

1 STATE OF MISSOURI
2 PUBLIC SERVICE COMMISSION
3
4
5 TRANSCRIPT OF PROCEEDINGS
6 Hearing
7 July 26, 2007
8 Jefferson City, Missouri
9 Volume 2

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,
CONNIE MURRAY,
20 STEVE GAW,
ROBERT M. CLAYTON, III,
21 LINWARD "LIN" APPLING,
Commissioners.
22

23 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. My name is Benjamin Lane. I'm the
4 regulatory law judge that's been assigned to handle
5 this case. This case is Case No. WC-2007-0452, et
6 al. It's styled The Staff of the Missouri Public
7 Service Commission as the Complainant versus the
8 Suburban Water and Sewer Company and Gordon Burnam,
9 Respondents.

10 We're here today for an evidentiary
11 hearing on the allegations of Staff's complaint, and
12 we are about ready to begin. I think we've got some
13 of the technical preliminaries with the light board
14 taken care of.

15 I'd like to begin with just a couple of
16 announcements to the audience and to the
17 participants. First of all, I would really
18 appreciate it and I think our equipment would too, if
19 you would totally deactivate or turn off all cell
20 phones, BlackBerries, all of that type of thing. It
21 can wreak havoc with the electronic systems and the
22 speakers as well. So just muting them is -- is not
23 sufficient. If you would please turn them off, I
24 would really appreciate that.

25 I think let's begin. I know you have

1 entered your written entries of appearance and given
2 them to our court reporter today, but if we could
3 begin with oral entries of appearances -- oral
4 entries of appearance, I would appreciate that.
5 Let's begin with counsel for Staff, the Complainant
6 in this matter.

7 MS. SYLER BRUEGGEMANN: Good morning.
8 My name is Shelley Syler Brueggemann. I am here on
9 behalf of Staff. The address is 200 Madison Street,
10 Jefferson City, Missouri. I think it's 65102.

11 JUDGE LANE: Thank you, Ms. Brueggemann.

12 MR. REED: Steven Reed also for Staff at
13 the same address, Judge.

14 JUDGE LANE: Mr. Reed, thank you. For
15 OPC, Office of Public Counsel?

16 MS. BAKER: Thank you, your Honor,
17 Christina Baker, Assistant Public Counsel, P.O. Box
18 2230, Jefferson City, Missouri 65102, appearing on
19 behalf of the Office of Public Counsel and the
20 ratepayers.

21 JUDGE LANE: Thank you, Ms. Baker. And
22 for Suburban and Gordon Burnam?

23 MR. HARRISON: Your Honor, thanks. Tom
24 Harrison for Respondents. Address is 1103 East
25 Broadway, Columbia, Missouri 65201.

1 JUDGE LANE: Thank you, Mr. Harrison.

2 MR. VOLKERT: And Matthew Volkert, same
3 address as well, your Honor.

4 JUDGE LANE: Mr. Volkert, thank you and
5 welcome to the hearing. Welcome to everyone to the
6 hearing this morning.

7 As far as procedural matters, it looks
8 as if all the parties, of course, are present and
9 represented by their counsel, so we're ready to -- to
10 go into resolving some preliminary matters and
11 pending motions that -- that still remain.

12 But before we do that, given the number
13 of exhibits that may be offered into evidence in this
14 case, I'd like to take a brief intermission where we
15 will go off the record briefly, allow the parties --
16 give the parties time to premark those exhibits, and
17 I can get them on my form and we can get that taken
18 care of so we don't have to take up that time during
19 the hearing, and it would make it easier on our court
20 reporter as well.

21 So after that, just so that you know,
22 we'll resolve those preliminary matters, I will also
23 talk about how we'll proceed as far as opening
24 statements, order of cross-examination, that type of
25 thing, since there is not a pretrial order addressing

1 those issues at this point. And then we will proceed
2 with opening statements, presentation of evidence by
3 all the parties in this matter, and we'll proceed
4 from there.

5 So let's go off the record for just a
6 moment. We'll get those exhibits marked and then
7 we'll come back. Thank you very much.

8 (DISCUSSION HELD OFF THE RECORD.)

9 (EXHIBIT NOS. 1 THROUGH 13 WERE MARKED
10 FOR IDENTIFICATION BY THE COURT REPORTER.

11 (EXHIBIT NOS. 30 THROUGH 66 WERE MARKED
12 FOR IDENTIFICATION BY THE COURT REPORTER.)

13 JUDGE LANE: All right. We're back on
14 the record in Case No. WC-2007-0452, and I want to
15 thank everyone who might be watching or listening to
16 this for their patience as we got those exhibits
17 marked. I think that will more than save us the time
18 as we go here to do it now, given the number of
19 exhibits.

20 I want to go ahead and begin by telling
21 you that there is an agenda meeting scheduled for
22 9:30, and I know some of the Commissioners are
23 wanting -- have indicated an interest in seeing the
24 opening statements. So I'm gonna handle a couple of
25 preliminary matters and pending motions, and we'll

1 get going with those opening statements. I'll send
2 an e-mail upstairs real quick to -- to get them down.

3 As far as the preliminary matters,
4 pending motions, the Commission is aware, of course,
5 that several contested motions in this case have not
6 yet been decided. One of them is the Respondent's
7 pending motion to strike Staff's motion for
8 reconsideration of the Commission's order of
9 July 24th, which granted, in part, and denied, in
10 part, Respondent Gordon Burnam's Motion to Dismiss.
11 That motion to strike is denied.

12 Staff's motion for reconsideration
13 itself is also denied. There are also three other
14 pending motions. Staff's motion for an order
15 directing Staff to investigate and file a report
16 which was filed on July the 10th, Staff's motion
17 under Section 393.140 to order Suburban Water and
18 Gordon Burnam to make reasonable improvements to
19 promote the public interest to preserve the public
20 health and protect consumers of Suburban Water and
21 Sewer Company, and finally, Respondent, Gordon
22 Burnam's motion to quash a portion of Staff's
23 subpoena.

24 These motions will be ruled from the
25 bench if and when circumstances arise during the

1 course of the hearing which require that they be
2 decided now.

3 At this time, if necessary, I will also
4 further explain the scope of the ruling from the
5 bench. And in all of these cases, there will be --
6 the rulings from the bench will be followed by
7 written orders explaining -- further explaining the
8 rationale for the decision. Are there any questions
9 about -- about those preliminary matters at this
10 point?

11 (NO RESPONSE.)

12 JUDGE LANE: All right. Hearing none, I
13 want to just go through very briefly how we will
14 proceed, and since we did not have a pretrial order
15 specifying this, we will begin, of course, with
16 opening statements from the various parties. We will
17 then proceed to the Complainant's evidence. It is my
18 understanding that OPC will not be presenting any
19 witnesses; is that correct, Ms. Baker?

20 MS. BAKER: That is correct.

21 JUDGE LANE: All right. In that case,
22 it will be Staff's evidence. Then that will be
23 followed by the presentation of Suburban's evidence
24 as Mr. Burnam has been dismissed as an individual
25 party.

1 The order of cross-examination for
2 Staff's witnesses, OPC will begin the
3 cross-examination and Suburban will then
4 cross-examine. For Suburban's witnesses, OPC will
5 cross-examine, followed by Staff's cross-examination.

6 There will then be -- at the conclusion
7 of all the evidence, there will be oral closing
8 arguments by all parties. This is pursuant to the
9 Commission's order setting this matter for an
10 expedited hearing. There will be no post hearing
11 briefs. There will be oral closing arguments by all
12 parties with a rebuttal argument by Staff as the
13 Complainant.

14 So having taken care of these
15 preliminary matters, I'd like to ask the parties if
16 they are all ready to proceed. Staff?

17 MS. SYLER BRUEGGEMANN: Actually, your
18 Honor, there might be one other preliminary matter
19 that Staff would like to bring out to the bench at
20 this time.

21 JUDGE LANE: All right.

22 MS. SYLER BRUEGGEMANN: We would request
23 leave of the Commission to dismiss count 1 as to the
24 failure to refund deposits. We are not planning on
25 presenting any evidence on that today, and since

1 discovery has been ongoing including the local public
2 hearing up to Monday night, that would be the basis
3 for requesting at such a late date leave to go ahead
4 and dismiss that count.

5 JUDGE LANE: All right. Well, at this
6 moment, I haven't had a chance to poll the
7 Commission, of course, but I -- I'm sure that such
8 leave would be granted given that you're not going to
9 be presenting any evidence on those counts, and
10 therefore, the decision would be in favor of the
11 Respondents on that anyway. So thank you very much
12 for bringing up that as well. Is -- is Suburban
13 ready to proceed?

14 MR. HARRISON: We are ready, your Honor.

15 JUDGE LANE: OPC?

16 MS. BAKER: Yes.

17 JUDGE LANE: Thank you very much. Let's
18 begin with opening statements first by the
19 Complainants in this matter, the Staff of the
20 Missouri Public Service Commission.

21 MS. SYLER BRUEGGEMANN: Good morning.
22 Now, as one other quick note, this case deals with
23 WR-2005-0455 which is the PSC case number for the
24 rate case with Suburban and Staff. It also -- there
25 was the informal number of QW-2005-0001 for the PSC

1 case number. There was the ECN case number that was
2 17,652, and I would ask for the bench to take
3 judicial notice of those case numbers as we go
4 through this proceeding.

5 Now, to begin my opening statement. On
6 March 30th, 2007, a Notice of Dissolution was sent
7 out by Suburban Water and Sewer Company that, as of
8 July 1st, 2007, the water service would no longer be
9 provided to its customers. As a result, in late May
10 the Office of Public Counsel filed its motion to open
11 investigation and have a local public hearing.

12 Staff of the Public Service Commission
13 then filed this complaint case for violations of rate
14 case Disposition Agreement terms, that earlier number
15 I just said, that Suburban, through the president,
16 Gordon Burnam, agreed to and then signed.

17 This case is not a vendetta by the State
18 against a small utility company as the newspapers
19 report that some sides have been saying. This is a
20 case where Suburban came in for a rate case after
21 12 years in 2005 and actually late 2004, and it's a
22 case where they were not upgrading their system, they
23 agreed to certain terms to upgrade, and then refused
24 to complete or even begin in some situations the
25 actions they agreed to.

1 Those terms were established because in
2 2005 the system was in poor condition. That poor
3 condition was the result of numerous factors: Poor
4 maintenance and oversight of the system, artificially
5 low rates kept in place for 20 years up to a 1993
6 rate case that was filed, and then those rates from
7 that 1993 case kept in place until 2005.

8 Whether this was a business incentive
9 because Suburban's president was buying water for his
10 other businesses or just general neglect of
11 maintaining and upgrading the system as necessary,
12 we'll probably never know. What we do know is that
13 the obvious lack of necessary upkeep to keep the
14 system in even average condition was not done.

15 Now the system is in bad shape, and the
16 customers are the ones suffering the consequences.
17 So let me now give you a little bit of background
18 into what Suburban Water system's history is.

19 In the late 1960s to early 1970s, Gordon
20 Burnam started developing an area of his 120-acre
21 farm. This development was named BonGor Estates
22 after Bonnie and Gordon Burnam. To support the
23 residences being built, Mr. Burnam built a water and
24 sewer system. Still in 1973, Suburban Water and
25 Sewer Company was authorized by this Commission, not

1 the one sitting today obviously, to provide water
2 sewer service -- I'm sorry -- water and sewer service
3 and was granted that water service CCN as a water
4 corporation.

5 Now, some of the residences owned by
6 Mr. Burnam were four-plexes and duplexes and
7 single-family homes. They were also being built
8 throughout this time. Many were rented out by the
9 Burnams and part of the rent paid to Mr. Burnam
10 covered the water his Suburban Water business was
11 selling. The sewer system, by the way, has long been
12 sold off, but the water system is still operated by
13 Suburban today.

14 Then in 1993, 20 years after its
15 inception, Suburban asked for a rate increase. Those
16 rates were in effect until the company, without
17 authorization from the Commission, raised its rates
18 in April 2004 up until October of 2004. Staff told
19 Suburban to come in for a rate increase as it
20 appeared that it -- that's what it wanted to do by
21 raising the rates without our authorization, and
22 Suburban filed to open a rate case in late 2004.

23 Suburban received an increase in that
24 case, \$4,152 from the Commission, conditioned upon
25 certain terms they agreed on in a Disposition

1 Agreement also approved by the Commission. No
2 rehearing was requested, nor an appeal ever filed.
3 The Burnam family continued at least through March of
4 2004 to own numerous properties in the BonGor
5 Estates.

6 Now, today we are dealing with certain
7 terms of that Disposition Agreement that Suburban has
8 violated. Staff will show evidence as to term No. 8
9 in that Disposition Agreement that was signed by
10 Gordon Burnam on May 26th of 2005 as to term 8, that
11 was -- that the company agreed to develop and
12 distribute to all customers a brochure detailing the
13 rights and responsibilities of the utility and its
14 customers.

15 That brochure, according to Paula
16 Belcher, was developed in June of 2007, two years
17 after the effective date of the order approving the
18 Disposition Agreement, and was sent out.
19 Unfortunately, that was not a part of the intended
20 time frame to get it done. Underlying Rule 13.040,
21 sub 3, specifically lists that every company is
22 required to maintain and have available a brochure of
23 a customer's rights and responsibilities, and they
24 didn't have one until 2007, in violation of that
25 rule, which is part of the basis for the term in that

1 agreement.

2 The company on item No. 9 agreed to
3 develop a continuous property record system for a
4 plant that at a minimum includes the date plant is
5 placed in service, the purchase price of plant and
6 the dates of retirement of property. What they
7 developed in the summer of 2007, probably the last
8 two months, was a piece of paper that had property
9 records system at the top, it had certain items of
10 plant and facility listed there, it only went back to
11 2005 on some of those lists.

12 Obviously, this system has been in since
13 1973, so that's not a continuous property record
14 system. You will be shown that exhibit and shown
15 that -- that what they've provided is completely
16 insufficient as to why a continuous property record
17 system was requested to the basic nature of what a
18 continuous property system -- records system is.

19 Further, you will be told, or it will be
20 testified to that there are reasonable time frames
21 that can easily be met to put this together. A
22 company should already have this information in its
23 records, and at most, at most, there will be
24 testimony that from a day to a month, whatever the
25 testimony is, you will need to determine what the

1 reasonable time frame expectation was for developing
2 that continuous property record system. You'll also
3 be asked to determine if you find that there were
4 violations, a time frame for the brochure to have
5 been developed.

6 Going to item 10, which is count 5 of
7 Staff's complaint, the company was -- agreed to
8 install meters for all buildings no later than
9 August 31st, 2005. To date, they have admitted that
10 three buildings do not have meters. They've also
11 admitted that the meters are not being read at the
12 directive of Gordon Burnam. There was, for whatever
13 basis, economic justification. This term has been
14 admitted and not agreed to, and that date is specific
15 to August 31st, 2005.

16 On item 11, count 6, I believe, of
17 Staff's complaint, the company was to implement a
18 ten-year replacement program for existing meters.
19 This is based off of Rule 10.030, and essentially,
20 that rule states that every ten years for certain
21 sized pipes, a company, a water system is required to
22 go and test its meters to make sure they're working.

23 Now, for some water systems, it's just
24 more economical to go ahead and replace the meter
25 whether -- rather than sending it out for expensive

1 testing, replacing a meter and then reinstalling
2 later if that be the case. You will be asked to
3 determine a reasonable time frame that that should
4 have been done.

5 On item 12, the company agreed to
6 install flush valves with the flushing capability of
7 at least three feet per second in all mains. It
8 installed no other flush valves since 2005 as it
9 agreed to do. You will hear testimony that -- that
10 there's -- there's a basis for the flush valves, and
11 they're necessary to maintaining an uncontaminated
12 system. They help to flush the contaminants out of
13 the pipes, they need to be located at specific areas
14 to help that safe and adequate water be supplied and
15 the company just didn't do it, period.

16 No. -- item 13, the company agreed to
17 replace the standpipe with an inlet high enough to
18 provide adequate circulation and attention time.
19 Now, this has been determined to mean that the
20 standpipe needed a higher inlet, the inlet being
21 where the water comes from the well. When the inlet
22 pours the water into the standpipe, an automatic
23 circulation happens. If the inlet's lower, then less
24 water is being turned over at the bottom. If the
25 inlet is higher, more water is affected.

1 Further, it circulates the water so that
2 the water at the top of the standpipe is detained for
3 less time, and the water at the bottom of the -- of
4 the standpipe is detained for more time so that you
5 can make sure that that water is being treated
6 properly and then going back out to the customers.

7 Item 14 was that the company agreed to
8 contract with a certified operator to maintain the
9 company's well and distribution system. This was
10 also earlier discussions (sic) as to why the informal
11 small rate case went to formal because they hadn't
12 gotten that done yet. They still, to this day, have
13 not contracted with a certified operator.

14 The system has chlorination, there are
15 DNR requirements, a certified operator is absolutely
16 necessary to quality water and a system being
17 maintained and upkept for people to have safe water.
18 You'll hear testimony about that. On the standpipe
19 and certified operator, you will also be asked to
20 specifically determine a reasonable time frame that
21 they should have had this done by.

22 Finally, the company agreed that it
23 would provide quarterly reports regarding monthly
24 customer meter usage data and monthly master meter
25 usage data to the auditing staff of the Commission

1 for the period July 1st, 2005 through December 31st,
2 2006. A quarterly report is exactly that, it's a
3 quarterly report of a year. So if a year's broken
4 down into quarters, that's a three-month period.

5 So as of July 1st to September 31st
6 2005, they should have then provided a quarterly
7 report to the auditing staff by October 15th, October
8 31st after the -- immediately after the quarter
9 sometime of the monthly customer meter usage data and
10 the monthly master meter usage data. They did
11 neither of those things up until they provided the
12 usage data a few months ago.

13 Further, they're not reading their
14 customer meters monthly, so they don't have the data
15 to turn over. So that's just another part of the
16 violation of that term that they agreed to do, that
17 they refused to do. And on this, the time frame --
18 you'll also be asked to go ahead and determine the
19 reasonable time frame that a quarterly report being
20 turned in could be expected to come in.

21 As to those violations, Staff is asking
22 if you find that those terms have been violated as we
23 think they have, to go ahead and grant us authority
24 to seek penalties for those violations.

25 Now, the second part of this case is --

1 goes to the future of Suburban Water and Sewer
2 system. It goes to improvements that are necessary
3 and need to be made. There is -- was an inspection
4 done by Staff on July 13th of 2007 that outlined all
5 of the different needs of the system. And of course,
6 everything that was listed in the Disposition
7 Agreement needs to be met, but now it's two years
8 later.

9 It's two years later, the system's
10 gotten worse over those two years. The rust spots in
11 the standpipe have gotten worse. We haven't had
12 anybody look inside the standpipe to see how bad the
13 deterioration is to see if the standpipe has any life
14 expectancy left at all. The flush valves are still
15 not installed. The system itself needs to be looked
16 at.

17 The pressure in the pipes, DNR has cited
18 violation for being under 20 psi. If you are under
19 20 psi, what that means is back flow can happen from
20 different sources and can contaminate the pipes and
21 therefore the water that people are drinking and
22 using in their food and showering with and brushing
23 their teeth with. So there's a basic need for
24 pressure that's not met. The pipes might have to be
25 upgraded, the sufficiency of the well needs to be

1 looked at.

2 An as-built plan of the system has never
3 been provided to Staff or DNR even though it's been
4 requested. So nobody has a true, accurate diagram of
5 what the pipe size is that is in place right now.

6 Further, they -- they need to read the
7 meters, they need to do some -- some basic actions as
8 outlined in the report to go ahead and make sure that
9 water loss in the system isn't excessive.

10 Bob Gilbert did a study and testified in
11 the preliminary injunction hearing in Boone County
12 Circuit Court on June 29th that the system used the
13 amount of water in two and a half to three days that
14 it should have been using in seven days. So it
15 halved -- it halved the time that -- of the amount --
16 of that amount of water that it should have been
17 using. That's a leak possibility that really needs
18 to be reviewed.

19 And if this system ever has to be hooked
20 up to another system, that water loss could be
21 crucial to whatever the system is that they're
22 hooking up to. It will have to be paid for by
23 customers. It's inefficient, it's ineffective, and
24 no other company would really want to probably handle
25 that, but that is speculation.

1 There are other inspections listed in
2 Staff's report that, once done, need to be reported
3 to the Commission, including whether or not the
4 standpipe needs to be rehabbed or replaced, and if
5 once flush valves were installed, that system
6 flushing should be done on a regular basis.

7 Further, the meters have to start being
8 read. At the local public hearing, we heard
9 testimony about up and down readings and lots of
10 estimates. This is just a continuous problem with
11 Suburban Water and Sewer's reporting.

12 Now, this is not new information. All
13 the information on improvements was brought up at the
14 June 29th preliminary injunction hearing. It was
15 discussions in 2005 when the rate case came through.
16 That's why half of the disposition terms seem to deal
17 with upgrading the system.

18 So therefore, the Commission has the
19 authority under 393.140 to look at this and order
20 improvements as necessary. And in realty, the system
21 is in bad shape. We need to do something to go ahead
22 and make sure the customers of Suburban Water and
23 BonGor Estates have water.

24 So we would just ask for you to find
25 that the Respondents have violated the terms of the

1 Disposition Agreement, give us authority to pursue
2 penalties and order improvements as listed in Staff's
3 report, and inspection and recommendations, and any
4 further improvements that you feel are absolutely
5 necessary also. Thank you.

6 JUDGE LANE: Thank you very much,
7 Ms. Brueggemann. Ms. Baker, your opening statement
8 on behalf of Public Counsel.

9 MS. BAKER: Thank you. Ratepayers are
10 entitled to safe and adequate water service from
11 their public utility. Suburban Water and Sewer has
12 failed in its duty to provide safe and adequate
13 service to its customers. Ratepayers have been used
14 as a pawn in Suburban's game of empty promises and
15 fear mongering.

16 In 2005, in order to obtain a rate
17 increase, Gordon Burnam, as president of Suburban
18 Water and Sewer, signed a Disposition Agreement which
19 included a list of actions, repairs and improvements.
20 Public Counsel joined in that agreement relying
21 heavily on these agreements to bring improvements to
22 the -- to the water quality and service to the
23 customers of Suburban.

24 Suburban promptly forgot its agreement
25 and the ratepayers did not see any improvements. In

1 fact, they saw even more degradation of their water
2 supply. Only minimal effort was expended by Suburban
3 and it continues to be in violation, to this day, of
4 DNR regulations.

5 Then Suburban decided that even that
6 small amount of effort was too great for it. In the
7 spring of this year, Suburban sent a letter to its
8 customers saying the water would be turned off on
9 July 1st. There were -- there were no indications to
10 the customers of what they were going to do or what
11 recourse they had.

12 Public Counsel requested and received a
13 local public hearing. The local public hearing was
14 well attended and the Commissioners heard directly
15 from the customers regarding the poor water quality,
16 the lack of meter reading and the trauma of being
17 told out of the blue that their water would be turned
18 off with -- with no indication of what they were to
19 do.

20 Public Counsel also requested that an
21 inspection or an investigation of the system be done.
22 That was done by the Staff, and their -- their
23 findings show that the system is poorly degraded and
24 very little maintenance has been done. There is --
25 there are questions of exactly what the system

1 contains, what the piping is. There's no indication
2 of exactly what is there and -- and exactly what
3 quality or what maintenance has been done.

4 Public Counsel, on behalf of these
5 customers, requests that the Commission find Suburban
6 in violation of the 2005 Disposition Agreement and
7 its obligation to provide safe and adequate water
8 service.

9 Public Counsel would also request that
10 the Commission -- Public Counsel would also request
11 that the Commission order prompt repairs to bring the
12 system into compliance with the state regulations
13 including those of the -- of the Department of
14 Natural Resources and also to order any other actions
15 it sees fit to ensure this safe and adequate service.
16 And also to -- and also to ensure that the -- that
17 the customers of Suburban have a continuing and safe
18 and adequate water supply. Thank you.

19 JUDGE LANE: Thank you very much,
20 Ms. Baker. Opening statement on behalf of Suburban
21 Water and Sewer Company.

22 MR. HARRISON: Thank you, your Honor.
23 It's -- it's clear and obvious from what counsel for
24 Staff has said that there is a substantial
25 disagreement about what this case is about. Much of

1 my opening is gonna be spent discussing what the case
2 is about and what the case isn't about. It's
3 certainly Suburban's view, based on the pleadings in
4 the case primarily, that the case before you is much
5 more limited than counsel would have you believe and
6 that which counsel has suggested.

7 For example, counsel mentioned the 1993
8 rate case. That's not before you. That's not before
9 you in this case. I would suggest also that there's
10 no evidence of noncompliance with respect to the 1993
11 order or any orders coming out of the 1993 rate case,
12 but that's not before you in this case. I think
13 that's important to emphasize and that's a point
14 we're going to be emphasizing throughout this
15 hearing.

16 There's no allegation in the
17 complaint -- this is key -- there is no allegation in
18 the complaint that rules have been violated. If you
19 look at the four corners of the complaint, that's not
20 what's being alleged here, and that's also a key
21 point to note. What's being alleged simply is a
22 violation of, now, eight items of the 2005
23 Disposition Agreement. There's no allegation in that
24 complaint, in the pleadings in this case, that rules
25 have been violated. That's not before you, quite

1 simply.

2 Improvements that have been suggested by
3 counsel for Staff and OPC, that's not before you
4 either. That's not part of the pleadings in this
5 case. This is not something that's in the prayer for
6 relief that the Complainant filed. That is not
7 before you, we respectfully suggest. It's beyond the
8 scope of the pleadings. It's not fairly raised by
9 the pleadings. Those types of issues are not fairly
10 raised by the pleadings. The Respondent is not --
11 has not been put on notice that that matter's before
12 you, I would respectfully point out.

13 This -- this case concerns the 2005
14 agreement only. We suggest and we submit that the
15 narrow issue is whether the Commission should
16 authorize Staff to seek penalties in Circuit Court.
17 That's the issue. Is there cause for that to occur?
18 That's the issue before you, we suggest.

19 Suburban will present substantive and
20 convincing evidence that the penalties should not be
21 sought. We will -- we will submit that evidence to
22 you in this hearing. This case is also not about
23 construing or interpreting the agreement from -- from
24 2005. It's respectfully suggested and respectfully
25 submitted that the Commission doesn't have the legal

1 power and authority to interpret contracts, and we
2 take that position in this case.

3 The relief requested, again, in the
4 complaint is simply authorizing circuit court action.
5 That's what the Staff has asked you to do. It's
6 important to note that the Staff drafted the
7 agreement in this case. The evidence will be that
8 Suburban had no part in drafting the agreement.
9 Suburban had scarce opportunity to even comment on it
10 or review it, and it's gonna be clear from the
11 evidence that Suburban played no part whatsoever in
12 drafting any part of the agreement that's before you
13 in this case.

14 It's also going to be clear, it's clear
15 from the face of the document, that there aren't any
16 deadlines or time parameters contained within that
17 agreement within which the matters were to be
18 performed. It's clear on the face of the agreement.
19 It appears that you're gonna be asked to fill in
20 those gaps that were left when Staff drafted that
21 agreement. It appears that you're gonna be asked to
22 supplement or interpret the agreement with respect to
23 time deadlines. We are opposed to that. We do not
24 believe that's appropriate in this case.

25 The evidence will also be that Suburban

1 has, in fact, satisfied many of the items in that
2 agreement. You'll note that two counts of the
3 complaint have already been dismissed. I think
4 that's important for the Commission to realize.

5 Suburban has made reasonable and
6 substantial efforts on many of the other items in the
7 agreement. Suburban has made substantial efforts to
8 comply. Suburban has defenses which you will hear
9 evidence on on the other points.

10 Suburban is a responsible company.
11 Suburban does maintain its system. You will hear
12 substantial evidence to that effect. You will hear
13 substantial evidence that Suburban complies with DNR
14 requirements, that Suburban engages in the water
15 testing that it's required to do. You will hear
16 evidence about that. You'll hear -- you'll hear
17 evidence about repairs, maintenance, in some cases,
18 substantial amounts of repairs and maintenance that
19 have been done to the Suburban system over the years
20 and in some cases in the recent past.

21 The evidence in this case will warrant
22 findings in favor of Suburban. We appreciate the
23 opportunity to participate in the process. Thank
24 you.

25 COMMISSIONER APPLING: Judge, can I

1 intercept? Counselor, would you just hold on for one
2 second before you return to your chair?

3 MR. HARRISON: Of course.

4 COMMISSIONER APPLING: Just one
5 question. Can you and I agree that safe and adequate
6 service for the people that live in that area, that
7 is a part of what we're discussing here for the next
8 couple of days?

9 MR. HARRISON: I guess I would agree
10 that that is a general concept that's at issue here.

11 COMMISSIONER APPLING: Well, you and I
12 are getting off on a different agreement right away
13 because I think that any time that anybody appears
14 here, safe and adequate service is the center stage.
15 So let's don't get off on the wrong road here, okay?

16 MR. HARRISON: Yes, sir, I respect that.
17 And all I would ask, sir, in return, is for the
18 evidence that we present to be considered. And I
19 appreciate your --

20 COMMISSIONER APPLING: My -- my -- my
21 concern right away, Counselor, is that that's for
22 judges and -- and for attorneys to get to the heart
23 of the penalties, but safe and adequate service is a
24 concern of mine, and I -- I -- I heard you say
25 nothing about safe and adequate service, so thank

1 you.

2 MR. HARRISON: Thank you.

3 JUDGE LANE: Thank you, Mr. Harrison.

4 The Commissioners are going to have to leave now to
5 conduct the agenda meeting upstairs. Meanwhile, we
6 will continue with the -- with the hearing and
7 hopefully they'll be back as soon as they can.

8 MS. SYLER BRUEGGEMANN: Your Honor, may
9 I request after hearing everyone's opening
10 statements, you said that -- that upon someone
11 requesting it, you may consider to go ahead and rule
12 on outstanding motions as there is that difference of
13 opinion that Mr. Harrison expressed between Staff's
14 position and our position. I would ask that you go
15 ahead and make a ruling, if possible, on whether or
16 not Staff was able to make the report -- or on the
17 pleadings for making the report and making improvements
18 to the system.

19 JUDGE LANE: I would prefer to wait
20 until some party attempts to adduce evidence and
21 there's an objection thereto on the grounds asserted
22 in the motions, and that at that point go ahead and
23 rule the motions, and also upon further consideration
24 your request to dismiss count 1. Our rules do
25 provide that as long as no prefiled testimony has

1 been filed concerning the subject matter, the
2 withdrawal, and there has been no evidence presented,
3 then you can dismiss without leave of the Commission.
4 So let's consider count 1 to be dismissed at this
5 point. I'll grant that request right here from the
6 bench.

7 MS. SYLER BRUEGGEMANN: Thank you, your
8 Honor. And can I also ask -- I apologize -- will the
9 Commissioners be ruling on the 393.140 issue?

10 JUDGE LANE: Yes.

11 MS. SYLER BRUEGGEMANN: Thanks.

12 MR. HARRISON: Judge, before -- I'm
13 sorry to interrupt. Before evidence -- before the
14 first witness is called, we're gonna request that
15 witnesses be excluded.

16 JUDGE LANE: All right. You care to
17 invoke the rule?

18 MR. HARRISON: Yes.

19 MS. SYLER BRUEGGEMANN: Then, your
20 Honor, would you make the announcement as to what
21 that means for anybody watching on the web cast
22 system to explain that.

23 JUDGE LANE: All right. Basically, this
24 is a time-honored unwritten rule that, while there
25 is -- well, one side is presenting testimony, the

6 So as each side calls its witnesses,
7 I -- I will ask the attorneys for the parties to
8 please ask their witnesses to leave the room during
9 the testimony of the witnesses of -- of other
10 parties, if that adequately summarizes your request.

13 JUDGE LANE: All right. All right. As
14 I indicated before, we're going to begin with the
15 testimony of the Complainant in this case -- or the
16 evidence -- presentation of evidence for the
17 Complainant in this case which is Staff. Staff,
18 let's begin with the presentation of your evidence,
19 and if you would please call your first witness and
20 we'll have the various witnesses give them time to
21 leave the room.

24 JUDGE LANE: Of course.

1 as the representative of Staff, is Dale Johansen
2 allowed to stay in the room equivalent to --

3 JUDGE LANE: Yeah. I mean, he's -- he's
4 essentially a party --

5 MS. SYLER BRUEGGEMANN: Right.

6 JUDGE LANE: -- as a member of the Staff
7 of the Commission. So I don't believe -- well, does
8 he -- is he going to testify?

9 MR. REED: Yes.

10 MS. SYLER BRUEGGEMANN: Yes.

11 JUDGE LANE: He is?

12 MS. SYLER BRUEGGEMANN: Yes. Equivalent
13 to Gordon Burnam and Paula Belcher also in the room,
14 also going to testify.

15 JUDGE LANE: Okay.

16 MR. HARRISON: And we certainly agree
17 that they have a right to have a representative here,
18 and if that's their designated representative, that's
19 certainly fine.

20 JUDGE LANE: Okay. No problem at all
21 with that.

22 MR. HARRISON: And in our case,
23 Mr. Burnam is gonna be our designated representative.

24 JUDGE LANE: All right. Do you have --
25 anybody have an issue -- have a problem with that?

1 MS. SYLER BRUEGGEMANN: Judge, for
2 clarification, so that means Paula Belcher is not
3 gonna be --

4 JUDGE LANE: That's right.

5 MS. SYLER BRUEGGEMANN: -- a
6 representative in this case? Okay.

7 MR. HARRISON: Correct, yes.

8 MS. SYLER BRUEGGEMANN: Thank you.

9 MR. REED: Your Honor, the Staff would
10 like to have Mr. Gordon Burnam testify first.

11 JUDGE LANE: All right. Mr. Burnam,
12 would you please come up to the witness stand.
13 Mr. Burnam, would you spell your name for the could
14 reporter, please.

15 MR. BURNAM: Okay. Gordon, G-o-r-d-o-n,
16 also known as Ramon Burnam, R-a-m-o-n, the last name
17 B, as in boy, u-r-n-a-m.

18 (THE WITNESS WAS SWORN.)

19 JUDGE LANE: Thank you very much.
20 Direct examination, Staff, you may proceed, Mr. --
21 Staff, you may proceed, Mr. -- Mr. Reed. Yes, thank
22 you.

23 DIRECT EXAMINATION BY MR. REED:

24 Q. You are Gordon -- you are Gordon Burnam,
25 correct?

1 A. That's correct.

2 Q. You're the president of Suburban Water
3 and Sewer system?

4 A. That's correct.

5 Q. Are you also a shareholder and director?

6 A. Yes.

7 Q. The other shareholder of Suburban Water
8 and Sewer system is your wife, correct?

9 A. Bonnie Burnam.

10 Q. And she's also a director?

11 A. Yes.

12 Q. Are you the only two shareholders?

13 A. Yes.

14 Q. Are you the only two directors?

15 A. Yes.

16 Q. Suburban Water and Sewer serves a
17 subdivision in Columbia, Missouri; is that right?

18 A. That's correct.

19 Q. That subdivision is called -- is it
20 called BonGor Lake Estates?

21 A. That's correct.

22 Q. Okay. BonGor Lake Estates. I want
23 to -- okay. And as I understand it, that name BonGor
24 is derived from Bonnie's name and your name, correct?

25 A. That's correct.

1 Q. Your wife Bonnie and Gordon. All right.
2 Suburban serves 37 single-family residences; is that
3 correct?

4 A. Yes. Really, it's 39 instead of 37.

5 Q. Okay. Well, I think the deposition
6 testimony --

7 A. I know. And we had to recount and I was
8 mistaken in the deposition.

9 Q. Okay. So it's -- you believe it's 39?

10 A. Yes.

11 Q. All right. And the number of duplexes
12 and four-plexes at BonGor Lake Estates is 108?

13 A. 108 units.

14 Q. 108 units.

15 JUDGE LANE: May I interrupt here for a
16 moment? Would you please have the -- pull the
17 microphone down towards you and there's a button on
18 the -- on the front of the microphone to turn it on.

19 BY MR. REED:

20 Q. By units you mean, I guess, a unit is
21 one of two duplexes, for instance?

22 A. No. A living unit -- a duplex has two
23 living units and a four-plex has four living units.

24 Q. All right. Okay. So there are 108
25 units, correct?

1 A. Period, yes.

2 Q. BonGor Lake Estates was developed by you
3 starting back in the late 60s or early '70s, correct?

4 A. That's correct.

5 Q. And you built these houses and duplexes
6 at BonGor?

7 A. Not all of them.

8 MR. HARRISON: Object to the question
9 for vagueness. He said "you." Does he mean
10 Mr. Burnam personally? Is that what you mean? Object
11 to the form of the question. I think it's vague.

12 JUDGE LANE: Could you reform the
13 question?

14 MR. REED: Well, I'll be referring
15 throughout my examination to "you." Gordon -- it's
16 been established that Gordon Burnam is the president
17 of Suburban Water and Sewer Company, and as I
18 understand it, he's been dismissed as an individual
19 party, so I fail to see how "you" could in any way be
20 vague at this point.

21 MR. HARRISON: So when you ask him
22 "you," you mean whether he personally built the --
23 built the house, did the construction; is that what
24 you mean? Is that -- is that what your question is,
25 sir?

1 MR. REED: That's my question.

2 MR. HARRISON: All right. Do you
3 understand the question, Gordon?

4 THE WITNESS: We built most of them but
5 there's two or three other builders that built houses
6 in BonGor Lake Estates.

7 BY MR. REED:

8 Q. Of the -- how many -- okay. How many of
9 the homes and duplexes were -- were you responsible
10 for having built?

11 MR. HARRISON: Same objection, it's
12 vague. The question is vague. I'm sorry, but the
13 question is vague.

14 JUDGE LANE: I think we clarified the
15 intended meaning of the term "you" earlier. When he
16 uses -- when -- when Mr. Reed is using the
17 question -- is using the word "you," I think he very
18 clearly explained that refers to Mr. Burnam.

19 MR. HARRISON: So he's -- all right.
20 Just so the witness understands the question is --

21 MR. REED: If he doesn't, the witness
22 will tell me, I'm sure.

23 MR. HARRISON: -- if you personally do
24 this --

25 BY MR. REED:

1 Q. I will ask the question -- I will ask
2 the question, right?

3 A. Okay. Yeah.

4 Q. Did you understand the question?

5 A. Would you repeat it, please?

6 Q. How many of the 108 duplexes and 37
7 residences, single-family residences, were you
8 responsible for having built at BonGor?

9 A. I can't remember the exact number, but I
10 would say a majority of them.

11 Q. A majority. Suburban got its
12 Certificate of Convenience and Necessity from the
13 Public Service Commission back about 1973; is that
14 right?

15 A. As well as I remember.

16 Q. So Suburban has been in the water
17 business for 34 or 35 years, correct?

18 A. Uh-huh, that's correct.

19 Q. The sewer operation was sold some years
20 ago?

21 A. That's correct.

22 Q. Who was that sold to?

23 A. Well, it was sold to an individual who
24 then sold it to the Boone County Regional Sewer
25 District.

1 Q. All right. Suburban Water and Sewer
2 Company currently has no employees?

3 A. That's correct.

4 Q. Of the -- of the single-family
5 residences and the duplexes at BonGor Lake Estates
6 that you were responsible for having built, you sold
7 those -- you sold all of those by 1986; am I right?

8 A. Yes, they were all sold by 1986.

9 Q. When did you start building those
10 buildings at BonGor Lake Estates?

11 A. As well as I remember, I think it was
12 either the late '70s or early '71.

13 Q. There was a period of time after they
14 were built where you would have owned a duplex
15 building, for instance, and been the landlord; is
16 that right?

17 A. Yes, on some occasions but not
18 necessarily all of them.

19 Q. All right. Whenever you were a landlord
20 for a duplex or a four-plex, Suburban Water and Sewer
21 Company would sell its water to you as the landlord,
22 correct?

23 MR. HARRISON: Judge, could I make a
24 relevance objection? We're talking about something
25 that happened 20 years ago.

1 THE WITNESS: I can't even remember who
2 I played golf with last week let alone 30, 35 years
3 ago.

4 MR. HARRISON: Gordon, there's an
5 objection --

6 THE WITNESS: Okay.

7 MR. HARRISON: -- so when I make an
8 objection, please abstain from answering. I'm sorry.

9 JUDGE LANE: Thank you. The objection
10 is -- the objection is relevance?

11 MR. HARRISON: Relevance. It's not
12 relevant.

13 JUDGE LANE: I think it helps lay a
14 background for understanding the events even going up
15 to today, so I'll allow it.

16 BY MR. REED:

17 Q. The question was, when you were a
18 landlord at BonGor Lake Estates, you would buy water
19 from Suburban Water and Sewer Company, correct?

20 A. I don't remember.

21 Q. Whenever you were a landlord, you
22 charged rent to your tenants obviously, correct?

23 A. That's correct.

24 Q. And then as part of that rent, the water
25 service was included, was it not?

1 A. I think it was more or less taken for
2 granted rather than stated.

3 Q. What does that mean?

4 A. I mean, if they're gonna rent the unit,
5 they had to have water.

6 Q. Right. So did the tenants pay
7 separately for water or not?

8 A. I can't remember how it was handled.

9 Q. Can't remember. An average rate for a
10 customer of Suburban Water and Sewer Company is now
11 about \$16.25 a month?

12 A. That's correct.

13 Q. Whereas, the water district in the area
14 there had a rate of about \$33 a month; is that right?

15 MR. HARRISON: Relevance, Judge? I
16 mean, what's this got to do with anything before the
17 Commission?

18 MR. REED: It's just additional
19 background information.

20 JUDGE LANE: Overruled. Go ahead.

21 BY MR. REED:

22 Q. Isn't it about 33 a month at the water
23 district?

24 A. The last time I checked.

25 Q. Now, currently, do any of your family

1 members own houses or rentals at BonGor Lake Estates?

2 MR. HARRISON: Objection on the basis of
3 relevance. It's got nothing -- it's got no probative
4 value on any issue before the Commission in this
5 case.

6 JUDGE LANE: I think we are getting a
7 bit far afield from -- from the issues.

8 MR. REED: Well, I -- I think what you
9 heard in the opening statement what we're wanting to
10 get into at this point now, Judge, is that these
11 rates are low, they're very low. There haven't been
12 many rate cases over the years because Mr. Burnam was
13 selling water to himself. Suburban was selling water
14 to Mr. Burnam so the rates were kept low so that he
15 as a landlord would have low rates and the tenants
16 were not billed separately for water. They would pay
17 for water as part of the rent. So that's what we're
18 getting into at this point.

19 JUDGE LANE: All right. If these
20 questions are designed to lead down that path, then --
21 then they are relevant -- then it is relevant. So
22 please proceed. But if you don't -- you know, don't
23 get to that point at some point, these relevancy
24 objections are gonna start being sustained.

25 MR. REED: I understand.

1 BY MR. REED:

2 Q. The question was, do any of your family
3 members currently own any houses or rentals at
4 BonGor?

5 A. No.

6 Q. Have they in the past?

7 A. Yes.

8 Q. And who --

9 A. No, no. Wait a minute. Family, no.
10 Okay, if you're talking about a corporation that my
11 family may have had some interest in, it's yes, but
12 I'm not aware of it.

13 Q. You're not aware of what?

14 A. I'm not aware of how they held it or
15 what they did. It was my -- strictly my kids.

16 Q. But they currently don't own or their
17 companies don't own any land at BonGor?

18 A. I'm not sure about my children.

19 MR. HARRISON: That's a different
20 question than the question he asked before.

21 THE WITNESS: Okay. Okay.

22 MR. HARRISON: Okay. He asked about
23 land this time.

24 THE WITNESS: I am -- okay.

25 JUDGE LANE: Mr. Reed is conducting

1 direct examination.

2 THE WITNESS: I'm not aware of how many
3 corporations my kids have. I know they're heavily
4 involved in lots of land and real estate, and I think
5 that one of their corporations owns some property,
6 not in BonGor Lake Estates but in the surrounding
7 area.

8 BY MR. REED:

9 Q. Okay. Are you -- do you know of any of
10 your family members' partnerships or corporations who
11 have owned real estate at BonGor Lake Estates?

12 A. In the past I think they did, but I'm --
13 I'm not aware of it. It's strictly my four children.

14 Q. What period of time are you aware of
15 them having owned that kind of land, that kind of
16 property?

17 A. In -- I'm not with you. Are you talking
18 about the subdivision or are you talking about the
19 land surrounding the subdivision?

20 Q. I'm talking about any property at BonGor
21 Lake Estates.

22 A. Okay. That's the subdivision?

23 Q. Yes.

24 A. Okay. At the present time, I know -- I
25 don't know of any that they own in BonGor Lake

1 Estates subdivision.

2 Q. Okay. But they have owned property
3 there in the past?

4 A. Yes, uh-huh.

5 Q. All right. In 2005, Suburban Water
6 Company obtained a rate increase, an overall rate
7 increase of a little over \$4,000. Do you recall
8 that?

9 A. Yes.

10 Q. There was a Disposition Agreement that
11 was entered into which you, as the president of
12 Suburban Water and Sewer Company signed, correct?

13 A. That's correct.

14 Q. And are you familiar with the order that
15 was issued by the Commission, the Public Service
16 Commission, approving that Disposition Agreement?

17 A. There was some comment concerning that,
18 okay? When we had a meeting with the seven, I think,
19 Staff people at the PSC here in Jeff City and
20 everything, we discussed the -- the rate increase and
21 everything. At that time the Staff did not mention
22 in any way any contingency on that deal, and that
23 came at a later date. And yes, I did sign it, but --

24 Q. All right. What I asked you was whether
25 you were familiar with the order --

1 No. 2 also?

2 JUDGE LANE: Yeah. We've just got
3 Exhibit 1 right now.

4 MS. SYLER BRUEGGEMANN: That's my
5 mistake.

6 JUDGE LANE: All right. I've got copies
7 of Exhibits 1 and 2. And I'm sorry, your request is?

8 MR. REED: I'd move for admission,
9 Judge, of 1 and 2.

10 JUDGE LANE: All right. Exhibits 1 and
11 2, Staff has moved for their admission into evidence.
12 Any objections?

13 MR. HARRISON: Not from us, Judge.

14 JUDGE LANE: They are proper matters for
15 official notice as well, so the -- they are admitted.

16 (EXHIBIT NOS. 1 AND 2 WERE RECEIVED INTO
17 EVIDENCE AND MADE A PART OF THE RECORD.)

18 BY MR. REED:

19 Q. Mr. Burnam, Suburban Water has not
20 installed meters for all buildings; isn't that right?

21 A. There was a little bit of a problem
22 concerning -- after -- concerning the rate increase
23 in '05.

24 Q. Did you --

25 A. Okay --

1 Q. Mr. Burnam, did you understand my
2 question?
3 A. Yes, okay. I'm trying to tell you --
4 Q. Has -- has Suburban Water and Sewer
5 Company installed meters for all buildings?
6 A. No.
7 Q. Mr. Burnam, has Suburban Water and Sewer
8 Company implemented a ten-year replacement program
9 for existing meters?
10 A. We only replace meters on a fail basis
11 and did not have a program in place.
12 Q. You do not have a program in place?
13 A. We're in the process of making one at
14 this time.
15 Q. All right. As I understand it, if the
16 meter breaks --
17 A. We replace it.
18 Q. -- that's when you fix it? Okay.
19 A. Or if we notice in meter readings that
20 it's a big difference in volume, why, we also change
21 the meters.
22 Q. Mr. Burnam, Suburban has not installed
23 flush valves on the system with the flushing
24 capability of at least three feet per second in all
25 mains?

1 A. That's correct. Excuse me.

2 Q. Has Suburban Water and Sewer Company
3 replaced the standpipe inlet with an inlet high
4 enough to provide adequate circulation and detention
5 time?

6 A. No, at this time. We have obtained an
7 engineer and is in the process.

8 Q. Suburban Water and Sewer Company has not
9 contracted with a certified operator to maintain the
10 well and distribution system; is that right?

11 A. Well, we have taken steps to -- the fact
12 is, an in-house person we sent to certified water
13 school. We also contacted some other people in
14 regard to being a certified operator. We found one
15 certified operator that worked for the city, retired.
16 I give him -- offered him \$5,000 if he'd take the
17 system and he said, "No, thanks."

18 But anyway, we did make an effort to get
19 a certified water operator. We were aware that one
20 was going to be needed and we are still in the
21 process and we have lined up a certified water
22 person.

23 Q. You've lined somebody up at this point
24 in time?

25 A. Yeah, we're talking to him. He's an

1 employee of the Boone County Regional Sewer District
2 which serves BonGor Lake Estates. And we've received
3 permission from the regional sewer district to let
4 him -- if they'd let him moonlight, for lack of a
5 better word.

6 Q. Suburban Water and Sewer Company has not
7 provided quarterly reports regarding monthly customer
8 meter usage data to the auditing staff of the Public
9 Service Commission?

10 A. No.

11 Q. You have not done that?

12 A. (Shook head.)

13 Q. As I understand it, Suburban has now
14 developed a customer brochure, correct?

15 A. That's correct.

16 MR. REED: I think I have a copy of
17 that. This is Exhibit No. 6, Judge.

18 BY MR. REED:

19 Q. Mr. Burnam, Exhibit No. 6, does that
20 appear to be a copy of the customer brochure?

21 A. Yes.

22 Q. As I understand it, that was developed
23 and distributed in June of 2007?

24 A. That's correct.

25 Q. By Ms. Paula Belcher?

1 A. That's correct.

2 Q. Can you explain -- let me withdraw that
3 question. It took two years to prepare this
4 brochure, Mr. Burnam?

5 A. That's correct.

6 Q. "Suburban Water and Sewer Company has
7 not developed a continuous property record system for
8 plant."

9 A. Would you define what you call plant? I'm
10 not -- are you talking about a well -- a pump that's
11 450 feet down in the ground or are you -- you know ...

12 Q. If you would take a look at Exhibit
13 No. 1 and turn to page -- first you have to turn back
14 to appendix A. Do you see that about three pages in?

15 A. Yes.

16 Q. And then where it says "Unanimous
17 Agreement," you work back three pages to page 3 of 5.

18 A. What item are you referring to?

19 Q. It's item No. 9.

20 A. Okay. Whenever we replace the pump
21 which is our biggest expenditure, yes, we know when
22 it was done and what it cost and everything like that
23 and we keep it on our books, okay? Now, do we report
24 it to the PSC? I don't think so.

25 Q. The -- the -- that paragraph 9 indicates

1 that "The company," meaning Suburban, "will develop a
2 continuous property records system for plant," and
3 then it continues.

4 A. Well, we have to for depreciation
5 purposes, not only for PSC, but for the IRS.

6 Q. And have you developed that continuous
7 property records system?

8 A. Well, I'm sure my wife keeps everything.
9 I'm not involved in that part of it.

10 Q. You're -- you're not aware of whether
11 you have --

12 A. No.

13 Q. -- a continuous property records system?

14 A. You'll have to ask her.

15 Q. All right. Mr. Burnam, would you agree
16 that there are improvements needed to the Suburban
17 Water system?

18 A. If I might tell you what led up to the
19 rate increase in '05. We have been in --

20 MR. HARRISON: Judge, at this point let
21 me raise an objection and that is relevance. I think
22 we're getting down to the prehearing matters that we
23 discussed. I don't think this matter is before the
24 Commission. I think it's outside the scope of the
25 pleadings. I think the question is not relevant to

1 the matter -- to the matters before the Commission
2 here.

3 MS. BAKER: Your Honor, may I make a
4 statement? I want to remind the Commission and --
5 and counsel that as part of this case is a
6 consolidated case from -- from the Office of Public
7 Counsel and that case number was WC-2007-0444, where
8 Public Counsel requested that the Commission open a
9 case for investigation of Suburban Water and Sewer
10 and also the request for the local public hearing.

11 And in that and as a part of that and
12 consolidated into this case, is a request for an
13 investigation of the safe and adequate service of
14 Suburban. So all -- all of these issues regarding
15 to -- to the -- how -- how this system is and the
16 maintenance of the system, that is all very relevant
17 to my portion of this case.

18 MR. HARRISON: Judge, Public Counsel's
19 application is limited, quite limited in scope. It's
20 related to the letter with respect to the July 1,
21 2007 water service shutdown. That's what their --
22 that's their -- on the face of their application,
23 that's what that's about. It's not about
24 improvements. That's not what -- that's not what
25 their case is about, and it's certainly not what

1 Staff's case is about.

2 JUDGE LANE: All right.

3 MR. REED: I believe it's ripe for
4 determination by the Commission, Judge. And we can
5 argue about this particular motion here to you.
6 There's more argument to be made, but if the
7 Commission is going to make a determination, we would
8 ask that that be done.

9 The balance of my examination deals with
10 improvements. There will be substantial testimony
11 later today regarding improvements that are needed.
12 This follows from Staff -- or from the OPC's motion
13 that Ms. Baker's talked about and the Staff motion
14 that was filed under 393.140.

15 JUDGE LANE: Do you plan to tie your
16 direct examination regarding the improvements, tie
17 those back to the order, the original order? In
18 other words, do you plan to tie -- do you plan to
19 connect the two issues on the grounds that the reason
20 that these requirements were put in the order in the
21 first place were to ensure safe and adequate service,
22 to explain the reason they were in the order?

23 You've already asked questions about
24 whether those things have been done. Do you plan to
25 tie it in that way, because if that's what you plan

1 to do, I'm inclined to allow the line of questions.
2 If that's not what you plan to do, then I can go into
3 rulings on the -- on the motions for improvements.

4 MR. REED: We plan to have witnesses
5 testify regarding the Disposition Agreement and why
6 particular items were placed there. Some of those
7 things I've gone through with Mr. Burnam. I would
8 submit to you that many of those things have not been
9 done. We will have testimony about why they should
10 have been done, why they're important.

11 JUDGE LANE: All right.

12 MR. REED: There will be -- there will
13 be testimony that goes beyond those things. Those --
14 that's the subject of the Staff's report that was
15 filed recently.

16 MR. HARRISON: And --

17 JUDGE LANE: And --

18 MR. HARRISON: I'm sorry. Go ahead,
19 sorry.

20 JUDGE LANE: Actually, I read Staff's
21 report and it actually is split into a couple of
22 sections. One is an analysis of the existing state
23 of the plant based on the inspection, the visual
24 inspection that was done, the photographs and so
25 forth. And -- and that part of the report certainly

1 goes directly to whether or not Suburban has complied
2 or failed to comply with the Disposition Agreement in
3 the Commission's order of 2005.

4 There is a section -- a separate section
5 of the report, as I understand it, that goes into
6 improvements that need to be made. Some of those
7 improvements are things that were supposed to have
8 been done in 2005, and some of them go beyond that
9 and talk about other items. That's my understanding
10 of -- of the report and its contents.

11 Let me go ahead, because it's -- it's
12 time to discuss this issue now. Let me go ahead and
13 rule on these motions. With regard to Staff's motion
14 under Section 393.140 to order Suburban Water and
15 Gordon Burnam to make reasonable improvements to
16 promote the public interest, preserve the public
17 health and protect consumers of Suburban Water and
18 Sewer Company, the Commission is going to deny that
19 motion.

20 And I want to talk about a little bit
21 what that -- exactly what that means. In the
22 motion -- in the subject motion, Staff sought an
23 order of the Commission that directed Suburban and
24 Gordon Burnam to make improvements necessary to
25 promote the public health. And the improvements

1 suggested by Staff not only included many of the
2 items that were included in the Disposition Agreement
3 in the 2005 order of the Commission, but also others.
4 And Staff explicitly alleged that the water system,
5 since 2005, has fallen into additional disrepair
6 since that time, and is in need of additional
7 improvements.

8 Now, Suburban and Mr. Burnam filed their
9 response to that -- to the motion on July 18th in
10 which they basically stated that this relief is new
11 to the case, a request that they actually -- the
12 first amendment -- the first amended complaint says
13 nothing about ordering Suburban to actually implement
14 any improvements.

15 It talks about -- it requests a
16 Commission order finding that Suburban violated the
17 terms of the Disposition Agreement and the
18 Commission's order of June 2005, and it also seeks an
19 order authorizing the Commission's general counsel to
20 seek monetary penalties for those alleged violations
21 in Circuit Court.

22 Suburban's response points -- indicates
23 that what the motion essentially was, was an attempt
24 to file a second amended complaint without seeking
25 leave of the Commission to do so. It's -- it's the

1 Commission's view that Staff has requested relief
2 that goes well beyond that sought in Staff's first
3 amended complaint. It also goes well beyond the very
4 broad and very general requests made by OPC in
5 their -- in their request.

6 OPC basically requested a local public
7 hearing and an investigation. An investigation has
8 been done into the existing system and compliance
9 with the order of 2005 as well as the Disposition
10 Agreement. So the Commission agrees with the
11 Respondents that the relief requested in that motion
12 is distinct from that sought in the instant case.

13 This is not to say that the Commission
14 does not find these issues important. They certainly
15 do raise very important issues. The Commission
16 certain -- just certain only feels that at this point
17 it was -- it was too late to grant Staff leave to
18 file what is essentially a second amended complaint,
19 and that if Staff wishes, or OPC, for that matter,
20 wishes to request the relief that's sought in the
21 motion, that should be done in a separate complaint
22 case with a separate evidentiary hearing which Staff
23 is entirely free to file, or OPC as well, should it
24 decide to do so. So that's the ruling on the motion
25 under Section 393.140.

1 Let's go into the other motion that
2 deals with these issues. That's the Staff's motion
3 for an order directing Staff to investigate and file
4 a report that was filed on July the 10th. That
5 motion is -- is also denied. Part of it is denied as
6 moot and part of it is denied for the same reasons
7 that I just expressed with regard to the motion under
8 Section 393.

9 There were actually two things that were
10 sought in the motion for order directing Staff to
11 investigate and file a report. One of them was an
12 order of the Commission, quote, directing Staff to
13 investigate the facilities at Suburban Water and
14 Sewer Company to determine compliance with the
15 Commission's order in Case No. WR-2005-0455, unquote.

16 The second thing sought in that order of
17 July the 10th was an order directing Staff to
18 investigate, quote, Suburban's ability to provide
19 safe and adequate service, end quote. To aid in the
20 accomplishment of these objectives, Staff
21 specifically requested that the order direct
22 Suburban -- Suburban and Gordon Burnam to cooperate
23 with Staff's investigation and allow access to the
24 plant and facilities under Section 393.140 sub 3.

25 Now, on July 13th, Staff withdrew that

1 portion of its motion stating that Suburban had
2 agreed to permit and cooperated with regard to the
3 inspection, that an inspection had taken place
4 earlier that day and that a report regarding the
5 results of the inspection would be filed later.

6 Since that inspection has already taken
7 place and the Commission finds that Staff already had
8 an authority to perform an investigation and file a
9 report regarding the Respondent's compliance with the
10 Commission's order as requested in paragraph 4 of the
11 motion, that first request that I mentioned is denied
12 as moot. In other words, the inspection's already
13 taken place. They had authority to investigate their
14 own complaint as the Complainant and as a party to
15 the Disposition Agreement that was approved by the
16 Commission.

17 Now, the second cannot be said, however,
18 of Staff's second request which, as you'll recall,
19 was to direct Staff to investigate Suburban's ability
20 to provide safe and adequate service. That request
21 involves Suburban's ability to provide safe and
22 adequate service to its customers on a going-forward
23 basis. We're not looking back, we're not looking --
24 we're looking forward. We're looking back to the
25 extent to determine whether those things have not

1 been remedied and we can look at why those were there
2 in the first place, and that's certainly relevant.

3 But we're looking forward. So we're not
4 looking at claimed violations in the disagreement --
5 Disposition Agreement as much as we are the
6 overarching principle of providing safe and adequate
7 service to the customers.

8 And in paragraph 5 of the motion, Staff
9 requested a Commission order directing Staff to
10 investigate and make recommendations in a report
11 regarding the improvements that are necessary for
12 Suburban to meet -- to provide safe and adequate
13 service. And in paragraph 6, Staff specifically
14 referred to its recommendations for future
15 improvements.

16 So Staff itself, if you recall -- as I
17 recall, suggested the Commission, quote, should
18 consider bifurcating these issues from the complaint
19 case and set a separate hearing. That is exactly the
20 procedure the Commission feels should be done in this
21 case, both with regard to the Section 393 motion and
22 regard to the safe and adequate service. It's a very
23 important issue, certainly the motions raise
24 important issues that are -- that are important to
25 the public, important to Suburban and important to

1 the Commission.

2 The Commission simply feels that this
3 ought to be handled in a separate complaint case
4 where those issues are raised, and adjudicate it in a
5 separate complaint case. The Commission feels that
6 it's important to keep this matter limited to the
7 issues that are expressly raised in the first amended
8 petition, and that is whether or not Suburban
9 violated or failed to comply with the Disposition
10 Agreement and the Commission's June 2005 order
11 approving that agreement, and if that is true,
12 deciding whether or not to authorize general counsel
13 to seek penalties in circuit court. That is the
14 ruling on those -- on those two pending motions.

15 Any questions or is there anything I
16 need to further explain before you proceed, Mr. Reed?

17 MR. REED: Yes, Judge.

18 JUDGE LANE: All right.

19 MR. REED: With regard to the additional
20 witnesses that we have lined up for today, I take it,
21 just so I'm clear, if those witnesses testify about
22 those specific issues raised in the complaint, for
23 instance, a standpipe inlet or flush valves, then
24 those witnesses would be allowed to testify with
25 regard to those kinds of issues because there's --

1 they're in the complaint, they're joined for
2 consideration today, so the witnesses can talk about
3 whether they're present, for instance, a flush valve?

4 JUDGE LANE: Of course.

5 MR. REED: Why they're necessary?

6 JUDGE LANE: Yes.

7 MR. REED: All right. But anything
8 beyond those matters in the complaint is off limits?

9 JUDGE LANE: That's correct. Anything
10 beyond the allegations in the first amended
11 complaint. I mean, that's what we're here to
12 determine.

13 MR. REED: All right.

14 MR. HARRISON: Judge, may I ask
15 something?

16 JUDGE LANE: Yes.

17 MR. HARRISON: Along those same lines,
18 you haven't said it but I assume it goes without
19 saying that there won't be any ability to amend the
20 complaint that's before the Commission now based on
21 the evidence adduced; in other words, I want to be
22 careful about that. I don't want to have to make
23 extended, prolonged objections, but I want to make
24 sure that with the evidence that does come in is
25 deemed by you and the Commission to be relevant,

1 again, only to that which is before the Commission on
2 the first amended complaint and can't be used then
3 later to bootstrap some kind of amendment after the
4 close of the evidence, for example.

5 JUDGE LANE: Yes, Mr. Harrison --

6 MR. HARRISON: Call -- call me paranoid,
7 but --

8 JUDGE LANE: You made it quite clear in
9 your opening statement that you intended to attempt
10 to limit the evidence that comes in to evidence that
11 bears on the allegations in the first amended
12 complaint. And the Commission feels that's important
13 to do that because the -- the pleadings define the
14 scope of the complaint.

15 And that's not to say, just so that I
16 explain, that Suburban did not have notice that these
17 were potential lurking issues around the corner.
18 It's only, you know, in order to say that they
19 couldn't possibly have anticipated those would come
20 up. It's only to say that the issue before the
21 Commission in the first amended complaint is whether
22 there -- is whether Suburban violated the order or
23 failed to comply with the order and with the
24 Disposition Agreement, and if so, whether the
25 Commission should then proceed to authorize its

1 general counsel to pursue penalties.

2 Now, to the extent the Staff
3 investigation report and any further witnesses that
4 you want to call want to touch on those issues as --
5 as they relate to the things that were alleged in the
6 complaint, that is, things that were included in the
7 Disposition Agreement in the first place, that's --
8 that's fair game. I'm just trying to explain that.

9 MR. HARRISON: And your Honor, one other
10 thing I want to make sure. You -- the order is not
11 that the matter before the Commission now has been
12 bifurcated in any way?

13 JUDGE LANE: That's correct.

14 MR. HARRISON: That's correct. Okay.

15 JUDGE LANE: That's correct.

16 MS. BAKER: Your Honor, can I get a
17 point of clarification --

18 JUDGE LANE: Yes.

19 MS. BAKER: -- on his request? Is he
20 requesting that the evidence and the documents from
21 this case not be used in a subsequent complaint?

22 JUDGE LANE: No, that's not what he's
23 saying. He -- well, you're -- actually, your -- your
24 question was, do I need to have a continuing
25 objection to the introduction of any evidence that

1 goes beyond the complaint.

2 MR. HARRISON: That's essentially right.
3 That's essentially right.

4 JUDGE LANE: And the answer to that
5 question is, you make the objections, I'll rule on
6 them and if you want to make a continuing objection,
7 then I'll also rule on that request, all right?
8 Certainly, issues beyond the scope of the pleading
9 could be tried by mutual consent, but I doubt that
10 such consent is -- is present here.

11 MR. HARRISON: And I'll just state for
12 the record that we don't consent and we aren't gonna
13 consent to that, just so the record's clear.

14 JUDGE LANE: So -- but, no, I -- I
15 certainly didn't understand Mr. Harrison's question
16 to be asking about whether -- you know, to preterm at
17 any future inquiry or whether any evidence that was
18 brought forth in this hearing could not be used in
19 any other proceeding. Those -- those issues are
20 certainly, you know, not before us at this point.

21 MS. BAKER: I just wanted to clarify
22 that. I also want to ask for a clarification on
23 Staff's investigation since that was a request of my
24 original filing in this case. Can Staff's
25 investigation and things that they looked at and the

1 things that they found be part of this case? Because
2 that was part of the case that I filed.

3 JUDGE LANE: Well, again, I -- I don't
4 want to -- you know, announce beforehand how specific
5 objections will be ruled, but I will say based on
6 what I've just told you with regard to the
7 Commission's rationale on the -- on the orders
8 that -- that I just ruled from the bench, that Staff
9 had -- had authority to conduct the investigation
10 regarding Suburban's compliance with the order and --
11 and to do the things that it did.

12 And so essentially, it didn't need to
13 ask the Commission for authority to do that. And the
14 inspection was -- was conducted and a report was
15 prepared on the results of that inspection. So I
16 believe the request made by OPC in the consolidated
17 action has also been satisfied.

18 MS. BAKER: Okay. And that can be
19 referred to in questions of the witnesses?

20 JUDGE LANE: Of course.

21 MS. BAKER: Thank you.

22 JUDGE LANE: And I'll -- I'll -- I mean,
23 just as a general principle.

24 MS. BAKER: Thank you.

25 JUDGE LANE: But anyway, let's move on.

1 I think I've said enough about those two particular
2 orders. I wanted to go into some detail to give the
3 parties the benefit of the Commission's thoughts on
4 those.

5 MR. REED: Thank you, Judge. And we
6 certainly intend to follow the Commission's order.
7 If, however -- I don't intend to get -- get beyond
8 the order. I think I understand it, but if I do,
9 Mr. Harrison will -- will stop me, I'm sure. So to
10 continue the examination of Mr. Burnam.

11 BY MR. REED:

12 Q. The standpipe itself needed repair back
13 in 2005?

14 A. Yes.

15 Q. And it still needs repair?

16 A. Yes, and we have repaired.

17 Q. You've done some repair or --

18 A. Yes, uh-huh.

19 Q. -- there's additional repair to be done?

20 A. No, not as we set here, other than
21 examination and maybe some exterior painting, is the
22 only thing I know of subject to inspection. In other
23 words, if there was a leak, we fixed it in the
24 standpipe. We hired an outside contractor to come in
25 and fix the leak.

1 Q. All right. There were some DNR
2 requirements that needed to be met, and have you
3 complied with those?

4 MR. HARRISON: I'm gonna -- I have to
5 object on the basis of relevance.

6 MR. REED: Well, I think it's under the
7 general scope of safe and adequate service, Judge. I
8 think it's a fair question.

9 JUDGE LANE: Yeah, that question is not
10 objectionable. Go ahead.

11 THE WITNESS: The DNR has sent us a
12 letter concerning certain things about the BonGor
13 Lake Estates or the Suburban Water and Sewer, and
14 we're in the process of obtaining information from
15 engineers to see exactly what has to be done and --
16 in order to comply.

17 BY MR. REED:

18 Q. With DNR requirements?

19 A. Okay. I'm just saying is that we're
20 kind of caught in a in-between between the DNR and
21 the PSC. I mean, which comes first, the chicken or
22 the egg, you know? And you're coming at us, the DNR
23 is coming at us, and we are a bankrupt company that
24 has no money.

25 Q. The system needed these flush valves

1 back in 2005 and still needs them?

2 A. We have a flush valve but they --

3 Q. You have one?

4 A. We have one, but we don't have three.

5 Q. And it -- and it does not comply with
6 the specifications set forth in that order that's in
7 front of you, correct?

8 A. That's correct.

9 Q. There still need to be meters placed on
10 some buildings, correct?

11 A. That's correct.

12 Q. How many buildings are left?

13 A. Three that I know of.

14 Q. I want to -- I want to turn to your
15 decision to get out of the water business,
16 Mr. Burnam. Do you still want out?

17 A. Yes. Can I tell the reason why I want
18 out?

19 Q. Not until I ask.

20 A. Okay.

21 Q. As I understand it, back in -- on
22 July 1st 2007, you tried to just walk away from this
23 water system, correct?

24 MR. HARRISON: Judge, I'm gonna have to
25 raise a relevance objection again here. The matters

1 before the Commission deal with the 2005 agreement.

2 MR. REED: Well, under the general scope
3 of safe and adequate service again, Judge, I would
4 like to know how this system is being operated.

5 JUDGE LANE: I also think it's important
6 that the Commission know the background, the general
7 background leading up to this case. I stated that
8 before, so I'll allow it.

9 BY MR. REED:

10 Q. Now, you wanted to turn off the water on
11 July 1st, 2007, correct?

12 A. There's a reason. Can I explain to you
13 what my reasoning was?

14 Q. I want you to answer my question first.
15 You planned to shut the system down July 1st, 2007?

16 A. No, I did not.

17 Q. You planned to shut the water off?

18 A. No, I did not.

19 Q. What did you plan to do?

20 A. No, we sent a letter out but --

21 Q. Yes?

22 A. -- never in my mind would I ever shut
23 the water off to those people. What I tried to do
24 was get the Commission's -- PSC's attention.

25 Q. What you wanted to do was you wanted the

1 Public Service Commission to get involved to appoint
2 a receiver and let you go off on your trip to Spain?

3 MR. HARRISON: Judge, that's
4 argumentative.

5 THE WITNESS: Oh, that's -- that's --

6 MR. HARRISON: Assumes facts --

7 MR. REED: It's an adverse party.

8 MR. HARRISON: Assumes facts not in
9 evidence.

10 JUDGE LANE: Well, nothing's been --
11 nothing's been established about a trip to Spain.
12 There's been -- there's been no foundation for that
13 part. Can you rephrase?

14 THE WITNESS: Somebody had a nightmare
15 when they dreamed up that one. I never went to
16 Spain.

17 BY MR. REED:

18 Q. Where did you go?

19 MR. HARRISON: Same objection. This has
20 no bearing on anything before the Commission.
21 There's no foundation for it, it's argumentative.

22 JUDGE LANE: Yeah, Mr. Burnam's travel
23 plans really aren't terribly relevant to these
24 proceedings.

25 BY MR. REED:

1 Q. You did plan to be out of town July 1st,
2 2007, did you not?

3 MR. HARRISON: Same objection, Judge. I
4 mean --

5 THE WITNESS: I made reservations to --

6 MR. HARRISON: Gordon, one -- one
7 minute. There's an objection pending.

8 THE WITNESS: Okay. Do I answer now?

9 MR. HARRISON: No, not until the judge
10 rules.

11 THE WITNESS: Okay. Okay.

12 JUDGE LANE: All right. What's the
13 objection? Relevance to the question of whether he
14 planned to be out?

15 MR. HARRISON: It has nothing to do with
16 the case, yeah.

17 JUDGE LANE: Planned to be -- planned to
18 be on vacation or gone on July the 1st?

19 MR. HARRISON: Right. It's got nothing
20 to do with the case.

21 JUDGE LANE: Sustained.

22 BY MR. REED:

23 Q. Did you have somebody in place to take
24 over the water system, Suburban Water system on
25 July 1st, 2007?

1 A. No.

2 Q. No one --

3 A. You mean an outside company or person?

4 Q. Yes.

5 A. No.

6 Q. Nobody?

7 A. Business as usual.

8 Q. You told Paula Belcher you were getting

9 out of the water business, did you not?

10 A. Been trying for two years.

11 Q. Right. And she was happy about that?

12 A. Yes.

13 Q. You told your wife you were getting out

14 of the water business, correct?

15 A. Common knowledge.

16 Q. And she was happy about that?

17 A. Less work for her.

18 Q. You made the decision to try to get out

19 of the water business?

20 A. Yes. Can I tell you why I decided?

21 Q. Tell me how you planned to get out of

22 the water business.

23 A. Okay. In 1986 when we disposed of all

24 of our properties with the exception of four mobile

25 home parks and Suburban Water and Sewer, I made a

1 decision that I was getting ready to die because I
2 wanted to put my estate in order, and at that time we
3 became citizens of Florida and we were no longer in
4 Missouri, maybe three to five months out of the year.

5 And through the years, we had a pretty
6 good reputation of being a pretty good operator of
7 things, okay? We have dealt with the DNR before and
8 we knew that the DNR was coming up with some very
9 rigorous conditions concerning Suburban Water and
10 Sewer, okay?

11 One thing I'd like to state at this
12 time, the Commissioners said never did we ever get a
13 complaint to the PSC, to the Department of Health.
14 We've always sent in good tests and we've taken care
15 of our customers.

16 Now, regardless of what comes out of all
17 this, never has the Public Counsel ever received a
18 complaint, the PSC has never received a complaint
19 about the Suburban Water until all of this came up
20 and people wanted to be on TV, and yes, they wanted
21 to complain, okay?

22 Now, rephrase the question again. I'm
23 sorry I got off of it.

24 MR. REED: I need another exhibit
25 marked.

1 (EXHIBIT NO. 15 WAS MARKED FOR
2 IDENTIFICATION BY THE COURT REPORTER.)
3 BY MR. REED:

4 Q. Mr. Burnam, as I understand it, you had
5 your attorneys draft a letter to Suburban Water's
6 customers indicating that, "Your water service will
7 be shut off indefinitely on or about July 1st, 2007"?

8 A. Yes.

9 Q. All right. After this notice went out,
10 you had customers calling in, did you not, concerned?

11 A. Several.

12 Q. And you directed all those phone calls
13 to your attorney?

14 A. Yes.

15 Q. In other words, you didn't take those
16 phone calls?

17 A. Well, I think Mrs. Belcher had some at
18 our office that I'm not sure, and I think she
19 directed them to our attorney.

20 Q. To your attorney?

21 A. Yeah.

22 Q. And what did your attorney tell the
23 customers?

24 A. You'll have to ask him.

25 Q. What did you tell your attorney to tell

1 the customers?

2 MR. HARRISON: That's privileged.

3 THE WITNESS: Privileged.

4 MR. REED: It's privileged. All right.

5 Judge, I'd like to move for admission of Exhibits 15,

6 I believe the last one I marked, and also No. 6.

7 JUDGE LANE: Exhibit 6, the brochure and

8 15, the shut-off letter have been offered into

9 evidence. Any objection?

10 MS. BAKER: No.

11 MR. HARRISON: No objection to 6. I'd

12 like to see 15.

13 MR. REED: Oh.

14 MR. HARRISON: Relevance objection as to

15 15 again --

16 JUDGE LANE: Overruled.

17 MR. HARRISON: -- I don't think this is

18 before the Commission.

19 JUDGE LANE: Any other objections?

20 MR. HARRISON: No.

21 JUDGE LANE: The exhibits are received

22 into evidence.

23 (EXHIBIT NOS. 6 AND 15 WERE RECEIVED

24 INTO EVIDENCE AND MADE A PART OF THE RECORD.)

25 MR. REED: And we'll -- we'll provide

1 copies of No. 15 as soon as we can, Judge.

2 JUDGE LANE: All right. Thank you. It
3 might be a good time since we've been going for --
4 since about 8:00, so it's about two and a half hours.
5 I don't like to have my court reporter going for any
6 longer than that. So I'd -- I'd like to have us take
7 a 15-minute recess and we'll be back on the record
8 after that. Thank you.

9 (A RECESS WAS TAKEN.)

10 (EXHIBIT NO. 67 WAS MARKED FOR
11 IDENTIFICATION BY THE COURT REPORTER.)

12 JUDGE LANE: All right. We're ready to
13 go back on the record in Case No. WC-2007-0452. When
14 we took our break, Staff was conducting the direct
15 examination of witness Gordon Burnam. And Counsel,
16 you may proceed.

17 MR. REED: Thank you.

18 BY MR. REED:

19 Q. Mr. Burnam, after the 2005 rate case
20 that we had talked about a little bit earlier, after
21 that case was completed, Suburban Water and Sewer
22 Company stopped reading the meters on many of the
23 buildings, did it not?

24 A. That's correct.

25 Q. And instead, I think Suburban and you,

1 as president, chose to bill a flat rate to many of
2 these buildings?

3 A. At the rate -- we were granted the rate
4 increase in '05. We met with members of the people
5 down here and said that because of the metering type,
6 that we could issue a flat rate of \$12.30 per living
7 unit, okay? And at the time, since we were
8 flat-rating them, all of the commercial units, I
9 could not see any reason for reading the meters again
10 because I was always gonna just charge them \$12.30.

11 Q. And tell us who from the Staff you
12 entered into this agreement with that you would no
13 longer read many of the meters.

14 A. I don't remember it being discussed.
15 You know, it was always a living unit at -- you know,
16 at the rental units there, and the separate deal with
17 the single-family houses where we read the meters.

18 Q. Do you have the name of a person,
19 though, you discussed this with?

20 A. It was discussed amongst seven Staff
21 members, Martin Hummel -- Hummel was the one that led
22 the discussion.

23 Q. The Disposition Agreement in the
24 Commission's order that we had talked about a little
25 bit earlier, those Exhibits 1 and 2, you would agree

1 that there's no -- there's nothing in those documents
2 that calls for a change in the way you bill your
3 customers, is there?

4 MR. HARRISON: You're asking the witness
5 for a legal conclusion and the document speaks for
6 itself. There's an objection pending.

7 THE WITNESS: I'm just not with you. We
8 had a --

9 MR. HARRISON: There's an objection
10 pending.

11 THE WITNESS: Okay, okay.

12 JUDGE LANE: Just a moment. Your
13 objection is that the question calls for the witness
14 to draw a legal conclusion and the document
15 interpreting --

16 MR. HARRISON: And -- and it's the best
17 evidence of what it says.

18 JUDGE LANE: He can refer to his
19 understanding of the document. I'll allow it.

20 MR. HARRISON: So the question is what
21 his understanding of the agreement is, then?

22 MR. REED: The question is just as I put
23 it.

24 THE WITNESS: The way that I understood
25 it from Mr. -- Mr. Hummel is this is, that we got a

1 flat rate on all of the living units where there
2 was apartments involved, and we were to continue
3 reading the meters on single-family houses, which we
4 have done.

5 BY MR. REED:

6 Q. And stop reading the meters on the
7 multiple-family housing?

8 A. That's correct.

9 Q. And Mr. Hummel is the person you talked
10 to about that?

11 A. That's correct.

12 MR. REED: That's all.

13 JUDGE LANE: Thank you very much.

14 Cross-examination by Office of Public Counsel,
15 Ms. Baker.

16 MS. BAKER: Thank you.

17 CROSS-EXAMINATION BY MS. BAKER:

18 Q. Mr. Burnam, through the tariff that's
19 been given to Suburban Water and Sewer, Suburban
20 collects revenues from the customers; isn't that
21 correct?

22 A. That's correct.

23 Q. And in return for that revenue, the
24 customers are to receive safe and adequate service;
25 isn't that correct?

1 A. That's correct.

2 Q. And Suburban and Water -- Suburban Water
3 and Sewer is the only source of water for the
4 customers there in the BonGor Lake Estates?

5 A. No. There's an alternate source that
6 could be hooked on, but basically that's right.

7 Q. And who has control over whether that
8 alternate source is turned on or off?

9 A. If we have a repair in the system, we
10 have an agreement with the water district where that
11 we can call them and you turn their water there if
12 we're down for an extended amount of time.

13 Q. Okay. So the customers themselves do
14 not have control over that emergency connect; is that
15 correct?

16 A. No, we do that just as an accommodation,
17 and then, of course, they charge us an exorbitant
18 rate for water.

19 Q. But again, the customers have no control
20 over that, correct?

21 A. No.

22 Q. All right. In your testimony earlier,
23 you said that you sent a letter to the customers --
24 and I believe that was Exhibit 15, to the customers
25 but didn't intend to turn the water off; isn't that

1 correct?

2 A. That's right.

3 Q. Did you tell the customers that even
4 though they got this letter, you really did not
5 intend to turn the water off?

6 A. Nobody asked me.

7 Q. You had gotten contacts from the
8 customers when they received that letter, didn't you?

9 A. No. Personally, no.

10 Q. Okay. Suburban or Vista had gotten
11 contacts from customers after they received that
12 letter; isn't that correct? You had stated --

13 A. No -- no -- no customer contacted me
14 personally at -- on that letter.

15 Q. Okay. All right.

16 A. Absolutely none.

17 Q. All right. Customers who did contact
18 the customer support line, isn't it correct -- and
19 you said earlier, that they were sent to your
20 attorney for comment?

21 A. That's correct, yes.

22 Q. Okay. Were any -- were any of the
23 customers who contacted Suburban or the customer
24 support line, were they told that you did not -- or
25 Suburban did not intend to turn off the water?

1 A. No.

2 Q. Okay. So basically -- and you had
3 stated that there were several of these conditions of
4 the Disposition Agreement that were not fulfilled; is
5 that correct?

6 A. Of the '05 agreement?

7 Q. Yes.

8 A. Yes, some of them we were working on and
9 some of them we did not do.

10 Q. Okay. So instead of fulfilling your
11 duty under the Disposition Agreement, the ratepayers
12 were just a pawn?

13 A. To what, repairs?

14 Q. Yes. Instead of fulfilling your duty
15 to -- to implement the repairs in the Disposition
16 Agreement, the ratepayers were just a pawn; is that
17 correct?

18 A. We have always repaired on an as-needed
19 basis, and none of our customers has ever been
20 without water over eight, maybe ten hours if we had a
21 big break in the line or something like that. So we
22 have always taken repairs, we've always made sure
23 that our customers had water.

24 Q. Okay. But you did not take care to make
25 sure that they were not afraid that the water would

1 not (sic) be turned off; is that correct?

2 A. I'm sure they were afraid when they got
3 the letter.

4 Q. And you did not care or Suburban did not
5 care; is that correct?

6 A. I didn't say that I didn't -- did not
7 care.

8 Q. But you --

9 A. And never did I ever tell anybody that I
10 was going -- in all of this, that I was gonna turn
11 off the water, okay? We had to get the attention of
12 the Public Service Commission because the Commission,
13 we write them letters. They would not respond to our
14 letters, okay? We would send them certified letters
15 and they still wouldn't respond to it.

16 Q. And so through that you used the
17 ratepayers and their fear of losing their water as a
18 mechanism for your desire to get out of the water
19 system business?

20 A. No, to get the attention of the Public
21 Service Commission.

22 Q. To fulfill your desire to walk away from
23 the water system; is that correct?

24 A. I've never said that. Never thought it,
25 never crossed my mind.

1 Q. Never crossed your mind? You sent out a
2 letter to that effect. It apparently crossed your
3 mind; is that correct?

4 A. Let me -- let me go back --

5 MS. BAKER: No. I have no further
6 questions. Thank you.

7 JUDGE LANE: Thank you very much.

8 Cross-examination by Suburban.

9 MR. HARRISON: Your Honor, I think I'm
10 gonna reserve my cross for our case.

11 JUDGE LANE: Very well. We'll now
12 proceed to questions from the bench. Commissioner
13 Murray.

14 COMMISSIONER MURRAY: Thank you.

15 QUESTIONS BY COMMISSIONER MURRAY:

16 Q. Good morning. Mr. Burnam, is it?

17 A. Yes.

18 Q. I'd like to ask you about the
19 Disposition Agreement that was entered into in
20 2005 --

21 A. Yes.

22 Q. -- and settlement of the small company
23 rate case proceeding.

24 A. Uh-huh.

25 Q. You signed that on behalf of the

1 company; is that correct?

2 A. Yes.

3 Q. Okay. And I -- then I assume you are

4 familiar with it?

5 A. Very familiar.

6 Q. All right. On item No -- No. 8 listed

7 on that agreement, is -- I'm sorry. It's -- yeah,

8 okay. It was item No. 8. The parties agreed that

9 "The company will develop and distribute to all

10 customers a brochure detailing the rights and

11 responsibilities of the utility and its customers."

12 Has the company done that?

13 A. Yes.

14 Q. And when did -- when was that done?

15 A. In probably the last 45 days.

16 Q. Okay. And -- and why was it not done

17 sooner?

18 A. Well, remember, the order says with the

19 exception of establishing meters at a certain time.

20 There was no time limit set in that order.

21 Q. Okay. I understand that. I'm just

22 asking you why it was not done earlier.

23 A. Yeah. I mean, we just didn't work it --

24 we're a small company. Suburban has no employees,

25 and it's a matter of working it in -- through our

1 other office.

2 Q. Okay. And then item No. 9 stated that,
3 "The company will develop a continuous property
4 record system for a plant that at a minimum includes
5 the date plant is placed in service, the purchase
6 price of the plant and the dates of retirement of
7 property." Did the company develop a continuous
8 property record system?

9 A. The only thing we did was for tax
10 purposes and for -- also for depreciation purposes
11 for PSC. Since PSC has a different depreciation than
12 the IRS, why, my wife set it up on the books. I'm
13 not sure how she did it.

14 Q. What do you think that paragraph -- or
15 item No. 9 in that agreement that you agreed to, what
16 do you think it required?

17 A. I guess because to make sure the meters
18 were working or something, and -- and have a program
19 in place to maintain them or replace them or
20 something.

21 Q. Okay. I'm -- I'm not sure myself
22 what --

23 A. Okay.

24 Q. -- a continuous property record system
25 is.

1 A. Yeah.

2 Q. What do you think a continuous property
3 record --

4 A. Well, the thing of it is, you know, we
5 have -- in the water system we have the underground
6 lines, okay? We have a standpipe, we have a pump
7 that sets 450 feet in the ground, okay, and we have a
8 standpipe, and that's basically it. And the
9 standpipe has never been replaced. The pump is
10 replaced. Normally it's about every five years the
11 pump has to be replaced and there's just no other
12 things. So we'd never kept it except on -- on the
13 books basis.

14 Q. Okay. And this agreement required you
15 to -- that -- required that record system, that at a
16 minimum includes the date plant is placed in service.
17 Did you -- did you include the date that --

18 A. No.

19 Q. -- those items were placed into service?

20 A. The only thing we go by is the bill that
21 is paid out of Suburban Water and Sewer and we used
22 that. I think my wife handles all that, so I'm not a
23 real good person to answer.

24 Q. And is your wife here to answer any of
25 these questions today?

1 A. Yes, uh-huh.

2 Q. All right. And then you agreed that
3 "The company will install meters for all buildings no
4 later than August 31st, 2005." And I think I heard
5 you state earlier that all buildings did not have
6 meters installed as of today; is that correct?

7 A. There's three buildings that have no
8 meters.

9 Q. Okay. And then, "The company will
10 implement a ten-year replacement program for existing
11 meters." Now, has that replacement program been
12 implemented?

13 A. We've always operated on a failure basis
14 in regard to replacing meters. One thing, No. 1,
15 they work or they don't work, okay?

16 Q. Is that a yes or a no?

17 A. Huh?

18 Q. Is that a yes or a no? That just
19 requires a yes or no.

20 A. Well, if we have a paper trail, the
21 answer would be no.

22 Q. Then you agreed that, "The company will
23 install flush valves with the flushing capability of
24 at least three feet per second in all mains." What
25 does that mean, "in all mains"?

1 A. I'm not real sure. That's an
2 engineering thing. I'm not an engineer. I know that
3 we have not installed them, but we do have an
4 estimate of what it would take to install them.

5 Q. And what is that estimate?

6 A. I think it's about \$6,000 as well as I
7 remember.

8 Q. And how many are there?

9 A. Three, I think, is what the --
10 Mr. Hummel required.

11 Q. Have any been installed?

12 A. I'm sorry. I didn't hear you.

13 Q. Have any of them been installed?

14 A. Well, we have one flush valve that's
15 been in place for a long, long time but we have never
16 had the three installed.

17 Q. And the one you have in place, does it
18 have a capability of at least three -- three feet per
19 second?

20 A. The engineers say no.

21 Q. And you agreed that, "The company will
22 replace the standpipe inlet with a high -- with an
23 inlet high enough to provide adequate circulation and
24 detention time." You indicated, I believe, that you
25 have replaced a standpipe inlet or the standpipe

1 inlet?

2 A. No, no.

3 Q. You have not?

4 A. What we have done -- we -- any time it
5 sprung a leak, we fixed it and everything. Again, we
6 hired an engineer, and the only way that we can judge
7 exactly on that is that our engineer tells me that we
8 have to get a person to go down in the standpipe and
9 physically check it, and we have not done that, but
10 it's in the plan to do it.

11 Q. But the agreement was to replace the
12 inlet?

13 A. Well, I'm not even sure I was there when
14 they set the thing, and I'm not even sure what
15 they're talking about on an inlet. But it concerns
16 the flow of the water out as it's pumped in, and then
17 it's a gravity system, not a pressure system.

18 Q. So when you signed the agreement, you
19 didn't understand what was required?

20 A. Nope, I just didn't check into it. And
21 one of the reasons was because we also had the same
22 deal from the DNR, and that was one of their
23 objections that we had to do.

24 Q. Okay. Item No. 14 agreed to by the
25 parties that, "The company will contract with a

1 certified operator to maintain the company's well and
2 distribution system." And I believe I heard you say
3 earlier you have not done that; is that right?

4 A. No, but we've contacted several
5 operators and asked them if, you know, they could
6 service. And the ones that we contacted, Lake of the
7 Ozarks, a company here in Jeff City, and said that it
8 was just too far for a certified operator.

9 We sent one of our employees to
10 certified school. Unfortunately, they lacked two
11 percentage points of passing. At the present time,
12 we have been in contact with a certified water
13 operator that lives in the Columbia area.

14 Q. So how long have you been attempting to
15 contract with a certified operator?

16 A. Ever since '05. That was one of the
17 things that we got to work on right away.

18 Q. Is cost an issue there in terms of what
19 it would cost you to -- to contract?

20 A. The only thing we have is the people.
21 They just said that it was too far for them to send
22 their operator, you know, certified operator up
23 there. And like I said, we also contacted another
24 certified water operator, and he was retired from the
25 City of Columbia, and he was getting ready to leave

1 town, so he didn't, of course, want to do it.

2 Q. Do you have written correspondence from
3 these operators that you had contacted?

4 A. Yeah, Paula Belcher. She's got some
5 paper trail. One of them I know here in Jeff City
6 was Aqua, which is a fairly large company, it gets
7 water districts. Another one was a guy by the name
8 of Ned Goss (phonetic spelling) down at Lake of the
9 Ozarks. I talked to him personally.

10 Q. And do you remember when you talked to
11 these two --

12 A. I can't remember the exact date.

13 Q. Not even approximately?

14 A. No.

15 Q. Okay. Then the next one was the company
16 agreed "to provide quarterly reports regarding
17 monthly customer meter usage and monthly master usage
18 data to the auditing staff of the Commission for the
19 period July 1, 2005 through December 1, 2000 --
20 December 31, 2006." What --

21 A. We just never did it.

22 Q. You just didn't do that. Okay. Any
23 reason?

24 A. You got to remember, we're a very small
25 company, and, you know, certain things slip through

1 the cracks.

2 Q. You forgot?

3 A. I can't remember.

4 COMMISSIONER MURRAY: Okay. I believe

5 that's all. Thank you.

6 THE WITNESS: Uh-huh.

7 JUDGE LANE: Thank you very much.

8 Commissioner Gaw?

9 COMMISSIONER GAW: I'm gonna pass right

10 now.

11 JUDGE LANE: All right. Commissioner

12 Clayton?

13 COMMISSIONER CLAYTON: Thank you.

14 QUESTIONS BY COMMISSIONER CLAYTON:

15 Q. Good morning, Mr. Burnam.

16 A. Good morning.

17 Q. I have some questions that may have

18 already been asked and I apologize if they're

19 repetitive.

20 A. Okay.

21 Q. I wanted to get some background on your

22 involvement in the water industry. Do you operate

23 any water companies anywhere other than Suburban

24 Water?

25 A. We have one mobile home park that we

1 furnish water to our customers there.

2 Q. And where is that?

3 A. It's located in an area called

4 Prathersville, north of Columbia.

5 Q. Prathersville?

6 A. Yeah.

7 Q. Yeah, I know where that is. Okay. And

8 do you sell water at retail? Do you sell it to

9 customers?

10 A. In the mobile home parks?

11 Q. Yes.

12 A. No. We furnish it as part of the rent.

13 Q. You just furnish it. And is that also

14 called Suburban or is it under a different name --

15 A. No, no, no.

16 Q. -- or is it even a company?

17 A. No. The reason all of this came up, we

18 just went through a big deal with the --

19 Q. First of all --

20 A. Okay. Okay.

21 Q. Let me just -- let me just -- I don't --

22 I appreciate all that, if I have additional

23 questions, just, is there a company that's -- a

24 separate company that's in Prathersville offering --

25 that provides that water?

1 A. Yes, uh-huh.

2 Q. What's the name of that company?

3 A. It's called Burnam Family Company.

4 Q. Burnam Family. Okay. And is its sole

5 purpose to be in existence just to -- to provide that

6 water to a mobile home park?

7 A. That's correct.

8 Q. Did -- did Burnam Family Company also

9 develop the mobile home park; is that how it came

10 about?

11 A. Yes, uh-huh.

12 Q. Yeah?

13 A. Yes.

14 Q. Okay. Now, do you have any other water

15 companies anywhere else?

16 A. No.

17 Q. Okay. And is -- is your primary career

18 been involved in developing water companies?

19 A. No.

20 Q. All right. What has been your

21 primary --

22 A. Well, we started out as a contractor

23 building houses, single-family houses, duplicates,

24 and our main -- when we retired was mini warehouses.

25 Q. I'm sorry?

1 A. Mini warehouses.

2 Q. Oh, mini warehouses.

3 A. Yes.

4 Q. Like storage facilities?

5 A. That's correct. We developed one here

6 in Jeff out on St. Mary's.

7 Q. Okay. Now, did you -- do you also do

8 home building?

9 A. Well, I did years ago but we haven't

10 built any single-family homes in a long time.

11 Q. Okay. Did you develop the houses that

12 were in the subdivision that's the subject of this

13 case?

14 A. A majority of the homes and buildings

15 that were built up there, but there was three other

16 builders that built in the area also that we sold

17 lots to.

18 Q. Okay. Is it fair to say that you were

19 the primary developer of the -- of the tract?

20 A. I'd say that would be fair.

21 Q. How big of an area are we talking in

22 terms of acreage?

23 A. We're talking probably about an area of

24 maybe 15 to 18 acres.

25 Q. 15 to 18 acres, and were you the

1 original purchaser of the original 15 to 18 acres?

2 A. Yes, uh-huh.

3 Q. Okay. And then you would sell lots --

4 A. That's correct.

5 Q. -- to other developers?

6 A. Uh-huh, that's correct.

7 Q. All right. How many houses would you
8 say exist within the 15 to 18 acres?

9 A. Well, we know that Suburban covers a
10 total of 39 -- I'm sorry, 37 in the immediate area
11 and another two additional.

12 Q. How many subdivisions -- let me ask the
13 question this way: How many subdivisions would you
14 say are located on the 15 to 18 acres? Is it all one
15 together or are there several --

16 A. No. It's all one subdivision.

17 Q. It's all one. And what is it called?

18 A. BonGor Lake Estates, blocks 1 through 5.

19 Q. Okay. And there were, say, two other
20 developers?

21 A. Three.

22 Q. Three other developers?

23 A. Uh-huh.

24 Q. What was the name of your development
25 company that --

1 A. BonGor Development.

2 Q. Who would have been responsible for
3 developing the infrastructure for the development,
4 the common area like the roads --

5 A. We hired a -- yeah, we hired an
6 engineer.

7 Q. But who -- who -- who paid to put in the
8 infrastructure?

9 A. Yeah, we did.

10 Q. That was your responsibility?

11 A. Yeah, my wife and I.

12 Q. All right. And you-all put in all of
13 the -- all of the water system?

14 A. That's correct.

15 Q. And all the -- the common pipes and
16 mains?

17 A. Yeah, uh-huh.

18 Q. Yeah? What year would that have taken
19 place?

20 A. It probably started in '70 and we
21 probably finished the water lines probably in the
22 early '80s, completed -- we did it by blocks, like I
23 said, blocks 1, 2, 3, 4 and 5. We would build a bit,
24 sell them, and then we'd go a little farther and a
25 little farther.

1 Q. Okay. Now, the other developers that
2 you were selling lots to, would they -- would they
3 develop the water systems associated with each of
4 your lots?

5 A. No, no. They were builders, they
6 bought -- the water was to the lot line and then it
7 was their responsibility to go into the homes.

8 Q. So there would be a main that would get
9 the water --

10 A. That's correct.

11 Q. -- to their --

12 A. That's correct.

13 Q. -- to their property lines?

14 A. Yeah.

15 Q. And then when they developed the house,
16 they would -- they would put in the line from the
17 main into the house?

18 A. Plus the water meter.

19 Q. Plus the meter. Okay. Okay. When --
20 when you were selling lots -- and let me -- let me
21 rephrase this. You began this development in 1970.
22 When did you sell your first house that you had
23 developed?

24 A. We developed four four-plexes was our
25 original that we started the subdivision on. We

1 purchased an additional ten acres after we moved out
2 there and there was an existing duplex, and then we
3 started out, we built four four-plexes. And that's
4 what we started out with, and then the single-family
5 homes came at a later date.

6 Q. What year would have been the first four
7 four-plexes?

8 A. I think they would -- probably would
9 have been finished in about 1974.

10 Q. '74. And did you operate those
11 four-plexes or did you sell them?

12 A. Well, we -- we operated them for several
13 years and then we sold them.

14 Q. What year did you sell the four-plexes?

15 A. 1986.

16 Q. So you kept them for a good 12 years
17 there?

18 A. No, more than that.

19 Q. When did you sell your first house or
20 your first apartment building to a third party?

21 A. Probably in 1975.

22 Q. And would that have been a house or --

23 A. No, it was a four-plex.

24 Q. Four-plex. And when you sold that
25 structure to a third-party, what was the deal on

1 water? Was there a deal on water?

2 A. Well, you mean when I sold the four-plex
3 lot?

4 Q. Yeah, was that --

5 A. Well, it's the same as a single-family,
6 that we would -- the lines were in and then they
7 would put -- install a meter, a meter -- a meter --
8 well and a meter.

9 Q. A well and a meter?

10 A. A meter well which the --

11 Q. Oh, a meter well.

12 A. -- meter sits in, uh-huh.

13 Q. So the third party would install the
14 meter well, and then --

15 A. We would install the meter.

16 Q. You'd install that for them?

17 A. Yeah, I'm sorry. Yeah.

18 Q. And then what was the arrangement on
19 reading the meter or even recording the water?
20 What --

21 A. Yeah, we --

22 Q. Did they pay you for the water? Would
23 they pay Suburban the water --

24 A. No. It was paid to Suburban and we read
25 the meter.

1 Q. Okay. So Suburban -- what year would
2 have Suburban been created, 1975?

3 A. 1973.

4 Q. Okay. And it would have had its
5 certificate by that time?

6 A. That's correct.

7 Q. Certificate of Public Convenience and
8 Necessity?

9 A. The first buildings, we operated off of
10 an existing well that was on the property.

11 Q. So in 1973 did Suburban have rates that
12 were approved by the Commission?

13 A. Yes. The main reason we got in the
14 water business is because we had to get in the sewer
15 business, too.

16 Q. But does Suburban operate a sewer
17 company?

18 A. Yes, Suburban Water and Sewer.

19 Q. It does?

20 A. We operated a sewer company for maybe 15
21 years.

22 Q. And you sold that?

23 A. Yes.

24 Q. And -- and these customers in the BonGor
25 development are served by that same sewer company?

1 A. That's correct, uh-huh.

2 Q. What -- do you know the name of that
3 sewer company?

4 A. Yeah, Boone County Regional Sewer
5 District.

6 Q. Boone County Sewer District. Okay.
7 When did -- when did you sell your last structure to
8 a third party in the BonGor development?

9 A. The last lot? I -- I really can't
10 remember.

11 Q. Would it have been in the '80s or '90s?

12 A. I'd say it would probably be in the
13 '80s, but I couldn't -- time gets by, I just can't
14 remember. I take it back. The last -- there was two
15 lots left and the last lots we sold was probably in
16 the early '90s.

17 Q. Did -- did you or Suburban ever just
18 give away water where you didn't charge people?

19 A. One instance.

20 Q. Was it by accident or --

21 A. No. My grandson lived there.

22 Q. Okay. Do you believe that Suburban is
23 experiencing water quality problems today?

24 A. The only thing I can say is that we send
25 in a test to the Department of Health on a monthly

1 basis, okay? According to our records, only one time
2 in the last five years have we ever had a test come
3 back, and then what the procedure is, if you send in
4 a test to the Health Department, it doesn't pass,
5 why, then you have to go back and take five other
6 tests, okay?

7 And then when we -- it didn't fail.
8 When it did fail, we went back and tested five
9 different homes, sent it in and it did pass. That's
10 the only time that we've ever had any -- any tests
11 fail and we send it religiously to the DNR -- I
12 mean -- I'm sorry, to the Health Department.

13 Q. And what year would that testing have
14 been done?

15 A. You'll have to ask -- Paula Belcher is
16 my associate. She's the one that handles that and
17 she could probably tell you the year. She's been
18 with me five years, so it's her responsibility to
19 take the water tests.

20 Q. Were you at the local public hearing the
21 other night?

22 A. No.

23 Q. In Columbia? No? Did you -- have you
24 had an opportunity to review the transcript for that?

25 A. No.

1 Q. Have you received any feedback from your
2 attorney of what went on at the local public hearing?

3 A. No, just general comments, you know,
4 what people made concerning the -- you know, what
5 happened, I guess.

6 Q. Did it get relayed to you the -- the
7 problems in water quality that were raised at the
8 local public hearing?

9 A. Well, the only thing -- when you talk
10 about water quality, yes, I mean, they did
11 complain --

12 Q. I mean, was it passed on to you --

13 A. Yes, yes.

14 Q. -- that there were people talking about
15 how the water smelled like sulfur --

16 A. Okay. That's right.

17 Q. -- and that they had to replace water
18 heaters on a regular basis and that they had toilets
19 that were ruined? I mean, did that information get
20 related to you?

21 A. Yes.

22 Q. It did. And do you believe there is any
23 merit to those concerns that were raised?

24 A. Okay. No. 1 is, I lived in the area for
25 25 years --

1 Q. Okay.

2 A. -- okay? As you can see, other than
3 open heart surgery, I'm pretty healthy, okay? We
4 drank the water. It wasn't -- and there is a problem
5 with the water, it's very hard, okay? There's -- and
6 I may be pronouncing it wrong, hydrogen sulfate, that
7 if you go away on a weekend and you come back and
8 turn on your hot water heater, it smells like rotten
9 eggs, okay?

10 Now, that used to be the case. Not
11 because the Commission ordered, but we started
12 arbitrarily chlorinating the water at BonGor Lake
13 Estates just because we wanted to give good water
14 service to that. And that should have eliminated it,
15 but still it's a problem, you know. We can't judge
16 what everybody does, how they handle their water.

17 Q. When did you live in the BonGor
18 development?

19 A. From 1966 to 1991.

20 Q. And during that entire time, the --
21 after being away for a couple of days, the water
22 would smell like rotten eggs during that entire time?

23 A. No, no. In the hot water heater -- hot
24 water only. It would settle in the bottom of the hot
25 water heater, and then when you turn the hot water

1 on, not the cold with the hot, why, it smells like
2 rotten eggs.

3 Q. Okay. And it was like that from 1966
4 through 1991 during the time you lived in BonGor
5 subdivision?

6 A. Yes. I might add that our house was not
7 chlorinated.

8 Q. Okay. Okay. And during the time that
9 you lived there and the hot water smelled like rotten
10 eggs, you didn't see a problem in the quality of the
11 water that was being provided?

12 A. I raised four kids there and they're all
13 pretty healthy.

14 Q. Okay. So is that a yes or --

15 A. Yes.

16 Q. -- is that a no?

17 A. Yes.

18 Q. Did you ever experience during your time
19 a quality of the water that you thought was not high
20 quality water?

21 A. All I can say is, we received no
22 complaints from the customers. If you're referring
23 to the customers at BonGor --

24 Q. Let's just talk about your service.

25 A. Okay.

1 Q. Was there ever a time when you were not
2 happy with the product that was coming through your
3 pipes?

4 A. Yes, and that's when I started
5 chlorinating.

6 Q. And what year was that?

7 A. I can't remember exactly. I'd say
8 probably in the late '80s, maybe early '90s.

9 Q. Okay. So basic -- and why did you begin
10 that chlorination?

11 A. Just because we wanted good water
12 quality.

13 Q. All right. So there was a problem with
14 water quality that the point?

15 A. No, huh-uh. It passed all tests.

16 Q. Then why did you start chlorinating --

17 A. It passed --

18 Q. Why did you start chlorinating it if
19 there wasn't a problem?

20 A. Just -- just because I'm a nice person
21 and I knew it needed it.

22 Q. Why did you know that it needed the
23 chlorination?

24 A. Well, again, I think one of my sons was
25 living over in one of the living units at the time.

1 But you know, you just know, that's all, you know.

2 Q. Give me an example. Was it a physical
3 issue, was it -- I mean, you could smell or sight or
4 what would lead you to start chlorinating it?

5 A. Well, No. 1 is -- and, of course, we had
6 the apartment manager and we were renting out
7 apartments and we did have some complaints from the
8 tenants. I knew --

9 Q. What -- do you remember what those
10 complaints were?

11 A. Well, it smelled like rotten eggs.

12 Q. Okay. And when those complaints came
13 in, did you tell them or did you -- when those
14 complaints came in, did you believe that there was a
15 problem in the water?

16 A. I knew they smelled like rotten eggs, if
17 that's what you mean.

18 Q. Okay.

19 A. As far as the quality of the water,
20 never, ever do I remember anything but -- other than
21 putting out good quality water, and it's passed all
22 tests.

23 Q. Okay. So those complaints came in
24 sometime in the late '80s, and that's what led to
25 your decision to start chlorinating?

1 A. Well, they probably came in in the '70s,
2 '80s. I can't remember exactly, you know.

3 Q. When -- so -- but when did you -- when
4 do you think you started chlorination?

5 A. I think it was in late '80s or early
6 '90s.

7 Q. Late '80s and early '90s.

8 A. Yeah.

9 Q. And it was due to complaints coming in
10 from the apartment complexes?

11 A. Yeah, we had several.

12 Q. Okay. According to my notes here, I
13 wrote down that you sold your last house or your last
14 structure sometime in the 1980's. Would it be fair
15 to say that, that -- you had -- you were done selling
16 houses in the BonGor development by the time you
17 started chlorination?

18 A. I think we sold our last house -- it's
19 beginning to come back. We did build one in the late
20 '80s and early '90s, and that would be when it was,
21 early '90s.

22 Q. Okay. Were there any other complaints
23 other than the rotten egg smell that you recall that
24 led to the chlorination?

25 A. No.

1 Q. So it's just the -- the rotten egg smell
2 that led to chlorination?

3 A. Uh-huh, that's correct.

4 Q. Okay. So --

5 A. And the water was very hard also.

6 Q. And the water was hard. What does that
7 mean?

8 A. Well, if you take a sample, it's the
9 iron content.

10 Q. And what does that mean, beyond that?
11 It's a high iron content --

12 A. Yeah.

13 Q. -- does it taste different, does it
14 look --

15 A. No. It doesn't taste. It's just the
16 idea that if you don't have a water softener, it
17 takes more soap to wash your clothes because of the
18 iron content, is a classic ...

19 Q. So that -- are there any other issues
20 with hard water other than just needing more soap?

21 A. Not that I'm aware of.

22 Q. Does it affect appliances in any way?

23 A. I'm not sure.

24 Q. Does it affect pipes in any way?

25 A. I'm not sure.

1 Q. Does it affect plumbing fixtures in any
2 way?

3 A. I think probably the hardness of the
4 water would be more than the iron content, but again,
5 I'm no engineer.

6 Q. Okay. Is it fair to say you're not sure
7 what hard water means?

8 A. Hard water?

9 Q. Yeah, what -- what hard water is?
10 You're not sure what it is?

11 A. I think hard water is the iron content
12 and some other chemicals, and I'm just not aware of
13 it.

14 Q. Okay. And you're not sure other than
15 needing more soap, what other impact hard water would
16 have on a particular system?

17 A. I couldn't -- I just don't know.

18 Q. Okay. And you have operated a water
19 company for, what, some 30 years; is that correct?

20 A. Yes.

21 Q. Yeah. Do you think someone operating a
22 water company for that long should be aware of what
23 hard water is and what its impact is on appliances
24 and fixtures?

25 A. It was something over which I had no

1 control. In other words, if everybody put in a water
2 softener, they would alleviate the problem. You
3 know, if somebody buys a house, you can't go over and
4 say, I -- put in a water softener or I'm not gonna
5 give you water. It's just something over -- without
6 our control.

7 Q. So your testimony is that hard water is
8 completely out of your control and there wasn't
9 anything you can do about it?

10 A. Yeah, I can't do anything about it.

11 Q. There's no treatment that you could do?

12 A. Not that I'm aware of and I'm not saying
13 that there isn't.

14 Q. So there may be some treatment --

15 A. Yeah, there may be.

16 Q. -- that a company could -- could soften
17 the water where it's pumped in, you're just not sure?

18 A. I'm just not familiar with it.

19 Q. Okay. Okay. Now, it was your
20 testimony, I believe, that the water in the hot water
21 tank smelled like rotten eggs from the very start
22 when you first started producing the water sometime
23 in the late 1960s or early '70s; is that --

24 A. No, I think it was pretty common from
25 the word get-go, from Suburban Water about the -- I

1 think it's called hydrogen sulfate, and it's heavier
2 than water and it settles in the bottom of the water
3 tank, the hot water heater.

4 Q. Where were you getting your water in
5 1966 when you lived out in BonGor development?

6 A. From the lake that we had there through
7 a sand filter.

8 Q. Okay. Okay. And then the water company
9 started -- started up in 1973, and so then from 1973
10 on, you would have received water from Suburban
11 Water?

12 A. No, not --

13 Q. No?

14 A. It was at a later date that we did. And
15 the fact is, in the meantime, Public Water District 7
16 came along to the old Highway 63, we call it, and we
17 hooked on to that, one of the houses, and then fed
18 off to our house.

19 Q. Okay. Is it a fair statement that the
20 rotten egg smell, the hydrogen sulfate, existed in
21 the water from the beginning of the existence of
22 Suburban Water in 1973?

23 A. That's correct.

24 Q. Okay. And how many complaints would you
25 say you received when you -- when you made the

1 decision to start chlorinating the water?

2 A. I don't -- rephrase that. I'm not with
3 you.

4 Q. At some point you made a decision to
5 chlorinate the water?

6 A. Yeah, okay. In the late '80s, early --

7 Q. And I think you made it a point of
8 saying it wasn't the Commission that made you do it,
9 it wasn't --

10 A. Yeah. No, we just --

11 Q. -- any government entity that made you
12 do it; it was your decision?

13 A. That's correct.

14 Q. Okay. So how many complaints -- and
15 then you -- then you further said that it would --
16 complaints started coming in from some of your
17 tenants or some of your owners that led to your
18 decision to chlorinate. Did I accurately --

19 A. Yeah, yeah. I think as far as how many,
20 I can't remember, you know, how many complaints we
21 had or we didn't have.

22 Q. Well, how much does it cost to begin the
23 chlorination process?

24 A. Okay. You buy a chlorinator, and as the
25 water comes 1,000, 50 foot in the ground, why, the

1 chlorination is pumped into it. It has a pump before
2 it goes into the standpipe.

3 Q. What kind of cost are we talking about
4 to put in a --

5 A. The chlorinators, you'll have to ask
6 Ms. Belcher. She just bought one recently and she
7 can tell you how much they cost. I can't remember.

8 Q. Is it -- is it a significant amount of
9 money?

10 A. Oh, I don't think so. It's the Clorox
11 that goes into them. It's a lot more expensive than
12 the actual chlorinator. Chlorinator pumps are high
13 maintenance, though.

14 Q. And you don't recall how many complaints
15 that you received to lead to that decision?

16 A. No, huh-uh.

17 Q. Since the chlorination system was -- was
18 installed, are you aware of other complaints that
19 have been raised on -- on the smell or taste of the
20 water by people who live in the area?

21 A. To the best of my knowledge, like I
22 stated earlier to the Public Counsel and to the PSC,
23 they have received no complaints on the BonGor Lake
24 water system, at least they didn't bring it to our
25 attention.

1 Q. So -- so no one brought it to your
2 attention on the smell or the taste?

3 A. Well, it was an ongoing problem from day
4 one, but as far as how many people brought it to my
5 attention, I can't remember.

6 Q. Now, -- okay. Now, you made that
7 statement, you say it was a problem from day one.

8 A. That's right.

9 Q. What do you mean it was a problem from
10 day one?

11 A. It had the odor. The water didn't
12 change.

13 Q. Okay. So -- so you -- you agree that
14 it's been a problem?

15 A. Yes.

16 Q. Okay. But then you also say that you
17 offer a high quality of water. So is the smell of
18 the water a problem? Is it not a problem?

19 A. Not with -- whether it's good or bad, it
20 has nothing to do on that. Why would the Health
21 Department give me a good test and let me operate if
22 I was putting out bad water?

23 Q. That's an excellent question. Do you
24 think it was a problem, though, from day one?

25 A. The hydrogen sulfate was --

1 Q. Yeah.

2 A. -- but never about the quality of the

3 water.

4 Q. And yet you waited 20 years before you

5 put in a chlorination system?

6 A. You know, poor people have poor ways.

7 Q. Poor people have poor ways?

8 A. That's right.

9 Q. What do you --

10 A. Maybe I couldn't afford it back then.

11 Q. You couldn't afford it back then?

12 A. That's right.

13 Q. When could you afford it? Can you

14 afford it today?

15 A. Yes.

16 Q. So something happened? You -- did you

17 do all right over the years? At some point you could

18 afford the chlorination system?

19 A. Well, I've been selling assets trying to

20 retire.

21 Q. I see. Do you still live in the BonGor

22 development?

23 A. No.

24 Q. Do you still live in the area or are

25 you --

1 A. No.

2 Q. You're out of the area?

3 A. I spend most of my time in Florida.

4 Q. Okay. Are you aware of -- does the
5 water still smell like rotten eggs? Does the
6 chlorination system that you installed in the late
7 '80s and early '90s address the smell and quality of
8 the water?

9 A. I personally am not aware, but I don't
10 answer the phone in our office, so you'll just have
11 to ask Mrs. -- Ms. Belcher how many complaints we get
12 concerning that, sir.

13 Q. Do you ask Ms. Belcher how many
14 complaints that you get on -- on -- on the quality of
15 water or on the smell of the water in her office? Do
16 you inquire?

17 A. The last time I checked with her, we
18 received none.

19 Q. And when did you check with her on that?

20 A. Oh, probably two or three weeks ago when
21 all of this came up. Unless people complain, we have
22 no way of knowing, you know.

23 Q. Is the -- is the office, the Suburban
24 Water office, is it located in the BonGor development
25 area?

1 A. No, huh-uh.

2 Q. Do you -- do you plan on reading the
3 transcript from the local public hearing that was
4 conducted the other night? Do you feel that's
5 some -- would be something important for you to do?

6 A. I haven't had the time to do it yet.

7 Q. The question was, do you think you will
8 read it?

9 A. Well, just out of -- I probably will.

10 Q. You probably will? Do you think that --
11 that would be important?

12 A. Well, here's the -- you know, like I
13 said, is that we received no complaints at our
14 office, okay? I don't go around to knock on doors
15 and say, do you have any complaints about your water,
16 okay?

17 When the PSC put all types of ads in
18 the -- both newspapers, big ads, then there's gonna
19 be people come out, out of curiosity. They're also
20 curious about the notice about cutting the water off.
21 So they came out. And you get them in front of a TV
22 mic, they're gonna say this, that or if nothing else,
23 to be on TV. But they did not complain to our office
24 about their water.

25 Q. Okay. So is it your testimony that the

1 people who showed up complaining about the water at
2 the local public hearing were just doing it to get on
3 TV?

4 A. No, I didn't say that, but I said
5 that --

6 Q. Do you think they're a bunch of liars?

7 A. -- some people -- some people might.

8 Q. Do you -- do you think there's just a
9 bunch of liars --

10 A. No.

11 Q. -- showing up complaining about the
12 water quality?

13 A. Just human nature. You give people a
14 chance to complain, some of them are gonna complain.

15 Q. I see. I see. So is that -- do you
16 think it's important for you to just review that
17 material to see who's complaining and why, and what
18 their complaints are? Do you think that's important?
19 That's the question.

20 A. Until somebody calls our office, gives
21 us a name and an address, and they have a problem
22 with their water, we check it out. If they --

23 Q. Is that a yes or a no? Do you believe
24 it's important for you to review the testimony from
25 the local public hearing and see and hear what those

1 complaints were the other night?

2 A. Okay.

3 Q. Is it important to you?

4 A. Okay, not to me personally, but to the
5 lady that operates the water system for me, she does
6 it, she's aware of it and have read -- I think she
7 watched it on the internet.

8 Q. So is it fair to say that it's not your
9 job to do that? That's your employee's job to do
10 that?

11 A. That's right.

12 COMMISSIONER CLAYTON: Okay. That --
13 that makes everything clear. Thank you.

14 JUDGE LANE: Thank you very much,
15 Commissioner Clayton. Commissioner Appling?

16 QUESTIONS BY COMMISSIONER APPLING:

17 Q. Good morning, sir.

18 A. Yeah.

19 Q. I think I only have one or two
20 questions. What do you want to do with this water
21 company?

22 A. I'd be lying if I said otherwise. I
23 want out of the water business, okay? And the reason
24 I want out is we were aware of the DNR requirements
25 that were going to be made on BonGor Lake Estates,

1 okay? Mrs. Belcher and I had consulted with the DNR,
2 they have an office in Macon, Missouri, and we -- and
3 we had just made some improvement to our system that
4 we -- which I told the Commissioner that we operate
5 and everything, and I knew that it was coming to
6 BonGor because they told me, that we were gonna have
7 to get a certified operator, we were gonna have to do
8 this, we were gonna have to do that, okay? And we
9 knew that and everything, okay?

10 And that's why that I went to Public
11 Water District No. 1 in '05 and I made arrangements
12 with them to buy water from them. Then I asked the
13 PSC for a rate increase to buy water and eliminate
14 the well, the standpipe, the odors and everything
15 else, and the Commission would not grant me a raise,
16 okay?

17 Instead, they gave me a raise of \$4,000
18 a year, okay? Okay. Which is peanuts for the --
19 what has to be done to the system, okay? And the --
20 Mr. Brummels (sic) got up and said, "We can't raise
21 rates out there." At the time the Public Water
22 District was paying \$28 a month average cost. Our
23 average cost was about 10 or \$11, okay? We got a
24 rate increase of \$4,000 a year.

25 We tried to get out of the water

1 business. We tried to -- we said that we would read
2 the meters, we would do the administration and
3 everything if we could buy the water. We have an
4 interconnection with Public Water District. Any time
5 that the people are without water, we connect to it.
6 And we made that arrangement, and the PSC would not
7 give us the rate increase where we could buy water
8 and get out of the water producing business of what
9 everybody's concerned about, the quality -- you know,
10 that we just couldn't do it, okay?

11 What they did tell us at that time at
12 that rate hearing, is we said, this isn't enough.
13 What happens if the standpipe goes out, what happens
14 if the pumps go down? This was in May of '05, okay?
15 They give us a deal on a rate -- they give us a meter
16 rate of \$12.30 for the deal, and then the order says
17 we have to read the meters. Now, it's kind of tough
18 to charge on a per-unit basis and then go out and
19 read the meters. It's kind of counterproductive.

20 But anyway, in '05 we tried to get an
21 increase to hook up with the water district. The PSC
22 would not allow that, okay? So we go along to '05,
23 okay, and then '06, guess what happens? The pump
24 goes out, okay? Mr. Brummel (sic) said, "If you have
25 had an emergency, contact us and we will give you an

1 emergency rate increase to cover the additional
2 cost." We sent him a bill, a letter in '06 along
3 with an invoice where we replaced the well -- I'm
4 sorry, the pump, and I think the cost was something
5 like \$15,000.

6 We never heard from the PSC. We never
7 heard from the PSC. They never responded to our
8 letter where we wrote and asked for an emergency
9 hearing. We sent a copy of the bill where we paid
10 the guy that put on the pump. Nothing, okay?

11 Then when we got ready to -- I had to do
12 something, number one. You know, my wife and I last
13 year both had open heart surgery, okay? What's gonna
14 happen to Suburban if we die, okay? So we said,
15 let's try to get out of the water business, okay?
16 Okay. We would have been happy if the PSC had
17 granted us where we could buy the water, okay? But
18 they wouldn't do it, okay?

19 And then our attorneys sends the PSC a
20 letter in January and they deny they ever got it, and
21 it's registered, okay? Now, what am I supposed to
22 do? I'm here, I got bad health, open heart surgery,
23 and when they cut you open and you got a lot of time
24 to think, you're a little fragile, okay? So I think
25 it was good that we started the deal to get us out of

1 the water -- what happens if we die? I'm 76 years
2 old, my wife's 73. PSC doesn't care, they won't
3 answer our letters. What would you do?

4 Q. I feel your frustration, but I just
5 wanted to know what you wanted to do here.

6 A. Yeah.

7 Q. My whole interest here is not to pop
8 your head; my interest here is to make sure that good
9 service gets to the people, and I'm sure that's what
10 you want.

11 A. That's right. And we have never -- we
12 have always given good, clean water and never with a
13 minute -- we just do it, that's all.

14 COMMISSIONER APPLING: Okay. Thank you
15 for your comments. I think I've heard enough, okay?
16 Appreciate it.

17 JUDGE LANE: Thank you very much.
18 Chairman Davis?

19 QUESTIONS BY CHAIRMAN DAVIS:

20 Q. Mr. Burnam, I just want to start out by
21 saying I do apologize. I apologize that your January
22 letter was not responded to, and I apologize for the
23 way that the staff here may have treated you in the
24 past because it's certainly not the first complaint
25 that I've heard. I'm afraid it's probably not going

1 to be the last either.

2 Take me back, if you could, through
3 the -- where you got the \$4,000 rate increase, if you
4 would.

5 A. Okay.

6 Q. You had a -- you had a local public
7 hearing; is that -- is that right?

8 A. I don't think so but I can't remember.
9 I don't think in '05 we'd never had a local public
10 hearing, no.

11 Q. Okay. Did you -- did you ever have a
12 hearing -- I remember -- you know, I voted to approve
13 the increase --

14 A. Uh-huh.

15 Q. -- but did you ever have a hearing in
16 front of the Commission? I mean --

17 A. No, it was just -- there was Warren
18 Brummel (sic) and six other of his associates. We
19 met with Mrs. -- Ms. Belcher and I met here in Jeff
20 City with them.

21 Q. Okay.

22 A. And that's when they said, you know --
23 also, I might add also that the Commission sent three
24 auditors to Columbia, Missouri to audit Suburban's
25 books, and I think they did at the time about \$16,000

1 a year in gross revenue.

2 Q. And do you recall how long -- how long
3 it took those three auditors to get through that
4 \$16,000 a year in gross avenue?

5 A. Just one day.

6 Q. Okay. Well, at least they got it in one
7 day and it didn't take a week. That gives -- does
8 give me some reassurance. So you know, the four --
9 the 4,000 was what basically the PSC Staff told you
10 you were gonna get, take it or leave it; is that --

11 A. That's correct.

12 Q. Is that a -- is that a fair analysis?

13 A. That's absolute truth.

14 Q. And -- and do you recall who told you
15 specifically, you know, we're not gonna pay to let
16 you get hooked up -- or to get your water from the
17 local public water district?

18 A. Mr. Brummel (sic). Martin.

19 Q. Martin Hummel?

20 A. Hummel, I'm sorry.

21 Q. Hummel.

22 A. Okay.

23 Q. Okay. I was getting -- I was getting
24 lost there --

25 A. Okay.

1 Q. -- because I didn't know who Brummel
2 was, but now --

3 A. No, he's the one -- he just said, "We
4 can't give you a rate increase, that's too much."
5 And I said, "Well, that's what their neighbors are
6 paying is \$28 a month average cost."

7 Q. And so it was your impression that --
8 and that would have just basically covered the cost
9 of getting the water from the public water district
10 and converting -- you know --

11 A. No, it wouldn't even come close. Their
12 rate was five dollars per thousand gallon.

13 Q. Okay. Do you -- do you recall what you
14 asked for in that case?

15 A. I wanted to shut down my water system
16 and I wanted to buy water from Public Water District
17 No. 1. We would read the meters and do the
18 administrative end of it --

19 Q. Uh-huh.

20 A. -- and that would put us out of the
21 water-producing business.

22 Q. Right. And do you recall how much --
23 much money that would have cost?

24 A. I -- I can't remember. All I remember
25 is, that it seems like at the time before we got the

1 increase, we were somewhere between 16,500 and 18,000
2 in annual gross income, okay?

3 Q. Uh-huh.

4 A. And then we did have a master meter in --
5 and I can't remember whether we took the exact
6 reading, you know, for that. The only thing I know
7 is that any time we had trouble with the system, we
8 had to buy water. We have an interconnection with
9 the water district --

10 Q. Right.

11 A. -- okay? And any time we'd buy water
12 from them, it would be like 8, 900 or 1,000 bucks.
13 And that's -- I can't remember exactly, figuring from
14 our master meter readings, exactly what it would have
15 cost.

16 Q. Did you make any money off the system in
17 2006?

18 A. Well, right now if -- we couldn't pay
19 our bills if we didn't hit our hip every month, and I
20 think right now that Suburban owes us, in notes,
21 \$36,000.

22 Q. So you've been --

23 A. Every month we hit our hip almost.

24 Q. Okay. And can you help me, what does
25 hitting your hip mean?

1 A. Just take money out of your billfold and
2 deposit it in Suburban's account.

3 Q. Okay. And how long -- how long has that
4 been going on?

5 A. Ask me when it hasn't been.

6 Q. Okay. So has it been going on for ten
7 years?

8 A. 30 years.

9 Q. 30, so ever -- ever --

10 A. Yeah.

11 Q. Ever since day one?

12 A. I take it back. It seems like when we
13 were in the sewer money -- in the sewer business,
14 why, we might have had some extra money, I just can't
15 remember. And then when we sold the -- the sewer
16 system, why, it -- just the water only, why -- but
17 again, you'll have to talk to my wife about that.
18 She's the bookkeeper.

19 Q. Okay. Okay. Have you -- have you ever
20 had any conversations with anybody else on the PSC
21 Staff besides Mr. Hummel?

22 A. Normally it's been Martin that's been
23 our contact person ever since he started to work for
24 the Commission.

25 Q. Okay. Do you have any -- do you ever

1 have any contacts with the Office of Public Counsel?

2 A. No.

3 Q. Okay.

4 A. Never.

5 Q. So they never -- they didn't come in in
6 your rate case there a couple years ago at the end --

7 A. I'm not saying that they -- there was
8 seven people there in the room.

9 Q. Okay. So you --

10 A. And I -- the only one -- I can't
11 remember who they were.

12 Q. Okay. And is it fair to say that you
13 can't find a buyer for this system?

14 A. Well, I offered one guy 5,000 if he'd
15 take it. He was a certified water operator, and he
16 turned me down. And before all of this, I think I
17 would have probably upped it to 20. We have been in
18 contact with Boone County Regional Sewer District,
19 the people that service the sewer at BonGor.

20 Q. Uh-huh.

21 A. It is our understanding -- and they're
22 checking, he's checking that -- that they now the
23 have the approval to maybe go in the water business.
24 And he's checking with these lobbyists or something,
25 you know. And we've contacted them in regard to it,

1 and they expressed an interest and he took it to his
2 board --

3 Q. Okay.

4 A. -- last Thursday and he's gonna be on
5 vacation, and there may be a hint there that they
6 might take it over. They're billing the people right
7 now in BonGor for sewer service.

8 Q. Right.

9 A. So it would be a natural for them to
10 take over the water district.

11 Q. Now, after your attorney sent the letter
12 back in January when you didn't -- you didn't hear
13 anything back and anybody --

14 A. From the PSC, no response.

15 Q. No -- no response?

16 A. Not, hello, goodbye, kiss my foot or
17 nothing.

18 Q. Did anybody ever call the PSC and say,
19 hey, did you get my letter or -- well, obviously, if
20 it was sent --

21 A. Well, it was certified.

22 Q. It was certified. It was certified.

23 A. Okay.

24 Q. Maybe we can get counsel to provide us
25 with a copy of that later. So to your knowledge, did

1 anybody call and ask, hey, where did the letter go?
2 Did you ever contact your state representative or
3 your state senator and say, hey, what's -- what's
4 going on with those yahoos at the PSC?

5 A. Yes, it just so happened that I was next
6 door neighbors for many years from our local
7 representative there. The word I got back was that
8 the PSC was making a guinea pig out of us because Jay
9 Nixon's father has a water company down there that
10 may be in the same trouble as us. That's -- if you
11 ask about -- and I understand that's pure gossip.

12 Q. Well, I appreciate -- appreciate that.

13 A. Okay.

14 Q. So -- but that was -- that was -- that
15 was fairly recently, then?

16 A. I asked him, I said, "Ed," I said,
17 "would you" -- and he says he knew somebody over here
18 because he's on the appropriation committee.

19 Q. Ed?

20 A. Ed Rob.

21 Q. Oh, Ed Rob.

22 A. And he said, "I'll -- I'll make a call
23 over there, Gordon, and find out what the deal is,"
24 and never did hear back from him after that.

25 CHAIRMAN DAVIS: Okay. For the record,

1 I never got a phone call from Ed Rob.

2 THE WITNESS: Okay. Okay.

3 BY CHAIRMAN DAVIS:

4 Q. So ultimately, if you could -- could get
5 the sewer district to take over and you could just
6 get out of the business, that you would?

7 A. Yeah, yes, that's correct. At my age,
8 like I said, you know, I'm 76, open heart surgery.

9 Q. Right.

10 A. I hope I'm around.

11 Q. Is there -- is there anything this
12 Commission can do to -- to help, you know, make that
13 possible?

14 A. Well, I will say in defense of Martin, I
15 think he has made some contacts with other people,
16 you know, about acquiring the system and everything.
17 But the thing of it is, with -- when you're trying --
18 two people, we're trying to please the PSC, we're
19 trying to please the DNR, you know, and the DNR is --
20 we've had a good rapport with them and we try, but we
21 knew that all of this was coming from the DNR.

22 The guy -- Ms. Belcher has a good
23 rapport with those people. We dealt with them in
24 another situation, and we also operate a sewage
25 lagoon at one of our parks. So we have a lot of

1 contact with them. They told us what was gonna
2 happen. They sent us the letter, and then we hired
3 an engineer to start making us some estimate what it
4 would take to supply the DNR, okay?

5 Probably just rough -- assuming we don't
6 have to replace the standpipe, if we do everything
7 the Commission wants us to, it will probably take
8 \$50,000.

9 Q. And you -- I'm sorry for going back
10 here. When you had your case back in 2005, you
11 didn't have an attorney?

12 A. That was my big mistake. In '93 we had
13 one. I guess we got a little chincy or something,
14 but didn't do it and we handled it ourselves, and it
15 was a big mistake.

16 CHAIRMAN DAVIS: I don't have any
17 further questions, Judge.

18 JUDGE LANE: Thank you, Mr. Chairman.
19 Commissioner Gaw, I believe you had passed and I'm
20 coming back to you now.

21 QUESTIONS BY COMMISSIONER GAW:

22 Q. Good afternoon, Mr. Burnam.

23 A. Hi.

24 Q. Just past noon.

25 A. I'm sorry. I didn't hear.

1 Q. I said it just past noon, so it's good
2 afternoon.

3 A. Okay, thank you.

4 Q. I'm -- would you -- would you refresh my
5 memory on exactly where this subdivision is?

6 A. Okay. Since I know you're from Moberly
7 and I grew up in Moberly, and I don't know whether
8 you remember old Highway 63 or not.

9 Q. I grew up there, so ...

10 A. Okay. Well, you know, then. It's about
11 a mile and four-tenths -- well, it's really about two
12 miles from the Prathersville intersection on
13 Highway VV which is the old Highway 63.

14 Q. Which side?

15 A. It would be on the northwest corner
16 of -- it would be north of VV.

17 Q. Okay. And how -- how long did -- how
18 long did you own that ground before it was developed?

19 A. We bought it in 1966 and we started in
20 the late '70s doing some preliminary work in it.

21 Q. I see. And then when you started the
22 water company, did you contribute the investment that
23 you'd made in the mains and the other things --

24 A. Yeah.

25 Q. -- to the water company?

1 A. Yeah, uh-huh. I think we have some --
2 my wife handles all of that and everything. Of
3 course, it's always a problem between the PSC's
4 depreciation rules and the IRS, you know --

5 Q. Well, the reason I'm asking is because
6 it's a broader thing than just dealing with this
7 case.

8 A. Yeah.

9 Q. When you moved -- when you -- when you
10 transferred those assets, do you know whether the
11 assets had any -- showed any value for depreciation
12 purposes --

13 A. Yes.

14 Q. -- for --

15 A. My wife would be able to explain it to
16 you. She handles all that.

17 Q. I'll just ask her, then.

18 A. Yeah, you could ask her.

19 Q. And then -- and then from the standpoint
20 of where you are today and how that relates to the
21 money that you have coming in and the money that
22 you've got going out, you say you've been
23 contributing money to the company to make ends meet?

24 A. That's right.

25 Q. What expenses are there that are over

1 and above what revenues that you have?

2 A. Well, you know, No. 1 is, I will have to
3 admit, we have not done a good job. In other words,
4 we don't charge anything off our office, we don't
5 charge anything for Ms. Belcher. We do charge some
6 when our maintenance goes go out and everything, but
7 we have not done a real good job of billing
8 everything because it was a nonproducing asset and it
9 didn't get a lot of attention unless we had a
10 complaint. Now, if we had a complaint, we took care
11 of it right away.

12 But I'm just saying is, it -- the loss
13 would show a lot more if we were better bookkeepers.
14 And we charged everything out, like Suburban has no
15 employees. We have a operating company called Vista
16 Homes, and our maintenance people, if there's
17 something wrong -- if we can fix it, we don't (sic).
18 If we don't, we hire an outside guy come in like with
19 a backhoe if we have to dig up a water line or
20 something like that.

21 Q. Okay. So -- so from the standpoint --
22 let me talk -- let's talk about Ms. Belcher for just
23 a moment.

24 A. Yeah.

25 Q. None of her salary is -- is booked to

1 the water company?

2 A. None. Or the lady in the office that
3 does the billing.

4 Q. Now, I assume they probably do things
5 for other companies?

6 A. Oh, yeah, sure. Uh-huh.

7 Q. Have you asked for any of their -- their
8 salaries or wages to be taxed to the company?

9 A. No. No.

10 Q. What --

11 A. If we'd done a better job of billing it
12 out and everything, it probably, you know, but we
13 just -- you know, it's such a small asset, you know.

14 Q. But -- I understand but it's part of
15 this --

16 A. Yeah, I understand that.

17 Q. -- this piece that --

18 A. I'm just saying we did a lousy job of
19 not charging Suburban for everything that we did.

20 Q. You had mentioned several times about
21 the DNR requirements.

22 A. That's correct.

23 Q. But -- and you have probably explained
24 what that is, but I didn't -- I didn't get to hear it
25 very well if you did. Can you just tell me generally

1 what you're talking about.

2 A. Well, the big thing was, of course, the
3 certified operator which is also -- you know, and we
4 realize that and we're taking steps to -- to take
5 care of it, okay? The chlorination is their big
6 thing that the water has to be chlorinated for -- in
7 our other system we spent a lot of money making it
8 happen.

9 I think it was -- it had to stay in
10 chlorination a half an hour before it was distributed
11 out in the system. And that was one of the big
12 things at -- at BonGor they wasn't sure of, and the
13 only way we could be sure of it was to hire somebody
14 to go down inside the tank and check the inlet.

15 Q. So is that something that has not
16 happened yet?

17 A. That's right. It is gonna happen
18 regardless, you know.

19 Q. Yeah.

20 A. And our engineer has been in contact
21 with the person that performs such a thing, but it's
22 kind of tough finding somebody to go up 80 feet in
23 the air and go down and check it, so ...

24 Q. Has that thing been checked for very
25 long? How long has it been since anybody's been in

1 there?

2 A. Five -- every five years we shut it
3 down. We have a manhole there. If there's any
4 accumulation of residue or anything out of the
5 system, it settles in the bottom. We clean it out
6 and there's a manhole there. You know, it's got a
7 bunch of bolts and --

8 Q. Right.

9 A. -- one of our employees goes in there
10 and cleans it out. As far as checking the
11 chlorination at that time, it wasn't a big problem
12 and we never attacked it.

13 Q. Okay. You know, the other night we had
14 some people -- somebody that was at that public
15 hearing that expressed some concern about a bunch of
16 bleach bottles like Clorox bottles that they saw
17 dumped off, and they were worried about whether that
18 was --

19 A. No, what we use for chlorination is
20 Clorox. We buy it by the pallets from Sam's.

21 Q. And I guess the reason I'm asking is if
22 you could clarify whether or not that's something
23 that DNR said is acceptable?

24 A. Oh, yeah, we use chlorination in the
25 other system at our mobile home parks.

1 Q. But that's the method of doing it --

2 A. Yeah, uh-huh.

3 Q. -- and DNR is aware of that?

4 A. Yeah. Oh, sure.

5 Q. Health -- Health Department is aware of

6 it?

7 A. Well, we send in tests every month.

8 Q. I understand, but it raised -- they

9 raised a concern --

10 A. Okay. I understand, yeah --

11 Q. -- and wanted somebody to address that.

12 A. -- where they're coming from.

13 Q. And there was another individual, if I

14 remember correctly, that said they had a filtration

15 system and they -- and they expressed some fairly, I

16 think, dramatic concern about the amount of sludge or

17 something that was appearing in that filter system.

18 A. Well, you know --

19 Q. Do you know -- did you hear that from

20 anyone?

21 A. No, huh-uh.

22 Q. I mean, from the other night?

23 A. No. But I'm just saying, what could

24 happen, you know, which we have no control over, the

25 individual customer is responsible from the yoke

1 that's in the meter well into his house. He could
2 have had a break in his line and had it fixed and got
3 some dirt in it or something like that when he dug.
4 All I can say is, we've not had any complaints. We
5 haven't had any complaints, period.

6 Q. Do you -- I guess I'll ask somebody else
7 this a little later --

8 A. Yeah.

9 Q. -- about the -- about how the
10 chlorination impacts the rotten egg smell because
11 you're tying it together --

12 A. I'm not aware, I couldn't explain it.

13 Q. Have you been told by someone that that
14 is the -- is the way to deal with this smell from the
15 hot water heaters?

16 A. I think our engineer years ago told us.
17 You know, it's been a problem, I've made no bones
18 about it, you know.

19 Q. And I'm not asking you --

20 A. Yeah. Yeah.

21 Q. -- to talk about the problem with this
22 question. What I'm looking for is whether or not you
23 are aware of whether or not that actually addresses
24 that problem, that chlorination?

25 A. Only thing I remember, when we started

1 it, I checked with our engineer and I asked him, I
2 says, "What can we do?" And he said, "chlorinate."
3 And subject -- that was all that I ever asked and --
4 Q. That's all you know?
5 A. -- ever discussed.
6 Q. Well, I may ask somebody --
7 A. Yeah, okay.
8 Q. -- that deals with water a little bit.
9 A. I'm just not familiar with it.
10 Q. Now, from the standpoint of the
11 interconnection of the system with the -- with the
12 water district, is the only thing that would need to
13 be done to actually physically accomplish that --
14 A. Open the valve.
15 Q. Open a valve. That's -- that's --
16 everything's already hooked up?
17 A. Well, we use them as a standby when we
18 have an emergency --
19 Q. You said that.
20 A. -- like we have to replace a pump or
21 major --
22 Q. Right.
23 A. We buy water from them.
24 Q. Right. And do you know whether -- have
25 you had conversations to know whether or not they

1 would be willing to take on that extra --

2 A. We met with their board before we
3 applied for the rate increase in '05. We met
4 physically with their board one night --

5 Q. Yes.

6 A. -- and Ms. -- Ms. Belcher and I did and
7 everything. And they said they would be interested
8 in taking over the water system because they could
9 pick up all these customers in a short distance where
10 otherwise, they go a mile. But anyway, but they
11 said, all of our meters are at the back and they
12 said -- you know at the back of the lots.

13 Q. Oh, okay.

14 A. They said theirs was in the front, and
15 they gave an estimate at the time. I think it was
16 \$160,000 of improvement to the system before they
17 would even consider taking it over.

18 Q. Okay. Now, there's a distinction
19 between actually taking it over and just buying water
20 from them --

21 A. Yeah.

22 Q. -- and I'm not clear now on which you
23 were talking about.

24 A. Okay. When we applied for the rate
25 increase in '05, our request to the Commission was

1 that we get out of the water-producing business, buy
2 water from Public Water District No. 1. At the time,
3 the only charge that they would -- they would sell it
4 to us was five dollars a thousand.

5 Q. Okay. And do you know -- five dollars a
6 thousand?

7 A. Gallon.

8 Q. Yeah.

9 A. And if we'd have used that formula on
10 Suburban's customers, why, it would have put it up to
11 \$33 a month or something like that.

12 Q. Yeah, a significant increase.

13 A. Yeah.

14 Q. And do you know whether there -- what
15 other issues are there outside of the well and the
16 tower, whatever you call it, in regard to -- to
17 upgrading needs if you're aware of them?

18 A. Well, I mean, certain things. The flush
19 valves, you know, is a good idea. I think we had an
20 estimate of \$6,000 to install them.

21 Q. Okay. What else?

22 A. It's a flushing system. We do it on
23 a -- on a weekly basis right now but it's not
24 sufficient for the entire system. As far as
25 installing, there's three homes right now that have

1 no meter wells or water -- I mean, no meters, okay,
2 of doing that.

3 The next thing is a certified water
4 operator, and then we don't know about the standpipe
5 until it's inspected by an expert and an engineer.
6 If you replace it, we got an estimate of \$100,000.

7 Q. Now, and you're back -- you're back on
8 the tower or the standpipe issue?

9 A. Yeah, yeah.

10 Q. Okay. Now, there were -- there were
11 concerns at the public hearing about the reading of
12 the meters. Do you know personally how often the
13 meters are being read?

14 A. Well, we tried to -- if you're from that
15 part of the country, and you know, last winter when
16 we had six inches of ice and five inches of snow
17 for -- there's a couple of months there, we didn't
18 read the meters.

19 Q. Okay. Well --

20 A. We estimated, you know --

21 Q. I'm not -- I'm not looking for defenses
22 here. I'm just looking for facts.

23 A. Yeah, there is some times, you know,
24 that we haven't read the meters absolutely 12 times a
25 year.

1 Q. Okay. But what is the general -- what
2 is the policy -- what --

3 A. Okay. We normally read them the second
4 week of every month because our office, limited, and
5 we get all the rent in, the water payments and
6 everything the first of the month, and that's when
7 the time comes. So we have a lady from the office,
8 one of our maintenance people, and they go around and
9 physically read the meters.

10 Q. Okay. But the policy is to read them
11 every month?

12 A. That's correct.

13 Q. Okay. We had some people that -- that
14 suggested they couldn't -- that they didn't believe
15 their meter had ever been read. One person said
16 that.

17 A. Well, there's one person that's got a
18 pit bull --

19 Q. Yes.

20 A. -- okay?

21 Q. Okay.

22 A. And you'll have to ask Ms. Belcher. And
23 we have called them and, you know, and said, "We're
24 not gonna send our people in there until you tie up
25 that dog." That's the only case I can remember.

1 Q. Okay. But other than that, the only
2 time that the meters aren't read, it's your -- it's
3 your testimony that you're aware of is when there's a
4 weather issue?

5 A. I'm not saying there hasn't ever been an
6 instance where we haven't read them every month, but
7 it's -- it's our common deal to read the meters.

8 Q. How many people do that?

9 A. Well, we have one full-time maintenance
10 person and we have one full-time person in the
11 office, and then we have Ms. Belcher, and that's
12 pretty well our staff right there. And then we have
13 other people that come in on a part-time basis.

14 Q. And how many of those people are shown
15 on the books of the water company?

16 A. Sometimes we charge out our maintenance
17 people at an -- at an hourly rate, and if we've got
18 the money, we pay it, if we don't ...

19 Q. Do you know how much is allocated in --
20 from the last rate agreement?

21 A. I have no idea about that.

22 Q. Okay. You realize, Mr. Burnam, it's a
23 little difficult for the Commission -- the Commission
24 up here to know what's -- what's happening in regard
25 to the concerns if we get a stipulation, there's

1 not -- the concerns that you're bringing up now or
2 the Staff may have, Public Counsel may have, once
3 there's an agreement, the agreement's just presented;
4 you understand that?

5 A. Okay. I know. I'm not here to make
6 suggestions, but what would be a good thing for the
7 Commission to consider is, is there's a lot of these
8 water companies I'm sure you-all regulate.

9 Q. There are a lot.

10 A. And why don't you get -- why don't you
11 get a committee and put one of your people on it,
12 some of those, and address all these common problems,
13 and I'm sure it would save you-all a lot of trouble
14 and a lot of time and a lot of expense.

15 Q. Well, there certainly are a number of
16 these small water companies --

17 A. And I think if you had a bunch of
18 operators, you know, on a council, you know, or
19 something like that, I think it would give you-all
20 some input -- whether you took it or not, but at
21 least you'd get some input.

22 Q. Mr. Burnam, I understand you may be back
23 later to testify --

24 A. Okay. Okay.

25 Q. -- so I'm gonna let you go to lunch.

1 A. Okay. Thank you.

2 COMMISSIONER GAW: Yes, sir, thank you.

3 JUDGE LANE: Thank you very much,

4 Commissioner Gaw. Any further questions?

5 Commissioner Clayton?

6 COMMISSIONER CLAYTON: (Shook head.)

7 JUDGE LANE: Any -- any further

8 cross-examination based on questions that were asked

9 from the bench? Starting with OPC.

10 RE CROSS-EXAMINATION BY MS. BAKER:

11 Q. I have a question about the meter

12 reading that Commissioner Gaw was asking about.

13 Isn't it true that you made a -- made a new policy

14 within the -- within Suburban Water and Sewer that

15 meters were not to be read in certain ones because

16 you had been given an unmetered rate?

17 A. That's correct.

18 Q. So your statement to Commissioner Gaw

19 that -- that meters are being read every month is

20 incorrect?

21 A. Well, I should have clarified it.

22 Q. Now, please do clarify.

23 A. Okay. The ones that are read are the

24 single-family on a monthly basis. The multi-family

25 is a metered -- unmetered flat rate of \$12.30 a month

1 per unit.

2 MS. BAKER: Thank you. No further

3 questions.

4 JUDGE LANE: Thank you very much.

5 Suburban, are you gonna reserve your questions?

6 MR. HARRISON: Yes, sir.

7 JUDGE LANE: All righty. Any redirect

8 from Staff?

9 MR. REED: No, thank you.

10 JUDGE LANE: Thank you very much.

11 Mr. Burnam. You may be excused, but you are not

12 finally excused --

13 THE WITNESS: Okay. Okay.

14 JUDGE LANE: -- because I understand

15 that Suburban is going to call you and other

16 Commissioners may have additional questions. You may

17 step down. Thank you.

18 THE WITNESS: Okay. Okay.

19 JUDGE LANE: Normally we'd proceed to

20 our next witness. It is the lunch hour. I would

21 suggest that we take -- I'll tell you what, it's 1:20

22 now. Let's reconvene --

23 MS. BAKER: 12:20.

24 JUDGE LANE: Or 12:20 now, let's

25 reconvene at 1:30. 1:30. All right? Thank you very

1 much. We're off the record.

2 (THE NOON RECESS WAS TAKEN.)

3 JUDGE LANE: All right. We're ready to
4 go back on the record in Case No. WC-2007-0452. We
5 completed our last session with the direct and
6 cross-examination of Mr. Burnam, and we are ready for
7 Staff to call its next witness.

8 MS. SYLER BRUEGGEMANN: Staff calls Bob
9 Gilbert to the witness stand.

10 JUDGE LANE: Sir, if you would spell
11 your name for the court reporter, please.

12 THE WITNESS: Bob Gilbert,
13 G-i-l-b-e-r-t.

14 JUDGE LANE: Thank you, Mr. Gilbert.
15 Please raise your right hand and be sworn.

16 (THE WITNESS WAS SWORN.)

17 JUDGE LANE: Thank you very much. You
18 may inquire.

19 DIRECT EXAMINATION BY MS. SYLER BRUEGGEMANN:

20 Q. Hi, Mr. Gilbert.

21 A. Hello.

22 Q. Could you tell us who you work for.

23 A. I work for Bartlett & West Engineers, a
24 consulting firm in Jefferson City.

25 Q. And how long have you worked there?

1 A. I've worked there about seven months
2 now.

3 Q. Okay. And what did you do before that?

4 A. I was a consulting engineer in the
5 Kansas City area with another firm.

6 Q. Okay. And what are your professional
7 credentials?

8 A. I have a bachelor of science degree in
9 civil engineering, and I'm a licensed professional
10 engineer in Missouri and Kansas.

11 Q. And what type of consulting do you do?

12 A. I do civil engineering consulting in the
13 public works sector, meaning water, wastewater,
14 roads, storm water systems.

15 Q. Okay. And are you familiar with
16 Suburban Water and Sewer system?

17 A. Generally, yes.

18 Q. How long have you been familiar with
19 that system?

20 A. Since about April of this year when the
21 PSC approached the Consolidated Water Supply District
22 No. 1 of Boone County who we are a consultant for.
23 And when the PSC approached the district to look at
24 essentially taking over the Suburban Water Company
25 system, that's when I got involved.

1 Q. Okay. And did you do anything in regard
2 to that approach to Consolidated No. 1 in regards to
3 Suburban Water system?

4 A. Yes. The board of the water district,
5 upon the request of the PSC to look into taking over
6 the system, the board asked our firm to evaluate the
7 availability of water from the district's system as
8 well as issues or concerns that may come up with the
9 consolidation or the wholesale water scenario to the
10 water company.

11 Q. Okay. And are you aware of who from the
12 PSC approached Consolidated to inquire about taking
13 over Suburban's system?

14 A. I believe that the first meeting with
15 the board, the PSC was represented by Peggy Whipple,
16 Jim Merciel and Martin Hummel.

17 Q. Okay. I am going to approach and hand
18 you what's been marked as Exhibit 10.

19 A. Okay.

20 Q. Now, are you familiar with the document
21 that I've just handed to you?

22 A. Yes.

23 Q. And are you the author of that document?

24 A. Yes, I am.

25 Q. And why was it prepared?

1 A. It was prepared --

2 MR. HARRISON: Judge, I think at this
3 point I'm gonna need to start making objections
4 because this report which we've seen before talks
5 about -- talks -- talks zero about anything relevant
6 to the 2005 agreement, and it talks about prospective
7 type improvements.

8 So I'm gonna dig up the objections that
9 we talked about this morning based on relevance,
10 primarily, and based on the ruling on the motions
11 this morning. I don't think this document is
12 relevant or admissible for those reasons. I
13 understand it hasn't been offered yet, but I want to
14 make my objection before the witness starts making --
15 starts testifying about the document.

16 JUDGE LANE: Ms. Brueggemann?

17 MS. SYLER BRUEGGEMANN: Your Honor, this
18 report was actually -- was a study done of the
19 current state of the system by Mr. Gilbert. So it --
20 and it actually did some studies on psi, water
21 supply, problems currently with the system that would
22 affect the safety and adequacy of Suburban's water
23 system. So I think that falls within the realm of
24 what you said would be applicable to this case.

25 MS. BAKER: And your Honor, if I may

1 also add, this goes directly to Public Counsel's
2 motion in their request for an investigation
3 regarding the resolution of the matter to ensure the
4 customers are not deprived of safe and adequate
5 service. This does go to how -- how the system is at
6 the moment, and it -- it is the study that was done.
7 There's no other study done by the company itself.
8 So this is the study on -- on the state of the
9 system.

10 JUDGE LANE: I'm reviewing the exhibit
11 right now, and it certainly does appear to contain
12 information that falls within the criteria that I
13 announced earlier for relevancy to this matter, so
14 the objection is overruled.

15 MR. HARRISON: Judge, may I voir dire
16 the witness briefly about the document?

17 JUDGE LANE: Yes.

18 VOIR DIRE EXAMINATION BY MR. HARRISON:

19 Q. Sir, could you look at the last sentence
20 of the first paragraph of the exhibit you've been
21 handed there.

22 A. Yes.

23 Q. It says, "This study summarizes the
24 analysis we have performed to investigate water
25 availability and other issues associated with either

1 the consolidation of the private system with the
2 district's system or the ability to provide wholesale
3 water service to the private system." Did I read
4 that correctly?

5 A. Yes.

6 Q. So that sentence summarizes why you
7 were asked to prepare this report; is that correct,
8 sir?

9 A. Very generally, yes.

10 MR. HARRISON: All right. Then I renew
11 my objection. He just testified that that's the
12 reason he's prepared the report, it was a prospective
13 matter.

14 MS. BAKER: And your Honor, if I may,
15 that -- that was my motion as a prospective look into
16 the -- that customers are not deprived of safe and
17 adequate service.

18 JUDGE LANE: Ms. Brueggemann, any
19 response?

20 MS. SYLER BRUEGGEMANN: Just that the
21 information contained within the report applies to
22 the system currently as is, and then with whatever
23 the underlying purpose that it was created for. It
24 still shows a study on the system as is.

25 JUDGE LANE: And to that extent, the

1 objection is overruled.

2 DIRECT EXAMINATION (RESUMED) BY MS. SYLER BRUEGGEMANN:

3 Q. Okay. I forgot what my last question
4 was, so when did you put together this report?

5 A. We were requested by the board of the
6 district to look at the report at their board meeting
7 on April 12th, and I turned in the report on May 4th
8 as the letter indicates.

9 Q. Okay. Did you actually visit Suburban
10 Water and Sewer system?

11 A. I've -- you mean in the field? I've
12 been there, yes.

13 Q. And did you visit that system for the
14 purpose of obtaining this information in this report?

15 A. No. The -- the visit I -- I had there
16 was very general in nature, and I -- again, I don't
17 want to profess that I know a lot about that system.
18 I know generally the components that are in it and
19 then, again, the report was -- was generated on
20 behalf of the district and the issues that may be
21 encountered on their behalf.

22 Q. Okay. And looking at this report,
23 there's a section heading for Water Demand. Did you
24 put together information as to what the water demand
25 for Suburban Water -- Suburban Water and Sewer system

1 was?

2 A. Yes. And in that section what we
3 utilized in terms of records were provided by
4 Suburban Water Company, and they are meter readings
5 from their well and well pump, which means it's kind
6 of an aggregate look at the total flow.

7 Again, it's my understanding that there
8 are not meters on every unit out there, and so there
9 is no real way to estimate exact demands to
10 individual units, so we had to look at the entire
11 production of the well and utilizing those records,
12 we produced what the average and peak usage are.

13 Q. Okay. And what did you find those peak
14 usages were?

15 A. Basically, the -- it indicated in the
16 exhibit, you know, the per user peak we show as
17 .258 gpm or, again, over -- the peak demand being
18 38.9 gallons per minute being that -- that value.

19 Q. Okay. And what do those figures mean to
20 the layperson?

21 A. Okay. They basically indicate what the
22 system sees or needs in terms of the demand, meaning
23 at one point in time the pipes, if you will, out
24 there are seeing 38.9 gallons per minute need to flow
25 through them.

1 Q. Okay. Now, the next heading is Water
2 Supply and Storage. What did you find as to water
3 supply and storage?

4 A. Again, basically, from the water
5 district's standpoint in terms of being able to
6 supply wholesale water or -- or a consolidation is
7 that the wells and the storage facilities, the
8 elevated storage tanks and ground storage tanks in
9 the water district's system are adequate --

10 Q. Okay.

11 A. -- to -- to supply the -- the 150 or so
12 users there.

13 Q. Okay. Next heading is Static Pressure
14 and what was your static pressure analysis?

15 A. The static pressure analysis is what we
16 look at to determine the highest pressures that we
17 believe the system will -- will undergo. Basically,
18 what we do in that kind of analysis is assume there's
19 no demand, so it's like the middle of the night,
20 basically. There's no demand and the pumps have run
21 and filled the tanks. So basically, the tanks are at
22 the highest elevation and that means the highest
23 pressure is -- is put on the system.

24 And so, again, we looked at that
25 analysis in terms of comparing it to the existing

1 Suburban Water Company's system's pressures, again,
2 to see what kind of comparison there would be. And
3 that is an area of concern that I shared in the
4 letter report that the static pressures in the
5 district's system which is surrounding Suburban Water
6 Company vicinity are double or a little over double
7 the current pressures in the Suburban Water Company's
8 system. Again, the concern there is that introducing
9 higher pressures could produce problems in the
10 Suburban Water Company's system.

11 Q. And what kind of problems could be
12 produced from a 60 to 70 psi being introduced into
13 something half that amount?

14 A. Well, typically, 60 to 70 psi is not a
15 very high pressure to begin with, but the fact that
16 that system has been there 30 years or more operating
17 at a lower pressure, there is basically a chance that
18 leaks could spring up, whether it be throughout the
19 system's piping or even in residences that have been
20 experiencing a certain pressure.

21 Q. And what type of pressure does Suburban
22 system have that you found?

23 A. I -- I don't have information on exactly
24 what the pressures are, but I understand from the
25 meetings with -- with the PSC and then being out on

1 the site, it seems reasonable that the pressures are
2 in the neighborhood of 30 to 40 psi. I have seen
3 some pressure reading graphs from DNR as well, some
4 of their testing, that has indicated that's in the
5 ball park.

6 Q. Okay. And is there any way to cure
7 something like that, the -- the differences in static
8 pressure?

9 MR. HARRISON: Judge, again, relevance?
10 I mean, that's not an issue in this case.

11 JUDGE LANE: That's sustained.

12 MS. SYLER BRUEGGEMANN:

13 Q. Okay. Did you, in your -- in your study
14 of the information, look at -- at water usage for
15 Suburban Water system when it was hooked up to the
16 district?

17 A. Yes, we did. It's not part of this
18 report but subsequent to the submission of this
19 report, we did look at records. The -- I probably
20 need to back up a little bit. The water district
21 does have a meter connection to the Suburban Water
22 Company system, and it has been used in emergency
23 cases, as I understand it, when repairs are made to
24 the Suburban Water Company system. The water
25 district's water is used.

1 Again, that kind of pointed to some of
2 our concerns with higher pressures and potential
3 leaks. The records indicated that in -- in 2006,
4 basically in April of 2006, there was a three-day
5 period in the Suburban Water Company records where
6 essentially no flow was -- was produced from their
7 system; it was all -- it was all on the district
8 while some repairs were made. So in that three days,
9 we looked at the district's records and found the
10 water usage was in the neighborhood of 293,000
11 gallons over a three-day period.

12 Q. And --

13 A. And I guess you have to give that in
14 some perspective. The average usage in the Suburban
15 Water Company system is in the neighborhood of
16 260,000 gallons in a seven-day period. So looking at
17 that period of time of three days, essentially, over
18 two and a half times the average amount of water was
19 used while the district system was connected. And
20 again, I -- I don't know where that water went. I
21 don't know that anyone does. But it does point to
22 some concern that when the system is connected to the
23 districts, that there could be leaks or could be
24 problems going on that are causing that kind of water
25 loss.

1 MS. SYLER BRUEGGEMANN: Okay. Nothing
2 further. Thank you -- oh, one -- actually one
3 matter. I would like to go ahead and offer Exhibit
4 No. 10, I believe. It's numbered into the record.

5 JUDGE LANE: Exhibit No. 10 has been
6 offered. Any objections?

7 MR. HARRISON: Is it offered for the
8 limited purpose -- is it offered for any reason to
9 show any prospective -- for any prospective purposes
10 or any -- any remediation or anything like that?

11 MS. SYLER BRUEGGEMANN: It's offered for
12 the same explanation as to the objection earlier to
13 show the safety and adequacy of Suburban Water's
14 system.

15 MR. HARRISON: I just need to ask the
16 witness a couple more questions, if I might.

17 JUDGE LANE: All right, sir.

18 VOIR DIRE EXAMINATION BY MR. HARRISON:

19 Q. Sir, your exhibit -- I mean, your
20 report, rather, on page 2 references a figure 2.

21 THE COURT REPORTER: I'm sorry. Your
22 microphone -- I know it's probably on, but I'm just
23 having trouble hearing you.

24 MR. HARRISON: I'll shout.

25 BY MR. HARRISON:

1 Q. Would you look at page 2 of your report?

2 A. Okay.

3 Q. It references figure 2 in --

4 A. Okay.

5 Q. -- the third paragraph. Is figure 2
6 attached to your report?

7 A. Not in front of me but I have a copy
8 here.

9 Q. Are figures 3 or 4 attached?

10 A. Not to my exhibit.

11 Q. I'm talking about the exhibit. It's not
12 attached to the exhibit there?

13 A. No. I -- I only have the two pages of
14 the letter and the well production numbers.

15 MR. HARRISON: I mean, it may be,
16 Counsel, that those two figures were omitted
17 intentionally because I think they do deal with
18 prospective type things, and maybe that was
19 intentional. I'm not sure. I wanted to bring that
20 to the attention of the judge. I'm gonna renew my
21 objection; that -- that document gets into things
22 that are beyond the scope of what's before the
23 Commission in this case.

24 JUDGE LANE: The objection's overruled.
25 It's admitted subject to the limitations that I

1 mentioned in response to your earlier objection.

2 (EXHIBIT NO. 10 WAS RECEIVED INTO
3 EVIDENCE AND MADE A PART OF THE RECORD.)

4 JUDGE LANE: Cross-examination by Office
5 of Public Counsel, please.

6 CROSS-EXAMINATION BY MS. BAKER:

7 Q. Good afternoon.

8 A. Hello.

9 Q. I just have a couple of questions about
10 your comments on water loss.

11 A. Uh-huh.

12 Q. Were you provided any individual meter
13 readings from BonGor Lake Estates in your -- in your
14 review of the system?

15 A. No.

16 Q. Would individual meter readings have
17 assisted you in a better determination of water loss?

18 A. Absolutely.

19 MS. BAKER: Thank you. Nothing further.

20 JUDGE LANE: Thank you.

21 Cross-examination by Suburban?

22 CROSS-EXAMINATION BY MR. VOLKERT:

23 Q. Hi, Mr. Gilbert.

24 A. Hi.

25 Q. So the report was partially or wholly

1 for the purpose to make sure that the system would
2 provide safe and adequate water service? Is that
3 part of your assessment?

4 A. My -- again, the report was produced for
5 the district and to look at issues that would be
6 encountered with serving the Suburban Water Company's
7 system with water or taking it over.

8 Q. Was your intention that if they took it
9 over or did this, that they would provide safe and
10 adequate water service or was it an assumption or --

11 A. Well, I guess -- yeah, are you asking
12 would I assume the district would want to provide
13 safe -- safe and adequate water if they were to do
14 that? Yes.

15 Q. And you reviewed the current system with
16 that in mind or with that assumption in the back of
17 your mind?

18 A. Sure.

19 MS. SYLER BRUEGGEMANN: I need to -- I'm
20 sorry. That's fine.

21 JUDGE LANE: Are you objecting?

22 MS. SYLER BRUEGGEMANN: It's already
23 been answered so I will not object.

24 JUDGE LANE: You could move to strike.

25 MS. SYLER BRUEGGEMANN: (Shook head.)

1 JUDGE LANE: All right.

2 THE WITNESS: Can you repeat the
3 question?

4 BY MR. VOLKERT:

5 Q. Yeah. When you prepared this report,
6 was it your assumption while you were preparing the
7 report that you were attempting to provide a basis
8 upon which the public water supply district could
9 provide safe and adequate water service?

10 MS. SYLER BRUEGGEMANN: And I'd object
11 that that's prospective and that's what we're limited
12 from judging today.

13 MR. VOLKERT: That's exactly what you
14 offered into evidence for us to prove the current
15 state of the system of whether or not it provides
16 safe and adequate water service.

17 MS. SYLER BRUEGGEMANN: And I believe
18 the objection was sustained that I could not go into
19 anything prospective.

20 MR. VOLKERT: Okay. I'll withdraw the
21 question.

22 JUDGE LANE: All right. Thank you.

23 BY MR. VOLKERT:

24 Q. Let me ask you this: You did review the
25 system fairly carefully?

1 A. Yes.

2 Q. Is that your typical practice, you
3 review it fairly carefully?

4 A. Yes.

5 Q. Good. Did you -- where in your report
6 does it say that the company has to have a ten-year
7 replacement program for existing meters? Can you
8 point that out?

9 A. No, I don't.

10 Q. Is it in there?

11 A. No.

12 Q. No. Where in the report does it say the
13 company has to install flush valves with a flushing
14 capacity of at least three feet per second?

15 A. It does not.

16 Q. It's not in there at all?

17 A. (Shook head.)

18 Q. Where in the report does it say that the
19 company has to contract with a certified operator?

20 A. It does not.

21 Q. You mentioned you were an engineer. Do
22 you have to take math classes for that?

23 A. Yes.

24 Q. What -- did you take statistics, is that
25 one of the math classes you took?

1 A. I don't believe so, no.

2 Q. You mentioned earlier, I believe your
3 testimony was that you -- you determined that there
4 was some sort of water loss based on actual usage
5 over three days --

6 A. Uh-huh.

7 Q. -- per the -- per the district's meter,
8 and average usage over seven days for the Suburban
9 system. Do you think that's a good comparison?

10 A. Well, again, the comparison was made
11 because it's the only data available, and the
12 concerns we have with higher pressure --

13 Q. Excuse me, I'm not asking your concerns.
14 I'm asking you whether comparing three days of actual
15 water usage against seven days of average water usage
16 is gonna give you an accurate picture of the water
17 loss, potential water loss.

18 A. Again, I'd have to add, that is the only
19 information that we have. Without -- without meter
20 readings --

21 Q. Yes or no question, can you answer --
22 can you answer me yes or no, please. Is a three-day
23 actual reading compared to a seven-day average
24 reading gonna give you an accurate picture of actual
25 water loss?

1 A. No.

2 MR. VOLKERT: Thank you. Nothing
3 further.

4 JUDGE LANE: Thank you, Mr. Volkert.
5 Hearing now questions from the bench. Commissioner
6 Gaw, do you have any questions of Mr. Gilbert?

7 QUESTIONS BY COMMISSIONER GAW:

8 Q. How are you doing, Mr. Gilbert?

9 A. Just fine.

10 Q. And this may already be in, but can you
11 tell me -- tell me generally what your -- you were
12 tasked to do in regard to this study?

13 A. Okay. Well, basically, we are --
14 Bartlett & West Engineers is a consultant to the
15 water district, and the PSC approached the water
16 district in April of this year to consider taking
17 over the BonGor system or providing wholesale water
18 service to the system.

19 And so at the request and expense of the
20 water district, we looked at, again, issues related
21 to that, you know, one, can we provide the water;
22 two, what issues would be encountered if we were to
23 provide the water or take over the system. And so
24 that is the task I had.

25 Q. Okay. And this -- this letter that's

1 dated May the 4th of '07 to Gary Woody, is your
2 report?

3 A. Yes, sir.

4 Q. Were there any other attachments or
5 additional information provided as a result of your
6 study?

7 A. Well, yes. I -- the way I understand
8 it, the exhibit that I have only has three pages.
9 There were maps and a cost estimate that went along
10 with the report as figures.

11 COMMISSIONER GAW: Okay. Was there --
12 Judge, has there been some sort of a ruling that
13 prohibited us from looking at those cost estimates?

14 JUDGE LANE: Yes. From earlier
15 today while I think the Commissioners were still in
16 the agenda meeting, I ruled on one of the motions
17 that was still outstanding with regard to seeking
18 prospective relief in this case. And the ruling on
19 the -- on the motion was that anything that deals
20 purely with prospective changes to the system are
21 not -- are not germane to this proceeding, but
22 evidence that deals with the existing state of a
23 system and how that might impact on its safety and
24 adequacy would be permitted.

25 COMMISSIONER GAW: Okay. I don't know

1 how to walk that line very well, but I'm gonna ask --
2 ask --

3 BY COMMISSIONER GAW:

4 Q. Mr. Gilbert, from the standpoint of the
5 current status of the system, did you evaluate all of
6 the matters that would -- that were problematic with
7 the system from your standpoint?

8 A. And when you're talking about the
9 system, are you talking about the Suburban Water
10 Company's system?

11 Q. Yes, I am.

12 A. I would have to say our investigation
13 was not intended to be a summary of everything
14 involved with the Suburban Water Company system, so
15 no.

16 Q. All right. So when you -- the
17 examination that you made of it, can you tell me the
18 limits of it in regard to what you would do if you
19 were doing a full evaluation as a comparison?

20 A. Well, I think the limits of the
21 system -- and, again, I think I might need to clarify
22 what -- what you're looking for.

23 Q. I'm asking for the limits of your review
24 of the system as you did it for this -- for this
25 purpose as compared to a fuller review -- in other

1 words, what is it that you -- you didn't look at as
2 compared to what you did, if that makes sense to you?

3 A. There are -- there are so many things
4 that could be looked at, it's difficult to answer
5 that question.

6 Q. Okay.

7 A. The -- well, I was gonna say, there are
8 just -- there are probably too many things to -- to
9 answer that with --

10 Q. Why don't you tell me what you did look
11 at.

12 A. Well, we do have system maps from the
13 construction of the Suburban Water Company system, so
14 I -- we did look at and -- and put into our modeling
15 system to determine these pressures, the pipes, the
16 lengths and the sizes of those pipes, and then review
17 what happens if you turn on the water from the
18 district's side. That's how we determined some of
19 the information.

20 Q. Did you physically go out and examine
21 the pipes?

22 A. No. They're all in the ground so we
23 don't have any information.

24 Q. You didn't do any -- any burrowing down
25 or any examination of that type?

1 A. No. Just a -- just a field
2 drive-through to, you know, see the standpipe and
3 understand how the system works.

4 Q. Did you go up into the tower or whatever
5 the heck that thing is called?

6 A. No, no.

7 Q. No examination of that?

8 A. No.

9 Q. Did you look at the chlorinator? Did
10 you look at that?

11 A. No.

12 Q. Did you look at any of the meters?

13 A. No.

14 Q. Go ahead. I stopped you. I think you
15 were describing what you had done, so what you had
16 looked at.

17 A. Again, the -- for the purposes of this
18 report and the findings that -- that we have, again,
19 only a general knowledge of the Suburban Water
20 Company system was necessary. Again, and the report
21 generated the concerns that we have from the
22 standpoint of pressures being different, and then the
23 potential for water losses indicated from the only
24 records that are available. Again, without --
25 without individual meters on every unit, it's

1 impossible to basically tell you where all the water
2 goes.

3 Q. And if I understand that correctly, as a
4 matter of common sense, because you don't have meters
5 on all of the known outlets --

6 A. Uh-huh.

7 Q. -- it's impossible to tell whether or
8 not a usage that appears to be higher than you would
9 expect is actually a usage through one of those
10 outlets or a leak; would that be true?

11 A. Absolutely. The -- the only information
12 we have is the production from the well. So the
13 starting point, we have flows, and at the end there
14 are no -- no ways to compare where that water coming
15 out of the ground went.

16 Q. Okay. You couldn't -- you couldn't
17 determine -- let me -- let me ask you so I understand
18 a little better. The comparison you were making, was
19 it a comparison of water usage for -- out of the well
20 for a period of time as compared to out of the
21 Suburban -- excuse me, out of the water district's
22 source for a period of time? What were you
23 comparing? I'm not clear about that.

24 A. Okay. We utilize the information from
25 the well and Suburban Water to develop an average

1 usage of water --

2 Q. Okay.

3 A. -- based -- based on taking that total
4 well production and dividing it by the number of
5 users that are there.

6 Q. All right. Over what period of time?

7 A. Basically, we have records from Suburban
8 Water Company, and they were sporadically taken
9 roughly on a daily to three daily -- three days'
10 basis. And so essentially, you take all those
11 readings of how many gallons have gone out over the
12 periods of time that each of those readings are. So
13 it varies, basically --

14 Q. Uh-huh.

15 A. -- is the answer. And then the
16 comparison made was what is that average as compared
17 to the water district's average in that zone or that
18 area of the water district.

19 Q. I see. For customers that might be
20 similarly situated, is that --

21 A. Yeah, roughly geographically, yes,
22 uh-huh.

23 Q. Okay. But do you have any idea whether
24 or not there's -- they are the same type of customer,
25 residential customers or the -- or not? Was there

1 any analysis of that?

2 A. Generally, again, it wasn't in the
3 report but as a matter of explaining that, the --
4 that particular geographic area or that zone does not
5 have as many multi-family units as -- you know, the
6 BonGor system has, I think it's about 150 units and
7 100 and -- I think it's 108 of those are multi-family
8 units. So there is a -- a difference in that if
9 you're comparing it. Typically, multi-family units
10 use less water than single-family units.

11 Q. When you -- when you count those units,
12 are they counted separately or if you have a -- what
13 is it, a four -- four-unit -- how would you say that
14 if you've got a multi-family unit? You'd say there
15 were four?

16 A. A four-plex or something like that, you
17 mean?

18 Q. Yes, I'm just looking for something to
19 call it.

20 A. Uh-huh.

21 Q. If you've got a four-plex, are you --
22 are you counting that as four separate houses?

23 A. Yes.

24 Q. Okay. So when you say they would
25 typically not use as -- as one house, a single-family

1 dwelling --

2 A. Right.

3 Q. -- you're talking about each unit, not

4 the whole four units together?

5 A. Right.

6 Q. Okay.

7 A. Speaking generally, they don't have --

8 they don't wash their cars or water their lawns and

9 that sort of thing, so there's --

10 Q. So you would expect less usage?

11 A. Yes.

12 Q. And yet, you -- what was your findings

13 in comparison to --

14 A. If you look at table 1 on the -- on the

15 exhibit, what you can see in terms of average per

16 user, the comparison is -- the first column there is

17 BonGor, and then the Consolidated zone 7 which is a

18 geographic and pressure zone that -- it's -- it's in

19 the area. Again, the average per user is very

20 similar, you know, 2 percent difference. The peak

21 per user, the BonGor system has a 36 percent lower

22 peak.

23 Q. Okay. Go ahead and finish. I have a

24 question when you finish.

25 A. Okay. And again, that basically is

1 saying that the average usage per unit is very
2 similar to that of zone 7 in the water district,
3 which, again, I cannot speak with any absolute
4 numbers on that, but it -- it provides some insight
5 into -- you know, usually multi-family units use less
6 water and so if you're at the same average, it kind
7 of makes you wonder if there are some problems with
8 the system and -- and there are leaks going on.

9 Q. Okay. Doesn't indicate that that would
10 be the only answer, right?

11 A. Right, right.

12 Q. But it's one possibility?

13 A. Again, it highlights our concern.

14 Q. Sure. What -- what I have -- what I
15 notice here is this difference in the peak usage.

16 A. Uh-huh.

17 Q. Can you explain that?

18 A. The -- again, I can't explain that
19 conclusively. There are a lot of ideas I can
20 speculate on of why that peak usage is different.

21 Q. Well, let me offer one possibility --

22 A. Okay.

23 Q. -- and ask you if this would be true or
24 if just the opposite would be true. If I were -- if
25 you did have a leak on the system, would that leak --

1 would that -- would that leak cause there to be
2 some -- have some effect on -- on peak demand in the
3 system as it would have appeared if you did not have
4 the leak? In other words, when you smooth the peak
5 out, would it increase it or would it have no affect
6 on it?

7 A. I would -- I would -- I would expect to
8 see a difference in the average usage if there were a
9 leak. Basically, the peak usage occurs when -- when
10 there are, you know, major system demands and a leak
11 is constant or --

12 Q. Well, that's kind of my question.

13 A. -- has some more consistency to it.

14 Q. So it would cause it to be and -- over
15 the system, would it not cause it to be a lower peak
16 than you would have otherwise had without the leak?

17 A. It would cause you to have a lower --
18 lower peaking factor --

19 Q. Okay. Which is --

20 A. -- which is indicated in there as the
21 1.49-ish versus a 2.09 peaking factor meaning that
22 the averages are higher and the peaks are about the
23 same, and so the factor reduces.

24 Q. Okay. The actual peak in there is lower
25 too, though. It's 36 percent lower, right, peak per

1 user?

2 A. Right.

3 Q. And the peak demand is about 36 percent
4 lower. What -- what does that tell you?

5 A. Well, again, I can -- I can speculate on
6 why that is, and if you look at the characteristics
7 of the BonGor system and the units being a lot of
8 multi-family dwellings --

9 Q. Yes.

10 A. -- versus the zone 7 in the district is
11 that when you have a lot more concentration of
12 multi-family units on the Suburban system, you know,
13 there is -- there's less peaking because there's no
14 water being -- you know, or no lawns being watered
15 and cars being washed and that kind of thing as
16 frequently as with a per-unit single-family dwelling.

17 Q. Okay. Is the age of this system of any
18 concern one way or the other with regard to the age
19 of the lines or any of the elements to it? Did you
20 look at that?

21 A. Yes. In the report we do indicate --
22 again, the purpose of the report was -- was for the
23 water district's consumption, and I did report in
24 there that -- the system being approximately 35 years
25 old and having an unknown exact quality of materials

1 and installation, that being a concern that I would
2 share with anyone who wanted to take the system over.

3 Q. You don't know or do you know what
4 the -- what the mains are constructed of?

5 A. I -- I -- I have seen that information.
6 I don't recall.

7 Q. Okay. Did you look at the recommended
8 agreement, and Stipulation and Agreement that had
9 been entered in this -- with this company earlier
10 involving the Public Service Commission's Staff in --
11 in certain improvements that were to be done under
12 that agreement?

13 A. Are you talking about the 2005
14 agreement?

15 Q. Yes.

16 A. I have seen it very recently, not -- not
17 with this report.

18 Q. Okay. Were those improvements something
19 that you did or did not consider when writing this
20 report?

21 A. No, I did not consider those.

22 Q. Does that mean that you consider them
23 not important, or that you just didn't evaluate their
24 importance or what?

25 A. I was not aware of the 2005 stipulations

1 or any agreements that the Suburban Water Company had
2 with the PSC at that time.

3 Q. Okay. But you have seen it since?

4 A. Yes.

5 Q. Did -- did you -- did you find reason to
6 agree or disagree with the recommendations or the
7 orders -- the agreements in the step for those
8 improvements to the system?

9 A. To be fair, I'd probably want to review
10 those in front of me before I would answer that. I
11 do remember a few of them and seeming that those were
12 appropriate, but I don't remember them all.

13 Q. Do you recall any that you disagreed
14 with?

15 A. Not off the top of my head, no.

16 COMMISSIONER GAW: Okay. But if someone
17 has them, perhaps they could --

18 MS. SYLER BRUEGGEMANN: Yes. And this
19 has been marked as Exhibit 1 already and entered into
20 evidence, I believe.

21 MR. REED: I don't know how difficult
22 that is for him to walk through quickly.

23 MS. SYLER BRUEGGEMANN: Are we just
24 talking about the items at issue?

25 COMMISSIONER GAW: Yes.

1 MS. SYLER BRUEGGEMANN: Which are items
2 8 through 15.

3 THE WITNESS: Okay.

4 BY COMMISSIONER GAW:

5 Q. I'll give you a -- just a moment to take
6 a look if you would.

7 A. I don't have any objection to those
8 stipulations.

9 Q. Are they things that to you would appear
10 to be reasonable in regard to improvements to a water
11 system like this one?

12 A. I think so.

13 COMMISSIONER GAW: I think that's all I
14 have, Judge. Thank you.

15 JUDGE LANE: Thank you, Commissioner
16 Gaw. Commissioner Appling, I know you arrived after
17 Mr. Gilbert had given his direct testimony, but do
18 you have any questions for the witness?

19 COMMISSIONER APPLING: I apologize,
20 Judge, but I don't have any questions. Thank you.

21 JUDGE LANE: All right. Thank you. Is
22 there any further cross-examination based on the
23 questions from the bench? OPC?

24 MS. BAKER: No.

25 JUDGE LANE: And Suburban?

1 MR. VOLKERT: No.

2 JUDGE LANE: Thank you very much. Any
3 redirect?

4 MS. SYLER BRUEGGEMANN: No.

5 JUDGE LANE: All righty. I believe that
6 takes care of this particular witness. Mr. Gilbert,
7 you may be excused. Can he be finally excused?

8 MS. SYLER BRUEGGEMANN: As far as we're
9 concerned.

10 MR. HARRISON: Judge, I guess there's a
11 chance we could recall him in rebuttal. I don't
12 think it's gonna happen, but I can't swear.

13 JUDGE LANE: All right. In that case --
14 in that case --

15 MR. HARRISON: I'm sorry.

16 JUDGE LANE: -- you're -- you're excused
17 subject to possibly being recalled tomorrow. Is that
18 going to be a problem for you?

19 THE WITNESS: It should not be a problem
20 but can I leave today? Is that what you're talking
21 about, I can leave now but then be called back
22 tomorrow?

23 JUDGE LANE: Yes, it's unlikely that we
24 will get to the Respondent's case today.

25 THE WITNESS: Okay.

1 JUDGE LANE: Thank you very much. We're
2 ready for Staff's next witness.

3 MS. SYLER BRUEGGEMANN: Yes, your Honor.
4 The Staff calls Rob Smith to the stand.

5 JUDGE LANE: Sir, would you spell your
6 name for the court reporter please.

7 THE WITNESS: It's Robert Smith,
8 R-o-b-e-r-t, S-m-i-t-h.

9 JUDGE LANE: Please raise your right
10 hand and be sworn.

11 (THE WITNESS WAS SWORN.)

12 JUDGE LANE: Thank you very much.
13 Counsel, your witness.

14 MS. SYLER BRUEGGEMANN: Thank you.

15 DIRECT EXAMINATION BY MS. SYLER BRUEGGEMANN:

16 Q. Thank you. Mr. Smith, were you present
17 at the local -- okay. Are you aware that there was a
18 local public hearing conducted by the Public Service
19 Commission on Monday night, July 23rd in Columbia,
20 Missouri?

21 A. Yes, I was.

22 Q. Okay. And were you present at that?

23 A. I was.

24 Q. And why were you present that -- that
25 evening?

1 A. Because I own property in the
2 neighborhood that's being affected by the Suburban
3 Water Company shutting down.

4 Q. Okay. And how much property do you own?

5 A. I have 15 duplex buildings, 30 units.

6 Q. And have you ever owned any different
7 property than you own now in the BonGor system?

8 A. Yes, I had two houses up there,
9 single-family homes as well.

10 Q. Now, did you own all of these properties
11 yourself?

12 A. Between my father and I -- I own -- I
13 own all the 15 buildings now, but my father and I
14 originally purchased them.

15 Q. Okay. And who did you purchase those
16 from?

17 A. Well, it would have been an LLC entity.
18 Windy Point Partners would have been the LLC at the
19 time.

20 Q. Okay. And was there any other business
21 or person involved with the sale of those properties?

22 A. As far as individuals who I dealt with?

23 Q. Well --

24 A. Or another company?

25 Q. How about another company.

1 A. Yeah, another company. Windy Point
2 Partners transferred ownership just before closing,
3 before we closed the properties into a LLC, called
4 B-SIB.

5 Q. Okay. And are you aware of what B-SIB
6 stands for?

7 A. I don't know for sure. I have my -- I
8 have my guesses what it stands for.

9 Q. Okay. Well, what's your best guess?

10 A. Burnam Siblings is what I would guess.

11 Q. And why do you say that?

12 A. Just because I dealt with the Burnam
13 siblings --

14 Q. Okay. And who --

15 A. -- on the traction.

16 Q. I'm sorry.

17 A. That's okay.

18 Q. Who specifically did you deal with?

19 A. Chris and Weyen Burnam.

20 THE COURT REPORTER: I'm sorry. What
21 was the second name?

22 THE WITNESS: Weyen.

23 THE COURT REPORTER: Thank you.

24 THE WITNESS: Uh-huh.

25 BY MS. SYLER BRUEGGEMANN:

1 Q. And did Weyen have an unusual spelling?

2 A. I think he spells it W-e-y-e-n, if I
3 recall correctly.

4 Q. And what did Chris Burnam do in regards
5 to that sale?

6 A. Well, Chris was kind of, I guess, the
7 point person for the LLC to conduct the transaction.
8 He signed on behalf of the LLC.

9 Q. Okay. And what did Weyen do?

10 A. Weyen was the licensed real estate agent
11 marketing the properties for sale.

12 Q. Okay. When did this transaction occur?

13 A. March of 2004, if I recall correctly.

14 MS. SYLER BRUEGGEMANN: Okay. If I can
15 approach the witness, your Honor?

16 JUDGE LANE: Yes.

17 MS. SYLER BRUEGGEMANN:

18 Q. I've just handed you what's been marked
19 as Exhibit 9. Do you recognize this document?

20 A. I do.

21 Q. And can you describe what this document
22 is.

23 A. That's a warranty deed transferring
24 ownership from B-SIB, LLC, to my company, RMS
25 Properties, LLC.

1 Q. Okay. And how long have you been a part
2 of RMS or have you been RMS Properties?

3 A. I think it was formed in 1998, something
4 like that.

5 Q. Okay. And were you present at the
6 execution of the warranty deed?

7 A. I was. Well, actually, no, I wasn't
8 because that's Michael's signature, so that would
9 have been pre-signed outside the closing table.

10 Q. Are you referring to the signature with
11 a name underneath that says Michael G. Burnam?

12 A. Uh-huh. And I don't recall him being
13 there. I think Chris was there along with their
14 legal counsel.

15 Q. Okay. Now, the properties that you own
16 in BonGor, the -- the duplex units, are they metered?

17 A. They are not.

18 Q. Okay. The two houses that you own, were
19 they metered?

20 A. To my knowledge, they were.

21 Q. Okay. And what do you -- you, or
22 assuming you have tenants, do about billing from
23 Suburban Water Company?

24 A. They send me a monthly statement times
25 the number of units that I own to my company, RMS.

1 It's billed in the -- the name of RMS Properties and
2 I pay a flat rate per unit that I own.

3 Q. Now, to track back for a second, did you
4 testify at the local public hearing on the 23rd?

5 A. I did not. My attorney did on my
6 behalf.

7 Q. Okay. And what was your attorney's
8 name?

9 A. Dan Simon.

10 Q. Okay. And you authorized him to testify
11 on your behalf?

12 A. Yes, ma'am, I did.

13 Q. Okay. And have you ever had -- well,
14 strike that. Withdrawn. Have you ever had the
15 opportunity to meet Gordon Burnam?

16 A. I have.

17 Q. And when did that happen?

18 A. It was either just right before the
19 closing of this transaction or just shortly after. I
20 can't remember the exact time frame, but I met
21 them -- met him at his office.

22 Q. And what was the reason for the meeting?

23 A. It's been a while back. I can't really
24 remember whether it was an introduction meeting on,
25 this is the guy that purchased your properties or had

1 something to do with it, but it also kind of related
2 to the water situation and it was kind of described
3 to me as a very unique situation, something that I
4 would not have been used to dealing with in other
5 transactions that I've been involved in or other
6 property that I've owned.

7 Q. And do you know what the unique water
8 situation was, do you recall?

9 A. No. It's -- my memory is pretty vague
10 on all of that. You kind of -- I kind of learned the
11 uniqueness of the water situation as my ownership
12 continued, if that makes sense.

13 Q. What uniqueness have you learned about
14 the water system?

15 A. Well, the meter, for one thing, didn't
16 realize that they weren't metered. The second thing
17 is every property that I own, and I own about 80
18 different units, rental property units in the
19 Columbia area, and, of course, every -- every lease
20 that I have is set up that all tenants are
21 responsible for all of their utilities. We don't pay
22 for any utilities.

23 So I kind of learned as I was sending
24 tenants down there to sign up for water service, they
25 were rejected and sent back to me, basically, stating

1 they couldn't put water in their name, and so it had
2 to stay in my name. So I learned that, you know, at
3 as -- as we closed a month to two months after the
4 closing, that they could not secure the utilities in
5 their name, so I had to eat that bill.

6 Q. Was there any -- was that a
7 misunderstanding from closing or --

8 A. I don't -- I don't think it was ever
9 disclosed, actually. I mean, I don't think there was
10 a misunderstanding. I don't ever recall being told
11 that this is the way it's gonna go.

12 Q. Okay.

13 A. Because it would have, honestly, changed
14 my viewpoint on how I would have evaluated the
15 properties to some extent because, again, it would
16 have calculated your numbers on the purchase a little
17 bit different knowing you would have had to, you know
18 pay for their utility service as well.

19 Q. Okay. Have you ever -- are you aware of
20 any -- anything having to do with the water quality
21 produced by the Suburban system?

22 A. As far as like just the quality of water
23 in general itself on what's happened up there?

24 Q. Yes.

25 A. Yes, yeah.

1 Q. And what's your understanding?

2 A. Well, it's very hard, very, very low
3 pressure depending on the time of day, to no pressure
4 at all. The water will just go out at times. And
5 again, I'm not necessarily standing there looking at
6 this, this is feedback. When things happened, my
7 phone rings off the hook because tenants start
8 calling.

9 As a matter of fact, it just happened a
10 week or so ago that they shut the water off -- they
11 either shut it off or it went off, and they gave us
12 notice but it was pretty short notice that it was
13 happening. Of course, it was too late. The tenants
14 were already calling us in our office because they
15 had no water and they were concerned that -- because
16 of the letter in April that D-day hit and that the
17 water actually was shut off.

18 Q. Were you aware or did you receive that
19 March 30th, 2007--

20 A. I did.

21 Q. -- letter? You did?

22 A. I did, uh-huh.

23 Q. Did --

24 A. Well, I don't know it'd be the exact
25 date, but I do -- I do remember getting the letter

1 and reading the letter.

2 Q. Was it a Notice of Dissolution?

3 A. Yes, it was a notice that the company
4 was filing bankruptcy, if I recall correctly, and
5 that water would be shut off effective July 1st
6 indefinitely.

7 Q. Did you do anything in reaction to that
8 letter?

9 A. Yes, ma'am, I did.

10 Q. What did you do?

11 A. Well, the first thing I did was contact
12 my attorney, Dan Simon. And then the second thing is
13 we started calling around and then made contact with
14 the Public Service Commission to see what we could do
15 because obviously that -- that would have been
16 earth-shattering if that water actually would go --
17 go off. That would have not been good financially.

18 Q. Did you contact the company?

19 A. You know, I don't remember whether I
20 actually called Suburban Water or not.

21 Q. Okay.

22 A. My attorney Dan may have, but at that
23 point they were directing everything to their legal
24 counsel, so I don't know that we really dealt with
25 them.

1 MS. SYLER BRUEGGEMANN: Okay. And one
2 last item, your Honor. I would offer as Exhibit
3 No. 9, the warranty deed dated March 3rd, 2004,
4 between B-SIB and RMS Properties, and -- with a
5 signature of apparently Michael G. Burnam into
6 evidence at this time.

7 JUDGE LANE: Exhibit 9 has been offered
8 into evidence. Any objection?

9 MS. BAKER: No.

10 MR. HARRISON: We'll stipulate that he
11 owns the property. I don't know that the document is
12 relevant to anything. The grantor of the document is
13 not a party to this case.

14 JUDGE LANE: If the objection is
15 relevance, it's overruled. Any others?

16 MR. HARRISON: No.

17 JUDGE LANE: The document is admitted.

18 (EXHIBIT NO. 9 WAS RECEIVED INTO

19 EVIDENCE AND MADE A PART OF THE RECORD.)

20 CROSS-EXAMINATION BY MS. BAKER:

21 Q. Good afternoon.

22 A. Good afternoon.

23 Q. My name is Christina Baker and I'm with
24 the Office of Public Counsel. I have a couple of
25 questions about the notice that you received. You

1 said that you received the Notice of Dissolution
2 saying the July 1 cutoff date for water, correct?

3 A. That is correct.

4 Q. Do you know if your tenants received
5 copies of that letter or if the letter came directly
6 to you?

7 A. I don't know for sure. I know that a
8 lot of them heard it on the news and, obviously, once
9 it hit the newspapers, that we had some inquiries
10 about that, and a few lost tenants, actually, that
11 didn't renew because they were nervous that they were
12 gonna lose their water.

13 Q. Okay. So -- so the tenants were very
14 concerned that the water was gonna be turned off?

15 A. Yeah, yeah, absolutely. Absolutely.

16 Q. All right. You said that --

17 A. So was I.

18 Q. I understand. You said that at that
19 time inquiries were being sent to the attorneys of
20 Suburban Water and Sewer; is that correct?

21 A. Uh-huh, I believe that's correct.

22 Q. Do you know if -- or did you -- did you
23 talk with the attorneys of Suburban Water and Sewer?

24 A. I did not. My attorney actually handled
25 that for me and I believe he spoke with Matt

1 Volkert --

2 Q. Okay.

3 A. -- would have been the attorney he spoke
4 with.

5 Q. Were you notified that -- that basically
6 Suburban Water and Sewer sent out the letter never
7 intending to turn off the water?

8 A. Were we notified of that fact?

9 Q. Yes.

10 A. That's not the way I interpreted the
11 letter or was never told any different, that the
12 water was getting shut off on July 1st.

13 Q. Okay. So you remained concerned --

14 A. Absolutely.

15 Q. -- beyond that, and no other information
16 was given to you?

17 A. Not to me.

18 Q. Okay.

19 A. I stayed in touch with the Public
20 Service Commission. I don't remember the gentleman's
21 name that -- that I spoke with, but I would follow up
22 with him to see what new facts were -- you know, what
23 we were finding out in the case. And we discussed
24 solutions with their office to see, you know, how
25 this could be handled. But no, other than that, no

1 other correspondence. It was my understanding it was
2 gonna be shut off July 1st.

3 Q. Okay. Would you be very concerned if it
4 was told to you that -- that the letter was sent out
5 with no intention of turning it off, but as a -- as a
6 ruse, basically, to get the Public Service
7 Commission's attention?

8 MR. HARRISON: I'll object to that.
9 It's argumentative.

10 MS. BAKER: No, it's a question of his
11 opinion of, you know, how would he feel with that.

12 MR. HARRISON: It's argumentative. How
13 he feels is not relevant.

14 MS. BAKER: It's very relevant. He got
15 the letter.

16 MR. HARRISON: If I could make my
17 objection. And it assumes facts not in evidence.

18 MS. SYLER BRUEGGEMANN: Your Honor, if I
19 may, since it was testimony prior in this case, then
20 I think it is relevant.

21 MS. BAKER: It is very relevant.

22 MR. HARRISON: I'm sorry, but that's not
23 what the testimony was.

24 MS. BAKER: His client -- his client
25 brought it up himself. It was not brought up in --

1 in the direct questions, his client brought it up
2 himself.

3 MR. HARRISON: No.

4 JUDGE LANE: Could you please direct me
5 to the section of the transcript at the local public
6 hearing?

7 MS. BAKER: No, no, this morning. This
8 morning.

9 JUDGE LANE: Oh, I'm sorry. I thought
10 you were talking about at the public hearing.

11 MS. BAKER: This morning with Gordon
12 Burnam --

13 JUDGE LANE: All right.

14 MS. BAKER: -- he stated directly that
15 he sent the letter not intending to turn it off, but
16 to get the Public Service Commission's attention.
17 And my question is, is that concerning to a tenant.

18 JUDGE LANE: The objection is overruled.
19 The witness may answer.

20 THE WITNESS: Can you reword it again?
21 Sorry. Or ask the question again for me.

22 BY MS. BAKER:

23 Q. Would it concern you to find out that
24 you'd received the letter that Suburban Water and
25 Sewer had no intention of turning off the water but

1 was using the letter to try to get the Public Service
2 Commission's attention?

3 A. Well, personally, it would make me a
4 little unhappy just of the tactic, I guess, really,
5 what we're talking about here because it instills
6 fear into everybody, and so now I'm losing tenants
7 which is getting into my pocketbook because I'm
8 having trouble renting the properties or maintaining
9 tenants.

10 Without tenants, 15 buildings only last
11 so long on my income or reserve capital -- capital,
12 and once that happens, it's called foreclosure. So,
13 yeah, I mean, that would very much concern me to
14 where I'd have 15 foreclose on my company. You
15 betcha.

16 MS. BAKER: Thank you. No further
17 questions.

18 JUDGE LANE: Thank you very much. Any
19 cross-examination of Mr. Smith by Suburban?

20 MR. HARRISON: Yeah, thank you, Judge.

21 CROSS-EXAMINATION BY MR. HARRISON:

22 Q. Rob, just a couple questions.

23 A. Sure.

24 Q. In connection with the purchase
25 transaction that you testified about, it's correct

1 that you didn't deal with Gordon Burnam?

2 A. That is correct.

3 Q. Did you -- when you purchased the
4 property, you did it on an as-is basis, right?

5 A. I believe that was in the contract, yes,
6 if I recall correctly.

7 Q. All right. And did you have an
8 inspection period in which you were given the
9 opportunity to do due diligence and so forth?

10 A. Uh-huh.

11 MS. SYLER BRUEGGEMANN: Your Honor, I'd
12 object as to relevance as to the actual closing and
13 the inspections. We're not talking about that today.

14 JUDGE LANE: I'll allow it.

15 MR. HARRISON: Judge on direct --

16 BY MR. HARRISON:

17 Q. And in fact, did you perform some due
18 diligence or did someone on behalf of your company do
19 it?

20 A. I did. Actually, my father and I both
21 did on our own behalf.

22 Q. Your father is a partner in rough terms;
23 is that a fair statement?

24 A. I guess you could say that. I mean,
25 they were separate companies but we went into it

1 together.

2 Q. Did you go out to the property and
3 inspect it --

4 A. Walked through every single unit, yes,
5 sir.

6 Q. Okay. Did you inspect the exterior of
7 the buildings and so forth, the grounds?

8 A. Uh-huh. Uh-huh.

9 Q. Yes?

10 A. Yes, we did.

11 Q. Okay.

12 A. Yes, I'm sorry.

13 MR. HARRISON: No further questions.

14 JUDGE LANE: Thank you, Mr. Harrison.

15 Questions from the bench, Commissioner Gaw?

16 QUESTIONS BY COMMISSIONER GAW:

17 Q. Just clarification, Mr. Smith. He was
18 asking you about whether you inspected this property,
19 I assume to question why you would be surprised about
20 the units not being metered. That's what I'm
21 assuming he's asking you about.

22 A. Uh-huh.

23 Q. Do you want to respond to that?

24 A. Well, I -- I -- the only thing I can say
25 is I never looked specifically for water meters in

1 the yard, I mean, if we're gonna talk about the water
2 issue.

3 Q. Right. And why would that be?

4 A. Because it's pretty commonplace that
5 most units would have a water meter.

6 Q. So you would -- you would expect the --
7 the meters to have been there unless you were
8 informed otherwise; is that what you're saying?

9 A. Yes, that's what I'm saying.

10 Q. You keep referring to your father. Who
11 is your father?

12 A. His name is officially -- it's William
13 Smith but he goes by Farrell, his middle name.

14 Q. Okay. And is there -- can you give me a
15 perspective on -- you're paying the water bills,
16 right?

17 A. That is correct.

18 Q. How -- how do you -- how is the water
19 bill determined for those units?

20 A. I have no idea. I just get a sheet of
21 paper. As a matter of fact, I -- I think they
22 actually have it. It's on one sheet and it just will
23 give the service dates, and it will label the number
24 of units that I own times a flat fee, and I don't
25 remember what it was, \$12.30 or something like that

1 times 30 units for a total amount. It's \$340-some a
2 month and I pay that amount.

3 Q. Okay.

4 A. And actually, it was 31 units for a
5 while. They misbilled me there for quite a while.

6 Q. But the amount of water used for those
7 units is totally irrelevant to the -- the bill you
8 receive?

9 A. I wouldn't have -- yeah, I wouldn't have
10 a clue how much water -- how many gallons of water
11 the units use. I have no idea.

12 Q. How about the sewer bill? I realize
13 it's a separate company but how is the sewer bill
14 done for that?

15 A. I'm not sure I get a sewer bill. I'd
16 have to check on that, now that you mention that.
17 I'm not sure that I do. It would come across -- it's
18 billed through our local electric co-op, Boone
19 Electric.

20 Q. Is it --

21 A. Is how they bill that, but I'm -- I'm
22 not sure how they bill that. I've never actually
23 paid attention to that.

24 COMMISSIONER GAW: Okay. That's all I
25 have. Thank you very much.

1 THE WITNESS: You're welcome.

2 JUDGE LANE: Thank you, Commissioner
3 Gaw. Any further cross-examination based on
4 Mr. Gaw's questions -- or Commissioner Gaw's
5 questions? OPC?

6 MS. BAKER: No.

7 JUDGE LANE: Suburban?

8 MR. HARRISON: No.

9 JUDGE LANE: All right. Any redirect?

10 MS. SYLER BRUEGGEMANN: No, your Honor.

11 JUDGE LANE: All right. May this
12 witness be excused finally? I'd like to just
13 inquire.

14 MS. SYLER BRUEGGEMANN: On Staff behalf,
15 yes.

16 MS. BAKER: Yes.

17 MR. HARRISON: Yes.

18 JUDGE LANE: All right. Thank you,
19 Mr. Smith --

20 THE WITNESS: You're welcome.

21 JUDGE LANE: -- for appearing here today
22 and you're finally excused. If Staff would please
23 call its next witness.

24 MS. SYLER BRUEGGEMANN: And I believe
25 Mr. Reed is doing so right now. The next witness

1 Staff will call is Everett Baker.

2 (A RECESS WAS TAKEN.)

3 JUDGE LANE: All right. We'll go back
4 on the record. Mr. Baker, if you would have a seat
5 at the witness stand. Sir, would you please spell
6 your name for the court reporter.

7 THE WITNESS: E-v-e-r-e-t-t, and it's
8 B-a-k-e-r.

9 JUDGE LANE: Thank you, sir. Please
10 raise your right hand and be sworn.

11 (THE WITNESS WAS SWORN.)

12 JUDGE LANE: Thank you very much.
13 Ms. Brueggemann, you may proceed.

14 MS. SYLER BRUEGGEMANN: Thank you.

15 DIRECT EXAMINATION BY MS. SYLER BRUEGGEMANN:

16 Q. Now, Mr. Baker, what is your occupation?

17 A. I'm an environmental engineer that works
18 for the Missouri Department of Natural Resources.
19 I'm the lead engineer for the field services division
20 in drinking water, and I work out of the Macon
21 regional office, the northeast regional office in
22 Macon. And I also have part of my time as the chief
23 of the engineering section in that regional office as
24 well.

25 Q. Okay. And how long have you been with

1 DNR?

2 A. Before there was a Department of Natural
3 Resources, I was working in drinking water with the
4 State. I've been six and -- 36 and a half years.

5 Q. All right. Now, does your jurisdiction
6 include Boone County?

7 A. Yes, it does.

8 Q. And how long has that been a fact?

9 A. Since around 2000. This was part of a
10 district that had existed before and it was
11 eliminated and we received six counties of it, and
12 that's when we picked up Boone County.

13 Q. Okay. And are you familiar with
14 Suburban Water and Sewer system?

15 A. Yes, I am. We call it BonGor Estates
16 but it's the same thing.

17 Q. And have you ever had the opportunity to
18 go to water -- or excuse me, to Suburban's water
19 system?

20 A. Yes, I have.

21 Q. So you've actually inspected parts of
22 the system or at least --

23 A. Yes.

24 Q. -- looked at it?

25 A. Yes.

1 Q. Okay. Now, are you aware of a
2 Disposition Agreement between the Missouri Public
3 Service Commission's Staff and Suburban Water and
4 Sewer system that occurred in 2005 around the rate
5 case that was completed here?

6 A. By hearsay. As far as them asking for a
7 rate increase -- is this the one where they asked for
8 a rate increase to connect to and buy water from
9 Boone Consolidated No. 1?

10 Q. I believe you probably have the right
11 situation in mind.

12 A. I -- I wasn't directly involved in that,
13 other than discussions with the water district and
14 with representatives from Suburban Water as to what
15 they were gonna try and do and what they were
16 attempting to do on that.

17 Q. Okay. Now, in the last year, year and a
18 half or so, has DNR had the opportunity to inspect
19 Suburban's water system?

20 A. We did a formal inspection and wrote a
21 report. The report was issued in June of 2006. We
22 did what we call a environmental assistance visit
23 in -- if I can find the date -- in 2000 -- March of
24 2007. We -- I had one of my people go down and set
25 up a pressure recorder because of complaints.

1 We received complaints but they won't
2 file a formal complaint, so we'd have people say
3 "We've got low pressure," and I'd say, "Who are you,"
4 and they'd say, "I'd rather not say." But we had
5 enough of them that we decided that we'd set up a
6 pressure recorder and -- and did that in May of 2007.
7 So while we -- our last formal inspection was 2006,
8 but we have -- we have been involved with the system
9 between that.

10 Q. Okay. So real quick, what were the
11 primary complaints and the basis for you going out to
12 Suburban in May of 2007?

13 A. Two -- low water pressures. And to us
14 low water pressure has a legal definition. A low
15 water pressure is pressure that's less than 20 psi
16 which is our regulated pressure that says if you're
17 under 20 psi, it's a violation of our regulations.

18 Q. Did you issue any type of report or
19 letter --

20 A. We sent -- we sent a letter June 14th,
21 2007, informing the -- the operators of Suburban
22 Water that we had set up the recorder and that we
23 found low pressures.

24 We had set up a recorder once before
25 because this is something that we'd been hearing

1 since we took on the system in 2000, was that there
2 are low pressures. We set a recorder up once before
3 but we set it up in one of the apartment buildings
4 that was there.

5 And from the chart we got from the
6 recorder and what was observed when the pressure
7 recorder was set up, it looked like they were having
8 a lot of pressure problems but they may have been as
9 much due to problems within the plumbing of the
10 apartment house as they were to the plumbing of the
11 water system.

12 So when we set up the recorder the
13 second time we specifically asked to set it up and
14 look for a place where we could set it up that it --
15 it would not be affected by the plumbing within the
16 building.

17 Q. Okay. So the first time in 2000 you set
18 it up inside an apartment unit?

19 A. One of the apartment buildings, yeah.

20 Q. And that was problematic in getting a
21 good reading of water pressure, so then you set it up
22 in a house in 2007?

23 A. At a house. Actually, we set it up on
24 one of the -- on the outside faucet. We try and
25 avoid entering private space if we can avoid it, and

1 this person was also one that worked during the day,
2 so they would be gone most of the time and the
3 readings that we would get would not be affected by
4 anything that was happening in the house.

5 Q. So what did that 2007 pressure recording
6 reveal?

7 A. It revealed that there were low --

8 MR. HARRISON: Judge, let me object.
9 Pressure is not one of the matters at issue in this
10 case. It's not part of the agreement. That's not
11 what we're here about.

12 MS. SYLER BRUEGGEMANN: Your Honor, I
13 would --

14 MR. HARRISON: -- it's not relevant --
15 relevant to the matter before the Commission.

16 MS. SYLER BRUEGGEMANN: And your Honor,
17 I would just argue that it goes to the safety and
18 adequacy of the system, if I can continue with the
19 witness.

20 JUDGE LANE: It's relevant. The
21 objection is overruled.

22 THE WITNESS: What it showed was that at
23 frequent times throughout normal days -- and we had
24 it on from -- from May 3rd to the 16th, and
25 specifically want to cover nearly a two-week period

1 so that we could see on typical days what was going
2 on -- and showed that frequently throughout that time
3 period the pressures would drop below 20 psi which
4 is -- which is the minimum protected pressure that we
5 require.

6 BY MS. SYLER BRUEGGEMANN:

7 Q. Why is that the minimum protective
8 pressure you require?

9 A. Well, it's actually based on being a
10 pressure that would have water above the top of a
11 two-story building, so that gives you about 45 feet.
12 So if you're -- for most residential areas, that
13 would get you a pressure that would be above the top
14 story of a -- of a two-story building. That way you
15 would not get Tidy Bowl and other things coming out
16 of toilet tanks back into plumbing systems if you
17 could stay 20 pounds and above that.

18 Also, it was -- it's fairly universally
19 agreed to as far as 20 psi, and it's pressured to
20 make sure that if there's a leak in the main, the
21 water leaks out, there's enough pressure to keep
22 contamination from coming back in.

23 And in fact, it's such an important
24 thing that if a system, even during a water break,
25 has pressures drop below 20 pounds, we tell them that

1 they can either voluntarily issue a boil-water notice
2 or we will issue them a boil-water order and issue
3 the notice. So it's -- it's something that we would
4 use our emergency abatement order powers to enforce.

5 Q. Now, speaking of two-story gravity water
6 systems, have you -- are you familiar with Suburban's
7 standpipe?

8 A. Yes.

9 Q. And what condition do you think that
10 standpipe is in, if you know?

11 A. I think it's in very poor condition.
12 They've had to patch a number of leaks. The --
13 that's -- my experience over the years has been if
14 you start having leaks come out like that, what
15 you've got is severe pitting on the interior of that
16 standpipe. You can look at some spaces and just look
17 at one side and count six to eight patches.

18 Q. And are we talking about metal
19 patches --

20 A. Yes.

21 Q. -- welded patches on the outside of
22 the --

23 A. On the outside of the standpipe.

24 Q. -- of the metal standpipe?

25 A. And that tells -- my experience is, is

1 that that tells you that the interior of the
2 standpipe is very badly pitted and probably to the
3 point that large sections would have to be replaced
4 beyond the value of the standpipe. It would -- it
5 would probably end up less expensive to build a new
6 standpipe than it would be to repair the existing
7 one.

8 Q. Why would it get pitted from the inside?
9 Why would --

10 A. One of the things that I haven't had is
11 the opportunity to inspect the standpipe of it, but
12 my -- my guess is, is that the coating on the
13 interior of it is --

14 MR. HARRISON: I'll object to him
15 guessing. I mean, he just said he hasn't had a
16 chance to inspect it. He's speculating at this
17 point.

18 JUDGE LANE: Sustained.

19 BY MS. SYLER BRUEGGEMANN:

20 Q. In your -- in your experience with DNR,
21 have you inspected different --

22 A. Yes.

23 Q. -- standpipes? Have you inspected the
24 inside and the outside?

25 A. Yes.

1 Q. Have you been able to observe different
2 conditions, good and bad, of water systems and their
3 standpipes --

4 A. Yes.

5 Q. -- around the State of Missouri in your
6 36 years?

7 A. Yes.

8 Q. In your professional opinion, do you --
9 do you have any idea what could typically cause leaks
10 of the interior -- or of a standpipe like that?

11 A. I can tell you from a scientific basis.
12 The water cannot cause corrosion to the metal if it
13 isn't in contact with the metal. For it to be in
14 contact with the metal, the interior coating has got
15 to be compromised in different locations for it to
16 come into contact.

17 Counting the number of leaks that are in
18 that standpipe, it's pretty evident that the water in
19 the interior of the standpipe is in contact with the
20 metal in a lot of different places. My experience is
21 that the pitting of these standpipes occurs because
22 the coating is not there to keep the water from being
23 directly in contact with cold rolled steel.

24 Q. And in your experience, how often should
25 standpipe be recoated, if you will, to make sure that

1 that doesn't occur, that the water doesn't touch the
2 metal?

3 A. That varies with the type of coating
4 that's installed on it. If a three-part epoxy
5 coating is used, you should be able to go ten to 12
6 years without recoating the interior, with one
7 corollary. You may need some touch-up in between
8 that time.

9 Q. Are you --

10 A. What we recommend is a standpipe -- or a
11 water tower be inspected every two to five years,
12 with the five-year period being just after it's
13 painted. You can go maybe five years before you
14 inspect it. After that, it should be inspected every
15 two years so that you can do touch-ups instead of an
16 entire repaint job.

17 Q. Now, are you aware if Suburban's
18 standpipe has been inspected in ten or 12 years or
19 every two years?

20 A. The -- looking at our correspondence, we
21 have some correspondence where we were told that
22 somebody inspected it, but we did not get an
23 inspection report and we didn't get any information
24 as to the qualifications of the person inspecting it.
25 I believe it was the person who's done the welding on

1 the outside of it who looked at it. But I -- I don't
2 have a name in my file. I can't say.

3 Q. Okay.

4 A. What we did in our inspection report was
5 recommend that they have it inspected by a qualified
6 inspector, and that we obtain a copy of the
7 inspection report and the pictures which would be
8 part of the inspection report.

9 Q. Okay. Now, has DNR considered or looked
10 at the chlorine -- or chlorination of Suburban's
11 system?

12 A. Yes.

13 Q. And what did it find?

14 A. They are -- they do have a little
15 solution chlorinator that's a little diaphragm
16 solution pump sitting on top of a barrel, and it's
17 used to add disinfectant. We have had problems over
18 the years from our looking at our reports in files
19 where they have not maintained adequate chlorine
20 residuals in it and when chlorine residuals have
21 fluctuated.

22 Also, we have a problem with the
23 chlorine residual under our regulations. It's
24 supposed to be tested daily and the results recorded
25 as well as being tested each time they take a --

1 their monthly bacteriological sample.

2 It's supposed to be recorded on the
3 cards so that we know that they not only have a
4 minimum residual leaving the well or the treatment
5 facility, they -- but they also are maintaining that
6 residual within the distribution system.

7 Q. Okay.

8 A. So we have had issues on both of those
9 counts maintaining the minimum residual, maintaining
10 residuals in the distribution system.

11 Q. And did you inform Suburban that that is
12 a violation?

13 A. Yes.

14 Q. Have you gotten any response yet or at
15 all from Suburban on that?

16 A. In a way, in that Suburban has made it
17 clear that they would like to get out of the water
18 treatment business and have somebody else take over
19 the water system serving BonGor Estates, and that --
20 if they would do that, that that would solve all of
21 the issues that we have with that. Otherwise, we're
22 still discussing the need to do the testing and to
23 maintain adequate residuals and to do -- and to have
24 that done by a qualified person.

25 Q. Okay. Before we get too much further,

1 in front of you is Exhibit -- what's been marked as
2 Exhibit 11. It's up on that bar in between you and
3 the court reporter. And did you write this letter?

4 A. Yes.

5 Q. Is that your signature at the bottom?

6 A. Yes.

7 Q. Did you attach those pressure readings?

8 A. Yes.

9 Q. And was this the information from May
10 2007 from the low pressure complaints, the actual
11 hookup you did to that house to get -- or the outside
12 of the house to get some readings?

13 A. This is -- attached to it is a copy of
14 the chart printout that came from our pressure
15 recorder.

16 Q. Okay. So -- and this is -- and this is
17 your letter?

18 A. Yes.

19 MS. SYLER BRUEGGEMANN: Your Honor, at
20 this time I'd like to ask to admit Exhibit 11 into
21 evidence.

22 JUDGE LANE: Exhibit 11 has been
23 offered. Any objection?

24 MS. BAKER: No.

25 MR. HARRISON: No objection.

1 JUDGE LANE: It's admitted.

2 (EXHIBIT NO. 11 WAS RECEIVED INTO
3 EVIDENCE AND MADE A PART OF THE RECORD.)

4 BY MS. SYLER BRUEGGEMANN:

5 Q. Now, the reason I did that is because
6 I'd like to give you what's been marked as Staff
7 Exhibit 12. Now, do you recognize Exhibit 12?

8 A. Yes, this is a copy of our 2006
9 compliance and operation inspection, the report of
10 our 2006 compliance and operation inspection done on
11 BonGor Estates or Suburban Water.

12 Q. Okay. And is your signature on the last
13 page?

14 A. Yes, it is.

15 Q. Did you participate in producing this
16 report?

17 A. Yes, he did.

18 Q. And in this report does it also address
19 the low water pressure issue?

20 A. Yes, it does. It's item No. 1.

21 Q. Okay. And is a finding made or a basis
22 made for the low pressures?

23 A. What we stated in the report was that
24 this was an issue that had to be addressed and that
25 we recommended that they get a consulting engineer to

1 evaluate the distribution system and try and identify
2 what is the cause of the low pressures. They can be
3 caused by several things and we go into it in the
4 inspection report but --

5 Q. Is one of those inadequately sized mains
6 or improperly --

7 A. Yes.

8 Q. -- operating the water tower?

9 A. Yes.

10 Q. Do you know what size the mains are?

11 A. No, I don't.

12 Q. Why?

13 A. One of the things we don't have is a
14 copy of plans and records on this system which --

15 Q. Have you requested them?

16 A. Yes, we have.

17 Q. And what -- and what kind of plans and
18 records for the system are you looking for?

19 A. Well, our law requires detailed plans
20 and descriptions of the system. So what we asked for
21 is engineering plans that are to-scale plans showing
22 the location of the water lines, the size of the
23 water lines, the location of valves, the location of
24 flushing hydrants, the -- more information like on
25 the capacity of the well pump, detailed information

1 on the standpipe, that type of thing.

2 Q. Okay. You mentioned flushing wells?

3 A. Flushing hydrants or clean-out, whatever
4 you want.

5 Q. Are those equivalent to flush valves?

6 A. Yes.

7 Q. Okay. And what do flush valves do?

8 A. They allow you to remove contamination
9 from the system. Any system, water system, no matter
10 how clear the water is, ends up with deposits that
11 end up in the bottom of the line. Those deposits can
12 be a place to harbor bacteria.

13 There's also a possibility that in a
14 line break, or something like that, that you would
15 get contamination in a line. You have to be able
16 to remove that contamination from a system. You
17 have to be able to remove it at flushing velocities
18 which is a minimum of two and a half feet per square
19 foot -- or gallons per minute per foot per second,
20 feet-per-second flow.

21 Q. Is the Suburban system, is it able to
22 flush adequately, then, right now on its -- on its
23 lines or mains?

24 A. I don't believe they have enough lines,
25 but I haven't got the plans to sit down and look at

1 calculations to see if they could do two and a half
2 feet per second flow.

3 Q. Are you aware of how many flush valves
4 they do have?

5 A. I'm aware of seeing one.

6 Q. Okay. Is that enough for that system?

7 A. No, not to be able to do two and a half
8 feet per second.

9 Q. Okay. How many at a minimum would they
10 need to have?

11 A. We recommend that they install flushing
12 devices at each transition and size of main, and that
13 they look at distance of -- distance of line and the
14 flow that's required and install one generally every
15 600 feet at the -- at the least minimum.

16 But it's hard to say without having
17 plans on the system, and I don't have that, so I
18 don't know exactly how many feet of run in a line,
19 and I can't tell you that this line needs one and
20 that one needs one. One of them may need two or
21 three, and another need fewer than that or more. It
22 just depends on the size of the line, the feet of
23 run, and I don't have that information.

24 Q. Okay. Now, on this inspection, does it
25 address anything about -- about meters?

1 A. Well, one of the things that we did in a
2 previous inspection, we had concerns about the fact
3 that there's no information to show water loss in the
4 system, a comparison between the amount being pumped
5 by the well and the amount being metered to the
6 customers.

7 We look at water loss in a system to get
8 an idea of the condition of the system. And we
9 recommend that that water loss be somewhere
10 between -- well, actually, what we say is, if it's
11 somewhere between five and 10 percent, we will not
12 call it excessive.

13 If it's above ten percent, we consider
14 it to be excessive water loss and something they need
15 to address because if it can leak out, there's the
16 opportunity for it to leak in contamination to enter
17 the system.

18 Q. Okay. Does this system, are you aware
19 if it has 5 to 10 percent water loss?

20 A. We have no information on water loss
21 from this system. We have requested it. It's one of
22 the issues that we covered in our inspection reports,
23 not just this one, but previous ones. One of the
24 things we've told them that, you know, metering is a
25 part of things that can cause excessive water loss.

1 We wanted them to have an accurate meter
2 on the discharge of the well and to record it daily
3 so that we could end up with well production
4 information and compare that with the readings
5 they're getting from customer meters.

6 Q. And off of that main well, would that be
7 the master meter that would take that data?

8 A. Yes.

9 Q. Okay. Now, does DNR have a requirement
10 for a certified operator --

11 A. Yes.

12 Q. -- for water systems?

13 A. We have regulations that requires all
14 community public water systems and nontransient
15 noncommunity public water systems to have a certified
16 chief operator in responsible charge of the system.
17 In addition, there must be a standby certified
18 operator in case that chief operator is incapacitated
19 in some manner. That's chapter 14 of our
20 regulations.

21 Q. And have you cited Suburban for a
22 violation --

23 A. Yes.

24 Q. -- of that provision, or at least warned
25 them that that's a violation?

1 A. We've covered it in this inspection
2 report.

3 Q. Have you ever made contact with
4 anybody -- anybody associated with Suburban?

5 A. Yes.

6 Q. Who have you made contact with in the
7 past?

8 A. Gordon Belcher (sic), who's the
9 principal.

10 Q. Paula Belcher or Gordon Belcher?

11 A. No, Gordon Burnam who's the principal
12 and Paula Belcher who's his office manager.

13 Q. Okay. And did you advise them of any of
14 the issues that we just discussed?

15 A. Yes.

16 Q. Which ones?

17 A. All of them.

18 Q. And have you -- what was the feedback
19 you received or what did they say?

20 A. The feedback that we've received is, is
21 that they are --

22 Q. And can we specify who you received it
23 from, if it was from Gordon or Paula.

24 A. Well, mainly from Gordon, that he is
25 actively seeking to get somebody else to take over

1 this water system.

2 Q. Okay. And is he aware of the -- of your
3 opinion on the flush valves?

4 A. He's aware of the opinion on the other
5 things that we issued. The flush valves isn't
6 something that we've directly set on because one of
7 the things is that we need plans on the system in
8 order to go that next step.

9 Q. Okay. Is he aware of your position on
10 the 5 to 10 percent water loss and meters?

11 A. That's -- that's very clear in our
12 inspection reports.

13 Q. Okay. Now, do you -- one last item.
14 And did you see the condition of Suburban Water's
15 system when you first gained jurisdiction over Boone
16 County?

17 A. Yes.

18 Q. And how would you compare that condition
19 to its current condition?

20 A. One of the things that they have done
21 since we started taking over was they did clean up
22 the pumping house, the pump house where the well
23 is. They've done painting on the piping, they've
24 straightened out the building itself somewhat,
25 cleaned things up. Those issues are good that

1 they've taken on -- on some of that. One of the --
2 it doesn't address some of the big basic issues.

3 Q. Has anything gotten worse in those
4 years?

5 A. I think the stand -- well, I know the
6 standpipe is continuing to deteriorate. It's -- it's
7 sprouted additional leaks since the last ones that
8 they patched during -- that we pointed out when we
9 did our first inspections.

10 The -- as far as the water lines and so
11 forth, we need more information to give you some of
12 that issues (sic). We're -- as far as operation
13 goes, that needs improvement, and that's -- that
14 hasn't changed from one report to the next one.

15 MS. SYLER BRUEGGEMANN: Okay. At this
16 time I'd like to ask that Exhibit 12 be admitted into
17 evidence.

18 JUDGE LANE: Exhibit 12's been offered
19 by Staff. Any objection?

20 MS. BAKER: No.

21 MR. HARRISON: No, as long as it's
22 admitted for the same limited purpose as previously
23 stated.

24 JUDGE LANE: All right. It's admitted.

25 (EXHIBIT NO. 12 WAS RECEIVED INTO

1 EVIDENCE AND MADE A PART OF THIS RECORD.)

2 MS. SYLER BRUEGGEMANN: Nothing.

3 JUDGE LANE: Thank you very much.

4 Cross-examination by Office of Public Counsel.

5 CROSS-EXAMINATION BY MS. BAKER:

6 Q. Good afternoon, Everett.

7 A. Hi, Christine.

8 Q. Okay. I think I want to start with
9 something that was a common complaint in the local
10 public hearing that we had this past week, and that
11 is a rotten egg smell or hydrogen sulfite issue,
12 okay?

13 A. (Nodded head.)

14 Q. Can you explain to us how a chlorine
15 addition would help with a hydrogen sulfide issue?

16 A. Chlorine oxidizes hydrogen sulfide from
17 the volatile hydrogen sulfide compound into a sulfur
18 chloride compound, and it no longer causes an odor.

19 Q. Okay. So if there is sufficient
20 chlorine in the water, there will be a lessening of
21 the rotten egg smell?

22 A. If there's sufficient chlorine in the
23 water, there should be no rotten egg smell.

24 Q. Okay. If it was reported to you that on
25 occasion customers were having a rotten egg smell,

1 would that indicate that the chlorine levels were not
2 being kept up to a sufficient level?

3 A. Absolutely.

4 Q. Okay.

5 A. Our inspections show that that's been a
6 problem.

7 Q. Have you had complaints been called in
8 about a rotten egg smell?

9 A. We haven't received any complaints on
10 that, but our inspections when we've done it, we
11 found residuals that aren't adequate. And in the
12 past, we've had to tell him that that was a
13 violation, you must maintain the minimum residual
14 leaving the treatment facility, and that you have to
15 record and maintain the residuals in the distribution
16 system.

17 Q. Okay. In your experience, are people
18 discomforted by having a rotten egg smell even though
19 samples come back just fine for bacteriological
20 samples?

21 A. Yes, it makes the water taste bad and it
22 makes anything you make with it taste unpalatable.

23 Q. Okay. And adjusting the chlorine can
24 take that away?

25 A. Yes.

1 Q. Okay. One of the requirements of the
2 Staff's Disposition Agreement with Suburban was that
3 the company would install a standpipe inlet that was
4 high enough to provide adequate circulation and
5 detention time. My understanding of that is that is
6 also related to chlorine; is that correct?

7 A. Yes.

8 Q. What would be --

9 A. Chlorine has to have a reaction time,
10 and there has to be a time that it's in contact with
11 the water for that reaction to occur. The only way
12 that that can happen is if the water goes into some
13 kind of storage tank, and then where it's held for a
14 period of time and comes out.

15 One of the ways to do that is to put a
16 riser inside of a standpipe to force the water to be
17 held in the standpipe for a period of time to allow
18 the chlorine reactions to occur.

19 Q. And that is a retrofit for an existing
20 standpipe; it's not something that a new standpipe
21 would be required?

22 A. I can tell you, Christine, we're
23 requiring that on more new standpipes all the time,
24 because of -- of the fact that they're often used for
25 the chlorine contact time on, at least in the

1 southern counties where they operate with wells. So
2 it's becoming more of a common thing on a new
3 standpipe that they would do that.

4 Q. Okay. But that is something that an
5 older standpipe can be retrofitted to have?

6 A. It is a common retrofit on a standpipe.

7 Q. Okay. All right. And so my
8 understanding of it is, if the inlet is too low and
9 it's too close to the outlet, then it doesn't mix
10 correctly?

11 A. It does what we call short-circuiting.
12 Water flows the path of least resistance; instead of
13 going all the way up to the top of the tank and
14 coming back down, it will just shoot from one inlet
15 to the -- to the outlet. That's short-circuiting.

16 Q. And that does not give it enough
17 detention time?

18 A. It will give it seconds. That's all.

19 Q. Okay. You had mentioned that there was
20 a connection with Consolidated No. 1 there as an
21 emergency connection, correct?

22 A. Yes. It's my understanding there is an
23 emergency connection where Consolidated No. 1 could
24 pressurize that system and provide service to them
25 while -- if something happened to their well or

1 standpipe.

2 Q. And while -- while this emergency
3 connection is being utilized and water is flowing
4 through from Consolidated, the piping that is there
5 in BonGor will still affect the water quality; is
6 that correct?

7 A. Yes, yes. The deposits in the pipe, the
8 sizing of the pipe will still -- water has to flow
9 through it to get to the customers. That can still
10 affect the service to the customers, things like
11 that. They still would probably need to flush it
12 out. The difference in some of the chemical
13 characteristics of the water is not that great, so
14 there shouldn't be a chemical reaction between Boone
15 County's water and the water in BonGor Estates, but,
16 yeah, it will affect the quality of it.

17 Q. Okay. So if there is a pressure problem
18 where it's going below 20 psi, that wouldn't matter
19 whether the water came from the well or the water
20 came from Consolidated?

21 A. The only thing -- it could make a
22 difference if the pressure -- standard pressures in
23 Boone Consolidated are greater than provided by the
24 standpipe. If -- they, say, have 100 pounds of
25 pressure at their connection to BonGor Estates, that

1 would be 100 pounds, where the standpipe gives you
2 considerably less than that. I think its maximum
3 pressure is around 45 pounds.

4 Q. And you have no indication of the -- the
5 quality or the -- how the pipes are doing, whether
6 they could stand that much pressure?

7 A. No, I have no information on that end of
8 it. Most of that system that I have records on was
9 constructed in 1971 or '72, and the lines are getting
10 to be 35 years old. Even for plastic pipe, depending
11 on the quality of pipe you've got at that time, it
12 may be nearing its design life.

13 Q. If Suburban Water and Sewer were to
14 change over and just be a purchaser of water and
15 supply that to their customers, would Suburban and
16 therefore Gordon Burnam and Bonnie Burnam, who are
17 the shareholders and the executives of Suburban,
18 would they still be under the regulations of DNR as a
19 distribution system?

20 A. Yes, they would.

21 MR. HARRISON: Let me object because I
22 don't think there's any evidence that Gordon and
23 Bonnie Burnam are subject to the regulations. I'll
24 object to that question. Assumes facts not in
25 evidence.

1 MS. BAKER: No, I said as -- as the
2 executives of, would they still be under the
3 regulations of Department of Natural Resources.

4 JUDGE LANE: Well, I don't think we've
5 heard any evidence -- are you assuming -- are you
6 asking him would they be subject or are they subject
7 now?

8 MS. BAKER: Would they, would they be
9 subject. I can -- I can -- I could reask my question
10 if this is a problem.

11 JUDGE LANE: Please.

12 BY MS. BAKER:

13 Q. Would Suburban Water and Sewer still be
14 a distribution system?

15 A. It would still be a community public
16 water system. Our regulations -- if they sell
17 water -- we have an exemption. If the system serves
18 25 individuals or 15 service connections, it's a
19 public water system, but we have a caveat on that.
20 If it only is distribution, it buys from an approved
21 system and does not sell water, then we don't require
22 them to get a permit to dispense and we don't
23 regulate them as we would a normal system.

24 However, if they sell water, they are a
25 community public water system, really doesn't matter

1 to us whether they have a well or they don't have a
2 well, they're still a community public water system.

3 We're going through that with a number
4 of mobile home parks in the Boone County area where
5 they installed meters and have started selling water,
6 and we've had to explain that they've now become
7 public water systems that we regulate.

8 Q. And so as a public -- as a community
9 water supply, they would still be under the
10 requirements for pressure?

11 A. Yes.

12 Q. And under the requirements for chlorine
13 contact time?

14 A. Yes.

15 Q. Let's go to the meters and the water
16 loss determination. Evidence has been given
17 throughout the day that not all of the units have
18 meters. And would that make a water loss
19 determination very difficult to not have meters on
20 each of the units?

21 A. Yes, it would. It would make any water
22 loss determination you made, it would skew it. One
23 of the things that -- one of the most common causes
24 of excessive water loss is not having a good meter
25 change-out program where a meter is replaced every

1 million gallons of water that goes through it,
2 residential meters.

3 Meters larger than residential size,
4 which is larger than one inch in size, we recommend
5 that they be tested every two years. If you don't
6 have a meter on something at all, then you have no
7 idea how much usage is going on there.

8 Q. All right. I want to go to a statement
9 that you made regarding some -- some public contacts
10 that you had. You said that people had contacted the
11 Department of Natural Resources with complaints but
12 that they did not want to do formal complaints. Can
13 you explain a little bit about that?

14 A. When somebody calls our office or
15 contacts our office and asks -- says that they've got
16 a problem, we say, "Will you file a complaint?" And
17 then that means we take name, address, telephone
18 numbers. It goes into our files which are public
19 files and therefore open to anybody through sunshine
20 requests that wants to look at them. We have not had
21 anybody from BonGor's that would be willing to file a
22 complaint. We -- we haven't even filled out an
23 anonymous complaint. They wouldn't -- they just
24 said, "Well, here's -- we have a problem with this."

25 Or if one of our people is doing

1 inspections and some resident will say something, you
2 know, "My pressure is not very good." Well, then,
3 immediately we say, "Okay, we've got a complaint form
4 we'd like to fill out." And they said so far, "No, I
5 don't want to file a complaint, I just want you to
6 know it."

7 So one of the issues -- we had enough of
8 that happen that I decided that we needed to put a
9 recorder on it to find out what's going on.

10 Q. Is it your findings that a lot of time
11 people do not want to file complaints because they're
12 concerned about retribution?

13 MR. HARRISON: Relevance, no basis for
14 that whatsoever in this case. I mean, it calls for
15 speculation.

16 MS. BAKER: The testimony this morning
17 from Gordon Burnam was he got no complaints, he got
18 no complaints. I'm asking if this is -- is a common
19 reason why people do not give complaints.

20 JUDGE LANE: As someone who receives
21 complaints, I think he can answer that question.
22 Overruled.

23 THE WITNESS: That is a very common
24 reason why people aren't willing to file complaints,
25 or if they do file one, they'll file an anonymous

1 one.

2 MS. BAKER: Thank you. No further
3 questions.

4 JUDGE LANE: Thank you very much.

5 Cross-examination by Suburban.

6 CROSS-EXAMINATION BY MR. HARRISON:

7 Q. Mr. Baker, does your job include
8 evaluating or reviewing water test samples that are
9 submitted by Suburban?

10 A. Yes.

11 Q. Explain how that works. In other words,
12 if -- in Suburban's case -- let me back up. In
13 Suburban's case, where do they submit monthly water
14 test samples?

15 A. They submit samples to the Department of
16 Health laboratory in Jefferson City which has a
17 contract with the Department of Natural Resources to
18 do the microbiological testing.

19 Q. Okay.

20 A. The results of those microbiological
21 tests are submitted to the Department of Natural
22 Resources' headquarters. The actual cards that were
23 filled out when the sample was collected are sent to
24 the respective regional office that has that system
25 in.

1 Q. And that's you?

2 A. We get the cards that Suburban's
3 operator fills out when they collect samples.

4 Q. Okay. So the actual sample isn't
5 submitted to your office; you see the end result, if
6 you will?

7 A. Yes.

8 Q. And those come to you in the normal
9 course of your job?

10 A. We get bundles of cards. We have 30
11 counties. We get bundles of cards on a routine basis
12 throughout every month.

13 Q. And is it correct that the requirement
14 is for Suburban to submit test samples on a monthly
15 basis?

16 A. For microbiological analysis, yes.

17 Q. Are they required -- is Suburban
18 required to submit any other samples on any other
19 frequency?

20 A. They -- yes. There are chemical samples
21 that -- for different tests that are submitted at
22 widely varying different frequencies. It could be
23 from every year to every three years, every quarter,
24 depending upon the test and so forth.

25 There are routine tests that they are

1 required to do such as chlorine analysis. You ship
2 it and the analyses aren't correct. The time it
3 takes in shipping throws your tests off. They're
4 required to do daily tests for chlorine residuals and
5 record that. Those -- that's reviewed when we do
6 inspections.

7 Q. Right. But as far as what they actually
8 submit in terms of a water sample when they submit
9 water samples to the DNR or a DNR contractor, there's
10 the monthly -- there's a monthly sample that you
11 testified about?

12 A. And then there's chemical analysis and
13 they vary widely enough that -- you probably don't
14 want me to go into all of that.

15 Q. Well, I don't think I do but they vary
16 widely between --

17 A. As to times they're taken.

18 Q. Okay. All right. I think I understand.
19 So you don't do the actual analysis of the water --
20 of the water sample, you just read it?

21 A. Well --

22 Q. You're not the guy who sits there and
23 does the actual lab work?

24 A. No. There's -- there's chemists who do
25 the atomic absorption tests, there's microbiologists

1 who do the bacteria analysis. I've done it. I know
2 how to do it, but it's not something I want to do
3 every day.

4 Q. No, I understand. That's not my
5 question.

6 A. Yeah.

7 Q. In Suburban's case, I just want to
8 establish it that you don't do it?

9 A. No.

10 Q. Okay. That's all I wanted to get at.

11 A. Okay.

12 Q. All right. You testified about the
13 standpipe condition. It's correct, isn't it, that
14 you haven't inspected the inside of a standpipe?

15 A. No, I have not inspected the inside of a
16 standpipe.

17 Q. Right. And you haven't inspected,
18 therefore, the standpipe inlet; is that a fair
19 statement?

20 A. That's true, I haven't seen it.

21 Q. All right.

22 A. You got to get inside. It's full of
23 water.

24 Q. And I think your testimony in your
25 reports were that in order to give a complete

1 evaluation, that's my term, you'd need to do that?

2 A. What I --

3 Q. Or someone?

4 A. The report says that a qualified person
5 should inspect the interior of that and give a report
6 that -- along with pictures that says an evaluation
7 of that tower. And by qualified, I mean somebody
8 who's very familiar with not just painting towers,
9 but tower construction, maintenance, the department's
10 criteria for safety and sanitary facilities that have
11 to be on towers.

12 Q. Back on the testing, I neglected to ask
13 you a couple of questions. Say, over the past --
14 well, since you've been working with Suburban, which
15 is what, the last seven years, six and a half years,
16 right?

17 A. Around that, yeah.

18 Q. Have they been submitting their
19 monthly -- or monthly test samples?

20 A. We had some problems in 2000 when they
21 first started with major monitoring violations,
22 that's not submitting any samples during the time
23 period. We had some additional problems in 2003 with
24 microbiological samples not being submitted. We had
25 some problems with positive samples. I'd have to --

1 Q. Well, right now I'm just asking you
2 about the actual submissions of the samples. Since
3 '03, then, have they been submitting them on a
4 monthly basis?

5 A. We have not had a violation since '03.

6 Q. Okay. That was gonna be my next
7 question. Are you aware that, and I think it was
8 2006, Suburban replaced the pump?

9 A. We were not informed that the pump was
10 replaced.

11 Q. Okay. Did I just tell you that for the
12 first time? Is that the first time you've heard it?

13 A. That's the first time I've heard it,
14 which brings up the issue that they're supposed to
15 get our permission before doing that.

16 All right. So you haven't inspected
17 it -- you haven't inspected the pump since it was
18 replaced last year?

19 A. No.

20 Q. When your -- when your employees were
21 on-site in 2000 -- earlier this year, that wasn't
22 part of what was inspected?

23 A. It's a submersible pump, it's inside the
24 well.

25 Q. Okay.

1 A. You can't see it. All you see is a pipe
2 coming out of the well.

3 Q. Does the monthly tests that -- the
4 monthly water tests that are submitted, you might --
5 you might need to explain this more precisely for me
6 because I'm a layman, what is it measured for, what
7 do those tests measure?

8 A. They test for total coliform bacteria.
9 Total coliform is an indicator bacteria that,
10 statistically, if it's not present, there's a very
11 high statistical probability that pathogenic
12 organisms are not present.

13 If total coliform bacteria is present,
14 it is a firm indicator that contamination is there
15 that should not be there. There's also a much higher
16 probability that that could include pathogenic
17 organisms. What happens if we get a positive total
18 coliform is the laboratory immediately runs an
19 analysis for Escherichia coliform, or fecal coliform
20 is what it's commonly being called, and it is
21 bacteria that grows in the intestines of warm blooded
22 mammals. If that's positive, it indicates it is
23 proof that fecal material is contaminating the water.

24 Q. Okay.

25 A. So far, the analysis has been positive

1 for total coliform. We have not had a positive for
2 fecal of the ones that we've had.

3 Q. Okay. In other words, all of the tests
4 have been acceptable. You might have said positive
5 and that might create an ambiguity at least in my
6 mind.

7 A. We've had a couple of -- we've had some
8 tests and investigations where there were positive
9 samples.

10 Q. Okay.

11 A. I'd have to look through the file to
12 tell you the dates and so forth, but we've --

13 Q. And then -- and if that happens, so
14 there is a retesting required?

15 A. If that happens there's retesting
16 required and we do an investigation to find out why
17 you ended up with a positive sample.

18 Q. Okay. The daily -- I think you
19 testified earlier that there's supposed to be daily
20 samples taken as well and tested?

21 A. And tested for chlorine residuals.

22 Q. And how is that done?

23 A. That has to be done --

24 Q. Correction: How is that supposed to be
25 done?

1 A. It is done on-site by a system operator
2 and it has to be done using either a
3 spectrophotometer or a colorimeter, and it's a
4 chemical analysis, wet chemical analysis where a
5 sample of water is taken, a measured amount of
6 chemical is added, it's taken in and measured, a
7 cuvette, and that, then, is put in the machine and
8 the machine reads the sample. There's a --

9 Q. So --

10 A. That's general. There's a calibration
11 procedure and all that type of thing to do it.

12 Q. All right. So colorimeter, if I said
13 that correctly, is a machine?

14 A. It's a machine that will read the -- the
15 residual.

16 Q. All right. And is it a machine that can
17 be purchased from water and sewer supply companies
18 and so forth or is that --

19 A. Yes, yes.

20 MR. HARRISON: All right. Nothing
21 further.

22 THE WITNESS: They make what they call a
23 pocket colorimeter for chlorine, specifically for
24 chlorine, and that's what most small systems use.

25 BY MR. HARRISON:

1 Q. Meaning a small size of the -- yeah?

2 A. It's (indicated) -- well, you'd have to
3 have a large pocket but theoretically, you could put
4 it in your pocket.

5 MR. HARRISON: Right. Nothing further.

6 JUDGE LANE: Thank you, Mr. Harrison.
7 Questions from the bench, Commissioner Clayton?

8 COMMISSIONER CLAYTON: No questions,
9 thank you.

10 JUDGE LANE: Thank you very much.

11 QUESTIONS BY JUDGE LANE:

12 Q. I have one question, and that is when an
13 investigation is performed by DNR, either as a result
14 of a complaint or as a routine periodic inspection,
15 and there are indications that the pressure in the
16 system is below the 20 psi threshold established by
17 the regulations, what is the next step?

18 A. We inform the system that they are not
19 maintaining the minimum required pressure. In this
20 case, we informed them that they were not maintaining
21 the required pressure, and that we wanted to know why
22 they were having the low pressures.

23 One of the problems that we've got with
24 this is we don't have enough information to know
25 specifically what's causing it. I can surmise some

1 things, but I would like more information before I
2 make -- make judgments on that.

3 Q. All right, so --

4 A. You can tell by the printout of the
5 chart that we're probably looking at line size. But
6 I would like to know the line size and the number of
7 services.

8 Q. So in Suburban's case, you found low
9 pressure and informed them that there was low
10 pressure, asked them to --

11 A. Contact the consulting engineer to come
12 back with us with an explanation as to what is
13 causing the low pressures and what will be done to
14 correct them.

15 Q. All right. And where is Suburban in
16 the -- have they completed -- have they got back to
17 you on that yet?

18 A. No.

19 Q. They have not?

20 A. They have not.

21 Q. All right. And what happens -- how much
22 time do you allow before you take the next step if
23 there is a next step? Is there a next step after
24 that?

25 A. There is a next step. What we'll end up

1 doing is issuing a Notice of Violation and start
2 climbing the enforcement ladder where we say that
3 this is a violation, you have to correct the
4 violation. We'll turn it over to enforcement,
5 they'll be trying -- be a negotiation and a
6 compliance schedule and time frame out. If that
7 falls through, then we would seek injunctive relief
8 through a court.

9 Q. So for Suburban, though, you're still on
10 the first rung of that enforcement ladder?

11 A. We're still on the first rung, and to be
12 quite honest with you, we're kind of watching what's
13 happening here to see -- there's no need in our minds
14 for Public Service Commission and us to travel --
15 repeat the same process. We're interested in
16 compliance. If Public Service Commission's actions
17 get that compliance, we're tickled. We just want
18 compliance. Whether we were the ones who did it or
19 somebody else, we don't care.

20 JUDGE LANE: Thank you very much. Is
21 there any further cross-examination based on my
22 questions from OPC or Suburban?

23 MS. BAKER: No.

24 MR. HARRISON: No, Judge.

25 JUDGE LANE: Thank you. Any redirect?

1 MS. SYLER BRUEGGEMANN: No, your Honor.

2 JUDGE LANE: All right. Now would be a
3 good time to take a break. Before I do that, is
4 either side planning -- any -- could this witness be
5 finally excused or do you think that there's a
6 possibility he'll need to be recalled?

7 MR. HARRISON: He can be excused as far
8 as we're concerned.

9 JUDGE LANE: All right.

10 MS. BAKER: Excused.

11 THE WITNESS: Thank you.

12 JUDGE LANE: All right. You are finally
13 excused. And it's mid afternoon, time for a mid
14 afternoon break. Let's reconvene at four o'clock.
15 That's about 18 minutes from now.

16 (A RECESS WAS TAKEN.)

17 JUDGE LANE: All right. We're back on
18 the record in Case No. WC-2007-0452. We're ready for
19 Staff's next witness.

20 MR. REED: Judge, Staff's next witness
21 is going to be Jim Russo. Before I call Mr. Russo to
22 the stand, I just wanted the court to be aware that
23 Mr. Russo needed to be out of town tomorrow. The
24 Staff hadn't originally planned to call Mr. Russo
25 with its case in chief, but we want to make sure that

1 the Respondents have an opportunity to examine him
2 and cross-examine him and to get what they need into
3 the record from Mr. Russo. So I am calling Mr. Russo
4 at this time.

5 JUDGE LANE: All right. Thank you very
6 much.

7 MR. HARRISON: And we appreciate that.

8 JUDGE LANE: You are most welcome, I'm
9 sure. Mr. Russo, would you take the stand. Yes,
10 sir. Would you first please spell your name for the
11 reporter.

12 THE WITNESS: R-u-s-s-o.

13 JUDGE LANE: Please raise your right
14 hand to be sworn.

15 (THE WITNESS WAS SWORN.)

16 JUDGE LANE: Thank you, sir. Your
17 witness.

18 DIRECT EXAMINATION BY MR. REED:

19 Q. Mr. Russo, what is your occupation?

20 A. I am employed by the Missouri Public
21 Service Commission in the water and sewer department.
22 My official title is rate and tariff examination
23 supervisor.

24 Q. What is your educational background?

25 A. A BS in accounting.

1 Q. Okay. From where?

2 A. Fresno State.

3 Q. Mr. Russo, how long have you been
4 employed by the Missouri Public Service Commission?

5 A. Since April of 1997.

6 Q. And before then, where did you work?

7 A. I was assistant treasurer tax collector
8 for San Joaquin County in California.

9 Q. How long have you been with the water
10 and sewer department here?

11 A. I believe August of 2004.

12 Q. Have you had occasion to work on rate
13 cases involving water and sewer companies here at the
14 Commission?

15 A. Yes, not only water and sewer but also
16 when I was an auditor in the auditing department.

17 Q. All right. Did you play a role in the
18 2005 Disposition Agreement involving Suburban Water
19 and Sewer Company?

20 A. Yes, essentially I prepared that
21 document.

22 Q. You prepared the agreement?

23 A. The -- yes.

24 Q. Were you a part of any of the meetings
25 with the Burnams?

1 A. One meeting with -- one physical meeting
2 with Gordon, yes.

3 Q. And who else was present?

4 A. To the best of my recollection, Paula
5 was there, it was -- it was on May 2nd.

6 Q. Of what year, 2005?

7 A. Yes, sir.

8 Q. Go ahead.

9 A. Paula Belcher, Debbie Bernsen, myself,
10 Martin Hummel, Jim Merciel, Kofi Boateng, Dana Eaves
11 and I believe, but I'm not 100 percent sure, that
12 Mr. Joe Hanson may have attended that meeting late.

13 Q. Was the 2005 -- was the Disposition
14 Agreement discussed during that meeting?

15 A. Items that went into that agreement were
16 discussed.

17 Q. All right. Mr. Russo, at the meeting
18 that you attended with the Burnams and the other
19 parties -- other people that you indicated, do you
20 recall any of the items discussed in particular?

21 A. The way we conducted the meeting was we
22 basically went around the table. For instance,
23 Debbie Bernsen talked about the refunds, Mr. Hummel
24 would have talked about the meter replacement, he
25 would have talked about the standpipe, he talked

1 about the flush valve. I know Dana Eaves talked
2 about the refunds that were from the -- from the
3 increase in the rates earlier, he talked about that.
4 There were probably other things. At this moment I
5 just -- I just don't recall.

6 Q. Who would have talked about the rates
7 specifically that were --

8 A. Well, that would have been myself in
9 terms of rate design, I would have discussed that.

10 Q. Like the cost per thousand gallons type
11 of numbers?

12 A. That is my number, that \$1.87 was
13 designed by myself.

14 Q. And what about rates for -- what about
15 flat rates that would be in the tariff?

16 A. I developed the flat rate which, I
17 guess, was the 12.30.

18 Q. Was there any discussion at that time
19 about whether that flat rate would apply to any
20 particular customers?

21 A. It was for the unmetered customer. It
22 was designed so that while they were unmetered, the
23 company would have a revenue stream. The intention
24 was to get -- to get these customers meters,
25 obviously, but in the meantime, in order to be able

1 to charge them something, get revenue for the
2 company, there had to be something in the tariff that
3 would allow the company to do that, and that was --
4 that was the intent of the 12.30.

5 Q. And the -- by unmetered, do you mean a
6 building with no meters, correct?

7 A. Well, you had two situations. You had
8 buildings with no meters -- or you had a building
9 that had one meter but it had, I guess the word's
10 jump, the jumps in where all you had to do was
11 basically stick in a meter -- take out the jump and
12 stick in a meter and those -- they'd be ready to go.
13 It was to cover those situations.

14 Q. Was there any discussion about how
15 the -- how units would be billed; for instance, a
16 four-plex where the building had only one meter?

17 A. I honestly don't recall any specific
18 discussion.

19 Q. Is it -- in your experience here at the
20 Commission when there is a case wherein there might
21 be a four-plex, for instance, with only one meter on
22 it, would the meter -- would you -- would you plan
23 the rates so that the meter would be read and divided
24 among four customers?

25 A. Sometimes, yes. You have -- there's the

1 possibility you have some buildings that they only
2 have one inlet, so to speak, one way for the water to
3 get in. In that case, you would read the meter, it
4 would be billed, one bill for that building. In this
5 case on some of these buildings, on some of them -- I
6 don't know if they all were that way -- you had four
7 different inlets.

8 So let's say, for example, unit A may
9 have a meter on it. B, C and D, even though they
10 have these jumps so they could -- they could have a
11 meter, they just didn't have it. So in that case,
12 the rates were designed so that, of course, A would
13 get billed the metered rate, but B, C and D, until
14 they got the meters, would be at the unmetered rate.

15 Q. Until they got meters?

16 A. Yes. Yes, sir.

17 MR. REED: That's all, Judge.

18 JUDGE LANE: Thank you very much.

19 Cross-examination by Office of Public Counsel?

20 MS. BAKER: I really just have one
21 question, so I'll stay here if that's all right.

22 CROSS-EXAMINATION BY MS. BAKER:

23 Q. Would individual meters on -- on the
24 buildings ensure that the users in that building are
25 paying for their own cost of service?

1 A. Yes.

2 Q. And a -- and a flat rate, unmetered rate

3 is not necessarily the full cost of service?

4 A. That's correct.

5 MS. BAKER: No further questions.

6 JUDGE LANE: Suburban? Mr. Volkert.

7 CROSS-EXAMINATION BY MR. VOLKERT:

8 Q. Good afternoon.

9 A. Good afternoon, sir.

10 Q. So you testified that you're familiar

11 with Suburban; is that correct?

12 A. With some aspects, yes, sir.

13 Q. And did you have much history with them

14 before 2005?

15 A. No, sir.

16 Q. How would you characterize -- actually,

17 let me -- let me rephrase that. Would you say

18 Suburban, for a company of its size, is of about

19 average sophistication; is that correct?

20 A. Sophistication, yes, sir.

21 Q. I'm gonna hand you what's been marked as

22 Exhibit 55. Do you recognize this document?

23 A. Yes.

24 Q. And what is it?

25 A. It's Staff's Disposition Agreement

1 filing.

2 Q. And if I direct your attention to
3 appendix A where it says, "Disposition Agreement and
4 attachments," following that, the document, the
5 "Unanimous Agreement Regarding Disposition of Small
6 Water Company Rate Increase Request," are you at that
7 document, please?

8 A. Okay.

9 Q. Turn to that document. I believe it's
10 on the sixth or seventh page.

11 A. Yes.

12 Q. Who drafted this?

13 A. I did.

14 Q. And did you read it carefully when you
15 drafted it?

16 A. Yes.

17 Q. To your recollection, was it an accurate
18 portrayal of the agreements that were -- that were
19 being entered into by Suburban and the Staff at the
20 time?

21 A. Yes.

22 Q. You mentioned that this was discussed at
23 a May 2nd meeting. Was this discussed in the form
24 that it is now or were there more changes to be made?

25 A. Items contained in this document were

1 discussed. It's -- it's possible items changed from
2 that May 2nd meeting but I can't recall specifically.

3 Q. Okay. If I direct your attention to
4 page 3 of 5 in that agreement --

5 A. Okay.

6 Q. -- and specifically, I want to focus on,
7 let's see, No. 7.

8 A. Okay.

9 Q. Go ahead and look at that quickly. Does
10 this ring a bell with you?

11 A. Yes.

12 Q. And you intended to include that in the
13 agreement?

14 A. Yes.

15 Q. Do you know when that was done?

16 A. No, I do not.

17 MR. VOLKERT: First of all, your Honor,
18 I'd like to move to admit 55, Exhibit 55.

19 JUDGE LANE: All right. Could I have a
20 copy of that?

21 MR. VOLKERT: Oh, yeah, I'm sorry. I
22 apologize.

23 JUDGE LANE: Exhibit 55 has been
24 offered. Any objections from Staff or OPC?

25 MS. BAKER: No.

1 MR. REED: I just --

2 JUDGE LANE: Yeah, you have a chance to
3 take a look at it.

4 MR. REED: No objection, Judge.

5 JUDGE LANE: All right. Hearing none,
6 it is admitted.

7 (EXHIBIT NO. 55 WAS RECEIVED INTO
8 EVIDENCE AND MADE A PART OF THE RECORD.)

9 BY MR. VOLKERT:

10 Q. I'm gonna hand this back to you
11 admitted. And I'm also gonna hand you, Mr. Russo,
12 another exhibit that's been labeled Exhibit No. 66.
13 Please go ahead and take a look at this.

14 A. Okay.

15 Q. And specifically, the second paragraph
16 of this letter --

17 A. Okay.

18 Q. First of all, do you recognize this
19 letter?

20 A. I don't recall but it's fine. It says
21 it's addressed to me so I'm sure I've looked at it
22 before.

23 Q. And the date on this?

24 A. March 28th, 2005.

25 Q. And in the second paragraph, does it say

1 that, "The overcharges are going to be refunded in
2 April 2005"?

3 A. Yes, it does.

4 Q. Did you -- to your knowledge were they,
5 in fact, refunded in April of 2005?

6 A. I do not know if that took place then or
7 not, no.

8 Q. Do you remember discussing that in
9 connection with the Disposition Agreement?

10 A. I know at the time of the Disposition
11 Agreement that the refunds were in the process of
12 being refunded if they hadn't been done, but I don't
13 recall specifics.

14 Q. Can you tell me, would there be any
15 reason to include something like paragraph No. 7 that
16 we were talking about earlier on page 3 of 5 of the
17 Disposition Agreement in that agreement if these
18 overcharges were already done?

19 A. If they had been done and Staff had
20 knowledge of that, no.

21 MR. VOLKERT: Your Honor, I would move
22 to admit Exhibit 66.

23 JUDGE LANE: Exhibit 66 has been marked
24 and offered into evidence. Any objections from Staff
25 or OPC?

1 MS. BAKER: I have not seen it.

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

3 JUDGE LANE: I'm sorry. I thought you
4 had distributed a copy to Ms. Baker.

5 MR. VOLKERT: That's my fault, your
6 Honor.

7 MS. BAKER: No objections.

8 MR. REED: Judge, my objection is to
9 relevance. Paragraph 7 of the Disposition Agreement
10 and also the letter, Exhibit 66 both relate to
11 count 2 which was dismissed.

12 JUDGE LANE: That's -- that's overruled.
13 There are portions of this letter that are relevant.

14 (EXHIBIT NO. 66 WAS RECEIVED INTO
15 EVIDENCE AND MADE A PART OF THE RECORD.)

16 BY MR. VOLKERT:

17 Q. If you turn back to Exhibit 55, please,
18 the agreement, page 3 of 5 again, Mr. Russo.

19 A. Yes.

20 Q. The next item I want to call your
21 attention to is No. 8.

22 A. Okay.

23 Q. I'm sorry -- yeah, No. 8. And paragraph
24 No. 8, your understanding is it required Suburban to
25 develop and distribute to all customers a brochure

1 detailing the rights and responsibilities of the
2 utility and its customers, correct?

3 A. I'm sorry? I missed the question on
4 that, Counselor.

5 Q. Do you understand this requirement to be
6 that Suburban is required to distribute a brochure
7 detailing the rights and responsibilities of the
8 utility and its customers?

9 A. That's correct.

10 Q. Does this requirement have any deadline
11 stated?

12 A. No, sir, it does not.

13 Q. When would you expect this to be
14 completed?

15 A. Something like this probably within 90
16 days.

17 MR. VOLKERT: Your Honor, I'd like to --
18 do we have an Exhibit No. 6 that's been previously
19 admitted, I believe?

20 MS. SYLER BRUEGGEMANN: It would be with
21 the court reporter, I believe.

22 MR. VOLKERT: It would.

23 BY MR. VOLKERT:

24 Q. I'm handing you what's been previously
25 marked and admitted as Exhibit 6. Can you look at

1 this Exhibit, Mr. Russo. Can you tell me does this
2 brochure describe rights and responsibilities of a
3 utility?

4 A. It has those type items in it, yes.

5 Q. To your -- in your opinion, is the draft
6 of the Unanimous Disposition Agreement, does this
7 satisfy No. 8?

8 A. I can't answer that. I don't know what
9 the -- this would be more of a question for the --
10 Ms. Bernsen. She would be an expert on what's
11 required of the rule. I don't know the items within
12 the rule to say that everything in here meets those
13 requirements.

14 Q. I'm not talking about the rule. I'm
15 asking if this brochure describes rights and
16 responsibilities of the utility and its customers and
17 does that satisfy No. 8 of the agreement?

18 A. I don't know if it fulfills No. 8
19 completely, no, I don't know that.

20 Q. But it does contain rights and
21 responsibilities of the utility and its customers?

22 A. It has some of those items in it, yes,
23 sir.

24 Q. What other items would you expect to
25 see?

1 A. I don't deal with this. I can't answer
2 that. I don't know.

3 Q. What other items are -- what other
4 specific items are required by paragraph No. 8, then?

5 A. Again, I don't know that rule. I don't
6 know the specific item, sir.

7 Q. I'm not asking about a rule, I'm asking
8 about paragraph No. 8.

9 A. I don't know, sir.

10 Q. Next paragraph I'd like to direct you to
11 is paragraph No. 9.

12 A. Okay.

13 Q. Can you tell me in your understanding
14 what a continuous property records system is?

15 A. I'm sorry. Could you repeat that again?
16 I was reading it.

17 Q. Oh, I apologize.

18 A. No, that's fine.

19 Q. Can you tell me in your -- what's your
20 understanding of a continuous property records system
21 for client?

22 A. It starts at the inception of a company
23 when you have plant, and it goes -- it's perpetual in
24 that sense, it goes on forever. You include items of
25 data purchase, type of -- type of item that you've

1 purchased, date placed in service, serial numbers,
2 you've got cost involved, those type of things.

3 Q. Paragraph No. 9, the -- that reads that,
4 "At a minimum includes the date plant is placed in
5 service, the purchase price of plant and the dates of
6 retirement of property"; is that correct?

7 A. Yes, sir.

8 Q. I'm gonna show you what's been premarked
9 as Staff Exhibit No. 3. Can you read what the title
10 of this document is?

11 A. "Suburban Water and Sewer Company
12 property record system."

13 Q. And could you please read the four
14 columns of this table.

15 A. "Plant" --

16 MR. REED: Your Honor, I'll object.
17 This exhibit hasn't been introduced into evidence so
18 to have -- to have the witness read it is improper at
19 this point in time. There needs to be a foundation
20 for this exhibit.

21 MR. VOLKERT: Fair enough.

22 BY MR. VOLKERT:

23 Q. Mr. Russo, do you recognize this
24 exhibit?

25 A. Yes.

1 Q. And when did you first see this exhibit?
2 Where did you -- who did you receive this from?

3 A. I believe it was from you at a
4 deposition maybe a week ago.

5 MR. VOLKERT: Your Honor, I'm gonna move
6 to admit this as is.

7 JUDGE LANE: Exhibit 3 has been marked
8 and offered into evidence. Objections, Public
9 Counsel?

10 MS. BAKER: I guess I'm unclear of the
11 foundation of the fact that he had just seen it.

12 JUDGE LANE: I think it would help if --

13 MR. REED: I think there needs to be
14 additional foundation, however, the Staff is willing
15 to accept the stipulation by the Respondents that
16 this was prepared by Suburban's attorneys within the
17 last few weeks. I don't know what the date was.

18 JUDGE LANE: Will Suburban stipulate to
19 that?

20 MR. VOLKERT: Yes, your Honor, with --
21 with -- well, we'd stipulate it with the
22 assistance -- with the assistance of Suburban,
23 prepared by us with the assistance of Suburban.

24 MR. REED: Can we have a time period, a
25 date when it was prepared?

1 JUDGE LANE: Within the last few weeks,
2 do you agree to that?

3 MR. VOLKERT: Yes, your Honor.

4 JUDGE LANE: All right. With that --
5 with that stipulation in mind, hearing no objection,
6 it's admitted.

7 MR. VOLKERT: Thank you.

8 (EXHIBIT NO. 3 WAS RECEIVED INTO
9 EVIDENCE AND MADE A PART OF THE RECORD.)
10 BY MR. VOLKERT:

11 Q. Okay. Now, Mr. Russo, I'd like you to
12 read in the titles, please, the four column titles in
13 the table.

14 A. "Plant, parentheses, description, date
15 placed in service, purchase price with an asterisk,
16 date of retirement with two asterisks."

17 Q. And are these the last three
18 categories -- the last three column headings, are
19 these the three categories of information that are
20 required pursuant to paragraph 9?

21 A. At a minimum, yes.

22 Q. Are there any other things required --
23 in your understanding, are there any other things
24 required in paragraph 9, specifically required in
25 paragraph 9 that are not on this exhibit?

1 A. Well, we typically on CPRs, continuous
2 property records, expect more detail. In terms of,
3 for instance on water lines, there may be two-inch
4 lines, there may be four-inch lines, there could be
5 six-inch lines. We expect more detail in terms of
6 things like serial numbers.

7 Q. Does this --

8 A. Go -- I'm sorry.

9 Q. No, I apologize. I didn't mean to
10 interrupt.

11 A. That's okay, it was a fleeting thought.

12 Q. But are any of those things written
13 anywhere in this agreement that I've handed you in
14 Exhibit 55?

15 A. No, sir.

16 Q. And the agreement for paragraph 9, does
17 it list a deadline?

18 A. No, sir.

19 Q. And when would you expect this to be
20 completed?

21 A. I would say probably within 90 days.

22 Q. If you'd turn back into the agreement --
23 or actually, let me show -- point you to the next
24 paragraph underneath paragraph No. 9 in the
25 agreement, same page. It's not numbered but it looks

1 like it should be paragraph No. 10.

2 A. Yes, sir.

3 Q. You just testified a little earlier,
4 isn't it correct, that you had discussions about
5 meters being placed in service for each unit?

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

7 Q. Can you read this paragraph No. 10 and
8 tell me, does it -- in your understanding, is that
9 what this paragraph requires?

10 A. That's my understanding. I realize it
11 says "buildings," but it would be units.

12 Q. Would you say a four-plex is four
13 separate buildings?

14 A. I would say a four-plex is four separate
15 units.

16 Q. But your testimony is that installing
17 meters for all buildings means installing individual
18 meters for each unit in each building?

19 A. The intent was units.

20 Q. The intent. And let me point you to,
21 please, to agreement attachment No. 1, example tariff
22 sheets. It's about -- if you flip forward, about --

23 A. I have it.

24 Q. -- five pages. Okay. At the bottom of
25 Rate Schedule W1 heading on the first page where it

1 says Unmetered Monthly Rate --

2 A. Yes.

3 Q. -- does it have any qualifiers in
4 that -- in the tariff sheets or in the agreement
5 itself as to how that applies or when that applies or
6 when that may expire?

7 A. No.

8 Q. If you flip back to page 3 of 5, please.

9 A. Okay.

10 Q. I'm gonna point you to the next
11 non-numbered paragraph, call it paragraph No. 11
12 because it is right underneath the one we were
13 calling paragraph No. 10.

14 A. Right.

15 Q. And is a ten-year replacement program
16 defined in the Commission rules?

17 A. It's my understanding it is. It's in
18 10.030, I believe. It's either .37 or .38 or both.

19 Q. The phrase "ten-year replacement
20 program"?

21 A. I don't know if that exact phrase is in
22 there or not, sir.

23 Q. Do you know what the Commission rule
24 requires? Does it require a ten-year replacement of
25 all meters?

1 A. We have a ten-year replacement meter
2 program, yes.

3 Q. Is this in addition or supplemental to
4 the rule that requires ten-year testing meters?

5 A. It's not practical for a small company
6 to take a meter out and test it. In other words, a
7 small company doesn't have a facility, a certified
8 facility in-house to do that; they would have to send
9 it off somewhere.

10 You have all the -- when you consider
11 the cost of the meter and you consider the cost of
12 getting a meter taken out, sent off, tested and put
13 back in, it's just easier for the companies to
14 replace them. It's cheaper for them, it's cheaper
15 for the ratepayers.

16 Q. I guess what I'm trying to find out is
17 did the Commission rules require ten-year testing of
18 meters or ten-year replacement of meters?

19 A. I don't recall the specific wording in
20 the rule.

21 Q. And with your understanding of this
22 specific paragraph in the agreement, how do you
23 understand -- what do you understand a ten-year
24 replacement program to mean for Suburban?

25 A. In their case, if they had, for

1 instance, 150 meters, we were to expect them or I
2 would expect them to replace 15 a year.

3 Q. Is that just dividing the total meters
4 by ten years?

5 A. Basically that's an easy way to do it.
6 Obviously, if you have a year that, say, for some
7 reason 18 meters broke, you'd want to replace those
8 18 but that would meet the requirement of the 15.
9 That would keep you on track.

10 Q. And do you recall any specific
11 discussions for what this meant for Suburban in this
12 particular rate case?

13 A. Martin Hummel discussed this. The time
14 I was present would have been the May 2nd meeting
15 here in the Governor's Office building.

16 Q. And how many did he say should be
17 replaced a year?

18 A. I can't say if he said a number or not.
19 I don't recall the specifics of what he said. The
20 item, the topic was discussed.

21 Q. Was the number of 20 meters a year
22 discussed?

23 A. I can't say. I don't recall if a
24 specific number was discussed.

25 Q. I'm gonna point you to your deposition,

1 Mr. Russo. You tell me -- I'm handing you a
2 document, you tell me what that document is.

3 A. It's a copy of a deposition of James M.
4 Russo on July 17th.

5 Q. And can you turn to page 55, please.

6 A. Yes, sir.

7 Q. At the very top, the first full sentence
8 of page 55, can you read that, please?

9 A. Sorry, I'm on the wrong page. "Because
10 of the age of this system, I believe we had
11 discussions of doing 20 a year." That's correct.

12 Q. So did Suburban have 200 meters?

13 A. No. I believe that statement was made
14 in the context -- and I'm not sure, I'd have to see
15 the rest of that deposition agreement, but when I
16 said that, I was thinking about when -- when Staff
17 was thinking about going -- doing an accelerated
18 program on this company. I was thinking of internal
19 discussions that Staff had. I -- I don't recall
20 specifically if we talked to Mr. -- if we talked to
21 Gordon about that or not. I just don't recall that.

22 Q. So you were talking internally with
23 Staff about a program other than a ten-year
24 replacement program for meters?

25 A. Staff did discuss, in fact -- and I

1 believe it was in a March 14th letter I sent to the
2 company -- we were talking about possibly doing a
3 five-year meter replacement program to get them
4 caught up, but I don't recall the date of that
5 letter. I think it was March 14th.

6 But yes, Staff internally did discuss
7 that. By the time we got to this agreement, for
8 whatever reason, we decided not to do that but I
9 can't recall the -- any specific reasons.

10 Q. So -- so -- so is it your testimony,
11 then, that the 20 meters per year is related to a
12 five-year meter replacement program?

13 A. With 150 meters, and they didn't have it
14 at the time, but if they had them, it's kind of in
15 between that, I would say. But at the time it was
16 just a number, a round number to discuss. For
17 discussion purposes, yes.

18 Q. But it's obviously different than 10
19 percent a year?

20 A. Yes, sir.

21 Q. I'm gonna show you what's been marked
22 as -- premarked as Exhibit No. 56. Have you ever
23 seen this before, Mr. Russo?

24 A. I don't think so. No.

25 Q. If -- if Suburban were to adopt a

1 program to replace its meters from time to time on an
2 as-needed basis and to have replaced all said meters
3 no later than March -- than May -- sorry, May 31,
4 2015, would that in your mind constitute a ten-year
5 replacement program for meters?

6 A. A ten-year -- excuse me. Ten-year
7 replacement program is something that's in my mind is
8 continuous. You're constantly replacing these
9 meters. So in my mind for a company that's been
10 around as long as Suburban has, I think it was '73,
11 I'm not sure, but assuming you have 150 meters, it
12 would just be 15 a year, give or take a few. And it
13 would be forever.

14 It wouldn't just be from now until 2015,
15 2016. You do another 15 because the ones you put in
16 in 2006, they would be due. And then the ones in
17 2017 would be the ones in 2007. Obviously, things
18 may break and it may be different ones, but as a rule
19 it would be those in this case, say, 15 meters.

20 Q. So give or take a few, not 10 percent a
21 year, then?

22 A. It always could be give or take a few
23 because, I mean, some years, like I say, if in year
24 two 18 broke, well, you're -- technically the next
25 year you wouldn't have to do 15, you could do 12.

1 And over the two years you've done 30, 15 a year
2 average, so that would work.

3 Q. That sounds to me, what you just said,
4 like replacing the meters on an as-needed basis.

5 A. On a -- you're always gonna have some
6 fail or stop. I mean, that's always possible. But
7 you're still gonna have your program. If you only
8 had one or two fail but they've been there for 12
9 years, you'd want to -- you'd want to replace them.

10 You'd want to be on the -- the program.
11 You'd want to be able to go to your records and say,
12 this meter at this location has been there for ten
13 years, I need to do something with it. That's the
14 intent.

15 Q. That's the intent but that's not what
16 paragraph No. 11 states, is it?

17 A. It says, "The company will be on a
18 ten-year replacement program for existing meters."

19 Q. Which could be replacing meters on an
20 as-needed basis and all of them within ten years?

21 A. It was discussed, so I don't -- I don't
22 know if I would agree with that, sir.

23 Q. Well, you just said it was discussed --
24 at one point it was 20 meters a year, and then at
25 another point it was 10 percent a year.

1 A. Also that the meter replacement program
2 was discussed by Mr. Hummel at the May 2nd meeting.

3 MR. VOLKERT: Actually, I'm not gonna
4 move to admit this at this time, your Honor, just
5 that one. I'll hold to it.

6 BY MR. VOLKERT:

7 Q. On this deadline, this particular
8 deadline No. 11, does this state a deadline for the
9 requirement?

10 A. No, it does not.

11 Q. When would you expect this to be
12 completed?

13 A. I would expect it to be continuous every
14 year.

15 Q. Okay. The next paragraph, No. 12.

16 JUDGE LANE: Excuse me. Are you
17 referring -- at this point you're referring to the
18 disposition --

19 MR. VOLKERT: I'm sorry. Yes, your
20 Honor, back to Exhibit No. 55, the Disposition
21 Agreement.

22 JUDGE LANE: Okay. Thank you.

23 BY MR. VOLKERT:

24 Q. Paragraph No. 12 in the Disposition
25 Agreement, does that paragraph state any deadline?

1 A. No, sir.

2 Q. When would you expect that to be
3 completed?

4 A. Originally when I looked at this, I had
5 said 90 days, but since then I've come across other
6 information, and it's possible that -- maybe it was
7 probably not the deposition, I don't know.

8 But since then I've thought about it and
9 since there's apparently an evaluation that needed to
10 be done, I don't think 90 days would be sufficient
11 but I really don't know. There's a lot of other
12 factors. So 90 days might not have been enough but I
13 really don't know how long.

14 Q. A lot of other factors not stated in
15 paragraph 12 of this agreement, correct?

16 A. Yes.

17 Q. Next question I've got is No. 13 below
18 in the Disposition Agreement.

19 A. Okay.

20 Q. Can you tell me, does this require the
21 company to replace a standpipe with an inlet or to
22 replace the inlet or what does it require? What's
23 your understanding of the requirement?

24 A. My understanding of this requirement is
25 a standpipe would be replaced with an inlet high

1 enough as it -- as it states here.

2 Q. The entire standpipe?

3 A. That was my understanding -- that is my
4 understanding, yes, sir.

5 Q. Okay. And did you ever have any
6 confirmation during the -- during the 2005 case or
7 since that the existing inlet is not of sufficient
8 height?

9 A. I don't have anything on the inlet at
10 all, no, sir.

11 Q. Does this paragraph contain a deadline
12 for doing this work?

13 A. No, sir.

14 Q. When would you expect this work to be
15 completed?

16 A. Something like this where you're
17 replacing a standpipe, I would throw that out there
18 somewhere in the neighborhood of a year.

19 Q. Next paragraph below, No. 14.

20 A. Yes, sir.

21 Q. Does this -- does this requirement
22 contain any deadline?

23 A. No, sir.

24 Q. And when -- what was your -- what is
25 your understanding of the deadline?

1 A. I would say that this is an ASAP. The
2 system's chlorinated. DNR -- it's my understanding
3 they -- they required an operator for this type of
4 system, so I would say as soon as possible.

5 Q. I'm gonna show you what's been premarked
6 as Exhibit 57. Do you recognize this document?

7 A. Yes, sir.

8 Q. Did you draft this document?

9 A. Yes, sir.

10 MR. VOLKERT: I'd move for this to be
11 admitted, your Honor.

12 JUDGE LANE: Any objections to Exhibit
13 No. 57 by OPC or Staff after you've had a chance to
14 look it over?

15 MS. SYLER BRUEGGEMANN: (Shook head.)

16 MS. BAKER: (Shook head.)

17 JUDGE LANE: Hearing none, it is
18 admitted. Exhibit 57.

19 (EXHIBIT NO. 57 WAS RECEIVED INTO
20 EVIDENCE AND MADE A PART OF THE RECORD.)

21 BY MR. VOLKERT:

22 Q. Can you tell me what this document is
23 for?

24 A. It's an extension agreement. You have
25 180 days on these small cases, small informal cases,

1 and when we realize we're not gonna meet that
2 deadline, we'll do an extension. I believe this case
3 would have been like June 7th was day 180, I'm not
4 sure. I don't have the timeline in front of me. But
5 we knew we were not gonna meet that, so we did an
6 extension agreement.

7 Q. When did you extend the deadline to?

8 A. For filing the tariffs, it was May 31st.

9 Q. And I'm gonna direct your attention to
10 the paragraph No. 2 -- or the second paragraph, I'm
11 sorry, not numbered, that's entitled Reason For
12 Extension. Do you see that paragraph?

13 A. Yes, sir.

14 Q. And can you -- can you please read that
15 paragraph and tell me what the first sentence states?

16 A. You want me to read it --

17 Q. No, I'll just -- I'll -- I'll -- no,
18 I'll withdraw the question and just ask you a new
19 one. Does the first sentence of that paragraph state
20 that the company was attempting to contract with the
21 state certified operator?

22 A. Yes, they were trying to find one,
23 that's correct.

24 Q. And that the second sentence, does it
25 state that they would try to get it done by May 13?

1 A. Yes.

2 Q. Was this done?

3 A. To my knowledge, no.

4 Q. Why did you proceed with the rate case
5 and filing when this wasn't done?

6 A. This, in itself, would not necessarily
7 be a reason to stop the rate case. The company was
8 making an effort at that point in time to find one.
9 There's no point to punish the company at that point
10 where they're making the effort.

11 Q. Is it sometimes difficult for small
12 companies like this to find certified water
13 operators?

14 A. Yes.

15 Q. Back to the Unanimous Disposition
16 Agreement. When was the next time you heard of this
17 agreement after it was -- after it became final?

18 A. Are you -- are you asking when it was
19 brought to my attention again?

20 Q. Correct. When did you next hear of it?

21 A. It would have been in the last few
22 weeks.

23 Q. Between the period that this agreement
24 became final and your hearing about it again a few
25 weeks ago, did the company ever ask for your

1 assistance in any manner?

2 A. They wrote a letter, I believe, June or
3 July of 2006. I'm not sure it was asking for
4 assistance. I recall it was a informational-type
5 letter.

6 MR. VOLKERT: One moment, your Honor.

7 JUDGE LANE: All right.

8 BY MR. VOLKERT:

9 Q. I'm gonna hand you what's been
10 previously marked as Exhibit 58. Do you recognize
11 that letter?

12 A. Yes.

13 Q. And you received that letter?

14 A. Yes.

15 MR. VOLKERT: Your Honor, I'd move to
16 admit Exhibit 58.

17 JUDGE LANE: What's been marked as
18 Exhibit 58 has been offered into evidence. Do I hear
19 any objections to its admission from Public Counsel
20 or Staff?

21 MS. BAKER: No.

22 MR. REED: No.

23 JUDGE LANE: No objections. It is
24 received into evidence. Exhibit 58.

25 (EXHIBIT NO. 58 WAS RECEIVED INTO

1 EVIDENCE AND MADE A PART OF THE RECORD.)

2 BY MR. VOLKERT:

3 Q. And you don't -- your testimony is that
4 you do not believe this letter requests any
5 assistance or response from the Commission or from
6 the Staff?

7 A. Yes, that's correct.

8 Q. Last sentence, can you please read that.
9 Go ahead and read that out loud for the record.

10 A. Sure. "Again, I say let me hook on to
11 Public Water District No. 1 as I am no longer willing
12 or able to subsidize the water system at BonGor Lake
13 Estate."

14 Q. You don't understand that to be a
15 request?

16 A. I do not believe that's a request. I
17 believe that is a statement from Mr. Burnam based on
18 my dealings with Mr. Burnam.

19 Q. "Let me hook on to Public Water District
20 No. 1" is a -- how would you characterize that
21 statement if it's not a question?

22 A. I consider it Mr. Burnam being
23 frustrated but I do not consider this a request for a
24 rate case.

25 Q. I didn't ask you if you considered it a

1 request for a rate case, I asked you if you
2 considered it a request.

3 A. I don't consider it a request of
4 anything. I just consider it a statement.

5 Q. If someone says to you, let me do
6 something, that is not a request; is that your
7 testimony?

8 A. It depends on who and what the item is,
9 maybe sometimes it would be. In this case I do not
10 believe it's a request.

11 Q. Please elucidate me on that a little
12 bit. If someone says, let me do something, in what
13 circumstance would that not be a request?

14 A. Again, I do not believe this to be a
15 request.

16 Q. No, I understand what you've previously
17 testified to. I'm asking you to give me a little
18 more background on that. If someone says to you, let
19 me do something, when would that not be a request in
20 your opinion?

21 A. As I see it here.

22 Q. Is this the only instance?

23 A. I don't know.

24 Q. How often do you get letters from
25 utilities that say, let me do something and you don't

1 respond at all?

2 A. I don't recall any letters similar to
3 this from any utility company.

4 Q. So you don't recall any?

5 A. Similar to this, that's correct.

6 Q. What about dissimilar utility companies?

7 A. We get letters all the time from -- from
8 various companies. For this type of statement, I
9 cannot recall anything like that.

10 MR. VOLKERT: I don't have anything
11 further at this time.

12 JUDGE LANE: Thank you. That completes
13 the cross-examination of Mr. Russo. There will be no
14 questions from the bench. Any further
15 cross-examination -- well, there are no bench
16 questions. Any redirect from Staff?

17 MR. REED: Yes.

18 REDIRECT EXAMINATION BY MR. REED:

19 Q. Just a few questions, Mr. Russo.

20 A. Fine.

21 Q. Do you have authority to allow Suburban
22 Water and Sewer Company to hook up to the Public
23 Water Supply District No. 1?

24 A. Do I have authority?

25 Q. Yes.

1 A. No.

2 Q. The Exhibit 3, the property record
3 system that was previously shown to you.

4 A. Okay.

5 Q. Now, you -- you indicated that
6 continuous property record systems are -- you
7 referred to them as CPRs, correct?

8 A. Yes, sir.

9 Q. You've seen a number of them, I take it?

10 A. Yes, sir.

11 Q. Would you consider this a continuous
12 property record system?

13 A. No, sir.

14 Q. The reason is why?

15 A. Numerous reasons. It's -- I think it's
16 incomplete. I don't think there's enough detail,
17 again, like I indicated earlier. For instance, on
18 the water lines, are they two-inch lines, are they
19 four-inch lines?

20 Q. If this were --

21 A. You'd have lines being put in and taken
22 out continuously. So that's just a good example. On
23 the pumps there's no serial numbers.

24 Q. If this were created in June of 2007,
25 would you consider it continuous?

1 A. No, sir.

2 MR. REED: That's all.

3 JUDGE LANE: Thank you very much. Any
4 recross?

5 MR. VOLKERT: Yes, your Honor. Just
6 briefly.

7 RE CROSS-EXAMINATION BY MR. VOLKERT:

8 Q. Couple quick questions, Mr. Russo.

9 First, you mentioned that that Exhibit No. 3 doesn't
10 talk about two-inch lines or four-inch lines,
11 et cetera?

12 A. Correct.

13 Q. Where are those requirements stated in
14 the Disposition Agreement?

15 A. It does -- the Disposition Agreement
16 does not go into that type of detail.

17 Q. Okay. And one other thing, just --
18 because I'm not sure if I asked it before or not, but
19 the -- the letter that you got in June of 2006,
20 Exhibit No. 58, just to be clear for the record, did
21 you, in fact, respond at all to that letter?

22 A. As far as I know, nobody responded to
23 it.

24 MR. VOLKERT: Okay. Thank you. Nothing
25 further.

1 THE WITNESS: You're welcome.

2 JUDGE LANE: All right. Thank you very
3 much. It's my understanding that this witness will
4 be unavailable tomorrow, so Mr. Russo, you are
5 finally excused.

6 THE WITNESS: Thank you.

7 JUDGE LANE: We're ready for Staff to
8 call its next witness.

9 MS. SYLER BRUEGGEMANN: And she is
10 coming downstairs as we speak, I believe, your Honor.

11 (DISCUSSION HELD OFF THE RECORD.)

12 JUDGE LANE: All right. You may call
13 your next witness.

14 MS. SYLER BRUEGGEMANN: Thank you, your
15 Honor. We call Debbie Bernsen to the stand.

16 JUDGE LANE: Would you please spell your
17 name for the reporter.

18 THE WITNESS: My name is Debbie Bernsen,
19 B-e-r-n-s-e-n.

20 JUDGE LANE: Now, please raise your
21 right hand to be sworn.

22 (THE WITNESS WAS SWORN.)

23 JUDGE LANE: Thank you very much.
24 Direct examination.

25 MS. SYLER BRUEGGEMANN: Thank you, your

1 Honor.

2 DIRECT EXAMINATION BY MS. SYLER BRUEGGEMANN:

3 Q. Thank you, your Honor. Ms. Bernsen,
4 where do you work?

5 A. I work at the Missouri Public Service
6 Commission.

7 Q. And how long have you been there?

8 A. I've been there approximately 32 years.

9 Q. Is your title management utility analyst
10 III?

11 A. Yes, it is.

12 Q. And what are your job duties?

13 A. My job duties are to perform management
14 and operational reviews of the utility companies
15 under the jurisdiction of the Commission.

16 Q. Okay. Does that include reviewing
17 billing systems, records or communications to and
18 from customers to name a few?

19 A. Yes.

20 Q. Okay.

21 A. It includes all those items and many --
22 and many more.

23 Q. Do you participate in audits or reviews
24 of all types of companies?

25 A. Yes, I review all types of companies.

1 Q. And small water and sewer companies are
2 included in that group?

3 A. They are included, yes.

4 Q. Okay. Are you familiar with Suburban
5 Water and Sewer system?

6 A. Yes, I am familiar with Suburban.

7 Q. And how are you familiar with them?

8 A. I was a participant in the case in 2005
9 and actually filed an audit report in that case.

10 Q. Okay. Are you familiar with the
11 Disposition Agreement that came out of the 2005 rate
12 case?

13 A. Yes. Yes, I am.

14 Q. Okay. Did you help prepare or
15 supplement information for the -- for the terms in
16 that Disposition Agreement?

17 A. Yes, I did provide some information for
18 that agreement.

19 Q. Okay. Can I have you look at
20 Exhibit 55. It may be in front of you, the big one.
21 And will you look to the beginning, probably six
22 pages back. It is actually page 3 of 5 of the
23 Disposition Agreement.

24 A. All right, I have that.

25 Q. And out of terms 8 through 15, going

1 ahead and numbering number 10 and 11 they would
2 naturally fall, which terms out of 8 through 15 did
3 you have direct review or involvement with?

4 A. I had direct responsibility for No. 8
5 and just participated in some discussion, limited
6 discussions, on the property record system.

7 Q. Okay. Now, do you have in front of you
8 Exhibit No. 6 which is the brochure?

9 JUDGE LANE: She does now.

10 MS. SYLER BRUEGGEMANN: Thank you.

11 BY MS. SYLER BRUEGGEMANN:

12 Q. Have you seen that document before?

13 A. Yes, I have seen that document.

14 Q. And where did you see it?

15 A. I reviewed the document at the law
16 offices in Columbia. This document was provided to
17 Staff as a result of some information requests during
18 discovery that we had recently.

19 Q. And since then have you had an
20 opportunity to review the document more than at that
21 office?

22 A. Yes, I have. I -- we -- we took the
23 documents back to our offices and I was able to spend
24 a little bit of time looking through it.

25 Q. Okay. And going back to what item 8

1 actually required of the company, it says that, "The
2 company will develop and distribute to all customers
3 a brochure detailing the rights and responsibilities
4 of the utility and its customers." Now, what rights
5 and responsibilities -- strike that.

6 How do you define the rights and
7 responsibilities that must be listed in that
8 brochure?

9 A. Well, the development and issuance
10 of a brochure for customers is actually something
11 within the Commission's -- Commission's Rule
12 4 CSR 240, Chapter 13, specifically addresses exactly
13 what has to be within a customer brochure.

14 And so I used that as my guideline to
15 determine what should be in a customer brochure and
16 then applied that against the development of this
17 brochure.

18 Q. So based off of that, did you request
19 that this term be placed in the Disposition
20 Agreement?

21 A. Yes, I did. And that is referenced in
22 more detail in the audit report --

23 Q. Is the --

24 A. -- that I issued.

25 Q. I'm sorry.

1 A. That I issued.

2 Q. Is the audit report that you issued at
3 the back of this document?

4 A. Yes, it is contained at the back of this
5 document.

6 Q. Is it labeled as attachment 3, Overview
7 of Company and Customer Service Operations?

8 A. Yes, it is.

9 Q. Okay. And is the part dealing with
10 customer -- well, Utility Rights and Responsibilities
11 brochure, the very last page of that report?

12 A. Yes, it is contained on the last page.

13 Q. And could you read us what your
14 recommendation was.

15 A. The specific recommendation was that,
16 "The EMSD Staff recommends that company management
17 develop and distribute to all current and future
18 customers a brochure detailing the rights and
19 responsibilities of the utility and its customers."

20 Q. Is that -- how many sentences did you
21 just read? I'm sorry. Is that the whole thing?

22 A. That's the very specific recommendation.

23 Q. Oh, okay. And is there a description
24 above that? I'm sorry.

25 A. Yes, there is a description above it,

1 and that explains and kind of leads up to the
2 recommendation. That information actually references
3 the specific rule cite that governs the development
4 of such a brochure.

5 Q. Do you know if this report was ever
6 provided to the company?

7 A. Yes, I know it was. Normally -- and I
8 know we did it in this case -- our standard practice
9 is to go over our findings with the company in sort
10 of a draft mode to let them know what we've come up
11 with. We talked to them about it. And then the
12 actual document here, of course, was also attached to
13 the Disposition Agreement to formalize the -- the
14 recommendations.

15 Q. Okay. Now, I have set in front of you
16 what's been marked as Exhibit No. 8; is that right --
17 oh, I'm sorry, Exhibit No. 6 -- no, no, I'm talking
18 about the rule.

19 A. I believe I have 240.13 as Exhibit 8.

20 Q. Okay.

21 JUDGE LANE: Yes, Exhibit No. 8.

22 MS. SYLER BRUEGGEMANN: Thank you.

23 BY MS. SYLER BRUEGGEMANN:

24 Q. Do you recognize that document?

25 A. Yes, I do. This is the Chapter 13

1 service and billing practices for residential
2 customers of electric gas and water utilities.

3 MS. SYLER BRUEGGEMANN: And, your Honor,
4 at this time it might be easiest to first ask the
5 bench to take judicial notice of 4 CSR 240-13.040
6 sub 3, if you will.

7 JUDGE LANE: Yes, this is a proper
8 subject of official notice of the Commission.

9 MS. SYLER BRUEGGEMANN: Okay. And after
10 that I would just ask that Exhibit 8 go ahead and be
11 admitted into the record.

12 JUDGE LANE: Any objections?

13 MR. HARRISON: No objection.

14 MS. BAKER: No.

15 JUDGE LANE: All right. It is admitted.

16 (EXHIBIT NO. 8 WAS RECEIVED INTO
17 EVIDENCE AND MADE A PART OF THE RECORD.)

18 BY MS. SYLER BRUEGGEMANN:

19 Q. Now, under -- let's walk through sub 3
20 fairly quickly. What are some of the requirements
21 that are listed in the first paragraph of section 3
22 of this rule?

23 A. Well, specifically, first the company
24 has to develop and prepare something, it has to be in
25 written form. And that form has to be submitted --

1 or it states it shall be submitted to the consumer
2 services department of the Missouri Public Service
3 Commission and to the Office of Public Counsel. So I
4 guess that's really the first, what I see as a
5 requirement.

6 Q. Is this for any utility that -- or any
7 entity that becomes a utility?

8 A. Well, the service and billing practices
9 does apply to all electric gas and water utilities,
10 so all utilities are supposed to follow this
11 procedure.

12 Q. Are they supposed to follow it as soon
13 as they become a utility?

14 A. Excuse me?

15 Q. Are they supposed to follow this
16 procedure as soon as they become a defined utility?

17 A. Oh, yes. This is -- this is a rule that
18 is -- the rules have been in effect many years, so
19 they -- yeah, they have been there a long time.

20 Q. So, in effect, for an entity that's been
21 around for about 30 years, they should have had a
22 brochure for about 30 years?

23 A. They -- they probably should have. I
24 think the rules first came into being in the '70s,
25 the first run on these, so ...

1 Q. Okay.

2 A. I'm not sure of the exact date of this
3 part of it, but this has been in effect for quite
4 awhile.

5 Q. Okay. So -- and just to go back, you
6 said this is where you defined what the rights and
7 responsibilities that need to be listed as, as
8 referred to in item No. 8 of the Disposition
9 Agreement are?

10 A. Yes. The rule actually lists specific
11 information that should be included in a brochure.

12 Q. Okay. So looking at Exhibit No. 6,
13 which is the brochure that the company, Suburban
14 Water and Sewer system provided, did they -- let's
15 just go through one by one. On A, did they provide
16 information -- sufficient information for the billing
17 and estimated billing procedures?

18 A. Well, it did not meet all of the
19 criteria. The brochure does make a statement that
20 bills are issued monthly, but it does not at all
21 address the issue of estimated billings. And
22 estimated billings are -- should have included
23 information that estimated billings will be noted as
24 such, and they did not include anything in here about
25 estimated billings. So it did not meet that

1 criteria.

2 Q. Further, are you aware if Suburban
3 actually estimates any of their bills?

4 A. I am aware through some recent
5 information provided to us at a local public hearing,
6 that there were a number of instances where customers
7 received repeated estimated bills, and upon reviewing
8 those bills, they were not marked as estimates.

9 Q. Okay. On B, methods for customer
10 verification of billing accuracy, is that referenced
11 or listed in Exhibit 6?

12 A. It's -- I might -- there is a schedule
13 of rates in there, so I'm hoping that that would
14 address enough -- the information a customer would
15 need in order to check their bill.

16 Q. What else should be there? You sound
17 hesitant.

18 A. Well, frequently, companies may also put
19 something in there that actually explains a little
20 better to the customer how they can actually
21 calculate their bill. The information as it's
22 presented is just kind of confusing. And from
23 talking to some of the customers the other evening,
24 again at the local public hearing, I don't think they
25 felt it was very helpful.

1 Q. Okay. On C, customer and payment
2 requirements and procedures, is that in this brochure
3 and is it sufficient?

4 A. The company did address pretty much some
5 issues regarding payment, gave a mailing address, a
6 payment drop box. So they did address most of the
7 things that I think should be in there for that
8 issue.

9 Q. Okay. On D, deposit and guarantee
10 requirements, did they address those?

11 A. I did not find any mention of whether
12 the company collects or requires any guarantee -- a
13 deposit or any guarantee of service. So there should
14 have been some indication in there and let -- to let
15 the customer know.

16 Q. So they needed to say that if they don't
17 collect deposits anymore, we do not collect deposits?

18 A. Right. Most -- most companies would
19 make a statement, that, you know, we do not -- you
20 know, even new customers are not required to post a
21 deposit or a guarantee of payment for service.

22 Q. Okay. On E, conditions of termination,
23 discontinuance and reconnection of service, are those
24 in this brochure?

25 A. The company did address -- well, I think

1 it's maybe on the last page of their brochure here,
2 issues regarding, you know, disconnection of service
3 for nonpay, which we usually term that as termination
4 of service.

5 And then reconnection, they did mention
6 that -- you know, that they could within -- if it's
7 turned off and not turned on, except for upon payment
8 of the amount, they have to pay a reconnection
9 charge. So I think that is probably adequate for
10 that area.

11 Q. Okay. On F, procedures for handling
12 inquiries, did they fulfill that requirement?

13 A. They did make a statement at the bottom
14 of the brochure that if they had any questions about
15 their bill, they could be assisted by the customer
16 service department there at the company and gave some
17 hours. And then, of course, the telephone number is
18 listed earlier in the brochure.

19 Q. And would you consider that a procedure
20 for handling an inquiry?

21 A. Well, at least it does give the customer
22 at least a telephone number. I -- you know, it's at
23 least addressing it somewhat. I probably would
24 suggest a little more detail on it.

25 Q. Okay. Under G, explanation of meter

1 reading procedures which would enable a customer to
2 read his or her own meter. Is that present in this
3 brochure?

4 A. The company didn't address the issue of
5 meter reading by the customer, so that is lacking
6 there completely.

7 Q. Okay. And do you know if meters are
8 read on some residences within the Suburban Water
9 system?

10 A. I do know that some of the meters at the
11 single-family residences have not been read on a --
12 on a pretty continual basis, so that may have been a
13 very important thing to include in this brochure.

14 Q. Okay. On H, a procedure where a
15 customer may avoid discontinuance of service during a
16 period of absence. Is that present?

17 A. No, it's not addressed and that really
18 speaks to where a customer may be leaving an area for
19 a period of time, and want to discontinue that
20 service during that time, so that I think needs to be
21 addressed a little more clearly, too, in the brochure.

22 Q. Okay. Under I, are the complaint
23 procedures under 4 CSR 240-2.070 listed?

24 A. No, that was not addressed at all in the
25 brochure, and those complaint procedures are -- makes

1 it -- sets it out very clearly to let the customer
2 know what they can do if they have a complaint that
3 the utility -- you know, that they need to take steps
4 with the utility, and if the utility does not
5 resolve -- respond to their inquiry, what they can --
6 what steps they can take next.

7 And basically, that is helping them to
8 be able to contact the Commission, how they can
9 contact the Commission, file an informal complaint,
10 that sort of thing. That's all explained under this
11 particular rule. And there's really no statement in
12 here at all that helps the customer to know that.

13 Q. Okay.

14 A. So I don't believe that's -- that's been
15 addressed.

16 Q. And under J, that basically references a
17 telephone number, address of customer services at the
18 PSC, an 800 telephone number and the statement that
19 the company is regulated by the PSC. Is that present
20 in this brochure?

21 A. No, that -- that really wasn't at all
22 addressed. There were a couple -- there's a
23 statement in here about -- you know, refers to some
24 other statutes, but it doesn't really tell the
25 customer any information about the Commission, how to

1 contact us. So I believe that that -- that
2 requirement is not met in the brochure.

3 Q. Okay. And under K, the address and
4 telephone number of OPC and a statement of function
5 of that office. Is that present in this brochure?

6 A. The -- unfortunately, no. That also is
7 not addressed in the brochure.

8 Q. Okay. Is L applicable here?

9 A. L is not applicable here. That's only
10 for gas distribution utilities.

11 Q. Okay. Also in the top paragraph, it
12 states two-thirds down from the top of the paragraph,
13 "The information shall be delivered or mailed to each
14 new customer of the utility upon the commencement of
15 service and shall be available at all times upon
16 request and it shall indicate conspicuously that it's
17 being provided in accordance with the rules of the
18 Commission," and it goes on. Were any of those
19 aspects fulfilled?

20 A. I don't believe so. My understanding is
21 that the brochure was just very recently developed in
22 June of 2007, and was at that time, I believe, mailed
23 to existing customers.

24 As far as the information being, you
25 know, displayed or available at the -- at the offices

1 of the company, I don't know that. I haven't been
2 back to the company offices since that time, so I
3 don't -- I don't know that.

4 Q. Would you consider just basically that
5 the complaint procedures at the PSC and access to the
6 PSC and OPC are general rights of every utility
7 customer?

8 A. Oh, certainly, absolutely. That's --
9 that's -- that's a basic.

10 Q. Okay. Now, how long do you think it
11 would reasonably take someone to develop a brochure
12 listing out rights and responsibilities of customers
13 and the company?

14 A. Well, I guess, you know, given anyone's
15 familiarity these days with simple word processing
16 and having a checklist, basically, in front of you of
17 what to make sure is in there, I think that makes it
18 easier. And you know, my assessment would be that a
19 couple of hours or so. I actually sat down and did
20 it and that's -- you know, and had lots of
21 interruptions. And I have to honestly say I think
22 maybe two, two and a half hours, something like that
23 to develop it.

24 I'm not saying it's pretty, but it
25 doesn't have to be pretty. What it has to do is get

1 across the information and have it available to the
2 customer. So I don't think that the rule ever at all
3 anticipated something very glossy or expensive or
4 difficult to put together. I think it was meant to
5 be just a simple, basic thing of information for the
6 customer.

7 Q. So then one last question. Do you feel
8 that the company will develop and distribute to all
9 customers a brochure detailing the rights and
10 responsibilities of the utility and its customers
11 that was approved by the Commission on June 16th of
12 2005 was met by this brochure?

13 A. Well, I don't believe that the brochure
14 includes the information that -- all the information
15 that it should have. So therefore, I think the
16 brochure is deficient.

17 Q. So that's a no?

18 A. That's a no.

19 MS. SYLER BRUEGGEMANN: Okay. Nothing
20 further.

21 JUDGE LANE: Thank you, Ms. Brueggemann.
22 Cross-examination by the Office of Public Counsel?

23 MS. BAKER: I have no questions. Thank
24 you.

25 JUDGE LANE: Cross-examination for

1 Suburban?

2 CROSS-EXAMINATION BY MR. VOLKERT:

3 Q. So you've been with the Commission for
4 over 30 years; is that right, is that what I heard?

5 A. Yes, I have.

6 Q. And do you specialize in water
7 companies? Do you deal with all sorts of utility
8 companies?

9 A. I primarily deal in energy and water
10 utilities. I don't do much telephone anymore.

11 Q. How many small company cases have you
12 done?

13 A. On the last couple of years maybe four,
14 six, something like that. I know some of the names
15 but I'd have to go on memory at this point.

16 Q. So are they different, would you say
17 they're quite a bit different from the larger cases
18 which, I guess, is what you spend most of your time
19 working on?

20 A. They're -- they're very different and
21 I -- I think we all realize that.

22 Q. Can you tell me what the purpose of
23 having a small company case is?

24 A. Well, I'm not with the water department.
25 I conduct an operational review in conjunction with

1 the small case or the water case. I think the
2 overall purpose is to help to expedite a company's
3 request for rate relief.

4 Q. Would you say it's less formal than
5 normal rate cases?

6 A. Yes, it is less formal.

7 Q. Is that one of the purposes to make it
8 less formal for smaller companies so it's not as
9 difficult and expensive?

10 A. I believe so, yes.

11 Q. How many times in a small company case
12 have you dealt with a small company represented by an
13 attorney?

14 A. Excuse me?

15 Q. How many times in a small company case
16 have you dealt with a company that was represented by
17 an attorney?

18 A. I'm thinking back and I don't believe --
19 I don't believe any of them that I've worked on.

20 Q. I'm gonna point you back to Exhibit 55,
21 that's the big agreement right there. And do you
22 know who -- and then I'm gonna point you specifically
23 to the appendix A which is six or seven pages back,
24 the actual Unanimous Agreement itself. Do you know
25 who drafted that?

1 A. I assume the case coordinators usually
2 do those.

3 Q. And if you could turn to page 5 of 5,
4 when was this signed?

5 A. I don't see a signature date on this.

6 Q. Page -- make sure we're looking at the
7 same thing.

8 A. This is actually -- I'm looking at the
9 official case file memo, page 5 of 5.

10 Q. No, I'm sorry. The agreement itself is
11 attached as appendix A to this -- in this Exhibit 55,
12 and that's three or four pages back from the very
13 front -- or forward from the very front.

14 A. I'm looking at the page that starts at
15 the top, Staff Recommendations; is that where you're
16 talking about? Perhaps -- why don't you show it to
17 me.

18 Q. Yeah, okay.

19 A. A lot of these don't have page numbers
20 on them --

21 Q. Sorry.

22 A. And so it's very confusing. Oh, yeah,
23 I'm way back.

24 Q. It's okay. It's page 5 of 5.

25 A. Page 5 of 5?

1 Q. That document right there. Can you tell
2 me what --

3 A. Can you repeat your question?

4 Q. Sure, no problem. When was this signed
5 on behalf of Suburban Water and Sewer Company?

6 A. It appears that Mr. Burnam signed on
7 5/26/05.

8 Q. And I know you were -- in your prior
9 testimony you were talking about the memo that's
10 attached to the back. In fact, let me point you to
11 another page. I've opened Exhibit 55 to a page, oh,
12 about halfway back, at the top says -- does it say
13 Staff Recommendation, appendix A?

14 A. Yes, it does.

15 Q. If you could flip two pages forward from
16 that to the beginning of the actual recommendation
17 itself where it says Memorandum at the top. Just a
18 couple pages.

19 A. Forward or backward?

20 Q. You know, I always get that mixed up, so
21 I'm sorry. It's farther -- deeper down in the
22 document so I think it's forward, right?

23 A. No, it's backward, but that's all right.

24 Q. Is that right?

25 A. That's right. It says Memorandum at the

1 top?

2 Q. That's right.

3 A. All right.

4 Q. What date is this memorandum?

5 A. It appears to be June 13th, 2005.

6 Q. And so it was after Mr. Burnam signed

7 the Disposition Agreement on behalf of Suburban?

8 A. Yes.

9 Q. And then turn to page 4 of 5 of the same

10 memorandum, please, and just briefly read to

11 yourself, if you would, that first paragraph,

12 particularly item No. 3.

13 A. Are you on page 5?

14 Q. I'm sorry, four of five pages, page 4 of

15 5.

16 A. And which paragraph?

17 Q. First paragraph under Additional

18 Information, in particular, clause 3.

19 A. You want me to read this whole paragraph

20 in?

21 Q. Just to yourself. No, no, no, no.

22 A. Oh.

23 Q. Just -- I'm just pointing you where I

24 am. That -- that refers to a Staff overview of the

25 company and its customer service procedures and

1 practices included as attachment A, correct, to the
2 memorandum dated June 13th, 2005?

3 A. This says, "The Staff's overview of the
4 company and its customer service procedures and
5 practices is included in attachment 3."

6 Q. Okay. Right. So I'm sorry to go in
7 such a roundabout way but I want to make sure it's
8 clear. The memorandum that you were talking about
9 earlier in your earlier testimony, is that
10 attachment 3 that's referred to in this memo that's
11 dated June 13th, 2005?

12 A. This No. 3 here that I just read --

13 Q. Right.

14 A. -- this is the document all the way at
15 the back of this.

16 Q. Correct. And then I -- if I recall,
17 Ms. Brueggemann was pointing you to the very back of
18 that particular memorandum that we were just talking
19 about that starts with attachment 3, Overview of
20 Company and Customer Service Operations. Is that
21 what you were referring to earlier when you were
22 testifying?

23 A. Yes.

24 Q. Okay. So to circle back all the way, am
25 I correct in saying that the memo that you were

1 talking about earlier in your testimony was attached
2 to a memorandum that was dated June 13th, 2005, after
3 Mr. Burnam signed the Disposition Agreement?

4 A. I don't believe I understand your --
5 your reasoning here.

6 Q. Let me rephrase it for you.

7 A. Please.

8 Q. You testified just a few minutes ago
9 that this memorandum was attached to the Disposition
10 Agreement.

11 A. When -- when we say "this memorandum,"
12 we're talking about the one that starts, "To Missouri
13 Public Service Commission official case file"? I
14 think the problem I'm having here is -- and I'm not
15 trying to mess with you, but it's just that I want to
16 make sure --

17 Q. No, we're clear. That's fine. That's
18 fine.

19 A. All right.

20 Q. No, the memorandum that you were looking
21 at in the very back of this entire package of papers
22 is Exhibit 55.

23 A. The memorandum?

24 Q. Well --

25 A. That's not --

1 Q. I don't know what else I would call it.

2 That's your report.

3 A. Okay. That's a -- that's a customer
4 service operations report.

5 Q. I'm sorry.

6 A. So -- yeah. Let's -- let's call it that
7 so that I stay clear on what you want to refer to.

8 Q. Fair enough. Fair enough.

9 A. All right.

10 Q. The customer service operations report
11 that you were referring to earlier -- testifying
12 about earlier --

13 A. Right. That's --

14 Q. -- is attachment No. 3 to the memorandum
15 dated June 13th, 2005; is that correct?

16 A. It's attached at the back of this entire
17 package that the memorandum was dated that, correct.

18 Q. But my point is, the memorandum -- this
19 report, this consumer -- I'm sorry, customer service
20 operations report that you were testifying, you
21 testified earlier it was attached to the Disposition
22 Agreement, correct? That's right?

23 A. Yes, it was.

24 Q. Okay. My point here is, in these
25 documents it's actually attached to a memorandum that

1 we just looked at that was dated June 13th, 2005
2 which was dated after the signing of the Disposition
3 Agreement, correct? Take your time.

4 A. The memorandum was dated June 13th, '05.

5 Q. Correct.

6 A. And this document, the customer service
7 operations report, was attached to the back of this.

8 Q. Correct. So, in fact, this customer
9 service operations report was not attached to the
10 Disposition Agreement when Mr. Burnam signed it on
11 behalf of Suburban Water and Sewer Company; is that
12 correct?

13 A. I don't know that. The customer service
14 operations review was completed long before this and
15 was actually discussed with a company representative,
16 so this is not something that came after the fact.

17 Q. I'm gonna point you back to the actual
18 Disposition Agreement itself, and that Disposition
19 Agreement itself has a few attachments to it, right?
20 If this report was prepared earlier, why wasn't it
21 attached to the Disposition Agreement that Mr. Burnam
22 signed on behalf of Suburban?

23 A. I don't know that. You'd have to ask
24 the case coordinator that.

25 Q. Okay. But you don't know that it was

1 attached to that Disposition Agreement when you
2 signed it; is that correct?

3 A. I -- I don't know that.

4 Q. Okay.

5 A. I know the company was aware of what was
6 in the report.

7 Q. Okay. Let's talk a little bit more
8 about the requirement No. 8 which you spent most of
9 your testimony on earlier, the brochure. And I know
10 you testified -- or you testified, correct, that
11 Exhibit No. 6 which you were provided, a copy of the
12 brochure, does not satisfy the rule, and I believe it
13 was rule -- the rule that's printed out on Exhibit
14 No. 8, 4 CSR 240-13.040?

15 A. Yes, that is the rule reference to the
16 customer brochure.

17 Q. Okay. My question is a little bit
18 different, so I want to make sure I phrase it
19 carefully.

20 A. Please do.

21 Q. Okay. Does this brochure satisfy
22 paragraph No. 8 as it's written in the Disposition
23 Agreement? Not the rule, but paragraph No. 8.

24 A. Does the brochure that is Exhibit 6 --

25 Q. Correct.

1 A. -- does it satisfy the rights and
2 responsibilities section?

3 Q. Correct.

4 A. No, it does not.

5 Q. Can you point in paragraph 8 which right
6 and responsibility that's mentioned there that's not
7 in this brochure, Exhibit 6?

8 A. Well, I would have to go through again
9 as we did earlier, the details. The rule says, "and
10 shall contain information concerning but not limited
11 to," so --

12 Q. I'm not asking about the rule, I'm not
13 asking about the rule. I don't want you to tell me
14 about the rule. I want you to tell me where in
15 paragraph 8 of the Disposition Agreement, Exhibit 55,
16 where in paragraph 8 does it say a right or
17 responsibility that's required to be included in that
18 brochure that is not in Exhibit 6? Just point me to
19 one, just one.

20 A. It's very obvious in the reference in
21 the Disposition Agreement what that -- the statement
22 of rights and responsibilities of the customers
23 relates very clearly to what is mentioned in the
24 audit report at the back of this agreement.

25 Q. Which was filed on June 13th, 2005, two

1 weeks after the Disposition Agreement was signed?

2 A. It is still not meeting the requirements
3 of the rule. It does not significantly address the
4 rights and responsibilities of the customers. Even
5 if you take away these individual points, the
6 information presented here is confusing, it does not
7 give the customer contact points.

8 We had customers testify at the local
9 public hearing that it was, quote, a joke, unquote.
10 Therefore, if customers don't find it useful, I've
11 got to believe they don't think it's addressing their
12 needs.

13 Q. And let me circle back and ask for a yes
14 or no answer, okay? Does --

15 A. And my answer is no, it does not meet --

16 Q. I didn't even ask the question. I
17 didn't ask the question. Are you gonna answer the
18 question before I ask it?

19 A. Certainly.

20 Q. Wait, please, for me to ask the
21 question. Paragraph No. 8, can you please say, does
22 paragraph No. 8 recite any right or responsibility,
23 any specific requirement that is not contained in
24 Exhibit 6, and please point me -- yes or no. I'm not
25 asking about your report, I'm not asking about the

1 rule; I'm asking about paragraph No. 8 of the
2 Unanimous Disposition Agreement.

3 A. Paragraph No. 8 says Rights and
4 Responsibilities, correct?

5 Q. Correct.

6 A. "A right of the customer is to read
7 their own meter if they so wish." That's not
8 addressed. "A right of the customer is to contact
9 the Public Service Commission or the Office of Public
10 Counsel if they have an inquiry that is not being
11 addressed by the company." That is also not
12 addressed.

13 Q. So it's your testimony that a brochure
14 is not complete unless it addresses every single
15 right that a customer has under Chapter 386 or 393 or
16 other applicable law; is that correct?

17 A. I believe so, that's -- that's the rule.
18 Going back to the rule, when it says rights and
19 responsibilities, that's --

20 Q. And customers have no rights -- let me
21 just make sure I'm clear on this, customers have no
22 rights under chapter 386 or 393 except for those
23 rights that are listed on Exhibit 8; is that right,
24 then?

25 A. No, certainly customers have additional

1 rights but I -- you asked me to note some rights that
2 the customer has that were not addressed in this
3 brochure and that was two of them.

4 Q. That's not what I asked. I asked you to
5 address some rights and responsibilities that were
6 required by paragraph 8 that are not in the brochure,
7 and you just said -- testified just a few minutes ago
8 that paragraph 8 requires every single right that a
9 utility customer has to be included within a
10 brochure. That's what you -- that's what you just
11 testified to, I understand. Is that incorrect or did
12 I mishear you?

13 A. No. I think -- I think -- I'd like you
14 to go back and restate that because I'm not -- I
15 think we're going in circles here and I'm not sure
16 I'm understanding.

17 Q. All right. We're going in circles
18 because you're not answering the question, so let
19 me -- let me -- let me rephrase it again.

20 MS. SYLER BRUEGGEMANN: Okay. I'd
21 object at that point that he's being argumentative.

22 JUDGE LANE: Just -- just -- just reask
23 the question.

24 MR. VOLKERT: Okay. Can you -- yeah,
25 please direct the witness to answer the question.

1 BY MR. VOLKERT:

2 Q. Yes or no, paragraph No. 8 --

3 A. Let me have this open again --

4 Q. Yes.

5 A. -- because I think I know what it said
6 but I want to be sure. I think it just said Rights
7 and Responsibilities; is that correct?

8 Q. Yeah -- yeah, you can look at it.

9 A. Thank you. And now I have to find the
10 page again. All right. I'm on -- actually I'm on
11 "Small company rate case Disposition Agreement" and
12 its page 3 of 5 --

13 Q. Right.

14 A. -- correct?

15 Q. Correct.

16 A. And it's No. 8?

17 Q. No. 8, right.

18 A. Okay.

19 Q. So yes or no. I want a yes or no
20 answer, please. Paragraph No. 8 includes a
21 specific -- or requires a specific right or
22 responsibility by its text set forth in paragraph 8
23 that is not contained in Exhibit 6?

24 A. Are you asking me if Exhibit 6 does or
25 does not detail the rights and responsibilities of

1 the utility and its customers?

2 Q. Nope. I'm asking for a yes or no answer
3 that paragraph 8 contains a requirement for a
4 specific right or responsibility that is not
5 contained in Exhibit 6.

6 A. It does not break out specific rights
7 and responsibilities in No. 8.

8 Q. Okay. Thank you. Did you ever provide
9 the rule that's Exhibit 8, did you ever provide that
10 to Suburban in the course of the 2005 rate case?

11 A. I probably did. I usually do. When I
12 go to a company, I make them very aware of it, and if
13 they are not aware of it and do not have a copy, I
14 always give them a copy.

15 Q. You always give -- and do you recall
16 specifically giving Suburban a copy of Exhibit 8?

17 A. I don't -- I must say I don't remember.
18 That is my standard practice, though. If they did
19 not have it already, I would have given it to them.
20 I've even faxed it to companies before.

21 Q. Do you ever have any concern that
22 companies that are not represented by an attorney and
23 that small companies are supposed to be receiving
24 more informal treatment during a rate case, that they
25 may not be able to understand or fully comply with

1 this rule without a little more guidance?

2 A. I -- I do have concerns about that and
3 I -- I address that with the companies. My job is
4 not to make their -- their job harder; I try to
5 assist them in -- in this.

6 Q. And let me ask you this: Exhibit 6, you
7 said you received it, what, a month or so ago? I'm
8 sorry. And I don't mean to put words in your mouth,
9 but when did you receive Exhibit No. 6, a copy of
10 Exhibit No. 6?

11 A. The first time I saw this document was
12 the Monday that we came to your law offices in
13 Columbia to review the information that had been
14 submitted and that was three weeks ago, four weeks
15 ago. I -- I would have to look at a calendar.

16 Q. Have you called Suburban to comment on
17 the brochure and tell them where you think this is
18 deficient?

19 A. I have not because of the situation. We
20 were in the middle of -- of a case and did not feel
21 like it was the appropriate time to do that.

22 Q. When is the appropriate time to contact
23 someone if you see that they've got a brochure that's
24 deficient in some manner?

25 A. Well, normally if a company calls me, I

1 would respond immediately, and that has happened. I
2 have reviewed documents, brochures, billing systems
3 for companies before outside of a case, but as -- we
4 had -- there was a case going on, I believe I was not
5 supposed to contact them outside of a formal kind of
6 a process.

7 Q. Did you -- have you contacted him to
8 demand that they -- not just to give them comments
9 but to demand that they reform this brochure or
10 correct it or supplement it, have you contacted them
11 at all regarding this brochure?

12 A. No, I have not.

13 Q. One more question. If I could direct
14 you to the last page of Exhibit No. 6 at the very
15 bottom, and I would actually like you to read into
16 the record that entire statement. It starts
17 "Suburban Water and Sewer Company is a regulated
18 public utility."

19 A. You want me to read that?

20 Q. Yes, please, into the record.

21 A. "Suburban Water and Sewer Company is a
22 regulated public utility and the rights and
23 obligations of the company, and you, as its customer,
24 are governed by applicable law, including but not
25 limited to, Chapters 386 and 393 of the Missouri

1 Revised Statutes, and Title 4, Division 240 of the
2 Missouri Code of State Regulations."

3 Q. Title 4, Division 240 of the Missouri
4 Code of State Regulations, does that contain this
5 regulation that's in Exhibit 8?

6 A. Those are what are termed the CSRs, yes.

7 Q. And you don't think that that
8 incorporates this rule by reference in there so
9 that -- so that the brochure complies with the rule
10 itself?

11 A. I don't believe that that's very helpful
12 to the customer, so therefore, I don't think it does
13 actually address what that part of the rule wants it
14 to do. It wants it to let the customer know how they
15 can contact the company, contact the Office of Public
16 Counsel, the Commission, what their rights are.
17 Referring a normal customer simply to a chapter and
18 title of the Revised Statutes, customers don't have
19 access to that kind of information. It -- it's not
20 very useful.

21 Q. So if you don't think that that language
22 operates to incorporate in the rule, why do you think
23 that -- or to incorporate the rule within the
24 brochure, why do you think that the Disposition
25 incorporates your comments in your consumer report

1 that's attached to the back that was filed on
2 June 13th?

3 MS. SYLER BRUEGGEMANN: I'd have to
4 object at this point. She's already answered that
5 question. They've gone around it twice, and he got a
6 clear answer.

7 JUDGE LANE: I'm sorry. Would you
8 repeat the question?

9 MR. VOLKERT: Yeah, the question is
10 why the language in the brochure, Exhibit 6, does not
11 incorporate the rule by reference when the witness
12 just a few minutes ago has claimed that paragraph 8
13 of the Unanimous Disposition Agreement --

14 MS. SYLER BRUEGGEMANN: I think he's
15 mischaracterizing the last statements.

16 MR. VOLKERT: Oh, I'll rephrase the
17 question if you want.

18 MS. BAKER: Your Honor, he's also asking
19 for a legal conclusion.

20 JUDGE LANE: Answer the question if you
21 can. If you don't understand, ask for --

22 THE WITNESS: To be honest with you, I'm
23 not sure -- you're going around in circles and I want
24 to try to answer you honestly, but I'm not sure --
25 you're taking three things and trying to link them

1 and I'm not -- I'm not sure that there's a link
2 there, but if you want to restate it and then I'll
3 take a pause and let my attorney decide if it's
4 appropriate.

5 BY MR. VOLKERT:

6 Q. And this actually is my last question,
7 so --

8 A. That's fine.

9 Q. -- I promise. I understood your
10 testimony -- testimony earlier, and I'll give you a
11 long question so you understand so I'll try to be as
12 clear as possible.

13 A. Why don't we break this into pieces.
14 That might be more effective.

15 Q. I understood your testimony earlier that
16 paragraph 8 of Exhibit 55, the Unanimous Disposition
17 Agreement --

18 A. We're going back to the rights and
19 responsibilities statement?

20 Q. Right. The rights and responsibilities
21 language, you said, incorporated all the rules, the
22 4 -- the 4 CSR 240, you know, the Exhibit 8
23 requirements. Is that what your statement was
24 earlier?

25 A. Yes, the reference to a brochure

1 detailing the rights and responsibilities of the
2 utility and customer, it's almost a direct quote out
3 of the rule.

4 Q. So my question is, if that's the case,
5 why doesn't this last paragraph on Exhibit 6, which
6 specifically cites to 4 CSR 240, why does that not
7 incorporate the rule?

8 A. This is not a useful reference for a
9 customer which is who this is designed for. A simple
10 reference to a rule does not tell them what their
11 rights and responsibilities are. And so since that
12 was -- this may have been useful if it had gone on to
13 address the specifics of what that meant, but
14 frankly, an average customer does not have a copy of
15 the Missouri Revised Statutes, nor the Code of State
16 Regulations, so to be useful and to be effective and
17 to meet this requirement, they should have simply
18 used some plain language.

19 MR. VOLKERT: Thank you. Nothing
20 further.

21 JUDGE LANE: Thank you very much.
22 Finally, any redirect by Staff?

23 REDIRECT EXAMINATION BY MS. SYLER BRUEGGEMANN:

24 Q. Just a couple of questions to clarify a
25 couple of points. On Exhibit 8 of the rule, sub 3,

1 sub J and K, does that specifically state that
2 telephone numbers, addresses and a statement that the
3 company is regulated by the Public Service Commission
4 is required?

5 A. Yes, it does state that.

6 Q. Okay. In the brochure do you see a
7 telephone number for the PSC?

8 A. No, there is not a telephone number.

9 Q. Do you see an address of the customer
10 services office at the PSC?

11 A. No, there is not.

12 Q. Under K do you see the address of the
13 OPC?

14 A. No, there is no address of the OPC.

15 Q. Do you see -- do you see the telephone
16 number of the OPC?

17 A. No, that's not included either.

18 Q. And do you think it should have taken
19 two years to prepare this brochure?

20 A. Certainly not. As I stated earlier, I
21 believe a couple of hours of sitting in front of the
22 computer screen would have certainly produced a much
23 more useful brochure.

24 Q. That's a reasonable time frame?

25 A. I believe it is. I did it myself. The

1 checklist approach of the rule makes it very easy.
2 One could do more than that, but in order to satisfy
3 the rule, you had to meet these requirements. And I
4 think someone at the company could have done that in
5 a pretty short period of time, as I said earlier, two
6 hours.

7 Q. And instead, it was two years?

8 A. Yes, my understanding is, it was just
9 developed in June of 2007.

10 MS. SYLER BRUEGGEMANN: Nothing further.

11 JUDGE LANE: Thank you very much, and
12 that completes the testimony of Debbie Bernsen. And
13 it is my understanding that Ms. Bernsen will be
14 unavailable for at least a large portion of tomorrow.
15 I just wanted to require of the parties just to
16 confirm my prior understanding that it would be all
17 right to finally excuse this witness since she will
18 be unavailable tomorrow.

19 MR. VOLKERT: Yes.

20 JUDGE LANE: No objection to that?

21 MS. BAKER: No.

22 JUDGE LANE: Ms. Bernsen, you're finally
23 excused. You may step down.

24 THE WITNESS: Thank you.

25 JUDGE LANE: Can we go off the record

1 for just a moment to discuss what we're gonna do for
2 the rest of the evening here.

3 (DISCUSSION HELD OFF THE RECORD.)

4 JUDGE LANE: All right. We're back on
5 the record in Case No. WC-2007-0452, et al., and
6 we're ready for Staff to call its next witness.

7 MS. SYLER BRUEGGEMANN: Your Honor, the
8 Staff of the Public Service Commission calls Kofi
9 Boateng to the stand.

10 JUDGE LANE: Sir, would you spell your
11 name for the court reporter, please.

12 THE WITNESS: My name is Kofi Boateng
13 Agyenim. Kofi is K-o-f-i, Agyenim is A-g-y-e-n-i-m,
14 and Boateng is B-o-a-t-e-n-g.

15 JUDGE LANE: Thank you, sir.

16 THE WITNESS: Thank you.

17 JUDGE LANE: Please raise your right
18 hand to be sworn.

19 (The witness was sworn.)

20 JUDGE LANE: Thank you very much.
21 Ms. Brueggemann, your witness.

22 MS. SYLER BRUEGGEMANN: Thank you, your
23 Honor.

24 DIRECT EXAMINATION BY MS. SYLER BRUEGGEMANN:

25 Q. Mr. Boateng -- and am I pronouncing it

1 correctly?

2 A. That is correct.

3 Q. Okay. Are you a utility regulatory
4 auditor III?

5 A. That is correct.

6 Q. And how long have you been with the
7 Public Service Commission?

8 A. I believe about two and a half years.

9 Q. And what are your job duties?

10 A. I audit and review books and records of
11 utility companies providing service within the state
12 of Missouri.

13 Q. Does that include water and sewer
14 utility companies?

15 A. That is correct.

16 Q. And does that also include the small
17 water and sewer companies?

18 A. That is correct.

19 Q. Now, are you familiar with Suburban
20 Water and Sewer Company?

21 A. Yes.

22 Q. And when did you become familiar with
23 Suburban?

24 A. I believe about three months after I joined
25 the Commission, I was assigned to a rate case.

1 Suburban went in to have it filed somewhere within
2 December, and that is where I became familiar with it.

3 Q. Are you talking about December 2004?

4 A. That is correct.

5 Q. You were -- you said you were assigned
6 to the case?

7 A. That is correct.

8 Q. What was your assignment?

9 A. I was -- my specific assignment was to
10 review operating expenses of the company.

11 Q. Okay. And when you were reviewing those
12 documents, you were reviewing revenue, you said
13 expenses and capital items such as plant also?

14 A. Yes, there was another audit that I was
15 responsible for reviewing revenue and the plant
16 information, but I -- since I worked on the audit
17 with him, I had a chance to review some of the
18 information.

19 Q. And did you compile the information into
20 auditing schedules at the end?

21 A. That is correct, I did that.

22 Q. Okay. Are you familiar with the term
23 "continuous property record system"?

24 A. Yes, I am.

25 Q. Is -- why don't you define that term for

1 me.

2 A. Continuous property records system is a
3 procedure by which the costs of utility plants are
4 segregated and maintained by units of plant.

5 Q. Okay. And what purpose does a
6 continuing property -- continuing property records
7 system have?

8 A. I think they provide a very useful
9 information. They provide record by plant within a
10 set of plant information, and it helps us to be able
11 to determine how much a company should end on its
12 investment, it provides installation information,
13 cost information as well as any additions or
14 retirements that occur within plant.

15 Q. Now, and do you shorten it to CPR when
16 you talk about a continuing property records system?

17 A. I think for once or twice sometimes we
18 use CPR.

19 Q. Okay. Is this something typically
20 requested in one of your rate reviews?

21 A. Yes. Normally whenever we do these
22 audits and we did not find maybe the company's
23 maintaining those, we make recommendations for the
24 companies to maintain the CPRs.

25 Q. Okay. So do you know why a CPR was

1 recommended for Suburban?

2 A. Yes, I know.

3 Q. Okay. Would you tell the bench, then,
4 please?

5 A. I think during the audits and especially
6 the first time that we visited the company, we asked
7 for CPR information to be able to substantiate its
8 plant balances, and the company didn't have one. So
9 that was when at the end of our audit, we made a
10 recommendation that the company should start
11 maintaining CPRs.

12 Q. Okay. Now, in front of you there is a
13 large-packet exhibit, and it's actually listed as
14 Exhibit 55. It's right on that bar. I have it
15 opened to a page, but I want you to make sure what
16 I've just handed you is the Disposition Agreement in
17 the rate case that you were assigned to.

18 A. Yes, I think it says a small company
19 rate case Disposition Agreement, and I can see the
20 company's name there.

21 Q. Okay. And is -- under item No. 9, is
22 the term listed there that, "The company will develop
23 a continuous property records system for plant that
24 at a minimum includes the date plant is placed in
25 service, the purchase price of plant and the dates of

1 retirement of property"?

2 A. That is correct.

3 Q. Okay. There is also in front of you on

4 that same bar an Exhibit No. 3, the sheet of paper.

5 Have you seen this document before?

6 A. Yes.

7 Q. And where did you see it?

8 A. I think that was 9 of July, 2007, when the

9 Staff visited Suburban's counsel's office in Columbia.

10 Q. Okay. And was it your understanding

11 that Suburban had provided this document?

12 A. Yes.

13 Q. And was it your understanding that this

14 document is about Suburban Water's system?

15 A. That is correct.

16 Q. Okay. Now, the title reads Property

17 Records System; is that right?

18 A. That is correct.

19 Q. Will you take a minute to review this

20 document.

21 A. (Witness complied.) Yes.

22 Q. Do you believe this document is a

23 continuing -- a continuous property records system?

24 A. I think it -- on the face of it, it

25 looks like a continuing property records as far as

1 that, but I would say that it's not sufficient to
2 meet the requirements.

3 Q. And why is that?

4 A. If you take the standpipe, for instance,
5 you find a CPR. In the beginning I said the -- the
6 plant must have additions, and every work that is
7 done within the plant should be reported in the CPR.

8 But if you look at a standpipe, even
9 though it was written 1973, it doesn't show any
10 activity from that time until today. And I can say
11 that from that time there has been some activities
12 which are not reflected here, so that is a shortfall.

13 Q. Okay. So on the standpipe if there were
14 repairs done at any time since 1973 on the standpipe
15 to 2007, there should be documentation of that work?

16 A. That is correct.

17 Q. Okay. Now --

18 A. The same thing applies to warehouse.
19 If you read it, I would assume that nothing has
20 occurred from that time since it was put in in '73.
21 If you come down the column, I assume that may be --
22 that wasn't the first time the company put in well
23 pumps, so the one that was retired should have been
24 provided.

25 Q. Okay. So on the well pump, if they were

1 replacing their well pumps, say, every five years,
2 then you should have the well pump that was -- the
3 well pump that was placed in service in 2000, its
4 purchase price, its date of retirement, the well pump
5 that was placed in service in 1995, its purchase
6 price, it's date of retirement; is that correct?

7 A. That is correct.

8 Q. Okay. And so the same follows for
9 everything down the line?

10 A. That is correct.

11 Q. And then on meters, is the information
12 listed there sufficient to meet a continuing property
13 records system definition?

14 A. I don't believe so. Overhead doesn't
15 provide anything relating to cost, and for our
16 content purposes, I think that is the main thing that
17 we look for.

18 Q. And is the key to a continuous property
19 records system the word "continuous"?

20 A. Yes, it's a continuing process. You
21 don't start it and stop it somewhere because you --
22 it goes like you put a plant today, tomorrow there's
23 activities going on. And since it has -- it has a
24 definite time -- let me put it maybe like this: It
25 dies and then you bring an addition of plant, so it

1 does work itself that way.

2 Q. Okay. So do you think Exhibit No. 3
3 would suffice or would actually meet the condition of
4 item No. 9?

5 A. I would say no.

6 Q. Okay. Now, if you were putting together
7 a continuing property records system for an entity
8 the size of Suburban, how long do you think that
9 would reasonably take you?

10 A. Maybe that would depend on the level of
11 information, and I will say maybe it would depend on
12 the information and the size of the company. And in
13 this case with Suburban, since it's not a complex
14 system, I would say it may not take a day or at most
15 two days to put everything together.

16 Q. Okay. Does that include going around to
17 the documents inside of, let's say, your office and
18 collecting all the information for the plant that
19 you've had in the past, receipts or records that
20 you've kept in the continuing course of business?

21 A. That is correct.

22 Q. So that's probably -- is that part of
23 the one to two days' legwork you have to do?

24 A. And I think most of this information,
25 they have it already, so it's a matter of just, say,

1 putting it in a format.

2 Q. So actually entering it into an Excel
3 spreadsheet takes longer for most people?

4 A. Well, maybe Excel spreadsheet or maybe
5 on a book, a notebook, whatever they want to keep it.

6 Q. Okay. Now, are you familiar with term
7 No. 15 on Exhibit No. 55? And that says, "The
8 company will provide quarterly reports regarding
9 monthly customer meter usage data and monthly master
10 meter usage data to the auditing staff of the
11 Commission for the period of July 1, 2005, through
12 December 31st, 2006." Are you familiar with that
13 term?

14 A. That is correct.

15 Q. Okay. Have you seen -- have you seen
16 that document that I just handed you?

17 A. Yes.

18 Q. And where did you see this document?
19 Did you see it at the same office when you saw the
20 property records system or at another time?

21 A. That was the same time.

22 Q. Okay. Now, do you know if this has been
23 supplied by Suburban Water and Sewer Company?

24 A. That is my understanding.

25 Q. Okay. And is this a quarterly report

1 for -- or regarding monthly customer meter usage data
2 and monthly master meter usage data for the time
3 frames listed?

4 A. I think it's only provided for master
5 meter reading.

6 Q. Okay. So the condition in 15 requires
7 that monthly customer meter usage data must also be
8 provided in the quarterly report?

9 A. That is correct.

10 Q. Now, to you, what does quarterly report
11 mean?

12 A. What I think it means is every three
13 months you submit a report, in this case for master
14 meter reading.

15 Q. Okay. So for the condition on 15 where
16 it says a period starting -- or "a period, July 1st,
17 2005," the quarter that that would relate to would be
18 July 1st, 2005, to September 31st, 2005? Is that a
19 quarter?

20 A. That is correct.

21 Q. Okay. So that quarterly report, when
22 would it naturally and reasonably be required?

23 A. I think in that circumstance, a
24 reasonable period would be the month after the
25 quarter, and that will be no later than a month

1 following the quarter.

2 Q. So for the case of July 1st, 2005, to
3 September 31st, 2005, the end of October would be the
4 end of the next month?

5 A. That is correct.

6 Q. And should that be the case for every
7 quarterly report?

8 A. That should be it.

9 Q. Is the purpose of a quarterly report so
10 that a continuous review can go on quarterly of
11 whatever you're looking at?

12 A. That is correct.

13 Q. Okay. Now, why is it that monthly
14 customer meter usage data and monthly master meter
15 usage data is important to a review, if it is
16 important to a rate case review?

17 A. I believe the other part of this
18 recommendation was for Staff members to be able to
19 monitor the progress the company was making in
20 reducing the trouble that was identified during the
21 rate case.

22 Q. Okay. So you use meter readings to
23 determine usage of water?

24 A. That is correct.

25 Q. And based on usage you can derive

1 revenue?

2 A. That is correct.

3 Q. Okay. So what if usage is estimated?

4 THE COURT REPORTER: The what? I'm

5 sorry.

6 MS. SYLER BRUEGGEMANN: I'm sorry.

7 BY MS. SYLER BRUEGGEMANN:

8 Q. I'm sorry. So what if usage is

9 estimated?

10 A. I think that will not provide a reliable
11 measurement of -- maybe in the case of whenever you
12 determine revenue requirement, you may want to have a
13 actual meter reading, and that provides more reliable
14 information than just basing your calculations on
15 estimates.

16 Q. Okay. And revenue is generally an
17 amount of money a company has charged or received
18 from selling water?

19 A. That is correct.

20 Q. Which one is it? Is it --

21 A. Charge.

22 Q. Okay. So the amount of money a company
23 has charged from selling water equals revenue?

24 A. That is correct.

25 Q. Okay. Now, then, just to be clear and

1 have it on the record, for a reasonable time frame
2 for each of these quarterly reports for the period
3 from October 1st, 2005, to December 31st, 2005, would
4 it be reasonable to have the report end by January 1st,
5 2006?

6 A. That is correct.

7 Q. And for -- and so on and so forth for
8 the remaining four quarterly reports, the end of
9 every next month?

10 A. Yes.

11 Q. Okay. And I want to make sure that I
12 ask this: So on Exhibit 4, does this meet the
13 requirement of item 15 for the part that's requesting
14 monthly master meter usage data to auditing staff --

15 A. I would say no.

16 Q. Okay. And is that because it wasn't
17 provided directly after that month, or quarterly?

18 A. And more so, it doesn't contain the
19 individual meter readings.

20 Q. Okay. So what else -- so what else is
21 this missing, then? Let's go through it step by step
22 real quick.

23 A. I mean, the information should have been
24 provided at the end of every quarter, and as you
25 said, the first report you have been provided maybe

1 within October 2005.

2 Q. Okay.

3 A. In that order. And since the
4 Stipulation and Agreement stated that a company will
5 provide quarterly reports regarding monthly customer
6 meter reading for individual customers as well as
7 master, but in this case we only have the master
8 meter reading.

9 Q. Okay. So then it would just simply be
10 all the numbers for every month, so probably -- I'm
11 sorry. Back up. Will you say what you said one more
12 time? I just lost my train of thought.

13 A. Just a minute. What I'm saying, the
14 first report should have been provided in October.

15 Q. Okay.

16 A. That is, after every quarter. So the
17 first would be October 2005, in that order. And also
18 looking at the 15, it says "The company shall provide
19 master meter reading and customer meter reading," but
20 in this case we only have the master meter reading
21 without the customer meter reading.

22 Q. Okay. Then one last question: When --
23 do you -- I think you've already testified that you
24 look at and review Suburban's books and records as to
25 billing and expenses. Do you -- well, do you do that

1 at all?

2 A. Yes, I look at the expenses.

3 Q. Okay. Are salary expenses reflected on
4 a company's books generally?

5 A. Yes, it was under labor.

6 THE COURT REPORTER: I'm sorry. Can you
7 please repeat, sir?

8 THE WITNESS: It was part of the
9 expenses, and it was classified under labor.

10 BY MS. SYLER BRUEGGEMANN:

11 Q. Under labor?

12 A. That is correct.

13 Q. Okay. Now, in this case, did you ever
14 see any documents that showed salary expenses for any
15 employees of Suburban?

16 A. It was understanding that all
17 labor-related issues were under contract with Vista
18 Home Management, and so that is the ...

19 Q. So there were amounts under -- under
20 Vista that were booked as expenses in Suburban's
21 books?

22 A. That is correct, or expenses relating to
23 salary or labor-related expenses were paid to Vista.

24 Q. Okay. So, then, that was taken into
25 account and accounted for in the last rate case?

1 A. That is correct.

2 Q. Do you think you could find that in the
3 schedule in Exhibit 55 in front of you? Would that
4 be something that's in any of those documents?

5 A. Just a minute. If you look at the
6 accountant's schedules, I believe No. 8, the income
7 statement --

8 Q. Yes?

9 A. -- line No. 10, you have labor, and the
10 amount is \$33,387.

11 Q. And is the number in front of labor
12 600.000?

13 A. That is a code.

14 Q. Okay. So would it surprise you if
15 someone said that there was no employee labor
16 reviewed or reflected in the rate case?

17 A. I believe that would not be an accurate
18 statement.

19 MS. SYLER BRUEGGEMANN: Okay. And at
20 this point, your Honor, I would ask to enter
21 Exhibit 4 into the record.

22 JUDGE LANE: Exhibit 4 has been marked
23 and offered into evidence. Are there any objections?

24 MS. BAKER: No.

25 MR. HARRISON: No objection.

1 JUDGE LANE: Without objection, it is
2 received into evidence.

3 (EXHIBIT NO. 4 WAS RECEIVED INTO
4 EVIDENCE AND MADE A PART OF THE RECORD.)

5 MS. SYLER BRUEGGEMANN: Nothing further
6 for me at this time.

7 JUDGE LANE: All right.
8 Cross-Examination?

9 MS. BAKER: No questions, thank you.

10 JUDGE LANE: For Suburban? Mr. Volkert.
11 Thank you.

12 MR. VOLKERT: Thank you, your Honor.
13 CROSS-EXAMINATION BY MR. VOLKERT:

14 Q. Good evening.

15 A. Good evening.

16 Q. Sorry to keep you here so late. So you
17 testified you just started with the PSC just a little
18 bit before the 2005 rate case with Suburban; is that
19 correct?

20 A. That is correct.

21 Q. And when you do an audit like that, what
22 sort of things do you look for? Do you look for
23 unusual expenses, things that aren't typical?

24 A. Well, you look to substantiate whatever
25 expenses there has been paid.

1 Q. Do you ever make adjustments for
2 expenses that you don't think are reasonable or
3 typical?

4 A. Whenever anything appears to be
5 unreasonable, you look into it to make an adjustment.

6 Q. So is it an accurate statement, then,
7 that if you see an unreasonable cost, you make an
8 adjustment; if you don't see a cost as being
9 unreasonable, you don't make an adjustment?

10 A. That is correct.

11 Q. I'm gonna hand you what's been
12 previously marked as Exhibit No. 63. Do you
13 recognize this report?

14 A. Yes, I do.

15 Q. Did you prepare this report?

16 A. Yes, it has my name on it.

17 Q. Did you prepare it in connection with
18 the 2005 rate case for Suburban Water and Sewer
19 Company?

20 A. That is correct.

21 MR. VOLKERT: Your Honor, I'd move to
22 admit this exhibit.

23 JUDGE LANE: Exhibit 63 has been marked
24 and offered into evidence by Suburban. Any
25 objections? I'll give everyone a chance to look it

1 over.

2 MS. BAKER: No, your Honor.

3 MS. SYLER BRUEGGEMANN: No objection.

4 JUDGE LANE: All right. Without
5 objection, it is entered -- it is admitted into
6 evidence.

7 (EXHIBIT NO. 63 WAS RECEIVED INTO
8 EVIDENCE AND MADE A PART OF THE RECORD.)

9 BY MR. VOLKERT:

10 Q. This report is a summary of Suburban
11 Water and Sewer Company's general ledger entries; is
12 that correct?

13 A. It is the company's information that we
14 looked at.

15 Q. Right. So you took this from -- do you
16 recall, is it from the general ledger or what do you
17 recall?

18 A. Well, we look at the company's invoices
19 and then compare that with the -- because the
20 company's general ledger information we're taking
21 from is invoices, also documents.

22 Q. Are there adjustments on this report?
23 Actually, let me rephrase. There are only two
24 adjustments on this report for expenses; those are
25 for electric utilities on the first page where

1 there's an asterisk, and chemicals on the second page
2 where there's an asterisk -- asterisk; is that
3 correct?

4 A. That is correct.

5 Q. And so other than those two expenses,
6 you did not find any unreasonable expenses; is that
7 correct?

8 A. That is correct.

9 Q. I will point you specifically, please,
10 to page 2, the Labor Summary. When you entered these
11 numbers, did you -- do you have any recollection what
12 these specific labor -- labor charges relate to?

13 A. It relates to billing, I know, because
14 all the management of the system was under contract
15 with Vista, so anything relating to labor would be
16 under this item.

17 Q. But do you know what kind of labor these
18 were? So for each individual item, can you tell me
19 was it labor for management, was it labor for
20 billing, was it labor for maintenance? What was the
21 labor for?

22 A. At this time I would not be able to do
23 that.

24 Q. Do you know if Suburban, in fact, paid
25 Vista for salaries of its -- its management employees

1 who just did billings?

2 A. From this information I know they made a
3 payment to them.

4 Q. You know they made a payment to them,
5 but you don't know for what purpose?

6 A. Well, it shows it right here, the
7 company submit payments to Vista, and that is what we
8 looked at.

9 Q. Right. Right. I'm sorry. Let me be a
10 little clearer. Do you know -- to your recollection,
11 not just what it says here, do you know what these
12 charges, what kind of labor these charges are for?

13 A. And that is what I stated, for billing.

14 Q. Which ones are these -- which ones of
15 these charges relate to billing?

16 A. I said I would not be able to do it at
17 this time. I don't have any information in front of
18 me that indicates that.

19 Q. But you know -- you recall your -- you
20 specifically recall that some of these charges were
21 for billing, for customer billings?

22 A. That is what I remember.

23 Q. Okay. And do you know that some of
24 these charges were for salary for Paula Belcher, for
25 example?

1 A. I know Paula was reporting her time to
2 Vista, and Vista, in turn, charged Suburban, so I
3 know that her time is accounted for here.

4 Q. Oh, so you know that some of these
5 charges are to pay salary for Paula Belcher; that's
6 correct?

7 A. I indicated that the management of the
8 system was under contract with Vista.

9 Q. Right, I understand that. But I'm
10 asking you to specifically say you know that some of
11 these items were paid salary for Paula Belcher; is
12 that what you're stating now?

13 A. What I'm saying is that Paula was
14 reporting her time to Vista, and Vista was charging
15 Suburban. Whether Vista made any payment to Paula, I
16 don't think I looked at any check that indicated
17 Vista submitted any payment to Paula.

18 Q. Okay. So these charges could have been
19 Vista paying a maintenance person, it could have been
20 Vista paying a contractor to do some labor, it could
21 have been Vista paying a billing clerk; is that
22 correct?

23 A. Those would have been reported
24 separately.

25 Q. Okay. Those would have been reported

1 separately, so not under labor; is that what you're
2 saying?

3 A. Not for maintenance and repairs.

4 Q. Oh, so you -- so under labor you only
5 replace labor for -- I'm sorry. I was confused.
6 Under this category of labor, you only report labor
7 for billing, customer billings and administration,
8 not for maintenance?

9 A. Maybe we may want to go into the line
10 items, and that will maybe -- because I don't have
11 anything here that will help me to know whether this
12 particular payment was related to this.

13 Q. Well, for example, you mentioned --
14 let's turn back to the first page of Exhibit 63,
15 please, under Repairs/Maintenance. You see that at
16 the bottom, "Repairs/Maintenance of Water Plant"?
17 Under the description I don't see any of those that
18 relate to labor.

19 A. And that is a problem with most of these
20 classifications.

21 Q. That's a problem because the description
22 wasn't specific? We can't identify now which ones
23 were labor and which ones were not?

24 A. Well, for instance, if you see that, he
25 did repair works, and so you may not find maybe

1 materials 10,000 and labor 2,000, maybe paying 5,000.
2 So everything is reported over there in maintenance
3 and repairs.

4 Q. Okay. And so you're testifying -- just
5 so I'm clear, you're testifying right now that these
6 items that we're saying Vista home repairs and
7 maintenance, some of those covered labor; is that
8 correct?

9 A. No. What I'm saying is everything there
10 is related to labor.

11 Q. Everything under repairs and
12 maintenance, all payments under repairs and
13 maintenance to Vista relate to labor?

14 A. That is correct. And if you look at the
15 company's annual report, it says that, "All labor and
16 personnel under contract with Vista," so I would not
17 even go any further to look where the -- who Vista is
18 paying for what.

19 Q. Right. And I'm sorry, Mr. Boateng. I'm
20 just trying to make sure I understand what -- what
21 your -- what your -- what your testimony is. I
22 understand that Vista provides all labor. In other
23 words, that's your testimony, is that correct, that
24 Vista provides all labor to Suburban, and that you do
25 not know who Vista pays with the money that it gets

1 from Suburban; is that correct?

2 A. That is correct.

3 Q. All right. When you -- if you look
4 again at Exhibit 55 which you were already handed
5 earlier, that's the Unanimous Disposition Agreement.
6 Please open that to the same page you were looking at
7 before, page 3 of 5 of the agreement itself.

8 A. Okay.

9 Q. And I'll focus in on a couple of
10 recommendations. The first paragraph is No. 9. You
11 said that was one of the recommendations that you
12 provided?

13 A. The auditing department.

14 Q. Correct. And I recall that your
15 testimony was that Exhibit No. 3, if you'll look at
16 that again, does not contain all the requirements for
17 a continuous property records system because it does
18 not contain all additions and activity; is that
19 correct?

20 A. That is correct.

21 Q. Is there a Commission rule that defines
22 the word or the phrase "continuous property records
23 system"?

24 A. I have not seen one.

25 Q. Is there any other definition or form

1 that your department has that shows companies what a
2 continuous property records system is or should look
3 like?

4 A. I've not seen where that is in the CPR
5 form.

6 Q. In your experience with auditing small
7 water companies, do they all use the exact same form?

8 A. I would say no, depending on the
9 information, but then it must meet a minimum
10 standard.

11 Q. It must meet a minimum standard.
12 Paragraph 9, that paragraph, is it your understanding
13 that the minimum standard is the date plant is placed
14 in service, the purchase price of plant and the dates
15 of retirement of property? Is that the minimum
16 standard?

17 A. I think even though this provided the
18 beginning point, but then additional information
19 could have been added to it.

20 Q. Could have been added. But is it your
21 understanding of paragraph 9 that the minimum
22 requirements are, date plant is placed in service,
23 purchase price of plant and dates of retirement of
24 property?

25 A. That is what is here.

1 Q. And if I direct you to Exhibit 3,
2 please, and you look at the title to that table, the
3 title, the top row where they have the titles, can
4 you tell me, do those columns state the plant, the
5 date placed in service, the purchase price and the
6 date of retirement?

7 A. Yes.

8 Q. So it matches up with the minimum
9 requirement in paragraph 9 of the Disposition
10 Agreement; is that correct?

11 A. I think what is lacking here is it
12 doesn't ensure -- the purpose of the report is
13 showing continuing, but over here it's only showing
14 at a particular point in time; it doesn't show any
15 activities.

16 Q. And one more point on this paragraph
17 No. 9. Does it state a deadline?

18 A. There's none.

19 Q. Let's talk briefly about Exhibit No. 4
20 which you were previously handed, and I'm gonna
21 direct you back to the -- as well while we're looking
22 at this Exhibit 4, back to paragraph No. 15 of the
23 Unanimous Disposition Agreement, Exhibit 55.

24 A. Okay.

25 Q. And my recollection is that there were

1 two primary deficiencies that you testified to: One
2 was the timing of the provision of the reports, and
3 the other one was that customer readings were not
4 included in the reports; is that correct?

5 A. Please, sir, can you restate your
6 question?

7 Q. Sure, sure. Did you testify that the
8 two ways in which this Exhibit 4 is deficient were
9 that it did not have -- or, sorry, it was not
10 provided on time and that it did not include customer
11 meter reading records?

12 A. That is correct.

13 Q. Any other ways that it was deficient?

14 A. Just looking at it, I see none.

15 Q. And if I can direct your attention
16 specifically to paragraph 15.

17 A. Okay.

18 Q. Where does it say in there that -- that
19 customer meter readings are required? Does it state
20 that in that paragraph?

21 A. Required?

22 Q. Yeah. Where does it state in paragraph
23 15 that customer meter readings are required?

24 A. I think I can read that. It says, "The
25 company will provide quarterly reports regarding

1 monthly customer meter usage data and monthly" --

2 There's no requirement over there. I
3 don't see any word "required."

4 Q. Okay. And do you see any word in there
5 "customer meter readings"?

6 A. Yes, I see "customer meter usage" and
7 you get that from the readings.

8 Q. So that's -- the word "readings" or the
9 term "readings" is implied in customer meter usage
10 data?

11 A. That is correct.

12 Q. And where in paragraph 15 does it
13 prohibit the use of average customer meter usage
14 data?

15 A. I think that is what the recommendation
16 was. They would have to tell you the company shall
17 approve data with average customer information
18 relating to water usage.

19 Q. So average is not -- average data is not
20 sufficient because the word "average" isn't in the
21 paragraph 15; is that correct?

22 A. That is not the intention of the
23 recommendation.

24 Q. It's not the intention and it's also not
25 the express language, though, correct?

1 A. That is correct.

2 Q. Now, you said -- on that usage data,
3 actually, one more point. You said that the purpose
4 is to provide a -- the purpose of providing these
5 quarterly reports is so you can have a continuous --
6 or continuing review of the usage data; is that
7 correct?

8 A. That is correct.

9 Q. And I believe you also testified that
10 the quarterly reports, each quarterly report in your
11 opinion would be due within one month after the
12 quarter; is that correct?

13 A. That is correct.

14 Q. And did you also testify that you didn't
15 receive any usage data until you received Exhibit 4;
16 is that correct?

17 A. On July 9th of 2007.

18 Q. On July 9th, 2007. Why didn't you
19 follow up with the company on, let's see,
20 October 31st, 2005, to ask about the third quarter of
21 2005 customer usage data?

22 A. I believe the company had a
23 responsibility to meet the contract and the -- and
24 the Disposition Agreement.

25 Q. But wasn't the purpose of this

1 requirement to provide you the ability to
2 continuously review the usage data?

3 A. My duty relating to this case was to
4 make my recommendations, and once a company accepted
5 and appended its signature to this, I believe it has
6 a responsibility.

7 Q. I'm going to provide you two separate
8 exhibits that have been previously marked 61 and 62.
9 Do you recognize these documents?

10 A. Yes, I do.

11 Q. Did you draft these documents?

12 A. Yes, in conjunction with Dana Eaves.

13 Q. And were these in connection with the
14 2005 Suburban rate case?

15 A. That is correct.

16 Q. And is there in any of these, in either
17 of these memorandums, further explanation regarding
18 paragraph 15 of the Disposition Agreement,
19 specifically customer meter usage data? You can take
20 your time to look at them.

21 A. I do not see it here.

22 Q. And if I could direct you to the last
23 page of the draft which is Exhibit -- I'm sorry.
24 It's Exhibit 61, page 5. And also if you would
25 please open up to the last page of Exhibit 62.

1 Were paragraphs 9 and 10 of the draft
2 memorandum on page 5 of Exhibit 61, were those
3 intentionally omitted from the final memorandum,
4 Exhibit 62, to your knowledge, or is this copy that
5 we've got just incomplete?

6 A. I suppose Exhibit No. 62 is incomplete.

7 Q. So to the best of your knowledge,
8 requirements 9 and 10 were, in fact, attached to the
9 final memorandum, Exhibit 62?

10 A. That is my belief.

11 Q. And paragraph No. 10 describes an
12 18-month review to take place to verify the company's
13 compliance with the above recommendations; is that
14 correct?

15 A. That is correct.

16 Q. Did you undertake such a review?

17 A. This is a recommendation that the
18 auditing department made to the water and sewer
19 department.

20 Q. Right. And did -- did you follow
21 through on that recommendation? Did you, in fact,
22 have an 18-month review?

23 A. I don't see it being followed in the
24 Disposition Agreement.

25 Q. Oh, so that --

1 A. When I was assigned to the case, I don't
2 just go to companies to do reviews. I am always
3 assigned to a case. So in this case I wasn't
4 assigned to do any review on the company.

5 Q. And you mentioned that the review wasn't
6 included in the Disposition Agreement, that this
7 recommendation wasn't included. Is that -- so that
8 means it was not, in fact, a part of the agreement,
9 the review -- this -- this particular recommendation
10 was abandoned; is that your understanding, then?

11 A. I wasn't part of the negotiating team so
12 I wouldn't know.

13 Q. If -- if -- if there is an 18-month
14 review that's determined to be part of a Unanimous
15 Disposition Agreement, does it usually get inserted
16 into the agreement itself?

17 A. I don't know.

18 MR. VOLKERT: Nothing further.

19 JUDGE LANE: All right. Any redirect?

20 MS. SYLER BRUEGGEMANN: No, thank you.

21 JUDGE LANE: All right.

22 MR. VOLKERT: I'm sorry. Your Honor,
23 can I offer Exhibit 61 and 62 into evidence?

24 JUDGE LANE: Of course. I don't have a
25 problem with that. We could do cleanup later.

1 MR. VOLKERT: Okay.

2 JUDGE LANE: Will you consent to that or
3 do we need to battle it out?

4 MS. SYLER BRUEGGEMANN: No. No
5 objection.

6 MS. BAKER: I think the only thing is
7 that -- that if you put in there that 62 was
8 incomplete. That's the only thing.

9 JUDGE LANE: Well, the testimony will
10 reflect that, so 61 and 62 have been -- have been
11 offered into evidence, marked and offered into
12 evidence. And hearing no objection -- objection,
13 they are admitted into evidence. So 61 and 62 are
14 in.

15 (EXHIBIT NOS. 61 AND 62 WERE RECEIVED
16 INTO EVIDENCE AND MADE A PART OF THE RECORD.)

17 JUDGE LANE: All right. That concludes
18 your testimony, sir, and thank you very much. And I
19 believe you may also be finally excused. Is that --
20 any objection to that?

21 MR. HARRISON: No, not from us.

22 JUDGE LANE: All right. Thank you, sir.

23 THE WITNESS: Thank you, sir.

24 MS. SYLER BRUEGGEMANN: Thank you for
25 staying late.

1 THE WITNESS: Thank you.

2 JUDGE LANE: All right. We're ready for
3 Staff's next witness.

4 MS. SYLER BRUEGGEMANN: And Martin
5 Hummel is on his way, your Honor.

6 JUDGE LANE: All right. Good evening,
7 Mr. Hummel. Would you please take the stand. Would
8 you please spell your name for the court reporter,
9 please.

10 THE WITNESS: The first name is Martin,
11 M-a-r-t-i-n, and second -- and last name is
12 H-u-m-m-e-l.

13 JUDGE LANE: Thank you very much.
14 Please raise your right hand to be sworn.

15 (THE WITNESS WAS SWORN.)

16 JUDGE LANE: Thank you very much, sir.
17 Ms. Brueggemann, you are free to inquire on direct
18 examination.

19 MS. SYLER BRUEGGEMANN: Thank you, your
20 Honor.

21 DIRECT EXAMINATION BY MS. SYLER BRUEGGEMANN:

22 Q. Good evening. Thank you for staying
23 late, Mr. Hummel. How long have you worked for the
24 Commission?

25 A. Since 1989.

1 Q. And what are your professional
2 credentials?

3 A. I have a bachelor's degree in -- with
4 science education and a bachelor's degree in
5 engineering from the University of Missouri-Columbia,
6 and I'm a certified wastewater operator and a
7 certified water operator.

8 Q. And what are your job duties at the
9 Commission?

10 A. My job duties are primarily involved
11 with looking at the physical plant necessary to
12 provide water utility service and sewer utility
13 service.

14 Q. Okay. Do you do reviews of that --
15 those facilities or plant that you go and observe?

16 A. Yes, I will look at those in the field
17 and also look at various other information pertaining
18 to the condition and the operation of the physical
19 plant.

20 Q. Do you write reports and do inspections
21 and --

22 A. Yes.

23 Q. Okay. Are you familiar with Suburban
24 Water and Sewer Company?

25 A. Yes, I am.

1 Q. And how long have you known of Suburban
2 Water and Sewer Company?

3 A. I have known them since 1989 when I
4 started here with the Commission.

5 Q. Okay. Now, were you involved -- have
6 you been continuously involved with them since 1989
7 and the actual facilities on -- or around BonGor
8 Estates?

9 A. Yes, obviously not there every month,
10 but I've been involved with or stay informed of those
11 facilities on a continuous basis since then.

12 Q. Have you been assigned to any of the
13 rate cases that came to the Commission?

14 A. I have with regard to looking at the
15 physical facilities and to the extent that
16 information was needed or an evaluation of those
17 facilities was needed.

18 Q. Okay. Were you a part of the 2005 rate
19 case that was filed?

20 A. Yes.

21 Q. Okay. Were you actually assigned to
22 that case?

23 A. Yes.

24 Q. And what was your job duty in that case?

25 A. To look at the physical plant and the

1 operation of the water service being provided to
2 those customers at BonGor Lake Estates.

3 Q. Okay. Have you seen a Disposition
4 Agreement between Staff and Gordon Burnam in that
5 2005 rate case?

6 A. Yes, I have.

7 Q. Okay. What I have handed you is marked
8 as Exhibit No. 55 in this case, and it is the
9 certified copy of the WR-2005-0455 or the 2005 rate
10 case for Suburban. Would you turn probably eight
11 pages back to the Disposition Agreement terms?

12 A. Yes.

13 Q. Are you familiar with terms 8 through
14 15? Have you seen those before?

15 A. Yes, I have seen this.

16 Q. Okay. Did you have any part of
17 recommending any of those terms be placed into the
18 Disposition Agreement?

19 A. Yeah, I would have participated in the
20 item -- the unmarked sentences above 12, both of
21 those, 12, 13, 14, 15.

22 Q. Okay. So when it comes to -- and we've
23 been calling it No. 10, it follows 9, and it states,
24 "The company will install meters for all buildings no
25 later than August 31st, 2005." Did you ever go and

1 inspect the system to see if all -- if meters were
2 installed for all buildings?

3 A. Yes, we -- we did the inspection of the
4 facilities and we spent a fairly significant amount
5 of the time doing that inspection in the context of
6 this rate case of looking specifically at meters,
7 trying to understand what the status was in terms of
8 having meters for all the customers there at BonGor
9 Lake Estates.

10 Q. Okay. Have you since done an
11 inspection, possibly on July 13th, 2007, to review
12 this and other terms listed in the Disposition
13 Agreement as to whether or not they were completed?

14 A. Yes, I have.

15 Q. Did you also include in that a general
16 inspection of the Suburban Water system?

17 A. Yes.

18 Q. Did you make a report on that
19 inspection?

20 A. Yes, I did.

21 Q. Okay. You've been handed Exhibit No. 5.
22 Can you identify that document?

23 MR. HARRISON: Judge, do you want me to
24 object now or later?

25 JUDGE LANE: I mean, it hasn't even been

1 offered.

2 MR. HARRISON: Go ahead.

3 BY MS. SYLER BRUEGGEMANN:

4 Q. Can you identify this document?

5 A. Yes, I can. This is a copy of the
6 inspection report that I produced with -- in
7 conjunction with Mr. Merciel.

8 Q. Okay. And this was produced as of
9 July 20th, 2007?

10 A. Yes.

11 Q. And was this filed in the EFIS system at
12 the Public Service Commission?

13 A. I understand that to have -- yes, I
14 understand that to be -- to have been done.

15 Q. Okay. And did you attach your affidavit
16 to this report?

17 A. Yes.

18 Q. Okay. And the EFIS system, this is an
19 open -- this is a publicly open and available
20 document?

21 A. Yes.

22 Q. Okay. And are your findings from the
23 inspection as to the Suburban Water and Sewer system
24 within this report?

25 A. Yes.

1 MS. SYLER BRUEGGEMANN: Okay. I would
2 ask to enter this into evidence as Exhibit No. 5.

3 JUDGE LANE: Okay. Exhibit No. 5 has
4 been marked and offered into evidence.

5 MR. HARRISON: Certainly, with respect
6 to recommendations or prospective changes, we're
7 gonna object to. So at a minimum that would be
8 recommendations on pages 4 and 5. We certainly
9 object to that extent, your Honor.

10 JUDGE LANE: All right. Any response to
11 that objection?

12 MS. SYLER BRUEGGEMANN: Your Honor, this
13 is a report and recommendation as Staff -- is Staff's
14 standard after the majority of inspections, and I can
15 follow up with Mr. Hummel, if that is necessary, but
16 in any investigation to do that, it's already been
17 filed in EFIS, your ruling's already been made that
18 no improvements will be considered, and the decision
19 of this case will be restricted to the complaint
20 items and the current safety and adequacy of the
21 system. So I think it should be entered into evidence.

22 JUDGE LANE: Well, I think we'll do what
23 we did with regard to some of the other items, and
24 that is, your objection was to the portions of the
25 report that were looking at prospective-relief

1 recommendations regarding future actions that need to
2 be taken, and those portions of the report are, in
3 fact, not relevant to the -- excuse me, the
4 Commission has already ruled that those -- that that
5 evidence is not going to be admissible in this
6 proceeding.

7 So there's two ways we can handle this:
8 One is to admit it subject to the proviso that
9 information is not -- you know, it's not germane, or
10 we can go through the formal process of redacting the
11 document to remove that information.

12 But I'm not going to exclude the entire
13 report on the basis of your objection. So are you --
14 are you -- let me -- let me ask this: Are you asking
15 that the entire document --

16 MR. HARRISON: No, I don't think I can,
17 in good faith, do that. I think there are parts of
18 it based on the rulings previously that are admissible,
19 truthfully, so I don't think I can do that.

20 I don't think I would have a problem
21 admitting it subject to, you know, the previously
22 stated rulings.

23 JUDGE LANE: All right.

24 MR. HARRISON: I want the record to be
25 clear, again, that, you know, we certainly don't want

1 it to be admitted and later get some kind of motion
2 to amend the pleadings after the close of the
3 evidence. I think we've been through that, but I
4 want to state that again.

5 JUDGE LANE: I think that's perfectly
6 understood that we had -- we've gone through this
7 process, I believe, on some other exhibits. So the
8 objection will be granted to the extent of the --
9 that the report goes into prospective-only future
10 recommendations, but to the extent it discusses the
11 current state of the system, and as that regards the
12 safety and adequacy of the system and how that
13 relates to the Disposition Agreement and the
14 Commission's order in the 2005 case, it will be
15 received. So it's received for those -- for that --
16 for that -- that limited purpose, okay? So thank you
17 very much.

18 (EXHIBIT NO. 5 WAS RECEIVED INTO
19 EVIDENCE AND MADE A PART OF THE RECORD.)

20 JUDGE LANE: The objection having been
21 granted in part and overruled in part, I suppose, you
22 can continue on with the witness about the
23 nonobjectionable portions.

24 MS. SYLER BRUEGGEMANN: Thank you, your
25 Honor.

1 BY MS. SYLER BRUEGGEMANN:

2 Q. And Mr. Hummel, did you understand the
3 whole -- that's been kind of going on all day,
4 essentially we'll be talking about your report up to
5 the middle of the fourth page, essentially?

6 A. Okay.

7 Q. Okay.

8 JUDGE LANE: And by the way, just --
9 just so that you know, for purposes of my ruling, I
10 think I mentioned it in terms of relevance. It's
11 actually -- this is information that goes beyond the
12 scope of the pleadings, and the objection is that the
13 Respondents don't want to try those issues by mutual
14 consent. So that's the actual -- the formal basis
15 for the ruling.

16 MS. SYLER BRUEGGEMANN: Okay. Thank
17 you, your Honor.

18 BY MS. SYLER BRUEGGEMANN:

19 Q. Okay. On the Disposition Agreement,
20 item No. 9, it's requiring a continuous property
21 record system. And do you deal with continuous
22 property records systems generally?

23 A. I don't necessarily have a strong focus
24 on that. It is an issue that we -- it would be one
25 item that we would ask for in doing an inspection

1 just to -- when we can or if we can get to that point
2 of asking for those records and then just trying to
3 see how the company is doing with regard to that.

4 Q. Okay. And on what should be item 10
5 about installing meters for all buildings no later
6 than August 31st, 2005, did the company install
7 meters for all buildings by August 31st of 2005?

8 A. No.

9 Q. And do they have any meters still not
10 installed on -- on buildings as of now?

11 A. Yes.

12 Q. Or as of -- I'm sorry. As of your
13 inspection date, at least?

14 A. Yes.

15 Q. And how many would you say that that is,
16 if you know?

17 A. It's hard to get a precise number. But
18 I think I stated that -- stated something in this
19 report. It tries to quantify that, and I --

20 Q. Do you say in your report "except for
21 three buildings"?

22 A. There were three buildings that do not
23 have meters or meter boxes. There are also a number
24 of buildings that have a meter box but they do not
25 have a meter.

1 Q. Okay. But this requirement said
2 "install meters for all buildings," not meter boxes,
3 correct?

4 A. Correct. In order to install the
5 meters, you would need a meter box. And -- and of
6 course, it also includes those buildings that have
7 meter boxes but don't have the meters in place. That
8 also needs to be done.

9 Q. Okay. So how many buildings do you
10 think we're talking about without meters? And if --
11 and if the answer is more than three but you're
12 unsure, then that's ...

13 A. Okay. As I have in this report, I have
14 possibly 36 customers with no meters. Now -- and I
15 was wanting people to understand when they look at
16 that, there are circumstances where there is a
17 building with four living units, and so it --

18 Q. And so are you counting a meter for each
19 of those living units in that 36 number?

20 A. No. In this case I was -- I was trying
21 to give people -- whoever would be reading this --

22 Q. Uh-huh.

23 A. -- some kind of perspective on -- on
24 the quantification of the job that needs to be done,
25 and I think the total number of living units for the

1 whole area may be in the range of 150, and obviously
2 42 plus 42 and 36 don't add up to 150.

3 That's why I have a note on there that a
4 single meter may serve four living units in a
5 four-plex. Well, and the critical thing is that I
6 have a meter that all of the customer water use is
7 being metered.

8 Q. So for each living unit inside a
9 four-plex, what you're -- you're defining that as,
10 for clarification?

11 A. Well, that's what's confusing about
12 this. I have some four-plexes where there are
13 already four meter boxes for those four-plexes. So
14 in that case, there should be a meter for each unit.
15 If I --

16 Q. Okay. So four meters and four meter
17 boxes?

18 A. Yes.

19 Q. Okay. But you are aware that the
20 company has not installed meters for all buildings?

21 A. Correct.

22 Q. Okay. On item No. 11 for implementation
23 of a ten-year replacement program for existing
24 meters, have you seen a ten-year replacement program
25 for the company?

1 A. No, I have not.

2 Q. And what would you describe as a
3 ten-year replacement program?

4 A. That would be where management would
5 just establish a procedure to make sure they have a
6 meter that is metering all of the water going to
7 customers where that meter is either no more than ten
8 years old, or that meter has been evaluated to assure
9 that it is properly calibrated and working at least
10 on a ten-year frequency.

11 Q. Now, when implementing a ten-year
12 replacement program for a company that's already
13 currently been established for years and years and
14 years, how would you go about implementing a ten-year
15 replacement program for a company like that?

16 A. It would be specific to that particular
17 company.

18 Q. Okay. For Suburban, then.

19 A. For Suburban, first of all, it would get
20 back to having the continuous property records where
21 you come up with a listing of all the meters, the
22 serial number of that meter that matches up with the
23 location where it's being used, and you would look at
24 the age of those meters.

25 And certainly, any one -- any -- any

1 meter that was obviously not working properly, you
2 would get those replaced first. And then you would
3 look at all these meters and you would have to make a
4 decision whether you -- whether it was cost-effective
5 to simply replace the meter or do some kind of
6 evaluation of its functionality.

7 At the present time the cost of an
8 ordinary five-eighths-inch residential meter is
9 fairly small. It may be that the management would
10 simply decide to replace the meters.

11 Q. Okay. So what would be reasonable for
12 the 42 meters in place, 42 that are not read and
13 possibly 36 customers or living units with no meter,
14 what would be a reasonable ten-year replacement
15 program to implement for those?

16 MR. HARRISON: Well, Judge, that's --
17 that's not what the circumstance was in 2005, so I'm
18 not sure that that's relevant to this inquiry.

19 JUDGE LANE: Will you -- will you
20 please -- will the reporter read back the question,
21 please?

22 MS. SYLER BRUEGGEMANN: Your Honor, I
23 can actually tell you I was reading from the numbers
24 in the Staff report from July 13th, 2007.

25 JUDGE LANE: Okay. So you're reading

1 directly from the --

2 MS. SYLER BRUEGGEMANN: The numbers from
3 the report, yes.

4 JUDGE LANE: Okay. I'll allow the
5 question which will probably have to be restated.

6 THE WITNESS: I would need the
7 question --

8 BY MS. SYLER BRUEGGEMANN:

9 Q. How -- how do we implement a ten-year
10 replacement program or what -- what kind of
11 program -- what's it gonna look like for Suburban to
12 implement a ten-year replacement program?

13 A. The first thing that you would do is you
14 would place new meters in where there are no meters,
15 and that's not really part of replacement exactly;
16 that's simply establishing that there is a meter
17 at -- that you're metering all of -- of --

18 Q. Okay. So establishing that and moving
19 to the next step --

20 A. And once you've established that and
21 you've listed out your meters on a piece of paper and
22 you've listed -- listed the serial number and you've
23 listed the address that it serves, you would also
24 have listed on there as best as you can the age of
25 that meter.

1 Obviously, the new ones, you would have
2 that date there of when it was placed in service.
3 And you'd -- then you'd take a look at the oldest
4 ones, and starting with the oldest ones, either
5 replace them or at the very least confirm that the
6 meter is accurately measuring the flow going to that
7 customer.

8 Q. Okay.

9 A. Now, there -- there is a little bit of
10 flexibility on that particular item. There's
11 different ways to do that. I don't know if that's
12 answering your question.

13 Q. Oh, that's fine. So reasonably, how
14 long do you think it would take to start to implement
15 a ten-year replacement program?

16 A. To start the program, you could start it
17 in a week.

18 Q. How long would it take to fully
19 implement one, then?

20 A. That's a difficult question to answer
21 without having some idea of the number of personnel
22 that might be involved, and it depends on the
23 management's will to get the job done and whether --
24 whether they think it's important. But -- and it --

25 Q. Well, if they're doing what they're

1 supposed to do as a company to upkeep their water
2 system, what's a reasonable time frame?

3 MR. HARRISON: To implement one?

4 THE WITNESS: Six weeks.

5 MR. HARRISON: To implement one, is the
6 question?

7 MS. SYLER BRUEGGEMANN: Yes.

8 MS. SYLER BRUEGGEMANN:

9 Q. Six weeks, you said --

10 A. Yes.

11 Q. -- is a reasonable time frame to
12 implement so that they can go ahead and they've
13 inspected their facilities and they're putting it
14 down on a piece of paper, like you said, with the
15 names, the numbers, the ages and all the other
16 information to get to implementation of some kind of
17 ten-year replacement program?

18 A. Yes, it could be done in six weeks.

19 Q. Now, what you were saying about
20 management's willingness, would that deter the
21 timeline on being able to implement a ten-year
22 replacement program?

23 A. That would certainly be a wild card.

24 Q. Okay. Now, going to item No. 12,
25 installing flush valves with the flushing capability

1 of at least three feet per second in all mains, do
2 you know if the company has installed flush valves
3 with the flushing capability of at least three feet
4 per second in all mains?

5 A. Per my recent inspection, no, they have
6 not.

7 Q. Okay. And they currently have one flush
8 valve; is that correct?

9 A. Yes.

10 Q. Does that flush valve have the
11 capability to try to flush the system at least three
12 feet per second in all mains?

13 A. No.

14 Q. Okay. What is a reasonable time to
15 install flush valves?

16 A. Again, I've got the issue of
17 management's willingness to get the job done and the
18 issue of what kind of personnel that I've got
19 available to do the job. And you get into the issue
20 of whether you want to do this with your own
21 employees versus -- or whether you have the
22 capability of doing it with your own employees versus
23 doing this as a contract.

24 And my perspective on this would be that
25 you may want to involve an engineer to take a look at

1 this, and if you're gonna do it under contract, have
2 that engineer guide you on this, prepare a bid
3 document, put the project out to bid.

4 If -- if you decided to go that route,
5 and I'm not real familiar with just how long now that
6 that would take to go through that process with the
7 big documents and so forth, and it would depend on
8 whether you wanted to go to a true bid process where
9 you're gonna get three bidders and so forth. So
10 there's some complications in this, but --

11 Q. Let's say you had the personnel
12 available to go ahead and install a flush valve. How
13 long on that basis would it take? You have to -- you
14 just said you'd have to inspect to figure out where
15 to put the flush valves, correct, first? Is that the
16 first thing you'd have to do?

17 A. That is a complication because I'm not
18 sure if management -- I'm not sure in Suburban's case
19 whether they truly know where the end of the mains
20 are, but it would be reasonable to expect that they
21 should be able to figure that out. If that was the
22 case, you could get this done in as quickly as three
23 weeks.

24 Q. Now, that's the quickest. What do you
25 think your reasonable estimation would be, then, for

1 how quickly you could get -- for how quickly someone
2 under normal circumstances, or I don't know if there
3 are normal circumstances, but for Suburban Water and
4 Sewer Company, what would be a reasonable time frame
5 for them to get this done?

6 A. Two months.

7 Q. Okay. Okay. Do you know what goes into
8 actually installing flush valves? Do you know what
9 goes into installing flush valves?

10 A. Yes, I have my perception of what's
11 involved just due to being somewhat familiar with
12 excavation of water lines and some construction
13 practices with regard to installing water pipe.

14 Q. Okay. And do you have to excavate to
15 get down to a pipe after inspection?

16 A. Yes, you would.

17 Q. And then would you have to somehow
18 physically work on the pipe and shut off the water
19 and are those some things you'd have to do?

20 A. You would have issues of having to shut
21 off water likely, unless there's already -- again, I
22 don't know in this particular case whether there
23 might have been some kind of a valve placed on the
24 ends of the dead-end lines.

25 Q. Okay.

1 A. So those are some of the issues you'd
2 have to deal with, but there may be issues where you
3 would have to shut off the water in some fashion.
4 There are also --

5 Q. Okay.

6 A. -- at least a couple valves supposedly
7 within the system so that you can isolate a portion
8 of the system possibly, but --

9 Q. Okay. Great. Then on item No. 13 where
10 it says "Replace the standpipe with an inlet high
11 enough to provide adequate circulation and detention
12 time," how -- what does that term mean?

13 A. The term the inlet or --

14 Q. The whole item 13.

15 A. On item 13, one -- one of the items
16 that's -- that's apparent to someone such as myself
17 in terms of observing that standpipe is that you need
18 to make sure that there's adequate circulation of the
19 water so that you -- both to avoid stagnant water and
20 also to circulate the chlorine within that tank so
21 that the chlorine can do its job in terms of
22 chemically reacting.

23 In order to do that, you need to have an
24 inlet in that tank that extends above the bottom some
25 significant distance, for example, a third of the

1 height, perhaps, so that you create circulation in
2 that tank and the detention time.

3 Normally what's happening is you'd have
4 cold water coming into the tank and the warm water is
5 up at the top of the tank, and that's the way that
6 water wants to stay in a normal circumstance because
7 the warmer water is less dense than the cold water.
8 And so consequently, you don't have circulation there
9 unless you do something to promote that.

10 Q. Okay. So then what this says is, "Will
11 replace the standpipe with an inlet high enough to
12 provide adequate circulation and detention time."
13 Does that mean that this term was requesting that the
14 standpipe be replaced with another standpipe with a
15 higher inlet or that an inlet was -- a higher inlet
16 was to be put on the current standpipe?

17 A. At the time that was written, it was my
18 understanding that there was a very good chance that
19 the company would be faced with needing to replace
20 the standpipe once they actually looked inside of it.
21 And if they were faced with replacing that standpipe,
22 they should definitely replace it with an inlet
23 that's high enough to do what I'd suggested there.

24 Q. Okay. So this term is -- to your
25 understanding, was replacing the whole standpipe?

1 A. In that -- on that particular document,
2 that is what is envisioned, yes.

3 Q. Okay. Now, did you put together the
4 Disposition Agreements?

5 A. I was involved with that particular
6 recommendation.

7 Q. Right. But did you -- did you put
8 together the Disposition Agreement?

9 A. No, I did not put together the
10 Disposition Agreement.

11 Q. Who put together the Disposition
12 Agreement, the conditions?

13 A. I wasn't involved in the actual process
14 of the Disposition Agreement to be able to just say
15 exactly who --

16 Q. Okay.

17 A. -- put it together. It was other Staff
18 people and OPC, and I'm not sure what all -- I can't
19 really speak to that issue very well.

20 Q. On the issue of the replacement of the
21 standpipe with an inlet high enough, what's a
22 reasonable time frame that that could be
23 accomplished?

24 A. I presume you're asking that question in
25 relation to 2007, in this -- in the time frame of

1 2007 or in the time frame of 2005?

2 Q. Well, how has it changed?

3 MR. HARRISON: Judge, I think he can
4 answer about 2005. I don't think he can answer about
5 2007. It's not before the Commission.

6 JUDGE LANE: Yeah. Just keep your
7 question to 2005 for right now.

8 MS. SYLER BRUEGGEMANN: Well, your
9 Honor, I need to respond to the objection because the
10 replacement, if it happens, if it's -- okay, I'll
11 withdraw.

12 THE WITNESS: Okay. So --

13 MS. SYLER BRUEGGEMANN:

14 Q. I'll withdraw. If you replace the
15 standpipe with an inlet high enough, how long would a
16 reasonable time frame be to replace it as of 2005?

17 A. I would think that in that time frame it
18 could have been accomplished in an eight-month
19 period.

20 Q. Because you'd have to shut off the
21 water, empty it out of the standpipe, tear down the
22 current standpipe, get another foundation, put up
23 another standpipe; is that all included --

24 A. All of that has to be included, but you
25 would also involve an engineer and you would be

1 doing -- this is specialty work and you would -- you
2 would go to a specialty contractor that is involved
3 in tank construction for that.

4 Q. Okay. Now, on item No. 14, "The company
5 will contract with a certified operator to maintain
6 the company's well and distribution system," how long
7 do you think is a reasonable time for Suburban or a
8 company similarly situated to Suburban to be able to
9 contract with a certified operator?

10 A. And again, I'm answering this in -- 2005
11 would be six weeks.

12 Q. Does it take a lot of checking around to
13 see what individuals might be available to operate a
14 system?

15 A. You -- you -- you not only have to check
16 around, and yes, there's some contacts that you'd
17 have to make, but you'd also have to make the request
18 for service attractive in some fashion so that you
19 would have an operator willing to participate.

20 Q. Are there certified operators around
21 that are available for hire?

22 A. Yes.

23 Q. Okay. On -- as to the current condition
24 of the system, has it deteriorated at all from 2005?

25 A. Yes, it has.

1 Q. And how has it deteriorated? Let's
2 start with the standpipe. How has the standpipe
3 deteriorated?

4 A. The tank has continued to go downhill
5 and has had more leaks and more patches placed on it.
6 The immediate situation appears to have gotten worse.
7 Now, I say appears to be. In neither case did I go
8 to every meter, but that's a very time-consuming
9 process to go through every meter and check
10 everything, so it's really by virtue of looking at a
11 significant number of the meters.

12 Q. Okay.

13 A. And --

14 Q. Were the bolts on the standpipe loose?

15 A. The bolts on the standpipe were loose.
16 That was not observed previously.

17 Q. Was there any corrosion to the well
18 pump?

19 A. The well pump was in better condition in
20 2000 -- I'm not supposed to --

21 Q. You can talk about what the current
22 state of the system is as compared to 2005.

23 A. Okay.

24 Q. We just can't go further than today.

25 A. The well is in better condition in 2007

1 than it was in 2005. The well house was cleaned up
2 some, and there had been some painting done on the
3 top part of the well casing, and so it had
4 significantly improved.

5 Q. What about the meter boxes or the -- the
6 meter pits?

7 A. The meter boxes and the meter pits which
8 are basically synonymous, from my observations, were
9 worse off than they were in 2005.

10 Q. Were some of them collapsed that you did
11 not observe as collapsed before?

12 A. Yes.

13 Q. And is that a problem to actually put in
14 a functioning meter to a collapsed meter pit?

15 A. It certainly is a problem, and it just
16 involves a little bit more work than it would have
17 now than it would have in 2005.

18 Q. Okay. Now, did you take a bunch of
19 pictures whenever you were out inspecting on
20 July 13th, 2007?

21 A. Yes, I did.

22 Q. Okay.

23 MR. HARRISON: If you're gonna offer
24 them just to show --

25 MS. SYLER BRUEGGEMANN: -- the current

1 state of the condition as of July 13th, 2007.

2 MR. HARRISON: I don't have any
3 objection to that, but -- pardon me, if that's the
4 reason for which they're offered.

5 MS. SYLER BRUEGGEMANN: Okay. Your
6 Honor, and I may have to work out with the PSC IT
7 department, but there are numerous pictures that are
8 on the Smart Board that were downloaded to a CD.
9 There are actually 11 that describe the state of the
10 system.

11 JUDGE LANE: This is Exhibit 14?

12 MS. SYLER BRUEGGEMANN: Probably. Yes,
13 your Honor, that describe -- that show the water
14 system, the standpipe, the well pump, the meters, the
15 meter boxes as of July 13th, 2007.

16 JUDGE LANE: Are these the photographs
17 you've just asked the witness about?

18 MS. SYLER BRUEGGEMANN: Yes.

19 JUDGE LANE: All right.

20 MS. SYLER BRUEGGEMANN: And I can pull
21 them up on the board so that he can make sure that
22 those look like the pictures that he took for the
23 record.

24 JUDGE LANE: I think we ought to do that
25 just to --

1 MR. HARRISON: Counsel showed them to me
2 earlier.

3 JUDGE LANE: Okay.

4 MR. HARRISON: And I've seen them and
5 I'm fine with them. They're admissible on the basis
6 stated.

7 JUDGE LANE: All right. Are you
8 offering them?

9 MS. SYLER BRUEGGEMANN: I would like to
10 offer -- offer since we've stipulated that those are
11 the pictures from July 13th, 2007.

12 JUDGE LANE: Very well. Any
13 objections --

14 MS. BAKER: No, no objections.

15 JUDGE LANE: -- from OPC? All right.
16 Very well. Exhibit 14, which is a collection of 11
17 pictures of the Suburban Water system facilities
18 offered by Staff, is received into evidence without
19 objection.

20 (EXHIBIT NO. 14 WAS RECEIVED INTO
21 EVIDENCE AND MADE A PART OF THE RECORD.)

22 MS. SYLER BRUEGGEMANN: And just as a
23 side note, your Honor, what I'll try to do is work
24 with IT to label each picture within that exhibit so
25 that when you're going back through the record, it's

1 simpler.

2 JUDGE LANE: All right. And are those --
3 those are on the white board for -- are accessible, I
4 believe, for tomorrow?

5 MS. SYLER BRUEGGEMANN: Yes, for
6 tomorrow.

7 BY MS. SYLER BRUEGGEMANN:

8 Q. Okay. One last question. I'm handing
9 you what's been labeled Exhibit No. 7. Is that
10 Exhibit No. 7 a plan of the Suburban Water and Sewer
11 system that you were provided by Suburban?

12 A. Yes.

13 Q. Is it an official plan?

14 A. No. This is the best piece of
15 information that I've gotten from them over the
16 years. I've been asking for some kind of water
17 system plan probably since 1990, perhaps.

18 This is -- it is not a copy with an
19 engineer's seal or an engineer's signature saying --
20 or a clarification on it as to whether this is a plan
21 of what the system was intended to be or whether this
22 is an as-built plan that -- that accurately depicts
23 the actual system as constructed.

24 Q. So, so far as you know, this is the best
25 guess of Suburban?

1 A. This is the best guess, yes.

2 Q. Okay. And what would make this an
3 official document that you would believe is truly
4 accurate?

5 A. If I had a engineer that had signed off
6 on this stating that this was as-built and that's in
7 quotes, as-built.

8 Q. For purposes of our discussion, though,
9 is this at least a decent illustration of the water
10 lines and the BonGor Estate area for what we're
11 discussing?

12 A. I think this is an accurate depiction of
13 it to the extent that I've been able to look at the
14 system and to the extent that I can see the lay of
15 the lots and where the homes and so forth are out
16 there.

17 Q. Okay. And so two-inch -- so the listing
18 of two-inch plastic pipe or three-inch plastic pipe
19 or a two-inch water line, it's unknown at this time
20 whether or not those are true depictions?

21 A. That's correct. I don't know for sure
22 that I have, for example, three-inch plastic pipe,
23 nor do I know for sure where it depicts that I have
24 inch and a half, I don't know that for sure either.
25 But other than those sort of details, like I said,

1 this is the best information I've gotten so far and
2 it -- and it does fit with what I know of the system
3 as I see the surface and the location of homes and so
4 forth.

5 MS. SYLER BRUEGGEMANN: Nothing further.

6 JUDGE LANE: All right. Any
7 cross-examination from OPC?

8 MS. BAKER: I'm just gonna ask a couple
9 questions.

10 JUDGE LANE: Just a couple questions,
11 and after that I think would be a good time to break.
12 I'm sure, Suburban, you're going to have some
13 cross-examination of this witness, yes?

14 MR. HARRISON: (Nodded head.)

15 JUDGE LANE: That could take some time.
16 And the reason I say it's a good time to break is I
17 know for -- that some of the Commissioners have
18 indicated that they would like to ask questions of
19 this witness tomorrow.

20 MS. BAKER: Okay.

21 JUDGE LANE: Okay? So we can't finish
22 with him tonight anyway unless you want to stick
23 around and complete your cross-examination and then
24 have the Commissioner questions be first thing. I
25 thought it would be best if the Commissioners had the

1 benefit of hearing your cross-examination before, you
2 know, doing their questions, so --

3 MR. HARRISON: That's fine.

4 JUDGE LANE: Any objection to adjourning
5 for the evening after OPC finishes -- after Ms. Baker
6 finishes her cross-examination?

7 (NO RESPONSE.)

8 JUDGE LANE: All right. Very well.
9 Thank you.

10 MS. BAKER: I'll make it short.

11 CROSS-EXAMINATION BY MS. BAKER:

12 Q. Good evening, Mr. Hummel.

13 A. Good evening.

14 Q. It's been about two years since the
15 Disposition Agreement was signed; is that correct?

16 A. Yes.

17 Q. Okay. Would two years be more than
18 sufficient to install the meters for all the
19 buildings?

20 A. Yes.

21 Q. Would two years be more than sufficient
22 to at least begin implementation of a ten-year
23 replacement program?

24 A. Yes.

25 Q. Would ten years be -- or two years be a

1 sufficient amount of time to begin installing flush
2 valves?

3 A. Yes.

4 Q. Would two years' time be sufficient to
5 replace the standpipe?

6 A. Yes.

7 Q. And with your hesitation, that one made
8 you think that it might take a little longer; is that
9 correct?

10 A. The installation of the standpipe is a
11 more complicated process, and it has gotten even more
12 complicated due to the general problem of getting any
13 tank constructed right now.

14 Q. Okay. But two years would be a
15 sufficient amount of time to start the engineering
16 design process and get moving towards getting that in?

17 A. Yes.

18 Q. Okay. And two years would be sufficient
19 to get a certified operator, correct?

20 A. Yes.

21 Q. Okay. You had stated that from your
22 inspection of the water system, that it had been
23 allowed to deteriorate. In your opinion, do you
24 believe that that deterioration is causing a
25 possibility or a threat -- a threat to safe and

1 adequate service to the customers?

2 A. Absolutely.

3 MS. BAKER: No further questions.

4 JUDGE LANE: Thank you very much. And I
5 want to thank everyone, the attorneys, witnesses and
6 the Commissioners for their patience and
7 perseverance. We have just gotten done spending
8 about 10 of the last 12 hours in the cozy confines of
9 this hearing room.

10 But we'll be -- go at it again tomorrow
11 morning starting at 8:00 a.m. again, and we will
12 begin with Suburban's cross-examination of
13 Mr. Hummel. So please return tomorrow morning. I
14 want to also thank Pam Fick, our court reporter, for
15 her excellent work today. And we are adjourned until
16 tomorrow morning at 8:00 a.m.

17 (WHEREUPON, the hearing of this case was
18 recessed until 8:00 a.m., on July 27, 2007.)

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