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1 STATE OF MISSOURI  
2 PUBLIC SERVICE COMMISSION  
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6 TRANSCRIPT OF PROCEEDINGS

7 Hearing  
8 August 15, 2005  
9 Jefferson City, Missouri  
10 Volume 1

11

12 The Staff of the Missouri Public )  
Service Commission, )  
13 )  
Complainant, )  
14 )  
v. ) Case No. WC-2006-0029  
15 )  
Missouri Utilities Company, )  
16 )  
Respondent. )

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

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STEVE GAW,  
21 COMMISSIONER.

22

23 REPORTED BY:

24 KELLENE K. FEDDERSEN, CSR, RPR, CCR  
MIDWEST LITIGATION SERVICES

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APPEARANCES:

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FOR: Staff of the Missouri Public  
Service Commission.

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

2 JUDGE WOODRUFF: We've been struggling with  
3 the technology a bit this morning, but we're just going to  
4 have to go ahead without the video. So we'll go ahead and  
5 get started on this case.

6 We're here for a hearing in WC-2006-0029,  
7 which is the complaint of the Staff of the Commission  
8 against Missouri Utilities Company. We'll begin by taking  
9 entries of appearance, beginning with Staff.

10 MS. WESTON: My name is Mary Weston,  
11 Assistant General Counsel, Missouri Public Service  
12 Commission, Jefferson City, Missouri.

13 JUDGE WOODRUFF: All right. And the  
14 responding company is Missouri Utilities Company. I see  
15 no one here in the room from Missouri Utilities Company.  
16 The company also failed to file an answer on time and  
17 apparently is in default. But we'll go ahead and take  
18 evidence, which I believe it is the intention of Staff to  
19 present evidence. Why don't we begin with opening  
20 statement from Staff, then?

21 MS. WESTON: Thank you. On July 15th,  
22 2005, the well pump and the water well that serves  
23 Missouri Utilities' customers failed. That caused an  
24 interruption of services to all of their 150 customers.  
25 The sole owner and operator of Missouri Utilities, a

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1 Mr. Pat Mitchell, refused to take any action, though he  
2 had been demanded to do so by the Public Service  
3 Commission Water and Sewer Department, as well as  
4 customers of the company.

5 Mr. Mitchell stated that he would not spend  
6 any more of his money to repair or replace equipment or  
7 restore service. Actions by the Staff of the Commission  
8 and some of the customers of the company resulted in the  
9 service being restored about four days later.

10 Because of this incident and some other  
11 evidence that we'll present, the Staff is asking that the  
12 Commission find that Missouri Utilities has abandoned the  
13 water and sewer system, and to direct its General Counsel  
14 to petition the Circuit Court for an order attaching the  
15 assets of Missouri Utilities and finding that the return  
16 of the said company is not in the best interest of the  
17 customers. The Staff also asks that the Commission appoint  
18 an interim receiver pursuant to Section 393.145.2.

19 Thank you.

20 JUDGE WOODRUFF: Thank you. As indicated,  
21 there is no one here for Missouri Utilities, so we'll go  
22 on to our first witness from Staff.

23 MS. WESTON: I'd like to call Dale  
24 Johansen.

25 (Witness sworn.)

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1 JUDGE WOODRUFF: You may be seated.

2 DALE JOHANSEN testified as follows:

3 DIRECT EXAMINATION BY MS. WESTON:

4 Q. Please state your name and address for the  
5 record.

6 A. Dale Johansen. My work address is P.O.  
7 Box 360, Jefferson City, Missouri 65102.

8 Q. What is your position here at the Public  
9 Service Commission?

10 A. I'm the manager of the Water and Sewer  
11 Department in the Utilities Division, Utility Operations  
12 Division.

13 Q. And how long have you performed that  
14 function?

15 A. Approximately ten years.

16 Q. Are you familiar with the Missouri  
17 Utilities Company?

18 A. Yes.

19 Q. Are they a public utility?

20 A. Yes, they are.

21 Q. What type of utility are they?

22 A. They are both a water corporation and a  
23 sewer corporation.

24 Q. Where are they located?

25 A. They serve the, what's known as the Elm

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1 Hills Subdivision near Sedalia, Missouri, which is in  
2 Pettis County.

3 Q. Thank you. Can you describe the operation  
4 of the facilities just sort of on a high level, if you  
5 would, please?

6 A. They have a three-cell lagoon which  
7 provides wastewater treatment, and a collection system  
8 along with that. They have a single-well water supply  
9 system with a small pressure storage tank.

10 Q. And just once again to clarify, how many  
11 customers do they serve?

12 A. They have approximately 135 sewer customers  
13 and approximately 160 water customers.

14 Q. Do you know who owns Missouri Utilities?

15 A. William Pat Mitchell.

16 MS. WESTON: I'd like to offer an exhibit,  
17 please.

18 JUDGE WOODRUFF: Okay. No. 1.

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

21 BY MS. WESTON:

22 Q. This is a copy of the 1993 annual report  
23 filed by Missouri Utilities. Could you please go to  
24 page 3 of that document. This is just an excerpt from the  
25 actual report. It's about 20 pages long, but if you could

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1 please tell me who has listed themselves as the contact  
2 and the owner of the company?

3 A. William Pat Mitchell, and it has a  
4 reference to his mailing address, which is actually in  
5 Osage Beach, Missouri. And he's listed as the person to  
6 contact concerning information contained in the report,  
7 contact person for plant operations purposes, and also at  
8 the bottom, he signed it as -- with his title as  
9 president.

10 Q. Have you received any other annual reports  
11 from Mr. Mitchell from that time?

12 A. No. We did some research of the  
13 Commission's records and found that this is the only  
14 report, annual report that the company has ever filed.

15 MS. WESTON: I'd like to offer Exhibit 1,  
16 please.

17 JUDGE WOODRUFF: Exhibit 1 is offered into  
18 evidence. Any objection?

19 (No response.)

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

22 (EXHIBIT NO. 1 WAS RECEIVED INTO EVIDENCE.)

23 MS. WESTON: Thank you. I'd like to offer  
24 Exhibit 2, please.

25 (EXHIBIT NO. 2 WAS MARKED FOR

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1 IDENTIFICATION BY THE REPORTER.)

2 BY MS. WESTON:

3 Q. What I have here is the 2005 annual  
4 registration report from the Secretary of State. Can you  
5 please tell me who's listed as officer of Missouri  
6 Utilities Company?

7 A. Yes. William P. Mitchell is listed as the  
8 president and the secretary, and he is also listed as the  
9 sole board of director.

10 Q. So as far as you know, Mr. Pat Mitchell is  
11 the president of Missouri Utilities, the secretary, the  
12 point of contact for Missouri Utilities?

13 A. Yes.

14 Q. Thank you. How many employees does the  
15 company have?

16 A. As far as I know, Mr. Mitchell is also the  
17 only employee.

18 MS. WESTON: What I'd like to do now is  
19 offer another exhibit, Exhibit 3.

20 (EXHIBIT NO. 3 WAS MARKED FOR

21 IDENTIFICATION BY THE REPORTER.)

22 JUDGE WOODRUFF: Did you wish to offer 2?

23 MS. WESTON: I'm sorry. Yes, please.

24 JUDGE WOODRUFF: Exhibit 2 is offered into  
25 evidence. Are there any objections?



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1 (No response.)

2 JUDGE WOODRUFF: Hearing none, it's  
3 received into evidence.

4 (EXHIBIT NO. 2 WAS RECEIVED INTO EVIDENCE.)

5 BY MS. WESTON:

6 Q. Is this a copy of a letter that you  
7 received from Mr. Mitchell?

8 A. Yes, it is.

9 Q. And I think I've -- did I highlight a  
10 portion of your letter, or did I miss that?

11 A. No.

12 Q. Okay. Well, if you would go to -  
13 generally, what is the essence of this letter?

14 A. It's basically information from  
15 Mr. Mitchell to the customers of Missouri Utilities. It  
16 starts off with a report regarding two reports of low  
17 pressure, water pressure that he investigated. Gives some  
18 possible reasons for those.

19 He then goes into some information about  
20 how the people could conserve water so there's less water  
21 being used, which might assist in the low pressure  
22 problems. Talks about another option being replacement of  
23 the pump, possible installation of a water tower, possible  
24 hookup to the city.

25 And then near the end of the letter he says

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1 the following: I have approximately \$20,000 in Missouri  
2 Utilities that I would like to just get back. I can  
3 continue to operate, sell to another utility company, the  
4 city or to you. Are you willing to get involved or do you  
5 just want to flush and forget? Water and sewer are not  
6 free. You can affect the rules under which you get  
7 service and your cost by letting me know what you want to  
8 do.

9 Q. And around that time period, did you have  
10 any conversations with him regarding this letter, and what  
11 was his indication to you, generally?

12 A. Well, at the time that this letter was  
13 written, it was -- I actually didn't talk to him at that  
14 particular time, but sometime after that, when we were  
15 discussing some other issues related to the company, he  
16 did bring up the fact that he was interested in getting  
17 out of the business, and we began some discussions at that  
18 point about what those possibilities were.

19 We also discussed, as we have on numerous  
20 occasions with Mr. Mitchell, what his continuing  
21 responsibilities were as the owner of the company until  
22 such time that there was something done.

23 MS. WESTON: I'd like to offer Exhibit 3  
24 into evidence.

25 JUDGE WOODRUFF: Exhibit 3 has been offered

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1 into evidence. Are there any objections to its receipt?

2 (No response.)

3 JUDGE WOODRUFF: Hearing none, it will be  
4 received into evidence.

5 (EXHIBIT NO. 3 WAS RECEIVED INTO EVIDENCE.)

6 MS. WESTON: Thank you. I'd like to move  
7 on to Exhibit 4, please.

8 (EXHIBIT NO. 4 WAS MARKED FOR  
9 IDENTIFICATION.)

10 BY MS. WESTON:

11 Q. This is a letter dated April 1, 2005. I've  
12 highlighted some portions of it. Would you share that  
13 with us, please?

14 A. Yes. Near the end, it's the last full  
15 paragraph, large paragraph, about the middle of that says,  
16 I refuse to pay or borrow money personally to fix or  
17 operate your system. Later on it says, I will give you  
18 Missouri Utilities. And then it says -- near the end it  
19 says, call the PSC number if the well quits or with  
20 complaints, and he lists our 800 number, as well as our  
21 switchboard number.

22 Q. After this letter was sent out to the  
23 customers, did you have an opportunity to speak with him  
24 regarding this?

25 A. Yes, on several occasions. Again, one of

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1 the first things that we did was emphasize to Mr. Mitchell  
2 that his continuing responsibilities as the owner of the  
3 company. We actually started a series of e-mail messages  
4 and phone conversations with Mr. Mitchell, and leading up  
5 to the letter being sent actually. And then after the  
6 letter was sent, and again, I think Mr. Mitchell's, the  
7 letter, the e-mail messages that we traded back and forth  
8 and his responses, basically all I think indicated his  
9 frustration and his intent to want to get out of the  
10 business.

11 We again talked about the possibility of  
12 him selling the system, and he even went so far as to  
13 indicate that he was considering filing bankruptcy.

14 Q. So let's move forward now to something that  
15 happened fairly recently. Can you tell us a little bit  
16 about what happened on Friday, July 15th, 2005?

17 A. Yes. We were informed by a message from  
18 Mr. Mitchell -- both Jim Merciel and myself received a  
19 phone message from him indicating that there were problems  
20 with the well pump at the Elm Hill system. He had  
21 actually been there on Thursday, the day before, in  
22 response to some problems, did some work on the electrical  
23 controls, and thought he had the problem fixed. And then  
24 he was called back on Friday and went back on Friday to  
25 investigate, and actually that's the day that the pump

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1 failed.

2 Q. What actions did Mr. Mitchell take in  
3 regards to the well pump failure on Friday?

4 A. Basically none. He -- again, he had  
5 previously indicated that -- his intent not to do  
6 anything. When the pump actually failed and he followed  
7 through with that threat, if you will, Mr. Merciel and I  
8 both attempted to contact a gentleman by the name of Bob  
9 Gautreaux, G-e-a-u-t-r-e-a-u-x, and because he had been  
10 someone who had been working with Mr. Mitchell on possibly  
11 purchasing the system, and we knew he was interested in  
12 that. He's also an owner of one of three mobile home  
13 parks that is served by the system. And basically,  
14 Mr. Gautreaux and some of the other customers took the  
15 actions necessary to get the pump replaced.

16 MS. WESTON: I'd like to enter Exhibit 4,  
17 if I haven't done so.

18 JUDGE WOODRUFF: All right. 4 has been  
19 offered into evidence. Any objections to its receipt?

20 (No response.)

21 JUDGE WOODRUFF: Hearing none, it's  
22 received into evidence.

23 (EXHIBIT NO. 4 WAS RECEIVED INTO EVIDENCE.)

24 MS. WESTON: Mark Exhibit 5, please.

25 (EXHIBIT NO. 5 WAS MARKED FOR

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1 IDENTIFICATION BY THE REPORTER.)

2 THE WITNESS: If I might make a correction  
3 real quick.

4 MS. WESTON: Sure.

5 THE WITNESS: I misspelled Mr. Gautreaux's  
6 name for the recorder. It's actually G-a-u-t-r-e-a-u-x.

7 BY MS. WESTON:

8 Q. So you just previously indicated that  
9 Mr. Gautreaux and some other customers had taken some  
10 actions to resolve the issue, and what specifically did  
11 they do?

12 A. They contacted a drilling company to  
13 actually come out, pull the old pump and install a new  
14 one. They contracted with Harper Drilling, who's located  
15 in Clinton, Missouri.

16 Q. And as far as you know, the pump was  
17 replaced and the system was brought back online?

18 A. Yes, that's correct.

19 MS. WESTON: I'd like to offer Exhibit 5,  
20 please.

21 JUDGE WOODRUFF: Exhibit 5 has been offered  
22 into evidence. Any objections to its receipt?

23 (No response.)

24 JUDGE WOODRUFF: Hearing none, it will be  
25 received into evidence.

1 (EXHIBIT NO. 5 WAS RECEIVED INTO EVIDENCE.)

2 BY MS. WESTON:

3 Q. Was Mr. Mitchell or anyone else from  
4 Missouri Utilities involved in the resolution of this pump  
5 failure and the correction of that problem?

6 A. No, they were not.

7 Q. Let's go back to the company a little bit.  
8 Has the company filed its annual reports or paid its  
9 assessments?

10 A. No. As I mentioned earlier, the review of  
11 the Commission's records indicate that the only annual  
12 report that the company has filed was filed in -- was the  
13 calendar year 1993 annual report. That was actually the  
14 first full year of operation after Missouri Utilities took  
15 over this system.

16 I don't have a detailed listing of the  
17 unpaid assessment, but I do know the Staff filed a  
18 complaint last year for nonpayment of assessments and  
19 non-submission of annual reports, and we have done so  
20 again this year as well.

21 Q. And as far as the issue regarding  
22 bankruptcy, do you know that if he -- did he attempt to  
23 file bankruptcy? Has he filed bankruptcy?

24 A. To my knowledge, he has not. He simply  
25 indicated to me at one point that he had contacted an

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1 attorney about that as one of the options that he was  
2 considering, but I don't believe he has actually done  
3 that.

4 Q. What is your opinion regarding the future  
5 of Missouri Utilities and its continued operation of the  
6 system as we sit here today?

7 A. Well, I think it's basically -- it's now  
8 very clear that Mr. Mitchell has abandoned the system, and  
9 I believe it would be appropriate for the Commission to  
10 authorize the General Counsel's Office to file a petition  
11 for receivership in Circuit Court. And under the new  
12 provisions of the statutes that were just recently  
13 changed, I think it would also be appropriate for the  
14 Commission to appoint an interim receiver.

15 Q. Have you made any contacts regarding a  
16 possible interim receiver in this matter?

17 A. Yes, we have. I made -- the initial  
18 contacts that I made regarding this were with two  
19 companies, two other regulated companies. One was Aqua  
20 Missouri, which has a system in Sedalia, which is one of  
21 the reasons we contacted them. And then I've also  
22 contacted Missouri-American Water Company. My initial  
23 contacts with both of those companies were made on Monday,  
24 July the 18th.

25 And I have since talked with



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1 representatives of both companies. And on Friday,  
2 July 22nd, the Missouri manager for Aqua Missouri notified  
3 me that Aqua Missouri was not interested in stepping in  
4 and acting as a receiver for this system. As a result of  
5 that, I focused my efforts on working with  
6 Missouri-American Water Company about that. I've been in  
7 contact on a weekly basis, and sometimes several times  
8 during the week, since the first of this month, with Bob  
9 LeGrand with Missouri-American, as well as some other  
10 folks there.

11 The last contact I had with them was on  
12 Friday. They had not yet made a decision as to whether or  
13 not they would be willing to act as an interim receiver.  
14 They are supposed to be having some additional meetings  
15 today. Missouri-American's president is meeting with some  
16 of the upper-level operations people at the company, and  
17 we hope to know by the end of the day today or tomorrow  
18 whether or not they will agree to act.

19 MS. WESTON: I have no further questions.

20 JUDGE WOODRUFF: Okay. Commissioner Gaw,  
21 do you have any questions?

22 QUESTIONS BY COMMISSIONER GAW:

23 Q. Good morning, Mr. Johansen.

24 A. Good morning.

25 Q. If Missouri-American is not interested in

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1 picking up the receivership duties, where will you go  
2 next? Do you have some other ideas?

3 A. Yes. I've actually attempted to contact  
4 the Director of Public Works at Sedalia, Missouri on  
5 Friday and was not able to do that. I'm going to go ahead  
6 and start my attempts to contact him again today to see if  
7 the city might be willing to act in that capacity.

8 Q. Does the city currently do any operations  
9 of water?

10 A. It's really not clear. The wastewater  
11 system is owned and operated by the city. The water  
12 system is -- is a municipal system, but I think there's  
13 some type of special municipal corporation separate  
14 actually from the city that owns and operates it, but it  
15 essentially is a municipal system as well. So they do  
16 have both.

17 Q. So what is Aqua Missouri -- is that right,  
18 Aqua Missouri doing over there?

19 A. Aqua Missouri has a -- they have a system  
20 in an area called Maplewood that's outside of the city as  
21 well.

22 Q. Okay. And is this particular territory  
23 that's served by Missouri Utilities adjacent to the city  
24 limits of Sedalia or is it outside a ways?

25 A. It's outside the city limits. I'm not sure

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1 exactly from the standpoint of the city limit boundaries  
2 itself, I'm not sure how close it is. It is some distance  
3 from the city's water and sewer system. The city limits  
4 may extend out further than their systems actually do.

5 Q. I understand. How far, do you know?

6 A. I don't.

7 Q. Is it your understanding that the  
8 individual who helped to repair the well is still  
9 interested in this system to purchase it?

10 A. Yes. We've met with Mr. Gautreaux on one  
11 occasion, most recently probably about two weeks ago,  
12 actually met him at the system, some of our field  
13 representatives did, with a representative of DNR. He's  
14 still considering that.

15 We were also informed Thursday of last week  
16 actually that Mr. Mitchell has now approached Aqua  
17 Missouri about to see whether or not they're interested in  
18 purchasing the system. And they met with Mr. Mitchell, I  
19 believe, on Friday, and we are waiting to hear from them  
20 to see if they are interested in pursuing a purchase. But  
21 Mr. Gautreaux, our understanding, is still considering  
22 that, and as well as Aqua Missouri now  
23 being -- considering the purchase.

24 Q. Does Staff have a position on whether or  
25 not an interim receiver is eligible to purchase a system?

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1 If that's a legal question, don't -- you don't need to try  
2 to attempt to answer it, Mr. Johansen. I'm asking if you  
3 know.

4 A. We have had some initial discussions about  
5 that, and quite honestly, we've not reached a conclusion  
6 yet.

7 Q. That's fair. Does Staff believe that  
8 penalties may be due or maybe should be pursued in this  
9 case, over and above just the interim receiver being  
10 sought to be appointed?

11 A. I certainly think that that is another  
12 option that's available. Quite honestly, I don't have a  
13 copy of the complaint in front of me, and I don't recall  
14 whether or not we asked for that or not.

15 Q. I'll ask counsel in a moment.

16 A. We do have the other complaint cases  
17 pending on -- actually two from last year's annual report  
18 and assessment problems and this year's, where we are  
19 specifically asking for authority to seek penalties.

20 Q. And that's as a result of an initiative  
21 from the Commission to do something about those past  
22 assessments for companies that haven't been paying them  
23 and not filing annual reports that occurred a couple years  
24 ago; is that correct?

25 A. Correct.

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1           Q.     Mr. Mitchell has indicated no desire to  
2 continue to operate this system; is that correct?

3           A.     That is correct.

4           Q.     He's told you he doesn't want to?

5           A.     He has.

6           Q.     Is it not the case that failing to fulfill  
7 obligations as a certificated company in providing service  
8 to customers is a violation of some of our statutory  
9 provisions, or do you know?

10          A.     I believe it is, yes.

11          Q.     And do you believe that penalties can  
12 accrue for failure to do that?

13          A.     Yes.

14                   COMMISSIONER GAW: I'll stop there, I  
15 think, Judge. I want to ask counsel in a moment some  
16 questions. That's it.

17 QUESTIONS BY JUDGE WOODRUFF:

18          Q.     Mr. Johansen, I had some questions about  
19 Exhibit 5, which is the invoice for replacing the pump.  
20 It came to over \$9,600. Was that paid by Mr. Gautreaux  
21 personally?

22          A.     My understanding is that Mr. Gautreaux, who  
23 is an owner of one of three mobile home parks that's  
24 served by the system, Mr. Gautreaux, the owners of the  
25 other two mobile home parks, as well as some individual

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1 customers in essence pooled money together to pay this  
2 bill.

3 My understanding is that Mr. Gautreaux was  
4 the one who initiated the action, and probably from the  
5 standpoint of the amount that was paid, it's my  
6 understanding he paid a larger portion of that, but it was  
7 basically a pooling of Mr. Gautreaux, the other mobile  
8 home park owners and some individual customers.

9 Q. I assume they'd like to be paid back?

10 A. Yes.

11 Q. Has any arrangement been made to do that?

12 A. No, they haven't. One of the things that  
13 we have discussed from the standpoint of the potential  
14 sale of the system in particular is that -- well,  
15 obviously if Mr. Gautreaux would happen to be the  
16 purchaser, the cost of these repairs that he and the other  
17 customers have taken upon themselves would be -- would be  
18 recognized for ratemaking purposes on a going-forward  
19 basis.

20 We have also advised Aqua Missouri, who is  
21 now looking at a possible purchase, that this bill would  
22 be outstanding and would have to be addressed as part of  
23 their purchase of the system.

24 Q. Have they filed suit or anything against  
25 Mr. Mitchell?

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1           A.       I don't believe so, no.

2           Q.       Do you know anything about their plans in  
3 that regard?

4           A.       I don't.

5                   JUDGE WOODRUFF: Okay. All right. That's  
6 all the questions I have, then. Did you have any  
7 redirect?

8                   MS. WESTON: No, Judge.

9                   JUDGE WOODRUFF: Okay. Do you have any  
10 other witnesses?

11                  MS. WESTON: I do not.

12                  JUDGE WOODRUFF: All right. Mr. Gaw, you  
13 have indicated you had some questions for counsel?

14                  COMMISSIONER GAW: Yes. Thank you. I'd  
15 like to ask counsel at this stage whether or not there are  
16 other additional remedies available for the conduct of  
17 Missouri Utilities in this case from a penalty standpoint?

18                  MS. WESTON: I believe that we probably  
19 could file another complaint against Missouri Utilities  
20 for failure to obey lawful orders administered by the  
21 Commission, and it falls under 386.570. So I do believe  
22 we have that capability.

23                  COMMISSIONER GAW: Are there penalties that  
24 accrue from failure to provide service to customers under  
25 the water --

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1 MS. WESTON: For direct failure, I don't  
2 believe that -

3 COMMISSIONER GAW: If you don't know, don't  
4 tell me.

5 MS. WESTON: I'll say that I don't know  
6 that.

7 COMMISSIONER GAW: You're speculating. If  
8 you want to find out for me, I would like to know.

9 MS. WESTON: I can do that.

10 COMMISSIONER GAW: And particularly I'd  
11 like to know what potential violations of statutes have  
12 occurred in this case and what orders might -- of the  
13 Commission might have been violated, what the range of  
14 penalties are, including civil and other penalties, if you  
15 could provide that to the Commission.

16 MS. WESTON: I shall do that.

17 COMMISSIONER GAW: And the process to get  
18 that, that would be -- would have to be employed in order  
19 to look at those penalties.

20 Does the statute provide that an interim  
21 receiver have certain qualifications before they can be  
22 appointed? If you don't know right now, counsel, you can  
23 tell me in a filing of some sort, but -

24 MS. WESTON: Okay.

25 COMMISSIONER GAW: -- I'd like to know



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1     that.

2                     It seems like we have at this point fairly  
3     narrowed the search of potential receivers, and I need to  
4     understand whether that's because of the statutory  
5     provisions or whether or not that there could be a broader  
6     search, in the event that what we -- what's out there  
7     right now that's been mentioned doesn't seem to be  
8     answering our problem.

9                     MS. WESTON: Okay. I shall do that.

10    FURTHER QUESTIONS BY COMMISSIONER GAW:

11             Q.     Let me ask Mr. Johansen. Mr. Johansen, who  
12    is running the system today?

13             A.     Mr. Gautreaux has basically again taken it  
14    upon himself to monitor the operation of the well, to make  
15    sure that there aren't any continuing problems from the  
16    standpoint of the environmental sampling, the DNR required  
17    sampling and those kind of things. I do not believe  
18    there's anyone carrying out those functions right now.

19                     Mr. Gautreaux again is simply basically  
20    just doing some very basic monitoring to make sure that  
21    the well is functioning properly, since it was - since  
22    the pump was replaced. But other than that, I don't  
23    believe there's much of anything being done in regard to  
24    the day-to-day operations.

25             Q.     And this has been the case for how long

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1     now?

2             A.       Well, Mr. Mitchell was-- up until the time  
3     that the failure occurred, he was doing some of the basic  
4     things, from the standpoint of taking the samples that  
5     were required on both the drinking water and wastewater  
6     side, submitting those to DNR. We talked with the DNR  
7     folks to see if there had been any violations in those  
8     areas noted, and there had not been. So he was - up  
9     until the time that the pump actually failed, he was doing  
10    some of the basic operation.

11            Q.       But now it's not being done?

12            A.       So far as I know, it is not.

13            Q.       So if that's the case, then, what is the  
14    likely reaction from the Department of Natural Resources  
15    to not receiving those samples?

16            A.       They would issue, most likely, what they  
17    call a Notice of Violation, and it would be issued to  
18    Missouri Utilities Company. And they, in fact, have  
19    indicated to us that they are looking at enforcement  
20    actions regarding the pump failure, as well as now that  
21    they are fully aware of the situation, they are planning  
22    on taking actions as necessary from the standpoint of the  
23    day-to-day operations as well. I don't know if they've  
24    done anything specific yet.

25            Q.       When's the last time you had a conversation

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1 with them?

2 A. Probably about two weeks ago.

3 Q. It might be helpful to be updated on that.

4 A. We'll do that.

5 Q. From your standpoint, Mr. Johansen, and in

6 moving forward, have you assessed that Mr. -- is it

7 Gautreaux?

8 A. Yes.

9 Q. -- have you assessed that he is not  
10 qualified to become an interim receiver?

11 A. Well, I think if Mr. Gautreaux became  
12 involved in that sense, he would certainly have to hire a  
13 licensed operator, contract with a licensed operator to  
14 actually do the day-to-day operations of the system from  
15 the environmental side. He's not a licensed operator. He  
16 would definitely have to contract with someone else to do  
17 that.

18 Q. What other licensed operators are in that  
19 general area other than those that you've already  
20 described?

21 A. There is one other Commission-regulated  
22 utility in the Sedalia area. Quite honestly, we have not  
23 contacted them because they have had some administrative  
24 problems here at the Commission, from the standpoint of  
25 delinquent assessments and filing of annual reports. So

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1 we did not feel it was appropriate to approach them, and  
2 we would not have felt comfortable recommending to the  
3 Commission that they be considered for interim receiver  
4 because of their problems.

5 Q. So the list that you have already provided  
6 to us is pretty much it?

7 A. From the standpoint of other  
8 Commission-regulated utilities, people that we're  
9 directly -- you know, have direct knowledge of. We do  
10 have a contact with a respected contract operator in the  
11 Lake of the Ozarks region, and that's one of the  
12 additional contacts I'm going to make today, actually, is  
13 to see if he knows of any contract operators in the  
14 Sedalia area that he would recommend or even to see if he  
15 would be interested in expanding his operation, if you  
16 will, up to that area.

17 COMMISSIONER GAW: Thank you.

18 And counsel, do you have an opinion as to  
19 when the Commission needs information on the name of an  
20 interim receiver as far as process is concerned, if the  
21 Commission were to find that it was necessary to have an  
22 interim receiver appointed?

23 MS. WESTON: Based upon my conversations  
24 with Staff, we think that we can probably come to some  
25 resolution within the next couple of weeks as to -- as to

1 finding an interim receiver.

2 COMMISSIONER GAW: I guess what I'm asking  
3 is more of a legal question. When do we need the name in  
4 the process here? Assuming that the Commission concludes  
5 that it's appropriate to request a receiver in the Circuit  
6 Court, when in that process is it important to have the  
7 name of an interim receiver for purposes of an  
8 appointment?

9 MS. WESTON: Well, I do know that in your  
10 Order that you can -- the Order sending the General  
11 Counsel's Office to the Circuit Court, at that time you  
12 can appoint an interim receiver. So I guess that the  
13 answer is -- it's an open-ended question. Depends on how  
14 quickly we can get an interim receiver as to when you can  
15 make your determination and file an Order with -- sending  
16 us to Circuit Court and appointing an interim receiver.

17 JUDGE WOODRUFF: Do we have to do both in  
18 the same Order?

19 MS. WESTON: I don't think so, but it's  
20 something that we can do.

21 JUDGE WOODRUFF: The statute talks about  
22 appointing an interim receiver in the same Order, and --

23 MS. WESTON: Yes.

24 JUDGE WOODRUFF: -- I just wondered if you  
25 had an opinion as to whether we have to do that or if

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1     that's an option.  It makes sense if it's optional, but  
2     the statute is kind -- has funny language.

3                   MS. WESTON:  I'd have to read it, but my  
4     first initial impression of it when I did read it was that  
5     you didn't have to do it in the same order.  I thought it  
6     was a can, as opposed to a must or shall.

7                   COMMISSIONER GAW:  Is it the Staff's  
8     position it is preferable to have one named as soon as  
9     possible?

10                  THE WITNESS:  Yes, definitely.

11                  COMMISSIONER GAW:  Is it -- would it be  
12     possible legally, if another agency would consent to it,  
13     to appoint an agency such as DNR, for instance, as an  
14     interim receiver?  I'm not suggesting they would do it.  
15     I'm just asking if legally that is possible.

16                  MS. WESTON:  I don't know the answer to  
17     that, but I think that that may have been done in the  
18     past.

19                  THE WITNESS:  That has, in fact, been done.

20     BY COMMISSIONER GAW:

21                  Q.     Mr. Johansen, is there a reason why that  
22     would not -- would not be possible, assuming that DNR  
23     would consent to it under the law now, if you know?

24                  A.     I don't believe there's anything that would  
25     keep that from happening if they agreed to do so.

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1           Q.       Have you inquired about their willingness  
2 to do so?

3           A.       Not yet. I will do that.

4                   COMMISSIONER GAW: I think that's all I  
5 have, Judge.

6                   JUDGE WOODRUFF: I have one question.

7 FURTHER QUESTIONS BY JUDGE WOODRUFF:

8           Q.       Is it possible for a member of the Staff to  
9 be appointed as an interim receiver?

10                  COMMISSIONER GAW: Ask him whether that's  
11 been done in the past.

12 BY JUDGE WOODRUFF:

13           Q.       Has that been done in the past,  
14 Mr. Johansen?

15           A.       The Commission has been appointed a  
16 receiver in the past by a Circuit Court.

17           Q.       And I believe that ended unhappily.

18           A.       That ended -- pardon?

19           Q.       That ended unhappily?

20           A.       Not really. I mean, the Commission  
21 appealed that appointment, my recollection is, and the  
22 Circuit Judge's Order was eventually overturned. And  
23 quite honestly, we discussed that. The problem as we see  
24 it is as the complainant, there's a question of whether  
25 there's an obvious conflict in that being done.

1                   But we did actually discuss it, and the  
2   main reason we did was because of the prior situation  
3   where the Circuit Court appointed the Commission, which  
4   quite honestly de facto was appointing the Staff, and we  
5   actually cooperated with the judge down in Ozark, Missouri  
6   in getting an operator hired to operate a system and  
7   actually had several Staff people that spent quite a bit  
8   of time operating the system. We do have experience in  
9   that regard, and we did have some initial discussions  
10  about that for this situation.

11                  JUDGE WOODRUFF: Ms. Weston, you indicated  
12  that you were going to answer some questions for  
13  Commissioner Gaw. Can you do that by the end of the day?

14                  MS. WESTON: I can give you something very  
15  preliminarily and follow up with a more detailed filing.

16                  COMMISSIONER GAW: So long as it doesn't  
17  delay other things, that would be fine. I'm interested in  
18  knowing the answer to those questions, though. Thank you.

19                  JUDGE WOODRUFF: Go ahead and file that in  
20  the case when you get a chance.

21                  MS. WESTON: I shall.

22                  JUDGE WOODRUFF: Anything further from the  
23  Staff?

24                  MS. WESTON: I'd just like to close, if I  
25  could, please.



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1 JUDGE WOODRUFF: Go right ahead.

2 MS. WESTON: Thank you.

3 What we essentially have here is a small  
4 water and sewer company with about 150 customers, and  
5 Missouri Utilities has decided that it can no longer  
6 operate the system and provide safe and adequate service  
7 to its customers. The situation is a prime example of how  
8 Section 393.145 is supposed to be applied and how it can  
9 work to protect the consumer.

10 I ask that the statute -- I ask that the  
11 Commission apply the statute, appoint an interim receiver  
12 and send us to Circuit Court to get the system in  
13 someone's hands that will be able to provide safe and  
14 adequate service to the consumers. Thank you.

15 JUDGE WOODRUFF: Thank you. With that,  
16 then, this hearing is adjourned.

17 WHEREUPON, the hearing of this case was  
18 adjourned.

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STAFF'S EVIDENCE:

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DALE JOHANSEN

Direct Examination by Ms. Weston

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Questions by Commissioner Gaw

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Questions by Judge Woodruff

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Further Questions by Commissioner Gaw

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Further Questions by Judge Woodruff

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EXHIBITS INDEX

2

MARKED REC'D

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EXHIBIT NO. 1

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1993 Annual Report of Missouri  
Utilities Company

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EXHIBIT NO. 2

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2005 annual Registration Report

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EXHIBIT NO. 3

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7/29/03 Letter to Customers from  
William P. Mitchell

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EXHIBIT NO. 4

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4/1/05 Letter to Customers from  
William P. Mitchell

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EXHIBIT NO. 5

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Invoice from Harper Drilling

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