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1 STATE OF MISSOURI
2 PUBLIC SERVICE COMMISSION
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6 TRANSCRIPT OF PROCEEDINGS
7 Prehearing Conference
8 September 20, 2006
9 Jefferson City, Missouri
Volume 1

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11

12 In the Matter of the Application)
of Big Island Water & Sewer)
13 Company for a Certificate of)
Convenience and Necessity)
14 Authorizing it to Construct,) Case No. WA-2006-0480
Install, Own, Operate, Control,) et al.
15 Manage and Maintain a Water and)
Sewer System for the Public)
16 Located in an Unincorporated Area)
in Camden County, Missouri)

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19 MORRIS L. WOODRUFF, Presiding,
SENIOR REGULATORY LAW JUDGE.

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22 REPORTED BY:

23 KELLENE K. FEDDERSEN, CSR, RPR, CCR
24 MIDWEST LITIGATION SERVICES

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Service Commission.

PRO SE INTERVENORS: Cathy Orlor
Benjamin Pugh
Stan Temares
Cindy Fortney

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

2 JUDGE WOODRUFF: Welcome everyone to this
3 prehearing conference. My name is Judge Woodruff, and
4 we're here in Case No. WA-2006-0480, which is the
5 application of Big Island Water & Sewer Company for a
6 certificate of convenience and necessity. And we'll begin
7 today by taking entries of appearance, beginning with the
8 Big Island Water & Sewer Company.

9 MR. COMLEY: Thank you, Judge Woodruff.
10 Let the record reflect the entry of appearance of Mark W.
11 Comley, Newman, Comley & Ruth, 601 Monroe Street,
12 Suite 301, Post Office Box 537, Jefferson City, Missouri,
13 on behalf of Big Island Water & Sewer Company. Also
14 entering his appearance today is Charles E. McElyea,
15 Phillips, McElyea, Carpenter & Welch, P.C., 85 Court
16 Circle, P.O. Box 559, Camdenton, Missouri 65020.

17 JUDGE WOODRUFF: Thank you. Mr. McElyea,
18 you're still on the phone?

19 MR. McELYEA: Yes, I am, Judge.

20 JUDGE WOODRUFF: And for Staff?

21 MR. THOMPSON: Kevin A. Thompson, Post
22 Office Box 360, Jefferson City, Missouri 65102, for the
23 Staff of the Missouri Public Service Commission.

24 JUDGE WOODRUFF: For the Office of the
25 Public Counsel?

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1 MR. MILLS: Lewis Mills. My address is
2 Post Office Box 2230, Jefferson City, Missouri 65102.

3 JUDGE WOODRUFF: Thank you. And we also
4 have 16 individual intervenors in this case who are all
5 representing themselves. I'm just going to go down the
6 list and check off who's here. First of all, is Ben Weir
7 here? I don't believe he is. Cathy Orlor?

8 MS. ORLER: Present.

9 JUDGE WOODRUFF: Benjamin Pugh?

10 MR. PUGH: Here.

11 JUDGE WOODRUFF: Stan Temares?

12 MR. TEMARES: Here.

13 JUDGE WOODRUFF: And Cindy Fortney I
14 believe is on the phone?

15 MS. FORTNEY: Yes, I am.

16 JUDGE WOODRUFF: I don't believe any of
17 these other people are on the line, but I'm going to go
18 ahead and read their names off here: Bernard Beaven, Don
19 Deckard, Elaine and William Foley, Mark and Deborah
20 Hesley, Steven Kleppe, Joseph Geary Mahr, Arthur Nelson,
21 E.M. Prather, Jerry Steinhour, Donald and Frances West or
22 Weast.

23 MS. ORLER: Weast.

24 JUDGE WOODRUFF: Weast. Joseph Schrader.
25 And for the benefit of the court reporter, I'll give you a

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1 copy of this list after the hearing.

2 All right. I believe that takes care of
3 everyone who's here. There's a couple things I want to
4 take care of before we get to any other matters here.
5 First thing is, all our notices that have been going to
6 Jerry Steinhour have been coming back as undeliverable.
7 Does anyone have a correct address for him?

8 MS. ORLER: I can get you that.

9 JUDGE WOODRUFF: I appreciate that. The
10 one he gave us was a lot number, which I assume may be a
11 vacant lot.

12 MS. ORLER: Well, he's building. I'll get
13 that for you.

14 JUDGE WOODRUFF: I appreciate that. I also
15 noticed as I was preparing for this today that the
16 Department of Natural Resources was given notice of this
17 case but they did not apply to intervene as a party. The
18 Commission, I believe, would appreciate having the
19 Department of Natural Resources being a party, so I
20 anticipate issuing an Order adding them in a few days.

21 One other thing. There was a request filed
22 by some of the intervenors last week that we have a
23 neutral judge present here today to help mediate matters
24 between the parties, and Judge Cherlyn Voss over here has
25 graciously agreed to be here today, and in a few moments

1 after we go off the record I'll turn it over to her and
2 you can discuss with her and maybe come to some
3 resolutions on some things.

4 What I wanted to go through was the
5 procedural schedule and just give you some explanations
6 about what's going to happen in the case procedurally.
7 This is well known to all the attorneys that practice in
8 front of us, but of course the intervenors, it's going to
9 be new to you. This is especially for you, and if you
10 have any questions, if anybody has any questions, feel
11 free to ask me about procedural questions. Once we get
12 into the substance of the case, I'll be gone and you can
13 talk to Judge Voss.

14 The first thing I wanted to mention was
15 that the procedural schedule calls for the prefiling of
16 testimony. It's a little bit different than what we were
17 going to be doing in the complaint cases that you-all were
18 involved in. Simply that means that you get to ask
19 yourself questions and write down the answers, and it's a
20 way of -- the parties then will have an idea of what
21 you're going to say at the hearing.

22 And there's actually going to be several
23 rounds of this. The company is filing their direct
24 testimony on October 27th, according to the procedural
25 schedule. Then on November 17th, Staff, Public Counsel

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1 and all the other parties have a chance to file their
2 rebuttal testimony, which would be your version of events.
3 You get a chance to rebut what the company has said. If
4 you disagree with what they've said, you can present your
5 testimony. Then there's what we call surrebuttal
6 testimony that's coming in on December 22nd, and that's
7 coming from all the parties, and that just explains -- did
8 somebody just drop off the line?

9 MR. McELYEA: I'm still here.

10 MS. FORTNEY: I'm still here.

11 JUDGE WOODRUFF: Okay. Did somebody else
12 join us?

13 MR. MILLS: Did somebody drop the phone?

14 MS. FORTNEY: Wasn't me.

15 JUDGE WOODRUFF: Okay. Well, I was just
16 explaining then we have surrebuttal testimony, which is a
17 chance for everybody to have one more round of rebuttal
18 towards everybody else's testimony.

19 MS. ORLER: And these are all written
20 exchanges?

21 JUDGE WOODRUFF: These are all written
22 exchanges. And for your benefit, I have a copy of some
23 testimony that was filed in another case. This is just an
24 illustration of what the testimony kind of looks like.
25 I'll hand -- all the attorneys have seen these, too. If

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1 you have questions, you're all on the same information
2 here.

3 MS. ORLER: And this is the format, I would
4 assume, as well?

5 JUDGE WOODRUFF: This is the format with
6 numbered pages and line numbers, and I'm not really sure
7 how those line numbers are put in. I assume there's a
8 program computer-wise. You may talk with the attorneys.

9 MR. MILLS: Word does it fairly simply.

10 JUDGE WOODRUFF: I read it all the time,
11 but I don't write it. I don't get to see exactly how it's
12 done.

13 MS. ORLER: And if we don't have the -- I
14 mean, this is a requirement, so if we don't have the
15 capability --

16 MR. MILLS: The Commission's Rule
17 4 CSR 240-2.130 I believe has a description of how
18 testimony is to be filed. There's also a description of
19 what's in direct, what's in rebuttal, what's in
20 surrebuttal. So that's something else you should look
21 at. I can get you copies of that if you need to.

22 MS. FORTNEY: Is there a Word template or
23 something that puts that together?

24 MR. MILLS: We can certainly send out to
25 anybody who wants a piece of testimony that you can use as

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1 a template.

2 MS. FORTNEY: Okay. That's easier than to
3 go in and do it yourself.

4 MR. MILLS: Sure.

5 JUDGE WOODRUFF: And if you have documents
6 or other exhibits that you want to attach as part of your
7 testimony, you can do that also, and we call them
8 schedules.

9 Then when we actually get to the hearing,
10 which is set February 5th, 6th and 7th, you'll need to --
11 whoever files testimony will need to be at the hearing,
12 and you'll be subject to cross-examination, which simply
13 means that the other parties have a chance to ask you
14 questions about what you've testified to.

15 Since you've already filed your direct
16 testimony and rebuttal testimony, you don't get to redo
17 that at the hearing. You rely on your written testimony
18 and there's cross-examination, and then you'll be given a
19 chance to what's called redirect to address specific
20 questions that were asked to you at the hearing. Anybody
21 have any questions about that?

22 MR. PUGH: I think I understand.

23 MS. ORLER: Not yet.

24 MR. MILLS: How does redirect work for a
25 pro se individual?

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1 JUDGE WOODRUFF: Presumably -- of course,
2 you won't have an attorney there to ask you questions.
3 Normally when a witness is testifying, their attorney gets
4 to ask them questions on redirect. I'd anticipate we just
5 let them testify as a narrative, which simply means that
6 you'd be able to make a statement.

7 MS. ORLER: And then it would be ourselves
8 then asking the questions of the opposite?

9 JUDGE WOODRUFF: Yes. Yes. And I wanted
10 to say, too, that only one person -- the testimony
11 document would be from one person testifying. You can't
12 have three people offering the same testimony. But if one
13 of you wanted to testify, whereas the other people aren't
14 going to testify themselves but wanted to have -- wanted
15 to agree with your testimony, more than one person could
16 sponsor a piece of testimony.

17 MS. ORLER: Okay.

18 JUDGE WOODRUFF: So, for example, if
19 Ms. Orler wanted to testify but Mr. Temares didn't, you
20 could both join -- you could testify on his behalf. You
21 can't represent him as his attorney, but you can testify
22 as his witness. Am I making the distinction?

23 MS. ORLER: Oh, sure. Uh-huh. Now, in
24 asking questions, would then Stan in that scenario be able
25 to ask questions as well or only myself?

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1 JUDGE WOODRUFF: I believe any party -- any
2 party who's there can ask questions.

3 MS. ORLER: Okay.

4 JUDGE WOODRUFF: If we have difficulties
5 with that, we'll deal with that at the hearing. But, of
6 course, we try and I'm sure everyone would try and get
7 together as much as possible so we didn't have to have
8 five people asking the same questions.

9 MS. ORLER: Right. Right.

10 MS. FORTNEY: So basically if I agree with
11 something somebody else said, then that can be stated that
12 way?

13 JUDGE WOODRUFF: Yes.

14 MS. FORTNEY: So it doesn't have to be
15 repeated and all that?

16 JUDGE WOODRUFF: That's right. And this is
17 different than your complaint cases also in that in your
18 complaint cases the complainants have the burden of
19 persuasion. You have to prove your case. In this case,
20 it's the company that has the obligation to prove the
21 case.

22 MS. ORLER: Then how will our complaint
23 cases, since that hearing was canceled --

24 JUDGE WOODRUFF: Or postponed.

25 MS. ORLER: Or postponed, how will those

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1 be -- since the Commission's order or statement was that
2 the complaint cases could be better represented in the
3 certification case, if the process is different, how can
4 the relief --

5 JUDGE WOODRUFF: Well, the complaint cases
6 have not been consolidated into this case. The complaint
7 cases are still out there. We'll take up the complaint
8 cases again after the Commission decides what to do with
9 this case.

10 MS. ORLER: Okay.

11 JUDGE WOODRUFF: And depending upon how
12 this case turns out, of course, it's going to have an
13 impact on what happens in the complaint cases.

14 MS. ORLER: Okay. So in the Commission's
15 statements, then, when it was said that the complaint
16 cases could be better served through the certification
17 case, what was the exact meaning of that, then, if the
18 process is not -- doesn't include the complaint cases?

19 JUDGE WOODRUFF: The intent was that we
20 would resolve this issue of whether or not the company is
21 entitled to a certificate in this case. Once that
22 question is resolved, then we'll go back to look at the
23 complaint cases. So whatever decision the Commission
24 reaches in this case doesn't necessarily end the complaint
25 cases.

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1 MS. ORLER: Okay.

2 JUDGE WOODRUFF: But it was decided that we
3 had to resolve this issue first before we could make any
4 meaningful decisions on the complaint cases.

5 MS. ORLER: Okay.

6 MR. MILLS: If I may jump in, it may
7 resolve some of the issues in some of the complaint cases,
8 but certainly not all of them. It may narrow it some.

9 JUDGE WOODRUFF: Right. I believe that's
10 all I wanted to say about this. Is there anything any --
11 any other questions anyone has about procedures?

12 MS. ORLER: I'm sure we'll have a great
13 deal many more.

14 JUDGE WOODRUFF: Mr. Thompson?

15 MR. THOMPSON: Judge, since we have a large
16 number of intervenors that are opposing the company, are
17 you going to impose as a condition a rule against friendly
18 cross as has traditionally been recognized in Commission
19 proceedings?

20 JUDGE WOODRUFF: I think that is something
21 we will have to do, and I'll try and give an explanation
22 of friendly cross to you, and it is something that --
23 frequently in cases before the Commission there are many,
24 many parties. I believe in Judge Voss' upcoming rate case
25 with Ameren there's already 19 parties, all represented by

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1 attorneys and so forth. And the Commission has a rule
2 against what we call friendly cross, which is
3 cross-examination which in a normal circumstance is going
4 to be, for want of a better role, say hostile. By hostile
5 I don't mean angry, but on opposite sides.

6 MR. MILLS: Adverse.

7 JUDGE WOODRUFF: Adverse. But in those
8 kind of situations, a lot of times parties line up with
9 each other. A group of parties are one side and a group
10 of parties are on the other side. And the rule against
11 friendly cross is that the parties on the same side don't
12 get to ask each other softball questions.

13 MR. PUGH: They don't?

14 JUDGE WOODRUFF: They do not, right.

15 MR. MILLS: And part of that leads from the
16 fact the testimony's been prefiled, so by the time you get
17 to the hearing, the kind of easy questions that a friendly
18 party is asking you should have been asked in your
19 prefiled testimony. It allows -- if you do friendly
20 cross, it allows one party to get in extra stuff that the
21 other parties haven't had a chance to respond to in their
22 prefiled testimony.

23 MS. ORLER: Setting the stage, so to speak?

24 MR. MILLS: You're coming in late with
25 stuff that could have been done earlier. You can see how

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1 it can be an advantage.

2 MR. TEMARES: I would never do anything
3 like that.

4 JUDGE WOODRUFF: So, yes, we would have to
5 enforce that rule. Anything else anyone wants to bring
6 up?

7 MR. COMLEY: Judge Woodruff, one of the
8 reasons that I felt this prehearing would be of
9 importance, in addition to the things that you've already
10 addressed, would be pertaining to the discovery rules and
11 how they would apply to the intervenors. I'll represent
12 to you that I have submitted Data Requests to each of the
13 intervenors, and with the exception of one intervenor,
14 none have supplied responses within the time period
15 allowed by the rule.

16 And I wanted to address with you if
17 possible a way of moving toward compelling those answers,
18 and I know our rule requires that there be a conference
19 with you, but I think as we may see more often, it will be
20 difficult to acquire the intervenors for a hearing.

21 So I was going to propose to the Court
22 that, very much like we had done in the complaint case, I
23 was going to ask if we would waive that part of the rule.
24 I don't know if there's any way of contacting some of the
25 folks in advance.

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1 JUDGE WOODRUFF: You're talking about the
2 conference?

3 MR. COMLEY: Yes, to have that conference
4 in advance of seeking an order compelling them to file an
5 answer. I'm hoping that today is an example of the
6 awkwardness and sometimes difficulty in getting them in a
7 global type of conference.

8 JUDGE WOODRUFF: Well, if you find that you
9 need to file a motion to compel, state your reasoning for
10 asking for waiver of that rule within your motion. We'll
11 deal with it individually at that time. And I think the
12 whole discovery dispute question is something that might
13 be better handled by Judge Voss once we're off the record,
14 and I'll leave that to her.

15 MR. TEMARES: Can I -- what is the
16 purpose -- what's the purpose of that request?

17 JUDGE WOODRUFF: For the discovery or his
18 specific?

19 MR. TEMARES: His specific request for
20 the --

21 JUDGE WOODRUFF: Sure. The Commission has
22 a rule that any time there's a discovery dispute between
23 parties, the two parties have to get together and call the
24 Judge, me, to talk it over before they actually file a
25 written motion to require the discovery.

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1 What Mr. Comley was saying in this case, if
2 he wants to do a motion to compel 16 individuals to
3 comply, it may be very difficult to get all 16 people on
4 the phone at the same time. And he's just saying that if
5 that came up, he might request leave to waive that
6 requirement that everybody meets before they file a
7 written motion.

8 MR. TEMARES: I guess -- I mean, I guess as
9 they're sent in to Mr. Comley, he reviews them, the
10 information on that form that each individual puts in? He
11 does review that?

12 JUDGE WOODRUFF: I presume he would, yes.
13 I mean, he's requesting it. You can discuss the details
14 of this with Judge Voss once we're off the record as to
15 what's appropriate and so forth in discovery. That's one
16 of the things I thought might be accomplished.

17 MR. TEMARES: I didn't know if he reviewed
18 them personally or just filed them under the individual's
19 name or had us all under a different file.

20 JUDGE WOODRUFF: Well, that's something you
21 can discuss with him.

22 MR. TEMARES: All right.

23 JUDGE WOODRUFF: Well, unless there's
24 something further that we need to discuss on the record,
25 at this point we'll end the on-the-record portion of

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1 this --

2 MR. TEMARES: I want to ask one more.

3 JUDGE WOODRUFF: Go ahead.

4 MR. TEMARES: At our last hearing where you
5 were present and you had asked Mr. Comley to supply us
6 with copies of the covenants of the people who had signed
7 them on the island, you had asked if it could be supplied
8 within 14 days, and he agreed that he was going to supply
9 that, and we have not received it and wanted to find out
10 what can be done.

11 JUDGE WOODRUFF: Was that down at the Lake,
12 when we were down at the Lake?

13 MR. TEMARES: No. That was right here.

14 MS. ORLER: Their response was, Respondents
15 object to this request on the grounds that it is
16 unreasonably and unduly burdensome and expensive to create
17 the copies. This request involves assembling, copying and
18 production of over 2,500 documents.

19 They further objected on the grounds that
20 the Data Request is overbroad and that it spans nearly six
21 years of billing and payment information, which it should
22 have. That was the correct time frame requested.
23 Furthermore, that it's cumulative in facts and data
24 already compiled by the Staff of the Commission in
25 connection with its recommendation in this case, which it

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1 is not. These were separate requests, and I have a copy
2 of their response here.

3 JUDGE WOODRUFF: Again, I'm going to defer
4 that to Judge Voss, and you can discuss that as you like
5 to once we're off the record.

6 MR. TEMARES: Since he had agreed that he
7 would supply them within 14 days, then I thought since he
8 agreed to it --

9 JUDGE WOODRUFF: He filed a response.
10 Again, I'm not going to try and make a ruling on it today.
11 You can discuss that freely once we're off the record, and
12 maybe something can be worked out. If it can't be worked
13 out, then you can file a motion to compel.

14 MS. ORLER: And how many of those can you
15 file?

16 JUDGE WOODRUFF: There's no limit.

17 MS. ORLER: At what point does the
18 Commission decide, well, they filed six motions to compel
19 and this keeps perpetuating, at what point is a decision
20 made that something should be done?

21 JUDGE WOODRUFF: Well, if the Commission
22 issues a motion to compel, we expect the party to comply.

23 MS. ORLER: And then what happens then?

24 JUDGE WOODRUFF: There are various
25 sanctions the Commission can impose.

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1 MS. ORLER: So it's impose sanctions then?

2 JUDGE WOODRUFF: Sure. The Commission
3 expects its orders to be obeyed.

4 All right. With that, then, I will end
5 this on-the-record portion of the proceeding and hand it
6 over to Judge Voss. Thank you.

7 WHEREUPON, the recorded portion of the
8 prehearing conference was concluded.

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1 C E R T I F I C A T E

2 STATE OF MISSOURI)
3) ss.
4 COUNTY OF COLE)

5 I, Kellene K. Feddersen, Certified
6 Shorthand Reporter with the firm of Midwest Litigation
7 Services, and Notary Public within and for the State of
8 Missouri, do hereby certify that I was personally present
9 at the proceedings had in the above-entitled cause at the
10 time and place set forth in the caption sheet thereof;
11 that I then and there took down in Stenotype the
12 proceedings had; and that the foregoing is a full, true
13 and correct transcript of such Stenotype notes so made at
14 such time and place.

15 Given at my office in the City of
16 Jefferson, County of Cole, State of Missouri.

16

17 Kellene K. Feddersen, RPR, CSR, CCR
18 Notary Public (County of Cole)
19 My commission expires March 28, 2009.

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