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BEFORE THE PUBLIC SERVICE COMMISSION

STATE OF MISSOURI

TRANSCRIPT OF PROCEEDINGS

HEARING

November 15, 2002

Jefferson City, Missouri

Volume 6

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,
 SHEILA LUMPE,
 COMMISSIONERS.

REPORTED BY:
 TRACY L. CAVE, CSR
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1 JUDGE WOODRUFF: And we're here to resume the
2 hearing in WC-2003-0134. And when we left off yesterday, I
3 believe, Mr. Williams, you were about to call another
4 witness.

5 MR. WILLIAMS: Yes, your Honor. Call
6 Mr. Jeffrey Smith to the stand.

7 JUDGE WOODRUFF: Please come forward, sir.

8 (Witness sworn.)

9 JUDGE WOODRUFF: You may be seated and you may
10 inquire.

11 JEFFREY SMITH, having been sworn, testified as follows:

12 DIRECT EXAMINATION BY MR. WILLIAMS:

13 Q. Would you state your full name for the record,
14 please.

15 A. Jeffrey Alan Smith.

16 Q. Mr. Smith, are you the licensed operator in
17 charge of operating the Osage Water Company utility systems?

18 A. Yes.

19 Q. And were you first employed by Osage Water
20 Company back in 1999; is that correct?

21 A. That sounds about right, yeah.

22 Q. Okay. And you worked for the company until
23 late 2000, is that right, and then you were discharged by
24 the company for a while?

25 A. No.

1 Q. You went to work for me after that?

2 A. Oh, okay. Yeah.

3 Q. Okay. And then you went back to work for the
4 company in the summer of 2001?

5 A. Oh, yeah. Okay. I see what you mean, yeah.

6 Q. Is that right?

7 A. Yeah.

8 Q. And you've been operating those systems
9 continuously since the summer of 2001?

10 A. Yes.

11 Q. Mr. Smith, you're in charge of basic operation
12 and maintenance of all the systems; is that right?

13 A. Yes.

14 Q. And do you have a regular route that you cover
15 to review those systems and make sure they're operating
16 correctly?

17 A. Yeah. While we're chlorinating and during the
18 summer months, I run the routes two times a week. And when
19 we stop chlorinating, one time a week.

20 Q. What days of the week do you run in the
21 summertime?

22 A. Tuesdays and Fridays. And then I also -- when
23 we're doing well samples, BOD and fecal samples, so I
24 basically hit them sometimes more than once a week on those
25 meter readings.

1 Q. Okay. And what do you check when you go
2 around and do this route?

3 A. Different things at different wellhouses and
4 treatment plants. Some of them -- some of them I need to
5 check the chlorinator or some of them -- the pulleys on
6 Chelsea Rose's plant. Just basically make sure everything
7 is up and running and working all right.

8 Q. So would every system that the company owns
9 get looked at at least once a week year-round?

10 A. At least.

11 Q. Sometimes twice a week?

12 A. Uh-huh.

13 Q. Sometimes three times a week?

14 A. Sometimes.

15 Q. Now, in addition to that ordinary maintenance
16 route, do you also make emergency calls?

17 A. Yes.

18 Q. And what's your availability for emergency
19 calls for the company?

20 A. Twenty-four, seven.

21 Q. Twenty-four hours a day, seven days a week?

22 A. Yes.

23 Q. And how often do you have to make emergency
24 calls outside of regular business hours?

25 A. Oh, it can vary a little bit. Just whatever

1 happens to come up. Anybody calls in, I'm there.

2 Q. At least once a month?

3 A. Yeah.

4 Q. Once a week?

5 A. Maybe.

6 Q. Okay. Now, in addition to making emergency
7 service calls, are you also in charge of emergency repairs?

8 A. Yes.

9 Q. And what type of emergency repairs have you
10 made for the company?

11 A. Oh, anything that -- any leaks that are called
12 in, just -- just about anything that happens to the system.

13 Q. Water main breaks?

14 A. Yes.

15 Q. Sewer line breaks?

16 A. Yes.

17 Q. Sewer lift station failures?

18 A. Yes.

19 Q. Treatment plant failures?

20 A. Yes.

21 Q. Problems with water wells?

22 A. Yes.

23 Q. That's you, you do all those things?

24 A. Yes.

25 Q. Mr. Smith, do you keep a list of routine

1 service matters that require attention?

2 A. Yes. I -- I generally update it at least once

3 a week.

4 Q. So that's a revolving list?

5 A. Uh-huh. Yes.

6 Q. Have you ever gotten to the end of the list?

7 A. No.

8 Q. Are there enough hours in the week to get

9 everything done that you'd like to see done out there?

10 A. Sometimes, no.

11 Q. Okay. Now, Mr. Smith, just so the record's

12 clear, are you operating the systems today?

13 A. Not while I'm here, but I'm on call. If I get

14 a call, I'm heading that way.

15 Q. Were you working on the systems yesterday?

16 A. Yes.

17 Q. Day before that?

18 A. Yes.

19 Q. Okay. Last week?

20 A. Yes.

21 Q. Week before that?

22 A. Yeah.

23 Q. Okay. Any reason why you wouldn't be

24 operating the systems tomorrow?

25 A. No.

1 Q. Were you the operator on duty when the
2 Broadwater Bay/Pizza Hut water system failed in August?

3 A. Yes.

4 Q. Can you -- you okay?

5 A. Uh-huh.

6 Q. Were you actively making repairs to that water
7 system at the time the well pump failed?

8 A. I had just completed a repair and I just fired
9 the system back up.

10 Q. If you would, tell the Commission what the
11 nature of the system problem was that you had repaired prior
12 to the well pump failing?

13 A. Well, we'd taken off the total meter readings
14 from all the houses through -- that are still on the system
15 and compared those to the total in the wellhouse. And the
16 numbers didn't match. We were using a lot more gallons.

17 So I walked the system, I checked all around
18 to see if any water was surfacing anywhere. We never could
19 find any for quite a while. And then finally Mike, the
20 manager of Mariner's Cove, showed me a picture of where the
21 City come through and busted the line and it was a T.

22 And there was no reason for one of the lines
23 to be going in the direction it was. It wasn't serving any
24 purpose. And the water was finally started to surface just
25 below that. So I -- I dug up the system there, capped it

1 off right as short -- or as close to that T as I could and
2 the leak stopped.

3 Q. Okay. That's the one you were doing the day
4 that the well pump failed?

5 A. Yes.

6 Q. All right. Now, how long before that well
7 failed had you been aware that the well was pumping
8 considerably more water than the customers were using?

9 A. I'm not exactly sure how long it was, but it
10 wasn't until I took a special meter reading through all the
11 area and then took a special reading at the wellhouse itself
12 and compared the two. And that's when I realized we had a
13 leak somewhere.

14 Q. Well, would it have been more than a day
15 before?

16 A. Yes.

17 Q. More than a week?

18 A. Yeah. Probably.

19 Q. Maybe more than a month?

20 A. Maybe. That would be -- that would be a
21 little bit pushing it though, because I do monthly meter
22 readings already, or it could have even been before that
23 though it just didn't come to the surface.

24 Q. Now, the damage that you repaired, did it
25 appear to be -- to have been caused by over building of the

1 water system by the City of Osage Beach?

2 A. There was --

3 MS. O'NEILL: I'm going to object. There's no
4 foundation for that question.

5 JUDGE WOODRUFF: Overruled.

6 THE WITNESS: Could you say that again?

7 BY MR. WILLIAMS:

8 Q. The damage that you repaired the day that the
9 well pump failed, did it appear to you to have been caused
10 by the over building of Osage Water Company's water system
11 by the City of Osage Beach?

12 A. Yes. Their lines ran right across ours in
13 several different places. They would have had to come
14 across our lines and that T that was busted there. And I
15 understand they broke at other places too.

16 Q. Okay. Now, there's been some testimony in
17 this proceeding that there is still a leak in the Broadwater
18 Bay/Pizza Hut system.

19 A. Yes.

20 Q. Do you agree with that?

21 A. Yes.

22 Q. When were you able to locate the approximate
23 location of that leak?

24 A. Oh, just a week or two ago. I kept looking
25 for -- again, I walked the system, compared the meter

1 readings and everything. And then I kept looking for the
2 leak and looking for it. And then finally it came to
3 surface. And it's just down past building 5.

4 And the City came through at five different --
5 or four different places there, Buildings 2, 3, 4 and 5 and
6 that's -- the water that's surfacing is running along a
7 retaining wall and popping up just on the other side of the
8 retaining wall past Building 5.

9 Q. Now, when you say Buildings 2, 3, 4 and 5, are
10 those apartment buildings at Mariner's Cove?

11 A. Yes. Four-plexes.

12 Q. And were those customers of Osage Water
13 Company up until some time late spring, early summer of this
14 year?

15 A. Yes.

16 Q. And the lines that you're talking about that
17 the City put in, were those the lines that they put in to
18 disconnect those buildings from Osage Water Company's
19 system?

20 A. Yes. They ran separate lines and new meter
21 pits and meters.

22 Q. And did it appear from your records and your
23 observations of the system that these water leaks associated
24 with the Broadwater Bay/Pizza Hut system commenced at the
25 time the City started those connections?

1 A. Yes.

2 Q. Okay. Now, you haven't dug up this last leak
3 yet; is that correct?

4 A. No, I haven't.

5 Q. To your knowledge, are there any electric
6 lines in proximity to the water line?

7 A. Yes. They've all been marked off. The
8 electric lines run right with the water lines.

9 Q. And do you know what the voltage is in the
10 electric line?

11 A. No. Not right offhand, but I know it's high.

12 Q. It's a high voltage electric line?

13 A. Yes.

14 Q. Would it be safe for you to go out there and
15 dig that up by yourself?

16 A. Not without maybe shutting the power off.

17 Q. You haven't been able to arrange for anybody
18 else to come work with you or get the power shut off so that
19 that repair can be made?

20 A. No.

21 Q. Now, Mr. Smith, there was also testimony by
22 Mr. Hummel in this proceeding that there's a leak in the
23 High Point Center water tank. Are you familiar with that
24 situation?

25 A. Yes.

1 Q. Please tell the Commission, if you would, what
2 the nature of that leak is and how severe that leak is.

3 A. On the outside of the tank, outside of the
4 wellhouse, the part of the tank that sticks outside, there's
5 a plug and it's dripping maybe one drop a minute, if that.

6 Q. Okay. Is that on your list of service items
7 you would like to do?

8 A. Yes.

9 Q. Haven't got to it yet?

10 A. Haven't got to that one yet, no. Other --
11 other ones took priority.

12 Q. Okay. Now, let's talk about Eagle Woods.
13 You've spent a lot of time out on the Eagle Woods KK
14 treatment plant?

15 A. Every time it rains.

16 Q. Why do you go out there every time it rains?

17 A. We were getting bad infiltration from Eagle
18 Woods subdivision. We almost lost the plant there when we
19 had like a five-inch rain there in five hours there last
20 spring.

21 Q. Why did a five-inch rain result in almost
22 losing the treatment plant? Can you kind of explain that to
23 the Commissioners?

24 A. Well, I didn't see all the lines, but I
25 know -- I went around and checked all the clean-outs through

1 Golden Glade all the way down through Eagle Woods. Golden
2 Glade was all good. Eagle Woods, we were getting ground
3 infiltration from at least three different clean-outs at
4 that time.

5 Q. And how much water? Do you have any estimate?

6 A. Oh, I don't know, but it was a bunch.

7 Q. Twenty gallons, hundred gallons, two hundred
8 gallons a minute?

9 A. It filled that 12,000-gallon tank, the pit it
10 was in and it was overflowing.

11 Q. Okay. And had the developer there at Eagle
12 Woods been connecting houses before that problem arose?

13 A. Yes.

14 Q. And did it appear that a large portion of that
15 water was coming from his new connections?

16 A. All of it was. I couldn't find anything
17 anywhere else.

18 Q. Okay. Now, since that time did the company
19 request that the developer there, Mr. Westenhaver, make
20 repairs to those service connections and repair problems
21 with the sewer lines?

22 A. Yes.

23 Q. And did the company request that it be allowed
24 to inspect those repairs before backfill?

25 A. Yes.

1 Q. And have you observed reconstruction of sewers
2 and service connections have occurred at Eagle Woods?
3 A. Yes.
4 Q. Were you notified prior to backfill of those?
5 A. No.
6 Q. Did you have any opportunity to observe them
7 at all before they were covered back up?
8 A. No.
9 Q. Do you have any idea whether those
10 reconstructions and repairs were done properly?
11 A. No.
12 Q. Have any reason to believe that they may not
13 have been done properly?
14 A. Possibly, but we haven't got a rain like we
15 did in the spring time down there, so I won't know until we
16 get another big rain.
17 Q. Now, have you observed solids and floatables
18 getting into the effluent lift stations in Eagle Woods?
19 A. Yes. They've been clogging up the filters on
20 the pump vaults.
21 Q. Now, so the Commission understands, is this
22 sewer system designed so that solids stay in septic tanks as
23 opposed to going to the lift stations?
24 A. Yes. Only liquid is supposed to come down to
25 the treatment plant.

1 Q. Are the type of pumps that are installed in
2 the lift stations capable of pumping solids?

3 A. I don't believe so. That will clog up the
4 screens at minimum.

5 Q. Okay. And have you observed within the last
6 couple weeks, solids plugging up the screens in the lift
7 stations?

8 A. Yes. They clog it up so much I could
9 barely -- they were so heavy, I could barely get them out of
10 the pump vaults.

11 Q. Does that indicate to you that there's
12 problems with the customers' service connections that feed
13 down into the sewer system in Eagle Woods?

14 A. Yes.

15 Q. Okay. And those still exist today?

16 A. Yes.

17 Q. Now, Mr. Smith, I understand that there's a
18 lake in the Eagle Woods development, not the Lake of the
19 Ozarks, but a small lake; is that right?

20 A. Oh, the pond, yeah.

21 Q. Pond, small lake, yeah. Is it your
22 understanding that's been running into the sewer system?

23 A. Yes. I was told that it was. I was told that
24 the pond never came up to the height it was supposed to.
25 And it's my understanding that that's why, it was leaking

1 into the pipes going on through the system.

2 Q. And is that consistent with your observation
3 of the level of the pond and the amount of water going into
4 the sewer system?

5 A. Yes.

6 Q. Now, Mr. Smith, you handle new service
7 connections for the company?

8 A. Yes.

9 Q. Have there been requests by the developer
10 there at Eagle Woods, Mr. Westenhaver, to do service
11 connections on houses that he's built on lots that a DNR
12 permit has not yet been issued for?

13 A. At first there was. And I went in and I was
14 setting meters in there and --

15 Q. Well, he's requested the service connections?

16 A. Yes.

17 Q. What did the company do in response to those
18 requests?

19 A. When he requested it, I would go over and set
20 the meter while they had the ditch open and put the meter
21 horn in and the meters.

22 Q. And did you leave the meter turned on or
23 turned off?

24 A. If they weren't permitted, I turned and locked
25 them off.

1 Q. And so they were locked off because service
2 was not available under the company's tariff; is that right?
3 A. Yes.
4 Q. And have you had an opportunity to observe
5 whether those houses are occupied?
6 A. Yes, they are.
7 Q. They are occupied. And do they appear to have
8 water?
9 A. Yes, they do.
10 Q. Is it going through the company's locked off
11 water meter?
12 A. No.
13 Q. Does it appear that the meters have been
14 bypassed?
15 A. They had to have gotten around the meter
16 somehow.
17 Q. There's no other water supply out there, no
18 other wells, no other water lines --
19 A. No.
20 Q. -- to your knowledge?
21 So it appears to you that the developer there,
22 Mr. Westenhaver, has bypassed the company's water meters?
23 A. Yes.
24 Q. Now, did you take any action to and prevent
25 sewage from those unpermitted houses from getting into the

1 sewer system?

2 A. Yes. We sent off and got three four-inch test
3 balls, which are just balls that blow up and they plug off
4 the lines. Usually it's for testing, say, cast iron lines
5 for water column height. And I plugged off the one on --
6 between Lot 51 and 52, I believe, and 49 and 50. Those were
7 the two with the main infiltration coming through them.

8 Q. And did those also relate to unpermitted lots?

9 A. Yes.

10 Q. And so the company prevented sewage from
11 unpermitted houses from reaching the sewer system; is that
12 correct?

13 A. We tried to.

14 Q. Well, what happened?

15 A. Somebody came along and pulled the balls out.

16 Q. The company didn't authorize that to happen?

17 A. No.

18 Q. Did they leave the balls or did they take
19 them?

20 A. They took them.

21 Q. Now, Mr. Smith, you started to talk about
22 almost lost the sewage treatment plant at KK as a result of
23 this groundwater coming in?

24 A. Yes.

25 Q. Can you give the Commission a little more

1 specific description of what you observed and what was going
2 on that almost caused the treatment plant to be destroyed?

3 A. Well, the 12,000-gallon tank sits down in a
4 hole. And if it's operating normal, nothing -- the -- the
5 pit's not going to fill up. But when we were getting hit
6 with that rain and getting all the infiltration, it was
7 overflowing out, it filled up the pit and the tank actually
8 rolled, I'll say, two to three inches to one side.

9 Q. Now, when you say it was flowing out the top,
10 you mean the water was coming into the sewer system, running
11 into the tank and then coming out the top of the tank?

12 A. Uh-huh.

13 Q. So there was more water reaching the sewer
14 tank than the sewer system was designed or capable of
15 pumping through the treatment system?

16 A. Yes.

17 Q. And that caused the area in which the tank is
18 located to fill with water and float the tank?

19 A. It -- it rolled it. I don't know if it
20 floated it, but it rolled it.

21 Q. Okay. Did you observe the cycling on the
22 recirculation pumps during that time period? Did they ever
23 turn off?

24 A. Turn off?

25 Q. Well, were the pumps cycling on their normal

1 cycle or did they basically run all the time?
2 A. They were just running normal.
3 Q. Did you expend a lot of your time working on
4 that problem?
5 A. Yes.
6 Q. Well, are we talking hours, days?
7 A. Days.
8 Q. Weeks?
9 A. Probably.
10 Q. So in the spring of 2002, you spent weeks out
11 working on problems associated with the Eagle Woods
12 collection system?
13 A. Yes.
14 Q. And are there problems with that system today
15 that relate not to the company's operation, but to what the
16 developer is doing out there?
17 A. Yes.
18 MR. WILLIAMS: Okay. I don't believe I have
19 any further questions of the witness at this time.
20 JUDGE WOODRUFF: All right. Thank you.
21 And for cross we'll begin with Staff.
22 CROSS-EXAMINATION BY MR. KRUEGER:
23 Q. Good morning, Mr. Smith.
24 A. Good morning.
25 Q. If you did not have to do any construction for

1 Osage Water Company or for any of the developments such as
2 Golden Glade or Chelsea Rose and if all you had to do was
3 read the meters, check on the wells and the sewage treatment
4 plants, would you be able to handle that job without
5 additional help?

6 A. Yes.

7 Q. How much time would that require?

8 A. Reading meters and what?

9 Q. Reading meters, checking on the wells and
10 sewage treatment plants.

11 A. In the summer it -- let's see, 2, 4, 6, 8, 10
12 days a week in the summer.

13 Q. I'm sorry. Ten days a week?

14 A. Ten days a month. I'm sorry.

15 Q. And how many hours per day would that be?

16 A. Full days, eight.

17 Q. Okay. So it would be about half time then?

18 A. Yes. In the summer.

19 Q. Okay.

20 A. Less in the winter when we're not
21 chlorinating.

22 Q. And you work full-time year round?

23 A. Yes.

24 Q. Okay. Where does the rest of your time go
25 then?

1 A. Oh, whatever's needed. Either construction,
2 repairs, service calls.

3 Q. Construction of what?

4 A. Treatment plants, just development for laying
5 lines, water lines, sewer lines, connections.

6 Q. Is it all for Osage Water Company?

7 A. I believe so. I'm not sure about Golden Glade
8 well.

9 Q. Who is your employer?

10 A. Osage Water Company.

11 Q. Thank you.

12 How often do you record the flow rate at the
13 wells?

14 A. The flow rate?

15 Q. Yes.

16 A. Gallons per minute you're talking about?

17 Q. Yes.

18 A. Oh, I took a reading on them in October of
19 last year and from them on, I -- I'll check them from time
20 to time. I make rounds four times a month. If I -- if the
21 well happens to be kicking on at the time, I have a
22 stopwatch and I'll check and see if it compares to the
23 readings I had in October to see if there's any change.

24 Q. Since October of a year ago?

25 A. Yes.

1 Q. And you say you do it four times a month at
2 each well?

3 A. I run routes four times, but I only check the
4 gallons per minute from time to time just to make sure they
5 compare to the original ones I took in October.

6 Q. Not each time you run the route?

7 A. No.

8 Q. Once a month?

9 A. Yes.

10 Q. How often do you record the master meter
11 reading at the well?

12 A. Once a month.

13 Q. Okay.

14 A. At least.

15 Q. Now, you testified about the problem at
16 Broadwater Bay this summer?

17 A. Uh-huh.

18 Q. When did the pump at Broadwater Bay fail, do
19 you recall?

20 A. I don't know the exact date, but it was the
21 same day I was making the repair and got the repair -- the
22 leak to stop. And that's when I came up and tried to get
23 the system to go back on line. It would come up to
24 pressure -- or let's see. It would come up to pressure and
25 then when it dropped back down below the pressure, it

1 wouldn't come back on, it would kick the reset button back
2 out.

3 Q. And that was the day that it failed?

4 A. Yes.

5 Q. You testified about finding a leak, I believe
6 you said, at Mariner's Cove?

7 A. Uh-huh.

8 Q. When did you find that?

9 A. I probably found it the day before and I made
10 the repair the next day.

11 Q. The day before what?

12 A. The day before the well failed.

13 Q. Okay. And that was in August. Does that
14 sound right?

15 A. Probably, yes.

16 Q. And you found that because somebody pointed it
17 out to you?

18 A. Mike, the manager of Mariner's Cove there,
19 showed me a picture of a T. And there shouldn't have been a
20 T there, should have been a 90. And once I saw the T with a
21 line going to nowhere, it was a dead end line, that's when I
22 started digging there to see if that's where the leak was.

23 Q. Then you testified that you also found a
24 second leak; is that right?

25 A. Yes. There is now.

1 Q. When did you find that?
2 A. Oh, two weeks ago maybe, possibly longer.
3 Somewhere around there.
4 Q. But that has not been repaired?
5 A. No. Not yet.
6 Q. How did the amount of water lost as a result
7 of the second leak compare to the amount of water lost as a
8 result of the first leak?
9 A. Oh, I don't remember how much was lost on the
10 first one. The next one we figured at 38 gallons per minute
11 right now. I don't recall what the numbers were on the
12 first one.
13 Q. The current leak is 38 gallons per minute?
14 A. That's what we had figured, yes.
15 Q. What is the typical flow rate of the effluent
16 at the Golden Glade sewage treatment plant or at the KK
17 treatment plant?
18 A. The typical what?
19 Q. Flow rate of the effluent, the amount that
20 flows up.
21 A. I'm not sure.
22 Q. Do you make observations of that?
23 A. When I take my samples, BOD and fecal, I --
24 there's -- I mark it down on the paper that the flow rate
25 out of the back -- out of the -- past the chlorinator.

1 Q. Do you recall what's the highest flow rate
2 that you have observed?

3 A. No, I don't do that figuring. That's done at
4 the laboratory.

5 Q. You don't have recollection of any amounts of
6 the flow rate then?

7 A. Usually -- generally at, say, Golden Glade,
8 for instance, it's usually about a half inch to
9 three-quarters of an inch coming out of a four-inch pipe
10 with a V notch in it.

11 Q. Can you relate that to gallons per minute or
12 anything?

13 A. No. That's done at the laboratory. I could,
14 but they do it there.

15 MR. KRUEGER: Okay. That's all the questions
16 I have.

17 JUDGE WOODRUFF: All right. And for Public
18 Counsel?

19 MS. O'NEILL: Thank you.

20 CROSS-EXAMINATION BY MS. O'NEILL:

21 Q. Good morning, Mr. Smith.

22 A. Good morning.

23 Q. How are you doing?

24 A. Okay.

25 Q. Now, since 1999, have you been working on

1 Osage Water Company's systems the whole time?

2 A. Yes. Except like Greg said, before I was also
3 doing development there at the Golden Glade treatment plant,
4 laying water lines. So I technically wasn't working for
5 Osage Water Company, I was working for the development
6 company.

7 Q. But you were still working on Osage systems as
8 well as the constructions; is that right?

9 A. If anything had to be done to it, yes.

10 Q. Were you still doing your weekly routes and
11 that sort of thing for Osage during that time period, 2000
12 and 2001?

13 A. No. At that time Bob Mueller would have been
14 doing the routes at that time.

15 Q. Okay. And who's your current supervisor?

16 A. Debbie Williams.

17 Q. Okay. Has Debbie Williams ever told you not
18 to fix something at the system that was broken or not
19 operating?

20 A. No. Not really told me not to do anything to
21 it.

22 Q. Has she ever told you to wait before you fix
23 something?

24 A. Well, sometimes, yes.

25 Q. Has Greg Williams ever told you not to fix

1 something that was wrong with the system that needed repair?

2 A. Sometimes delayed until we get a game plan,
3 basically.

4 Q. And how about Pat Mitchell? Has he ever told
5 you not to fix something on the system?

6 A. No. But when I was working with Pat, usually
7 I -- he would give his instructions to Bob Mueller and then
8 I'd ride along with Bob and Bob would tell me what we were
9 doing for the day.

10 Q. So did you get to participate in setting up
11 that game plan that Greg wanted you to wait for when he
12 asked you to delay repairs?

13 A. Yes. Sometimes you have to call DIG-RITE
14 or -- until you have lines marked or sometimes you need
15 parts or sometimes just locating it or --

16 Q. Is sometimes it funding?

17 A. That's something I wouldn't know about.

18 Q. They don't tell you whether or not it's a
19 funding problem?

20 A. No. I'm just a man in the field is all.

21 Q. Okay. You'd testified a little bit this
22 morning about some problems you've been having at the KK
23 treatment plant over there by Eagle Woods and Golden Glade.
24 Do you know how many houses at Golden Glade are hooked up to
25 the KK treatment plant?

1 A. I'm not sure. If I saw my meter list -- I
2 never really total them up, but if I saw the list of houses
3 I -- I'd take a guess 25, 30 possibly.

4 Q. Twenty-five, thirty houses at Golden Glade?

5 A. Golden Glade only?

6 Q. Yeah. Just Golden Glade.

7 A. One, two, three -- to the treatment plant?

8 Q. To the treatment plant.

9 A. Eight, ten possibly.

10 Q. Eight or ten. Do you know who hooked them up?

11 A. Mike Vogel I think did the majority of those,
12 but I'm not sure about that.

13 Q. Mike Vogel working for Osage at that time?

14 A. No.

15 Q. Working for Golden Glade at that time or EU?

16 A. No. He's an independent contractor.

17 Q. Okay. Were you aware that they were hooked
18 up?

19 A. My job was to bring the main sewer lines up to
20 the back of the lots. And from there, it was up to the
21 developer or the homeowner to make the connection into our
22 system.

23 Q. And it was either one, either the homeowner or
24 the developer over in that system?

25 A. Yes.

1 Q. And it was their -- basically they worked out
2 the option, they didn't tell you who it was going to be?

3 A. Yes.

4 Q. And at some point after the hook-up happened,
5 you were informed that you had a customer out there, is
6 that -- and maybe a meter was set up or how does that work?

7 A. No. Usually I'm -- I'm driving by there. I
8 can see when they're making connections into the system or
9 if a house goes up, there's a house there, they have to
10 connect eventually some time to the system.

11 Q. So once they're connected, then they're
12 customers?

13 A. I would assume so, yes.

14 Q. Okay. Now, you testified you think there may
15 be some problems with the lines over in Eagle Woods that the
16 developer over there did. And that developer is not Greg or
17 Pat. Right? That's somebody else?

18 A. Yes.

19 Q. Okay. Did you participate in hooking any of
20 those lines up to the KK treatment plant that are serving --

21 A. To the plant itself?

22 Q. To the plant.

23 A. I did the vast majority of the work there.

24 Q. Okay. Did you hook up lines that hadn't been
25 inspected by Osage Water?

1 A. No. Not on that -- not on the treatment
2 plant.

3 Q. Okay. How about on the collection system?
4 Did you connect any of the collection system to -- are there
5 any collection system pipes that you didn't inspect that are
6 connected to KK?

7 A. Not -- not on Golden Glade. I ran almost all
8 those lines there. Eagle Woods, it was already in the
9 system before I was there.

10 Q. Everything was already in the system and in
11 the ground before you got there?

12 A. For the most part. Until he came along and
13 dug up those other lines then and put different clean-outs
14 again in different spots. And I know where the system all
15 runs and I've checked all the clean-outs from time to time,
16 but I haven't actually seen the lines themselves.

17 Q. So prior to the past month, has anybody at
18 Osage Water told you to disconnect anybody at Eagle Woods
19 from sewer?

20 A. Well, I -- the test balls, those four-inch
21 test balls that I put in to plug off the systems that
22 weren't permitted to be on that system, yes.

23 Q. Right. How about anybody else?

24 A. Anybody else?

25 Q. Any others other than this place with the test

1 balls with the illegal hook-ups? What about the legal
2 hook-ups?

3 A. Only one other one up by Golden Glade. He
4 wasn't paying his bill and I was instructed to put a test
5 ball in there. And he paid it and the test ball was pulled
6 back out.

7 Q. So as long as they were paying their bill, you
8 weren't told to disconnect anybody else except for maybe
9 something in the last couple weeks?

10 A. No.

11 Q. Have you heard anything in the last couple
12 weeks about turning off water or sewer service at Eagle
13 Woods?

14 A. No, I haven't.

15 Q. They haven't told you to do that?

16 A. No.

17 Q. Today, as far as you know, is there water and
18 sewer service going to Eagle Woods customers?

19 A. Yes.

20 MS. O'NEILL: No further questions.

21 JUDGE WOODRUFF: All right. Hancock
22 Construction?

23 MR. LORAIN: May it please the court, Judge.

24 JUDGE WOODRUFF: Please go ahead.

25 CROSS-EXAMINATION BY MR. LORAIN:

1 Q. Mr. Smith.

2 A. Hi.

3 Q. You say you work for OWC?

4 A. Yes.

5 Q. And how long have you worked for OWC?

6 A. I'm going to guess maybe three years possibly.

7 Q. All right. And you have permits from the

8 state?

9 A. DS1 and restricted DS2.

10 Q. And have you ever worked for Environmental

11 Utilities?

12 A. Yes.

13 Q. And when did you start working for them?

14 A. I'm not sure. I was getting checks from Osage

15 Water Company, then I was getting checks from Environmental

16 Utilities. I'm not exactly sure when that started.

17 Q. Okay. So as of today's date, for example,

18 your last paycheck would have been written on an EU account?

19 A. Yes.

20 Q. You don't know when that started?

21 A. Not exactly, no.

22 Q. How do you know you're working for OWC?

23 A. I do all the repairs and service calls or read

24 meters for Osage Water Company, I assume.

25 Q. But you get paid by EU?

1 A. Lately, yes, my checks are written from
2 Environmental Utilities, yes.

3 Q. Would it be true that that's been at least
4 since the end of August?

5 A. Possibly.

6 Q. Does anybody give you any explanation for that
7 or what the relationship between those companies are?

8 A. No. Not really. I know they're independent
9 of each other is all.

10 Q. When you work for EU, do you keep time tickets
11 for working for EU?

12 A. No. I just write my time on one regular time
13 sheet.

14 Q. All right. So OWC basically transfers that
15 time information and EU writes you a check?

16 A. Yes. I'm not sure how -- if they divide the
17 time up from my time cards or not. I turn them in once a
18 week.

19 Q. But you don't make any distinction on whose
20 project you're working on or anything of that nature?

21 A. No. But I do detail out where I've been.

22 Q. Okay. So if you went to Joe Schmuck's house,
23 you'd say, I've been at Joe Schmuck's house?

24 A. Yes.

25 Q. Okay. So you don't know what they do about

1 detailing it out from there?

2 A. No.

3 Q. Have you done contract work for Greg and
4 Debbie personally?

5 A. Yeah. A little bit.

6 Q. Where's that at?

7 A. Oh, sometimes at their home. I'm a plumber,
8 so if they have something break down there or water heater
9 elements, for instance. Also, at Golden Glade when I was
10 laying the main water lines through there, that was a
11 different development company.

12 Q. Did you get paid by that development company
13 then?

14 A. Yes.

15 Q. Different check?

16 A. Yes.

17 Q. Was that consistent then when you worked for
18 Greg and Debbie or Golden -- Golden Glade Development
19 company, you would get paid by them?

20 A. Yes. I'd get two different checks.

21 Q. When was the last time you did work for Greg
22 and Debbie?

23 A. They're doing a spec house over on F12. And
24 I -- they had some rock to be spread, they had some lots
25 they wanted cleared off that they're trying to sell, so I

1 cleared those lots and I was spreading rock. And they just
2 delivered the last load of rock I believe a couple days ago
3 and I've got one more load to spread.

4 Q. And how do you keep your time on this?

5 A. I just write it down on the same time card.

6 Q. And whatever happens, happens?

7 A. Yes. From there, I don't know how --

8 Q. In conjunction with this, do you receive
9 separate checks from them on this, or do you know?

10 A. No. I only get one check a week now.

11 Q. So from the OWC work basically?

12 A. I guess so. I'm not sure how they do it.

13 Q. Well, I guess you said earlier that you have
14 received other checks from Greg or from Golden Glade. Is
15 that by separate checking accounts or you just meant you
16 worked on different projects?

17 A. I would turn one time card in as Osage -- or
18 the development company, the other one was turned in as
19 Osage Water Company.

20 Q. And you do distinctly recall getting different
21 checks?

22 A. Oh, yes. On that one, yes.

23 Q. What about on this work with Greg and Debbie
24 that you're working on now?

25 A. No. I just get one 40-hour check. I'm not

1 sure how they divide that.

2 Q. Whose equipment do you use on cleaning this
3 lot off for Greg and Debbie?

4 A. It's his bobcat machines, Greg and Debbie's.

5 Q. That bobcat machine, do you know if it's owed
6 money on it?

7 A. I don't have any idea about that.

8 Q. It's in good condition?

9 A. I've seen better.

10 Q. Does it work?

11 A. Oh, yeah.

12 Q. Do the job?

13 A. Yeah.

14 Q. Do you have any rough idea on the value of
15 that equipment?

16 A. No.

17 MR. WILLIAMS: I'm going to object to that.
18 It's not relevant to any issue in this proceeding.

19 JUDGE WOODRUFF: Sustained.

20 BY MR. LORAIN:

21 Q. Do you tend to work -- in the winter months
22 when you have some down time, do you tend to work more with
23 Greg and Debbie then or is it more in the summer?

24 A. No. Neither one.

25 Q. Just as needed?

1 A. I try to get my 40 hours in every week.
2 Q. Okay. One way or the other?
3 A. If I can.
4 MR. LORAIN: I don't have anything further,
5 Judge.
6 JUDGE WOODRUFF: All right. Thank you. I
7 have a few questions from the Bench.
8 QUESTIONS BY JUDGE WOODRUFF:
9 Q. First of all, I'd like to get some
10 clarification on what happened with that leak at Broadwater
11 Bay. You said you were shown a picture of a T-intersection
12 in the pipe; is that right?
13 A. Yes.
14 Q. Now, was that Osage Water pipe or was that
15 City pipe?
16 A. That was our pipe that -- that was showing the
17 T, but there was also a picture of their water lines,
18 electric and I believe cable or telephone was also in the
19 picture.
20 Q. So the lines were -- City line and Osage Water
21 Company line were running close together?
22 A. Within a couple of feet --
23 Q. Okay.
24 A. -- maybe less.
25 Q. Any idea on how the City's construction might

1 have damaged the Osage Water line?

2 A. I know they broke that T there. You could see
3 where they'd repaired that T in the picture.

4 Q. Had they ever called Osage Water to report
5 they broke one of your lines?

6 A. I believe so. I believe they talked to Pat,
7 but I don't know that for a fact.

8 Q. Okay. Do you know how long before the leak
9 occurred that that happened?

10 A. No.

11 Q. Okay. And the other question I had was about
12 the Eagle Woods problems with the sewers there. You said
13 there was a lot of water infiltration. How does that
14 happen?

15 A. Well, I know around some of his septic tanks,
16 they weren't sealed properly. And after that, it -- he laid
17 a lot of lines there and instead of using expansion joints
18 or slip joints, he glued all his lines together. So if
19 there's any kind of movement at all, something's got to give
20 somewhere. And with his lines being glued all the way, they
21 could have broken apart just about anywhere.

22 Q. So just rainwater comes in?

23 A. Yes.

24 Q. You said there was a lot of infiltration
25 around some of the new houses. Is that -- I mean, is that

1 all the time or just when it rains?

2 A. When it rains.

3 Q. Okay. And the water infiltration problems,
4 does that also cause a problem with the solids?

5 A. Well, if the water infiltration is high
6 enough, I'm sure the solids are pouring over in those septic
7 tanks and still somehow managing it get on down to the
8 plant.

9 Q. So the solids are supposed to stay in the
10 septic tanks? They're separate from the treatment plant; is
11 that --

12 A. Yes.

13 Q. Does each house have its own septic tank?

14 A. I believe they were supposed to originally,
15 but he has sometimes four on one septic tank.

16 Q. And is that appropriate?

17 A. From what I know, they're -- each house was
18 supposed to have its own individual septic tank.

19 Q. So the water infiltration causes the septic
20 tank to overflow and it flows downstream?

21 A. And the solids come up. And there's usually a
22 T inside there to keep the solids away from it so that the
23 water will come up underneath the T and flow on down. Once
24 those tanks fill up, everything's going to go on top of that
25 T and go on through the lines.

1 JUDGE WOODRUFF: I think that's all the
2 questions I have.

3 Recross based on questions from the Bench then
4 beginning with Staff.

5 MR. KRUEGER: No questions, your Honor.

6 JUDGE WOODRUFF: Public Counsel?

7 MS. O'NEILL: No questions.

8 JUDGE WOODRUFF: And Hancock?

9 MR. LORAIN: None, your Honor

10 JUDGE WOODRUFF: Redirect?

11 MR. WILLIAMS: No, your Honor.

12 JUDGE WOODRUFF: Mr. Smith, we're done with
13 you and you may step down and you are excused.

14 And any other testimony from Osage Water?

15 MR. WILLIAMS: Nothing further, your Honor.

16 JUDGE WOODRUFF: All right. We'll take a
17 10-minute break then before we come back for closing
18 arguments. We'll begin with Staff, Public Counsel, Hancock
19 and conclude with Osage and that will begin at 9:25. Thank
20 you.

21 (A RECESS WAS TAKEN.)

22 JUDGE WOODRUFF: And since we completed the
23 receiving of evidence, it's now time for final arguments.
24 As previously indicated in a prior order, we're not going to
25 be taking briefs in this case so this is your chance to make

1 your final arguments to the Commission and summarize your
2 position citing to any legal or law references that you wish
3 to bring to the Commission's attention. So we'll begin
4 Staff

5 MR. KRUEGER: Thank you, your Honor. Good
6 morning. May it please the Commission.

7 Section 393.145 of the Missouri statutes
8 provides that if the Commission determines that if a small
9 water or sewer corporation has been actually or effectively
10 abandoned by its owners or if it is unable or unwilling to
11 provide safe and adequate service to its customers, the
12 Commission may petition the circuit court for an order
13 attaching the assets of the utility and placing the utility
14 under the control of a receiver.

15 The key issue in this case is whether the
16 company has been abandoned by its owners. The only persons
17 who own voting stock of Osage Water Company are Greg
18 Williams and Pat Mitchell.

19 Have they abandoned the company? Yes, they
20 have. Mr. Mitchell abandoned the company on July 6th or
21 7th, 2001. The company itself admitted that in paragraph 26
22 of its answer to the Staff's complaint in this case. The
23 company has admitted it and no further proof should be
24 required.

25 And during his testimony in this case,

1 Mr. Williams unequivocally stated that he has abandoned the
2 company. I haven't seen the transcript yet, but according
3 to the notes that I made at the time, Commissioner Murray
4 asked Mr. Williams, Have you abandoned the company? And
5 after considering the question for some time he answered,
6 Yes. No further proof should be required.

7 All of the company's voting shareholders have
8 abandoned the company and the requirements of Section
9 393.145 are satisfied.

10 Now, the company may argue that some time
11 after July 2001, Mr. Mitchell unabandoned the company; that
12 is, it may contend that even though all of the owners have
13 abandoned the company at one time or another, they have
14 never both done so at the same time.

15 But given Mr. Williams' unequivocal testimony
16 that he abandoned the company given in this hearing just a
17 couple of weeks ago, the only person whose abandonment may
18 not continue to this day would be Mr. Mitchell.

19 So what does Mr. Mitchell do for the company?
20 Well, he's the sole officer of the company, he's also the
21 corporation's only director. But he's not involved in the
22 day-to-day management of the company. In fact, he doesn't
23 even supervise the day-to-day management of the company.

24 He testified that his only duties with the
25 company are to conduct the meetings of the shareholders and

1 the directors and to handle some of the company's dealings
2 with outside parties, like when the company seeks to acquire
3 new service territories, which has not happened recently.

4 He did also sign a contract to enable the
5 company to restore service to the Broadwater Bay
6 subdivision, but only after he ascertained that there was
7 insurance money available to cover the cost of doing so.
8 Until the company found this insurance coverage, the company
9 was willing to leave its customers in Broadwater Bay without
10 service.

11 Mr. Mitchell also notified the company's
12 customers in the Eagle Woods subdivision that their water
13 and sewer service would be discontinued because of a dispute
14 between the company and the developer of the subdivision,
15 which the customers had nothing to do with.

16 Mr. Mitchell has nothing to do with the
17 day-to-day operations of the company's business, but the
18 company says he doesn't have to. In fact, it says no one
19 has to. The company doesn't have any employees. It does
20 not even have a bank account.

21 The revenues that Osage Water Company's
22 customers pay to the company just sail through Osage Water
23 Company untouched and land in the account of another account
24 owned by Mr. and Mrs. Williams; namely, Environmental
25 Utilities. Osage Water Company never handles the money at

1 all.

2 So what remains of Osage Water Company? What
3 exactly is it? It's virtually nothing. The company is
4 practically a ghost. For all practical purposes, Osage
5 Water Company is a non-entity. Greg and Debra Williams have
6 formed new company, Environmental Utilities, for the
7 apparent purpose of keeping Osage's revenues away from its
8 creditors. It seems clear that the company has been
9 abandoned by its owners.

10 Even if the owners have not abandoned the
11 company, there's another ground for seeking the appointment
12 of a receiver. The Commission may also seek appointment of
13 a receiver if the company is unwilling or unable to provide
14 safe and adequate service to its customers. Mr. Mitchell
15 stated several times during his testimony that the service
16 that the company provides is barely safe and barely
17 adequate.

18 Furthermore, he testified that a major
19 malfunction at the Eagle Woods subdivision is inevitable and
20 he said the company's not able to make the necessary repairs
21 if that happens. If that happens, the customers of Osage
22 Water Company in Eagle Woods will have no service
23 whatsoever.

24 The company has already informed Ron
25 Westenhaver, the developer of the Eagle Woods subdivision,

1 by letter that the company will terminate water and sewer
2 service to Eagle Woods until such time as water service
3 facilities and sewer service facilities that meet the
4 requirements of the Department of Natural Resources are
5 constructed.

6 And the company testified that DNR-approved
7 facilities do not now exist at Eagle Woods. What this
8 amounts to then is the statement by the company that its
9 service to Eagle Woods will be stopped.

10 In the same letter to Mr. Westenhaver, the
11 company stated that it would no longer maintain or repair
12 the water and sewer facilities in the Eagle Woods
13 subdivision. Clearly the company is not providing safe and
14 adequate service to Eagle Woods. In fact, it is threatening
15 to provide no service whatsoever.

16 Fortunately, the company has not yet acted on
17 its threat to discontinue service to Eagle Woods, but the
18 threat remains. Mr. Mitchell testified that he, quote,
19 would like to, unquote, discontinue service to Eagle Woods.

20 The problem at Eagle Woods results from a
21 disagreement between the company and Mr. Westenhaver. But
22 the consequences, unsafe and inadequate service, fall upon
23 the customers of Eagle Woods. This was most chillingly and
24 colorfully expressed by Mr. Mitchell when he said, quote,
25 the Eagle Woods customers are just pawns in this whole

1 thing, unquote.

2 Such a statement demonstrates the company's
3 callous disregard for its customers and for the quality of
4 the service that they receive. It also surely shows that
5 the company's not willing and able to provide safe and
6 adequate service to its customers.

7 There's another recent example of the
8 company's unwillingness to provide safe and adequate service
9 to its customers, which is already well known to the
10 Commission.

11 The company's water service to the Broadwater
12 Bay subdivision in Osage Beach was interrupted during August
13 of this year because of damage to a pump. The company
14 arranged for a temporary source of supply, but failed to
15 take any action to permanently repair the problem.

16 The company said it would not repair the pump
17 unless there was a source of funds available to pay the cost
18 of the repair. The company did eventually repair the pump
19 and restore service, but only after it discovered that its
20 insurance would cover the cost of the repair and only after
21 a three-day interruption of service.

22 Until then, the company was unwilling and
23 unable to provide safe and adequate service to its customers
24 in Broadwater Bay. In fact, it provided no service
25 whatsoever to these customers.

1 The company claims that these problems are
2 caused by the people that it contracts with or by third
3 parties. But it's the customers who suffer even though they
4 have nothing to do with these disputes. What the Commission
5 should be concerned about is the relationship between the
6 company and its customers.

7 The Staff submits that Osage Water Company
8 clearly has an obligation to provide safe and adequate
9 service to its customers, but the company seems to believe
10 that its obligation to provide safe and adequate service is
11 conditional and that the company only has this obligation if
12 sufficient funds are available.

13 The owners of the company have made it clear
14 during this hearing that they are not willing to provide any
15 new funds to the company, can't borrow any additional money
16 to finance the company's operations and know of no other
17 source for the needed infusion of cash.

18 The company has suggested during this hearing
19 that it will only provide safe and adequate service if it
20 gets rates that are to its liking. But the statutes don't
21 make the obligation to provide safe and adequate service
22 contingent upon the company can obtain a rate increase or
23 find some other source of funding.

24 Section 393.145 authorizes the Commission to
25 seek the appointment of a receiver if the company is unable

1 or unwilling to provide safe and adequate service, period.

2 The company claims though that it cannot
3 provide -- that it can provide safe and adequate service if
4 the Commission will just grant it a rate increase. A huge
5 rate increase. The company's present revenues are about
6 \$200,000 per year. The company says it needs another
7 \$180,000 per year, nearly doubling the amount of the
8 company's revenues.

9 This is not the proper proceeding for the
10 company to seek a rate increase. The company filed a small
11 company rate increase case about two years ago. It agreed
12 to a settlement of that case. In that settlement, it agreed
13 that the rates that are -- it agreed to the rates that are
14 now in effect.

15 Since the settlement of that case, the company
16 has not initiated a new rate increase and no rate case is
17 now pending. How can the company complain about the rates
18 that the Commission allows if the rates are exactly the ones
19 that the company agreed to and that the company -- and if
20 the company has never sought to increase them?

21 Finally, the company has consistently shown a
22 disregard for the requirements and orders of the Commission.
23 It has demonstrated this by failing to file annual reports
24 with the Commission when they are required and by failing to
25 pay annual assessments on time.

1 More importantly, the company conveyed assets
2 of the company in trusts -- that is, it mortgaged them --
3 without first obtaining the approval of the Commission to do
4 so as required by Section 393.190 of the Missouri statutes.
5 Mr. Williams then sought to foreclose on virtually all of
6 the company's plant in-service.

7 The Commission declared that deed of trust
8 void and the Circuit Court of Camden County stopped the
9 foreclosure and ordered the company not to transfer any
10 other assets of the company without approval of the
11 Commission.

12 Despite that order from the circuit court, the
13 company is now again trying to transfer assets from the
14 company back to Mr. Westenhaver in apparent violation of the
15 terms of the court's order.

16 Still very confusing who's in charge here.
17 Mr. Smith, who testified this morning, apparently forgot
18 that he worked for Greg Williams for about six months and he
19 forgot whom he works for now. He said he's employed by
20 Osage Water Company. The testimony of Mr. and Mrs. Williams
21 was that he was employed by Environmental Utilities.

22 It would be easy to understand why Mr. Smith
23 is confused as often as Mr. and Mrs. Williams and
24 Mr. Mitchell change hats and roles and form new companies
25 and close the bank accounts of old companies.

1 To summarize, the owners of Osage Water
2 Company have abandoned the company and the company is unable
3 or unwilling to provide safe and adequate service. That
4 satisfies the requirements of Section 393.145 of the
5 Missouri statutes. The Staff, therefore, requests that the
6 Commission direct its general counsel to petition the
7 circuit court for the appointment of a receiver. Thank you.

8 JUDGE WOODRUFF: Thank you.

9 For Office of Public Counsel?

10 MS. O'NEILL: Thank you, your Honor. Good
11 morning. Good morning, Commissioners.

12 Exhibit 22 in this case, Greg, I am tired and
13 broke. You want all the assets, you get all the headaches,
14 Pat Mitchell.

15 With the letter, he left the boxes in
16 Exhibit 6 on the front porch of the Williams' law office.
17 That's how Pat Mitchell told his co-owner of the company,
18 Osage Water Company, he wasn't interested anymore.

19 Exhibit 9, in September Greg Williams and
20 Debra Williams, who had been a director of the company and
21 had been managing the company, sent a letter over to Pat
22 Mitchell. Please be advised Gregory D. Williams does resign
23 as director and registered agent. Debra Williams resigns as
24 director and secretary and officer of Osage Water Company.

25 Is that abandoning the company? Now they say

1 no. But compare their words on the stand in this room with
2 what they've written and what they've done and you'll find
3 another story.

4 The evidence in this case establishes a clear
5 time line toward abandonment. In February of 2001, if you
6 look at Exhibits 7 and 8 in the record, you'll look at the
7 future advance deed of trust and security agreement and
8 promissory note of Greg Williams.

9 We heard testimony that these were not the
10 only future advance deeds of trust and promissory notes that
11 were completed in February of 2001. They encumbered the
12 assets of Osage Water Company without Commission approval.

13 July of 2001, we've already talked about the
14 letter from Pat Mitchell.

15 August 2001, Greg and Debra Williams applied
16 for a certificate of convenience and necessity for a new
17 company, Environmental Utilities. The reason? Because Pat
18 Mitchell had abandoned Osage Water Company.

19 January of 2002, shareholders meeting, we've
20 got the minutes at Exhibit 5. Pat Mitchell does reappear
21 and ordered to divvy up the spoils of the company and that's
22 what they talked about at the meeting.

23 August of 2002, Greg signed over his interest
24 in that promissory note and the deed of trust to
25 Environmental Utilities and Debra Williams initiated

1 foreclosure proceedings. Again, without Commission
2 approval.

3 Now, Environmental Utilities did file an
4 application asking for Commission permission to buy. I will
5 admit that there's evidence in the record of that.

6 And, of course, in September of 2002, Greg and
7 Debbie tendered their resignations to Osage Water Company
8 because, as Debbie said, we had a conflict of interest
9 because we were trying to collect a debt.

10 In the course of this hearing -- this
11 hearing -- Pat Mitchell and Debra Williams claim they
12 haven't abandoned Osage Water Company, but you need to
13 carefully judge the credibility of these witnesses and
14 consider their claims in a way that this Commission rarely
15 feels compelled to do.

16 Consider the answers they gave to the
17 questions that were asked and the non-answers that they
18 gave. Consider the times they were asked questions they
19 failed to answer even though they may have talked a great
20 deal.

21 Debra did testify she wants to sever her ties
22 with Pat Mitchell and she doesn't want to be connected to
23 Osage Water Company. Although she's still managing Osage
24 Water Company, she claims she's not the manager, but she's
25 managing it on behalf of Environmental Utilities. She says

1 this doesn't mean she's abandoned Osage. She's wrong.

2 Greg Williams does say that he has abandoned
3 Osage Water Company. That's an easy case.

4 Pat Mitchell says he hasn't abandoned Osage
5 Water Company in this hearing. He wants no share in the
6 liability and he assumes no responsibilities.

7 Frankly, the evidence in this case is such
8 that either Pat Mitchell did abandon the company or this
9 Commission heard a series of misrepresentations from Mr. and
10 Mrs. Williams in the Environmental Utilities case. You can
11 decide whether these very scenarios suggest that a receiver
12 should be appointed on this case given the entire history of
13 Osage Water Company.

14 Mr. Krueger talked quite a bit about the
15 requirements of 393.145 and, again, I'm not going to dwell
16 on those a lot, but unable and/or unwilling to provide
17 service is something that clearly has been established here.

18 Whether there's been actual permanent
19 abandonment, the intent to abandon or effective abandonment,
20 I think that the Commission clearly can find from the
21 evidence that that's the case with this particular company
22 and these particular owners and these particular principals.
23 In the short time this case has been pending, we've seen
24 convincing evidence of all these grounds.

25 In deciding this case, you may ask yourselves

1 what does it mean to provide service if it doesn't mean to
2 comply with a utility's statutory obligation to provide safe
3 and adequate service at just and reasonable rates. Even
4 Mr. Mitchell admits that at most the service being provided
5 is barely safe and barely adequate.

6 It's quite telling in the evidence, however,
7 that the company is unwilling to provide service. All the
8 principals in the company claim they're indeed willing to
9 provide service but not for free or for charity or out of
10 the goodness of their hearts, and that's fine. That's why
11 Osage charges rates. That's why it charges its customers
12 for the service it provides.

13 The company has a statutory obligation to
14 provide safe and adequate service to its customers. And
15 once it hooks up a customer, it incurs that obligation and
16 it has to comply with it.

17 The people who should be in charge of this
18 company fail to recognize that the company's property is
19 dedicated to the public use and that they have
20 responsibilities to the public, their customers. This
21 "should" in that sentence is unfortunately very telling.

22 The main problem with this company is that
23 nobody seems to be responsible for anything. Consider the
24 written statements of the principals in this company when
25 things go wrong. It's never their fault. It's always

1 someone else's problem.

2 You might want to look at Exhibit 4 and
3 Exhibit 36 when you're trying to decide what to do with this
4 case. It's Mr. Westenhaver's problem or it's the City of
5 Osage Beach's problem or some other developer's problem, but
6 it's never theirs. Sometimes it's the Commission's problem
7 too. That's in Exhibit 4.

8 Osage Water Company suggests that in
9 Mr. Williams' opening statement that cessation of service
10 should be the criteria for abandonment. They're
11 demonstrated that they're willing and able and about to do a
12 cessation of service, at least for part of their service
13 territory. That's Eagle Woods.

14 Eagle Woods is a current flash point. A few
15 months ago it was Broadwater Bay. There's still problems
16 there, but of course, those are not the fault of anyone at
17 Osage Water Company.

18 In the past there have been problems at
19 Chelsea Rose, Cedar Glen. In fact, most of the company's
20 service territories have or have had serious service related
21 problems. And there's always somebody else. That's
22 according to the folks running Osage.

23 Somebody has to be responsible to these
24 customers. It's fine to say Osage is responsible as if
25 there were a flesh and blood person instead of a corporate

1 fictional person that was Osage County -- or Osage Water
2 Company, excuse me. But there's nobody there to assume
3 responsibility to solve the problems. And that's a crucial
4 part of the problem with this company.

5 The assets and liabilities, the
6 responsibilities and the excuses have all been co-mingled
7 between a motley bunch of corporate entities, all small,
8 closely held corporations and all with these three people in
9 charge, Greg Williams, Debra Williams and Pat
10 Mitchell.

11 In fact, on the witness stand, all three of
12 them tried to explain how many different hats they wore and
13 when they wore them. In order to unravel all the problems
14 at Osage, you have to also know about Environmental
15 Utilities and Hurricane Deck Holding Company and the Water
16 Lab and the law office and the real estate office and Golden
17 Glade Landowners Association. And that's before you even
18 bring Dave Hancock or Ron Westenhaver or the rest of the
19 developers into the mix.

20 We're left here with a whole closet full of
21 hats, but for the most part, nobody's wearing any of them.
22 They're sitting on a shelf distracting you from the real
23 issue, which is who is responsible, because it's obviously
24 not Greg or Debra or Pat.

25 Like an old-fashioned shell game, the

1 responsibility is the little red ball underneath one of the
2 hats on the shelf. The trick is knowing that the little red
3 ball is never under any of the hats.

4 You've heard about the problems with
5 Broadwater Bay and the problems getting service to the
6 customers. Yes, Osage made a deal -- someone there -- to
7 get water to those customers for 10 years -- for 10 days,
8 excuse me, but did they fix the well during that time? No.
9 They let that agreement lapse. They left their customers
10 without water for several days so they could haggle over the
11 best deal, the most advantageous deal for Osage Water
12 Company at the expense of those customers.

13 I will say that at least in that case they
14 made an attempt to provide alternate service when they
15 weren't providing service there. And they had a mechanical
16 problem. Sometimes that happens, but the manner in which
17 they handled that problem is something that the Commission
18 can consider.

19 The problem with Eagle Woods is worse.
20 They're not even attempting to find an alternative provider.
21 Again, the people of the company say this isn't their fault.
22 Mr. Williams -- Mr. Westenhaver turned over a faulty system
23 and if they serve the customers from it, that's a violation
24 of their tariff so they have to stop. Well, the violation
25 of their tariffs was taking the system to begin with if it

1 was faulty.

2 Putting aside for a moment the fact that Osage
3 Water wants to cut off the service to the innocent pawns
4 that are the Eagle Woods customers, consider the claim
5 hastily assembled in the wake of another environmental
6 lawsuit, this one against Osage for the KK treatment system.

7 The company relies on 4 CSR 240-60.020, but
8 they shouldn't because it doesn't say what they say it does.
9 Osage accepted the water and sewer system for Eagle Woods
10 months ago, if not years.

11 It starts applying water and sewer through
12 that system. Osage, not the Eagle Woods customers, in is in
13 violation of the regulations, if there's someone in
14 violation.

15 If Ron Westenhaver, the developer, put in a
16 shoddy system, Osage Water Company should have known about
17 it and should have done something about it at the time. I'm
18 not here to defend Ron Westenhaver. If Osage Water Company
19 wants to go after Westenhaver every day of the week for the
20 next 20 years, that's their right to do so, but they need to
21 not do it at the expense of their customers.

22 The fact that the developer put in a shoddy
23 system does not give Osage the right to cancel the contract,
24 return the property back to the developer. That remedy is
25 not found in the regulation that they cite.

1 Why a receiver though? As Commissioner Murray
2 stated in her dissent in Case SA-99-268, which was also an
3 Osage Water Company case, The company's demonstrated a
4 pattern of disregard for permitting and certification
5 requirements and has failed to meet the Commission's annual
6 reporting requirements.

7 Staff in that case correctly pointed out that
8 Osage Water Company seems to regard the law as an annoying
9 technicality that they should not have to comply with. The
10 conduct of the company is a part of a pattern of misconduct
11 that the Commission should not continece by granting a
12 certificate of authority in that case.

13 Seems like some things never change.

14 Company also claims some reliance earlier on
15 Section 393.270. That's misplaced in the claim that the
16 Commission should now determine whether the company needs a
17 rate increase. I just want to briefly touch on that before
18 I close.

19 393.270 is a general statutory provision which
20 sets out the requirement for notice in hearing in all
21 proceedings before this Commission which are presented via
22 Sections 393.110 through 393.285, yes, that includes 145.
23 But, notably, it also includes rate cases and rate case
24 complaints.

25 There's no reason for the Commission in this

1 case to make a finding that rates need to be increased. And
2 even if there were, there's been no credible evidence and no
3 documentation whatsoever to back up the claim that a rate
4 increase is needed.

5 Even if the Commission believed that it should
6 determine whether a rate investigation should begin in this
7 matter, I would ask the Commission to be skeptical of the
8 company's claims and consider the level of service being
9 provided before acquiescing in any request to raise rates.

10 As a prior Missouri commission stated in north
11 Missouri Telephone Company, which is at 49 PUR 3d, 313, 1963
12 at page 318, the Commission should never lose sight of the
13 cardinal principle of regulation, that the public should and
14 must receive adequate service.

15 Until the company's customers receive adequate
16 service to which they are entitled, this Commission would be
17 derelict in its duty in imposing higher rates.

18 Receiverships a drastic measure, but drastic
19 problems require drastic solutions. Public Counsel believes
20 that this Commission has no other realistic option than to
21 direct its general counsel to select a receiver for this
22 company. Thank you.

23 JUDGE WOODRUFF: Thank you.

24 For Hancock Construction?

25 MR. LORAIN: Your Honor, may it please the

1 court, Commission.

2 Ladies and gentlemen, we have abandonment of a
3 utility company de facto. It has happened. It's been a
4 long time and coming. It's been coming in small doses over
5 the last few years.

6 The simplest thing to say is OWC doesn't have
7 a checkbook. I mean, that's pretty simple. That tells you
8 everything that you need to know. We can't run our
9 household without a checkbook, let alone a utility company.

10 This is a shoestring operation at this point.
11 It's a dangerous operation. The management is not fit for
12 the job. It has not been fit for the job, either by choice
13 or by incompetence.

14 There's a history of violations with DNR.
15 There's a history of violations with PSC. There's a history
16 of violations with the City of Osage Beach. There's
17 litigation with the Fire District of Osage Beach. There's
18 litigation with the City of Osage Beach. There's been
19 litigation with every entity that this company has ever
20 dealt with. This company is litigious and it does not do
21 its homework.

22 All of the assets -- it has no checkbook and
23 all the assets have been transferred either to Water Lab,
24 Jackson Engineering Company or Greg Williams, which are the
25 three principals.

1 There may be a priority argument and, in fact,
2 that transfer may be illegal, but that's more litigious
3 operations for the future and more expenditure of fees.
4 Mr. Williams claims he has \$450,000 of attorney fees. I
5 think there's never been a determination made as to how much
6 of that his hat was an officer, a director, how much of his
7 hat was -- which hat he was wearing, was he a lawyer?

8 This is a long process and I have no doubt in
9 my mind that he's spent enumerable hours. In fact, all this
10 company's history that it gives you is they spend
11 enumerable, incalculable hours grinding out the law and
12 their assessment of the law instead of doing the job.

13 I think it's time -- in 1998 there was a
14 witness that came in and called these people rogue
15 operators. That witness is still coming before this
16 Commission. That witness does not -- he did not possess a
17 crystal ball. He just is a financial analyst and he's been
18 right. The woodwork -- all the writing was on the wall.

19 The company failed to write their annual
20 reports, they failed to report properly when they did
21 report. These things caught up with them. They can't
22 even submit a new rate increase.

23 It's probably that they do need a rate
24 increase, but they can't -- they can't do it. Their records
25 are so obliterated by incompetence or willingly hiding the

1 ball. I don't know what the word is. I don't know why, but
2 they've spent so much time in doing the devious, that they
3 can't spend the time doing the right thing.

4 If they could prove a rate case, perhaps some
5 of their problems would be solved, but money alone won't do
6 it. And these guys -- this management team will not do it.
7 They have been obstreperous and difficult from day one.

8 The company owes the IRS. The company owes
9 the Missouri Department of Revenue. The company owes the
10 PSC for assessment fees. The company owes DNR. What does
11 the company do? Transfers its assets to the principals
12 illegally.

13 Commission has to go to the courthouse, plead
14 a case, please don't transfer assets. The Circuit Court of
15 Camden County admonishes the company, renders a verdict in
16 favor of the Commission, Mr. Hancock also by separate action
17 and we're rewarded with a new action.

18 Now we have some more transfer of assets from
19 the OWC company now to Mr. Westenhaver. That's after an
20 injunction, a TRO both. And both TRO and injunctions --
21 preliminary injunctions for both the Missouri Public Service
22 Commission and Mr. Hancock.

23 I don't know how you would make anything more
24 clear, but this company stands in the face of authority and
25 will not pass. It will not submit itself to any kind of

1 jurisdiction or authority. They are indeed rogue operators.
2 It is time to divest the public from this pestilence.

3 Somehow this company may or may not survive.
4 It's certainly Mr. Hancock's wish that it survive. When he
5 settled the case and received the debenture, a controverted
6 amount was assessed at \$240,000 and he compromised it for
7 less than that, took a no interest debenture for 20 years.

8 All they had to do was make \$1,000 a month
9 payment for 12 months of the year and they had it included
10 in the rate base. It was a pass-on, but it was actually
11 allowed by the Commission. It was reviewed by the Staff and
12 allowed by the Commission and they still -- they chose not
13 to pay that.

14 When they cross-examined the management, they
15 said, well, what did you want? We wanted to keep them wet.
16 We had to keep them wet and flushing, I think were the
17 terms.

18 Well, that's a noble concept and it certainly
19 should be done, but just so should have the valid obligation
20 of OWC to Mr. Hancock should have been paid, especially
21 under the very generous rates that he allowed.

22 The Staff brought up during this case that I
23 was unaware of -- in fact, it wasn't Staff, it was Public
24 Counsel brought up that Mrs. Williams receives double the
25 salary that was allocated to her. I think it's more just

1 indifference to the way the company operates.

2 Mr. Hancock stands once again before this
3 Commission. He's made efforts to purchase OWC in the last
4 several weeks. There's been no accord. We didn't expect
5 there would be an accord.

6 There has to be a general adjustment of the
7 debt. It will either be accomplished by the receiver,
8 bankruptcy court or further protracted litigation, but this
9 segment is just the beginning.

10 Mr. Hancock is the largest holder of valid
11 debt that's been reviewed and checked by the Commission. He
12 would be happy to be recommended as a receiver. He's
13 offered that on the stand. He said he would take no fee for
14 being a receiver, which under the circumstances of the money
15 situation, is probably something that everyone should be at
16 least attentive to.

17 Because if you bring this American Company in,
18 utility company, they're not going to believe the situation.
19 They're not going to understand the pumps, they're not going
20 to understand the system. Mr. Hancock does understand that.
21 Somebody has to see to the orderly transition or else the
22 public will be a victim, worse than it already is.

23 I know that this is a drastic matter when you
24 take private property away from a utility company and give
25 it to somebody else to control, but it's justified. It's

1 justified under the history. This Commission has sat
2 through numerous bouts of testimony, agonizingly hearing the
3 same old chatter, that these people are not operating
4 correctly, they're not operating competently, they're not
5 operating, period. We have heard that until we're all
6 nauseated by it. And yet here we stand again.

7 We would like the Commission to take the
8 complaint of the Staff seriously and we request that -- and
9 pray that this Commission ask some circuit court -- we would
10 hope that it would be the Camden County Circuit Court,
11 because it's already been involved in this matter, at least
12 two preliminary injunctions and two TROs and, as I
13 understand, Staff is now going forward with another TRO
14 today on the transfer of the Westenhaver matter.

15 So we would like to -- we believe that the
16 receivership should be sent to Camden County where these
17 people live and have been affected continuously for some
18 five to six years by this rogue operation. We think that
19 this is an absolute essential step for this Commission to
20 take.

21 Thank you for your Commission -- thank you for
22 your attention.

23 JUDGE WOODRUFF: Thank you.

24 For Osage Water.

25 MR. WILLIAMS: Thank you, your Honor. Good

1 morning Commissioners. Thank you for your time and your
2 patience throughout this proceeding.

3 I would like to say that all is well and that
4 things will be good, but I don't think that would be an
5 honest statement nor would it be appropriate.

6 This has certainly been a difficult proceeding
7 for me. I did not want this Commission to proceed based on
8 a complaint that I believe is filled with half-truths and a
9 few false statements and to move forward uninformed and
10 without full knowledge of the facts and circumstances
11 regarding Osage Water Company and without adequate
12 information about what options and alternatives are
13 available to the Commission.

14 I've been here for the purpose of presenting
15 evidence so that you get a full and complete picture and so
16 that you know what all of your alternatives are.

17 I did provide yesterday to the Hearing
18 Commissioner and have for you this morning a copy of what I
19 believe to be a relevant and pertinent statute that outlines
20 what the Commission's duties are with respect to complaints
21 against regulated utility companies.

22 Quite frankly, the company feels and certainly
23 I personally feel that there has been a diligent attempt on
24 the part of Staff to railroad this proceeding through the
25 Commission without an adequate hearing. There is an

1 allegation to support expedited treatment of this case that
2 there was an imminent danger of loss of service to
3 customers.

4 There was testimony from the chief member of
5 the Water and Sewer Department that that simply was not
6 true. That testimony is also supported by the testimony of
7 all the witnesses that the company has brought before this
8 Commission.

9 Are there problems with Osage Water Company?
10 Oh, absolutely. There's no question about that. Are the
11 problems such that there's an immediate and imminent danger
12 of loss of service? I think the testimony was clear that it
13 was not.

14 Why are we here on an expedited basis? Why am
15 I forced to be both a witness and counsel in this
16 proceeding? Because of that allegation. And it's very
17 troubling to the company and to myself, as an attorney, that
18 this proceeding has been expedited, that we've abandoned the
19 Commission's usual manner of doing the procedure and process
20 and based on a false allegation that the senior member of
21 Staff who testified he assisted in preparing the petition
22 said on the stand was not true. That's a problem.

23 The company has also brought to this
24 Commission's attention that a member of Staff has been
25 telling customers not to pay the service charge for new

1 connections in condominiums that's in the company's tariff.

2 And that's not a matter of bringing that as a
3 complaint before this Commission for determination. It's a
4 simple question that could have been resolved quickly and
5 easily. Get the facts, get the evidence out in front of
6 this Commission, could have been done in half a day or less,
7 but he simply did not take the time to bring that to the
8 Commission's attention.

9 He just told the customers don't pay it.
10 Everything will be fine. Company is out some \$10,000,
11 according to the evidence in this case, for connection
12 charges that have accrued, have been billed and which the
13 customers will not pay upon advice of a member of the
14 Commission Staff, and those are tariffed charges.

15 There was a lot of explanation about some
16 technical analysis of property lines and water service
17 lines, but when you really get down to it, condominium unit
18 owner has a meter set inside his unit, there's a new
19 connection, there's a fee that's in the tariff for that and
20 it's not being paid.

21 That's a concern to the company. It's a
22 matter of credibility of the company in dealing with its
23 customers and dealing with the Condominium Association, it's
24 been a huge problem. Probably a bigger problem that is
25 apparent simply from the \$150 per customer charge.

1 When the company says, This is in our tariff,
2 we're going to send you a bill for it and they're told by a
3 Staff member, Well, we don't agree with it so we're telling
4 you not to pay it, the company has no credibility. The
5 credibility is a problem when you go out and try to do
6 business as a utility company and you try to follow the
7 rules.

8 Let's talk about Broadwater Bay and the Pizza
9 Hut well. The testimony is not that the company refused to
10 repair the well. That's not the evidence in this case. The
11 evidence in this case is that representatives of the
12 company, recognizing that there's a problem, there is no
13 contingency, there is no reserve fund, there are no cash
14 funds on hand, made investigations, including contacting
15 your Staff saying, We know this is a problem.

16 The City of Osage Beach is over building this
17 area, we think the damage is caused by their construction.
18 These repairs are going to be extremely expensive and the
19 City is telling us they're going to take the rest of the
20 customers on this system in the near term.

21 Is there an accounting method that can be
22 utilized where the money that the company invests in
23 repairing this well can be recovered? And the answer is no.

24 Now, I don't know if that's the answer you all
25 would give. I don't know if we should have submitted an

1 accounting authority or some other thing. All I know is
2 that the company asked, tried to find a way with which the
3 funds could be recovered and was told, Whatever money you
4 spend out there you're going to lose.

5 Now, I don't know if you all have been in
6 business or you're business people, but I certainly in my
7 experience and the other principals of the company do not
8 feel that throwing money away is ever a good idea.

9 Was there attempt to work that out through the
10 Commission? Yes. We're not allowed to call the
11 Commissioners, but we did call your representatives and did
12 try to work that out. It didn't get worked out and it's
13 been a problem.

14 There's also testimony that in the last rate
15 case the Staff recognized there were at least \$90,000 in
16 legal expenses which were includable in rate base, but
17 they're not there. Company's not earning return on them.

18 There was a lot of discussion about how that
19 case got settled and I believe the Commission -- or Judge
20 Woodruff, you may have been there. We got to the end of the
21 hearing and the Staff basically reneged on a settlement
22 agreement.

23 We complained, we protested, we asked for
24 further hearings and it didn't happen. There you go.
25 Settlement's aren't honored by the Staff. The company is

1 left without money that the Staff acknowledged should be in
2 rate base that is not in rate base.

3 The problem here is not abandonment. It's not
4 a lack of management skills nor is it a lack of a
5 willingness to serve. The essence of where we start out
6 with is that the company has been over built through its
7 largest systems by the City of Osage Beach and a loss of
8 some 220 customers and the revenues associated with those
9 customers.

10 As I testified to Commissioner Murray, when
11 you take the heart out of the company and you're left with
12 the periphery and you have to rebuild the heart, it's going
13 to take money, it's going to take a reevaluation of what's
14 an appropriate charge, what's an appropriate rate.

15 Can the company be fixed without an adjustment
16 in rates? I don't think so. You know, will just appointing
17 a receiver and putting somebody else in the position of
18 making day-to-day decisions change that problem? How could
19 it possibly?

20 The evidence has been clear and I believe
21 uncontroverted that the company has been spending all --
22 all of its revenue on providing service to customers.
23 That's no return to investors. All the money goes to put
24 the people out in the field. Commission heard this morning
25 from the man in the field. He was there yesterday, he went

1 back out today.

2 Is the company providing service? Has it been
3 abandoned? No. That hasn't happened. Are there problems
4 that this Commission needs to address? Yes. No question
5 about that.

6 The receivership statute says is the company
7 unable or unwilling to provide safe and adequate service?
8 Well, the willingness is there. The ability is being
9 exercised to the best of its financial ability.

10 Or has it been actually or effectively abandoned
11 by its owners? There's no evidence here that anyone has
12 walked away from any of these systems and left them sitting
13 out in the field unattended, unmonitored. The DNR reports
14 are being filed. All of those things are going on.

15 When we go to the complaint, as I've said, the
16 Broadwater Bay system, the Commission heard this morning how
17 the problems that are associated with the water leaks there
18 arise from the over building by the City of Osage Beach from
19 the man in the field whose done the work, looked at the
20 pipes, explained exactly how that worked and how it
21 happened.

22 There is still a leak out there, it needs to
23 be repaired. It's not something that one man on his own
24 could or should be doing. There's an electric line laying
25 next to the water line that's very high voltage, risk of

1 harm and danger. It's simply need additional staff time.
2 And that leak was discovered while this proceeding has been
3 going on. It's pretty much occupied the time of all the
4 people who might help him do that.

5 Eagle Woods, serious problem out there. No
6 question about it. I've heard a lot of criticism this
7 morning about the company's approach to trying to resolve
8 those problems.

9 Company's trying to enforce the requirements
10 of its tariffs. You heard this morning from the man in the
11 field that the developer at Eagle Woods has dug up all the
12 lines within the last few months, did not allow an
13 opportunity for inspection nor review of what work he's done
14 to it, that there is an observation that from those lines
15 there is now solids entering the collection system, entering
16 the effluent pumping system and reaching the treatment plant
17 and causing harm and damage to the treatment plant.

18 Extreme -- and beyond that, that this
19 developer is also bypassing locked off water meters,
20 removing sewer plugs for houses that do not have DNR permits
21 and basically is disregarding any authority of the company
22 to manage, maintain or control that sewer system.

23 What options would you have us pursue?
24 Litigation is an obvious choice requiring a budget. I
25 believe the company's last rate case established a budget

1 annually of \$1,500 for legal expenses. I don't think that's
2 quite going to get us through any kind of legal proceeding
3 with the developer out at Eagle Woods.

4 The company has engaged in extensive
5 litigation with the City of Osage Beach relating to the over
6 building of its systems there. It's been very expensive.
7 It's been partially successful.

8 It's gone to the Court of Appeals. Court of
9 Appeals has affirmed this Commission's actions, reversed a
10 dismissal of the case, but it has not resulted in any money
11 coming back to the company that would pay for those services
12 or that would make the company whole. And may never.

13 Quite candidly, not every lawsuit is won.
14 When a lawsuit is not won, you have financial difficulties
15 that ensue. And that's part of the problem that Osage Water
16 Company is faced with here today.

17 It has lost value. It has lost 200-and-some
18 customers in the City of Osage Beach. It expended a lot of
19 capital to acquire those customers, acquire regulatory
20 approval. Without those customers, it has difficulty
21 serving the remainder from a financial standpoint.

22 There was allegation in the complaint that the
23 company had an unresolved consumer -- or customer issue with
24 sewage surfacing and damage to trees. And the company
25 presented to this Commission a signed settlement and release

1 from that customer, at least the customer that we've only
2 known about, the company's ever known about, indicating that
3 as far as that customer was concerned, the problem was
4 resolved and the company had paid money to settle his
5 claims.

6 I think that's indication not of abandonment
7 or a failure to exercise due diligence. It's doing exactly
8 what the company should do.

9 The Commission has before it obviously
10 substantial allegations, which I will not deny or
11 controvert, that the company executed a promissory note and
12 deed of trust to secure its attorney fees. It needed legal
13 services. Those were the terms on which I offered them.

14 And I'm told that the Commission has decided
15 that was wrong. I respect your opinion, although I don't
16 like it, but it is your prerogative to decide that.

17 The Commission has been told by its Staff that
18 it had to file suit. Quite frankly, all it had to do was
19 make a telephone call. That wasn't done. I was notified
20 that the Commission was going to take adverse action by
21 receipt of a notice less than 24 hours to appear in circuit
22 court and answer that.

23 It's somewhat troubling to me that that's the
24 manner in which your Staff has chosen to regulate and
25 administer the company. It seems to me that telephone calls

1 are a good place to start. Conferences are a good place to
2 follow up. Complaint actions and hearings by the Commission
3 are a good place to go after that.

4 But when you go right to circuit court action,
5 that's making it the most expensive alternative possible for
6 resolution of disputes with the company and the Commission
7 Staff.

8 There's an allegation in the complaint that
9 the company provided service outside its service areas. And
10 I think that while that was true at one point in time, this
11 Commission ordered a cessation of that and that we presented
12 the evidence that, in fact, the company complied with the
13 Commission's order. That's long resolved and in the past.

14 Why it is now thrown in as some kind of a
15 litany of problems with Osage Water Company is inexplicable
16 to me. The company has done what the Commission ordered.

17 The company has and is not current on filing
18 its annual reports. It's spending all of its revenues on
19 providing service to customers. It has no money with which
20 to hire an accountant to complete annual reports. The one
21 annual report that has been completed in the last year and a
22 half Staff had numerous objections to.

23 There's an allegation in the complaint of
24 Department of Natural Resources notices of violations. The
25 only evidence I heard in this case was that there were

1 notices of violations, all of which have been resolved.

2 Now, a company that's doing business that has
3 a problem should resolve those problems. That was the
4 evidence that's before this Commission. We heard
5 Mr. Cochran testify yesterday of three specific notices of
6 violations. Heard Mr. Mitchell respond that all of them had
7 been resolved to the satisfaction of the Department of
8 Natural Resources.

9 Things do not always go right. Sometimes
10 things need to be fixed. The company stepped up to the
11 plate, fixed the problems. That's what companies do.
12 Certainly not a basis for finding of an abandonment of the
13 company that problems that have arisen have been resolved.

14 There's been allegations of customer
15 complaints. The only specific one I know of is that of
16 Mr. Bergman, who got a check, signed a release. There's
17 other service problems out there. Problems arise on a daily
18 basis. Problems are dealt with on a daily basis. That is
19 not evidence of abandonment by the company.

20 There's testimony regarding the company being
21 delinquent in assessments. I think the evidence was
22 uncontroverted that the company caught up three years of
23 delinquent assessments within the past 12 months. It has
24 its current year it is somewhat behind on. It's spending
25 all of its money out in the field providing service to

1 customers.

2 There was an allegation in the complaint that
3 there were overcharges by the company. The Commission has
4 in evidence before it an exhibit which shows that the
5 company did not start charging until it received back from
6 this Commission a tariff page stamped filed.

7 Now, apparently there's some confusion as to
8 whether that was properly filed, improperly filed. We've
9 respected the Commission's determination that that tariff --
10 that the company should not have relied on it.

11 It would have required extensive litigation
12 before this Commission to contest it. The company instead
13 accepted and rebated to customers at a cost of some \$15,000
14 after it received back the tariff page stamped filed by your
15 filing department.

16 I don't see how overcharges that the company
17 has agreed with the Commission should be refunded and has,
18 in fact, refunded in any way indicate an abandonment of the
19 company or its obligations to provide service.

20 I have resigned as an officer and director of
21 Osage Water Company. Quite frankly, I'm tired of being told
22 everywhere I go that I have a conflict of interest in
23 representing the company as its attorney. It's difficult to
24 do both. I don't want to do both. I don't want to attempt
25 to do both.

1 I did not want to be a witness in this
2 proceeding nor do I want to be a witness in any subsequent
3 proceedings for Osage Water Company. If I'm hired as its
4 attorney and paid to be its attorney, I'll be glad to be its
5 attorney. But that's where I stand as far as my
6 participation in the company as an officer or a director.

7 Mr. Mitchell has testified that he has
8 continuously, since the inception of the company, been an
9 officer or director of the company and he remains so today.

10 He has testified that his desire is that the
11 company be operated on a contract management basis as it was
12 operated prior to 1999 and as it has been operated since
13 September of this year. It not his desire to put employees
14 directly on staff unless there is someone out there besides
15 himself who can supervise them.

16 Staff alleged in its complaint that Osage
17 Water Company and Environmental Utilities are in
18 competition. This Commission had previously found and held
19 that they are not in competition with each other.

20 And I think the evidence in this case is that
21 they are in cooperation with each other for the purpose and
22 with the intent to make sure that service continues to
23 customers even when it's not paid for.

24 Today water that's being supplied to Eagle
25 Woods is being supplied notwithstanding problems with the

1 developer's compliance with his contracts, notwithstanding
2 the developer's problems with compliance with the tariff and
3 it's being supplied from a well which this Commission has
4 never approved for charges and it's being supplied without
5 charge.

6 Ms. O'Neill says someone needs to be
7 responsible for getting those folks service.
8 Notwithstanding non-payment, those folks are getting
9 service. Notwithstanding problems with compliance with
10 contractual obligations and tariff requirements, those folks
11 are getting service. I'm not sure that's right, I'm not
12 sure that's fair, but it does protect customers.

13 The company needs to do something with respect
14 to the developer. If the Commission has a different idea of
15 what the company should do, certainly it's welcome to
16 provide that information to the company.

17 Yesterday there was a motion made that the
18 company be ordered not to disconnect any services at Eagle
19 Woods because of the problems with the developer. That
20 motion was denied by the Commission or at least through the
21 Judge. If the Commission wishes to change that, simply let
22 us know.

23 393.270, the statute that I've given to you,
24 governs all complaint actions brought against a utility
25 company, including the one under the receivership statute

1 393.145. It says that if this Commission, after such
2 investigation as shall have been made, determines that
3 improvements in the manufacture, transmission or supply of
4 water or in the collection, carriage, treatment and disposal
5 of sewage or in the methods employed by the utility company,
6 the Commission may order those improvements as such
7 improvements as willing the Commission's judgment be
8 adequate, just and reasonable.

9 If you believe service is inadequate, service
10 is unsafe, you may order any improvements. You may direct
11 the company to make such improvements as you deem are
12 necessary, just and reasonable.

13 That statutes also says in subparagraph 4,
14 Commission is to set the price to allow payment for those
15 improvements.

16 Now, if you believe there are deficiencies in
17 the company's provision of service, you may enumerate them
18 in an order. You may direct the company to make those
19 improvements. I suppose if the company refuses, you could
20 consider it an abandonment of its obligation to provide
21 service.

22 But here on the record, I will tell you if you
23 want to order those and you want to order the rates
24 necessary to pay for them, a diligent attempt will be made
25 to make those improvements.

1 I've told this Commission, and I think it's
2 true, that in the absence of a very large rate increase or
3 very substantial reduction in indebtedness, the business of
4 Osage Water Company of providing public utility service,
5 will not be successful.

6 At the present time, it does not generate
7 sufficient revenue with which to meet its operating expenses
8 and pay its debts. The solutions to that are to reduce its
9 debts or to increase its revenues. Both options are
10 available to this Commission. The choice is up to the
11 Commission.

12 To adjust debts, there will have to be
13 something in the nature of a foreclosure as was proposed to
14 this Commission in the case W-something 2000-365. That was
15 one of the ideas of how do you resolve the problem of
16 there's simply too much debt out there.

17 A foreclosure of a voluntarily granted note
18 and deed of trust was one alternative. I think that
19 alternative is still before this Commission. It would
20 require the Commission to approve a debt and authorize it to
21 be foreclosed.

22 There is before the Commission simply a
23 determination that continuation of this utility business is
24 not in the public interest and that the company should be
25 liquidated. Staff says appoint a receiver and liquidate it.

1 Go to circuit court, file another lawsuit and let's get this
2 receiver appointed who's then going to sell the company's
3 assets. That's the relief that's prayed for in this
4 Commission -- in this petition.

5 The Commission may, if it so finds that it's
6 in the public interest to liquidate this company, simply
7 order the company to liquidate. There are statutes on the
8 books in Chapter 351 that authorize and specify exactly how
9 a corporation may be liquidated and the proceeds of its
10 assets distributed to its creditors, its preferred
11 shareholders and ultimately, if there's anything left, which
12 I don't think there will, to its common stockholders.

13 Now, that will be much more cost effective
14 than a circuit court receivership proceeding. It will be
15 much more cost effective than a federal bankruptcy
16 proceeding. And it will achieve the same result that the
17 assets of the company will be sold.

18 The added benefit, this Commission may require
19 the liquidation sale be conducted under the jurisdiction and
20 supervision of this Commission. As Mr. Mitchell suggested
21 in his testimony, we can use this room. We can solicit
22 bids. We can solicit proposals from qualified purchasers.

23 We can put all that before the Commission and
24 the Commission can decide which proposal is best in the
25 public interest. Not necessarily which is the highest

1 price, but which one is in the best interest of the public.
2 That certainly is an option that's available.

3 The company has asked on the record that if
4 the Commission determines that as the Staff has suggested,
5 liquidation is the appropriate remedy, the liquidation be
6 done by the company here. That would be, we believe, the
7 least costly means of achieving the end.

8 There's been a request and an indication in
9 the Staff's complaint that Missouri American would be an
10 appropriate receiver. There's been testimony from
11 Mr. Mitchell that he's spoken to folks at Missouri American,
12 they have not agreed to be a receiver, although they're
13 interested.

14 And they certainly have not agreed on what it
15 would cost to be such a receiver. That raises a significant
16 concern in that the cost and expenses of the receiver, to
17 the extent they are not paid out of operating revenues, are
18 to come out of the assets of the company upon its
19 liquidation.

20 What we're talking about is taking what
21 equity, if any, or what value, if any, is in Osage Water
22 Company away from its creditors and away from its
23 shareholders and giving it to Missouri American. And you
24 have no idea at this point in time what amount we're talking
25 about.

1 And I would tell you, quite simply, that that
2 is not necessary. If you want the company liquidated, that
3 can be done. If you believe that's the goal, it can be done
4 here under your jurisdiction. All you have to do order the
5 sale of the assets.

6 Finally, 393.270, although Staff and OPC don't
7 seem to think that this is a rate case or it's proper to
8 consider rate issues in this case, says that if you believe
9 improvements are required, order the improvements and
10 determine what rate is appropriate.

11 The company has asked for just exactly that in
12 its answer here. Order a rate case. Make an investigation.
13 Let's find out what should be charged given that
14 200-and-some customers are no longer taking service from the
15 company and that the circumstances -- although we've got
16 basically the same number of water customers as there were
17 in 1999, they're not the same folks, they don't have the
18 same cost of service, they don't use the same amount of
19 water. And that's a significant change and it's time to
20 look at the rates again.

21 Whether it's for Osage Water Company, whether
22 it's for Environmental Utilities after a foreclosure,
23 whether it's for Mr. Hancock acting as a receiver or
24 creditor in possession or whether it's for Missouri
25 American, you're going to be faced with the issue of what is

1 the cost of service. What does it take to provide, as the
2 statute says, a reasonable average return on capital
3 actually expended and a reservation out of income for
4 surplus and contingencies.

5 And I would tell this Commission that a
6 reservation for surplus and contingencies is important on a
7 company that makes less than \$20,000 a month and has well
8 pumps that can cost \$15,000 to repair. That's an important
9 consideration in setting rates. It wasn't considered in the
10 last rate case and it should be considered in this one.

11 I think I've outlined all the alternatives
12 that I can think of as to how to reach a resolution of the
13 real problem here. The real problem is not abandonment of
14 Osage Water Company. The real problem is the loss of a
15 large customer base and a lack of revenue resulting
16 therefrom and a lot of debts that have been incurred in
17 trying to preserve that customer base.

18 I'll leave it up to the Commissioners to
19 decide which choice is most appropriate and best serves the
20 public interest. And I thank you for your time and
21 attention here.

22 JUDGE WOODRUFF: Thank you. All right. That
23 concludes the hearing then.

24 For the benefit of the court reporter, I'm
25 going to request that the transcript of yesterday's hearing

1 and today's hearing be expedited and that they be delivered
2 to the Commission by Monday, November the 18th. Anything
3 else that anyone wants to bring up while we're still on the
4 record? Hearing nothing, then this hearing is adjourned.
5 Thank you.

6 WHEREUPON, the hearing was adjourned.

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