

1 STATE OF MISSOURI  
2 PUBLIC SERVICE COMMISSION

3 TRANSCRIPT OF PROCEEDINGS  
4

5 Prehearing Conference  
6

7 September 6, 2007  
8 Jefferson City, Missouri  
9 Volume 2

10 In the Matter of Missouri-American )  
11 Water Company's filing of Revised )  
12 Sewer Tariff Sheets to Implement a )Case No.  
13 Capacity Charge for Missouri-American's )ST-2007-0443  
14 Warren County and Jefferson County )  
15 Sewer Districts. )

16 MORRIS L. WOODRUFF, Presiding  
17 DEPUTY CHIEF REGULATORY LAW JUDGE  
18  
19

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

2 JUDGE WOODRUFF: Well, good afternoon,  
3 everybody. Welcome to the prehearing conference in  
4 Case No. ST-2007-0443.

5 Let's begin today by taking entries of  
6 appearance, beginning with Missouri American.

7 MR. ENGLAND: Thank you, your Honor. Let the  
8 record reflect the appearance of W.R. England with the law  
9 firm of Brydon, Swearngen & England, Post Office Box 456,  
10 Jefferson City, Missouri, 65102, appearing on behalf of  
11 the Missouri American Water Company.

12 JUDGE WOODRUFF: Thank you. And for the Home  
13 Builders Association?

14 MR. HESS: Robert Hess of Husch & Eppenberger,  
15 235 East High Street, Jefferson City, Missouri, 65101, for  
16 Home Builders Associates of St. Louis and Eastern  
17 Missouri.

18 JUDGE WOODRUFF: Thank you. And for Staff?

19 MR. KRUEGER: Keith R. Krueger for the Staff of  
20 the Missouri Public Service Commission. My address is  
21 P.O. Box 360, Jefferson City, Missouri, 65102.

22 JUDGE WOODRUFF: All right. And Public Counsel?

23 Ms. BAKER: Thank you, your Honor. Christina  
24 Baker, P.O. Box 2230, Jefferson City, Missouri, 65102,  
25 appearing on behalf of the Office of Public Counsel and

1 the ratepayers.

2 JUDGE WOODRUFF: Thank you. And I don't see any  
3 other attorneys in the room. There are a number of other  
4 parties in the associated rate case, although I believe  
5 this is all the interested parties on this particular  
6 issue.

7 I had gotten an e-mail this morning from Mark  
8 Comley representing the City of Jefferson City indicating  
9 he would not be appearing, and I indicated that would be  
10 okay.

11 The reason I asked you here today is to try and  
12 figure out where we need to go with this case. I  
13 understand that there was a non-unanimous stipulation  
14 agreement filed in the rate case that dealt with these  
15 issues.

16 It's also my understanding that I believe the  
17 City of Joplin objected to that stipulation agreement.  
18 From speaking with Judge Stearley, it's my understanding  
19 that in the underlying -- in the overlying rate case that  
20 he's going to go ahead and issue an order based on the  
21 testimony that was presented.

22 But it's my understanding that no testimony on  
23 this issue has been presented. So I'd just throw it out  
24 to the parties to get a suggestion of how you want to  
25 proceed in this case, if you -- if it's possible to file a

1 separate stipulation and agreement that might not be  
2 objected to or if we need to have -- have a hearing.  
3 Mr. England?

4 MR. ENGLAND: I'll take a crack at it. And I'm  
5 sure others will correct me or add to it as they see fit.  
6 I agree with the assessment Judge Stearley -- the issue  
7 that's presented in this case has been dealt with in the  
8 stipulation and agreement.

9 That particular resolution, as far as I know,  
10 has not been objected to by Joplin or any other party for  
11 that matter.

12 I'm cautiously optimistic that we will still be  
13 successful in the rate case and convince the Commission  
14 that the nonunanimous stipulation and agreement is  
15 reasonable, in which case, it will take care of the issue  
16 in this case.

17 There has been some testimony filed on the  
18 issue. The company filed direct testimony, but then we  
19 suspended the procedural schedule.

20 In talking with Rob Hess earlier -- as you'll  
21 recall, this case got filed later than the rate case. And  
22 so only part of the entire suspension period or period of  
23 time that the Commission can suspend these tariffs has  
24 been invoked in order to dovetail with the rate case.

25 My thought would be that if this is not resolved

1 in the context of the rate case that we could simply agree  
2 to further suspend the tariffs in this case, which I  
3 believe under operation of law or the statutes could go as  
4 long as the first part of April, latter part of March  
5 2008, and we could just restart the remainder of the  
6 procedural schedule in this case.

7 But as I said before, I'm cautiously optimistic  
8 that this and other issues can be resolved in the rate  
9 case.

10 JUDGE WOODRUFF: Anyone else want to jump in  
11 here?

12 MR. KRUEGER: Yes, your Honor. I think that's a  
13 good assumption. I'd like -- I'd like that approach. The  
14 things that concern me about the stipulation and agreement  
15 -- I haven't been involved in that case, and so I've only  
16 had a brief opportunity to look at these documents.

17 But paragraph 6 of the stipulation and agreement  
18 says that -- pertains to the disposition of this matter.  
19 And it says, This stipulation and agreement, if accepted  
20 by the Commission, disposes of all issues in Case No.  
21 ST-2007-0443.

22 So it was the intent of the parties by executing  
23 the stipulation and agreement to resolve everything in  
24 this case.

25 However, in paragraph 21, it says that if the

1 Commission does not approve this stipulation and agreement  
2 unconditionally and without modification, then this  
3 stipulation and agreement shall be void and no signatory  
4 shall be bound by any other agreements or provisions  
5 hereof except as explicitly provided here in.

6 So it seems to me that if the Commission doesn't  
7 accept the entire stipulation and agreement, then that  
8 would void everything, including paragraph 6.

9 JUDGE WOODRUFF: Well, my question, I guess, is  
10 can the Commission accept the stipulation and agreement  
11 that's been objected to?

12 It's my understanding that certainly the  
13 Commission can order the same result as the stipulation  
14 agreement, but the question is whether the Commission can  
15 actually accept it.

16 MR. ENGLAND: That's a good question. I tend to  
17 agree with your first assessment. I think they can issue  
18 an order consistent with all of the terms and conditions  
19 of the non-unanimous stipulation.

20 And I think -- you know, I can only speak from  
21 this party's perspective. I think that would be  
22 satisfactory.

23 JUDGE WOODRUFF: But -- but the problem with  
24 that from this -- from my perspective from this case is,  
25 then, I have no evidence on which to write an Order

1 accepting what -- what's in the stipulation agreement as  
2 it pertains to this tariff.

3 And that's my concern. That's why I was  
4 wondering if the parties are going to -- to file a  
5 separate stipulation and agreement on this particular  
6 issue.

7 MR. ENGLAND: Well, if -- if the larger  
8 stipulation isn't approved or the Commission doesn't issue  
9 an Order consistent with that that the parties can accept,  
10 I think there's always the possibility that -- that the  
11 parties to this case may get together and try to resolve  
12 it through stipulation.

13 And if not, as I said, I think we've got  
14 additional time in the suspension period to go forward  
15 with the -- with the filing of testimony and having a  
16 hearing.

17 I'm not sure that -- that that portion of the  
18 stipulation and agreement that -- that Keith read isn't --  
19 isn't sort of unanimous now since Joplin has only  
20 indicated opposition to two or three issues, none of which  
21 touch on this whatsoever.

22 So I'm not so sure that that non-unanimous  
23 stipulation and agreement in the rate case isn't unanimous  
24 as to all those issues but those two or three issues  
25 raised by Joplin.



1 JUDGE WOODRUFF: Ms. Baker, what's Public  
2 Counsel's view on all this?

3 MS. BAKER: The view of Public Counsel is  
4 certainly that we -- we supported the non-unanimous  
5 stipulation and agreement, and we supported it both for  
6 resolution of the rate case and for this case as well.

7 And I would agree that -- that Joplin has been  
8 very focused on -- on their issues and made statements in  
9 their filings that they did not oppose the remaining  
10 sections of the stipulation.

11 And so I -- I would also state that -- that our  
12 view would be that those statements that they did not  
13 particularly point out would be unanimous as far as they  
14 are concerned as well.

15 JUDGE WOODRUFF: Okay. Okay. Now, the  
16 reason we consolidated this in the first place with the  
17 rate case was to avoid single issue rate-making concerns.  
18 Would those concerns come back if this was not resolved as  
19 part of the stipulation and agreement and we had to take  
20 -- go ahead and take further suspension and further  
21 action?

22 MS. BAKER: It was -- it was brought in as a  
23 case of its own and was given a case number of its own. I  
24 believe that as long as -- as it goes into a contested  
25 case situation where either we take evidence on it, have

1 the hearing on it or there is a stipulation and agreement,  
2 that would be sufficient for -- for taking care of any  
3 single issue rate-making problems might have been.

4 JUDGE WOODRUFF: Okay. And what's Home Builders  
5 Association's view?

6 MR. HESS: We were -- we were parties to the  
7 non-unanimous stipulation. We supported the resolution of  
8 the case as stated in the non-unanimous stipulation.

9 And we're amenable to going forward with the  
10 non-unanimous stipulation on the expectation or hope that  
11 the Commission will approve that. And if not, lengthening  
12 out the -- with the expectation that that doesn't happen,  
13 we can extend the date to allow other parties to submit  
14 testimony and get a ruling from this Commission on the  
15 issue. So--

16 JUDGE WOODRUFF: Okay. Well, I'm still  
17 concerned that the Commission won't be in a position to  
18 actually approve the entire stipulation and agreement.  
19 And I don't know what the position of the parties is if  
20 the Commission were to -- can the Commission prove part of  
21 the stipulation and agreement and not the entire thing?

22 I mean, the -- what Mr. Krueger read indicated  
23 that that would void the rest of the agreement, and I  
24 don't know what the parties' view on that is.

25 MR. ENGLAND: I think it all depends on what the

1 Commission does. I think that -- my preference, I think  
2 all the parties' preference, the signatories at least,  
3 would be that they issue an order consistent with all of  
4 the terms and conditions in the stipulation and agreement.

5 If, however, they choose to modify some  
6 particular provision, I think, under the terms that  
7 Mr. Krueger just read, the parties have an opportunity,  
8 then, to abandon, if you will, their support from the  
9 stipulation and agreement and pursue whatever alternatives  
10 they think they have available to them.

11 The other side is they could say -- they could  
12 assess that particular change that the Commission made and  
13 say, you know, that's acceptable to us and -- and -- and  
14 then offer no objection, and it would stand.

15 MR. KRUEGER: I think what Tripp said is right  
16 that if the Commission didn't accept it entirely, then the  
17 Commission -- the parties could abandon the agreement.

18 And they might do so if they thought that this  
19 was so integral to -- to that agreement that they didn't  
20 want to proceed with the settlement in paragraph 6 without  
21 settling everything else contemporaneously.

22 But the parties might believe and be able to  
23 agree that the settlement in paragraph 6 is satisfactory  
24 independent of the settlement of the other issues.

25 JUDGE WOODRUFF: Okay.

1           MR. KRUEGER: And then if the Commission decides  
2     that it cannot accept the stipulation and agreement and  
3     issue an Order doing something else, then we would have to  
4     come back and possibly hear evidence on this or -- further  
5     stipulation would be filed at that point?

6           MR. ENGLAND: I think those are alternatives  
7     that would be to just settle the one issue, if you will,  
8     that's in this case or attempt to present you with a  
9     stipulation and agreement on the issue in this case, not  
10    withstanding what may be going on in the rate case.

11           Or if that can't be resolved, then I think we  
12    have time for the filing to -- to restart, if you will,  
13    the procedural schedule for the filing of rebuttal  
14    testimony, the holding of a hearing and --

15           JUDGE WOODRUFF: We were already going to do  
16    that in just a couple months anyway, weren't we?

17           MR. ENGLAND: Right.

18           JUDGE WOODRUFF: Okay. All right. Well, I  
19    think that answers my questions. Anything else anyone  
20    wants to bring up while we're on the record?

21           All right. With that, then, we are adjourned.

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## REPORTER'S CERTIFICATE

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6 STATE OF MISSOURI )  
 ) ss.  
7 COUNTY OF OSAGE )

8

9 I, Monnie S. VanZant, Certified Shorthand  
10 Reporter, Certified Court Reporter #0538, and Registered  
11 Professional Reporter, and Notary Public, within and for  
12 the State of Missouri, do hereby certify that I was  
13 personally present at the proceedings as set forth in the  
14 caption sheet hereof; that I then and there took down in  
15 stenotype the proceedings had at said time and was  
16 thereafter transcribed by me, and is fully and accurately  
17 set forth in the preceding pages.

18

19 IN WITNESS WHEREOF, I have hereunto set my hand and  
20 seal on September 17, 2007.

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24

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Monnie S. VanZant, CSR, CCR #0539

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Registered Professional Reporter