

FILED³

APR 05 2002

STATE OF MISSOURI
MISSOURI PUBLIC SERVICE COMMISSION

Missouri Public
Service Commission

In the Matter of Missouri-American)
Water Company's Tariff Sheets De-)
signed to Implement General Rate)
Increases for Water and Sewer Ser-)
vice provided to Customers in the)
Missouri Service Area of the Compa-)
ny)

WR-2000-281
SR-2000-282
(Consolidated)

MOTION TO STRIKE STAFF FILINGS
DUE TO CONFLICT OF INTEREST AND
MOTION TO DISQUALIFY COUNSEL
DUE TO CONFLICT OF INTEREST

COME NOW AG PROCESSING INC, A COOPERATIVE ("AGP"),
FRISKIES PETCARE, A DIVISION OF NESTLE USA ("Friskies") and WIRE
ROPE CORPORATION OF AMERICA INC. ("Wire Rope") (hereinafter
collectively "St. Joseph Industrial Intervenors"), CITY OF RIVER-
SIDE, MISSOURI ("Riverside"), and GILSTER MARY-LEE CORPORA-
TION("Gilster"), by their respective counsel, and move that
certain filings purportedly made on behalf of the Staff of the
Public Service Commission on March 25, and 26, 2002, be struck
and expunged from the administrative record of the proceedings
herein and, further that counsel presently appearing on behalf of
the Staff be disqualified because of a conflict of interest, and
in support thereof state:

1. As evidenced by their appearance at the original
hearing, Attorneys Keith Krueger, Robert Franson and Keith
Snodgrass entered appearances for and on behalf of the **Staff of
the Missouri Public Service Commission** ("the Staff") in the
original hearing on this matter. Exhibit A is a page from Volume

299

9, page 34 of the transcript of that proceeding containing their entry of appearance. In addition, other earlier pleadings could be cited as well as appearances at the public hearings held throughout the State on this matter.

2. Following issuance of a Report and Order in this matter on August 31, 2000, certain parties filed for judicial review of the Report and Order of the Commission. In these proceedings, and in each of them, said attorneys entered appearances and submitted pleadings for and on behalf of the **Missouri Public Service Commission**. These pleadings were signed by them under the name of Dana K. Joyce, the General Counsel of the Commission.

3. A listing of court cases, all relating to judicial review of WR-2000-281, in which these attorney have entered their appearances for and filed pleadings on behalf of the Missouri Public Service Commission follows:

Case No.	Court
00CV325014	Circuit Court of Cole County, Missouri
00CV325196	Circuit Court of Cole County, Missouri
00CV325206	Circuit Court of Cole County, Missouri
00CV325218	Circuit Court of Cole County, Missouri
00CV325217	Circuit Court of Cole County, Missouri
00CV325222	Circuit Court of Cole County, Missouri
00CV325220	Circuit Court of Cole County, Missouri
00CV73667	Circuit Court of Buchanan County, Missouri
00CV680824	Circuit Court of Jasper County, Missouri
WD59387	Missouri Court of Appeals, Western District

Case No.	Court
00CV680808	Circuit Court of Jasper County, Missouri
SD24034	Missouri Court of Appeals, Southern District
WD59483	Missouri Court of Appeals, Western District
SC83414	Supreme Court of Missouri
SC83484	Supreme Court of Missouri
WD60080	Missouri Court of Appeals, Western District
WD60166	Missouri Court of Appeals, Western District
WD60167	Missouri Court of Appeals, Western District
WD60548	Missouri Court of Appeals, Western District
WD60549	Missouri Court of Appeals, Western District
WD60550	Missouri Court of Appeals, Western District
WD60651	Missouri Court of Appeals, Western District

4. During the course of this representation in the courts, these attorneys or perhaps several of them, participated behind closed doors in executive session with the members of the Commission in unrecorded meetings as to which no public records were kept. Accordingly, as representatives of parties before the Commission, these appearances were without notice to other parties and other parties were prevented from being present to hear, witness or observe such contact between attorneys for a party litigant and the members of the Commission.

5. Occasions of such non-public and secret contact between these attorneys and members of the Commission occurred at a minimum on the following dates as evidenced by electronic copies of the minutes of these meetings describing such sessions

as "closed" on the following dates: April 19, 2001, June 7, 2001, August 14, 2001, October 11, 2001, November 6, 2001, December 4, 2001 and December 18, 2001. Electronic copies of the minutes of these Commission meetings are attached hereto as Exhibit B. There may be other contacts and consultations that occurred as between members of the Commission and these attorneys at other times that have not been documented and as to which documentation is not available.

6. In connection with the foregoing litigation, the following matters were remanded to the Commission for further proceedings: Case Nos. 00CV325014, 00CV325196, 00CV325206, 00CV325218, 00CV325217, 00CV325222, and 00CV325220. In some cases, the Circuit Court of Cole County reversed the Commission outright; on other issues the Report and Order was affirmed. On still other issues, the Circuit Court saw fit to remand the matter to the Commission for proper findings of fact. Accordingly, the matter presently before the Commission is on a limited remand order and is in the midst of a yet incomplete judicial review. Accordingly, the matter remains within the jurisdiction of the Circuit Court of Cole County wherein these attorneys are representing the Commission.

7. In the course of their representation of the Commission and acting as their attorneys in numerous litigated court matters as aforesaid, it is presumed that such attorneys gained the trust and confidence of the members of the Commission and it is therefore inappropriate to permit them to simply resume

representation of a party litigant, i.e., the Staff, before the same Commission that they recently and arguably are continuing to represent in the courts.

8. Missouri Supreme Court Rule 4-1.7(b) provides as follows:

A lawyer shall not represent a client if the representation of that client may be materially limited by the lawyer's responsibilities to another client or to a third person, or by the lawyer's own interests, unless:

(1) the lawyer reasonably believes the representation will not be affected;

(2) the client consents after consultation. When representation of multiple clients in a single matter is undertaken, the consultation shall include explanation of the implications for the common representation and the advantages and risks involved.

9. The Comment associated with this Rule provides, in part:

Simultaneous representation of parties whose interests in litigation may conflict, such as co-plaintiff or co-defendants, is governed by paragraph (b).

10. Commission Rule 4 CSR 240-4.020 provides in part as follows:

(1) Any attorney who participates in any proceeding before the commission shall comply with the rules of the commission and shall adhere to the standards of ethical conduct required of attorneys before the courts of Missouri by the provisions of Civil Rule 4, Code of Professional Responsibility

Accordingly, it seems unquestioned that attorneys do not cease being attorneys nor cease being bound by the Canons of Ethics by

reason of their employment by the Missouri Public Service Commission or by the State of Missouri.

11. Further, Rule 4 CSR 240-4.020(6) precludes any "employee of the commission" from knowing inviting or entertaining any prohibited ex parte communication. At the time the attorneys were engaged in secret and confidential communications with the Commissioners, they must have been acting as attorneys for the Commission, since they would have been guilty of an ex parte contact had they continued to be acting as attorneys for the Staff, a party litigant before the Commission.

12. It stands to reason that an attorney who has as an attorney, represented the trier of fact or the administrative agency in a judicial review of an agency decision should not be permitted, upon remand of the matter to the agency for further proceedings, to **discontinue** representation of the agency and resume representation of the Staff, a party litigant before that agency. This would create a manifest injustice to the other parties who have no knowledge nor any means to defend against comments that may have been made to members of the agency by the attorney which communications would doubtless be asserted to be privileged.

13. Moreover, other parties are substantially prejudiced in litigation by reason of the mental impressions that may have been acquired by the attorney in their course of representation of the agency or even outright comments of the various Commissioners as to evidence that they might find compelling or

convincing as to which other parties are not privy and cannot be privy. Since no record is made of the secret proceedings before the Commission, it cannot be known whether and to what extent such communications may have occurred.

14. In the circumstances, it is simply inappropriate and further constitutes a denial of a fair hearing as guaranteed to the other parties to have these attorneys continue to represent the Staff, a party litigant before the Commission, in the same case in which they are currently appearing as counsel for the Commission in the courts and have during the course of this litigation and judicial review consulted with members of the Commission in secret and in executive sessions.

15. In the Comment to Rule 1.7 the following appears:

Where the conflict is such as clearly to call in question the fair or efficient administration of justice, opposing counsel may properly raise the question.

16. Moreover, it appears now that in the subject proceeding, these attorneys are attempting to assert a position that is radically different from that which they asserted on behalf of the Staff before the Commission but which is consistent with the position of the Commission in the yet pending actions for judicial review, namely on phase-in. In the original proceedings before the Commission, the Staff proposed that the rates be phased-in. The Commission denied the phase-in and, on judicial review, these attorneys supported the Commission's ruling. Now, on remand, these attorneys no longer support a phase-in even

though there has been no change in their putative client's (the Staff's) testimony on that issue.

17. All this appears to bring these attorneys' conduct well within the scope of the holdings and certainly the spirit of a recent decision of the Missouri Supreme Court in *Missouri vs. Planned Parenthood of Kansas and Mid-Missouri, et. al.*, 66 S.W.3d 16 (Mo. 2002) where the court said: "The attorney general, like all attorneys, is prohibited from representing a client if the representation of that client would be directly adverse to another client. Rule 4-1.7. . . . The same attorney may not undertake to represent one client against another client that he is then representing. *Terre du Lac Property Owners' Ass., Inc. v. Shrum*, 661 S.W.2d 45, 47 (Mo. App. 1983)." Significantly, the Court held that "For the attorney general to represent two opposing sides in the same litigation involving the validity of state contracts is, at best, confusing to the public . . . [a]t worst, allowing the attorney general, under the guise of neutrality, to control both sides of any lawsuit undermines and contorts the adversarial system."


18. Undersigned counsel for St. Joseph Industrial Intervenor brought these matters to the direct attention of the attorneys involved, in a writing, a copy of which is attached hereto as Exhibit C. To date, despite this request, the attorneys have not chosen to respond to this communication in any manner whatsoever. Undersigned counsel accordingly believe that

they are ethically obligated to bring this conflict to the attention of this Commission initially through this pleading.

WHEREFORE, the pleadings purported to have been filed by the Staff on March 26, 2002 and on March 25, 2002 should both be struck from this case and the administrative record hereof as having been filed by attorneys who were disqualified from so acting; and that these attorneys be disqualified from all further actions before the Commission in this matter including consulting with members of the Commission Staff.

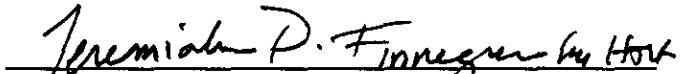
Respectfully submitted,

FINNEGAN, CONRAD & PETERSON, L.C.



Stuart W. Conrad Mo. Bar #23966
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Kansas City, Missouri 64111
(816) 753-1122
Facsimile (816) 756-0373
Internet: stucon@fcplaw.com

ATTORNEYS FOR AG PROCESSING INC.,
FRISKIES PETCARE, A DIVISION OF
NESTLE USA and WIRE ROPE CORPORATION
OF AMERICA, INC.



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Internet: jfinnegan@fcplaw.com

ATTORNEYS FOR CITY OF RIVERSIDE,
MISSOURI

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served the foregoing pleading by U.S. mail, postage prepaid addressed to the parties of record or their representatives as disclosed by the Commission's records in this proceeding.

Dated: April 5, 2002


Stuart W. Conrad

EXHIBIT A

0034

1 MR. ZOBRIST: Thank you.
2 Karl Zobrist, Blackwell, Sanders, Peper,
3 Martin, Kansas City, Missouri, representing the City
4 of St. Joseph, intervenor.
5 JUDGE THOMPSON: Tripp?
6 MR. ENGLAND: Thank you, your Honor.
7 Let me take this opportunity to enter the
8 appearance of myself, W.R. England, as well as Dean L.
9 Cooper and Richard T. Ciottone on behalf of the
10 Company, Missouri-American Water Company. We're
11 affiliated with the law firm of Brydon, Swearngen &
12 England, P.C.
13 JUDGE THOMPSON: Keith?
14 MR. KRUEGER: Keith R. Krueger, Cliff
15 Snodgrass, and Robert Franson for the Staff of the
16 Missouri Public Service Commission. I should note
17 that Mr. Snodgrass will be appearing pro hac vice, at
18 least until tomorrow, when he expects to receive his
19 Missouri Bar License.
20 JUDGE THOMPSON: Congratulations,
21 Mr. Snodgrass.
22 MR. SNODGRASS: Thank you, Judge.
23 JUDGE THOMPSON: If there is one thing we
24 need in this state, it's more lawyers. We're happy to
25 have you.

EXHIBIT B

Stu Conrad

From: Missouri PSC [mopsc-owner@listbot.com]
Sent: Tuesday, April 24, 2001 10:02 AM
To: List Member
Subject: Minutes for the Thurs., April 19, 2001 Agenda [mopsc]

Missouri PSC - www.psc.state.mo.us

MINUTES OF AGENDA MEETING
Thursday, April 19, 2001
PSC Agenda Room, Governor Office Building, Suite 900

Present: Sheila Lumpe (SL) P, M. Dianne Drainer (DD) P, Connie Murray (CM) P,
Kelvin Simmons (KS) P (via telephone), Steve Gaw (SG) P, and Staff

Approval of Minutes of Last Agenda Meeting

--as submitted.

New Orders and Tariffs

1. TE-2001-330 MCI WorldCom Communications, Inc. - Second Order Granting
Extension of Time for Activation of 314-898 NXX Code -
Thornburg
--as amended.
2. TE-2001-474 XO Missouri, Inc. - Order Granting Extension of Time for
Activation of NXX Codes in the 314 and 636
NPAs - Thornburg
--as submitted.
3. MC-2000-818 Director of Division of Manufactured Homes, et. al. vs.
Manufactured Housing Services of
Bonne Terre - Order of Partial
Relief - Hopkins
--withdrawn.
4. GR-2001-461 UtiliCorp United Inc. - Order Granting Variance - Hopkins
--as submitted.
5. TM-2001-429 Mpower Communications Corp. and Mpower Communications
Central Corp. - Order Approving Merger - Woodruff
--as submitted.
6. ES-99-581 Kansas City Power & Light Company - Order Directing Filing
Thompson
--as submitted.

Case Discussion

1. TO-2000-667 - SWBT - Post-Hearing Discussion - Woodruff
--discussed.
2. TO-2001-465 - MCIMetro/SWBT - SWBT's Application for Rehearing - Hopkins
--discussed.
3. WR-2000-844 - St. Louis County Water Co. - Case Discussion - Mills
--discussed.

Other Discussion

1. Various Commission scheduling matters
--discussed.
2. Legislation
--discussed.
3. Budget
--discussed.
4. Executive Director Report - Kinkade
--discussed.

5. Personnel
--not discussed.
6. Litigation - Missouri American Water Company Rate Case - Writs of
Review - Krueger
--voted to close.
--discussed.
- AmerenUE - Joyce
--voted to close.
--discussed.

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Stu Conrad

From: owner-pscdocket@listsrv.ecodev.state.mo.us on behalf of Viebrock, Shelley
[mviebroc@mail.state.mo.us]
Sent: Thursday, December 06, 2001 10:00 AM
To: 'pscdocket@listsrv.ecodev.state.mo.us'
Subject: Agenda Minutes of December 4, 2001

MISSOURI PUBLIC SERVICE COMMISSION
MINUTES OF AGENDA MEETING
Tuesday, December 4, 2001
PSC Agenda Room, Governor Office Building, Suite 900

Present: Kelvin Simmons (KS) P, Connie Murray (CM) P, Sheila Lumpe (SL) P,
Steve Gaw (SG) P, Bryan Forbis (BF) P, and Staff

Approval of Minutes of Last Agenda Meeting

--as submitted.

New Orders and Tariffs

1. TM-2002-47 Metro Teleconnect Companies, Inc. - Order
Approving Transfer of Assets and Granting Waiver of
Commission Rule 4 CSR 240-33.150 - Register
--as submitted.
2. 200200357 Southwestern Bell Telephone - Grandfather &
Discontinue Certain Digital Service Products - Kuss
--as submitted.
3. 200200318 Sprint Missouri, Inc., d/b/a Sprint - Change
Rates Pursuant to Price Cap Regulation - Solt
--Withdrawn.
4. 200200370 XO Long Distance - Grandfather Rates /
Introduce New Services and Rates - Murphy
--as submitted.
5. 200200374 One Star Long Distance, Inc. - Add New Rate
Programs and Prepaid Calling Card Service - Peters
--as submitted.

Case Discussion

1. None

Other Discussion

1. Various Commission scheduling matters
--Discussed.
2. Legislation
--Not Discussed.
3. Budget
--Discussed.
4. Personnel
--Not Discussed.
5. Litigation - FERC Docket Nos. CP96-152 and RP99-485 - Shemwell
--Withdrawn.
- Krueger
--Voted to close.
--Discussed.

Chairman

Date Approved

--

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Stu Conrad

From: owner-pscdocket@listsrv.ecodev.state.mo.us on behalf of Viebrock, Shelley
[mviebroc@mail.state.mo.us]
Sent: Thursday, November 08, 2001 10:01 AM
To: 'pscdocket@listsrv.ecodev.state.mo.us'
Subject: Minutes of Tues, Nov. 6

MISSOURI PUBLIC SERVICE COMMISSION
MINUTES OF AGENDA MEETING
Tuesday, November 6, 2001
PSC Agenda Room, Governor Office Building, Suite 900

Present: Kelvin Simmons (KS) A, Connie Murray (CM) P,
Sheila Lumpe (SL) P, Steve Gaw (SG) P, and Staff

Approval of Minutes of Last Agenda Meeting

--as submitted.

New Orders and Tariffs

1. 200200245 Southwestern Bell Telephone - Reduce Rates
Pursuant to Price Cap
Regulation - Solt
--as submitted.
2. TT-2001-646 Mark Twain Communications Company - Order
Denying
Rehearing - Mills
--as submitted.
3. TA-2002-122 Fidelity Communications Services I, Inc. -
Order Granting
Designation of an Eligible Carrier - Thompson
--as submitted.
4. GC-2002-150 Laclede Gas Company - Order Regarding Motion
to Dismiss - Thompson
--as submitted.
5. TC-2002-194 Alma Telephone Company, Chariton Valley
Telephone
Corporation, et. al. - Order Directing Filing and Dismissing
Certain Respondents - Thompson
--as submitted.
6. WR-2000-557 Osage Water Company - Order Directing
Temporary Reduction - Mills
--as amended.
7. TT-2002-129 AT&T - Order Setting Pre-hearing, Procedural
Schedule, and Further
Suspending Tariff - Hopkins
--Withdrawn.
8. AX-2002-203 Cold Weather Rule Amendment - Order Finding
Necessity for Rulemaking -
Mills
--as amended.
9. MX-2000-434 Final Order of Rulemaking - Bates
--as submitted.
10. MX-2000-435 Final Order of Rulemaking - Bates
--as submitted.
11. MX-2000-436 Final Order of Rulemaking - Bates
--as submitted.
12. MX-2000-447 Final Order of Rulemaking - Bates
--as submitted.
13. MX-2001-554 Final Order of Rulemaking - Bates

- as submitted.
14. MX-2001-556 Final Order of Rulemaking - Bates
--as submitted.
 15. MX-2000-590 Final Order of Rulemaking - Bates
--as submitted.

Case Discussion

1. ER-2001-672 - UtiliCorp United Inc., General Rate Case - Local Public Hearings
- Thompson
--Discussed.
2. AX-2002-203 - Cold Weather Rule Amendment - Case Discussion - Schwarz
--Discussed.
3. TA-2001-475 - Southwestern Bell Communications Services, Inc. - Motion for Protective Order - Dippell
--Discussed.

Other Discussion

1. Various Commission scheduling matters
--Discussed.
2. Legislation
--Not Discussed.
3. Budget
--Not Discussed.
4. Personnel
--Not Discussed.
5. Litigation - Krueger
--Voted to close.
--Discussed.

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Stu Conrad

From: owner-pscdocket@listsrv.ecodev.state.mo.us on behalf of Viebrock, Shelley
[mviebroc@mail.state.mo.us]
Sent: Tuesday, October 16, 2001 9:39 AM
To: 'pscdocket@listsrv.ecodev.state.mo.us'
Subject: Minutes of Thurs, Oct. 11

MISSOURI PUBLIC SERVICE COMMISSION
MINUTES OF AGENDA MEETING
Thursday, October 11, 2001
PSC Agenda Room, Governor Office Building, Suite 900

Present: Kelvin Simmons (KS) P, Connie Murray (CM) P,
Sheila Lumpe (SL) P, Steve Gaw (SG) P, and Staff

Approval of Minutes of Last Agenda Meeting

--as submitted.

New Orders and Tariffs

None

Case Discussion

1. TM-2001-669 - Claricom - Does the Commission have jurisdiction? - Hopkins
--Withdrawn.
2. GT-2001-329 - Laclede - Notice of Correction & Order Denying Laclede's Motion
to Clarify - Hopkins
--Discussed.
3. AX-2002-157 - 4 CSR 240-2.075 - Rule on Intervention - Thompson
--Discussed.
4. GR-2001-629 - Laclede - Local Public Hearing - Thornburg/Hopkins
--Discussed.

Other Discussion

1. Various Commission scheduling matters
--Discussed.
2. Legislation
--Not Discussed.
3. Budget
--Not Discussed.
4. Executive Director Report - Quinn
--Discussed.
5. Personnel
--Not Discussed.
6. Litigation - Krueger
--Voted to close.
--Discussed.

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or from another account, besides your subscribed account:

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Stu Conrad

From: owner-pscdocket@listsrv.ecodev.state.mo.us on behalf of Viebrock, Shelley
[mviebroc@mail.state.mo.us]
Sent: Thursday, August 16, 2001 9:23 AM
To: 'pscdocket@listsrv.ecodev.state.mo.us'
Subject: Minutes of Tues, August 14

MISSOURI PUBLIC SERVICE COMMISSION
MINUTES OF AGENDA MEETING
Tuesday, August 14, 2001
PSC Agenda Room, Governor Office Building, Suite 900

Present: Kelvin Simmons (KS) P (via telephone), Connie Murray (CM) A,
Sheila Lumpe (SL) P, Steve Gaw (SG) P, and Staff

Approval of Minutes of Last Agenda Meeting

--as submitted.

New Orders and Tariffs

1. GR-99-315 Laclede Gas Company - Second Order Denying
Rehearing

- Dippell

--as submitted.

2. TA-2002-7 World Communications Satellite
Systems, Inc. - Order
Suspending Tariff - Woodruff

--as submitted.

3. GM-2001-342 Laclede Gas Company - Order Approving
Stipulation and
Agreement and Approving Plan

to Restructure - Dippell

--as submitted.

4. ES-99-581 Kansas City Power & Light - Order
Reclassifying Records and
Closing Case - Thompson

--as submitted.

5. AX-2002-66 Proposed Amendments to 4 CSR 240-2.080 -
Pleadings, Filing,
and Service - Order Finding

Necessity for Rulemaking - Dippell

--as submitted.

6. AX-2002-67 Proposed Amendments to 4 CSR 240-2.130 -
Evidence - Order
Finding Necessity for

Rulemaking - Dippell

--as submitted.

7. ER-2001-672 Missouri Public Service - Order Granting
Reconsideration and
Reaffirming Grant of

Intervention - Thompson

--as submitted.

8. TO-2001-467 Investigation of Competition in SWBT
Exchanges - Order
Regarding Motions to Compel
and for Extension of Procedural

Schedule - Dippell

--as submitted.

9. ER-2001-672 UtiliCorp United, Inc. - Order Concerning
Test Year and

True-Up, Resetting Evidentiary and True-Up Hearings, Adopting
Procedural Schedule and Concerning Local Public Hearings
- Thompson

--as submitted.

10. TO-2001-440 Case Regarding Line Splitting and Line
Sharing - Order
Regarding Motion to Compel and Motion for Continuance
- Ruth

--as submitted.

Case Discussion

1. GR-2001-629 - Laclede Gas Company - Local Public Hearing Dates -
Thornburg
--Discussed.

Other Discussion

1. Various Commission scheduling matters
--Not Discussed.
2. Legislation
--Not Discussed.
3. Budget
--Not Discussed.
4. FCC Comments - Dietrich
--Discussed.
--Voted to file comments.
5. Personnel
--Not Discussed.
6. Litigation - Krueger
- St. Louis County Water Company rate case Writ of Review, Circuit
Court case number 01CV324557
--Voted to close.
--Discussed.

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Stu Conrad

From: Missouri PSC [mopsc-owner@listbot.com]
Sent: Tuesday, June 19, 2001 9:58 AM
To: List Member
Subject: Minutes of the Agenda for Thurs., June 7, 2001 [mopsc]

Missouri PSC - www.psc.state.mo.us

MISSOURI PUBLIC SERVICE COMMISSION
MINUTES OF AGENDA MEETING
Thursday, June 7, 2001
PSC Agenda Room, Governor Office Building, Suite 900

Present: Sheila Lumpe (SL) P, Connie Murray (CM) P,
Kelvin Simmons (KS) P, Steve Gaw (SG) P, and Staff

Approval of Minutes of Last Agenda Meeting

--as submitted.

New Orders and Tariffs

1. EO-2001-477 UtiliCorp United Inc. - Order Granting Variance - Hopkins
--as submitted.
2. TO-2001-455 AT&T v. SWBT Arbitration - Arbitration Order - Thompson
--as amended.
3. AX-2001-634 4 CSR 240-10.020 - Order Finding Necessity for Rulemaking
Hopkins
--as submitted.
4. GO-2001-541 Atmos Energy Corporation - Order Approving Unanimous
Stipulation and Agreement - Register
--as submitted.
5. GR-97-393 Union Electric Company - Order Approving Unanimous
Stipulation and Agreement - Hopkins
--as submitted.
6. TT-2001-298 SWBT - Phase 1 Report and Order - Mills
--as amended.
7. GR-2001-629 Laclede Gas Company - Suspension Order and Notice - Dippell
--as submitted.
8. AX-2001-654 New Chapter 3 Rules - Order Finding Necessity for
Rulemaking - Dippell
--as submitted.
9. SA-2001-304 Central Rivers Wastewater Utility, Inc. - Order Directing
Central Rivers Wastewater Utility, Inc. to Provide
Additional Notice
Woodruff
--as submitted.

Case Discussion

1. TA-99-47 - SWBT - Motions to Suspend Tariff - Dippell
--discussed.
2. TA-2001-475 - SWBT - Motions to Suspend Tariff - Dippell
--discussed.

Other Discussion

1. Various Commission scheduling matters - Ruth
--discussed.
2. Legislation
--not discussed.
3. Budget
--discussed.

4. 9:30 a.m. DED Cost Allocation Plan, David Mitchem - Kolilis
--discussed.
5. Executive Director Report - Kolilis
--discussed.
6. Personnel
--not discussed.
7. Litigation - Krueger
--voted to close.
--discussed.
- Dottheim
--voted to file a letter with the FERC - docket RT01-88-001

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Stu Conrad

From: owner-pscdocket@listsrv.ecodev.state.mo.us on behalf of Viebrock, Shelley
[mviebroc@mail.state.mo.us]
Sent: Thursday, December 20, 2001 9:50 AM
To: 'pscdocket@listsrv.ecodev.state.mo.us'
Subject: Minutes of Tues, Dec. 18

MISSOURI PUBLIC SERVICE COMMISSION
MINUTES OF AGENDA MEETING
Tuesday, December 18, 2001
PSC Agenda Room, Governor Office Building, Suite 900

Present: Kelvin Simmons (KS) P, Connie Murray (CM) P, Sheila Lumpe (SL) P,
Steve Gaw (SG) P, Bryan Forbis (BF) P, and Staff

Approval of Minutes of Last Agenda Meeting

--as submitted.

New Orders and Tariffs

1. EO-2002-215 UtiliCorp United, Inc. - Order Approving
Application
~ Thornburg
--as amended.
2. TE-2001-543 @Link Networks, Inc. - Order Denying Motion
for Confidential
Treatment of Annual Report &
Closing Case - Thornburg
--as submitted.
3. TO-2000-374 North American Numbering Plan Administrator
- Order
Regarding Cost Allocation and Cost Recovery for State Number
Pooling Trials - Thornburg
--as submitted.
4. TR-2002-251 Sprint Missouri, Inc., d/b/a Sprint - Order
Denying Rehearing
- Thompson
--as submitted.
5. TT-2002-108 Southwestern Bell Telephone Company - Report
& Order
TT-2002-130 - Woodruff
--as amended. Commissioner Murray Dissent attached.
Commissioner Gaw Concurrence to
follow.
6. TT-2002-108 Southwestern Bell Telephone Company - Order
Further
TT-2002-130 Suspending Tariff - Woodruff
--as submitted.
7. TX-2001-636 General Counsel's Office - Order of
Rulemaking Approving
Rescissions - Snodgrass
--as submitted.
8. AX-2001-634 General Counsel's Office - Order of
Rulemaking Seeking to
Withdraw Proposed Rescission
- Snodgrass
--as submitted.
9. TT-2002-227 Southwestern Bell Telephone Company - Order
Further
Suspending Tariff and Directing Notice - Woodruff
--as amended. Commissioner Murray Dissent attached.

10. TT-2002-235 MCI Metro Access Transmission Services, LLC
- Order Further

Suspending Tariff, Granting
Intervention, Directing Notice and
Scheduling a Prehearing
Conference - Woodruff

--as submitted. Commissioner Murray Dissent to follow.

11. TT-2002-274 NuVox Communications of Missouri, Inc. -
Order Further

Suspending Tariff, Granting
Intervention, Directing Notice and
Scheduling a Prehearing
Conference - Woodruff

--as submitted. Commissioner Murray Concurrence attached.

12. TA-2001-285 Southern Telcom Network, Inc. - Order
Further Suspending

Tariff, Directing Notice and
Scheduling a Prehearing Conference
- Woodruff

--as submitted. Commissioner Murray Concurrence attached.

Case Discussion

1. ER-2002-217 - Citizens Electric Corporation - Stipulation &
Agreement - Dippell

--Discussed.

2. TO-2001-467 - Southwestern Bell Telephone Company - Case discussion
- Dippell

--Discussed.

3. TO-2002-185 - Southwestern Bell Telephone - Case discussion - Mills
--Discussed.

Other Discussion

1. Various Commission scheduling matters
--Discussed.

2. Legislation
--Not Discussed.

3. Budget
--Not Discussed.

4. Update on Chapter 3 Rules Project - Snodgrass/Johansen
--Discussed.

5. FERC Docket No. RM01-10-000 Standards of Conduct for Transmission
Providers
- Dottheim/Proctor/Morrissey

--Discussed.

6. Personnel
--Voted to close.
--Discussed.

7. Litigation - Missouri American Water Company Rate Case - Krueger
--Voted to close.
--Discussed.

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EXHIBIT C

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Writer's 24-Hour Number:
(888)266-7934

March 27, 2002

Mr. Dana K. Joyce
General Counsel
Missouri Public Service Commission
200 Madison Street
Jefferson City, MO 65101

Mr. Keith Krueger
Assistant General Counsel
Missouri Public Service Commission
200 Madison Street
Jefferson City, MO 65101

Mr. Robert Franson
Assistant General Counsel
Missouri Public Service Commission
200 Madison Street
Jefferson City, MO 65101

Re: **Missouri-American Water Company**
Case No. WR-2000-281 et al.

Gentlemen:

Each of you has recently submitted a pleading in the above matter on apparent behalf of the Staff of the Missouri Public Service Commission. Your pleading was also signed under the name of Dana K. Joyce, the Commission's General Counsel, hence my inclusion of Mr. Joyce in this letter.

As you know this matter has been remanded in an interlocutory decision of the Circuit Court of Cole County for specified additional action by the Commission, the precise nature of which may be subject to some dispute. In the several court cases, including Cole County Circuit Court Nos. 00CV325014, 00CV325196, 00CV325206, 00CV325218, 00CV325217, 00CV325222, and 00CV325220, that Court ruled that the Commission had failed to provide adequate findings of fact supporting its decision in several particulars stated in the Court's Order. In all those proceedings for review of the original Commission decision, you

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Messrs. Joyce, Krueger and Franson
March 27, 2002
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acted as Counsel for the Commission, appearing on their behalf, seriatim, in the Cole County Circuit Court, the Circuit Court for Buchanan County, the Circuit Court for Jasper County, the Missouri Court of Appeals Western District, the Missouri Court of Appeals, Southern District and the Missouri Supreme Court on several occasions.

During the period that these various actions for review or related proceedings were pending, as revealed by minutes of the agenda sessions of the Commission, you and other members of the General Counsel's group communicated with the members of the Commission in executive sessions in which no record was taken and no members of the public were permitted to be present. Some of these minutes explicitly and specifically reference these pending matters. The substance of those conversations is at this time unknown.

Indeed, given the rather incomplete nature of the Cole County Circuit Court's decision on this matter (which was also appealed by you on behalf of the Commission), being a decision that affirms the Commission on certain aspects of its decision, reverses it on others, and remands for additional findings of fact on other issues, you continue to be shown as counsel of record on behalf of the Commission in those yet pending actions for review.

That being the background, I would appreciate your clarifying for me how you reconcile your continuing and preceding representation of the Commission in the actions for review in the various circuit courts and courts of appeal in this state, and your unreported communications to and with the members of the Commission apparently regarding legal strategies in these writ of review proceedings, with your now going forward with active representation of an active litigant, i.e., "the Staff," before the very same Commission who you continue to represent in the judicial proceedings.

Moreover, it appears that at least one of your current pleadings now represents an abrupt change of position by your purported client (the Staff) that is openly inconsistent with the currently filed testimony of that client, which changed position perhaps coincidentally appears to align your "party" with the decision of the Commission that you are also representing and have represented in the judicial actions and in a manner that is directly inconsistent with the position that party took at the initial proceeding before the Commission.

FINNEGAN, CONRAD & PETERSON, L.C.

Messrs. Joyce, Krueger and Franson

March 27, 2002

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extent to which information, knowledge or insight obtained during and through secret consultative executive sessions has been utilized by you in preparing pleadings that you have recently filed in this proceeding as an advocate is unknown at this point in time.

All these things are disturbing to my clients. I must confess, they are disturbing to me as a member of the Missouri Bar. In the Comment to Rule 1.7 the following appears:

Where the conflict is such as clearly to call in question the fair or efficient administration of justice, opposing counsel may properly raise the question.

In my view, the circumstances described above **clearly** call in question the fair or efficient administration of justice in this matter by the Commission in that your revived representation of a party -- "the Staff" -- before the Commission places other parties including my clients who have not enjoyed such unfettered access to the Commission at an obvious disadvantage in this proceeding and in so doing raises serious due process problems. Accordingly, and in advance of taking more formal action before the Commission or the available courts or their agents, I bring these matters directly to your attention.

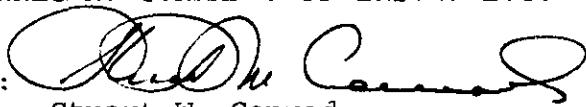
I would like to have a prompt response or clarification of your position on these various concerns such that I may share with my clients. It would seem to me in the circumstances that recusal or withdrawal is the only appropriate choice of action.

In the event that you choose not to recuse yourself or respond to this letter promptly, I am prepared to present this matter to the Chief Disciplinary Counsel of the Missouri Bar on behalf of my clients including a copy of this letter and copies of other relevant documents in this and related proceedings.

Very truly yours,

FINNEGAN, CONRAD & PETERSON, L.C.

By:


Stuart W. Conrad