

1 STATE OF MISSOURI
2 PUBLIC SERVICE COMMISSION

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5
6 TRANSCRIPT OF PROCEEDINGS

7 Hearing
8 June 4, 2002
9 Jefferson City, Missouri
Volume 5

10
11 Office of the Public Counsel,)
12 Complainant,)
13 v.) Case No. WC-2002-155
14 Warren County Water and Sewer)
15 Company and Gary L. Smith,)
16 Respondents.)

17
18 LEWIS R. MILLS, JR, Presiding,
19 DEPUTY CHIEF REGULATORY LAW JUDGE.

20 KELVIN SIMMONS, Chair,
21 CONNIE MURRAY,
22 BRYAN FORBIS,
COMMISSIONERS.

23 REPORTED BY:

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

2 JUDGE MILLS: We're back on the record for the
3 second day of the hearing in WC-2002-155. On the stand is
4 Mr. Smith. I'll remind you you're still under oath.

5 We are continuing with questions from the
6 Bench. Following that, we will have further
7 cross-examination based on questions from the Bench, and
8 following that we'll have redirect. Any questions? Let's
9 proceed.

10 Commissioner Forbis.

11 COMMISSIONER FORBIS: Thank you.

12 GARY L. SMITH testified as follows:

13 QUESTIONS BY COMMISSIONER FORBIS:

14 Q. Good morning.

15 A. Good morning.

16 Q. I only had a couple questions, then I guess
17 we'll get back to the other part of it. But I'm curious if
18 anything has happened since we left yesterday with regard to
19 your review of potential management companies or selling the
20 company?

21 A. Well, I got in last night, I got messages but
22 nothing -- just telephone messages, nothing with regard to
23 this. I didn't get the mail yesterday because it was too
24 late. So I really don't have --

25 Q. So nothing new to add on that front?

1 A. No.

2 Q. Just wanted to check. Thank you.

3 Just two small questions. One I was just
4 curious about about the customers, and you noted in, I think
5 it was your surrebuttal testimony, that you no longer are
6 going to make the connections because you're selling the
7 equipment, no longer going to make it for the customers of
8 the district and the company, and I wondered if that's
9 proven to be any kind hardship or are the other -- are the
10 customers finding -- easily finding other ways to make their
11 connections?

12 A. I still do some. I rent, like, the backhoe
13 for a weekend and we'll go out and do one or two. I've got
14 a job coming up. So I would do that, but it's not a
15 hardship, to answer your question. I might answer
16 completely so you understand.

17 Q. Sure.

18 A. For -- since the early '80s or late '70s when
19 the company was established up until when I took over and
20 for a couple of years after that until the current
21 connection fees were established, the company waived
22 connection fees and the connections were made by the
23 customer.

24 When I had the current connection fee set or
25 the Commission set them, then we began providing the pit,

1 the lid, the cover, meter, you know, what was set out in the
2 evaluation done at the time that those fees were set.

3 Around '95-'96 it became apparent that we
4 couldn't do any maintenance or work or whatever on the
5 utility without equipment, and there was no way the utility
6 could afford the equipment.

7 So that's when I bought the backhoe, and as
8 long as I could do enough side jobs to pay for it, then the
9 utility had access, and that's when -- and then I started
10 talking with the Staff about changing those connection
11 policies so that we would do all the crossings. That way if
12 I did all the road crossings and got enough revenue from
13 connection fees, then I could pay for the equipment and the
14 utility could do all of them.

15 The only way we could financially do road
16 crossings is if we do all of them because of the investment
17 in equipment involved. And first I filed a letter
18 requesting a change in connections, and Mr. Merciel
19 indicated it had to go through a rate process.

20 Then we filed the rate process and, you know,
21 my understanding of the correspondence I received is that
22 that's never been determined what the new rate would be or
23 what our responsibilities are. So as of this time, the
24 customer's basically responsible and they hire whoever they
25 want.

1 Q. And that hasn't proven difficult in the area
2 to find somebody?

3 A. No problem, no.

4 Q. Thank you for the review. I appreciate it.

5 I only had one other question, just because
6 I'm not an economist or an accountant, so -- I'm a political
7 scientist, whatever that's worth. I was looking through on
8 page 11 of your rebuttal. I just want to make sure I
9 understand the salary issue, that there were several years
10 there where the utility would pay you a salary and then you
11 would put it back and it would become then capital?

12 A. Yes. Let me explain that from a historical
13 perspective. In 1991 the revenues were 20,000 and the
14 expenses were 30. Of the 30, there was a \$20,000 management
15 fee.

16 I took over the company and I didn't draw a
17 salary because the company needed money. I filed for the
18 rate increase and the auditors wouldn't recognize a salary
19 because I wasn't drawing one, which makes sense, but they
20 also didn't recognize what had been paid the previous year.

21 So the auditor recommended that, even if I
22 didn't draw the salary, that I at least charge a salary and
23 then periodically reinvest that as capital in the company.
24 So over about ten years, whatever the salary was each year,
25 I would draw some and then the balance I would cut a check

1 to myself. Wouldn't be cashed or deposited. In fact, I got
2 one there not even signed. And then I'd also cut a check
3 back from myself back to the utility for the same amount and
4 show that deposited into capital.

5 Now, the auditors have always refused to
6 recognize that as a capital investment, and maybe they're
7 right, maybe -- whatever. But that's been what I've done in
8 the past about salary.

9 Q. Okay. Is that a fairly -- is that a common
10 practice in a business that's having maybe financial
11 difficulties for corporate officers to do that kind of
12 thing?

13 A. Well, the cleanest way would probably be go
14 ahead and draw that salary each month and then periodically
15 out of other funds, or I guess the same funds, actually put
16 the money back in in cash. You know, it's the same
17 difference on paper, but that might be a way somebody else
18 would do it.

19 Q. I guess I'm curious. You made your living off
20 of your other investments or other --

21 A. I think I drew actually about 9,000 last year
22 off the utility. I charged 36,000. The year before I
23 charged 30 and probably drew in the neighborhood of 10. So
24 that's been the pattern.

25 Q. Okay. So the money -- there really wasn't a

1 transaction. You would write a check, but you would just
2 put it right back?

3 A. I've got a 30-some-thousand-dollar check here
4 that wasn't even signed or anything. It was issued from the
5 utility to me for the balance of management fees, and then I
6 had a personal check back, and on the books all it shows is
7 a payment to me and then a deposit for capital.

8 Q. Was the cash really there --

9 A. No.

10 Q. -- for it to come to you?

11 A. No.

12 Q. Okay.

13 A. That's when they talked the 70-some thousand,
14 that's nonexistent cash for the most part.

15 COMMISSIONER FORBIS: All right. Thank you.

16 JUDGE MILLS: I really just have one question.

17 QUESTIONS BY JUDGE MILLS:

18 Q. As you progress with talks in terms of a
19 day-to-day operator and a possible purchaser, would you be
20 willing to let the Commissioners -- let the Commission know
21 how those discussions are going --

22 A. Oh, yes.

23 Q. -- with periodic filings?

24 A. Oh, yes. Prior to the most recent discussion,
25 I'm going to say in the last week or two, you know,

1 you-all -- or it's been suggested it was just a last-minute
2 thing, but in January is when I first started trying to make
3 an effort to sell, but I didn't have any success partly
4 because of some bad information I think some people got.
5 I know Water District 2 told me they thought they'd have to
6 spend 3- or \$400,000 to replace the treatment plants. They
7 don't need to be replaced. They just need to be upgraded.

8

9 So, I mean, with an investment like that and
10 then, like Mr. Merciel said, what you call big bucks for a
11 water tower, you know, it's not attractive to buy it. And
12 then it's my understanding, and I may be wrong, it's
13 Commission policy not to grant a rate increase when a
14 company first takes over. At least it's bad policy, I think
15 they testified, for a new company to come in and immediately
16 raise their rates.

17 So all those factors makes it unattractive to
18 buy. So then I decided maybe the best route to go in
19 talking with attorneys and so forth is a management
20 arrangement for six months or whatever to let things cool
21 down, to get established and to deal with these companies,
22 and the management agreement would allow the cooling off or
23 cooling effect, I guess, from all this litigation, and would
24 also allow me to -- what I'd like to do is spend two weeks
25 in Texas and two weeks in Missouri and just kind of oversee

1 business affairs and watch -- obviously a company can't --
2 if I walk off, a new company can't come in and take over the
3 company and run it. I mean, everything's in my head. So, I
4 mean, as a practical matter, there's going to be a certain
5 amount of cooperation for a certain period of time in
6 allowing a management company to take over.

7 And Water District 2, their understanding of a
8 management arrangement would give them six months to look
9 into financing. I think they're talking bond money to do
10 some investments and put together a package for them.

11 And also, in talking with my attorneys,
12 possibly we could get some financing authority pretty
13 quickly here and some rate authority pretty quickly here to
14 maybe let me, through the management arrangement, go ahead
15 and make some of these improvements that need to be done.
16 The water tower and the new treatment plant would be
17 priorities.

18 And if that's done, then the new company that
19 would buy the company could then come in and not go for a
20 rate increase right away.

21 Q. So let me see if I understand this. You're
22 planning not to actually have any kind of a sale until at
23 least six months from now?

24 A. Well, if somebody said today or tomorrow they
25 would buy it, I mean, sure, I would entertain that, but I'm

1 just saying I think realistically, because of all the legal
2 complications in even effectuating a management agreement, I
3 think you're talking some period of time. I just said six
4 months. I mean, that's not a firm. I mean, no reason for
5 that other than just six months.

6 Q. But you'd be willing to file pleadings with
7 the Commission --

8 A. Oh, sure.

9 Q. -- as you go along in the process --

10 A. Sure.

11 Q. -- and keep us informed of what's going on
12 with that?

13 A. Our plan is, if I can get the management
14 arrangement in position so that I can get away, and then if
15 I go forward with the water tower financing and the
16 treatment plant financing on behalf of the management
17 company, that we would file for financing authority and rate
18 authority immediately and then effectuate a sale then.

19 I think the company would be in a lot better
20 position to sell and more attractive to a buyer if it can be
21 shaped up before it's just thrown to the wolves.

22 Q. You understand it's possible that this case
23 may be resolved well before that six months is up?

24 A. Well, that's what we were trying to do. We
25 weren't trying to play any games, and the only reason for

1 the lateness in the continuance is because last Friday is
2 the first chance I really had to meet with those people.

3 Originally back in January, February,
4 whatever, they didn't come out because they were told that
5 they had to spend all kinds of money, and they just didn't
6 respond or come out, and then -- well, Randy Johnson, who's
7 the consultant to Alliance, I talked to him and he talked to
8 them, because he's very familiar with the company, and he
9 talked to them and explained a little different perspective
10 than what I think they'd heard, and I got a phone call
11 immediately and then an appointment for them to come out.
12 So at this point I feel like we're making progress.

13 EMC, the other company I've dealt with, their
14 problem was they just don't want a big operation. They want
15 me to retain a lot more of the control and operation of the
16 company, you know. They just basically want to check the
17 plants on a daily basis, and I doubt that would be as
18 acceptable as a turnkey job with Alliance.

19 JUDGE MILLS: Okay. I think that's all the
20 questions I have. Anything further from the Bench?
21 Commissioner Murray.

22 FURTHER QUESTIONS BY COMMISSIONER MURRAY:

23 Q. Mr. Smith, you just indicated that a water
24 treatment and a new tower would be priorities. Have they
25 not been priorities since 1996?

1 A. Yes, but in 1998 we couldn't get the rate
2 increase to make up for the operating losses. We -- I'm
3 sorry.

4 Q. I wanted to ask, you also talk about financing
5 authority for the management company, to allow the
6 management company to have more funds to work with, right?

7 A. Yes.

8 Q. But is it not true that you also received
9 financing authority back in somewhere in '96, '98, something
10 like that --

11 A. Right.

12 Q. -- from this Commission?

13 A. Right, but the --

14 Q. That's all I wanted.

15 A. Okay.

16 Q. Thank you.

17 And then I wanted to ask you, in terms of the
18 statute, in terms of what Public Counsel and Staff are
19 requesting that this Commission do, which is to have the
20 court appoint a receiver to operate the utility, that
21 statute provides that a receiver appointed pursuant to this
22 section shall be a responsible person, partnership or
23 corporation knowledgeable in the operation of utilities,
24 shall give bond and have the same powers and be subject to
25 all provisions as far as they may be applicable and joined

1 upon a receiver appointed by virtue of the law providing for
2 attachment. The receiver shall operate the utility so as to
3 preserve the assets of the utility and to serve the best
4 interests of its customers. The receiver shall be
5 compensated from the assets of the utility in an amount to
6 be determined by the court.

7 Why wouldn't that be better for everyone
8 except you?

9 A. Well, you're talking cost. The receiver would
10 have to hire a management company. So you've got an
11 additional layer of cost.

12 Q. Out of the assets of the company, which is
13 basically you?

14 A. And there are no assets. I mean, there are
15 no -- financially, as of today, or the end of May, we're
16 showing a 35, \$36,000 loss so far this year. Of course, a
17 lot of that's legal fees. But if you take my salary out, a
18 management company's going to charge several times what I
19 charge, and then you add the layer of the receiver, you're
20 talking doubling the rates just to pay the costs.

21 Q. The receiver would -- in that the receiver
22 would be charged with preserving the assets of the utility
23 and serving the best interests of the customers, the
24 receiver would not be able to transfer any assets from the
25 regulated utility; is that correct?

1 A. Yes.

2 MR. SCHAEFER: I'm going to object that it
3 calls for a legal conclusion.

4 JUDGE MILLS: Well, I don't believe that it
5 does call for a legal conclusion, and he's already answered
6 it anyway. So the objection is overruled.

7 COMMISSIONER MURRAY: And then just one more
8 thing. When the attorneys brief this -- I assume we're
9 going to have a briefing schedule?

10 JUDGE MILLS: Yes, I intend to.

11 COMMISSIONER MURRAY: I would like the
12 attorneys to address the issue of the transfer of the real
13 estate and how that would play into a sale of this utility,
14 whether it be by a receiver or whether it be without having
15 to appoint a receiver. I'd just like to know how the
16 parties would suggest addressing that issue of the assets
17 that have been transferred without authority.

18 Thank you.

19 JUDGE MILLS: And I've actually got a couple
20 more.

21 FURTHER QUESTIONS BY JUDGE MILLS:

22 Q. You mentioned yesterday, I believe, that you
23 have the deeds ready to record to transfer that property
24 back and that you have the paperwork and the registration or
25 whatever it is with the Secretary of State to reinstate the

1 corporation in good standing. When are you going to get
2 those two tasks completed?

3 A. Well, the deeds I've held up because of
4 discussions about things like fraudulent transfer and so
5 forth, because we had looked at the possibility of a
6 Chapter 11 as a process of liquidation. That's probably the
7 way I would go rather than a receiver.

8 And I think anything within a year of filing
9 relief is a fraudulent conveyance, but I'd probably just go
10 ahead and record it anyway. That's the only -- we've just
11 held back discussing that, but I have absolutely no reason
12 not to record it or I don't care. I hadn't really thought
13 about it before the issue came up.

14 Like I said, there's no rate base in it.
15 There's no value. Property with a treatment plant on it
16 can't be used for anything but that, so that's really not an
17 issue as to ownership, in my opinion, but I can record those
18 tomorrow. I mean, that makes no difference. But we had
19 thought about maybe the legal consequences if they are
20 recorded.

21 Q. And then the filing with the Secretary of
22 State?

23 A. That's ready to go. They need some tax forms
24 yet. All I have to do is fill out those or send those in.
25 So all the federal taxes were done, but apparently the state

1 returns weren't filed. So I've got to go back and get the
2 state's filed. That's all it lacks on that. There's no
3 taxes owed.

4 Q. So you're planning to do both of those within
5 a week, a month?

6 A. I'll probably do it this week. I think the
7 deed issue, just to satisfy everybody here, it would be
8 better to go ahead and record it and not worry about the
9 consequence.

10 Q. Could we get you to file a pleading when those
11 two items have been accomplished?

12 A. Sure.

13 Q. Thank you.

14 COMMISSIONER MURRAY: Just one more question
15 just to clarify. When you say you're planning to record
16 that deed, in whose name are you planning to record it?

17 THE WITNESS: Warren County Water and Sewer.

18 COMMISSIONER MURRAY: Thank you.

19 BY JUDGE MILLS:

20 Q. And my other question has now escaped me. Oh,
21 you said that over the last several years you haven't even
22 been able to pay yourself the full salary that normally
23 would be due to an operator. How do you anticipate paying
24 for the manager that you're going to hire?

25 A. Well, obviously that's something that has to

1 be addressed. I don't have any idea what they had talked
2 about in terms of compensation. So what I'm currently
3 drawing would be available, but I'm sure it would be a lot
4 more than that just strictly because of the number of people
5 and travel and so forth.

6 And I guess the option would be, No. 1, me
7 subsidize it for the convenience of being able to get away,
8 or secondly, if we do file some kind of a case here for
9 financing authority and rate authority, we would hope to
10 incorporate something like that in whatever we would file
11 with the Commission.

12 Q. Because I think even a small company rate
13 increase case will take considerably longer than -- you're
14 talking about hiring a manager within the next week or two.
15 It would take considerably longer than that.

16 A. Right. And that's something that I really
17 don't know the answer as far as timing and so forth, but
18 I've talked with the attorneys about, No. 1, filing
19 something with the Commission. I don't know what relief
20 would be available.

21 And secondly, I'm assuming that small case --
22 small rate case is closed, but if it hasn't actually been
23 physically closed, I was hoping maybe it could be reopened.
24 But again, I don't know the answer. You would know better
25 than I would on those things.

1 JUDGE MILLS: Okay. That's all the questions
2 I have.

3 If there's nothing further from the Bench, we
4 will go on with a round of further cross-examination based
5 on those questions. Mr. Krueger?

6 RECROSS-EXAMINATION BY MR. KRUEGER:

7 Q. Good morning, Mr. Smith.

8 A. Good morning.

9 Q. You talked about potentially selling the
10 company within approximately six months, correct?

11 A. Well, I'm trying today and as soon as it can
12 be effectuated, but I would think it would take a period of
13 time, probably six months to do that.

14 Q. Now, during this time, would you be building
15 this water tower?

16 A. If we can get the authority and go forward.
17 The water tower company called me three or four days -- last
18 week one day. They've offered to provide financing. Of
19 course, it would be a lot higher interest rate and so forth,
20 but I would be interested in pursuing that, assuming that a
21 purchaser would come in and then pay that off and take me
22 off the note. We would pursue it.

23 But like I said, the whole problem for the
24 last several years has been the rates relative to the costs
25 of operating, and my position has always been and the bank's

1 position has always been is that the operating costs have to
2 be at least made up in rates because I can't subsidize
3 operating costs and make payments on the water tower.
4 That's been the position I've been.

5 Q. Okay. What I'm talking about is building a
6 tower, building a water tower prior to the time that you
7 have a contract for the sale. Do you have plans to do that?

8 A. Well, you're not going to get it done in six
9 months, but my plans would be to proceed with that, because
10 all the engineering's done. DNR said we'd have to renew the
11 permit. But assuming we can take the plans and all the work
12 that was done before and just simply go forward, then we
13 would start immediately. You know, that could be done.

14 Q. Do you know -- I'm sorry. Finish your answer.

15 A. Well, I don't know construction time and all
16 the, you know, the mechanics of what we're doing here as far
17 as how that goes, but I would be willing -- I'm going to
18 call tomorrow and say, you know, we're prepared to go
19 forward, but obviously I'm not in a position to make a
20 commitment for a \$200,000 loan not knowing what's going on
21 here.

22 Q. In what sense are you prepared to go forward
23 if you don't know how you're going to pay for it?

24 A. Well, to line it up and be prepared to go --
25 to put the financing in place, to go back to DNR and try to

1 get the permit renewed. You know, we'd start taking more
2 serious efforts.

3 I mean, at one time we were at the point of
4 actually going forward and actually start construction, and
5 then when we -- I didn't feel like we had the rates to
6 justify it, that's when we stopped. If we can go back and
7 start in again, we'll just start going forward.

8 Q. Are you going to wait until you have the rates
9 to justify it before you start construction?

10 A. If the management arrangement is worked out
11 and they show sufficient interest in buying it, which
12 they've indicated they are, then I would go forward in
13 reliance upon -- I know whoever takes over is going to get a
14 big rate case, I mean, or increase. There's no doubt about
15 that.

16 So based upon that, I would be prepared to
17 take the risk, but I'm not going to put \$200,000 in a
18 company and be in a situation where I walk away or forced to
19 walk away from it.

20 Q. I guess my question then is, who's going to
21 pay for the tank, pay for the construction of the tank? Are
22 you talking about --

23 A. I would get a construction loan with a buyout
24 from the permanent financing, and the Alliance or whoever
25 would look at buying it, that would have to be factored then

1 into the purchase price.

2 Q. Would you be able to get a construction loan
3 without having a contract for the sale of the company?

4 A. If I put up personal assets.

5 Q. So you would be able to obtain financing for
6 the construction of the water tower at this time if you
7 chose to do so?

8 A. Well, I can't speak for a bank, but they've
9 always indicated if I put up sufficient personal assets,
10 personal guarantee, life insurance and my house, that they
11 would make the loan.

12 Q. Are you able to do that?

13 A. Well, sure.

14 Q. Do you know how long it would take to
15 construct a water tower?

16 A. No. That's why I can't really answer your
17 question directly because I don't know the time frame we're
18 talking about on all the different steps. Those things are
19 beyond my control, so I can't --

20 Q. Do you know if it could be completed within
21 six months?

22 A. I would say that would be pushing it, but --

23 Q. Okay. And do you understand that you can't
24 get any recovery of the investment in the water tower until
25 the water tower is in service?

1 A. Sure. And I've already got 60-some thousand
2 dollars invested that for several years hasn't drawn any at
3 all obviously. So I'm painfully aware of that.

4 Q. And you understand that even a small company
5 rate case may take up to 150 days or sometimes more by
6 agreement of the company?

7 A. Frankly, with my experience in this, I think
8 we're going to have to file formal proceedings and go that
9 way. I don't know how long -- and that may take longer. I
10 don't know. But I think that's the only way to effectuate
11 all this.

12 Q. Do you understand that the operation of law
13 date on a formal rate case is 11 months typically after the
14 date that the --

15 A. I've heard something like that.

16 MR. KRUEGER: No other questions. Thank you.

17 JUDGE MILLS: Thank you. Ms. O'Neill?

18 MS. O'NEILL: Thank you. Your Honor, I may be
19 going back and forth rather than try and take everything up
20 here.

21 JUDGE MILLS: That's fine.

22 RECROSS-EXAMINATION BY MS. O'NEILL:

23 Q. Good morning, Mr. Smith.

24 A. Good morning.

25 Q. Now, you testified this morning that you're

1 ready to file those papers with the Secretary of State's
2 Office and get corporate status reinstated; is that correct?

3 A. Yes.

4 Q. And you've known about this dissolved
5 corporate status for quite a while?

6 A. Yes.

7 Q. In fact, you wrote a letter to the Staff
8 July 25th, 2001 where this was raised in connection with
9 your rate case that you -- rate relief that you requested;
10 is that correct?

11 A. Yes.

12 Q. And do you recall addressing this issue about
13 corporate standing in that letter?

14 A. Yes.

15 Q. Okay. I'm going to show you -- do you recall
16 what you said?

17 A. I said I'd pursue it or we're pursuing it.
18 This proceeding has really delayed everything because I
19 don't want to go forward not knowing where I'm going to be
20 with it.

21 MR. SCHAEFER: Ms. O'Neill, can I see that,
22 please, before you show it to the witness?

23 MS. O'NEILL: Sure.

24 BY MS. O'NEILL:

25 Q. Mr. Smith, what's the date that you wrote that

1 letter?

2 A. July 25th, 2001.

3 Q. And that's your signature on the letter?

4 A. Yes.

5 Q. And where it says corporate standing on that
6 second page, what does it say you're going to do regarding
7 that?

8 A. That I'm going to get it reinstated.

9 Q. And that was July 25th, 2001 --

10 A. Yes.

11 Q. -- is that correct?

12 A. Yes.

13 Q. That was before this complaint case was filed?

14 A. Well, I'd filed for the tax clearance and the
15 paperwork and so forth, and then I frankly put everything
16 aside while this case is pending.

17 Q. You filed for tax clearance?

18 A. Well, you have to get a tax clearance to then
19 file with the Secretary of State.

20 Q. And have you received that document?

21 A. Yes.

22 Q. When did you receive that document?

23 A. Well, I got it right after this, but that
24 expires after 60 or 90 days, I think. So, Kurt, I believe
25 his secretary may have applied for another one, so -- but

1 it's just a matter of walking that through the Department of
2 Revenue.

3 Q. But during the 60 to 90 days that you had the
4 valid tax clearance, you didn't file for reinstatement?

5 A. No.

6 Q. Now, yesterday Commissioner Murray asked you
7 whether or not you had discussed the option of selling the
8 company in any of the prefiled testimony. You said you
9 didn't recall that. Have you had a chance to review your
10 prefiled testimony?

11 A. I haven't looked at it since yesterday, but we
12 discussed that Chapter 11 possibly, that was an indirect
13 reference to a way to sell it.

14 Q. I'm going to hand you a copy of the
15 surrebuttal testimony of Gary Smith that you filed April 4.
16 Do you have a copy of that in front of you?

17 A. Yes.

18 Q. Why don't you just refer to your own copy,
19 then. Would you turn to page 4. At line 16 is there a
20 question?

21 A. Yes.

22 Q. And what is that question?

23 A. When asked if I considered the option, it
24 outlines that contact that I had with Water District No. 2.

25 Q. Okay. What does the question say at line 16

1 and 17?

2 A. Have you further considered the option of
3 selling the company as suggested by Mr. Merciel?

4 Q. And at line 18, does your answer begin with
5 the word yes?

6 A. Yes.

7 Q. Now, you testified yesterday in response to
8 questions from Commissioner Murray that you transferred at
9 some point in time Gary Smith & Associates assets into the
10 utility or tried to merge them without Commission approval?

11 A. Merged.

12 Q. Or transferred them together in some fashion;
13 is that right?

14 A. Yes. We wouldn't need -- you said Commission
15 approval. That's personal assets, not utility assets.

16 Q. You later testified that -- you also testified
17 that at some point you transferred nonregulated assets out
18 of the utility and into another corporate entity that you
19 created; is that correct?

20 A. Yes.

21 Q. And that among the assets you transferred out
22 of the utility was rental property?

23 A. Well, it was whatever personal assets that I
24 owned that didn't belong to the utility.

25 Q. Did you testify yesterday that that included

1 rental property?

2 A. Yes, I believe so.

3 Q. Rental real estate property?

4 A. Yes.

5 Q. And while that rental real estate property was
6 contained within the utility company, were you reporting the
7 income from that rental property as income to the utility?

8 A. No. The financial statements of the utility
9 broke down utility and non-utility income and utility and
10 non-utility expenses.

11 Q. When you attempted to obtain financing for
12 utility company projects, did you propose to utilize this
13 rental property as some sort of collateral for those loans?

14 A. Yes. The first effort I made was with First
15 Bank in Warrenton, and they sent a letter stating -- and
16 that was based upon the utility property securing the loan,
17 and they sent a letter stating that, based upon the profit
18 and loss of the company, that they wouldn't make the loan.
19 That was just standing -- the utility standing for itself.

20 And People's Bank, who I also talked with,
21 they said they would make the loan but that, in their
22 opinion, the utility had no value for loan purposes and that
23 they would make it based upon me pledging other collateral.

24 Q. Did you have any other discussions with
25 People's Bank regarding a loan and perhaps using some other

1 government sources to obtain some of your financing?

2 A. Well, the loan that I proposed with everyone
3 was with Rural Development where you get a 90 percent
4 federal guarantee on it.

5 Q. And did you ever send the paperwork in to
6 finish applying for that Rural Development loan?

7 A. Yes. We had all that, and they indicated they
8 could fund it. So it was up to the bank to issue their
9 guar-- or their acceptance or whatever.

10 Q. Okay. So that was after Mr. Merciel had been
11 in contact with the bank?

12 A. Well, I don't know that he had. I think he
13 said he had, but I don't know personally. I think I
14 prepared an application to that original '96 application
15 with First Bank and then I still had that.

16 Q. You recall the attachment to Mr. Merciel's
17 cross-surrebuttal testimony where he discusses -- which is a
18 report from 1999 that starts at Attachment 1-4 and goes into
19 Attachment 1-5. Do you have that in front of you? Have you
20 read that?

21 A. I don't know what it is first.

22 Q. Okay.

23 MR. SCHAEFER: Was that the rebuttal testimony
24 of Mr. Merciel?

25 MS. O'NEILL: Cross-surrebuttal testimony of

1 James Merciel.

2 MR. SCHAEFER: Cross-surrebuttal. Thank you.

3 BY MS. O'NEILL:

4 Q. Attachment page 1-4, what's the title of that
5 document?

6 A. Missouri Public Service Commission Staff
7 Report of Investigation.

8 Q. By James Merciel?

9 A. Yes.

10 Q. And what's the date?

11 A. September 7, 1999.

12 Q. So that was after the Stipulation & Agreement
13 was approved by the Commission; is that correct?

14 A. Yes.

15 Q. Okay. If you'd turn the page to attachment
16 page 1-5.

17 MR. SCHAEFER: I'm going to object. Can I
18 voir dire the witness just for a second, Judge?

19 JUDGE MILLS: To what end?

20 MR. SCHAEFER: To see if he's familiar with
21 this document, if he's ever seen it before. She's going to
22 ask him questions regarding a document that I don't believe
23 he's even said he's seen before.

24 JUDGE MILLS: It was filed in a Commission
25 case in which he was a party. I would assume that he has

1 seen it. If he's not, he certainly should have. And it's
2 already been admitted into the record, so the question of
3 it's admissibility is not at issue. I'm not sure to what
4 end you want to voir dire him.

5 MR. SCHAEFER: Well, I believe that she's
6 going to ask him questions about the content of the document
7 I simply wanted to ask him for the record if he's ever
8 reviewed this document before because I don't believe that
9 foundation was laid by Ms. O'Neill.

10 JUDGE MILLS: I don't believe foundation has
11 to be laid. No, you can't voir dire the witness.

12 MR. SCHAEFER: Thank you, Judge.

13 BY MS. O'NEILL:

14 Q. Mr. Smith, the first paragraph on Attachment
15 page 1-5, is there a discussion of your discussions with
16 People's Bank and Trust regarding a loan?

17 A. Warren County Water and Sewer sought financing
18 as evidenced by the finance. People's Bank agreed to a
19 proposed loan contingent upon several items. Among those
20 items USDA guarantee. He said 80 percent. I think it was
21 90. A representative of the bank told me an application for
22 this guarantee needs to be submitted and it would take 30 to
23 60 days to obtain approval. Warren County claims it
24 prepared the application approximately two years ago and the
25 bank has the application. However, neither the bank --

1 Warren County Water and Sewer or the bank submitted USDA due
2 to other loans and financial situations. Bank
3 representative stated Warren County Water and Sewer needs to
4 submit or at least make the call to go ahead with the
5 submission.

6 Q. Okay. Now, and the date of that report is
7 what month of 1999? It's at Attachment 1-4.

8 A. September 7, '99.

9 Q. Okay. And, in fact, you did submit this, you
10 did do something to get loan approval following the
11 submission of that report; is that correct?

12 A. Yes. I talked to them in '96, '97.

13 Q. I'm talking about 1999.

14 A. I don't recall offhand what went on in '99.

15 Q. Okay. Do you have a copy of the surrebuttal
16 testimony of Kimberly Bolin in front of you?

17 A. No.

18 Q. Well, I'm going to refer you -- and I'll show
19 you a copy of this -- Schedule KKB-17 of that surrebuttal
20 testimony. Is that a fax from you to the Public Service
21 Commission Staff?

22 A. Yes.

23 Q. And does it indicate that you have loan
24 approval for the water tank?

25 A. Yes. This is the one that Pittsburgh Tank --

1 it was a lease/purchase agreement that Pittsburgh Tank had
2 arranged.

3 Q. Mr. Smith, please read --

4 A. I'm sorry.

5 Q. -- the content of the fax, the message. You
6 don't have to read all the --

7 A. I was notified this a.m. that water tank loan
8 has been approved. Pittsburgh Tank's preparing a
9 construction schedule and the loan details. Closing's being
10 worked out. I will keep you advised. It appears
11 construction in January is probable.

12 Q. And did you sign your name Gary on that?

13 A. Yes.

14 Q. And is the date of that fax in December of
15 1999?

16 A. December 17, 1999.

17 Q. Thank you.

18 Now, in response to one of the questions I
19 just asked you in following up on questions from the Bench,
20 you said that you didn't believe that you needed approval
21 for these mergers or consolidations or reorganizations
22 from the Commission, is that your --

23 A. My testimony was that I didn't think I needed
24 approval for stock transfers.

25 Q. And was it your position that the only thing

1 that was transferred regarding Warren County Water and Sewer
2 Company was stock?

3 A. No. I said that we transferred real estate.

4 Q. Okay. And you said that -- you said that
5 during this hearing?

6 A. In response to your questions, I answered
7 that.

8 Q. Now, do you recall receiving a Data Request
9 from my office March 29, 2002 that was answered by you
10 regarding merger documents?

11 A. Yes.

12 Q. And were those -- the answers to those Data
13 Requests, did they -- were they transmitted to my office by
14 your attorney's office?

15 A. I'm sure they were.

16 Q. I'm going to ask you to look at a fax
17 transmission from Lathrop & Gage of April 24th, 2002 of Data
18 Request No. 1014.

19 MR. SCHAEFER: May I see that?

20 JUDGE MILLS: Show it to Mr. Schaefer, please.

21 MS. O'NEILL: Sure.

22 BY MS. O'NEILL:

23 Q. Mr. Smith, did you sign the response to that
24 Data Request?

25 A. Yes.

1 Q. And can you read the paragraph right above
2 your signature, the typewritten paragraph?

3 A. The information provided to the Office of the
4 Public Counsel in response to the above information request
5 is accurate and complete and contains no material
6 misrepresentations or omissions based upon present facts
7 known to the undersigned. The undersigned agrees to
8 immediately inform the Office of the Public Counsel if any
9 matters are discovered which would materially affect the
10 accuracy or completeness of the information provided in
11 response to the above information.

12 Q. Okay. Now would you please read the
13 information requested paragraph.

14 A. The answer?

15 Q. The information requested typewritten
16 paragraph.

17 A. Oh, I'm sorry. Rebuttal testimony of Gary
18 Smith.

19 Q. No, no. At the top of this page it says
20 information requested.

21 A. Yeah.

22 Q. Read what it says.

23 A. That's where I started.

24 Q. Where it says please provide?

25 A. That's the next thing. Please provide copies

1 of all invoices documenting the \$60,000 spent for the
2 proposed water storage tank.

3 Q. Excuse me. 1014.

4 A. Okay. Please provide all documentation
5 regarding the attempted merger of the utility with any other
6 business owned by Gary Smith. Include documentation
7 establishing that separation of utility from the
8 nonregulated construction company has been completed,
9 including, but not limited to, all applications to the PSC
10 to merge. If no such documentation exists, explain why not.

11 Q. Okay. And for the record, you did sign that
12 data request response and the paragraph about accuracy is
13 the same; is that correct?

14 A. Yes.

15 Q. Okay. And could you read your answer, please?

16 A. Only documentation is stock transfers and
17 accounting records. Object to providing non-utility
18 records.

19 Q. And on your copy -- okay. So it says only
20 documentation is stock transfers and accounting records?

21 A. Yes, but I believe there was a deed to the
22 property.

23 Q. Okay. You did not reveal that in the response
24 to this Data Request?

25 A. I apparently overlooked it.

1 Q. Was there just one deed?

2 A. I don't recall offhand.

3 Q. Do you know?

4 A. Well, it had to be more because part of the
5 property's in Lincoln County and part in Warren County.

6 Q. Are there more -- is there more than one
7 parcel of property?

8 A. Yes.

9 Q. Did you transfer it all in one deed or did you
10 transfer a separate deed for each parcel?

11 A. I don't recall now. Normally I would include
12 all parcels in one county in one deed, but I can't swear to
13 that now.

14 Q. So the fact that this was not just a stock
15 transfer but a deed transfer of property was something that
16 slipped your mind when you responded to this Data Request?

17 A. Well, you were -- well, I guess the answer
18 would be yes, but you were talking about the merger of the
19 two companies, and to merge them we just transferred the
20 stock, but there was a transfer of the assets.

21 Q. So you believe that -- so the transfer of the
22 assets you didn't think was relevant to answering this Data
23 Request?

24 A. I hadn't even thought about it. I've said the
25 way it is. Whether I should have explained more or not,

1 that's left to interpretation, I guess.

2 Q. And can you tell on that copy what date that
3 that response was transmitted to my office at the top there?
4 Can you tell?

5 A. Something 24th.

6 Q. April 24th, 2002, 3:45 p.m., Lathrop & Gage.

7 A. Yes.

8 Q. Is that what it says up there?

9 A. Yeah. I can't see the month, but --

10 Q. How about this copy (indicating)?

11 A. Yes.

12 Q. Make sure the record is clear.

13 A. April 24th.

14 Q. What kind of deed did you use to transfer
15 those -- that property out of the utility into the
16 investment company?

17 A. Probably would have been a general warranty
18 deed. I can't swear to it without looking.

19 Q. Okay. And Commissioner Murray asked you some
20 questions about the Mecro Engineering judgment. Is that also
21 a lien on the property?

22 A. That would be a legal opinion. I can't
23 answer. I mean, whether it's on the record or not, I don't
24 know.

25 Q. Would it surprise you if there was a lien by

1 Mecco Engineering against the property --

2 MR. SCHAEFER: And I'm going to --

3 MS. O'NEILL: -- on that unpaid judgment?

4 MR. SCHAEFER: It calls for a legal

5 conclusion. He's testified he doesn't know.

6 MS. O'NEILL: He has a law degree.

7 MR. SCHAEFER: He may have a law degree, but
8 there's no testimony that he's a practicing lawyer or that
9 he knows real estate law.

10 JUDGE MILLS: I don't know whether it calls
11 for a legal conclusion or not, but he's already said he
12 doesn't know. So to ask him if he would be surprised to
13 find out, I don't think that's enough of a differentiation
14 in the question. I think it's been asked and answered.

15 BY MS. O'NEILL:

16 Q. When you conveyed these parcels of utility
17 property out of the utility company to your other
18 investment -- to your investment company by warranty deed or
19 however, did you do a title search to see what kind of
20 encumbrances there were on the property?

21 A. No.

22 Q. Are you aware of any encumbrances on the
23 properties?

24 A. I haven't done a title search. I mean, other
25 than what I'd speculate, I don't know.

1 Q. Okay. You are still the owner of the property
2 and you were the owner of the property prior to the
3 transfer?

4 A. Yes.

5 Q. As the owner of the property, are you aware of
6 any liens against the property?

7 A. You might have to define what you mean by
8 property, but if you're talking strictly utility property
9 where the treatment plants are, the well and so forth, I'm
10 not aware of any liens, unless there would be a judgment.

11 Judgment lien, as I recall, is good for three
12 years, and when that Meco judgment was I don't know. I
13 mean, I just can't say whether or not something like that
14 would still be in effect, if it is in effect.

15 Q. And so you don't know when the Erb Equipment
16 Company would have gotten a judgment against you either?

17 MR. SCHAEFER: I'm going to object. It
18 assumes facts not in evidence.

19 JUDGE MILLS: Sustained.

20 BY MS. O'NEILL:

21 Q. Part of your testimony in response to
22 questions from Commissioner Murray yesterday afternoon
23 included statements regarding the problems or obstacles that
24 the Incline Village Board of Trustees put up in your way
25 against being able to complete this water construction

1 project?

2 A. Yes.

3 Q. Is it your testimony that those obstructions
4 or conflicts continued after the Stipulation & Agreement was
5 approved?

6 A. We've had conflicts for 10, 12 years.

7 Q. I want to relate -- I understand that there is
8 some -- there's some bad blood there, and I don't want to
9 talk about the whole general thing, but specifically related
10 to conflicts regarding the proposed construction of this
11 water storage tank or tower, was that obstruction continuing
12 after the Stipulation & Agreement was approved by the
13 Commission in 1998?

14 A. That's a pretty broad question, you know. As
15 far as any lawsuits or anything, there weren't any lawsuits.
16 They didn't object on the rate case. Those would be the
17 more serious obstructions that I would have expected, but
18 they didn't. But as far as in-fighting, you know, I don't
19 know. I can't speak for them.

20 Q. There were no further lawsuits filed to enjoin
21 you from building after the Stipulation & Agreement was --

22 A. Not after I did the condemnation.

23 Q. Right. And that was in 1997, wasn't it?

24 A. Yes.

25 Q. And then in 1998, in June of 1998 is when the

1 Commission approved the Stipulation & Agreement, correct?

2 A. Yeah.

3 Q. And the Incline Village Board of Trustees was
4 a party to that stipulation?

5 A. Yes.

6 Q. And you were a party to that stipulation?

7 A. Yes.

8 Q. And everybody agreed that there wasn't going
9 to be any more obstruction of your ability to construct this
10 tower?

11 A. Yes.

12 Q. And there hasn't been, right?

13 A. There haven't been any lawsuits. As far as
14 anything else, I can't speak for what they've done or
15 haven't done.

16 Q. They have not made any legal effort to
17 obstruct your efforts to build this water tower since the
18 stipulation was approved --

19 A. Not that I'm aware of.

20 Q. -- in 1998?

21 A. No.

22 Q. In response to some questions, I believe they
23 were this morning, from Commissioner Forbis, he was talking
24 to you about the connection costs of customers. You do have
25 tariffs that discuss connection fees and connection charges,

1 don't you?

2 A. Yes.

3 Q. And you do charge your customers for
4 connections?

5 A. Yes.

6 Q. And, in fact, you attempted to institute a
7 contract that was not completely in line with your tariff;
8 is that correct?

9 A. No.

10 MR. SCHAEFER: I'm going to object. This
11 assumes facts not in evidence and it's beyond the scope.

12 MS. O'NEILL: I'm referring to the rebuttal
13 testimony of James Merciel, Attachment 1-5. This is the
14 rebuttal, not the surrebuttal. It's in evidence, and it's
15 in reference to questions from the Bench.

16 MR. SCHAEFER: Specifically what question from
17 the Bench?

18 MS. O'NEILL: Commissioner Forbis was asking
19 about connections. Mr. Smith was answering that he wasn't
20 charging for connections and then he wanted to have tariffs
21 and then I believe conveyed an erroneous impression that
22 there were no tariffs that dealt with the cost of
23 connection.

24 JUDGE MILLS: I think this is related to
25 questions from the Bench.

1 MR. SCHAEFER: I think that's fine. With that
2 explanation, I'll withdraw any objection.

3 THE WITNESS: That statement is not accurate,
4 what you just said.

5 BY MS. O'NEILL:

6 Q. You do charge your customers for connections?

7 A. We charge a connection fee based upon the
8 tariffs.

9 Q. Based upon the tariffs. And you also were
10 attempting to enforce a contract for utility services, is
11 that correct, at one point?

12 A. Enforce how?

13 Q. You were asking new customers to sign a
14 contract for utility services? That was the subject of some
15 complaints before this Commission.

16 A. We have an application for service, and in the
17 last few years I've set out the utility portion of the
18 service and the non-utility portion of the service, and we
19 try to get the customer to sign it so they're aware of what
20 they do and what we do.

21 Q. Okay. And Mr. Merciel pointed out some
22 problems with that contract; is that correct?

23 MR. SCHAEFER: I'm going to object. It's
24 leading.

25 MS. O'NEILL: It's cross-examination, and

1 leading is generally permitted on cross.

2 MR. SCHAEFER: Perhaps I wasn't -- I don't
3 think -- perhaps you can be more specific. I don't know
4 that he definitely knows what testimony of Mr. Merciel's
5 that she's referring to.

6 MS. O'NEILL: I'd be happy to show it to him.

7 JUDGE MILLS: The mere fact that he may not
8 know the answer doesn't make it an objectionable question.
9 If he doesn't know, he can say he doesn't know. I agree it
10 was sort of a very general question and it may be better to
11 ask it more specifically, but it doesn't make it
12 objectionable.

13 THE WITNESS: What was the question?

14 JUDGE MILLS: The question was, did
15 Mr. Merciel point out that there were problems with the
16 contract?

17 THE WITNESS: I don't recall him talking about
18 the contract. He talked about connection fees.

19 BY MS. O'NEILL:

20 Q. Did he talk about the conflicts between your
21 contract and the connection fees in your tariff?

22 A. I don't recall that language. I mean, there's
23 been a conflict as far as our interpretation of the tariffs
24 with regard to connection fees, and he referred to that.
25 We've still got a strong disagreement on that.

1 Q. Okay. But you do recall receiving a letter
2 from Mr. Merciel in April of 2001 regarding problems with
3 the conflict between the tariff and the contract? I can
4 show you a copy if you'd like.

5 A. Yeah.

6 Q. It's attached to Mr. Merciel's rebuttal
7 testimony, Attachment 1-5. Is that a letter from
8 Mr. Merciel?

9 A. Yes. Okay.

10 Q. And is that a letter discussing problems he's
11 having with your contract versus the tariff language?

12 A. Yes.

13 Q. And what's the date of that letter?

14 A. April 12, 2001.

15 Q. And is it a letter to you?

16 A. Yes.

17 Q. Did you receive that letter?

18 A. I'm sure I did.

19 Q. Now, in response to some questions from the
20 Bench this morning, you talked about your plans to try and
21 get financing and get these improvements made and then sell
22 the company because the company -- a new owner would not
23 want to or there may be a reason why it wouldn't be a good
24 idea for the new owner to come in and suddenly get a big
25 rate increase. Do you recall testimony along those lines?

1 A. Yes.

2 Q. Now, have you taken any affirmative steps to
3 obtain current financing or to reapply for your DNR permits
4 for this water tank construction?

5 A. Not since this proceeding's been pending, no.

6 Q. Okay. So we don't have anything in writing we
7 can look at to see whether or not you're really planning on
8 going forward with this?

9 A. There's nothing you can put in writing until
10 you get something worked out, you know, have something
11 concrete to deal with.

12 Q. And you don't have anything in writing
13 regarding any of the proposed management people?

14 A. Not yet, no.

15 Q. Don't have anything in writing about any
16 proposed buyers?

17 A. No.

18 Q. So all we have is your word?

19 A. Well, we've got documentation from the company
20 that they were coming out. I assume they could write a
21 letter and explain to you what they've done.

22 Q. Do we have that documentation in evidence here
23 today?

24 A. If it wasn't attached to the Motion for
25 Continuance, we've got it. I don't know if it was attached

1 to the motion or not.

2 Q. There's a written documentation attached to
3 the Motion to Continue?

4 A. I don't know. I haven't -- I don't know.

5 MR. SCHAEFER: For the record, I've never seen
6 it. If it exists, we'll certainly give it to you. I don't
7 know that any such document exists.

8 BY MS. O'NEILL:

9 Q. So it would be fair to say that there is
10 nothing in the record in this case that's a documentation of
11 any of your plans?

12 A. No. I -- well, not in the record, no.

13 Q. Just what you've said here today?

14 A. Well, I had a letter from Water District No. 2
15 which I faxed to their office. Now, what happened to it
16 there, I don't know.

17 Q. Okay.

18 MR. SCHAEFER: I'd like to clarify for the
19 record, it may be that Mr. DeFord who is mainly dealing with
20 this case has. I certainly haven't seen it.

21 BY MS. O'NEILL:

22 Q. But as far as what's in the record in this
23 case --

24 A. No.

25 Q. -- nothing but what you have said?

1 A. Yes.

2 MS. O'NEILL: No further questions.

3 JUDGE MILLS: Thank you. Redirect,

4 Mr. Schaefer?

5 MR. SCHAEFER: Judge, can we have just about

6 three minutes?

7 JUDGE MILLS: Yeah, that's fine.

8 (A recess was taken.).

9 JUDGE MILLS: Let's go back on the record. I

10 believe we're ready to proceed with redirect examination by

11 Mr. Schaefer.

12 MR. SCHAEFER: Thank you, Judge. May I

13 proceed?

14 JUDGE MILLS: Please go ahead.

15 REDIRECT EXAMINATION BY MR. SCHAEFER:

16 Q. Mr. Smith, there's been some extensive

17 discussion about the new water tower issue?

18 A. Yes.

19 Q. And I want you to explain to Judge Mills some

20 of the issues that I don't believe have been clarified and

21 have been actually muddled with some of the testimony

22 regarding the tank issue.

23 Let me -- I'll go ahead and ask you. When you

24 first started looking into putting in the new tank,

25 approximately when was that?

1 A. '96, early, I think.

2 Q. What were -- explain to Judge Mills your
3 original plans for putting in that tank.

4 A. The original plan was to get a bank loan at
5 bank rates, and my initial contacts was to find out what
6 they would require to make the loan.

7 Q. Okay. And I'm going to ask you about the
8 financing in just a second, but let's talk about the actual
9 engineering plans for putting in the tank.

10 A. Okay.

11 Q. What were the original plans for putting in
12 the tank?

13 A. Oh, as far as the location, Mecos had
14 recommended a site about one mile down Route WW outside of
15 Incline Village because that was the highest elevation in
16 the system. Well, it wasn't in the system, in the service
17 area, but it was relatively close, but that was the
18 recommended site to put the tank.

19 Q. Okay. Did you ultimately go with that design?

20 A. Yes. We filed the application to expand our
21 service area so that we would pick that up and whatever else
22 was included in that application in '96, I guess it was.

23 Q. Okay. At some point did the engineering plans
24 for that tank change?

25 A. Yes.

1 Q. And please explain that situation to Judge
2 Mills.

3 A. Well, we came down for a prehearing conference
4 with regard to that '96 case. I'm not sure who the judge
5 was at the time. And I anticipated the water storage tank
6 to sail on through with no opposition, but at that
7 prehearing conference some of the trustees from Incline
8 Village showed up, specifically Darwin Zimmerman, and at
9 that time indicated to the Commission that they objected to
10 the tank being constructed outside of Incline Village.

11 Q. Okay. So in response to that, did you change
12 the engineering plans?

13 A. Yes.

14 Q. And explain the change in engineering plans.

15 A. We talked to the engineers as an alternative
16 site, and because of cost and other factors involved, we
17 decided the most logical second site would be adjacent to
18 the current well and storage tank.

19 Q. Okay. Did you make that change based on the
20 concerns expressed by Incline Village?

21 A. Yes.

22 Q. Okay. And just go ahead. Proceed. What
23 happened then?

24 A. Well, at that point I purchased the lot
25 adjacent to the water tower. I paid for it, obtained title

1 and so forth.

2 Q. And was that inside Incline Village?

3 A. Yes.

4 Q. Okay.

5 A. And I began doing some work, knocked down some
6 trees, clearing it out, and at some point there we did the
7 engineering work on the soil conditions and so forth. And I
8 made an entrance off of Highway WW to that work site, and at
9 that point Incline Village filed an injunction suit against
10 us proceeding. They said that the cutting down the trees
11 and so on and so forth violated the restrictive covenants of
12 Incline Village.

13 Q. So was it your understanding at that point
14 that Incline Village then didn't want the tank in Incline
15 Village?

16 A. Then they didn't want it in Incline Village.

17 Q. Okay. What happened then?

18 A. I asked -- I said we couldn't put it in a
19 balloon. So we filed a condemnation suit to then condemn
20 the interest of Incline Village in that lot.

21 Q. And what was Incline Village's position on
22 your condemnation request to get the property in Incline
23 Village to put in the tank?

24 A. Well, we tried the case. The judge appointed
25 commissioners, and Incline Village at the meeting with the

1 commissioners wanted 300-and-some thousand dollars for the
2 right -- for my right to construct the water tower on that
3 particular lot.

4 Q. Did the commissioners in the condemnation case
5 eventually make an award on the value you had to pay for the
6 lot?

7 A. Yes. It was approximately \$14,000.

8 Q. Okay. Approximately how much money did you
9 spend defending that suit against Incline Village?

10 MS. O'NEILL: Objection; irrelevant.

11 JUDGE MILLS: I think there's been a lot of
12 issue about this water tower and why it hasn't been
13 constructed to date, and I think this is relevant to that
14 question. The objection is overruled.

15 THE WITNESS: I spent in the neighborhood of
16 \$30,000.

17 BY MR. SCHAEFER:

18 Q. Have you ever gotten that money back?

19 A. No. It's an asset not contributed yet.

20 Q. Okay. And has that loss of that \$30,000 in
21 any way affected your ability to proceed with installing the
22 tank?

23 A. When I've run the cash flow, that along with
24 not getting the rate case, our cash flow's just been a
25 disaster in the last few years.

1 Q. There's been some questions asked of you
2 regarding financing for the tank. Did you seek financing
3 for the tank?

4 A. Yes.

5 Q. Okay. Could you get financing for the tank?

6 A. Not without personal assets sufficient to
7 secure the loan and my guarantee that I would make the
8 payments, because they didn't feel like the utility could
9 secure the loan.

10 Q. Okay. In your testimony that you provided,
11 did you provide testimony regarding your inability to get
12 financing for that tank?

13 A. Yes.

14 Q. After you filed your surrebuttal testimony,
15 did you find a document that's relevant to that issue?

16 A. Yes. Last week or a couple weeks ago I was
17 going through the rate case from back in '98 and I did find
18 a bank document at that time.

19 Q. Okay. I'm going to hand you what's been
20 marked as Exhibit 19. Mr. Smith, do you see what's been
21 marked as Exhibit 19?

22 A. Yes.

23 Q. What is Exhibit 19?

24 A. That's a letter that I received from First
25 Bank in Warrenton regarding the application for financing

1 for the water tower.

2 Q. Okay. Is this a true and accurate copy of
3 what you received from the bank?

4 A. Yes.

5 MR. SCHAEFER: I'm going to move for the
6 admission of Exhibit 19.

7 JUDGE MILLS: Are there any objections to the
8 admission of Exhibit 19?

9 MR. KRUEGER: Your Honor, I object to it.
10 It's hearsay. It's evidence that is introduced during
11 redirect that I will not have an opportunity to
12 cross-examine the witness about, and I have several
13 questions I'd like to ask him about it that I assume
14 Mr. Schaefer probably will not ask him.

15 JUDGE MILLS: Ms. O'Neill?

16 MS. O'NEILL: I believe I also want to object.
17 If I can voir dire the witness, I may be able to clarify the
18 reasons for my objection.

19 MR. SCHAEFER: Judge, I would like to point
20 out that I provided both Mr. Krueger and Ms. O'Neill with a
21 copy of this document yesterday. It was marked by the court
22 reporter and I gave it to them before I even called
23 Mr. Smith yesterday.

24 I didn't think it was going to be necessary to
25 use it, but now that they've raised so many questions on the

1 cross-examination about the financing, that's why I'm
2 bringing it in. They did have it previously.

3 MS. O'NEILL: I have a few voir dire questions
4 and then I can address my objections more clearly.

5 JUDGE MILLS: Okay. You can voir dire.
6 VOIR DIRE EXAMINATION BY MS. O'NEILL:

7 Q. Mr. Smith, is the -- the page 1 of this
8 proposed exhibit, is that a letter?

9 A. Yes.

10 Q. And is that a loan application? Is that
11 letter a loan application?

12 A. It's from the bank.

13 Q. Is the letter a loan application?

14 A. The letter is not a --

15 Q. There are documents attached to the letter.
16 Are those documents a loan application?

17 A. They're the documents that I had submitted and
18 they were returning.

19 Q. Are they a loan application?

20 A. No.

21 Q. The letter is signed by Steven Brune. Steven
22 Brune is not employed by First Bank currently, is he?

23 A. No.

24 Q. So there would be no way for my office or the
25 Commission Staff by contacting First Bank to be able to call

1 Mr. Brune to verify whether, in fact, this is his signature
2 or this is his letter?

3 A. I'm sure they could verify the signature, and
4 I've had discussions with other people at the bank. I
5 haven't done business with them for three or four years.

6 Q. But there's no way we could talk to Mr. Brune
7 at this bank today and find out whether or not he really
8 sent this letter?

9 A. Not at the bank, but I understand he resides
10 in Warrenton.

11 Q. Is there anything in Exhibit 19 that indicates
12 where Mr. Brune resides?

13 A. No.

14 Q. Go ahead and look.

15 A. No.

16 Q. Do you believe that the -- as a person with a
17 law degree, you took evidence?

18 MR. SCHAEFER: I'm going to object.

19 JUDGE MILLS: I don't think this -- I don't
20 think this is proper voir dire.

21 MS. O'NEILL: I have further voir dire. I can
22 go on.

23 BY MS. O'NEILL:

24 Q. Mr. Smith, did you receive a Data Request from
25 my office dated March 29, 2002 which is numbered 1011?

1 A. Yes.

2 Q. And did you sign that Data Request --

3 A. Yes.

4 Q. -- response?

5 And previously you read into the record a

6 typewritten statement above your signature on another Data

7 Request. Is that same statement on this Data Request?

8 A. Yes.

9 Q. And did you understand that statement at the

10 time you made -- that you signed the response?

11 A. Yes.

12 Q. What information was requested in this data

13 response, this Data Request?

14 A. Documentation sent to any bank regarding the

15 possible financing and documentation sent to the company by

16 any bank regarding financing.

17 Q. Okay. All documentation --

18 A. Yes.

19 Q. -- sent by any bank regarding possible

20 financing, all documentation sent to you. Okay. Is it your

21 testimony that Exhibit 19 was sent to you by a bank?

22 A. Yes.

23 Q. Please read your response to Data

24 Request 1011.

25 A. Applications made with First Bank - Warrenton

1 and People's Bank - Troy. Other than loan applications, all
2 communications were verbal. Object to the loan documents as
3 being confidential and not relevant. Only relevance would
4 be to the fact applications were made.

5 Q. And is there a fax transmission date at the
6 top of that page that indicates when Lathrop & Gage sent
7 that to my office?

8 A. April 24th.

9 Q. And the date of the request was March 29th?

10 A. Yes.

11 MS. O'NEILL: Your Honor, we would object to
12 the admission of this exhibit for a number of reasons. One,
13 there's a discovery violation. We requested this
14 information and Mr. Smith did not provide it as requested.
15 He signed and he understood the paragraph regarding a
16 continuing duty to provide information should he find it
17 available. He says he found this a couple of weeks ago.

18 MR. SCHAEFER: I'm going to correct that. I
19 believe his testimony was either last week or a couple weeks
20 ago, he was not sure, and I intend to go back over that with
21 him.

22 MS. O'NEILL: Last week or a couple weeks ago,
23 either way was time before the hearing to make us available
24 this exhibit prior to the hearing, give us time to prepare
25 so that we could cross-examine him on it. We haven't had

1 adequate time to prepare. We did get it yesterday
2 afternoon. We have no way of verifying these figures. We
3 have no way of contacting Mr. Brune.

4 And, frankly, it's not all that relevant. If
5 it's relevant at all, it's relevant to what happened in '96.
6 The evidence in this case already clearly shows and
7 Mr. Smith testified this morning that in 1999 he had loan
8 approval from another source.

9 He's admitted that he had discussions with
10 People's Bank well after the date of this and they were
11 making arrangements to get the Rural Development loan
12 through that bank.

13 JUDGE MILLS: So you're objecting because it's
14 not relevant?

15 MS. O'NEILL: I don't believe it's relevant.

16 JUDGE MILLS: So your objection is it's not
17 relevant and because it wasn't provided in discovery?

18 MS. O'NEILL: Right.

19 JUDGE MILLS: And Mr. Krueger, your objection
20 is that it is being offered -- it should have been offered
21 earlier in the proceedings when you would have had a chance
22 to conduct cross-examination on it; is that correct?

23 MR. KRUEGER: Yes. Essentially it's
24 supplementary surrebuttal. There's been no authority for
25 that. He had the opportunity to supplement this some time

1 ago, a week or two weeks ago, and failed to do so.

2 JUDGE MILLS: And Mr. Schaefer, this is being
3 offered to prove what, the financial state of Warren County
4 Water and Sewer at the time, September 16th, 1996 or --

5 MR. SCHAEFER: That he --

6 JUDGE MILLS: -- that he sent that information
7 to a bank and a bank turned him down for a loan?

8 MR. SCHAEFER: Yes.

9 JUDGE MILLS: The latter, not the former?

10 MR. SCHAEFER: The latter. And if I could
11 respond, Ms. O'Neill just said it's irrelevant. How on
12 earth could she be prejudiced and alleges it's a discovery
13 violation if she's in the same breath saying it's irrelevant
14 to the case?

15 But aside from that, he's already testified
16 that he -- we'll get into this -- he found this document,
17 and if I could be allowed to go ahead and continue
18 questioning him, I think his testimony's going to be that at
19 the time he submitted that Data Request, the response to the
20 Data Request, he didn't know about this. He found out about
21 it. We can go into that. I think it's much ado about
22 nothing.

23 JUDGE MILLS: Here's what we're going to do.
24 I'm going to admit Exhibit 19 into the record. I'm going to
25 allow the parties half an hour to prepare -- the other

1 parties that is, Staff and Public Counsel, half an hour to
2 prepare further cross-examination based on this exhibit, and
3 we will come back at 10:30 and you-all can do
4 cross-examination on Mr. Smith based on this document.

5 MS. O'NEILL: Is that cross-examination after
6 Mr. Schaefer's finished with his direct on the document?

7 JUDGE MILLS: Yes. I'm sorry. Let's go off
8 the record and we will come back in half an hour.

9 (EXHIBIT NO. 19 WAS RECEIVED INTO EVIDENCE.)

10 (A recess was taken.)

11 JUDGE MILLS: Let's go back on the record.

12 The way we left things, I had admitted
13 Exhibit 19. Mr. Schaefer was going to finish his redirect
14 examination on that document specifically, and then we would
15 go on and allow the other two parties the opportunity to
16 cross-examine Mr. Smith about that document. And you-all
17 were talking as I left the room. Has anything changed on
18 that?

19 MR. KRUEGER: No.

20 JUDGE MILLS: Then let's proceed with that.
21 Go ahead, Mr. Schaefer.

22 MR. SCHAEFER: Thank you. Thank you, Judge.

23 REDIRECT EXAMINATION (RESUMED) BY MR. SCHAEFER:

24 Q. Mr. Smith, we were looking at Exhibit 19, and
25 I'll direct your attention to that document.

1 A. Yes.

2 Q. What is Exhibit 19?

3 A. That's the letter that the bank sent to me, as
4 I recall, returning the financial information that I had
5 furnished in connection with a loan request, and they also
6 gave me a written rejection, which is what the Rural
7 Development people wanted in order to issue their guarantee.
8 So apparently I had asked that they put something in writing
9 for that purpose.

10 Q. Okay. And specifically the first page of
11 Exhibit 19, what is the very first page?

12 A. That's the letter, cover letter and the letter
13 stating the loan was denied.

14 Q. And the subsequent seven pages, what are
15 those?

16 A. Those are just financial records that I had
17 submitted in connection with the application.

18 Q. Okay. When did this document first come to
19 your attention, recently that is?

20 A. Well, really last week, probably late in the
21 week when I started preparing. When I answered the
22 interrogatory or --

23 Q. I'll ask you that.

24 A. I'm sorry.

25 Q. Specifically have you had time to recall what

1 specifically, how you came across this document?

2 A. Yeah. I was going through the file on the '98
3 rate case looking for other information, and this happened
4 to be in that file. Apparently it was misfiled, and I
5 didn't realize it existed.

6 Q. Do you know whether or not this document was
7 actually admitted into that rate case?

8 A. I don't think so. I think I just misfiled the
9 document at the time.

10 Q. Okay. Now, you were asked some questions by
11 Ms. O'Neill about your Data Request, the one to which I
12 guess it was sent to Ms. O'Neill on April 24th, 2002. Do
13 you recall looking at that Data Request?

14 A. Yes.

15 Q. At the time that you answered that Data
16 Request, were you aware that you had this document --

17 A. No.

18 Q. -- in your possession?

19 Okay. And again, now that you've had some
20 time to think about it, when did you become -- when did you
21 find this document?

22 A. We discussed me -- what I needed to do in
23 regard to this case Friday, I think. So I think that's
24 about the time frame when I was going through specifically
25 looking. I had pulled some old files in the last week, two

1 weeks or so starting to clean up the house, but I hadn't
2 gone through the file and actually seen the document until
3 probably Friday.

4 Q. When did you give the document to me?

5 A. Yesterday morning.

6 MR. SCHAEFER: Okay. I think on this specific
7 document, Judge, that's probably it on that document.

8 JUDGE MILLS: We'll move to cross-examination
9 about this document. Mr. Krueger, how much cross do you
10 have?

11 MR. KRUEGER: A couple of minutes.

12 JUDGE MILLS: Mr. Schaefer, why don't you
13 clear out and let him use the podium. Sorry.

14 MR. SCHAEFER: That's all right.

15 FURTHER RE-CROSS-EXAMINATION BY MR. KRUEGER:

16 Q. Mr. Smith, the first paragraph of this letter
17 says that the bank will not be able to make the loan you
18 requested. What loan did you request?

19 A. For the water tower.

20 Q. How much -- how large a loan did you request?

21 A. 200,000.

22 Q. And was that solely for the construction of
23 the water tower?

24 A. Yes.

25 Q. There wasn't any of that money that was

1 intended for purposes other than Warren County Water and
2 Sewer?

3 A. No.

4 Q. Was the loan to be secured or unsecured?

5 A. Well, it would be secured. At the time we
6 were trying to secure it with utility assets.

7 Q. Was this the only loan application you made at
8 that time?

9 A. Well, they had an ongoing financing
10 arrangement with me on some real estate development. I
11 mean, that was totally separate.

12 Q. I guess my question is, was this the only
13 attempt that you made at that time to obtain financing for
14 the construction of the water tower?

15 A. It was the first attempt I made, yes.

16 Q. But was it the only one?

17 A. Well, then I went to People's Bank after that.

18 Q. And the financial documents that are attached
19 to this loan are the ones that you provided to the bank in
20 connection with this loan application?

21 A. Yes.

22 Q. And does the information on those financial
23 statements pertain only to Warren County Water and Sewer?

24 A. Yes.

25 Q. And does it pertain only to regulated

1 activities?

2 A. Yes.

3 Q. What is Forest Green Water which is listed
4 there under the fixed assets? It's the first listing on
5 fixed assets on the balance sheet as of September 16.

6 A. Forest Green is a subdivision that actually
7 precipitated my taking over the utility. They wanted water
8 extended to their subdivision because the DNR had condemned
9 their well. So when I first took over the company, it was
10 with the intent to run water. The \$15,000 is what the
11 developer contributed or paid for that line. It's not
12 considered rate base for rate -- I don't know if I answered.

13 Q. I was just trying to find out what Forest
14 Green is.

15 A. Oh, it's a subdivision that we have water
16 service to.

17 Q. And is that part of Incline Village?

18 A. No. It's another subdivision.

19 Q. But that is served by Warren County Water and
20 Sewer?

21 A. Yes.

22 Q. And Warren County Water and Sewer provides
23 water service to the public there?

24 A. Yes.

25 Q. Does it have a Certificate of Convenience and

1 Necessity to serve Forest Green?

2 A. It was included in our expansion area in '90--
3 there's a case in '92, '93 that included that.

4 Q. So you do have a certificate for that area?

5 A. Yes.

6 Q. And do you still serve Forest Green?

7 A. Yes.

8 Q. Were these financial statements audited that
9 you provided to the bank?

10 A. No.

11 Q. Were they prepared by an accountant?

12 A. No.

13 Q. Did you prepare them yourself?

14 A. Yes.

15 Q. Using whatever invoices and documents you
16 could find?

17 A. Well, I have an ongoing accounting system
18 through Quick Books which I printed out for this particular
19 period on that date.

20 MR. KRUEGER: That's all my questions.

21 JUDGE MILLS: Thank you. Ms. O'Neill?

22 FURTHER RECROSS-EXAMINATION BY MS. O'NEILL:

23 Q. Now, the date of the letter, Exhibit 19,
24 September 23rd, 1996; is that right?

25 A. Yes.

1 Q. And that predates any resolution of that
2 96-449 case; is that right?
3 A. Oh, yes. Yeah.
4 Q. Okay. Because that wasn't approved until June
5 of '98?
6 A. Right.
7 Q. And it predates that condemnation action which
8 was settled in '97?
9 A. Yes.
10 Q. And I -- and the letter itself does not
11 contain any information regarding the purpose of the loan,
12 the letter doesn't?
13 A. By implication, but I --
14 Q. Okay.
15 A. It speaks for itself.
16 Q. There's nothing in the letter that says that
17 this was a request for a loan for construction of the water
18 tower?
19 A. No.
20 Q. There's nothing in the letter that says how
21 much you're requesting the loan amount for?
22 A. No.
23 Q. There's no discussion in the letter regarding
24 whether there would be any guarantees available from other
25 sources, the federal government or anywhere?

1 A. No.

2 Q. There's no discussion of any collateral in the
3 letter?

4 A. No.

5 Q. And you said that the information in the
6 attachment was information prepared by you?

7 A. Yes.

8 Q. And not audited by anybody else?

9 A. No.

10 Q. And did you say in connection with a question
11 that your attorney asked you something about the Rural
12 Development people wanted a rejection?

13 A. Well, a condition to a federal guarantee. I
14 was trying conventional financing at this time, and when I
15 was working on Rural Development they needed -- I'm not sure
16 when I started working with them date-wise, but they need
17 rejection letters from banks showing that conventional
18 financing is not available and that the federal guarantee is
19 required.

20 So I probably called the bank and requested
21 this after I'd already submitted the -- that's why I assumed
22 everything was verbal, but that would probably be the reason
23 I requested that in writing or a written letter.

24 Q. So your recollection now is that you requested
25 a written rejection of your -- of your request for a loan so

1 that you could use that as evidence in support of your
2 request for federal guarantees?

3 A. I can't testify under oath as to whether or
4 not this was in response to a request for that purpose, but
5 I do know that Rural Development, just like SBA, requires
6 some proof that you can't get conventional financing.

7 Q. And did you use this document as proof that
8 you couldn't get conventional financing with Rural
9 Development?

10 A. We have never, as far as I know, submitted the
11 Rural Development application to the Rural Development
12 people. It was prepared and submitted to the bank, and then
13 the bank is the one that forwards that to Rural Development,
14 but they've never been in a position where they would do
15 that.

16 Q. That's the Rural Development USDA --

17 A. Yes.

18 Q. -- application that Mr. Merciel talked about
19 about People's Bank --

20 A. Yes.

21 Q. -- and Trust that we talked about earlier?

22 A. Yes.

23 Q. Did you attach this letter to that
24 application?

25 A. I don't recall. I have an ongoing

1 relationship with the bank, so basically they know my
2 relationship or situation, you know. So the documents were
3 submitted, but I'm not sure they required this specifically
4 at the time.

5 Q. So you don't know for sure?

6 A. No.

7 MS. O'NEILL: No further questions.

8 JUDGE MILLS: Thank you. Okay. Mr. Schaefer,
9 we can resume redirect examination.

10 MR. SCHAEFER: Thank you, Judge.

11 REDIRECT EXAMINATION (RESUMED) BY MR. SCHAEFER:

12 Q. Mr. Smith, you've been testifying regarding
13 your inability to get a loan for the water tank. Based on
14 discussions that you had with banks and other individuals
15 relating to those loan rejections, did it appear to you that
16 you had any options for possibly trying to successfully get
17 a loan for that tank?

18 A. The only two options -- or the only two
19 requirements that would have met the bank's satisfaction
20 would be operating expenses being comparable to the op--
21 what did I say -- operating income being comparable to
22 operating expenses so that I didn't have to rely on personal
23 finances to pay operating expenses, that I then would be in
24 a position to pay the loan payment on the water tower. So I
25 needed the money for operating expenses in order to really

1 get the loan for the tank.

2 Q. Okay. So I believe you said that one option
3 was putting up personal assets?

4 A. Well, that would be required to secure the
5 loan.

6 Q. Okay. Did you try that?

7 A. Well, they would do that, but then they also
8 wanted to see that I wouldn't have to take personal income
9 and subsidize operating costs at the same time I was
10 obligated to make payments on the loan. So the operating
11 costs were to get the utility operations off and paying for
12 itself so that then I'd be in a position to make payments on
13 the tank loan.

14 Q. Were you ever able to make that demonstration
15 to the bank?

16 A. No.

17 Q. And why not?

18 A. The auditors declined the rate increase for
19 the operating costs.

20 Q. Was that one of the reasons that you sought
21 the rate increase?

22 A. Yes.

23 Q. Are you a member of any utility associations?

24 A. Yes.

25 Q. Can you name those utility associations that

1 you're a member of?

2 A. The Missouri Rural Water Association, American
3 Waterworks Association. There's a Water Environment
4 Association, I think. There's one here in Jeff City.
5 There's several.

6 Q. Well, as part of those associations and as
7 part of your job, do you know other individuals or companies
8 that own and operate utilities in the state of Missouri?

9 A. Yes.

10 Q. Specifically sewer utilities?

11 A. Yes.

12 Q. How much do you charge per month for sewer
13 service?

14 A. \$18.14.

15 Q. Okay. Do you know any other paying utility in
16 the state of Missouri that is similar to yours that charges
17 a lesser amount than 18.14 a month?

18 A. I'm not --

19 MR. KRUEGER: Objection, your Honor,
20 irrelevant.

21 MS. O'NEILL: Objection.

22 MR. SCHAEFER: Asking for his personal
23 knowledge.

24 JUDGE MILLS: Well, whether he has personal
25 knowledge is different from whether or not it's relevant,

1 and I think it is relevant. The company's cash flow has
2 been placed at issue in this case, and I don't know that he
3 can definitively speak to the charges of all utility
4 companies in the state, but he can certainly tell us what
5 his knowledge of the utilities that he does know is. So I'm
6 going to overrule the objections. I believe it is relevant.

7 THE WITNESS: Other than municipalities which
8 subsidize from other sources, Foristell is \$25 a month. The
9 water districts in the area are roughly \$30 a month for
10 sewer service. And I've calculated on average over a period
11 of time it costs me \$25, \$26 a month to provide service.
12 BY MR. SCHAEFER:

13 Q. Okay. How many hours a day on average do you
14 work for the utility?

15 A. I usually start about 7, get things lined out.
16 I take a tour of the facilities, check on that, get the
17 mail, do the banking, do bookwork in the afternoon. Phone
18 calls usually come in at night. Now, it's not continuous
19 from 7 until 7 or 8, but off and on throughout the day,
20 depending on the requirements.

21 Q. Are you compensated for all the time that you
22 put in?

23 A. I just charge a flat monthly management fee.
24 Through 2001 that's what I did. Currently I'm drawing a
25 weekly check.

1 Q. How much of a weekly check are you drawing?

2 A. Right now I raised it to \$506, and I haven't
3 decided whether I'm going to call that as management fee or
4 on labor and pay the taxes as an employee. My -- well, I
5 made the agreement with myself, I guess, but from
6 January 1st until June 30th I intended to pay roughly \$500 a
7 week, and then on July 1st, depending on how things are
8 going, then reevaluate that.

9 Q. What did you do before January 1st?

10 A. Last year I charged 3,000 a month. Year
11 before that I charged, I think it was 2,500 per month. In
12 '92 or '93 when I first started charging, I set it at
13 20,000, which is what my predecessor paid in '91. So I used
14 that as a base to start with.

15 Q. Even though that's what you pay yourself, do
16 you always get that money?

17 A. No.

18 Q. Explain that.

19 A. Well, I might go two or three or four months
20 not need any money or I may need \$200. I think if you look
21 at the registers, maybe draw 200, may draw 500, may draw
22 1,000.

23 MS. O'NEILL: Excuse me. I'm going to object.
24 I don't think these registers are in evidence.

25 JUDGE MILLS: I don't even know what the

1 registers are.

2 MS. O'NEILL: I don't know what they are. So
3 I object to him testifying about a document that's not in
4 evidence.

5 JUDGE MILLS: Let's just -- go ahead.

6 THE WITNESS: Well, the records of the company
7 I think if they were in evidence would reflect that I
8 periodically draw various amounts.

9 MS. O'NEILL: I have the same objection.
10 Those documents are not in evidence.

11 MR. SCHAEFER: Let me clarify the question.

12 BY MR. SCHAEFER:

13 Q. Without addressing any specific documents,
14 just generally.

15 A. Okay. I'll write a check whenever I need 200
16 bucks for 200 bucks, or I'll write a check for 500 if I need
17 \$500.

18 Q. Are you getting rich off this utility?

19 A. Last year I actually drew about 9,000
20 something dollars.

21 Q. Are you making a living off this utility?

22 A. No. I have other assets.

23 Q. Now, you were asked extensive questions about
24 your addition to your testimony regarding your current
25 interest in selling the company and putting in a management

1 company.

2 A. Yes.

3 Q. Do you recall those questions?

4 A. Yeah.

5 Q. Does that addition to your testimony

6 contradict any of your prefiled testimony in this case?

7 A. Not that I'm aware of.

8 Q. Okay. I'm going to hand you what's been

9 marked as Exhibit 15. Do you have Exhibit 15, which is your

10 rebuttal testimony?

11 A. Yes.

12 Q. If you go to page 24, line 8, you were asked,

13 What needs to be done with the utility? Do you see that

14 question?

15 A. Yes.

16 Q. Can you read your answer to that question,

17 please?

18 A. To assure that the company can continue to

19 provide safe and adequate service, the rates need to be

20 adjusted to a reasonable level on an expedited basis.

21 Obviously due to the track record of failed informal

22 proceedings, this will require a formal rate case and most

23 likely emergency relief. Currently the company is not

24 performing maintenance where a backhoe is required and only

25 addresses, should be any emergencies as they occur. Private

1 contractors will have to be paid.

2 Because the company continues to lose money,
3 it is urgent that the Commission act quickly. It would be
4 unjust, unlawful and an abuse of process to force the
5 company into receivership by continuing to deny rate relief
6 and thus the opportunity to earn a reasonable return on
7 utility investments.

8 Q. Was that testimony of yours true and correct
9 at the time you filed this testimony?

10 A. Yes.

11 Q. Is it true and correct today?

12 A. Yes.

13 Q. If you would please look at your surrebuttal
14 testimony, which is Exhibit 16, and if you look at page 4
15 starting at line 9, the question is, Have you given further
16 consideration to the idea of putting the company into
17 receivership? Do you see that question?

18 A. Yes.

19 Q. Can you read your response to that question?

20 MR. KRUEGER: Your Honor, I object to this. I
21 don't see any need to read into the record testimony that's
22 already been admitted.

23 MR. SCHAEFER: Judge, can I respond?

24 JUDGE MILLS: Yes, you may.

25 MR. SCHAEFER: Commissioner Murray

1 specifically raised the issue that his testimony, his
2 additional testimony that he was interested in selling the
3 company was contradictory to the testimony that was in his
4 filed testimony, and she specifically said, and I have
5 written it down, I wish someone would go into that. So that
6 is exactly what I'm doing.

7 JUDGE MILLS: I'm going to allow it. I
8 certainly don't want to spend all day reading stuff that's
9 already in the record, but everybody does it. It happens
10 all the time. We've had a lot of it already this hearing.
11 I'm going to allow this one.

12 MR. SCHAEFER: I won't take long, Judge.

13 JUDGE MILLS: Objection is overruled.

14 BY MR. SCHAEFER:

15 Q. If you could read that response, please.

16 A. Yes. In light of Mr. Merciel's testimony, I
17 would agree that placing the company into receivership will
18 not provide a permanent solution to resolve any problems
19 that may exist, nor do I believe that it would be in the
20 best interests of the utility, its customers or myself
21 because it would add another layer of expense to the utility
22 operations that would somehow need to be recovered.

23 Q. Was that testimony true and correct when you
24 filed your surrebuttal testimony?

25 A. Yes.

1 Q. Is it true and correct today?
2 A. Yes.
3 Q. And the next question, which is the last one
4 I'll ask you about -- well, actually, I guess the next two
5 questions. The next question is, Have you further
6 considered the option of selling the company suggested by
7 Mr. Merciel? What was your -- rather than having you read
8 the whole thing, what's your initial response to that
9 question?
10 A. Yes, I have.
11 Q. And is that -- was your testimony regarding
12 that question true and correct when you filed it?
13 A. Yes.
14 Q. Is it true and correct today?
15 A. Yes.
16 Q. And the following question, Are you currently
17 considering or exploring any other options? What's your
18 immediate answer to that question?
19 A. Yes.
20 Q. And is that testimony true and correct at the
21 time you filed it?
22 A. Yes.
23 Q. And is it true and correct today?
24 A. Yes.
25 Q. I'll clarify, that's on page 5 at line 4 of

1 Exhibit 16.

2 Is that testimony inconsistent with the
3 additional testimony you provided yesterday that you are
4 actively seeking a management company and a purchaser of the
5 assets?

6 A. No.

7 Q. And it was also characterized that somehow you
8 came to this conclusion to sell the company, I believe it
9 was asserted last Friday. Is that true?

10 A. No.

11 Q. Okay. In fact, how long have you been
12 pursuing that option?

13 A. Well, really over ten years in a haphazard
14 way, I guess, but seriously, in conjunction with this case,
15 probably since January.

16 Q. And you're familiar with what we've called
17 your federal case --

18 A. Yes.

19 Q. -- that we referred to in this case?

20 Did you ever actually discuss the issue of
21 selling the company and the possibility of your selling the
22 company with the judge in that case?

23 A. Yes.

24 Q. When was that?

25 A. Probably February.

1 Q. Of this year?

2 A. Yes.

3 Q. Okay. Now, even though you've testified that
4 you are actively looking for a management company and a
5 purchaser, do you believe that you should be forced to sell
6 your company?

7 A. No. I think it would be a disadvantage to
8 everybody.

9 Q. And do you believe that your company should be
10 forcefully taken from you and given to a receiver?

11 A. No.

12 Q. Why did you add to your testimony yesterday
13 that you want to sell or that you're looking to sell and
14 looking for a management company? Let me restate the
15 question.

16 Is there a reason why you didn't necessarily
17 want that public information previously?

18 A. Well, I preferred not to have it broadcast,
19 and we were running into problems with people talking to
20 different people, I suppose, and we began to have more
21 positive results in the last couple, three weeks, I guess,
22 and so it's --

23 Q. Is some of that information that got out what
24 you would consider misinformation in relation to
25 Mr. Merciel's -- or the testimony stated to, you testified

1 to earlier regarding Mr. Merciel and some information to
2 someone else?

3 A. Well, I don't know that Mr. Merciel has said
4 anything.

5 Q. And I don't mean to imply that, but I believe
6 it was in relation to --

7 A. One of the trustees was quoted by a person I
8 was talking to as saying certain things that would have
9 really destroyed the sale, and I think that's the reason
10 they hadn't worked with me at that time.

11 Q. Did you hope to not make public your interest
12 in selling the company in order to avoid those kind of
13 things?

14 A. Yes.

15 Q. There's been some questions asked of you
16 regarding the rates and some information regarding whether
17 or not any subsequent owner or receiver would require a rate
18 increase to operate this utility. What is your opinion on
19 that?

20 A. I think it would have to be a substantial
21 increase. In all companies that I've talked to in the past
22 or now, they've indicated such, because it cost me a lot
23 less to operate than what larger companies from the outside
24 would cost.

25 Q. And why is that?

1 A. Well, you've got management levels, you've got
2 operator levels, you've got meter readers, a variety of
3 different people, and you've got more travel expense,
4 insurance, benefits, whatever they provide.

5 Q. Okay. There were some questions asked of you
6 regarding your statement that in the near future you were
7 going to Texas?

8 A. Yes.

9 Q. How long are you going for?

10 A. Well, I'm going to be gone for a week starting
11 Friday.

12 Q. Are you fleeing to Texas?

13 A. No.

14 Q. Are you abandoning this utility in any way?

15 A. No.

16 Q. Do you have any intention to abandon this
17 utility?

18 A. No.

19 Q. Why not?

20 A. I've got too much invested in it. I'd like to
21 try to recoup what I can.

22 Q. In fact, I believe as Ms. O'Neill pointed out,
23 aren't you obligated to keep your probation officer apprised
24 of your address at all times?

25 A. Yes.

1 Q. And do you fully intend to comply with that
2 requirement?

3 A. Yes.

4 Q. There's been some testimony regarding an
5 alleged probation violation --

6 A. Yes.

7 Q. -- in this year. Did you hear that testimony?

8 A. Yes.

9 Q. Are you aware of whether or not the court in
10 your federal case has ever determined that you violated your
11 probation?

12 A. No. He just has continued it a couple of
13 times.

14 Q. To the best of your knowledge, has there ever
15 been a determination that you violated your probation?

16 A. No.

17 Q. In response to some questions that were asked
18 of you by Ms. O'Neill regarding prohibiting certain
19 companies from operating at Incline Village, do you recall
20 that line of questioning?

21 A. Yes.

22 Q. Can you please explain that situation to Judge
23 Mills?

24 A. Well, the specific one that she was talking
25 about had to do with the lift station situation. I guess

1 when I first came in in '92 I had to learn the business and
2 learn the operation, and at the time a particular contractor
3 and a particular supplier were installing concrete septic
4 tanks and then hanging a pump in the tank to serve as
5 individual lift stations.

6 And I've talked with Mr. Merciel a lot about
7 different issues like that, and I mean, he's been very
8 cooperative, and between all of us we came up with this
9 fiberglass tank and a, you know, a specific lift station
10 designed for the type of situation we have out there.

11 So I mandated that people began using that and
12 under the tariffs advised that I have the right to do that.
13 And this one particular contractor tried to install those
14 old concrete tanks and this one customer really got cheated
15 pretty bad with costs and so forth, and they were imposing
16 some considerable expense to us because we would have to
17 pump sludge from that particular tank the way they had it
18 designed.

19 So I just said he can't install any -- or do
20 any more work, and that was because of this. Now, once that
21 was resolved, I don't know that he's ever done one. In
22 fact, we've probably installed all the -- well, I won't say
23 all -- probably 80, 90 percent of them since then.

24 Q. If that particular company were to install
25 what you and Staff have determined is the proper equipment,

1 would you have any objection to them installing that?

2 A. No. The application provides that they buy
3 the lift stations from or through -- no -- through the
4 company or according to specifications. Whatever the tariff
5 language is is what we put in the application.

6 Q. So other than that, have you ever prohibited
7 any companies from operating in Incline Village?

8 A. No. If they pay by voucher, I usually take it
9 because the company that we buy them from won't take
10 vouchers. If they pay by check, I generally suggest that
11 the customer write a check directly to our supplier.

12 Q. Have you ever told anyone that they have to
13 use you and they can't use anyone else?

14 A. No.

15 Q. You were asked several questions that went to
16 the safety and adequacy of the drinking water, and there
17 were some issues pertaining to rusty colored water. Do you
18 recall that?

19 A. Yes.

20 Q. Explain what causes that.

21 A. Well, well water or ground water contains
22 minerals as opposed to surface water or river water having
23 organic contaminants. Well water has inorganic or mineral
24 contaminants. That includes iron, among other things, and
25 the iron in the water will tend to settle out, and when it

1 settles out, obviously it's resting on the bottom of the
2 pipes.

3 So the solution to that is periodically, my
4 policy now is twice a year, to go in an organized fashion
5 flushing the lines out, and by proper flushing what you do
6 is you pick up that sediment and then carry it on out
7 through the fire hydrant, thus cleaning the lines.

8 If you flush a toilet or run water while
9 you're in the process of doing that, you're going to get
10 rusty water, or typically for a couple, three hours
11 afterwards it's usually a milky appearance to the water you
12 get because of that flushing action.

13 That -- so you'll get that when you flush
14 lines or if there's a line break, something of that nature
15 that causes -- technically it's called a sudden increase in
16 velocity.

17 Q. Is there any danger posed to the public by
18 rust being in that water?

19 A. No. I mean, it's aesthetic. It's not
20 something you want to drink. People call it muddy water or
21 whatever, but it's just a rust color, and that's just if you
22 happen to catch it at the time that you're flushing that
23 line.

24 Q. Is that a common phenomenon for any water
25 company that uses the same type of water source as you?

1 A. Oh, yes. Wright City, Troy, all these areas
2 have the same problem.

3 Q. Does that pose a substantial safety risk to
4 the public?

5 A. No.

6 Q. Are you required to provide enough water
7 pressure in fire hydrants for the fire department to fight a
8 fire directly from the hydrant?

9 A. No.

10 Q. Is it your understanding that the fire
11 department knows that?

12 A. Yes.

13 Q. I believe that there was some testimony
14 regarding drinking water having a certain odor to it at
15 certain times?

16 A. Yes. I believe they're referring to hydrogen
17 sulfide.

18 Q. Explain to Judge Mills what that --

19 A. Hydrogen sulfide is a reaction from well water
20 from some of the minerals in that water. It's a rotten egg
21 odor, and the most common way to treat that is through
22 chlorination. That's why we started chlorinating. That's
23 why the other cities in the surrounding area started
24 chlorinating. The chlorine will kill that rotten egg odor.

25 Q. If at some point for some reason the chlorine

1 didn't kill it and the water were to have an odor, would
2 that pose a safety risk to the public?

3 A. No.

4 Q. You were asked about assessment fees --

5 A. Yes.

6 Q. -- that you owe to the Public Service
7 Commission, and there was some issue regarding what that
8 amount was?

9 A. Yes.

10 Q. After you went home yesterday, were you able
11 to locate a letter from the Public Service Commission
12 regarding that amount?

13 A. Yes. Yesterday I testified that I'd received
14 a letter indicating the balance was about \$1,600 and I
15 didn't know where they were talking about a \$2,000 figure,
16 or a year 2000 figure. I brought that down. That's the
17 only record or only knowledge I have of assessments is what
18 was -- and it's from the General Counsel's office.

19 Q. Do you have that letter with you?

20 A. I gave it to you this morning.

21 MR. SCHAEFER: Can we go off the record for a
22 second?

23 JUDGE MILLS: Yes.

24 (Discussion off the record.)

25 JUDGE MILLS: Let's go back on the record.

1 (EXHIBIT NO. 20 WAS MARKED FOR IDENTIFICATION
2 BY THE REPORTER.)

3 BY MR. SCHAEFER:

4 Q. Mr. Smith, I'm going to hand you what's been
5 marked as Exhibit 20 and ask you what Exhibit 20 is?

6 A. That's the letter I received from the General
7 Counsel, Dana Joyce, of the Public Service Commission, dated
8 May 10th, 2002, indicating the balance due on the
9 assessments which were \$1,666.36.

10 Q. For what time period?

11 A. Year 2001.

12 Q. Is that the letter that you actually received?

13 A. Yes.

14 Q. Is it in the same or similar condition as when
15 you received it?

16 A. Yes.

17 MR. SCHAEFER: Judge, I'm going to move for
18 the admission of Exhibit 20.

19 JUDGE MILLS: Are there any objections?

20 MR. KRUEGER: No, your Honor.

21 MS. O'NEILL: No objection. I would ask that
22 a copy be made for us.

23 JUDGE MILLS: Yes, I'd like a copy as well.

24 Okay. Exhibit 20 will be admitted.

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

1 BY MR. SCHAEFER:

2 Q. I believe on cross-examination you were asked
3 by Mr. Krueger about whether or not you could secure
4 financing for the water tower if you put up personal assets?

5 A. Yes.

6 Q. Do you recall that --

7 A. Yes.

8 Q. -- question? Do you feel that you should be
9 responsible for putting up your personal assets to secure
10 loans for the utility?

11 A. Well, I don't mind doing it as long as I get a
12 return on it or expectation of being paid back, but under
13 the circumstances now, I think some issues need to be
14 resolved.

15 Q. Okay. Would one of those issues be your
16 previous rate case?

17 A. Yes.

18 Q. You were shown an exhibit by Ms. O'Neill which
19 is in the surrebuttal testimony of Kim Bolin, which is
20 Exhibit 7, and it's an attachment to Exhibit 7 which is
21 Schedule KKB-17. I'm going to hand you that.

22 A. Okay.

23 Q. And ask you, what is that?

24 A. It's a letter or a fax that I sent to Jim
25 Merciel and Mark Comley and Tom Burkemper, a local attorney,

1 regarding a financing prospect that I had.

2 Q. What's the date on that?

3 A. December 17, 1999.

4 Q. Was that financing that you were looking into
5 for the water tower?

6 A. Yes.

7 Q. Explain that financial issue that you were
8 looking into to Judge Mills.

9 A. Well, Pittsburgh Tank is the company that I
10 had chosen to purchase the tank from, and they had
11 indicated, you know, that they were prepared, ready, so
12 forth to install. That goes back to probably '98 or
13 whatever.

14 Q. And was Pittsburgh Tank the manufacturer of
15 the tank?

16 A. Well, it was going to be used, and they
17 refurbish and then they install.

18 Q. Okay.

19 A. And they kept calling me maybe daily, at least
20 monthly, wanting to know the status and when can they
21 deliver and so forth, and finally I told them, I said, you
22 know, I've got to get financing in place, you know, because
23 I can't have them deliver it and not have any financing.

24 And then they had offered to finance. They
25 called a finance company and called me back and said that

1 the financing is set and work out the details, and based on
2 that -- and I was probably premature, but based on that I
3 indicated that we were going forward.

4 Q. So did you send that fax in the time that you
5 had had that discussion with the tank company that they told
6 you that they could arrange for financing?

7 A. Yes.

8 Q. What happened after that?

9 A. Well, I started dealing with the finance
10 company, and it turns out it was a lease finance
11 arrangement. And based on normal bank financing, the
12 payments were going to be just under, I think, \$2,000 a
13 month.

14 The payments on this lease finance arrangement
15 was going to be about 3,700, I think, per month, and I --
16 No. 1, that's extremely high interest or effective interest
17 rate, and No. 2, I wasn't sure it was covered within the
18 financing authority of the Commission.

19 Q. Did you make a business determination for the
20 utility that you couldn't afford to do that?

21 A. Yes. I might add --

22 Q. Go ahead.

23 A. -- in connection with that they called last --
24 as early as last week and they're still prepared to do
25 something like that. So, I mean, that's an option, but I

1 don't think that's -- I mean, if I did it, I'd want to know
2 that within a six-month or so period that somebody's coming
3 in to buy that out.

4 Q. The way things are now, your rates the way
5 they are now, everything else being the same, could you
6 afford to take that loan?

7 A. No. I couldn't pay 3,700 a month.

8 Q. Do you recall what the interest was on that?

9 A. Between 15 and -- probably around 15 percent.

10 Q. Okay. But you recall the monthly amount?

11 A. Yes.

12 Q. Which was?

13 A. It was around \$3,700.

14 Q. Okay. Ms. O'Neill also showed you an exhibit
15 which was attached to the rebuttal testimony of Mr. Merciel,
16 and that attachment was Attachment 1-5, which is an
17 April 12th, 2001 letter to you from Mr. Merciel. Do you
18 recall that?

19 A. Yes.

20 Q. I'm going to hand you that document. Is the
21 general subject matter of that document the issue that's
22 been discussed here today and both yesterday regarding the
23 hookups?

24 A. Yes.

25 Q. What is that issue as you understand it?

1 A. Well, I explained earlier the progression from
2 the early 1980s to today on how connections have been
3 handled. A few -- well, three to five years, whatever ago,
4 the Staff had indicated that it was my responsibility to do
5 road crossings, both water and sewer, and I indicated that
6 that was fine except, you know, it had to be reflected in
7 the connection fee.

8 Sewer, for example, would cost you about
9 1,000, \$1,500 to make a road crossing, and the connection
10 fee is \$150. I mean, you'd be giving a customer free sewer
11 service for about ten years if I subsidized to that extent.

12 So my position has always been, is if we're
13 required to do it, that the connection fees need to reflect
14 that because we can't subsidize the customers that much.
15 And I'm -- my position is the tariffs through, No. 1, the
16 interpretation over a period of years, 20-some years, is
17 what we've been following. That establishes what the
18 tariffs mean.

19 No. 2, when the connection fees were set at
20 the current level, which was probably two or three years
21 after I took over, the Staff came out and itemized what we
22 were to do. We got bids, prices and so forth on, like,
23 meter pits, meters, so on and so forth, and the connection
24 fees were based upon what the Staff and I had determined to
25 be our responsibility or assumed to be our responsibility,

1 which was 150 and \$300.

2 So again, based on that, which was then
3 approved by the Commission, you know, that's a policy that I
4 think the tariffs indicate.

5 And then thirdly, I filed a letter requesting
6 a change in the connection fees, which was the old
7 procedures I understand it down here, but then Jim indicated
8 that we needed to go a rate case rather than a -- just a
9 letter request that they be adjusted, and we filed that.

10 And I had extensive discussions with the
11 Staff, and Merciel's idea was take the cost of a water
12 crossing, the cost of a sewer crossing, average them, and
13 then split that between water and sewer for connections.
14 That way every customer is paying the same connection fee
15 and we're -- if we pay a thousand or if we pay \$600, you
16 know, the company would eventually average out.

17 So that's all the discussions we had, and that
18 was a part of the rate case that was filed last year, and to
19 this date we haven't gotten a specific response as to that.

20 So based upon custom, usage, ongoing
21 situations, my opinion is that the tariffs require only that
22 we provide the certain items that we provide, the pit, so on
23 and so forth.

24 And then what confused the situation even more
25 now is when we had the conference on the rate case down

1 here, Jim brought up and said that the company's not
2 responsible for sewer crossings but we are responsible for
3 water crossings.

4 So, you know, I really don't know what the
5 position is, but my position -- what their position is, but
6 my position has always been tell me what my responsibility
7 is and set the connection fees to reflect that.

8 Q. Okay. And based on that, on the exhibit that
9 you have in front of you and Mr. Merciel's position on that,
10 do you understand what his position is?

11 A. Yes.

12 Q. What is his position?

13 A. His position is that the tariffs require us to
14 run, now he's saying water lines from the main to the meter
15 pit, I guess, or the customer's front yard.

16 Q. Do you agree with his position in that
17 exhibit?

18 A. No.

19 Q. And have you ever been told otherwise by the
20 Commission?

21 A. No.

22 Q. Previously you were shown a Data Request by
23 Ms. O'Neill regarding a request for documents relating to
24 company merger. Do you recall that?

25 A. Yes.

1 Q. And specifically what was your understanding
2 of what was requested in that Data Request?

3 A. Documents regarding the merger would be
4 related to corporate matters, and I guess I didn't consider
5 or think about deeds being a part of it. You know, I have
6 nothing to hide about that, but --

7 Q. Let me clarify. At the time I believe that
8 she asked you several questions on the fact that you did not
9 disclose the real estate issues in that Data Request; is
10 that correct?

11 A. Yes.

12 Q. At that time that you answered that Data
13 Request, did you consider that real estate to be a utility
14 asset?

15 A. Oh, no, it's not a utility asset.

16 MR. SCHAEFER: That's all I've got.

17 JUDGE MILLS: Thank you. Mr. Smith, you may
18 step down.

19 (Witness excused.)

20 JUDGE MILLS: We need to talk about a briefing
21 schedule. Today is the 4th. We can figure on the
22 transcript being filed around the 18th or so. How much time
23 do the parties believe they'll need to file additional
24 Briefs and Reply Briefs? Don't everybody talk at once.

25 MS. O'NEILL: Your Honor, normally I would say

1 20 days, 10 days. I'm concerned about the 20 days running
2 into a time where I'm not going to be available to file a
3 Reply Brief ten days afterwards. I'm going to be involved
4 to some degree in a case I think you're involved in,
5 Ameren's complaint case.

6 I'm also -- during part of the time that case
7 is going on, I'm going to be participating in that case and
8 part of the time I'm going to be out of the jurisdiction and
9 probably not going to have a good opportunity to file
10 something while that's going on. So depending on when we do
11 the Initial Brief due, I may either ask you to consider a
12 longer or shorter time for reply. What's 20 days from the
13 18th?

14 JUDGE MILLS: 20 days from the 18th would
15 be -- that would be, looks like the 8th, July 8th, Monday.

16 MS. O'NEILL: I don't have any problem with
17 that. I think that would be a good time for Initial Briefs.

18 JUDGE MILLS: And then ten days from that, if
19 that's what we're going to do, would be July 18th.

20 MS. O'NEILL: Judge, do you know what day that
21 Ameren hearing starts?

22 JUDGE MILLS: No, I don't, in fact. Currently
23 it is scheduled to start July 11th. There is an indication
24 that we may need more than the three weeks of hearing time.
25 So we're looking to find time to add a fourth week of trial,

1 and so it may start as early as July 1.

2 MS. O'NEILL: That would also affect my
3 ability to have --

4 JUDGE MILLS: We probably won't know for sure
5 on that for a while.

6 MR. SCHAEFER: Judge, I might add, Mr. DeFord
7 will be actually briefing it. I don't know the availability
8 of his schedule. Obviously whatever you want to set I'll
9 pass along to him.

10 But perhaps if you wanted to, since it does
11 appear there's some issues regarding the schedule, possibly
12 could you leave it open for a day or two and have the
13 parties submit a proposed schedule?

14 JUDGE MILLS: We could do that, if you-all
15 want to get together with your calendars and --

16 MR. SCHAEFER: That way I can get back to
17 Mr. DeFord and I can have Mr. DeFord submit his schedule.

18 JUDGE MILLS: That will be fine. On something
19 like this, you don't need to even file a pleading. If you
20 come to a resolution that you-all agree to, you can have
21 just one of you call me and I'll issue a notice that will
22 establish that schedule.

23 If you can't agree on a briefing schedule,
24 then we'll probably have to fight it out in pleadings, but
25 if you can agree, just call me and let me know.

1 MR. KRUEGER: Since the 8th is on a Monday and
2 immediately following the 4th of July and also with the
3 possible complications of the Ameren hearing, I might prefer
4 an additional couple of days at least.

5 JUDGE MILLS: Yeah. I can tell you that I
6 will be in the Ameren hearing pretty well solid at least
7 from July 11 through August 2nd, and it's entirely possible
8 I may not even read your Briefs until sometime considerably
9 after when they're filed. So I don't know that there is
10 really a need for you-all to be knocking yourselves out to
11 try to get them to me by July 8th.

12 MS. O'NEILL: I appreciate that, and I think
13 we can work something out. Of course, I don't think any of
14 us want to delay it too long for a number of reasons. So
15 we'll see if we can get something to you maybe tomorrow.

16 MR. SCHAEFER: Yeah. I'm going to go back and
17 talk to Paul as soon as I go back.

18 JUDGE MILLS: Okay. Is there anything further
19 we need to take up?

20 MS. O'NEILL: I don't think so.

21 JUDGE MILLS: I'll close the record and the
22 hearing is adjourned.

23 WHEREUPON, the hearing of this case was
24 concluded.

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I N D E X

WARREN COUNTY WATER AND SEWER COMPANY'S EVIDENCE

GARY L. SMITH

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