

1 STATE OF MISSOURI
2 PUBLIC SERVICE COMMISSION
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6 TRANSCRIPT OF PROCEEDINGS
7 Hearing
8 October 30, 2002
9 Jefferson City, Missouri
10 Volume 3
11
12 The Staff of the Missouri Public)
13 Service Commission,)
14 Complainant,)
15 v.) Case No. WC-2003-0134
16 Osage Water Company,)
17 Respondent.)
18
19 MORRIS L. WOODRUFF, Presiding,
20 SENIOR REGULATORY LAW JUDGE.
21
22 SHEILA LUMPE,
23 CONNIE MURRAY,
24 COMMISSIONERS.
25
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1 P R O C E E D I N G S

2 JUDGE WOODRUFF: Okay. Welcome back for day
3 three of this hearing, and when we left off yesterday, we
4 finished Debra Williams. So I believe at this moment Greg
5 Williams is on the stand to be cross-examined by Public
6 Counsel.

7 So if you'd take the stand, Mr. Williams, you
8 are still under oath.

9 GREG WILLIAMS testified as follows:

10 CROSS-EXAMINATION BY MS. O'NEILL:

11 Q. Good morning.

12 Mr. Williams, you testified on direct
13 examination that you own either one-half or one-third of the
14 voting stock of Osage.

15 Which of those is it, one-half or one-third?

16 A. It would be my opinion it's one-half.

17 Q. And is it true that the only other person who
18 owns voting stock in Osage Water Company is Pat Mitchell?

19 A. I believe so.

20 Q. And neither of you own enough voting stock to
21 control what happens to Osage. Is that part of the problem
22 you've been having with him?

23 A. Well, what you've referred to as the common
24 stock, there is also preferred stock issued which had
25 contention voting rights in the event dividends were not

1 paid within a three-year period, and Mr. Mitchell owns more
2 of that stock than I do.

3 Q. And you still own the voting stock, though?
4 You're still a stakeholder of Osage from the point of view
5 that you own part of the company?

6 A. I still own voting stock. I'm not sure if
7 that makes me a stakeholder for that basis.

8 Q. Last July Mr. Mitchell dumped these boxes
9 containing the company records on the porch of your office;
10 is that right?

11 A. A year ago, July of 2001.

12 Q. And left a note that's in evidence as 22, the
13 one that says -- starts out with "I'm tired and broke."

14 You've seen that; is that correct?

15 A. That's correct.

16 Q. And basically he had nothing to do with the
17 company for a period of approximately six months after that.
18 Is that also correct?

19 A. No.

20 Q. It's not correct?

21 A. No. There was a board meeting, I'm going to
22 say within probably 45 days of that date that he attended.

23 Q. So your wife's testimony yesterday was
24 incorrect when she said the first board meeting he attended
25 was on January 8th of 2002?

1 A. I believe she was confused, yes.

2 Q. What was the date of that meeting that you say
3 happened within 45 days?

4 A. That's the best estimate I can give you. I
5 couldn't give you a specific date from memory.

6 Q. Do you have an estimate of the month that
7 occurred in?

8 A. I believe it was in August. It may have been
9 in late July. May have been before late July. I don't
10 recall specifically.

11 I know that Mr. Mitchell and I had had a
12 number of disagreements about company operations prior to
13 that time. Prior to July, he had wanted to hire an outside
14 firm to do operations and maintenance and solicit the --
15 some estimates of what that would cost, and basically that
16 was his solution to O and M for the company.

17 I didn't see how that would ever work out for
18 shareholders, the creditors of the company, because the
19 estimates he was getting were substantially equal to the
20 anticipated revenues of the company. We'd had considerable
21 disagreements about that, and he simply did not want to
22 operate after that.

23 As I indicated, at some point, whenever we
24 sent out a notice for a board meeting to discuss what to do
25 after he left things on the front porch, he did show up for

1 that.

2 Q. Okay. So around July the 7th he left the
3 boxes on the front porch, and about 45 days later you had a
4 meeting with him, this board meeting; is that correct?

5 A. Would have been certainly less than 45 days
6 later.

7 Q. And in the middle of August of 2001, you filed
8 paperwork on behalf of Environmental Utilities seeking a
9 certificate to serve Golden Glade; is that correct?

10 A. That's correct.

11 Q. And in that application and in the process of
12 applying for that certificate, you represented to this
13 Commission that Mr. Mitchell had abandoned Osage Water
14 Company?

15 A. I think we gave the exact facts that I've just
16 testified to the Commission in that proceeding as to what he
17 did and how he did it and what he said and what his letter
18 said. I think all that's in the record.

19 Q. Except for the 45 days later meeting?

20 A. I don't know if that's in evidence or not.

21 Q. You don't recall putting that in evidence, do
22 you?

23 A. I don't recall whether we did or did not
24 discuss that in evidence in that case.

25 Q. And testimony was filed signed by Debra

1 Williams that she testified later was actually drafted by
2 you, and you and she went over it and she submitted that
3 testimony.

4 Do you recall that?

5 A. It was prepared testimony, yes.

6 Q. Prefiled testimony, and that was -- that was
7 testimony that you drafted with her; is that correct?

8 A. Yes. It's prepared testimony.

9 MS. O'NEILL: May I approach the witness?

10 JUDGE WOODRUFF: You may.

11 BY MS. O'NEILL:

12 Q. Mr. Williams, I'm showing you what's in
13 evidence in this proceeding as Exhibit 3, and you've seen
14 this, I believe, on Thursday.

15 Is this an excerpt of the prefiled testimony
16 of Debra Williams in the Environmental Utilities application
17 case?

18 A. I believe it is, yes.

19 Q. And at the top of that page, page 2, does it
20 state that there was a letter from Mr. Mitchell indicating
21 he no longer intended to operate OWC?

22 A. Yes. That's exactly what I've just testified
23 to.

24 Q. Do you recall the date that prefiled -- the
25 dates that prefiled testimony was filed on behalf of

1 Environmental Utilities in that case?

2 A. Absolutely I do not.

3 Q. Would those -- those pieces of prefiled
4 testimony have been filed after the meeting you just
5 described here this morning?

6 A. I would think they probably were, but I don't
7 specifically recall, as I've said, the date of the prefiled
8 testimony when it was filed.

9 Q. In any event, Mr. Williams attended a
10 shareholders meeting on January 8th of 2002?

11 A. I did.

12 Q. You did. Mr. Mitchell also attended that
13 meeting?

14 A. Yes, he did.

15 Q. And Mrs. Williams prepared minutes of that
16 meeting; is that correct?

17 A. I believe so, yes.

18 Q. At that January 8th meeting, you discussed
19 what should happen as far as Osage Water Company; is that
20 correct?

21 A. That was always a topic of discussion at
22 meetings.

23 Q. And a primary topic of discussion at this
24 particular meeting was whether or not the company should
25 cease operations, file bankruptcy or sell its assets.

1 Do you recall that?

2 A. Absolutely.

3 Q. And according to the minutes of this meeting

4 which are in Exhibit 5 -- have you looked at Exhibit 5?

5 A. At various times I have.

6 Q. Okay. The second page of Exhibit 5, there's

7 an indication that the shareholders decided it would be in

8 the best interests of the corporation to sell the assets in

9 order to pay taxes, reduce the balance owed for legal work,

10 to you I presume; is that correct?

11 A. Yes.

12 Q. And to recover from the City of Osage -- so

13 that further litigation regarding the City of Osage Beach

14 could continue?

15 A. Yes.

16 Q. And also to eliminate other priority creditor

17 claims?

18 A. Are you reading from the document? I mean,

19 I'm sure that's what it says.

20 Q. Is that your recollection of what happened at

21 the meeting?

22 A. I remember discussions to that effect, yes.

23 Q. So one purpose of trying to sell the assets

24 was to defeat creditor claims?

25 A. No, ma'am. It was to pay creditor claims.

1 Q. So eliminate means pay?
2 I'd be happy to show this to you if you need
3 clarification.
4 MS. O'NEILL: May I approach?
5 JUDGE WOODRUFF: You may.
6 THE WITNESS: The purpose as I've stated in
7 selling assets was to raise funds with which to pay debt.
8 BY MS. O'NEILL:
9 Q. Does this state to eliminate other priority
10 creditor claims?
11 A. That's exactly what it says. You eliminate
12 them by paying them, if you're operating as a corporation.
13 Q. Is the only way of eliminating a creditor
14 claim by paying it?
15 A. Well, you can file bankruptcy.
16 Q. Or you could foreclose on the assets as
17 another creditor and transfer the assets to another
18 corporation?
19 A. When you foreclose on assets you sell assets
20 at a foreclosure sale to raise funds with which to apply to
21 debts that are outstanding, and there's statutory allocation
22 of those debts among the claims, if there's surplus of the
23 debt that's being foreclosed.
24 Q. And I want to talk to you about that in a
25 moment.

1 There are a number of transactions that were
2 discussed at the shareholder meeting, according to the
3 minutes, and Mrs. Williams discussed some of those in her
4 testimony.

5 Do you recall that?

6 A. Recall what?

7 Q. That Mrs. Williams discussed some of these
8 proposed property --

9 A. I was here when she testified.

10 Q. And do you recall that testimony?

11 A. Right at the moment, no.

12 Q. She was not able to state whether any of the
13 transactions discussed at this meeting had actually
14 occurred.

15 Do you know whether or not they've occurred?

16 A. To my knowledge, none of the proposed
17 transactions ever occurred. What I was unaware of at the
18 time of that meeting was that Mr. Mitchell had not paid
19 federal withholding taxes for a period of some -- for parts
20 of 1999 and 2000 and that there were outstanding tax liens,
21 which pretty much eliminated any possibility of carrying out
22 any of those transactions.

23 Q. And all those transactions were in favor of
24 you; is that correct?

25 A. No.

1 Q. The majority?

2 A. I don't consider getting paid for money that's

3 owed me to be a favor. I think that's something that is

4 simply a business transaction.

5 Q. Well, in favor of doesn't necessarily mean a

6 favor, now, does it?

7 A. Well, it was a simple transaction designed to

8 pay debt with assets, as opposed to with cash, since there

9 was not cash.

10 Q. Pay debt toward you, owed to you?

11 A. Yes. It was a primary concern of Mr. Mitchell

12 that the ability to continue litigation be maintained, and

13 I'd indicated to him that we certainly weren't in favor of

14 advancing additional time or expenses on behalf of the

15 corporation without payment.

16 Q. Now, following this meeting on January 8, you

17 remained a director of Osage Water; is that correct?

18 A. I believe that's correct.

19 Q. Now, would you agree that Osage Water has a

20 legal obligation to provide its customers with safe and

21 adequate service?

22 A. Under the terms of its tariff, it does, yes.

23 Q. And would you agree that as a director, and

24 earlier in your career with Osage as an officer of the

25 corporation, you've had a duty to ensure that Osage complied

1 with that law?

2 A. There's a duty to make sure that Osage Water
3 Company complies with all of its obligations.

4 Q. Including that one?

5 A. Certainly.

6 Q. You attempted to dissociate yourself with
7 Osage Water Company by sending a letter to Mr. Mitchell on
8 September 3rd of this year; is that correct?

9 A. On September 3rd of this year I resigned as a
10 director of Osage Water Company, if that's what you mean by
11 attempting to dissociate.

12 Q. It wasn't a complete disassociation, however,
13 was it?

14 A. I would have been very happy if it had been.

15 Q. Is it your position that you are no longer a
16 director of Osage Water Company?

17 A. Ma'am, I think my resignation is in evidence
18 in this case.

19 Q. Yes, it is. But do you think you're still a
20 director or not?

21 A. Absolutely not.

22 Q. You were the attorney who filed the answer to
23 the complaint in this case; is that correct?

24 A. That's correct.

25 Q. And attached to the complaint in this case you

1 attached Exhibit C, which consisted of a letter and a
2 document, a form to the Secretary of State; is that correct?

3 I can show it to you if you don't recall.

4 A. You have it in your hand, so I presume it is
5 correct.

6 MS. O'NEILL: May I approach?

7 JUDGE WOODRUFF: Yes, you may.

8 BY MS. O'NEILL:

9 Q. I'm showing you the answer to the complaint,
10 Exhibit C, which consists of a letter signed by Mr. Mitchell
11 and a 2002 Annual Registration Report.

12 Do you recall attaching those to the answer?

13 A. I do.

14 Q. And on the 2002 Annual Registration Report,
15 are you listed as a director of the corporation?

16 A. That would have been accurate as of the date
17 the report was due to be filed, yes.

18 Q. Report was filed October 8th, 2002?

19 A. It was not.

20 Q. The letter was sent October 8th, 2002?

21 A. That's correct.

22 Q. When was the report filed?

23 A. The report was due to be filed on or about
24 April 15th of 2002.

25 Q. When was the report filed?

1 A. To my knowledge, it has not been.

2 Q. Was it your intention when you attached this
3 as Exhibit C to suggest to this Commission that it had been
4 filed?

5 A. No.

6 Q. When you attached this to your answer -- never
7 mind.

8 You were an officer of Osage Water Company in
9 February 2001; is that correct?

10 A. I may have been the secretary at that point in
11 time.

12 Q. And in February of 2001 is when you obtained
13 from Osage Water the promissory note for -- with the Future
14 Advance Deed of Trust regarding your unpaid attorney's fees;
15 is that correct?

16 A. Yes.

17 Q. You drafted some promissory note?

18 A. I drafted it. I sent it to Mr. Mitchell with
19 a cover letter that said he should inquire with his personal
20 counsel and get independent advice as to whether or not that
21 was something that he wanted to sign for the corporation.

22 Q. You drafted the Future Advance Deed of Trust?

23 A. Yes. It's a form.

24 Q. You signed the Future Advance Deed of Trust as
25 secretary of the corporation?

1 A. I attested to Mr. Mitchell's signature as
2 secretary of the corporation, yes.

3 Q. And affixed the corporate seal over your
4 signature?

5 A. Yes.

6 Q. And this happened before the incident with the
7 records on the porch?

8 A. Yes.

9 Q. Mr. Williams, did you bring with you this
10 morning the Management Services Agreement or whatever it's
11 entitled between Osage Water Company and Environmental
12 Utilities?

13 A. No. We were not able to locate that this
14 morning. I haven't been to the office. Debbie's going to
15 try to find that today.

16 Q. Did you draft that document?

17 A. Yes.

18 Q. Do you know what it says?

19 A. Yes, in rough terms.

20 Q. Did you draft that on behalf of a client?

21 A. Environmental Utilities.

22 Q. Did you conduct any of the negotiations
23 between Environmental Utilities and Osage Water?

24 A. Yes.

25 Q. What was your part in those negotiations?

1 A. Well, I prepared an initial draft of an
2 agreement between the two companies. I sent them to
3 Mr. Mitchell, again with a cover letter suggesting he could
4 consult with his attorney on those matters, and he does have
5 counsel of his own. He rejected the initial draft. I
6 discussed with him what portions of it he considered to be
7 unacceptable.

8 We worked out a resolution on those portions.
9 I redrafted the document, sent it to him and he signed it.

10 Q. Do you have copies of the letters you sent to
11 Mr. Mitchell with both the promissory note in 2001 and with
12 the draft of the proposed agreement?

13 A. I do.

14 Q. Could you bring those with you to this hearing
15 tomorrow, make them available to the Commission?

16 A. Certainly. Let me make a note here.

17 Q. Will you have time to get to your office and
18 look for them?

19 A. Depends on what time we get out of here today.

20 Q. And did Environmental Utilities pay you to
21 draft that agreement?

22 A. Not yet.

23 Q. Do you know how much you're billing
24 Environmental Utilities for that agreement?

25 A. It would be hourly.

1 Q. Do you know how many hours?
2 A. No, I don't.
3 Q. And the purpose -- can you explain, if you can
4 recall from the contents, what the purpose of that agreement
5 was?
6 A. The management agreement?
7 Q. Yes.
8 A. Basically, it was to recognize the transfer of
9 operation of the water and sewer utility systems to
10 Environmental Utilities. So that basically reduced that to
11 writing so that if there were any questions on Environmental
12 Utilities' authority to undertake those actions, that there
13 would be a written memorialization of it.
14 Q. However, according to the testimony we heard
15 from Mrs. Williams, the net effect of that agreement was
16 that everyone who was doing jobs for Osage would continue to
17 do the same activities, only for Environmental Utilities.
18 Is that your understanding?
19 A. Well, Environmental Utilities was originally
20 formed after Mr. Mitchell quit doing operations for the
21 purpose of operating Osage Water Company. Because he
22 continued to participate to some extent, that transfer of
23 actual operations did not occur until later.
24 Q. Mr. Mitchell continued participation in Osage
25 Water?

1 A. Yes. He no longer crawls head first into
2 muddy ditches because he got too old and he doesn't want to
3 do that anymore, but he still does paperwork.

4 Q. He does paperwork?

5 A. Yeah.

6 Q. He signs things you send him to sign?

7 A. Sometimes, and sometimes he doesn't.

8 Q. He attend -- he's attended at least two
9 meetings?

10 A. Yes.

11 Q. And starting in December after he dumped those
12 boxes on the porch, he started doing water testing again?

13 A. Well, his --

14 Q. Or his water lab started doing testing again?

15 A. His company did initially, and Debbie had
16 worked out arrangements with Mike McDuffy with Lake Ozarks
17 Water and Sewer to handle some of the testing and operations
18 and consulting. After that six-month period, Mike said he
19 just didn't want to do that.

20 Q. So that was actually a separate agreement with
21 Mr. Mitchell. It wasn't as part of his duties or as part of
22 his connection to Osage Water; that was a contract with the
23 water lab?

24 A. Yes. You know, the president's position does
25 not now nor has it ever paid a salary or any other

1 compensation that would cover anything beyond simply
2 administrative administerial types of acts.

3 Q. So the mere fact that the water lab now had a
4 contract to do the water testing wouldn't necessarily mean
5 Mr. Mitchell was involved in the operations of Osage Water?

6 A. Well, day-to-day operations, no.

7 Q. In fact, that contract wouldn't have anything
8 to do with whether or not Mr. Mitchell was involved in the
9 operations of Osage Water Company?

10 A. Well, I don't think there's a contract.
11 Basically, they take samples there and he tests them. If
12 they take the samples to Mike McDuffy's office, they'll test
13 them there.

14 It's not a commitment long-term to do
15 business. It's just that he's one of the service providers
16 who does that sort of thing in the Lake area, and he happens
17 to be the cheapest one. So it makes sense when you're short
18 on money to use the guy that's cheapest.

19 Q. And I'm not -- and I'm not going to try and
20 use the cheapest analogy because I don't know where that
21 breaks and I don't want to suggest that about you, but one
22 of the reasons you've done legal work is because you -- for
23 the company is because you became familiar with the
24 company's legal proceedings; is that correct?

25 A. That would be the principal reason why I'm

1 counsel today as opposed to someone else, is that it would
2 take an extremely long time for someone else to become
3 familiar with the 52 different allegations in the complaint,
4 where they could even prepare an answer.

5 Q. And the fact that you are representing the
6 company and providing legal services doesn't necessarily
7 mean that you're connected to the company?

8 A. It means I'm its attorney.

9 Q. Now, going back to this agreement --

10 MS. O'NEILL: And, your Honor, I may have
11 additional questions on the agreement after it's produced,
12 but I do want to try and move on.

13 JUDGE WOODRUFF: Go ahead.

14 BY MS. O'NEILL:

15 Q. Mrs. Williams testified that one of the
16 reasons why this agreement was entered into was because of
17 concerns that creditors could garnish the Osage Water
18 Company checking account.

19 Do you recall that?

20 A. That may have been her concern.

21 Q. Was that -- was that one of the reasons that
22 Environmental Utilities entered into the Management Service
23 Agreement?

24 A. No.

25 Q. And Environmental Utilities is owned by you

1 and your wife?

2 A. Yes.

3 Q. And nobody else?

4 A. That's correct.

5 Q. Now, is that owned jointly, the whole LLC

6 owned jointly a hundred percent or is it divided 50/50 or

7 how is that division made?

8 A. I think it's joint, a hundred percent.

9 Q. So either of you can act on behalf of the

10 company, either of you have authority?

11 A. To a certain extent, yes.

12 Q. Presumably you would consult with one another

13 and hopefully act on consensus?

14 A. That's the normal procedure, yes.

15 Q. You also own with her and with your parents

16 Hurricane Deck Holding Company, correct?

17 A. Yes.

18 Q. And who controls the voting stock of Hurricane

19 Deck?

20 A. Well, 50 percent of it is owned by Debbie and

21 I and 50 percent is owned by my parents.

22 Q. And Hurricane Deck is the owner of the Chelsea

23 Rose well; is that correct?

24 A. It owns the property on which the well is

25 located, and you did ask some questions of her about how the

1 financing was structured which she was not familiar with.

2 The loan was taken out in the name of Osage
3 Water Company. However, the collateral for the loan was
4 provided by Hurricane Deck Holding Company, which included
5 the land on which the well is located and some other lots in
6 the project.

7 The obligation to construct the well was Osage
8 Water Company's, but it could not obtain financing on its
9 own, so we set up a financing structure where basically the
10 development company was providing collateral guarantees for
11 the financing that was needed to build the well.

12 Q. Now, I want to talk to you a little bit about
13 this promissory note.

14 Debra Williams is the trustee of the Future
15 Advance Deed of Trust, correct?

16 A. She was the main trustee on the deed of trust,
17 that's correct.

18 Q. And in July of 2001, she became the manager of
19 Osage Water Company?

20 A. Yes, after the deed of trust had been in
21 existence for quite a bit of time.

22 Q. And at the time that she became manager of
23 Osage Water Company, you had outstanding legal fees secured
24 by that Future Advance Deed of Trust in a significant
25 amount; is that correct?

1 A. Yes.

2 Q. And she was aware of the promissory note?

3 A. Yes.

4 Q. She was aware that you were owed legal fees?

5 A. Yes.

6 Q. Did she make any payments on that promissory

7 note?

8 A. I don't believe she's had any funds, net

9 revenue left over with which to make such a payment.

10 Q. Did she make any payments that you can recall?

11 A. No.

12 Q. Did you make any demands for payment?

13 A. I had made demand on Mr. Mitchell in May of

14 2001, indicating that he had defaulted under the note, the

15 terms of the note, with respect to the minimal monthly

16 payments that were called for therein, and protested pretty

17 extensively some other payments that he had made to his

18 companies for -- out of company revenues.

19 Q. That was in May of 2001?

20 A. Yes.

21 Q. From May of 2001 until August of 2002, did you

22 make any demands for payment to Debra Williams?

23 A. On a regular basis.

24 Q. And did you receive any payments as a result?

25 A. I received an explanation that the money had

1 been spent for this or had been spent for that and it was
2 all going to operating expenses, to pay taxes, to pay PSC
3 assessments to reduce obligations to other creditors, and
4 that I'd just have to wait for money.

5 Q. On August 14th of this year, you assigned that
6 note and deed of trust to Environmental Utilities; is that
7 correct?

8 A. I presume your date's correct.

9 Q. Okay. If you like, I've got a copy of
10 Exhibit 24 now. You can take a look.

11 A. There's no question that that's what I did.

12 Q. And at that point in time, you were owed
13 somewhere in the vicinity of \$500,000 in legal fees?

14 A. My recollection is that the maximum amount on
15 the note had been exceeded at that point in time. That was
16 somewhat over \$500,000 in legal fees that had been incurred
17 and unpaid, and that if we did any additional legal work,
18 that it would clearly not be within the terms of the note.

19 Q. And had Osage Water Company disputed any of
20 those fees?

21 A. No.

22 Q. And had you submitted invoices, billing slips
23 or anything like that regarding how much billing fees were
24 to Osage?

25 A. Absolutely. Mr. Mitchell would sign off on

1 those on an annual basis.

2 Q. Now, you assigned this promissory note and
3 deed of trust to Environmental Utilities for \$10 is what it
4 says here; is that correct?

5 A. Under Missouri law, that's a nominal
6 consideration. \$10 and other valuable consideration is
7 considered sufficient enough to support a conveyance.

8 Q. What was the other good and valuable
9 consideration?

10 A. Well, basically the note was contributed to
11 the limited liability company which I already owned jointly
12 with my wife.

13 Q. You chose to attempt to -- you chose to assign
14 this note before the trustee instituted any foreclosure
15 action?

16 A. Yes.

17 Q. Rather than have the foreclosure action
18 instituted with you as the owner and holder of the note?

19 A. I think that's accurate, yes.

20 Q. Was that because Environmental Utilities is a
21 limited liability corporation?

22 A. No. It's because it had filed already a
23 certificate case with the Commission, and contemporaneously
24 with the foreclosure we had submitted an application to the
25 Commission requesting approval to transfer assets into that

1 company if we were successful in getting that foreclosure.

2 Q. And when you transferred this note, Debra
3 Williams was not only the trustee of the Future Advance Deed
4 of Trust, but she was also the managing member of
5 Environmental Utilities and the manager of Osage Water
6 Company; is that correct?

7 A. I think that's correct. It's not uncommon for
8 a trustee under a deed of trust to be an officer of the bank
9 that's foreclosing. That's a fairly common practice. The
10 duties of the trustee under a trust are fairly limited and
11 defined by statute.

12 Q. Environmental Utilities is not a bank?

13 A. Doesn't matter whether you're a bank or a
14 different holder of the note, the principal remains the
15 same.

16 MR. LORAIN: Your Honor, I'd like to ask that
17 that all be struck. That was not responsive to any of her
18 questions.

19 JUDGE WOODRUFF: Overruled.

20 BY MS. O'NEILL:

21 Q. But it's not a bank?

22 A. Well, it's someone who holds a note. That's
23 what it is.

24 Q. Right. It's a limited liability corporation
25 that you and your wife formed to seek a certificate from

1 this Commission; is that correct?

2 A. Yes.

3 Q. When this transfer or assignment of the note
4 and deed of trust was carried out, that was done with the
5 understanding that this foreclosure proceeding would then
6 commence; is that correct?

7 A. That was anticipated, yes.

8 Q. And at that time you explained to your wife
9 what her duties would be as the trustee to foreclose on this
10 note?

11 A. Sure. The deed of trust had a provision that
12 allowed the appointment of a successor trustee if she didn't
13 want to go ahead and handle those duties.

14 Q. Did you direct her to commence with
15 foreclosure proceedings or did she direct you to file the --
16 or prepare the documents for the foreclosure proceeding?

17 A. Well, typically the request for foreclosure
18 comes at the instance of the creditor whenever the note is
19 delinquent and in default.

20 Q. So --

21 A. And so we discussed it and actually had some
22 discussions with Staff here at the Commission, and I believe
23 I sent some copies of correspondence and proposed pleadings
24 to your office as well.

25 Q. Is it your testimony that members of the Staff

1 told you it would be okay to foreclose on Osage Water
2 Company as Environmental Utilities?

3 A. They didn't say it would be okay. They said
4 that that sounded like an interesting solution to the
5 problem and they would like to see additional paperwork,
6 which I then sent to them. And I did not receive anything
7 back from them that said they thought that was a bad idea.

8 Q. If you had received something back from them
9 saying they thought it was a bad idea, would you have still
10 gone through with the foreclosure?

11 A. No.

12 Q. Did you tell the Staff that you were asking
13 for an opinion from them about whether or not this was
14 something that you could do?

15 A. Yes.

16 Q. Who did you tell?

17 A. I spoke with Mr. Johansen and as I've
18 indicated, I sent e-mails to Mr. Krueger and to your office
19 and to Mr. Johansen, probably to Mr. Merciel. I thought
20 that was pretty clear that that's what I was asking about.

21 Q. You didn't hear from anybody at my office
22 saying that we thought it would be okay, did you?

23 A. I got some inquiries from you about how it
24 might work.

25 Q. But you didn't hear anything from my office

1 saying that we thought it would be okay for you to do that?

2 A. You did not say it would be okay, nor did you

3 say that you thought it could not be done.

4 Q. We did not -- we did not offer you an opinion,

5 did we?

6 A. That's correct.

7 Q. And at that point in time, you had not filed

8 any proceedings in front of the Commission at the time of

9 those initial e-mails?

10 A. I believe that the e-mails went to your office

11 and then Mr. Krueger and his Staff before anything was filed

12 with the Commission.

13 Q. However, then you did file something with the

14 Commission, an application asking the Commission to allow EU

15 to acquire the assets of Osage Water by foreclosure?

16 A. Yes.

17 Q. So at the time that the foreclosure

18 proceedings were instituted, you had at least some idea that

19 Environmental Utilities wanted to acquire these assets?

20 A. We understood that that was a likely outcome

21 of a foreclosure proceeding, yes.

22 Q. And, in fact, Environmental Utilities intended

23 to bid on the assets, correct?

24 A. Oh, yes.

25 Q. Now, the terms of the proposed trustee sale,

1 were there any requirements that the bid the trustee
2 accepted had to be the highest?

3 A. That is the law.

4 Q. In order for a successful bidder with the
5 highest bid to acquire the assets, does the bid need to be
6 sufficient to defeat or pay off priority creditors?

7 A. No. You take at a foreclosure sale title in
8 the condition in which it exists at the time that the deed
9 of trust is executed, which means there were some priority
10 creditors who had enforceable liens against the property,
11 and anyone who bid at the foreclosure sale would take
12 subject to those existing enforceable liens.

13 Q. And if a priority creditor with a secured
14 interest in the assets were to successfully bid, and they
15 were not first in line but they were somewhere in line, high
16 up on the -- on the ladder, so to speak, would they have --
17 would they still be responsible for satisfying those
18 creditors behind them in priority?

19 A. Creditors that are behind them in priority do
20 not have to be satisfied. Creditors that are ahead of them
21 in priority do, or you take subject to the risk that those
22 creditors will also foreclose their lien and extinguish any
23 title obtained at foreclosure sale.

24 Q. At the time that you -- Environmental
25 Utilities instituted this foreclosure proceeding, it was

1 under the impression that this Future Advance Deed of Trust
2 was a secured -- made them a secured creditor; is that
3 correct?

4 A. That's correct.

5 Q. And that it was fairly high on the priority
6 list?

7 A. There were others ahead of it, but it would
8 have been ahead of some others, yes.

9 Q. Who was ahead?

10 A. Well, the Internal Revenue Service, Missouri
11 Department of Revenue, their tax liens attach whether or not
12 they're filed of record. And there were on some of the
13 assets deeds of trust to Central Bank of the Lake of the
14 Ozarks. There were mechanics liens, I specifically recall,
15 to Jim Clary Construction. There may have been some other
16 small judgment liens.

17 Q. What was the approximate amount of outstanding
18 debt that those higher priority creditors would have had
19 under the assumptions that EU had at the time?

20 A. It would have been in excess of \$100,000.

21 Q. But less than -- less than the --

22 A. Less than a million, more than \$100,000, and I
23 don't have exact numbers on me.

24 Q. And less than the obligation to Greg Williams?

25 A. Oh, yes. As far as I know, that's the largest

1 one that the company owes.

2 Q. Do you know whether any of those higher
3 priority creditors planned to bid at the sale?

4 A. There would be no reason for a higher priority
5 creditor to bid at a foreclosure sale. Their interest is
6 protected by the reported lien, or in the case of taxes, the
7 unreported lien.

8 Q. Do you know whether any lower priority
9 creditors intended to bid at the sale?

10 A. I didn't receive any calls from any lower
11 priority creditors. I did receive calls from other parties
12 that were interested in bidding.

13 Q. If Environmental Utilities had successfully
14 bid, and if, indeed, this note constituted a priority
15 creditor secured, the assets of Osage Water would have
16 transferred to EU, correct?

17 A. Yes. Title would have passed on foreclosure,
18 that's correct.

19 Q. Title to the assets?

20 A. Yes.

21 Q. Mr. Mitchell would no longer have title to any
22 of those assets?

23 A. Mr. Mitchell does not today. Osage Water
24 Company has title.

25 Q. Mr. Mitchell would not own any entity or have

1 ownership interest in any entity that had title to those
2 assets?

3 A. That's correct. Not all of the assets of the
4 company were covered by the foreclosure. There are some
5 intangible claims, claims against various people the company
6 may find it owes money.

7 Q. As far as physical property, easements, plant,
8 those types of things, those are included?

9 A. Real property interests are covered in the
10 trust.

11 Q. Are all covered?

12 A. Yes.

13 Q. Now, Mr. Mitchell and Osage Water Company are
14 named in a lawsuit in Pettis County. Is Osage named because
15 of the connection to Mr. Mitchell?

16 A. As far as I know. I really don't have much
17 personal knowledge about that. I don't know why Osage Water
18 Company would be named in a lawsuit in Pettis County on
19 systems that are owned by other utility companies. It's a
20 very bizarre -- I don't understand it.

21 Q. Would that be another reason why it might be a
22 good idea to get Mr. Mitchell out of the picture and Osage
23 Water Company's name out of the picture as far as operating
24 its utilities?

25 A. Mr. Mitchell has done things that I don't know

1 about, that the company does not know about, and that
2 lawsuit, I think, is representative of those types of
3 things that might still be out there that could come back
4 as claims against the company for no reason other than that
5 Mr. Mitchell's been associated with the company.

6 Q. But if there's no more Osage Water Company,
7 then the Attorney General, if it prevails on that suit,
8 can't attach or file a claim against the assets of Osage
9 Water; is that correct?

10 A. That's correct.

11 Q. Mr. Williams, I realize that you're the
12 attorney for Osage Water Company and not a manager of it,
13 but do you happen to have any information about the sewer
14 plant problem from yesterday?

15 A. Very limited. I was in the car on the way
16 home last night as Debbie was talking with the field
17 supervisor. My understanding is that there's been some kind
18 of an electrical shortage at a lift station and that it's
19 probably not a severe problem, something that just requires
20 some maintenance. It's a routine type of problem.

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

22 JUDGE WOODRUFF: Okay. Now, at this point, it
23 would be Osage Water's turn to cross-examine the witness,
24 obviously.

25 MR. WILLIAMS: I have no questions for me,

1 your Honor.

2 JUDGE WOODRUFF: I was going to give you an
3 opportunity to make a statement if you wished.

4 MR. WILLIAMS: No, thank you.

5 JUDGE WOODRUFF: We'll come up to questions
6 from the Bench, and begin with Commissioner Murray.

7 COMMISSIONER MURRAY: Thank you.

8 QUESTIONS BY COMMISSIONER MURRAY:

9 Q. Good morning, Mr. Williams.

10 A. Good morning, ma'am.

11 Q. It's a pleasure to have you on the stand for a
12 change.

13 A. Well, that's kind of one-sided, I'm afraid.

14 Q. I suspected as much.

15 I have a lot of questions, and my notes are
16 fairly scribbled trying to keep up with what's gone on here,
17 but let me get started.

18 First of all, do you agree with the
19 testimony of your wife that there are currently
20 approximately 300 customers of Osage Water Company?

21 A. That would be a gross count. There's
22 approximately a little over 300 water customers.
23 Approximately 250 of those are also sewer customers.

24 Q. Okay. And the debt that is owed you by Osage
25 Water Company is currently \$564,000, plus whatever you're

1 incurring by representing them in this proceeding; is that
2 correct?

3 A. It's approximately \$500,000 principal, and
4 then the note provided for 8 percent interest on that, which
5 has not been paid. And I think 560, 564 is what I'd
6 calculated a couple months ago.

7 Q. Okay. So currently the customers of Osage
8 Water Company are indebted to you for the amount of
9 approximately \$1,880 per customer; is that right?

10 A. Well, the company is indebted to me for
11 approximately \$1,880 per customer, if you want to allocate
12 it out to customers, yes.

13 Q. What are the sources of income for Osage Water
14 Company?

15 A. It has no source of income other than water
16 and sewer service.

17 Q. The customers?

18 A. That's correct.

19 Q. And the proposed rate increase that you
20 suggest as a possible solution to Osage Water Company's
21 problems, how much of an increase to its current rates have
22 you calculated would be necessary?

23 A. I think that, you know, potentially doubling
24 the sewer rate would be something that would raise
25 sufficient capital or sufficient income to support a capital

1 investment sufficient to pay off its obligations.

2 Q. Now, that is its operating obligations, as
3 well as its indebtedness?

4 A. Yes.

5 Q. So that would raise the sewer rates to
6 approximately \$5--

7 A. In the vicinity of \$50.

8 Q. --2 a month --

9 A. Yes.

10 Q. -- minimum for that.

11 I guess the sewer rate is just a set rate; is
12 that correct?

13 A. It has been a flat rate, that's correct.

14 Q. And that would be in addition to a minimum of,
15 what is it, \$19 and change for water service per customer?

16 A. No, ma'am. I believe the minimum is -- I
17 think it's 16.36, but I don't work with that on a daily
18 basis.

19 Q. Okay. I guess that's accurate, because your
20 wife indicated \$16.30 for the first 2,000 gallons.

21 A. That's correct. And there's a large number of
22 customers that are consistently at the minimum on water, and
23 then there's a few customers that use just huge volumes,
24 commercial customers.

25 Q. And she stated yesterday that the average rate

1 that full-time families pay for water and sewer service is
2 currently \$55 per month. So if you add another \$26.03 to
3 that, you're up to about, what is that, \$81 a month for
4 water and sewer service for an average family?

5 A. There aren't very many average families that
6 are served by the company.

7 Q. I didn't ask you how many there were. I said
8 for an average family.

9 A. Yeah. If there were, you know, for example, a
10 family of four residing in a home, that would potentially be
11 what you're talking about.

12 Q. And you think that's reasonable?

13 A. I think it's consistent with the cost the
14 company has been incurring in terms of the sewer service at
15 \$25, \$26 a month. I think it has been significantly
16 underpriced, in terms of the costs that are being incurred
17 and what is charged by municipalities and other companies
18 providing similar service around the state.

19 Q. Do you know any other entity that charges
20 anywhere close to \$81 per month for the average family for
21 combined water and sewer service in the state of Missouri?

22 A. I've seen a table published by the Missouri
23 Rural Water Association that would indicate rates, not only
24 that much, but well in excess of that are charged in various
25 parts of the state, yes.

1 Q. Will you please provide that as an exhibit?
2 A. I'll be glad to.
3 Q. And bring it tomorrow?
4 A. Sure.
5 Q. Thank you.
6 A. Let me make a note, if I may.
7 Q. Yes. And also I do want to get back to this
8 production of documents that you were instructed yesterday.
9 I was here when your wife was on the stand and agreed to, as
10 a condition for her dismissal and her nonrequirement of
11 being present today, that she promised this tribunal that
12 she would have you bring that agreement today. And I saw
13 you nod yes, that that would be possible.
14 Now, I want to ask you, in relation to the
15 fact that you agreed to do that and did not do it, a little
16 bit more about that.
17 Where is your office located?
18 A. Sunrise Beach, Missouri.
19 Q. How far is that from where you live?
20 A. It's about half a mile to where I live.
21 Q. Okay. But it was impossible for you to get
22 that extra half a mile between yesterday evening and today
23 in order to comply with what you had promised this tribunal?
24 A. It would take a considerable amount of time to
25 find the documents that were requested, and I'm not

1 particularly familiar with where they're located at.

2 I mean, it's not an unwillingness. I
3 mean, that's -- we were -- we arrived back there after
4 seven o'clock last night and were dealing with issues such
5 as the sewer lift station failure and things of that nature.
6 It's not by any means an unwillingness. It's simply, as a
7 practical matter, it's probably going to take an hour or two
8 to gather the documents that are described there.

9 Q. Did you understand that yesterday when your
10 wife was on the stand and agreed that you would provide that
11 document today?

12 A. I really didn't know what would be involved.
13 That's my understanding now.

14 Q. Okay. And what changed between then and today
15 that made you understand that, that didn't allow you to
16 understand that yesterday?

17 A. We went back and we spent some time looking
18 last night. We didn't find all the documents.

19 Q. You did go back to the office, then, in
20 contrast to what you stated earlier?

21 A. We were -- we were there for a while and
22 simply -- ma'am, I have something in the neighborhood of
23 seven or eight file drawers full of utility company records,
24 and that information is in there somewhere. And she will
25 find it today as she's agreed, and I can bring it tomorrow.

1 Q. Now, I'd like to go back to what you said
2 earlier.

3 Why did you testify that you were unable to
4 get to your office --

5 A. I may have --

6 Q. -- after you went home?

7 A. -- not been real clear on what I was trying
8 to say there. I was simply not able to get everything
9 together. We did spend about 12 hours on this matter
10 yesterday, and it would have been considerably more time
11 to -- to find all that last night.

12 Q. Did you or did you not go back to your office
13 after you left here?

14 A. Briefly.

15 Q. Is Debra Williams paid regularly for her
16 management services of Environmental Utilities?

17 A. Yes.

18 Q. And that is, as she testified, \$3,000 a month?

19 A. That's my understanding, yes.

20 Q. And the revenues that Osage Water Company
21 transferred to Environmental Utilities from its operations
22 on a monthly basis are somewhere between -- well, I guess
23 she stated the average monthly income was \$15,000.

24 Would you agree with that?

25 A. I think that's probably accurate.

1 Q. So roughly her salary that she is being paid
2 regularly amounts to about 20 percent of the operating
3 expenses?

4 A. Yes.

5 Q. Mr. Williams, are you familiar with
6 Section 393.220.4 of the Revised Statutes of Missouri?

7 A. I couldn't quote it to you by that number, no.

8 Q. All right. Are you familiar with the statute
9 that reads, and I quote, every officer, agent or employee of
10 a water -- I'm leaving out a few of the words, just reading
11 the relevant ones -- of a water corporation or sewer
12 corporation and every other person who knowingly authorizes,
13 directs, aids in, issues or executes or causes to be issued
14 or executes -- executed any stock or bond, note or other
15 evidence of indebtedness in nonconformity with the order of
16 the Commission authorizing the same or contrary to the
17 provisions of this chapter shall be deemed guilty of a
18 felony and upon conviction shall be punished by a fine of
19 not less than \$1,000 nor more than \$5,000 or by imprisonment
20 for not less than two years nor more than five years or by
21 both such fine and imprisonment.

22 Have you ever read that statute?

23 A. I probably have. I don't have a specific
24 recollection of it.

25 Q. Okay. And it's under Chapter 393, which

1 applies to water and sewer corporations.

2 Is that your understanding?

3 A. Yes.

4 Q. Now, you earlier were testifying about the

5 attempted transfer of assets between Osage Water Company and

6 Environmental Utilities via the foreclosure sale.

7 Do you recall that?

8 A. Yes, ma'am.

9 Q. And you indicated that you had conversed with

10 Staff and the Office of the Public Counsel.

11 Do you recall that?

12 A. Yes, ma'am.

13 Q. And that you took their silence in regard to

14 your latest correspondence with them having your wife

15 attempt to foreclose on the assets as what you needed to go

16 forth; is that correct?

17 A. No. What I took their silence was that they

18 did not have an opinion that it would be clearly

19 inappropriate. I did not by any means think that they could

20 approve. In fact, I thought that if they were in strong

21 opposition, they would say so.

22 Q. All right. And so you did not believe as you

23 went forward that you had an Order from this Commission

24 authorizing you to do so; is that correct?

25 A. No, ma'am. That's why we filed an application

1 with the Commission.

2 Q. After the fact?

3 A. At the same time.

4 Q. I would like you to tell me the date that you

5 filed the application with the Commission.

6 A. All I can tell you is the Exhibit 1 that's

7 here is a certified mailing on August 16th, and this copy

8 has handwritten on it, filed August 23rd.

9 Q. And that is of 2002?

10 A. Yes, ma'am.

11 Q. Okay. And at the time that you entered into

12 the promissory note and the deed of trust, what were those

13 dates?

14 A. I believe that was February of 2001.

15 Q. So significantly prior to the time you made

16 application to this Commission --

17 A. Yes, ma'am.

18 Q. -- to encumber the assets?

19 A. Yes, ma'am.

20 Q. Now, as an attorney who's practiced before

21 this Commission for a number of years -- you have done that,

22 have you not?

23 A. To a certain extent, yes.

24 Q. And you're extremely familiar with Osage Water

25 Company, so much so that no other attorney could possibly

1 get familiar with it quickly enough to represent Osage Water
2 Company in this proceeding?

3 A. Not in the time that was allowed for the
4 answer in this case, that's correct.

5 Q. So you would say that you're pretty expert
6 about Osage Water Company and its regulatory requirements
7 and the proceedings that are necessary for this Commission?

8 A. I think you're stretching my knowledge a
9 little bit, but to a certain extent, yes.

10 Q. As much so as any other attorney would be,
11 correct?

12 A. Ma'am, I've done a number of certificate of
13 authority applications in front of this Commission. I
14 haven't had a lot of regulatory experience outside of that
15 area.

16 Q. Okay. As an attorney, you understand that
17 when a certificate is granted, that it has certain legal
18 requirements that go along with it, do you not?

19 A. Yes.

20 Q. And as the attorney for the company, who would
21 be responsible for seeing that the company complies with all
22 of those legal requirements?

23 A. To a certain extent it would be the attorney's
24 job to advise the principals of the company, the president,
25 as to what regulatory requirements might need to be met.

1 Q. To a certain extent?

2 A. You can't make them do things, but you can
3 tell them.

4 Q. Okay. You frequently qualify your answers,
5 and I want to get to the bottom of what your answers really
6 are.

7 A. Certainly.

8 Q. You state to a certain extent the attorney
9 would be responsible. Is the attorney not -- who else is
10 responsible for advising the company how to comply with
11 legal --

12 A. Well, advising the company is the attorney's
13 job. I would agree with that.

14 Q. The minutes that I believe you were asked
15 about earlier by Ms. O'Neill -- and I just wrote down this
16 portion of the quote -- but part of the minutes read that
17 the purpose or the goal that was being examined at that
18 point in terms of Osage Water Company was to eliminate other
19 priority claims.

20 Do you recall that language?

21 A. I recall the language from the minutes. I did
22 not write those.

23 Q. That would have been your wife that wrote
24 those?

25 A. I believe so, yes.

1 Q. What would be the meaning of other priority
2 claims in that context?

3 A. My understanding is that to eliminate other
4 priority claims they would have to be paid, and the priority
5 claims that I'm particularly cognizant of would be the tax
6 obligations.

7 Q. So the list that Ms. O'Neill went through with
8 you earlier where you indicated that there were some other
9 claims that had priority over yours --

10 A. Yes.

11 Q. -- and you said they were roughly \$100,000, is
12 that what I recall, or did you qualify it to that extent?

13 A. I know there are at least \$100,000. I'm not
14 sure on the tax, exactly what the total obligation is.

15 Q. And was a part of that goal to pay your claim
16 against the company?

17 A. What we were discussing at that point in time
18 is the need for additional legal services because of the
19 ongoing situation the company's experienced with the City of
20 Osage Beach and my unwillingness to do basically an
21 unlimited amount of legal work without any form of
22 compensation at all by the company.

23 And one of the issues we had discussed was
24 reducing those -- the balance owed for legal fees by
25 conveying assets, which would have required further

1 proceedings in front of this Commission, by sale to me at an
2 agreed-upon price.

3 And we have discussed at length what those
4 prices might be, as I indicated, subsequent to those minutes
5 in that meeting I discovered that the tax obligations were
6 considerably higher than I had been led to believe.

7 Q. All right. And in the transfer of the assets
8 to Environmental Utilities, the goal, as was explained by
9 your wife, was to -- I can't find her exact language -- but
10 basically to free -- become free of the debts of Osage Water
11 Company; is that correct?

12 A. My viewpoint would be that the goal is to get
13 paid for the obligations that Osage Water Company has
14 incurred to me, and if the company cannot pay that from its
15 revenues, then it needs to pay that by sale of its assets.

16 Q. All right. And you are half owner of the
17 common stock of Osage Water Company and Pat Mitchell is half
18 owner; is that correct?

19 A. Yes, ma'am, I believe so.

20 Q. Okay. Now, his -- the debt that he is owed
21 by Osage Water Company, I believe Mrs. Williams stated
22 yesterday was around \$250,000, or somebody stated that. I'm
23 not exactly sure of that.

24 But would you agree with that?

25 A. That sounds like it could be correct. It may

1 be somewhat more than that, but I don't have a real clear
2 recollection on that.

3 Q. And is that secured?

4 A. Yes.

5 Q. And how is that secured?

6 A. Deed of trust.

7 Q. And when was that issued?

8 A. Same time frame, February of 2001.

9 Q. So which has priority, your note and deed of
10 trust or his note and deed of trust?

11 A. Mine does. That was the agreement.

12 Q. Between you and Mr. Mitchell?

13 A. Yes.

14 Q. And did Mr. Mitchell come to this Commission
15 and seek an Order that it was all right to encumber the
16 assets?

17 A. To my knowledge, he has not.

18 Q. And were you advising him as the legal advisor
19 at the time?

20 A. I advised him at the time that that needed to
21 be done.

22 Q. That what needed to be done?

23 A. An application of approval of debt needed to
24 be filed with this Commission.

25 Q. Prior to -- okay.

1 A. At the time that the documents were prepared,
2 that that was something that needed to be done, and one of
3 the requirements this Commission has with that is that the
4 annual reports be current and on file. And I advised him
5 that needed to be done, called him almost on a weekly basis
6 as to progress on that, and they were not done.

7 Q. All right. Did you advise yourself at the
8 time --

9 A. Absolutely.

10 Q. -- that you needed to do that?

11 A. Yes.

12 Q. But you went ahead and entered into the
13 promissory note and the Future Advance Deed of Trust without
14 seeking the approval of this Commission?

15 A. That's correct.

16 Q. But you knew you had to?

17 A. I thought that that was something that should
18 be done, and based on what I read in the statutes, that the
19 deed of trust, at least, was a transaction that appeared to
20 be within the scope of the Commission's authority. The note
21 was a one-year demand note, and whether it's required for
22 approval or not is -- I don't think it is, but the deed of
23 trust, I thought, needed Commission approval.

24 Q. So you knowingly did something that you knew
25 was in violation of this Commission's --

1 A. Yes, I entered into that transaction with the
2 understanding the rest of the requirements were going to be
3 followed through with by Mr. Mitchell, so that that could be
4 approved by the Commission.

5 Q. But you understood that it was not
6 something --

7 A. That it had not done --

8 Q. -- that needed to be done prior to
9 encumbrance; is that correct?

10 A. I'm sorry. That could be correct. I don't
11 know if that's what the statute says specifically.

12 Q. Now, when a statute requires that something
13 not be done unless there is an Order of the Commission
14 granting approval, would that not ordinarily, in your legal
15 interpretation, be something that had to be done prior, that
16 the Order approving it had to be done prior to the action?

17 A. I'm not sure what the Commission's practice
18 is, whether you want documents that have already been signed
19 or documents that have not been signed.

20 As I said, I contemplated that it would have
21 been done post haste and it was not.

22 Q. Let's look at that logically a minute or two.
23 If there's a requirement that before something be done there
24 has to be an Order of the Commission granting approval that
25 it be done, or let's just say -- let's take the prior out of

1 it.

2 Let's just say there has to be an Order of
3 approval from the Commission before, for example, a sale of
4 the assets would occur. And if that could be interpreted
5 that the Order approving it doesn't have to come until after
6 the sale, how would that practically play out, if the
7 Commission did not approve it and the sale had already
8 occurred?

9 Would that statute have any practical effect?

10 A. Well, I believe that the statute says those
11 transactions are void if the Commission does not approve
12 them.

13 Q. All right. So the result would be that the
14 innocent third party would suffer the damage as a result of
15 the transaction occurring then post -- post the fact the
16 Commission, then, has to approve it. Is that right, an
17 innocent third party would be affected thereby?

18 A. If there was an innocent third party who was
19 not aware, that would be the result, yes.

20 Q. Earlier, or actually yesterday, I believe it
21 was, on the stand your wife answered a question related to
22 her testimony that was filed as Exhibit 2, and it was an
23 excerpt from her testimony in EU-2003-0065.

24 On page 144, which is actually page 2 of
25 Exhibit 2, there is a reference there to the partners in

1 Osage Water Company, and the quote from the testimony at
2 line 14 is, When we have approached the partners in Osage
3 Water Company to go to the bank and borrow the money
4 necessary to bring all of their debts current, no one was
5 willing to do that.

6 And someone, I don't recall whether it was
7 myself or someone else, asked her who those partners were,
8 and she stated Dave Hancock and Pat Mitchell.

9 Now, first of all, how are partners of
10 Osage Water Com-- how you would define partners of Osage
11 Water Company?

12 A. I would not, ma'am.

13 Q. All right. So her reference to Dave Hancock
14 as a partner of Osage Water Company, why would she have made
15 that reference, do you think?

16 A. Well, there was a point in time when
17 Mr. Hancock was a shareholder, officer and director of Osage
18 Water Company, and there was a point in time where -- I'm
19 going to say this was in 1994-1995, when he was in those
20 positions where I had gone to, at that point in time it was
21 Mercantile Bank, and tried to make arrangements to borrow
22 money to satisfy outstanding obligations, including
23 obligations to Mr. Hancock through the corporation, and
24 Mr. Mitchell and Mr. Hancock refused to participate in that
25 financing.

1 Q. Okay. And Mr. Hancock is the one who has the
2 judgment currently against Osage Water Company for \$210,000;
3 is that right?

4 A. That would be that man, that's correct.

5 Q. You have been the attorney that's represented
6 Osage Water Company in all of its certificate of need
7 applications before this Commission; is that right?

8 A. No, ma'am.

9 Q. All right. Who else?

10 A. In the initial application that I'm familiar
11 with -- well, I believe Faye Coultas was the attorney who
12 incorporated the corporation and represented it in its
13 initial application with the Commission in 1987 and through
14 -- I think the orders are dated in 1989. I don't know if
15 there were any proceedings between '89 and '91.

16 At that point in time, my firm was engaged,
17 and actually an associate in my firm represented the company
18 in a case before the Commission, which resulted in the
19 issuance of stock to myself and Mr. Hancock and transfer of
20 stock to Mr. Mitchell from his parents.

21 Subsequently, in 1994 the company retained
22 Brent Stewart in a case. I'm going to take a wild stab at
23 it, but I think it was 94-132, and Mr. Stewart represented
24 the company in that case. I may have been co-counsel in
25 that application, but I don't have a clear recollection of

1 that. I think I've been counsel on the cases since 1994, to
2 the best of my recollection.

3 Q. Okay. And in '94-'95 would have been the time
4 in which Dave Hancock and Pat Mitchell were approached and
5 asked to go to the bank and borrow money necessary to bring
6 the debt current for Osage Water Company?

7 A. That would have been the time, the only time
8 that Mr. Hancock was approached on that. In -- I'm going to
9 say there have been other discussions with Mr. Mitchell. He
10 has indicated to me an unwillingness to participate in any
11 way in that type of a transaction. And I recall last
12 January or February he had sent out basically notice to
13 Mr. Hancock and to Mr. Mitchell that additional capital
14 needed to be raised, either through issuance of stock or
15 through bank financing.

16 Q. And when did you say that was?

17 A. It would have been December of 2001, or
18 January/February of 2002. I'm not clear exactly, but it was
19 in that winter of -- around the first of the year in 2002.

20 Q. And you said notice was sent to Mr. Hancock?

21 A. Yes.

22 Q. That additional capital needed to be raised?

23 A. He is a stockholder. He holds some preferred
24 stock.

25 Q. Okay. Who are the preferred stockholders in

1 Osage Water Company?

2 A. My professional corporation owns some Class B
3 preferred stock. I'm going to say it's in the vicinity of a
4 face value of \$6,800 that the Commission approved in 1992.

5 Hurricane Deck Holding Company owns
6 Class A preferred stock. I believe it's either 51 or
7 \$53,000 that was approved by the Commission in 1992.

8 Mr. Mitchell or one of his corporations holds,
9 I believe, \$75,000 in preferred stock, Class A, and that
10 also was approved in 1992. I mean, specifically that those
11 issuances were approved.

12 Mr. Hancock owns, I believe, \$150,000 in
13 Class A stock that was approved generally in the 1994 case
14 that I mentioned.

15 Q. Do you personally have any preferred stock?

16 A. Ma'am, I don't believe that I do.

17 Q. Who would know?

18 A. Well, that's the best of my recollection. I
19 think it's in the Hurricane Deck Holding Company name, and I
20 don't believe I've ever received any preferred stock in my
21 personal name.

22 Q. So between your PC and Hurricane Deck Holding
23 Company, there's approximately 60,000?

24 A. I think that, yeah, that would be consistent
25 with my recollection.

1 Q. Plus your half ownership in the common stock?
2 A. Yes, 50 shares that I think I had an initial
3 consideration of a dollar a share.
4 Q. All right. I'm going to go back to the
5 testimony that was excerpted from your wife's testimony in
6 EU-2003-0065 for a minute.
7 A. I think that's the 2002-0065.
8 Q. Was it 2002?
9 A. Well, there was never any testimony in the
10 2003 case. That was the application for approval to
11 foreclose.
12 Q. All right. Thank you.
13 Back on page 144 of her testimony, she was
14 speaking on line 13 there, she said, We need a cash infusion
15 of money to survive, and then goes on to make that statement
16 that I quoted earlier about we've approached the partners.
17 Now, since she was talking about a '94-'95
18 period of approaching Hancock and Mitchell, that was prior
19 to some of the certificate applications for Osage Water
20 Company, was it not?
21 A. I think I gave you a specific instance in
22 '94-'95. There have been other requests, as I've said, but
23 that specific request was prior to --
24 Q. Stop a moment.
25 A. Okay.

1 Q. What I asked you was, that time period was
2 prior to Osage Water Company's -- some of Osage Water
3 Company's applications for certificates with this
4 Commission, was it not?

5 A. Yes.

6 Q. And in those applications, have you stated --
7 as the attorney, have you filed documents that stated that
8 the company was financially viable?

9 A. I believe that what we have told the
10 Commission was that the company was paying its debts as they
11 arose at the time of those applications.

12 Q. And was there testimony that the company would
13 be able to continue to do so and that we should approve the
14 applications because not only were you technically and
15 managerially competent, you were also financially viable?
16 Did that have to be shown or at least did the Commission
17 have to find that -- those things in order to approve your
18 certificates?

19 A. I think there was considerable debate on
20 financial viability versus financial ability to carry out
21 the project proposed in a specific application, and my
22 recollection of the testimony -- and I'm going to go back to
23 the Parkview Bay case. Janis Fischer testified on behalf of
24 the Staff that as long as the principals were willing to
25 carry the debts that were owed to them in the amounts that

1 they were being paid, that the company was financially
2 viable. And the testimony at that point in time was that
3 there would have been no indication of a change in that
4 circumstance.

5 Q. And who were the principals that were owed
6 debt at the time to which she was referring?

7 A. To Mr. Hancock, Mr. Mitchell and myself.

8 Q. And since that time, you yourself have become
9 unwilling to carry that debt; is that correct?

10 A. I've been unwilling to advance any additional
11 debt, and the company seems to continue to need additional.

12 Q. So --

13 A. I think the answer to your question is yes.

14 Q. So circumstances since that certificate was
15 granted have indeed changed as to Osage Water Company's
16 financial ability to conduct business as a water and sewer
17 company?

18 A. Yes. The company has not filed any new cases
19 with this Commission since 1999, and I would not represent
20 to the Commission at this point in time that it has the
21 ability to carry out any new -- any new projects or anything
22 of that nature.

23 Q. You've not filed any new certificate cases
24 since 1999?

25 A. I believe the last one was the Eagle Woods

1 certificate application, which is docketed at 99-437.

2 Q. And that would have been approved in what
3 year?

4 A. I think it's January of 2000. It was
5 actually, I believe, filed in April of '99. I think I'm
6 getting my dates correct.

7 Q. Okay. And the date on which you -- the date
8 of the promissory note is -- what was the date of that?

9 A. February 2001.

10 Q. Was there any thought -- well, what was the --
11 your debt at the time, your -- the debt owed to you by Osage
12 Water Company at the time that Eagle Woods subdivision was
13 approved for certificate?

14 Do you recall approximately?

15 A. No, ma'am, I do not. I know that a good
16 portion of what's owed me now relates to the certificate
17 case, the appeals by the City of Osage Beach. That was a
18 good bit of expenditure. I don't know what it was prior to
19 that time.

20 Q. All right. I'm sure you were here and
21 you heard your wife testify that you and she formed
22 Environmental Utilities for the purpose of transferring
23 assets out of OWC into Environmental Utilities.

24 Do you recall her testimony in that regard?

25 A. I do recall her testimony, and I think that's

1 an accurate statement of exactly where we were at in the
2 second week of July in 2001 when Mr. Mitchell left
3 everything on my porch. The utility systems needed
4 someplace to go.

5 Q. Okay. Now, please explain how that attempted
6 transfer differs from what might be called a corporate shell
7 game just to defraud creditors.

8 A. Well, there are very different owners of
9 Environmental Utilities than there are of Osage Water
10 Company, and my --

11 Q. Stop just a moment.

12 A. Sure.

13 Q. The other owners of Osage Water Company, are
14 they all creditors?

15 A. They all have creditor claims as well as
16 ownership interest, except for Hurricane Deck Holding
17 Company.

18 Q. Okay. So the owners are different. Some of
19 the owners -- some of the creditors who are also owners want
20 to form a new company, correct?

21 You and your wife as creditors want to form
22 another company that's separate from the other owner
23 creditors; is that right?

24 A. Well, the first thing I would like to do is
25 for some other company to come in and take over these

1 systems and pay the debts that are outstanding and -- and I
2 want to be real clear that if Missouri-American was willing
3 to do that, I would be delighted to have them as the utility
4 company serving the subdivisions that my wife and I have
5 developed.

6 In the absence of a willing and able buyer
7 capable of running these systems who will purchase them and
8 pay off these obligations, we need another solution. And if
9 the company cannot make enough money, which is extremely
10 difficult to do with customers being converted to the City
11 of Osage Beach for your revenues to go up, even though your
12 company's been adding customers over -- outside the city and
13 losing them inside the city, that poses a real difficult
14 situation when you have new debt that needs -- or new
15 capital that basically needs to be formed to pay for these
16 new customers that are coming online.

17 I feel somewhat stuck in that I have
18 development projects that are tied to Osage Water Company
19 and the company is unable, because of what has happened with
20 some of its older systems, to satisfy those obligations.
21 So, you know, the purpose of Environmental Utilities is to
22 provide a way for what remains out there that's not inside
23 the City of Osage Beach to be put in a regulated utility
24 where service can continue preferably without interruption.

25 That's my thought processes on it.

1 Q. And as the owners of the new utility that
2 you're proposing to take over, are you proposing that that
3 new utility that you and your wife have formed would
4 purchase from Osage Water Company and pay off all these
5 debts and be able to continue with the operating --
6 sufficient operating income?

7 Is that your proposal for Environmental
8 Utilities to purchase?

9 A. In order for all of the debts to be paid off,
10 as I've indicated, there would have to be a significant
11 increase in rates.

12 And, you know, to be candid, some of the legal
13 work is not capital type of legal work. It is legal work
14 that was incurred of an expense nature for lawsuits with the
15 City of Osage Beach, for collection of -- for example, in
16 Harbor Bay, there was a lawsuit with the developer there
17 who -- who did not want to contribute the capital that the
18 company was of the opinion he'd agreed to. And I think
19 there's about \$20,000 in legal expenses associated with
20 getting that to circuit court, getting a settlement. So --

21 Q. Can you get to my question, please?

22 A. I'm trying. To a certain extent we're willing
23 to invest additional capital to come out of what's left of
24 Osage Water Company with a financially viable, solvent
25 company.

1 Q. Okay.

2 A. Yes.

3 Q. Now, let me stop you there, because you said
4 you would be perfectly willing for another company to take
5 over --

6 A. Yes.

7 Q. -- so long as they purchased and provided, you
8 know, enough capital or enough money --

9 A. Yes.

10 Q. -- to pay Osage Water Company's debts, I
11 believe I heard you say.

12 A. Yes, ma'am.

13 Q. And to take over operations of the company and
14 just get you out of it altogether?

15 A. I'd be delighted.

16 Q. Now, is that your proposal with Environmental
17 Utilities, that if Environmental Utilities purchases the
18 assets of Osage Water Company, it purchases at the value
19 that would include paying off all of its debts, not just
20 your debt, but all of its debts?

21 A. No, ma'am, I don't think I have the amount to
22 fund that.

23 Q. So you think that Environmental Utilities
24 should be given preference over another company that would
25 not pay enough for the assets to pay off all of the debts?

1 A. No, ma'am. I think the best offer should be
2 given preference.

3 Q. So if a company is willing to purchase but not
4 willing to cover all of the debts, including your debt,
5 which is the major one --

6 A. It's the largest one. I think there's a
7 number of major ones.

8 Q. But by far the largest, it's at least twice --
9 over twice the next-largest debt that I recorded here from
10 what's been said.

11 You wouldn't be willing to sell; is that
12 right?

13 A. Oh, I don't think that's right at all. I'd be
14 delighted to get any recovery on the work that I've done.

15 Q. Okay. So you're not saying that you need to
16 be repaid your claimed \$546,000?

17 A. I -- I think that there's a serious likelihood
18 that the assets may not bring that much. I don't know. And
19 one of the continual problems you have, usually you value a
20 utility system based on its projected cash flow ability, and
21 the systems inside the City of Osage Beach I can't give you
22 a projection for what they'll do tomorrow.

23 I know that we, as I testified to yesterday,
24 had an offer of some \$300,000 for the Cedar Glen system
25 alone. There's some significant values out there. Whether

1 ready, able and willing buyers can be found that will pay
2 enough to satisfy my debt, Mr. Hancock's debt,
3 Mr. Mitchell's debt, the taxes and other things, I don't
4 know the answer to that.

5 I can tell you no one's called me and said
6 they were interested in paying anything for it other than
7 the one Cedar Glen system.

8 Q. The company has had significant problems in
9 complying with environmental regulations, as well as this
10 Commission's regulations; is that correct?

11 A. I really don't agree that it's had significant
12 compliance in complying with environmental regulations
13 (sic). The company systems have been operated and tested on
14 a monthly basis and consistently do comply with
15 environmental regulations.

16 There have been construction-related problems
17 and environmental issues in terms of getting systems built
18 in a time frame that they should be built in under the DNR
19 permits. But in terms of ongoing, for example, failing
20 sewer sampling or water --

21 Q. Like today where there's sewage running over
22 and things like that?

23 A. Well, that's -- that's a normal type of thing
24 that does occur, and it's not a -- it's not an unexpected
25 thing. That's why the systems have alarms. That's why you

1 send a guy out. He's making interim arrangements to get the
2 sewage pumped out of there until the electrical problem can
3 be debugged and fixed. I mean, that's -- that's something
4 that's going to happen with any utility system that involves
5 moving parts.

6 Q. That alarm that goes off, does that notify
7 DNR?

8 A. No.

9 Q. Why would DNR have gotten involved yesterday?

10 A. The homeowners in Eagle Woods usually call DNR
11 when the alarm goes off. They may or may not call the
12 company first.

13 Q. Has the company been issued Notices of
14 Violation in the past?

15 A. There have been notices in the past. As I've
16 indicated, most of them are construction-related. To my
17 knowledge, there's never been a notice issued that said
18 something to the effect of, you know, something broke and
19 you failed to fix it.

20 Q. Okay. How about your compliance with this
21 Commission's rules, such as timely filing of annual reports
22 and timely filing of the paying of your assessments?

23 A. There's been some delinquencies in those, yes.

24 Q. Have they ever been on time, to your
25 knowledge?

1 A. I can tell you what I do know. Whenever I was
2 elected president in 1996, Mr. Mitchell handed me the annual
3 report forms going back to 1990 that had not been filed. I
4 spent a considerable amount of time getting the books
5 brought up front, and they were filed, I believe, in a
6 timely manner in '96 and '97.

7 And I think in '98, I remember, we hired a
8 certified public accountant to do that one. '99 was filed
9 delinquent, and Debbie has had Staff people trying to get a
10 good general ledger set up that we can tell the Commission
11 of the '99, 2000 and 2001 reports will not only -- well,
12 they'll be accurate.

13 Q. But they've not been filed yet?

14 A. '99 has been, but I'm not real sure that it's
15 accurate.

16 Q. So an inaccurate '99, no 2000, no 2001; is
17 that correct?

18 A. I think that's an accurate assessment, yes,
19 ma'am.

20 Q. Who owns the well at Chelsea Rose?

21 A. The well is on property that's titled to
22 Hurricane Deck Holding Company.

23 Q. Okay. But Osage Water Company borrowed the
24 money, I believe I heard you say, from Central Bank for that
25 well; is that right?

1 A. That's correct.

2 Q. So Osage Water Company is paying the debt for
3 that well?

4 A. That's correct.

5 Q. The debt guaranteed by Hurricane Deck Holding
6 Company, which is you and your wife and your parents --

7 A. Yes.

8 Q. -- is that correct?

9 But Hurricane Deck Company, Holding Company
10 owns the well?

11 A. It has title to it, and as I've indicated,
12 we'd be delighted to convey it over if the obligation is
13 satisfied and we have our property released.

14 Q. Is there an agreement to that effect between
15 Osage Water Company and Hurricane Deck Holding Company that
16 when the debt is satisfied to Central Bank, that the title
17 to the well will transfer to Osage Water Company?

18 A. There's no written agreement to that effect.

19 Q. So this is all verbal between you and your
20 wife and Mr. Mitchell and --

21 A. Yes, ma'am.

22 Q. -- and you and your wife and your parents?

23 A. Well, the corporation and Mr. Mitchell for
24 Osage Water.

25 Q. And as far as the assets of Osage Water

1 Company, none of the creditors could attach; is that
2 correct?

3 A. That's correct.

4 Q. And --

5 A. Although, ma'am, if they wanted to pay off the
6 debt, the bank, I'd be glad to deed it to the company and
7 they can attach. I don't have an interest in keeping it.

8 Q. What do you think that well is worth?

9 A. The note, I believe, was \$35,000, and all the
10 money was expended on the water well.

11 Q. And what kind of a condition is it in?

12 A. Good.

13 Q. Has maintenance been done regularly?

14 A. Well, I haven't been inside it for quite some
15 time, but I have noted -- I mean, it's been completely
16 unremarkable. It's not had any service problems. I know it
17 was well built when it was built.

18 Q. Not involved in any Notices of Violation?

19 A. No, ma'am.

20 Q. In addition to the agreement that your wife
21 promised that you would bring today and you failed to bring,
22 are there any other written agreements between Environmental
23 Utilities and Osage Water Company?

24 A. Just the water supply agreement that's been
25 filed in the Environmental Utilities application.

1 Q. That's the only other written agreement
2 between the two companies?

3 A. Well, the deed of trust, but I -- I'm not sure
4 that you're referring to that in terms of other contractual
5 arrangements.

6 I don't believe there are any.

7 Q. The sewer plant at Golden Glade was mentioned
8 as being owned by you and your wife?

9 A. Yes, ma'am.

10 Q. And that's correct?

11 A. That's correct.

12 Q. And also it was stated that there's a
13 long-term lease, probably a five-year renewable lease. I
14 guess this was you that testified to this.

15 Is that lease with Osage Water Company?

16 A. Yes, ma'am.

17 Q. Not with Environmental Utilities?

18 A. That's correct.

19 Q. Now, you indicated when Mr. Krueger was
20 questioning you that -- I'm quoting what you said. You
21 said, if it does not involve some form of a legal document,
22 I don't know how to fix it.

23 Do you recall saying that?

24 A. I believe so, ma'am.

25 Q. Which means that you don't know how to do the

1 operational activities involved with the water or sewer
2 company; is that right?

3 A. I have limited knowledge on that. I do have a
4 DS1 water operator's license, but that generally involves
5 knowing how to turn the well on and off and how to fix a
6 water main break, things of that nature.

7 Q. But you do have a lot of experience in
8 attempting to fix things with legal documents; is that
9 right?

10 A. That's what I do, ma'am.

11 Q. And part of that would be protecting
12 creditors --

13 A. Yes, ma'am.

14 Q. -- from loss of their assets, I assume?

15 A. Yes, ma'am.

16 Q. You have quite a bit of knowledge of
17 bankruptcy law?

18 A. I have some.

19 Q. And does -- does a large percentage of your
20 practice or some percentage of your practice regularly
21 involve dealing with creditor/debtor-type situations?

22 A. Not in the last ten years or so. And prior to
23 that time I did some of that type of work, but I haven't
24 done any in a long time.

25 Q. How about corporate structure?

1 A. I do a fair amount of that, yes.

2 Q. How much of your practice would you say,
3 roughly, is involved in corporate work, corporation work?

4 A. Oh, 5 percent, maybe 10 percent.

5 Q. Did you explain to your wife prior to her
6 signing legal documents the meaning of the documents?

7 A. We always discuss them, yes.

8 Q. Did you explain from a legal standpoint what
9 she was assuming as she signed --

10 A. Yes.

11 Q. -- legal documents?

12 A. Yes, always.

13 Q. You always do that?

14 A. Yes.

15 Q. There was a mention yesterday of a lawsuit
16 that Shoney's has filed?

17 A. Lawsuit that Shoney's has filed?

18 Q. That claims \$10,000 of lost revenue for the
19 night they were out of water.

20 Now, I can't recall whether that was you or
21 your wife?

22 A. No, ma'am. That's not Shoney's. That's
23 Little Rizzo's, and they sent a demand letter inquiring
24 specifically whether or not the company's insurance policy
25 might cover such an incident.

1 Q. And have they filed a lawsuit?

2 A. No, ma'am.

3 Q. And the demand letter was to -- addressed to

4 Osage Water Company or Environmental Utilities?

5 A. Osage Water Company.

6 Q. Would Environmental Utilities have any

7 responsibility to meet such an obligation?

8 A. I'm not aware of any. I don't think that

9 under the company's tariff there is liability for that. I

10 think Debbie had indicated that -- that there may be an

11 ability to obtain liability coverage for such problems in

12 the future.

13 Q. Okay. In terms of liability, does

14 Environmental Utilities have any legal liability for

15 anything that occurs with Osage Water Company?

16 A. Well, I think it has a duty to carry out its

17 obligations under the contract to the best of its ability,

18 and if it failed to do so, it would have liability, yes.

19 Q. Liability to whom, Osage Water Company?

20 A. It would be contractual with Osage Water, yes.

21 Q. But in terms of liability to anyone else for

22 safe -- say, for example to the DNR, to meet the

23 requirements of DNR, is that all Osage Water Company's legal

24 responsibility?

25 A. I think initially the responsibility is Osage

1 Water Company's, yes.

2 Q. So if DNR claimed that Environmental Utilities
3 was violating -- sent a Notice of Violation to Environmental
4 Utilities, you would reject it as not being to the right --
5 addressed to the right party; is that right?

6 A. Not necessarily. If it's something that
7 resulted from actions of Environmental Utilities employees,
8 I think it might very well be Environmental Utilities'
9 responsibility.

10 Q. How about violations of this Commission's
11 rules and regulations or statutory provisions related to
12 water and sewer companies, who would be responsible, the
13 responsible party for those violations today?

14 A. At this point in time, it would be Osage Water
15 Company's obligation.

16 Q. So Environmental Utilities is really
17 protected?

18 A. I don't consider it to be particularly
19 protected, no.

20 Q. You consider it to be vulnerable?

21 A. It is a contract operator for Osage water
22 company. Obviously, it has a duty to properly discharge
23 those obligations.

24 Q. A duty to Osage Water?

25 A. In terms of the relationship as a regulated

1 utility, it is not at this point in time.

2 Q. So if Osage Water Company did not bring an
3 action against Environmental Utilities for breach of
4 contract, Environmental Utilities wouldn't have anything to
5 worry about; is that right?

6 A. I think there's a lot of things to worry about
7 when you're operating water and sewer utility systems, but
8 in terms of -- you're asking me about --

9 Q. Legal liability.

10 A. -- Commission obligations, I think that
11 Commission obligations specifically derived from the
12 certificate, and at this point in time that would be Osage
13 Water Company's obligations. There obviously are other
14 legal liabilities that Environmental Utilities could incur.

15 Q. Let's take the Commission obligations.

16 Assume that -- well, who is -- what is Osage
17 Water Company today as it exists?

18 A. It's an administratively dissolved
19 corporation.

20 Q. Okay. And tell me what that means.

21 A. I'll give you my best explanation. The
22 statute was changed since I went to law school and I may not
23 get it exactly right.

24 But an administratively dissolved corporation
25 is one that has failed to comply with the requirements of

1 the Secretary of State's Office and has been sent a notice
2 that it's been administratively dissolved. Its corporate
3 existence continues for two years after that notice is
4 issued, with the limitation that the corporation can only
5 take such actions as are consistent with winding up its
6 affairs and liquidating its assets.

7 It does have the two-year period within which
8 to satisfy whatever condition caused its administrative
9 dissolution and to be reinstated into good standing, which
10 would remove the limitation that it cannot transact any new
11 business.

12 Q. Have you applied -- has Osage Water Company
13 applied for reinstatement with the Secretary of State?

14 A. Actions have been taken towards that.

15 Q. Have they applied?

16 A. Mr. Mitchell requested a tax -- a tax
17 clearance letter from the State, has prepared the annual
18 report and tendered that.

19 I think that's the current status.

20 Q. Okay. In WC -- in this case, WC-2003-134, in
21 attachment C to your answer to the complaint, which
22 Ms. O'Neill, I believe, was questioning you about earlier,
23 that is the copy of the letter to Mr. Matt Blunt addressed
24 October 8 and the Annual Registration Report; is that
25 correct?

1 A. Yes, ma'am.

2 Q. And that was not sent on October 8th; is that

3 right?

4 A. I believe it was.

5 Q. So this has been filed with the Secretary of

6 State?

7 A. It was taken to their office and given to them

8 and then given back.

9 Q. And what date was that done?

10 A. It would have been sometime after October 8th.

11 Q. Sometime between October 8 and October 17?

12 A. Ma'am, I don't recall the specific date.

13 Q. So you don't recall when you filed your answer

14 to the complaint?

15 A. I think the letter was taken after the

16 complaint -- the answer to the complaint was filed, yes.

17 That's my best recollection.

18 Q. It was taken to the Secretary of State after

19 the answer was filed?

20 A. Yes.

21 Q. Why would it have been dated October 8th?

22 The answer to the complaint was filed October 17.

23 A. That would have been the date that

24 Mr. Mitchell signed it.

25 Q. And you normally would wait a couple weeks

1 before you would take something like that?

2 A. Well, in this particular incident there was
3 some unusual circumstances regarding administrative
4 dissolution of the corporation, and I did hand carry it in
5 to their office to discuss those with them.

6 Q. And they told you that it was not accepted; is
7 that right?

8 A. What had happened, if you're interested, yes,
9 they did say it was not acceptable, that they had issued an
10 administrative dissolution for Osage Water Company January
11 or February of 2002, based on a report they had received
12 from the Department of Revenue showing Osage Water Company
13 as a non-filer for franchise tax purposes. But the
14 Department of Revenue had listed thousands of corporations
15 as non-filers, and there's not an obligation to file a
16 franchise tax report if you're not liable for it.

17 And it was kind of a transition as to who was
18 doing reporting on franchise taxes, and so they had issued
19 an administrative dissolution, which meant you can't file
20 anything with them until you get the dissolution rescinded.
21 And on the date the annual report was due of April 15th, the
22 corporation was rescin-- was administratively dissolved.
23 And so the report was not filed at that point in time.

24 Subsequently, they reversed their prior
25 administrative dissolution sometime in April or May and

1 administratively dissolved it again because the annual
2 report had not been filed at a time when they would not have
3 accepted it. And I -- I did go in to discuss that with them
4 in detail because the company felt that the whole procedure
5 was somewhat irregular and that it should be reinstated if
6 it just tendered its annual report, but they would not
7 accept it.

8 Q. So the company has, in fact, had problems with
9 agreeing with the actions of the Department of Natural
10 Resources and this Commission and Secretary of State's
11 Office on several occasions; is that right?

12 I mean, I recall them from prior proceedings
13 here where the company has taken the position that either
14 the Staff of the Commission was inappropriately doing
15 something or the Department of Natural Resources had done
16 something that wasn't really accurate or wasn't really --
17 didn't apply to the right person.

18 Have you had similar disagreements with the
19 various agencies over time?

20 A. Well, I don't think any state agency is always
21 100 percent correct or that you can't disagree with them on
22 some instances.

23 I don't believe the company's ever disagreed
24 with the Commission itself.

25 Q. Okay.

1 A. And --

2 Q. The Commission itself?

3 A. -- while I don't like what Mr. Blunt's

4 position is on the corporate dissolution, I think it's

5 within his statutory authority.

6 And I can tell that from time to time I get

7 different answers from different members of your Staff on

8 particular questions, so it would be difficult for me to

9 always agree on them on everything or for Mr. Mitchell to

10 always agree with them on everything.

11 Q. Okay.

12 JUDGE WOODRUFF: We are due for a break.

13 We'll take a break and come back at 10:45.

14 (A BREAK WAS TAKEN.)

15 JUDGE WOODRUFF: We're back on the record, and

16 Commissioner Murray was asking questions of the witness, so

17 you may proceed.

18 COMMISSIONER MURRAY: Thank you, your Honor.

19 QUESTIONS BY COMMISSIONER MURRAY:

20 Q. Mr. Williams, earlier we talked about what you

21 thought the company would have to charge in order to be able

22 to have enough revenue to meet its expenses, and you've said

23 that you thought the sewer -- the charges for sewer service

24 would have to be doubled.

25 Do you recall that?

1 A. Yes, ma'am.

2 Q. And what would the water rates -- what would
3 result with water rates?

4 A. The numbers I ran were pretty much just based
5 on doubling the sewer charge. The water rates were just
6 recently doubled.

7 Q. Is Osage Water Company through Environmental
8 Utilities providing service to the customers at Eagle Woods
9 currently?

10 A. Yes.

11 Q. And is that just water service?

12 A. No. It's water and sewer service.

13 Q. Water and sewer.

14 And who owns the wells for the Eagle Woods
15 Subdivision?

16 A. There is a well owned by Osage Water Company
17 within Eagle Woods Subdivision. And as either I or Debbie
18 testified, there's another well that we have constructed in
19 Golden Glade which is interconnected with Eagle Woods
20 Subdivision, but at the present time it's the principal
21 source of supply, and that was pretty much the subject of
22 the WA-2002-65 case.

23 Q. Okay. The well that is owned by Osage Water
24 Company, was that conveyed by the developers --

25 A. Yes.

1 Q. -- to Osage Water Company?

2 A. Yes. There was supposed to be two, but I only

3 found title documents to support one of those two.

4 Q. And that was -- developer was Mr. --

5 A. Westenhaver.

6 Q. -- Westenhaver?

7 A. Well, his company was Summit Investments or

8 something, but Mr. Westenhaver is the individual involved.

9 Q. Earlier you testified that each of you has --

10 I believe you were asked the question regarding you and your

11 wife and your ownership of Osage Water Company.

12 I'm sorry. Environmental Utilities. That you

13 were asked if each of you has authority to act on behalf of

14 the company. And your answer was, to a certain extent yes.

15 To what extent do either or both of you not have authority

16 to act on behalf of the company?

17 A. In that limited liability company, she is the

18 designated manager of the company and would have general

19 authority to act for the company. There's certain powers

20 that are reserved to the members, and I would share those

21 powers.

22 Q. Okay. And they would be what?

23 A. Off the top of my head, I don't think I can

24 answer that question. It would depend on the statutes and

25 operating agreements, things of that sort, but generally she

1 would have broad authority to act for the company.

2 Q. And because it's a limited liability company,
3 you do not?

4 A. That's correct.

5 Q. And you set it up that way; is that right?

6 A. That's right.

7 Q. Who were the priority creditors that would
8 have been paid off by a successful bidder if this had been
9 sold, if the assets of Osage Water Company had been sold?

10 A. Tax claims, Central Bank Lake of the Ozarks,
11 Jim Clary Construction. There may be other small judgments
12 that -- I have not done a judgment lien check recently.

13 Q. Would not have been Greg Williams?

14 A. That would have been under the foreclosure,
15 the principal -- the note that -- I thought you were asking
16 about ones prior to the foreclosure.

17 That also would have been on the list, yes.
18 Payment from proceeds, and then if you have proceeds in
19 excess of the balance due on a note, it goes down through
20 the list of recorded liens on the property.

21 Q. And next in line would have been where --
22 well, where does the judgment stand in that line?

23 A. It would be in line, but it would be behind my
24 note.

25 Q. Behind your note. Okay. Would it be next?

1 A. I believe Mr. Mitchell would have a claim that
2 would be next.

3 Q. So it would be Greg Williams, Pat Mitchell,
4 then Hancock?

5 A. Yes, ma'am. If you're talking strictly about
6 real estate law, that's the way it would work.

7 Q. And the ones -- the tax claims and the Central
8 Bank claim and Jim Clary claim are all significantly smaller
9 than your claim; is that right?

10 A. They would be smaller. I consider them --
11 certainly the taxes to be a very significant claim.

12 Q. Do you agree with the figure of around
13 100,000?

14 A. She would know better than I would. I haven't
15 seen a notice recently.

16 Q. So you don't have reason to disagree with what
17 your wife stated?

18 A. I do not.

19 Q. Who were the other parties that you mentioned
20 earlier that you had received calls from that were
21 interested in bidding?

22 A. Received a call from Bednara, B-e-d-n-a-r-a.

23 Q. Mr. Williams, may I ask you to speak up. I
24 can certainly hear you because we're close, but the
25 microphone doesn't pick it up too well unless you speak up.

1 A. I'll try. I don't talk very loud usually.
2 Q. Go ahead.
3 A. Mr. Bednara had called about the possibility
4 of purchasing the wellhouse located in the Ledges
5 residential subdivision, which is inactive at this point in
6 time and has been since the City overbuilt that area.
7 Q. So he was interested in bidding on only a
8 portion?
9 A. Yes.
10 Q. Would that have been possible?
11 A. Absolutely. I do a fair amount of real estate
12 foreclosure law, and one of the things that the trustee is
13 required to do is to offer property in parcels if there's
14 someone interested in buying that way. And then if it
15 brings more by parcel than it would as a whole, you can
16 convey it that way.
17 Q. Who else?
18 A. That's the only specific call that I remember
19 receiving where someone said, you know, I plan to be at the
20 sale and buy. There was indication that other parties were
21 attempting to obtain information, such as the condominium
22 owners association at Cedar Glen.
23 Q. So when you said you had received calls from
24 parties, other parties --
25 A. I may have gotten one from Mr. Rudy also with

1 respect to the Ledges wellhouse.

2 Q. Any other parcels that you had calls about
3 other than the Ledges wellhouse?

4 A. Not that I recall specifically.

5 Well, I think there may have been calls from
6 Eagle Woods homeowners, but I did not take those calls.
7 Debbie would have taken them.

8 Q. It would certainly be possible, with approval
9 from this Commission to sell parcels, for you to have done
10 that all along, would it not, if you had come to the
11 Commission for approval to sell, for example, Eagle Woods
12 area to the homeowners of Eagle Woods, if they had wanted to
13 purchase it and you reached an agreement and you'd come here
14 and asked this Commission for approval?

15 Would that have been possible?

16 A. That's my understanding. This Commission can
17 approve those types of sales. The question arises whether
18 or not you can sell any of the parcels with sufficient
19 revenue to satisfy things such as the tax lien. And I don't
20 know if you can order them sold free and clear of those
21 liens or not. I have no idea or not if that's within your
22 authority. If it is, it's not apparent in the statutes that
23 I've seen.

24 Q. So the tax liens cover all of the Osage Water
25 Company assets; is that right?

1 A. Yes, ma'am.

2 Q. So they include all of your certificated
3 areas?

4 A. Yes, ma'am.

5 Q. Now, you indicated earlier also that not all
6 of the assets were covered by the foreclosure.

7 Please explain your reference to the
8 intangible assets.

9 A. Okay. The company has some claims, such as it
10 has the claim against Mr. Hancock for actions that he took
11 to harm the company, which is the subject of a lawsuit in
12 Camden County. We had three claims against the City of
13 Osage Beach for taking of its properties within the City
14 limits or the value of those properties within the City
15 limits.

16 Those types of what I would call a general
17 intangible under the uniform commercial code would not be
18 covered by a foreclosure.

19 Q. So in other words, if the foreclosure sale had
20 taken place, those lawsuits could have proceeded in the name
21 of Osage Water Company with the proceeds, any proceeds from
22 the lawsuits going back to the original owners of the Osage
23 Water Company; is that what you're saying?

24 A. Yes, ma'am.

25 Q. Okay. Just want to make sure what you're

1 saying.

2 A. Yes.

3 Q. Now, what if this were -- what if the assets
4 of Osage Water Company were to be transferred through other
5 than a foreclosure sale, just an ordinary sale, what happens
6 to the intangibles then?

7 A. They would remain with the company, unless
8 conveyed with the assets.

9 Q. With the owners of the company?

10 A. Yes, ma'am. The company has not to date filed
11 an action for taking against the City of Osage Beach, and
12 that may be the most valuable asset that the company has.

13 Q. And why did you originally choose to go into
14 business with Pat Mitchell?

15 A. It was recommended by the manager of the water
16 and sewer department. I had filed an application for the
17 Chelsea Rose Subdivision under the name of Sunrise Water
18 Company, and the manager at that point in time was
19 Mr. Sankpill.

20 He requested that I come up and meet with him
21 and with Bill Mitchell, Pat Mitchell's father, and --

22 Q. I'm sorry. The manager's name again?

23 A. Bill Sankpill; S-a-n-k-p-i-l-l, if I remember
24 correctly.

25 He didn't say we had to do a joint company,

1 but he said, if I recall his words correctly, I already have
2 one water and sewer company at the Lake of the Ozarks, and
3 that's all we really want. Why don't you-all see if you can
4 work something out?

5 Q. So you must have investigated that feasibility
6 before entering into such a long-term legal, quote,
7 partnership, did you not?

8 A. To some extent. I was familiar with Bill
9 Mitchell and what he had done in the Lake area and who he
10 was, and I thought that's who we were going to get.

11 Q. When did that relationship first go sour?

12 A. Probably 1994, 1995, that time frame.

13 Q. Okay. And when was the last time you put
14 Mr. Mitchell on the stand as the only witness for Osage
15 Water Company in seeking a certificate?

16 A. I believe that was in the Eagle Woods hearing.
17 It would have been sometime in 1999.

18 Q. Which was approved in 2000?

19 A. I think the order came out in January or
20 thereabouts.

21 Q. All right. I would like to turn to your
22 answer to the complaint. You indicated you have a copy with
23 you; is that right?

24 A. Yes, ma'am.

25 Q. On the answer No. 2, Respondent fails that

1 Missouri -- or Respondent states that Missouri law fails to
2 define the term "principals" as used in paragraph 2 of the
3 complaint and, therefore, denies the allegations as to the
4 principals of the company set forth in paragraph 2.

5 Paragraph 2 of the complaint reads, The
6 principals of the company are Gregory D. Williams, Debra J.
7 Williams, the wife of Gregory D. Williams, and William P.
8 Mitchell. The only persons who own voting stock of the
9 company are Mr. Williams and Mr. Mitchell. Mrs. Williams is
10 the director of the company, and then it goes on.

11 You've got the complaint in front of you?

12 A. Yes, ma'am.

13 Q. Anyway, do you deny that -- why do you deny
14 that Gregory Williams, Debra Williams and William P.
15 Mitchell were principals of Osage Water Company?

16 A. "Principals" is a term that I think is used
17 very loosely and not always accurately with respect to
18 corporations. Corporations have shareholders, they have
19 officers and they have directors.

20 Q. Let's take them one by one then.

21 What are you currently with Osage Water
22 Company?

23 A. I'm a shareholder and its attorney, in this
24 case.

25 Q. Now, Debra Williams, what is she currently

1 with Osage Water Company?

2 A. She has no relationship with Osage Water
3 Company.

4 Q. When did she resign as director?

5 A. I believe the date's September 3rd, 2002.

6 Q. Did she resign as an officer at that time or
7 was she ever an officer?

8 A. She was the secretary at that time, and she
9 resigned as the secretary also.

10 Q. Why did she resign?

11 A. Mr. Mitchell didn't appear in court on that
12 day.

13 Q. And what was the purpose of his appearance in
14 court?

15 A. To testify with respect to Mr. Hancock's suit,
16 or I guess it was Hancock Construction Company's suit on a
17 note.

18 Q. Okay. And for that reason she wanted to
19 disassociate herself completely with Osage Water Company; is
20 that right?

21 A. It became very clear at that point in time
22 that Osage Water Company's future existence was very
23 questionable and that there was very little, if anything,
24 that she could do as an officer or director with respect to
25 that.

1 Q. Okay. William P. Mitchell, currently, what is
2 his --

3 A. He's the president, shareholder and a
4 director.

5 Q. When did he become president?

6 A. He was president of the company back in the
7 early '90s, and again in January of 2001, I believe.

8 Q. Who was president between -- in that period in
9 which he was not president?

10 A. I was.

11 Q. Why did you resign as president?

12 A. I've explained this yesterday. I'll try and
13 cover that testimony as clearly as I can.

14 Being president implies a level of control
15 over the day-to-day activities that I didn't feel that I
16 ever had during that time frame and that it was not
17 appropriate for me to continue to be the president of the
18 company.

19 Mr. Mitchell had been the vice president while
20 I was president and controlled the day-to-day activities.

21 Q. And why did you resign as director?

22 A. Same reason as Mrs. Williams. Mr. Mitchell
23 didn't come to court.

24 Q. So your resignation as director was in
25 September of 2002?

1 A. 2002, yes, ma'am. I believe that's what the
2 Staff's alleged in its complaint, and I didn't disagree with
3 that.

4 Q. Now, in paragraph 2, you deny the allegations
5 pertaining to Hurricane Deck Holding Company.

6 The allegation in paragraph 2 of the complaint
7 is that Hurricane Holding Company, a corporation controlled
8 by Mr. Williams, also owns non-voting preferred stock but it
9 has no authority to control OWC's affairs or operations.

10 A. Part of that's true, and I probably should
11 have given a longer answer. The previous stock is, at this
12 point in time, voting preferred stock.

13 Q. So your reason for denial is that it says
14 non-voting preferred stock?

15 A. Yes.

16 Q. So you admit that Hurricane Deck Holding
17 Company is a corporation controlled by you?

18 A. Well, I do participate in its management. I
19 don't have exclusive control.

20 Q. And that they have voting preferred stock?

21 A. Correct.

22 Q. And that they have no authority to control
23 OWC's affairs or operations?

24 A. That's correct.

25 Q. All right. Paragraph 3, you deny that the

1 report that was filed with the Secretary of State
2 establishes as a matter of law the identities of the
3 officers and directors of the corporation.

4 Is this a report with the Secretary of State
5 that the corporation filed?

6 A. Yes.

7 Q. But you're saying that that report would not
8 indicate the officers and directors?

9 A. Well, the reports are filed, my understanding
10 is you record the officers as of the date of the
11 commencement of the fiscal year for which the report
12 pertains. And the report was accurate as of when it was
13 filed, but the one that's referred to in here would have
14 been the 2001 annual report.

15 Q. So you're saying you deny that the report
16 establishes as a matter of law the identities. Do you deny
17 that the identities listed are these -- are the identities
18 of the officers?

19 A. I believe the answer said, and I concur with
20 it, is that the 2001 annual report states as alleged in
21 paragraph 3 that it was accurate as of the date it was
22 prepared and filed, but that the officers and directors
23 changed thereafter.

24 Q. Okay. That -- also in that paragraph, the
25 complaint says that Staff has no reason to believe that

1 any person other than Mr. Williams, Mrs. Williams or
2 Mr. Mitchell is an officer of the corporation.

3 And you say that response states further that
4 the belief of the Staff and the reason for such belief are
5 irrelevant to any material issue in this case. Respondent
6 denies each and every other allegation contained in
7 paragraph 3.

8 So are you denying that any other person other
9 than Mr. Williams, Mrs. Williams or Mr. Mitchell is not an
10 officer of the corporation?

11 A. I'm not aware of any other person that's an
12 officer of the corporation, no.

13 Q. All right. So you're really not denying what
14 Staff's belief is there, that the Staff believes that they
15 have no reason to believe that there's any other person as
16 an officer or director or an officer of the corporation; is
17 that right?

18 A. I'm not aware why they would have such a
19 reason.

20 Q. All right. And if you -- if there were
21 another officer of the corporation, would you be aware of
22 it, as either a shareholder or the attorney?

23 A. I should be, and I'm not aware of any other
24 person.

25 Q. Can you say there is no other person?

1 A. Mr. Mitchell may have appointed officers after
2 September 3rd. I have not discussed that with him. I think
3 he would have told me, but I have not heard.

4 Absence of information is not always
5 information.

6 Q. Did you consult with Mr. Mitchell before --
7 your client in this matter before answering this complaint?

8 A. Yes, ma'am.

9 Q. And did he tell you there were any other
10 officers of the corporation?

11 A. No, he did not.

12 Q. Did he tell you there were not?

13 A. No, he did not.

14 Q. You didn't ask him that question or did he
15 just refuse to answer?

16 A. I don't believe we discussed that with
17 specificity. As I said, I personally know no reason to
18 believe there's any other officers of the corporation, and I
19 think he would have told me if there were.

20 Q. Did you go through the complaint with him?

21 A. Yes.

22 Q. So he helped you answer question by question?

23 A. Yes.

24 Q. All right. No. 4, same question as to
25 directors. It states that Staff has no reason to believe

1 that any person other than Mr. Williams, Mr. Mitchell or
2 Mrs. Williams is a director of the corporation.

3 Do you have any reason to believe that anyone
4 else is a director of the corporation?

5 A. No.

6 Q. Did you ask Mr. Mitchell if anyone else was a
7 director of the corporation?

8 A. No.

9 Q. You didn't think that was relevant?

10 A. There would have been a shareholders meeting
11 to appoint someone.

12 Q. And who would have been invited to a
13 shareholders meeting?

14 A. I presume I would have been.

15 Q. So in answering this complaint, did you assume
16 that there were or there were not other directors?

17 A. I assume there were not.

18 Q. Okay. And yet you deny why -- you kind of
19 avoid, I guess, answering by saying that Respondent states
20 that the beliefs of Staff are irrelevant and deny every
21 other allegation?

22 A. I think that's a blanket phrase that's
23 attached to every paragraph, just in case there's something
24 in there that we might have forgotten to specifically deny.

25 Q. All right. Who is the registered agent for

1 the corporation?

2 A. According to the records of the Secretary of
3 State, I am, but I tendered my resignation.

4 Q. If you've resigned, who is the resident
5 agent -- registered agent?

6 A. I'm not aware of that.

7 Q. So OWC has no registered agent?

8 A. That's correct. Well, as a matter of law, I
9 think until the charter is reinstated and the Secretary of
10 State accepts filing, I remain by statute as the registered
11 agent.

12 Q. What was the purpose --

13 A. That's what I'm told.

14 Q. -- of your resignation?

15 A. I don't want to be the registered agent.

16 Q. But you think you will be forced to be?

17 A. That's my understanding of the law.

18 Q. Do you think it's appropriate to not have a
19 registered agent for Osage Water Company?

20 A. No.

21 Q. Did you make any attempt to find another
22 registered agent before tendering your resignation?

23 A. No. Mr. Mitchell's been the registered agent
24 in the past.

25 Q. Okay. Respondent denies that the company has

1 been abandoned by its shareholders, officers or directors,
2 and denies each and every other allegation contained in
3 paragraph 6 of the complaint.

4 Now, paragraph 6 of the complaint, as I read
5 it, is a very brief paragraph. It states there are no
6 others with corporate authority, and that's the others being
7 other than those three that we've been talking about,
8 Mr. Williams, Mrs. Williams, Mr. Mitchell, and that all
9 three have abandoned the company. You deny that the company
10 has been abandoned by, first, its shareholders.

11 Okay. On what basis do you deny that
12 abandonment?

13 A. The duty of the shareholders, of course, is to
14 appear at the shareholders meeting and vote their stock, and
15 there's been no expressed intent on the part of anyone not
16 to do so.

17 Q. Okay. How about the officers?

18 A. Mr. Mitchell remains as the president of the
19 company.

20 Q. And the other two officers, have they
21 abandoned the company?

22 A. Ma'am, I have not been an officer for the past
23 year.

24 Q. The other officer?

25 A. Debra Williams has resigned the position.

1 Q. And prior to that, did you resign?
2 A. No. My term expired last January, and I was
3 not reappointed.
4 Q. And no one else was put in place?
5 A. Well, my position was secretary, and Debra
6 Williams was appointed as secretary.
7 Q. All right. Directors, you deny that the
8 company has been abandoned by its directors?
9 A. Mr. Mitchell remains as the director of the
10 company.
11 Q. So do you agree that it has been abandoned by
12 all officers and directors except Mr. Mitchell?
13 A. Yes, ma'am. I would agree that they've all
14 resigned except for him.
15 Q. No. 7 states a matter of law. You say it
16 doesn't require a factual response, so I won't ask you for a
17 factual response.
18 No. 8, the portion of your answer that says
19 Respondent denies that it has no legal authority to take any
20 action other than to liquidate its assets, and affirmatively
21 states that as an administratively dissolved corporation
22 Respondent is authorized to a period of two years, it is
23 authorized to take such actions as are necessary to wind up
24 its affairs -- wind up its affairs, including the
25 collections of its assets and claims, payment of its

1 obligations, and if its administrative dissolution is not
2 rescinded, to liquidate its assets and distribute the
3 surplus, if any, to its shareholders.

4 All right. As I understand your answer,
5 you're saying that the corporation has -- in its current
6 state with the Secretary of State as a dissolved corporation
7 not reinstated, has the ability to for two years take such
8 actions as are necessary to wind up its affairs.

9 Is that your answer?

10 A. Yes, ma'am.

11 Q. And that would include collections of its
12 assets and claims. Payment of its obligations, is it your
13 testimony that the company is attempting to pay its
14 obligations?

15 A. Yes, ma'am.

16 Q. Now, is that current operating obligations or
17 is that secured debts?

18 A. To date, it's just been current operating
19 obligations.

20 Q. And when you say it has the ability to
21 liquidate its assets and distribute the surplus, if any,
22 to its shareholders, that's surplus after all that list of
23 creditors that we listed; is that right?

24 A. Yes, ma'am.

25 Q. Both secured and unsecured?

1 A. Yes, ma'am.

2 Q. What's the likelihood of there being anything
3 left for the shareholders?

4 A. Remote.

5 Q. What's the likelihood of all of the creditors
6 being paid?

7 A. Poor.

8 Q. What's the likelihood of the first in line to
9 be paid?

10 A. The taxes.

11 Q. Yes.

12 A. Fairly good.

13 Q. What's the likelihood of the second in line to
14 be paid?

15 A. Fair.

16 Q. Third in line?

17 A. I think that's Mr. Clary, and I'd say his is
18 probably pretty good.

19 Q. So if his is pretty good, No. 2 would be
20 better than fair?

21 A. No. 2 would be the bank, and I think there's a
22 pretty good, and Mr. Clary's is pretty good.

23 Q. No. 4?

24 A. It starts getting rather dicey after that, I
25 guess is a good way to describe it.

1 Q. Who is No. 4?

2 A. I thought it was me, but I'm not sure today.

3 Q. What's the likelihood of at least a portion of
4 yours being paid?

5 A. I would say there's some chance of that.

6 Q. You say there's probably -- assuming from your
7 answer, there's probably relatively little, if any, chance
8 that any of the creditors below you would be paid; is that
9 right?

10 A. I have looked for that scenario as a
11 possibility, and I don't see it as a reasonable likelihood
12 that the remaining assets of the company can be liquidated
13 for a sufficient amount of money to pay most of its
14 obligations.

15 Well, and let me say that that's discounting
16 any recovery it might make from the City of Osage Beach, if
17 the claim for taking was pursued.

18 Q. I want to go back to your answer to No. 6 for
19 just a moment.

20 A. Okay.

21 Q. Actually, the complaint, the paragraph 6
22 states that no person other than Mr. Williams, Mr. Mitchell
23 or Mrs. Williams has any authority to control the business
24 and affairs of the company.

25 Do you allege that there is any person other

1 than one of those three that has authority to control the
2 business and affairs of the company?

3 A. No, ma'am. The answer is -- states that
4 Mr. Mitchell's the sole officer and director. I think he
5 would be the only person at this point in time.

6 Q. And the answer is -- does the answer state
7 that? Okay.

8 You think the Broadwater Bay situation has
9 been pursued already.

10 The Eagle Woods Subdivision, in paragraph 10
11 of the complaint, the complaint says that, Furthermore,
12 Mr. Williams appears unconcerned about OWC's failure to
13 serve Eagle Woods.

14 And I heard you on the stand yesterday say
15 that you had no personal -- you felt no personal obligation
16 to serve the customers of Osage Water Company. I believe
17 that's fairly close to a quote. Correct me if I'm wrong.

18 Are you unconcerned about OWC's failure to
19 serve any customers?

20 A. Ma'am, I would not have prepared and filed the
21 application for Environmental Utilities in WA-2002-65 if I
22 was completely unconcerned about the supply of water to
23 residents of Eagle Woods. I've gone to a lot of time and
24 effort and expenditure of my money to bring that matter
25 before this Commission so that those people can be served.

1 I have allowed, you know, Osage Water
2 Company's operations to be moved into my law office
3 building. It takes up space, utilizes my resources,
4 prevents me from doing other things that I would like to do
5 and which would be profitable, so that Osage Water Company's
6 customers can be served. I am concerned. I do not think
7 that I have a legal obligation to be so concerned, but I
8 have been concerned.

9 Q. Okay. But you're very concerned about your
10 financial connection with Osage Water Company, too, I would
11 assume?

12 A. Well, absolutely.

13 Q. Do you -- could you rate them in priority?

14 A. Well, the financial concern has been well
15 behind the concern that customers get served for a very long
16 period of time.

17 Q. But you have taken -- you've made sure that
18 you're in line as a secured creditor and attempted to --

19 A. Well, before I was willing to advance
20 additional legal work in February of 2001, I did want that,
21 yes. I -- I mean, it was a situation where the company had
22 a number of pending claims, including the issues with the
23 City of Osage Beach, that I could foresee taking a
24 considerable amount of additional time.

25 And if you look at the note, it states a

1 balance, I believe, of 435 outstanding at that point in
2 time, and allowed for advances of another amount up to
3 \$500,000. And I was unwilling to make additional advances
4 to the company without some form of assurance that
5 Mr. Mitchell was going to make an effort to at least make
6 some payments on that obligation.

7 As it turned out, I never got any payment on
8 the obligation.

9 Q. Had you given any thought to whether you would
10 be able to present that kind of obligation to the Commission
11 as being a reasonable encumbrance on a water company of that
12 size to get approval that you were supposed to get and
13 didn't get?

14 Did you give any thought to that prior to
15 deciding to go ahead and encumber the assets without
16 Commission approval?

17 A. That really wasn't the focus of my concern.
18 Maybe it should have been, but as I've indicated, my concern
19 was I saw a lot of legal work needing to be done and no cash
20 to pay for it.

21 Q. And have you explained on the record here
22 anything regarding allegation No. 11 of the complaint, where
23 you deny that -- where you state that the wastewater
24 treatment plant -- you see the complaint talking about
25 Cimmaron Bay, Cimmaron Bay water and sewer facilities to

1 Harbor Bay?

2 In your answer -- I'm sorry. The complaint
3 saying Harbor Bay and stating that to this date, two years
4 after WC-2001-195, there is no -- the sewer system
5 construction and the water system expansion project
6 undertaken to serve new customers are still incomplete.

7 Did you deny that?

8 A. Ma'am, with respect to the water system
9 expansion, there's a denial in the answer. With respect to
10 the sewer system expansion, I believe it's admitted that
11 that's incomplete at this point in time.

12 Q. So you're saying the water system is complete?

13 A. I believe so, yes. It involved installing the
14 36,000 gallon water tank, and the tank is installed.

15 Q. Is it operational?

16 A. Yes.

17 Q. Is that the size tank you agreed to install?

18 A. I believe it's larger.

19 Q. And does it meet the requirement that -- to
20 serve the number of customers that are being served by it?

21 A. It's more than adequate, yes.

22 The installation of that tank was submitted to
23 DNR's public drinking water program and approved by them.

24 Q. I thought you just said that you admitted that
25 the sewer system was incomplete?

1 A. Some components require additional work, yes.

2 Q. But your answer states that the wastewater
3 treatment plant is fully operational?

4 A. It does work, yes.

5 Q. And capable of providing safe and adequate
6 service to the company's sewer customers?

7 A. There are additional condominiums that are
8 anticipated will be built in the future, and the sand
9 filters need to be complete. But at the present time, the
10 plant is able to handle the load.

11 Q. And when were those construction projects
12 supposed to be completed, according to Case No. WC-2001-195?

13 A. That case had absolutely nothing to do with
14 construction of those facilities. That was a complaint
15 initiated by Staff, if you read their preceding sentence
16 with regard to the disconnection of the condominium building
17 there in the project, and that complaint was resolved by
18 mediation. And I believe the stipulation settlement is in
19 evidence in this proceeding.

20 Q. And in that Stipulation and Agreement, was
21 there an agreement to finish the sewer system construction?

22 A. No, ma'am. That whole issue was the matter of
23 civil litigation in Camden County, because the developer of
24 the condominium project did not agree with the contract that
25 said he was to pay the cost of that expansion, and it went

1 to judgment and advanced some additional money. There was
2 probably a couple weeks worth of labor left to finish the
3 sand filters out there.

4 Q. When was the additional money advanced?

5 A. I'm not sure when the last payment was made.
6 Perhaps last spring.

7 Q. There's only a couple weeks worth of work
8 needed?

9 A. That's correct. All -- all the parts are
10 there.

11 Q. Why wasn't that work completed with the money
12 that was advanced last spring?

13 A. Well, the money was not sufficient to pay all
14 the costs. The company had to basically put up some
15 additional cost in terms of labor, equipment, to assemble
16 it.

17 Q. And the company's not willing or able to do
18 that?

19 A. That is No. 3 on Jeff Smith's list of things
20 to do.

21 Q. And how likely is it to be done in the next
22 month?

23 A. Not likely.

24 Q. How likely is it to be done in the next year?

25 A. Very likely.

1 Q. What has to happen prior to that?

2 A. Well, there's a large water leak at the
3 Broadwater Bay system at the Mariner's Cove apartments that
4 needs to be fixed first. There's issues such as keeping the
5 lift stations in Eagle Woods operational. There is a small
6 leak in the recirculating sand filter at Golden Glade that
7 Mr. Smith's been working on trying to locate the repair.

8 As the answer indicates, the Cimmaron Bay
9 treatment plant presently is able to handle the load that's
10 on it without the additional sand filters, but as I said,
11 they do need to be finished.

12 Q. Why do you think it's likely that there will
13 be enough money to do that, to cover those priorities in the
14 next year?

15 A. Mr. Smith works on that type of construction
16 when there are not other emergency repairs to be made.

17 Q. And there's enough money in the company to do
18 these things?

19 A. To pay his, yes.

20 Q. How about the repairs, don't the repairs cost
21 something?

22 A. Fairly small sums of money. We're talking
23 \$100 for equipment, time and a few parts. It's more just
24 the time involved. If the company had another field
25 operator, then these things could be stepped up in time for

1 completion.

2 Q. What are -- I've forgotten his name. What did
3 you say his name was?

4 A. Jeff Smith.

5 Q. Jeff Smith. Do you pay him by the hour or do
6 you pay him --

7 A. He's an hourly employee.

8 Q. So he is part-time?

9 A. Not so far. Usually he's 40 hours.

10 Q. Is he an independent contractor --

11 A. No.

12 Q. -- or an employee?

13 A. No. He's an employee. He's got a master
14 plumber license from the State of Texas.

15 Q. Your statement in Answer No. 12, Respondent
16 affirmatively states that Dale Johansen of the Commission
17 Staff testified in Case WA-2002-65 that he and other members
18 of the Staff under his supervision are biased against
19 Respondent and its principals.

20 Do you have a citation to that quotation?

21 A. I don't off the top of my head. I can find
22 that for you.

23 Q. Can you please tell me what was said that made
24 you interpret that to be an affirmative statement by
25 Mr. Johansen that he and other members of the Staff are

1 biased against you?

2 A. I asked him that question specifically on
3 cross-examination whether he was biased against the company
4 Environmental Utilities or its principals as a result of --

5 Q. Past performance; is that correct?

6 A. No. It was as a result of their experience in
7 other cases before the Commission, and he said yes.

8 Q. Meaning that they're basing their evaluation
9 of they were basing their evaluations of the applicants for
10 Environmental Utilities based upon their past experiences
11 with the same people operating under the name of Osage Water
12 Company; is that correct?

13 A. That's not what he said. I suppose that's one
14 way you could interpret it, but he did state that he had a
15 bias against the principals of the company.

16 Q. In terms of granting them another certificate,
17 whether they would be --

18 A. That was a certificate case, yes.

19 Q. Okay. And Staff was opposed to that; is that
20 correct?

21 A. I believe they've been opposed to the last
22 several certificate cases.

23 Q. Okay. No. 14, Respondent admits that it has
24 had difficulty in the past -- been delinquent in filing its
25 annual reports and admits that it has made installment

1 payments.

2 Why, Mr. Williams, should it have been so
3 difficult for Osage Water Company to file its annual
4 reports?

5 A. If you're asking me why it should have been, I
6 couldn't give you a possible reason why in the world it
7 should have been. I thought it should have been a fairly
8 simple and straightforward thing to get done.

9 Q. And you have no ability to help that get done
10 or direct that that be done?

11 A. Actually, I spent quite a bit of time and
12 effort trying to help that get done, and what I was able to
13 I did, and encouraged Mr. Mitchell. And as I testified
14 previously, I -- I did several years of reports myself and
15 made sure they were filed with the Commission, set up a
16 comprehensive computer system to track expenses as they were
17 made so they could be posted to the prior Commission
18 accounts.

19 And I thought during -- from 1998 on, that
20 Mr. Mitchell was utilizing that system and was rather
21 dismayed when he left the boxes on my front porch that he
22 used a different system. It's very difficult. I -- I don't
23 have a good answer to you for why.

24 Q. Now, then, your representation of Osage Water
25 Company as its attorney, I believe your wife when I was

1 asking her what your duties were, what you actually did for
2 Osage Water Company, she said you took care of all the
3 regulatory requirements and filed things with the Commission
4 and worked with the Staff and that sort of thing.

5 Why would you not have stepped in and seen
6 that, even if you had to personally do it yourself,
7 why would you have not seen to it the company complied with
8 those minimal requirements?

9 A. I did everything that I could and, in fact,
10 the '99 report that was filed was based on the limited
11 information that Mr. Mitchell had compiled. And then I sat
12 down with him and I filled out the rest of the report and
13 filed it with the Commission and received numerous
14 complaints from the Staff regarding inconsistencies and
15 incompleteness, which I confess there are, because I didn't
16 have the information that should have been tracked and
17 gathered as the year progressed.

18 And then since that report was filed and the
19 concerns about it, I consistently advised Debbie to get the
20 records corrected, and she has had the bookkeeper who does
21 the billing also going back and pulling all of the check
22 records for Osage Water Company from the checking account,
23 posting all of those into the computer system that I
24 utilized prior to 1998 and bringing those current and trying
25 to get an accurate statement.

1 And all I can say is that that's a work in
2 progress and it's not simple, and it should have been done
3 as the expenditures were incurred.

4 Q. Do you think anything like that should be
5 taken into account when a company who is delinquent and for
6 whatever reason is unable to provide accurate and/or timely
7 information to the Commission about those things that are
8 required in an annual report, that that should be taken into
9 consideration when that company goes before the Commission
10 to seek expanded territory or more certificates to provide
11 service to other areas and take on more customers?

12 A. Yes, ma'am.

13 Q. So it would have been your position in your
14 prior certificate cases that, yes, we should have taken that
15 into account, your delinquencies?

16 A. That would have been my personal opinion. I
17 tend to agree with your position on that. I don't know that
18 that's what I advocated for the company, but that wouldn't
19 have been my job.

20 Q. But you were not a witness, so --

21 A. If I was not a witness, I would have not given
22 you that answer, that's correct.

23 Q. But you filed pleadings that -- as the
24 attorney for the company that the company was perfectly
25 qualified and competent and financially viable and all of

1 that to provide service?

2 A. I don't believe I ever filed a pleading that
3 said anything along the line, that it would have addressed
4 those particular criteria in the Tartan Energy case.

5 Q. And managerial capacity is one of them?

6 A. Yes, ma'am.

7 Q. The company does have, right?

8 A. I don't believe I ever gave you any factual
9 misrepresentations as to who the principals were, what they
10 were doing and what the status of the company's annual
11 reports were. I would not do that, and I don't believe I
12 did.

13 Q. Okay.

14 A. And I have not attempted nor agreed to file
15 any certificate cases for Osage Water Company since its '98
16 report was prepared by an accountant and filed with the
17 Commission. I don't think we've filed anything since then.
18 It is one of your requirements that the annual reports be
19 current before a certificate application will be considered.

20 Q. That's a recent rule requirement, I believe?

21 A. Yes.

22 Q. In your answer to No. 15, as you stated
23 earlier, you kind of discount the Notices of Violation
24 that --

25 A. Ma'am, I don't discount them. I think that

1 any Notice of Violation is a serious matter requiring
2 correction. But I've seen Notices of Violation that were
3 for small matters and I've seen Notices of Violations that
4 might be very large matters, and -- and that allegation is a
5 bit vague, I guess is the way I describe it, Notices of
6 Violations have been issued.

7 I guess I would describe that difference
8 between a speeding ticket and a DWI third. Sometimes things
9 are more serious than others. And I'm not aware of, as the
10 answer states, any Notice of Violation that the company has
11 not made a diligent effort to correct.

12 Q. Okay. And you said that -- you said Notices
13 of Violation have been resolved by the company as and when
14 the issues to which they pertain arose.

15 Were they always quickly resolved?

16 A. That would be my general impression, yes.

17 Q. And what would you consider quickly or as when
18 they arise?

19 A. It depends on exactly what the circumstances
20 are. I know the company received a Notice of Violation from
21 DNR because of a water outage at Broadwater Bay and -- and
22 there's been extensive testimony what actions the company
23 took and how long it took and why it took that long to get
24 that resolved.

25 The company may very well have received a

1 Notice of Violation because the lift station went out of
2 service yesterday. That could happen. Work was commenced
3 to restore service or restore it to good working order
4 yesterday and will continue until it's completed.

5 Q. Okay. No. 16, the company has not
6 demonstrated an ability to negotiate the arrangements and
7 carry out the construction projects necessary for customers
8 to receive adequate -- safe and adequate service.

9 And you deny -- I'm just reading the first
10 sentence of that right now. But you deny the allegations of
11 that full paragraph.

12 Tell me how the company has demonstrated an
13 ability to negotiate the arrangements and carry out the
14 construction projects necessary for customers to receive
15 safe and adequate service.

16 A. The only time this Commission or its Staff
17 hears about a construction arrangement is when there's a
18 problem. When there's not a problem, you don't hear about
19 it. And there's been quite a bit of construction activity
20 that's gone on over the past decade that you never heard
21 about.

22 Q. For example, what was done?

23 A. We can start back in 1992, with the
24 installation of the water main from the Pizza Hut well to
25 Broadwater Bay Subdivision, which never registered on the

1 radar map at all and simply happened and was done. There
2 was a water main extension, I'm going to say in '97 or '99
3 down in the Ledges Subdivision area where the line was
4 extended to serve 12 apartment units. It was simply
5 unremarkable, no comments ever made.

6 Much of the water lines laid in the -- water
7 lines and sewer lines in the Chelsea Rose Subdivision were
8 installed without problems, confusion, delays.

9 Q. Who owns the Ledges condominium area?

10 A. The individual involved with that apartment
11 project was -- I'm sorry. I don't know. It was so
12 unremarkable it never really came to my attention.

13 Q. All right.

14 A. I know the company did it, but that's about
15 all I can tell you. There's been service -- or main
16 extensions within Broadwater Bay Subdivision to serve new
17 homes.

18 Q. Who was the -- who's the developer of
19 Broadwater Bay Subdivision?

20 A. It's a company named TGS Development, Inc. I
21 believe at one time Ron Thompson was involved with that, but
22 he no longer is. Jerry Gilmore, an engineer out of Rolla,
23 is involved with it, I believe, still at the present time,
24 and I'm not sure who the S is.

25 Q. No relationship with you?

1 A. I don't know the people. I know Ron Thompson,
2 but I don't know the other two.

3 Q. And Chelsea Rose?

4 A. That would be mine.

5 Q. All right. You probably weren't finished with
6 your answer.

7 A. I could go on for a long time. There have
8 been some situations where there's been problems.

9 Q. Okay. In your answer -- let's see. We may
10 have covered all of this.

11 When we talked earlier about the secured
12 debt of Mr. Mitchell, was it this promissory note to Water
13 Laboratory Company you were referring to or was it both that
14 and a promissory note to Jackson Engineering?

15 A. I know that there's two.

16 Q. And you're not denying that Osage Water
17 Company is insolvent and unable to pay its debts as they
18 come due and unable to obtain necessary -- capital necessary
19 to repair your systems and expand the same?

20 A. I think that's an accurate statement.

21 Q. So when you said that in the next year we
22 could expect the top three priorities, it appears to be
23 done -- those were different; is that correct?

24 A. I'm sorry. I'm not following your question.

25 Q. Well, earlier we talked about the priorities,

1 top three priorities on your employee Jeff's list, and the
2 water leak at Broadwater Bay, the lift stations at Eagle
3 Woods, the leak in the sand filter at Golden Glade, and sand
4 filters in the Cimmaron Bay area.

5 You indicated that those would be able to be
6 done?

7 A. The first three of those items are generally
8 what I would describe as repairs rather than construction or
9 a nonordinary expense type of thing.

10 The sand filters at Cimmaron Bay, he made
11 quite a bit of progress on those this past summer to the
12 point where I describe them as being in excess of 90 percent
13 complete, and the materials are on hand. There's not a
14 large cash outlay associated with that at this point in
15 time.

16 Q. So you deny that you're unable to obtain
17 capital necessary to repair the systems?

18 A. There's very minimal capital involved in that
19 at this -- at this point in time.

20 Q. Okay. And the references to 2002-65 are
21 Environmental Utilities; is that right?

22 A. I'm sorry. Where are you at?

23 Q. I'm sorry. No. 19.

24 A. Yes. That would be an Environmental Utilities
25 application.

1 Q. You don't think that that case was relevant to
2 the issue in this proceeding. Is that your answer?

3 A. Yes.

4 Q. Even though your wife testified that
5 everything that's being done for Environmental Utilities is
6 the same as for Osage Water Company, she said there's no
7 difference?

8 A. From her perspective in the day-to-day duties
9 that she's engaged in, I don't believe there's any
10 difference.

11 Q. The difference is purely a paper difference,
12 is it not?

13 A. Well, I think it's -- there's a difference in
14 structure. There's a difference in the ability and our
15 willingness to invest in Environmental Utilities versus
16 Osage Water Company. There is a real difference in the two
17 companies, but from the day-to-day operation viewpoint,
18 there's not a lot of change.

19 Q. And the primary difference is that only some
20 of the owners of Osage Water Company are owners of
21 Environmental Utilities; is that correct?

22 A. Well, that's one difference. Another
23 difference is that Environmental Utilities is structured as
24 a sub-chapter S pass-through entity for tax purposes and
25 Osage Water Company is a sub-chapter C, which means when it

1 loses money, that doesn't pass through to any of its
2 shareholders.

3 It's certainly been my experience over the
4 past several years that utility companies that are expanding
5 tend to lose money, at least for tax purposes. It's a
6 pretty significant difference, at least from my perspective.

7 Q. So you're saying its tax losses would be
8 passed through on --

9 A. Environmental Utilities.

10 Q. -- Environmental Utilities?

11 A. Yes.

12 At least if you're losing money, you can
13 deduct it against your income taxes.

14 Q. Another financial advantage to the change of
15 paper; is that correct?

16 A. I think it's a structural difference. It
17 makes -- it is a financial advantage, yes.

18 If I could convert Osage Water Company to
19 sub-chapter S status, I would try to do that, but I don't
20 think it qualifies.

21 Q. Is that because the government frowns on
22 transactions that are just done to avoid taxes?

23 A. No, ma'am. It's because Osage Water Company
24 has more than one class of stock, and that's one of the
25 limitations for sub-chapter S. You cannot have multiple

1 classes of stock and be a sub-chapter S corporation. You
2 basically have to have -- sometimes you describe under the
3 tax code a -- an S corporation as an incorporated
4 partnership where you have relatively few shares that can be
5 allocated, as opposed to a more complex capital structure
6 such as Osage Water Company has.

7 Q. If you and the other shareholders of Osage
8 Water Company at a board meeting decided to change that
9 structure and exchange all of the preferred shares for --

10 A. Common.

11 Q. -- common stock, could you not do that?

12 A. Well, that would be a start. It would have to
13 be an agreement by all the shareholders to convert preferred
14 to common, which means giving up, obviously, the preferences
15 that are associated with the preferred stock. And it would
16 require amending the Articles of Incorporation, which,
17 unless I'm mistaken, we would probably have to file
18 something with the Commission in order to do that.

19 It's a fairly lengthy step-by-step process,
20 and I mean, theoretically it could happen.

21 Q. In answer to No. 20, which is the -- in the
22 complaint that says the company has failed to pay Commission
23 assessments, you admit no payments toward 2003 annual
24 assessments and state that '99, 2000, 2001 have been paid.
25 And then Respondent affirmatively states that it requires

1 rate relief in order to recover its -- cover the expenses it
2 is incurring in providing water and sewer service to its
3 customers and to provide a return on its capital utilized to
4 provide said services.

5 What kind of a return would you be seeking?

6 A. I think what was in the last rate case was
7 10.5 percent. I generally target return right now at about
8 8. I'd carry a note for someone. That's what I'm looking
9 for.

10 Q. So if you have a lower return than has
11 currently been granted, how would that work?

12 A. Well, the problem we have right now is that
13 the operating expenses are considerably more than what Staff
14 budgeted. There is no return at all.

15 Q. Operating expenses being just that 15,000 a
16 month?

17 A. Yes.

18 Q. So you're not looking at repaying any debts?

19 A. I'm sorry. I don't understand that question.

20 Q. You're not looking at a need to recover an
21 amount that makes you capable of repaying the debts?

22 A. Well, you have to have the return on capital
23 in order to recapitalize those debts, as I testified
24 yesterday. The company needs a capital restructuring where
25 either money is invested in the form of equity or a

1 long-term obligation is set up to pay off these various
2 indebtednesses; in particular judgment liens.

3 I just -- I don't see how, you know, it's
4 going to continue to operate over the long-term. And in
5 order to secure that type of investment or secure that type
6 of long-term debt, the company's going to have to be offered
7 to make payments of either of dividends or of principal and
8 interest.

9 And at the present time its revenues and its
10 operating expenses are substantially equal or maybe in the
11 negative relationship, such that you can't borrow money and
12 you can't invest more money on the promise of return if
13 you're not earning it.

14 Q. You indicated that you thought doubling the
15 sewer rates to customers would provide the company what it
16 needed to meet its expenses.

17 Does that include meeting the expenses of
18 payment toward the obligations to all the creditors?

19 A. I think that that would put the company in a
20 position where it may be able to look at that type of a
21 capital transfer.

22 Q. To look at?

23 A. I've just done some rough numbers, ma'am, and
24 somewhere in the neighborhood of 5 to \$7,000 a month profit
25 would result from doubling the rates. I'm talking about an

1 operating profit, such that you could talk about
2 capitalizing that cash flow into a -- either stock or debt
3 investment.

4 Am I making any sense or am I getting too off
5 the target?

6 Q. I won't answer that.

7 A. I apologize. I thought I was losing it.

8 JUDGE WOODRUFF: If I could interrupt now, it
9 is 12 o'clock. It's time to break for lunch. Let's come
10 back at 1:15.

11 (A BREAK WAS TAKEN.)

12 JUDGE WOODRUFF: Let's come to order and we'll
13 resume where we left off, with Commissioner Murray asking
14 questions of the witness.

15 Please proceed.

16 COMMISSIONER MURRAY: Thank you.

17 BY COMMISSIONER MURRAY:

18 Q. Paragraph No. 26 of the complaint and your
19 answer to that states that -- your answer states, The
20 Respondent admits the allegations of paragraph 26, but
21 affirmatively states that applicable Missouri law does not
22 require that the president of the corporation actively
23 participate in the day-to-day operations of the corporation.

24 And Mr. Mitchell is currently president of
25 OWC; is that correct?

1 A. Yes, ma'am.

2 Q. And it's your position that he does not under
3 Missouri law have to actively participate in any of the
4 day-to-day activity of the corporation?

5 A. That's correct.

6 Q. Okay. Who is actively participating in the
7 day-to-day operations of the corporation?

8 A. The corporation is contracting for services
9 with Environmental Utilities.

10 Q. But on behalf of OWC, who is --

11 A. Does not have any day-to-day activities other
12 than administering that contract.

13 Q. And that contract was signed by Mr. Mitchell
14 as the president of OWC?

15 A. That's correct.

16 Q. Also, Mr. Williams, I think you may need to be
17 called back to the stand, I would assume, after you produce
18 the document in question, since we can't really question you
19 about it, not having it before us.

20 Also, on allegation No. 27 of the complaint,
21 it's not clear what role Mr. Mitchell may now play with
22 the company. And in the answer it states that Mr. Mitchell
23 is -- admits that Mr. Mitchell is the president and director
24 of Osage Water Company and is authorized to execute
25 documents on its behalf, and affirmatively states that

1 Mr. Mitchell is actively carrying out his duties and
2 obligations with respect to the company.

3 So in terms of who -- in terms of anyone that
4 is currently associated with Osage Water Company in any
5 official capacity, are the only duties that exist
6 administrative duties that the president would carry out?

7 A. To my knowledge, that's correct at this time.
8 If Mr. Mitchell elects to change the manner of operations,
9 that could change, but the way he's chosen to do it, there's
10 not a lot of day-to-day things for him to do.

11 Q. And there wouldn't be any -- wouldn't be any
12 meetings, would there, with the board because there is no
13 board; is that right?

14 A. The bylaws call for an annual meeting, I
15 believe it's the second Monday in January that is required,
16 but beyond that, I don't know why he would be required to
17 have specific meetings.

18 Q. And who would that meeting include?

19 A. Be the shareholders, whoever it is on that
20 date, and then the bylaws provide for a board meeting
21 immediately following.

22 Q. And who would the board meeting include?

23 A. At this point, it would be only Mr. Mitchell,
24 unless the shareholders elect different people at the
25 shareholders meeting.

1 Q. Then on complaint paragraph No. 28,
2 Mr. Mitchell refused to accept service of process on behalf
3 of the company. And that is admitted, but in your answer
4 it's also denied that -- well, actually, the answer
5 affirmatively states that said allegations establish that
6 the company has been abandoned by its owner or has failed to
7 provide safe and adequate service to its customers.

8 Do you see that answer?

9 A. I don't think that's what I meant to say. I
10 think I meant to say -- I believe that the company intended
11 to state --

12 Q. Mr. Williams, would you pull the microphone
13 closer?

14 A. I'll try.

15 Q. Or sit closer?

16 A. I don't believe the answer is typed properly.
17 Did not intend to admit that that establishes abandonment by
18 the owners.

19 Q. And --

20 MR. LORAIN: Judge, I would ask that that be
21 struck. The legal pleading is binding on the corporation.
22 Its already been pled and acted upon.

23 I would ask that that be struck. He can say
24 what he wants, I suppose, but the legal effect of that is --

25 JUDGE WOODRUFF: Well, the legal effect has

1 nothing to do with whether or not his testimony is stricken
2 here today. He's testified as he's testified and it will be
3 allowed to stand.

4 The objection is overruled.

5 MR. LORAIN: Thank you, Judge.

6 BY COMMISSIONER MURRAY:

7 Q. The complaint also says that Mr. Mitchell
8 failed to appear at court at a hearing on -- well, I guess
9 the case number in Camden County, and that was the case in
10 which Mr. Hancock sought and obtained a judgment against the
11 company for more than \$200,000.

12 Do you see that in the complaint?

13 A. Yes, ma'am.

14 Q. And then in your answer, in the answer it
15 says, Determination of the officers and directors as to
16 which lawsuits to prosecute or defend and which not to
17 prosecute or defend rests with the sole discretion of the
18 officers and directors of the company.

19 Now, that would be with the sole discretion of
20 Mr. Hancock at this point; is that correct?

21 A. I believe you mean Mr. Mitchell, ma'am, but
22 yes.

23 You said Mr. Hancock.

24 Q. I'm sorry. Mr. Mitchell is who I meant, yes.

25 So that if Mr. Mitchell chooses not to defend

1 the company against judgments by creditors, that's solely up
2 to Mr. Mitchell?

3 A. At this point in time, that's correct, yes.

4 Q. And does that have any effect on whether the
5 company is solvent and able to continue to conduct business
6 and provide safe and adequate service?

7 A. It could, yes.

8 Q. And allegation No. 29, that says Mr. Mitchell
9 has abandoned the company, which Respondent denies, and that
10 he is actively involved in the company's business.

11 If Mr. Mitchell chooses as the sole decision
12 maker for Osage Water Company not to accept service of
13 process and not to defend the company against claims, that
14 is his sole discretion to do so; is that right?

15 A. Yes, ma'am.

16 Q. And choosing not to defend the company you
17 don't consider abandoning the company?

18 A. Well, it depends on the nature of the claim
19 made and whether or not there's a legitimate defense to be
20 tendered and whether or not the cost of the defense may
21 exceed the potential adverse impact.

22 There were other suits brought in the past
23 which the company did not tender a defense, basically
24 because of the small dollar amounts involved and the fact
25 that the cost of defending would exceed the amount of the

1 claim. Judgments were entered and settled or paid or
2 resolved.

3 That is a business decision we have to make in
4 any litigation, whether the cost of the litigation exceeds
5 the benefit you would derive from engaging in the
6 litigation.

7 Q. And your role with the company as set out in
8 paragraph 30 of the complaint, you deny -- or the Respondent
9 denies that Gregory D. Williams has been Staff's principal
10 contact at the company for the preceding ten years, except
11 with respect to legal matters pending before this
12 Commission.

13 Who has been the principal contact for the
14 company for the preceding ten years?

15 A. Mr. Mitchell.

16 Q. Even while you were acting in the capacity of
17 either an officer or director?

18 A. Yes, ma'am.

19 Q. And when you were president?

20 A. Yes, ma'am.

21 Q. And I can't honestly remember what you
22 answered earlier as to whether you have abandoned the
23 company?

24 A. I have resigned, other than for this case,
25 from all positions with the company with Osage Water

1 Company.

2 Q. Would you say you have abandoned it?

3 A. Yes.

4 Q. And you deny that Environmental Utilities is a
5 competing utility; is that correct?

6 A. Yes, ma'am.

7 Q. Is it true that Environmental Utilities is
8 providing services to the same customers in the same
9 geographic locations as Osage Water Company?

10 A. No, ma'am.

11 Q. It's not?

12 A. At this point in time, Environmental Utilities
13 only operates Osage Water Company's systems. It does not
14 have a certificate for Golden Glade, which I think is what
15 they're referring to. It does not bill anyone for water
16 services in Golden Glade. I pay the bills with respect to
17 Golden Glade out of my personal checking account.

18 Q. And is that the -- the reason -- the fact
19 that EU does not have a certificate, is that the reason that
20 money is still funneled through Osage Water Company?

21 A. No one charges for water service in Golden
22 Glade, if that's your question. It's not that Osage Water
23 Company is charging for it or that Environmental Utilities
24 is charging for it. No one is.

25 Q. I'm talking about where water and sewer

1 service is being charged.

2 A. The certificates and the assets belong to
3 Osage Water Company. Environmental Utilities is operating
4 those systems and continuing service to those customers, but
5 it is at this point in time Osage Water Company's business.

6 Q. And 33, it appears that you're denying even
7 that you and Mrs. Williams are developers of the Golden
8 Glade Subdivision. Is that correct or is that not -- is
9 that answer not denying that fact?

10 A. I didn't intend to deny that.

11 Q. So are you and Mrs. Williams developers of the
12 Golden Glade subdivision?

13 A. Yes, ma'am.

14 Q. And Complaint No. 34, that the Williams want
15 to disassociate themselves from OWC, and then it references
16 her testimony in the EU case. The answer denies the
17 relevance, but is it true that you and Mrs. Williams want to
18 disassociate yourselves from Osage Water Company?

19 A. Yes.

20 Q. And your answer to No. 35, the Respondent
21 admits that it has executed a deed of trust in order to
22 secure its obligation to pay attorney fees which it has
23 incurred, and that the holder thereof has attempted to
24 foreclose said deed of trust because Respondent is unable to
25 make payment with respect to said obligation, and then

1 denies each and every other allegation contained in
2 paragraph 35.

3 Is the Respondent denying that Mr. Williams by
4 that action sought to obtain title to all of the company's
5 assets and transfer the assets to Environmental Utilities,
6 thereby making it impossible for OWC to provide water and
7 sewer service to its customers?

8 A. The purpose of the foreclosure is to raise
9 money to pay debt.

10 Q. And were you attempting to transfer all of the
11 company's assets --

12 A. By foreclosure.

13 Q. -- to Environmental Utilities?

14 A. That's one possible outcome of the foreclosure
15 sale, yes. There's other -- other possibilities as was
16 described in the application filed with this Commission.

17 Q. And would the treatment of the assets, if they
18 were transferred to Environmental Utilities, would that
19 benefit you and Mrs. Williams to the detriment of Osage
20 Water Company, its shareholders, creditors and customers?

21 You can take those one at a time if you want
22 to.

23 A. Well, with respect to shareholders, their
24 interest in the company is in the equity of the company
25 after all this debt -- deduct the debts from the assets, you

1 get the equity, and that's what the shareholders own. I
2 don't believe there is any equity left beyond the debts that
3 are outstanding for Osage Water Company.

4 The next question was, you said shareholders
5 and then --

6 Q. Creditors.

7 A. Creditors?

8 The creditors of Osage Water Company, all of
9 them are in a difficult position because the tangible
10 physical assets at this point in time, as I've indicated,
11 may have less value than the total amount of liabilities,
12 and there is not enough to go around. And there is -- I
13 don't know a way that everyone's going to get paid unless
14 there is some successful judgment for the assets that have
15 been taken.

16 Q. And customers?

17 A. Customers presumptively would continue to
18 receive service. There's no reason anyone would want to
19 disrupt service to the customers, because if customers don't
20 have service they don't pay for service. If they don't pay
21 for service, then none of the assets have any value at all.

22 Q. And they can't legally receive service from
23 non-certificated corporations; is that right?

24 A. Well, there would have to be an entity that is
25 legally authorized, yes, either a utility company, a

1 homeowners association, water district, municipal
2 government, something of that sort, yes.

3 Q. And you indicated earlier that the likelihood
4 of a sale being for an amount that would cover the debts is
5 extremely remote?

6 A. To cover all debts, yes, I don't see that as a
7 likely possibility.

8 Q. But is it Osage Water Company's position that
9 this Commission should not force a sale of the assets for
10 less than an amount that would cover all of the debts?

11 A. You're asking me a difficult position question
12 as an attorney who's also a witness in this case. And so I
13 will tell you that I cannot answer that for the company, but
14 I will tell you my personal viewpoint on that, if that's
15 acceptable to you, and that is that the Commission, in my
16 opinion, should see that these assets are sold for the fair
17 value of the assets to someone who's capable of operating
18 them and has adequate capital to do so, and that --

19 Q. Sorry.

20 A. -- that may or may not be more than the amount
21 of the debt that's outstanding.

22 The company has incurred losses as a result of
23 the overbuilding of its systems by the City of Osage Beach
24 such that traditional principles of utility regulation with
25 respect to water and sewer companies where you paid X may

1 not really work in those circumstances.

2 Q. Okay. And then you wouldn't object, I assume,
3 to it being an arm's-length transaction with third parties,
4 such as you mentioned Missouri-American Water Company
5 earlier, some third party that was able to purchase but for
6 an amount that did not cover the debt that had been
7 incurred?

8 A. As the developer of two subdivisions which
9 receive water and sewer utility service from Osage Water
10 Company, I would be thrilled to have that sort of a company
11 running those systems and owning those systems.

12 And I'm speaking again on my personal
13 viewpoint, and that may or may not be shared by
14 Mr. Mitchell.

15 Q. And is that qualified depending upon how much
16 of the debt is able to be recovered?

17 A. Not really, no.

18 Q. Would you agree that you have derived some
19 benefit from your work for Osage Water Company, in that it
20 has been a utility that allowed development to occur where
21 you own -- where you were the developer?

22 A. No, ma'am.

23 Q. You don't think that you received any benefit
24 from that?

25 A. I don't see that that's helped my development

1 projects in the least.

2 Q. When you became involved in providing utility
3 services, did it have anything to do with helping to develop
4 your property?

5 A. The thought was that the systems, rather than
6 being turned over to the homeowners association which may or
7 may not have adequate ability to operate and maintain those
8 systems, would be better served if they went to a -- a more
9 permanent entity, and which as I've indicated your
10 department here suggested Osage Water Company at the time.

11 Experience over the past decade has led me to
12 conclude that that was an erroneous decision and would have
13 been better and probably would still be better if those
14 systems were transferred to the homeowners association in my
15 development project. So I simply don't agree that the
16 developments have gained any benefit.

17 Q. Have you advertised that your developments
18 were -- had state-approved water and sewer service?

19 A. State-approved water and sewer systems? At
20 one point in time I thought that Osage Water Company was a
21 good thing, and we probably did advertise that. I don't do
22 that today.

23 Q. In fact, is it well known in the community
24 that you are associated with the water and sewer companies?

25 A. Yes, ma'am.

1 Q. Your answer to No. 41, which is that the
2 complaint states that the company's condition satisfies the
3 requirements of Section 393.145.1 for petitioning the court
4 to appoint a receiver and attach the assets, your answer
5 says that Missouri law does not provide for the attachment
6 and receivership of assets not owned by a public utility.

7 What do you mean?

8 A. Well, I was looking at the sentence at the
9 bottom of page 15 in the complaint which says the Commission
10 should direct its general counsel to petition the Circuit
11 Court for an Order attaching the assets of the company and
12 assets that are owned by others.

13 That raised considerable concern as to exactly
14 what was intended or what roving commission the Staff might
15 be seeking from the Commission to -- to go out and seize
16 assets.

17 Q. Do you think they may have been referring to
18 assets that were owned by other entities that is the same
19 people?

20 A. I don't know.

21 Q. The 42 answer states that the allegations are
22 denied where the allegation is that representatives of
23 Missouri-American Water Company have informed members of the
24 Staff that Missouri-American would be willing to serve as a
25 receiver for the company if so appointed by the Circuit

1 Court, and that Staff believes other qualified companies
2 would also be willing and able to serve as a receiver, and
3 that is denied.

4 On what basis do you deny that?

5 A. Mr. Mitchell has spoken with representatives
6 of Missouri-American and inquired -- I'm going to wander
7 into hearsay because I can only tell you what he's told me
8 as to whether or not they've made any specific agreement or
9 arrangements, and he's been advised that they have not.

10 Q. Nothing specific in writing or whatever?

11 A. And particularly no price. And the other
12 concern is, as I understand the essence of the complaint,
13 they want to appoint a receiver and sell off all the assets
14 of the company.

15 Assets of the company can be sold off without
16 a receiver if this Commission determines that's what should
17 be done. The corporation already possesses all the
18 authority it needs as an administratively dissolved
19 corporation to do so. And the people who know the systems
20 best would be Mr. Mitchell and myself.

21 And if that's what you want, that can be done
22 and we don't have to have a receiver.

23 Q. And what if the company says we've got --
24 cannot be sold unless we recover X dollars and there's no
25 willing buyer at X dollars?

1 A. I think this Commission has the authority to
2 order the sale of these assets for X dollars if the
3 Commission wants to. As I've indicated, I don't think the
4 corporation is going to end up with a net positive number at
5 the end.

6 Q. And the complaint No. 44, Respondent denies
7 that returning to control to the -- returning control to the
8 owners is not in the best interests of the customers, and
9 states that control of the company should never be removed
10 from its owners.

11 Now, its owners, as I understand it from the
12 testimony here in this proceeding, are not having any
13 activities with the corporation. They're not controlling
14 the corporation.

15 A. And this is where I have trouble with the
16 wording of the statute in terms of, are we talking about the
17 company in terms of the business that -- providing water and
18 sewer utility service or are we talking about the
19 corporation and its structure of Osage Water Company?

20 The business is being operated with the
21 revenues that are being derived from the business as best
22 that it can be. There's a lot of focus here on the
23 corporate structure and who's doing what on what given day
24 and in what manner, and I think that's not the right
25 analysis.

1 The question is, is an effort being made to
2 the best financial ability that's being provided from
3 revenues for the customers to be served and to receive
4 service in accordance with what they're paying for?

5 And I think the answer to that is that they
6 are.

7 Q. And if --

8 A. I don't see -- I'm sorry.

9 Q. You said in accordance with what they're
10 paying for it. So if an average to a family of \$55 a month
11 for water and sewer is not -- is, in the company's judgment,
12 in accordance with less than adequate service because it's
13 less than the company's expenses, is that adequate service?

14 A. Well, I don't believe that this Commission
15 should require a company to provide service at a cost in
16 excess of the rate revenues that it is receiving. I don't
17 see how you can expect that, expect it to last for more than
18 a very short period of time.

19 And I don't think it's consistent with the
20 United States Constitution or Missouri Constitution to
21 require companies to do that, and I think that's exactly
22 what Osage Water Company has been doing for a considerable
23 period of time and is doing today.

24 Q. Do you know approximately how long?

25 A. I believe 1999 is when, to the best of my

1 knowledge, the deficits became more than a minimal matter of
2 whether you're close or not on a year-to-year basis. I know
3 that several of the annual reports that I prepared up to
4 1997 did show operating profits.

5 As expansion occurred, sometimes there were
6 expenses that exceeded revenues while the -- you know, as a
7 new service area was added and you had expenditures going
8 out for it and then customers came later. But since 1999
9 there's been substantial shortfalls.

10 Q. And when the company has come to the
11 Commission for further certificates ---

12 A. There have been no certificate applications
13 since 1999.

14 Q. But there was testimony in the Eagle Woods
15 application after that time, was there not?

16 A. I think the hearing in that case was
17 contemporaneous with the rate case filing. It's going to be
18 within a month or two one way or the other. It was -- the
19 hearing, I'm sure, was during '99, because the Order, as I
20 recall, was issued in January of 2000.

21 Q. And the rate case was settled; is that right?

22 A. There was a disposition agreement entered
23 into, that's correct.

24 Q. And the company agreed that the amount that
25 was agreed to was adequate?

1 A. No. I specifically remember striking that
2 language out of the proposed agreement. I think it says
3 something along the lines of it's appropriate at this point
4 in time.

5 Q. Have you filed for rate increase since that
6 time?

7 A. No, ma'am.

8 Q. Why not?

9 A. The annual reports are not completed. The
10 company is not current on its PSC assessments, and the
11 company's been unable to pay its attorneys for the last rate
12 case.

13 Q. So there's a management problem?

14 A. There's a money problem.

15 Q. And a money problem.

16 And why would you think that keeping control
17 with the owners of Osage Water Company would be in the best
18 interests of the public or the best interests of the
19 customers?

20 A. There's no indication in this complaint that
21 service can be provided at the same or lower cost than it's
22 presently being provided to the customers. There's no
23 indication that the customers will continue to receive
24 service from Osage Water Company or anyone else.

25 The allegation in the complaint, as I

1 understand it, is that representatives of the City of Osage
2 Beach, various homeowners associations and other entities
3 have spoken to members about the possibility of operating or
4 purchasing the company's assets in the event of liquidation.

5 Now, I don't see how that benefits the
6 customers of the company. It may make them no longer
7 customers of the company and customers of no utility company
8 at all, but, for example, the water and sewer systems
9 serving Chelsea Rose could be conveyed to a homeowners
10 association there tomorrow and cease to be regulated.

11 Q. There are some legal hinderances to these
12 conveyances, though, are there not?

13 A. Yes, ma'am, there certainly are.

14 Q. Since there are judgments and since there
15 are --

16 A. Yes, there are.

17 Q. -- other liens?

18 A. Yes, ma'am.

19 Q. Which is one of the things that I would
20 question in saying that the company has the ability to
21 liquidate its assets, transfer ownership, that there's no
22 need to appoint a receiver to do so.

23 I would think there would be a lot of legal
24 questions about what could be conveyed debt free, how you
25 identify the assets that really belong to Osage Water

1 Company, what a purchaser would be getting.

2 A. I share your concerns. I mean, I see
3 difficulty and I've examined those issues, and I think I've
4 told you before, I mean, I can't give you a clear answer as
5 to how all of that would work. I don't have a solution for
6 Osage Water Company.

7 Q. And in that you are the largest creditor of
8 Osage Water Company, it might make it at least appear that
9 anything that you would structure might be self-serving. Is
10 that -- would you agree with that?

11 A. It could appear that way, yes.

12 COMMISSIONER MURRAY: Believe it or not, I
13 think I'm finished.

14 Thank you.

15 JUDGE WOODRUFF: Commissioner Lumpe?

16 QUESTIONS BY COMMISSIONER LUMPE:

17 Q. Mr. Williams, I'm looking at Exhibit 4, which
18 is the letter to Eagle Woods and Golden Glade customers.

19 Do you have that with you?

20 A. Yes, ma'am.

21 Q. Okay. And I'm looking about halfway down the
22 first paragraph there, where it says, Unfortunately, the
23 county courts have not upheld the rights of the company,
24 resulting in a loss of over 200 customers in the city limits
25 of Osage Beach in the last five years, despite two victories

1 in Missouri State appellate courts.

2 Would you give me the gist of those decisions
3 that occurred in the appellate court?

4 A. Certainly, ma'am. The first one was an appeal
5 from this Commission's granting of the certificate of
6 convenience and necessity to Osage Water Company to provide
7 water service to Parkview Bay Condominiums, which the City
8 of Osage Beach, although not a party to that proceeding
9 here, filed a Petition for Writ of Review in the Cole County
10 Circuit Court, obtained an order from that court reversing
11 your decision.

12 And from that decision, on behalf of Osage
13 Water Company, I filed an appeal with the Western District
14 Court of Appeals, which reversed the Cole County Circuit
15 Court and held that the certificate was, in fact, validly
16 granted by this Commission.

17 The second decision, we had filed an
18 injunction action against the City of Osage Beach, seeking
19 to enjoin them from utilizing water lines that had been
20 conveyed to the company by the developer at Parkview Bay and
21 which the city or the developer or jointly had disconnected
22 from Osage Water Company's water well and connected to a new
23 city water well.

24 The Circuit Court had denied that injunction,
25 based in part upon the Cole County Circuit Court's decision

1 reversing the certificate.

2 I appealed that on behalf of the company to
3 the Southern District Court of Appeals, which also reversed
4 and remanded the case back to Camden County for further
5 proceeding, in light of the fact that the company did and
6 does have a certificate of convenience and necessity to
7 provide water service at Parkview Bay Condominiums.

8 Q. And is that still pending, then, that remand?

9 A. On the remand, the Circuit Court of Camden
10 County granted summary judgment against the company, and
11 it's been appealed again.

12 Q. So you're back on appeal?

13 A. Yes, ma'am.

14 Q. Thank you. I wanted to know the gist of that.
15 It didn't involve any monies, then? It was not an appeal
16 based on the fact that the City took properties and did not
17 pay compensation?

18 A. That's correct. The only claim that's ever
19 been brought is that it's improper for the City to take and
20 that it should return those properties. A -- obviously, a
21 corresponding claim would arise that if the properties are
22 not returned, then the City must pay the value of the
23 property taken or damaged, and that claim has not been
24 filed.

25 Q. And that's what you were talking about, the

1 various properties that the City has attached, they have not
2 paid anything for those properties?

3 A. That's correct.

4 Q. Is it conceivable that if the City would pay
5 for those properties, there might be more money for the --
6 for Osage Water to pay its debts?

7 A. Absolutely.

8 Q. So that it might be wise or somebody ought to
9 maybe take their complaints to that level?

10 A. Yes. I suggested to Mr. Mitchell that he
11 retain an attorney who has not been an officer or director
12 of the company that could pursue that. I had significant
13 difficulty pursuing these types of claims for the company in
14 Circuit Court.

15 Q. And Mr. Hancock also could do the same thing,
16 could he not, saying you've attached property and I have a
17 lien on it? He could do that, could he not?

18 A. Yes, he could. And his attorney has
19 repeatedly encouraged the company to take those sorts of
20 actions against the City.

21 Q. Just a couple more questions here.

22 And I think you're in a very difficult
23 position because you're trying to express your opinion, as
24 well as trying to give the position of the party you're
25 representing, and that becomes when you're reading through

1 this document here of complaints and answers to complaints,
2 while you have said one thing here, that may not be your
3 actual position; is that correct?

4 A. That's correct, ma'am. As an attorney, I
5 don't always express my personal opinion, and I have tried
6 to convey to Commissioner Murray when I'm giving my opinion
7 versus --

8 Q. Versus what is in this document?

9 A. -- what the company might have as its
10 position.

11 Q. Okay. And so that -- and that's what sort of
12 confused you in the -- in terms of, I think you were saying
13 a receiver might not be the most appropriate thing, but
14 maybe from your point of view a receiver is, or not?

15 A. It depends on what purpose this Commission
16 would have in appointing a receiver. If the purpose is to
17 make sure that a qualified operator is running the systems
18 and that the systems or the company as a whole will be
19 rehabilitated and that those assets will continue to serve
20 those customers through a regulated utility context, then
21 that's one thing.

22 If the concept is, as the Staff has indicated,
23 let's appoint a receiver and slice this company up into its
24 component parts and give them away or sell them at nominal
25 dollars or whatever number we can get out of a particular

1 system, then I really have a problem with that concept.

2 And that's what I see being asked for in the complaint.

3 Q. Okay. I appreciate hearing that.

4 And when you talked about homeowners

5 associations, is that the preferred association that DNR

6 likes?

7 A. It's, I think, last on their list, but it is

8 on the list.

9 Q. It's on the list, but it's --

10 A. It's not their first choice. Their first

11 choice is a municipality or public utility district, a

12 government entity. Second choice would be a public utility

13 company, and I think the homeowners association is third or

14 fourth or fifth on the list.

15 Q. And the current municipality that exists in

16 that area would only take it for no money; is that right?

17 In other words, they wouldn't pay anything; is that correct?

18 A. That's my understanding. They would be happy

19 to be given everything that Osage Water Company owns inside

20 the city limits, but they will not pay, and that's --

21 Q. That gets to the issue of takings?

22 A. Yes, ma'am.

23 Q. If there were a receiver and a receiver were

24 to, as you say, dice up the company, would that receiver

25 have to come to the Commission for permission to sell these

1 assets?

2 A. I believe they would go to the Circuit Court.

3 Q. So --

4 A. Because they would operate under the Circuit

5 Court's jurisdiction. Now, whether the Circuit Court would

6 require the Commission to approve a proposed transfer or

7 would on its own approve those transfers is something that I

8 have absolutely no experience or knowledge about, but I

9 would tend to think that the court would make the decisions,

10 rather than the Commission.

11 Q. So we would lose jurisdiction; is that

12 correct?

13 A. The statute is awfully brief. It says, look

14 at another chapter on receiverships in the code. Looking at

15 that section, it appears to contemplate the court making

16 decisions rather than the Commission.

17 Q. So the court, in effect, would also appoint

18 the receiver, would it not?

19 A. Yes, ma'am.

20 Q. And then the Commission could say, here is --

21 A. You could say appoint Missouri-American and

22 they could appoint Dave Hancock. You could say appoint Dave

23 Hancock and they could say, no, I won't. I'm going to

24 appoint somebody else.

25 It's my understanding that the appointment is

1 made by the court, not the Commission.

2 Q. And then at that point, if they were to sell
3 the assets, the court would make that decision also, right?

4 A. Yes, ma'am.

5 Q. Okay. Not us. And they wouldn't have to come
6 to us for any kind of approval to sell this to this person
7 or that one to that person?

8 A. Subject to the limitation that I am not an
9 expert on that area of law, I agree with you that that's how
10 it would work.

11 Q. Thank you.

12 I think I may just have one more, but my
13 concern here is at this time there's an agreement between EU
14 and Eagle Woods to supply money; is that -- I mean water; is
15 that correct?

16 Is that the agreement we were talking about?

17 A. It's between Environmental Utilities and Osage
18 Water Company.

19 Q. Osage Water --

20 A. And that's in the Environmental Utilities
21 application case.

22 Q. Okay. And if -- if Osage Water were to be
23 sold off, et cetera, then there wouldn't even be a
24 possibility of EU selling water to Osage; is that correct?

25 A. Well, if Osage Water Company were split into

1 component parts, I can tell you if Missouri-American were to
2 buy the Eagle Woods and Golden Glade water/sewer systems,
3 that I would be happy to sell them the water well at Golden
4 Glade and they could run that, too, and that would not be an
5 issue.

6 If, for example, the homeowners association at
7 Eagle Woods was given back the water lines and sewer lines
8 that are in that subdivision, Environmental Utilities, as a
9 regulated utility, could sell water to that homeowners
10 association for distribution to its customers. I suppose
11 there's other scenarios that might arise, but those are two
12 certain possibilities --

13 Q. I guess what I'm thinking of is that the
14 condition for an EU certificate was that it sell water to
15 Osage Water, and if Osage Water doesn't exist, then there's
16 not even a possibility for you to sell water there to get a
17 certificate, is that -- does that sound logical?

18 A. I think we discussed at the time of the
19 hearing that the customers are unlikely to go away and their
20 need for water service is unlikely to go away, and whether
21 it's Osage Water Company or some other entity buying water
22 that could change, since it is basically contemplated one
23 selling water to a subdivision.

24 I don't have a real problem with just
25 conveying the well to the Golden Glade Homeowners

1 Association and terminating the interconnect where there is
2 no sale or distribution of water. As I indicated earlier,
3 our principal reason for bringing in Environmental
4 Utilities' application to the Commission was to make it
5 possible for a better source of supply to be provided to the
6 Eagle Woods Subdivision, as well as Golden Glade.

7 Q. And that was my concern, that it seemed to say
8 very specifically that the water had to be sold to Osage
9 Water Company.

10 A. I think that's the way the Order is drafted.

11 Q. And if that doesn't exist, then there's no
12 possibility for you to get a certificate, and I assume in
13 that -- that case, you would just set up a homeowners
14 association; is that correct?

15 A. That's correct.

16 COMMISSIONER LUMPE: Okay. Thank you.

17 I think that's all I have, Mr. Williams.

18 MR. WILLIAMS: Thank you, ma'am.

19 JUDGE WOODRUFF: I've got a couple questions.

20 QUESTIONS BY JUDGE WOODRUFF:

21 Q. First of all, when you were asked by
22 Commissioner Murray a question about the sewer plant at
23 Golden Glade, I believe you agreed that you and your wife
24 own the sewer plant at Golden Glade. I was under the
25 impression that Osage Water owned the sewer plant at Golden

1 Glade and that you own the water plant.

2 Am I correct?

3 A. A bit of confusion there, your Honor.

4 Osage Water Company developed a contribution

5 for Phase 1 of the treatment plant and constructed that on

6 property that my wife and I own. Phase 2 of the treatment

7 plant, my wife and I constructed and paid for.

8 Q. But sewer service is being provided by Osage

9 Water --

10 A. Yes.

11 Q. -- through those?

12 A. Through that facility, yes.

13 Q. Okay. Thank you for clarifying that.

14 Also wanted to ask you about what are the

15 prospects for Osage Water being able to be reinstated in

16 good standing by the Secretary of State as a corporation?

17 A. I think they're pretty good. The letter I saw

18 from the Department of Revenue indicated that there were

19 less than \$3,000 in withholding taxes on their list of taxes

20 that needed to be cleared, and that's the unfiled, what we

21 understood to be not needed to be filed franchise tax

22 reports would need to be filed, but the company at this

23 point, I believe, would have assets under a million dollars

24 and would not owe any franchise taxes.

25 Q. So it's a franchise tax report that you don't

1 need to file and then state withholding tax, was it?

2 A. Yes.

3 Q. Those are the things that were --

4 A. Yes. I believe all the sales taxes are paid

5 and current, and what we're talking about is not a huge

6 number and -- but for payment of counsel to appear here,

7 might have been taken care of already.

8 Q. Okay. And there's been several -- there's

9 some discussion about possibly Osage Water filing for

10 bankruptcy.

11 Has that been considered and what are the

12 chances of that happening?

13 A. You put me squarely in the dilemma of being an

14 attorney who's testifying.

15 Q. I don't want to force you into any conflict.

16 If you feel that that's -- the question will put you in a

17 conflict --

18 A. May I answer this question?

19 Q. If you want to have time discuss this with

20 your client, I'll take a short recess.

21 A. There have been discussions of that. As I

22 indicated testifying yesterday, adjustments of debts would

23 be an alternative to adjustment of equity

24 Q. A final question then. You've indicated Osage

25 Water Company's financial situation is not very good right

1 now, and I'm asking, how long under these circumstances can
2 it continue to provide water and sewer service to its
3 customers?

4 A. To be candid, I thought that it would not be
5 able to provide service in July of 2001, and I've been
6 amazed at Debbie's ability to keep the systems running and
7 make progress on paying the bills.

8 I'm probably not an optimist on that point,
9 and -- and all I can tell you is that if you'd asked me
10 then, I would have said it would have been wrapped up in 30
11 days or less, and it continues today and may continue for
12 the foreseeable future.

13 It's not in the interest, I think, of any of
14 the creditors of the company to put the company in a
15 position where it can't provide service, because once that
16 happens any hope of anyone ever being paid is completely
17 extinguished.

18 Q. Let me follow up on that with some questions
19 about the kind of service that is being provided to the
20 customers now.

21 Have you been receiving complaints about
22 service?

23 A. I'll speak from my limited knowledge, and
24 that's because the phone rings in to the front office at my
25 office.

1 Generally, I would say no, that I know that
2 when they started running it through the office there in
3 July of 2001, the phone rang all of the time. For a period
4 of time I took the phones myself at night and, you know, got
5 the emergency calls, the problems.

6 I know that the Cedar Glen well went off twice
7 a week. Somebody had to go out and restart the well. All
8 of those problems were resolved months and months and months
9 ago, you know. The only types of calls the company gets now
10 is something like what was talked about yesterday, an alarm
11 went off on a lift station, somebody needs to go fix it, not
12 a situation of I don't have water or there's sewer running
13 out in my backyard and it's been that way for months and
14 months.

15 We don't get those kind of calls. I think
16 that, at least my perception is that customer satisfaction
17 is much better than it ever has been since I've been
18 cognizant that was even an issue, and that would be, you
19 know, since '96 forward.

20 Q. Now, if the -- if the company does get into a
21 financial situation where it cannot provide service to its
22 customers or if something breaks down that cannot be
23 repaired or whatever other scenario, how will the Commission
24 know about that?

25 A. I think we can tell you.

1 Q. I suppose you'd be -- we'd be getting calls
2 from customers?

3 A. Customers will tell you also when they're out
4 of service. I don't think there's any doubt about that.

5 Q. What does the Commission do in that situation?

6 A. You have a phone number, it's an 800 number,
7 but there's certainly a complaint hotline where people call
8 in, and then calls are referred to the appropriate
9 management or supervisory department, which in this case
10 would be water and sewer.

11 Q. And if a month from now a major pump goes out
12 and we get -- the Commission gets all those calls and we
13 call the company and the company says, sorry, I don't have
14 enough money to pay for this, what does the Commission do in
15 that situation, which is similar to the situation as I
16 understand it that happened in August?

17 A. That was the situation that happened in
18 August. What the Commission can do is order the company to
19 appear and answer what's going on, get explanations. The
20 Commission may direct it -- its Staff to investigate, the
21 Staff give answers to the Commission. The company -- or the
22 Commission may issue orders directing the company to take
23 actions.

24 I certainly would have liked that to have
25 happened in August, to have been called in front of the

1 Commission to answer what was going on, so that I could have
2 perhaps inquired directly of the Commission whether there
3 was an accounting method for treatment of the repair costs
4 of that well that would allow investors to recover money.

5 As it is, I'm not allowed to call the
6 Commissioners and get answers. I work with the Staff. I
7 get the information that the Staff gives me, and I have to
8 work with that. And, you know, the Commission or its Staff
9 chose to file a Circuit Court action or threatened one in
10 Camden County, which, as I indicated, in the complaint was
11 not helpful, did not aid in resolving the problem out there.

12 The problem is one of a system failure of a
13 very old system in an area that's being overbuilt by
14 another, at this point, competing utility, the City of Osage
15 Beach. And -- and how do you come up with a plan to solve
16 that problem that doesn't involve throwing money away, and
17 as I've indicated, being asked to come and answer questions
18 would be just fine. I don't have a problem with that.

19 Q. And as you've indicated, you're not anxious to
20 throw away money, and I can certainly understand that.

21 A. Yes.

22 JUDGE WOODRUFF: Thank you.

23 FURTHER QUESTIONS BY COMMISSIONER LUMPE:

24 Q. You triggered one more for me. And I'm
25 looking at your response to the complaint, and it's No. 12,

1 and I'm wondering, did you have any conversations with the
2 Staff on by what authority they were telling people that
3 they shouldn't pay their connection fees, and were those
4 fees in the tariffs?

5 A. Ma'am, the fees are in the tariffs and, yes, I
6 have had conversations with Staff. I've had a conference
7 with most of the Staff of the water and sewer department and
8 members of the general counsel, and I've explained to them
9 the company's position very clearly and concisely. And I've
10 put that in written form which is in evidence here today.

11 I've got the Staff's response in evidence here
12 today. And I've told the Staff that we don't believe that
13 their interpretation of the tariff is even remotely
14 consistent with the language of the tariff or the intent of
15 the tariff, and if they don't want customers to have to pay
16 those connection fees, then they should file a complaint
17 with this Commission and let you decide whether they're
18 right or the company is correct. But there is a \$150 per
19 customer new connection fee in the tariff.

20 Q. And did Staff in any way tell you, here's why
21 we're telling people not to pay it?

22 A. They said that they don't believe that a new
23 connection fee applies to a condominium unit,
24 notwithstanding that you're installing a meter and point of
25 connection in that unit. It only applies when the building

1 is connected, even though we don't install a meter for the
2 building because we've agreed to separately meter
3 condominium units.

4 And the connection charge that the company has
5 been assessing is a charge that I personally drafted the
6 service charge for at a time when we were contemplating
7 installing meters inside condominium units. And I know what
8 the intent was. I'm very clear on that, and they disagree
9 with me.

10 Q. And isn't it Staff's position that all those
11 units should be individually metered?

12 A. I think that was the agreement of the company,
13 the Staff and the Office of the Public Counsel, and may even
14 be in the disposition agreement in the rate case.

15 COMMISSIONER LUMPE: Thank you. Appreciate
16 that.

17 JUDGE WOODRUFF: All right. At this time,
18 then, we'll go to recross based on questions from the Bench.

19 I'm going to give all the parties a chance to
20 do recross, because they're all variously situated in this
21 case as far as doing direct. And so to make things easiest
22 as possible, we'll start with recross beginning with Office
23 of the Public Counsel.

24 RECROSS-EXAMINATION BY MS. O'NEILL:

25 Q. I'm going to try and just ask a couple of

1 questions to clarify here, although please don't take the
2 word couple to actually mean two, because I'm a lawyer.

3 Mr. Williams, you had indicated that you
4 believe that customer complaints have decreased and that
5 problems seem to be being handled as they come up now, as
6 opposed to prior to your wife's taking over management of
7 Osage Water.

8 Do you recall that?

9 A. Yes.

10 Q. Is it your testimony now that all of those
11 complaints are being handled timely and quickly and
12 efficiently without problems with the customers?

13 A. All that I'm aware of, ma'am.

14 Q. The Little Rizzo's matter that you testified
15 to earlier in response to questions from Commissioner Murray
16 about having to shut down and the demand letter, is that
17 outstanding?

18 A. The incident that occurred was a low-pressure
19 problem in the system in a peak usage period that arose
20 because of a failure of the secondary well, which we call
21 the Shoney's well. The Shoney's well, I believe you heard
22 testimony, has been repaired.

23 Is there an additional question you had about
24 that incident?

25 Q. So that well was repaired after that complaint

1 was received but before the demand letter was sent?

2 A. Yes, ma'am.

3 Q. Now, you testified that -- you testified that

4 you resigned as a director of Osage Water Company because

5 Pat Mitchell did not show up in court; is that correct?

6 A. That was the precipitating incident, yes.

7 Q. That was the reason?

8 A. That was the precipitating incident.

9 Q. That's not the only reason?

10 A. No, ma'am.

11 Q. And the day that Pat Mitchell did not show up

12 in court, that was the case involving Hancock Construction;

13 is that correct?

14 A. That's correct.

15 Q. And that's the case that resulted in a default

16 judgment?

17 A. That's correct.

18 Q. Is it your understanding that no Golden Glade

19 residents have been charged for water service at all?

20 A. That's my understanding. I think there may

21 have been an incident where a billing clerk erroneously

22 issued a bill. I don't believe the money was accepted if

23 anyone paid it.

24 Q. There was billing for a couple of months of

25 water service when there was no authority to bill for water

1 service; is that correct?

2 A. As I said, there may have been a bill issued
3 erroneously. The clerk was being very aggressive about
4 making sure everyone was on the system and didn't understand
5 the difference between Eagle Woods, where people were billed
6 for water and sewer service, and Golden Glade, where they
7 were only billed for sewer.

8 Q. But you didn't have anything directly to do
9 with that; that was a management issue?

10 A. It was a clerical error.

11 Q. But it was a clerical error that the manager
12 was supposed to deal with?

13 A. And she did.

14 MS. O'NEILL: I don't have anything further.

15 JUDGE WOODRUFF: Recross from Staff?

16 MR. KRUEGER: Thank you, your Honor.

17 I'd like to have an exhibit marked.

18 JUDGE WOODRUFF: We're up to Exhibit 25.

19 (EXHIBIT NO. 25 WAS MARKED FOR IDENTIFICATION
20 BY THE REPORTER.)

21 CROSS-EXAMINATION BY MR. KRUEGER:

22 Q. Good afternoon, Mr. Williams.

23 A. Yes, sir.

24 Q. I've handed you what's been marked for
25 identification as Exhibit 25, and I will represent to you

1 that that is a portion of the transcript from the hearing in
2 the Environmental Utilities application case WA-2002-65
3 proceedings which were held on March 25, 2002.

4 Would you take a moment to read that? You
5 don't need to read it aloud, but just read it and
6 familiarize yourself with it, please.

7 A. I have.

8 Q. I believe you stated this morning that
9 Mr. Johansen had testified under oath in that case in
10 response to a question that you asked stating that the Staff
11 was biased against Osage Water Company, and this is the
12 testimony of Mr. Johansen in response to your
13 cross-examination questions.

14 And I would call your attention specifically
15 to page 490, which is -- I think is the third page of this
16 exhibit, reading from lines 3 through 8 -- 3 through 9.
17 Question from you: Now, so the record is clear, are you
18 biased in favor or against the principals of the applicant
19 in this case, Environmental Utilities, based on your
20 involvement as a consultant for Osage Water Company prior to
21 the time that you became employed by this Commission?

22 Answer: No.

23 Do you see that?

24 A. Yes.

25 Q. Do you have any reason to believe that that

1 was not what Mr. Johansen said?

2 A. No, I don't.

3 Q. Do you know any -- do you have any reason to
4 believe that there was some other place where he did say
5 that he was biased against the company?

6 A. I remember specifically asking him three
7 separate questions. Two of the answers I recall being
8 negative and one of them was in the affirmative.

9 Q. Well, I will represent to you that that is --
10 that what I have given you, Exhibit 25, is the entire text
11 of the initial cross-examination of him in this case. There
12 was some recross, and I have the transcript here that you
13 can refer to if you like. And I'd like for you to just take
14 as much time as you need to look at this (indicating), and
15 this transcript if necessary, and tell me whether there was
16 any time where he did testify that he was biased against the
17 company.

18 A. Mr. Krueger, I'm going to tell you that my
19 recollection is that he did say he was biased.

20 Q. Can you point to any place in the transcript
21 where it says so?

22 A. Not here today, I cannot.

23 Q. If you find such a record, would you please
24 bring that with you tomorrow?

25 A. Sure.

1 MR. KRUEGER: Okay. I would offer Exhibit 25,
2 your Honor.

3 JUDGE WOODRUFF: Exhibit 25 has been offered
4 into evidence. Are there any objections to its receipt?

5 MS. O'NEILL: No objection.

6 JUDGE WOODRUFF: Hearing none, it will be
7 received into evidence.

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

9 MR. KRUEGER: May I approach the witness, your
10 Honor?

11 JUDGE WOODRUFF: You may.

12 BY MR. KRUEGER:

13 Q. I'm showing you now Exhibit 9 to the complaint
14 that was filed in this case.

15 A. Okay.

16 Q. You have it there. I'll go back to the podium
17 for questioning.

18 Calling your attention to -- well, first of
19 all, can you identify what this Exhibit 9 is?

20 A. Only by what's written on it.

21 MS. O'NEILL: Your Honor if it would assist
22 the witness, at the bottom of the page, I believe that
23 exhibit is identified.

24 BY MR. KRUEGER:

25 Q. I will represent to you that that is page 5 of

1 the feasibility study that Environmental Utilities attached
2 to its application in Case No. WA-2002-65.

3 Do you recognize it as such?

4 A. No, but I couldn't disagree with you. It very
5 well might be.

6 Q. In the section there near the top of that page
7 under anticipated operation costs, the first sentence reads,
8 The water system will be operated by the company jointly
9 with its operation of the Osage Water Company systems
10 abandoned by Mr. Mitchell.

11 Did you write that statement?

12 A. I might have.

13 Q. Did you prepare the feasibility study in the
14 Environmental Utilities application case?

15 A. Probably.

16 Q. So if this is that document, then, you did
17 probably draft this?

18 A. Yes.

19 Q. Including that sentence?

20 A. I have no recollection, Mr. Krueger, but I
21 think that's the document.

22 Q. You have no recollection what?

23 A. Of preparing it.

24 Q. Did you then -- is it correct to say that you
25 stated that the Osage Water Company systems were abandoned

1 by Mr. Mitchell?

2 A. Yes.

3 Q. Thank you.

4 If the foreclosure proceedings that you had
5 initiated this summer had proceeded, and if all assets that
6 were sought to be foreclosed upon had been sold to
7 Environmental Utilities or Environmental Utilities had been
8 the successful bidder at that sale, and if the proceeds were
9 not sufficient to pay any claims beyond your lien, would the
10 claims of junior creditors have been extinguished?

11 A. No.

12 Q. Would they have had any assets from which to
13 satisfy those claims?

14 A. Possibly.

15 Q. And what assets would those be?

16 A. Claims. As I've testified to earlier, the
17 intangible claims, such as the lawsuit against the City of
18 Osage Beach for the taking the assets and other outstanding
19 claims that the company has for monies owed to it.

20 Q. Do you know about what the value of those
21 assets might be at the present time?

22 A. The company had approximately a million
23 dollars booked on its acquisition costs and construction
24 costs for systems located within the City of Osage Beach.
25 And that would be a starting point for valuing the takings

1 claim.

2 There would be the loss of future anticipated
3 revenues and profits from those systems, damage to the
4 company generally overall in its business operations,
5 including, I presume, having to go through proceedings such
6 as this because of the loss of customers and established
7 systems.

8 It would be very significant.

9 Q. These creditors would not be able to satisfy
10 their claims from any of the assets on which you sought to
11 foreclose?

12 A. That's correct, if the assets were all sold.

13 Q. And in that scenario that you had attempted to
14 foreclose upon these assets, you also sought to transfer the
15 certificates to Environmental Utilities; is that correct?

16 A. That request was filed with this Commission,
17 that's correct.

18 Q. So if this had proceeded as you planned and
19 envisioned, Osage Water Company would no longer have been
20 providing service?

21 A. That's correct.

22 Q. And its assets in Camden County would have
23 been sold at foreclosure?

24 A. Yes.

25 Q. And so the only thing that would remain is

1 these -- basically the interest in these lawsuits?

2 A. Yes.

3 Q. And if there was nothing available from the
4 proceeds of those lawsuits to satisfy the claims, then
5 Mr. Mitchell would not be able to receive anything from the
6 company on his indebtedness; is that correct?

7 A. That's correct. That's what happens when
8 companies lose money.

9 Q. Nor Mr. Hancock or Hancock Construction
10 Company?

11 A. Well, they would not receive money from the
12 physical assets. They would have to get it from the
13 intangibles.

14 Q. I think -- I think I asked you to assume that
15 these -- that they would not -- they might not be able to
16 realize anything from the --

17 A. Mr. Krueger, I'm a little tired. My
18 concentration is probably not as good as it was earlier this
19 morning.

20 Q. Did anybody on the Staff tell you that it was
21 okay to foreclose on the assets in Camden County?

22 A. I had a discussion with Dale Johansen. I ran
23 through the different options that, you know, we talked
24 about here in terms of sale of assets, foreclosure of
25 assets, bankruptcy of the company.

1 He didn't say it was okay. He said that it
2 sounded like an interesting idea, why didn't I send him some
3 paperwork on it, and I did.

4 Q. Was that the most positive response he gave
5 you?

6 A. My past experience with Staff, they rarely
7 tell you something is okay. At best you might get from them
8 a response to the effect of, we don't think that's
9 completely wrong, and I didn't get that from them. I didn't
10 get a response from Staff that said, no, no, we can't do
11 that, we won't go along with that.

12 I never got that one, which is what I was
13 really looking for.

14 Q. So did he say anything more positive than that
15 it was an interesting proposal?

16 A. No.

17 Q. Did you regard his silence as assent?

18 A. Well, as I've indicated, I sent the proposed
19 paperwork to you, to Ms. O'Neill and to Staff, and inquired
20 specifically. And I heard nothing back and, as I said, no
21 is an answer. What I got back was not a no.

22 Q. So you were relying, then, on silence?

23 A. Yes.

24 Q. Did you advise Osage Water Company that it
25 needed approval of the promissory note and deed of trust

1 that were executed in February 2001?

2 A. I discussed that with Mr. Mitchell with
3 respect particularly to the deed of trust.

4 Q. And did you -- you also discussed with him
5 that annual reports would have to be filed, the outstanding
6 annual reports?

7 A. Absolutely.

8 Q. Did you then decide to execute the note and
9 deed of trust first and get the annual reports filed
10 subsequently?

11 A. I was under the impression that they were done
12 almost on something of that nature, that it was not going to
13 be a length of time.

14 Q. So you relied, then, upon a statement that
15 they would be filed soon?

16 A. Yes.

17 Q. But you did execute these documents without
18 knowing that they were filed?

19 A. Yes.

20 Q. And you also recorded the documents without
21 knowing that they were filed?

22 A. Yes.

23 Q. Did the Staff suggest in its complaint that
24 the receiver, if one is appointed, should sell the -- should
25 slice the company's -- slice the company up into its

1 component parts before selling it?

2 A. That's my understanding of your complaint.

3 Q. Can you tell me where -- point to a language
4 that led you to that conclusion?

5 A. Paragraph 45.

6 Q. What specific part?

7 A. Paragraph 45.

8 Q. That paragraph reads, Representatives of the
9 City of Osage Beach, various homeowners associations and
10 other entities have spoken to members of the Staff about the
11 possibility of either operating the company's facilities or
12 purchasing the assets of the company in the event of
13 liquidation.

14 Is that what suggested to you that it would be
15 sliced up into its component parts?

16 A. It would have to be for any of those things to
17 occur, because the homeowners association may only operate a
18 system that serves its members and could not -- for example,
19 the Chelsea Rose Subdivision association could not operate
20 the water and sewer systems at Golden Glade. The City of
21 Osage Beach may not, to the best of my knowledge, operate
22 utility systems outside its municipal limits, unless it's an
23 extension of existing city systems, which these would not
24 be.

25 I don't know what other entities Staff may

1 have spoken to or what those entities might have said, but
2 the information that's in there indicated to me that it was
3 very clear that this company was to be split up into its
4 pieces and either sold or given away to the City and various
5 homeowners associations.

6 Q. The next sentence of that paragraph says,
7 Based upon these conversations, the Staff believes that if
8 the company is placed in receivership, the receiver will be
9 able to sell the assets of the company for a fair and
10 adequate price, correct?

11 A. That's what you said.

12 Q. Now, did that lead you to conclude that the
13 Staff was suggesting that the company be sliced up?

14 A. Oh, absolutely. Because you said that, based
15 on your conversations with the City of Osage Beach and
16 various homeowners associations, that the assets of the
17 company may be sold for a fair and adequate price.

18 Q. There is nothing in that paragraph, though,
19 that talks about selling the company in its component parts
20 or parcels or anything other than -- or any specific way of
21 doing it, is there?

22 A. Absolutely. You can't sell the homeowners
23 associations the entire company. You have to sell pieces to
24 homeowners associations. You can't sell to the City of
25 Osage Beach the entire company. You have to sell pieces of

1 the company.

2 Q. Isn't it true that this paragraph basically
3 just says that there would be interest in the assets of the
4 company?

5 A. In the pieces. There's nothing in there that
6 says Missouri-American wants to acquire the entire asset of
7 the company. There's nothing in there that says Camden
8 County, which conceivably could acquire the whole thing, is
9 interested in acquiring all the assets of the company and
10 operating it.

11 Q. Thank you.

12 A. It says you're going to cut it up in pieces.

13 Q. You agree that Section 393.190 of the Missouri
14 statutes requires a company to obtain approval of assets
15 that are used in the provision of regulated utility service
16 before it sells the assets?

17 A. I'm not sure I understood that question.

18 You mean does the company have to get approval
19 of the sale of assets?

20 Q. If the company wants to sell assets that are
21 used for the provision of water or sewer utility service, do
22 you agree that the company needs to obtain the Commission's
23 approval?

24 A. Yes.

25 Q. Okay. Do you know if there's any provision in

1 that statute that the approval of the Commission would not
2 be required if a receiver sells the assets pursuant to court
3 order?

4 A. As I explained to Commissioner Lumpe, I'm
5 not an expert on the receivership statutes, but what I
6 understand of the PSC receivership provision is that it says
7 to see those receivership statutes. And I don't believe
8 they refer to approval of the Commission. How that would
9 play out in the Circuit Court, I have no idea.

10 Q. My question was, do you know of anything in
11 that statute, Section 393.190, that says that approval of
12 the Commission would not be required if sale is by receiver?

13 A. I don't -- I don't have it in front of me. I
14 couldn't possibly testify to it from memory.

15 Q. Would you like to refer to it?

16 A. No.

17 Q. Okay. So your answer is, you don't know of
18 anything?

19 A. I do not know.

20 Q. Thank you.

21 You testified that there have been significant
22 operating losses by the company since 1999?

23 A. Yes.

24 Q. Do you know how much they were each year or
25 can you say approximately how much they were each year?

1 A. I have seen an operating statement based on
2 the checking accounts for '99 and 2000. '99 reflected a
3 loss of some \$45,000, and that's a strictly cash
4 expenditures in excess of earned income received.

5 Q. So you're saying a change in -- a change in
6 cash balance of that amount?

7 A. Yes, and 2000 shows a smaller loss because
8 there was no source of cash with which to lose more. And so
9 expenditures had been curtailed, I'm going to say it was in
10 the \$15,000 range.

11 Q. So when you testified about the significant
12 operating losses since 1999, is that what you were talking
13 about, just the change of the checking account?

14 A. Well, that's -- that's -- the losses would
15 actually be more than that, because there were such things
16 as taxes incurred and not paid that would not be reflected
17 in those numbers. That does not include obligations, other
18 obligations incurred, such as legal fees and operating
19 contract expenses that were incurred and not paid, in
20 essence, accrued expenses. But just on a cash basis, the
21 company had \$45,000, more or less, less money at the end of
22 '99 than it had at the start.

23 Q. Do you have any knowledge of what you reported
24 for income tax purposes as profit and loss in those years?

25 A. I'm pretty certain the company has not

1 reported income and loss in those years for income tax
2 purposes.

3 Q. Has not -- has not reported income or loss?

4 A. The returns are not filed, but they would
5 definitely show a loss.

6 Q. The list of debts that you went through in
7 your testimony, I believe, yesterday afternoon totals about
8 1.3 million.

9 Does that sound about right?

10 A. Are you talking about Debbie's testimony?

11 Q. Perhaps it was Debbie's testimony. Does that
12 sound like a reasonably accurate estimate of the total
13 amount of debts of the company?

14 A. What was your number?

15 Q. \$1.3 million.

16 A. That sounds high.

17 Q. And what are the assets of the company?

18 A. What are their --

19 Q. What is the value of the assets of the
20 company?

21 A. Physical systems outside the City of Osage,
22 you know, that's a very difficult question to answer. Do
23 you want to talk about book value? Do you want to talk
24 about cash flow value? Do you want to talk about potential
25 market value in a sale? Do you want to talk about

1 PSC-regulated rate base?

2 How would you like the question answered?

3 Q. Would you agree that the assets as shown on

4 the balance sheet must equal the liabilities plus equity?

5 A. Yes.

6 Q. Do you know if the liabilities are

7 approximately \$1.3 million as shown on the balance sheet?

8 A. I think that's a little high. I think it's a

9 little less than that.

10 Q. As shown on a balance sheet, then, do you know

11 approximately how much the assets would be?

12 A. The last balance sheet, I think, would put

13 them somewhere around a million dollars.

14 Q. Okay. Now, the difference between the assets

15 as shown on the balance sheet and the liabilities, what does

16 that amount to or what is -- is that negative retained

17 earnings?

18 A. That's what it would be, yes.

19 Q. Okay. Do you have an idea about how much that

20 is?

21 A. Well, no, I really don't. I would think that

22 the amount of the assets and the amount of the liabilities

23 is pretty close to being dead even at best.

24 MR. KRUEGER: That's all the questions I have.

25 Thank you.

1 JUDGE WOODRUFF: For Hancock Construction?
2 MR. LORAIN: May it please the court and
3 Commission, please?
4 JUDGE WOODRUFF: Yes.
5 RECROSS-EXAMINATION BY MR. LORAIN:
6 Q. Mr. Williams, counsel for Staff showed you a
7 partial application which I believe he marked as Exhibit 25,
8 and you had some reservations, at least -- I don't want to
9 misclassify it, but my understanding was you weren't sure
10 that that was included on the original application.
11 Is that a true assessment of what you said?
12 A. Mr. Loraine, maybe I'm confused or you are,
13 but the Exhibit 25 I have is a partial transcript of the
14 hearing in Case WA-2002-65.
15 Q. Maybe I am confused. Perhaps I am confused.
16 Thank you, Mr. Williams. It's been a long day back in the
17 back, too.
18 In any case, I would like to ask you a few
19 more questions. Yesterday -- and I understand in talking
20 with you in the hall -- I just want to put it on the record.
21 My understanding is that, you know, yesterday
22 Debbie was asked to not only bring the operating agreement
23 that Commissioner Murray had talked about this morning, but
24 I had also requested her to bring the balances of the debt.
25 She had made some speculation on the stand what she thought

1 the debts were, and she said she could put it together and
2 bring us a copy in before this hearing was over.

3 And it's my understanding that you will
4 provide that tomorrow. At least that's your anticipated
5 date for that, is that correct, on the balance of the debts
6 still owed by OWC?

7 A. That's my understanding, and I did speak with
8 her during the lunch break and she advised she was working
9 on that.

10 Q. Very fine then, just having gotten that
11 housework out of the way.

12 There was some discussion about the -- about a
13 few things that I was confused about. Maybe you can help
14 me. There was some talk about debt and priorities with
15 Commissioner Murray and yourself, and you talked in terms
16 of, I believe, roughly 450,000 or thereabouts to
17 Mr. Williams for legal services, Mr. Hancock something in
18 the neighborhood of 210,000, and Mr. Mitchell was -- and I
19 didn't get that figure and I'd like to have that, rounded
20 off, what you thought that figure was?

21 A. I have no clear recollection of that number.

22 Q. All right. In any case, in talking about
23 those particular debts, there was a certain assumption that
24 they were all valid debts when you were talking to
25 Commissioner Murray.

1 Would you agree with that?

2 A. Yes.

3 Q. All right. And we had talked about these

4 debts as part of the overall debt scheme of OWC, and I guess

5 they go towards that one-million-some-odd-thousand, \$100,000

6 figure that you just arrived at. And it seems important to

7 determine if they're all valid to me.

8 And in establishing priorities, I did not

9 understand why you felt that the Williams debt and the

10 Mitchell debt was -- had priority status over Mr. Hancock,

11 and could you explain that to me?

12 A. Well, I was answering Commissioner Murray's

13 questions, which I understood her to be asking questions

14 based on real estate law and recording of notes and deeds of

15 trust.

16 Q. Okay. And. In fact, that may not be reality,

17 because at least we know that there was a -- there was at

18 least a -- there has been some discussion in other forums,

19 in courts, and even in the PSC as to whether or not these

20 debts -- some of these debts have been recognized.

21 Would you agree with that statement?

22 A. Please explain what you mean by recognized.

23 Q. All right. It may be too broad. Let's talk

24 in specific about the Williams legal debt.

25 Has that ever been presented to this

1 Commission and authorized to be paid or recognized
2 officially by the Staff or the PSC in this -- in any
3 proceeding that you know of?

4 A. Well, as I indicated to Commissioner Murray,
5 some of the legal expenses would not be capital
6 expenditures; some of them are capital expenditures. The
7 Staff and I went through a detailed analysis of that in the
8 last rate case, and they had some numbers that they'd given
9 to me that they thought should be capitalized and some that
10 they thought were expenses.

11 Whether they're capitalized or expensed didn't
12 really affect whether they were owed.

13 Q. Well, did you get official recognition from
14 the PSC on that \$450,000?

15 A. I think the number we were talking about at
16 that point was about \$389,000, and the Staff went through it
17 in detail, yes.

18 Q. Well, what was the answer? Did they -- was
19 that included for expenses, was that allowed to be included
20 for expenses for PSC -- pardon me -- for OWC to pay it?

21 A. Staff does not make decisions whether or not
22 the company pays its bills.

23 Q. I understand that. Did the PSC ever make a
24 ruling on your attorney fees?

25 A. The PSC does not make rulings on whether to

1 allow --

2 Q. Have they been recognized as valid expenses or
3 as valid capital expenditures?

4 A. A good portion of them are recognized as
5 capital expenditures, yes, and there was a special provision
6 put on the tariffs that a surcharge was to be added to each
7 water and sewer bill monthly with which to recover what they
8 called organizational expenses, or it was basically the
9 legal fees.

10 Q. How much of the legal fees do you believe are
11 in that category of the 450,000 -- or 465 that you've
12 testified to?

13 A. How much of it is in that category? You mean
14 how much was capitalized as rate base?

15 Q. Whatever you -- whatever you think you've
16 gotten recognized by the PSC. I'm trying to determine that.

17 A. Well, as I testified, the Staff doesn't pay a
18 whole lot of attention to the part that is expenditures.
19 They're simply company expenditures, expenses.

20 Q. Well, Staff paid a lot of attention to
21 Mr. Hancock's debenture and ruled that -- and suggested and
22 the Commission, in fact, included his \$210,000 debenture as
23 valid expenses to be taken out at \$1,000 a month, you know,
24 \$12,000 per year with no interest; isn't that true?

25 A. Yes.

1 Q. And I --

2 A. A similar sort of treatment, but they did not

3 give a fixed dollar amount on the legal fees.

4 Q. So there was no dollar amount ascertained to

5 be paid out on a monthly basis to Mr. Williams for his legal

6 fees?

7 A. Nor was there any dollar amount excluded.

8 Q. All right. And can we go through the same

9 exercise with Mr. Mitchell's debt, whatever it is?

10 A. No.

11 Q. Why not?

12 A. Because I don't have any information about

13 that.

14 Q. Well, has Mr. Mitchell's debt ever been

15 approved either as a -- as capital expenditures or as

16 expenses recognized by either the Commission or its Staff?

17 A. Yes, the Staff did go through his expenses.

18 Q. And how much of them?

19 A. They went through all of them.

20 Q. Have they all been recognized in whatever the

21 dollar figure is?

22 A. A goodly portion of his were accrued in unpaid

23 expenses rather than capitalized.

24 Q. Was there any dollar amount recognized to be

25 paid out on a monthly basis?

1 A. I don't think they put a -- any specific
2 surcharge in the tariff for that, no.

3 Q. All right. So at least Mr. Hancock seems to
4 be one step ahead of both of you in regards to that there is
5 a \$1,000-per-month figure recognized by the PSC and it's in
6 the tariff as expense; is that true?

7 A. No. There's nothing in the tariff for
8 Mr. Hancock at \$1,000 a month. There is in the tariff a
9 dollar per customer per month for attorney's fees.

10 Q. Is there a judgment of any court any place for
11 Mr. Williams on his \$465,000?

12 A. I have not sued the company, no.

13 Q. Is there a judgment for Mr. Mitchell in any
14 regard as to whatever his value that he thinks is owed?

15 A. No.

16 Q. Is there a judgment in a circuit court for
17 \$210,000 to Mr. Hancock?

18 A. It's about that amount.

19 Q. And would it, therefore, be that Mr. Hancock's
20 judgment would be superior to your attorney fees or to
21 Mr. Mitchell's fees, whatever their fees are?

22 A. Well, I'll leave that decision to the
23 Commissioners. The statute seems to say that no one can get
24 a lien on the company without their permission. And I guess
25 if I don't have one, he doesn't either.

1 Q. Will you recognize the fact that there
2 is a judgment priority by the Circuit Court of Camden
3 County, which is now final and not been appealed on behalf
4 Mr. Hancock?

5 A. Mr. Loraine --

6 Q. Yes or no, Mr. Williams. That's all I'm
7 asking.

8 A. Your question is confusing, because you asked
9 priority. There is a judgment.

10 Q. And it's a final judgment?

11 A. I would suppose it probably is.

12 Q. All right. So if we're going to talk about
13 priorities and to fully answer Commissioner Murray's
14 inquiries, we would have to talk about priorities of some
15 debts as to final payment, wouldn't we, as to these three
16 that we've been discussing?

17 A. I'm not sure I understand what your question
18 is.

19 Q. Would there -- if we were going to answer
20 Commissioner Murray's inquiry as to how these might be paid
21 out, would not priority be an issue to determine that?

22 A. Yes.

23 Q. And, in fact, if there was a -- as it stands
24 right now, with your deed of trust in question, would you
25 believe that Mr. Hancock's judgment would be superior to

1 your and Mr. Mitchell's deeds of trust that were filed in
2 Camden County?

3 A. No.

4 Q. And what would you base that on?

5 A. Exactly what I said before. If you cannot
6 create a lien except by order of the Commission, then
7 Mr. Hancock does not have a lien and he would be at parity
8 with every other creditor of the company.

9 Q. Well, you certainly don't think that you
10 have a lien with the Commission in any regards as to your
11 \$465,000, do you?

12 A. I would have to say that.

13 Q. And you certainly don't think Mr. Mitchell has
14 one?

15 A. I haven't seen a determination by the
16 Commission on that.

17 Q. Nevertheless, if a priority determination is
18 being made, Mr. Hancock is a secured creditor by reason of a
19 judgment.

20 Would you agree with that statement?

21 A. I think that's up to the Commissioners.

22 Q. Well, what about your legal opinion in the
23 rest of the world, outside this Commission?

24 A. Oh, outside the Commission? If we ignore the
25 Commission's authority, is that what you're asking?

1 Q. Sir, I'm asking you for this question to -- so
2 that we can determine a matter of credibility of what your
3 statements are. I'd like to know whether a judgment
4 creditor in the outside world would be superior to these
5 deeds of trust that have been denied foreclosure rights?

6 A. I have no answer to that.

7 Q. All right. Who wrote the -- when the
8 foreclosure attempt on the part of Environmental Utilities
9 was attempted, your wife placed a notice of that foreclosure
10 sale in the newspaper.

11 Who wrote that check for the -- for that
12 expenditure?

13 A. What expenditure?

14 Q. For the publication of the three times in the
15 news paper in Camden County.

16 A. I don't think it's been paid yet.

17 Q. Who would write it?

18 A. Would be Environmental Utilities' expense.

19 Q. And that's because you transferred your debt
20 to Environmental Utilities by reason of that assignment,
21 which is part of evidence in this case?

22 A. It's because Environmental Utilities is the
23 holder of the note by virtue of the assignment.

24 Q. And would it be fair to say that we've already
25 had testimony here that Environmental Utilities doesn't even

1 have a checkbook and they don't have any revenue?

2 A. No.

3 Q. Why isn't that fair?

4 A. It does have a checkbook.

5 Q. Does OWC provide all the revenue for it?

6 A. No.

7 Q. How does -- how does Environmental Utilities
8 acquire any revenue?

9 A. Well, other than Osage Water Company's money,
10 it would get money from me by virtue of contributions of
11 cash to it.

12 Q. Other than as contributions, it has no source
13 of revenue?

14 A. It conducts no other business.

15 Q. So that, in all likelihood, the money for that
16 foreclosure would probably be OWC's revenue, wouldn't it?

17 A. Not necessarily.

18 Q. All right. The \$15,000 average monthly income
19 of OWC over -- at least 20 percent of that goes to Debbie's
20 salary.

21 Would that be a fair statement?

22 A. That's her salary.

23 Q. And some money goes out of that to two other
24 parties; one is a secretary that works underneath Debbie and
25 the other is a field representative named Jeff?

1 A. That's correct.

2 Q. And Jeff also does work for -- I guess for
3 building some houses for you in a separate capacity?

4 A. Not at this time, he doesn't.

5 Q. What does he do for you? Does he maintain in
6 some fashion some other business entities of yours?

7 A. No.

8 Q. So he used to build houses for you?

9 A. No.

10 Q. What did he do?

11 A. He built sewer lines for me.

12 Q. All right. And that that was not for -- who
13 was that -- in what capacity, in your private ownership?

14 A. Yes.

15 Q. And what company was that?

16 A. My personal checking account.

17 Q. What company did he build these lines for?

18 A. There was not a company.

19 Q. It was just you and Debbie?

20 A. Yes.

21 Q. When did you stop sharing him, at least his
22 time?

23 A. When the sewer lines were all completed.

24 Q. And this other lady that works as a second
25 underneath Debbie, what is her name?

1 A. Kris.

2 Q. And does Kris also work -- does she work in
3 the law office?

4 A. No.

5 Q. What does she do?

6 A. She works -- she does the utility billing and
7 accounting.

8 Q. Strictly for EU?

9 A. Oh, yes.

10 Q. And I've seen her signature -- I've seen her
11 notarize documents, at least legal documents. You'd agree
12 that she does do that?

13 A. She is a notary public.

14 Q. What was it about your conversation with Staff
15 that led you to believe that -- that they were encouraging
16 you, that they would recommend to this Commission that EU
17 would be the successor company of OWC?

18 A. I don't believe I've testified to anything to
19 that extent.

20 Q. Well, there was --

21 A. I indicated --

22 Q. You indicated something. Tell me about that
23 again.

24 A. Well, as I said, I had discussed with them --
25 or particularly with Mr. Johansen, various options as to

1 what might be done, and foreclosure was one of them, and he
2 asked for an additional proposal. That was sent to him.

3 Q. And did you talk with Mr. Hancock about that
4 in any way?

5 A. Mr. Loraine, I do not speak with your client
6 directly.

7 Q. And you didn't tell me about it, did you?

8 A. I don't recall.

9 Q. So that the -- for some reason you felt that
10 you could talk to Staff and -- and they might give you some
11 insight as to what this Commission might or might not do.

12 Is that a fair assessment?

13 A. No. They might give me some insight as to
14 what position Staff might take with an application submitted
15 to the Commission.

16 Q. And that gives you a little advantage as to
17 what the PSC might do; would you agree with that?

18 A. It's always helpful if the Staff is in support
19 of a particular action, as opposed to opposed, but the
20 Commission does not always accept the Staff's
21 recommendation.

22 Q. And this is the same Staff that -- that's
23 biased and prejudiced against you but you were willing to
24 talk with them in any regard; is that true?

25 A. I am willing to talk with them, yes.

1 Q. And you were looking for insight and possibly
2 some sort of advice from them?

3 A. I wanted to know if they were going to oppose
4 the proposal.

5 Q. But you fully knew that they didn't have the
6 right to tell you anything and you didn't have the right to
7 rely on anything they said?

8 A. I think they have the right to tell me what
9 they want to tell me. They could tell me if they intended
10 to oppose something.

11 Q. You certainly knew that it didn't make any
12 difference what they said, that PSC approval was still
13 necessary?

14 A. It would be up to the Commission to decide
15 whether or not to approve the application that we prepared
16 and submitted to them. The Commissioners, not the Staff.

17 Q. What was the urgency for you filing the two
18 deeds of trust and the future advance on 2/15 of the year
19 '01? What was the -- what was the urgency to do that on
20 February 15th?

21 A. Why were they signed that day?

22 Q. Uh-huh.

23 A. My recollection is that your client had filed
24 a second lawsuit against the company, and I had advised
25 Mr. Mitchell that I would not enter my appearance in that

1 case or any other litigation unless there was some
2 collateral arrangements for legal fees incurred.

3 Q. And that lawsuit was filed by Mr. McDorman,
4 wasn't it, as attorney for them?

5 A. That could be correct.

6 Q. And that was, in fact, the attempt to collect
7 this debt of \$210,000, wasn't it?

8 A. I believe that's correct.

9 Q. So you certainly were on notice and there was
10 some degree of urgency if you were going to get ahead of
11 this possible judgment that might occur, so you and
12 Mr. Mitchell met and gave each other mutual deeds of trust
13 and advances on each other; is that true?

14 A. I would have been perfectly happy for
15 Mr. McDorman to proceed to judgment without my
16 participation, as long as I was not required to do any
17 additional legal work for the company.

18 Q. Well, let me put it this way: If that
19 would have happened and there was a judgment acquired by
20 Mr. Hancock, he certainly would have been in advance of your
21 legal fees, had you not signed the deed of trust; wouldn't
22 you agree with that?

23 A. Oh, absolutely not. Had the note and deed of
24 trust not been signed, I was prepared to file my own lawsuit
25 to collect attorney fees.

1 Q. I understand, but it would have been already
2 behind Mr. Hancock's, which was already filed; isn't that
3 true?

4 A. The time of filing that, there might have been
5 a difference there, yes.

6 Q. All right. This preferred stock that you
7 testified, there seems to be at least a Class A and a
8 Class B of preferred stock. I believe you suggested to
9 someone that that would not be available if it was a
10 sub-chapter S.

11 That's true, isn't it?

12 A. That's my understanding of sub-chapter S
13 Internal Revenue code, yes.

14 Q. But there was some purpose in going to
15 Class A and B, wasn't there, for OWC?

16 A. There was a purpose. At the time it
17 was originally set up, the corporation was already a
18 C corporation.

19 Q. But it certainly met your needs to set up
20 certain classes whereby certain classes would vote and
21 certain classes would have priority before other classes.
22 Would you agree?

23 A. That met the corporation's needs at the time
24 it was done, yes.

25 Q. All right. There was some discussion when I

1 talked with you several days ago that -- and it's come up
2 again today. I believe it was Commissioner Murray that
3 asked something about the water ownership out at Golden
4 Glade and how the sewer and the water were related.

5 My understanding was that you had told me that
6 you and your wife owned the Golden Glade well?

7 A. Yes.

8 Q. And I --

9 A. That's true today.

10 Q. And that's true, you're saying?

11 And I had asked you, did you remember that
12 Mitchell had testified in a prior case, and you said, I've
13 been saying that for several years, but you never have seen
14 that.

15 Do you remember that discussion we had?

16 A. No.

17 Q. We had it several days ago.

18 A. Okay.

19 Q. Have you since learned that that does exist
20 somewhere?

21 A. No.

22 Q. I'd like to show you what's been previously
23 marked as Exhibit 26.

24 (EXHIBIT NO. 26 WAS MARKED FOR IDENTIFICATION
25 BY THE REPORTER.)

1 BY MR. LORAIN:

2 Q. And if you would, it has cover sheets of Case
3 WA-99-437 filed on August 18 of 1999.

4 Mr. Mitchell testified, page 3, talks in terms
5 of his qualification -- page 23. Pardon me. Turn to page
6 29. Question -- and there were -- by the way, so that
7 everybody understands, these were prepared testimony, true?

8 A. Appears to be, yes.

9 Q. And you would have assisted in that
10 preparation?

11 A. Yes.

12 Q. The question, page -- pardon me -- on 23,
13 line 21, does this application contemplate the Osage Water
14 Company will operate the water system for Golden Glade also?

15 Answer: Yes, but that is not part of the
16 authority requested by this application.

17 Question: How will construction of the water
18 system be financed?

19 Answer: The Eagle Woods developer has agreed
20 to contribute his existing well and distribution system to
21 OWC and to construct or pay for the cost of construction of
22 any distribution system. The developer of Golden Glade is
23 willing to transfer the completed water well in exchange for
24 preferred stock or debenture and to contribute the
25 distribution system in Golden Glade without compensation.

1 Does that answer refresh you in that regard?

2 A. In what regard?

3 Q. Does the answer that I've just read and the
4 questions refresh you as to whether Mr. Mitchell ever
5 testified as to -- as to the ownership of that Golden Glade
6 well?

7 A. Looks like he testified Osage Water Company
8 had plans to buy it.

9 Q. Did he say that before the Commission in
10 testimony?

11 A. August 16th, 1999 is the date of the testimony
12 filed on August 18.

13 Q. So that would be a yes?

14 A. He had plans to buy it.

15 MR. LORAIN: May I move for the admission of
16 Exhibit 26 into evidence, Judge?

17 JUDGE WOODRUFF: I have a question about it,
18 just to clarify.

19 The excerpt you started reading is on page 23,
20 then it continues on page 29. Is that a pagination problem
21 or was there something in between?

22 MR. LORAIN: I really don't remember, Judge,
23 at this point, but it's out of that transcript.

24 JUDGE WOODRUFF: Well, Exhibit 26 has been
25 offered into evidence. Is there any objection to its

1 receipt?

2 MR. KRUEGER: No objection.

3 MR. WILLIAMS: Your Honor, I have no
4 objections to the portions referred to in testimony. I
5 would object to the rest of the testimony, since it does not
6 appear to relate to any issue in the case.

7 JUDGE WOODRUFF: And that's the same situation
8 we had with the Staff transcript earlier in the proceeding.

9 Mr. Loraine, would you like to limit --

10 MR. LORAIN: Yes, Judge. Well, I would like
11 to make sure that it's clear from the record that page 3 was
12 Mr. Mitchell testifying. I think that's important. And it
13 goes down through the bottom of there and I think the top of
14 page 5. It just goes to his credentials.

15 And then I would agree to eliminate pa-- on
16 page 23, items 6 through 20. And then I would like included
17 item -- lines 21, 22, 23, and on page 29, 1 through 6.

18 And I don't care about the rest of it, Judge.
19 I would agree to eliminate the rest.

20 JUDGE WOODRUFF: What you're actually offering
21 is what begins on page 21 or 23?

22 MR. LORAIN: Well, I'm offering page 3, and
23 page 23 -- I'm sorry. Lines 1 through 23 on page 3.

24 JUDGE WOODRUFF: And then 29 would be lines 1
25 through 6?

1 MR. LORAIN: No. I need -- page 23, I need
2 lines 21, 22 and 23.

3 And then on page 29, lines 1 through 6.

4 JUDGE WOODRUFF: Okay. And the rest is not
5 offered?

6 MR. LORAIN: I agree.

7 JUDGE WOODRUFF: With those limitations, are
8 there any objections to the receipt of the document?

9 MR. WILLIAMS: No, your Honor.

10 JUDGE WOODRUFF: With those limitations, then,
11 Exhibit 26 is received into evidence.

12 (EXHIBIT NO. 26 WAS RECEIVED INTO EVIDENCE.)

13 BY MR. LORAIN:

14 Q. You've suggested this company is going to be
15 dismembered, as I basically hear your testimony. At least
16 that's your interpretation of what Staff is requesting the
17 PSC to do.

18 Have you had any inquiries from anyone that
19 would be willing to buy the entire system?

20 A. No.

21 Q. Have you talked with Mr. Hancock about that?

22 A. I've talked with you.

23 Q. And has he indicated any inclination to buy
24 the entire system?

25 A. Mr. Loraine, you and I had an extensive

1 discussion about that just a few months ago, and you
2 indicated you wanted some information, which I provided to
3 you, and you would be forthcoming with an offer. And I
4 never received an offer from you to buy the whole system or
5 any part of it.

6 Q. And there is some discussion, isn't there,
7 about these attorney fees that have never been approved?

8 Was there some discussion about that?

9 A. You're the only person I've ever heard discuss
10 it.

11 Q. Well, if I were -- my client were going to
12 make you an offer, he'd want to discuss that, Mr. Williams.

13 Would you be interested in discussing that?

14 A. Not here today, no.

15 Q. I understand not here today, but the fact
16 remains is, there might be buyers out there; isn't that
17 true?

18 A. Not that I know of.

19 Q. Well, Mr. Hancock might be interested.

20 Do you know that?

21 A. No, I don't. As I've indicated, he was asked
22 to make an offer. You told me he'd make an offer and he
23 didn't make an offer. So I presume he's not interested.

24 JUDGE WOODRUFF: Mr. Loraine, let me interrupt
25 for a moment. We're past due for a break.

1 MR. LORAIN: I had one more question and I
2 will get out of it.

3 JUDGE WOODRUFF: All right. Go ahead.

4 BY MR. LORAIN:

5 Q. Yesterday there was a -- we introduced an
6 exhibit, Exhibit 23, and it was a letter from Greg Williams
7 to Larry Dusenberg, and there was a question asked about the
8 intent.

9 I'd like you to read, if you could, off that.
10 Do you have that exhibit?

11 A. Yes.

12 Q. I'd like you to read paragraph 7 on the
13 bottom, and as it continues on the top of the next page,
14 aloud, please, so we can get it into the record.

15 A. It is in the record.

16 Q. I'd like you to read it.

17 A. This is dated August 27, 2002. The
18 relationship between Environmental Utilities and Osage Water
19 Company at the present time is that Environmental Utilities
20 is a holder of a secured note executed by Osage Water
21 Company for the sum of \$500,000, which is in default and
22 which is attempting to foreclose, which may result in
23 transfer of ownership of OWC's assets to Environmental
24 Utilities.

25 Other than this debtor/creditor relationship,

1 there's no legal relationship between the two entities.
2 However, Environmental Utilities has agreed to sell water to
3 OWC for the Eagle Woods distribution system.

4 Q. That was signed by yourself and that is your
5 signature, sir?

6 A. Yes.

7 MR. LORAIN: I have nothing further, Judge.

8 JUDGE WOODRUFF: All right. Now,
9 Mr. Williams, again changing hats a little bit, you have an
10 opportunity to make a statement for cross-examination if you
11 wish to.

12 MR. WILLIAMS: Can we break first?

13 JUDGE WOODRUFF: We can break first.

14 All right. We'll take a break and we'll come
15 back at 3:35.

16 (A BREAK WAS TAKEN.)

17 JUDGE WOODRUFF: Okay. Let's go back on the
18 record and resume, and when we left off, we had --
19 Mr. Williams was still on the stand. I'd given him a chance
20 to make a narrative statement for purposes of recross of
21 himself.

22 MR. WILLIAMS: I don't believe I have any,
23 your Honor.

24 JUDGE WOODRUFF: All right. Either Staff or
25 Hancock Construction have any redirect?

1 MR. KRUEGER: No, your Honor.

2 JUDGE WOODRUFF: All right. With that, then,
3 you may step down.

4 MR. WILLIAMS: Thank you.

5 JUDGE WOODRUFF: One more housekeeping item
6 while I'm thinking about it here.

7 I show that Exhibit 16, which was a Staff
8 report on complaint in WR-2000-557, which was offered by
9 Osage, was going to be -- copies provided late.

10 MR. WILLIAMS: I still haven't, your Honor.

11 JUDGE WOODRUFF: Just wanted to remind you.
12 Then Staff can call its next witness.

13 MR. KRUEGER: I was hoping to call Martin
14 Hummel. Is he in the vicinity?

15 Otherwise, I'll call Bill Meyer.

16 JUDGE WOODRUFF: It's up to you.

17 MR. KRUEGER: Call Bill Meyer.

18 (Witness sworn.)

19 JUDGE WOODRUFF: You may be seated and you may
20 inquire.

21 MR. KRUEGER: Thank you, your Honor.

22 WILLIAM A. MEYER testified as follows:

23 DIRECT EXAMINATION BY MR. KRUEGER:

24 Q. Good afternoon.

25 A. Good afternoon.

1 Q. State your name and address for the record.
2 A. William A. Meyer, Jr.
3 Q. By whom are you employed and in what capacity?
4 A. I'm employed by the Staff of the Missouri
5 Public Service Commission as a regulatory auditor.
6 Q. How long have you been employed by the Public
7 Service Commission?
8 A. Something in excess of 28 years.
9 Q. And what are your duties with the Commission?
10 A. I am responsible for supervising and assisting
11 with audits of the books and records of various utilities
12 operating within the state of Missouri.
13 Q. Briefly, what is your educational background?
14 A. I attended Central Missouri State University,
15 from which I had received a bachelor of science -- let me
16 get the exact title.
17 MR. WILLIAMS: Your Honor, the Respondent
18 would certainly stipulate that Mr. Meyer is a certified
19 accountant and an expert witness in this area, if that's
20 what the purpose of the testimony is offered for.
21 MR. KRUEGER: That is the purpose.
22 JUDGE WOODRUFF: Anyone have any objection to
23 that?
24 MR. LORAIN: Judge, I would stipulate that he
25 is an expert witness.

1 JUDGE WOODRUFF: So stipulated. We'll
2 recognize you as an expert.

3 BY MR. KRUEGER:

4 Q. Do you have any duties with regard to the
5 filing of annual reports with the Commission?

6 A. There are no direct duties that I have as part
7 of my job responsibilities. However, based on my past
8 experience here at the Commission, many Staff members, as
9 well as actually personnel from various utility companies
10 will contact me for questions regarding content of annual
11 reports and even interpretation of what was requested in
12 certain fields of an annual report.

13 Q. Prior to appearing here today, have you
14 reviewed Osage Water Company's compliance with the
15 requirements to file an annual report?

16 A. Yes.

17 Q. When is the annual report required to be filed
18 with the Commission?

19 A. The statute requires it to be filed by
20 April 15th of each calendar year.

21 Q. Now, for the report that was due on
22 April 15th, 2002, is that referred to as the 2001 annual
23 report?

24 A. Yes.

25 Q. Has Osage Water Company filed that report?

1 A. No.

2 Q. So how much past due is it at the present

3 time?

4 A. Six months.

5 Q. Has it filed the 2000 annual report?

6 A. No.

7 Q. And that was due on April 15th, 2001?

8 A. Yes.

9 Q. So that's about a year and a half late?

10 A. Yes.

11 Q. Has Osage Water Company filed the 1999 annual

12 report?

13 A. Yes. The 1999 annual report was submitted and

14 docketed in Case No. WE-2002-240.

15 Q. And do you know when that was filed?

16 A. I believe it was -- I want to say it was in

17 November of 2001.

18 Q. And it was due in April of 2000?

19 A. Correct.

20 Q. So it was about a year and a half late also?

21 A. Yes.

22 Q. Okay. Do you know when Osage Water Company

23 first began operating?

24 A. The first annual report that I saw was for the

25 calendar year 1989, and I've heard previous testimony and

1 saw references that they were first set up as a corporation
2 in 1987.

3 Q. To your knowledge, were any of the company's
4 annual reports filed on time?

5 A. Yes. Reports for 1989, 1990 and 1991 were
6 submitted on time or prior to the due date.

7 Q. How late was the 1998 annual report?

8 A. About four months.

9 Q. 1997?

10 A. Sixteen months.

11 Q. 1996?

12 A. Four months.

13 Q. 1995?

14 A. Fifteen months.

15 Q. 1994?

16 A. Twenty-seven months.

17 Q. 1993?

18 A. Thirty-six months.

19 Q. And 1992?

20 A. Forty-eight months.

21 Q. I believe you testified to the ones prior to
22 that were filed on time?

23 A. Correct.

24 Q. Do you have any duties with regard to the
25 company's obligation to pay an annual assessment to the

1 Commission?

2 A. No, though I'd say I am familiar with how the
3 assessment is calculated and I have talked to various
4 utility companies about their assessment amounts.

5 Q. Prior to appearing here today, have you
6 reviewed the Commission's records regarding the company's
7 compliance with the requirement to pay an annual assessment?

8 A. Yes.

9 Q. When is the annual assessment required to be
10 paid to the Commission?

11 A. The annual assessment is -- has a nominal due
12 date of July 15th of each calendar year. The utilities do
13 have an option to pay on a quarterly basis, and I believe
14 there's some circumstances where they can make monthly
15 payments.

16 Q. And so a report was due on July 15th of 2002?
17 I mean -- I'm sorry. The assessment.

18 A. Assessment was due, payment was due at that
19 point in time, yes.

20 Q. And is that the 2003 assessment? Is that what
21 it's called?

22 A. It's for fiscal year 2003, correct.

23 Q. Did the company pay that by July 15th?

24 A. No. And it's not been paid as of earlier this
25 week when I checked.

1 Q. It hasn't paid any part of it?
2 A. Correct.
3 Q. What is the balance due on the company's 2003
4 assessment?
5 A. \$3,657.34.
6 Q. Has the company paid the annual assessment for
7 2002?
8 A. Yes.
9 Q. When was that payment made?
10 A. The payment by our record was made in three
11 installments. The first installment of \$786.68 was paid on
12 November 29th, 2001. The second installment of \$600.00 was
13 paid on June 6th, 2002. And the final installment of
14 \$1,760.04 was paid on 7/15/2002.
15 Q. Were those payments timely?
16 A. No.
17 Q. Has the company paid the annual assessment for
18 2001?
19 A. Yes.
20 Q. And when was that payment made?
21 A. The first payment was made on October 3rd,
22 2001. It was equal to one-fourth of the total assessment
23 amount. It was \$402.18. A second payment was made on
24 November 6th, 2001 for the actual balance total of
25 \$1,760.04.

1 Q. Were those payments timely?

2 A. They were both past their due date, if you

3 look on a truly quarterly basis. However, by making the

4 balance of the second payment, that actually caught them up

5 and paid second, third and fourth quarters. So you could

6 say third and fourth quarters were in advance.

7 Q. But the first and second quarters were late?

8 A. Yes.

9 Q. Were you able to ascertain whether there was

10 any balance due for years prior to 2001?

11 A. I believe the company is paid up on all prior

12 years. There was a slight question in our records about

13 \$30-some due to a recalculation for fiscal year '98, but I

14 have been unable to determine for sure if it was actually

15 refunded or not.

16 Q. Payments for years prior to 2001 generally

17 made on time?

18 A. My notes show that for fiscal year 1993 they

19 were on time. Fiscal year 1994, they were five days late.

20 Fiscal year 1995, 1996, 1997 and the first two quarterly

21 payments for 1998 were all on time. The payments --

22 remaining payments for fiscal year 1998 and fiscal year 1999

23 were past due their respective due dates.

24 Q. Thank you.

25 A. They have been paid.

1 MR. KRUEGER: Thank you. That's all the
2 questions I have, your Honor.

3 JUDGE WOODRUFF: Okay. Then for cross, we'll
4 begin with Public Counsel.

5 CROSS-EXAMINATION BY MS. O'NEILL:

6 Q. Good afternoon, Mr. Meyer.

7 Are these annual reports that you testified
8 about submitted on a standardized form?

9 A. Yes.

10 Q. And is that form readily available to utility
11 companies?

12 A. The Staff for the Commission actually mails
13 out a blank copy of the annual report form to each utility,
14 usually early January of each year.

15 Q. And do you believe that the annual report is
16 something that can be completed by even a small company with
17 little or no outside assistance?

18 A. Generally speaking, I'm saying yes.
19 Obviously, it kind of depends on how you've kept your
20 records during the year.

21 Q. And regarding assessments, how are -- those
22 are calculated by the Public Service Commission and the
23 amount is sent to the company; is that correct?

24 A. Yes. The assessment amounts are based in part
25 on a statement of revenue form that is mailed to the

1 companies probably early February and due back by March 31st
2 each year. Assessments are generally then calculated for
3 them and an actual bill is sent to each utility late June.

4 Q. And does the Commission send a bill to a
5 utility if they haven't gotten that revenue form back?

6 A. Yes. If they have not filed their statement
7 of revenue form, first Staff will make some attempts to try
8 to get the information. Failing to get information, there
9 will be estimates -- Staff will make an estimate of what
10 their annual revenue was for the previous year and base the
11 assessment in part on that calculation.

12 Q. And would that assessment be based on the
13 previous history of that company's revenue?

14 A. In part. Again, it would be -- generally,
15 it's up to the manager of the respective utility department
16 to come up with an estimate of what they think the revenues
17 have been, whether there's possibility of a growth or
18 decline in revenues.

19 Q. So if a company did have, say, a decline in
20 revenues, it might be very advantageous of that company to
21 make sure that that revenue form got mailed in on time?

22 A. Yes.

23 Q. When you were reviewing the records, did you
24 have a chance to look at whether or not revenue forms had
25 been returned on time for Osage Water Company?

1 A. We do not have records to say whether it was
2 filed on time or not. I will note that for -- the form that
3 was due this past March has never been submitted, so the
4 amount of the assessment, current assessment was an
5 estimated amount.

6 MS. O'NEILL: Thank you. I have no further
7 questions.

8 JUDGE WOODRUFF: Yes?

9 AUDIENCE MEMBER: Mr. Loraine's with his
10 client. He informed me to tell you that he has no questions
11 for Mr. Meyer.

12 JUDGE WOODRUFF: Okay. We're going to Osage
13 Water.

14 MR. WILLIAMS: No questions, your Honor.

15 JUDGE WOODRUFF: Okay. Questions from the
16 Bench?

17 QUESTIONS BY COMMISSIONER MURRAY:

18 Q. Mr. Meyer, you're just here to testify as to
19 the status of the company's compliance with the annual
20 report filing requirements and the assessment requirements;
21 is that right?

22 A. As far as I know, yes.

23 COMMISSIONER MURRAY: I think it's been
24 covered. Thank you.

25 JUDGE WOODRUFF: All right. I have no

1 questions.

2 Any recross?

3 MR. WILLIAMS: No, your Honor.

4 JUDGE WOODRUFF: Any redirect?

5 MR. KRUEGER: No, your Honor.

6 JUDGE WOODRUFF: You may step down.

7 You can call your next witness.

8 MR. KRUEGER: Martin Hummel.

9 (Witness sworn.)

10 JUDGE WOODRUFF: You may inquire.

11 MR. KRUEGER: Thank you.

12 MARTIN HUMMEL testified as follows:

13 DIRECT EXAMINATION BY MR. KRUEGER:

14 Q. State your name and address for the record.

15 A. My name is Martin Hummel. I -- my address is

16 P.O. Box 360, Jefferson City, Missouri.

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

18 A. I'm employed as an engineer with the water and

19 sewer department with the Missouri Public Service

20 Commission.

21 Q. What are your duties in that position?

22 A. My primary duties are to look at the water and

23 wastewater facilities and the operation of those facilities.

24 Q. What is your educational background?

25 A. I have a BS degree in education and a BS

1 degree in engineering from the University of Missouri -
2 Columbia.

3 Q. Please briefly describe your professional
4 experience.

5 A. Prior -- prior to my employment with the
6 Missouri Public Service Commission, which started in 1989, I
7 had experience with research with a university. I had some
8 experience with a consulting engineering firm. I think
9 that's adequate.

10 Q. Okay. Do your duties require you to go out
11 into the field to investigate problems and to determine
12 whether regulated water and sewer companies are complying
13 with Commission requirements?

14 A. Yes.

15 Q. Are you familiar with the interruption of
16 service that occurred at Broadwater Bay that there's been
17 testimony about in this case?

18 A. Yes, I am.

19 Q. When did that outage occur?

20 A. My recollection, I think my first awareness of
21 it was August -- I'm going to have to think about it just a
22 little bit -- 19th, I think.

23 Q. Did you investigate that interruption of
24 service?

25 A. Yes, I did.

1 Q. When did you investigate?

2 A. Primarily I was checking on that problem on

3 the same day that the City was reconnecting its emergency

4 service to provide water to those customers at Broadwater

5 Bay.

6 Q. And has that outage now ended?

7 A. Yes, the outage to those customers has ended.

8 Q. And has service been restored?

9 A. Service has been restored. There's still an

10 outstanding problem with the major leak on the system.

11 Q. Have you visited the Broadwater Bay well site

12 since service was restored?

13 A. I have been by that site on a couple of other

14 occasions, not inside the wellhouse, but just by.

15 Q. Since service was restored?

16 A. Yes.

17 Q. When was your most recent visit?

18 A. My most recent visit was last Friday, which

19 would have been October 25th.

20 Q. Okay. At that time, did you observe any

21 problems in the operation of the system?

22 A. I simply observed whether or not the pump was

23 operating and looked -- glanced at the electric meter. I

24 was not inside the wellhouse. And I also looked at the flow

25 of water coming from the leak on the system.

1 Q. Tell me about that leak.

2 A. The leak is a very large leak for that
3 particular system. It flows off of a -- the piping in
4 Mariner's Cove and goes out through some -- through the
5 weeds. The company has now marked that leak.

6 The size of the leak may be something to the
7 tune of half the capacity of the well. Consequently, when
8 the well is pumping, of course, a very large portion of that
9 water is simply going out on the ground.

10 Q. Do you know how long that problem has existed?

11 A. From records I have seen, I estimate that that
12 has been going on for over three months.

13 Q. How are you able to determine that or make
14 that estimate?

15 A. I've looked at records on -- from the master
16 meter on the well and the customer meter records.

17 Q. Now, would it be difficult for a water company
18 that's providing safe and adequate service to even know that
19 they are losing water to leakage?

20 A. No, not to this extent. They should have been
21 able to observe this in a fairly short period of time,
22 perhaps a week.

23 Q. Now, would it be difficult for a company
24 that's providing safe and adequate service to find a leak of
25 this magnitude?

1 A. Not a leak of this magnitude.

2 Q. Do you know when the company did find the leak
3 or did you know -- do you know that the company has found
4 the leak?

5 A. Shortly after we had had a prehearing on
6 another case and we had asked Mr. Mitchell about this leak.
7 That prehearing had to do with the complaint case on the
8 water outage at Broadwater Bay. At that time we discussed
9 the problem with him and the issue of finding the leak and
10 why the company hadn't found the leak, and tried to explore
11 other details about finding that leak.

12 And one of the thoughts, I think, was that if
13 that leak was finally taken care of, that the precariousness
14 of those customers receiving service would largely be
15 abated. We questioned Mr. Mitchell at that time with regard
16 to our assisting, the water and sewer department staff
17 assisting finding that leak, and asked him about his
18 participation in that process. Specifically, at one point I
19 asked him if he wished to even be notified if we were in
20 contact with Jeff Smith down there to try to find that leak.

21 I'm trying -- without looking at a record, I'm
22 not exactly sure when that prehearing was.

23 Q. Can you estimate about how recent -- about how
24 long ago that was?

25 A. That prehearing was on the 15th.

1 Q. 15th of October?

2 A. 15th of October. And within the next few days
3 or by that next Monday, I called Jeff Smith to ask him about
4 the leak and whether or not -- I was anticipating trying to
5 help find the leak. At that time he suggested to me that he
6 thought he had found the leak. So except for maybe some
7 further verification, I assumed at that point that the leak
8 had been found.

9 Subsequently, when I went down to that area, I
10 checked in that general area where we thought the leak might
11 even be, and he did have the -- he had the leak flagged at
12 that point.

13 Q. Do you know when that -- when that was when he
14 told you that he had -- when you discovered that he had it
15 flagged?

16 A. When I actually checked to see if it was
17 flagged, I think that was the 23rd of October. It would
18 have been last Wednesday.

19 Q. But as of October 15th they had not located
20 the leak; is that correct?

21 A. That was my understanding, yes.

22 Q. And as of the time that service was
23 reconnected at Broadwater Bay in August, did the leak exist
24 at that time?

25 A. Apparently it -- yes, it did exist at that

1 time.

2 Q. So between approximately August 22nd and
3 October 15th, there was an undetected leak that was
4 amounting to at least as much as half of the flow from the
5 well; is that correct?

6 A. Yes.

7 Q. Do you know why the company was not able to
8 find the leak for about six or seven weeks after service was
9 restored at Broadwater Bay?

10 A. Well, I have my opinion, due to the fact that
11 there's only one operator for the company and he has -- is
12 stretched very thin in terms of taking care of details and
13 checking on meters and doing construction and everything
14 else that needs to be done with the various systems that the
15 company presently operates.

16 Q. Could a leak such as this cause problems with
17 the operation of the equipment at the Broadwater Bay well in
18 the future if it's not corrected?

19 A. Yes, I do believe that it could cause -- the
20 system is not designed to function with this kind of leak.
21 It wasn't designed prior to it being -- you know, prior to
22 the outage instance, it was a major contributing factor, I
23 believe, to the failure of that well.

24 Q. So then is it your testimony that the leak
25 probably existed prior to the failure of the well?

1 A. Yes, most definitely it did.

2 Q. And the leak contributed to the failure of the
3 well?

4 A. I do believe it did.

5 Q. In the course and scope of your work with the
6 Commission, do you have the opportunity to monitor the
7 progress of Osage Water Company's construction projects?

8 A. I do to the limited extent that I can have the
9 time to check on them and to the extent that I can gather
10 the information to know that construction is taking place.

11 Q. Are you able to observe whether these projects
12 are generally completed on schedule?

13 A. Yes, I have opportunity to make that
14 observation.

15 Q. And what have you found?

16 A. Generally, they are not completed on schedule.

17 Q. How lengthy are the delays? Are they
18 significant or small?

19 A. Sometimes they are very lengthy. It depends
20 on what you might use as when the starting point should have
21 been. There is several -- I guess I would term that --
22 there's at least a few areas of construction right now.

23 MR. WILLIAMS: Your Honor --

24 JUDGE WOODRUFF: I'm sorry, we have an
25 objection.

1 MR. WILLIAMS: Your Honor, I'm going to object
2 to this witness testifying to his opinions and conclusions
3 regarding vague, unidentified construction projects and
4 delays. If this witness has facts for the Commission from
5 which the Commission can draw a conclusion or opinion or he
6 can support his conclusions and opinions with facts, that
7 would be different, but I'm hearing testimony that is solely
8 opinions and conclusions, and that's objectionable.

9 JUDGE WOODRUFF: Response?

10 MR. KRUEGER: I'll rephrase the question.

11 BY MR. KRUEGER:

12 Q. Mr. Hummel, can you cite a specific instance
13 where there has been what you consider to be an extensive
14 delay?

15 A. Yes. The recirculating sand filter at
16 Cimarron Bay, Harbor Bay area is still not complete, and
17 last time that I was by there, which was last Friday, it had
18 a problem as far as water overflowing in the tank and then
19 saturating the soil next to the tank.

20 This recirculating sand filter at Route KK or
21 the Golden Glade area is still incomplete, has been in
22 construction for at least a year. This is the Phase 2
23 portion of that construction.

24 The well at Chelsea Rose still does not have
25 the tank installed, and consequently that well is

1 short-cycling.

2 The tank at Cedar Glen has very recently been
3 installed by the developer. That tank sat next to the
4 facilities waiting for installation for a very extensive
5 period of time, over several months, if not more than a
6 year.

7 Q. Okay. Let's talk, then, for a minute about
8 Cimarron Bay construction. Do you know when that
9 construction began?

10 A. I don't think I could give you a specific
11 date. It's got to be -- it has to be over a year by this
12 point in time.

13 Q. Do you know when construction was scheduled to
14 be completed?

15 A. I don't have the specific date on that. The
16 developer of Harbor Bay Condominiums has been anxious for
17 service for quite some time.

18 Q. What remains to be done there?

19 A. I don't know if I can specify all the details
20 that need to be completed. There a lot of the piping going
21 from the tanks to the filter are uncovered yet at this
22 point. I haven't had the opportunity to make an inspection
23 of that facility with the company or to look at plans and
24 really look at each of the details, in terms of what still
25 needs to be completed at that site.

1 Q. Have company personnel told you when
2 construction may be completed at that site?

3 A. I don't think -- no. The company personnel
4 has not given me a specific date. This is something, as far
5 as my observations are, is that they work on this when they
6 can get to it.

7 Q. Do you have an opinion as to why the
8 construction is being delayed there?

9 A. In my opinion, they simply don't have the
10 personnel to get the job done.

11 Q. Okay. Now, with respect to Golden Glade, you
12 talked about problems with construction of the recirculating
13 sand filter?

14 A. Yes.

15 Q. What remains to be done there?

16 A. My understanding as of today -- and again, I
17 haven't had the opportunity to do a detailed inspection.
18 This is by way of my making a very quick look at the
19 facility. I know there's some fencing that still needs to
20 be completed. There is a -- as I understand it, there is a
21 leak on one of the filters that needs to be corrected, and I
22 think the -- I think some of the electrical and pumping
23 problems have recently been taken care of, but that facility
24 is not complete yet.

25 Q. Do you know when construction was scheduled to

1 be completed there?

2 A. No. There again, I do not know when -- I have
3 not seen a very specific schedule. I don't know that one
4 exists in terms of a schedule for completion. There again,
5 the one operator for OWC works on that facility when he can
6 get to it.

7 In terms of -- I'm picturing this in my mind
8 as I'm trying to think of the different things that I'm
9 aware of that have not been completed. The tank that -- the
10 main recirculation tank is not covered, and it is my
11 understanding that it is not anchored, and it's sitting in a
12 very large hole in the ground. There is the prospect of
13 adding a second tank in that area, I presume, but there's a
14 fair amount of incomplete ground work that would have to be
15 done before that facility is -- would really be called
16 complete.

17 Q. Now, this is an expansion of the existing
18 facility there at Golden Glade; is that right?

19 A. Yes. It's my understanding that this is
20 Phase 2 of the construction of that facility to serve Golden
21 Glade and Eagle Woods.

22 Q. Is there a need for that facility to be in use
23 and operating in order to serve the customers there?

24 A. It is my understanding that there is need,
25 yes, right now for that expansion.

1 Q. Do you have an opinion as to why there has
2 been a delay in the completion of construction?

3 A. In my opinion, it's a matter of not having
4 enough staff or the wherewithal to get the job done.

5 Q. Have company personnel told you when
6 construction will be complete?

7 A. No.

8 Q. Now, with regard to the well at Chelsea Rose,
9 what -- do you know when construction was expected to be
10 complete there?

11 A. No. I have not seen something definitive
12 saying when that well will be complete and specifically when
13 that tank will be put online.

14 Q. Is it needed now?

15 A. Yes, it is.

16 Q. What remains to be done?

17 A. The tank is laying proximate to the wellhouse,
18 and that tank needs to be set with the end of it inside of
19 the wellhouse and then plumbed in to the piping system going
20 from the well.

21 Q. Have company personnel told you when
22 construction will be complete?

23 A. No, they have not.

24 Q. Do you have an opinion as to why construction
25 has been delayed?

1 A. I don't think the company has the personnel or
2 the capability of getting the job done.

3 Q. With regard to the tank at Cedar Glen, do you
4 know when construction was expected to be complete there?

5 A. I'm not sure what that schedule was supposed
6 to be. The tank I would have thought would have been in
7 place for the summer season. That hasn't happened, but as
8 it stands, as I understand it, the large tank that I had in
9 mind is in place now. And as I understand, the developer
10 did that work.

11 I don't know if that facility has actually
12 been inspected by any public drinking water program DNR
13 folks or whether it's been inspected by a company engineer
14 or whether any as-built drawings have been made of that.

15 Q. Is that tank required for service to the
16 customers at Cedar Glen at the present time?

17 A. It is to the extent that, in the process of
18 putting that tank in place, they took one of the ground
19 storage tanks away. At the very moment, as we speak, the
20 level of water usage is relatively low at a condominium
21 project like that.

22 So if you want to get into specifics in terms
23 of the actual function of the system, it probably doesn't
24 need that large of a tank right at this very moment, but the
25 system, of course, has to be built for peak load and, yes,

1 it does need that tank for being built for peak loads.

2 Q. Have company personnel told you when
3 construction will be complete?

4 A. No, they have not.

5 Q. Do you have an opinion as to why construction
6 has been delayed?

7 A. It's the same as what I've mentioned so far,
8 in terms of the company having only one operator. And the
9 one other consideration in this is the ability of the
10 company to actually go out and contract with outside
11 contractors to get some of this work done, due to the fact
12 that the -- there are a number of contractors that are
13 already owed money. I think they would probably have a
14 difficult time hiring outside contract help.

15 Q. Aside from the delays that we've just been
16 talking about, are there other construction problems that
17 the company experiences?

18 A. There has been problems with the construction
19 in the past, such as issues of proper separation between
20 water lines and sewer lines. There are some issues with
21 regard to having as-built plans for some of the OWC
22 facilities, which is, in effect, one of the paperwork
23 details that you need to take care of on any of these
24 public-works-type projects.

25 Q. Now, have you recently visited Cimarron Bay?

1 A. I stopped by Cimarron Bay last Friday.

2 Q. Did you observe any problems there?

3 A. This was a fairly brief visit, and the company

4 had -- someone had placed a pump in the tank to pump the

5 tank that had previous -- that had been overflowing two days

6 previous. And they were -- this was a simple pump with a

7 garden hose on it, and the garden hose was pumping that

8 water back on top of the filter.

9 Other than that, I don't -- I didn't notice

10 any differences much.

11 Q. Does this place at risk the company's ability

12 to continue to provide safe and adequate service there?

13 A. Yes, I consider it to be at risk, because I'm

14 not confident that -- that the system will function

15 properly. I think it is my opinion that there is a leak in

16 the recirculating sand filter at this site also, and I

17 haven't seen this facility function in, really, a manner

18 that I would expect it to function if it was properly

19 operating.

20 Q. Might this result in an interruption of

21 service at some time in the future?

22 A. To the extent that it might result in

23 wastewater being discharged without being properly treated,

24 yes, that very well could occur.

25 Q. Have you visited the Osage Beach facility

1 recently?

2 A. I've been by different Osage Beach facilities
3 the last week. I was not -- I mean, I didn't have access to
4 go inside of wellhouses, but just to drive by and take a
5 look at what I can see without getting inside the wellhouse.

6 Q. Did you observe any problems with the
7 operations of any of those facilities?

8 A. The High Point Shopping Center tank still has
9 a leak. And, of course, the system, the High Point Shopping
10 Center is in Osage Beach north. The Pizza Hut well is in
11 Osage Beach south, and it is the one where I'm rather
12 concerned about the size of the leak off of that well yet.

13 Q. That's the one that's often been referred to
14 as Broadwater Bay?

15 A. Yes, that provides service to Broadwater Bay.

16 Q. Do these problems, do these leaks place at
17 risk the company's ability to continue to provide safe and
18 adequate service to the customers in those areas?

19 A. Yes, they do. And the other troubling thing
20 about this is that the failure of the Pizza Hut well that
21 serves Broadwater Bay, and then the subsequent discovery
22 that the Shoney's well had failed -- or actually they may
23 have actually discovered that shortly before that, I'm not
24 exactly sure on the timing -- those failures should not have
25 been such a big surprise if those wells were being properly

1 operated and maintained.

2 It's not usual or routine for wells to be
3 going out on systems like this. There are observations to
4 be made that would help whoever's in charge of those wells
5 to recognize when they've got a problem coming.

6 Q. Have you visited the Cedar Glen service area
7 recently?

8 A. It's been a little while longer since I've
9 been to the Cedar Glen facility. I think that was the very
10 first part of October that I may have slid by there.

11 Q. Did you observe any problems in the operation
12 of the facilities at Cedar Glen?

13 A. No, not at -- not at that time. I did not
14 have access to inside the wellhouse. I did observe, of
15 course, that the tank was in place and -- well, at the
16 recirculating sand filter, which is the sewer service at
17 Cedar Glen, there is a leak at that sand filter. And it
18 is -- as far as I can tell, that still has not been
19 corrected.

20 Just to summarize, every one of their
21 recirculating sand filters, I believe, does have a -- each
22 of them has a leak in it.

23 Q. And does that jeopardize the company's ability
24 to provide safe and adequate service there?

25 A. It does to the extent that the system is

1 simply not operating as designed.

2 Q. Have you visited Chelsea Rose service area
3 recently?

4 A. It's been -- I'm not sure when the last time I
5 was by the Chelsea Rose system, unless I -- I may have been
6 by there very briefly early in October, at which time I
7 would -- I observed that the tank was not installed at the
8 wellhouse.

9 I did not have access on the sewer system,
10 although in past it's been my past experience that the sewer
11 system has only -- this is the sewage treatment plant at
12 Chelsea Rose has only one motor blower set up functioning,
13 and I suspect it still probably has only one motor blower
14 set up functioning. And it's supposed to have a duplex
15 system to provide the reliability that's needed.

16 Q. Does this jeopardize the company's ability to
17 continue to provide safe and adequate service there?

18 A. Yes.

19 Q. Have you visited the company's facilities on
20 Route KK recently?

21 A. Yes. I'm trying to think of the -- I'm having
22 a little bit of trouble remembering the timing of my last
23 visit.

24 Q. Can you give an approximation?

25 A. I think I went by there last week, if my

1 memory's serving me correctly. If not, I've been by there
2 this month.

3 Q. Did you observe any problems in the operation
4 of the facilities there?

5 A. This is the facility at -- remind me which
6 facility.

7 Q. Route KK.

8 A. The Route KK system that serves Eagle Woods
9 and Golden Glade?

10 Q. Correct.

11 A. The operation of that I still consider to be
12 very precarious. There are things that need to be
13 completed, such as fencing, but -- and there's the leak in
14 the sand filter. There has been some improvements in terms
15 of some of the work having been done, and I am partly saying
16 that because I had asked Keith Forck with Department of
17 Natural Resources about that facility.

18 But I am very concerned that something's going
19 to happen to that facility in terms of the tank and how it
20 is situated and maintained.

21 Q. And does that jeopardize the company's ability
22 to continue to provide safe and adequate service to the
23 customers there?

24 A. Yes, it does.

25 MR. KRUEGER: That's all the questions I have,

1 your Honor.

2 JUDGE WOODRUFF: All right. Then for cross,

3 we'll begin with Office of the Public Counsel.

4 CROSS-EXAMINATION BY MS. O'NEILL:

5 Q. Good afternoon, Mr. Hummel.

6 A. Good afternoon.

7 Q. I want to start kind of where you stopped here

8 with Mr. Krueger, and that's at Route KK. And that's the

9 service system that serves Eagle Woods and Golden Glade; is

10 that right?

11 A. Yes, it does.

12 Q. Now, are you aware of the problem over in that

13 area with the lift station that happened this week?

14 A. Yes, I did hear about that yesterday.

15 Q. You haven't had a chance to go down and check

16 that out for yourself; is that right?

17 A. No, I have not.

18 Q. Part of that's because you've been here

19 waiting to testify?

20 A. Yes.

21 Q. Okay. And is that one of the things that you

22 were worried about because of the precarious nature of the

23 way that system was set up right now?

24 A. I'm very concerned about that. That should

25 not be routine at all that a lift station fails without some

1 way for an operator to know about it very quickly, because
2 that's not only a water pollution hazard, but that is a
3 health hazard. We're talking about water being discharged
4 away from the system that is untreated wastewater.

5 Q. And this is actually a separate problem from
6 the leak in the sand filter out there; isn't that right?

7 A. Yes, it is.

8 Q. Now, do you know whether or not any of the
9 other leaking treatment plants, sewage treatment plants that
10 you've testified are leaking outside of the plant at this
11 point in time, are the leaks contained within the treatment
12 plant?

13 A. As I understand, let's see, the recirculating
14 sand filter at Cedar Glen, that leak does go outside the
15 fence, but as -- to be fair about this, you need to
16 understand that that leak in that recirculating sand filter
17 would be water that has at least gone through the filter
18 once. So it's not the same level of hazard as a lift
19 station.

20 Notwithstanding that a recirculating sand
21 filter cannot function properly, it -- very much of that
22 water is getting away from that filter and cannot be
23 recirculated.

24 Q. So even if what is making it out right now is
25 at least partially treated water, that still is potentially

1 hazardous, especially if the leak continues; is that fair to
2 say?

3 A. The real hazard is in the proper operation of
4 the facility.

5 Q. And the leak's going to hurt the proper
6 operation; is that right?

7 A. In -- in this case, it would hurt that proper
8 operation as much as anything by causing additional problems
9 for the operator and greater demand for his time.

10 Q. Now, on the Shoney's well, you testified that
11 if that well had been properly maintained, they should have
12 been able to see the problems coming; is that right?

13 A. Yes, I do believe that.

14 Q. In fact, if the well had been properly
15 maintained, would they maybe have been able to avoid at
16 least most of those problems with that well?

17 A. I think they could have judiciously planned
18 for additional maintenance to be made on that well, but it
19 is my understanding that -- my perception of what was taking
20 place was simply that with the loss of customers in Osage
21 Beach, the company had made the decision to do the absolute
22 bare minimum in terms of even checking on any of these
23 wells, and I think you see the result in what took place at
24 Broadwater Bay and what took place at Shoney's.

25 Q. And so Jeff Smith, who's the only person

1 they've got out there checking them, just wasn't making the
2 rounds often enough to do maintenance and to keep an eye on
3 things?

4 A. My perception is that he would not -- it's a
5 combination of whether or not he would get by there, and
6 also the question of the type of observations that he would
7 make when he's there.

8 Q. Okay. And you also mentioned just now the
9 Broadwater Bay situation. There's a major leak still on the
10 Broadwater Bay system, even though the pump's been repaired,
11 right?

12 A. Yes.

13 Q. Now, you said that you thought that leak had
14 been there at least three months before the pump broke?

15 A. Yes, as -- as I recall looking at the record,
16 I think it could have started at least by June of this year.
17 So it's at least three months.

18 Q. And you --

19 A. Maybe four.

20 Q. And based -- you say this is a pretty major
21 leak, right?

22 A. It is for that system. It is a very
23 major leak. I would term it be to the tune of about 40 to
24 50 gallons per minute or the equivalent, if you want to
25 visualize it, of possibly five garden hoses at an

1 individual's house turned on full blast.

2 Q. Now, with that kind of a leak on that system,
3 could that leak itself have contributed to the problems with
4 the pump at the Broadwater Bay well?

5 A. Yes, it very well could have.

6 Q. Now, when you -- since the repairs have been
7 made to the pump, but they still have the problem with the
8 leak, have you or anybody else on Staff offered to assist
9 Osage in locating the leak or investigating anything about
10 the leak?

11 A. Yes. I have -- back in August when I was at
12 the site with the operator, when the City of Osage Beach was
13 reconnecting their line, at that time I had talked to Jeff
14 about looking for that leak and was concerned about that
15 issue.

16 One of the things I realized was that the
17 company can't afford to buy water from the City. It wasn't
18 a question of the cost -- per-thousand-gallon cost. It was
19 a question that 90 percent of the water was going out on the
20 ground, and you can't afford to buy water and just have it
21 go out on the ground.

22 So at that time I even offered that, you know,
23 maybe we should do some looking for this leak. And we
24 really had our hands full on that particular day, because
25 the actual reason that I was going down that day originally

1 wasn't to deal with the problems at Broadwater Bay, but due
2 to the --

3 Q. To the emergency?

4 A. -- emergency.

5 I felt that we needed to deal with that part
6 of it. We were also expecting to go over to Eagle Woods to
7 flush that water system.

8 But in any event, we took a very quick glance
9 around to see if we could see a leak, but we did not look at
10 it very thoroughly because the immediate concern was to try
11 to make sure that the system at Broadwater Bay was properly
12 flushed, and to also make sure that we didn't have a vacant
13 -- a homeowner that wasn't home that when the water sys--
14 water flow resumed, wouldn't have a flooded basement. So we
15 wanted to make sure that none of those homes had a problem
16 as that water was turned on.

17 Q. So you have offered assistance in various
18 situations to Osage Water yourself, and I presume you know
19 of other instances where other Staff members have offered
20 them assistance to help out with these problems?

21 A. Yes. In all fairness, this is somewhat
22 limited simply because we're not that big of a staff, and it
23 tends to be when we have -- when we happen to be in the area
24 or if we're down there to make an inspection with them, that
25 might be the time that we would have the opportunity to

1 maybe give some assistance.

2 Q. And sometimes you find out about possible
3 problems from customers, as well as from doing your own
4 checking out of the systems; is that also fair to say?

5 A. Yes, that is very true.

6 Q. Now, in the past you've investigated
7 complaints from customers about things like complaints that
8 the water lines weren't placed deep enough. Do you recall
9 that at Cimarron Bay?

10 A. I remember some -- there were questions that
11 were brought to our attention with regard to the placement
12 at water lines at Cimarron Bay.

13 Q. Okay. And when you have investigated customer
14 complaints and found problems and informed the company of
15 what you found out, have those problems always been
16 corrected quickly?

17 A. No, they haven't been corrected very quickly.
18 And that brings to mind in particular at Cimarron Bay, which
19 was referred to in this hearing that we're -- I can't think
20 of the name that was mentioned, but the system at Cimarron
21 Bay, the effluent from the treatment plant goes down and
22 surfaces in a couple of customers' yards. And one of the
23 customers' name is Frank Meyer. He has been very patient.

24 I've looked at this problem with the company.
25 I've looked at this problem on several occasions. This

1 thing is -- this thing has been going on for more than a
2 year, and the actual cause of the problem has not been
3 determined, nor has anything been changed in terms of the
4 piping that is the cause of this problem. And Mr. Meyer is
5 still waiting to see his yard dry up like it should. He has
6 lost three trees out of this because of this.

7 This is due to what I perceive to be some poor
8 construction in terms of that water line, and that's my
9 perception of it at this time. The last time that I had a
10 chance to look at that, which was last Wednesday, I was --
11 I've seen various things when I've checked on this, and
12 amazingly the water wasn't -- it was wet, but there wasn't
13 any water flowing.

14 This water is supposed to come through the
15 drain holes in the seawall, the way it's set up. This is a
16 house that's right on lake level. That baffled me, so I
17 went up to look at the facility at that point, and that is
18 when I discovered that the main -- one of the main
19 recirculation tanks was overflowing and the water was coming
20 out of the tank.

21 It was not apparently flowing offsite
22 particularly. It was saturating the soil next to the tank.
23 This is either untreated or very septic water. It's water
24 that's not being -- this is water that was not going through
25 the sand filter like it should.

1 Q. And --

2 A. So that was -- that ended up being the reason

3 why this -- the water wasn't going across the customer's

4 lawn at this particular time, was simply because the

5 wastewater facility was not functioning, and it was,

6 therefore, not discharging any.

7 Q. So when you were going to investigate the

8 status on a recurring long-term problem, you found yet

9 another problem with the treatment plant?

10 A. Yes, I did.

11 Q. And that problem that you found with the

12 treatment plant could constitute a health hazard to

13 customers?

14 A. Yes, it very well could have. I did call the

15 company late that afternoon, after I got back here to the

16 office, and alerted them to the fact that someone needed to

17 go check on this, and see what was -- why it was overflowing

18 that tank.

19 Q. And are the things that you've described here

20 this afternoon some of the reasons behind your belief that

21 the continued provision of service to customers by this

22 company is precarious?

23 A. Yes, it is.

24 MS. O'NEILL: Thank you. No further

25 questions.

1 JUDGE WOODRUFF: All right. Then for Hancock
2 Construction?
3 MR. LORAIN: No cross-examination, Judge.
4 JUDGE WOODRUFF: For Osage?
5 MR. WILLIAMS: Thank you, your Honor.
6 CROSS-EXAMINATION BY MR. WILLIAMS:
7 Q. Mr. Hummel, let's start with the water leak
8 serving the Broadwater Bay Subdivision.
9 A. Yes.
10 Q. Were you able to make any determination what
11 might have caused that leak originally to occur?
12 A. I don't think it has been -- there's not
13 enough work been done there to find an actual cause of the
14 leak.
15 Q. Would you agree with me that the leak is in
16 the vicinity of a location where the apartment project
17 disconnected from the company's water system and extended
18 service lines to the City's water system?
19 A. By virtue of the fact that it's on that
20 system, it has to be at least in the area, because it's in
21 the area of Mariner's Cove. It is -- the leak is just past
22 the buildings that are currently served, so I wouldn't -- if
23 you're alluding to whether or not one would make a
24 determination that this leak could have been caused by the
25 work that the City has done, I think there's always that

1 possibility, but it's not necessarily a conclusion I would
2 draw at this point in time.

3 Q. Okay. And if you were told that the leak
4 commenced at approximately the same time that the apartment
5 projects switched from the company's water system to the
6 City's water system, would that change your conclusion?

7 A. It -- it would cause me to want to make some
8 further investigation about that type of thing.

9 Q. Okay. Mr. Hummel, you're familiar with the
10 operations of Osage Water Company for the past several
11 years, are you not?

12 A. Yes.

13 Q. And you're aware that in the past the company
14 had more than one operator in the field, are you not?

15 A. As I understand it, there was more than one
16 operator by virtue of contract operation with Water Lab
17 Company.

18 Q. Well, let's go back to 1999. Do you recall
19 the company employing a gentleman by the name of Bob Mueller
20 in addition to Jeff Smith?

21 A. I wouldn't be able to put the time frame on
22 it, but I do recognize that at some point there was more
23 than one operator.

24 Q. Okay. And you know that the Staff went
25 through the company's records and established a list of what

1 they called adjusted jurisdictional expenditures in the most
2 recent water and sewer rate cases?

3 Do you recall that?

4 A. Not very specifically.

5 Q. Let me hand you what purports to be Staff
6 accounting schedules in Case WR-2000-557 and SR-2000-556,
7 and ask you to look at Accounting Schedule 9-1 and see if
8 that would refresh your recollection on those points.

9 A. What are you wanting me to -- are you wanting
10 me to do accounting work or what are you wanting me to look
11 at?

12 Q. Well, did you participate in that case?
13 You gave testimony.

14 A. I didn't participate in this case as an
15 accountant.

16 Q. Did you give testimony in the case?

17 A. Do you have a copy of my testimony in this
18 case?

19 Q. I don't think I have it with me. Do you
20 remember?

21 A. I don't know off the cuff by looking at this.
22 This was a revenue case. So I mean, just off the cuff, I
23 don't know if I --

24 Q. Well, do you see on the pages that are open
25 there a budgeted item for O and M?

1 MS. O'NEILL: Your Honor, I'm going to object
2 at this time.

3 THE WITNESS: Yes.

4 MS. O'NEILL: It doesn't appear that this
5 witness has knowledge of this document and can't testify
6 regarding the contents of this document.

7 There may be another witness later who can.

8 JUDGE WOODRUFF: Response?

9 MR. WILLIAMS: Your Honor, this is
10 foundational to a question of whether there was a
11 recommendation for a change in the number of operators in
12 the most recent rate cases, and what amounts were
13 recommended by Staff with respect to O and M employees.

14 JUDGE WOODRUFF: He's not asking this witness
15 to verify anything in this document at this point.

16 At this point, I'm going to overrule the
17 objection and you can go ahead and answer if you can.

18 THE WITNESS: Okay. I presume you're wanting
19 me to see that there is only enough money here for one
20 operator?

21 BY MR. WILLIAMS:

22 Q. Will you agree with that, that that's what's
23 on those schedules?

24 A. That very well may be true, but as -- I'm also
25 aware of at this time, the operator -- looking at operating

1 expenses here, and the operators at that time were not only
2 doing the operating, but they were also doing construction
3 for -- at least for the company if not for other parties.

4 And so it there's some reasons why they
5 definitely couldn't have gotten along with only one
6 operator, when you're trying to not only operate the
7 facilities but also do construction, which would then show
8 up as a cap-- as an expense in plant.

9 Q. Mr. Hummel, didn't the Staff make adjustments
10 to the company's actual expenditures to come up with the
11 amounts that's on those pages, though?

12 MS. O'NEILL: Objection.

13 THE WITNESS: I wouldn't be --

14 MS. O'NEILL: I don't think this witness can
15 answer the question.

16 MR. WILLIAMS: He can say "I don't know" if he
17 doesn't know.

18 JUDGE WOODRUFF: He can answer if he can. If
19 he can't answer, he can say so.

20 THE WITNESS: I don't speak to that particular
21 issue, specific issue, without any -- without any particular
22 review of this.

23 BY MR. WILLIAMS:

24 Q. Well, Mr. Hummel, in your participation in
25 this rate case, did you recommend that more than one

1 operator be put in the budget for the company?

2 A. I don't think I could recollect it without --
3 just off the cuff like this what I recommended then.

4 Q. Can you tell the Commission from the
5 information that's in front of you how much money Staff did
6 recommend for operators?

7 A. I would prefer that you simply ask one of the
8 accountants about that. This is accounting information.

9 MR. WILLIAMS: Okay.

10 JUDGE WOODRUFF: Before you go into any other
11 matters, it is now ten 'til five, and I do intend to stop
12 for five o'clock, so unless you're very close to
13 finishing -- it doesn't look like you are.

14 MR. WILLIAMS: I've got three topics.

15 JUDGE WOODRUFF: Let's go ahead and wait until
16 tomorrow to continue with Mr. Hummel.

17 At this point we're adjourned until 8:30
18 tomorrow morning.

19 WHEREUPON, the hearing was continued until
20 8:30 a.m. on October 31, 2002.

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