

1 STATE OF MISSOURI

2 PUBLIC SERVICE COMMISSION

3

4 TRANSCRIPT OF PROCEEDINGS

5 Oral Argument

6 January 13, 2005

7 Jefferson City, Missouri

8 Volume 2

9 In the Matter of the Joint)

10 Application of Missouri-American)

11 Water Company and Both Osage Water)

12 Company and Environmental)

13 Utilities, L.L.C. for Authority)

14 for Missouri-American Water)

15 Company to Acquire the Water and) Case No. WO-2005-0086

16 Sewer Assets of Both Entities, and)

17 for the Transfer to Missouri-)

18 American Water Company of)

19 Certificates of Convenience and)

20 Necessity to Continue Operation of)

21 Such Assets as Water and Sewer)

22 Corporations Regulated by the)

23 Missouri Public Service Commission)

24

25 LEWIS MILLS, Presiding,

DEPUTY CHIEF REGULATORY LAW JUDGE.

JEFF DAVIS, Chairman,

CONNIE MURRAY,

ROBERT M. CLAYTON,

LINWARD "LIN" APPLING,

COMMISSIONERS.

REPORTED BY:

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

2 JUDGE MILLS: We're on the record this
3 morning for a prehearing conference as well as oral
4 argument in Case No. WO-2005-0086. We'll start by taking
5 entries of appearance, and I'll just sort of move along
6 the front row to the next row and then towards the back.
7 If we could begin on the front row with the PSC Staff.

8 MR. SNODGRASS: Good morning, your Honor.
9 My name is Cliff Snodgrass. I represent the interests of
10 the Missouri Public Service Commission Staff here today.
11 My mailing address is Box 360, Governor's Office Building,
12 Suite 800, here in the big town of Jefferson City,
13 Missouri.

14 JUDGE MILLS: Thank you. Ms. O'Neill, go
15 ahead.

16 MS. O'NEILL: Yes. Ruth O'Neill for the
17 Office of the Public Counsel. Our address is P.O.
18 Box 2230, Jefferson City, Missouri 65102.

19 JUDGE MILLS: And let's keep on going
20 around the room. Don't mind me.

21 MR. WILLIAMS: Gregory Williams for the
22 joint applicants, Osage Water Company and Environmental
23 Utilities. My office address is P.O. Box 431, Sunrise
24 Beach, Missouri 65079.

25 MR. ALLEN: Terry Allen. I represent the

1 Intervenor, Hancock Construction Company. My address is
2 314 Monroe, Post Office Box 1702 in Jefferson City,
3 Missouri 65102.

4 MR. DUGGAN: Tim Duggan with the Attorney
5 General's Office. I'm representing the Clean Water
6 Commission and Missouri Department of Natural Resources.
7 I'm at P.O. Box 899, Jefferson City, Missouri 65102.

8 JUDGE MILLS: Thank you.

9 MR. COMLEY: Good morning, Judge. Let the
10 record reflect the entry of appearance of Mark W. Comley,
11 Newman, Comley & Ruth, 601 Monroe Street, Suite 301,
12 Jefferson City, Missouri 65101, appearing on behalf of
13 Cedar Glen Condominium Owners Association, Inc.

14 MR. COOPER: Dean L. Cooper from the law
15 firm of Brydon, Swearngen & England, P.C., P.O. Box 456,
16 Jefferson City, Missouri 65102, appearing on behalf of
17 Missouri-American Water Company.

18 JUDGE MILLS: Okay. I think that's all the
19 parties that are represented. We have a somewhat -- at
20 least from the Public Service Commission's perspective, a
21 somewhat unusual proceeding in this case because we're not
22 doing prefiled testimony, but rather we're doing all the
23 testimony at the hearing. And I have several pleadings
24 from several parties who have questions about witness
25 availability and scheduling.

1 From my brief look at that, it doesn't look
2 as though we'll have a problem with the witness
3 availability. There is a mention by the Office of Public
4 Counsel of adjourning the proceedings early on the first
5 day, and I'm not sure that we're going to be able to do
6 that.

7 MS. O'NEILL: Judge Mills, I talked to one
8 of the other attorneys in my office, Mike Dandino, about
9 covering that other matter for me, and he's going to do
10 that, so I no longer need to adjourn early on Monday.

11 JUDGE MILLS: Okay.

12 MR. SNODGRASS: Your Honor, the Staff
13 may -- does have a conflict on that public hearing date
14 issue, because Mr. Meyer is scheduled to appear, as is
15 Mr. Johansen. Those are two primary witnesses in this
16 case.

17 JUDGE MILLS: Okay. And when are they
18 going to have to be leaving here?

19 MR. SNODGRASS: Probably between two or
20 three o'clock in the afternoon, Judge.

21 JUDGE MILLS: Well, I would envision -- and
22 of course I'm going to have you-all work on the order of
23 witnesses at some point, but I would envision that it
24 would probably be moving parties, Missouri-American, Osage
25 Water and Environmental Utilities, that would go first,

1 and I doubt that we'll get to Staff witnesses the first
2 day in any event. So I don't think that will be a problem
3 if we have to schedule them after that first Monday.

4 MR. ALLEN: Judge, on Hancock I filed a
5 pleading to indicate some problem. I would hope that
6 either Tuesday afternoon or Wednesday would be available.

7 JUDGE MILLS: Right. And I think that --
8 as I said, I think we'll probably do the moving parties
9 first, and then we'll get to Staff, Intervenor, Public
10 Counsel after that. So I don't think that the Tuesday
11 would be a problem.

12 MR. ALLEN: On the issues this morning, I
13 have a similar problem. I have to be absent after 11. I
14 can come back after about 1. But in advance, I did
15 prepare a brief, just some comments on legal issues on
16 behalf of Hancock that I will submit.

17 JUDGE MILLS: Okay. Well, as I said, I
18 think we'll probably get going on the oral argument
19 portion of this proceeding about 10:30. I may call on you
20 first if you have to leave at 11, and --

21 MR. ALLEN: Thank you.

22 JUDGE MILLS: -- we'll get your comments in
23 first.

24 And in terms of the issues lists that the
25 parties have prepared, I've seen cases in which the

1 parties have not been able to agree on a list of issues,
2 and it can get messy. I mean, it's sometimes difficult to
3 tell exactly what issues the witnesses are trying to talk
4 about. It's difficult to even know how to frame the
5 issues when writing an Order in order to resolve all the
6 issues that are raised.

7 So I'm going to strongly encourage you-all
8 to spend some time today and even tomorrow if necessary to
9 continue to work on trying to come up with one unified
10 list of issues. And I will -- after we get through the
11 oral arguments, I will be -- I'm not sure exactly how to
12 phrase this. I will be involved in trying to help you-all
13 come to some agreement on a unified list of issues.

14 MS. O'NEILL: Judge, do you anticipate that
15 after the oral argument we may have some guidance about
16 narrowing the scope of the hearing set for the last week
17 of this month?

18 JUDGE MILLS: I think it's very possible
19 that between now and when the hearing starts you will. I
20 don't know that there will be anything announced from the
21 Bench at the close of argument that narrows the scope, but
22 I think within the next -- within the next week it's
23 certainly my hope that if the Commission is willing and
24 able to narrow the scope, that we will issue an Order
25 doing so sufficiently ahead of time to help somewhat in

1 preparation for the trial of this matter.

2 MR. SNODGRASS: On an optimistic note,
3 Judge, I think perhaps after the prehearing conference in
4 this case, we may also be able to mutually narrow the
5 scope of the issues in this case.

6 JUDGE MILLS: Okay. Good. Okay. As I
7 said, we're going to hold off with further matters until
8 we get the Commissioners ready for oral argument. So
9 we're going to go off the record, but I'd just as soon
10 you-all don't disperse. If you can all start talking
11 about your various lists of proposed issues and see where
12 you can find common ground, that may be helpful.

13 Anything further before we go off the
14 record briefly?

15 (No response.)

16 JUDGE MILLS: Okay. We're off the record.

17 (A BREAK WAS TAKEN.)

18 JUDGE MILLS: We're back on the record.
19 We're going to go ahead with some of the oral argument.
20 Mr. Comley on behalf of Cedar Glen Condominium Owners
21 Association has another appointment, so we're going to go
22 ahead and address the issues that are raised and the
23 proposed list of issues that have the most impact on Cedar
24 Glen Condominium Owners.

25 Mr. Comley, if you can step forward to the

1 podium.

2 MR. COMLEY: Thank you very much, Judge.

3 May it please the Commission?

4 In looking at the issues identified in the
5 Commission's Order of the other day, January 7th, I wanted
6 to explain to the Commission that Cedar Glen felt as if
7 these issues were more appropriately those that should be
8 addressed by the applicants as well as the Staff and
9 Office of Public Counsel, to the extent they do have
10 comments.

11 Because Cedar Glen's issue in this matter
12 is somewhat different from what normally might appear in
13 this case, these issues we think are more appropriately
14 addressed by the other parties, and we don't have any
15 separate kind of presentation for you today.

16 JUDGE MILLS: Okay. Well, then let me ask
17 some questions about specifically Cedar Glen Condominium
18 Association's interest in the case.

19 From what you filed in your proposed list
20 of issues and one of the issues in Missouri-American's
21 list of issues, it's my understanding that you're raising
22 sort of a sub-issue of the overall issue of not
23 detrimental to the public interest, the proposition that
24 some of the facilities that are currently proposed to be
25 sold to Missouri-American would instead be transferred in

1 some fashion to the Condominium Owners Association; is
2 that correct?

3 MR. COMLEY: Right. We want the Commission
4 to consider whether or not a transfer to Missouri-American
5 of those particular assets, assets which we understand are
6 exclusively used for service to the condominium owners at
7 Cedar Glen, whether that is in the public interest. The
8 evidence we intend to show the Commission would be that
9 the Condominium Owners Association can operate and
10 maintain those facilities at a cost and expense far less
11 than what they -- the owners would be billed for service
12 by Missouri-American under the proposals that are
13 contained in the application, and it would be a
14 substantial, substantial savings.

15 And because these facilities are what I
16 understand to be exclusively for these facilities, the
17 Cedar Glen Condominiums, it would seem right and just if
18 300 condominium unit owners could have rates for service
19 that are far less than what the regulated entity could
20 provide.

21 And again, I think it is conceivable and
22 possible that these facilities can be operated by experts
23 in the field -- the expert is listed on the exhibit list,
24 and witness list -- and to do so within the framework of
25 health regulations, DNR regulations, and not

1 inconsistently with the regulations of this Commission.
2 In other words, it would not be a for-profit operation.
3 So that's the basis of it.

4 JUDGE MILLS: Okay. Let me just ask you as
5 a hypothetical, would the Commission be obligated to
6 consider that a portion -- a different portion from the
7 Cedar Glen portion be transferred to some other entity who
8 has not yet made an offer to purchase if they could
9 demonstrate that some other customers could possibly
10 obtain the facilities and provide service to themselves at
11 a lower cost?

12 MR. COMLEY: My thoughts would be, Judge,
13 that if that other entity is not in this business right
14 now, then the Commission shouldn't consider it. If they
15 didn't have the wherewithal and the interest to intervene,
16 then no, they should not consider it.

17 But as an Intervenor Cedar Glen came
18 forward and said, take a look at this, we'd like to
19 challenge the idea that the public interest is going to be
20 served by this particular part of the transaction.

21 JUDGE MILLS: Has the Condominium Owners
22 Association had any discussions with Osage Water about
23 purchasing these facilities?

24 MR. COMLEY: I would say that they are in
25 their very earliest and preliminary form right now, but

1 yes, there's some warming up to negotiations, some of
2 which I trust may happen after this prehearing.

3 JUDGE MILLS: Okay.

4 MR. COMLEY: The issues have been -- and
5 I'll -- in visiting with some Staff members about the
6 nature of the assets, it's unclear about whether or not
7 the sewer utility assets are involved in this transaction.
8 It's something I have to nail down before we can make an
9 appropriate offer. The other thing that's at stake is the
10 title of these facilities, I'm thinking about the sewer
11 facilities.

12 And the offer that Cedar Glen would have to
13 make would have to be fairly comprehensive and expect all
14 parties that have any conceivable interest in those
15 facilities to join in and relinquish their interest in
16 exchange for the consideration involved.

17 So that's one step that we still have to
18 fulfill, another milestone event that we have to reach,
19 but I'm trusting that within the next week that can be
20 done.

21 JUDGE MILLS: Okay.

22 MR. COMLEY: And if that works out, then we
23 may disappear.

24 JUDGE MILLS: Okay. I think that's helpful
25 at least to clarify what your interest and what your

1 position is.

2 MR. COMLEY: Our presentation we think will
3 be three witnesses. Karen Metters is the Condominium
4 Owners Association manager. She is in the business of
5 managing condominium owners associations in the Lake area
6 and is familiar with operations of other condominium
7 owners that own exclusively their own facilities.

8 Mr. Ned Gott (ph. sp.) is the gentleman
9 that I mentioned earlier, the expert who operates a number
10 of facilities, and I think, as I recollect, he's told me
11 that he has about 30 operations in the Lake area and other
12 areas that he operates under, I think, a Class A license
13 from the Missouri Department of Natural Resources and a
14 variety of other agencies, and does it well. And he will
15 be prepared to offer that same thing.

16 The other person is Denny Blake, who is a
17 member of the board, and he would give the Commission the
18 interest of the board itself in trying to maintain a low
19 rate for service for those facilities.

20 JUDGE MILLS: Okay. Before I wander off,
21 I'm going to hear from anyone who's interested in
22 responding to that. I want to start with Mr. Williams.

23 MR. WILLIAMS: Thank you, sir. Appreciate
24 the opportunity to address it. I'll limit my comments and
25 testimony to the Cedar Glen --

1 JUDGE MILLS: Yes. We'll get into some
2 more general questions later.

3 MR. WILLIAMS: One of the things that we
4 have looked at in this case is potentially filing a motion
5 in limine particularly addressing whether or not that
6 external issue could even be brought before the Commission
7 or evidence heard with respect to it, because the statute
8 we're dealing with here is 391.190, which gives the
9 Commission authority to determine whether a proposed sale
10 is detrimental to the public interest.

11 The Commission does not have the authority
12 to order the sale of assets. The Commission does not have
13 the authority to approve a proposed sale in part and not
14 in part. And so really unless the evidence that Cedar
15 Glen wants to present would show that the sale to
16 Missouri-American is detrimental to the public interest,
17 as opposed to the assets remaining where they are with
18 Osage Water Company, it is irrelevant and immaterial to
19 any issue that this Commission might need to consider in
20 determining whether or not to approve the sale.

21 Mr. Comley has represented to this
22 Commission that there are negotiations pending, and I will
23 tell the Commission exactly what I have received from
24 Mr. Comley. I got an e-mail that said, we're thinking
25 about making an offer. Would you consider selling these

1 assets to us outright? And our response was, the assets
2 are under contract with Missouri-American. Any offer that
3 we would consider would be contingent upon the sale to
4 Missouri-American not closing.

5 Osage Water Company has relinquished its
6 right to sell these assets to Cedar Glen Condominium
7 Association by contracting with the folks from
8 Missouri-American. We have a contract. That contract
9 requires Osage Water Company to do certain things. Osage
10 Water Company is going to do those things.

11 If Missouri-American does not close the
12 transaction, the assets will be back on the table and we
13 certainly can entertain an offer from another entity, but
14 at this point in time, there is no contract nor will there
15 be a contract prior to this matter going to hearing.

16 JUDGE MILLS: Okay. Thank you.
17 Missouri-American?

18 MR. COOPER: I assume that you want us to
19 continue coming to the podium?

20 JUDGE MILLS: Please.

21 MR. COOPER: Very briefly, your Honor. I
22 think the issue that Mr. Comley referenced that was
23 included in Missouri-American's proposed issue list was
24 structured to say, may the Commission consider any
25 proposed sale or transfer of those facilities to Cedar

1 Glen in the absence of an agreement or application? It
2 probably should come as no surprise to you that -- as no
3 surprise to you that when Missouri-American files its
4 position statement or Prehearing Briefs as the Commission
5 has set out, its answer to that question will be no.

6 We believe that the deal that is on the
7 table is the contract between Osage Water, Environmental
8 Utilities and Missouri-American, that the whole of that
9 transaction is what is on the table for the Commission to
10 consider and to determine whether it is not detrimental to
11 the public interest, and that in the absence of a contract
12 or application or something that sets forth an agreement
13 to sell these -- the Cedar Glen assets to the Cedar Glen
14 Homeowners Association -- Condominium Owners Association,
15 that it's just not relevant to this proceeding.

16 JUDGE MILLS: Thank you. Mr. Comley, do
17 you have a response?

18 MR. COMLEY: Thank you. I think the
19 Commission has some unique factors in this case it may not
20 otherwise have in the normal transfer of assets case, and
21 one is the financially weakened condition of one of the
22 applicants that serves the facilities, Osage Water
23 Company. Because it's financially weakened and because
24 there is such a chance -- there is the chance of a very
25 high rate for the condominium owners to face after the

1 transaction, I think that this is an appropriate time for
2 the Commission to hear evidence about what the impact will
3 be on these condominium owners if the sale occurs as
4 planned.

5 Again, the issue is for us it could be
6 either couched in terms of, is it detrimental to the
7 public interest or there's a considerable amount of public
8 involved in this transaction, and that would be the
9 condominium owners associations, or is it detrimental to
10 them or is it in the public interest? Again, there's a
11 considerable amount of public involved in that.

12 So when there's that many owners in the
13 equation, I'm hoping that the Commission will not ignore
14 them. I'm a little mystified that Mr. Williams has
15 already broken off negotiations at this stage. I had
16 presumed that there was an opening of some sort, and we'll
17 try and see what happens. Perhaps the barricade will
18 drop.

19 JUDGE MILLS: Okay. All right. Well, I
20 think that's really as far as we can go down the Cedar
21 Glen Condominium Owners Association question.

22 I know the Commissioners are still
23 interested in doing their best to get down here. So we're
24 going to stop at this point, see if we can -- I'm going to
25 go upstairs, see if I can find out when the Commissioners

1 are going to be available, and then we'll come back down
2 and we'll have a definite time for when we pick up with
3 the rest of oral argument.

4 So at this time we'll be off the record,
5 and I'll come back down in just a few minutes to let you
6 know when we'll resume again. Thank you. We're off the
7 record.

8 (AN OFF-THE-RECORD DISCUSSION WAS HELD.)

9 JUDGE MILLS: We're back on the record,
10 ready to proceed with the rest of the oral argument in
11 this case. I think I'll begin with the moving parties,
12 and I don't have any particular preference whether Osage
13 Water and Environmental Utilities goes first or
14 Missouri-American. You-all can decide yourselves.

15 Thank you, Mr. Cooper. I think what I'd
16 like to do, I gave a list of some very general questions
17 of the items that sort of leapt out at me from the
18 parties' proposed list of issues that appeared to be
19 primarily legal issues rather than factual issues.

20 I think we may be able to narrow the scope
21 of this proceeding or at least more clearly define it if
22 we can address some of the legal issues separately from
23 the factual issues. So if you would, you can address
24 those issues or any other related legal issues and just go
25 through all of them at once.

1 MR. COOPER: That was going to be my
2 question. The first question that the Commission posed
3 was, what authority does the Commission have to specify
4 how the proceeds from the sale are to be distributed?
5 Missouri-American takes the position that the Commission
6 has no authority to specify how the proceeds would be
7 distributed. We rely upon a case that goes by the name of
8 Fee Fee Trunk Sewer Inc. v Glitz, 596 SW 2d 466, and
9 specifically on page 468 of that decision.

10 The Eastern District Court of Appeals
11 stated that no statute grants to the Commission the power
12 to determine the interests of persons making claim to the
13 proceeds of the sale of the assets of a utility. Beyond
14 that, I would say that, as pointed out in that Fee Fee
15 Trunk Sewer case as well, there's a civil system available
16 to collection of creditors.

17 I don't think the Commission needs to take
18 on that role, and so that certainly is the company's
19 position as to how distribution of proceeds or what
20 authority the Commission would have as to specifying how
21 proceeds from the sale would be distributed.

22 Now, connected with that issue, the
23 Commission also had sort of a should question identified,
24 which is if the Commission does not have authority, should
25 the Commission consider the possibility that the proceeds

1 may be distributed in a way that detrimentally affects a
2 particular entity. And how does a detriment to a
3 particular entity factor into the not detrimental to the
4 public interest standard?

5 The company takes the position that
6 detriment to a particular entity is not determinative of
7 the public interest, that the public interest is a larger
8 question. It goes beyond the interest of any one
9 individual that may be impacted by the Commission's
10 decision, that may be impacted by the transaction proposed
11 in this case.

12 An example of that is found in the Tartan
13 Energy Company case, which is cited quite often in the
14 context of criteria for the grant of a new certificate.
15 But in that case, one of the intervenors or one of the
16 groups of intervenors was propane dealers. They were
17 opposed to the application for a certificate for a natural
18 gas system, and part of their argument was, if you allow
19 natural gas in this area, it will necessarily impact the
20 propane dealers adversely.

21 And the Commission in that case said the
22 extent to which the businesses of the propane dealers are
23 adversely affected by the grant of a certificate to
24 provide natural gas service to the proposed service area
25 is not a determining factor in the Commission's decision

1 as to whether it is appropriate to issue such a
2 certificate.

3 And I think the theory there and the
4 concept is similar, and that is that the Commission's duty
5 is to look at the greater good, the public interest as a
6 whole, not how a transaction may affect one individual
7 that might be adversely affected by that transaction.

8 The second issue that was identified by the
9 Commission is, what authority does the Commission have to
10 transfer a certificate of convenience and necessity?
11 I think that under the -- under the statutes, under
12 393.190, the statutes contemplate that a transfer of a
13 certificate can take place. One of the sentences in
14 393.190.1 refers to a transfer of a franchise or a permit
15 under that section. I think the permit under that section
16 refers to certificates. I think it's contemplated that a
17 transfer of a certificate can take place.

18 In fact, looking at the prior cases of this
19 Commission, the Commission has purported to transfer
20 certificates in the past. One example would be an
21 application of Southern Missouri Gas Company. The case is
22 found at 4 MoPSC 3rd 383, and in that case the Commission
23 said, you know, the Commission would customarily either
24 cancel the old certificate and grant a new certificate or
25 transfer the old certificate depending upon the

1 circumstances, and it ultimately did transfer the
2 certificate of convenience and necessity rather than
3 cancelling the old certificate and issuing a new one.

4 JUDGE MILLS: Mr. Cooper, do you have the
5 Commission number for that case?

6 MR. COOPER: I don't have the Commission
7 case number. I'm sorry.

8 Another series of cases that the Commission
9 decided that discusses this issue of transfer and
10 cancellation of old certificates and issuance of new
11 certificates that discusses this issue quite a bit is in
12 the matter of the joint application of GTE Midwest and
13 Cass County. And once again, I don't have the Commission
14 case cite, but I have the reporter cite, which is
15 3 MoPSC 3rd 306.

16 And I will tell you that I think that the
17 Order that starts on 306 is the most appropriate, but if
18 you look at the reporter, there's a whole series of orders
19 from that case, a couple of which discuss this issue of
20 issuance of or transfer of certificates versus
21 cancellation of old certificates and issuance of new
22 certificates.

23 But in that case the Commission
24 distinguished -- well, first off, it acknowledged that it
25 had transferred certificates many times in the past. It

1 distinguished in one way that it thought those transfers
2 happened in cases where the company receiving the
3 certificate was already a public utility in the state of
4 Missouri as opposed to a new entity, which Cass County was
5 at the time of that case. In the end, made the statement
6 that it thought that to avoid confusion, it might be more
7 appropriate to cancel old certificates and issue new
8 certificates, but did not find that a transfer was
9 unlawful or that a transfer was something that it just did
10 not have authority to do in certain circumstances.

11 Now, now that I've said all that, I'm going
12 to backtrack just a little bit and tell you that from
13 Missouri-American's perspective, Missouri-American's not
14 sure that it really matters in the end whether in this
15 case the Commission would transfer certificates or it
16 would cancel old certificates and issue new certificates.
17 In the joint application that's been filed in this case,
18 the alternative of cancellation of old certificates and
19 issuance of new certificates was identified on page 4.

20 Missouri-American's interest in this case
21 is that it receive the same geographic areas that Osage
22 and Environmental Utilities have. Whether that takes the
23 form of a transfer or the issue of a new certificate is --
24 the company's indifferent to that distinction.

25 Connected with this same issue was kind of

1 a subquestion of, if the Commission does have authority to
2 transfer, are the criteria used to evaluate the transfer
3 of the certificate different than those used to evaluate
4 the grant of a certificate? I don't have a case cite for
5 you on this, but my opinion and that of my client is that
6 you would still look back in a transfer case to the Tartan
7 Energy criteria, just like you would in a new certificate.

8 You probably quickly move past Item No. 1,
9 that there must be a need for the service because the
10 Commission has already in issuance of the prior
11 certificate found that there was a need for the service.
12 But I think that certainly the Commission would be well
13 justified in still looking at, you know, is the applicant
14 qualified, have the financial ability, those sort of --
15 those sort of criteria would still be relevant, whether
16 you're talking transfer or the issuance of a new
17 certificate.

18 The third question that the Commission
19 posed for today was, what authority does the Commission
20 have to allow Missouri-American Water Company after the
21 transfer to charge rates higher than the rates approved
22 for Osage Water and Environmental Utilities? And then
23 kind of a subquestion, if they can set a different rate,
24 what factors must the Commission consider in setting those
25 rates?

1 Missouri-American believes that the
2 Commission may authorize whatever initial rates it
3 believes are appropriate as a part of this case within the
4 restrictions of the transfer must not be detrimental to
5 the public interest, and whatever rates are set must be
6 just and reasonable and based upon a consideration of all
7 relevant factors.

8 There is case law, starts with a Western
9 District case, Laclede case, case cite being
10 535 SW 2d 561, and specific page cite of 566, where the
11 file and suspend provisions of the statutory sections are
12 discussed by the Court of Appeals.

13 And the Court of Appeals said in that case
14 that the statutory sections lead to the conclusion that
15 the Commission does have discretionary power to allow new
16 rates to go into effect immediately or on a date sooner
17 than that required for a full hearing as to what will
18 constitute a fair and reasonable permanent rate.

19 It says, this indeed's the purchase of the
20 file and suspend procedure, and that simply by non-action
21 the Commission can permit a requested rate to go into
22 effect. Since no standard is specified to control the
23 Commission in whether or not to order a suspension, the
24 determination as to whether or not to do so rests within
25 the Commission's sound discretion.

1 Now, I think you have to -- you have to
2 read that case along with some language in the UCCOM case
3 from the Supreme Court, which says although no hearing by
4 the Commission is required before a new rate goes into
5 effect under the file and suspend method, the Commission
6 is nonetheless required in determining whether or not to
7 suspend the proposed rate to consider all factors relevant
8 to the maximum rate to be charged.

9 To me, the import of those cases on this --
10 on this transaction, on this case is that the Commission
11 can take evidence as to what a proper rate would be post
12 transaction, that the Commission can determine what the
13 rate would be post transaction, and that similar to the
14 part of a Commission order and transaction case where it
15 would direct the company to file tariffs adopting rules
16 and regulations of the prior entity, it could also at that
17 time direct and authorize the company to file a rate
18 tariff that reflects new rates for the company based upon
19 evidence that would have been presented to the Commission
20 in the transactional or in the transaction hearing.
21 And if the Commission then allows that tariff sheet to go
22 into effect, does not suspend that tariff sheet, that
23 procedurally we can get to new rates in that fashion.

24 You know, will there be estimates in that
25 process? Absolutely. There's always going to be

1 estimates involved in setting the initial rates for a
2 company. Back to the Tartan Energy case, the Commission
3 recognized that there. It says, it's difficult to truly
4 calculate cost-based rates for a startup company since the
5 actual costs are not and cannot be known with certainty
6 until the company is up and running. The question
7 therefore becomes whether the estimates given are
8 reasonable.

9 Now, we're a little farther along than that
10 in this situation. Osage Water and Environmental
11 Utilities have some history. Missouri-American has some
12 history. So we're not completely working with bare bones
13 estimates. But I think that by looking at the evidence
14 that can and will be presented to the Commission, that the
15 Commission can come to a determination as to what a just
16 and reasonable rate would be based upon all relevant
17 factors.

18 How does that impact on the not detrimental
19 to public interest standard? I think that it goes back to
20 what I said before, and that is the question of public
21 interest is the greater good, what is in the public
22 interest in this situation?

23 I think that one of the factors you may
24 choose to consider is that there may be a rate increase
25 associated with Missouri-American's purchase of these

1 facilities at the rate base that has thus far been
2 identified, but it's certainly within your power and
3 within your discretion to decide that, in spite of that,
4 that the overall transaction is in the public interest,
5 that the public good would be -- not only would it be not
6 detrimental to the public interest, perhaps it would be a
7 benefit to the public interest. So that's how the company
8 believes that those factors would play into this case.

9 Now, having said that, this is a very
10 important question. This question of whether the
11 Commission can authorize a rate increase in this
12 proceeding or certainly before any transaction would be
13 completed between Missouri-American and Osage Water and
14 Environmental Utilities and the other entities that are
15 represented in those agreements. And that's because those
16 agreements, a condition precedent to those agreements is
17 that the Commission have approved a rate increase
18 sufficient to cover the rate base that would result from
19 this transaction that's been identified by the parties
20 that would make this transaction financially viable.

21 And if the Commission believes it does not
22 have authority to address any sort of rate increase in
23 this proceeding because it just -- it just does not have
24 the lawful authority to do so, I would greatly encourage
25 you to issue that order now before we have a four-day

1 hearing that will expend many resources, both financial
2 and otherwise, because that really for Missouri-American
3 anyway is a stopping point. Missouri-American believes
4 that's a stopping point in the contract, and certainly it
5 would make much more sense for all the parties involved if
6 we can't get to a rate increase to know that now rather
7 than later.

8 And at this time I guess I would stop and
9 ask you if you have any questions or if you would like for
10 me to allow other parties to speak?

11 JUDGE MILLS: Why don't we go ahead and do
12 Commissioner questions on each party as we go by, and we
13 may -- we may recall you for more questions later, but
14 we'll go ahead right now for questions for you.

15 Chairman Davis?

16 CHAIRMAN DAVIS: Mr. Cooper, has there been
17 any notice given to the customers of either Osage Water or
18 Environmental Utilities that there could be a potential
19 rate increase as a result of this acquisition?

20 MR. COOPER: I cannot tell you offhand
21 whether there has. I think there has been notice of the
22 transaction. I cannot remember the specific terms of
23 that. Certainly it would not include any numbers, even if
24 the possibility of a rate increase was mentioned in the
25 notice.

1 CHAIRMAN DAVIS: Hypothetically speaking,
2 if Missouri-American Water had acquired Osage and
3 Environmental Utilities and filed a rate case here at the
4 Commission, then there would be some notice requirement to
5 the customers, correct?

6 MR. COOPER: Not necessarily, no. If you
7 work on the idea that under the file and suspend method
8 the company could file a tariff and the Commission could
9 allow it to go into effect by inaction essentially, by not
10 suspending that tariff, I don't know that there would be
11 any formal requirement for notice in that situation.

12 Now, is that good business for the
13 Commission? Would Ms. O'Neill be not very happy with that
14 whole different set of issues, but I don't think there
15 would be any lawful requirement in that situation.

16 And I guess what I rely on, and I think
17 Ms. O'Neill probably disagrees maybe with my
18 interpretation and we need to pull out the case and
19 actually read the case specifically, but I look back to
20 the Jackson County case, State Ex Rel Jackson County v
21 Public Service Commission, 532 SW 2d 20, and in particular
22 pages 31 through 32, which it's a Missouri Supreme Court
23 case later cited in that UCCOM case, the Utilities
24 Consumer Council of Missouri case that I mentioned
25 previously.

1 But in that case there's statements that
2 utility customers have no vested rights in any fixed
3 utility rates and thus no property interest in existing
4 rates that's protected by constitutional due process. So
5 again, whether that's a good idea or not is a different
6 matter, but I think strictly the law does not require
7 that.

8 CHAIRMAN DAVIS: What about our
9 regulations?

10 MR. COOPER: I don't know that your
11 regulations, Commissioner, require that either. Certainly
12 with the normal tariff filing, there's no customer notice
13 requirement in the regulations.

14 CHAIRMAN DAVIS: Okay. Mr. Cooper, in your
15 opinion, what is the value of Osage Water and
16 Environmental Utilities minus depreciation?

17 MR. COOPER: In my opinion?

18 CHAIRMAN DAVIS: In your opinion.

19 MR. COOPER: Whatever the Staff and the
20 Commission is willing to allow into rate base for those
21 facilities. And I'm not really trying to be terribly
22 cute, but there's perhaps a little bit, as Commissioner
23 Clayton can see. In the end, that's what's important to
24 my company is what dollar amounts can go into rate base
25 and --

1 CHAIRMAN DAVIS: Okay. Let me ask -- let
2 me ask you another question. Is there an acquisition
3 premium?

4 MR. COOPER: Not the way the deal is
5 structured, no. But that goes back to, I guess, my
6 earlier statements, which is the deal is structured such
7 that the purchase price will be the amount that the
8 Commission is allowed -- will allow to be utilized as the
9 rate base.

10 CHAIRMAN DAVIS: And even if there -- even
11 if there were some sort of -- I won't call it an
12 acquisition premium, we'll just say some sort of
13 artificial increase in value, let's say, you would still
14 argue that the transfer of Osage Water and Environmental
15 Utilities away from -- to Missouri-American Water is in
16 the public interest, correct?

17 MR. COOPER: Well, we certain -- we would
18 argue that it's in the public interest, but my client
19 wouldn't be here at that point, because if -- and as I
20 understood your question, Commissioner, was if there is
21 some sort of -- if the price to be paid were assumed to
22 exceed original cost net of depreciation, that assumes a
23 fact that really is a bail out for my client, I guess.
24 That's a point when it's not going forward with this
25 transaction.

1 CHAIRMAN DAVIS: Bail out for your client
2 or a bail out for someone else's client?

3 MR. COOPER: I think my client. My client
4 does not want to go down that road. My client does not
5 want to be -- it's done that before. You-all are familiar
6 with that. It's found itself in a position where it has
7 been in a situation where it was -- it had agreed to pay
8 more than what it was ultimately determined to be rate
9 base. And my client as a part of this negotiation
10 essentially wrote that into the agreements because it just
11 does not want to go down that road.

12 CHAIRMAN DAVIS: Okay. And that's -- and
13 that's why there's all the discussion about whether we
14 have the authority to dispose of particular -- particular
15 assets as well as whether or not we have the authority to
16 order how the money is disbursed, correct?

17 MR. COOPER: (Nodded.)

18 CHAIRMAN DAVIS: Okay. No further
19 questions.

20 JUDGE MILLS: Commissioner Murray?

21 COMMISSIONER MURRAY: Just one
22 clarification. The contract for sale is dependent upon
23 the buyer receiving a rate increase sufficient and by your
24 sole discretion, is it not?

25 MR. COOPER: Yes.

1 COMMISSIONER MURRAY: So that that is
2 partly why you made your comments earlier that if we
3 determine that we don't have the authority to grant a rate
4 increase, then we should not waste the resources of
5 everybody, including the Commission, going forward with a
6 hearing on this matter to later determine, no, we're not
7 going to grant the rate increase and, therefore, the
8 contract is null and void?

9 MR. COOPER: That's correct.

10 COMMISSIONER MURRAY: Thank you.

11 CHAIRMAN DAVIS: That's strictly a legal
12 issue, correct?

13 MR. COOPER: I posed it as a legal issue,
14 yes. Yes, whether -- whether or not the Commission has
15 the authority.

16 CHAIRMAN DAVIS: Do any of the -- I don't
17 know. Judge, at some point can you find out if any of the
18 other parties dispute that?

19 JUDGE MILLS: I think we'll find out.
20 Thank you. Commissioner Clayton?

21 COMMISSIONER CLAYTON: I want to be clear
22 on this, because maybe I -- maybe I misunderstand. So
23 Missouri-American will -- if we do not agree to give a
24 rate increase, you-all are going to pull out of the
25 contract?

1 MR. COOPER: That's the way the agreement
2 is structured.

3 COMMISSIONER CLAYTON: In this case,
4 you-all are going to -- so Missouri-American is going to
5 pull out unless we grant a rate increase?

6 MR. COOPER: Sufficient to cover whatever
7 rate base might be determined by the Commission, yes.

8 COMMISSIONER CLAYTON: Okay. Have -- so is
9 it based on agreeing on rate base or based on -- because
10 there are more factors than just rate base in setting
11 rates. So, I mean, do we have to agree with everything,
12 all the expenses and operating costs with the company with
13 Missouri-American or you-all are going to back out of the
14 deal? Because I suppose if -- if the case is set up to
15 where we have to agree with your position on everything or
16 you're backing out, I guess we need to know that.

17 If that's the case, that's the case, but I
18 thought it was based on rate base, and frankly I thought
19 that the price or the -- the price of the company was
20 based on an agreed-to rate base and that Staff had agreed
21 to that, and I know there's a dispute to that and I'm
22 going to investigate that.

23 MR. COOPER: To answer your question, I
24 think that it's not as -- it's not as difficult, I guess,
25 as what you're envisioning, Commissioner. And that is

1 because from Missouri-American's perspective anyway -- and
2 others may have different perspectives, but from
3 Missouri-American's perspective, the rate issue and the
4 change in rates would be primarily driven by rate base and
5 associated depreciation on that, that different rate base,
6 and so I don't know that in the end the other factors, the
7 operational expenses --

8 COMMISSIONER CLAYTON: So you have an
9 agreement on operational expenses?

10 MR. COOPER: We do not have an agreement,
11 but I can -- I don't want to lead you to believe we --
12 we're just not to a point where we either agree or
13 disagree on those operational expenses.

14 COMMISSIONER CLAYTON: That's because you
15 don't know the position of each party or --

16 MR. COOPER: That's part of it. And the
17 company needs to sit down with both Staff and OPC and work
18 through those. There may be other parties that have an
19 interest, but obviously Staff and OPC are primarily
20 interested.

21 COMMISSIONER CLAYTON: Well, what is that
22 rate base value that Missouri-American is demanding?

23 MR. COOPER: Well, again, I don't think
24 Missouri-American is demanding a rate base value, but --

25 COMMISSIONER CLAYTON: If you're -- if

1 you're saying that it's either the rate base or you-all
2 are leaving town, is that -- are you-all saying that it's
3 got to be your way or the highway or not?

4 MR. COOPER: In many respects, but -- but
5 if the Commission says it's 500,000, I mean, Missouri
6 American's not going to pay the higher number. So it
7 changes -- it changes the deal. In the end, whatever
8 Missouri-American pays, it wants to find that number in
9 rate base, and that's really the driver, and whether that
10 number is 1.2 million or 900,000 or 500,000.

11 COMMISSIONER CLAYTON: Okay. Then what is
12 your-all's -- is there a number?

13 JUDGE MILLS: And just so everyone's aware,
14 there is a Protective Order in this case, and I think some
15 of the numbers that may be discussed are highly
16 confidential pursuant to that Protective Order.

17 MR. COOPER: Commissioner, let me see if I
18 can find it. It's about 845 on one piece and --

19 COMMISSIONER CLAYTON: And that would match
20 the purchase price?

21 MR. COOPER: Right. And then there's
22 85,000 or so on the other piece.

23 COMMISSIONER CLAYTON: On the Environmental
24 Utilities?

25 MR. COOPER: Right. Right. We

1 obviously -- it might take me a few minutes to come up
2 with a specific --

3 COMMISSIONER CLAYTON: That's all right.

4 MR. COOPER: That's pretty close.

5 COMMISSIONER CLAYTON: Okay. Okay. And
6 you're saying that if we -- well, can you tell me what
7 rate base rates are currently based on? I mean, how far
8 off --

9 MR. COOPER: You know, Mr. Williams may be
10 able to. Is it 300,000 arguably or --

11 MR. WILLIAMS: I'll be glad to answer that
12 question when we get to it. It would be significantly
13 different.

14 COMMISSIONER CLAYTON: Okay. Going through
15 the other issues, I understand the legal issue of the
16 dis-- I think distribution of proceeds would be a legal
17 issue, public detriment. And I can't remember, I was
18 getting set up here, on the transfer of certificates
19 issue, is that a big deal to you-all or whether you get a
20 new one, I mean, whether you just get the territory or --

21 MR. COOPER: It's the latter, Commissioner.
22 The big deal to Missouri-American is whether it gets the
23 geographic territory. Whether that takes the form of a
24 transfer or the issuance of a new certificate is not of
25 significance to Missouri-American.

1 COMMISSIONER CLAYTON: And then is it
2 Missouri-American's intention that if we -- if the
3 Commission says that a rate increase is possible in this
4 type of proceeding, if we get over that legal hurdle, then
5 would we anticipate a full evidentiary hearing for rates?
6 MR. COOPER: Certainly that would be part
7 of the evidence that would be presented by the company in
8 this case, yes.
9 COMMISSIONER CLAYTON: Okay. Are there any
10 other legal issues that have to be decided?
11 MR. COOPER: Not that I'm aware of today.
12 COMMISSIONER CLAYTON: When you suggested
13 you had been -- that your client had been down the path
14 before of paying a price and then not being able to
15 recover it in rates, I'm assuming -- was that Warren
16 County that you're referring to?
17 MR. COOPER: That's certainly one of the
18 cases that comes to mind, and I don't know that whether
19 they will or won't be able to recover all of that, you
20 know, the jury's still out, but it certainly has created
21 risk for the company.
22 COMMISSIONER CLAYTON: Certainly. And, I
23 mean, in that case there were other bidders that could
24 have stepped in at that price. So, I mean, the company
25 wasn't forced to enter into that agreement and was aware

1 of our -- of the Commission's lack of interest in
2 acquisition premiums. Was the company aware of that ahead
3 of time and aware that there were other bidders?

4 MR. COOPER: Certainly. Certainly they
5 were aware of those things.

6 COMMISSIONER CLAYTON: Are you suggesting
7 that you were misled by the Commission in that case?

8 MR. COOPER: I don't know that I can tell
9 you from the company's perspective one way or the other,
10 Commissioner, whether they believe they were misled in
11 that case or not.

12 I think certainly, though, the process of
13 what is the rate base, you know, that was a part of that
14 process, whether you -- whether you consider that
15 acquisition premium would ever be recovered or might be
16 recovered or what have you, I don't think that going into
17 that case you necessarily knew what the acquisition
18 premium was going to be, because I don't think anyone knew
19 what the rate base was. And my memory is -- and I didn't
20 try that case, but my memory from observation was that
21 even that basic question was a part of that proceeding.

22 COMMISSIONER CLAYTON: Are there any other
23 legal issues that we could dispose of before the hearing?
24 I want to make sure that I have them all. There's so many
25 pieces of paper with different issues that are on them.

1 Can you think of any other legal issues?

2 MR. COOPER: Give me just a second.

3 COMMISSIONER CLAYTON: Sure. Certainly.

4 MR. COOPER: Well, the one item that was

5 discussed before the Commission's arrival was the position

6 of Cedar Glen Condominium Owners Association. Certainly I

7 think their ability to make some arguments as to another

8 possible transaction that hasn't been negotiated, agreed

9 to, that there's no application for, I think that's

10 probably a legal issue that, if not already raised, I

11 think Mr. Williams indicated earlier he planned to raise

12 perhaps by motion in limine. So that's the only other

13 issue that comes to my mind right now.

14 COMMISSIONER CLAYTON: Okay. Thank you.

15 JUDGE MILLS: Commissioner Appling?

16 COMMISSIONER APPLING: No questions.

17 JUDGE MILLS: Commissioner Murray?

18 COMMISSIONER MURRAY: I had a couple more.

19 Mr. Cooper, this contract -- I'm just trying to recreate

20 the time frame here, but this resulted after there was a

21 petition by this Commission to put Osage Water Company in

22 receivership; is that right?

23 MR. COOPER: I probably am not the right

24 person to answer that. I've been involved in this

25 transaction, I guess, in the application filing portion of

1 it. Was not involved in the underlying negotiations and
2 really don't have a good timeline in my mind of how those
3 events transpired.

4 COMMISSIONER MURRAY: So were you involved
5 at the time that the company -- that your company agreed
6 with Osage Water Company to enter into a contract for sale
7 upon agreed rate -- rate base, agreed-to rate base?

8 MR. COOPER: No.

9 COMMISSIONER MURRAY: But it is the
10 company's position, your client's position in the contract
11 for sale that we're being asked to approve that if we
12 don't agree that the rate base is as high as the purchase
13 price, then we should either adjust -- make you adjust
14 that purchase price downward to what we think it ought to
15 be or just say no, and the contract goes away?

16 MR. COOPER: I think it's the latter
17 really, and again, Mr. Williams may have a different
18 opinion, but I think it's the latter. If the Commission
19 says no, the purchase price is not a close approximation
20 of the rate base, I think then it kind of tosses it back
21 to the parties in terms of where we go from there.

22 COMMISSIONER MURRAY: So if the Commission
23 is still of the opinion that the company needs to be
24 placed in the hands of a viable operator, that we start
25 over with the receivership, I guess, is the next option?

1 MR. COOPER: It's an option, I suppose,
2 yeah.

3 COMMISSIONER MURRAY: Thank you.

4 JUDGE MILLS: Mr. Cooper, I've got some
5 questions for you. You talked about the Jackson County
6 case a little earlier, and I'm trying to figure out
7 exactly by what mechanism Missouri-American would raise
8 rates in this particular docketed case. And it seems to
9 me that even under the Jackson County endorsement or the
10 file and suspend method, a tariff has to be filed.

11 MR. COOPER: Right.

12 JUDGE MILLS: And until we grant a
13 certificate, I don't understand how Missouri-American can
14 file a tariff covering the customers that were formerly
15 Osage Water and Environmental Utilities'.

16 MR. COOPER: In a more traditional
17 acquisition case, and let's say -- Cedar Hill was a system
18 that Missouri-American acquired not that long ago, several
19 months ago. My memory is that in the Commission's Order
20 approving that transaction, it authorized
21 Missouri-American Water Company to file tariffs to adopt
22 essentially Cedar Hill's existing tariffs so that their
23 existing rules and regulations would apply after
24 Missouri-American's completion of that transaction.

25 Those tariff sheets were actually filed

1 before that transaction was closed. They were filed prior
2 to the closing date, and then eventually the effective
3 date was kind of matched up to the closing date so that
4 those tariffs would be in effect on the day that the
5 company closed.

6 I guess in my opinion what I'm proposing is
7 a similar process, that in addition to adoption notices,
8 that the Commission's order in this case would authorize
9 the company to file a tariff sheet containing new rates of
10 X, Y and Z, and that at the same time the company would
11 have normally filed that adoption notice it would also
12 file that rate sheet with an effective date attempting to
13 match to the closing date so that those tariffs would then
14 be in effect on the day of closing.

15 JUDGE MILLS: Okay. And say that's the
16 process we all follow, and just for an example, Cedar Glen
17 Condominium Owners Association files a motion to suspend
18 those tariffs. What would -- I mean, would it be your
19 recommendation that the Commission would not be abusing
20 its discretion if it determined not to suspend those
21 tariffs?

22 MR. COOPER: Yes.

23 JUDGE MILLS: I mean, or Public Counsel
24 filed a motion to suspend those tariffs, or both.

25 MR. COOPER: But my argument is that if

1 those rate numbers were based upon evidence that had been
2 presented to the Commission in the context of this case
3 and the Commission purported to have considered all
4 relevant factors, that it would be within its discretion
5 to not suspend that tariff sheet in particular -- I guess
6 would be more than one tariff sheet in reality -- but
7 would be within its discretion to not suspend those tariff
8 sheets and allow them to go into effect on the effective
9 date.

10 JUDGE MILLS: And, of course, the
11 Commission wouldn't be able to anticipate any argument
12 that parties moving to suspend those tariffs could raise.
13 I mean, are you somehow asking the Commission to sort of
14 promise ahead of time not to suspend those tariffs? What
15 happens if we get to the end of the case and we do
16 everything that -- well, more or less everything that
17 Missouri-American and Osage Water want, you file those
18 tariffs, someone files a truly compelling motion to
19 suspend and the Commission says, well, we hadn't thought
20 about that, we better suspend? What happens with the
21 transaction between Missouri-American and Environmental
22 Utilities and Osage then?

23 MR. COOPER: I think it holds, because I
24 guess in my description there, what I was describing was
25 tariff sheets that would be effective with the -- with the

1 closing of the transaction. So if the Commission at that
2 point were to determine that for whatever reason it needed
3 to suspend those tariffs, I think closing doesn't go
4 forward.

5 JUDGE MILLS: Does that nullify the
6 transaction or does it delay it?

7 MR. COOPER: Well, I don't know. I don't
8 know. It certainly doesn't go forward on the previously
9 identified closing date. What it does for the overall
10 transaction I'd have to think about more before I could
11 offer you an opinion on that.

12 JUDGE MILLS: Okay. Okay. That's all the
13 questions I have.

14 Anything further from the Bench?

15 (No response.)

16 JUDGE MILLS: Okay. Thank you,
17 Mr. Cooper. Let's hear from Osage Water/Environmental
18 Utilities next.

19 MR. WILLIAMS: Thank you, your Honor. Your
20 Honor and Commissioners, my name is Greg Williams. I
21 represent Osage Water Company and Environmental Utilities
22 in this proceeding.

23 I'd like to start by advising you that I
24 join in largely with Mr. Cooper in his arguments with
25 respect to the issues that the Commission has raised in

1 its Order today.

2 I would with respect to the first issue as
3 to what authority the Commission has to specify how the
4 proceeds from the sale would be distributed direct your
5 attention to Section 393.190.1, which gives the Commission
6 the authority to withhold approval of a proposed sale of
7 assets. And I think that is basically where your
8 authority in this proceeding comes from. There is nothing
9 in that statute that grants the Commission any authority
10 other than to approve or reject the proposed sale.

11 The case that Mr. Cooper cited, the State
12 ex rel Fee Fee Trunk Sewer Company appears to clearly
13 state that distribution of proceeds is outside the
14 jurisdiction of this Commission. There are a number of
15 state and federal court proceedings in which distribution
16 of proceeds can be addressed, but it does not appear to be
17 something that has been put within the purview of this
18 Commission.

19 I would tell the Commissioners that the
20 contracts that are in issue in this case are the result of
21 approximately 18 months of negotiation. They involve a
22 number of compromises and items that are less than
23 satisfactory to my clients, that are probably less than
24 satisfactory to Missouri-American, that may or may not be
25 satisfactory to the Staff. It is a compromised document

1 that has taken an extensive amount of time to put
2 together.

3 I would tell the Commission further that
4 there are more debts than there are sale proceeds, and
5 that no matter what order you made with regard to how the
6 proceeds should be distributed, there are going to be
7 unhappy people. There is no proposal in the contracts for
8 distribution with respect to shareholders of Osage water
9 company. Stockholders will receive nothing as a result of
10 this sale transaction. All the money will be going to pay
11 creditors.

12 Issue No. 2 with respect to the transfer of
13 a certificate, the sections at issue I believe are 393.170
14 and 393.190. I did not find any cases as far as court
15 cases that are directly on point. I believe Mr. Cooper
16 has cited you some prior Commission decisions. I think
17 you can do it either way. The one thing that is very
18 clear is that Missouri-American must leave this proceeding
19 with a certificate. And again, that's not an issue that
20 my clients are particularly concerned about.

21 With respect to rates, I think that there's
22 some procedural issues as to how Missouri-American gets
23 that properly before this Commission. Certainly tariff
24 pages do need to be filed. Whether they're filed prior to
25 the hearing, after the hearing, as a result of the

1 hearing, whether you take evidence regarding rates or
2 during this hearing, whether you allow them to file the
3 tariffs and then suspend them and set a hearing, that's a
4 procedural matter that you-all have to decide how to
5 proceed with.

6 It is a condition of the contract that the
7 rates are satisfactory to Missouri-American. It is not a
8 condition that they're satisfactory to my clients. It's
9 not an issue that we're particularly concerned about. But
10 certainly tariff pages do need to be filed, and at some
11 point you will need some evidence that allows you to
12 determine whether or not the tariff pages are proper.

13 Someone asked the question as far as the
14 notice that was sent. I believe the notice that was
15 mailed gave notice of the pendency of the application in
16 this matter. It was a notice prescribed by this
17 Commission. It was mailed to all of the customers of my
18 clients. They certainly had the opportunity to review the
19 petition that was brought before the Commission. It did
20 include a request for a rate adjustment. Whether you
21 consider that sufficient due process I will leave up to
22 you, because again it is not an issue that my client is
23 terribly concerned about, other than how it affects timing
24 of closing of the sale.

25 I believe I've already given my argument

1 with respect to the Cedar Glen transaction. I will repeat
2 it briefly, since the Commissioners were not all present.
3 Cedar Glen appears to be attempting to raise an issue as
4 to an alternative sale transaction. There is no contract,
5 there is no agreement, there is no sale for this
6 Commission to approve or reject with respect to the Cedar
7 Glen assets. And I think that simply is a red herring in
8 this proceeding. The Commission should not consider that.

9 Questions from the Commissioners?

10 JUDGE MILLS: Questions, Chairman Davis?

11 CHAIRMAN DAVIS: Mr. Williams, can you
12 refresh for my recollection, what was the original fine, I
13 guess, in the proceeding with the Clean Water Commission?

14 MR. WILLIAMS: No, sir, I could not. I was
15 not counsel in that proceeding and I'm not familiar.

16 CHAIRMAN DAVIS: How long have you been
17 representing Environmental Utilities and Osage Water?

18 MR. WILLIAMS: I've represented
19 Environmental since its inception. With respect to Osage
20 Water, I've represented them in a number of matters for
21 the past decade, but I did not represent them in that
22 proceeding. Mr. Duggan is present, and I'm sure he can
23 tell you those numbers.

24 CHAIRMAN DAVIS: Okay. And is Mr. Duggan
25 the owner of Osage Water and Environmental Utilities?

1 MR. WILLIAMS: No. I was referring to the
2 attorney for the Missouri Clean Water Commission, which is
3 a party in this proceeding.

4 CHAIRMAN DAVIS: Okay.

5 MR. WILLIAMS: He is present and would have
6 better knowledge than I.

7 CHAIRMAN DAVIS: Who is the owner of Osage
8 Water and Environmental Utilities?

9 MR. WILLIAMS: Environmental Utilities is
10 owned by my wife and myself. Osage Water Company has
11 several classes of stock that are owned by various
12 parties. I own some of the common stock. Mr. Mitchell,
13 who is the president, director of the corporation, is
14 present and he owns some of the stock in it also.

15 CHAIRMAN DAVIS: No further questions at
16 this time.

17 JUDGE MILLS: Thank you. Commissioner
18 Murray?

19 COMMISSIONER MURRAY: Thank you. Just to
20 follow up on that last question, how much of the stock of
21 Osage Water Company do you personally own?

22 MR. WILLIAMS: 50 shares.

23 COMMISSIONER MURRAY: And does your wife
24 own any besides that?

25 MR. WILLIAMS: No.

1 COMMISSIONER MURRAY: And what percentage
2 is that?

3 MR. WILLIAMS: Of the common stock? If
4 you're talking about the equity of the company, it would
5 be a fairly small percentage, because the common stock had
6 I believe a \$10 per share value. There's a fairly large
7 amount of preferred stock issued. As far as voting
8 rights --

9 COMMISSIONER MURRAY: Total percentage,
10 what do you own?

11 MR. WILLIAMS: Common stock would be
12 50 percent.

13 COMMISSIONER MURRAY: Total percentage.

14 MR. WILLIAMS: 5 percent as far as equity
15 value.

16 COMMISSIONER MURRAY: And you said various
17 other entities or various other parties, and you mentioned
18 Mr. Mitchell?

19 MR. WILLIAMS: Yes, ma'am.

20 COMMISSIONER MURRAY: And who are the other
21 parties?

22 MR. WILLIAMS: Some of his corporations, I
23 believe.

24 COMMISSIONER MURRAY: Pardon me?

25 MR. WILLIAMS: Mr. Mitchell's corporations,

1 Mr. Hancock's corporation.

2 COMMISSIONER MURRAY: As to Cedar Glen,
3 that issue that's been raised, I was looking at the
4 contract, and I realize that these are -- these have been
5 designated highly confidential. I don't think I'm getting
6 into anything confidential. If I do, please tell me and
7 I'll stop.

8 But the seller, that's not confidential, is
9 it?

10 MR. WILLIAMS: No, ma'am.

11 COMMISSIONER MURRAY: And the seller here
12 is shown as Hurricane Deck Holding Company?

13 MR. WILLIAMS: Yes, ma'am. That's not with
14 respect to the Cedar Glen assets.

15 COMMISSIONER MURRAY: Okay. You're
16 correct. Scratch what I said about Cedar Glen, and let's
17 pursue my questions related to this contract. Hurricane
18 Deck Holding Company, that seller owns certain water and
19 sewer system assets being operated by Osage Water Company;
20 is that correct?

21 MR. WILLIAMS: That's correct.

22 COMMISSIONER MURRAY: And who owned those
23 assets when Osage Water Company received its certificate
24 from this Commission?

25 MR. WILLIAMS: Hurricane Deck Holding

1 Company.

2 COMMISSIONER MURRAY: That has not changed?

3 MR. WILLIAMS: No, it has not.

4 COMMISSIONER MURRAY: And in Article 7 of

5 the contract, I'm trying to see how to identify these. I

6 guess this is just the one labeled Contract for Sale of

7 Water Distribution System Assets and Sanitary Sewer

8 Assets.

9 MR. WILLIAMS: There's an A, B, C and D.

10 I'm not sure which one you're --

11 COMMISSIONER MURRAY: This one must be A,

12 because it has no letter.

13 MR. WILLIAMS: Is it the Osage Water

14 Company contract?

15 COMMISSIONER MURRAY: Yes.

16 MR. WILLIAMS: Yes, that would be the A,

17 correct.

18 COMMISSIONER MURRAY: There's a clause in

19 there that says that the execution and delivery are

20 subject to certain approvals and authorizations which must

21 be obtained by seller prior to closing, and any failure to

22 obtain said approvals would void the agreement. How many

23 of those are outstanding at this time, do you know?

24 MR. WILLIAMS: I believe the only issue is

25 the Commission's approval, ma'am.

1 COMMISSIONER MURRAY: And in terms of your
2 clients or client or whatever having no concern about the
3 rates that are granted in this proceeding, I believe you
4 said when you entered into a contract or an agreement --
5 and maybe it wasn't even a written agreement at the time.
6 I can't recall whether it was or not. But there was a
7 receivership action taken by this Commission; is that
8 correct?

9 MR. WILLIAMS: Uh-huh. That's correct.

10 COMMISSIONER MURRAY: And your clients --
11 and I don't remember whether you were acting as yourself
12 at the time or whether you were representing anybody at
13 the time. But anyway, Osage Water Company as I understood
14 it entered into an agreement that in order to satisfy the
15 court that Missouri-American and Osage Water Company were
16 about to contract for the sale of the assets at upon
17 agreed -- agreed upon rate base; is that correct?

18 MR. WILLIAMS: I'll have to tell you, I did
19 not represent Osage Water Company at that hearing.
20 I was disqualified. I was not present. I did not hear
21 the evidence that was presented to Judge Hutcherson. At
22 the conclusion of the hearing, I was present in the
23 courtroom and Judge Hutcherson ordered and directed me to
24 complete the contracts with Missouri-American, file them
25 with him and proceed with filing them with this

1 Commission, and that's why I'm here and that's what I've
2 done.

3 COMMISSIONER MURRAY: And who was
4 representing your client that indicated to Judge
5 Hutcherson on several occasions that a contract was
6 imminent?

7 MR. WILLIAMS: The corporation and its
8 designated representative Mr. Mitchell was present in the
9 courtroom, and so if those representations were made, they
10 must have been made by him, but I was not present at that
11 time.

12 COMMISSIONER MURRAY: And you weren't aware
13 of these representations being made?

14 MR. WILLIAMS: I have no doubt that they
15 were, ma'am, but I did not discuss with Mr. Mitchell his
16 strategy for trial. I was not present in the courtroom.
17 I was not trial counsel, but I was directed by Judge
18 Hutcherson to proceed as I described here.

19 COMMISSIONER MURRAY: And then you
20 proceeded to represent Osage Water Company and
21 Environmental Utilities; is that correct?

22 MR. WILLIAMS: Yes, ma'am.

23 COMMISSIONER MURRAY: And then both of
24 those entities entered into a contract with
25 Missouri-American?

1 MR. WILLIAMS: Yes, ma'am.

2 COMMISSIONER MURRAY: And that contract was

3 for --

4 MR. WILLIAMS: They're actually separate

5 contracts, but yes.

6 COMMISSIONER MURRAY: Okay. Those

7 contracts were for the sale?

8 MR. WILLIAMS: Yes, ma'am.

9 COMMISSIONER MURRAY: With agreed-upon --

10 for agreed-upon rate base as being the purchase price; is

11 that fair?

12 MR. WILLIAMS: Yes, ma'am.

13 COMMISSIONER MURRAY: And there were

14 extensive negotiations as I understand it to come up with

15 an agreed-upon rate base, were there not?

16 MR. WILLIAMS: I think extensive would be a

17 severe understatement of the length of the negotiations,

18 but the general sense of what you're saying is, yes, a

19 very long time period, lots of detailed records review.

20 The numbers that are there are the result of a number of

21 compromises between the companies' position, the Staff's

22 position to get to the numbers that are in those

23 contracts.

24 COMMISSIONER MURRAY: And although you

25 don't care personally what the rates to Missouri-American

1 turn out to be from this, you do care what they're paying
2 for your entities, do you not?

3 MR. WILLIAMS: Ma'am, let me say, you've
4 asked a question whether I personally care, and the answer
5 to that one would be yes. Do the corporations that I'm
6 here to represent today care? No, they do not, because
7 they will not be in business at the conclusion of this
8 proceeding and it's not going to be a corporate matter.
9 Rate base is certainly a concern in terms of being able to
10 generate sufficient proceeds to pay debts.

11 COMMISSIONER MURRAY: And how much of --
12 and again, if this is highly confidential, please tell me.
13 But of that agreed-upon rate base, how much of the debts
14 there were for attorney fees payable to you?

15 MR. WILLIAMS: The debts that are
16 outstanding are approximately \$560,000. Proposed payment
17 in the contract is \$200,000.

18 COMMISSIONER MURRAY: And you indicated
19 earlier that, to a question from someone from the Bench,
20 that you would answer the question when you got up here
21 regarding the current rate base that the rates are based
22 upon, and I didn't hear you indicate that. What is it?

23 MR. WILLIAMS: Thank you for reminding me.
24 The current rates involved, I believe, approximately
25 \$360,000, which was put into rates and earning a return.

1 There was approximately another \$250,000 that was put in
2 as an amortized obligation, and that was in the 1999 case.

3 COMMISSIONER MURRAY: And that was attorney
4 fees, was it not?

5 MR. WILLIAMS: No, ma'am, it was not.

6 COMMISSIONER MURRAY: What was it?

7 MR. WILLIAMS: That would be Mr. Hancock's
8 obligation. And now that you mention that, there was an
9 allowance put in the rates of a dollar per customer per
10 month for attorney's fees, but no dollar amount assigned
11 to that.

12 COMMISSIONER MURRAY: And in determining
13 what is an appropriate rate base or an appropriate
14 purchase price, are we to assume that it is in the public
15 interest that all of these debts were incurred and that
16 the ratepayers -- that it is just and reasonable to the
17 customers that they pay for these things?

18 MR. WILLIAMS: I don't think you're
19 supposed to assume that. I think you're supposed to
20 decide whether or not that is the case.

21 COMMISSIONER MURRAY: And are you saying
22 that all of these debts that were incurred that increased
23 the rate base from over double were just and reasonable?

24 MR. WILLIAMS: Ma'am, I think it would be a
25 higher number. That is a compromised figure that your

1 Staff has agreed to.

2 COMMISSIONER MURRAY: Thank you.

3 JUDGE MILLS: Commissioner Clayton?

4 COMMISSIONER CLAYTON: Is the -- and I mean

5 Cliff to tell me this. Is the Staff recommendation and

6 report, is that a public record or is that confidential?

7 MR. SNODGRASS: I think it's public record,

8 would be my position.

9 COMMISSIONER CLAYTON: So everybody's got a

10 copy of this?

11 MR. SNODGRASS: Yes.

12 COMMISSIONER CLAYTON: Have you seen a copy

13 of the Staff rec? I'm sure you've seen it.

14 MR. WILLIAMS: I did see it, yes.

15 COMMISSIONER CLAYTON: On -- I just had a

16 couple of questions. On Memo Attachment 1, line 6, it

17 says pre-2000 capitalized Williams legal fees, and I was

18 wondering if you could explain capitalized, exactly what

19 that means.

20 MR. WILLIAMS: My understanding, that's the

21 numbers that the Staff added up out of bills that we

22 prepared for work performed that related to certificate

23 and asset acquisition legal expenses prior to the date in

24 question.

25 COMMISSIONER CLAYTON: But the capitalized,

1 what does that mean? Do you know?

2 MR. WILLIAMS: A portion of them they

3 decided should have been ordinary operating expenses. The

4 balance of them related to capital acquisitions and should

5 be capitalized and added into rate base.

6 COMMISSIONER CLAYTON: Well, does that mean

7 that the legal fee, the debt, instead of being

8 characterized as a debt is characterized as an ownership

9 interest? Is that what that means?

10 MR. WILLIAMS: No, it does not.

11 COMMISSIONER CLAYTON: Or does capitalized

12 just mean amortized -- oh, forget it.

13 MR. WILLIAMS: That's an accounting

14 question that whether the expenditures is a capital

15 expenditure or an expense expenditure.

16 COMMISSIONER CLAYTON: Okay. I'll ask

17 Staff that one when we come around to that.

18 What is the value of debt that is owed by

19 either Osage -- let's start with Osage Water, owed to you

20 personally?

21 MR. WILLIAMS: Approximately \$560,000.

22 COMMISSIONER CLAYTON: And Environmental

23 Utilities?

24 MR. WILLIAMS: It's 25 to \$30,000.

25 COMMISSIONER CLAYTON: Okay. And are there

1 any debts to your wife, to Mrs. Williams?

2 MR. WILLIAMS: No.

3 COMMISSIONER CLAYTON: And are you aware of

4 debts to Mr. Mitchell?

5 MR. WILLIAMS: Osage Water Company does

6 have debts to Mr. Mitchell.

7 COMMISSIONER CLAYTON: And what is the

8 value of those debts?

9 MR. WILLIAMS: I'm going to say they're

10 approximately \$360,000.

11 COMMISSIONER CLAYTON: Okay. When you said

12 that the shareholders weren't going to receive any funds,

13 does that mean that there won't be enough proceeds for

14 either you or Mr. Mitchell to receive any of the proceeds

15 of the sale?

16 MR. WILLIAMS: There would be some payments

17 with respect to debt, but none with respect to stock.

18 COMMISSIONER CLAYTON: Okay. So the

19 shareholders as creditors would receive some part of the

20 distribution?

21 MR. WILLIAMS: Yes, sir.

22 COMMISSIONER CLAYTON: And is there an

23 agreed-to amount that would be received by you and

24 Mr. Mitchell with either the company or the Staff for

25 those acting as a creditor?

1 MR. WILLIAMS: With the company, yes, I
2 have agreed to compromise the debt of Osage Water Company
3 for legal fees to the sum of \$200,000, including the cost
4 of this proceeding.

5 COMMISSIONER CLAYTON: Okay. And
6 Mr. Mitchell?

7 MR. WILLIAMS: I'm not aware of any
8 agreement, but he would be the person with whom he would
9 be making the agreement, so I presume -- he is the officer
10 and director of Osage Water Company.

11 COMMISSIONER CLAYTON: As the attorney for
12 Osage Water, though, you're not aware of any agreement on
13 the sale of Osage Water where the proceeds, whether any
14 would go to him to pay for any debts?

15 MR. WILLIAMS: I believe he gets what's
16 left over, is what's in the agreement as I understand.

17 COMMISSIONER CLAYTON: And is there any
18 amount that's to be left over?

19 MR. WILLIAMS: A very small amount.

20 COMMISSIONER CLAYTON: Is there a -- first
21 question, is there -- have you asserted an attorney's lien
22 on the company?

23 MR. WILLIAMS: Yes, sir.

24 COMMISSIONER CLAYTON: And what is the
25 value of that lien?

1 MR. WILLIAMS: We've agreed to compromise
2 on \$200,000.

3 COMMISSIONER CLAYTON: I know, but what was
4 the -- what is the value of the lien?

5 MR. WILLIAMS: The outstanding balance is
6 approximately \$500,000.

7 COMMISSIONER CLAYTON: Okay. And no court
8 has invalidated that lien, correct?

9 MR. WILLIAMS: No, sir.

10 COMMISSIONER CLAYTON: Okay. Okay. And
11 it's your position that this Commission has no authority
12 to establish priorities in the distribution of these
13 funds, correct?

14 MR. WILLIAMS: That's what I read in the
15 cases, sir.

16 COMMISSIONER CLAYTON: Is it your
17 understanding that other than extra debt that you will not
18 be compensated for, will all other liabilities of Osage
19 Water and Environmental Utilities be paid from the
20 proceeds of this case?

21 MR. WILLIAMS: That was the way the
22 transaction was originally structured and that was what
23 was contemplated. I think there's interest accruing and
24 things of that sort as the matter's gone on, and so it
25 would be difficult. If we were closing today, I could

1 tell you that further compromises are probably going to be
2 required. If we close a year from now, certainly those
3 are all different numbers.

4 COMMISSIONER CLAYTON: How much -- other
5 than your attorney's liens, are there any other
6 security -- any other debt that is secured?

7 MR. WILLIAMS: There's a number of
8 judgments outstanding, sir. And whether or not those
9 judgments constitute a lien on utility assets is probably
10 a legal question, because the statute seems to imply there
11 are no liens unless this Commission approves them in
12 advance.

13 COMMISSIONER CLAYTON: Does the
14 agreement -- does the agreement include satisfying each of
15 those judgment liens?

16 MR. WILLIAMS: That was the original number
17 proposed.

18 COMMISSIONER CLAYTON: Okay. Thank you.

19 JUDGE MILLS: Commissioner Appling?

20 COMMISSIONER APPLING: Good afternoon,
21 Mr. Williams.

22 MR. WILLIAMS: Good afternoon, sir.

23 COMMISSIONER APPLING: It's been kind of a
24 long haul for you. I can see the expression on your face.
25 Anyway, just two questions.

1 Refresh my memory on the number of clients
2 that you're serving and are they being served, how well
3 are they being served at this time?
4 What are the things that are going on, I mean, the people
5 that --

6 MR. WILLIAMS: There's approximately I'm
7 going to say 750 service connections. Some of those would
8 represent both water and sewer customers. I'm going to
9 say total of about 400 residences.

10 COMMISSIONER APPLING: Right.

11 MR. WILLIAMS: Service at this point in
12 time is -- I would describe as adequate but less than
13 stellar. The company -- obviously Osage Water Company is
14 short on capital, unable to raise capital, and has
15 difficulty in the event of substantial breakdowns. That's
16 one reason why I think that this sale transaction needs to
17 move forward. There's no one at this time that is out of
18 service or that has less than adequate service, but
19 certainly there's room for improvement in service.

20 COMMISSIONER APPLING: What I hear you
21 saying is it's in the best interests of the ratepayers to
22 move this on as quickly as possible?

23 MR. WILLIAMS: I think as soon as possible,
24 yes, sir.

25 COMMISSIONER APPLING: Thank you, sir.

1 CHAIRMAN DAVIS: Couple more questions.

2 Mr. Williams, do you agree that we have the authority to

3 place conditions on a sale?

4 MR. WILLIAMS: Sir, I think that you can

5 condition your approval or rejection on any terms that you

6 want to. The statute says that your approval and consent

7 is required. Now, I would also advise you that the

8 contract is specific as to parties' obligations, and that

9 one of the requirements, of course, is that the Commission

10 approve the contract.

11 CHAIRMAN DAVIS: Right.

12 MR. WILLIAMS: So if you would place

13 conditions basically, we would be in the position of

14 renegotiating the contract.

15 CHAIRMAN DAVIS: Well, hypothetically

16 speaking, Mr. Williams, what about a condition that would

17 permanently bar you or any affiliate of yours from ever

18 maintaining ownership in any water, sewer or anything else

19 that ever would ever come before this Commission again?

20 MR. WILLIAMS: I wouldn't be here today if

21 I hadn't been ordered by a circuit judge to be here, sir.

22 And as far as do you have the authority to do that, I

23 don't believe that you do. But if you have a legitimate

24 concern that I'll be back asking for certificates, I don't

25 think that's something you need to worry about.

1 CHAIRMAN DAVIS: Okay. Now, you've
2 negotiated for \$200,000 in attorney's fees. Is that from
3 Osage or Environmental -- that's from Osage, correct?
4 MR. WILLIAMS: That's from Osage, sir.
5 CHAIRMAN DAVIS: Did you ever draw any
6 other salary, dividends or any other type of financial
7 remuneration from Osage?
8 MR. WILLIAMS: No, sir, I have not.
9 CHAIRMAN DAVIS: Not one dollar?
10 MR. WILLIAMS: The only thing I've ever
11 been paid is some attorney fees. Never had a salary.
12 CHAIRMAN DAVIS: And how much were those
13 attorney fees that you've been paid?
14 MR. WILLIAMS: Probably been paid in the
15 neighborhood of \$30,000 in the past two years. Nothing
16 prior to that time.
17 CHAIRMAN DAVIS: And so you just
18 represented Osage, you know, out of the goodness of your
19 heart for the last decade and never sent them a bill?
20 MR. WILLIAMS: Oh, I sent bills.
21 CHAIRMAN DAVIS: And they never paid?
22 MR. WILLIAMS: Let me correct that. There
23 was a time period in the mid '90s that I got about \$1,000
24 a month with respect to the 60 or \$70,000 fee that was
25 outstanding at that time.

1 CHAIRMAN DAVIS: And, Mr. Williams, I mean,
2 what prompted you to keep providing legal services to
3 Osage if they weren't paying your bills?

4 MR. WILLIAMS: There was a fairly involved
5 matter with the City of Osage Beach where they overbuilt
6 some of the city systems and a large portion of the legal
7 fees that are involved relate to lawsuits arising from
8 that. And there was some anticipation that perhaps some
9 funds could be recovered on behalf of the company. They
10 were not.

11 CHAIRMAN DAVIS: All right. No further
12 questions.

13 JUDGE MILLS: Commissioner Murray?

14 COMMISSIONER MURRAY: I have just a couple
15 more. Mr. Williams, how much was your wife's salary?

16 MR. WILLIAMS: She makes \$3,000 a month.

17 COMMISSIONER MURRAY: Makes? Continues to?

18 MR. WILLIAMS: Yes.

19 COMMISSIONER MURRAY: And who is that paid
20 by, which entity?

21 MR. WILLIAMS: It's paid by Environmental
22 Utilities.

23 COMMISSIONER MURRAY: And how long has she
24 been making that?

25 MR. WILLIAMS: Couple years.

1 COMMISSIONER MURRAY: And if this agreement
2 is consummated, she will no longer be an employee of
3 either one of these companies?

4 MR. WILLIAMS: That's correct.

5 COMMISSIONER MURRAY: Then was she ever on
6 the salary of Osage Water Company?

7 MR. WILLIAMS: Not directly, no. I guess
8 the answer to that is no, she was not.

9 COMMISSIONER MURRAY: When you say not
10 directly, what do you mean by not directly?

11 MR. WILLIAMS: She was working for
12 Environmental Utilities.

13 COMMISSIONER MURRAY: Paid by Osage Water
14 Company basically?

15 MR. WILLIAMS: Well, the revenues come from
16 customers for Osage Water, yes.

17 COMMISSIONER MURRAY: And how long were you
18 president of Osage Water Company?

19 MR. WILLIAMS: Five years.

20 COMMISSIONER MURRAY: And when was the last
21 time you served in that capacity?

22 MR. WILLIAMS: January of 2001.

23 COMMISSIONER MURRAY: And what other office
24 or capacity did you hold with Osage Water Company?

25 MR. WILLIAMS: I was the secretary for a

1 time.

2 COMMISSIONER MURRAY: What period of time?

3 MR. WILLIAMS: 1992 to '95. May have

4 overlapped with president also during that time period.

5 COMMISSIONER MURRAY: What positions have

6 you held with Environmental Utilities?

7 MR. WILLIAMS: I do not hold a position

8 with them.

9 COMMISSIONER MURRAY: And you answered a

10 question from Chairman Davis a few moments ago when he

11 indicated -- asked you a question about whether we could

12 impose a condition that you would never seek a certificate

13 from this Commission, something of that nature, and you

14 said you don't have to worry about that. Are you saying

15 that you have no intention of seeking a certificate to

16 operate any utility from this Commission in the future?

17 MR. WILLIAMS: Certainly not for any

18 company in which I would have any interest. I do not

19 think that would be something I would have any interest in

20 doing.

21 COMMISSIONER MURRAY: But you're not making

22 that commitment; is that correct?

23 MR. WILLIAMS: Ma'am, if you're asking me

24 am I going to invest in a utility company regulated by

25 this Commission, I will tell you that I will not, and I

1 will certainly make that a commitment.

2 COMMISSIONER MURRAY: Okay. That's --

3 MR. WILLIAMS: At the present time I advise

4 and counsel all my clients not to bring matters before

5 this Commission. That would be a general area of advice

6 that I give to developers whom I represent in the Lake

7 area.

8 COMMISSIONER MURRAY: Good. And then

9 you -- that would indicate that you have no intention of

10 buying into a utility that's operated --

11 MR. WILLIAMS: Oh, absolutely not.

12 COMMISSIONER MURRAY: -- that's under this

13 Commission's jurisdiction?

14 MR. WILLIAMS: Absolutely not.

15 COMMISSIONER MURRAY: What about a company

16 that you might own that might get into the utility

17 business in the future? Would you have any objection --

18 MR. WILLIAMS: I think homeowners

19 associations are a wonderful solution.

20 COMMISSIONER MURRAY: I don't recall you

21 thinking that in the past.

22 MR. WILLIAMS: My opinion has changed,

23 ma'am.

24 COMMISSIONER MURRAY: Thank you.

25 JUDGE MILLS: I've just got a couple of

1 quick questions. The Hancock Construction matter, and
2 I -- Mr. Allen was here earlier and handed out -- he had
3 to leave, and he handed -- although I anticipate seeing
4 him back any time now. He handed out some comments, and I
5 believe everyone got a copy of that, and -- and you may
6 not know this, but if you do, is his interest in this case
7 simply that the Commission not approve a number for
8 Hancock Construction different from the judgment that has
9 been rendered in Hancock's favor?

10 MR. WILLIAMS: Obviously I can't speak for
11 him. He's probably one of the last people in the room I
12 could ever speak for. But that's what I understand from
13 what he's filed.

14 JUDGE MILLS: Okay. That was -- that's
15 different from what I thought he was saying.

16 MR. WILLIAMS: There seems to be in his
17 issues here something about, you know, whether or not the
18 rate base numbers are appropriate. And as I've indicated,
19 my clients at least have reached a compromise that they're
20 reasonably unsatisfied with with the Staff, and that's not
21 something we're interested in talking about further.

22 JUDGE MILLS: Okay. Well, when Mr. Allen
23 comes back, I'll inquire further of him.

24 Anything further from the Bench?

25 (No response.)

1 JUDGE MILLS: Let's -- why don't we move on
2 to the Attorney General's Office and the Department of
3 Natural Resources.

4 MR. DUGGAN: Good afternoon. My name is
5 Tim Duggan. I'm an Assistant Attorney General, and I
6 represent for purposes of this matter the Clean Water
7 Commission and the Missouri Department of Natural
8 Resources.

9 And I will tell you right up front that the
10 goal of that Commission and Department is to secure
11 payment of unpaid fees, penalties for nonpayment of those
12 fees, and satisfaction of a default judgment for civil
13 penalties, all against Osage Water Company. That last
14 thing, the default judgment, is for violations of
15 environmental laws.

16 Otherwise, these agencies are primarily
17 seeking assurance that approval of the transfer of assets
18 takes into consideration whether Missouri-American is
19 committed to, capable of and has the resources for
20 correcting any deficiencies in the systems that they would
21 be acquiring, properly maintaining those systems in the
22 future and operating them in compliance with state and
23 federal environmental laws.

24 We do not have a particular issue with
25 Missouri-American, but I have spoken to Mr. Cooper this

1 morning and we would be expecting some sort of agreement
2 between the Department of Natural Resources and
3 Missouri-American should the transfer of assets be
4 approved to make sure that the systems are up to speed and
5 in compliance and all of that.

6 When I set forth my statement of the
7 issues, I thought as a lawyer. I don't regularly appear
8 before this Commission, and I'm not real conversant with
9 the issues that you deal with on a day-to-day basis. So
10 in posing the issues, I assumed that the burden of proof
11 is on the applicants to show that the transfer would not
12 be detrimental to the public, and I stated forth the
13 issues that I just described to you essentially in that
14 filing to make sure those things were covered in their
15 burden of showing that there is -- it would not be
16 detrimental to the public to transfer these assets.

17 In other words, we want the judgments paid,
18 we want the fees paid. We want the penalties on the fees
19 paid. We want to make sure these things are run properly
20 in the future, and we don't really care how that gets
21 done, to be honest with you, whether it comes out of the
22 sale proceeds or through some other arrangement with any
23 of the applicants or any combination of those applicants.

24 So that's just to tell you up front why I'm
25 even here in the first place. We accepted the

1 Commission's invitation to intervene in this matter to
2 take care of those kind of concerns.

3 Now, with respect to the questions that
4 were posed, again, this may seem kind of basic, and I hope
5 I do not insult the intelligence of the members of the
6 Commission who probably are well aware of some of the
7 basic legal principles that guide you in your day-to-day
8 business. But with respect to your authority questions, I
9 glean from the case law that the Commission is an
10 administrative agency of the Legislature with only such
11 powers that are either expressly conferred by statute or
12 necessarily implied in order for the Commission to carry
13 out its statutory duties.

14 And the statutes are intended to protect
15 the public from destructive competition between public
16 utilities by allowing the Commission to establish
17 regulated monopolies. That case law goes all the way back
18 to the beginnings of this Commission.

19 Now, there really is no question that this
20 Commission has the authority to approve a transfer of
21 assets from Osage Water Company and Environmental
22 Utilities and so forth to Missouri-American Water Company,
23 if such transfer is not detrimental to the public
24 interest. You have that authority. There's really no
25 question about that.

1 There's also no question that the
2 Commission is empowered to establish reasonable rates for
3 Missouri-American's customers post transfer upon receiving
4 a proper request. Rates are reasonable if they both
5 ensure that the public utility's plants will be in proper
6 repair for providing effective service and of course that
7 the investors will have a reasonable return. And in any
8 specific case, whether it involves the transfer approval
9 or rates, you determine the facts and you have to exercise
10 your sound judgment and common sense.

11 Now, courts have held that the Commission
12 does not have judicial powers and, therefore, you cannot
13 adjudicate individual or personal rights or pecuniary
14 reparations, refunds or damages or determine the interest
15 of claim amounts to the proceeds of a sale as the Fee Fee
16 case says. That having been said, however -- and again
17 I'm sort of trying to be sort of an amicus here, trying to
18 be helpful to you to answer your questions in the Order.

19 But that having been said, the parties in
20 this case are not asking the Commission to resolve
21 disputes concerning their rights or interest. We're not
22 asking the Commission to order payment of reparations,
23 refunds or damages. Rather, certain parties, most notably
24 the applicants themselves, are asking the Commission to
25 approve a transfer of assets with conditions that assure

1 the titles to those assets are not clouded by outstanding
2 mortgages, judgments and liens.

3 And no party has suggested that it would
4 not be detrimental to the public interest for the
5 Commission to approve the transfer while outstanding
6 judgments and liens are left unsatisfied.

7 Okay. Now, I'm going to try to get to the
8 specific questions, and forgive me, but it's easier for me
9 to look at them in reverse order. With respect to
10 Question 3, which has to do with the ratemaking, State
11 Intervenors note that the presentation application for the
12 transfer of assets is confusing.

13 Missouri-American appears to be asking the
14 Commission to approve the transfer contingent upon the
15 Commission first setting rates that Missouri-American in
16 its sole discretion will accept.

17 Either the application is asking for an
18 asset transfer approval that Missouri-American reserves
19 the right to withdraw from at some point in the future if
20 it does not get the rates it wants, or more likely it is
21 asking as part of its request in this proceeding that the
22 asset transfer approval follow a binding determination of
23 post sale customer charges that are acceptable to
24 Missouri-American.

25 Now, you've seen in the Staff's

1 recommendation that they take those issues on quite
2 directly and bluntly, and they say first of all there's no
3 precedent for considering a rate increase for current
4 customers in the context of an asset transfer case. I
5 defer to their accuracy on that.

6 And then secondly, while it is clear that
7 certain adjustment to the overall cost of service that is
8 reflected in current rates would be needed, once the
9 subject case is transferred to and operated by
10 Missouri-American, it is not at all clear what those
11 adjustments should be.

12 Okay. Now, what I gather from the Staff's
13 recommendation is that they're not prepared at this point
14 to make any recommendation concerning what the future
15 rates should be. And that doesn't surprise me, as the
16 application as I read it doesn't request or provide
17 information that supports any specific rate increase. The
18 Staff recommendation suggests that the rate issue is
19 premature. It suggests a disinclination to waste
20 resources investigating what amounts to a hypothetical
21 question as the issue will not arise in their view unless
22 the transfer of assets is first approved.

23 Okay. In short, the application appears to
24 be placing the cart before the horse by trying to make a
25 rate case first and an asset transfer case second. And

1 given the second part of the question that the Commission
2 asks about your authority in this matter, in view of the
3 issues I've seen raised by Public Counsel, it may be fair
4 to say that if the application is treated as a rate
5 increase request at this point, it is incomplete, it
6 provides insufficient notice to affected parties of the
7 related issues, and it places the Commission and affected
8 persons, whether presently parties or not, at a
9 disadvantage in preparing for the hearing at the end of
10 this month.

11 With respect to their second question
12 that -- whether or not you have the authority to approve a
13 transfer of certificates of convenience and necessity, no
14 statute directly authorizes it and no statute directly
15 doesn't authorize it. I read from the Staff's
16 recommendation that such authority is not clearly implied
17 because it's not necessary for you to have that authority
18 to function.

19 You could simply cancel the old and issue
20 new ones as the Staff has suggested, and that based on
21 what they've said makes sense to me because those are old.
22 They're probably out of date, and there ought to be some
23 accuracy with respect to those certificates concerning the
24 definition of the areas served and the customers actually
25 served and projected to be served by these particular

1 facilities once they are acquired by Missouri-American.

2 In other words, there probably ought to be
3 a review of that rather than a flat-out transfer, and if
4 there's a compelling reason to do it the other way, and if
5 that would be a change of procedures for this Commission,
6 if that would be a new process, if there's compelling
7 reason for that, the applicants haven't presented it, and
8 in fact, today I guess they both have taken the position
9 that they don't care how you do that.

10 With respect to the first question, this
11 I've already touched upon a little bit, about the
12 authority to order the distribution of the sale proceeds,
13 I would note that the applicants themselves have asked the
14 Commission to approve a plan for distributing some of the
15 sale proceeds while leaving to Environmental Utilities
16 unbridled discretion to determine which other debts are to
17 be paid, including obligations to its owners, operators,
18 salary or independent legal fees and so on.

19 The applicants and the PSC Staff seem to
20 agree that negotiations over the rate base and sales price
21 have been driven by concerns about how the sale proceeds
22 are to be allocated and other stellar considerations.
23 Okay. No doubt from what I've observed those
24 considerations of the seller include who will ultimately
25 decide how much of the proceeds would go to Greg Williams

1 and maybe to his wife and others whose decisions have
2 probably much affected operation of the facilities and
3 their current physical condition.

4 It is ironic, then, that upon receiving the
5 Staff's recommendation proposing a different disbursement
6 schedule than what they included in the application,
7 they're now saying the Commission has no authority to look
8 at those things, those are legal questions, and are now
9 backing off of their recommendation that you even jump
10 into that swimming pool.

11 So as I read the application -- and I'm not
12 here to say whether I like it or I don't like it. I'm
13 just trying to understand it. But I think the applicants
14 are asking the Commission to approve the transfer of
15 assets with two conditions; one, condition that the buyer
16 determines what it will charge its customers after the
17 transfer, and the sellers, which are incorporated
18 entities, they get to decide what to pay owners, employees
19 and their lawyers from the sales proceeds to the detriment
20 of the company's unsecured creditors.

21 The contracts that form the basis for the
22 transfer the applicants ask this Commission to approve
23 strike me as a clever scheme that allows certain persons
24 to derive a maximum benefit from the sale proceeds that
25 are admittedly not going to cover all the obligations to

1 third parties, unless of course the price is raised.
2 Missouri-American's not concerned about the price, so long
3 as it recovers those costs by passing them on to the
4 customers it will then serve.

5 Those customers have not had safe and
6 adequate service for the rates they have been paying,
7 rates deemed reasonable by this Commission. And this
8 Commission's receivership case against Osage Water
9 Company suggests that the Commission has determined that
10 the problems experienced by the customers have been caused
11 not -- have been caused by poor management of the
12 facilities and not by unreasonably low rates.

13 The Commission in exercising sound judgment
14 and common sense is being asked by applicants to determine
15 that approving the asset transfer according to their
16 conditions, conditions that result in the sellers,
17 customers and debtors being forced to pay off the sellers
18 despite the past mismanagement in order to bring in a more
19 trustworthy company to provide service in the future, that
20 this will not be detrimental to the public interest. And
21 my clients and I are not prepared to stand here and tell
22 you that you are powerless to prevent that result.

23 And that's my statement. The best I can
24 answer your questions at this point . . .

25 JUDGE MILLS: Chairman Davis?

1 CHAIRMAN DAVIS: Mr. Duggan, so you -- let
2 me ask you this. Do you think it is in the public
3 interest to transfer ownership of Environmental Utilities
4 and Osage Water?

5 MR. DUGGAN: Oh, yes, to a company more
6 committed and more capable --

7 CHAIRMAN DAVIS: Absolutely unequivocally?

8 MR. DUGGAN: Absolutely.

9 CHAIRMAN DAVIS: And do you believe that
10 this Commission has the authority to determine how the
11 proceeds to the sale might be distributed as a condition
12 precedent to the sale?

13 MR. DUGGAN: As a general legal principle,
14 I think the Fee Fee Trunk Case says no, but in the context
15 of your being asked to approve a specific application that
16 gives a distribution schedule to you and they want you to
17 approve that and they don't want you to approve some other
18 version of a schedule for disbursement, I guess it's a
19 heads up.

20 CHAIRMAN DAVIS: So would you say don't
21 approve the distribution schedule at all?

22 MR. DUGGAN: I would like to.

23 CHAIRMAN DAVIS: Let everybody slug it out
24 somewhere else in another forum?

25 MR. DUGGAN: I think that just -- I would

1 be concerned about whether or not that, as the applicants
2 themselves have indicated, simply allows the transfer of
3 assets that are clouded by outstanding liens, judgments
4 and so forth.

5 CHAIRMAN DAVIS: Okay.

6 MR. DUGGAN: Now, it may be the case, and I
7 haven't looked into the statute that Mr. Williams referred
8 to, that those judgments and liens and so forth must be
9 approved by this Commission. I'm not sure the context of
10 that particular authority. I know that Mr. Allen in the
11 brief he filed suggests that this Commission cannot in
12 effect set aside outstanding legally valid liens by
13 transferring assets to another entity. That's a concern I
14 share, since I do represent judgment creditors.

15 CHAIRMAN DAVIS: No further questions at
16 this time.

17 JUDGE MILLS: Commissioner Murray?

18 COMMISSIONER MURRAY: Thank you,
19 Mr. Duggan, for your thoughtful analysis of the situation.
20 You indicated that you thought the contracts were a clever
21 scheme to allow certain parties to get certain proceeds.
22 One of the concerns that I and other Commissioners have
23 had with some of these -- with something like this is that
24 you can have a bad actor and that actor can be bad for a
25 long period of time, and then gets to the point that the

1 consumers are so damaged or so injured by that bad actor
2 that the Commission is forced into doing something to help
3 those customers.

4 Now, in the situation like this, we've been
5 forced with a choice. We need to take those customers and
6 put them in the hands of somebody that will comply with
7 environmental laws, that will give them safe, adequate
8 service, that will provide them reasonable rates, the
9 things that they should have had from the beginning but
10 have not had.

11 Now, we've been given the choice here, let
12 the bad actors receive a financial reward by getting the
13 price that they want for transferring these assets, and
14 either allow -- either force the ratepayers to pay that or
15 force another company that has not been a bad actor who is
16 willing to take this over, who is capable of taking it
17 over, to absorb those costs.

18 And that would be a takings. I don't see
19 how we could even do that if we wanted to do that. But it
20 is a terrible situation that this Commission is placed in.

21 MR. DUGGAN: I agree.

22 COMMISSIONER MURRAY: We have been placed
23 in it by bad actors, and one of the things that might
24 result from it is the reward of bad actors.

25 Now, you made a statement that I considered

1 very important, and you said you didn't think this
2 Commission was powerless to prevent that result. How can
3 we prevent that result?

4 MR. DUGGAN: You can simply disapprove this
5 application.

6 COMMISSIONER MURRAY: And let it go back
7 into a receivership?

8 MR. DUGGAN: Right. That is certainly an
9 option. And you may have others -- I guess the bankruptcy
10 court may be available to, if not this Commission,
11 certainly other persons who are debtors of the current
12 operators, but yeah, you have a Hobson's choice there. I
13 don't disagree with that. And you do not have a whole lot
14 of help in the statutory powers that you've been given.

15 COMMISSIONER MURRAY: Now, let me ask you
16 this, because we had this before the court previously
17 seeking a receivership, and it was delayed and delayed and
18 delayed because certain parties were successful in arguing
19 to the court and convincing the court that some
20 satisfactory agreement was eminent. Now --

21 MR. DUGGAN: And this is what you have.

22 COMMISSIONER MURRAY: -- this may be this
23 case again if we have to go back to court to seek a
24 receivership. What about the rate -- the customers, are
25 they receiving service right now that is not -- for

1 example, are there environmental laws that are being
2 violated right now, to your knowledge?

3 MR. DUGGAN: To my knowledge, there have
4 been some inspections of a couple of the facilities, and
5 there have been some unsatisfactory features noted, and I
6 don't know that those have all been corrected. We're at a
7 time of year, though, when the usage is way down in the
8 Lake area.

9 And so the Department of Natural Resources
10 in its priorities may not get back there very quickly, and
11 I'm not sure they'll be able to get back to all of them
12 prior to the hearing of this matter set for the last week
13 of this month.

14 But it's certainly -- I can't stand here
15 and tell you that everything's in working order and it's
16 safe and adequate and everybody's happy about it. I've
17 seen some inspection reports suggesting that certain
18 repairs need to be made, and the Department is talking to
19 Missouri-American as part of Missouri American's due
20 diligence effort to try to get a handle on the various
21 facilities, the state of repair they're in right now and
22 so forth.

23 COMMISSIONER MURRAY: And you indicated
24 that if the sale is approved, you would be expecting some
25 sort of an agreement from Missouri-American showing a

1 compliance schedule or something of that nature?

2 MR. DUGGAN: Yes. Yes.

3 COMMISSIONER MURRAY: And I would assume
4 that that will involve some expenses to be incurred toward
5 bring these facilities into complete compliance and to
6 provide otherwise safe and adequate service.

7 MR. DUGGAN: I assume that as well. The
8 Department of Natural Resources, however, can't put on
9 witnesses to testify what those costs might be. That
10 would really be up to Missouri-American's engineers to
11 say, this is what we think we're facing. Once we acquire
12 this asset over here, it needs X, Y, Z. We have an
13 engineering report. We think the costs are going to be
14 something. I would -- I would anticipate that they may be
15 putting on that kind of evidence, but they may not be.

16 COMMISSIONER MURRAY: And in your
17 experience, when a facility is in noncompliance and has to
18 be brought into compliance, does that usually require the
19 expenditure of some money to do that?

20 MR. DUGGAN: Yes, usually it does. There
21 has to be an evaluation, first of all, of what the problem
22 is, and often an engineer is required to do a proper
23 evaluation.

24 COMMISSIONER MURRAY: How much experience
25 have you had with any of the entities here that are

1 sellers in this proceeding?

2 MR. DUGGAN: Personally, not a whole lot of
3 direct experience. I know our office has been involved in
4 litigation with Osage Water in a number of enforcement
5 cases in an attempt to obtain compliance from that
6 company. I -- the default judgment was an old case that
7 was pending that was assigned to me, and I just simply
8 followed through on that particular matter.

9 But my witness testified that we were
10 seeking past penalties in that case, that the
11 environmental violations had indeed been corrected by the
12 point we were in that courtroom. So I have not had direct
13 dealings with those companies myself, but our office does
14 have a history with them that goes back several years.

15 COMMISSIONER MURRAY: How about
16 Environmental Utilities?

17 MR. DUGGAN: Not directly. I understand
18 that to be basically a pass-through company. They pay the
19 bills.

20 COMMISSIONER MURRAY: And --

21 MR. DUGGAN: By the way, they don't hold
22 permits that I'm aware of the Department of Natural
23 Resources.

24 COMMISSIONER MURRAY: Environmental
25 Utilities does not?

1 MR. DUGGAN: Right. Right. It's Osage
2 Water that's the permit holder for the various facilities.

3 COMMISSIONER MURRAY: I think that was
4 approved and I was a dissenting voice. I said something
5 about a shell.

6 But in terms of Mr. Williams or
7 Mrs. Williams, have you had direct dealings with them from
8 an environmental standpoint?

9 MR. DUGGAN: I have not. I have not
10 personally, no.

11 COMMISSIONER MURRAY: Thank you.

12 JUDGE MILLS: Commissioner Clayton?

13 COMMISSIONER CLAYTON: Just very briefly.
14 Mr. Duggan, what is the amount of penalties and fees owed
15 to the Department of Natural Resources?

16 MR. DUGGAN: It's in the Staff
17 recommendation. It's something like 47 -- now, this is a
18 default judgment, by the way. That's \$47,057 or something
19 like that.

20 COMMISSIONER CLAYTON: Okay. So \$47,000.
21 And do you know, is DNR to receive payment I guess in this
22 agreement that is in distribution that is somewhere out
23 there floating around?

24 MR. DUGGAN: The initial application
25 referred to -- had a figure of about \$17,000 for both the

1 PSC and the Clean Water Commission, and I understand that
2 16,000 or so of that was PSC. Once the Staff received our
3 default judgment, they changed the number owed to the
4 Clean Water Commission to that default judgment number.
5 Now, in formal discussions with --
6 COMMISSIONER CLAYTON: Is that a yes or no?
7 I'm sorry. You are in the schedule on line 6, correct?
8 MR. DUGGAN: Yes.
9 COMMISSIONER CLAYTON: Okay.
10 MR. DUGGAN: Two different numbers.
11 COMMISSIONER CLAYTON: Okay. If we do
12 not -- if we do not do an Order requiring distribution of
13 the assets in a certain manner, does the Department of
14 Natural Resources have the ability to get its money in
15 another forum or is DNR out the money unless we order that
16 it be made a condition of this sale?
17 MR. DUGGAN: I was sort of anticipating
18 that question. I understand from the discussions with
19 counsel for the applicants that in their contracts, which
20 I have not seen, they have provisions for satisfying
21 outstanding permit fees and the like.
22 COMMISSIONER CLAYTON: So you're going to
23 rely on their --
24 MR. DUGGAN: I don't like to rely on that,
25 but that's all I have right now.

1 COMMISSIONER CLAYTON: So the answer is
2 that you don't have any other forum to get paid?

3 MR. DUGGAN: We will -- apparently they
4 understand that those fees have to be caught up. Now,
5 whether Missouri-American pays them or Osage Water, we
6 don't care. The fees will be caught up on the permits.

7 COMMISSIONER CLAYTON: You're confident
8 that they'll be paid up?

9 MR. DUGGAN: I'm confident that those will
10 be paid.

11 COMMISSIONER CLAYTON: Okay. Good. Thank
12 you.

13 JUDGE MILLS: Commissioner Appling?

14 COMMISSIONER APPLING: Mr. Duggan, my only
15 question is, I'm concerned about the -- concerned with the
16 people that this company is serving. Do you have any
17 other suggestions to us that would help us out here to
18 make sure that the service to those people don't continue
19 to deteriorate? And I know I'm asking a big -- that's a
20 big question, but that's a major concern of mine, and I --
21 while we bounce this ball around, I have been doing it for
22 the last two years almost now, and service is beginning to
23 go downhill. And I would not like to see that go any
24 farther than it is right now. Somewhere somebody's going
25 to have to step up to the bat and bite the apple and walk

1 away without anything in their pocket. So --

2 MR. DUGGAN: Right.

3 COMMISSIONER APPLING: -- we need to get to
4 that point in the best way that we can and make sure that
5 the ratepayers are not harmed any more than they are right
6 now.

7 MR. DUGGAN: Right. And just to let you
8 know, I don't have a position on whether a rate increase
9 would be an appropriate thing to do for purposes of
10 bringing the facilities up to speed, making sure they work
11 right and all that.

12 And if this Commission approves a transfer
13 of assets, and then after Missouri-American operates for a
14 while it comes back and says, you know, the rates just
15 aren't sufficient, we've got to make this many repairs, we
16 have to replace equipment, we have to do all this stuff
17 and it is fair to pass that on, that's what you do every
18 day I assume at the Commission. You look at those issues,
19 and that that would be the reasonable way to raise them.

20 I guess I'm just concerned in this
21 particular application that it's sort of a back door issue
22 of -- and I don't know that it will be given the full fair
23 play the ratepayers themselves are entitled to have, and
24 of course, Office of Public Counsel, that's really their
25 authority to deal with, but it's a concern that I've --

1 I've picked up on.

2 And as far as American Water, I -- they
3 will be acquiring a service area. They will be acquiring
4 new customers. There is development to be had down there
5 at the Lake, and I assume that their business assumes
6 certain risks in hopes to make profit down the road and
7 they look at the bigger picture.

8 I'm -- my clients are very satisfied with
9 working with them on that Warren County issue. If they
10 came away from that feeling that they didn't get a fair
11 return or fast enough return on whatever investment they
12 made, they at least didn't make it our problem. And I do
13 respect Missouri-American for that, and I would hope that
14 if they do find a way to take over these facilities, that
15 they will work with us in that spirit, making sure that
16 the customers are taken care of and the environment's
17 protected, and I do have confidence in that company.

18 COMMISSIONER APPLING: Thank you.

19 CHAIRMAN DAVIS: Environmental Services --
20 or Environmental Utilities provided, what was it, billing
21 services and just general like office management for
22 Osage; is that correct?

23 MR. DUGGAN: That's my understanding.

24 CHAIRMAN DAVIS: Okay. And is it your -- I
25 mean, do you have any knowledge, I mean, was Environmental

1 Utilities, should they have been responsible for filing
2 the permits and paying the \$800 fees that are the subject
3 of your judgment against them?

4 MR. DUGGAN: That's a sort of legal
5 question I'm not sure I can answer off the top of my head,
6 but I can tell you that when those bills were mounting,
7 they weren't being paid, the bills going to Osage Water at
8 some point, I'm sure DNR was talking to Environmental
9 Utilities and Environmental Utilities' response was,
10 essentially, yeah, we have the checkbook; yeah, we would
11 take care of that for Osage Water. We'll make sure -- but
12 Osage Water has no money, you know. We have these other
13 obligations and we'll get to you. It's one of those
14 deals.

15 CHAIRMAN DAVIS: Have you given any thought
16 to attempting to pierce the corporate veil against the
17 Williams?

18 MR. DUGGAN: I have not been involved in
19 discussions directly in our office. That's certainly
20 something that we might consider at some point, but I
21 can't say we've come to any conclusion about that.

22 CHAIRMAN DAVIS: Okay. So in its current
23 form, you would have us disapprove of the sale; is that
24 correct?

25 MR. DUGGAN: Well, the applicants, the

1 application -- I hate to use this word, and I don't mean
2 to be unfair to anybody, but it seems a bit disingenuous
3 to me, quite frankly. They're not prepared to say, we're
4 ready to pick up this ball and run with it, you know, if
5 you approve this application. They're saying, we have all
6 these conditions and, you know, the deal's going to fall
7 through. They seem to be saying you have very limited
8 authority in this matter and they have more authority
9 because of the way they've written the contracts.

10 CHAIRMAN DAVIS: Okay. And we have a
11 septic system that is near a large body of water.

12 MR. DUGGAN: Uh-huh.

13 CHAIRMAN DAVIS: We have -- and this is
14 just my impression, and you correct me if I'm wrong -- a
15 system that has not had any money, had relatively little
16 money put into its maintenance or upkeep for some time.

17 We are also facing the prospects of, you
18 know, if there -- if there were a leak or something of
19 that nature, then, you know, not only would it be
20 detrimental to, you know, the current company in terms of
21 environmental fines, et cetera, but to the entire
22 community where, you know, tourism is a significant
23 component of their economy, you know. I mean, how do we
24 -- in light of all those facts, you would still have us,
25 you know, disapprove this transaction?

1 MR. DUGGAN: I'm not going to recommend
2 that. I don't think that's in the best interest of the
3 public at this point. I'm just not sure what you have in
4 front of you is a viable application for transfer of
5 assets. There's just so many conditions.

6 CHAIRMAN DAVIS: Right.

7 MR. DUGGAN: Whether those conditions are
8 fair and reasonable based on your statutory
9 responsibilities to ensure that there is safe and adequate
10 service -- and I hear that very clearly from all of you,
11 that's your first concern in this matter, as it should be.
12 The second concern is a fair reasonable rate of return for
13 the investors.

14 CHAIRMAN DAVIS: Right.

15 MR. DUGGAN: And the case -- what we're --
16 and I think what you're wrestling with is how much of a
17 return out of the sale is going to go to the wrong
18 folks --

19 CHAIRMAN DAVIS: Right.

20 MR. DUGGAN: -- and not get back into
21 fixing the system to make it work right and satisfying
22 those people who have been paying the price. I think you
23 have the authority to put conditions on your approval of
24 the transfer that addresses those issues. It may not be
25 the best solution you can come up with, but you have the

1 authority to address those things.

2 CHAIRMAN DAVIS: If certain parties waited
3 ten years to collect their legal fees, I don't see why
4 they can't wait a little bit longer. Thank you.

5 COMMISSIONER MURRAY: Can I ask one more,
6 Mr. Duggan? I'm sorry. One question usually leads to
7 another.

8 If the only reasonable solution were to
9 have this property transfer at a sale price that's closer
10 to what its current rate base is, does this Commission in
11 your opinion have the authority to adjust the sale price?

12 MR. DUGGAN: Adjust it upward to cover the
13 debts?

14 COMMISSIONER MURRAY: No, adjust it
15 downward.

16 MR. DUGGAN: Adjust it downward? I think
17 you do have that authority, and I think that makes a lot
18 of sense.

19 COMMISSIONER MURRAY: You think we have the
20 authority to order Osage Water Company and Environmental
21 Utilities and whatever the other parties are here that are
22 sellers to sell at a lower --

23 MR. DUGGAN: No, I don't think you have the
24 authority to order them to do it, but I think it's
25 understood that if that's the condition you place on

1 approval, then the thing will be a dead letter. I will
2 agree with Mr. Williams' general statement that you have
3 the authority to approve this or not, and you have the
4 authority to put reasonable conditions on it and satisfy
5 your statutory criteria, but you really don't have the
6 authority to order them to do anything with respect to
7 their legal interests.

8 COMMISSIONER MURRAY: And we do have the
9 authority to say we don't think it's worth that and we're
10 not approving it?

11 MR. DUGGAN: Sure.

12 COMMISSIONER MURRAY: Thank you.

13 JUDGE MILLS: Thank you. Anything further
14 from the Bench?

15 (No response.)

16 JUDGE MILLS: We're going to hear briefly
17 from Mr. Allen on behalf of Hancock Construction, and then
18 we're going to take a much-anticipated lunch break.

19 MR. ALLEN: I'm Terry Allen. I represent
20 the Intervenor Hancock Construction. The only real basis
21 of intervention has to do with the debt that's a judgment
22 that was rendered in September of September 3rd of 2002
23 for \$215,640.39, with interest accruing at the rate of
24 9 percent per annum. And there's been a lot of discussion
25 between the parties and -- over the years and currently as

1 to what is the effect of these judgments and what is the
2 authority with respect to the PSC with respect to the
3 judgments. And I'm here to try to just basically protect
4 Mr. Hancock's interest.

5 I've read some of the cases and the
6 statutes that have been referred to me by Mr. Williams and
7 others, and frankly I just wonder about the effect of a
8 judgment lien versus the statutes. I did put together a
9 little paper commenting on the question that you-all had
10 asked initially, which was the authority of the Commission
11 to specify how proceeds of the sale would be distributed.
12 And what I generally heard a minute ago about your ability
13 to -- to require conditions with regard to these sales I
14 tend to agree with.

15 There's a lot of things I don't know about
16 your jurisdiction. I'm not going to sit up here and
17 belabor. But I do -- I do wonder when I see proposed
18 sales prices of things and allegations or at least in the
19 process recommendations that the amount to be paid to a
20 judgment creditor is \$236,000 when, you know, that
21 judgment on the face of it with interest is over 262,000.
22 And I wonder about those things because I'm told that your
23 rate base is based on these debts, and I wonder about
24 them.

25 And when I ask about contracts I'm told,

1 well, that's done in secret and you have to get -- it's
2 under a Protective Order and no one really knows how he
3 comes up with this, although I'm told that there was a
4 \$25,000 credit that they should -- seller should get
5 reference and that's how they get to the 236,000. And
6 then later I'm told maybe we're really thinking about
7 217,000.

8 And I concern myself because I hear also
9 the comments, and this is suggested, that the sellers --
10 and I don't mean anything personal to Mr. Williams, but it
11 sure does look funny when these creditors, and we don't
12 know if these are even all the creditors, who have
13 provided the services to bring this up to date, up to
14 speed, aren't getting paid, and we don't know how they
15 come up with these figures. We don't have really any
16 notes except we're just supposed to accept them. And I'm
17 not sure the Staff knows how they come up with these
18 figures, with all due respect.

19 So it -- in my comments I think certainly
20 you have the authority to approve the recommendation of
21 the Staff or to impose conditions with respect to these
22 debts as part of this transaction, but I think you ought
23 to look at it very carefully. And the things that bother
24 me is if they get paid less, then what is this interest?
25 You know, is that really going to relieve the

1 Missouri-American Water of the remaining judgment lien?

2 And I don't know that that really has been answered.

3 I've read your 3-- I think it's 393,
4 whatever it is, on what your authority is with regard to
5 secured interest and whatnot. It doesn't speak to
6 judgment creditors. That's a judgment imposed by a court
7 under a state statute. So I think it leaves a lot of
8 things open.

9 With that said, and I told this to the
10 parties, to the sellers and the potential buyers,
11 nobody -- at least I'm not, and I don't think Mr. Hancock
12 on his behalf is opposed to the sale, if it's done right.

13 When Commissioner Murray was talking about,
14 well, can we adjust it down, why can't we adjust the sale
15 price up as a condition to make sure these contingencies
16 are covered? What's the difference, other than it costs
17 in rate? I guess your rate would have to be higher to
18 cover it.

19 But there's a lot of things about this that
20 I don't know, and I've tried to express them in some
21 regard with my humblest thoughts in this little comment to
22 the Commission in the event I wouldn't get a chance to
23 speak to you-all. And we appreciate the opportunity.
24 Sorry I had to step out for a while.

25 JUDGE MILLS: Chairman Davis?

1 CHAIRMAN DAVIS: Mr. Allen, can you refresh
2 for my recollection, what is the underlying source of the
3 debt to Mr. Hancock?

4 MR. ALLEN: It's my understanding Hancock
5 Construction did plant construction and it says consulting
6 fees. I didn't handle the case in Camdenton against them.
7 I handled some other matters for Mr. --

8 CHAIRMAN DAVIS: Do you have any idea when
9 these, quote, consulting fees were accrued?

10 MR. ALLEN: No. I can only tell you when
11 the -- if you want the pleadings, I can get you all the
12 pleadings. The judgment itself was dated September 3rd of
13 2002.

14 CHAIRMAN DAVIS: Okay. So it was a period
15 of time, and was it against Osage?

16 MR. ALLEN: Against Osage Water Company,
17 right. That's what it says on the face of the judgment,
18 and I think you have this in your file, too, at some
19 point.

20 CHAIRMAN DAVIS: I'm sure we do. I'm sure
21 we do. No further questions.

22 JUDGE MILLS: Commissioner Murray?

23 COMMISSIONER MURRAY: Thank you.
24 Mr. Allen?

25 MR. ALLEN: Yes, ma'am.

1 COMMISSIONER MURRAY: Do you know if
2 Mr. Hancock was ever a shareholder in Osage Water Company?

3 MR. ALLEN: I don't know. I think he
4 received some debentures in trying to settle this matter
5 with them at some time and that's my understanding, but
6 I'm not familiar with the ins and outs of that. I don't
7 know that he was, no, ma'am.

8 COMMISSIONER MURRAY: Do you know if he was
9 ever in any kind of partnership with Mr. Williams?

10 MR. ALLEN: I do not know.

11 COMMISSIONER MURRAY: Thank you.

12 JUDGE MILLS: Commissioner Appling?

13 COMMISSIONER APPLING: Mr. Allen, I haven't
14 been able to locate it. I'm sure it's in our files
15 someplace. But how much is owed to Mr. Hancock? Do you
16 have an idea?

17 MR. ALLEN: As of -- I have a form I can
18 give you that shows the calculation as of -- and I filed
19 this by the way in your file. It was like \$262,000 toward
20 the end of December, and see, that's with the interest
21 accruing at 9 percent, the statutory interest. The
22 judgment itself was for -- here it is. Just a minute.
23 The judgment itself was for around 215,000, actually
24 \$215,640.39. And the calculation as of November 16th, '04
25 with the 9 percent interest was \$262,979.95, and it's

1 still accruing.

2 COMMISSIONER APPLING: And Mr. Hancock, did
3 he actually construct the plant or he was the consultant
4 for it?

5 MR. ALLEN: I assume that he was involved
6 in the construction, because he's a construction company.
7 I see these consulting fees on here. Mr. Williams might
8 be able to speak to that.

9 COMMISSIONER APPLING: Thank you very much,
10 Mr. Allen.

11 MR. ALLEN: Yes, sir.

12 JUDGE MILLS: I've just got a couple of
13 questions for you. Is your interest here primarily that
14 this Commission doesn't do anything that interferes with
15 your ability to collect on your judgment or that we
16 somehow try to enforce it? Because those are two
17 different things.

18 MR. ALLEN: Well, if the Commission is
19 going to approve the sale, I think they have some
20 responsibility to impose conditions to make sure that the
21 sale is high enough to protect people such as Mr. Hancock.
22 And there's others, not just Mr. Hancock. There's the
23 bank and there's other folks. And I guess this is all of
24 them.

25 You know, and then we see environmental

1 people come in here, kind of toward the end, but, you
2 know, with regard to trying to execute on the judgment,
3 that creates a lot of issues, and we -- to the extent that
4 we don't get satisfied and legitimately so in this
5 process, then we will just do what we have to do to try to
6 satisfy our judgment otherwise.

7 And if you're going to require conditions
8 in this sale, distribute monies in certain fashions, then
9 it seems to me like it would be appropriate to make sure
10 those monies are sufficient to satisfy this judgment and
11 clear up any question about judgment liens on property
12 that is owned by Osage Water Company that will be part of
13 this new ownership. That's the way it strikes me. Maybe
14 the Commission's not interested in that.

15 JUDGE MILLS: So I guess your answer to my
16 question is you want us to actively try to ensure that the
17 judgment creditors are paid?

18 MR. ALLEN: Yes, sir, that's my answer.

19 JUDGE MILLS: Okay. All right. That's all
20 the questions I have.

21 COMMISSIONER MURRAY: May I ask another
22 question?

23 JUDGE MILLS: Yes, Commissioner Murray.

24 COMMISSIONER MURRAY: Mr. Allen, do you
25 know whether Mr. Hancock was or is or ever was in

1 partnership in any way with Pat Mitchell?

2 MR. ALLEN: I don't know. I have met

3 Mr. Mitchell, I think, once or twice. I don't know. But

4 any of those questions I can get answers for you, I'd be

5 happy to.

6 CHAIRMAN DAVIS: Can you do that?

7 MR. ALLEN: I will do it. I have a couple

8 of them. I'll take care of it.

9 JUDGE MILLS: At this point I think we're

10 going to take a recess, why don't we say, until quarter

11 'til three, about an hour, little less. Quarter 'til

12 three, and we'll come back and finish this up. We're off

13 the record.

14 (A RECESS WAS TAKEN.)

15 JUDGE MILLS: Okay. We're going to go back

16 on the record. We have yet to hear from Public Counsel

17 and Staff, so let's go ahead with the Office of the Public

18 Counsel and then we'll finish up with Staff. And then in

19 the event there are further questions from the Bench, we

20 may call some of the others back.

21 MS. O'NEILL: Good afternoon. As you know,

22 I'm Ruth O'Neill and I represent the Office of the Public

23 Counsel. And I'm happy to address these questions that

24 were set forth for us this afternoon. I will try to not

25 cover too much that's already been covered, but I think

1 there's some issues that may need some further
2 information.

3 As we know, the Commission in considering
4 whether to grant an application to transfer assets to a
5 qualified buyer first must determine the transaction's not
6 detrimental to the public interest. In order to conduct
7 that analysis, Commission must consider if a member of the
8 public would suffer harm that is a detriment as a result
9 of the transaction.

10 If there's a significant risk of such harm,
11 the Commission may consider whether it can impose
12 conditions on the sale to mitigate or eliminate that harm
13 so that a detriment is alleviated. I think that's one of
14 the reasons that we're addressing that first question that
15 you had, what authority does the Commission have to
16 specify how the proceeds from the sale are to be
17 distributed?

18 For a regulated utility selling its assets
19 to another regulated utility and the selling entity has a
20 number of outstanding debts which affect its abilities to
21 transfer the property, we believe it's just and reasonable
22 that the Commission order the selling party to clear title
23 to the assets by paying the creditors with judgments
24 against the company or liens against the assets that are
25 being sold.

1 We don't believe the Commission needs to
2 place too much reliance on the language in the Fee Fee
3 Trunk Sewer that's already been discussed here today.
4 Although the language suggested at least initially by the
5 applicants in this case may be somewhat on point, it does
6 deal with the issue that's somewhat different in this
7 case. In that issue the issue is whether customers who
8 made contributions in aid of construction should be
9 reimbursed for those contributions when the company was
10 sold to Metropolitan Sewer District. Those contributions
11 would not have been included in the rate base before and
12 there was a situation where they were concerned with
13 unjust enrichment.

14 That claim that the utility was being
15 unjustly enriched by selling assets it received as
16 contributions from customers is a different consideration
17 I think than what the Commission has to look at in this
18 case.

19 The Commission Staff made a recommendation
20 regarding how some of these proceeds should be distributed
21 and basically asked the Commission to order Osage Water
22 Company to pay its debts to judgment creditors, lien
23 creditors, state regulatory bodies and secured and
24 unsecured creditors out of proceeds of the sale.

25 However, at issue in this case is not

1 strictly whether certain sale proceeds must be used to pay
2 existing debts, but whether the Commission can order that
3 such debts be paid as a condition of approving the
4 transfer of the assets. In this case, the parties in
5 their application to the Commission and attachments, and
6 you heard from Mr. Duggan about this already, agree that
7 there are certain creditors that need to be paid, and
8 they've even sort forth in their application amounts that
9 they propose be paid from the proceeds of the sale as a
10 term of their application.

11 And, therefore, we would suggest that at
12 first questions should be asked, if they don't think the
13 Commission has the authority to authorize that, why did
14 they ask the Commission to do it in the first place?
15 While whether to approve the application in whole or in
16 part is within the discretion of the Commission, that's
17 something -- I think that's something that you need to
18 consider.

19 In addition, one of the primary defenses
20 that Osage Water Company was raising in recent litigation
21 concerning the Commission's petition for receivership was
22 that it just -- it wasn't able to make those payments to
23 creditors because of cash flow problems and, therefore, it
24 seems that it would be generous of the Commission if it
25 was going to order that those debts be paid, that it order

1 the debts be -- that the company not have to pay those
2 debts until it receives the proceeds from the sale.

3 So I think that as far as -- I think
4 there's two questions here instead of just one. One is
5 does the Commission have the authority to say, you shall
6 take the proceeds of this sale and distribute it according
7 to some schedule, or -- and I think you've heard a lot of
8 discussion about that issue. And I think you should -- I
9 think that Mr. Duggan's analysis was very good on this
10 point.

11 I think the other issue, though, is does
12 the Commission have the authority to order Osage Water
13 Company while it is still in the jurisdiction of the
14 Commission as a condition of this sale to pay its
15 creditors off and, therefore, clear title to those assets
16 so that they can be transferred unencumbered.

17 Now, there are -- the Commission has as far
18 as, you know, imposing conditions, the conditions --
19 imposes conditions in transfer cases all the time, and
20 does so in order to ensure that the transfer won't have
21 detrimental effects. One recent case where conditions
22 were imposed was in an AmerenUE case, which is
23 EO-2004-0108, where the Commission affirmed that it had
24 the authority to impose conditions on a proposed asset
25 transfer in order to ensure that the transfer did not have

1 any detrimental effects.

2 In the past this Commission has ordered as
3 a condition requirement of payments of past due
4 assessments. An example of that would be Eastern Missouri
5 Utilities Company and City of Foristell, which was Case
6 No. SM-2002-1062. I was trying to do a little bit of
7 research to see whether or not this particular issue has
8 come up anywhere else.

9 Other commissions have conditioned asset
10 transfers on the retirement of a certain utility's debts
11 within a specified time after the date of the order. One
12 example I was able to find that was relatively recent was
13 in the matter of the joint petition for United Water - New
14 Jersey, Incorporated and United Water - West Millford,
15 Incorporated, which was a Docket No. WM-96-080603 for the
16 New Jersey Board of Public Utilities, and that was in
17 1997, and that's a Westlaw cite.

18 Certainly this Commission and other
19 commissions have ordered the payment of past due
20 assessments and other debts as a condition of approving
21 asset transfers between regulated utilities, at least to
22 the extent that those debts may encumber the assets to be
23 transferred.

24 One of the subquestions that was asked in
25 the Order setting this hearing was whether the

1 Commission -- even if the Commission doesn't have the
2 authority, should the Commission consider the possibility
3 that proceeds may be distributed in a way that
4 detrimentally affects a particular entity, how does that
5 detriment factor into the not detrimental to the public
6 interest standard?

7 We think it can because, for one thing, if
8 a debt encumbers an asset that's sought to be transferred,
9 the purchasing utility might suffer some detriment and
10 then the customers would thereby suffer detriment because
11 the purchaser is unable to obtain a clear title to the
12 assets. This could detrimentally affect their ability to
13 provide service to the existing and any future customers.

14 Second question that was posed was, what
15 authority does the Commission have to transfer the
16 certificate of convenience and necessity or does the
17 Commission have that authority? We believe it does. In
18 the case of Missouri Gas Company, which was Case No.
19 GM-94-252 -- no, it was a 1994 case -- the Commission
20 approved the transfer of certificates of convenience and
21 necessity from another gas entity to what was then
22 UtiliCorp.

23 That's just one example of a number of
24 cases that are out there where the Order on an asset
25 transfer case transfers a certificate instead of cancels

1 them and establishes a new certificate.

2 We believe that whether the language is
3 transferring the certificate or cancelling the old one and
4 issuing a new certificate, that the criteria are the same.
5 They're the criteria from Tartan Energy, Intercon Gas --
6 Intercon Gas cases, the Court of Appeals case. With those
7 same criteria, that's 848 SW 2d 593, 1993. It discusses
8 the same standards, it's not the same parties.

9
10 And those are pretty basic as far as the
11 need for the proposed service, whether the applicant's
12 qualified to provide the service, the applicant has the
13 financial ability to provide the service, whether the
14 applicant's proposal is economically feasible and whether
15 the service promotes the public interest. And we believe
16 that those are the same criteria you should apply in this
17 case, regardless of how you consider how the certificate
18 goes from Osage Water to Missouri-American.

19 The other question regarded allowing
20 Missouri-American to charge rates higher than the rates
21 approved for Osage Water Company and Environmental
22 Utilities after a transfer if the transfer is approved.
23 We believe that at this time the Commission does not have
24 the authority to change the rates charged to customers for
25 Osage Water Company or Environmental Utilities.

1 Those customers are currently being charged
2 under rates approved by the Public Service Commission.
3 The Environmental Utility rates were set in Case
4 No. WA-2002-0065, and the Osage Water Company rates were
5 set in WR-2000-557 and 556; I think they were
6 consolidated. And by statute, of course, the rates set by
7 the Public Service Commission are presumed to be just and
8 reasonable.

9 When customers of a regulated utility are
10 being charged for service under Commission approved rates,
11 those rates may only be changed in two ways. Case law
12 says they can either be changed by the filing of a
13 complaint or by the file and suspend method whereby the
14 company files a tariff, which is then most likely
15 suspended in order to allow the Commission to consider all
16 relevant factors in setting appropriate, just and
17 reasonable rates.

18 There's a lot of case law that talks about
19 these two methods. They're described as complementary
20 methods. By the Commission and its most recent Report in
21 the most recent Missouri-American Water rate case, which
22 is WR-2003-0500, the way cases are -- rate cases are
23 initiated is discussed in the Jackson County case that
24 Mr. Cooper mentioned earlier, and we don't have the same
25 interpretation of that case, Laclede Gas Company vs.

1 Public Service Commission case, and -- and a number of
2 other cases.

3 And frankly, the most common method of
4 seeking a rate change is that a company files a tariff
5 that sets forth proposed new rates, along with
6 documentation meeting the Commission's current minimum
7 filing requirements. That tariff, proposed tariff is then
8 suspended pursuant to the Commission's authority as set
9 forth in Section 393.150. That statute is entitled
10 Commission may fix rates after a hearing, stay, increase,
11 burden of proof, but basically the triggering events that
12 give the Commission the authority to consider increasing a
13 rate under that statute is filing a tariff.

14 To date Missouri-American's filed no
15 tariffs nor provided the companies with proposed tariffs
16 nor provided notice to the parties or the customers of the
17 amount of any proposed rate increase. And we're sitting
18 here less than two weeks out from when the evidentiary
19 hearing is set to begin. Where here -- whereas here the
20 statutes prescribe a manner in which proceedings before a
21 public utility commission are to be initiated, that
22 procedure should be followed, and that's from the Laclede
23 Gas case at -- I think it's 535 SW 2d 561, appellate case
24 from 1976.

25 There are some things -- although the case

1 law and the statutes don't address the issue of due
2 process to customers, we believe that's an important
3 reason, probably the most important reason why the statute
4 requires that a company seeking a rate increase file a
5 tariff that contains the proposed new rate, because that's
6 the only way to ensure that the customers' rights to due
7 process are honored.

8 I was -- I did a little bit of checking
9 over the lunch hour because I hadn't had a chance to do it
10 before and because I hadn't found it in the statute
11 itself, but there is some reference that strongly suggests
12 that notice to customers is an integral part of the rate
13 case process, and that's contained in a couple of
14 different places, and some of it more by implication than
15 directly by stating.

16 If you look to the general provisions of
17 tariff filings which create rate cases, which is at
18 4 CSR 240-2.065, that -- that procedure discusses how a
19 general rate increase request can be filed, and that
20 happens when a public utility submits a tariff which
21 constitutes a general rate increase request. The
22 Commission then establishes a case file for the tariff,
23 and there are minimum filing requirements that go along
24 with that.

25 In addition, in Chapter 2 before I get to

1 those filing requirements, at 240-2.075 regarding
2 intervention, it says that an application to intervene
3 shall comply with these rules and be filed within 30 days
4 after the Commission issues its order giving notice of the
5 case, unless otherwise ordered by the Commission. And
6 that application to intervene shall state the proposed
7 intervenor's interest in the case and whether the proposed
8 intervenor supports or opposes relief sought or is unsure
9 of those positions.

10 Now, an intervenor can't intervene in a
11 case that the intervenor doesn't know about and can't
12 state a position or even an interest in the case unless
13 they know what the subject matter of the case is. So I
14 strongly suggest that there is a notice requirement to the
15 public, and that would include a company's customers.

16 In addition, in the filing of a general
17 rate increase, in the minimum filing requirements for
18 filing at 240-3.030 at subsection 3B, among the minimum
19 filing requirements is general information concerning the
20 filing which will be of interest to the public and
21 suitable for publication, including the amount of dollars
22 of the aggregate annual increase and the percentage of
23 increase over current revenues which the tariffs propose.

24 Now, one issue that may be -- may come to
25 mind on looking at that is, well, at this point in time

1 anyway, Osage Water Company is a small company and would
2 be eligible for small company rate case procedures. And
3 there are specific small water company and small sewer
4 company rate case procedures that the Commission also has,
5 and they are a little bit different, and they are found --
6 they're pretty much identical except for the words water
7 and sewer, but they are found at 240-3.330, and 240-3.635,
8 and I think that they're also instructed with -- regarding
9 whether or not there's sufficient notice for this to be a
10 rate case or a place where rates can be considered.

11 Significantly with a small company case, a
12 tariff isn't filed. There's a letter that's sent to the
13 secretary of the Commission, copied to my office. The
14 letter shall state the amount of the additional revenue
15 requested, the reasons for the proposed change and a
16 statement that all Commission annual assessments have been
17 paid in full or are being paid under an installment plan.
18 Again, clearly information that says what amount of rate
19 increase is being sought, providing the opportunity for
20 notice and an opportunity for investigation to begin into
21 a rate increase request.

22 We don't have any of that here. We don't
23 have any of that here because this is an application for
24 transfer of assets case, not a rate case. It's not a rate
25 case for a lot of reasons, besides the name of the case,

1 most importantly because they haven't complied with the
2 filing requirements for a rate case under either
3 provision, either the small company or the general filing
4 requirements for a rate case.

5 You know, going back to the statutes
6 themselves, I mean, we go back to this idea that Missouri
7 law generally prohibits any change in the rates with less
8 than 30 days notice and 30 days publication, except in
9 those extreme circumstances authorized by this Commission.
10 We haven't heard anything in this legal argument about why
11 there's any legal reason, if there's any legal reason
12 there should be any change from the regular procedure for
13 setting rates. We just haven't heard it.

14 But, you know, no tariff's been filed.
15 There's no time to notify the customers of a proposed rate
16 increase, certainly not within the time set in this case
17 as far as the procedural schedule and the hearing set at
18 the end of this month. We believe that there are due
19 process considerations that the Commission must consider
20 in this case. Require -- due process requires that
21 administrative hearings be fair and consistent with
22 rudimentary elements of fair play.

23 One component of due process is that the
24 parties be afforded a full and fair hearing at a
25 meaningful time and in a meaningful manner. We still

1 don't know how much of an increase Missouri-American
2 thinks they want. They don't know how much they think
3 they want, because it's one number if the Commission
4 approves an asset transfer based on the rate base numbers
5 that are contained in the application or in the Staff's
6 recommendation and they're basically -- they're pretty
7 close. There's not much difference between those numbers.

8 It's something else if the Commission -- I
9 guess something else if the Commission says, you can do it
10 but rate base should only be 500,000 or 430,000 or
11 something like that. We don't know what they're asking
12 for. So there's no way we can consider all of the
13 relevant factors.

14 And that goes to the second part of that
15 issue, and that is what factors must the Commission
16 consider in setting those rates. They're the same factors
17 you need to consider no matter whose rates you're setting
18 and what the situation is. You have to include all
19 relevant factors.

20 Section 393.270.4 requires the Commission
21 consider all relevant factors in setting just and
22 reasonable utility rates, and this section is also often
23 the source of the prohibition of what we call single issue
24 ratemaking. And that's also discussed in the Utility
25 Consumers Council of Missouri vs. Public Service

1 Commission case.

2 A hearing in a rate case, the company
3 proposing the change would have the burden of proof,
4 establish that the current lawful rate is not just and
5 reasonable, and customers or their representatives would
6 have the opportunity to present evidence if they chose
7 rebutting the company's claims and may even make their own
8 proposals regarding an appropriate rate. After careful
9 and impartial consideration of the evidence, the
10 Commission would then determine what rate is just and
11 reasonable in that situation.

12 We heard some discussion earlier from
13 Mr. Duggan, and I just want to add one thing. And he
14 said, you know, he understood that rate -- things have to
15 be fair and there have to be -- rates have to be high
16 enough to make sure that there's safe and adequate
17 service, and there also should be at least the
18 opportunity, I would say, for the company to earn a
19 reasonable rate of return. The third component is that
20 those rates must be just and reasonable to the customers
21 as well as to the company.

22 One factor I think that would be relevant
23 to the Commission in consideration of whether or not rates
24 should change, in addition to what the rate base ended up
25 being, would be consideration of savings that would be

1 generated by elimination of various payments from Osage
2 Water Company to its debtors, to its various principals,
3 to other entities such as the other entities that own
4 parts of the assets that were used in providing service.

5 Another factor saving is generated by
6 elimination of things like what we've referred to as the
7 Hancock debenture, which was a manner of trying to repay a
8 debt to Mr. Hancock, who's also a party in this ca--
9 Hancock Construction is a party in this case. The dollar
10 a month add-on to rates that Mr. Williams discussed this
11 morning for payment of back legal fees, those are all just
12 examples without delving into the exact day-to-day
13 operations of the company that would be factors for the
14 Commission to consider in deciding what rates are just and
15 reasonable in this particular case.

16 There are others, and because we don't know
17 what they want, we're not really in a position to discuss
18 why that is or is not appropriate. If we want to do that,
19 we need to do that in a proper forum, and the proper forum
20 is a rate case, and no rate case has been filed. We just
21 think it's really -- although the element that they --
22 that the applicant Missouri-American has brought up is the
23 change in rate base, that's just one factor. We can't
24 explore the rest of that factor or any other factor in
25 isolation.

1 You know, even in situations where initial
2 certificates are sought for areas where there's not
3 regulated service, there's some sort of evidence set forth
4 and some proposed rate that we have an ability to analyze
5 in the setting of rates in the issuance of a new
6 certificate for a previously unserved area. We don't even
7 have that in this case.

8 Just -- I mean, based upon -- those are the
9 answers that we think best address the issues in this
10 case. We note that, you know, again, the application in
11 this case seem to be prepared in a way that was not as
12 clear cut as it could have been and certainly doesn't
13 contain the information that Missouri-American should have
14 included if it wanted to address rate issues in this
15 particular case. And I don't know if you have any further
16 questions.

17 JUDGE MILLS: Commissioner Clayton?

18 COMMISSIONER CLAYTON: I apologize for
19 being late, Judge. The clock got away from me and I
20 didn't get down here in time. I didn't get an e-mail from
21 the Judge either, so -- I want to go through a few things
22 here real quick.

23 First of all, OPC believes that the
24 Commission does have the authority to step in and as a
25 condition of approving the transfer setting out some sort

1 of distribution schedule of the proceeds?

2 MS. O'NEILL: I think the Commission could
3 do that. I think if there was a dispute among the
4 creditors, I'm not sure that you want to get into that,
5 but I think you could at least order that those proceeds
6 be used or that Osage --

7 COMMISSIONER CLAYTON: Hang on. First --
8 the first question is, do you believe we have the
9 authority to do that?

10 MS. O'NEILL: I think you do.

11 COMMISSIONER CLAYTON: Okay. So I think
12 so, yes, is your answer.

13 The second question is, what is OPC's
14 position on the advisability of whether we should do that?
15 Is it your position that we order payment of all secured
16 debt? Is it your position that we pay -- that we order
17 distribution of penalties or government-related fines and
18 assessments and not unsecured debtor or just general
19 unsecured debt? What about judgments? I mean, do you
20 differentiate on any of that? Do you have a position?

21 MS. O'NEILL: I think that ideally the fact
22 that the current ownership and management of Osage Water
23 Company has created this debt situation, that they need
24 to -- they need to make good on their debt obligations.
25 The first obvious ones and the easiest ones for the

1 Commission to consider, I think, are judgments, liens and
2 assessments by governmental entities, back taxes,
3 assessments, penalties.

4 COMMISSIONER CLAYTON: So it is OPC's
5 position that we should order distribution of those?

6 MS. O'NEILL: Yes. And I believe to the
7 extent there are other outstanding obligations that are
8 undisputed, that those could be included in the Order. To
9 the extent there may be some things that are disputed, I
10 don't -- I don't know how far you want to get into that.
11 I wouldn't be opposed to your ordering --

12 COMMISSIONER CLAYTON: I'm asking what your
13 position is. I'm not asking you to speculate on what we
14 want to do, but what are you urging us to do?

15 MS. O'NEILL: I think that my office would
16 urge you to order the payment of known and measurable
17 debts that are not in dispute, and order that as a
18 condition of the sale.

19 COMMISSIONER CLAYTON: Who determines
20 what's in dispute and what's not in dispute?

21 MS. O'NEILL: Well, some things are easy.
22 If you have a judgment amount, that would certainly be
23 something that you would look at, something that was
24 indisputable.

25 COMMISSIONER CLAYTON: Shall we anticipate

1 OPC submitting a list of debts that it agrees that are
2 undisputed and should be paid as part of a distribution
3 order of the Commission?

4 MS. O'NEILL: My initial -- as far as we've
5 gotten in this has been to review the proposed
6 distribution by the Staff, and we didn't have a problem
7 with that, but we'd be happy to look into it more.

8 COMMISSIONER CLAYTON: Well, I'm trying to
9 identify the positions. There's a lot of -- I mean, I
10 just -- I guess that was a yes or a no question. And so
11 you support the Staff's position, whatever that is?

12 MS. O'NEILL: Yeah. Yeah. There's an
13 attachment to the Staff's recommendation that contains
14 some proposed disbursements.

15 COMMISSIONER CLAYTON: Your position is
16 that of Staff's on the -- okay.

17 MS. O'NEILL: We agree with that.

18 COMMISSIONER CLAYTON: Okay. Does OPC
19 believe -- have a position on the transfer of certificates
20 or whether we should?

21 MS. O'NEILL: I think you can do it. I'm
22 not sure that --

23 COMMISSIONER CLAYTON: Does it make any
24 difference to you?

25 MS. O'NEILL: -- it makes any difference.

1 COMMISSIONER CLAYTON: Okay.

2 MS. O'NEILL: Because it's an existing --

3 COMMISSIONER CLAYTON: So OPC does not have

4 a problem with accommodating Missouri-American relating to

5 wanting the geographic limitations established?

6 MS. O'NEILL: As far as what's -- as far as

7 the granting of the certificates, we don't have any

8 problem with that.

9 COMMISSIONER CLAYTON: Okay. Okay.

10 MS. O'NEILL: It's the other issues.

11 COMMISSIONER CLAYTON: Okay. Regarding the

12 rate increase, would Public Counsel be in a position to

13 evaluate information if supplied by the company in

14 establishing rates in this territory, if the information

15 was supplied by the company that you have said that has

16 not been supplied?

17 MS. O'NEILL: Yeah. The only information I

18 have is I do have -- and I think we got it yesterday or

19 the day before -- an e-mail and some response to some Data

20 Requests that has some information about what they think

21 may be -- it doesn't have a rate in it. Okay. It has one

22 proposed rate, but I hear that's not the one that they're

23 asking for.

24 We could evaluate the information but

25 the -- there's a couple of problems with that. One is

1 time. We're set to start hearing on the 24th of January.
2 One is -- and that's not just physical time but resources,
3 availability of resources in my office is a big issue.
4 But the other thing is just because they
5 give us information, unless we have some way of verifying
6 it, comparing it, having some way of looking at what's
7 actually going on, that also takes time. I mean, it's not
8 something -- we do it in rate cases. That's why they file
9 rate cases.
10 COMMISSIONER CLAYTON: You may not be able
11 to give me an answer to this because John may have to make
12 a decision. I don't know how decisions are made on this
13 level. But if we were to order the company to comply with
14 our rules regarding a small company rate increase and then
15 they did comply with doing the letter, supplying the
16 information, would Public Counsel object to that form of
17 ratemaking for this district?
18 MS. O'NEILL: You're right, I would have to
19 talk to Mr. Coffman, but I can also maybe give you some
20 clarification because we have had some discussion on this.
21 One issue is who would file, and if it would be
22 Missouri-American --
23 COMMISSIONER CLAYTON: I understand.
24 MS. O'NEILL: -- that's less problematic
25 for us than Osage. A concern we have with

1 Missouri-American and one we really haven't had a chance
2 to come to a decision on is the fact that
3 Missouri-American, at least for its other territories, is
4 under a rate moratorium right now.

5 COMMISSIONER CLAYTON: I understand. Well,
6 that's part of the problem here is that all this talk
7 about whether or not they should be entitled to have a
8 rate case, well, they just ought to go out and file a rate
9 case. Well, they can't file one until, what, February of
10 '07 -- is it '05?

11 MR. SNODGRASS: '05.

12 COMMISSIONER CLAYTON: I thought it was a
13 three-year moratorium from last year.

14 MS. O'NEILL: It's --

15 COMMISSIONER CLAYTON: You can tell me.

16 MS. O'NEILL: I think it's December, isn't
17 it? December of this year?

18 MR. SNODGRASS: End of '05.

19 MS. O'NEILL: They can file. They can file
20 in '05.

21 COMMISSIONER CLAYTON: So they can file one
22 the end of this year. Well, that was different than we
23 talked about today.

24 MS. O'NEILL: Yeah.

25 COMMISSIONER CLAYTON: But there are

1 limitations on the ability to file a rate case. Legally,
2 if we were to -- now, these are all hypothetical scenarios
3 because this is crazy. If we were to perhaps establish a
4 rate base value, set a dollar amount what we think is rate
5 base, approve the transfer, the transfer goes through,
6 would Missouri-American be able to file any sort of small
7 company rate case just for Osage Water's territory or
8 would they be bound by the moratorium, or do you know?

9 MS. O'NEILL: I'm thinking about it. I
10 think that if the Commission decided that they would allow
11 that -- because the size of the district would -- assuming
12 that it stays at least for this period of time a separate
13 district, isn't in with Jeff City or something like that,
14 would be small enough as far as number of customers to
15 qualify, generally --

16 COMMISSIONER CLAYTON: That's the next
17 question. That leads to the next question is, according
18 to state statute, would they be able to do that?

19 MS. O'NEILL: The small company -- the
20 small company procedures is for companies having 8,000 or
21 fewer customers.

22 COMMISSIONER CLAYTON: So they would not be
23 able to do that?

24 MS. O'NEILL: Yeah. Now, the other thing,
25 though, is -- and like I said, I would have to talk to

1 Mr. Coffman. I mean, the other thing is that although the
2 general time frame for a general rate case is 11 months,
3 it doesn't have to be 11 months. There's an initial
4 30 days and then it's four-month suspension and then
5 there's a six-month suspension, and if it was a small
6 discrete territory, and I, you know --

7 COMMISSIONER CLAYTON: Well, that's not
8 going to -- I mean, they're not going to file a full-blown
9 rate case. And I think isn't there a rule or something
10 that would prohibit them from doing just single districts?

11 MR. COOPER: Commissioner, I'm sorry. Can
12 I break in just for a second, Ruth?

13 MS. O'NEILL: Sure.

14 MR. COOPER: That is the other level there
15 is that there has been arguments made, I think, by the
16 Office of Public Counsel as to a different company that
17 they at one time certainly argued that a public utility is
18 a public utility and it was not allowed to come in and
19 file for a rate increase only on a specific district or
20 division of the company. And so that's another level of
21 complexity that plays in to whether Missouri-American
22 could get a rate increase for just these properties
23 without filing a full-blown rate case. I'm sorry for --

24 MS. O'NEILL: Sure. You know, and that's
25 right. And I know that we made that argument about a year

1 ago in a case regarding MoPub in St. Joe, and I think we
2 lost the argument, but I don't think our position may have
3 changed on that. But I think it's an open question from a
4 legal perspective. Then again, December 2005 is not that
5 far away, and I'm not sure how long the closing would take
6 once an Order was issued.

7 COMMISSIONER CLAYTON: Well, that's
8 relative all in the eyes of the beholder. Does OPC agree
9 that the purchase price may be the rate base value?

10 MS. O'NEILL: We were -- we participated in
11 some of those discussions about that, and we are
12 comfortable with how that number was arrived at, and I --
13 so yeah. I know you want yes or no.

14 COMMISSIONER CLAYTON: Yes, I do. Because
15 there's -- really I'm not sure where we're going with all
16 this. So yes, you agree with the company? Is that the
17 only thing that you agree with the company about --

18 MS. O'NEILL: Probably.

19 COMMISSIONER CLAYTON: -- is the value of
20 rate base?

21 MS. O'NEILL: Yes, probably. There might
22 be another word or two.

23 COMMISSIONER CLAYTON: All right. Does OPC
24 believe that the transfer is detrimental to the public
25 interest or there's a public detriment to this transfer?

1 MS. O'NEILL: In -- I can't give you a yes
2 or no answer on this one either. Sorry. But in general
3 we believe it is in the public interest to change
4 ownership of these companies. Whether or not this
5 particular procedure becomes detrimental may in part fall
6 on whether or not there would be a significant rate
7 increase to the customers. They're already paying a lot
8 of money for relatively inadequate service, and it will --
9 and I would hate to see them being -- paying even more
10 even before improvements are made.

11 COMMISSIONER CLAYTON: Okay. Then I'm just
12 going to summarize here real quick and you correct me if
13 I'm wrong on any of these. So Public Counsel agrees with
14 the rate base value is the purchase price of both
15 utilities. Public Counsel believes that we should
16 establish criteria and a schedule of distribution of the
17 proceeds --

18 MS. O'NEILL: Yes.

19 COMMISSIONER CLAYTON: -- in this case,
20 that the transfer is in the public interest or not
21 detrimental to the public interest. You don't care about
22 the transfer of the certificates one way or the other, and
23 you're opposed at all cost to any sort of rate increase?

24 MS. O'NEILL: In this proceeding, yes.

25 COMMISSIONER CLAYTON: Okay. Thank you.

1 COMMISSIONER APPLING: No questions, Judge.

2 JUDGE MILLS: I've got a few questions. I

3 think some of these are going to overlap what Commissioner

4 Clayton asked.

5 In terms of satisfying outstanding

6 obligations of Osage Water, I think you've said that you

7 think that should be something the Commission should set

8 as a condition for the transfer to go ahead?

9 MS. O'NEILL: Yes.

10 JUDGE MILLS: It seems to me that there

11 isn't now and doesn't seem likely that there will be an

12 agreement on exactly what those amounts are to be, and I

13 think that's the sole reason that Hancock Construction is

14 in this case. Is that a fair reading of the situation?

15 MS. O'NEILL: It -- it appears that Hancock

16 Construction isn't satisfied with what their amount is

17 that they're owed, but I think there are creditors who do

18 have undisputed amounts. So there may be some, but I

19 mean, I think there are a lot of undisputed amounts

20 already.

21 JUDGE MILLS: There are a lot of disputed

22 or a lot of undisputed?

23 MS. O'NEILL: Undisputed.

24 JUDGE MILLS: Okay. So is it your position

25 that we should order as a condition precedent the

1 satisfaction of the undisputed amounts, and then what do
2 we do with the disputed ones? Do we determine those on
3 our own?

4 MS. O'NEILL: I think that one of the
5 most -- the Hancock Construction issue presents a
6 difficult dilemma because it is clearly a -- there is
7 clearly a judgment out there. There's clearly been
8 Commission ratemaking effects regarding that judgment in
9 the ratemaking that's happened with Osage Water for the
10 past several years. I think one -- I think the issue is
11 not so much the amount of judgment, but some dispute about
12 how much has been paid on the judgment and whether
13 interest accrued should be considered.

14 But as far as the amount of the initial
15 judgment, I don't think that's in dispute. I think that
16 amount could be ordered. And if Mr. Hancock and his
17 company believe they're entitled to more, Camden County
18 courthouse is busy, but it's not that busy. They've been
19 there before.

20 JUDGE MILLS: Okay. So if the whole idea
21 is to resolve any possible cloud on the ownership of these
22 assets, how does simply ordering the payment of undisputed
23 amounts resolve that cloud? I mean, if the parties are
24 still going to have to run to the courthouse to figure out
25 who owes who what and then they may have some claim on the

1 properties being transferred, how do we resolve that issue
2 by simply ordering the payment of undisputed amounts?

3 MS. O'NEILL: You've lessened it
4 considerably, because instead of a dozen creditors out
5 there seeking some sort of an action, you've got everyone
6 paid something, and there may be someone who's seeking
7 more on top of that who can go and seek that. So it
8 certainly lessens the complexity of whatever court
9 proceeding may take place.

10 JUDGE MILLS: Okay. All right. Now, say
11 the Commission does decide that it wants to go down that
12 path and it does order that the proceeds are to be
13 distributed in a certain way. How do we -- how do we
14 enforce that order?

15 Say we issue that order and the sale
16 closes. We hear six months later, six days later from
17 Hancock Construction he didn't get a dime. What do we do?

18 MS. O'NEILL: Well, I can tell you what
19 happened in Warren County, because there were a lot of
20 outstanding creditors there when we finally got around to
21 doing closing in that case.

22 The title company, of course, does a
23 search, and there are things that will cloud a title, and
24 those obligations all were satisfied at the time of the
25 closing by checks written -- I think by checks written by

1 Missouri-American to those people and deducted from the
2 purchase price that went to Mr. Smith. And basically
3 Mr. Smith didn't get any significant amount of money out
4 of that deal.

5 So the title company will have a list of
6 creditors whose obligation -- whose demands on the
7 property have an effect on the title. So those things are
8 going to have to be cleared up regardless before title
9 will pass. So they're already going to do that.

10 JUDGE MILLS: You're saying the problem
11 won't arise, because the transaction simply won't close if
12 everybody is not satisfied at that time?

13 MS. O'NEILL: I would imagine not. That's
14 what happened in the Warren County case.

15 JUDGE MILLS: So we rely on the title
16 company to make sure everybody's satisfied?

17 MS. O'NEILL: Yeah, we -- yes.

18 JUDGE MILLS: Okay. Now, and I think --
19 and what you've just said makes me wonder if I
20 misunderstood you. I thought you'd said earlier on that
21 it was Public Counsel's position that Osage Water ought to
22 be required as a condition before the sale to satisfy all
23 the judgments?

24 MS. O'NEILL: No. I said I think that the
25 Commission could order that if they wanted to. I don't

1 think that's practical in this case.

2 JUDGE MILLS: Okay.

3 MS. O'NEILL: And I'm sorry if I didn't
4 speak that clearly.

5 JUDGE MILLS: And that was going to be my
6 next question, because as I understand it, it may not be
7 possible with Osage's current cash flow to satisfy all the
8 judgments outstanding.

9 MS. O'NEILL: In fact, I think mostly I
10 said that -- because I think that could be a condition of
11 the sale that the Commission could order that by saying,
12 no, you don't have to do it before you close, but out of
13 the proceeds these have to be paid, is just a practical
14 consideration that you want them to have the cash to be
15 able to comply with the condition.

16 JUDGE MILLS: Okay. Okay. Switching gears
17 and turning to ratemaking, you were here this morning and
18 you heard Mr. Cooper's theory about how we could proceed,
19 which is we approve the transaction and that we order the
20 company to file tariffs that would adopt this service
21 territory under their tariffs and they would file new rate
22 sheets, whatever amount that the determination in this
23 case supposedly justifies.

24 Now, just speaking hypothetically, if we
25 were to do that, if we have the best record in the world

1 in this case, we've got all the facts we need, we have
2 miles and miles of facts, we've got the best findings of
3 fact in the order you've ever seen, we find all the facts
4 necessary to support a rate increase, if all those things
5 happen, in Public Counsel view is it still unlawful for
6 the Commission to simply allow a rate increase tariff to
7 go into effect without suspension if it was filed in this
8 case simply because it didn't start out as a rate case?

9 MS. O'NEILL: It's filed -- it's -- part of
10 my problem is there has been no tariff and we don't have a
11 number. So I would say, yeah, that would be a problem.

12 JUDGE MILLS: As Mr. Cooper explained it,
13 we would issue an Order in this case approving the
14 transaction. We'd have a lot of evidence in the case
15 about the valuation of rate base, the amount of expenses
16 that are going to go into running it. So in theory -- and
17 this is part of my hypothetical -- we're going to have
18 information in the case that tells us what rate base is,
19 what expenses are and what the rate of return ought to be
20 so that we could set rates.

21 If we have all the information necessary to
22 do that and it's all good information, we issue a good
23 Order that finds all the facts necessary on those three
24 things, then the company after we've approved the transfer
25 files a tariff in which they add to their territory

1 description the Osage Water territory, which they would be
2 doing in any event, and they also file new tariff sheets
3 that say, these are the rates that apply in those
4 territories, and those rates are increased from Osage
5 Water's current rates.

6 MS. O'NEILL: In other words --

7 JUDGE MILLS: Are we allowed to do that
8 without suspending those tariffs?

9 MS. O'NEILL: I don't think so. I think
10 that -- I think there's two ways to initiate a change in
11 rates. One is a complaint, and one is file and suspend.
12 Now, sometimes rates get filed and there's not a
13 suspension, but that's still a different case.

14 JUDGE MILLS: And that was Mr. -- well --

15 MS. O'NEILL: And I think the problem is
16 they could file a tariff -- I mean, there's nothing in the
17 law that says they can't file a tariff whenever they want
18 and other parties can move to suspend or move to reject or
19 whatever for whatever legal reasons they may be.

20 But I think the filing of the tariff would
21 initiate a rate case, and then the Commission would then
22 have the obligation to do the things the Commission does
23 under 193.150 and under its rulings regarding rate cases.
24 I think it would be a different case than that one.

25 JUDGE MILLS: Well, in a rate case what

1 typically happens is the Commission issues a Report and
2 Order in which it rejects the rate increase tariffs that
3 the company files. The company then turns around and
4 refiles a new set of tariffs that create the revenue the
5 Commission has said they're allowed, and those typically
6 don't get suspended.

7 MS. O'NEILL: Right. And that would be the
8 exception, I think, that the statute contemplates.

9 JUDGE MILLS: I think what Mr. Cooper is
10 suggesting here is something similar. We would have all
11 kinds of information in this case. The Commission would
12 issue an Order saying we're going to approve this
13 transfer. We find that the rate base that's being
14 transferred has this value based on all these facts, that
15 the rate of return ought to be this, the expenses going
16 forward are going to be that, so that a proper rate for
17 this territory would be X. Then the company turns around
18 the tariffs that adopt that territory and would implement
19 those rates.

20 MS. O'NEILL: If I can clarify, you're
21 contemplating that the company would put on evidence in
22 support of what rate they want. The other parties would
23 have had the opportunity to investigate, verify, audit
24 that information to see whether or not it was reliable,
25 put on information, confirming, rebutting, disputing that

1 information. And the Commission would have all that
2 information before it, and all of that could be
3 accomplished before the hearing begins so that we can do
4 this case on the record.

5 JUDGE MILLS: The discovery would have to
6 be accomplished before this hearing begins, yeah, but all
7 the evidence would be put on during the hearing.

8 MS. O'NEILL: Okay. So there would be
9 adequate time for that discovery to take place?

10 JUDGE MILLS: In my hypothetical, yes.

11 MS. O'NEILL: In your hypothetical, okay.
12 Because my answer is predicated on the fact that your
13 hypothetical is different than the situation we have right
14 now.

15 JUDGE MILLS: Right. I'm just trying to
16 get hypothetically past all the stumbling blocks to see if
17 we could possibly under ideal circumstances overcome the
18 filing of a tariff that increases rates outside of a
19 general rate case.

20 MS. O'NEILL: I cannot stand here and tell
21 you that my office would not appeal that decision.

22 JUDGE MILLS: Okay. And that's certainly
23 what I expected. I just wanted to make sure that I
24 understood that correctly.

25 Okay. That's all the questions I have. Is

1 there anything further from the Bench?

2 (No response.)

3 JUDGE MILLS: I'm sorry. I didn't see you

4 come in. Any questions?

5 COMMISSIONER MURRAY: I don't think so.

6 JUDGE MILLS: Okay. Thank you. Okay.

7 Mr. Snodgrass?

8 MR. SNODGRASS: Good afternoon. My name is

9 Cliff Snodgrass. I represent the Staff here today.

10 After listening to all this various

11 confusing testimony, it reminds me of a line from a Kenny

12 Rogers song and that's, I just dropped in to see what

13 condition my condition was in. That's sort of how I feel

14 today. Like Mr. Duggan and hopefully as articulately as

15 he did, I'd like to start at the rear of these questions

16 and refer to Question 3.

17 MAWC has said that it's got to have a rate

18 increase or this deal's dead. That's what they said.

19 That's the way I characterize their testimony here. Now,

20 it's undisputed the Commission has exclusive jurisdiction

21 to establish public utility rates. Courts don't do that.

22 Everybody knows that.

23 If the Commission wants to know how a rate

24 case is created or how a rate increase occurs, there is a

25 one size fits all case the Commission can look at. That

1 case would be State ex rel Utility Consumers Council vs.
2 PSC Mo, I think as Dean calls it the UCCOM case.

3 Now, this is what the court of -- the
4 Supreme Court of Missouri said about how you get a rate
5 increase. The Court said in part, pursuant to
6 Section 393.150, a utility may file a schedule stating a
7 new rate which shall become valid unless suspended by the
8 Commission on its own motion or upon complaint of
9 interested parties as authorized by statute. That's one
10 method.

11 It says, if it's suspended, however, the
12 Commission must within a specified period hold a hearing
13 concerning the propriety of the new rate. The hearing may
14 also be held without the filing of a new rate if a
15 complaint is filed or on the Commission's own motion.
16 Those are the ways according to the Missouri Supreme Court
17 that you get a rate increase.

18 Now, under this particular rationale, it's
19 clear to me that nothing has happened in this case along
20 those lines whatsoever. Why? MAC hasn't filed a new
21 tariff in this case seeking a rate increase. It hasn't
22 done that. The Commission hasn't filed a motion regarding
23 the rates, and there hasn't been a complaint filed
24 regarding rates connected with this acquisition.

25 It's really quite simple to me. Since none

1 of the ways to get a rate increase has happened, Staff
2 would argue that Missouri-American should not be allowed
3 to obtain a rate increase at this time. This is not the
4 right -- it hasn't done anything to get it. That's
5 according to Supreme Court precedent here.

6 Well, going to the certificate issue, while
7 it's true that the Commission sets rates in some
8 certificate cases, it's been Staff's experiences those
9 cases usually involve a startup scenario where a new
10 certificate is being issued for the first time to a new
11 utility provider and initial rates need to be fixed so the
12 utility can start up its business and start serving its
13 customers.

14 Now, what MAWC is looking for here is a
15 change to existing Commission approved rates that already
16 exist for Osage Water/Environmental Utilities. That's a
17 different scenario than the Staff has seen before
18 regarding rates connected with a certificate.

19 Clearly this is not a scenario where the
20 Commission establishes initial rates for a startup
21 utility's customers. The Staff just looks at this
22 transaction and says that existing customer rates are
23 simply not changed in the context of this kind of transfer
24 of certificate case.
25 It's not the appropriate forum.

1 Now, Mr. Cooper refers to the Laclede
2 Gas vs. PSC case as some authority that they can pursue a
3 rate increase with this filing at a later date. I'd
4 remind the Commission that that case was decided in the
5 case of an interim rate increase case.

6 What had happened was Laclede had filed a
7 case asking for about 12.5 million. About two weeks later
8 they came in for an interim rate filing asking for about
9 5.4 million, and the courts said that the Commission had
10 the discretion to go forward with an interim rate case,
11 but commentary was made in the case that on occasion
12 Commissioners regard those interim rate cases as emergency
13 situations, and certainly this is not an emergency
14 situation. No emergency comes to mind. None has been
15 stated.

16 Going to the second part of Question 2, I
17 don't think anybody really has an issue with that. I
18 would cite the statute, however, just to add a little new
19 information to the Commission. 393.270, 4 and 5 states in
20 part that in determining the price to be charged for water
21 and sewer service the Commission may consider all facts
22 which in its judgment have any bearing on the question
23 with due regard, among other things, to a reasonable
24 average return on capital actually expended and to the
25 necessity of making reservations out of income for surplus

1 and contingencies.

2 I think everybody agrees here the law is
3 quite clear that when determining a rate the Commission is
4 obligated to review and consider all relevant factors
5 rather than just a single factor. All the company's
6 talked about in its application so far is an adequate
7 return on its anticipated investment in this case. That's
8 certainly not all relevant factors. That's only one
9 factor.

10 In terms of examples of other factors, in
11 UCCOM the court listed other factors can also include
12 operating expenses, in addition to the utility's rate of
13 return. We have no information on either the rate amount
14 as the OPC says, we have no information on the operating
15 expenses the company intends -- might incur when it takes
16 over the operation of these companies if it does.
17 So basically the ultimate purpose of ratemaking we all
18 agree is to fix a rate which is just and reasonable both
19 to the utility and to its customers.

20 I'd like to move on now to Question 2.
21 Staff has a little different take on that. We're pretty
22 much on board with everyone, with the exception of what we
23 prefer to happen here. The question is what authority
24 does the Commission have to transfer a certificate? Well,
25 they've done it already, done it several times.

1 Evidently they thought they did in
2 EM-91-29, a case involving Arkansas Power & Light Company,
3 Union Electric. The Commission approved a stip that
4 provided for the transfer of certificate of convenience
5 and necessity. In a case that may be near and dear to
6 your hearts, EM-2002-92, the joint application of
7 UtiliCorp United and St. Joe Light & Power Company for
8 authority to merge
9 St. Joe with and into UtiliCorp, the Commission used
10 language in its Report and Order that also appeared to
11 approve the transfer of St. Joe's certificates to
12 UtiliCorp.

13 However, on the other side of that fence,
14 we -- the Staff just saw an Order come out recently in
15 WL-2005-0206, companion case SO-2005-0207. The case is
16 really Silverleaf Resorts and Algonquin Water Resources,
17 were the parties. That preliminary order denied a request
18 to transfer a certificate of convenience and necessity and
19 required the applicant to apply for a new certificate.
20 This is a case where both parties appear to be experienced
21 operators.

22 So there is a few clouds on the horizon of
23 whether or not it's clear transfers are just common place.
24 I don't know that's the case. Staff as a matter of
25 history and experience doesn't see that many transfers of

1 certificate? We do agree, however, that application for a
2 new certificate and a transfer of a certificate involve
3 the same standards expressed in the Tartan Energy case.
4 We've already talked about that.

5 There's authority that could be implied to
6 transfer of a certificate in the rules. 4 CSR 240-3.605,
7 which deals with selling the assets of a water company, in
8 paragraph A includes the operating rights of certificates
9 of convenience and necessity in relation to property
10 involved in an acquisition transaction. Sewer sales rule
11 uses the same language.

12 So it seems to me it's arguable that since
13 certificates are mentioned in context of description of
14 the property being sold, that these transfer -- the
15 transfer of certificates is also permissible.

16 In terms of the preference, Staff prefers
17 that new certificates be issued in the case, and the
18 reason for that is that not all the certificated areas of
19 Osage Water Company and Environmental Utilities are being
20 transferred in this case. As I understand it with my
21 conversations with my Staff client, the Parkview Bay
22 certificated area and perhaps Shawnee Bend 5 are not
23 included within this transfer. Because of that, Staff
24 would prefer that new certificates be issued that specify
25 specifically what MAWC's new service area might be.

1 I'm going on in a more loaded question to
2 No. 1. I think there's a distinction between ordering
3 distribution of proceeds and authorizing the sale to
4 proceed under certain conditions. The Commission is not
5 going to order the sale to occur under X, Y and Z. They
6 are going to authorize it to occur if certain conditions
7 are met. That's not the same thing as ordering
8 distribution that a circuit court might do on claims to
9 assets. There is a distinction there in what the
10 Commission does. It doesn't order. It authorizes a
11 transaction.

12 Staff believes that that's certainly more
13 than a semantic difference. We believe that the
14 Commission can certainly condition its approval of this
15 transaction based on the Staff's recommendation, and that
16 recommendation was already filed in this case setting a
17 rate base value about \$845,000, I believe, for Osage Water
18 and about \$85,000 for Environmental Utilities.

19 I guess I'd remind the Commission of an old
20 case. It's probably older than I am. City of St. Louis
21 vs. PSC talked about what the public interest is. What is
22 that? The court said -- Missouri Supreme Court said in
23 adopting a Maryland case -- a Maryland case's language
24 that to prevent injury to the public and the clashing of
25 private interest with the public good in the operation of

1 public utilities is one of the most important functions of
2 the Public Service Commission. It is not their province
3 to insist that the public be benefited as a condition of
4 ownership, but their duty is to see that no such change
5 shall be made to work to the public detriment. In the
6 public interest in such cases means no more than not
7 detrimental to the public.

8 Sort of sounds like the physician's oath,
9 which as I understand is do no harm. That's the
10 Commission's duty, and that's standard here in these
11 cases, do no harm to the public. That's your public
12 trust.

13 I guess the question is, is the
14 Commission stuck with this deal as it's written? Is it a
15 take-it-or-leave-it scenario? Staff doesn't think so.
16 Staff thinks you have the power because you have the right
17 to look out after the public interest, you have the
18 authority to determine the value of public utility
19 property under 393.230, that all these things and the
20 public trust gives you the authority to place or recommend
21 conditions of a transaction.

22 If the parties don't like those particular
23 conditions and they aren't willing to abide by them, they
24 can walk away from them. It's not an order from a court.
25 It's authorization from the Commission. If they don't

1 like those conditions, they don't have to accept them.
2 That's the Staff's view. That's why the Staff asked that
3 you go along with its recommendation to set a rate base
4 value according to the recommendation that was filed, and
5 that recommendation is being revised by Dale Johansen.
6 We've got some numbers we'd like to change.

7 But Staff doesn't exactly agree with Public
8 Counsel, although we're for about 95 percent of what they
9 said, about 95 -- about 90 percent of what Mr. Duggan
10 articulately said. The Commission -- the Staff believes
11 the Commission should condition the sale such that the
12 proceeds are distributed, which would allow the rate base
13 to be valued at about \$845,000 for Osage and about 85,000
14 for Environmental Utilities. Anything in excess of that
15 could be decided in the court arena.

16 That's what the State believes the
17 Commission -- the Staff believes is the appropriate rate
18 base here. Mr. Johansen prepared those figures and is
19 familiar with how that figure was reached. I am no
20 accountant, so I'm not sure I'd be the best source to ask
21 on how those numbers were reached, to be frank with you,
22 and I don't want to mislead you.

23 Staff wanted me to make this argument to
24 you, and I'm going to do the best I can with it.
25 Ratemaking is a Commission function. Everybody agrees

1 with that. Excuse me stating the obvious. And
2 determining rate base is clearly within the Commission's
3 power.

4 From a practical standpoint, the Commission
5 must know how the proceeds of the sale are to be
6 distributed or it must be at least assured that certain
7 entities will be paid certain amounts, because without
8 this assurance the Commission can't determine the
9 post-sale ratemaking rate base value of the assets owned,
10 leased by Osage Water Company and/or Environmental
11 Utilities to provide service is anything other than the
12 ratemaking base value at the time of Osage Water's last
13 rate case.

14 In other words, pardon my poor reading,
15 Staff believes that you need to approve the Staff's
16 numbers. That way you'll be assured as to what the post
17 ratemaking rate base value is. If it goes into the
18 circuit court arena, we don't know who's going to be paid
19 what on what assets. We don't know what rate base will
20 be. I think that's essentially the Staff's argument in
21 this case.

22 As to whether or not the impact of
23 distribution to sales on outside entities may or may not
24 affect the Commission determination of whether the
25 detrimental standard has been met, I think it depends on

1 how much and who we're talking about. I think that's a
2 difficult question to answer. If maybe one entity of a
3 small amount is not properly paid, that might not be a
4 public interest detriment, but if several entities were
5 paid and a larger amount of money was involved, that might
6 be. I think that's up for the -- that's an issue the
7 Commission needs to decide.

8 I guess that would be the close of my
9 presentation today. Thank you.

10 JUDGE MILLS: Thank you. Commissioner
11 Murray?

12 COMMISSIONER MURRAY: Thank you.
13 Mr. Snodgrass?

14 MR. SNODGRASS: Yes, ma'am.

15 COMMISSIONER MURRAY: You indicated that
16 not all of the Osage Water Company assets are being sold,
17 are being transferred?

18 MR. SNODGRASS: I'm talking about two
19 different certificated areas, ma'am, as I understand it,
20 Shawnee Bend 5 and I think Parkview Bay. Yes, ma'am.

21 COMMISSIONER MURRAY: And then I see in
22 Contract A that it is --

23 MR. COOPER: May I insert something real
24 quick before that gets twisted? I think what
25 Mr. Snodgrass is referring to is that Staff's

1 recommendation does not recommend that two areas be
2 transferred. I think that those -- we need some
3 discussion then.

4 MR. WILLIAMS: Your Honor, if I may, I was
5 intimately involved.

6 JUDGE MILLS: I think your microphone's
7 turned off.

8 MR. WILLIAMS: If I may, Shawnee Bend 5 is
9 part of this transaction. The assets involved are part of
10 the transaction. The Parkview Bay assets are not
11 operational and were not included in the list of assets.
12 What happens with the certificate is academic with respect
13 to that service area.

14 MR. SNODGRASS: All right. I think Staff
15 would go along with that particular characterization.
16 Thank you.

17 COMMISSIONER MURRAY: So there are no
18 customers being served in the Parkview Bay certificated
19 area today; is that correct?

20 MR. WILLIAMS: That's correct. That's the
21 one City of Osage Beach overbuilt and disconnected all the
22 customers.

23 COMMISSIONER MURRAY: Is Osage Water
24 Company requesting that that certificate be canceled?

25 MR. WILLIAMS: That is not part of the

1 application, but it is not of concern one way or the
2 other. If that's the Commission's desire, that's fine.

3 COMMISSIONER MURRAY: And then there was in
4 Contract A , it was understood that buyer is not acquiring
5 any assets associated with sewer services provided to the
6 Cedar Glen development, and that obligation to the
7 customers dependent on those facilities will remain with
8 seller or others. Would somebody please explain that?

9 MR. SNODGRASS: It was my understanding
10 that only the water system and its asset was being sold.
11 Perhaps I'm wrong.

12 MR. WILLIAMS: I'll be glad to speak to
13 that.

14 JUDGE MILLS: Please do, because we're
15 recording all this and if you're not speaking into the
16 microphone, we can hear you, but you're not getting out.

17 MR. WILLIAMS: I understand. Ma'am, the
18 Cedar Glen sewer system was built by the developer on
19 property belonging to Ameren.

20 COMMISSIONER MURRAY: Who is the developer?

21 MR. WILLIAMS: Cedar Glen Construction,
22 Inc.

23 COMMISSIONER MURRAY: By Cedar Glen
24 Construction, Inc. on property owned by --

25 MR. WILLIAMS: They did not own. It

1 belongs to what we call Union Electric at the Lake.
2 There's title issues that we've been working to resolve
3 with respect to that. There's an anticipation that they
4 may be resolved soon and that a contract to convey those
5 to Missouri-American will be forthcoming, but at this
6 point in time, they are not part of this transaction.

7 COMMISSIONER MURRAY: Is there a
8 certificate to serve those customers?

9 MR. WILLIAMS: Yes, ma'am.

10 COMMISSIONER MURRAY: And whose name is
11 that in?

12 MR. WILLIAMS: Osage Water Company.

13 COMMISSIONER MURRAY: And what's going to
14 happen to those in the meantime, those customers?

15 MR. WILLIAMS: I presume it will continue
16 to be operated in the manner it is now.

17 COMMISSIONER MURRAY: So we're not totally
18 rid of Osage Water Company as a regulated utility even if
19 this goes through?

20 MR. WILLIAMS: Apparently not.

21 COMMISSIONER MURRAY: Mr. Snodgrass?

22 MR. SNODGRASS: Yes, ma'am.

23 COMMISSIONER MURRAY: You also indicated
24 that the Staff wanted you to argue that for rate base the
25 Commission must know the distribution of the proceeds.

1 Let me see if I understand Staff's position here. Is it
2 Staff's position that the rate base should -- for future
3 consideration of rates should be the purchase price?

4 MR. SNODGRASS: Pardon me for consulting
5 with my client, but again, I'm not an accountant and I
6 fully admit that and I'm sure it's evident.

7 COMMISSIONER MURRAY: Neither am I.

8 MR. SNODGRASS: I think Staff's position is
9 that so long as certain people and entities are paid, that
10 would be the price.

11 COMMISSIONER MURRAY: And the reason for
12 that is that -- let me see if I'm correct on that -- that
13 if certain entities are not paid, that they could then
14 come back to Missouri-American and demand payment or there
15 is that possibility, and that that would, therefore, lower
16 the value of what is being paid as the purchase price?

17 MR. SNODGRASS: I'm advised that if the
18 price that was paid was different than what we proposed,
19 then you couldn't come to a definite rate base.

20 COMMISSIONER MURRAY: I'm sorry. Would you
21 restate that.

22 MR. SNODGRASS: If the price that we --
23 if the overall total price that we've suggested is not
24 paid --

25 COMMISSIONER MURRAY: Is there some

1 question that the buyer is not going to pay the full
2 price, or is there a question of once it's paid, where are
3 the proceeds going?

4 MR. SNODGRASS: I think it's the latter.

5 COMMISSIONER MURRAY: And the question
6 that -- and the thing that the Commission -- the Staff is
7 saying the Commission needs to know is where the proceeds
8 go; is that correct?

9 MR. SNODGRASS: Yes.

10 COMMISSIONER MURRAY: And the reason for
11 that is that if the buyer -- I mean the seller does not
12 distribute the proceeds in the manner outlined, then some
13 of those creditors may come back to Missouri-American
14 demanding payment and there will be a cloud on the title
15 of the assets transferred? I mean, am I making an
16 argument that's somewhat what Staff is saying?

17 MR. SNODGRASS: I think Staff would agree
18 with you, ma'am, that that's possible. I congratulate
19 you.

20 COMMISSIONER MURRAY: That's a possibility?

21 MR. SNODGRASS: Yes, ma'am.

22 COMMISSIONER MURRAY: But if we know how
23 the proceeds are distributed and if they are distributed
24 as outlined in the agreement, then Staff is of the
25 position that the purchase price should be the amount that

1 is put into rate base for future determination of rates?

2 MR. SNODGRASS: Yes.

3 COMMISSIONER MURRAY: And that is what the

4 company should be allowed to earn a rate base on, a rate

5 of return on?

6 MR. SNODGRASS: Yes, ma'am.

7 COMMISSIONER APPLING: I see a lot of heads

8 going up and down.

9 MR. SNODGRASS: I apologize.

10 COMMISSIONER MURRAY: And in determining

11 that, did the Staff just look at, okay, this company is

12 worth what all of the debts are and that the ratepayers

13 need to pay a rate based on all the debts that this

14 company accumulated over time? I'm seeing heads shaking

15 no, that that's not --

16 MR. SNODGRASS: No, I don't think so. I

17 don't believe that's the case. I think Staff looked at

18 all the factors and came to the conclusion that certain

19 people needed to be paid so that a post ratemaking value

20 could be established for ratemaking purposes.

21 COMMISSIONER MURRAY: But Staff is also

22 taking the position that there should be no rate

23 determination in this case.

24 MR. SNODGRASS: That is right. We don't

25 think they've properly -- they've done the right thing to

1 get a rate increase frankly.

2 COMMISSIONER MURRAY: And may I ask

3 Mr. Cooper -- is it Mr. Cooper's position that we actually

4 should be determining rates and not just declaring what

5 the rate base for a future rate case will be?

6 MR. COOPER: It is, Commissioner, the

7 company's position that it should both determine rate base

8 and the initial rates to be charged.

9 COMMISSIONER MURRAY: But your contract is

10 only contingent upon an agreed-upon rate base, is it not?

11 MR. COOPER: No. It's also contingent upon

12 rates.

13 MR. SNODGRASS: On an adequate rate of

14 return, I believe?

15 MR. COOPER: Sufficient rates to derive the

16 adequate rate of return.

17 MR. SNODGRASS: Yes, that is in the

18 application, your Honor.

19 COMMISSIONER MURRAY: In the contract.

20 Could you point out the contract language, please?

21 MR. SNODGRASS: I think it's on page 7 of

22 the application.

23 COMMISSIONER MURRAY: I'm talking about the

24 contract language.

25 MR. SNODGRASS: It is in the application.

1 COMMISSIONER MURRAY: The application to
2 the Commission for approval of the contracts?

3 MR. SNODGRASS: Yes, ma'am.

4 COMMISSIONER MURRAY: But where is it in
5 the contracts?

6 MR. SNODGRASS: I don't think Staff can
7 answer that question at this point in time.

8 MR. WILLIAMS: Paragraph 3.3.

9 MR. COOPER: In Agreement A.

10 MR. WILLIAMS: On page 13 of Agreement A.

11 COMMISSIONER MURRAY: Okay. This is
12 specifically a rate increase condition precedent to the
13 execution of the contract?

14 MR. WILLIAMS: Yes, ma'am.

15 MR. SNODGRASS: Condition precedent
16 language is correct.

17 COMMISSIONER MURRAY: Okay. I think that's
18 all. Thank you.

19 MR. SNODGRASS: Thank you.

20 COMMISSIONER CLAYTON: Okay. Somewhere in
21 the Staff report -- can I go --

22 JUDGE MILLS: Please.

23 COMMISSIONER CLAYTON: Somewhere in the
24 Staff report, Cliff, it says that Staff disputes the
25 \$845,000 being the proper rate base, like there's supposed

1 to be a deduct for some depreciation. Is your position
2 different now that you agree with the 845?

3 MR. SNODGRASS: The 845 has to be
4 depreciated through December of 2004.

5 COMMISSIONER CLAYTON: Okay. What does
6 that mean?

7 MR. SNODGRASS: Means that the depreciation
8 expense has to be taken against the assets.

9 COMMISSIONER CLAYTON: Which is -- so it's
10 one year worth of depreciation. How much money are we
11 talking; 5,000, 10,000, 20, 100? Big amount, little
12 amount?

13 MR. SNODGRASS: With Staff, I guess big and
14 small is relative, but I don't think we're sure, but I
15 think we think it's small.

16 COMMISSIONER CLAYTON: Okay. And same
17 thing for Environmental Utilities, even smaller amount?

18 MR. SNODGRASS: Much smaller.

19 COMMISSIONER CLAYTON: Not that size
20 matters. Okay. So there's close to a general agreement
21 on the rate base value. OPC agrees with the value,
22 company, joint applicants, Staff, on the 845,000 being the
23 rate base value, correct?

24 MR. SNODGRASS: Correct.

25 COMMISSIONER CLAYTON: Everybody?

1 MR. SNODGRASS: Everybody's nodding. And
2 85 for Environmental Utilities.

3 COMMISSIONER CLAYTON: Okay. So we're very
4 close on that?

5 MR. SNODGRASS: Yes, sir.

6 COMMISSIONER CLAYTON: Good. Now, I don't
7 understand this distribution, why you-all care about the
8 distribution.

9 MR. SNODGRASS: I think one of the reasons
10 is that we're concerned with clouds on title to the
11 assets, No. 1.

12 COMMISSIONER CLAYTON: Is it only secured
13 debt, only judgment liens, only penalties? You don't care
14 about unsecured debt?

15 MR. SNODGRASS: Well, for example, the sale
16 price of 845,000 is conditioned on Mr. Hancock receiving
17 approximately \$215,000. If he didn't get \$215,000, rate
18 base would not equal \$845,000.

19 COMMISSIONER CLAYTON: But rate base isn't
20 based on debt, right? I mean, is it because there's not
21 enough money left or what?

22 MR. SNODGRASS: It's removing at least
23 partially a cloud on the utility assets.

24 COMMISSIONER CLAYTON: Okay. Mr. Cooper, I
25 thought when we started this you said that you didn't

1 believe that the Commission should set a schedule of
2 distribution or order any type of conditions on
3 distribution of the proceeds. Is that accurate?

4 MR. COOPER: I think my position was that
5 the Commission does not have the authority to determine
6 where sale proceeds are to be provided.

7 COMMISSIONER CLAYTON: So you-all don't
8 think we have the authority. Certainly the company's
9 going to take action to make sure that it's buying good
10 title to all the assets, correct?

11 MR. COOPER: Yeah. That's one of the --
12 certainly one of the points that we wanted to make
13 eventually here is that the contracts themselves call for
14 clear and unencumbered assets to be provided to
15 Missouri-American Water Company, and that is sort of a
16 step that's separate and apart, at least in
17 Missouri-American's view, from the Commission approval.

18 Certainly if the Commission were to approve
19 this transaction, I mean, that's -- an extremely very
20 important step in this process has to happen, but it
21 doesn't end there. This transaction doesn't all of a
22 sudden close two days later.

23 COMMISSIONER CLAYTON: To simplify, you're
24 going to -- you have to get an Order from us, and then
25 basically you're going to get all the things lined up, and

1 to simplify you're going to go to the title office and the
2 title agent is going to say, you've got to do this, this,
3 this and this, and you're going to demand that they comply
4 with that or correct all those defects?

5 MR. COOPER: Or the deal can still fall
6 apart at that stage.

7 COMMISSIONER CLAYTON: Right. Okay. So
8 you-all are going to have a mechanism to take care of
9 that, so they're not going to want to buy a clouded title
10 to any assets, so then that comes back, why would anyone
11 else care? That's where I'm having --

12 MR. COOPER: Let me take a shot at that
13 even though it's not necessarily my item, but let me take
14 a shot at that. I think what is being said is that
15 original cost in Staff's view is based upon what has been
16 paid for the assets. Some of these debts relate to hard
17 assets that are in the ground but arguably have not yet
18 been paid for, and so Staff has treated them, for lack of
19 a better way of saying it, sort of like contributed
20 property. They have not allowed them to be in the rate
21 base.

22 So I believe that it is important to Staff
23 that those assets actually are paid for, which then kind
24 of takes them out of that quasi-contributed property
25 category in Staff's view and then makes them proper to be

1 included in the rate base.

2 And I hope I haven't stepped on anyone's
3 toes with that, but I think that's where they're coming
4 from more than the clear title idea is the idea that if
5 those assets are going to be in rate base, they should
6 have been paid for, there should be an original cost.

7 MR. SNODGRASS: That would be an accurate
8 summary.

9 COMMISSIONER CLAYTON: Okay. Mr. Cooper,
10 on this transfer of certificate business, the certificates
11 that Osage Water and Environmental Utilities, whichever
12 one has includes territory in the Parkview Bay, Shawnee
13 Bend 5 that you were not supposed to get, correct? So
14 wouldn't that cause a problem? Would you like to respond
15 to that?

16 MR. COOPER: Yeah. I think that the
17 Parkview Bay area is not an issue.

18 MR. WILLIAMS: It is not an issue.

19 MR. COOPER: I think that the Shawnee Bend
20 area is an issue.

21 COMMISSIONER CLAYTON: Wouldn't it be
22 cleaner to issue a new certificate with just the -- with
23 the right territory?

24 MR. COOPER: Well, I think the
25 disagreement, though, Commissioner, is what is the right

1 territory. I think there is one -- there is one area
2 where we have a disagreement with Staff. I think we want
3 that area. Staff thinks we shouldn't get it.

4 COMMISSIONER CLAYTON: Which area is that?

5 MR. COOPER: I think the Shawnee Bend area.
6 But Mr. Johansen has a different opinion of that, I can
7 tell, and we may need to speak to that.

8 COMMISSIONER CLAYTON: Who's serving
9 Shawnee Bend right now?

10 MR. WILLIAMS: Your Honor, if I may clarify
11 just briefly, there are two areas that Osage Water Company
12 refers to as Shawnee Bend. One is Shawnee Bend 5, which I
13 told the Commission earlier is definitely at issue and is
14 to be conveyed to Missouri-American. The other is an area
15 referred to as Shawnee Bend which lies in Shawnee Bend 2
16 in which there are no physical assets in operation. The
17 certificate was acquired. The fees that are owed to me in
18 part were incurred for that certificate.

19 Missouri-American has requested that that
20 certificate be given to them in addition to the others,
21 and if that -- I think that's where the dispute with Staff
22 lies is whether that one should or should not be
23 transferred to them as well. They want more area than
24 what is actually being served by Osage Water Company but
25 is certificated at this time.

1 COMMISSIONER CLAYTON: Mr. Cooper, the
2 company wants a rate increase. At what point would the
3 company begin supplying information to allow for -- aside
4 from illegality or not being authorized to do this, when
5 would the company supply that information, recognizing
6 that we accelerated the schedule on this?

7 MR. COOPER: Yeah. Certainly that --
8 that's where my answer starts, Commissioner, and that is
9 that when the parties proposed their procedural schedule,
10 we proposed filed testimony leading to a hearing, I can't
11 remember, in March or something.

12 Part of the purpose of that was that -- at
13 least from Missouri-American's point of view, was that we
14 were going to be coming in with rate information. It's
15 easier if we provide that in prefiled testimony, other
16 parties have the opportunity to review it, do discovery
17 and move on that way than it is to do that live and on the
18 stand.

19 The Commission as you said accelerated that
20 proceeding, which is fine, and the company is more than
21 willing to do its direct testimony on the stand for a rate
22 increase, but I don't know that that's the ideal way to do
23 it.

24 MR. SNODGRASS: And for purposes of
25 cross-examination, if you don't know what the testimony

1 is, really you can't plan cross-examination.

2 COMMISSIONER CLAYTON: There's an entire
3 rule on discovery that's out there on how to get that
4 information, isn't there?

5 MR. SNODGRASS: Yes, there is. That's
6 possible.

7 COMMISSIONER CLAYTON: There I go confusing
8 this place. Okay. Well, then maybe what we need to do is
9 I suppose if -- maybe we need to revert to the old
10 procedural schedule. If you-all haven't exchanged this
11 information, we're arguing apples and oranges here.
12 Everybody's kind of looking at each other, well, why isn't
13 there an exchange, why aren't there Data Requests seeking
14 this information?

15 MS. O'NEILL: Commissioner, an initial
16 round of Data Requests did go out about as soon as
17 possible after the revised procedural schedule.

18 MR. SNODGRASS: Staff did send some Data
19 Requests out also.

20 MS. O'NEILL: And we got information
21 regarding that in the last couple of days, but that's
22 preliminary information. That's less information than I
23 would have gotten in a, you know, initial filing in a
24 formal rate case. So we're still -- I mean, we can do
25 that discovery, it's ongoing, but it's going to be time

1 consuming, more time consuming than the next ten days.

2 COMMISSIONER CLAYTON: I would say so. I

3 mean, this is certainly a unique request. I would have

4 thought that the company would have supplied something

5 outside of testimony, which everybody else but me seems to

6 like. I was confused.

7 Mr. Williams, I thought you said that you

8 were going to be out of the utility business. Now it

9 appears you're still going to be in the utility business,

10 correct?

11 MR. WILLIAMS: The intention is to wrap up

12 the Cedar Glen as soon as possible, sir.

13 COMMISSIONER CLAYTON: And do what with it?

14 MR. WILLIAMS: Preference, sir, would be to

15 sell it to Missouri-American because they want it. The

16 alternative is to allow the homeowners association there

17 in Cedar Glen to acquire it. That's the one system that

18 there seems to be a lot of interest in someone having

19 besides Missouri-American.

20 COMMISSIONER CLAYTON: Okay. Thank you,

21 everybody.

22 JUDGE MILLS: Commissioner Appling?

23 COMMISSIONER APPLING: I think I'm totally

24 confused, so I think I'll just end it at that. But no

25 questions.

1 JUDGE MILLS: All right.

2 COMMISSIONER MURRAY: I do have a few more
3 if I may.

4 JUDGE MILLS: Okay. Commissioner Murray?

5 COMMISSIONER MURRAY: Mr. Snodgrass, maybe
6 I shouldn't ask you this question. I think I'll ask
7 Mr. Cooper this question instead.

8 MR. SNODGRASS: Probably a wise choice.

9 COMMISSIONER MURRAY: Well, he probably
10 knows, has more interest in this particular issue.
11 Parkview Bay, Shawnee Bend 2 area, the company included in
12 the purchase -- in the calculation of the purchase price
13 some assets used to serve that area; is that right?

14 MR. COOPER: No, I don't think that -- I
15 think that the asset in the particular area is the
16 certificate itself.

17 COMMISSIONER MURRAY: Okay. And the
18 company considers that certificate an asset which was
19 included as a part of the purchase price?

20 MR. COOPER: The company believes it was a
21 part of the purchase price, yes.

22 COMMISSIONER MURRAY: And the reason that
23 the company would still be interested in that, I assume,
24 would be that the company might be able to get some of
25 those customers who left Osage Water Company to be served

1 by the City; is that not correct?

2 MR. WILLIAMS: Ma'am, if I may? You've

3 confused two areas.

4 COMMISSIONER MURRAY: Okay. Sorry. That's

5 easy to confuse areas.

6 MR. WILLIAMS: It is. Parkview Bay is the

7 one that's inside the city of Osage Beach. Shawnee Bend

8 is not.

9 COMMISSIONER MURRAY: Okay. And you aren't

10 saying that Shawnee Bend 2 was Parkview Bay, that they

11 were one and the same?

12 MR. WILLIAMS: No, ma'am. I'm sorry if I

13 misled you on that. I didn't mean to.

14 COMMISSIONER MURRAY: What is Shawnee

15 Bend 2? You said something about it. What did you say

16 about it?

17 MR. WILLIAMS: It is a geographic area for

18 which a certificate was granted and in which service has

19 been offered, but there are presently no customers and

20 there are no facilities, physical assets that are being

21 transferred as part of the transaction.

22 COMMISSIONER MURRAY: And is there a

23 dispute as to that Shawnee Bend 2 area?

24 MR. COOPER: Yes.

25 COMMISSIONER MURRAY: And what is that

1 dispute?

2 MR. COOPER: The dispute is, as I
3 understand it, and Staff may want to speak to this because
4 it's their issue, but Missouri-American wants to have a
5 certificate for that particular area. It was, as
6 Mr. Williams said, a part of a larger certificate, and I
7 believe Staff's position is that because there are no
8 customers being served there and no facilities,
9 Missouri-American should not get that geographic area.

10 COMMISSIONER MURRAY: After Mr. Snodgrass
11 finishes consulting with his client, I'd like to know,
12 Mr. Snodgrass, why is Staff taking that position? Do you
13 know?

14 MR. SNODGRASS: I think if I'm interpreting
15 what my Staff client told me correctly, the certificates
16 issued for those areas have never been exercised, and
17 Staff's view is since they haven't been exercised within a
18 number of years, they're no longer valid. I think that's
19 supported by statute, and I can dig up the statute. There
20 was never any service. They were never executed.

21 MR. COOPER: Well, the argument's going to
22 become, though, Commissioner, whether they have been
23 executed on or not. So that's where the disagreement I
24 think's going to lie.

25 COMMISSIONER MURRAY: That's a live issue,

1 then?

2 MR. SNODGRASS: Yes, ma'am.

3 COMMISSIONER MURRAY: And the Parkview Bay,

4 is there any dispute remaining about that? Does

5 Missouri-American want a certificate for Parkview Bay?

6 MR. COOPER: No. I think that's just not a

7 part of our transaction.

8 COMMISSIONER MURRAY: Okay. And Shawnee

9 Bend 5 is a part of the conveyance and that is not

10 disputed by Staff?

11 MR. SNODGRASS: That's correct.

12 COMMISSIONER MURRAY: And, Mr. Williams,

13 Cedar Glen Development, who is -- who makes up Cedar Glen

14 Development?

15 MR. WILLIAMS: The correct name, I believe,

16 is Cedar Glen Construction, Inc. The principals of that

17 to the best of my knowledge, are Jeffrey Tillman, William

18 Tillman, Darrel Foster. There may be others, but those

19 are the people with whom I've had interactions in that

20 company.

21 COMMISSIONER MURRAY: You and any of the

22 related companies that are here have no interest in Cedar

23 Glen Development?

24 MR. WILLIAMS: That's correct, ma'am.

25 COMMISSIONER MURRAY: Or Cedar Glen

1 Construction, Inc.

2 MR. WILLIAMS: That's correct.

3 COMMISSIONER MURRAY: As to the

4 distribution of the proceeds, I believe you heard an

5 exchange earlier that I had with Staff counsel about the

6 reason that Staff believes that the distribution of the

7 proceeds needs to be as it is in the agreement in order

8 for the rate base to be the purchase price.

9 Are you bound by these contractual

10 arrangements? As I understand it, you have some control

11 over the disbursal of the proceeds, you personally? Is

12 that true or not?

13 MR. WILLIAMS: Only to the extent that it

14 would involve properties in which I own an interest, that

15 certainly those would -- that there's no payment for them,

16 there would be issues as to whether or not we're going to

17 sign deeds to them. But in terms of control over what

18 Osage Water Company does with the money that's designated

19 in the contract to go to it, no, ma'am, I do not. I did

20 not sit on the board. I'm not an officer.

21 COMMISSIONER MURRAY: But Mr. Mitchell

22 does?

23 MR. WILLIAMS: Yes, ma'am.

24 COMMISSIONER MURRAY: Mr. Mitchell would be

25 in control of the distribution of the proceeds?

1 MR. WILLIAMS: Yes, ma'am. To the extent
2 that Missouri-American is going to do something other than
3 have them disbursed through a title company, there are --
4 and candidly one of the problems we're dealing with, for
5 example, Mr. Duggan's judgment was obtained after the
6 contract was written. There's an amount that was
7 contemplated in the contract that has now changed.

8 There's a judgment obtained by Cedar Glen
9 Construction after the contract was written. We have
10 judgment liens out there that were not contemplated in the
11 contract language. That's one of the reasons why I've
12 simply suggested to the Commission that this is all going
13 to have to go somewhere else to be resolved as to how the
14 money gets disbursed, because those numbers do change and
15 they change regularly.

16 Mr. Hancock's attorney has changed the
17 number that was incorporated in the contract when the
18 contract was drafted based on interest that's accruing.
19 Those numbers have changed and will change and may change
20 significantly between now and the closing date. That
21 becomes a very difficult issue for this Commission to
22 address to say, well, here's who you need to pay the money
23 out to, because we may have to come back and say, well,
24 that was great at the time, but now we've got some
25 different numbers.

1 And that's why I'm saying it is between --
2 it's something Missouri-American to get clear title, the
3 contract calls for clear title. The money will have to be
4 disbursed to pay legitimate liens on the property. I'm
5 not sure it's an issue that this Commission needs to
6 consider unless it directly impacts on detriment to
7 service to the public.

8 COMMISSIONER MURRAY: If we wanted to
9 assure ourselves that the disbursements were proper in
10 approving, if we decided to go ahead and approve this
11 transaction, these transactions, can any of the counsel
12 here comment on whether we could condition the sale upon
13 the proceeds being distributed by a -- I mean, is there
14 some protection we can put in that, some language that --
15 Ms. O'Neill?

16 MS. O'NEILL: Yes. Commissioner, I think I
17 mentioned this briefly, and I need to go back and check my
18 file from the Warren County case, but I believe -- and,
19 Mr. Cooper, I don't think you were in this case, so I
20 don't know if you know. But in that case at the time --
21 by the time of closing there was a receiver in place, and
22 one of the things that the receiver did was direct the
23 distribution.

24 I think the court -- or I'm sorry. Without
25 getting the court involved and a receiver involved, I

1 think the Commission might be able to handle this issue,
2 and I haven't thought this all the way through because it
3 just occurred to me, by an Order conditioning a condition
4 that said that whatever creditors have -- need to be paid
5 off regarding -- before title can transfer be paid
6 separately from -- separately by Missouri-American instead
7 of that money paid to Osage or whatever at the time of the
8 closing at the title company, so they're cleared that way.

9 That could give the Commission assurance
10 that those creditors are paid off and the titles are
11 cleared for transfer without having to do whatever has to
12 be done for the check to clear and then Osage to -- Osage
13 doesn't have a bank account to write checks. So I mean
14 there could be a condition that isn't specifically related
15 to specific amounts to be paid, but directing that those
16 checks be separately issued to the creditors instead of
17 through Osage.

18 MR. WILLIAMS: Ma'am, that would be the
19 standard title closing conditions in a transaction of this
20 nature. That's something that Missouri-American's going
21 to require. It's contemplated in the contract.

22 COMMISSIONER MURRAY: Is that the case,
23 Mr. Cooper?

24 MR. COOPER: Yeah. And I think it all
25 essentially goes back to what we said before, which is

1 that the contract calls for the production of clear title
2 to the assets, and all that is a part of the ability of
3 the sellers to deliver clear title.

4 COMMISSIONER MURRAY: But for some reason
5 that still does not satisfy Staff that that's appropriate.
6 Well, maybe when we have testimony, we'll get to the
7 bottom of why that's still a concern.

8 I had one more question. Oh, Ms. O'Neill,
9 the position of Public Counsel in terms of rate base, is
10 it -- is Public Counsel also in agreement that the
11 purchase price is appropriate for inclusion in rate base
12 in the -- for the company to earn a rate of return on, or
13 has Public Counsel even taken a position?

14 MS. O'NEILL: I think that our position is
15 that an analysis has been made -- the short answer is,
16 yes, we think that rate base is appropriate, but I think
17 to get there, if you look at what property was in rate
18 base at the time the transactions started being
19 negotiated, what items of assets could have been in rate
20 base had they been properly conveyed to Osage Water but
21 they weren't or which were kept outside of rate base in
22 order to -- because of other issues in the Hancock --
23 there's some Hancock Construction property that's not in
24 rate base but will be in rate base after this company
25 changes hands.

1 You can get pretty close to this number
2 just by putting those other properties back in. That's
3 one of the reason there's such a big difference in rate
4 base.

5 Now, that's not to say that there are not
6 operating expenses associated with those that have been
7 going on all along and that that necessarily is going to
8 translate into higher rates just because the rate base is
9 higher. There's other things that have to be looked at.
10 But as far as rate base, we don't think there's
11 acquisition premium in this case.

12 COMMISSIONER MURRAY: Okay. Because you
13 think assets have been purposefully kept out of Osage's
14 books basically?

15 MS. O'NEILL: For whatever reasons that the
16 owners of Osage and those who are also basically the
17 owners of those other properties under different names,
18 for whatever reasons they didn't put those in. If they
19 had put them in, they would have been rate base items all
20 along.

21 COMMISSIONER MURRAY: All right. Thank
22 you. Thank you, Judge.

23 JUDGE MILLS: And I've got a few questions
24 along those lines. And, Mr. Snodgrass, if -- if I follow
25 your reasoning, if this transfer didn't take place, Osage

1 somehow came into some money, paid off all the judgment
2 creditors, then filed for a small company rate increase
3 case, would Staff suggest that the rate base value was
4 about \$845,000?

5 MR. SNODGRASS: Yes.

6 JUDGE MILLS: Okay. And that all else
7 being equal would be 180 percent increase, something along
8 those lines, close to triple the rates now?

9 MR. WILLIAMS: Yes, sir.

10 JUDGE MILLS: Whatever the ratio between
11 360,000 and 845,000 is.

12 MR. SNODGRASS: Rate base is larger, yes.

13 JUDGE MILLS: So all expenses being equal,
14 everything else being equal, if the only thing that
15 changed was rate base, we'd go from \$360,000 worth of rate
16 base to \$845,000 of rate base?

17 MR. SNODGRASS: Yes, that's correct.

18 JUDGE MILLS: Okay. Now, in terms of
19 Staff's position on the Commission's condition about the
20 proceeds, would it satisfy Staff if we issued an Order
21 that simply said if the proceeds are distributed as
22 follows, rate base will be X?

23 MR. SNODGRASS: Yes.

24 JUDGE MILLS: And then we don't have to get
25 into trying to follow up and ensuring that those proceeds

1 are actually transferred that way, we can make a
2 determination based on the conditions that they are
3 transferred that way, and that will make our
4 determination.

5 MR. SNODGRASS: The answer to that is yes.

6 JUDGE MILLS: Mr. Cooper, how does that fix
7 you?

8 MR. COOPER: Can you ask me the question
9 again?

10 JUDGE MILLS: Okay. If instead of saying
11 the transfer can only happen if the proceeds are
12 distributed as follows, if we issue an Order that says, if
13 the proceeds are distributed as follows, then the rate
14 base will be X, whatever that amount is. It keeps us in
15 the finding mode rather than the enforcement mode.

16 MR. COOPER: I don't know. I think we say
17 once in a while the devil's in the details. As we talked
18 about before, some of these numbers are going to be a
19 moving target.

20 JUDGE MILLS: Okay.

21 MR. COOPER: And so I think that if you try
22 to specify numbers, you're just going to buy issues, and
23 we're going to buy risk to the extent that the actual
24 numbers when it comes time to close don't match what the
25 Commission has.

1 JUDGE MILLS: Right. But I mean, the
2 alternative is to say, we condition the sale on the
3 proceeds being distributed as follows, and if those
4 numbers have changed, then you have no authority to
5 complete the sale. I mean, I think you're asking -- I
6 think if -- I think you're assuming a bigger risk if we do
7 try to pin down the numbers and do try to specifically
8 allocate where everything's going to go.

9 MR. COOPER: Well, I thought that's what
10 you were suggesting to some extent. Are you suggesting
11 that the Commission Order would say that the rate base is
12 845,000 if these people are paid at least this much?

13 JUDGE MILLS: Right. Yes. And to the
14 extent that a --

15 MR. COOPER: You know, I'd have to see it,
16 but I think that probably works.

17 JUDGE MILLS: Conceptually that works?

18 MR. COOPER: Yeah.

19 JUDGE MILLS: Okay.

20 MR. COOPER: Now, that number is
21 necessarily going to be different, I think, than, for
22 instance, in the case of Hancock Construction. I think
23 the number that has to be plugged in in this scenario is a
24 lower number than what Hancock Construction is going to
25 tell you it's owed.

1 JUDGE MILLS: Right, and that -- that very
2 well may be. And, Mr. Snodgrass, when Ms. O'Neill was
3 wrapping up, I asked her a long, involved hypothetical
4 question about can we get to a rate increase in this case
5 if everything else fell into place, if we've got all the
6 relevant factors covered and the Commission's findings
7 cover all those, are the procedural infirmities in Staff's
8 view such that we can't do that no matter what evidence is
9 produced in this case?

10 MR. SNODGRASS: No.

11 JUDGE MILLS: No, we can't do that, or yes,
12 we could do that if all the evidence fell into place in
13 this case?

14 MR. SNODGRASS: Yes, we could do that if
15 all the evidence fell in place. That's the answer we
16 intended.

17 JUDGE MILLS: Okay. I think that's all the
18 questions I have. Is there anything further from the
19 Bench?

20 COMMISSIONER MURRAY: Just one second.
21 This may just be confusing things further, but Mr. Cooper,
22 if we had an Order similar to what the judge has suggested
23 that said that the rate base would be X if A, B, C and D
24 were paid at least X number of dollars each, and then you
25 get to closing and A, B, C and D or one of those parties

1 does not want to give you a -- and I can't even think.

2 MR. COOPER: Not going to release their

3 judgment lien, for example?

4 COMMISSIONER MURRAY: Yes, thank you. Then

5 what happens?

6 MR. COOPER: Mr. Williams, you look like

7 you want to --

8 MR. WILLIAMS: I wish my microphone worked.

9 Judgment liens are a fairly simple matter. You get the

10 number from the circuit clerk. You pay the money to the

11 circuit clerk. The circuit clerk will docket it as

12 released.

13 COMMISSIONER MURRAY: Except that by the

14 time the closing occurs there will be more interest accrue

15 than what is in the Order.

16 MR. WILLIAMS: That certainly is an issue

17 that gives me great concern in this matter, is whether or

18 not you approved every dollar that's set forth in these

19 contracts the closing could take place, and I simply don't

20 know the answer to that today. And whether -- if I did, I

21 might not know the answer tomorrow.

22 MR. COOPER: Commissioner, I think that

23 ultimately in that scenario there's going to come a day

24 when some of those creditors are going to be faced with

25 the -- a choice, and that is there's going to be a check

1 available for them for some dollar amount if they can
2 release and this deal goes through, and there will be no
3 check for them on that day in any amount if they're not
4 ready to release.

5 And if they stand strong and say, by golly,
6 they've got to be paid in full and this is -- I'm speaking
7 for Missouri-American, give the other applicant a chance
8 to voice his opinion. But if they decide that, by golly,
9 they're not going to release that lien and there's not
10 enough money to pay them, we may still have a problem.

11 COMMISSIONER MURRAY: Let me ask just one
12 follow-up question there. If the creditor decided that,
13 okay, they have a lien against the property and they
14 decide they'll release Missouri -- they'll release the
15 property, they'll release -- actually I guess they're
16 releasing the lien, but does that give -- take away any
17 right they might have to go back after Mr. Williams
18 personally, for example?

19 MR. WILLIAMS: A release of a judgment lien
20 is not a satisfaction of judgment. There is a difference
21 between the two, so --

22 COMMISSIONER MURRAY: So they could come
23 back against you personally?

24 MR. WILLIAMS: They could try.

25 COMMISSIONER MURRAY: But they could sign

1 the judgment?

2 MR. WILLIAMS: A release of judgment, yes.

3 COMMISSIONER MURRAY: Okay. It would be --

4 I assume they might think it would be a strong argument

5 that they didn't have anything remaining if they went to

6 court to try to enforce what they didn't get paid?

7 MR. WILLIAMS: Well, there's a number of

8 alternatives as to how Osage Water Company will have to

9 deal with its creditors. One is by negotiation to see if

10 they can be compromised into an amount that is within the

11 total sale price. Mr. Mitchell certainly has options in

12 the federal bankruptcy court in terms of forcing a

13 liquidation of the company.

14 The issue before this Commission is

15 converting what at this point is a series of physical

16 assets which have no values to any creditors into sale

17 proceeds from Missouri-American, which at least there's

18 something then that people can fight over.

19 COMMISSIONER MURRAY: Okay. Thank you. I

20 think that's all.

21 JUDGE MILLS: And, Mr. Williams, I'm sorry,

22 but I'm going to bring you back up because that brings a

23 question to my mind. And you may or may not be able to

24 answer this, but what if any continuing operations will

25 Osage Water -- assuming that this transaction goes through

1 as the applicants intend it to, what continuing operations
2 will Osage Water be doing?

3 MR. WILLIAMS: The only thing that I'm
4 aware of that would be left would be the Cedar Glen
5 treatment plant, and I would anticipate either a near-term
6 sale to Missouri-American that would again be brought back
7 to this Commission or a disposition to the homeowners
8 association.

9 JUDGE MILLS: Assuming that that -- that
10 the title issue there clears up quickly and the transfer
11 to Missouri-American takes place quickly, what further
12 business will Osage Water as a company be doing?

13 MR. WILLIAMS: None, to my knowledge.

14 JUDGE MILLS: Certainly no more regulated
15 business in front of the Public Service Commission?

16 MR. WILLIAMS: I don't believe so, sir.

17 COMMISSIONER MURRAY: Judge, you just
18 brought up another question. If the judgment creditors,
19 if the creditors were not -- if their judgments were not
20 fully satisfied but they were willing to release their
21 liens, would they have recourse then against the assets of
22 Cedar Glen?

23 MR. WILLIAMS: Technically Osage Water
24 Company does not own the real property there. They would
25 own -- at best if the transaction as discussed at the

1 present time goes through, they will have a permit from
2 Union Electric that could be transferred then to
3 Missouri-American. Certainly there would be, quote, an
4 asset in the sense that there's a permit.

5 But in terms of something that could, for
6 example, be made the subject of a sheriff's execution
7 sale, I don't believe there would be anything there. But
8 for example, the assets of Parkview Bay certainly will
9 remain in Osage Water Company's name. There's, I believe,
10 another well lot out there that remains in Osage Water
11 Company's name also. Those assets could be subject to
12 creditor recovery.

13 COMMISSIONER MURRAY: And that brings up
14 another question. The assets at Parkview Bay, those are
15 the ones that are not being used to serve anyone and
16 they're not being sought by Missouri-American?

17 MR. WILLIAMS: They have not requested
18 those, that is correct.

19 COMMISSIONER MURRAY: But Osage Water
20 Company would still own assets in Parkview Bay?

21 MR. WILLIAMS: Yes, ma'am.

22 COMMISSIONER MURRAY: And they are assets
23 that are for the purpose of delivering sewer?

24 MR. WILLIAMS: Water utility service. It's
25 a deep well and series of water meters installed in

1 condominium units.

2 COMMISSIONER MURRAY: But you have stated

3 that Osage Water Company is willing to have this

4 Commission cancel its certificate in the Parkview area; is

5 that correct?

6 MR. WILLIAMS: Mr. Mitchell says yes.

7 COMMISSIONER MURRAY: And what is the

8 possible disposition of those assets then?

9 MR. WILLIAMS: I would imagine the county

10 tax sale will be eminent at some point in time. They have

11 no value.

12 COMMISSIONER MURRAY: Okay. Thank you.

13 JUDGE MILLS: Anything further from the

14 Bench? Anything further from the parties?

15 (No response.)

16 JUDGE MILLS: We -- as I mentioned in the

17 Order issued January 7th, this prehearing will be

18 continued until the 14th if necessary. At this point I

19 believe it's going to be necessary. We're going to go

20 back on the record tomorrow at 10. We'll pick up with

21 some discussions about the lists of issues at that point,

22 and I anticipate sometime during the course of the day

23 that we'll go off the record and I will admonish you-all

24 to play nice and talk among yourselves.

25 At least initially we'll start out on the

1 record and we will have some discussions about the lists
2 of issues. And I think -- and you-all may want to be
3 thinking about this overnight. I'm going to see if,
4 assuming that we proceed on the schedule that the
5 Commission has adopted, I'm going to encourage you-all to
6 stipulate to as much as you can in the way of facts. For
7 example, there doesn't seem to be a whole lot of
8 disagreement that Missouri-American meets the Tartan
9 Energy criteria.

10 Just as an example, we may be able to take
11 that off the table, not have to spend half a day with
12 witnesses trying to prove that Missouri-American does, if
13 that's the case. And if the parties can agree, that would
14 be an example of someplace we can save a lot of hearing
15 time. There may be many issues like that that we can
16 stipulate to and save the four days of hearing time that
17 we have scheduled for issues that are in dispute.

18 MR. WILLIAMS: Your Honor, I'm not
19 available tomorrow. However, I have advised Mr. Cooper
20 that we are substantially aligned with Missouri-American
21 and he certainly can speak for Osage Water Company and
22 Environmental Utilities as to the list of issues and
23 things of that sort.

24 JUDGE MILLS: Okay. All right. Anything
25 further?

1 (No response.)

2 JUDGE MILLS: We're off the record. We're
3 adjourned until 10:00 a.m. tomorrow.

4 WHEREUPON, the oral argument in this case
5 was concluded.

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