

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
September 29, 2003
Jefferson City, Missouri
Volume 1

In the Matter of the Joint)
Application of Missouri-American)
Water Company and Warren County Water)
& Sewer Company for Authority for)
Missouri-American Water Company to) Case No. WM-2004-0122
Acquire Certain Assets of Warren)
County Water & Sewer Company and, in)
Connection Therewith, Certain Other)
Related Transactions.)

NANCY M. DIPPELL, Presiding,
SENIOR REGULATORY LAW JUDGE.

REPORTED BY:
KELLENE K. FEDDERSEN, CSR, RPR, CCR
ASSOCIATED COURT REPORTERS

ASSOCIATED COURT REPORTERS
JEFFERSON CITY - COLUMBIA - ROLLA
(888) 636-7551

1 APPEARANCES:

2 DAVID ABERNATHY, Attorney at Law
3 535 North New Ballas Road
4 St. Louis, Missouri 63141
5 (314)996-2276

6 FOR: Missouri-American Water Company.

7 KURT U. SCHAEFER, Attorney at Law
8 Lathrop & Gage
9 314 East High Street
10 Jefferson City, MO 65101-3213
11 (573)893-4336

12 FOR: Warren County Water & Sewer.

13 RUTH O'NEILL, Assistant Public Counsel
14 P.O. Box 7800
15 Jefferson City, Missouri 65102-780
16 (573)751-4857

17 FOR: Office of the Public Counsel
18 and the Public.

19 KEITH R. KRUEGER, Deputy General Counsel
20 P.O. Box 360
21 Jefferson City, Missouri 65102
22 (573)751-3234

23 FOR: Staff of the Missouri Public
24 Service Commission.

25

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

P R O C E E D I N G S

JUDGE DIPPELL: This is Case No. WM-2004-0122, in the matter of the joint application of Missouri-American Water Company and Warren County Water and Sewer Company for authority for Missouri-American Water Company to acquire certain assets of Warren County Water and Sewer Company and, in connection therewith, certain other related transactions.

My name is Nancy Dippell and I'm the

regulatory judge assigned to this matter. We'll begin with entries of appearance. You've already given written entries to the court reporter, so if you just want to state your name and who you're representing, that will be fine. Begin with Staff.

MR. KRUEGER: Keith Krueger for the Staff of the Missouri Public Service Commission.

MR. SCHAEFER: Kurt Schaefer with the law firm of Lathrop & Gage for Warren County Water and Sewer.

MR. ABERNATHY: David Abernathy for Missouri-American Water Company.

MR. LeGRAND: Bob LeGrand for Missouri-American Water Company.

MS. O'NEILL: Ruth O'Neill for the Office of the Public Counsel.

JUDGE DIPPELL: I'm sorry. Mr. Schaefer, you're with Warren County?

1 MR. SCHAEFER: I'm with the law firm of
2 Lathrop & Gage, here representing Warren County, yes.

3 JUDGE DIPPELL: Some new faces today.

4 MR. SCHAEFER: I'm here for Mr. DeFord who is
5 usually here.

6 JUDGE DIPPELL: All right. I asked you all to
7 come in today on such short notice because we had a motion
8 for expedited treatment in this case, and the motion
9 indicated that the reasoning was the circuit court
10 proceedings that are going on in Warren County.

11 And I know that the Commission has been
12 involved in all of that and everything, but you have to
13 realize that I have not been involved in all of that, so I'm
14 not able to advise the Commission on exactly what the status
15 of that case is. So I'd like to start with that, find out
16 exactly what the status of that case is right now.

17 And Mr. Krueger, would you like to address
18 that?

19 MR. KRUEGER: Well, your Honor, I think the
20 status of that case is accurately stated in the supplement,
21 the joint application that Warren County Water and Sewer
22 Company filed. On May 13th the court entered a memorandum,
23 the Warren County Circuit Court entered a memorandum that
24 says, case comes on for trial. Defendant consents to
25 judgment and appointment of receiver effective in 90 days.

1 If petition for transfer of ownership of the company is
2 filed but not completed before the Commission at the end of
3 that 90-day period, the judgment may be continued by the
4 consent of the parties.

5 That application for transfer of ownership was
6 not filed within the 90 days but shortly thereafter, and so
7 far as I know there's nothing in the circuit court
8 proceeding that requires any immediate action here. There
9 is nothing pending. There's no court date at the circuit
10 court at this time.

11 JUDGE DIPPELL: And the circuit court said
12 that the judgment would become effective in 90 days unless
13 there was consent of the parties? Was there consent of the
14 parties? I mean, there hasn't been a receiver appointed; is
15 that correct?

16 MR. KRUEGER: No consent was filed. No
17 receiver has been appointed. I think in order to accomplish
18 that we'd have to call it up on the docket in the Warren
19 County Circuit Court. The document that's filed in the
20 Warren County Circuit Court is entitled memorandum.
21 Obviously it's not a judgment until it's titled as a
22 judgment.

23 JUDGE DIPPELL: Okay. And is that the other
24 parties' understanding of where that stands right now?

25 MS. O'NEILL: Your Honor?

1 JUDGE DIPPELL: Ms. O'Neill.

2 MS. O'NEILL: Your Honor, I did file a
3 response to the supplement in the joint application to kind
4 of clarify the reason why, just really briefly, there had
5 not been further action at the circuit court at this point
6 in time, which is that Mr. Krueger and I and Mr. Abernathy
7 and Mr. DeFord, who Mr. Schaefer's here for today, have had
8 numerous conversations during that 90 days trying to, from
9 my point of view and what I was trying to do was trying to
10 get things moving as quickly as possible, because the
11 customers of Warren County Water and Sewer Company have been
12 under severe hardship and disadvantage.

13 And I think that's all set forth in the record
14 and our application for receivership in the hearing that we
15 had before the Commission on that matter. They certainly
16 want this to be resolved. There are actions that have been
17 taken by Warren County's -- I can't remember if it's the
18 planning and zoning commission or some other board in Warren
19 County that has restricted the ability of people who own
20 lots in the serviceterritory from constructing homes.

21 So we have been trying to get this done as
22 expeditiously as possible, and I believe that both companies
23 worked to try to get this done within the 90 days. I do
24 think that the circuit court is probably going to want some
25 sort of status report fairly soon if we're not able to file

1 something that says this is done, to ask us what's going on,
2 but at this point in time I haven't gotten any communication
3 from the court.

4 JUDGE DIPPELL: Okay. The purchase agreement
5 itself was filed as a highly confidential document. There's
6 one term in there that I believe affects the expedited
7 treatment of this case, and I'd like to discuss that with
8 you-all, but I need to know if there's anyone in the room
9 who would not be allowed to view that document.

10 MS. O'NEILL: I don't think so, your Honor.
11 From my office, Barb Meisenheimer's here, but she's with the
12 Public Counsel's office and was involved in the complaint
13 proceeding. I don't think there's any problem. I think the
14 only other people who are here are staff.

15 MR. KRUEGER: I don't see anyone.

16 JUDGE DIPPELL: And let me ask the counsel for
17 the parties to the agreement if the expiration date of that
18 agreement is indeed a highly confidential term or can we
19 make that public?

20 MR. ABERNATHY: No, it's not confidential.

21 JUDGE DIPPELL: We can --

22 MR. ABERNATHY: I put that as highly
23 confidential simply because I don't like my documents out in
24 the public domain for somebody to grab and --

25 JUDGE DIPPELL: Right. Before we discuss

1 it --

2 MR. ABERNATHY: The expiration date is not
3 highly confidential.

4 JUDGE DIPPELL: Before we discussed it on the
5 record. Okay, then. Then I won't have to make this a
6 confidential record. Because what I want to ask is, there
7 was a term in the agreement that said that the agreement was
8 going to expire on October 31st, and I assume that that is
9 really the reason that this has been asked for expedited
10 treatment, am I correct on that, or that the October 31st
11 date was chosen?

12 MR. ABERNATHY: Do you want me to go ahead and
13 respond to that?

14 JUDGE DIPPELL: Yes.

15 MR. ABERNATHY: My understanding is similar to
16 what Ms. O'Neill said, which is that the circuit court
17 wanted something done right away, and Warren County wanted
18 this resolved right away. So we picked a date, a couple
19 months or month and a half when we could get the contract
20 signed to get the matter moving, because we didn't think
21 there was anything controversial about this and we thought
22 we were trying to resolve this problem.

23 MR. SCHAEFER: I might say very general, that
24 is my understanding as well. I think that truly the focus
25 is that the circuit court I know is going to want to move

1 this along.

2 JUDGE DIPPELL: In my discussions with the
3 Commission on their agenda on Thursday, Thursday or Tuesday,
4 one of those days, I think the Commission is interested in
5 moving this along and the Commission wants -- doesn't want
6 to do anything that might affect the purchase, and -- but
7 they can't make the findings that they need without having
8 all the information in front of them. The courts keep
9 reminding them of that.

10 So we obviously need information from Staff
11 for the Commission to make its determination. So I guess my
12 question to you-all is, is the sale in danger of failing, is
13 this purchase in danger of not going through if you don't
14 have something from the Commission by October 31st?

15 MR. SCHAEFER: I think that Mr. Abernathy can
16 probably speak to that better than I can. We would
17 certainly like to see it go through before then. Whether or
18 not it would kill it, I can't say. I certainly don't want
19 to put it in jeopardy in any way.

20 MR. ABERNATHY: We don't want to either, but I
21 do want to use this as a bit of a leverage tool because we
22 have to get this -- I don't want to go in receivership,
23 which is I guess where we go next, and it has to get
24 resolved. I mean, we can -- I don't know if we want to
25 delve into the issues that I guess Staff finds controversial

1 with the contract or --

2 JUDGE DIPPELL: We'll get to -- I'm going to
3 ask Staff about what information they feel that they need
4 that they don't have and that.

5 MR. ABERNATHY: All right. But yeah, I guess
6 there is some danger of it not going, if that's the
7 question, if you want yes.

8 JUDGE DIPPELL: I just want the answer.

9 MR. ABERNATHY: That's the answer I'm giving
10 you is yes, there is that risk.

11 JUDGE DIPPELL: So then, Mr. Krueger, let me
12 put you on the spot, then, and ask you what it is that Staff
13 needs that -- I mean, Staff's been involved with this
14 company for some time, and what is it that Staff has to do
15 to get the information they need to make a recommendation to
16 the Commission?

17 MR. KRUEGER: Well, what they have asked for,
18 what the applicants have asked for in paragraph 16 of the
19 application is an order, agreement that the assets that are
20 subject to this application will be valued for ratemaking
21 purposes at the purchase price contained in the agreement.

22 We don't know whether that is equal to the
23 rate base, the actual rate base or greater or less, and we
24 need time to investigate to determine what exactly the rate
25 base is. In essence, what this asks for is acquisition

1 premium. Until we can determine what the rate base is, we'd
2 be reluctant to make a recommendation that it be -- that
3 that term be included in an Order approving transfer of the
4 assets.

5 JUDGE DIPPELL: And what is necessary to
6 determine the rate base and make that recommendation, what
7 other information? Does Staff not have information
8 regarding Warren County's rate base from its involvement in
9 the receivership case?

10 MR. KRUEGER: I'd need to confer with
11 Mr. Rackers

12 Your Honor, what the Staff would need is an
13 opportunity to determine whether certain improvements have
14 been made to the facilities of the company; if so, the
15 extent of the improvements. We might be able to accomplish
16 a lot of that by discussions today or very soon.

17 I don't think it would require extensive
18 study. But based on the most current information we have,
19 we would not be able to agree that the rate base is as high
20 as the amount specified.

21 JUDGE DIPPELL: Okay. Do you have any idea --
22 you'd asked for until December 1st to make a recommendation.
23 Do you have any idea actually how long an audit that you're
24 talking about would take, how many man hours or --

25 MR. KRUEGER: Two weeks.

1 JUDGE DIPPELL: And can you tell me -- I mean,
2 I have a general idea from being at the Commission, but can
3 you explain on the record what it is that is preventing
4 Staff from doing that right now?

5 MR. KRUEGER: Well, we need to establish the
6 cost basis for any assets that would be included in the rate
7 base of the company, and we have previously done audits such
8 as this, but not up to date. And so we'd need to review the
9 company's books to see what the basis is for any assets that
10 have been added to the company plant since the last time
11 that an audit was completed.

12 JUDGE DIPPELL: But there's at least eight
13 weeks between now and December 1st, maybe more. I haven't
14 looked at the calendar exactly. What is it that's
15 preventing Staff from going right now and doing that audit,
16 getting that information?

17 MR. KRUEGER: I think we can go right now. I
18 indicated that two weeks would be sufficient time for us to
19 make a recommendation.

20 It's just that the Order that the Commission
21 entered previously and which is still in effect so far as I
22 know is that we're required to make that recommendation by
23 October 1st. That's the day after tomorrow. We're not
24 prepared to do it that soon, but we are prepared to do it
25 soon and two weeks would be sufficient.

1 It's possible that if we made a -- if we were
2 able to complete our audit and make a recommendation within
3 two weeks, the October 31st date might possibly still be
4 accomplished.

5 MS. O'NEILL: Your Honor, may be able to --
6 just so that you're aware, my office really believes that
7 this matter needs to be resolved quickly, and we think that
8 it should be able to be resolved by the end of October,
9 which is what the request was initially by the parties.

10 And I don't know whether or not the people at
11 Staff who are working on this case were the people who were
12 working on the books in the complaint case, but the books
13 and records were reviewed thoroughly there. I know that
14 there are problems because the records that Warren County
15 was keeping were so bad and because there were some
16 questions about some transfers of assets that needed to go
17 back to the company that had been transferred out of the
18 company. It's my understanding all that's been
19 accomplished. And it shouldn't be a real big job to get
20 that taken care of.

21 But I know that there are records from the
22 complaint case that are probably up to date as far as
23 improvements, although there may be some questions about
24 ownership of some assets and those things would be need to
25 be clarified.

1 But I don't see why this can't be done in
2 sufficient time that we can't get this resolved by the end
3 of October. The people who live out there are not getting
4 improvements made to their property, what I'm hearing, since
5 the complaint case began, and they can't get safe and
6 adequate service until after -- they can't get safe and
7 adequate service until they get ownership over there who can
8 do the things that need to be done to upgrade the system.

9 And again, as I mentioned earlier, there are
10 people with land out there who have been wanting to build
11 for a year or even longer who have not been able to break
12 ground because of the fact that the system is insufficient
13 to add more homes to it. So my office is very interested in
14 having this matter resolved as quickly as possible.

15 JUDGE DIPPELL: Is the Office of the Public
16 Counsel prepared to make a recommendation regarding this
17 rate base issue?

18 MS. O'NEILL: I think we could be prepared to
19 make a recommendation regarding this rate base issue this
20 week. We've been hampered by the fact that generally we get
21 information from the Staff, and that hasn't been gotten
22 ready yet.

23 But we can look at what we have and, depending
24 on answers I might even be able to get here today from
25 Mr. Schaefer, certainly this week we probably could make a

1 recommendation or the first part of next week depending on
2 the Staff's progress and information we get from them.

3 JUDGE DIPPELL: Okay. I'm going to address
4 one thing that Mr. Krueger brought up, is that currently
5 there stands an Order directing Staff to file a
6 recommendation by October 1st, and I'm going to order that
7 that will -- that Staff is excused from that filing
8 deadline. I will set a new one, but not today. Probably
9 will come out in an Order from Thursday's agenda when I
10 suspect that the Commission will actually rule on the motion
11 for expedited treatment and a new Staff recommendation date
12 will be set in that Order. But for now the Staff is excused
13 from filing on October 1st a recommendation.

14 Now I want to ask if -- can the transfer be
15 approved and can the Commission find that it's not
16 detrimental to the public interest without an audit?
17 Mr. Krueger?

18 MR. KRUEGER: I believe that -- probably not.
19 I think probably not. The main concern that I've been
20 focusing on is the inclusion of this request in paragraph 16
21 for an acquisition, for approval of an acquisition premium,
22 but also the request for moratorium in paragraph 13 of the
23 application is a concern.

24 But I think that we cannot determine whether
25 it's detrimental to the public interest without an audit,

1 even absent approval of those two requested items.

2 JUDGE DIPPELL: Is the transfer contingent on
3 those two paragraphs in the application?

4 MR. ABERNATHY: Do you want me to speak to
5 this a little bit? Let me clarify something. We're not
6 asking for an acquisition premium. What we're asking for is
7 the price we're paying for this property be the rate base
8 number, because we don't know what the rate base number is
9 precisely. Nobody does.

10 This has been going for months, this process.
11 Staff could have done its audit three, four, five months ago
12 because they knew it was going to be sold. We were asked to
13 step in. We said we would. We offered what we thought was
14 a very fair price for the property.

15 We didn't want to get caught in a situation
16 like this now where now in hindsight we're going to go back
17 and do an audit, come up with a number probably.
18 Acquisition premium makes we worry that we're going to come
19 up with a number lower than what I'm offering to pay, and
20 now suddenly I've got premium I can't recover in rate.
21 That's the dilemma.

22 We've got other systems like this in the
23 state. We would like to step up and help with those
24 systems, too. If we get burned in this situation, there's
25 not a lot of incentive for my company to come forward and do

1 this again. We'd just like to get this done, get an Order
2 declaring that that is the rate base, go on and do the next
3 one, which is Osage Water next.

4 JUDGE DIPPELL: But you understand the law
5 says the Commission has to determine whether it's
6 detrimental to the public interest?

7 MR. ABERNATHY: Well, let's define what's
8 detrimental. Why would that be? I mean, I think it's a
9 fair price. Nobody knows for sure what it is. I can get
10 five guys in a room and they can't agree on what the rate
11 base number is. I don't think this is out of line by any
12 means. Does anybody else think it's out of line, what we've
13 offered? It's not a lot of money for this system.

14 JUDGE DIPPELL: I guess my question was, is
15 the sale contingent on that?

16 MR. ABERNATHY: Possibly. I'm not going to
17 put my company in positions where it can get hurt monetarily
18 for trying to resolve these problems, these issues. We have
19 to look at it.

20 JUDGE DIPPELL: And there was a recent
21 decision in the Aquila merger case that dealt with an
22 acquisition premium and what the Commission has -- I mean,
23 the Commission in that case had said that they would deal
24 with the acquisition premium in the rate case and the court
25 said no, you'll have to determine that in the merger to

1 determine whether it's detrimental to the public interest.
2 You can't know unless you know how you're going to deal with
3 that in rate base. That's my understanding of the case, and
4 correct me if that's not your understanding.

5 MR. ABERNATHY: Your Honor, at least Aquila
6 knew they may be paying a premium at that time. When we did
7 this deal, we didn't think we were paying a premium.

8 JUDGE DIPPELL: Well, how do you think that
9 that case affects this situation and how the Commission can
10 rule? Mr. Krueger, do you have a thought?

11 MR. KRUEGER: I haven't studied that case
12 specifically.

13 MR. SCHAEFER: I'll just make a brief comment,
14 and I'm not familiar with that case, but I will tell you
15 that I was involved in the complaint case that was filed,
16 and I think that the amount of information on Warren County
17 Water and Sewer that's already possessed by the Staff and
18 the attempts that were made to move that case along
19 extremely quickly because of the information that I think
20 Staff had, to now at this point when to everyone's interest,
21 including the public, a resolution is at hand, a circuit
22 court is waiting for a determination for what everyone asked
23 for to begin with, to now put that off for this reason does
24 not seem justified to me when you're looking at it in the
25 balance of what is detrimental. To the exact case, I cannot

1 comment.

2 JUDGE DIPPELL: Any other comments on that
3 particular case?

4 MR. ABERNATHY: If I may, your Honor, I don't
5 know if it applies or not. It's going to be an interesting
6 question. If you recall the Aquila deal, the premium part
7 was within the contract itself, the four corners of the
8 contract. In this situation we're not asking for that in
9 the contract but in the application.

10 JUDGE DIPPELL: Okay.

11 MR. ABERNATHY: So maybe it makes a
12 difference.

13 JUDGE DIPPELL: I suspect it may make a
14 difference if everybody's in agreement to it also, but come
15 rate case time, there could be some issue come up.

16 I think that's all the questions I had, what I
17 wanted to accomplish at this prehearing conference. It does
18 sound like that this may be a beneficial time for you-all to
19 discuss with Staff what it is they need and what information
20 they can get.

21 I will stress again that the Commission is
22 anxious to resolve this. They want to see the receivership
23 case wrapped up and taken care of as easy as we can. They
24 want to make sure that the customers have safe and adequate
25 service and as quickly as possible. And they're encouraged

1 by the fact that there is an offer out here, and they want
2 to see this resolved as quickly as possible, but they have
3 to do that within the confines of the law and what's
4 required of them.

5 So this is -- this Commission is a very
6 thorough commission and they're very interested in having
7 all the information before they make decisions. So I'm
8 going to -- I have this placed back on the agenda tomorrow
9 for a discussion item to give them an update of what we
10 discussed here today, and I expect they'll rule on the
11 motion for expedited treatment on Thursday.

12 So with that, is there anything final that
13 you-all would like to share with me? Mr. Krueger, you look
14 like maybe you had some final words.

15 MR. KRUEGER: No, I don't think so, your
16 Honor.

17 JUDGE DIPPELL: Mr. Schaefer?

18 MR. SCHAEFER: No, thank you.

19 JUDGE DIPPELL: Mr. Abernathy?

20 MR. ABERNATHY: No, thank you.

21 JUDGE DIPPELL: Ms. O'Neill?

22 MS. O'NEILL: No.

23 JUDGE DIPPELL: Okay. Then we can conclude
24 the on-the-record portion of this prehearing conference, and
25 I encourage you-all to discuss away, and I'll be upstairs if

1 you need me for anything.

2 Thank you. Off the record.

3 WHEREUPON, the recorded portion of the
4 prehearing conference was concluded.

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

ASSOCIATED COURT REPORTERS
JEFFERSON CITY - COLUMBIA - ROLLA
(888) 636-7551