

OFFICIAL CASE FILE

Exhibit No. 25

Date 9-21-01 Case No. 1296-450

Reporter xf

STATE OF MISSOURI

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Missouri Public
Service Commission

MAY 20 1996

PUBLIC SERVICE COMMISSION

TRANSCRIPT

OFFICIAL CASE FILE

CASE NO. : GR-94-228

In the matter of Missouri Gas Energy's tariff revisions for the former Gas Service area (exclusive of the Palmyra area) to be reviewed in the actual cost adjustment for the period February 1, 1994 through June 30, 1994.

CASE NO. : GR-94-101

In the matter of Gas Service, a Western Resources company, tariff sheets reflecting PGA changes to be reviewed in the company's 1993-1994 actual cost adjustment.

DATE : MAY 6, 1996

PAGES : 1 TO 97, INCLUSIVE
140 TO 154, INCLUSIVE (INDEX: 151-154)

VOLUME NO.: ONE

OFFICIAL CASE FILE

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STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

At a Hearing of the Public Service
Commission, held at Jefferson City,
Missouri, on the 6th and 7th
days of May, 1996.

C O N S O L I D A T E D R E C O R D

CASE NO. GR-94-228

In the matter of Missouri Gas Energy's
tariff revisions for the former Gas
Service area (exclusive of the Palmyra
area) to be reviewed in the actual
cost adjustment for the period
February 1, 1994 through June 30,
1994.

CASE NO. GR-94-101

In the matter of Gas Service, a
Western Resources company, tariff
sheets reflecting PGA changes to be
reviewed in the company's 1993-1994
actual cost adjustment.

1 **BEFORE:**

2 **JOSEPH A. DERQUE III, Presiding,**
3 **ADMINISTRATIVE LAW JUDGE.**
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15 FOR: Staff of the Missouri Public
16 Service Commission.

1 PROCEEDINGS

2 (Written Entries of Appearance filed.)

3 ALJ DERQUE: We're on the record in the
4 matter of Consolidated Cases No. GR-94-101 and
5 GR-94-228 in the matter of Gas Service, a Western
6 Resources company, actual cost adjustment of '93 --
7 1993-94, and Missouri Gas Energy, exclusive of the
8 Palmyra district, actual cost adjustment for the
9 period February 1, '94, through June 30th, 1994.

10 I have filed in this case two Stipulations
11 and Agreement. One is styled "Unanimous Stipulation
12 and Agreement," filed December 14th, 1995.

13 Is that stipulation still in effect? Is it
14 still accurate?

15 MR. DUFFY: It is, your Honor.

16 ALJ DERQUE: Okay.

17 MR. BREGMAN: Yes.

18 ALJ DERQUE: Mr. Bregman?

19 MR. BREGMAN: Yes, it is.

20 ALJ DERQUE: Okay. The Staff?

21 MR. KEEVIL: Yes.

22 ALJ DERQUE: And Mr. Micheel?

23 MR. MICHEEL: Yes, sir.

24 ALJ DERQUE: Okay. Have there been any
25 changes in that Stipulation and Agreement?

1 MR. DUFFY: No, your Honor.

2 ALJ DERQUE: Okay. I assume the parties
3 want the Commission in its Report and Order to act on
4 that stipulation also?

5 MR. DUFFY: We would have preferred that the
6 Commission acted on it before now, but as soon as
7 possible, sure.

8 ALJ DERQUE: I have --

9 MR. CONRAD: Your Honor, a couple of us -- I
10 guess it's the early onset of Alzheimer's, but we
11 can't recall precisely what that stipulation was
12 about. We're not arguing about it yet.

13 ALJ DERQUE: There was originally five
14 issues in the Staff's recommendation, Mr. Conrad.
15 This stipulation deals with three of them.

16 MR. DUFFY: You signed the agreement,
17 Stuart, and it was filed in December. But the
18 Commission has -- according to my search of the files,
19 the Commission has never issued an order explicitly
20 approving the Stipulation.

21 ALJ DERQUE: No, they have not.

22 MR. CONRAD: Were we identifying issues in
23 that?

24 ALJ DERQUE: Yeah. I'm going to identify
25 those for you in a moment.

1 Storage inventory, take or pay account, and
2 either assignment of gas supply contracts or gas
3 procurement contract process. Do you remember -- does
4 anyone remember which one? It's one or the other.

5 MR. KEEVIL: It's assignment, I think.

6 ALJ DERQUE: Assignment?

7 MR. KEEVIL: Yeah, assignment of gas supply
8 contracts, storage inventory and take or pay account.

9 ALJ DERQUE: Take or pay account.

10 MR. DUFFY: I think in this situation,
11 Stuart, you didn't sign the original, but I think you
12 sent a letter afterwards saying that you agreed with
13 it, or didn't oppose it.

14 MR. CONRAD: Okay.

15 ALJ DERQUE: Yeah. December 14, 1995, and
16 this letter -- "This letter will indicate that Midwest
17 Gas Users Association has no objection to and joins in
18 the Unanimous Stipulation and Agreement."

19 MR. CONRAD: Okay.

20 ALJ DERQUE: I assume -- I assume that
21 represents -- effectively represents the signature on
22 this agreement by your client. Is that correct,
23 Mr. Conrad?

24 MR. CONRAD: That should. I just simply
25 could not recall, your Honor, what we had here in the

1 file. This thing has stretched on so long.

2 ALJ DERQUE: Do you want a moment to make
3 sure?

4 MR. CONRAD: No. That's fine. They have a
5 copy here, and I recall it now. Thank you.

6 ALJ DERQUE: Okay. I have an agreement of
7 May the 2nd, 1996, captioned "Stipulation and
8 Agreement," which is not signed by Missouri (sic) Gas
9 Users Association and by Williams Natural Gas.

10 MR. KEEVIL: It should be Midwest Gas Users,
11 I believe.

12 MR. CONRAD: Did that not get corrected?

13 ALJ DERQUE: Wait a minute. What's your
14 client's name, Mr. Conrad?

15 MR. CONRAD: Midwest Gas Users Association.

16 ALJ DERQUE: That's what I thought. Isn't
17 that what I said?

18 MR. KEEVIL: You said "Missouri Gas Users."

19 ALJ DERQUE: Ah. Midwest Gas Users. I knew
20 that. Midwest Gas Users Association.

21 Mr. Brownlee?

22 MR. BROWNLEE: What?

23 ALJ DERQUE: Are you familiar with this
24 Stipulation and Agreement?

25 MR. BROWNLEE: Yes.

1 ALJ DERQUE: Okay. Your client, Williams
2 Natural Gas, did not sign the Stipulation and
3 Agreement; however, in regard to the issue that it
4 purports to settle, which is the issue styled "The
5 Mid-Kansas Riverside Pipeline Contract"; is that
6 correct?

7 MR. BROWNLEE: Yes.

8 ALJ DERQUE: Is that accurate? Okay. In
9 regard to that issue, does your client waive rights to
10 litigate and/or appeal that issue?

11 MR. BROWNLEE: Yes.

12 ALJ DERQUE: Okay. Mr. Conrad, your client,
13 Midwest Gas Users, did not sign the agreement. Does
14 your client waive rights to litigate and/or appeal
15 that issue?

16 MR. CONRAD: We sent -- your Honor, we sent
17 down a letter addressed to Rob Hack at his request
18 that was dated May 1. It was my understanding that he
19 was going to submit that along with the stipulation
20 package which states our position. I would be glad to
21 read that or refer your Honor to that.

22 ALJ DERQUE: I've read -- I've read that
23 letter, Mr. Conrad. Does your client waive the
24 right -- the due process right to litigate and appeal
25 the issue that is purported to be settled in the

1 Stipulation and Agreement of May the 2nd, '96?

2 MR. CONRAD: Well, subject to the conditions
3 in that letter, we do.

4 ALJ DERQUE: Okay. I'm not -- I won't
5 guarantee this assembly that we won't be litigating
6 that issue. I will have to take the letter and submit
7 it to the Commission and see if it's acceptable.

8 MR. BROWNLEE: You said you don't guarantee
9 that we're not going to litigate that issue?

10 ALJ DERQUE: No, I do not, Mr. Brownlee.
11 It's not a unanimous stipulation and agreement. I've
12 read the letter, and I've read it once, but I have not
13 sat down and seriously considered it for what it may
14 purport to say.

15 Yes, Mr. French.

16 MR. FRENCH: Judge, at the very worst, isn't
17 it true the Commission rules provide that Mr. Conrad
18 has a certain number of days in which to file a notice
19 of protest and stipulation? I believe it's five
20 working days.

21 ALJ DERQUE: Yeah, it is. In the rule, it
22 is.

23 MR. FRENCH: If he has not filed that, then
24 the Commission shall treat the Stipulation and
25 Agreement as unanimous.

1 ALJ DERQUE: No. It says that he waives his
2 right to a hearing is, I believe, what it says.

3 MR. DUFFY: Judge, it also says that it will
4 be treated as a unanimous stipulation, I believe, if
5 you read further in the rule.

6 ALJ DERQUE: It says "Constitute waiver of
7 the party's right to a hearing, Mr. French. As I --

8 MR. FRENCH: Paragraph 2 --

9 ALJ DERQUE: -- said, the Commission will --
10 pardon me?

11 MR. FRENCH: Paragraph 2 above that, I
12 think, says that the Commission shall treat it as
13 unanimous.

14 ALJ DERQUE: As unanimous, that's correct.
15 I'm not -- I'm not sure that -- I'm not convinced that
16 that's effective, legally -- legally sufficient.

17 MR. DUFFY: That the Commission's rule is
18 not legally sufficient? Is that what you're saying?

19 ALJ DERQUE: No. There is one on appeal
20 right now, back from appeal, in fact, Mr. Duffy, that
21 involves --

22 MR. DUFFY: Well, I understand that, but --

23 ALJ DERQUE: -- something of the same
24 situation.

25 MR. DUFFY: -- but I didn't think there was

1 anybody attacking the validity of the Commission's
2 rule.

3 ALJ DERQUE: Well, that I can't tell you.
4 It's not my case, and I don't know. I'm not familiar
5 with it, but this has been kind of a -- as I said, I
6 will present it to the Commission, and they will, I'm
7 sure, determine.

8 MR. DUFFY: Well, I guess -- I can't speak
9 for all of the parties, but I guess we would be -- I
10 would be interested in how you frame that issue to the
11 Commission since we might have a viewpoint on that
12 question and -- and would not want to be, you know,
13 left out of that discussion. If you're going to pose
14 the question -- or pose the argument to the Commission
15 that this stipulation is somehow invalid, then I think
16 some of us might want to comment on that, or have the
17 ability to comment on that.

18 ALJ DERQUE: I'm not going to pose that
19 argument, Mr. Duffy. I'm going to present it to the
20 Commission in as neutral a fashion as possible.
21 That's typically the way I do my job.

22 MR. BROWNLEE: I'm a little confused. The
23 only person that seems to be -- that could get harmed
24 by this first issue being litigated is, I guess, my
25 client and potentially Mr. Conrad's client. I mean,

1 if the Commission goes ahead and wants to take up
2 the -- the first issue, the one that we believe is
3 settled, then I think we ought to --

4 ALJ DERQUE: You mean --

5 MR. BROWNLEE: -- I mean, we ought to be
6 able to get back into the game.

7 ALJ DERQUE: On the Mid-Kansas Riverside
8 issue?

9 MR. BROWNLEE: Yeah. Right. Yes.

10 ALJ DERQUE: Well, you will certainly have
11 the opportunity. Everybody will have the opportunity
12 to get back in the game.

13 MR. BROWNLEE: Okay. But, I mean, I'm
14 waiving my appeal and the hearing on that issue --

15 ALJ DERQUE: That's right.

16 MR. BROWNLEE: -- pending the fact the
17 Stipulation is accepted. Obviously, if it isn't, I
18 want my testimony to go to that issue. I want to be
19 able to brief it and all of the rest of the tended
20 rights.

21 ALJ DERQUE: That's correct, and that's
22 understood on the record.

23 One moment, Mr. Conrad.

24 Do you have any statement in this regard to
25 make for the record, Mr. Bregman?

1 MR. BREGMAN: Only that -- I agree with
2 Mr. Duffy. It may be appropriate for us to have -- if
3 this is an issue, the opportunity to put some short
4 argument in our brief supporting our position that
5 this is, in fact, a settled issue.

6 We certainly are on the other side of
7 Mr. Brownlee's position. He said that the only
8 party that -- parties that stand to be injured by this
9 are Williams and MGUA if this case gets litigated.
10 Well, the three parties that are most -- I guess there
11 are four parties -- directly involved in the issue,
12 Staff, Riverside, MGE and Western Resources, settled
13 this in order to put it behind them and also specify
14 what the amount to be paid would be and to eliminate
15 the risk associated with litigating that in both
16 directions.

17 So, obviously, we would be injured in the
18 event --

19 MR. BROWNLEE: You're right.

20 MR. BREGMAN: -- the Stipulation is not
21 approved, because we would lose the benefit of that
22 stipulation, as would the Staff, as would the other
23 parties.

24 ALJ DERQUE: As opposed to trying the issue?

25 MR. BREGMAN: No. What I'm saying is that

1 we have a stipulation that tells us what our
2 obligation is, and the purpose of that stipulation was
3 to eliminate the risk and the expense of going forward
4 with litigation, so we would obviously be harmed if
5 the stipulation isn't used. We would like to avoid
6 that.

7 ALJ DERQUE: Mr. Duffy, do you have anything
8 further to add?

9 MR. DUFFY: No, just my belief that
10 Mr. Conrad's letter dated May the 1st, I believe, has
11 the effect of indicating that he does not oppose --
12 does not oppose settlement of the specific issues
13 addressed by this stipulation. And I believe the
14 Commission's non-unanimous stipulation rule then makes
15 that into a unanimous stipulation, which I believe the
16 Commission should approve.

17 ALJ DERQUE: Okay. Mr. Keevil?

18 MR. KEEVIL: I agree with what Mr. Duffy and
19 Mr. Bregman have just said. It's been my
20 understanding for -- I know it's been the practice for
21 several years that letters such as Mr. Conrad's have
22 been deemed to convert non-signatory stipulations to
23 non-unan-- to unanimous stipulations.

24 And as far as -- I mean, everybody in the
25 case stands to be hurt, really, if it goes to hearing

1 because everyone agreed to something in the
2 Stipulation that I'm sure they wouldn't have otherwise
3 agreed to were they not receiving the benefits -- the
4 other things in the Stipulation which they deemed to
5 be beneficial to their position. And I think everyone
6 who signed it did so in good faith.

7 And I think Mr. Conrad's and Mr. Brownlee's
8 position is understandable considering that their
9 clients weren't directly involved in that issue, and
10 really they had no basis on which to judge whether or
11 not it was a good deal. Therefore, I think what
12 they've done by submitting letters is understandable
13 and in accordance with fairly well-established
14 practice around here.

15 So like I said, I would agree with what
16 Mr. Duffy and Mr. Bregman said awhile ago.

17 ALJ DERQUE: Mr. Micheel?

18 MR. MICHEEL: I think the non-unanimous
19 stipulation rule makes it a unanimous stipulation.
20 And I know that's not the issue on the MOPUB appeal
21 which your Honor referred to.

22 ALJ DERQUE: Probably not. Right at this
23 time, it isn't.

24 MR. MICHEEL: You know, that's an appeal our
25 office had taken, so I would just echo what everyone

1 else has said.

2 ALJ DERQUE: Okay. Mr. Conrad?

3 MR. CONRAD: Well, seeing as how we have,
4 through the attempt to be helpful, caused the problem,
5 let me just restate what our understanding is. The
6 stipulation that is before the Commission, at least
7 the one I believe that was filed May 2 -- am I
8 correct -- was intended to, and it's my understanding
9 that it is limited to settlement of that one issue.

10 Now, that one issue has a number of
11 subpoints to it, but that one issue has been generally
12 described by the parties as the Mid-Kansas/Riverside
13 issue and involves issues regarding the prudence or
14 lack thereof of certain parties contending that
15 actions made with respect to a series of contracts or
16 group of contracts were arguably prudent or were
17 arguably imprudent, and that's what's being resolved,
18 or would be proposed to be resolved.

19 Midwest did not take an explicit position on
20 that -- that group of issues so characterized. We did
21 not put evidence in on that particular issue, that
22 group of issues so characterized. And it was not my
23 intent in sending Mr. Hack this May 1 letter, which
24 frankly I had viewed as intended to be an
25 accommodation to him and to the Commission to get by

1 this issue rather than something to inject additional
2 controversy into the process. And I'm sorry if that
3 wasn't clear. I know I had that discussion with
4 Mr. Hack and not with everybody else on some
5 conference call.

6 It is however my intent that we could not
7 sign that stipulation that is proffered and be a
8 supporting or acquiescing party thereto because that
9 stipulation involves waiver of appeal, waiver of
10 rights of rehearing, waiver of certain other things
11 that are broader in their statement than this
12 particular issue.

13 Were it -- were everything that was involved
14 in this case just that group of issues, Mid-Kansas/
15 Riverside, I don't think we would have a problem with
16 it. It's where it's -- I have grown out of an
17 abundance of caution out of the last number of years
18 practicing down here and have unfortunately seen
19 stipulations and agreements stretched beyond what
20 their -- their explicit terms say.

21 So about the only way that I can deal with
22 that is to say, "Okay. We want to preserve to our
23 position the right to appeal, the inclusion of take or
24 pay, and transition costs as a part of this PGA that
25 is being passed through to transportation customers."

1 That's the vehicle that's being used, and this is the
2 only forum in which I can address that issue.

3 It's not our intent in this context to offer
4 evidence on that, but it remains a legal issue and it
5 is one as to which I am not yet willing to waive the
6 right of appeal as to the specific narrow issue of the
7 Mid-- Mid-Kansas/Riverside issues.

8 We have not taken a position and we do not
9 have -- and I tried to state it here -- we do not have
10 any opposition to the stipulation that the parties
11 have proffered to the Commission as long as it is
12 limited to that specific issue and does not go beyond
13 that to cover other issues that may or may not be in
14 the case. There is not even clarity as to the issue
15 in the case. So I'm not willing to -- to waive issues
16 that parties are not willing to accede are there.

17 I am willing to waive as to that particular
18 narrow issue which I understood the discussions and
19 the negotiations to be. That was the purpose of my
20 May 1 letter, was to say, if you -- if you blue
21 pencil, if you will, that one issue and just say
22 that's all that we're dealing with, fine. Then we
23 have no objection. If you attempt to go beyond that,
24 then I've got to reserve some rights and some
25 positions.

1 I don't know if that helps your Honor any.
2 Again, I'm not -- we're not trying to bring ten
3 witnesses down here and engage in a back and forth
4 between Riverside and Williams or anything like that.
5 That's not what we're about. I'm just simply trying
6 to protect my client's interest and basically get by
7 this hurdle for the other parties.

8 MR. DUFFY: Mr. Derque?

9 ALJ DERQUE: Thank you, Mr. Conrad.

10 Yes, sir.

11 MR. DUFFY: At the risk of belaboring this,
12 Mr. Conrad made a statement that gives me some
13 concern. I would direct everybody's attention to the
14 last line on Page 8 of this stipulation.

15 Mr. Conrad made a statement that he thought
16 that the parties were waiving appeal and briefing on a
17 broader scope of issues, and I respectfully disagree
18 with that. I look at Paragraph 11 that begins at the
19 bottom of Page 8 of the Stipulation, and it says, "In
20 the event the Commission accepts the specific terms of
21 this stipulation, the signatories waive with respect
22 to the issues resolved herein . . ." and then it goes
23 on.

24 And I believe that that was put in there
25 specifically to reflect that we were only waiving

1 these things on the Mid-Kansas issue because that's
2 the only issue that's resolved in this stipulation.
3 So just so the record is clear, I don't think other
4 parties share Mr. Conrad's belief that this waiver is
5 as broad as perhaps he intimated.

6 ALJ DERQUE: Mr. French?

7 MR. FRENCH: I agree with Mr. Duffy's
8 comments. The Stipulation was designed only to
9 resolve the issues addressed therein, and I believe
10 Mr. Conrad's comments were sufficient to allow this
11 Commission to approve the Stipulation and Agreement.

12 ALJ DERQUE: Mr. Brownlee?

13 MR. BROWNLEE: I don't think I could add
14 anything that would clarify the situation at this
15 point.

16 ALJ DERQUE: Okay. Okay. On the issue --
17 let's see. On the issue at hand, is there any
18 preferred order of opening statements?

19 MR. KEEVIL: That being the OXY issue that
20 is the contested issue.

21 ALJ DERQUE: The issue at hand, yeah, the
22 contested issue.

23 MR. KEEVIL: Well, suddenly the Stipulation
24 became an issue, so I wanted to clarify exactly what
25 we were talking about.

1 MR. BROWNLEE: Could we -- for those of us
2 who could probably at least thin the ranks down, is
3 there any way we would maybe mark these stipulations
4 as Exhibits 1 and 2 and then go ahead and mark some of
5 the testimony? Is that --

6 ALJ DERQUE: Is it the intent of the parties
7 to enter the May the 2nd, '96, Stipulation and
8 Agreement along with testimony?

9 MR. KEEVIL: Yes.

10 MR. BROWNLEE: Yes.

11 MR. BREGMAN: Yes.

12 ALJ DERQUE: Okay. Well, let's do that now.

13 MR. BROWNLEE: Okay.

14 ALJ DERQUE: Let's go off the record.

15 (Discussion off the record.)

16 (EXHIBIT NOS. 1 TO 18 WERE MARKED FOR
17 IDENTIFICATION.)

18 ALJ DERQUE: We are on the record.

19 I have what's offered as Exhibit No. 1.
20 It is a Unanimous Stipulation and Agreement of
21 December 14, 1995, offered into evidence.

22 Are there any objections?

23 (No response.)

24 ALJ DERQUE: Seeing none, it will be
25 admitted.

1 (EXHIBIT NO. 1 WAS RECEIVED IN EVIDENCE.)

2 ALJ DERQUE: Exhibit No. 2, Stipulation and
3 Agreement of May the 2nd, 1995 (sic) --

4 MR. DUFFY: '96?

5 ALJ DERQUE: I'm sorry. -- '96, offered
6 into evidence by the parties.

7 Is there any objection?

8 (No response.)

9 ALJ DERQUE: Seeing none, it will be
10 admitted.

11 (EXHIBIT NO. 2 WAS RECEIVED IN EVIDENCE.)

12 ALJ DERQUE: I have testimony in regard to
13 the -- to Exhibit No. 2. It would be No. 3 through
14 No. 18, and that testimony will be admitted subject to
15 the Commission accepting the purported Stipulation and
16 Agreement of May the 2nd of 1996. Do all of the
17 parties understand what I'm saying?

18 (No response.)

19 ALJ DERQUE: If it turns out that -- that
20 the Commission requires that that issue be litigated,
21 the parties aren't bound. Someone may want to object
22 to this testimony in that case, in which case we will
23 have to go back and start from scratch.

24 Does anybody object to that procedure?

25 (No response.)

1 MR. DUFFY: Under the conditions that you
2 stated, we don't -- I don't object to it, no. I mean,
3 I would --

4 ALJ DERQUE: I'm trying to avoid a party
5 going back and saying, well, I would have objected to
6 that testimony if I'd known we were going to try that
7 issue. Do you see what I'm trying to avoid,
8 Mr. Duffy?

9 MR. DUFFY: Absolutely. And I agree they
10 should have the right to object to it if we were going
11 to go to litigation on that issue.

12 ALJ DERQUE: That's fine. Subject to what
13 we've just said, is there any objection at this point
14 to the testimony Nos. 3 through 18?

15 (No response.)

16 ALJ DERQUE: Seeing none, they will be
17 admitted.

18 (EXHIBIT NOS. 3 TO 18 WERE RECEIVED IN
19 EVIDENCE.)

20 ALJ DERQUE: I have what's offered by the
21 Staff as Exhibit No. 19, the Hearing Memorandum --

22 MR. KEEVIL: Actually, I hadn't offered that
23 yet. You said --

24 ALJ DERQUE: The Hearing Memorandum will be
25 No. 19, Mr. Keevil.

1 (EXHIBIT NO. 19 WAS MARKED FOR
2 IDENTIFICATION.)

3 ALJ DERQUE: I have what's offered by the
4 Staff as the Hearing Memorandum, Exhibit No. 19. Is
5 there any objection to the admission of Exhibit No. 19
6 into evidence?

7 (No response.)

8 ALJ DERQUE: Exhibit No. 19 will be
9 admitted.

10 (EXHIBIT NO. 19 WAS RECEIVED IN EVIDENCE.)

11 ALJ DERQUE: I need quickly to take up -- I
12 have pending motions to strike.

13 MR. KEEVIL: Mr. Derque, I believe the
14 Stipulation addresses those as well.

15 ALJ DERQUE: I understand that it does, but
16 I'm -- we're going to address those on the record,
17 anyway.

18 I have motions to strike by Williams Natural
19 Gas Company and Western Resources and Missouri Gas
20 Energy, both filed on April the 18th, '96.

21 Mr. Brownlee, in regard to Williams Natural
22 Gas Company's motion to strike, is that withdrawn or
23 do you wish a ruling?

24 MR. BROWNLEE: No. Pursuant to Footnote 2,
25 I believe that we stated --

1 ALJ DERQUE: Let me say ahead of time -- I
2 understand what Footnote 2 says. Let me say ahead of
3 time that, of course, the parties will get to refile
4 these in case we have to litigate that issue.

5 MR. BROWNLEE: Right. So at this point,
6 assuming we could -- if we have to litigate, we would
7 at that point ask leave to refile it, but at this
8 point, we would just waive it, and the Commission does
9 not need to rule on it at this point.

10 ALJ DERQUE: That's fine. And I'll consider
11 that without prejudice --

12 MR. BROWNLEE: Thank you.

13 ALJ DERQUE: -- so you can refile it.

14 The joint motion of Western Resources and
15 Missouri Gas Energy, Mr. Bregman?

16 MR. BREGMAN: We would take the same
17 position with regard to our motion, your Honor. We
18 would withdraw it, not request a ruling from the
19 Commission on that motion, but in the event that we
20 have to come back and litigate the Riverside issue, we
21 would renew the motion.

22 ALJ DERQUE: It will be withdrawn without
23 prejudice.

24 Let me see. Yeah. Okay. On April the
25 29th, there was another flurry of motions involving

1 the same issue, the striking of testimony. I have a
2 response of Williams Natural Gas of April the 29th to
3 the joint motion of Western and Missouri Gas Energy to
4 strike. Mr. Brownlee?

5 MR. BROWNLEE: Well, I just request the same
6 ruling regarding that response.

7 ALJ DERQUE: Okay. It will be withdrawn
8 without prejudice.

9 ALJ DERQUE. Answer of Western Resources?

10 MR. BREGMAN: Same, your Honor. We would
11 withdraw without -- with the reservation.

12 ALJ DERQUE: Thank you, Mr. Bregman.

13 MR. BREGMAN: Thank you.

14 ALJ DERQUE: And the response of Mid-Kansas?

15 MR. FRENCH: Judge, I would withdraw that
16 without prejudice.

17 ALJ DERQUE: Thank you, Mr. French.

18 Are there any other pending motions? Is
19 there anything I need to deal with before --

20 MR. DUFFY: I think I filed an application
21 for rehearing on the order involving the language in
22 the order talking about what contracts can be compared
23 as to whether they've been deprudent or not, and I've
24 not seen a ruling on that application.

25 MR. KEEVIL: It was ruled upon.

1 MR. DUFFY: It was?

2 MR. MICHEEL: Yes, sir.

3 MR. DUFFY: I didn't get a copy of that.

4 ALJ DERQUE: I'm sorry. Gosh, that went out
5 a week or ten days ago, didn't it?

6 MR. DUFFY: I've never seen that.

7 ALJ DERQUE: Okay. Let the record reflect
8 that I will furnish Mr. Duffy with a copy of with.
9 We'll take about a 10 or 15-minute break, Mr. Duffy.
10 If you need more time, I'll sure give it to you.

11 MR. DUFFY: I've never seen it.

12 ALJ DERQUE: We are off the record.

13 (Discussion off the record.)

14 ALJ DERQUE: There are no Commissioners, to
15 my knowledge, present. We'll put opening statements
16 on the record for the benefit of the Commission.

17 Do you -- does -- is there anybody that does
18 not want to present an opening statement?

19 MR. BROWNLEE: Yes. On behalf of Williams
20 Natural Gas, since our testimony is in; the issue we
21 were concerned with is otherwise resolved, we would
22 like to be excused.

23 ALJ DERQUE: I have no objection -- does
24 anyone have any objection to Mr. Brownlee, Williams
25 Natural Gas, being excused?

1 MR. DUFFY: No, Your Honor.

2 ALJ DERQUE: Mr. Conrad?

3 MR. CONRAD: Oh, on opening statements, just
4 very quickly, your Honor --

5 ALJ DERQUE: I thought -- are you going to
6 wish to be excused, or are you going to remain?

7 MR. CONRAD: At least at this point, subject
8 to how the flow goes, I had one witness that I had --

9 ALJ DERQUE: Oh, okay.

10 MR. CONRAD: -- a few questions for and I
11 discussed that with their attorney.

12 ALJ DERQUE: Okay. Before -- before opening
13 statements, is there anything else I need to deal with
14 on the record?

15 We are going to start with opening
16 statements, and then the first witness is Mr. Brown;
17 is that correct?

18 MR. BREGMAN: Well, Mr. Brown's evidence was
19 all admitted on the Stipulation, so the first witness
20 would be Mr. Axelrod.

21 ALJ DERQUE: Okay. Then we are going to --
22 Brown is waived?

23 MR. BREGMAN: Yes, your Honor.

24 ALJ DERQUE: Okay. Now, we are off the
25 record until ten or a quarter after.