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PUBLIC SERVICE COMMISSION

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TRANSCRIPT OF PROCEEDINGS

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In the Matter of an Investigation)

into the Status of Missouri's)

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Natural Gas Local Distribution) Case No. GW-2006-0110

Companies' Compliance with)

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Commission Rule 4 CSR 240-40.018)

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KEVIN A. THOMPSON, Presiding,

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DEPUTY CHIEF REGULATORY LAW JUDGE.

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

2 JUDGE THOMPSON: Good morning. My name is
3 Kevin Thompson. I'm the Regulatory Law Judge assigned to
4 preside over this matter, which is an investigation into
5 the status of Missouri's natural gas local distribution
6 companies' compliance with Commission Rule
7 4 CSR 240-40.018. This is Commission Case No.
8 GW-2006-0110.

9 This case is what we call a working group,
10 which means that it's not, in the opinion of the
11 Commission, a contested case. It's not likely to result
12 in any outcome in which the rights of any individual will
13 be affected. Consequently, the normal rules as to
14 ex parte contact and that sort of thing, the formalities
15 of a trial-type case do not apply. And I have told
16 parties who have contacted me by telephone that they may
17 attend without counsel.

18 The purpose of this is simply a series of
19 meetings which will result in some sort of report to the
20 Commission. Okay? So it is not a contested case. It's
21 not a trial-type case. It is rather a working group.

22 Nonetheless, I'm going to proceed with the
23 procedures that I'm familiar with because otherwise I
24 won't know what to do. So the first thing we'll do is
25 essentially call the roll. In a contested case, we would

1 have the attorneys enter their appearance. Since this is
2 not a contested case, we will instead have everybody in
3 the room tell me who they are and who they represent or
4 who employs them and we'll find out who is here. So
5 remember to speak loudly and slowly for the court reporter
6 so that she'll be able to get this all down.

7 Why don't we start with Public Counsel,
8 since you're the one who essentially got this party going
9 with your motion.

10 MR. MILLS: I'm Lewis Mills. I'm here on
11 behalf of the Office of the Public Counsel and the public.

12 JUDGE THOMPSON: Very well. Work around
13 the table.

14 MR. FISCHER: I'm Jim Fischer with
15 Fischer & Dority, P.C., 101 Madison Street, Suite 400,
16 Jefferson City, Missouri 65101, and I'm appearing today on
17 behalf of Atmos Energy Corporation, Fidelity Natural Gas,
18 Inc. and Southern Missouri Gas Company, LP.

19 MR. BYRNE: Tom Byrne appearing on behalf
20 of AmerenUE.

21 MR. COOPER: Dean Cooper appearing on
22 behalf of Aquila, Inc. and Missouri Gas Utility, Inc.

23 MR. PENDERGAST: Mike Pendergast appearing
24 on behalf of Laclede Gas Company.

25 MR. CASLEY: Chuck Casley appearing on

1 behalf of Missouri Energy Development Association.

2 MR. HACK: Rob Hack appearing on behalf of
3 Missouri Gas Energy, a division of Southern Union Company.

4 MR. WOOD: Warren Wood, here on behalf of
5 Public Service Commission Staff.

6 MR. SCHWARZ: Tim Schwarz, Commission
7 Staff.

8 MR. GLAESER: Scott Glaeser on behalf of
9 AmerenUE.

10 MS. CRUTHIS: Emma Cruthis, AmerenUE.

11 MR. MASSMANN: Jim Massmann on behalf of
12 Ameren.

13 MR. WHEATLEY: Mark Wheatley for the Office
14 of the Public Counsel and the public.

15 MS. MEISENHEIMER: Barb Meisenheimer with
16 Public Counsel.

17 MR. MARTIN: Eric Martin, Public Counsel.

18 MR. CHOE: Kwang Choe, Commission Staff.

19 MR. SOMMERER: Dave Sommerer, Commission
20 Staff.

21 MR. PLEUS: Larry Pleus from Ameren.

22 JUDGE THOMPSON: Very well. I think that's
23 a list of everybody.

24 The documents that have already been filed
25 in this case suggest that it is an investigation into the

1 local distribution companies' compliance with Commission
2 Rule 4 CSR 240-40.018, and that is a rule that requires
3 hedging in order to avoid price spikes. Here it is right
4 here. The official title is natural gas price volatility
5 mitigation.

6 Yesterday in agenda this matter was
7 discussed among the Commissioners, and at least one
8 Commissioner would like an additional topic to be pursued,
9 which is whether or not any kind of improvement can be
10 made to the PGA ACA process that has been in place these
11 40 years. In particular, he'd like to know what other
12 states do, if they do anything different or anything
13 better, or anything worse, I suppose, so we can make sure
14 we don't do that, and whether or not any kind of prudence
15 review can be done more quickly.

16 Let me hasten to say, that is the opinion
17 of one Commissioner, perhaps supported by another. It is
18 not an instruction from the body, the Commission acting as
19 a body, and at this point it's not at all clear that, in
20 fact, the body will adoption that suggestion. I just
21 wanted to let you know what little I know about what's
22 going on. This case will be discussed again tomorrow in
23 the agenda session, presumably in order to settle the
24 issue of exactly what the scope of the case is going to
25 be.

1 But certainly you are at least charged with
2 reviewing compliance with the hedging rule that I just
3 cited to you.

4 Okay. One other thing that came out of
5 yesterday's agenda was a definite direction to seek
6 suggestions from everyone who appears here today. I
7 suppose suggestions in terms of what this group can do
8 that would be useful and beneficial to the companies and
9 to the ratepayers in the state.

10 Okay. So with that being said, the floor
11 is open, and it could be that we will adjourn the recorded
12 portion and leave you to work informally. I don't know
13 how you want to proceed, this being a working group. In a
14 contested case I would say let's set a procedural
15 schedule, when are you going to file your prepared
16 testimony, when are we going to have a hearing, when are
17 you going to file your Briefs, right?

18 But since this is a working group, we are
19 not necessarily going to follow that procedure, although I
20 will state that a big part of Mr. Mills' motivation in
21 seeking this case was to get information on this topic on
22 the record, to have it preserved on the record for
23 whatever purposes can then be made with that record. So
24 we will at some point perhaps take testimony. Is that
25 what you envision?

1 MR. MILLS: It is. And along those, I
2 think -- although you may not want to order a procedural
3 schedule, I think a very good starting point would be to
4 order the utilities to file in perhaps a more narrative
5 and fleshed-out form the information that they've been
6 presenting to the Commission in terms of what they've done
7 so far to comply with the rule and to do what they can to
8 mitigate price spikes for this coming winter.

9 I think most of that work has already been
10 done. I think it could be filed within a matter of a week
11 or two, and I think that would be a very good place to
12 start.

13 MR. PENDERGAST: Judge, from our
14 perspective, we think that's an excellent suggestion, that
15 a lot of work has already been done by our presentations
16 to the Commission regarding what the status of each LDC's
17 efforts are to cope with this nationwide energy problem
18 that we're facing, and having that submitted in this
19 docket seems to me to make a lot of sense.

20 It's also, I think, worth noting, and I
21 think the other LDCs would probably agree with it, we are
22 in unprecedented times because of what's going on at the
23 national level. There are a lot of reasons for what's
24 going on at the national level, very little of which has
25 to do with the conduct and activities of local

1 distribution companies.

2 Nonetheless, we, like our customers, are
3 faced with coping with it, and there are significant
4 operational and other activities that our people have to
5 undertake. Those are the same people that would be
6 presumably involved in presenting and preparing testimony
7 and answering questions and that sort of thing.

8 I think in the long-term interest of our
9 customers, even in the short-term interest of our
10 customers, it's important that we be very concerned about
11 adding additional burdens to those particular individuals
12 at this point in time when they are trying to go ahead and
13 cope with these unprecedented circumstances.

14 I have no reason to believe that Mr. Mills
15 and his office won't be sensitive to that, but I just
16 wanted to go ahead and mention that for the record.

17 JUDGE THOMPSON: I think you raise a couple
18 of very good points. First of all, with respect to making
19 the presentations, some of which have been given, and I
20 suppose some of which have yet to be presented, with
21 making those part of the record in this case, do I hear
22 anybody that's opposed to that idea?

23 (No response.)

24 JUDGE THOMPSON: Okay. Since there's no
25 one opposed, we'll go ahead and direct that that be done.

1 MR. FISCHER: Your Honor, I have a couple
2 of clients that have not had those scheduled, and I wasn't
3 sure, in light of what you're apparently going to do, how
4 you'd like to proceed. Should I visit with the Chairman
5 to get that scheduled or -- for example, Atmos I think has
6 not been directed or scheduled to make a presentation.

7 Southern Missouri Gas, of course, had a
8 hearing on their hedging practices, and their informal
9 presentation has been canceled as a result of that. I
10 don't know. I guess we could either incorporate that into
11 our record here since they're not planning on making
12 another one.

13 JUDGE THOMPSON: Well, that was a question
14 that had occurred to me was whether the record in the
15 hearing that we had last week on the Southern Missouri Gas
16 PGA shouldn't just be made a part of this record. I think
17 that there was a lot of information that came out there
18 that's more pertinent to what's going on here.

19 So if -- why don't I ask you, then, do you
20 have any objection to making that part of the record here?

21 MR. FISCHER: I think the Commission can
22 take official notice of it if they want to and avoid the
23 paper if you like, but --

24 MR. WOOD: There were portions that were
25 highly confidential.

1 MR. FISCHER: That's true, there were some
2 HC.

3 JUDGE THOMPSON: That rating will continue
4 into this case. We'll issue a Protective Order in this
5 case, hopefully today. I'm sure that all of the other
6 companies have the same sort of concerns.

7 As to the companies that haven't given
8 preparations yet, I suppose you should, in fact, meet with
9 the Chairman or get ahold of the Chairman and get those
10 scheduled, and when they're given then you can make the
11 presentation part of the record in this proceeding, unless
12 you see some other way of proceeding that would be better.

13 MR. MILLS: No. I think that's fine.

14 MR. BYRNE: Your Honor, if I could?

15 JUDGE THOMPSON: Yes, Mr. Byrne.

16 MR. BYRNE: Not to just repeat what
17 Mr. Pendergast said, but on behalf of AmerenUE, we
18 completely agree that it's the seam people that are buying
19 the gas, that are managing the process this winter that
20 are going to have to be involved in the process of this
21 case.

22 So we're hopeful that the Commission will
23 balance its legitimate need for information on this topic
24 and the Office of the Public Counsel's legitimate asking
25 for information about this subject with our need to have

1 those people available. And, for example, you know, it's
2 a great idea to file the presentation that's already been
3 given because it's --

4 JUDGE THOMPSON: Because that work's done.

5 MR. BYRNE: That work's done. There may be
6 other examples of work that's already done that we can put
7 in this docket. We ought to be looking for opportunities
8 to do that.

9 Also, hopefully the Commission will be
10 conscious of the effect of widening the scope of this
11 docket on what people have to do, you know. To my mind,
12 this docket ought to be as narrow as it can be and still
13 give the Commission what they legitimately need to look at
14 going into this winter. There ought to be an effort made
15 not to unnecessarily expand the scope of the docket and,
16 you know, lead to a case where all the utilities walk out
17 with 150 data requests to answer.

18 JUDGE THOMPSON: I hear you, and I think
19 the Commission is sensitive to that, but I think you need
20 to recognize, you know, the Commission is a part of the
21 state. Ultimately we're responsible to people that are
22 elected, and as their constituents become concerned or
23 perhaps enraged by the bills that they get in the mail,
24 those people are going to get calls, and they're going to
25 start calling Commissioners, and Commissioners are going

1 to say, we need to do something, we need to be seen to be
2 doing something. There's a crisis. People are upset.

3 You know, here we're having this working
4 group. I mean, in the most rational sense, for example,
5 the best thing the working group could do probably would
6 be to review the PGA ACAs that have been completed most
7 recently, right? Look over the ones that are done, where
8 the audit's been done, and to see whether there has been
9 any prudence disallowances, whether in a looking at the
10 past sense you can say, well, they should have done, this
11 they should have done that.

12 But, of course, that gas was bought before
13 this crisis was upon us. It was a different time. And in
14 a sense this case is about the winter heating season
15 that's right now started, right? So --

16 MR. HACK: From a historical perspective,
17 kind of in line with, the Commission has people up line to
18 whom they report, and assessing the PGA ACA process from
19 the current group of Commissioners certainly doesn't
20 appear out of line, but I think -- and this but is not to
21 take away all that, but I think it needs to be understood
22 that this examination has occurred with relative frequency
23 over the past dozen years or so. There was a working
24 group in 1993. There was a case in 1996 where the
25 Commission looked at it and said, we like the PGA, it's

1 going to stay. There was another working group after the
2 winter of 2001. There were tweaks to the PGA that
3 occurred over the past couple of years.

4 So not to minimize the Commissioners' need
5 for information, a lot of the review and analysis can
6 simply be accomplished by picking up those documents and
7 looking at them.

8 JUDGE THOMPSON: Well, those of you who
9 have knowledge of those documents, why don't you get them
10 into the record?

11 MR. FISCHER: I would add to that that in
12 the case efficiency workshop that we went through, where
13 we looked at all the different types of case, PGA ACA was
14 also a subject of review, although I'm not sure we reached
15 a consensus about how to improve it, but there was
16 certainly a lot of discussions along that line.

17 MR. PENDERGAST: Your Honor, we're
18 certainly sensitive to the fact as prices go up and
19 consumers react that policymakers needs to be in a
20 position to try to explain why that's happening. And the
21 most important thing from our perspective is to make sure
22 they have an understanding of what the causes for this
23 are.

24 JUDGE THOMPSON: Yeah, because, see, you
25 guys are the ones that are going to take it in the neck,

1 so to speak. You're the ones that are selling the gas
2 directly to consumers that are going to get upset, even
3 though you're just passing on prices that you have no
4 control over.

5 MR. PENDERGAST: Yeah, and they need to
6 understand that if they want to have a meaningful impact
7 on those prices over the long term, who they need to talk
8 to, what elected leaders they need to go ahead and direct
9 their concerns at, and what factors are there that have
10 caused this tightening of the markets.

11 Aside from the hurricanes, they need to go
12 ahead and be made aware of the fact that nobody wants to
13 go ahead and open up any areas for production, that it's
14 almost impossible to get anything off the coast of
15 California or the coast of Florida because people down
16 there do not want to go ahead and have their aesthetics
17 disturbed by that, even if it means that people here in
18 the midwest need to pay 4 or \$5 more per MCF for gas.

19 There are a lot of other reasons why we're
20 in the situation we're in now, and it's important to go
21 ahead and make sure that consumers and customers
22 understand what those factors are and what hasn't
23 contributed to this particular situation.

24 You can use hedging. You can kind of
25 smooth these huge increases out a little bit if you like,

1 but it's not going to go ahead and solve the problem and
2 can't solve the problem. And we need to go ahead and
3 educate people as to what can, and if they're upset and
4 they're angry, where they should go ahead and direct that
5 anger at.

6 JUDGE THOMPSON: I agree. Maybe we better
7 put a surcharge on beef and corn.

8 MR. PENDERGAST: Well, I would say you're
9 not going to go to Disneyland this year because you can't
10 afford to do it.

11 JUDGE THOMPSON: Mr. Mills?

12 MR. MILLS: Well, just a couple of
13 comments. One, I think it's maybe a little bit
14 over-generalizing to say that these are prices over which
15 the gas utilities have no control over as Mr. Pendergast
16 points out. There are steps that the utilities can take
17 that can control to some extent the extreme price
18 fluctuations, and I think in the course of this docket
19 we'll see that some utilities have done just that and
20 others have done little or nothing.

21 But in terms of expanding the scope of this
22 docket to review the entire PGA ACA process, while I don't
23 object to doing that again because I'm not sure I
24 particularly like the results that have come out of the
25 last few dozen times it's been done, I'm concerned sort of

1 from the opposite perspective that if we broaden the scope
2 of this docket too much, that nothing will get
3 accomplished, and that we'll simply end up having bitten
4 off more than we can chew and end up at loggerheads over
5 whether or not changes can or should be made to the PGA
6 ACA, at loggerheads over whether or not that's even an
7 issue in this case and we won't get anything done.

8 I think we can realistically tackle the
9 issues that I brought up, which are what have the
10 utilities done, what should they have done, and is the
11 rule adequate. I think all of those are well within the
12 scope of this docket.

13 I think we may certainly come to
14 disagreement over what should have been done. I don't
15 think there's going to be a whole lot of disagreement over
16 what has been done. And I think we may come to
17 disagreement over whether or what should be done to the
18 rule to encourage or require better behavior in the
19 future. But I think those are at least manageable items
20 that we can take up in this docket.

21 I don't object, as I said, to reviewing the
22 PGA ACA process to see if changes need to be made because
23 I think they do, but that may be the scope of another
24 case, and that may be so far beyond this case that it
25 doesn't make sense to try and roll it in here,

1 particularly at the current time.

2 MR. BYRNE: And perhaps another case when
3 it's not -- when the time is not so critical for the
4 people who would have to be involved in it.

5 JUDGE THOMPSON: Well, you might want to
6 show up at agenda tomorrow and mention that to the
7 Commissioners.

8 MR. MILLS: If invited, I would be happy to
9 mention that to the Commissioners, and I will certainly be
10 there.

11 MR. PENDERGAST: One thing I'd like to
12 respond. I agree with Lewis that limiting it to that
13 particular subject is probably helpful. I think there has
14 to be some kind of understanding, though, that when we do
15 talk about compliance with the rule, it's a very vague
16 rule, you know. It sets out various things that LDCs can
17 look at as part of a diversified portfolio approach, but
18 it gives very little guidance as to what LDCs should
19 actually do.

20 It reflects a traditional hesitancy on the
21 part of the Commission and others to pre-approve or be
22 very specific about what kind of behavior is expected.
23 And I think we just have to have an understanding going on
24 that when we're talking about compliance with the rule,
25 it's a very vague and very general rule, and perhaps it's

1 something that could be improved in the future to be more
2 specific and to provide more guidance, and that could be
3 something that would be helpful for everybody.

4 As far as your other suggestion about are
5 there other things that can be done in the near term,
6 perhaps one thing we should discuss today is what can be
7 done as far as obtaining state appropriations for
8 low-income customers. The LDCs in this room are not going
9 to go ahead and benefit in any way from this surge in
10 natural gas prices. In fact, we will probably all suffer
11 financially because of it. The State and local
12 governments will be receiving significant windfalls as a
13 result of this.

14 Is it possible for us to go ahead and join
15 together and recommend that some of that new unanticipated
16 revenue be redirected to help low-income customers cope
17 with their energy bills this year, and perhaps those are
18 some of the things that we can go ahead and talk about
19 that will actually make a difference this winter.

20 JUDGE THOMPSON: Good point.

21 MR. SCHWARZ: I'd like to make a comment,
22 if I might. I don't believe that the present volatility
23 in natural gas prices is unprecedented or should have come
24 as a surprise to anyone. The first harbinger of this sort
25 of activity came in January of 1996 when gas prices shot

1 up from, I don't know, 2 and a quarter to, 2 and a half to
2 \$4, which caused outrage among folks. And, of course, you
3 have 2000-2001 where starting in the spring prices hit 3,
4 4, \$5, causing great concern, and then finally in November
5 and December took real price spikes, which then subsided
6 after January of 2001.

7 So to the extent that there is and has been
8 volatility in the gas market, it shouldn't come as a
9 surprise to anyone in this room in this -- in planning for
10 this heating season.

11 Secondly, I would caution about targeting
12 political subdivisions, particularly municipalities, on
13 terming the increases in their revenues as windfalls.
14 They will have to be paying the increased price for gas
15 just like everyone else, and to the extent that the
16 increases in their revenues are directed at paying
17 significantly increased utility bills, that's something
18 that you need to bear in mind as well.

19 And I don't know where the -- where the
20 line is, but I would urge that the rhetoric be dialed down
21 and the approach be moderate.

22 MR. WOOD: If I may --

23 MR. PENDERGAST: With respect to
24 Mr. Schwarz, I of course am all for moderation in all
25 things, but anybody that looks at the current situation in

1 the gas markets today, what is unprecedented, and I
2 realize that the second hurricane descended from a five to
3 something less than a five, but I'm not sure I recall any
4 circumstance in recorded memory when you had two
5 hurricanes of category five in the same area within three
6 and a half weeks that, unfortunately, happens to be one of
7 the few parts of this country that are hospitable to
8 energy infrastructure off the coast.

9 That is a significant development that I
10 don't recall anybody anticipating earlier. And even if
11 you can anticipate what's happened in the past, you know,
12 we've had price spikes and then prices have gone down.
13 We've had high prices and they've gone even higher. The
14 fact of the matter is, nobody in this room knows which way
15 they're going to go ahead and go.

16 What we do know is they started out high.
17 The anticipation could have very well been that they were
18 at such high levels that they were destined to fall, and
19 then we had two hurricanes, category five hurricanes
20 within the course of three and a half weeks. That is a
21 significant development that I don't think most people can
22 be held responsible for having failed to fully anticipate.

23 MR. SCHWARZ: And that's all quite true,
24 but it also begs the question of a decision-making process
25 that says I'm going to defer gas purchases until late

1 August, early September, a mere three or four months prior
2 to the heating season in question, and that's something
3 that this docket can address as well.

4 JUDGE THOMPSON: Mr. Wood?

5 MR. WOOD: Yes, a couple of points. I was
6 thinking this docket would also likely need to include
7 some information on physical gas purchasing at this time
8 for the winter and the reliability of those supplies. I
9 would think -- as you've indicated, I do think we should
10 definitely take notice of the 2000-2001 Natural Gas
11 Commodity Task Force report.

12 Regarding documentation or incorporation of
13 all the presentations of the different natural gas
14 utilities to the Commission, as indicated previously in
15 Staff's response, we think that's a very appropriate thing
16 to do. Here we have talked briefly about Southern
17 Missouri Gas' PGA hearing record being incorporated into
18 this docket.

19 There was a significant amount of public
20 information in that docket. There was some of it that was
21 highly confidential. We've mentioned a Protective Order.
22 I would want the utilities to be encouraged to maintain at
23 least the level of public information that's previously
24 been provided by Ameren and Aquila in its presentation to
25 the Commission be maintained in the public format in this

1 docket as well.

2 I'm concerned under a Protective Order at
3 this point the information from this point forward, a
4 higher percentage of it or all of it may be proposed as
5 highly confidential information. I wouldn't want to see
6 that happen.

7 JUDGE THOMPSON: Okay. Anyone else have
8 anything to add? What companies have already done
9 presentations?

10 MR. BYRNE: AmerenUE has.

11 MR. COOPER: Aquila has.

12 MR. WOOD: And Laclede is scheduled for
13 Thursday, yes, tomorrow.

14 MR. HACK: MGE is scheduled for, I think, a
15 week from today.

16 MR. WOOD: Missouri Gas Utilities is
17 scheduled for the 18th. And Atmos and Fidelity I believe
18 are the remaining utilities that have not been scheduled.

19 JUDGE THOMPSON: Okay. So UE and Aquila
20 are done. Laclede is scheduled for tomorrow; is that
21 correct?

22 MR. PENDERGAST: That's correct.

23 JUDGE THOMPSON: MGE in a week, Missouri
24 Gas Utilities on the 18th. Atmos and Fidelity haven't been
25 scheduled. SMG canceled, but we do have the transcript

1 from the PGA hearing.

2 Okay. Why don't -- Mr. Byrne, when do you
3 think you can submit the UE presentation material that was
4 already done?

5 MR. BYRNE: Very quickly. By the end of
6 this week, if that's sufficient.

7 JUDGE THOMPSON: And Mr. Cooper, how about
8 Aquila?

9 MR. COOPER: I suspect by the end of the
10 week as well.

11 JUDGE THOMPSON: All right. I'll write
12 down by end of this week.

13 Now, Warren, you referred to a task force
14 report. Is that something you can submit to the record?

15 MR. WOOD: Yes. It's available on our
16 Internet site currently. We can have that filed very
17 quickly.

18 JUDGE THOMPSON: Okay. I'll give you to
19 the end of the week, too.

20 All right. Are there other documents
21 already available that can be submitted we should take
22 notice of?

23 MR. HACK: I think the -- and I can't even
24 remember if there was a docket or not. There was a 1993
25 report prepared, I think by the Staff, regarding the whole

1 process. That was about the time that unbundling had
2 fully occurred at the federal level. I don't even know if
3 I have one of those.

4 MR. SCHWARZ: I think I have one, and it
5 was probably also addressed in GO-94-384 in one -- Part 1
6 or Part 2.

7 MR. HACK: 318, I think it was. There was
8 a Commission Report and Order that ultimately went up on
9 appeal and the Court of Appeals said PGA lawful.

10 JUDGE THOMPSON: Missouri Gas Users?

11 MR. HACK: Yeah.

12 JUDGE THOMPSON: I've read that opinion
13 several times. I still wonder what they say.

14 MR. HACK: You've just got to get to the
15 bottom line.

16 MR. MILLS: They said yes.

17 JUDGE THOMPSON: Everyone knows they said
18 yes, but how they got there, we're still not clear. Since
19 she's on the Supreme Court now, I'm sure that decision
20 won't be disturbed.

21 MR. BYRNE: Your Honor, I think that
22 relative to this winter, at least AmerenUE and I think the
23 other utilities may have gotten a letter from the Staff
24 asking for detailed information about hedging that's in
25 place for this winter and gas supply, and I know we

1 provided this half-inch thick set of paper to the Staff.
2 Now, some of this may be -- we're going to have to go
3 through it and see to what extent it's highly
4 confidential.

5 JUDGE THOMPSON: That's already in the
6 hands of Staff?

7 MR. BYRNE: That's already in the hands of
8 Staff.

9 JUDGE THOMPSON: What is Staff doing with
10 it? You've got it right there?

11 MR. SCHWARZ: I've got it right there.

12 JUDGE THOMPSON: Are you going to put it
13 into the record?

14 MR. SCHWARZ: I hadn't anticipated doing
15 so. We can certainly file them as HC and then have the --
16 the Commission can direct the individual utilities to
17 declassify.

18 MR. BYRNE: It's really got some
19 confidential information in it, though. Most of it's
20 probably confidential.

21 JUDGE THOMPSON: We want to protect the
22 confidential information.

23 MR. MILLS: From what I've seen -- and we
24 haven't actually gotten copies of that, but from what I've
25 seen of the information from at least several of the

1 utilities, it's provided in essentially the same format,
2 which makes it easy to look at Utility A compared to
3 Utility B compared to Utility C and see what they've done,
4 where they are, and I think it would be helpful to get
5 that kind of information in the record. But I agree, some
6 of it is going to be confidential.

7 MR. SCHWARZ: Yes. And I don't know how --
8 I would prefer that not be a this-week project, because
9 information that is commercially sensitive, and there
10 whether be some.

11 JUDGE THOMPSON: Absolutely.

12 MR. SCHWARZ: I don't know that Ameren's or
13 Laclede's stuff or who should be seeing what.

14 MR. HACK: No. And that's a concern, and
15 frankly, you know, we may have to look at the Protective
16 Order. I don't know if there's a --

17 MR. SCHWARZ: And let me suggest we not put
18 those in, or at least discuss not putting them in, because
19 the utilities will be making their individual
20 presentations to the Commission. I think it's far easier
21 to deal with things in that perspective. I don't
22 anticipate that there will be any major differences
23 between what's presented to the Commission and what's
24 been, you know, provided in response to Mr. Henderson's
25 inquiry. That may already have been --

1 MR. BYRNE: In some sense it's backup to
2 what the presentations are to the Commission.

3 MR. SCHWARZ: Has the Commission received
4 copies of those?

5 MR. WOOD: No.

6 MR. SCHWARZ: So I'd like to defer a
7 decision on that until we see.

8 JUDGE THOMPSON: Very well.

9 MR. SCHWARZ: Just from the perspective of
10 how do you keep Peter from knowing what Paul is doing
11 where that's appropriate.

12 JUDGE THOMPSON: I wonder if you could tell
13 me, Mr. Schwarz, is there any kind of summary or report on
14 the most recent round of ACA cases that have been
15 completed indicating any problems that have been
16 encountered or --

17 MR. SCHWARZ: I don't think that we have a
18 summary. There are, of course, Staff recommendations in
19 every ACA case.

20 JUDGE THOMPSON: In each case, right.

21 MR. SCHWARZ: But I don't know that we
22 have -- that Staff has a summary of those.

23 JUDGE THOMPSON: Okay. I suppose if there
24 were any prudence disallowances, we would -- those would
25 be in those recommendations?

1 MR. SCHWARZ: Yes, absolutely, and comments
2 on reliability and comments on purchasing practices and
3 that sort of thing.

4 MR. MILLS: And if you're talking about
5 prudence disallowances in the sense of the Commission
6 ordering a disallowance as a result of a litigated ACA
7 case, I don't believe that you'll find one in the history
8 of Missouri.

9 JUDGE THOMPSON: The way those work, as I
10 recall, is that the Staff files their final accounting and
11 the company has a chance to respond where they either say,
12 yes, we accept those balances or, no, we don't and here's
13 how come. And that's where litigation would occur if it
14 were going to occur, and I should say I don't think it
15 ever has gone from that point through a litigated case to
16 a final decision.

17 MR. SCHWARZ: There was one with Associated
18 Natural Gas where the Commission made a disallowance that
19 was later overturned on the basis of trapping
20 FERC-approved charges.

21 MR. MILLS: Pike County.

22 MR. SCHWARZ: The filed rate doctrine.

23 MR. HACK: There's an old gas service
24 company disallowance in the early '90s. There's been a
25 litigated MGE case, GR-96-450, that is currently on

1 appeal. There is -- there was a litigated MGE case
2 related to the 2000-2001 winter that has been pending
3 decision for many, many months. There --

4 MR. SCHWARZ: The Commission did not make a
5 disallowance in 96-450.

6 MR. HACK: The Commission rejected a Staff
7 proposal.

8 MR. SCHWARZ: Yes.

9 MR. HACK: There is another MGE case that
10 is gearing up for hearing next March, not related to
11 purchasing practices, but there are prudence allegations.

12 MR. FISCHER: There have also been some
13 settled cases where some of those -- there were
14 allegations related, for example, to a company's use of
15 storage, and they were typically settled without having a
16 litigated case with a decision.

17 MR. HACK: Again, that was the 2000-2001
18 winter.

19 JUDGE THOMPSON: Okay.

20 MR. HACK: There were a series of cases
21 there.

22 JUDGE THOMPSON: So there's been a few but
23 not very many.

24 MR. HACK: Too many from my perspective.

25 MR. SCHWARZ: From your current

1 perspective.

2 JUDGE THOMPSON: Maybe not enough from your
3 former perspective.

4 MR. HACK: No. Things change.

5 JUDGE THOMPSON: Okay. Anyone have
6 anything else at this point? Well, why don't I leave you
7 guys to discuss what sort of schedule you see in the sense
8 of what should the next round of activity be, what should
9 be done next, when should it occur. You're the ones who
10 have knowledge of what your employees can or cannot do at
11 the time when they're trying to buy gas as cheaply as
12 possible.

13 All right. And then we typically leave the
14 development of a proposed schedule in the hands of the
15 parties, and I don't see any reason to depart from that
16 here. Everyone has -- there is already some homework
17 that's been assigned. All right. Any objections, screams
18 of dismay?

19 MR. MILLS: Well, some of this, of course,
20 will have to be tentative based on the Commission's
21 discussion tomorrow about where they ultimately want the
22 scope of this case to end up.

23 JUDGE THOMPSON: Well, and I reported to
24 you what I know about that discussion, which is should
25 they add, gosh, let's redo the PGA ACA process, should

1 that be added to the case or not? As some people pointed
2 out, that's already been looked at recently in the case
3 efficiency series of round tables and working groups that
4 were done, I think, just within the last two years.
5 Perhaps there's a result from that that could be adopted
6 or incorporated.

7 There's been -- Mr. Mills, the moving
8 spirit behind this case, has spoken forcefully against
9 including that topic in this case, which is certainly fine
10 with me. My job is just to sit up here and try not to
11 fall asleep. So I don't really care what you have in the
12 case.

13 MR. BYRNE: I think it would be maybe fair
14 to characterize this. Correct me if I'm wrong anybody,
15 but it seems like the parties here at least think it's --
16 including Mills -- think the scope of this proceeding
17 should be narrow. So maybe if no one objects to that,
18 maybe, if asked, you could report that to the
19 Commissioners.

20 JUDGE THOMPSON: I will report that,
21 whether asked or not. I think that's only fair. They did
22 tell me to get suggestions. So the suggestion that I
23 hear, the consensus is that it should be a narrow focus on
24 compliance with the price mitigation rule, right, which is
25 what Mr. Mills originally wanted?

1 MR. MILLS: And the rule itself.

2 JUDGE THOMPSON: Now, that raises an
3 additional point that we haven't visited yet. Mr. Mills
4 has characterized the rule as, I think, toothless was the
5 word you used, and so I think you would like to see --

6 MR. MILLS: That's been thrown up to me
7 several times.

8 JUDGE THOMPSON: You would like to see
9 something added to the rule in penalties. Now, I've heard
10 from Mr. Pendergast that perhaps the rule should provide
11 more positive guidance. Staff's recommendation filed
12 earlier in this docket had a series of caveats, cautions
13 that seemed to say don't get too particular in terms of
14 what you're going to tell the companies to do.

15 So what kind of reaction do we have with
16 respect to changing that rule, making it either stricter
17 or making it perhaps more detailed? Mr. Byrne?

18 MR. BYRNE: Your Honor, I think there's a
19 relationship. If you have a vague rule, it's very
20 difficult to assign penalties for noncompliance. If you
21 have -- the more specific the rule is, then it's -- then
22 it's more appropriate to assign penalties for
23 noncompliance.

24 JUDGE THOMPSON: That certainly makes
25 sense.

1 MR. HACK: From my perspective, the rule
2 is -- if it went up before a court, I think they'd be hard
3 pressed to say what it requires or doesn't require, and I
4 think the phrase vague and overbroad would be likely to
5 result. I don't think it provides much guidance to the
6 companies or the Staff or the OPC or the customers about
7 what actually will be done. I don't think that
8 uncertainty provides benefit to anybody in this process.

9 So, you know, to the extent that as we
10 examine what Mr. Mills has characterized as what was done,
11 what, quote, should have been done, perhaps there will be
12 suggestions that may be generally agreed upon or not to
13 bring some specificity to the rule, more specificity,
14 they'll put some parameters around it so that companies
15 aren't just shooting in the dark.

16 JUDGE THOMPSON: Well, this should be
17 exactly the group of people that can reach a consensus on
18 what is the minimum that an LDC should do in terms of
19 acting in advance to mitigate possible or likely price
20 spikes, right? The whole point of having a rule is that
21 it sets a minimum, right? So you are exactly the people
22 who ought to be able to say, oh, well, the minimum should
23 be X, Y and Z.

24 Mr. Wood?

25 MR. WOOD: I think it may be helpful for

1 the record here, I've heard some discussions regarding the
2 toothless rule, and I'd like to address that. The Natural
3 Gas Commodity Price Task Force created in response to the
4 gas price spike of 2000-2001 was put together with the
5 objective of looking at a number of aspects regarding gas
6 purchasing prudence of those purchases.

7 One of the issues brought up time and time
8 again from several different parties, including some of
9 the people in this room, was the fact that there was not a
10 Commission policy statement or state government policy
11 position of any type regarding the need to participate in
12 hedging.

13 And there were some discussions going on in
14 different states regarding if it was appropriate to be
15 participating in spending dollars toward hedging and
16 recognizing that at times those efforts may result in gas
17 prices to customers that are over the market because
18 certain fixed price contracts or purchasing practices have
19 been put in place and the market dropped.

20 The policy statement of that task force was
21 strongly supported by the industrials, the Staff, the
22 Office of the Public Counsel and the utilities at that
23 time, and that rule implemented the policy statement, much
24 of it verbatim from the policy statement of that task
25 force.

1 What it provided for at that time was a
2 policy statement of the Commission that said you should
3 indeed be considering participating in these programs to
4 look at mechanisms to mitigate gas price volatility and
5 gas price spikes, with a recognition that these efforts at
6 times may result in gas prices that are over the market,
7 and that is a recognized possible result of those efforts.

8 So to the degree we want to change it from
9 a Commission policy statement or advisory statement may be
10 appropriate for these discussions, but as a number of
11 folks have indicated, it doesn't necessarily say that you
12 shall do X, Y or Z. It recognize that there are benefits
13 and risks of those different approaches, and that
14 utilities if they had any doubt if they should consider
15 implementing these mechanisms, they should indeed
16 implement these mechanisms as a matter of Commission
17 policy, or at least consider them, and if they decide not
18 to, have some documentation as to why they have not.

19 JUDGE THOMPSON: Well, if I could comment,
20 we are in a situation now that is unusual. There's been
21 some different views discussed, offered as to whether it
22 was unpredictable or that it's unprecedented or just how
23 unprecedented it is. But the point is, I guess, that
24 prices, already high, have suffered further impact from
25 these two unexpected and unforeseen hurricanes that

1 happened to strike the single area in the country where
2 people are happy to have gas wells.

3 So we may be entering a period when the
4 Commission will be more interested in disallowing costs.
5 I don't know. But every one of those consumers who picks
6 up the phone and makes an angry call is creating some
7 small quanta of pressure to do something to control
8 prices, whatever that might be, whether it's
9 disallowances, whether it's more rules, whether it's
10 investigations like this or some combination of those
11 things and other things that I haven't foreseen.

12 It's a new era, and it may be an era in
13 which the companies will actually be protected by having a
14 rule that says do this, right, as opposed to a vague
15 statement. You know, the trouble with a vague statement
16 is it cuts both ways, right? The present one just says --
17 and I guess that was a step forward from having no policy.
18 It's a step forward to have a rule that says we have a
19 policy and that is you should do something. What, we're
20 not going to say, but something.

21 And if we're going to move into a situation
22 where there's a lot more finger pointing and people after
23 the fact saying, hey, whatever it is you did, it wasn't
24 enough or it wasn't right because look what I've got to
25 pay and I can't afford it, then it might be better for

1 everybody if there's a rule that is more specific and
2 says, well, you shall at least do this. I see there's a
3 lot of responses now.

4 MR. SCHWARZ: I would suspect that Tom's
5 and mine's might actually be parallel at this stage. You
6 need to disabuse not only the Commission but the general
7 public that a hedging rule is going to result in lower
8 prices. What will result in lower prices is people
9 turning their thermostat down five degrees, wearing
10 sweaters, reducing demand, possibly doing something or
11 encouraging increases in supply.

12 But while there are things that the
13 utilities can do with the blessing of the Commission to
14 dampen sudden surges in the price of natural gas, there's
15 not much that either the LDCs or the Commission can do
16 about the general price level. That is, there is nothing
17 that anyone in this room can do to return us to the days
18 of \$2 or \$2.50 natural gas. That's not on the horizon.

19 JUDGE THOMPSON: I understand, and that's
20 why I say it may actually be a benefit to the companies to
21 have a rule saying here's what you've got to do and no
22 more.

23 MR. SCHWARZ: But it needs to be made clear
24 that if the expectation is that the LDCs or the Commission
25 have somehow failed in duty or an opportunity to secure

1 low price gas, that needs to be dispelled from the outset.

2 MR. MILLS: No. I think that's one of the
3 things we need to investigate. We can't jump to the
4 conclusion that there were opportunities that -- that
5 there weren't opportunities that were missed, which is I
6 think what you just suggest. I think that's one of the
7 reasons we're here.

8 MR. SCHWARZ: That is not what I am
9 suggesting. I'm suggesting that the absolute price levels
10 are beyond the control, not only of the Commission, but of
11 the LDCs as well. And while a strategy that works in a
12 rising market is to be applauded, that same strategy in a
13 falling market might be the source of discontent, just as
14 much as the lack of one in a rising market is.

15 And it's -- to the extent that there might
16 be an expectation that someone in this room can do
17 something about whether gas is \$7 or \$9 or \$11, you need
18 to dispel that from the get-go.

19 JUDGE THOMPSON: Mr. Byrne?

20 MR. BYRNE: I'd like to, I guess, agree
21 with Mr. Schwarz. I mean, I think our experience is that
22 hedging doesn't -- in the long run, hedging doesn't save
23 money. In fact, it probably costs more to hedge gas
24 supply than if you didn't hedge it. What it does is it
25 dampens the volatility, smooths out the peaks and valleys.

1 JUDGE THOMPSON: But ultimately may cost
2 more, is that what you're saying?

3 MR. BYRNE: Yeah.

4 MR. SCHWARZ: That's stated in the current
5 rule.

6 MR. BYRNE: I'd also like to agree with --

7 JUDGE THOMPSON: That may be a message you
8 need to get to the Commissioners.

9 MR. BYRNE: And I'd also like to agree with
10 Mr. Wood that I do think that at the time -- you know, I
11 worked on that rule and worked on the -- other people from
12 UE did, and I think it was a pretty material step forward.

13 I mean, until that rule came along, you
14 couldn't -- you couldn't be sure that the Commission
15 wasn't going to say, you know, you shouldn't be hedging at
16 all and all hedging costs would be thrown out the minute
17 they turned against you. I mean, that was the environment
18 we were in before that rule came along. So I do think it
19 was a helpful policy thing for the Commission to do.

20 Now, the problem is if you want to
21 become -- if you want to have a rule that's more specific,
22 and I guess there are some benefits to having a rule
23 that's more specific. I certainly don't think that
24 penalties should be applied against anyone unless there's
25 a specific rule where you can clearly tell what you're

1 supposed to do and what you're not supposed to do.

2 But if you're going to -- if you're going
3 to have a rule that has specifics, the problem is
4 conditions change. What looks like -- what looks like a
5 good requirement for right now might be a terrible
6 requirement in a different market or in different
7 conditions. And so it's very hard to put specifics on a
8 rule like that that will stand the test of time and that
9 will -- that will apply no matter what happens with the
10 market or how many hurricanes you have or don't have.

11 JUDGE THOMPSON: Unless the rule was
12 something like each company shall present to the
13 Commission by X date its hedging plan for the upcoming
14 year, which the Commission will review and, if approved,
15 then the company has an approved hedging plan in place.

16 MR. BYRNE: Sure.

17 JUDGE THOMPSON: If there's a problem and
18 the weather's not what is expected or there's a series of
19 hurricanes, you say, hey, you approved the plan.

20 MR. FISCHER: Judge, I would also caution
21 as a representative of some very small LDCs that a rule
22 that is very specific and one size fits all may be very
23 difficult to develop because I think based upon the small
24 companies' perspective and the record we've seen, they
25 don't have the same options available. They don't have

1 storage available. They don't have the number of
2 financial instruments that are included in the rule
3 available.

4 And to the extent that we try to develop a
5 very specific rule that applies to an electric and gas
6 utility's hedging practices and one that has less than a
7 thousand customers, it may be very difficult.

8 MR. PENDERGAST: I don't disagree with what
9 anybody has said. I think the challenge is, is there
10 something that could provide more guidance than the
11 current rule does yet not be so restrictive that you're
12 coming up with framework that may not work well in
13 environments that can change and change rapidly.

14 I don't know that it's a choice between
15 being completely vague and providing nothing but sort of a
16 let's just assure everybody that when you go out and do
17 these costs may be higher than they otherwise would be and
18 saying this is exactly what you do and how much call
19 option you buy and how much fixed price contracts you'll
20 have. There's probably something in between that would go
21 ahead and be helpful.

22 I guess as a historical note, you know, the
23 hedging rule I think was a positive step forward, but I
24 don't think we want to lose sight of the issue that there
25 were more specific guidelines and standards that were once

1 approved by the Commission and utilized by at least some
2 utilities where the Commission was very specific about how
3 much of their gas supply should be covered, what kind of
4 instruments should be used, and what sort of a safe harbor
5 utilities would have if they went ahead and utilized those
6 instruments.

7 I believe it was after the winter of '96
8 the idea was to use call options, cover 70 percent of your
9 volumes. Those call options were procured over a
10 reasonable period of time at market rates, that that would
11 be okay. And we went from that very specific to having
12 nothing for a while, from what I remember, to having this
13 rule that, you know, we all have our different
14 perspectives on how vague it is.

15 I do think it's helpful, but it does not
16 provide the kind of guidance that was provided at one
17 point in time. And people have a lot of different reasons
18 as to why it didn't or shouldn't, but I don't think we
19 want to lose track of the fact that that specific kind of
20 guidance was offered at one point.

21 Another item I think we need to keep in
22 mind, I think it was the Associated case, you know, if
23 you're interested in taking a look at potential prudence
24 evaluations and disallowances and that sort of thing, I
25 believe the test at least under that Western District

1 Court of Appeals, you've got to establish two things.
2 You've got to establish that, No. 1, the utility was
3 imprudent, and No. 2, that it had an adverse impact on its
4 customers.

5 The fact of the matter is, nobody in this
6 room today knows whether somebody hedging or not hedging
7 or not hedging enough or not hedging in the right way is
8 necessarily going to go ahead and have an adverse impact,
9 Unless somebody knows what the price of gas is going to be
10 throughout this winter.

11 And so from the standpoint of making any
12 kind of determination as to whether or not some sort of
13 disallowance should be pursued, I don't know how you'd do
14 it until the winter's over. It shouldn't be based on
15 hindsight, obviously. You know, if you do anything, it
16 would have to be based on the facts and circumstances as
17 we knew it at the time these events were happening.

18 But from the standpoint of saying that you
19 actually have something to disallow at this point, nobody
20 knows that and won't for a number of months.

21 JUDGE THOMPSON: Mr. Wood?

22 MR. WOOD: While I very much appreciate the
23 discussion on the idea of fixing certain aspects of the
24 rule, as noted in the task force report that will be
25 entered into the record before the end of the week, there

1 were quite a few discussions regarding putting more detail
2 in the rule. And while I think there may be some room to
3 place percentages of gas costs that should be fixed prior
4 to the beginning of winter season, the number of years
5 that that planning cycle should take place over, when we
6 begin to get into more detail, I think as Mr. Pendergast
7 pointed to, saying the percentage of calls, fixed price
8 contracts, things like that, that does become -- somewhere
9 between giving some percentage and specifying exactly how
10 it becomes problematic.

11 In the rule there's some notes regarding
12 management decisions and the cost and benefits of those
13 different possibilities. I think putting a rule out that
14 very specifically nails down every last aspect would be
15 quite problematic, if for no other reason than the fact
16 that our storage percentages, the size of our utilities,
17 if they have propane facilities or not change their
18 availability to do different things.

19 You mentioned the interesting idea of the
20 hedging plan presentations to the Commission well in
21 advance of the time period of the winter, such as in the
22 spring or some other time when those plans are being
23 finalized. I think that's an interesting one. It was one
24 of the ones I have on my bullet list of things to talk
25 about today as a possibility. So I thank you for that.

1 JUDGE THOMPSON: Anyone else?

2 Okay. I'm going to leave you guys to work
3 out a schedule as to what should happen next. Who would
4 like to report on that to me?

5 MR. MILLS: I will.

6 JUDGE THOMPSON: Very well. Mr. Mills,
7 we've given you some homework, to do. Anything else we
8 need to do on the record? Do you want to continue your
9 discussions on the record?

10 MR. MILLS: I don't think we need to be on
11 the record.

12 JUDGE THOMPSON: In that case, we will
13 adjourn the recorded portion of this meeting. Kellene,
14 thank you very much for your efforts. If anybody wants a
15 transcript, get in touch with her.

16 Thank you, and I will report back to the
17 Commission.

18 WHEREUPON, the recorded portion of the
19 prehearing conference was concluded.

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