

1 STATE OF MISSOURI  
2 PUBLIC SERVICE COMMISSION  
3  
4 TRANSCRIPT OF PROCEEDINGS  
5  
6 Evidentiary Hearing  
7 September 23, 2014  
8 Jefferson City, Missouri  
9 Volume 2  
10 In The Matter Of The )  
Application Of Peaceful )  
11 Valley Service Company's ) File No. SR-2014-0153  
Request For Increase )  
12 in Sewer Operating Revenues)  
13 In The Matter Of The )  
Application Of Peaceful )  
14 Valley Service Company's ) File No. WR-2014-0154  
Request For Increase )  
15 in Water Operating Revenues)  
16  
17 KIM S. BURTON, Presiding  
REGULATORY LAW JUDGE  
18  
19 STEPHEN M. STOLL,  
WILLIAM P. KENNEY,  
20 DANIEL Y. HALL,  
COMMISSIONERS  
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25 Reported by: Rebecca Brewer, RPR, CRR

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A P P E A R A N C E S

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

2 JUDGE BURTON: The Commission has before it  
3 the matter of Application of Peaceful Valley  
4 Services Company's Request for Increase in Sewer  
5 Operating Revenues, File No. SR 2014-0153. And in  
6 the matter of Application of Peaceful Valley  
7 Service Company's Request for Increase in Water  
8 Operating Revenues, File No. WR-2014-0154.

9 Today is Tuesday, September 23rd, 2014.  
10 And as I've previously stated, the time is  
11 currently 10:33 a.m. I would ask that all those  
12 who are present today, please turn your phones on  
13 silent before we begin. And also remember for  
14 those who are sitting at their desk or if you move  
15 up to the podium to turn your microphone on when  
16 you're speaking because this hearing is being  
17 videotaped and broadcasted as well. So this way  
18 others will be able to hear what you're saying.

19 At this time, I would ask that the parties  
20 enter their appearance for the record. Let's begin  
21 with the staff of the Missouri Public Service  
22 Commission.

23 MR. THOMPSON: Thank you, Judge. Kevin  
24 Thompson and Alex Antal for the Staff of Missouri  
25 Public Service Commission, PO Box 360, Jefferson

1 City, Missouri, 65102.

2 JUDGE BURTON: Thank you.

3 And on behalf of the Office of Public  
4 Counsel?

5 MS. BAKER: Thank you. Christina Baker, PO  
6 Box 2230, Jefferson City, Missouri, 65102,  
7 appearing on behalf of the Office of the Public  
8 Counsel and the customers.

9 JUDGE BURTON: All right. Thank you.

10 Now, I don't have anything on file as far  
11 as an attorney entering their appearance for  
12 Peaceful Valley Service Company. And are there any  
13 attorneys present on behalf of Peaceful Valley  
14 Service Company? Seeing no hands, we'll go ahead  
15 and assume that there are no attorneys on their  
16 behalf.

17 Now, at this time I'm going to ask if there  
18 are any procedural matters that we need to address  
19 before we continue with the witness testimony.

20 All right. Seeing no hands, at this time,  
21 I believe that the Commission has subpoenaed August  
22 B. Hoernschemeyer to appear before us. Are you  
23 here, sir?

24 A Yes.

25 Q Mr. Hoernschemeyer, we're going to call

1     you up to testify, so could you please come right  
2     over there to witness the stand? Now, would you  
3     please raise your right hand?

4                     AUGUST HOERNSCHEMEYER,  
5                     Of lawful age, produced, sworn and  
6     examined, deposes and says:

7                     EXAMINATION

8     BY JUDGE BURTON:

9             Q     Thank you. You may be seated. All  
10    right. Now, sir, I'm going to ask you really  
11    briefly, could you please spell your name for the  
12    record?

13            A     Okay. My name is officially August,  
14    A-U-G-U-S-T, Hoernschemeyer,  
15    H-O-E-R-N-S-C-H-E-M-E-Y-E-R.

16            Q     All right. Thank you. And I am  
17    pronouncing it correctly?

18            A     Yes.

19            Q     All right. Now, Mr. Hoernschemeyer,  
20    where do you currently reside?

21            A     Currently I'm -- I live in St. Louis,  
22    Missouri. I have a weekend home at Peaceful Valley.  
23    And -- but my home address is 108 Worthington  
24    Circle, St. Louis, Missouri, 63128.

25            Q     And did you travel here today for this

1     **hearing from that St. Louis address?**

2             A     We came down to the lake last night and  
3     then from -- we came here from Peaceful Valley Lake.

4             **Q     Okay. Could you give me that address in**  
5     **Peaceful Valley.**

6             A     At Peaceful Valley Lake, my address is  
7     1533 Lake Shore Drive, Owensville, Missouri, I'm not  
8     sure what that zip is.

9             **Q     Okay. Thank you. Now,**  
10    **Mr. Hoernschemeyer, are you currently employed?**

11            A     I am currently retired. I have -- I do  
12    a little bit of engineering consulting, but that is  
13    a minor thing. I'm basically retired.

14            **Q     Do you have any type of educational**  
15    **degrees or certifications?**

16            A     Yes, I am a professional engineer in  
17    Missouri. I have a degree in civil engineering from  
18    St. Louis University.

19            **Q     Okay. And when was that received?**

20            A     1957.

21            **Q     Okay. Thank you. Now, are you**  
22    **currently the president of Peaceful Valley Service**  
23    **Company?**

24            A     Yes.

25            **Q     Okay. How long have you been in that**

1     **position?**

2             A     I think three years. About three years.  
3     Before that, previously, I have been on the board  
4     for maybe ten years or so. Starting, I think, 2002,  
5     I believe.

6             Q     Okay. Thank you. Now, at this time,  
7     I'm just going to turn this over to the Commission  
8     in general. And I'll go ahead and start down here  
9     on my left to see if there are any questions for you  
10    specifically.

11                   **Commissioner Hall?**

12             COMMISSIONER HALL: You want to go in order  
13     of seniority?

14             JUDGE BURTON: Commissioner Stoll?

15             COMMISSIONER STOLL: I'm not sure, how is  
16     this going to proceed? Will there be questions  
17     from staff of the Office of Public Counsel or --

18             JUDGE BURTON: We'll be asking questions  
19     here from the Commission and then all parties will  
20     have an opportunity to cross-examine based on the  
21     questions. And present rebuttal testimony.

22             COMMISSIONER HALL: And I'm also going to  
23     have some questions for counsel for staff and OPC  
24     as well.

25             JUDGE BURTON: Okay.

1 COMMISSIONER STOLL: Yeah, I'm not sure if  
2 I have questions at this time. It seems like the  
3 sewer rate and what needs to be done in the future  
4 to meet DNR standards is a big issue here. Is that  
5 correct?

6 JUDGE BURTON: Yes.

7 COMMISSIONER STOLL: I think for right now  
8 I will hold any questions until we're a little  
9 farther along in the proceedings.

10 JUDGE BURTON: Okay. Commissioner -- okay,  
11 Commissioner Kenney?

12 COMMISSIONER KENNEY: I'll start with one  
13 question now, but I do have -- because the  
14 gentleman's here, but I have other questions, but I  
15 would also like to wait and hear from staff.

16 EXAMINATION

17 BY COMMISSIONER KENNEY:

18 Q What's -- I heard that you are  
19 considering forming a non-profit, is that still in  
20 the works?

21 A That is in the works, yes.

22 Q How far in the works is it?

23 A I talked to my attorney, Mary Weston,  
24 yesterday afternoon. She said she had talked to the  
25 Missouri Secretary of State, she said they -- she



1 had one more sheet of paper to fill out and then the  
2 application would be complete.

3 COMMISSIONER KENNEY: That's all my  
4 questions. Thank you.

5 JUDGE BURTON: Okay. Commissioner Hall?

6 EXAMINATION

7 BY COMMISSIONER HALL:

8 Q Good morning. And thank you for coming  
9 here today.

10 My understanding is that you sought a  
11 rate increase in a letter sent in November of 2013  
12 and that rate increase was \$93,840 a year and that  
13 that rate increase was designed so that you could  
14 put in place a new sewer system to comply with DNR  
15 regulations, is that correct?

16 A That is correct.

17 Q Okay. Then, during the course of the  
18 rate case, and you had conversations, communications  
19 with -- with staff and with OPC, and my  
20 understanding is that they -- they were not willing  
21 to agree to any type of stipulation that would  
22 involve that kind of increase?

23 A That is correct.

24 Q And, in fact, they -- I shouldn't say  
25 they. Staff came up with a rate increase

1     **significantly smaller which you did not**  
2     **necessarily -- well, you did not believe would --**  
3     **would provide the funding to comply with DNR, but**  
4     **you went ahead and signed that agreement?**

5           A     Yes, it was a matter of take it or leave  
6     it, I guess.

7           Q     Well, could you explain that to me a  
8     little bit in a little more detail?

9           A     I got this letter from the public  
10    service saying this is -- this is what we are. We  
11    are -- this is what we're going to give you and it  
12    was a matter of -- it was not a question of being  
13    able to object to that. It was a matter of  
14    presented in such a way that this is the way -- this  
15    is what you're going to get and period. You know.  
16    And so I did go ahead and sign it and reluctantly,  
17    but I did sign it, yes.

18          Q     So it was at that point when you  
19    considered forming a not for profit and thereby  
20    eliminating this commission's jurisdiction over the  
21    water and sewer system?

22          A     Well, that is basically when we started  
23    it. The other thing, when we went to our bank and  
24    talked about loans, we found out that general  
25    banking -- general banking practices would say that

1 if you don't have collateral and you don't have a  
2 stream of income coming in, you don't get a loan.  
3 And that -- so that pretty well eliminated us from  
4 being able to comply with the DNR because if we  
5 don't get the money, we can't do the work and  
6 therefore we would be in violation of the DNR  
7 specifications, so we had to look elsewhere to try  
8 to get some money.

9 We did contact the -- both the DNR,  
10 loan program, and also the United States Department  
11 of Agriculture has a program where they will loan --  
12 what do you call it -- the -- I believe the -- it's  
13 a loan program for rural areas I guess is what it is  
14 and they would -- they have a program where they  
15 would loan money for this type of improvement.  
16 However, all of these loans are not available to  
17 for-profit companies. Therefore, we said our best  
18 course would be to become not for profit.

19 **Q So, if you were to continue upon that**  
20 **approach, your plan would be become a not for**  
21 **profit, then increase rates enough to provide a**  
22 **stream of income so that you could pay back a**  
23 **federal loan?**

24 **A That is correct.**

25 **Q Okay. Well, and I'm speaking for myself**

1 right here. I'm not speaking on behalf of the  
2 Commission or anybody else for that matter. But, I  
3 mean, if you were to decide that that is the  
4 approach that you want to take, then by all means,  
5 go for it with that. And I personally have -- I  
6 understand that position.

7 If you were interested in not moving  
8 to a not for profit and maintaining your current  
9 corporate structure, there are some other approaches  
10 that might provide you with the funding necessary --  
11 with a stream of income such that you could get a  
12 bank loan.

13 A I'm not aware of any.

14 Q Well, and that's actually why we're  
15 here. Because there -- the approach -- and, again,  
16 speaking on behalf of myself, not speaking on behalf  
17 of anybody else, but there's a concept called a  
18 surcharge and a surcharge would allow you -- and it  
19 has to be approved by the full commission. But a  
20 surcharge would allow you, the company, the ability  
21 to charge a certain amount of money per month or per  
22 quarter per customer for plant, for assets, that are  
23 not yet built.

24 Now, that is contrary to the way we  
25 usually do things here. And I do not in any way

1     fault staff for, on their own, not taking that  
2     approach in this case, because that's not typically  
3     how we do things. The way we typically do things  
4     here is a company can only recover in rates for  
5     plant that is used and useful. It has to be up and  
6     running. That's the typical way we do things.

7                     But one of the things that I am  
8     considering and, again, speaking on behalf of  
9     myself, one of the things I am considering is  
10    whether or not your company is not the poster child  
11    for moving in a different direction on this issue  
12    and allowing you to recover -- allowing you to  
13    charge X amount per customer, per month in order to  
14    pay for this new system and that's -- that's why  
15    we're here today.

16            A     Okay. I don't -- I do not have any  
17    really objection to that. Of course, I speak for  
18    myself. I don't speak for the whole board. But as  
19    long as we can find a source for the money to pay  
20    for the improvement, and my own feeling is that it  
21    doesn't matter whether we are under PSC or not under  
22    the PSC if we cannot find the revenue source to pay  
23    for the job.

24            Q     Okay. Well, that's so -- as we -- as a  
25    commission, as we get information today, both legal

1 and factual, and then as a commission make a  
2 decision as to whether or not a surcharge is  
3 appropriate in this case, that by no means indicates  
4 that you can't continue to work on a parallel path  
5 of investigating whether a not for profit structure  
6 is in your company's best interest. I just want to  
7 make that clear.

8 A My personal feeling is that the --  
9 regardless of whether, even if we get a surcharge, I  
10 believe it would be extremely difficult to get a  
11 loan from a bank for this project.

12 Q Well, that's actually where I was headed  
13 next. So thank you. I read somewhere, and I'm not  
14 even exactly sure where, but I read that the bank  
15 that you currently are associated with -- and which  
16 bank is that, by the way?

17 A Legends Bank in Owensville.

18 Q You went to Legends Bank and laid out  
19 your situation with the DNR permit and the ammonia  
20 issue, is that --

21 A Yes.

22 Q And according to the engineering report,  
23 it was a \$1.1 million project, is that correct?

24 A Right. That is correct.

25 Q And what did Legends Bank tell you?

1           A     Basically that, you know, that we did  
2     not have collateral, we didn't have income stream,  
3     there was no way they could loan us the money. And  
4     he actually referred us to the Department of  
5     Agriculture loan division.

6           Q     So, if we were to put a surcharge in  
7     place that would allow for an increase in revenues  
8     in the ballpark of what your November, 20th, 2013  
9     letter requested, would that allow you to get  
10    financing?

11          A     I'm not sure. I can't -- I don't know.  
12    That particular issue was not addressed with the  
13    bank, no.

14          Q     Okay. Well, I would encourage you to --  
15    if you are interested in this surcharge approach, I  
16    would encourage you to get in contact with the bank  
17    or some other bank to determine whether or not you  
18    could get financing because I think this approach  
19    only works if -- a surcharge approach only works if  
20    you are able to get financing somewhere.

21          A     Right.

22          Q     Okay. I also read somewhere, and I  
23    apologize for not being able to cite it. Read  
24    somewhere that you were considering getting another  
25    engineering report or getting another engineer to

1     **look at the Integrity Engineering report, is that**  
2     **correct?**

3             A     As I understand, the Department of  
4     Agriculture has their own process or specifications  
5     for an engineering report. The engineering report  
6     that we have right now does not meet those  
7     specifications. Now, ideally if we could get the  
8     Department of Agriculture to accept that engineering  
9     report with some modification, it would probably --  
10    probably be the least expensive option for us, but  
11    at the same time, they may tell me that I have to  
12    get -- I have to actually go out for bids and get  
13    three different proposals from three different  
14    engineering companies before they will accept our  
15    application.

16            Q     **And is that for the purpose of getting**  
17    **one of the loans through the agency?**

18            A     Yes.

19            Q     **Has anybody at the Department of**  
20    **Agriculture indicated that there was something**  
21    **deficient in the engineering report from an**  
22    **analytical perspective or was it just a matter of**  
23    **documentation that's missing or what's wrong with**  
24    **the Integrity report, if you know?**

25            A     I'm not sure just what is wrong, but we



1 met with a Ms. Donna Martin from the Department of  
2 Agriculture and reviewed this whole thing. She said  
3 she did not think that the engineering report was  
4 adequate. But she would have to review it and see  
5 if it would -- how much would have to be revised to  
6 meet their specs.

7 But the main thing was that they  
8 require three different -- three different proposals  
9 before we -- before they accept it and we did  
10 actually, in a more informal basis, when we went out  
11 to get an engineering report, we did talk to three  
12 different people. But it was strictly on a verbal  
13 basis. We do not have a firm proposal from the  
14 other people besides Integrity.

15 **Q One of the things I'm going to ask**  
16 **counsel for staff and OPC and maybe their witnesses**  
17 **is for their thoughts on the Integrity report and**  
18 **whether or not they view it as sufficient for us to**  
19 **move forward or whether some type of additional**  
20 **engineering report is required.**

21 **A** Now, I did talk to Integrity Engineering  
22 recently and they indicated that there is some new  
23 technology out there that could possibly reduce the  
24 cost of this project considerably, so -- but I have  
25 not -- I'm hesitant to spend money because we don't

1 have much money, so I did not release them to go  
2 ahead and make that additional study. And that is  
3 probably one of the things I would do once we --  
4 once we get the assurance that we're going to get  
5 some money, I guess.

6 **Q Do you know whether or not the Integrity**  
7 **report -- the project that is recommended by the**  
8 **Integrity report, the re-circulating biofilter**  
9 **system, whether that would allow for the 340 water**  
10 **availability customers to get on the sewer system,**  
11 **do you know? And if not, I can ask counsel for OPC**  
12 **or staff to --**

13 **A** That design would be based just on the  
14 present population plus a projection of 20 year  
15 growth from that. I think right now we have 168  
16 homes, I believe, and we, over the past 20 years,  
17 we've -- we've grown at the rate of maybe one to two  
18 houses a year. So the Integrity report is based on  
19 our present number of households plus it allows for  
20 20 years of growth.

21 **Q So, adding 20 to 40 homes?**

22 **A** Something like that, yes.

23 **Q Do you know whether or not the system**  
24 **that they recommend could, in fact -- could -- has**  
25 **enough capacity for the -- for all your water**

1     **availability customers even if it's not designed for**  
2     **that, do you know if it would?**

3             A     It probably would not be adequate,  
4     however, it is a modular system where you can add  
5     another -- another tank to it and another tank to it  
6     and increase capacity.

7             Q     **Are you -- are you conversant in -- in**  
8     **recirculating biofilter system -- do you know what**  
9     **that is?**

10            A     Yes, I'm -- I had civil engineering way  
11    back, I took a course in water supply and sewage, so  
12    I'm familiar with the general terminology and the  
13    general process. But water -- water supply and  
14    sewage was not my main, in my career, I did not  
15    really get into that, so I am -- I know something  
16    about it. I am by no means an expert on it.

17            Q     **Well, did you agree with the Integrity**  
18    **report in terms of evaluating the five options and**  
19    **coming up with that one as the best one?**

20            A     There were a few things that I did not  
21    agree with, but it was -- it was a matter of he's  
22    the one -- he's the engineer that put his seal on  
23    it, so I pretty well have to accept that.

24            Q     **Could you elaborate on those things that**  
25    **you didn't agree with?**

1           A     Not specifically, I don't recall, but  
2     there were, you know, a few odds and ends.

3           Q     But the fundamental conclusion that that  
4     was the best option of the five, you didn't have any  
5     reason to disagree with that?

6           A     I had no reason to disagree with that,  
7     no.

8           Q     Okay. Were you familiar with the  
9     other --

10          A     I thought, well, excuse me, let's put it  
11     this way, one of their conclusions was that we would  
12     have to abandon the present lagoon. I thought we  
13     could come up with something that we could add on to  
14     the lagoon, but they felt that that was not  
15     practical, so --

16          Q     So you think it would be possible to  
17     expand the current lagoon as one option, even though  
18     they -- they did not?

19          A     I guess that was my feeling, but I'm  
20     not -- I'm not a expert in sewage and they  
21     supposedly are, so I have to take their advice,  
22     really.

23          Q     So my understanding is that you need to  
24     complete construction by January 1, 2018 on a new  
25     treatment system in order to comply with the DNR EPA

1     **regs?**

2             A     That is correct.

3             **Q     And that -- that deadline, it was --**  
4     **that deadline has been pushed back per your request**  
5     **to that date?**

6             A     No, that is the final deadline -- the --  
7     initially it was I think 18 months sooner than that  
8     and they extended the deadline by 18 months, I  
9     believe.

10            **Q     Right now, you don't charge any**  
11     **availability fees for sewer customers, is that**  
12     **correct?**

13            A     That is correct, right.

14            **Q     Do you know why that is? I mean, I**  
15     **guess -- one answer would simply be your tariff**  
16     **doesn't allow for it, but going deeper, do you know**  
17     **why we have availability fees for water but not for**  
18     **sewer?**

19            A     Well, with the water situation, water  
20     availability means that they have a water main in  
21     front of their lot, so at any time they can hook on  
22     to that water. However, with the sewers, they do  
23     not -- there is not a sewer line in front of every  
24     lot. In fact, if they want to hook on to the  
25     system, they will have to pay -- sometimes they will

1 have to pay for the extension of the sewer lines to  
2 their property. We just had a case like that last  
3 year where the people thought they had a sewer line  
4 in front of their house but they did not have a  
5 sewer line, so -- but they had to pay for about a  
6 200-foot extension of the sewer line.

7 Q Okay.

8 A And that is part -- I think that is part  
9 of the tariffs where if there's not a sewer line in  
10 front of your place, the customer is responsible for  
11 bearing the cost of extending that line and then in  
12 the future if somebody else hooks on to the line, he  
13 is entitled to recoup part of that money.

14 Q I'm sorry, say that last part again.

15 A If a -- if we have to extend the sewer  
16 line for a particular customer, and then if somebody  
17 else builds a house next to him and wants to use  
18 that same line, they are entitled to recoup part of  
19 that -- the money they paid to have that sewer line  
20 put in.

21 Q Okay. Well, I mean, that does explain  
22 the different treatment between water and sewer on  
23 availability fees.

24 A Right.

25 Q I don't think I have any other questions

1 right now, but like I said a moment ago, I am going  
2 to have some questions for counsel for staff and for  
3 OPC and for their witnesses and I would hope that  
4 you could stay for the course of those conversations  
5 because I or someone else up here may have  
6 additional questions for you.

7 A That's fine.

8 Q But let me just -- to kind of summarize  
9 where I am -- and I think I speak for all of us with  
10 this -- I mean, we are looking for a way so that you  
11 can provide safe and adequate service to your  
12 customers and comply with DNR and EPA regulations.  
13 We are also, of course, mindful of the cost of that  
14 and we are, of course, doing everything we can to  
15 minimize that cost.

16 But, we don't believe it makes sense  
17 to put new tariffs in place for you and I speak for  
18 myself, I'm sorry, I don't think it makes sense to  
19 put new tariffs in place for -- for your water and  
20 sewer system that don't allow you to comply with DNR  
21 and EPA regs. I think that is not good public  
22 policy. And it's not good for your -- not good for  
23 your customers.

24 So that's why we are looking at some  
25 creative approaches, some outside-the-box approaches

1 to allow you to provide safe and adequate service to  
2 your customers in compliance with DNR and EPA regs.

3 A I appreciate that.

4 Q Thank you.

5 COMMISSIONER KENNEY: Judge, first off,  
6 refresh my memory, that agenda when we had this  
7 case in open discussion, did we -- didn't we  
8 request that we -- some more options or we had  
9 some -- we dealt with something asking the Peaceful  
10 Valley for additional options, did we not?

11 JUDGE BURTON: We requested that staff  
12 submit a report identifying certain issues and  
13 identifying whether other options were available.  
14 And staff provided a report in August of 2014.

15 COMMISSIONER KENNEY: Okay. Thank you.

16 EXAMINATION

17 BY COMMISSIONER KENNEY:

18 Q DNR, are they mandating that this permit  
19 is issued but you have to incorporate these  
20 anticipated rules that are not in effect right now,  
21 like for the ammonia and nitrogen?

22 A I think there is ammonia limits right  
23 now. The national EPA is making it even more  
24 restrictive and they said we should design it for  
25 more restrictive.



1           **Q**     Even though they're not in place, DNR's  
2     requesting that you design it and put in place for  
3     something that's not even in their rules right now?

4           **A**     No, no, it is in the rules right now.  
5     But they're anticipating an additional restriction  
6     that they also want us to incorporate.

7           **Q**     But they want you to incorporate  
8     something that is not currently in the rules,  
9     correct? They're anticipating it's going to be  
10    changed even though it hasn't been changed, but  
11    they're anticipating this is what's coming down, we  
12    want you to build this for this measure, is that  
13    right?

14          **A**     Yeah, and they said it's recommended.  
15    They said it's not required.

16          **Q**     It's not required?

17          **A**     No.

18          **Q**     So they're not mandating it?

19          **A**     No, but it could be that when they do  
20    change the rules, we would still have to comply and  
21    build again to comply with the new restructuring if  
22    we don't meet.

23          **Q**     So they're saying you don't have to do  
24    it over again, is that what they're --

25          **A**     Exactly, yes.

1           **Q     Thank you very much, sir. I appreciate**  
2 **you coming and speaking before us.**

3           JUDGE BURTON: Mr. Hoernschemeyer, if you  
4 could please remain seated. I have a few questions  
5 to follow up and after that, the attorneys for the  
6 staff and also Public Counsel will have some  
7 questions for you as well.

8           THE WITNESS: All right.

9                               EXAMINATION

10          BY JUDGE BURTON:

11           **Q     Under the disposition agreement that was**  
12 **filed that was signed by Peaceful Valley Service**  
13 **Company and the staff of the Missouri Public Service**  
14 **Commission, there is a requirement that there's**  
15 **supposed to be a new engineering study that's**  
16 **submitted by your company to staff. Under the**  
17 **tariffs that are currently under review and were**  
18 **proposed that your company has submitted, is there**  
19 **enough financing for your company to complete that**  
20 **engineering study?**

21           A     We have money in reserves. I think we  
22 probably could pay for it out of our reserves, yes.  
23 But we have not proceeded with that yet. Because  
24 I'm -- I'm reluctant to spend more money on  
25 engineering until we get the Department of

1 Agriculture satisfied that whatever we do will  
2 satisfy them.

3 Q Okay. Now, one of the other options  
4 that was referenced was -- in the study that was  
5 completed was to use the land and expand the lagoon,  
6 I believe, but there was some issues with the  
7 landowner next to the lagoon. Could you please  
8 explain that a little bit more?

9 A Well, one of the options that the  
10 engineering report studied was what they call land  
11 application. And the Department of Natural  
12 Resources prefers that method because that way  
13 nothing goes into the stream and they're very happy  
14 with that, because there is no -- nothing from our  
15 facility would go into the stream. It would go into  
16 the ground. However, they require, I think, maybe  
17 40 acres of ground or something like that, 20 acres,  
18 40 acres, I'm not sure how much ground.

19 Now, there is a farmer right next to  
20 us with that much ground and we did talk to him one  
21 time about whether or not he would be willing to  
22 sell some land just on a verbal basis and right  
23 away, it was no, no way, and you could understand  
24 it, because the land we're talking about using is,  
25 shall we say, right next to his house, so you could

1 see where he would be reluctant to put a sewage, any  
2 kind of sewage project next to his house, even if we  
3 paid him top dollar for that land.

4 **Q Okay. Could you describe, do you know**  
5 **what the stream is exactly that would currently run**  
6 **off to?**

7 A Presently we're at the very head waters  
8 of the stream. Actually, it's kind of a dry creek,  
9 doesn't really have water in it usually unless it  
10 rains. It does have the small amount of water that  
11 is discharged from our lagoon is about the only  
12 water that's in it most of the year.

13 Now, right -- maybe a thousand feet  
14 below our -- the outlet of our lagoon it runs into  
15 the spillway of the dam and when it rains, you get a  
16 tremendous amount of water going over that spillway,  
17 so you get a lot of -- a lot of dilution once we  
18 reach that point. But, actually, the stream itself  
19 is -- is not much and, in fact, you have to go maybe  
20 three or four miles before you get into a stream  
21 where there's really a steady flow of water.

22 **Q Okay. And have you had any discussions**  
23 **with DNR in the last year?**

24 A I have to have quite a bit of  
25 correspondence with them and -- but right now, it's

1 just a matter of, you know, they made their study  
2 and they made their report and they said this is  
3 what you have to do, you know, and I objected to a  
4 few things but I was turned down.

5 JUDGE BURTON: Okay. Thank you. At this  
6 time I'll see if staff has any questions or hold on  
7 one second.

8 EXAMINATION

9 BY COMMISSIONER HALL:

10 Q One follow-up to that. So has DNR  
11 looked at the Integrity report?

12 A Yes, we had to. That was one of the  
13 requirements for -- when we got our conditional  
14 permit is that we had to make an engineering study  
15 and that's when we hired Integrity to make this  
16 report. That report was submitted to DNR.

17 Q And did DNR have a response to that  
18 report?

19 A They did have one additional question.  
20 They didn't think the flow that we used was adequate  
21 and that's -- right now that's up for discussion and  
22 will be part of the revised report whenever we get  
23 that.

24 Q Is it your understanding that that  
25 disagreement has any bearing on the ultimate

1 conclusion in the report as to which is the best  
2 system to put in place?

3 A I don't think so. It might -- it might  
4 have the effect of making it bigger.

5 Q Did DNR provide you anything in writing  
6 in response to the report?

7 A Yes, we did get a letter from DNR  
8 stating this, but that was about it.

9 Q Stating that the report's been received  
10 or stating --

11 A The report has been received. That  
12 the -- that the flow amount of discharge that we  
13 submitted did not jive with the original permit and  
14 that they would have to make some kind of  
15 engineering degradation report or something like  
16 that and -- which we have not done because, as I  
17 said, we're not -- I'm -- I don't want to spend any  
18 more money until we get some of this resolved.

19 Q So there was nothing in that  
20 correspondence that indicated whether or not DNR  
21 agreed with the ultimate conclusion in the Integrity  
22 report or disagreed?

23 A No, as far as -- as far as that, I  
24 believe the DNR just accepts, once an engineer  
25 writes a report, I don't think they object.

1           Q     Would you be willing to submit a copy of  
2     that correspondence to us?

3           A     Yeah, I think --

4           Q     I don't know what the proper protocol is  
5     for that, how we effectuate that.

6           JUDGE BURTON: How about this? Could you  
7     provide that to staff counsel and staff counsel  
8     could review that and provide that to the parties  
9     and for submission into the record and I'll see if  
10    there are any objections at that time after it's  
11    been reviewed.

12          THE WITNESS: I have a copy of it right in  
13    my file folder that I have here with me.

14          JUDGE BURTON: So you do have it here with  
15    you?

16          THE WITNESS: Yes.

17          JUDGE BURTON: Okay. Why don't we go ahead  
18    and if you'd like to go ahead and get it right now  
19    and have an opportunity for the attorneys to review  
20    that real quick.

21          COMMISSIONER HALL: And we can have someone  
22    make copies for you if we need that.

23          THE WITNESS: These are the most recent --  
24    that's the most recent correspondence. I have some  
25    others.

1 MR. THOMPSON: Thank you, sir.

2 THE WITNESS: This one here is also --

3 MR. THOMPSON: Thank you, sir.

4 JUDGE BURTON: Okay. Attorneys for OPC and  
5 staff had an opportunity to review those documents.

6 MR. THOMPSON: That's true, Judge.

7 JUDGE BURTON: Okay. Are there any  
8 objections to the admission of those documents?

9 MS. BAKER: No.

10 MR. THOMPSON: No objections.

11 JUDGE BURTON: Okay. Then I would ask the  
12 court reporter to please mark those.

13 MR. THOMPSON: Should we get copies made,  
14 Judge, so we can return --

15 JUDGE BURTON: Yeah, I'll go ahead, is it  
16 okay if we have this admitted or do you have any --

17 THE WITNESS: I have no problem with that.

18 JUDGE BURTON: Why don't we take a quick  
19 recess and we'll get some photocopies made and  
20 we'll get this marked as an exhibit and copies for  
21 all the parties?

22 Let's go off the record.

23 (Break taken.)

24 (Hearing Exhibits 1, 2 and 3 marked.)

25 JUDGE BURTON: Let's go back on the record.



1           We have what's been marked by the court  
2   reporter as Exhibit 1, that's the April 14th,  
3   2014, letter stamped from the Department of Natural  
4   Resources. Exhibit 2 is the July 1st, 2014,  
5   stamped letter from Department of Natural  
6   Resources. And Exhibit 3 is a September 3rd,  
7   2014, letter from the Department of Natural  
8   Resources.

9           Now, I believe before we went off the  
10   record, the counsel for the staff and opposite  
11   counsel indicated they have no objection to the  
12   admission of these three exhibits.

13           MR. THOMPSON: That's correct, Judge.

14           MS. BAKER: That's correct.

15           JUDGE BURTON: All right. Then, Exhibits  
16   1, 2, and 3 will be admitted into the record.

17           And, Commissioner Hall, did you have any  
18   further questions?

19           COMMISSIONER HALL: Apologies to all, but  
20   yes.

21           **Q     (By Commissioner Hall) The July 1, 2014**  
22   **letter from the Department to you indicates that you**  
23   **sent them two letters or you sent the Department two**  
24   **letters on May 19 and June 23 of 2014. I'd like to**  
25   **see those letters as well.**

1           A     Okay.

2           **Q     And I apologize for that. I don't think**  
3     **that needs to hold us up going forward as well.**

4           JUDGE BURTON: Do you have copies of those  
5     letters as well?

6           THE WITNESS: I believe so, yeah.

7           JUDGE BURTON: Why don't you review those  
8     and see if you can find them real quick and what I  
9     would suggest is it's 11:30 right now. Why don't  
10    we go ahead and offer some questions and we'll take  
11    a break and then make photocopies and then see if  
12    there are any additional questions based off the  
13    additional letters.

14          **Q     (By Commissioner Hall) Then I guess just**  
15     **to eliminate the possibility of having to do this**  
16     **again, in that file, could you just go ahead and**  
17     **give us all of the correspondence between you and**  
18     **the department that relate to this particular**  
19     **facility?**

20          A     Sure.

21          **Q     Thank you.**

22          A     I guess I'm not -- I guess I could feel  
23     free to release the letters without giving DNR's  
24     approval, is that correct?

25          JUDGE BURTON: If they're addressed to the

1 company or you as the representative. Why don't we  
2 go ahead and do this, then. Why don't we go ahead  
3 and we'll have questions from the attorneys and  
4 then we'll take a break and at that point you can  
5 go through and review and we'll see about making  
6 photocopies.

7 THE WITNESS: Okay.

8 JUDGE BURTON: Okay.

9 THE WITNESS: All right.

10 JUDGE BURTON: Before we do that, are there  
11 any further questions from the Commission? Okay.  
12 At this time, we'll see, does staff wish to go  
13 first?

14 MR. THOMPSON: No questions. Thank you,  
15 Judge.

16 JUDGE BURTON: Okay. And Office of Public  
17 Counsel?

18 MS. BAKER: Thank you.

19 EXAMINATION

20 BY MS. BAKER:

21 Q Good morning. What caused Peaceful  
22 Valley to go down the path of thinking that  
23 construction would be necessary for ammonia limits?  
24 Where did that start?

25 A It started with the DNR. They came out

1 and made inspection and we submit monthly reports on  
2 the discharge from our lagoon. For many, many  
3 years, we have met all the DNR requirements, but  
4 recently they changed the requirements, especially  
5 insofar as the limits on ammonia. And because of  
6 the limits on ammonia, our lagoon presently cannot  
7 and, apparently, from what I'm told, there's no way  
8 that we could make improvements to the lagoon to  
9 take care of the ammonia and it gets into the  
10 matter, technical aspects, a different bacteria is  
11 required to remove the ammonia than is required to  
12 remove the ordinary oxygen demand of ordinary  
13 sewage. And let's say the two -- the two -- the two  
14 bacteria don't get along with each other, so it  
15 almost has to be done, if you want to get rid of  
16 ammonia, you have to do it in a separate cell. And  
17 I think that's base -- anyway, to answer your  
18 question, the DNR told us that we have to make this  
19 improvement.

20           **Q     Okay. Did DNR give the company any**  
21 **violations because of their discharge monitoring**  
22 **reports?**

23           **A     No, because we have been in compliance,**  
24 **so there was no -- no -- there was no rule and the**  
25 **only thing, we have to comply within so many years**

1 now and then if we don't comply, then we start  
2 getting violations.

3 Q Okay. So would you say an inspector  
4 came on site and said, Hey, there's these limits  
5 that are coming in the future, you might want to  
6 think about that? Is that basically what happened?

7 A Well, basically what happened is  
8 every -- I think it's every five years, we have to  
9 reapply for our permit to discharge water. And in  
10 the last time we -- our permit was due, DNR came,  
11 made a stream survey, and they also introduced this  
12 ammonia limitation. And when they introduced the  
13 ammonia limitation, they said that we would not be  
14 in compliance, so we had -- but they did give us a  
15 number of years to comply with that.

16 Q All right. And did they give you a copy  
17 of the DNR fact sheet ammonia criteria, the new EPA  
18 recommended criteria that's dated February of 2014,  
19 have you seen that?

20 A I don't recall that particular document,  
21 no.

22 Q Okay. Did you receive a copy of staff's  
23 report in this particular case?

24 A Of the DNR report?

25 Q No, staff's report that was done in

1     **August, I believe it was, for this -- for this case**  
2     **with the Commission, August 15th?**

3             A     I probably did. I'm sure I did, but I  
4     don't have it.

5             Q     **All right.**

6             A     I might have it, but I don't recall  
7     exactly.

8             Q     **Okay. Did you notice the fact sheet**  
9     **that was attached to staff's report?**

10            A     Once again, I don't remember.

11            Q     **Okay. All right.**

12            A     And what particular issue was it?

13            Q     **And the fact sheet was basically -- do**  
14     **you have staff's report with you?**

15            A     I may have. I'm not sure.

16            Q     **Okay.**

17                 MS. BAKER: Could I approach?

18                 JUDGE BURTON: Yes, you may.

19            Q     **(By Ms. Baker) What I have is a copy of**  
20     **the fact sheet that's attached to staff's report. I**  
21     **believe it's attachment two to it.**

22                         **Now, this was attached to staff's**  
23     **report. I have a section there that's underlined.**  
24     **Could you read that, that's underlined?**

25            A     "The Department has initiated

1 stakeholder discussions on this topic and at this  
2 time, there's no firm target date for starting the  
3 rule making to adopt new standards. Part of the  
4 consideration during these discussions will include  
5 evaluation of actual species of mussels native to  
6 Missouri and their sensitivity to ammonia."

7 I don't remember seeing this letter,  
8 no.

9 Q And from that, would you agree that the  
10 Department of Natural Resources has not put  
11 regulations in just yet as far as the EPA standards?

12 A Well, they tell -- per our new permit,  
13 all I can go is what the requirements of our new  
14 permit stated. And at that time, they stated that  
15 there was an ammonia limit in the -- in that  
16 requirement. And so I can only state what -- what  
17 we have from DNR. They told us there was ammonia  
18 limit and I had no reason to say no, there isn't.

19 Q Okay. Would you look at the second page  
20 of that?

21 JUDGE BURTON: Ms. Baker, did you want to  
22 have this admitted?

23 MS. BAKER: It's attached to staff's  
24 report. We can have it admitted or just take  
25 notice of it being attached to staff's report,

1 which is filed.

2 JUDGE BURTON: Which page are you on just  
3 so we can follow?

4 MS. BAKER: I'm on the staff's report,  
5 Attachment B. MDNR publication 2481, the second  
6 page.

7 JUDGE BURTON: Okay.

8 Q (By Ms. Baker) And now looking on the  
9 second page, the first full paragraph that begins  
10 operating permits for facilities, do you see that?

11 A The underlined part?

12 Q Yes. Can you read that paragraph?

13 A It says, "To aid permit holders in  
14 decision making to alert them to upcoming changes,  
15 the Department is including advisory language  
16 regarding the new federal criteria of new permits  
17 and permit fact sheets."

18 Q Okay. Why don't you go ahead and just  
19 finish out that paragraph.

20 A "When setting schedules for compliance  
21 for ammonia effluent limitations, the Department  
22 will take into considerations recently constructed  
23 upgrades to meet the current ammonia limitations and  
24 any other relative factors."

25 Q Okay. And so from that -- that language



1     that I had you read, would you agree that what DNR  
2     has done is to put those limits into permits as  
3     advisory language?

4             A     As I understand, there was -- there was  
5     a standard issued for ammonia, but then there was a  
6     new standard issued for or there is going to be a  
7     new standard for ammonia which is much more  
8     restricted.

9             Q     Okay.

10            A     And that's my understanding.

11            Q     Okay. But you have not received any  
12     violations for any of the existing ammonia  
13     standards?

14            A     No, because there were none up to this  
15     point. Up to this time, there were no ammonia  
16     limitations. The ammonia limitations would only  
17     come in after these couple years that we have to  
18     improve the facility.

19            Q     And is that the 2018 date that you  
20     mentioned before?

21            A     Yes.

22            Q     All right. I'll take that back. And  
23     I'd like to talk a little bit about the bid process  
24     with Integrity. You discussed that earlier. What  
25     was -- what instructions were given to the three

1     **engineering firms that you discussed as to what kind**  
2     **of a report you were looking for?**

3             A     Well, in the draft permit for the  
4     lagoon, the Department of Natural Resources gave us  
5     a criteria that they wanted this engineering report  
6     to cover. And what I did, I took that engineering  
7     or that -- those requirements and just forwarded  
8     them to, I think, three or four different engineers  
9     and then asked for a proposal to conduct -- conduct  
10    a study which would meet these requirements.

11            **Q     A proposal for construction choices?**

12            A     No, not for -- just for preliminary  
13    report, not for construction, no.

14            **Q     No, I meant for -- you wanted a report**  
15    **for them to put together construction choices for**  
16    **you, for the company?**

17            A     I would say that I wanted them to make a  
18    study of various options. I think three or four  
19    different options that we would have to go forward  
20    with this project. And then I asked, as I said, I  
21    asked three or four different companies, some got a  
22    response, some just got just a verbal response. I  
23    probably have -- I have those responses in my  
24    letter, but it was not a formal -- I guess it was  
25    formal. I did send a letter to them asking for this

1 proposal, and Integrity, and then we interviewed I  
2 think three different companies. We interviewed  
3 them and we called them in. And then after talking  
4 to all of those individuals, we selected Integrity  
5 as our choice and not necessarily cheapest, but the  
6 one that we thought was most qualified to do the  
7 job.

8 **Q And did you always assume that**  
9 **construction would be necessary?**

10 A Oh, yes, DNR basically told us that.  
11 They said there's no way that our present lagoon  
12 would meet these new requirements, therefore, you  
13 have to go ahead and make the study as to what is  
14 required to meet these new requirements.

15 **Q And you say that because your permit**  
16 **says those limits or who -- who in DNR said you must**  
17 **construct?**

18 A Well, DNR said that in several years you  
19 will have to meet the -- these requirements and the  
20 only way you can meet these requirements is to  
21 modify your lagoon system.

22 **Q Okay. Did you contact any operators to**  
23 **ask if there were operational changes that could be**  
24 **done that would meet the new limits?**

25 A Well, that was the purpose of this

1 engineering study; to tell us what can be done to  
2 have us meet these requirements.

3 Q But that is -- Integrity is a design  
4 engineering firm, correct?

5 A Right.

6 Q I'm talking about operational studies.

7 A No, I would assume that the engineering  
8 people know all about operations because that is --  
9 that's their business. They basically tell the  
10 operators how to conduct, how to do the work, you  
11 know.

12 Q You would agree that there's a  
13 difference between a certified operator for DNR and  
14 a professional engineering design firm, correct?

15 A Right. Well, there were, yes.

16 Q But you did not contact an  
17 operational --

18 A No, actually, I would assume that the  
19 professional engineers are much more qualified than  
20 the operators. In fact, the engineers would  
21 probably design the criteria that the operators use.

22 Q Okay. But you always --

23 A I'm an engineer, so I'm prejudiced.

24 Q Well, as am I. I am a professional  
25 engineer as well. So I understand that, too. But,

1     **and so I guess my point is: You contacted Integrity**  
2     **and all of the design firms with construction in**  
3     **mind and a report for construction?**

4             A     Well, we asked them to tell us what we  
5     have to do to come into compliance with these  
6     requirements. That's basically what we did. And  
7     the obvious conclusion is that, yes, you have to  
8     build something.

9             **Q     I believe that Peaceful Valley got an**  
10     **extension on when a construction permit is to be**  
11     **filed with DNR, is that correct?**

12            A     Well, that's a little -- a little bit  
13     confusing. The original permit or in the revised  
14     permit, they changed the completion date for the  
15     completion of the project, but they did not change  
16     the completion -- they did not change the date for  
17     completion of construction documents. So, but if  
18     you're going to extend the one date, you almost have  
19     to extend the other date.

20                         So I did -- I assumed that that was  
21     just a error on their part and I actually issued a  
22     construction schedule which I felt was reasonable  
23     and submitted it to DNR, they did not object, so I'm  
24     assuming they accepted that.

25            **Q     And what is that construction schedule?**

1           A     To be done by January, 2018.

2           **Q     And that construction schedule is based**  
3     **on the \$1.1 million recommendation by Integrity for**  
4     **the biofiltration?**

5           A     That's right, yes.

6           **Q     Do you know when you will be submitting**  
7     **a construction permit?**

8           A     I'm not sure what date I had that in my  
9     schedule, but it was within -- I don't -- you know,  
10    I know a little bit about construction and how long  
11    it takes. So I just prorate it back from the  
12    completion date back to where I thought would be a  
13    reasonable time to have construction documents  
14    finished.

15          **Q     And are you moving towards having an**  
16     **engineering, professional engineering firm, actually**  
17     **design the system for you?**

18          A     Yes. In fact, we will probably have  
19     Integrity do it, although I guess we could go out  
20     for bids again and obtain some different --  
21     different proposals for it.

22          **Q     But you're not sure who was going to be**  
23     **doing it at this time?**

24          A     At this time, no.

25          **Q     Okay. So you have not taken -- you do**

1 not have a firm that is actually designing it for  
2 you now?

3 A Not yet, no.

4 Q And one of the -- one of the  
5 recommendations by Integrity was -- that was looked  
6 at by Integrity was expanding the plant, is that  
7 correct?

8 A Integrity gave us, I think, four  
9 different options. They started with saying that  
10 they did not think that the existing lagoon could be  
11 brought up to standards, so they eliminated that  
12 one. Another option was that we would actually pump  
13 all the sewage off to the City of Owensville and let  
14 them treat it. That was obviously a much too costly  
15 option. Then they had, I think, three other options  
16 for different -- different ways of treating -- of  
17 treating the sewage and what came out was the --  
18 cheapest one was this biofilter system.

19 Q The cheapest option, is that your  
20 understanding?

21 A Yes. Um-hmm. One of the other options  
22 was this ground application which was kind of  
23 eliminated because of the not -- because the land  
24 was not available from that owner.

25 Q So I'm looking at the Integrity report

1 that is also attached to staff's report, and it  
2 states that two options for upgrading the existing  
3 lagoon were evaluated. The first would not modify  
4 the existing lagoon but would follow it with an  
5 additional process for nitrification, do you  
6 remember reading that?

7 A Yes.

8 Q And then it says that it has issues  
9 with -- with nitrifying bacteria, did you agree with  
10 that?

11 A I'm not sure about the details of that  
12 anymore. It's been a long time since I read that  
13 report.

14 Q And then there's a second option that  
15 was considered to convert it to an aerated lagoon,  
16 but it says that this option is hindered by the  
17 small size and shallow depth of the existing lagoon,  
18 do you remember that?

19 A Yes.

20 Q And the existing site is too constrained  
21 to perform the necessary expansion, is that correct?  
22 Is that your understanding?

23 A I think that's what they said, yes.  
24 Since then we have looked into it a little bit and  
25 there's more land beyond the lagoon that I think we



1 could use and it's one of those things that we have  
2 to investigate further with Integrity.

3 Q So at this point, Integrity was not  
4 aware that there was a possibility of other land  
5 available?

6 A They were aware of it, but it's, shall  
7 we say, a very overgrown swampy area and they did  
8 not think that this would be suitable for it. I  
9 think in a final design we could probably get around  
10 that.

11 Q And is this the same -- same land that  
12 you discussed earlier about the farmer who was  
13 nearby?

14 A No, this is land that is on Peaceful  
15 Valley property.

16 Q Is the land that the farm owner owns, is  
17 it close enough to be used for expansion of the  
18 facility if necessary?

19 A Yes, it's right next to the lagoon.

20 Q So, you've only talked with the  
21 landowner once --

22 A Yes.

23 Q -- and they said no?

24 A Yes.

25 Q Because they didn't like land

1     **application, is that correct?**

2             A     We did not -- we did not really discuss  
3     what it would be used for. Basically it was -- the  
4     thought was it's his farm, he didn't want to sell.

5             Q     And you would agree that when there's  
6     \$1.1 million possible on the table, that discussing  
7     some land purchase might be a good idea?

8             A     Well, could be, but that was not one of  
9     the -- land application was not one of the most  
10    economical issue points.

11            Q     But one of the first ones that Integrity  
12    looked at was land or was the treatment facility  
13    expansion --

14            A     Yes.

15            Q     -- on that same land?

16            A     Yeah.

17            Q     Okay. Do you know how that would  
18    compare to \$1.1 million?

19            A     Well, \$1.1 million is the expansion on  
20    our land. They would -- they would actually build a  
21    completely new treatment system on our present land  
22    right adjacent to the lagoon, but the lagoon would  
23    be abandoned.

24            Q     Right. But this option that I'm  
25    discussing is upgrading the existing lagoon, you

1     **understand that?**

2             A     For some reason, as I recall, Integrity  
3     said that was not feasible.

4             Q     **All right. And let's discuss a little**  
5     **bit more, you mentioned that since -- since**  
6     **Integrity did the report, that there may be some new**  
7     **technology that would make it much cheaper. Can you**  
8     **explain what that is?**

9             A     Yes, in our last meeting with Integrity,  
10    they mentioned that there was some new process that  
11    they were -- that somebody had installed, somewhere  
12    out of town, I think Macon, Missouri or something  
13    like that and that is operating very successfully of  
14    removing ammonia. And they indicated that they  
15    would probably investigate that further as part of  
16    the -- if we got into the final design of this  
17    thing.

18            Q     **Okay. So that would be another**  
19    **option --**

20            A     Um-hmm.

21            Q     **-- before you would go into the**  
22    **construction permit process?**

23            A     Yes. Um-hmm. I don't think -- I don't  
24    think this initial Integrity report is the final  
25    answer to our problems. I think there may be some

1 further options that we may investigate.

2 Q Okay.

3 A Hopefully they're cheaper.

4 Q I agree.

5 I think that's all the questions that  
6 I have. Thank you.

7 JUDGE BURTON: Okay. I did have -- were  
8 there any questions from the Commission?

9 COMMISSIONER STOLL: I have no questions of  
10 this witness.

11 COMMISSIONER KENNEY: I have a follow-up  
12 question.

13 JUDGE BURTON: Okay. Commissioner Kenney.

14 EXAMINATION

15 BY COMMISSIONER KENNEY:

16 Q Mr. Hoernschemeyer?

17 A Yes.

18 Q Just a follow-up question because OPC  
19 was talking about the current ammonia discharge.  
20 Right now, you are in compliance with DNR, correct?  
21 Have you ever been --

22 A No, actually, we are out of compliance,  
23 but we have two and a half years to get into  
24 compliance.

25 Q Well, I mean, I was just trying to find

1 that in your permit because I know your permit goes  
2 from January, 2014 to December 1st, 2018.

3 A Yes.

4 Q Okay. Because I'm just trying to  
5 understand this.

6 A I think there are present requirements  
7 in there and then there's also target requirements.

8 Q But under present requirements, do you  
9 have to build a new lagoon?

10 A No, not if we don't -- if we don't have  
11 to do the ammonia.

12 Q I understand, yeah, but looking at this  
13 letter and your permit and the letter that  
14 Department of Natural Resources sent you on  
15 July 1st, 2014, it's Exhibit 2.

16 JUDGE BURTON: Exhibit 2.

17 Q (By Commissioner Kenney) Exhibit 2, the  
18 second paragraph says, But this is not a  
19 requirement, it's only a recommendation. So, and  
20 I'll tell you something, sir. I've had to deal with  
21 DNR and deal with water problems because of  
22 development and I understand waters of the U.S. and  
23 waters of the state is not an easy thing to deal  
24 with and it could be very troublesome. It could be,  
25 you know, you're dealing with a big department, but

1 I guess my question: Are you being told that you  
2 need to construct this in order to be -- to meet  
3 some requirements that might be in the future or  
4 that they expect to be in the future?

5 A Well, the one thing is that there's two  
6 parts of to it. One that will be in effect and the  
7 other is another EPA requirement that may be in the  
8 future.

9 Q Okay. The one that will be in effect,  
10 did they tell you what time that will be effect in  
11 and what that is?

12 A I only know what's in that permit. You  
13 know, they told us -- the DNR told us in that permit  
14 that this is what you have to do. And that's what  
15 we're basically basing it on.

16 Q I'll spend a little more time looking at  
17 it. I really didn't look at it that much. But I  
18 know part of it is they're wanting you to do  
19 something that is not even in our current statute or  
20 state law, it's not even a part of rules. It's not  
21 a part of anything in the state government.

22 A I -- they are recommending it. I  
23 think -- let's say I'm not qualified to make that  
24 judgment.

25 Q Yeah, okay. But that's all I can say.

1 And I'm not saying it won't become a state law. And  
2 I don't know what the procedure is after it does  
3 become a state law. You probably get more time to  
4 do something. But --

5 A This is a -- in defense of the DNR, I  
6 think they were very reluctant to put these into  
7 effect, but the actual EPA actually dictated that  
8 they had to do this.

9 Q I think I thought I saw where the EPA  
10 anticipates putting these into effect.

11 A Well, once again, I think there's some  
12 that are in effect and then there's some that will  
13 be in effect.

14 Q Okay. Well, thank you very much. I  
15 appreciate you coming today.

16 JUDGE BURTON: Anything from the  
17 Commissioners?

18 COMMISSIONER STOLL: No.

19 COMMISSIONER HALL: I don't think so.

20 JUDGE BURTON: Were there any questions  
21 from the attorneys based on additional questions  
22 from Commissioner Kenney?

23 MR. THOMPSON: No questions, Judge, thank  
24 you.

25 JUDGE BURTON: It is 12:03. Why don't we

1 go ahead and take a recess and resume at 1:00.

2 (Break taken.)

3 JUDGE BURTON: Okay. Let's go back on the  
4 record and before we took our lunch break. I  
5 believe that the staff's office was going to  
6 prepare copies of some of the documents.

7 MR. THOMPSON: That's correct, Judge. I  
8 have here copies of documents obtained from  
9 Mr. Hoernschemeyer, if I said that correctly. I  
10 put them as far as possible into date order.  
11 Exhibit 4 appears to be a letter undated from the  
12 Peaceful Valley Service Company to the Department  
13 of Natural Resources, and let me say I have  
14 returned all the originals already to  
15 Mr. Hoernschemeyer.

16 JUDGE BURTON: Okay. Thank you.

17 MR. THOMPSON: Do you want copies for the  
18 commissioners who aren't here?

19 JUDGE BURTON: That would be fine if you  
20 have them.

21 MR. THOMPSON: Okay.

22 THE WITNESS: I do.

23 MR. THOMPSON: So this will be Exhibit 4.

24 (Hearing Exhibit 4 marked.)

25 JUDGE BURTON: Ms. Baker, have you had an



1 opportunity to review Exhibit 4?

2 MS. BAKER: I have.

3 JUDGE BURTON: Are there any -- I'm  
4 assuming, Mr. Thompson, you're offering Exhibit 4  
5 in?

6 MR. THOMPSON: I thought I'd offer them all  
7 as a group. Otherwise I'll get confused. It  
8 happens easily. Exhibit 5 is an internal  
9 memorandum to the file that was evidently prepared  
10 by Mr. Hoernschemeyer to memorialize a meeting and  
11 conversations with DNR and this is dated May 29th  
12 of 2013.

13 (Hearing Exhibit 5 marked.)

14 MR. THOMPSON: Exhibit 6 is a letter dated  
15 June 15, 2013 from Mr. Hoernschemeyer as president  
16 of the Peaceful Valley Service Company to the  
17 Department of Natural Resources.

18 (Hearing Exhibit 6 marked.)

19 MR. THOMPSON: Exhibit 7 is a letter dated  
20 August 5th, 2013 from the Department of Natural  
21 Resources signed by Lacey Hirschvogel,  
22 environmental specialist of the water protection  
23 program, directed to the Peaceful Valley service  
24 company, attention Mr. Hoernschemeyer.

25 (Hearing Exhibit 7 marked.)

1           MR. THOMPSON: Exhibit No. 8 is a similar  
2     letter dated November 26th, 2013 from Leanne  
3     Tippett Mosby, director of Division of  
4     Environmental Quality of the Department of Natural  
5     Resources, to Mr. Hoernschemeyer as president of  
6     the Peaceful Valley Service Company.

7           (Hearing Exhibit 8 marked.)

8           MR. THOMPSON: Exhibit No. 9 is a letter  
9     dated December 2nd, 2013 to Ms. Hirschvogel, I  
10    don't know who she is, this appears to be the cover  
11    letter by which the Integrity report was  
12    transmitted to DNR.

13          (Hearing Exhibit 9 marked.)

14          MR. THOMPSON: Exhibit 10 is a letter from  
15    Mr. Hoernschemeyer to Lacey Hirschvogel at  
16    Department of Natural Resources dated May 19, 2014.

17          (Hearing Exhibit 10 marked.)

18          MR. THOMPSON: And, finally, Exhibit 11 is  
19    a packet that I have put together just as I found  
20    it as it was supplied by Mr. Hoernschemeyer from  
21    his records. The top sheet is a letter dated  
22    June 23rd, 2014 from Mr. Hoernschemeyer to Lacey  
23    Hirschvogel at the Department of Natural Resources.  
24    Attached to it is a Peaceful Valley lagoon  
25    improvement project schedule. And the third sheet,

1 if I can actually get to it, is a glossary of terms  
2 that is abstracted from another document, the  
3 Missouri anti-degradation rule and implementation  
4 procedure that was attached to this.

5 (Hearing Exhibit 11 marked.)

6 EXAMINATION

7 BY MR. THOMPSON:

8 Q Now, Mr. Hoernschemeyer, I obtained the  
9 originals of all these documents from you, isn't  
10 that correct?

11 A Right.

12 Q And you have those originals in front of  
13 you now, isn't that correct?

14 A Yes.

15 Q And these are all copies or these are  
16 all copies of documents you prepared in the ordinary  
17 course of your business as the president of the  
18 Peaceful Valley Service Company, isn't that correct?

19 A Yes.

20 Q Or else copies of documents that you  
21 received also in the course of your business as the  
22 president of the Peaceful Valley Service Company?

23 A Yes.

24 Q And these have been retained in your  
25 records since the time that you either created them

1 or received them, isn't that correct?

2 A Yes. I am not sure that it's the  
3 complete record, but it's what I have retained in my  
4 file, yes.

5 Q But, nonetheless, with respect to each  
6 of these documents, do you recognize each of them as  
7 being an accurate copy of the document that you  
8 either prepared or received?

9 A Yes.

10 Q And that you retain in your files?

11 A Yes.

12 MR. THOMPSON: With that, Judge, I'll go  
13 ahead and offer Exhibits 4 through 11.

14 JUDGE BURTON: Okay. Exhibits 4, 5, 6, 7,  
15 8, 9, 10 and 11 have been offered.

16 Ms. Baker, are there any objections?

17 MS. BAKER: I don't really have objections.

18 I will just note that Exhibit 5 is more of a  
19 documentation, a note to self, which does not  
20 really have the same standing as the others. I  
21 would just note that for the Commission.

22 JUDGE BURTON: Okay. But you don't object  
23 to its submission?

24 MS. BAKER: I don't.

25 MR. THOMPSON: Thanks for that correction.

1 JUDGE BURTON: Okay. Then Exhibits 4  
2 through 11 will be admitted.

3 Now, I also know that we have the staff's  
4 reports that were submitted on August 15th, 2014  
5 that are part of and the Appendix A that was  
6 submitted by staff as part of their notice of the  
7 updated company's staff agreement. They are  
8 included in the Commission's records as part of the  
9 electronic filing and information system, EFIS, but  
10 at this time I was going to see if the parties  
11 wanted to, the staff, to admit them into the record  
12 for ease of reference.

13 MR. THOMPSON: I will certainly go ahead  
14 and offer that. I do not have a copy here. I  
15 would ask the Commission to take official notice of  
16 the document that is in its file.

17 JUDGE BURTON: Okay. Are there any  
18 objections from OPC?

19 MS. BAKER: No objection. Thank you.

20 JUDGE BURTON: Okay. Then why don't we go  
21 ahead and just identify the pages that are included  
22 as Appendix A and I'll double-check to reference  
23 what number they are in the EFIS, but that was  
24 included with the notice of updated company-staff  
25 agreement that was submitted by staff on the 10th

1 of July, 2014 as Exhibit 12. And the  
2 August 15th, 2014 memorandum that was filed from  
3 David Sprat as well as its attachments as Exhibit  
4 13.

5 (Hearing Exhibits 12 and 13 marked.)

6 Now, are there any other documents or  
7 records that are incorporated into EFIS but we have  
8 not identified for the record here as being part of  
9 the official record?

10 MR. THOMPSON: Not that I'm aware of,  
11 Judge. Thank you.

12 JUDGE BURTON: Ms. Baker?

13 MS. BAKER: No.

14 JUDGE BURTON: At that time, were there any  
15 additional questions for Mr. Hoernschemeyer?

16 MR. THOMPSON: None from staff. Thank you.

17 MS. BAKER: None from Public Counsel.

18 JUDGE BURTON: Seeing none,  
19 Mr. Hoernschemeyer, you're excused for now, but we  
20 would ask that you remain here during the hearing  
21 so you can be called back to testify if needed.

22 Now, I was going to allow oral arguments at  
23 the end of all of the evidence that was presented  
24 from the witnesses, but I believe that some of the  
25 commissioners would like to ask some of the

1 attorneys some questions, so at this time I would  
2 ask that we go ahead and have some statements and  
3 arguments from the attorneys. Why don't we go  
4 ahead and start with the staff.

5 MR. THOMPSON: Well, thank you, Judge. I  
6 don't really know what I would argue. This is a  
7 small company rate case. There is an updated  
8 disposition agreement that company and staff have  
9 entered into. I believe that Public Counsel  
10 indicated on the record they would not object,  
11 although they did not join in it. And that  
12 continues to be staff's position in this case.

13 Let me just say that staff exists only for  
14 the purpose of gathering and providing information  
15 to the Commission for the Commission's  
16 consideration in discharging its statutory duties  
17 and staff exists as well to implement and enforce  
18 the Commission's decisions once those are made.

19 Should the Commission decide to design  
20 rates that include surcharges in order to fund  
21 necessary construction, staff is perfectly at ease  
22 and happy with that in appropriate cases and  
23 certainly supports it 100 percent. Mr. Busch is  
24 must better able to speak to that than I. I simply  
25 say that to advise you that that is, of course,

1 staff's position.

2 JUDGE BURTON: Okay. Thank you. Any  
3 questions from commissioners?

4 COMMISSIONER STOLL: Yes, would you review  
5 the components of the disposition agreement? Do  
6 you have that handy?

7 MR. THOMPSON: I don't have that in front  
8 of me. Typically the disposition agreement will  
9 indicate how much money was requested, how much  
10 money the parties have agreed on in terms of a rate  
11 increase or decrease as sometimes happens.

12 COMMISSIONER STOLL: Can you give a summary  
13 of that or is that too much?

14 MR. THOMPSON: I will fake my way through  
15 it, sir.

16 COMMISSIONER STOLL: Okay.

17 JUDGE BURTON: Just so we know for  
18 clarification on the record, this is part of the  
19 Exhibit 12.

20 MR. THOMPSON: The updated agreement was  
21 filed around the tenth day or I believe on the  
22 tenth day of July. The company requested a rate  
23 increase on November 20th of 2013. In the sewer  
24 side, the company sought an increase of 139 percent  
25 and a zero percent increase in its annual water



1 system operating revenues.

2           Upon completion of investigation, the staff  
3 and the company eventually entered into an  
4 agreement, trying to see how much they agreed on, I  
5 don't see that here. Attached is, of course,  
6 Appendix A which sets out the body of the  
7 agreement. Let's see, the agreed upon revenue  
8 increase of \$2,335, which is a 9.57 percent, added  
9 to the level of previous revenues of 24,405 results  
10 in overall revenues of just under \$27,000 on an  
11 annual basis. This is what was agreed by the  
12 parties. Obviously that's quite a bit less than  
13 what the company had requested.

14           The auditing unit conducted a full and  
15 complete audit. They determined that rate base  
16 should be set at \$6,334. That's net rate base, so  
17 that would be original cost less accumulated  
18 depreciation and of course less all contributions.

19           The capital structure is 100 percent equity  
20 and a return was agreed on of 8.79 percent. A  
21 schedule of depreciation rates was attached in  
22 Attachment D. The company agreed to prepare  
23 tariffs and file proposed tariffs that would  
24 implement the rates that had been agreed to here.  
25 The current PSC MO No. 2 tariff would be canceled

1 and replaced by PSC MO No. 4 which was included in  
2 an example tariff.

3           Within -- the company agreed within 90 days  
4 of the order approving this disposition agreement  
5 to implement recommendations set out in the  
6 attached engineering and management services unit  
7 report in Attachment G, which to reduce the number  
8 of delinquent customer accounts, to ensure that  
9 discontinuances of service are conducted in a  
10 manner consistent with the time frame communicated  
11 to customers. To evaluate whether the use of a  
12 collection agency would be beneficial.

13           Within 90 days of the effective date of an  
14 approval order, the company will implement the  
15 recommendations in the water and sewer unit  
16 memorandum attached as Attachment H, which would  
17 include submitting a list of alternative solutions  
18 for the wastewater treatment and disposal, with  
19 proposed costs and limitations and a schedule of  
20 events describing how the chosen solution will be  
21 implemented.

22           Also, within 90 days of an effective date  
23 of an order approving the agreement, the company  
24 will implement the recommendations contained in the  
25 auditing unit report, which is attached as

1 Attachment I. And those are reflecting on its  
2 books and records the plant in service and  
3 depreciation reserve balances determined by staff.  
4 Used as the starting point for entries subsequent  
5 to that date. Maintenance of its records regarding  
6 utility plant and service depreciation reserves,  
7 operating revenues and operating expenses in a  
8 manner sufficient to allow staff to conduct  
9 system-specific cost of service analyses for future  
10 rate increase requests, including recording plant  
11 retirements at the time that the plant items --  
12 that replacement plant items are placed in service.

13 Develop, implement, and maintain records of  
14 all new construction connections at a minimum  
15 including customer names, service address, date of  
16 connection, applicable fees collected, all related  
17 expenses. Maintain financial records in accordance  
18 with the uniform system of accounts pursuant to the  
19 Commission's rules, including retaining records of  
20 sewer operations.

21 Develop continuing property records  
22 pursuant to commission rule for sewer systems for  
23 all Missouri utility plant in service and verify  
24 that all current customers are being correctly  
25 billed for the service provided and for all of

1     these things the company has agreed to seek  
2     guidance from staff as necessary to implement these  
3     recommendations.

4             The company will mail customers a final  
5     written notice of the rates and charges that are  
6     set out in the proposed tariff. Revisions prior to  
7     or with its next billing cycle, including a summary  
8     of the impact of the proposed rates on an average  
9     residential customer bill. It will also send a  
10    copy of that notice to the staff case coordinator  
11    for filing in the case.

12            Staff and Public Counsel may conduct  
13    follow-ups to ensure that the recommendations have,  
14    in fact, been implemented. Staff or Public Counsel  
15    may file a formal complaint if the company does not  
16    comply with the provisions of the approved  
17    company-staff disposition agreement. Everybody  
18    agrees that they've read it. That the facts stated  
19    therein are true and accurate according to their  
20    best belief. And that this resolves all issues.

21            COMMISSIONER STOLL: So in this agreement,  
22    they would be given 90 days to submit a plan for  
23    upgrade of the sewer system? Is that --

24            MR. THOMPSON: Right. Within 90 days to  
25    submit a list of alternative solutions for

1 wastewater treatment and/or disposal with proposed  
2 costs and limitations and a schedule of events  
3 describing how the chosen wastewater treatment  
4 process will occur.

5 COMMISSIONER STOLL: Okay. So, if they do  
6 that, I guess it would depend on whether or not  
7 they seek a not for profit status to make those  
8 improvements or -- and I guess my question would  
9 be: Would the entire -- under what they are  
10 currently considering, I'd say strongly  
11 considering, to seek a not-for-profit status, would  
12 that take the whole company into a not-for-profit  
13 status?

14 MR. THOMPSON: Well, of course, seeking  
15 not-for-profit status is an option that every small  
16 water and sewer company has available to it by  
17 statute. The statutes provide for a method to  
18 convert a normal for-profit corporation into a  
19 not-for-profit corporation for water or sewer  
20 operation.

21 This agreement contemplates not conversion  
22 into a not for profit but continuation of regulated  
23 status. So if regulated status continues, staff  
24 needs the company to make the decision as to what  
25 are you going to do with respect to the ammonia

1 discharge limitations that are now in force and  
2 that you cannot meet.

3 So there's several options have been  
4 proposed from the engineering that they've sought  
5 and the company needs to select the one that it's  
6 going to pursue. Once it has selected that and  
7 worked out a timeline because, after all, from the  
8 permit they know they have to have it in place by  
9 January 1 of 2018. So, they know when it has to be  
10 online. And staff then can do whatever it is able  
11 to do to assist them in meeting that date.

12 COMMISSIONER STOLL: How does that -- that  
13 assistance affect, like in the case of a small  
14 water and sewer company, it must be different than  
15 it is for, let's say, something that Missouri  
16 American Water would propose to do. They would --  
17 they would make upgrades and then they would seek  
18 to recover those costs for upgrades they made?

19 MR. THOMPSON: Correct.

20 COMMISSIONER STOLL: At what point are we  
21 getting into running the company, so to speak?  
22 This is the first case like this that I can -- so  
23 they come to us, let's say they come to staff with  
24 four or five options as to how to deal with the  
25 ammonia issue, what kind of guidance does staff

1 give?

2 MR. THOMPSON: I -- I can't -- I can't  
3 speak to whatever informal conversations that might  
4 have occurred that I wasn't part of. But based on  
5 the file documents, staff is simply saying to the  
6 company, you have to choose one. Let us know which  
7 one you choose. And once you've chosen it, then  
8 there has to be a rational schedule of  
9 implementation designed to get you to the point you  
10 need to be as of January 1, 2018.

11 COMMISSIONER STOLL: And then how to pay  
12 for that?

13 MR. THOMPSON: That's up to the company.  
14 Staff can't tell them how to pay for it. And staff  
15 hasn't put anything in rates for a solution, but  
16 that's because a solution has yet to be selected.

17 COMMISSIONER STOLL: Right.

18 MR. THOMPSON: So we don't know how much  
19 it's going to cost.

20 COMMISSIONER STOLL: So that's when you get  
21 into whether or not a surcharge would be requested,  
22 I guess, through a future --

23 MR. THOMPSON: Right. Through a future  
24 rate case. Once they know what they're going to  
25 do, then they can develop a forecast of what it's

1 going to cost and once they know what it's going to  
2 cost, then they can move towards getting that  
3 financing. Whether it's going to include a  
4 surcharge, however it's going to be done, first you  
5 have to know exactly how much it's going to be.

6 COMMISSIONER STOLL: If they would choose  
7 the path that they're currently pursuing to get a  
8 bank loan, let's say, and they're trying to figure  
9 out whether or not this is going to come together,  
10 would they then -- would that -- the revenue that  
11 they would raise to pay that loan, that would be  
12 outside of our -- our venue?

13 MR. THOMPSON: No, I think it would  
14 absolutely be at the heart of your venue of your  
15 jurisdiction.

16 COMMISSIONER STOLL: Okay. Would we then  
17 set the amount that the rate payers would pay to --  
18 to fulfill the commitment they're making to the  
19 bank? How does that work?

20 MR. THOMPSON: The way this happens  
21 normally in the cost of service rate making world  
22 is the company makes the improvement and once it's  
23 done and it's online and it's used and useful, it's  
24 determined how much of the cost will go into rates.  
25 And the company can start recovering the cost in



1 rates from the date that the improvement goes  
2 online. And big companies spend a lot of heartache  
3 in timing their rate cases in order to try to get  
4 those dates to match up in the best way they can.

5 For small companies, you have -- you have  
6 the additional problem that they may not be able to  
7 raise the capital necessary to make the improvement  
8 in the first place and that's what we're faced with  
9 here. They went and talked to the bank and the  
10 bank said, look, you don't have the income and you  
11 have no collateral. We can't loan you this money.  
12 Now, there may be some money available from this  
13 agency or that agency or the federal or state  
14 government, and they went and talked to them and  
15 they said, yeah, we have some money maybe, but not  
16 for profit-making corporations. If you were not  
17 for profit, then you'd be eligible.

18 I don't know if anybody ever told them, you  
19 know, here's the money right here, you come back  
20 and show us you've converted and we'll hand it to  
21 you. I don't know if they've ever gotten to that  
22 point.

23 So that's really the dilemma that faces the  
24 Commission and faces the company. The Commission  
25 can choose to raise rates in advance and order them

1 to set the money aside for the contingency  
2 represented by the construction that's required.  
3 The statute allows you to order the company to set  
4 money aside for contingencies. I think those can  
5 be specific or general.

6 So, certainly, it is well within the  
7 Commission's power to put money into rates in  
8 advance of construction in order to enable the  
9 construction to go forward. It's not -- it's not  
10 the traditional or usual way, but I believe it is a  
11 legal way.

12 COMMISSIONER STOLL: So basically by  
13 accepting the disposition agreement, we would be  
14 putting rates into place and saying within 90 days,  
15 come back, present us with your plan going forward  
16 and how does that work from there? Staff would say  
17 go forth and prosper or --

18 MR. THOMPSON: I think it would depend on  
19 how much time had elapsed. If you authorize the  
20 disposition agreement in front of you now and they  
21 come back in 90 days and say, okay, here's what  
22 we've selected. It's going to cost this number of  
23 dollars. Help us raise it. If the time that has  
24 elapsed is short, then perhaps the Commission could  
25 re-visit the rates that it had just authorized and

1 add a surcharge without the necessity of an entire  
2 new rate case, the idea being that conditions had  
3 not changed or had not changed in a material  
4 fashion.

5 The longer the amount of time that goes by  
6 between when these rates are placed into effect and  
7 when the new rates would be considered, then the  
8 more demand or reason there would be to have a full  
9 audit to see what other factors may have changed  
10 and in what direction.

11 COMMISSIONER STOLL: But the company  
12 believes that they are under the obligation from  
13 Department of Natural Resources to take care of  
14 their ammonia problem by January of 2018?

15 MR. THOMPSON: Yes, sir. Staff also  
16 believes that.

17 COMMISSIONER STOLL: And that's -- that is  
18 a little while down the road, so the sooner that it  
19 was determined what path they wanted to take, the  
20 better off we might be.

21 MR. THOMPSON: I believe that to be true.  
22 Particularly if there's going to be some sort of  
23 surcharge where they can start stockpiling money  
24 that's earmarked for that project. I don't know  
25 when they would actually break ground, but

1       certainly the more money they have in the bank to  
2       pay for it, the better.

3               COMMISSIONER STOLL:  And I wasn't sure if  
4       you were the person to ask this or if staff  
5       witnesses were going to come forward or how that  
6       works.  So --

7               MR. THOMPSON:  We can do it any way you  
8       want.

9               COMMISSIONER STOLL:  I understand how the  
10      process would go forward, so I'm sure others have  
11      questions and then we'll kind of see if witnesses  
12      are brought forward.

13              For those who are here that don't normally  
14      come to Commission evidentiary hearings, this is a  
15      little different than the cases we normally deal  
16      with, I'd say.  So just trying to make sure.

17              MR. THOMPSON:  Commissioner, maybe I can  
18      help.  We have on hand a number of staff experts  
19      who are able and willing to answer questions about  
20      different aspects of this agreement and different  
21      aspects of what's going on at Peaceful Valley.

22      Mr. Busch, Mr. Merciel, Mr. Gateley, Ms. Hanneken,  
23      Mr. Sprat.

24              We also, now, I probably -- if I were to  
25      call any witnesses, Mr. Merciel can speak to the

1 fact that the ammonia regulations are in effect  
2 right now, so the permit gives them -- when  
3 Mr. Hoernschemeyer said we're already out of  
4 compliance but they've given us some time to get  
5 into compliance, from staff's point of view, his  
6 statement was absolutely accurate. There are  
7 ammonia requirements that are in place pursuant to  
8 state regulation today, but they are not required  
9 to meet them until January 1st of 2018 by the  
10 terms of their permit. So the permit is in a sense  
11 a waiver that will expire on the first day of 2018.

12 And Mr. Gateley, who has only recently  
13 joined our water and sewer staff, came to us from  
14 DNR where he was personally involved and therefore  
15 has personal knowledge of Peaceful Valley's  
16 situation from the DNR side. So if you had  
17 questions as to what DNR thought or why they did  
18 something at a certain time, I think he would be  
19 able to speak to that.

20 COMMISSIONER STOLL: Okay. So how would  
21 fellow commissioners like to proceed? Do you  
22 have --

23 COMMISSIONER KENNEY: I want to ask a  
24 question specific on the permit and to see if the  
25 state has adopted the final aquatic life ambient

1 water quality criteria for ammonia fresh water 2013  
2 that the EPA says is not a rule nor automatically  
3 part of the state's water quality standards.  
4 States must adopt new ammonia criteria consistent  
5 with EPA's public ammonia criteria into the water  
6 quality standards that protect the designated uses  
7 of water bodies.

8 The Department of Natural Resources intends  
9 to adopt the new ammonia criteria during the next  
10 water quality standards triennial review. Have  
11 they done that? Has the Department already done  
12 that?

13 JUDGE BURTON: Are you addressing this  
14 question to --

15 MR. THOMPSON: Whoever can answer that.

16 COMMISSIONER KENNEY: Have they adopted it?

17 JUDGE BURTON: Why don't we wait for a  
18 minute and I'll see if anyone has any additional  
19 questions for the attorneys right now so we can  
20 address those and we can proceed with additional  
21 testimony from the witnesses.

22 COMMISSIONER KENNEY: He may be able to  
23 answer this one. The attorneys. As part of the  
24 permit between DNR and the operating permit for  
25 Peaceful Valley property owners that went into

1 effect, the date was January 1st, 2014, that it  
2 says in their standard conditions, which it doesn't  
3 mention anything in that permit about the ammonia  
4 qualities, but it does say, that last paragraph I  
5 read you, and it does say in addition to the  
6 specified conditions herein stated, the permit is  
7 subject to the attached parts one and three of the  
8 standard conditions dated November 1, 2013, and  
9 August 15th, 1994 and they are back in here and  
10 they don't have anything, I believe, on the ammonia  
11 standards either. So I guess maybe that's part of  
12 the permit. That doesn't say anything -- those are  
13 standard language, I believe, after my review of  
14 them, but I could be wrong.

15 MR. THOMPSON: It's my understanding that  
16 in the currently effective rules of the Department  
17 of Natural Resources there are ammonia standards.  
18 And the ammonia standards that are there are the  
19 ones that will be applicable to this company as of  
20 January 1, 2018.

21 COMMISSIONER KENNEY: Are you saying they  
22 are not applicable today?

23 MR. THOMPSON: They are not because of the  
24 permit. They're not applicable to this company.  
25 They are generally applicable in the state of

1 Missouri.

2 COMMISSIONER KENNEY: I'll just wait until  
3 the next -- whoever your expert witnesses are can  
4 answer that.

5 JUDGE BURTON: I'm just going to interrupt  
6 real quick. Could all the commissioners and the  
7 attorneys make sure to turn their mics on?

8 MR. THOMPSON: I apologize. It's my  
9 understanding that they are considering even more  
10 stringent ammonia rules at the behest of the  
11 federal government.

12 COMMISSIONER KENNEY: Okay. But that's not  
13 what -- that's not what I don't think is being put  
14 forth. I understand there are some ammonia  
15 standards. I'm talking about the ones that are  
16 mentioned specifically in the EPA's final aquatic  
17 life ambient water quality criteria for ammonia  
18 fresh water 2013. Those are the standards that I'm  
19 talking about.

20 MR. THOMPSON: Okay. Mr. Gateley will be  
21 able to answer that question.

22 COMMISSIONER KENNEY: Great. Thank you.

23 JUDGE BURTON: Commissioner Hall, do you  
24 have any questions for Mr. Thompson?

25 COMMISSIONER HALL: I want to make one



1     thing perfectly clear. Staff does not believe that  
2     there is any legal impediment to the Commission  
3     putting a surcharge in place in this particular  
4     case?

5             MR. THOMPSON: No, we do not believe  
6     there's any legal impediment.

7             COMMISSIONER HALL: And I believe you also  
8     said that there are certain situations where a  
9     surcharge is appropriate?

10            MR. THOMPSON: Yes, sir.

11            COMMISSIONER HALL: And then I guess the  
12     opposite is implicit; there are certain situations  
13     where it's not appropriate?

14            MR. THOMPSON: I believe that to be true.

15            COMMISSIONER HALL: Is there a staff  
16     position on what are the characteristics of a  
17     situation when it is appropriate?

18            MR. THOMPSON: Staff likes things that are  
19     known and measurable. So when we're looking at  
20     costs, either that are being incurred now or that  
21     are going to be incurred in the future, we prefer  
22     those costs to be as definite and certain as  
23     possible. When you're talking about historical  
24     costs, well, then those are as definite as you can  
25     get because they've already been paid. But what

1 about future costs? How certain are those future  
2 costs?

3 In this case, staff knows or believes that  
4 this company has to do something. That's not an  
5 issue for staff. What is an issue is what are they  
6 going to do and how much is it going to cost? We  
7 don't know what solution they're going to select.  
8 We don't know what the cost of that solution will  
9 be.

10 We believe that once they select a solution  
11 and that an appropriate professionally developed  
12 forecast of likely costs has been developed, then  
13 those costs would be sufficiently certain that they  
14 would support a surcharge.

15 COMMISSIONER HALL: And so in this case why  
16 staff did not support a surcharge today is because  
17 those costs are not known?

18 MR. THOMPSON: Exactly.

19 COMMISSIONER HALL: So, what process would  
20 you recommend going forward if the Commission was  
21 interested in pursuing a surcharge in this case in  
22 order to make sure that the costs are known  
23 sufficient to meet staff's criteria?

24 MR. THOMPSON: I think the process that's  
25 laid out in the disposition agreement, actually.

1 The company needs to select the solution it's going  
2 to pursue and then the timing of the solution needs  
3 to be made clear. And I would assume that the  
4 engineering reports that they're going to base  
5 their decision on will include forecasts of the  
6 costs and on a going forward basis those forecasts  
7 can be made more certain.

8 COMMISSIONER HALL: Okay. And this may be  
9 a question for one of your auditors, if that's the  
10 case, if you would prefer to defer it to an  
11 auditor, that's obviously okay. But do you have an  
12 idea now as to what type of safeguards would be  
13 appropriate if we were to put a surcharge in place  
14 in terms of reporting, in terms of disclosure, just  
15 in terms of making sure that the moneys accumulated  
16 from the surcharge are used appropriately?

17 MR. THOMPSON: I think the auditors would  
18 certainly like to speak to that. I can say from  
19 the legal point of view that the statute expressly  
20 authorizes the Commission to direct the company to  
21 set money aside for contingencies. So I think an  
22 order telling the company that certain moneys are  
23 earmarked to be set aside and may not be released  
24 and pending further order of the Commission would  
25 be what was necessary on the legal side. But I

1 think perhaps Ms. Hanneken or Mr. Busch can speak  
2 to further details.

3 Mr. Busch?

4 JUDGE BURTON: Well, we don't need to hear  
5 you right now.

6 MR. THOMPSON: I apologize.

7 COMMISSIONER HALL: Okay. And who -- who  
8 did you say that you're going to have available to  
9 discuss the DNR permit?

10 MR. THOMPSON: That would be Mr. Gateley.

11 COMMISSIONER HALL: Okay. I think that's  
12 all I have. Thank you.

13 JUDGE BURTON: Thank you.

14 COMMISSIONER HALL: Oh, actually, let me  
15 say one other thing real quick. I understand this  
16 and Commissioner Stoll alluded to this as well.  
17 This is kind of a different case than is  
18 typically -- that we typically have. And I  
19 understand and appreciate that it does put staff  
20 somewhat in a difficult position because we're  
21 asking -- we're asking questions that are eliciting  
22 information inconsistent with the disposition  
23 agreement that you already have in place. A  
24 disposition agreement that's based on current  
25 practice and it's a current practice that makes

1 sense and we are in no way proposing that we  
2 wholesale ignore our current practice. We're just  
3 looking for somewhat creative solutions in this  
4 unique situation and we also, I believe, anticipate  
5 a number of other cases down the pike similar to  
6 this one, so I understand how staff views its role  
7 here and I appreciate that.

8 MR. THOMPSON: Thank you, sir.

9 JUDGE BURTON: Okay. At this point, let's  
10 see if Christina Baker from the Office of Public  
11 Counsel would like to make some statements.

12 MS. BAKER: Thank you. Public Counsel put  
13 out their position that we did not oppose the  
14 agreement between the company and staff, the  
15 corrected updated company-staff agreement and we  
16 continue to hold that position.

17 As far as moving away from that, since that  
18 is what it is in front of the Commission for  
19 approval at the moment, to then add in a surcharge  
20 is something that Public Counsel would oppose.  
21 Public Counsel in certain cases of troubled systems  
22 has in the past not opposed and in some cases has  
23 even agreed to surcharges. But those are very  
24 special cases and special cases for systems that  
25 are very troubled. This may be a small system. It

1 is not a troubled system.

2 The company representative was very clear  
3 on my questioning that they are not in violation of  
4 ammonia standards. The current standards that are  
5 in place right now, the company meets. What  
6 they're worried about are future standards. And I  
7 think DNR, if you look at Exhibit 2, which is the  
8 July 1st, 2014 letter from DNR in the second  
9 paragraph, is very specific about DNR's position on  
10 this.

11 In your letter you question the  
12 applicability of water quality standards for  
13 ammonia based on mussel species in your permit. On  
14 August 22nd, 2013, the U.S. Environmental  
15 Protection Agency finalized new water quality  
16 criteria for ammonia based on toxicity studies of  
17 mussels and gill-breathing snails. Missouri's  
18 current ammonia criteria are based on toxicity  
19 testing of several species, but did not include  
20 data from mussels or gill-breathing snails.

21 Therefore, as stated in the fact sheet for  
22 your permit, the presence or absence of mussels is  
23 not a factor in the effluent limits applicable to  
24 your facility. The effluent limits in your permit  
25 are based off of the water quality standards for

1 ammonia per 10 CSR 20-7.031, sub five, sub B, 7.C  
2 and table B3 located in Chapter 7 with the default  
3 pH of 7.8 SU.

4           These water quality standards cover the  
5 acute and chronic toxicity of fish. The Department  
6 has not come to a conclusion on when the new water  
7 quality standards for ammonia will be adopted.  
8 However, because you are planning an upgrade, it is  
9 the Department's opinion that it is in your best  
10 interest to plan for the 2013 EPA water quality  
11 criteria for ammonia, but this is not a  
12 requirement, it is a recommendation.

13           And I think that's very clear. This is a  
14 recommendation. And so what we have before us is  
15 something that DNR may, may not do, may not look  
16 anything like EPA, we just don't know. And that is  
17 also mentioned in the -- in the ammonia criteria  
18 fact sheet from February of this very year.

19           And I had the company representative read  
20 it. The Department has initiated stakeholder  
21 discussions on this topic, and at this time there  
22 is no firm target date for starting the rule making  
23 to adopt the new standards.

24           Part of the consideration during these  
25 discussions will include an evaluation of the

1 actual species of mussel native to Missouri and  
2 their sensitivity to ammonia. So at this point, we  
3 don't know what kind of mussels Missouri has. How  
4 that relates to the mussel determination that is in  
5 the EPA standards, it may be significantly higher  
6 because Missouri has mussels that are more  
7 tolerable to ammonia. We just don't know.

8 And so to go about and look at putting in a  
9 surcharge right now for customers based on things  
10 that may not -- and DNR is saying this may not  
11 happen, be warned, it's not fair to the customers.  
12 A surcharge implies that the customers are going to  
13 bankroll this for the company. They are now the  
14 company's bank. And it's not fair because we don't  
15 know what it's going to be. We're just assuming at  
16 this point. And so to move ahead right now when we  
17 don't have a good indication of what they're going  
18 to be, we don't know that all of the -- all of the  
19 different options have been looked at. As the  
20 company representative brought up, a brand new one  
21 was just mentioned that could be much cheaper.

22 What we're looking at is 1.3 -- or  
23 \$1.1 million for 179 customers. It takes and it  
24 deserves us to step back and take some time to make  
25 sure that we get this right. And that it is



1 absolutely necessary before we move in to  
2 bankrolling something that may or may not happen.

3 And so while I'll agree that there are some  
4 ammonia limits that are in place right now, the  
5 ones that are at issue for this proposed surcharge  
6 or for the proposed construction are not in place  
7 and we don't know what they will be.

8 And so we are very concerned that we're  
9 sitting here today trying to put in money and to  
10 bankroll something where we have no idea where this  
11 is going to end up. And I don't think that that's  
12 really a precedent that the Commission should set.  
13 I understand for those that are troubled, I  
14 understand for those where it is absolutely  
15 necessary, this is not one of those cases.

16 And as far as experts, I have William Addo  
17 who did the audit for this particular case. I have  
18 Ted Robertson here as well. As a matter of fact,  
19 I, too, was a DNR permit engineer, so if you have  
20 questions of me, I can answer questions of that as  
21 well. So thank you.

22 JUDGE BURTON: Thank you. Commissioner  
23 Stoll, any questions?

24 COMMISSIONER STOLL: I'll do one quick  
25 question. In your questioning of the original

1 witness, you seem to draw a distinction or you did  
2 draw a distinction between consulting an  
3 engineering firm and an operating or operational  
4 firm. I forgot exactly what.

5 MS. BAKER: Yeah, the reason why I did that  
6 was because what DNR has in the permit and what  
7 they think is going to come in the future is an  
8 ammonia limit and they're saying that we think  
9 you're going to need to meet this limit. They  
10 don't see how you -- how you are to meet that limit  
11 and they don't necessarily say that you can't meet  
12 that limit.

13 So if there are operational changes that  
14 can be made, that cause them to meet that limit,  
15 then construction would not be necessary. So the  
16 first step that I would think would be done was can  
17 we make operational changes? Can we make minor  
18 modifications to the existing plant that can get us  
19 where we need to be without spending 1.3 million to  
20 throw away the plant that we have.

21 COMMISSIONER STOLL: So, for example, it  
22 could be that the effluent would go through another  
23 process before it's released into the stream.

24 MS. BAKER: It could be. It could be  
25 slowing it down. It could be diverting a portion

1 of it. There are a lot of things that a good  
2 operator of a wastewater system, a good A operator  
3 who can come in and say why don't you try this as  
4 operational before you go out and spend the money.  
5 And that was what I was trying to see, if they had  
6 thought about that before they moved straight into  
7 the construction phase.

8 COMMISSIONER STOLL: Okay. Thank you.  
9 That's all the questions I have for right now.

10 JUDGE BURTON: Okay. Commissioner Kenney?

11 COMMISSIONER KENNEY: I have one question.  
12 Thank you, Counselor, I appreciate your comments.

13 Is it your understanding that the numbers  
14 for the allowable ammonia final effluent  
15 limitations that they have of 4-6 8-0 in Year 4 in  
16 Table A2 of their permit, it sets concrete numbers  
17 that they have to measure. Is it -- would it be  
18 your understanding that those are based on what DNR  
19 thinks they're going to be or if they haven't  
20 adopted the rules yet?

21 MS. BAKER: It's my understanding of what  
22 they have put into the permit for the future  
23 planning or future reference is based on --

24 COMMISSIONER KENNEY: It's in their permit  
25 starting January 1, 2018.

1 MS. BAKER: Yeah, it's based on EPA's  
2 numbers. So they're saying almost like worst case  
3 scenario, if you had to meet everything the EPA  
4 says, this is probably what it would be. But what  
5 they're also saying with the fact sheet is Missouri  
6 may be somewhere below that. Or have a higher  
7 limit than that.

8 COMMISSIONER KENNEY: So we don't know yet?

9 MS. BAKER: We don't know, that's correct.

10 COMMISSIONER KENNEY: Thank you.

11 JUDGE BURTON: Okay. Thank you.

12 Commissioner Hall?

13 COMMISSIONER HALL: So OPC believes that  
14 the Commission has the legal authority to put a  
15 surcharge in place in water cases?

16 MS. BAKER: In water cases and in sewer  
17 cases, that is correct. There are issues in  
18 electric with CWIP being not allowed, yes.

19 COMMISSIONER HALL: So I understand that  
20 OPC believes that there are certain cases when it's  
21 appropriate, certain cases when it's not?

22 MS. BAKER: That's correct.

23 COMMISSIONER HALL: And I was wondering if  
24 you could identify what those characteristics are  
25 of a case when it is appropriate.

1 MS. BAKER: For an example, we have had one  
2 where Public Counsel, I forget if we didn't oppose  
3 or if we actually agreed to it, but it was a system  
4 that in receivership and was having -- was a very  
5 troubled system, a smaller system even than this,  
6 where the receiver needed to make some -- some -- I  
7 believe it was maybe a pump being put in, something  
8 like that, it was not like a future planning, but  
9 it was actual needed today for safe and adequate  
10 service. It was necessary and Public Counsel  
11 did -- did agree to that or at least not opposed  
12 it.

13 COMMISSIONER HALL: So it's critical in  
14 OPC's view that the construction project be  
15 necessary?

16 MS. BAKER: Oh, yes, definitely.

17 COMMISSIONER HALL: So that's what you  
18 think is lacking here?

19 MS. BAKER: I do.

20 COMMISSIONER HALL: If the Commission were  
21 to determine that it was necessary under --  
22 under -- under the permit or under DNA regs or  
23 under EPA regs or -- but for whatever reasons, if  
24 the Commission were to determine that it is  
25 necessary, they have to do it, then is this a case

1 where it's appropriate to put a surcharge in place?

2 MS. BAKER: I do not consider this to be a  
3 troubled system, no.

4 COMMISSIONER HALL: Okay. Why not?

5 MS. BAKER: It may be small. I mean, it  
6 has 179 sewer customers.

7 COMMISSIONER HALL: 171.

8 MS. BAKER: Something like that, yes. So  
9 it may be small, but it is being run very well. It  
10 does not have violations. It is moving along  
11 fairly well. It has a good -- a good board behind  
12 it, customers are behind it. It is not financially  
13 troubled. It is giving safe and adequate service  
14 to the customers.

15 COMMISSIONER HALL: Let me phrase my  
16 hypothetical. Let's say that we determine -- the  
17 Commission determines that the construction  
18 project -- well, a construction project is  
19 necessary to meet a DNR requirement, let's say we  
20 make that -- we make that determination. Then  
21 let's say we make the determination that they do  
22 not have the funds to make that improvement, they  
23 cannot get a bank loan because they don't have the  
24 income stream to make that improvement, now do you  
25 support a surcharge in this situation, this

1 hypothetical situation? And if not, why?

2 MS. BAKER: I mean, again, I don't think  
3 that our office -- I mean, the Commission can  
4 certainly do what it wants to do within the laws of  
5 Missouri. Is that something that we would appeal?  
6 It's possible. Because the commission is making a  
7 determination of necessity for something that is  
8 DNR.

9 COMMISSIONER HALL: I understand you do not  
10 agree with our determination of necessity. In my  
11 hypothetical, it is necessary.

12 MS. BAKER: It is probably not something  
13 that Public Counsel would agree to.

14 COMMISSIONER HALL: Okay. I tried real  
15 hard to understand what OPC's position on surcharge  
16 is and you're not helping me out here.

17 MS. BAKER: I am saying the reason why we  
18 would not is because this is not a troubled system.

19 COMMISSIONER HALL: That's not helpful.

20 MS. BAKER: That is my only answer.

21 COMMISSIONER HALL: Well, that's not --  
22 that's your only answer and I'm telling you it's  
23 not helpful. I'm done. Thank you.

24 JUDGE BURTON: Okay. I have a question.  
25 In OPC's position, is it prudent for a company to

1       disregard a regulated agency's recommendations?

2               MS. BAKER: It is not prudent for them to  
3       disregard, but it is certainly prudent for them to  
4       go in and make sure is this a recommendation? Is  
5       this a requirement? That is a very big difference.

6               JUDGE BURTON: I'm asking is it the Office  
7       of Public Counsel's position that it's prudent for  
8       a company to disregard a regulating agency's  
9       recommendation?

10              MS. BAKER: No, that would not be prudent.  
11       No, that's something they should ask about, and I  
12       believe that Peaceful Valley has. And the answers  
13       back is what we've given you is recommendations.

14              JUDGE BURTON: Okay. But you just stated  
15       that it's not OPC's position that a company should  
16       disregard an agency's recommendations.

17              MS. BAKER: Right. Yes.

18              JUDGE BURTON: So isn't the company trying  
19       to listen to and comply with DNR's recommendations?

20              MS. BAKER: They are trying to put into  
21       place something that is not required.

22              JUDGE BURTON: That wasn't my question.

23              MS. BAKER: Okay. Then I guess I don't  
24       understand.

25              JUDGE BURTON: My question is: Isn't the



1 company trying to comply with DNR's recommendation?

2 MS. BAKER: Yes, I believe they think they  
3 are.

4 JUDGE BURTON: You don't believe they are?

5 MS. BAKER: I think there is a big  
6 difference between requirement and recommendations.  
7 They believe that the recommendation was made to  
8 them and they are trying to comply, yes. I do  
9 agree with that.

10 JUDGE BURTON: Okay.

11 MS. BAKER: Should the customers pay for  
12 that, that is where I diverge.

13 JUDGE BURTON: Well, that leads me to the  
14 next question. Will the customers be paying for  
15 this if the company becomes a not for profit?

16 MS. BAKER: If the same group of people  
17 will be required to pay for this, yes, they will.

18 JUDGE BURTON: Okay. So does OPC have a  
19 position on the company becoming a not for profit?

20 MS. BAKER: No, we do not.

21 JUDGE BURTON: You don't in any way think  
22 it's good or bad for the customers?

23 MS. BAKER: It is certainly a business  
24 choice of theirs and I don't have a position on it,  
25 no.

1 JUDGE BURTON: You don't have any position  
2 on how that might impact the customers?

3 MS. BAKER: No. I mean, it is certainly a  
4 business decision that every company has and I  
5 don't try to put myself into it. There are  
6 hardships on being a non for profit just as well.

7 JUDGE BURTON: But don't have a position on  
8 whether it's good or bad for the customers?

9 MS. BAKER: No, I do not.

10 JUDGE BURTON: All right. Thank you.

11 Now, at this time, let's go ahead and we  
12 had the parties identify a list of witnesses and  
13 it's my opinion that -- well, let's see, does staff  
14 wish to call a certain witness first?

15 MR. THOMPSON: I would call Mr. Gateley.

16 JUDGE BURTON: Sir, would you raise your  
17 right hand?

18 CURTIS GATELEY,  
19 Of lawful age, produced, sworn and  
20 examined, deposes and says:

21 JUDGE BURTON: Thank you, you may be  
22 seated.

23 EXAMINATION

24 BY MR. THOMPSON:

25 Q State your name, please.

1           A     My name is Curtis Gateley,  
2     G-A-T-E-L-E-Y.

3           **Q     Thank you. How are you employed?**

4           A     Presently employed with Missouri Public  
5     Service Commission as a utility policy analyst.

6           **Q     Are how were you formerly employed?**

7           A     For nearly 14 years I was with the  
8     Department of Natural Resources.

9           **Q     Mr. Gateley, in the course of your**  
10    **employment with the Department of Natural Resources,**  
11    **did you happen to become acquainted with a water and**  
12    **sewer utility referred to as Peaceful Valley Service**  
13    **Company?**

14          A     Yes, in my capacity with the Department  
15    I was the supervisor of the permit writers that  
16    oversaw domestic wastewater, sewers. I was the unit  
17    chief of the domestic wastewater unit within the  
18    permitting section of water protection program, and  
19    so part of those duties in addition to several other  
20    roles that I fulfilled with the Department, I  
21    oversaw the writing of the permit for this facility  
22    and negotiations over the terms of the permit.

23          **Q     When did your employment with DNR end?**

24          A     July 14th of this year.

25               MR. THOMPSON: May I approach, Your Honor?

1 JUDGE BURTON: You may.

2 Q (By Mr. Thompson) I'm going to show you  
3 a document and ask you if you recognize that.

4 A This is a Missouri state operating  
5 permit for the Peaceful Valley -- Peaceful Valley  
6 property owners, the facilities, Peaceful Valley  
7 Service Company.

8 Q When did that permit become effective,  
9 if you know?

10 A According to the document,  
11 January 1st, 2014.

12 Q Were you involved in the writing of that  
13 particular permit?

14 A To give a complete answer, part of my  
15 duties was the technical expert for National  
16 Pollutant Discharge Elimination System permitting  
17 under which Missouri issues operating permits like  
18 this. So while I did not necessarily take an active  
19 role in drafting of this permit, I wrote a large  
20 extent of the policies under which this permit was  
21 written and then supervised the permit writer who  
22 did write it. So while I may not have done the  
23 actual work on drafting this, I supervised that  
24 process.

25 Q Okay. And you've been present in the

1 hearing room today?

2 A I have.

3 Q Throughout the discussions?

4 A I have.

5 Q And do you recall that there's been some  
6 interest in the ammonia standards?

7 A Yes.

8 Q Now, tell me, if you know, are there any  
9 ammonia standards that are currently applicable to  
10 wastewater systems in the state of Missouri  
11 generally?

12 A Yes, there are.

13 Q And are those a matter of DNR  
14 regulation?

15 A Yes, they are. 10 CSR 20-7.031 Tables  
16 B1, B2 and B3 are the ammonia standards.

17 Q Now, with reference to that permit that  
18 you have in front of you, can you tell me, is the  
19 Peaceful Valley utility with respect to its sewer  
20 operation, is it presently subject to any ammonia  
21 limits?

22 A Yes, they are.

23 Q Okay. And where do you find that in the  
24 permit?

25 A Table A2 describes the ammonia limits

1 based on current law that will be applicable to this  
2 facility. Table A1 references their current  
3 situation, which is monitoring only for ammonia.  
4 Effluent limits don't kick in until, according to  
5 this document, January 1st of 2018. Which means  
6 that when the permit was renewed, since they have a  
7 facility that is incapable of meeting ammonia  
8 limits, will have to be -- because it's a  
9 single-cell lagoon, will have to be replaced with an  
10 alternative technology of some kind. The facility  
11 was granted time to make that upgrade before these  
12 effluent limits would come into play.

13 Missouri statutes authorize a  
14 schedule of compliance like this when a facility  
15 can't immediately meet those effluent limits,  
16 they're given time to come into compliance and we  
17 call that a schedule of compliance when we're  
18 looking at permits like this. I believe the statute  
19 doesn't lay it out in exactly those terms.

20 **Q Okay. So let me make sure I understand**  
21 **your testimony. There is an ammonia standard or**  
22 **limit that's applicable generally in this state**  
23 **today?**

24 **A** Yes. The current standards were based  
25 on EPA's 1999 criteria, which were adopted in 2005,

1 I believe, and are based on a series of species but  
2 most sensitive ones were small fish and those are  
3 presently the law of the land. Yes.

4 Q Now, even though those standards are  
5 applicable today, this particular facility is not  
6 required to meet those standards until January 1st  
7 of 2018, is that correct?

8 A Correct.

9 Q Okay. Now, you've also heard some  
10 discussion of possible future standards based on the  
11 effect of ammonia on mussels, do you recall that?

12 A Yes.

13 Q And if you know, are there any standards  
14 based on the effect of ammonia on mussels? Are  
15 there any such standards that are in effect in  
16 Missouri today?

17 A There are not.

18 Q But is that something that may become  
19 effective in the future?

20 A Yes. When EPA promulgates new proposed  
21 water quality standards, they're an example for  
22 states and tribes to adopt into their own standards.  
23 A state can, if they have sufficient resources,  
24 adopt a more stringent standard if they can develop  
25 the science behind that. Very few states have

1 the -- that amount of resources, so most states will  
2 adopt the federal standard.

3 States cannot be less stringent than  
4 the federal government standards, though, so if a  
5 state were to not adopt those standards, as happened  
6 in Kansas a few years ago, the EPA does have the  
7 power to promulgate those standards upon that state  
8 or take away their permitting authority. So while  
9 they not be the law of the land now, at some point  
10 the state must address those standards. But with  
11 this mussel criteria, EPA proposed a great deal of  
12 flexibility, which means there's a lot of work for  
13 the state to do yet.

14 **Q So as far as you know, does anyone know**  
15 **when the mussel-based standards will become**  
16 **applicable to Missouri?**

17 **A** To the best of my knowledge, no. I know  
18 that DNR has withdrawn their proposal to adopt these  
19 criteria into the water quality standards during the  
20 current triennial review, the rule making they're  
21 doing right now.

22 **Q And again, if you know, do you expect**  
23 **the mussel-based standards to be more stringent than**  
24 **the current applicable standard?**

25 **A** They will be more stringent. Based on



1 my preliminary review when I was with the Department  
2 of Natural Resources, it would cut effluent limits  
3 by approximately 50 percent. Which is a significant  
4 enough amount that a lot of technologies will become  
5 obsolete and because of the amount of stress and  
6 strain that that's going to put on the nation's  
7 infrastructure, a lot of states are being careful  
8 and cautious about adopting those new criteria.

9 **Q If you know, is it certain that the**  
10 **mussel-based standards will become applicable to**  
11 **Missouri at some point in the future?**

12 **A** Some water quality standard protective  
13 of mussels will become the law of land in Missouri,  
14 yes.

15 **Q Thank you very much. I have no further**  
16 **questions?**

17 JUDGE BURTON: Did you want to go ahead and  
18 cross-examine now?

19 MS. BAKER: I have no questions, thank you.

20 JUDGE BURTON: Okay. Then I'll see if the  
21 Commissioner Stoll, do you have any questions?

22 COMMISSIONER STOLL: I believe I have one  
23 question.

24 **Q Thank you for your testimony and your**  
25 **detailed information. Did you say that Peaceful**

1 Valley would not be able to meet the effluent  
2 standard with the single-cell lagoon that they have  
3 now? Is that pretty much what's believed to be  
4 true?

5 A My position on that is based on my body  
6 of work. I started with DNR with enforcement so I  
7 was dealing with folks that were already out of  
8 compliance in the government permitting. Permitting  
9 work is reviewing a facility's existing performance.  
10 In 14 years, I never saw a single-cell lagoon that  
11 could meet the proposed effluent limits that are in  
12 this permit.

13 It's extremely unlikely, but the data  
14 from this one that I reviewed yesterday showed that  
15 they've already demonstrated they would not be able  
16 to comply with these effluent limits.

17 Q So, if they were to, or when they would  
18 construct a new facility, there would be -- would  
19 there be a variety of options that they might have?  
20 How limiting would those options be?

21 A There's more than one perspective on  
22 that answer. I'll try to be brief. When you  
23 propose to do construction in Missouri, there's a  
24 separate law called, a shorthand for it is  
25 anti-degradation, you can't make things any worse

1 than they already are. So if they were going to  
2 expand the facility, they would have that review,  
3 that review would limit their options potentially.

4 If they were only going to build a  
5 facility with the same capacity as the one is now,  
6 then what the DNR has done is examined several  
7 technologies and provided recommendations in  
8 technical bulletins they've produced that say these  
9 are some technologies that is will meet the current  
10 standard and the new standard. If you're making  
11 some choices, we wouldn't recommend maybe some of  
12 these because you might have to upgrade again at  
13 some point in the future. But if you choose one of  
14 these, a different suite of treatment technologies,  
15 existing ones, these aren't experimental, then these  
16 will meet the new standards as well.

17 So they've provided recommendations,  
18 but your constraints on what technologies to choose  
19 are right now pretty broad. You can't build a new  
20 single-cell lagoon in Missouri. It won't meet the  
21 technology standards that are applicable for  
22 biochemical oxygen demand and total suspended  
23 solids. Those are federal technology-based limits.

24 But there are -- there are several  
25 treatment options available that would comply with

1 the current law, meet the ammonia limits that are in  
2 their permit now. You just have to then start  
3 choosing whether or not it would also meet the  
4 ammonia limits to come.

5 Q So once, let's see, when a company is  
6 looking to replace, let's say, a single-cell lagoon,  
7 and they go to an engineering firm, that firm would  
8 say here are our options. Does DNR, I guess do they  
9 automatically review those or do they wait until one  
10 has been selected or how does that process work?

11 A I think it would be best to re-clarify  
12 that I can't state their current position on those  
13 issues. And I did not review construction permits  
14 myself. So I can't speak to their exact process,  
15 then or today, to tell you the truth. They are --  
16 they're always available to provide advice. But  
17 DNR's careful not to specify certain technology, but  
18 it just must meet a certain set of minimum  
19 standards.

20 Q So if the company would come to them and  
21 ask them their opinion, they would talk to them  
22 about that, but then also information is put out in  
23 bulletins that explains known technologies that will  
24 help -- will enable you to meet these requirements  
25 and some that may not, that may be necessary to meet

1     **future requirements?**

2             A     Correct.

3             Q     Okay. I think that's it for me right  
4     **now. Thank you.**

5             JUDGE BURTON: Okay. Commissioner Kenney.

6     BY COMMISSIONER KENNEY:

7             Q     Thank you, thank you for being here.

8     **Should have had you on first and could have saved**  
9     **all my questions for you. I appreciate your**  
10    **explanation. I have a couple questions for you.**

11             So the ammonia limits we're talking  
12    **about now were adopted by the state in 2005?**

13             A     I believe that's correct. On or about  
14    2005.

15             Q     Why has Peaceful Valley or any others  
16    **been excluded from them to this date?**

17             A     Trying to think of the best way to  
18    answer that question, sir. When the EPA proposed  
19    ammonia limits, and that's a toxic water pollutant,  
20    not all states adopted it into their own law  
21    immediately, the coasts were faster than the  
22    Midwest.

23             Q     **They always are. We're the Show Me**  
24    **state.**

25             A     Then, I'm putting in an uncomfortable

1 position of airing some dirty laundry for EPA. But  
2 they were asleep at the wheel, quite frankly. We  
3 had ammonia limits in some permits where a permit  
4 writer had judged that that was necessary and  
5 appropriate, but it was not required for all  
6 facilities.

7 In 2006, we received our program  
8 review, EPA reviews the state's regions once every  
9 four years, and suddenly we were doing everything  
10 wrong. 2007, 2008, 2009, we underwent a major  
11 overhaul in how we write permits, part of that  
12 effort was to start putting in monitoring for  
13 ammonia in nearly all permits with domestic  
14 wastewater. If they were shown to be a problem,  
15 then in the next permit, they received effluent  
16 limits like you see here and a schedule of  
17 compliance to upgrade that facility.

18 So they should have been put into  
19 permits sooner and Missouri was not just compelled  
20 to do so.

21 Q Now, next question: Has -- so are you  
22 saying Peaceful Valley shows that there's a concern  
23 today or just putting them in the permit because  
24 they're supposed to be in the permit?

25 A Based on my review of the data from the

1 facility, now I could also read the background of  
2 this permit, but the data from the facility I looked  
3 at yesterday, they absolutely have a concern right  
4 now.

5 Q So they do have a concern?

6 A Yes.

7 Q Thank you for that answer.

8 Now, as is mentioned in the permit,  
9 it says the Department of Natural Resources intends  
10 to adopt the new ammonia criteria during the next  
11 water quality standards triennial review. Now, was  
12 it your statement a minute ago that you said that  
13 the DNR does not intend to adopt EPA's 2013  
14 guidelines in their next triennial review?

15 A Shortly before I left DNR, they made the  
16 decision not to pursue that as part of the rule  
17 making package that they are going to submit to EPA  
18 for approval. States have to ask the federal  
19 government for permission before they change these  
20 water quality standards. And then as part of my  
21 duties now with PSC, I attend the DNR's stakeholder  
22 meetings and commission meetings and they have held  
23 true to that position that they are not going to  
24 adopt or to ask to adopt EPA's guidelines on ammonia  
25 in this triennial review.

1           **Q     So that will push it off, what, three**  
2   **years, since it's a triennial review?**

3           A     Minimum. But that's to a large degree  
4   speculative because this process is subject to  
5   citizens who'd enter a Clean Water Act and such.

6           **Q     I understand. Dealing with the**  
7   **government. How would that affect Peaceful Valley**  
8   **today or going forward? How does that decision**  
9   **affect Peaceful Valley?**

10          A     It's difficult for me to speculate  
11   exactly how that will impact Peaceful Valley because  
12   there will be judgment calls that the Department of  
13   Natural Resources would have to make and the EPA in  
14   their oversight role. It would be my recommendation  
15   that folks not have to spend money twice. But --

16          **Q     Especially when don't they have the**  
17   **money to spend the first time, right?**

18          A     But the timing issue for facilities will  
19   require quite a bit of judgment call and I can't  
20   guess at what it will mean specifically for Peaceful  
21   Valley or anybody else. It took six years or almost  
22   six years for the state to adopt the 1999 criteria.  
23   I don't know if that will hold true for this round,  
24   but once the state adopts that criteria, then the  
25   next time the permit comes up for renewal is when it



1 appears and they get some portion of a schedule of  
2 compliance.

3 Q So like in Peaceful Valley's case, it  
4 could be January, 2019?

5 A It could be a number of years down the  
6 road before those new criteria would actually be  
7 applicable to them in the permit.

8 Q Okay. I'm trying to -- now, you said  
9 the numbers that are shown in Table A2 dealing with  
10 ammonia are under the 2005 adopted criteria?

11 A Correct.

12 Q Then why is -- why is it mentioned in  
13 this permit, I just don't understand. Why is it  
14 recommended in this permit that we -- that they do  
15 something in compliance with the expected new  
16 triennial review that the state's going to adopt  
17 these new 2013 guidelines? So I would think there  
18 has to be something in the building of that new  
19 lagoon or system to be in compliance with the rules  
20 that we're not going to adopt now, but the permit  
21 says -- I'm just trying to understand. You  
22 understand my question? I'm being confusing, I'm  
23 sorry. I'm having a hard time putting it together.

24 A At the time this language was crafted,  
25 which I believe they're using somewhat different

1 language now, at the time the language was crafted,  
2 it was you're going to have to do something, yes,  
3 this is the law, but if you're going to spend money,  
4 your target really shouldn't be in this case a  
5 summer ammonia limit, a monthly average of 1.3, your  
6 target should really be .7 because within a couple  
7 years, the law's going to be different.

8                   Since this permit was drafted,  
9 they've backed off of that adoption schedule. So it  
10 was the agency's position at that time that it was a  
11 good faith effort to warn folks which is something  
12 that, quite frankly, lobbyists and special interest  
13 groups had pushed hard for more warning from the  
14 Department on things that were upcoming. And this  
15 was their effort to do so, but it was a more  
16 aggressive effort than what they're pursuing now.

17           **Q     Okay. Then a follow-up question. You**  
18 **saw the engineer's report of a \$1.1 million**  
19 **treatment facility, would that have included -- does**  
20 **that include, or do you know, the recommendations of**  
21 **the 2013 guidelines of the .7 or whatever it is?**  
22 **Because throughout the permit process in the**  
23 **letters, it keeps saying the state recommends this,**  
24 **this, but is it -- so when they -- when that**  
25 **engineer prepared that report, is that what he's**

1     **thinking?**

2             A     Again, this is speculation.

3             **Q     Because to me that's a big difference in**  
4     **dollars.**

5             A     It would be consistent with what I had  
6     seen in the last year or two of my work with the  
7     DNR. For a consultant to have considered that, the  
8     new criteria in anything they were going to propose  
9     because that was the advice the department had given  
10    in outreach efforts to engineering groups and  
11    consultants, to please look forward for this kind of  
12    thing. I don't know for certain. I did not review  
13    the report with that in mind to make sure.

14            **Q     Because I would imagine that's the**  
15    **difference. Just like anything like as a developer,**  
16    **when I want to develop a street now and I got to do**  
17    **all these different things and spend -- you know,**  
18    **there's always something extra a city or government**  
19    **wants or an agency wants. And I know a lot of**  
20    **things that you did in your old job were dictated by**  
21    **the federal government, which that at least two of**  
22    **us were up here on the legislature and one lobbied**  
23    **the legislature and said we don't like that. I'm**  
24    **sure you don't either.**

25                    But I just -- I'm trying to figure

1 out the whole thing and I don't know, you know, I'm  
2 sure, you know, to me, I just -- you know, what's it  
3 going to cost? And you can't tell me if these  
4 engineers have brought in all these things into  
5 account and now the state -- whether the state ever  
6 adopts it or if they adopt it six years from now and  
7 it goes into effect like this, it goes into effect,  
8 if adopted in 2005, recommended in '98?

9 A '99, yes.

10 Q '99. And then it's put in place, okay,  
11 you need to do it by 2018. Well, I'd try to build  
12 the cheapest thing I could. Because I've got 18  
13 years, 19 years.

14 A There will definitely be some folks who  
15 make that decision. It's one of those things where  
16 we make recommendations, but that's a choice they  
17 could make, yeah.

18 COMMISSIONER KENNEY: Thank you very much.  
19 I appreciate you being here and testifying. And  
20 welcome to PSC.

21 JUDGE BURTON: Commissioner Hall?

22 EXAMINATION

23 BY COMMISSIONER HALL:

24 Q Good afternoon. Make sure I understand.  
25 Looking at Table A2 of the permit, the standards set

1     **there for ammonia, those are the standards that**  
2     **currently exist in Missouri law?**

3             A     Those are effluent limits based on the  
4     current standards, yes, there's some math to get  
5     there, but yes.

6             Q     **And does the company currently meet**  
7     **those December 1, 2018 -- if the company does**  
8     **nothing, will they be able to comply with those**  
9     **limits?**

10            A     If the facility does nothing, they will  
11    not be able to comply with those limits.

12            Q     **Okay. And that is -- that determination**  
13    **is -- and that conclusion is based upon what?**

14            A     Data submitted by the facility on their  
15    performance. Right now, they have some discharges  
16    that are immediately lethal to aquatic life.  
17    They're both what we call the acute standard. These  
18    are much lower, these are based on harm to life.  
19    But some of the discharges from the facility right  
20    now are very high.

21            Q     **Okay. What does DNR do to a permit**  
22    **holder that violates the terms of the permit? What**  
23    **enforcement actions do they take?**

24            A     There are a series of options available  
25    to them and I can't speak to their position right

1 now. My knowledge is --

2 **Q Statutorily, what are their enforcement**  
3 **options, if you know? And if you don't know, that's**  
4 **okay.**

5 A I can give you functional answers with  
6 confidence. Functionally they can take enforcement  
7 action, including civil suit, they can give them  
8 administrative penalties, which was rare. They can  
9 give them administrative order without penalties.  
10 They could seek to revoke the permit. They could --  
11 they could take a variety of nuances within any of  
12 those approaches as well.

13 **Q So what is the functional result of**  
14 **revoking a permit?**

15 A When a facility is incapable of meeting  
16 water quality standards and they've already been  
17 granted a schedule of compliance available under the  
18 statutes, under 644.051, then if the permit then  
19 comes up for renewal again, the Department makes  
20 that review and it can't meet the water quality  
21 standards, then the director is not supposed to  
22 issue another permit to them. Supposed to revoke  
23 it. That revocation then would automatically  
24 trigger an enforcement action by the state.

25 **Q The attorney general would file suit?**

1           A     Correct. If the state had not been  
2     taking an active role, then also the EPA would be  
3     able to step in. It's one of the higher level  
4     violations to be discharging in the absence of a  
5     permit. That revocation means you are no longer  
6     authorized to discharge contaminants from that  
7     facility.

8           Q     So in a nutshell, is your belief that if  
9     Peaceful Valley does not take some action to curb  
10    ammonia discharge by January 1, 2018, they will be  
11    in violation of state law, they'll be in violation  
12    of their own permit, subject to a determination of  
13    permit revocation and lawsuit by the attorney  
14    general enforcing that determination?

15          A     That or perhaps a series of other  
16    actions within their power. But yes, they would be  
17    in violation and the state would be compelled to  
18    take action.

19          Q     Let me ask a couple questions and I  
20    apologize if they're duplicative of questions from  
21    Commissioner Kenney, but I'm not quite sure I  
22    understood the answer. Looking at the Integrity  
23    Engineering report, which I can't remember,  
24    you've -- you've reviewed that report?

25          A     I skimmed through the report. I'm a

1 scientist. I'm not an engineer. So I wasn't  
2 looking for specifics in the report. I was looking  
3 for things I wanted to see.

4 Q I'll do my best. The recommendation of  
5 Integrity Engineering was for a specific -- the  
6 construction of a specific treatment facility, was  
7 that based upon the effluent limit currently in law,  
8 in Missouri law, currently applicable to Peaceful  
9 Valley, January 1 of 2018? Or was that based upon  
10 effluent limits that might come down in some future  
11 rule making?

12 A I do not specifically remember seeing  
13 what they considered for the expectations when I  
14 looked. I was not looking for that. It would be  
15 common practice for consulting firms to select a  
16 technology that would meet those upcoming limits  
17 instead of just the ones that are in the permit.

18 Q Even though they don't know what the  
19 upcoming limits are?

20 A DNR is able to provide a reasonably good  
21 estimate of the worst case scenario. I was part of  
22 that effort in advising consultants because they  
23 wanted to know. They considered it part of their  
24 duty to their client to provide the best advice they  
25 could. They wanted to know approximately what those



1 targets would be.

2 Q I'm looking at the Integrity report on  
3 Page 4 and it describes what the new ammonia limits  
4 are. And those new ammonia limits are the limits  
5 that are set forth in the permit and that are  
6 applicable January 1, 2018. I mean, I would be  
7 curious if staff or OPC or could look at the report  
8 and clarify that particular question for me.  
9 Because, I mean, I think this is -- this is maybe  
10 where the rubber meets the road. And if what we  
11 have to determine is whether or not there is an  
12 effluent limit in place, whether or not Pleasant  
13 Value -- Peaceful Valley, excuse me, can meet that  
14 effluent requirement and when they have to do it by,  
15 and once we make those determinations, then it's a  
16 matter of okay, company, what do you propose to  
17 construct in order to meet those effluent limits?  
18 And then we need to come up with a funding  
19 mechanism. So --

20 MS. BAKER: I think I have an answer to  
21 your question, if you're wondering. On Page 4, the  
22 last paragraph right before Section 2, background,  
23 says at the time of this report, we have received  
24 verbal notification from DNR that effluent ammonia  
25 limits will be reduced even further to -- in order

1 to protect waters of the state. DNR anticipates  
2 publication of the new ammonia criteria within the  
3 next couple months. However, the current  
4 projection of revised ammonia limits is  
5 0.6 milligrams per liter in summer months and  
6 2.1 milligrams per liter in the winter months. The  
7 alternatives considered in this report will be  
8 evaluated based on meeting these new limits.

9 COMMISSIONER HALL: Now, that was helpful.

10 MS. BAKER: I can do it if I wanna.

11 COMMISSIONER HALL: I know. Exactly.

12 Thank you.

13 JUDGE BURTON: Okay. I don't have any  
14 questions. Does OPC wish to question based on the  
15 questions on the bench?

16 MS. BAKER: I just have a little bit of  
17 clarification as far as the DNR enforcement  
18 actions.

19 EXAMINATION

20 BY MS. BAKER:

21 Q DNR has the ability to do notices of  
22 violations, is that correct?

23 A Correct.

24 Q And they have the ability to do letters  
25 of warning?

1 A Yes.

2 Q And neither one of those require going  
3 to the AG's office or going to formal enforcement,  
4 correct?

5 A That's not a yes-or-no answer. If I  
6 may, those are documentation of violations and may  
7 or may not be then followed up with enforcement  
8 action depending upon the nature of the violations.

9 Q Right. But at the time that like a  
10 letter of warning is issued, the AG's office is not  
11 informed and they are not involved at that point, is  
12 that correct?

13 A Typically, no, not unless it's an  
14 egregious situation.

15 Q And were you still involved in DNR's  
16 effort for CC&P, conference, conciliation, and  
17 persuasion?

18 A That was not typically one of the things  
19 that I did past the first two years of employment.

20 Q Okay. Do you know what CC&P involves?

21 A Yes.

22 Q And you would agree that that would  
23 involve a situation where a system did not meet a  
24 DNR violation and DNR would try to assist them in  
25 putting together a time frame for meeting that

1     **violation?**

2             A     That is typical for less egregious  
3     situations, yes.

4             Q     And so for a situation like this, where  
5     there may be a permit recommendation there, those  
6     options are available to a system if they wanted to  
7     proceed through the CC&P process, correct?

8             A     In a situation like this, it would  
9     require a judgment call for the regional office  
10    staff member engaged in the situation. If a  
11    facility has done nothing in their schedule of  
12    compliance, then it would be atypical for the  
13    regional office to pursue further CC&P. If they  
14    have made some effort toward compliance, then the  
15    regional office would have to determine in their  
16    judgment what's the best course of action as part of  
17    CC&P for compelling compliance.

18                    If a facility was very close to being  
19    done, say, a facility like this had pursued a  
20    construction effort and were very close to being  
21    done, then the regional office would have to decide,  
22    well, perhaps no further action is necessary, I'm  
23    just going to keep an eye on this. And there are a  
24    tremendous number of shades of gray along that  
25    spectrum of compliance effort by a facility.

1           Q     Okay. And did you see all of the  
2 exhibits that were -- that were put into place in  
3 this particular case?

4           A     I did not review all the exhibits, no.

5           Q     And -- but you are aware that there were  
6 at least, I think, something like eleven exhibits of  
7 documentation going back and forth between Peaceful  
8 Valley and DNR?

9           A     Yes.

10          Q     And that would certainly be something  
11 that DNR would take into account in a CC&P process  
12 of having dialogue with the company and  
13 understanding that the company is concerned?

14          A     In my opinion, if -- if I were reviewing  
15 this situation, if the facility had -- was in  
16 non-compliance and I was evaluating it, the dialogue  
17 that you reference would be helpful in determining  
18 that the facility definitely knew what the  
19 requirements were, that there wasn't a lack of  
20 understanding and that those portions of the CC&P  
21 effort would be taken off the table. That if --  
22 there are some entities who lacked in understanding.  
23 Based on my knowledge of this facility and the  
24 discussions with Lacey Hirschvogel, the permit  
25 writer, there were extensive communications with

1 this permittee, so if anything it would shorten my  
2 efforts on CC&P because some of CC&P, in my  
3 judgment, would be reserved for educating those  
4 folks who didn't have an understanding of what the  
5 permit requirements were.

6 Q But they're not necessarily enforcement  
7 candidates because they've not been responsive?

8 A Correct.

9 Q And in your experience, are there -- are  
10 there systems out there that operate for years on an  
11 expired permit?

12 A That has happened in the past, yes.

13 MS. BAKER: No further questions.

14 JUDGE BURTON: Any redirect?

15 EXAMINATION

16 BY MR. THOMPSON:

17 Q Mr. Gateley, do you have any reason to  
18 doubt that Peaceful Valley is required to meet  
19 certain ammonia discharge standards by January 1,  
20 2018?

21 A I have no reason to doubt.

22 Q And do you have any reason to doubt that  
23 Peaceful Valley will have to engage in significant  
24 construction or modification of their system in  
25 order to meet those standards?

1           A     It is my belief based on my experience  
2     that they will have to undergo some kind of  
3     significant modification of this facility.

4           MR. THOMPSON: Thank you. No further  
5     questions.

6           JUDGE BURTON: Okay. Thank you. You're  
7     excused.

8                     Staff may call your next witness.

9           MR. THOMPSON: I call Jim Busch.

10          JUDGE BURTON: Would you please raise your  
11     right arm?

12                     JAMES BUSCH,  
13             Of lawful age, produced, sworn and  
14     examined, deposes and says:

15          JUDGE BURTON: You may be seated.

16                     EXAMINATION

17     BY MR. THOMPSON:

18           **Q     State your name, please.**

19           A     My name is James Busch.

20           **Q     Are you employed, Mr. Busch?**

21           A     I'm employed as the manager of the water  
22     and sewer unit of the Missouri Public Service  
23     Commission.

24           **Q     Have you been present throughout the**  
25     **proceedings today?**

1           A     For the most part, yes.

2           Q     And do you recall that there has been  
3     some discussion of surcharges?

4           A     Yes.

5           Q     Now, Mr. Busch, in your capacity as  
6     manager of the water and sewer unit, have you ever  
7     had occasion to give thought to the use of a  
8     surcharge to fund future construction of facilities  
9     for a water or sewer utility?

10          A     Yes, I have.

11          Q     Can you tell me what sort of  
12     circumstances led to you having those thoughts?

13          A     That's a long process. I've been the  
14     manager of the water and sewer unit since  
15     February 1st of 2008. Prior to that I worked in  
16     the energy department. I worked at OPC for five  
17     years before and I've worked in procurement and  
18     analysis department in the PSC for two years prior  
19     to that. Very familiar with how Ameren Missouri  
20     works. Very familiar with the Laclede Gas Company,  
21     very familiar with Missouri American. Was not very  
22     familiar at all with small water and sewer utilities  
23     until I took over in 2008.

24                     Since that time, the biggest issue  
25     I've dealt with is how do we get small water and



1 sewer utilities to be able to get the funds  
2 necessary to continue to provide safe and adequate  
3 service and try to keep those rates as just as  
4 reasonable as possible. One of the things that  
5 we've been dealing with over the last six almost  
6 seven years now is potential of surcharge. As  
7 Ms. Baker pointed out, we have used a surcharge in  
8 the past, I believe it was Gladlo was the situation.  
9 That is a company of ours that is under  
10 receivership.

11 The pump went out, we were able to  
12 get a pump company to come in, fund it for them, but  
13 they weren't -- it wasn't a loan that they get from  
14 the bank. The company just carried that amount of  
15 money for them. So they needed to get that money  
16 paid back to that company as quickly as possible, so  
17 we developed a surcharge and I think it was about a  
18 36-month surcharge that we did.

19 Because of the situations like that,  
20 we've started to consider whether or not we could  
21 build in some sort of a surcharge to address these  
22 situations. I've reviewed past documents from my  
23 predecessor and others upon staff, the auditing  
24 department, and this is something that has been  
25 discussed in the past. We had a small water and

1 sewer workshop and I think it was briefly discussed  
2 in that. It's something that based upon the new  
3 requirements and the new permitting that is going on  
4 at DNR, knowing how difficult it is for these small  
5 water sewer systems, I think staff currently is  
6 taking a much more active pursuit of the surcharge  
7 to address these type of issues on a going forward  
8 basis.

9           **Q     Assuming that Peaceful Valley selected**  
10 **the construction option that they would pursue to**  
11 **make necessary modifications to their system, and**  
12 **assuming that there was a reasonably certain**  
13 **forecast of the likely cost of that construction,**  
14 **would you consider this company to be a viable**  
15 **candidate for a surcharge?**

16           A     I do.

17           **Q     Have you given any thought to what sort**  
18 **of safeguards would be necessary with the use of a**  
19 **surcharge to ensure that the money was not used in**  
20 **an unexpected or undesigned fashion?**

21           A     I have. Like I said, we had some  
22 discussions with staff, but staff has not come up  
23 with a complete decision process yet. We're still  
24 in the initial stages of it. But I've thrown out  
25 some ideas among staff and I think we're getting

1 some feedback that is something that staff would  
2 consider.

3 The things that we would like to see,  
4 and we'll use Peaceful Valley since it's the case  
5 right in front of us, we know that they're going to  
6 have to upgrade its facilities by January 1st,  
7 2018. What we did know in this case and why we did  
8 not do anything to address that potential is we  
9 didn't know exactly what the company was going to  
10 choose.

11 So any of the safeguards that we  
12 would have is we would make sure that we would work  
13 with the company, we would work with DNR to  
14 determine what is the best, the most economical  
15 decision it to go forward with. We would make that  
16 decision with the water and sewer staff, with our  
17 engineers and our analysts, we would work with the  
18 auditing department, we would then come up with a  
19 very good idea based on looking at the engineering  
20 reports what we believe that the ultimate cost of  
21 that facility would be.

22 We would then determine a surcharge.  
23 What amount of money would need to be collected, if  
24 we started beforehand, would be great because it  
25 show the banks if you have to go out and get funding

1 from a bank that we do have a dedicated stream of  
2 income that would be -- to pay back the loan.

3 What we would then do is we would  
4 want the Commission to approve some sort of an  
5 escrow account, some sort of money that that  
6 surcharge would go specifically to an account,  
7 hopefully an interest bearing account that would  
8 then require all moneys to go there to be deposited  
9 there.

10 We would then have some sort of  
11 reporting. We've talked about monthly reporting,  
12 quarterly reporting, that that would come back to  
13 the staff at least, we could -- probably counsel  
14 would want to see those documentation. We could  
15 have it filed within the case itself and that  
16 documentation would show the amount of money that  
17 was billed to to all customers. It would show the  
18 amount of money that was collected. It would show  
19 the monthly balances. Anything like that that would  
20 need to be determined and proved that there was a  
21 specific amount of money coming in and where that  
22 money stood.

23 Once the company would start the  
24 construction process and would start to need dollars  
25 out of that account, they could only pull money out

1 of that account upon Commission approval. They  
2 couldn't just get the money. They could not have  
3 access to the dollars unless they had the Commission  
4 approval to pull money out.

5 And they would do that by making a  
6 filing, staff would make a recommendation that, yes,  
7 these are dollars that are specific for the project  
8 that has been identified that the surcharge was  
9 collected for, and then we would make a filing in  
10 front of the Commission and the Commission would  
11 decide to go ahead and allow those funds to be  
12 disbursed to the company to make those payments.

13 MR. THOMPSON: Thank you, Mr. Busch. I  
14 have no further questions.

15 JUDGE BURTON: At this time, we're going to  
16 take a brief 20-minute recess. Let's reconvene at  
17 3:15.

18 MR. THOMPSON: Okay. Thank you.

19 JUDGE BURTON: We'll go off the record.

20 (Break taken.)

21 JUDGE BURTON: Okay. The time is currently  
22 3:20 and we are back on the record. And I believe  
23 that staff had concluded its direct questioning of  
24 Mr. Busch.

25 MR. THOMPSON: That is correct, Judge.

1 JUDGE BURTON: Okay. And does the Office  
2 of Public Counsel have any cross-examination?

3 MS. BAKER: I just have a couple of  
4 questions.

5 EXAMINATION

6 BY MS. BAKER:

7 Q You were talking about the surcharge  
8 that was put into place for Gladlo, I remember that.  
9 How much money was that about? You said it was for  
10 a pump.

11 A Gosh, that's been five or six years.  
12 I'm thinking 14 to \$15,000.

13 Q So nowhere near an amount of anything  
14 like \$1.1 million?

15 A No, there was not.

16 Q Okay. And this was an emergency  
17 situation for the system?

18 A That was correct.

19 Q And you would agree that that particular  
20 system is under a receiver?

21 A Yes, it is.

22 Q And so you would also consider that to  
23 be a troubled system?

24 A I would consider it to be a troubled  
25 system, yes.

1           **Q     And would you think the Peaceful Valley**  
2   **is a troubled system quite like that one?**

3           A     It's not a troubled system like Gladlo.  
4   If things don't happen, it could become a troubled  
5   system.

6           **Q     It has its ups and downs, you would**  
7   **agree?**

8           A     It has its ups and downs and it's a very  
9   small system with an inability to attract capital  
10  like a lot of small systems.

11          **Q     But it is not under receivership?**

12          A     No, it is not under receivership.

13               MS. BAKER: I have no further questions.

14   Thank you.

15               JUDGE BURTON: Thank you.

16               Commissioner Stoll, do you have any  
17  questions?

18                               EXAMINATION

19  BY COMMISSIONER STOLL:

20          **Q     Thank you for your testimony, and I**  
21   **guess first thing I'd want to ask you: Do you --**  
22   **are you familiar with a situation in your relatively**  
23   **brief tenure here where a surcharge of a substantial**  
24   **amount has been authorized to do something like**  
25   **this? Have we had anything like that before?**

1           A     In my tenure, I cannot think of a  
2     situation like that. I do know we have Mr. Merciel  
3     who's been here a few years longer than I have. He  
4     may know something that happened before I got here,  
5     but I cannot remember.

6           Q     But you're advocating for doing  
7     something like this as a remedy to help companies  
8     that possibly will come to us in the future?

9           A     I think it's something that myself and  
10    others and staff had thought about. It's basically  
11    another tool in our toolbox that we could utilize to  
12    help prevent systems from falling into a status that  
13    is not optimal and that they're not providing safe  
14    and adequate service and try to work with the  
15    environmental agencies to make sure that we're not  
16    polluting the environment and trying to keep rates  
17    as just and reasonable as possible.

18          Q     Yeah. I wonder in seeking -- maybe I'm  
19    just not clear on seeking not-for-profit status.  
20    Would they -- would the company be seeking that --  
21    the way I'm looking at it is the company would seek  
22    that in order to -- to be eligible for a loan from a  
23    bank and they would have to enter into an agreement  
24    with the customers to pay so much per year on that  
25    debt, I guess. Is that --



1           A     Well, I think as the company currently  
2     stands, they can go out and get a loan from the  
3     bank. Potentially. It would be, you know, what we  
4     see in a lot of these small systems is that banks do  
5     not want to own the wastewater treatment facility.  
6     They do not want to own a water distribution system,  
7     so to put out a million dollars in a loan with  
8     nothing else but that for collateral, a lot of banks  
9     are gun shy about giving those types of loans.

10                     What not-for-profit status would  
11     potentially allow them would it would allow them to  
12     get state, federal, you know, USDA loans and/or  
13     grants, because it's a not-for-profit status which  
14     are not on the wastewater side eligible for small  
15     systems. Privately owned systems. So to me that's  
16     what the main reason why a small entity would want  
17     to become not for profit is because they would be  
18     eligible for financial assistance that they're not  
19     currently eligible for. And then also one have to  
20     come in here for raising rates and that would be the  
21     board and the customers would be the owner, so --

22           Q     So if they were to make improvements to  
23     the tune of a million dollars and they got -- they  
24     received a -- I don't know how much a grant from  
25     USDA or something like that would be these days, but

1 let's -- if it's half of the amount, let's pretend,  
2 they'd still have to come up with a means to finance  
3 the other 50 percent of the project.

4 A They would still have to, either through  
5 customer rates, either through low income loans from  
6 other agencies or just going out to a bank itself,  
7 they would still have to come up with the other --  
8 whatever funds that were not given to them in a  
9 grant, they would still have to raise those funds.

10 Q Yeah. You know, sometimes we hear about  
11 contributions and aid to construction. Is there any  
12 way something like that could work with a system  
13 like this? I mean --

14 A I'll try not to step too much into CIAC  
15 and that with auditors in the room, but to me, that  
16 would be somebody building a facility and then  
17 giving it to the company, which we generally see in  
18 a small system, like a developer would build a  
19 wastewater treatment facility and then would give it  
20 to the company and we would treat that as CIAC.

21 In this situation, the Property  
22 Owners Association owns the service company, so I  
23 don't really -- I mean, the people who would really  
24 be in any position to do that are the people who  
25 live there already. So I don't see that as a viable

1 option in this case.

2 Q Right. Nobody's going to volunteer.

3 A Nobody's going to just build them a  
4 facility.

5 Q Okay. I think that's all the questions  
6 I have now. Thank you.

7 JUDGE BURTON: Okay. Commissioner Kenney,  
8 if your mic is on.

9 COMMISSIONER KENNEY: Thank you very much.

10 EXAMINATION

11 BY COMMISSIONER KENNEY:

12 Q Thank you, Mr. Busch. I appreciate your  
13 comments and your kind of explanation of where -- of  
14 your thought process.

15 I have a question. During your talk,  
16 you mentioned about -- I mean, this thing has been  
17 going on, the staff received a letter in November of  
18 last year that Peaceful was going to ask for 93,340  
19 or what was it?

20 A Something like that, yeah.

21 Q Yeah, something like that.

22 And you also mentioned when you were  
23 talking, you said that staff now says, okay, let's  
24 pass these -- this modest rate increase to cover the  
25 expenses for the cost of capital now and then maybe

1 we can get into some dialogue about where we can go  
2 from here. Why hasn't staff begun that process  
3 since -- I mean, during the last six or eight  
4 months?

5 A Very good question. To move towards the  
6 process of a surcharge of what we're talking about  
7 today, you know, there's a way that staff has done  
8 business and I think it's been touched upon here  
9 about wanting to see facilities that are built used  
10 and useful before the customers would come and start  
11 paying for that. Before we would build that into  
12 rates.

13 I think that it's been a long process  
14 and an evolution of staff to come to a realization  
15 that what works for a large utility may not work for  
16 a small utility. The small systems, water, sewer,  
17 you know, with less than 8,000 customers, we need to  
18 look at treating them differently, I think. And I  
19 think staff has been having internal conversations  
20 to work through that process.

21 You know, when you're out there and  
22 you're looking at the big companies and they take so  
23 much of our time, it's then I think hard to change  
24 the way you look at a small system. Because, you  
25 know, you're out there, you're just trying to do the

1 best you can. So, I think it's -- it's just a  
2 slowly evolving process that I think with this case  
3 and then the Hickory Hills case, which we were  
4 supposed to go to hearing yesterday but it got  
5 pulled because hopefully we found a good solution  
6 for that, has really caused some concerns among  
7 staff that maybe we need to really re-visit this  
8 more closely now.

9 And to be quite honest, hearing the  
10 Commission and the agenda sessions over the last  
11 couple months and hearing that the Commission has  
12 really taken a very active role in wanting to see  
13 answers for these small water sewer systems and  
14 these problems that are facing --

15 **Q That was going to be my next question.**  
16 **Does Commission makeup make a difference because I**  
17 **know Commissioner Hall has taken this on as -- in**  
18 **the water committee, I know he's taken an interest**  
19 **in this and several others of us have expressed some**  
20 **situations.**

21 **A** Yes, the commissioners that are on and  
22 have shown a tremendous amount of interest in the  
23 small water sewer cases and have indicated through  
24 the agenda sessions that I've attended that they are  
25 interested to see something done. And I think that

1 definitely gives staff a motivation to address those  
2 things.

3 Q Good answer. I don't want to take up  
4 too much time.

5 Another question is: Do you have any  
6 idea if the design that Integrity was putting out  
7 there in their plan, they came up with five  
8 proposals. They looked at five options. Enlarging  
9 the existing lagoon, which they couldn't do because  
10 they can't find the ground. That was the second  
11 option. Doing some other stuff on the first, they  
12 looked at all kinds of different things and came up  
13 with the recirculating biofilter system.

14 Do you know if they included the  
15 recommendations by DNR to go towards the EPA's 2013?

16 A That I do not know. I'm not an  
17 engineer, so I didn't get to that level of detail.

18 Q All right. That's -- okay. I think  
19 that -- that's all I had. Thank you very much.

20 A Thank you.

21 JUDGE BURTON: Commissioner Hall?

22 COMMISSIONER HALL: Couple questions.

23 EXAMINATION

24 BY COMMISSIONER HALL:

25 Q Good afternoon, Mr. Busch.

1           A     Good afternoon, sir.

2           Q     First of all, I want to say I appreciate  
3     staff's interest and willingness to look at  
4     innovative solutions to this -- to this particular  
5     problem. And it appears clear to me that staff is  
6     aware that this is an issue that's not specific to  
7     Peaceful Valley, but to many troubled, potentially  
8     troubled water systems. And it's something that  
9     we're going to need as a commission to make some  
10    effort to resolve, to resolve going forward, so I  
11    appreciate staff's interest in working with us on  
12    that.

13                     You, in response to some questions  
14    from your counsel, outlined certain procedures that  
15    you would recommend to account for any potential  
16    surcharge.

17           A     Correct.

18           Q     Were those the processes that were in  
19    place in the Gladlo case, at least similar?

20           A     We did not have an escrow account set up  
21    because the pump situation was -- the company -- the  
22    pump company went ahead and did the repair and so  
23    the money, the surcharge went, you know, straight to  
24    the company, pay back the debt that it was owed. So  
25    we didn't need to set up any sort of escrow account

1 or anything like that. I don't remember that we had  
2 monthly reporting.

3 What I do remember is the company had  
4 to come back in for a rate case after a certain  
5 amount of time and we did -- a trip audit was done  
6 to verify the amounts that were collected and were  
7 expended to the pump company.

8 And that's something that also we  
9 would -- that I would like to see if we did set up  
10 some sort of a surcharge account, like this, that  
11 once the projects were in place, then we would have  
12 a rate case to come in to not only look at the  
13 amount of money that was collected in the surcharge  
14 and in that account, to see if what moneys were left  
15 over and/or not left over but also then to  
16 re-establish what the rates should be on a going  
17 forward basis at that time.

18 **Q So, if the Commission were to determine**  
19 **that a surcharge is a potential avenue in this case,**  
20 **but we were also to determine that there is not a**  
21 **plan in place that is concrete enough to warrant**  
22 **that determination now, what would you recommend**  
23 **going forward?**

24 **A** What I would recommend would be that  
25 right now the Commission has in front of them a



1 disposition agreement between the staff and the  
2 company that the Public Counsel has not opposed. I  
3 think that, in net, there's a little bit more  
4 dollars going to the company based upon those two  
5 agreements. So I would think that the Commission in  
6 its order approving the disposition agreement and  
7 the tariffs on a going forward basis could require  
8 the company to come back in for another rate case in  
9 six months, nine months, a year, would allow for a  
10 couple things.

11 One, it would allow for the company  
12 to continue to explore, if they want to, becoming a  
13 not for profit, which then would really render all  
14 this -- wouldn't be our concern. It would still be  
15 DNR's concern, the company's, but it wouldn't be  
16 ours.

17 And but then it would also give them  
18 time to continue to go down the path of what is the  
19 best facility to put forth and then they could have  
20 better estimates of what the costs are going to be.  
21 Any other costs that would be built in. And then we  
22 could build that into a rate case, you know, on a  
23 going forward basis because I think that has to be  
24 in place by January 1st, 2018. Construction  
25 probably has to begin sometime in 2017.

1                   So that would give us enough time to  
2 go through the process, get the surcharge in place,  
3 and then they could start the process of building  
4 the facility.

5                   **Q     Would another option be adopt the**  
6 **disposition agreement and give the company 60 days**  
7 **to come back with a plan and do a surcharge at that**  
8 **point? Or is 60 days not long enough in your view?**

9                   A     In my opinion, I don't think that's long  
10 enough. I would -- I would like to be able for my  
11 department, water sewer, to work with the auditing  
12 staff to work with the company so that way whatever  
13 facility would determine to be the most economical,  
14 that would allow for the lowest and most just and  
15 reasonable rate. We would be able to explore those  
16 options and then come up with a better more firm  
17 estimate to the commission.

18                  **Q     And you don't think 60 days is a long**  
19 **enough time?**

20                  A     I do not believe so, sir. No.

21                  **Q     Okay. All right. Thank you. I have no**  
22 **further questions.**

23                  JUDGE BURTON: I have a few questions for  
24 you.

25                                   EXAMINATION

1 BY JUDGE BURTON:

2 Q You were just discussing with  
3 Commissioner Hall the options and the amount of time  
4 you would like to have your team consider a  
5 different option and the most economical option.  
6 Would that option consider the 2013 EPA guidelines?

7 A I think, yeah. Yes. You'd want to  
8 consider what the potential future limits might be  
9 because it would, to me, not make a lot of sense if  
10 you're going to have to expend a large amount of  
11 dollars to meet the current permit, then to turn  
12 around and have to do it all again in three or four  
13 years. You could end up costing the consumers a lot  
14 more money in the long run to try to push that off,  
15 in my opinion.

16 Q Okay. Would you imagine that this would  
17 be part of another full small rate case where  
18 eleven-month schedule --

19 A I think so. Because it would definitely  
20 give staff and Public Counsel an opportunity to  
21 review all the options. It would give the  
22 Department of Natural Resources an opportunity to  
23 intervene in the case so they could be involved in  
24 this process, I would imagine, and I might get  
25 yelled at from my auditing friends, but, you know, a

1 full audit at that time shouldn't be as difficult  
2 since the company just went through an audit. So it  
3 would be not too hard for them to do another audit,  
4 but it would give us the time to really dig into the  
5 different cost estimates for the different  
6 facilities.

7 I think they even mentioned Macon.  
8 There's some new facility up there with a different  
9 type of treatment, maybe that would give us time to  
10 see if that's a viable option as well.

11 Q Okay. Now, if the company was to  
12 proceed with pursuing a not-for-profit status  
13 change, they would need to come into the Commission  
14 to get approval for transfer of assets, correct?

15 A I believe that's correct.

16 Q Okay. In your opinion, how long would  
17 that process take for them to file that case and  
18 forward the review and final determination on that?

19 A They could file the case today if they  
20 were ready. I don't know how long it's going to  
21 take them to get ready to do all that stuff and  
22 then --

23 Q Let's say -- let's hypothetically say  
24 they filed next week.

25 A They filed next week, staff would look

1 into the application, we would verify that what was  
2 being requested had all the appropriate statutes and  
3 regulations and we would make a recommendation, we  
4 could probably do that 30, 60 days.

5 **Q Okay. Now, I think you mentioned that**  
6 **construction, if there was an improvement that was**  
7 **approved and adopted by the company, would need to**  
8 **begin at least by 2017?**

9 **A I believe -- I was talking to**  
10 **Mr. Gateley earlier. You know, with the**  
11 **January 1st, 2018 deadline, when would they have**  
12 **to begin construction, and he said probably nine to**  
13 **twelve months out.**

14 **Q Okay. And that would include a**  
15 **recirculating biofilter system?**

16 **A I'm assuming. That's what we were**  
17 **talking about, so --**

18 **Q Now, I don't know if you know this, but**  
19 **you were discussing if they were to get a loan from**  
20 **a bank, that having a surcharge would make that**  
21 **easier for them and facilitate showing that there's**  
22 **a source of income. Do you have any idea on how**  
23 **long a surcharge would need to be in place before**  
24 **getting a private loan would be possible?**

25 **A That I have no idea. We've talked with**

1 various banks with various other companies and each  
2 one's different and unique. So I have no idea.

3 **Q Okay. Thank you.**

4 JUDGE BURTON: Any cross-examination based  
5 on the Commission's questions?

6 MS. BAKER: No, thank you.

7 JUDGE BURTON: Any redirect?

8 MR. THOMPSON: No redirect. Thank you.

9 JUDGE BURTON: Okay. You may be excused.  
10 Thank you.

11 And does staff have any additional  
12 witnesses to call?

13 MR. THOMPSON: I have one very briefly. I  
14 would call Jim Merciel.

15 Please raise your right hand.

16 JAMES MERCIEL,

17 Of lawful age, produced, sworn and  
18 examined, deposes and says:

19 JUDGE BURTON: Please be seated.

20 EXAMINATION

21 BY MR. THOMPSON:

22 **Q State your name, please.**

23 A James A. Merciel, Jr.

24 **Q How are you employed, Mr. Merciel?**

25 A I am employed in the water and sewer

1 unit of the Public Service Commission as an  
2 engineer.

3 Q How long have you been so employed?

4 A Since 1977. I can't count the years,  
5 too many.

6 Q Mr. Merciel, have you been present in  
7 the room throughout the proceedings today?

8 A Yes, I have.

9 Q And I have you up here for one reason  
10 and one reason only. Do you recall a question that  
11 Commissioner Kenney asked of Mr. Busch as to whether  
12 or not the engineering study contained certain --  
13 met certain standards?

14 A Yes, I do.

15 Q Do you recall what that question was?

16 A Yes, I do recall.

17 Q Do you have an opinion for it?

18 A Yes. There is a line -- actually, I  
19 think Ms. Baker pointed out before, there is a line  
20 in the study saying that it did consider possible  
21 future ammonia limits. So the answer is yes, it  
22 appears that it would include future limits,  
23 whatever they may be.

24 Q And you're specifically talking about  
25 what's been referred to as the EPA 2013 ammonia

1 standards?

2 A That's correct.

3 Q Thank you, Mr. Merciel. No further  
4 questions.

5 JUDGE BURTON: Okay. Any cross-examination  
6 from the Office of Public Counsel?

7 MS. BAKER: No thank you.

8 JUDGE BURTON: Okay. Commissioner Stoll?

9 COMMISSIONER STOLL: I have no questions.

10 JUDGE BURTON: Commissioner Kenney?

11 EXAMINATION

12 BY COMMISSIONER KENNEY:

13 Q Thank you.

14 A You're welcome.

15 Q I did find that in the engineer's report  
16 on Page 10 of the last bill. It says, The proposed  
17 effluent limits subject to anti-degradation review  
18 for the updated facility, blah blah blah, total  
19 ammonia 1.3. And is that milligrams per liter?

20 A Yes, it is.

21 Q So 1.3 milligrams per liter summer and  
22 2.9 winter. However, DNR has stated that lower  
23 ammonia limits will be issued soon, tentatively  
24 these limits are going to be .6 milligrams a liter,  
25 total ammonia summer which is less than half. And



1     2.1 milligrams per liter total ammonia winter which  
2     is about two-thirds of that. Only alternatives that  
3     are capable of meeting those lower limits will be  
4     considered as viable alternatives.

5                     So as an engineer, would that cause  
6     increased construction costs to develop a facility  
7     that would meet those levels?

8             A     Well, no, I think we're looking at what  
9     they proposed is what would meet those levels.

10            Q     I know they're proposed. But would it  
11     be cheaper not to do something that didn't meet  
12     those standards?

13            A     Well, that's a good question. I don't  
14     have a definitive answer for you. I wish I did.  
15     I've looked for some information about pilot studies  
16     about following lagoons with enhanced treatment to  
17     meet ammonia limits, and I wish -- I mean, I want to  
18     spend more time on that, but what I found so far  
19     indicates that success is limited with that type of  
20     thing.

21                     And, in fact, this engineering  
22     report, the first couple of alternatives the  
23     engineer talked about following a lagoon with a  
24     treatment or aerating a lagoon maybe with some other  
25     treatment and he was not comfortable in recommending

1 that to Peaceful Valley. That would have been taken  
2 in the context of the new ammonia limits.

3 So whether that would make a real  
4 difference, I don't really have a good answer for  
5 that. It might.

6 Q Well, I would think, just like any water  
7 purification system and the different pressure types  
8 can get more ingredients out of it, it can --  
9 there's a lot of different systems, so I would  
10 think, just --

11 A There may be well -- may well be ways to  
12 do it. I haven't found anybody that -- and I've  
13 also -- Hickory Hills case is closed now, so I guess  
14 it's not ex parte anymore, but in looking at one of  
15 the systems in that, I was questioning one of the  
16 plant suppliers about treating lagoon waters as  
17 opposed to treating raw sewage and it wasn't a very  
18 warm response. I'm not getting good information  
19 about, you know, trying to follow an existing lagoon  
20 and enhancing the treatment.

21 So I've not been able to get any  
22 information that would tell me, yes, you can  
23 actually do that and get good results.

24 Q I imagine, then, if you could do one  
25 system and it takes out this or takes out it all, I

1 mean, that's -- I can't see how a system is not --  
2 that one system is just going to do it all.

3 A Yeah, well, what I'm finding in some of  
4 the information is consistency. If you do have --  
5 if you follow this, and when you look at the tables  
6 in the engineering report throughout the year, you  
7 know, there might be one month that you get a good  
8 ammonia treatment and other months you won't get it.  
9 And what I'm seeing with enhanced treatment is kind  
10 of the same thing. It's just inconsistent. It  
11 might work sometimes. It might not work other  
12 times. So --

13 Q Okay. I appreciate your comments and  
14 your insight. Thank you.

15 A You're welcome.

16 JUDGE BURTON: Commissioner Hall?

17 COMMISSIONER HALL: Yes. Thank you.

18 EXAMINATION

19 BY COMMISSIONER HALL:

20 Q Good afternoon.

21 A Good afternoon.

22 Q The existing Missouri rules on ammonia  
23 that are in the existing permit at issue here, are  
24 you familiar with the DNR permit?

25 A With the permit, yes, sir, I am.

1           **Q**     Do you have an opinion as to whether or  
2     not Peaceful Valley can comply with the permit which  
3     reflects existing Missouri law without doing  
4     something?

5           A     Based on the engineering report and the  
6     ammonia limits that are portrayed as this lagoon,  
7     discharging now, the answer would be no, it would  
8     not be able to meet it without doing something.

9           **Q**     Do you know if there are -- and you may  
10    have gotten into this a little bit with Commissioner  
11    Kenney and so I apologize. But are you aware of any  
12    additional approaches that Integrity might have  
13    looked at had they been focused solely on this lower  
14    ammonia requirement?

15          A     Not really. Other than perhaps looking  
16    into facilities to follow a lagoon with only that  
17    level of treatment in mind. In fact, they didn't do  
18    that, so that might be possible.

19          **Q**     I'm sorry, explain that a little bit  
20    more.

21          A     Well, it's a matter of -- going to back  
22    up a little bit. If you have an existing lagoon and  
23    if you follow with that an enhanced treatment  
24    process like, for example, another treatment plant,  
25    maybe aeration or some kind of a sand filter or

1 biofilter system, pilot studies that I've seen do  
2 not -- they say you're not getting current or you  
3 don't get good consistent results with ammonia  
4 treatment.

5 Now, whether or not it would meet  
6 what's required in the permit versus what might be  
7 required in the future, I don't have enough  
8 information to address that. And I don't think  
9 Integrity looked at it with that in mind. Now, if  
10 they did, maybe they would have the same conclusion.  
11 So I'm saying I really don't know the answer to  
12 that.

13 **Q So, is it possible that there is some**  
14 **type of corrective action that the company could**  
15 **undertake to deal with these -- with the current**  
16 **ammonia restrictions that would not be money wasted**  
17 **if in the future they had to comply with more**  
18 **stringent ammonia requirements? Is that possible?**

19 **A** I really don't think it would be  
20 substantially different. It might be different.  
21 The biofilter they're proposing, I forgot how many  
22 units, it was something like three or four units is  
23 the first stage and then two units is the second  
24 stage. Might be able to reduce the number of units  
25 that are needed or not do the second stage.

1           Q     Okay. So in that scenario, there would  
2     be a lower cost up front and then if DNR and EPA  
3     came down with more stringent limits, two, three,  
4     four years from now, then they could spend that  
5     additional money?

6           A     Might be able to add to it, yes, sir.

7           Q     But the money that they spent on the  
8     first stage would not be wasted then?

9           A     Correct, yeah, I would agree with that.  
10    I don't know if it would fall out that way, it's  
11    possible. That would have to be looked at. And I  
12    was going to say the -- I think Integrity was pretty  
13    thorough in look at the treatment process  
14    alternatives. I don't know if they looked at a lot  
15    of different treatment products. In other words,  
16    kind of like buying a car, if you want a station  
17    wagon, there's a number of different products. You  
18    wouldn't just go to one dealer and see what they  
19    have, you would look around and see what's there.

20                   And it's somewhat similar with  
21    treatment plants. There are a lot of companies out  
22    there building products, might be concrete cast in  
23    place or might be a plastic facility that's shipped  
24    on a truck. You know, the setup costs, the costs of  
25    buying the product. Point is there are a lot of

1 different alternatives. Once you choose the  
2 direction, you know, which product do you select?

3 And, again, probably not a big  
4 difference, but it might be the difference between a  
5 million dollars and \$850,000 or, you know, could  
6 make some small difference. So I'm not convinced  
7 that has been looked at thoroughly.

8 Q Thank you.

9 A Yes, sir.

10 JUDGE BURTON: Any cross-examination based  
11 off of the questions from the Commission?

12 MS. BAKER: No thank you.

13 JUDGE BURTON: Any redirect?

14 MR. THOMPSON: No redirect. Thank you,  
15 Judge.

16 JUDGE BURTON: All right. You may be  
17 excused. Thank you.

18 MR. THOMPSON: Staff has no further  
19 witnesses.

20 JUDGE BURTON: Okay. Now, I know that  
21 staff had provided a list of other witnesses that  
22 are possible, including the auditors. Does the  
23 Commission have any need to -- because I know there  
24 was an issue earlier about fundings and surcharges,  
25 does the Commission have any questions that they

1 like to address to any other staff witness?

2 COMMISSIONER HALL: I may have one, yeah,  
3 for an auditor.

4 JUDGE BURTON: Okay. The Commission would  
5 like to hear from an auditor from the staff.

6 MR. THOMPSON: Absolutely. Staff calls  
7 Lisa Hanneken.

8 JUDGE BURTON: Please raise your right  
9 hand.

10 LISA HANNEKEN,  
11 Of lawful age, produced, sworn and  
12 examined, deposes and says:

13 EXAMINATION

14 BY JUDGE BURTON:

15 Q You may be seated. And would you please  
16 state and spell your name for the record?

17 A Lisa Hanneken. L-I-S-A.  
18 H-A-N-N-E-K-E-N.

19 JUDGE BURTON: Thank you.

20 EXAMINATION

21 BY MR. THOMPSON:

22 Q Ms. Hanneken, how are you employed?

23 A I'm an auditor five with the Missouri  
24 Public Service Commission in the St. Louis office.

25 Q And in the course of your duties, have



1     **you become familiar with a utility known as Peaceful**  
2     **Valley Service Company?**

3             A     Yes. I've actually conducted an audit  
4     of them twice.

5             **Q     Okay. I have no direct for you today.**

6                     **I will tender the witness.**

7             JUDGE BURTON: I'm assuming you don't have  
8     any cross-examination at this time?

9             MS. BAKER: But I will maybe later.

10            JUDGE BURTON: That's fine.

11            Commissioner Stoll?

12            COMMISSIONER STOLL: I have no questions.

13     I'll save mine.

14            JUDGE BURTON: Commissioner Kenney?

15            COMMISSIONER KENNEY: No questions. Thank  
16     you.

17            JUDGE BURTON: Commissioner Hall?

18                     EXAMINATION

19     BY COMMISSIONER HALL:

20            **Q     Good afternoon.**

21            A     Good afternoon.

22            **Q     Were you involved in the -- in the**  
23     **Gladlo case?**

24            A     Not directly. It was done out of the  
25     St. Louis office, so I was sort of involved in some

1 conversations in that, but I was not directly  
2 assigned to that case, no.

3 Q Okay. Well, one -- and I guess there  
4 were two. There was a 2009 case or 2013 case, but  
5 in the 2009 case, my understanding is that there was  
6 a surcharge ordered by the Commission and they put  
7 in place a contribution in aid of construction in  
8 that case where they had the surcharge not go to  
9 rate base but instead be counted as CIAC. Are you  
10 familiar with that?

11 A I'm familiar with that procedure, yes.

12 Q If the Commission were to determine that  
13 a surcharge was appropriate in this case, would that  
14 same -- would it make sense to implement it the same  
15 way from your perspective?

16 A Yes, it would. Essentially, CIAC  
17 contributions in the aid of construction are  
18 basically funds provided by an outside source. Not  
19 by the company itself. So I think Mr. Busch had  
20 talked about sometimes the developer will put in the  
21 treatment plant in the process of putting in the  
22 development and then they donate that to the utility  
23 at the time that it goes into service.

24 So therefore, the utility itself did  
25 not pay for that property. So it would not

1 return -- it would not earn a return of or on it.  
2 So because the customers have already paid for it or  
3 it was donated to the customers, you wouldn't charge  
4 the customers again to give that money to the  
5 utility because the utility did not have any funds  
6 out of pocket for that.

7                   So in this particular instance, if  
8 you were to institute some sort of surcharge with  
9 whatever provisions that would be aligned, those  
10 funds would be considered as CIAC. And basically  
11 the plant itself would go into the utility plant in  
12 service and as well there would be depreciation  
13 calculated on it and that would go into accumulated  
14 reserve. However, that would be offset on the rate  
15 base schedule by the CIAC and the CIAC also has the  
16 amortization to it.

17                   So while it's shown as plant in  
18 service, as an asset to the utility, because it is  
19 the utility's asset, they will not be earning an  
20 actual return on or of it through the normal  
21 regulatory rate making process.

22           **Q     Were you in the -- in the hearing room**  
23 **when Mr. Busch laid out some of the procedures that**  
24 **he would recommend if we were to implement a**  
25 **surcharge in terms of disclosure and reporting**

1 requirements?

2 A Yes, I was.

3 Q Were those consistent with what -- with  
4 what -- let me rephrase that. Do you have any  
5 comment or thoughts on the -- on what he laid out?

6 A I'm sorry, it's my understanding that  
7 those are sort of things that are being discussed  
8 internally with staff. I believe that my manager,  
9 Mark Oligschlaeger, has been in those discussions, I  
10 have not been privy to those particular detailed  
11 discussions. However, I am aware that there are  
12 some discussions back and forth about certain  
13 criteria and what would be the best methodology to  
14 account for that criteria and things like that.

15 So while I think the general  
16 principles that Mr. Busch has put forward are in  
17 general acceptable, I think there should be some  
18 further discussion as to the details of it and how  
19 it would be accounted for and things like that.

20 COMMISSIONER HALL: I have no further  
21 questions. Thank you.

22 EXAMINATION

23 BY JUDGE BURTON:

24 Q Sort of building off of that, if a  
25 surcharge was to be put into a type of escrow

1     **account, what type of account under the uniform**  
2     **system of accounts would you identify that as or**  
3     **would you think that should be included in?**

4             A     As far as escrow part itself or are you  
5     saying --

6             Q     **The funds of the surcharge, if they are,**  
7     **let's say, hypothetically put into an escrow**  
8     **account, as Mr. Busch had suggested as an option,**  
9     **what type of accounting method would that be?**

10            A     Okay. I was thinking that Mr. Busch  
11     when he referred to an escrow account, he was  
12     referring to the bank account escrow account, like  
13     you would do for a large construction project. If  
14     you're talking about a USOA account, I would have to  
15     look specifically for the type of water and sewer,  
16     you know, if it was Class C, Class B, D, what USOA  
17     prescribes as the proper account number to place  
18     that under. I don't know off the top of my head.  
19     But I thought when Mr. Busch was stating escrow  
20     account, he meant the type of bank account that  
21     would be used.

22            Q     **Would that account -- what I'm trying to**  
23     **figure out is if it's in an escrow account, let's**  
24     **say, would that account, if it is restricted as far**  
25     **as the use, would that be considered, then, revenue**

1     **or funds for the company once it's been collected?**

2             A     Once it's been collected, I mean, it  
3     would be -- yeah, let me think about this. It would  
4     be a surcharge and therefore it would be  
5     customer-generated revenue. However, because it's  
6     being placed in escrow account, once it's used for  
7     the construction, then we're going to CWIP, which is  
8     construction work in progress and then eventually  
9     going to plant service accounting.

10            **Q     But that's once it's been used?**

11            A     Once it's used and useful, then it goes  
12     into plant service, yes.

13            JUDGE BURTON: Okay. Thank you.

14            Any questions for Office of Public Counsel?

15            MS. BAKER: I do.

16                         EXAMINATION

17     BY MS. BAKER:

18            **Q     Just to kind of put the discussion about**  
19     **CIAC and rate base into perspective, I'm looking at**  
20     **company-staff disposition agreement for the sewer**  
21     **side. It says the agreed upon net rate base is**  
22     **\$6,334, is that correct?**

23            A     That is correct.

24            **Q     So that is the sewer plant rate base**  
25     **that the company has today?**

1           A     That was the agreed upon amount and that  
2     was determined at a point in time that the cutoff of  
3     this case was determined.

4           Q     We're discussing what is possibly a  
5     \$1.1 million project here being possibly put into a  
6     surcharge. So, if it were CIAC because the  
7     customers paid for it, that \$1.1 million would not  
8     go into rate base, correct?

9           A     It would not be a net rate base and  
10    therefore there would be no rate of return applied  
11    to it. It would be shown on a rate base scheduled  
12    and it would be plant in service as an asset to the  
13    company.

14          Q     But then it would be offset by the fact  
15    that it was paid for by the customers and so future  
16    rates would not reflect that because it had already  
17    been paid for?

18          A     Correct. Correct. There would be no  
19    future customer outlay for that asset. Currently,  
20    going back to your \$6,334 example. An actual plant  
21    in service company has \$67,298 in plant in service  
22    as an asset. But with the reserve and with CIAC,  
23    that brings that down to your \$6,000 level.

24          Q     And so there would be no return that  
25    would be paid on this \$1.1 million because it was

1     **already paid for?**

2             A     Yes. Because a rate of return is a way  
3     for the company to receive consideration for money  
4     that it outlayed to put investment into the company,  
5     but since the company is not technically outlaying  
6     any money for this, and the customers are doing it,  
7     then the company does not receive return on it.

8             Q     And so in the future, some day past this  
9     point, if they wanted to sell this system, they  
10    would basically have no rate base because this  
11    entire plant would be paid for by the customers?

12            A     Correct.

13            Q     So in some ways in the future that could  
14    be a detriment to the company because then they  
15    would have no equity on which to sell? It would not  
16    be something that would be looked well upon?

17            A     I can't make that determination.

18            Q     Okay. And in this particular situation,  
19    putting in a surcharge, the customers would be the  
20    source of funds, not the owners. Is that correct?

21            A     Yes.

22            Q     But the customers would not be the  
23    owners of that system, correct?

24            A     Correct. Yes. When -- if CIAC is in  
25    play, it's contributed to the utility.



1           Q     So are the customers getting any profit  
2     back? Are they getting anything for the use of  
3     their money from a normal surcharge situation?

4           A     They are getting -- I guess you would  
5     say they could be receiving a benefit in the fact  
6     that if the company outlaid the money, they would  
7     then be having to pay a return to the company for  
8     the use of the company's money, whereas if they paid  
9     for it themselves, they would not be required to pay  
10    a return to the company.

11          Q     Okay. But if they put that money in  
12    their own savings account, they could get their own  
13    return on their money, correct?

14          A     I mean, if you do put money in a savings  
15    account, you do get interest.

16          Q     All right. And were you here earlier  
17    whenever there was -- there was discussion with the  
18    company representative that the plant that was being  
19    put in had -- had -- was designed with a 20-year  
20    growth, did you hear that?

21          A     Yes. Customer growth.

22          Q     Okay. So, what is being designed would  
23    meet the current customers plus it would be a little  
24    bit oversized to make it big enough to cover  
25    customers for the next 20 years, is that your

1     **understanding?**

2             A     From the testimony I heard today, that  
3     would be my understanding.

4             Q     **Okay. And for those customers who are**  
5     **not here yet or have not added on to the system,**  
6     **would there be a disallowance for a certain amount**  
7     **of capacity that was not used and useful in the**  
8     **normal situation?**

9             A     That is normally evaluated in general by  
10    the water and sewer department and I think there's a  
11    lot of factors that goes into a determination like  
12    that.

13            Q     **But you have seen plant that's been put**  
14    **into place for future use that has been disallowed?**

15            A     In my experience, it's been generally a  
16    large amount of plant that was overbuilt for  
17    anticipated customers that never surfaced.

18            Q     **Okay. And putting in a surcharge based**  
19    **on the full amount would assume that the customers**  
20    **would pay today for everything, even though there**  
21    **was a certain amount of customer growth built into**  
22    **it, is that your understanding?**

23            A     From what you've just described, I would  
24    say that the customers are paying for the entire  
25    amount to the plant, so whatever it is designed for

1 is what they would be paying for.

2 Q Okay. And you've seen a lot of small  
3 water and sewer companies in your career?

4 A Yes.

5 Q And you would agree that a surcharge  
6 like this will take a fair -- a fairly large amount  
7 of recordkeeping by the company, would you agree?

8 A It would depend on the company system  
9 and how it could be set up to track -- track the  
10 money.

11 Q Okay. Are most small water and sewer  
12 systems keeping their records in a situation where  
13 they could keep track of something of this  
14 sophistication?

15 A It varies by company.

16 Q There are several companies out there  
17 who you would agree with me that their recordkeeping  
18 is somewhat lacking?

19 A There are some companies that we have  
20 made significant recommendations of their  
21 recordkeeping, yes.

22 Q And it would be keeping an escrow  
23 account and keeping track of money coming in, money  
24 going out, customers that left the system that maybe  
25 needed to have refunds back to them would be a

1     **significant amount of time for a small system?**

2             A     Again, it would depend on their software  
3     and how they set it up. Sometimes your software  
4     systems will keep track of most of that for you, so,  
5     again, it varies.

6             MS. BAKER: I have no further questions.

7             JUDGE BURTON: Thank you. Redirect?

8             MR. THOMPSON: Just briefly. Thank you,  
9     your Honor.

10                             EXAMINATION

11     BY MR. THOMPSON:

12             **Q     Do you recall that you were asked about**  
13     **whether the customers would be the owners of the**  
14     **improvement, the customers would pay the surcharge?**

15             A     Yes.

16             **Q     Okay. Who, in fact, owns Peaceful**  
17     **Valley Service Company, if you know?**

18             A     I believe it's the Property Owners  
19     Association.

20             **Q     And if you know, are the members of the**  
21     **Property Owners Association, are they also**  
22     **customers?**

23             A     Yes.

24             **Q     Thank you. No further questions.**

25             JUDGE BURTON: Okay. Thank you. You may

1 be excused. I don't believe there are any further  
2 witnesses from the staff.

3 Office of Public Counsel?

4 MS. BAKER: Thank you. I call Mr. Ted  
5 Robertson.

6 TED ROBERTSON,  
7 Of lawful age, produced, sworn and  
8 examined, deposes and says:

9 JUDGE BURTON: You may sit down.

10 EXAMINATION

11 BY MS. BAKER:

12 Q Could you state and spell your name for  
13 the court reporter?

14 A Ted Robertson, T-E-D, R-O-B-E-R-T-S-O-N.

15 Q And how are you employed?

16 A I'm the chief accountant for the  
17 Missouri Office of Public Counsel.

18 Q And do you have any licensures with  
19 Missouri?

20 A I am a licensed CPA.

21 Q And through your work with the Office of  
22 Public Counsel, are you familiar with Peaceful  
23 Valley?

24 A I am.

25 MS. BAKER: And I guess I tender him out

1 for whatever questions they have for him.

2 JUDGE BURTON: Okay. Any

3 cross-examination?

4 MR. THOMPSON: Not at this time. Thank

5 you.

6 JUDGE BURTON: Okay. Commissioner Stoll

7 has stepped out. Commissioner Kenney?

8 COMMISSIONER KENNEY: No, I have no

9 questions. Thank you very much.

10 JUDGE BURTON: Commissioner Hall?

11 COMMISSIONER HALL: Just a few.

12 EXAMINATION

13 BY COMMISSIONER HALL:

14 Q If the Commission were to determine that  
15 a surcharge is appropriate in this case, what types  
16 of disclosures or reporting requirements would OPC  
17 recommend to account for those proceeds?

18 A I think it's already been touched on  
19 somewhat. But certainly the escrow account.

20 Q Let me rephrase that then. You heard  
21 what Mr. Busch recommended. Do you agree or  
22 disagree with those set of procedures?

23 A I would agree that would probably be a  
24 starting point, yes.

25 Q Would that be sufficient?

1           A     You know, actually, we would need more  
2     time to look at it and see what process you were --  
3     you ordered.

4           Q     Well, what we ordered would be based  
5     upon the evidence that we hear today.

6           A     Yeah, but what I'm getting at is  
7     certainly the escrow account and then we'd have to  
8     set up and see what the costs of the construction  
9     are. We'd somehow have to monitor the construction,  
10    monitor the payments to the contractors or whoever  
11    did it. We'd have to monitor the payments out of  
12    the escrow to see if they went to the contractors.  
13    Essentially I think it's just a verification  
14    process. I don't know that it would be all that  
15    complicated depending on how well the company worked  
16    with us. But, you know, it could be done. Just a  
17    matter of putting together the process to see what  
18    money's collected and see what money's paid out and  
19    for what.

20           COMMISSIONER HALL: Thank you. I have no  
21    further questions.

22           JUDGE BURTON: Okay. Mr. Stoll, did you  
23    have any questions?

24           COMMISSIONER STOLL: I have no questions.  
25    Thank you for your testimony.

1 EXAMINATION

2 BY JUDGE BURTON:

3 Q Would a source of income, let's say from  
4 a surcharge, assist a company to procure a private  
5 loan for any improvements?

6 A Are you asking me that if they had a  
7 source of revenue coming in authorized by the  
8 Commission through payments from rate payers, would  
9 a lender view that as favorable toward giving a  
10 loan?

11 Q Let's say hypothetically if it was a  
12 surcharge that's been discussed today.

13 A I think in my experience the answer is  
14 yes.

15 Q And how much income would be needed or  
16 what source of -- what length or level of income  
17 would be needed before, let's say, the company would  
18 be able to procure a loan?

19 A That's pure speculation. It depends on  
20 the lender. All lenders are different and it  
21 depends on what the project is you're going to use  
22 the money for and how much money you have coming in.  
23 Essentially --

24 Q So it's not a base percentage, let's  
25 say, or certain amount?



1           A     I don't think so. It's essentially  
2     making the lender comfortable that they would be  
3     able to recover the funds they've loaned out plus  
4     the interest they earned.

5           Q     But you do agree that a surcharge that's  
6     been identified here today would assist?

7           A     In the sense that they would go out and  
8     get a lender or I thought the surcharge we've been  
9     talking about here today would be the rate payers  
10    would fund the construction.

11          Q     I believe there was discussion that the  
12    company was unable to obtain a private loan because  
13    they didn't have a source of income. Would this  
14    help facilitate if that's what they intended to do?

15          A     I think a lender would look at it  
16    favorably.

17          Q     Thank you.

18               JUDGE BURTON: Any cross based on the  
19    questions from the Commission?

20               MR. THOMPSON: No recross. Thank you,  
21    Judge.

22               JUDGE BURTON: Redirect?

23                               EXAMINATION

24    BY MS. BAKER:

25          Q     I guess just to kind of clarify. The

1 discussion earlier today I believe where the  
2 confusion is is the company had stated that they had  
3 gone to the bank and because they didn't have  
4 collateral, they could not get a loan. And so I'm  
5 wondering if the Commission is asking whether a  
6 surcharge will give them the collateral that they  
7 said that the bank needed.

8 A Essentially I think it would give them  
9 assurance that they're going to receive the funding,  
10 that the funding -- the company would have the  
11 funding to pay for the loan. Essentially, it's a  
12 revenue stream. So whether that's collateral, you  
13 determine that's collateral or not. I usually think  
14 of collateral as some sort of tangible type thing.  
15 This would be earning stream. They would finance  
16 the loan.

17 Q And then from Commissioner Hall's  
18 questions about the recordkeeping requirements, what  
19 is the basic goal or the basic concern that Public  
20 Counsel has with a surcharge?

21 A That the money's actually used for what  
22 it's intended to be used for. That the company  
23 doesn't somehow -- I'm not really saying  
24 maliciously, but the money somehow gets drained off  
25 for something else rather than what the project is

1 at hand. For example, in Gladlo, I believe it was  
2 just a motor that went out and they also had a  
3 fence, I think, that needed repaired and the owner  
4 or the receiver, not the owner, receiver out in  
5 Denver, I believe, wanted to put the money up  
6 because he couldn't get the money from a financial  
7 institution, so we agreed to that and we agreed to  
8 the surcharge and we agreed to some tracking and  
9 some final reporting.

10 There were some minor bumps in the  
11 road, some disagreement at the end, but essentially  
12 it worked out somewhat well. I'm not going to say  
13 perfectly well. We had problems, but it fixed the  
14 motor and fixed the fence. And, of course, now here  
15 you're talking about a whole system replacement.  
16 That was just a small motor and small company.

17 **Q And would you say that that brings more**  
18 **concerns?**

19 **A** Big concerns, because essentially what  
20 you're doing is you're asking rate payers to fund  
21 the company but you're giving assets to the owners  
22 of the company.

23 Now, I know with this company, the  
24 association is the owner of the corporation which  
25 owns the utilities. But if you stretch out past

1 this very far, you can get where the owners of the  
2 utility have nothing to do with the rate payer  
3 essentially and rate payers would be putting all the  
4 money into utility but they're not the owners.

5 So if the owners want to sell the  
6 utility, if there was a profit with it, they would  
7 get the profit for something that was paid for by  
8 the rate payers, rate payers took the risk, owners  
9 didn't.

10 Q And as far as other requirements are  
11 concerned, one thing that was not mentioned before  
12 was dealing with customers that leave the system  
13 before the construction is completed. How would you  
14 protect those customers?

15 A Offhand, I don't know right now. They  
16 essentially -- they would be paying a surcharge for  
17 a service they never got to use. That would take  
18 some discussion. I don't know that I -- I don't  
19 know if you would want to refund the money back to  
20 them or costs they'd end up eating. Something to  
21 be talked about in the process. I don't think it's  
22 resolved.

23 MS. BAKER: That's all the questions I  
24 have.

25 JUDGE BURTON: Thank you. You're excused.

1 THE WITNESS: I'm sorry?

2 JUDGE BURTON: You're excused.

3 THE WITNESS: Thank you.

4 MS. BAKER: The other witness that Public  
5 Counsel brought today is William Addo. He did the  
6 audit for the current rate case. So if you have  
7 questions on the current state of our audit of it,  
8 he can certainly answer those questions.

9 COMMISSIONER STOLL: I have no other  
10 auditing questions. Thank you for staying, though.

11 COMMISSIONER KENNEY: I have none.

12 COMMISSIONER HALL: I don't as well.

13 JUDGE BURTON: Thank you, I don't think  
14 that will be necessary.

15 Does the Commission have any additional  
16 questions for Mr. Hoernschemeyer because I know at  
17 the beginning of the day we asked him to stick  
18 around if he was needed.

19 COMMISSIONER STOLL: I don't believe I have  
20 any. I do thank you for being here and we  
21 certainly look forward to reaching some kind of a  
22 conclusion to this case that provides your folks  
23 with the safe and adequate service that we know  
24 they want. So we do appreciate your attendance  
25 today. Thank you.

1 JUDGE BURTON: Okay. Commissioner Kenney?

2 COMMISSIONER KENNEY: I, too, would like to  
3 thank you for coming, both of you gentlemen. I  
4 know it's been probably a complex situation and  
5 since you guys live there and you're part of your  
6 association, I know it's got to be -- my heart goes  
7 out to you guys. But I think you can see that this  
8 process is here to try to help you and that's one  
9 of the things that maybe you didn't -- you weren't  
10 aware of how we operate. But at least today I  
11 think you can go away knowing that we're trying to  
12 do what we can in your best interest and to help  
13 you get to that, whatever -- when you make that  
14 decision, whatever it is, but we're here to work  
15 with you. And I know staff will do a good job and  
16 OPC in trying to negotiate some type of fix. Thank  
17 you.

18 JUDGE BURTON: Commissioner Hall?

19 COMMISSIONER HALL: First I want to echo  
20 the comments of my fellow commissioners. We  
21 appreciate your presence here and we appreciate  
22 what you do on behalf of the customers. And I do  
23 have one question, though, I don't want know if you  
24 want me to ask it from here, I'm fine.

25 JUDGE BURTON: Mr. Hoernschemeyer, if you

1 could just --

2 COMMISSIONER HALL: I'm fine.

3 JUDGE BURTON: You're still under oath and  
4 let me go ahead and just get you on camera so we  
5 can see you.

6 EXAMINATION

7 BY COMMISSIONER HALL:

8 Q If the Commission were to determine that  
9 a surcharge is appropriate in this case, but we were  
10 also to determine that there's not a concrete plan  
11 in place right now to allow -- to allow for that  
12 surcharge to go to be implemented immediately,  
13 what -- how long would you need, do you think, in  
14 order to reach out to Integrity or some other  
15 engineering firm to come back with an engineering  
16 report and a design plan to go forward?

17 A I would think maybe four to six months,  
18 I would think. I think originally we gave  
19 Integrity, I think, four months to prepare that  
20 initial report.

21 Q And that's just for the preliminary  
22 report, that's not for --

23 A Right.

24 Q So how much longer for an actual design  
25 and with a more specific dollar amount?

1           A     Well, they would come up with an  
2     engineer's estimate on it. We don't have a real  
3     dollar amount until we would actually go out for  
4     bids. And --

5           **Q     You wouldn't go out for bids until you**  
6     **knew there was some kind of surcharge in place?**

7           A     Right.

8           **Q     I suppose it's the chicken and the egg.**

9           A     Catch 22.

10          **Q     Okay. All right. Thank you.**

11          A     I would like to comment one thing about  
12     the surcharge, though. If we would start getting a  
13     surcharge right now, we would still have to get a  
14     bank loan and the surcharge would basically go  
15     toward paying off the loan. It would not -- so I  
16     guess we would collect the surcharge and instead of  
17     going to an escrow account, it would go to the bank  
18     to pay off that loan. So the escrow account would  
19     not -- would never be very large. It might be  
20     whatever we collect between now and the time it's  
21     constructed. But the most of it -- most of the  
22     money will go directly to the bank to repay the  
23     loan. It won't go into an escrow account.

24          **Q     Yeah. So, in fact, perhaps the escrow**  
25     **account should be the proceeds from the loan?**



1           A     It could be.

2           Q     Okay. All right. Thank you very much.

3                           **EXAMINATION**

4     BY JUDGE BURTON:

5           Q     I do have a question,  
6     **Mr. Hoernschemeyer. Based off of what you've heard**  
7     **today, do you believe that the company has any**  
8     **interest in pursuing an option such as a surcharge**  
9     **or does the company prefer to continue seeking a**  
10    **non-for-profit status?**

11          A     I think we would be better off seeking  
12    the not for profit because the Department of  
13    Agriculture charges about two percent for interest  
14    and I think the regular bank would probably be  
15    charging us higher, six percent. So I think we  
16    would be better off with the Department of  
17    Agriculture.

18               JUDGE BURTON: Okay. Thank you. Are there  
19    any additional questions from the bench?

20              All right. Thank you, Mr. Hoernschemeyer.

21              Now, at this time I would ask the attorneys  
22    if they wanted to make some concluding statements  
23    here or arguments or would they prefer to just wait  
24    for a briefing? Right now the transcript is  
25    scheduled for an expedited service and I believe it

1       should be available by the end of the day on  
2       Friday, this Friday, the 26th of September.

3               MS. BAKER: I guess it's more along the  
4       lines of what did the Commission have in mind for  
5       this? I mean, were you expecting to hear legal  
6       arguments back from us? Briefs? Those kind of  
7       things? Just closing statements? I don't know  
8       what you were expecting.

9               JUDGE BURTON: Okay.

10              COMMISSIONER KENNEY: I think we're fine.

11              JUDGE BURTON: By statute you are allowed  
12       to make either opposing or oral arguments or a  
13       briefing. So I was just providing that option.

14              MS. BAKER: I'm fine either way, but I  
15       wasn't sure what the Commission had -- what it  
16       preferred.

17              MR. THOMPSON: Staff certainly would waive  
18       its right to make a closing argument or to file a  
19       brief. We viewed the proceeding today as a  
20       fact-finding exercise by the Commission, which we  
21       were delighted to participate in. And if there is  
22       any other or further information that the  
23       Commission wants, staff and I'm sure the Public  
24       Counsel would be more than happy to do our best to  
25       provide it.

1 COMMISSIONER KENNEY: Thank you.

2 COMMISSIONER STOLL: Thank you.

3 JUDGE BURTON: Why don't I go ahead and

4 just set a deadline for next Wednesday,

5 October 1st. If the parties wish to submit a

6 brief to address any factual or legal issues, they

7 could do so as that point. And depending on what

8 is received or not received on the 1st, we'll make

9 a decision as far as a reply brief schedule.

10 Are there any other matters that need to be

11 addressed while we're still on the record?

12 Okay. Seeing none, I want to thank

13 everyone and this will conclude today's hearing.

14 We'll go off the record.

15 (Hearing concluded.)

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1 STATE OF MISSOURI)

) SS

2 CITY OF ST. LOUIS)

3 I, Rebecca Brewer, Registered Professional  
4 Reporter, Certified Real-time Reporter, and Notary  
5 Public in and for the State of Missouri do hereby  
6 certify that the witness whose testimony appears in  
7 the foregoing hearing was duly taken by me; that  
8 the testimony of the said witness was taken by me  
9 to the best of my ability and thereafter reduced to  
10 typewriting under my direction; that I am neither  
11 counsel for, related to, nor employed by any of the  
12 parties to the action in which this hearing was  
13 taken, and further that I am not relative or  
14 employee of any attorney or counsel employed by the  
15 parties thereto, nor financially or otherwise  
16 interested in the outcome of the action.

17 \_\_\_\_\_ RPR, MO-CCR,  
18 Notary Public within and for the State of Missouri  
19  
20  
21  
22  
23  
24  
25

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