

1 STATE OF MISSOURI
2 PUBLIC SERVICE COMMISSION
3
4
5 TRANSCRIPT OF PROCEEDINGS
6 Hearing
7 July 27, 2007
8 Jefferson City, Missouri
9 Volume 3

10 The Staff of the)
Missouri Public Service)
11 Commission,)
12)
Complainant,)
13 v.) Case No. WC-2007-0452 et al.
14 Suburban Water and)
Sewer Co. and Gordon)
15 Burnam,)
16 Respondents.)

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18 BENJAMIN H. LANE, Presiding,
REGULATORY LAW JUDGE
19 JEFF DAVIS, Chairman,
STEVE GAW,
20 LINWARD "LIN" APPLING,
Commissioners.

21
22 REPORTED BY:

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

2 JUDGE LANE: Good morning, ladies and
3 gentlemen. It's 8:15 on July the 17th, and we're
4 ready to resume proceedings in Case No. WC-2007-0452.
5 When we adjourned the proceedings last night,
6 Mr. Martin Hummel was on the stand and we were ready
7 to -- for cross-examination by Suburban. So,
8 gentlemen, if you're ready to begin your
9 cross-examination of Mr. Hummel.

10 CHAIRMAN DAVIS: Judge, can I -- can I
11 interrupt? Could I ask the indulgence of counsel?
12 I'm gonna have to leave here in a few minutes. Can
13 I -- can I ask Mr. Hummel a few brief questions and
14 then you can --

15 MR. HARRISON: Absolutely.

16 MR. VOLKERT: Absolutely.

17 CHAIRMAN DAVIS: All right. Thanks.

18 QUESTIONS BY CHAIRMAN DAVIS:

19 Q. Mr. Hummel.

20 A. Good morning.

21 Q. What is -- can you refresh my
22 recollection? What is your job? What do you do down
23 there in the water and sewer department?

24 A. I'm an engineer with the water and sewer
25 department with a background in water and wastewater,

1 including having gotten certification on -- as a
2 water and wastewater operator, and I look at the
3 facilities used to provide water utility service and
4 to provide sewer utility service and the operation of
5 those facilities with the perspective of trying to
6 understand how it fits with providing safe and
7 adequate service to those -- to the customers.

8 Q. Okay. And with that theme of providing
9 safe and adequate service to the customers, I mean,
10 do you view it as part of your job to help people?

11 A. Yes, I do.

12 Q. Are you helping people?

13 A. Yes.

14 Q. Okay. You didn't hear Mr. Burnam's
15 testimony yesterday, did you?

16 A. No, I did not.

17 Q. Okay. So if Mr. Burnam would have come
18 in here yesterday and said, you know, I made repeated
19 pleas to the Commission for help, not only did those
20 pleas go unanswered, they weren't even responded to,
21 how do you respond to that?

22 A. I think there has been some problems
23 with communications. For example, neither I nor
24 Mr. Merciel were aware, for example, that the well
25 had been replaced in May of 2006 until the letter had

1 gone out to the customers. So there has been some
2 times where -- and I'm not wanting to put blame on
3 one person or another. There's been times where
4 maybe the communication wasn't the best, but we had
5 no idea that had occurred. That's just -- I'm just
6 using that as an example.

7 Q. Right. Okay. And --

8 A. But I have been working with this system
9 for a very long time, and I can't remember some
10 specifics, but there are things I can remember and I
11 have, back in the early '90s talked to Mr. Burnam and
12 said, "If you've got a problem, if you need to make
13 an improvement here, we need to get them done and we
14 need to get them in the rates." I made that very
15 clear to him.

16 But at the same time, I came to the
17 realization that it's gonna be very difficult for me
18 to convince him of that because at that time he was
19 the biggest customer. He had over half of the living
20 units that he owned and he was having to bill
21 himself. So consequently, he wasn't receptive to the
22 idea that he should go through the process of a rate
23 increase.

24 Q. Okay. Now, did he come to you a couple
25 of years ago with -- with an idea about hooking up

1 the water system to the -- to the public water
2 district?

3 A. Yes, he did. And he -- his -- and my
4 understanding was he wanted to get out of the
5 business, which I understand that. He -- he had --
6 you know, he was at that point where maybe that was a
7 good thing.

8 Q. Uh-huh.

9 A. When we looked at that overall picture,
10 it was very clear that I could provide safe and
11 adequate service with the -- with the facilities that
12 he had there more economically than having to buy
13 wholesale water from the district, and particularly
14 when I could not even go to the district with a
15 straight face and suggest that they take over the
16 system because I had no meters on the system to even
17 suggest it to -- to them that they were taking
18 something other than a piece of junk.

19 I mean, it's a point of frustration.
20 This system has been allowed to go into the ground
21 gradually over time. Normally, you know, if we make
22 an inspection, we don't spend that much time going
23 out and checking on meters and verifying that every
24 meter's working, but --

25 Q. Okay. Mr. Hummel, now, yesterday we

1 heard some testimony that I believe, as -- as part of
2 the last rate increase that Suburban received in 2005
3 or there was a subsequent recommendation by the
4 auditors that, you know, there would be an 18-month
5 inspection or something to come back and see if the
6 improvements -- improvements that were part --
7 recommended as part of that rate case had actually
8 been -- been performed, and that was never done. Do
9 you have any idea why that is?

10 A. Are you referring to doing an 18-month
11 review after the 2005 --

12 Q. Uh-huh.

13 A. -- rate case?

14 Q. Uh-huh.

15 A. No, I can't speak to why -- what should
16 have triggered Staff to take that action. I mean,
17 I'm not sure if I was conscious of it that there was
18 an agreement that there was supposed to be an
19 18-month review on this --

20 Q. Well, I don't believe that there was an
21 agreement, but I believe it was a recommendation of
22 the auditors, the PSC auditors. And you're not aware
23 of that?

24 A. I'm not specifically aware of that. I
25 know the 18-month review is often used just kind of

1 as a goal whenever there's a rate case that there
2 is -- we -- as I understand it, normally there is the
3 idea that we need to have some -- set some kind of
4 goal in terms of when to go back and look at things.
5 And 18 months is kind of a standard number to use.

6 Q. But that -- that was never done,
7 correct?

8 A. As far as I understand, no, it was not
9 done from --

10 Q. Okay. Mr. Hummel, getting back to, you
11 know, your -- I think your first answer to me, which
12 was there was a breakdown in communication, this
13 isn't the only case involving a small water or sewer
14 company where there's been a, quote, breakdown in
15 communication, is there?

16 A. I would say that is an -- that is an
17 issue people should be more sensitive to with all of
18 them, because it just involves quite a number of
19 people, and the whole process of what's going on with
20 that communications has to be -- it needs to receive
21 a little bit more attention.

22 The whole process, even with regulating
23 these small companies even from the State's side,
24 you've got Department of Natural Resources, you've
25 got different regional offices, then you've got

1 Public Service Commission, and it involves a lot of
2 different people, and it's just not always as neat as
3 you'd like to see it.

4 Q. Okay. Do you have any idea how much
5 money Mr. Burnam spent on attorneys here in the last
6 month or two litigating this proceeding?

7 A. I don't have a sound idea. The thought
8 has crossed my mind for sure, because I know -- and
9 it's frustrating to me because I know that there's so
10 much work could have been done on the system for the
11 same -- for that amount of money. But I don't have
12 any specific idea about how much it is.

13 Q. And Mr. Hummel, I mean, my mental
14 impression of our water and sewer department and
15 their ability to help operators provide safe and
16 adequate service is that it is an unmitigated
17 disaster down there. And how do you respond to that?

18 A. Actually, I think we do a very good job
19 for the number of people that we have to work on
20 this. And when we talk about it, the problems that
21 exist, you've got a lot of small water and sewer
22 companies, you have individuals involved in that.
23 They won't listen to us, they won't listen to
24 Department of Natural Resources, they won't listen to
25 experts that come to them and say, you know, you

1 really ought to do it this way.

2 You have -- it's a people problem. I
3 don't -- I mean, I'm not disagreeing --

4 Q. So you're saying you need more people
5 down there? Do you need more -- I mean, tell me what
6 you need down there.

7 A. Of course, you're asking that from --
8 I'm not in a position to -- manager, but --

9 Q. It doesn't matter what position you're
10 in. You can't -- I'm your ultimate supervisor here
11 at some point, so you can't get in trouble for anything
12 you say, Mr. Hummel. So just tell me what you think
13 you need to do your job down there, because right now
14 I have concerns that the job's not getting done.

15 A. I think that the process does need to be
16 looked at. We go to some of these small companies
17 and there's too many PSC employees having to look at
18 the problem. And I understand there's a need for --
19 you don't want a situation where it's only one person
20 making all the decisions --

21 Q. Uh-huh.

22 A. -- and giving direction, but these small
23 companies, they don't need 12 people from Public
24 Service Commission looking at all the issues. You --
25 the approach appears to me to be that you -- that we

1 fall into trying to regulate small water and sewer
2 utilities in the same manner that we try to approach
3 very large companies. It simply doesn't make any
4 sense.

5 Every one of my small water and sewer
6 companies, it doesn't take a lot of people. It takes
7 a few people to look at it and understand what the
8 circumstances are. And then they've got to be --
9 they've got to have some way of being able to
10 exercise some authority so that if you talk to one of
11 these owners, that they know that when you ask them
12 to do something, that you're --

13 Q. That they're gonna be able to get their
14 money back?

15 A. That they're gonna get their money back
16 but that they better listen to you. But that doesn't
17 just apply -- I mean, as I say that, they've got
18 people from DNR telling them -- trying to get them to
19 do the right thing.

20 Q. Uh-huh.

21 A. Same thing there. DNR doesn't want to
22 go out and issue Notices of Violations. They just
23 want them to do what they're supposed to do. But it
24 is very difficult for them to -- it's like they've
25 got to somehow trick the developer or the owner to do

1 the right thing and it's difficult.

2 What happens in this business is people
3 in my position or in similar positions in DNR, it's
4 just a matter of persistence. We just keep at it.
5 You don't -- and then some things finally happen.

6 Q. Mr. Hummel, we've got four or five small
7 water/sewer companies that are in receivership.
8 We've probably got an untold number that -- that
9 could be in receivership. If we put a sign out on
10 the front steps that said just come drop your books
11 and your keys off, I wonder how many small operators
12 would take it.

13 I mean, I think Mr. Burnam would have
14 taken it in a heartbeat. And, you know, as one of
15 the people here who's, you know, responsible for
16 trying to clean up this mess, I mean, what should we
17 be doing here?

18 A. Somehow we need to keep individuals that
19 don't really care about water service and don't
20 really care about sewer service and don't take the
21 time to learn anything about it from getting in the
22 business.

23 Q. Okay. Well, you know, that's -- that's
24 all well -- that's all well and good, but, you know,
25 what do we do with what we got right now? I mean, if

1 you were Mr. Burnam, would you trust the Public
2 Service Commission? I mean, he sent us untold number
3 letters apparently, letters that I've never seen. He
4 says he's got a certified letter that he sent us that
5 was signed for that we never acknowledged. Now,
6 that's not in evidence yet, and hopefully it will be
7 here.

8 A. I think that's -- to a great extent
9 that's Mr. Burnam's perspective.

10 Q. Okay.

11 A. But the reality is, if he had difficulty
12 with getting these meters in, he never called me, he
13 never made a contact with me and asked me about it,
14 nor did he ask directly to somebody in the water and
15 sewer department. That letter came in and,
16 unfortunately, I never saw it.

17 But historically, Mr. Burnam has not
18 come to Public Service Commission and said, here,
19 I've got this problem, I need to deal with it. When
20 he wanted to get out of the business, he came in in
21 2005, and I -- I'm not wanting to be negative about
22 Mr. Burnam. He's a businessman. I understand that.

23 But if you want to give away a
24 liability, you've got to at least work with people so
25 that they can help you. He hasn't -- I pleaded with

1 him to get the meters in. I really -- 2005, from my
2 contact with the company, I thought he was gonna --
3 he was on the track of getting the meters in.

4 The way it stands right now, I can't go
5 to the district, I can't entertain -- I can't talk to
6 other operators or receivers to even suggest that
7 they take this system. It's a piece of junk and
8 nobody would want to have their name associated with
9 it. And he has -- just to put in meters. Now, it's
10 a point of frustration because there has been efforts
11 to help Mr. Burnam.

12 Q. Okay. Well, and then let's -- let's
13 talk about those efforts. Has anybody in our water
14 department ever heard of quit? I mean, isn't
15 there -- isn't there -- isn't there some way that we
16 can -- that you can come up with some proposals to at
17 least put in front of this Commission to help finance
18 some of these things? I mean, where, you know ...

19 A. It's -- I'm not -- that is not really my
20 field in terms of really understanding some of the
21 different financial possibilities. I know there's
22 some out there --

23 Q. Uh-huh.

24 A. -- in general.

25 Q. Uh-huh.

1 A. But when I've got a situation where I've
2 got a private developer --

3 Q. Uh-huh.

4 A. -- that built a system --

5 Q. Right.

6 A. -- on more than half of the property up
7 until 2004 --

8 Q. Uh-huh.

9 A. -- he's not gonna be able to assess --
10 the grant money is very limited anyhow.

11 Q. Right.

12 A. But he's not gonna be able to qualify.
13 Now -- now, there may be people that -- in the
14 finance industry that can come up with something that
15 I might not know about for sure, but --

16 Q. I'm sorry. Go ahead.

17 A. But there's no way in this situation
18 that I can see that somebody can simply take the
19 liability away from Mr. Burnam without him making
20 some kind of sound effort. And I'm not talking about
21 sending a letter somewhere. I'm talking about what
22 he actually does.

23 Q. Uh-huh.

24 A. He -- it's just simply irresponsible to
25 leave the system go to the dogs like this. I don't

1 know how else to put it.

2 Q. Okay.

3 A. And I wouldn't want to use this
4 situation as an example for all the small companies,
5 but again, the problem with --

6 Q. But Mr. Hummel, we've got a lot of small
7 companies that are out there that, you know, may have
8 a little bit different set of facts, but they're
9 certainly similarly situated to Mr. Burnam's case
10 here because, you know, I mean, do we need to
11 mentally recount the list? You know, we've got, you
12 know, the system over in California -- whatever -- I
13 can't think of the name of it right now, Hickory
14 Ridge? Is that right?

15 A. Hickory Hill.

16 Q. Hickory Hill. And we've got Stoddard
17 County that, you know, apparently is over capacity
18 that, you know, we don't know -- well, I guess
19 we're -- been working on the ownership of Stoddard
20 County ever since I got here three years ago.

21 You know, you have all of these little
22 situations out there and, you know -- and I guess my
23 view here is that Mr. Burnam is not an isolated
24 incident, and there's probably going to be another
25 two, three, four cases just like this, and I'm trying

1 to figure out how we get a handle on it and how we
2 move forward and can be constructive because I'm
3 concerned that, you know, these people that live
4 there aren't going to be able to sell their homes
5 because they don't have good water.

6 I'm concerned that they're not going to
7 be -- you know, have that safe and adequate supply.
8 I mean, water's the only utility that you ingest, and
9 when you guys get together down in the water
10 department, do you ever talk about these things,
11 about how you can actually fix the process?

12 I mean, is anybody ever gonna come to me
13 and say hey, boss, I've got some ideas or are we just
14 gonna be content to let things go like they go and,
15 you know, wait for Mr. Burnam to send a disconnect
16 notice to all his customers? I mean, I don't know
17 what the answer is, but I'm looking for them.

18 A. Well, I do believe we need to be more
19 focused on identifying the potential small companies
20 that have the -- I mean, I've got to deal with what I
21 have now today.

22 Q. Uh-huh.

23 A. I do believe that -- and I've got to
24 point to myself to some extent on this, and maybe I
25 need to ask for more help, but we do need to identify

1 the companies. Perhaps we need to when we -- we need
2 to be able to make an inspection and we need to be
3 saying, just to be completely honest with this, we
4 need to make a determination of what -- what is the
5 likelihood of this system having an interruption of
6 service within the next year.

7 Q. Uh-huh.

8 A. And if we did that -- I'm not saying
9 this solves the problem, but it's gonna highlight the
10 problem.

11 Q. Right.

12 A. But -- but if we did that and if we did
13 it on the basis of sound engineering and
14 understanding -- it's not just engineering because
15 there's people involved and you've got to try to
16 understand the administration behind the company, and
17 I mean --

18 Q. And Mr. Hummel, are you aware that we
19 have seven water and sewer companies that haven't
20 been in for a rate increase in more than 20 years?

21 A. Yes, and some of them are --
22 Mr. Burnam's company is an example why that happens.
23 Mr. Burnam had no incentive, none, to come in here
24 for a rate increase because he was more than half of
25 the customers himself. And it was for his own self

1 interest that he didn't come in here for a rate
2 increase, and I can guarantee you I asked him to
3 please make the improvements and come in for a rate
4 increase and let's get it done.

5 Q. Okay. Well, I mean, the question is,
6 for those seven that are still out there that haven't
7 been in in over 20 years, and for the other 10, 15 or
8 so that haven't been in in more than a decade, you
9 know, should we be out there ordering rate reviews
10 for those utilities?

11 Should we be out there ordering, you
12 know, Staff to go out there and inspect them and see
13 what improvements need to be made for the safe and
14 adequate service of water? And should we be out
15 there ordering these improvements and, you know,
16 trying to make some things happen, or should we just,
17 you know, sit around here and, you know, wait for
18 Mr. Burnam?

19 A. I think that -- that we should be out
20 there looking at those systems, and I think there has
21 to be a recognition that the Public Service
22 Commission is not just a regulator on it in this
23 situation but we are a partner with those companies
24 in making sure that that water and sewer service is
25 available, and we need to approach it as such.

1 And so in doing, we need to be able to
2 talk to those companies and say -- we should speak up
3 if we would look at -- even from an auditing
4 function, if the rates aren't adequate and things
5 aren't being done, we ought to have some way where we
6 can push to straighten out the mess and not have to
7 wait for the company to come to us.

8 Q. Has there been any speaking up, up until
9 now?

10 A. Has there been any what?

11 Q. Has anybody in your water/sewer division
12 been speaking up, up until now?

13 A. With regard to?

14 Q. Anything.

15 A. I'm -- I don't know how to answer that
16 exactly.

17 Q. That's okay.

18 A. I know there's a frustration of -- of
19 just trying to say grace over what we have and not
20 necessarily being able to back away from it and just
21 let certain things go and just try to make some
22 priorities.

23 It's -- there's never been a time that
24 I've been working here at the water -- at Public
25 Service Commission that I felt I could come in and

1 somehow maybe we would be caught up that day. It
2 doesn't happen.

3 Q. Okay. Last question, Mr. Hummel: Do
4 you think Mr. Burnam feels like the PSC Staff has
5 been a good partner?

6 A. I can see where he would have his
7 difficulty dealing with state bureaucracy, and it's
8 not just PSC Staff, it's also Department of Natural
9 Resources. But Mr. Burnam needs to look at himself
10 just as well because he has been a very stubborn
11 individual when it came to doing things right.

12 CHAIRMAN DAVIS: Judge, I have no
13 further questions. And Mr. Burnam, I apologize for
14 taking up 20, 25 minutes of your counsel's time this
15 morning, but thank you.

16 JUDGE LANE: I think can we handle any
17 issues arising out of those questions either during
18 redirect or during Suburban's cross-examination of
19 the witness since we went out of order?

20 MR. VOLKERT: Okay.

21 JUDGE LANE: Since we do have
22 Commissioner Appling here, do you want to -- do you
23 want to ask any questions at this time?

24 QUESTIONS BY COMMISSIONER APPLING:

25 Q. I just want to ask a couple questions.

1 How you doing this morning?

2 A. Doing fine.

3 Q. We at a crossroad with this case and we
4 want to move it ahead and solve the problem. An
5 owner said yesterday to me that he really want out of
6 the water business and there's some things that need
7 to be corrected in this water system probably before
8 somebody else is going to take it.

9 You indicated yesterday that the people
10 that run this sewage for this company that there's a
11 different company that this sewage is tied to. I'm
12 sure you know that.

13 A. Yes.

14 Q. And they might in the next few days here
15 say, yes, we will work out something to try to take
16 this. What is your -- what are your recommendation?
17 Because I want to help you and I want to help him and
18 I want to help the whole cause here with the way I'm
19 going to decide on this case.

20 So what is your recommendation here to
21 get this moving forward? Do you have a
22 recommendation this morning that what need to be done
23 here in order to get back on track? I know it's a
24 lot of things.

25 A. In order for me to speak to any

1 entity -- or any person that wants -- that would
2 be -- that would consider taking over this service to
3 these customers or would even consider being an
4 operator for this system -- to use an example,
5 Mr. Burnam wants me to find a buyer for his old
6 vehicle. I need him to at least put air in the
7 tires, please.

8 Now, I have to have meters on this
9 system and I have to have flush valves on this system
10 in order for me to be able to go to any operator or
11 any entity that would even consider taking it and be
12 able to look at him with a straight face and suggest
13 that they get involved.

14 As it stands right now, it's just one
15 big wild card. And I -- I'm not -- anyone that would
16 be talking to me and asking me about this knows that
17 I'm not going to give them a bunch of BS about it.
18 This system has got to have meters, it's got to have
19 flush valves.

20 Mr. Burnam is involved in other
21 businesses. It is not out of the -- it's not a --
22 it's not rocket science. There are reasons why he
23 doesn't have that -- that this system is in this
24 condition, and he needs to get the flush valves on
25 there, get the meters on there, and at least try to

1 present this to other potential entities in a manner
2 that they might consider it. He can't get an
3 operator? Of course he can't get an operator,
4 because no operator would want to come in and try to
5 run this in its present condition.

6 Q. Do you have an estimate of the item that
7 you're talking about, what approximately the cost
8 would be on that? I think I heard a number yesterday
9 that to get the system tuned up and running, it would
10 be approximately \$50,000. Is -- can the flush valves
11 and the other item that you talked about, what is
12 your estimate on the cost for that?

13 A. I don't have a good estimate to say,
14 okay, this is how much it takes to fix the system.
15 It really needs to be broken down into its components.
16 but the Staff of the Commission has never been asking
17 Mr. Burnam to make a grand improvement.

18 When it comes to simply putting in
19 meters, I understand it will take some labor. Again,
20 I'm not talking about rocket science. Mr. Burnam has
21 other businesses, he has other people that have
22 worked for him. He knows how to get ahold of a
23 contractor.

24 There's no excuse to not have meters on
25 this system. I can't give you a good price, but it

1 is not -- it's not high like saying \$80,000 or some
2 such thing like that. That's not the case when you
3 talk about putting meters on. To put flush valves on
4 this system, this is not rocket science. We've
5 got -- I mean, I would recommend that he talk to an
6 engineer and have that engineer try to figure out
7 what he actually has in the ground. It's been very
8 difficult to do that.

9 I haven't gotten ahold of that
10 information until very recently in terms of actually
11 having something that shows me where the water system
12 is, but there's just little stuff on this system
13 that's been let -- it's been let go to just run it
14 down to nothing and then complain to other people
15 that it's not right and that he can't get things
16 done. That doesn't make any sense.

17 The big item -- if I was asking him that
18 he had to replace the standpipe right now today, that
19 that would be very expensive. Unfortunately, right
20 now as we speak, it might be more -- it might be
21 prohibitively expensive. I'm not sure if I could
22 find a tank contractor to actually be willing to bid
23 on the project.

24 But that's not item No. 1. I don't have
25 to have the tank to be able to entertain the water

1 district or the sewer district or an operator in
2 terms of running this system, but I have to have
3 meters, I have to have flush valves, and those items
4 are not that expensive.

5 COMMISSIONER APPLING: Judge, thank you.

6 JUDGE LANE: Thank you very much,
7 Commissioner Appling. That will conclude the
8 Commissioners' questions for now, so -- and again, we
9 can address Commissioner Appling's comments as we're
10 going to do with the Chairman's comments.

11 So without further adieu, Suburban's
12 cross-examination of Mr. Hummel can now commence.
13 Thank you for your indulgence in allowing the
14 Commissioners to go out of turn.

15 CROSS-EXAMINATION BY MR. VOLKERT:

16 Q. Good morning.

17 A. Good morning.

18 Q. I'd like to refresh my memory a little
19 bit from yesterday's testimony. How long have you
20 been with the water and sewer department again?

21 A. Since 1989.

22 Q. And you've been working with Suburban
23 since that time?

24 A. That was the earliest time -- yes, I had
25 my first contact with the system in 1989.

1 Q. Have you been doing inspections of the
2 system since that time?

3 A. I have done a number of inspections from
4 then till now, yes.

5 Q. How many would you say?

6 A. I suppose I've done at least 12 perhaps.

7 Q. So --

8 A. I don't know that that's a definite
9 number. I'm just ...

10 Q. And you were involved in the 2005 rate
11 case in what capacity?

12 A. To look at the physical plant of the
13 system and the operation of that plant in terms of
14 providing safe and adequate water service.

15 Q. I'm gonna show you what's been marked
16 previously as Exhibit 53. Do you recognize this
17 document, Mr. Hummel?

18 A. Yes, I do.

19 Q. Did you prepare this document?

20 A. Yes.

21 Q. Did you prepare it in connection with
22 your review of the system in 2005?

23 A. Yes.

24 Q. What would you say -- I just heard a lot
25 of testimony from you about how horrible and awful

1 the system is and how it's been run into the ground
2 for so long. What would you say the condition of the
3 system was in 2005?

4 A. Poor.

5 Q. Poor. And I'd like to direct your
6 attention to the bottom of the memo. There's four --
7 what appear to me to be four recommendations. Are
8 these your recommendations?

9 A. Yes.

10 Q. And is it typical to only have four
11 recommendations when a system is in that type of
12 condition?

13 A. I don't know if you could use the term
14 typical, because if you're going to say that, you
15 have to also assume you've got a typical system. But
16 in this particular case, there were certain
17 improvements that were needed in order to make
18 further recommendations on what else needed to be
19 done.

20 And so first of all, the recommendations
21 were to try to point to the items that were most
22 critical and that needed to be done and that might be
23 required to be done in order to make any further
24 evaluation.

25 Q. How would you -- how do these

1 evaluations and these additional recommendations come
2 up with a small system like this? In a rate case are
3 there any other times?

4 A. These items -- these recommendations
5 may -- there's more attention given to them in a rate
6 case, perhaps, because certainly that is the
7 opportunity for the Staff to see where there might be
8 a problem, bring that to everyone's attention, get
9 the money spent to make the correction and get it
10 into the rates.

11 Q. What other times have you made
12 recommendations other than in the rate case for a
13 small company?

14 A. On small companies, a lot of times I'll
15 make recommendations at the time that I'm making the
16 inspection if I'm there with the owner of the
17 company. I mean, the smaller items, just items that
18 I would observe, I would make it on the spot.
19 Otherwise, it would more likely be in a situation
20 where I would -- after having made the inspection,
21 send a letter to the company and -- and spell out
22 some specific items that I was recommending being
23 done.

24 Another approach would be that I would,
25 having talked with the owner on a particular item and

1 getting an understanding of what's needed, I may call
2 the owner back and ask, have you had any luck in
3 pursuing a particular item, what difficulties might
4 you have come across and so forth.

5 Q. How often do you bring up
6 recommendations with the rest of the Staff with the
7 water department -- water and sewer department to
8 make it more clear what needs to be done to fix a
9 system? These are all informal things you're
10 describing. How often do you have formal
11 recommendations other than in a rate case?

12 A. I don't -- I don't know that I can give
13 you a good generalization about the time frame on
14 that. Normally if we make an inspection,
15 particularly if there's items that are needed, it
16 kind of depends on what discussions we've had with
17 the owner.

18 But that would be one of the items
19 that -- that would be one of the ways that we would
20 be in contact with the owner and, say, maybe perhaps
21 even just a reminder that we discuss items 1 through
22 4 and these are the things that need to be done, and
23 I --

24 Q. Let me ask you this, Mr. Hummel: Before
25 the 2005 rate case, had you ever brought Suburban up

1 with the rest of the Staff at the water and sewer
2 department with anybody else here at the PSC?

3 A. I'm sure there have been discussions
4 over time with other parties at -- with the water and
5 sewer department staff to discuss what the
6 circumstances might be at Suburban.

7 Q. And did you act on anything, any of
8 those discussions?

9 A. Would you want to clarify what you're
10 asking me?

11 Q. Did you initiate any proceedings, did
12 you make any formal recommendations, did you take any
13 formal actions as a result of discussing Suburban
14 before the 2005 rate case?

15 A. Formal action with regard -- with regard
16 to a discussion that I've had with water and sewer
17 department staff?

18 Q. Yeah. What I'm asking is, if this
19 system was in such terrible, awful shape, did you do
20 anything about it before the 2005 rate case with the
21 rest of the Staff or with anybody else?

22 A. I would have to go back to look at my
23 records to try to answer that question in terms of
24 whether I generated some letter.

25 Q. So you remember, though, you remember

1 that Suburban was in awful shape for all this time,
2 but you don't remember whether you actually talked to
3 anybody about it or raised it with anybody here?

4 A. Well, let's back up and give an
5 example --

6 Q. No, no, no, no, I'm sorry. Let me ask
7 that question first and then we can back up and get
8 to your example. Did you raise it with anybody
9 before the 2005 rate case in an official capacity, an
10 official letter to the Commission, to the rest of the
11 Staff? Was there any action taken to your
12 recollection before the 2005 rate case regarding
13 Suburban?

14 A. I --

15 Q. That's a yes or no, Mr. Hummel.

16 A. Nothing comes to mind in terms of an
17 official memo internally with regard to Suburban.
18 I'm sure there were some discussions or some
19 comments, but I can't point to an official internal
20 memo or something like that.

21 Q. Well, let me ask you, then, you
22 testified earlier that a rate case is a good time to
23 discuss -- to review a system, investigate it,
24 discuss recommendations. If it's such a good time in
25 2005, why did you only have these four

1 recommendations?

2 A. As I stated previously, I have to have
3 the items that are contained in these four
4 recommendations in order to make sound
5 recommendations beyond these four recommendations.
6 I'm not there trying to get the company to just spend
7 money. As soon as I suggest to the company that you
8 need to do something, I also have to be willing to
9 put that cost and support putting that cost in the
10 rates for the customers.

11 Consequently, I am fairly particular
12 about what I'm asking the company to do because I --
13 I'm not asking the company to do something that I'm
14 not willing to support in terms of going to the
15 customer and asking that customer to pay for it.

16 Q. One more question on this memo, and that
17 is, at the very bottom you say, "These minimum
18 requirements will cost between 26,000 and \$80,000";
19 is that correct?

20 A. Finish the statement, please.

21 Q. "As a rough estimate," I'm sorry. I'm
22 sorry.

23 A. Yes, as a rough estimate. I was trying
24 to give anyone who would read this some idea of some
25 kind of a cost estimate. I felt I should at least do

1 that even if I didn't have very specific dollar
2 values.

3 Q. And so for these initial recommendations
4 that you made in that 2005 rate case, is it a --
5 would it surprise you, then, if Mr. Burnam testified
6 yesterday that he expects these to cost around
7 \$50,000?

8 A. I think we need to be a little bit more
9 specific about -- are we talking about these four
10 recommendations?

11 Q. Good point. No, the recommendations in
12 the Unanimous Disposition Agreement, are you familiar
13 with those recommendations? Are they different than
14 these, do you know?

15 A. There was more included.

16 Q. Okay.

17 A. Because these recommendations are
18 recommendations with regard specifically to the
19 physical plant. And the big item on this is
20 replacing the standpipe. If I take that item off,
21 the 26,000 and the 80,000 go away.

22 Q. So do you know how much the total
23 expenses for the compliance of the Unanimous
24 Disposition Agreement, do you have an opinion on
25 that?

1 A. I don't -- I don't have a dollar number
2 that I have gone -- I haven't gone back and reviewed
3 that and then formulated a dollar value for it, no.

4 MR. VOLKERT: Your Honor, I'd move to
5 admit Exhibit 53.

6 JUDGE LANE: 53? Exhibit 53 has been
7 marked and offered into evidence by Suburban. Are
8 there any objections?

9 MS. BAKER: No.

10 MS. SYLER BRUEGGEMANN: No, your Honor.

11 JUDGE LANE: Hearing none, it is
12 admitted.

13 (EXHIBIT NO. 53 WAS RECEIVED INTO
14 EVIDENCE AND MADE A PART OF THE RECORD.)
15 BY MR. VOLKERT:

16 Q. Now, in connection with this 2005 rate
17 case, yesterday Mr. Russo testified there was a
18 meeting between PSC Staff and -- and Suburban
19 representatives on May 2nd, 2005. Did you attend
20 that meeting?

21 A. I have attended various meetings. I
22 don't know if I can say specifically whether I was at
23 that meeting. We can proceed and presume I was
24 there, I guess.

25 Q. But you don't recall?

1 A. No, I don't specifically recall.

2 Q. Do you recall whether you would have
3 made a statement to Mr. Burnam at that meeting as to
4 whether or not the Staff was recommending against
5 hooking onto the Public Water Supply District service
6 because the rates would be too high? Do you recall
7 making that statement?

8 A. I don't recall making that statement,
9 but that would not have been out of the realm of
10 possibilities because it was my understanding after
11 we looked at things in 2005, that it would be
12 significantly more expensive to -- not only to get
13 water from the district, but we had a very
14 complicated wild card here because we had no way of
15 knowing how much water would need to be bought from
16 the district because we have no way of knowing how
17 much is just gonna go out on the ground and be
18 wasted.

19 We have -- so it was -- without having a
20 good handle on the amount of water that was going to
21 be going through the system, there was no way to make
22 a good recommendation to hook onto the district and
23 buy expensive wholesale water.

24 Q. Now, how could you make that
25 determination, Mr. Hummel, when there was so much

1 work that had to be done with Suburban -- I mean, you
2 said 26 to \$80,000 was the range for the initial
3 requirements possibly including replacing the
4 standpipe, correct?

5 A. Most of that would be the standpipe.

6 Q. And then what -- do you have any idea or
7 opinion as to what additional work may need to be
8 done after the additional evaluations that you
9 described, how much those would cost? Do you have
10 any idea -- yeah, I'll repeat the question. I'm
11 sorry.

12 Do you know how much -- do you have any
13 idea or estimate as to how much the additional work
14 that may be required after these first
15 recommendations were done, how much that additional
16 work would cost? Do you have any idea?

17 A. I'm gonna have to have clarification on
18 that. Are you asking me how much additional work
19 would be done after meters would be installed?

20 Q. Correct.

21 A. Again, I would have to -- I don't think
22 this is that simple. I would have to go ahead and
23 kind of pencil out what I expected after that had
24 occurred. But the point is, I've got to have meters
25 before I even entertain looking at that issue.

1 Q. Right. I understand -- I understand
2 your -- your -- that you want to have meters. But my
3 question is this: You testified earlier that the
4 first recommendations that were made in the 2005 case
5 were preliminary; is that correct?

6 A. Restate your question.

7 Q. The recommendations contained in your
8 memo, Exhibit 53 that we submitted earlier and
9 contained in the 2005 rate case --

10 A. Yes.

11 Q. -- you testified earlier that those were
12 preliminary, correct? Let me clarify. Strike that
13 question. You testified that more recommendations
14 would need to be made, correct, to fix the system?

15 A. Further evaluation would be needed once
16 you've put meters in place and you've gotten some
17 kind of handle on how much flow is coming from the --
18 coming through the system, how much is coming in and
19 how much is going out.

20 That piece of information is so
21 fundamental to running this system, that I wouldn't
22 expect anybody to want to fuss with this thing until
23 you get that piece of information; not even -- I
24 wouldn't expect an engineer to suggest that he's
25 gonna do a study for your system if you don't first

1 nail down what the flow is through the system.

2 Q. Okay. Thank you. Let me be a little
3 more clear on my question, though. I understood your
4 testimony to be that there would be more work that
5 would need to be done to get this system to be a good
6 system other than what was in the Unanimous
7 Disposition Agreement and the memo that you drafted,
8 Exhibit 53; is that correct?

9 A. I think the proper way to say it is
10 there would be -- need to be further evaluation once
11 you've done some of this fundamental work because
12 then you would be able to make a decision in terms of
13 what improvement I might want to put in the place,
14 how much is it gonna cost and what is the effect
15 gonna be on the -- on the service provided and on the
16 customer.

17 It's clear to me that you would have to
18 do further evaluation. You're not going to look at
19 this system as it sits today and come up with a
20 conclusion of just how everything should be. It
21 isn't gonna happen. You've got to put the meters in
22 place, you've got to be able to get some fundamental
23 information about the system in order to make any
24 kind of sound evaluation, much less some
25 recommendation about what needs to be done.

1 Q. And you can't make any -- you don't have
2 any idea what that may be after inspecting it 12
3 times over 15 years or 17 years and -- and stating
4 here in court earlier that it was in just such a
5 terrible shape, you have no idea what those may be?

6 A. Perhaps I need to repeat myself again.

7 Q. Okay.

8 A. I made those inspections. I need to
9 know what the flow is through the system. I have to
10 have that information in order to do further
11 evaluation.

12 Q. Okay. So your testimony now is that --
13 let me ask you, after all the testimony that you've
14 given about how deplorable this system is and how
15 it's deteriorated, the only thing you can tell me
16 right now is that it needs meters?

17 A. I have to know what the flow is through
18 the system in order to make further sound evaluation
19 so that I can honestly talk to both the owner and the
20 customer and say, here's what we need to do.

21 Q. You stated earlier that Gordon owned
22 most of the system or some of the system until 2004.
23 Do you have any basis for making that statement?

24 A. Yes. And I can't give you specific
25 dates of when I have talked to Mr. Burnam over the

1 last 20 years or whatever it's been, 27 years. Over
2 the years I've talked to Mr. Burnam, I've talked to
3 Mike Burnam, I've talked to another one of his sons.
4 Somewhere in there I think I met Bonnie at one point
5 when I was trying to be able to look at records for
6 the company and trying to get a plan of the system.

7 But in the context of that, it became
8 quite apparent to me that when I had asked Mr. Burnam
9 that if you need improvements on this system, let's
10 get them done, let's get the records of how much it
11 cost and let's put them into the rates, and I know
12 very well that I told him that.

13 And I had the realization that here I'm
14 trying to convince Mr. Burnam to do this and he's
15 gonna have to pay over half of the bill for any rate
16 increase because he owns more than half of the
17 property. He owned the four-plexes and the duplexes.

18 Now, my understanding of this actually
19 didn't -- I mean, in terms of me knowing that there's
20 duplexes and four-plexes out there, that preceded
21 1989. I knew that that development was out there.

22 Q. You came to the realization, but did you
23 have any evidence that Mr. Burnam had not sold all of
24 the apartments and duplexes, et cetera, in 1986? Do
25 you have any evidence that he didn't do that?

1 A. In 1986?

2 Q. Correct.

3 A. No, in 1986 I had no evidence of that
4 because I hadn't talked to Mr. Burnam by 1986.

5 Q. Do you have any evidence now that he did
6 not sell all the apartments and duplexes in 1986?

7 A. I don't have a very specific
8 understanding in terms of how he might have managed
9 that property and what type of corporate setup he
10 might have used.

11 Q. I'm sorry. Let me -- let me rephrase
12 it. Yes or no, please, in answer to this question:
13 Do you have any evidence now that Mr. Burnam did not
14 sell all the apartments and duplexes out there in
15 1986, yes or no?

16 A. No.

17 Q. Thank you. One other thing I wanted to
18 clarify. Ms. Baker in her cross-examination
19 mentioned the deterioration of the system. There
20 were also some improvements to the system in the last
21 two years; is that correct?

22 A. Improvements in the last two years?

23 Q. Yeah.

24 A. Yes, there were.

25 Q. And specifically the well and the well

1 house, I think you mentioned, had been improved in
2 the last couple years?

3 A. The well house was in a more sanitary
4 condition since my previous look at it, and the pump
5 in the well had been pulled and reinstalled and, you
6 know, put back in service.

7 Q. Now, back to the 2005 case, I'm gonna
8 point you to Exhibit 55. Yeah, you've got that in
9 front of you there.

10 A. Yes.

11 Q. And ask you to turn, please, to the
12 Unanimous Disposition Agreement. It's the seventh or
13 eighth page.

14 A. Yes.

15 Q. Specifically page 3 of 5 of that
16 agreement.

17 A. Yes.

18 Q. And am I correct that -- that you
19 recommended the paragraph that we've been referring
20 to as paragraph No. 10?

21 A. "That the company will install meters
22 for all buildings no later than August 31st, 2005,"
23 yes.

24 Q. Yes, that paragraph.

25 A. Yes.

1 Q. And that was your recommendation?

2 A. Yes.

3 Q. And how do you understand the word --

4 what do you understand the word "buildings" to mean?

5 Does that mean --

6 A. One -- one structure with a common roof.

7 Q. Okay. So a building would be a single

8 four-plex or a single duplex or a single-family

9 residence, correct?

10 A. Yes.

11 Q. The paragraph right below that, we've

12 been referring to that as paragraph No. 11, but it

13 says, "The company will implement a ten-year

14 replacement program for existing meters." Was that

15 your recommendation?

16 A. Yes.

17 Q. And --

18 A. It may have been made in conjunction

19 with other people giving some input to it, but yes.

20 Q. Okay. Does the phrase "ten-year

21 replacement program," does that have a definition,

22 official definition?

23 A. I can't quote exactly, and I'm -- and

24 I'm -- I don't remember it that way. I just know

25 that there is such a thing as a ten-year replacement

1 program, and what that means is you're going to
2 either put a new meter in place every ten years or
3 you're going to at least verify the functionality of
4 the meter that you're using, and you're gonna do that
5 at least every ten years.

6 Q. But you're not -- you're not aware of a
7 Commission rule that defines ten-year replacement
8 program?

9 A. I can't -- I can't quote it right now,
10 but I'm sure that I -- yes, there is one.

11 Q. Is there rule -- there is a rule that
12 requires replacement of meters every ten years?

13 A. I would have to go back and look at that
14 rule to -- and have it in front of me to -- to say
15 what -- what my opinion of that was in terms of
16 whether -- I don't -- I don't know the wording. I
17 don't have it in front of me.

18 Q. Of the rule, is that what you're saying?

19 A. I don't have the rule in front of me,
20 no.

21 Q. So without the rule in front of you, you
22 can't say whether or not it requires replacement of
23 meters every ten years; is that correct?

24 MS. SYLER BRUEGGEMANN: Your Honor, I'm
25 gonna object. He's asked and answered the question

1 twice.

2 MR. VOLKERT: Okay. I'll withdraw.

3 BY MR. VOLKERT:

4 Q. When you testified earlier, is it
5 correct that you stated that you need to get meters
6 that are not working replaced first; is that correct?

7 A. Correct.

8 Q. And so if a company adopted a policy to
9 replace meters on an as-needed basis, would that
10 satisfy that typical requirement?

11 A. As long as it's done at least -- as long
12 as there's either a new meter in place every ten
13 years and -- or the meter that is in place is tested
14 for its functionality.

15 Q. Another thing I believe you testified to
16 is that you needed to list the meters on a piece of
17 paper; is that correct?

18 A. You need a -- a written itemization of
19 the meters, yes.

20 Q. And that's required in a ten-year
21 replacement program for existing meters?

22 A. That would be part of your continuing
23 property records.

24 Q. Oh, a list of meters is part of the
25 continuing property records or part of the ten-year

1 meter replacement program?

2 A. It serves both purposes.

3 Q. But is a piece of paper listing the
4 meters required to comply with or to implement a
5 ten-year replacement program?

6 A. You need some record. It can be an
7 electronic record if need be. It needs to be
8 something other than a vague memory of when something
9 was done.

10 Q. Can you tell me this paragraph, what
11 we've been referring to as paragraph 11, does it
12 state that you need a list or a piece of paper in
13 that paragraph?

14 A. The paragraph doesn't delineate and
15 doesn't give the definition of a ten-year replacement
16 program.

17 Q. Yeah, but I asked, Mr. Hummel, does it
18 state in that paragraph that you need to have meters
19 listed on a piece of paper?

20 A. No.

21 Q. Okay. Do you believe that a ten-year
22 replacement program requires replacing 10 percent of
23 your meters every year?

24 A. It requires either replacing 10 percent
25 every year or verifying the functionality of the

1 meters every ten years.

2 Q. The next paragraph, paragraph No. 12,
3 Mr. Hummel, would you please look at that one.

4 A. Yes.

5 Q. Does paragraph No. 12 state any
6 deadline?

7 A. No, it does not.

8 Q. Next paragraph, No. 13, Mr. Hummel, does
9 that state any deadline?

10 A. No.

11 Q. Next paragraph, Mr. Hummel, No. 14, does
12 that state any deadline?

13 A. With all three of those, it's expected
14 by the Staff that the company will simply do what is
15 prudent.

16 Q. And just so I recall, did you testify
17 yesterday that it would take approximately, you
18 think, six weeks for Suburban to get a certified
19 water operator; is that correct?

20 A. I think that's what I stated. There was
21 a condition on that statement.

22 Q. Oh, okay.

23 A. The system has to have flush valves and
24 meters in order for it to be attractive to a
25 certified operator; otherwise, you're not ever gonna

1 get a certified operator.

2 Q. So are you testifying, then, that
3 Suburban would have to install the meters and flush
4 valves first and then hire a certified water
5 operator?

6 A. I'm certifying -- I'm saying that that
7 operator has to know that the system will be operable
8 if he's asked to operate it. And in order to do so,
9 he's gonna have to have some confidence that certain
10 improvements would be allowed.

11 Q. I'm gonna hand you what's been
12 previously marked as Exhibit 57. Have you ever seen
13 this before, Mr. Hummel?

14 A. I don't recall ever seeing it before.

15 Q. And in paragraph No. 2, would you please
16 read the paragraph No. 2, the one that's underneath
17 "reason for extension."

18 A. Yes, I'll read it. Okay, I have read
19 it.

20 Q. Do you have any recollection as to why
21 the Staff and Suburban ultimately went ahead and
22 finalized the agreement without waiting to get a
23 certified operator?

24 A. No.

25 Q. Yesterday -- and again, feel free to

1 correct me if I'm mischaracterizing, Mr. Hummel,
2 because I'm not trying to put words in your mouth.
3 Yesterday I believe you testified that the length of
4 time it may take for Suburban to get certain things
5 done depends on the level of management and other
6 factors; is that correct?

7 A. Yes.

8 Q. Is one of those factors the net income
9 of the company?

10 A. The net income of Suburban Water
11 Company?

12 Q. Right.

13 A. That is a factor and it might affect
14 both ways. I mean, you might look at the net income
15 and realize that if you don't get these improvements
16 made, that net income is gonna become even less.

17 So you might decide that that net income
18 is too low, therefore, I better go get some financing
19 and get the job done in order to be able to correct
20 my problem with my net income.

21 MR. VOLKERT: If I may, your Honor,
22 approach the witness.

23 BY MR. VOLKERT:

24 Q. And I'm just gonna show you a page,
25 Mr. Hummel, out of Exhibit No. 55. You can hand me

1 that big exhibit, please.

2 A. (Witness complied.)

3 Q. Thank you. Mr. Hummel, I'm pointing you
4 to schedule 1 which is an accounting schedule
5 attached to the Unanimous Disposition Agreement. Are
6 you aware that Suburban's net operating income is
7 only \$1,570?

8 MS. BAKER: I'm sorry. Which page are
9 you on?

10 MR. VOLKERT: I'm sorry, Christina.
11 It's the first schedule. Yeah, the one that you've
12 already got turned to.

13 THE WITNESS: I have not specifically
14 concerned myself with that particular number.

15 BY MR. VOLKERT:

16 Q. Were you aware of it?

17 A. In what context?

18 Q. Oh, I'm just -- no context. Were you
19 aware that Suburban's net income for this 2005
20 agreement was only \$1,570 a year?

21 A. No.

22 Q. After the 2005 agreement, when was your
23 next inspection of Suburban Water and Sewer Company?

24 A. I can't remember the date off the cuff.
25 It was 2007.

1 Q. This year. What month of this year,
2 Mr. Hummel?

3 A. I think it was May.

4 Q. May of 2007? So the 12 inspections that
5 you referred to, those were all before 2005?

6 A. Probably, and the reference was
7 approximately 12 inspections.

8 Q. I'm sorry, yeah.

9 A. I don't know how many I've really done.

10 Q. If these -- if this company was in such
11 an awful shape --

12 A. Uh-huh.

13 Q. -- and if the recommendations in the
14 2005 agreement were supposed to be followed up with
15 additional evaluations, why didn't you go back after
16 2005 until this -- until this year, until May 2007?

17 A. When I had done the evaluation in 2005,
18 the company had contracted with an engineering firm,
19 and a party to that engineering firm was there when
20 we were making the inspection. And there was quite a
21 bit of emphasis made on looking at the situation with
22 the meters.

23 And when I was finished with that in
24 2005, it was my understanding that the company would
25 put meters in place, and I -- as far -- I wasn't tied

1 to -- that the company just had to get everything
2 done immediately. I -- but I left there with the
3 confidence that they were going to have meters in
4 place and they would -- gonna take the steps
5 necessary to be able to get to the point where they
6 can make sound judgment about what to do next on this
7 system.

8 Now, I don't know what else to say
9 except that I didn't feel it was necessary to make
10 that follow-up in combination with other work that I
11 had to get done, when I know that the company has
12 contracted with an engineering firm to look at these
13 items, and I also know that the Department of Natural
14 Resources is gonna -- is going by and making an
15 inspection, if I understood correctly.

16 And I'm not necessarily wanting to just
17 make one more inspection and take up more of the
18 company's time with the process either. So all of
19 that kind of comes into play, those combination of
20 things.

21 Q. Well, why would you have confidence that
22 things were going to get done when apparently the
23 ten -- however many years before that, the company
24 had been operated in a terrible, deplorable
25 condition?

1 A. The ten -- the previous years -- the
2 conditions that you're seeing there now didn't --
3 they weren't precipitous. It took time and it
4 gradually became a mess, if you will. The condition
5 that you see in the meters didn't happen in a
6 precipitous fashion all in just a couple of months;
7 it was a very gradual process.

8 And as a matter of fact, there's a lot
9 of our companies, I wouldn't be out there
10 necessarily -- I wouldn't necessarily think there was
11 a problem with a company taking care of their meters.
12 It's not something that is normally a problem with
13 companies.

14 I mean, if the company -- the meters are
15 the cash register for the company. If -- you know,
16 you talked about the ten-year replacement program.
17 Duh, if the meter isn't working, you're not measuring
18 the water that you're selling. It's not normally
19 something that we have to push real hard to get
20 people to take care of their meters.

21 Q. So in 2005, what else, other than meters
22 and flush valves, did you want -- and the ten-year
23 replacement program, did you want done to this
24 company?

25 A. I'm sure in 2005 -- and I'm sure it's in

1 the record if you want to read it, but I'll try to
2 repeat it again. I had to have meters so I know how
3 much water's coming in and going out of this system,
4 I had to have a -- some kind of sound as-built plan
5 in order to make further evaluation of the system, I
6 had to have flush valves on the system in order to be
7 able to have a chance of delivering clean water to
8 the customers and I had to have the meters.

9 Now, if I went back and looked at the
10 record, maybe I'd find something else that I'd
11 include in that, but you're asking me to repeat it
12 again, so I did.

13 Q. Okay. Other than those things, were
14 there anything material in this 2005 agreement for
15 providing safe and adequate water service?

16 A. I'm -- I would have to go back and look
17 at that to be very definitive in my answer on that.
18 I just -- and if you're looking at the Disposition
19 Agreement that came out of the rate case, I wasn't
20 the -- it doesn't include only items that have to do
21 with the physical plant and the operation of that
22 plant.

23 JUDGE LANE: Excuse me for interrupting.
24 I need to take about a two-minute break.

25 (A RECESS WAS TAKEN.)

1 JUDGE LANE: All right. We are back.

2 BY MR. VOLKERT:

3 Q. We talked about inspections, but since
4 the 2005 agreement, did you ever have any contact or
5 discussions with Suburban?

6 A. Since 2005 till today?

7 Q. Well, I'm sorry. Till May of 2007 when
8 you did your latest inspection.

9 A. I -- I really didn't have any
10 discussions there with Suburban until either the May
11 inspection or at least perhaps the -- one of the
12 meetings with the Consolidated Public Water Supply
13 District No. 1. It was one of those meetings that
14 both Paula and Gordon were at so that -- and that
15 preceded the May inspection.

16 Q. So you never demanded or requested or
17 even asked about compliance with the 2005 agreement
18 to Suburban after 2005 before spring of 2007?

19 A. No, I did not go back and review where
20 he was at on that process.

21 Q. I'd like to show you an exhibit which
22 has been previously admitted No. 58. Have you ever
23 seen this letter before?

24 A. No, I have not.

25 Q. Would it be typical for the Staff to

1 make you aware of changes to the physical plant or
2 correspondence from a company that you inspect?

3 A. I don't know if it would necessarily be
4 typical. I'm not sure -- I mean, there are --
5 there's correspondence that comes in -- comes in on
6 various companies that I have inspected that may not
7 be brought to my attention unless there's something
8 in it that triggers whoever has it to say, Martin
9 needs to see this.

10 Q. Would you expect to be notified if a
11 company that you're responsible for installs a new
12 well -- or I'm sorry -- installs a new well pump?

13 A. There are -- there are companies that I
14 have inspected that have a well pump pulled and
15 replaced that I don't find out about until some time
16 later. It's no -- it's not routine necessarily that
17 somebody would route this to me. I mean, in some
18 cases it may be other people also working with this
19 company, but, you know, it's not routine necessarily
20 that they would route this to me.

21 Q. I'm gonna point you to the first
22 paragraph of this letter, Exhibit 58. Have you ever
23 seen the document referenced there, the copy --
24 compliance and operation inspection report from the
25 DNR?

1 A. Repeat that. I'm having trouble
2 following.

3 Q. I'm sorry. In the first paragraph it
4 refers to a compliance and operation inspection
5 report, correct?

6 A. Yes.

7 Q. Did you ever see that report? Have you
8 ever seen that report?

9 A. I've seen different reports from the
10 Department of Natural Resources on this system and
11 I'm -- you'd almost have to put a date on it to be
12 very specific. I mean, there's a good chance that I
13 have looked at that report.

14 Q. Do you recall looking at that -- looking
15 at a DNR report in 2006 relating to Suburban?

16 A. No, I -- I don't recall specifically
17 looking at a report in 2006.

18 Q. Is that something that the Staff would
19 typically forward to you for a company that you're
20 responsible for, a DNR report?

21 A. It's not an exact thing, but there would
22 be a fair chance that they would -- they might route
23 it to me or they might put it in that particular file
24 that I -- where I would see it the next time I was --
25 had occasion to have to deal with that company.

1 It's -- it's kind of -- it's not a very definite
2 thing.

3 Q. Does the Staff review DNR reports
4 submitted on companies under their jurisdiction?

5 A. They definitely look at them, yes.
6 It's -- it's not one of those items where we have
7 some standard procedure to make sure that we've
8 gotten this DNR report reviewed within some time
9 frame or some such thing like that. It's more a
10 question of we -- of we're happy to get some --
11 some -- some -- we're happy to be copied on that
12 report.

13 And we -- we will look at that kind of
14 information, and then we're gonna take that into
15 account with whatever we're working on, whether it's
16 your rate case or whether it's the prospect of doing
17 another inspection or what have you. We're gonna
18 factor that into the overall picture if we have the
19 information.

20 Q. Do you know if the Staff got a DNR -- if
21 another Staff person got another DNR report in 2006
22 on Suburban?

23 A. I don't know specifically. Like I said,
24 it's not a -- it's not a very formal process in terms
25 of a DNR inspection report coming in. There's some

1 variation depending on what regional office with DNR
2 in terms of how this is handled. It's -- it's
3 informal, I guess, would be the proper way to say it.

4 I mean, there are some of these
5 inspection reports that they may not give us a copy
6 on, not -- not because they're trying to keep it from
7 us, but just because the person that's actually
8 writing the report has to remember, oh, I want to
9 send a copy to Public Service Commission.

10 Q. Whose job is it at the Staff -- let me
11 take a step back. Strike that. Let me start over
12 again. If the DNR does send you a report on a
13 company that's under your jurisdiction --

14 A. Yes.

15 Q. -- or a company does send you evidence
16 that they've made some sort of a plant improvement or
17 similar work, whose job is it to look at that and
18 decide whether or not it merits a response or there's
19 a -- there's an item of concern noted in the -- in
20 the -- in the materials that were submitted? Whose
21 job is it on the Staff?

22 A. I'm gonna have to think about the
23 question a little bit. You're -- a lot of this, if
24 it was simply sent to the water and sewer department,
25 possibly would go to Mr. Johansen in terms of going

1 to his office and placed in his office, but if
2 it's -- if it's clear that it's something, for
3 instance, that I have just been working on, he may
4 just bring it to my attention or he may hand it to me
5 or send me a copy. It's not a real formal process
6 necessarily.

7 And when something like this comes
8 through, you've got to understand, it comes through
9 in the context of a lot of other things going on, and
10 it has to -- just because it comes in doesn't mean we
11 stop what we're doing and take care -- take care of
12 that particular item. It's not a formal process when
13 we're -- we're trying to coordinate with DNR.

14 Q. Is it a formal process that you don't
15 respond to certain letters like this?

16 A. No.

17 Q. I'm gonna point you to the last
18 sentence. Could you please read that out loud into
19 the record.

20 A. "Again, I say let me hook onto Public
21 Water Supply District No. 1, as I am no longer
22 willing or able to subsidize the water system at
23 BonGor Lake Estates."

24 Q. Is there a formal or informal policy
25 that you don't respond to statements like that?

1 A. I am not aware of one particularly. If
2 you're asking me if I --

3 Q. I'm asking you.

4 A. There's -- there's not a -- a policy one
5 way or the other saying specifically on this -- for
6 that statement a policy doesn't come to mind. And of
7 course, what you're doing is, you're asking me about
8 something that I haven't seen, but whatever.

9 If you think about the statement,
10 though, we're not telling the company that they can't
11 hook to the Public Water Supply District. I mean,
12 it's not like he's presenting a statement from the
13 Public Water Supply District No. 1 --

14 Q. But you told --

15 A. Well --

16 Q. -- you told Suburban in 2005 --

17 A. -- let me back up.

18 Q. No, hold up. I'll -- let me ask this
19 question. You told Suburban in 2005 they couldn't
20 hook onto the Public Water Supply District; is that
21 correct?

22 A. No.

23 MS. SYLER BRUEGGEMANN: I object to the
24 word "you" in the --

25 BY MR. VOLKERT:

1 Q. I'm sorry. The Staff in 2005 told
2 Suburban, or the Commission in 2005 told Suburban
3 they couldn't hook onto the Public Water Supply
4 District; is that correct?

5 A. I don't know if I can properly answer
6 that question. We went through a rate case and it
7 was clear from the evidence that we had with regard
8 to the cost of service that the prudent thing you do
9 would be to, at least at that point in time, continue
10 to operate the system using the well that was there,
11 understanding that there are going to be some
12 improvements made to even make getting water from the
13 district a plausible thing.

14 As long as you were going to buy -- you
15 were gonna buy water -- what was being proposed here
16 is that you were gonna buy expensive water from the
17 district without even knowing how much you're gonna
18 just run out on the ground. It does -- that will not
19 work.

20 Q. So you're aware, though, in the 2005
21 rate case that Suburban had asked to hook onto the
22 Public Water Supply District, correct?

23 A. Yes.

24 Q. And you were aware in the 2005 rate case
25 that the Commission refused that request by Suburban,

1 correct?

2 A. Correct.

3 Q. So let me ask you one more question
4 about this last sentence in this letter. If you get
5 a letter -- if the Staff gets a letter from a company
6 under -- that's subject to its regulation asking them
7 to -- asking the Staff to let them do something, is
8 that something that in your opinion merits a
9 response?

10 A. If that's all I have to go by, I would
11 say yes, it merits a response. But I don't know what
12 else was -- I don't know in what context that this is
13 coming in.

14 Q. Okay. In 2007 you said you went out
15 to inspect Suburban in May, is that correct, this
16 year?

17 A. Yes.

18 Q. Did you go out to inspect it relating to
19 the 2005 agreement, relating to its compliance with
20 the 2005 agreement?

21 A. I went out to inspect it to see what the
22 status of the physical facility was and try to
23 understand the operation and what improvements would
24 be needed. And it's not necessarily just specific to
25 the 2005 agreement; it's in the context that I work

1 for the water and sewer department and we were
2 responsible for looking at these systems and --

3 Q. But at the time did you know -- did you
4 know that there was an issue of possible compliance
5 with the 2005 agreement?

6 A. I don't think I was exactly sure at
7 that -- I didn't have in my mind that those items
8 were all listed in the 2005 agreement exactly. I had
9 to remind myself of that, and I'm not sure when I
10 went back and looked at that relative to when I was
11 making that inspection. I don't remember if I went
12 back and reviewed that before the inspection or after
13 the inspection. I don't remember exactly.

14 Q. When did you first, then, look at the
15 2005 agreement to determine whether or not there was
16 a compliance issue after 2005, of course?

17 A. I can't -- I can't really say. I mean,
18 that wasn't -- my concern here wasn't just hinged on
19 a 2005 agreement. My concern with looking at this
20 system is where do I stand in terms of being able to
21 deliver safe and adequate service to these customers.

22 Regardless of any agreements, I still
23 have to understand what's going on with this physical
24 plant, what's going on with the service, and at the
25 time of an -- the inspection, I'm not concerning

1 myself with that agreement per se; I'm looking at the
2 facilities.

3 Now, to the extent that past
4 correspondence, agreement or otherwise reminds me of
5 where things were in the past and clues me in on what
6 to look for, I would have observed that, and I may
7 have -- I probably wouldn't have just looked at only
8 an agreement that had been done in the past; I would
9 have looked at other information to try to prepare
10 myself for doing an inspection of the system.

11 Q. Right. But to the best of your
12 recollection, when did you first look at that 2005
13 agreement after 2005?

14 A. It was after the letter threatening to
15 shut off service to the customers went out. And
16 after I was aware of that, obviously that got my
17 attention as it did a number of other person --
18 people's attention.

19 Q. So can you give me a month --

20 A. And at that point --

21 Q. -- April, May --

22 A. What?

23 Q. I'm sorry to interrupt. Go ahead and
24 finish.

25 A. Well, this all happens in context of

1 other work that's going on, so I can't say precisely
2 when I would have gone back and looked at that
3 agreement. But it was -- I mean, as we're discussing
4 this, some of this is helping my memory a little bit
5 because I know when that -- when the letter went out,
6 that caught everybody's attention obviously.

7 Q. Uh-huh.

8 A. And then as time permitted, I would have
9 looked at information with regard to Suburban. And
10 there was a point where after -- by the time I went
11 to one of the meetings with Consolidated Public Water
12 Supply District or somewhere close to that, I had
13 become aware of what was in that agreement. So it
14 was -- it would have been prior to my actual
15 inspection.

16 Q. So when -- at the time of your actual
17 inspection and subsequent discussions with the
18 company, you were aware of possible violations of the
19 2005 agreement; is that correct?

20 A. By the time I was making that
21 inspection, I would have been aware of lack of
22 compliance with what was in that agreement, yes.

23 Q. Did you bring this to the -- to the
24 attention of the company?

25 A. I had -- after one of those meetings

1 since I was proximate to the situation there in
2 Columbia, since I didn't have to drive very far, I
3 thought it was a good use of my time to see what I
4 could learn by checking in with the company.

5 And I was particularly concerned about
6 where things were at with regard to meter
7 installation because I knew that Mr. Burnam wanted to
8 be out of the business, and I knew that I could not
9 help Mr. Burnam, I couldn't help the district, I
10 couldn't help anybody to be able to make a change to
11 this water service if I didn't get the meters in
12 place.

13 Q. Okay. That's all very interesting, but
14 let me restate my question just so you can understand
15 what the question was.

16 A. Okay.

17 Q. After you -- when you talked to the
18 company after you looked at the 2005 agreement, did
19 you ask -- did you mention it to them?

20 A. So then in the context that I just
21 explained, I went to their office. This was
22 unplanned. I think Paula may have been at the
23 meeting, so I thought, well, then, there's a good
24 chance she'll be at the office and I'd take my
25 chances to see if I could learn anything.

1 And I was specifically thinking about
2 meters; I wasn't thinking about Disposition Agreement
3 or anything, I was thinking about meters. And I went
4 to the office and talked to Paula a little bit, and
5 she said, "Well, Gordon is not very far away from
6 here, so if you don't mind, let me see if I can call
7 him." And she called Gordon and Gordon was not very
8 far, and I waited and Gordon came to the office.

9 And Paula and I and Gordon looked at a
10 map of the system, which it was actually a sewer -- a
11 map of the sewer system, and they, both Paula and
12 Gordon, talked to me about where meters were at,
13 because as I explained to them, my concern was trying
14 to get some handle on this whole issue of getting in
15 meters and why -- what's the difficulty? Why are we
16 still here today and not have meters in, and I needed
17 to understand where are there meters, where are there
18 not meters and try to get a handle on this.

19 And they did -- I mean, I appreciated
20 it. They did a good job of trying to help me
21 understand and gave me information about what I
22 presume they conscientiously tried to help me
23 understand where the meters and where are the not
24 meters (sic), and they had the sewer plan that showed
25 the lots and had delineated on there where there were

1 meters and so forth. And that was the focus of my
2 discussion. Now --

3 Q. And they were cooperative --

4 A. -- at that time --

5 Q. Sorry.

6 A. At that time I think there was mention
7 made of what had been previously agreed to -- I don't
8 know that I necessarily would have referred to it as
9 a Disposition Agreement, but I knew that -- I'm
10 pretty confident at that time that I knew that
11 Mr. Burnam had officially agreed to get certain
12 things done.

13 And there was mention made of that, but
14 I didn't want to spend time talking about that. I
15 was trying my darnedest to be focused on what is this
16 issue with the meters and why -- what was the
17 difficulty with getting those in place. And that was
18 the thrust of the discussion. And they did a very
19 good job of -- of, I think, giving me an update on
20 what the status was on the meters at that time.

21 Q. Okay. But -- so let me ask again, at
22 that meeting or after that, did you ever specifically
23 tell Suburban, did you ever bring up the 2005
24 agreement to your recollection, yes or no?

25 A. I think there was some mention made

1 of --

2 MR. VOLKERT: Your Honor, can you please
3 instruct him to answer the question?

4 THE WITNESS: I -- I -- okay, I
5 didn't -- I don't recall whether I would have
6 specifically said Disposition Agreement, understand?

7 BY MR. VOLKERT:

8 Q. Why -- why was a determination made to
9 file a complaint in this case?

10 MS. SYLER BRUEGGEMANN: Objection. That
11 calls for a legal determination, and it's not
12 relevant.

13 BY MR. VOLKERT:

14 Q. Did you -- did you -- were you involved
15 in discussions concerning -- and actually --

16 MR. VOLKERT: Well, let me address
17 that -- let me strike that and address that
18 objection. It is relevant, your Honor, the reason
19 why the complaint was filed in this case. That's
20 what we're talking about is the complaint and whether
21 or not these things are material to Suburban's
22 operations or the safety and adequacy of the water
23 system or whether these are material obligations
24 under the 2005 order, and whether Suburban's
25 compliance is material or, in fact -- compliance is

1 actually very relevant. And so I think the complaint
2 getting into why the complaint was filed, the
3 motivation behind it and -- is very relevant.

4 JUDGE LANE: To the -- to the extent the
5 witness knows what factual -- or what -- what
6 concerns motivated Staff to take action in this case,
7 I think you can answer that.

8 THE WITNESS: Go ahead and repeat the
9 question.

10 BY MR. VOLKERT:

11 Q. Yes. Do you know why Staff determined
12 to file the complaint in this case?

13 A. Not precisely, since it wasn't my
14 decision about whether to file the complaint. But I
15 certainly would have been supportive about thinking
16 what I thought would move this system forward in
17 terms of improving the service and actually getting
18 the system to the point where I could somehow find
19 another owner.

20 Q. I'm gonna show you what's been
21 previously marked as Exhibit 65. Do you recognize
22 this?

23 A. Yes.

24 Q. What is this?

25 A. It's a memo -- well, it's a memo from

1 Ms. Whipple to the water and sewer --

2 MS. SYLER BRUEGGEMANN: At this time I
3 think I need to go ahead and object that since it's
4 from Peggy Whipple, that this is privileged
5 information protected by attorney/client privilege in
6 litigation.

7 MR. VOLKERT: Yeah, if I may respond,
8 your Honor. Two points: First of all, Ms. Whipple
9 was the attorney for the Commission, not the Staff,
10 in the injunction case. She is not an attorney for
11 the Staff at this point in time. She's been
12 representing the Commission, not the Staff.

13 Second of all, the -- this was provided
14 in discovery to us. Therefore, any privilege that
15 may be claimed has been waived.

16 MS. SYLER BRUEGGEMANN: Your Honor, if I
17 can respond?

18 JUDGE LANE: Yes, please.

19 MS. SYLER BRUEGGEMANN: Ms. Whipple was
20 the attorney for Staff at one time at the beginning
21 of this complaint case. Further, we made objections
22 and filed them in this case to anything including
23 attorney/client privilege, so if this was mistakenly
24 released in discovery, then so be it, it was
25 mistakenly released. It was not -- it has not been

1 waived. And in those objections I believe it said we
2 do not waive attorney/client privilege. So I would
3 continue to object.

4 MR. VOLKERT: One more response, your
5 Honor, and that is that objections typically -- to
6 withhold information, when you provide it, I think it
7 is, in fact, waived. You can't give all sorts of
8 information and reserve all your objections to trial
9 like this. Once they've disclosed it, the physical
10 delivery of this to us, its intended recipient, I
11 might add, is, in fact, an affirmative waiver of the
12 privilege notwithstanding some paper objections that
13 they filed in a separate document earlier on.

14 JUDGE LANE: All right. Let's take a
15 look at the objections that were made in the
16 discovery on -- that relate to the attorney/client
17 issue, because I want to see if there has been
18 intentional -- intentional waiver here, and see if
19 the information was produced subject to them raising
20 those defenses if the evidence was attempted to be
21 used at trial.

22 MS. SYLER BRUEGGEMANN: And for ease,
23 your Honor, in EFIS, I believe the objections filed
24 to Suburban's first request for production of
25 documents is under No. 60 on the docket sheet.

1 JUDGE LANE: All right.

2 MS. SYLER BRUEGGEMANN: And the
3 objections and responses to interrogatories was
4 No. 59 on the docket sheet.

5 JUDGE LANE: All right. Just a moment.
6 All right. And what were those numbers again? I'm
7 sorry.

8 MS. SYLER BRUEGGEMANN: Docket No. 59
9 for interrogatories, docket No. 60 for production of
10 documents and probably 60 (sic). I'm looking at both
11 to make sure.

12 JUDGE LANE: This -- this document was
13 produced pursuant to their request for production of
14 documents?

15 MS. SYLER BRUEGGEMANN: Yes, your Honor.

16 JUDGE LANE: All right. And the
17 objections --

18 MS. SYLER BRUEGGEMANN: And your Honor,
19 in the production of documents there is first on the
20 first page a general objection as No. 1 that lists
21 that, "To the extent that the information requested
22 or its details are protected by and subject to
23 privileges including attorney/client or other
24 applicable privileges," that's one of the objections.

25 JUDGE LANE: Uh-huh.

1 MS. SYLER BRUEGGEMANN: "And object on
2 the basis of requesting attorney work product,
3 including attorney opinion, mental processes,
4 conclusions and legal theories or other
5 nondiscoverable information prepared for trial or in
6 anticipation of litigation. To illustrate,
7 Respondent's definition of the words 'you' or 'yours'
8 specifically includes all of its employees, agents,
9 officers, attorneys, including the General Counsel."

10 Then if you turn to specific objections
11 and under No. 3, their request "Any and all
12 correspondence in any form between you," also
13 including that definition, "and Suburban at any time
14 concerning the subject matter and allegations of the
15 complaint."

16 The bottom part of our response says,
17 "Without waiving said objections and expressly
18 preserving same, Staff provides the attached
19 documentation."

20 JUDGE LANE: Your response?

21 MR. VOLKERT: My response, your Honor,
22 is that that is a general filing, and again, the
23 purpose of those filings are to raise general
24 objections for documents you're not producing. The
25 actual production of a document is an affirmative and

1 knowing and intentional waiver, and the privilege,
2 specifically the attorney/client privilege, can be
3 waived even by unintentional disclosures.

4 If you talk to somebody where the
5 attorney's not present or if you disclose a
6 communication to someone other than your attorney,
7 it's waived. There's no saying, but I'm gonna
8 disclose this subject to an objection. It's waived,
9 it's done. So that's my response.

10 JUDGE LANE: The objection is sustained.
11 The information is protected by work product
12 privilege as well without waiving those objections.

13 BY MR. VOLKERT:

14 Q. Mr. Hummel, was one of the basis --
15 bases for filing this complaint to use it as leverage
16 over Suburban?

17 A. I don't know.

18 Q. You don't know. Was there a -- did you
19 intentionally not disclose violations of the 2005
20 agreement to Suburban at any time?

21 A. No.

22 MR. VOLKERT: Nothing further, your
23 Honor.

24 JUDGE LANE: Thank you very much. That
25 concludes the cross-examination of this witness.

1 Commissioner Gaw may have some questions, so just a
2 moment, please.

3 All right. There will be no
4 Commissioner questions because Commissioner Gaw
5 actually popped across the hall to be in another
6 hearing that's being conducted at this very moment.
7 So let's see. Redirect from Staff?

8 MS. SYLER BRUEGGEMANN: Nothing further.

9 JUDGE LANE: All right. I guess there
10 will be no recross, then. In that case, this witness
11 may be excused and I would presume he could be
12 finally excused. Thank you very much.

13 THE WITNESS: Thank you.

14 JUDGE LANE: Staff would call its next
15 witness.

16 MR. REED: Dale Johansen.

17 JUDGE LANE: Mr. Harrison, what was the
18 exhibit number on the e-mail?

19 MR. HARRISON: 65.

20 JUDGE LANE: 65, thank you.

21 Mr. Johansen, would you please spell your name for
22 the reporter.

23 THE WITNESS: I'm sorry. It's Dale
24 Johansen, J-o-h-a-n-s-e-n.

25 JUDGE LANE: And if you would please

1 raise your right hand to be sworn.

2 (THE WITNESS WAS SWORN.)

3 JUDGE LANE: Thank you very much.

4 Direct examination, Mr. Reed.

5 MR. REED: Thank you, Judge.

6 DIRECT EXAMINATION BY MR. REED:

7 Q. Mr. Johansen, what's your occupation?

8 A. I'm the manager of the Public Service
9 Commission's water and sewer department.

10 Q. How long have you held that position?

11 A. Just a little over 12 years.

12 Q. What did you do before that?

13 A. I worked for Missouri One Call System
14 for about two years, I did some consulting work for
15 about a year and a half, and prior to that time I was
16 employed here at the Commission in various positions
17 for about 13 years.

18 Q. Have you always worked with water and
19 sewer companies?

20 A. No. My initial work here at the
21 Commission was in the pipeline safety program, the
22 natural gas pipeline safety program. I also worked
23 as a case coordinator for the utility division. I
24 was also the director of the utility services
25 division for a while. And then as I mentioned, when

1 I left the Commission, I went with Missouri One Call
2 for a couple of years, did some consulting work and
3 then came back.

4 Q. You've been working with water and sewer
5 companies for 12 years now, though?

6 A. Yes.

7 Q. Over the years I would think you've
8 worked with many small water and sewer companies?

9 A. The vast majority of the work that we do
10 is with small companies.

11 Q. Are you familiar with how small water
12 companies operate?

13 A. Generally, yes.

14 Q. Are you familiar with how they set rates
15 or how rates are set, rather?

16 A. Yes.

17 Q. Mr. Johansen, why is it important for a
18 water company to have a continuous property records
19 system?

20 A. Well, one of the main reasons is that
21 that's a basic document that gives an overview of the
22 system itself of the various components that make up
23 the system. It also provides the company with the
24 information that they need in order -- and the Staff
25 needs, quite honestly, in order to be able to

1 evaluate the ratemaking value of the property that
2 they have in service for purposes of determining the
3 company's rate base, for purposes of determining the
4 company's net plant values for depreciation expense
5 purposes, for example. It's just a basic operating
6 document that they need to have.

7 Q. Have you seen the property record system
8 prepared by Suburban Water Company's attorneys in
9 June of 2007?

10 A. Yes, I saw that during my deposition.

11 Q. Is that sufficient for the Staff here to
12 utilize to begin and end a rate case?

13 A. No, it's not.

14 Q. How long, in your experience, would it
15 take for a small water company to prepare an
16 appropriate continuous property records system?

17 A. Oh, I would think they should be able to
18 do that based on their records that they have easily
19 within a three- to six-month time period.

20 Q. We've heard quite a bit of discussion,
21 Mr. Johansen, about meters and why they're needed on
22 buildings. You've been present during the entire
23 hearing or most of it, have you not?

24 A. Most of it, yes.

25 Q. Is there anything that you as the

1 manager of the water and sewer department need to
2 add, feel that you need to add to the discussion
3 about meters and their importance?

4 A. I don't believe so. I think Mr. Hummel
5 covered that issue very well. I would just reiterate
6 that it's -- it's one of the basic pieces of
7 equipment that -- particularly if you have a system
8 that's partially metered and partially unmetered.
9 It's even more important to ensure that you have the
10 whole system metered.

11 But I think Mr. Hummel has discussed
12 that very well in his testimony regarding the reasons
13 that you do, in fact, need to do that.

14 Q. You -- are you familiar with the
15 Commission's rule on checking and replacing meters?

16 A. Yes.

17 Q. What rule number is that?

18 A. It's in Chapter 10 of the Commission's
19 rules. I believe it's 10.030. Section 37 of that
20 rule sets out the accuracy standards that meters have
21 to meet. Section 38 of that rule talks about how
22 often meters need to be removed and tested, and it's
23 based on various sizes of meters.

24 Q. The -- without doing so, just answer
25 this question yes or no, if you can. If I ask you to

1 explain how that rule regarding replacement of meters
2 works, you could do that, could you not?

3 A. I could.

4 Q. And you're familiar with the Disposition
5 Agreement that we've been talking about since
6 yesterday about the -- the -- about implementing --
7 about Suburban implementing a ten-year replacement
8 program for existing meters, are you not?

9 A. Yes.

10 Q. Is there a difference between that
11 provision in the Disposition Agreement and the rule?

12 A. From a practical standpoint, there is
13 not.

14 Q. What's your understanding of
15 implementing a ten-year replacement program for
16 Suburban Water and Sewer Company?

17 A. Well, basically, they need a systematic
18 program whereby they are evaluating the accuracy of
19 their meters as provided for in the rule on a -- on a
20 ten-year cycle, if you will. And I think one thing
21 that has not been brought out about that from a
22 practical standpoint is, if you -- if you remove your
23 meters to test them, you are putting another meter in
24 place of that meter you're removing to test. So you
25 are, in fact, replacing it.

1 The meter that's removed can be tested.
2 Under the rule, it is -- technically it would be
3 required for you to test that. What we have done
4 with our smaller companies, basically, is in lieu of
5 requiring them to do those tests, is if they will
6 agree to a -- just a straight replacement program,
7 we've considered that to be compliant with the rule.

8 And the reason we have done that and the
9 reason we actually encourage our companies to do it
10 that way rather than go the testing route, is that
11 the fact that they don't have their own test
12 equipment available, there's a lot of expense related
13 to finding a facility that's available to test
14 meters.

15 You've got shipping expenses to and from
16 the facility, you have the actual cost of the test,
17 and based on the cost of meters, it simply comes down
18 to the fact it is more economic to replace the meter
19 on a ten-year cycle rather than it is to test them.

20 Q. Mr. Johansen, we've heard quite a bit of
21 evidence about flush valves in this case also from
22 Mr. Baker from the Department of National Resources
23 and also from Mr. Hummel. You've heard that
24 testimony?

25 A. I have.

1 Q. As a layperson, I understand it as one
2 of those things that's needed to assure that you have
3 safe water?

4 A. Correct.

5 Q. With regard to the Disposition Agreement
6 in particular, it calls for installing flush valves
7 with the flushing capability of at least three feet
8 per second in all mains. How does a company like
9 Suburban, I guess, prepare or evaluate the system to
10 meet that sort of provision?

11 A. Well, one of the basic things they would
12 need to do is to provide information regarding the
13 system itself, its configuration, the sizes of mains
14 that are in -- that make up the system, most likely
15 to an engineer, to a consulting engineer, for them to
16 evaluate how many flush valves would be needed to be
17 in that system in order to be able to flush the
18 system at a certain velocity.

19 Q. You have some familiar (sic) with the
20 Suburban system in particular, do you not?

21 A. Generally, yes.

22 Q. Have you been there?

23 A. I have not.

24 Q. I take it there are discussions with
25 your Staff members, though?

1 A. Oh, yes.

2 Q. All right. Do you know about how many
3 customers it serves?

4 A. Yes.

5 Q. Given what you know that Suburban would
6 have to do in anticipation and in preparation for
7 preparing these flush valves at certain -- for -- at
8 certain specifications, and given what you know about
9 Suburban Water and Sewer system, how long do you
10 believe it should reasonably take for Suburban to
11 have complied with this provision requiring
12 installation of flush valves?

13 A. Well, I think because you have a
14 situation where you're involving an evaluation of the
15 system, as I mentioned, by an engineer to determine
16 as best they can what actually needs to be done from
17 the physical standpoint, you've got time involved
18 there. You may very well have time involved in
19 obtaining DNR permits to do the actual work. This
20 might very well be the type of work that would
21 require a construction permit to be obtained from the
22 DNR in order to do the work in approved -- in an
23 approved manner.

24 So I think taking those two things into
25 consideration, and then the physical aspects of

1 getting the work actually done, I think it would --
2 it would be reasonable -- it would be reasonable
3 compliance with the rule -- with the -- I'm sorry,
4 not with the rule, but with the Disposition Agreement
5 for that work to have been completed no later than
6 a -- than a year after the agreement was entered
7 into.

8 Q. There's a provision in the Disposition
9 Agreement that says, "Replace the standpipe with an
10 inlet high enough to provide adequate circulation and
11 detention time." And I read that because I have a
12 couple questions about that provision. Yesterday we
13 heard some testimony that this provision calls for
14 replacing the standpipe.

15 A. I recall that, yes.

16 Q. You recall that testimony?

17 A. (Nodded head.)

18 Q. I think when -- when we began this case,
19 we were talking about replacing an inlet. Can that
20 be done separate from replacing the standpipe?

21 A. It -- it could be, yes. And this gets
22 to an issue from the standpoint of the
23 recommendations that were made by Mr. Hummel as part
24 of his participation in the rate case, the language
25 that was -- actually ended up in the Disposition

1 Agreement, and then some evaluation of that language
2 that was done in preparation for the actual complaint
3 filing. And so there has been a lot of discussion
4 about what that item, in particular, means. The
5 inlet in the existing standpipe certainly could be
6 raised to a higher level. There isn't any question
7 that you --

8 Q. And what would that address?

9 A. That would address two things,
10 basically. It would address providing additional
11 circulation of the water within the tank itself so
12 you would lessen the likelihood that you -- that you
13 have some stagnant water in that tank that might make
14 it out into the distribution system.

15 It would also address the issue of
16 providing adequate contact time since this is a
17 chlorinated system, adequate contact time for the
18 chlorine to perform, if you will, its functions of
19 disinfecting the water.

20 Q. So the inlet itself could be raised?

21 A. It could.

22 Q. Do you know if -- if -- if -- I think
23 your testimony has established the standpipe has not
24 been replaced?

25 A. It has not, that's correct.

1 Q. Are you familiar with any information
2 regarding whether the inlet has been raised?

3 A. I do not have any -- any information
4 that indicates that that has been done either.

5 Q. If the inlet were to be raised, do you
6 have an opinion about how long a period of time it
7 would take for Suburban to -- to complete that --
8 that task?

9 A. Well, I -- generally, yes. And -- and I
10 say generally because one of the first things you
11 would have to do -- or that you should do in -- in
12 determining whether this was a proper action to take,
13 is that you would have to take the tank out of
14 service and inspect it, have it inspected by a
15 qualified tank inspector to determine, first of all,
16 whether the tank is in a good enough condition to
17 warrant the action of raising the inlet in that
18 existing tank and continuing to use that tank.

19 So that clearly would take some time
20 from the standpoint of making arrangements to have
21 the tank taken out of service and inspected,
22 preparing a report regarding that inspection and some
23 time to evaluate what that report says with regard to
24 whether it makes sense to do work on that tank.

25 I think if the conclusion was reached

1 that the tank is in sufficient condition to warrant
2 expending the funds to -- to raise the inlet and keep
3 the tank in service, I -- I would think, again,
4 because it might involve -- clearly involve some
5 evaluation time, it might, again, involve some DNR
6 permitting time, I -- I would basically have the same
7 opinion time-frame-wise on that issue as I did on the
8 flush valves which basically would -- I would think
9 you should clearly be able to do that kind of work
10 and at least make a determination of whether you're
11 going to raise that inlet within a six -- six-month
12 to one-year time period.

13 Q. How long in your opinion would be a
14 reasonable period of time to find a certified
15 operator for Suburban's system?

16 A. I would think you should be able to go
17 through the process of identifying operators that are
18 available in the area, put together a bid document,
19 if you will, or make contact with those operators,
20 and I would certainly think that you should be able
21 to go through that process and have someone hired
22 within a three- to six-month time period.

23 Q. We've heard some testimony about the
24 condition of the system there, and I believe that
25 Mr. Hummel said that there's -- nobody's gonna want

1 to take it in its current condition, no certified
2 operator is gonna take on this kind of liability.
3 Does that affect your opinion about a reasonable
4 period of time in which to retain a certified
5 operator?

6 A. Well, I -- I think there's -- there's
7 really two issues there. I think what you're talking
8 about in one situation is knowing enough about the
9 condition of the system to be able to possibly find
10 someone who would be willing to operate it, not only
11 operate it but also potentially to take over
12 ownership of the system.

13 I do understand that certified operators
14 might very well have some concerns about operating
15 the system without knowing what the basic condition
16 of it is because they're basically putting their
17 certification on the line. They're responsible for
18 ensuring that the system meets the standards that
19 it's required to meet as the certified operator.

20 So I -- I certainly could see that they
21 would have some concerns that would need to be
22 addressed regarding the condition of the system, the
23 commitment of the owner of the system to expend the
24 funds necessary to keep it or get it in good
25 operating condition based on their work on the

1 system. It could affect the -- the time frame from
2 the standpoint that you might need to do some basic
3 work before you would be able to find someone. That
4 could affect it.

5 Q. All right. Are you familiar with
6 Suburban's request to hook up to the Boone -- I think
7 it's the Boone County Water District No. 1 in the
8 2005 rate case?

9 A. Yes.

10 Q. In other words, they would -- they would
11 close down the standpipe and hook up to the water
12 district?

13 A. That's basically correct, yes.

14 Q. Was that alternative evaluated by Staff
15 in that 2005 rate case?

16 A. That was one of six alternatives that
17 the Staff evaluated as part of the 2005 rate case.

18 Q. Explain why that alternative was not
19 Staff's recommended alternative.

20 A. Basically, for a little background on
21 the -- on the evaluation that was conducted, one of
22 the items that we looked at was what the cost of
23 service would be if the company did take wholesale
24 water service from the district. That was far and
25 away the most expensive option that was available.

6 Q. And added into rate base?

8 Q. All right.

11 Q. Would that include replacing the
12 standpipe?

15 Q. All right. Go on.

19 We also did evaluations based on the
20 current operation as it stood at that time and
21 determined what the company's investment in the
22 system was, what the system's rate base was without
23 any improvements being made, and that was sort of the
24 baseline.

1 if we -- if some of the basic system improvements
2 that the company's engineer had identified as being
3 necessary were done, that's the \$26,000 rate base
4 addition.

5 We did the third evaluation -- a third
6 evaluation assuming that the standpipe was replaced,
7 which was an \$80,000 addition to rate base, and then
8 we did the evaluation of what the cost service would
9 be buying wholesale water. It was -- again, it was
10 far and away the most expensive cost of service for
11 the company, and thus, its customers, to take service
12 from the water district.

13 Q. These -- these -- these improvements
14 recommended in the 2005 Disposition Agreement, these
15 were not part of rate base as used in the 2005 rate
16 case?

17 A. They were not.

18 Q. So -- well, just explain how -- how
19 these improvements would become part of rate base and
20 enter rates to customers.

21 A. Well, basically -- excuse me -- once the
22 improvements had been made and placed in service, we
23 would have expected the company to come back,
24 identify that those changes had been made, and
25 request that its rates be changed to reflect those.

1 Q. All right. Did you receive a letter in
2 2006 from Suburban Water Company saying something to
3 the effect of, let me hook up to the water district.
4 Do you remember that?

5 A. I don't recall specifically seeing that
6 letter in 2006. I will acknowledge that it was
7 received in our department. I don't recall whether
8 that letter came to me directly and was then provided
9 to Mr. Russo, or if it went directly to Mr. Russo. I
10 do know the letter came, yes.

11 Q. This was a year after the rates were set
12 in the 2000 -- or at least it was the calendar year
13 later after the 2005 case.

14 A. Yes.

15 Q. What would have to happen after that
16 letter in order for a hookup with the water district
17 to be accomplished?

18 A. Well, the company could have at any time
19 made that management decision to do so without asking
20 for our approval. Now, there would certainly be some
21 risk associated with that because of what we knew
22 about the cost of service ramifications for doing so.
23 But they certainly, from a practical standpoint, they
24 did not need our approval to make that change.

25 They may very well have had to obtain

1 some DNR approvals to do that simply because they
2 would have been taking their well out of service,
3 they would have been abandoning their standpipe.
4 There very well could have been some DNR requirements
5 that they would have to meet to effectuate those
6 physical changes to the system. But as far as
7 getting the Staff's approval or this Commission's
8 approval to make that change in service, they
9 would -- they would not have had to have done that.

10 Q. But those costs for that wholesale water
11 would not have gone into rates immediately?

12 A. No, they would not. They would have --
13 had they made that change, they clearly would have
14 needed to have a change in their rates simply because
15 of the cost of the wholesale water was significantly
16 more than the retail commodity rate that their rates
17 were based on.

18 Q. It -- it would be true, though, would it
19 not, that -- that even if they filed a rate case
20 after obtaining that wholesale water at a higher
21 cost, that the Staff may not have approved the full
22 cost of service for that water?

23 A. And that's true, and that's why I
24 mentioned that there's a risk associated with making
25 a substantial change like that if it's not determined

1 that it's a change that makes a good economic sense,
2 not only on behalf of the company, but also on behalf
3 of the company's customers.

4 Q. Mr. Johansen, I wanted to ask you about
5 what a reasonable period of time would be for a
6 company like Suburban to begin to implement a
7 ten-year replacement program for its meters.

8 A. Well, I think that's basically something
9 that could be done immediately. There would be very
10 little lead time, if you will, involved with -- with
11 doing so. You might have to -- you might have to
12 spend some time on organizing your records regarding
13 your -- the meters that you have in service or -- or
14 developing information regarding the age of the
15 meters that you have in service.

16 From a perspective of implementing that
17 program with when those rates were going into effect,
18 and I believe I mentioned this in my deposition, that
19 it certainly would have been reasonable to expect
20 them to implement that the -- at the beginning of the
21 next calendar year.

22 Q. There's a letter dated January 31st,
23 2005, certified letter, that you were asked about in
24 your deposition. Do you recall that?

25 A. Yes, I believe it was January 31, 2007,

1 though.

2 Q. 2007, I'm sorry. You're absolutely
3 right. I know that we'll see the letter and talk
4 about it more today. But when did you receive that
5 letter?

6 A. We actually received it sometime after
7 the customers were sent the letter regarding the
8 pending dissolution of the company and the notice to
9 the customers that the service would be terminated
10 effective July 1. We did not receive that letter
11 prior to that time.

12 Q. I don't -- give me a -- give me a time
13 frame.

14 A. I believe it was -- my recollection is
15 that the letter to the customers went out around the
16 end of March, first of April. We received the
17 January letter sometime after the first of April.
18 Actually, I believe that letter was provided by the
19 company's attorneys to either Ms. Whipple or
20 Ms. Heintz in the General Counsel's office, but it
21 was -- it would have been sometime after April 1.

22 Q. Does -- do you know Shawn Watson?

23 A. I do not.

24 Q. Does Shawn Watson work for you?

25 A. He does not.

1 Q. Do you know if Shawn Watson works at the
2 Public Service Commission?

3 A. I do not believe so, no.

4 MR. REED: Thank you.

5 JUDGE LANE: Thank you, Mr. Reed. And
6 that completes the direct examination of the witness.
7 Any cross-examination by Office of Public Counsel?

8 MS. BAKER: Yes, thank you.

9 CROSS-EXAMINATION BY MS. BAKER:

10 Q. Good morning.

11 A. Good morning.

12 Q. We've been talking about Suburban Water
13 and Sewer system and its president Gordon Burnam's
14 desire to get out of the water business. You've
15 heard that in the testimony?

16 A. Yes.

17 Q. Okay. If -- if the Public Service
18 Commission had allowed Gordon Burnam to attach to
19 or to buy water from the water district back in
20 2005, would he have been out of the water business?

21 A. No.

22 Q. And why would that be true?

23 A. He -- that change would have been a
24 change in the source of supply only. Suburban
25 Water and Sewer Company would have continued to

1 have existed, would have been providing distribution
2 service to its customers, would have continued to
3 be responsible for the operation and maintenance
4 of the distribution system, the billing of the
5 customers. It would have simply been a change in
6 the source of supply and not a situation where
7 the company would have been out of business.

8 Q. So it would still have been Suburban
9 Water and Sewer system's responsibility to provide
10 safe and adequate service?

11 A. It would, yes.

12 Q. Some of the people in your -- your
13 section have performed inspections just recently of
14 Suburban. Have you -- have you seen those reports?

15 A. Yes.

16 Q. All right. Those reports basically
17 state that the system is in a deteriorated condition,
18 correct?

19 A. To some degree, yes. I think -- I think
20 there -- it identifies things that -- that have not
21 been done that were recommended and agreed to be
22 done. I believe Mr. Hummel's testified that -- that
23 there are possibly some things a little better than
24 what they were two years ago, there are some things
25 that are worse, but I think the most important part

1 of that is -- is -- is what the report points out
2 about things that were to have been done that have
3 not been done.

4 Q. And from that, is it your opinion
5 that this deteriorated condition of the system is a
6 threat to the safe and adequate service for the
7 customers?

8 A. Well, I think it certainly could be,
9 yes.

10 Q. Okay. Were you in the courtroom
11 yesterday during Gordon Burnam's testimony?

12 A. Most of it, yes.

13 Q. Did you hear the testimony of Gordon
14 Burnam stating that he sent the letters to the
15 customers but didn't intend to turn off the water,
16 just simply to get the Public Service Commission's
17 attention?

18 A. I did hear that.

19 Q. And what is -- I guess what is your
20 opinion of whether Gordon Burnam has now received the
21 Public Service Commission's attention?

22 A. If that was his intent, he was most
23 certainly successful.

24 Q. And what is your opinion on -- on the
25 effect of the customers from that attempt to gain the

1 Public Service Commission's attention?

2 A. Well, I think it has certainly raised a
3 lot of concern on the customers' part. It's a very
4 serious matter from the customers' perspective and
5 from anyone's perspective as to whether or not
6 there's going to be water service provided. There
7 are numerous ramifications of service actually being
8 terminated like that, so I -- I -- I certainly think
9 it's gotten the -- it's gotten the customers -- it's
10 raised various concerns on their part that were most
11 likely unnecessary, but again, it's most certainly
12 gotten everyone's attention.

13 MS. BAKER: No further questions. Thank
14 you.

15 JUDGE LANE: Thank you, Ms. Baker.
16 Before Suburban commences its cross-examination, can
17 I suggest that we take a little break. We've been
18 going for over two and a half hours straight, and I
19 don't like to make my court reporter go for any
20 longer than that. So how about we take a ten-minute
21 break until 11 o'clock. We'll reconvene right around
22 11:00. All right.

23 (A RECESS WAS TAKEN.)

24 JUDGE LANE: All right. We're back on
25 the record in Case No. WC-2007-0452, Staff versus

1 Suburban Water and Sewer and Gordon Burnam, and we're
2 ready for Suburban's cross-examination of the
3 witness, Dale Johansen.

4 MR. VOLKERT: Thank you, your Honor.

5 CROSS-EXAMINATION BY MR. VOLKERT:

6 Q. Mr. Johansen, so you are familiar with
7 Suburban Water and Sewer Company. How long have you
8 been familiar with -- or how long have you known
9 about this company?

10 A. Well, generally speaking, I've known
11 about them since I've been in the department. My
12 most direct interaction with the company came about
13 as a result of the 2005 rate case.

14 Q. And what's your opinion -- actually, let
15 me ask you another -- let me strike that and ask you
16 another couple background questions. What is your
17 official responsibility in the water and sewer
18 department?

19 A. Well, I have general administrative
20 duties over the department which involve personnel
21 issues, just general administrative issues. I also
22 have oversight of the activities of the department
23 from the standpoint of our inspection program. I
24 have responsibility from a oversight perspective of
25 the -- all the small company rate cases -- well, all

1 the rate cases, whether they're small companies or
2 large companies. I normally do not get involved
3 directly in field inspection work, for example, but
4 just general overview and general management
5 responsibilities.

6 Q. And what would you say is your opinion
7 of the sophistication, the relative sophistication of
8 Suburban Water and Sewer Company compared to other
9 small water companies of the same size?

10 A. Oh, I would say they're -- they're
11 basically what I would consider average. I think in
12 some regards, they're -- they're -- probably have a
13 better understanding of the business than some of our
14 companies. They probably have a lesser
15 understanding, less amount of sophistication than
16 some of them. So I would say basically average.

17 Q. And how would you characterize its
18 customer service operations, again, compared to its
19 peer group?

20 A. I would say they have -- they have
21 problems similar to issues that we find with other
22 companies, probably in some regards less than some of
23 the companies that we regulate. But again, I would,
24 I guess on a -- on a average or above or below
25 average scale, I would say average.

1 Q. And at the time of that 2005 rate case,
2 how would you -- do you recall if you had a lot of
3 problems with Suburban in the years before then?

4 A. None in particular that I would say that
5 were -- you know, that were unusual. I think what
6 the -- what the rate case offered, if you will, was
7 the opportunity to address some issues that may have
8 been outstanding for a while. It was the opportunity
9 to -- to address issues that were identified during
10 the course of the Staff's review of that request.

11 But generally, it -- it was not an
12 unusual situation from the standpoint of the Staff
13 addressing -- identifying and addressing issues of
14 the type that we did for this case.

15 Q. Would you say any of those problems were
16 serious or any of those issues were serious?

17 A. Serious from the standpoint that there
18 were clearly things that the company needed to
19 address from the standpoint of its system, serious
20 from the perspective that there were clearly issues
21 that they needed to address from the standpoint of
22 rules compliance with some customer service issues
23 that were identified.

24 You know, basically I would say that the
25 items that we specifically included in the Unanimous

1 Disposition Agreement for the case were clearly the
2 ones that -- that were considered the most serious
3 and that needed attention.

4 Q. I'm going to show you your deposition in
5 this case that was taken last week. Can you please
6 read what's on the cover of that into the record or
7 tell me what that is.

8 A. Yes. "Deposition of Dale Johansen,
9 Taken on Behalf of Defendants, July 16th, 2007," and
10 this is a copy of the transcript.

11 Q. Could you please turn to page 10.

12 A. I'm there.

13 Q. And if you would, please, Mr. Johansen,
14 could you read in the questions and answers starting
15 at line 15 of page 10 through lines 6 of page 11.

16 MR. REED: Objection. Improper
17 impeachment.

18 JUDGE LANE: Your response?

19 MR. VOLKERT: Your Honor, it's his
20 testimony they read in before -- that was in the
21 deposition before.

22 MR. REED: I'll move for admission of
23 the transcript, Judge.

24 JUDGE LANE: Any objections to just
25 admission of the transcript?

1 MR. VOLKERT: Yes, your Honor. I think
2 I want to object to the admission of the entire
3 transcript. I'm only gonna ask him to read in
4 portions for impeachment purposes for the statements
5 that he just made. That was my only intent.

6 JUDGE LANE: Does Staff have any
7 objection to the portions that have been designated
8 as being misleading or otherwise providing an
9 incomplete picture of what the deposition testimony
10 was?

11 MR. REED: Well, there's been no
12 foundation for anything that's misleading or
13 otherwise inaccurate, so --

14 JUDGE LANE: Okay. Well, you're arguing
15 it's improper, and so --

16 MR. REED: Improper impeachment.
17 There's nothing to impeach at present.

18 JUDGE LANE: The deposition itself has
19 not been read in. That's -- I mean, the deposition
20 itself has not been admitted, so to have him read
21 from a document -- I mean, you can have him read from
22 the document, I suppose, but all he's done is
23 describe what the -- what the document is that you
24 handed him.

25 MR. VOLKERT: Oh, I'm sorry.

1 BY MR. VOLKERT:

2 Q. Is that a copy of the deposition that I
3 took with you on -- I'm sorry. I forget the date,
4 but is that a correct copy of the transcript from the
5 deposition that I took with you two weeks ago
6 approximately?

7 A. It appears to be, yes.

8 Q. And are the -- the transcript in there,
9 is it accurate -- an accurate copy of the statements
10 that you made or an accurate transcript of the
11 statements -- or the questions I asked and the
12 statements that I made? And I'll direct you
13 specifically to those line items that I just pointed
14 out earlier, line 15, page 10 through line 6 on
15 page 11.

16 MR. REED: Judge, can I withdraw my
17 objection and allow the witness to read that portion
18 that Mr. Volkert wants read?

19 JUDGE LANE: Very well.

20 MR. REED: Thank you.

21 JUDGE LANE: Without objection.

22 MR. VOLKERT: Thank you, your Honor.

23 BY MR. VOLKERT:

24 Q. Mr. Johansen, I'm sorry. Can you please
25 read out loud into the record the page 10, line 15

1 through page 11, line 6.

2 A. Are you sure you don't want me to start
3 on line 14? That's where the sentence starts.

4 Q. Oh, I'm sorry. Yes, go ahead and start
5 on line 14, please.

6 A. Okay. "With all of our companies we
7 strive to do a field inspection with them on an
8 annual basis, so we do have consistent interaction
9 with the companies. It's just that we don't see a
10 lot of the small companies here for rate cases very
11 frequently. But we do have consistent interaction
12 with them from the standpoint of going out and
13 inspecting their systems on a regular basis and --
14 and interacting with them in that -- in that fashion.

15 "Question: And do you know if there's a
16 company that's having a problem maintaining a system?

17 "Answer: Yes.

18 How -- or "Question: How -- I mean, how
19 quickly does that come up the chain to you if a field
20 inspector determines that there's a company that's
21 struggling or isn't properly maintaining its system?

22 "Answer: Well, if it's a serious
23 problem, it -- it comes up to me very quickly. You
24 know, we also have other -- other means of finding
25 out about problems from the standpoint if there's

1 serious customer-related issues as far as service is
2 concerned or as far as billing issues, we get
3 contacts from the customers themselves."

4 And I would note on page 11 that I went
5 through line 9 because that's the end of the
6 sentence.

7 Q. Yeah, I'm sorry. I must have -- I must
8 have given you the wrong line citation. I'm sorry.
9 I did. I gave you the wrong page citations. My
10 fault. It's page 9.

11 MS. BAKER: If that's not what he wants
12 read, then can we have that stricken from the record?

13 MR. VOLKERT: That's fine, your Honor.
14 I'm sorry. It was my mistake.

15 JUDGE LANE: All right. I'll grant that
16 motion --

17 MS. BAKER: Thank you.

18 JUDGE LANE: -- and have that excerpt
19 that Mr. Johansen read just stricken.

20 BY MR. VOLKERT:

21 Q. Okay. And what I was after earlier,
22 Mr. Johansen -- I apologize -- is pages 11, line 15
23 through page 12, line 6, those page -- incorrect page
24 reference is what I gave you.

25 A. Okay. Beginning on page 11, line 15,

1 starts with a question, "Did you have any -- either
2 contact from either the inspector -- the field
3 inspector as far as the problem with the system or
4 customer complaints before the 2005 rate case?

5 "Answer: We didn't have a lot of
6 customer-based issues. We did have some issues that
7 we -- we routinely dealt with with the company on
8 from the standpoint of -- of the annual inspections.
9 I would say until the 2005 rate case, those really
10 didn't, you know, rise to the level of being
11 considered, you know, overly serious, if you will.
12 They were issues that we -- that we dealt with them
13 on a routine basis like we do all of our small
14 companies, but nothing that I can recall in
15 particular prior to the time of the rate case.

16 "Question: So again, sort of what the
17 management's sophistication, probably the issues with
18 the system, about average, you're saying?

19 "Answer: About average, yeah."

20 Q. Thank you. So the 2005 rate case, what
21 was the -- what was the reason that that was
22 initiated by the company?

23 A. Without having the letter here in front
24 of me, I'll go from memory. I think it will be
25 fairly accurate. The company's request initially was

1 for an increase in their annual operating revenues
2 of, I believe, \$7,000, and as part of that, they also
3 asked that the issue of changing their source of
4 supply from their existing well and standpipe to the
5 Public Water Supply District be considered.

6 Q. And you testified earlier that that
7 request was turned down by the Staff, correct?

8 A. No. I -- I think that is a
9 mischaracterization -- mischaracterization of what
10 happened.

11 Q. Uh-huh.

12 A. What happened was that the Staff
13 certainly did consider the issue of changing the
14 source of supply. As I mentioned earlier, we did
15 several scenarios involving what the company's cost
16 of service would be if that change was made. It was
17 clear that the cost of service that would be in place
18 for the company if that change had been made was far
19 and above the most expensive option that was
20 available.

21 Q. So the question --

22 A. We --

23 Q. I'm sorry. Go ahead. I'm sorry. Go
24 ahead and continue.

25 A. We did, as I mentioned earlier, six

1 different scenarios regarding the cost of service.
2 We presented that information to the company, and the
3 company agreed with the Staff's proposal regarding
4 the disposition of that case.

5 Q. Okay. Let me --

6 A. We did not turn them down --

7 Q. Okay.

8 A. -- on their --

9 Q. Let --

10 A. -- on their request.

11 Q. Okay. Mr. Johansen --

12 A. They agreed --

13 Q. Okay. Please. You can get this back on
14 redirect if you want. Let me restate my -- let me
15 repeat my question for you. Did the Staff recommend
16 in favor of Suburban's request to hook onto the
17 Public Water Supply District in the 2005 rate case?
18 Yes or no.

19 A. Well, number one, that wasn't your
20 question, but the answer to that question is no.

21 Q. Thank you. So when you stated earlier
22 in your testimony that Suburban had the power -- and
23 again, please correct me if I mischaracterize, but
24 that Suburban had the power to unilaterally hook onto
25 the Public Water Supply District in 2006 and then

1 asked the department to approve it, what do you think
2 the likelihood of the department approving it --
3 approving that action would be?

4 A. Well, as I mentioned, that action would
5 have been taken with great risk simply because of
6 what we knew from the 2005 rate case. It would
7 have -- unless things had changed significantly from
8 the standpoint of the cost of the improvements that
9 might have been necessary for Suburban to continue
10 with existing source of supply, we would likely have
11 not have (sic) favorably on that.

12 Q. One other question about how that would
13 work if they hooked onto the water supply district if
14 they had done that. You mentioned that Mr. Burnam --
15 or Suburban, sorry, would still be in the water
16 business or something along those lines?

17 A. Yes.

18 Q. That he would still have to worry about
19 distribution of water and providing safe and adequate
20 water service, but he would no longer have to worry
21 about source of supply and water testing the well and
22 keeping and maintaining the well and maintaining the
23 standpipe, things of that nature, correct?

24 A. That's correct.

25 Q. Do you know, would he have to send in

1 residual tests and other tests required by the DNR
2 after he was no longer operating the well if he were
3 to do that?

4 A. They would -- my understanding is, they
5 would not have been required, for example, to do the
6 daily chlorination residual testing because they
7 would not be the entity treating the water. That
8 would be one thing that they would not have to do.
9 They're required to do that now because it's --
10 they're producing the water and chlorinating it.
11 That requirement would have gone away.

12 They would have still been required to
13 do their monthly testing regarding compliance with
14 the Safe Drinking Water standards. It there's
15 monthly biological tests that have to be done, there
16 may be for this system other quarterly and annual
17 type tests that may have to be done, I believe as
18 Mr. Baker testified to yesterday.

19 They would not have been relieved of
20 those responsibilities. And the reason for that is
21 that a system that buys water from a wholesale
22 supplier that also resells the water is considered to
23 be a public water system by the Department of Natural
24 Resources, and I believe Mr. Baker made that
25 distinction yesterday. So there would still be a lot

1 of the standard testing that DNR requires that the
2 company would still have been responsible for.

3 Q. Would they have -- I'll strike that,
4 your Honor.

5 Let me talk a little bit about rate
6 cases in general, and specifically this idea of a
7 rate base --

8 A. Yes.

9 Q. -- that you talked about in your direct.
10 The rate base, is that the -- or can you -- can you
11 please describe that to me again just so I understand
12 how that's calculated?

13 A. Basically the -- a company's rate base
14 is the original cost of the facilities that are in
15 service, providing service to the customers, less the
16 depreciation that is accrued over time, and less any
17 contributions that have been made by customers or
18 developers to that investment.

19 So it's the -- it's the net value of the
20 plant that's in service.

21 Q. And there's another -- there's another
22 relevant item as well on this which is cost of
23 service; is that correct?

24 A. Well, the cost of service is a general
25 term that relates to what it costs the company to

1 provide service. There are various components that
2 make up the total cost of service. You have the
3 company's depreciation expense on its rate base, you
4 have the company's opportunity to return -- to earn a
5 return on that rate base investment, you have the
6 company's expenses related to the operation and
7 maintenance of that system and its overall cost of
8 customer billing, customer meter readings, general
9 management, expenses, all of those components make up
10 the cost of service.

11 Q. I'm gonna point to -- Mr. Johansen, to
12 Exhibit 55 which has been previously -- in those
13 previous documents that I think have been identified
14 Exhibit 55. Do you recognize this document?

15 A. Yes. It's actually comprised, it looks
16 like, of two different documents, but, yes, I do
17 recognize it.

18 Q. Okay. And were you involved in the
19 preparation of this agreement, the unanimous
20 decision --

21 A. I was -- I was generally involved in the
22 preparation of -- of everything that's in this
23 exhibit.

24 Q. Okay. And first, before we get into
25 that, let's have a general discussion -- I have a

1 general question about the -- how the case gets to
2 the point of entering into the agreement. Can you
3 briefly describe what the steps in the informal rate
4 case leading up to the Disposition Agreement are?

5 A. Yes. The process is started by a
6 company submitting a letter directed to the secretary
7 of the Commission requesting an increase in its
8 annual operating revenues. Our small company rate
9 case procedure rule includes some basic information
10 that that letter has to include, such as how much
11 increase they are requesting, the reasons for the
12 request. Those are the two basic items that have to
13 be included in the letter.

14 Once that letter is received, it is
15 entered -- entered into our electronic filing and
16 information system in what we call a tracking file.
17 In this particular case, I believe that would have --
18 the file number itself was QW-2005-0001. That's the
19 first time that the -- there's any kind of a file
20 created here at the Commission, is when that letter
21 comes in, goes into our system and is assigned that
22 tracking number.

23 Subsequent to that, my department is
24 responsible for putting together a timeline related
25 to the request for the review of the request. We ask

1 for other departments in the Commission Staff to
2 assign personnel to be involved in that review. Part
3 of the process is that we inform the company of who
4 those Staff members are that will be participating in
5 the review, and then basically the work starts.

6 There are several departments here at
7 the Commission Staff that are involved in that
8 review, not just mine. We go through a process where
9 the review and audit is conducted. There's a point
10 in the process where the Staff's results of the audit
11 and its recommendations for the possible resolution
12 of the request are provided to the company and to
13 Public Counsel. There's been an opportunity for
14 either of those two parties to request a conference
15 call or a meeting to discuss our proposal. There
16 usually is a meeting like that, and there was one
17 held in this situation in particular.

18 Once there is an agreement reached with
19 the company and potentially with the Public Counsel
20 regarding the resolution of the request, the
21 Disposition Agreement, as we call it, is finalized
22 and signed by the parties that are going to enter
23 into that agreement.

24 There are then tariff revisions that are
25 filed to implement the terms of that agreement. The

1 tariff filing is what starts the -- is what creates
2 the formal case, if you will, before the Commission,
3 the -- in this case a WR case. That's when there is
4 a formal docketed case opened. But it is all -- the
5 informal process, if you will, leads up to that
6 tariff filing. That is the end of the informal
7 process and that's when the docketed case is opened.

8 Q. In its informal process, do you involve
9 the Office of the Public Counsel and customers?

10 A. Yes. The -- one of the first things
11 that is done in a case -- in a -- with regard to a
12 small company request -- I'm gonna try to distinguish
13 between a request and a case --

14 Q. Okay.

15 A. -- to keep that clear. One of the first
16 things that is done when a request is submitted, the
17 company sends a notice regarding its request to its
18 customers. Our -- my department, Jim Russo,
19 actually, normally drafts up that notice, sends it to
20 Public Counsel and the company for their approval.
21 Once those approvals are received, the company then
22 sends that notice to its customers. The customers
23 have 30 days to respond to that notice. We
24 oftentimes get customer comments regarding service
25 issues, whether they be physical service issues,

1 customer-service-related issues, comments regarding
2 the impact of the rate increase, those kind of
3 things.

4 But that notice is sent out early in the
5 process to get the customers involved. Public
6 Counsel's involvement, again, starts at that point
7 also. They are offered the opportunity to comment
8 back to us about what that notice should say, and
9 they do, in fact, review that. Normally they'll give
10 us a phone call or an e-mail that says it's fine,
11 it's ready to go out as far as they're concerned.

12 Q. How frequently -- what's a typical
13 number of customer complaints in a small rate case or
14 a small rate -- what did you say, request?

15 A. I would say for a company of a similar
16 size to Suburban, it's not at all unusual to get 15
17 or 20 comments back.

18 Q. Do you recall how many comments you got
19 back in the 2005 rate case?

20 A. One.

21 Q. Only a single comment?

22 A. That's correct.

23 Q. Did you talk to the customer?

24 A. I did not, no.

25 MR. VOLKERT: Actually, I'm going to --

1 first of all, your Honor, let me say it, I don't have
2 multiple copies of this. I just -- I wasn't prepared
3 to admit this, so do you want me to show this to you
4 and to Ms. Baker before I give it to the witness?
5 It's been previously marked as Exhibit No. 67.

6 JUDGE LANE: This is not one of the
7 exhibits that was premarked, right?

8 MR. VOLKERT: Right. I -- yes, I
9 apologize, your Honor.

10 JUDGE LANE: No problem.

11 MR. VOLKERT: Would you like to see
12 this, your Honor?

13 JUDGE LANE: Yes, I would. Thank you.

14 MR. VOLKERT: Thank you.

15 BY MR. VOLKERT:

16 Q. Mr. Johansen, I'm showing you what's
17 been marked as Exhibit 67. And feel free to look
18 through the whole thing, but the page that I have it
19 turned to is the one that I want to ask you about.

20 A. (Witness complied.) Okay.

21 Q. Do you recognize this?

22 A. Yes.

23 Q. What is it?

24 A. This is the public comment form that I
25 mentioned there was one customer comment received in

1 response to the company's initial notice. This is
2 the -- the page you've asked me to look at in this
3 exhibit is the public comment form regarding that
4 contact.

5 Q. Yes. And I'm sorry. And what's the
6 entire document, Exhibit 67?

7 A. The entire document is the contents, if
8 you will, of the QW tracking file for Suburban's
9 request.

10 Q. For the informal portion of the -- of
11 the rate request?

12 A. Correct.

13 MR. VOLKERT: And your Honor, I'd move
14 to admit this exhibit.

15 JUDGE LANE: Exhibit No. 67 has been
16 marked and offered into evidence by Suburban. Do I
17 hear any objections?

18 MR. REED: Relevance, hearsay.

19 MR. VOLKERT: Your Honor -- oh, I'm
20 sorry, I'm sorry.

21 JUDGE LANE: Well, let me just say as to
22 relevance, that objection is overruled. As to
23 hearsay, what is the purpose for offering the
24 exhibit?

25 MR. VOLKERT: The purpose is

1 impeachment, your Honor, and it's also relevant --
2 I'm sorry. It's for -- it's for impeachment purposes
3 and the actual statement itself -- well -- actually,
4 that's my sole -- that's my sole reason for offering
5 it, for impeachment purposes.

6 JUDGE LANE: All right. Then that --
7 then both objections are sustained.

8 MR. HARRISON: Both are sustained?

9 JUDGE LANE: Both the objections to the
10 introduction of the -- of the document.

11 MR. VOLKERT: Are sustained?

12 JUDGE LANE: Did I say sustained?

13 MR. HARRISON: You said sustained.

14 JUDGE LANE: The first one is overruled,
15 the second one is sustained. I apologize.

16 MR. VOLKERT: Okay. Okay. Thank you.

17 BY MR. VOLKERT:

18 Q. Do you recall, Mr. Johansen, what the
19 substance of the customer complaint was in the -- the
20 single customer complaint was in the 2005 case?

21 A. I don't.

22 Q. I'm next gonna ask you to look at what's
23 been previously marked and admitted as Exhibit 62.
24 Can you turn to page 3 of this exhibit, please.

25 A. Okay.

1 Q. And look at the paragraph that's titled
2 Expenses.

3 A. Yes.

4 Q. And is it a fair statement to say that
5 expenses other than water loss expenses for which
6 there was an adjustment made by the audit staff that
7 the company's past expenses are going to be used as
8 their future and reasonable expenses going forward?

9 A. That's correct.

10 Q. So in this rate case, the rate was based
11 on expenses as they existed before the rate case,
12 correct?

13 A. Well, based on the expenses that existed
14 in the test year that we looked at, yes.

15 Q. Okay. And that test year, do you recall
16 what that was?

17 A. I don't, offhand.

18 Q. Does the first sentence of this expenses
19 paragraph state that the company -- that the test
20 year was based on the 2004 financial statement?

21 A. No, it does not. It says "The expense
22 used to develop the revenue requirement was the
23 amount of expenses booked by the company during the
24 test year and contained in its 2004 financial
25 statement."

1 Q. Oh, I see.

2 A. That doesn't indicate to me that they're
3 one and the same. They may be.

4 Q. How often do you review a test year
5 based on financial statements from a different year?

6 A. Well, for example, if you have a company
7 that requests a operating revenue increase, let's
8 say, in August of a given year, the test year might
9 very well be the 12 months into June 30th. We would
10 look at that test year, the level of expenses,
11 investment, all those things that make up the cost of
12 service during that test year.

13 We would also look at the company's most
14 recent calendar year financial statement as part --
15 as part of the review. So there could be a different
16 time period. I -- what I don't recall in this
17 particular case is if they're one and the same.

18 Q. Okay. When you look at a new ongoing
19 expense in rate cases generally, if this is a new
20 going-forward expense and it's not included in the
21 test year, do you consider that in setting the rate?

22 A. If it's an expense item, we often do.
23 We often look at inclusion of expenses that may fall
24 outside of the test year if it's clear that they are
25 going to be an ongoing expense for the company. So

1 yes, we do do that from an expense standpoint.

2 Q. But in this case -- in this case, again,
3 there were no -- to your knowledge there were no
4 adjustments to the expenses other than for the water
5 loss issue that was used for purposes of the
6 company's rate?

7 A. I believe that's correct, yes.

8 Q. Back to Exhibit 55, Mr. Johansen, if
9 you'd look back at schedule 1, the accounting
10 schedule 1 which is a scanned copy that's attached
11 toward the back of Exhibit 55, it's actually after
12 attachment 2 to the Staff's memorandum which is
13 attached in Exhibit 55.

14 A. The page preceding that document, does
15 it say "Attachment 2, Revenue Requirement Audit Work
16 Papers"? I want to make sure I'm looking at the
17 correct document.

18 Q. That's correct.

19 A. Okay.

20 Q. That's correct.

21 A. Okay.

22 Q. And on schedule 1, line 3, it says, "Net
23 Operating Income Requirement, \$1,570," correct?

24 A. Yes.

25 Q. And that number means that assuming

1 expenses stay the same as were used for cost of
2 service, and other assumptions are correct, that the
3 company would be expected to make a net income of
4 \$1,570 a year; is that correct?

5 A. Not really, no.

6 Q. Okay. What does that number mean?

7 A. That number in particular is the return
8 on the company's investment that the Staff is
9 proposing that it be allowed the opportunity to earn.
10 What it basically is, it's -- it is the number on
11 line 1 which is the net original rate base, times the
12 rate of return on line 2, which is 11 percent. It's
13 a multiplication of those two numbers.

14 That's what this schedule calls a net
15 operating income requirement. It's -- it's the --
16 it's the component -- it's the rate-of-return
17 component of the cost of service, if you will.

18 Q. And assuming that the company's cost of
19 service going forward is the exact same as it was in
20 the assumptions for this schedule, and assuming that
21 its revenues were the exact same as the assumptions
22 that were used for this schedule, would you expect
23 the company to earn a net income each year of \$1,570
24 or not?

25 A. That's basically correct, yes.

1 Q. Now, in the Disposition Agreement
2 itself, and I just want to give you the actual
3 Disposition Agreement within Exhibit 55 which is
4 about page --

5 A. I have that.

6 Q. Okay. Page 3 of 5, please, if you'll
7 look at that.

8 A. Okay.

9 Q. Actually, first -- first, if you look at
10 the signature page which is page 5 of 5.

11 A. Okay.

12 Q. And you signed on behalf of the Staff,
13 correct?

14 A. Correct.

15 Q. And were you the one that gave this
16 document final approval?

17 A. Yes.

18 Q. And are you responsible for approving
19 all Disposition Agreements for water -- for small
20 water companies?

21 A. Basically, yes.

22 Q. And do you read these agreements before
23 you sign them?

24 A. Absolutely.

25 Q. And if I could point you now to page 3

1 of 5 of that agreement, paragraph Nos. 8 through
2 15.

3 A. Okay.

4 Q. These requirements, were the cost of
5 these requirements included within the company's --
6 either the company's cost of service or its rate
7 base?

8 A. I don't believe they were, no. These
9 are prospective changes.

10 Q. So the company was expected to make
11 these changes and then apply for a new rate; is that
12 correct?

13 A. That's basically correct, yes.

14 Q. And do you have any idea about the cost
15 of some of these requirements? Let's go through
16 them -- or just -- just in general. We don't have
17 to --

18 A. I would say in general, the -- the ones
19 with the -- that have costs obviously associated with
20 them are the ones regarding the physical improvements
21 to the system. The -- the ones, you know, such as
22 the preparing the brochure, putting together the
23 continuous property record, providing a monthly -- or
24 I'm sorry -- the quarterly reports that item 15 talks
25 about, those are ones that might have some expense

1 related to them from the standpoint of employees'
2 time. They would not be -- I would not expect they
3 would be significant. The ones that would clearly
4 have a cost associated with them are the ones
5 regarding the physical improvements to the system.

6 Q. And you said you would expect the
7 company to make those physical improvements and then
8 come for a rate case?

9 A. Yes.

10 Q. You would expect the company to use --
11 or to do this based on \$1,570 of talking about -- or
12 of assumed net income a year?

13 A. I would expect them to do that with
14 additional investment in the company if needed.

15 Q. Let me talk about some specific
16 paragraphs -- or let's talk about some specific
17 paragraphs first, paragraph No. 8. And what's your
18 understanding -- you heard yesterday testimony from
19 Ms. Bernsen; is that correct?

20 A. I heard most of her testimony. I'm not
21 sure if I heard it all, but quite a bit of it, yes.

22 Q. Okay. Do you recall that she stated
23 that -- that paragraph No. 8 required the company to
24 comply with a separate rule of the Commission?

25 A. Yes.

1 Q. Is that your understanding, paragraph
2 No. 8?

3 A. Yes.

4 Q. Why didn't you have paragraph -- why
5 didn't paragraph 8 state that?

6 A. Basically because the report prepared
7 my -- by Ms. Bernsen and provided to the company
8 regarding what her recommendations were going to be
9 for the case, and the genesis of this particular item
10 in the agreement was based on that rule.

11 Q. And that rule -- and now you're saying
12 the genesis of this -- of this paragraph No. 8, the
13 language in paragraph No. 8 was based on that rule?

14 A. This item in the Disposition Agreement
15 was based on the recommendation included in
16 Ms. Bernsen's report. This particular -- the
17 customer brochure in particular was an item addressed
18 in a report, and there was a discussion in her report
19 of the rule and -- which provided the basis for her
20 recommendation that they develop a brochure. So I --
21 I believe it -- it clearly all ties together.

22 Q. Now, were you also here yesterday when
23 she testified -- I assume you're referring to this
24 report that she testified about which was attached to
25 this June 3rd, 2005 Staff memo; is that what you're

1 referring to?

2 A. That's the report I'm referring to, yes.

3 Q. Okay. Did you also hear Ms. Bernsen's
4 testimony that the rule provides a pretty clear
5 checklist for someone to determine what needs to go
6 in a brochure?

7 A. Yes.

8 Q. Do you see any items from that checklist
9 in paragraph No. 8?

10 A. No.

11 Q. Why didn't you include any of those
12 items from that checklist in paragraph No. 8?

13 A. We didn't think it was necessary because
14 the company had the report. This -- this item in the
15 Disposition Agreement came directly from the report,
16 the requirements of compliance with the rule was
17 discussed in the report. We simply didn't think it
18 was necessary to be repetitive.

19 Q. Do you know that Ms. Bernsen, in fact,
20 gave this report -- do you have personal knowledge
21 that she, in fact, gave this report to Suburban?

22 A. Her testimony yesterday was that she
23 did, and I -- I know it was provided to them as part
24 of our overall process.

25 Q. You know that -- you have personal

1 knowledge of that?

2 A. I have information from the file that,
3 in fact, was discussed during my deposition with you
4 that indicates that it was.

5 Q. Is there a deadline stated in paragraph
6 No. 8?

7 A. No, there's not.

8 Q. And I'd like you to look at Exhibit
9 No. 6 that's been previously admitted.

10 A. Yeah.

11 Q. Yeah. In your opinion, does this
12 exhibit -- I'll let you look at it.

13 A. Okay.

14 Q. Does this exhibit comply with
15 paragraph 8 of the Disposition Agreement?

16 A. To the extent that it is a customer
17 brochure that attempts to comply with -- with
18 paragraph 8, I would say it's a starting point. I
19 think there was significant testimony yesterday from
20 Ms. Bernsen as to why it was her opinion that it is
21 not sufficient.

22 Q. And did you hear her testimony where she
23 said she's never contacted Suburban about the
24 contents and the -- and the extent to which they're
25 sufficient or not yesterday?

1 A. Yes.

2 Q. Did you direct her not to contact
3 Suburban?

4 A. I have not talked with her about whether
5 she should or should not contact them regarding this
6 particular item.

7 Q. Do you know if anyone's made -- if
8 anyone's contacted Suburban from the water and sewer
9 department or otherwise to talk about the brochure
10 and how it could be improved?

11 A. To my knowledge, no.

12 Q. Is that typical policy of the water and
13 sewer department if it sees something that may be
14 deficient to not contact the company?

15 A. I think it makes a significant
16 difference in regard to something like this of
17 whether we are in a informal, if you will, mode of
18 dealing with the company or we're -- we're in the
19 middle of what is significant litigation regarding
20 the compliance. I think that makes a difference, and
21 I think Ms. Bernsen discussed that yesterday with
22 regard to why she hasn't made any contact with him
23 about it.

24 Q. I'd like you now to look back at
25 Exhibit 55, please, and particularly paragraph No. 9.

1 A. Okay.

2 Q. Is there a definition of continuous
3 property records system in Commission rules?

4 A. I don't believe there is one directly.
5 There -- we do have rules regarding preservation of
6 records, we have a rule that adopts a Uniform System
7 of Accounts, and I think you would have to get into
8 the actual Uniform System of Accounts before you
9 might be able to find a -- an actual definition of
10 that term.

11 Q. And the uniform system of accounts today
12 provide for specific requirements for a continuous
13 property records system, then?

14 A. The Uniform System of Accounts basically
15 sets out for plant purposes -- for example, it
16 basically sets out the -- how -- how accounts are
17 identified, what type of plant should be accounted
18 for in that particular category or account. I
19 believe they discussed continuing property records.
20 I -- quite honestly, I would have to review them to
21 make sure of that.

22 Q. So is it your understanding that the
23 Commission rule on Uniform System of Accounts is
24 incorporated into the requirements in -- or the
25 requirement in paragraph No. 9?

1 A. Well, I think if you're looking at it
2 from a standpoint of does a company's existing
3 recordkeeping system or a proposed recordkeeping
4 system properly provide the information that's
5 needed, I think you would certainly use that Uniform
6 System of Accounts as a base document to determine
7 that.

8 Q. Well, my question is, do you think
9 paragraph No. 9 requires compliance with that rule?

10 A. Not specifically, no.

11 Q. Do you know if the audit department ever
12 cited that rule to Suburban?

13 A. I don't believe they did, no.

14 Q. Please look at what's been previously
15 marked and entered as Exhibit No. 3. I don't know if
16 it's in that stack.

17 A. I guess not.

18 Q. Do you recognize this document?

19 A. I do.

20 Q. And do you think that this document --
21 or actually, let me ask you first, what is this
22 document and when did you receive it or when did you
23 first receive it?

24 A. I first saw this, I believe, during my
25 deposition which, I think, was July 16th.

1 Q. And in your opinion does this comply
2 with the requirements in paragraph No. 9?

3 A. No.

4 Q. Does it include a column for date plant
5 is placed in service?

6 A. It does.

7 Q. Does it include a column for purchase
8 price, plant?

9 A. It does.

10 Q. Does it include a requirement for dates
11 of retirement, plant?

12 A. It includes a column that's titled Date
13 of Retirement. The information that is included in
14 that is projected retirement dates, not actual
15 retirement dates of property as time has gone on.

16 Q. And in what specific manner do you think
17 that this Exhibit No. 3 fails to satisfy paragraph
18 No. 9?

19 A. Well, number one, it certainly isn't
20 continuous in nature. For the standpipe, for
21 example, it shows that the date it's placed in
22 service is 1973. It shows the original purchase
23 price and it shows a projection -- projected date of
24 retirement. It does not have any information
25 regarding the historical information as to what

1 improvements may have been made to that standpipe
2 that could possibly alter the value of the standpipe
3 for ratemaking purposes, for example.

4 It simply shows it was placed in service
5 in 1973, what the original price was and what the
6 projected retirement date is. It has nothing
7 regarding the continuous nature of the history of
8 those facilities and what changes may have been made
9 to it and what costs may have been associated with
10 those changes.

11 Q. And where are those specific
12 requirements contained in paragraph No. 9 of the
13 Unanimous Disposition Agreement?

14 A. I think from the standpoint of it being
15 a continuous property record system, you would
16 certainly expect to see information regarding what
17 has happened to the equipment in a particular
18 account, if you will, on a continuous basis since the
19 date it was placed in service. From the standpoint
20 of the information that, at a minimum, is
21 specifically required by this paragraph, paragraph 9,
22 the document does include that information.

23 Q. Okay. I'd like to move on to the next
24 paragraph. It's not numbered but we've been
25 referring to it -- again, the paragraph in the

1 Unanimous Disposition Agreement, we have been
2 referring to it as paragraph No. 10.

3 A. Yes.

4 Q. And what do you understand the meaning
5 of the word "building" in that paragraph to be? Do
6 you understand it to mean one structure, whether it's
7 a duplex, four-plex or single-family or one unit?

8 A. Structure.

9 Q. Next paragraph which we've been
10 referring to as paragraph No. 11.

11 A. Yes.

12 Q. What is the -- or what is -- what is the
13 rule -- I know you discussed it a little bit, but I'm
14 still a little confused about the rule regarding
15 meters. Is there a rule in the Commission's rules of
16 replacing the meters every ten years?

17 A. There is a rule in the Commission rules
18 that requires meters to be removed -- that
19 specifically requires meters to be removed from
20 service and tested for accuracy at least once every
21 ten years.

22 Q. So the rule requires testing every ten
23 years?

24 A. It requires every meter to be removed
25 from service, which means that that meter is going to

1 be replaced, if you will, and for the meter that's
2 taken out of service to be tested for accuracy every
3 ten years. That's the specific requirement of the
4 rule.

5 Q. Does the rule define the phrase
6 "ten-year replacement program"?

7 A. No. The rule, again, sets forth the
8 requirements for removal and testing.

9 Q. What do you think that a ten-year
10 replacement program means other than what you've
11 already just stated, what the rule states?

12 A. Well, I think basically what you should
13 have in a water system, you should not have any
14 meters that are in service that have not been either
15 replaced, or at a minimum, in strict accordance with
16 the rule, removed from service and tested. That
17 should happen at least every ten years for every
18 meter in your system.

19 Q. And is there a deadline in paragraph
20 No. 11?

21 A. There is not.

22 Q. And if Suburban had -- or would a --
23 sorry. Let's strike that, Judge.

24 Withdraw the question.

25 Would replacing meters on an as-needed

1 basis and all events within ten years satisfy the
2 requirement for a ten-year replacement program?

3 A. Let me understand your question for
4 sure. If it -- if it includes the premise that the
5 as-needed basis results in meters not being in
6 service for more than ten years, then it probably
7 would meet that requirement, yes.

8 Q. Next paragraph, No. 12, is this required
9 by the rules of the Commission?

10 A. I don't believe we have a specific rule
11 that -- that's pertinent to this item.

12 Q. Do you recall yesterday, were you in
13 here for Mr. Baker's testimony when he stated that
14 the DNR has a rule requiring 2.5 feet per second?

15 A. Yes, I do recall that.

16 Q. Is there a reason that the Commission --
17 or that the -- that this Disposition Agreement
18 requires three feet per second to your knowledge?

19 A. The distinction between those two, I
20 think basically the three feet per second came from
21 Mr. Hummel's recommendation specifically, and I would
22 be quite honest with you, if -- if there is a
23 standard the DNR has that says that two and a half
24 feet per second is sufficient, that would be fine. I
25 think the key point is, is that you have to have the

1 flush valves available in the system so that you do
2 have the capability of flushing all of your mains.

3 Q. Is there a deadline in this paragraph?

4 A. There is not.

5 Q. Next paragraph No. 13, to your knowledge
6 has anyone ever been inside and confirmed whether or
7 not the inlet is -- the current existing inlet is
8 high enough?

9 A. The inspections that Mr. Burnam
10 testified to that the company does on a periodic
11 basis as far as the standpipe is concerned, his
12 description of that probably would not determine
13 that. I'm not aware that the company has hired or
14 contracted with and actually had a tank inspector
15 conduct a physical inspection of the interior, so it
16 may very well not have been done.

17 Q. And do you know if the Staff's done it
18 or someone on behalf of the Staff?

19 A. I'm sure we have not.

20 Q. Do you know if anyone did it in
21 connection with this 2005 agreement on behalf of the
22 company or the Staff?

23 A. I don't believe so.

24 Q. Does this term state a deadline?

25 A. It does not.

1 Q. Next paragraph, paragraph No. 14, does
2 this state any deadline?

3 A. It does not.

4 Q. After the 2005 rate case was completed,
5 when was the next time you had occasion to hear about
6 Suburban, either hear from them or hear about them,
7 any contact?

8 A. Well, as far as contact with company
9 representatives are concerned, I did not have any
10 contact with them subsequent to the rate case up
11 until the last couple of months. Any contacts that
12 were made -- that may have been made by other Staff
13 members, I'm not aware of any, but personally I have
14 not had any contact with -- with representatives of
15 the company since the rate case until recently.

16 Q. I'd like you to take a look at what's
17 been previously marked and admitted as Exhibit 58.

18 A. Okay.

19 Q. Have you seen this before?

20 A. I know I -- I believe this is one of the
21 letters that we discussed during my deposition. I
22 may have seen it before that.

23 Q. Do you believe you saw it in 2006?

24 A. I don't know. I think as I explained in
25 my deposition, it may have been the situation where

1 it came across my desk just as a normal part of our
2 mail distribution process. It may very well have
3 been delivered directly to Mr. Russo.

4 Q. I'm gonna hand you the transcript from
5 your deposition that you were looking at earlier.
6 Can you please take a look at page 153? I just want
7 to give you a chance to read it. I'll take it back,
8 Mr. Johansen, and read it.

9 On page 153, line -- starting at
10 line 16, "Answer: Sometimes all the departments'
11 mail comes across my desk. Sometimes it's -- like in
12 this case, if Jim's name is on it, it may have gone
13 to him, but I do recall seeing the letter.

14 "Question: Back in 2006?

15 "Answer: Yeah."

16 I'll show this to you again.

17 A. Okay. No, I read what you had
18 highlighted there.

19 Q. That's accurate?

20 A. Yes.

21 Q. Do you recall if you sent the DNR report
22 that's referenced in that letter, do you recall if it
23 was attached?

24 A. I don't.

25 Q. Do you recall if you discussed any DNR

1 reports concerning Suburban in 2006?

2 A. Discussed with who?

3 Q. Staff, other Staff members or Suburban
4 itself.

5 A. I don't recall that, no.

6 Q. Do you recall the -- whether or not
7 there was information relating to well -- a well pump
8 repair or replacement that's referenced in the
9 letter, whether that was attached to the letter?

10 A. I believe it was, yes.

11 Q. Did you discuss that with anyone at the
12 Staff?

13 A. Not that I recall, no.

14 Q. Did you notify -- so you didn't notify
15 Mr. Hummel or any other engineers that are
16 responsible for inspecting Suburban's physical --

17 A. I don't recall that I did, no.

18 Q. Now, I know we talked about this in your
19 deposition, and I know you've seen me talk to other
20 witnesses about it, but I'm gonna direct your
21 attention to the last sentence of this letter.

22 "Again, I say let me hook onto Public Water District
23 No. 1, as I am no longer willing or able to subsidize
24 the water system at BonGor Lake Estates." Did I read
25 that correctly? You don't have the exhibit? I'm

1 sorry.

2 A. No.

3 Q. I'm sorry. I started off with
4 Exhibit 58. I apologize.

5 A. Oh, maybe I've got it.

6 Q. Exhibit 58, jumping ahead.

7 A. Okay. I'm sorry. I put it away too
8 soon. Yes, I have that now, and yes, that is what
9 the last sentence says.

10 Q. And do you not characterize this as a
11 request?

12 A. I characterize it as a statement by
13 Mr. Burnam. I don't characterize it as a request.

14 Q. Just so I'm clear, you get a letter from
15 a regulated company that states, let me do something,
16 you do not characterize that as a request?

17 A. Not particularly, no.

18 Q. Is it your policy not to respond to
19 letters like this?

20 A. I would say generally a letter like this
21 on the day-to-day basis might very well be responded
22 to. There would be some situations possibly where it
23 wasn't.

24 Q. Did you, in fact, or do you know if
25 anyone from the Staff responded to this letter?

1 A. To my knowledge there was not a response
2 sent.

3 Q. Now I'm gonna show you Exhibit No. 34
4 that's been previously marked. Do you recognize this
5 letter?

6 A. I do.

7 Q. Have you seen this letter before -- or
8 when did you see this letter first?

9 A. This is the letter that I discussed
10 during my direct examination from Mr. Reed, and I
11 believe I indicated then that I received it sometime
12 after April the 1st after the company's customer
13 notice went out.

14 MR. VOLKERT: Your Honor, I'm not sure
15 if this has actually been admitted, so I'm gonna move
16 to have this letter admitted into evidence on the
17 record.

18 JUDGE LANE: Okay. It has not been
19 admitted. Exhibit 34 has been marked and offered
20 into evidence by Suburban. Objections?

21 MS. BAKER: No, I don't think I have any
22 objection.

23 MR. REED: No objection.

24 JUDGE LANE: All right. It's admitted.

25 (EXHIBIT NO. 34 WAS RECEIVED INTO

1 EVIDENCE AND MADE A PART OF THE RECORD.)

2 BY MR. VOLKERT:

3 Q. The first page of this exhibit,
4 Mr. Johansen, can you -- can you tell me what the date
5 of the letter is?

6 A. January 31st, 2007.

7 Q. And you don't have to do it out loud,
8 but could you please read the second addressee and
9 tell me who that is and whether or not that address
10 is correct.

11 A. That is me and that is one of the two
12 mailing addresses that we normally use.

13 Q. You do get mail at that address, then?

14 A. Yes.

15 Q. I'd like you to turn to the last page in
16 this exhibit, please.

17 A. Okay.

18 Q. And what is this?

19 A. Apparently it is a copy of the certified
20 mail receipt. The top of the page says, "Sent to
21 Dale Johansen," only the name. There's no address or
22 anything shown there. The bottom portion is -- it
23 does have the full address on it under the section
24 that says, "Sender complete this section." There's
25 also a signature on the right-hand portion of the

1 bottom section that would indicate the letter was
2 picked up.

3 Q. And the address that appears on that
4 bottom card, photocopy of the card, that is the
5 correct address again?

6 A. It's the same address that's used for
7 the letter, and that is an address that we do get
8 mail at.

9 Q. This letter, you did not receive it in
10 January or February of 2007?

11 A. I did not.

12 Q. And who's Shawn Watson?

13 A. I don't know.

14 Q. Did he mark next to his -- his
15 signature, did he -- I'm sorry. Strike that, your
16 Honor. I'll withdraw.

17 How often do you not get certified mail
18 that's addressed to your -- the correct address, do
19 you know?

20 A. I don't have any way of knowing what I
21 don't get.

22 Q. Well, you know you didn't get this one?

23 A. I know I didn't get this one.

24 Q. That's the only one?

25 A. It's the only one I know of.

1 Q. Have you talked to Mr. Watson?

2 A. I have not.

3 Q. Has anyone talked to Mr. Watson?

4 A. Not that I'm aware of.

5 Q. Have you followed up at all with anyone

6 about why you didn't get this letter?

7 A. I have not yet.

8 Q. Not yet. You've known about this letter

9 now for two months or so, correct?

10 A. Approximately, yes.

11 Q. But you haven't followed up with

12 anybody?

13 A. I have not.

14 Q. And again, who do you think -- who do

15 you think this Mr. Watson may be?

16 MR. REED: Calls for speculation, no

17 foundation.

18 JUDGE LANE: He's already said he

19 doesn't --

20 MR. VOLKERT: Fair enough.

21 BY MR. VOLKERT:

22 Q. After the Staff did, in fact, receive

23 that letter, I think you testified earlier that it

24 did get your -- get the -- get the -- did get your

25 attention. Or tell me --

1 A. Well, I think what -- what I was
2 referring to as getting our attention was the letter
3 that the company sent to its customers regarding the
4 planned dissolution and discontinuance of service.
5 We actually received this letter after we were made
6 aware of the other letter being sent.

7 Q. Okay.

8 A. So ...

9 Q. And when you say it got your attention,
10 did it mean that -- that caused you to file the two
11 complaints against Suburban or the complaint in this
12 case, let me ask?

13 A. That was a -- part of the result of
14 that, yes.

15 Q. What else have you done -- has the Staff
16 done -- after Suburban got its attention with the
17 customer notice, just to be clear, what else has the
18 Staff done other than file this complaint as far as
19 dealing with Suburban?

20 A. I'm aware that either Ms. Whipple or
21 Ms. Heintz, I'm not exactly sure which one, did
22 contact your-all's offices about this letter because
23 there were some -- there were some conversations
24 after the -- the customer notice letter came to our
25 attention about this. I know there were

1 conversations regarding that. We started doing
2 follow-up work from the standpoint of determining
3 what the company had or had not done with regard to
4 the rate case agreement.

5 There were additional inspections done
6 by -- by Mr. Hummel. I believe that he's testified
7 to those. So that there's -- there have been actions
8 taken, certainly.

9 Q. Any actions to assist Suburban with
10 complying with obligations under the 2005 agreement?

11 A. What I would characterize specifically
12 as assistance, probably not.

13 Q. Any actions to assist Suburban at all
14 since this 2005 -- or since this notice to customers
15 were sent out?

16 A. Not that I'm aware of.

17 Q. And in the two years since 2005, I
18 believe you probably heard Mr. Hummel testify that --
19 or did you hear Mr. Hummel testify that he hadn't
20 inspected Suburban since that 2005 rate case?

21 A. I believe that's correct, yes.

22 Q. Did you hear Mr. Boateng say that he had
23 not done an 18-month follow-up review with Suburban
24 after the 2005 rate case?

25 A. Yes.

1 Q. So let me generalize -- make the
2 question even more general. Since the 2005 rate
3 case, has the PSC Staff done anything to assist
4 Suburban Water and Sewer Company in any regard?

5 A. Not that I'm aware of.

6 Q. You also mentioned earlier in your
7 testimony with me, I believe, that there was a
8 difference between an informal mode and litigation
9 when we were talking about Ms. Bernsen's testimony on
10 the -- on the brochure and whether or not she'd
11 provided Suburban with feedback on that. Do you
12 recall that statement?

13 A. I do and I -- my reference to that
14 was -- was with regard to Ms. Bernsen's testimony
15 regarding whether or not she had followed up with
16 them and her reasoning for -- for doing so or not
17 doing so.

18 Q. And -- but did you say that there was a
19 difference between informal mode and litigation?

20 A. Yes, I think there generally is.

21 Q. Who made the decision to pursue -- to
22 file the complaint and to pursue the two five
23 thousand -- the 2005 agreement in litigation as
24 opposed to in an unformal (sic) mode?

25 MR. REED: Objection, relevance.

1 MR. VOLKERT: Same -- same response as
2 earlier, Judge. I think it's very relevant. The
3 motivation for filing the complaint, the reason that
4 they -- they took that step and the -- and how it
5 impacts the interpretation of the 2005 agreement and
6 whether or not Suburban's complied with its
7 obligations under the agreement.

8 JUDGE LANE: Same ruling. If he knows,
9 he can answer.

10 MR. VOLKERT: Yeah.

11 THE WITNESS: I'm sorry. What was your
12 question?

13 BY MR. VOLKERT:

14 Q. Do you -- do you know, to your
15 knowledge, who made the decision to file the
16 complaint and commence the litigation against
17 Suburban over this 2005 agreement?

18 A. The basic decision to initiate the
19 complaint was made by the General Counsel's office.
20 I was involved in the process, if you will, but
21 the -- the actual decision to do that was made there.

22 Q. Did you or anybody else on the Staff
23 ever propose any sort of informal mode of response to
24 Suburban?

25 A. I did not. I'm not aware that any other

1 Staff member did.

2 MR. VOLKERT: Nothing further, your
3 Honor.

4 JUDGE LANE: Thank you very much,
5 Mr. Volkert. We're done with the cross-examination.
6 It's time for questions from the bench.

7 Commissioner Gaw, I know you just got
8 here.

9 COMMISSIONER GAW: I did, and I didn't
10 know when you were gonna break for lunch.

11 JUDGE LANE: As soon as we finish this
12 witness, I was planning on doing that.

13 COMMISSIONER GAW: So you're gonna go
14 back through the attorneys for questions?

15 JUDGE LANE: Well, we're gonna have some
16 redirect. I wanted to ask Staff about redirect and
17 then possible recross, but I don't expect that to be
18 terribly lengthy.

19 COMMISSIONER GAW: Perhaps the Chairman
20 might have some questions for this witness.

21 CHAIRMAN DAVIS: Here's the letter.

22 JUDGE LANE. All right. We do have some
23 Commissioner questions, and let's get to those before
24 we go to lunch.

25 QUESTIONS BY CHAIRMAN DAVIS:

1 Q. All right. So Mr. Johansen, did you get
2 this -- did you receive this certified letter?

3 A. Any time around the date that it was
4 mailed, I did not.

5 Q. You did not. And do we know -- so is
6 this -- who's -- so who signed for it? Do you have
7 any --

8 A. Shawn Watson signed for it. I do not
9 know for sure who Shawn Watson is.

10 Q. So he doesn't work here, he's not an
11 employee -- Commission employee or --

12 A. Not that I'm aware of, no.

13 Q. Okay. And so -- all right. All right.
14 So have you ever -- okay. Assuming you didn't get
15 this letter, then have you ever heard any -- any
16 complaints from Mr. Burnam before?

17 A. Not particular -- not in -- not
18 specifically to this type of a -- of a situation, no.

19 Q. Okay. All right. So Mr. Johansen, were
20 you here when I was asking Mr. Hummel questions this
21 morning?

22 A. Yes, sir.

23 Q. So do you have any -- any thoughts or
24 comments to anything I might have asked Mr. Hummel
25 this morning? I don't want to go back through and

1 rehash that whole soliloquy.

2 A. Well, I think in general with regard to
3 improvements in our process, if you will, I'd
4 certainly agree with Mr. Hummel that there are things
5 that -- that we need to be looking at possibly
6 differently or new things that we need to be looking
7 at.

8 We have made several changes and -- for
9 example, in our small company rate case processes
10 over the last couple of years, we're proposing even
11 more from the standpoint of our rules. I think
12 Mr. Hummel made a very good point about needing a
13 better overall evaluation of our companies and of an
14 overall consensus approach within the Staff on how to
15 deal with companies that are having troubles or that
16 may have troubles. We are certainly making some
17 efforts towards that.

18 We've recently put together a -- a Staff
19 group involving not only my department but also
20 departments from the utility services division
21 directly involving Mr. Schallenberg as a director of
22 that division, the auditing department, the
23 management services department. One of the things
24 that we're doing in that regard is putting together
25 a -- an overall detailed analysis of the -- what, for

1 lack of a better term, I would call the status of
2 each of our companies.

3 We're looking at in the -- in the
4 context of, partially at least, in how long it has
5 been since the company has been in for a rate case.
6 We're looking at it not only from that perspective,
7 but also from the perspective of the information we
8 have from our inspection programs about the
9 conditions of the system, concerns that my department
10 in particular would have with those.

11 I think the end result of that project
12 is likely to be a more proactive approach, I guess
13 you would say, to having direct interaction with the
14 companies based on that overall evaluation to work
15 with them on getting system improvements made that
16 are needed, on working with them on encouraging them,
17 if necessary, if we believe it's -- the information
18 justifies it, encouraging them to come in for rate
19 reviews to ensure that their rates are -- are
20 sufficient to cover the cost of service. Certainly
21 to make sure their rates are sufficient to recover
22 their costs with any improvements.

23 So I -- knowing a lot of the things that
24 Mr. Hummel talked about this morning about attention,
25 if you will, being paid, improved communications with

1 the company, that's a lot about what this project is
2 involved with. It's a genesis of that project, and
3 we are certainly working on that.

4 Q. Okay. If you had to apportion
5 responsibility in this -- excuse me -- on a scale of
6 zero -- excuse me. If you had to apportion
7 responsibility on this case -- in this case on a
8 scale of zero to 100 between the PSC's water and
9 sewer department and Mr. Burnam, or Suburban Water,
10 how much would you apportion fault in this case to
11 Mr. Burnam, Suburban Water, and how much would you
12 apportion to the PSC's Staff's, you know, lack of
13 proactive assistance in this case?

14 A. Well, I think if you go back to --

15 Q. Okay. Mr. Johansen, I'm not -- I'm not
16 asking for a -- an explanation. I just want to know,
17 is it 50 percent to each party, is it 75 percent
18 Mr. Burnam's fault? I just want you to give me a
19 number and tell me, you know, how much responsibility
20 do you and your department take, how much
21 responsibility lies on Mr. -- Mr. Burnam, in your
22 opinion?

23 A. 75/25 on the company.

24 Q. Okay, Mr. Johansen, last question: Do
25 you understand why myself and other Commissioners

1 here, you know, based on -- on what I've seen in the
2 three-plus years that I've been on this Commission,
3 don't have a high degree of confidence that the PSC's
4 Staff in the water and sewer division is capable of
5 assisting these companies to provide safe and
6 adequate water supply?

7 A. I certainly understand why you have that
8 concern. I understand the frustrations that are
9 experienced. Those frustrations are shared. I think
10 we are doing several things to address issues as they
11 come up. We've done several things in the last two
12 or three years. We're continuing to do things.

13 I -- I most certainly understand your
14 concerns and the other Commissioners' concerns and
15 frustrations in that regard. And I can assure you
16 that I am responding to those. I believe I'm
17 responding to those, and we are working towards a --
18 as I mentioned earlier, a more proactive approach to
19 this to try to stay out of situations like this, in
20 particular, where there have been identified
21 problems.

22 Now the company has agreed to address
23 those problems and we find out later, then we should
24 have found out that they haven't done so. I believe
25 we are addressing those. I believe what we're doing

1 in that regard will have a significant change in
2 situations like this coming up again.

3 Q. Okay. And how is that any different
4 from what -- what I've been hearing for the last
5 three-plus years?

6 A. Well, I think it -- I think as we
7 identify more things, we address them, and we are
8 always going to identify things that can be done
9 differently and things that could be done better.
10 And I guess, you know, my feeling is, is that as we
11 identify problems that either come to your-all's
12 attention or situations where we make changes in our
13 processes before things get brought to your
14 attention, I think we are continually evaluating
15 that, we are continually doing things to address
16 problems.

17 I can't tell you today that I am aware
18 of every problem that exists in our processes or
19 exists with our companies to where we're not going to
20 need to do more than what we're doing now. I would
21 expect we will identify problems that we're not aware
22 of today that we're gonna have to deal with.

23 We're -- we're making a significant
24 effort, I believe, to get out in front of those, to
25 identify them as best we can based on our recent

1 experience, and we are making changes to address
2 those. I can't guarantee you that I've identified
3 all the problems yet.

4 Q. So what you're saying to me is you don't
5 know how many other cases there are out there like
6 Mr. Burnam's?

7 A. Well, from the standpoint of this
8 particular type of situation where a company has
9 agreed to make certain system improvements as part of
10 a formal agreement with the Staff that the Commission
11 has approved, and knowing in a more timely fashion
12 whether those agreements have been carried out, I can
13 tell you I'm not aware of any other situations like
14 this one in that regard.

15 That is one of the changes that -- that
16 we certainly have made. We made it before this
17 situation ever surfaced, was to ensure that when we
18 agree, and possibly Public Counsel and the company
19 agree that things are going to be done, we have
20 implemented a process whereby there are follow-ups
21 done to make sure that those things are getting done,
22 to make sure that we don't get in a situation like
23 this where we have to come before the Commission for
24 compliance purposes.

25 Q. Currently, do the small water and sewer

1 companies, is there any sort of system in place where
2 a PSC Commission employee in the water and sewer
3 department is assigned to a particular water or sewer
4 company so that those small water and sewer operators
5 know that they've got one particular person that they
6 can call as their liaison to the agency?

7 A. We -- we don't have that set up
8 formally. I can tell you that it is the common
9 occurrence that the same inspector, for example, will
10 inspect the particular companies on a consistent
11 basis. For example, in this situation, Mr. Hummel
12 has been the main person from the water and sewer
13 department that's been involved with the -- with the
14 inspections over the years of Suburban Water.

15 Do we have a formal notification to the
16 companies, for example, that we would send out
17 notification to them that if you have a question,
18 call me as the manager or call Martin? We have not
19 done that. But it is -- it's our normal course
20 for -- particularly from the field inspection
21 program's perspective, that it is often the case
22 where the same people inspect the same companies on a
23 continuous basis.

24 Q. Do you think it would be a good idea in
25 the future to make sure that there -- that that line

1 of communication is more formal so people who are
2 situated in Mr. Burnam's position in the future don't
3 have to go through what Mr. Burnam's gone through?

4 A. I certainly think that -- that's
5 something that we can easily do. I think it's a good
6 idea, and we will do that.

7 CHAIRMAN DAVIS: Judge, I don't have any
8 further questions.

9 JUDGE LANE: Thank you, Chairman Davis.
10 Commissioner Gaw?

11 COMMISSIONER GAW: Just a few, I
12 believe.

13 QUESTIONS BY COMMISSIONER GAW:

14 Q. Really, I'm interested in following up
15 on one of the answers to the questions that you gave
16 to Chairman, Mr. Johansen, and that has to do with
17 your apportionment of responsibility. I'd like for
18 you to give me a little more detail on what it is
19 that you think that Staff should have done
20 differently than what actually occurred.

21 A. I think it's -- it's clear, and I will
22 admit that it's clear, that there should have been a
23 specific follow-up with this company regarding its
24 compliance with the Disposition Agreement that it
25 signed, that the Commission approved and that the

1 Commission directed the company to comply with.
2 That's the biggest shortfall in this situation that I
3 believe that exists from our perspective, and our
4 perspective being the Staff's perspective.

5 And I think it's clear that we might not
6 very well be in the situation we're in today had that
7 occurred. And that's really the -- that's the main
8 thing that I think we could have and should have done
9 differently. And that's one of the things I
10 mentioned to Chairman Davis, that even before this
11 situation come up, we have implemented that kind of a
12 follow-up program.

13 Q. What would it be that -- what should
14 have occurred specifically, and if you were going
15 forward, what would you do in a similar circumstance
16 to do the appropriate compliance follow-up?

17 A. Well, I think the prime example in this
18 particular situation is that the company agreed to
19 install meters to all of its buildings by a date
20 certain. We clearly would have had the right and
21 clearly should have followed up somewhat recently
22 after that deadline expired to see if the company
23 had, in fact, done what it agreed and was ordered to
24 do.

25 Q. Well, when -- when was that deadline in

1 your opinion?

2 A. The -- if you give me just a second, I
3 can give it to you exactly. August 31, 2005.

4 Q. Okay. And what was to happen regarding
5 the meters by that deadline, in your understanding?

6 A. For buildings that did not have meters,
7 they were to install meters. So what we should have
8 had was a situation where all of the buildings in the
9 system would have been metered so that the company
10 could be measuring the water sold to all of its
11 customers.

12 Q. All right. And -- and I think it's
13 already pretty much established that still hasn't
14 occurred as of today.

15 A. That's correct.

16 Q. Anything else in any of those matters as
17 far as compliance is concerned that you would have --
18 should have done differently or would it all fall
19 under that general follow-up you're talking about?

20 A. I think basically it would all fall
21 under the concept of conducting a specific follow-up
22 review, not only from my department's perspective,
23 but, for example, from management services'
24 perspective on a couple of the items that they were
25 involved with, the auditing department's perspective

1 on some of the items that ended up in a Disposition
2 Agreement that were generated by their
3 recommendations in the process.

4 It would -- it would have not just
5 involved someone from my department like Mr. Hummel
6 going and checking to see if the meters had been
7 installed or if the flush valves had been installed.
8 It would have involved a coordinated effort among the
9 departments that were involved in the small company
10 rate case process to ensure that all of those items
11 were -- were reviewed.

12 Q. And the flush valves, how -- would you
13 give me your perspective on how important those are.

14 A. I think the most important aspect of
15 having flush valves in your system is to ensure --
16 excuse me -- is to ensure that you have the
17 capabilities of flushing those mains on a periodic
18 basis to get residuals that may build up over time in
19 the mains out of the water, to ensure that you don't
20 have a situation possibly where you have a dead-end
21 main where you have water stagnating and potentially
22 backing into the system overall.

23 It's really a -- a -- the term we
24 normally use, it's really a quality of service issue
25 from the standpoint of making sure that -- that

1 you're providing not only safe drinking water to the
2 customers, but that you're providing overall good
3 water to the customers. It's really an O&M issue.

4 Q. Well, I understand your point, although
5 I would -- I would think that we would be ranking
6 health and safety a little ahead of everything else
7 there.

8 A. Well, that's certainly true, but I guess
9 from the standpoint of being able to flush your
10 system, it certainly does have a positive effect on
11 providing safe water. It has other benefits from the
12 standpoint of providing an overall, if you will, good
13 quality of water. There are benefits other than the
14 safe drinking water aspects of that type of
15 capabilities.

16 Q. Are you familiar with the -- with the
17 status of the pressure of this system?

18 A. Generally, yes.

19 Q. Did you hear any of the testimony from
20 the DNR witness --

21 A. I did.

22 Q. -- yesterday? Did you hear a discussion
23 about the -- the pressure dropping below 20?

24 A. Yes, I did.

25 Q. Are you familiar with whether or not

1 that has any -- any bearing on the safety of the
2 water system?

3 A. It certainly can, yes. The 20 pounds
4 operating pressure has been chosen, as Mr. Baker
5 explained yesterday, as a minimum pressure that if
6 it's -- if it's maintained at all times, there are
7 several risks associated with the -- with the
8 operation of a distribution system that you don't
9 have to be concerned about if you keep the pressure
10 at least at that level. There are risks to the
11 system from a safety standpoint of the water if you
12 drop below that level.

13 Q. Well, Mr. Johansen, do you know when
14 that test was conducted?

15 A. I don't for sure. I believe Mr. Baker
16 discussed that yesterday, but I -- I -- right now I
17 don't recall when it was.

18 Q. You don't know whether it was recent or
19 not, recent like in the last two or three months or
20 several years ago?

21 A. Well, I don't recall if it was within
22 the last couple of months. I -- I'm fairly certain
23 what he was talking about, the time period -- it may
24 have been up to a year ago, but it's been within that
25 time period.

1 Q. Well, Mr. Johansen, knowing that there
2 is this issue that -- that at least appeared to be
3 the case with this system, what is your view about
4 the potential for unsafe water on this system
5 existing?

6 A. Well, I think from the perspective that
7 the existing facilities are not functioning in a
8 manner that keeps the system above that 20-pound
9 operating level, I think you certainly have to look
10 at what needs to be done to the system, either to the
11 components or maintenance-wise or possibly
12 replacement-wise to ensure that that issue is taken
13 away.

14 Q. Here's my concern --

15 A. That's -- that's very clear.

16 Q. Here's my concern, Mr. Johansen. I have
17 heard that dropping the pressure below 20 can result
18 in the contamination of the system from -- from other
19 sources where the system may -- may be exiting,
20 whether that's into something outside of a house
21 where things are being watered with a hose or whether
22 it's something that might be upstairs in -- and I am
23 very concerned as to whether or not this system is
24 safe, based upon hearing that yesterday. And what I
25 want to know is, first of all, is my concern

1 justified, and second of all, if it is, why is there
2 no movement to doing something about it right away?

3 A. Well, I think --

4 Q. Or is there?

5 A. I think you're -- number one, I -- I
6 believe your concern is justified based upon the
7 information that was provided by Mr. Baker yesterday
8 and based upon my -- you know, my general
9 understanding of why that minimum system pressure
10 requirement is there. I think it is a legitimate
11 concern.

12 I believe that some of the things that
13 we have recommended the company to do in the past,
14 some of the things that we have identified that the
15 company needs to do going forward, some of the things
16 that DNR has identified to them as needing to be done
17 would certainly address those concerns.

18 Q. My concern right now is time, and I want
19 to know whether or not people who are ingesting water
20 on this system are drinking safe water based upon
21 what appears to be some findings that there could be
22 the potential for contamination in this system. I'm
23 not -- I'm not talking about what eventually happens.
24 I'm talking about today and what's happened over the
25 last several months, whether or not I ought to be

1 concerned about cross-contamination in that system
2 impacting people who are ingesting that water.

3 A. Based on what I heard yesterday, I
4 believe the low pressure situation is probably an
5 isolated one. I don't think it's a situation where
6 you -- you have that situation where the pressure's
7 dropping below that minimum level on any kind of a
8 continual basis. I -- I don't believe that's the
9 case.

10 Q. Why -- why do you say that? What makes
11 you believe that?

12 A. Well, there have -- the one instance
13 that Mr. Baker was talking about, those were done in
14 response to, I believe, what he characterized as
15 anonymous complaint, informal -- or anonymous
16 complaints regarding the system pressure.

17 My understanding is that information
18 that had been gathered prior to that, information
19 that has been gathered subsequent to that does not
20 indicate that that's a continual operating status of
21 this system.

22 Q. So you're saying -- have there been
23 other tests subsequent to the tests that he discussed
24 yesterday that show that the pressure is above 20 on
25 a continual basis?

1 A. I -- my understanding is that they have
2 done some follow-up pressure testing, and that the
3 problem did not exist at the time of those tests. I
4 believe that was part of the information provided
5 yesterday.

6 Q. Okay.

7 A. And that's -- that's my reference. But
8 I don't think it's -- even if it was an isolated
9 situation, there certainly are concerns about that,
10 and that points out the need for a serious evaluation
11 of this system to be done, and potentially for either
12 system improvements to be done or if it's caused --
13 on a cost-effective basis, for the source of supply
14 to be changed.

15 I think those are clearly things that
16 need to be evaluated, need to be evaluated quickly,
17 so we can determine what needs to be done to this
18 system to ensure that even an isolated incident like
19 that doesn't happen.

20 Q. Well, I want to make sure that I can
21 confirm from the record that it is designated as
22 an isolated incident as far as our record is
23 concerned here. So -- and I'll have to review that
24 from -- to assess it better, but to the -- to the
25 extent that that -- that that record is clear, that

1 will be great; if it's not clear, I hope it gets
2 cleared up before we get done with this.

3 All right. That's all the questions I
4 have.

5 A. Well -- and I can -- I can certainly
6 offer and -- and one of the things that I will
7 talk with Mr. Hummel about is, we do have pressure-
8 recording gauges that we can utilize to install on
9 the system, and we oftentimes do that when we have
10 pressure complaints that we receive from customers.

11 And we had not previously received
12 any -- any pressure complaints that were -- that were
13 specific enough to prompt us to go out and put our
14 pressure-recording gauges on the system.

15 But we will certainly do that, and I
16 will work with -- with Mr. Hummel, and -- and I have
17 no doubt that Mr. Burnam will be willing to cooperate
18 in that effort so we can get our own verified look at
19 what that situation is. And we will do that
20 promptly.

21 Q. Well, I hope you work with DNR to do
22 that so we're not duplicating, but I want to -- I
23 want to understand -- I mean, we have the public
24 hearing that we had. Clearly there were individuals
25 complaining about pressure on the system. We know

1 that, correct?

2 A. Yes.

3 Q. The DNR test has been out there, you're
4 not sure how long, but at that point in time there
5 was -- there was a pressure problem on the system.
6 What I need to confirm is whether or not that DNR
7 satisfied itself subsequently that that was a limited
8 incident and that that is no longer occurring in
9 their opinion, and I didn't get the -- to hear all of
10 that record at this point in time, so ...

11 A. If -- if I can't confirm that from --
12 from reviewing the transcript, I will certainly
13 follow up with -- with Mr. Baker about that, and as I
14 said, we'll do some of our own follow-up work on
15 that.

16 COMMISSIONER GAW: Thank you. I'm done,
17 Judge. Thanks.

18 JUDGE LANE: Thank you, Commissioner
19 Gaw. I have a couple of questions.

20 QUESTIONS BY JUDGE LANE:

21 Q. First one is, would you take a look at
22 Exhibit 34? That's the letter dated January 31st,
23 2007. Your testimony is that you did not actually
24 receive a copy of that letter until well after
25 January 31st, 2007; is that right?

1 A. That's correct.

2 Q. And it was at least, what, early April
3 is your recollection is the first time you saw this?

4 A. Yes.

5 Q. Early April 2007?

6 A. It was -- yes, I know it was after the
7 time that the company sent its letter to the
8 customers regarding the pending dissolution and
9 termination -- termination of service. I know it was
10 after that. What I don't specifically recall is how
11 much after that.

12 Q. All right. But it certainly wasn't
13 February 5th, 2007, as indicated by the -- on the
14 last page of the exhibit --

15 A. Right.

16 Q. -- February 5th, 2007?

17 A. And my understanding of -- of -- of that
18 is that would be the date that the person signing for
19 the letter picked the letter up.

20 Q. All right. Okay. I just -- I just
21 wanted to make sure of that. And one further
22 question on that in that regard. And what were the
23 circumstances under which you finally saw this? Was
24 this provided to you by counsel, by Staff? I mean,
25 did it just show up on your desk one day and --

1 A. No. It came about after we became aware
2 of the customer letter, if you will, that the company
3 sent out. During the conversations that were held
4 between members of the General Counsel's office and
5 the company's legal representatives, the existence of
6 this letter was part of those discussions. Excuse
7 me. And as a result of that, myself, Mr. Russo and
8 Mr. Merciel, Mr. Hummel, we all did a search through
9 our records to see if, in fact, this letter had been
10 received --

11 Q. All right.

12 A. -- in the department, if you will. Once
13 we determined that that was not the case,
14 representatives from the General Counsel's office
15 requested from Mr. Burnam's attorneys that we be
16 provided a copy of the letter. And that's -- that's
17 when we actually got it and how we actually got it.

18 Q. All right. That's what I wanted to
19 know. You never got a phone call or an e-mail or
20 anything like that from Irene Crawford, the other --
21 the other recipient of this letter, did you, about
22 the letter or saying, hey, I got this letter?

23 A. No. And actually, I talked to
24 Ms. Crawford about this, I talked to Mr. Baker about
25 this, and Mr. Baker specifically said that he had

1 never seen the letter until the time that we were
2 talking to him about it which was after all this time
3 that I just explained.

4 Ms. Crawford indicated to me that she
5 did not recall receiving the letter. So that -- that
6 was -- we did contact them. It was after the fact.
7 There was some discussions with them about it, and
8 that's the extent of those discussions.

9 Q. All right. That was a couple months
10 after. Thank you. That takes care of my question.
11 I also have a question for the Chairman who had to
12 run. And he asked me to ask you who is the -- who is
13 the one person ultimately responsible for Staff's
14 failure to follow up on the 2005 rate case items, the
15 compliance?

16 A. Dale Johansen.

17 JUDGE LANE: Thank you very much. That
18 concludes the question from the bench. Do you have
19 any further questions, Commissioner Gaw?

20 COMMISSIONER GAW: No.

21 JUDGE LANE: Any further
22 cross-examination from OPC based on the questions
23 from the bench?

24 MS. BAKER: No, thank you.

25 JUDGE LANE: Any cross from Suburban

1 based on questions from the bench?

2 MR. VOLKERT: No, your Honor.

3 JUDGE LANE: All right. Any redirect
4 now by Staff?

5 MR. REED: No, thank you.

6 JUDGE LANE: Okay. There will be no
7 cross. We're now done with Mr. Johansen. Thank you
8 very much, sir, for your testimony today. And may he
9 be finally excused, or do you think we need to --

10 MR. VOLKERT: I'd like to reserve the
11 right to call him on direct, your Honor.

12 JUDGE LANE: All righty. All right.
13 Then you are not finally excused.

14 All right. It's time for lunch. I say
15 we take an hour, and afterwards we'll -- we'll push
16 through and we'll soldier on and try to get done
17 tonight if at all possible.

18 If we have to -- if we have to -- if it
19 gets to a point where it's obvious we're not gonna
20 make it, then we'll just have to reserve another day
21 to finish. I will -- over lunch I will check the
22 availability of hearing rooms on Monday and Tuesday
23 of next week. I hate to think about that prospect,
24 but it could happen. Thank you very much and we're
25 adjourned till two o'clock.

1 (THE LUNCH RECESS WAS TAKEN.)

2 (EXHIBIT NOS. 16 AND 17 WERE MARKED FOR
3 IDENTIFICATION BY THE COURT REPORTER.)

4 JUDGE LANE: We're back on the record in
5 Case No. WC-2007-0452. It's been brought to my
6 attention that counsel for Suburban would like to
7 call a witness out of order due to his limited
8 availability if we were to do it later, and counsel
9 for Staff and OPC have agreed to allow that.

10 So although this is part of the case of
11 the Respondents, Suburban Water and Sewer, we're
12 going to take that witness out of order, and we'll
13 go -- we'll go from there. Sir, would you please
14 spell your name for the reporter, please.

15 MR. EDLUND: Yes. My first name is
16 Craig, C-r-a-i-g. Last name is Edlund, E-d-l-u-n-d.

17 JUDGE LANE: I'm sorry. How is that
18 pronounced?

19 MR. EDLUND: Edlund.

20 JUDGE LANE: And -- and your first name
21 is?

22 MR. EDLUND: Craig.

23 JUDGE LANE: Is Craig. Okay. All
24 right, Mr. Edlund, would you please raise your right
25 hand to be sworn.

1 (THE WITNESS WAS SWORN.)

2 JUDGE LANE: Thank you very much. And
3 Mr. Volkert, you may proceed with direct examination
4 of this witness.

5 DIRECT EXAMINATION BY MR. VOLKERT:

6 Q. Mr. Edlund, thank you for coming by
7 today. Could you please state your name again.

8 A. Craig Edlund.

9 Q. And where are you employed?

10 A. I'm employed at Alliance Water
11 Resources, 206 South Keene, Columbia, Missouri.

12 Q. And what does Alliance Water Resources
13 do?

14 A. Alliance is in the business of operating
15 water wastewater systems on a contract basis with
16 cities, sewer districts, water districts, Missouri
17 and the surrounding states.

18 Q. Does Alliance have certified water
19 operators on staff, DNR-certified water operators on
20 staff?

21 A. Yeah, we have probably 50 or 60
22 operators on staff.

23 Q. And what's your position with Alliance
24 Water Resources?

25 A. I'm vice president. I'm in charge of

1 our marketing and business development.

2 Q. I'm gonna -- have you ever heard of
3 Suburban Water and Sewer Company?

4 A. Yes, I have.

5 Q. Did you have a conversation with -- with
6 someone on behalf of Suburban Water and Sewer Company
7 in 2005?

8 A. I recall having a conversation. I don't
9 know the exact date of that, but that sounds about
10 right.

11 Q. Okay. And at the time, did you agree or
12 not agree to manage the water system for Suburban
13 Water and Sewer Company?

14 A. We declined to be involved in the
15 operation of that. Our -- our business model, our
16 business plan, if you will, is to really do larger
17 systems where we can have full-time staff, at least a
18 couple people on -- on staff at all of our locations,
19 and that's what we do here in Missouri and Iowa.

20 Q. So you declined outright?

21 A. Yes.

22 MR. VOLKERT: Nothing further.

23 JUDGE LANE: All right. Thank you very
24 much. Cross-examination? First we'll go with OPC.

25 CROSS-EXAMINATION BY MS. BAKER:

1 Q. You stated that -- that your normal
2 business model is to deal with larger companies; is
3 that correct?

4 A. That's correct.

5 Q. What size of companies are the smallest
6 that you deal with?

7 A. I think the smallest we have is maybe a
8 water district of 7 or 800. Most of them are 2000 or
9 more.

10 Q. Okay. Do you know if you were told
11 immediately that this was a much smaller system than
12 what Alliance normally works with?

13 A. Yeah. My recollection -- and again, I
14 don't -- I don't have any records of this. But my
15 understanding, one was more interested in buying it,
16 which we're not in that business of owning utilities,
17 and the second thing is operating it. And once I
18 asked about the system and how big it was, it did not
19 fit our business model, so we declined.

20 Q. Okay. So you were not ever in -- in
21 serious consideration of being a certified operator
22 for a system this small?

23 A. No.

24 MS. BAKER: Thank you.

25 JUDGE LANE: Thank you very much.

1 Cross-examination by Staff?

2 MR. REED: No.

3 JUDGE LANE: All right. I have a quick
4 question.

5 QUESTIONS BY JUDGE LANE:

6 Q. Mr. Edlund, your testimony was that you
7 did decline to pursue looking in -- or pursue
8 management of the Suburban system; is that correct?

9 A. That's right.

10 Q. And I believe your testimony was that --
11 that part of the reason for that -- and I'll go into
12 that a little bit further -- was the -- that the size
13 of Suburban is not the size of company that you
14 typically -- that your -- that the company for which
15 you work usually works with?

16 A. Correct.

17 Q. All right. Were there other factors
18 that went into that decision? Was that the most
19 important factor in declining to take over the
20 system?

21 A. I guess a secondary consideration is
22 sometimes if there's a small system that is near one
23 of our existing operations where we could do some
24 kind of thing, we would -- it -- still may not be
25 interested in doing it, but at least it would -- it

1 would make it more of a possibility, and we really
2 don't have anything that's -- that's close enough for
3 us to do that that would make sense.

4 So that -- it's really a -- you know,
5 it's first of all size, and then sometimes the
6 geography, we might try to figure out something to
7 do, but it just -- we don't have anything close
8 enough to make that make sense.

9 Q. All right. So the -- would it be fair
10 to say the primary consideration was its size and the
11 secondary one was the geography and location?

12 A. Certainly, yes, I would agree with that.

13 JUDGE LANE: All right. Thank you very
14 much.

15 THE WITNESS: Uh-huh.

16 JUDGE LANE: Any redirect of the
17 witness?

18 MR. VOLKERT: No, your Honor.

19 JUDGE LANE: All right. I should have
20 asked if there was any further cross based on my
21 questions. I'm sorry.

22 MS. BAKER: No.

23 JUDGE LANE: All right. Very well.

24 Mr. Edlund, thank you for your testimony, and you are
25 finally excused for the day.

1 THE WITNESS: All right. I appreciate
2 you accommodating my time schedule too, so thank you
3 very much, and my casualness. I normally would
4 have ...

5 JUDGE LANE: And thanks for the parties
6 for agreeing to allow him to be called out of order
7 so that we could take care of that. All right.
8 We'll go back to the normal schedule, and the normal
9 schedule would dictate that it's now time for Staff
10 to call its next witness.

11 MS. SYLER BRUEGGEMANN: And that is
12 Mrs. Bonnie Burnam.

13 JUDGE LANE: All right. Mrs. Burnam,
14 would you please spell your name for the court
15 reporter.

16 MS. BURNAM: B-u-r-n-a-m, Bonnie,
17 B-o-n-n-i-e.

18 JUDGE LANE: Thank you very much.
19 Please raise your right hand to be sworn.

20 (THE WITNESS WAS SWORN.)

21 JUDGE LANE: Thank you very much.
22 Direct examination, you may proceed.

23 MS. SYLER BRUEGGEMANN: Thank you.

24 DIRECT EXAMINATION BY MS. SYLER BRUEGGEMANN:

25 Q. Mrs. Burnam, are you secretary of

1 Suburban Water and Sewer Company?

2 A. Yes, I am.

3 Q. Are you a shareholder of Suburban Water
4 and Sewer Company?

5 A. Yes.

6 Q. And if you could wait for me to ask the
7 question, finish with it, so that we can get it all
8 down by the court reporter. Thank you. Were you
9 ordered to appear today by a subpoena duces tecum?

10 A. Yes.

11 Q. And did that subpoena contain an order
12 to produce documents? Did it have a line that said
13 there are certain documents you have to bring with
14 you?

15 A. I'm not sure.

16 Q. Okay. If I told you that I'm looking at
17 a copy of the subpoena that we served you with and it
18 said you're supposed to bring corporate records for
19 Suburban including all records and minutes of
20 shareholder and director meetings from the years 2002
21 to 2007, would you take my word for it?

22 A. Yes.

23 Q. Okay. And do you know if you or your
24 attorneys brought those documents today?

25 A. I'm not sure.

1 Q. Okay. Well, I've been supplied with
2 what I've been told was the book of minutes and you
3 can check if you want to.

4 MR. HARRISON: That's all right. I gave
5 them to you before.

6 MS. SYLER BRUEGGEMANN: Okay.

7 MR. HARRISON: I'll just make it easy
8 and state that for the record.

9 MS. SYLER BRUEGGEMANN: Thank you.

10 MR. HARRISON: What I gave you, to be
11 precise, were the articles, the minutes, I think also
12 some of the annual reports which I don't think were
13 necessarily comprehensive of your subpoena, but I
14 gave them to you anyway.

15 MS. SYLER BRUEGGEMANN: Okay.

16 BY MS. SYLER BRUEGGEMANN:

17 Q. Now, do you recall signing any minutes
18 or typing up any minutes for Suburban Water and Sewer
19 Company for the shareholders on January 31st, 2007?

20 A. Yes.

21 Q. You do? And then do you also remember
22 signing off on a written consent of the board of
23 directors of Suburban Water and Sewer Company also on
24 January 31st, 2007?

25 A. Not for sure, but I probably did.

1 MS. SYLER BRUEGGEMANN: Okay. Your
2 Honor, I just received these sets of minutes, so I'm
3 gonna have to ask the bench's indulgence, and I don't
4 have copies.

5 JUDGE LANE: All right. And do you plan
6 to have them -- have they already been marked?

7 MS. SYLER BRUEGGEMANN: Not these two.
8 I just received them about three minutes ago.

9 JUDGE LANE: All right. So we'll need
10 to have them marked if you're going to show them to
11 the witness or --

12 MR. REED: Are you gonna introduce those
13 into evidence?

14 MS. SYLER BRUEGGEMANN: Yes.

15 MR. REED: Okay. Then let's mark them.

16 JUDGE LANE: All right.

17 MS. SYLER BRUEGGEMANN: They're --
18 Mr. Harrison, they are --

19 MR. HARRISON: I'm sorry. I'm sorry. I
20 wasn't listening. I'm sorry.

21 MS. SYLER BRUEGGEMANN: They are your
22 originals.

23 MR. HARRISON: That's all right. That's
24 all right.

25 MS. SYLER BRUEGGEMANN: Thank you.

1 (EXHIBIT NOS. 18 AND 19 WERE MARKED FOR
2 IDENTIFICATION BY THE COURT REPORTER.)

3 JUDGE LANE: Just for my notes, I'm
4 showing Exhibit 18 is the written consent of
5 shareholders of Suburban for January 31st, 2007, and
6 Exhibit No. 19, written consent of the board of
7 directors of Suburban, January 31, 2007.

8 BY MS. SYLER BRUEGGEMANN:

9 Q. Now, you just finished reviewing the
10 shareholders' written consent for Suburban; is that
11 correct?

12 A. Yes.

13 Q. And can you give us a summary of what
14 this written consent was doing or what it was
15 stating?

16 MR. HARRISON: Is this Exhibit 18?

17 MS. SYLER BRUEGGEMANN: It is.

18 THE WITNESS: To dissolve the water or
19 something, dissolve the corporation or shut the water
20 off on July 1st.

21 BY MS. SYLER BRUEGGEMANN:

22 Q. Okay. And it -- and it specifically
23 said, "Be it resolved that the corporation dissolve
24 and commence winding up its business and affairs
25 effective as of July 1, 2007." All is generally

1 outlined in other minutes. The last part was my
2 summary. Is that what it said?

3 A. Yes.

4 Q. And was that your signature at the
5 bottom of this document?

6 A. Yes.

7 MS. SYLER BRUEGGEMANN: Okay. At this
8 time I would ask for the admission of Exhibit 18 into
9 the record.

10 JUDGE LANE: Exhibit 18 has been marked
11 and offered into evidence by Staff. Any objection
12 from OPC or Suburban?

13 MS. BAKER: I haven't seen it, but no
14 objection.

15 MR. HARRISON: No.

16 MS. SYLER BRUEGGEMANN: I'm so sorry,
17 Ms. Baker.

18 MS. BAKER: I keep getting left out.

19 MR. HARRISON: Well, if she's gonna
20 object ...

21 MS. BAKER: No objection.

22 JUDGE LANE: All right. Without
23 objection, it is admitted into evidence, Exhibit 18.

24 (EXHIBIT NO. 18 WAS RECEIVED INTO
25 EVIDENCE AND MADE A PART OF THE RECORD.)

1 BY MS. SYLER BRUEGGEMANN:

2 Q. Now, what I just showed you was
3 Exhibit 19, and was that your signature at the
4 bottom?

5 A. Yes.

6 Q. For January 31st, 2007?

7 A. Yes.

8 Q. Okay. Did you actually write these
9 minutes up?

10 A. No.

11 Q. Okay. But you're sure this is a
12 document you signed?

13 A. Yes.

14 Q. And what would you say that this Board
15 of Directors Unanimous Written Consent was doing?

16 A. The same as the previous one, to try to
17 dissolve the company.

18 Q. Okay. And was it -- was this also to
19 support the shutting off of water on July 1st of
20 2007?

21 A. Yes.

22 Q. And was that knowing that you signed the
23 minutes on both of these documents?

24 A. Yes.

25 Q. And throughout, was that the intent, to

1 go ahead and dissolve the company and wrap up
2 everything by July 1st, 2007?

3 A. Yes.

4 MR. HARRISON: The intent of whom? The
5 company or the witness --

6 MS. SYLER BRUEGGEMANN: Well, she
7 already answered the question.

8 BY MS. SYLER BRUEGGEMANN:

9 Q. But specifically, Mrs. Burnam, as a
10 shareholder and the secretary of Suburban Water and
11 Sewer Company, was that the intent of the documents?

12 A. Yes.

13 Q. And did that happen?

14 A. No.

15 Q. Okay. And when did the intent change
16 not to dissolve the company?

17 A. I don't know exactly.

18 MS. SYLER BRUEGGEMANN: Okay. Before I
19 move any further, I'd ask for the admission of
20 Exhibit 19, the written consent of the board of
21 directors of Suburban as of January 31st, 2007.

22 JUDGE LANE: Exhibit 19 has been marked
23 and offered into evidence. Any objection?

24 MS. BAKER: No.

25 JUDGE LANE: Have you seen that?

1 MS. BAKER: Yes. She showed me both at
2 the same time.

3 MR. HARRISON: No, no objection.

4 JUDGE LANE: All right. Hearing none,
5 it is received.

6 (EXHIBIT NO. 19 WAS RECEIVED INTO
7 EVIDENCE AND MADE A PART OF THE RECORD.)

8 MS. SYLER BRUEGGEMANN:

9 Q. Mrs. Burnam, I've just handed you
10 Exhibit 17 and Exhibit 16. Exhibit 16, the title of
11 it is the Unanimous Written Consent of the Board of
12 Directors of Suburban Water and Sewer Company, and
13 there's a signature page on the very last page. Can
14 you identify that for us, please, who signed and on
15 what date?

16 A. That is my signature, June 25th.

17 Q. And who else signed?

18 A. Gordon Burnam.

19 Q. Okay. And just to go back for a brief
20 minute on the other two exhibits, did Gordon Burnam
21 sign those also?

22 A. Yes.

23 Q. Okay. Now, on Exhibit 17 titled
24 Unanimous Written Consent of the Shareholders of
25 Suburban Water and Sewer Company, can you tell me who

1 signed that document?

2 A. Bonnie Burnam and Gordon Burnam.

3 Q. Okay. So that is your signature?

4 A. Yes.

5 Q. And what's the date on that one, please?

6 A. June 25th, 2007.

7 Q. Okay. And for the shareholders document,
8 Exhibit No. 17, what is the effect of this document?

9 MR. HARRISON: The document speaks for
10 itself. I mean, the witness can read it if she wants,
11 but the document speaks for itself.

12 JUDGE LANE: Well, as someone who signed
13 it, she's certainly -- she's certainly allowed to
14 testify as to her understanding of what the
15 document --

16 MR. HARRISON: Oh, is that the question?

17 JUDGE LANE: Yes.

18 MS. SYLER BRUEGGEMANN: If you'd like me
19 to --

20 JUDGE LANE: If you'd like the question
21 read back, perhaps, or you can rephrase.

22 MR. HARRISON: Let's have it --

23 MS. SYLER BRUEGGEMANN: I can rephrase.

24 MS. SYLER BRUEGGEMANN:

25 Q. Mrs. Burnam, what is your understanding

1 specifically of Exhibit No. 17?

2 A. It was the postponement of the
3 dissolution is how I understood it.

4 Q. Okay. And do you know how that came
5 about that you decided to go ahead and postpone the
6 dissolution?

7 A. I don't know.

8 Q. Would you look at Exhibit 16 for a
9 second, please. Now, does this document state that
10 it is in the best interest -- and I'm at the second
11 "whereas" on the first page, third line from that --
12 from the bottom of that whereas. "It is in the best
13 interest of the corporation and its shareholders to
14 delay said dissolution and winding up of the
15 corporation in order to respond to said actions." Is
16 that what it says?

17 A. Yes.

18 Q. And is that "said actions" referred to
19 above as the public -- Missouri Public Service
20 Commission has initiated legal actions against the
21 corporation, including a complaint for statutory
22 penalties and a petition for injunction. Is that
23 what it's referring to?

24 A. That's correct.

25 Q. And are you aware that the Missouri

1 Public Service Commission filed its complaint
2 May 29th of 2007?

3 A. The exact date I don't know.

4 Q. This was signed on June 25th, correct?

5 A. Uh-huh, yes.

6 Q. And were you aware of the PSC filing a
7 complaint just prior to this resolution being signed?

8 A. I don't remember the exact date.

9 Q. Were you aware of it before?

10 A. Signing this?

11 Q. Yes.

12 A. I gather I probably was.

13 Q. Okay. So was this the first day that
14 your intent changed as to not shut off the water on
15 July 1st, 2007?

16 MR. HARRISON: What was the first day,
17 June 25th?

18 MS. SYLER BRUEGGEMANN: Yes.

19 THE WITNESS: My intent?

20 BY MS. SYLER BRUEGGEMANN:

21 Q. Yes, as the secretary and shareholder in
22 signing these minutes, was that your intent?

23 A. I signed the minutes.

24 Q. What's that?

25 A. I signed the minutes, yes.

1 Q. So was it the intent to not shut off --

2 A. Not to shut it off, correct.

3 Q. -- on July 1st? Was June 25th the first
4 day that this became your intent not to shut off the
5 water on July 1st as a shareholder and secretary of
6 Suburban?

7 A. I don't know when my intent began.

8 Q. Okay. When you started -- when -- when
9 you signed these different sets of minutes in January
10 and then subsequently in June -- well, let's start
11 with January 31st.

12 On January 31st you've already just
13 testified that you -- the intent there was to have to
14 shut off the water on July 1st, 2007; is that correct?

15 A. That's correct.

16 Q. Were those minutes signed as a joke?

17 A. No.

18 Q. Did Gordon sign those minutes as a joke?

19 A. No.

20 Q. Did he sign those minutes just to get
21 somebody's attention?

22 A. Possible.

23 Q. Okay. Did he sign those minutes not
24 intending to shut off the water on July 1st, 2007?

25 A. I don't know what he intended to do.

1 MS. SYLER BRUEGGEMANN: Okay. I would
2 ask for the admission of Exhibit No. 16 and 17 into
3 evidence at this time.

4 JUDGE LANE: Exhibit 16 and 17 have been
5 marked and offered into evidence by Staff. Any
6 objections?

7 MS. BAKER: No objection.

8 MR. HARRISON: Nope.

9 JUDGE LANE: Hearing none, they are
10 admitted, they are received.

11 (EXHIBIT NOS. 16 AND 17 WERE RECEIVED
12 INTO EVIDENCE AND MADE A PART OF THE RECORD.)
13 BY MS. SYLER BRUEGGEMANN:

14 Q. Okay. Going back to Exhibit 16, the
15 minutes of the board of directors meeting from
16 June 25th, 2007, on the second page, letter E, could
17 you just read what that says, please.

18 A. "Regarding item No. 10, the corporation
19 is not required to install meters on buildings for
20 which an unmetered monthly rate was approved in its
21 last tariff sheet, and the corporation has not been
22 able to install meter wells and meters in these
23 buildings due to a lack of funds."

24 Q. Was that your understanding when you
25 signed this?

1 A. Yes.

2 Q. Will you read F, please.

3 A. "Regarding item No. 11, the corporation
4 has implemented the subject replacement program for
5 existing meters which is to replace meters from time
6 to time on an as-needed basis and to have replaced
7 all said meters no later than May 31st, 2015."

8 Q. And was that your understanding?

9 A. Yes.

10 Q. Will you read item G, please.

11 A. "Regarding item No. 12, the corporation
12 has not been able to install the -- the subject flush
13 valves due to a lack of funds."

14 Q. Okay. And was your understanding that
15 flush valves were not installed?

16 A. That's correct.

17 Q. Would you read item H, please.

18 A. "Regarding No. 13, the corporation has
19 not been able to replace the subject inlet due to the
20 condition of the standpipe, lack of funds and" --

21 Q. Okay. Was that your understanding?

22 A. Yes.

23 Q. And will you read I, please.

24 A. "Regarding item No. 14, the corporation
25 has been -- not been able to contract with a certified

1 water operator due to lack of funds; and ..."

2 Q. And your understanding is they still
3 haven't contracted with a certified water operator?

4 A. No definite contract.

5 Q. And finally, will you please read J.

6 A. "Regarding item No. 15, the corporation
7 has provided the subject report regarding master and
8 customer meter usage -- usage data."

9 Q. Was that your understanding?

10 A. Yes.

11 Q. Who has this data?

12 A. An employee of another company who works
13 on this.

14 Q. Okay. And do you know the name of that
15 employee?

16 A. Paula Belcher.

17 Q. Okay. And you do not retain that
18 information?

19 A. I do not.

20 Q. Okay. And who supervise the day-to-day
21 operations of Suburban?

22 A. Paula Belcher.

23 Q. And who supervises the billing of
24 Suburban Water and Sewer Company?

25 A. Paula Belcher.

1 Q. Okay. Now, do you have any records
2 pertaining to what would be called a continuous -- or
3 continuing property records system?

4 A. I have records of purchases and usage.

5 Q. Okay. So you have records of equipment
6 purchases for Suburban Water and Sewer Company?

7 A. Yes.

8 Q. And how far back do those records of
9 purchases go?

10 A. 1973.

11 Q. Okay. Do you know if you ever compiled
12 that information into a continuous property record
13 document?

14 A. No.

15 Q. Oh, one last question. I have in front
16 of me your deposition from July 17th of 2007, and
17 there's a correction on a page prior to your
18 signature of this deposition. Have you seen the
19 written transcript of this?

20 A. No.

21 Q. You didn't see it today or in the past
22 week?

23 A. (Shook head.) No.

24 Q. So you haven't signed a document for
25 your deposition?

1 A. This week, how long ago? Since --

2 MR. HARRISON: She's seen it. Just show
3 it to her. It's the deposition, she's seen it.

4 THE WITNESS: Oh, the deposition, yes.
5 I didn't know what document you were talking about.

6 BY MS. SYLER BRUEGGEMANN:

7 Q. The one I said.

8 A. This is when we were down here before.
9 I'm sure I did and I signed it.

10 Q. Okay. Thank you. Now, there's an error
11 listed on the last page referring to some testimony
12 you gave on page 8, line 17 through 25, and page 9,
13 line 1 through 13. Can you tell me what that error
14 was?

15 A. Was that where I said Paula was vice
16 president or something?

17 MR. HARRISON: Do you want to look at
18 the deposition?

19 THE WITNESS: Yes, I would like to see
20 it again. This one here?

21 BY MS. SYLER BRUEGGEMANN:

22 Q. It's not my handwriting. This back
23 page.

24 A. Yes, yes. Did I write this one? That's
25 correct. And that's my writing on the last page.

1 Q. Now, can you tell us what the correction
2 was?

3 A. A correction of Paula being vice
4 president of Suburban Water and Sewer.

5 Q. Paula -- I'm sorry.

6 A. Paula Belcher.

7 Q. So she is vice president of Suburban?

8 A. She is not. She is vice president of
9 another corporation.

10 Q. Was your testimony that two and a half
11 years prior, you made her vice president of Suburban
12 so that she could sign off on documents?

13 A. That was probably what I said, but then
14 I put that error in there too.

15 Q. Okay. How did you learn it was in
16 error?

17 A. Because I thought about it.

18 Q. You just thought about it?

19 A. Correct.

20 Q. Okay. Then did you talk to anyone about
21 it?

22 A. Not prior to saying it was an error.

23 Q. How about afterward?

24 A. I don't know. I don't remember.

25 Q. Did you tell Paula?

1 A. Yes.

2 Q. So you did talk to someone?

3 A. I talked to Paula.

4 Q. Okay.

5 A. I told her I had said that but I didn't
6 mean it.

7 Q. Okay. So the only two officers of
8 Suburban are you as secretary and Gordon Burnam as
9 president; is that correct?

10 A. Yes.

11 MS. SYLER BRUEGGEMANN: Okay. Nothing
12 further at this time.

13 JUDGE LANE: All right. Ms. Baker, do
14 you have any cross-examination of this witness on
15 behalf of the Public Counsel?

16 MS. BAKER: I have no questions. Thank
17 you.

18 JUDGE LANE: All right. Suburban,
19 cross-examination? Mr. Harrison. Thank you.

20 CROSS-EXAMINATION BY MR. HARRISON:

21 Q. Bonnie, the good news is I'm gonna be
22 pretty brief here after you've been sitting outside
23 for the better part of a day and a half. First of
24 all, one sort of housekeeping thing. Do people call
25 you Micky from time to time?

1 two.

2 MR. HARRISON: Okay. I'll just put
3 those up here.

4 THE WITNESS: Those look like originals.

5 MR. HARRISON: Okay. Your Honor, is it
6 all right if I ask this witness some questions from
7 right here?

8 JUDGE LANE: Of course.

9 BY MR. HARRISON:

10 Q. Okay. I've handed you Exhibit 3 there --

11 A. Yes.

12 Q. -- which has previously been marked and
13 admitted -- pardon me -- in this case.

14 A. Uh-huh.

15 Q. Take as much time as you want to look at
16 that, and I'll ask you the question. And if you want
17 to look at it and think about it some more, that's
18 fine. Have you seen that before?

19 A. Yes, I have.

20 Q. And just -- just for the record, it's
21 called Suburban Water and Sewer Company Property
22 Record System?

23 A. Correct.

24 Q. Did you participate in the preparation
25 of that document?

1 A. Probably the original, years and
2 amounts, yes.

3 Q. In other words --

4 A. It came direct from a general ledger
5 entry and books.

6 Q. Well, I want to make sure I'm clear on
7 this, though. Are you saying that you supplied that
8 information --

9 A. Yes.

10 Q. -- to be put into this document; is that
11 what you're --

12 A. Yes.

13 Q. -- saying? Okay. All right. And is it
14 correct that Paula Belcher assisted?

15 A. Yes.

16 Q. And is it correct that one of your
17 attorneys assisted, Mr. Volkert?

18 A. Yes.

19 Q. All right. Is it correct that Suburban
20 has somewhere around -- well, do you know as you sit
21 here how many bill-paying customers Suburban has
22 approximately?

23 A. Approximately? There -- I don't know,
24 38, 39 single families and maybe 118 duplexes,
25 four-plexes.

1 Q. Okay. The exact number isn't important.

2 A. I'm not sure.

3 Q. Well, it's not important for the line of
4 questioning I'm going into here, so I'm not gonna ask
5 you to nail that down. Is it correct, then, that
6 those people are Suburban's source of revenue?

7 A. Yes.

8 Q. They pay for water that's supplied to
9 them?

10 A. Yes.

11 Q. All right. And is it correct also that
12 Suburban has no other source of revenue, operating
13 revenue?

14 A. That is correct.

15 Q. It doesn't own any other income or
16 revenue-producing assets, for example?

17 A. No.

18 Q. Okay. And there's been testimony about
19 the components of the system, of the water system,
20 and I'm sure you're generally aware of
21 them. I'm not gonna ask you about specifics of
22 them, though. But I will ask you this: Is it
23 correct that, you know, the components of the water
24 system, the pump and the well and the standpipe and
25 the lines and so forth, those are Suburban's assets,

1 physical assets?

2 A. Yes.

3 Q. And Suburban doesn't have any assets
4 beyond those?

5 A. None.

6 Q. All right. With respect to Suburban's
7 recordkeeping, you just testified very generally
8 about what your role is. What is it that you -- what
9 records is it that you maintain and produce and so
10 forth?

11 A. In the very beginning I did all the
12 recordkeeping and everything, but in the past ten
13 years I have had some of the employees of another
14 company do it. I have overseen it, corrected it,
15 submitted it.

16 Q. All right. So you at least play a role
17 in keeping the books of the company?

18 A. Yes.

19 Q. I assume you have some role in assisting
20 in preparation of tax returns?

21 A. Yes.

22 Q. You don't actually do the preparation of
23 the tax returns?

24 A. No.

25 Q. But you, for example, provide

1 information to the company's accountants in order to
2 get that done --

3 A. Yes.

4 Q. -- is that a fair statement? All right.
5 I'm gonna hand you Exhibit 30. Take a second to look
6 at that, please, and then I'll ask you some questions
7 about it.

8 A. (Witness complied.)

9 Q. All right. Have you had an opportunity
10 to look at Exhibit 30?

11 A. Yes.

12 Q. It's -- up near the top, it's dated
13 as -- there's a date as of 1/31/06; is that right?

14 A. Yes.

15 Q. Is that a -- well, and it's relating --
16 related to Suburban Water and Sewer?

17 A. Yes. This is the balance sheet.

18 Q. It's the company balance sheet as of
19 that date?

20 A. Yes.

21 Q. All right. And just for the record, it
22 shows -- if you could move your thumb, it shows total
23 assets of just a little bit over \$16,000, right?

24 A. Correct.

25 Q. Total liabilities as of that date of

1 about \$12,300?

2 A. That's correct.

3 Q. And that --

4 A. We operate only on a cash basis, so ...

5 Q. Okay. And that balance sheet is -- is
6 accurate as of December -- I'm sorry -- January 31st
7 of '06?

8 A. Yes.

9 MR. HARRISON: I offer Exhibit 30.

10 JUDGE LANE: Exhibit 30's been marked
11 and offered into evidence by Suburban. Does
12 counsel --

13 MS. BAKER: I have one question about --
14 about this.

15 JUDGE LANE: Yes.

16 MS. BAKER: Why is the date at the top
17 12/22/05 and the balance sheet as of 1/31/06?

18 THE WITNESS: I could answer that very
19 easily.

20 MR. HARRISON: If you want to voir dire.

21 MS. BAKER: That's my objection for it.

22 JUDGE LANE: You're free to voir dire
23 the witness.

24 MS. BAKER: Okay.

25 VOIR DIRE EXAMINATION BY MS. BAKER:

1 Q. Explain it, please.

2 A. I can answer that. After December 31st,
3 when I closed the year on December 31st, I run that
4 sheet, and then the next date pumps up on your
5 machine for the balance sheet is the end of the
6 following month. And so this is the beginning balance
7 in '06 even though it says as of 31st because it's
8 reporting for the month of January '06 and nothing
9 has been reported in it at this particular time.

10 Q. What is the date 12/22/05?

11 A. That was the date it was run. That was
12 the date I ended the year 2005. I ended 2005. Does
13 that --

14 Q. So it's not as of 1/31/06 --

15 A. I --

16 Q. -- it's as of 12/22/05?

17 A. I cannot read this. My glasses must
18 have been left out in the outer room, and I don't see
19 what the date here is. What is the date up there,
20 December something? I actually just picked it at
21 random.

22 MR. HARRISON: December 22, '05.

23 THE WITNESS: That's correct. That was
24 how the year ended, '05.

25 BY MS. BAKER:

1 Q. So what is the date of the numbers, of
2 the amounts?

3 A. The date of the numbers would be
4 January 1st, '06.

5 Q. How can that be when the date of the
6 report is 12/22/05?

7 A. No further business was transpired
8 between those two dates, and I closed my books as of
9 12/22/05.

10 Q. So --

11 A. Any --

12 Q. -- it is the end of 12/22/05?

13 A. Correct.

14 Q. Not 1/1/06, not 1/31/06; it is 12/22/05?

15 A. That's correct.

16 MS. BAKER: Thank you.

17 JUDGE LANE: All right. Any --

18 THE WITNESS: But it was also the end of
19 12/31.

20 MS. BAKER: No, 12/22/06 -- or '05.

21 JUDGE LANE: If you have any further
22 lingering questions, you'll be able to --

23 MS. BAKER: Thank you.

24 JUDGE LANE: So Exhibit 30, no -- no
25 objections from Staff?

1 MS. SYLER BRUEGGEMANN: I would object
2 that it's inaccurate, that she's just testified that
3 it's not as of 1/31/06.

4 MR. HARRISON: There's no evidence of
5 that. She just explained it.

6 THE WITNESS: That was -- that's fine.
7 There was nothing happened between 12/22 and 12/31.

8 JUDGE LANE: If you -- if you would like
9 to address that issue on redirect, you're free to do
10 that, but as far as the admissibility goes, the
11 document is admissible and will be admitted over an
12 objection that it's inaccurate.

13 (EXHIBIT NO. 30 WAS RECEIVED INTO
14 EVIDENCE AND MADE A PART OF THE RECORD.)
15 DIRECT EXAMINATION (RESUMED) BY MR. HARRISON:

16 Q. Okay. Now I'm gonna hand you Exhibit
17 No. 32. Can you please identify that?

18 A. I'm gonna send my husband out to get my
19 glasses.

20 MR. HARRISON: Do you want to take a
21 short recess to get your glasses?

22 MR. VOLKERT: Here, I've got them.

23 THE WITNESS: Okay. This is the year of
24 2006.

25 BY MR. HARRISON:

1 Q. Well, what's the -- describe the
2 document first. What is it?

3 A. This is a profit and loss statement.

4 Q. Okay. And let's be clear on -- let's go
5 through the questions that you were just asked here
6 on voir dire.

7 A. Uh-huh.

8 Q. All right. Up at the upper left-hand
9 corner, upper left-hand corner there's a date. What
10 is the date?

11 A. 12/22/06.

12 Q. What does that mean?

13 A. That's when I closed the year.

14 Q. All right. Is it your testimony
15 based -- well, is your testimony now based on your
16 previous testimony that between December 22 of '06
17 and December 31 of '06 that there was no further
18 financial activity with respect to the company?

19 A. None.

20 Q. So had you prepared this report at 12:00
21 midnight on January 1st, 2007, there wouldn't have
22 been any difference?

23 A. Correct.

24 Q. All right. Near the top it says,
25 "Period, 1/1/06 to 12/31/06." What does that mean?

1 A. It's the full year.

2 Q. In other words, this document summarizes
3 the profit and loss of the company for the entire
4 calendar year?

5 A. Yes.

6 Q. All right. And it shows a -- the bottom
7 line shows a net loss of a little bit over \$14,000?

8 A. Correct.

9 Q. On total revenues of how much?

10 A. 22,994.

11 MR. HARRISON: Offer Exhibit 32.

12 JUDGE LANE: Exhibit 32's been marked
13 and offered into evidence by Suburban. Any
14 objections to its admission?

15 MS. BAKER: With the testimony on the
16 date, fine.

17 JUDGE LANE: All right. Hearing none,
18 it is admitted.

19 (EXHIBIT NO. 32 WAS RECEIVED INTO
20 EVIDENCE AND MADE A PART OF THE RECORD.)

21 MR. HARRISON: Judge, I've given the
22 witness Exhibit No. 35 which is a good standing
23 exhibit for the company. I'm just gonna offer it. I
24 don't know if there's gonna be objection to the --
25 it's a self-authenticating document.

1 JUDGE LANE: Is this your only copy?

2 MR. HARRISON: You're welcome to have

3 it.

4 JUDGE LANE: 32?

5 MR. HARRISON: I'm sorry. It's 35, I

6 believe.

7 JUDGE LANE: 35. All right. All right.

8 Has counsel for Staff and OPC seen a copy of 35?

9 MS. BAKER: (Nodded head.)

10 JUDGE LANE: All right. You may

11 proceed.

12 MR. HARRISON: Were there any

13 objections? I'm offering it into evidence.

14 JUDGE LANE: You're offering it into

15 evidence? Any objections?

16 (NO RESPONSE.)

17 JUDGE LANE: All right. It's admitted.

18 (EXHIBIT NO. 35 WAS RECEIVED INTO

19 EVIDENCE AND MADE A PART OF THE RECORD.)

20 MR. HARRISON: It's probably apparent by

21 now that I'm in an exhibit-offering mode, so I'm

22 gonna try to do this quickly, Judge.

23 JUDGE LANE: That's fine. Don't go so

24 fast that you leave opposing counsel behind and

25 hopefully not the witness, but yes.

1 MR. HARRISON: I'll try not to. I'm
2 just trying to save everybody time while we jump
3 through the hoops here.

4 BY MR. HARRISON:

5 Q. Now, I've handed you Exhibit No. 36. Is
6 that -- well, let's take a look. Please look at
7 that. While you're doing that, let me ask you, is
8 that Suburban Water and Sewer Company's bank
9 statements for the calendar year 2005?

10 A. Yes.

11 Q. I think on the first page there's a date
12 that's circled --

13 A. It says 1/31 there, uh-huh.

14 Q. Right. It says, "A collection and
15 photocopy of all the bank statements for the entire
16 year"; is that correct?

17 A. Yes, it seems to be.

18 Q. These documents were maintained in the
19 regular course of Suburban's business; is that
20 correct?

21 A. Correct.

22 Q. And you received the bank statements?

23 A. At that time I did.

24 Q. Right. Well, I should -- I should say
25 Suburban received the bank statements?

1 A. Yes.

2 MR. HARRISON: All right. All right.

3 I'm gonna offer that exhibit, then, 36.

4 JUDGE LANE: 36 has been offered --

5 marked and offered. Any objections?

6 MS. BAKER: No.

7 MS. SYLER BRUEGGEMANN: At this point
8 can we ask -- or I'm going to ask what is it relevant
9 to?

10 MR. HARRISON: It shows the company's
11 financial position.

12 MS. SYLER BRUEGGEMANN: And that has
13 relevance to this case in that ...

14 MR. HARRISON: We've reserved it as a
15 defense for the inability to accomplish some of the
16 work in the -- under the agreement.

17 JUDGE LANE: It's one of their
18 affirmative defenses and it's relevant. I'll admit
19 the document over a relevance objection.

20 MS. SYLER BRUEGGEMANN: It's a legal --
21 well, what's the legal -- the affirmative defense is
22 specific --

23 MR. HARRISON: We don't have the money
24 is the defense. We lack the capacity to, the ability
25 to satisfy the -- some of the requirements under the

1 agreement.

2 MS. SYLER BRUEGGEMANN: So it's an
3 impossibility?

4 MR. HARRISON: That's one of the
5 defenses.

6 MS. SYLER BRUEGGEMANN: Okay. That
7 clarifies it, then, so relevance objection.

8 JUDGE LANE: All right. That's
9 overruled. Any other objections?

10 (NO RESPONSE.)

11 JUDGE LANE: All right. The sole
12 objection being overruled, the document is admitted
13 into evidence.

14 (EXHIBIT NO. 36 WAS RECEIVED INTO
15 EVIDENCE AND MADE A PART OF THE RECORD.)

16 BY MR. HARRISON:

17 Q. Do you have Exhibit 37 in front of you?

18 A. Yes.

19 Q. Can you explain to the judge what that
20 is, please.

21 A. It's the bank statements for the year
22 2006.

23 Q. For Suburban Water and Sewer Company?

24 A. Yes.

25 Q. And again, these are documents that are

1 kept in the -- kept and received in the ordinary
2 course of business in the company; is that right?

3 A. Yes.

4 Q. They reflect the bank balance, bank
5 deposits and disbursements from time to time?

6 A. Yes.

7 MR. HARRISON: Offer Exhibit 37.

8 JUDGE LANE: I just want to make sure,
9 is that the one that on the first page -- is this 37?

10 MR. HARRISON: It certainly is.

11 JUDGE LANE: All right. 37 has been
12 offered by Suburban and marked. Any objections?

13 MS. BAKER: (Shook head.)

14 MS. SYLER BRUEGGEMANN: No objection.

15 JUDGE LANE: None? It's admitted.

16 (EXHIBIT NO. 37 WAS RECEIVED INTO
17 EVIDENCE AND MADE A PART OF THE RECORD.)

18 MR. HARRISON: I told you I was gonna go
19 fast.

20 JUDGE LANE: Go, man, go.

21 MR. HARRISON: I can't get anybody to
22 laugh here today. I don't know what it is.

23 JUDGE LANE: You got a smile from me.

24 BY MR. HARRISON:

25 Q. Okay. Now I've handed you Exhibit

1 No. 38, I think it is; is that right, Bonnie?

2 A. Yes.

3 Q. Can you explain what that is, please.

4 A. This is for the year of one thousand and

5 six.

6 Q. One thousand and six?

7 A. 2000, sorry. Or is this for seven?

8 Okay. It's for '07 when you go that way.

9 Q. That's what I was gonna ask you.

10 A. Okay. It's 2007.

11 Q. Bank statements?

12 A. Yes.

13 Q. For Suburban Water and Sewer Company?

14 A. Exactly.

15 Q. Received and maintained in the

16 ordinary course of business of the company; is that

17 right?

18 A. Yes, it is.

19 MR. HARRISON: Offer Exhibit 38.

20 JUDGE LANE: Exhibit 38's been marked

21 and offered by Suburban. Any objections?

22 MS. BAKER: No.

23 MS. SYLER BRUEGGEMANN: No objection.

24 JUDGE LANE: Hearing none, it's

25 received.

1 (EXHIBIT NO. 38 WAS RECEIVED INTO
2 EVIDENCE AND MADE A PART OF THE RECORD.)

3 BY MR. HARRISON:

4 Q. I've handed you now Exhibit 46; is that
5 right?

6 A. That's correct.

7 Q. Can you please identify it for the
8 record.

9 A. It's U.S. income tax return for Suburban
10 Water and Sewer for 2005.

11 Q. And are the tax returns of Suburban
12 Water and Sewer Company prepared on a regular basis?

13 A. Every year.

14 Q. And are maintained -- prepared, kept and
15 maintained as a business record of the company; is
16 that right?

17 A. Yes.

18 Q. And you recognize that document, Exhibit
19 No. 46 there, to be the 2005 return?

20 A. Yes.

21 MR. HARRISON: I offer that exhibit, 46.

22 JUDGE LANE: 46 has been offered. I'll
23 give counsel a chance to look it over.

24 MS. BAKER: No objection.

25 JUDGE LANE: Objections to 46?

1 (NO RESPONSE.)

2 JUDGE LANE: All right. It's received.

3 (EXHIBIT NO. 46 WAS RECEIVED INTO

4 EVIDENCE AND MADE A PART OF THE RECORD.)

5 BY MR. HARRISON:

6 Q. Handing you now Exhibit No. 47. Okay.

7 Do you have Exhibit 47 in front of you?

8 A. Yes, I do.

9 Q. Can you identify it, please.

10 A. It's the U.S. income tax return,
11 Suburban Water and Sewer, for the year of 2006.

12 Q. That return, like the 2005 return, and I
13 guess like all other returns for the company, was
14 prepared in the ordinary course of business?

15 A. Yes, they were.

16 Q. And you recognize it as the 2006 return?

17 A. Yes.

18 MR. HARRISON: I offer 47.

19 JUDGE LANE: 47's been offered. Any
20 objections?

21 MS. SYLER BRUEGGEMANN: No.

22 MS. BAKER: No.

23 JUDGE LANE: All right. It's admitted.

24 (EXHIBIT NO. 47 WAS RECEIVED INTO

25 EVIDENCE AND MADE A PART OF THE RECORD.)

1 BY MR. HARRISON:

2 Q. I did have one more question. You
3 testified previously about Exhibit 16 which I've now
4 given back to you. Take as much time as you want to
5 refamiliarize yourself with it. That's the unanimous
6 written consent of the board from, I think it was
7 June 25. Yeah --

8 A. Yeah.

9 Q. -- June 25, 2007. Could you look at
10 page 2 under item F. It is -- I just want to make
11 sure that this is clear on the record. It's the
12 company's -- the company had implemented a
13 replacement program for existing meters, right?

14 A. Correct.

15 Q. Which was -- which is to replace the
16 meters from time to time on an as-needed basis?

17 A. That's correct.

18 Q. And then further to have replaced all of
19 the meters not later than the end of May of 2015?

20 A. 2015.

21 Q. Which is ten years after 2005, if I'm
22 any judge of mathematics, correct?

23 A. That's correct.

24 MR. HARRISON: All right. No further
25 questions.

1 JUDGE LANE: Thank you very much. That
2 concludes the cross-examination of this witness by
3 Suburban. There will be no questions from the bench,
4 so we're now ready for redirect from Staff.

5 Take your time. There was quite a
6 bit of information that came in within a short
7 period.

8 MS. SYLER BRUEGGEMANN: Thank you, your
9 Honor. No recross.

10 JUDGE LANE: Okay. No redirect?

11 MS. SYLER BRUEGGEMANN: No redirect.
12 Thank you.

13 JUDGE LANE: In that case, this witness
14 may be excused. And is there any objection to
15 finally excusing this witness?

16 MS. BAKER: No.

17 MR. HARRISON: None from us.

18 JUDGE LANE: Hearing none, the witness
19 is finally excused. Thank you, Mrs. Burnam. We're
20 ready for Staff's next witness.

21 MS. SYLER BRUEGGEMANN: Staff's next
22 witness would be Paula Belcher.

23 JUDGE LANE: Ma'am, would you spell your
24 name for the reporter, please.

25 MS. BELCHER: Uh-huh. My name is Paula,

1 P-a-u-l-a, Belcher, B-e-l-c-h-e-r.

2 JUDGE LANE: Thank you. Please raise
3 your right hand to be sworn.

4 (THE WITNESS WAS SWORN.)

5 JUDGE LANE: Thank you very much.

6 Ms. Brueggemann.

7 DIRECT EXAMINATION BY MS. SYLER BRUEGGEMANN:

8 Q. Are you the vice president of Vista Home
9 Management Company?

10 A. Yes.

11 Q. Okay. And in that job, do you
12 supervise the day-to-day operations of the Suburban
13 water system?

14 A. Yes.

15 Q. Now, are you the vice president of
16 Suburban Water and Sewer Company?

17 A. No, I'm not.

18 Q. Okay. And how did you find out that you
19 were not the vice president?

20 A. That was an error that we believe
21 was made when there was some accounting paperwork
22 that was sent in. I've never been approached to be
23 the vice president of Suburban Water and Sewer
24 Company.

25 Q. Okay. So did Bonnie Burnam tell you

1 that -- that it was a mistake?

2 A. That was actually -- I think it was
3 corrected on the deposition.

4 Q. Right. How did you know to correct it
5 on the deposition?

6 A. I was told that.

7 Q. By who?

8 A. By Bonnie Burnam.

9 Q. Thank you. Now, what are your other job
10 duties as vice president of Vista in regards to
11 Suburban?

12 A. When the work is assigned on Suburban
13 Water, then I oversee the work to make sure that the
14 work gets completed on the day-to-day operations.

15 Q. So then if there's a leak or something
16 in the standpipe, let's say, then you would call to
17 get it fixed?

18 A. Something like a leak on a standpipe, if
19 it's a small leak, yes, I would contact someone to
20 get that leak taken care of. If it's several leaks
21 or if it's a bigger problem, then that -- that work
22 would then be assigned by Gordon and Bonnie Burnam,
23 but we would discuss it.

24 Q. Okay. Ms. Belcher, this is Exhibit
25 No. 11, I believe. It's already been stipulated that

1 it was the system on July 31st of 2007. Were you
2 there when Martin Hummel came out to do his
3 inspection of your system -- or Suburban water
4 system?

5 A. Yes.

6 Q. Okay. Is that an accurate picture of
7 the standpipe?

8 A. Yes.

9 Q. And can you see the actual welded
10 patches on the standpipe?

11 A. Yes.

12 Q. Can you also see the rust runs on the
13 standpipe?

14 A. Yes.

15 Q. Okay. And the standpipe itself, is it
16 the same way on the other three sides of that
17 standpipe if you would cut it into four sides? Are
18 there more patches on each side of the standpipe?

19 A. I'm not sure of the total number of
20 patches, but there are patches on the standpipe
21 probably on the sides.

22 Q. Okay. The first picture was a picture
23 facing away from the well house; is that correct?
24 Like if you were standing at the well house taking
25 the picture, the first one we just showed?

1 A. That's correct.

2 Q. This is a picture with the well house in
3 the background?

4 A. That's correct.

5 Q. Are there numerous patches in this
6 picture visible also?

7 A. Yes.

8 Q. Okay. Okay. Real quick, did you
9 develop a brochure for Suburban Water and Sewer
10 Company?

11 A. I did.

12 Q. Okay. And in this brochure, when did --
13 when did you develop it?

14 A. I developed that in June of 2007.

15 Q. And when did you send it?

16 A. I mailed -- I'm sorry. I don't know the
17 exact date I mailed it, but I mailed it in June.

18 Q. Okay. After June 7th or --

19 A. Approximately some time after that.

20 Q. -- after you developed it?

21 A. Uh-huh.

22 Q. Did you have any -- did you assist at
23 all in developing the continuous property records
24 system?

25 A. No.

1 Q. You didn't?

2 A. No.

3 Q. Okay. You didn't assist Bonnie in
4 collecting any information on that?

5 A. No.

6 Q. And you didn't assist the attorneys in
7 actually helping to put it together?

8 A. No.

9 Q. Okay. Now, when you put together the
10 brochure, what was your purpose? Why did you put it
11 together?

12 A. My purpose according to my understanding
13 was to inform the customer of Suburban Water the
14 hours, the rates.

15 Q. Okay. The hours, the rates. What else?

16 A. Information about the company.

17 Q. Anything else?

18 A. Basic informations to customer, some of
19 their rights in here.

20 Q. Okay. So some of their rights are
21 listed?

22 A. Uh-huh.

23 Q. Are all of their rights listed?

24 MR. HARRISON: Calls for a legal
25 conclusion.

1 MS. SYLER BRUEGGEMANN: Your Honor, she
2 just stated that some of the rights are listed. I
3 believe she --

4 MR. HARRISON: So you're asking the
5 witness to list all of the customer rights, then?

6 MS. SYLER BRUEGGEMANN: I can ask the
7 questions, you can make the objection.

8 MR. HARRISON: My objection is the
9 question's vague, ambiguous, calls for a legal
10 conclusion.

11 JUDGE LANE: All right. I think the
12 term "rights" is being used rather loosely. I'm not
13 sure that the customer should -- I think the witness
14 can answer to the extent she can express her
15 understanding of what rights or what obligations the
16 company has to its customers and what she intended to
17 express in the document.

18 BY MS. SYLER BRUEGGEMANN:

19 Q. So will you go ahead and do that?

20 A. Okay. What I was trying to explain was
21 the discontinuance of service for the customer --

22 Q. Uh-huh.

23 A. -- and then how the customer would
24 discontinue their service if they wanted to
25 discontinue.

1 Q. Okay. And on the very last page did you
2 put in the bottom-most paragraph?

3 A. I did put that in.

4 Q. Okay. And where did you get that
5 information from, if you recall?

6 A. I got that information from -- from our
7 attorney.

8 Q. Okay. So they provided the paragraph?

9 A. That's correct.

10 Q. Are you familiar with the 2005 rate case
11 of Suburban Water and Sewer Company with the Public
12 Service Commission?

13 A. I am familiar with that.

14 Q. Okay. And did you see any of the
15 filings from that case, filings being any part of the
16 actual case number and documents from the PSC? Did
17 you ever see any of those documents?

18 A. Yes.

19 Q. Okay. Do you think you saw many of
20 those documents or numerous documents, more than one?

21 A. I -- more than one, numerous.

22 Q. I've just handed you what has been
23 marked as Exhibit G.

24 JUDGE LANE: Exhibit G?

25 MS. SYLER BRUEGGEMANN: I -- yeah, I'm

1 sorry. This is from the -- from the deposition. I
2 realize I pulled the wrong document.

3 MR. REED: 55.

4 BY MS. SYLER BRUEGGEMANN:

5 Q. Thank you. And actually, I just handed
6 you Exhibit No. 55 in this instance. If you'll take
7 a minute to look at that and tell me if you've ever
8 seen this document before.

9 A. You're talking about a part of the
10 documents that has customer service operations or the
11 whole document? Do you want me to look at the whole
12 document?

13 Q. Why don't we start at customer service
14 operations. That would be great.

15 A. Okay.

16 Q. Have you seen -- have you seen this
17 part, this report labeled Suburban Water and Sewer
18 Company Customer Service Operations?

19 A. I have seen this.

20 Q. Okay. And have you ever -- have you
21 actually read the whole document in 2005 even maybe?

22 A. Yes.

23 Q. Okay. And the very last page where it
24 says Utility Rights and Responsibilities Brochure,
25 have you ever seen that section?

1 A. Yes.

2 Q. Okay. Can you read the second sentence
3 for me, please.

4 A. "The development of such brochure and in
5 prominent display and availability to customers
6 required by Commission Rule 4 CSR 240.130.40 (3)."

7 Q. Thank you. So you were aware of that
8 whenever you were putting together your brochure?

9 A. I -- yes.

10 Q. Okay. Now, do you supervise any meter
11 reading that goes on for Suburban water system?

12 A. I supervise them taking the readings, or
13 basically, I supervise when they bring the meter
14 readings back in.

15 Q. Okay. Do you tell them to go -- do you
16 tell an employee or contract laborer to go out and
17 get some meter readings?

18 A. Yes.

19 Q. Okay. So are you familiar with meter
20 usage data?

21 A. Yes.

22 Q. Okay. And what do you use meter usage
23 data -- data for, if at all?

24 A. We use it -- we use it for billing
25 purposes.

1 Q. Okay. And what is meter usage data?

2 A. The water that goes through the meter.

3 Q. Okay. Is it also the meter readings?

4 A. Yes, it is.

5 Q. Okay. So your understanding of the word

6 "meter usage" -- or the phrase "meter usage data" is

7 that it's meter readings?

8 A. Meter readings is part of it, and I

9 understand the flow of water through it, is that --

10 Q. Okay.

11 A. -- what you're asking?

12 Q. So -- so what is your total

13 understanding of what the word -- or the phrase

14 "meter usage data" means?

15 A. That would be my understanding of it.

16 Q. Okay. So the meter readings and flow of

17 water?

18 A. Yes.

19 Q. Okay. Back to Exhibit No. 55, probably

20 six pages from the front, there are some item numbers

21 from a Disposition Agreement, and if you want to take

22 a look and make sure you're looking at a Disposition

23 Agreement in this case between Gordon Burnam,

24 president of Suburban, and the PSC Staff, please take

25 a second.

1 A. (Witness complied.)

2 Q. Okay. Do you think you're looking at --
3 at item -- the page with item 6 through 15 -- or 6
4 through 16 of the Disposition Agreement?

5 A. Uh-huh, at the top. It's numbered
6 page 3 of 5 pages?

7 Q. Yes.

8 A. Uh-huh.

9 Q. Okay. On No. 15 where it talks about
10 that the company will provide quarterly reports
11 regarding monthly customer meter usage data and
12 monthly master meter usage data, do you know if that
13 information's been provided?

14 A. I know that the monthly master meter
15 reading or usage data has been provided.

16 Q. Okay. And how recently was that
17 provided?

18 A. That was provided in June of this year.

19 Q. Okay. And then are you aware if the
20 monthly customer meter usage data has been provided?

21 A. It has not been provided.

22 Q. Okay. Do you have an understanding of
23 what a quarterly report is?

24 A. Yes.

25 Q. Okay. And can you describe what your

1 understanding is?

2 A. My understanding of the quarterly report
3 would be that -- that it would be taken -- you would
4 submit the data, you would gather the data and you
5 would submit it on the fourth quarter. Like if it
6 was -- you break it down into a year, you would read
7 it like for the first three, and then you would
8 submit it.

9 Q. So you would submit it the fourth month?

10 A. That's correct.

11 Q. So from July 1st, 2005, to September
12 31st, 2005, was that quarterly report submitted by
13 October 1st, 2005?

14 A. No, it was not.

15 Q. And was it the same for the rest of the
16 information?

17 A. That's correct.

18 Q. Okay. Do you know if a ten-year meter
19 replacement program has been developed for existing
20 meters?

21 A. It has been.

22 Q. Okay. Can you tell me what that is?

23 A. The ten-year meter replacement program
24 is that every -- is that every address out there that
25 has a meter, it will be replaced within a ten-year

1 time period.

2 Q. Okay. So how do you document that?

3 A. Well, what we've done is, we have a
4 spreadsheet and you'd put every address on the
5 spreadsheet and you would just make -- you would put
6 the date of when the meter was replaced, and you
7 would list your serial number and have the meters --
8 and you would have them replaced.

9 If I had -- if I had a meter that was
10 broken, then I would just write on there that I
11 replaced it and the date that I replaced it.

12 Q. Okay. So is part of this program going
13 out and testing the meters?

14 A. Yes.

15 Q. Okay. So how many meters are set to be
16 tested per whatever time frame? How -- how -- how do
17 you go out and -- how do you designate what meter
18 gets tested when?

19 A. At the present time I don't have data of
20 the age of the meter, and so I would have to start
21 testing the meters.

22 Q. Okay. Have you set up to do that?

23 A. I have not yet set up to do that.

24 Q. So how are you going to implement the
25 ten-year meter replacement program?

1 A. Someone would be assigned to do that.

2 Q. Okay. Nobody's been assigned yet?

3 A. I have not assigned anyone to do that,
4 but that's not necessarily an assignment I would do.

5 Q. Who would do that type of assignment?

6 A. That would be a special project, and
7 that would be Bonnie and Gordon Burnam.

8 Q. Okay. Are you aware that they've
9 assigned anyone?

10 A. I don't know that.

11 Q. Okay. Very quickly, do you -- does
12 Suburban still not have a certified operator?

13 A. No, it does not.

14 Q. Okay. And has Suburban still not
15 replaced the standpipe with an inlet high enough to
16 provide adequate circulation and detention time?

17 A. No.

18 Q. Okay. And has Suburban still not
19 installed flush valves besides the one that was there
20 from 1995?

21 A. No.

22 Q. And there are still three buildings that
23 do not have meters on them or that meters have not
24 been installed on, three buildings that Suburban
25 serves?

1 A. That's right.

2 Q. Okay. Is there a policy as to how the
3 meters do get read for billing purposes?

4 A. I don't know that I have a policy on how
5 they're read. The meters are just read.

6 Q. Okay. Well, how are -- tell us how
7 they're read, then, how often they're read or how you
8 execute the meter readings or supervise them.

9 A. Okay. The meter readings are read once
10 a month, and they're read sometime between the 10th
11 and the 17th. And that is based on weather
12 conditions.

13 Q. Okay. So there's some months that
14 meters have to be estimated?

15 A. That's correct, like particularly this
16 last winter.

17 Q. And does every meter get read every
18 month besides weather conditions?

19 A. Yes.

20 Q. So dogs in back yards don't prohibit
21 your staff from going and reading meters?

22 A. If possible we try to call ahead and
23 have them put the dogs up, but that would depend on
24 if you're furnished with a good phone number.

25 Q. Were you at the local public hearing on

1 July 23rd, 2007?

2 A. Yes, I was.

3 Q. Okay. Did you hear some of the
4 statements from customers that said their meter
5 hasn't been read in quite some time?

6 A. I -- I heard them make that statement.

7 Q. Okay. And have some of those meters of
8 those certain customers not been read?

9 A. I know that -- I know that we were out
10 there that same week that they were making that
11 comment reading meters.

12 Q. Before or after?

13 A. We read the meters, I think, on the
14 17th.

15 Q. Okay. When they were talking about
16 their meters not being read in June or May or the
17 other time periods, was that correct?

18 A. We had been out and we had read the
19 meters. I'm not sure -- I mean, I know we read them
20 in June, and I know we read them in July.

21 Q. So their statements were incorrect that
22 their meters had not been read?

23 A. As I stated before, we estimated --

24 MR. HARRISON: Let me raise an objection
25 because I'd like to know which witness she's

1 referring to. There were numerous people who made
2 numerous statements about numerous meters being read.
3 If she's asking generally were the statements
4 incorrect, that's one thing, but if she has specific
5 questions as to a particular witness, I think that's
6 a fair objection.

7 JUDGE LANE: I agree. It is a fair
8 objection. Could you be more specific about your
9 inquiries or --

10 MS. SYLER BRUEGGEMANN: It will take me
11 a few minutes, then, if that's okay with the bench.

12 JUDGE LANE: If you want to ask about
13 particular customers.

14 MS. SYLER BRUEGGEMANN: Thank you. I'll
15 need a minute.

16 JUDGE LANE: All right. Sure.

17 BY MS. SYLER BRUEGGEMANN:

18 Q. Okay. That was shorter than a minute.

19 Are you familiar with Karol Clark?

20 A. And I'm not familiar with her.

21 Q. Okay. Do you know if she's a customer
22 or not?

23 A. I know I have seen her name -- I've seen
24 her name on our customer list.

25 Q. I believe I've handed you the bill for

1 Karol Clark, service from 5/13/07 to June something,
2 2007; is that correct?

3 A. That's correct, that's what you gave me.

4 Q. And what's that June date specifically?

5 I'm sorry. I forgot.

6 A. Are you talking the service date or the
7 billing date?

8 Q. How about the service to date.

9 A. Oh, that's June 13th.

10 Q. Okay. And what is the building --
11 billing date on that?

12 A. Billing date is 6/14.

13 Q. Okay. What's the old reading read?

14 A. The old reading reads 431370.

15 Q. Okay. What's the new reading?

16 A. 29400.

17 Q. Okay. Can you explain that?

18 A. I can't because I did not prepare this
19 bill.

20 Q. Who prepared the bill?

21 A. Someone that works in the office,
22 another staff member.

23 Q. Okay. Have you seen bills similar to
24 the -- to the bill we have in front of us, the
25 general format?

1 A. I've seen the format of the bill, yes.

2 Q. Okay. Are -- do you have any part of
3 billing for Suburban?

4 A. I don't -- I don't do the billing. I
5 don't do the bills.

6 Q. Okay. But you do deal with the meter
7 readings, correct?

8 A. Are you asking me if I read the meters?

9 Q. You just testified that you --

10 A. I supervise the people to go out and
11 read the meters, and I supervise the person that does
12 the billings, but I don't do the billings.

13 Q. Okay. And you just said earlier also
14 that you were the person that collects or deals with
15 the customer usage -- the customer meter usage data,
16 correct, yes or no?

17 A. Yes, as far as putting it on a form.

18 Q. Okay. So is the old reading larger than
19 the new reading?

20 A. That's correct, according to this.

21 Q. Do meters go backwards?

22 A. No, they don't.

23 Q. Okay. So would that be an estimated
24 reading?

25 A. No. This is an error that would need to

1 be researched.

2 Q. So the months that you send somebody out
3 to go get a meter reading and you can't get to their
4 back yard, how do you bill them for that month of
5 usage?

6 A. What you would bill them for would be an
7 estimate of what normally their bill would be.

8 Q. Okay. So what if you estimate higher
9 than what their actual bill was?

10 A. Then I would lower it, but it -- it
11 should not be this much.

12 Q. Okay. But that type of reading where
13 the old reading is higher than the new reading could
14 happen if a last-month's bill was a higher estimate
15 than it should have been?

16 A. That's correct.

17 MS. SYLER BRUEGGEMANN: Okay. Thank
18 you. And just for the record, these were entered as
19 exhibits from the local public hearing. I believe
20 the number is Exhibit No. 5, so for reference.

21 BY MS. SYLER BRUEGGEMANN:

22 Q. Okay. One last set of questions. Were
23 you aware that Suburban had started dissolution
24 proceedings on January 31st, 2007, or before?

25 A. Yes.

1 Q. Okay. And were they planning to shut
2 off the water on July 1st, 2007?

3 A. That was what the letter stated.

4 Q. Okay. Now, did Gordon Burnam make a
5 statement to you that he was getting out of the water
6 business?

7 A. Yes.

8 Q. Okay. And you were present at Gordon
9 Burnam's deposition on July -- or on July 16th,
10 right?

11 A. Yes.

12 Q. Okay. Did he make the statement that
13 "When I told Paula, she about kissed -- that I was
14 getting out of the water business, she about kissed
15 me"?

16 A. I think that statement was made, but it
17 was made in jest.

18 Q. Right, but he just meant that you were
19 happy he was gonna get out of the water business is
20 all he meant with that statement, correct?

21 A. Yes.

22 Q. Okay. So what did you understand to
23 mean when he said he was getting out of the water
24 business or that Suburban was getting out of the
25 water business?

1 A. I'm not sure what you're asking me.

2 Q. What did it mean when Gordon Burnam said
3 he was getting out of the water business? What was
4 your understanding of that statement?

5 A. My understanding of that statement has
6 been my understanding that Bonnie and Gordon would
7 both like to be out of the water business.

8 Q. Okay.

9 A. And that was my understanding.

10 Q. Was there a letter sent out on
11 March 30th, 2007, to all the customers saying that
12 your water's gonna be shut off on July 1st, 2007?

13 A. There was a letter sent out, uh-huh.

14 Q. Was that a joke? Was that a joke?

15 A. No.

16 Q. It was -- it was a serious letter?

17 A. That was a letter mailed by our
18 attorney -- or by the -- by the Suburban Water
19 attorney.

20 Q. And was that your understanding that the
21 water was going to be shut off on July 1st when they
22 sent the letter March 30th, 2007?

23 A. My understanding is that --

24 Q. No, was. Was. Was that your
25 understanding?

1 A. Yes.

2 Q. Okay. When did you become aware they
3 were not going to shut off the water July 1st, 2007?

4 A. I don't -- attempts have been made --

5 Q. Oh, no, no, no. My question was, when
6 did you become aware they were not going to shut off
7 the water July 1st, 2007?

8 A. I never thought they would shut off the
9 water July 1st.

10 Q. So you -- so you didn't believe the
11 letter when it said -- that went out to customers
12 that said they were going to shut off their water
13 indefinitely on or about July 1st, 2007?

14 MR. HARRISON: Misstates her testimony
15 and is argumentative.

16 MS. SYLER BRUEGGEMANN: I'm asking for
17 clarification because she -- if she believes the
18 letter that went out --

19 JUDGE LANE: Objection's overruled. She
20 can answer that.

21 THE WITNESS: I'm sorry. Would you
22 repeat that again?

23 BY MS. SYLER BRUEGGEMANN:

24 Q. Did you believe the letter that went out
25 to all the customers of Suburban Water Company that

1 said your water's gonna be shut off indefinitely as
2 of July 1st, 2007?

3 A. Can I say I don't know?

4 JUDGE LANE: If you don't know.

5 THE WITNESS: Because I don't know. I
6 don't know.

7 BY MS. SYLER BRUEGGEMANN:

8 Q. You don't know if you believed whether
9 or not -- the letter sent out by the attorneys? You
10 don't know -- is that what you just said, you don't
11 know that you believed -- whether or not you believed
12 the letter?

13 A. It's a -- it's -- if the letter was
14 written, I guess that's what the -- I'd have to say
15 yes, then.

16 Q. Yes, that you did believe it?

17 A. That -- yes.

18 Q. When customers -- let me -- let me
19 rephrase that. Did any customers call up about the
20 water that they thought was going to be shut off on
21 July 1st, 2007?

22 A. We had some phone calls at the office.

23 Q. And what did you say to those customers?

24 A. We asked them to contact our attorney if
25 they had any questions.

1 MS. SYLER BRUEGGEMANN: Okay. Nothing
2 else.

3 JUDGE LANE: Thank you very much. That
4 concludes the direct examination. Any
5 cross-examination of Ms. Belcher by Office of Public
6 Counsel?

7 MS. BAKER: Yes, thank you.

8 CROSS-EXAMINATION BY MS. BAKER:

9 Q. Good afternoon.

10 A. Hi.

11 Q. Are you aware that Gordon Burnam
12 testified yesterday morning saying that he sent out
13 the letter saying the water would be shut off to the
14 customers, not intending to shut off the water to the
15 customers, but that he did it to get the attention of
16 the Public Service Commission?

17 MR. HARRISON: I don't think she was
18 aware because she wasn't in the room. She was
19 excluded.

20 JUDGE LANE: Well, you're answering the
21 question.

22 MR. HARRISON: Well, that was the
23 question.

24 JUDGE LANE: Well, I know. If you're
25 gonna object, state an objection, please. Thank you.

1 MS. BAKER: I'll rephrase if that would
2 make it easier.

3 JUDGE LANE: No, the question was not
4 objectionable.

5 MS. BAKER: Okay. Okay.

6 THE WITNESS: I'm sorry. Could you
7 repeat that again? Can you repeat your question
8 again?

9 BY MS. BAKER:

10 Q. Were you aware that Gordon Burnam is
11 saying that he sent out this letter to the customers
12 saying the water would be shut off but that he had no
13 intention of shutting off the water and that he used
14 the letter to get the Public Service Commission's
15 attention?

16 A. I'm not aware that that's what he said.

17 Q. Has he --

18 A. I'm not aware that that's what he
19 testified.

20 Q. Has he said anything to that effect to
21 you?

22 A. Yes.

23 Q. He has said to you that he was using the
24 letter to get the Public Service Commission's
25 attention and you said yes; is that correct?

1 A. I'm not sure that I would use the word
2 "attention." I think I would use the word to get
3 some feedback or comments from them, yes, yes.

4 Q. Okay. Now, you get a lot of customer
5 contact; is that correct?

6 A. No.

7 Q. You are in the office and you get
8 customer calls?

9 A. That's correct.

10 Q. That is customer contact, yes?

11 A. That's correct.

12 Q. Now, knowing that that letter went out
13 as basically a ruse, how would you expect the
14 customers to react?

15 MR. HARRISON: Object to the form of the
16 question. It's argumentative.

17 MS. BAKER: No.

18 MR. HARRISON: Nobody has said it was a
19 ruse. That's counsel's --

20 JUDGE LANE: She didn't use the term
21 "ruse."

22 MS. BAKER: Okay. Okay.

23 BY MS. BAKER:

24 Q. Knowing what you know, that the letter
25 was not sent out to actually shut off the water but

1 to get some Public Service Commission attention, how
2 would you expect the customers to react?

3 A. I would expect them to react the way
4 that when they called the office and I suggested that
5 I couldn't help them and to contact the attorney and
6 that -- that would be what I would do.

7 Q. Would you expect them to be afraid?

8 MR. HARRISON: Judge, I think this calls
9 for speculation again. I think the question requires
10 the witness to be put in the mind of a customer.

11 MS. BAKER: I'm asking her expectations.
12 She answers the calls, she knows how the people are
13 reacting. I'm asking her expectations as the
14 customer support person.

15 JUDGE LANE: I'll overrule the
16 objection. All of us are water customers, and I
17 think this is in the kin of human experience,
18 especially as someone who takes consumer calls, so --

19 MS. BAKER: Thank you.

20 THE WITNESS: I would expect a customer
21 to be upset, and I would expect them to not be sure
22 of what was going to happen and to -- and to contact
23 the attorney and to contact someone from the PSC.

24 BY MS. BAKER:

25 Q. And once they find out that the letter

1 was not intended to turn off their water but was
2 intended to get the Public Service Commission's
3 attention, how would you expect them to react? It's
4 not a very hard question.

5 A. I would expect them to be upset.

6 Q. You stated that a ten-year meter
7 replacement program has been put into place. Do you
8 know of any meters that have been replaced since
9 2005?

10 A. I know -- I know some meters that were
11 broken that were replaced.

12 Q. How many?

13 A. I know of at least three.

14 Q. But they were replaced because they were
15 broken, not because they were being moved out of
16 service per the ten-year program; is that correct?

17 A. That's correct.

18 Q. Isn't it true that you were told to
19 discontinue reading some of the meters by Gordon
20 Burnam sometime in the last two years?

21 A. That's correct.

22 Q. Did you do any analysis of comparing
23 what the bill would be for reading the meter as
24 opposed to just charging an unmetered rate?

25 A. No.

1 Q. So it's possible that Suburban Water and
2 Sewer is undercollecting because of its policy of not
3 reading the meters; is that correct?

4 A. It is possible.

5 MS. BAKER: No further questions.

6 JUDGE LANE: Thank you.

7 Cross-examination by Suburban?

8 CROSS-EXAMINATION BY MR. HARRISON:

9 Q. To your -- best of your recollection,
10 has anyone from the Public Service Commission Staff
11 given you or anybody else at Suburban any instruction
12 as to how to prepare a continuous property records
13 system?

14 A. Not to the best of my memory.

15 Q. You were shown, I think it's Exhibit 6.
16 Oh, there it is, yeah.

17 A. Yes.

18 Q. Okay. Exhibit 6 is the brochure -- one
19 of the brochures you prepared when you were asked
20 questions about that earlier?

21 A. Yes.

22 Q. I don't think this has come out on
23 the record yet, but there were actually two
24 brochures that were prepared; isn't that correct?
25 Were there two different forms of a brochure that

1 were prepared?

2 A. No, just the one.

3 Q. One for a meter and one for unmetered;

4 is that not correct?

5 A. Oh, yes, that is correct.

6 Q. All right.

7 A. I'm sorry.

8 Q. And what you have in front of you is

9 just one of the two? In other words --

10 A. Yes. No.

11 Q. In other words, you're not looking at

12 two brochures?

13 A. No.

14 Q. There's another brochure?

15 A. Yeah.

16 Q. The other brochure is substantially like

17 that one?

18 A. Yes.

19 Q. All right. And was the other brochure

20 also sent to the relevant customers?

21 A. Yes.

22 Q. All right. Just a couple of real

23 general things also. As far as the books and records

24 of the company, I think your testimony was that you

25 had some -- you have some role with respect to books

1 and records of the company and files and so forth,
2 yes?

3 A. Yes.

4 Q. And you know if -- that Bonnie Burnam
5 does as well?

6 A. Yes.

7 Q. Is it correct that Gordon Burnam doesn't
8 play any role in keeping the books of the company or
9 maintaining the books and records of the company as a
10 general matter?

11 A. That's correct.

12 Q. I've just given you Exhibit No. 4 which
13 has been previously identified and introduced in
14 evidence in this case. Take a minute to look at
15 that, if you would. Have you seen it before?

16 A. Yes.

17 Q. Did you play any part in preparing the
18 document?

19 A. I did not prepare the document.

20 Q. Well, did you participate in the
21 preparation of it with Bonnie Burnam, perhaps on a
22 telephone call or a series of telephone calls?

23 A. I actually supplied them the monthly
24 usage data.

25 Q. Yeah. Well, yeah, that's what I mean.

1 In other words, I know you didn't prepare the
2 document --

3 A. No.

4 Q. -- but you supplied the information in
5 order to prepare the document?

6 A. That's correct.

7 Q. All right. That's what I wanted to --
8 that's what I wanted to establish. Now, there's been
9 some, I don't know, apparently conflicting -- or
10 potentially conflicting testimony on something. I'm
11 talking about meter readings, okay?

12 You testified, I believe, on direct
13 examination a minute ago that every meter is read
14 every month subject to, you know, weather and ability
15 to get access to the meters because of mean dogs and
16 things like that; is that correct?

17 A. We read -- we read the single-family-
18 dwelling meter readings, uh-huh, yes.

19 Q. Right. And that's -- that's the case --
20 that occurs every month?

21 A. That's correct.

22 Q. Unless one of these factors over which
23 you have no control applies and -- such that you
24 can't read the meters; is that correct?

25 A. We try to read the meters every month

1 unless the weather is bad.

2 Q. All right. Or there's a dog or
3 something like that?

4 A. Right.

5 Q. I mean, in other words, I don't want --
6 I don't want there to be any suggestion that the only
7 reason in the world that you wouldn't read the meter
8 is if the weather's bad.

9 A. No, I don't -- I don't schedule the
10 meter reading. That is something that Mr. Burnam
11 schedules.

12 Q. Okay. And then there are employees who
13 go out and do that?

14 A. Yes.

15 Q. And then they assemble the data in
16 connection with the meter readings?

17 A. Yes.

18 Q. And then they submit it to you?

19 A. No. They submit it to the person who
20 does the billing.

21 Q. Okay. Fair enough. All right. Now,
22 you testified that there have been some meters
23 replaced since 2005?

24 A. That's correct.

25 Q. And they were replaced when they were

1 broken?

2 A. That's correct.

3 Q. They were replaced, therefore, on an
4 as-needed basis?

5 A. That's correct.

6 Q. And Exhibit 16 which I put in front of
7 you which has previously been marked and admitted as
8 a written consent of the board of directors of the
9 company, you see that?

10 A. Uh-huh.

11 Q. Page 2, item F indicates that, "The
12 corporation has implemented a replacement program for
13 existing meters." You see that?

14 A. Yes.

15 Q. "Which is to replace said meters from
16 time to time on an as-needed basis."

17 A. Yes.

18 Q. You see that?

19 A. Yes.

20 Q. So is it correct, then, that replacing
21 those meters that have been broken is consistent with
22 this program?

23 A. Yes.

24 Q. I'm gonna hand you what's been marked
25 Exhibit No. 51. Would you take a minute to review

1 that, please. And after you've done that, tell the
2 judge what Exhibit 51 is.

3 A. (Witness complied.) It's my test
4 results back from the Missouri Department -- or from
5 Public Health, basically, on the water samples that I
6 take once a month and I submit -- I submit to Public
7 Health.

8 Q. Just for the record, you take those
9 samples from the Suburban system?

10 A. Yes, I do.

11 Q. All right. After you take the samples,
12 what do you do with them in terms of transmitting
13 them to where they ultimately go?

14 A. Water samples are taken once a month and
15 submitted to the health lab over in Jefferson City,
16 and then they make sure that the water is safe.

17 Q. Just one minute. How do you get them to
18 Jefferson City? Do you take them, do you mail them,
19 do -- how do you send them?

20 A. I actually Fed-Ex them because there's a
21 30-hour time limit on when the -- between the time
22 the water can be -- is taken and the time that they
23 can do the testing, so even though we're in Columbia,
24 I have to Fed-Ex them overnight over to Jeff City.

25 Q. Okay. Because if you mailed them, you

1 wouldn't be assured that they'd get there in 30
2 hours?

3 A. No. That's been a problem in the past.

4 Q. All right. All right. And so you
5 submit them for the test -- or for the water samples
6 to be analyzed?

7 A. That's correct.

8 Q. Who does the analysis, if you know?

9 A. It's a health lab, the Missouri Health
10 Lab in Jefferson City.

11 Q. All right. Does that health lab or the
12 DNR transmit those results back to the company then?

13 A. That's correct.

14 Q. Do you get them -- how often after you
15 submit -- typically after you submit a sample do you
16 get the results back?

17 A. I get the results within seven to ten
18 days.

19 Q. Do they -- do the results come to you by
20 mail?

21 A. Uh-huh, they do.

22 Q. Do they come to the Suburban office?

23 A. Yes.

24 Q. Are they then kept in the Suburban files
25 as a business record?

1 A. They are, but -- but you have to post --
2 you have to post per -- per month in case the
3 customers would want to come in and see that.

4 Q. What do you mean "post"? You mean put
5 on the wall somewhere in the office?

6 A. Uh-huh, they're put on a bulletin board
7 and posted for the customers' knowledge.

8 Q. Did you say that was for a period of 30
9 days?

10 A. That's correct, because then on the 30
11 days, then you replace it with the next one.

12 Q. Okay.

13 A. So it's always current.

14 Q. And you do, in fact, do that posting?

15 A. Yes, I do.

16 Q. All right. And then after you take the
17 document down from being posted, is it maintained in
18 the files of the company?

19 A. Yes, it is.

20 Q. Could you look at that exhibit there and
21 tell the judge the period covered? In other words, I
22 believe there's -- it's sequential order, so if you
23 look at the first one and you look at the last one,
24 the dates on them.

25 A. It is January 2005 to June of '07.

1 Q. All right. So does that contain all the
2 results for the system that have been submitted since
3 the 1st of January of '05?

4 A. Yes.

5 Q. Okay. You don't have the July result
6 yet?

7 A. No. I just took that sample.

8 Q. Okay. And do all those indicate the --
9 that the tests were acceptable?

10 A. Yes.

11 Q. And just for the record and for the
12 judge's edification, near the right-hand side it
13 says, "Lab results." Is that what you were talking
14 about?

15 A. Yes.

16 Q. And it's got the letter A?

17 A. Yes.

18 Q. What does A mean?

19 A. A is acceptable.

20 MR. HARRISON: Okay. I'm gonna offer
21 51.

22 JUDGE LANE: I am edified. Thank you.
23 51's been marked and offered into evidence by
24 Suburban. Do I hear any objections?

25 MS. SYLER BRUEGGEMANN: No objection.

1 JUDGE LANE: All right. Hearing none,
2 it's submitted.

3 (EXHIBIT NO. 51 WAS RECEIVED INTO
4 EVIDENCE AND MADE A PART OF THE RECORD.)
5 BY MR. HARRISON:

6 Q. Have you received any water pressure
7 complaints from Suburban customers?

8 A. I have not received any water pressure
9 complaints from Suburban water customers in the
10 office. I don't answer the phone on a full-time
11 basis, but I have not -- the person that does has not
12 indicated to me that she's received any either.

13 Q. All right. Then let me ask another
14 question just for clarity, then. You're also not
15 aware, then, from anybody else at Suburban --

16 A. That's correct.

17 Q. -- about water pressure complaints, that
18 is?

19 A. That's correct.

20 Q. All right. Do you know how many -- I
21 might have asked you this before and I apologize if I
22 have. Do you know how many bills Suburban sends
23 every month to its customers?

24 A. I don't know the exact number of the
25 bills.

1 Q. Do you know approximately how many?

2 A. I think -- I'm guessing around 44, 45
3 bills.

4 Q. Do you write checks to pay company
5 expenses?

6 A. Yes, I do.

7 Q. Do you have knowledge, therefore, of
8 what the company's bank account balance is from time
9 to time?

10 A. Yes.

11 Q. Are you able to testify on average, just
12 on an average typical day what the bank account
13 balance of the company would be?

14 A. I would guess, but it would depend
15 because the payments -- when the payments come in --
16 at the current time it's around \$590.

17 Q. Right. In other words, it depends on
18 where you are in the month?

19 A. Right.

20 Q. It depends on if you've just sent out
21 bills and there's an in-flow of revenue, then it's
22 gonna be higher than it otherwise might be --

23 A. Right.

24 Q. -- fair? Do you know -- there was some
25 evidence adduced earlier that the total revenues of

1 the company in 2006 was about 22, \$23,000; is that
2 what you recall, the total gross revenue?

3 A. That would be about right.

4 Q. So is it fair that the gross revenue of
5 the company on a monthly basis is somewhere around
6 the \$2,000 mark, maybe a little -- maybe a little
7 under?

8 A. That would -- that's correct.

9 Q. All right. So the company has gross
10 operating revenues, generally speaking, on a monthly
11 basis to keep going of around \$2,000, maybe a shade
12 under?

13 A. That's correct.

14 Q. All right. And you testified Suburban
15 maintains an office, yes, that there's an office
16 where people can come to transact business with
17 Suburban?

18 A. That's correct. It's in the Vista
19 office.

20 Q. Right. What are the hours? What are
21 the office hours?

22 A. The hours are 9:00 to 12:00 and 1:00 to
23 5:00 Monday through Friday, and then the first
24 Saturday of every month.

25 Q. Who staffs the office?

1 A. Vista staffs the office.

2 Q. I mean, what are the names of the
3 people?

4 A. It's myself and -- and there's another
5 full-time clerical person named Leslie.

6 Q. Okay. And is it correct that you and
7 Leslie are there on more or less a full-time basis
8 during those hours that you just testified about?

9 A. During those hours that -- we're there
10 during those hours. Someone is there, but I'm not
11 generally in the office if I'm out in the field.

12 Q. Okay. But someone is there?

13 A. Someone is there.

14 Q. Are there emergency telephone numbers?

15 A. There are emergency telephone numbers.

16 Q. Are the emergency telephone numbers
17 posted there in the office or otherwise made known?

18 A. Yes. If we would have to leave the
19 office unstaffed for whatever reason, we have a sign
20 that we put on the door with our cell phone numbers
21 on it so in case we -- someone can contact us, and
22 our regular phone number rolls over to a message
23 center.

24 Q. Okay. Is your -- is your -- did you say
25 your cell phone number is made known somehow?

1 A. Yes.

2 Q. Okay. I need you to look at Exhibit
3 No. 55 again. That's the big one that you were --
4 yeah. And if you could look at the Disposition
5 Agreement, I'm gonna ask you some questions about it.
6 Specifically, I've turned to page 3 of 5 of the
7 Disposition Agreement, okay?

8 A. Uh-huh.

9 Q. With respect to the brochure question
10 again which is No. 8 there on that list in front of
11 you, do you see that?

12 A. Yes.

13 Q. Did -- well, let me back up. You
14 testified earlier that that brochure had been sent --
15 was mailed out to customers?

16 A. That's correct.

17 Q. Is it -- and it was mailed in -- let me
18 back up again. Both versions were mailed to the
19 relevant customers? I may have asked you that
20 already, but I want to make sure I cover it.

21 A. That's correct.

22 Q. Okay. Did -- I think you testified also
23 that you were involved in the 2005 rate case, at
24 least in some capacity?

25 A. Yes.

1 Q. Did anybody from the Staff of the Public
2 Service Commission indicate to you a deadline by
3 which they want this -- these brochures sent out?

4 A. No.

5 Q. We've established ad nauseam multiple
6 times in this case that there's no deadline in the
7 agreement, so I won't ask you that. But there was no
8 deadline that was either discussed or agreed to
9 that's not reflected in this agreement?

10 A. No.

11 Q. My statement is correct?

12 A. That is correct.

13 Q. Did anybody at the Staff of the Public
14 Service Commission follow up after the Disposition
15 Agreement was signed with respect to the brochure and
16 call and say, have you sent the brochures yet or
17 anything like that?

18 A. No.

19 Q. And in fact, isn't it correct that you
20 didn't hear anything from the Staff of the Public
21 Service Commission about the brochure issue until
22 maybe May of this year?

23 A. That's correct.

24 Q. So in between May of 2005 and May of
25 2007, you didn't hear a peep out of the Public

1 Service Commission with respect to the brochure --

2 A. That's correct.

3 Q. -- questions? Did you ask anyone at the
4 Public Service Commission Staff for a sample
5 brochure?

6 A. I did.

7 Q. Do you remember who you asked?

8 A. I know -- I asked -- I asked the Staff
9 that came over to do the audit, and I believe I asked
10 Debbie.

11 Q. And what answer did you get when you
12 asked for that?

13 A. I explained that if I had a sample, I'd
14 know how to do the brochure to the way that they
15 wanted it done, and I was told that they did not have
16 a sample and that I would need to contact another
17 water company or get on the internet and use that for
18 a sample.

19 Q. Did anybody at the Public Service --
20 Service Commission give you a copy of the -- of the
21 applicable rule or regulation that they say deals
22 with brochures?

23 A. No.

24 Q. Still looking at the agreement there in
25 front of you, the one with the -- what we've been

1 referring to as No. 10, it doesn't have a number in
2 front of it -- I'm sorry -- No. 11, No. 11, that
3 deals with the implementation of the ten-year
4 replacement program, you see that?

5 A. Yes.

6 Q. All right. I know you've already
7 testified or there's already been testimony about --
8 about whether that program exists, so I won't ask you
9 about that again. Again, was there any deadline for
10 this requirement that was discussed with you or given
11 to you by the Public Service Commission Staff that's
12 not shown here?

13 A. No.

14 Q. Did anybody to your knowledge contact
15 anybody at -- I'm sorry. Strike that. Did anybody
16 at -- with the Public Service Commission Staff to
17 your knowledge contact anyone with Suburban between
18 May of 2005 and May of 2007 to check in on the
19 progress of the implementation of this system?

20 A. Not that I'm aware of.

21 Q. And you had no -- you had no direct
22 contact?

23 A. No.

24 Q. And you're not aware that anybody else
25 was contacted; is that right?

1 A. That's correct.

2 Q. Looking at No. 13 of the agreement with
3 respect to the standpipe, was there a deadline for
4 this matter that was discussed with you in connection
5 with the 2005 agreement?

6 A. No, not that was discussed with me.

7 Q. Was there an agreement made with respect
8 to a deadline that's not expressed in this agreement?

9 A. Not to the best of my knowledge.

10 Q. Did anyone at the Public Service
11 Commission Staff between May of 2005 and May of 2007
12 follow up with you about that requirement?

13 A. No.

14 Q. Did they follow up, to your knowledge,
15 with anybody else at Suburban about that?

16 A. No.

17 Q. Has anyone in the last -- has anyone
18 from the Public Service Commission Staff, I should
19 say, in the last two years inspected the inside of
20 the standpipe?

21 A. No.

22 Q. Has anyone at the PSC Staff directed
23 Suburban to inspect the inside of the standpipe
24 within the past two years?

25 A. No.

1 Q. Item 14 of the agreement right below
2 that, it deals with the certified water operator. I
3 want to ask the same question. Was there a deadline
4 to get this item done that was discussed between
5 Suburban and the PSC Staff in 2005?

6 A. No. No.

7 Q. Was there an agreement that was reached
8 with respect to a deadline that's not shown in this
9 document?

10 A. No.

11 Q. Okay. Did the PSC Staff follow up with
12 Suburban on that matter between May of 2005 and May
13 of 2007?

14 A. No.

15 Q. Have you, on behalf of Suburban, made
16 contact with any certified water operators with
17 respect to this system, say -- say, in the past two
18 years?

19 A. Yes.

20 Q. I want you to testify some about that.
21 First, I want you to -- first, I want you to tell who
22 you've talked to.

23 A. I talked to a company out of Jefferson
24 City called AquaSource, and we talked to the manager
25 and to their certified water operator, and I believe

1 that was in June or July of 2005. They came up to
2 the system --

3 Q. Let's just go through the list first.

4 A. Okay. Okay.

5 Q. So you talked to AquaSource?

6 A. Yes.

7 Q. Who else, if anybody else?

8 A. Yes. I talked to -- I talked to Craig
9 from Alliance.

10 Q. Craig Edlund?

11 A. Uh-huh.

12 Q. All right. Anybody else that you can
13 recall?

14 A. I took that water class --

15 Q. Okay.

16 A. -- in May of --

17 Q. I'll get to that in a minute.

18 A. Okay.

19 Q. Are there any other operators --

20 A. Yes.

21 Q. -- even if you can't remember their
22 names that you've spoken to?

23 A. Oh, I know that -- I know that there was
24 a gentleman from the City of Columbia that worked for
25 the water -- or -- I'm sorry. There was a gentleman

1 that had had a certified water operator, and I was
2 present when Gordon talked to him.

3 Q. All right. Anybody else that you can
4 recall who you spoke to?

5 A. I recently spoke to Total Environment at
6 Osage -- Lake Osage or Osage Beach, Missouri. I
7 spoke to him about four days ago.

8 Q. Okay. Anybody else that you can
9 remember?

10 A. No.

11 Q. All right. You said you talked to
12 AquaSource, you say, in -- sometime in '05?

13 A. That's correct.

14 Q. Do you recall when you talked to Edlund?

15 A. At the same time.

16 Q. Okay. The third -- the third person, I
17 don't know -- I didn't write the name down. I can't
18 remember what you said the third person's name was.

19 A. It was a gentleman that worked for
20 the -- a certified water operator that --

21 Q. Do you remember -- do you remember his
22 name?

23 A. I'm sorry. I don't.

24 Q. When did that contact occur?

25 A. That occurred probably about the same

1 time.

2 Q. In 2005?

3 A. That's correct.

4 Q. All right. What did the AquaSource
5 people tell you?

6 A. They told me that most of the systems
7 that they took care of were south of Jefferson City,
8 and so it was not profitable for them to go north to
9 take care of such a small water system, so they were
10 not interested.

11 Q. So they declined?

12 A. That's correct.

13 Q. What did Mr. Edlund tell you?

14 A. He said to me that they only take care
15 of larger systems than what we had and he was not
16 interested.

17 Q. And you said that the third person you
18 spoke to was somebody who either was then or had been
19 with the City of Columbia?

20 A. I thought that was Greg. It was someone
21 that Gordon knew that hadn't had a certified water
22 operator and Gordon offered to give them the system.

23 Q. Okay. And what -- what -- what, if you
24 recall, was that person's response?

25 A. That person went out and looked at the

1 system and then he -- he got back to Gordon and said
2 that he was retired and he declined to do it.

3 Q. All right. And then you said a minute
4 ago that you -- let me back up. Are you -- are you
5 aware of any contacts with potential certified water
6 operators that have been made by other Suburban
7 representatives other than you?

8 A. I know Gordon contacted some.

9 Q. Okay. Anybody else that you know of,
10 any other contacts that you know of?

11 A. No.

12 Q. Okay. You testified, and there was
13 previous testimony about what, a certified water
14 operator class that you enrolled in?

15 A. Yes.

16 Q. When did that happen?

17 A. That was in May of 2006.

18 Q. Okay. And where was this class held?
19 Just explain generally what it was and when it was.

20 A. I attended a class down at Linn,
21 Missouri for a week --

22 Q. Okay.

23 A. -- that was taught on water certification.

24 Q. All right. Does anybody have
25 Exhibit 58? Oh, here it is right here. Sorry for

1 the false alarm. I've handed you Exhibit 58 there
2 which has been previously marked and admitted. Have
3 you seen that before?

4 A. Yes, I have.

5 Q. Are you aware that it was sent by the
6 company to the Missouri Public Service Commission to
7 the attention of Jim Russo?

8 A. Yes.

9 Q. Are you aware of any response that
10 Suburban received to that letter?

11 A. They received no response.

12 Q. Now, I'm gonna hand you what's been
13 marked Exhibit No. 34. Have you seen that before?

14 A. Yes.

15 Q. You're aware that that's a letter sent
16 by Suburban's attorneys; is that right?

17 A. That's correct.

18 Q. Are you aware of any response that the
19 company received to that letter from the Public
20 Service Commission?

21 A. There was no response.

22 MR. HARRISON: Judge, did I offer 51? I
23 did offer 51, right?

24 JUDGE LANE: 51 is in evidence.

25 MR. HARRISON: All right. Judge, give

1 me one second here to peruse my notes, if you would.

2 JUDGE LANE: All right. Your one
3 second's up.

4 MR. HARRISON: All right. That's it. I
5 have no further questions.

6 JUDGE LANE: All righty. That concludes
7 the cross-examination of this witness. There are no
8 questions from the bench. Any redirect from Staff?

9 MS. SYLER BRUEGGEMANN: I just have two
10 questions, I believe.

11 REDIRECT EXAMINATION BY MS. SYLER BRUEGGEMANN:

12 Q. When Mr. Harrison was asking you about
13 reading the single-family dwelling meters, does that
14 mean all the units, duplexes and four-plexes, you
15 don't actually read those meters?

16 A. No.

17 Q. Okay. Secondly, when OPC asked you
18 and you stated that you did know -- or that Gordon
19 Burnam had told you he just wanted to get the PSC's
20 attention and wasn't going to turn off the water on
21 July 1st, 2007, I want to know when he told you that.

22 A. I don't know. I don't know a specific
23 date.

24 Q. Okay. Why don't you give me a month.

25 A. I guess I'd have to say maybe in June.

1 MS. SYLER BRUEGGEMANN: Okay. That's
2 it. Thank you.

3 JUDGE LANE: Any recross based on that
4 question?

5 MR. HARRISON: Possibly here, your
6 Honor.

7 JUDGE LANE: All right.

8 RECROSS-EXAMINATION BY MR. HARRISON:

9 Q. Okay. I'm gonna show you another
10 exhibit here. Okay. I've given you two exhibits
11 side by side, Exhibit 12 and Exhibit 58, okay?

12 A. Uh-huh.

13 MR. HARRISON: If it's all right with
14 you, Judge, I'll ask her some questions from here.

15 JUDGE LANE: All right.

16 BY MR. HARRISON:

17 Q. Exhibit 58 you testified about a minute
18 ago is the letter dated June 29th of '06 that was
19 sent to Mr. Russo?

20 A. Yes.

21 Q. And in it, it references a compliance
22 and operation inspection report. Do you see that?

23 A. Yes.

24 Q. Is that report -- is Exhibit 12 that
25 report which is dated June 19th of '06?

1 A. Yes.

2 MS. SYLER BRUEGGEMANN: I'm sorry. I
3 need to object. Is this in response to my question?

4 JUDGE LANE: Yes, this recross does need
5 to be limited --

6 MR. HARRISON: All right. She's already
7 answered the question. No further questions.

8 MS. SYLER BRUEGGEMANN: Will you please
9 strike the answer from the record, your Honor?

10 JUDGE LANE: Yeah, strike the question
11 and the answer.

12 MS. SYLER BRUEGGEMANN: Thank you.

13 JUDGE LANE: Does Staff have any -- have
14 any further witnesses they wish to call in support of
15 their case?

16 MS. SYLER BRUEGGEMANN: No further
17 witnesses for Staff.

18 JUDGE LANE: All right. Very well.
19 Then we will proceed to presentation of testimony and
20 evidence by the Respondent, Suburban Water and Sewer.

21 THE COURT REPORTER: Could we have a
22 break, your Honor?

23 JUDGE LANE: Yeah, it might be a good --
24 let -- can we take a -- let's see. I'll rally --
25 rally the Commissioners as well. It's late

1 afternoon. And you're right, it's been about two and
2 a half hours, hasn't it? Let's take a 15-minute
3 break, and so we'll start up at, oh, in 15 minutes.
4 It's --

5 MR. REED: Well, five minutes is fine.
6 I mean, we just need a few minutes to take a breath
7 and then we'll --

8 MS. BAKER: I need to go up to my
9 office --

10 JUDGE LANE: All right. All right.
11 I'll tell you what. How about --

12 MS. BAKER: -- for just a second, so ten
13 is good.

14 JUDGE LANE: Yeah. How about -- how
15 about we'll just start up again at 4:30.

16 MR. REED: All right.

17 (A RECESS WAS TAKEN.)

18 JUDGE LANE: All right. We're back on
19 the record in Case No. WC-2007-0452, and Staff has
20 now concluded the presentation of its case as the
21 Complainant in this matter, and we're now ready for
22 the Respondent, Suburban Water and Sewer Company's
23 evidence.

24 MR. VOLKERT: Your Honor, before we call
25 our first witness, given Mr. Johansen's testimony,

1 I'd like to offer into the evidence the original of
2 the January 31, 2007 letter and both signed return
3 receipts including the one signed by Ms. Crawford.
4 I'd like to actually just offer that because it's an
5 official U.S. Postal Service document, speaks for
6 itself, original signatures. We'll offer the
7 originals into evidence just to clear up any doubt.

8 JUDGE LANE: Any objection to that?

9 MR. REED: I think the copies came in,
10 correct?

11 JUDGE LANE: The copies are already in.

12 MR. REED: Yes, that's fine.

13 JUDGE LANE: Except there's not the
14 return receipt from Ms. Schafer.

15 MR. VOLKERT: Ms. Crawford.

16 JUDGE LANE: Or Ms. Crawford, I'm sorry.

17 MR. REED: Can I just look at it for --

18 JUDGE LANE: Sure.

19 MR. REED: I haven't seen it.

20 JUDGE LANE: Please do.

21 MR. VOLKERT: Would you like to look at
22 it, your Honor, before I hand it to the court
23 reporter?

24 JUDGE LANE: Sure. All right. Hearing
25 no objection, the originals are admitted. What do

1 you want to call those? Do you want to give them an
2 exhibit number or --

3 MR. VOLKERT: Exhibit No. 68.

4 JUDGE LANE: 68? Okay.

5 (EXHIBIT NO. 68 WAS MARKED FOR
6 IDENTIFICATION BY THE COURT REPORTER.)

7 (EXHIBIT NO. 68 WAS RECEIVED INTO
8 EVIDENCE AND MADE A PART OF THE RECORD.)

9 JUDGE LANE: It's my understanding that
10 Suburban plans to call Mr. Johansen --

11 MR. VOLKERT: Yeah.

12 JUDGE LANE: -- who was not finally
13 released?

14 MR. VOLKERT: That's correct. I'm
15 sorry, your Honor. Yeah, we call Mr. Johansen. I
16 understand he has to go somewhere, so I'll probably
17 get him done quickly.

18 MR. JOHANSEN: Thank you.

19 JUDGE LANE: Please remember you are
20 still under oath.

21 MR. JOHANSEN: Yes, sir.

22 MR. VOLKERT: And just a few questions,
23 Mr. Johansen.

24 MR. JOHANSEN: Okay.

25 MR. VOLKERT: First of all, an exhibit

1 that I tried to get admitted earlier, I'm actually
2 gonna go back. This is the one that has been
3 previously marked Exhibit 67 and, your Honor, I'd
4 ask, number one, that you take notice, official
5 notice of this which is the Commission's own official
6 file of its unofficial rate request, so I understand
7 it, and that's QW-2005-001.

8 JUDGE LANE: All right. We can -- I
9 understand what the exhibit is.

10 MR. VOLKERT: Okay.

11 DIRECT EXAMINATION BY MR. VOLKERT:

12 Q. And then, Mr. Johansen, can you please
13 tell us what that exhibit is?

14 A. Yes. The first page is a printout of
15 what we call our tracking sheet which exists for all
16 of our small company rate increase requests.

17 Q. Okay.

18 A. The rest of the document -- well, the
19 best way to explain the rest of the -- of the
20 exhibit, each of the documents that are listed on
21 that cover sheet is what follows here. The first
22 item is the small company rate increase request.
23 That's the company's letter and the supporting
24 documentation regarding its request. That's what
25 gets the process started. That's the first document

1 that's entered into our filing system and what
2 results in the creation of the QW tracking number.

3 The second document is the first
4 customer notice that the company sent out in regard
5 to its request. The third document is the public
6 comment form related to the one customer comment that
7 was submitted in response to the notice.

8 Item No. 4 is an agreement between the
9 company and Staff regarding an extension of the 150-
10 day tariff filing requirement that's part of our
11 process. And then item No. 5, which is the last
12 document in the file, is simply a reference sheet that
13 points someone looking at this file to the formal
14 rate case.

15 Q. And is this file maintained by the
16 Commission Staff in the ordinary course of business?

17 A. It's actually maintained by our data
18 center. It's -- it's the official record of the
19 Commission regarding small company requests.

20 Q. The data center, then, is responsible
21 for keeping these files?

22 A. Correct. The -- the -- our
23 information -- our Electronic Information Filing
24 System which we call EFIS is the repository for the
25 Commission cases, and the QW tracking type files are

1 one of the many files or documents or different parts
2 of that overall system.

3 MR. VOLKERT: Okay. Your Honor, now I'd
4 like to move to admit this as a business record of
5 the Public Service Commission.

6 JUDGE LANE: All right. 67 has been
7 reoffered into evidence by Suburban. Are there any
8 objections to the admission of Exhibit 67?

9 MR. REED: Well, we haven't resolved the
10 hearsay objection but I'll --

11 JUDGE LANE: Well, if you want to remake
12 that objection.

13 MR. REED: I will not. I will not object.

14 JUDGE LANE: All right. OPC, any
15 objections?

16 MS. BAKER: Oh, no objections. Thank you.

17 JUDGE LANE: All right.

18 (EXHIBIT NO. 67 WAS RECEIVED INTO
19 EVIDENCE AND MADE A PART OF THE RECORD.)

20 BY MR. VOLKERT:

21 Q. You see that page right there that I'm
22 showing you, what's the title to that page?

23 A. This is the public comments form that I
24 referenced earlier.

25 Q. And would you -- would you please -- and

1 what -- this is a single customer complaint that you
2 received in the course of that informal case; is that
3 correct?

4 A. Yes.

5 Q. Can you read into the record the
6 description, the public comment description there at
7 the bottom.

8 A. Certainly. And I'll note right up front
9 that this -- this form itself was one that I created
10 in response to a telephone call from a customer, and
11 part of what I read into the record will reflect that
12 as well but ...

13 The public comments description is as
14 follows: "Generally concerned about the proposed
15 increase but recognizes that switching the source of
16 supply to the district would be beneficial in that it
17 would result in better quality water and improved
18 system pressure." And in parentheses there's a note,
19 says, "(call taken by Dale J. on 1/12/05)."

20 Q. Does that mean you actually spoke to
21 that customer?

22 A. That's correct.

23 Q. Now I'm gonna show you two exhibits that
24 have been previously marked and entered. Let me help
25 you find them. 12 and 58. Okay. And --

1 A. I have both of those.

2 Q. Okay. Great. If -- if I recall your
3 testimony correctly, was it that you had seen that
4 letter which is Exhibit 58 back in 2006; is that
5 correct?

6 A. Yes.

7 Q. And did you hear Ms. Belcher's testimony
8 that what's been marked as Exhibit 12 is the DNR
9 report that's referenced in that letter?

10 A. Yes, I did hear that.

11 Q. Is that your recollection? Do you
12 recall seeing this DNR report?

13 A. Yes. I believe this would have been the
14 report referenced in the other letter.

15 Q. And am I correct in my characterization
16 of that report that it cites several deficiencies in
17 the Suburban Water and Sewer system including the
18 lack of a certified water operator? Go ahead and
19 take your time to look through it.

20 A. Yes. The item regarding the certified
21 operator is item No. 7 under the Findings heading.

22 Q. Thank you. And is this something that
23 you would have typically responded to if you had seen
24 that there was a DNR report citing deficiencies?

25 A. We normally don't -- we don't respond to

1 the DNR, for example. What -- our normal course of
2 business, basically, is to review those reports as
3 they come in, see if there is anything in particular
4 that we believe we need to address in conjunction
5 with the DNR or in addition to DNR, so we do normally
6 review those. It is not something that would
7 necessarily prompt a response, certainly not to the
8 DNR and possibly not to the company either.

9 Q. And you did not respond and ask the
10 company about that report; is that correct?

11 A. My -- I don't believe we did, no.

12 Q. Next thing I'm going to hand you is what
13 has just been entered and marked as Exhibit 68. Can
14 you tell me, is this letter the same letter -- I'm
15 sorry. Let me find the right letter to give to you
16 to compare these.

17 MR. VOLKERT: One moment, Judge. Sorry.

18 JUDGE LANE: Not a problem.

19 MR. VOLKERT: It's Exhibit No. 34 that
20 we're trying to find.

21 THE WITNESS: I have that.

22 BY MR. VOLKERT:

23 Q. That's right. Okay. Can you -- you can
24 compare those letters with the -- Exhibit No. 68, the
25 one that I've just handed you, the same as Exhibit

1 No. 64?

2 A. Yes, I believe it is.

3 Q. Attached to the front of Exhibit 68, can
4 you tell me what those are?

5 A. Those are the certified mail receipts
6 that would have gone back to your office.

7 Q. And can you look at the second one.

8 A. Okay.

9 Q. Who is that from?

10 A. The -- there's two pieces of paper here
11 that make up the full receipt. The first one says it
12 was sent to G. Irene Crawford. The second one is
13 actually the -- the pickup receipt, if you will.
14 Again, it has Ms. Crawford's name and address on the
15 left portion of that receipt. On the right portion
16 is the signature and name of the person who I assumed
17 picked this up.

18 Q. Theresa Gates; is that right?

19 A. Correct.

20 Q. So seeing that, how -- do you believe
21 Ms. Crawford's statement to you that she never
22 received that letter?

23 A. Ms. Crawford's statement to me, I --
24 I -- I believe I said, was that -- when I talked to
25 her about it, she didn't recall receiving it. So

1 I -- other than that, I don't have any information
2 regarding whether she physically got it or not.

3 Q. What do you think the likelihood of two
4 certified letters with signed return receipts not
5 having been received are?

6 A. Very slim.

7 Q. One final question. This is a little
8 bit of general question, so just however you -- you
9 can react to it. I'm not even sure how to ask it
10 properly. But if a company -- or if Suburban had
11 sent you one letter which is acknowledged to have
12 been received and another certified letter for which
13 they received a return receipt and had no response to
14 either of those letters over a nine-month period, how
15 would you expect them to feel about that? Would you
16 expect them to feel frustration?

17 A. I would think they would feel some
18 frustration. I think they would also pick up the
19 phone and call us and say, what the heck are you guys
20 doing? Why are you not responding to our
21 correspondence?

22 MR. VOLKERT: Nothing further.

23 JUDGE LANE: All right. Thank you very
24 much. Any cross-examination by Staff or OPC?

25 MS. BAKER: None from me.

1 MR. REED: No.

2 JUDGE LANE: All right. No questions
3 from the bench, so I think we're done. Mr. Johansen,
4 you are now finally excused.

5 THE WITNESS: Thank you.

6 JUDGE LANE: You can go home and enjoy
7 your weekend.

8 MR. VOLKERT: Your Honor, we'd like to
9 now call Jim Merciel to the stand.

10 JUDGE LANE: All right.

11 MS. BAKER: Your Honor, do you still
12 have the little key for the door? It might be time
13 for that.

14 JUDGE LANE: I was just going to propose
15 taking a moment to do that while we were waiting for
16 Mr. Merciel.

17 MS. BAKER: Okay.

18 JUDGE LANE: All right. Mr. Merciel,
19 would you please spell your name for the reporter.

20 MR. MERCIEL: M-e-r-c-i-e-l.

21 JUDGE LANE: Would you please raise your
22 right hand and be sworn.

23 (THE WITNESS WAS SWORN.)

24 JUDGE LANE: Thank you very much. We're
25 ready for direct examination, Mr. Volkert. Will you

1 be conducting that?

2 MR. VOLKERT: Yes, your Honor.

3 DIRECT EXAMINATION BY MR. VOLKERT:

4 Q. In that stack of papers in front of you,
5 Mr. Merciel, is Exhibit No. 55. It's a big thick
6 document.

7 A. All right.

8 Q. Can you turn back six or seven, eight
9 pages to the document that's titled Unanimous
10 Agreement.

11 A. What -- I'm sorry. What page did you
12 want?

13 Q. The first page -- or actually it's page
14 3 of 5 in the unanimous agreement.

15 A. 3 of 5, okay. Okay. Got it.

16 Q. But first let me -- I skipped over the
17 formality. Could you please state your name.

18 A. Oh, yes. My name is James A. Merciel,
19 Junior.

20 Q. And what's your position with the PSC?

21 A. My -- my position is assistant manager,
22 engineering, and I work in the water and sewer
23 department.

24 Q. And how long have you been with the PSC?

25 A. 30 years.

1 Q. And you're familiar with Suburban Water
2 and Sewer Company?

3 A. Yes.

4 Q. How long have you been familiar with
5 Suburban?

6 A. Well, most of the 30 years that I've
7 been working here, probably not all of it.

8 Q. And if you were to characterize
9 Suburban, rank it versus a similar-sized company for
10 its management sophistication such as the way it
11 keeps records, supervises its operations, et cetera,
12 how would you compare it?

13 A. It's hard to rank them. It's not a very
14 sophisticated company. We have found recordkeeping
15 is somewhat lacking. Over the years customers have
16 gotten fairly good service. It hasn't been what I
17 would consider to be a problem company over the
18 years. That seems to be changing a little bit now,
19 but it's -- it's been providing service for -- for
20 all these years.

21 Q. Would you characterize it as a mid range
22 compared to similar-sized company as far as
23 management sophistication?

24 A. Probably low to mid, yes.

25 Q. I'm gonna show you a copy of your

1 deposition dated July 16th, 2007, and let me look and
2 make sure I get the page numbers right.

3 A. Okay. Okay. Yeah.

4 Q. Does it look like it's the transcript
5 from your deposition?

6 A. It -- it does, yeah. Looks like I
7 answered mid range, so, yeah.

8 Q. So in your deposition you answered that
9 Suburban was mid range --

10 A. Yes.

11 Q. -- compared to a similar-sized company?

12 A. Yes, uh-huh.

13 Q. And how would you consider its track
14 record with customer complaints, possible violations,
15 things like that; about average?

16 A. As far as customer complaints, I would
17 say average. As I said, hasn't -- with regard to
18 customer complaints, it hasn't been a problem
19 company. Generally when there are complaints, the
20 company would take care of it.

21 Q. Okay. Okay. I'm now back to Exhibit 55
22 and we digressed briefly from that. But Exhibit 55,
23 page 3 of 5, the Unanimous Disposition Agreement.
24 I'm just gonna run through some of these requirements
25 quickly. Requirement -- requirement No. 8, look at

1 that, please. Does that include a deadline?

2 A. No, it does not.

3 Q. What would you consider to be a
4 reasonable period of time in which to get that done?

5 A. That's about the brochure and I wouldn't
6 have thought it would take very long, say, a month or
7 so to get something like that out to customers.

8 Q. Number -- the next number, No. 9, does
9 this include a deadline?

10 A. No, it does not.

11 Q. And how long would you expect this to
12 take to be completed?

13 A. This particular one, it's something the
14 company should have already had since its inception.
15 Given that they didn't, again, it would take just not
16 very long to get something started to get a system
17 started and developed. Matter of weeks, month,
18 something like that.

19 Q. And next paragraph, or let's see, no,
20 not the next paragraph but the one below that that
21 reads that, "The company will implement a ten-year
22 replacement program for existing meters." We've been
23 referring to that as paragraph 11.

24 A. Okay. Right.

25 Q. Does that have a deadline?

1 A. No.

2 Q. And what would you -- what -- what
3 exactly would you think that this would -- would
4 require the company to do?

5 A. The ten-year replacement program is an
6 ongoing thing. It depends on meter records but it
7 does mean the company, if they hadn't been doing it
8 at this time, they should immediately start with a
9 meter replacement program.

10 Q. And does it require a certain frequency
11 of meter replacement?

12 A. The frequency is ten years on a
13 per-meter basis. It -- it's not necessarily a
14 certain number of meters per month, it's -- it's --
15 it's based on meter-to-meter. Any individual
16 customer's meter after it's been in service for ten
17 years should be replaced, so that's the closest
18 frequency that there would be.

19 Q. So is a policy that -- or the program
20 that states that meters should be replaced on an
21 as-needed basis in all events within ten years, would
22 that satisfy this requirement in your mind?

23 A. As-needed basis, I'm not sure what you
24 mean by that.

25 Q. Just the common sense ordinary meaning.

1 A. I don't think I can agree with that.
2 It's -- it's -- it's ten years in service. When
3 it -- when -- when an individual meter is in service
4 for ten years, it should be replaced. That's the way
5 to describe it.

6 Q. Next paragraph, paragraph No. 12, and is
7 there a deadline stated in this paragraph?

8 A. No, there is not.

9 Q. When would you expect this to be
10 completed?

11 A. This is about flush valves. The company
12 wouldn't be able to -- well, probably would not be
13 able to install them by themselves. Possibly they
14 could with some of their own people, but could take
15 contractor work and they could have started work on
16 it immediately. It could take maybe, say, a couple
17 of months depending on weather, contractor
18 availability to get this done.

19 Q. I'm looking back at your deposition
20 again from July 16th, 2007, and I'm gonna show you
21 page 35. Is it correct that at that time you stated
22 maybe six months?

23 A. Okay. I said six months. As I said --
24 yeah, I'm just using judgment. It would depend on
25 availability.

1 Q. Next paragraph, No. 13, does this
2 include any deadline?

3 A. No.

4 Q. And what would be a reasonable period of
5 time in which to get this done in your mind?

6 A. This one, again, would depend on a -- on
7 a contractor. There are people who work on tanks. I
8 don't remember what I said in the deposition. Again,
9 this could be several months to get this completed.

10 Q. Several. Could you give me a little
11 more definite --

12 A. I -- well, I mean, I could. I don't --
13 I don't know what the time frame would be. I think
14 the company should have contacted -- contacted
15 contractors immediately, and it could have been done
16 in one month, it might have been six months. It
17 would depend on the contractor availability on it.

18 Q. Okay. Okay. Next paragraph, No. 14,
19 does this state a deadline?

20 A. No, it does not.

21 Q. And when would you expect this to be
22 completed?

23 A. This one could have been done
24 immediately. This one would depend on availability
25 of a -- of an operator to actually begin work. I

1 would think this one could be -- you would expect
2 this to be within a month or so.

3 Q. I'm gonna show you what's been marked as
4 Exhibit 57. I don't think you have it in front of
5 you. Let me find it. Do you recognize this
6 document?

7 A. Yes, I recognize what it is.

8 Q. Have you seen it before?

9 A. I probably saw it back at the time. I
10 don't remember it right off the bat right now.

11 Q. Well, let me point you to the paragraph,
12 second full paragraph that's under the title Reason
13 For Extension. Could you read that, please, just to
14 yourself.

15 A. Okay. (Witness complied.) Okay.

16 Q. If a certified water operator could be
17 found almost immediately or within a month, why
18 didn't the Staff require that before entering into
19 the Unanimous Disposition Agreement?

20 A. Well, I don't know the answer to it. I
21 didn't actually participate in these negotiations,
22 but it says, "The Staff and company agreed the
23 process be completed by May 13th" -- let's see here.
24 Well, it says, "The process should be completed by
25 May 13th," and it's signed the early part of May.

1 Q. To your knowledge was that process
2 completed before the Disposition Agreement was done?

3 A. Again, the hiring of a certified
4 operator?

5 Q. Correct.

6 A. To my knowledge it was not.

7 Q. After the 2005 agreement, did you have
8 occasion to talk to Suburban about it prior to spring
9 of 2007?

10 A. No, I did not.

11 Q. Did you have occasion to look at or
12 think about it or talk to Suburban about it prior to
13 the notice to customers that went out about the
14 possible water shut-off?

15 A. I'm sorry. What is it you're asking
16 about? I thought we were on the Disposition
17 Agreement.

18 Q. Yeah, I'm sorry. Sorry. Yeah, let me
19 restate -- I'll restate the question. After the 2005
20 Disposition Agreement was entered into, did you have
21 occasion to look at it --

22 A. I don't believe --

23 Q. -- think about it and talk to Suburban
24 about it before the notice to customers went out in
25 May -- in April of 2007 or March 2007?

1 A. I don't believe I did.

2 Q. All right. And do you know why the
3 complaint in this case was filed?

4 A. Well, it's -- it's to enforce some of
5 these actions that were agreed to in the rate case,
6 and it stems from the threat of disconnect.

7 Q. Was it --

8 A. Or shut-down.

9 Q. Was one of the main purposes -- to your
10 knowledge, was one of the main purposes for filing
11 the complaint to get leverage over Suburban in
12 connection with that customer notice?

13 A. That would probably be accurate.

14 Q. And did you knowingly refrain from
15 talking to Suburban about the 2005 agreement and
16 possible violations of that agreement prior to the
17 filing of the complaint due to that fact, due to the
18 fact that you were using it as leverage or that you
19 may be using it as leverage?

20 A. Well, I don't believe I had the occasion
21 to talk to them. I wouldn't say I refrained from
22 talking to them.

23 MR. VOLKERT: Okay. Okay. Nothing
24 further. Thank you.

25 THE WITNESS: Okay.

1 JUDGE LANE: Thank you very much.

2 Cross-examination from Office of Public Counsel?

3 MS. BAKER: I have no questions. Thank
4 you.

5 JUDGE LANE: Cross-examination from
6 Staff?

7 CROSS-EXAMINATION BY MS. SYLER BRUEGGEMANN:

8 Q. Hi, Mr. Merciel.

9 A. Hello.

10 Q. Just a few questions. On the items that
11 you ran through with Mr. Volkert, should any of those
12 conditions or terms in the Disposition Agreement have
13 taken two years to complete or perform?

14 A. I don't believe any of them should take
15 two years. I would say if they do take that long, if
16 the company was earnestly attempting to get them done
17 and for some reason had problems and couldn't do it,
18 had a valid reason, then we could have dealt with
19 that.

20 Q. What do you mean by "could have dealt
21 with that"?

22 A. Well, if -- if -- oh, for example -- I
23 don't know, let's say -- let's say the -- the
24 standpipe, just picking one, if the company called us
25 and said, well, we have a contractor who's -- he's

1 not gonna be able to get to it, maybe -- maybe this
2 is sometime afterwards, if he gives us, you know,
3 some -- some long time frame that a contractor's
4 gonna get to him, then, you know, we would accept a
5 story like that.

6 Q. Okay. And is it true that some of these
7 items they haven't even started?

8 A. That is true.

9 Q. And to your understanding, are the items
10 within this agreement agreed to by Suburban Water and
11 Sewer Company, were they agreed to by Suburban Water
12 and Sewer Company?

13 A. Yes, they were.

14 Q. Okay. So then it's their agreement that
15 binds them to these conditions?

16 A. Right. Suburban had agreed to it, they
17 had -- they had -- they had signed this document.

18 Q. So then if they didn't perform these
19 conditions like they agreed to, then that's why we
20 would pursue violations?

21 A. Yes.

22 MS. SYLER BRUEGGEMANN: Thank you.

23 JUDGE LANE: All right. Any -- there
24 will be no questions from the bench. So any
25 redirect?

1 MR. VOLKERT: Yes, briefly, your Honor.

2 REDIRECT EXAMINATION BY MR. VOLKERT:

3 Q. You just stated if a small water company
4 had a reason that it couldn't comply, you usually
5 give them additional time; is that correct?

6 A. Yes, we try to work with them as best we
7 can.

8 Q. And are there any preconditions to that
9 sort of relief?

10 A. Preconditions?

11 Q. Right. Are there typical policies where
12 you will or won't consider requests for relief,
13 circumstances that -- that makes it automatic that
14 you won't or will or --

15 A. I don't think I can give you anything
16 specific. It's pretty much a case-by-case thing.
17 If -- if it looks like the company's earnestly
18 attempting to -- to do what they're supposed to do,
19 then -- and having trouble with it, then we would
20 generally accept that as opposed to let's just say
21 some hokey story or if it looks like the company's
22 just telling us something, you know, to sound like
23 they're doing their job but they're really not.

24 Q. Does a -- does a company have to
25 initiate that process, do they have to call you and

1 say, we're having trouble or if you see a company
2 that appears to be having trouble, do you sometimes
3 give them another chance?

4 A. Well -- well, we do -- we do work with
5 our -- with our companies so it's possible if --
6 it's -- generally I'd say, particularly on a -- on a
7 formal case, it would be up to the company to come to
8 us. Now, from a practical standpoint, we may be
9 speaking with them informally and possibly suggest
10 that they request an extension, something like that.

11 Q. Is there any reason that you didn't
12 pursue any sort of informal discussions like that
13 with Suburban in this case?

14 A. Well, I don't know the answer to that.
15 I -- as -- to be honest, as far as I can tell, nobody
16 followed up on these items in a timely manner. I
17 wasn't necessarily the one to do it. Some of the
18 people in our department possibly could have. I
19 don't -- I'm not -- I'm not inclined to point fingers
20 but I don't think -- I don't think the Staff was
21 really pursuing this.

22 Q. And because the Staff didn't pursue it,
23 is that a reason not to try and work it out
24 informally?

25 A. Well, not necessarily. I don't think it

1 was up to us to get it worked out. It was ultimately
2 up to the company. As I said, on a formal matter the
3 company agreed to do it, the company should have been
4 doing it. Just because the Staff wasn't paying
5 attention is not an excuse for the company not to
6 have done it from a --

7 Q. Prior to filing the complaint in this
8 case, to your knowledge, did you or anyone else on
9 the Staff contact the company and ask them whether or
10 not they complied with the agreement -- or to comply
11 with the agreement?

12 MS. SYLER BRUEGGEMANN: Your Honor, I'm
13 having a hard time trying to remember back to how
14 this relates to the questions that I asked on cross,
15 so that's my objection.

16 MR. VOLKERT: She opened up this line of
17 questioning, your Honor, because she asked about --
18 I'm trying to remember the specific question. She
19 asked about whether or not Suburban was in compliance
20 with the requirements, and Mr. Merciel stated that --
21 and whether or not it should have additional time,
22 and Mr. Merciel stated that sometimes the Staff works
23 with companies to give them additional time if the
24 circumstances warrant, et cetera, to comply with
25 their -- with their agreements. That's all I'm

1 talking about.

2 JUDGE LANE: Okay. I remember that, and
3 to the extent that your question is designed to
4 elicit further information about what those
5 circumstances are or how that might come into play --

6 MR. VOLKERT: Or if it had happened in
7 this case.

8 JUDGE LANE: Or if had it had happened
9 in this case, then it's permissible, so the objection
10 is overruled.

11 THE WITNESS: Okay. Did anybody talk
12 about specifically about these items, I -- I don't
13 think we approached the company specifically about
14 this. Now, this all started after the letter was
15 sent to the customers where the system was gonna be
16 shut down. We -- I'm gonna say we did speak to the
17 company. I didn't personally but some of our people
18 did, and -- and we also contacted the water district.

19 A lot of this is an earnest attempt to
20 help this company get the system transferred to
21 someone else. But in so doing, you know, we
22 discovered, hey, there's a lot of stuff here
23 that's -- that this company hasn't done, a lot of
24 which would help a sale to another entity if they
25 would do some of this stuff.

1 And that -- that's the angle that I'm
2 looking at it. You know, this company needs to do
3 some things, not only to provide service but to
4 attract a buyer here that some of this stuff really
5 needs to get done.

6 BY MR. VOLKERT:

7 Q. Is the complaint supposed to help the
8 company transfer its operations to another -- a
9 potential buyer?

10 A. Well --

11 MS. SYLER BRUEGGEMANN: I'm gonna object
12 to the speculation -- to any speculation on that.

13 BY MR. VOLKERT:

14 Q. To your knowledge, to your knowledge,
15 was the complaint intended to help assist it -- to
16 facilitate the transfer of the system to another
17 operator?

18 A. In my opinion that's the ultimate goal
19 to get the system transferred. I know Mr. Burnam
20 wants to retire, and for that reason and for others
21 it's desirable for some other owner to step in, and
22 we'd sure like to see that happen.

23 MR. VOLKERT: Thank you. Nothing
24 further.

25 JUDGE LANE: All right. Any recross

1 based on that? I'll give you one final.

2 MS. SYLER BRUEGGEMANN: No, your Honor.

3 JUDGE LANE: All right.

4 MS. BAKER: None for me, thank you.

5 JUDGE LANE: All right. Mr. Merciel,
6 thank you very much. That concludes the examination
7 and cross-examination, and you're finally excused.

8 And we may be in a position where Suburban is calling
9 its final witness of the hearing, the entire hearing.

10 MR. HARRISON: I believe that's correct.

11 JUDGE LANE: Now, just don't -- don't
12 tell me that the light at the end of the tunnel is
13 the head lamp of an oncoming train.

14 MR. HARRISON: Judge, I wouldn't do
15 that. There's not a whole lot new that I think I can
16 elicit from this witness, but I'll try.

17 JUDGE LANE: Okay. Let's see. You --
18 you were not finally excused last time, so I'd just
19 remind you that you're still under oath.

20 THE WITNESS: Yes. Yes.

21 DIRECT EXAMINATION BY MR. HARRISON:

22 Q. Gordon, I'm gonna try to get through
23 this as quickly as I can here and I'll try not to be
24 repetitive. So -- but there is some -- there is some
25 material that I need to cover with you here.

1 A. Uh-huh.

2 Q. I want to ask you some general questions
3 about Suburban's financial condition, all right? By
4 the way, I assume you can hear me okay, but if you
5 can't, speak up.

6 A. Yes, yeah.

7 Q. All right. There's already been a lot
8 of testimony to the effect that you're not the one
9 who keeps the books, right? You don't -- you don't
10 keep the books of the company?

11 A. That's correct.

12 Q. All right. But I assume it's true that
13 at least on a general level, you monitor the
14 financial condition of the company, just on a general
15 level?

16 A. On a very, very, very general.

17 Q. All right. Is the company -- is it a
18 fair characterization to say that the company's
19 barely making it at this point?

20 A. Well, the company, for all practical
21 purposes, is bankrupt.

22 Q. All right. That's what I wanted to
23 cover. There's been testimony here in the Staff's
24 case in chief, primarily, about the maintenance of
25 the system, the water system, okay? The contention

1 is that the water system, I think Mr. Hummel's word
2 is "junk," okay? Do you recall hearing that
3 testimony?

4 A. Well, I'd say --

5 Q. Just -- do you remember hearing that
6 testimony?

7 A. Yes, yes.

8 Q. Okay. Let me ask the question.

9 A. Okay.

10 Q. I want to ask you some general questions
11 about maintenance, though. Just as a general
12 statement, does Suburban, in fact, do maintenance
13 work to the system?

14 A. Yes.

15 Q. It's accurate, I assume, that the
16 company responds first to, you know, big picture sort
17 of emergency type situations if there's a leak or
18 something like that? In other words, the squeaky
19 wheel gets the grease, so to speak; is that a fair
20 statement --

21 A. Well, you know, any time --

22 Q. -- when it comes -- when it comes to
23 maintenance, doing the maintenance?

24 A. Yes. Yeah, that would be partially
25 true.

1 Q. Right. So if there's a leak or some
2 kind of break or something -- something major, that's
3 gonna get attention first; is that a fair statement?

4 A. That's right.

5 Q. But it's also true that there is
6 maintenance, routine maintenance done to machinery
7 that's -- that are -- that's part of the system, yes?

8 A. Well, there's very little machinery
9 involved, the pump's down 450 feet. There is some
10 maintenance inside the well and then there's some
11 maintenance on the -- on the standpipe.

12 Q. And that maintenance is done, that's the
13 question I'm asking?

14 A. Yes, uh-huh.

15 Q. All right. In other words, there's
16 maintenance that's done to the components of the
17 system that need regular maintenance; is that
18 correct?

19 A. That's correct.

20 Q. All right. There's been testimony about
21 patches and repairs to the standpipe. That has been
22 done over the years, right?

23 A. That's right.

24 Q. But it's also true that nobody's gotten
25 inside the standpipe within the past three or four

1 years to inspect it, to inspect the inside and its
2 condition, right?

3 A. It's due. We do -- we've always did it
4 every five years and it's -- this is the year that we
5 do it.

6 Q. Right. So it hasn't happened for at
7 least four years, then?

8 A. Yeah.

9 Q. All right. Is it correct that the
10 financial condition of the company has prevented any
11 major type of repairs, major undertakings with
12 respect to this system; is that a fair statement?

13 A. Well, yeah. In January of '06 we had to
14 spend \$15,000 for a new pump and, of course, the only
15 way we were able to do that was for Bonnie and I
16 personally to loan the money to Suburban.

17 Q. Now, there was testimony about the
18 development. I think there was testimony when you
19 testified previously about the development in the
20 BonGor subdivision?

21 A. Yes.

22 Q. I want to make sure that one or two
23 points there are clear. There were other builders
24 who developed -- who built in that subdivision?

25 A. That's correct.

1 Q. In other words, your affiliated company
2 wasn't the only builder out there?

3 A. That's correct.

4 Q. And that's typical for residential
5 subdivisions, isn't it?

6 A. That's correct.

7 Q. Or for some anyway in your experience;
8 is that right?

9 A. Yeah, uh-huh.

10 Q. In other words, you plat a subdivision,
11 you put in infrastructure, yes? Is that correct?

12 A. That's correct.

13 Q. And somebody's then -- somebody then has
14 to build the houses that are gonna be lived in and
15 sold to people, right?

16 A. That's correct.

17 Q. And in this case you had a
18 development -- or a construction company that did
19 some of that construction?

20 A. That's correct.

21 Q. But then you also sold to, I think you
22 said, two or three other builders who did some
23 construction?

24 A. That's correct.

25 Q. All right. Also, I believe it was your

1 testimony that 1986 was about the time that you sold
2 off the last of any property out there that you had a
3 direct affiliation with?

4 A. There was one lot that wasn't sold in
5 1986, and it was sold -- I can't think of the
6 builder's name in the late '80s or early '90s.

7 Q. All right. All right. All right. I'm
8 gonna need you to look at an exhibit.

9 A. Okay.

10 Q. Let me help you find it here. Okay.
11 I'm handing you Exhibit No. 55 and I'm turning to
12 page 3 of 5 --

13 A. Uh-huh.

14 Q. -- of the Disposition Agreement, right?

15 A. Yes.

16 Q. You testified about this agreement
17 previously; do you recall that?

18 A. That's correct.

19 Q. All right. I'm gonna ask you some
20 questions about that part of that agreement. And I'm
21 not gonna go through every single one of these in the
22 interest of time. I want to ask you first generally
23 about the question of deadlines, all right, Gordon?

24 A. Yes.

25 Q. All right. Other than No. 10, with

1 respect to meter installation --

2 A. Uh-huh.

3 Q. -- you'd agree that there's no deadline
4 imposed on the company to perform any of the other
5 work, correct?

6 A. That's correct.

7 Q. Now, with respect to the question of
8 deadline, of deadlines, when you were -- back in 2005
9 when you were talking about this agreement, did
10 anybody from the PSC Staff suggest any deadlines for
11 any of this work that didn't make their way into the
12 agreement?

13 A. We never -- after the hearing here in
14 Jeff City in May of '05, we never heard from anybody
15 from the PSC.

16 Q. What about before that? What about
17 before the agreement was signed?

18 A. If there was an inspection made, I don't
19 remember --

20 Q. No, no, I'm talking about -- I'm just
21 talking about deadlines.

22 A. No, no, no.

23 Q. Were deadlines discussed?

24 A. No, absolutely not.

25 Q. All right. Were deadlines agreed to

1 that -- were there -- were there agreements made with
2 respect to deadlines that didn't make their way into
3 the agreement?

4 A. No.

5 Q. All right. Now, I want to ask about
6 follow-up, okay? After this agreement was signed,
7 between the time when this agreement was signed in
8 May of 2005 and about May of 2007, that two-year
9 period --

10 A. Uh-huh.

11 Q. -- to your knowledge, did the -- did
12 anybody from the PSC Staff follow up with your --
13 with your company to, you know --

14 A. No.

15 Q. -- with respect to the items in this
16 agreement?

17 A. No.

18 Q. All right. And is it correct,
19 basically, that you didn't hear from anybody at the
20 PSC Staff with respect to any of those items until
21 about May of this year --

22 A. That's correct.

23 Q. -- for about two years? Have you
24 investigated -- well, let me -- look at No. 12 of
25 that agreement, the one dealing with flush valves.

1 A. Yes, uh-huh.

2 Q. Have you talked to anybody or made any
3 investigations about the costs associated with doing
4 that?

5 A. The only thing, we have -- we have an
6 engineer called Marshal Engineering, and I'd been in
7 contact with Bill, and he come up with an estimate of
8 what he thought was fair and reasonable to -- to meet
9 that requirement.

10 Q. In terms of a cost, you mean?

11 A. I'm sorry?

12 Q. In terms of cost?

13 A. Yes, uh-huh.

14 Q. Do you remember what that amount was?

15 A. I think it was \$6,000.

16 Q. To install the flush valves that are
17 apparently --

18 A. To meet the requirements of the PSC.

19 Q. Of the agreement. All right. Has
20 anyone at the Public Service Commission Staff
21 inspected the inside of the standpipe?

22 A. No. That's always been done by some
23 other people.

24 Q. Has anybody at the Public Service
25 Commission Staff directed Suburban to do that, to

1 inspect the inside of the standpipe?

2 A. Well, maybe in one of Martin's visits he
3 suggested that we ought to do it and that's when we
4 started -- there's a manhole where you take off
5 the --

6 Q. Right. I understand it, but has
7 anybody --

8 A. Yeah, okay. And you do it every five
9 years.

10 Q. But has anybody said, has anybody from
11 the Commission ordered the company --

12 A. No.

13 Q. -- to do that? All right. Have you
14 discussed with Mr. Marshal or anybody else any costs
15 with respect to replacing the standpipe?

16 A. Yes, uh-huh.

17 Q. Has he given you any kind of estimate --

18 A. The range --

19 Q. I'm talking about -- I'm talking about
20 replacement of the entire standpipe.

21 A. Yeah, okay. The range was 100 to
22 \$110,000.

23 Q. All right. You were in the room when
24 Paula Belcher testified about her contact with
25 certified water operators?

1 A. That's correct.

2 Q. You heard her testify about, I think she
3 said it was a former City of Columbia employee?

4 A. I was the one. It was a good friend of
5 one of my son's, and he --

6 Q. So you had -- you had the contact with
7 that person?

8 A. Yeah, the guy's name was Dickie Hayden.

9 Q. And was her testimony in that regard
10 basically correct? I mean, you had the discussion
11 with him?

12 A. Yeah.

13 Q. And he declined to do it?

14 A. Offered him 5,000 to take it.

15 Q. Have you had any discussions with
16 potential certified water operators for this system
17 other than the ones she testified about?

18 A. Yeah. We've been having some dealings
19 with Boone County Regional Sewer District and in
20 meeting with Tom Raderman, the head of it, and they
21 have a certified water operator. And I asked him if
22 it was okay if we tried to hire him to moonlight and
23 be a certified water operator on our system.

24 Q. What response?

25 A. Supposed to meet with the -- the guy

1 tomorrow.

2 Q. So the answer is they're thinking about
3 it?

4 A. Yes.

5 Q. Okay. Now I've given you Exhibit
6 No. 58.

7 A. Yes.

8 Q. And if I'm not mistaken, you testified
9 about that previously when you testified in this
10 case?

11 A. Yes, okay.

12 Q. So I'm not gonna, you know -- I don't
13 think there's any foundation that needs to be laid
14 for that. But that's the letter of June 29th, 2006
15 that you wrote to Mr. Russo or that Suburban wrote to
16 Mr. Russo?

17 A. That's correct.

18 Q. That letter was written after you got
19 that DNR report, right?

20 A. Yes.

21 Q. The letter --

22 A. Yeah, that was a year later.

23 Q. Right. Well --

24 A. Yeah.

25 Q. -- that letter refers to the DNR report?

1 A. That's correct.

2 Q. And it was also written after the work
3 on the -- on the pump was done?

4 A. Uh-huh.

5 Q. Right?

6 A. That's correct.

7 Q. And had you had conversations previously
8 with Mr. Hummel about granting emergency rate
9 increases if major system repairs or upgrades were
10 needed?

11 A. At that -- at the May meeting when the
12 increase in May of '05, why, that was one of the
13 questions. There was, I think, six or seven Staff
14 people at that meeting along with Paula and I. And
15 as well as I remember, we asked for a rate increase
16 of \$7,000; we got \$4,000, and my answer to Martin
17 was, "What happens if we have a major catastrophe?"

18 And then he says, "If you do and
19 everything, write me a letter and I'll get you some
20 type of an emergency" -- I forget the word that he
21 used, action more or less, "to take care of the
22 bill."

23 Q. Was that part of the reason you wrote
24 that letter --

25 A. That's the only reason.

1 Q. -- Exhibit 58?

2 A. Yes, sir.

3 Q. All right. And of course, nobody
4 responded to that letter?

5 A. That's correct. One of the major
6 problems that -- you have the PSC on one hand, you
7 have the DNR on the other hand. The DNR has a
8 different requirement than the PSC, and you don't
9 know what to do, okay?

10 And you know, somewhere along the line
11 we're gonna have to decide whether we're gonna comply
12 with the DNR or are we gonna comply with the PSC?
13 Because they -- the DNR doesn't require you to keep
14 meter replacements, they don't require the meter,
15 they require -- they have a different set of
16 requirements completely.

17 And you know, small operators like us,
18 you know, we never have any money. It's broke, it's
19 bankrupt. The only reason that it's in existence is
20 because, you know, a little pride that we got started
21 and don't want to see people without water, but there
22 has to be an end --

23 Q. Right.

24 A. -- you know, somewhere along the line.

25 Q. Let me ask you a question or two about

1 some things that were implied previously by -- in
2 this case. The implication has been that it was your
3 desire to keep water rates in this subdivision low
4 because you owned property out there.

5 A. No, it was my --

6 Q. Just let me ask -- let me ask the
7 question.

8 A. Oh, no.

9 Q. Do you recall that testimony?

10 A. Yeah.

11 Q. I think this goes to sort of real estate
12 development practices. When you're a real estate
13 developer, you're trying to develop real estate so
14 that it gives you a return on your investment; is
15 that a fair statement?

16 A. Yes.

17 MR. REED: Your Honor, I'm gonna object
18 to leading. I want to get through this as much as
19 anyone, but this portion of the examination I'm
20 objecting to leading.

21 JUDGE LANE: If you could, just watch
22 any questions that do suggest an answer.

23 MR. HARRISON: Okay.

24 BY MR. HARRISON:

25 Q. You've developed -- you have developed

1 real property in the past?

2 A. Yes.

3 Q. You've testified about that somewhat
4 extensively in this case, I believe. What's the goal
5 of a real estate developer?

6 A. Well, it's always when you've got a
7 family of four kids, you get -- you got to make a
8 living.

9 Q. Thank you. And would a profit be one of
10 the goals?

11 A. Yes, uh-huh.

12 Q. And do real estate developers generally
13 like to see their property depreciate in value? Is
14 that a good thing?

15 A. No.

16 Q. So if you have a piece of real estate
17 and there is a utility or other infrastructure that's
18 substandard, is that something that usually helps the
19 property value or does that hurt the property value,
20 if you have substandard infrastructure?

21 A. Well, you know, the water system helped
22 us get started --

23 Q. Well, just --

24 A. Okay. I'm sorry.

25 Q. -- on the general proposition, if you

1 have substandard infrastructure serving a piece of
2 real estate, does that help the property value --

3 A. Oh, no. It decreases.

4 MR. HARRISON: -- or does that -- thank
5 you. I don't have anything else.

6 JUDGE LANE: Thank you very much.
7 Direct examination is complete. Cross-examination by
8 Office of Public Counsel?

9 MS. BAKER: I have one question.

10 CROSS-EXAMINATION BY MS. BAKER:

11 Q. You stated that you have the PSC on one
12 hand and the DNR on the other hand, and you have to
13 choose which one you're gonna follow; is that
14 correct?

15 A. Well, the --

16 Q. No, is that correct?

17 A. Yes.

18 Q. But quite frankly, you're in violation
19 of both PSC and DNR; is that correct?

20 A. That's correct.

21 MS. BAKER: No further questions.

22 JUDGE LANE: Cross-examination by Staff?

23 CROSS-EXAMINATION BY MR. REED:

24 Q. Mr. Burnam.

25 A. Yes.

1 Q. You threatened to shut off the water at
2 Suburban by a letter from your attorneys March 30th,
3 2007. You recall that, don't you?

4 A. Yes.

5 Q. There was a suit, then, to enjoin you
6 from turning off the water. Do you remember that?

7 A. That's correct.

8 Q. After that suit was filed, a complaint
9 was filed here at the Public Service Commission. You
10 remember that?

11 A. Every time I turned around, there was a
12 process server.

13 Q. Right. So with regard to the timeline,
14 that's what happened?

15 A. Yes.

16 Q. This rate case that you began in 2005,
17 you figured out how to do that. You remember?

18 A. Say again?

19 Q. The rate case in 2005, you figured out
20 how to get through that?

21 A. We wrote a letter and -- and Martin
22 responded to it, and then he came up and then we
23 talked, and then we had a meeting down here.

24 Q. And you guys -- you worked with Staff
25 for many months?

1 A. It wasn't that long, really, but we did
2 several months, yes.

3 Q. And you -- you worked out an agreement,
4 and Public Counsel joined that agreement and it was
5 filed, right?

6 A. That's correct.

7 Q. You've worked with Martin Hummel since
8 1989?

9 A. Well, he's been around. He -- yeah.

10 Q. You've known him since 1989?

11 A. Yeah, yeah.

12 Q. Have you ever picked up the phone and
13 called him?

14 A. No. He usually calls and comes around.
15 We've had no problems other than the rate situation
16 that I need to call Martin.

17 Q. But -- so you -- have you ever picked up
18 the phone and called Martin Hummel?

19 A. Not to my knowledge.

20 Q. The --

21 A. I take it back. Once I remember calling
22 him and we were having trouble with the well or
23 something. And this goes back maybe 15, 18 years
24 ago. But other than that, I don't recollect.

25 Q. The -- the Disposition Agreement, you

1 know what I mean by that, don't you?

2 A. Yes.

3 Q. We've talked about that for two days
4 now. You would agree that it is Suburban's
5 responsibility to comply with that Disposition
6 Agreement?

7 A. I signed the agreement, okay? It was
8 never discussed at this meeting when they approved
9 the rate that that -- that these requirements were
10 there. It was never discussed, and only the letter.
11 I read it, I said to myself, well, 4,000 is better
12 than nothing, so I signed the sucker.

13 Q. You're saying that it's not Suburban's
14 responsibility to comply with the Disposition
15 Agreement?

16 A. Well, I -- you know, I'm a big boy. I
17 signed it, so ...

18 Q. You read it and then you signed it?

19 A. That's right. And I've tried to do
20 certain things that was required in there, the basic
21 thing, the certified operator. We started doing
22 some -- as high as our people could reach doing on
23 the standpipe, you know.

24 Q. And you do realize that after the
25 Disposition Agreement was signed, it was approved by

1 this Commission and became law --

2 A. Yeah.

3 Q. -- right?

4 A. That's correct.

5 Q. And --

6 A. I think that's the way --

7 Q. And you did not take issue with that,
8 did you?

9 A. I have no reason to.

10 Q. And now Suburban is in violation of the
11 law?

12 MR. HARRISON: Objection. Calls for --
13 calls for a legal conclusion.

14 THE WITNESS: On certain occasions, yes.

15 MR. HARRISON: There's an objection
16 pending. Don't ask him a question. Ask that that be
17 stricken. That calls for a legal conclusion.

18 JUDGE LANE: To the extent he's asking a
19 layperson to ask whether something violates the law,
20 I think that -- that question is objectionable.
21 Could you restate or move on?

22 BY MR. REED:

23 Q. You sent the -- we've heard some
24 testimony about you sending two letters to the Staff
25 of the Public Service Commission and you got no reply

1 to either one?

2 A. That's correct.

3 Q. Did you follow up with a phone call?

4 A. No.

5 Q. Now, after you spent the 15, \$16,000 for
6 the pump in 2006, you sent the letter to Jim Russo
7 and you got no reply?

8 A. That's correct.

9 Q. But just a year earlier you had gone
10 through the entire rate case process, correct?

11 A. That's correct. I don't remember
12 Mr. Russo being too involved in that. Maybe he was.

13 Q. But you sent the letter directly to Jim
14 Russo?

15 A. Well, if I did, I did.

16 Q. You could have picked up the phone and
17 said, Martin, did you guys get my letter?

18 A. Well, in dealing with state agencies,
19 normal -- it's -- it's a good policy to follow up in
20 writing even if you do call.

21 Q. But you didn't call?

22 A. Not to my knowledge.

23 Q. Now, as I understand it, based upon the
24 testimony that we've heard in this case is that your
25 family members and their businesses finally sold out

1 of BonGor Lake Estates March of 2004. You're
2 familiar with that, aren't you?

3 A. I remember when they sold it, yes.

4 Q. There was a period of time where
5 Suburban was selling water to your relatives and
6 their businesses as landlords, correct?

7 A. And we were -- we started paying
8 Suburban -- when we started to develop, we paid them
9 \$750 a month for the water that we used on a flat
10 rate. I can't remember. The kids were charged on a
11 flat rate just like anybody else.

12 Q. After 2004 when your family and their
13 businesses exited BonGor Lake Estates --

14 A. Uh-huh.

15 Q. -- you started the first rate case in 12
16 years for Suburban, didn't you?

17 A. Well, I could see things would have to
18 be done.

19 Q. And rates would have to go up?

20 A. Well, they've been pretty low, and
21 inflation -- you know, when you got inflation 3
22 percent a year.

23 Q. Have you complied with the Disposition
24 Agreement that you signed? Has Suburban complied?

25 A. Not 100 percent. We have made some

1 efforts to take care of some of the things that were
2 mentioned.

3 MR. REED: That's all.

4 JUDGE LANE: All righty. There are no
5 questions from the bench. Any redirect?

6 REDIRECT EXAMINATION BY MR. HARRISON:

7 Q. Did you ever do anything at BonGor Lake
8 Estates intentionally to decrease property values?

9 A. No.

10 MR. HARRISON: Thank you.

11 JUDGE LANE: Very well. Mr. Burnam, you
12 may be finally excused.

13 THE WITNESS: Okay.

14 JUDGE LANE: You too can begin enjoying
15 your weekend. Are there any further witnesses or
16 evidence that Suburban plans to present?

17 MR. HARRISON: No. The only thing we
18 have finally, Judge, is request that judicial notice
19 be taken of the Notice of Satisfaction that's filed
20 in this case.

21 JUDGE LANE: And as a pleading in this
22 case, official notice is taken of all -- of all
23 pleadings so that -- that request is granted.

24 MR. HARRISON: So we rest.

25 JUDGE LANE: Does Staff have any

1 rebuttal witnesses?

2 MR. REED: (Shook head.)

3 JUDGE LANE: No? All right. In that
4 case, we are to the end of closing statements. As
5 you know, there -- the Commission's order setting
6 this hearing specified that due to the expedited
7 nature, there would be no post hearing briefs, so
8 this is your chance to give a closing statement or
9 argument. You can focus on whatever things you like.
10 And we will begin with Staff since they are the
11 Complainant.

12 MS. SYLER BRUEGGEMANN: We've been here
13 two really long days hearing all of the evidence
14 about the Disposition Agreement. This Disposition
15 Agreement, it's uncontested that it was agreed to by
16 Gordon Burnam, signed by Gordon Burnam as president
17 on behalf of Suburban Water and Sewer Company in
18 2005.

19 Now, certain of those conditions we've
20 already gone through. The court's very, very aware
21 of what they are, but this is a simple contract issue
22 as to whether or not Suburban Water and Sewer Company
23 has violated the terms of the agreement, the
24 agreement that was then approved by the condition --
25 by the Commission on June 16th and went into effect

1 for a rate increase on June 30th.

2 Now, once the agreement was made, the
3 conditions set, the order approved, Suburban Water
4 and Sewer Company didn't get any of them done, even
5 until now. So let's be a little specific for a
6 second.

7 When we talk about developing and
8 distributing a brochure, they put together -- that
9 actually covers -- excuse me, the rights and
10 responsibilities of the utility and its customers.
11 They put together some pieces of paper in 2007,
12 sometime in June is what the testimony shows, and
13 sent it out sometime in June of 2007.

14 This was pursuant to a rule that Paula
15 Belcher said that she read that was the requirement.
16 She read that last page of the customer service
17 operation agreement referring to the rule. The
18 rights that customers have include being able to
19 contact the PSC if they're a utility customer and
20 being able to contact the OPC. It's not in the
21 brochure. The brochure does not cover essential
22 rights of the customers.

23 And further, it would have -- the
24 testimony shows that the deadline that the bench can
25 look at and the Commission can look at is that it

1 would have taken a couple of hours to put together an
2 ugly brochure that would have had all the necessary
3 information to fulfill this requirement.

4 Now, on the continuous property record,
5 they put together another piece of paper entitled --
6 entitled Property Record System and -- that had terms
7 that started in 2005 for a system that started in
8 1973. It's had a well pump since its inception, and
9 yet you only have the well pump that was installed in
10 2005. It's simply insufficient. It isn't a
11 continuous property record system. Semantics can't
12 argue that. It's incomplete. They did not perform
13 item No. 9.

14 Testimony from Kofi Boateng shows that
15 it would have taken maybe a couple of days, and
16 that's putting together the information from past
17 years on plant. And it's something that has also
18 been testified to that they should have had since
19 their inception anyway. Same thing with the
20 brochure, it's -- under a Commission rule they're
21 supposed to have this since their inception -- or
22 excuse me, if the rule was created in 1977 or 1968
23 since they only came in in '73, maybe for four years
24 they weren't supposed to have it. But since this --
25 this disposition and agreement in 2005, they were

1 required to have that item completed.

2 As to item No. 10 on installing meters
3 for all buildings no later than August 31st, 2005, it
4 wasn't done, period. It's -- there are still three
5 buildings without meters. They've gone ahead and
6 admitted that through Gordon Burnam's testimony,
7 through Paula Belcher's testimony, there is no
8 argument, they violated the agreement.

9 On item No. 11 on a ten-year replacement
10 program, this could have been started very, very
11 quickly. They could have put together a list of the
12 meters that they have and started putting down ten
13 meters a month to be tested. Or if that was too
14 much, five meters a month on some sort of piece of
15 paper and then gone out and started replacing them so
16 that they could just show they were implementing a
17 program. All they can say to us is, well, if they
18 broke, we went and fixed them. That's not the
19 implementation of a ten-year replacement program.

20 The testimony for a reasonable deadline
21 for the Commission to look at on this one was -- was
22 testified as immediately or one week or even up to
23 six weeks. It's two years later and it still hasn't
24 been implemented.

25 On item No. 12 which is installing flush

1 valves, it's been admitted by the company that they
2 did not install necessary flush valves that would
3 work to flush the system to make sure it's safe, make
4 sure the water doesn't actually have contaminants.
5 The reasonable deadlines for this range is anywhere
6 from -- from two months, if you had someone that was
7 wanting to get it done in a quick amount of time, up
8 to one year. It's still two years later and it's not
9 done.

10 Now, on the item No. 13, standpipe with
11 an inlet high enough to provide adequate circulation
12 and detention time, that, again, has not been done.
13 Dale Johansen specifically testified that six months
14 to a year, you could do all of the necessary items,
15 contacting an engineer, contacting a contractor,
16 doing everything that has time frames that you may
17 have to match up, and you can do it in six months to
18 a year. It's two years later, it hasn't been done.
19 On item No. -- and furthermore, Martin Hummel had an
20 estimate square in the middle of that, that's eight
21 months.

22 On item No. 14, contracting with a
23 certified operator to maintain the company's well and
24 distribution system. I believe the Commission got
25 evidence that five or six certified operators were

1 contacted. It's two years later, they don't have a
2 certified operator. Five or six or ten is not
3 sufficient. If it was or not, it's very
4 straightforward: Will contract with a certified
5 operator to maintain the company's well and
6 distribution system. They violated this term.

7 You have testimony in front of you that
8 establishes that a reasonable time frame to try to
9 hire one bid out, get responses back, three to six
10 months. Again, two years later.

11 On item No. 15, quarterly reports
12 regarding monthly customer meter usage data and
13 monthly master meter usage data. Well, Paula Belcher
14 admitted that the monthly customer meter usage data
15 that she also interprets as meter readings, is -- has
16 not been provided. Her interpretation, just like
17 Kofi Boateng's interpretation of a quarterly report,
18 is for a three-month period. You then turn in the
19 report the month after.

20 We got -- the PSC received information
21 on master meter usage data in June of 2007, and we
22 still don't have monthly customer meter usage data.
23 This term has been violated, period. The deadline
24 for that is obviously the month after each, and so
25 the last date on this is December 31st, 2006. The

1 last quarterly report that should have been turned in
2 should have been January 31st of 2007, six months
3 ago.

4 The other thing that the Commission
5 should take into consideration is some of the case
6 law that discusses performance made within reasonable
7 time frames. Specifically, and I'm -- and I'm
8 quoting sections of Millington v. Masters, and I'll
9 give a citation for the record in a moment, but it
10 says, "When no time is specified in the agreement,
11 performance must be made within a reasonable time.
12 What constitutes a reasonable time depends on the
13 circumstances of each case."

14 Millington was a Missouri Appellate
15 Southern District decision, December of 2002, S.W. --
16 excuse me, 96 S.W. 3d 822 at pages 829 and 30. It
17 was also quoting Ballenger v. Castlerock which was a
18 Missouri Appellate Western District case from '95,
19 and if you look back to Ballenger, it was citing 3003
20 Investment, Incorporated v. Moffit which was a
21 Missouri appellate case from 1981. In Millington, in
22 that case, Respondent's contract cause of action
23 accrued upon the Appellant's failure to do the thing
24 contracted for at the time and in the manner
25 contracted, and failure -- and the statute of

1 limitations began to run when Respondent could
2 maintain suit.

3 So here, what you have, is circumstances
4 that establish performance was to be done on the
5 conditions, and Gordon Burnam has stipulated that he
6 has not met the conditions of the Disposition
7 Agreement.

8 Further, the bench should take into
9 consideration the credibility issues of Gordon Burnam
10 and Paula Belcher. It's something serious when you
11 go ahead and put forward to the public a Notice of
12 Dissolution, and then you -- on -- in January of
13 2006 -- and then a Notice of Dissolution to your
14 customers to the public, March 30th -- and I'm sorry,
15 wrong year, March 30th, 2007, that their water is
16 going to be shut off July 1st.

17 April, May, June, that's three months
18 that they had to figure out where are we gonna have
19 water. As of the local public hearing, June 29th,
20 people were in their yards asking if they had water.
21 There was no recision letter sent. The board of
22 directors issued minutes but did they send any notice
23 to their customers? No.

24 And yet Gordon Burnam testifies that he
25 did this to get the PSC's attention. He panicked

1 individuals in the community. People didn't re-sign
2 their leases because they didn't think they would
3 have water. People lost livelihood because of Gordon
4 Burnam's scare tactics to get the PSC's attention
5 when he couldn't pick up the phone.

6 The Staff would continue to ask for the
7 authority to seek penalties for violations in this
8 case. It's a very straightforward case, and we
9 appreciate your time.

10 JUDGE LANE: Thank you very much,
11 Ms. Brueggemann. Closing statement on behalf of the
12 Office of Public Counsel, Ms. Baker.

13 MS. BAKER: Thank you. Gordon Burnam
14 sat on the stand and told this Commission that
15 Suburban Water and Sewer sent out a letter saying
16 that the water was going to be turned off July 1st
17 but stated that he had no intention of turning off
18 the water. He stated he did this because he wanted
19 to get the Commission's attention and that he wanted
20 to get out of the water business.

21 He agreed that he knew people would be
22 upset, they would be afraid, and he agreed that they
23 had no other source of water that was not controlled
24 by Suburban Water and Sewer. This is an act -- this
25 act of using the fears of the customers is just the

1 culmination of how little regard Suburban Water and
2 Sewer has for the needs of its customers.

3 Gordon Burnam and Paula Belcher as well
4 admitted that Suburban Water and Sewer did not
5 install the meters, did not install flush valves, did
6 not install a new standpipe or even work on the inlet
7 of the existing standpipe. They did not implement
8 the ten-year replacement program for the meters and
9 they have not contracted with a certified operator or
10 provided the quarterly reports regarding the meter
11 data for the master meter or the customer meters
12 themselves.

13 Gordon Burnam admitted in his testimony
14 that he is in violation of the Disposition Agreement.
15 The Disposition Agreement was basically signed and
16 promptly forgotten. Two years have now passed and
17 the system is in worse shape than it was in 2005.

18 Going on good faith alone from the
19 Disposition Agreement, much could have been a
20 accomplished in the two years' time that has passed.
21 The agreed-to repairs and reporting would have gone a
22 long way toward making Gordon Burnam's desire to get
23 out of the water business a reality. But, to
24 paraphrase an old saying you cannot make a mess and
25 expect others to be willing to clean it up for you.

1 The water system at BonGor Lake Estates
2 has been allowed to deteriorate so much that the
3 customers' right to safe and adequate service is
4 threatened. The testimony has shown that they've
5 agreed to the repairs and the changes and those have
6 not even begun.

7 Gordon Burnam said he wanted the PSC's
8 attention, and it seems that he has gotten it. It's
9 a shame that that -- that even a small amount of the
10 money Suburban has expended in this case could not
11 have been spent on the water system to ensure the
12 customers would have safe and adequate service.

13 Therefore, the Public Counsel on behalf
14 of the customers request that the Commission find --
15 find Suburban in violation of the 2005 Disposition
16 Agreement and its obligation to provide safe and
17 adequate service, Public Counsel would request that
18 the Commission order the General Counsel to seek
19 penalties and order any other actions it sees fit to
20 ensure safe and adequate service for the customers.
21 Thank you.

22 JUDGE LANE: Thank you, Ms. Baker.
23 Closing statement on behalf of Suburban.

24 MR. HARRISON: Yes, sir.

25 JUDGE LANE: Mr. Harrison.

1 MR. HARRISON: Judge, thank you. This
2 is not the closing argument that I had planned to
3 give a couple of days ago. I planned -- I planned to
4 give the usual closing argument much like counsel
5 gave here a minute ago, and run through the evidence
6 and talk about the witnesses and talk about
7 credibility and the usual stuff for a closing
8 argument.

9 But this case took a turn in the middle
10 of it, a couple of different turns which, frankly, my
11 client was glad to see, pleased to see. And the fact
12 that case took -- that the case took the turn that it
13 did has led me to change the argument here a little
14 bit to emphasize different points that otherwise
15 might have (sic) been emphasized.

16 Nobody's denying that Suburban Water
17 Company has problems. I think Mr. Burnam was quite
18 forthright and basically said that. It's a small
19 company, it's got very little staff, it's got very
20 little -- very few resources. It's broke, it's
21 essentially bankrupt from what Mr. Burnam said. The
22 company has not a lot of sophistication, but on the
23 other hand, I think the testimony basically was it's
24 about an average -- it's about an average small water
25 company when it comes to operations and things like

1 that. I think the testimony -- I think it can be
2 fairly stated that the testimony was that's about --
3 that an average run company.

4 I think that it has problems that are
5 typical of most small water companies from what I
6 understand. I think some of the questions from the
7 Commission brought that to light. And that's one of
8 the important things that came to light in this case,
9 I think.

10 There is a lot of fear -- frustration on
11 the part of my client. There's a lot of frustration
12 on the part of Suburban, and I think Mr. Burnam's
13 testimony made that absolutely clear, particularly
14 his testimony in the Staff's case in chief. He's
15 frustrated with the bureaucracy he has to deal with.
16 Not just the bureaucracy here, but the bureaucracy at
17 the Department of Natural Resources.

18 He's sort of mad at the system. He's
19 frustrated with the system, for lack of a better --
20 for lack of a better word, and I think his
21 frustration was brought to the fore with these
22 letters that he sent that weren't responded to. And
23 I think that's completely understandable. I think
24 that's completely reasonable under the circumstances.

25 Now, my client doesn't know what

1 other -- what problems other small water companies
2 have. If -- if Suburban's case is anything close to
3 typical, something's got to be done. Something's got
4 to be done, not only with the Suburban company, but
5 with lots of other small water companies from what
6 has been said in this hearing in the last two days.

7 Frankly -- and this is something that
8 I'll talk about later in this argument -- is that the
9 prospect of making significant up-front expenditures
10 to do the work that DNR and the Public Service
11 Commission are asking for is a daunting issue.
12 That's a problem. That's a problem. It was a
13 problem in 2005, it's a problem today, it was a
14 problem before 2005. And I'll talk about that some
15 more in a minute, but that's one of the -- that's one
16 of the problems that my client sees with the system.

17 This case, I guess, isn't about solving
18 other companies' problems or fixing the system in
19 general, but that certainly came to light in this
20 case. There is -- this case is about frustration and
21 this case is about this agreement which I'll talk
22 about some more in some detail.

23 As I said, Suburban isn't a perfect
24 company, but nothing -- the people who run Suburban
25 aren't malicious, they aren't mean, they aren't

1 nasty. Suburban, much like -- much like the Staff
2 people here, they're all good people, okay? It's --
3 the perception that my client has is that it's sort
4 of a -- just sort of a clash of two different
5 systems.

6 You've got small water companies on the
7 one hand that are bound -- that are constrained by a
8 reality, and you've got the Public Service Commission
9 on the other hand, the Staff of the Public Service
10 Commission that have to deal with certain realities,
11 regulations and rules. And regulations and rules
12 don't work too well sometimes with a \$20,000 a year
13 company. I think one of the most important things
14 that was said was Jim Merciel's testimony when he
15 said, "This hasn't been a problem company over the
16 years." I believe that's a direct quote from his
17 testimony.

18 As I said, Suburban is appreciative of
19 the fact that there's less rigidity in the system
20 when it comes to small water companies. They
21 appreciate that. They appreciate that most people on
22 the public Commission Staff are helpful people.

23 So Suburban wants to try to resolve this
24 case. That's the message -- that's one of the
25 primary messages I want to give in this argument.

1 They want to resolve this case. They want to do it
2 within a reasonable framework. They're pleased that
3 the case developed the way that it did and took some
4 of the twists and turns that it did, particularly in
5 connection with some of the questions from the --
6 some of the points made by the Commissioners.

7 Now, as to the agreement itself, no
8 argument would be complete if it didn't have a little
9 legal argument, so it's not disputed that some of the
10 items in the agreement were, in fact, accomplished.
11 And in fact, one of the them was accomplished before
12 the case was filed, but, oh, Staff forgot about that
13 one, so they went ahead and included that one anyway.

14 So that's evidence -- that's an
15 indication, and there was other evidence in the case
16 that they didn't really pay very much attention to
17 that agreement until about two months ago. They
18 didn't really give it another thought after 2005
19 until a couple months ago. It wasn't that big of a
20 deal to them. I'm suggesting that none of those
21 provisions were material to them. Had they been
22 material, they would have been monitoring, they would
23 have been following up and they wouldn't have waited
24 until May of 2007 to do something about these --
25 these -- these problems that they -- that they say

1 exist.

2 The agreement was written by the Staff.

3 The evidence is not disputed whatsoever that my
4 client had no role whatsoever in writing that
5 agreement. My client was scarcely given an
6 opportunity to comment on it. My client was told,
7 you're gonna get this rate increase that we're
8 telling you here or you're not gonna get any at all.
9 That was the testimony. So when it comes time to
10 interpret the contract, if that's what's gonna be
11 done in this case, that needs to be remembered. My
12 client had no role whatsoever in preparing that
13 document.

14 There was a ton of testimony about the
15 fact that the agreement was almost completely devoid
16 of any deadlines. If these items, if these matters
17 were so material and so important, you'd think that
18 they would have maybe included a deadline here and
19 there.

20 There was also inconsistent testimony on
21 what -- what reasonable times are for satisfying
22 these things. I think it's counsel's position that
23 the Commission is supposed to interpret the contract,
24 fill in the holes that were left in it when it was
25 drafted, and one of those holes has to do with time

1 deadlines.

2 Well, the Staff people who testified
3 were all over the map on what the deadlines were.
4 You had wide-ranging testimony on various points,
5 various time deadlines for all these matters. So
6 that needs to be taken into account.

7 There are ambiguities in the agreement,
8 there are ambiguities dealing with the standpipe and
9 other important issues that would be costly, very
10 costly to the company. So my client shouldn't be
11 held responsible for these ambiguities and the
12 sloppiness that went into drafting that agreement.

13 Legal fees has been discussed. Well,
14 legal fees is a touchy subject with any client, at
15 least any client who I do work for. And I think
16 questions from Chairman Davis were quite relevant to
17 that. I would respectfully suggest that this
18 attorneys fee issue wouldn't be an issue if not for
19 the actions of the Staff in this case.

20 I would remind you, your Honor, that
21 there wasn't any follow-up from Staff as to these
22 highly important matters in the Disposition
23 Agreement, there wasn't any follow-up on that.
24 They're -- they're criticizing Suburban for not
25 following up. Well, if that's the case, isn't it a

1 two-way street? If these were -- if these were such
2 material problems, such important problems, wasn't a
3 little follow-up on the other side in order? I think
4 it was.

5 There was -- there has been testimony
6 that the system has been run into the ground and that
7 it's junk. I think that's Mr. Hummel's word. The
8 implication is that Gordon Burnam had a motive to run
9 the property -- run the water system into disrepair
10 so that he wouldn't have to -- so that he could keep
11 his own water rates low. I think that's the
12 suggestion.

13 Well, I don't know how to respond to
14 that other than to say that's ludicrous. Any real
15 estate developer is in the business to make money
16 from cash flow and appreciation of property, and if
17 you have bad infrastructure, if you have
18 infrastructure that is junk, I don't think I've ever
19 seen in a real estate development in which that helps
20 you make money from any -- from any perspective.

21 I want to cite -- cite you to some legal
22 authority as well. On the point with respect to
23 construing the agreement, you have -- the case law is
24 clear that the terms of a contract are to be read as
25 a whole to determine the plain and ordinary meaning.

1 That gets into the question of ambiguity. There's
2 plenty of ambiguity and lack of clarity in this
3 agreement which gets to the heart of the -- heart of
4 a -- one of our legal arguments in this case.

5 The Commission doesn't have the power to
6 interpret a contract. The interpret of a -- the
7 interpretation of a contract is a question of law,
8 and I'll cite the case of Helterbrand v. Five Star
9 Mobile Home Sales, 48 S.W. 3d 649 which is an appeals
10 court case from 2001.

11 Gains v. Gibbs, 709 S.W. 2d 541 which is
12 an appeals court case from 1986 stated that, "The
13 Public Service Commission is not a court and it has
14 no power to construe or enforce contracts."

15 It has no power to construe or enforce
16 contracts. The Commission doesn't have the authority
17 to fill in the blanks and clean up the sloppiness
18 that the Staff created. This case is, in fact, about
19 leverage. Mr. -- Mr. Merciel testified to that
20 effect, he basically admitted it.

21 There wasn't any follow-up between
22 running from the Staff to Suburban. I think that was
23 clear. I don't think that -- I don't think that
24 testimony was controverted in any way. But I say,
25 again, that my client is interested in sort of

1 meeting half -- halfway in this case and resolving
2 the matter.

3 What my client doesn't want to do,
4 frankly, is to be forced to make improvements to this
5 system and particularly the substantial and costly
6 improvements that are being discussed here, and then
7 have the system taken away without any right of
8 reimbursement.

9 That's my client's -- I would say that
10 that's Suburban's primary fear. That's what Suburban
11 wants to avoid. And frankly, given Staff's position,
12 I think that's what they're after. I think that's
13 what -- if they had their way, that's what would
14 happen in this case.

15 I don't think that result would be fair
16 and equitable. I don't think that result would be
17 helpful to any of the parties. I do think that the
18 parties should continue to seek a resolution of this
19 matter. I also think the evidence in the case
20 contains significant evidence of mitigation on the
21 part of Suburban.

22 It did, in fact, contain evidence that
23 Suburban has performed, and it contained evidence
24 that Suburban is continuing to try to perform. I
25 don't think it's warranted under these circumstances

1 for the Commission to grant the relief that the Staff
2 is asking for, and therefore, we're requesting that
3 that relief be denied. Thank you.

4 JUDGE LANE: Thank you very much,
5 Mr. Harrison. Rebuttal by Staff?

6 MS. SYLER BRUEGGEMANN: I believe it's
7 fairly simple. The Commission has the ability to
8 enforce its orders. The order in this case approved
9 a rate increase based on conditions listed out in a
10 Disposition Agreement.

11 Also I think that the excuse of
12 bureaucracy somehow impeding this small sympathetic
13 company is ridiculous.

14 He -- it was just in closing that he's a
15 developer, he developed property to make money. To
16 help him make money, he installed a water system and
17 a sewer system. He sold off the sewer system -- or
18 Suburban sold off the sewer system, and they kept the
19 water system. And then at that point the system went
20 on.

21 However, there were no major
22 improvements. There was no proactive look at the
23 system itself. It was maintained at a 1973 level.
24 He could have come in for a rate case, he knew how to
25 do it. He didn't. If the equipment was put in and

1 it was used and -- used and useful, it can put in --
2 be put into customer rates and you can get your
3 return and you can make your money back; you just
4 have to have a little bit of patience.

5 But instead, what has happened is going
6 ahead and agreeing -- agreeing to things that you
7 don't intend to do, violating DNR rules, violating
8 PSC agreements because, you know, that's what --
9 what -- that's what we can do.

10 And whether or not -- any which way you
11 look at it, they sent out a letter January 31st,
12 2007, apparently, that was received by some
13 individual on February 5th, 2007 stating that they
14 were going to dissolve the company and shut off the
15 water. Well.

16 So any implication that the PSC was
17 somehow involved in creating this situation, Suburban
18 created their own situation and the -- and the PSC
19 had to try to help look out for customers that need
20 safe and adequate water service and reacted once
21 they found out about the upcoming July 1st shut-off
22 date.

23 I think that's all I have. Thank you.

24 JUDGE LANE: Thank you, Counsel. Before
25 I close the record in this case, it's my practice to

1 make sure that all exhibits have been offered and/or
2 admitted or denied into evidence that were intended
3 to. I know -- I urge you to take a look at your
4 exhibit list that you've been keeping. I know there
5 were several exhibits that were marked that were
6 never offered into evidence but there was never any
7 argument or never any -- they were never used with
8 witnesses so there was no intention of having done
9 that.

10 I believe Exhibit No. 7, that was a
11 exhibit that had been -- had been marked by Staff,
12 the plat showing the lines --

13 MS. SYLER BRUEGGEMANN: Yes, I did not
14 enter that into evidence.

15 JUDGE LANE: All right.

16 MS. SYLER BRUEGGEMANN: Thank you.

17 JUDGE LANE: Okay. All right. So
18 anyway, I just wanted to make sure that all the
19 parties had an opportunity to do that. I'm not 100
20 percent sure, but I know there were exhibits that
21 were offered by the members of the public who
22 testified at the local public hearing, and I'm not
23 exactly sure about the procedure on that.

24 I don't know that the members of the
25 public have to formally move that those exhibits be

1 entered into the record in this case.

2 I believe there were some photographs.
3 Some of the exhibits were duplicates of information
4 that was entered into evidence in this case, but just
5 to make sure that the photographs that were referred
6 to in their testimony, I'm going to sua sponte, move
7 on behalf of the court that those exhibits that were
8 at the -- offered at the local public hearing that
9 were received, and they're on EFIS, they've been
10 filed on EFIS by now, that they be admitted into
11 evidence.

12 Is there any objection to -- to doing
13 that from any of the parties?

14 MS. BAKER: No objection.

15 MS. SYLER BRUEGGEMANN: No, your Honor.

16 JUDGE LANE: All right. Then they
17 are -- they are admitted.

18 (EXHIBIT NOS. 1 THROUGH 3, MARKED FOR
19 IDENTIFICATION AT THE PUBLIC HEARING ON JULY 23,
20 2007, WERE RECEIVED INTO EVIDENCE AND MADE A PART OF
21 THE RECORD.)

22 JUDGE LANE: And in closing, I just -- I
23 want to thank the parties and their attorneys. This
24 case was on an expedited treatment. Everything was
25 accelerated, you know, double, triple-speed.

1 I want to thank counsel for working out
2 some of the early disagreements and for conducting
3 discovery in such an expeditious manner, and getting
4 those depositions done and, you know, and really
5 moving this case forward. I really appreciate that.

6 I also wanted to say to Mr. Burnam,
7 thank you for cooperating with the Staff in allowing
8 the -- the inspections that went on and -- here on
9 very short notice. I think that was very helpful and
10 was a very helpful gesture and an element of
11 cooperation. So I just want to, again, thank the
12 parties, thank their attorneys. I want to thank our
13 court reporter who has faithfully made it through
14 these two days.

15 And I will close the -- close the
16 evidence in this case and we'll go adjourned. And
17 you can look for -- I do not remember the exact
18 date but you can look for an order, a report and
19 order in this case to be issued, I'd say, I believe
20 the request was no later than August -- do you
21 remember?

22 MS. SYLER BRUEGGEMANN: 20th, I believe,
23 your Honor.

24 JUDGE LANE: August 20th. That's about
25 three weeks. And I think that's really doable, so

1 I'll be cranking on that. And so we are adjourned,
2 and, again, thank you very much.

3 (WHEREUPON, the hearing in this case was
4 concluded.)

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