

3 Q. I'd ask you to read to yourself, you don't

4 have to read it aloud, the provisions of paragraph 1.

5 A. Okay.

6 Q. May I see it so I can ask a question? Am I

7 correct to say that that basically just appoints -- by the

8 terms of that paragraph, Osage Water Company appoints

9 Environmental Utilities to do certain things?

10 A. That's correct.

11 Q. And now look at paragraph 3 of the document.

12 A. Yes.

13 Q. And that paragraph basically says that either

14 party can terminate the agreement at any time. Correct?

15 A. That's correct.

16 Q. Okay. Now, the longest paragraph there is

17 paragraph 2. I'd ask you to read that, please.

18 A. Just to myself or out loud?

19 Q. To yourself is fine.

20 A. I've read it.

21 Q. Okay. Am I correct to understand that that

22 states that Environmental Utilities is authorized to do

23 certain things?

24 A. Yes.

25 Q. My question is, does that paragraph require

1 Environmental Utilities to do anything?

2 A. No.

3 Q. Is there anything in there that requires

4 Environmental Utilities to do anything?

5 A. It becomes the agent of the company.

6 Paragraph 1 appoints it as an agent of the company.

7 Q. Does that require them to do anything?

8 A. Agency does connote fiduciary duty between

9 the two parties.

10 Q. To do what?

11 A. Operate, maintain and repair water and sewer

12 utility systems.

13 Q. Okay. So it's your testimony that this

14 requires Environmental Utilities to do that --

15 A. Yes.

16 Q. -- operate and maintain utility systems?

17 A. Yes.

18 Q. Okay. And that document is signed by you on

19 behalf of Osage Water Company?

20 A. Yes.

21 Q. And by Mrs. Williams on behalf of

22 Environmental Utilities?

23 A. That's correct.

24 Q. And the first agreement was -- tell me how

25 that document came to be prepared. I'm sorry, the draft,

1 the three-page document.

2 A. Mr. Williams prepared an O and M agreement,
3 operation and management, when the foreclosure was
4 contemplated and filed.

5 There was going to be a period of time where
6 operation of systems may be uncertain and it was my express
7 interest to make sure that the customers always had secure
8 operational maintenance of the systems and requested a O and
9 M contract with Environmental Utilities that would allow for
10 operational maintenance of the systems. The first -- this
11 draft was the first one that I got and I refused it.

12 Q. That was unsatisfactory to you?

13 A. Yes.

14 Q. And so the second document then was prepared,
15 which was satisfactory to you, and you signed it?

16 A. Right. I had marked up the first one and made
17 some suggestions and we had faxed back and forth and this
18 was the one I ended up signing.

19 Q. And the terms of the second document are
20 entirely satisfactory to you?

21 A. Well, it was as satisfactory as I was going to
22 get in the short time frame negotiating.

23 Q. Does Osage Water Company have a bank account?

24 A. Not to my knowledge.

25 Q. Why not?

1 A. Mr. Hancock would take all the money out of
2 it.
3 Q. Trying to keep the money out of the hands of
4 creditors?
5 A. Yes.
6 MR. KRUEGER: Okay. That's all the questions
7 I have, your Honor.
8 JUDGE WOODRUFF: All right.
9 MR. KRUEGER: I would like to offer
10 Exhibit 30.
11 JUDGE WOODRUFF: Exhibit 30 has been offered
12 by Staff. Is there any objection to its receipt?
13 MS. O'NEILL: I don't have an objection, but
14 for clarification is that the signed operation and
15 maintenance agreement and the draft agreement both?
16 JUDGE WOODRUFF: That's what was offered
17 before.
18 MR. KRUEGER: That's what my intention was.
19 MS. O'NEILL: Thank you.
20 JUDGE WOODRUFF: All right. Hearing no
21 objections, it will be received into evidence.
22 (EXHIBIT NO. 30 WAS RECEIVED INTO EVIDENCE.)
23 JUDGE WOODRUFF: And for cross-examination
24 we'll begin with the Office of Public Counsel.
25 MS. O'NEILL: Thank you.

1 CROSS-EXAMINATION BY MS. O'NEILL:
2 Q. Good afternoon, Mr. Mitchell.
3 A. Good afternoon.
4 Q. As far as you know, does Osage Water Company
5 currently have any employees?
6 A. No. I think as of September or so, it
7 probably doesn't have any official employees.
8 Q. Okay. You don't know for sure though?
9 A. I'm not positive. I believe all the employees
10 now officially work for Environmental Utilities.
11 Q. Because you don't get involved in the
12 management of the company anymore?
13 A. Because the company doesn't have any employees
14 and operates with an operational maintenance contract like
15 it has, except for about a year and a half, since its
16 inception.
17 Q. But you wouldn't have personal knowledge
18 because you don't participate in the management of Osage
19 Water Company anymore. Correct?
20 A. It never has been the president's job to
21 supervise.
22 Q. I didn't ask you what the president's job was,
23 sir. I asked whether you were currently involved in the
24 management of Osage Water Company?
25 A. I'm involved in the management Osage Water

1 Company, but I'm not involved in the supervision of
2 employees.

3 Q. You're not currently managing the company, are
4 you?

5 A. I'm not currently doing day-to-day operation.

6 Q. You are not managing the company?

7 MR. WILLIAMS: Asked and answered.

8 THE WITNESS: I have to disagree with that.

9 BY MS. O'NEILL:

10 Q. You disagree with that?

11 A. Yes.

12 Q. You testified that your duties were to
13 administer contracts?

14 A. Yes.

15 Q. And other than the operation and maintenance
16 agreement that's just been admitted as Exhibit 30, are you
17 currently administering any other contracts for Osage Water
18 Company?

19 A. No. We did a couple last month for the City
20 of Osage Beach, but -- for temporary water supply and a
21 couple different of those.

22 Q. Let's talk about that. That had to do with
23 the Broadwater Bay water pump, didn't it?

24 A. That's correct.

25 Q. And at the time that the pump broke for

1 Broadwater Bay, there was a temporary contract for 10 days
2 service?

3 A. That's correct.

4 Q. From the City of Osage Beach?

5 A. Yes. That's as long as we could get from the
6 City on the initial --

7 Q. Is that how long you sought from the City
8 initially?

9 A. That got them a couple days past their next
10 board meeting and that was all that the city administrator
11 was comfortable with doing.

12 Q. When you got 10 days worth of temporary
13 service from the City of Osage Beach, did you undertake any
14 management duties or other duties on behalf of Osage Water
15 Company to make sure that that pump was back in service by
16 the time that 10-day period had ended?

17 A. I spoke with a couple well drillers, I spoke
18 with Jeff Smith about some of the problems that were there,
19 I spoke with Jim Merciel, I spoke with Martin Hummel, I
20 spoke with Mrs. Williams and Mr. Williams daily. I
21 recommended some other well drillers, that's how we got to
22 Flynn. Usual stuff.

23 Q. At the end of the 10-day period, had the pump
24 been repaired?

25 A. Not to my knowledge.

1 Q. At the end of the 10-day period, Osage Beach
2 was no longer supplying water to your customers; is that
3 correct?

4 A. They turned the water off.

5 Q. And the water was off for several days before
6 Osage Water Company was able to come to terms to have the
7 water turned back on; is that correct?

8 A. No. The contract we signed was the same one
9 they offered when they -- before they turned it off
10 actually.

11 Q. So is your answer that the water wasn't off
12 for several days?

13 A. No. I didn't say that.

14 Q. The water --

15 A. You said the -- that we came to terms. The
16 City offered a contract that we agreed and signed several
17 days after they turned the water off, but they offered the
18 contract before we turned the water off but it was on terms
19 the company couldn't accept.

20 Q. Osage Water Company did not accept those terms
21 until the water had been off to their customers for several
22 days; is that correct?

23 A. That's correct.

24 Q. During those days were your customers at
25 Broadwater Bay receiving any service at all?

1 A. No.

2 Q. So they weren't getting safe service or
3 adequate service?

4 A. That would be correct. They weren't getting
5 any unsafe service though either.

6 Q. No service --

7 A. They were getting no service.

8 Q. No service is not adequate, is it?

9 A. It's not adequate, but it's not unsafe.

10 Q. Well, we'll not get into that discussion.
11 How's that sound?

12 You indicated that basically what you did last
13 July -- well, July of 2001 -- I'm a little bit confused
14 because the testimony's been a bit contradictory here. You
15 thought that you made an appointment with Mrs. Williams on
16 July 6th or 7th?

17 A. Yes.

18 Q. And how did you make that appointment?

19 A. By phone.

20 Q. Did you talk to her?

21 A. Yep.

22 Q. In person? I mean her actual voice, not an
23 answering machine?

24 A. Yes.

25 Q. She was home?

1 A. She was at the office.

2 Q. She was at the office. Okay. You called the
3 office number?

4 A. Yes.

5 Q. It's not a cell phone?

6 A. I don't remember whether I talked to her on
7 the cell phone or on -- I don't know her cell phone number.
8 I'm sure it was at the office.

9 Q. Did she say she was going to meet you that
10 day?

11 A. Yes.

12 Q. Did you pick a time?

13 A. Yes.

14 Q. What time?

15 A. Shortly after lunch. It was going to be 1:00
16 or 1:15 something like that.

17 Q. And when you got there, nobody was at the
18 office?

19 A. That's correct. It was a Friday after-- or
20 Thursday afternoon, day after a holiday -- day or two after
21 a holiday.

22 Q. Nobody was at the office?

23 A. No.

24 Q. Was the door locked?

25 A. You bet.

1 Q. Let me show you what's in evidence as
2 Exhibit 6. Do you recognize what's depicted in the two
3 pictures on Exhibit 6?
4 A. Looks like boxes of paper to me.
5 Q. Look like familiar boxes to you?
6 A. Could be.
7 Q. Do those look like the boxes of records you
8 left on the porch at the Williams' law firm?
9 A. Well, they weren't left in quite that
10 condition, but that looks like boxes that were left there,
11 yes.
12 Q. Does the picture depict the condition in
13 better or worse condition than how you left them?
14 A. Worse.
15 Q. They're worse than how you left them?
16 A. Yes.
17 Q. How so?
18 A. Well, there's -- there's, like, the
19 corporate -- or a bank book sitting out and some other stuff
20 that was all tucked into the box nice and neat. There was
21 no chance of the wind blowing anything away when I left it.
22 Q. Did you include a letter with those boxes?
23 A. There was a letter left at the office, yes.
24 Q. At the same general location as the boxes were
25 left?

1 A. In the mailbox.

2 Q. In the mailbox?

3 A. Yes. There's a drop box that doesn't show in

4 the picture just above the boxes.

5 Q. Now, you said that you thought that was a

6 two-page letter?

7 A. I -- I that's what my memory serves. It may

8 not be.

9 Q. I'm going to show you what's in evidence as

10 Exhibit 22. Do you recognize that letter?

11 A. I recognize this is something I wrote and

12 signed.

13 Q. You signed that letter?

14 A. I'd have to refer to my copy to see if there's

15 something been left out of it, but I -- this is something

16 that I wrote.

17 Q. Does it appear to be a complete letter in that

18 it has a date, it has a signature?

19 A. Oh, it has all those valid items, yes.

20 Q. Was there a second page with a postscript? Do

21 you recall what the second page would have been if there

22 really was a second page to the letter?

23 A. Well, it might have just been reduced and put

24 on one page. It's possible it's something like that,

25 because that's a pretty small format for something I would

1 have printed out is why it's not familiar right off.

2 Q. So this may not be the accurate format of the

3 letter that you actually sent?

4 A. It is at least a majority of the letter I

5 sent. I'm -- it may very well be all of it. I'd have to go

6 back and check my records to see if this one adequately

7 reflects that.

8 Q. Is there anything in that letter that if you

9 take time -- have you looked at that recently?

10 A. No.

11 Q. Take a couple of minutes and take a look at

12 that and then I'll have a couple more questions to ask you

13 about it.

14 A. Okay.

15 Q. Can you identify any place in the letter where

16 it looks like any items that you wrote and included in the

17 letter have been omitted?

18 A. I can't identify any on this page, no. And

19 I'm not saying that there are, I just would need to check

20 with my copy.

21 Q. Does that appear to you, now that you've had a

22 chance to read it, to be a complete letter that you wrote,

23 to the best of your recollection?

24 A. I can't confirm or deny it.

25 Q. Can you tell me where in that letter it states

1 that Water Lab is ending its association with Osage Water
2 Company?

3 A. Doesn't say that anywhere on this page.

4 Q. At the top of that letter does it say that
5 Water Lab is broke or that you are broke?

6 A. It's one and the same thing.

7 Q. What does it say?

8 A. It says, I am tired and broke.

9 Q. Okay.

10 A. And it's signed by me.

11 Q. And it's signed by Pat Mitchell -- William P.
12 Mitchell?

13 A. That's right.

14 Q. And there's no place in the letter that says
15 that Water Lab's ending any kind of business relationship
16 with Osage Water Company?

17 A. Not on this page.

18 Q. So does it appear that you didn't talk about
19 Water Lab when you dumped these records on the porch and
20 stuffed this letter in the envelope?

21 A. There was nobody there.

22 Q. So you didn't mention it in the letter?

23 A. I don't see it anywhere on this page.

24 Q. So either you didn't mention it in the letter
25 or the letter's been altered?

1 A. Or there was other correspondence and --
2 and -- between myself and the Williamses.
3 Q. On this date?
4 A. On this date?
5 Q. On that date?
6 A. On this date there wasn't any.
7 Q. Now, this letter's dated July the 6th. On
8 July the 5th what actual people were managing Osage Water
9 Company?
10 A. I don't understand the question.
11 Q. Okay. You gave some responses to Mr. Krueger
12 that Water Lab was managing or Water Lab was doing different
13 things. Who at Water Lab was responsible for Osage Water
14 Company?
15 A. Define "responsible."
16 Q. Who was managing the company? Who was
17 managing Osage?
18 A. I was.
19 Q. How long after you dumped these records on the
20 porch did you have your next Osage Water Company meeting?
21 A. It was in August.
22 Q. Do you have a date?
23 A. I don't remember the date.
24 Q. Were there minutes of that meeting?
25 A. I have some notes somewhere, but I don't know

1 if there's -- if Debbie kept any official minutes of the
2 meeting or not.

3 Q. Was this an official meeting of Osage Water
4 Company's directors --

5 A. Yes.

6 Q. -- or officers?

7 Either? Both? Which was it?

8 A. Well, both.

9 Q. Shareholders?

10 A. There was some discussion and a portion of the
11 meeting was -- we did talk about some shareholder issues.

12 Q. And was there any -- did Osage Water Company
13 have any requirement to provide any written notice to
14 directors, shareholders or officers of that meeting?

15 A. Yes.

16 Q. Was that written notice given?

17 A. Yes.

18 Q. Do you have a copy of it?

19 A. Somewhere.

20 Q. Can you provide a copy of that to this
21 Commission before the end of this hearing?

22 A. As long as it's not tomorrow.

23 Q. Is that a yes?

24 A. If I can find it. I will look for it.

25 Q. Do you know who drafted that notice?

1 A. One of the Williamses.

2 Q. Where was the meeting held?

3 A. At the Williams' office.

4 Q. And what was the subject of that meeting?

5 A. Direction -- future direction of the company.

6 Q. And at that point in time did you indicate

7 that you were no longer interested in participating in the

8 operations of the company?

9 A. I restated my -- Water Laboratory's position

10 that it was no longer interested in the operational

11 maintenance of the company.

12 Q. How about you?

13 A. How about me?

14 Q. Were you interested?

15 A. You need to go back in history and understand

16 that in January of 1996, I --

17 Q. Excuse me.

18 A. -- I told them 5 years was it.

19 Q. Mr. Mitchell, I'm not asking you.

20 A. It was up in January of 2001.

21 Q. I'm not asking you about --

22 A. It's been well known forever that I did not

23 want --

24 JUDGE WOODRUFF: Mr. Mitchell --

25 THE WITNESS: -- maintain with the company

1 forever.

2 JUDGE WOODRUFF: You need to listen to counsel
3 and answer the question she asked. She wants to ask you a
4 different question now or reask that question.

5 MS. O'NEILL: Thank you, our Honor.

6 BY MS. O'NEILL:

7 Q. In August of 2001, did you indicate that you
8 were no longer willing to be involved in operating Osage
9 Water Company?

10 A. I no longer was interested in operating or
11 maintenance of any sort for any company, including Osage
12 Water Company.

13 Q. Didn't want to have anything to do with the
14 way the company was being run?

15 A. I've been doing operational maintenance since
16 1981, been on call 24 hours a day, 7 days a week. Don't
17 want to go there no more for nobody.

18 Q. Even today?

19 A. Even today.

20 Q. Let alone August of 2001?

21 A. Don't want to be on call 24 hours a day,
22 7 days a week for anybody.

23 Q. Just want to --

24 A. Have a normal life.

25 Q. Just want to get your money out of the

1 company?

2 A. That would be nice.

3 Q. Just want to stay -- do you want to stay an

4 officer of the company or would you rather not be an officer

5 of the company anymore either?

6 A. There's still problems that need to be worked

7 on in the company. I have expertise to offer the company.

8 I'm just not interested in being on call 24 hours a day,

9 7 days a week anymore.

10 Q. Do you want to be an officer of Osage Water

11 Company?

12 A. It's not something I aspire to for the rest of

13 my life.

14 Q. How about today?

15 A. Today's okay.

16 Q. How about a year and a half from now?

17 A. I don't know what's going to happen in the

18 next week.

19 Q. So today it's okay, after next week you don't

20 know?

21 A. I don't know what's going to happen. It may

22 not exist next week.

23 Q. Do you want to remain a director of Osage

24 Water Company?

25 A. That's a fairly simple job, generally just

1 meets once or twice a year. Interesting problems to solve.

2 I wouldn't mind being involved in that position.

3 Q. Do you want to remain in the foreseeable
4 future a director of Osage Water Company?

5 A. Sure.

6 Q. As long as you don't have to be on call and
7 you don't have to be bothered by any emergencies that crop
8 up?

9 A. Well, you know, if the emergencies occur 8:00
10 to 5:00 Monday through Friday, I'm there.

11 Q. How long did this August meeting last?

12 A. I don't know. Hour or so, maybe two.

13 Q. At the end of that meeting, were any decisions
14 made about what was going to happen with Osage Water
15 Company?

16 A. No real action items were taken that would
17 require the president to do anything.

18 Q. Is that the best you can answer that question?

19 A. We didn't decide to go borrow some money
20 immediately, because we didn't think we could get any
21 anywhere, so I didn't have to do that, that sort of thing.
22 I mean, you got to look at what items, you know --

23 Q. Did you express your unwillingness to obtain
24 additional financing for Osage Water Company at that
25 meeting?

1 A. I didn't say that I was unwilling to go try to
2 get it. I just said it was not decided to go do that as an
3 example, hypothetical.

4 Q. Did you refuse to participate in obtaining
5 additional financing for --

6 A. No.

7 Q. -- Osage Water Company at that meeting?

8 A. I've never done that.

9 Q. You've never done that?

10 A. I've never refused to participate --

11 Q. In getting money --

12 A. -- in looking for money for Osage Water
13 Company.

14 Q. Have you ever participated to infuse
15 additional capital into Osage Water Company?

16 A. Every day up until July 7th of 2001, I infused
17 capital in Osage Water Company.

18 Q. Since July 7th of 2001, have you ever agreed
19 to infuse additional capital in --

20 A. I don't have any.

21 Q. Even if you did?

22 A. How could I agree to put something in that I
23 don't have?

24 Q. Have you ever agreed to infuse additional
25 capital into Osage Water Company since July 6th of 2001?

1 A. I don't have any.

2 Q. Have you ever been asked and refused?

3 A. No.

4 Q. You've never been asked by Greg or Debra

5 Williams to infuse additional capital into Osage Water

6 Company since July 6th of 2001?

7 A. No.

8 Q. If there were meeting minutes of that August

9 meeting, where would they be?

10 A. Williams' office.

11 Q. And if there were minutes of that meeting,

12 would they reflect the discussions that were held at that

13 meeting?

14 A. Generally. I mean, I don't recall seeing the

15 minutes, if there are any, so I can't really comment on what

16 they might say. But, in general, minutes from other prior

17 meetings record some of the discussions and conclusions that

18 were reached.

19 Q. So you don't know?

20 A. I don't know what they say, no.

21 Q. Do you recall if at that meeting Greg or Debra

22 Williams told you they were planning on forming a new

23 company, a new utility company?

24 A. I don't remember if they told me that or not.

25 I knew about it.

1 Q. You knew about their plans to form
2 Environmental Utilities?
3 A. Uh-huh.
4 Q. I'm sorry. You're going to have to answer yes
5 or no for the court reporter.
6 A. Yes. I'm sorry.
7 Q. Do you recall when you learned about that?
8 A. Oh, it had to be within a month or two. I
9 think maybe I saw the notice in the paper after the first
10 filing.
11 Q. So you didn't find out until after they filed?
12 A. That's correct.
13 Q. When you saw that, did you have any concern
14 about the future health of Osage Water Company when you saw
15 that they were filing for another certificate under another
16 company name?
17 A. Well, the -- it wasn't for an overlapping
18 certificate or anything like that.
19 Q. Did you have any concern?
20 A. No. Not immediately at all after I thought
21 through the situation.
22 Q. Between the August meeting and the
23 January 8th, 2002 shareholders meeting, did you have any
24 other meetings --
25 A. I was --

1 Q. -- regarding Osage Water Company?
2 A. I was on vacation.
3 Q. Did you have any other meetings regarding --
4 A. No.
5 Q. -- Osage Water Company?
6 Other than possibly in December making Water
7 Laboratory Company available to do some water testing, did
8 you have anything else to do with it?
9 A. We had some phone calls back and forth, but we
10 didn't have any meetings. We stayed in touch, but, you
11 know, there really wasn't anything that broke during that
12 period of time to acquire my attention.
13 Q. Who did you talk to on the telephone?
14 A. Sometimes Jeff Smith would come by or Debbie
15 Williams.
16 Q. Jeff Smith came by on the telephone?
17 A. No. Jeff Smith would stop and ask me
18 questions about, you know, the -- one of the systems.
19 Jeff's the operational maintenance guy.
20 Q. And you talked to Debbie Williams about the
21 management of Osage Water Company between August and
22 December of 2001?
23 A. In general terms, yeah.
24 Q. How many times?
25 A. I don't remember.

1 Q. More than three?

2 A. Probably not.

3 Q. More than one?

4 A. Probably not more than three.

5 Q. At least once, but not more than three times?

6 A. That would be -- that's as close as I can come

7 today, yeah.

8 Q. And when you got to the shareholders meeting

9 in January of 2002, the discussion at that meeting seemed

10 primarily concerned with what to do about Osage Water

11 Company, whether it should cease operations, file bankruptcy

12 or sell its assets. Is that your recollection?

13 A. That's what the minutes reflect.

14 Q. Is that your recollection?

15 A. Sure.

16 Q. Do you have a personal recollection or would

17 you have to rely on the minutes to be able to recall it?

18 A. No. Not a personal recollection. I think the

19 minutes accurately reflect what happened at the meeting.

20 Q. And you've reviewed the minutes recently?

21 A. I think I signed them.

22 Q. In fact, you did sign them, William P.

23 Mitchell. And have you seen them recently?

24 A. No.

25 Q. There's an Exhibit 5 in evidence which

1 purports to be the minutes of that shareholders meeting, and
2 there's discussion in there about transferring assets of the
3 system -- different systems of the company to different
4 people. Do you recall having those discussions?

5 A. Sure.

6 Q. Do you recall having any discussions at that
7 meeting about seeking Public Service Commission approval for
8 those transfers?

9 A. Yes. That was one of the concerns that
10 Mr. Williams had was the cost of the case required to
11 accomplish the transfer. It really doesn't reflect that,
12 but it's not a business of Osage Water Company so it's
13 more -- be Environmental Utilities or his personal business
14 anyway. It does state in there that he was to bear the cost
15 of that if he intended to go through with the sale as
16 outlined.

17 Q. Do you know if any actions were taken pursuant
18 to the decisions at the shareholders meeting --

19 A. I'm not aware --

20 Q. -- for transfers?

21 A. I'm not aware of any that --

22 Q. And as the president of Osage Water Company,
23 would you be the person who would receive service of process
24 for any legal proceedings?

25 A. Not necessarily. The registered agent is --

1 as far as I know, is the official address and receiver of
2 paperwork for the corporation.

3 Q. What if the registered agent was the person
4 who was applying to transfer the assets away from Osage
5 Water Company, then would you expect to receive some kind of
6 service, if you were actively involved in the corporation
7 and hadn't abandoned it?

8 A. That's a compound question.

9 Q. If you can't answer it, I'll break it up, but
10 you seem to be able to do that.

11 A. I would expect that the company's that -- that
12 if an application was filed with the Commission for the
13 company to sell some assets, I think they'd want to talk to
14 the president and I would get notice of the proceeding.

15 Q. Have you ever refused to accept service of
16 process for Osage Water Company?

17 A. I believe there was one that was refused at my
18 office recently.

19 Q. Did you refuse it?

20 A. No.

21 Q. Who refused it?

22 A. Paulette.

23 Q. And who's Paulette?

24 A. Paulette works in my office.

25 Q. And does she have any -- and what's her title?

1 A. Office manager.

2 Q. And do you have any relationship with Paulette

3 other than as office manager?

4 A. We've been living together for 10 years.

5 Q. Would Paulette have reason to know whether or

6 not you were the president of Osage Water Company?

7 A. Well, I don't know if she kept up that close

8 on the -- I can't speak to that. I have no idea whether she

9 knows which job -- which hat I've got on which day.

10 Q. And you seem to have quite a few of those

11 hats.

12 A. It's one of those things. When you live at

13 the Lake of the Ozarks, you do what you can.

14 Q. In addition to being president of Osage Water

15 Company, you have the Water Laboratory. And are you

16 president of that?

17 A. And sole officer.

18 Q. And sole officer. And you have some other

19 corporate entities?

20 A. Jackson Engineering, president and sole

21 officer.

22 Q. Any other corporate entities that you're a

23 part of right now?

24 A. Missouri Utilities, president and sole

25 officer.

1 Q. What's Missouri Utilities?
2 A. It's a small water and sewer utility company
3 regulated by this Commission just on the south edge of
4 Sedalia.
5 Q. And is that utility company currently involved
6 in some litigation in Pettis County?
7 A. Not that I know of.
8 Q. Are you involved in litigation in Pettis
9 County?
10 A. Yes.
11 Q. Is Osage Water involved in that same
12 litigation?
13 A. I believe so.
14 Q. How did Osage Water Company get involved in
15 litigation in Pettis County?
16 A. Some people up there that operate a totally
17 different utility company than any that's been discussed
18 here called West 16th Street had a broken sewer line and
19 they requested some emergency help to go fix it. I
20 dispatched two guys up there to go to that.
21 Q. Who did you send up?
22 A. Jeff and Bob.
23 Q. Jeff Smith?
24 A. Yes.
25 Q. Bob who?

1 A. Mueller.

2 Q. Okay. And what's that got to do with whether

3 or not Osage Water Company is in this lawsuit?

4 A. Good question. I haven't a clue. You have to

5 ask DNR why they sued Osage Water. Only thing I can figure

6 is because Osage Water -- they were on Osage Water Company's

7 payroll at the time.

8 Q. And there was a problem with the work that was

9 performed?

10 A. No. Actually, when they got there, they

11 didn't do any work at all. They -- there was a broken line

12 and the owners of the system were running a trash pump and

13 DNR was unhappy about that, sent everybody home. Two years

14 later, we got sued.

15 Q. And did you or any of your corporations

16 receive any payment for Bob and Jeff going over there?

17 A. Yes.

18 Q. How much?

19 A. Six months later. How much?

20 Q. How much?

21 A. I don't know. Maybe four hours billing at

22 50 bucks an hour.

23 Q. Okay.

24 JUDGE WOODRUFF: I'm going to interrupt you at

25 this point because it is almost five o'clock and we're going

1 to end for the day now. So you can step down, Mr. Mitchell.

2 THE WITNESS: Thank you.

3 JUDGE WOODRUFF: As far as when we're going to
4 resume, it will not be tomorrow, but we can -- I'll ask the
5 attorneys to e-mail me before ten o'clock tomorrow with your
6 exclusionary dates for the next few weeks, that would be the
7 dates that you're not available for hearing. And I'll try
8 and put them together and find the next available date on
9 the Commission's calendar so we can get back together.

10 Any other matters anyone wants to bring up
11 while we're still on the record?

12 MS. O'NEILL: Not at this time.

13 MR. LORAIN: Judge, I have 33 and 34 to
14 dispense if anyone wants me to do so now.

15 JUDGE WOODRUFF: Please do so.

16 Was there anything else that needed to be done
17 on the record? At this point then, we are adjourned.

18 (EXHIBIT NOS. 29, 30 AND 31 WERE MARKED FOR
19 IDENTIFICATION.)

20 WHEREUPON, the hearing was adjourned until a
21 date to be set at a future time.

22

23

24

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I N D E X

957

ASSOCIATED COURT REPORTERS
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1	STAFF'S EVIDENCE	
2	MARTIN HUMMEL	
	Cross-Examination by Mr. Williams	676
3	Questions by Judge Woodruff	692
	Recross-Examination by Mr. Loraine	697
4	Recross-Examination by Mr. Williams	702
	Redirect Examination by Mr. Krueger	704
5	Further Questions by Judge Woodruff	720
6	JAMES A. MERCIEL	
	Direct Examination by Mr. Krueger	722
7	Cross-Examination by Ms. O'Neill	740
	Cross-Examination by Mr. Loraine	750
8	Cross-Examination by Mr. Williams	762
	Questions by Judge Woodruff	770
9	Recross-Examination by Mr. Loraine	780
	Recross-Examination by Mr. Williams	783
10	Redirect Examination by Mr. Krueger	788
11	DALE JOHANSEN	
	Direct Examination by Mr. Krueger	795
12	Cross-Examination by Ms. O'Neill	821
	Cross-Examination by Mr. Loraine	836
13	Cross-Examination by Mr. Williams	858
	Questions by Judge Woodruff	890
14	Recross-Examination by Ms. O'Neill	893
	Recross-Examination by Mr. Loraine	894
15	Recross-Examination by Mr. Williams	894
	Redirect Examination by Mr. Krueger	897
16	WILLIAM P. MITCHELL	
17	Direct Examination by Mr. Krueger	904
18	Cross-Examination by Ms. O'Neill	931
19	HANCOCK CONSTRUCTION'S REBUTTAL EVIDENCE	
20	STEVE JONES	
	Direct Examination by Mr. Loraine	885
21	Cross-Examination by Mr. Williams	888
	Redirect Examination by Mr. Loraine	889
22		
23		
24		
25	EXHIBITS INDEX	
	958	Marked Rec'd
	ASSOCIATED COURT REPORTERS	
	573-636-7551 JEFFERSON CITY, MO	
	573-442-3600 COLUMBIA, MO	

1	Exhibit No. 27		
2	Rules Governing the Rendering of Water Service	705	790
3	Exhibit No. 28		
4	Drawing		791
5	Exhibit No. 29		
6	OWC Debts, October 30, 2002	957	794
7	Exhibit No. 30		
8	Operation and Maintenance Agreement and		
9	Contract for Wholesale Water Purchase	957	930
10	Exhibit No. 31		
11	Missouri Rural Water Association Rate Survey		
12	2002	957	795
13	Exhibit No. 32		
14	Rules Governing Rendering of Sewer Service	818	821
15	Exhibit No. 33		
16	E-mail and attachments	904	904
17	Exhibit No. 34		
18	Third Staff Report	904	904
19			
20			
21			
22			
23			
24			
25			