

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

STATE OF MISSOURI  
  
PUBLIC SERVICE COMMISSION

-----

TRANSCRIPT OF PROCEEDINGS  
  
Prehearing Conference

March 1, 2000  
Jefferson City, Missouri  
Volume 1

-----

In the Matter of the Application       )  
of the City of Rolla, Missouri,       )  
for an Order Assigning Exclusive       ) Case No.  
Service Territories and for       ) EA-2000-308  
Determination of Fair and Reasonable)  
Compensation Pursuant to Section       )  
386.800, RSMo 1994.       )

-----

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

-----

REPORTED BY:  
  
MELINDA ADOLPHSON, CSR  
ASSOCIATED COURT REPORTERS, INC.

ASSOCIATED COURT REPORTERS, INC.  
(573) 636-7551 JEFFERSON CITY, MO 65102  
(573) 442-3600 COLUMBIA, MO 65201

1 APPEARANCES:

2 COLIN P. LONG, Attorney at Law  
3 Smith, Dunbar & Turley  
4 P.O. Box 494  
Waynesville, MO 65583

5 FOR: Southside Neighbors.

6 MARK W. COMLEY, Attorney at Law  
7 Newman, Comley & Ruth  
8 601 Monroe Street, Suite 301  
P.O. Box 537  
Jefferson City, MO 65102-0537

9 FOR: Intercounty Electric Cooperative  
10 Association.

11 GARY W. DUFFY, Attorney at Law  
12 Brydon, Swearengen & England  
13 312 East Capitol Avenue  
P.O. Box 456  
Jefferson City, MO 65102-0456

14 FOR: City of Rolla.

15 DENNIS L. FREY, Assistant General Counsel  
16 P.O. Box 360  
Jefferson City, MO 65102

17 FOR: Staff of the Missouri Public  
18 Service Commission.

19 SHANNON COOK, Assistant Public Counsel  
20 P.O. Box 7800  
Jefferson City, MO 65102-7800

21 FOR: Office of the Public Counsel and  
22 the Public.

23

24

25

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

2 JUDGE THOMPSON: Good morning. My name is  
3 Kevin Thompson. We are here in the matter of the  
4 application of the City of Rolla, Missouri for an  
5 order assigning exclusive service territories and  
6 for determination of fair and reasonable  
7 compensation pursuant to Section 386.800 RSMo 1994,  
8 Case No. EA-2000-308.

9 Could we have entries of appearance,  
10 please, starting with you, Mr. Frey?

11 MR. FREY: Thank you, your Honor. Dennis  
12 Frey, appearing on behalf of Staff of the Missouri  
13 Public Service Commission. Address is Post Office  
14 Box 360, Jefferson City, Missouri 65102.

15 JUDGE THOMPSON: Thank you.

16 MR. COMLEY: Judge Thompson, let the  
17 record reflect the entry of appearance of Mark W.  
18 Comley of Newman, Comley and Ruth, 601 Monroe  
19 Street, Suite 301, Jefferson City, Missouri,  
20 appearing on behalf of Intercounty Electric  
21 Cooperative Association.

22 JUDGE THOMPSON: Thank you, sir.

23 MR. LONG: Good morning, your Honor. My  
24 name is Colin Long of the law firm of Smith, Dunbar  
25 & Turley, and my partner Michael Dunbar is also

1 entering his appearance on behalf of the  
2 intervenors Southside Neighbors in this matter,  
3 collectively known as the Southside Neighbors.  
4 Each resident is named individually in the motion  
5 to intervene. Post Office Box 494, Waynesville,  
6 Missouri 65583.

7 JUDGE THOMPSON: Thank you, sir.

8 MR. LONG: Thank you.

9 MR. DUFFY: Gary Duffy, law firm of  
10 Brydon, Swearngen and England, P.C., P.O. Box 456,  
11 Jefferson City, Missouri 65102, appearing for the  
12 Applicant, City of Rolla, Missouri.

13 JUDGE THOMPSON: Thank you.

14 Has everyone filled out one of the entry  
15 of appearance forms and given that to the  
16 reporter? Very well. Thank you.

17 We have a proposed procedural schedule  
18 due, I believe, a week from today; is that  
19 correct?

20 MR. FREY: Yes.

21 MR. COMLEY: Yes.

22 JUDGE THOMPSON: I know we have reset  
23 this. Some of you are new to Commission practice  
24 or at least one of you is new to Commission  
25 practice. I will kind of run over what we will do

1 at this prehearing conference and what we expect in  
2 the proposed procedural schedule. Our prehearing  
3 conference is expected to be an opportunity for the  
4 parties to discuss settlement primarily. It's also  
5 an opportunity for you to discuss the procedural  
6 schedule and work out your dates, so I hope you've  
7 all brought your calendars with you.

8 I will be here for only a short time, and  
9 then I will leave the room to you. You will have  
10 it all day until 5:00 p.m. if, in fact, you want to  
11 use it that long. And I hope you will take  
12 advantage of the opportunity and have fruitful  
13 discussions.

14 I will be available in the building if for  
15 any reason you need me today. The proposed  
16 procedural schedule will set out dates for  
17 important procedural events during the life of this  
18 case. The procedural schedule should include, for  
19 example, dates for a hearing. There is a calendar  
20 which is kept back in the Administrative Law Judge  
21 section that you are welcome to come back and look  
22 at, pick out your hearing dates. Set as many days  
23 as you believe you will need to present your case.

24 We will also have dates in this procedural  
25 schedule for the filing of direct testimony, filing

1 of rebuttal testimony, filing of surrebuttal  
2 testimony, for the filing of a list of issues, for  
3 the filing of position statements. Let me explain  
4 the list of issues and position statements because  
5 that is an unusual aspect of Commission practice.  
6 It's certainly not similar to anything I ever  
7 encountered in circuit court or federal court.

8 We will expect you today, hopefully, but  
9 perhaps in discussions after today, to agree on a  
10 list of issues to be presented to the Commission  
11 for determination. You will then put that in a  
12 list form and usually Staff takes the lead in doing  
13 that, which will be filed in the case and a copy,  
14 of course, served on every party.

15 Closer to the hearing date, we will expect  
16 each party to file a position statement. The  
17 position statement will follow and, in fact,  
18 restate the issues from the list of issues and will  
19 then succinctly state the facts and law which  
20 support each party's position with respect to each  
21 issue. You will file these things on paper and  
22 electronically.

23 And, I believe the order adopting  
24 procedural schedule will have detailed instructions  
25 on these points and will include my E-mail address

1 and such like. I will then take the position  
2 statements, and I will compile from that a document  
3 that we call the hearing memorandum, which I will  
4 use to brief the Commissioners prior to the  
5 hearing. So they will have been briefed in a  
6 public meeting, but you're welcome to attend if you  
7 would like, on the issues to be determined and the  
8 positions of the parties with respect to those  
9 issues. Okay.

10 As to the filing of testimony, if you're  
11 not used to practicing before the Commission, I  
12 don't know if you've ever had the experience where  
13 you prefile testimony, but that's how we do it  
14 here. We never have direct examination of any  
15 witness. We only have cross-examination here at  
16 our hearings. So your witness will file direct  
17 testimony. It's similar to a deposition. The  
18 pages are line numbered. The testimony is under  
19 oath and it consists of questions and answers. The  
20 same is done with rebuttal and surrebuttal. And  
21 take a look at our rules to understand how we use  
22 those terms, direct, rebuttal and surrebuttal.

23 When you put your witness then on the  
24 stand here, the witness simply adopts the testimony  
25 and is crossed by each of the other parties as to

1     that testimony, and the Commissioners will ask  
2     questions as well. All right. I guess that pretty  
3     well sums up the way we do it. There will be an  
4     opportunity for written briefs following the  
5     hearing, and we'll set the briefing schedule at the  
6     close of the hearing. And the Commission will then  
7     take the case under advisement.

8             If you have a particular -- I believe we  
9     have a statutory deadline in this case. And so the  
10    Commission will make sure that it disposes of the  
11    case prior to that statutory deadline, but not  
12    necessarily very soon before the statutory  
13    deadline. So if you need the decision sooner than  
14    that, you should let us know that in your proposed  
15    procedural schedule.

16            Do any of the parties have any matter they  
17    would like to bring to my attention at this time?

18            (NO RESPONSE.)

19            JUDGE THOMPSON: Okay. Now, I believe we  
20    extended the time for decision in this case because  
21    of a representation that there was going to be  
22    extensive discovery, isn't that correct?

23            MR. LONG: Yes.

24            MR. COMLEY: Yes.

25            JUDGE THOMPSON: Okay. A new thing that I



1 would like to do -- I know lawyers hate to hear  
2 about new things -- but I would like to see a date  
3 for close of discovery in the procedural schedule.  
4 This is a common federal court practice, and I  
5 think we need to start doing it here, because we  
6 have had some unhappy experiences with cases that  
7 are just extremely contested and where the Law  
8 Judge is having to determine discovery issues on  
9 the very eve of the evidentiary hearing. Okay.

10 So in order to make my life more calm, I  
11 would like to have a date proposed for the cut off  
12 discovery. Now, if you later decide if you want to  
13 go further, of course, you just file a motion. All  
14 right. And ask for that date to be modified. I  
15 would like to see in the proposed procedural  
16 schedule a date for the close of discovery. Okay.

17 MR. FREY: Your Honor?

18 JUDGE THOMPSON: Sir?

19 MR. FREY: Do you have sort of a latest  
20 date in mind?

21 JUDGE THOMPSON: I don't care when it is,  
22 frankly. I don't care when it is. I just want  
23 there to be one.

24 MR. DUFFY: As long as we're on that  
25 topic, I know the question has -- the question of

1     whether the Commission should order things like  
2     that has come up in the past and some rule makings,  
3     and I know the Commission is going through some  
4     rule makings.

5             JUDGE THOMPSON:  That is true.

6             MR. DUFFY:  Is the Commission going to put  
7     a requirement like that in a rule that's coming  
8     up?

9             JUDGE THOMPSON:  No, I don't believe so.

10            MR. DUFFY:  So this is your own personal  
11     preference?

12            JUDGE THOMPSON:  Well, nothing is strictly  
13     personal.  There are non-law judges, and we discuss  
14     these procedural matters among ourselves very  
15     frequently.  And this is something that has come up  
16     recently in discussion among the law judges based  
17     on experiences that one or another of us has had.  
18     It is our job, of course, to manage the case and to  
19     bring the case to decision in a timely way.  It's  
20     not our job to decide the case.  That's the  
21     Commissioners' job.

22            So in terms of case management, I think  
23     the close date for discovery would be a useful  
24     thing based on some cases that I have seen.

25            MR. DUFFY:  I understand the policy.

1 JUDGE THOMPSON: Right. Okay. So, yes,  
2 we're going to try it here. And if it doesn't  
3 work, I guess we won't try it again. Sorry to make  
4 you guys guinea pigs, but, you know, somebody has  
5 to be. Anything else?

6 (NO RESPONSE.)

7 JUDGE THOMPSON: Very good. Well, it's  
8 your room. Please take some time to discuss  
9 procedural dates.

10 (MS. COOK ENTERS THE HEARING ROOM.)

11 JUDGE THOMPSON: My goodness. We started  
12 without you. I didn't think you were coming.

13 MS. COOK: I'm very sorry. I didn't think  
14 I was either.

15 JUDGE THOMPSON: Let the record reflect  
16 the appearance of the Office of Public Counsel. Go  
17 ahead and make your oral entry of appearance, if  
18 you would?

19 MS. COOK: Thank you. Shannon Cook, on  
20 behalf of the Office of the Public Counsel and the  
21 Public, P.O. Box 7800, Jefferson City, Missouri  
22 65102-7800.

23 JUDGE THOMPSON: Now, for you, Mr. Long,  
24 who are not typically involved, I guess, in  
25 Commission cases, by law the Office of Public

1 Counsel is involved in every case if they choose to  
2 participate as is Staff.

3 What we've done, Shannon, is just run over  
4 the procedural schedule and what should be  
5 happening today. The one quirk will be I want a  
6 date for close of discovery in the proposed  
7 procedural schedule. Other than that it's  
8 everything like you're used to.

9 Anything else?

10 (NO RESPONSE.)

11 JUDGE THOMPSON: Thank you very much for  
12 coming today. It's your room till five o'clock.  
13 The best thing you can do would be to make this  
14 case go away. Then you don't have to file a  
15 proposed procedural schedule and you don't have to  
16 see me again. Thank you very much. We will  
17 adjourn the prehearing conference at this time.

18 WHEREUPON, the on-the-record portion of  
19 the prehearing conference was concluded.

20  
21  
22  
23  
24  
25