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1 STATE OF MISSOURI  
2 PUBLIC SERVICE COMMISSION  
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6 TRANSCRIPT OF PROCEEDINGS  
7 On-the-Record Presentation

8 July 31, 2006  
9 Jefferson City, Missouri  
10 Volume 1  
11

12 In the Matter of the Application )  
13 of Hickory Hills Water & Sewer Co., )  
14 Inc., the Staff of the Missouri )  
15 Public Service Commission, and the )  
16 Office of the Public Counsel for )  
17 Approval of Their Unanimous ) Case No. WO-2007-0036  
18 Stipulation and Consent Order for )  
19 Appointment of Interim Receiver )  
20 and Order to General Counsel to )  
21 Petition the Circuit Court of Cole )  
22 County for the Appointment of a )  
23 Receiver )

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APPEARANCES:

2

PEGGY WHIPPLE, Chief Litigation Attorney  
JENNIFER HEINTZ, Associate General Counsel

3

P.O. Box 360  
200 Madison Street  
Jefferson City, MO 65102  
(573) 751-3234

5

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 AND 2 WERE MARKED FOR  
3 IDENTIFICATION BY THE REPORTER.)

4 JUDGE VOSS: We're on the record. We'll  
5 take entries of appearance, beginning with Staff.

6 MS. WHIPPLE: My name is Peggy Whipple, and  
7 together with Jennifer Heintz, we are here today on behalf  
8 of the Staff of the Public Service Commission. Our  
9 address is Post Office Box 360, Jefferson City, Missouri  
10 65102.

11 JUDGE VOSS: Let the record note that the  
12 Office of Public Counsel is not here. There was a health  
13 issue with the attorney, and hopefully someone else will  
14 be joining us. I believe, Ms. Whipple, you can state you  
15 spoke with Mr. Dandino this morning.

16 MS. WHIPPLE: I did. Right before the  
17 commencement of this hearing, I spoke directly with  
18 Mr. Dandino, and he asked me to assure the Court that the  
19 Office of Public Counsel is in complete agreement with the  
20 Unanimous Stipulation that we're here to discuss today,  
21 and that if the Court should desire any follow-up  
22 documentation or briefing or response in any way, he will  
23 be happy to comply.

24 JUDGE VOSS: Let the record also note that  
25 Mr. Clifford from Hickory Hills is not in attendance. He

0004

1 has declined to be represented by counsel and has signed  
2 an affidavit stating that he is aware of his right to a  
3 hearing and is declining to attend, and an affidavit  
4 stating that fact will be entered momentarily. Would you  
5 like to offer the stipulation?

6 MS. WHIPPLE: Yes. We have two exhibits  
7 today. Exhibit No. 1 is entitled Unanimous Stipulation  
8 and Consent Order for Appointment of Interim Receiver and  
9 Order to General Counsel to Petition the Circuit Court of  
10 Cole County for the Appointment of a Receiver. And this  
11 document has already been filed in the record in this  
12 case, and it bears the signatures of myself on behalf of  
13 Staff, Mr. Mike Dandino on behalf of the Office of the  
14 Public Counsel, and Mr. Randy Clifford, the officer and  
15 director of Hickory Hills Water & Sewer Company.

16 And Exhibit No. 2 is entitled Affidavit of  
17 Randy Clifford. It is signed and notarized by Mr. Randy  
18 Clifford, dated the 26th day of July, and in sum it  
19 indicates that Mr. Clifford was notified of his  
20 opportunity to be present today and declines to appear  
21 today, stating that his entire statement is already  
22 contained within the record.

23 JUDGE VOSS: Are there any objections to  
24 admission of these two exhibits?

25 (No response.)

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1 JUDGE VOSS: Hearing none, they're admitted  
2 into the record.

3 (EXHIBIT NOS. 1 AND 2 WERE RECEIVED INTO  
4 EVIDENCE.)

5 JUDGE VOSS: Ms. Whipple, would you like to  
6 give a brief opening statement and explanation of the  
7 Stipulation & Agreement?

8 MS. WHIPPLE: Yes. This Unanimous  
9 Stipulation was arrived at after several discussions  
10 between representatives of the Office of Public Counsel,  
11 myself and Ms. Heintz, Staff, and of course Mr. Randy  
12 Clifford. We all agreed, without any disagreement  
13 whatsoever, that the process of putting this Hickory Hills  
14 Water & Sewer Company into a voluntary receivership was  
15 the right and appropriate thing to do in order to assure  
16 adequate and reliable service to the customers of Hickory  
17 Hills.

18 Mr. Clifford stated more fully in his first  
19 affidavit, which is incorporated within the Unanimous  
20 Stipulation, that he has numerous reasons for wishing the  
21 Hickory Hills facility to go into receivership, personal  
22 reasons as well as health reasons.

23 We're all in agreement that this is the  
24 appropriate way to handle this company at this time and in  
25 the interest of the customers, and so we're here today to

0006

1 answer any questions and to make sure that we have  
2 properly documented this decision.

3 JUDGE VOSS: It is time for questions.  
4 Commissioner Appling, do you have any questions?

5 COMMISSIONER APPLING: Ms. Whipple, I don't  
6 know whether you're the right person to answer or whether  
7 Dale would be the one to ask this question.

8 I'm just concerned that we don't have any  
9 denigration in the service to the customers, Dale, during  
10 the time of this receivership change. So can you help me  
11 out a little bit by stepping back a couple steps and tell  
12 me how that's going to work here so that we can make that  
13 a part of the record?

14 I just don't want the customers complaining  
15 and not getting the service they deserve here during the  
16 time, the transition from the present owner to the person  
17 that's going to pick up the responsibility. Help me out a  
18 little bit with that if you wouldn't mind. I haven't read  
19 the stipulation. That's --

20 MS. WHIPPLE: Shall I go ahead and have  
21 Dale be sworn before he replies? Would that be  
22 appropriate?

23 JUDGE VOSS: Mr. Russo also, I presume,  
24 should be sworn.

25 COMMISSIONER APPLING: Go ahead.

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1 (Witnesses sworn.)

2 JUDGE VOSS: Go ahead.

3 MR. JOHANSEN: Yes. Commissioner Appling,  
4 my name is Dale Johansen. I'm the manager of the water  
5 and sewer department for the Commission.

6 I think from the standpoint of the service  
7 that the customers are currently receiving and what will  
8 happen during the transition is that Mr. Clifford has  
9 indicated that he is continuing to operate the system.

10 The main issue here recently has been  
11 whether or not he has continued to chlorinate the water  
12 supply. He is currently doing that. He has no intentions  
13 of ceasing that function. And it's my understanding that  
14 until such time that a receiver is actually appointed,  
15 that Mr. Clifford will continue with those activities.

16 Once a receiver is appointed, either as an  
17 interim receiver by the Commission or eventually by the  
18 Circuit Court, the receiver will actually at that point be  
19 responsible and will be making arrangements for a licensed  
20 operator to be involved with the operation of the system.  
21 And we fully expect that any regulatory activities that  
22 are required from the standpoint of DNR or the  
23 Commission's regulations regarding the operation of the  
24 system will basically continue with a receiver basically  
25 at the status quo today, that the system will continue to

0008

1 be operated. There will be a licensed operator involved  
2 and so forth.

3 COMMISSIONER APPLING: Any customer can  
4 still complain if their service is denigrated the same as  
5 they could yesterday or today, right?

6 MR. JOHANSEN: Oh, certainly. The -- I  
7 think one of the things that's important to note here is  
8 that the appointment of an interim receiver by the  
9 Commission or the appointment of a receiver by the Circuit  
10 Court doesn't really change anything from the standpoint  
11 of the company, except for the management.

12 You're basically replacing the existing  
13 management with someone that's appointed on an interim  
14 basis by the Commission and then eventually by the Circuit  
15 Court. The company continues in its operations. Its  
16 responsibilities continue as they always were. It's  
17 simply you have a new CEO in effect.

18 COMMISSIONER APPLING: So what is your best  
19 guess or anticipation on what date that this might take  
20 place?

21 MR. JOHANSEN: Basically, what we have --  
22 what we have done in a similar case from the standpoint of  
23 a receivership action is that the interim receiver, that  
24 appointment would be effective upon the effective date of  
25 the Commission Order approving this, I assume approving



1 this Unanimous Stipulation and authorizing the General  
2 Counsel to go to Circuit Court. So the Commission's  
3 appointment of the interim receiver will be effective with  
4 the effective date of that Order.

5                   From the standpoint of the Circuit Court  
6 action, the time that it will take to actually have that  
7 petition filed with the Circuit Court and then ruled on by  
8 the judge, the standpoint of the filing, that could be  
9 done fairly quickly. From that point on, once it's filed,  
10 there's some time for responses that's available to the  
11 company. I believe even though this is a consent  
12 situation, that that time frame will still have to run,  
13 which if I recall correctly is 30 days.

14                   And then the Circuit Court judge's actions  
15 on that petition, basically the timing of that is simply  
16 going to be up to the judge and his docket.

17                   COMMISSIONER APPLING: So, Peggy, what is  
18 our responsibility, that is for us to approve the  
19 stipulation here coming up posthaste here?

20                   MS. WHIPPLE: Yes. I think that that is  
21 even within Mr. Clifford's desire, that once we can get an  
22 effective Order from the Commission here, he understands  
23 that, you know, things may slow down a little bit over in  
24 Circuit Court because those judges' dockets are rather  
25 unpredictable. But we're not anticipating any change

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1 between the interim receiver. The identity of the  
2 gentleman, Mr. Gary Cover, that we're submitting to the  
3 Commission to approve will be the very same person that  
4 we're asking the Circuit Court to bless as the permanent  
5 receiver.

6 And so effectively once we get Mr. Cover  
7 appointed here by the Commission, it should run smoothly  
8 no matter how long it takes, frankly, over at Circuit  
9 Court. There shouldn't be any other changes.

10 COMMISSIONER APPLING: I had a list --  
11 Judge, I had a list of questions, and you have them also,  
12 questions that Tim put together for us on Friday that we  
13 were going to ask. Is there some way that I can get these  
14 put into the record and maybe ask OPC to answer these  
15 questions in writing later?

16 JUDGE VOSS: I will issue an Order this  
17 afternoon directing Public Counsel to answer these  
18 questions.

19 COMMISSIONER APPLING: Okay. Thank you. I  
20 don't think I have anything else. Dale, do we -- are we  
21 okay here with this?

22 MR. JOHANSEN: I believe we are. I think  
23 this is -- this is a proper resolution of this situation.  
24 It clearly is Mr. Clifford's desire. We're not -- we're  
25 certainly not forcing anything down his throat, so to

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1 speak. He's in agreement with this.

2 COMMISSIONER APPLING: I think he just  
3 wants out of the business, right?

4 MR. JOHANSEN: Yes. That's the bottom line  
5 as far as he is concerned, yes.

6 COMMISSIONER APPLING: Good.

7 JUDGE VOSS: I do have a few questions from  
8 some of the other Commissioners. If you have any  
9 additional questions, just step in, let me know.

10 COMMISSIONER APPLING: Go ahead.

11 JUDGE VOSS: You said that the interim  
12 receiver will effectively be operating the company from  
13 the date of the Commission Order, from any Commission  
14 Order. Do you have any type of a compensation package in  
15 place yet that the receiver will receive for operating?

16 MS. WHIPPLE: Well, we have a past  
17 agreement with Mr. Gary Cover in another receivership,  
18 that I have been assured by other attorneys the Commission  
19 is currently pleased with his performance.

20 Now, I do know that that's an hourly rate.  
21 I have been told that it's \$150 an hour. But I have also  
22 been told, especially talking with Staff -- and Dale and  
23 Jim might answer that better than I would -- that other  
24 receivership was, shall we say, a contentious situation.  
25 Okay. I probably hit the right word. And very likely

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1 required significantly more time from Mr. Cover than any  
2 of us anticipate being required here because we have a  
3 voluntary situation and no disagreement.

4 JUDGE VOSS: The size of that other system,  
5 that's a pretty sizeable system, isn't it, the Osage?

6 MR. JOHANSEN: It's significantly larger  
7 than Hickory Hills, but as Ms. Whipple said, that  
8 situation has involved a great deal of time on Mr. Cover's  
9 part simply because it has been contested. There's been  
10 numerous issues raised and that continue to be set for  
11 hearing in Camden County Circuit Court regarding that  
12 situation.

13 So far as Hickory Hills Water & Sewer is  
14 concerned, I don't anticipate Mr. Cover having a  
15 significant amount of time involved from the standpoint of  
16 his activities as the receiver. One of the things that he  
17 will need to do that we have had some preliminary  
18 discussions with him about, but nothing firm yet, is that  
19 he will need to make arrangements with a licensed operator  
20 to actually do the day-to-day operations of the system.

21 So from the standpoint of compensation and  
22 what the receivership, if you will, will cost, I think the  
23 most significant issue there is going to be the  
24 arrangements that he can make for an operator and not his  
25 time itself.

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1 JUDGE VOSS: That will be additional cost  
2 on the --

3 MR. JOHANSEN: Correct.

4 JUDGE VOSS: -- customers, whatever the  
5 operator's paid in addition to his --

6 MR. JOHANSEN: Yes.

7 JUDGE VOSS: So as receiver, then, he won't  
8 be billing for mileage, just straight time?

9 MR. JOHANSEN: Mr. Cover himself, I think  
10 his -- most of his activities will not require him to  
11 travel. Depending upon who he makes arrangements with for  
12 operation purposes, you know, there's likely to be some  
13 time involved there on their part from the standpoint of  
14 not only the time that's required in the system itself,  
15 but also the time that that contract operator is going to  
16 have in getting to the job.

17 JUDGE VOSS: Okay. I think that addresses  
18 the bulk of the questions I had from the other  
19 Commissioners. Do you have anything else, Commissioner?

20 COMMISSIONER APPLING: I just -- I don't  
21 think so. I just don't want any denigration in the  
22 service to the customer, and that's the thing that I think  
23 that we need to make sure that we keep our eyes on. Is  
24 somebody here going to kind of be overseeing or watching  
25 this as we progress?

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1                   MR. JOHANSEN: Oh, yes. In all the  
2 situations that -- the current situation with Osage Water  
3 Company that's operating under receiver and Missouri  
4 Utility Companies -- Missouri Utility Company, which is  
5 also operating under receivership, we monitor those  
6 situations closely. We're in contact, you know, weekly if  
7 not daily in some instances with the receiver as well as  
8 the operator.

9                   So it's something that we monitor very  
10 closely, and one of the reasons we do that is to ensure  
11 that the receiver not only is keeping the system running  
12 the way it should be, but we try to provide as much  
13 assistance as we can to help keep the costs down from the  
14 standpoint of the time that the receiver has to spend on  
15 it.

16                  COMMISSIONER APPLING: Okay. Judge, that's  
17 all I have.

18                  JUDGE VOSS: I have no further questions.  
19 Call this to a close. Thank you.

20                  WHEREUPON, the on-the-record presentation  
21 was concluded.

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EXHIBITS INDEX

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MARKED RECEIVED

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EXHIBIT NO. 1

4

Unanimous Stipulation and Consent  
Order for Appointment of Interim  
Receiver and Order to General Counsel  
to Petition the Circuit Court of Cole  
County for the Appointment of a  
Receiver

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EXHIBIT NO. 2

8

Affidavit of Randy Clifford

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## 1 C E R T I F I C A T E

2 STATE OF MISSOURI )  
 ) ss.

3 COUNTY OF COLE )

4 I, Kellene K. Feddersen, Certified  
5 Shorthand Reporter with the firm of Midwest Litigation  
6 Services, and Notary Public within and for the State of  
7 Missouri, do hereby certify that I was personally present  
8 at the proceedings had in the above-entitled cause at the  
9 time and place set forth in the caption sheet thereof;  
10 that I then and there took down in Stenotype the  
11 proceedings had; and that the foregoing is a full, true  
12 and correct transcript of such Stenotype notes so made at  
13 such time and place.

14 Given at my office in the City of  
15 Jefferson, County of Cole, State of Missouri.  
16

17 Kellene K. Feddersen, RPR, CSR, CCR  
18 Notary Public (County of Cole)  
19 My commission expires March 28, 2009.  
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