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STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

TRANSCRIPT OF PROCEEDINGS

Prehearing Conference

February 5, 2004
Jefferson City, Missouri
Volume 20

In the Matter of Missouri-American)
Water Company's Tariff Sheets)
Designed to Implement General Rate) Case No. WR-2000-281
Increases for Water and Sewer)
Service Provided to Customers in the)
Missouri Service Area of the Company.)

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

REPORTED BY:

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ASSOCIATED COURT REPORTERS

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

2 JUDGE THOMPSON: Good morning. We're here in
3 the matter of Missouri-American Water Company's tariff
4 sheets designed to implement general rate increases for
5 water and sewer service provided to customers in the
6 Missouri service area of the company, Case No. WR-2000-281.
7 My name is Kevin Thompson. I'm the Regulatory Law Judge
8 assigned to preside over this matter.

9 And we'll take oral entries of appearance at
10 this time. Why don't we begin with the parties who are here
11 in the room. Let's start with Staff and just work our way
12 across.

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

16 JUDGE THOMPSON: Did you guys hear that?

17 SPEAKER ON PHONE: No, not very well.

18 JUDGE THOMPSON: That was Keith Krueger.
19 Everybody shout, okay?

20 MR. COOPER: Dean L. Cooper and W.R. England,
21 III from the law firm of Brydon, Swearngen & England, P.C.,
22 P.O. Box 456, Jefferson City, Missouri 65102, appearing on
23 behalf of Missouri-American Water Company.

24 JUDGE THOMPSON: That was the company.

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

1 the Public Counsel, P.O. Box 2230, Jefferson City, Missouri
2 65102.

3 MR. ELLINGER: Marc Ellinger and Jim Deutsch,
4 law firm of Blitz, Bardgett & Deutsch, on behalf of the City
5 of Joplin, 308 East High, Suite 301, Jefferson City, 65101.

6 JUDGE THOMPSON: Thank you. Now, let's begin
7 with Ms. Langeneckert.

8 MS. LANGENECKERT: Lisa C. Langeneckert
9 appearing on behalf of the Missouri Energy Group, Law Office
10 of Robert Johnson, 720 Olive Street, 24th Floor, St. Louis,
11 Missouri 63101.

12 JUDGE THOMPSON: Thank you. Mr. Fischer.

13 MR. FISCHER: James M. Fischer, Fischer &
14 Dority, PC, 101 Madison Street, Suite 400, Jefferson City,
15 Missouri 65101, appearing on behalf of the water districts
16 in the St. Joseph area.

17 JUDGE THOMPSON: Thank you.

18 MS. VUYLSTEKE: Diana Vuylsteke of the firm
19 Bryan Cave, LLP, appearing on behalf of the Missouri
20 Industrial Energy Consumers. My address is 211 North
21 Broadway, Suite 3600, St. Louis, Missouri 63102.

22 JUDGE THOMPSON: Thank you. Mr. Conrad.

23 MR. CONRAD: Stu Conrad, Finnegan, Conrad &
24 Peterson, Suite 1209, 3100 Broadway, K.C., Mo. 64111.

25 JUDGE THOMPSON: Thank you. Mr. Zobrist.

1 MR. ZOBRIST: Carl Zobrist, Blackwell,
2 Sanders, Peper, Martin, 2300 Main Street, Kansas City,
3 Missouri 64108, where it's snowing like crazy. I represent
4 the St. Joseph Water Rate Coalition.

5 MR. CONRAD: In this case, Carl?

6 MR. ZOBRIST: Pardon me. Thank you, Stu.
7 City of St. Joseph.

8 JUDGE THOMPSON: And finally Mr. Finnegan.

9 MR. FINNEGAN: Jeremiah Finnegan, 3100
10 Broadway, Suite 1209, Kansas City, Missouri 64111,
11 representing the City of Riverside.

12 MR. CURTIS: This is Lee Curtis. I need to
13 enter.

14 JUDGE THOMPSON: Very good.

15 MR. CURTIS: Leland Curtis with the firm
16 Curtis, Oetting, Heintz, Garrett & O'Keefe, 130 South
17 Bemiston, Suite 200, St. Louis, Missouri 63105, entering an
18 appearance on behalf of the City of Warrensburg.

19 JUDGE THOMPSON: Thank you very much,
20 Mr. Curtis.

21 You all know the purpose of this prehearing
22 conference this morning. I won't belabor that. For those
23 of you who are attending by telephone, if you have anything
24 to say, please indicate who you are at the beginning of your
25 remarks so that the reporter knows who to attribute those

1 remarks to.

2 Those of you who have filed written pleadings,
3 I have reviewed those, and it would appear to me that the
4 Commission needs to move with dispatch to decide the
5 remanded issues and issue a remanded decision in the 281
6 case.

7 The Commissioners wanted me to hold this
8 prehearing conference to see whether there was a possibility
9 that they could get out of reading all that stuff, but I can
10 see that that possibility does not exist. Anyone have
11 anything they'd like to add at this point?

12 MR. CONRAD: There's a preliminary matter,
13 too.

14 JUDGE THOMPSON: What is that, Mr. Conrad?

15 MR. CONRAD: There is an unruled motion which
16 we filed shortly ahead of the prior prehearing conference in
17 this matter.

18 JUDGE THOMPSON: Is that the one to disqualify
19 Staff's attorneys, Mr. Conrad?

20 MR. CONRAD: That is correct.

21 JUDGE THOMPSON: Okay. We will get you a
22 ruling on that expeditiously.

23 MR. CONRAD: I'm sure.

24 JUDGE THOMPSON: You're supposed to snicker
25 behind my back.

1 Okay. Anyone else? Mr. Deutsch, I can see
2 you've got something. What do your friends in Joplin want
3 you to tell me?

4 MR. DEUTSCH: You know, my friends in Joplin
5 had a chance to look at the pleadings that were filed by
6 Staff, and I didn't want for the Commission to take up its
7 duties in deciding the issues pertinent to Joplin without
8 noting at least on the record, because, of course, we don't
9 have a filing and a response, but I would just simply point
10 out that all the cases that are cited for the proposition
11 that the question is moot concerning the \$900,000 load
12 placed on Joplin citizens that doesn't apply to anybody
13 else, and we believe in violation of the principle of undue
14 discrimination, is not moot.

15 There isn't anything in those cases that deals
16 with a case like this. In this case, the case was decided,
17 went up on judicial review, the court found it couldn't
18 review. They didn't affirm what the rates were. They
19 looked at it and said, we don't know what the rates are, do
20 it over.

21 And it sat here for two years, and for
22 whatever reason that is, fine, but for the -- I would just
23 suggest that before taking the Staff's advice to leap into
24 the brave new world of deciding that it will just declare
25 matters moot by the fact that they sat on them long enough

1 to make them that way I think would sit very poorly with
2 Judge Brown when we go back to him, because that decision
3 will definitely get judicial review.

4 Thank you.

5 JUDGE THOMPSON: Thank you, Mr. Deutsch.
6 Anyone else?

7 MR. CONRAD: And that's the same -- this is
8 Conrad. That's the same with respect to the total absence
9 of any findings with respect to the large main issue. I
10 can't speak for as I -- any more than I did with respect to
11 the phase-in issue which we also raised.

12 I do think that the preliminary motion that we
13 have lodged will also be a matter that will be taken up
14 because that affects, frankly, the Staff's position in this
15 case, it affects and goes right to the heart of the position
16 that they're announcing in that pleading.

17 JUDGE THOMPSON: Okay. Anyone else?

18 MR. CONRAD: They can't be on both sides of
19 the issue at the same time, both representing the Commission
20 and representing the Staff.

21 JUDGE THOMPSON: Ms. O'Neill?

22 MS. O'NEILL: Just real briefly, your Honor, I
23 think that one of the interesting postures that we're in
24 here is that the issues that may become moot when the
25 Commission issues its next order in the pending 2003-0500

1 case, you know, we're in a posture they're not moot yet.
2 There's still a lot of controversy. The petitions for
3 review have been filed. They've been briefed. They've been
4 submitted. They may become moot when the new tariffs issue.

5 There may be some exceptions to mootness that
6 apply to some of those issues. We think that because there
7 may be exceptions that apply specifically to issues which
8 may be capable of being repeated yet they review, such as
9 issues regarding phase-in and why phase-in is or is not
10 appropriate may be things that may be subject to review even
11 if there are new rates in place because it's an unsettled
12 issue.

13 I think part of that depends on whether or not
14 the Commission decided against the phase-in based on
15 evidence and maybe in going through the Findings of Fact and
16 Conclusions of Law decided in this particular instance it
17 was not appropriate versus whether the Commission believes
18 it has the authority to institute a phase-in absent a
19 request from the company who was seeking a rate increase,
20 which was -- which is probably -- which is a different take
21 on it, and it wasn't clear from the opinion in the original
22 Report and Order which way the Commission had gone.

23 So depending on how those issues that are
24 remanded are decided, there may be some exceptions to the
25 mootness doctrine that would allow some of those issues to

1 continue to be reviewed.

2 JUDGE THOMPSON: Yes, ma'am. Thank you.

3 Anyone else?

4 MR. DEUTSCH: I just had one other thing to

5 add to follow up on what Ruth said.

6 JUDGE THOMPSON: Sure. Absolutely.

7 MR. DEUTSCH: Just by way of advice to the

8 Commission, following up on what I said earlier about the

9 dangers of following the approach the Staff has taken,

10 please bear in mind, the Staff, as Mr. Conrad has pointed

11 out in his motion, is in an ideal position. They can take

12 this position, force it on the Commission and then it

13 becomes your decision, not theirs. Then they won, they've

14 got what they want. You get blamed for it. Judge Brown

15 will review your decision, not theirs.

16 I would suggest that the better approach is,

17 decide the case. If, in fact, there is a question of

18 mootness, that could be raised on judicial review. It

19 doesn't need to be raised here. And I would be very

20 hesitant to urge the Commission to stick its neck out for no

21 good reason at all on a case that I think at best could be

22 said is unusual.

23 JUDGE THOMPSON: Thank you, Mr. Deutsch.

24 Would any of the parties want an opportunity to respond in

25 writing to any of the pleadings that were filed yesterday?

1 MS. O'NEILL: I don't know that that would be
2 necessary.

3 JUDGE THOMPSON: I'm not saying you have to.
4 I'm just saying if you would like the opportunity, then --

5 MR. DEUTSCH: I think the only response we
6 have is the one I've already said, that none of the cases
7 supporting it, if you read them, have anything to do with
8 the facts of this case and they're not applicable.

9 If the Commission decides they want to apply
10 those cases and stretch them to fit, I don't think any
11 amount of argument that I can make's going to -- I tend to
12 think that, quite honestly, I do not envy the Commissioners
13 the task of reading through the record on this.

14 I'd also point out that I believe that the
15 requirement is that they read the record or the portions of
16 it referenced in the Briefs. If that would perhaps ease the
17 burden, I would be --

18 JUDGE THOMPSON: I think that second aspect is
19 probably the approach they're going to take.

20 MR. DEUTSCH: I think that is the appropriate
21 approach.

22 JUDGE THOMPSON: Very well. Anyone else with
23 anything else?

24 Very well. I think that I've heard everything
25 certainly that I need to hear. I appreciate your attending,

1 those of you who appeared physically and those of you who
2 appeared through the magic of telephoning. Anything else?
3 Hearing nothing, we will adjourn this prehearing conference.

4 Wait. Mr. England?

5 MR. ENGLAND: This can be off the record, your
6 Honor. I just ask that you leave the conference bridge open
7 because we were going to try to transact some additional
8 business on another matter.

9 JUDGE THOMPSON: I will be more than happy to
10 do that. I will leave the conference bridge open, as you
11 say, take my toys and go home. We're done.

12 WHEREUPON, the recorded portion of the
13 prehearing conference was concluded.

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