

Exhibit No. 12

Staff – Exhibit 12
Curt Gately Testimony
from WO-2024-0036
File No. WC-2023-0353

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BEFORE THE PUBLIC SERVICE COMMISSION
OF STATE OF MISSOURI

IN THE MATTER OF THE PETITION FOR AN INTERIM RECEIVER
AND FOR AN ORDER DIRECTING THE GENERAL COUNSEL
TO PETITION THE CIRCUIT COURT FOR THE APPOINTMENT
OF A RECEIVER FOR MISTY WATER WORKS,

File No. WO-2024-0036

JOHN T. CLARK, Presiding
Senior Regulatory Law Judge

EVIDENTIARY HEARING
Volume III
Pages 1 - 100

OCTOBER 26th, 2023

(Starting time of the Hearing: 8:30 a.m.)

1 cognizant of or not.

2 MS. KERR: Yes. I think I was going to try to
3 get that in, excuse me, later with Mr. Blevins. This is
4 something that he signed.

5 JUDGE CLARK: Okay. That's fine. I wasn't
6 trying to tell you how to do it. I was just reminding you that
7 that was out there.

8 MS. KERR: Thank you.

9 JUDGE CLARK: Okay. At this time Staff may call
10 their next witness.

11 MS. KERR: I would call Curtis Gateley.

12 JUDGE CLARK: Mr. Gateley, would you please take
13 the stand. Would you raise your right hand to be sworn?

14

15

16 CURTIS GATELEY,

17 being sworn on his oath by Judge Clark saith:

18 DIRECT EXAMINATION

19 QUESTIONS BY MS. KERR:

20 JUDGE CLARK: Please be seated.

21 Staff, you may question your witness.

22 MS. KERR: Thank you.

23 Q. Good morning.

24 A. Good morning.

25 Q. Can you please spell your name for the record?

1 A. Curtis Gateley. C-u-r-t-i-s. G-a-t-e-l-e-y.

2 Q. And by whom are you employed and what's your position?

3 A. Public Service Commission. I'm the Manager of the
4 Water, Sewer, and Steam Department.

5 Q. And just generally what are your job duties and
6 responsibilities?

7 A. It's pretty broad. I oversee staff who review and
8 provide recommendations on applications before the Commission,
9 and I also oversee folks who do investigations and inspections.

10 Q. Are you Adam Stamps' supervisor?

11 A. Yes.

12 Q. And are you familiar with Mr. Blevins?

13 A. Yes.

14 Q. Are you familiar with this investigation regarding Mr.
15 Blevins' business?

16 A. Yes.

17 Q. Okay. And what's been your involvement with that,
18 with this investigation just generally?

19 A. I was part of the initial contact from DNR when they
20 presented their concerns about the situation and then worked
21 with Adam in his investigation, and I also did some of the site
22 visits myself with Adam.

23 Q. Okay. So you said you did some of the site visits.

24 Do you remember seeing any of the well sites?

25 A. I did see some of the sites. I did not attempt to

1 enter any of the well houses, that sort of thing. It was more
2 of a just laying eyes on the facilities as part of the same trip
3 when we initially met with Mr. Blevins.

4 Q. Okay. All right. So you don't know any of the
5 specific -- or you don't remember any of the specifics or
6 anything?

7 A. I don't remember, for example, which street names that
8 the wells were on that I visited.

9 Q. Okay. That's fine.
10 Do you remember talking to Mr. Blevins?

11 A. Yes.

12 Q. And can you just describe how -- what did you talk to
13 Mr. Blevins about?

14 A. We met with Mr. Blevins to discuss and explain why we
15 were looking into his business.

16 The process with the Public Service Commission -- most
17 folks don't know what we do. So I can't assume that someone
18 who, when I'm not dealing with a professional that they've hired
19 who is familiar with our stuff I was going to sit down and
20 explain the situation. And we had a discussion for oh, I
21 believe it was less than an hour. But, about the complaints we
22 had received, the concerns we had, what we were investigating,
23 and ultimately what it might take if Mr. Blevins wanted to
24 become -- get a certificate from the Commission to operate
25 legally.

1 Q. Did he seem cooperative with you?

2 A. Reasonably so, yes.

3 Q. Did he seem to understand what you were there for?

4 A. As much as someone can in a first meeting like that,
5 yes. We went over several subjects, and I wouldn't expect a lay
6 person to immediately understand all of it, but yes.

7 Q. How often did you personally meet with him?

8 A. I only personally met with Mr. Blevins once as a one
9 on one meeting.

10 He attended the public information session that we
11 had, but I don't recall if we had another discussion separately
12 at that one.

13 Q. Okay. So was that basically your involvement with Mr.
14 Blevins?

15 A. Directly, yes.

16 Q. Okay. And with regard to PSC -- as a supervisor what
17 is the, what are you looking for, what was your concern with Mr.
18 Blevins with the complaints that you were receiving with the
19 investigation?

20 A. The complaints that we had received from customers and
21 the details we had been provided from the Department of Natural
22 Resources my concern No. 1 was the safety of those customers.
23 We had folks who couldn't drink their water or if they were they
24 were putting their lives in danger.

25 And being familiar with other situations also in

1 Pulaski County where substandard wells had been constructed to
2 intentionally try to dodge regulation from DNR and PSC we had a
3 lot of concern about the integrity of those wells, if the rest
4 of them were safe.

5 Customers were most frustrated with the -- what they
6 viewed as double dealing by Mr. Blevins because they had
7 contracts for water supply at a certain rate and those
8 contracts, the terms of which were changed on them without
9 notice. That showed to us that not only was Mr. Blevins, you
10 know, offering himself out as a public utility and charging for
11 service but also doing so in an unsafe manner.

12 Q. Okay. And is that a concern for the PSC?

13 A. Absolutely.

14 Q. And how so?

15 A. The PSC exists to protect customers who are subject to
16 a monopoly like this one, and to make sure that they are paying
17 just and reasonable rates and have safe and adequate service.
18 And when companies try to operate without, operate outside the
19 law, those protections don't exist.

20 Q. And is it your opinion that Mr. -- and Mr. Blevins'
21 operation is not regulated?

22 A. Not currently regulated by the PSC, correct.

23 Q. Okay. And so it's -- so what are the concerns with
24 regard to the customers then if it's not regulated?

25 A. The lack of oversight and the lack of rules on how you

1 set your rates.

2 And then in this situation there are wells that
3 otherwise would be regulated by the PSC and, therefore, subject
4 to scrutiny and compliance with environmental regulations that
5 otherwise those customers have no such protections.

6 Q. And you talked about adequate service. What does that
7 mean?

8 A. It's a broad term. Adequacy is not just -- the first
9 thing folks think of probably is outages or a lack of water
10 pressure. Pressure is actually a safety issue. A customer
11 might consider it adequacy, but for us it's a safety issue
12 because the pressure rules exist to make sure that no
13 contaminants can leak into a distribution service.

14 For us certainly the concerns with outages, a lack of
15 maintenance, preventative maintenance to have, to reduce outages
16 to the degree possible, compliance with our rules on how you
17 bill, how you have customer contacts, actually return phone
18 calls. A lot of the customers told me that they would call and
19 have the number they were told to call and it was a full
20 voicemail and couldn't reach anyone.

21 Mr. Blevins has experienced his own personal
22 challenges. But, there has to be someone else, some kind of
23 backup, somebody that a customer can reach with a problem. A
24 customer needs to be able to request that their service be
25 turned off if they have a service line issue in their own yard.

1 They need to be able to get hold of a company for the basic
2 utility services that everyone expects. And customers were
3 telling us that they weren't receiving that kind of service.

4 The situation at one of Mr. Blevins' wells were on the
5 lot what appeared to be campers or RVs was parked and there was
6 no provision for sewage. There is no situation where sewage
7 should be straight piped. But, in this case you had customers
8 calling and complaining to us about an entity that was allowed
9 to dump sewage beside a well. That -- it's not yet a safety
10 issue, but that's a demonstration of a lack of adequate service
11 that would prevent safety issues.

12 There are probably more examples that I haven't gone
13 into, but that's some of them.

14 Q. Okay. And is all that incorporated into the memo, in
15 the memorandum that was filed with the Petition which is Exhibit
16 6?

17 A. I believe that was done prior to some of the more
18 recent information that customers had complained to us about
19 that we had not separately tried to re-document.

20 But, yes; most of that is in that memo.

21 Q. Okay. And so the PSC -- so the PSC filed this
22 Petition for a receivership. What would -- does that go into
23 the bases for that or what was the basis?

24 A. Receivership is our most extreme option.

25 The situation with Mr. Blevins in my opinion is one

1 where folks are currently not receiving safe and adequate
2 service and he has demonstrated either an inability or a lack of
3 desire to bring facilities into compliance; either one of those
4 situations endangers customers.

5 That wouldn't even get into the types of rates they're
6 paying and such. I don't know what number under our rules they
7 would end up paying. But, right now there's no review of it at
8 all.

9 So those situations -- in our view there doesn't
10 appear to be a situation where Mr. Blevins could simply get a
11 certificate and bring the facilities into compliance. He lacks
12 the -- for lack of a better term the infrastructure within his
13 business to, he can't wave a wand tomorrow and become a proper
14 utility company. But, his relationship with DNR and the
15 facility being on a boil order for so long, the lack of testing
16 of the other wells to see how bad they might be because we
17 expect they're probably of similar construction, all those to me
18 suggest that a utility company that has demonstrated an ability
19 to bring facilities into compliance and operate them properly is
20 the best choice for customers going forward.

21 MS. KERR: Okay. I don't have any other
22 questions. Thank you.

23 JUDGE CLARK: Mr. Blevins, do you have any
24 questions for this witness?

25 MR. BLEVINS: I do.

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EXAMINATION

QUESTIONS BY MR. BLEVINS:

Q. You've mentioned complaints. What complaints did you actually receive?

A. Are you asking how many or the details of them?

Q. Well, I've never received any complaints in writing from you folks, but you indicated that there were complaints.

Were there -- did you have that in writing or how did that get into your knowledge or whatever?

A. So there were customers who had contacted DNR to request assistance and DNR put us in contact with those folks. And we let them know that there was a process for anyone who has a complaint about a utility company, to file those with the PSC through our electronic docket system.

I do not recall if I actually spoke with any of the folks who had filed the complaints because one of my staff was the lead on that. But, I did read them.

Q. You said filed the complaints and you read them?

A. Yes.

Q. And what did you do with them after that?

A. Because the nature of the complaints and the information from DNR showed that we were potentially dealing with an unregulated utility the investigation then shifts to the utility itself because with the complaints Staff is charged with

1 examining whether a company violated their tariff or other
2 provisions of the law. And there isn't a tariff to compare to
3 for a company that isn't yet regulated.

4 Q. Am I understanding that from that point then you did
5 not go into any mode of trying to help the situation or just to
6 attack the situation?

7 A. We met with the person who was providing the service
8 and tried to explain the nature of the investigation early on.
9 But, it rapidly became clear to me that this was a situation
10 where we were not going to be able to have a facility come in
11 and be regulated -- or a company come in and be regulated.
12 Instead we needed an entity with better resources to step in.

13 Q. How long had this person that we're talking about --
14 which happens to be me. How long did you think that the wells
15 were in operation by me?

16 A. Well, I've heard at least three different amounts of
17 time. In our initial meeting you were, you know, somewhat upset
18 with our appearance and discussion about this subject. You had
19 said that it had been going on for forty years and why was this
20 a problem now?

21 Yesterday I heard you say that you had only been
22 operating the wells for three to four years. And then later on
23 said that you had taken them over twenty years ago.

24 So I don't know.

25 Q. Okay. So at that point then it was not your position

1 then with the problem that you indicated from complaints and the
2 DNR asking you to assist -- was that assistance supposed to be
3 providing help to this individual or this company or whatever
4 you tried to make this, call this company utility?

5 Was that, was your efforts to help that or to just
6 dispose of it?

7 A. With the regulations I operate under there is no
8 specific provision that I'm here to assist a utility company or
9 to assist a particular customer or company, that sort of thing.

10 My initial examination of it, of the information that
11 was available to me at the time, and the, what I know through my
12 career meant that my No. 1 priority was the safety of those
13 customers. And how do we get, how we get there? The most
14 efficient way it's -- I had no particular agenda to assist you
15 and your company or to assist the customers with forming their
16 own homeowner association, any of that.

17 My No. 1 priority was fixing the situation. And the
18 more I learned the more concerned I became and, no, I did not --
19 after receiving quite a bit of information I was not in any,
20 making any further efforts to assist you.

21 Q. Okay. You mentioned that earlier that you seen
22 something that looked like people were dodging something or
23 double dealing. What do you mean there?

24 How did you determine anything like that?

25 A. For the double dealing reference that was my attempt

1 to explain the customers being upset at having contracts which
2 they -- I've seen at least three of them where folks came to me
3 and showed me that they believed they should be paying I believe
4 it was thirty-five dollars, a certain amount. And that that
5 rate had been changed on them and more than one of them had
6 hired an attorney to consult with and were going to sue under
7 breaking that contract.

8 The evasion of DNR regulations when wells like these
9 were constructed I had seen it before during my career when I
10 was at DNR, and I had seen it in previous cases where the
11 Commission had to step in and order an entity to become
12 certificated. That company then failed and we had to do a
13 receivership, take it away.

14 But, wells that were intentionally drilled and set up
15 to supply only a few customers to try to stay below DNR's rules
16 on having to sample them, not constructing them properly I had
17 seen that before. And after a major Court decision that changed
18 things for the way DNR can regulate some of these they regained
19 some more power to ensure safety.

20 DNR's rules are set up for -- and it comes down from
21 the Federal law. It's about the amount of risk. The more
22 people that are put at risk the more regulations are applied to
23 a well down to -- when you get down to individual wells there
24 really aren't rules for sampling or licensing for a well for an
25 individual home.

1 These situations where developments in Pulaski County
2 -- and probably some other counties where a developer chose to
3 punch multiple wells instead of installing one adequate well in
4 a centralized distribution system to me is clearly an effort to
5 evade DNR rules.

6 I'm not alleging that you constructed those wells.

7 Q. That was my question. Did you determine when these
8 wells were constructed and who constructed them?

9 A. I've heard anecdotes. I did not personally try to run
10 down those details because my current role with the PSC it's
11 more about rectifying the cūrrēnt situation than trying to go
12 back and address violations of DNR law historically.

13 Q. You mentioned outside the law, operations outside the
14 law. What do you mean by that? That you determined was outside
15 the law.

16 A. It's a nicer way for me to say someone is operating
17 illegally on purpose.

18 There is no situation where utility in Missouri that
19 is charging for service and serving the public should be able to
20 do so without following their PSC rules and being subject to the
21 same rules that other utility companies are subject to.

22 In addition, those rules are set out to protect
23 customers in a monopoly situation, and those laws exist for a
24 reason. Folks who are not following those laws are operating
25 outside the law.

1 Q. How did you -- what would be or how did you determine
2 that something was done on purpose when these wells that have
3 been in operation for in excess of twenty years already and has
4 never been subject to your rules -- I don't understand why in
5 twenty years...

6 Can you explain to me why twenty years these wells
7 were operated the way they are today?

8 A. I think that there are a lot of things that go on that
9 we don't know about. I think that even if we had a lot more
10 inspectors and a lot more investigators we would not be able to
11 identify every situation that was going on that shouldn't be
12 that way. When customers complain to us we're going to
13 investigate.

14 But, no. I do not have an explanation for how it was
15 constructed and the evasion of the rules for so long. I don't.

16 Q. Again, you mentioned that you had complaints.

17 A. Yes.

18 Q. And you investigate that complaint. The complaints
19 that you alluded here how did you investigate that, them?

20 A. My staff member contacted those customers, asked for
21 some documentation that they might have to support their
22 positions, visited the sites and saw for himself what the
23 physical situation was. We then realized that we were, appeared
24 to be dealing with an unregulated utility that should be subject
25 to PSC rules, but because there's no tariff in place and the

1 company had not received a certificate our investigation had to
2 shift to then dealing with that unregulated company because
3 we -- there wasn't an ability to say to a customer complaint
4 that there were violations of a tariff when no tariff was yet in
5 place.

6 Q. You mentioned prices earlier. How did you determine
7 that the price that you seen in reference to maybe the
8 complaints about pricing was it too high? Too low? How did you
9 determine that? That the pricing was incorrect, I guess.

10 A. Well, I haven't made a determination that it's
11 incorrect. We have not been able to conduct an audit to
12 determine the cost to provide service. And I don't know that --
13 I mean just professional experience, thirty-five dollars seems a
14 little bit low. Customers had told me that they were now being
15 asked to pay quite a bit more than that. I don't know what the
16 proper price is yet. _____

17 Q. What is quite a bit more than that?

18 A. We're going off my memory. But, I believe that I was
19 told by customers that they had been raised to fifty-five
20 dollars to I believe some had told me seventy dollars. But,
21 that may be incorrect.

22 Q. Do you consider fifty-five dollars too high?

23 A. I don't know. There are situations where some
24 companies under PSC rules have rates that are lower than that,
25 but it's very site specific and depends on that company's cost

1 to operate and how many customers are there.

2 Q. Okay. But, did you determine the cost of operations
3 in your investigation?

4 A. No.

5 Q. Okay. You mentioned pressure. Pressure in the wells?

6 A. Pressure at the residences.

7 Q. Pressure at the residence. Can you explain that to
8 me, please?

9 A. DNR has regulations on minimum pressure, that water
10 being the way it is it can vary a bit in the distribution
11 system. But, in no situations should it be below I believe it's
12 twenty psi, pounds per square inch. The goal there is to ensure
13 that if there's a leak in the water line the water is leaking
14 out, not leaking in. Water lines in the ground, obviously water
15 getting in could introduce contaminants. It's allowed to be
16 quite a bit higher.

17 Coming into my house I had to install a pressure
18 reducing valve because it was tearing up my equipment.

19 Q. Was it determined that the pressure in these wells
20 since you mentioned it was wrong or --

21 A. I don't remember that.

22 I have seen documentation of operating below twenty
23 psi when the wells were in operation. Obviously there has been
24 outages complained about, but customers have routinely expressed
25 to us their dissatisfaction with pressure. Not at all of the

1 systems obviously, but in some of them. And that's why I
2 mentioned that it was -- while a customer has, multiple
3 customers have complained to us about pressure we sometimes get
4 customer complaints about pressure that are operating legally
5 but the customers don't consider it adequate.

6 Q. Did you investigate any of those complaints?

7 Typically.

8 A. I don't believe that we put a pressure gauge with a
9 data recorder on ourselves.

10 Q. Okay.

11 A. And I don't remember if DNR did.

12 Q. Okay. You also mentioned the billing. Was there any
13 mention in the meeting that there's any billing going on for the
14 water that's used?

15 A. Which meeting? The public meeting where we had --

16 Q. No. The personal meeting I think you were talking
17 about.

18 A. I don't remember. We covered a lot of ground because
19 it was your first introduction to these. I really don't recall.

20 Q. Do you remember how the customers were charged then?

21 A. Customers showed us bills from what's my understanding
22 is two of your businesses that, the fictitious names the Outlaw
23 Corral and Misty Mountain or Misty Water Works. They also told
24 us that they had had verbal billing that folks had come door to
25 door to try to collect.

1 And then during the meeting when I met with you
2 personally two customers were there and I witnessed you and a
3 customer negotiate some other price that appeared. But, I
4 didn't try to write that down or keep track of it. That
5 customer is -- my understanding was writing one check to cover a
6 number of months. So to me the billing was -- there was not a
7 consistent way that bills were being received, which is required
8 by our regulations.

9 Q. Were you provided with a document that said agreement
10 to furnish water?

11 A. I believe I have reviewed it -- at least a couple of
12 those, yes.

13 Q. And what did you think about that particular document?

14 A. It demonstrated to me that you -- the water
15 provider -- were putting yourself out there to provide water
16 service to the public.

17 Q. Who do you call the public?

18 A. I'm sorry?

19 Q. Who do you call the public?

20 A. In this situation I'm talking about the people who
21 live within the subdivisions where you provide water.

22 Q. Did you in your investigation determine whether or not
23 there was any other source of water available to these people?

24 A. Yes.

25 Q. And were there other sources?

1 A. In most situations no, there were no other existing
2 sources.

3 We learned of the line that existed from the Pulaski
4 County Water District that would serve a small number of
5 customers. But, our investigation reaching out to the local
6 municipalities and that water district showed that it would be
7 cost prohibitive for any of them to try to provide service
8 primarily due to topography and distance. It's not flat ground.

9 Q. Am I to understand then that in your investigation you
10 determined that there was no public service for water available
11 on a reasonable basis or a reasonable cost?

12 A. No alternative sources, correct.

13 Q. No alternative, okay.

14 I'd like to get your determination as to what you
15 actually investigated and saw for you to say that the safe and
16 adequate operations are not safe and adequate.

17 A. Well, I think it's -- the easiest way is to start with
18 the bacterial contamination that wasn't fixed. Any company that
19 my group oversees that would allow folks to be exposed to
20 contaminated water for eight months will have a complaint filed
21 before the Commission. That's not acceptable. It's not
22 acceptable to anyone.

23 The problems that were were relayed to us from
24 customers of wells being improperly shocked. Customers
25 complaining to us about having to take their children to the

1 doctor because they had chemical burns from chlorine. And while
2 that's not, you know, direct evidence that I obtained it's
3 something that we have to investigate when customers complain of
4 that. And it was corroborated by experiences that DNR had and
5 some of the statements they had from the operator, the licensed
6 operator. That's a demonstration of not receiving safe service.

7 Q. I see. You indicated that someone had a chemical
8 burn. Did you collaborate that -- did you collaborate that with
9 a doctor or something?

10 A. No. And there's a few reasons for that. No. 1, we
11 didn't have to as part of -- it wasn't the most important part
12 of this case. The most important part of this case in my mind
13 is a company is operating without a certificate and does not
14 appear to have the wherewithal to operate properly if a
15 certificate was granted.

16 A second reason is that if I try to start bringing in
17 documented health conditions with a particular person into a
18 case there's Federal privacy laws. I would like to avoid having
19 to make a customer come in and testify in a case like this when
20 it isn't necessary over any of them.

21 We do have customers who come in and testify in
22 complaint cases when they have a complaint against a regulated
23 utility and are asking for some kind of relief. But, I'm not
24 generally going to try to force other folks to come in with that
25 sort of thing. They volunteered it.

1 We did not make that a key part of our presentation
2 before the Commission.

3 Q. Am I to understand then with your testimony that on
4 the initial meeting that your determination was not to get
5 really a certificate of convenience and necessity, but to oust
6 out the whole situation, to eliminate it and put it somewhere
7 else?

8 A. I don't know when -- I didn't write down or document
9 when my attitude on that shifted. The initial meeting was
10 absolutely about this is the process for becoming certificated
11 and this is what we have to investigate.

12 I do remember more than one meeting amongst Staff
13 members discussing the situation, and at one point I finally
14 made the call that we were going to have to recommend
15 receivership instead of a certificate because what we had been
16 learning through our conversations with DNR and customers that
17 we did not believe that you would be able to properly operate a
18 utility if certificate was granted.

19 MR. BLEVINS: Okay. I have no further questions
20 at this point.

21 JUDGE CLARK: Thank you, Mr. Blevins.

22 Are there any questions from Commission? I hear none
23 at this time.

24 I have a few bench questions for you, Mr. Gateley.
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EXAMINATION

QUESTIONS BY JUDGE CLARK:

Q. Now, you said you went on several site visits, is that correct? You visited several wells?

A. I visited several wells on one visit.

Q. Okay. And even though you did not step into the well houses what was your observation in regard to those well houses?

A. I will characterize my site visits as much more limited than someone who was doing an inspection.

But, what I saw were very simply constructed well houses that did not appear to have received much maintenance. They didn't appear to be recently painted. Some of the roofs were clearly in distress. I don't recall during my visit if we saw one that had some of the other documented problems that we've seen in some of the photographs.

Q. You indicated just a minute ago to Mr. Blevins that you were not sure when you went exactly and made the determination to shift the PSC Staff focus from assisting Mr. Blevins with obtaining that certificate to recommending a receivership.

You may not remember when, but do you remember what it was that tipped the scale?

A. I would characterize it as an overview of the evidence and the repeated problems that we were seeing. I mean during our investigation customers learned we existed and started

1 reaching out to us. So we kept receiving communications from
2 customers about when they would lose service. We had one that
3 we were considering -- I may get the termination wrong, but that
4 some kind of emergency from the PSC because from my recollection
5 at one well they were without water for two weeks. At some
6 wells that was work going on that caused DNR concern. That we
7 kept seeing operational type of problems.

8 It just didn't seem like a safe situation to me that
9 could be remedied easily by a company that had the capabilities
10 to properly operate the utility.

11 And I don't remember there being a specific
12 circumstance. There was more a series of discussions with other
13 staff members.

14 Q. Now given that you indicated that most people have not
15 even heard of the Public Service Commission, much less know what
16 it is that we do, what makes you believe that Mr. Blevins was
17 operating illegally on purpose?

18 A. That has to be my presumption when I begin these
19 investigations. The companies that choose to do business that
20 is otherwise regulated for whatever reason -- there are lots of
21 them. There are lots of oversight boards and commissions and
22 such.

23 It has to be my position that someone is operating
24 illegally on purpose when we start these investigations.

25 With Mr. Blevins we met with him, we described the

1 situation, offered an educational opportunity, informed him that
2 if he wanted to get a certificate the proper thing to do was to
3 first acquire legal representation because this is a legal
4 process. That if he -- well, I started to say the ownership
5 situation, that wasn't clear. But, I don't know if we had
6 reviewed the property tax records to show that he had not
7 recorded ownership of a lot of these with the County. I don't
8 remember if that was part of the initial meeting.

9 But, that was part of some of our questioning to Mr.
10 Blevins when we found that he had for some reason chosen not to
11 record with the County government that he owned certain
12 properties. You can't provide safe and adequate service if you
13 do not have legal access to service a well.

14 So when customers had told us that they had bought
15 lots and believed they owned the well that was on the lot it
16 made us be concerned that, well, okay, does an easement exist?
17 Is there a way for the water provider to legally access that
18 well?

19 I've gone off track a bit. I'm sorry.

20 Q. You are fine. You answered my question plus some.

21 We have primarily talked about the three systems --
22 the three public water systems of Charity, Misty Mountain, and
23 Rolling Hills.

24 Now, you indicated there was a public information
25 meeting that was held. Was that just for customers of those

1 three systems or was that for a larger customer base?

2 A. We invited -- we sent letters to all the customers
3 that we received contact information for from Mr. Blevins. We
4 had exchanged contact information during that meeting, got his
5 email address, exchanged some emails.

6 I later learned that one of the systems that we did
7 not receive addresses for those, a limited number of customers.

8 But, we wanted to hear from everyone that this entity
9 was providing service to.

10 Q. Have you received -- has the Commission received
11 complaints from customers ~~that~~ were not a part of those three
12 systems?

13 A. I believe so. I did not try to keep track of that
14 level of detail myself.

15 Q. Did the Commission or did the Commission Staff receive
16 complaints after the filing of this case?

17 A. Yes.

18 Q. Is the Commission Staff continuing to receive
19 complaints?

20 A. I think that's an appropriate characterization, yes.

21 Q. You indicated that you were contacted by DNR with
22 DNR's concerns. What concerns exactly did DNR express to you?

23 A. They had a situation they believed where customer
24 safety was in jeopardy, but also that it appeared to be a
25 company that should be regulated by the PSC. I and my

1 predecessor do what we can to have meetings with DNR staff,
2 explain what we do. I had one with one of the DNR Regional
3 offices just last month. So that when they encounter a
4 situation like this they know to refer them to us for
5 investigation.

6 Q. At two different points during your testimony here
7 today you talked about Mr. Blevins' capabilities, and at one
8 point you said that he was lacking the infrastructure and at
9 another point you said he had insufficient resources.

10 What do you mean by that or by those? By using those
11 terms what do you mean? —

12 A. I'll contrast his situation with another company that
13 we regulate. I know of one company in particular with slightly
14 more customers that still keeps track of everything on paper.
15 Issues paper bills. That company has an owner, has another
16 person that I believe is a relative that assists with office
17 tasks and billing, and they have a couple of other folks who can
18 step in when something needs to be done if those folks are busy
19 or unavailable. Those customers always have someone who will
20 answer the phone. There's a twenty-four hour service line.

21 None of that exists based on the customers'
22 experiences they have relayed to us with Mr. Blevins. It's
23 never a good idea to only have one copy of customer information,
24 billing records, that sort of things. If there was a fire, for
25 example, Mr. Blevins would have no idea who has paid, who has

1 not paid. And I witnessed customers who were paying for
2 multiple months at a time. Customers have told us that they had
3 paid ahead for six months just as a -- wrote a check. All those
4 kinds of records would be destroyed with no backup, no recourse
5 for those customers except for them having to try to file a
6 complaint and fight or go to Court.

7 That kind of lack of basic operating infrastructure
8 that I have seen done, done well, and I'm not seeing that with
9 Mr. Blevins.

10 The poorly maintained wells and the wells that were
11 not repaired quickly, the situation where DNR was asking for
12 disinfection to be installed and investigate the well to see why
13 disinfection was even necessary: Either a company lacks the
14 financial resources to conduct those activities to let people
15 have decent water, either they lack the money or they lack the
16 empathy.

17 I would call it a callous disregard of customer safety
18 and their health when you know you're providing water that can
19 make people sick.

20 Q. At one point during your testimony you indicated that
21 lives were in danger. Why is that?

22 A. The presence of e. coli in water is an indicator.
23 It's one that we can culture readily, we can do good tests for
24 quickly. There is a large infrastructure set up for that with
25 drinking water and with wastewater so that we can do these

1 tests. But, it's still just an indicator. It shows that some
2 gut bacteria is getting in the water. But, there are a host of
3 other pathogens, some of which are routinely more dangerous to
4 human health. And without a doubt e. coli will kill you. It
5 depends on which strain you get and how good your immune system
6 is. But, there are other things like cryptosporidium, for
7 example, that killed over a hundred people in Milwaukee in 1994.
8 Giardia [phonetic]. There is of course a host of viruses and
9 such that it's possible that could be in there. But, all of
10 those things are very hard to test for. So we use e. coli as
11 that benchmark. When we see e. coli we know there's at least a
12 problem with that, but likely problems with other pathogenic
13 organisms.

14 Q. We've seen that there is a lot of these small, I guess
15 you might call them domestic wells, that Mr. Blevins allegedly
16 has that are not being regulated in any way by the Department of
17 Natural Resources. And the concerns that were expressed by the
18 Department of Natural Resources were as to the three systems we
19 talked about, that they do now regulate.

20 What is the logic behind requesting that the
21 Commission do a receivership for all of Mr. Blevins' water
22 operations?

23 A. A water provider is required to provide that safe and
24 adequate service. There isn't a way to logically separate that
25 simply because a provider had multiple wells that were small

1 enough not to fall under DNR's rules for licensing and sampling.

2 I would envision a company that receives a certificate
3 if operations continued in this matter that we would work with
4 DNR to establish a minimum sampling requirement for that company
5 to demonstrate compliance with PSC law and the tariff that they
6 would receive. Without that there isn't any way to ensure that
7 customers are receiving that safe and adequate service.

8 But, the concept of a company being allowed to operate
9 in a way that they should have to have a certificate but they're
10 too small for some of DNR's rules that doesn't make any sense
11 with the PSC law. And there's no minimum number of customers to
12 be served with drinking water and I think that -- it's my
13 opinion that that's appropriate because of the risk. I mean
14 people are consuming this water, therefore, there must be some
15 kind of oversight to the extent of our ability.

16 Q. Okay. We're not talking just about oversight. That's
17 I believe the complaint case and that is also the certificate
18 case.

19 But, we're talking in this hearing about receivership.
20 Is the underlying assumption -- and if I'm wrong let me know.
21 Is the underlying assumption that if these are the deficiencies
22 and dangers with the systems that DNR is looking at that it is
23 unlikely that the systems that DNR is not looking at are
24 operating at a different standard?

25 Let me see if I can say that more succinctly.

1 **A. Thank you.**

2 **Q. Is the Commission assuming or is the Commission Staff**
3 **assuming that because these deficiencies dangers exist with the**
4 **systems that DNR and the Commission has looked at that those**
5 **deficiencies are also present in the system or in the wells Mr.**
6 **Blevins owns that DNR and the Commission haven't directly looked**
7 **at?**

8 **A. Yes.**

9 **Q. Thank you. Would you just run down with me -- I've**
10 **heard a myriad of different complaints spread out across the**
11 **Hearing, you know, not receiving water, water off for periods of**
12 **time, high chlorine, you know.**

13 **Can you just go through to the best of your memory the**
14 **nature -- not the number, but the nature of all the complaints**
15 **that you're cognizant the Commission Staff has received?**

16 **A. And by received I would include the ones we received**
17 **from --**

18 **Q. From DNR, correct.**

19 **A. -- at the public meeting as well. But, yeah.**

20 **Q. I think that would be inclusive because that was --**
21 **theoretically were customers that were invited to be there.**

22 **A. Customers complained of not being able to predict or**
23 **understand how much they were paying. Customers complained of**
24 **not being certain who they were even supposed to be paying**
25 **because they received conflicting documentation from someone**

1 trying to collect money from them. I received complaints that I
2 did not attempt to substantiate myself, but folks who
3 experienced a, what appeared to be people who were under the
4 influence of some kind of recreational product confronting them
5 at their homes, being unconscious in a vehicle right after
6 talking to them at their homes. Generally concerning an
7 unprofessional behavior out of folks who were purporting to be
8 working for the utility.

9 Q. Wait a second. Can you explain that? These were
10 things that customers told you or that you observed?

11 A. I did not observe because they had been in the past.

12 Q. Okay.

13 A. But, multiple customers told me that a person they
14 understood to be related to Mr. Blevins or his son -- I didn't
15 try to chase down who it was -- they had several unsavory
16 encounters to relay. Customers complained with a lack of
17 certainty that they were able to even sell their homes because
18 of the inconsistent service or lack of service or unsafe
19 service. Customers complained about the speed with which DNR
20 and PSC were addressing the situation. They complained about
21 a -- like the situation that was mentioned to us or mentioned to
22 me at the public meeting where a customer had to dig up the line
23 themselves that they had heard existed that would allow a
24 connection to the public water supply, the County. That their
25 water provider didn't even know that it existed or where it was

1 was upsetting to them. And I've heard multiple explanations of
2 that, that that was a complaint that we got that they felt they
3 were having to go out and improve the service themselves. When
4 they were told they were under a boil order there was no effort
5 to give them bottled water or some kind of alternative. That
6 was not what customers expected would, how they would be treated
7 by a company.

8 The safety concerns that DNR relayed were obviously
9 the most concerning for us with the contaminated well. They had
10 approached Mr. Blevins this must be corrected and nothing was
11 done. And then it was my understanding that there were also
12 other wells which experienced bacterial contamination, which
13 suggests to me the potential for either multiple wells being
14 constructed in a substandard manner or the particular area they
15 were in was contaminated and, therefore, disinfection may be
16 necessary for all the wells.

17 Pulaski County is an area that's what's called a karst
18 topography and it's relatively easy for surface water to enter
19 ground water and there's lots of situations where wells are
20 disinfected for a reason. That created concern out of the
21 customers that their -- if some of the wells which they had
22 understood had tested positive for bacteria, then multiple wells
23 might also test positive for bacteria but they didn't know.

24 At the well that eventually physically failed I
25 received complaints from customers about debris entering their

1 water or entering their house through the distribution system.
2 The faucet aerators were becoming clogged with sediment and
3 debris that they described as looking like mud. The overall
4 condition of the well houses that we saw is certainly going to
5 be something that folks complain about. Sometimes appearances
6 don't necessarily say that it's definitely an unsafe situation,
7 but in this case what customers brought to us certainly suggests
8 that if it's not unsafe yet it could be soon be.

9 There's a reason you secure a well and there's a
10 reason you have it safe for folks to come in and work on it and
11 maintain it. And then we also received complaints from
12 customers about outages and low pressure.

13 Q. Other than a boil warning from DNR were customers --
14 are you aware of whether or not Mr. Blevins informed customers
15 of some of these potential dangers as they were discovered?

16 A. I don't know.

17 JUDGE CLARK: Thank you. Those are all the
18 questions I have for you.

19 Are there any questions from the Bar based on bench
20 questions?

21 Mr. Blevins, do you have any questions based upon my
22 questions?

23 MR. BLEVINS: No questions.

24 JUDGE CLARK: Thank you. Any Redirect or any
25 questions based -- first of all, any questions based upon my

1 questions from Staff?

2 MS. ASLIN: I have some questions.

3 JUDGE CLARK: Are they Redirect?

4 MS. ASLIN: Mostly.

5 JUDGE CLARK: Okay. Go ahead.

6 MS. ASLIN: Thank you.

7

8

EXAMINATION

9 QUESTIONS BY MS. ASLIN:

10 Q. So if a person, a company, a utility -- well, I guess
11 a utility offers water to ~~the~~ public and charges or bills the
12 residents, people, for that water. People that use it for that
13 water and they're not licensed by the PSC they're violating
14 statute. Correct?

15 A. In this case that's our position with Mr. Blevins.

16 Q. Okay. And ~~the~~ PSC isn't out looking for violators,
17 they're not out searching for utilities, unregulated utilities
18 that might be billing people for using the water.

19 A. Not only do we lack the resources to pursue such an
20 effort, I don't have enough people for that sort of thing.

21 We -- if folks are receiving safe water and they
22 believe that they're paying a reasonable amount for it they're
23 not coming to us with a complaint. Our involvement generally
24 only increases costs for everybody.

25 Q. So if you get a complaint -- I'm sorry.

1 A. There's not a reason for us generally to go out and
2 start beating the bushes looking for folks to regulate.

3 But, they -- in our situation right now we are
4 certainly complaint driven or referrals from DNR usually.
5 Occasionally I'll receive a referral from a company that is
6 certificated to serve an area and learns of someone operating
7 illicitly.

8 Q. But, for the most part the complaint comes to you and
9 then you -- the complaint comes to the PSC Staff and then the
10 PSC Staff goes and does something?

11 A. Yes. ---

12 Q. But, an unregulated utility is not supposed to charge
13 rates under the law that -- they're supposed to charge rates
14 that are filed and approved by the Commission. Correct?

15 A. There are situations where folks recover costs by
16 charging company -- or customers where they're only recovering
17 their costs that they paid to another water provider. They're
18 not operating for gain. They're not disconnecting people.
19 They're not charging late fees, those sorts of things. They're
20 only recovering costs associated with usage through -- they have
21 one large meter themselves. Those situations, generally
22 speaking, are not subject to PSC regulation.

23 In this cause someone operating in the manner that Mr.
24 Blevins is operating under yes, they would only be able to
25 charge rates that are approved through a tariff.

1 Q. Okay. And that would be because they're licensed and
2 regulated?

3 A. Yes.

4 Q. So you testified about public water system being cost
5 prohibitive to be, to run that water to some of the houses, some
6 of the neighborhoods. That it was cost prohibitive.

7 Can you explain why?

8 A. We are trying to -- there are no lines that are close
9 by, that are easy for folks to simply make a connection to
10 beyond the -- that we know of beyond the line that Mr. Blevins
11 already took advantage of to connect some folks.

12 In order to move the water from a supply to these
13 neighbors you would probably have to have -- I haven't tried to
14 consult an engineer on design on this. But, looking at the
15 terrain you would probably have to have probably multiple
16 pumping stations. You would certainly have to have miles of new
17 water line laid for a very small number of people. That means
18 it costs a lot of money and that effort then to -- in the public
19 water supply's mind to serve a few folks over a long distance
20 away and to incur all those costs that would then have to be
21 borne by all their other customers. They did not view that as a
22 situation they wanted to get into, and really it didn't make any
23 sense. It's a lot cheaper to fix the wells that are there,
24 install disinfection, and maintain those wells than it would be
25 to spend hundreds of thousands or millions of dollars on getting

1 water from a long ways away.

2 Q. And you said you had visited Mr. Blevins in his
3 office. Did you see his records?

4 A. I saw some. I did not attempt to go through all of
5 his books.

6 Q. And what did they look like? Were they ledgers?
7 Paper? Computer records? What?

8 A. The records that he showed us -- our discussion with
9 him was more about the operation in general and what the PSC
10 was. He happened to have some on his desk that he briefly
11 referenced. But, two customers showed up while we were there
12 and he was referring to his ledger to reference what he believed
13 should be charged. So I did see some of that.

14 But, he also had a secretary who had a tablet and
15 that's how we started exchanging emails and such. So I don't
16 know for an absolute certainly that some of the records are not
17 on that tablet. But, when we asked Mr. Blevins for information
18 as part of discovery among the complaint case and the -- well,
19 all three cases what has been given to us is copies of
20 handwritten records.

21 Q. Okay. And you said you were trying to figure out what
22 properties Mr. Blevins owns. Could you -- were you able to tell
23 easily what properties he owns? What wells he owns?

24 A. Well, I have folks that are looking into that, so I'm
25 relying somewhat on what they relayed. No.

1 We have -- the County clearly indicated that some of
2 the wells that Mr. Blevins was providing service from the County
3 said he didn't own them through their property records.

4 Q. So you said he owned or sold wells without recording
5 the deeds.

6 Is that what you had said earlier?

7 A. I don't recall. But, that is a correct
8 characterization of what I believed some of this was because Mr.
9 Blevins had showed us documents for some of the wells that he
10 did own them. But, that conflicted with the County records and
11 that would suggest that it had not been filed with the County to
12 make it proper and legal.

13 Q. Okay. Is this a problem?

14 A. Absolutely.

15 Q. How so?

16 A. If someone else owns that well they can put a lock on
17 it and say you can't access this. If someone else owns that
18 well they could attempt to prosecute someone for trespass. If
19 someone else owns that well and they are the ones who are
20 providing service and someone else approaches you to bill you
21 and they claim they are also providing that service then the
22 customer has no idea who to pay.

23 Q. Would that be a problem for the PSC or receiver or
24 utility to --

25 A. The receiver is going to have to straighten some of

1 this out. It's my understanding that since we started this
2 effort Mr. Blevins has sold some wells. I haven't seen the
3 documentation of that myself. I don't know if any of those
4 sales have been properly recorded.

5 When we have a complaint we have to figure out who the
6 responsible party is, and that that has been somewhat difficult
7 in this situation -- except that Mr. Blevins has said that he is
8 the provider, that he does have clear ownership of some of the
9 wells. But, untangling some of these extenuating circumstances
10 is going to be the responsibility of the receiver when they're
11 trying to dispose of this and get it in the hands of a proper
12 utility.

13 Q. So really being the provider isn't necessarily being
14 the owner of the wells as you've come to find out?

15 A. In this situation, yes.

16 Q. The number of complaints that Staff received -- and
17 when I say complaints I mean in the general sense, not
18 necessarily informal or formal complaints, complaints received
19 in person conversations, phone calls, emails, is this what
20 triggered an investigation into Mr. Blevins' system?

21 A. Along with DNR, certainly.

22 Q. And once Staff's focus shifted from the CCN case to
23 filing a Petition for Receiver did Staff feel the need to act
24 relatively quickly due to the information that we had gathered
25 at that point?

1 **A. Yes.**

2 Q. And due to the difficulty locating information and
3 records in this case and also a lack of information and records
4 was that what Staff felt was the best option in this situation,
5 even though we weren't able to present maybe a perfect case?

6 **A. Yes.**

7 Q. Does Staff need to verify or investigate every single
8 complaint that it receives to determine that a utility is not
9 providing safe and adequate service?

10 **A. If we received several complaints that are of the same**
11 **nature and we demonstrate with even one of them if it's the same**
12 **complaint over and over then that would carry through all of**
13 **them. We don't have to investigate every single customer**
14 **complaint to view something as a problem. Generally speaking we**
15 **try and we do investigate every informal and formal complaint**
16 **against regulated complaints.**

17 Q. Would you say that the water and sewer industry is
18 unique from other utility industries such as electric and gas in
19 that you deal with a larger number of smaller systems?

20 **A. Yes.**

21 Q. So it's not unusual for water and sewer staff to meet
22 with individuals or small groups of people or families who own a
23 company in water and sewer?

24 **A. That's not unusual.**

25 Q. As opposed to electric and gas where -- or larger

1 water companies where you might be meeting with that company's
2 employees who are well versed in PSC regulation?

3 **A. Yes.**

4 Q. Do you think that Staff's Water and Sewer Department
5 does its best to explain the role of the PSC and how to comply
6 with our regulations?

7 **A. Certainly.**

8 Q. The purpose of Staff's Petition for an Interim
9 Receiver is to protect the customers. Correct?

10 **A. Yes.**

11 Q. Our goal is not to punish Mr. Blevins. Correct?

12 **A. Correct.**

13 Q. Does Staff's lack of knowledge of a system mean that
14 it should not be regulated?

15 If you are not aware that a system is --

16 **A. Not directly, no. I mean we have to have some kind of
17 basis for why we would pursue.**

18 Q. Right. But, just because we are not aware of a system
19 doesn't mean that it would fall under PSC jurisdiction?

20 **A. Correct.**

21 Q. Even if that system has been operating for decades?

22 **A. Yes.**

23 Q. Is it unusual for Staff to identify or discover or to
24 have brought to our attention water and sewer systems that have
25 been illegally operating?

1 A. I would not characterize it as unusual. There are a
2 few a year. Most of those the outcome is that they change their
3 behavior to no longer fall under our jurisdiction.

4 Q. In order to indicate a safety concern do we need to
5 determine that a specific person experienced skin irritation,
6 for example, from chlorine in their water, or is it enough to
7 just know that the risk is present once a certain level of
8 chlorine has been detected?

9 A. I would characterize it as knowing that unsafe
10 practices are the norm for a company is enough. I don't have to
11 see myself the chlorine results that were a risk at someone's
12 tap if it has been explained to me that someone routinely
13 engages in activities that would, that are likely to put a
14 customer at risk.

15 Q. Would your response be the same in relation to e. coli
16 or other bacteria that might be detected in water?

17 A. To a degree. With e. coli detection that's a very
18 firm detection of a serious problem, but that's not necessarily
19 created by the water company. But, it dictates a response.

20 Q. And that's why water testing or sampling occurs,
21 right, to prevent or limit harm to customers?

22 A. Yes. Yes.

23 MS. ASLIN: All right. I have no further
24 questions.

25 JUDGE CLARK: Staff have any more witnesses to