

1 BEFORE THE PUBLIC SERVICE COMMISSION

2 STATE OF MISSOURI

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4 TRANSCRIPT OF PROCEEDINGS

5 HEARING

6 August 17, 2005

7 Jefferson City, Missouri

8 Volume 1

9 _____

10 In the Matter of the Application of)
11 Southtown Utilities Company, Inc., for)
 a Certificate of Convenience and)
12 Necessity Authorizing It to Construct,)Case No. WA-2005-0268
 Install, Operate and Maintain a Sewer)consolidated with
13 System and to Supply and Render Sewer)SA-2005-0269
 Service and Construct, Install, Operate)
14 and Maintain a Water System and to)
 Supply and Render Water Service to the)
15 Public Located in and around an)
 Unincorporated Area Near Bolivar, Polk)
16 County, Missouri

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19 _____

20 KENNARD L. JONES,
 REGULATORY LAW JUDGE.
21 CONNIE MURRAY,
 ROBERT M. CLAYTON, III,
22 LINWARD "LIN" APPLING,
 COMMISSIONERS.

23 _____

24 REPORTED BY:
25 TRACY L. THORPE, CSR, CCR
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A P P E A R A N C E S

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FOR: Staff of the Missouri Public Service Commission

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

2 JUDGE JONES: This is an on-the-record
3 presentation or question and answer, Southtown Utilities
4 Company's application for certificate of convenience and
5 necessity to provide water and sewer in Polk County, Missouri.

6 My name is Kennard Jones. I will be the judge
7 presiding over this matter.

8 Just so you all understand, at this time I
9 think I'll take entries of appearance from the attorneys in
10 the gallery starting with Staff.

11 MR. KRUEGER: Keith R. Krueger for the Staff of
12 the Missouri Public Service Commission. My address is PO
13 Box 360, Jefferson City, Missouri 65102.

14 MR. FISCHER: Your Honor, let the record
15 reflect the appearance of James M. Fischer, Fischer and
16 Dority, PC, 101 Madison Street, suite 400, Jefferson City,
17 Missouri appearing today on behalf of Southtown Utilities
18 Company.

19 JUDGE JONES: Thank you all.

20 The way we're going to do this is we'll have --
21 I assume, sir, you're Mr. Fink, Richard Fink?

22 MR. FINK: Yes.

23 JUDGE JONES: Okay. Unless the attorneys have
24 any objection to it, we'll just swear Mr. Fink in, have the
25 Commissioners ask questions they want to ask and that will be

1 it. Okay? So let's go ahead and get started. Mr. Fink, can
2 you come up to the witness box over here, please.

3 (Witness sworn.)

4 JUDGE JONES: Okay. You may be seated. We
5 will start with questions from Commissioner Murray.

6 MR. FISCHER: Judge, would you like me to do
7 any preliminaries at all or just go -- whatever --

8 JUDGE JONES: Not unless you have preliminaries
9 you think you need to share.

10 MR. FISCHER: That's fine.

11 JUDGE JONES: Okay. We'll go right to
12 questions then.

13 COMMISSIONER MURRAY: Judge, I'm going to pass
14 to Commissioner Clayton for right now.

15 JUDGE JONES: Commissioner Clayton.

16 COMMISSIONER CLAYTON: I'll go ahead and ask
17 those preliminary questions, if that would be all right. I'm
18 a little out of practice, but I've kind of missed doing this.

19 QUESTIONS BY COMMISSIONER CLAYTON:

20 Q. Sir, would you state your name for us, please?

21 A. Yes. Richard Earl Fink.

22 Q. And, Mr. Fink, what is your business address?
23 Where are you located?

24 A. I'm located at 1919 South Killingsworth Drive,
25 Bolivar, Missouri.

1 Q. And is that, what, Polk County?

2 A. That's Polk County, yes.

3 Q. Okay.

4 A. Polk.

5 Q. And what kind of business are you in?

6 A. I'm in a development business, contractor,

7 general contractor.

8 Q. Okay. And that's based in Polk County?

9 A. Yes.

10 Q. And that's at -- the principal business place

11 of business is in Polk County for your development business?

12 A. Yes.

13 Q. You are the applicant in this proceeding here

14 today, the applicant being Southtown Utilities Company,

15 Incorporated; is that correct?

16 A. Yes.

17 Q. Are you the owner of Southtown Utilities

18 Company?

19 A. Yes.

20 Q. Are you the sole shareholder --

21 A. No.

22 Q. -- or are there multiple shareholders?

23 A. I'm not the sole owner. I have one partner.

24 Q. One partner. And -- so there are just two

25 shareholders in the overall business?

1 A. Yes.

2 Q. I'm not going to ask you the share breakdown.

3 A. Two.

4 Q. I don't think that's necessary.

5 Who is the registered agent for Southtown

6 Utilities Corporation Company?

7 A. The registered agent?

8 Q. Yeah. Are you the registered agent for the

9 company?

10 A. I would be the registered agent. I think so.

11 Q. You are.

12 Okay. Mr. Fink, Have you ever been involved in

13 a utility business before?

14 A. Never have been involved in a utility business.

15 Q. You've never run a water company?

16 A. Not as -- no, not as an owner.

17 Q. How have you run a water company, if not as an

18 owner?

19 A. I have only been involved in installation and

20 maintenance of water and sewer companies all my working

21 life --

22 Q. Okay.

23 A. -- all my working life.

24 Q. So in the -- in your role as a developer,

25 you've installed the equipment necessary to run a water or

1 sewer company?

2 A. Yes. My role as a developer and also as a
3 contractor. I've done that over the years in construction
4 business.

5 Q. And forgive me. Is this both water and sewer
6 service or is this just water service?

7 A. It's water and sewer, both.

8 Q. Water and sewer. Have you ever run a sewer
9 company before?

10 A. No, I have not.

11 Q. All right. Have you ever been employed by a
12 water or a sewer company?

13 A. No. Not -- not directly. I've subcontracted
14 for waters and sewers.

15 Q. Okay. In the installation --

16 A. In the installation --

17 Q. -- and the maintenance?

18 A. -- and the maintenance, yes, uh-huh.

19 Q. And how many -- can you just give me a general
20 idea of how many water utilities that you provided service
21 for? Is it like once or is it a dozen times where you have
22 installed water utility equipment or sewer utility equipment?

23 A. It would be numerous. Probably over -- as far
24 as single companies, I would say probably 10 companies maybe,
25 10 -- most of those were mix-- cities.

1 Q. Okay. Have you ever served on the board of a
2 directors of a water district or a sewer district or a
3 municipal utility of any sort?

4 A. No, I haven't.

5 Q. Have you ever been employed in any capacity for
6 any such utility like that?

7 A. Again, I haven't been employed directly, no.

8 Q. Okay. Okay. How many residential customers
9 are located in this -- in the territory of this utility?

10 A. The ter-- if we take the territory of the
11 utility that we proposed, it would be -- you know, counting
12 the real estate, it would be -- I really couldn't give you a
13 number on that. Now, what we -- we have got ready to develop
14 right now is about 118 lots for development in the residential
15 side and I probably own land to develop another 100 at the
16 present time.

17 Q. How many residential lots have been developed
18 where people -- there's a structure built and people are
19 either --

20 A. Oh, I think it's 20, I believe.

21 Q. 20. So 20 people have moved in?

22 A. 20 -- there have been water meters installed.
23 Probably half -- these are houses that water meters are in,
24 they're under construction. There are some of them occupied,
25 but not all of them yet.

1 Q. So basically you've got 20 people that are
2 either on line or going to be coming on line pretty soon?

3 A. That's correct, yes.

4 Q. How many commercial lots?

5 A. Commercial I think we're about 16, I believe.

6 Q. And what type of businesses are those?

7 A. Restaurant, convenience store, antique stores,
8 a retail store, a specialty T-shirt manufacturing is in it, a
9 furniture store, a garage or a --

10 Q. Do you own all this land or is this stuff that
11 you've sold?

12 A. I've owned a lot of it. I don't own it all
13 now. I've owned a lot of it. This was a prior -- some of
14 this was a prior subdivision that I had purchased a couple of
15 years ago that did not have a utility on it and I -- I
16 purchased it and picked it up.

17 Q. Okay. And how many subdivisions have you
18 developed in the past? Is this your first subdivision
19 development or have you done -- or been a part of many in the
20 past?

21 A. No. I've been a part of many. Many
22 subdivisions.

23 Q. The subdivisions that you've worked on in the
24 past, how was water or sewer service supplied to the customers
25 in those circumstances?

1 A. They were all city services from the cities
2 that we were developing in.

3 Q. Okay. So this area, this subdivision, is it
4 called Southtown?

5 A. It's called -- yeah, it's called Carlin Acres.

6 Q. That's close.

7 A. Okay. I guess.

8 Q. Okay. So it's called Carlin Acres and it's
9 located outside the city limits?

10 A. That's correct.

11 Q. In unincorporated Polk County?

12 A. That's correct.

13 Q. So Southtown is just kind of a catchy name?

14 A. Southtown was a development that I had
15 developed in Bolivar that was a large -- and we've got a
16 Southtown Corporation and that's what we're naming the utility
17 company.

18 Q. But these utilities will not service those
19 areas. Correct?

20 A. No, they will not.

21 Q. Okay. All right. I'm going to throw out some
22 numbers, tell me if they sound relatively accurate. A typical
23 residential customer for using 6,000 gallons of water per
24 month will be charged roughly a rate of \$25 per month. Does
25 that sound -- what you stated in your application?

1 A. I've got to review -- I've got to review my
2 water. I haven't done that.

3 Q. How about if I state it this way. If water
4 rates are proposed to be \$7.47 per customer per month, plus
5 \$2.94 per 1,000 gallons of usage, does that sound close?

6 A. It sounds close, but I haven't reviewed -- I --
7 I can't remember those figures. I've looked at them, but I
8 haven't -- I can't remember.

9 Q. Assuming that they are correct, and I'm not
10 asking you to vouch for them because you don't have your
11 information, do you know how those figures were established?

12 A. Well, a lot of that was help with the -- the
13 Commission here, Mr. Merciel and his people. That was the way
14 a lot of it was established. Some of it was my input because
15 I did not want to be out of line with the City of Bolivar. I
16 did not want to be too completely out of line with them, what
17 they charged.

18 Q. Do you know what the City of Bolivar charges
19 for water or sewer service?

20 A. I don't know. I know we are -- we're trying to
21 be about 50 -- about half again higher than, about -- the City
22 of Bolivar, if you're outside the city limits, they charge you
23 one and a half times their normal bill and I was trying to
24 come in line to that, so --

25 Q. So your goal was to charge one and a half times

1 of what the --

2 A. Well --

3 Q. -- in-city rate would be for the City of
4 Bolivar?

5 A. In that general neighborhood, yes, uh-huh.

6 Q. So you weren't shooting to be 50 percent of
7 in-city water service costs like Bolivar?

8 A. You mean 50 percent less you mean?

9 Q. You weren't trying to come in half of what they
10 pay?

11 A. No.

12 Q. You were trying to be what they pay times
13 another half?

14 A. I was trying to be half again of what they pay,
15 yes.

16 Q. Half again. Okay. Good. Good.

17 Did you learn quite a bit in developing these
18 rates and working with the Public Service Commission Staff?

19 A. I did. Although I wasn't as directly involved
20 as some of the other people I had that were actually working
21 on it, but I learned a lot from the people at the PSC.

22 Q. Okay. If you look -- let me ask this question.
23 What is your timetable on developing the 118 lots that you
24 referenced and then I think you said there were maybe another
25 100 lots that were -- that had potential to be developed.

1 What is your timetable for getting those lots developed and
2 sold or sold and let somebody else develop them? Are we
3 talking a matter of years, 5 years, 10 years, 15 years?

4 A. Basing that on what I've done in the City of
5 Bolivar before, we can -- we think that we'll probably base
6 between 12 and 15 a year, maybe 20, although it's a growing
7 area and I'm hoping to do better, but we've done that in the
8 past.

9 Q. Okay. Okay. Who is your partner?

10 A. A gentleman named Earl Spiegel.

11 Q. And is he a contemporary of yours? Is he a
12 similar age, is he a younger guy, older guy?

13 A. He's worked for me for 3-- about 35 years. And
14 he's actually a couple years older than I am.

15 Q. Couple years older, but not quite your mentor?

16 A. Well, not quite.

17 Q. Okay. Okay. Well, let me ask you a couple of
18 tough questions. How many more years do you see yourself
19 working, 10 years, 15, 20, 25, forever? Do you see -- do you
20 see a golf course and retirement somewhere down in Florida in
21 your future?

22 A. I enjoy working, I enjoy what I do and I have
23 for years. There may come a time when I won't want to do
24 that, but it's not here yet. And I enjoy build-- I mean, we
25 do a lot of general construction on the side. I mean, we're

1 in that business. I still enjoy doing that type stuff. And
2 as long as I do that, I'll continue.

3 Now, I'll definitely continue out here because
4 I've got -- I've got so much money tied up not only in this
5 facility but some of the existing lands around it that I will
6 want to develop later.

7 Q. If you have some of these lots that haven't
8 been sold in, say, 10 years, say you don't sell all the lots
9 and you're ready to retire, and I throw that out as an
10 arbitrary figure, who do you see taking over this water or
11 sewer utility?

12 A. We think that -- this Mr. Spiegel has worked
13 for me for so long and I've got another partner that's in
14 other businesses, we've both got heirs that work in the
15 business for us. And we -- you know, that's a tough question.
16 I've thought about that.

17 We're trying to set -- you know, I want to set
18 this thing up -- our involvement -- when you've got the
19 investment we've got, I don't see -- we can't have bare land
20 there without -- you know, we can't sell it without sewer and
21 water, you know. We've got an investment there.

22 The heirs, if -- yeah, if something happens to
23 me, and I know where you're going with this thing, but, you
24 know, we're -- we're in that business, we've done that all of
25 our life. We're in that business to stay there. Now, I may

1 quit tomorrow, but we've got heirs that will -- that work in
2 our business now that I hope that will take it on, you know.

3 Q. Now, who are these heirs you keep talking
4 about? You got family or are you --

5 A. Family. Family.

6 Q. Family that are coming up in the business?

7 A. That's right. Mr. Spiegel's got a son in the
8 business and Rhonda, she's my daughter, she kind of runs --
9 runs that end of it. And I've got one more partner that
10 he's -- he's not a partner in this venture, but we're partners
11 on lots of other things. And, you know, we've just got --
12 we've got kids that help us in the business, sure.

13 Q. All right. If you --

14 A. They've got a financial stake in it to keep it
15 going.

16 Q. Is it your intention that once the lots are
17 sold, that you'll keep running the utility or is it your
18 intention that you'll turn the utility over to the homeowners
19 at that time?

20 A. I am -- I'm almost certain that the City of
21 Bolivar will have the utility in a matter of a short -- a
22 few -- a short period of time.

23 Q. So you're suggesting the City of Bolivar will
24 take this over?

25 A. I didn't build it for that. We built it to

1 stay in the sewer and water business, but we're in a district
2 there that probably has not got -- it's probably not got a
3 point where we'll stop developing it, you know, because the
4 growth is -- we're in a district that's relative growth free
5 now, but it's -- I mean, not growth free, but got -- we're
6 just getting it started, a development that's sitting in the
7 right spot on the right highway and we're selling property.

8 And I don't see that -- I don't see that
9 stopping. I see the highway sat there and I don't see a
10 change taking place that would make it stop. That's --

11 Q. Do you see the City of Bolivar annexing this
12 subdivision?

13 A. Yeah, I do.

14 Q. Okay. Let's assume they don't annex. Your
15 heirs -- you or your heirs have a decision to make, the lots
16 are sold. Is it -- would it be your intention to keep
17 operating the utility as a business or turning it over as a
18 homeowners association?

19 A. No. We would keep operating it as a business
20 as long as the company stays in business. You know, here
21 again, you say when the thing is finished. You know, I don't
22 know that -- probably wouldn't be finished until we called it
23 a finish, you know. Because we're -- that's one reason we
24 actually overbuilt the facility because we -- we want an
25 ongoing -- you know, we want it to be able to have the

1 capacity to keep handling more and more.

2 Q. With these lots just you keep -- you keep
3 selling lots for a long period of time?

4 A. Keep selling lots. We think so, yes.

5 Q. The gift that keeps on giving?

6 A. Well, maybe.

7 Q. It sounds like quite a retirement plan here.

8 A. Well, I don't know.

9 Q. You suggested that you knew where I was going
10 with these questions. And I suppose that I should preface my
11 next question, but -- with some information. We've had some
12 difficulties around the state with small water operators
13 primarily starting out as developers that then either abandon
14 the service once the lots are sold or do not show the proper
15 attention, once the marketing of the land is done, no one else
16 is going to be moving in, and abandoning the system and
17 leaving the residents who are there without quality water,
18 without quality sewer service, either environmental problem or
19 a health hazard.

20 And this Commission, I think, has decided to
21 take steps to fully evaluate each new water operator that
22 comes in to make sure that they're going to be in for the long
23 haul and that they're committed to providing quality service
24 to these customers.

25 So without -- I don't think there was an

1 intention to single you out, but I have to ask the question.
2 Are you committed to the customers that exist now and that
3 will exist in the future in providing quality -- high quality
4 water and sewer service for the foreseeable and unforeseeable
5 future?

6 A. I'm committed to own and operate a water
7 company. I've -- I've put the investment in, I've put the
8 best equipment in, I've hired -- I've hired the -- the man
9 that manages City of Bolivar water and sewer. He's coming to
10 work for me as soon as we get this thing behind us and we know
11 where we're at. I'm committed to operate a water company.

12 Q. Do you believe these rates that have been
13 discussed here today will be sufficient to provide the
14 necessary revenues to help in operating this company?

15 A. I think they will. Not right off or for a
16 couple years, of course, I don't think they will.

17 Q. Well, you got to keep people moving into those
18 houses.

19 A. Sure we do. And we -- you know, I think -- I
20 think it will. As long as we're continuing to develop, you
21 know, you always write -- it's the -- the catch-22 thing, you
22 know. We've got the land here that if we don't get water and
23 sewer, we can't use it. So it's -- it's -- it's worthless to
24 us, I mean, without sewer and water. So I don't know how to
25 answer that question as far as -- we are committed to run a

1 sewer and water. We know -- we know how to operate it. I've
2 got the engineers in place, I've got the people in place to
3 run it and --

4 Q. What engineers do you have in place? You
5 mentioned engineers.

6 A. The ones that I used that designed it for me.
7 I've worked with them for years and --

8 Q. Are they local down --

9 A. They're in Springfield.

10 Q. Springfield?

11 A. Uh-huh. Yes. Yes.

12 Q. Okay. Okay. And they will be able to provide
13 the assistance -- considering you've never run a utility
14 before, they provide the assistance to help you in running
15 that utility?

16 A. Well, they are -- they are so far, yes. They
17 are now.

18 Q. Probably paying for that assistance too, aren't
19 you?

20 A. Yes. But -- but I've done -- I've paid him for
21 several years so --

22 Q. Gotcha, gotcha. Hopefully the Staff taught --

23 A. We get along great and he's a -- we get -- he's
24 helpful to us.

25 Q. I see.

1 A. And that's another reason I hired -- I hired
2 some people with experience to do the day-to-day thing.

3 Q. How many employees do you anticipate Southtown
4 Utilities Company having?

5 A. I think just -- I think one full-time at the
6 present time.

7 Q. Who is that? Is that you?

8 A. Well --

9 Q. Who will be the one full-time or Earl?

10 A. Well, it's going to be -- right now --

11 Q. Earl --

12 A. Right now it's Earl, but it's going to be a
13 gentleman that I hired.

14 Q. You're going to have a hired man out there?

15 A. Yes. Uh-huh.

16 Q. And will he be full-time?

17 A. He'll be full-time, yes.

18 Q. And he'll be -- will he collect the bills and
19 also do the maintenance on the pumps and everything?

20 A. We're going to -- we're going to try to. Now,
21 we're just -- Rhonda will probably do the billing and stuff
22 through our offices. She's got some people employed that do
23 that, but he'll probably do the meter reading. And -- and
24 then I've got -- I've got lots of employees around that are
25 familiar with repairs and things like that that we will help

1 him those kind of circumstances. But we need an operator, you
2 know, that watches pumps and does readings and takes samples.
3 That's what his basic job will be.

4 Q. Okay. Mr. Fink, I don't think I have any other
5 questions. I want to thank you for coming up here today. And
6 I just want to say that the Commission I don't think intended
7 to single you out in looking at these small operator issues,
8 but I will make the statement to you that we are very serious
9 in making sure that you stick to your word --

10 A. I understand.

11 Q. -- that you're making here today and holding up
12 your end of the bargain with the customers. And I'm sure that
13 I will. I've never met you, but I get the sense that you're
14 going to hold that commitment. But we want to make sure that
15 that message gets out to all the small operators that are out
16 there.

17 A. I understand, yes.

18 COMMISSIONER CLAYTON: Thank you for coming up
19 today.

20 THE WITNESS: Thank you.

21 JUDGE JONES: Thank you, Commissioner.

22 Commissioner Murray?

23 COMMISSIONER MURRAY: Mr. Appling, would you
24 prefer to go first?

25 COMMISSIONER APPLING: Commissioner Murray, you

1 need to get ready now because I only have one question.

2 QUESTIONS BY COMMISSIONER APPLING:

3 Q. Mr. Fink, how are you doing?

4 A. Fine.

5 Q. Good. You seem to be -- you seem to be a
6 no-nonsense guy here and I kind of like that.

7 But my question is, in the job that I had
8 before I came to the Public Service Commission, I ran all of
9 the State-owned buildings, and water can be a problem. I'm
10 sure you know that by building 10 different water systems, as
11 you've indicated here today. Are you up for -- are you up to
12 the job for this?

13 A. I've fixed a lot of the water breaks at
14 two o'clock in the morning, but I've got -- yes, we can -- we
15 can run the water. Running the water system maintenance, I
16 don't worry about that. That's not a problem to me.

17 Q. Okay. So in the building of it and running
18 them and all that, you have a pretty good feel for what needs
19 to be done in order to get this thing going? And you're going
20 to get calls at two o'clock in the morning. You know that?

21 A. That's right. I get -- I know that.

22 Q. Okay. Is there anything else you'd like to add
23 about this? I see no reason for not giving you a shot at this
24 thing, but I don't want to see you back up here though.

25 A. No. I think that -- what I've said all my life

1 that I probably didn't want to be in the water and sewer
2 business, but we've -- we've put the best equipment in, I'm
3 trying to hire the best people and, you know, I'm -- I'm --
4 that's where we're at in developing out now. We're out in
5 that part of the country, I've picked up a lot of land out
6 there and bought a lot of land out there and I intend to stay
7 there --

8 Q. Stick to it.

9 A. -- and try.

10 Q. In your construction in the past -- over the
11 past 10 years has the notion ever been to put in a water and
12 sewer or has it been building houses?

13 A. Most of it -- I've been in the concrete
14 construction. That was my basic business.

15 Q. Right.

16 A. And we always developed land and houses and
17 commercial buildings on -- you know, we always had those
18 projects going.

19 Q. Right.

20 A. But my main business was actually in the
21 concrete construction and dirt work and sewer and water
22 installations and that kind of stuff.

23 Q. My assumption -- I can see it with my own eyes
24 when I drive down that way, business has been pretty good down
25 that way.

1 A. We're in a growth. Yes, we're in a growth
2 area, that's correct.

3 Q. Well, now is the time to strike while you're in
4 that growth.

5 A. Now is the time for me, I guess. I'm getting
6 old enough, it needs to be.

7 COMMISSIONER APPLING: Okay. Again, I echo the
8 same thing my colleague did. Thanks for coming up and talking
9 to us.

10 THE WITNESS: Sure. Thank you.

11 COMMISSIONER APPLING: Appreciate your time.
12 Connie?

13 JUDGE JONES: Commissioner Murray.

14 COMMISSIONER MURRAY: Thank you, Judge.

15 QUESTIONS BY COMMISSIONER MURRAY:

16 Q. My fellow Commissioners have asked most of the
17 questions I believe, but I do have a few remaining ones. And
18 I would like to reiterate something that Commissioner Clayton
19 said about the problems that we have experienced here.

20 We have a small lot of small water and sewer
21 facilities, as he stated, and we've found that some have been
22 put in by developers who, of course, as you said, can't sell
23 their properties unless there's water and sewer available.
24 And the water and sewer service is something that's just kind
25 of this disgusting necessity that has to go along with

1 developing the properties. And we found that some of these
2 owners just don't have an interest in serving the consumers
3 once they've accomplished their purposes.

4 And you've indicated that your business in the
5 past has been primarily in construction -- concrete
6 construction and installation of water and sewer systems, but
7 it's my understanding that you've not been in a situation
8 where you've had the ongoing operation and service of these
9 facilities --

10 A. No.

11 Q. -- is that correct?

12 A. I've never ran one.

13 Q. And you understand that that's a totally
14 different ball game?

15 A. I -- I've -- I know. Uh-huh.

16 Q. And you understand that takes a long-term
17 commitment?

18 A. I understand that.

19 Q. There were a few things that kind of raised red
20 flags in reading the Staff recommendations, findings and
21 conclusions that the Staff presents to us to indicate whether
22 or not we should approve one of these systems. And one of the
23 things in the recommendation was -- recommendations -- or
24 findings and conclusions was that the owner of SUC, as a
25 developer, will need to absorb more of the capital investment

1 than developers normally need to do. And a factor of
2 50 percent and 68 percent for developer capital contribution
3 to the water and sewer systems respectively has been included
4 in the Staff's rate-base and rate calculations.

5 And then somewhere later Staff makes the
6 statement that plant additions beyond the existing systems to
7 serve future customers beyond the capacity of the existing
8 system need to be placed on line with a similar level of
9 rate-base, which to me indicates that you're going to have a
10 lot of -- you're going to have more than the average developer
11 has invested in the water and sewer system that is not going
12 to be recoverable through rates. Is that your understanding?

13 A. Yes. That's right.

14 Q. And that will keep the rates at a level that is
15 considered affordable. Is that also your understanding?

16 A. That's what I'm want-- trying to do, yes.

17 Q. And we've had -- well, we've had some similar
18 things to that happen in the past where there has been such an
19 effort to design the rates to make them affordable, that the
20 developer has absorbed so much of the cost that the developer
21 ends up deciding it's not economically feasible. And once we
22 approve a system, once we approve you as an operator or
23 approve you, you know, as a certificated company in this
24 state, you're obligated to provide that service.

25 A. Yes. I realize --

1 Q. You understand that?

2 A. I realize that.

3 Q. And safe and adequate service at all times.

4 A. I realize that.

5 Q. And it's not a -- it's not an easy task.

6 A. I realize that.

7 Q. And sometimes it's costly, sometimes you don't
8 get fully remunerated for that, particularly when your rates
9 are designed in a way that you have a significant contribution
10 that you can't put into rate-base.

11 A. That's correct.

12 Q. And you're willing to assume those
13 responsibilities even if it causes you, in terms of the water
14 and sewer system, to lose money?

15 A. When we look at the cash flow basis of what
16 that system brings in money-wise, all my instances in the past
17 I think we've probably given the City of Bolivar and Buffalo
18 and surrounding cities probably 7 to 8 million dollars worth
19 of infrastructure, sewers, water, streets, lift stations.

20 Because in those cities when -- when we built
21 the subdivision, we signed off to the City everything. There
22 was no cooperative effort on their part to -- they didn't pay
23 for anything. So we were giving that away.

24 So basically what I -- the way I view this here
25 is -- as a developer, in -- with the exception of the actual

1 facility, actual treatment facility, the actual water pumping
2 facility and the actual operations of it, I can absorb -- I
3 can absorb -- those are the only additional costs I've got
4 then I've been used to where I've been giving them away.

5 So I feel like on a cash flow basis, I think
6 we're fine on that. And if I have to subsidize it over the
7 years, you know, of course, as long as I'm involved, my
8 family's involved, we're developing, we will -- we will -- we
9 will keep it running, we'll keep it -- you know, as fine as we
10 can.

11 But that's where -- as a developer, when I look
12 at that, that doesn't concern me giving a high -- you know,
13 putting a lot of my money in the -- in the system to get the
14 rates down because everything I've ever done in the past I've
15 given it 100 percent away. And I've had -- you know, we've
16 recouped it in lot sales, which is basically what we're doing
17 with our portion of the development in this system.

18 Q. Now, later on if you decide that you don't want
19 to run it anymore and you want to retire or something, as
20 Commissioner Clayton was talking about earlier, and you'd want
21 to sell it, if a purchaser could not afford to cover the costs
22 that you've contributed and still keep the rates the same,
23 would that -- is that something that you foresee as a problem?
24 In other words, do you --

25 A. I could see how that would be a problem if I

1 went to sell it, yes, and you know, getting -- selling it for
2 enough money where the purchaser could buy it and make it
3 payable. I mean, I know that.

4 Q. And much of what -- well, we have had
5 situations where we have been presented with scenarios where
6 there's been a large contribution to rate-base by the
7 developer, but then when it comes time to sell the system, the
8 developer wants that all back.

9 Now, what I hear -- what I hear you saying --
10 and certainly this is not something that's committing you to
11 any kind of future action or anything, but what I'm
12 interpreting out of what you're saying is that you're not
13 considering the amounts that you're contributing for
14 construction of the system to be something that you will ever
15 necessarily recover?

16 A. That's basically the way I'm looking at it.

17 Q. Because you're considering that you're
18 recovering that in your development?

19 A. In lot sales. Because that's the way it --
20 everything except the actual facilities that we didn't need to
21 build when we were developing in the cities, you know, that
22 had the systems.

23 Q. And you indicated you have about 20 that are
24 presently installed --

25 A. Yeah.

1 Q. -- for residential?

2 A. Yeah, residential.

3 Q. And how many commercial?

4 A. I think we've got 16 right now.

5 Q. 16?

6 A. I think we've installed 16 meters, I believe.

7 Q. When are you planning to hire a full-time
8 person?

9 A. Well, I talked to him last night and he was
10 going to give his two weeks notice and -- you know, my people
11 are doing it now. Don't get me wrong. We're doing it now.
12 We're -- my people are there every day. We're working on it
13 every day, but as far as putting a gentleman in place and on
14 the payroll to do that, that's probably going to happen in
15 about two weeks.

16 Q. And in your calculations of rates, there was a
17 category for operations, labor and expense. Is that where
18 these people would be -- where their salaries would come into
19 play?

20 A. Well, I think so. That's what it would have
21 been for.

22 Q. And I don't see any amount in there that would
23 indicate a full-time salary. It may be that I need to put a
24 Staff witness on the stand to find out what -- where this --
25 where these salaries would be recoverable.

1 Because I'm assuming you're not planning to,
2 just out of your own pocket, pay the salary of somebody to run
3 the water and sewer -- to operate on a daily basis the water
4 and sewer company, are you?

5 A. Well, that's the way part -- that's the way
6 it's going to work for a little while, because he's going to
7 help me in my other -- you know, he's -- he's -- that's what
8 he does. He'll help me in situations where I need him again,
9 where I need him for another -- for something else.

10 Q. So you're not planning to separate his time for
11 the water and sewer facility versus his time for you in other
12 capacities?

13 A. We'll -- we'll separate, yes. We'll have to
14 know how much we're putting in the water and sewer and how
15 much we're -- we're doing in the -- for my other areas if I
16 pull him off to help me somewhere else for a half day or
17 something, like the way we're planning on working him.

18 Q. Are you planning to recover that salary in
19 rates? I mean, is that your understanding, that that's in the
20 rates?

21 A. (Witness nodded head.)

22 Q. Now, you said the current land is capable of
23 118?

24 A. What we've got platted is 118.

25 Q. But eventually you -- that present facility

1 will accommodate 174. Is that residential lots?

2 A. It will accommodate I think it's about 156 and
3 then 30 residentials or -- a lot of that depends on our flow
4 rate, what our discharge rate is, you know, as far as our
5 commercials.

6 Q. Okay. But you said that you were going to
7 develop another 100 later, so that would be beyond that
8 capacity?

9 A. Not all of it would be. Some of that 100 --
10 we've got 118 on now and we -- we've got land right now to
11 develop another 100. No, I couldn't put all that on the one
12 sewer system. I'd have to expand that again if I develop the
13 full 100. I could develop part of those on this same system.

14 Q. And would you have to come back to this
15 Commission for permission to expand it at that time, do you
16 know?

17 A. I -- I think we have to come back to the
18 Commission to -- for permission to expand. I think. I really
19 don't know on that.

20 Q. So you would be going beyond the area that we
21 would be certificating you for today; is that correct?

22 A. Well, I don't -- not the way I understand it.
23 I thought -- when we sent the boundary lines up here, I
24 thought that that was the land that was supposed to serve.
25 Now, what I'm talking about is in that area. I don't -- maybe

1 I don't know what you're asking.

2 Q. And I'm probably not asking it clearly enough.
3 And I think I would like to have a Staff witness when we're
4 finished with you just to answer a couple more of my
5 questions.

6 How do the sewer rates compare to the rates of
7 the City of Bolivar?

8 A. I think they're about 50 percent higher too, I
9 think.

10 Q. And did the water -- or did the homeowners
11 association express any interest in owning and operating the
12 system?

13 A. I was the homeowners association when we first
14 started it.

15 Q. 100 percent?

16 A. Yes.

17 Q. Okay. Now you're --

18 A. There was an existing facility there that had a
19 homeowners association in place, very small facility on part
20 of the land that I bought. Okay. To get our construction
21 permits and start -- we had to form our homeowners association
22 to get the permits rolling.

23 Q. Okay.

24 A. But that -- before we -- and I intended to stay
25 probably a homeowners association until the -- the DNR people

1 in Springfield told me -- the engineer said, You're going to
2 get such a large area out there that why don't look at having
3 the authority to run the sewer and water. And that's kind of
4 got this thing rolling.

5 Q. Now, as a homeowners association, homeowners
6 association could still own it, could they not?

7 A. They could still own it, yes.

8 Q. And not be certificated?

9 A. The way I understand it, they could, yes.

10 Q. And why is it that you'd prefer to be
11 certificated?

12 A. I was afraid I would have trouble if I went to
13 extend it. Every time I started to develop a new piece of
14 land, I would have to go back to the homeowners association
15 because I was losing control of it. And if I had the
16 authority to run it, I could do it with -- the way that my
17 bylaws are set up, it would be my decision if I wanted to sell
18 water to another -- someone else. With the homeowners
19 association, I would lose that control and I was afraid of
20 that.

21 Q. And your contemplation of selling water to
22 someone else is basically other developments that you would be
23 developing. Is that what --

24 A. Other developments I'd be developing or someone
25 else maybe.

1 Q. Are you aware of any of those?

2 A. Just speculation. No.

3 Q. Speculation for those --

4 A. I've had --

5 Q. -- that may be constructed?

6 A. -- people talk to me that would ask if I would
7 serve them water, they would like to maybe develop their land.

8 Q. And to do that you would have to expand your
9 system. Is that your understanding?

10 A. Water -- water, I wouldn't. Sewer is the one
11 that I would be -- I probably couldn't -- I -- on sewer -- I
12 can't go sewer -- I won't let any other developers come onto
13 my sewer because we are limited on our discharge. Water I'm
14 not worried about because water I guess I can -- we've drilled
15 two wells, I've built a large water and I could keep extending
16 it.

17 Q. When you talked about the engineers from
18 Springfield, you said they're current -- they're doing so so
19 far, they're helping you so far, with some hesitation there as
20 if this is just something that you're not counting on. Right?

21 A. Oh, no, no. I didn't mean it that way.
22 They're helping me so far. Yeah, I just meant -- yeah,
23 they'll continue to stay in the game, I guess. We've worked
24 for 20 years.

25 Q. And you pay them by con-- is it a contractual

1 fee you pay these engineers?

2 A. (Witness nodded head.)

3 Q. And is that included somehow in --

4 A. It should have been in our costs --

5 Q. -- operations?

6 A. -- we put together.

7 Q. And --

8 A. Now, their fee's -- now their fee's probably --
9 their fee's -- their contracting fees are pretty well coming
10 to an end. You know, on a advice thing now. Whenever we call
11 them, we need advice because the systems are built and in
12 place.

13 Q. What do you do on a day-to-day basis to operate
14 a water and sewer system?

15 A. Well, the first thing we do is have guys go by
16 and check all the lift stations, check the hour meters on the
17 pumps, visually look at the flows, visually look at the flows
18 in the tanks.

19 Q. Is that daily?

20 A. That's every morning and every night. That's
21 twice a day. And just -- and water system, go check the --
22 read the master meters to see if we've had any large
23 unusual -- you know, anything out of line. I mean, if
24 we're -- if we're pump excess amount of water that day, you
25 know, why and where did it go? You know, through the master

1 meters or the BOD treaters or the recert tanks or anything
2 that's got a larger amount of water than normal, we want to
3 know why, what spiked it, you know, those kind of things.

4 Q. And how often do you check for BOD levels and
5 the other levels you have to check for?

6 A. BODs we check -- we send those samples to the
7 lab about every two weeks. That's -- that's -- that's -- the
8 BOD level, that's -- the restaurant we've got involved, we've
9 got -- we built a system down there that separates what we
10 call the BODs, basically the grease and stuff -- grease out of
11 the -- cooking grease and that kind of thing.

12 Q. And the restaurant is paying you extra to --

13 A. That's correct.

14 Q. -- continue to operate that?

15 A. To continue to take care of it. And we're
16 wanting it that way, because we know it will be taken care of.

17 Q. And if you find that the BOD levels or, you
18 know, you've got a high level of fecal coliform or something
19 like that, what do you do?

20 A. We've never had it happen yet, but when we do,
21 we're going to have to figure out why. You know, you probably
22 got a malfunction in that -- in that treater, I guess, or
23 we've had a spike or something put on the system or something,
24 you know.

25 Q. Are you familiar with the Uniform System of

1 Accounts?

2 A. (Witness shook head.)

3 Q. Do you understand that you have to keep your
4 books and records in accordance with the Uniform System of
5 Accounts?

6 A. I understand that, yes.

7 Q. Do you have an accountant that's going to do
8 that for you?

9 A. Well, we've got two accountants that work for
10 us. And Rhonda takes care of that and they -- they review the
11 books. They don't do the day-to-day thing, no. We'll have an
12 accountant that takes care of that.

13 Q. Are you going to have somebody train you as to
14 how your books need to be -- books and records need to be kept
15 so that the accountant can put all this together in the form
16 of Annual Reports and other --

17 A. We'll probably have the accountant tell us what
18 they need.

19 Q. Early in the process, I would assume, so
20 that --

21 A. Well, I think it's probably --

22 Q. -- you don't find out too late?

23 A. I think it's probably already in the works.

24 Q. Just a few more questions. I'm almost
25 finished.

1 COMMISSIONER MURRAY: All right. I think
2 that's all I have for you. And then I would like to ask a
3 Staff witness a couple of questions. Thank you.

4 THE WITNESS: Okay.

5 JUDGE JONES: Thank you, Mr. Fink. You may be
6 seated.

7 MR. FISCHER: Judge, could I ask just a couple
8 clarifying questions?

9 JUDGE JONES: Yes, you can. I'm sorry.

10 Mr. Fink, take the stand.

11 QUESTIONS BY MR. FISCHER:

12 Q. Mr. Fink, would you explain to the
13 Commission -- there were some questions regarding the City of
14 Bolivar -- just how many miles from the City of Bolivar city
15 limits your development is?

16 A. My development is 3 miles from the City of
17 Bolivar. It's on 13 Highway, which is the major road through
18 Bolivar -- or around Bolivar. And we're at the first major
19 intersection. I own the land there. There was not much
20 development there.

21 Four years ago there was some gentleman that
22 had a piece of ground out there and they went to the City to
23 ask them for services out there and they denied it. Okay?
24 When I went out there, I never did ask. I informally talked
25 to the mayor and I talked to the council because I know all

1 those guys and told them what I was going to do here. And I
2 just -- my time frame didn't let me try to get it in the works
3 for the City to take it in.

4 Since we have done that, since I've started,
5 I've been approached by the mayor, I've been approached by all
6 the council, in fact, I give a proposal to the mayor to buy
7 the water and sewer system, the price, what it included and I
8 would voluntary annex what I done. And I said I'll go either
9 direction, but I need to know.

10 Well, the first thing they need to do is annex
11 13 Highway, because we did not join the city. We're 3 miles
12 from them. So they're in the process of doing that now.
13 They've sent letters out to the landowners that the
14 annexation -- it's a MoDOT annexation, so it's pretty well --
15 I think MoDOT just turns it over to them and then the City has
16 the right of way, it actually becomes part of the City.

17 So -- and that's -- that's actually where we
18 stand right now. And that's happened about two months ago. I
19 feel like everything we build out there, the water mains,
20 sewer mains, streets, water retention, everything's built to
21 City of Bolivar specs. They've looked at copies of our
22 engineering drawings, everything being's been inspected that's
23 put in the ground. And I feel like we'll probably -- the city
24 will probably take this thing over from me.

25 But I didn't build it counting on that. I

1 wanted it to where the City could. That's why I didn't cut
2 any corners when I built it.

3 Q. If the City were to actually provide service
4 outside their service territory or outside their municipal
5 city limits, would they need to build a 3-mile main to reach
6 you then? Is that what -- would that be correct?

7 A. They would need to build about a 3-mile main,
8 yes.

9 Q. Okay.

10 A. Although the far north end of my development, I
11 have a large -- I have the water main big enough to -- to hook
12 on to that end so they just -- they would have to build to
13 my -- the land that I own, the land I'm developing right now.

14 Q. There were also some references to the Staff
15 assisting you I think in developing the rates proposal that --

16 A. Yes.

17 Q. -- is in the Staff -- would you describe the
18 relationship you've had with Staff in this process?

19 A. We had a very good relationship. Jim Merciel
20 and his people were very good. They really -- they advised
21 us, they helped us. Couldn't ask for -- I couldn't ask for
22 any better. I mean, they were -- because we were in a
23 territory that we really didn't know and they -- they've been
24 great to work for.

25 Q. Staff, in their Staff rec-- recommendation,

1 indicates that they believe that there is a need for the
2 proposed service and that there's a need for the company to
3 provide that proposed service. Would you agree with their
4 comments in that regard?

5 A. Yes, I would.

6 Q. And I believe you also indicated that you were
7 in the process of hiring a person that -- did you say he comes
8 from the City?

9 A. Yes. He works for the City now. He has for
10 18 years and he's coming to work for me.

11 Q. Okay. And he's got the background to --

12 A. He's got the background, he's got the
13 operator's license both in water and sewer.

14 Q. And do you believe the company will have the
15 financial ability to provide the proposed service?

16 A. Yes, I do.

17 Q. And from your perspective, is it economically
18 feasible?

19 A. I think it will be three years down the road,
20 but I think it's going to be three years before it is.

21 Q. Okay. Staff came to the conclusion that the
22 company's proposal would promote the public interest. Do you
23 agree with that?

24 A. Yes.

25 MR. FISCHER: Okay. That's all I have. Thank

1 you.

2 JUDGE JONES: Are there any questions from the
3 Staff of the Commission?

4 MR. KRUEGER: No, your Honor.

5 JUDGE JONES: Commissioner Murray?

6 COMMISSIONER MURRAY: I need to follow up.

7 FURTHER QUESTIONS BY COMMISSIONER MURRAY:

8 Q. If your plan is to sell to the City, wouldn't
9 it be easier for you to just maintain the system under the
10 homeowners association? You realize if you have a
11 certificated company, you're going to have to come back to us
12 before you can sell it, you're going to have to get approval
13 from us?

14 A. Yes, I was aware of that.

15 Q. Wouldn't it be easier not to become
16 certificated?

17 A. Well, it wasn't my plan to sell it until about
18 two months ago and I already had this going. It wasn't my
19 plan to sell it to the City. They approached me about it.
20 And I -- you know, we've already -- we're this far and I don't
21 want -- I really -- the homeowners thing, which we'll revert
22 back to that. If we don't get the authority to run it, I'll
23 revert back to that, because I won't have any choice. Or
24 operate illegally the way I understand it, and I don't want to
25 do that.

1 Q. So what's the major -- well, you explained to
2 me earlier why you wanted to become certificated because, one,
3 you might want to sell to other locations; two, if you expand,
4 you don't want to have to get -- form new homeowners
5 associations?

6 A. My biggest drawback on that was there's an
7 attorney friend of mine in town and he has tried -- he has
8 developed a country club and they went into the homeowners
9 association and he has -- he had problems with it.

10 My circumstance, I -- I feel like I'll be
11 continually developing, I need to be -- I need to know where I
12 stand each time. If I want to extend my water mains to
13 someone else, you know, it's -- it's the utility's actions
14 that do that, not the homeowners.

15 Q. So it's a matter of going back to the
16 homeowners every time and getting approval for anything you
17 want to do?

18 A. And then the squabbling among the homeowners
19 and the things -- you know, we were -- we were -- our
20 homeowners association was set up with a five-member board
21 that's voted every two years and that's the way we were
22 setting it up. But I was afraid that we would run into
23 trouble whenever I wanted to extend a water main or I wanted
24 to develop another 40 lots or I wanted to do -- develop a
25 commercial property on the highway that required more water

1 than normal, you know, or more sewage than normal, I've got to
2 go back to the homeowners and get permission to do that.

3 Q. What percentage of the homeowners association
4 are you now?

5 A. Oh, I'm probably 2-- I'm probably 75 percent of
6 it probably. That's -- that's unsold lots, that's -- you
7 know, each homeowner -- I mean, that's the way the thing's
8 distributed out, each lot they own. And I still probably own
9 75 to 80 percent of the development

10 COMMISSIONER MURRAY: Okay. Thank you.

11 THE WITNESS: Thank you.

12 JUDGE JONES: Mr. Fischer?

13 FURTHER QUESTIONS BY MR. FISCHER:

14 Q. Mr. Fink, does the fact that you have a
15 substantial number of commercial customers also complicate the
16 landowners association?

17 A. That's what I was afraid I'd get into. If I
18 had another restaurant -- on our discharge of sewer was one of
19 the problems that worried me, because I was afraid I would
20 have landowners say, We don't -- you know, we don't want to --
21 we don't want to let them discharge 1,000 gallon of sewage a
22 day, you know, when each home discharges 300.

23 And I didn't want to go back -- if I had a
24 client that wanted to buy a piece of real estate or wanted me
25 to build him something -- wanted me to build him something, I

1 really didn't want to go back to the homeowners association
2 and get permission to do that.

3 MR. FISCHER: Thank you.

4 JUDGE JONES: Okay. You can step down,
5 Mr. Fink. At this time we'll call Dale Johansen to the stand.

6 COMMISSIONER CLAYTON: I want Dale, but Connie
7 may want Jim. I don't need both so, I mean, there's no reason
8 to bring both of them up.

9 COMMISSIONER MURRAY: I was assuming it would
10 be Jim, but it's -- I'm sure Mr. Johansen can answer the
11 question.

12 JUDGE JONES: If he can't, we'll call Jim.

13 Step forward, Mr. Johansen.

14 (Witness sworn.)

15 JUDGE JONES: Thank you, you may be seated.

16 Please state your name for the record.

17 THE WITNESS: Dale Johansen.

18 JUDGE JONES: Thank you.

19 Commissioner Murray?

20 QUESTIONS BY COMMISSIONER MURRAY:

21 Q. Mr. Johansen, on the rates, the expenses that
22 are shown in determining calculation for rates --

23 A. Yes.

24 Q. -- can you show me where full-time -- is there
25 a provision for full-time staff member?

1 A. The -- the operations, labor and expense line
2 item on -- for the water spreadsheet, if you will, and the
3 sewer speed sheet totals -- I believe that would be \$15,600.
4 And that was the estimate of the time that would be needed for
5 operations purposes for the utility company only. So we are
6 allowing -- in the expenses that we've used to design the
7 rates on a total basis, we've allowed \$15,600 for an operator.

8 Q. And what else is included in operations, labor
9 and expense?

10 A. So far as I know, that is just the operator's
11 salary.

12 Q. So where would contractual fees to engineers
13 show up?

14 A. Those are basically the fees that have been
15 associated with the design of the facilities. Any contractor
16 fees related to the actual construction, those are all
17 capitalized as part of the investment.

18 Q. All right. So they're not recoverable is what
19 you're saying?

20 A. Well, they're recoverable from the standpoint
21 that they're part of the investment. They're not an ongoing
22 expense item. Those costs are capitalized as part of the
23 investment.

24 Q. And to the extent that the developer's
25 contributing the investment, they're not recoverable --

1 A. They're --

2 Q. -- to that extent?

3 A. -- not recoverable through the rates, yes.

4 Q. Yes.

5 A. Yeah.

6 Q. How are you saying they're recoverable then, if
7 they're not recoverable through rates?

8 A. Well, as -- as Mr. Fink is recovering the other
9 investment through the lot sales, that's -- it's the same --
10 same way.

11 Q. Is Staff going to be working with the company
12 to show them what is expected for the Uniform System of
13 Accounts?

14 A. Yes. Our -- our auditing staff that worked on
15 this case -- and actually, unfortunately, they're out on other
16 audits today or they would be here -- they have met with the
17 company, done some initial work in that regard. And we
18 have -- we have offered the company those folks or other folks
19 from the Staff to meet with their accountants to make sure
20 that we get the initial books and records set up in accordance
21 with the USOA. And then we certainly, as with everybody else,
22 we offer our assistance on any ongoing problems or issues that
23 they have.

24 Q. And at the time is someone explaining the
25 Annual Reports and assessments --

1 A. Yes.

2 Q. -- are due at a certain time of the year and --

3 A. Right.

4 Q. Okay. See if I have anything else.

5 I guess just one more general question, and
6 that is, with the developer contributing more than usual --
7 more than the usual percentage, doesn't it create a potential
8 problem if later on the owner wants to sell? Does that not
9 create a potential problem in determining the value of the
10 assets and their recoverability in rates by the future owner?

11 A. I don't believe so, because the -- basically
12 what you have is we -- we will have an established rate-base
13 for this company. And based on past practices and -- and
14 policy, any future -- any potential buyer would basically know
15 what that rate-base value is. If it's a regulated utility
16 that would potentially be a buyer of the system, I think they
17 would know full well that -- that any amount over that
18 established rate-base would -- would be considered a premium
19 and not likely to be recovered.

20 Q. But then isn't that where the problem occurs,
21 that we've -- where we've seen problems occur is where the
22 developer who's made the contributions expects to get the
23 contributions back not only from developing the lots, but when
24 this property is sold, that -- expecting that the new owner
25 will pay a premium. And then the new owner is stuck with a

1 choice, either I pay a premium and I don't get a return for
2 it, sometimes taking on a property that needs improvements at
3 that time, or I have to somehow convince this owner that it's
4 only worth what's in the rate-base and -- I mean,
5 realistically how likely is that going to be?

6 A. Well, it's a problem from the standpoint, if
7 you will, of -- of I guess a potential buyer negotiating, you
8 know, what they believe is an appropriate sale price versus
9 what the seller thinks is an appropriate sale price.

10 But I mean, there are established numbers, the
11 policy is well established as to how those are going to be
12 treated if it's a regulated buyer. And I think that, quite
13 honestly, is something that the seller and the buyer have to
14 recognize and have to deal with. And whatever their
15 arrangement is, it is.

16 Q. And one of the problems with -- that we run
17 into is we can't force a company to sell, we can't force a
18 company to sell to a certain -- we can't force them to sell at
19 what's in rate-base. And another company isn't going to want
20 to take on a problem and pay a premium for it that they can't
21 get back in rates.

22 So it just -- I just wonder if this isn't a
23 part of our ongoing problem where we allow utilities to
24 maintain their rate-base at such a level that, okay, it keeps
25 the rates low, but what happens later on? You know, I don't

1 think it's realistic to think that another company is going to
2 come in and absorb. The developer's willing to do that, the
3 developer's getting paid back through lots, but the second
4 company that comes in to purchase is not going to receive any
5 remuneration other than through rates.

6 A. That's correct. And -- and that's -- that's
7 why the policy is -- has been established that -- that what
8 the -- what the buyer is allowed to earn a return on from the
9 standpoint of fairness to the customers is the established
10 rate-base. It's the original -- it's the investment that the
11 utility made originally.

12 And it is a problem that we deal with. And I
13 think we're -- it's just one of those that -- that we're going
14 to continue to struggle with. But I quite honestly think in
15 this situation that what we have here is -- is a -- is a
16 person who is probably -- as a new company, is probably
17 more -- has been made more aware of all of these issues than
18 what -- what companies have been made -- the way they've been
19 made aware of them in the past.

20 I don't think -- 15 years ago I don't think a
21 developer started a new utility company, investing certain
22 monies as a development company, investing certain monies as a
23 utility company, I don't think they understood the
24 relationship there. I think that situation is definitely
25 different today. I think that these folks do understand what

1 rate-base means, what it means from the standpoint of
2 potential buyers, particularly if potential buyers are other
3 regulated companies.

4 Q. And it may not be a problem with this instant
5 situation, but even if the cus-- or even if the utility
6 understands, that doesn't necessarily mean that the utility
7 will be reasonable when it comes to the point-of-sale.

8 A. Oh, I -- you're right. It does not mean that.
9 I just think that in-- the way we go through the process now,
10 I think the investors in the utility have a much better
11 understanding of -- of the future ramifications. That's my
12 main point, is that -- I think there's a much higher level of
13 understanding of the relationship between development
14 investment and utility investment than what there ever has
15 been in the past.

16 Q. Okay. Mr. Fink indicated earlier that he
17 believed that he was -- the contributions that he was making
18 to the utility that he's going to recover by developing the
19 lots, did he not?

20 A. Yes.

21 Q. And that is your understanding as well; is that
22 correct?

23 A. From the stand-- there's really -- there's
24 really two different pieces, if you will, to -- to -- to the
25 system and the way that it's recovered normally.

1 Most utility companies -- even existing utility
2 companies have main extension policies whereby developers
3 either construct and contribute on the water side the
4 distribution system or they pay the utility for the
5 construction of that system. On the sewer side, the developer
6 constructs and contributes the collection system or they pay
7 for that construction.

8 The next piece on the water side is source of
9 supply and storage. What normally occurs in -- is that the
10 utility company makes the investment in those facilities.
11 What we have here is that the developer is not only
12 contributing the -- on the water side is not only contributing
13 the distribution system, but is also contributing a portion of
14 that source of supply and storage cost.

15 And the same thing on the wastewater side, the
16 developer is not only contributing the collection system, but
17 is also contributing a portion of the wastewater treatment
18 facilities -- of the investment in those facilities.

19 And basically the -- the -- the decision that
20 was made was that the developer needed to make that additional
21 contribution over and above what we normally see in order for
22 the rates to be set at a reasonable level, not only reasonable
23 from the standpoint of the customer's monthly bill, but also
24 reasonable from Mr. Fink's standpoint of the relationship to
25 the City of Bolivar's rates.

1 The utility company still has a significant
2 investment, capital investment in the facilities. It's just
3 that it is not as high as normal.

4 Q. Somewhere I think I lost you there and I
5 apologize for that, but are you separating the utility
6 company -- what are you calling -- how are you separating what
7 the utility company is contributing and saying it's not as
8 high as normal?

9 A. The -- the utility company normally invests on
10 the water for water systems. Utility company normally invests
11 in water supply and water storage facilities. Developers
12 contribute distribution systems. In this instance the
13 developers -- the developer is contributing, in addition to
14 the distribution system, a portion of the supply and treatment
15 costs of the -- of the initial costs for those facilities.

16 Q. Okay. So the developer's contributions would
17 be looked at separately from the utility's contributions in
18 terms of whether the developer recovered those contributions
19 so the developer -- should the developer -- in that they're
20 one and the same --

21 A. Well, it basically -- the difference is are --
22 are those costs being recovered by the developer through the
23 sale of land or are those investments being recovered by the
24 utility company through customer rates.

25 Q. Yes.

1 A. The difference here is that customer rates
2 normally cover all of the water supply and storage facilities.

3 Q. Okay.

4 A. That is not being done here.

5 Q. Which means the developer is contributing more?

6 A. Correct. The developer is contributing more
7 than normal for water supply and storage and more than normal
8 for wastewater treatment.

9 Q. But the utility is also contributing?

10 A. But the utility also has investments in -- in
11 those three items. And significant investment.

12 Q. And is there a reason for the utility to ever
13 expect to recover the utility's contributions in rates?

14 A. They are recovering them through their customer
15 rates.

16 Q. Okay.

17 A. They're getting a return on and a return of --

18 Q. All right.

19 A. -- their level of investment in those
20 facilities through the customer rates.

21 Q. Okay. So when you talked about the percentages
22 in your recommendation or your findings, you're talking
23 about -- I'll find that, if I can. Well, it shouldn't be that
24 hard to find.

25 A. It's on page 3 of the memo.

1 Q. Okay. A factor of 50 percent and 68 percent,
2 that's what the developer is contributing to the water and
3 sewer systems. Right?

4 A. That's what the developer in this instance is
5 contributing to water supply and storage and to wastewater
6 treatment.

7 Q. And that's what is not --

8 A. That's --

9 Q. -- recoverable in rates?

10 A. That -- yes.

11 Q. Okay.

12 A. And that's what is unusual about this
13 situation.

14 Q. And what would those percentages normally be?

15 A. Zero.

16 Q. Developer contribution, zero?

17 A. For treatment on wastewater and for supply and
18 storage on water, there is normally no developer contribution.
19 That's normally an investment supplied by the utility company
20 and recovered by the utility company in their rates.

21 COMMISSIONER MURRAY: Okay. All right. Thank
22 you for clearing that up for me.

23 JUDGE JONES: Commissioner Clayton?

24 BY COMMISSIONER CLAYTON:

25 Q. Dale, my questions are very -- are general and

1 not based on Southtown Utilities. I wanted to ask you what
2 you think the Commission should be doing to -- on the front
3 end of reviewing these orders granting certificates at the
4 beginning to keep from having the difficulties we've had with
5 various small operators around the state. And I wanted to see
6 what you thought would be the most appropriate use of
7 Commissioners' time in terms of reviewing these as they come
8 through.

9 A. Well, I think generally the -- I guess the
10 right phrase to use would be the level of attention that has
11 been paid in this situation to making sure that the owner of
12 the utility company is aware of how the rates are being
13 developed, is aware of their significant responsibilities
14 in -- in forming a utility company, I think that is something
15 that -- that we are -- we are now doing more so than has been
16 done in the past.

17 And I think that is very important to make sure
18 that people understand basically what they're getting into and
19 focusing them on not only the initial responsibilities, but
20 the ongoing responsibilities.

21 Q. What is going on now that hasn't gone on in the
22 past in terms of that education?

23 A. Well, I think one of the things -- and, again,
24 it's somewhat unique to this case but it's also an approach
25 we're taking in all of our certificate reviews is making sure

1 that -- and particularly if there's a development company
2 involved as well, is making sure that the owner of those
3 companies understands that basically what we're doing is
4 treating this as two separate companies and that their
5 development company is going to be treated exactly the same as
6 a developer wanting to have service extended two and three
7 years from now.

8 That from the standpoint of the initial
9 investments, that there is a clear distinction between the
10 development business and utility business. And I think that
11 focus is -- is heightened over what it has been in the past.

12 I also think we clearly are making it clearer
13 to the utility companies, particularly new ones and even
14 existing ones as they expand their certificated areas, what
15 their ongoing responsibilities are from the standpoint of --
16 of adhering to our rules, maintaining their books and records
17 in accordance with our rules, making sure they understand that
18 they are not only obtaining the right to do things, but they
19 are also -- but along with that goes significant obligations,
20 Annual Reports, Uniform System of Accounts compliance --

21 Q. So that education is going on now --

22 A. -- payment of assessments.

23 Q. -- when it wasn't going on before or is it just
24 enhanced now?

25 A. I think it's enhanced. I think people --

1 Q. Enhanced in verbal or in writing? Do you
2 provide additional written material or is it just
3 conversations with you and your staff?

4 A. We are providing -- in almost every certificate
5 case, we submit a letter back to the applicant that basically
6 is an overview of what our recommendation is going to be and
7 an explanation of the basis for that recommendation and
8 what -- and we've traditionally done that in all situations.

9 One of the things that we are now doing, and I
10 can't tell you how long ago we started it, but we are doing it
11 differently than what we had done in the past, is that the
12 types of information that are now normally included in
13 Commission orders granting certificates, those are addressed
14 in that letter up front when we tell the company, Here's what
15 our recommendation is, here's what the basis is and by the
16 way, here are responsibilities that you will have on an
17 ongoing basis as a certificated utility.

18 Q. So that letter -- that letter changed when the
19 Commission changed its orders?

20 A. Yes, it did.

21 Q. Okay. Is there anything else that can be done
22 to help provide education and -- and make operators aware that
23 we're changing our -- changing our -- our past policy with
24 regard to these small operators?

25 A. I can't think of anything right now that --

1 that -- that we need to do. I think we've -- I think as far
2 as the Staff's end of it is concerned, I -- I think we've --
3 we've responded to issues as they've been raised by the
4 Commission over the last couple of years in the way that we
5 deal with these.

6 I think we -- we are consciously more aware of
7 what the companies need to understand. And I do think we
8 are -- we are being more diligent about expressing that
9 information to the companies as we are reviewing these
10 applications and as we are informing them of what our
11 recommendations are going to be.

12 Q. Have you said no to anybody, any small operator
13 applicant?

14 A. Not recently.

15 Q. How far ago?

16 A. We have in the past and have been overruled.

17 Q. How long ago?

18 A. Probably -- it's probably been at least 5 years
19 ago.

20 Q. Who was around then?

21 COMMISSIONER MURRAY: I dissented.

22 THE WITNESS: The Commissioner who is still
23 here agreed with the Staff's recommendation.

24 COMMISSIONER CLAYTON: Interesting.

25 COMMISSIONER MURRAY: Thank you.

1 COMMISSIONER CLAYTON: All right. Sorry about
2 this, Mr. Fink.

3 BY COMMISSIONER CLAYTON:

4 Q. It has been suggested by at least one large
5 national water company that state commissions should stop
6 issuing certificates to small water operators. Do you agree
7 or disagree with that?

8 A. I disagree with that. I don't think it's
9 practical at all to do that.

10 Q. Have you seen any sign from large water
11 companies that they'd be willing to step in and provide
12 service in a circumstance such as this?

13 A. Quite honestly, I think if it is a large enough
14 development and if it's somewhat convenient to existing
15 service areas, they are certainly interested in that. If it's
16 a situation where it doesn't initially involve a significant
17 customer base and if it means a company going to the expense
18 of establishing local operations presence over and above what
19 they currently have, I don't think they would be willing to do
20 it.

21 Q. Well, as we move forward and look at each of
22 these as they come along, I think as you are aware, the
23 Commission's going to look at these much more carefully than
24 we have in the past. My recommendation will be to you and
25 your staff would be to assist the Commission in enhancing its

1 own review of these.

2 Recognizing that it is a contested case,
3 there's limited conversation, but once this case is complete,
4 maybe we should have these conversations to help formulate a
5 process that will be more efficient in going through the
6 questions that we've posed here and maybe dig deeper into the
7 recommendations that you are making. Because I know a lot of
8 these things you've already evaluated, but sometimes it's just
9 not clear how hard a look you actually gave something.

10 A. And I think -- you know, I agree with that
11 100 percent, that we need to have a non-case related dialogue,
12 if you will. And I think, too, there are probably some things
13 that we need to look at from the standpoint of explaining
14 better in the documentation that we do file with the
15 Commission.

16 And I think, you know, as we move along in the
17 process, I think we frequently identify things that it
18 would -- we could have said something better or more clearly
19 or we left something out that we -- we needed to address.

20 Q. Do you have any other pending cases other than
21 this one relating to pending applications for a certificate?

22 A. We have I believe four and maybe five other
23 certificated cases.

24 Q. When are we ever going to have -- well, once
25 this case is complete, can we have generic conversations about

1 this process?

2 A. Well, I think we could have generic
3 conversations at any time, as long as we don't talk about
4 case-specific information.

5 Q. Well, it would be helpful to me if you would
6 write up your ideas and your suggestions and then get together
7 with me or with one of the other Commissioners and we can
8 bring this before the agenda.

9 A. I'll be glad to do that.

10 COMMISSIONER CLAYTON: Thank you again,
11 Mr. Fink, for coming up here. I think you can get a sense of
12 the frustrations that we've had. And we wish you the best of
13 luck. Well, I do anyway. I don't know if anyone else does,
14 but I do.

15 JUDGE JONES: And, Commissioner Appling, do you
16 have questions of Mr. Johansen?

17 COMMISSIONER APPLING: Just one question.

18 BY COMMISSIONER APPLING:

19 Q. Do you see in -- do you see any reason why we
20 shouldn't approve the certificate of Mr. Fink?

21 A. I honestly do not. I believe this is a
22 situation -- it is a situation that I -- I feel very
23 comfortable in the recommendation that we have made and -- and
24 in you granting the certificates.

25 COMMISSIONER APPLING: Thank you very much,

1 Mr. Fink, and your family. We wish you all the best and
2 appreciate you coming up this afternoon. Okay?

3 MR. FINK: Thank you.

4 JUDGE JONES: Mr. Krueger, do you have
5 questions of Mr. Johansen?

6 MR. KRUEGER: No, I don't, your Honor.

7 JUDGE JONES: Mr. Fischer?

8 MR. FISCHER: No, your Honor.

9 JUDGE JONES: Thank you all. With that, we'll
10 adjourn.

11 WHEREUPON, the on-the-record presentation was
12 adjourned.

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