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STATE OF MISSOURI

PUBLIC SERVICE COMMISSION

TRANSCRIPT OF PROCEEDINGS

Prehearing Conference

December 17, 2001
Jefferson City, Missouri
Volume 1

In the Matter of the Joint Application)
of Missouri-American Water Company,)
St. Louis County Water Company, d/b/a)
Missouri-American Water Company, and) Case No.
Jefferson City Water Works Company,) WO-2002-273
d/b/a Missouri-American Water Company,))
for an Accounting Authority Order)
Relating to Security Costs.)

KEVIN A. THOMPSON, Presiding,
DEPUTY CHIEF REGULATORY JUDGE.

REPORTED BY:

MELINDA ADOLPHSON, CSR
ASSOCIATED COURT REPORTERS

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9 Missouri-American Water Company,
10 Missouri-American Water Company,
11 Jefferson City Water Works Company
12 d/b/a Missouri-American Water Company.

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14 STUART W. CONRAD, Attorney at Law
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25 FOR: Staff of the Missouri Public Service
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1 How about Staff?

2 MS. KIZITO: Good morning, Judge. I'm
3 Victoria Kizito on behalf of Staff. Our address is
4 Governor Office Building, Suite 800, 200 Madison
5 Street, P.O. Box 360, Jefferson City, Missouri
6 65102. Also present is counsel for Staff, Keith
7 Krueger and our Staff member, Mark Oligschlaeger.

8 JUDGE THOMPSON: Thank you. Is
9 Mr. Krueger here to keep an eye on you or on me?

10 MS. KIZITO: Both.

11 JUDGE THOMPSON: Has anybody seen the
12 Public Counsel?

13 MR. CONRAD: My understanding was, Judge,
14 that Ruth --

15 JUDGE THOMPSON: O'Neill?

16 MR. CONRAD: -- O'Neill was coming down,
17 but she's obviously not here yet.

18 JUDGE THOMPSON: Maybe she's sitting in
19 the other room.

20 MR. CONRAD: I'll be glad to -- depends on
21 what you want to do.

22 JUDGE THOMPSON: Let's go off the record
23 for a minute, and I'll check the other room.

24 (OFF THE RECORD.)

25 JUDGE THOMPSON: Ms. O'Neill is not in the

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1 other room, and we're 10 minutes past the published
2 start time for the hearing, so we'll continue
3 without her.

4 Mr. Conrad, would you like to give an oral
5 entry of appearance, please?

6 MR. CONRAD: Yes. Your Honor, Stuart W.
7 Conrad, with the law firm of Finnegan, Conrad and
8 Peterson, 1209 Penntower, 3100 Broadway, Kansas
9 City, Missouri 64111. This morning we filed on
10 behalf of Ag Processing, Friskies and Wire Rope, an
11 application to intervene in this proceeding, which
12 I believe has been served on all the parties either
13 electronically or manually here this morning in the
14 hearing room. I believe your Honor has a copy of
15 that sheet indicated to me before.

16 JUDGE THOMPSON: Thank you, Mr. Conrad.

17 Mr. Deutsch?

18 MR. DEUTSCH: Jim Deutsch, of the law firm
19 of Blitz, Bardgett and Deutsch, L.C., 308 East High
20 Street, Suite 301, Jefferson City, Missouri,
21 representing the City of Joplin, Missouri.

22 JUDGE THOMPSON: You're back for your
23 friends in Joplin.

24 MR. DEUTSCH: I have many friends in
25 Joplin.

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1 JUDGE THOMPSON: Thank you, sir. Have you
2 filed a motion to intervene or application at this
3 time?

4 MR. DEUTSCH: No. I just found out about
5 this a short time ago, so I haven't had an
6 opportunity to, but I intend to.

7 JUDGE THOMPSON: Would you like to make an
8 oral application to intervene at this time?

9 MR. DEUTSCH: I wish to be granted leave
10 to intervene, Judge.

11 JUDGE THOMPSON: Are there perhaps any
12 grounds that might support the application that you
13 can think of offhand?

14 MR. DEUTSCH: Yes. We are both a consumer
15 and user and also representative as a municipality
16 of a district of Missouri-American, which I assume
17 that the purpose for their application is once
18 again to stick us with further costs. So I believe
19 that we have an interest that's affected and should
20 authorize intervention as a matter of right.

21 JUDGE THOMPSON: Thank you, Mr. Deutsch.

22 At this time I will ask the parties
23 whether anyone has an objection first to the
24 application to intervene on behalf of Ag
25 Processing, Friskies and Wire Rope represented by

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1 Mr. Conrad?

2 Hearing no objections, that application to
3 intervene is granted.

4 Second, I will ask whether any party has
5 an objection to the application to intervene on
6 behalf of the City of Joplin represented by Mr.
7 Deutsch?

8 Hearing no objections, that application to
9 intervene is granted.

10 Do we have any other pending motions at
11 this time? No? Okay.

12 MS. KIZITO: Excuse me, your Honor.

13 JUDGE THOMPSON: Yes, ma'am.

14 MS. KIZITO: The Applicant's motion for
15 expedited treatment as well as the underlying
16 application.

17 JUDGE THOMPSON: Thank you, Ms. Kizito.
18 You are right. There is the motion for expedited
19 treatment as well as the underlying application. I
20 have suggestions in opposition from Public Counsel
21 who has not favored us with attendance this
22 morning. I don't suppose that means they are
23 waiving their opposition, do you?

24 What is Staff's position? You filed
25 something, but frankly, I haven't had a chance to

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1 read it yet.

2 MS. KIZITO: Your Honor, Staff's position
3 is that as far as their motion for expedited
4 treatment, that the Applicant has not submitted us
5 even the most basic facts as to the reason why.

6 JUDGE THOMPSON: You're opposed?

7 MS. KIZITO: Yes, we're opposed.

8 JUDGE THOMPSON: Thank you.

9 Mr. Deutsch, are you opposed?

10 MR. DEUTSCH: Yes. On the same basis.

11 JUDGE THOMPSON: Okay. Mr. Conrad?

12 MR. CONRAD: And, your Honor, we also
13 are -- well, let me say that if the relief the
14 Commission was contemplating was denying the
15 application, we would have --

16 JUDGE THOMPSON: Just talking about the
17 motion for expedited treatment at this time.

18 MR. CONRAD: Well, we wouldn't have any
19 objection if it was expeditiously denied. But
20 given the facts that there isn't an allegation of
21 the fact that's sufficient to support the
22 application, it would seem to us that we have no
23 choice but to oppose the application and the motion
24 for expedited treatment.

25 JUDGE THOMPSON: Very well.

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1 Mr. Cooper, could I hear from you on the
2 reasons supporting expedited treatment?

3 MR. COOPER: Well, your Honor, it's
4 factual -- I guess the factual basis for our motion
5 to expedite is kind of a combination of things.
6 It's, one, based upon the fact that the events
7 driving our application occurred on September
8 11th. We are going to three months and a few days
9 removed from those. In that three-month period the
10 Company, in reacting to the security challenges
11 raised by those events and various enforcement
12 agencies that became interested in our properties
13 and securities after September 11th, has worked
14 quite quickly during that three-month period to try
15 to take steps to add to the secure nature of the
16 water facilities.

17 And because of those steps, the Company
18 has just now in the month of December been able to
19 put its arms to a certain extent around those
20 costs, and to bring those costs to the Commission
21 for possible treatment in an accounting authority
22 order. Now, if this were April, there probably
23 would not be, just based upon that three-month
24 period, grounds for expedited treatment or a need
25 for expedited treatment. The problem is the fact

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1 that accounting conventions are such that books
2 close at the end of the year, December 31st.

3 And under, I guess, the theory we're
4 operating on, if the accounting authority order is
5 going to have any impact, we need to get that
6 within a reasonable period of time after -- or
7 actually a very quick period of time after
8 December 31st.

9 JUDGE THOMPSON: Is that when your books
10 close?

11 MR. COOPER: Which is the period that
12 closes our books, yes. In order to include those
13 costs, if the Commission should grant an
14 application for accounting authority order on the
15 2001 books. So that's the basis of our argument.

16 JUDGE THOMPSON: So how soon after
17 January 31st do you need the AAO?

18 MR. COOPER: December 31st.

19 JUDGE THOMPSON: December 31st. I'm
20 sorry.

21 MR. COOPER: At this point I am told
22 January 4th. Very quickly after December 31st.

23 JUDGE THOMPSON: Can't the Commission --
24 let's say the Commission issues the order later
25 than that. Can't the Commission direct the Company

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1 how to account for those costs even after the
2 financial year has ended?

3 MR. COOPER: The Commission probably can
4 direct that, just as you suggest, your Honor. I
5 think the difference probably is in the reporting,
6 because the three companies that I represent here
7 today are part of American Water Works Company,
8 which is a publicly traded company. Those
9 accounting records that are as of the end of
10 December 31st find their way into publicly filed
11 documents with the FCC, and I think that's where
12 the issues come in.

13 JUDGE THOMPSON: So they can't be changed
14 once they are reported to the FCC?

15 MR. COOPER: They probably can be
16 changed. I think it's -- I don't know how to say
17 this otherwise, but it's probably a decision on
18 whether that effort is required or worth the
19 situation involved.

20 JUDGE THOMPSON: Okay. Mr. Conrad, am I
21 correct in understanding that you would like to
22 speak?

23 MR. CONRAD: Yes, sir. Thank you. Your
24 Honor, I can't recall whether you or Judge
25 Woodruff, it may have been Judge Woodruff, that

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1 handled the AAO case for St. Joseph Light and Power
2 where they excluded their -- part of their Lake
3 Road Station, but I think it was established in
4 that case. And I recall by either an interlocutory
5 or, perhaps, final order of the Commission that a
6 utility as a business enterprise can establish an
7 accrual account any time they want to. And they
8 can accrue in that account such amounts as they
9 want you to do. And they do not require Commission
10 approval to do that.

11 Accordingly, this application must ask for
12 more than simply the ability to do that, and what
13 it asks for is future rate treatment. Given that
14 as the application, it is deficient as to amount,
15 it doesn't tell you how much, it doesn't tell you
16 what for, it doesn't tell you where in any of the
17 seven or eight or nine districts now. Maybe ten if
18 you count Jeff City that this Company is operating
19 in. I'm sure the amounts in each one, if any, are
20 going to be different.

21 And moreover, as we pointed out in our
22 application to intervene, there may very well be
23 offsetting revenue reductions. There may be growth
24 that offsets the expense that would wash away any
25 need for any kind of rate treatment at all. It

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1 seems to me --

2 JUDGE THOMPSON: But, Mr. Conrad, part of
3 what you're addressing it seems to me goes to the
4 question of whether the amounts should be recovered
5 in rates as opposed to whether it should simply be
6 isolated by an AAO?

7 MR. CONRAD: That's correct. But that's
8 why we're here. Going back to my initial point, is
9 they don't -- in order to do an accrual account,
10 they don't need the imprimatur of the Commission to
11 do that. They can do that at any time. And if
12 those expenses prove to be sufficient to deny them
13 the ability to make what they consider to be
14 improper return, then they can file a rate case at
15 that time. And all of that goes to the point that
16 there is just no reason for expedited treatment
17 here. I mean, you have to think about here we are
18 on whatever it is, the 17th of December, and
19 they're asking for relief by January 4, and we
20 don't know how much or what or where or anything.
21 And indeed --

22 JUDGE THOMPSON: Well, now that relief is
23 simply the AAO, which as I understand, it doesn't
24 guarantee recovery of any of that amount.

25 MR. CONRAD: Well, if it doesn't guarantee

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1 recovery, why do they want it?

2 JUDGE THOMPSON: I think it permits
3 recovery.

4 Mr. Cooper, do you want to address this?

5 MR. COOPER: Let me respond to that very
6 briefly. I am very much aware of Missouri Gas
7 Energy case that's on the books from the Western
8 District Court of Appeals that says accounting
9 authority orders are not ratemaking decisions.
10 That all they do is preserve those dollars until
11 such time as a rate case so that the Commission can
12 make a decision based upon all the relevant factors
13 at that time, and I'm not asking to change that in
14 my application.

15 What I'm asking to do is to be able to
16 keep those dollars until such time is that rate
17 case so I can make that argument in a rate case.
18 That's what the application asks. One other point
19 that Mr. Conrad also, I guess, alleged that we
20 could do that without an accounting authority order
21 from this Commission. I don't know that everybody
22 in the world agrees with that. And that's why
23 we're here.

24 MR. CONRAD: That's my point.

25 JUDGE THOMPSON: Does anyone else have

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1 anything they would like to say?

2 MR. DEUTSCH: It just occurs to me, Judge,
3 that, I guess, I was expecting to hear some kind of
4 an emergent circumstance that required us to do all
5 of this before the 4th of January. I'm not sure I
6 heard it. I understand the problem that they have
7 and the questions they have. And I don't question
8 their right to be here asking for something. The
9 issue before you is the expedited treatment, and it
10 seems to me that expedited treatment is something
11 that generally is going to require that there are
12 circumstances that require it, and those are
13 usually emergent circumstances that require you to
14 change the normal course that these things take.

15 Maybe Dean could enlighten us other than
16 the inconvenience that they have had to make
17 certain filings to close their books, which, you
18 know, I mean, everybody has got to live with the
19 burden of regulation in some way. And, you know,
20 that may be unfortunate. I don't know that that
21 constitutes any kind of a different or emergent
22 circumstance. It sounds to me like one of the
23 problems that you encounter and everybody is asking
24 for some kind of relief from somebody because of
25 September 11th.

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1 And I think we need to be a little bit
2 more cautious than to just immediately agree
3 because something bad happened on September 11th
4 that it changes everything with regard to
5 businesses that have functioned under the same
6 rules forever. So I'm just curious as to what the
7 big emergency and the rush really is.

8 JUDGE THOMPSON: Thank you, Mr. Deutsch.

9 MS. KIZITO: Your Honor?

10 JUDGE THOMPSON: Ms. Kizito? How do you
11 pronounce your name? I'm sorry.

12 MS. KIZITO: Kizito.

13 JUDGE THOMPSON: Kizito. I apologize.
14 Ms. Kizito?

15 MS. KIZITO: I'll just reiterate Staff's
16 position, which is at this point we simply don't
17 have the information that we need to make a
18 determination about the motion for the expedited
19 treatment or the underlying application.

20 JUDGE THOMPSON: Okay. Let me ask you
21 this: What information does Staff believe that it
22 needs?

23 MS. KIZITO: Staff needs the costs
24 incurred, what action has been taken, why it has
25 been taken and that's basically the most basic

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1 facts.

2 JUDGE THOMPSON: Okay. I want to make
3 sure that the parties are focusing on the
4 appropriate issues. For the issue of expedited
5 treatment, it appears to me, at least, that the
6 costs incurred and why are not particularly
7 important. What is important is why it has to be
8 dealt with so quickly which has to do with the
9 timing evidently of certain federal reports. Am I
10 correct, Mr. Cooper?

11 MR. COOPER: Yes, your Honor.

12 JUDGE THOMPSON: That is what creates the
13 exigency here; is that not right?

14 MR. COOPER: That is our argument that it
15 is the closing of the Company's books and then the
16 reporting into those figures.

17 JUDGE THOMPSON: What is your Company's
18 fiscal year, may I ask you that?

19 MR. COOPER: December 31st is the close.

20 JUDGE THOMPSON: For all of the three
21 companies that you represent?

22 MR. COOPER: Yes, your Honor. It's the
23 calendar year for all three companies.

24 JUDGE THOMPSON: Calendar year, fiscal
25 year. Very well. And what is the filing date of

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1 the federal report to which you are referring?

2 MR. COOPER: If you would give me just a
3 second?

4 JUDGE THOMPSON: Certainly. Certainly.

5 MR. COOPER: Your Honor, with me is
6 Mr. Jim Jenkins, who is the Treasurer -- Vice
7 President/Treasurer of all three companies that I
8 represent here today. And let me clarify one
9 thing. We talked about filing requirements, that
10 sort of thing. I should not represent these as
11 federal reports. I think what I should represent
12 them as is releases that are made to the
13 marketplace as a result of the publicly traded
14 nature of American Water Works.

15 JUDGE THOMPSON: The holding company?

16 MR. COOPER: The holding company, yes,
17 your Honor.

18 JUDGE THOMPSON: See, we have two issues
19 here, as you are all, I hope, well aware. One of
20 them is what are these costs, why were they
21 incurred and should they go into rate base. And
22 the other issue is how quickly do we have to
23 determine that first issue, right? Now, by filing
24 a motion for expedited treatment, telling us you
25 need an answer by January 4th, you're telling me we

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1 have to answer that first question very, very
2 quickly. And in support of that, I have to know
3 and everyone else has a right to know why. Why
4 does it have to be done so quickly?

5 The Commission's authority to issue an
6 accounting authority order is conditioned upon a
7 hearing. After hearing the condition made, the
8 Commission may direct that the Company account
9 however the Commission wants it to for a particular
10 type of cost, but there has to be a hearing. The
11 requirement of a hearing means you have to give due
12 process, right? So we have several parties here,
13 three that are represented, and one that is
14 unaccountably absent, all of whom are objecting to
15 the speed with which the Company wants to do this.
16 And secondly, I suspect, objecting to the whole
17 idea of recovering these costs anyway.

18 And since we can only let you do this
19 after a hearing, I think we have to require a
20 strong showing why this hearing has to be done
21 lickety split, right? Because that just makes
22 everybody else's job harder. And I understand your
23 books close. And financially ignorant as I am, I
24 do understand that concept. What I don't
25 understand so far is why the decision on the AAO

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1 has to be made so quickly. Okay.

2 So here is what I'm going to do, because I
3 don't know that the parties are really ready to
4 address all this just yet. I'm going to require
5 you to give me suggestions in support of your
6 motion including affidavits supporting and setting
7 out any factual material that are necessary to
8 support what relief you want and to give me that by
9 Friday and serve it on all the parties. And this
10 only goes to the issue of why do we have to do it
11 so quickly. And then I'm going to give -- well,
12 let's think. This Friday is what, the 22nd, 21st?
13 Who knows what date Friday is?

14 MR. DEUTSCH: You're going to give us till
15 Christmas day, right?

16 JUDGE THOMPSON: I'm going to make you
17 come in personally.

18 MR. COOPER: Friday is the 21st, your
19 Honor.

20 JUDGE THOMPSON: Okay. Well, I'm going to
21 give you guys till the following Friday to respond.

22 MR. CONRAD: So hum bug anyway?

23 JUDGE THOMPSON: Let's just take arguendo
24 one of you proves to me that the sky is going to
25 fall if he doesn't get this by January 4th, do you

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1 understand? So I don't see how I can give you much
2 longer.

3 MR. DEUTSCH: Personally I think that will
4 be fine, Judge, because if he can prove to you the
5 sky is going to fall, I don't have anything more to
6 say.

7 JUDGE THOMPSON: Then the people in Joplin
8 would support his request?

9 MR. DEUTSCH: People in Joplin do not want
10 the sky to fall.

11 JUDGE THOMPSON: I appreciate that.

12 MR. COOPER: We'll work from there then.

13 JUDGE THOMPSON: That's a heck of a bar.

14 MR. COOPER: I always like opportunities
15 to excel.

16 MR. DEUTSCH: It's a challenge, but Dean
17 is capable of meeting it.

18 MR. COOPER: That's right. That's what
19 makes life worthwhile.

20 JUDGE THOMPSON: So everybody's got their
21 assignment? Okay.

22 MR. CONRAD: If I did the dates right,
23 Friday would be the 21st, and so responses would be
24 the 28th.

25 JUDGE THOMPSON: And the first agenda

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1 after the 28th, I will take it into the
2 Commissioners and ask them what they want to do.
3 Okay. I don't know what more I can do than that.
4 All right. And --

5 MR. DEUTSCH: May I ask when this was
6 filed? I just found out about the hearing. I
7 haven't seen any of the filings.

8 MR. COOPER: December 10th.

9 MR. DEUTSCH: Can I get copies of that?

10 MR. COOPER: Maybe. Yes, absolutely.

11 MR. DEUTSCH: I'll get you a Christmas
12 present then.

13 MR. COOPER: In that case for sure.

14 JUDGE THOMPSON: I set this hearing a week
15 ago, so I did this as quickly as I thought that I
16 could.

17 Anything else we need to talk about?

18 I'll just leave you guys with one thought,
19 which is the idea of the accrual account without
20 authority of the Commission. The Commission, as
21 you know by regulation, adopted the Uniform System
22 of Accounts in each utility area as they existed as
23 of a certain date. The Uniform System of Accounts
24 as of that date included in its description of, I
25 think it's Account 187, authority for the utility

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1 to put stuff in that accrual account without coming
2 to us first, so that's where that comes from.

3 The Uniform System of Accounts for water
4 has changed since then. It no longer includes that
5 authority. I don't know offhand if the
6 Commission's rule has changed, whether they have
7 adopted the later version or not. But if they
8 have, then that authority to do it without coming
9 here first, in my opinion at least, no longer
10 exists. Because it was an artifact of language of
11 the Uniform System of Accounts.

12 Now, on that happy, happy note, I will see
13 you-all later. Thank you.

14 WHEREUPON, the on-the-record portion of
15 the prehearing conference was concluded.

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