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STATE OF MISSOURI

PUBLIC SERVICE COMMISSION

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TRANSCRIPT OF PROCEEDINGS

Prehearing Conference

December 17, 2001  
Jefferson City, Missouri  
Volume 1

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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. )

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

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REPORTED BY:  
MELINDA ADOLPHSON, CSR  
ASSOCIATED COURT REPORTERS

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1 APPEARANCES:

2 DEAN COOPER, Attorney at Law  
3 Brydon, Swearngen & England, P.C.  
4 312 E. Capitol Avenue  
5 P.O. Box 456  
6 Jefferson City, MO 65102-0456  
7 573-635-7166

8 FOR: St. Louis County Water Company d/b/a  
9 Missouri-American Water Company,  
10 Missouri-American Water Company,  
11 Jefferson City Water Works Company  
12 d/b/a Missouri-American Water Company.

13  
14 STUART W. CONRAD, Attorney at Law  
15 Finnegan, Conrad & Peterson, L.C.  
16 3100 Broadway  
17 Kansas City, MO 64111  
18 816-753-1122

19 FOR: St. Joseph Industrials - AGP, Friskies,  
20 Wire Rope.

21  
22 JAMES B. DEUTSCH, Attorney at Law  
23 Blitz, Bardgett & Deutsch, L.C.  
24 308 E. High Street, Suite 301  
25 Jefferson City, MO 65101  
573-634-2500

26 FOR: City of Joplin, Missouri.

27  
28 KEITH KRUEGER, Deputy Counsel  
29 VICTORIA KIZITO, Legal Counsel  
30 Governor Office Building  
31 P.O. Box 360  
32 Jefferson City, MO 65102  
33 573-751-3234

34 FOR: Staff of the Missouri Public Service  
35 Commission.

36

37

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

2 JUDGE THOMPSON: Good morning, everyone.  
3 We are here In the Matter of the Joint Application  
4 of Missouri-American Water Company, St. Louis  
5 County Water Company, doing business as  
6 Missouri-American Water Company, and Jefferson City  
7 Water Works Company also doing business as  
8 Missouri-American Water Company for an Accounting  
9 Authority Order Relating to Security Costs, Case  
10 No. WO-2002-273.

11 We'll go ahead and take oral entries of  
12 appearance at this time beginning with the  
13 Company.

14 MR. COOPER: Dean L. Cooper, with the law  
15 firm of Brydon, Swearingen and England, P.O. Box  
16 456, Jefferson City, Missouri 65102, appearing on  
17 behalf of St. Louis County Water Company, doing  
18 business as Missouri-American Water Company,  
19 appearing on behalf of Missouri-American Water  
20 Company and appearing on behalf of Jefferson City  
21 Water Works Company, doing business as  
22 Missouri-American Water Company, and hopefully by  
23 the first of the year that will be a whole lot  
24 shorter.

25 JUDGE THOMPSON: Thank you, Mr. Cooper.

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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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14

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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16

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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21

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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