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Procedural Facts

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to the Commission. Staff requested the schedule established in the Suspension Order and Notice be modified to move the evidentiary hearing date to August 30 through September 3, 1999. Staff also recommended other procedural dates for the filing of testimony, for prehearing conferences, and for other filings prior to the evidentiary hearing.

On March 8, 1999, the 319 West Miller Corporation (West Miller) filed its application for intervention. West Miller stated that it is a large customer of water service from UWM and that it opposed and objected to the proposed rate increase sought by UWM. West Miller claimed that its interest differs from that of the general public because it is not a residential user and granting its intervention will serve the public interest. No objections to intervention by West Miller were received.

On March 9, the City of Jefferson (City) filed its application to intervene. The application stated that the City of Jefferson comprises the primary area of service for UWM. The City stated that it believes that because of the critical role water plays for the citizens of Jefferson City, the City should be involved in any proceedings regarding an increase of rates for water service of the primary source of water in the community. The City also stated that allowing this intervention will not hinder or delay the process unduly. No objections to this application for intervention were received.

On March 17, Public Counsel filed its Response to Staff's Motion to Establish Procedural Schedule. Public Counsel stated that it supports Staff's Motion to Establish Procedural Schedule and requests the date set

forth in that motion be adopted by the Commission. Public Counsel also requested that the procedural schedule provide for an initial hearing memorandum due July 22 after the prehearing conference but before rebuttal testimony is submitted as well as a final hearing memorandum due August 24, the date suggested by Staff. Public Counsel stated that it believes the use of two hearing memoranda would benefit the parties as well as the Commission by encouraging the parties to focus their efforts at prehearing conference on providing the Commission with either an initial hearing memorandum or a stipulation and agreement. By apprising the parties and the Commission of the issues in the proceeding at an earlier date, Public Counsel stated that the parties may prepare rebuttal and surrebuttal testimony with respect to contested issues only, provide the Commission with a complete but concise record, and facilitate productive discussion only of the issues remaining in dispute after preparation of the initial hearing memorandum, increasing the possibility of resolution of the disputed issues. Public Counsel also stated that it believes that the use of the initial and final hearing memorandum would not cause the parties additional work but would merely shift the timing of the work to an earlier stage in the proceeding.

On March 18, Public Counsel filed a Request for Local Public Hearings. Public Counsel stated that the Commission should schedule local public hearings in order to allow members of the public in the company's service area an opportunity to testify concerning the rate increase and quality of service presently being provided. Public Counsel suggested that a notice of the time, date and location of the local

hearing, along with information regarding the amount of the proposed rate increase and the approximate percentage of the proposed increase, should be given to each affected customer, either by an imprint on the customer's monthly billing or a bill insert, or by a separate mailing. Public Counsel stated that this notice should occur not more than 45 days or less than 10 days prior to the date of the public hearing. Public Counsel also requested that newspapers in the relevant service areas, as listed in the current Official Manual of the State of Missouri, be notified of the proposed increase as well as the date, time and location of the public hearing not less than 10 days before the date scheduled for the hearing. Public Counsel suggested that the newspapers be asked to publish the notice seven and three days before the hearing. Public Counsel stated that similar notice should be given to any radio and television stations in the service areas not less than three days before the public hearing.

On March 25, UWM filed a Reply to OPC's Response to Staff's Motion to Establish Procedural Schedule. UWM stated that it also supports the procedural schedule dates requested by Staff. UWM also suggested that in addition to Staff and Public Counsel, all intervenors should be required to file direct testimony simultaneously. UWM stated that the procedural schedule should then read:

Direct testimony by Staff, Public Counsel and Intervenors on all issues except rate design	-	June 25, 1999
Direct testimony by Staff, Public Counsel and Intervenors on rate design	-	July 2, 1999

UWM also stated that it agrees with Public Counsel that an initial hearing memorandum at the conclusion of the prehearing conference would assist both the parties and the Commission in clarifying the issues and in producing a record that would be helpful in the Commission's decision process. UWM did not agree on the procedure for preparing the final hearing memorandum.

On March 25, UWM filed its response to Public Counsel's Request for Local Public Hearings. UWM stated that it agrees that the Commission should establish a local public hearing but believes that a single public hearing would be sufficient for the purposes outlined in Public Counsel's request. UWM stated that its service area encompasses only a very small part of unincorporated Cole County, immediately adjacent to the city limits of Jefferson City. Therefore, a single public hearing held in Jefferson City would be reasonably convenient for both those customers within the city limits of Jefferson City and in the unincorporated areas of the county. UWM proposed that any public hearing take place on a date during the week of May 24-28, 1999. UWM stated that it believes this week to be sufficiently prior to the filing deadline for the direct testimony of the Staff, Public Counsel and intervenors for the parties to include those public comments they deem appropriate in their testimony.

On March 30, Staff filed its reply to Public Counsel's response to its motion to establish procedural schedule. Staff stated that it opposed Public Counsel's recommendation for the parties to prepare and

file an initial hearing memorandum because it would double the filing requirement over a normal rate case. Staff further stated that preparing a hearing memorandum is not a simple task. Staff stated that the parties must develop position statements on numerous issues, with some parties refusing to provide their statements until they have reviewed opposing parties' statements, parties delay submitting their positions to determine other parties' positions, parties rewrite their positions to rebut arguments in another party's position, even though arguments are not permitted in position statements, which leads to further rounds of revisions. Often, parties do not meet the deadlines to supply their statements to Staff's attorneys for the inclusion in the hearing memorandum, causing Staff to rush and use extra resources to attempt to meet the hearing memorandum filing deadlines. Staff stated that during the prehearing conference the parties identify the contested issues which will then be addressed in rebuttal testimony and surrebuttal testimony, and summarized in the hearing memorandum. Staff indicated that if there is a concern that the prehearing conference results in only an oral listing of contested issues, the parties may, after a prehearing conference concludes, circulate among themselves a written list of the contested issues. Staff stated that Public Counsel's recommendation for an initial hearing memorandum does not identify a corresponding benefit to be gained or problem to be remedied by these additional filings.

Staff also filed its Response to Public Counsel's Request for a Local Public Hearing on March 30. Staff stated that it does not oppose the scheduling of one local public hearing to provide customers of UWM

with an opportunity to express to the Commission their opinions regarding the proposed rate increase. Staff stated that it does not believe that it is necessary to schedule more than one hearing because the service area of UWM is small enough that those customers who are interested may readily attend a hearing at a convenient location without having to travel a long distance.

Procedural Schedule

The Commission has reviewed the parties' motions and finds that the dates established in its Suspension Order and Notice for filing of test year recommendations by Staff, Public Counsel and intervenors on or before April 21, 1999, and the evidentiary hearing beginning on August 16, 1999, should not be changed. The Commission finds that the dates for the filing of direct testimony proposed by Staff, as amended by the recommendation of UWM, and the date recommended for the prehearing conference, are reasonable and should be adopted. The Commission will establish the remaining dates on the procedural schedule in order to comply with the evidentiary hearing dates set in the Suspension Order and Notice. The following conditions shall be applied to the procedural schedule:

(A) The Commission will require the prefiling of testimony as defined in 4 CSR 240-2.130. All parties shall comply with this rule, including the requirement that testimony be filed on line-numbered pages. The practice of prefiling testimony is designed to give parties notice of the claims, contentions and evidence in issue and to avoid unnecessary

objections and delays caused by allegations of unfair surprise at the hearing.

(B) Pursuant to 4 CSR 240-2.130(15), testimony and schedules shall not be filed under seal and treated as proprietary or highly confidential unless the Commission has first established a protective order. Any testimony or schedule filed without a protective order first being established shall be considered public information.

(C) The parties shall agree upon and the Staff shall file a list of the issues to be heard, the witnesses to appear on each day of the hearing and the order in which they shall be called, and the order of cross-examination for each witness. Any issue not contained in this list of issues will be viewed as uncontested and not requiring resolution by the Commission.

(D) Each party shall file a statement of its position on each disputed issue. Such statement shall be simple and concise, and shall not contain argument about why the party believes its position to be the correct one.

(E) The Commission's general policy provides for the filing of the transcript within two weeks after the hearing. If any party seeks to expedite the filing of the transcript, such request shall be tendered in writing to the regulatory law judge at least five days prior to the date of the hearing.

(F) All pleadings, briefs and amendments shall be filed in accordance with 4 CSR 240-2.080. Briefs shall follow the same list of issues as filed in the case and shall set forth and cite the proper

portions of the record concerning the remaining unresolved issues that are to be decided by the Commission.

(G) All parties are required to bring an adequate number of copies of exhibits which they intend to offer into evidence at the hearing. If an exhibit has been prefiled, only three copies of the exhibit are necessary for the court reporter. If an exhibit has not been prefiled, the party offering it should bring, in addition to the three copies for the court reporter, copies for the five Commissioners, the regulatory law judge, and all counsel.

The Commission finds that it is not necessary to require the parties file an initial hearing memorandum. In light of some of the arguments cited by Staff, the Commission has changed the conditions of the procedural schedule eliminating the requirement of filing a hearing memorandum. This will alleviate many of the problems encountered by Staff in formulating the Hearing Memorandum. Since there will no longer be a Hearing Memorandum, there is no reason to file an initial hearing memorandum.

The hearing memoranda were filed to inform the Commission of the issues remaining in controversy just before hearing. While they may have been utilized to assist the parties in negotiations, such was not the purpose for which the Commission ordered them. The parties may continue to voluntarily exchange information regarding their positions at any stage of the proceeding.

Interventions

Under 4 CSR 240-2.075, the Commission may permit intervention on a showing that

- a) the applicant has an interest in the proceeding which is different from that of the general public;
- b) the applicant is a municipality or other political subdivisions;
- c) granting the proposed intervention would serve the public interest; or
- d) applications being filed after the intervention date set by the Commission may be granted upon a showing of good cause.

An application to intervene must also state the applicant's interest in the proceeding and reasons for seeking intervention as well as the applicant's position supporting or opposing the relief sought. 4 CSR 240-2.075.

The Commission has reviewed the applications for intervention filed by West Miller and the City, find that they comply with the rules and hearing no objection to these applications, the Commission will grant intervention to West Miller and the City of Jefferson.

Local Public Hearings

The Commission has reviewed Public Counsel's request for local public hearings and the responses and replies filed by the other parties. The Commission finds that it would be aided in its decision by the taking of testimony at a local public hearing in Jefferson City. The Commission agrees with Staff and UWM that the size and location of the service area

is small enough that those customers who are interested may readily attend one hearing at a convenient location. Notice of the hearing shall be sent by UWM, either by an imprint on the customer's monthly billing, a bill insert, or a separate mailing not more than 45 days and not less than 10 days prior to the day of the public hearing. The notice shall include the time, date and location of the local hearing, the proposed rate increase and the approximate percentage of the proposed increase.

The Commission will direct the Information Officer to send notice of the local public hearing to radio stations, television stations, and newspapers located in the UWM service area, as listed in the Official Manual of the State of Missouri, and to members of the General Assembly representing customers in the UWM service area. The Commission will also direct the Records Department of the Commission to serve a copy of this order upon the county commission of each county and mayor of each municipality within UWM's service area.

IT IS THEREFORE ORDERED:

1. That the Commission shall adopt and establish the following procedural schedule:

Direct Testimony by Company	-	March 22, 1999
Test Year Recommendation by Staff, Public Counsel and intervenors	-	April 21, 1999
Direct Testimony by Staff, Public Counsel and intervenors on all issues except rate design	-	June 25, 1999 (by 3:00)
Direct Testimony by Staff, Public Counsel and intervenors on rate design	-	July 2, 1999 (by 3:00)

Prehearing Conference	-	July 12-16, 1999 (First day at 10:00 a.m.)
Rebuttal Testimony by all parties	-	July 29, 1999 (by 3:00)
Surrebuttal Testimony by all Parties	-	August 5, 1999 (by 3:00)
Statement of Issues to be filed	-	August 6, 1999 (by 3:00)
Reconciliations/Statement of Position by all parties	-	August 10, 1999 (by 3:00)
Evidentiary Hearing	-	August 16-20, 1999 (first day at 9:00 a.m.)

2. That the evidentiary hearing will be held in the Commission's Hearing Room on the fifth floor of the Harry S Truman State Office Building, 301 West High Street, Jefferson City, Missouri.

3. That the 319 West Miller Corporation's Motion for Intervention filed on March 8, 1999, is granted.

4. That the City of Jefferson's Request to Intervene filed on March 9, 1999, is granted.

5. That a local public hearing is scheduled on Thursday, May 27, 1999, from 6:00 p.m. to 8:00 p.m. in the Commission's Hearing Room on the fifth floor of the Harry S Truman State Office Building, 301 West High Street, Jefferson City, Missouri.

6. Anyone wishing to attend the prehearing, hearing or local public hearing who has special needs as addressed by the Americans with Disabilities Act should contact the Missouri Public Service Commission at least ten (10) days before the prehearing conference, hearing or local

public hearing at: Consumer Services Hotline - 1-800-392-4211 or
TDD Hotline - 1-800-829-7541.

7. That this order shall become effective on May 6, 1999.

BY THE COMMISSION



Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

(S E A L)

Shelly A. Register, Regulatory Law
Judge, by delegation of authority
pursuant to 4 CSR 240-2.120(1),
(November 30, 1995) and Section 386.240,
RSMo 1994.

Dated at Jefferson City, Missouri,
on this 27th day of April, 1999.

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COMMISSION COUNSEL
PUBLIC SERVICE COMMISSION