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BEFORE THE PUBLIC SERVICE COMMISSION

STATE OF MISSOURI

TRANSCRIPT OF PROCEEDINGS

HEARING

November 14, 2002

Jefferson City, Missouri

Volume 5

The Staff of the Missouri)
Public Service Commission,)
) Case No.
Complainant,) WC-2003-0134
)
vs.)
)
Osage Water Company,)
)
Respondent.)

BEFORE:

MORRIS L. WOODRUFF, Presiding,
 SENIOR REGULATORY LAW JUDGE.
 CONNIE MURRAY,
 COMMISSIONER.

REPORTED BY:
 TRACY L. CAVE, CSR
 ASSOCIATED COURT REPORTERS

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JUDGE WOODRUFF: Welcome back to the hearing -- continuation of the hearing in Case No. WC-2003-0134 and we're ready to begin again today.

Before we do that though, I do want to make a little statement. I would really very much like to finish the hearing today. Obviously I want to give everyone a full and fair opportunity to be heard and present their evidence, but I want you all to keep that in mind as we're going through the case.

And if you feel that something is cumulative or not relevant, please feel free to make an objection. I may agree with you, I may not. But we do want to try to keep things moving along as much as possible with the goal of finishing today.

And if we have to go a little bit late today, we may do that as well. We'll see how things are going in the afternoon and we'll let you know about that.

When we left off, Mr. Mitchell was on the stand, but don't come up for a moment. Commissioner Murray has indicated she has a few questions for Mr. Williams as a witness again concerning the water supply contract.

So I'd like Mr. Williams to take the stand at this time and Commissioner Murray has a few questions. And I'll give everyone a chance to recross and redirect based on

1 those questions.

2 Commissioner Murray?

3 And you are still under oath.

4 THE WITNESS: Yes, sir.

5 GREGORY WILLIAMS, having been previously sworn, testified as
6 follows:

7 QUESTIONS BY COMMISSIONER MURRAY:

8 Q. Good morning, Mr. Williams.

9 A. Good morning.

10 Q. Do you have Exhibit 30 --

11 A. I can.

12 Q. -- the Operation and Maintenance Agreement?

13 A. I've got everything. Let me get it.

14 Q. Also, you might bring the water supply
15 agreement with you.

16 A. I have what's in evidence. If there's
17 something else, I'll be glad to try and answer questions
18 about it.

19 Okay. I have that in front of me.

20 Q. All right. First question, on paragraph 2B,
21 the language there -- first of all, you drafted this; is
22 that right?

23 A. Yes, ma'am. And the first one that you're
24 referring to that has a paragraph 2B was not accepted by
25 Mr. Mitchell. That was a draft agreement and he rejected

1 it.

2 Q. I understand that. I want to ask you some
3 questions about it though --

4 A. Okay.

5 Q. -- because it was filed, it is in record here,
6 this --

7 A. Yes.

8 Q. -- agreement that was not accepted.
9 2B, the language as to -- well, at the very
10 end of that paragraph, May seem necessary to conserve my
11 interests.

12 Whose interests are we referring to there or
13 are you referring to?

14 A. Well, that actually was a general power of
15 attorney form that I modified for this particular
16 application. And it would have been Osage Water Company as
17 the grantor's interest that was intended there.

18 Q. Refers to Osage Water Company's interest.
19 Then paragraph 2C the language that references -- that says,
20 Affecting any and all property presently belonging to OWC,
21 or hereafter acquired, located anywhere which to
22 Environmental Utilities, LLC, may seem necessary or
23 advantageous for OWC's interests.

24 How would it have been determined that the
25 property would have been necessary for or advantageous for

1 OWC's interests? How would Environmental Utilities
2 determine that? I'm trying to figure out how Environmental
3 Utilities could be objective in determining what would be
4 advantageous for OWC's interests.

5 A. Well, I think any time that you act on behalf
6 of someone else, you're held to a very high standard to act
7 on that person's best interests. And you have to exercise
8 your best judgment as to what furthers the interests of the
9 party on whom's behalf you're acting.

10 You know, how you determine that is you sit
11 down and evaluate all the facts and information available
12 and exercise your best judgment to decide what is in the
13 best interest of the principal.

14 Q. And the way that was written, it would have
15 been you and Mrs. Williams' sole discretion to decide what
16 was advantageous to? It would have been you and
17 Mrs. Williams' sole discretion to determine what was in the
18 best interest of OWC; is that correct?

19 A. Well, I think under the law of principal and
20 agent, when you're acting as agent, if the principal is
21 available for consultation and can make the decision on its
22 own behalf or you consult with the principal. If the
23 principal is not available, yes, it would have been up to
24 Environmental Utilities and its people to make the
25 decisions.

1 Q. And the principal for OWC would have been?

2 A. Mr. Mitchell. Who, of course, rejected that
3 language and would not accept it.

4 Q. Yes. And then also the next paragraph would
5 have allowed Environmental Utilities to enter into, take
6 possession of any land, real estate, tenements, houses,
7 storage or buildings or parts thereof belonging to OWC.

8 And that, again, would have been the same.
9 Right? You and Mrs. Williams making the decision based upon
10 your analysis and possibly by consultation with the
11 principal, Mr. Mitchell?

12 A. That's the way a general power of attorney
13 works, yes.

14 Q. And then I assume in paragraph E where it
15 says, To commence and prosecute in OWC's behalf in suits or
16 actions or other legal or equitable proceedings for the
17 recovery of any of my lands or for any goods, chattels,
18 debts duties.

19 Again, who is my lands referring to?

20 A. Osage Water.

21 Q. Okay. And this was just boilerplate
22 language --

23 A. It's a form, yes.

24 Q. -- that you just didn't change?

25 A. Uh-huh.

1 Q. And then paragraph F, again, this is
2 Environmental Utilities determining what would be due, owing
3 belonging to or payable to OWC in its own right or
4 otherwise. And this would have allowed Environmental
5 Utilities to basically take any steps necessary for
6 recovering or holding any possessions or monies due it or
7 due OWC; is that right?

8 A. The initial request was for broad power of
9 attorney and that would have included that right. As I
10 said, there was a question raised in this proceeding as to
11 whether or not it was a negotiated transaction and so we
12 provided the draft as well as the ultimate agreement that
13 was reached between the parties.

14 Q. Okay. And then any reference to my said
15 attorney, in fact, is to Environmental Utilities; is that
16 correct?

17 A. It was proposed to be an attorney of fact. Of
18 course, that power was not granted in the final agreement.

19 Q. Okay. And then that language in paragraph G
20 referred to OWC or its officers. And at that time of that
21 drafting, who were the OWC officers?

22 A. Mr. Mitchell.

23 Q. Only Mr. Mitchell. So OWC or its officers
24 refers to Mr. Mitchell or Mr. Mitchell?

25 A. Well, the corporation or its officers --

1 Q. Okay.

2 A. -- whoever they might be whenever.

3 Q. And if that had been -- if this draft had been
4 accepted, hypothetically if Environmental Utilities were to
5 have done something with the operation of the facilities,
6 the service territories that belong to OWC that resulted in
7 a notice of violation from the Department of Natural
8 Resources, would Environmental Utilities have claimed no
9 responsibility for that because they'd only been acting for
10 OWC and OWC would have been the ultimate entity responsible
11 for any violations?

12 A. Well, I think it's a correct statement that
13 OWC is the entity ultimately responsible, but to the extent
14 that there's affirmative acts taken by the operator or
15 person operating the systems, then that person is also
16 responsible for those things.

17 Q. So if Environmental Utilities just operates
18 the facilities for OWC or any other company, Environmental
19 Utilities would accept the responsibility for violations of
20 either Department of Natural Resources rules and regulations
21 or environmental statutes or violations of PSC requirements.
22 Is that what you're saying?

23 A. Well, to the -- to the extent that the
24 violations are due to actual actions of the operating
25 company as opposed to things that the operating company does

1 not do or does not have a responsibility to do. But if
2 there's something that arises from affirmative acts of the
3 operating entity, of course it's responsible for those.

4 Q. And I want to go back to that in a minute, but
5 I want to finish this document first.

6 A. Uh-huh.

7 Q. Under paragraph H, I guess it's 3H, there's
8 2 -- okay, I'm sorry. It's paragraph 3. That would have
9 allowed Environmental Utilities to take possession of
10 assets, to carry on business, collect all revenue, pay all
11 Environmental Utility salaries and expenses and with any
12 left over, pay Greg Williams; is that correct?

13 A. Yes, ma'am.

14 Q. And paragraph 4 which sets the rate of 44.25
15 per month minimum, that's a retail rate; is that correct?

16 A. The 44.25 minimum and the metered rate are the
17 rates that were discussed and put in the proposed tariff
18 that's pending in the Environmental Utilities' application
19 for a two-inch water meter.

20 Q. And that is also the retail rate that's
21 charged to its customers, is it not?

22 A. It's the only rate that's in there.

23 Q. Now, I want to go to the operation and
24 maintenance agreement.

25 A. Okay.

1 Q. And this is the one that was signed and was
2 agreed to on September 1st, 2002; is that correct?

3 A. Yes, ma'am.

4 Q. And in paragraph 1, Osage Water Company does
5 hereby appoint Environmental Utilities, LLC, as its agent
6 for the purpose of operating, maintaining and repairing the
7 water and sewer utility systems owned by OWC in Camden
8 County, Missouri.

9 That includes repairing; is that correct?

10 A. That's correct, ma'am.

11 Q. And then you also entered into a water supply
12 agreement on September 1st of -- OWC and Environmental
13 Utilities did; is that correct?

14 A. Yes, ma'am.

15 Q. And that agreement --

16 COMMISSIONER MURRAY: I don't believe that
17 agreement is in evidence in this proceeding yet, Judge.

18 JUDGE WOODRUFF: Which agreement would that
19 be?

20 COMMISSIONER MURRAY: The water supply
21 agreement signed September 1st, 2002.

22 JUDGE WOODRUFF: I believe that was
23 attached --

24 COMMISSIONER MURRAY: Is it attached to
25 someone's --

1 JUDGE WOODRUFF: -- attached to something.
2 THE WITNESS: I don't know the answer to that,
3 whether it's in evidence or not.
4 COMMISSIONER MURRAY: Does Staff counsel know
5 if that is in evidence?
6 MR. KRUEGER: I do not know that it is.
7 COMMISSIONER MURRAY: Okay. Well, I would
8 like to get it in the record in this proceeding, because I
9 want to ask some questions about it. So we'll give it a
10 number.
11 JUDGE WOODRUFF: Do you have extra copies?
12 COMMISSIONER MURRAY: I do not. I'm sorry,
13 Judge.
14 JUDGE WOODRUFF: We'll get extra copies into
15 the record later. Does counsel have copies of it?
16 MR. LORAIN: I'm sorry. What is it, Judge?
17 COMMISSIONER MURRAY: It's the -- I'm not the
18 judge, but I'll answer.
19 JUDGE WOODRUFF: Go ahead, Commissioner.
20 COMMISSIONER MURRAY: It's the water supply
21 agreement dated September 1st, 2002 and it was -- it is in
22 evidence in Case No. WA-2000-265. It is attached -- or
23 Exhibit A to Environmental Utilities' September 11th filing
24 of notice of Water Supply Agreement.
25 MS. O'NEILL: Public Counsel has a copy,

1 Commissioner. And I'm not sure I have it actually with me,
2 but I'm familiar with it.

3 MR. LORAIN: What number will that be, your
4 Honor?

5 JUDGE WOODRUFF: That will be No. 35.

6 MR. KRUEGER: Your Honor, I believe I have
7 several copies of it here that I could distribute.

8 JUDGE WOODRUFF: That would be very helpful.
9 Thank you.

10 JUDGE WOODRUFF: This is 35.

11 (EXHIBIT NO. 35 WAS MARKED FOR
12 IDENTIFICATION.)

13 THE WITNESS: If she's going to ask me
14 questions, I probably ought to have it.

15 MR. LORAIN: Judge, we would be moving for
16 the admission of that into evidence at this time then.

17 JUDGE WOODRUFF: All right. 35 has been
18 offered into evidence actually by Hancock and by
19 Commissioner Murray. Is there any objection to its receipt?

20 MR. KRUEGER: No objection.

21 MS. O'NEILL: No objection.

22 JUDGE WOODRUFF: It will be received into
23 evidence and you can ask questions about it.

24 (EXHIBIT NO. 35 WAS RECEIVED INTO EVIDENCE.)

25 COMMISSIONER MURRAY: Thank you.

1 BY COMMISSIONER MURRAY:

2 Q. Turning to Exhibit No. 35, the water supply
3 agreement entered into on September 1st, 2002, the same date
4 as the operational maintenance agreement that we just
5 discussed, you have that copy in front of you now; is that
6 correct?

7 A. I do now, ma'am.

8 Q. Okay. And in this agreement is it
9 contemplated that Osage Water Company will write
10 Environmental Utilities a check monthly for the water
11 service that it purchases for resale to OWC's customers?

12 A. Yes, ma'am.

13 Q. And from what will that -- from what will the
14 company write a check? From what account?

15 A. Well, from whatever account it has. At the
16 present time its account is managed by Environmental
17 Utilities.

18 Q. I didn't think it had a checking account?

19 A. It does not have a separate bank account, no.

20 Q. So how will OWC write Environmental Utilities
21 a check? Will it actually be Environmental Utilities
22 writing itself a check?

23 A. Yes, ma'am. On the bookkeeping system there's
24 a -- an account for revenues derived from Osage Water
25 Company customers and then -- you know, it's set up, but at

1 this point there is no revenue derived from Environmental
2 Utilities' customers.

3 Q. All right. And Osage Water Company in this
4 agreement is agreeing to purchase water from Environmental
5 Utilities?

6 A. It's a purchase and sale agreement, that's
7 correct, yes.

8 Q. And then in paragraph 2, Environmental
9 Utilities agrees to furnish said water on a best efforts
10 basis and shall not be liable to OWC or its customers for
11 any interruption or termination of service other than the
12 deliberate and intentional acts of its duly authorized
13 agents or employees. It goes on a little bit from there.

14 So if there is an interruption of service, who
15 do the customers go to for help?

16 A. Talking about customers of Osage Water
17 Company? Obviously their call would be in on -- for Osage
18 Water Company repair. And the Water Supply Agreement was
19 contemplated as a long-term arrangement where the management
20 agreement may or may not continue for a long term.

21 The concept being that, you know, if there is
22 a disruption in service, those people do have recourse
23 through their regulated utility, Osage Water Company, to
24 call and -- and make complaint or inquiry as to why service
25 has been disrupted.

1 The purpose of the best efforts language was
2 to make it clear that this is not a guarantee that water
3 will flow no matter what the circumstances that might arise,
4 but it is contemplated that water will be supplied to
5 Environmental Utilities' best efforts.

6 Q. And in the Operation and Maintenance
7 Agreement, Environmental Utilities agrees to be the agent of
8 OWC for the purpose of operating, maintaining and repairing
9 the systems; is that correct?

10 A. Yes, ma'am.

11 Q. But in the Water Supply Agreement,
12 Environmental Utilities shall not be liable to OWC or its
13 customers for any interruption or termination of service
14 other than deliberate acts; is that correct?

15 A. Yes. That's correct.

16 Q. Okay. Under paragraph 3, Environmental
17 Utilities shall render its bills for water service to OWC at
18 the same time and in the same manner as its bills for water
19 service to retail customers or --

20 A. I believe that should be of Environmental
21 Utilities.

22 Q. And who are the retail customers of
23 Environmental Utilities?

24 A. Well, the proposed retail customers in the
25 case pending are the residents of Golden Glade subdivision.

1 Q. But they are the customers of Osage Water.

2 Oh --

3 A. No, they're not.

4 Q. You're talking about --

5 A. Water service in Golden Glade is not provided
6 by Osage Water.

7 Q. And the retail customers referenced here are
8 those of Golden Glade?

9 A. Well, at this point in time. And that may be
10 all there ever are, if there are ever those.

11 Q. And in the event that any bill for service is
12 not paid in a timely manner, Environmental Utilities may
13 discontinue the provision of water service until such time
14 as all sums due and owing from OWC to Environmental
15 Utilities are paid in full and a deposit for one month's
16 average usage by OWC is deposited with Environmental
17 Utilities.

18 And then you go on to point out that any bill
19 remaining unpaid for a period of longer than 60 days may --
20 Environmental Utilities may terminate the agreement upon
21 10 days written notice to OWC; is that correct?

22 A. Yes, ma'am. I think I copied that out of your
23 regulations on billing practices for small water and sewer
24 companies.

25 Q. Okay. Now, Environmental Utilities, the

1 customers would be Osage Water Company? The customers under
2 this agreement would be Osage Water Company; is that
3 correct?

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

5 Q. So Environmental Utilities would not have any
6 duty to notify any end-users; is that right?

7 A. Not under this agreement, no.

8 Q. And it would fulfill its obligation under this
9 agreement and under our rules by notifying Osage Water
10 Company only; is that right?

11 A. That's correct.

12 Q. And if Osage Water Company is effectively not
13 doing anything and nobody's owning up to being a part of
14 Osage Water Company, who would the end-users have recourse
15 to? Anyone?

16 A. Well, their recourse would be to Osage Water
17 Company. If the management agreement is in effect at the
18 time of -- that a non-payment would arise, then
19 Environmental Utilities would go ahead and notify the retail
20 customers. You know, the customer's recourse is to their
21 utility company.

22 Q. Now, just a second. What did you say about
23 Environmental Utilities' notice to the retail customers?

24 A. If Environmental Utilities is still operating
25 as the -- under Exhibit 30, as a manager, then it would --

1 it would have to go ahead and notify retail customers.

2 Q. But it would do so under the name of Osage
3 Water Company?

4 A. On behalf of it, that's correct.

5 Q. And Environmental Utilities would have no
6 liability to those end-users for either any interruption of
7 service or discontinuance of service or basically -- would
8 Environmental Utilities ever have any liability to the
9 end-user customers?

10 A. Well, as it says in the agreement, for
11 intentional and deliberate acts it certainly would.

12 Q. Only in that situation?

13 A. Yes. And -- but if we have a situation where
14 Osage Water Company is not paying for water that it's
15 reselling to its customers, that -- that would certainly
16 create a problem for Environmental Utilities continuing to
17 supply water without receiving payment for it.

18 Q. So if Mrs. Williams, as the manager, decided
19 not to write a check to pay Environmental Utilities, that
20 would be Osage Water Company default; is that correct?

21 A. Yes.

22 Q. And since it's all paid out of the same
23 account, it's solely in yours and Mrs. Williams' discretion
24 as to whether or not or when Osage Water Company defaults,
25 is it not?

1 A. You mean which bills get paid on what day?
2 That is a business decision that she has to make. I'm
3 generally not involved in that.

4 Q. Okay. Then, also, what is Osage Water Company
5 supposed to use to pay its bills to Environmental Utilities
6 if Environmental Utilities has taken over the assets and all
7 of the accounts receivables? What are the funds that Osage
8 Water Company is supposed to use to pay Environmental
9 Utilities?

10 A. Well, what the management agreement says is
11 that Environmental Utilities is to collect revenues from
12 Osage Water Company's customers and to pay Osage Water
13 Company's bills. If the tariff is ultimately approved, the
14 wholesale agreement is approved, that would be an Osage
15 Water Company bill, which would be paid out of those
16 revenues.

17 You know, the obvious question arises what do
18 you if Osage Water Company has more bills than it has
19 revenues? And that has been a problem and it is a problem
20 and I think we all know it's a problem. And the question
21 becomes who doesn't get paid and that's a problem, if the
22 Osage Water Company does not have enough money to pay its
23 bills.

24 And I understand that and I don't -- you know,
25 I can't tell you that, you know, water will be supplied for

1 free from the well at Golden Glade. Water supply is
2 expensive and it does need to be paid for and somehow those
3 revenues have to be generated to pay for it. And how you
4 prioritize payment of bills when you don't have enough money
5 is a real problem. And to date, you know, the priority has
6 been to maintain service to customers.

7 Q. And it's a very real possibility, is it not,
8 that there won't be enough water -- enough money to pay
9 Osage Water Company's bills?

10 A. I think that's more than a possibility.

11 Q. Okay.

12 A. I think it's a virtual certainty.

13 Q. So let's go through the scenario of that
14 virtual certainty. Some of Osage Water Company creditors
15 come back to Osage Water Company and start collecting upon
16 judgments or whatever outstanding bills against Osage Water
17 Company. What happens? Take me through what happens.

18 A. I don't have any good answers as to what
19 happens. The company cannot pay its bills in full today.
20 It's been sued by some of its creditors. It will probably
21 be sued by others of its creditors. That poses problems in
22 raising any additional capital with which to fund repairs.

23 Revenues are insufficient at this point in
24 time to generate a return on existing capital. That poses a
25 problem in the sense that shareholders are unhappy,

1 creditors are unhappy.

2 Quite frankly, I don't see any positive
3 future. I think I answered this question the last time I
4 was here. I really don't see a scenario where this works
5 out that doesn't involve rather drastic increases in user
6 rates.

7 Osage Water Company has lost some 220
8 customers within the City of Osage Beach on systems that
9 were paid for. And all the various certificate applications
10 that were brought into this Commission and approved by this
11 Commission were analyzed on a marginal revenue basis in the
12 sense that the proposed systems would generate more revenue
13 than they cost, but we were always assuming that the -- the
14 base cost, the fixed overhead cost, would continue to be
15 paid from existing customers.

16 Those existing customers are gone today. And
17 so we're left with systems that generate only marginal
18 revenue. Very few of the systems have actually been taken
19 off line in the sense that they have no customers, so the
20 operating expenses have not decreased proportionately to the
21 loss of customers, if I'm making any sense.

22 That means that you have to make up those base
23 operating costs from the customer base that's there now,
24 which was never contemplated when the financial projections
25 were -- were put together that were presented to this

1 Commission. It's a very, very difficult situation.

2 Q. Okay. I understand that. Take me through
3 what happens when Osage Water Company starts defaulting --

4 A. Well, it gets sued by its creditors.

5 Q. -- to Environmental Utilities specifically.

6 A. You know, it doesn't pay for water from the
7 Golden Glade well today, and I've continued to pay for that
8 personally and supply that for customers. At some point, we
9 would like to either somehow get paid for that or to be able
10 to stop supplying it personally. And I don't have a good
11 solution that doesn't involve hardship on people out on KK.
12 I simply don't.

13 Q. So that would involve cutting off service to
14 the end-use customers?

15 A. Yes.

16 Q. With only Osage Water Company being
17 responsible under the terms of the agreements that you've
18 signed that Environmental Utilities --

19 A. The responsibility is there today and we're
20 not proposing to change that under these agreements.

21 Q. So you're telling us that Osage Water Company
22 can't pay its debts, won't be able to pay Environmental
23 Utilities and you see no solution other than stopping
24 service to the customers or having some kind of a huge
25 increase in rates; is that correct?

1 A. I think you've summarized my testimony very
2 succinctly, yes, ma'am. I don't know that a receiver will
3 help in any of those regards though.

4 Q. Couldn't do any worse, could it? What could
5 be worse?

6 A. Yes, ma'am. Well, operating costs could
7 increase. That's my biggest concern with the proposed
8 receivership, is that if it -- if the operating costs are
9 higher because you're dealing with people out of the area
10 who have to travel into the Lake area -- I don't see that
11 the company is wasting any of its operating revenues in
12 providing service.

13 There's not a lot of fluff out there where
14 money's being siphoned off or being spent elsewhere. That
15 simply isn't happening. The question comes down to if you
16 don't have enough money, where do you get it?

17 Q. Also, I would like to ask you about whether
18 Osage Water Company intends to own and continue to own the
19 water and sewer systems serving Eagle Woods subdivision?

20 A. I can relay to you the discussions that
21 Mr. Mitchell and I have had on that topic, if that's okay
22 with him.

23 There are significant construction problems
24 with the lines that were installed by the developer in Eagle
25 Woods. Under your regulations, when a developer builds his

1 own systems, he's responsible for those systems with a
2 warranty back to the company for a year.

3 Demands have been made repeatedly under those
4 warranties for repairs and inspections as provided in the
5 tariffs and have been refused by that developer. And the
6 company has advised him that those systems have been
7 rejected, that they are not built in accordance with DNR
8 standards, they do not meet the requirements of the
9 company's tariff. They are not operable in the condition in
10 which they've been constructed.

11 Now, does the company have a desire to
12 continue to provide service to KK? Yes. But only in
13 accordance with the requirements of the tariff and DNR
14 regulations for systems that are properly constructed.

15 Q. And which company desires to continue to
16 provide service with someone else's facilities?

17 A. Someone -- well, no. With systems that would
18 meet the requirements. There was a contract originally
19 entered into with that developer where he was to provide
20 proper systems. He has not done so.

21 Q. So is it your position that Osage Water
22 Company wants to transfer the sewer line and water line
23 easements back to the developer?

24 A. The -- the company has tendered the deeds
25 back, which included the lines themselves, and the easements

1 as requested that the developer reconstruct the systems in
2 compliance with DNR regulations.

3 Q. Tendered them back, what do you mean by that?

4 A. Mr. Mitchell took him a letter rejecting them
5 together with deeds returning the easements and the deeds.
6 That included the lines, the equipment, everything that's
7 with them. It was basically a real estate and a bill of
8 sale transaction when they originally were acquired.

9 Q. And this is real estate owned by Osage Water
10 Company currently; is that right?

11 A. All it really was, was an easement to get to
12 the lines that were -- already installed at the time the
13 lines were executed and the -- the mechanical components of
14 those facilities that were contributed by the developer but
15 aren't in compliance with the tariff.

16 Q. And aren't those easements and lines necessary
17 for the provision of water and sewer service to the
18 customers?

19 A. Oh, yes. But they're not proper lines at all.
20 I mean, they're -- they have serious problems. And I'm not,
21 as an attorney, specifically familiar, but I know that
22 Mr. Mitchell is with -- he's been out in the field and
23 looked at them.

24 Q. And Osage Water Company has the certificate to
25 provide service to those customers -- certificate from this

1 Commission. Correct?

2 A. Yes.

3 Q. And this Commission requires before any assets
4 are transferred, that a regulated company come to this
5 Commission for approval. Isn't that the case?

6 A. I -- I think what we're talking about is a
7 rejection of assets, not a transfer of assets. What was --
8 what was tendered and what was represented by
9 Mr. Westenhaver was that the systems fully complied with all
10 the DNR regulations. And your regulation on when a
11 developer builds systems is that they have to provide a
12 one-year warranty.

13 During this -- the past 12 months, we're
14 absolutely convinced that those systems do not comply with
15 DNR regulations and that they're not operable and they're
16 not repairable as they're constructed. They need to be
17 reconstructed. They've been rejected.

18 Q. And what condition were they in when Osage
19 Water Company was here seeking a certificate of service to
20 provide service to the Eagle Woods subdivision?

21 A. I believe they were partially constructed.

22 Q. And did Osage Water Company testify that there
23 would be adequate facilities to serve those customers?

24 A. I -- I don't recall specifically the
25 testimony. I do know that there was a contract in evidence

1 under which the developer agreed to construct adequate
2 facilities.

3 Q. And did Osage Water Company indicate to the
4 Commission at that time that if those facilities were not
5 constructed properly, that they would be rejected and there
6 wouldn't be any facilities owned by Osage Water Company?

7 A. I -- I don't recall what testimony was
8 presented. I don't think that anything along those lines
9 was discussed, but that is the requirement of your
10 regulations, that there be a one-year warranty and the
11 warranty be honored by the developer.

12 Q. And do you have a citation to which you're
13 referring?

14 A. Not off the top of my head, but I think
15 someone here can probably find that here before too long.
16 But it's in your -- the PSC's regulations for water, or
17 particularly sewer companies. It's in the CSRs.

18 Q. And, again, I want to go back to the water
19 supply agreement for a minute. Under the Water Supply
20 Agreement, is there any -- I'm having trouble finding it
21 right now -- oh, here it is in paragraph 6.

22 It is contemplated under this agreement that
23 OWC will maintain its water distribution system in good
24 repair at all times and that the water shall be supplied
25 only for normal residential purposes, etc.

1 How is it contemplated that OWC will maintain
2 its water distribution system in good repair at all times?

3 A. Well, the requirement of the agreement would
4 be that it maintain and repair its lines. This agreement,
5 the Water Supply Agreement, makes no particular requirement
6 on how Osage Water Company would do that.

7 Q. And is it possible that Osage Water Company
8 can do that; and, if so, would you explain how it's
9 possible?

10 A. So far there have not been excessive water
11 leaks or other high-volume usage at Eagle Woods, to my
12 knowledge.

13 Q. And --

14 A. Particular concern in that paragraph was the
15 limitation to 53 residential homes.

16 Q. Okay. But that's not my concern at this
17 moment.

18 A. Okay.

19 Q. My concern is the portion that requires OWC to
20 maintain its water distribution system in good repair at all
21 times. Now, as a part of the system that is being -- that
22 OWC is rejecting, is that the water system or is that --

23 A. Yes, ma'am.

24 Q. -- the sewer system?

25 A. That's also water system.

1 Q. So how can OWC reject the facilities and yet
2 maintain the system in good repair at all times? How is
3 that possible?

4 A. Well, in the letter rejecting those systems,
5 Mr. Westenhaver was advised that he is to reconstruct
6 systems in accordance with DNR regulations and convey those
7 to Osage Water Company if he wants public utility service.

8 The impression we get from Mr. Westenhaver is
9 that he does not want to comply with the requirements of the
10 tariff that he build proper lines or the requirements of the
11 contract that he build proper lines. He simply wants to put
12 whatever in the ground --

13 MR. LORAINÉ: Judge, I am going to object to
14 that as hearsay. Mr. Westenhaver isn't here to protect
15 himself. And I doubt seriously if that's what he said, but
16 nevertheless, I do object to that as the worst form of
17 hearsay.

18 JUDGE WOODRUFF: I'm going to overrule the
19 objection. Continue to answer.

20 MR. LORAINÉ: Thank you, Judge.

21 BY COMMISSIONER MURRAY:

22 Q. Let me clarify. What I'm looking for here is
23 the answer of how Osage Water Company can fulfill its
24 obligation under the contract that it signed on
25 September 1st of this year to maintain its water

1 distribution system in good repair at all times.

2 A. Ma'am, it can only do so if it has properly
3 constructed lines. And it has taken steps to require the
4 developer at Eagle Woods to honor his obligation of the
5 contract to supply proper lines as opposed to what he's
6 delivered to date.

7 Q. And on September 1st of this year, did Osage
8 Water Company know that those lines were not constructed
9 properly?

10 A. We knew that there were deficiencies in them.
11 We had been discussing with the Department of Natural
12 Resources whether they could be accepted as they were or
13 whether they would need to be reconstructed. That issue has
14 been pending with DNR, and I think there may be a letter
15 already in the exhibits that I wrote to Mr. Dusenberg
16 regarding that.

17 DNR has not approved use of the lines as part
18 of a public water system in their current condition --
19 public drinking water program.

20 Q. I'm trying to think through some areas here.
21 If this Commission for some reason were to determine that
22 Osage Water Company did not have to go into receivership and
23 also were to determine that Environmental Utilities had met
24 the prerequisites for being granted a certificate of
25 service, and the two companies were operating under these

1 agreements that are in evidence here, how do you envision --
2 what do you envision playing out for the customers that are
3 currently customers of Osage Water Company?

4 A. That's a good question. There's a couple
5 possible solutions for the folks that live at Eagle Woods
6 with respect to their water supply.

7 What Osage Water Company has said is that the
8 systems that are built, that are out there, do not comply
9 with the tariff. They're not suitable for use to provide
10 public utility service.

11 The developer may, if he so desires,
12 reconstruct those water lines and comply with the DNR
13 regulations and convey those correctly constructed lines to
14 Osage Water Company and service can continue as a regulated
15 utility.

16 Q. I'm sorry. That should take some time, should
17 it not?

18 A. I would believe it would, yes.

19 Q. What happens to the customers' water supply in
20 the meantime?

21 A. Well, it would depend entirely upon what
22 Mr. Westenhaver expressed as his intended result. If he
23 said, Okay, I will do that, I think that service could be
24 continued on an interim basis with the existing lines. If
25 he says, No, I won't do that, then I think we have a real

1 problem.

2 Q. Okay. Let's assume he says, I will do that
3 and creditors of Osage Water Company come forward and
4 prevent Osage Water Company from being able to pay
5 Environmental Utilities. What happens then?

6 A. Well, if water service isn't paid for, it
7 should be terminated, under your rules.

8 Q. Okay. So under that scenario -- and you've
9 said it's likely that creditors would come forth and it's
10 very likely -- in fact, you said it's a virtual certainty
11 that Osage Water Company will not be able to pay its bills;
12 is that correct?

13 A. I think I've said very clearly that without
14 some adjustment in its debt structure, that it's -- I don't
15 see a scenario that looks good.

16 Q. Okay. So that's one scenario. If
17 Mr. Westenhaver says, Yes, I will comply I will do that, the
18 customers will be cut off is the end result; is that
19 correct?

20 A. That's certainly a likely scenario, yes.

21 Q. Let's say Mr. Westenhaver says, No, I won't do
22 that, I won't comply. Now take me through what happens to
23 the customers.

24 A. Well, at that point without lines that meet
25 the requirements of the tariff, there really aren't any

1 customers of Osage Water Company at Eagle Woods. And the
2 whole tariff concept contemplates that not only do you have
3 a price for service, but there's certain conditions on which
4 service is provided. And if those conditions aren't met,
5 then the price really is not appropriate.

6 Then the -- Mr. Westenhaver can allow the
7 Homeowners Association at Eagle Woods to operate water
8 systems outside of the regulation of this Commission to
9 provide service to the homeowners.

10 My understanding -- and it comes strictly from
11 hearsay -- is that the homeowners are contemplating trying
12 to gain control of their Homeowners Association so they can
13 control their own destiny outside of Mr. Westenhaver. That
14 is another alternative for those folks there.

15 Q. And they would be getting service from a
16 non-regulated entity at that time; is that correct?

17 A. Their Homeowners Association, yes.

18 Q. And hasn't Osage Water Company taken the
19 position in the past that to be served by a regulated
20 utility was much superior for the customers than to be
21 served by a utility that was not regulated by this
22 Commission?

23 A. That was the choice that has been expressed by
24 Osage Water Company. It would not be my personal choice to
25 date, but that has been the company's position in the past.

1 Q. So would you say the customers would be better
2 off served by the Homeowners Association?

3 A. In the short run, they would be. In the long
4 term, I'm not certain that they would be. Because
5 Homeowners Associations tend not to make any provisions for
6 long-term costs.

7 Q. Okay.

8 A. In the short run, their cost of service would
9 be considerably lower.

10 Q. Now, under either of those two scenarios,
11 where, one, the developer agrees to comply with the DNR
12 requirements, convey the facilities back to Osage Water
13 Company, but Osage Water Company can't pay its debts so the
14 customers would be cut off, under that scenario, what
15 happens to Osage Water Company?

16 A. Well, it's either insolvent or bankrupt or
17 both.

18 Q. Okay. Under Scenario No. 2 where you say then
19 there would be no customers of Osage Water Company and the
20 Homeowners Association would be in control, what happens to
21 Osage Water Company then?

22 A. Quite frankly, it's probably better off
23 without an obligation to serve folks with deficient lines
24 because the cost of providing service is going to exceed the
25 revenues Osage Water Company gets under its current rates.

1 The alternative is, as I've said, a very large rate
2 increase.

3 Q. Now, Osage Water Company serves more customers
4 than just those at Eagle Woods; is that correct?

5 A. That's correct.

6 Q. And what happens to those other customers when
7 Osage Water Company can't pay its bills?

8 A. Well, all the customers are faced with the
9 same problem, that if it can't pay its bills, particularly
10 electric bills and the bills necessary for DNR compliance,
11 then they're going to be out of service.

12 Q. And Environmental Utilities in the
13 agreement -- the Operation and Maintenance Agreement was
14 agreeing to operate and maintain -- well, take that back.
15 Not agreeing to maintain, but agreeing to operate all of
16 Osage Water Company's facilities; is that correct? It
17 wasn't just Eagle Woods they were referring to, was it?

18 A. It was all systems. And --

19 Q. And they can cut service off to Osage Water
20 Company for any of its systems for non-payment of service;
21 is that correct?

22 A. Well, the operating agreement could be
23 terminated, yes.

24 Q. And the likelihood being a virtual certainty
25 that Osage Water Company can't pay its bills, would you say

1 it's a virtual certainty that Environmental Utilities will
2 not be being paid for providing service under the Operation
3 and Maintenance Agreement?

4 A. Well, if revenues continue to decline and
5 service -- I mean, the system simply can't be operated with
6 the funds available, then Environmental Utilities will not
7 be able to operate the systems with the revenues available.
8 And I think under those circumstances, I certainly would
9 recommend termination of the Operation and Maintenance
10 Agreement.

11 Q. And the end-use customers in those other
12 certificated areas, what happens to them?

13 A. It would be up to Osage Water Company to find
14 a solution for that. And I don't know that that's possible.
15 As I've said, a debt adjustment is going to be required
16 unless there's a very large rate increase.

17 Q. And assuming that the Eagle Woods subdivision
18 becomes served by the Homeowners Association rather than
19 Osage Water Company, that's even more customers that Osage
20 Water Company would be losing; is that correct?

21 A. That's correct.

22 Q. And that decreases revenues; is that correct?

23 A. And expenses. But, yes, revenues and expenses
24 would both decline.

25 Q. Now, the major expenses that Osage Water

1 Company has are its past due debts, are they not?

2 A. No. For example, when we were here last, you
3 may recall that there were lift station problems at Eagle
4 Woods. The company expended \$1,000 that week to pump the
5 two lift stations down to determine what the problems were.
6 And they were determined to be construction related
7 deficiencies in the system.

8 The \$1,000 is more than Osage Water Company
9 derives from Eagle Woods customer in a month. And those
10 kind of problems have been recurring at Eagle Woods. So,
11 yes, expenses and revenues will both decline with respect to
12 Eagle Woods. Expenses are going to go down more than
13 revenues go down.

14 Q. All right. And I probably stated my question
15 wrong.

16 A. Okay.

17 Q. But monies owed by Osage Water Company are
18 primarily in past due accounts, are they not?

19 A. That's correct.

20 Q. And the day-to-day expenses are very small by
21 comparison to those past due accounts, are they not? Even
22 if you include Eagle Woods.

23 A. Well, in the sense that you're talking about
24 expenses of, you know, ordinary operating expenses in the
25 neighborhood of 14,000, 15,000 dollars a month versus a

1 million dollars in debts, the ratio is that it's much
2 smaller for the ordinary operating expenses, yes.

3 Q. So it's not really the operating expenses that
4 are the major problem for Osage Water Company, it's the
5 accumulated unpaid debts, is it not?

6 A. The operating expenses, I think it's -- it's a
7 very tight operating budget in the sense that the operating
8 expenses are very close to revenues derived and there's not
9 a lot of room for extraordinary repairs such as the well
10 failure repair expenses.

11 And those are something that you would expect
12 not to happen every month, but they would happen. And
13 there's been no reserve available to pay those. If your
14 question is could the business itself be operated on a
15 profitable basis, the answer is yes.

16 Q. Now, let me ask you this. How many customers
17 would Osage Water Company have if it did not have the
18 customers at Eagle Woods subdivision?

19 A. There are 25 at Eagle Woods. Let me think for
20 a moment. My recollection is there's about 311 water
21 customers and all but 50 of those are also sewer customers.
22 So 250 to 260 sewer customers. You'd be taking out 25 of
23 those.

24 Q. Okay. So your ability to remain solvent would
25 depend on under 300 customers supporting payment of all of

1 the debts, plus the operating expenses to serve those
2 customers; is that correct?

3 A. Yes. If you're -- yeah, if you're going to
4 not have any kind of a bankruptcy or foreclosure or other
5 type of debt adjustment that would extinguish old debt,
6 that's where you're at.

7 Q. Could amount to pretty expensive water and
8 sewer service, couldn't it?

9 A. I can tell you as a developer, I'm certainly
10 not in favor of having those rates charged in the
11 subdivisions where I'm trying to sell real estate. It's a
12 little frightening.

13 Q. And in the subdivisions where you're trying to
14 sell real estate, what is the water and sewer situation?

15 A. Well, at Chelsea Rose, I would say it's pretty
16 much unremarkable. You know, the water flows, the sewer
17 goes away and is treated and it's not a significant problem
18 either way.

19 Q. But that's Osage Water Company's territory; is
20 that right?

21 A. That's correct.

22 Q. So it's a real possibility that those
23 customers will, in the near future, either face a
24 significant rate increase or not have water service; is that
25 right?

1 A. No. I don't think so. We pay for the well
2 and the sewer system and I think the service should continue
3 in some form.

4 You know, my suggestion to you, quite simply,
5 is that if rate increases cannot be made and foreclosures
6 cannot be done, that the company should be liquidated. And
7 that, for example, the Chelsea Rose system, there is in the
8 declaration restrictions a Homeowners Association provided
9 for and those systems could go back to the Homeowners
10 Association operation.

11 Q. And who owns those systems now?

12 A. Hurricane Deck Holding Company has legal title
13 to them.

14 Q. And that's you and your parents and your wife?

15 A. We do -- yes, that's the principals of the
16 corporation, yes.

17 Q. Okay. Other subdivisions that you're
18 currently selling real estate in?

19 A. Golden Glade.

20 Q. Any others?

21 A. No, ma'am.

22 Q. And what is the purpose of Environmental
23 Utilities if Osage Water Company customers -- if Osage Water
24 Company can't pay its bills, which you say is a virtual
25 certainty, it can't pay Environmental Utilities. What is

1 the purpose of Environmental Utilities?

2 A. We originally formed it shortly after
3 Mr. Mitchell ceased doing operation and maintenance. We
4 were under the impression at the time that he intended to
5 not do anything further with Osage Water Company.

6 We then looked at the facts and circumstances
7 out there. We were not comfortable with Osage Water Company
8 at that point in time or with providing additional capital
9 to it. We did want to put a water well in on KK. We saw a
10 need to supply water for use at Eagle Woods.

11 The only scenario that I'm aware of where you
12 can build a water well and charge for water service is
13 through a regulated utility environment. It was formed
14 principally for that purpose, so that folks in Eagle Woods
15 could receive water from a public water supply.

16 Q. Okay. And that scenario is not likely to play
17 out the way you thought it would at that time, is it?

18 A. It sure hasn't, no.

19 Q. So what's the current purpose of Environmental
20 Utilities?

21 A. The current purpose is to make sure that
22 service continues to customers.

23 Q. But you've stated that it's a virtual
24 certainty that Osage Water Company won't pay its bills, so
25 Environmental Utilities won't provide the service if that's

1 the case; is that correct?

2 A. Well, if I may postulate a hypothetical, if
3 Osage Water Company were to file a bankruptcy proceeding,
4 there are debts owed. Some of those debts, particularly the
5 legal services debt, has been assigned to Environmental
6 Utilities.

7 It would be a creditor in bankruptcy. It
8 would certainly have a claim. It could request or propose
9 acquisition of assets during the bankruptcy proceeding.
10 That is a scenario which would result in an adjustment of
11 debts to a level where perhaps rates in a reasonable range
12 could be charged where the remaining debt would be paid.
13 That's one scenario.

14 The scenario, of course, that we previously
15 presented to this Commission requesting approval of the debt
16 and foreclosure of it is another way of debt adjustment
17 where the total capital is reduced or outstanding
18 obligations are reduced to a level where current rates would
19 be -- or rates close to current rates would be sufficient
20 with which to satisfy that capital requirement and pay
21 operating expenses.

22 My primary concern with Environmental
23 Utilities is that the business, which as you've indicated
24 and I've testified, is at least marginally cash flow
25 positive, could be continued and protected.

1 Q. And you have taken steps to ensure that your
2 debt and that of Mr. Mitchell are high, if not the highest,
3 on the priority list of debts that would be repaid; is that
4 correct?

5 A. No, ma'am. The highest priority would be
6 federal government taxes. There are judgment liens
7 outstanding out there also. I mean, it's -- there's a lot.

8 Q. Some smaller debts up in front of yours to the
9 government entities. And there is also a judgment --

10 A. Yes.

11 Q. -- against Osage Water Company?

12 And you don't deny --

13 A. At least two.

14 Q. -- that a judgment has some priority in there,
15 do you?

16 A. It has priority, yes, according to the date of
17 the judgment.

18 Q. Before yours?

19 A. Some of -- one of the judgments I'm certain
20 does. I know Mr. Hancock's judgment is after the date of
21 the deed of trust, but of course, litigation has ensued with
22 questions of priority of that deed of trust.

23 Q. And did you and Mr. Hancock negotiate whose
24 debt would have priority between yours and his, since you
25 drafted both documents?

1 A. At the time that we negotiated to settle
2 Mr. Hancock's initial --

3 Q. I'm sorry. I don't mean Mr. Hancock.
4 Mr. Mitchell.

5 A. Oh, did we negotiate? Absolutely.

6 Q. And yours is superior to his; is that correct?

7 A. That was the agreement, yes.

8 COMMISSIONER MURRAY: All right. I think I've
9 covered what I wanted to cover, Judge. Thank you.

10 JUDGE WOODRUFF: Recross based on questions
11 from the Bench then, beginning with Public Counsel.

12 RECROSS-EXAMINATION BY MS. O'NEILL:

13 Q. Good morning, Mr. Williams.

14 A. Good morning.

15 Q. I just want to follow-up hopefully briefly on
16 some information regarding Exhibit 35 and some questions you
17 got from Commissioner Murray.

18 Now, you had some discussion about who would
19 be responsible to the end-use customers in Eagle Woods if
20 there was a disruption of water service. And we talked
21 about corporate responsibility and agency responsibility,
22 but if water service was terminated to Eagle Woods, for
23 example, this weekend, what person would the Osage Water
24 Company customer in Eagle Woods contact about that?

25 A. Well, I'm sure they'd call in on the company's

1 phone line and that would go to Debbie.

2 Q. So they would talk to Debbie Williams about
3 that?

4 A. Yes.

5 Q. And would Debbie Williams answer those
6 questions as an agent of Osage or as the managing member of
7 Environmental Utilities?

8 A. Both.

9 Q. And would the answers to the questions be the
10 same from both of those people?

11 A. I'm sorry. I can't answer that question since
12 the -- you know, it's implicit in the agreement that
13 Environmental Utilities is the managing agent for Osage
14 Water Company and she would be the principal of
15 Environmental Utilities carrying out the obligations under
16 the contract.

17 Q. So Debbie would have the obligation to address
18 the disconnection of water service, period?

19 A. Yes. Of course, at this point in time, the
20 Commission has not approved the Water Supply Agreement.
21 There is no certificate in force for Environmental Utilities
22 and there's no obligation for Environmental Utilities to do
23 anything to provide water to the folks at Eagle Woods and
24 cannot charge for doing it if it does.

25 Q. But Osage Water Company has an obligation to

1 provide water to the people at Eagle Woods?

2 A. In accordance with the terms of its tariff,
3 yes.

4 Q. And you still have a copy of Exhibit 35 in
5 front of you?

6 A. Yes.

7 Q. And could you look at the first page of that
8 exhibit? And could you read for us the third whereas
9 sentence there at the top?

10 A. Okay.

11 Q. Could you read it into the record, please?

12 A. It is in the record.

13 Q. Could you read it out loud, please?

14 A. Which one do you want me to read?

15 Q. The third --

16 A. The one that says that Osage Water does not
17 have a public water supply?

18 Q. That would be the one.

19 A. Okay.

20 Q. Osage Water Company does not own a public
21 drinking water supply for Eagle Woods; is that correct?

22 A. That's correct.

23 Q. But it does have the obligation to provide
24 service?

25 A. In accordance with the terms of its tariff.

1 Q. Is that a yes?

2 A. Yes. In accordance -- only in accordance with
3 the terms of its tariff.

4 Q. And also as the person who is managing, under
5 whatever hat, Osage Water Company, Mrs. Williams has the
6 obligation to pay whoever she's getting that Osage Water
7 Company water from; is that correct?

8 A. That would be correct.

9 Q. And if she deliberately or intentionally
10 failed to pay Environmental Utilities for this water, would
11 that be something that end-user customer in Osage Water
12 could come to her about as Environmental Utilities for
13 violation of her duties?

14 A. Well, you're assuming that she's going to
15 violate a duty when she has the ability to make a payment.
16 And I can tell you that in my experience, she would never do
17 such a thing.

18 Q. If she did.

19 A. Well, I'm not going to speculate on something
20 that I don't think will ever happen.

21 Q. So if she -- but if she did do that --

22 JUDGE WOODRUFF: Your objection is sustained.

23 Please move on.

24 MS. O'NEILL: Okay. Nothing further.

25 JUDGE WOODRUFF: All right. For Hancock?

1 MR. LORAINÉ: May it please the Court and
2 Commission. Your Honor, I'd like to introduce Exhibit 36.

3 JUDGE WOODRUFF: And what is it?

4 MR. LORAINÉ: It's a letter dated November 8th
5 from Osage Water Company signed by Mr. Mitchell to Mr. Ron
6 Westenhaver.

7 JUDGE WOODRUFF: All right. Do you have
8 copies?

9 MR. LORAINÉ: Yes, I do. I don't have them
10 premarked, Judge.

11 (EXHIBIT NO. 36 WAS MARKED FOR
12 IDENTIFICATION.)

13 RECROSS-EXAMINATION BY MR. LORAINÉ:

14 Q. There's been some discussion, Mr. Williams,
15 with Commissioner Murray that there was a recent letter
16 basically giving back the water and sewer lines and
17 explaining your position on that signed by Mr. Mitchell,
18 addressed to Mr. Westenhaver. Exhibit 36, is that that
19 letter?

20 A. Appears to be, yes.

21 Q. All right. Mr. Williams, did you give advice
22 to -- legal advice to Mr. Mitchell to do this?

23 A. We discussed it at length.

24 Q. All right. Did you advise Mr. Mitchell to
25 deed back the sewer line, which is attached to that

1 document, as a sewer line easement?

2 A. Mr. Loraine, I will not testify as to my legal
3 advice to Mr. Mitchell in this proceeding.

4 JUDGE WOODRUFF: I'll take that as an
5 objection and it will be sustained.

6 BY MR. LORAINÉ:

7 Q. Did Mr. Mitchell sign the sewer line agreement
8 and the water line agreement that are attached to this
9 document in your presence?

10 A. I think he did, yes.

11 Q. Does Kris Corum work for your law office?

12 A. No, she does not.

13 Q. Who does she work for?

14 A. Environmental Utilities.

15 Q. All right. On this Exhibit 23 that's already
16 in evidence, it was dated August 27th of 2002. That was
17 your letter to Mr. Dusenberg. Do you have a copy of that?

18 A. Yes.

19 Q. At that time, August 27th of 2002, you had
20 apparently projected that you were going to have problems
21 with the water lines that I guess is the subject matter of
22 Exhibit 36 also; is that true?

23 A. I'm not sure what you mean, Mr. Loraine.

24 Q. All right. There is a -- Mr. Dusenberg's
25 letter talks about some inadequate distribution water lines

1 at Eagle Cove. Do you have that recollection?

2 MS. O'NEILL: Your Honor, I'm going to object.
3 This is beyond the scope of questions from the Bench.

4 JUDGE WOODRUFF: Response?

5 MR. LORAIN: This goes to Exhibit 36, which
6 really was the heart of -- one of the heart of Commissioner
7 Murray's cross-examination of this witness.

8 THE WITNESS: I'll concur with Mr. Loraine's
9 position on that, your Honor. I think it is within the
10 scope of cross.

11 JUDGE WOODRUFF: I'll overrule the objection.

12 BY MR. LORAIN:

13 Q. My question was, Exhibit 23 seems to be
14 related to Exhibit 36 in that regard. Do you agree?

15 A. Yes. May I explain?

16 Q. Please do.

17 A. Earlier in 2002, there had been a problem with
18 the water wells serving Eagle Woods that were conveyed by
19 Mr. Westenhaver or attempted to convey by Mr. Westenhaver.

20 At that time I had contacted Steve Jones of
21 DNR and we had worked out an interim interconnection
22 agreement. DNR required, as part of that interim
23 interconnection agreement, that certain engineering work --
24 and I believe that -- that letter is Exhibit No. 11 -- and
25 that certain engineering work be submitted to them that

1 would document the construction condition of the Eagle Woods
2 water system.

3 Mr. Dusenberg had subsequently sent me a
4 letter, which I'm not certain whether or not it is in
5 evidence, but it was to the effect that they wanted a
6 representation from an engineer that the lines in Eagle
7 Woods had been constructed in accordance with the DNR public
8 drinking water program's standards for construction of
9 public water systems.

10 My letter of August 27th was simply a letter
11 explaining to him that based on the information we were able
12 to obtain from Mr. Westenhaver, those lines had not been
13 constructed in accordance with the public drinking water
14 program's specifications and advising him what problems
15 might reasonably be anticipated in the future and inquiring
16 whether or not DNR wanted those lines to be utilized as part
17 of a public water system or not. And I had not received a
18 reply to that.

19 I did contact Mr. Dusenberg within the last
20 couple of weeks and he advised me that the department had
21 not approved the use of those lines on a permanent basis and
22 probably would not do so.

23 I relayed that information to Mr. Mitchell and
24 based on that, we thought it was appropriate to reject the
25 lines as not being in accordance with the requirements of

1 the contract that Mr. Westenhaver had entered into with
2 Osage Water Company.

3 Q. And there's no doubt in your mind, at least on
4 water application 99-437, which was filed in April 5th of
5 1999 --

6 MR. LORAIN: May I approach the witness?

7 JUDGE WOODRUFF: You may.

8 BY MR. LORAIN:

9 Q. Would my filing information be correct on
10 that?

11 A. This is the certificate application for Eagle
12 Woods.

13 Q. All right. No doubt that No. 5 right on the
14 first page -- pardon me, No. 6 on the first page continuing
15 to the second page talks about the water -- this various
16 water system that we're talking about here?

17 A. Oh, absolutely.

18 Q. So --

19 A. It was contemplated as part of the contract
20 attached to that application that the systems would meet the
21 requirements of DNR and --

22 Q. And, in fact --

23 A. -- they do not.

24 Q. And, in fact, you said that? In an
25 application your wife said that?

1 A. Based on representations -- well, my wife was
2 not involved in that case.

3 Q. I thought she signed that one. Let's see.
4 That was signed by --

5 A. I signed it.

6 Q. -- Mr. Williams as president of Osage Water
7 Company.

8 All right. And, sir, so you had --

9 A. As I was about to finish saying --

10 Q. Go ahead.

11 A. -- that was based on the representations of
12 Mr. Westenhaver and his engineer at the time, Rocky Miller.

13 Q. Okay. And no question at that particular time
14 or shortly thereafter, you took over operation of those
15 water lines?

16 A. Oh, absolutely that is incorrect.

17 Q. Well, when did you start -- when did you start
18 using these water lines?

19 A. After the certificate was granted.

20 Q. What year was that?

21 A. I don't remember.

22 Q. But it certainly was well in advance of 2001,
23 wasn't it?

24 A. No.

25 Q. Well, 2002?

1 A. I --

2 Q. There's been testimony, Mr. Williams, that
3 this was entered into prior to January of 2001, quite in
4 excess of that, that you would operate those water lines; is
5 that correct?

6 A. The company had a limited involvement prior to
7 July of 2001 with those systems. Mr. Westenhaver continued
8 to bill residents of Eagle Woods and collect revenues from
9 residents of Eagle Woods until some time in the fall of
10 2001. And I believe it may have been December before actual
11 control went to the company.

12 Q. No question, those water lines were used?

13 A. Somebody was using them.

14 Q. All right. And at least as of the certificate
15 case that reflects the filing in 99-437, whenever that was
16 approved, you were serving that water through OWC; isn't
17 that true?

18 A. No.

19 Q. Who was?

20 A. Mr. Westenhaver was continuing to operate the
21 systems and bill the customers until the fall of 2001.

22 Q. Okay. Fall of 2001. And in August of 2001,
23 you filed the application in WA-2000-265?

24 MR. LORAIN: Judge, may I approach the
25 witness?

1 JUDGE WOODRUFF: You may.

2 BY MR. LORAIN:

3 Q. Is my filing date correct, August 6th on that?

4 A. Yes.

5 Q. And then in regards to these same water lines,

6 No. 6 tells us once again that OWC believes and testified

7 before this Commission that these water lines are adequate

8 for the purposes --

9 A. Absolutely not.

10 Q. What does it say?

11 A. These are different water lines. These are

12 the lines in Golden Glade. They are constructed to meet DNR

13 specifications that are referred to in the Golden Glade

14 water application by Environmental Utilities. Those are not

15 the water lines in Eagle Woods.

16 Q. So the water lines that are referred to in

17 2000-265 application, where do they start and where do they

18 stop?

19 A. I'm sorry. The Eagle Woods application or the

20 Golden Glade application?

21 Q. I'm sorry. The 2000-265 case. That would be

22 the one I just showed you.

23 A. The Golden Glade case?

24 Q. Yes.

25 A. Those water lines were constructed under a DNR

1 permit that -- and there's approved plans and
2 specifications. The water lines run from the water well on
3 the west -- I'm sorry east side of the Golden Glade
4 development to Lot 1 on the west end of the Golden Glade
5 development. Lot 1 of Golden Glade is separated from Lot 1
6 of Eagle Woods by a 40-foot strip of land.

7 Q. So they tie into the same piping system or
8 distribution system, if you want to --

9 A. The Golden Glade water line ends -- the one
10 that was approved and built according to DNR specifications,
11 ends at the end of Golden Glade.

12 Q. And that's the one that your company built,
13 OWC?

14 A. That's the one that I built as the developer
15 of Golden Glade.

16 Q. And I believe at least there's been some
17 controversy in the past between Mr. Hancock and you about
18 that particular well and that system?

19 MS. O'NEILL: Your Honor, I'm going to object.
20 This goes beyond the scope of questions from the Bench.

21 JUDGE WOODRUFF: I believe it does.
22 Sustained.

23 MR. LORAIN: I agree it does. Thank you.

24 BY MR. LORAIN:

25 Q. Mr. Williams, do you agree that the

1 transfer -- you used the word tender, but do you agree that
2 transfer of the two quick claim deeds on Exhibit 36 which
3 are attached to there has legal significance?

4 A. I'm not sure I understand your question.

5 Q. Let's break it up. The water line easement
6 that's attached to Exhibit 36, that is a document that deeds
7 back a water line easement signed by OWC's president,
8 Mr. Mitchell?

9 A. That's correct.

10 Q. And it goes back to Mr. Westenhaver's
11 Homeowners Association; is that true?

12 A. The Eagle Woods Homeowners Association.

13 Q. And that has legal significance?

14 A. I believe it does.

15 Q. And the same question I would ask you in
16 regards to the sewer line easement, which is also attached
17 to this Exhibit 36, dated the 11th day of November and that
18 is signed by Mr. Mitchell and it goes back to the Eagle
19 Woods Homeowners Association and it conveys the sewer line
20 easement and it has legal significance. Would you agree?

21 A. Yes.

22 Q. And these documents are filed of record, are
23 they?

24 A. Not to my knowledge.

25 Q. You've made them so they can be filed of

1 record if the person that you conveyed them to wishes to do
2 so? They've been notarized?

3 A. I believe they're recordable.

4 Q. All right. So they do transfer OWC assets, do
5 they not?

6 A. No.

7 Q. Why not?

8 A. The lines do not meet the requirements of the
9 tariff.

10 Q. Well, I understand that. And whether or not
11 they meet the -- the tariff requirements or not, they were
12 properties that were, in fact, received by OWC at a prior
13 time. Do you agree with that statement?

14 A. They're properties that have no value.

15 Q. And they were received by someone else at an
16 earlier time by OWC in the same format, in deeds. True?

17 A. Yes.

18 Q. So now we've got transfer of assets, according
19 to your testimony -- and I don't want to misquote that, but
20 no value assets that were transferred back to the Homeowners
21 Association from OWC; is that true?

22 A. Those are liabilities, they're not assets.

23 Q. Nevertheless, they were transfers. Do you
24 agree with that?

25 A. They are what they are.

1 Q. All right. And isn't that similar or akin to
2 the same issue that was decided in the Camden County case
3 where deeds of trust were conveyed without permission of
4 this Commission?

5 A. No.

6 Q. Why do you draw a distinction on those?

7 A. These systems were rejected under a warranty
8 which had not been honored by the developer.

9 Q. Still --

10 A. There's nothing at all similar between the two
11 factual situations.

12 Q. Still conveyed property from OWC to
13 Mr. Westenhaver's association. Do you agree with that?

14 A. Rejected property.

15 Q. Well, Mr. Williams, a deed conveys something,
16 doesn't it?

17 MS. O'NEILL: Your Honor, I'm going to object.
18 This is cumulative and I think this is also going beyond the
19 scope of questions from the Bench.

20 JUDGE WOODRUFF: I think it's within the
21 scope. It has been asked and answered. I'll sustain the
22 objection.

23 BY MR. LORAIN:

24 Q. Mr. Williams, one follow-up question on
25 Mrs. Murray. She said something about bankruptcy was one of

1 the solutions. Have you and Mr. Mitchell discussed that for
2 OWC?

3 A. I will not testify to my conversations with
4 Mr. Mitchell. And I think that question is asked and
5 answered in the record already.

6 JUDGE WOODRUFF: It was in the record from
7 last week -- or whenever last we were here. I'll sustain
8 the objection.

9 MR. LORAIN: All right. I have nothing
10 further, Judge.

11 JUDGE WOODRUFF: Okay. Mr. Williams, do you
12 wish to make any statements as cross of yourself?

13 MR. WILLIAMS: No, your Honor.

14 JUDGE WOODRUFF: All right. Then redirect
15 from Staff.

16 MR. KRUEGER: Thank you, your Honor.

17 REDIRECT EXAMINATION BY MR. KRUEGER:

18 Q. Good morning, Mr. Williams.

19 A. Good morning, Mr. Krueger.

20 Q. You testified about your ability to provide --
21 or Osage Water Company's ability to provide service to Eagle
22 Woods if you don't have properly constructed lines. Do you
23 remember that testimony?

24 A. Vaguely.

25 Q. Is it your testimony that Osage Water Company

1 cannot provide safe and adequate service to Eagle Woods
2 because the lines are not properly constructed?

3 A. It would be my testimony that Osage Water
4 Company needs lines constructed in accordance with
5 requirements of its tariff, which include, by reference, the
6 DNR regulations in order to provide safe and adequate
7 service. And it does not presently have such lines.

8 Q. So is Osage Water Company presently unable to
9 provide safe and adequate service to Eagle Woods?

10 A. No. It's perfectly able if someone wants to
11 meet the requirements of its tariff.

12 Q. Is it presently able to do that?

13 A. It presently may provide service if someone
14 meets the requirements of the tariff.

15 Q. But no one has done that. Is that your
16 testimony?

17 A. That is correct.

18 Q. And how soon could someone do that?

19 A. I don't know the answer to that question.
20 That would depend principally upon the Department of Natural
21 Resources public drinking water program. It's not something
22 that from a physical construction standpoint would require a
23 large amount of time.

24 Q. But as of the present time, you cannot provide
25 safe and adequate service?

1 A. No, I did not say that.

2 Q. Explain the distinction, please.

3 A. The safe and adequate service implies
4 compliance with the tariff. Osage Water Company is able to
5 provide service if someone wants to comply with the tariff.
6 Mr. Westenhaver does not.

7 Q. Nor has anyone else?

8 A. I have not heard from anyone else this week
9 with regard to that.

10 Q. Okay. Thank you.

11 In response to questions from Commissioner
12 Murray, you talked about the advantage of providing service
13 as a regulated water company -- water or sewer company as
14 compared to Homeowners Association. Do you recall that
15 testimony?

16 A. I remember briefly discussing it, yes.

17 Q. Did you testify that the Homeowners
18 Associations often cannot or do not provide for long-term
19 costs associated with operating a utility system?

20 A. Historically, that has been a problem. DNR
21 has addressed that with some new regulations that require
22 them basically to structure rates very similar to what the
23 PSC does where you establish reserves for emergency repairs
24 which, of course, the PSC does not do, but you also
25 establish depreciation reserves and things of that sort.

1 So the current DNR regulations are very
2 similar in concept to what should go on at the Public
3 Service Commission in rate-making. So, you know,
4 historically Homeowners Associations have not done that, but
5 they are required to now.

6 Q. Has Osage Water Company done that?

7 A. Tried.

8 Q. Has Osage Water Company done that?

9 A. Not been successful in getting those rates
10 approved by the Commission.

11 Q. So Osage Water Company has not adequately
12 provided for long-term costs either?

13 A. It requested in its last rate request from the
14 Commission \$308,000 in annual revenue and was approved for
15 approximately \$160,000 in annual revenue. The difference
16 being what we would consider to be necessary to provide a
17 better quality of service and provide adequate reserves for
18 emergencies, contingencies and provide a return on capital
19 and that's a problem. The company has asked, it has not
20 been given what it has asked for.

21 Q. So would I be correct to summarize that by
22 saying that you wish that you could and tried to and asked
23 the Commission for sufficient money to do so, but you are
24 not able to adequately provide for long term?

25 A. Company is ready, willing and able, but the

1 Commission has not approved it to do so.

2 Q. You were asked earlier about where in the
3 regulations of the Commission is the developer required to
4 warranty the facilities for a period of one year. Correct?

5 A. I was asked that question, yes.

6 Q. And you do not know the answer?

7 A. I do not know sitting on the stand today.

8 That's the sort of thing I usually look up in a book.

9 Q. Okay. I'd like to ask, if you would, please,
10 to do so and bring the answer to that question at the next
11 opportunity.

12 A. If you want to take about a three-minute
13 recess, I'll be glad to get it out of the box.

14 JUDGE WOODRUFF: We're due for a recess
15 anyway. I'll provide you with a Bench copy of the
16 regulations.

17 THE WITNESS: Thank you, sir.

18 MR. LORAIN: What was the question, Keith?

19 MR. KRUEGER: Where in the --

20 THE WITNESS: Hold on. I think we got it
21 here.

22 JUDGE WOODRUFF: It's on the final paragraph
23 of page 2 of 36. There's a citation to a CSR.

24 THE WITNESS: Oh, yes. Here we go. It would
25 be at 4 CSR 240-60.020, subparagraph 6 in the Commission's

1 regulations.

2 BY MR. KRUEGER:

3 Q. Okay. Thank you.

4 Environmental Utilities presently collects all

5 revenues received by Osage Water Company; is that correct?

6 A. To the best of my knowledge.

7 Q. And pays bills of Osage Water Company?

8 A. Yes.

9 Q. Is it able to pay all bills of Osage Water

10 Company?

11 A. Absolutely not.

12 Q. How does it determine which bills to pay

13 first?

14 A. Well, the primary bills are those that are

15 required to continue operation and maintenance of the

16 system -- systems.

17 Q. Am I correct to understand that your wife is

18 paid a salary of \$3,000 per month?

19 A. Yes.

20 Q. By Environmental Utilities?

21 A. Yes.

22 Q. Is that the first bill paid?

23 A. No.

24 Q. What is paid ahead of that?

25 A. Almost everything.

1 Q. Has she been regularly paid?
2 A. No.
3 Q. How far in arrears is it?
4 A. I don't know the answer to that, but I know
5 that her paycheck is irregular and it depends on whether or
6 not revenue is available. That's the last operating
7 expense -- regular operating expense that she pays.
8 Q. So am I correct to understand then that what
9 you pay is the operating expenses and with nothing available
10 for debt?
11 A. That's correct.
12 Q. And that --
13 A. Electric bills get paid first, postage and
14 billing expenses would probably be second in line. The
15 field staff and the billing clerk would be next in line.
16 She would be somewhere after that.
17 Q. Okay. Thank you.
18 A. And there's nothing left.
19 MR. KRUEGER: Thank you. That's all the
20 questions I have.
21 JUDGE WOODRUFF: All right. And we are due
22 for a break.
23 Before we do that, Exhibit 36 I show it as
24 being -- I don't show it as being offered.
25 MR. LORAIN: I move for the introduction of

1 that, Judge.

2 JUDGE WOODRUFF: Exhibit 36 has been offered.
3 Are there any objections to its receipt?

4 Hearing none, it will be received into
5 evidence.

6 (EXHIBIT NO. 36 WAS RECEIVED INTO EVIDENCE.)

7 MR. KRUEGER: Your Honor, I brought with me
8 this morning copies of the document that was identified as
9 Exhibit 28, the drawing that Martin Hummel made. I have
10 reduced that down to an 8 1/2 by 11 size and I'd like to
11 offer that at this time.

12 JUDGE WOODRUFF: All right. Well, it was
13 offered and admitted at that time, we just didn't have
14 copies of it. So if you want to go ahead and distribute it
15 then.

16 MR. KRUEGER: Thank you, your Honor.

17 MR. WILLIAMS: Your Honor, am I excused under
18 the subpoena?

19 JUDGE WOODRUFF: I believe so.

20 MR. WILLIAMS: Thank you, your Honor.

21 JUDGE WOODRUFF: You may leave the chair.

22 MR. WILLIAMS: Thank you, your Honor.

23 JUDGE WOODRUFF: And we are going to take a
24 break and we will come back at 10:20.

25 (EXHIBIT NO. 28 WAS MARKED FOR IDENTIFICATION)

1 BY THE COURT REPORTER.)

2 (A RECESS WAS TAKEN.)

3 JUDGE WOODRUFF: I believe when we left off
4 last time, Mr. Mitchell was on the stand with Public Counsel
5 cross-examining. So if you want to come up, Mr. Mitchell.
6 And you were sworn last week so you're still under oath.

7 You may inquire.

8 WILLIAM P. MITCHELL, having been previously sworn, testified
9 as follows:

10 CROSS-EXAMINATION BY MS. O'NEILL:

11 Q. Mr. Mitchell, how are you doing this morning?

12 A. Just fine.

13 Q. Okay. You recall the last time that we were
14 in session with you the last time, we were talking about
15 that Pettis County lawsuit. You remember that?

16 A. Vaguely.

17 Q. Okay. And you testified regarding what you
18 believed was the reason why you and Osage Water Company were
19 named in that lawsuit regarding West 16th Street Sewer
20 Utility?

21 A. I don't recall specifically, but --

22 Q. Do you recall why you were named in that?

23 Maybe you can -- maybe --

24 A. You'd have to --

25 Q. -- that would be a good place to start. Why

1 don't you tell us why that is?

2 A. You'd have to ask DNR that question, because
3 we didn't initiate the lawsuit.

4 Q. That's true. Now, you're named however; is
5 that correct?

6 A. That's correct.

7 Q. Osage Water Company is named?

8 A. That's correct.

9 Q. And Osage Water Company does not actually
10 serve any customers in Pettis County?

11 A. That's correct.

12 Q. And this lawsuit is related to a problem with
13 the -- I think you said -- West 16th Street Sewer Utility
14 Company?

15 A. That's correct.

16 Q. And the incident or incidences that are the
17 basis for that complaint, when they are alleged to have
18 occurred?

19 A. Summer of 2000.

20 MR. WILLIAMS: Your Honor, I'm going to object
21 to this line of questioning as being outside the scope of
22 the issues raised in the complaint in this matter unless she
23 can tie it into somehow that's in the complaint.

24 MS. O'NEILL: I'm about to try to do that,
25 your Honor.

1 JUDGE WOODRUFF: I'll let you go forward a
2 little bit further.

3 You may renew your objection if you feel it's
4 appropriate.

5 MR. WILLIAMS: Thank you, your Honor.

6 BY MS. O'NEILL:

7 Q. During that time period, you were the
8 designated licensed operator for that utility company; isn't
9 that correct?

10 A. For which utility company?

11 Q. West 16th Street Sewer Company.

12 A. Yes.

13 Q. And you, in your qualifications in the
14 certificate case for Osage Water Company WA-99-437 that
15 there's been some testimony about in this case, which is the
16 certificate case regarding Eagle Woods, you mentioned that
17 contract operator status -- your designated license operator
18 status as one of your qualifications; is that correct?

19 A. I don't specifically recall that testimony.

20 Q. Would you like to take a look at the testimony
21 and see if it refreshes your recollection?

22 MR. WILLIAMS: Your Honor, I'm going to renew
23 my objection. This still doesn't go to any issue raised in
24 the complaint.

25 JUDGE WOODRUFF: Can you tell me how this is

1 going to relate?

2 MS. O'NEILL: Yes. We're talking about
3 whether or not Osage Water Company is providing safe and
4 adequate service. A lot of things have come up recently
5 regarding -- recently as in this morning in this proceeding
6 regarding the Eagle Woods problems and this is related to
7 Eagle Woods issues.

8 JUDGE WOODRUFF: The problems in Sedalia are
9 related to this Eagle Woods? Is that what you're telling
10 me?

11 MS. O'NEILL: One of the issues in this case
12 is whether or not the Osage Water Company, which of course
13 is a small company, operations being passed among evidently,
14 according to the testimony, of basically three people
15 including Mr. Mitchell, is qualified to provide service.
16 And this goes into qualifications.

17 JUDGE WOODRUFF: Going to his qualifications
18 as operator?

19 MS. O'NEILL: Yes.

20 MR. LORAIN: Also, your Honor, it goes to the
21 competence and that's really where she's going with this
22 qualification issue. It goes to the competence and maybe
23 even to choices that they make for whatever reasons they
24 make.

25 MS. O'NEILL: And actually this is a

1 preliminary matter actually. I want to get into Eagle
2 Woods. I don't really want to spend a lot of time on this.
3 I wouldn't be offering to show him the testimony if he could
4 remember what he said.

5 MR. WILLIAMS: Your Honor, you've asked to
6 expedite this proceeding. As the Respondent, I get to go
7 last. I think either she can get to the heart of the matter
8 and get into it and get out or she needs to stay away from
9 it.

10 JUDGE WOODRUFF: I'm going to sustain the
11 objection. If you wish to get into matters that are
12 relevant to the determination that we're faced with today,
13 you can go into that. Nobody's showing me anything about
14 how the incident in Sedalia is relevant to anything as far
15 as today, so go ahead.

16 BY MS. O'NEILL:

17 Q. Now, at the time of the application in
18 WA-99-437, you were involved with Osage Water Company at the
19 time of that application. Correct?

20 A. That's the Eagle Woods?

21 Q. Eagle Woods.

22 A. Yes.

23 Q. And you filed testimony in that case; is that
24 correct?

25 A. Yes.

1 Q. And at the time of that application you
2 proposed that Osage would construct sewer treatment systems
3 for Eagle Woods and for Golden Glade; is that correct?
4 A. Treatment plants, yes, not sewer systems.
5 Q. Did you construct the treatment plant?
6 A. Yes.
7 Q. You, personally?
8 A. Yes.
9 Q. At KK?
10 A. The first phase.
11 Q. And at that time you were the person operating
12 Osage Water Company?
13 A. Yes.
14 Q. And currently the Missouri Attorney General's
15 office has also filed a lawsuit against Osage Water Company
16 regarding that KK treatment plant; is that correct?
17 A. No.
18 Q. It's not regarding the KK treatment plant?
19 A. No.
20 Q. What's it regarding?
21 A. It's regarding illegal hook-ups by customers
22 to that -- in Golden Glade to the sewer main, which has
23 nothing to do with the treatment plant.
24 Q. Where does the sewage in the sewer main go?
25 A. Pardon me?

1 Q. Where does the sewage in those sewer mains go?
2 A. Goes to the treatment plant.
3 Q. Okay.
4 A. Instead of into the lake, which is where it
5 would go if they didn't hook up.
6 Q. That lawsuit alleges that Osage Water Company
7 is violating the Missouri Clean Water Act. Correct?
8 A. I believe that's what it says.
9 Q. And that's currently pending in Camden County?
10 A. Yes. That's where it's filed.
11 Q. And that's related to a service territory that
12 Osage Water does have?
13 A. Yes, I believe you're correct.
14 Q. It's at least in a certificated area that
15 Osage Water has?
16 A. Yes. Yes, it is a sewer certificated area.
17 Q. And you are personally named as a Defendant in
18 that case?
19 A. Sure. I have no idea why, but --
20 Q. So is Greg Williams?
21 A. Yes.
22 Q. So is Debra Williams?
23 A. Yes.
24 Q. So is the Golden Glade Landowners Association?
25 A. I believe so.

1 Q. Did the violations of the Clean Water Act at
2 the KK sewer system happen while you were operating Osage or
3 after you stopped being involved in the operations of Osage?

4 A. I don't know. The customers illegal -- excuse
5 me -- the houses were illegally hooked up by the homeowners
6 some time in the past without our consent or knowledge.

7 Q. You had --

8 A. So I don't know when it was that they did
9 that.

10 Q. Are the Golden Glade customers being billed
11 for sewage service by Osage Water Company?

12 A. Not to my knowledge. Not while I was in
13 charge anyway.

14 Q. You plan to contest the allegations in the
15 Camden County lawsuit?

16 A. Of course.

17 Q. Do you plan to claim as part of your defense,
18 that you had no part in any violations that may have
19 happened in that case?

20 A. I have not formulated an opinion on what my
21 defense is going to be.

22 Q. Is your defense going to be that you have
23 disassociated yourself with Osage Water Company?

24 MR. WILLIAMS: Your Honor, I'm going to object
25 to this, asking the witness to specify what his answer or

1 defenses may be in another pending lawsuit.

2 JUDGE WOODRUFF: I'll sustain the objection.

3 BY MS. O'NEILL:

4 Q. Is Mr. Williams representing you in that case?

5 A. No. I've not acquired any representation as
6 of this point. Nothing's been filed as an answer in the
7 case that I'm aware of.

8 Q. As the president of Osage Water Company, what
9 level of legal costs for defending this suit will you seek
10 to recover from Osage Water customers?

11 A. I have no idea what the costs of defending the
12 suit will be. We have not retained counsel for that
13 purpose.

14 Q. Do you intend to seek recovery for whatever
15 those legal costs are from your Osage Water Company
16 customers?

17 MR. WILLIAMS: Your Honor, I'm going to object
18 to that as outside the scope of the pleadings in this
19 complaint case.

20 JUDGE WOODRUFF: I'm going to overrule it. It
21 seems to be relevant to the future finances of Osage Water.

22 You can answer it, if you can.

23 THE WITNESS: If Osage Water Company is found
24 innocent, I certainly will.

25 BY MS. O'NEILL:

1 Q. What if they're found liable?

2 A. I'll have to think about it and re-evaluate at
3 that point.

4 Q. You're not going to rule that out at this
5 point?

6 A. I'm not going to rule it in either.

7 Q. Neither one?

8 A. Neither in nor out.

9 Q. Okay. When a sewer treatment plant leaks and
10 violates the Clean Water Act, would you agree that this
11 would threaten the ability of the customers to receive safe
12 and adequate service?

13 A. No. It depends.

14 Q. Do you believe that customers are receiving
15 safe service if their sewage treatment plant is leaking
16 water in violation of the Clean Water Act?

17 A. Maybe. It depends on what the violation is.
18 If the leak is producing water that is -- meets the
19 standards for discharge, there's obviously no harm even
20 though it might be a violation.

21 Q. Well, a violation of the Clean Water Act would
22 require that the leak be of insufficiently treated effluent
23 of some sort, wouldn't it?

24 A. No.

25 Q. It wouldn't be a violation otherwise?

1 A. Yes, it would be. If a sewer treatment plant
2 bypass any particular function of the sewer plant itself,
3 it's determined as a bypass and to be a violation whether it
4 meets the standards or not. If you'd look at the case in
5 Sedalia, you would see that that was the case.

6 Q. You would see that -- I would see that the
7 case in Sedalia was that there was no danger to customers.
8 Is that what your testimony is today?

9 A. Yes.

10 Q. And that's the problem that you sent your
11 Osage Water Company employees over to look at that they
12 weren't able to fix?

13 A. No. They went there to fix a sewer line. The
14 owner of the system was running a pump, was pumping it down.
15 The DNR grabbed a sample of that and it met standards.

16 Q. And so they issued a violation notice?

17 A. Because it was not flowing through the
18 treatment plant as the treatment plant was designed.

19 MS. O'NEILL: May I approach the witness?

20 JUDGE WOODRUFF: You may.

21 BY MS. O'NEILL:

22 Q. Mr. Mitchell, I've handed you a copy of what's
23 in evidence as Exhibit 36. You recognize this letter?

24 A. Yes.

25 Q. Did you sign this letter?

1 A. Yes.

2 Q. Did you write the letter?

3 A. This is the second or third draft of the
4 letter. I made suggestions and comments through the
5 drafting process, but I did not actually type the letter.

6 Q. Did you write the letter? Did you compose the
7 letter?

8 A. Parts of it.

9 Q. Parts of it were composed by other people?

10 A. Yes.

11 Q. Greg Williams?

12 A. Yes.

13 Q. Debra Williams?

14 A. I have no idea. I don't think so.

15 Q. To your knowledge, anybody besides you or Greg
16 Williams?

17 A. I don't know that it wasn't, but I don't know
18 that it was.

19 Q. You only have the knowledge of those two
20 people?

21 A. I only contacted -- I was only working with
22 Greg Williams on the drafting of the letter.

23 Q. Did Greg help you -- did Greg work with you
24 drafting this letter as a fellow owner of Osage Water or as
25 your attorney?

1 A. As an attorney.

2 Q. Now, this letter deals with an area where
3 Osage Water Company has a certificate to provide water
4 service. Correct?

5 A. That's correct.

6 Q. And sewer service?

7 A. That's correct.

8 Q. Eagle Woods. Correct?

9 A. Yes.

10 Q. When Osage received those certificates, would
11 you agree that Osage also incurred the obligation to provide
12 safe and adequate water and sewer service to that
13 subdivision?

14 A. Under the terms and conditions of the tariff.

15 Q. Would you agree that statutorily if you have a
16 certificate, you have an obligation to provide safe and
17 adequate service to your customers?

18 A. Under the terms and conditions of the tariff.

19 Q. Is that a yes or a no?

20 A. The company has obligation to provide service
21 under the terms and conditions of the tariff, not under any
22 condition whatsoever.

23 Q. As the company with the tariff -- who has to
24 operate under the tariffs, does the company incur an
25 obligation to make sure that the service is in compliance

1 with the tariffs?

2 A. That the service is in compliance with the
3 tariffs?

4 Q. Yes.

5 A. Yes.

6 Q. It's your obligation as the company?

7 A. Best of our ability, that's what we do.

8 Q. And, in fact, Osage Water has been providing
9 water and sewer service in Eagle Woods for some time now?

10 A. Making an attempt at it.

11 Q. Been billing the customers there for water and
12 sewer service for some time now?

13 A. Yes. Over my objection, but yes.

14 Q. But you were no longer involved in the
15 operations of the company during that period of time. Is
16 that your testimony?

17 A. I'm not the sole owner of the company. I
18 can't dictate what it does and doesn't do.

19 Q. Because you only have a 50 percent vote?

20 A. That's correct.

21 Q. And that's --

22 A. And -- well, at the time, only one out of
23 three director seats.

24 Q. And this would be a shareholder decision that
25 would require more than 50 percent vote of shareholders?

1 A. It was -- no, it was more of a director's
2 level decision.

3 Q. And in any event, you were no longer operating
4 the company personally?

5 A. I was not doing operation and maintenance at
6 the time, but I was familiar with the construction of the
7 system.

8 Q. And constructed the sewage treatment plant to
9 which the sewer system in Eagle Woods was connected; is that
10 correct?

11 A. The first phase.

12 Q. Exhibit 36 is a letter whereby you attempted
13 to transfer water and sewer systems to the Eagle Woods
14 Homeowners Association; is that correct?

15 A. Returning the easements that were fraudulently
16 transferred to Osage Water under representation that
17 everything was constructed properly.

18 Q. The letter says, Enclosed is a deed returning
19 to the Eagle Woods Homeowners Association -- enclosed is a
20 deed returning to the Eagle Woods Homeowners Association,
21 Incorporated the water and sewer systems heretofore conveyed
22 by you to Osage Water Company. First paragraph; is that
23 correct? First paragraph, first page.

24 A. That's what the letter says. I didn't put the
25 word "fraud" in the letter. I thought that might be

1 inappropriate, but I thought it was fraudulently transferred
2 to Osage Water Company due to the deficiencies in the
3 systems.

4 Q. If you could turn to page 4 of that letter --
5 now, this -- well, since you threw it out there, are you
6 alleging that the Osage Water Company customers in Eagle
7 Woods subdivision committed fraud against Osage Water
8 Company?

9 A. No. Ron Westenhaver did.

10 Q. So not the customers?

11 A. Right. They're just pawn -- they're just
12 pawns in the whole thing.

13 Q. Page 4 of the letter, are you there?

14 A. Yeah.

15 Q. It says, Osage Water will no longer accept
16 wastewater from Eagle Woods for treatment at the KK
17 treatment plant; is that correct?

18 A. That's what it says.

19 Q. Also down a little bit further in that
20 paragraph, Osage Water Company will not provide water
21 utility service at Eagle Woods; is that correct?

22 A. That's what it says.

23 Q. And who will suffer from the refusal to
24 provide water and sewer service?

25 A. Well, the people that will not suffer is the

1 other 500 customers of Osage Water Company that don't have
2 to subsidize the 25 customers that are in Eagle Woods.

3 Q. Who will suffer?

4 A. I don't think anybody -- Ron Westenhaver will
5 probably suffer.

6 Q. Will the customers of Eagle Woods suffer if
7 you turn off their water and sewer?

8 A. I don't know.

9 Q. Have you turned it off?

10 A. No.

11 Q. Are you planning to turn it off?

12 A. I would like to turn it off personally, yes.

13 Q. Are you planning to turn it off?

14 A. That's up to DNR.

15 Q. Would you be willing to --

16 A. Turn it off? Yes.

17 Q. Would you be willing to agree to this
18 Commission that you will not turn off that service while
19 this proceeding is pending?

20 A. No.

21 Q. If the Commission directed you not to turn it
22 off, would you turn it off?

23 A. Possibly.

24 Q. In violation of a direct Commission order?

25 A. If DNR orders me to turn it off, I'll turn it

1 off. They have \$10,000 a day penalties for doing things,
2 and I'm going to do what they say to do.

3 Q. And do you have any documents from DNR saying
4 that they want you to turn off this water and sewer service
5 to Eagle Woods customers?

6 A. DNR wants the violations from the Eagle Woods
7 system to stop.

8 Q. But they don't want you to stop serving the
9 customers in Eagle Woods, do they?

10 A. DNR doesn't want any sewage spilled on the
11 ground. That's -- or released where it might harm the
12 public. And there are other methods of achieving that goal
13 other than treating it through the Osage Water Company's
14 treatment plant.

15 Q. Would you say that sewage is more or less
16 likely to be spilled on the ground if you turn off service?

17 A. I have no idea.

18 Q. Well, you have engineering training, don't
19 you?

20 A. There are also pump trucks out there that can
21 haul the stuff off.

22 Q. Do you have engineering training?

23 A. Yes.

24 Q. And your engineering training, would that tell
25 you that it's more or less likely that sewage would flow on

1 the ground if the sewer service is shut off?

2 A. It would -- it would depend entirely on a
3 hauling service, which operated for months and months and
4 months in the same area before we accepted the wastewater
5 into the treatment plant to resume, and the ability of
6 Mr. Westenhaver to coordinate that and pay for it. Not --
7 there's no engineering reason why any of it should spill.

8 Q. Mr. Westenhaver doesn't hold a certificate to
9 provide sewer service in Eagle Woods?

10 A. He doesn't need to. He has a Homeowners
11 Association. It doesn't require PSC regulations.

12 Q. He doesn't have a certificate, does he?

13 A. He's not required to have a certificate. He
14 has no certificate.

15 Q. You have a certificate to provide service to
16 Eagle Woods?

17 A. Osage Water Company has a certificate.

18 Q. And that's you and Mrs. and Mrs. Williams?

19 A. I'm the president of Osage Water Company.

20 Q. But you're not Osage Water Company?

21 A. No.

22 Q. There is no actual living, breathing person
23 who is Osage Water Company?

24 A. That's the definition of a corporation.

25 Q. And there's no actual living, breathing person

1 who has any responsibility for Osage Water Company?

2 A. The corporation does. In the eyes of the law,
3 that is a living, breathing person.

4 Q. And you, Mr. Williams and Mrs. Williams are
5 the corporation; is that correct?

6 MR. WILLIAMS: Your Honor, I'm going to object
7 to counsel misstating the law. That is a gross misstatement
8 of the law, the statements with respect to corporations.
9 And it's improper to ask this witness to either affirm or
10 deny an improper statement of law.

11 MS. O'NEILL: Your Honor --

12 JUDGE WOODRUFF: I'll sustain your objection.

13 MS. O'NEILL: -- if I may be heard.

14 JUDGE WOODRUFF: You may be heard.

15 MS. O'NEILL: We've heard nothing but it's
16 Osage Water's responsibility, it's Environmental Utilities'
17 responsibility, it's Hurricane Deck's property, when, in
18 fact, these are small, closely held corporations.

19 The people involved in Osage Water Company,
20 including this witness and Mr. Williams and Mrs. Williams,
21 because that's all there really are, having been trying to
22 hide behind corporate veils to avoid assuming any
23 responsibility or any obligation to the customers of Osage
24 Water Company and that's what this question's about.

25 JUDGE WOODRUFF: The question itself was

1 improper. I understand what you've stated. He is not the
2 corporation. He may be a principal of the corporation, he
3 may be a shareholder of the corporation. If you want to ask
4 him about that -- and I think that's already been asked and
5 answered many times today. The objection to your specific
6 question is sustained.

7 MR. WILLIAMS: Thank you, your Honor.

8 BY MS. O'NEILL:

9 Q. Has Osage Water Company applied for permission
10 to this Commission to transfer the systems to anyone in
11 Eagle Woods?

12 A. Have we applied to transfer the Eagle Woods
13 systems to anyone?

14 Q. Right.

15 A. There's been no filing with the Public Service
16 Commission that I'm aware of since the certificate was
17 granted dealing with Eagle Woods systems specifically.

18 Q. So that would be no?

19 A. That's correct.

20 Q. Has Osage Water Company received permission
21 from the Missouri Public Service Commission to stop
22 providing water service at Eagle Woods?

23 A. It hasn't asked.

24 Q. Has it received their permission?

25 A. No.

1 Q. Has it received permission to stop providing
2 sewer service at Eagle Woods?
3 A. No. Hasn't asked.
4 Q. Has Osage Water Company found an alternative
5 qualified service provider or providers for Eagle Woods for
6 water or sewer service?
7 A. City of Osage Beach has a sewer line directly
8 across the street.
9 Q. Has Osage Water Company made any arrangements
10 with the City of Osage Beach to begin providing that
11 service?
12 A. That's up to Mr. Westenhaver. But the City of
13 Osage Beach has stated in the past they're ready, willing
14 and able.
15 Q. Has Osage Water Company made any of those
16 arrangements?
17 A. No.
18 Q. Has Osage Water Company terminated maintenance
19 of any of the water lines or sewer lines in the Eagle Woods
20 subdivision?
21 A. Yes.
22 Q. It's no longer maintaining them?
23 A. Haven't been out there since yesterday.
24 Q. Will you be out there again?
25 A. No.

1 Q. How about the lift stations in Osage -- in
2 Eagle Woods? Is Osage maintaining them?
3 A. No.
4 Q. So if part of the system's not functioning
5 and, say, there's a garden hose being strewn between two
6 parts of the system, this time of year do you think this
7 arrangement could create a risk that sewer service would not
8 be safe or adequate?
9 A. Well, the systems as constructed in Eagle
10 Woods are not safe or adequate.
11 Q. They're neither one?
12 A. No.
13 Q. And this garden hose arrangement that is
14 currently in effect --
15 A. I have no knowledge of any garden hose in
16 Eagle Woods.
17 Q. You don't know anything about anything --
18 A. I'm not involved in the day-to-day operations
19 of any of the systems --
20 Q. So you --
21 A. -- especially Eagle Woods.
22 Q. So you don't know what's going on at Eagle
23 Woods?
24 A. I know that Osage Water Company's not there
25 today.

1 Q. They're not there today?

2 A. Right.

3 Q. They're not serving today?

4 A. Right.

5 Q. They've shut them off?

6 A. No. Didn't shut them off.

7 Q. They're not turned off, but they're not being

8 served?

9 A. Not being maintained.

10 Q. Not being maintained. So if I were to tell

11 you that I got two different telephone calls this week

12 regarding a situation like I just described in Eagle Woods,

13 you wouldn't know anything about that?

14 A. I know that -- that Jeff Smith was out there a

15 good part of last week and this week working on them, but I

16 don't know any specifics. Debbie Williams handles that. I

17 don't.

18 Q. Is Debbie going to be maintaining that system?

19 A. I don't see why.

20 Q. Is your --

21 A. She doesn't know anything about them to start

22 with.

23 Q. Is Environmental Utilities, as the agent of

24 Osage Water Company, going to be maintaining those sewer

25 lines?

1 A. You should ask them that question. I have no
2 idea.

3 Q. Well, they're your agent. Have you directed
4 them to do it or to stop?

5 A. To stop.

6 Q. Given your written intent in this letter and
7 your stated intent here to stop providing water and sewer
8 service at Eagle Woods, would you expect that your agent
9 who's managing Osage would pay any water bills submitted to
10 them from Environmental Utilities for any water out there?

11 A. I don't understand the question.

12 Q. Well, if you don't want to provide the service
13 and someone billed you for water, would you direct your
14 agent not to pay that bill?

15 A. I still don't understand your question.

16 Q. Well, you don't understand the arrangement
17 that Environmental Utilities and Osage Water Company --

18 A. I understand that one entirely. I still don't
19 understand your question.

20 Q. Well, let me ask you this. The situation
21 regarding the proposed Water Supply Agreement between
22 Environmental Utilities and Osage Water Company, is there
23 any reason for Osage Water Company to make any payments on
24 that?

25 A. Environmental Utilities doesn't have a tariff

1 agreement to where they could sell any water yet, so no,
2 there's no reason to pay anything.

3 Q. Let's do a hypothetical.

4 MR. WILLIAMS: Your Honor, I'm going to object
5 to this. It's outside of the scope of the issues raised in
6 the pleadings in this case. There's specific issues raised
7 in the complaint. This is tangential. It was raised by
8 Commissioner Murray on cross-examination of me this morning,
9 but this is not within the issues raised in the complaint
10 that is before the Commission in this case.

11 MS. O'NEILL: It's central to the issues
12 raised in this complaint, which is whether or not this
13 company intends to provide service to its customers or
14 whether it's abandoning them. I believe that --

15 JUDGE WOODRUFF: I'll overrule the objection.
16 You can proceed.

17 MS. O'NEILL: Okay. Let's --

18 JUDGE WOODRUFF: I'm sorry. You can go ahead
19 and answer the question if you remember.

20 MS. O'NEILL: I'm not sure that there was one
21 at the time the objection was made.

22 BY MS. O'NEILL:

23 Q. You signed a Water Supply Agreement with
24 Environmental Utilities on behalf of Osage Water Company?

25 A. That's correct.

1 Q. Hypothetically, if Environmental Utilities is
2 issued a certificate to serve customers, including Osage
3 Water Company service to Eagle Woods, given the fact that
4 you have stated an intention to not serve Eagle Woods
5 anymore, if Environmental Utilities submitted Osage Water
6 Company a bill for water, would you instruct your agent not
7 to pay the bill?

8 MR. WILLIAMS: Your Honor, I'm going to object
9 to asking a hypothetical question of this witness. The
10 witness has not been qualified as an expert on any of the
11 issues which she's asking about. If she wants to ask him a
12 question of facts which he has knowledge, that's
13 appropriate. Hypothetical questions are not appropriate if
14 he's not an expert witness.

15 JUDGE WOODRUFF: I'm going to sustain the
16 objection. It's simply asking him to speculate about what
17 might happen in the future.

18 BY MS. O'NEILL:

19 Q. Have you given any instructions to Debra
20 Williams not to pay any bills for water from Environmental
21 Utilities should she get them?

22 A. No.

23 Q. If she gets one, are you going to tell her not
24 to pay it?

25 MR. WILLIAMS: Again, I'm going to object.

1 Calls for speculation on the part of the witness and it's a
2 hypothetical.

3 JUDGE WOODRUFF: Sustained.

4 MS. O'NEILL: That's enough protesting. I
5 have no further questions.

6 JUDGE WOODRUFF: All right. Then for Hancock?

7 CROSS-EXAMINATION BY MR. LORAINÉ:

8 Q. Mr. Mitchell, did you make the decision to
9 transfer the water and sewer easement, which is the subject
10 matter of Exhibit 36?

11 A. Yes.

12 Q. Did you have any assistance in that matter
13 from Greg Williams?

14 MR. WILLIAMS: Your Honor, I'm going to object
15 to his inquiry as to whether or not he obtained assistance
16 of legal counsel. That, again, invades the attorney/client
17 privilege.

18 MR. LORAINÉ: I didn't ask anything about
19 legal counsel, Judge. Mr. Williams is in --

20 JUDGE WOODRUFF: I'll overrule the objection.
21 I'm not going to require him to disclose any attorney/client
22 confidences.

23 MR. LORAINÉ: I didn't ask that.

24 JUDGE WOODRUFF: You haven't asked that, so
25 you can go ahead and answer that question.

1 THE WITNESS: Would you restate the question,
2 please?

3 BY MR. LORAIN:

4 Q. The question is, essentially did Mr. Williams
5 assist you in making that decision on a transfer of these
6 deeds -- water and sewer deeds back, which is the subject
7 matter of Exhibit 36?

8 A. He wrote the deeds up.

9 Q. Did you have knowledge at the time of the
10 transfer of the deed of trust to Water Lab -- to Water Lab
11 and to Jackson Engineering, those are your companies. At
12 the time of the deeds of trust, did you have knowledge that
13 it was prohibited -- transfers of assets were prohibited
14 without talking or getting permission from the Public
15 Service Commission?

16 A. Yes.

17 Q. And who gave you that knowledge?

18 A. I don't know.

19 Q. Did Mr. Williams tell you that?

20 A. We discussed it.

21 Q. Did Mr. Williams tell you to seek attorney
22 advice outside of whatever he may have told you in that
23 regard?

24 A. There was a fax that came into my office when
25 I wasn't there that at the bottom of the letter said, Review

1 this and seek legal counsel. I got a message on the cell
2 phone that Greg was looking for me to sign some paperwork.
3 And being out and about that day, I stopped by his office
4 and we discussed it and I signed it.

5 Q. You're aware of the allegations that to
6 transmit such assets of public utilities may be equal to the
7 commission of a felony? You're aware of that law?

8 A. I have no idea of the consequences. I know
9 that -- that it required Commission approval to actually
10 transfer the assets.

11 Q. Well, why did you sign the deed -- why did you
12 do the actual transfer if you knew that you didn't have
13 permission from the PSC on those two deeds of trust -- three
14 deeds of trust?

15 A. We didn't actually transfer any assets.

16 Q. You transferred --

17 A. All we did was sign a deed -- sign a deed of
18 trust.

19 Q. And those deeds of trust were filed of record?

20 A. I believe they were.

21 Q. And did someone tell you that that was not a
22 transfer?

23 A. No.

24 Q. Did someone tell you that the transfer on
25 Exhibit 36, the water and sewer easement, when you sent them

1 back to the Eagle Cove Homeowners Association by deed, did
2 someone tell you that that was not a transfer?

3 A. We didn't discuss that specifically.

4 Q. You're aware that there was an injunction
5 issued in circuit court by Judge Mary Dickerson on the three
6 deeds of trust in question?

7 A. Well, I believe it was issued to Environmental
8 Utilities and it had to do with one deed of trust, not
9 three.

10 Q. All right. And that was in reference to
11 Mr. Williams' deeds of trust, wasn't it?

12 A. That's correct.

13 Q. Did you know in the time that these deeds of
14 trust were filed that Mr. Williams' deed of trust took
15 priority over your -- over the deeds of trust to your two
16 companies, Jackson Engineering and to Water Labs?

17 A. Yes.

18 Q. And you were aware that if the deed of trusts
19 were foreclosed on, all of the assets of Osage Water Company
20 would enaer here to the benefit of Mr. Williams for his
21 legal fees and you would get none of those assets, weren't
22 you?

23 A. Only if the sale price were higher than the
24 value of the deed would I receive anything.

25 Q. Okay. So you were aware of that?

1 A. Yes.

2 MR. LORAIN: I have nothing further, Judge.

3 Thank you.

4 JUDGE WOODRUFF: Thank you. Cross by Osage

5 Water?

6 MR. WILLIAMS: Thank you, your Honor.

7 CROSS-EXAMINATION BY MR. WILLIAMS:

8 Q. Mr. Mitchell, let's go back to July of 2001.

9 Well, let's go back further. Let's go back to January of

10 2001. You were elected as president of Osage Water Company

11 at that time; is that correct?

12 A. Yes. I'd been vice president for the previous

13 five years, I believe -- four or five years.

14 Q. And, Mr. Mitchell, at the time did you

15 terminate Osage Water Company's employees that had been out

16 doing field service, that being Bob Mueller and Jeff Smith?

17 A. That was in January of 2000 is what you're --

18 Q. 2000 or 2001?

19 A. January of 2001 we had no employees.

20 Q. Okay. At that point in time did you hire

21 contract operators to operate the company's sewer systems?

22 A. Not until the first of April.

23 Q. And who did you hire?

24 A. Environmental Enterprises.

25 Q. And that would be whom, particularly?

1 A. It's John Liebler and his son.

2 Q. And did you also -- is Mr. Liebler related in
3 any way to Osage Water Company other than having a contract
4 relationship?

5 A. No. Not -- not whatsoever.

6 Q. Did you also solicit proposals for operation
7 and maintenance of all the company's systems?

8 A. Yes.

9 Q. Who did you solicit those proposals from?

10 A. I also talked to Mike McDuffy.

11 Q. Anyone else?

12 A. I talked to Aqua Source.

13 Q. And who is Aqua Source?

14 A. It's a regulated utility company based in Jeff
15 City.

16 Q. And who's Mike McDuffy?

17 A. Mike McDuffy's a contract operator at Lake of
18 the Ozarks.

19 Q. Anyone else you spoke to?

20 A. Yes. I spoke with Alliance, I believe was
21 their name. A contract operator that operates in the state
22 of Missouri, very large one. Spoke with Mr. Cunningham.

23 Q. Were all of those people that you contacted
24 have licensed water and sewer operation staff?

25 A. You bet.

1 Q. And would they be generally qualified to
2 provide operation and maintenance services for a public
3 water and sewer utility company?

4 A. Well, Mr. Liebler is a Class A operator
5 both -- in wastewater. He generally doesn't do a lot of the
6 drinking water operation. He does a few condo projects,
7 but -- and he, in general, can operate treatment facilities.

8 The other and -- and Mr. McDuffy is the same
9 scenario. And Mr. McDuffy also has a drinking water license
10 I believe and operates both water and wastewater.

11 And Alliance and Aqua Source would be
12 qualified to -- and we discussed doing operation and
13 maintenance and billing, basically taking over the
14 day-to-day operations.

15 Q. And did you get any proposals from them?

16 A. Yes. We did get one back from Aqua Source.
17 Allegiance said that we were too small. And ultimately we
18 went with Mr. Liebler.

19 Q. Okay.

20 A. That's the only one we could afford out of the
21 bunch.

22 Q. Do you recall what the proposal from Aqua
23 Source was?

24 A. About double the revenue of the company.

25 Q. So the company would not have been able to

1 afford to hire them to do so their operation maintenance and
2 billing?

3 A. That's correct.

4 Q. Okay. Now, Mr. Mitchell, have you had any
5 contacts since this complaint was filed with the receiver
6 proposed by Staff in its complaint, Missouri American Water
7 Company?

8 A. Yes. I've talked to the attorney a couple
9 times on the phone.

10 Q. Were you able to obtain from him any proposals
11 as to what it might cost to operate the utility systems
12 belonging to Osage Water Company?

13 A. He couldn't even state for sure whether they
14 were interested in doing it or not --

15 Q. Okay.

16 A. -- at any price.

17 Q. Now, Mr. Mitchell, was there some disagreement
18 among the shareholders of the company about hiring contract
19 operators and what that would cost versus the company hiring
20 its own employees?

21 A. Yes.

22 Q. Now, to follow-up on that, who was doing
23 operation and maintenance and billing of the water systems
24 and billing for the sewer systems from January of 2001 until
25 July of 2001?

1 A. Water Laboratory Company.

2 Q. And that's your company?

3 A. Yes.

4 Q. And did you receive cash payment for that?

5 A. Some.

6 Q. As much as it expended, as it cost?

7 A. Absolutely not.

8 Q. Now, in July of 2001, you tendered resignation
9 as contract operator; is that correct?

10 A. That's correct.

11 Q. And I believe your letter of resignation is in
12 evidence in the case here, if I recall correctly; is that
13 right?

14 A. That's right.

15 Q. And in that letter you put in there a rather
16 detailed listing of exactly what actions were needed at that
17 point in time for the company?

18 A. That's correct.

19 Q. So it wasn't your intent that the company's
20 systems would not be operated. You just simply were
21 unwilling or unable to continue to operate them?

22 MR. KRUEGER: Your Honor, I object to this
23 continuing series of leading questions.

24 JUDGE WOODRUFF: It is cross, so it's
25 overruled.

1 MR. WILLIAMS: It's your witness.

2 JUDGE WOODRUFF: I might add, I will give you
3 an opportunity to recall him on direct if you wish to do so.
4 But at this point it is cross.

5 THE WITNESS: Yes. I was financially unable
6 to continue providing services at a loss to Osage Water
7 Company.

8 BY MR. WILLIAMS:

9 Q. So you didn't have a problem with the company
10 hiring its own employees, you simply weren't willing to do
11 the contract operation at a loss?

12 A. That's correct. We -- in fact, in the past
13 the company had attempted to hire its own employees and
14 continue on that basis, but as the rate case drug out over
15 years, the company -- the company ran out of money and
16 couldn't pay employees anymore and they all quit.

17 Q. Let's back up to 1999. Is that the time frame
18 when you hired employees to work directly for the company?

19 A. Yeah. I believe it was spring of '99.

20 Q. And who did you hire?

21 A. Jeff Smith and Bob Mueller.

22 Q. And did they spend substantially all of their
23 time doing operation maintenance and repairs for the systems
24 of Osage Water Company?

25 A. They did some -- spent some time doing

1 construction also. The revenues of operation and
2 maintenance weren't enough to pay their salaries.

3 Q. Okay. Mr. Mitchell, let's talk a little
4 bit -- I know that there are other cases that you've given
5 your qualifications to the Commission, but I don't recall
6 you testifying in this case. What's your educational
7 background?

8 A. I've got a bachelor's degree in economics.

9 Q. What else?

10 A. I'm a thesis short of a master's degree in
11 environmental engineering.

12 Q. Do you hold any licenses issued by the state
13 of Missouri?

14 A. I've got an A license in both water and
15 wastewater treatment.

16 Q. And are there any higher licenses issued with
17 respect to water and wastewater treatment?

18 A. No.

19 Q. Do those licenses place any restrictions on
20 your ability to operate any water or sewer utility system in
21 the state of Missouri?

22 A. No restrictions on it.

23 Q. Okay. Have you ever held any other
24 professional licenses?

25 A. I had a broker's license in real estate for

1 20 years.

2 Q. Okay. And how about any engineering licenses?

3 A. The Jackson Engineering holds a license with
4 the state of Missouri, Professional Division of
5 Registration.

6 Q. Okay. And so you have experience in
7 engineering, water and sewer operations and also in real
8 estate?

9 A. That's correct.

10 Q. Mr. Mitchell, how much experience have you had
11 in operating water and sewer utility systems, hands-on
12 experience?

13 A. Since 1981.

14 Q. And what type of systems have you operated
15 since 1981?

16 A. Anything from literally two homes on a system
17 up through about 1,200.

18 Q. Okay. And have you had any experience in
19 operating a public utility company as opposed to operating a
20 water system or a sewer system?

21 A. Yes. I've operated Osage Water Company since
22 its inception up through July of 2001. I also operated West
23 16th Street doing the operation and maintenance. I did not
24 do the billing or the customer service or any of that,
25 strictly the O and M since 1993 up through 2002. Also, a

1 second small utility in Sedalia owned by the same man that
2 owned West 16th Street, and I've owned another utility
3 company called Missouri Utilities since 1992.

4 Q. Is that company regulated by the Public
5 Service Commission?

6 A. Yes.

7 Q. Are you actively involved in its operation,
8 management day-to-day today of that company?

9 A. Yes.

10 Q. Now, Mr. Mitchell, is there a difference
11 between operating a water system or sewer system and
12 operating a water and sewer company?

13 A. Absolutely.

14 Q. And would you please explain to the Commission
15 the difference between operating a system and operating a
16 company?

17 A. Well, operating a system just involves being
18 notified that there is a problem, if you're not there at the
19 time, and finding the problem and then going out and
20 correcting any problems that you find. You also have
21 regular routine maintenance on moving parts that require
22 lubrication or belts or air filters or that sort of thing.
23 You have operation of sewer systems or water systems,
24 routine testing, that sort of thing.

25 The company as a whole requires -- also adds

1 billing, customer service, line location, leak detection,
2 construction, inspection, all of that. A myriad of
3 additional responsibilities that's required over just
4 operating a system itself.

5 Q. Can a utility company spend all of its money
6 on system operation and successfully run a utility business?

7 A. Well, they wouldn't have anybody to answer the
8 phone.

9 Q. Okay. Any other problems that would arise if
10 you just spent all your money on operation and maintenance?

11 A. Nobody to do the billing, nobody would answer
12 the mail from DNR, nobody would answer the mail from Public
13 Service Commission, nobody would -- there's -- at least
14 50 percent of the work involved is not operation or
15 maintenance.

16 Q. Okay.

17 A. Of course, the work's not quite as hot and
18 dirty and wet and cold and all that as the operation and
19 maintenance part is, but the number of hours involved is
20 probably 50 percent.

21 Q. Now, Mr. Mitchell, you had a chance to review
22 in detail the budget that the Water and Sewer Department
23 staff or the Commission Staff put together in the most
24 recent Osage Water Company rate case; is that right?

25 A. That's correct.

1 Q. And you do have a background in economics?

2 A. That's correct.

3 Q. And you have experience operating hands-on
4 water and sewer utility systems?

5 A. Yes.

6 Q. And actually managing a water and sewer
7 utility company?

8 A. Yes.

9 Q. Do you think that, in your opinion, based on
10 that background, that the expenses estimated by the Staff in
11 that rate case for the operation of a public water and sewer
12 utility company, that those estimates are adequate of the
13 actual costs incurred?

14 A. Absolutely not.

15 Q. And do you believe that based on the cost
16 analysis in that case, that there's any way that Osage Water
17 Company can be successfully operated on the rates that were
18 based on that cost analysis?

19 MS. O'NEILL: Your Honor, I'm going to object
20 to this. Prior testimony from this company is that they
21 agreed to this rate increase, so I'm not sure where
22 Mr. Williams is going with this. It sounds like it's not
23 relevant to the issues here today.

24 JUDGE WOODRUFF: Response?

25 MR. WILLIAMS: Well, your Honor, I think the

1 best response I can give you is the statute governing
2 complaint proceedings, which says that -- if I can find it
3 here -- when a complaint action is brought within Sections
4 393.110 to 393.285, which the complaint in this action would
5 fall within that statutory range, that the Commission after
6 the hearing shall determine whether any improvements in
7 service are required and shall order the rates necessary
8 with which to make those improvements. And I will give you
9 that statute.

10 And simply say that the answer in this case
11 certainly raises the issue as to the adequacy of the
12 revenues of Osage Water Company with which to provide water
13 and sewer utility service, and that that's directly within
14 the scope of the issues which Missouri law says are relevant
15 and important in this case and that's what this evidence is
16 directed towards.

17 JUDGE WOODRUFF: Are you suggesting that the
18 Commission could order different rates in this proceeding?

19 MR. WILLIAMS: I'm suggesting that's exactly
20 what the statute says.

21 JUDGE WOODRUFF: Okay.

22 MR. WILLIAMS: And the relief requested by the
23 Respondent here in its answer is that the Commission order
24 such a rate increase and commence a rate proceeding to
25 determine what amount is appropriate.

1 JUDGE WOODRUFF: All right. I'm going to
2 overrule the objection. You can go ahead and answer the
3 question.

4 BY MR. WILLIAMS:

5 Q. Do you remember?

6 A. No.

7 MR. WILLIAMS: Would you read it back for us,
8 please?

9 THE COURT REPORTER: "Question: And do you
10 believe that based on the cost analysis in that case, that
11 there's any way that Osage Water Company can be successfully
12 operated on the rates that were based on that cost
13 analysis?"

14 THE WITNESS: The only way that the company
15 can and has operated under this rate scenario is by
16 consuming 100 percent of the depreciation, the capital
17 reserve, any return to the shareholders and putting
18 100 percent of everything it could find into operation and
19 maintenance.

20 BY MR. WILLIAMS:

21 Q. Okay. And have you gone through and
22 analyzed -- well, let me back up.

23 You heard Mr. Hummel's testimony here?

24 A. Yes.

25 Q. And would you agree that there's a need for

1 more field operators for Osage Water Company beyond
2 Mr. Smith, one person out in the field?

3 A. Yes. And I believe that our original request
4 was for two full-time operators.

5 Q. And why do you think the company needs two
6 full-time operators as opposed to one operator in the field?

7 A. There are a number of different sites that
8 have been to be visited on a regular basis. It's not
9 humanly possible for one person to cover all of the basis at
10 the frequency that EPA would like to see everything covered
11 in.

12 Q. Well, what frequency is that?

13 A. Three times a week is the EPA recommended
14 minimum for small water and sewer service systems.

15 Q. Okay.

16 A. Also, we have a difficulty in the Lake of the
17 Ozarks when the systems are most active, during the
18 summertime. Traffic is also at its heaviest. Amount of
19 time traveled just to get from location to location is high.

20 The customers that we have are generally more
21 in the area on the weekends than during the week. However,
22 during the week is the period of time when parts are
23 available to do repair work.

24 So we end up with a scenario where it would be
25 best if we had somebody available seven days a week during

1 normal business hours, 8:00 to 5:00 or whatever to respond
2 to any problems that are going on and also to operate the
3 systems.

4 This would -- if we had more than one
5 operator, it would also allow the history of the company to
6 not be lost if the one person that's been operating the
7 system for several years suddenly gets involved in a traffic
8 accident and we lose the institutional memory of where -- of
9 the small nuances and how the systems operate and where
10 things are at and the efficiency of the company drops
11 considerably, where if there was two operators and one
12 person is lost, you're able to much easier retrain somebody
13 to operate the systems.

14 Q. Okay. Mr. Mitchell, have you made an analysis
15 of other costs that you believe should be included in rates?

16 A. Yes.

17 MS. O'NEILL: Your Honor, I'm going to object
18 unless we have the exhibit that's been handed to the witness
19 marked and identified.

20 MR. LORAIN: Judge, in addition, your
21 Honor --

22 MS. O'NEILL: And a copy provided to counsel.

23 MR. LORAIN: Your Honor, may I add to that?

24 JUDGE WOODRUFF: Yes. Go ahead.

25 MR. LORAIN: Judge, I believe that this is

1 getting into a rate case at this point. I think it's
2 irrelevant to these proceedings.

3 JUDGE WOODRUFF: I am troubled by the fact
4 that this seems to be beyond the scope of cross-examination.
5 It seems to be going into direct examination.

6 MR. WILLIAMS: Well, your Honor, in Missouri
7 cross-examination is wide open for any subject or topic with
8 which the witness may have knowledge and which bears on any
9 issue in the case.

10 I've provided you with the statute that says
11 where a complaint is made, that the Commission should
12 inquire as to what improvements in service are required in
13 order to remedy the issues raised in the complaint and
14 should order the appropriate adjustment in rates with which
15 to remedy those needs.

16 I don't know how the Commission possibly could
17 satisfy its statutory obligation under that statutory
18 section which bears upon this complaint action without
19 having some evidence as to what might be needed.

20 MR. LORAIN: Judge, if I may respond, your
21 Honor.

22 JUDGE WOODRUFF: Go ahead.

23 MR. LORAIN: That's true, except we're
24 getting into the actual dollars and cents and what
25 contributes to a rate base. That's not what this is all

1 about here. The rate has already been set.

2 And if he wants to talk and criticize it, I
3 guess he can do so, Judge, but going into the actual what
4 would it take to fix it, that's a rate base case. That's
5 the nature of my objection.

6 JUDGE WOODRUFF: Let me ask a question of
7 Staff. Under what sections of the statute was your
8 complaint brought?

9 MR. KRUEGER: 393.145.

10 JUDGE WOODRUFF: That's within the statute.

11 MR. WILLIAMS: It's right in the middle. Your
12 Honor, basically the Commission is going to be faced at the
13 end of this proceeding with a decision whether to appoint a
14 receiver because the company is unable or unwilling to
15 provide service or to order improvements in service and to
16 order the rates to pay for them.

17 That's the essence of what that statute --
18 where the Staff has placed the Commission. You either have
19 to say that the company's unwilling and has abandoned
20 service or that it needs more money to provide service as
21 the Staff would like to see it provided.

22 And in order for the Commission to make a
23 decision between Choice A and Choice B, you have to have the
24 evidence of what Choice B looks like.

25 JUDGE WOODRUFF: Okay. I'm going to overrule

1 the objection at this point. Obviously the Commission at
2 this point is not really in a position in this case of
3 trying to determine what exactly rates can be. I don't
4 think that's where you're going with this.

5 MR. WILLIAMS: No. What I've suggested real
6 simply is that we would like to provide a foundation of the
7 types of costs which the Commission should take into
8 consideration. The relief we have prayed for in the answer
9 is that the Commission order its Staff to make a full
10 investigation and adjust the rates as necessary in order for
11 the company to continue to provide service.

12 JUDGE WOODRUFF: With that understanding, you
13 may proceed.

14 MS. O'NEILL: Your Honor, before he proceeds,
15 if I may be heard again on my objection, which was that we
16 ask that the exhibit given to the witness be provided to
17 counsel, be marked. And, also, if this is going to get into
18 areas that have not been previously addressed with this
19 witness, we would -- I mean, I know you want to end today,
20 Judge, but I think that to not allow the parties to
21 cross-examine on this information would be inappropriate and
22 a violation of our right to due process.

23 So I understand where he's going with this,
24 but I think we are entitled to the information and the
25 opportunity for cross.

1 JUDGE WOODRUFF: I think you are as well.
2 Let's deal with the piece of paper. Just to make the record
3 clear, before we start asking questions, counsel handed a
4 piece of paper to the witness. I don't know what it is and
5 nobody else does either.

6 And that brings into also the problem -- the
7 second part of the objection was how to handle this. And I
8 think that the parties are entitled to cross-examine based
9 on this. And when you're doing this as cross, they're not
10 going to have an opportunity to do that.

11 MR. WILLIAMS: You know, that's the procedure
12 you've been utilizing, your Honor. Typically in circuit
13 court we allow recross --

14 JUDGE WOODRUFF: Typically in circuit court
15 there's not four parties typically in circuit court.

16 MR. WILLIAMS: I've done a lot of cases where
17 there are and you do allow recross with respect to issues
18 raised in cross, but don't allow that recross to exceed the
19 scope of the issues raised on cross. I have no objection to
20 doing that if that's what you want.

21 JUDGE WOODRUFF: I am certainly interested in
22 moving things along as quickly as possible and my procedures
23 can certainly be flexible. Were you anticipating bringing
24 him back on direct later to ask other questions or --

25 MR. WILLIAMS: Well, no. I would like to be

1 done with the witness when we're done with cross.

2 JUDGE WOODRUFF: With that understanding then,
3 I will allow the parties to ask recross based on what you're
4 going into at this point. So we can go ahead and proceed at
5 this point, which brings us back again to that document.

6 MR. WILLIAMS: Your Honor, it's not a
7 document. It's a list of things that Mr. Mitchell wrote
8 down for which -- to assist in his recollection testifying
9 here today. It is not a prepared exhibit or anything other
10 than that.

11 I have no objection to anyone seeing it. I
12 have no objection to photocopying it, but it is not
13 something that is prepared in terms of something to be
14 submitted in itself as evidence. It's simply to assist in
15 making sure that the points that he believes are relevant
16 are covered in his testimony.

17 MR. LORAIN: Your Honor, if I may be heard,
18 the proper procedure in that regard would be for all of us
19 to voir dire about this particular exhibit or give us the
20 exhibit so we don't have to waste the additional time to do
21 so.

22 JUDGE WOODRUFF: I believe counsel for Osage
23 Water indicated he would be willing to provide a copy of
24 that document to the other parties.

25 MR. WILLIAMS: As I say, it is not an exhibit

1 that is prepared to be entered into evidence. It's simply
2 something for him to refresh his recollection.

3 JUDGE WOODRUFF: I understand.

4 MR. LORAIN: But, Judge --

5 JUDGE WOODRUFF: You have a right to see it.
6 And I'll direct at this point that counsel come forward,
7 we'll go off -- well, I'm not going to go off the record,
8 but come forward and look at the exhibit and if you want
9 copies of it, we'll have copies made.

10 MR. LORAIN: Thank you, Judge.

11 MS. O'NEILL: Yeah. I would like a copy of
12 it. I agree that it's probably not an exhibit.

13 MR. WILLIAMS: It's not an exhibit.

14 JUDGE WOODRUFF: So the record is clear, the
15 piece of paper just walked out the door.

16 MR. WILLIAMS: Your Honor, if it doesn't come
17 back, we're in trouble, but Staff has it in their possession
18 at this point.

19 JUDGE WOODRUFF: And Staff, I assume, is going
20 to be making copies of this; is that correct?

21 MR. KRUEGER: That's correct.

22 JUDGE WOODRUFF: Are you able to proceed until
23 the document comes back?

24 MR. WILLIAMS: I think we can get started.

25 JUDGE WOODRUFF: Is that acceptable with

1 everyone?

2 All right. Proceed.

3 BY MR. WILLIAMS:

4 Q. Mr. Mitchell, in addition, have you got an
5 estimate of what a second operator would cost for Osage
6 Water Company?

7 A. It would cost the company in the neighborhood
8 of \$30,000 a year.

9 Q. And how did you arrive at that estimate?

10 A. I have several recent -- I get regular e-mails
11 from, like, Missouri Water and Wastewater Conference of
12 various job openings available throughout the state, that
13 sort of -- there was one from City of Branson, entry level
14 wastewater operator was \$13-and-some-odd-cents an hour. The
15 City of Camdenton had an operator, but it was very basic
16 level, basically drives a sludge truck, and it was 19,000.

17 These are what the amounts that the city or
18 the cities were going to pay the operators. So you've got
19 to add benefits and unemployment and Social Security taxes
20 on top of all that to come to these amounts. I know what
21 we're paying our existing operator and to find somebody
22 that -- and what we've paid in the past. I used all those
23 experiences to come to a price.

24 Q. Okay. And so would that include
25 transportation expenses such as a vehicle for the employee

1 in that \$30,000 number?

2 A. No. That was strictly wages and benefits.

3 Q. Okay. And what do you estimate those

4 transportation expenses would be?

5 A. Probably another -- a pickup truck and fuel,

6 another \$10,000 a year.

7 Q. Okay. And, Mr. Mitchell, you're aware that

8 Mr. Hancock's debenture, which previously did not bear

9 interest, has been reduced to judgment and now bears

10 interest; is that right?

11 A. That's correct.

12 Q. And are you aware of what interest rate that

13 judgment now bears?

14 A. 9 percent.

15 Q. And have you included in -- what amount would

16 have to be allowed in rates in order just to amortize that

17 judgment with interest over 20 years?

18 A. 22,673 per year.

19 Q. Let me ask the question. The money that that

20 note, debenture, judgment represents, what was it -- where

21 did it go?

22 A. That was sewer -- or water main serving a fair

23 portion of the commercial district in Osage Beach.

24 Q. Is that water main still in service today?

25 A. Yes, sir.

1 Q. And does it have customers?

2 A. You bet.

3 Q. Make money for the company?

4 A. Yes.

5 Q. Any reason why that cost of capital wouldn't

6 be appropriate, to your knowledge, for the company to

7 recover in rates?

8 A. We've had that argument with the Staff before.

9 I certainly don't know why it's not in rates.

10 Q. Okay. Now, you've also included in there

11 amortization of the debts held by your attorney and also by

12 your companies; is that correct?

13 A. That's correct.

14 Q. And can you tell the Commission what those

15 costs are?

16 A. If they're amortized at 8 percent, I believe

17 Environmental Utilities holding the -- your notes would be a

18 little over \$50,000 per year and the total for the two

19 companies that I control would be about \$36,000 a year.

20 Q. And have you made any estimate of the cost of

21 providing any fringe benefits to employees?

22 A. Sure. Health insurance for the four people

23 would be about \$7,200 a year.

24 Q. Okay. And have you looked back at what

25 depreciation was calculated in the last rate case?

1 A. Yes. The number totaled about \$7,800 per
2 year.

3 Q. And that would have changed some since then?

4 A. Yes. It's gone up some. There's been some
5 plant added since then.

6 Q. Okay. And would that plant include the sewer
7 plant out on KK?

8 A. Yes. Many of the facilities on KK are not
9 included.

10 Q. Okay. And what's your estimate of the
11 additional capital return required for that investment out
12 on KK for the sewer plant?

13 A. The sewer plant, about \$4,700.

14 Q. And if the company was going to acquire the
15 water well that's been the subject of the Environmental
16 Utilities' application, what return on capital would be
17 required for that?

18 A. \$6,320 per year.

19 Q. Now, were the certificate costs -- let's see.
20 If the company were to obtain a certificate
21 for Golden Glade to provide water in addition to sewer
22 service, do you have an estimate as to what that might run?

23 A. Another \$2,000 a year.

24 Q. Okay. And has the company made an investment
25 and still owe an investment out at Cedar Glen for the well

1 and sewer plant?

2 A. Yes.

3 Q. And what amount do you anticipate -- what
4 construction costs have been incurred out there but are not
5 yet on the company's books?

6 A. About \$150,000.

7 Q. And what revenue requirement would be required
8 for that?

9 A. Oh, at 8 percent in 20 years, that would be a
10 \$12,000 a year expenditure.

11 Q. Now, Mr. Mitchell, can you tell the Commission
12 roughly what all of those numbers add up to?

13 A. Roughly \$180,000 per year additional revenue
14 required.

15 Q. And what's the company's current revenue per
16 year?

17 A. Just under \$200,000.

18 Q. So we're talking basically about roughly
19 doubling --

20 A. That's correct.

21 Q. -- revenues?

22 Now, Mr. Mitchell, do you know what the
23 company's current rates for service are?

24 A. Generally.

25 Q. Well, the company's base for water is 16.36.

1 You recall that?

2 A. I believe that includes 2,000 gallons.

3 Q. Okay. And since the time of the last rate
4 case, have there been any other utilities in the vicinity of
5 the Lake of the Ozarks where rates have been either
6 established or proposed or changed?

7 A. There was -- there's been several of the
8 cities and water districts that have changed rates.

9 Q. Are you familiar with the rates of the City of
10 Osage Beach?

11 A. Yes.

12 Q. Have they changed recently?

13 A. Yes. Just within the last month. I don't
14 remember the exact amount, it's almost \$19 a month is the
15 base rate.

16 Q. And was it 12 before?

17 A. Yeah, 12 or 12.75 -- 12 something.

18 Q. So about a 50 percent increase in water rates?

19 A. Yes. They did reduce their gallonage charge
20 above that, but it -- they needed to.

21 Q. And so their current rate would be more than
22 Osage Water Company's base rate?

23 A. Yes. Significantly.

24 Q. And with respect to sewer rates, are you
25 familiar with the City's sewer rates for service outside

1 municipal limits?

2 A. Yes.

3 Q. What would that be?

4 A. They're \$36 and some change per month for
5 sewer.

6 Q. And have there been any proposals by Camden
7 County to provide wastewater service in the vicinity of
8 Cedar Glen?

9 A. Yes.

10 Q. And have they proposed a particular rate for
11 service that they anticipate charging?

12 A. Well, they've -- have a goal that they told
13 the voters they wouldn't go over \$35 a month per -- per
14 residence.

15 Q. And does their proposal involve any free
16 money?

17 A. Yes. There's grant money involved, there is
18 low interest loans involved, both.

19 Q. So their cost of capital would be lower than
20 market rates paid by a private utility?

21 A. They're going to get some free capital and
22 then they'll also be getting some -- 2 percent revolving
23 loan fund. It might even be below 2 percent at today's
24 rates, interest rates.

25 Q. Now, Mr. Mitchell, in the statute that's been

1 provided to the Commissioners here today, does it provide
2 that the Commission should allow for a reserve for surplus
3 and contingencies?

4 A. It sure does.

5 Q. Does the company currently have any revenues
6 which it could reserve as surplus and contingencies?

7 A. It's currently spending 100 percent of its
8 revenue on operation and maintenance.

9 Q. And the numbers you just went through are
10 money that the company needs to spend but is not yet
11 spending?

12 A. That's correct.

13 Q. So there would not be reserve for surplus or
14 contingencies in that number; is that correct?

15 A. That's correct.

16 Q. Are you asking the Commission to also allow a
17 reserve for surplus and contingencies in rates?

18 A. Yes. There was -- in the original allowed
19 rates there was some rate base that was recognized by the
20 Staff as existing and that's not in any of these
21 calculations.

22 Q. Well, for example, the company's never had a
23 reserve with which it could pay for replacement of a well
24 pump, has it?

25 A. No.

1 Q. That posed a problem recently in Broadwater
2 Bay?
3 A. Yes.
4 Q. No cash in the bank?
5 A. None.
6 Q. And there was no proposal in the last rate
7 case to establish such a reserve, was there?
8 A. No.
9 Q. Now, Mr. Mitchell, would it agree with your
10 recollection that at the time the last rate case was
11 initiated, the company had 317 water companies and 120 sewer
12 customers?
13 A. Sounds familiar.
14 Q. And at the present time it has about the same
15 number of water customers and about 270 sewer customers?
16 A. Yes.
17 Q. Are they the same customers?
18 A. Absolutely not. That's -- the profile of the
19 customers has changed quite a bit. Several of the
20 substantial customers in Osage Beach have switched over to
21 City of Osage Beach service.
22 Q. Well, let's stop right there. What do you
23 mean by a substantial customer and can you give any specific
24 examples?
25 A. Well, for instance, Shoney's restaurant, you

1 know, would be, you know, 300 or 400 or 500, depending on
2 what time of the year it was, \$500 a month in revenue.

3 Q. That's just one customer?

4 A. That's just one customer. The Wal-Mart store
5 moved up the street and that didn't have anything to do with
6 the City of Osage Beach, but it was a customer with very
7 large -- \$1,000 a month customer that moved out. We had a
8 grocery store move out and then has come back at a much
9 reduced rate. And the banks, tire stores, not necessarily
10 large customers, but much larger than any resident.

11 Q. Okay. So you've lost commercial and added
12 residential?

13 A. That's correct.

14 Q. So we're not talking apples and apples --

15 A. Not at all.

16 Q. -- in customer accounts?

17 And has your loss in the Osage Beach customer
18 base been from approximately 279 customers down to 50?

19 JUDGE WOODRUFF: Mr. Loraine, do you wish to
20 make an objection?

21 MR. LORAIN: Your Honor, I wish to object on
22 any further inquiry. He has achieved his purpose. It is
23 beating a dead horse and it's definitely going into a rate
24 base case, Judge.

25 The purpose of this matter is to decide

1 whether these people as we know as principals can continue
2 operation for a lot of different reasons, the least of which
3 is to mention money right now. There's all kinds of other
4 allegations. We're turning this matter into a rate base
5 case at this point, Judge. I would object.

6 JUDGE WOODRUFF: There certainly were
7 allegations about money and the company's ability to pay its
8 bills. I'm going to overrule the objection. You can go
9 ahead and proceed.

10 MR. WILLIAMS: Thank you, your Honor.

11 BY MR. WILLIAMS:

12 Q. I believe the question I was on, customer base
13 within the city limits of Osage Beach has decreased from
14 approximately 279 in 1999 to 50 today?

15 A. Even that might be a little high, but I'd have
16 to look. Might be around 40.

17 Q. Okay. Now, are those customers spread out
18 amongst most of the water systems you operated in 1999?

19 A. Yeah. We've only shut one off -- excuse me --
20 we've shut off two.

21 Q. Which two were shut off?

22 A. The system at Park View Bay and the one at the
23 Blue Harbor.

24 Q. Okay. Now, Mr. Mitchell, you currently are
25 active in operating, managing Missouri Utilities as a

1 regulated public utility?

2 A. That's correct.

3 Q. Are you willing to be active and manage Osage
4 Water Company as a regulated public utility if the revenues
5 are there with which to operate it properly?

6 A. You mean do the day-to-day operation and
7 maintenance?

8 Q. Or supervise it.

9 A. About as far as I would go would be to
10 administrate a contract where somebody else operated it.

11 Q. Okay. But is there any reason why Osage Water
12 Company couldn't do a good job if it had revenues with which
13 to do a good job?

14 A. Absolutely not. It could hire Missouri
15 American and they could come in and operate it if we had
16 sufficient revenues. I wouldn't have a problem with that at
17 all.

18 Q. Now, if the Commission determines that the
19 rates it would take to generate the revenue you've outlined
20 for the Commission are simply too high, would you be willing
21 to, through Osage Water Company, liquidate the assets of the
22 corporation and distribute the revenues or sale proceeds to
23 the creditors in accordance with Missouri law for
24 dissolution of a corporation?

25 A. Well, if the Commission finds that there's a

1 political limit to how high the rates can go, then I'm sure
2 that we can liquidate the company. And it won't -- it
3 probably won't generate much, but maybe a couple creditors
4 would get happy. Maybe the IRS will get happy, but nobody
5 else.

6 Q. Let me ask the question this way. If the
7 Commission desires to see, as the complaint has alleged, the
8 assets of the company liquidated, are you, with Osage Water
9 Company, willing to undertake to liquidate them to get the
10 highest and best value for yourself and the other creditors
11 of the company as opposed to having the Commission appoint a
12 receiver to undertake to do the same thing?

13 A. I can very easily hold an auction and we could
14 dispose of the assets forthwith.

15 Q. Okay. And you're willing to do that?

16 A. Sure. Wouldn't want to be a pain in the butt
17 to the PSC any longer than we have to.

18 Q. Okay. Now, Mr. Mitchell, are you opposed to
19 the appointment of a receiver in this matter because of the
20 lack of info-- information on cost of such a receivership
21 and the lack of any solid prospects for purchase or
22 liquidation of these assets?

23 A. Absolutely. With my experience in what it
24 really costs to do the operation and maintenance, the amount
25 of money the company's bringing in today and the feasibility

1 of somebody walking in from outside and taking over and
2 starting to operate it, there's definitely going to be some
3 deficits pending going on by somebody. That can't possibly
4 be in the best interest of any of the creditors.

5 Q. Now, Mr. Mitchell, is there any special
6 relationship between the Lake Sun Leader newspaper and Osage
7 Water Company that is unusual besides just that being the
8 newspaper in the Lake area?

9 A. The publisher of the newspaper is also a
10 customer.

11 Q. Okay. Has he had any service problems that
12 you're aware of?

13 A. Yes. He is a customer in the Chelsea Rose
14 subdivision service area, the F12 service area.

15 MR. LORAIN: Judge, I'm going to object to
16 this line of inquiry. It has absolutely nothing to do with
17 any relevant thing in this. I'm sure this court and
18 Commission is not going to rule based on what is in the
19 newspapers, so it has no place in this hearing.

20 JUDGE WOODRUFF: Your response?

21 MR. WILLIAMS: I just had a couple questions
22 and I think it is proper background information for this
23 Commission to know there's consistent allegations of
24 numerous complaints of low water pressure at the Lake of the
25 Ozarks with respect to Osage Water Company that are brought

1 out in the newspaper or talked about here by Staff like
2 everybody knows about it.

3 And I think it's appropriate for the company
4 to be able to respond to what complaints it's received and
5 why those complaints may be appearing in the newspaper that
6 are being disseminated out to members of the public and the
7 Staff of the Commission. And I'm not going to take very
8 long.

9 JUDGE WOODRUFF: Okay. Well, that's certainly
10 a concern. I'm not sure that the ownership of the Lake Sun
11 News Leader, or whatever the name of the newspaper is, is
12 particularly relevant, but if you want to get into the
13 question of where complaints are coming from, I think that
14 is relevant. So I'll let you go ahead and proceed.

15 MR. WILLIAMS: Thank you.

16 BY MR. WILLIAMS:

17 Q. Mr. Mitchell, the publisher would be Tom
18 Turner; is that correct?

19 A. That's correct.

20 Q. Has he complained about low water pressure
21 inside his house to the company?

22 A. Repeatedly.

23 Q. And have you made an investigation into that
24 situation?

25 A. Yes.

1 Q. And have you checked the water pressure in the
2 company's water mains?

3 A. Yes.

4 Q. And what kind of pressure does the company
5 have in the water mains?

6 A. Between 60 and 70 pounds.

7 Q. And what's the size of the water main?

8 A. Two inch.

9 Q. And have you examined the plumbing inside
10 Mr. Turner's house?

11 A. I was present when Mr. Turner's house was
12 being constructed. The Osage Water Company -- we provide a
13 one-inch meter loop, one-inch connections on both sides --
14 or excuse me -- three-quarter inch meter loop with one-inch
15 connections on both sides of it. It goes through a
16 five-eighths meter.

17 His builder show chose to install a
18 three-quarter inch line all the way to the building. And
19 then once inside the building, all of the lines are a half
20 inch or smaller.

21 Q. And --

22 A. I conveyed my concerns to the builder at the
23 time the house was being built that he was going to be
24 experiencing complaints with problems within the homes from
25 such inadequate plumbing. There are no building codes in

1 this particular neck of the woods.

2 Q. Well, then with respect to that complaint from
3 that individual, you've investigated it?

4 A. Yes.

5 Q. And is it a problem with the company's system?

6 A. Absolutely not.

7 Q. Okay.

8 MR. WILLIAMS: I think I'm done with that
9 topic. Thank you, your Honor.

10 JUDGE WOODRUFF: All right.

11 BY MR. WILLIAMS:

12 Q. Mr. Mitchell, there's been allegations that
13 you're not actively involved in Osage Water Company's
14 business. Have you hired legal counsel for the company?

15 A. Yes.

16 Q. Have you investigated the company's options
17 for filing bankruptcy?

18 A. Yes.

19 Q. And have you tendered a defense in this case?

20 A. Yes.

21 Q. Have you taken efforts to recover the
22 company's intangible assets consisting of claims against the
23 City of Osage Beach for taking its properties and the value
24 of its water systems?

25 A. Yes.

1 Q. And are you continuing to do that?

2 A. Yes.

3 Q. Now, Mr. Mitchell, have you also been active
4 somewhat in field repairs and remedies?

5 A. When Debra or Jeff get to someplace where
6 they're stuck and can't figure it out, I usually get a call
7 and tell them what I know about the situation and try to
8 help them as best I can.

9 Q. And recently you've been involved in repairs
10 to the Cimmaron Bay wastewater treatment plant?

11 A. Yes. I stopped by, was able to -- the
12 company's not able to get the manufacture of a panel to
13 actually come out and do any work so -- and Jeff Smith's
14 expertise being in plumbing, I did stop by and do a quick
15 electrical fix on a -- on the panel.

16 Q. You've also been involved with respect to
17 inspections of construction at Cedar Glen, improvements to
18 the well and sewer system?

19 A. Yes.

20 Q. You've had contacts with the developments
21 making those improvements?

22 A. You bet. Several times.

23 Q. You've relayed the company's positions and
24 problems to them?

25 A. Written them letters.

1 Q. Okay. You also were involved in the
2 preparation for this hearing today --
3 A. That's correct.
4 Q. -- and last week?
5 A. And the week before.
6 Q. Have you also been making contacts regarding
7 potential prospects for the purchase of the company's
8 assets?
9 A. Yes.
10 Q. Find anybody?
11 A. No.
12 Q. Okay. Have you been involved for some time
13 with problems at Eagle Woods and the developer there with
14 respect to construction deficiencies in the systems he
15 built?
16 A. Yes.
17 Q. Have you or other persons on behalf of Osage
18 Water Company exchanged correspondence with the developer
19 out there for an extended period of time?
20 A. Yes.
21 Q. Are you able to get any mutually agreeable
22 resolution with that developer?
23 A. No. Not at all.
24 Q. Is that because the company won't agree or
25 because the developer won't do anything?

1 A. The developer apparently can't do anything
2 correctly the first time and won't do it right the second
3 time or the third time.

4 Q. And as recently as this past spring, did you
5 request or the company request that he make certain repairs
6 to deficiencies in the sewer system and that the company be
7 allowed to inspect them prior to backfill?

8 A. Yes.

9 Q. And did he allow inspection prior to
10 backfilling whatever he did to the system?

11 A. Never called once.

12 Q. Is that a requirement of the tariff, that when
13 other people work on the systems, they let the company
14 inspect it prior to backfill?

15 A. It is.

16 Q. Now, with respect to Cedar Glen and the letter
17 that was sent out, Ms. O'Neill went through some provisions
18 in that letter indicating that the systems were being
19 rejected and that service would not be provided through
20 those systems. Is that your recollection of the letter?

21 A. Yes.

22 MR. KRUEGER: Your Honor, I believe the
23 question was about Cedar Glen. Is this Eagle Woods?

24 MR. WILLIAMS: I'm sorry. I meant Eagle
25 Woods.

1 BY MR. WILLIAMS:

2 Q. And I think you did also; is that correct?

3 A. Yes. Eagle Woods.

4 Q. Do you have that letter in front of you?

5 A. Yes. I still have it.

6 Q. Let's look at the last page of that letter, if
7 you would, page 4, I guess is what I'm looking at.

8 A. Okay.

9 Q. Starting with the first full sentence on that
10 which begins at the end of the second line, Ms. O'Neill
11 asked you to read into the record the part that says, OWC
12 will no longer accept wastewater for Eagle Woods for
13 treatment at the KK treatment plant.

14 Would you finish the sentence for the record,
15 please?

16 A. Until such time as a sewer collection system
17 is constructed in compliance with the requirements of OWC's
18 tariff and applicable MDNR regulations under the supervision
19 of and inspection by a registered professional engineer
20 designated by Osage Water Company is constructed and
21 approved by MDNR and OWC.

22 Q. Is Osage Water Company ready, willing and able
23 to accept wastewater for treatment and service if that
24 requirement is met?

25 A. Absolutely.

1 Q. Is that a requirement of the company's tariff?

2 A. Absolutely.

3 Q. Let's go on to the next sentence, which I
4 believe Ms. O'Neill had you read the first part about Osage
5 Water Company will not provide water utility service. Would
6 you finish that sentence for the record?

7 A. Until such time as the water distribution
8 system is constructed in compliance with the requirements of
9 OWC's tariff and applicable MDNR regulations under the
10 supervision of and inspection by a registered professional
11 engineer designated by Osage Water Company is constructed
12 and approved by MDNR and OWC.

13 Q. Is Osage Water Company ready to provide water
14 service if that requirement is met?

15 A. Absolutely.

16 Q. And were those the requirements of the
17 original contract with Mr. Westenhaver?

18 A. Yes, they were.

19 Q. And that was the contract that was submitted
20 to this Commission for approval in the certificate case?

21 A. Yes, it is.

22 Q. Has Mr. Westenhaver ever complied with those
23 requirements?

24 A. Never.

25 Q. And have you attempted on more than one

1 occasion to gain his willing compliance?

2 A. Yes.

3 Q. And has he voluntarily complied?

4 A. Never.

5 Q. Now, Mr. Mitchell, in the complaint here there
6 is some allegations about an attempted foreclosure on Osage
7 Water Company by Environmental Utilities. You recall that
8 instance?

9 A. Yes.

10 Q. And were you opposed to such a foreclosure?

11 A. No.

12 Q. Why not?

13 A. The -- at the present state of where the rates
14 are, the value of the company, the future liabilities, I
15 don't think that there's any positive value there to anyone
16 unless they have a -- there's no financial interest in
17 operating the system at the current way it's currently set
18 up. There's no money available for -- to pay for capital or
19 any kind of a return on the system.

20 Therefore, the only person that has a real
21 interest in operating the system would be someone who has an
22 outside interest, whether it be a real estate development
23 interest or as a form of government entity that might have
24 access to much cheaper capital than the company has
25 available.

1 The only real asset in the present form the
2 company has is the outstanding lawsuit with the City of
3 Osage Beach. And if the burden -- burden is not quite the
4 word -- the distraction of having to spend 110 percent of
5 our time with the operation and maintenance issues,
6 constantly battling fires there were eliminated, the company
7 could proceed with its lawsuits uninterrupted and unimpeded,
8 but the operation and maintenance of the present structure
9 is unworkable.

10 Q. Okay. Now, Mr. Mitchell, is there any reason,
11 other than money, revenues derived from rates, that would
12 make Osage Water Company unable or unwilling to provide safe
13 and adequate service to its customers?

14 A. Only money.

15 Q. And if the Commission were to approve enough
16 money, would Osage Water Company be able to provide safe and
17 adequate service?

18 A. Absolutely.

19 Q. And, to the best of your knowledge, is Osage
20 Water Company providing safe and adequate service to all of
21 its customers today?

22 A. Barely safe, barely adequate.

23 Q. But it's not providing any return to its
24 shareholders?

25 A. None. No reserve, no nothing.

1 Q. So you would recommend to the Commission some
2 change in service and some changes in rates?
3 A. Exactly.
4 Q. Now, Mr. Mitchell, there's been an allegation
5 here that you have abandoned Osage Water Company. Do you
6 agree with that?
7 A. No.
8 Q. You've been as active as you can stand to be?
9 A. Spent a lot of free time working for Osage
10 Water Company.
11 Q. Would you be willing to be more active if you
12 were compensated for your time?
13 A. Somewhat, but never as much as I was in the
14 past.
15 Q. Mr. Mitchell, what's your age?
16 A. Forty-eight.
17 Q. Does that have an impact on how much you're
18 willing to go out and do for the company in the field?
19 A. Well, my knees feel like they're 48.
20 Q. Is that a yes?
21 A. Yes.
22 Q. So that is part of why you keep saying that
23 you don't want to be out in the field doing stuff, is simply
24 physical ability to do it at this point in time?
25 A. It -- yes, that's part of it. Just after

1 20 years of being on call 24 hours a day, 7 days a week,
2 other things become more important than working.

3 Q. How many years were you on call 24 hours,
4 7 days a week for Osage Water Company?

5 A. For Osage Water Company, since '87 --

6 Q. Until --

7 A. -- '91 -- or excuse me, 2001.

8 Q. Okay. Mr. Mitchell, in the Staff's complaint
9 it also requested expedited treatment. In order to obtain
10 that it said that the customers of the company are in
11 imminent danger of losing their water and/or sewer service.
12 Are you familiar with that?

13 A. Yes.

14 Q. Complaint was drafted on October 7th of 2002.
15 To the best of your knowledge, was that true on October 7th
16 of 2002?

17 A. Not that I'm aware of.

18 Q. Are they in imminent danger of losing their
19 water or sewer service today?

20 A. Only if the New Madrid fault -- we have an
21 earthquake.

22 Q. Okay. So they were getting service then,
23 they're getting service now?

24 A. Yes.

25 Q. To the extent allowed under the tariff?

1 A. To the extent of the amount under the tariff.
2 Also to the full amount of revenue available.

3 Q. Okay. Mr. Mitchell, is the company requesting
4 at -- Mr. Mitchell, is the company requesting that the
5 Commission order that the Staff that filed the complaint in
6 here and the requested expedited treatment be ordered to
7 reimburse the company for its attorney's fees and expenses
8 incurred in this proceeding?

9 A. Yes.

10 MR. WILLIAMS: Okay. I don't believe I have
11 any further questions of the witness at this time, your
12 Honor.

13 JUDGE WOODRUFF: All right. That would
14 conclude the cross-examination. We'll do recross after
15 lunch. It's now a little after 12:00. We'll come back and
16 restart at one o'clock.

17 MS. O'NEILL: Your Honor, I have a motion
18 before we go off the record. In light of testimony by
19 Mr. Mitchell this morning, I would move that the Commission
20 direct Osage Water Company not to disconnect service from
21 any of its customers while this matter is pending.

22 JUDGE WOODRUFF: I'm not going to make a
23 ruling on that at this time. Is there any -- well, we'll
24 take that up again after lunch.

25 MS. O'NEILL: Thank you. I just thought you

1 might be in a position to speak to the Commissioners over
2 the break and I wanted to make the motion first.

3 JUDGE WOODRUFF: That's fine. We're now off
4 the record until one o'clock.

5 (A RECESS WAS TAKEN.)

6 JUDGE WOODRUFF: Okay. We're back on the
7 record after lunch. And just before lunch, there was a
8 motion made by Public Counsel. Do you want to address that
9 further?

10 MS. O'NEILL: Your Honor, the Osage Water
11 Company has a statutory obligation to provide and furnish
12 safe and adequate service in all respects, which is found at
13 393.130.

14 Once it is -- whether or not the company chose
15 to undertake to provide that service in a place where it was
16 not satisfied with the quality of the construction, once it
17 undertook that obligation and began to provide service, it
18 is under the obligation to continue to provide service under
19 the terms and conditions that those customers expect the
20 service to be provided.

21 And when those end-use customers, in this
22 situation, they're the Eagle Woods subdivision customers,
23 through no fault of their own, are deprived of safe and
24 adequate service or any service whatsoever, that would be a
25 failure of this company, which would -- I mean, on the one

1 hand, I guess I'm hurting my case -- or hurting Staff's case
2 here because that would certainly be something that would
3 fall under the claims under the allegations in this
4 complaint, there would not be safe and adequate service.

5 And according to Mr. William's definition of
6 abandonment that he made in his opening statement, that
7 would constitute abandonment of some of his service
8 territory and some of their customers.

9 Given the information that's in Exhibit 36 and
10 the statements by Mr. Mitchell on the witness stand this
11 morning that he wants to turn off that service, that he has
12 not made any arrangements for alternate provision of service
13 for those customers, we believe that those customers are at
14 imminent risk of substantial harm if the Commission does not
15 order this company to continue to provide service at least
16 until the conclusion of these proceedings, whether a final
17 order regarding how this company is going to be managed and
18 who's going to be managed it is going to be had.

19 JUDGE WOODRUFF: I'm going to give everybody a
20 chance to respond. Staff, do you have any response?

21 MR. KRUEGER: No, your Honor.

22 JUDGE WOODRUFF: I have a question for you
23 though. Is Staff aware of this situation and is it going to
24 be doing anything?

25 MR. KRUEGER: I'm sorry, your Honor. I was

1 preparing for cross-examination. This is in regard to the
2 termination of service?

3 JUDGE WOODRUFF: At Woods, the customers -- in
4 the situation that those customers may be losing service.

5 MR. KRUEGER: Yes, your Honor. We do
6 presently plan to seek relief in the circuit court.

7 JUDGE WOODRUFF: Okay. And can you give me
8 more details on what -- I don't want you to violate any
9 confidentiality.

10 MR. KRUEGER: We are planning to file a
11 petition for a preliminary injunction in circuit court to
12 order the company not to terminate the water and sewer
13 service to Eagle Woods subdivision. And we will probably do
14 that either later today or else tomorrow.

15 JUDGE WOODRUFF: Okay. Mr. Loraine, do you
16 wish to be heard?

17 MR. LORAIN: Judge, thank you. The position
18 that I'm concerned about, of course, obviously we're
19 concerned about those customers, but other people here are
20 more concerned about those customers.

21 One of the things that we're deeply concerned
22 about is a transfer of assets again. And in all deference
23 to Mr. William's definition, whether they're valuable assets
24 or they aren't valuable assets, both of those two easements
25 were mentioned in that TRO and preliminary injunction that

1 we sought in circuit court to avoid the foreclosure on.

2 And Mrs. Dickerson, the circuit judge,
3 basically ruled that status quo would be maintained. I
4 don't think -- I don't think she interpreted that to mean
5 that just the foreclosure would be stopped. I think she
6 meant that no other assets be transferred in violation of
7 the PSC regulations.

8 And in my position and I think Mr. Hancock's
9 is that if that is not reversed or if this court is not
10 interested -- I mean, if this public entity is not
11 interested in doing that, that we're going to have to seek
12 to stop that kind of transfer of these assets also.

13 So we would be delighted to see at least the
14 customers taken care of, but we want one additional step in
15 that we want that set aside as void. And I believe we'd be
16 asking the Commission or its Staff to be follow filing a TRO
17 or something along those lines. And if they don't, we'll
18 probably go in on a contempt order down in circuit court.

19 JUDGE WOODRUFF: Mr. Williams?

20 MR. WILLIAMS: Your Honor, as I understand the
21 motion, the Staff -- or the Office of Public Counsel is
22 requesting that the company be ordered to continue service
23 no matter the circumstances and without regard to whether or
24 not the requirements of its tariff are being complied with.

25 I would advise the Commission that I have been

1 advised by the Missouri Department of Natural Resources,
2 public drinking water program that they have and intend to
3 file suit through the Missouri Attorney General's office to
4 prohibit the company from providing water service through
5 the water lines.

6 Now, how this Commission can order the company
7 to do something which it knows does not comply with the DNR
8 regulations, which DNR knows does not comply with DNR
9 regulations and which the tariff requires comply with DNR
10 regulations, I don't understand.

11 You're going to put the company in a position
12 where it's sued here and it's sued there. The company
13 cannot be there. That's why there is a tariff rather than
14 just an absolute obligation to provide service no matter
15 what. That is not the law in the state of Missouri.

16 The tariff defines the terms and conditions on
17 which service is available. If the tariff is not complied
18 with, then the requirements to obtain service and to have
19 the right to service have not been satisfied.

20 Those are pre-conditions to the obligation to
21 provide service in the manner in which this Commission
22 regulates public water and sewer utility companies and in
23 the manner in which the Department of Natural Resources
24 regulates public water and sewer utility companies.

25 There has been extensive testimony on the

1 record about problems and deficiencies with the Eagle Woods
2 water and sewer systems and how they do not comply with the
3 requirements of the tariff. In essence, the Office of
4 Public Counsel is asking the company to not do what the
5 Commission has directed and ordered it to do by approving
6 the tariff.

7 It's the company's job to make the hard
8 choices. When someone violates the tariff, you can't
9 continue to provide service like they didn't violate the
10 tariff. You have to enforce the tariff. The tariff, under
11 Missouri law, becomes law when it's approved by this
12 Commission.

13 Now, if the Commission wants to suspend the
14 tariff, order the company to provide service and find some
15 way to pay the costs that are going to be associated with
16 providing service in a manner other than what the tariff
17 contemplates, that's a different matter, but
18 that's not what's being asked for here today.

19 Now, are there end-users who are going to be
20 affected? Yes. Are they innocent? Well, to the extent
21 that they didn't build these systems, I suppose they're not
22 legally responsible for fixing them. But our tariff says
23 that they're only entitled to service when the tariff
24 requirements are met.

25 They got their houses at a price that reflects

1 the costs incurred by their developer to build these
2 systems. He cut corners, he cut costs, he sold them cheap
3 houses. The remedy is not to order the continue the company
4 to incur losses to provide them with service. That's not
5 it.

6 What the company has done is what the tariff
7 requires, what the Commission's regulations require. There
8 is supposed to be a warranty, there is supposed to be
9 repairs to systems to be made. Those are supposed to be
10 inspected by the company. What else can the company do but
11 follow what the Commission has established as a manner of
12 doing business?

13 JUDGE WOODRUFF: Ms. O'Neill?

14 MS. O'NEILL: Yes. A couple of things. One
15 is although the Office of Public Counsel is not a party at
16 this point in time to the pending matters regarding -- and
17 I'm not sure whether or not the specific issues in this --
18 that are the subject of my motion are actually pending
19 litigation or if they're just proposed litigation, but I
20 have been in contact with the attorney representing the DNR
21 in regard to this situation.

22 And I am not under the impression that DNR
23 wants Mr. Williams or Mr. Mitchell or Mrs. Williams or
24 whoever Osage Water is this week to cut off service to the
25 customers. Those customers did not violate the terms of

1 that tariff.

2 Whether or not the terms of the tariff are
3 violated and by whom and when may be issues that need to be
4 resolved at some point, but what Mr. Williams is not
5 recognizing is that once Osage Water Company assumed the
6 obligation to provide service by starting to provide service
7 in Eagle Woods, that's when their obligation to provide safe
8 and adequate service attached as far as that subdivision was
9 concerned.

10 They have an obligation to make sure that
11 people who did not violate the tariff and were paying their
12 bills continue to receive service.

13 And we may need -- I mean, obviously this is
14 further evidence of the rank mismanagement of this company,
15 but at this point in time, we need to look at this and the
16 Commission needs to take intermediate steps that it can to
17 make sure that the innocent customers are not harmed and
18 that's the reason for my motion.

19 It's a temporary fix. It's going to have to
20 be resolved on the road, but at this point in time, the best
21 that I can do to represent the interests of this company's
22 customers is to ask the Commission to order that at least
23 enter this temporary order that they keep the water flowing
24 and they not shut off the sewer, not yet.

25 JUDGE WOODRUFF: Certainly the Commission is

1 concerned about the well-being of customers in Eagle Woods
2 subdivision. However, this appears to be a very complex
3 matter involving a lot of parties who are not here today and
4 it's really far beyond the scope of the complaint.

5 And it's also beyond the scope of the -- I
6 believe it's in the regulation or perhaps even the statute
7 that permits the Commission to issue a temporary order
8 during the pendency of a complaint procedure.

9 In most situations, that's something coming
10 into complaint about their gas being shut off or their
11 electricity being shut off, and it's a simple situation
12 where the Commission can order that without implicating
13 public health issues.

14 In sum, this is a matter that needs to be
15 decided in court and it sounds like it's headed for court.
16 It's not something that I'm comfortable ruling on from the
17 Bench to issue such an order at this time. I'm going to
18 deny the motion.

19 If Public Counsel feels that it needs to
20 pursue this motion further, they may feel free to file a
21 written motion which can be brought up to the Commission at
22 its next agenda, but I'm going to deny the motion at this
23 time subject to the possibility of being reconsidered if a
24 written motion is filed.

25 MS. O'NEILL: Your Honor, in the alternative,

1 I would move that the Commission and your Honor take notice
2 of Mr. Mitchell's statement, which is in evidence -- and I
3 don't know you have to actually specifically take notice --
4 that he wants to shut off these customers and even if the
5 Commission ordered him to keep it on, he still may shut them
6 off in considering the outcome of this case.

7 JUDGE WOODRUFF: I believe he said he would
8 shut it off if DNR ordered him to do so. And that's just
9 another indication of why this matter is best resolved in
10 circuit court with all parties represented and all parties
11 can speak for themselves. Motion is denied and we'll
12 proceed further.

13 And we have a witness on the stand. And for
14 recross, we will begin with Public Counsel.

15 MS. O'NEILL: Probably should start with
16 Staff.

17 JUDGE WOODRUFF: It's his witness, so
18 technically Staff will be doing redirect. Under the
19 circumstances, we'll also allow Staff to do cross at the
20 time they do that. Everybody's looking at me with a
21 quizzical look.

22 MR. KRUEGER: I agree, your Honor.

23 MR. LORAIN: I'll be happy to go if you need
24 a volunteer.

25 MS. O'NEILL: I just wasn't sure whether or

1 not you were cutting Staff off, because I think if they do
2 redirect, we're going to get leading question objections and
3 that will just take more time.

4 JUDGE WOODRUFF: I was not intending to cut
5 Staff off, but now that you reminded me, I do have a couple
6 questions from the Bench before we go to recross.

7 QUESTIONS BY JUDGE WOODRUFF:

8 Q. Let me ask questions from the Bench then. You
9 mentioned that you were willing to have an auction of the
10 assets of Osage Water. Have you considered how that would
11 work?

12 A. Tried to have one in September.

13 Q. That was the --

14 A. The foreclosure.

15 Q. The foreclosure. Okay. If you were to try
16 and do an auction at this point, how would you deal with the
17 various creditors of Osage Water? How would they be
18 satisfied?

19 A. Most likely just have everybody submit claims,
20 give a deadline on proving those up and distribute the money
21 equally.

22 Q. That sounds like a bankruptcy proceeding.
23 Have you considered a bankruptcy proceeding?

24 A. Yes. I've consulted with several attorneys
25 about bankruptcy proceedings.

1 Q. And is that a possibility in the future?
2 A. It's always a possibility.
3 Q. Is it a good possibility?
4 A. I found a couple lawyers who will take the
5 money.
6 Q. That's probably not that hard to do.
7 A. No. Not at all. If there is any money to be
8 had. That's the other part.
9 Q. Okay.
10 A. It takes money to file a bankruptcy.
11 Q. If a bankruptcy were filed or if the assets of
12 Osage Water were auctioned off in some other manner, would
13 Osage Water be willing to continue service to its customers
14 while all those matters were pending?
15 A. That was the initial reason that I entered
16 into the contract with EU was to provide an orderly transfer
17 through the foreclosure auction.
18 At the time we entered into that agreement,
19 the Staff had not called or filed anything in the circuit
20 court or nobody else had either, so that was the whole
21 reason -- or the basis for getting that set up in place was
22 to protect the customers through that procedure.
23 One of my major worries is that the bankruptcy
24 proceeding could take -- I've been on the creditor end of
25 several of them, most of them I've seen take up to a year.

1 If anybody else comes in to operate the company like
2 Missouri American or somebody, there's going to be nothing.
3 Even Missouri American is going to end up a loser.

4 The last receiver that the PSC appointed ended
5 up backing out in the middle of the case. And I believe the
6 PSC was appointed as the receiver at some point in that
7 proceeding because there wasn't enough money for the
8 receiver to operate the system.

9 We may get into exactly the same situation
10 here and especially going into wintertime. You need to
11 understand that the company's revenues are seasonally based.

12 And during the wintertime, the revenues are
13 going to drop probably in the \$10,000 a month range, which
14 by the time you look at just the electric bills and the --
15 and the labor required, that's all the money there is. So
16 the factor of the company being willing, you know, I'm not
17 sure that the -- you know, the will's there, but I'm not
18 sure the funds are there.

19 JUDGE WOODRUFF: Okay. That's all the
20 questions I have then.

21 And for recross, we'll go to Public Counsel.

22 RECROSS-EXAMINATION BY MS. O'NEILL:

23 Q. Mr. Mitchell, you testified in response to
24 questions from Mr. Williams that all of these problems are
25 due to just not getting enough money. Would that be a

1 fair way to sum up your position?

2 A. Money doesn't buy happiness, but it does buy
3 solvency.

4 Q. So it's your position that quite a bit more
5 money would be needed for you to be satisfied that you could
6 operate this company adequately and safely?

7 A. I think it would be the position of anybody
8 that looks at the books could see that a 100 percent of the
9 money being used right now is all going to operation and
10 maintenance.

11 Q. Now, you said there was a difference between
12 operation and maintenance and running the company. Correct?

13 A. That's correct.

14 Q. Operation and maintenance doesn't include
15 customer service?

16 A. That's correct.

17 Q. Doesn't include billing?

18 A. That's correct.

19 Q. Doesn't include supervision of employees?

20 A. That's correct. There would be some
21 supervision. I mean, you could have -- if you have a
22 multiple -- more than one person doing the operation and
23 maintenance, obviously somebody would be supervising the
24 other two people or -- but --

25 Q. And because you're not involved in the

1 operation of the company right now, you wouldn't know
2 whether or not people are being paid to do billing or paid
3 to supervise or to do customer service. Is that your
4 testimony?

5 A. I didn't write the checks, but they keep
6 showing up for work and -- and I know they're -- you know,
7 they wouldn't do that unless they were paid.

8 Q. Kris Corum is a billing clerk. She doesn't do
9 operation and maintenance; is that correct?

10 A. That's correct.

11 Q. Debra Williams' main duties were management,
12 customer service, those types of things; is that correct?

13 A. Employee supervision, yes.

14 Q. Bookkeeping, that sort of thing?

15 A. Not too much of that, but I imagine she was
16 involved with some of that.

17 Q. She writes checks and she makes deposits?

18 A. Yes.

19 Q. So it's fairly simple bookkeeping, but she's
20 the one who's in charge?

21 A. No bookkeeping for a utility company is fairly
22 simple, but there is --

23 Q. There's certain accounts that have --

24 A. I would say she's -- balancing the checkbook
25 would be fairly simple.

1 Q. And she's allocating things to the appropriate
2 accounts or you don't know?
3 A. To the best of my knowledge.
4 Q. You don't know for sure?
5 A. I haven't seen it -- the allocation this
6 month.
7 Q. But she's getting paid every month something,
8 isn't she?
9 A. No. I believe she testified earlier that
10 there were some months she didn't get paid.
11 Q. In fact, her testimony was that she got paid
12 every month, but she didn't always get her \$3,000 that she
13 was billing the company for her management services; is that
14 correct?
15 A. The record stands for itself. I'm not -- my
16 memory's not the best in the world.
17 Q. You were involved in the last rate case
18 involving Osage Water Company; is that correct?
19 A. I testified, yes.
20 Q. You were involved in the operation and
21 management of the company; is that correct?
22 A. Yes.
23 Q. And you were involved in the agreement
24 regarding the settlement of that rate case; is that correct?
25 A. I was involved with it, yes.

1 Q. And that rate case settled; is that correct?
2 A. More than once.
3 Q. And you have not been involved in any further
4 requests for rate increases from this Commission; is that
5 correct?
6 A. That's correct.
7 Q. Other than anything you may have said here
8 this morning?
9 A. That's correct. There's been no cases filed
10 with -- in Osage Water Company's name.
11 Q. There's no moratorium on Osage Water Company
12 filing a rate case, is there?
13 A. I don't believe there was one until the last
14 temporary was made permanent, which was not very long ago.
15 Q. But you don't know for sure?
16 A. I don't have the paperwork in front of me.
17 Q. Osage Water Company doesn't own the water well
18 at Golden Glade, does it?
19 A. No. It doesn't have a certificate at Golden
20 Glade.
21 Q. And it doesn't own the well either?
22 A. No.
23 Q. So when you included the costs of the water
24 well capital for KK, that's the Golden Glade well, isn't it,
25 when you were testifying this morning?

1 A. It would have to be -- if not that one, it
2 would be another one. The prices are all about the same.

3 Q. Osage Water Company doesn't own -- other than
4 those small family wells in Eagle Woods doesn't own a well
5 at KK today?

6 A. There's no public water supply system that
7 meets MDNR standard in Eagle Woods today.

8 Q. Osage Water Company doesn't own -- other than
9 those wells, doesn't own a well out in the KK area today in
10 that territory?

11 A. Osage Water Company owns no public water wells
12 on -- in the KK area.

13 Q. And hasn't applied for a water certificate for
14 Golden Glade, has it?

15 A. No.

16 Q. Do you know what used and useful means?

17 A. Generally. I'm not a legal expert on it.

18 Q. In connection with Public Service Commission
19 rate cases?

20 A. It's an asset that is being used to service
21 customers currently. That would be a rough definition.
22 Would you agree with that?

23 Q. And also owned by the company?

24 A. No. It could be a leased object. I mean, it
25 wouldn't have to be owned.

1 Q. You don't lease the Golden Glade well either,
2 do you?

3 A. Not today.

4 Q. In the last rate case, did Osage Water Company
5 agree to a specific treatment regarding the Hancock
6 debenture?

7 MR. WILLIAMS: Your Honor, I'm going to do
8 object.

9 MS. O'NEILL: It's on this list that he
10 testified to with Mr. Williams.

11 MR. WILLIAMS: Your Honor, I'm going to object
12 to her inquiry as to what Osage Water Company may have
13 agreed to in the last rate case. There are documents of
14 record in that case which speak for themselves which would
15 be the best evidence as to what Osage Water Company agreed
16 to.

17 This witness's recollection is not the best
18 evidence and may or may not be in accordance with what the
19 documents actually state. If she wants to prove that up,
20 she can get the document and bring it in here.

21 JUDGE WOODRUFF: I'm going to overrule the
22 objection. To the best of your knowledge, you can testify.

23 THE WITNESS: What's on the sheet here is a
24 20-year amortization at 9 percent and that's not what was
25 allowed in the -- what the Staff put in their budget.

1 BY MS. O'NEILL:

2 Q. That's not --

3 A. For the --

4 Q. That's not --

5 A. For the -- and the company reluctantly agreed
6 to --

7 Q. Okay.

8 A. -- in the last rate case.

9 Q. That 20 years at 9 percent has to do with the
10 judgment Hancock got after Osage Water Company defaulted; is
11 that correct?

12 A. Yes.

13 Q. There was some allowance for some treatment of
14 the Hancock debenture in the last rate case, wasn't there?

15 A. There was an amount per month that was put
16 into the rates, the revenue to be derived from the rates for
17 that debenture.

18 Q. And that revenue was not used to pay for -- to
19 make those payments; is that correct?

20 A. That's correct. It was used to provide for
21 operation and maintenance and keep the customers wet and
22 flushing.

23 Q. And of this \$178,000 \$180,000 that you were
24 testifying to in response to questions from Mr. Williams,
25 about 86,000 of that has to do with your debt and his debt;

1 is that correct?

2 A. Yes.

3 Q. And when you were trying to estimate cost of a
4 second operator, did you only consider full-time operators?

5 A. That was the question.

6 Q. Okay. When you were trying to determine
7 whether or not ---

8 A. No, no. I didn't ask what your question was.
9 I said that was what his question was, how much was a
10 full -- another operator going to cost.

11 Q. When you were trying to come up with the
12 figures you testified about this morning, did you consider
13 part-time operators or whether or not any additional
14 operator was actually needed?

15 A. Mr. Hummel testified that additional operators
16 are needed. The original budget only has \$9,600 in it for
17 all operation and maintenance. At the \$12 an hour that you
18 were aware of that we were paying our operators at the time
19 of the last rate case, that's 13 hours a week total time for
20 doing all operation and maintenance and repairs. That's
21 what's in the budget right now.

22 So we're using all of Dave Hancock's money,
23 all of the rate -- return that was allowed, all the money
24 that should have been paid to the attorney for attorney fees
25 just to keep the systems running.

1 Q. Do you recall that Mr. Hummel also testified
2 that when the systems aren't put in well, they're going to
3 require more maintenance?

4 A. That's right. That's why we want to
5 disconnect the Eagle Woods system, so that we don't punish
6 the other 400 customers because 25 of them have a lousy
7 system.

8 Q. You have problems in your systems other than
9 Eagle Woods though, don't you?

10 A. Yes. There's a -- the developer is doing a
11 current expansion of the wastewater plant at Cedar Glen and
12 there is a recurring leak there that the developer is fixing
13 again.

14 Q. And there's still a leak over at Broadwater
15 Bay. Right?

16 A. Not that I'm aware of, but --

17 Q. Okay.

18 A. I haven't been there for --

19 Q. You haven't been around Broadwater Bay any
20 time recently?

21 A. Not on the drinking water system. We've been
22 working on the wastewater leaks.

23 MS. O'NEILL: Nothing further.

24 JUDGE WOODRUFF: All right. For Hancock?

25 MR. LORAIN: May it please the court, your

1 Honor.

2 JUDGE WOODRUFF: Go ahead.

3 RECROSS-EXAMINATION BY MR. LORAINÉ:

4 Q. Mr. Mitchell, you suggested that in the last
5 rate case that you participated in for OWC that you
6 reluctantly agreed to the rate including the Hancock
7 figures. Would that be a correct quote out of what you
8 said?

9 A. Yes.

10 Q. And to refresh your recollection, I didn't
11 hear an amount, but would \$1,000 a month or \$12,000 a year
12 sound appropriate?

13 A. That's what the Staff put in the budget.

14 Q. Okay.

15 A. I mean, actually I think the agreement only
16 was for the total amount and the rate itself, but that's
17 what was in the budget.

18 Q. And in that same quote/unquote budget, no
19 money was allowed for Mr. Mitchell on his past debts and
20 costs and no amount was allowed for Mr. Williams on his past
21 attorney fees; is that true?

22 A. No.

23 Q. Why is that not true?

24 A. I believe there was one dollar a month per
25 customer allowed for attorney's fees. And that the Staff

1 had recognized some rate base for engineering, but in
2 general, what we agreed on was that bottom line, there's --
3 I don't remember the exact number of dollars. I don't have
4 that in front of me, this is the amount of revenue increase
5 that we're going to agree on and we're going to agree to
6 disagree on everything else until we bring another case
7 before the Commission.

8 Q. Why has another case not been brought before
9 the Commission?

10 A. Because the attorney hasn't been paid for the
11 last case brought before the Commission. They cost 20,000
12 to \$40,000 a piece.

13 Q. There was a comment that I quoted you saying
14 that rather than spend money on Hancock, you needed to keep
15 people wet and flushing. That's a correct quote?

16 A. Yes.

17 Q. And who made the decision not to pay
18 Mr. Hancock the \$1,000 a month?

19 A. I did.

20 Q. All during this same period of time Debbie
21 Williams substantially was paid \$3,000 a month?

22 A. No. Mr. Hancock --

23 Q. A week? What is she paid? I'm sorry. 3,000
24 a month, wasn't it?

25 A. That's her current pay scale, but at the time

1 Mr. Hancock was not paid, all the employees were laid off,
2 all the equipment was repossessed.

3 The Public Counsel decided in -- to have a
4 public hearing and then -- you know, it went on and on for
5 another six months before the company got a rate increase.
6 So we were substantially in default and Mr. Hancock had
7 filed against the company before we ever saw a rate
8 increase.

9 Q. At that time that these decisions were being
10 made, you said equipment was foreclosed on. I assume you're
11 talking about the bobcat and the trencher?

12 A. Yes.

13 Q. Well, somebody made a decision not to make
14 those payments, didn't they?

15 A. Sure. I thought I'd pay the electric bills.
16 It was dead of winter.

17 Q. So those were let go?

18 A. Yeah.

19 Q. Did you know that they wound up back with EU
20 and Mr. and Mrs. Williams?

21 A. Sure. Saved the company money. If the -- if
22 the bobcat company just auctioned them off, they'd probably
23 have bought substantially less than the balance owed on
24 them. And they got the company off the hook for that debt.

25 Q. But you deliberately made a decision among

1 creditors? You made a selection that this bobcat and
2 trenching machine could be sold for whatever was against it
3 and Williamses would benefit, but Mr. Hancock didn't benefit
4 from that?

5 A. Williams didn't decide to even buy it for a
6 couple months after the stuff had been picked up, foreclosed
7 on, all done with.

8 Q. You testified that one of the distinct
9 possibilities would be a liquidation of some sort of the
10 assets?

11 A. Sure.

12 Q. And you would be willing to do that, supervise
13 that liquidation. Is that -- that's my understanding of
14 your testimony?

15 A. Yes.

16 Q. And that, of course, presumes that the monies
17 that you claim and Mr. Williams claims in accordance with
18 those deeds of trust that were filed after that rate case,
19 that money in question you're suspecting is going to be
20 valid and it's going to be prioritized right at the top
21 below the tax liens; isn't that true?

22 A. I assume that the Commission would be a little
23 more detailed in their order than just sell the company
24 however you can.

25 Q. So you'd be willing to take a substantial

1 discount on those. Is that what you're telling me?

2 A. All offers will be fairly reviewed.

3 Q. Which brings up one final point and then I'll
4 sit down. You testified that there was no offers for the
5 OWC assets that you're aware of. I'd like to remind you
6 that Mr. Hancock has made several offers during the pendency
7 of these actions. Does that refresh your recollection?

8 MR. WILLIAMS: Your Honor, I'm going to object
9 to that question to the extent that it calls for a
10 disclosure of settlement negotiations. Certainly that was
11 the tenor in which any information might have been conveyed.

12 Mr. Loraine I understand has Mr. Hancock on
13 the witness list. If he wishes to tender an offer for
14 assets, he certainly may do so through his own witness
15 witness's testimony, but I think it's improper for
16 Mr. Loraine to bring out settlement discussions before this
17 Commission.

18 MR. LORAIN: May I respond that, Judge?

19 JUDGE WOODRUFF: You may.

20 MR. LORAIN: This has nothing to do with
21 settlement offers or demands. It has something to do with
22 lying on the stand and it's impeachment.

23 JUDGE WOODRUFF: I'm going to overrule the
24 objection as to that question, because it was simply asking
25 whether or not there were offers.

1 And you can answer that.

2 THE WITNESS: Mr. Hancock never offered to buy
3 the company. All he wanted to do was buy the assets.

4 BY MR. LORAINÉ:

5 Q. There have been offers?

6 A. There have been offers -- there has been an
7 offer or I guess -- there's been multiple offers by the same
8 person, however you want to look at that.

9 Q. And that's been Mr. Hancock?

10 A. To purchase some or -- actually, some of the
11 assets of the company.

12 Q. Well, is that a fair statement, that there
13 have been offers? I'm quibbling with the fact that you said
14 earlier there weren't any offers.

15 A. Well, the question before was has there been
16 any offers to purchase the company. And, no, there's not
17 been any offers to purchase the company. Mr. Hancock wants
18 to buy some of the assets, cherry pick here and there,
19 that's fine. But that was not the question that
20 Mr. Williams tendered to me.

21 MR. LORAINÉ: Thank you, sir. I have nothing
22 further.

23 JUDGE WOODRUFF: All right. Osage Water?

24 RE-CROSS-EXAMINATION BY MR. WILLIAMS:

25 Q. Mr. Mitchell, in response to a question from

1 the Bench, you discussed a possible auction of assets and a
2 dissolution and liquidation of the corporation. Is that
3 under Chapter 351, the dissolution corporation provisions in
4 the general corporation code?

5 A. There is some general statutes there that
6 could govern this.

7 Q. And you have reviewed those and that's what
8 you were proposing to carry out, a liquidation pursuant to
9 Missouri law?

10 A. Right.

11 Q. And it would be your understanding that if an
12 auction was held, that the Commission would have to confirm
13 such a sale?

14 A. And they might even allow the use of this
15 room.

16 Q. All right. You've also looked into the
17 possibility of what would be involved in a bankruptcy
18 proceeding?

19 A. Yes. I've spoke with a couple different
20 attorneys on that subject.

21 Q. And with respect to the cost of administering
22 a dissolution under Chapter 351 versus the cost and time
23 involved in administering a dissolution or liquidation
24 through bankruptcy, have you reached any conclusion as to
25 which would be the fastest or the most cost effective or

1 both?

2 A. Doing it under general statutes for
3 dissolution would be much cheaper and faster. I'm afraid
4 bankruptcy court would end up with another long drawn out
5 mess fighting over who gets what.

6 Q. And do you have a concern with the long and
7 drawn out aspect of a bankruptcy proceeding as it affects
8 customers?

9 A. Yes. Like I was relaying to the judge, that
10 we had provided the original agreement for a short-term
11 auction on the courthouse steps all done and over with and
12 the EU could proceed through with the customers seeing
13 minimal disruption.

14 I'm afraid if we go to bankruptcy with a
15 third-party receiver, that the receiver's costs are going to
16 far exceed the remedies available and we're going to end up
17 in the situation that happened the last time the PSC
18 appointed a receiver. And I don't see the customers coming
19 out in a very good shape that way.

20 Q. Now, Mr. Mitchell, does it benefit the
21 corporation to go through a bankruptcy procedure, liquidate
22 its assets because it will get a discharge at the end of the
23 bankruptcy proceeding?

24 A. The company will still owe debts for whatever
25 amount at the end of the proceeding as it did at the

1 beginning. It's not like a personal bankruptcy is my
2 understanding where you discharge the debts. The debts are
3 still there, just the company doesn't have the assets to pay
4 it and generally just quietly wanders off.

5 Q. So from a functional result, the same end
6 result happens in a corporate dissolution as in a
7 bankruptcy? You sell assets and pay claims in proportion
8 and priority?

9 A. Exactly.

10 Q. All right. Now, another question was asked by
11 Ms. O'Neill regarding whether or not the company could file
12 another rate case. Is it your understanding that
13 WR-2000-557 was just closed by the Commission within the
14 last three or four months?

15 A. Something like that, yes. I don't have the
16 exact date.

17 Q. So the company -- and is it also your
18 understanding you can't file a rate case while a rate case
19 is pending?

20 A. Yeah. We had that issue going during the last
21 rate case, that we couldn't file another one because the
22 first one -- it's not news to most of the people in the
23 room.

24 Q. So the 1999 rate case, WR-2000-557, was just
25 closed in 2002?

1 A. Yes.

2 Q. And during that time frame, you really haven't
3 had the opportunity to request additional rate relief?

4 A. That's true.

5 Q. But you are asking that of the Commission here
6 today?

7 A. Yes.

8 Q. Mr. Mitchell, Mr. Loraine also delved into the
9 repossession of the bobcat and excavator the company used to
10 own. Is it your belief that the company may have had some
11 exposure for deficiency on its lease agreement?

12 A. It most certainly did. There was probably --
13 we'd have another creditor probably in the tune of 5,000
14 \$6,000.

15 Q. And was the company harmed then by the
16 purchase of that?

17 MR. LORAIN: Judge, I'm going to object to
18 that as calling for a legal conclusion which we're still not
19 willing to give up on. That's a legal conclusion there.

20 JUDGE WOODRUFF: Overruled. You can answer
21 the question.

22 BY MR. WILLIAMS:

23 Q. Was the company harmed in any way by that
24 equipment being bought back after repossession?

25 MR. LORAIN: Same objection, your Honor. to

1 any line of --

2 JUDGE WOODRUFF: Again, overruled.

3 MR. LORAIN: Thank you.

4 THE WITNESS: I told several other people that
5 I was familiar with that the equipment was sitting in
6 Jefferson City and available for purchase at what the
7 balance was left on the lease. And Mr. Williams is the
8 only person that attempted to even consider it at the price.
9 BY MR. WILLIAMS:

10 Q. So you tried to get the equipment disposed of
11 without -- so that the company would not incur additional
12 claims against it?

13 A. Yeah. Before it was repossessed and after,
14 both.

15 Q. Okay.

16 MR. WILLIAMS: I believe that's everything I
17 have your Honor, thank you.

18 JUDGE WOODRUFF: Go ahead, Mr. Loraine.

19 MR. LORAIN: Judge, in light of that, I'd
20 like to ask one question back on that issue -- on that very
21 issue.

22 JUDGE WOODRUFF: Go ahead. Why don't you do
23 it from there. Pull your microphone over.

24 FURTHER RE-CROSS-EXAMINATION BY MR. LORAIN:

25 Q. Sir, what was the balance on those two items

1 that you mentioned, the backhoe and the trencher?

2 A. I'm not exactly sure. Somewhere between
3 15,000 and 20,000.

4 MR. LORAIN: Thank you.

5 THE WITNESS: I think. It's been several
6 years.

7 JUDGE WOODRUFF: Then Staff for cross as well
8 as for redirect.

9 MR. KRUEGER: Thank you, your Honor.

10 REDIRECT EXAMINATION BY MR. KRUEGER:

11 Q. Good afternoon, Mr. Mitchell.

12 A. Good afternoon.

13 Q. Did you abandon Osage Water Company on
14 July 7th, 2001?

15 A. I rescinded my operation and maintenance
16 contract at Water Laboratory Company with Osage Water
17 Company in July of 2001.

18 Q. My question is, did you abandon Osage Water
19 Company at that time?

20 A. No.

21 Q. Did you review the answer to the complaint in
22 this case before it was filed?

23 A. Yes.

24 Q. You're familiar with the contents of that?

25 A. Well, I don't have it memorized.

1 MR. KRUEGER: May I approach the witness, your
2 Honor?

3 JUDGE WOODRUFF: You may.

4 BY MR. KRUEGER:

5 Q. I'm going to show you the complaint and motion
6 for expedited treatment. You recognize that as the
7 complaint that was filed in this case?

8 A. It looks similar.

9 Q. And I'd ask you to just read the first
10 sentence after the italics in paragraph 26 at the top of
11 page 11.

12 A. First sentence after the italics?

13 Q. Yes.

14 A. Mr. Mitchell abandoned the company on July 6th
15 or 7th, 2001.

16 Q. Okay. Now, I'm going to show you the answer
17 to complaint. Do you recognize that as the answer that was
18 filed in this case?

19 A. Yes.

20 Q. And I'd direct your attention to paragraph 26
21 and ask you to read what is written there.

22 A. Respondent admits the allegations of
23 paragraph 26 of the complaint, but affirmatively states that
24 applicable Missouri law does not require that the president
25 of the corporation actively participate in the day-to-day

1 operations of the corporation.

2 Q. So by stating that you admitted the
3 allegations of paragraph 26 of the complaint, didn't you
4 admit that you abandoned the company on July 6th or 7th of
5 2001?

6 A. Can I read paragraph 26 again?

7 Q. Yes, you may.

8 A. Water Laboratory Company, who I'm also a
9 principal of, took all the assets to Osage Water Company and
10 put them on the front porch of the registered agent and left
11 them there.

12 Q. The first paragraph of paragraph -- the first
13 sentence of paragraph 26 of the complaint though says
14 Mr. Mitchell abandoned the company on July 6th or 7th, 2001.
15 And in the answer it states Respondent admits the allegation
16 of paragraph 26 of the complaint.

17 A. Mr. Mitchell wears four different hats,
18 including a personal hat.

19 Q. Did you abandon the company on July 6th or
20 7th, 2001?

21 MR. WILLIAMS: Your Honor, I'm going to
22 object. The question's been asked and answered.

23 JUDGE WOODRUFF: Sustained.

24 BY MR. KRUEGER:

25 Q. Am I correct to understand that you testified

1 that Osage Water Company may not be able to continue to
2 provide water and sewer service to Eagle Woods subdivision
3 because the Department of Natural Resources will not allow
4 it?

5 A. Yes.

6 Q. Is that the only reason why you would
7 terminate service to the Eagle Woods subdivision?

8 A. No.

9 Q. If the Department of Natural Resources does
10 not prohibit you from serving Eagle Woods subdivision, will
11 you continue to provide service to the subdivision?

12 A. Possibly. There's one other -- Department of
13 Natural Resources is not here, let me try to clarify what
14 else is going on.

15 Mr. Westenhover questioned MDNR on whether
16 they would allow him to build a separate wastewater plant to
17 handle the sewage from Eagle Woods. The actions that we
18 took yesterday will allow him to do that.

19 And we would certainly support if he wanted to
20 go ahead and build his own water and sewer system so that
21 the certificate be canceled for that area and he be allowed
22 to do that as a Homeowners Association if he wants to.

23 We're not interested in operating sub-standard
24 built systems such as what he has there. It's not fair to
25 the other 400 customers that Osage Water Company has to have

1 to subsidize that.

2 Q. So --

3 A. So there's other scenarios in which we would
4 cease operation in Eagle Woods voluntarily.

5 Q. So long as Osage Water Company has the
6 certificate to serve Eagle Woods and so long as the
7 Department of Natural Resources does not prohibit you from
8 doing so, will you continue to provide water and sewer
9 service to Eagle Woods?

10 A. I don't want to. I don't think it's fair to
11 everybody else that -- every other customer that the company
12 has. It's -- it's draining huge amounts of resources --
13 limited resources that the company has to try to keep that
14 system running.

15 Q. My question is, will you continue to provide
16 service?

17 A. I don't know.

18 Q. What would cause you to terminate service?
19 How would you decide whether to terminate the service?

20 A. We've already decided to terminate service.
21 The expenses -- it's just like Broadwater Bay, the expenses
22 to continue operation exceed the revenue. It's just a
23 matter of time before a large malfunction occurs and the
24 company's not financially able to provide the capital
25 necessary to rebuild the whole system. It's not a matter of

1 if, just a matter of when.

2 Q. So it's inevitable that a large malfunction
3 will occur at Eagle Woods?

4 A. Yes. The system is substantially deficient in
5 many MDNR standards.

6 Q. And when that happens, you will not be able to
7 provide service to Eagle Woods?

8 A. The wastewater treatment plant is able to
9 provide the service up to a point unless -- you know,
10 depends on if the system breaks and emits large amounts of
11 lake water like it did the last time. Then there's nothing
12 the company can do to stop that without going out there and
13 substantially rebuilding the system. And we're talking
14 probably a \$100,000 bill. The company doesn't have the
15 money.

16 Q. So is it fair to say the company is not
17 willing to do that?

18 A. No. The company's perfectly willing. The
19 company would prefer to have a quarter million dollars go in
20 there and rebuild the water and sewage and sue
21 Mr. Westenhaver out of existence. That's what the company
22 would prefer to do. The company doesn't have the money to
23 do that. That would solve PSC's problems, DNR problems,
24 solve the company's problem. But that's not a viable option
25 here.

1 Q. So the company would be willing to do it if,
2 but only if, you have a substantial sum of money that you do
3 not now have?

4 A. That particular scenario requires a
5 substantial sum of money that the company now does not have.

6 Q. As I understand it, you relied on this
7 department of -- this Rule 4 CSR 240-60.020(6); is that
8 correct?

9 A. Yes.

10 Q. The first sentence of that states, All
11 construction of sewers and appurtenances shall be inspected
12 by the utility or its authorized agent to assure that they
13 are constructed in accordance with approved plans and
14 specifications and shall not be accepted until a
15 construction complies with the plans and specifications.

16 Did Osage Water Company inspect these
17 facilities to ensure that they were in accordance with
18 approved plans and specifications?

19 A. Mr. Westenhaver was notified an inspection was
20 necessary. He refused to comply or tell us when
21 construction was happening so that we could be there.

22 It's not like it's an ongoing construction
23 project that you keep a full-time man standing around down
24 there waiting for it to happen. It requires a partial
25 construction, somebody to call and then we can go and look

1 at what's there and then agree to allow it to be backfilled.

2 That didn't happen. So as a back-up, it
3 allows for our agent -- and we referred to that he needed to
4 get a professional engineer to sign off on it and MDNR to
5 sign off on it. He did both of those things on -- in the
6 case of the sewer system.

7 MDNR has never signed off on the water system.
8 And we started operating the sewer system, we found that
9 MDNR and the professional engineer must have been blind or
10 not present at all and there's substantial deficiencies in
11 the systems.

12 Q. Am I correct to understand from your answer
13 that you did not inspect the sewers and appurtenances?

14 A. I did not personally inspect the sewers and
15 appurtenances while they were under construction.

16 Q. Did you accept the sewers and appurtenances?

17 A. I personally did not accept the sewers and
18 appurtenances.

19 Q. Did you begin operating, using those sewers
20 and appurtenances?

21 A. That happened sometime after July of 2001 and
22 over my recommendation that they not do it.

23 Q. Well, I guess I'm asking about the company.
24 Did the company provide service to its customers using those
25 sewers and appurtenances?

1 A. Sometime in -- I don't have the exact date.
2 Some time in late 2001, Mr. Westenhaver tendered a
3 professional engineer's substantial completion certification
4 that the plans that were done substantially according to
5 plans and specifications. And that MDNR had approved the
6 systems. And I was out of town at the time and the company
7 accepted the systems.

8 Q. The company did accept them?

9 A. It's my understanding. I haven't seen the
10 paperwork. I don't have it here with me.

11 Q. And the company provided service to the
12 customers there?

13 A. They billed them, yes, and have worked on the
14 system, yes.

15 Q. And billed the customers for the services
16 provided there?

17 A. Yes. Well, billed the customers the amount
18 allowed in the tariff which has been far exceeded by the
19 amount of services provided there.

20 Q. Mr. Williams asked you some questions about
21 the fourth page of the letter to Mr. Westenhaver dated
22 November 8th. Do you have that in front of you?

23 A. Yes.

24 Q. And he specifically asked you about -- I
25 believe it's the second full sentence there, which states,

1 OWC will no longer accept wastewater from Eagle Woods for
2 treatment at the KK treatment plant until such time as
3 there's a sewer collection system constructed in compliance
4 with the requirements of OWC's tariff and applicable MDNR
5 regulations under the supervision and inspection by a
6 registered professional engineer designated by OWC as
7 constructed and approved by MDNR and OWC. Do you see that?

8 A. Yes.

9 Q. Has that occurred?

10 A. I don't believe the valve has been shut off.

11 Q. Okay. My question is whether a sewer
12 collection system constructed in compliance with those
13 requirements has been constructed and approved?

14 A. Has it been -- has the -- there is a sewer
15 system there. DNR did sign off on that. Mr. Westenhaver's
16 engineers signed off on that. Subsequent inspection by us
17 has -- has found that somebody's lying or blind, one of the
18 two, and the system's don't meet any of the applicable
19 regulations.

20 Q. So is it your testimony then that a system --
21 sewer collection system constructed and approved by MDNR and
22 OWC does not exist there?

23 A. That's exactly right.

24 Q. Okay. So looking at that whole sentence then,
25 is it correct for me to understand that OWC will no longer

1 accept wastewater from Eagle Woods for treatment at the KK
2 treatment plant at this time?

3 A. That's what it says.

4 Q. Okay. How will the customers in the Eagle
5 Woods subdivision obtain sewer services if the company will
6 no longer accept wastewater from them under the situation
7 that now exists?

8 A. Well, there's several options. We went
9 through this earlier this morning. Mr. Westenhaver can hook
10 the systems into the City, he can build his own system or he
11 can just have the wastewater hauled like he did for months
12 and months before the original approval was given by DNR.

13 Q. Okay. That's what Mr. Westenhaver can do.
14 What can --

15 A. He is in control of the Homeowners
16 Association.

17 Q. What can the homeowners do, the customers?

18 A. They can do exactly the same things.

19 Q. And you're just leaving it up to them to
20 figure out what to do?

21 A. They -- I believe their intelligence is above
22 their body temperature. I don't see why that's a problem.

23 Q. Do you consider that safe and adequate
24 service?

25 A. It beats no service whatsoever, but it is

1 service in accordance with the tariff.

2 Q. The next sentence of that letter then provides
3 to water utilities service. And am I correct to say that
4 the company will no longer provide water utility service
5 until such time as satisfactory facilities constructed and
6 approved according to MDNR and regulations are put in place?

7 MR. WILLIAMS: Your Honor, this is ground
8 we've already covered. The question's been asked and
9 answered.

10 MR. KRUEGER: The previous question was in
11 regard to sewer facilities.

12 MR. WILLIAMS: No. It's been asked and
13 answered either on direct or cross in this case and we're
14 simply rehashing the case. If we want to get done, we need
15 to move on to something new.

16 JUDGE WOODRUFF: I'm going to overrule the
17 objection. Keep making them as you see fit.

18 THE WITNESS: And the question is to -- as I
19 remember, is OWC going to turn off service for the -- we
20 have not shut off access to the Environmental Utilities'
21 well and Environmental Utilities has not shut off access to
22 that well either as of this time. There still is at least
23 one well that the deeds transfer back to the Homeowners
24 Association that could be supplying that system.

25 BY MR. KRUEGER:

1 Q. Does that sentence say that the company will
2 not provide water utilities service until a water
3 distribution system constructed in accordance with
4 applicable MDNR regulations is constructed and in place?

5 A. Also says requirements of OWC tariff. So we
6 have this dichotomy going here where we end up with --
7 caught between a rock and hard place. The customer needs
8 service and OWC needs a system that works and DNR is getting
9 ready to sue us because the system doesn't work. Don't want
10 to be there. There's no money to pay for the lawsuit.

11 Q. Is there in existence a system that satisfies
12 the requirements of this sentence?

13 A. No.

14 Q. So then does that sentence say that you will
15 not provide water utility service until better facilities
16 are constructed?

17 A. That's what it says.

18 Q. Okay. And, again, you're going to leave the
19 customers to find their own water service?

20 A. There's a well there, possibly two.

21 Q. Do you consider that that is safe and adequate
22 service of -- water service to the customers in Eagle Woods?

23 A. The original system was two wells, each of
24 them having 14 houses. That is perfectly allowable under
25 DNR regulations as non-community water systems. If that's

1 what the homeowners choose to do, they could do that.

2 Q. Is the company providing safe and adequate
3 water service if that occurs?

4 A. The company would be providing service under
5 its tariff.

6 Q. Is it your testimony that you need two
7 operators to properly operate the water and sewer systems of
8 Osage Water Company?

9 A. Yes. I believe that's in complete agreement
10 with Mr. Hummel's testimony.

11 Q. And you can't provide safe and adequate
12 service until you do?

13 A. The -- one operator is -- it's shades of gray.
14 It would be better to have two operators than one, for
15 reasons that I alluded to earlier in cross-examination.

16 Q. Is it possible to provide safe and adequate
17 service with one operator?

18 A. We're doing it today. Barely safe and barely
19 adequate.

20 MR. KRUEGER: I believe that's all the
21 questions I have.

22 JUDGE WOODRUFF: All right. Thank you. And
23 with that then, Mr. Mitchell, you can step down.

24 Staff have any other witnesses?

25 MR. KRUEGER: No, your Honor.

1 JUDGE WOODRUFF: All right. Public Counsel?

2 MS. O'NEILL: May I have a moment?

3 JUDGE WOODRUFF: Certainly.

4 MR. WILLIAMS: Your Honor, I do have a motion
5 to make and I'd like to be heard.

6 JUDGE WOODRUFF: Okay. Go ahead.

7 MR. WILLIAMS: Your Honor, real simply, the
8 company would move for A directed verdict at the close of
9 the Staff's case in this matter. We've heard already from
10 all of the Staff's witnesses in this case.

11 What the Staff told us as we started this
12 matter, was that they would show that the company was
13 unwilling or unable to provide safe and adequate service or
14 that it had been abandoned by its owners.

15 What, in fact, the Staff has shown through the
16 testimony of its witnesses is the company is willing and is
17 able, if it has proper funding, to provide safe and adequate
18 service. And that it has, through Mr. Mitchell, an officer
19 and a director who is active and participating in the
20 company's operations.

21 This action was brought under 393.145.1. It's
22 specific as to what it was required for this Commission to
23 find in order to proceed to circuit court and request
24 appointment of a receiver. The company must find -- or the
25 Commission must find that the water corporation is unable or

1 unwilling to provide safe and adequate service or has been
2 actually or effectively abandoned by its owners. Those are
3 the two things.

4 The Staff's evidence here is clear. You have
5 the testimony of Mr. Mitchell, you have my testimony, you
6 have Debbie Williams' testimony. All of which say that
7 Mr. Mitchell is active and is participating, that the
8 company is providing service and it is doing so to the best
9 of its ability with the funds which it has available.

10 We're at the end of the analysis under the
11 receivership proceeding. It is not within the receivership
12 proceeding to say because the company has more debts than it
13 can pay out of current revenues, that a receiver should be
14 appointed. That is not within the scope of the authority
15 for a receivership this Commission has. That evidence is
16 before the Commission.

17 The remedy is also before this Commission, and
18 it's in the statute I gave you this morning. It says that
19 if you want an improvement in service, order the improvement
20 and order the rates to pay for it. I think we're at the end
21 of the issue of should a receiver be appointed and we're
22 left with the issue of what should we do with the problem.

23 And, therefore, I would ask the Commission for
24 a directed verdict at the close of Staff's case in this
25 matter finding that they have failed to sustain their burden

1 of proof that the company has not been abandoned and it is
2 neither unwilling or unable, but is financially at a
3 disadvantage and, therefore, the complaint should be
4 dismissed.

5 JUDGE WOODRUFF: I'm going to deny the motion
6 simply because I don't believe I have the authority to grant
7 the authority from the Bench. That's a Commission decision.

8 MR. WILLIAMS: Well, then I would request
9 rather than you deny it, you reserve determination and
10 submit it to the Commission for their determination.

11 JUDGE WOODRUFF: Certainly the Commission will
12 consider that at the end of all the testimony today.

13 MR. WILLIAMS: Thank you, your Honor.

14 JUDGE WOODRUFF: Mr. Loraine?

15 MR. LORAIN: I'd like to respond to that if
16 it's not going to be ruled on now and there's going to be
17 some decision later made by the Commission.

18 JUDGE WOODRUFF: Go ahead and respond.

19 MR. LORAIN: Judge, in response to that
20 motion, I would just merely point out to this court and the
21 Commission that this is -- there's all kinds of evidence and
22 it's everywhere and it's 180 degrees apart.

23 The Staff says that there's been abandonment.
24 Mr. Mitchell says no. Mr. Williams in past records has said
25 yes and now he says no. We have simple issues of

1 credibility that have just been demonstrated. Mr. Williams
2 has testified that the transfer of the water and sewer
3 easements and wells are not of value and, therefore, it's
4 not a significant transfer.

5 JUDGE WOODRUFF: Microphone.

6 MR. LORAIN: It's not a significant transfer,
7 whereas, Mr. Mitchell just got done saying that the folks up
8 there at Eagle Cove -- pardon me -- Eagle Woods have just
9 been transferred two wells that they can use. This
10 demonstrates consistent with all the evidence, that there's
11 absolute dichotomy and that's what a lawsuit many times is
12 about.

13 Obviously if the Commission is entertaining at
14 all Mr. William's motion, this is a factual dispute and
15 there seems to be very wide ranging dichotomy of the
16 evidence. So I would say that there's no way without
17 hearing all of the evidence, that something like that can be
18 ruled on on that kind of a motion. Thank you, Judge.

19 JUDGE WOODRUFF: Okay.

20 MR. KRUEGER: Your Honor, I'd like to also
21 respond very briefly.

22 JUDGE WOODRUFF: Go ahead.

23 MR. KRUEGER: I submit that the Staff has
24 proven both that the company has been actually or
25 effectively abandoned by its owners and that it's unwilling

1 or unable to provide safe and adequate service.

2 With respect to the abandonment, the company
3 admitted in its answer that Mr. Mitchell had abandoned the
4 company on July 6th or 7th, 2001. And in response to a
5 direct question from Commissioner Murray, Mr. Williams
6 testified that he had abandoned the company. I think that's
7 clearly established.

8 And there's plenty of evidence also in regard
9 to the inability or unwillingness to provide safe and
10 adequate service.

11 JUDGE WOODRUFF: Public Counsel might as well
12 weigh in as well.

13 MS. O'NEILL: I guess I'll come in too. I
14 would join what Mr. Krueger said. I also would caution the
15 Commission in looking at Section 393.270, which is a general
16 provision regarding notice in hearing for proceedings before
17 the Commission based on filings for everything from 393.110
18 through 393.285, which we all know it includes 145, also
19 includes every rate case.

20 The reading that Mr. Williams gives to that
21 statute is not completely the reading that Public Counsel
22 would give to the statute.

23 Again, as Public Counsel said at the beginning
24 of this proceeding, we'd ask the Commission when it decides
25 what to do with this case, without disregarding the actual

1 failures to provide safe and adequate service and actual
2 evidence of abandonment, to look at the unwillingness to
3 provide service, the effective abandonment of this company.

4 It's been clear -- and the Commission's going
5 to have a much greater responsibility to weigh the
6 credibility of the evidence and the credibility of each
7 particular witness in this case than it does in a lot of
8 other cases before it because it's going to have to look not
9 only at the words that came out of these witnesses' mouths,
10 but the manner in which those words did or did not answer
11 the questions that were posed.

12 Certainly at every opportunity still the
13 witnesses that Staff called, who are what we believe are
14 principals of the company, although even that term has been
15 disputed by the company, have indicated an unwillingness to
16 provide safe and adequate service to their customers that
17 they have undertaken a responsibility to provide, that
18 they're unwilling to even continue operations unless they
19 get what they want, which frankly, is yet another outrageous
20 demand for an outrageously high rate case they've never
21 filed for.

22 They complain about the fact they didn't think
23 they could file it until the 557 case was over with. And
24 yet, the reason it took so long for 557 to be completed was
25 because the company took so long to do the things that they

1 assured the Commission they could do in 45 days.

2 So that also is evidence that I believe as has
3 been testified to by various witnesses in the Staff's case
4 that go to the willingness to provide service and the
5 effective abandonment. And we believe that certainly a
6 directed verdict is not appropriate here and it certainly
7 would be something that the Commission should not grant
8 regardless of its finding on the merits when all the
9 evidence is in.

10 JUDGE WOODRUFF: All right. And that's kind
11 of a preview of everyone's closing arguments, which we'll
12 hopefully get to later today. Just another hint here.

13 All right. I've made my ruling on the motion
14 already so we can go ahead and bring up your witness.

15 MS. O'NEILL: Call Kim Bolin.

16 (Witness sworn.)

17 JUDGE WOODRUFF: You may be seated and you may
18 inquire.

19 MS. O'NEILL: Thank you.

20 KIMBERLY BOLIN, having been sworn, testified as follows:

21 DIRECT EXAMINATION BY MS. O'NEILL:

22 Q. Could you please state your name and your work
23 address.

24 A. Yes. My name's Kimberly K. Bolin. My address
25 is P.O. Box 7800, Jefferson City, Missouri 65102.

1 Q. And by whom are you employed and in what
2 capacity?

3 A. I'm employed by the Office of the Public
4 Counsel of the State of Missouri as a public utility
5 accountant.

6 Q. And could you please describe briefly your
7 educational background?

8 A. I graduated from Central Missouri State
9 University in Warrensburg, Missouri with a bachelor of
10 science in business administration with a major emphasis in
11 accounting.

12 Q. And what's the nature of your current duties
13 with the Office of the Public Counsel?

14 A. Under the direction of the chief public
15 utility accountant, I'm responsible for performing audits
16 and examinations of the books and records of the public
17 utilities operating within the state of Missouri.

18 Q. And does that work include cases involving
19 small water and sewer companies?

20 A. Yes, it does.

21 Q. Are you familiar with Osage Water Company?

22 A. Yes.

23 Q. When did you first become familiar with this
24 company?

25 A. In February 2000, approximately four months

1 after the company requested an increase through the small
2 company rate procedure.

3 Q. And can you describe your first introduction
4 after you became aware of the company pursuant to that
5 procedure?

6 A. I attended a meeting in February of 2000 at an
7 Osage Water Company customer's home. There I personally met
8 with about 20 customers. At the meeting each customer told
9 of their service problems that they had experienced with
10 their water and sewer. The problems ranged from lack of
11 water service to the rudeness of company personnel answering
12 the phone.

13 Q. And after that customer meeting, did you have
14 any further contact with those customers?

15 A. Yes, I did.

16 Q. Please describe some of those contacts.

17 A. Several of the customers wrote our office
18 letters, called our office. Several of them were at the
19 local public hearing and I spoke with those customers at the
20 local public hearing.

21 Q. And did you participate in the hearing
22 regarding how the company's last rate increase was going to
23 be implemented?

24 A. Yes, I did.

25 Q. And do you recall what Public Counsel

1 recommended in that case?

2 A. Public Counsel recommended the company receive
3 interim rates subject to reduction.

4 Q. An interim increase subject to reduction?

5 A. Yeah.

6 Q. And why did Public Counsel believe that the
7 rate increase should be interim?

8 MR. WILLIAMS: Your Honor, I'm going to object
9 to this line of questioning as outside the scope of the
10 issues raised in the complaint which the OPC has joined in
11 in this matter.

12 JUDGE WOODRUFF: Response?

13 MS. O'NEILL: It goes to the continuing nature
14 of the problems that this company's had regarding providing
15 service to its customers. And I'm not going to delve deeply
16 into the issues.

17 JUDGE WOODRUFF: I'm going to overrule the
18 objection. It also seems to have something to do with the
19 appropriateness of rates, which was an issue that was raised
20 by Osage Water. You may proceed.

21 THE WITNESS: The company, we believe, was not
22 keeping good records, we had numerous customer service
23 complaints. Office of Public Counsel made this
24 recommendation in hopes that the completion of these -- of
25 items would improve some of the customer service issues and

1 aid the Staff or other -- our office in the next rate
2 proceeding.

3 BY MS. O'NEILL:

4 Q. Now, you said one of the concerns that Public
5 Counsel had was the problem with record keeping. Why are
6 good records so important?

7 A. Without good records, you're not able to
8 perform a good audit. If you cannot verify the expense and
9 revenues in an audit, you'll not be able to provide reliable
10 results. Inadequate records do not allow the PSC to have
11 the info and data to rely on to set the cost of service in
12 order to ensure rates paid my Missourians are just and
13 reasonable.

14 Another concern is that regulated utilities
15 require large capital investments, and inadequate records
16 will not allow utilities to obtain the capital necessary to
17 provide safe and adequate service.

18 Q. And did the Commission order interim rates in
19 that last rate case?

20 MR. WILLIAMS: Your Honor, again, I'm going to
21 raise the objection. This is outside the scope of the
22 issues raised in the complaint. If she wants to talk about
23 needs for a current rate increase, that's fine. I think
24 that's within the scope of the issues that have been raised
25 by the pleadings, but to talk about what was done in a prior

1 rate case in terms of Commission decisions and
2 recommendations, those are a matter of record that the
3 Commission already has before it and it's simply unneeded
4 testimony in this case.

5 JUDGE WOODRUFF: Response?

6 MS. O'NEILL: This is a preliminary question
7 into a new area, which goes into the manner in which the
8 company's been operating and whether or not it's providing
9 safe and adequate service to its customers.

10 JUDGE WOODRUFF: I think that particular
11 question was objectionable. Certainly you can go ahead and
12 inquire into the area you were planning on going in about
13 safe and adequate service. I'm going to sustain the
14 objection as to that question.

15 BY MS. O'NEILL:

16 Q. Once the Commission entered its order in the
17 rate case in 557, was the company able to comply with the
18 conditions in that order without additional proceedings
19 before the Commission?

20 MR. WILLIAMS: I'm going to object, your
21 Honor. There's a lack of foundation for that question.
22 There's no evidence that this witness has any personal
23 knowledge or information concerning the company's compliance
24 with that. She's not given any basis other than a few
25 meetings with customers in the year 2000.

1 MS. O'NEILL: That's kind of because she
2 couldn't answer the last question.

3 JUDGE WOODRUFF: I'm going to sustain the
4 objection and give you a chance to go back and provide some
5 more foundation, which may bring you back to your other
6 question, but proceed.

7 BY MS. O'NEILL:

8 Q. Okay. What was the Commission's order in 557
9 regarding the nature of the rates and conditions?

10 MR. WILLIAMS: Your Honor, I have the same
11 objection. This is --

12 JUDGE WOODRUFF: All right. I'll sustain the
13 objection again. What you need to do is provide foundation
14 that she knows -- provide the foundation indicating that she
15 understands what happened in that rate case.

16 MS. O'NEILL: Sure.

17 BY MS. O'NEILL:

18 Q. Ms. Bolin, are you familiar with the Public
19 Service Commission's order and the conditions in the order
20 of the last rate case for Osage County, which I believe is
21 WR-2000-557?

22 A. Yes, I am.

23 Q. You've read that order?

24 A. Yes, I've read the Report and Order.

25 Q. Okay. And are you familiar with conditions

1 that the company was required to comply with if they wanted
2 that rate case -- that rate increase to be permanent?

3 A. Yes, I am.

4 Q. And was the company able to comply with the
5 Commission's order without additional proceedings?

6 MR. WILLIAMS: Your Honor, I'm going to object
7 to the answer of that question for lack of foundation. This
8 witness has demonstrated no knowledge as to the company's
9 performance. Knowledge of the order is not knowledge of
10 performance.

11 I think this Commission needs to know what
12 basis this client has -- or this witness has for whatever
13 statements she might make in answer to that question before
14 she's allowed to make that statement.

15 MS. O'NEILL: I'd be happy to ask another
16 question, Judge, if it would make things easier.

17 JUDGE WOODRUFF: Ask your next question.

18 BY MS. O'NEILL:

19 Q. Ms. Bolin, as part of your duties with the
20 Office of Public Counsel, have you been aware of further
21 proceedings regarding the enforcement of the conditions in
22 557?

23 A. Yes, I have.

24 Q. And there were additional proceedings that had
25 to take place before the Commission regarding the conditions

1 in 557; is that correct?

2 A. That is correct.

3 Q. And could you explain those?

4 MR. WILLIAMS: Your Honor, I'm going to object
5 to that as asking for a general narrative on the part of
6 this witness. I don't know what her answer might be,
7 whether she's going to include hearsay.

8 What I'm looking for for foundation here is
9 some evidence that this witness has personally investigated
10 and has knowledge. If she has it, let's get it on the table
11 and move on; if she hasn't and just wants to give opinion
12 testimony, let's get her off the stand and move on to
13 relevant evidence.

14 JUDGE WOODRUFF: I believe the question was
15 whether she was aware of further proceedings.

16 MR. WILLIAMS: I think she answered that
17 question.

18 JUDGE WOODRUFF: She indicated she was. And
19 the next question was what happened in those proceedings.
20 Is that the gist of it?

21 MS. O'NEILL: Yes.

22 MR. WILLIAMS: The question I object to is
23 please explain.

24 JUDGE WOODRUFF: Yeah. That is a narrative --
25 calls for a narrative response. For the form of the

1 question, I'll sustain the objection.

2 MR. WILLIAMS: Thank you, your Honor.

3 BY MS. O'NEILL:

4 Q. Ms. Bolin, were you present when Mr. Mitchell
5 testified in the 557 rate case regarding the company's
6 timetable for implementing the recommended conditions to the
7 Commission?

8 MR. WILLIAMS: Your Honor, I'm going to object
9 to any questions that would ask this witness to testify to
10 the contents of a Commission proceeding on the record. If
11 she wants to bring the record in, that's fine, but to have
12 this witness testify to her recollection of somebody's
13 testimony in another case on the record is improper.

14 JUDGE WOODRUFF: Yes, Mister --

15 MR. LORAIN: Judge, I'd like to be heard.
16 There's nothing wrong with a narrative answer or this line
17 of questioning as long as it's something that's intended to
18 speed the matter up.

19 In fact, if we're going to slow the matter
20 down, this is the way to do it. And Mr. Williams is going
21 to try to do that, Judge. So my comment is it's an
22 appropriate question and I believe it is.

23 MS. O'NEILL: Your Honor, I know that
24 Mr. Williams doesn't want the answers to these questions on
25 the record and that's probably prompting some of these

1 objections, but I want to deal with it on a legal ground and
2 that is this.

3 Mr. Mitchell has testified here today that the
4 problem with making improvements and providing safe and
5 adequate service, which he categorizes as barely safe and
6 barely adequate, his own words several times during his
7 testimony, is that there's just not enough money.

8 Well, he's talked about how he needs another
9 rate increase. Well, we want to look at the track record of
10 this company when they got a rate increase the last time to
11 see whether things, in fact, got any better. Because the
12 time frame from the last rate increase until now is the time
13 frame in which the allegations of the complaint are
14 relevant.

15 MR. WILLIAMS: Your Honor, my concern, plain
16 and simple and the reason I am objecting is I don't believe
17 that this witness has been to the company's office or done
18 any auditing work since February of 2000.

19 And I'm concerned that she really lacks any
20 personal knowledge of any facts and is simply going to sit
21 here and recite to the Commission things that she's observed
22 and her opinions and conclusions based on other Commission
23 proceedings and that's not evidence.

24 If this witness -- if she wants to lay a
25 foundation that this witness has factual information and get

1 that factual information into the record, I'm fine with it.
2 But what I'm seeing is an effort to provide a foundation for
3 some opinion without providing any factual evidence on which
4 that opinion or conclusion might be based. And I do not
5 want that kind of evidence coming into the record in this
6 case because it is not proper evidence.

7 JUDGE WOODRUFF: I'm going to overrule the
8 objection. You can go ahead and answer the questions.
9 We'll deal with further objections as they come. Can you
10 remember what the questions is? Would the reporter please
11 read it back?

12 THE COURT REPORTER: "Question: Ms. Bolin,
13 were you present when Mr. Mitchell testified in the 557 rate
14 case regarding the company's timetable for implementing the
15 recommended conditions to the Commission?"

16 THE WITNESS: Yes, I was.

17 BY MS. O'NEILL:

18 Q. And based on your knowledge of the subsequent
19 proceedings that were had in that case, did the company meet
20 that timetable?

21 A. No, they did not.

22 MR. WILLIAMS: I'm going to object. It calls
23 for an opinion or conclusion on the part of this witness,
24 which the witness is not qualified to render.

25 JUDGE WOODRUFF: I'm going to overrule it.

1 You can answer the question.

2 THE WITNESS: No, they did not.

3 BY MS. O'NEILL:

4 Q. And based on information you obtained in the
5 course of your employment with the Office of Public Counsel,
6 did you also review information that the company improperly
7 charged customers the increased rates before those tariffs
8 were in effect?

9 A. Yes. I read different motions, notices on
10 this matter.

11 Q. And that was the reason that the refunds that
12 Mrs. Williams testified about in this proceeding were
13 ordered; isn't that correct?

14 A. That is correct.

15 Q. Did you participate in the case where Mr. and
16 Mrs. Williams applied for a certificate for Environmental
17 Utilities?

18 A. Yes, I did participate in that case.

19 Q. And in the course of that case, did you
20 receive any information regarding whether Mr. Mitchell or
21 Mr. and Mrs. Williams had abandoned Osage Water Company?

22 A. We received information that Mr. Mitchell had
23 abandoned the company.

24 Q. And did that go beyond the letter that's in
25 evidence today?

1 A. The fact that he also dumped the books on the
2 porch.

3 Q. And did Mrs. Williams also testify that she
4 had taken over all of Mr. Mitchell's duties?

5 A. Yes.

6 Q. Now, have you seen any documentation since
7 then that leads you to believe that Mr. or Mrs. Williams
8 have effectively or constructively abandoned Osage Water
9 Company?

10 A. I have seen a letter where they resigned as
11 directors of Osage Water Company and a letter where -- I
12 think it was the same letter where Greg tried to resign as
13 the registered agent. And it's -- both letters have their
14 signatures on it.

15 Q. And is that in evidence here today in one of
16 the exhibits?

17 A. Yes, it is.

18 Q. Okay. And are you also aware of a proceeding
19 which Debra Williams attempted to foreclose on the assets of
20 Osage Water Company?

21 A. Yes, I am.

22 Q. And are you aware of her reason for trying to
23 do that?

24 A. It's my understanding that Osage Water Company
25 did not keep up on their payments on a promissory note or a

1 legal bill owed to Mr. Williams. This happened while Debbie
2 was managing Osage Water Company.

3 Greg has now -- Mr. Williams now turned the
4 promissory note over to Environmental Utilities. Debbie, as
5 the trustee of the note, published a notice of foreclosure
6 on OWC and stated her intent to sell the company on the
7 courthouse steps.

8 Q. And without getting into that, because I think
9 other witnesses have talked about that quite a bit, does the
10 Office of Public Counsel have a recommendation for what they
11 think should happen in this case?

12 A. We agree with the recommendation of Staff,
13 that this company should be placed under the control of a
14 receiver.

15 Q. When you were involved in the 557 case, did
16 you or have you looked at the information from that case to
17 see how much money Osage Water Company has budgeted to pay a
18 manager?

19 A. Yes. I've reviewed the documents from that
20 case.

21 Q. Do you know about how much that is?

22 A. I believe the manager was supposed to receive
23 \$18,000 a year. That's what was budgeted in Staff's
24 accounting schedules.

25 Q. And you heard Mrs. Williams testify that she

1 bills the company \$3,000 a year for her -- or \$3,000 a month
2 for her services?

3 A. Yes. I heard her testify to that.

4 Q. Is that going to work out right?

5 A. No. It would be almost double if she would
6 collect it.

7 Q. Okay.

8 MS. O'NEILL: I don't have any further
9 questions.

10 JUDGE WOODRUFF: All right. For cross then,
11 we'll begin with Staff.

12 MR. KRUEGER: No questions, your Honor.

13 JUDGE WOODRUFF: For Hancock?

14 MR. LORAIN: No questions, Judge.

15 JUDGE WOODRUFF: For Osage Water?

16 MR. WILLIAMS: Just a few, your Honor.

17 CROSS-EXAMINATION BY MR. WILLIAMS:

18 Q. Good afternoon.

19 A. Good afternoon.

20 Q. When did you last audit records of Osage Water
21 Company?

22 A. I looked at some of the audits -- or not --
23 some records that were in your law office. I can't remember
24 the exact time frame.

25 Q. More than a year ago?

1 A. Yes. More than a year ago.

2 Q. Probably two years ago?

3 A. It was during the 2000-557 case.

4 Q. Okay. And so you've looked at no records
5 since that time?

6 A. I've seen some documents that you have
7 produced based on the refunds.

8 Q. All right. Have you looked at any customer
9 complaint logs?

10 A. No, I haven't.

11 Q. So you would have no information on what the
12 status of customer complaints or customer satisfaction would
13 be from the company's records since early 2000?

14 A. Since the last rate case.

15 Q. So it's been a long time?

16 A. Since the last rate case. I don't know when
17 the exact date the ending of it was.

18 Q. When's the last time you met with customers of
19 the company?

20 A. Just today.

21 Q. Okay. Anyone other than at Eagle Woods?

22 A. I'm not sure. I don't -- I think they were
23 all Eagle Woods customers.

24 Q. And their concerns are mainly about the
25 company's rejection of deficient systems?

1 A. Yes.

2 Q. Okay. So you're basing your opinion and
3 recommendation to the Commission here on information that
4 you obtained that you know is more than a year old?

5 A. I have talked to customers in the Golden Glade
6 area for the Environmental Utilities' application. Those
7 are not Osage Water customers. No, I haven't seen any --

8 Q. Okay. So you really don't have any personal
9 knowledge about what services the company's performing
10 today, who does what, the amount of time expended or the
11 costs involved. Would that be an accurate statement?

12 A. Not currently as of today. I don't know
13 what --

14 Q. Okay. And do you have any basis for telling
15 this Commission that a receivership would be a more cost
16 effective manner of providing public water and sewer utility
17 service than the manner in which the company's currently
18 providing it?

19 MS. O'NEILL: I'm going to object, because
20 that's not what her testimony was. Her testimony was the
21 Public Counsel recommended the appointment -- that the
22 Commission go with the Staff, but I don't recall her saying
23 anything about cost effective manner or whether she'd done
24 any studies to that effect.

25 JUDGE WOODRUFF: I'm going to overrule the

1 objection. You can answer, if you can.

2 THE WITNESS: I've not looked at any cost
3 studies based on a receivership -- receiver running the
4 company versus the company continuing the way it is.

5 BY MR. WILLIAMS:

6 Q. Do you think it would be in the interest of
7 the customers for a receiver to operate the company if the
8 costs were substantially higher than current operating
9 costs?

10 A. I don't think costs are the only thing you
11 would look at. I think customer service or lack of water,
12 lack of service, lack of sewer service are things the
13 Commission also has to look at.

14 MR. WILLIAMS: Okay. Would you read back the
15 question, please.

16 THE COURT REPORTER: "Question: Do you think
17 it would be in the interest of the customers for a receiver
18 to operate the company if the costs were substantially
19 higher than current operating costs?"

20 THE WITNESS: I have not looked into that
21 matter. I do not know.

22 BY MR. WILLIAMS:

23 Q. So you don't have an opinion as to whether the
24 cost -- if the cost was higher, you think that would be
25 okay?

1 A. I've not looked into the cost benefit.

2 Q. It doesn't matter to you. Is that what you're
3 saying?

4 A. No. I have not reviewed it.

5 Q. Is it a factor that the Commission should
6 consider?

7 A. It is one of the many factors the
8 Commission --

9 Q. Okay. And you have no current information
10 regarding the company's records on customer service?

11 A. We have not received any complaints currently
12 in our office except for Eagle Woods customers.

13 Q. Okay.

14 A. And Broadwater Bay.

15 Q. And just so the record's very clear, prior to
16 coming here and testifying today, you did not request the
17 opportunity to review any of the company's records as far as
18 its customer complaint log, time records or anything of that
19 sort?

20 A. We have not requested that.

21 Q. And so you have no information you could give
22 the Commission on those topics?

23 A. No. I do not.

24 Q. Okay.

25 MR. WILLIAMS: Thank you, your Honor.

1 JUDGE WOODRUFF: I have no questions from the
2 Bench, so there's no need for recross. Any redirect?

3 MS. O'NEILL: No questions.

4 JUDGE WOODRUFF: All right. Then you may step
5 down.

6 And at this time then we'll take a break.
7 We'll come back at 10 minutes until 3:00.

8 (A RECESS WAS TAKEN.)

9 JUDGE WOODRUFF: We're back on the record and
10 it looks like we have a witness on the stand. This is
11 Mr. Hancock, I believe?

12 MR. LORAINÉ: Yes, it is, Judge.

13 (Witness sworn.)

14 JUDGE WOODRUFF: You may be stated and you may
15 inquire.

16 MR. LORAINÉ: Thank you, your Honor. May it
17 please the court.

18 DAVID HANCOCK, having been sworn, testified as follows:

19 DIRECT EXAMINATION BY MR. LORAINÉ:

20 Q. Sir, for the record, state your name.

21 A. David Hancock.

22 Q. Mr. Hancock, you're the David Hancock that has
23 been involved in litigation more than one time against OWC
24 over the last -- since 1998, I guess?

25 A. That's correct.

1 Q. You were a prior full shareholder in this
2 company up until the year of '96. Would that be true?
3 A. That's correct.
4 Q. And since that time, you've been a creditor of
5 this company, OWC?
6 A. Yes.
7 Q. Now, what do you do by profession, so we can
8 get that in the record?
9 A. I'm a water and sewer main contractor, have
10 been since 1971, '72. We also build subdivision roads and
11 have a concrete division.
12 Q. Are you familiar with DNR and their various
13 regulations?
14 A. Yes, I am. We work under their scrutiny
15 continuously through engineering firms and so forth with
16 approved plans.
17 Q. And that would be both the water and the sewer
18 sections?
19 A. That's correct.
20 Q. So you know of the regulatory scheme that's
21 set up in that regard?
22 A. Yes.
23 Q. And would it be fair to say, sir, that you're
24 probably -- with the exception of Mr. Mitchell and
25 Mr. Williams, you would be probably the largest creditor of

1 OWC?

2 A. Yes. I believe that's true.

3 Q. And it would be also fair to say that you
4 believe at least there's some controversy around their
5 claims as far as priority? You would agree with that?

6 A. Yes. Yes, I would. I believe I would be
7 before theirs because of my debenture placed some time
8 before what they tried to do with the assets.

9 Q. All right. And you're making reference to the
10 deeds of trust --

11 A. Yes.

12 Q. -- that were filed?

13 Would it be fair to say you filed your lawsuit
14 for collection on that debenture --

15 MR. WILLIAMS: Your Honor, I'm going to object
16 to Mr. Loraine continuing to lead this witness.

17 MR. LORAIN: Trying to speed it along, Judge.
18 Preliminary matters.

19 MR. WILLIAMS: He's asked a lot of preliminary
20 questions and I said I'm going to object to him continuing
21 to lead the witness. At some point he's got to have this
22 witness testify.

23 JUDGE WOODRUFF: I don't think it's
24 preliminary anymore. I'm going to sustain the objection.

25 BY MR. LORAIN:

1 Q. Mr. Hancock, can you tell me when did you file
2 your lawsuit against OWC and who was the attorney?

3 MR. WILLIAMS: I'm going to object to the
4 question as outside of the scope of the issues raised in the
5 pleadings in this case.

6 JUDGE WOODRUFF: Overruled.

7 THE WITNESS: My first lawsuit was filed with
8 Mr. McDorman in Versailles.

9 BY MR. LORAIN:

10 Q. What was the purpose of that lawsuit?

11 A. To acquire the debenture.

12 Q. And when you got that debenture, then did you
13 have to follow that up with the circuit court matter?

14 A. Yes, I did.

15 Q. Who filed that, sir?

16 A. You did, sir.

17 Q. I believe Mister --

18 A. I'm sorry. Mr. McDorman filed it and you and
19 I followed up with it.

20 Q. And, in fact, you know how that's set as far
21 as timing? When did you file for the lawsuit on the
22 collection of the note on the delinquency? How did that fit
23 in the overall scheme in reference to the deeds of trust?

24 A. I believe it was in January of '01.

25 Q. At or about the same time that these deeds of

1 trust were filed?

2 A. I believe it was just -- it was a month prior.

3 Q. So your lawsuit was actually filed prior?

4 A. I believe -- yes. Yes, it was filed prior.

5 Q. And at the time did you have any knowledge of
6 the existence of any of these three deeds of trust?

7 A. No, no.

8 Q. Did you subsequently reduce that to a
9 judgment, sir?

10 A. Yes.

11 Q. And that's presently pending, the collection
12 of that?

13 A. Yes, it is.

14 Q. And that calls for some interest rate. What
15 is that?

16 A. 9 percent interest rate on \$216,000.

17 Q. All right. There's been some discussion about
18 the liquidation of OWC. Can you tell the court and the
19 Commission what your position would be on that liquidation?

20 MR. WILLIAMS: Your Honor, I'm going to object
21 to him giving opinion testimony to the Commission for which
22 no foundation has been laid and I think that's just asking
23 for an opinion.

24 MR. LORAIN: I asked for his position on
25 that. I didn't ask for his opinion.

1 JUDGE WOODRUFF: I'm going to overrule the
2 objection. You can go ahead and answer the question.

3 THE WITNESS: That was my position on the --
4 on this matter?

5 MR. LORAIN: Just a minute. Don't say
6 anything. I'm going to let her read the question back.

7 THE COURT REPORTER: "Question: All right.
8 There's been some discussion about the liquidation of OWC.
9 Can you tell the court and the Commission what your position
10 would be on that liquidation?

11 THE WITNESS: Yes. My position on it is I
12 would offer to take over that company and -- first, after
13 review of all records and so forth. I believe I have a
14 knowledge of the area, of the customers.

15 I've been in that area since 1975 and I know
16 many of the systems and many of the systems I installed
17 myself through my company. And I'm aware of most all of the
18 customers and areas that they're in, what is required to
19 operate the systems.

20 And I have a large interest in it to protect
21 the assets that I installed back in '72 and '3 -- I'm
22 sorry -- '82, '83 --

23 BY MR. LORAIN:

24 Q. You mean '9--

25 A. -- somewhere in there -- '92, I'm sorry. In

1 '92.

2 Q. All right. Would you be willing -- what's
3 your position on the liquidation? Would you be willing to
4 keep the public served until such liquidation occurred in
5 some orderly fashion?

6 A. Yes. Absolutely.

7 Q. Regardless of rate increase or otherwise?

8 A. Yes. Uh-huh.

9 Q. Do you believe you have the capital to be able
10 to do that?

11 A. Yes, I do. I have substantial ways to fund
12 the company.

13 Q. What would your fee be for doing that service?

14 A. I would do it for no fee if I can protect my
15 assets that I've invested in that company.

16 Q. No fee?

17 A. No fee.

18 Q. Do you believe that if some sort of a
19 liquidation such as the Commission's talking about, some
20 professional utility company coming in here, do you believe
21 that's economically feasible?

22 A. No, I do not. I'm concerned that that would
23 just cause the company's near instant death. Someone
24 outside that doesn't -- not aware of the systems, a lot of
25 the systems are sand filter systems, a lot of companies are

1 unaware how they operate.

2 I just -- I don't think they'd have -- and
3 things are different in our area around the Lake of the
4 Ozarks area, terrain and so forth. And I just can't see how
5 an outsider coming into it would have the ability to do it
6 as economically as I could.

7 Q. And you'd be willing to do that for free?

8 A. Yes, I would.

9 Q. There has been some discussion about whether
10 or not there was offers. Without getting into details, have
11 you made any offers to purchase either OWC or its assets?

12 A. Yes. I've made several offers.

13 Q. And that's actually been during the pendency
14 of these matters for the --

15 A. Yes.

16 Q. -- last four or five weeks here?

17 A. That's correct.

18 Q. Has that been communicated to both
19 Mr. Mitchell and Mr. Williams?

20 A. Yes, sir.

21 Q. And you still stand ready to enter the foray,
22 if you will, in an attempt to try to protect the existing
23 assets of OWC?

24 A. That's correct.

25 Q. You're familiar with most of these -- I know

1 you've sat through this testimony for weeks here and other
2 cases before the Public Service Commission involving OWC.
3 You're familiar with their assets?

4 A. Yes. Most -- most of them. Some of them
5 maybe not, but most all the company, I would say.

6 Q. You're familiar with all the subdivisions that
7 have been brought up and the condo projects?

8 A. Yes. Uh-huh.

9 Q. Do you have an opinion as to whether or not
10 there's been financial concerns that the company has raised
11 in testimony here? Is that the only problem they've had, is
12 just lack of funds?

13 A. No. Operational problems. Lack of -- way
14 back, many years ago, not -- when they acquire systems, not
15 doing proper testing and so forth to make sure that those
16 systems were good and viable.

17 I believe a lot of systems were just taken
18 over just to get the income and then they'll worry about it
19 later, just kind of a haphazard thing. I believe that's
20 happened in Eagle Woods.

21 I can't see any reason why they would take
22 that system over without first pressure testing the lines
23 and making sure there's flushing valves on it. I understand
24 now there's contamination in the water mains and that can be
25 resolved by putting some flushing valves on. It's not --

1 not all that expensive to do and go on with it.

2 I don't -- it's been testified that there's no
3 leaks in that Eagle Woods subdivision. I don't understand
4 why they've got a problem with the system.

5 Q. Have you talked with Mr. Westenhaver, the --

6 A. Yes, I have.

7 Q. About the possible resolution of the issues
8 around this controversy?

9 A. Yes, I have.

10 MR. WILLIAMS: Your Honor, I'm going to object
11 to any testimony by Mr. Hancock as to anything that
12 Mr. Westenhaver might have said.

13 MR. LORAIN: I didn't ask for that, Judge.

14 JUDGE WOODRUFF: You haven't asked for that
15 yet. The question that's been asked is not objectionable.
16 The next one may be. You can raise an objection, if you
17 wish, at that time.

18 BY MR. LORAIN:

19 Q. To your satisfaction based on your
20 discussions, do you believe you can resolve these issues?

21 A. Yes. I believe I can resolve the Eagle Woods
22 subdivision issue and quite timely.

23 Q. How timely?

24 A. Thirty days.

25 Q. Did you hear the testimony that there was some

1 other private wells that were deeded back?

2 A. Yes, I did.

3 Q. Do you believe that those private wells have
4 any place in this equation for temporary water?

5 A. Absolutely. They're assets of Osage Water
6 Company that were transferred first to Osage Water and then
7 back and they're viable assets to the company. Even in an
8 emergency situation, if the -- if the Golden Glade well
9 failed, there's water available.

10 And they're -- I don't know that they'd be --
11 I've not tested them, but I don't -- I have no reason to
12 believe that they'd be contaminated or any other reason they
13 couldn't use those wells on a temporary basis to provide
14 those people service.

15 Q. You believe they're used and useful?

16 A. Yes, I do.

17 Q. You believe they're valuable assets?

18 A. Yes, I do.

19 Q. I assume you resent the fact that they were
20 transferred back?

21 A. Absolutely. There goes some more of the
22 assets of the company. There's no reason to give away the
23 assets of the company. The company needs all the financial
24 help it can get.

25 Q. Do you have any other instances that you

1 personally have witnessed where assets have been transferred
2 like that in the past?

3 A. The bobcat and the excavator, which I still
4 believe that --

5 MR. WILLIAMS: Your Honor, I'm going to object
6 to this witness testifying to his belief on that issue.
7 It's not an issue raised in the complaint in this matter and
8 it was an issue heard and decided by the Commission in
9 WA-2002-65.

10 JUDGE WOODRUFF: I'll sustain that objection.

11 BY MR. LORAIN:

12 Q. Have there been other instances of transfers
13 that you believe are inappropriate from OWC assets?

14 A. Trying to have the trustee sell the assets
15 this year, which we got stopped in Camden County Court.

16 Q. You're talking about all the assets of --
17 according to those three deeds of trust?

18 A. Yes. All the assets.

19 Q. You believe the problem of lack of due
20 diligence, my understanding is what you've essentially said
21 on taking over these systems, that's certainly contributed
22 to some of these problems?

23 A. Certainly contributed to it.

24 Q. Do you believe there's a competence level in
25 maintenance and operation over the years that's been

1 deficient?

2 MR. WILLIAMS: Your Honor --

3 THE WITNESS: Yes, I do.

4 MR. WILLIAMS: -- I'm going to object to this
5 witness continuing to testify as to his belief. If he has
6 factual information which may assist this Commission in
7 making its own determination and reaching an opinion, that's
8 one thing, but for him to continue to make opinion testimony
9 is simply improper. That called for an opinion. I object
10 to the question and the answer and request that that be
11 stricken.

12 JUDGE WOODRUFF: Response?

13 MR. LORAIN: Judge, he's already said he's
14 familiar with the systems, he's familiar with how they work
15 and how they operate. I think he's entitled to -- he's been
16 a past shareholder and officer of this company. He's
17 entitled to render an opinion on those kind of matters.

18 JUDGE WOODRUFF: The opinion in the question
19 was whether or not the management of Osage Water was
20 competent. There's been no foundation laid for him to give
21 that kind of opinion. I'm going to sustain the objection.

22 BY MR. LORAIN:

23 Q. Sir, are you familiar with the management's
24 past practices of Osage Water Company?

25 A. Yes.

1 Q. Have you been involved in the process prior to
2 your leaving the company?

3 A. Yes.

4 Q. Do you have complaints concerning the way the
5 management was run prior to your leaving the company?

6 A. Yes.

7 Q. And what did they center on?

8 A. Well, as I said earlier, systems would just be
9 taken without some serious investigation into them as to
10 whether they were -- would meet standards and so forth.

11 Q. Did you object to that procedure?

12 A. Yes, I did. Yes, I did.

13 Q. What other problems did you have with
14 management decisions that you objected to?

15 A. It was agreed upon to install a water main
16 without reservoir and install hydrants -- fire hydrants on
17 the mains. And it -- it left in a lot of peoples' minds
18 that they had fire protection with that hydrant there, when,
19 in fact, they didn't. There was no -- no large reservoir to
20 protect the people with the fire protection.

21 Q. Did you object to that procedure?

22 A. Yes, I did. Yes, I did.

23 Q. What other objections to management and their
24 decisions have you had? Make reference to the books. Have
25 you made any reference to that?

1 A. Oh, the annual report. I've never understood
2 why the annual report can't be made within a few month
3 period of the ending of the year. I mean, every business
4 going files an annual report within a three-, four-, five-,
5 six-month period or at least within a year.

6 And for the reports to be in arrears every
7 year, as far as I know, and I think they're three years in
8 arrears at this time is my understanding, why can't that be
9 filed? If they're keeping records, if they've got a
10 checkbook, they can -- you know, I just don't believe
11 they're -- if they can't manage that, I don't know how they
12 can manage the rest of the business.

13 If they can't do that simple thing of making
14 filings to the PSC, annual revenues and/or expenses -- I
15 don't understand why they can't do that.

16 Q. Let me ask you a question about the
17 recordation of various personal property items or, if you
18 will, fixtures. Did you have complaints about the failure
19 to do that, record those on part of the company?

20 A. Oh, not knowing where -- where the assets are
21 specifically. There was -- I don't believe that's on record
22 yet. I'm not sure that the PSC ordered -- the Staff I
23 believe ordered their people to find those and account for
24 all of that and I don't believe that's ever been done yet.

25 Q. Well, in that regard, haven't you been making

1 an effort since 1998 to find out what all the assets were
2 yourself?

3 A. Yes, I have. And we've inquired -- through
4 you, we've inquired to Mr. Williams, asked him for a list of
5 assets. And I don't believe we've ever received that.

6 Q. Simple fact of the matter is you have
7 complaints about the prior recording of where the assets
8 are, what kind of assets they are, etc., and so forth?

9 A. That's correct.

10 Q. Have any of these complaints been verified by
11 expert witnesses that you've hired?

12 A. Yes, they have.

13 Q. And who's that been?

14 A. I'm sorry?

15 Q. What witness has that been?

16 A. Bill Cochran.

17 Q. Do you believe based on the evidence that
18 you've seen, that there's been effective abandonment of the
19 management of this company?

20 MR. WILLIAMS: I'm going to object to this
21 witness's opinion as to that issue which is the ultimate
22 issue for determination of the Commission in this case. If
23 he has facts, he can testify to facts. His opinion is
24 neither relevant, material or proper in this case.

25 JUDGE WOODRUFF: I'll sustain the objection.

1 He's already testified to facts.

2 BY MR. LORAINÉ:

3 Q. Do you believe that the principals of the
4 company, Greg Williams -- do you believe that at any time --
5 do you believe he had the competence level to manage this
6 company?

7 MR. WILLIAMS: Your Honor, I'm going to object
8 to this again. It's calling for an opinion or conclusion on
9 the part of this witness. If he has facts, he can testify
10 to them. His opinion is not admissible in this case.

11 MR. LORAINÉ: Your Honor, he's given a basis
12 for any opinions he might have had. He was involved and
13 watched the management of this company. I think he's
14 entitled to that conclusion.

15 JUDGE WOODRUFF: I'm going to sustain the
16 objection.

17 MR. LORAINÉ: All right. Thank you, Judge.

18 BY MR. LORAINÉ:

19 Q. At one point did you actually have a
20 controversy with Mr. Williams over his attorney fees when
21 you were still a member of this company?

22 A. Yes, I did.

23 Q. Can you tell the court about that?

24 A. Well, it's been probably seven, eight years
25 ago, it's not real clear to me. But it just seemed to me

1 that the attorney fees were very high for the -- the work
2 being done, the things being accomplished for the company.
3 I couldn't understand the -- and I know there are a lot of
4 attorney fees. A lot of legal work done going through the
5 PSC and that, but it just seemed excessive to me when I was
6 there.

7 Q. Did you have --

8 MR. WILLIAMS: Your Honor, I'm going to move
9 to strike that evidence -- or that testimony. The question
10 was what the controversy was, what we were given was an
11 opinion and conclusion on the part of the witness. We were
12 not given any factual information. That's non-responsive to
13 the question asked.

14 JUDGE WOODRUFF: Overruled.

15 BY MR. LORAIN:

16 Q. Sir, did you examine the attorney fees at the
17 time and ask whether or not there was a distinction made
18 between being an officer of the company and being a lawyer?

19 A. Yes, I did.

20 Q. Do you believe that has ever been fully
21 litigated or understood?

22 A. No.

23 Q. In fact, at one point you disallowed
24 Mr. Williams to be an officer of this company and a lawyer
25 while you were still involved in it?

1 A. That's correct.

2 Q. Sir, the basis of your debenture -- I want to
3 briefly state it, but what was the basis for that original
4 debenture? What were those services for?

5 A. For installing water main in various
6 locations. The biggest part of the work was done in the
7 City of Osage Beach. 10-inch water main -- started out to
8 be an 8-inch water main, it was determined to build a
9 10-inch water main, moved it up on the highway right-of-way.
10 That was a lot of the expense.

11 We had -- we, as the owners of Osage Water
12 Company, had agreed to bring water service to a new
13 development, Miner Mike's, and several other areas along the
14 right-of-way and we had a time frame to get it there to them
15 in order to serve them. And we did that.

16 And after -- after building the system, I felt
17 that the other two partners in the company did not come up
18 with their part of the funds to fund that project.

19 And that had happened in another project also
20 in Cimmaron Bay. I purchased the well -- I ordered the well
21 to be drilled with the agreement the other two partners to
22 come up with their each thirds of that after the well was
23 drilled. They never did come up with the money. I ended up
24 paying for that well out of my company, over 20-some
25 thousand dollars, but I had ordered it and I paid the

1 contractor for that and never been reimbursed for it.

2 Q. You believe the services you provided were
3 used and useful in the OWC operation?

4 A. Yes. They -- they even testified this morning
5 as to the high dollar volume in that Osage Beach area of,
6 you know, 200, 300 and 500 dollars per month meter income
7 from those -- that system.

8 Q. These were basically along the commercial
9 areas?

10 A. Yes. Yes.

11 Q. And you did all that work?

12 A. Yes. Yes.

13 Q. And, in fact, the fee that you agreed to on
14 that debenture, I take it that was an agreed upon amount?

15 A. Yes.

16 Q. You actually claimed more?

17 A. Yes. I claimed more.

18 Q. Okay.

19 A. Uh-huh.

20 Q. You received money for a while on that
21 debenture, as I understand it?

22 A. Yes.

23 Q. How long?

24 A. I believe it was about 12 months, 13 months.
25 I don't know exactly. I don't have anything in front of me.

1 Q. Okay. And that would have been as of what
2 period, assuming the debenture was entered into in '98?

3 A. '98, '99.

4 Q. All right.

5 A. I believe.

6 Q. So since that time, basically how were you
7 reimbursed, if at all?

8 A. The reimbursement was to be \$1,000 a month. I
9 agreed to no interest on a 20-year note. And they were not
10 paid timely and suddenly ended at one point. Might have
11 been 13, 14 payments they made to me.

12 Q. All right. That led to -- ultimately to the
13 decision to call them in breach and to go to court, I
14 believe you said in January?

15 A. Yes.

16 Q. Of 19-- 2001?

17 A. Yes. Uh-huh.

18 MR. LORAIN: Judge, I don't believe I have
19 anything further of this witness. Thank you.

20 JUDGE WOODRUFF: All right. Thank you.

21 Cross then, we'll begin with Staff.

22 MR. KRUEGER: No questions, your Honor.

23 JUDGE WOODRUFF: And Public Counsel?

24 MS. O'NEILL: No questions.

25 JUDGE WOODRUFF: Osage?

1 MR. WILLIAMS: Thank you, your Honor.

2 MR. LORAINE: Greg, excuse me, I wanted to
3 introduce the schedule -- payment schedule. Do you have any
4 objection to that through this witness?

5 MR. WILLIAMS: I don't think there's any
6 dispute.

7 MR. LORAINE: No, there's not.

8 JUDGE WOODRUFF: You may proceed.

9 MR. WILLIAMS: Thank you, your Honor.

10 CROSS-EXAMINATION BY MR. WILLIAMS:

11 Q. Mr. Hancock, how much are you willing to pay
12 for Osage Water Company?

13 MR. LORAINE: I'll object to that, Judge.
14 That calls for information that is still yet developing as
15 we go. He can ask him how much he's offered for it already,
16 but there were circumstances in negotiations, so I believe
17 it invades the attorney privilege.

18 JUDGE WOODRUFF: I'll sustain the objection.
19 You may want to modify your question. I think it would be
20 appropriate -- as Mr. Loraine indicated, that it would be
21 appropriate to ask what's offered. I'm not going to ask him
22 to disclose his ultimate bargaining position.

23 BY MR. WILLIAMS:

24 Q. Okay. Mr. Hancock, what have you offered to
25 pay for Osage Water Company?

1 A. I've offered some money and with certain
2 stipulations. It -- the agreement could get quite involved.

3 Q. Is there a dollar amount?

4 A. It would be subject to things. The thing that
5 I don't know today to answer your question exactly is
6 exactly how many tax liens, exactly how many people Osage
7 Water Company does owe. I've seen some information about
8 exactly what they owe and every day it changes.

9 And the price I would be willing to pay would
10 be based on what debt there is actually there and knowledge
11 of the problems in the systems, review of the systems,
12 physical review of them. And, of course, the permission of
13 the Public Service Commission, under what stipulations
14 they'd allow me to take over the company, if in fact, they
15 would.

16 Q. So there isn't a dollar amount today. Is that
17 what you're telling us?

18 MR. LORAIN: Well, Judge. That's
19 argumentative. The witness stated there's a lot of
20 conditions here. There's been --

21 JUDGE WOODRUFF: I'm going to overrule the
22 objection. You can answer, if you can.

23 THE WITNESS: I don't have that dollar amount
24 exactly today --

25 BY MR. WILLIAMS:

1 Q. Do you have any --
2 A. -- but it's there.
3 Q. -- even an approximation? Can you give us a
4 range?
5 A. I'd give true value for the company.
6 Q. And how would we determine that?
7 A. We'd all sit down and hammer it out.
8 Q. And is there a range within which you're
9 willing to pay for the company that you can tell this
10 Commission today?
11 A. True market value.
12 Q. Do you know of anyone else who's willing to
13 make a competitive bid for the company?
14 A. I've not -- I've not asked anyone to. No. I
15 haven't looked for anyone to.
16 Q. Okay. Is there a dollar amount that you're
17 willing to pay for the company's assets as opposed to the
18 company?
19 A. After review, yes, I'm sure there would be,
20 yeah.
21 Q. Do you have any idea --
22 A. I'd go either way.
23 Q. Do you have any idea what that amount would
24 be?
25 A. Not exactly today.

1 Q. Can you give us an estimate?

2 A. No, sir.

3 Q. Okay. Mr. Hancock, do you believe it's

4 unreasonable for the utility company to rely on a

5 professional engineer's report that a system has been built

6 according to plans and specifications and that it's been

7 leak tested?

8 A. Unreasonable?

9 Q. Do you believe that's unreasonable?

10 A. No.

11 Q. So if the company received such a report with

12 respect to Eagle Woods, you would consider the company to

13 have acted reasonably there?

14 A. Depending on the report. There are lots of

15 engineered reports, lots of different ways an engineer can

16 report. If an engineer has stamped his plan that the

17 project was built as an as-built, that's one thing.

18 Q. How about if he certifies that it's built in

19 accordance with the approved plans and certification or

20 approved plans and specifications and certifies that? Do

21 you think that's acceptable for the company to rely on?

22 A. Not totally.

23 Q. Why not?

24 A. They need to take a look at the system

25 themselves.

1 Q. And how would you do that if it's buried in
2 the ground?

3 A. Hook onto the system and check it for pressure
4 leaks, check it for volume.

5 Q. And you would agree with me, would you not,
6 that it's difficult to tell when pipe has been buried in the
7 ground, whether proper type of piping has been utilized?

8 A. There are ways to find out.

9 Q. But you don't think it's reasonable just to
10 rely on an engineer's representation?

11 A. Not totally, no.

12 Q. Okay. So you'd do more than just get an
13 engineer to certify it?

14 A. If I had any doubt about a system, sure.

15 Q. Now, Mr. Hancock, you've testified that you
16 believe the multi-family wells at Eagle Woods have value --

17 A. Yes.

18 Q. -- is that right?

19 Suppose the Department of Natural Resources
20 would require that those multi-family wells be disconnected,
21 plugged and sealed. Would they have value?

22 MR. LORAIN: Judge, I'm going to object to
23 that. It may be it's a hypothetical he's posing, but at
24 this point I know of no such evidence in this case so it's
25 not based on any evidence of this case.

1 JUDGE WOODRUFF: Do you wish to respond?

2 MR. WILLIAMS: I have a follow-up question
3 after he answers that.

4 MR. LORAIN: I have a follow-up -- I have an
5 objection before he gets to his follow-up, Judge. And
6 that's that it's an improper question with no foundation or
7 basis.

8 JUDGE WOODRUFF: I'm going to overrule the
9 objection. You can answer the question.

10 THE WITNESS: The question again, please.

11 BY MR. WILLIAMS:

12 Q. Okay. If the Department of Natural Resources
13 would require that the multi-family wells serving Eagle
14 Woods be disconnected, plugged and sealed, do they have
15 value?

16 MR. LORAIN: Judge, an additional objection
17 would be there's not sufficient -- I mean, there's not
18 sufficient basis or -- if he wants to further qualify that
19 and say under what circumstances, but right at this point
20 there's not sufficient facts to be able to answer that
21 question. If it's not DNR regulated, they have no business
22 telling us anything about it, if it's community well only.
23 So, I mean, that's a very broad question.

24 JUDGE WOODRUFF: I'm going to overrule the
25 objection. You can go ahead and answer.

1 THE WITNESS: If the well is plugged, which I
2 don't believe they are, it wouldn't have much value if it
3 were plugged.

4 BY MR. WILLIAMS:

5 Q. And if you were required to plug them, they'd
6 actually have a negative value because you'd have to pay for
7 plugging, wouldn't you?

8 A. Yes.

9 Q. All right. Mr. Hancock, look with me, if you
10 will, at this letter from the Department of Natural
11 Resources dated August 22nd, 2002. Down here in paragraph 3
12 starting with DNR, would you read that please on the record?

13 MR. LORAIN: I'm sorry. What exhibit number
14 is it, sir?

15 MR. WILLIAMS: It's not an exhibit.

16 MS. O'NEILL: Your Honor, I'm going to object
17 to hearsay, at least without any further foundation.

18 JUDGE WOODRUFF: Response?

19 MR. WILLIAMS: Your Honor, it's a letter from
20 the Department of Natural Resources pertaining to the Eagle
21 Woods water system.

22 MR. LORAIN: Judge, if it's not in evidence
23 and nobody's had an opportunity to review it, I really don't
24 know what value it has. There's been DNR people in here.
25 If he wanted to put that evidence in, he should have done

1 so. It's based on hearsay. If it's not a certified record,
2 it doesn't exist.

3 MR. WILLIAMS: Your Honor, it's a response to
4 issues raised by Mr. Loraine's direct examination which
5 specifically talked about the value of the multi-family
6 wells at Eagle Woods. And it's a letter from the Department
7 of Natural Resources pertaining to the multi-family wells at
8 Eagle Woods. And I think it's appropriate cross-examination
9 to ask Mr. Hancock to put that information into the record
10 in this case.

11 JUDGE WOODRUFF: I'm going to overrule the
12 objections and allow the testimony.

13 BY MR. WILLIAMS:

14 Q. Would you read that beginning where it says
15 DNR?

16 A. There are several items in this letter.

17 Q. Yes. Would you read the part that I've asked
18 you to read, please?

19 A. Do you want me to read line item three of six?
20 Is that what you're looking for?

21 Q. We'll do this a different way. Let's look
22 right here. This letter says, DNR requires that the
23 multi-family wells which have served Eagle Woods be
24 disconnected, properly plugged and sealed.

25 Did I read that correctly?

1 A. Yeah. I think you did.

2 Q. All right. Thank you. Now, knowing that DNR
3 requires the multi-family wells be disconnected, plugged and
4 sealed, do you think they have value to Osage Water Company?

5 MR. LORAIN: Judge I'm going to object.
6 That's one sentence out of a letter. We've got to know more
7 facts before that question is relevant. It just doesn't
8 have appropriate legal -- I mean, facts sufficient for this
9 witness to make that statement. And if it's Mr. Dusenberg's
10 letter, he could have subpoenaed him in here and given us
11 the details on it.

12 JUDGE WOODRUFF: Response?

13 MR. WILLIAMS: Your Honor, the sentence from
14 the letter is now in evidence in this case. I've asked him
15 to follow-up on the conclusion of how that sentence affects
16 the value of the wells at Eagle Woods that he's previously
17 testified on direct that they did have value.

18 And I think -- I haven't asked him to
19 incorporate the whole contents of the letter nor have I
20 offered the letter as evidence. I have asked him to advise
21 this Commission if knowing that DNR is going to require that
22 the wells be disconnected, sealed and plugged, if that
23 affects his opinion that he gave on direct that they have
24 value.

25 JUDGE WOODRUFF: I'm going to overrule the

1 objection for the question. It's appropriate for that
2 limited purpose. Go ahead.

3 THE WITNESS: I believe I answered the
4 question earlier. If you plug the well, it doesn't have any
5 value.

6 BY MR. WILLIAMS:

7 Q. All right. Thank you.

8 Now, Mr. Hancock, you testified you objected
9 to Osage Water Company's installation of fire hydrants.
10 Weren't you the contractor that installed those?

11 A. That's correct. Uh-huh.

12 Q. Okay. And you were on the board of Osage
13 Water Company at the time that the decision was made to
14 install them?

15 A. That's correct.

16 Q. So when you tell the Commission that you
17 objected to that being done, you didn't object very much,
18 did you?

19 A. I objected to the misleading statements made
20 by some people in Osage Water Company at that time that the
21 people would have fire protection when, in fact, there was
22 no reservoir built to give them fire protection. I would --
23 go ahead.

24 Q. You were on the board at the time?

25 A. Yes.

1 Q. You were the contractor that installed them?
2 A. That's correct.
3 Q. All right. Now, Mr. Hancock, didn't you take
4 over bookkeeping for Osage Water Company in approximately
5 May of 1995?
6 A. I tried to.
7 Q. Did you file the 1994 annual report?
8 A. No, sir. The records were incomplete. It was
9 impossible to do it.
10 Q. Did you do the books for the remainder of 1995
11 and file the 1995 annual report?
12 A. I don't believe I had the records but just for
13 a few months.
14 Q. Okay. So the answer would be no?
15 A. It would be no.
16 Q. All right. Now, Mr. Hancock, wasn't there at
17 one point in time an agreement on your part to contribute
18 for common stock in Osage Water Company and some preferred
19 stock a water well and sewer system in a trailer park that
20 you developed?
21 A. Yes.
22 Q. Did you honor that agreement?
23 A. Yes, I did.
24 Q. Did you keep that agreement?
25 A. Yes, I did.

1 Q. You delivered the water well and the sewer
2 system to Osage Water Company?
3 A. Until we made a different agreement, which you
4 were involved in and I was.
5 Q. Didn't, in fact, Osage Water Company sue you
6 because you never delivered the well or the sewer system and
7 it never got any --
8 A. No.
9 Q. Oh, I see. Okay.
10 A. I don't believe that's true.
11 Q. All right.
12 A. I believe I delivered more to the company than
13 I ever took from it.
14 Q. Did Osage Water Company ever bill any
15 residents of your trailer park for water or utility service?
16 A. I don't know that.
17 Q. In fact, they got no money from those systems,
18 did they?
19 A. Those systems were never transferred to Osage
20 Water Company.
21 Q. All right. Thank you very much.
22 Mr. Hancock, do you hold an operator's license
23 to operate a water system?
24 A. No, I do not.
25 Q. Do you hold an operator's license to operate a

1 sewer system?

2 A. No, I do not.

3 Q. Other than this period in 1995 when you didn't
4 keep the books or file annual reports, have you ever been
5 responsible for bookkeeping for a public utility system?

6 A. No, sir.

7 Q. Have you ever been responsible for handling
8 customer complaints for a public utility system?

9 A. I've handled customer complaints since 1971.

10 Q. For a public utility company?

11 A. No, sir, for my own company.

12 Q. Okay. Have you ever operated on your own a
13 utility company subject to the jurisdiction of the Missouri
14 Public Service Commission?

15 A. On my own? No.

16 Q. Have you ever been responsible for filing
17 reports with the Public Service Commission?

18 A. Only while I was part of Osage Water.

19 Q. Okay. Now, Mr. Hancock, with respect to your
20 offer on liquidation, did I understand you correctly to say
21 that you would keep all of the systems in operation without
22 a rate increase and liquidate the same and charge absolutely
23 nothing for providing that service?

24 A. I'm looking to protect the assets that I put
25 into that company, the value of them. And in all this

1 situation, all I've wanted to do is get repaid for the money
2 that I put in that company, and that's what I'm looking for.
3 I don't want anything more or less, but I will collect that
4 money that I put in that company.

5 MR. WILLIAMS: Okay. Would you read back the
6 question, please?

7 THE COURT REPORTER: "Question: Okay. Now,
8 Mr. Hancock, with respect to your offer on liquidation, did
9 I understand you correctly to say that you would keep all of
10 the systems in operation without a rate increase and
11 liquidate the same and charge absolutely nothing for
12 providing that service?

13 BY MR. WILLIAMS:

14 Q. Would you answer that question, please?

15 A. Contingent upon what I'd said earlier, when I
16 would make an offer for the company, all things would have
17 to fall in place correctly so I could, in fact, operate the
18 company. And I could do that, yes.

19 Q. Okay. And if all things didn't fall in place,
20 then you would not do that. Is that what you're saying?

21 A. I would look at it -- my experience in
22 business -- in successful business is several years. And I
23 believe that I can make that water and sewer company viable
24 under my leadership.

25 Q. And have you proposed that to the board of

1 directors of Osage Water Company?

2 A. Not formally.

3 Q. Okay. So you would like the Commission to
4 direct Osage Water Company to allow you to do that, but you
5 don't want to ask the board of Osage Water Company; is that
6 correct?

7 A. That's not correct at all. I'd be glad to
8 make you a proposal.

9 Q. But you have not done so prior to coming here
10 and testifying today?

11 A. We've made proposals to you and Mr. Mitchell
12 right here in this room.

13 Q. Okay.

14 A. Two weeks ago last Thursday, I believe it was.

15 Q. I'll go back to a previous question. How much
16 are you willing to pay for Osage Water Company?

17 MR. LORAIN: Well, Judge, this has been asked
18 and answered. We've been through the objections over it.
19 It's contingent on disclosure of records which Mr. Williams
20 doesn't seem to have or be able to do. So, you know, it's a
21 meaningless question at this point.

22 JUDGE WOODRUFF: I'll sustain the objection.

23 MR. WILLIAMS: Thank you, your Honor. I think
24 the importance of the question is to make it very clear on
25 the record what is and is not being offered by this witness.

1 And the lack of an answer is important, and I would request
2 that the Commission either direct the witness to answer or
3 ignore any testimony he might have about his willingness to
4 make an offer.

5 MR. LORAIN: Judge, is it time to make
6 closing arguments?

7 JUDGE WOODRUFF: No, it's not.

8 MR. LORAIN: Then I would ask if that was an
9 objection, that that be struck from the record.

10 MR. WILLIAMS: It was a request for
11 reconsideration of the ruling on the question.

12 JUDGE WOODRUFF: The second objection is
13 overruled. The record will stand as it was.

14 The first objection to overrule -- to prevent
15 the question -- I'm getting confused myself here.

16 He does not have to answer the question about
17 how much he's going to offer.

18 MR. WILLIAMS: Very well, your Honor. Thank
19 you.

20 JUDGE WOODRUFF: All right. I have no
21 questions from the Bench, so no recross. Any redirect?

22 MR. LORAIN: Just a question.

23 REDIRECT EXAMINATION BY MR. LORAIN:

24 Q. That document that Mr. Williams had you read a
25 sentence from, could I ask you to look at the top, read

1 starting at the word Eagle Cove -- Eagle Woods?

2 A. The Eagle Woods subdivision drinking water
3 system was constructed and operated as a multi-family water
4 system, which as you know, does not meet the definition of a
5 public water system and, therefore, was not regulated as a
6 public water system.

7 Q. Thank you. And that's in that same letter?

8 A. Yes, it is.

9 Q. Is that your understanding, that for
10 multi-family water system, it does not have to be plugged?

11 A. That's my understanding, sure.

12 Q. And, in fact --

13 A. It can operate as a multi-family.

14 Q. And it has value, doesn't it?

15 A. It has value.

16 Q. And it was an asset, was it not --

17 A. Yes, it was.

18 Q. -- of OWC?

19 A. Yes.

20 Q. And it was traded?

21 A. Traded.

22 MR. LORAIN: Thank you. Nothing further,

23 Judge.

24 JUDGE WOODRUFF: All right. Then you may step
25 down.

1 THE WITNESS: Thank you.

2 JUDGE WOODRUFF: You may call your next
3 witness.

4 (Witness sworn.)

5 JUDGE WOODRUFF: You may be seated and you may
6 inquire.

7 MR. LORAINE: Thank you, your Honor. May it
8 please the court, Judge.

9 JUDGE WOODRUFF: You may.

10 WILLIAM COCHRAN, having been sworn, testified as follows:
11 DIRECT EXAMINATION BY MR. LORAINE:

12 Q. Sir, for the record would you please state
13 your name.

14 A. William J. Cochran, C-o-c-h-r-a-n.

15 Q. Mr. Cochran, can you give your background a
16 little bit for this court?

17 A. I worked as a Staff engineer for 20 --
18 18 years.

19 Q. Where at, sir?

20 A. Before that --

21 Q. No, pardon me. Where at?

22 A. At the Public Service Commission.

23 Q. Thank you.

24 A. Before that, I worked as a financial analyst,
25 dash, auditor for Kennett, Cott, Copper for three years.

1 Before that, I worked for Hunnewell as a commercial sales
2 and design engineer for control systems for four years. And
3 before that, I was in the Navy for eight years.

4 Q. Sir, are you an engineer?

5 A. I'm a register professional engineer by
6 examination in Missouri. I have a bachelor of science
7 degree in engineering from the U.S. Naval Academy. I have a
8 master's degree in business administration from Southern
9 Illinois University.

10 Q. Sir, you testified as an expert at the
11 Commission; is that true?

12 A. Yes. Many times.

13 Q. And did it involve auditing functions, analyst
14 functions as far as systems and rate bases and things, etc.,
15 and so forth?

16 A. Yes, it did.

17 Q. In fact, your opinions have stood the test of
18 the Eighth Circuit Court of Appeals; is that true?

19 A. Yes, they have.

20 Q. Sir, I'd like to ask if you have had a chance
21 to review the complaint filed in this case?

22 A. Yes, I've reviewed Staff's complain contained
23 in Exhibit 1.

24 Q. And regarding that complaint, did you and I
25 discuss what your Direct Testimony would be?

1 A. Yes, sir. The direct -- the purpose of my
2 Direct Testimony will -- I will support specific paragraphs
3 of Staff's complaint. The specific paragraphs I'm going to
4 address in this Direct Testimony are paragraphs 8, 9, 10,
5 14, 15, 16, 17, 21 and 36.

6 Q. Sir, in regards to paragraph 8, what testimony
7 do you have and what's it based on?

8 A. It's based on my examination of --

9 MR. WILLIAMS: Your Honor, I'm going to object
10 to the form of the question as calling for a narrative by
11 the witness.

12 MR. LORAIN: He's an expert.

13 JUDGE WOODRUFF: Yeah. It's still calling for
14 a narrative.

15 Can you read back the question?

16 THE COURT REPORTER: "Question: Sir, in
17 regards to paragraph 8, what testimony do you have and
18 what's it based on?"

19 JUDGE WOODRUFF: Sounds like a narrative. You
20 need to break it down a bit

21 BY MR. LORAIN:

22 Q. Sir, first of all, let me ask this. In
23 preparation of your testimony, how many years have you
24 reviewed the business dealings of OWC?

25 A. Approximately eight years, since case

1 WA-97-236.

2 Q. What year approximately was that in human
3 time?

4 A. '98 -- 1998.

5 Q. All right. And essentially have you -- in
6 that process have you reviewed all of their financial
7 records?

8 A. Well, that's -- I've tried to review their
9 financial records, yes. Their records are in such disaccord
10 it's very difficult to come to any conclusions about just
11 what's going on in that company.

12 Q. Have you looked at all the annual reports
13 submitted?

14 A. Yes, I have.

15 Q. From day one of the company?

16 A. Yes. All of them from -- I can't say I looked
17 at '92. I looked at all the annual reports I think
18 beginning with '94 through 1999.

19 Q. All right. And in doing that, sir, have you
20 been able to arrive at any opinions in regards to
21 paragraph 8 of the complaint? And I believe you said you
22 have.

23 A. Yes.

24 MR. WILLIAMS: Your Honor, I'm going to object
25 to him testifying to an opinion or conclusion based on the

1 simple allegation that he's looked at annual reports. That
2 gives me absolutely no basis for understanding what he might
3 be testifying about nor what facts or information he
4 obtained from the annual reports on which that opinion or
5 conclusion would be based. And it certainly gives the
6 Commission no basis for understanding what his opinion is
7 based upon.

8 MR. LORAIN: Let me read through it.

9 JUDGE WOODRUFF: Before you do that, let me
10 ask you to clarify exactly what paragraph 8 is.

11 MR. LORAIN: Paragraph 8 of the complaint,
12 sir.

13 JUDGE WOODRUFF: Yes, I understand that. But
14 so the record is clear, what is the gist of paragraph 8?

15 MR. LORAIN: Yes. It involves the
16 receivership statute requirements have been met. That's the
17 heading of that paragraph.

18 JUDGE WOODRUFF: All right.

19 MR. LORAIN: And it says, The company
20 satisfies each of the bases for the appointment of a
21 receiver that are set forth in italics above 393.145-1.

22 And it says, The company has failed to provide
23 safe and adequate services to its customers. It is unable
24 to pay its obligation, has no legal authority to take any
25 action other than liquidate its assets if owners, officers,

1 directors and other agents have abandoned the company.

2 JUDGE WOODRUFF: That's a very broad
3 paragraph.

4 MR. LORAIN: Yes, it is.

5 JUDGE WOODRUFF: I'm going to have to sustain
6 the objection. It is such a broad category and it doesn't
7 give Mr. Williams a fair opportunity to understand what sort
8 of opinion he might be offering.

9 MR. LORAIN: Yes, Judge.

10 JUDGE WOODRUFF: If you can break it down a
11 bit.

12 MR. LORAIN: I will.

13 BY MR. LORAIN:

14 Q. There's been testimony in various cases. Have
15 you reviewed all the testimony in some of the cases over the
16 last -- since 1998?

17 A. Yes, sir. And I've come to a conclusion.

18 Q. Before you go there --

19 A. Yes, I have.

20 Q. -- have you looked at testimony by
21 Mr. Williams and Mr. Mitchell throughout the cases that
22 you've reviewed?

23 A. Yes, I have.

24 Q. Have you talked with Mr. Mitchell and
25 Mr. Williams personally?

1 A. Yes.

2 Q. Can you tell me what cases and what
3 testimonies you've reviewed?

4 A. Cases WA-97--- well, I've talked to them about
5 Case WA-94-136 -- 132, Case WA-97-236, Case WA-2002-65.

6 Q. Have you looked at the transcript of the rate
7 case?

8 A. Yes, I did. And I reviewed all the reports
9 and all the testimony and all the accounting schedules in
10 WR-2000-557.

11 Q. Sir --

12 A. And I reviewed essentially the compliance
13 agreement in the following cases, WE-2002-240 about the
14 annual report filed in 1999.

15 Q. Sir, have you, based on that testimony that
16 you reviewed, based on the sworn statements made by
17 Mr. Mitchell and Mr. Williams, based on the information
18 you've garnered over the years, have you formed an opinion
19 as to whether they provide safe and adequate service to
20 their customers?

21 A. Yes, I've --

22 MR. WILLIAMS: I'm going to object, your
23 Honor, to the form of the question. This is calling for an
24 opinion and conclusion on the part of this witness and yet
25 it gives me absolutely no information about what facts or

1 information that opinion or conclusion might be based on nor
2 is there any indication what topic, other than quality of
3 service to customers, that he's talking about.

4 He has not stated any specific facts on which
5 that opinion might be based, which would enable this
6 Commission to assess whether the opinion fairly reflects the
7 facts and information which he is basing his opinion on. In
8 essence, it's an unassisted opinion.

9 JUDGE WOODRUFF: I'm going to overrule the
10 objection. You can certainly inquire as to foundation of it
11 on cross if you wish to. The objection is overruled. You
12 can answer the question.

13 THE WITNESS: I'd like the question to be read
14 back.

15 BY MR. LORAIN:

16 Q. I'm going to state it briefly. It's has the
17 company failed to provide safe and adequate services to its
18 customers?

19 A. Yes. In my analysis of three -- three
20 different water systems that the company has installed,
21 built and operated for the last nine years, I've identified
22 specific unsafe, inadequate services from each of these
23 three water systems.

24 Q. Can you tell us what system and -- first of
25 all, and tell me what it's --

1 A. The first water system was when the Commission
2 awarded OWC a CCN in WR-94-132. The Commission ordered and
3 it was stipulated that OWC would provide fire protection to
4 the City of Osage commercial district and residential
5 district.

6 The specific fire code and fire flow
7 regulations identified in the stipulated agreement were that
8 OWC would install mains -- water mains that would give 3,500
9 gallons a minute for commercial and up to 1,000 gallons per
10 minute to residential.

11 I found that the systems that were installed
12 were totally inadequate to provide any kind of fire
13 protection to any of the city residents or commercial
14 enterprises.

15 I found in my analysis of plats of the company
16 that they installed six fire hydrants on these -- on these
17 mains that were characterized by the chief of the Osage
18 Beach Fire District --

19 MR. WILLIAMS: Object to any testimony about
20 what someone else may have characterized something.

21 JUDGE WOODRUFF: Sustained.

22 BY MR. LORAIN:

23 Q. Was that testimony in -- sworn testimony by
24 the chief?

25 A. Yes, it was.

1 Q. And based on that sworn testimony, were you
2 able to agree or disagree with the chief?

3 A. I was able to agree with him.

4 Q. And tell me not what he said, but tell me what
5 was wrong with the fire hydrants.

6 A. The fire hydrants were inoperative according
7 to Mr. Williams' admission in a June 3rd, 1998 letter. The
8 chief was very worried --

9 Q. Don't tell me what the chief was worried
10 about. What did you find wrong with the fire hydrants?

11 A. I found that they were inoperative because the
12 mains would not support the fire flows that would be
13 required to operate those fire hydrants.

14 Q. Would that give a wrong illusory item to the
15 public?

16 A. It would -- it would to the public, but mainly
17 would give it to firefighters or mutual aide fire -- fire --
18 fire districts that would pull up and try to hook up to
19 these fire hydrants and then run into a burning building
20 thinking they had fire support.

21 MR. WILLIAMS: Your Honor, I'm going to object
22 to this line of questioning regarding fire hydrants. It's
23 outside the scope of the issues raised in the complaint in
24 this matter.

25 MR. LORAIN: Judge, it goes to the safe and

1 adequate services that OWC has in the past -- these are
2 examples. He wanted specific examples. We're willing to
3 give him some.

4 MR. WILLIAMS: Your Honor, fire protection is
5 not water utility service under the Commission's
6 regulations. There is a distinction drawn by the
7 Commission, there's different charges for it. This is not
8 proper evidence with respect to safe and adequate service,
9 water utility service.

10 JUDGE WOODRUFF: I believe this was also the
11 subject of a previous litigation before the Commission.

12 MR. WILLIAMS: It is, your Honor.

13 JUDGE WOODRUFF: I'm going to sustain the
14 objection as to this line of questioning as far as --
15 because it is going into fire protection rather than safe
16 and adequate drinking water protection which is what the
17 company is purporting to provide.

18 BY MR. LORAIN:

19 Q. Have you got any examples of other unsafe and
20 inadequate services as to water -- serving of water itself?

21 A. Yes.

22 Q. Tell me what situation that would be.

23 A. That would be WA-97-236 characterizes the Park
24 View Bay condominium CCN.

25 Q. And what was say -- pardon me -- what is

1 unsafe or inadequate about that service?

2 A. It's unsafe and inadequate because these
3 principals installed a water system that was totally and
4 grossly under -- undersized and inadequate based on the DNR
5 construction specifications that DNR said that they had to
6 use to build that water system.

7 Q. Did you personally examine the inadequacies
8 for diameters, etc., and so forth?

9 MR. WILLIAMS: Your Honor, I'm going to object
10 to this line of questioning also as an issue that has been
11 fully and completely and previously litigated before this
12 Commission and on which the Commission has made a
13 determination in its Park View Bay certificate case. And
14 it's outside the scope of the issues in this pleading.

15 MR. LORAIN: Judge, it goes to the history of
16 this company. If we're going to talk about whether they
17 provide safe and adequate services, we have to look at the
18 historical basis. We're lucky we have somebody that has
19 that knowledge.

20 JUDGE WOODRUFF: I'm going to overrule the
21 objection.

22 MR. WILLIAMS: Your Honor, this complaint does
23 not go to history. It goes to today.

24 JUDGE WOODRUFF: The objection's overruled.
25 You can go ahead and answer the question.

1 THE WITNESS: Would you read it back?

2 THE COURT REPORTER: "Question: Did you
3 personally examine the inadequacies for diameters, etc., and
4 so forth?"

5 THE WITNESS: Yes, I did. I compared the
6 actual driller's well permit. I looked at the reports on
7 the depth of the well, how it was done, the horsepower size
8 that was put in. And I can give a comparison to what DNR
9 said had to be done and what was actually done.

10 BY MR. LORAIN:

11 Q. And did he comply with the requirements of
12 DNR?

13 A. No.

14 Q. In what way did he fail?

15 A. DNR told him he had to dig a well to at least
16 1,000 feet to percolate approximately 200 gallons per
17 minute. He dug a well to approximately 645 feet that
18 percolates approximately 100 gallons per minute.

19 DNR said that you will put in a 50 horsepower
20 pump through an 8-inch casing so that that pump can give you
21 dynamic head of 229 feet at 200 gallons per minute, which
22 matches the well depth percolation. Instead, he dug a
23 6-inch casing and --

24 JUDGE WOODRUFF: If I could interrupt, you've
25 been referring to "he." Who is "he"?

1 THE WITNESS: Mr. Williams. In all these
2 communications Mr. Williams' name has been on the DNR
3 notices of complaint, which I was going to testify to later.
4 And Mr. Williams has been communicated with with DNR in all
5 the construction permits and the notice of complaints on his
6 illegal operation of the Park View Bay Condominium water
7 well system.

8 JUDGE WOODRUFF: Thank you.

9 THE WITNESS: So I was at the 6-inch casing he
10 installed instead of the DNR required 8-inch casing. The
11 8-inch casing was required because an 8-inch casing will
12 accommodate a 50 horsepower motor which is a fire pump under
13 Osage Beach's own restrictions.

14 But instead of -- he couldn't fit a 50
15 horsepower motor into a 6-inch casing and he dropped a
16 totally gross and inadequate 7 1/2 horsepower motor which
17 could not even meet the water needs of 121, at that time,
18 condominium users that were living at Park View Bay.

19 He was also directed to install an 11,000
20 gallon storage tank to accommodate the water -- the drinking
21 water needs of all the residents at Park View Bay.

22 He did not install any water storage tank
23 other than several small bladder tanks that were totally
24 inadequate.

25 BY MR. LORAIN:

1 Q. Sir, where did he get those bladder tanks?

2 A. He just bought them, I guess. But when he was
3 told by DNR in a January 9th, 1998 notice of violation, that
4 he was illegally operating the Park View Bay Condominiums,
5 three weeks later he goes over and he goes over to the
6 Broadway -- Broadwater Bay --

7 Q. Actually, it was the Pizza Hut.

8 A. Pizza Hut slash Broadwater Bay.

9 Q. Right.

10 A. And he takes the 4,300 gallon storage tank
11 there, moved it over to Park View Bay to try to get out of
12 this illegal operation label laid on him by DNR in its
13 notice of violation.

14 Okay. On February 10th, after he did that, he
15 gets another notice of violation from DNR saying, You
16 modified the Pizza Hut, slash -- didn't say Broadwater Bay
17 at that time. You modified the Pizza Hut without
18 authorization and you've left them without the permit
19 required storage tank.

20 Q. What is the consequence for today's hearing
21 that this court and Commission needs to know about that? Do
22 you have any conclusions on the well at the Broadwater Bay?

23 A. Yes. When he compromised -- when Mr. Williams
24 and Mr. Mitchell took that 4,300 gallon tank from Pizza Hut
25 without authorization and received a notice of violation

1 from DNR, he essentially left that system without adequate
2 storage so that that pump, that water pump, in my opinion,
3 has run continuously for the last five years, which means to
4 me as an engineer, it snaps on and off continuously because
5 it has to meet demand because there's no storage to draw
6 from so the pump could rest for long time periods.

7 So when you've got a well designed to have a
8 pump operate for long-term periods and then shut off for
9 long-term periods and you switch it because you've modified
10 a system without -- without permission, and you start
11 clicking that system on and off and you're cycling it real
12 hard, you're going to burn that system up and you're going
13 to burn those contacts and there's probably going to be a
14 fire there. And that's what happened.

15 Q. Now, as a practical matter, did that occur at
16 the Broadwater Bay?

17 A. Yes, it did.

18 Q. And what was the consequence of that?

19 A. The consequence is the Staff filed a
20 complaint, they went without water for 10 days or -- I think
21 the record better reflects than my memory just what a mess
22 they created with their inept operations and their -- their
23 blatant refusal to abide by DNR regulations on permits.

24 Q. All right. Now, sir, in regards to -- I
25 believe we've talked about the contribution as it

1 contributed to the Broadwater Bay problem. Do you have any
2 other situations where they have provided unsafe and
3 inadequate service to their customers?

4 A. Well, just recently the Eagle Woods system
5 where they're going to shut it off, and that's inadequate
6 and unsafe service. And I think it's been explored very
7 thoroughly here that they're going to be -- they're in
8 imminent danger of losing their service.

9 Q. Sir, have there been circumstances where OWC,
10 in your investigations, has been unable to pay its
11 obligations?

12 A. Yes. To -- my first -- my first encounter was
13 when I looked at Hancock Construction's billings, invoices,
14 time sheets on a large sum of money he -- as a construction
15 company, he invested installing mains in City of Osage Beach
16 and he was not paid for any of that and he was not paid for
17 the Cimmaron Bay well, which was -- was dug and he paid I
18 think 23,000-some-odd dollars for that well.

19 Q. Sir, did your investigations as a auditor
20 indicate anything unusual about the custom -- about the
21 charges of Hancock that you've just mentioned?

22 A. No. I found all of his time sheets were
23 accurate and backed up by very good data. I found all the
24 invoices tied to his billing to this company. I found his
25 rentals and his charges for large equipment were very in

1 line with the dollar rates that I'm -- that I was very
2 familiar with. I found nothing wrong or nothing out of
3 order in any of his bills amounting to well over \$240,000.

4 Q. And, in fact, that subsequently became the
5 basis by some kind of agreement between those parties,
6 neither of which you and I had anything to do with? They
7 reduced that to a debenture and that's known as the Hancock
8 debenture?

9 A. Yes. I was poised to be called as a witness
10 in the circuit court case and they settled that case out
11 before I was to testify.

12 Q. All right. Sir, in regards to paragraph
13 No. 9, the company has failed to provide -- I believe we've
14 talked about the electrical fire that happened at Broadwater
15 Bay. Do you have any other conclusions in regards to that
16 paragraph in the complaint?

17 A. No. I think we covered that.

18 Q. All right. Sir, in reference to Eagle Woods,
19 in paragraph No. 10 I believe you covered that with the
20 exception of the wholesale water agreement. What comments,
21 if any, do you have about that?

22 MR. WILLIAMS: Object to that as calling for a
23 narrative on the part of the witness, your Honor. If he's
24 got specific questions for this witness, I think he should
25 ask them.

1 JUDGE WOODRUFF: Sustained.

2 BY MR. LORAIN:

3 Q. Sir, what is inadequate or unsafe about the
4 wholesale well agreement between OWC and Eagle Woods?

5 A. Paragraph 6 of that wholesale water agreement
6 calls -- identifies if there are excessive water leaks. The
7 August 27th, Exhibit 23, and the August 22nd letter that we
8 just talked about, both from Larry Dusenberg DNR, both of
9 those letters discuss in detail what could be -- the poor
10 condition of the Eagle Woods -- or just the distribution
11 system of the Golden Glade water system.

12 Despite that -- despite that pre-knowledge,
13 these principals came in in WA-2002-65 and offered that
14 Water Supply Agreement knowing that Eagle Woods subdivision
15 distribution system was totally inadequate and could --
16 could have harmful bacteria introduced into those
17 distribution lines. And they knew that when they came in
18 with that contract.

19 Q. Sir, in regards to paragraph -- let's see
20 here -- 14 of the complaint, which basically is captioned as
21 failure to comply with Commission requirement, have you
22 observed any inability to comply? I believe you mentioned
23 previously the annual reports, but can you go into that in a
24 little bit more detail?

25 A. Yes. OWC has consistently failed for the last

1 nine years to comply with Commission orders directing timely
2 filings of annual reports and using Commission rule
3 mandated, and I'll say this once, National Association of
4 Regulated Utility Commission Uniform System of Accounts
5 normally characterized by the acronym NARUC USOA.

6 They were told four different times since 1994
7 beginning in case WA-94-132, please get your records in
8 order, please adopt rule mandated NARUC accounting systems
9 accounting of assets.

10 This record -- this order was -- this
11 direction of the Commission was repeated in WA-97-110,
12 WA-98-36 and finally in WR-2000-557. I have looked at their
13 last filing of their 1990 annual report in --

14 Q. What year, sir?

15 A. 1999, excuse me.

16 Q. All right.

17 A. Annual report filed November 28 of 2001 and it
18 was totally inadequate. It was like the others. You cannot
19 find NARUC USOA accounting anywhere in any of their annual
20 reports.

21 Q. Why is that a problem for this Commission?

22 A. That is a problem because in my 22 years of
23 presenting positions before this Commission and FERC and
24 other -- those are the two administrator agencies, on things
25 such as jurisdictional allocations, determining assets used

1 and useful, determining assets fully operational and used
2 for service, determining -- doing full depreciation studies
3 on utility rate base, I found NARUC USOA has to be
4 absolutely necessary in finding and identifying the big four
5 I call it, the capacity, the capability, the function, the
6 location of all assets providing service to the customers.

7 You cannot do a reasonable audit of a company
8 that does not perform -- or does not conform to NARUC USOA.
9 And this company has never conformed to USOA --NARUC USOA
10 and I don't think they can. I don't think they're competent
11 to do it.

12 Q. Do you know whether or not there was a recent
13 request by Staff to find all the assets of this company,
14 OWC? What case did that come up in?

15 A. I don't know the case number. It was a case
16 in quality service or quality service of water. I mean,
17 maybe Staff could help me on the case number.

18 Q. It's immaterial, but has that been done, to
19 the best of your knowledge?

20 A. No. I read Staff's --

21 MR. WILLIAMS: Your Honor, I'm going to object
22 to this witness testifying as to whether or not the Staff
23 has or has not filed a report. I think they can pull the
24 docket in that -- docket sheet in that case file and if
25 there's a report, there's a report; if there isn't a report,

1 there isn't a report. But this witness's testimony is
2 certainly not the best evidence of whether the report has
3 been done and whether the Staff has done what the Commission
4 directed it to do.

5 JUDGE WOODRUFF: I'll sustain the objection.
6 I think the report's already in evidence maybe.

7 MR. LORAIN: It's not whether the report is
8 in evidence. What I was getting to was the quality of the
9 information contained in there.

10 JUDGE WOODRUFF: You can inquire further about
11 that. The objection was to specific testimony about what
12 was in the report. If you want to inquire further, go
13 ahead.

14 BY MR. LORAIN:

15 Q. In regards to other company requirements by
16 the part of the PSC what has been -- let's strike that.

17 Let's go onto the notice -- No. 15 paragraph
18 notices of violation and customer complaints. I believe
19 you've already touched on the Pizza Hut issue that we talked
20 about?

21 A. Yes.

22 Q. And that led to the Broadwater Bay. Is there
23 anything else that you have in reference to that particular
24 paragraph?

25 A. Yes. OWC --

1 MR. WILLIAMS: Your Honor, I'm going to object
2 to the form of the question as calling for a narrative from
3 this witness. He asked is there anything else that you have
4 on this issue. And that does not give any basis for knowing
5 what in the world this man might say.

6 MR. LORAIN: Well, he said yes and I'll
7 follow-up on that.

8 JUDGE WOODRUFF: Sustained as to form of the
9 question. You can follow-up on specifics.

10 BY MR. LORAIN:

11 Q. What specific item do you have?

12 A. I have three specific DNR notices of violation
13 regarding unsafe and inadequate and on one occasion illegal
14 operations. The three notices of violation are 1033JC, this
15 is on the Park View Bay Condominium notice of violation that
16 was -- they were illegally operating that water system. And
17 DNR specifically said you're illegally operating this water
18 system because you do not have a permit to dispense water.

19 Q. What is the second?

20 A. The second is 1043JC, which we've already
21 discussed was the Pizza Hut slash Broadwater Bay water
22 system where they just -- they just -- I call it
23 cannibalize. They just picked up the 4,300 gallon tank and
24 moved it over to Park View Bay to attempt to get out of
25 illegal operation notice of violation and just created

1 another notice of violation.

2 Q. Sir, before you go onto the third of that, if
3 NARUC accounting system would have been in effect, would
4 that -- a certain specific account number been assigned to
5 that bladder tank and would we have been able to trace it
6 and find out where it was?

7 A. Yes. It wasn't a bladder tank. It was a
8 structural storage tank. There would have been an account
9 number -- I'm sorry, the exact account number escapes me
10 now. I think it's Account 351.

11 Q. In any case, no such account number was there
12 and no such accounting was able to -- no such follow-up on
13 where that tank went?

14 A. No. You can't track when they move assets
15 around. You can't track if they transfer them because
16 there's no accounting.

17 Q. All right. When you use the word
18 "accounting," you're not talking about an accounting
19 principle like accountants do?

20 A. No.

21 Q. You're talking about specifically being able
22 to identify in accordance to those four principles you
23 established earlier?

24 A. Yes. My four big is capacity, capability,
25 function and location. You first start out with location,

1 you go find it and you identify the capacity, the capability
2 and its function, what it is.

3 Q. Okay.

4 A. Is it a pump? is it a storage tank? Is it a
5 tower?

6 Q. Mr. Hancock and Mr. Williams have been dealing
7 with some attempt to establish where those -- what kind of
8 personal assets those things have been for more than a year
9 that I'm aware of. You've been aware of that?

10 MR. WILLIAMS: I'm going to object to that as
11 a very leading question and appears more to be testimony by
12 Mr. Loraine than it is --

13 MR. LORAIN: I'll withdraw it, Judge.

14 BY MR. LORAIN:

15 Q. Have you had an experience for the last year
16 in regards to being specific on assets?

17 A. Yes, I have. I've been involved in trying to
18 identify OWC assets primarily with you and Mr. Hancock in
19 trying to get -- I hate the word value. I will identify it
20 for more the Commission's benefit as costs. And in trying
21 to tie those into rate-making principles, rate case
22 accounting schedules. And despite my 22 years experience, I
23 can't do it.

24 Q. And that's because of inadequate records?

25 A. No NARUC USOA.

1 Q. Sir, in regards to paragraph I believe it's
2 16, the lack of management skills, what have you -- I'm
3 sorry. You had a third violation on 15 and I never let you
4 go back to it. What is that third one?

5 A. Let's see. Okay. The third was 1378JC and it
6 was regarding the Golden Glade water system and was
7 identified in Case WA-99-437 where they were again cited by
8 DNR for not having a permit to dispense water from the
9 Golden Glade water system.

10 Q. All right. And in regards to lack of
11 management skills, do you have any specifics on lack of
12 management skills that you can give this Commission?

13 A. My opinion, after looking --

14 MR. WILLIAMS: I'm going to object to that.
15 Mr. Loraine asked for the witness for specific evidence and
16 he's giving an opinion in response thereto.

17 JUDGE WOODRUFF: I'll sustain the objection.

18 BY MR. LORAIN:

19 Q. What specific items can you list under lack of
20 management skills?

21 A. The specific items are the installation in
22 WA-94-132, the installation and operation in WA-97-236. And
23 that's the two examples I've identified that these -- OWC is
24 not technically competent to design, install and operate
25 public water -- public drinking water systems as -- as

1 defined by DNR as having to serve the public with safe and
2 adequate water service -- drinking water service.

3 Q. Do they have a history of delays on these
4 projects?

5 A. You got me on that.

6 Q. All right. Do they have a history of
7 construction defects, other than what you've pointed out?

8 A. Other than what I've pointed out, I don't
9 know.

10 Q. All right. Reference to paragraph 17, the
11 company liabilities, the allegation basically stresses that
12 the company is insolvent. Do you have any specific
13 instances where you've demonstrated that?

14 A. Yes. In paragraph 17 there was a \$435,000
15 promissory note to Mr. Williams. This demonstrates OWC's
16 complete disregard for rate-making proceedings in Case
17 WR-2000-557 and significantly contributed to OWC's inability
18 to pay contractors, refund illegal overcharges and caused
19 OWC's default on the Hancock Construction debenture.

20 Q. And how did that contribute -- what was
21 significant about the filing of that deed of trust at that
22 particular time that brought that to your attention?

23 A. My -- it was -- their disregard for the
24 rate-making process can be identified on date that he
25 created the promissory note. Staff filed their rate case --

1 their WR-2000-557 rate case, they filed it after examining
2 all the company's books and records for several months on
3 their premises. They filed their case on February the
4 14th, 2001.

5 Q. What was the date on the deeds of trusts that
6 were filed, the three of them?

7 A. February 15th. They created these one day
8 after Staff left the premises so that Staff could not
9 possibly discover those deeds of trust in their audit.

10 Q. And those were filed of record after they were
11 created obviously, so there would be no public record of it
12 prior to that date?

13 A. There would be no public record for Staff to
14 uncover in its audit.

15 Q. Okay. In regards to paragraph 21 in the
16 complaint, inability to refund overcharges, you made some
17 statement about that. Can you tell this court and the
18 Commission what you have in reference to the refund
19 overcharges, the failure -- inability to pay those?

20 A. Well, the fact that they were illegally
21 collecting money.

22 Q. What was the date of the illegal collection?

23 A. November the 6th, 2001 was the Commission's
24 first finding or first order that they had found that OWC
25 had unquote -- this is a quote -- unlawful overcharges on --

1 to their customers.

2 Q. And, in fact, they requested the company to
3 reimburse that, did they not?

4 A. Yes, they did.

5 Q. Was that done, if you know?

6 A. I don't know.

7 Q. Did that overcharge occur, at least in part,
8 while Debbie was in charge of OWC?

9 A. I heard testimony here that she started
10 July the 7th and those overcharges continued on after she
11 started as manager.

12 Q. Sir, in regards to paragraph 36, I'll read for
13 the court's information, Allegation No. 36, Mr. Williams
14 refuses to provide legal representation for the company.

15 What specific example do you have in that
16 regard?

17 A. That \$435,000 was -- the critical date on that
18 was February 15th, in my mind. Because Staff had already
19 rejected his capitalization of \$390,000 legal fees into
20 Account 302, according to Mr. Johansen's testimony.

21 Staff did not capitalize any of Mr. Williams'
22 past legal claims in OWC's rate base. And the Commission
23 WR-2000-557 order shows that Mr. Williams did not oppose
24 Staff's rejection of any of these alleged legal fees
25 totaling the \$390,000.

1 I mean, he totally did not challenge Staff
2 excluding all of those capitalized fees from their rate
3 proposal, their rate revenue requirement that they proposed
4 to the Commission unopposed by the company.

5 Q. What was the situation in that regard with
6 Mr. Mitchell's -- that the bills and services that he billed
7 that basically was culminated in the deed of trust he
8 received on Water Labs and Jackson Engineering?

9 A. I could not find any Staff reference to those.
10 Even looking at them, they were not on the books at all that
11 I could determine from Staff's audit or from any of their
12 testimony and certainly not from the accounting schedules
13 where they developed their revenue requirement.

14 Q. Didn't appear on any of the annual reports
15 thereafter either, did it?

16 A. There were none after that.

17 Q. Okay. Sir, do you believe that it would be
18 proper to -- do you have an opinion as to whether or not it
19 would be proper to bring up those attorney fees and the
20 engineering fees, Water Laboratory fees now in a new rate
21 case?

22 MR. WILLIAMS: Your Honor, I'm going to object
23 to his opinion on what might be proper procedure before the
24 Commission. The Commission's rules and the decisions of the
25 Commission would be binding on that and his opinion -- he's

1 not an attorney and has no basis for providing that.

2 MR. LORAINÉ: Judge, he does have a basis.
3 He's been a Staff expert witness for a number of years. If
4 I can clear this up with a word or so, maybe I can proceed.

5 JUDGE WOODRUFF: Proceed.

6 BY MR. LORAINÉ:

7 Q. Sir, have you ever heard the word retroactive
8 rate-making?

9 A. Yes, I have.

10 Q. What does that principle stand for?

11 A. That principle stands for trying to go back
12 past the last rate case and re-- to first litigate a new
13 issue that you did not litigate in the last rate case.

14 In short, Mr. Williams did not attempt to
15 bring the \$390,000 legal fees that he capitalized and Staff
16 rejected, did he not attempt to bring that up as a contested
17 issue in the Commission's WR-2000-557.

18 And I have a direct quote from the Commission
19 saying that -- I'll read it. Commission found on page 7
20 Osage did not prefile any written testimony and none of the
21 testimony of its witnesses at the evidentiary hearing
22 contradicted Staff's calculation of an Osage appropriate
23 revenue requirement.

24 Okay. That means that he passed on trying to
25 bring up an issue of the \$390,000. And if he brought -- he

1 can bring it up in the next rate case, but it's what we
2 would call -- what we called for 20 or 18 years, that's a
3 retroactive rate-making issue. And my experience with the
4 Commission is they've universally rejected that, retroactive
5 rate-making attempts.

6 Q. Sir, in regards to that issue, that was never
7 brought up again in any case, but nevertheless, there were
8 deeds of trust filed, surreptitiously, if you will, on the
9 day after the Staff left. Is that my understanding?

10 A. That's --

11 MR. WILLIAMS: Your Honor, I'll object to the
12 form of the question as leading and including a terminology
13 there of surreptitious, which is not in evidence or
14 supported by anything in this case.

15 MR. LORAIN: I'll withdraw that, Judge.

16 I don't believe I have anything further.

17 JUDGE WOODRUFF: Okay. Then for cross we'll
18 begin with Staff.

19 MR. KRUEGER: No questions, your Honor.

20 JUDGE WOODRUFF: Public Counsel?

21 MS. O'NEILL: No questions.

22 JUDGE WOODRUFF: All right. For Osage?

23 MR. WILLIAMS: Thank you, your Honor.

24 CROSS-EXAMINATION BY MR. WILLIAMS:

25 Q. Mr. Cochran, you would agree with me, would

1 you not, that the issues regarding fire protection at Osage
2 Beach that you've described in WA-94-132 have previously
3 been heard and litigated in front of this Commission
4 particularly in the Park View Bay certificate case; isn't
5 that correct?

6 A. No, I won't agree with that.

7 Q. You don't think those issues were heard by the
8 Commission?

9 A. Yes, they were. I'm sorry. It's been a long
10 time. They were.

11 Q. You presented testimony on those issues --

12 A. I did.

13 Q. -- in that case?

14 A. You're right. I presented those issue.

15 Q. And the Commission heard everything you've
16 said here today, is that correct, about the fire hydrants at
17 Osage Beach?

18 A. I don't think they've heard everything I've
19 said today. There's a lot of new evidence I've brought in
20 today.

21 Q. But they did make a decision back on the Park
22 View Case about fire hydrants and how that affected the
23 Osage Water and they granted the certificate in that case,
24 didn't they?

25 A. They granted the certificate. I don't know if

1 they addressed the fire hydrants.

2 Q. Now, with respect to your comments about the
3 improper construction of Park View Bay, did the Department
4 of Natural Resources issue a permit to dispense with Park
5 View Bay?

6 A. No.

7 Q. You don't think they ever issued a permit to
8 dispense?

9 A. They issued a permit to dispense probably to
10 the City of Osage Beach.

11 Q. You don't think Osage Water Company ever got a
12 permit to dispense?

13 A. Not that I saw.

14 Q. Mr. Cochran, where in the Commission's annual
15 report form would you find a NARUC listing by account of all
16 assets of the company?

17 A. Page -- I can't tell you the page number, but
18 it's -- the NARUC account listing is 301 through 399 on -- I
19 can't remember the page number in the annual report.

20 Q. And are you saying that the company didn't
21 fill those pages out?

22 A. I'm saying that the company didn't fill in all
23 the blanks and they did not use back-up sheets properly and
24 did not identify the proper accounts like -- as I remember
25 from '97 on, you have no pumping equipment, which is

1 impossible. You have to have pumping equipment.

2 Q. Okay.

3 A. Okay.

4 Q. So your question -- your concern would be

5 whether or not the assets are broken down to the appropriate

6 sub-categories or whether the total values are listed or

7 what's your concern there?

8 A. My concern is that the Staff's rate case found

9 after a detailed audit that you only had \$245,000 worth of

10 NARUC identified assets. Okay. Your annual reports

11 commonly list that you have one million four to one million

12 eight. And those two numbers cannot be reconciled by any

13 reasonable methods.

14 Q. What's the difference between rate base and

15 assets owned?

16 A. The differ--

17 Q. And do you list on the annual report rate base

18 or assets owned?

19 A. You list on the rate base what you're going to

20 earn a return on under NARUC accounts. Unregulated non--

21 non-regulated assets are not included on your sheet. And,

22 furthermore --

23 Q. What about --

24 A. -- there's a mandated rule that --

25 Q. -- the --

1 A. Would you let me finish the question?

2 Q. You did finish the answer to the question I
3 asked?

4 A. No, I didn't.

5 JUDGE WOODRUFF: You finished the question he
6 asked. He's gone on to another question.

7 BY MR. LORAIN:

8 Q. What about contributed capital, Mr. Cochran?
9 Would that be shown on the balance sheet but not included in
10 rate base?

11 A. Well, are you talking of -- the annual
12 reports, contributions in aid of construction is shown on a
13 different page.

14 Q. It's not shown in the asset listing?

15 A. Not that -- it can't be. It cannot be -- it
16 cannot earn a return on those assets.

17 Q. And is it your testimony to the Commission
18 that the annual report reflects only those assets which the
19 company is going to earn a return on?

20 A. That's my position it should be, yes.

21 Q. It should be, but is that the way that the
22 annual report calls for it to be filled out?

23 A. Yes. The two rules call for you to file
24 timely annual reports, to identify all your debt, to
25 identify by NARUC account on certain page number, to

1 identify by CIAC on a different page number and to identify
2 expenses somewhere else on an income statement.

3 And if I look at your statements,
4 Mr. Williams, I find half the pages blank and there's -- and
5 to be honest with you, I cannot reconcile anything on your
6 annual report against what should be reported.

7 Q. Well, the question I asked you is you said
8 that as far as you were concerned, the annual report should
9 be -- should reflect rate base items as opposed to balance
10 sheet items. Now, is that your opinion or is that the
11 Commission's rule?

12 A. It's the rule that you report things by NARUC.

13 Q. Very good. Have you --

14 A. USOA.

15 Q. Now, Mr. Cochran, have you examined the
16 records of the Department of Natural Resources with respect
17 to the notice of violation that you just testified to on the
18 Park View Bay water well?

19 A. I couldn't hear you. You were mumbling. I
20 couldn't hear the first part.

21 Q. Have you examined the records of the
22 Department of Natural Resources with respect to the three
23 notices of violations that you testified to here today?

24 A. I did to the best of my ability. I went to
25 DNR on the -- what's this -- October the --

1 Q. So your answer would be yes?

2 A. Yes.

3 Q. All right. And did those records reflect that

4 the notice of violation with respect to the Park View Bay

5 water well had been completely resolved to the Department of

6 Natural Resources' satisfaction?

7 A. They wouldn't allow me to look at enforcement.

8 Q. Okay. So you don't know the answer then?

9 A. I don't know the answer because --

10 Q. Very good. Thank you.

11 Now, with respect to the Pizza Hut well notice

12 of violation, were you able to examine those records?

13 A. No.

14 Q. And with respect to the Golden Glade water

15 system, were you able to examine those records?

16 A. No. Just the notices.

17 Q. So you can't tell the Commission whether or

18 not those notices were resolved to the satisfaction of the

19 Department of Natural Resources?

20 A. I can't tell them because they wouldn't

21 release the records to me.

22 Q. Would you agree that if those had been

23 resolved, that there would be no reason for the Commission

24 to be concerned about resolved notices of violation that

25 happened years ago?

1 A. I can't answer that.

2 Q. I see. You have no opinion on whether or not
3 resolved violations are important?

4 A. I have an opinion they are, because it would
5 take more -- it would have taken more authority or more of a
6 release of records than the DNR was going to give me.
7 Mr. Price specifically said enforcement notices will not
8 be -- you will not be allowed to see them today.

9 Q. All right. Now, Mr. Cochran, you testified
10 that you've been unable to identify Osage Water Company's
11 assets. Is that a correct summary of your testimony?

12 A. That's correct.

13 Q. Is there any obligation on the part of Osage
14 Water Company to give you access to any of its records?

15 A. Just through the public records that you're
16 supposed to file with the Commission.

17 Q. Okay. But as far as looking at the company's
18 internal records, you have no right to do that, do you?

19 A. No. I just have a right to look at the public
20 records, and they're a mess.

21 Q. Okay. And so you don't know what records the
22 company might or might not have; is that correct?

23 A. Well, that's true. I wouldn't know.

24 Q. All right. All right. Now, you also
25 testified that the company recorded or signed deeds of trust

1 one day after the Staff completed its audit in the rate
2 case; is that correct?

3 A. That's correct.

4 Q. Now, how do you know when the Staff completed
5 its audit?

6 A. My 20 or 18 years with the Commission when we
7 would file a case, it would be stamped. I went to the data
8 center, pulled Staff's records and the stamp dates on all
9 their exhibits and all their testimony was February 14th --

10 Q. Now --

11 A. -- 2001.

12 Q. -- that wouldn't tell you when the Staff was
13 last in the company's office, would it?

14 A. It would probably tell me they weren't in
15 there for a couple weeks. It would tell me that
16 knowledgeable utilities would know I could go in on the last
17 day and look at stuff.

18 Q. Right.

19 A. And they -- that would be the last day I would
20 possibly be on those premises.

21 Q. But you really don't know when the Staff
22 completed its audit, do you?

23 A. The Staff completed its audit based on the
24 stamp date.

25 Q. Well, that's when they filed their testimony,

1 isn't it?

2 A. They -- somebody could have been there. I

3 don't know.

4 Q. You don't know?

5 A. I don't know, but I did --

6 Q. That was the question, whether or not you

7 know.

8 A. I would say they weren't there.

9 Q. Now, with respect to your testimony regarding

10 the lack of inclusion of legal services and engineering fees

11 in the last rate case hearing, wasn't there specific

12 provisions in the disposition agreement that the parties had

13 agreed not to address those issues in that case?

14 A. I don't know that.

15 Q. You don't know?

16 A. No.

17 Q. So the disposition agreement that's in the

18 Commission's files and records here would be the best

19 evidence of what the parties agreed to in that matter,

20 wouldn't it?

21 A. No. The best evidence would be the

22 Commission's finding which I read to you that you did not

23 oppose the revenue requirements you got and that revenue

24 requirement did not include the \$390,000 you had capitalized

25 in the Account 302.

1 Q. So if there was an agreement between the Staff
2 and the company that those matters would be taken up at a
3 later time, do you think that that's not binding?

4 A. It's not binding. You could bring it up -- as
5 I said, you could bring up that 390,000 again, but it would
6 be -- somebody who's on the ball will identify that as
7 retroactive rate-making and you would be asked the question
8 why didn't you contest this at the rate case. And your
9 answer would be --

10 Q. You don't have --

11 THE COURT REPORTER: I can only write one at a
12 time.

13 MR. LORAIN: I'm sorry. There is a question.
14 The expert witness is answering it. He's cut him off. I'd
15 like permission for him to finish it, your Honor.

16 MR. WILLIAMS: He's answering a whole lot more
17 than what I asked him.

18 JUDGE WOODRUFF: Counsel certainly has a right
19 to control the responses he gets from witnesses and when he
20 starts going into areas he hasn't asked a question about.

21 MR. LORAIN: Well, Judge --

22 JUDGE WOODRUFF: I'll certainly admonish both
23 counsel and witness when one's talking not to talk over the
24 other, but I understand you need to stop him when you need
25 to, but we just need to keep the court reporter in mind.

1 MR. WILLIAMS: I'll try.

2 THE WITNESS: I will too.

3 BY MR. WILLIAMS:

4 Q. Now, Mr. Cochran, would it be accurate to say
5 that you've never actually reviewed the company's books and
6 records at its offices?

7 A. That would be accurate. I would review --

8 Q. So your knowledge is limited to what you find
9 here at the Commission and other public places?

10 A. Yes. All the public records filed. That
11 should contain an adequate knowledge for me to make a
12 determination about the ability of this company to operate.

13 Q. Mr. Cochran, you were here and heard the
14 testimony of Mr. Hummel with respect to connection fees in
15 condominium units?

16 A. Yes.

17 Q. And what would be -- and you're familiar with
18 the facts and circumstances regarding the installation of
19 meters inside condominium units?

20 A. I'm not familiar with that.

21 Q. You're not. Just what you heard here?

22 A. Just what I heard here.

23 MR. WILLIAMS: No further questions, your
24 Honor.

25 JUDGE WOODRUFF: All right. I have no

1 questions from the Bench, so there's no recross. And
2 redirect?

3 MR. LORAIN: None, your Honor.

4 JUDGE WOODRUFF: Okay. And you're excused
5 then, Mr. Cochran.

6 THE WITNESS: Thank you.

7 JUDGE WOODRUFF: Did Hancock have any further
8 evidence?

9 MR. LORAIN: No further evidence, your Honor.

10 JUDGE WOODRUFF: We move over to Osage Water.
11 Do you have any other witnesses you'd like to offer or
12 evidence?

13 MR. WILLIAMS: I'd like to recall Mr. Mitchell
14 to the stand.

15 JUDGE WOODRUFF: Very well. And you are still
16 under oath, sir

17 THE WITNESS: Yes, sir.

18 JUDGE WOODRUFF: And you may inquire.

19 MR. WILLIAMS: Thank you, Judge.

20 WILLIAM P. MITCHELL, having been previously sworn, testified
21 as follows:

22 DIRECT EXAMINATION BY MR. WILLIAMS:

23 Q. Mr. Mitchell, with respect to the Park View
24 Bay water system, did Osage Water Company obtain a permit to
25 dispense from the Department of Natural Resources for that

1 system?

2 A. Yes, it did.

3 Q. With respect to the change-out of the water
4 tank at the Broadwater Water Bay well, did Osage Water
5 Company submit plans and specifications to the Department of
6 Natural Resources for the smaller tank that was installed
7 there?

8 A. Yes, it did.

9 Q. Did DNR approve that?

10 A. Yes.

11 Q. And you heard Mr. Cochran's testimony that he
12 believed that the change-out in the water tank resulted in
13 the well failure. Is that consistent with your observation
14 of the operation of the system?

15 A. The leaks on the water system caused the rapid
16 fluctuation of the well. The symptom's the same, but the
17 cause is different.

18 Q. And, in your opinion as a licensed operator
19 with many years of experience, did changing out the tank in
20 any way cause that well to fail this past summer?

21 A. The well operated perfectly satisfactory for
22 over five years. The pump itself was close to ten years
23 old, about the average life span for a well pump.

24 Q. Now, Mr. Mitchell, has Osage Water Company
25 kept its accounting records according to the NARUC system of

1 accounts?

2 A. Not in a timely fashion.

3 Q. But has that system of accounts been used?

4 A. Yes.

5 Q. With respect to the notice of violation that
6 Osage Water Company received with respect to the Park View
7 Bay well, was that notice of violation resolved to the
8 satisfaction of the Department of Natural Resources?

9 A. Yes. They issued the permit to dispense.

10 Q. With respect to the notice of violation with
11 respect to the Pizza Hut well, was that notice of violation
12 resolved to the satisfaction of the Department of Natural
13 Resources?

14 A. It was.

15 Q. And with respect to the Golden Glade water
16 system, do you have any knowledge as to whether that notice
17 of violation was resolved to the Department of Natural
18 Resources' satisfaction even though that's not an Osage
19 Water Company system?

20 A. Yes. I believe it was.

21 Q. Okay. Now, with respect to the issues that
22 Mr. Cochran testified to regarding the legal fees and
23 engineering fees in the last rate case, were there any
24 provisions in the disposition agreement that those issues
25 were not to be decided in that case?

1 A. Yes, there were. That was exactly the
2 language that was in the disposition agreement.

3 Q. And did the company abide with those terms in
4 the disposition agreement?

5 A. Yes.

6 Q. Well, Mr. Mitchell, there's been considerable
7 testimony about charges under -- or what do I want to say
8 here? That the company overcharged customers beginning in
9 May of 2001 after the rate case had been approved but prior
10 to the Commission entering a formal order approving tariff
11 pages. Did you receive from the Commission a tariff page
12 stamped filed prior to implementing those rates?

13 A. Yes, I did.

14 (EXHIBIT NO. 37 WAS MARKED FOR
15 IDENTIFICATION.)

16 BY MR. WILLIAMS:

17 Q. Mr. Mitchell, is that the tariff page?

18 A. Yes.

19 Q. Does it reflect it was filed with the
20 Commission?

21 A. Yes.

22 Q. Did you change the computer system to reflect
23 those rates after you received it?

24 A. Yes.

25 Q. Based on the effective date on this page?

1 A. Yes.

2 Q. Did you think you'd done everything you needed
3 to do?

4 A. Best of my knowledge.

5 Q. So your implementation of the rate increase
6 was based on receipt of a filed stamped tariff back from the
7 Commission?

8 A. That's the way I've always gotten the rate
9 changes before.

10 Q. Mr. Mitchell, have you had an opportunity to
11 work with Mr. Hancock in the past?

12 A. Yes. When he was a principal in the company.

13 Q. To your knowledge, does he have the experience
14 necessary to operate a public utility company?

15 A. I've never seen him operate any of the
16 systems. Constructed systems, but never seen him operate
17 them.

18 Q. So do you know of him having any knowledge in
19 operation, or is his experience limited solely to
20 construction?

21 A. I'm unaware of any operation and maintenance
22 that he performs as a normal course of business.

23 Q. Now, above and beyond operation and
24 maintenance of systems, has he ever actually operated the
25 utility business as opposed to a utility system?

1 A. No. He never did the day-to-day operation of
2 Osage Water Company at any time during his past.

3 Q. Would you consider him as an appropriate
4 person to serve as a operator while the systems were being
5 liquidated based on your experience with him?

6 A. He would certainly be experienced in doing the
7 repair work, but I don't think he has any experience in the
8 day-to-day operation of a utility company.

9 Q. Okay.

10 MR. WILLIAMS: I don't believe I have any
11 further questions, your Honor.

12 JUDGE WOODRUFF: Did you wish to offer 37?

13 MR. WILLIAMS: Yes, I do, your Honor.

14 JUDGE WOODRUFF: 37 has been offered. Is
15 there any objection to its receipt?

16 MR. KRUEGER: No objection.

17 MS. O'NEILL: No.

18 MR. LORAIN: No objection.

19 JUDGE WOODRUFF: Hearing none, it will be
20 received.

21 (EXHIBIT NO. 37 WAS RECEIVED INTO EVIDENCE.)

22 JUDGE WOODRUFF: And as far as copies, the
23 only one that really needs to have it right now is the court
24 reporter and if you can get me a copy later.

25 MR. WILLIAMS: This is actually I think the

1 only one I have. It is actually the one that came back from
2 the Commission stamped filed so that's -- maybe we can get
3 out to the copy machine before we get done.

4 JUDGE WOODRUFF: That would be helpful and we
5 will take a break before we do final arguments.

6 All right. For cross then beginning with
7 Staff?

8 MR. KRUEGER: No questions, your Honor.

9 JUDGE WOODRUFF: Public Counsel?

10 MS. O'NEILL: No questions.

11 JUDGE WOODRUFF: Hancock?

12 MR. LORAIN: I think just one or two.

13 JUDGE WOODRUFF: Go ahead.

14 REXCROSS-EXAMINATION BY MR. LORAIN:

15 Q. Mr. Mitchell, there was some discussion about
16 dollar amounts and offers between Hancock and you all. Do
17 you recall those discussions several weeks ago?

18 A. In general.

19 Q. There were, in fact, dollar amounts given by
20 Mr. Hancock which were not far from your dollar amounts.
21 Would you agree with that?

22 A. No.

23 Q. Well, let me put it this way. There were
24 other problems in the negotiations other than money. Would
25 you agree with that?

1 A. There were -- yes, there were other problems
2 in addition to money.

3 Q. The type of dispersement of the money might
4 have been a problem for everyone, but would you agree that,
5 in essence, Mr. Hancock had offered in excess of 160,000 in
6 cash? Not necessarily up front, but cash?

7 A. Well, if it's not up front, it's not cash.

8 Q. My question is, do you agree with the fact
9 that -- what I just said?

10 A. That number on a page total more than 160,000?

11 Q. Yes.

12 A. That would be a fair statement.

13 MR. LORAIN: I have nothing further.

14 JUDGE WOODRUFF: All right. No questions from
15 the Bench, so no recross.

16 Any redirect?

17 MR. WILLIAMS: No, your Honor.

18 JUDGE WOODRUFF: All right. Then you may step
19 down. Any other witnesses?

20 MR. LORAIN: I have none, Judge.

21 MR. WILLIAMS: Your Honor, I had contemplated
22 calling Jeff Smith. I did not arrange for him to be here
23 because until I arrived here, I didn't know you intended to
24 conclude today. I would like to do so. His testimony would
25 relate to current operation of the systems.

1 JUDGE WOODRUFF: This is Jeff Smith who's the
2 operator of the company?
3 MR. WILLIAMS: Yes.
4 MR. LORAIN: Was he on the witness list?
5 JUDGE WOODRUFF: No, he was not.
6 MR. LORAIN: Then I'm going to object.
7 MR. WILLIAMS: I advised you right up front in
8 this case that I did not know what the evidence would be
9 during the hearing and I was not prepared to tell you at
10 that point in time who we might need to call in rebuttal.
11 JUDGE WOODRUFF: That's correct. I know the
12 Commission -- the room is available tomorrow. Are the
13 parties available tomorrow?
14 MR. KRUEGER: I am, your Honor.
15 MR. WILLIAMS: I'm available in the morning,
16 your Honor.
17 JUDGE WOODRUFF: I see nods of agreement that
18 everyone is available.
19 MS. O'NEILL: I have a dentist appointment,
20 but I can move it.
21 JUDGE WOODRUFF: Well, then let's adjourn for
22 now and we'll reconvene tomorrow morning at 8:30.
23 MR. WILLIAMS: Thank you, your Honor.
24 JUDGE WOODRUFF: At this time we are
25 adjourned.

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