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1 BEFORE THE PUBLIC SERVICE COMMISSION

2 STATE OF MISSOURI

3 _____

4 TRANSCRIPT OF PROCEEDINGS

5 Stipulation and Agreement

6 September 21, 2006

7 Jefferson City, Missouri

8 Volume 3

9 _____

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11 In the Matter of the Tariff Filing of Aqua)
12 Missouri, Inc., to Implement a Rate Increase) Case No.
13 or Water Service Provided to Customers in) WR-2007-0020
14 Its Missouri Service Areas)

15 In the Matter of the Tariff Filing of Aqua)
16 RU, Inc., d/b/a Aqua Missouri, Inc., to) Case No.
17 Implement a Rate Increase for Water Service) WR-2007-0021
18 Provided to Customers in Its Missouri)
19 Service Areas)

20 In the Matter of the Tariff Filing of Aqua)
21 Missouri, Inc., to Implement a Rate Increase) Case No.
22 for Sewer Service Provided to Customers in) SR-2007-0023
23 Its Missouri Service Areas)

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26 NANCY M. DIPPELL, Presiding,
27 DEPUTY CHIEF REGULATORY LAW JUDGE.
28 JEFF DAVIS, Chairman
29 CONNIE MURRAY,
30 STEVE GAW,
31 LINWARD "LIN" APPLING,
32 COMMISSIONERS.

33 _____

34 REPORTED BY:
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36 MIDWEST LITIGATION SERVICES

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

2 JUDGE DIPPELL: This is Case No. WR-2007-0027,
3 WR-2007-0021 and SR-2007-0023 in the matter of a tariff filing
4 of Aqua Missouri, Inc. to implement a rate increase for water
5 service provided to customers in its Missouri service areas.
6 And the company name has changed in the caption as need be.

7 My name is Nancy Dippell. I'm the Regulatory
8 Law Judge assigned to this matter. And we've come here today
9 for a stipulation regarding -- I'm sorry, for a hearing
10 regarding the stipulation that was filed in this case. And
11 we've asked a witness to appear and testify before the
12 Commission and he is present.

13 And we're going to begin with entries of
14 appearance, and I'll start with Staff.

15 MR. KRUEGER: Keith R. Krueger for the Staff
16 of Missouri Public Service Commission. My address is PO Box
17 360, Jefferson City, Missouri 65102.

18 JUDGE DIPPELL: Okay. Office of Public
19 Counsel?

20 MR. MILLS: On behalf of the Office of the
21 Public Counsel, my name is Lewis Mills. With me today is
22 Christina Baker. Our address is Post Office Box 2230,
23 Jefferson City, Missouri 65102.

24 JUDGE DIPPELL: Aqua Missouri?

25 MR. ELLINGER: Marc Ellinger with the law firm

0004

1 of Blitz, Bardgett and Deutsch for Aqua Missouri. My address
2 is 308 East High, Suite 301, Jefferson City, Missouri 65101.

3 JUDGE DIPPELL: Okay. And before we ask for
4 our witness to testify, I wanted to just discuss the
5 procedural status of this case.

6 We had a stipulation between Staff and the
7 company. Office of Public Counsel asked for public hearings,
8 which were held. Our small company rate case rule says that
9 Public Counsel has 10 days after those hearings to -- or
10 7 days, whichever it is, to file its agreement or
11 disagreement.

12 And Public Counsel filed its disagreement with
13 the tariffs, asking that the tariffs be suspended for the full
14 amount of time stating that they disagreed with the return on
15 equity figures and asking for a Staff investigation into
16 consumer complaints of quality of service and service issues.

17 Public Counsel attempted to clarify its
18 filing, originally saying it wanted an evidentiary hearing and
19 then saying that it didn't want an evidentiary hearing, but it
20 still wanted the tariffs suspended.

21 So, Mr. Mills, I'm going to ask you, does
22 Public Counsel object to the tariff?

23 MR. MILLS: Yes, definitely.

24 JUDGE DIPPELL: And does that, thus, create
25 this as a regular rate case?

0005

1 MR. MILLS: Well, that's sort of up to the
2 Commission. I mean, it creates a situation in which the
3 moving party, that being the company, has to present evidence
4 in support of its requested rate increase.

5 JUDGE DIPPELL: So there's no way that the
6 Commission can approve the stipulation as such because it's
7 not between all of the parties. Correct?

8 MR. MILLS: I don't believe there's any
9 evidence that supports it.

10 JUDGE DIPPELL: Okay. So Public Counsel is
11 also willing to go forward than and present evidence regarding
12 at least the return on equity issue?

13 MR. MILLS: No. No. I believe it's the
14 company that has the burden of presenting evidence. If the
15 company presents some evidence, then we will certainly present
16 some rebutting evidence.

17 JUDGE DIPPELL: Okay. But Public Counsel is
18 prepared to participate in a rate case in that fashion?

19 MR. MILLS: I'm sorry. I'm not -- in what
20 fashion?

21 JUDGE DIPPELL: As if this were a regular
22 tariff that had been filed and Public Counsel objected to it,
23 which is -- I mean, the fact that the Commission has a
24 different rule for small company rate increases doesn't affect
25 that, does it?

1 MR. MILLS: It does not affect the burden of
2 proof. The burden of proof is statutory. So the Commission's
3 rules on a small company rate increase proceeding do not
4 affect who has the burden of proof.

5 JUDGE DIPPELL: Okay. Well, does Staff or
6 Aqua Missouri want to add anything with regard to the
7 procedure for this case?

8 MR. ELLINGER: Go ahead, Keith.

9 MR. KRUGER: I don't know -- I don't really
10 have anything to add. I think this is sort of unplowed ground
11 and so I'm -- don't have any response to it.

12 JUDGE DIPPELL: Mr. Ellinger?

13 MR. ELLINGER: Well, I think since we're in a
14 small rate case and it's the process -- I mean, are we
15 converting this -- if we're converting this to a full-blown
16 rate case with the full evidentiary hearing, I'm not sure
17 there's grounds for that based upon the fact that the Office
18 of Public Counsel has withdrawn its request to have an
19 evidentiary hearing. Had they maintained a request, certainly
20 I think there's at least an argument to be made that it
21 becomes a full-blown rate case and we have to put on evidence.

22 We're obviously prepared to put on evidence.
23 We have our witnesses here to speak to these issues. But once
24 the Office of Public Counsel withdrew their request for an
25 evidentiary hearing, I'm not sure there's a real basis to take

0007

1 an evidentiary hearing since no other party has requested one.

2 The Office of Public Counsel -- or excuse me,
3 the PSC Staff filed their recommendation on the proposed
4 Stipulation and Agreement which was requested by the
5 Commission and the company has no disagreement with that
6 recommendation.

7 With respect to the Office of Public Counsel's
8 disagreement, aside from saying they disagree, they haven't
9 asked for an evidentiary hearing. I'm not sure there's any
10 basis to hold one, but we would defer to the Commission on
11 that.

12 And again, as I said, we're prepared to put on
13 witnesses, including Mr. Debenedictis, who came at the
14 specific request of the Commission

15 JUDGE DIPPELL: Is Aqua Missouri satisfied
16 with the status of what's in the current record, that it will
17 have met its burden justifying this rate case?

18 MR. ELLINGER: Well, I think the attached
19 documents to the agreement and the stipulation encompass much
20 of the evidence that would be based upon any rate agreement
21 and the tariff filing is based on those documents. But,
22 again, we're happy to put on our witnesses to speak
23 specifically to rate of return issue, which my understanding
24 from what Mr. Mills just said is really the only issue that
25 they have a significant objection to aside from customer

1 complaint issues, which I think the Staff has proposed a
2 recommendation on and we're prepared to address those issues
3 also.

4 MR. MILLS: Just so the record is clear, that
5 is not the only issue on which we have a significant
6 disagreement. That was one issue that we raised in the short
7 period of time in which we had to make a response, but it's
8 not the only issue we have.

9 JUDGE DIPPELL: And you also raised an issue
10 with regard to the phasing in of the rate increases.

11 MR. MILLS: If a rate increase is granted in
12 this case, then I believe that the magnitude that's being
13 discussed here is so great that it should be phased in if the
14 Commission decides to grant a rate increase.

15 JUDGE DIPPELL: And, Mr. Ellinger, are you
16 prepared today to put forth all of your evidence on this
17 matter or would Aqua Missouri -- would Aqua Missouri need yet
18 more time to prepare a response in case --

19 MR. ELLINGER: Well, obviously we haven't
20 seen -- you know, we just received the Office of Public
21 Counsel's response this morning. The phase-in argument that
22 they've raised is the first time it's ever been addressed in
23 this case by any party. It's without any legal basis and --
24 but that's obviously a different issue.

25 With respect to the return of equity and the

0009

1 rate structure and the need for the rate increase, I mean, we
2 have -- we have Mr. Bob Griffin here who can address those
3 issues. We also -- with respect to the customer issues, we
4 have Tina Hail-Rush (ph.) to address the customer issues and
5 obviously again, as I noted, Mr. Debenedictis, who was
6 specifically asked to appear for this hearing.

7 So we can go forward and present evidence.
8 The first thing obviously, we would have the Commission take
9 notice of the Stipulation Agreement and the attachments to
10 that that have already been filed.

11 JUDGE DIPPELL: Okay. I think what we'll do
12 is -- first, since I know Mr. Debenedictis has a time crunch
13 here with regard to catching a plane and I know the Commission
14 has some questions specifically for him, I think what we'll
15 start with is letting the Commission ask those questions and
16 then we will see where we are and whether we want to take that
17 stipulation into evidence and begin any kind of further
18 cross-examination based on that.

19 So we're just going to start with
20 Mr. Debenedictis, because we know that that needs to go
21 forward, and then we'll take it from there. So if that's all
22 right, Mr. Debenedictis, would you mind coming forward.

23 THE WITNESS: Sit down first or swear first?

24 JUDGE DIPPELL: Go ahead and sit down. That's
25 fine.

0010

1 (Witness sworn.)

2 JUDGE DIPPELL: Thank you.

3 NICHOLAS DEBENEDICTIS testified as follows:

4 QUESTIONS BY JUDGE DIPPELL:

5 Q. If you could just start out by giving us your
6 name and spelling it for the court reporter.

7 A. Sure. Nicholas Debenedictis, N-i-c-h-o-l-a-s
8 D-e-b-e-n-e-d-i-c-t-i-s.

9 Q. And if you could tell us a little bit about
10 your background --

11 A. Oh, sure.

12 Q. -- and what your title is and so forth.

13 A. Well, long career in government and public
14 service and then in utility and Chamber of Commerce work. And
15 the last 12 years, have been the chairman of a company called
16 Aqua America, its predecessor company Philadelphia Suburban
17 Water. It has been around for about 125 years, mainly a
18 Pennsylvania company.

19 And about half a dozen years ago or so we
20 decided to try and become more of a national company because
21 we had grown to a size we felt we had the economy of scale to
22 be able to service more states than just Pennsylvania.

23 We're now 1 of 500 municipalities and/or
24 private companies that serve about a third of the water
25 systems in the country. Ironically, in Missouri, we're one of

0011

1 the 50,000 small water systems that has become the debate of
2 national public policy debate on what are we going to do with
3 all these small water and wastewater systems. So we sort of
4 are a big company elsewhere, small company here in Missouri.
5 So I'd like to just juxtapose so you know how we're presenting
6 our self today.

7 About -- not about. 2003, July of 2003, so
8 almost three years ago, a little over, we bought a -- what
9 could be considered a troubled national company, which was
10 very rare. This was an electric company that, after
11 deregulation, decided to re-invest their proceeds from the
12 sale of their nuclear plants into a water industry.

13 And their strategy was to buy small troubled
14 water companies and fix them. They bought a lot of them. The
15 problem is they didn't fix them and it was a failed company.
16 We bought the remnants of that company and that was in
17 January of '03 -- excuse me, July of '03.

18 Of the 13 states they were in, Missouri was
19 one of those. Missouri was one of the smallest concentration
20 of customers they had. They had a number of systems, maybe
21 75 to 80 systems, but only about 3,000 customers. We bought
22 those systems -- those customers for I think a very fair
23 price, about 300 to 400 dollars a customer. Our national
24 average is \$1,500 a customer rate-base. I don't know what
25 they -- what it would be for Missouri America, probably close

0012

1 to that here if you're a large company.

2 So we didn't over pay, clearly. And,
3 therefore, didn't ask for any -- when we asked for approval,
4 asked for no acquisition adjustments, just basically what we
5 paid for. In the meantime, however, we've put a lot of money
6 into it.

7 And that's what I'd like to talk a little bit
8 about today is your need to have companies invest in some of
9 these small systems and what policies are needed in order to
10 do that. And I think it's -- it gets to the heart of some of
11 the argument. Obviously everybody has their precedent setting
12 issues and legal issues they have to look at and I respect
13 that.

14 We -- a year and a half ago, I was asked -- or
15 I was asked to and you invited me out to talk about what you
16 wanted out of a larger company to handle small water systems
17 and small wastewater systems in the state. Unfortunately, a
18 snowstorm in St. Louis kept us from landing and I didn't make
19 it, but I think Bob maybe was here. We had two or three
20 people here and we gave the presentation for Commissioners
21 unofficially and Staff just so they could understand what our
22 drivers were.

23 At that point a year and a half ago, thought
24 the best way to handle administratively the issue of the fact
25 that these small systems needed capital, need expertise,

0013

1 hadn't been in for a rate case in 12 years was to use your
2 administratively efficient small system rate case proceedings.
3 And that's what we've been going through for a year and a
4 half.

5 In all honesty, if I'd have thought it was
6 going to take a year and a half, we would not have gone
7 through that system because it's generated obviously a lot of
8 policy issues and so on that are going to end up being at the
9 Commission's level anyhow.

10 The -- I'll say this. In the year and a half
11 of experience we've had with Mr. Johansen and the rest of the
12 Staff, you have a very professional, in-depth Staff. And they
13 zeroed in on a lot of accounting issues. And we argued them,
14 a lot of time spent. We won some, we lost some, but the end
15 result of it is our books are now good.

16 Unfortunately, the Aqua Source books were
17 probably no better than the operations of that company. We
18 had service problems with them and so on. And we ended up
19 writing off on our books, the company's books, almost half of
20 the rate-base that we paid for basically to the Aqua Source
21 Company, because of -- didn't meet your standards, there was
22 challenges to certain things like contributed property, things
23 of that sort that they hadn't logged in right and so on.

24 So basically half our investment in the
25 original investment has disappeared. But rules are rules.

0014

1 We've -- we're in 13 states, we understand that and we
2 accepted that. And that's part of this stipulation.

3 We also decided we better build and expand on
4 our staff and direct them all to regulated. So we've gotten
5 out of all the other businesses Aqua Source was in and we're
6 now concentrating strictly on the regulated side. And we have
7 invested capital.

8 Now I mentioned to you we paid 300, 350
9 dollars a customer, of which half of that is now not on the
10 books and not going to be ever earning rate-base. These are
11 actual numbers spent. I'll submit these for anybody who wants
12 them. They're right out of our records. We're 10-K, we're
13 GAAP oriented so I can show you exactly.

14 We spent \$200,000 in '03 in the six months
15 after we bought it. Chlorination problems, pressure problems
16 at some water plants and so on, lagoon problems that the EPA
17 had problems with. In '04, prior to filing the rate case, we
18 spent another 900,000. And in '05, although much of this is
19 not allowed under your rules because you have a historic test
20 year, not a future funded test year for capital, we have spent
21 700,000 although half a million of that won't be allowed in
22 this rate proceeding.

23 And so if you just take what we spent through
24 the end of '05, audited books, we've spent a million eight.
25 The run rate on depreciation is 100,000. So clearly somebody

0015

1 has to come up with cash to spend that kind of money when
2 you're only getting 100,000 out of your cash flow from the
3 company. And that person is Aqua America, not a bank.

4 Now, the -- we then looked at, well, can we
5 make some money on the expense side and, therefore, help get
6 some cash that way. And I'll give you our audited numbers on
7 that.

8 Now, our expenses are lower than what they
9 were with Aqua Source so it's not like we added a lot of
10 expenses. We added two operators because we had to because we
11 didn't think Aqua Source was running their systems under the
12 rules of the Missouri EPA.

13 These are our actual audited GAAP numbers for
14 something called EBITAA, Earnings Before Interest, Taxes,
15 Appreciation, Amortization. So this is strictly dollars
16 collected, dollars out just to run the business.

17 Obviously if you spent a million eight,
18 somebody's putting the money up for that and you have to
19 capitalize that somewhere and that's Aqua America. And also
20 if you have losses, somebody has to pay for the losses because
21 you do pay your employees and if you lose money, the
22 corporation has to eat that.

23 These are the actual GAAP numbers. We lost
24 81,000 in '03, we lost 319,000 in '04, we lost 416,000 in '05,
25 and we are projecting a loss, if there is no rate proceeding

0016

1 relief, which would only be now a couple months of this, but
2 the run rate for the full year -- not just the nine months,
3 but the full year will be about \$520,000.

4 Now, this case, when I looked at the expenses
5 that are being allowed that we are agreeing to is less because
6 it's two years old, than what the run rate is today for
7 electricity, for chemicals, for labor, because we do give our
8 people raises in the last two years. So we already know that
9 the expense level is not going to achieve what we need to
10 continue to run it.

11 Having said that, we're stipulating that
12 because we're going to continue to run it because we're a
13 professional company and the corporation is going to live up
14 to its commitment to the -- to the Commission here in Missouri
15 for our franchise.

16 We're also not going to stop spending capital
17 money because, one, the EPA wants us to; and two, because as
18 part of our franchise, we can't have a company that has
19 service problems. And our budgeted for '06 and our budgeted
20 for '07 is over a million dollars each year, which means that
21 obviously we're going further in the hole even if we get
22 the -- the relief that we're -- we're asking today or have
23 been asking for the last 18 months.

24 Now, that doesn't count the cap-- if you want
25 to capitalize losses, capitalize only the capital spent

0017

1 through the end of '05. That's about \$3 million. If you want
2 to give us 6 percent on that, that's about \$180,000 a year
3 more that we're losing as we continue to try and make a go of
4 it in Missouri.

5 I think -- I very much appreciate you inviting
6 me, Chairman especially. I saw the order. Many of you I've
7 met through the NARUC and you've -- you've taken the time,
8 which we appreciate, to come to the water committee.

9 Most people want to go to telephone, electric
10 because that's the big -- they're the big cases. But the
11 water is a national issue with a bifurcated delivery system of
12 large municipalities and some large companies, but then a lot
13 of small ones. And that's the problem, major infrastructure
14 needed, which means capital. People think water should be
15 free.

16 And with all those dynamics, it becomes a much
17 more -- for a small industry, a much bigger public policy
18 issue than probably deserving until -- until policies are set
19 in place.

20 The states who have decided they're going to
21 attack the small system problem, mainly Pennsylvania and North
22 Carolina, have come up with policies that are clear, so that
23 we're not arguing with Staff. The Staff knows what the
24 policies are, they're done, it's either been approved in cases
25 or they've been approved in policies adopted.

1 And I think that's -- I'm not telling tales
2 out of school. I respect your Staff. They've done a great
3 job with what they think the policy is, but one example is, if
4 you expect anybody, American Water, Aqua America, anybody to
5 really try and get the benefit of consolidation of economies
6 of scale so that the small systems can be better capitalized
7 and that there be an efficient process to get fair recovery --
8 I realize there's always going to be lag, but I don't think
9 you expect any company to lose money and continue to invest.

10 I would say that the issue we raised here a
11 year and a half ago, consolidated rates, that we filed in the
12 small system that was clearly not allowable in the Staff's
13 mind, we just conceded on, said, Fine, we'll have to file a
14 full rate proceeding and let -- you know, eventually the next
15 rate case and let you decide on that in a later case because
16 we can't continue to hemorrhage half a million dollars a year
17 while we're waiting for a policy decision. And I think that's
18 a crucial issue.

19 There's some other ones I could go into if you
20 want to ask what are some of the other issues that would make
21 Missouri a better place for water companies to invest and
22 address some of the small systems.

23 And I guess I would say I appreciate you
24 inviting me out, I appreciate the interest you've shown at
25 NARUC, I appreciate the time taken on this case, but the

0019

1 realities are, if we were an independent company, if we were
2 an LLC, we wouldn't have a bank lending us money. We would be
3 in receivership as we speak.

4 So because the company's big, we're funding it
5 because we see light at the end of the tunnel. Now, if it
6 takes a year and a half to get a no answer, that's not light
7 at the end of the tunnel. I'll let counsel respond directly
8 to the counsel's position, but I think there's a fairness
9 issue too here. Had we been told you're never going to get a
10 small case without a full evidentiary hearing, we should have
11 just done the evidentiary hearings from day one.

12 And I don't think we are unwelcome here. I
13 can't tell you I could stand up in front of my shareholders
14 and say, This is a great investment for Aqua Missouri. And
15 that is not a veiled threat. We are staying here. I've told
16 you all individually we're going to invest here.

17 But we just have to have some fairness in the
18 overall addressing of how -- where you want us to be five
19 years, ten years from now. That's what we're really looking
20 at. It's not a year and out. It's basically we're trying to
21 make an investment here and it's just very difficult to date.
22 Appreciate it.

23 JUDGE DIPPELL: Thank you. Let's begin with
24 some Commissioner questions. Mr. Chairman, do you have some
25 questions for Mr. Debenedictis?

0020

1 QUESTIONS BY MR. CHAIRMAN DAVIS:

2 Q. Mr. Debenedictis, thank you for coming all the
3 way here today. Do you have any idea why we asked you to come
4 here today?

5 A. No, I don't.

6 Q. Have you had an opportunity at which -- you
7 probably have not because apparently these transcripts were
8 just provided to us yesterday. Have you had an opportunity to
9 review any of the transcripts from any of the local public
10 hearings?

11 A. I have been briefed on them, Chairman. I've
12 not obviously read them page by page. I've asked Tina, she's
13 ready to address some of the issues that were raised.

14 Q. Well, I mean, I guess, you know, have you been
15 informed that there were numerous complaints about Aqua
16 Missouri not returning phone calls?

17 A. I'll let Tina address it. She told me that
18 that, she felt, was an unfair allegation. Can I refer to her
19 if you want an answer?

20 Q. We'll refer -- we'll refer to her.

21 A. Okay.

22 Q. We'll have an opportunity to ask her questions
23 here in a little bit.

24 A. Okay.

25 Q. And obviously our Staff investigated all of

0021

1 those complaints and certainly came back, you know, with
2 opinions about, you know, whether or not each one of those
3 individual complaints were valid and, you know, how those
4 should be handled.

5 And obviously I was -- you know, at the time
6 we asked for this order, I was a little confused myself as to
7 exactly what the nature of Public Counsel's, you know, request
8 was at the time. Obviously now we know what Public Counsel's
9 intention is.

10 Do you have any concerns about Aqua Missouri's
11 customer service here in Missouri?

12 A. We have transferred and centralized call
13 taking. I think it's -- we will be able to give you all the
14 counts you want. We've checked on that. And I've -- in
15 asking Tina and the rest of the staff, my understanding is
16 that, sure, if people have a rate increase and come, that's
17 their chance to tell you they have an issue, but we're ready
18 to address every one if we haven't already addressed it. And
19 we'll go through it page by page, if you'd like, Chairman.

20 We have not cut expenses here. We've added
21 people here. And I don't think we want to have three call
22 takers here rather than have it more efficient with a national
23 call center for 3,000 customers. On the other hand, if
24 there's a specific where we didn't respond or put a meter in
25 or something, it won't happen again, if it happened once.

1 I don't think any system, whether governmental
2 or private, doesn't have a issue that somebody could raise
3 that didn't happen when you're a big company; but on the other
4 hand, we'll address it.

5 Q. Mr. DeBenedictis, would you be surprised if I
6 told you that I called the call center and asked for a return
7 phone call and didn't get a phone call back?

8 A. Yes, I would be. I'm sure you did and you're
9 telling me the truth, but I'd be surprised.

10 Q. I'm honestly a little perplexed about, you
11 know, where we go from here in terms of -- I mean, obviously
12 you earlier stated it's been 12 years since some of your
13 properties have had a rate increase; is that correct?

14 A. Yes. Yes, Chairman. We did not own it the
15 whole 12 years, but in looking at the last time they were in.

16 Q. Right.

17 CHAIRMAN DAVIS: I'll pass right now, Judge.

18 JUDGE DIPPELL: Commissioner Murray, did you
19 have any questions?

20 COMMISSIONER MURRAY: Thank you. I'd just
21 like to say thank you, Mr. DeBenedictis, for making the not
22 insignificant effort to come to Jefferson City. And in the
23 interest of time, I'm going to defer to the other
24 Commissioners who requested your presence here.

25 THE WITNESS: Thank you.

1 JUDGE DIPPELL: Commissioner Gaw, did you have
2 any questions?

3 COMMISSIONER GAW: Well, I can wait until
4 Commissioner Appling has had a chance to ask the questions
5 that he wanted to ask. That would be fine with me, or I can
6 go. It depends -- whatever he wants to do.

7 COMMISSIONER APPLING: Why don't you go on --
8 go ahead on, Commissioner.

9 QUESTIONS BY COMMISSIONER GAW:

10 Q. Okay. Well, I guess I don't want -- first of
11 all, thank you for coming, sir. And I don't want to ask a lot
12 of questions here, but I do -- I sat through this public
13 hearing here in Jefferson City a few nights ago and -- I think
14 it was August the 30th. We had people from the Jefferson City
15 area and we had remote video from Branson and Reed Springs.
16 So we had a few of the areas and there were several around
17 Jefferson City of smaller systems, so it was not just one.

18 And I don't remember. You may have said this.
19 Have you had an opportunity to see those transcripts?

20 A. I've been briefed on them. I have not read
21 them page by page.

22 Q. Well, my recollection is there were a couple
23 of categories of complaints. One dealing with service itself
24 and they varied from one -- as would you expect them to, from
25 one area to another in regard to particular complaints. In

1 other words, one area might -- there might have been
2 complaints in regard to the coloration of the water or another
3 area it might be something that was different than that, but
4 there were those categories.

5 And then there was another category, and I
6 thought this one was the one that I -- while both of them were
7 disturbing, this one was the one that seemed to be the most
8 consistent throughout, and that was the lack of response,
9 which Chairman Davis has already raised, to phone calls and a
10 level of frustration on that item that I don't think I've ever
11 seen before.

12 And in looking at -- looking at that, it was
13 generally the case that they were complaining about a failure
14 to return phone call messages. And while that wouldn't have
15 necessarily surprised me if I'd have heard it once or twice,
16 there were numerous instances of that complaint. And so I'd
17 like for you to tell me what you have as far as your policies
18 are concerned --

19 A. Sure.

20 Q. -- to ensure that phone calls get returned and
21 that these offices out here are responsive. And maybe a
22 little bit of detail about -- and I know this is not something
23 that you normally spend your time dealing with every day, but
24 to the extent that you can, give me some idea about how it's
25 supposed to work.

1 A. Well, probably I know more about it than I
2 should because I do get involved day-to-day, having been a
3 regulator. And if you check with other states, I think you'll
4 not find any of this issue.

5 We decided, because we wanted to put all our
6 resources in Missouri into operations because of the EPA
7 problems that we discovered when we got here, that -- I don't
8 remember how many Tina had, maybe one other person who did
9 calls. We transferred them to a more centralized call center
10 in Illinois which handles the Missouri, Illinois, Indiana.

11 That system is now undergoing a change because
12 of is Sarbanes-Oxley because everything has to be standardized
13 to a new computer system. But that's no excuse, but that's
14 the only thing I can understand on why a call would be lost,
15 other than just inappropriate management of a call center,
16 which I have to admit I'm not checking on the 11 people or
17 10 people who are in Kankakee.

18 Mr. Rackasee is here, Tina can maybe address
19 some more of the specifics. But I appreciate you saying it's
20 more generic, it's not just one or two issues so maybe they
21 can address the other.

22 The one that I did drill on was the water
23 quality. That's something that having been the head of
24 environment in Pennsylvania for eight years, those aren't --
25 we just don't have those problems. I came here, looked at

1 samples today. Tina brought a couple of them.

2 And as you know, it's easy to come to a
3 hearing and complain about, My water's always dirty and every
4 time you sample it either is or it isn't. And I think we can
5 argue that we can answer those issues pretty clearly and
6 subject our self to any evidentiary response you want.

7 Would it be appropriate for asking Terry or
8 Tina to address some of your questions? Because I just don't
9 have the specific on what calls weren't answered and how many.

10 Q. Well, we would go through the transcript if
11 you'd like, but give me an overview. Tell me what is supposed
12 to happen. If you have a customer that is calling from one of
13 the Jefferson City locations, first of all, where do they
14 call --

15 A. Yes.

16 Q. -- and how does the call route and then what
17 is supposed to happen to it?

18 A. Well, we've set up toll-free numbers. It
19 would ring in Kankakee, Illinois. This week we just moved the
20 call center to the new system, along with the new high-tech
21 VIATT systems and so on so it's more efficient. And we can
22 log calls, we know who's calling now and so. Before, it was
23 just the normal bell system and people logged them in
24 manually. So now it's all computerized.

25 We staff that center so that the calls can be

0027

1 answered according to the metrics that all the phone systems
2 and electrical systems have. I don't know if it's 30 seconds
3 or something of that sort. And 80 percent of the calls are
4 usually handled by the call center because it's usually a
5 billing problem, a why is this happening and so on and you
6 should be -- you know, did you get my check, why am I getting
7 this shut-off notice, things of that sort.

8 And then that is now technologically linked.
9 This will be going in Missouri in March of this year, so it's
10 still now faxes, unfortunately, to under service linked to --
11 directly to the computer in the truck of the person who will
12 be in that division or whatever.

13 Now, in the case now -- I assume, Tina, you
14 get all the complaints? Okay. The -- so we're in a -- I'd
15 say three- to six-month transition to get to the system that
16 is now working in North Carolina and Pennsylvania where we put
17 it in first to make sure -- because that's where our
18 established call centers already were.

19 So I hate to tell you help is on the way, but
20 it is one thing that we're very concerned about. We don't
21 have these kind of complaints in our other cases and it will
22 be corrected. You have my commitment on that if there is a
23 generic problem.

24 Q. So in regard to what's supposed to happen,
25 before you make your changes, when these people would have

1 been making their complaints, what was happening after they
2 called Kankakee?

3 A. Well, they should have been -- 75, 80 percent
4 should have been satisfied with their first call because it
5 would have been a billing issue or I need my meters --
6 something with my reading and so on.

7 Those that needed what we'll call field
8 service work have to be transferred to the operational office
9 which is headquartered here by Tina Hail-Rush and then her
10 staff takes care of it and then closes out the work order.

11 Q. Would there have been a phone call that was --
12 according to your business practice, should there have been a
13 phone call back to that customer if the information were sent
14 to Jefferson City from Kankakee?

15 A. Terry, you're going to have to help me for
16 that. Your practice is for Tina to call or Kankakee to call?

17 UNIDENTIFIED SPEAKER: Kankakee should be
18 returning the call.

19 THE WITNESS: Okay. So the call center should
20 have returned the calls.

21 BY COMMISSIONER GAW:

22 Q. Okay. And they would have gotten the
23 information -- if there was information that they would have
24 needed from the -- from the Jefferson City office, that
25 information would have been transmitted back to Kankakee and

1 then the call would have been made?

2 A. Because the computer system to close out all
3 the service orders would be in Kankakee, so that would be
4 needed to complete the loop. Under the new system, the
5 computerized system, it would all be done on the PC and then
6 right back to -- or on the laptop right back and close out the
7 order in the centralized system, which will be a national
8 centralized computer system so we can close out orders.

9 Q. And then how would the customer have known
10 that their issue had been taken care of?

11 A. Well, on -- most of the time they would get
12 off the phone and feel satisfied because they've said, okay,
13 I've got your check, there's no new notice coming out, it was
14 an estimated bill, we'll have somebody out to read your meter.

15 Q. These complaints, I think, generally -- I'd
16 have to go back and re-scan this again, but the complaints
17 generally were calls that were expected to be returned that
18 were not. So would that have been a misunderstanding of the
19 consumer, do you think, that they were not supposed to get a
20 return call or was it --

21 A. Well, if they were told they were going to get
22 a return call, they should, because obviously the operator
23 wouldn't have said that if there wasn't a reason to do that.

24 Q. And how would you go about determining --
25 let's say we just -- perhaps someone on your behalf could go

0030

1 through these transcripts and look at all of these issues
2 regarding return phone calls. How would your company go about
3 determining who had -- assuming that some of these complaints,
4 if not all of them, were correct, determining where the
5 communication broke down?

6 A. Well, it would start with me because I'm going
7 to ask for that question. But it would be Terry Rackasee
8 (ph.) who runs -- who is our president of the Illinois,
9 Indiana, Missouri who runs the call center until it goes onto
10 our national center and people work for him and he grades them
11 and so on.

12 Tina Hail-Rush, who has to be an integral part
13 of the ones that can't be answered in Kankakee, to make sure
14 they're being answered and/or fixed, more fixed, whether the
15 modus operandi is to call somebody and say, We fixed it or not
16 if they already knew you fixed it. I don't know for sure what
17 the -- what the process is there.

18 And the third would be the new person who's
19 going to be in charge of the call center to make sure that the
20 new system picks up anything that fell through the cracks.
21 And we'd be glad to get back to you on that.

22 Q. Yes. I would appreciate it if that could
23 happen so we could -- and the other -- the other thing is, is
24 there a way that -- and, again, I don't want to try to state
25 here on the record that there was a particular number of these

0031

1 complaints because the record would speak for itself. But if
2 you would -- if you would normally have these kinds of
3 complaints, if those kinds -- and let me rephrase that.

4 If you had these kinds of complaints, how
5 would you normally, from a customer relations standpoint, deal
6 with the customers who were complaining about it?

7 A. This is not the -- a copout. We have not had
8 the problems. It's that simple. This is --

9 Q. But as a matter of course, if one is in
10 business --

11 A. Okay. We have to respond.

12 Q. -- it's pretty important communication.

13 A. I didn't mean to say --

14 Q. I know you're not. I'm just trying to make
15 sure I follow up.

16 A. No. We're going to come up with a plan to
17 make sure that people -- at this point I'd start with the call
18 center director to find out what went wrong. Obviously if
19 people are complaining and then the Chairman called and
20 confirmed he didn't get a call, then obviously something's
21 gone wrong.

22 It's either that person -- it's the employees
23 who are ducking calls. I mean, it's a call center. They
24 might say, yeah, I've made all my marks, but if they're not
25 answering the call -- you have to have monitoring, which we do

0032

1 now and so on. And I'll get you an answer. If you give me a
2 week, we'll get you an answer.

3 Q. Well, and, again, the point of my last
4 question was, at some point in time if you determine that
5 there was an issue here and, of course, some of these
6 customers testified that they personally feel there's a
7 very -- there's an issue here, how do you deal with your
8 consumers to let them know that the issue has been confronted
9 and fixed?

10 A. Well, I think probably with such a small
11 customer base, we could either call each one who complained
12 and/or write to every customer. And I don't think that would
13 be an overwhelming cost. And we'll tell them what we're doing
14 with the call center and that if they have a problem, they can
15 call Tina Hail-Rush at home. How is that? Or me at home.
16 Because I'm confident there's not going to be that many
17 problems.

18 Q. I'm not sure how your employees would feel
19 about that, but I will say to you, that you might want to read
20 this transcript --

21 A. I will.

22 Q. -- because it might give you some indications
23 of some issues that --

24 A. I will.

25 Q. -- are specific. And I'm not going to raise

0033

1 them right now because, again, they're in the transcript. And
2 I just -- I can -- that issue is one which I've heard call
3 center complaints before. Don't misunderstand me. Generally
4 the call center complaints that I'm used to hearing had to do
5 with how long it takes to get in, being placed on hold or --

6 A. Right.

7 Q. -- number of rings that it takes to get in.
8 I'm not used to hearing the number of complaints
9 percentage-wise that we heard in this one in regard to not
10 calling the customer back.

11 In regard to the other issues, I'll leave that
12 for others on the water quality issue for now and I'll stop
13 for now. Thank you, sir.

14 A. Thank you, Commissioner.

15 QUESTIONS BY COMMISSIONER APPLING:

16 Q. How are you doing, sir?

17 A. Good, Commissioner.

18 Q. Good to see you.

19 A. Same here.

20 Q. You and I have had several different talks.
21 The last time we talked was in Jacksonville, Florida I believe
22 it was where I had a chance to share with you my frustration
23 with Lake Caramel. And that has grown into a formal complaint
24 I believe registered with the Public Service Commission here.
25 So I will stay a little bit away from that just for the fact

0034

1 of it is a case before us or will be coming before us pretty
2 soon.

3 But I want to go on the record today -- I've
4 had good conversation with you and this is the third or fourth
5 time I think that you and I have been in each other's
6 presence. But you do have a customer service problem here in
7 Missouri. I'm not going to try to address all the issues or
8 talk to you today about it, but that's an area I invite you
9 personally as the CEO of this organization to take a look at
10 or turn over to your deputy.

11 But from my perspective, in the 65 years that
12 I've been in -- or not 65 years, but 45 years that I've been
13 in public service, like you have, I believe I can identify
14 when an organization have a customer service problem. So I --
15 that's enough to be said about that.

16 But if we support you in some way on the
17 stipulation in which you're asking for, certainly you have a
18 plan to help us fix the problem that we have here in Missouri
19 and if you do, share a little of that with me, please.

20 A. Well, I'm comfortable that we can get the
21 process -- if there is a process in Kankakee that's different
22 than the rest of the company on returning phone calls, that
23 can be initiated immediately. And as soon as I read the
24 transcript, talk with Terry Rackasee and Tina Hail-Rush.

25 Q. But you understand --

1 A. No, no.

2 Q. -- once people think you've got you on the
3 run, then everybody piles on. You've seen that?

4 A. Yeah. But customer service and water quality
5 are two things that we brag about, so I'm concerned.

6 Q. Okay.

7 A. And I think addressing on the apology note,
8 whether it to be to everybody who complained in the
9 interrogatories -- I'm sorry, in the transcript at the
10 hearings or every customer, I'd be willing to sign something
11 like that and explain what we're doing.

12 And what we are doing is moving from a very
13 decentralized, unfortunately, inefficient, it was only as good
14 as the person in that local office. And I think we had
15 38 computer systems, which under the new -- I hate to keep
16 blaming Sarbanes-Oxley, but because of the new restrictions of
17 the SEC, they want things in certain ways. You just can't do
18 it with 38 different systems when that's your revenue stream
19 in the sense of your billing and customer service all being
20 part of the operation.

21 So that's all being transferred and we're
22 doing it state by state so that we shake out any problems. As
23 you know, there's always a problem with computer turnover.
24 And we started in Pennsylvania, which was our biggest state
25 and the one that we had the most expertise in and the most

1 staff that we could jump on and that's worked very well.
2 North Carolina was second because that's where our other call
3 center is. And now we're bringing all the southern states
4 into that call center. And that's all geared for November
5 and -- well, I'll just tell you exactly what our plan is,
6 Commissioner.

7 And then I believe the -- what we call Aqua
8 North, which is Missouri, Indiana, Illinois, Ohio is due in
9 March. Terry, is that your date of transfer? So we're doing
10 it every three months because we don't want to do it in
11 between a quarter or we're in violation of reporting on the
12 10-K. So I think we're due for early March to bring that over
13 and we're working as we speak.

14 We have hired a new call center director, so
15 that will be her first assignment, to look at this transcript
16 and tell me what happened in the past and what we're doing in
17 the future. And we have -- I think we've just hired two more
18 call center employees so we have enough adequate staff.

19 And when I checked the call response, as the
20 Commission -- as Commissioner Gaw said, it wasn't people
21 couldn't get through. It's just that -- this issue of the
22 followup. And that's something between operations, which
23 would be Tina here in Missouri and her managers, and Terry
24 from a standpoint of being the president of the whole
25 operation and the call center, which is now under a new vice

1 president, all the call centers are going to be under one so
2 we can have billing and everything coordinated. And I'll get
3 back to you with a complete plan of attack and also response
4 to these transcript issues.

5 Q. When you leave here today and you're flying
6 out of St. Louis or Kansas City, if you want to blame somebody
7 for insisting that you be here today, you can start with the
8 alphabet A. I was one of those people that insisted you come
9 because I think it's important that you hear.

10 A. No, you're absolutely right.

11 Q. But I didn't call you down here to beat up on
12 you. I called you down here to try to get eyeball to eyeball
13 and say what can we do together to fix this program in
14 Missouri. And that's what I'm interested in hearing.

15 And I think all five of the Commissioners and
16 the Staff -- and if the Staff is not prepared to do it, we
17 certainly can help get them prepared to do that. We want to
18 do what's necessary here to cut out the complaints and get
19 people good service here.

20 So help us out here with leading us in the
21 road where we need to be on the costs, because I think OPC is
22 concerned about phasing in the cost of the rates that you are
23 asking for. So I'm asking you to do the best you can and meet
24 us in the road so that we can get to a point so that we can
25 help you get on with doing what you need to do to provide the

0038

1 right service for the customers here in Missouri. Okay?

2 A. Thank you. We will respond to the few water
3 quality, and I want to give you detail on that, and all the
4 customer service issues with a plan.

5 And regarding phase-in, I would argue that
6 12 years is -- if you count that towards a phase-in, it's been
7 a long time since rates are up. I looked at all the rates,
8 Commissioner, and it looks like about a dollar a day which is
9 almost the national average.

10 So I think any time you do percentages, it's
11 always rough, especially if you haven't been in for 12 years.
12 And especially if you put triple the amount of capital in the
13 last three years that you invested over the last 12. And we
14 are willing to continue to lose money in Missouri until we can
15 turn this around, but it's getting worse rather than better.

16 I just plead to you that you have to look at a
17 public company. If this were a government, they'd be raising
18 taxes to pay for the water system.

19 Q. I understand that, sir. And believe me, you
20 know, when you do go in for a large rate increase, it's a
21 sticker shock for the individual that's been paying
22 8 or 10 dollars for water and then you're going up to
23 16 or 32 or whatever the case shakes out.

24 I'm interested in doing what we need to do.
25 You can't afford to lose money and stay in business. I know

0039

1 that. And we don't want you to lose money. But we also want
2 you to be fair to our ratepayers here.

3 A. Oh, yeah. Absolutely.

4 Q. Okay.

5 COMMISSIONER APPLING: Judge, that's about all
6 I have at the present time.

7 JUDGE DIPPELL: Okay. Are there any other
8 Commissioner questions?

9 Mr. Chairman, do you need just a minute?

10 Okay. Seeing none, I will ask, are there any
11 questions from Staff?

12 MR. KRUEGER: No questions, your Honor.

13 JUDGE DIPPELL: Public Counsel?

14 MR. MILLS: No. I have no questions. Thank
15 you.

16 JUDGE DIPPELL: Thank you.

17 All right. Then, Mr. Debenedictis, appreciate
18 your presence and you may be excused.

19 THE WITNESS: Thank you, Judge.

20 JUDGE DIPPELL: Does the Commission wish to
21 hear from any of the other witnesses that came for Aqua
22 Missouri today?

23 Let's take just a brief recess and go off the
24 record.

25 (Off the record.)

1 JUDGE DIPPELL: Just had a little
2 off-the-record discussion with a couple of the Commissioners
3 about where to go from here. Mr. Ellinger earlier sort of
4 offered to present the stipulation, which is what this hearing
5 was noticed basically as is a stipulation presentation. He
6 basically offered it into evidence. Would there be any
7 objection to receiving the stipulation into evidence?

8 MR. MILLS: Yes, there would be. And I don't
9 believe that Mr. Ellinger offered it. I believe he asked the
10 Commission to take notice of it, which is an entirely
11 different concept. So I don't believe at this point it has
12 been offered. And I have no problem with the Commission
13 taking notice of it as a document that's been filed in the
14 case.

15 JUDGE DIPPELL: But not as evidence is what
16 you're saying?

17 MR. MILLS: That's correct.

18 JUDGE DIPPELL: Okay.

19 MR. ELLINGER: And, Judge, I'd like to just
20 restate that the Office of Public Counsel, although they filed
21 a disagreement, they expressly filed a pleading withdrawing
22 their request for an evidentiary hearing on any of their
23 disagreement matters. Now they've appeared before the
24 Commission today and said they want an evidentiary hearing on
25 all disagreement matters.

0041

1 MR. MILLS: That's not the case. I'm
2 perfectly happy with the status of the record in this case.
3 If the Commission believes that there is sufficient evidence
4 to grant a rate increase, then we'll see if that's the case.

5 It's not my position that I am required to
6 make a record in this case. It's the company, and to a
7 certain extent the Staff who is supporting them, it's their
8 responsibility to make a record in the case. I am under no
9 obligation to convene an evidentiary hearing to prove up their
10 case. And that's why I did not request an evidentiary
11 hearing.

12 JUDGE DIPPELL: I understand. I think it's
13 finally clear to me, Mr. Mills, Office of Public Counsel's
14 position. You are perfectly fine if the Commission thinks
15 there's evidence in this record to make their decision with
16 them going forward.

17 All right. Are there any other -- are there
18 any other Commission questions for any of the attorneys?
19 Mr. Chairman?

20 CHAIRMAN DAVIS: Mr. Mills, I haven't had an
21 opportunity to review -- I'm looking at some of these tariffs
22 here and obviously it looks like -- I mean, in my opinion, it
23 looks -- I mean, not to compare apples to oranges, but it
24 certainly appears that some of these rates are probably below
25 the state-wide and the national average at least in some cases

0042

1 by probably a significant amount.

2 And obviously there may be legitimate reasons
3 for that in case -- in some cases where, you know, the plant
4 was donated and there's no value -- you know, there's no
5 assets in rate-base or something like that.

6 But, you know, for -- in cases where a utility
7 has not had a rate increase, you know, in more than -- where a
8 utility, for instance, like Aqua Missouri in some of these
9 specific cases has not had a rate increase in more than a
10 decade and where obviously they started working on their
11 informal request more than a year and a half -- more than a
12 year ago certainly, so you feel that any request over
13 15 percent is unreasonable and should be I guess phased in.
14 Is that a fair assessment?

15 MR. MILLS: The 15 percent actually came from
16 a Commission order. The Commission itself found in a Union
17 Electric case that anything above 15 percent at any one go
18 would be unconscionable.

19 I agree that that's a perfectly reasonable
20 place to set the bar. Anything more than that is going to
21 cause severe problems for people budgeting. I mean, most
22 goods and services simply don't go up 50 percent in one shot
23 after remaining stable for a dozen years. I think customers
24 will have a very, very difficult time adjusting to something
25 like that.

1 And that's why I propose that if the
2 Commission decides to grant a rate increase in this case, that
3 it ought to be phased in to allow customers the opportunity to
4 adjust their spending and to adjust their budgeting to be able
5 to cope with it.

6 There was more to your question, but that was
7 the end part and I'm not sure I addressed all of it.

8 CHAIRMAN DAVIS: Well, I think that gets it.
9 So I mean, if somebody's paying 5 to 10 to 15 dollars a month,
10 then that really bears no -- I guess that doesn't have any
11 merit in your views then if they're --

12 MR. MILLS: Certainly the Commission --

13 CHAIRMAN DAVIS: If they're paying \$5 a month
14 for sewer, I mean, do you think those customers would be more
15 tolerant of an increase larger than 15 percent? I mean,
16 certainly if they're paying 40 or 50 dollars a month, they're
17 probably not going to be tolerant of a rate increase of more
18 than 15 percent.

19 So I guess what I'm trying to get at is, is
20 there any subjectiveness in that 15 percent rule, in your
21 opinion or is it all just, you know, anything above
22 15 percent is unconscionable?

23 MR. MILLS: I think -- you know, if the
24 Commission wants to, I think it could look at the starting
25 point. Obviously the case that I cited was an electric case

1 and as a general rule, customers are paying more per month for
2 electric rates than for water and sewer rates. So that, you
3 know, all else being equal, a 15 percent raise in an electric
4 rate would be different than a 15 percent raise in a water
5 and sewer rate. But I don't have any other Commission
6 precedent that would allow me opine on a different number.

7 CHAIRMAN DAVIS: Okay. And you're not going
8 to step out on a limb?

9 MR. MILLS: I'm not going to volunteer a
10 higher number, no. I bargained against myself once and it
11 didn't turn out well.

12 MR. ELLINGER: Mr. Chairman?

13 CHAIRMAN DAVIS: Wait. Wait. Okay. I think
14 Commissioner Appling wants to ask someone a question and then
15 I see Mr. Ellinger with his hand up in the back of the room.

16 COMMISSIONER APPLING: I'm not sure it's a
17 question, Mr. Mills. I really am bothered by the small water
18 companies in the state of Missouri and I really would like to
19 see them somewhat fixed before I leave the Commission one of
20 these days in the future.

21 We just heard the CEO talk about the
22 conditions in which our small water companies are in. I hate
23 to ask you, do that have any bearing on you to try to get
24 these things back on track? And I don't mean that to be a
25 direct hit. I mean that to be something that we can try to

0045

1 come to grips with here.

2 MR. MILLS: Absolutely. I understand. The
3 problem of trying to make the economies of scale work on a
4 system that's set up to serve a handful of people is becoming
5 harder and harder all the time.

6 To the extent that we can get larger, more
7 responsible, more diverse companies with better access to
8 capital taking over some smaller systems and running them in a
9 better way and absorbing increase in capital costs more
10 equitably, I think that -- all of that is good stuff. I think
11 those are worthy goals.

12 I'm not sure that, you know, simply
13 implementing very large rate increases with no evidentiary
14 record is the best way to get there. I think -- I think what
15 you're suggesting are definitely worthy goals. I'm not sure
16 that I agree that, you know, allowing the rate increase that's
17 been agreed upon in this case is the way that we should go to
18 get there.

19 CHAIRMAN DAVIS: Can I jump in here and ask
20 just another question, Mr. Mills? Okay. You object to the
21 ROE. What other facets to the Stip and Agreement do you
22 object to? And obviously any increases that are above
23 15 percent. But what specifically in the mechanics in terms
24 of depreciation, net salvage, you know, what other issues, you
25 know, rate -- you know, capital structure, I mean, what other

0046

1 issues do you object to?

2 MR. MILLS: Well, my main objection is that
3 there is no evidence whatsoever to support any of it so I have
4 no basis to agree with either the capital structure, the
5 return on equity or -- or even -- or even the cost of debt. I
6 have no reason to agree with the rate-base calculation. I
7 have no reason to agree with the expense calculation, I have
8 no reason to agree with the billing units, I have no reason to
9 agree with the current revenues

10 CHAIRMAN DAVIS: Okay.

11 MR. MILLS: I disagree with all of those
12 things that I just mentioned.

13 CHAIRMAN DAVIS: Okay. And is that due to the
14 fact that the predecessors in interest to these Aqua Missouri
15 properties literally in some cases might have kept no records
16 or whatever records didn't get transferred to Aqua Missouri or
17 is that because, you know, the Staff here at the PSC didn't
18 put it all down in writing or --

19 MR. MILLS: I'm not sure it's any of those.
20 Certainly the fact that the predecessors in interest kept
21 lousy records is one of the things that led to the informal
22 portion of this case taking so long is that much of that had
23 to be reconstructed from almost nothing.

24 CHAIRMAN DAVIS: And has that been
25 reconstructed to your satisfaction?

1 MR. MILLS: No.

2 CHAIRMAN DAVIS: Okay. And what is the -- I
3 mean, is it feasible that the parties may not be able to
4 reconstruct a record?

5 MR. MILLS: I could -- I could see situations
6 in which, yeah, a company took over another company and the
7 record simply didn't exist and so couldn't be reconstructed.

8 CHAIRMAN DAVIS: And so is it your position
9 then that Aqua Missouri should just eat those costs if they
10 can't -- if they don't have records to justify it or, you
11 know, allow some scientific guessing, you know? I don't --

12 MR. MILLS: No. It is not -- it is not my
13 position that they should necessarily be required to eat those
14 costs. There may be some situation in which they should and
15 situations in which they should not.

16 CHAIRMAN DAVIS: Okay. And do you think the
17 Staff here at the PSC needs to -- I mean, can they help put
18 more evidence, you know, in front of you that would satisfy
19 your needs in some of these respects or -- I mean, is this a
20 recurring theme in all small water cases or is this just, you
21 know, specific to this particular case, Mr. Mills?

22 MR. MILLS: Well, there -- I believe there's a
23 problem with the process. I mean, we get to the end of these
24 cases and, you know, if there isn't agreement among all
25 parties, there isn't any evidence and there isn't any

0048

1 procedure in which evidence is to be presented. And that's
2 exactly where we are today. There was an agreement among less
3 than all the parties because Public Counsel didn't join in it
4 and as a result, there isn't any evidence to support the
5 agreement.

6 CHAIRMAN DAVIS: Mr. Krueger, Mr. Ellinger, do
7 you have anything else to offer?

8 MR. KRUEGER: Well, I guess I'm a little
9 confused about Public Counsel's problem here. Is the problem
10 that there is no verified evidence in the case or that you
11 have not seen any documentation?

12 Because I think we've shared our work papers.
13 We filed the work papers. You have received the information.
14 It has not been introduced into evidence. Is that the -- is
15 that the problem that you have or is it that you just have not
16 been able to get information?

17 MR. MILLS: Would the Bench like me to answer
18 that question?

19 CHAIRMAN DAVIS: Absolutely.

20 MR. MILLS: We have gotten a lot of
21 information. We've gotten work papers. Some of this stuff
22 has even been filed. None of it is evidence.

23 CHAIRMAN DAVIS: Okay. Realizing that none of
24 it is evidence, I mean, do you feel like it needs to be in the
25 form of evidence? I mean, is the fact that the records being

1 provided to you aren't being provided under affidavit or oath,
2 that you somehow question the veracity of the documents that
3 are being provided to you in your settlement -- or potential
4 settlement negotiations? Is that the problem or --

5 MR. MILLS: No.

6 COMMISSIONER GAW: Would I be able to --

7 CHAIRMAN DAVIS: Go ahead, Commissioner Gaw.

8 COMMISSIONER GAW: See if I'm following
9 Mr. Mills or not. And he can tell me whether I'm following
10 him or not.

11 CHAIRMAN DAVIS: Maybe you following him will
12 help me follow you and him.

13 COMMISSIONER GAW: That's my thought, but I'm
14 not sure it's going to be worth a lot.

15 First, if I understand you, Mr. Mills,
16 correctly, you're suggesting you didn't sign off on the stip.

17 MR. MILLS: That's correct.

18 COMMISSIONER GAW: Because you didn't sign off
19 on the stip, there's a requirement that an evidentiary hearing
20 be held before the Commission can have a finding in this case?

21 MR. MILLS: Well, there is no such requirement
22 in the small company rules. I think as a general practice, an
23 administrative body must have an evidentiary record on which
24 to base its decision.

25 COMMISSIONER GAW: And there are cases to that

0050

1 effect.

2 MR. MILLS: Oh, many. Yes.

3 COMMISSIONER GAW: And because of that, you're
4 suggesting there is no evidence up to this point in time.
5 You're not consenting to the stipulation, you objected to it.

6 MR. MILLS: Yes.

7 COMMISSIONER GAW: Which means the stipulation
8 is only some recommendation at the most.

9 MR. MILLS: Yeah. It's evidence of an
10 agreement among some parties to the case.

11 COMMISSIONER GAW: Because it's not something
12 for the Commission to just accept and turn up and down without
13 considering evidence.

14 MR. MILLS: Exactly. It's not competent
15 substantial evidence and it's not probative in any way.

16 COMMISSIONER GAW: And at this point without
17 there being evidence presented by the entity requesting
18 relief, you're not in a position to suggest that there's
19 anything here for you to consent to.

20 MR. MILLS: Exactly.

21 COMMISSIONER GAW: Okay.

22 CHAIRMAN DAVIS: Okay.

23 COMMISSIONER GAW: Sorry about that.

24 So to conclude, the only way for there to be
25 relief granted, in your opinion, is for the company to at some

0051

1 point proceed with putting on evidence.

2 MR. MILLS: Right. That's subject to
3 cross-examination and subject to responsive testimony and the
4 whole bit, yes.

5 COMMISSIONER GAW: And were you noticed up for
6 such a hearing today?

7 MR. MILLS: No. The hearing very clearly
8 states -- I mean the notice of this hearing says, The parties
9 shall appear at a hearing for the presentation of the
10 Stipulation and Agreement.

11 Nothing was -- one witness was required to
12 appear, no other witnesses were offered or invited.

13 CHAIRMAN DAVIS: Okay. All right.

14 JUDGE DIPPELL: Mr. Ellinger, you were wanting
15 to say something earlier. Do you still --

16 MR. ELLINGER: That's water under the bridge
17 now, Judge. I think the issue obviously is we have a
18 stipulation. I understand EMS runs have been filed. And I'm
19 not completely clear -- I understand the discussion regarding
20 the evidentiary standard that Mr. Mills believes.

21 And I guess maybe we're looking for some
22 clarification from the Commission and from you, Judge, as to
23 whether -- what we need to do is have somebody from the Staff
24 simply get up and say, Here are the EMS runs that we ran, we
25 verify that they're accurate through our system and tender

1 that person for cross-examination to Mr. Mills. We can put on
2 a witness to say -- to discuss the financial numbers, the same
3 thing.

4 Now, Mr. Mills seems to indicate he's not
5 prepared to do an evidentiary hearing today. And I guess I'm
6 looking for some clarification from the Commission. We
7 obviously have been waiting a year and a half to try to get
8 some rate relief. We're scheduled to have some rates go into
9 effect the end of this month, which was the reason that, you
10 know, we rushed everything to get this hearing put together.

11 And I guess I would not want to do anything
12 that would jeopardize that ability to get those rates moving
13 forward. If that means we need to put evidence on today, like
14 I said, we have witnesses, we can put evidence on today. We
15 can address these issues.

16 If Mr. Mills believes we need to take
17 pre-filed testimony and go through what is, at its heart, a
18 formal rate case, you know, as long as he has no objection to
19 the rates going into effect at the end of the month and the
20 Staff has no objections to the rates going into effect at the
21 end of the month and we'll continue to have evidence, the
22 company doesn't have objection to that.

23 But the end of the month is a pretty key point
24 to us after waiting -- I don't know if it's been 18 full
25 months. It may be more than that than now.

1 MR. DEBENEDICTIS: If I could just in a
2 business perspective, Chairman?

3 JUDGE DIPPELL: Mr. Debenedictis --

4 THE WITNESS: No? All right. Sorry.

5 JUDGE DIPPELL: -- we'll reserve this part for
6 just the attorneys.

7 MR. ELLINGER: And obviously, Judge, we can
8 put Mr. Debenedictis back on the stand. When we start talking
9 about things like cost of debt and debt to equity ratio, I
10 mean, these are all issues that can be addressed very quickly
11 in testimony. And if that's all that Mr. Mills is requesting,
12 you know, we can get Mr. Debenedictis up there to say the cost
13 of debt is 4.87 percent, we can get him to say the debt to
14 equity ratio is 50/50. And that's easy to have him get up
15 there and testify to that.

16 But if Mr. Mills is going to want pre-filed
17 testimony and schedules and, you know, kill another forest so
18 we can have a small rate case, then maybe that's -- I guess
19 that's appropriate, I guess, if the court -- if the Commission
20 determines that to be the case. We just don't want to have to
21 wait on the rates going into effect.

22 JUDGE DIPPELL: I think Mr. Mills is maybe
23 getting a little bit of a bad rap here. I don't believe he's
24 mentioned anything about pre-filed testimony or any such
25 thing, just that the Commission needs an evidentiary record

1 with competent and substantial evidence upon which to make its
2 decision.

3 Mr. Mills, is Office of Public Counsel
4 prepared to conduct cross-examination on any of that kind of
5 evidence today?

6 MR. MILLS: If ordered by the Commission, I
7 will do my best to, but I was not notified that this was going
8 to be an evidentiary hearing. I don't have a witness to
9 counter cost of capital questions. I don't have a witness who
10 is here to testify on any contrary positions. And I would
11 submit that, you know, a couple of minutes notice is not
12 adequate for something like that.

13 JUDGE DIPPELL: That answers my question.

14 Would Public Counsel be prepared to conduct
15 that kind of cross-examination on an expedited basis within
16 the next few weeks?

17 MR. MILLS: Well, you know, my dance card's a
18 little full these days, but, you know, if the Commission is
19 going to order something, we will do our best to comply. And
20 if what the Commission ultimately orders in terms of procedure
21 meets due process standards, then you can go ahead with it.
22 And if not, then it won't be. I mean, I don't know what to
23 tell you when you say the next few weeks what that means.

24 JUDGE DIPPELL: Well, the Administrative
25 Procedures Act says 10 days unless good cause is found to do

0055

1 it sooner.

2 MR. MILLS: I'm not willing to concede here
3 today that 10 days is sufficient to prepare for a rate case.

4 JUDGE DIPPELL: I'm trying to figure out the
5 process. Because we did enter into this small company
6 procedure and now we seem to find ourselves in some odd
7 hanging position, I'm just trying to work out among everybody
8 that's here so we can all talk about it, what the process is
9 going to be.

10 MR. MILLS: We've heard a lot about the small
11 company procedure. And, I mean, I think the small company
12 procedure was designed for very small companies who really
13 don't have the expertise to pursue a major rate case to be
14 able to get rate relief very quickly.

15 It was not designed to really handle
16 contentious issues. It wasn't designed to handle fairly large
17 companies with some fairly significant rate increases
18 affecting a fairly significant number of customers.

19 And the fact that this is not really a very
20 good fit for the small company rate increase process, it's not
21 a big surprise to me and it's -- I mean, I don't mean to make
22 light of it, but it isn't really my problem. My problem is
23 that we need to have an evidentiary record.

24 And the company, no matter the size of it or
25 no matter the amount of the request, has the burden of proving

0056

1 that an increase in rates is necessary. And we haven't gotten
2 that yet.

3 JUDGE DIPPELL: Okay. Well, what we did set
4 this for today was a presentation of the stipulation. Is
5 there any comment, argument or other procedure or
6 speechmaking, whatever, that needs to be done from Staff or
7 Aqua Missouri with regards to telling the Commission about
8 their stipulation? Would you like to present the stipulation
9 to the Commission for what it's worth?

10 MR. ELLINGER: I think we do want to present
11 the stipulation. And I think based upon what Mr. Mills has
12 said, I think we probably ought to have somebody from Staff
13 testify very briefly to the stipulation, somebody from Aqua
14 Missouri testify to the stipulation.

15 I think also based upon some of the questions
16 from the Commission to Mr. Debenedictis earlier, maybe we can
17 provide some testimony to address some of those specific
18 issues, which, you know, the CEO of a corporation may not know
19 the details of an individual water quality problem in one
20 particular household. We have somebody here to testify to
21 that today.

22 And I think what we should do is present the
23 stipulation very quickly. And if Mr. Mills wants to
24 cross-examine the witnesses on the stipulation, he's welcome
25 to do so.

1 JUDGE DIPPELL: We can do that. And I'm not
2 saying that that's going to be sufficient evidentiary record
3 by any means for the Commission to make a decision, but that
4 is what we noticed that we were going to do today and I'd like
5 to take the opportunity to do that so we have at least that
6 much information.

7 Would Staff have a witness that they would
8 like to bring forward to discuss the stipulation?

9 MR. KRUEGER: Yes. We'll call Dale Johansen.

10 JUDGE DIPPELL: And I have been saying
11 stipulation in singular, when actually there are three
12 different agreements in the three different cases.

13 And Mr. Debenedictis, if you need to leave to
14 catch your plane, you are free to do so.

15 MR. DEBENEDICTIS: I'll stay as long as I can
16 in case there's any questions.

17 (Witness sworn.)

18 JUDGE DIPPELL: Thank you.

19 DALE JOHANSEN testified as follows:

20 DIRECT EXAMINATION BY MR. KRUEGER:

21 Q. State your name and address for the record,
22 please.

23 A. Dale W. Johansen, J-o-h-a-n-s-e-n. Business
24 address --

25 Q. By whom --

0058

1 A. I'm sorry.

2 Q. By whom are you employed and in what capacity?

3 A. I'm employed by the Missouri Public Service
4 Commission as the manager of the Water and Sewer Department.

5 Q. Did you participate in the Staff's
6 investigation of these three rate cases that are before the
7 Commission today?

8 A. Yes.

9 Q. And what was your role in these rate cases?

10 A. Generally, supervisory from the standpoint
11 that the Water and Sewer Department basically acts as a
12 coordinator of all the Commission departments that are
13 involved in the cases.

14 We put together the packets of information
15 that are -- that are filed throughout the case. We draft and
16 finalize and submit the Staff recommendation for the cases.
17 So we -- myself and Jim Russo of my department, we have fairly
18 significant knowledge of all the aspects of the case. And I'm
19 fully aware of the various inputs that go into the case to end
20 up with the Staff's recommendation on it.

21 Q. And were you involved in the negotiation of
22 the disposition agreement?

23 A. Yes.

24 Q. In each of the three cases?

25 A. Yes.

1 Q. And are the terms of those disposition
2 agreements reasonable, in your opinion?

3 A. Yes.

4 Q. And how were these -- how was the information
5 that supports these disposition agreements gathered?

6 A. Well, basically the -- the Staff undertook a
7 full audit of the company's books and records. It was done
8 actually in the context of what I call four separate operating
9 units that Aqua Missouri has in the state.

10 One that we call Aqua Missouri CU, which is
11 basically the Jefferson City/Sedalia service area; Aqua
12 Missouri RU, which is an operating unit of what I call the old
13 Riverside Utilities Company, which a lot of those facilities
14 are located down around the Branson area and they also have
15 some in the Warsaw area; and as well as a company that was
16 previously known as Aqua Source Development, which has also
17 been acquired by Aqua Missouri. So I guess really there's the
18 three operating units.

19 There ended up being four cases filed because
20 of the way that the rates are structured throughout those
21 various units.

22 Q. And did you perform all of this work or
23 supervise the performance of all of the work in gathering this
24 information for the negotiation of the disposition agreements?

25 A. Yes.

0060

1 Q. Who else on Staff was involved in this
2 investigation?

3 A. Jim Russo of the Water and Sewer Department;
4 Jim Merciel of the Water and Sewer Department; Jerry Scheible
5 of the Water and Sewer Department, Jerry did a lot of the
6 field work and field investigations; Bill Nickle of the Water
7 and Sewer Department was involved in the field work; Paul
8 Harrison of the Auditing Department was the lead auditor; and
9 Matt Barnes was the Staff person from the financial analysis
10 department that participated; and Gary Bangert from our Energy
11 and Management Services Department participated from the
12 standpoint of the customer service issues. And we also had a
13 Staff person from the depreciation department, and who that
14 was, I don't recall right now. I think it was Jolie Mathis,
15 but I'm not sure.

16 Q. Okay. Thank you. Now, did you share the
17 information that was gathered as a result of this
18 investigation with the Office of Public Counsel?

19 A. Yes.

20 Q. And then did you negotiate an agreement
21 between the Staff and the company?

22 A. Yes, we did.

23 Q. And did Public Counsel join in that agreement?

24 A. They did not.

25 Q. And did you cause that disposition agreement

0061

1 to be filed with the Commission?

2 A. Yes. It was filed -- the agreement itself was
3 filed on July 21. And I believe it was filed on the same date
4 for each of the cases. Let me double check that.

5 Yes. The agreement itself was filed on
6 July 21, 2006 in each of the cases. And under our process,
7 that filing is made shortly after the company files its
8 tariffs to implement the rates that are agreed upon, which is
9 when the formal rate case is actually docketed.

10 MR. KRUEGER: Your Honor, these disposition
11 agreements have been filed in the case and I'd like to have
12 them identified as an exhibit. I don't have an executed copy
13 with me, but I would like to have that identified as an
14 exhibit and offered as an exhibit.

15 JUDGE DIPPELL: Okay. I'll mark the
16 disposition agreement in WR-2007-0020 as Exhibit No. 1 and the
17 disposition agreement in WR-2007-0021 as Exhibit No. 2 and
18 disposition agreement in SR-2007-0023 as Exhibit No. 3.

19 MR. KRUEGER: And I would offer that into
20 evidence.

21 JUDGE DIPPELL: Would there be any objection
22 to those exhibits coming into the record?

23 MR. MILLS: I don't object to them being
24 preserved in the record. I object to the characterization of
25 them as evidence. I certainly don't -- it's a legal document.

1 It's an agreement among two parties. It is not evidence of
2 anything other than the fact that that agreement was entered
3 into. And simply having it as a filing in the case is
4 sufficient for that.

5 So I think to the extent that somehow by
6 making it an exhibit at the hearing today if it somehow is
7 viewed as being bootstrapped into the status of competent and
8 substantial evidence, I would object to that. But having said
9 that, I have no objection to it being marked and referred to
10 by those numbers for convenience.

11 MR. KRUEGER: Your Honor, I think it's
12 evidence of the agreement between the Staff and the company
13 concerning the terms of that. And we will offer additional
14 evidence in regard to -- that supports how the Staff came to
15 that conclusion.

16 JUDGE DIPPELL: Okay. I'm going to receive it
17 into evidence.

18 (Exhibit Nos. 1, 2 and 3 were received into
19 evidence.)

20 JUDGE DIPPELL: As to its evidentiary value
21 and the Commission making a determination in the rate case
22 based on competent and substantial evidence, the Commission
23 will have to deal with that when it makes its decision. But I
24 will receive Exhibits 1, 2 and 3.

25 MR. KRUEGER: Thank you, your Honor.

0063

1 BY MR. KRUEGER:

2 Q. Subsequent to the filing of the disposition
3 agreements, did the Staff cause other documents to be filed in
4 the case?

5 A. Yes, we did. And, again, the filing I'm going
6 to refer to now was made on the same date in each of the three
7 cases. And that filing was made on August 21st, 2006. It was
8 titled Pre-local Public Hearing Informational Filing Regarding
9 Small Company Rate Increase Request.

10 Would you like the EFIS identification numbers
11 for each of those?

12 JUDGE DIPPELL: Sure. If you have them there
13 handy

14 THE WITNESS: For WR-2007-0027, it's EFIS item
15 No. 9, it's also EFIS item No. 9 for WR-2007-0021 and also
16 No. 9 for SR-2007-0023.

17 BY MR. KRUEGER:

18 Q. Prior to filing those documents, the Pre-local
19 Public Hearing Informational Filings, did you either prepare
20 all of the information in that or review it for its accuracy?

21 A. Yes. I was familiar with all the documents
22 that were -- that were included with that filing. And if I
23 could, I would like to refer to the various items that were
24 included with that.

25 Q. Please do so.

1 A. There were six items included with this filing
2 and it was the same for each of the cases. Number 1 was the
3 summary of the company's annual operating revenues at its
4 current rates; item No. 2 was the rate-making income statement
5 relative to either each case or each service area, depending
6 upon how the systems are broken down for rate-making purposes.

7 There was a rate design worksheet for each
8 case and potentially for each system; number 4 was a summary
9 of the company's annual operating revenues at the proposed
10 rates; number 5 was the residential customer billing
11 comparison for each system -- for each company and each system
12 within the company; and number 6 was revenue requirement audit
13 work papers, which for purposes of reference are usually
14 referred to as our EMS runs.

15 Q. And these same six documents were filed in
16 each of the cases?

17 A. That's correct.

18 Q. And is all the information contained therein
19 accurate to the best of your information, knowledge and
20 belief?

21 A. Yes, it is.

22 Q. Did you have any other evidence concerning how
23 this rate case was -- these rate requests were determined?

24 MR. MILLS: Your Honor, may I ask a point of
25 clarification here? Are we proceeding with an evidentiary

0065

1 hearing this afternoon? Because it seems as though that is
2 where the Staff is going with this and it's my understanding
3 from your earlier ruling that we were not going to be doing
4 that today.

5 JUDGE DIPPELL: No. I'm specifically asking
6 for them to present their stipulation.

7 MR. MILLS: Okay. So you are not under the
8 impression that we're in the middle of an evidentiary hearing
9 today?

10 JUDGE DIPPELL: I am not under that
11 impression. And I understand that -- your statement. The
12 Commission will have to make any decision on competent and
13 substantial evidence and --

14 MR. MILLS: Because the documents that they're
15 talking about now were not filed in conjunction with the
16 disposition agreement. They were filed at a vastly different
17 point in time and were not filed with the disposition
18 agreement.

19 So I mean, they haven't been offered or
20 anything, but we're talking about evidence and, you know,
21 whether it's true and correct or not and it leads me to
22 believe that perhaps Staff is trying to go that route. And I
23 wanted to be sure that my understanding was the same as the
24 Bench's, that we're not doing an evidentiary hearing today.

25 JUDGE DIPPELL: That is correct.

1 MR. MILLS: Thank you.

2 BY MR. KRUEGER:

3 Q. Mr. Johansen, did you have a response?

4 A. Well, I think what I -- one of the things that
5 Mr. Mills' point raises I think is really a procedural issue.
6 From the standpoint of the process that is used in situations
7 where the rate case, if you will, starts out under the small
8 company procedure, the process that we use is that once
9 there's an agreement reached between at least the company and
10 the Staff, the company files tariffs that are reflective of
11 that agreement that are in compliance with that agreement, if
12 you will.

13 The Staff subsequently files the agreement
14 itself. And then at some point in the process, the Staff
15 files the work papers, if you will, that that agreement is
16 based upon.

17 It could easily be filed as part of the
18 initial filing. It's just that our process as it is currently
19 established and as we've been doing for several years now,
20 it's -- the work papers on which the disposition agreement is
21 based, is not filed at the same time.

22 And I think there is absolutely no distinction
23 about when it's filed. It's the fact that it is filed. And
24 the work papers that I referenced of the filing on August 21st
25 are the work papers on which the agreement is based.

1 MR. KRUEGER: Your Honor, I would offer
2 exhibits -- the Pre-local Public Hearing Informational Filings
3 as exhibits.

4 MR. MILLS: And your Honor, to respond to
5 that, it has not been my contention and it is not my
6 contention that there might be some evidence somewhere that
7 supports this agreement.

8 My contention is that it has not been filed to
9 date. And if you allow it in here today, then we're talking
10 about an evidentiary hearing in which that I am apparently
11 supposed to be able to cross-examine this witness or other
12 witnesses who were involved in the preparation of these
13 exhibits to find out if they are, in fact, true and correct
14 and if they're substantive evidence and that's an evidentiary
15 hearing.

16 If you allow this exhibit in here today,
17 you're creating an evidentiary record in an evidentiary
18 hearing and there was not sufficient notice given that this
19 would be an evidentiary hearing.

20 MR. KRUEGER: I wasn't expecting to present
21 any evidence or testimony today either. And I'm not sure
22 exactly what it is that we're trying to accomplish other than
23 presenting the stipulation -- or the disposition agreement
24 which has been presented and has been filed in the case. And
25 I don't know what the Commission is seeking to do, I guess,

0068

1 with this information.

2 MR. ELLINGER: Judge, if I may.

3 JUDGE DIPPELL: Go ahead, Mr. Ellinger.

4 MR. ELLINGER: My understanding is that the
5 purpose of the hearing today is to present the disposition
6 agreement to the Commission for their review and ultimate
7 determination whether to accept it or not to accept it. I
8 understand the Office of Public Counsel objects to it.
9 They've filed a disagreement and they're within their rights
10 to do so.

11 I think that all we're doing -- at least my
12 understanding of what we're doing is putting the disposition
13 agreement and supporting documentation into the record as
14 evidence before the Commission. I don't believe that rises to
15 the standard of a full evidentiary hearing. I don't think
16 there is a full evidentiary hearing called for in this case.

17 And I think the Office of Public Counsel's
18 being a bit duplicitous. And I'm sorry to attack the Office
19 of Public Counsel in this situation, it's not personal, Lewis,
20 but, you know, they initially filed a request for an
21 evidentiary hearing, then they withdraw their request for
22 evidentiary hearing, then we show up to present the
23 stipulation and the supporting documents to it and they say,
24 wait a second, we can't have an evidentiary hearing because we
25 didn't request an evidentiary hearing, we requested and

1 withdrew.

2 I mean, at some point -- and I'm not exactly
3 sure what Mr. Mills' game here is except for, you know, he's
4 opposed to the agreement and I think he's made that quite
5 clear. But I think it's certainly within this Commission's
6 authority to take the disposition agreement and supporting
7 documentation into evidence. I don't think that rises to the
8 level of a full-blown evidentiary hearing under a formal rate
9 case. We're not under a formal rate case.

10 And if Mr. Mills' disagreement, which I think
11 is the term of the document he filed, initially called for an
12 evidentiary hearing, he's withdrawn that request. For him to
13 now object that this is an evidentiary hearing or that we
14 shouldn't have an evidentiary hearing or he needs more time to
15 prepare for an evidentiary hearing is kind of -- well, I
16 fooled you once, I fooled you twice and shame on you for being
17 fooled.

18 And I think we need to just -- let's get this
19 evidence in the record. If he wants to ask questions and
20 cross-examination, he ought to do that. We'll put our
21 witnesses on. If he wants to ask questions on
22 cross-examination, he can do that.

23 And the only issue then presented to the
24 Commission is disposition agreement, supporting documentation.
25 If the Commission determines there's not sufficient evidence

1 to support only that document, well, then we go to a
2 full-blown evidentiary hearing. That's my understanding of
3 what the process ought to be.

4 MR. KRUEGER: I think, as I understand it,
5 Mr. Mills' argument was that there's no evidence because
6 there's no sworn testimony about all these documents that have
7 been put into the record. I was seeking to remedy that by
8 getting the testimony of Mr. Johansen that would support
9 accepting this as evidence.

10 It could have been -- it could perhaps have
11 been accomplished by merely attaching an affidavit to the
12 filings at the time that they were filed. This is the way to
13 remedy that. And as Mr. Ellinger noted, with this in
14 evidence, then the Commission can make a determination on the
15 stipulation -- on the disposition agreements.

16 MR. MILLS: And, your Honor, if that's the
17 route we're going to go, Mr. Johansen identified six people
18 that he knew of that were involved in the preparation of this
19 these documents. I will have questions of all of them before
20 I'm willing to admit that there's a foundation that's been
21 laid that's adequate for it to be allowed into evidence.

22 And, once again, I will submit that that is
23 very much like an evidentiary hearing. And if that's what
24 we're doing today and if that's what the Commission has
25 planned, that's what we'll do. But I object to that and I've

0071

1 objected to that several times on the record today.

2 JUDGE DIPPELL: Okay. I'm going to take a
3 little break. It is 20 after 3:00 and we've been in here for
4 almost two hours, so we're going to take a 15-minute break,
5 come back at 25 till by that clock in the back of the room.
6 Go off the record.

7 (A recess was taken.)

8 JUDGE DIPPELL: Let's go back on the record.
9 Okay. We took a much lengthier break than the transcript will
10 indicate. The parties had some settlement discussions and
11 they have some information for me. Who would like to speak?

12 MR. ELLINGER: Well, I mean, I'm happy to
13 start. We've had settlement discussions between the Staff,
14 the Office of Public Counsel and the company and we've reached
15 an agreement that all parties will enter into.

16 I don't know how far in depth you would like
17 us to brief you on what the agreement is. Basically the
18 disposition agreement that has been provided, the substantive
19 terms, with the exception of the rates, all remain the same.
20 Rates will be implemented -- all those rates which would upon
21 the proposed -- current proposed rates where the rates are
22 \$25 or less will go into effect immediately basically upon
23 approval -- on tariff sheets being approved.

24 The remaining rates that are proposed would go
25 into effect at 65 percent of the increase amount. And that

0072

1 would be immediately upon the filing of tariff sheets and
2 getting it in front of the Commission. The parties agree to
3 expedited treatment of those new tariff sheets that would be
4 filed since we'd have to change them obviously.

5 And an agreement from the company that they
6 will not file for a new rate case any sooner -- I'm trying to
7 think of the right way to word it -- any sooner than
8 February 1st, 2007.

9 JUDGE DIPPELL: And do you anticipate -- when
10 do you anticipate getting something filed then?

11 MR. MILLS: Given the company's desire to get
12 these rates into effect by September 30th if possible, very
13 quickly. I would be surprised if we could do it tomorrow, but
14 I would bet Monday or Tuesday next week.

15 JUDGE DIPPELL: So the Commission could act on
16 it next week?

17 MR. MILLS: Yes.

18 MR. ELLINGER: Yes.

19 JUDGE DIPPELL: I'm sure that will be the main
20 question the Commissioners will have.

21 MR. ELLINGER: And one other request that I
22 would make on behalf of the company, is if we could have a
23 copy of the transcript -- we did not order a copy of the
24 transcript from the public hearing. We would like a copy of
25 that transcript provided immediately, as soon as possible in

0073

1 following up with Mr. Debenedictis' conversation with
2 Commissioner Gaw so we can immediately act upon those issues.

3 JUDGE DIPPELL: The transcript -- I did get --
4 the transcript is actually in EFIS so you can print it from
5 there.

6 MR. ELLINGER: I will withdraw that request
7 then.

8 JUDGE DIPPELL: I apologize. And let me just
9 tell you that I believe there's a page numbering issue, the
10 index is messed up with the Point Lookout, Reed Springs
11 transcript. And the court reporters are having some kind of
12 difficulty getting us an electronic copy and that's what the
13 delay was on that.

14 As soon as we get a corrected version of the
15 transcript, I will also have that put in EFIS. But I believe
16 the testimony is correct in there, there's just maybe some
17 page numbering issues.

18 So is there anything else from anyone?

19 MR. MILLS: No. I think that's it.

20 JUDGE DIPPELL: I appreciate your indulgence.

21 MR. MILLS: And we appreciate yours for
22 letting us talk about this.

23 JUDGE DIPPELL: And I'm glad it could end up
24 being productive. Let's go ahead and go off the record.

25 WHEREUPON, the Stipulation and Agreement

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1 hearing was adjourned.

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NICHOLAS DEBENEDICTIS

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Questions by Judge Dippell

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Questions by Chairman Davis

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Questions by Commissioner Gaw

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Questions by Commissioner Appling

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DALE JOHANSEN

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Direct Examination by Mr. Krueger

57

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0076

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EXHIBITS INDEX

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REC'D

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Exhibit No. 1

4

Disposition agreement in Case No. WR-2007-0020

62

5

Exhibit No. 2

6

Disposition agreement in Case No. WR-2007-0021

62

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Exhibit No. 3

8

Disposition agreement in Case No. SR-2007-0023

62

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