

1 STATE OF MISSOURI  
2 PUBLIC SERVICE COMMISSION

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5  
6 TRANSCRIPT OF PROCEEDINGS

7 Hearing  
8 June 3, 2002  
9 Jefferson City, Missouri  
Volume 4

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:

24 KELLENE K. FEDDERSEN, CSR, RPR  
25 ASSOCIATED COURT REPORTERS

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12 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 (EXHIBIT NOS. 1 THROUGH 17 WERE MARKED FOR  
3 IDENTIFICATION.)

4 JUDGE MILLS: We're on the record this morning  
5 in Case No. WC-2002-155, which has been consolidated with  
6 Case No. SC-2002-160. We're going to do entries of  
7 appearance, beginning with the Staff.

8 MR. KRUEGER: Keith R. Krueger and Victoria  
9 Kizito for the Staff of the Missouri Public Service  
10 Commission. Our address is P.O. Box 360, Jefferson City,  
11 Missouri 65102.

12 JUDGE MILLS: Thank you.

13 MS. O'NEILL: Good morning. Ruth O'Neill for  
14 the Office of the Public Counsel and the Public. Our office  
15 address is P.O. Box 7800, Jefferson City, Missouri 65102.

16 JUDGE MILLS: Thank you.

17 MR. SCHAEFER: Kurt Schaefer of the law firm  
18 Lathrop & Gage for Warren County Water and Sewer Company and  
19 Mr. Gary L. Smith. The address is 326 East Capitol Avenue,  
20 Jefferson City, Missouri 65101.

21 JUDGE MILLS: Thank you. I'm sorry. I had to  
22 get our video recorder going.

23 We've just taken entries of appearance. I am  
24 now going to take up the Motion for Continuance that was  
25 filed on May 29th by Warren County Water and Sewer Company

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1 and Gary L. Smith. The Commission discussed this briefly in  
2 agenda on Thursday and determined that it would deny this  
3 motion. In essence, it's a little too little and too late.  
4 It doesn't appear that there's going to be any great  
5 prejudice by proceeding with this hearing. All the  
6 witnesses are scheduled.

7               If Warren County Water and Sewer and Gary  
8 Smith had made this motion a month or two ago, we may have  
9 entertained it. If they had begun the process of trying to  
10 effectuate a sale and an operating company to manage it  
11 months ago, we may not be at this point today. But to file  
12 it one business day before the beginning of the hearing is  
13 simply too late, and the Commission's going to proceed with  
14 the hearing. Any questions on that? Okay. The Motion for  
15 Continuance is denied.

16               We will go off the record, and we will begin  
17 opening statements at 8:45. We're off the record.

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

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

20               We'll begin with opening statements beginning  
21 with Public Counsel, and since the Commissioners weren't  
22 here for entries of appearance, please introduce yourself at  
23 the beginning of your opening statement. If you could step  
24 to the podium, please. Ms. O'Neill.

25               MS. O'NEILL: Good morning, Commissioners,

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1 your Honor, counsel. My name is Ruth O'Neill and I  
2 represent the Office of the Public Counsel and the Public in  
3 this proceeding.

4               We are here today -- I feel kind of a little  
5 bit strange. I'm not usually the first one to talk. But we  
6 are here today because the Office of the Public Counsel has  
7 filed a complaint against Warren County Water and Sewer  
8 Company and Gary Smith, who is the owner of the company.

9               The evidence in this case will show he is the  
10 ultimate owner of the company, although there have been some  
11 actions that Mr. Smith has taken to try and create other  
12 layers of corporate accountability between himself and the  
13 public utility company without this Commission's knowledge  
14 or approval.

15              The evidence is also going to show that this  
16 company's failed to meet its legal obligation to provide  
17 safe and adequate water and sewer service. This company has  
18 consistently placed its customers at risk due to acts and  
19 omissions of the company's management.

20              Those are the reasons that Public Counsel is  
21 recommending that this Commission direct its General Counsel  
22 go to the Circuit Court under the procedures we have in  
23 Missouri law and request that this small utility company be  
24 placed under the operation and control of a receiver.

25              We also believe that it is not likely that

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1 over time the management will become in a position to be  
2 able to serve the best interests of its customers, and so we  
3 are also asking the Commission to direct the General Counsel  
4 to recommend that that receiver be authorized to find a  
5 buyer for the company, and that is based on the powers that  
6 this Commission has to make that request pursuant to  
7 Missouri Revised Statute 393.145.

8                   This seems like fairly drastic action, and  
9 that's why we're here today to present evidence to show you  
10 why we believe that it is not in the best interests of the  
11 company's customers to continue or to return management to  
12 the owner due to the magnitude of the company's failure to  
13 provide safe and adequate service.

14                   One of the questions before the Commission and  
15 probably the easiest one to answer is whether or not the  
16 company has adequately maintained its sewer system to  
17 provide adequate and safe sewer service.

18                   The answer to that is a fairly easy no. Gary  
19 Smith, the owner of the company and its manager and  
20 operator, was convicted of a felony violation of the Clean  
21 Water Act in Federal District Court in St. Louis. He  
22 committed this crime by discharging raw sewage into Incline  
23 Village Lake in April of 2001. Mr. Smith remains on felony  
24 probation for that offense.

25                   Then in January of this year, the Missouri DNR

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1 and the US EPA discovered that a lift station and manhole in  
2 the company's Shady Oaks service territory, which is across  
3 the street from Incline Village, was discharging raw sewage.  
4 As a result of this investigation, the District Court  
5 determined that Mr. Smith violated his probation by breaking  
6 the same law again. He remains on probation.

7               Public Counsel and the Commission's Staff also  
8 investigated these violation allegations. Photographs of  
9 the lift station from the January violation are attached to  
10 the supplemental direct testimony of Barbara Meisenheimer,  
11 and photographs of the manhole which was overflowing,  
12 photographs that were taken by DNR witnesses who will appear  
13 in this witness are attached to the supplemental direct  
14 testimony of Kimberly Bolin.

15               We believe the Commission could easily find a  
16 violation of the company's legal duty to provide safe and  
17 adequate service based on the conviction and the probation  
18 violation even without the many customer complaints that  
19 this Commission heard at the local public hearing and which  
20 are also addressed in testimony that was filed by the Office  
21 of the Public Counsel.

22               But that's just sewer service. The company  
23 does not provide adequate water service, and in general the  
24 management of this company is poor. Evidence of these  
25 additional problems will also be presented to the Commission

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1 during this hearing to demonstrate that the company's  
2 failure in these areas further justify placing the utility  
3 under the control of a receiver.

4           The company does not have adequate water  
5 storage capacity. The company asked this Commission back in  
6 1996 for the authority to construct additional storage and  
7 that case was settled. My office and the Commission Staff  
8 agreed with the company that additional storage capacity was  
9 necessary.

10           This Commission, the Public Service  
11 Commission -- I'm not sure any of the Commissioners are  
12 still here -- did approve that stipulation that we all came  
13 to, and the company did apply for permits from the DNR to  
14 construct this tank, but the construction never took place  
15 and the DNR permits were allowed to lapse. To date, the  
16 company still has not installed that storage tank.

17           Population in this area has grown considerably  
18 in the past six years. The company has not installed any  
19 additional storage, that tank or anything else. Customers  
20 regularly experience water pressure problems. They  
21 experience numerous other water quality problems as well,  
22 which they described to this Commission at the local public  
23 hearing.

24           When they report these problems, the customers  
25 must face management which treats them sometimes with

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1 indifference, sometimes with outright hostility. Not only  
2 is the company's owner/manager rude to customers, he doesn't  
3 address their problems.

4               Deciding which violations to actively pursue  
5 in this case and what type of penalty to recommend was  
6 complicated by the fact that Mr. Smith operates the utility  
7 and some other business interests basically as a single  
8 entity. This commingling creates problems for customers who  
9 don't know what services the utility is responsible to  
10 provide and what services Mr. Smith is attempting to provide  
11 through his nonregulated business interests.

12              This commingling also creates an auditing  
13 nightmare as the Staff discovered when Mr. Smith requested a  
14 rate increase in 2001. This commingling rose to the level  
15 of violating Missouri law when Mr. Smith attempted to  
16 transfer the assets of the utility to an unregulated company  
17 that he owns without Commission knowledge or approval.

18              There are few remedies available to address  
19 violations this serious. One obvious option would be for  
20 the Commission to simply revoke the company's Certificate of  
21 Convenience and Necessity, but unfortunately that would  
22 leave over 300 customers without water and sewer service.

23              The better option is found at Missouri Revised  
24 Statute Section 393.145. Under that section, the Commission  
25 can petition the court for appointment of a receiver to

1 oversee the operations of the company and, we believe in  
2 these circumstances, arrange for the company to be sold.

3           While this may seem to be a drastic solution,  
4 the evidence in this case will show that the current  
5 management cannot be allowed to continue to operate this  
6 company.

7           The evidence in this case will not provide any  
8 rational explanation for the company's continued failure to  
9 adequately manage and maintain the system. Even while this  
10 complaint case was pending, the company continued to  
11 disregard its basic obligation to provide safe and adequate  
12 service to its customers.

13           Therefore, we ask that this Commission direct  
14 the General Counsel to file a petition in the Circuit Court  
15 asking that this company be placed under the control of a  
16 receiver and ultimately that the court find that the control  
17 and responsibility for the utility cannot in the best  
18 interests of its customers be returned to the owners.

19           Thank you.

20           JUDGE MILLS: Thank you, Ms. O'Neill.  
21 Mr. Krueger.

22           MR. KRUEGER: Thank you. Good morning. My  
23 name is Keith Krueger and I represent the Staff of the  
24 Missouri Public Service Commission in this proceeding.

25           Since I'm following Ms. O'Neill, I did think

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1 about just saying I agree with what she said, but since I  
2 prepared a statement, I want to deliver it.

3               This case is a complaint against Warren County  
4 Water and Sewer Company, which has been a problem company  
5 for at least the last several years, and against its owner,  
6 Gary L. Smith. The problems are many and varied. They  
7 involve both water service and sewer service, and it appears  
8 that the operator of the company is making no effort or very  
9 little effort to correct these problems.

10              The evidence will reveal problems with safety  
11 issues such as the company's failure to maintain the  
12 equipment that is used to warn of sewage overflows, the  
13 failure to maintain fences and gates, and the failure to  
14 secure wet wells of sewage lift stations.

15              The evidence will also reveal poor service,  
16 such as the failure to provide adequate water pressure, the  
17 failure to maintain proper chlorine levels in the water  
18 supply, poor customer relations and billing on the basis of  
19 estimates of water use rather than going to the trouble of  
20 actually reading the meters.

21              Customers of the company have detailed these  
22 problems in the testimony that they provided at the local  
23 public hearing that was held in this case.

24              The evidence will also reveal poor  
25 recordkeeping, which made it very difficult for the Staff to

1 audit the company the last time the company filed a small  
2 company rate increase case. And, in addition, the company  
3 transferred assets to a nonregulated affiliate without  
4 Commission approval.

5           The evidence will also show that the company  
6 has failed to pay real estate taxes and Commission  
7 assessments on time and that the company has failed to file  
8 timely Annual Reports with the Commission.

9           The evidence will also show that the company  
10 has made no real attempt to correct these defects. All  
11 parties have agreed since 1996 that there is a need for  
12 additional -- for an additional water storage tank to  
13 maintain adequate pressure and adequate supplies, but the  
14 company has never provided a new water storage tank and has  
15 failed to make other needed capital expenditures for pumps,  
16 blowers and replacement equipment for the sewage treatment  
17 plants and the lift stations.

18           The company's problems are most dramatically  
19 evidenced by the fact that the owner of the company, Gary  
20 Smith, has pleaded guilty in federal court to the felony  
21 offense of knowingly discharging a pollutant into the waters  
22 of the United States. He was placed on probation for 12  
23 months, but soon thereafter he again discharged untreated  
24 sewage into the waters of the United States. The federal  
25 judge did not revoke his probation, but he did give

1 Mr. Smith a stern lecture insisting that he satisfy the  
2 terms of his probation in the future. We'll see.

3                   Whether Mr. Smith should be incarcerated or  
4 not is a question for the federal court, but whether he  
5 should continue to provide water and sewer service to the  
6 customers of Warren County Water and Sewer Company is a  
7 question for this Commission.

8                   It's easy to see that Warren County Water and  
9 Sewer Company is a problem company, but identifying the best  
10 solution is more difficult because the customers of the  
11 company will require water and sewer service regardless of  
12 what happens to this company. Can a suitable provider be  
13 found?

14                   The Commission will have to either take steps  
15 to require the sale of the company or the appointment of a  
16 receiver or it must countenance the continued operation of  
17 the company by Gary Smith, who has been convicted of a  
18 federal felony, not just any felony but a felony involving  
19 the very subject that this Commission regulates, the  
20 provision of safe and adequate water and sewer service to  
21 the customers of the company.

22                   The best ultimate solution is the permanent  
23 transfer of the company and its assets to a responsible  
24 operator. No such sale has yet been proposed, however.  
25 Until a responsible buyer can be found, the Commission

1 should appoint a receiver that -- should take steps to  
2 obtain the appointment of a receiver that is capable of  
3 providing safe and adequate service. The evidence will  
4 reveal that such an operator can be found.

5 Bill Meyer will be adopting the testimony of  
6 Staff witness Dana Eaves in this case and will testify on  
7 behalf of the Staff in this case, as will Jim Merciel and  
8 Steve Loethen. They will be pleased to answer your  
9 questions later on in this hearing.

10 Thank you.

11 JUDGE MILLS: Thank you. Mr. Schaefer.

12 MR. SCHAEFER: My name is Kurt Schaefer. I'm  
13 with the law firm of Lathrop & Gage, and I represent Warren  
14 County Water and Sewer Company and Mr. Smith, Mr. Gary Smith  
15 in this matter.

16 I'm not quite sure why we're having this  
17 hearing today. We no longer agree with the Issues List as  
18 previously presented. I believe both the Office of the  
19 Public Counsel and the Staff know that Mr. Smith has changed  
20 his position since the beginning of this case.

21 The Office of the Public Counsel is seeking in  
22 this case to have the assets of Warren County Water and  
23 Sewer transferred and the management transferred to someone  
24 else. Mr. Smith has now agreed that he will pursue that  
25 position. As both the Office of the Public Counsel and the

1 Staff know, he's changed his position as discussed in the  
2 Motion for Continuance that we filed last week. He's  
3 currently negotiating with two management companies that the  
4 Staff is aware of. He's also actively negotiating with  
5 potential purchasers for the company.

6                   Having the hearing today can only serve to  
7 interfere with the progression and orderly transfer of those  
8 assets, which is what the Office of the Public Counsel is  
9 seeking here.

10                   Again, Mr. Smith has agreed to put in a  
11 management company in the near term to take over the  
12 day-to-day operations, and also he's making his best efforts  
13 to sell, transfer the assets within six months.

14                   The hearing today is only going to interfere  
15 with the orderly sale and inhibit Mr. Smith's ability to  
16 freely negotiate with potential purchasers, and it could  
17 detrimentally affect the value of the company. In the  
18 interests of the company's customers and all parties in this  
19 matter, those interests will be best served by focusing the  
20 efforts on the outside management and sale of the assets  
21 rather than this litigation. We're going to be back before  
22 this Commission within six months likely anyway for the  
23 approval of that sale, so it's not like this issue is going  
24 away.

25                   Once we proceed with this hearing and the

1 briefing schedule and everything else that goes along with  
2 it, it is very likely that any potential buyers are going to  
3 wait until this proceeding is concluded to determine the  
4 value of the company. That's most likely going to have a  
5 negative effect on the value of the company, and also it  
6 will inhibit and slow down the sale.

7           Office of the Public Counsel is also  
8 requesting that, in the alternative, that a receiver be  
9 appointed in this case. A receiver is not going to be  
10 necessary in that we are actively pursuing the transfer of  
11 the assets and a management company to take over very  
12 quickly the short-term day-to-day management. A receiver is  
13 only going to cost more money, and that money is going to be  
14 passed on to the customer.

15           So the best solution is to continue this  
16 hearing and allow Mr. Smith to focus his attention on  
17 preparing for and negotiating for the orderly sale of the  
18 company. I would ask that you reconsider our motion to  
19 continue which is based on these issues, and Judge Mills,  
20 I'd ask that you poll the Commission on that issue.

21           JUDGE MILLS: Well, Mr. Schaefer, seeing as  
22 how you've said nothing new from your motion that was filed  
23 on Thursday and the Commission did discuss it in their  
24 agenda meeting, I don't believe that there's any need to  
25 poll the Commission at this point.



1                   MR. SCHAEFER: Thank you, Judge. I have  
2 nothing further.

3                   JUDGE MILLS: Thank you. Let's go on to our  
4 first witness, Ms. O'Neill.

5                   MS. O'NEILL: Yes, your Honor. I'd call Vic  
6 Muschler.

7                   (Witness sworn.)

8                   JUDGE MILLS: Thank you. You may be seated.  
9 VIC E. MUSCHLER testified as follows:

10 DIRECT EXAMINATION BY MS. O'NEILL:

11           Q.       Good morning. Could you state your name for  
12 the record, please.

13           A.       Vic Ernest Muschler, M-u-s-c-h-l-e-r.

14           Q.       And how are you employed?

15           A.       Special agent, United States Environmental  
16 Protection Agency, Criminal Investigations Division.

17           Q.       How long have you been employed by EPA?

18           A.       Approximately ten years.

19           Q.       What are your primary duties in your current  
20 position?

21           A.       I conduct criminal investigations involving  
22 environmental regulations and laws of the United States.

23           Q.       And were you involved in an investigation of  
24 Gary Smith and/or Warren County Water and Sewer Company?

25           A.       Yes, I have been.

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1           Q.       And did you provide previous testimony under  
2 oath which has been filed in this case and is marked as  
3 Exhibit No. 1, designated your surrebuttal testimony of Vic  
4 Muschler?

5           A.       Yes.

6           Q.       Have you reviewed that previously filed  
7 testimony?

8           A.       Yes, I have.

9           Q.       Are there any changes, corrections or updates  
10 that you would make to that testimony?

11          A.       No, there is not.

12          Q.       And if I asked you the questions in that  
13 previous testimony today, would your answers be the same  
14 today as they were then?

15          A.       Yes.

16                   MS. O'NEILL: I would offer Exhibit No. 1 into  
17 evidence.

18                   JUDGE MILLS: Exhibit No. 1 is offered. Are  
19 there any objections?

20                   MR. KRUEGER: No objection.

21                   MR. SCHAEFER: I would object to the extent  
22 that his transcript does contain conversations with other  
23 individuals, I believe, that would go -- that would be  
24 out-of-court statements offered for the truth of the matter  
25 asserted. I would object on the grounds of hearsay, but

1 other than that, I have no objection.

2 JUDGE MILLS: Your objection will be noted,  
3 and Exhibit No. 1 will be admitted.

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

5 BY MS. O'NEILL:

6 Q. Mr. Muschler, at that -- at the time that you  
7 gave that previous testimony, were there two items that were  
8 marked as deposition exhibits at that time?

9 A. Yes, there was.

10 Q. And referring you to what has been marked as  
11 Exhibit No. 17, are those attachments the deposition  
12 exhibits that were marked for your testimony at that time?

13 A. Yes, they appear to be.

14 Q. They appear to be the same exhibits as before?

15 A. That is correct.

16 MS. O'NEILL: And at this time I would offer  
17 Exhibit 17 into evidence as well, and I would note to the  
18 Commission and to Judge Mills that both of those items are  
19 contained in the record elsewhere, but for ease of  
20 reference, should questions be directed to those exhibits, I  
21 thought that we should have them close together with  
22 Mr. Muschler's actual testimony.

23 JUDGE MILLS: Exhibit 17 has been offered.  
24 Are there any objections to the admission of Exhibit 17?

25 MR. KRUEGER: No objection.

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1 MR. SCHAEFER: Same hearsay objection, Judge.

2 JUDGE MILLS: Okay. Well, on this one I'm  
3 going to need a little help, Mr. Schaefer. Which portions  
4 of Exhibit 17 do you believe constitute hearsay?

5 MR. SCHAEFER: Well, Judge, there's a letter  
6 attached to this exhibit. Attached to that letter is a  
7 Notice of Violation Report from the Department of Natural  
8 Resources. I believe that report would be an out-of-court  
9 statement, and I believe it's being offered for the truth of  
10 the matter asserted. Therefore, I object on the grounds of  
11 hearsay. Other than that, I have no objection.

12 JUDGE MILLS: You're talking about the letter  
13 that's toward the end of that Exhibit 17 that has the Notice  
14 of Violation attached to it?

15 MR. SCHAEFER: Yes, your Honor.

16 JUDGE MILLS: Ms. O'Neill, do you have a  
17 response?

18 MS. O'NEILL: Your Honor, I would note that  
19 Paul Mueller, who conducted this investigation, is a witness  
20 in this case and will be available tomorrow and be able to  
21 be subject to cross-examination on this or whatever other  
22 issues Mr. Schaefer wishes to discuss with him.

23 Also, I can ask questions about whether or not  
24 this is information that Mr. Muschler reasonably relies upon  
25 if you like to -- in the course of his duties.

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1 JUDGE MILLS: Well, I'll tell you what, for  
2 the purpose of this exhibit, perhaps you can prove the  
3 allegations in this letter in some other fashion, but for  
4 the purpose of admitting this exhibit, I will sustain the  
5 objection that it's hearsay seeing as how it talks about  
6 what Mr. Mueller said and it's a letter from someone who is  
7 not a witness in this case.

8 But I will admit it to show that there was a  
9 letter sent to Mr. Smith and a Notice of Violation given to  
10 him. So to the extent that I've sustained that objection,  
11 that objection goes to that portion of this exhibit. The  
12 exhibit will be admitted.

13 MS. O'NEILL: So it's sustained as to that use  
14 of it, but it's coming in for the other purposes?

15 JUDGE MILLS: Exactly. And the rest of the  
16 exhibit comes in unobjected to.

17 MS. O'NEILL: I would tender the witness for  
18 cross-examination at this time.

19 JUDGE MILLS: Thank you. Mr. Krueger?

20 CROSS-EXAMINATION BY MR. KRUEGER:

21 Q. Good morning, Mr. Muschler.

22 A. Good morning.

23 Q. Are you familiar with the sewer systems of  
24 Warren County Water and Sewer Company and their components.

25 A. Somewhat familiar, yes, sir.

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1 Q. Do you know how many sewage treatment plants  
2 there are in the system?

3 A. Yes.

4 Q. How many?

5 A. Two.

6 Q. And where are they located?

7 A. They're located inside Incline Village.

8 Q. Both treatment plants are inside Incline  
9 Village?

10 A. That is correct.

11 Q. And does that -- do they serve the Shady Oaks  
12 subdivision as well?

13 A. Yes, they do.

14 Q. Are they designated as Treatment Plant No. 1,  
15 and Treatment Plant No. 2 by any kind of generally  
16 recognized terminology or do you know?

17 A. Yes. After I reviewed the Missouri Department  
18 of Natural Resources permits, they refer to them as Plant 1  
19 and Plant 2.

20 Q. What area does Treatment Plant 1 serve?

21 A. I don't have those specifics. I don't know.

22 Q. Okay. And do you know where that discharges  
23 its effluent?

24 A. Discharges it into waters of the United States  
25 and Incline Village Lake, yes.

1 Q. It discharges to the lake?

2 A. Yes, sir.

3 Q. Okay. And do you know where Treatment Plant

4 No. 2 discharges?

5 A. It also discharges into the lake.

6 Q. Okay. Do you know how many lift stations

7 there are in the company's sewer systems?

8 A. I don't know the specific number, no. I'm

9 aware of two.

10 Q. Okay. And they pump sewage to the treatment

11 plants; is that correct?

12 A. That is correct.

13 Q. Do they provide sewage treatment at all or

14 just merely pump the sewage?

15 A. I don't have the knowledge to answer that

16 question.

17 Q. Okay. Do you know how many -- do you know

18 whether these lift stations pump to Treatment Plant No. 1 or

19 to No. 2?

20 A. I believe the lift station which was the focus

21 of the Indictment pumps to Plant No. 1. The lift station

22 which was the focus of the probation revocation, I'm not

23 aware of exactly where it pumps to.

24 Q. Okay. Do you know if there are any other

25 units in the Warren County Water and Sewer Company system

1 that provide treatment?

2 A. Not that I'm aware of.

3 Q. So the treatment is provided by those two  
4 treatment plants, and the lift stations are used to pump  
5 sewage to the treatment plants; is that correct?

6 A. Those are the two permitted wastewater  
7 treatment plants that I'm aware of, yes.

8 Q. At page 7 of your surrebuttal testimony you  
9 talk about a discharge from a sewer manhole to Incline  
10 Village Lake. Now, was the discharge from a manhole or was  
11 it from a lift station?

12 A. It was from the manhole which is located  
13 directly next or down from the lift station.

14 Q. So it's downstream from the lift station  
15 between the lift station -- between the lift station and the  
16 sewage treatment plant?

17 A. Technically, it would be upstream.

18 Q. Okay.

19 A. Because the manhole flowed into the lift  
20 station, then the lift station would have flowed into the  
21 plant. It's my opinion when the lift station stopped  
22 working properly, the sewage then flowed out of the manhole  
23 and then flowed into waters of the United States, Incline  
24 Village Lake.

25 Q. And do you recall to which treatment plant



1 that lift station was pumping sewage?

2 A. I believe it goes to Plant No. 1.

3 Q. What is meant by the term waters of the United  
4 States?

5 A. That's a definition --

6 MR. SCHAEFER: I'm going to object. I think  
7 it calls for a legal conclusion.

8 JUDGE MILLS: First, Mr. Schaefer, I didn't  
9 hear the objection. Could you pull the microphone closer to  
10 you? And for the rest of you, while we're all fairly close  
11 together and we can hear each other, this hearing is  
12 actually being streamed to the worldwide web, and unless you  
13 speak into the microphones, your comments won't go out.  
14 We're also recording this to disk so that we can view it  
15 later, and if you don't speak clearly into the microphones  
16 we won't get those captured in the disk.

17 So with that preliminary in mind, could you  
18 repeat your objection, Mr. Schaefer?

19 MR. SCHAEFER: Judge, I believe his question  
20 was, what are waters of the state? Waters of the state is a  
21 term of art. It's defined in federal statute, and I believe  
22 the question calls for a legal conclusion. Therefore, I'm  
23 objecting to the question.

24 JUDGE MILLS: Mr. Krueger, do you have a  
25 response?

1                   MR. KRUEGER: The witness stated that Incline  
2 Village was waters of the United States. I'm asking what  
3 was meant by that term, the use of that term.

4                   JUDGE MILLS: I'm going to overrule the  
5 objection. I think this is the kind of determination that  
6 this witness is called upon to make in his day-to-day duties  
7 as far as I can tell. So I'm going to overrule the  
8 objection.

9                   THE WITNESS: May I refer to the Exhibit  
10 No. 17 or the Indictment? I believe it has the definition  
11 that we used for waters of the United States.

12                   I believe it's paragraph 12, page 3, the  
13 Incline Village Lake is a navigable water of the United  
14 States within the meaning of the Clean Water Act, United  
15 States Code Section 1362(7), Title 40, Code of Federal  
16 Regulations, Section 122.2. That's what I use.

17 BY MR. KRUEGER:

18           Q.       Where are you reading from?

19           A.       Page -- it's been marked as Exhibit No. 17,  
20 page 3, paragraph 12.

21           Q.       And is that what you understand waters of the  
22 United States to be?

23           A.       Yes.

24           Q.       In your testimony at page 11, you stated that  
25 a lift station had failed and was discharging into an

1 unnamed tributary. Can you tell me what that tributary is?

2 Is that a stream or what?

3 A. It's a wet weather water runoff is what it  
4 was.

5 Q. And where does that tributary flow to?

6 A. I don't recall at this time.

7 Q. Do you know if it flows to the lake, Incline  
8 Village Lake?

9 A. I don't have any idea.

10 MR. SCHAEFER: I'm going to object. It's  
11 leading, and he's already testified that he doesn't know.

12 JUDGE MILLS: I think it was leading, so I  
13 will sustain that objection. Mr. Krueger, you can rephrase.

14 MR. KRUEGER: He's not my witness.

15 JUDGE MILLS: You can still lead a witness. I  
16 believe it was a leading question. You can rephrase it if  
17 you wish.

18 MR. KRUEGER: I'll just proceed.

19 BY MR. KRUEGER:

20 Q. Do you know if Mr. Smith is currently on  
21 probation?

22 A. Yes, he is.

23 Q. Do you know how much longer that probation  
24 will continue?

25 A. I believe until September.

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1 Q. Do you know if he has been charged with any  
2 additional violations of the terms of his probation since  
3 the January incident?

4 A. Yes, a probation violation was filed.

5 Q. When was that filed?

6 A. In January.

7 Q. Okay. Has there been any additional  
8 violations filed since then?

9 A. No.

10 Q. Do you know how many Notices of Violation the  
11 Department of Natural Resources has issued to Warren County  
12 Water and Sewer?

13 MR. SCHAEFER: I'm going to object on the  
14 grounds of hearsay, and also lack of foundation.

15 JUDGE MILLS: And the question was, does he  
16 know how many Notices of Violation were filed? Well, if he  
17 knows, then it wouldn't be hearsay. If he knows, then  
18 there's probably a foundation for that. I think the witness  
19 can answer this question. The objection is overruled.

20 THE WITNESS: No, I don't know.

21 BY MR. KRUEGER:

22 Q. Are you aware of Notices of Violation that the  
23 Department of Natural Resources has issued to the company?

24 A. I'm aware of some, yes.

25 Q. How many are you aware of?

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1           A.       Specifically, I know of two recently.

2           Q.       How recent were those?

3           A.       I believe the one was issued in reference to  
4 the probation revocation in January, and then it's my  
5 understanding another one has recently been issued as of  
6 last week.

7           Q.       Do you know if they have been resolved?

8           A.       I don't have any knowledge of that.

9           MR. KRUEGER: Okay. Thank you. That's all  
10 the questions I have.

11           JUDGE MILLS: Thank you. Mr. Schaefer?

12           MR. SCHAEFER: I have no questions, Judge.

13           JUDGE MILLS: Questions from the Bench?

14 Before I do that, let me -- for those of you who may not be  
15 familiar with the practice, the way we're going to proceed  
16 today is after the first round of cross-examination by all  
17 the parties we will have questions from the Bench, followed  
18 any another round of cross-examination that deals  
19 exclusively with subjects covered in questions from the  
20 Bench. Following that, we will have one single round of  
21 redirect to cover both the initial round of cross, the  
22 questions from the Bench and the further round of  
23 cross-examination.

24           So at this point we will go to questions from  
25 the Bench. Chair Simmons.

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1                   CHAIRMAN SIMMONS: Thank you, Judge.

2 QUESTIONS BY CHAIRMAN SIMMONS:

3           Q.       Good morning, sir.

4           A.       Good morning.

5           Q.       I've got a few questions, and I'll ask you to  
6 help me here because I believe that this may be one of the  
7 first encounters I've had with a situation quite like this.  
8 So some of my questions may be those that are curiosity in  
9 nature, and you may have to do some defining for me also.

10                  With respect to, I guess, your position and  
11 what you normally do, my understanding is that you work on  
12 also criminal investigations?

13          A.       Yes, your Honor, strictly criminal  
14 investigations.

15          Q.       Strictly criminal?

16          A.       Yes, sir.

17          Q.       Okay. As it relates to some of the procedures  
18 that you would engage in as you investigate some of these  
19 complaints, the procedure that you used to investigate this  
20 particular complaint, is that normal course of duties for  
21 you in terms of as you go out and investigate these  
22 complaints, is there anything that you would do different or  
23 how do you go about your actual duties?

24          A.       Yes, sir, this is a very typical type  
25 situation. We receive our complaints anyplace from

1 citizens, disgruntled employees, current employees. After  
2 we receive those, we are not a regulating type division. In  
3 other words, we don't regulate individuals. In the state of  
4 Missouri you have the Missouri Department of Natural  
5 Resources to handle most of the regulations and the  
6 permitting that is delegated through them through the  
7 Federal Code of Regulations.

8               So we will notify the emergency responders and  
9 those individuals if we become aware of a situation that may  
10 be harming the health or the environment in any way so that  
11 they can take the appropriate action. I strictly deal with  
12 the criminal violations of that.

13              So we allow the Missouri Department of Natural  
14 Resources and the EPA and any other government organization  
15 to take care of their situations. That's why you'll see,  
16 although we never direct those individuals what to do, we  
17 must notify them so that they can take the appropriate  
18 action.

19           Q.       Okay. Thank you.

20              Now, I understand that with this particular  
21 case you presented the facts of your investigations and your  
22 findings to the U.S. Attorney's Office; is that correct?

23           A.       Yes, sir, that is correct.

24           Q.       And is -- would that be the normal  
25 circumstance that you would engage in after you believe that

1 you found, you know, enough evidence to believe that it  
2 warrants going to the U.S. Attorney's Office? Is that your  
3 normal procedure?

4       A.       Absolutely. What we do is we conduct the  
5 investigations. We attempt to gather as many facts as we  
6 can. We don't make the final determination for prosecution.  
7 If we believe a criminal violation has occurred, we present  
8 that to the U.S. Attorney's Office for their determination  
9 to move forward on a criminal case.

10               On occasion, if we haven't felt we've had  
11 enough evidence or allegations found to be true for a  
12 criminal violation, we may forward that case to a regulatory  
13 civil organization.

14       Q.       Okay.

15       A.       But we would cease our participation at that  
16 time. We do not investigate any civil violations.

17       Q.       My understanding is that what was presented  
18 and I believe what the U.S. Attorney's Office found was that  
19 this was a felony violation; would that be correct?

20       A.       Yes, sir.

21       Q.       Does the Clean Water Act itself call for a  
22 felony violation? Are there degrees in which violation  
23 occurs? In other words, this is a felony. Is there a  
24 difference between a misdemeanor and a felony or how does  
25 that --



1           A.       Yes, sir, there is a difference between a  
2 felony criminal Clean Water Act violation and a misdemeanor.  
3 In simplest terms, a misdemeanor would many times be  
4 determined that that is so a misdemeanor if it was  
5 accidental, there wasn't any intent, negligence. I'd have  
6 to really refer to the law itself to give you the exact  
7 reading of it.

8                   CHAIRMAN SIMMONS: Judge, the question that  
9 I'm about to ask, I don't know if it's going to call for a  
10 legal conclusion or not. I don't believe from what I read  
11 that we have an attorney here.

12 BY CHAIRMAN SIMMONS:

13           Q.       But I guess what you told me, there's probably  
14 a threshold difference between a misdemeanor and a felony  
15 violation. Would one have to knowingly discharge in order  
16 to have a felony violation from not knowingly being a  
17 misdemeanor violation?

18                   MR. SCHAEFER: Excuse me, Judge. I want to go  
19 ahead and give Commissioner Simmons the ability to ask his  
20 question. I do believe that he's correct, though, that it  
21 does get into the issue of legal conclusion, and I'd just  
22 like to make sure that objection is on the record.

23                   JUDGE MILLS: Well, the objection is on the  
24 record and so I will have to deal with it. I believe you're  
25 probably correct, Mr. Schaefer. So I think I'm going to

1 sustain it. But Chair Simmons, I think you can probably  
2 rephrase the question to get at how he deals with it in his  
3 routine day-to-day business, and I think you could examine  
4 it from his field of expertise rather than as a legal  
5 conclusion.

6 CHAIRMAN SIMMONS: You're going to cause me to  
7 be a lawyer now. I guess in -- Judge, why don't I just  
8 forego that question? Maybe I'll come back.

9 That's all the questions I have at this  
10 moment. Thank you, sir.

11 THE WITNESS: Thank you.

12 JUDGE MILLS: Commissioner Murray.

13 COMMISSIONER MURRAY: Thank you.

14 QUESTIONS BY COMMISSIONER MURRAY:

15 Q. Good morning.

16 A. Good morning.

17 Q. Maybe I can follow up there where Chair  
18 Simmons left off just a little bit. When you investigate  
19 complaints such as this, you make a -- if you find a  
20 violation, you make a referral to the U.S. Attorney; is that  
21 right?

22 A. Yes, ma'am, that's correct.

23 Q. And you refer -- do you refer misdemeanor  
24 violations as well as felony violations?

25 A. Yes, ma'am.

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1 Q. And do you make a determination at the time  
2 that you are investigating which that violation falls under?

3 A. We have a procedure in place. No, ma'am, I do  
4 not. We have lawyers assigned to the criminal division of  
5 EPA. I present the facts to them. They read my reports.  
6 We have a discussion. A determination is made for the  
7 referral to the U.S. Attorney's Office.

8 Now, the U.S. Attorney's Office will then make  
9 their final decision as to whether it's going to be charged  
10 as a misdemeanor or as a felony.

11 Q. And if there is a discharge into the waters of  
12 the United States, that is a violation that you refer; is  
13 that correct?

14 A. That is one of many, yes, ma'am.

15 Q. And you did find in this instance a discharge  
16 into the waters of the United States?

17 A. Yes, ma'am. The facts of the case were  
18 presented to a grand jury who returned an Indictment.

19 Q. Can you tell me how a navigable water of the  
20 United States differs, if at all, from a navigable water of  
21 the state?

22 MR. SCHAEFER: Commissioner Murray, I  
23 certainly don't want to impair your ability to ask  
24 questions, but I would also like to go on the record that I  
25 believe this also calls for a legal conclusion.

1 JUDGE MILLS: Well, calling on the witness to  
2 determine the difference between a felony and a misdemeanor  
3 certainly does, and I sustained that objection.

4 I believe that this is similar to an earlier  
5 objection that I overruled, and I think that this is the  
6 kind of call that this witness probably has to make on a  
7 day-to-day basis as to whether or not a discharge is in  
8 navigable waters, and so I'm going to overrule this  
9 objection. You may answer the question.

10 THE WITNESS: Thank you.

11 JUDGE MILLS: If you can.

12 THE WITNESS: I can't give you the legal  
13 definition, but a navigable water of the United States has a  
14 very lengthy legal definition, and I think your question is  
15 how does it differ than waters of the state, and although --  
16 I don't think it really does very much at all. They cross  
17 different jurisdictions, you know. The state has their  
18 definition. We have our definition.

19 I can tell you that waters of the United  
20 States can be a dry gulch. It can be a drainage ditch. It  
21 can be many things. When we say the term navigable waters  
22 of the United States, we're not talking about just the  
23 Mississippi River, the Missouri River and things like that.  
24 I've had the Leuter River, which I think most of us are  
25 familiar with that runs in the state of Missouri, waters of

1 the United States.

2 BY COMMISSIONER MURRAY:

3 Q. Now, isn't a part of the reason that it would  
4 be called water of the United States even if it were, as you  
5 said, a dry gulch the fact that things that appear in that  
6 particular location eventually make their way into a  
7 navigable water of the United States?

8 A. Ma'am, I don't recall that ever being part of  
9 our definition.

10 Q. I wanted to ask you, in your testimony that  
11 you filed, your surrebuttal testimony, you mentioned that  
12 the reason that you investigated the violation that you  
13 investigated for Incline Village was that you had -- there  
14 was a customer complaint; is that correct?

15 A. Yes.

16 Q. Is there a process by which the Department of  
17 Natural Resources of the state of Missouri and/or the Public  
18 Service Commission of the state of Missouri work together  
19 with EPA to notify the EPA that there are violations that  
20 they feel would come under EPA's jurisdiction?

21 A. Yes, ma'am. I believe the question is, is  
22 what is their procedure for notifying us of a situation they  
23 feel may be criminal?

24 Q. Yes.

25 A. Yes, there is a procedure in place. I'm

1 somewhat familiar with it. I don't have it in writing and  
2 I've never seen it in writing.

3 Q. Now, is that for the DNR to notify the EPA  
4 or --

5 A. That is correct. I'm not aware of what the  
6 Public Service Commission's rules are.

7 Q. And did the Department of Natural Resources of  
8 the state of Missouri work together with you on your  
9 investigation?

10 A. Yes, ma'am. The Missouri Department of  
11 Natural Resources provided some services to the EPA. It  
12 would be best described as, because of the situation and the  
13 possible effects on the environment and the human health,  
14 that I never directed them. The criminal division does not  
15 direct the Missouri Department of Natural Resources in their  
16 duties. We notify them of situations and allow them to  
17 follow their procedures.

18 In this situation, we utilized the Missouri  
19 Department of Natural Resources laboratory to analyze some  
20 samples that were obtained by my -- I shouldn't say my --  
21 our regional technical coordinator, who is a scientist  
22 that's assigned to the criminal division of the EPA out of  
23 St. Louis, because I am not authorized to obtain samples.

24 Q. Do you know if there was a Notice of Violation  
25 issued by the Department of Natural Resources?

1           A.       Yes, I believe there was.

2           Q.       And do you have any knowledge as to whether  
3 the lift station that was causing the problem that you  
4 investigated, whether that was repaired or whether the  
5 broken line, wastewater line was ever repaired?

6           A.       I have been told it's been repaired. I have  
7 also been told --

8                   MR. SCHAEFER: I'm going to object because I  
9 believe what he's about to say is hearsay.

10                  JUDGE MILLS: I'm not going to sustain the  
11 objection. You can make an objection after the fact. We'll  
12 have to see what he says. If it is hearsay, then you can  
13 object to it. If it's not, then I'm not -- I'm not going to  
14 guess about what he's going to say and sustain an objection  
15 to it.

16                  You may go ahead and answer the question.

17                  THE WITNESS: I have also been told that it  
18 hasn't been repaired completely.

19                  MR. SCHAEFER: And again, now I'm going to  
20 object. It's hearsay.

21                  JUDGE MILLS: And I think it may be, but as  
22 you know, the technical rules of evidence don't apply at the  
23 Commission, and so the statement will be allowed into the  
24 record and given the weight that it is due.

25 BY COMMISSIONER MURRAY:

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1 Q. And when was the last time you were on the  
2 site yourself?

3 A. Friday.

4 Q. This Friday?

5 A. Yes, ma'am.

6 Q. What did you observe?

7 A. I was notified on Thursday of a fish kill from  
8 a customer at Incline Village. I immediately notified the  
9 Missouri Department of Natural Resources, and I also  
10 notified the Missouri Department of Conservation. The  
11 Missouri Department of Conservation agreed to meet me at the  
12 location on Friday. So I was there to assist him in any way  
13 I could, to give him the background in reference to that  
14 situation.

15 Q. Did you see anything that you would have  
16 considered either a discharge, an improper or illegal  
17 discharge or anything of that nature at the time?

18 A. No. I didn't go up to the actual plant and  
19 look at the discharge. I don't get into the technical  
20 operations of the facility. I rely upon the other  
21 employees, the Missouri Department of Natural Resources, the  
22 Public Service Commission and those individuals. I gather  
23 the facts.

24 Q. And when you say you gather the facts, you  
25 were gathering in this instance the facts about the fish



1 kill and --

2           A.       Really, in reality I was meeting the  
3 individual because he had never been at the location. He  
4 needed the background so that he could continue his  
5 investigation and eventually prepare a report. So that's  
6 the only reason I was there.

7           Q.       And when you say the individual, are you  
8 speaking about the DNR individual or the Conservation?

9           A.       Missouri Department of Conservation. It's my  
10 understanding DNR had been there previously, the prior day.

11                   COMMISSIONER MURRAY: I believe that's all I  
12 have. Thank you, Judge.

13                   JUDGE MILLS: Thank you. Commissioner Forbis.

14 QUESTIONS BY COMMISSIONER FORBIS:

15           Q.       I want to make sure you are talking about the  
16 fish kill with the Incline Village Lake?

17           A.       That is correct, sir.

18           Q.       Okay. So it's the same waters of the state  
19 and the nation we're talking about before?

20           A.       That is correct.

21           Q.       Did you see dead fish?

22           A.       Absolutely.

23           Q.       Large number, small number, your judgment?

24           A.       I can only give you my opinion, and it  
25 appeared to be a large number.

1 Q. But we're still waiting for any definitive  
2 findings from DNR with regard -- or Conservation yet, right?

3 A. That is correct, sir.

4 Q. So it's sort of an ongoing investigation right  
5 now?

6 A. That is correct.

7 Q. Do you have any sense how long these things  
8 take?

9 A. No.

10 Q. Okay. But they will inform you if they  
11 discover --

12 A. They will follow their procedures. I would  
13 like to think I'll be copied on their reports, which I have  
14 been in the past. And after I receive their information,  
15 I'll present that to the appropriate people.

16 COMMISSIONER FORBIS: Okay. Thank you.

17 JUDGE MILLS: Is there anything further from  
18 the Bench?

19 Seeing nothing, we will do a further round of  
20 cross-examination based on questions from the Bench.  
21 Mr. Krueger?

22 MR. KRUEGER: No questions, your Honor.

23 JUDGE MILLS: Mr. Schaefer?

24 MR. SCHAEFER: Thank you, Judge.

25 RE-CROSS-EXAMINATION BY MR. SCHAEFER:

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1 Q. Mr. Muschler, in discussing the fish kill on  
2 Friday, did you see any evidence at all that that fish kill  
3 was caused by a discharge from a treatment plant?

4 A. No, I didn't.

5 Q. Okay. Is it possible that that fish kill  
6 could be from the heat or some other source?

7 A. I don't have the information or the knowledge  
8 to answer your questions.

9 MR. SCHAEFER: Thank you. I have no further  
10 questions.

11 JUDGE MILLS: Thank you. Redirect,  
12 Ms. O'Neill?

13 MS. O'NEILL: Thank you.

14 REDIRECT EXAMINATION BY MS. O'NEILL:

15 Q. During the investigation, Mr. Muschler, of the  
16 initial complaint and of the probation violation, did you  
17 work in connection with DNR employees who were doing some  
18 testing?

19 A. I utilized their findings.

20 Q. So you were in communication with them about  
21 the results of their testing?

22 A. They reported their results of their testing  
23 to me.

24 Q. Okay. And --

25 A. Not only to me. Copied me.

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1 Q. And are you also aware of whether or not you  
2 and/or the DNR had contact with my office or the Public  
3 Service Commission Staff regarding the results of those  
4 tests?

5 A. I believe they were provided to Public Service  
6 Commission, that's correct.

7 Q. Now, in your investigation of the criminal  
8 matter, in gathering your facts, do you seek to determine  
9 whether or not the operator of a discharging system is aware  
10 of the discharge?

11 A. Yes, that's a fair statement.

12 Q. And in your investigation of the initial  
13 complaint in this case, did you have contact with Mr. Smith  
14 to determine whether he was aware of the discharge?

15 A. Yes, in this situation I did.

16 Q. And was Mr. Smith aware of the discharge?

17 A. He told me he was.

18 Q. And following that conversation, did you have  
19 later opportunity to see whether or not the discharge was  
20 continuing?

21 A. Yes, I did.

22 Q. And was the discharge still continuing?

23 A. Yes, it was.

24 Q. And was that several days later?

25 A. Yes, it was.

1 Q. And were these among the facts that you  
2 reported to the U.S. Attorney's Office so they could decide  
3 whether to pursue charges and what type of charges to  
4 pursue?

5 A. That is correct.

6 Q. And you said you believe that DNR has taken  
7 some -- done some testing perhaps regarding the fish kill  
8 that you investigated Friday?

9 A. The fish kill that I was on on Friday, yes,  
10 it's my understanding they have obtained some samples.

11 Q. Okay. And do you have reason to believe that  
12 when those testing results are completed, that you'll  
13 receive a copy of those?

14 A. Yes, I do believe so.

15 Q. Is that based on the working relationship you  
16 have regarding receiving these reports in this ongoing  
17 investigation?

18 A. No. That's based upon the fact I have to  
19 specifically request them and I did so.

20 Q. So you have specifically asked for these?

21 A. Yes. I am not normally on their copy list.

22 Q. But in this situation, you've asked to be on  
23 the copy list?

24 A. Yes, I have.

25 MS. O'NEILL: Thank you. I have nothing

1 further.

2 JUDGE MILLS: Thank you. Mr. Muschler, you  
3 may step down.

4 THE WITNESS: Thank you.

5 MS. O'NEILL: Your Honor, may this witness be  
6 excused?

7 JUDGE MILLS: Yes, I believe so.

8 (Witness excused.)

9 JUDGE MILLS: Ms. O'Neill, if you'd call your  
10 next witness, please.

11 MS. O'NEILL: Yes, your Honor. I'd call  
12 Barbara Meisenheimer, please.

13 (Witness sworn.)

14 JUDGE MILLS: You may be seated.

15 BARBARA MEISENHEIMER testified as follows:

16 DIRECT EXAMINATION BY MS. O'NEILL:

17 Q. Could you state your name, please.

18 A. Barbara Meisenheimer.

19 Q. And how are you employed?

20 A. I'm a Chief Economist with the Missouri Office  
21 of the Public Counsel.

22 Q. And as part of your duties with the Office of  
23 the Public Counsel, have you participated in the complaint  
24 case of the Office of the Public Counsel against Warren  
25 County Water and Sewer Company and Gary Smith?

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1           A.       Yes, I have.

2           Q.       And as part of your participation, did you  
3 prepare and cause to be filed direct testimony, supplemental  
4 direct testimony and surrebuttal testimony in this case?

5           A.       Yes, I did.

6           Q.       And is your direct testimony currently marked  
7 as Exhibit No. 2?

8           A.       I assume that it is.

9                   JUDGE MILLS: It is.

10                  THE WITNESS: Thank you.

11 BY MS. O'NEILL:

12           Q.       It is. And I will inform you, and if you have  
13 a question I'd be happy to show you the list, but do you  
14 also have supplemental direct testimony marked as Exhibit 3  
15 and surrebuttal testimony marked as Exhibit 4?

16           A.       I assume that they are.

17           Q.       Okay. And were your answers to the questions  
18 which you gave in what's marked as Exhibits 2, 3 and 4  
19 accurate and correct to the best of your knowledge?

20           A.       I have one correction, but in other respects,  
21 yes.

22           Q.       Okay. What is that correction?

23           A.       On page 5 of the supplemental direct  
24 testimony.

25           Q.       Which is 3, uh-huh.

1           A.       On line 1.

2           Q.       Yes.

3           A.       The date should be January 16th.

4           Q.       All right. In other respects, are the answers  
5 that you gave true and correct to the best of your  
6 knowledge?

7           A.       Yes.

8           Q.       And if I were to ask you the questions  
9 contained in these exhibits again today, would your answers  
10 be the same today?

11          A.       Yes, they would.

12                 MS. O'NEILL: At this point I would offer into  
13 evidence Exhibits 2, 3 and 4.

14                 JUDGE MILLS: Exhibits 2, 3 and 4 have been  
15 marked. Are there any objections?

16                 MR. KRUEGER: No objection.

17                 JUDGE MILLS: Hearing none --

18                 MR. SCHAEFER: I was waiting for Mr. Krueger.

19                 MR. KRUEGER: I have none.

20                 MR. SCHAEFER: I guess I have a few, Judge.

21 First of all, the testimony is fraught with hearsay.

22 There's extensive testimony, I believe, regarding

23 conversations and complaints, which is information from

24 other individuals who are not here.

25                 Additionally, Ms. Meisenheimer is an economist

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1 for the Office of the Public Counsel, and I don't believe  
2 she's qualified to testify as to the safety and adequacy of  
3 service of a water and sewer company. Therefore, I would  
4 object on those grounds.

5 JUDGE MILLS: Ms. O'Neill, do you have a  
6 response?

7 MS. O'NEILL: Yes. First of all, regarding  
8 the first objection regarding hearsay, information is  
9 normally gathered -- if you want, I can get this from  
10 testimony or I can just tell you that contact with customers  
11 and obtaining information from those sources for  
12 investigation is part of the duties of this office. I can  
13 get that from her testimony if you would prefer.

14 Second, the testimony that Ms. Meisenheimer is  
15 offering here today consists of two types of testimony. One  
16 is factual testimony regarding her actual observations, and  
17 the other is policy testimony that addresses requirements  
18 that regulated companies must comply with, including the  
19 requirement of safe and adequate service.

20 And she through the work with the Office of  
21 the Public Counsel does indeed investigate issues of safety  
22 and adequacy of service as part of those duties. I can ask  
23 those questions if you would prefer to do that.

24 JUDGE MILLS: Thank you. With regard to the  
25 objection as to hearsay, once again the technical rules of

1 evidence don't apply. The objection as to hearsay will go  
2 to the weight of the evidence rather than its admissibility.  
3 And so I will -- I will make note of the objection in terms  
4 of the hearsay statements in the testimony, but I will not  
5 refuse to admit it on those grounds.

6                   And in terms of the objection as to the  
7 qualification of the witness, I agree with Ms. O'Neill.  
8 Much of the testimony has to do with factual observations,  
9 and I don't believe there's anything of an overly technical  
10 nature here that any reasonable, intelligent, observant  
11 person could make regardless of their background and  
12 training.

13                   And in terms of the statements of policy, I  
14 think this witness is perfectly capable of testifying to the  
15 policy of the Office of the Public Counsel with respect to  
16 the provision of safe and adequate service. So I will  
17 overrule that objection, and I will allow Exhibits 2, 3 and  
18 4 into the record.

19                   (EXHIBIT NOS. 2, 3 AND 4 WERE RECEIVED INTO  
20 EVIDENCE.)

21                   MS. O'NEILL: I have no further questions at  
22 this time.

23                   JUDGE MILLS: Thank you. Cross-examination,  
24 Mr. Krueger.

25                   MR. KRUEGER: Thank you.

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1 CROSS-EXAMINATION BY MR. KRUEGER:

2 Q. Good morning, Ms. Meisenheimer.

3 A. Good morning.

4 Q. I'd like to go first to Exhibit 3, the  
5 supplemental direct testimony. You just corrected an error  
6 on page 5, and I wanted to check whether that date is now  
7 correct. It says that the visit was on January 16, 2001.  
8 Was that 2001 or 2002? Your supplemental direct testimony,  
9 page 5.

10 A. It was 2002.

11 Q. Okay.

12 A. I would then correct that throughout that  
13 group of questions in my testimony.

14 Q. Okay. Thank you.

15 Now, you stated in your direct testimony on  
16 page 2 that the trustees of Incline Village are willing and  
17 able to act as receivers, and that testimony was filed on  
18 September 26, 2001, more than eight months ago. Do you know  
19 if that statement is still true?

20 MR. SCHAEFER: I'm going to object in that it  
21 calls for hearsay.

22 JUDGE MILLS: Overruled.

23 THE WITNESS: It is my understanding that the  
24 homeowners association would prefer if a qualified operator  
25 were to take over the system. They were at that time

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1 willing to take that responsibility if necessary to have  
2 control of the assets and operation of the company under  
3 different management. I --

4 BY MR. KRUEGER:

5 Q. I'm sorry. Go ahead.

6 A. I under-- or it is my understanding that they  
7 have been seeking other operators that might be willing to  
8 assume operation of the system. I have not heard that as a  
9 last resort that they would not assume that responsibility  
10 at this time.

11 Q. I think in your answer now you mentioned the  
12 homeowners association in your testimony you referred to the  
13 trustees. Is that the same entity or --

14 A. Yes, the Incline Village Board of Trustees.

15 Q. Okay. And how did you determine that they're  
16 willing to act as receivers?

17 A. I participated in one meeting where they came  
18 and visited us in our office. I participated in another  
19 meeting with an individual member at Incline Village. So on  
20 two different occasions I've been a participant in meetings  
21 where that was expressed as a possibility. However --

22 MR. SCHAEFER: I'm going to object to the  
23 testimony that she's -- she's offering out-of-court  
24 statements to prove the truth of the matter asserted and I  
25 believe it's hearsay.

1 JUDGE MILLS: So noted. Overruled.

2 BY MR. KRUEGER:

3 Q. And what leads you to the conclusion that  
4 they're able to serve as receivers?

5 A. I want to make clear that at this time Public  
6 Counsel is not recommending specifically that they be  
7 appointed receivers. We would like an opportunity to review  
8 the qualifications of any potential receiver before making a  
9 specific recommendation. I believe that my surrebuttal  
10 testimony speaks to that.

11 At that time, they were discussing with an  
12 operator of other systems that lived in Incline Village  
13 potentially running the system for them.

14 Q. Okay. Do you believe that the trustees of  
15 Incline Village are able to act as receivers?

16 A. I believe that if -- I believe that there is a  
17 strong likelihood that they could, with the help of a  
18 licensed operator, perform that function.

19 Q. You also mention in your testimony that the  
20 trustees have found a qualified operator. What evidence do  
21 you have to support that claim that they have found a  
22 qualified operator?

23 A. Once again, I would note that we are offering  
24 that as a potential alternative. The individual, whose name  
25 is John Mainard, he was an operator of other systems. Our

1 Staff had reviewed information including a resume provided  
2 to us by an Incline Village member of the board of trustees.

3 MR. SCHAEFER: Judge, can I just have a  
4 running objection to this? I believe now she's testifying  
5 as to someone's qualification who's not here. We have no  
6 way of dealing with that. So I just would like it on the  
7 record that we are objecting to the hearsay.

8 JUDGE MILLS: Well, I'm going to have to  
9 disagree with you that this is hearsay. She's objecting to  
10 her opinion of the witness' qualifications based on a  
11 resume. I don't believe that that is hearsay.

12 And so if you want to -- I don't think I can  
13 have a running objection to hearsay without knowing right up  
14 front that I'm going to agree that it is hearsay.

15 So I think you're going to have to object  
16 every time you think it is hearsay, because if you were  
17 going to object to that last statement I would not -- I  
18 would not consider it to be hearsay and I would overrule the  
19 objection on that grounds.

20 MR. SCHAEFER: Judge, I believe she's  
21 testifying as to the truth of someone's qualifications from  
22 a resume, which is an out-of-court statement that we don't  
23 have here today, but I just -- rather than constantly  
24 interrupting, I could have an ongoing objection, but I'll  
25 just go ahead and keep objecting.

1 JUDGE MILLS: I understand, and I would prefer  
2 that, too, but I'm not sure that we can do that.

3 MR. SCHAEFER: Thank you, Judge.

4 BY MR. KRUEGER:

5 Q. Are you asking the Commission to decide in  
6 this case when it issues its Report and Order who should be  
7 the receiver?

8 A. No, we are not.

9 Q. So you're not recommending any specific  
10 individual?

11 A. That's correct.

12 Q. You stated in your surrebuttal testimony that  
13 Public Counsel can make additional suggestions regarding  
14 potential receivers. Are you able to now do that?

15 A. We are aware of an additional company that has  
16 been contacted and expressed some interest in negotiations.  
17 We would like the opportunity to comment at the time that  
18 the Commission considers who might be specifically an  
19 appropriate receiver. We would like -- we would prefer not  
20 at this time to preclude other potential receivers that may  
21 be identified.

22 Q. Do you have any additional names that you want  
23 to mention at this time?

24 A. I believe there have been discussions with a  
25 nearby public water supply district, and the operation is

1 run by Alliance on behalf of the public water supply  
2 district. It's a nearby provider.

3 Q. And is this someone that Public Counsel would  
4 recommend as a -- for consideration?

5 A. For consideration.

6 Q. Do you have information about the status of  
7 negotiations for the sale of the company?

8 A. No, I do not. What I can say regarding that  
9 is that in surrebuttal testimony I believe that Mr. Smith  
10 suggested that a potential sale wasn't likely, that based on  
11 incorrect facts that were given to the Staff, that he didn't  
12 see that that was a potential outcome at that time.

13 The first that I really knew of these  
14 potential negotiations was what was filed in the motion very  
15 recently for continuance in this hearing, and I have not  
16 been a participant in any discussions regarding acquisition  
17 of the company's assets or a specific receiver. So while I  
18 appreciate that perhaps those are going on, it's not  
19 something that Public Counsel is comfortable with in terms  
20 of delaying this action.

21 Q. Do you have specific knowledge of any company  
22 that Mr. Smith is negotiating with for the sale of the  
23 company?

24 A. I'm sorry, I don't.

25 Q. Do you have knowledge about negotiations with



1 a management company to come in and operate the company's  
2 system?

3 A. No, I don't.

4 Q. In your surrebuttal testimony at page 9,  
5 line 4, you refer to the deposition of Paul, I don't know if  
6 it's Miller or Mueller. Now, is that the same as his  
7 surrebuttal testimony?

8 A. Yes, it is.

9 Q. Prefiled surrebuttal testimony?

10 A. His deposition was incorporated in his  
11 testimony on behalf of Public Counsel.

12 MR. KRUEGER: Thank you. That's all the  
13 questions we have.

14 JUDGE MILLS: Mr. Schaefer, do you have any  
15 extensive cross-examination?

16 MR. SCHAEFER: Not extensive.

17 JUDGE MILLS: We will go ahead with that and  
18 then we'll take a short recess.

19 CROSS-EXAMINATION BY MR. SCHAEFER:

20 Q. Ms. Meisenheimer, you're an accountant,  
21 correct?

22 A. No, I'm not an accountant.

23 Q. I'm sorry. You are --

24 A. I'm an economist.

25 Q. Economist. Okay. But you act as an

1 accountant for the Office of the Public Counsel; is that  
2 correct?

3 A. No, that's not correct.

4 Q. You act as an accountant?

5 A. No, I do not act as an accountant. I act as  
6 an economist with the Office of the Public Counsel.

7 Q. And you're not an engineer?

8 A. No, I'm not, although I've had some  
9 engineering classes.

10 Q. Okay. But you're not a licensed engineer in  
11 the state of Missouri, are you?

12 A. No, I'm not.

13 Q. Do you have any experience in running a water  
14 or sewer company?

15 A. No, I don't.

16 Q. Have you ever testified in a sewer case?

17 A. No, I have not.

18 MR. SCHAEFER: I have no further questions,  
19 Judge. Thank you.

20 JUDGE MILLS: Thank you. We're going to take  
21 a ten-minute recess, and then we'll come back and we'll do  
22 questions from the Bench followed by a further round of  
23 cross-examination and redirect.

24 We're off the record.

25 (A RECESS WAS TAKEN.)

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1 JUDGE MILLS: We're now back on the record.

2 Ms. O'Neill, go ahead.

3 MS. O'NEILL: Yes. Before we proceed, I just  
4 wanted to inform your Honor and the Commission that we  
5 appear to be moving more rapidly, which is not a bad thing,  
6 which is a good thing. I do have two witnesses who are  
7 subpoenaed for tomorrow that I am attempting to contact.  
8 One I have contacted. He's in Lincoln County, and he can be  
9 here this afternoon. The other one who's in St. Louis we're  
10 still attempting to contact to see whether or not they can  
11 be here this afternoon.

12 I anticipate that after Ms. Meisenheimer and  
13 Ms. Bolin that we would still have time to put on at least  
14 one of the DNR witnesses, who is Mr. Mueller, and he will be  
15 available this afternoon.

16 We may be requesting to break early if I can't  
17 get Mr. Daugherty here. His subpoena was for tomorrow. We  
18 really did anticipate this being a lot longer proceedings  
19 today. I just want to advise you of that.

20 JUDGE MILLS: I hate to -- if we're moving  
21 that quickly, I hate to just break for the afternoon. Would  
22 it be possible to go out of order and take all the Staff  
23 witnesses?

24 MS. O'NEILL: I have no problem with that.

25 MR. KRUEGER: I have no problem with that,

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1 your Honor.

2 JUDGE MILLS: Mr. Schaefer?

3 MR. SCHAEFER: Judge, I do have an objection  
4 to continuing this to another day if it's not necessary.  
5 We're trying to keep the expenses for Mr. Smith and the  
6 company down as low as possible. I believe that's why we  
7 renewed our Motion for Continuance this morning, and we  
8 would object to anything that's going to allow this to go on  
9 to another day when it doesn't have to, I believe.

10 JUDGE MILLS: Would you object to taking the  
11 Staff witnesses out of the agreed-upon order if it will help  
12 us move along?

13 MR. SCHAEFER: If it would help us move along  
14 today, I have no problem. If it's going to cause the  
15 proceeding to continue into tomorrow, I do have an objection  
16 to that.

17 JUDGE MILLS: Well, Ms. O'Neill, do what you  
18 can to get them here. I note that the parties did agree  
19 that they're going to make witnesses available to testify  
20 immediately following the conclusion of the testimony by the  
21 preceding witness. I think we should move this along, and  
22 if -- whatever. Do what you can, and if we get to a point  
23 where you don't have witnesses and we have time left, we'll  
24 have to deal with that when we get there.

25 COMMISSIONER MURRAY: Judge, may I ask, was

1 this -- this is scheduled for three days; is that correct?

2 JUDGE MILLS: I believe it's scheduled for  
3 four.

4 COMMISSIONER MURRAY: Okay. Thank you.

5 JUDGE MILLS: Let's see. We were up to  
6 questions from the Bench for Public Counsel witness  
7 Meisenheimer. Chair Simmons.

8 CHAIRMAN SIMMONS: Thank you.

9 QUESTIONS BY CHAIRMAN SIMMONS:

10 Q. Good morning.

11 A. Good morning.

12 Q. Ms. Meisenheimer, let me ask you just a few  
13 questions here, and the first question I'm going to ask you  
14 is, how many times did you visit the facilities that are in  
15 question?

16 A. I visited them on three different occasions.  
17 In addition, I attended the public hearing.

18 Q. Okay. And when was the last time you visited  
19 the facilities in question?

20 A. I believe it was at the public hearing.

21 Q. Public hearing. Give me that time frame.

22 A. Was it March 11th, 2002?

23 Q. March 2002.

24 A. And I can verify that date for you if that  
25 would be helpful.

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1           Q.       I seem to remember a March date, I believe, in  
2 your testimony.

3           A.       That is correct.

4           Q.       Okay. Very good.

5                    I believe it's page 3 of your direct  
6 supplemental testimony, you talk about road cuts, is that  
7 it, and you also have a picture and an exhibit of a road  
8 cut?

9           A.       Yes, I included two pictures of different cuts  
10 in my supplemental direct testimony.

11          Q.       And talk to me about the significance of the  
12 road cuts.

13          A.       We had received customer complaints regarding  
14 road cuts. There is other testimony presented in this case,  
15 I believe, attached to Kim Bolin's testimony where there are  
16 complaints from consumers regarding road cuts. The problem  
17 is, is that the road is not left in similar condition as it  
18 was prior to work being done.

19          Q.       Okay. Would that have been the responsibility  
20 of the company to repair those roads in the way that would  
21 put it back in the condition that it was prior to the cut?

22          A.       I believe so, to put it back to where it  
23 wasn't a problem in terms of the road having big potholes in  
24 it, things like that.

25          Q.       Okay. Thank you.

1                   Now, in your testimony you also make reference  
2 to improvements that the company made. Is it your  
3 contention or your testimony that the company did make some  
4 improvements after they were notified to make certain  
5 improvements?

6           A.       I did acknowledge in my testimony that the  
7 company had remedied some of the things that had been  
8 mentioned in previous rounds of my testimony. For example,  
9 there was a fence that provided screening, some level of  
10 screening if you will, constructed around one of the lift  
11 stations that we had visited on a previous visit. There  
12 were fence panels replaced at one point on one of the  
13 treatment plants.

14                   JUDGE MILLS: Ms. Meisenheimer, I hate to  
15 interrupt. Can you please move the microphone closer?  
16 Thank you.

17                   THE WITNESS: However, those are things that  
18 we would have certainly hoped would have been done on a more  
19 regular basis in terms of the fence repairs. And also there  
20 were a number of things that we felt were not corrected,  
21 such as the fence on the Treatment Plant 2, the fence was  
22 actually in worse condition on the second and third visit  
23 than it had been on the first.

24 BY CHAIRMAN SIMMONS:

25           Q.       I believe in your surrebuttal testimony,

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1 page 3, you also talk about the fact that I believe you say  
2 that Mr. Smith and the company still refuses to comply with  
3 Commission rules and state and federal law. Could you give  
4 me an example of how you reached that conclusion and rules  
5 and law that Mr. Smith in your opinion refuses to comply  
6 with those orders?

7           A.       I relied on the testimony provided by expert  
8 witnesses, Mr. Muschler that was here before me from EPA. I  
9 relied on testimony from DNR regarding fencing rules, for  
10 example, and the condition that the plants are supposed to  
11 be maintained in.

12                   I relied upon your own Staff experts.  
13 Mr. Loethen I believe has actually been an operator and has  
14 provided significant testimony regarding his belief about  
15 safe and adequate service of the company. I believe that  
16 Mr. Merciel, who is also going to be a witness on behalf of  
17 your Staff, identified a number of rules that he felt that  
18 the company may have violated, and then I spoke in my own  
19 testimony regarding that. So that is the basis for my  
20 discussion.

21           Q.       Okay. And we talk about the violation being  
22 one thing, and so that is I'm going to say at an earlier  
23 point in time, and then at another point in time I guess we  
24 have a situation where in your testimony you say he still  
25 refuses. So I guess that at some point in time afterwards



1 there would have been a situation where he did not comply  
2 and knowingly refused to comply; is that what we're saying?

3       A.       I believe that that is the case based on the  
4 testimony of the other expert witnesses and what I observed.

5       Q.       Okay. On page 8 of your surrebuttal direct  
6 testimony, I believe you talk about business practices being  
7 deficient. Could you elaborate on that in terms of what  
8 business practices you believe were deficient that gets to  
9 the issues of safe and adequate services?

10       A.       Well, certainly a fundamental part of being  
11 able to provide safe and adequate service is that you are  
12 able to justify the rate increases, if they are necessary,  
13 to maintain your facilities to, in this case, for example,  
14 construct a new water tower to ensure that there is an  
15 adequate supply of water. And so certainly maintaining  
16 adequate records that distinctly identify the costs and  
17 revenues associated with the regulated utility are an  
18 important component.

19               Safe and adequate service in my mind also  
20 includes customer care components, such as, for example, a  
21 customer should be billed for the proper amount at the  
22 proper time.

23               CHAIRMAN SIMMONS: Thank you. That's all the  
24 questions I have.

25               JUDGE MILLS: Thank you. Commissioner Murray.

1 COMMISSIONER MURRAY: Thank you.

2 QUESTIONS BY COMMISSIONER MURRAY:

3 Q. Good morning.

4 A. Good morning.

5 Q. In your work as an economist for the Office of  
6 the Public Counsel, do you regularly provide testimony  
7 related to such things as cost shifting or allocation  
8 between regulated entities and unregulated affiliates of the  
9 companies that the public service company regulates?

10 A. Yes. At various times in my employment for  
11 Public Counsel I've provided testimony regarding cost  
12 shifting, that -- there were a few cases in  
13 telecommunications where those types of issues were raised  
14 and were addressed and I provided testimony. Also, in  
15 natural gas there were issues related to potential cost  
16 shifting.

17 Q. And the Office of the Public Counsel, would  
18 you define what the Office of the Public Counsel's role is  
19 before the Public Service Commission?

20 A. We represent investor-owned utility consumers  
21 before the Public Service Commission.

22 Q. And is a part of your charge to provide the  
23 Public Service Commission with information as to whether the  
24 consumers are receiving safe and adequate service at just  
25 and reasonable rates?

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1           A.       Absolutely.

2           Q.       And in this particular instance with the  
3 company that you have filed the complaint against, is it  
4 your position that the consumers are not receiving safe and  
5 adequate service at just and reasonable rates?

6           A.       Yes.

7           Q.       And I believe you have provided some testimony  
8 about some cost shifting and some transfer of assets between  
9 regulated entities and unregulated affiliates; is that  
10 correct?

11          A.       Yes. I provided a theoretical discussion from  
12 an economist's perspective on the potential dangers of cost  
13 shifting and on the importance of ensuring that the  
14 regulated customers are not being charged for costs  
15 associated with nonregulated operations and are, in fact,  
16 paying sufficiently to cover the prudently incurred  
17 regulated costs.

18          Q.       And is it your position that -- let me ask you  
19 this: Of these three choices, is it your position that,  
20 one, the company is providing service in a way that has the  
21 customers paying just what they should be paying; two, that  
22 the company is not providing that kind of service; or three,  
23 that with the records that the company is keeping, it is  
24 impossible to know?

25          A.       It is in my opinion, it is impossible to know,

1 and that is based on the Staff's report regarding the most  
2 recent attempt at an audit when the company was requesting a  
3 rate increase.

4 Q. And is it Public Counsel's position that it is  
5 important for regulated utilities to keep -- to do adequate  
6 recordkeeping so that those costs and allocations can be  
7 accurately tracked and charged to the appropriate entities?

8 A. It is essential. It is their responsibility,  
9 and it is something that you must rely on to make  
10 appropriate decisions regarding just and reasonable rates.

11 Q. All right. And then you visited -- you had  
12 occasion to visit this site four different times as I  
13 understand what you're saying, correct?

14 A. Yes, that is correct.

15 Q. And your first visit was -- the reason you  
16 went to the site the first time was because you had received  
17 customer complaints; is that correct?

18 A. That is correct, and I accompanied Ruth  
19 O'Neill.

20 Q. Okay. And you also provided in your testimony  
21 a copy of the Code of State Regulations related to small  
22 sewage works; is that correct?

23 A. A portion of it, yes, I did.

24 Q. And you had some brackets around some of the  
25 sections that you provided. On the very last page of the

1 Code of State Regulations that is attached to your  
2 surrebuttal testimony, you had a large bracket down the  
3 whole third column on that page. Do you see that?

4 A. Yes.

5 Q. Now, under 11A it states, All wastewater  
6 treatment facilities must be fenced sufficiently to restrict  
7 entry by children, livestock and unauthorized persons as  
8 well as to protect the facility from vandalism.

9 Now, as an economist, can you tell whether a  
10 property is fenced?

11 A. As a reasonably intelligent human being, I can  
12 determine whether an area is fenced.

13 Q. And also, would you be able to determine that  
14 whether the fence is sufficient to prevent entry by  
15 children, livestock or any unauthorized person?

16 A. Yes. And in my direct testimony where I  
17 provided photos regarding the fencing, specifically I stood  
18 beside the fence where there was a panel missing. It's  
19 picture No. 7, and it's in Attachment BAM-1 on page 2. I  
20 specifically stood beside that to give you a sense of  
21 whether you felt a small child could crawl through that, and  
22 I certainly believe that they could.

23 Q. All right. Also, at 11G on that same page of  
24 the Code of State Regulations it states, At least one  
25 warning sign shall be placed on each side of the facility

1 enclosure in such positions as to be clearly visible from  
2 all directions of approach.

3           Were you able to observe whether there were  
4 warning signs posted?

5           A.       At the facilities, I did observe a warning  
6 sign, but certainly not in compliance with this rule as  
7 stated. There were not warning signs on each side of the  
8 fence.

9           Q.       All right. And on page 9, that's the easiest  
10 way to refer to it, I believe, if you go just back one page  
11 in the 10 Code of State Regulations 20.8, and on page 9  
12 there that you had attached you have a bracket around a  
13 paragraph 10?

14          A.       Yes.

15          Q.       And that is alarm systems. Did you observe  
16 whether there were alarm systems?

17          A.       There were malfunctioning alarm systems that I  
18 observed in some cases.

19          Q.       How did --

20          A.       I'm sorry.

21          Q.       I'm sorry. I cut you off. Go ahead and  
22 finish.

23          A.       On each of the visits there were things that I  
24 noticed regarding the electrical boxes and the alarm  
25 systems. On the first visit we were accompanied by members

1 of the Commission's Staff as well as Vic Muschler who just  
2 recently testified before you, and Jim Merciel, in fact,  
3 tried to manually test the alarm system at one of the lift  
4 stations and that was not operational.

5           On other visits, the alarm systems -- or the  
6 alarm system at Shady Oaks appeared not to be functioning.

7           Q.       Was the Office of the Public Counsel notified  
8 of the fish kill that Mr. Muschler investigated last Friday?

9           A.       Our investigator was informed.

10          Q.       Informed by a customer or by DNR, EPA or the  
11 Department of Conservation?

12          A.       That contact was made with your attorney, Ruth  
13 O'Neill, and I was only made aware of it through a brief  
14 discussion. I'm sure that I would learn more about it once  
15 there were additional information from the investigation.

16          Q.       All right. Now, in regard to the motion that  
17 was filed by the company to delay this proceeding pending a  
18 negotiated -- or negotiations for a sale, do you have any  
19 reason to believe or know that that is other than for the  
20 purpose of delay?

21          A.       No, I don't. We have been at this -- I filed  
22 my direct testimony in September of 2001, and there has been  
23 ample time, I believe, for the company to come forward and  
24 attempt to offer potential management changes, to offer to  
25 attempt to sell the assets, and the first admission that the

1 company was willing to move forward with these things was  
2 one business day ago.

3           So you know, I certainly can't read the mind  
4 of the company's management, but it is imperative in Public  
5 Counsel's opinion that we keep this ball rolling.

6           Q.       And Public Counsel had indeed lined up some  
7 witnesses from various locations from the Environmental  
8 Protection agency, Department of Natural Resources and your  
9 own Staff for this proceeding; is that correct?

10          A.       Yes, and have -- you know, we have brought  
11 them from St. Louis and asked the Commission to go ahead and  
12 let us proceed given that there was only one day.

13          Q.       On page 14 of your surrebuttal testimony,  
14 you -- there in summarizing Public Counsel's position in  
15 this case, you stated the first step to correcting a problem  
16 is to acknowledge that the problem exists. However, this  
17 company has failed to even take that first step. Instead,  
18 its testimony constitutes little more than finger pointing  
19 at the Staff, its customers and Public Counsel. The company  
20 offers no appropriate proposals for correcting the  
21 deficiencies identified in Public Counsel's complaint. We  
22 ask this Commission not to give this company any more  
23 chances because the customers have waited long enough for  
24 the relief they deserve.

25               Do you see that in your testimony?



1 A. Yes.

2 Q. And this testimony was filed on April 24th,  
3 2002; is that correct?

4 A. Yes, that's correct.

5 Q. And at that time nothing -- the company had  
6 offered no proposed solutions; is that right?

7 A. That is correct, and I believe at the same  
8 time the company filed testimony that indicated that they  
9 did not feel that it was going to be an option to sell the  
10 company.

11 Q. So this latest proposal one business day ago  
12 to delay these proceedings in order to allow the company to  
13 proceed with a negotiation for sale, even if it is sincere,  
14 would you say it might be something like a day late and a  
15 dollar short?

16 A. I think that's an apt characterization.

17 COMMISSIONER MURRAY: Thank you. I have no  
18 other questions.

19 JUDGE MILLS: Commissioner Forbis.

20 COMMISSIONER FORBIS: Yes, thank you.

21 QUESTIONS BY COMMISSIONER FORBIS:

22 Q. Good morning.

23 A. Good morning.

24 Q. Try not to sound like my cold is overwhelming  
25 me. It's getting better actually.

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1                   Just a couple of sort of random questions  
2 wandering around through your testimony here. I think you  
3 mentioned to Chair Simmons that you had been back on site in  
4 March when the public hearing happened?

5           A.       That's correct.

6           Q.       Have you or has anyone else from OPC been back  
7 since that time?

8           A.       I think that perhaps Ruth O'Neill had made an  
9 additional trip back, and I'm not sure other than that. I  
10 work generally on other issues than do our other staff  
11 members that are participating in this hearing, but you  
12 might be able to ask Kim Bolin also when she's on the stand.

13          Q.       So some of these issues might have been  
14 corrected in the interim months, some of the fence, gaps in  
15 the fence and that sort of thing, possibly?

16          A.       That is possible, and I -- you may also want  
17 to ask Steve Loethen of your staff. I believe that he has  
18 attempted to visit the company on a fairly regular basis.

19          Q.       Okay. Thanks.

20                   You talked a lot, I think, especially in your  
21 direct testimony, about a lot of safety concerns. I  
22 actually agree that -- share your concerns, but are all of  
23 them necessarily rule violations? I read in some of the  
24 attachments you had with those excerpts from rules, like the  
25 fence and the sign, but there were also statements about a

1 plywood cover over a station as opposed to a metal cover, no  
2 lock on electrical outlet. Are those rule violations or are  
3 those safety concerns?

4           A.       Well, I believe that perhaps a discussion of a  
5 lock certainly might be. The actual material which the  
6 cover is made from, I relied upon a discussion with Steve  
7 Loethen from your staff that I had prior to preparing  
8 testimony about the reasons for recommending that that be of  
9 metal.

10          Q.       Maybe just more follow-up with Mr. Loethen?

11          A.       Yes.

12          Q.       Okay. And the final question I had was back  
13 again to the notion of selling the company or bringing in  
14 management, someone to manage the company in the interim.  
15 We've talked a lot about a receiver. Does OPC have a  
16 position should, in fact, a management -- a different  
17 manager be found in the interim pending a sale, would that  
18 be an acceptable outcome?

19          A.       We think that it is a necessary outcome.  
20 However, we believe that the Commission should move forward  
21 with seeking authority from the Circuit Court to appoint a  
22 receiver that would in turn retain a qualified operator if  
23 that particular receiver weren't qualified to actually  
24 operate the facilities itself.

25          Q.       But say if in the next week or three days

1 someone showed up and said, I'm the new management, manager  
2 of this water company pending sale, would that be  
3 acceptable, depending on who it might be?

4       A.       In Public Counsel's opinion, no, it would not  
5 be sufficient that the process end there and we simply take  
6 the company's word for it that they're eventually going to  
7 find different ownership for the assets. The company has  
8 had years to maintain the fences properly, to lock things  
9 up.

10               And, you know, there's a question as to  
11 whether the company is viable in terms of their financials  
12 to continue to run the system and to hire management. I  
13 mean, those are all things that I believe need to be  
14 taken -- need to have a very close look taken at them, but  
15 we strongly believe that these consumers have been asked to  
16 wait time and time again for action to be taken on their  
17 behalf. The company has not done that, and we're asking  
18 that the Commission move forward and do that.

19       Q.       I just want to make sure. I think you said  
20 this to Mr. Krueger earlier. You don't have any knowledge  
21 of the entities, the parties that they are talking to or  
22 they say that they're talking to? You don't know who those  
23 are?

24       A.       I did the read motion that was filed. I do  
25 not remember any specific names being mentioned at that

1 time. I remember that there was a discussion of that  
2 perhaps they had been talking to Staff about potential  
3 management, potential change of ownership. However, we were  
4 not brought into those conversations, which I certainly hope  
5 we would be, given that it's our complaint.

6 COMMISSIONER FORBIS: Okay. Thank you.

7 JUDGE MILLS: Is there anything further from  
8 the Bench? Commissioner Murray?

9 FURTHER QUESTIONS BY COMMISSIONER MURRAY:

10 Q. Ms. Meisenheimer, how long have you been with  
11 the Office of the Public Counsel?

12 A. Over six years.

13 Q. Were you a part of the discussions at all that  
14 resulted in settlement with the water company in 1996 to  
15 provide additional storage?

16 A. I was not part of the discussions. However, I  
17 have reviewed a great deal of material related to the water  
18 tower issue.

19 Q. Okay. And in that review, did you see that  
20 the company had agreed to provide additional storage for the  
21 facility?

22 MR. SCHAEFER: I'm going to be. I don't  
23 believe she -- she's testified she doesn't have any personal  
24 knowledge. She may have reviewed those discussions, but I  
25 believe she doesn't have any personal knowledge as to this

1 issue.

2 JUDGE MILLS: Well, it was a docketed case,  
3 and there was a great deal of information filed in that  
4 case. If that is the information on which she's relying, I  
5 think she can tell us what she knows and how she got to know  
6 it. I'm going to overrule the objection.

7 THE WITNESS: I have reviewed material from  
8 previous cases regarding where there was discussion of the  
9 water tower. I've reviewed Commission Orders where there  
10 were statements regarding the water tower. And I'm sorry,  
11 but at this point I've forgotten the question.

12 BY COMMISSIONER MURRAY:

13 Q. My question was, did you in your review see  
14 anything where the company had stipulated and agreed to  
15 provide additional storage?

16 A. Yes, they had, and something that I remember  
17 specifically from that was that the company in that  
18 stipulation, one of the components was that, in fact, that  
19 was necessary. Despite the concept of an expanded area,  
20 there was a need for it with the existing service territory,  
21 and I believe that's consistent with what Jim Merciel has  
22 testified to.

23 Q. And that was in 1996; is that right?

24 A. The settlement -- I'm trying to remember the  
25 specific date of that settlement.

1           Q.       If I told you that Ms. O'Neill stated that it  
2 was 1996 in her opening statement, would you have any reason  
3 to doubt that?

4           A.       I would not.

5           Q.       And also, do you know whether any additional  
6 storage has ever been added?

7           A.       I don't believe that it has.

8           Q.       Okay. Do you know whether there has been  
9 growth in that area since 1996?

10          A.       Yes, there has. There's been significant  
11 growth. I had reviewed information from other witnesses,  
12 and in particular on Kim Bolin's -- in her direct testimony  
13 on behalf of our office on page 6.

14                 MR. SCHAEFER: Before we go any further, I'm  
15 going to object that it's improper bolstering. She's  
16 testifying from the testimony of other witnesses.

17                 JUDGE MILLS: I think she's referring to the  
18 testimony of another witness in order to answer the  
19 Commissioner's question. I'm going to overrule the  
20 objection.

21                 THE WITNESS: On page 6 of that testimony, it  
22 is reported that the company provided water to 155 homes  
23 which had come on since 1996, bringing the total, I guess,  
24 at the time of this -- or actually based on December 31st of  
25 2000 to something like 325 residential customers.

1 BY COMMISSIONER MURRAY:

2 Q. So if there was a need for additional storage  
3 in 1996, I would assume that the need would be much greater  
4 now with an additional 155 homes?

5 A. Absolutely. I mean, I did some back of the  
6 envelope calculations, which I believe I'm qualified to do  
7 given that I have a math degree, and when I did the  
8 calculation based on the same formula that the Department of  
9 Natural Resources appeared to use, I got something like that  
10 the average daily usage was easily four-fold as an estimate  
11 based on the common usage of what the tower currently holds.

12 COMMISSIONER MURRAY: Thank you very much.

13 JUDGE MILLS: Is there anything further from  
14 the Bench?

15 We'll do a round of -- a round of additional  
16 cross-examination based on questions from the Bench.

17 Mr. Krueger?

18 MR. KRUEGER: No questions.

19 JUDGE MILLS: Mr. Schaefer?

20 MR. SCHAEFER: Yes, I believe I have a few.

21 RE-CROSS-EXAMINATION BY MR. SCHAEFER:

22 Q. Ms. Meisenheimer, you testified regarding the  
23 road cuts?

24 A. Yes.

25 Q. And you believe that that was the utility's



1 responsibility to repair those road cuts?

2           A.       I believe it's the utility's responsibility to  
3 take the pipe to the customer premise, and so, yes, to the  
4 extent that the company put the cut across the road, I think  
5 it's their responsibility to repair it.

6           Q.       Okay. Can you cite to me what provision of  
7 regulation or statute for the regulation of the utility  
8 which requires them to do those road cuts and repair those  
9 road cuts?

10          A.       I believe that their tariffs actually say that  
11 they will -- that they will place facilities to the customer  
12 premise at the meter, I believe, and that that in turn makes  
13 them responsible for repairing the roads that they damage.

14          Q.       So you believe it's part of -- it's your  
15 testimony as part of their tariff they're responsible for  
16 fixing those road cuts?

17          A.       I would say that's fair, yes.

18          Q.       You've been following the federal case that  
19 was referred to by Mr. Muschler, haven't you?

20          A.       I know certain things about it. I certainly  
21 wouldn't say that I have been following it, no.

22          Q.       You testified that Mr. Smith has not taken  
23 responsibility for any of the myriad of things that you're  
24 alleging; is that true?

25          A.       I didn't say for any of the myriad of things

1 that we are alleging. In fact, I attempted in my testimony  
2 to identify areas where the company did take minimal  
3 measures to correct issues that we have brought to the  
4 Commission's attention in previous rounds of testimony.

5           But as a whole, we don't think that the  
6 company has or is capable of at this time remedying the  
7 things that cause it to provide unsafe and inadequate  
8 service.

9           Q.       But you are aware that -- in regards to the  
10 allegations in the federal case that Mr. Muschler testified  
11 to, are you aware that Mr. Smith has accepted responsibility  
12 for those issues?

13          A.       I know there was a settlement to some fact --  
14 or there was a settlement where there were Findings of Fact  
15 perhaps. I'm not an attorney and, I mean, I can say  
16 generally what I understand it to be, but --

17          Q.       Well, my question is, are you aware that he  
18 took responsibility for the issues in that case?

19          A.       There was a settlement, I believe, agreeing to  
20 certain things and for certain purposes.

21          Q.       So again, I know you're aware of a settlement,  
22 but is it your understanding, do you know that he took  
23 responsibility for those actions?

24          A.       I believe that I do recall that he agreed to  
25 admit certain of the allegations that were made in that

1 proceeding, but I would point to the motion that was filed  
2 last week where, in fact, I believe it specifically said  
3 that the company was not at this time admitting to any of  
4 the things in Public Counsel's complaint. If someone has  
5 that motion, I'd be happy to review it.

6 Q. Which motion are you referring to?

7 A. I believe it was filed on Thursday perhaps.

8 Q. Reasserting the position that there are things  
9 in the complaint that Mr. Smith does not agree with,  
10 correct?

11 A. Well, I thought that you were asking me if he  
12 is acknowledging responsibility for --

13 Q. I asked you, my question to you was, in the  
14 federal case, which Mr. Muschler testified to and I believe  
15 you've also brought up, my question to you was, are you  
16 aware that he had taken responsibility for the actions  
17 alleged in that case?

18 A. Admitted, I would agree to.

19 Q. Thank you. Now, Ms. Meisenheimer, you're not  
20 a safety inspector, are you?

21 A. No.

22 Q. Have you ever been trained as a safety  
23 inspector?

24 A. Not for this purpose, no.

25 Q. Okay. How many other facilities have you

1 conducted safety inspections of other than Warren County  
2 Water and Sewer?

3 A. None. However, I would say that the pictures  
4 that are in my testimony speak for themselves.

5 MR. SCHAEFER: I have no further questions.

6 JUDGE MILLS: Thank you. Redirect,  
7 Ms. O'Neill?

8 MS. O'NEILL: Thank you.

9 REDIRECT EXAMINATION BY MS. O'NEILL:

10 Q. Ms. Meisenheimer, you're not disputing that  
11 Mr. Smith pled guilty to the felony charge in that case, are  
12 you?

13 A. No.

14 Q. Now, you have not done an audit of this  
15 company's books; is that right?

16 A. I have not, no. I'm not an accountant.

17 Q. And you had some discussion with, I believe,  
18 with Commissioner Forbis about financial viability of the  
19 company. Is that including your concerns that you've  
20 testified to on a policy basis about the commingling of the  
21 various business entities that Mr. Smith operates?

22 A. Yes, it is.

23 Q. And those, in fact, make it very difficult,  
24 even if you were an accountant, to be able to determine  
25 exactly what expenses and revenues go where?

1                   MR. SCHAEFER: I'm going to object to the  
2 question. It's leading.

3                   JUDGE MILLS: It is leading. Objection  
4 sustained.

5 BY MS. O'NEILL:

6           Q.       Would you agree with this statement, that the  
7 commingling of assets between regulated and unregulated  
8 business entities could make it difficult to accurately  
9 determine actual revenues and expenses for a regulated  
10 entity?

11          A.       Yes, and that there is a significant danger in  
12 that to ensuring that rates are just and reasonable for the  
13 regulated utility's customers.

14          Q.       Now, you've testified to -- a little bit about  
15 the visits you made to the site of these facilities. Do you  
16 recall that?

17          A.       Yes.

18          Q.       And attached to both your original direct  
19 testimony filed in September and your supplemental direct  
20 testimony filed February 13th of 2002 there are photographs;  
21 is that correct?

22          A.       That is correct.

23          Q.       And you referred to a couple of those  
24 photographs previously in your testimony here today; is that  
25 correct?

1           A.       Yes, I have.

2           Q.       And you described those in your prefiled

3 testimony?

4           A.       Yes, I did.

5           Q.       I want to refer you to your direct testimony,

6 which is Exhibit 2, and to your Attachment BAM-1, page 4.

7           A.       Yes, I have that in front of me.

8           Q.       Were you present when those photographs were

9 taken on that page?

10          A.       Yes, I was present because I believe I took

11 them.

12          Q.       Okay. And you previously answered a couple of

13 questions from Commissioner Murray regarding the condition

14 of fencing where you have a picture on an earlier page where

15 you're standing next to a fence?

16          A.       Yes.

17          Q.       Do you recall that? The pictures on page 4,

18 is that the same treatment plant?

19          A.       The treatment plant illustrated in attachment

20 BAM-1 and the treatment -- on page 2 and the treatment plant

21 illustrated in attachment BAM-1 on page 4 are different

22 treatment plants.

23          Q.       So the fencing deficiencies illustrated on

24 page 4 are fencing deficiencies for the second treatment

25 plant?

1                   MR. SCHAEFER: And I'm going to object. It's  
2 leading.

3                   JUDGE MILLS: It may be leading, but I'm going  
4 to allow it because it's going to be easier to do it that  
5 way. The exhibits are labeled. It's clear that one is  
6 Treatment Plant 2 and one is Treatment Plant 1. I think the  
7 fact that they are different pictures is evident in the  
8 record, and I think it will be much more expeditious if we  
9 just proceed. So I'm going to overrule the objection.

10                  THE WITNESS: They are different treatment  
11 plants, and the fencing problems were present at both.  
12 BY MS. O'NEILL:

13           Q.       Now, you have photographs attached as part of  
14 your schedules to your supplemental direct testimony as  
15 well; is that correct?

16           A.       Yes, I do.

17           Q.       And are those additional photographs  
18 photographs which were taken on more than one of your site  
19 visits?

20           A.       Yes. They were taken at two different visits,  
21 at two different times.

22           Q.       Okay. And when you made the -- you made one  
23 of those site visits again in October of 2001, approximately  
24 a month after the direct testimony was filed; is that  
25 correct?

1           A.       On the 17th.

2           Q.       And if you will refer to supplemental direct  
3 testimony, attachment BAM-1 for this testimony, page 5, are  
4 you there?

5           A.       Yes, I am.

6           Q.       And also on page 6 and page 7. Is that -- are  
7 those pictures designed to illustrate the condition of the  
8 fence a month after the complaint was filed or approximately  
9 a month after the complaint was filed?

10          A.       That is correct, and there is an additional  
11 picture on page 8.

12          Q.       I'm sorry. That's correct.

13          A.       And, in fact, I believe it was even in even  
14 worse shape on the second visit than I observed it to be on  
15 the first visit. On page --

16                   MR. SCHAEFER: Judge, I'm going to object to  
17 the narrative nature. There's not a question before the  
18 witness.

19                   JUDGE MILLS: I think the witness is  
20 continuing with her answer to the previous question. I  
21 don't agree with you that there is not a question pending.  
22 I think she's answering a question. It is pending.

23                   MR. SCHAEFER: Can I have the question read  
24 back, please?

25                   MS. O'NEILL: I'll be happy to ask an



1 additional question if it would move things along, Judge.

2 JUDGE MILLS: Fine. I think that may solve  
3 the problem.

4 BY MS. O'NEILL:

5 Q. Why do you believe that it was in worse  
6 condition than on your prior visit?

7 A. I'm looking now at Attachment 1, BAM-1,  
8 page 4, picture No. 15 as is labeled in my direct testimony  
9 and comparing it to Attachment BAM-1, page 6 of 10, which  
10 was taken --

11 Q. Okay. So you're comparing a direct testimony  
12 picture with a supplemental direct testimony picture?

13 A. That's correct.

14 Q. Okay.

15 A. And you can notice from those two pictures  
16 that the fence is held to, if you will, by a big rock that  
17 was placed there. In the first one from my direct  
18 testimony, I don't remember the side panel beside the gate  
19 actually being entirely disconnected from it or hanging by a  
20 corner, which it was a month later.

21 So that's why I say that it appears -- it  
22 appeared to me that the fence was actually in worse  
23 condition on the second visit and it was -- you know, in any  
24 event, it wasn't secured against entry.

25 Q. I want to direct your attention to attachment

1 BAM 2 of your supplemental direct, and there are a number of  
2 pictures there. I want to just deal with -- well, first of  
3 all, can you tell me when the picture at page 1 of 9 of  
4 BAM-2 of your supplemental direct was taken?

5 A. On Attachment BAM-2?

6 Q. Yes.

7 A. I believe this was taken on the January 16th  
8 visit.

9 Q. Okay. Was that the first time that you had  
10 taken pictures of that lift station at Shady Oaks?

11 A. I believe that is correct, and I'm just --  
12 actually, back on Attachment BAM-1, page 1 of 10, there were  
13 previous pictures.

14 Q. Okay. So there are some pictures from October  
15 of that same lift station?

16 A. Yes.

17 Q. Thank you for pointing those out because I  
18 thought there were and I suddenly lost them. Okay. So the  
19 picture taken page 1 of 10 of BAM-1 was taken in October; is  
20 that correct?

21 A. That's correct.

22 Q. And can you -- and in that picture it appears  
23 that the lid to the lift station is lifted up?

24 A. Yes.

25 Q. By?

1           A.       By Kim Bolin.

2           Q.       Okay. And there's another picture of that at  
3 page 2 of Attachment BAM-1?

4           A.       Yes.

5           Q.       Did you have to unlock anything in order to  
6 lift up the lid to that lift station?

7           A.       No. There was no lock on either visit.

8           Q.       Okay. So now going to BAM-2, in the first  
9 couple of pictures we still see that there are no locks, is  
10 that correct, on the lift station?

11          A.       That is correct.

12          Q.       Picture 3 of BAM-2, is that the electrical box  
13 at that lift station that's apparent in the previous  
14 picture?

15                   MR. SCHAEFER: I'm going to object to the  
16 leading nature of all these questions.

17                   JUDGE MILLS: I don't believe that that  
18 question is leading. The objection is overruled.

19                   THE WITNESS: Yes. The utility box is held to  
20 by a twig.

21 BY MS. O'NEILL:

22          Q.       Did you observe any other locking device other  
23 than the twig on that electric box?

24          A.       No, I did not.

25          Q.       At page 4 of BAM-2 on your supplemental

1 direct, can you describe what that is?

2           A.       This is the open lid to the lift station  
3 showing the level to which the station was filled. This is  
4 the first time that I had seen one of these lift stations  
5 full to that level, and I believe that Steve Loethen provide  
6 testimony -- provided testimony regarding that that seemed  
7 very high.

8                   MR. SCHAEFER: Again, I'm going to object,  
9 improper bolstering. She's testifying from someone else's  
10 testimony.

11                  JUDGE MILLS: I think that is correct. The  
12 question didn't have to do with what another witness  
13 observed about this lift station. So I think you need to  
14 confine yourself to your observations.

15 BY MS. O'NEILL:

16           Q.       Which visit was picture -- this picture of the  
17 lift station that is full, what date was that taken on?

18           A.       January 16th of 2002.

19           Q.       And when you went to do the site visit in  
20 January of 2002, was that in response to any customer  
21 complaints?

22           A.       Yes. We had received complaints that the lift  
23 station was not working properly. In addition, I believe  
24 that we had received some complaints about the smell in and  
25 around the area and a concern that there might be sewage

1 that was making its way untreated to a nearby creek, if you  
2 will.

3 MR. SCHAEFER: And I'm going to object to the  
4 response being hearsay.

5 JUDGE MILLS: I think the question was why did  
6 you go there and she was explaining why she went there. To  
7 the extent that she's explaining the reasons for her visit,  
8 I think that the answer is perfectly fine. The objection is  
9 overruled.

10 BY MS. O'NEILL:

11 Q. Now, you responded to some questions from  
12 Commissioner Murray regarding the duties of the Office of  
13 the Public Counsel. Do those duties include receiving and  
14 investigating customer complaints?

15 A. Yes, they do, and I've done that on numerous  
16 occasions in the time that I've worked for Public Counsel.

17 Q. And have you done that in cases other than  
18 that case?

19 A. Yes.

20 Q. And have you also done that in this case?

21 A. Yes.

22 Q. Now, in regard to the complaint that Public  
23 Counsel's made in this case, we have made allegations about  
24 safety regarding service. What aspect of safety do you  
25 believe that the pictures that we've discussed demonstrate

1 for the Commission regarding that complaint?

2           A.       In addition to the obvious nature of the  
3 danger to, for example, small children or even adults, the  
4 lift stations are huge pits, if you will, that a child could  
5 easily fall into and, if they fell into, may or may not be  
6 able to get back out.

7                   In addition to those types of issues where  
8 it's the safety of a child or an animal, for example, or an  
9 adult perhaps, there are issues with warding against  
10 vandalism of the facilities, which ensures the safety of the  
11 community served by those facilities. So there are two  
12 different issues with respect to safety.

13           Q.       And based on your investigation of customer  
14 complaints and discussion with customers about problems  
15 they've reported with the service, do you believe that you  
16 have discovered evidence that the service is not adequate?

17                   MR. SCHAEFER: And again, I'm going to object.  
18 I believe she can testify as to the observations that she  
19 made, but I'm going to renew my objection previously as to  
20 her opinion as to safety and adequacy that she's not  
21 qualified.

22                   JUDGE MILLS: That's noted. That objection  
23 has previously been overruled, and it will be overruled  
24 here.

25                   THE WITNESS: In my opinion, the company is

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1 not providing adequate service in a number of respects that  
2 I've discussed in my testimony and where I've referenced  
3 other witnesses' testimony.

4           The water tower is certainly a blatant example  
5 of where there is inadequate service being provided to  
6 customers. It has been six years since the plan for a water  
7 tower was undertaken, and the customers are still waiting  
8 despite being promised, I believe, in tariff language in  
9 1999 that it was anticipated that it would be done very  
10 soon.

11           You've heard testimony at public hearings of a  
12 customer testified that they had attended a meeting where  
13 Gary Smith on behalf of the company had told those customers  
14 that there was already a tower being constructed and that it  
15 would not be long. That's my own characterization of what  
16 that customer said. Certainly the public hearing transcript  
17 can speak for itself. But that's one area of adequate (sic)  
18 service where we don't believe the company has met that  
19 obligation to date.

20           There are other issues which I raised  
21 regarding the need for the company to keep adequate records  
22 and to ensure that, through the use of adequate  
23 recordkeeping and following the procedures set out by the  
24 Commission, that that company can come in and get a rate  
25 case -- or a rate increase through a rate case, if

1 necessary, to ensure that their service is adequate to their  
2 customers, that and other issues that I mentioned in my  
3 testimony.

4 BY MS. O'NEILL:

5 Q. Now, you had a couple of questions on  
6 cross-examination about receivers, and from your -- just to  
7 clarify, is it Public Counsel's position that Public Counsel  
8 will do nothing regarding seeking possible receiver  
9 candidates until the Commission issues a Report and Order in  
10 this case?

11 A. No. Public Counsel has already been trying to  
12 learn more about potential receivers. We would certainly  
13 continue to move forward with that so that we are able to  
14 make additional recommendations to the Commission regarding  
15 our opinion on a potential receiver. We encourage you to  
16 move very quickly on this. The customers have been waiting.

17 There are continued problems. It is possible  
18 that if another violation is incurred Mr. Smith could go to  
19 jail, and that company would be left with no one there  
20 running it. In our opinion, we believe that's a substantial  
21 danger, and . . .

22 Q. Now, if as Commissioner Forbis mentioned, if a  
23 manager is found by the company to just take over without  
24 having the Commission scrutinize that arrangement, why is  
25 Public Counsel unwilling to just let that happen in the



1 natural course of things?

2           A.       Because that -- the potential for that to  
3 happen offers no guarantee that it will happen. If the  
4 company has a potential receiver, if the company has a  
5 potential buyer for the company, then fine, we'll be happy  
6 to consider those recommendations, but it should not stop  
7 this process.

8                   The company can certainly bring those names to  
9 our attention, and potentially those might be  
10 recommendations that we make to you regarding a receiver,  
11 but you -- there is no guarantee that one of those things is  
12 going to work out. These customers have been waiting too  
13 long already for relief, and we ask you to move forward with  
14 that relief.

15           Q.       And is -- to Public Counsel's view, is a  
16 primary purpose of appointment of a receiver so that the  
17 management operations and the operation of the systems will  
18 both be taken out of the stands of the current management as  
19 soon as possible?

20           A.       Yes.

21           Q.       And does Public Counsel believe that a  
22 receiver could help to facilitate finding a buyer for the  
23 system if directed to by the court?

24           A.       Yes.

25                   MS. O'NEILL: I have nothing further.

1 JUDGE MILLS: Ms. Meisenheimer, you may step  
2 down.

3 (Witness excused.)

4 JUDGE MILLS: Ms. O'Neill, if you'd call  
5 Ms. Bolin forward.

6 MS. O'NEILL: Yes.

7 (Witness sworn.)

8 JUDGE MILLS: Thank you. Ms. O'Neill, you may  
9 go ahead.

10 MS. O'NEILL: Thank you.

11 KIMBERLY BOLIN testified as follows:

12 DIRECT EXAMINATION BY MS. O'NEILL:

13 Q. Would you state your name for the record.

14 A. My name is Kimberly Bolin.

15 Q. And how are you employed?

16 A. I'm employed as a Public Utility Accountant  
17 with the Office of the Public Counsel and the State of  
18 Missouri.

19 Q. And how long have you been employed by the  
20 Office of the Public Counsel?

21 A. Since September of 1994.

22 Q. As part of your duties with the Office of the  
23 Public Counsel, have you been involved in the investigation  
24 of the complaint filed by Public Counsel against Warren  
25 County Water and Sewer Company and Gary Smith?

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1           A.       Yes, I have.

2           Q.       And as part of your involvement with this  
3 case, have you prepared and caused to be filed direct  
4 testimony which has been marked as Exhibit No. 5 in this  
5 case?

6           A.       Yes, I have.

7           Q.       And have you prepared and caused to be filed  
8 Exhibit 6, supplemental direct testimony of Kimberly Bolin?

9           A.       Yes, I have.

10          Q.       And have you prepared and caused to be filed  
11 Exhibit No. 7, surrebuttal testimony of Kimberly Bolin?

12          A.       Yes, I have.

13          Q.       And in addition to your testimony, do these  
14 prefiled exhibits also contain schedules and additional  
15 information which you reviewed and relied on in coming to  
16 your position that you state in your testimony?

17          A.       Yes, they do.

18          Q.       And are there any changes or corrections that  
19 you'd like to make to Exhibit 5, 6 or 7 which have not been  
20 taken care of in subsequently filed testimony?

21          A.       No, there are no corrections.

22          Q.       And if I were to ask you the questions today  
23 that you answer in these three exhibits, would your answers  
24 be the same today as they were at the time they were filed?

25          A.       Yes, they would.

1 MS. O'NEILL: At this time I would offer  
2 Exhibits 5, 6 and 7 into evidence.

3 JUDGE MILLS: Exhibits 5, 6 and 7 have been  
4 offered. Are there any objections?

5 MR. KRUEGER: None from Staff, your Honor.

6 MR. SCHAEFER: I have the same hearsay  
7 objection that I believe her testimony contains out-of-court  
8 statements offered for the truth of the matter asserted,  
9 that being conversations with other people. So I make a  
10 hearsay objection to that.

11 And also, as for any testimony going to safety  
12 and adequacy, to those issues, she is an accountant, and I  
13 don't believe she has the qualification to make that  
14 testimony.

15 JUDGE MILLS: And in terms of both of those  
16 objections, my rulings are the same as I made for the same  
17 objections to Ms. Meisenheimer's testimony. So they are  
18 noted and overruled, and Exhibits 5, 6 and 7 will be  
19 admitted.

20 (EXHIBIT NOS. 5, 6 AND 7 WERE RECEIVED INTO  
21 EVIDENCE.)

22 MS. O'NEILL: I have nothing further at this  
23 time.

24 JUDGE MILLS: Thank you. Cross-examination,  
25 Mr. Krueger.

1 CROSS-EXAMINATION BY MR. KRUEGER:

2 Q. Good morning, Ms. Bolin.

3 A. Good morning.

4 Q. You testified in your direct testimony about  
5 Notices of Violation issued by the Department of Natural  
6 Resources. Your direct testimony was filed in September of  
7 2001. Do you know if there have been any new Notices of  
8 Violation since you filed that direct testimony?

9 A. I do believe I had some new violations in my  
10 supplemental testimony, and I'm not sure if I had -- I don't  
11 think I had any in my surrebuttal.

12 Q. Do you know how many NOVs there were?

13 A. I think there were two NOVs attached to my  
14 supplemental direct.

15 MR. SCHAEFER: Judge, I'm going to object. I  
16 believe this is friendly cross. He's simply going over what  
17 was already in her supplied testimony. I believe the  
18 position of Staff and Public Counsel are sufficiently  
19 aligned here that this is just going back over the prefiled  
20 testimony.

21 JUDGE MILLS: There certainly is a danger of  
22 that, and I would caution Mr. Krueger not to do any friendly  
23 cross. I'm going to allow some latitude to see where this  
24 line of questioning is going, but if it is simply to bolster  
25 the prefiled testimony, then your objection will be valid.

1 So keep it in your pocket. You may need it again.

2 BY MR. KRUEGER:

3 Q. Do you know if those NOVs have been resolved?

4 A. I don't know.

5 Q. Do you know if Incline Village is still  
6 willing to act as a receiver?

7 A. Last I've heard, yes.

8 Q. Do you believe that they are qualified to  
9 serve as a receiver?

10 A. Yes, I do.

11 Q. What is the reason for that belief?

12 A. They've obtained -- they will obtain the  
13 services of an operator, and I believe they have knowledge  
14 among the board of trustees to conduct business.

15 Q. And have you worked with the people on the  
16 Incline Village Board of Trustees in the past?

17 A. We have received letters from them and  
18 correspondence and met with them, yes.

19 Q. Do you know if Incline Village is still  
20 willing to operate the company as a receiver?

21 A. I do believe they are.

22 MR. SCHAEFER: Again, I'm going to object  
23 because I believe it is calling for out-of-court statement,  
24 that Incline Village truly still has that position, and I  
25 believe that's hearsay for this witness to testify as to

1 that.

2 JUDGE MILLS: I believe that what she's  
3 testifying to is her belief as to whether or not a statement  
4 in her prefiled testimony is still accurate, and I think  
5 that necessarily relies on a communication with the board of  
6 trustees to come to that conclusion, but I don't know that  
7 that makes it hearsay. I'm going to overrule the objection.

8 BY MR. KRUEGER:

9 Q. Do you know of anyone else who has -- is  
10 willing to serve as a receiver?

11 A. We have been made aware of the Public Water  
12 Supply District nearby is a possibility, and they've  
13 expressed some interest.

14 Q. And they expressed that interest to the Office  
15 of the Public Counsel?

16 A. Yes.

17 MR. KRUEGER: Thank you. That's all the  
18 questions I have.

19 JUDGE MILLS: Thank you. Cross-examination,  
20 Mr. Schaefer?

21 MR. SCHAEFER: Yes.

22 CROSS-EXAMINATION BY MR. SCHAEFER:

23 Q. Now, Ms. Bolin, you are an accountant,  
24 correct?

25 A. That is correct.

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1           Q.       You're not an economist, which is the word I  
2 could not get out of my mouth earlier?

3           A.       Right, I'm not an economist.

4           Q.       You're not an engineer?

5           A.       No, I'm not.

6           Q.       You testified briefly that it's your  
7 understanding and your belief that Incline Village could  
8 serve as a receiver or as a manager of the facility?

9           A.       Yes.

10          Q.       If Incline Village were to do that, would it  
11 be regulated by the Public Service Commission?

12          A.       Yes, it would.

13          Q.       Even if it was a nonprofit?

14          A.       I'm not sure on all the technical legality, if  
15 it's a nonprofit homeowners association. I'm not sure.

16          Q.       Okay.

17          A.       But with Shady Oaks, in their service  
18 territory, and they're not members of Incline Village, it  
19 couldn't. It would have to be regulated by this Commission.

20          Q.       Okay. Is it possible that there could be an  
21 organizational structure, though, for Incline Village to  
22 take that as a receiver or manager and not be a regulated  
23 entity of this Commission?

24          A.       Not with Shady Oaks.

25          Q.       And are you aware that, I believe as you are,



1 that some of the customers of the company are actually  
2 outside of Incline Village?

3 A. Yes. That's why it would have to be  
4 regulated.

5 Q. And you're aware that -- strike that. Just  
6 leave it there.

7 MR. SCHAEFER: That's all I have.

8 JUDGE MILLS: Thank you. Let's go on to  
9 questions from the Bench for Mr. Bolin. Chair Simmons.

10 CHAIRMAN SIMMONS: I don't have any questions  
11 at this time.

12 JUDGE MILLS: Commissioner Murray.

13 COMMISSIONER MURRAY: Thank you.

14 QUESTIONS BY COMMISSIONER MURRAY:

15 Q. Good morning, Ms. Bolin.

16 A. Good morning.

17 Q. In your direct testimony, the Schedule KKB-7,  
18 which is the very last page, you have a letter included that  
19 was from Incline Village to Ms. Ruth O'Neill and Mr. James  
20 Merciel; is that correct?

21 A. Yes, that's correct.

22 Q. And that was dated August 23rd, 2001; is that  
23 right?

24 A. That's correct.

25 Q. In reading this letter, in the second

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1 paragraph, I believe it's the second sentence in that  
2 paragraph, the last sentence in the paragraph, You can be  
3 assured that the level of safety, environmental protection,  
4 technical skills and fiscal responsibility that we will  
5 require and achieve should we be able to purchase Warren  
6 County Water and Sewer Company will be orders of magnitude  
7 better than Mr. Smith's current operations. Do you have any  
8 opinion as to whether that statement has any validity?

9 MR. SCHAEFER: And I'm going to object in that  
10 it calls for hearsay.

11 JUDGE MILLS: I think the question calls for  
12 Ms. Bolin's opinion as to the validity of a statement, and I  
13 don't think that that calls for hearsay. She may have any  
14 number of reasons to come to a judgment on the validity of  
15 that statement, and some of them may be hearsay, many of  
16 them may not. I don't think that the answer necessarily  
17 calls for hearsay.

18 MR. SCHAEFER: The statement itself is an  
19 out-of-court statement offered for the truth of the matter  
20 of what's asserted in the letter, and on that grounds I'm  
21 raising it as hearsay, Judge.

22 JUDGE MILLS: The letter itself may or may not  
23 be hearsay, but the objection I thought you were raising was  
24 to the answer, was that the question called for hearsay, and  
25 I don't think that the answer necessarily calls for hearsay.

1 so I'm going to overrule the objection.

2           THE WITNESS: As far as the board wanting to  
3 purchase the company, I don't think that is an option  
4 anymore. They've discussed it and they do not wish to  
5 purchase it. But if they have to, they would be appointed  
6 receiver if they could not get any other receiver to do it.  
7 BY COMMISSIONER MURRAY:

8           Q.       Okay. And I guess my question related more to  
9 if the board were to take over the operations of the  
10 facility, whether you have an opinion as to whether the  
11 level of safety, environmental protection, technical skills  
12 and fiscal responsibility would be orders of magnitude  
13 better than Mr. Smith's current operations?

14          A.       The technical skills, I do believe John  
15 Mainerd's resume outlined that he has a great deal of  
16 experience in the technical aspect of it. And from my  
17 understanding, several of the members of the board of  
18 trustees have other backgrounds that may be able to operate  
19 the company financially and follow -- and fiscal -- follow  
20 fiscal responsibilities.

21          Q.       Do you have an opinion as to the financial  
22 resources of Mr. Smith to operate the company or -- let me  
23 phrase that differently -- do you have an opinion as to the  
24 financial resources of Warren County Water and Sewer  
25 Company?

1           A.       I've read different Staff work papers on their  
2 previous audits, and I've also seen documents where  
3 Mr. Smith has had bad checks to the electric coop and to  
4 this Commission. That's where I'm basing my belief.

5           Q.       And what is that?

6           A.       That he is not.

7           Q.       And have you performed an audit?

8           A.       I have not personally performed an audit.

9 Neither has the Office of the Public Counsel.

10          Q.       Have you observed any of the financial records  
11 that Staff has compiled?

12          A.       Yes, I have.

13          Q.       And what is your opinion of those?

14          A.       Staff has noted the difficulty in completing  
15 the audit with the various commingling of funds between his  
16 unregulated and regulated businesses. I believe the audit  
17 of the Staff is correct in their findings of what they're  
18 able to base their information on.

19          Q.       And as an accountant, is the type of  
20 information that is provided by the company a type of  
21 information that you think is necessary to do an audit?

22          A.       No, it isn't. That's part of Staff's  
23 difficulties in performing the audit, that all the records  
24 are not provided in the proper manner.

25          Q.       Were you a participant in the Stipulation &

1 Agreement that the company and the Staff and the Office of  
2 the Public Counsel entered into, and I believe I have that  
3 correct, that it was 1996 where the company agreed to  
4 provide additional storage, water storage?

5       A.       I wasn't involved with it, but I have reviewed  
6 some of the documents.

7       Q.       Ms. Bolin, have you participated in other  
8 cases involving regulated water and sewer companies for this  
9 Commission?

10      A.       Yes, I have.

11      Q.       And in what capacity do you usually  
12 participate?

13      A.       As an accountant, with the bigger water  
14 companies we take certain accounting issues. Osage Water  
15 Company, I've done various tasks with it. One was trying to  
16 decide whether a certificate should be granted to another  
17 company.

18      Q.       Okay. And in terms of your participation, are  
19 you generally looking at the financial aspects, whether the  
20 company is financially viable?

21      A.       Generally, but I also look at other things.

22      Q.       Such as?

23      A.       Such as consumer complaints.

24      Q.       And did you receive any of the consumer  
25 complaints in this case?

1           A.       I have some of them attached to my different  
2 pieces of testimony, yes, and I was at the public hearing,  
3 the local public hearing.

4           Q.       So you personally have visited with some of  
5 the residents, the consumers?

6           A.       Yes, and I've made different trips with  
7 Ms. O'Neill or with Ms. Meisenheimer and we've talked to  
8 different consumers.

9           Q.       Is it fair to say that there are significant  
10 problems with the service of the water and the sewer to the  
11 customers?

12          A.       Yes.

13                  MR. SCHAEFER: I'm going to object that she  
14 doesn't have the foundational background to make that  
15 opinion.

16                  JUDGE MILLS: The objection is overruled.

17                  THE WITNESS: Yes, I've talked to many  
18 customers who had many complaints.

19                  MR. SCHAEFER: I'm going to object to that on  
20 the grounds of hearsay.

21                  JUDGE MILLS: And again, that objection is  
22 overruled.

23 BY COMMISSIONER MURRAY:

24           Q.       And these complaints, we heard many of them at  
25 the local public hearing; is that correct?

1           A.       That is correct.

2           Q.       And in your experience working with Office of  
3 the Public Counsel and receiving and responding to  
4 complaints from customers of water and sewer companies, do  
5 you think that receiving adequate water and sewer service is  
6 very much a health and safety issue in itself?

7           A.       Yes, it is.  People digest water, and sewage  
8 can pollute waters also.

9           Q.       So that if a company that is charged with  
10 providing water and sewer service to customers, captive  
11 customers, and they're not providing adequate water and  
12 sewer service, then do those customers have any -- what  
13 would be the recourse of those customers or what would be  
14 their options?

15          A.       Several customers have filed complaints in the  
16 past with the Commission.  We are basically their -- we  
17 bring forth these issues and they really have no recourse  
18 available.  I don't know.

19          Q.       So if we have certificated a company to  
20 provide water and/or sewer service and the customers are  
21 really dissatisfied, the customers feel that they are not  
22 receiving adequate service and perhaps not receiving safe  
23 service, their ability to do anything to correct the problem  
24 would be exercised primarily through your office?

25          A.       Through the Commission in granting

1 receivership would be the only recourse, I would think, if  
2 it was drastic and . . .

3 Q. Let me ask you this. Would it most likely be  
4 brought to the attention of the Public Service Commission  
5 through your office?

6 A. That's correct, or through your consumer  
7 complaints division, yes.

8 Q. And then the Office of the Public Counsel in  
9 this case has provided the Commission with evidence from the  
10 customers, from evidence from visits on site, through  
11 photographs that were taken of the facilities, through your  
12 prefiled testimony and has made suggestion to the Commission  
13 as to how to remedy that problem and provide these customers  
14 with some relief; is that correct?

15 A. That's correct, yes.

16 COMMISSIONER MURRAY: I think that's all the  
17 questions I have. Thank you.

18 JUDGE MILLS: Commissioner Forbis?

19 COMMISSIONER FORBIS: No, your Honor.

20 JUDGE MILLS: Anything further from the Bench?

21 Seeing none, we will have a round of -- a  
22 further round of cross-examination based on questions from  
23 the Bench. Mr. Krueger?

24 MR. KRUEGER: No questions, your Honor.

25 JUDGE MILLS: Mr. Schaefer?

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1 MR. SCHAEFER: No questions, Judge.

2 JUDGE MILLS: Redirect, Ms. O'Neill?

3 MS. O'NEILL: Thank you.

4 REDIRECT EXAMINATION BY MS. O'NEILL:

5 Q. Ms. Bolin, has the Office of the Public  
6 Counsel asked this Commission to transform Warren County  
7 Water and Sewer Company into a homeowners association for  
8 Incline Village only?

9 A. No.

10 Q. And is it your understanding -- what is your  
11 understanding about the customers outside Incline Village  
12 and how Public Counsel wants this matter resolved as relates  
13 to them?

14 A. They want the whole company and the customers  
15 outside for the company to be placed into a receivership and  
16 eventually sold.

17 Q. So Public Counsel is attempting to represent  
18 all of the customers of the company as far as the concerns  
19 for safe and adequate service?

20 A. Yes.

21 Q. And all of the customers inside and outside of  
22 Incline Village regarding issues relating to safe and  
23 adequate service; is that right?

24 A. Yes.

25 Q. And as part of your duties with the Office of

1 Public Counsel, do you receive telephone calls and copies of  
2 written correspondence from customers with complaints?

3 A. Yes, we do. I do.

4 Q. And do you personally speak to some of those  
5 consumers?

6 A. I have personally spoke to some.

7 Q. And is it part of your duties to review those  
8 complaints?

9 A. Yes, it is.

10 Q. And some of the complaints that you have  
11 personally reviewed are attached to your testimony?

12 A. Yes, they are.

13 Q. And in addition, in this case, during site  
14 visits, did you also personally speak to customers?

15 A. Yes. During both of my -- two of my site  
16 visits, I personally spoke with customers.

17 Q. And do you recall any specific occasions when  
18 customers attempted to demonstrate some of the problems with  
19 the water to you directly?

20 A. We had one person who went out and turned the  
21 fire hydrant on to show the brown water that comes out, and  
22 this person said they had to turn their water faucet -- or  
23 their fire hydrant on every so often to get rid of the smell  
24 in their home from the water faucet.

25 Q. And they demonstrated this for you while you

1 were there?

2 A. Yes.

3 Q. And regarding the -- in the attachments to  
4 your testimony, you have some of the documents, is that  
5 correct, relating to case -- Commission Case WA-96-449,  
6 which was the application for the -- which discussed the  
7 application for the water storage tank?

8 A. Which piece of testimony is that in?

9 Q. I'm going to refer you to your direct  
10 testimony. Looks like in Schedule KKB-3, there are numerous  
11 pleadings from previous Commission matters; is that correct?  
12 I'm going to refer you especially to pages -- oh, beginning  
13 around page 79, which is an Order Approving Stipulation &  
14 Agreement by the Commission --

15 A. Yes.

16 Q. -- which actually was issued in June of '98.

17 A. Yes, I have that in front of me.

18 Q. And that was in relation to that '96 filing by  
19 the company; is that correct?

20 A. That's correct.

21 Q. And there are some other documents relating to  
22 that matter in your attachments; is that correct?

23 A. That's correct.

24 Q. And did you review those attachments?

25 A. Yes, I did.

1           Q.       Now, you testified that you did not personally  
2 conduct an audit of the company in its most recent request  
3 for a rate increase. First of all, this is a small company.  
4 So did it file under formal rate case procedures like a big  
5 company would file under?

6           A.       No. The company filed under the small water  
7 and sewer rate increase procedure.

8           Q.       And that's special rules that relate to small  
9 companies like this one?

10          A.       Yes, it is.

11          Q.       And although you did not personally conduct  
12 the audit, did you have access to all the Staff's  
13 information?

14          A.       Yes. We requested all the Staff work papers  
15 for the audit and received them.

16          Q.       And as part of your duties, is it common for  
17 you to receive audits --

18          A.       Yes.

19          Q.       -- conducted by the Staff in these small  
20 cases?

21          A.       Yes, I frequently do.

22          Q.       And when you personally reviewed the  
23 information that the Staff provided to you, were you able to  
24 see where these various problems they were encountering came  
25 up?

1           A.       Yes.

2           Q.       And did you agree with the findings that the  
3 Staff made in its audit?

4                   MR. SCHAEFER:  Again, I'm going to object on  
5 the grounds of hearsay.  She's testifying as to those  
6 documents which, as far as I know, aren't admitted here.

7                   JUDGE MILLS:  The question was did you agree  
8 with the results of those audits, and I don't believe that  
9 calls for hearsay.  The objection is overruled.

10                  THE WITNESS:  Yes, I agreed with them.

11 BY MS. O'NEILL:

12           Q.       And attached to your surrebuttal testimony,  
13 beginning at KKB-16 -- actually, that's not the correct one.

14                   Attached to your rebuttal testimony, do you  
15 have some runs from prior requests for rate increases?

16           A.       Yes, I do.

17           Q.       And were there similar problems encountered in  
18 those matters in 1999?

19           A.       Yes, I believe there was.

20                   MS. O'NEILL:  I have nothing further.

21                   JUDGE MILLS:  Ms. Bolin, you may step down.

22                   (Witness excused.)

23                   JUDGE MILLS:  I think at this point we're  
24 going to -- it's quarter to 12.  We'll go ahead and take a  
25 lunch recess and we'll be back at one o'clock.

1 MS. O'NEILL: Your Honor, I do have some  
2 further information on my witnesses that were subpoenaed for  
3 tomorrow. Mr. Mueller will be available by 1:30.  
4 Mr. Daugherty will be available by two o'clock. So perhaps  
5 if we want to start at one with a Staff witness out of  
6 order, I don't have a problem with that.

7 JUDGE MILLS: I think if nobody has any strong  
8 objection to that, I think that will probably be the most  
9 effective use of our time. Rather than wait until those  
10 people are here, we'll go ahead and start at one.

11 We're off the record.

12 (The noon recess was taken.)

13 JUDGE MILLS: We're back on the record. We  
14 are -- it's my understanding we're going to go ahead and  
15 proceed with at least one Staff witness while we wait for  
16 the remainder of the Public Counsel witnesses to arrive; is  
17 that correct?

18 MS. O'NEILL: That is correct, your Honor.

19 JUDGE MILLS: And who are you going to do  
20 first, Mr. Krueger?

21 MR. KRUEGER: I think Mr. Loethen, please.

22 JUDGE MILLS: Okay.

23 (Witness sworn.)

24 JUDGE MILLS: Thank you. Mr. Krueger, go  
25 ahead.

1 STEVE G. LOETHEN testified as follows:

2 DIRECT EXAMINATION BY MR. KRUEGER:

3 Q. Please state your name and business address.

4 A. Steven Gerard Loethen. Haven't been here  
5 long. Governor's Office Building, Jeff City, Missouri.

6 Q. Would that be P.O. Box 360?

7 A. That would be P.O. Box 360.

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

9 A. With the Missouri Public Service Commission.

10 I work in the Water Sewer Department as a Utility Operations  
11 Technical Specialist.

12 Q. Did you prepare and cause to be prefiled the  
13 rebuttal testimony of Steve G. Loethen in this case?

14 A. Yes, I did.

15 Q. Do you have any corrections or changes to that  
16 testimony?

17 A. No, I don't.

18 Q. If I asked you the same questions as are  
19 contained therein today, would your answers be the same?

20 A. Yes.

21 Q. And did you also prepare and cause to be  
22 prefiled the cross-surrebuttal testimony of Steve G. Loethen  
23 in this case?

24 A. Yes.

25 Q. Do you have any corrections or changes to that

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1 testimony?

2           A.       No.

3           Q.       And if I asked you the same questions today,  
4 would your answers be the same?

5           A.       Yes, they would.

6                   MR. KRUEGER: I would offer Exhibits 12 and 13  
7 and tender the witness for cross-examination.

8                   JUDGE MILLS: Exhibits 12 and 13 have been  
9 offered. Are there any objections?

10                  MS. O'NEILL: No objection.

11                  MR. SCHAEFER: Same objections as to the  
12 previous to the extent that there are conversations, things  
13 like that. We'd object that they're hearsay. Other than  
14 that, we have no objection.

15                  JUDGE MILLS: Those objections will go to the  
16 weight of the evidence rather than the admissibility, and  
17 the exhibits will be admitted and 12 and 13 will be made a  
18 part of the record.

19                   (EXHIBIT NOS. 12 AND 13 WERE RECEIVED INTO  
20 EVIDENCE.)

21                  JUDGE MILLS: Cross-examination, Ms. O'Neill?

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

23                  JUDGE MILLS: Thank you. Mr. Schaefer?

24                  MR. SCHAEFER: None, Judge.

25                  JUDGE MILLS: We're moving right along.



1 Questions from the Bench, Commissioner Murray.

2 COMMISSIONER MURRAY: Thank you.

3 QUESTIONS BY COMMISSIONER MURRAY:

4 Q. Good afternoon, Mr. Loethen.

5 A. Good afternoon.

6 Q. You have had occasion to make how many  
7 inspections, two?

8 A. As of right now, I completed a third one about  
9 two weeks ago.

10 Q. And why did you do the third one two weeks  
11 ago?

12 A. DNR was going to do a follow-up inspection,  
13 and they invited me to go along and I did.

14 Q. What did you observe at that time?

15 A. The most recent one?

16 Q. Yes.

17 A. Shady Oaks lift station did have the wiring  
18 run properly through the conduit. It did have locks on the  
19 control panel and the lift station. Both treatment  
20 facilities, Treatment Plant 2 appeared -- it was better.  
21 Treatment Plant 1 still looked to be putting out poor  
22 effluent.

23 We didn't go around to all of the lift  
24 stations. We went -- I went by the lift station by the boat  
25 dock and it was in the same condition as I reported in my --

1 or in my surrebuttal testimony.

2 Q. And that condition was? Would you mind --

3 A. There were two operational pumps. I didn't  
4 actually go through the -- have anybody run through the  
5 controls as far as the floats and cycle the floats, but the  
6 last time I was there we had an employee of -- whoever,  
7 Mr. Smith, I don't know if he's an employee of the company  
8 or his construction company, he went with us and I had him  
9 cycle the floats, which more or less you imitate the water  
10 level going up and doing an operation going up and then  
11 turning the pumps on and going back down.

12 What it was showing is that it will go to the  
13 first float and the pump will turn on and go back down, and  
14 when the bottom float, essentially the water level gets to  
15 where it's empty, it would alternate the pumps, but the  
16 pumps are supposed to be in a first pump kick on, and if  
17 that pump doesn't work the second pump will kick on, and it  
18 was not working like that. So if the first pump would  
19 malfunction, it's a possibility for an overflow to occur.

20 Q. And that was --

21 A. It was still -- as far as I know, it is still  
22 like that.

23 Q. And that was two weeks ago, you said?

24 A. May 14th.

25 Q. You said in your testimony that you have asked

1 the company for but have not seen records that would show  
2 how often the plants are visited and what operational  
3 testing or work is being done during those visits. Have you  
4 since seen any records that would show you those things?

5 A. No, I haven't. There is -- like on the well  
6 house, there is a calendar where he'll initial it every now  
7 and then, but that'll show me how often Mr. Smith or a  
8 company official has been there, but it doesn't show what  
9 kind of operations are being done while they're there, no  
10 documented.

11 Q. And for a regulated utility, is it something  
12 that we require that they have documented records that show  
13 how often they're visited?

14 A. It's customary to, but as far as the  
15 wastewater, you have the size of facility as Mr. Smith does,  
16 there are certain operational testings that should be done  
17 on a weekly, sometimes daily. It depends on the size as to  
18 what actually has to be done. I don't know the exact  
19 specifications, but there should be some testing done and  
20 there should be operational procedures done.

21 Q. And does the Staff of the Public Service  
22 Commission help the regulated companies when they need to  
23 have direction as to how often they should be doing the  
24 testing and what things they should be testing for?

25 A. Yes, we do.

1 Q. Have you offered to assist Mr. Smith?

2 A. Yes, I have.

3 Q. And has he taken you up on that offer?

4 A. No, he hasn't.

5 Q. You also noted in your testimony, and I'm  
6 looking right now at your rebuttal testimony, on page 4,  
7 that the operation and maintenance of the treatment plants  
8 is inadequate. Would you say that is still the case?

9 A. Yes.

10 Q. And you noted several safety problems,  
11 including unlocked gates, insufficient fencing and a  
12 possible cross connection of Treatment Plant No. 2. Do you  
13 know if those are still -- if that is still the case for  
14 those items?

15 A. Most of the facilities now have sufficient  
16 fencing, locks. Exception to the lift station by the boat  
17 dock, I think it is -- finally does have locks on everything  
18 but maybe the control panel and the electric, the breaker  
19 box. But it does have a fence around the lift station, but  
20 I still think the fence would allow access to a younger  
21 child or small person. They could possibly get their way  
22 into it.

23 Q. And this possible cross connection you  
24 observed?

25 A. That's been taken care of.

1 Q. And the gate is no longer being held shut with  
2 a bowling ball sized rock?

3 A. No. There's been a few nails driven in the  
4 fence to hold the gate shut.

5 Q. Now, you indicated that something you observed  
6 would possibly result in another overflow; is that correct?

7 A. In the rebuttal testimony?

8 Q. No. I'm sorry. On your last visit on  
9 March 14 -- or May 14.

10 A. Yes. There's both lift stations, one -- the  
11 Shady Oaks lift station only has one operating pump. If  
12 that pump should fail, the same problem will occur. I've  
13 only ever -- on all my visits, I've only seen it operating  
14 on one pump, and it shows what can happen. You can have an  
15 overflow situation operating it this way.

16 And the lift station at the boat dock or the  
17 marina is still not -- still doesn't have a lead pump, lag  
18 pump operations as far as I know.

19 Q. When there is an overflow, is that -- can that  
20 result in exposure to individuals to raw sewage?

21 A. Yes.

22 Q. That could be children as well as adults, I'm  
23 assuming?

24 A. Yes. And at Shady Oaks lift station, when  
25 there was an overflow occur, you could see evidence -- I'm

1 assuming, you could see evidence of kids playing. You can  
2 tell by sticks being thrown in it and footprints around the  
3 area, which is definitely a health issue.

4 Q. In terms of the water system operations, do  
5 you -- have you observed that recently?

6 A. Yes. We looked at the water system also on  
7 May 14th.

8 Q. And is it correct that there is still no  
9 additional storage that has been --

10 A. Yes, that is correct.

11 Q. So it's correct that the water service is  
12 still inadequate; is that right?

13 A. That's correct.

14 Q. And your experience in dealing with Mr. Smith  
15 has been, would you -- how would you characterize your  
16 experience with Mr. Smith?

17 A. I'd say less than cooperative.

18 Q. And do you receive complaints from customers?

19 A. Yes, I do.

20 Q. Would you say that you receive more complaints  
21 from this company than you would from an average small water  
22 and sewer company?

23 A. Yes, I would.

24 Q. And do you have any knowledge of how the  
25 company responds to customer complaints?

1           A.       Comparing it against how I used to respond to  
2 complaints in my years of service, I think it's fairly poor.  
3 It takes a fair amount of time for him to respond, if he  
4 responds, or Mr. Smith or Warren County Water and Sewer  
5 Company responds. Either by lack of knowledge of how the  
6 system works or lack of want, it takes a long time to get  
7 complaints fixed adequately or at all in some cases.

8                   The customer very seldom knows what is going  
9 on by the company. In some cases I've had to call the  
10 company and relay what's going on to the customer. I don't  
11 think that's proper management, especially in the case that  
12 I have attached to my surrebuttal testimony where the  
13 customer had one of its individual septic units out of  
14 service, the customer didn't know if they could -- it was  
15 fixed. They didn't know if they could use their own  
16 toilets. And this went on for like a week. That's not  
17 proper service as far as I'm concerned.

18          Q.       Is that a health issue?

19          A.       Any time you have sewage either overflowing on  
20 the ground or backing up into a home, yes, it is, it's a  
21 health issue.

22          Q.       And what is your background before you came to  
23 the Public Service Commission?

24          A.       I worked for a regulated company for eight  
25 years, water and sewer company.

1 Q. All right. And so you do have experience in  
2 dealing with customers and the operation and maintenance of  
3 a system?

4 A. Yes, I do.

5 COMMISSIONER MURRAY: Thank you. I think  
6 that's all I have.

7 JUDGE MILLS: Thank you. Further  
8 cross-examination based on questions from the Bench,  
9 Ms. O'Neill?

10 MS. O'NEILL: Thank you.

11 RE-CROSS-EXAMINATION BY MS. O'NEILL:

12 Q. Good afternoon.

13 A. Good afternoon.

14 Q. Mr. Loethen, you said something about the last  
15 time you were out there at Warren County Water and Sewer  
16 doing an inspection in May there was an employee out there  
17 of some sort; is that correct?

18 A. On May 14th, Mr. Smith was with us to go to  
19 both the treatment plants and the water, the wellhouse where  
20 the water tower is.

21 Q. And on other occasions have there been persons  
22 other than Mr. Smith there to look at facilities with you?

23 A. On some occasions. Some occasions while  
24 I'm -- we do other work in St. Louis. On the way up I'll go  
25 by and just look at the treatment plant effluents, kind of



1 look over the fence and see how things look.

2 Q. You'd indicated that an employee of either the  
3 utility or the construction company was with you at one  
4 point in time. Do you remember when that was?

5 A. I think that was my March 7th visit.

6 Q. And it was unclear to you whether or not this  
7 was a regulated utility employee or an employee of the  
8 unregulated business enterprise?

9 A. I'm aware Mr. Smith has some guys working for  
10 him. I'm not sure exactly how they're employed or who by.

11 MR. SCHAEFER: I'm going to object because I  
12 think this is also friendly cross. She's getting into his  
13 prefiled testimony, and I don't believe this even relates to  
14 anything that was asked of this witness previously since  
15 he's been on the stand.

16 MS. O'NEILL: This is in response to  
17 questioning from Commissioner Murray.

18 JUDGE MILLS: Which questions?

19 MS. O'NEILL: I didn't write the question  
20 down. I just wrote the answer down. Regarding his  
21 inspections subsequent to his filing of testimony.

22 JUDGE MILLS: Well, the question has already  
23 been answered, so I'll -- we'll see what the next question  
24 is.

25 BY MS. O'NEILL:

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1           Q.       Now, you also indicated in response to  
2 questioning from Commissioner Murray that you have still not  
3 been provided with records regarding maintenance schedules  
4 for the various components?

5           A.       No, I haven't.

6           Q.       And how important is it to have those types of  
7 records available for inspection?

8           A.       Mr. Smith has indicated that he has problems  
9 with his treatment facilities. In order for me or anybody,  
10 or him as an operator, you need to run some tests on your  
11 facilities. Any adjustments you do you need to document.

12                   Without these tests and without documented  
13 information to fall back on or to see what different  
14 adjustments or what things did, there's no -- you're  
15 shooting in the dark. You can't trouble shoot the treatment  
16 facility just by going out there and looking at it. You  
17 need to keep track of what you're doing and find out, you  
18 know, what any adjustment or what differences things made on  
19 the operations.

20           Q.       So among other things, it would have helped  
21 you to give him advice about his operations if he had kept  
22 those records?

23           A.       Me and anyone else. Mr. Smith indicated that  
24 he had other professionals or even DNR employees. In order  
25 to help him, we need that kind of documentation or -- to

1 know what steps to take to try to improve the facility.

2 Q. Did you ever attempt to explain to Mr. Smith  
3 why this recordkeeping was important?

4 A. Yes.

5 Q. And still no records are available?

6 A. No.

7 Q. Now, you responded to some questions about  
8 your latest inspection of the facilities, including the lift  
9 stations at Shady Oaks and over by the boat dock. Do you  
10 recall that?

11 A. Correct.

12 Q. And although there have been some repairs done  
13 at Shady Oaks, you believe there's still a possibility that  
14 there could be overflow there; is that right?

15 A. If it is only operated on one pump, if that  
16 pump should fail. It also looks to me like the -- there's  
17 some piping that had been -- PVC piping I seen that's not as  
18 the plant was -- the facility was designed. Without knowing  
19 exactly what that piping is, you know, things are meant to  
20 be put back together the way they were designed, and that  
21 could be a -- there's a board holding a piece of pipe in  
22 place. I don't know if that board fell down, if it would  
23 allow that pipe to burst. If it would, that would be an  
24 overflow. If the pump would not function properly, it would  
25 be an overflow depending on how long it takes to get another

1 pump in there.

2 Q. And this Shady Oaks lift station is the lift  
3 station that caused the problems that resulted in the  
4 probation violation proceedings; is that right?

5 A. That's my understanding.

6 Q. Okay. And you also talked about the lift  
7 station at the boat dock and the continuing problems with  
8 the way that is set up; is that right?

9 A. Yes.

10 Q. Now, that boat dock, lift station by the boat  
11 dock, is that fairly close to the water's edge?

12 A. There's a road between the lift station and  
13 the water's edge. If the lift station does back up or does  
14 malfunction, it won't actually overflow out of that lift  
15 station. It will overflow out of the manhole preceding that  
16 lift station, and that is fairly close to the water's edge.  
17 I've actually seen it run into the water's edge before from  
18 that lift station.

19 Q. And that manhole's actually on the other side  
20 of the road?

21 A. That's on the other side of the road, correct.

22 Q. And that manhole overflow was the subject of  
23 the investigation that led to the criminal charges in this  
24 case; isn't that correct?

25 A. That is correct.

1 Q. When you were there, were there any boats over  
2 at the dock yet when you were there?

3 A. There's always a few around there.

4 MS. O'NEILL: Thank you. I have nothing  
5 further.

6 JUDGE MILLS: Thank you. Mr. Schaefer,  
7 further cross-examination based on questions from the Bench?

8 MR. SCHAEFER: Thank you, Judge.

9 RECROSS-EXAMINATION BY MR. SCHAEFER:

10 Q. Mr. Loethen, I believe that you testified in  
11 response to a question from Commissioner Murray that you  
12 previously worked for a -- was it a sewer company?

13 A. Water and sewer company.

14 Q. What was the name of that company?

15 A. It was Capital Utilities when I worked there.  
16 It's had several names, Helmes Environmental Services,  
17 Capital Utilities and AquaSource.

18 Q. Where's that facility located?

19 A. In the Jefferson City area here, and we had --  
20 in Warsaw and Sedalia I also operated facilities there, and  
21 then I helped with contract jobs in Bourbon, Missouri.

22 Q. Those facilities ever receive any NOV's from  
23 DNR?

24 A. Yes, we have.

25 Q. You testified that two weeks ago that you were

1 at the facility, and you testified that the effluent looked  
2 poor from the first treatment facility?

3 A. Yes, it did.

4 Q. Did you take any samples?

5 A. No, I didn't. DNR did. Paul Mueller and Dan  
6 Daugherty and one other man was there from DNR and they took  
7 samples.

8 Q. Have you seen any results from those samples?

9 A. I haven't seen them, but I heard that both  
10 treatment plants failed.

11 Q. But you haven't seen those yourself?

12 A. No, I haven't.

13 Q. Okay. And have you ever taken any water  
14 samples of the drinking water from the Warren County --

15 A. No, I haven't.

16 Q. -- water?

17 A. Just chlorine residuals.

18 Q. Have you ever known the company to have an  
19 unacceptable water sample?

20 A. Not that I know of.

21 MR. SCHAEFER: I don't have anything further.

22 JUDGE MILLS: Redirect, Mr. Krueger?

23 MR. KRUEGER: No questions, your Honor.

24 JUDGE MILLS: Mr. Loethen, you may step down.

25 (Witness excused.)

1 MS. O'NEILL: Your Honor, if we could have a  
2 couple minutes. My witnesses have arrived. I just kind of  
3 want to let them know what's going on. Maybe a five-minute  
4 break.

5 JUDGE MILLS: Sure. Let's take a five-minute  
6 recess. We're off the record.

7 (A recess was taken.)

8 JUDGE MILLS: Ms. O'Neill, you can call your  
9 next witness, please.

10 MS. O'NEILL: Yes. I call Daniel Daugherty.

11 (Witness sworn.)

12 JUDGE MILLS: Thank you. Ms. O'Neill, you may  
13 proceed.

14 MS. O'NEILL: Thank you.

15 DANIEL DAUGHERTY testified as follows:

16 DIRECT EXAMINATION BY MS. O'NEILL:

17 Q. Could you please state your name and where  
18 you're employed.

19 A. Daniel Daugherty, Missouri Department of  
20 Natural Resources, St. Louis regional office.

21 Q. And how long have you been employed by the  
22 DNR?

23 A. Just over 12 years as of March this year.

24 Q. What are your primary duties in your current  
25 position?

1           A.       I'm the Unit Chief in the Field Investigation  
2 Section for the Water Section. I primarily supervise the  
3 staff that do drinking water activities.

4           Q.       And have you been involved in conducting  
5 investigations related to Warren County Water and Sewer  
6 Company or Gary Smith?

7           A.       Yes. I did several inspections related to the  
8 water and wastewater system over the years.

9           Q.       Now, have you previously given testimony  
10 that's been filed in this case as surrebuttal testimony of  
11 Daniel Daugherty?

12          A.       Yes.

13          Q.       And is that marked, as I think I just  
14 whispered to you as you came up to the stand, as Exhibit 8  
15 for identification?

16          A.       Yes, that's correct.

17          Q.       Have you had a chance to review that  
18 testimony?

19          A.       Yes, briefly.

20          Q.       Okay. Are there any changes, corrections or  
21 updates you'd like to make to that testimony?

22          A.       None that I could find.

23          Q.       Okay. And if I asked you the same questions  
24 today as I asked you during this previous testimony, would  
25 your answers be the same as they were then?



1           A.       Yes, they would.

2                   MS. O'NEILL:  At this time I would offer  
3 Exhibit 8 into evidence.

4                   JUDGE MILLS:  Exhibit 8 has been offered.  Are  
5 there any objections, Mr. Krueger?

6                   MR. KRUEGER:  No, your Honor.

7                   JUDGE MILLS:  Mr. Schaefer?

8                   MR. SCHAEFER:  To the extent it contains  
9 hearsay, I object, but that's it.

10                  JUDGE MILLS:  I've been through  
11 Mr. Daugherty's testimony, and I couldn't find anything that  
12 I would consider to be hearsay.  Can you point to me --

13                  MR. SCHAEFER:  I can go back through, Judge.  
14 It seems to me that I do recall that there was some  
15 information regarding the communications with someone else.  
16 I could be wrong on that, though.  I scanned through this  
17 right before we started in anticipation you may ask me that  
18 question.  I didn't see it.  If it's not there, I withdraw  
19 the objection, but I do believe that I did come across that.

20                  JUDGE MILLS:  Well, if you can find it, let me  
21 know and then we'll deal with the objection.  Otherwise, I'm  
22 not sure it's even a proper objection.  If you can tell me  
23 which portion you object to, then we'll address it.

24                  MR. SCHAEFER:  Well, Judge, he does -- for  
25 example, just on page 6, he does testify regarding

1 complaints that they received. I think that to the extent  
2 that the testimony regarding complaints is being offered for  
3 some other purpose, it might not be hearsay, but to the  
4 extent that it's used to establish that they did receive  
5 complaints, asserting that that out-of-court statement is  
6 that there was a problem with something, I believe that is  
7 hearsay.

8 JUDGE MILLS: But I don't think it does that.  
9 I think it simply says, what do you do when you receive a  
10 complaint?

11 MR. SCHAEFER: I think he specifically asked  
12 about complaints on this facility, and I don't believe he  
13 was asked in a general context of what does he do in  
14 general. I think he says -- he was specifically asked about  
15 complaints for this facility.

16 JUDGE MILLS: Exactly, but at least on page 6  
17 he doesn't testify about what the complaint said, and I  
18 don't believe the fact that he received a complaint is  
19 hearsay. So if that's your objection, it's overruled.

20 MR. SCHAEFER: Okay.

21 JUDGE MILLS: Were there more?

22 MR. SCHAEFER: I can keep reading or perhaps  
23 you can take it under advisement and I can keep skimming  
24 this while Ms. O'Neill is laying further foundation.

25 JUDGE MILLS: I believe she's probably done

1 with the foundation.

2 MR. SCHAEFER: Okay. Then I'll keep looking.

3 (EXHIBIT NO. 18 WAS MARKED FOR IDENTIFICATION  
4 BY THE REPORTER.)

5 MR. SCHAEFER: Other than on page 10 where he  
6 discusses that Mr. Baker was present and talked with  
7 Mr. Smith, but I don't believe actually that it's very  
8 damaging because they don't go into very much there. So I  
9 still think testifying to any conversation Mr. Baker may  
10 have had with Mr. Smith is hearsay, but that's my objection.  
11 It's on page 10.

12 JUDGE MILLS: The statement that Mr. Baker has  
13 been out several times to talk to Mr. Smith, that's the  
14 statement that you object to?

15 MR. SCHAEFER: And also I believe that  
16 Mr. Baker was present when the Missouri Rural Water  
17 Association was out and helped Mr. Smith with smoke testing  
18 sewer lines to detect leaks that would allow inflow into the  
19 sewer system and overload the package plants, I think that  
20 testimony is very borderline as to whether or not that's an  
21 inference that there's a problem or not. To the extent that  
22 inference can be drawn from that testimony, it's hearsay.

23 JUDGE MILLS: I don't find that either of  
24 those statements are statements made by someone who is not  
25 present. I don't think either of those are actually

1 hearsay. So the objection is overruled, and the testimony  
2 will be admitted.

3 (EXHIBIT NO. 8 WAS RECEIVED INTO EVIDENCE.)

4 JUDGE MILLS: Ms. O'Neill, were you finished?

5 MS. O'NEILL: Actually, since I'm here, your  
6 Honor, I think I'm going to ask the witness to identify one  
7 more item.

8 BY MS. O'NEILL:

9 Q. Mr. Daugherty, show you what's been marked for  
10 identification as Exhibit 18. Ask you if you recognize  
11 that?

12 A. Yes. This is my most recent inspection of the  
13 water system serving Warren County Water and Sewer system  
14 that was conducted on May 14th of this year.

15 Q. And other than the cover letter, did you  
16 prepare that report?

17 A. Yes, I did.

18 Q. And approximately when did you prepare that  
19 report?

20 A. It would have been on the -- probably the 15th  
21 and 16th of May.

22 Q. Okay. And is that report true and accurate to  
23 the best of your knowledge?

24 A. To the best of my knowledge, yes.

25 Q. And it concerns Warren County Water and Sewer

1 system?

2           A.       Yes, the water portion of the water and sewer  
3 system.

4                   MS. O'NEILL: At this time I would also offer  
5 Exhibit 18.

6                   JUDGE MILLS: Are there any objections to the  
7 admission of Exhibit 18, Mr. Krueger?

8                   MR. KRUEGER: No, your Honor.

9                   JUDGE MILLS: Mr. Schaefer?

10                  MR. SCHAEFER: No, Judge.

11                  JUDGE MILLS: Thank you.

12                  MS. O'NEILL: I have no further questions at  
13 this time.

14                  JUDGE MILLS: Thank you. Cross-examination,  
15 Mr. Krueger?

16                  MR. KRUEGER: No, your Honor.

17                  JUDGE MILLS: Mr. Schaefer?

18                  MR. SCHAEFER: No, your Honor.

19                  JUDGE MILLS: Thank you. We'll move straight  
20 to questions from the Bench. Commissioner Murray.

21 QUESTIONS BY COMMISSIONER MURRAY:

22           Q.       Good afternoon.

23           A.       Good afternoon.

24           Q.       The Exhibit 18 that you were just asked to  
25 identify, the inspection report, can you tell me what

1 that -- without reading the whole thing, can you tell me  
2 what the inspection report indicated?

3           A.       As far as the physical quality of the water,  
4 it was in reasonably good shape. It had in the previous 12  
5 months only one bacteriological maximum contaminant  
6 violation and one minor monitoring violation in another  
7 month, which means that they did collect samples and that  
8 the samples were okay but they didn't collect enough  
9 samples.

10                   Other than that, the chemicals, the nitrates,  
11 all appeared to have been submitted satisfactorily and are  
12 in compliance. The only other violations that the water  
13 system has was for failure to remit primacy fees and  
14 laboratory services administration fees.

15           Q.       And how long has that failure gone on? How  
16 much past due are those fees?

17           A.       The laboratory services fees have not been  
18 paid for this year, and I believe the primacy fees have not  
19 been submitted for the years 1999, 2000 or 2001.

20           Q.       What are those fees?

21           A.       The fees are actually charged to the customers  
22 of the water system. They're based upon the size of the  
23 water system, the size of the meter serving the residence or  
24 building. The water system is required to collect these  
25 fees. Usually they start at \$2 for the service connection

1 and they go down from there depending upon the size of the  
2 water system. The larger the water system, the smaller the  
3 fees for residential customers.

4           And it helps to in small part fund the public  
5 drinking water program so that the state of Missouri's  
6 public drinking water program will be the primacy agency in  
7 charge of enforcing the public drinking water laws and  
8 regulations rather than forfeiting the ability to do that to  
9 the state and turning it over to the US EPA.

10           Q.       And do you know the dollar amount that is past  
11 due?

12           A.       No, I do not.

13           Q.       On page 11 of your surrebuttal testimony, you  
14 speak about a letter there, and I'm looking down on lines 20  
15 and following. The letter stated that it was time for him  
16 to consider moving ahead with plans of adding additional  
17 storage or a new storage structure for his water system. Is  
18 that a letter from you that you're speaking of to Mr. Smith?

19           A.       Yes, I believe that would be correct.  
20 Mr. Smith provided me information on the amount of water  
21 being produced daily and asked me to review that, and so  
22 then I responded back to him saying that, based on his water  
23 usage, the current storage facility was reaching its maximum  
24 average daily -- maximum daily usage and it was time to look  
25 for a larger water storage facility or water tower.

1           Q.       And on the next page it looks like you  
2 indicated that that was somewhere around 1996 or '97; is  
3 that correct?

4           A.       I believe that's the correct dates, yes.

5           Q.       So if -- or do you know if any additional  
6 storage has been added since that time?

7           A.       No, there has not.

8           Q.       So what is your opinion as to the adequacy of  
9 the water supply?

10          A.       Currently -- I believe I may have touched on  
11 that on the most recent inspection -- with the additional  
12 housing that's been going in at Incline Village and just  
13 outside Incline Village, I believe they're at about one-half  
14 of an average daily storage, or they're using about  
15 approximately twice as much water as what the stand pipe  
16 will store.

17          Q.       And that means what in terms of adequacy?

18          A.       Our design guide establishes as kind of a rule  
19 of thumb the water storage should be approximately one  
20 average day's consumption. This will allow the water system  
21 some margin of time in the event a well goes down or there's  
22 other problems, they'll still be able to provide water for  
23 12 to possibly 24 hours depending on how much storage they  
24 actually have.

25                   So currently they have less than a half day's



1 storage. If there was a problem with the pump and it had to  
2 be replaced, there's practically no way of having enough  
3 water in storage that they could have the pump replaced  
4 without losing service to the entire system.

5 Q. And once service is lost, is there a  
6 restoration delay, restoration of service?

7 A. Well, it could last for, depending on what the  
8 problem is, several hours or a day or longer depending on  
9 what the problem is that they have to correct.

10 The problem as I see it is that, once you lose  
11 pressure, then there's a potential that contaminants could  
12 enter the water line because the water lines are no longer  
13 under pressure and any cracks or other openings in the line  
14 which normally would leak water out would now allow ground  
15 water to enter, and you may get contamination of the  
16 distribution system. So it's just another potential problem  
17 for losing service for an extended period of time.

18 Q. If there is contamination that occurs, what's  
19 the remedy for that?

20 A. We advise water systems right now that if they  
21 do lose pressure, whether it's the entire system due to a  
22 complete outage or a small portion of a line due to just  
23 repair of a short section, to issue a precautionary boil  
24 order until they can collect samples from the distribution  
25 sample, have them analyzed and make sure that there was no

1 contamination.

2 Q. Are you aware of any times in which this  
3 system has lost pressure?

4 A. I believe there were, but I don't have any  
5 specific dates.

6 Q. And if there were to be an emergency where  
7 there was water needed to put out a fire or something like  
8 that, would that -- would the pressure likely reduce to the  
9 point that it would be inadequate?

10 A. I'm not sure how the local fire department is  
11 set up. You would really have to check with them, but I  
12 believe they are familiar with the local system, and I --  
13 I'm not positive, but I don't believe they would hook a  
14 pumper truck directly to the water system there within  
15 Incline Village. They would simply use the hydrant to fill  
16 the tanker and then they would pump out of a tanker truck.

17 COMMISSIONER MURRAY: I believe that's all.

18 Thank you.

19 JUDGE MILLS: I've just got a couple of  
20 questions.

21 QUESTIONS BY JUDGE MILLS:

22 Q. I think one of the first things that you  
23 talked about with Commissioner Murray was the primacy fees,  
24 and I believe you said that those fees are collected from  
25 the water system's end user customers?

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1           A.       Correct.

2           Q.       So in the case of Warren County Water and  
3 Sewer Company, it appears that it's delinquent for three  
4 years of those fees, is that correct, not counting 2002,  
5 1999, 2000 and 2001?

6           A.       Yeah. I didn't get a response -- the response  
7 I got back from the drinking water program stated 1999,  
8 2000, 2001. I'm not sure what the date is that they send  
9 out the notice for, you know, each year. So it may have  
10 just been sent out and they're not due yet.

11          Q.       For 2002?

12          A.       Correct.

13          Q.       But for those other three years --

14          A.       They are past due.

15          Q.       All that money would have been collected from  
16 the customers during those years?

17          A.       Right. It's -- generally, it starts at a \$2  
18 per year annual charge per service connection or per house,  
19 and water systems have a variety of ways of dealing with it.  
20 They either have one month where they actually itemize that  
21 on the bill and collect that separately or some smaller  
22 systems, especially those that are on a flat rate, simply  
23 take that money out of the money that comes in, you know,  
24 without itemizing it separately and don't make a separate  
25 charge out of it.

1 JUDGE MILLS: Okay. That's all the questions  
2 I had. Is there cross-examination based on those questions,  
3 Mr. Krueger?

4 MR. KRUEGER: None from Staff, your Honor.

5 JUDGE MILLS: Mr. Schaefer?

6 MR. SCHAEFER: No, Judge.

7 JUDGE MILLS: Redirect, Ms. O'Neill?

8 MS. O'NEILL: No, your Honor. Thank you.

9 JUDGE MILLS: Thank you. Mr. Daugherty, I  
10 believe you're excused. Thank you.

11 (Witness excused.)

12 MS. O'NEILL: We would call Paul Mueller.

13 JUDGE MILLS: Before you proceed, just as a  
14 housekeeping matter, I never actually said that Exhibit 18  
15 is admitted into the record, so I will say that now. There  
16 were no objections to it and it's now admitted.

17 (EXHIBIT NO. 18 WAS RECEIVED INTO EVIDENCE.)

18 (Witness sworn.)

19 PAUL MUELLER testified as follows:

20 DIRECT EXAMINATION BY MS. O'NEILL:

21 Q. Could you please state your name.

22 A. Paul Eric Mueller.

23 Q. And Mr. Mueller, how are you employed?

24 A. Environmental Specialist for the Missouri  
25 Department of Natural Resources.

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1 Q. And how long have you been employed by the  
2 Department of Natural Resources?

3 A. Since 1993.

4 Q. And what are your primary duties in your  
5 current position?

6 A. I'm the water pollution facilities inspector,  
7 public drinking water facility inspector and also work in  
8 our Solid Waste Program.

9 Q. And have you been involved in investigating  
10 Warren County Water and Sewer Company and/or Gary Smith?

11 A. Yes, I have.

12 Q. And previously today did you give testimony  
13 which has been filed in this case and is marked as  
14 Exhibit 9?

15 A. Yes.

16 Q. And have you had a chance to review that  
17 testimony?

18 A. Yes, I have.

19 Q. Are there any changes or corrections or  
20 updates that you need to make to that testimony at this  
21 time?

22 A. Not at the date of that testimony, no.

23 Q. If I asked you the questions in that previous  
24 testimony today, would your answers be the same today as  
25 they were then?

1           A.       Yes, they would.

2                   MS. O'NEILL: At this point I would offer

3 Exhibit 9 into evidence.

4                   JUDGE MILLS: Exhibit 9 has been offered. Are

5 there any objections?

6                   MR. KRUEGER: No, your Honor.

7                   MR. SCHAEFER: Can I have just another minute,

8 your Honor?

9                   JUDGE MILLS: I'm sorry?

10                  MR. SCHAEFER: Can I have just one more second

11 to look something over?

12                  JUDGE MILLS: Sure.

13                  MR. SCHAEFER: No questions, Judge -- or no

14 objections. Excuse me.

15                  JUDGE MILLS: With no objections, Exhibit 9

16 will be admitted into the record.

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

18                  MS. O'NEILL: I have nothing further at this

19 time.

20                  JUDGE MILLS: Cross-examination, Mr. Krueger?

21                  MR. KRUEGER: No questions, your Honor.

22                  JUDGE MILLS: Mr. Schaefer?

23                  MR. SCHAEFER: No questions, Judge.

24                  JUDGE MILLS: Thank you. Questions from the

25 Bench, Commissioner Murray.

1 COMMISSIONER MURRAY: Thank you.

2 QUESTIONS BY COMMISSIONER MURRAY:

3 Q. Good afternoon. You have had several  
4 occasions apparently to inspect the facilities of Mr. Smith;  
5 is that correct?

6 A. Yes, I have.

7 Q. And in the testimony that you filed, on  
8 page 5, you indicated that on average you go out to the  
9 Warren County Water and Sewer Company's territory about once  
10 a year if there are no problems, but if there are problems  
11 maybe on a monthly or weekly basis; is that correct?

12 A. Yes.

13 Q. And at the time this testimony was filed, you  
14 indicated, I believe, that you had been out there about  
15 weekly; is that right?

16 A. Yes.

17 Q. Since January of, that would have been 2002?

18 A. Yes.

19 Q. And the reason that you were out there so  
20 frequently was?

21 A. We were having a problem with the pump station  
22 out there that had been failing, so I was regularly checking  
23 it. It took some time to get it repaired, and then I was  
24 monitoring to make sure that it was still operating properly  
25 because it still only had one pump in it, so it was still a

1 concern.

2 Q. And you are familiar, I'm sure, with the  
3 EPA --

4 A. Yes.

5 Q. -- Notice of Violations, and what about DNR  
6 NOVs?

7 A. I've sent Notice of Violations out several  
8 times. I would have to look them up to see when they  
9 actually were. We have sent them to our enforcement section  
10 at the Water Pollution Control Program, and they are  
11 processing additional enforcement action there.

12 Q. Currently?

13 A. Currently, yes.

14 Q. And what violation or violations is that  
15 current proceeding involving?

16 A. We have several violations that have built up,  
17 several fees that have not been paid, plants that are not  
18 meeting their monthly limits based on samples that Mr. Smith  
19 has submitted. Samplings that I've collected have been in  
20 violation. So we've got several different problems out  
21 there that we're trying to get corrected.

22 Q. And these are wastewater system problems?

23 A. Yeah, these are on the wastewater facilities.

24 Q. And you say several samples that you have  
25 collected. What would be the most recent sample that has



1 had a problem?

2           A.       The last inspection that I did out there would  
3 have been back on May 14th.

4           Q.       Okay. And you collected the sample at that  
5 time?

6           A.       One from each plant, yes.

7           Q.       And what did those samples show?

8           A.       The BOD was out on both plants above the  
9 limits, and the non-filterable residue was above the limits  
10 on Plant No. 1. Plant 2 was within limits.

11          Q.       And BOD was over on both?

12          A.       Yes. That's the biochemical oxygen demand.

13          Q.       And prior to that, what was the most recent  
14 sample that showed a violation?

15          A.       In February I'd set up composite samplings  
16 over a period of time on both plants and had violations at  
17 that time also.

18          Q.       Was that BOD violations?

19          A.       I believe both plants were out on BOD, but I  
20 don't have that figure in front of me right now. There  
21 would be reports in the file showing what they were.

22                   MS. O'NEILL: Commissioner Murray, I don't  
23 have copies to enter as exhibits, but I do have copies of  
24 that report.

25                   COMMISSIONER MURRAY: If he'd like to refer to

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1 it.

2                   THE WITNESS: On March 5th I sent Mr. Smith a  
3 letter notifying him of my composite samples. Plant No. 1,  
4 the non-filterable residue was 223 percent above the  
5 required limit. It was at 97 milligrams per liter, and --  
6 BY COMMISSIONER MURRAY:

7           Q.       I'm sorry. Would you repeat that? It was how  
8 much above?

9           A.       223 percent above the limit. It was at 97  
10 milligrams per liter.

11          Q.       All right.

12          A.       And the non-filterable residue was at 84  
13 milligrams per liter, and the limit's 30 on that.

14                   Plant 2, the BOD was at 25, and on that plant  
15 the limit is 20 because it's directly on the lake, and the  
16 non-filterable residue was 27. Again, the limit on that  
17 plant was 20 milligrams per liter. Effluent's a better  
18 quality, but the limits are tighter on that. So they're  
19 still in violation.

20          Q.       And that is in violation of Missouri law as  
21 well as the Clean Water Law; is that right?

22                   MR. SCHAEFER: I would object in that it calls  
23 for a legal conclusion.

24                   JUDGE MILLS: I don't believe that it calls  
25 for a legal conclusion. I think this is the kind of thing

1 that this witness does on a daily basis. This is what he  
2 does for a living.

3 THE WITNESS: I have specific laws that I can  
4 cite that were in violation, and I did cite the actual law  
5 and regulations in the Notice of Violation.

6 BY COMMISSIONER MURRAY:

7 Q. And you have that with you?

8 A. That would be Missouri Clean Water Law  
9 Chapter 644. It would be subsection 644.051.13, and Clean  
10 Water Law 644.076.1 were the actual laws that were cited  
11 that were in violation.

12 Q. And I will ask you a question that I asked one  
13 of the witnesses from the EPA earlier today. When there is  
14 a violation that the DNR notices that you think might be  
15 affecting the waters of the United States, does the DNR  
16 routinely notify the EPA?

17 A. Not routinely, no.

18 Q. Why not?

19 A. We conduct our investigation separate from  
20 their investigations. I just routinely don't notify them.  
21 If we get something that's severe that -- I think the fish  
22 kills we do notify them when we get fish kills, but  
23 routinely, routine violations we don't notify them, because  
24 sometimes we have plants that have a problem and we discuss  
25 things with the owner and it gets corrected and we're back

1 into compliance again there.

2 Q. And would you say it works that way for EPA as  
3 well, if they're investigating something that they think  
4 might be of interest to DNR that they don't notify DNR?

5 A. They'll come into the office to review our  
6 files, and at that point we're pretty much put on notice  
7 that there's a problem with that facility because they're  
8 reviewing it, and our supervisor will check with us to see  
9 what we know about what's going on out there.

10 Q. And your reason for being at the facility on  
11 May 14th, was that because of the fish kill, the advisory on  
12 the fish kill?

13 A. No. The fish kill was last week. May 14th  
14 was a routine inspection that we did schedule with  
15 Mr. Smith, and several people from the Department of Natural  
16 Resources and the Public Service Commission were out there  
17 to meet with him and look at the facilities.

18 Q. All right. On page 12 of your surrebuttal  
19 testimony, you indicate -- at line 16 you say, Records  
20 indicate that the plants' effluent has degraded in the last  
21 year so that at this time I feel that there has not been  
22 much progress in making the plants operate better. Would  
23 you say that is still the case?

24 A. Yes.

25 Q. Have you worked directly with Mr. Smith?

1           A.       I've talked to him on several times. My  
2 expertise is not in operation of plants. I do give him some  
3 advice on things that I've heard that he might try,  
4 recommend people that can give technical assistance to work  
5 with him, but I have met with him at the site several times.

6           Q.       What response have you received from advice  
7 you've given?

8           A.       He seems receptive at the time.

9           Q.       Does he follow through?

10          A.       Not as completely as I think he could be.

11                   COMMISSIONER MURRAY: I believe that's all I  
12 have. Thank you.

13                   JUDGE MILLS: Further cross-examination based  
14 on questions from the Bench, Mr. Krueger?

15                   MR. KRUEGER: None, your Honor.

16                   JUDGE MILLS: Mr. Schaefer?

17                   MR. SCHAEFER: Yes, Judge.

18 RE-CROSS-EXAMINATION BY MR. SCHAEFER:

19          Q.       Mr. Mueller, do you pronounce it Mueller or  
20 Mueller?

21          A.       Mueller.

22          Q.       Mueller. How long have you been with the  
23 Water Pollution Control Program?

24          A.       I started working in the Water Pollution  
25 Control Program in 1994.

1 Q. Approximately how many NOVs would you believe  
2 that the Water Pollution Control Program issues per year?

3 A. I would have no idea.

4 Q. Would it be over 500?

5 A. The program itself, I never see that data, so  
6 it would be just a guess on my part.

7 Q. How many regions are there for DNR for the  
8 Water Pollution Control Program?

9 A. Seven regions.

10 Q. Seven regions. And you're in the St. Louis  
11 region, correct?

12 A. Right.

13 Q. How many NOVs would you say are issued by the  
14 Water Pollution Control Program by the St. Louis region in a  
15 year?

16 A. I don't track the other inspectors' Notice of  
17 violations, so I wouldn't know that information either.

18 Q. Would it be over 100?

19 A. Again, it would be a guess on my part.

20 Q. Okay. Have you yourself been involved in any  
21 bypass or overflow issues with the St. Louis Metropolitan  
22 Sewer District?

23 A. Not in recent years.

24 Q. Have you in the past?

25 A. Previously, before I was working in the

1 satellite office, I did some work with them.

2 Q. What is a bypass?

3 A. A bypass is just a short term we use for  
4 talking about when we have wastewater not getting to the  
5 treatment plant and going through the proper treatment  
6 chain.

7 Q. Could that lead to increased BOD in the final  
8 discharge?

9 A. No.

10 Q. Could it lead to increased residue?

11 A. No.

12 Q. It could not lead to increased BOD?

13 A. Not if the bypass is occurring. It's not  
14 getting to the plant, so it's going somewhere else besides  
15 to the plant, so it's not going to affect the discharge at  
16 the plant.

17 Q. Okay. Wherever that bypass is going, would  
18 that lead to an increase in BOD?

19 A. Yes.

20 Q. And also wherever that bypass is going, would  
21 that lead to an increase in residue?

22 A. Yes.

23 Q. Does the St. Louis Metropolitan Sewer District  
24 have bypasses?

25 A. Yes.

1 Q. Does it receive NOV's from the Department of  
2 Natural Resources?

3 A. I haven't issued any. I'm not sure how the --  
4 it's handled by senior staff in the St. Louis regional  
5 office.

6 Q. How many sewage treatment facilities would you  
7 say you cover in your St. Louis region?

8 A. I believe I have 40, 45 assigned to me.

9 Q. Okay. How many NOV's on average do you issue  
10 per year to those facilities in total?

11 A. Probably 10 to 12.

12 Q. Okay. That would be 10 to 12 facilities or 10  
13 to 12 total NOV's?

14 A. 10 to 12 total NOV's.

15 MR. SCHAEFER: I don't have any further  
16 questions.

17 JUDGE MILLS: Redirect, Ms. O'Neill?

18 MS. O'NEILL: Thank you.

19 REDIRECT EXAMINATION BY MS. O'NEILL:

20 Q. Mr. Mueller, I am not clear about a couple  
21 answers you gave to Commissioner Murray, so I just want to  
22 try to clarify something really quick.

23 You went out to conduct an inspection, a  
24 regular routine inspection on May 14th; is that right?

25 A. Yes.



1 Q. There was a report of a fish kill last week.

2 Are you aware of that?

3 A. Yes.

4 Q. Did you also go out to investigate that?

5 A. Yes, I did.

6 Q. And did you take any -- do any sampling at  
7 that point in time?

8 A. I did some field sampling of nitrates, pH,  
9 conductivity, temperature, and I also took a -- grabbed a  
10 sample from the effluent discharge of Plant No. 1.

11 MR. SCHAEFER: Judge, I'm going to object  
12 because I actually don't believe that Commissioner Murray  
13 did ask anything about the fish kill. I think this is  
14 beyond the scope.

15 JUDGE MILLS: I believe she did. I believe  
16 she asked the question about whether he went in response --  
17 whether his visit on May 14 was in response to the fish  
18 kill.

19 MR. SCHAEFER: I may be mistaken on that.

20 BY MS. O'NEILL:

21 Q. And are those samples being processed or being  
22 tested at this current time?

23 A. The grab sample is still at the lab being  
24 tested, yes. I did take field tests that I had instant  
25 results from out there.

1 Q. What did your instant results show?

2 A. I had high pH and very high ammonias, both in  
3 the effluent and in the bay of Incline Lake.

4 Q. And that would be the bay where the dead fish  
5 were?

6 A. Yes.

7 Q. Were there a lot of dead fish?

8 A. I didn't do a count of that. That was  
9 something that we leave for the Missouri Department of  
10 Conservation to do. I would estimate somewhere around a  
11 thousand gizzard shad.

12 MS. O'NEILL: No further questions.

13 JUDGE MILLS: Thank you. Mr. Mueller, you may  
14 step down.

15 (Witness excused.)

16 MS. O'NEILL: Your Honor, may Mr. Daugherty  
17 and Mr. Mueller be excused?

18 JUDGE MILLS: Yes, they may.

19 MS. O'NEILL: And at this time Public Counsel  
20 rests.

21 JUDGE MILLS: I think we're up to Mr. Merciel.

22 (Witness sworn.)

23 JUDGE MILLS: You may be seated.

24 JAMES A. MERCIEL, JR. testified as follows:

25 DIRECT EXAMINATION BY MR. KRUEGER:

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1 Q. Please state your name and business address.

2 A. My name is James A. Merciel, Jr. Business  
3 address is 200 Madison Street, Jefferson City, Missouri.

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

5 A. By the Public Service Commission. My title is  
6 Assistant Manager - Engineering. I work in the Water and  
7 Sewer Department.

8 Q. Did you prepare and cause to be prefiled in  
9 this case the rebuttal testimony of James A. Merciel, Jr.  
10 which has been marked as Exhibit No. 10?

11 A. Yes, I did.

12 Q. Do you have any corrections or changes to that  
13 testimony?

14 A. No, I don't.

15 Q. If I asked you the same questions today as  
16 those that are contained in this testimony, would your  
17 answers be the same?

18 A. Yes, they would.

19 Q. Did you also prepare and cause to be prefiled  
20 in this case the cross-surrebuttal testimony of James A.  
21 Merciel, Jr.?

22 A. Yes, I did.

23 Q. And that has been identified as Exhibit 11.  
24 Do you have any corrections or changes to that document?

25 A. No, sir.

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1           Q.       If I asked you the same questions today, would  
2 your answers be the same?

3           A.       Yes.

4           MR. KRUEGER: I would offer Exhibits 10 and 11  
5 and tender the witness for cross-examination, your Honor.

6           JUDGE MILLS: Exhibits 10 and 11 have been  
7 offered. Are there any objections?

8           MS. O'NEILL: No, your Honor.

9           MR. SCHAEFER: I do have the same hearsay  
10 objection. There is extensive testimony on the substance of  
11 complaints, and I would object to that as hearsay.

12          JUDGE MILLS: Those objections are noted.  
13 They'll go to the weight of the testimony and not to its  
14 admissibility, and Exhibits 10 and 11 are admitted.

15          (EXHIBIT NOS. 10 AND 11 WERE RECEIVED INTO  
16 EVIDENCE.)

17          JUDGE MILLS: Cross-examination, Ms. O'Neill?

18          MS. O'NEILL: Thank you.

19 CROSS-EXAMINATION BY MS. O'NEILL:

20          Q.       Good afternoon.

21          A.       Good afternoon, Ms. O'Neill.

22          Q.       Mr. Merciel, in the course of your duties, do  
23 you receive complaints from customers of water utilities?

24          A.       Yes, regularly.

25          Q.       Is that part of your -- is it part of your

1 duties to respond to those complaints?

2 A. Yes, it is.

3 Q. And did you -- and in the course of your --  
4 well, let me ask you, have you worked with the Warren County  
5 Water and Sewer Company in the past?

6 A. Yes, I have.

7 Q. And by work with I mean as a Commission staff  
8 member.

9 A. Yes. In the context of my employment with the  
10 Commission, that's correct.

11 Q. And have you also investigated consumer  
12 complaints based on this company?

13 A. I have. Many of them have been investigated  
14 by others under my supervision as well.

15 Q. In your employment with the Commission Staff,  
16 have you attempted to provide assistance in the past to  
17 Warren County Water and Sewer Company in overcoming problems  
18 related to consumer complaints?

19 MR. SCHAEFER: Judge, I'm going to object. I  
20 believe again Office of the Public Counsel and Staff are  
21 sufficiently aligned. This is all covered in his testimony,  
22 and I think this is all friendly cross.

23 JUDGE MILLS: And once again I agree with you,  
24 this is friendly cross, but it hasn't really gone anywhere  
25 yet. I think these are just sort of preliminary questions

1 to set the stage. This is stuff that's pretty much taken  
2 for granted. I'm going to wait and see where Ms. O'Neill  
3 goes with this questioning before I determine whether it's  
4 friendly cross or not.

5                   Right now, yes, it is friendly cross and it is  
6 routine stuff that's in all the testimony, and I certainly  
7 don't want to take up a whole lot of time with that kind of  
8 stuff this afternoon, but I'm going to allow her to go a  
9 little bit further and see where she's going with it. So  
10 your objection's overruled.

11                   THE WITNESS: The answer to that question is  
12 yes.

13 BY MS. O'NEILL:

14           Q.       And are you aware of whether Mr. Smith sent a  
15 letter to your department saying you were the only  
16 Commission staff member who was doing their job or words to  
17 that effect?

18           A.       I recall seeing something to that effect.

19           Q.       And are you aware of whether there was later  
20 correspondence from Mr. Smith backing out of that opinion,  
21 or do you know, or does he still think that you're still a  
22 pretty good staff member?

23           A.       I would have to say I don't recall additional  
24 correspondence saying anything to that effect.

25           Q.       Okay. Are you aware that a letter with those

1 compliments to you, perhaps at the expense of your is  
2 coworkers, attached to --

3 MR. SCHAEFER: I'm going to object, Judge.  
4 She's testifying now.

5 JUDGE MILLS: I think she hasn't finished her  
6 question yet, but we'll see what it says.

7 BY MS. O'NEILL:

8 Q. -- is attached to Mr. Loethen's testimony in  
9 this case, I believe it's his rebuttal testimony?

10 A. I believe you're right, I believe it is.

11 MS. O'NEILL: I have nothing further at this  
12 time.

13 JUDGE MILLS: In case I wasn't clear, that  
14 last objection was overruled.

15 Cross-examination, Mr. Schaefer?

16 MR. SCHAEFER: No, Judge.

17 JUDGE MILLS: Questions from the Bench,  
18 Commissioner Murray.

19 COMMISSIONER MURRAY: Thank you.

20 QUESTIONS BY COMMISSIONER MURRAY:

21 Q. Good afternoon, Mr. Merciel.

22 A. Hello, Commissioner.

23 Q. I'm going to go through your testimony and ask  
24 you some questions related to it. First of all, on page 6  
25 of your rebuttal testimony, at the bottom of the page there

1 you're indicating that some customers have been out of water  
2 for several weeks. Is that correct?

3 A. Yes, that is correct.

4 Q. What do those -- what have those customers  
5 done when they've been out of water for several weeks?

6 MR. SCHAEFER: I'm going to object in that I  
7 believe his statement there is that he received those  
8 complaints from other individuals. That would be hearsay.  
9 So I would object to any testimony from those hearsay  
10 statements.

11 JUDGE MILLS: Well, I think -- I think the  
12 question here is more of a general nature as in what does a  
13 customer do when it's out of water for several weeks. I  
14 don't know that this has anything to do with -- I'll have to  
15 see what the answer is. We'll wait and see. But I don't  
16 think that this has to do with Mr. Merciel's conversations  
17 with these particular individuals.

18 MR. SCHAEFER: My objection would be to the  
19 extent that he's going to testify as to what he's discussed  
20 with these individuals, that would be hearsay.

21 JUDGE MILLS: And I agree, it probably would.

22 THE WITNESS: Well, first of all, I have  
23 talked to such customers who were out of water directly  
24 myself. I've taken some of the complaints, as have others  
25 on the staff. When I say the staff, I'm included. I have



1 handled them personally.

2                   In some cases the customers were able to run  
3 hoses from someone else's house who was not out of water and  
4 at least receive some type of water service in some fashion.  
5 I honestly don't recall if the company assisted in that  
6 regard or not. In some situations companies do, and I  
7 honestly don't remember whether Mr. Smith did or not.

8                   I think there may have been some customers  
9 that truly didn't have water, and in some cases they might  
10 be able to haul water in, like, milk jugs or some other type  
11 of container and at least make do. It's painful for a long  
12 time, of course, but sometimes you have to do what you have  
13 to do.

14 BY COMMISSIONER MURRAY:

15           Q.       In your experience with the Public Service  
16 Commission, is it unusual for a customer of a regulated  
17 water utility to be out of water for several weeks?

18           A.       I would say it's unusual, not unheard of.  
19 It's happened here, and I can think of one other. In fact,  
20 there was another company, it might have been the same time  
21 as this one, had a similar outage with some customers out of  
22 water, and I don't recall the length, but it was some length  
23 of time on that one as well.

24           Q.       Were you personally involved in taking the  
25 complaints and seeing what was going on with this particular

1 outage? Actually, you mentioned twice in seven years where  
2 water mains have frozen. Were you involved in that  
3 personally?

4       A.       Yes, ma'am, I was personally involved. Not  
5 single-handedly, but I was involved.

6       Q.       Do you know how the -- how Mr. Smith responded  
7 at the time?

8       A.       Well, this last time he did have his workers  
9 come out and, if I recall, he tried several things. First  
10 of all, there's a flush valve at the end of the main, and  
11 I'm not remembering all the details, but one theory is if  
12 you can get a little bit of water running through the main  
13 then that would melt some of the ice where the main's  
14 frozen.

15               And, in fact, I believe in one case there was  
16 some water running through the main but a customer's service  
17 line was the one that was frozen up. So there was a  
18 customer that was out of water when there actually was water  
19 in the main.

20               Also, he had his employees dig up the main and  
21 attempt to thaw it out that way. If I recall, there was  
22 some warmer weather, it was frozen but getting the main  
23 exposed and getting some sunlight on it. There may have  
24 been sections that were actually replaced, dig a trench and  
25 simply reconstruct the pipeline.

1                   If I recall, rock was a factor in this, so I  
2 think that's probably why it freezes to begin with. It's  
3 not that deep. There was some rock and it's a fairly  
4 shallow pipeline, and I think that was a factor in part of  
5 its replacement.

6           Q.       And why is it shallow?

7           A.       Well, because of the rock. There's a layer of  
8 dirt, which is easy to dig in, but it's not so easy to dig  
9 in rock, and whenever the -- and by the way, Mr. Smith was  
10 not the one that constructed this water main originally. It  
11 was another subdivision, and whoever installed the water  
12 main, I have no idea who that was, but they dug as far as  
13 they could in the dirt, and it just wasn't deep enough to  
14 avoid freezes.

15          Q.       Is there something that should be done to  
16 prevent that kind of outage in the future?

17          A.       Ideally, replacing it, replacing the water  
18 main at a sufficient depth would be the right way to do it.

19          Q.       Have you recommended that?

20          A.       I believe we did.

21          Q.       Has Mr. Smith responded?

22          A.       I don't believe Mr. Smith dug any rock out.  
23 As I stated, I believe part of it was replaced, but not  
24 necessarily by digging rock. There might have been -- might  
25 have been some portions where some dirt was hauled in.

1 Again, I'm not remembering all the details about it, but  
2 there might have been some dirt hauled in in some places so  
3 that effectively the main remains at the same place but it's  
4 buried deeper by nature of hauling dirt in.

5 Q. You mentioned on that same page that billing  
6 has been based on estimated meter readings. Do you know if  
7 that is still the case?

8 A. I don't know of any current problems, but  
9 there have been a few of those in the past. And one reason  
10 why I consider that unique among this company, of course,  
11 estimated bills are not all that uncommon, but usually  
12 there's a reason, like you can't get to the meter, maybe  
13 it's grown in weeds or it's in somebody's yard and there's a  
14 dog running in the yard or there's some reason not to be  
15 able to get to the meter.

16 But in this case, the ones we've seen, there  
17 really wasn't a good reason we could determine why it was  
18 estimated. It's just that the meter wasn't read.

19 Q. So you don't know whether the meters are  
20 currently being read?

21 A. As far as I know, they're currently being  
22 read, and the billing problems that have resulted to my  
23 knowledge have been resolved.

24 Q. What about improper charges for construction  
25 of water service connections?

1           A.       To my knowledge, that is still a problem.

2           Q.       And would you elaborate on that, what that  
3 problem is?

4           A.       Okay. Yes, I can. It relates to the  
5 connection charge for a water service line. What the  
6 company's tariff states is there is a connection charge the  
7 company pay-- or that the customer pays, and I think it's  
8 \$300. Might be 350. It's something on that order. And  
9 what the company is supposed to do is tap the water main and  
10 bring a service line to the customer's property line and  
11 then set a meter at the property line, and then the customer  
12 constructs his own service line in from there.

13                   What we're finding the company doing is they  
14 charge the connection charge but the customer ends up paying  
15 for the portion of the service line that the company's  
16 supposed to construct, and that could be crossing a road.

17                   In some cases a customer might be -- we've  
18 heard of customers paying Mr. Smith's construction company  
19 for a road bore in order for them to construct a service  
20 line where the company was supposed to be constructing the  
21 service line. I hope I've stated that clearly.

22           Q.       So in other words, he is charging the  
23 customers in some instances for those things which he should  
24 not be charging them for?

25           A.       Exactly, yes.

1 Q. And in terms of charging customers, you heard  
2 the testimony from Mr. Mueller about the permit fees that  
3 are delinquent; is that correct?

4 A. Yes, I did.

5 Q. And do you know if those are being billed or  
6 have been billed to the customers?

7 A. I don't. I don't have first knowledge of  
8 that.

9 Q. Would the customers be aware of whether  
10 they're paying those fees?

11 A. Presumably it would appear as a line item on  
12 the bills. That's the way most water companies do it. It's  
13 a separate line item on the water bill. It's called a  
14 primacy fee, and yes, I'm sure most customers would know if  
15 that's appeared on the bills or not.

16 Q. Would they be aware if those primacy fees have  
17 not been paid?

18 A. No. The customers wouldn't have any way of  
19 knowing that without looking into it.

20 Q. The installation and maintenance of sewer  
21 pumps, of sewer pump units, that has been a problem. I  
22 assume from what we've heard today that's still a problem?

23 A. Frankly, there's one, the customer's name is  
24 Nichols, and I'm not sure if that's been resolved to the  
25 customer's satisfaction or not. That's the only one that I

1 know of at this point in time.

2           Q.       You indicate there on page 7 that a lack of  
3 apparent concern on the company's part regarding customers'  
4 concerns, poor communication in some situations and failing  
5 to take corrective action in a timely and appropriate manner  
6 accentuate many of the complaints.

7                   Do you feel that there is a lack of apparent  
8 concern on the company's part?

9           A.       Well, that's -- yes, I do. That's based on  
10 what I hear from customers. When we get complaints, often  
11 part of it is that they're not getting return phone calls or  
12 they leave a message and don't hear back or Mr. Smith is  
13 rude when he does contact them. I have heard that sort of  
14 thing.

15                   I cite one here, and I did -- it was one about  
16 a telephone message on a customer's answering machine, and I  
17 didn't hear the message myself.

18                   MR. SCHAEFER: I'm going to object.  
19 Testifying as to that information from that customer is  
20 hearsay.

21                   COMMISSIONER MURRAY: He's indicated that he  
22 heard that himself.

23                   JUDGE MILLS: Objection is overruled.

24                   MR. SCHAEFER: I'm sorry. Just for  
25 clarification of the record, I believe that he testified

1 that he heard it from the customer or that he heard it  
2 himself?

3 THE WITNESS: I was meaning to testify that I  
4 heard the tape with Mr. Smith's voice.

5 BY COMMISSIONER MURRAY:

6 Q. On page 8 of your testimony, you speak about  
7 complaints from the system being relatively numerous  
8 compared to other regulated utilities, and you indicate,  
9 beginning on line 11, that there are examples of events that  
10 should not happen, and then you list some of those.

11 The extreme elevated chlorine level, that  
12 could have been prevented by just checking the levels; is  
13 that correct?

14 A. Well, in my opinion, yes. The answer is yes.  
15 And I'm not saying Mr. Smith didn't do any checks. I think  
16 there were times, like, he might have checked at his own  
17 house but not necessarily around the system. I just think  
18 there's more that could have been done to prevent that sort  
19 of thing.

20 Q. And then you indicate that another example of  
21 something that shouldn't happen is repeated main breaks  
22 caused by the utility owner's construction crew. What is  
23 the construction crew typically doing when these main breaks  
24 occur?

25 A. In some cases, perhaps making a tap on a sewer



1 main and hit a water line, or constructing a -- constructing  
2 a customer service line.

3 Q. And would they be doing this construction for  
4 the regulated utility?

5 A. Probably in most cases. Frankly, I don't know  
6 what other work Mr. Smith's construction company does. It's  
7 possible they're doing other road work, or I don't know if  
8 he does any work for other utilities. I guess it could be  
9 other types of work.

10 Q. And, of course, the low water pressure that  
11 you cite would be corrected if there were an adequately  
12 sized and located storage tank?

13 A. Yeah. And by location, I really mean vertical  
14 location. The tank needs to be taller than the one that is  
15 there now.

16 Q. And you indicate also that adequate flushing  
17 following repairs is not always performed. Does that create  
18 any kind of a potential contamination of the water?

19 A. Well, the procedure after a main break, you  
20 know, there is a risk of contamination while the main's open  
21 and pressure's low. So the proper procedure would be to do  
22 flushing after the main is repaired, and if you don't, then  
23 you could still have some contamination or something flushed  
24 out.

25 Q. And also is a boil order required?

1           A.       It's my understanding based on conversations  
2 with the Department of Natural Resources and going to some  
3 of their conferences that a boil order is usually not  
4 required. It's good practice and many utilities voluntarily  
5 do it, but I don't -- to my knowledge, it's not actually  
6 required that they do a boil order after a main break.

7           Q.       You indicate that communications with  
8 customers is not as it should be; is that correct?

9           A.       Yes.

10          Q.       So are the customers not informed about what  
11 may be going on with their water system or their sewer  
12 system?

13          A.       That -- yes. Yes. That's one factor. I have  
14 gotten complaints that they're out of water and, you know,  
15 they think, well, why can't a notice be posted at the  
16 entrance to the subdivision. I've heard that sort of thing.  
17 And again, it gets into like return phone calls. I've heard  
18 complaints about that before.

19          Q.       Okay. And then in terms of the financial  
20 capacity of the company, you indicate on page 9 that you've  
21 got -- you have information regarding unpaid electric bills  
22 on the company's accounts; is that accurate?

23          A.       Yes.

24          Q.       And also that the company is delinquent on the  
25 payment of its Commission assessments. How many years are

1 owing?

2           A.       I'm sorry. I don't have current information  
3 on that. I know that there have been past due assessments.  
4 The company did have a rate case fairly recently, and  
5 presumably they were caught up at that time. That's been,  
6 say, within the last couple of years.

7           I don't know what the current status is right  
8 now. I should have looked it up before I came down here,  
9 but I didn't do that.

10          Q.       How about their Annual Reports, are they  
11 current?

12          A.       I'm afraid I don't know that either. I  
13 might -- if I can defer to one of our staff witnesses from  
14 the accounting department might be more up to speed on some  
15 of the financials, such as Annual Reports. I believe Bill  
16 Meyer is going to testify in place of Dana Eaves.

17          Q.       All right. You talk about the need for a  
18 water storage tank and call that a large capital investment;  
19 is that correct?

20          A.       Yes.

21          Q.       Now, there is no storage tank that's been  
22 purchased and just not installed; is that right?

23          A.       That's correct, other than the one that is in  
24 service, the stand pipe, the one that's been there since the  
25 system was new. But no, as far as a new tank, there is no

1 tank waiting to be installed.

2           Q.       Now, if a potential buyer were looking to  
3 purchase this utility and take over the operations, would it  
4 be very attractive looking to somebody coming in in terms of  
5 what their revenue might be in comparison to what kind of  
6 capital investment they might have to make, or have you made  
7 any such analysis?

8           A.       Well, I really haven't done an analysis. I  
9 guess I -- I perhaps have a simplistic view on that in that,  
10 you know, the company is worth its rate base, and  
11 theoretically a buyer could come in and pay the rate base  
12 and go ahead and construct a storage tank.

13                   And, to me, there's not much difference  
14 between that and Mr. Smith constructing a storage tank,  
15 increasing the rate base and then a buyer coming in and  
16 paying more. So the end result theoretically would be the  
17 same as far as rates.

18                   The difference is a buyer would have to --  
19 there is -- some buyers are leery of doing that because they  
20 don't want to come in and then all of a sudden have a huge  
21 rate increase. They think it may look bad in the eyes of  
22 the customers. Of course, there's some truth to that. So  
23 that would be a factor.

24           Q.       I'm looking at one of the attachments to your  
25 testimony, and it is rebuttal testimony from Case

1 No. WA-96-449 which you attached to your rebuttal testimony  
2 here.

3 A. Might that be attached to the  
4 cross-surrebuttal testimony?

5 Q. No. It's attached to your rebuttal.

6 A. Really?

7 Q. At least it is on my copy.

8 A. Okay.

9 Q. Maybe -- I am sorry. I may have pulled that  
10 myself. That may not have been attached to your testimony.

11 A. All right. Yeah. What's on mine, I think  
12 what the intent on my cross-surrebuttal, I do have some --  
13 well, it's really not testimony. It's actually the staff  
14 report. Is that the one you're looking at?

15 Q. No. I believe I have pulled some of your  
16 testimony from a prior case myself.

17 A. Okay. I understand.

18 Q. I attached it to the back of your --

19 A. Okay.

20 Q. -- rebuttal testimony. So no wonder you're  
21 confused.

22 Anyway, in Case No. WA-96-449 you also  
23 testified?

24 A. Yes, I did.

25 Q. Do you recall that?

1           A.       Yes.

2           Q.       And at the time you filed testimony in that  
3 case, it was May 22nd, 1997. You summarized your testimony  
4 in that case and this was, I believe, regarding a transfer  
5 of assets from Smith/Incline to Warren County Water and  
6 Sewer Company.

7           A.       Yes.

8           Q.       Would that be accurate?

9           A.       Yes, it is.

10          Q.       And you stated that that transfer of assets is  
11 not detrimental to the public interest, that was your  
12 opinion, that expansion of the water service area is  
13 reasonable and in the public interest provided that some  
14 planned improvements to the system are completed, and that  
15 there is not a sufficient plan in place to expand the sewer  
16 system at this time.

17                   Can you tell me what you meant by expanding  
18 the sewer system at that time?

19          A.       Okay. As I recall -- well, first of all, at  
20 the time that -- well, at the time that case was filed, Gary  
21 Smith owned the utility personally. In other words, he  
22 didn't have a company. That's why I was calling it  
23 Smith/Incline, and part of that case he transferred the  
24 assets to the company that Mr. Smith had formed, Warren  
25 County Water and Sewer Company.

1                   And also he had requested expansion of the  
2 service area. As I recall, he requested an expansion for  
3 boat water and sewer, and -- well, he was also requesting  
4 financing for the new storage tank. That was something the  
5 company appeared to be moving forward with doing, and I  
6 didn't have a problem with expansion of the water system.

7                   But to expand the sewer system to the extent  
8 that was being requested, I thought he needed a plan to  
9 expand the treatment plants or provide additional treatment  
10 capacity, and there was no such plan. So that's what I mean  
11 by an inadequate plan to expand the sewer system.

12           Q.       And then in that case, WA-96-449, there was a  
13 Stipulation & Agreement entered, correct?

14           A.       Yes, that's correct.

15           Q.       And there was a certificate granted  
16 conditional to serve the extended area, and was that just  
17 for water?

18           A.       Yes. Yes, it was.

19           Q.       And that was conditioned upon Incline or  
20 Warren County Water and Sewer constructing a water storage  
21 tower in accord with the specified construction schedule?

22           A.       That's correct.

23           Q.       And since that water storage tower has never  
24 been constructed, was the certificate vacated, the  
25 conditional certificate?

1           A.       In my opinion, it was. The Commission did  
2 approve that stipulation the way it was with that condition.  
3 In my opinion, since the tank -- there was some date that  
4 the tank was to be constructed. Since it was not  
5 constructed by then and there was no request for any  
6 extension or to do anything else, in my opinion that  
7 expansion was, whatever the word, is rescinded or no longer  
8 in effect. So the service area would have reverted to what  
9 it was.

10          Q.       And is water being provided in that expanded  
11 area without authorization?

12          A.       I don't believe any extension was actually  
13 made into that area. In fact, if I recall, the only -- the  
14 only customer at the time that was actually requesting  
15 service was a fire station, and I'm certain the company is  
16 not -- I know where the fire station's located, and I'm  
17 certain they're not out that far.

18          Q.       So if the Commission were to as a result of  
19 this complaint case put this utility into receivership, then  
20 the receiver could conceivably arrange for purchase by a  
21 qualified entity; is that correct?

22          A.       Yes, in theory, that is correct.

23          Q.       And in your opinion, is this -- well, let me  
24 ask it a different way. In your opinion, is that the best  
25 solution?



1           A.       Well, in my opinion, receivership not so much  
2 for the purpose of selling the company to another entity,  
3 but a receiver would be -- would be valuable in solving some  
4 of the day-to-day problems, like customer relations,  
5 handling of the funds day-to-day, some of the smaller --  
6 smaller repairs that need to be made, like perhaps  
7 purchasing of a second pump for a lift station, that sort of  
8 thing a receiver could do.

9                   I don't see how a receiver could construct a  
10 storage tank or expand a treatment facility where we're  
11 talking about, using slang term, big bucks. A receiver's  
12 just not in a position to make an investment like that.

13          Q.       Wouldn't that be a reason for finding a buyer?

14          A.       Absolutely. That's why I think, as I  
15 testified, I think the solution to this is, I think I called  
16 it alternative ownership. I think that's the only way these  
17 problems would get resolved.

18          Q.       Is it accurate to say that you don't think the  
19 problems would get resolved under the current ownership?

20          A.       I would have to say no, and I've worked with  
21 Mr. Smith a lot and --

22          Q.       Excuse me. No, it is accurate or --

23          A.       I'm sorry. Well --

24          Q.       -- yes, it is accurate?

25          A.       Can you restate your question?

1           Q.       Is it accurate that you don't think the  
2 problems would get resolved under the current ownership?

3           A.       Okay. My answer is yes, I think that is  
4 accurate, and that's just based on my experience with  
5 Mr. Smith, I've worked with him a lot, but I think over the  
6 years it's been demonstrated that this company is just  
7 not -- the system's just not being kept up the way it should  
8 be, and I just don't see any change going the direction  
9 we're going right now.

10                   COMMISSIONER MURRAY: Thank you.

11                   JUDGE MILLS: At this point we're going to  
12 take a -- well, it's about 13 minutes 'til. We'll take a  
13 13-minute recess until three o'clock. We'll come back with  
14 further cross-examination and then redirect.

15                   We're off the record.

16                   (A recess was taken.)

17                   JUDGE MILLS: We're back on the record. We  
18 finished with questions from the Bench for Staff witness  
19 Merciel. We are ready for further cross-examination based  
20 on those questions. Ms. O'Neill?

21                   MS. O'NEILL: Thank you.

22 RE-CROSS-EXAMINATION BY MS. O'NEILL:

23           Q.       Mr. Merciel, how are you doing?

24           A.       I'm doing fine.

25           Q.       Okay. During questioning from Commissioner

1 Murray, you indicated in response to the issue of the unpaid  
2 electric bills on the company's accounts that that remains a  
3 problem; is that correct?

4       A.       Well, I'm afraid I'm not really current on the  
5 situation. I don't know how it stands today. I think I  
6 provided in my testimony it has been a problem for many  
7 years. I've had many calls from the electric utility. Not  
8 recently, though.

9       Q.       Now, is the cost of the electricity to operate  
10 the system part of the cost of service that is considered  
11 when rates are set for a water or sewer company?

12      A.       Yes, it is.

13      Q.       And as far as the amount for paying an Annual  
14 Report, is that set in cost of service?

15      A.       Amount for paying Annual Report?

16      Q.       Annual fees and preparation of Annual Report?

17      A.       Yes, if the company is incurring -- some  
18 companies have an accountant or some type of bookkeeper do  
19 it, and if there's some expense, then yeah, it's generally  
20 included.

21      Q.       And are the annual fees that the company has  
22 to pay to the PSC or to another regulatory body, are those  
23 included in the cost of service?

24      A.       Yes. The assessments, yes, those are  
25 included, too.

1 Q. Okay.

2 A. Not the primacy fees from DNR. Those are  
3 usually not considered part of company revenue. That's an  
4 add-on line item.

5 Q. So that's generally considered to be passing  
6 through directly to the customers?

7 A. Yes, in most cases. I guess the company could  
8 consider it part of their revenue and just include it, but  
9 most of them don't. It's not set up that way.

10 Q. Would that primacy fee, however, be included  
11 in the total amount of the bill the customer receives?

12 A. Yes, it would.

13 Q. So if the customer pays its entire bill, they  
14 pay their share of the primacy?

15 A. It would be included in there somewhere, yes.

16 Q. Now, you indicated that, in regard to this  
17 large capital investment that is needed for the system for  
18 the water storage, a potential buyer of the system could  
19 look at this as what is in rate base and then buy a fairly  
20 cheap system and then add to the system with their own  
21 investment or theoretically the system could add the storage  
22 and then sell for a higher price?

23 A. Yes, that is correct.

24 Q. And so the plant that would be in service  
25 would be included in rate base, and that would be a figure

1 that a potential buyer would be interested in looking at?

2 A. Normally, yes.

3 Q. Now, would it be important for a buyer of a  
4 company like this one to know the value of the property that  
5 is owned by the system and is in service?

6 A. Yes, especially if it's going to be operated  
7 as another regulated utility. It's not quite so important  
8 if an unregulated utility such as a homeowner association or  
9 public district or city, since they don't have to -- they  
10 don't have to live with our regulatory ratemaking policies.

11 Q. And because of -- and because of those  
12 regulatory ratemaking policies, it's important for a company  
13 to come to the Commission for approval if the company wants  
14 to sell off its assets or transfer its assets somewhere  
15 else; is that correct?

16 A. Yes, it's important. It's also required.

17 Q. It's a requirement of -- it's a legal  
18 requirement?

19 A. If we're talking about transferring assets,  
20 yes.

21 Q. And in connection with valuing the rate base  
22 of this particular company for a potential buyer, would that  
23 be made problematic because of the issue regarding who  
24 currently owns the real estate and assets of this company?

25 A. Yes, it could be.

1           Q.       And at page 9 of your rebuttal testimony, you  
2 note that there -- I'm starting at line 4 and through to  
3 line 7.

4           A.       Okay.

5           Q.       There's also an issue of real estate and  
6 assets that should be owned by the company but apparently  
7 have been transferred to one or more affiliated corporations  
8 that are not authorized to own and operate public utility  
9 facilities. Do you recall making that statement in your  
10 testimony?

11          A.       Yes, I do.

12          Q.       Do you know whether or not that problem's been  
13 rectified?

14          A.       To my knowledge, it has not.

15          Q.       Is there still considerable question about  
16 where that ownership lies as far as the legal entity that  
17 owns these items?

18          A.       I guess you could say that. I'm not sure it's  
19 so much of a question as -- I mean, I'm not sure it's a  
20 question as to who owns it. It's just that Warren County  
21 Water and Sewer does not have the title to the property, as  
22 far as I know.

23          Q.       As far as you know, Gary Smith in some format  
24 owns it?

25          A.       Yes. Yes. And the point being, if somebody

1 buys it, they need to know what they're buying, who they're  
2 buying it from. You can't buy something from Warren County  
3 Water and Sewer that's owned by somebody else.

4 Q. And because of the legal requirement that  
5 before Mr. Smith could transfer those assets he should have  
6 come to this Commission for approval, is it your belief that  
7 any transactions where he puts that in another entity would  
8 be void or voidable?

9 MR. SCHAEFER: I'm going to object to the term  
10 voidable. Calls for a legal conclusion.

11 JUDGE MILLS: I think he's right. Could you  
12 rephrase the question, please?

13 MS. O'NEILL: Sure. I will try.

14 BY MS. O'NEILL:

15 Q. Given the legal requirement that the company  
16 should come to this -- must come to this Commission for  
17 approval of transfer of assets, would that make Mr. Smith's  
18 actions in transferring the assets to other entities he owns  
19 a problem in evaluating the value of this system?

20 A. In evaluating the value of it?

21 Q. Yes.

22 A. Well, to answer that question, it wouldn't  
23 necessarily be a problem if we know where the assets are.  
24 In other words, we could still from a practical standpoint  
25 look at the utility facilities and if the property -- if we

1 know that it belongs to whatever, Warren-Lincoln  
2 Investments, then we can see it. So I'm not sure it's a  
3 problem for doing an evaluation. It certainly could create  
4 other problems.

5 Q. And if a receiver was appointed in this case,  
6 could that receiver take the necessary steps to regular-- to  
7 make those -- or let me rephrase that -- take the necessary  
8 steps to bring those improperly transferred assets back into  
9 the regulated utility so that a potential purchaser would  
10 actually get what's in rate base?

11 A. I suppose a receiver could handle that problem  
12 and accomplish it somehow. It may require some -- well, a  
13 judge, you know, a judge in a court appoints a receiver, and  
14 I'm not sure the receiver can do a whole lot without the  
15 judge's consent.

16 But if the judge allows a receiver to do that  
17 and if the power extends to the, not only the regulated  
18 company, that's really what's in receivership, I guess there  
19 could be a question whether the receiver and the judge have  
20 authority over some other third entity. I can see where it  
21 would be a problem. I don't know what the answer is.

22 Q. So these actions do complicate how to  
23 handle --

24 A. It certainly complicates it, yes.

25 Q. And to your knowledge, does Gary Smith know



1 about the requirement to come to the Commission for approval  
2 before assets get transferred?

3 A. I'm certain that he knows about it.

4 Q. And, in fact, in the Case No. 96-449, he did  
5 make such an application to the Commission?

6 A. Exactly, that's true. He's done it before.

7 MS. O'NEILL: Thank you. I have nothing  
8 further.

9 JUDGE MILLS: Mr. Schaefer?

10 MR. SCHAEFER: Thank you, Judge.

11 JUDGE MILLS: And if you could come up to the  
12 podium, please, for your cross.

13 MR. SCHAEFER: Yes.

14 RE-CROSS-EXAMINATION BY MR. SCHAEFER:

15 Q. Mr. Merciel, do you know what the Metropolitan  
16 Sewer District of St. Louis charges per month for sewer  
17 service?

18 A. I do not know.

19 Q. Would that be around \$23 a month?

20 A. I'm sorry.

21 MS. O'NEILL: Objection.

22 THE WITNESS: I don't know.

23 MS. O'NEILL: He said he didn't know.

24 BY MR. SCHAEFER:

25 Q. What about for other not-for-profit systems in

1 the area where Warren County Water and Sewer is located, do  
2 you know how much they charge per month?

3 A. No, I don't. I've not looked at them.

4 Q. Would it surprise you if that was 25 to \$30 a  
5 month?

6 A. Some utilities are. Some are higher. Some  
7 are lower. It could be anything.

8 Q. Do you know what Warren County Water and Sewer  
9 charges per month for sewer service?

10 A. Well, I do. I don't have the number off the  
11 top of my head.

12 Q. Would it surprise you if that was \$18.14 a  
13 month?

14 A. That sounds like it could be right.

15 Q. In your opinion, can anyone provide sewer  
16 service at \$18.14 a month?

17 A. That's an approved rate based on a Staff audit  
18 and Commission approval.

19 MR. SCHAEFER: No further questions.

20 JUDGE MILLS: Thank you. Redirect,  
21 Mr. Krueger?

22 MR. KRUEGER: No questions, your Honor.

23 JUDGE MILLS: Mr. Merciel, you may step down.

24 (Witness excused.)

25 JUDGE MILLS: Next we'll have Mr. Meyer

1 standing in for Mr. Eaves.

2 (Witness sworn.)

3 JUDGE MILLS: Thank you. You may be seated.

4 WILLIAM A. MEYER, JR. testified as follows:

5 DIRECT EXAMINATION BY MR. KRUEGER:

6 Q. Please state your name and business address.

7 A. William A. Meyer, Jr. I'm a Regulatory  
8 Auditor with the Missouri Public Service Commission,  
9 P.O. Box 360, Jefferson City, Missouri 65102.

10 Q. Are you adopting the cross-surrebuttal  
11 testimony of Dana Eaves in this case?

12 A. Yes, I am.

13 Q. Could you briefly describe your educational  
14 background?

15 A. I have received a bachelor of science in  
16 business administration degree with an emphasis in  
17 accounting from Central Missouri State University in 1974.  
18 I've been basically employed by this Commission since that  
19 point in time.

20 Q. Have you previously testified before the  
21 Commission?

22 A. Yes, I have.

23 Q. Do you know approximately how many times?

24 A. I have submitted written testimony probably in  
25 35 to 40 cases, and I've had live cross-examination probably

1 a dozen times.

2 Q. What was generally the nature of the testimony  
3 in those cases?

4 A. Related to the results of any audits or audit  
5 work that I may have either personally done or was done  
6 under my supervision.

7 Q. Have you reviewed the prefiled  
8 cross-surrebuttal testimony of Dana E. Eaves which has been  
9 marked as Exhibit No. 14 in this case?

10 A. Yes, I have.

11 Q. And is all of the information in that  
12 testimony correct except for the personal information  
13 pertaining to Mr. Eaves?

14 A. Yes, to the best of my knowledge.

15 Q. Do you have any changes or corrections to that  
16 testimony?

17 A. No, I do not.

18 Q. If I asked you the same questions today, would  
19 your answers be the same as the answers that are contained  
20 in Exhibit 14?

21 A. Yes.

22 MR. KRUEGER: I would offer Exhibit 14 and  
23 tender the witness for cross-examination, your Honor.

24 JUDGE MILLS: Exhibit 14 has been offered.

25 Are there any objections?

1 MS. O'NEILL: No, your Honor.

2 MR. SCHAEFER: No objection.

3 JUDGE MILLS: Hearing none, it will be  
4 admitted.

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

6 JUDGE MILLS: Cross-examination, Public  
7 Counsel?

8 MS. O'NEILL: Thank you.

9 CROSS-EXAMINATION BY MS. O'NEILL:

10 Q. Mr. Meyer, you -- in adopting Mr. Eaves'  
11 testimony, would it be fair to say that you also have  
12 reviewed the information on which that testimony was based?

13 A. Yes, I have. I'm actually Mr. Eaves' direct  
14 supervisor.

15 Q. So as Mr. Eaves' supervisor, do you review the  
16 audits that are conducted that he does?

17 A. Yes.

18 Q. Do you also review letters that go to small  
19 companies as a result of the audit with recommendations in  
20 them?

21 A. Yes, I do.

22 Q. And in this case, did you review a letter that  
23 was signed by Randy Hubbs that went out with the results of  
24 Mr. Eaves' audit to this company?

25 A. Yes, I did. I believe it was dated somewhere

1 in the March time frame.

2 Q. Okay. And did you also -- have you also  
3 reviewed any earlier letters or correspondence between  
4 Mr. Smith and Mr. Hubbs regarding the audit and the rate  
5 request?

6 A. I have seen at least two letters that I can  
7 recall in the work paper itself.

8 Q. Okay. Did you, in reviewing Mr. Eaves' work  
9 or the information on which his testimony is based, make any  
10 determination to see whether or not the corporate status of  
11 this company with the Secretary of State has been resolved  
12 or whether it is still an administratively dissolved  
13 company?

14 A. I have not done any checking in the last  
15 probably 60 days. I believe it was in the March time frame  
16 we had made that check, and they were still in the dissolved  
17 state.

18 I believe -- I do not recall the date of the  
19 prehearing conference, but the company attorney I believe  
20 went on record at that point in time acknowledging that  
21 there were some technical reasons why they were dissolved,  
22 but they were working to get that corrected and get the  
23 company reinstated.

24 Q. Now, as far as the audit itself, it's my  
25 understanding that the Staff encountered several problems

1 when they were attempting to audit this company; is that  
2 correct?

3           A.       I guess I would assume, yes, based on just  
4 there were some difficulties in trying to identify actual  
5 paid invoices, just simply trying to identify what is actual  
6 operating revenues and expenses.

7           Q.       And why is it important for the Staff to be  
8 able to determine the proper operating revenues and  
9 expenses?

10          A.       In order to set a proper, correct rate base  
11 and rate of return with the resulting rates to be charged to  
12 the company customers, we wanted to have a good  
13 understanding or basis as to what the actual cost of service  
14 of the company is.

15          Q.       And in order to have an accurate cost of  
16 service determination, do you also need to know what plant  
17 that's in service is owned by the company?

18          A.       Again, I would say yes. In this case we  
19 simply used the plant balances that were recorded on the  
20 company's books and records and reports that were on file.  
21 We did not go to verify is the ownership clear of any liens  
22 or anything like that.

23          Q.       So at the time that the audit was conducted  
24 for the rate case, there was no action by your department to  
25 verify whether or not property which was in rate base from

1 the previous case was still owned by the company or whether  
2 it had -- there had been an attempt to transfer that?

3 A. We did not do any audit steps to verify that  
4 one way or the other.

5 Q. So that was discovered by other people working  
6 on this case?

7 A. Yes.

8 Q. Now, when a small company comes in for a rate  
9 case, the procedures are less formal but an audit is still  
10 conducted; is that right?

11 A. That is correct.

12 Q. Now, when a small company comes in for a rate  
13 case, does the Staff attempt to determine how much revenue  
14 the company is receiving from its customers?

15 A. Yes. We would basically go back to look at  
16 meter readings, customer numbers, examine the tariffs, try  
17 to reconstruct revenues to the extent possible. We would  
18 look at operating expenses to -- for any invoices that were  
19 paid, any out-of-pocket-type expenses that may have been  
20 incurred.

21 And in certain cases where we know a company  
22 is not current on either its bills or is not performing a  
23 service at a level that is desired, we may go ahead and  
24 still impute a level of operating expense under the  
25 assumption that that work would be done on a routine basis.



1 Q. So even if there aren't good records, your  
2 staff knows that there are some expenses that a company  
3 incurs and they have to impute that expense to them; is that  
4 right?

5 A. Correct.

6 Q. And likewise, your Staff would know that there  
7 are some revenues that come in based on the fact that  
8 billings go out and hopefully at least the majority of the  
9 customers are paying their bills?

10 A. Correct.

11 Q. And at some point in time does the Staff  
12 attempt to reconcile the revenues that they believe should  
13 be coming in based on billing and such with actual amounts  
14 received by the company?

15 A. On a routine basis, I'd say the answer is no,  
16 we would not take that extra step. But if questions get  
17 raised about was an annualization or adjustment done  
18 correctly, there have been times we will actually go out to  
19 bank records and look at deposits and so forth.

20 Q. In this case, did Mr. Eaves go out and try to  
21 verify the amount of revenue for the test year?

22 A. I believe the audit steps that he took first  
23 was simply an annualization based on current number of  
24 customers and meter readings that we had. We did compare  
25 that annualized total to an amount that was on the

1 company's, I guess I'd call it general ledger.

2 Q. And did they compare to be very close?

3 A. For the annualized for our test year of 2001,  
4 the amount was very close. I believe it was a \$150 between  
5 the two amounts.

6 Q. And, in fact, according to Mr. Eaves'  
7 testimony on page 3, it was a slightly lower number than the  
8 actual amount that the company said it collected; is that  
9 correct? I'm referring to there's a figure on line 16 of  
10 \$164,835.20 versus the line, the annualized amount which is  
11 on line 20 of \$164,692.

12 A. That is correct, and other work papers and  
13 information that I had seen has shown revenue has been  
14 growing anywhere from between 10 to 15,000 per year.

15 Q. Now, in setting the amount due that appears on  
16 the bills for the customers for this company, are the  
17 primacy fees from DNR included in that, do you know?

18 A. I do not know specifically in this case if  
19 they are included. I would say, normal practice, the  
20 primacy fee would not be included in this number.

21 Q. Generally, it's an additional charge on the  
22 bill?

23 A. It's an additional charge or a tax on the  
24 bill, and the company operates simply as a collection  
25 agency. It basically is running through accounts receivable

1 and accounts payable and never hitting the income statement.

2 Q. Are there some companies that want to include  
3 that primacy fee in the cost of service and just put it in  
4 their total amount?

5 A. I can recall in several instances in the past  
6 years where a company may have done so, and I'm thinking at  
7 that time the primacy fee may have been like a flat \$200 for  
8 a company, that they had only had a few customers. So  
9 instead of customizing their bill for them and trying to  
10 allocate it out, they simply included it in cost of service.  
11 At the same time, I don't believe it was included in a rate  
12 case cost of service.

13 Q. Okay. Getting back to the expenses and the  
14 difficulties with auditing the system, it's my understanding  
15 that Staff determined that there were a number of large  
16 expenditures, checks written to Gary Smith or one of the  
17 affiliated companies without appropriate documentation. Is  
18 that your understanding?

19 A. That is my understanding.

20 Q. And how did the Staff determine whether  
21 this -- whether those checks were written without  
22 appropriate documentation?

23 A. Basically, the invoices that we had available  
24 to us were not cross referenced to indicate that this --  
25 invoice one was paid by check No. 1502 was an example or

1 there was no detailed supporting records to indicate any  
2 type of reconciliation.

3           In reaching that amount, I had simply asked  
4 Mr. Eaves to go through the check register that he had and  
5 total up all checks that were written either to Mr. Smith or  
6 to one of his known affiliate companies, and in doing so,  
7 that's where the 74,433 number came from.

8           Q.     And that 74,433 number, is that the  
9 unaccounted for money or is that the total amount of checks  
10 written to him?

11          A.     That was the total number of checks that we  
12 found written during that approximately eight-month period.

13          Q.     And were some of -- were there invoices or  
14 documentation for some of those checks?

15          A.     I'm sure there probably was, but we did not --  
16 at the time we put this testimony together, that was not our  
17 focus was to try to reconcile that. The rate case, informal  
18 rate case where we had done that type of work had been  
19 concluded several months before then.

20          Q.     And in that rate case, there was an indication  
21 that a revenue reduction was needed on the water side --

22          A.     I believe that was --

23          Q.     -- is that correct?

24          A.     Yes, that was correct.

25          Q.     And possibly a small, much smaller increase

1 than the reduction on the water side to the sewer service  
2 side; is that correct?

3       A.       What I have found shows an increase in sewer  
4 of approximately 6,700 and a decrease in water of about  
5 30,000.

6       Q.       And ultimately there was a recommendation, I  
7 believe, from the Staff not to change the rates at this  
8 time, not to increase the sewer rates at this time because  
9 of the various accounting problems; is that correct?

10      A.       I believe that was one of the reasons stated.  
11 I do not have a copy of Mr. Hubbs' letter.

12      Q.       Now, we've talked about some of the things  
13 that get included in determining the cost of service. Is  
14 there some manner in which property taxes are accounted for  
15 in determining the cost of service for a utility company?

16      A.       Property taxes is a normal, I call it line  
17 item on the income statement. It would be includable in  
18 cost of service.

19      Q.       Okay. So a company is able to charge its  
20 customers enough money to cover things like property taxes  
21 and assessments and the types of things we talked about  
22 earlier in your testimony; is that correct?

23      A.       That is correct.

24      Q.       And at the time that you reviewed Mr. Eaves'  
25 work or at least at the time that Mr. Eaves did the audit

1 and prepared the testimony, there was a recognized need for  
2 this water storage tank but none had been purchased; is that  
3 correct?

4           A.       That is really outside the scope of the  
5 accounting audit.

6           Q.       There wasn't any documentation to suggest that  
7 any money had been expended toward purchasing the water  
8 tower, as you recall?

9           A.       As I recall, no.

10           MS. O'NEILL: No further questions.

11           JUDGE MILLS: Mr. Schaefer?

12 CROSS-EXAMINATION BY MR. SCHAEFER:

13           Q.       Mr. Meyer, were connection fees included in  
14 that audit as part of the ordinary income?

15           A.       Connection fees as I would define it was a  
16 charge actually to connect the initial service to a customer  
17 would not be included in operating revenues for ratemaking  
18 purposes.

19           Q.       Okay. Do you have a copy of that audit, that  
20 2001 audit?

21           A.       I have a copy of the revenue requirement  
22 schedules that were produced as a result of the audit.

23           Q.       If you could, can you just hold up what you  
24 have there? I'm not quite sure if it's the same thing I  
25 have or not.

1                   Okay. Well, let me ask you this: The  
2 document that you have, does it show whether or not  
3 connection fees were included in the ordinary income and  
4 expenses for 2001?

5           A.       Okay. The document I'm looking at right now  
6 is related to the water operations, and the categories of  
7 revenue were unmetered sales to customers, metered sales to  
8 customers, late charges, reconnect charges, and here is the  
9 Missouri state primacy fee.

10                   In this case, this company apparently did run  
11 the primacy fee through the income statement and not the  
12 balance sheet.

13       Q.       Okay.

14       A.       For the sewer operations, the categories were  
15 residential revenue, late charges and reconnection charges.  
16 In neither case was there an actual connection fee included  
17 in what we would define as above the line operating revenues  
18 on which monthly tariff rates are based upon.

19       Q.       Okay. Let me hand you a document which I'm  
20 looking at which is entitled Warren County Water and Sewer  
21 Company Profit and Loss - January through December 2001.  
22 Ask you if you recognize that?

23       A.       At least in the work papers I have seen  
24 documents similar to this. Whether it's this one exactly,  
25 it would take me a little while to go through and find if

1 it's exactly in there, but I have seen that type of  
2 document.

3 Q. Do you know who actually prepared this  
4 document?

5 A. As far as I know, it was prepared by  
6 Mr. Smith.

7 Q. Okay. Do you know for the year 2001 how much  
8 Mr. Smith actually paid himself?

9 A. The only thing I would have would be for the  
10 first eight months in detail from the check registers that  
11 we had. There were a series of checks written to Gary L.  
12 Smith. There were a number of them written to GLS &  
13 Associates, several to Warren-Lincoln Investments. It's  
14 Warren-Lincoln and I. I believe it was Investments.

15 So those were the three different payees that  
16 we've identified that there were checks totaling \$74,000.

17 Q. Of that \$74,000, do you know how many, if any,  
18 of those checks were actually cashed?

19 A. No, I do not.

20 MR. SCHAEFER: I don't have any further  
21 questions.

22 JUDGE MILLS: Thank you. Questions from the  
23 Bench for Mr. Meyer. Commissioner Murray.

24 QUESTIONS BY COMMISSIONER MURRAY:

25 Q. Good afternoon, Mr. Meyer.



1           A.       Good afternoon.

2           Q.       Do you know how many Annual Reports are past  
3 due, if any?

4           A.       For this company specifically?

5           Q.       Yes.

6           A.       The current -- the Annual Report for the year  
7 2001 as far as I know is past due. It was due on April 15th  
8 of this year. The 2000 Annual Report form was filed last  
9 July, and that's about the time the small company rate  
10 increase request was filed. I did not go back prior years  
11 to see when they were filed, but I would -- I believe  
12 everything up through 2000 was filed.

13          Q.       All right. And do you know the amount of the  
14 delinquent assessments?

15          A.       I do not have it written down here, but my  
16 recollection is that there was about 1,600 due for 2000  
17 fiscal year and about 3,400 for the current fiscal year,  
18 totaling approximately \$5,000 outstanding right now.

19                   COMMISSIONER MURRAY: I think that's all the  
20 questions I have. Thank you.

21                   JUDGE MILLS: Commissioner Forbis.

22                   COMMISSIONER FORBIS: No questions.

23                   JUDGE MILLS: We'll do a further round of  
24 questions based on those questions, if necessary.

25 Ms. O'Neill?

1 MS. O'NEILL: No further questions.

2 JUDGE MILLS: Mr. Schaefer?

3 MR. SCHAEFER: Just one question.

4 RECROSS-EXAMINATION BY MR. SCHAEFER:

5 Q. Mr. Meyer, do you know the assessments that  
6 you just testified to in response to Commissioner Murray's  
7 question, do you know if those assessments have been paid to  
8 date?

9 A. As of this morning, there was nothing -- on  
10 the record I looked did not show it was paid.

11 Q. What record did you check?

12 A. This was an internal document on our intranet  
13 website assessment ledger. I did not talk to the clerk  
14 normally responsible for it to see if it's two days out of  
15 date or a week out of date or just how current it is. But  
16 this morning, a little after eight, it showed this amount as  
17 outstanding.

18 Q. But I believe you don't -- what you just  
19 testified is you don't know how often that's updated?

20 A. That's correct.

21 MR. SCHAEFER: I have nothing further.

22 JUDGE MILLS: Thank you. Mr. Krueger,  
23 redirect?

24 MR. KRUEGER: No questions, your Honor.

25 JUDGE MILLS: Mr. Meyer, you may step down.

1 (Witness excused.)

2 JUDGE MILLS: Mr. Schaefer, if you want to  
3 call Mr. Smith forward, we'll proceed.

4 MR. SCHAEFER: Judge, can I have just about  
5 two or three minutes here just to get my things in order?

6 JUDGE MILLS: Sure. Go ahead.

7 (Discussion off the record.)

8 JUDGE MILLS: Mr. Smith, if you'd come  
9 forward, please.

10 (Witness sworn.)

11 JUDGE MILLS: Thank you. You may be seated.  
12 Please go ahead, Mr. Schaefer.

13 MR. SCHAEFER: Thank you, Judge.

14 GARY L. SMITH testified as follows:

15 DIRECT EXAMINATION BY MR. SCHAEFER:

16 Q. Mr. Smith, can you state your name and spell  
17 it for the court reporter, please.

18 A. Gary, G-a-r-y, L. Smith, S-m-i-t-h.

19 Q. Mr. Smith, I believe there's probably some  
20 water in that pitcher and cup if you'd like to get a drink.

21 Mr. Smith, what is your business?

22 A. One business is the water and sewer utility,  
23 doing business as Warren County Water and Sewer.

24 Q. And what is your relation to Warren County  
25 Water and Sewer?

1           A.       I'm the owner.

2           Q.       What's the business address for Warren County

3 Water and Sewer?

4           A.       It's 1248 Mimosa Court, P.O. Box 150

5 Foristell, Missouri, 63348.

6           Q.       Thank you.

7                   And Mr. Smith, you have before you your

8 rebuttal testimony which has been marked Exhibit 15 and your

9 surrebuttal testimony which has been marked as Exhibit 16;

10 is that correct?

11          A.       Yes.

12          Q.       Did you cause Exhibits 15 and 16 to be

13 prepared?

14          A.       Yes.

15          Q.       Okay. Is the testimony that you provided in

16 Exhibits 15 and 16 true and correct to the best of your

17 knowledge, information and belief?

18          A.       Yes.

19          Q.       After providing your surrebuttal testimony, is

20 there anything that you would add to that testimony?

21          A.       Well, somewhat I guess the position of the

22 company has changed as far as what we intend to do or

23 proceed, if that's what you're asking.

24          Q.       Okay. Can you basically tell the Commission

25 what that position is?

1           A.       Well, my family is in Texas. I'm anxious  
2 to -- trying to rejoin them. My state retirement has kicked  
3 in. For various other reasons I'm trying to cut back and  
4 move to Texas.

5           Q.       So how has that caused a change in your  
6 position?

7           A.       Well, I'm trying to liquidate as many assets  
8 as I can. Currently I've gotten rid of the construction  
9 equipment. I'm leasing my house out, basically cutting back  
10 all non-utility functions.

11          Q.       And what about the management and the transfer  
12 of assets for Warren County Water and Sewer, what is your  
13 position on that?

14          A.       Well, with various legal counsel we've  
15 discussed a possibility or so of an interim management  
16 agreement. Because of the difficulties in trying to find a  
17 sale at the current time, it seems advisable to try to do a  
18 six months or whatever arrangement with someone and then  
19 during that time period look for prospective purchasers.

20          Q.       Have you been discussing or negotiating with  
21 anyone on the day-to-day management of the company?

22          A.       Yes. I've talked with EMC. They manage the  
23 Foristell system. They have less interest. They said it  
24 would be too big of a job, but I indicated we could tailor  
25 it any way they want and they're considering that.

1           The best prospect is Alliance. They manage  
2 Public Water District No. 2 in St. Charles County. I had  
3 contacted them back in January or February, but at that time  
4 they had some, well, I want to say bad information about the  
5 company or whatever and didn't show a lot of interest.

6           But then I had another contact that works for  
7 Alliance go back to them, and now they're showing interest  
8 in it. They were out Friday and toured the facilities, got  
9 financial information and so forth, and they indicated that  
10 they would be interested in doing an interim management  
11 agreement, and then they want to purchase. So if I lock in  
12 with them, they would be wanting an exclusive option to  
13 purchase the company.

14         Q.       Other than Alliance, have you discussed sale  
15 of the company with anyone else?

16         A.       David Shorr from your office --

17         Q.       I'm not talking about counsel. I'm talking  
18 about any entities that are potentially interested.

19         A.       Well, I was leading into, he recommended a  
20 client of yours at the Lake of the Ozarks, and I put  
21 together a proposal and sent the information down there. I  
22 forget the name, Lake Ozark Sewer or something.

23         Q.       Okay. Other than what we just discussed on  
24 your position, your current position, if I were to ask you  
25 the same questions that you were asked and provided answers

1 for in your rebuttal testimony and your surrebuttal

2 testimony, would your answers today be the same?

3 A. Yes.

4 MR. SCHAEFER: At this time I'd move for the  
5 admission of Exhibits 15 and 16.

6 JUDGE MILLS: Exhibits 15 and 16 have been  
7 offered. Are there any objections?

8 MR. KRUEGER: No objection, your Honor.

9 MS. O'NEILL: No objection.

10 JUDGE MILLS: Hearing none, they will be  
11 admitted.

12 (EXHIBIT NOS. 15 AND 16 WERE RECEIVED INTO  
13 EVIDENCE.)

14 MR. SCHAEFER: And I'd tender the witness for  
15 cross-examination.

16 JUDGE MILLS: Thank you. Cross-examination,  
17 Mr. Krueger?

18 CROSS-EXAMINATION BY MR. KRUEGER:

19 Q. Good afternoon, Mr. Smith.

20 A. Good afternoon.

21 Q. There's been some references made to the case  
22 WA-96-449 earlier today. Did you hear those references?

23 A. Yes. I believe that was the expansion finance  
24 case.

25 Q. And you're familiar with what went on in that

1 case?

2 A. Yes.

3 Q. And in that case you signed a Stipulation &  
4 Agreement, or actually I should say your company entered in  
5 a Stipulation & Agreement; is that correct?

6 A. Yes.

7 Q. It was signed by your attorney, Mark Comley,  
8 on your -- on the company's behalf?

9 A. Yes.

10 Q. Now, in that Stipulation & Agreement, did you  
11 agree that the construction of an elevated 100,000 gallon  
12 water tower and storage tank is necessary for the health,  
13 safety and welfare of the public in the present service  
14 area?

15 A. Yes.

16 Q. And did you also represent that the water  
17 tower was strongly recommended by your engineers?

18 A. Yes.

19 Q. And who was your engineer in that?

20 A. Meco Engineering.

21 Q. And do you recall specifically what they  
22 recommended?

23 A. A 55 gal-- I'm sorry. 55-foot 100,000 gallon  
24 elevated storage tank.

25 Q. Did you follow all of their recommendations



1 regarding construction of a storage tank?

2 A. We haven't constructed it yet.

3 Q. Did you follow any of their recommendations?

4 A. We did all the engineering work, got all the  
5 plans, got the permits, zoning approval, DNR permits, so on  
6 and so forth, and then we hit a block with financing.

7 Q. So you have not constructed this storage tank?

8 A. No.

9 Q. Do you still believe that the construction of  
10 an elevated 100,000 gallon storage tank is necessary for the  
11 health, safety and welfare of the public?

12 A. Yes.

13 Q. And that it has been more or less continuously  
14 since the time that you signed that Stipulation & Agreement?

15 A. Yes.

16 Q. So for the past five years or so, the public  
17 has not been -- you have not been providing something that  
18 is necessary for their health, safety and welfare?

19 A. We've been providing what was built  
20 20-some-odd years ago and has continued the same since.

21 Q. But not the --

22 A. Not the elevated.

23 Q. Not the water storage tank that you --

24 A. No.

25 Q. -- agree is necessary?

1 A. Yes.

2 Q. Okay. Was the corporate charter of Warren  
3 County Water and Sewer forfeited for failure to file an  
4 Annual Report?

5 A. Yes. We neglected that, I think, last year.

6 Q. Has that forfeiture been rescinded?

7 A. No. We're ready to submit the paperwork. I  
8 just haven't done it yet.

9 Q. Do you recall how long ago that forfeiture  
10 occurred?

11 A. I believe they send notices out in August or  
12 September. So it would have been last year, August,  
13 September.

14 Q. Eight or nine months ago?

15 A. Probably.

16 Q. Are you current on your taxes for Warren  
17 County Water and Sewer?

18 A. As far as Warren County Water and Sewer, at  
19 the time I ran the employees through Warren County Water and  
20 Sewer, we had about a 600, \$800 employment tax. That's paid  
21 now. So as far as the utility goes, there are no taxes  
22 owed.

23 Q. Any property taxes?

24 A. Real estate taxes.

25 Q. Unpaid real estate taxes?

1           A.       Yes.

2           Q.       Do you know what the balance of that is?

3           A.       It would be probably 20-some thousand.

4           Q.       Are you current on your payment of assessments  
5 to the Commission?

6           A.       I got a letter a week, two weeks ago saying  
7 there was a balance due from last year of a thousand some  
8 odd some hundred dollars. As far as what he referred to  
9 from 2000, that was paid, and it had to have been paid in  
10 order for me to file the rate case last year.

11          Q.       So it's your testimony then that it was paid  
12 prior to the rate case, prior to the filing of the rate  
13 case?

14          A.       At the time of filing the rate case,  
15 everything was current, and there was a payment arrangement  
16 on the balance, on the quarterly payments, whatever you-all  
17 do, and so the last installment or last two installments  
18 haven't been paid yet.

19          Q.       Have you -- the last two installments which  
20 are due when?

21          A.       They're past due now, but I don't know what  
22 date they're due.

23          Q.       The most recent two installments you have  
24 failed to pay?

25          A.       The letter I got from Staff indicated there's

1 been 1,600 or something balance. I don't recall exactly.

2 Q. But that's all that's past due on assessments?

3 A. Yes.

4 Q. And are you current on your filing of Annual  
5 Reports to the Commission?

6 A. I've got one for -- well, I say for this year.

7 I guess it was last year's Annual Report, ready to file.

8 I've got it about half done, then I got sidetracked with all  
9 this other stuff.

10 Q. Do you know when that was due?

11 A. April 15th.

12 Q. So it's about six weeks late at the present  
13 time --

14 A. Yes.

15 Q. -- is that correct?

16 You mentioned some negotiations that you've  
17 had with potential buyers. Is this still in a very  
18 preliminary stage or have you had any concrete discussions  
19 with these potential buyers?

20 A. I'm not sure how to characterize. They've  
21 submitted an offer back in '92 or '93. So they're familiar  
22 with the system. They're operating other systems in the  
23 area, so they're familiar. I gave them a tour Friday, gave  
24 them all the information they asked for, and then they asked  
25 for permission to contact various people for information, I

1 think the Staff here, DNR, Mecro Engineering, and they were  
2 going to follow up with that this week. So I haven't heard  
3 back. So to say at what stage, that's all I can say.

4 Q. Do you know anything about what time line  
5 they're looking at as far as making an offer?

6 A. No, but I assume fairly quickly. With EMC,  
7 the other company, I asked that they do something by  
8 June 7th, this Friday, because I'm leaving for Texas then,  
9 but we haven't gotten that done. So obviously it depends on  
10 time.

11 One of the problems with Alliance is that they  
12 don't maintain individual lift stations. The Commission  
13 requires that my company do it, and things like that have to  
14 be worked out on legalities. So I assume it would be a  
15 complicated process.

16 Q. Are you soliciting bids or have you  
17 established an asking price or how are you --

18 A. No.

19 Q. -- going about the negotiations?

20 A. I've just submitted all the financials.  
21 That's as far as I've gotten. I've gotten some  
22 recommendations on how to determine value, but as far as a  
23 dollar, in 10 years or 12 years I've never heard anyone  
24 indicate they knew how to value a utility.

25 Q. Okay. So have any of these potential buyers

1 given you any indication of what price they might be willing  
2 to --

3 A. No.

4 Q. -- even think about?

5 A. No. I had an offer from, oh, the one  
6 Mr. Loethen worked for, the one company two or three, four  
7 years ago. That's the only hard offer, and then I had an  
8 offer back, like I said, in '92, '93, but it changes all the  
9 time.

10 Q. What was this recent hard offer that you  
11 talked about? When was it made?

12 A. I wish I could recall. It was a company out  
13 of Texas that came in here and was trying to buy several.  
14 They had talked in terms of 1,000, \$1,100 per customer, and  
15 we were negotiating different things. Then we had some  
16 variations in there, and then it just fell through.

17 I don't know if -- I heard that they didn't  
18 follow through buying some other systems here in the state,  
19 and mine was one of them, but I really don't have an answer  
20 as to why.

21 Q. Okay. My question was --

22 A. I'm sorry.

23 Q. -- when did that occur?

24 A. They were going around the state, what, three,  
25 four years ago or something. I don't recall the exact time.

1 I've got a file, but I haven't looked at it in a long time.

2 Q. I don't need to know the exact time. You  
3 think it was --

4 A. I want to say three or four years ago, yes.

5 Q. Okay. Are you still considering them as a  
6 potential buyer?

7 A. No. I don't -- I don't know that they're  
8 buying. I heard they're not in the market.

9 Q. Who owns the assets that are used to provide  
10 service to your customers?

11 A. The real estate I transferred to  
12 Warren-Lincoln Investments. As far as all the personal  
13 assets or other assets of the utility, it's in Warren County  
14 Water and Sewer.

15 Q. Okay. When did you transfer the real estate  
16 to Warren-Lincoln Investments?

17 A. I'm going to say about July 1st of 2001.

18 Q. And did you seek Commission approval for that?

19 A. No.

20 Q. Ms. Bolin testified, I believe, in her  
21 surrebuttal testimony that you have made some reference to  
22 serving customers on a nonregulated basis. Do you remember  
23 that testimony?

24 A. Our construction work is done on a  
25 nonregulated basis.

1 Q. Okay. So you're not proposing and never did  
2 propose to serve utility customers on a nonregulated basis?

3 A. Not utility services, no.

4 Q. And you have no intention of doing that?

5 A. No.

6 Q. Okay. Mr. Smith, you did enter a guilty plea  
7 to a felony offense in federal court; is that correct?

8 A. Yes.

9 Q. And by -- when you did so, you acknowledged  
10 that you knowingly discharged a pollutant into the water  
11 from a point source and that the water was a water of the  
12 United States and that that discharge was unpermitted; is  
13 that correct?

14 A. Yes.

15 MR. KRUEGER: That's all the questions I have.

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

17 MS. O'NEILL: Thank you.

18 JUDGE MILLS: And while we're changing  
19 cross-examiners, just for your reference, we're going to go  
20 to just about five o'clock today. If we need to go a few  
21 minutes late to wrap up what we're right in the middle of,  
22 we will, but we're not going to go significantly past five,  
23 just so you know.

24 CROSS-EXAMINATION BY MS. O'NEILL:

25 Q. Good afternoon, Mr. Smith.



1           A.       Good afternoon.

2           Q.       Mr. Smith, as matters were filed in this case,  
3 did you review the prefiled testimony and attachments of  
4 other witnesses?

5           A.       Yes.

6           Q.       And have you reviewed the surrebuttal  
7 testimony of Kimberly K. Bolin, which is in evidence as  
8 Exhibit 7? Did you review that?

9           A.       Some time ago.

10          Q.       Did you review the attachments to that  
11 testimony?

12          A.       Yes, I believe so.

13          Q.       Mr. Smith, I'm going to refer you -- and I  
14 have a copy here if you don't have one with you -- to  
15 Schedule KKB-18.1 attached to that surrebuttal testimony,  
16 which is a two-page document. It's 18.1 and 18.2. Do you  
17 recognize that document, sir?

18          A.       Yes.

19                   MR. SCHAEFER: Excuse me. You're on the  
20 direct testimony?

21                   MS. O'NEILL: Surrebuttal testimony. Sorry.  
22 I'm trying to talk into the microphone, but I'm not sure it  
23 really goes back there.

24                   MR. SCHAEFER: Do you have a copy of the  
25 document? Thanks.

1 THE WITNESS: Yes.

2 BY MS. O'NEILL:

3 Q. Mr. Smith, do you recognize that document?

4 A. Yes.

5 Q. And did you prepare that document?

6 A. Yes.

7 Q. And on the second page of that document, which  
8 is KKB-18.2, I believe, is there a paragraph there that  
9 talks about serving customers outside Incline Village on a  
10 nonregulated basis?

11 A. Yes.

12 Q. Would you read that document -- would you read  
13 that sentence into the record, please.

14 A. It says, Based upon the Sumac Ridge exemption,  
15 we will only serve customers inside Incline Village on a  
16 regulated basis with current assets. The customers outside  
17 Incline will be served from the new tower on a nonregulated  
18 basis.

19 Q. Thank you. And you signed that, right?

20 A. Yes.

21 Q. And this was a fax to the Public Service  
22 Commission staff; is that right?

23 A. Yes.

24 Q. And it discusses a lot of things, including  
25 what you refer to as the lack of progress in cases and the

1 proposed water tower and other things in addition to the  
2 Sumac Ridge exemption; is that correct?

3 A. Yes.

4 Q. Now, that water tower was -- you first applied  
5 in a 1996 case, that 96-449, among the things you wanted in  
6 that case was approval from this Commission, permission from  
7 this Commission so you could construct additional water  
8 storage; is that right?

9 A. Yes.

10 Q. And among the items of evidence that you filed  
11 with this Commission in order to justify that request was an  
12 engineering report by Meco Engineering; is that correct?

13 A. Yes.

14 Q. And in your review of the previously filed  
15 testimony and schedules in this case, did you find a copy of  
16 that report attached to the direct testimony of Kimberly  
17 Bolin?

18 A. Yes.

19 Q. Okay. Is that the report that you filed in  
20 the prior case?

21 A. Yes.

22 Q. Did you later have a dispute with Meco  
23 Engineering about payment for that engineering report?

24 A. Yes. I felt like they'd overcharged.

25 Q. And they obtained a judgment against you; is

1 that correct?

2 A. Yes.

3 Q. Is that against you personally or against  
4 Warren County Water and Sewer Company?

5 A. Probably both, but I don't recall  
6 specifically.

7 Q. Is that judgment still outstanding?

8 A. I paid some of it, what I felt was fair, and  
9 that's been the end of it.

10 Q. Now, you indicated that you are -- one of the  
11 reasons that you have changed your position, as you say, in  
12 this case is that you now want to sell the company and you  
13 said something about going to Texas; is that correct?

14 A. My wife and child are down there. She -- they  
15 were here and commuting, and they've made the decision to  
16 move down there.

17 Q. And so you want to divest yourself of your  
18 Missouri operations and property and move to Texas; is that  
19 fair to say?

20 A. Yes. The utility is a little bit more  
21 complex, and some real estate holdings are more complex, but  
22 as far as other items, I've already disposed of quite a few  
23 or most of it.

24 Q. You indicated, you said that you were planning  
25 on leaving for Texas Friday of this week?

1           A.       Yes.

2           Q.       Have you obtained permission from your  
3 probation officer to go to Texas?

4           A.       Yes.

5                   MR. SCHAEFER: I'm going to object to  
6 relevancy.

7                   JUDGE MILLS: I don't believe there's a  
8 question pending.

9 BY MS. O'NEILL:

10          Q.       When you go to Texas, who is going to operate  
11 the system in your absence?

12          A.       My staff and then the consultant that I've had  
13 on retainer for some time.

14          Q.       Now, you indicated that you transferred real  
15 estate belonging to Warren County Water and Sewer Company to  
16 Warren-Lincoln Investments in July of last year; is that  
17 correct?

18          A.       Yes.

19          Q.       Was that right around the time that you filed  
20 your request for a small company rate increase?

21          A.       I think it was afterwards, but I -- well, I  
22 set up Warren-Lincoln Investments, I think, as of July 1st.  
23 The rate case was filed earlier than that.

24          Q.       In fact, you sent the letter requesting a rate  
25 increase on June 28th, is that correct, 2001?

1           A.       If that's what the record shows. I don't  
2 recall when it was. No, that couldn't be -- of 2001?

3           Q.       2001.

4           A.       I think they completed the audit by then.

5           Q.       They completed the audit. Do you recall them  
6 completing the audit somewhere around December of 2001?

7           A.       No. Well, I'm talking about when they were  
8 out at my house. They were out at my house in June, I  
9 think.

10          Q.       Was the small company rate increase request  
11 pending at the time that you created Warren-Lincoln  
12 Investments?

13          A.       I don't recall. There was no relationship, so  
14 I don't recall,

15          Q.       You don't recall whether or not you had gotten  
16 the final answer from the Staff at the time that  
17 Warren-Lincoln Investments began on July 1st, 2001?

18          A.       I hadn't gotten a final answer on July 1st.

19          Q.       At the time that you created Warren-Lincoln  
20 Investments, how long after that did you transfer the real  
21 estate?

22          A.       I don't recall, but I think I set that all up  
23 effective on July 1st.

24          Q.       Of 2001?

25          A.       Yes.

1 Q. And --

2 A. I don't know the date of recording, but that's  
3 the effective date on the transfer.

4 Q. Now, we know that you didn't seek Commission  
5 approval for that transfer. Did you inform the Staff of the  
6 Public Service Commission that that real estate was no  
7 longer owned by Warren County Water and Sewer and should not  
8 be considered as part of rate base?

9 A. There's no rate base in that property. I  
10 bought it for a dollar and that's all the asset value is.

11 Q. Did you inform the Staff who was conducting  
12 the audit that you no longer -- that the company, Warren  
13 County Water and Sewer Company no longer owned that real  
14 estate?

15 A. No.

16 Q. Mr. Smith, I see -- or I would if I had your  
17 testimony. In your rebuttal testimony, Mr. Smith, you say  
18 that you have a JD from the University of Missouri -  
19 Columbia; is that correct?

20 A. Yes.

21 Q. So you have a law degree?

22 A. Yes.

23 Q. And for a time you were a practicing attorney;  
24 is that correct?

25 A. Yes.

1 Q. Now, as a trained attorney, would it be fair  
2 to say that you know what state statutes are?  
3 A. I don't have them memorized.  
4 Q. You know they exist?  
5 A. Well, sure.  
6 Q. And you know where you can go to find them and  
7 look things up?  
8 A. Yes.  
9 Q. And would it be fair to say that you know that  
10 businesses have laws they have to comply with and those laws  
11 are found in state statute books, among other places?  
12 A. Sure.  
13 Q. And you know that the water and sewer utility  
14 that you own is a regulated enterprise; is that correct?  
15 A. Sure.  
16 Q. And as someone with a law degree, you know  
17 that there are regulations that the Commission has and the  
18 Department of Natural Resources has and other people have,  
19 other agencies have that you have to comply with; is that  
20 correct?  
21 A. Sure.  
22 Q. And you know where you can go to look those  
23 regulations up if you had a question?  
24 A. Sure.  
25 Q. Now, at the time you purchased this company,



1 which is now Warren County Water and Sewer Company, you knew  
2 it was a regulated utility?

3 A. Yes.

4 Q. And you requested approval from the Commission  
5 to buy the company, didn't you?

6 A. Yes.

7 Q. And you later obtained approval from the  
8 Commission when you decided to transfer the assets from Gary  
9 Smith, doing business as Incline Village Water and Sewer, to  
10 the new corporation, Warren County Water and Sewer Company?

11 A. I had already transferred them. I just asked  
12 for approval afterwards.

13 Q. You knew you had to come to the Commission and  
14 get approval?

15 A. Yes.

16 Q. And you knew that the Warren County Water and  
17 Sewer Company corporation that you had formed was something  
18 that had to be registered with the Missouri Secretary of  
19 State?

20 A. Yes.

21 Q. And you did that?

22 A. Yes.

23 Q. And you knew that there are requirements you'd  
24 have to comply with to stay in good standing as a  
25 corporation in the state of Missouri?

1 A. Yes.

2 Q. And you knew what they were?

3 A. Yes.

4 Q. And you -- also, when you went into a  
5 corporate mode, you also sought Commission approval to  
6 construct and install this additional water storage that  
7 we've talked about?

8 A. Yes.

9 Q. And you knew how to do these things even  
10 though you were no longer practicing as an attorney?

11 A. Yes.

12 Q. Now, you surrendered your law license in 1983;  
13 is that correct?

14 A. Yes.

15 Q. And that was in connection with your being  
16 charged with forgery in Stoddard County?

17 MR. SCHAEFER: I'm going to object to the  
18 relevancy.

19 JUDGE MILLS: Sustained.

20 MR. SCHAEFER: I ask that that be stricken  
21 from the record.

22 MS. O'NEILL: Your Honor, I have a couple of  
23 specific questions that go to issues in this case as far as  
24 this person's knowledge of things that -- regarding  
25 commingling of funds, and it's just a couple of questions.

1 JUDGE MILLS: Let me do this. We're not going  
2 to strike the question from the record. I did sustain the  
3 objection to it. It doesn't have to be answered. The  
4 following questions, Mr. Schaefer, you're free to object to  
5 them as well as we go forward.

6 So I've already determined that something that  
7 happened in 1983 is not likely to be relevant, and that's  
8 why I sustained that objection. So you can proceed however  
9 you wish based on that.

10 BY MS. O'NEILL:

11 Q. Mr. Smith, you were convicted of transferring  
12 money from a client's account into your personal account, is  
13 that correct, the grounds of the forgery conviction?

14 MR. SCHAEFER: Again, I'm going to object on  
15 relevancy.

16 JUDGE MILLS: Ms. O'Neill, how is that  
17 relevant to the proceedings before us today?

18 MS. O'NEILL: One of the issues in this case  
19 is the fact that Mr. Smith has been -- we believe the  
20 evidence is in the record to show that he is commingling  
21 regulatory assets with his personal and nonregulated  
22 business assets.

23 The fact that he has previously suffered  
24 consequences for commingling funds related to a business  
25 relationship with his personal funds shows that he has

1 knowledge that that's something he should not be doing.

2 MR. SCHAEFER: Judge, may I respond?

3 JUDGE MILLS: Yes.

4 MR. SCHAEFER: There's no case law in this  
5 state that's going to establish that something -- an issue  
6 that happened 20 years ago such as this is any way relevant  
7 to what she's attempting to show today. She can put on  
8 whatever evidence that's pertinent to this case that she  
9 likes, but I believe that what she's attempting to do is  
10 simply harass the witness and it's irrelevant.

11 JUDGE MILLS: As I recall, the whole prior bad  
12 acts doctrine is really just there to show an MO, and I  
13 don't think that one occurrence 20 years ago is going to  
14 have any probative value in terms of whether or not what  
15 you're alleging in this case actually happened. So I'm  
16 going to sustain the objection.

17 BY MS. O'NEILL:

18 Q. Now, Mr. Smith when you say that you had a  
19 change in position and that now you would like to sell the  
20 company, you also testified on direct examination that you  
21 wouldn't change any of the answers to the questions that  
22 were asked to you in the prefiled rebuttal and surrebuttal  
23 testimony; is that correct?

24 A. Not as of when it was prepared, no.

25 Q. Okay. And speaking of that, did you prepare

1 these documents yourself or did someone else prepare them,  
2 your rebuttal -- and documents I mean rebuttal and  
3 surrebuttal testimony.

4       A.       I prepared the draft and they were typed by a  
5 legal secretary.

6       Q.       So these are basically your words --

7       A.       Yes.

8       Q.       -- that are the answers?

9               Page 5 of your rebuttal testimony, starting at  
10 line 11, actually starting at line 10, some discussion about  
11 fences. You state that the fences around your sewer  
12 treatment plants serve as a screener and are not designed  
13 for security purposes or to keep anyone out. Is that still  
14 your position?

15       A.       Well, I think there's a semantic argument  
16 about that. The fences are not going to keep anyone out.  
17 I've got an eight-foot fence with barbed wire that people  
18 crawl over to steal gas, and this is a six-foot wood fence.  
19 So they're designed to discourage entrance would be my --  
20 would be a better wording, I think, but they're not going to  
21 keep anyone out.

22       Q.       So you did not intend -- or is it your current  
23 testimony that you did not intend to suggest that there was  
24 no regulation that required you to fence those treatment  
25 plants?

1           A.       No. I said that -- I don't say anything about  
2 the regulations. The regulations require fencing, and they  
3 were approved back in 1880, '83 whenever they were  
4 established, and on each annual inspection DNR's never  
5 criticized or written up anything about the fences.

6                   Now, as far as my language about designed to  
7 keep people out, I would say the best word would be they're  
8 designed to discourage people because it's easy to get in  
9 the wood fences.

10          Q.       DNR has never suggested that you keep those  
11 fences in good repair?

12          A.       They've never criticized me for not keeping  
13 them in good repair. We repair them or rebuild them about  
14 twice a year, and they've never criticized the condition.

15          Q.       Ever?

16          A.       Not that I recall.

17          Q.       In your rebuttal testimony at page 8, you  
18 attempt to explain the relationship between your  
19 construction company and your regulated utility company in  
20 the answer to the question that's on that page; is that  
21 correct?

22          A.       Yes.

23          Q.       You're aware that during the auditing process  
24 in your rate increase request the Staff was unable to find  
25 documentation to support transactions between your regulated

1 and your nonregulated companies?

2           A.       Well, they say that, but all the documentation  
3 is there and everything's broken down. They can say  
4 anything, I suppose, but the documentation is there. They  
5 had followed up after the audit and requested additional  
6 invoices and I provided that. Then they indicated they had  
7 everything they needed.

8                    So whatever they were saying they didn't have  
9 they didn't ask for either during the audit or subsequent to  
10 it.

11           Q.       Is it your testimony that during the Staff's  
12 audit no one asked you for invoices to support the transfers  
13 of money from Warren County Water and Sewer Company to you  
14 or to your unregulated businesses?

15           A.       Yes. I brought all the invoices out and sat  
16 them on my dining room table where they had them, and then  
17 after the audit they called back and said they were missing  
18 some information and I provided that. Then we bought some  
19 equipment that they were going to include in the rate base  
20 and they wanted invoices for that, which I provided, and  
21 then they indicated they had everything they needed.

22                    Had they requested -- if or had they wanted  
23 anything else, I could have provided it.

24           Q.       Did you have additional invoices that you did  
25 not provide to the Staff in connection with --

1           A.       If they don't have something they wanted, I  
2 obviously do.

3           Q.       And it was just you didn't know they wanted  
4 it?

5           A.       No. I throw all the invoices in a filing  
6 cabinet, pull them out, and I think while they were working  
7 I did separate some of them, and then I found some  
8 additional invoices and provided. So, I mean, I'd like to  
9 know what they want. I mean, I can go back and find out.

10                   Now, as far as my management fee, I don't have  
11 an invoice. I paid that -- charge that each month without  
12 an invoice. As far as billing for meter reading,  
13 maintenance, repairs, I do an invoice the first -- or the  
14 end of each month for that month's work that the  
15 construction company does and then I bill the utility and  
16 then I post as a receivable to the construction.

17           Q.       So what you're saying is that you write an  
18 invoice to yourself, and that's the documentation you  
19 provided to the Staff during the audit; is that correct?

20           A.       Right.

21           Q.       Okay.

22           A.       I've got -- well --

23                   MR. SCHAEFER: I believe if you're not  
24 finished you can finish your answer.

25 BY MS. O'NEILL:



1 Q. You can finish.

2 A. Well, I was going to say, the employees clock  
3 in on a time card and I use that for purpose of determining  
4 time to then bill, but I didn't provide that or they didn't  
5 ask.

6 Q. Page 9 of your rebuttal testimony, you discuss  
7 the fact that the Staff criticized you operating both  
8 operations, Smith & Associates and the utility, as one  
9 company. So you acknowledge that you received some  
10 criticism for that; is that correct?

11 A. Yes. Originally from '95 or so until I  
12 combined both businesses into Warren County Water and Sewer,  
13 I operated Gary Smith & Associates for non-utility matters  
14 and I operated Warren County Water and Sewer as a utility  
15 and I kept two separate entities.

16 Q. Until 1995?

17 A. No, from '95. Prior to '95 I didn't do any  
18 outside work. And then the Turner complaint was filed down  
19 here and they criticized people buying from a separate  
20 entity claiming it was self-dealing or whatever. So I said,  
21 fine, we'll merge Smith & Associates into the utility and  
22 operate as one combined company. So to meet that criticism,  
23 I did that.

24 And secondly, the banks have always taken a  
25 position that there's no loan value to the utility and that

1 by putting personal assets into the utility they could then  
2 make a loan. So I combined that, and then the auditors when  
3 they came out last year criticized the mingling. Although I  
4 separate construction and utility separately on the books,  
5 within one company they considered that mingling.

6                   So then now I've gone back to just the utility  
7 as the utility and then Warren-Lincoln Investments as a  
8 private business. So I've done it three different ways  
9 trying to satisfy them and --

10           Q.       And for which of those three different ways  
11 did you seek Commission approval for changing your corporate  
12 structure?

13           A.       Well, the utilities never changed. The  
14 utility's been operated as Warren County Water and Sewer.

15           Q.       And despite the fact that you were  
16 transferring business entities, you did not come back to the  
17 Commission to seek approval for any of that?

18           A.       Other than the real estate assets of the  
19 utility, I haven't transferred any utility assets. At the  
20 time I made the transfer, what I was really trying to  
21 transfer is all my personal assets out of the utility. I've  
22 got quite a bit of rental property or investment property.

23           Q.       Mr. Smith, moving right along, you have not  
24 transferred that real estate back to Warren County Water and  
25 Sewer Company yet; is that correct?

1           A.       I've got the deeds prepared, but for some  
2 legal issues I haven't recorded those yet.

3           Q.       Okay. You have the deeds prepared but they  
4 haven't been recorded?

5           A.       Right.

6           Q.       You have the paperwork to the Secretary of  
7 State but you haven't filed it, correct?

8           A.       Yes.

9           Q.       You owe some back assessments, but they  
10 haven't been paid yet?

11          A.       No.

12          Q.       You've had some problems with your electric  
13 bill, is that correct, Mr. Smith, for the utility company?

14          A.       Yes.

15          Q.       You have attempted to pay that electric bill  
16 with insufficient fund checks?

17          A.       That has happened. I've always made them  
18 good.

19          Q.       And you are familiar with the attachments to  
20 supplemental direct testimony of Kimberly Bolin, Schedule  
21 KKB-11.4, .5, .6 and .7 regarding insufficient funds checks  
22 returned from the Rural Electric Cooperative?

23          A.       Yes.

24          Q.       And those are checks that you signed and you  
25 issued?

1           A.       Yes.

2           Q.       And in your surrebuttal testimony at page 5  
3 you indicate that you are considering or exploring obtaining  
4 protection in federal bankruptcy court. Have you abandoned  
5 that position?

6           A.       No.

7           Q.       You're still trying to do that?

8           A.       No, I'm not. I said that was an option. It  
9 would still be an option.

10          Q.       And that's in relation to the regulated  
11 utility or is that a personal matter?

12          A.       No. That would be the utility.

13          Q.       Now, among the customer complaints that this  
14 Commission heard at the local public hearing are some  
15 problems regarding who is to do work on the utility lines  
16 other than the regulated utility and whether or not you were  
17 suggesting to customers that they had to use Gary Smith &  
18 Associates to do their work.

19          A.       Yes.

20          Q.       Do you recall that?

21          A.       Yes.

22          Q.       And do you recall ever telling any other  
23 company that they were not welcome to work in Incline  
24 Village on anything related to the water and sewer company?

25          A.       I had a problem with one company, I think. I

1 forget what the -- oh, that's when we had the lift station  
2 problems. They continued to try to install lift stations  
3 that's not approved and I said the only way to prevent that  
4 was me to prohibit them from doing them.

5 Q. Did you inform residents of Incline Village  
6 that Trip & Trenching was not going to be permitted to do  
7 any work related to the water and sewer system?

8 A. Yes. That had to do with the lift station  
9 installations.

10 Q. And have you made that known to other people  
11 who wanted to find out who they could use?

12 A. That was a one-time thing when that problem  
13 came up. Since then, I've required that they buy the lift  
14 stations through the utility or from our supplier and that  
15 solved the problem.

16 They used to put in a concrete tank that was  
17 extremely difficult to maintain, and the only way to stop  
18 them from installing it was to prohibit them from working.  
19 But then when everybody agreed to the system that we install  
20 or require, then I haven't had any problem with them.

21 Q. You're in delinquency on your primacy fee to  
22 DNR; is that correct?

23 A. I paid the 2001. I think I paid the others,  
24 but they indicate I haven't. So I've got to verify that,  
25 but the 2001 hadn't been paid and it's been sent in. The

1 other check had already been mailed before they showed up  
2 out there for the inspection. That was for this year's lab  
3 fee or whatever.

4 Q. You're aware that that's a pass through that's  
5 on your bills and you're to send that money right in to DNR  
6 for that primacy fee?

7 A. That's due August or September or something, I  
8 think.

9 Q. But you collect money from your customers for  
10 that --

11 A. Yes.

12 Q. -- you're aware of that?

13 You have property taxes past due for real  
14 property that should be in the name of Warren County Water  
15 and Sewer although you've transferred some of it; is that  
16 correct?

17 A. Yes.

18 Q. Do you know how many years of back property  
19 taxes you owe?

20 A. I maintain at five years is the limit you can  
21 go.

22 Q. So you -- since you can go five years, you go  
23 back five years, is that --

24 A. Well, when I took over in '92 there was five  
25 years, \$125,000 owed, and the Staff indicated if I took over

1 the company and took care of that that then there would be  
2 adjustments made to take care of it. That's never happened.  
3 So I've basically run in the same period of time that my  
4 predecessors had.

5 Q. So are there any other liens that you recall  
6 other than the Mecco Engineering lien and the back taxes on  
7 this real estate property?

8 A. I haven't had a title search. I couldn't say.

9 Q. How about back child support?

10 A. I'm --

11 MR. SCHAEFER: I'm going to object to  
12 relevancy.

13 JUDGE MILLS: Sustained.

14 BY MS. O'NEILL:

15 Q. Mr. Smith, Mr. Krueger talked to you about  
16 this stipulation that you entered into at the time that your  
17 company became Warren County Water and Sewer Company, that  
18 it was approved and the storage tank construction  
19 installation was approved. Do you recall that?

20 A. Yes.

21 Q. And that your attorney signed that agreement  
22 for you; is that correct?

23 A. Yes.

24 Q. And your attorney made you aware of the  
25 contents of that agreement; is that correct?

1           A.       Yes.

2           Q.       And at the time that your attorney signed this  
3 stipulation so that you could enter this agreement, would it  
4 be fair to say that you believed you would be able to comply  
5 with the conditions in this Stipulation & Agreement?

6           A.       The only condition we needed to meet would be  
7 the rate adjustment to make up for operating losses. As far  
8 as everything else, we met everything, but when we didn't  
9 get the adjustment for the operating losses, the banks held  
10 back.

11          Q.       You understand that this stipulation said that  
12 you were going to take all the necessary steps to install  
13 that water storage tank and that there's nothing in that  
14 stipulation that says you're going to get rate relief before  
15 it's placed in service? You understand that?

16          A.       We've never asked for rate relief for the tank  
17 itself. What we asked for and what the banks wanted was  
18 rate relief for the operating losses that we had sustained.

19          Q.       And you received a copy of the Staff's most  
20 recent audit of your company denying your request for rate  
21 increase --

22          A.       Yes.

23          Q.       -- on the basis that you were overearning  
24 substantially on the water side?

25          A.       Yes.



1 Q. And that because of numerous other problems  
2 they weren't going to recommend any other increases?

3 A. Yes.

4 Q. And are you aware of when the Stipulation &  
5 Agreement was entered into?

6 A. I don't recall the date now. '97 or something  
7 like that.

8 Q. Does January 7th -- do you believe it was  
9 1997?

10 A. I think the case was originally filed in '96  
11 and it went through '97 sometime. Maybe it was in '98.  
12 Whatever it says is what it says.

13 Q. So if the Order approving the Stipulation &  
14 Agreement was entered into on the 18th day of June 1998,  
15 that sounds right to you?

16 A. If that's what it says, yeah.

17 Q. Would you like to see?

18 A. No. I'll take your word for it.

19 Q. And at the time that this stipulation was  
20 presented to the Commission, you intended to comply with the  
21 terms of the stipulation; is that correct?

22 A. Yes.

23 MS. O'NEILL: No further questions at this  
24 time.

25 JUDGE MILLS: Thank you. We'll go on with

1 questions from the Bench. Commissioner Murray.

2 QUESTIONS BY COMMISSIONER MURRAY:

3 Q. Good afternoon, Mr. Smith.

4 A. Good afternoon.

5 Q. What year did you receive your doctor of juris  
6 prudence degree from the University of Missouri?

7 A. It was December 1973.

8 Q. And where did you practice law?

9 A. In Dexter, Missouri.

10 Q. And where did you take your graduate courses  
11 toward a master of arts degree?

12 A. I took political science courses at the  
13 University of Missouri Columbia and at North Carolina State  
14 University, and I took courses towards an MBA at Lindenwood  
15 University in St. Charles.

16 Q. How far did you get toward the MBA?

17 A. I think I've got about all the hours, but I  
18 never took the required course work to actually get the  
19 degree.

20 Q. What was your concentration in your MBA? Was  
21 it in finance or marketing or --

22 A. Marketing is not a field of mine, and finance  
23 is the reason I never completed the MBA. Really, the  
24 interest I had was taxation, federal tax law. I took some  
25 courses in that and then some marketing and so forth, but

1 taxation was the main thing I was interested in.

2           Q.       I heard you say earlier, I throw all the  
3 invoices in a filing cabinet and I pulled them out and then  
4 I found some additional invoices. It didn't sound like a  
5 person with a JD and studies toward an MBA. Is that what  
6 you learned about recordkeeping when you were studying for  
7 either your law degree or your MBA?

8           A.       Well, my practice is when I open the mail I  
9 put a stack of bills and I enter them into the computer, and  
10 then I put the bills up on the shelf and then I print the  
11 checks, and then I eventually throw the bills in a filing  
12 drawer, and if I feel energetic I'll file the bills in a  
13 manila folder. So I'm not real good at recordkeeping, no.

14          Q.       So it would be fair to say that's not what you  
15 learned when you were studying those disciplines at these  
16 universities?

17          A.       I may have slept that day.

18          Q.       Must have been several days.

19                  Okay. Have you made any payments toward  
20 delinquent assessments since Mr. Meyer checked the records  
21 here at the Commission this morning?

22          A.       He's not accurate about the 2000 because I  
23 filed the small company rate increase in 2001, so 2000 had  
24 to have been paid in order to file that, and then I paid on  
25 the installments initially through that rate process. So

1 the only thing owed would be whatever balance is left from  
2 2001, I guess.

3 Q. So if our records show that more than that is  
4 owing, those records are wrong?

5 A. I think if you check with the clerk, the 3,600  
6 or whatever for 2000 is wrong, and your Staff sent a letter  
7 out saying the balance is about, I think 1,600. I just got  
8 that a week or two weeks ago.

9 Q. Have you been billing the customers for the  
10 DNR primacy fees that are delinquent?

11 A. Yes.

12 Q. And how is that billed? Is it a line item?

13 A. Yes, once a year.

14 Q. Are your customers aware that those primary  
15 fees are delinquent?

16 A. No. Well, I wasn't aware that the '98 or  
17 2000 -- 2001 I just paid, and then I just billed for 2002.  
18 So they're not due yet.

19 Q. Okay. I'd like to pursue your change of  
20 position that has occurred in the last day or two in this  
21 case here. I heard you state earlier that your state  
22 retirement is just about to kick in and that's part of why  
23 you're wanting to move to Texas; is that right?

24 A. Yes.

25 Q. When did you first know that your retirement

1 would be kicking in about this time?

2 A. Well, I've known for years.

3 Q. So what made you change your position two days  
4 before the hearing date in this case?

5 A. That's not a critical factor. I mean, it's  
6 \$870 a month, which is not what I plan to live on, but I'd  
7 like to cut back and move to Texas. Moving to Texas was the  
8 primary thing.

9 Q. It's one of the things you cited about the  
10 reason that you --

11 A. Right.

12 Q. -- were changing your position and --

13 a. Right. That would --

14 Q. -- moving to Texas?

15 A. Well, my position has been the same since  
16 January, or December or January. I've been --

17 Q. Your position on what?

18 A. On trying to sell or move to Texas, and we've  
19 made some efforts along the way to do it.

20 Q. When did you file your testimony? Wasn't it  
21 March 28th?

22 A. March 28th, April 24th.

23 Q. What did you say in your testimony about your  
24 position, your prefiled testimony?

25 A. I don't think we said anything about the sale.

1 Q. Well, perhaps that can be pursued on recross  
2 because I think I have a recollection that you had said  
3 something about it, but I can't find it that quickly.

4 A. Well, the early -- the early efforts were not  
5 public knowledge. That was just between the attorneys and I  
6 talking about it as a way to resolve the case. And then as  
7 we got farther along and we've had these meetings in the  
8 last three or four weeks with different companies, then  
9 we've made it a public issue.

10 Q. You say you're now trying to liquidate your  
11 assets. Is this your personal assets? Is this your Warren  
12 County Water and Sewer assets? Is this Lincoln Investment  
13 assets?

14 A. I've sold all my construction equipment and  
15 basically am not doing any construction work, and when I  
16 come back from Texas I plan to probably lease the house and  
17 rent something to stay in in Foristell when I'm up here.  
18 And then as far as real estate, I'm trying to get rid of  
19 some of that, but mainly get it in a position where I can  
20 collect payments and not have to look after it.

21 Q. Are you still the sole shareholder of  
22 Warren-Lincoln Investments, Incorporated?

23 A. Yes.

24 Q. And what does Warren-Lincoln Investments,  
25 Incorporated do?

1           A.       It owns real estate.

2           Q.       What real estate, other than the real estate  
3 you just transferred from Warren County Water and Sewer  
4 Company?

5           A.       Rental properties primarily, some vacant lots.

6           Q.       And when was this company formed?

7           A.       I think it was set up as of July 1st, 2001.

8           Q.       And when did it acquire the other real estate  
9 other than the amount -- other than the real estate you just  
10 transferred from the water and sewer company?

11          A.       Well, originally Gary Smith & Associates owned  
12 them, and then I combined everything with the utility. And  
13 then when I separated back out in July, then I started  
14 operating as of July 1st as two companies.

15          Q.       Let me see if I can get this straight. Gary  
16 Smith & Associates owned real estate. Then that same real  
17 estate was then transferred to Warren County Water and Sewer  
18 Company?

19          A.       Yes.

20          Q.       And then that same real estate was then  
21 transferred to Warren-Lincoln Investments --

22          A.       Yes.

23          Q.       -- Incorporated?

24                   And Gary Smith & Associates, was that a  
25 regulated utility?

1           A.       No.

2           Q.       Warren-Lincoln Investments, is that a  
3 regulated utility?

4           A.       No.

5           Q.       So you transferred money into the regulated  
6 utility and then out of the regulated utility?

7           A.       Yes.

8           Q.       Without Commission approval?

9           A.       Well, that was non-utility property into and  
10 then back out. The purpose in transferring it in was to be  
11 able to structure the loan, to put collateral up to make the  
12 loan on the water tower.

13          Q.       Now, you said you bought that real estate for  
14 a dollar?

15          A.       The utility property.

16          Q.       The utility real estate?

17          A.       Yes.

18          Q.       That you have since transferred to another  
19 company?

20          A.       Yes.

21          Q.       But is that the same real estate on which some  
22 20-some-odd thousand dollars in back taxes is owed?

23          A.       Yes.

24          Q.       And when was that real estate purchased for a  
25 dollar?



1           A.       It was finalized April 1st, 1992.  
2           Q.       Purchased by Gary Smith & Associates?  
3           A.       No. Gary Smith.  
4           Q.       Gary Smith as an individual?  
5           A.       Yes.  
6           Q.       And then when was it transferred to Gary  
7 Smith & Associates?  
8           A.       The utility never has been. The utility went  
9 to Gary Smith, and then we got Commission approval to go  
10 with Warren County Water and Sewer, and then it was  
11 transferred into Warren County Water and Sewer.  
12          Q.       I'm talking about the real estate.  
13          A.       Yes.  
14          Q.       And it was purchased in April of '92 by you as  
15 an individual for a dollar?  
16          A.       Yes.  
17          Q.       And since then, that 20-some-odd thousand  
18 dollars in real estate taxes has become past due?  
19          A.       On April 1st of '92 there was \$125,000 owed.  
20 So I got the property essentially for nothing subject to the  
21 taxes.  
22          Q.       And who's been paying those real estate taxes?  
23          A.       I've paid everything up to what's -- up to  
24 what's currently owed.  
25          Q.       You as an individual or --

1           A.       No.

2           Q.       -- the water and sewer company?

3           A.       Well, in '92 I would have paid them  
4 personally, but in recent times it's been the utility.

5           Q.       Okay. So they've paid -- they've helped you  
6 buy, the utility company has helped you buy that property,  
7 then?

8           A.       It's helped. It's paid taxes that have been  
9 paid, yes.

10          Q.       And it was transferred out of the utility  
11 without Commission approval?

12          A.       Well, it was included with all the other  
13 assets that were transferred and, you know, and I've never  
14 indicated there's any reason not to transfer it back or  
15 whatever. It's just at the time I set up the new company to  
16 get the non-utility assets out of the utility, that property  
17 was just included with the deed but for no real purpose  
18 other than again having the real estate assets of one  
19 company for loan-making purposes.

20          Q.       You said along with the other assets that were  
21 transferred. What other assets were transferred out of the  
22 utility?

23          A.       My investment properties. The assets owned by  
24 Gary Smith & Associates, the non-utility assets were  
25 transferred into Warren County Water and Sewer for the

1 purpose of collateralizing the loan for the water tower. So  
2 the reason the utility held those assets was for collateral  
3 purposes with the banks.

4           Then in July when the auditors were  
5 criticizing all the -- everything being in one company, then  
6 I separated again the non-utility assets by transferring  
7 them out of the utility into a new company.

8           Q.     Did the utility pay any taxes on any of those  
9 other --

10          A.     No.

11          Q.     -- non-utility assets?

12          A.     No.

13          Q.     Did they pay anything else for those other --

14          A.     No.

15          Q.     -- non-utility assets?

16          A.     The private business subsidizes the utility.

17          Q.     Except for the real estate taxes that the  
18 utility paid?

19          A.     It pays operating expenses. In other words,  
20 I've drawn on personal investments and my salary to  
21 subsidize the utility.

22          Q.     Now, you mentioned some of the -- some of the  
23 entities that you've spoken to about purchasing the --

24          A.     Yes.

25          Q.     -- utility?

1                   And I thought I heard you mention David Shorr.

2 Is that the David Shorr that was formerly with DNR?

3           A.       He's my attorney here.

4           MR. SCHAEFER: I work with Mr. Shorr, and I

5 believe -- I'll just wait until your next question.

6           THE WITNESS: I hired Mr. Shorr for this  
7 proceeding.

8           COMMISSIONER MURRAY: Mr. Shorr is your  
9 attorney, and he is in the office with Mr. Schaefer?

10          MR. SCHAEFER: With myself, yes, Commissioner.

11          THE WITNESS: Yes.

12 BY COMMISSIONER MURRAY:

13       Q.       Is that the same David Shorr --

14       A.       Yes.

15       Q.       -- that was with the Department of Natural  
16 Resources?

17       A.       Yes. And to finish your question if I  
18 haven't, David called me and --

19       MR. SCHAEFER: Let's not -- at this point I'm  
20 going to instruct the witness not to go into anything that  
21 he discussed with his attorney. It would be attorney/client  
22 privilege.

23 BY COMMISSIONER MURRAY:

24       Q.       There's no question pending.

25               And in terms of corporate status of the Warren

1 County Water and Sewer Company, was it your testimony that  
2 you just kind of forgot to --

3           A.       I had the check for \$45 and the annual  
4 registration laying in a pile and --

5           Q.       In that same file cabinet?

6           A.       Yes. Yes. Stranger things have happened.

7           Q.       Okay. You said you had submitted some of the  
8 financials. Actually, you said you had submitted all of the  
9 financials about the company to the potential buyers that  
10 you've been discussing with.

11                   Now, are these financials different than the  
12 financial information you provided to the Staff?

13           A.       No. It would be the same. I use Quick Books  
14 program and I just print out whoever wants what.

15           Q.       You indicated that in that judgment that was  
16 obtained against -- and you said you didn't know whether it  
17 was against you or against Warren County Water and Sewer  
18 Company or both, the judgment that was obtained by Meco  
19 Engineering, you said that you paid what you thought was  
20 fair. Now, I just want to ask you, with your legal  
21 background, does that satisfy the judgment against you?

22           A.       Well, I'm talking about before the judgment.  
23 When I went to pick up the plans, I was told that there was  
24 a balance of 3, 4, \$5,000 owed on the account, which I paid  
25 and then they handed me the plans, and he said, Well, there

1 may be a few additional costs involved. I assumed copying  
2 costs or whatever. Then I go back and I get a bill for  
3 about \$5,000 more and I called and said, No, I paid that  
4 when I picked up the thing. He said, That was the  
5 additional amount that was owed. I said, Well, that's not  
6 right. So we -- that was disputed, but then he got a  
7 judgment and I never fought that, no.

8 Q. So have you paid the amount of the judgment?

9 A. I paid a portion of it and then I just quit.

10 Q. So does that mean your judgment is not  
11 satisfied?

12 A. No.

13 Q. When did Warren -- when did the utility become  
14 a subsidiary of Warren-Lincoln Investments?

15 A. I don't know if I recall the date exactly.  
16 I'm going to say it was probably January 1 of 2000, or maybe  
17 I'm not -- I missed your question. Oh --

18 Q. Go ahead.

19 A. Okay. What I meant was on July 1st of 2001 I  
20 set up Warren-Lincoln Investments as the holding company  
21 with the utility being owned by Warren-Lincoln Investments.  
22 Then I was told that I needed Commission approval even for  
23 the transfer of stock. I didn't think stock required  
24 approval.

25 So when that happened, I just took the stock

1 back into my name and, rather than the parent/subsidiary  
2 relationship, it's two corporations now.

3 COMMISSIONER MURRAY: I think that's all I  
4 had. Thank you.

5 JUDGE MILLS: I think at this point, rather  
6 than try to get through all the questions from the Bench,  
7 all the further cross-examination and the redirect, we're  
8 going to recess and take up tomorrow.

9 Before I make that final decision, let me ask  
10 this: Mr. Krueger, Ms. O'Neill, do you have substantial  
11 further cross based on the questions so far from the Bench?  
12 I mean more than a minute or two each.

13 MS. O'NEILL: Yes.

14 MR. KRUEGER: I do not.

15 MS. O'NEILL: Yeah, I probably will have more,  
16 and I don't know what Commissioner Forbis wants to ask or  
17 what you need to ask.

18 JUDGE MILLS: At this point, how much  
19 cross-examination do you believe you have?

20 MS. O'NEILL: I don't know. I have a feeling  
21 it could be substantial.

22 JUDGE MILLS: We'll go ahead and adjourn for  
23 the day and we will be back tomorrow morning at 8:30.

24 We're off the record.

25

|    |  |     |
|----|--|-----|
| 1  | I N D E X                                |     |
| 2  |  |     |
| 3  | Opening Statement by Ms. O'Neill         | 13  |
| 3  | Opening Statement by Mr. Krueger         | 19  |
| 4  | Opening Statement by Mr. Schaefer        | 23  |
| 5  |  |     |
| 6  | OPC'S EVIDENCE:                          |     |
| 7  | VIC MUSCHLER                             |     |
|    | Direct Examination by Ms. O'Neill        | 26  |
| 8  | Cross-Examination by Mr. Krueger         | 30  |
|    | Questions by Chairman Simmons            | 39  |
| 9  | Questions by Commissioner Murray         | 43  |
|    | Questions by Commissioner Forbis         | 50  |
| 10 | Recross-Examination by Mr. Schaefer      | 51  |
|    | Redirect Examination by Ms. O'Neill      | 52  |
| 11 |  |     |
|    | BARBARA MEISENHEIMER                     |     |
| 12 | Direct Examination by Ms. O'Neill        | 55  |
|    | Cross-Examination by Mr. Krueger         | 60  |
| 13 | Cross-Examination by Mr. Schaefer        | 66  |
|    | Questions by Chairman Simmons            | 70  |
| 14 | Questions by Commissioner Murray         | 75  |
|    | Questions by Commissioner Forbis         | 82  |
| 15 | Further Questions by Commissioner Murray | 86  |
|    | Recross-Examination by Mr. Schaefer      | 89  |
| 16 | Redirect Examination by Ms. O'Neill      | 93  |
| 17 | KIMBERLY BOLIN                           |     |
|    | Direct Examination by Ms. O'Neill        | 107 |
| 18 | Cross-Examination by Mr. Krueger         | 110 |
|    | Cross-Examination by Mr. Schaefer        | 112 |
| 19 | Questions by Commissioner Murray         | 114 |
|    | Redirect Examination by Ms. O'Neill      | 122 |
| 20 |  |     |
|    | DANIEL DAUGHERTY                         |     |
| 21 | Direct Examination by Ms. O'Neill        | 144 |
|    | Questions by Commissioner Murray         | 150 |
| 22 | Questions by Judge Mills                 | 155 |
| 23 | PAUL E. MUELLER                          |     |
|    | Direct Examination by Ms. O'Neill        | 157 |
| 24 | Questions by Commissioner Murray         | 160 |
|    | Recross-Examination by Mr. Schaefer      | 166 |
| 25 | Redirect Examination by Ms. O'Neill      | 169 |



1

2

STAFF'S EVIDENCE

3 STEVE G. LOETHEN

Direct Examination by Mr. Krueger 128

4 Questions by Commissioner Murray 130

Recross-Examination by Ms. O'Neill 137

5 Recross-Examination by Mr. Schaefer 142

6 JAMES MERCIEL, JR.

Direct Examination by Mr. Krueger 171

7 Cross-Examination by Ms. O'Neill 173

Questions by Commissioner Murray 176

8 Recross-Examination by Ms. O'Neill 195

Recross-Examination by Mr. Schaefer 202

9

WILLIAM A. MEYER, JR.

10 Direct Examination by Mr. Krueger 204

Cross-Examination by Ms. O'Neill 206

11 Cross-Examination by Mr. Schaefer 215

Questions by Commissioner Murray 217

12 Recross-Examination by Mr. Schaefer 219

13 WARREN COUNTY WATER AND SEWER COMPANY'S EVIDENCE

14 GARY L. SMITH

Direct Examination by Mr. Schaefer 220

15 Cross-Examination by Mr. Krueger 224

Cross-Examination by Ms. O'Neill 233

16 Questions by Commissioner Murray 259

17

18

19

20

21

22

23

24

25

|    |  |        |          |
|----|--|--------|----------|
| 1  | EXHIBITS INDEX   |        |          |
| 2  |  | MARKED | RECEIVED |
| 2  | EXHIBIT NO. 1  |        |          |
| 3  | Surrebuttal Testimony of Vic E. Muschler                 | 12     | 28       |
| 4  | EXHIBIT NO. 2  |        |          |
| 5  | Direct Testimony of Barbara A. Meisenheimer              | 12     | 59       |
| 6  | EXHIBIT NO. 3  |        |          |
| 7  | Supplemental Direct Testimony of Barbara A. Meisenheimer | 12     | 59       |
| 8  | EXHIBIT NO. 4  |        |          |
| 9  | Surrebuttal Testimony of Barbara A. Meisenheimer         | 12     | 59       |
| 10 | EXHIBIT NO. 5  |        |          |
| 11 | Direct Testimony of Kimberly K. Bolin                    | 12     | 109      |
| 12 | EXHIBIT NO. 6  |        |          |
| 13 | Supplemental Direct Testimony of Kimberly K. Bolin       | 12     | 109      |
| 14 | EXHIBIT NO. 7  |        |          |
| 15 | Surrebuttal Testimony of Kimberly K. Bolin               | 12     | 109      |
| 16 | EXHIBIT NO. 8  |        |          |
| 17 | Surrebuttal Testimony of Daniel Daugherty                | 12     | 149      |
| 18 | EXHIBIT NO. 9  |        |          |
| 19 | Surrebuttal Testimony of Paul E. Mueller                 | 12     | 159      |
| 20 | EXHIBIT NO. 10   |        |          |
| 21 | Rebuttal Testimony of James A. Merciel                   | 12     | 173      |
| 22 | EXHIBIT NO. 11   |        |          |
| 23 | Cross Surrebuttal Testimony of James A. Merciel          | 12     | 173      |
| 24 | EXHIBIT NO. 12   |        |          |
| 25 | Rebuttal Testimony of Steve G. Loethen                   | 12     | 129      |
| 26 | EXHIBIT NO. 13   |        |          |
| 27 | Cross-Surrebuttal Testimony of Steve G. Loethen          | 12     | 129      |

|    |  |     |     |
|----|--|-----|-----|
| 1  | EXHIBIT NO. 14   |     |     |
| 2  | Cross-Surrebuttal Testimony of Dana E. Eaves             | 12  | 206 |
| 3  | EXHIBIT NO. 15   |     |     |
| 4  | Rebuttal Testimony of Gary L. Smith                      | 12  | 224 |
| 5  | EXHIBIT NO. 16   |     |     |
| 6  | Surrebuttal Testimony of Gary L. Smith                   | 12  | 224 |
| 7  | EXHIBIT NO. 17   |     |     |
| 8  | Attachments to Surrebuttal Testimony of Vic E. Muschler  | 12  | 30  |
| 9  | EXHIBIT NO. 18   |     |     |
| 10 | 5/17/02 Letter to Gary Smith from DNR, Inspection Report | 148 | 157 |
| 11 |  |     |     |
| 12 |  |     |     |
| 13 |  |     |     |
| 14 |  |     |     |
| 15 |  |     |     |
| 16 |  |     |     |
| 17 |  |     |     |
| 18 |  |     |     |
| 19 |  |     |     |
| 20 |  |     |     |
| 21 |  |     |     |
| 22 |  |     |     |
| 23 |  |     |     |
| 24 |  |     |     |
| 25 |  |     |     |