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BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

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TRANSCRIPT OF PROCEEDINGS

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On-the Record Presentation

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In the Matter of North Oak Sewer)
District, Inc.'s Request for a) Case No. SR-2004-0306
Small Company Rate Increase)

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MORRIS L. WOODRUFF, presiding,
SENIOR REGULATORY LAW JUDGE
STEVE GAW, Chairman,
CONNIE MURRAY,
ROBERT M. CLAYTON, III,
COMMISSIONERS

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REPORTED BY:

Jennifer L. Leibach

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ASSOCIATED COURT REPORTERS

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A P P E A R A N C E S

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Commission

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PROCEEDINGS

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JUDGE WOODRUFF: We'll start by saying that this is Case No. SR-2004-0206 in the matter of North Oak Sewer District for a small company rate increase, and we're here today for an on-the-record presentation, basically for the purpose of answering questions presented by the Commissioners, and we'll begin by taking entries of appearance beginning with Staff.

MR. KRUEGER: Keith R. Krueger for the Staff of the Public Service Commission, P.O. Box 360, Jefferson City, Missouri, 65102.

JUDGE WOODRUFF: Okay. Public Counsel.

MS. O'NEILL: Yes, Ruth O'Neill for the Office of the Public Counsel. Our address is P.O. Box 2230, Jefferson City, Missouri, 65102.

JUDGE WOODRUFF: Thank you. Is there anyone here from North Oaks? Has anyone been in contact with them?

MR. KRUEGER: Mr. Johansen has.

JUDGE WOODRUFF: Okay. Since we're being fairly informal here, Mr. Johansen why don't you go ahead and tell us what you've heard.

MR. JOHANSEN: I talked with the Office Manager yesterday. Mr. Vacarro, who is the owner of the company, was out of town on business. She was trying to

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1 contact him as of 3:30 yesterday afternoon. She had not been
2 able to do that. I told her if she did get a hold of him to
3 -- my advice was to tell him it would be best if he were
4 here. She did not -- he was six or eight hours away out of
5 town. She did not know if she was going to be able to get a
6 hold of him, or if so, if he would be able to make it.

7 JUDGE WOODRUFF: Okay. And he's not here.
8 All right. Well, let's go ahead and proceed then. We'll go
9 ahead and let Staff and Public Counsel make opening
10 statements, if they want to, and then we'll go ahead and let
11 the Commissioners ask questions, and if need be, we'll call
12 and swear witnesses to answer questions, if Counsel can't ask
13 the questions, so go ahead and proceed, Mr. Krueger.

14 MR. KRUEGER: Staff does not have an opening
15 statement, your Honor.

16 JUDGE WOODRUFF: Does Public Counsel wish to
17 make?

18 MS. O'NEILL: No, your Honor.

19 JUDGE WOODRUFF: Okay. Then we'll go ahead
20 and proceed with questions from the Commissioners.
21 Commissioner Murray.

22 COMMISSIONER MURRAY: Thank you, Judge. Good
23 morning. I think the first question that I would like
24 answered is -- and since the company is not here to have
25 anyone answer any of these questions, it's unfortunate,

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1 because I can't get answers from the company, but I'd like to
2 know from Staff's perspective and OPC's perspective, if you
3 have one, why this company would need such a significant
4 increase. Is it because they failed to come in a timely
5 manner to seek an increase? Is it because when they were
6 first certificated that they did not have adequate rates in
7 place? I would just like a comment as to why the customers
8 all of a sudden should suffer such a significant increase.

9 JUDGE WOODRUFF: Go ahead, Mr. Krueger.

10 MR. KRUEGER: I think I'm going to have to
11 call on Mr. Johansen and Mr. Meyer. Mr. Johansen will
12 respond to that question. Why don't you come on up to the
13 witness stand.

14 (THE WITNESS WAS SWORN.)

15 JUDGE WOODRUFF: And you can go ahead and
16 answer the question.

17 THE WITNESS: Okay. I think in reviewing
18 this, one of the -- one of the things that we found in
19 looking back historically, this company was certificated
20 pursuant to Case No. SA-2004-17, and the rates that were
21 established in that case are the current rates, and they were
22 premised on a significantly higher number of customers than
23 the company currently has.

24 One of the things we have tried to do with the
25 current proposal to reflect that, however, is to make

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1 adjustments to the plant balances that are used for
2 depreciation and rate of return purposes to reflect that
3 there is a smaller number of customers now than originally
4 anticipated. That helps the rate -- keep the rate down to
5 some extent. You do have the problem, though, with the level
6 of current customers being smaller than originally
7 anticipated, and that the operating expenses do not fluctuate
8 basically on a per customer basis.

9 There are a lot of those that are not customer
10 number driven, so the operating expenses that we currently
11 have are being -- are not significantly different than those
12 originally used in the rate calculations, but are being
13 spread over a smaller number of customers that's really the
14 main reason for -- or one of the main reasons for the amount
15 of the increase.

16 Q. Was this system started by -- well, was it
17 started with the idea of developing a subdivision?

18 A. One of the initial purposes was to provide
19 service to a mobile home court that already existed. I
20 believe there was already an existing plant there already.
21 That was owned by Mr. Vacarro, who is the owner of the sewer
22 company.

23 Q. I'm sorry, the mobile home court was owned by

24 --

25 A. Yes.

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1 Q. -- the owner of the sewer company?

2 A. Of the sewer company. And they had a system
3 to serve that mobile home park that he owned. They formed
4 the company in order to be able to serve additional customers
5 other than just those -- just his mobile home park.

6 Originally, it was anticipated that another
7 rather large mobile home park would connect to the system.
8 There are also some single-family homes in the area that were
9 needing sewer service because they had onsite disposal
10 facilities that were failing. Several of those customers
11 have, in fact, connected, but the system itself originated
12 with Mr. Vacarro's mobile home park, and then as I mentioned,
13 the company was formed in order to provide service to
14 customers other than just the residents of that park.

15 Q. Why do you think the estimate of the number of
16 customers was not more accurate?

17 A. The main reason that we're seeing a difference
18 now is that a second mobile home park, which is called
19 Appleby Mobile Home Park, was anticipated to connect to this
20 system when it was expanded, and that has not happened, and I
21 believe that it makes up most, if not nearly all, of the
22 differences in the number of customers that were anticipated
23 when the company was certificated versus the number of
24 customers that it currently serves.

25 Q. How is that second mobile home park being

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1 served?

2 A. I believe it currently has its own lagoon
3 system, and it was anticipated that they would close that
4 system and connect to North Oak system. That has not
5 happened yet. We still believe it will, but it has not
6 occurred yet.

7 Q. And that is owned by a different party, I
8 assume; is that correct?

9 A. It is, yeah.

10 Q. When Staff was investigating for the
11 recommendation to certificate the company in 2000, was --
12 what was the basis on which you believed that the second
13 mobile home park would be connected?

14 A. If I can take a second and look back through
15 the recommendation to see if that was mentioned.
16 Commissioner Murray, I don't see anything right offhand that
17 -- that jogs my memory on that particular issue.

18 Q. All right. When Staff is looking at a
19 recommendation for whether a new provider should be
20 certificated, how do you evaluate when the applicant alleges
21 that there will be a specific -- or a certain estimated
22 number of customers?

23 A. That, quite honestly, is probably the most
24 difficult thing that we have to deal with. Traditionally,
25 the initial rates for new companies have been established

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1 based upon the customer projections for the third year of
2 operation. Companies are required, as part of their
3 certificate applications, to submit a feasibility study that
4 project's operating expenses, plant investments and customer
5 numbers, those are three of the major items, to project those
6 for a period of three years. Traditionally, the year three
7 projections have been used to establish the initial rates for
8 new companies.

9 Q. Does that result in -- I mean, I assume if
10 you're looking at year three being an increased number of
11 customers, I would also assume that year one would not be a
12 decreased amount of expenses, and if those assumptions are
13 correct, does that result in -- that practice result in the
14 rates being too low for the first two years?

15 A. To the extent that the company would not be
16 recovering its full return on the investment, it certainly
17 almost always results in that. One of the things we do,
18 however, is we certainly try to make sure that the rates will
19 at least cover the operating expenses that we believe are
20 going to exist, and we evaluate the rates based on the year
21 three numbers and then do an additional evaluation to make
22 sure that if the projections for year one and year two,
23 customer-wise, we also look at that to make sure that the
24 rates would be covering at least the operating expenses, so
25 it will very well result in underearnings, if you will. We

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1 try to make sure that it does not result in actual losses
2 from the standpoint of operating expenses.

3 Q. And then by year three, your assumption is
4 that there will be the estimated number of customers upon
5 which the projections were based; is that correct?

6 A. Correct.

7 Q. And at that time, the earnings would be
8 adequate based on the revenue requirement that you set up
9 year one. It would be adequate for that current period; is
10 that right?

11 A. Correct.

12 Q. But then the first two periods would have
13 still operated at a loss?

14 A. At an underearnings position at least, yes.

15 Q. What -- with the rates that are proposed here,
16 what will a single-family residence pay for sewer rates?

17 A. The proposed rates for single-family dwellings
18 is \$30 -- \$37.70 per month, for mobile home parks -- for
19 mobile homes in parks and apartment buildings, the proposed
20 rate is \$30.16 per month, and then for the two commercial
21 establishments that the company serves, the proposed rate is
22 \$41.47 per month.

23 Q. So for a mobile home in a park, it is \$30.16,
24 is that what you said?

25 A. Correct.

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1 Q. And what was the company initially requesting?

2 A. Well, as part of this process, they don't
3 actually request a rate.

4 Q. Okay.

5 A. They request an amount of increase in their
6 operating revenues.

7 Q. And what is the total percentage increase that
8 we're talking about here?

9 A. The total in operating revenues is
10 approximately 19.7 percent, and then the actual increases for
11 the three rates that they have vary from -- vary from that,
12 but total revenue increase is 19.7 percent.

13 Q. What's the maximum rate increase?

14 A. The commercial -- two commercial customers,
15 the proposed percentage increase in their bill is 38.25
16 percent. For single-family dwellings, it's 25.7 percent, and
17 for mobile homes and apartment buildings, it's 16.9 percent.

18 Q. Mr. Johansen, how long have you been in the
19 water sewer department here at the Commission?

20 A. About eight and a half years.

21 Q. And in your experience, how do these rate
22 increases compare to other rate increases for small water and
23 sewer companies?

24 A. On a percentage basis, they're -- they're not
25 terribly out of line. I think if you look at the actual

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1 rates, they would certainly be on the high side.

2 Q. Okay. Do you have a -- do you have a way that
3 you can tell us when you say they're on the high side, like
4 how they compare to other rates -- to average rates?

5 A. I don't have any information on that right
6 now. We can certainly develop it. We don't have a company
7 by company summary of rates and average monthly bills at this
8 present time.

9 Q. Are these areas that are -- these areas that
10 are being served by this company, are they -- I'm trying to
11 think of the term to use. The value of the residences, are
12 they -- would you say on the low end or in comparison to
13 average residential values, do you know?

14 A. I do not know. I have not been to this
15 company and seen its facilities personally.

16 Q. Someone on the water --

17 A. Yes.

18 Q. Someone in the water and sewer department has?

19 A. Yes.

20 Q. So any service quality questions should be
21 directed to Mr. Merciel?

22 A. Mr. Merciel -- or Steve Lathan has actually
23 done the inspections, and he is here today, if you have any
24 questions regarding those matters, I can make him available.
25 He actually did the inspection for this particular rate

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1 review.

2 Q. And in terms of who would have reviewed the
3 letters that were received in response to the notice about
4 the rate increase, who would that be?

5 A. At the time, those are all direct -- at the
6 time of this particular case, those would have been directed
7 to Randy Hubbs. Mr. Lathan was also involved in reviewing
8 those and responding to them, and then as I mentioned, he did
9 the field investigation for this case, so he was aware -- Mr.
10 Lathan would be aware of the letters and actually did the
11 field investigation for this case.

12 Q. Okay. I'm going to pass this to the other
13 Commissioners, if they have any questions for you while
14 you're up here.

15 A. Okay.

16 COMMISSIONER MURRAY: Thank you.

17 JUDGE WOODRUFF: Before I pass this on to the
18 other Commissioners, I forgot to do something when you first
19 came up. Could you identify yourself for the record?

20 THE WITNESS: I'm sorry, Dale Johansen,
21 J-O-H-A-N-S-E-N, and I'm the Manager of the Water and Sewer
22 Department.

23 JUDGE WOODRUFF: Okay. Thank you. Chairman
24 Gaw, do you have any questions?

25 CHAIRMAN GAW: No, not right now.

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1 JUDGE WOODRUFF: Commissioner Clayton?

2 COMMISSIONER CLAYTON: Just a few questions.

3 QUESTIONS BY COMMISSIONER CLAYTON:

4 Q. Mr. Johansen, and you may have answered this
5 already, what were the nature of the consumer letters that
6 were received in the system -- or when I say in the system,
7 either received by OPC or -- or by Staff both before and
8 after the agreed-to settlement?

9 A. The initial responses we received, in essence,
10 most of them were simply responding to the amount of the
11 increase. We did have one customer with a billing complaint
12 that Mr. Lathan did specifically investigate and found out
13 the details of that, but basically, the letters were all
14 directed towards the amount of the increase.

15 Not -- other than the one billing problem,
16 really no service issues. We did receive one letter
17 subsequent to the second notice, which reflected the Staff
18 and company agreement. That customer, again, questioned the
19 overall increase and also questioned the rate differentials
20 between the different types of customers.

21 Q. Okay. And last question, and you may have
22 answered this question, the charges for the customers, are
23 they based on usage of the system or is that flat rate?

24 A. These are flat rates.

25 Q. Flat rates?

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1 A. Yes.

2 Q. Thank you.

3 A. If I can clarify that there is a bit of a
4 differential between the three types of customers, those
5 being single-family residences, mobile home parks and
6 apartments, and the commercial establishments. The
7 commercial establishments are looked at on an equivalent
8 basis for residential customers. We did have information
9 available regarding their water usage, so that's why their
10 rate is different. The mobile home parks and apartments,
11 essentially are based on a level of 80 percent of the
12 single-family rate.

13 Q. Okay.

14 A. And again, that is something that has
15 traditionally been done. We -- it's not at all unusual for
16 mobile home park and apartment rates for flat rate customers
17 to be either 80 or 90 percent of the single-family rate.

18 Q. To the best of your knowledge, either in this
19 case or outside of this case in the form of a complaint, have
20 there been any quality of service issues that have come up
21 for this company?

22 A. No, the billing issue was the only one, as far
23 as quality of service.

24 Q. I understand billing, but qualities of service
25 I'm talking about, no problems with leaky pipes or treatment?

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1 A. No, we did not get any contacts in that
2 regard.

3 Q. And -- but even outside, you're not aware of
4 any complaints like that outside of this case?

5 A. That's correct.

6 Q. Okay. Okay.

7 COMMISSIONER CLAYTON: Thank you.

8 JUDGE WOODRUFF: I had a couple of questions.

9 QUESTIONS BY JUDGE WOODRUFF:

10 Q. North Oak -- or this rate increase is only for
11 sewer; is that correct?

12 A. Correct.

13 Q. Does North Oak provide water as well?

14 A. No, they do not.

15 Q. Where do these customers get their water from?

16 A. I believe it's the Public Water Supply

17 District but I'm not sure.

18 Q. Okay. And what is the reason why the company
19 uses a flat rate rather than a usage rate?

20 A. They currently do not have an arrangement with
21 the water district to obtain the water usage information.
22 That is certainly something that if the Commission is
23 interested in the company pursuing that, we can certainly
24 encourage them to do that, but they do not have water usage
25 information available from their operations. They would have

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1 to have an arrangement with the water district to obtain that
2 information.

3 JUDGE WOODRUFF: Okay. And Commissioners have
4 any further questions for Mr. Johansen? Staff, do you have
5 any questions?

6 MR. KRUEGER: No, your Honor.

7 JUDGE WOODRUFF: Public Counsel?

8 MS. O'NEILL: No questions.

9 JUDGE WOODRUFF: Then Mr. Johansen, you may
10 step down.

11 THE WITNESS: I assume I should go get Mr.
12 Lathan.

13 COMMISSIONER MURRAY: That would probably be a
14 good idea.

15 JUDGE WOODRUFF: All right.

16 COMMISSIONER MURRAY: Although I was going to
17 ask Mr. Merciel some questions.

18 JUDGE WOODRUFF: Mr. Merciel, why don't you
19 come forward then.

20 COMMISSIONER MURRAY: And before I ask Mr.
21 Merciel some questions, Ms. O'Neill, I know you don't have a
22 witness here, but did you have any response to the amount of
23 the increase?

24 MS. O'NEILL: Basically, our office decided
25 not to take a position on it because it is a pretty high

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1 rate. We only got two letters from customers, one when the
2 initial notice went out and one when the second notice went
3 out, and they were addressing the amount of the increase, and
4 I think that the Staff got letters from the same people.

5 We did review the audit that the Staff
6 conducted in this case, and -- to see whether or not we
7 wanted to raise any objections, and basically we're not able
8 to see anything that would give us a basis to request a
9 hearing on the matter and file that kind of an objection, so
10 we didn't join in the agreement because we think it's a
11 pretty big increase, but it's not an unheard of amount for
12 this small of an operation for us to see an increase of this
13 size.

14 COMMISSIONER MURRAY: Thank you.

15 JUDGE WOODRUFF: Mr. Merciel, we'll swear you
16 in.

17 (THE WITNESS WAS SWORN.)

18 JUDGE WOODRUFF: You may be seated. And we'll
19 go ahead and start with you again, Commissioner Murray.

20 QUESTIONS BY COMMISSIONER MURRAY:

21 Q. Mr. Merciel, do you have -- have you been on
22 site?

23 A. I have not. The field work for this company
24 has been conducted by Mr. Lathan, and Mr. Hummel has also
25 been there several times.

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1 Q. All right. And you didn't participate in the
2 audit, I assume, either.

3 A. No, I didn't actually participate in this rate
4 case.

5 Q. Okay. Maybe I really don't need to be talking
6 to you?

7 A. Okay.

8 Q. But let me see if there is something. Okay.
9 What is your knowledge about this company?

10 A. Well, I was going to say I did work on the
11 certificate case, and there was a question asked before that
12 I can provide the answer for.

13 Q. All right.

14 A. And that is regarding to the mobile home park
15 that is not connected. When the company filed its
16 certificate case, it represented that the mobile -- that this
17 is Appleby Mobile Home Park, the company represented that
18 that mobile home park existed out there, it had a treatment
19 facility that supposedly had some problems, and they were
20 going to be connected to North Oak's system. The best of my
21 knowledge, we didn't really question it.

22 That was representation of the company, and we
23 had no reason to dispute it. We later learned that the
24 company, this is after the certificate is granted, the
25 company thought that Department of Natural Resources was

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1 going to force that mobile home park to connect, which DNR
2 did not do, and to my knowledge, not doing it at the present.
3 As far as I know, that mobile home park still has its
4 whatever older treatment facility it has, so that's really
5 the answer to that question.

6 Should the Staff have looked at that mobile
7 home park, I guess you could argue maybe we should have done
8 that, but you know, we were going on the representation of
9 the company at the time.

10 Q. Did Staff look at whether that mobile home
11 park had any Notices of Violations from the Department of
12 Natural Resources?

13 A. I don't remember if we specifically did that.

14 Q. Does it currently have any NOV's that you know
15 of?

16 A. I really don't know that either. We don't
17 deal with that mobile home park directly, and it would be a
18 simple matter to find out, but to my knowledge, we haven't
19 done that.

20 Q. What if -- and I probably should have asked
21 this of Mr. Johansen, but what if that mobile home park does
22 connect in the near future. Does that make the -- does that
23 make the company be overearning?

24 A. I think the answer is probably yes. It would
25 dramatically increase their revenue, and if it ever does

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1 connect, then it would -- it could very easily cause an
2 overearning, I think.

3 Q. Has Staff had any consultation with the
4 Department of Natural Resources about the mobile home park
5 and about whether they will be doing anything to either
6 encourage or force that park to connect?

7 A. I haven't personally. The company's
8 consultant, Mr. Sankpill, who used to work here and did work
9 on the certificate case, I'm positive that he's been in
10 contact with the Department of Natural Resources. It's
11 possible that Mr. Hummel has, but I can't tell you for sure
12 that he has.

13 Q. Who's the first person you said?

14 A. Bill Sankpill, S-A-N-K-P-I-L-L, who used to
15 work in the water and sewer department and retired, and was
16 working as a consultant for a while.

17 Q. When somebody retires, don't they leave the
18 records that they have regarding a certain company and their
19 contacts? I mean, wouldn't Staff be able to look at what was
20 on file?

21 A. Well, Mr. Sankpill worked with North Oaks
22 after he retired as their consultant.

23 Q. Oh, okay.

24 A. So there are no records while he was employed
25 here.

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1 Q. But Mr. Hummel, you said, may have?

2 A. Yes.

3 Q. And would there be records of that?

4 A. Only if he made his own notes. Here again, we
5 can ask him and he would probably have some recollection if
6 he did have any contact with the Department of Natural
7 Resources.

8 Q. Wouldn't it be reasonable for there to be such
9 contact and for that to be a part of Staff's investigation to
10 determine the likelihood of this mobile home park actually
11 connecting?

12 A. Well, that's something I wish we would have
13 done at the time, but as a matter of routine with a
14 certificate case, we look at what the company is proposing,
15 and in this case, this person -- mobile home park was in his
16 area, I think we probably made the assumption that he knew
17 what was going on, and knows the people in the mobile home
18 park, and if he said they were going to connect to the sewer
19 system, I don't think we had any basis to question that.

20 I might point out with some certificate cases,
21 not necessarily true in this one, but often there are many
22 customers that are potential future customers and would be
23 impossible to really -- to really, you know, question all of
24 them. That's not to say we don't do some questioning. We
25 have in some cases, if there's some situation that causes a

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1 red flag or something looks kind of out of line, perhaps, if
2 a development is, you know, some distance away and it's going
3 to cost a lot of money to connect, you know, there are
4 circumstances that raise a red flag for us. This was not one
5 of those at the time though.

6 Q. Do the customers that are connected have any
7 alternatives for sewer service?

8 A. No, not other than septic tanks. The entire
9 area could conceivably be connected to the City of Warrenton,
10 I believe, is physically the closest one, although they have
11 a Wright City mailing address, but I think there are people
12 that looked at the idea of connecting to Warrenton, but it's
13 my understanding that's not really feasible.

14 Q. What if at the time of this certificate
15 application it had been known that there would only be the
16 current number of customers, would the Staff have still
17 recommended that we grant a certificate and impose the rates
18 that are being requested here or do you know?

19 A. Well, I don't know how the rates would have
20 calculated out, but very definitely if we had knowledge that
21 the mobile home park was not going to connect, we would not
22 have counted those customers in any kind of a calculation.

23 Q. And in determining whether to recommend that
24 the Commission approve a certificate application, does the
25 Staff consider the size of the rates, the amount of the

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1 rates?

2 Q. Yes, we do. Often from a developer's point of
3 view, basically if the rates are too high, you're not going
4 to get the customers to connect, so yes, we do look at that,
5 and that could be different in different areas. If it's an
6 upscale development, so to speak, we've had companies that --
7 that have initiated with rather -- well, higher rates, as
8 opposed to, you know, the community such as this one. It's a
9 mobile home park, and it's not what you would call an upscale
10 area. I think that often makes a difference.

11 Q. That leads me to another question. If we do
12 increase the rates to the level that is proposed here, won't
13 that make it less likely that the second mobile home park
14 will connect?

15 A. I believe the answer is yes, it would go in
16 that direction. It's probably somewhat less likely they
17 would connect. It's -- I think, also at some point, run the
18 risk of having more empty spaces in the existing mobile home
19 park.

20 Q. Because of the increase in rates that some
21 people may just decide they can't afford that and move?

22 A. Yes, it's possible.

23 Q. Okay.

24 A. I guess I should add to that that it may come
25 into the fact that you have a mobile home park owner who

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1 often is paying the utility rates, so probably depends onto
2 what extent the owner of the mobile home park can include
3 rates in the space rental, if rates are so high as to affect
4 what they can charge for their rental space, that's probably
5 more how to place out.

6 Q. And that would affect the owner of the park?

7 A. Well, it would that, yes.

8 Q. And that is?

9 A. Affect the owner of the park.

10 Q. In this case, the owner of the sewer company
11 is the same owner for the first mobile home park?

12 A. Well, there's a story about that. The -- Mr.
13 Vacarro, the owner of the sewer company, he and his wife had
14 the mobile home park. They have since gotten divorced, and
15 so the ex-wife actually owns the mobile home park as well as
16 the apartments, so Mr. Vacarro actually has no ownership of
17 the mobile home park anymore.

18 Q. So she owns the mobile home park and the
19 apartments?

20 A. Yes.

21 Q. Did she file a letter regarding the requested
22 rate increase?

23 A. I don't know that. I don't think so. There
24 was an issue over billing for the mobile home park that we
25 handled as an informal complaint. That's been probably a

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1 year ago or so, maybe a little more.

2 Q. I'm sorry, would you repeat that?

3 A. There was a billing issue between Mr. and Mrs.
4 Vacarro over the billing of the mobile home park, and meaning
5 how they're going to count units, and she had -- she didn't
6 want him to come in the mobile home park, there were some
7 personality conflicts that were involved, but the point is
8 there was a billing dispute over the mobile home park that we
9 handled on an informal basis.

10 Q. Do you think these rates are just and
11 reasonable?

12 A. I'm afraid I can't answer that. I'm not
13 really familiar enough with the rate case to answer that.

14 Q. All right. All right. I think that's all I
15 have for you, and pass it to Commissioner Clayton.

16 JUDGE WOODRUFF: Commissioner Clayton.

17 COMMISSIONER CLAYTON: I have no questions.

18 JUDGE WOODRUFF: Okay. Counsel for Staff or
19 Public Counsel have any questions for this witness?

20 MS. O'NEILL: No questions.

21 MR. KRUEGER: No questions.

22 JUDGE WOODRUFF: Mr. Merciel, you may step
23 down. The next witness then.

24 MR. KRUEGER: I don't have anyone I need to
25 present, but Steve Lathan is present to answer questions.

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1 JUDGE WOODRUFF: Mr. Lathan, why don't you
2 come forward.

3 (THE WITNESS WAS SWORN.)

4 JUDGE WOODRUFF: Could you tell us who you
5 are?

6 THE WITNESS: My name is Steve Lathan. I'm
7 with the Water and Sewer Department.

8 JUDGE WOODRUFF: Okay. Commissioner Murray,
9 do you have questions?

10 QUESTIONS BY COMMISSIONER MURRAY:

11 Q. Mr. Lathan, how long have you been with the
12 Water and Sewer department?

13 A. It was four years in January.

14 Q. And are you the Staff contact that has been on
15 the site of this particular sewer company and who would be
16 familiar with any service quality issues?

17 A. Yes, I did a -- Martin Hubble, we both went
18 out there.

19 Q. And Martin Hummel is now not available to
20 testify on this, you would have knowledge of those things; is
21 that right?

22 A. Yes.

23 Q. Okay. Did you see any red flags that were
24 raised by any of the letters that the Commission received?

25 A. No, most of the letters that I received or I

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1 looked at were what we call just rate complaints that the
2 rate was going to be too high or couldn't afford it. I
3 didn't see any service issues in any of the complaints.

4 Q. All right. There was a memorandum, it was
5 Attachment G-22 to -- let's see, what was that attached to.
6 I'm thinking it must have been attached to Staff's
7 recommendation. Anyway, my file doesn't show what it was
8 attached to, but it was labeled Attachment G-22. It was a
9 memorandum from Randy Hubbs to you regarding the North Oaks
10 Sewer District, Inc. rate increase; is that right?

11 A. Yep.

12 Q. And you have that before you?

13 A. Yes, I do.

14 Q. It was indicated there that the company hires
15 an operator to come visit the facilities two or three times a
16 week, and that they were in good condition at the time of his
17 inspection. Is a visit by an operator two or three times a
18 week, is that adequate in your view?

19 A. Yes, it is.

20 Q. And the memo also said the only deficiencies
21 found were that the company does not have a safety program on
22 file with the Commission and is having problems receiving
23 payment and/or disconnect service to a customer that is not
24 paying the bill. And that apparently is the informal
25 complaint that Mr. Merciel referenced earlier. Would that be

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1 your understanding that billing problem?

2 A. Yes.

3 Q. All right. In terms of the safety program,
4 the memo indicated that Mr. Hubbs had talked to Mr. Vacarro
5 about implementing a safety program and would send him
6 information on how to get this completed along with his
7 inspection letter, and that he would follow-up on the matter
8 during later inspections to make sure it is done. What has
9 transpired since this memo in regards to the safety program?

10 A. Just wanted to clarify you're saying Mr.
11 Hubbs, that's a letter from me to Randy Hubbs.

12 Q. Oh, I'm sorry.

13 A. I am the person who wrote this letter.

14 Q. Yes.

15 A. What a safety program is is basically they
16 need to have on file with us that they have a safety program,
17 which is like entering confined spaces, if they enter a
18 confined space, such as a manhole, they have someone else
19 present or you have, like, what we call sniffers where they
20 test the air before you enter a manhole, make sure they
21 practice shoring whenever they're digging, to make sure they
22 call one-call, just general safety issues.

23 We send out a kind of a template type deal
24 where we want them to answer it and follow what they send
25 back to us. We have not received that yet. What we do a lot

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1 of times is go back on annual inspections, and if we don't
2 get it, you know, after the next time back, we go ahead and
3 keep sending letters until we get one back, but with the
4 system like this where there's only one operator, a lot of
5 the safety issues pertain to having such as a
6 lock-out/tag-out, if you -- if you turn off electricity to a
7 pump or blower or something, you want to make sure you lock
8 it and tag it out so no one comes back and turns it back on.

9 Well, if you're the only person there, a
10 lock-out/tag-out kind of doesn't pertain to the -- pertain to
11 you on something like that, but that's how a lot of the
12 issues are on the safety program. They're, you know, it has
13 do you have a routine safety procedure like where you get
14 together with all your employees and make sure they're
15 practicing safety procedures. Well, if you're the
16 owner/operator and only employee, it kind of doesn't, you
17 know, they don't really pertain to situations such as that
18 you, just make sure the guy himself is practicing safe --
19 safety -- or safe -- when he does things, he's actually --
20 this guy is actually -- he operates a construction company
21 also, and he's -- a lot of his actions as far as digging,
22 shoring, are also governed by OSHA and things like that, so
23 he does practice a lot of the safety issues that we deal
24 with.

25 Q. And those safety recommendations or the safety

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1 steps that are used to design the template, which you said
2 the Staff sends out; is that right?

3 A. Uh-huh.

4 Q. Are they developed through an internal
5 procedure here?

6 A. It's actually we had one when I came to work
7 here, and I kind of revised it, and most of it is stuff that
8 I revised, and I went with Jim Merciel and Mark Hummel, the
9 Staff got together and we designed it and a lot of it has to
10 do with DNR, the classes or training we get through DNR, and
11 other regulatory like OSHA, your Dig Right, other agencies or
12 whatever, we follow their guidelines in how we made up our
13 template.

14 Q. Okay. And you say you've not received
15 anything back from the company indicating anything about how
16 they are implementing any kind of a safety program; is that
17 right?

18 A. Not in writing, no.

19 Q. How about verbally?

20 A. Like I said, I verbally discussed safety
21 issues with Mr. Vacarro.

22 Q. You've discussed it, but I didn't hear what he
23 replied that he's doing, did you say that?

24 A. Yeah, awhile ago, I said he also has a
25 construction company where his actions are also governed by,

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1 like, OSHA and things like that. He does practice safety
2 procedures like shoring, whenever he does digging and things
3 like that because he practices those with his construction
4 company also.

5 Q. And that's what he has verbally represented to
6 the Staff?

7 A. Yes, yes.

8 Q. Are you aware of any other internal procedures
9 or rules or any other requirements that this company is not
10 complying with?

11 A. No, I'm not.

12 Q. And I'll ask you in terms of any kind of
13 contact with DNR regarding either the service that this
14 company provides to its current customers or the second
15 mobile home park that's not at this time connected, have you
16 had any contact with DNR?

17 A. Yeah, the other -- the other facility is
18 meeting its limits, that's one of the reasons why if it
19 wasn't meeting its limits, it would be easier for it to
20 become a customer of this system, but as long as it's meeting
21 its limits, DNR is not going to do any enforcement actions
22 against it like saying it needs to -- enforce them to hook
23 onto this system. As far as I'm -- as far as I know, the
24 other system is meeting its limits, so, or was at the time
25 that I talked to somebody.

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1 Q. Do you know if -- were you familiar with the
2 certificate application by this company?

3 A. No, Martin did most of the work on that,
4 Martin Hummel.

5 Q. Do you know if the owner represented at that
6 time that the other mobile home park was not meeting its
7 limits?

8 A. About the only thing I know on that issue is I
9 think he believed that he was going to have that system as a
10 customer, but that's about all I know on that.

11 Q. So knowing what you know about this system and
12 about the other mobile home park, how likely do you think it
13 is that the other mobile home park will connect to this
14 system?

15 A. I really can't answer that. I don't know. It
16 all depends on, you know, operations. If the operations --
17 there's too many variables to really answer that question.

18 Q. To your knowledge, do these customers have any
19 alternative for sewer service?

20 A. These customers -- North Oaks Sewers
21 customers?

22 Q. Yes, North Oaks Sewer's customers?

23 A. There's always possibilities, but usually if
24 there's a sewer system there, even DNR kind of wouldn't say
25 enforce them, but even DNR kind of makes sure they hook into

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1 a sewer system instead of putting in septic tanks, leech
2 fields, or lagoons, or whatever.

3 Q. So in terms of another system that's in place
4 that they can connect to, is it your understanding that there
5 is none?

6 A. Not that I know of.

7 Q. Again, this might be a better question for Mr.
8 Johansen, but in light of the ownership of the mobile home
9 park and the apartment building, and the fact that there has
10 been some dispute in the past about billing issues between
11 the owners -- the owner there and the owner of North Oaks
12 Sewer Company, do you have an opinion as to whether rates
13 imposed -- if we impose the rates that are recommended here,
14 whether they would actually be collectible?

15 A. I don't think I have enough information to
16 have an opinion on that.

17 Q. Okay.

18 COMMISSIONER MURRAY: I suppose that's all I
19 have. Thank you.

20 JUDGE WOODRUFF: Commissioner Clayton.

21 COMMISSIONER CLAYTON: No questions.

22 JUDGE WOODRUFF: I don't have any questions.
23 Counsel have any questions for this witness?

24 MR. KRUEGER: Yes, your Honor. I do. I'd
25 like to have an exhibit marked, please. Unfortunately, I

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1 don't have copies, but I can provide them at a later time.

2 (STAFF'S EXHIBIT NO. 1 WAS MARKED FOR

3 IDENTIFICATION BY THE COURT REPORTER.)

4 JUDGE WOODRUFF: This has been marked as

5 Exhibit 1?

6 MR. KRUEGER: Yes. May I approach the

7 witness?

8 JUDGE WOODRUFF: You may.

9 DIRECT EXAMINATION

10 QUESTIONS BY MR. KRUEGER:

11 Q. Mr. Lathan, I want to show you what's been
12 marked as Staff Exhibit No. 1. In looking at the first page
13 of that, can you identify that document?

14 A. Yeah, it's the rule on the safety program is
15 part of it, is on there.

16 Q. Is this the rule on the safety program that
17 you referred to previously in your testimony?

18 A. Yes, it is.

19 Q. Okay. And what is the citation of that rule?

20 A. 4CSR240-60.040.

21 Q. Okay. And calling your attention to the
22 second page of that document, that exhibit, can you identify
23 that?

24 A. That's the, I guess template, if you will,
25 that we send out to -- if a company doesn't have their safety

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1 program, we send this out, and it's kind of an example of
2 issues that they should address.

3 Q. This is the template that you referred to in
4 answering questions from Commissioner Murray?

5 A. Yes.

6 MR. KRUEGER: I'd offer Exhibit 1, your Honor.

7 JUDGE WOODRUFF: Any objections to receipt of
8 Exhibit 1?

9 MS. O'NEILL: No objection.

10 JUDGE WOODRUFF: Exhibit 1 will be received
11 into evidence.

12 (STAFF'S EXHIBIT NO. 1 WAS RECEIVED INTO
13 EVIDENCE BY THE COMMISSION.)

14 Q. (By Mr. Krueger) Mr. Lathan, did you prepare
15 the page that has been attached to the Staff's recommendation
16 as Attachment G-1?

17 A. Is that the memorandum?

18 MR. KRUEGER: May I approach the witness?

19 JUDGE WOODRUFF: You may.

20 Q. (By Mr. Krueger) I'll show you the document to
21 which I refer.

22 A. Yes.

23 Q. You prepared that?

24 A. Yes, I did.

25 Q. And is that a list of all the contacts you

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1 received from customers of North Oak?

2 A. Yes, it is.

3 Q. And is Mrs. Vacarro the owner of the mobile
4 home park listed there?

5 A. No, she's not.

6 Q. So is it your belief, then, that she did not
7 contact you about this proposed rate increase?

8 A. She was one of the contacts. I think Jim had
9 received that one and he was working on that one. I don't
10 know why I didn't have it on here.

11 Q. Okay. Did you talk to her?

12 A. No, I haven't.

13 Q. Okay.

14 MR. KRUEGER: No other questions.

15 JUDGE WOODRUFF: All right.

16 COMMISSIONER MURRAY: I have just a little
17 follow-up.

18 JUDGE WOODRUFF: Go ahead.

19 QUESTIONS BY COMMISSIONER MURRAY:

20 Q. Mr. Lathan, the rule 4CSR240-60.040, does that
21 require that the company provide a safety program?

22 A. I don't have it in front of me anymore.

23 Q. Okay.

24 A. It said a copy of which should be filed with
25 the Public Service Commission.

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1 Q. What does it say before a copy of which?

2 A. Each utility shall document and execute a
3 safety program.

4 Q. So this company is in violation of one of our
5 rules; is that right?

6 A. I guess.

7 Q. Should that not be something that the
8 Commission considers when it's looking at a rate increase?

9 A. Yes, it's probably an issue that should be
10 addressed.

11 Q. Should the Staff call it to our attention?

12 A. I think I did in the memo that they didn't
13 have one.

14 Q. I don't recall it being pointed out in the
15 Staff rec. Was it there?

16 A. I don't know.

17 Q. I also have a question about the letters that
18 are sent in response to contacts regarding proposed rate
19 increases, and the letters always say that your letter along
20 with a copy of this letter will be given to the five-member
21 Commission where they review in consideration in this matter,
22 and what happens locally with that is that those letters come
23 into the case file, but they're not attached when we get a
24 Staff rec.

25 These are small company rate increase

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1 requests, and the Commission really isn't involved in them
2 until we get to the point of having a Staff rec on them, and
3 I think that the Commission should be provided, when it's
4 provided the Staff rec, it should at least, if nothing else,
5 at least those letters should be called to the attention of
6 the Commission, and if Mr. Krueger is pulling out, I think
7 the Staff rec, for some reason, I don't have a Staff rec
8 right in front of me. Does the staff rec itself reference
9 those letters?

10 MR. KRUEGER: Yes, it does, your Honor.
11 Attachment G-1, the one to which I just questioned Mr.
12 Lathan, lists kind of a summary of the contacts, following
13 that on Attachments G-2 and following, I think going all the
14 way to G-21, are copies of either letters received from
15 customers or summary of telephone contacts that the Staff had
16 with the customers together with a copy of the letter that
17 Mr. Lathan sent to each of these customers in response to the
18 contact.

19 COMMISSIONER MURRAY: Okay. What we need to
20 make sure that happens when we get these circulated is that
21 those attachments to the Staff rec are also circulated for
22 us, and I realize that's not General Counsel's or the Staff's
23 position to do that, but practically in some of these small
24 rate case requests, all we receive is the circulating order
25 and the, in this case, it was a two-page Staff rec without

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1 any attachments. I think I just put that on the record
2 because I think it's very important that the Commission have
3 those specifically called to its attention, and it's not, as
4 I say, that's not something that General Counsel's Office
5 would be doing, it's filed in the case and it's a matter of
6 the circulation that goes to us when we're asked to vote on
7 these small company rate increases.

8 I had another question for you, if I can
9 remember what it was, Mr. Lathan. Judge, could I see that
10 Staff rec again one more time?

11 JUDGE WOODRUFF: Certainly.

12 Q. (By Commissioner Murray) Okay. And in this
13 particular Staff rec, it points out that the Staff and the
14 company had negotiated and executed an agreement regarding an
15 addition of small rate increase requests and that is
16 ordinarily how the small rate increase requests are handled;
17 is that right?

18 A. As far as I know, I'm not in on the
19 negotiation part.

20 Q. In your opinion, would it be wise for the
21 Staff, before entering into an agreement, to make sure that
22 the company was in compliance with all statutory and rule
23 requirements of the Commission?

24 A. Yeah, it's something that we should look at.

25 Q. Would it not be incumbent upon the Staff to be

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1 looking at whether the company was in total compliance?

2 A. Yes, it's something we look at, and it's
3 something we're going to follow-up on. I mean, something we
4 follow-up on, yearly inspections, it's something we look at
5 with all the companies, whether or not they have a safety
6 program and whether it's current. Sometimes they have one
7 and it's out of date.

8 Q. I don't see anything in reading this Staff rec
9 other than a reference to the appendix, and nothing is
10 referenced specifically, it's just referencing the appendix,
11 and now I'll look at the appendix to see if there's anything
12 specifically set out there. And right offhand, I don't see
13 it, it may be there, but I don't see any reference in the
14 appendix either to the fact that there was a rule requirement
15 that the company is currently in non-compliance with, so what
16 that would leave the Commission to do would be to carefully
17 read every attachment to the Staff rec in order to determine
18 that for itself, and it seems, and I'm addressing this more
19 to Mr. Krueger, I believe, that if there is some kind of a
20 non-compliance, that that should be pointed out to the
21 Commission.

22 Mr. Krueger, if it has been and I missed it,
23 you're welcome to point that out to me. I realize it's in
24 the attachment, but it requires some digging to get to it.

25 MR. KRUEGER: I think Mr. Johansen wants to

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1 address that in a moment.

2 COMMISSIONER MURRAY: All right. And Mr.
3 Lathan, I think that's probably all I had for you. Thank
4 you.

5 JUDGE WOODRUFF: Go ahead, Mr. Lathan, you may
6 step down.

7 (A BREAK WAS HAD.)

8 JUDGE WOODRUFF: Since everybody is back,
9 we'll go back on the record. All right. Let's go and get
10 started again, and Mr. Johansen is back on the stand and
11 you're still under oath.

12 QUESTIONS BY COMMISSIONER MURRAY:

13 Q. Mr. Johansen, you had something you wanted to
14 respond to, I believe.

15 A. Yes, I'd like to point out a couple of things,
16 and this may go to the issue of the distribution issue that
17 you brought up about what you all see. The -- when we file
18 our Staff recommendation for these cases, well, not just
19 these particular cases, it applies to all the cases
20 currently, certificate cases or whatever, there is a cover
21 pleading that is titled Staff Recommendation, and then
22 attached to that is an appendix, is what we call the official
23 case file memorandum, which actually sets out in detail what
24 the review that the Staff conducted and what the specific
25 recommendations are.

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1 It is not at all unusual in any type of case,
2 it's common course of action in these small company cases,
3 that there are five or six attachments, then, to that Staff
4 memorandum, and those are all available through the
5 electronic system through the electronic case file, if it's
6 an issue of whether you all are aware that all that is there
7 or not, I'm not quite sure how to address that.

8 The other thing I would like to point out, I
9 think you do raise a very valid point in this particular
10 situation, and something that we will certainly correct in
11 the future, the issue of whether or not there are any rule
12 compliance matters that need to be brought to the
13 Commission's attention. We will -- we will make that common
14 practice now to set that out specifically in the Staff
15 memorandum, that's a valid point, and it's in this particular
16 case, that was not done, you would have had to have read
17 through 70 or 80 pages of attachments to be aware of that,
18 and that will be corrected in the future.

19 Q. Thank you. That would be helpful. And, you
20 know, we're personally aware that those attachments are
21 available, it's just that my concern is that they will not be
22 noticed, and I would hope that even in your, and I think you
23 do probably, in your memorandum, point out if there are
24 significant concerns raised by those letters.

25 A. Yes, there's a general summary of the number

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1 of letters that were received, and general statement
2 regarding the subject of those letters, and then the letters
3 themselves with the cover sheet, if you will, like Mr. Lathan
4 prepared in this particular case, summarizing the number of
5 letters received, who they were received from, and the
6 subject, but we do address that in general in the Staff
7 memorandum as well.

8 Q. Okay. Thank you.

9 COMMISSIONER MURRAY: And Judge, I have
10 another question for Mr. Merciel.

11 JUDGE WOODRUFF: Okay. Mr. Merciel, if you
12 could come forward, and you are still under oath also.

13 THE WITNESS: Yes, sir.

14 QUESTIONS BY COMMISSIONER MURRAY:

15 Q. Mr. Merciel, Mr. Lathan said Mrs. Vacarro was
16 one of the contacts responding to the notice of proposed rate
17 increase, and that she had talked to you; is that correct?

18 A. Yes, that was the matter I had talked about
19 before. Actually, when I talked to her, that was before the
20 rate case was filed. It was an informal -- it was an
21 informal complaint about the mobile home park building it.
22 It may have overlapped with the rate case, and I guess she
23 was still communicating with us, not me personally, but she
24 may have -- if she filed comments with the rate case, she may
25 well have done that.

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1 Q. Well, there aren't any shown here. I'd like
2 to know did she make any comments about the proposed rate
3 increase, since she happens to be the one who would be most
4 affected by it, apparently?

5 A. My recollection, I got my file sitting over
6 there, her complaint was about billing at the mobile home
7 park. She did make some comments about the rate case and
8 that was either -- either when it was first filed or might
9 even have been when he was considering filing a rate case.

10 Quite honestly, I think her comments were more
11 -- more from the context of her fighting with her ex-husband.
12 They were -- they were having some contention issues between
13 them, and -- well, that's really all I can say about it, I
14 guess, so, but yes, there were some comments about the rate
15 case, but that was -- I recall that as being in the context
16 of when we were talking about her billing issue, which itself
17 was outside the rate case.

18 Q. Do you have knowledge as to whether she
19 opposed the rate increase?

20 A. I would have to review my file to see what she
21 said. I'd be happy to take the time to do that. I don't
22 remember if she specifically opposed a rate increase.

23 Q. Do you know why she wouldn't have been listed
24 on the list of contacts?

25 A. That I don't know. Okay. Here's a letter

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1 here. This is -- I'm not sure of the time, this is June 20th
2 in 2003. I strongly disagree with any request for rate
3 increase for the North Oak District. The increase is
4 exorbitant and the basis of the request is of an increase
5 based on mismanagement of the district. It goes on, maybe --
6 if you don't have copies of this letter, maybe that would be
7 appropriate.

8 Q. We have copies of letters, but I thought Mr.
9 Lathan looked earlier and said there was nothing in the file
10 from Mrs. Vacarro.

11 A. Well, this is a letter that I have, this
12 happens to be an original one. I would think that I normally
13 would have made a copy and either given the original or the
14 copy to Mr. Hubbs, whether I actually did or what he did with
15 it, I am afraid I don't recall.

16 Q. I don't see it in here, and as I say, she
17 seems to be the, by far, the largest customer. It would seem
18 to be relevant.

19 A. That would be true, yes.

20 Q. It would seem to be a very relevant letter.
21 Did -- could I ask if Ms. O'Neill knows anything about --

22 MS. O'NEILL: I have never seen that letter,
23 so I don't know anything about that letter.

24 COMMISSIONER MURRAY: Did you have -- did the
25 Office of Public Counsel have any contact with Mrs. Vacarro?

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1 MS. O'NEILL: Mrs. Vacarro did not contact my
2 office at all, so I haven't had any discussions with her or
3 with any of the people that live in her rentals.

4 COMMISSIONER MURRAY: Thank you.

5 THE WITNESS: Yeah, a lot of this activity on
6 her issue was -- well, this letter is in March. It looks
7 like it was March and April of 2003, and later.

8 Q. (By Commissioner Murray) Well, the first date
9 you read was June 20th.

10 A. Yes, this letter here is June 20th, 2003, and
11 I responded on July 18th. As far as a rate case, I just said
12 with regard to legal expenses -- well, when we were handling
13 the billing issue, Mr. Vacarro got his attorney involved, and
14 although I don't see it in the letter, it might have been on
15 the phone, she talked about mismanagement, and I think she
16 was questioning whether legal expenses on handling her
17 complaint would be involved in the rate case and I didn't
18 know at the time. I said with regard to legal expenses, I
19 don't yet know what annual expense may eventually be included
20 in the rates. I say I do believe that North Oak's legal
21 consultation was valuable in resolving the important billing
22 issue with the properties.

23 Q. And were those legal expenses included in the
24 calculation?

25 A. I don't know. I would have to defer to the

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1 auditor on that one.

2 Q. And that would be Mr. Meyer?

3 A. That would be, yes, probably so. I'm sure we
4 have legal expenses. I'm not sure if he can separate out
5 what was used for for this particular issue.

6 Q. Okay. And this small company rate increase
7 request was initiated on December 11, 2002. Is that right?

8 A. I've seen some nods. I don't know myself, but
9 --

10 MR. KRUEGER: According to the Staff
11 recommendation, Staff received at the Commission's offices on
12 December 16th, 2002, so probably filed -- probably mailed a
13 few days before that.

14 Q. (By Commissioner Murray) It said that all of
15 those contacts from Ms. Vacarro were during the time that the
16 small company rate increase was being considered; is that
17 right?

18 A. It seems that it was. I think I indicated
19 that it wasn't, but my answer may not have been right on
20 that.

21 Q. Are there any -- and I will ask this of any
22 Staff member who might know, are there any other contacts
23 that were not included?

24 MR. KRUEGER: I had some contact with Ms.
25 Vacarro, but I don't believe it was in regard to the rates.

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1 It was in regard to how the mobile home park should be
2 billed, and I responded to that with a letter to her, which
3 was mentioned in -- in one of the attachments to the Staff
4 recommendation in this case, and basically that was just a
5 review of the existing tariffs and how the mobile home park
6 should be billed, since the units in that mobile home park
7 were not separately metered, but as I mentioned, I don't
8 recall that there was a complaint about the amount of the
9 rates.

10 Q. (By Commissioner Murray) Okay. I think that's
11 all for you.

12 A. Okay. I do have these two letters, if these
13 need to go somewhere or if we can make copies, it would be, I
14 mean, it does address the rate case.

15 Q. They should be introduced.

16 MR. KRUEGER: Mr. Merciel, you have identified
17 these documents. These letters which were -- which you've
18 just testified about.

19 MR. MERCIEL: Yes.

20 MR. JOHANSEN: I would offer these as Exhibits
21 2 and 3, your Honor.

22 JUDGE WOODRUFF: Okay.

23 MS. O'NEILL: No objection. I would like to
24 get copies of them though.

25 JUDGE WOODRUFF: They will be received, if you

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1 can have copies made for myself and Commissioners as well.

2 (STAFF'S EXHIBIT NOS. 2 AND 3 WERE RECEIVED

3 INTO EVIDENCE BY THE COMMISSION.)

4 JUDGE WOODRUFF: Anything else for Mr.

5 Merciel?

6 COMMISSIONER MURRAY: Not for Mr. Merciel.

7 JUDGE WOODRUFF: Do you wish to ask any other

8 questions?

9 COMMISSIONER MURRAY: Mr. Meyer.

10 JUDGE WOODRUFF: Mr. Meyer, if you could come

11 forward?

12 (THE WITNESS WAS SWORN.)

13 JUDGE WOODRUFF: You may ask your questions.

14 QUESTIONS BY COMMISSIONER MURRAY:

15 Q. Mr. Meyer, can you tell -- tell me what, if
16 any, legal expenses were included in the calculation of the
17 rate increase.

18 A. There's no legal fees included in the rates,
19 and that's -- that's not untypical for a small water and
20 sewer company.

21 Q. Not atypical to eliminate legal fees? Is that
22 true? Is that what you said?

23 A. Given the process of the small water and sewer
24 rate cases, and the attempts that we've tried to make in the
25 regulatory process, it's our belief, at least my belief, that

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1 the necessity for legal advice is greatly diminished.

2 Q. Okay. And you are the Staff person who was
3 most involved in auditing of the company; is that right?

4 A. No, not personally. Ed Beegan of the St.
5 Louis office performed the audit. I met with Ed and John
6 Cassidy, who supervised it, when the results were finalized
7 to look them over prior to them being submitted to Randy
8 Hubbs, so I do have familiarity with it. I worked on the
9 rate base to reconcile that, and looked over the expenses to
10 see that they were within a reasonable range.

11 Q. And is it your position that these just --
12 these rates are just and reasonable?

13 A. At this time, these rates are based on just
14 and reasonable expenses, yes.

15 Q. And if the second mobile home park connected,
16 would that result in overearnings?

17 A. In my opinion, yes. One thing that hasn't
18 been mentioned is that in our discussions with Mr. Vacarro, I
19 didn't personally have them, but he is to immediately notify
20 the Staff if the Appleby Trailer Park does come in, because I
21 think all parties recognize that these rates -- and given
22 that input or growth in the customer count, that the rates
23 would need to be reviewed immediately.

24 Q. And is that in writing somewhere that he is to
25 notify or did the Staff recommend that we place that in our

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1 Order approving the increase in rates?

2 A. I know it's specifically included in the
3 recommendation that the accounting department passed on.

4 MR. KRUEGER: Can I respond to that question?

5 JUDGE WOODRUFF: Yes, you may, Mr. Krueger.

6 MR. KRUEGER: In the official case file
7 memorandum, on Page 3, the first paragraph at the top of the
8 page, it states that the company should be required to
9 contact the Staff within one month of providing service to
10 mobile homes that are located in the area currently known as
11 the Appleby Mobile Home Park.

12 In the Staff's recommendations on Page 5 of
13 that document, it states based upon the above, the Staff
14 recommends that the Commission issue an Order that directs
15 the company to comply with the terms of the disposition
16 agreements submitted in this case, which would include that
17 provision, and in the pleading, the Staff requests that the
18 Commission issue an Order consistent with the recommendations
19 set out on Page 5 of the Staff memorandum, so taken those
20 together, that the Staff has requested that the company order
21 -- I mean, that the Commission order the company to notify
22 the Staff when service is provided to Appleby's.

23 COMMISSIONER MURRAY: And was that a part of
24 the terms of the agreement regarding disposition, so if the
25 company is ordered to comply with the terms of the agreement,

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1 does that cover that requirement?

2 MR. KRUEGER: Yes.

3 COMMISSIONER MURRAY: And --

4 MR. KRUEGER: That may be found on -- as
5 identified as Paragraph 7 on Page 3 of 5 of the small company
6 rate case disposition agreement, which it provides the
7 company agrees to notify the Commission within one month of
8 starting to serve mobile homes that are located in the area
9 currently known as Appleby Mobile Home.

10 COMMISSIONER MURRAY: So there is a specific
11 period of time, one month?

12 MR. KRUEGER: Yes.

13 COMMISSIONER MURRAY: And should the company
14 fail to do so with normal procedures in terms of monitors a
15 small company, would -- how long could it possibly go before
16 the Staff would notice?

17 MR. KRUEGER: I don't know the answer to that
18 question.

19 MR. MEYER: I know that in the original
20 application, North Oak was required to submit customer count
21 reports to the Staff on a semi-annual basis, January and July
22 of each year. I can't say that they've been diligent in
23 doing that, but if the reports were submitted, and the
24 trailer park had been connected, it would be reflected in
25 that. I haven't personally seen those reports across my

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1 desk.

2 Q. (By Commissioner Murray) And was that a part
3 of the Order granting the certificate, do you know?

4 A. I know it's contained in the memorandum for
5 the Staff rec. I don't know if it was actually incorporated
6 into the Order for that certificate or not.

7 Q. Was that raised as an issue that the company
8 might not have been complying with what the original granting
9 of the certificate was predicated on?

10 A. Not to my knowledge.

11 Q. I think one of the reasons that we wanted to
12 have this on the record today was because there appeared to
13 be some questions that weren't quite -- or some issues that
14 weren't quite clear from reading the pleadings here, and
15 further, because the Commission is concerned that small
16 companies be carefully monitored and diligently held to any
17 requirements that we place upon them, and I hope that's being
18 done and will be done in the future.

19 A. I guess one thing that I would add to what Mr.
20 Johansen said earlier is that one of the changes we have made
21 that Mr. Johansen and I have discussed is that for new
22 certificates that companies would be required to achieve the
23 second year of growth before they could seek rate recovery,
24 and that's going to replace these -- what you've commonly
25 seen in the past as 18-month reviews and 24-month reviews,

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1 because it's been our experience that on many times the
2 growth expectations in these developments hasn't been
3 achieved, and then in the 18-month review or a 24-month
4 review, the systems haven't grown to what the -- what was
5 expected, and therefore the audits are either initiated and
6 then concluded very quickly because the growth hasn't been
7 achieved, or you see something like your -- like your ruling
8 on today where the certificate was granted with 144 customers
9 and those customers were supposed to be online by 2003.
10 We're here in 2004. This case was predicated on -- or this
11 review was predicated on 60 customers.

12 Q. And you've said the 18 and 24-month reviews
13 will be replaced with?

14 A. What will happen is in the feasibility study,
15 there's three years of growth put together by the applicant.
16 The rates would be designed, as Mr. Johansen said, based off
17 of a third year of customers factor down somewhat, but what
18 the applicant would have to agree to after we've determined
19 the appropriate rate is that that they will not seek another
20 rate request until they have achieved the second year level
21 of growth, so that the system is more mature and is more in
22 line with what they projected in their feasibility and what
23 rates are ultimately set at, that they moved up that growth
24 ladder, and that will do away with these a lot of times,
25 which are just reviews that we -- that the Staff begins, gets

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1 the customer counts, and realizes that these systems haven't
2 grown hardly at all, five or six customers in 18 months, and
3 a rate review would not be appropriate at that time.

4 Q. And when is this new procedure being
5 implemented?

6 A. We're currently putting them in now for
7 certificates that come -- that are being processed currently.

8 Q. If that had been the case with this particular
9 company, there would not be an ability to seek an increase at
10 this time; is that right?

11 A. I would be hard pressed to say that North
12 Oak's wouldn't have been allowed some type of variance
13 because of the 180 customers, 66 of them were slated to come
14 from the Appleby Trailer Park. Mr. Vacarro also had
15 estimated that his residential customers would grow
16 substantially from up to in the 180, there was 57 residential
17 customers.

18 He's currently serving, I think 19, so it
19 would have been -- I don't want to not answer your question,
20 but I'm saying that a large part of his projection was in
21 Appleby's Trailer Park, which has not come on at all. It
22 also was the growth in the residential, so without knowing
23 exactly how those customers fell into the growth in the three
24 years, I wouldn't be able to tell you. If you take 66 out of
25 180, you get 114. It would be plausible to expect that he

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1 might have had 60 customers in the second year of growth.
2 I just don't have the feasibility to show the projections of
3 how he got to the 180.

4 Q. In other words, you're saying what he has now
5 might have been in accordance with what he projected for year
6 two?

7 A. It could have been, if he would have taken
8 away Appleby.

9 Q. But if it hadn't been, he wouldn't be able to
10 seek a rate increase; is that right?

11 A. Right, under the new standards.

12 Q. How much calculation would be required in
13 order to determine if he would have met that?

14 A. I would have to see the -- we'd have to go
15 back and pull the feasibility study to see if, in fact, there
16 were years one, two, three customer numbers, where Appleby's
17 fell into that, if even projected Appleby's in a certain
18 year.

19 Q. So at the time, it was not necessarily
20 required that projections be based on year by year?

21 A. I don't know that. All I'm saying is I don't
22 know if that was out there, if it was available. Back then,
23 we would have taken a year three. I don't know that -- I
24 don't know without the documents in front of me if years one
25 and two would have been documented or not. I know that at

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1 the end of 2003, because it's in the accounting memo or the
2 auditing memo, that by 2003, the system was expected to have
3 180 customers.

4 COMMISSIONER MURRAY: I think that's all I
5 have. Thank you, Mr. Meyer.

6 JUDGE WOODRUFF: Before you step down, could
7 you identify yourself again?

8 THE WITNESS: I'm Greg Meyer with the Public
9 Service Commission Staff Regulatory Audit Five.

10 JUDGE WOODRUFF: Thank you. You may step
11 down. Do you have any other questions?

12 COMMISSIONER MURRAY: No, thank you, Judge.

13 MR. KRUEGER: I believe Mr. Johansen may be
14 able to answer questions about the feasibility study that was
15 drawn in the previous case.

16 JUDGE WOODRUFF: Come forward.

17 THE WITNESS: Fortunately, Mr. Merciel had our
18 case file from the certificate case with him. In the
19 application that the company filed, with specific regard to
20 the number of customers that were anticipated, the -- it was
21 anticipated that there would be five single-family
22 residential customers, 45 mobile home customers, ten
23 apartment customers and two commercial customers at the time
24 that the system would be certificated and start operation.

25 The company stated then that it expected to

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1 add 52 single-family residential customers and 66 mobile home
2 customers over the next three years. There was not a
3 breakdown for each year, but that does get us to the total
4 number of customers, and I would also mention the -- I did
5 notice in our -- some of our work papers that I was reviewing
6 just a few minutes ago on the certificate case, the company's
7 rates at that time were based on 80 percent of the total
8 projected customers, so we didn't use the full projection,
9 but it was very nearly the year three customer projection,
10 but there is not a breakdown in year one, year two, year
11 three, in this particular application that would have allowed
12 us to do the kind of review that Mr. Meyer just referenced,
13 which we do currently do.

14 Q. (By Commissioner Murray) So the rates for each
15 class of customers were based on 80 percent of the three-year
16 projection?

17 A. Yes.

18 Q. It would have been a significantly greater
19 increase if it had been based on 100 percent, wouldn't it?

20 A. Yes.

21 Q. Okay. Thank you, Mr. Johansen.

22 JUDGE WOODRUFF: Thank you. Any other
23 witnesses or statements that any Counsel would like to make?

24 MR. KRUEGER: Not from Staff, your Honor.

25 JUDGE WOODRUFF: All right.

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1 MS. O'NEILL: No, your Honor.

2 JUDGE WOODRUFF: Anything further from the

3 Commission?

4 COMMISSIONER MURRAY: No. Thank you all for
5 being here to answer the questions.

6 JUDGE WOODRUFF: All right. With that, we are
7 adjourned. Thank you.

8 WHEREUPON, the recorded portion of the
9 on-the-record presentation was concluded.

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