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BEFORE THE PUBLIC SERVICE COMMISSION

STATE OF MISSOURI

TRANSCRIPT OF PROCEEDINGS

HEARING

April 19, 2004

Jefferson City, Missouri

Volume 26

In the Matter of Missouri-American) Case No. WR-2003-0500
Water Company's Tariff to Revise)
Water and Sewer Rate Schedules)

BEFORE: _____

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

CONNIE MURRAY,
COMMISSIONER

REPORTED BY:
TRACY L. THORPE, CSR, CCR
MIDWEST LITIGATION SERVICES

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

2 JUDGE THOMPSON: Good morning. My name is
3 Kevin Thompson. I'm the regulatory law judge assigned to
4 preside over this matter, which is in the matter of
5 Missouri-American Water Company's tariff to revise water and
6 sewer rates, WR-2003-0500.

7 We'll go ahead and take oral entries of
8 appearance at this time. Why don't we begin with Public
9 Counsel?

10 MS. O'NEILL: Good morning. Ruth O'Neill from
11 the Office of Public Counsel, PO Box 2230, Jefferson City,
12 Missouri 65102.

13 JUDGE THOMPSON: Thank you, Ms. O'Neill.
14 Company?

15 MR. ENGLAND: Thank you, your Honor. Let the
16 record reflect the appearance of WR England and David
17 Abernathy on behalf of the company, Missouri-American Water
18 Company.

19 JUDGE THOMPSON: Thank you.
20 And Intervenor?

21 MR. DEFORD: Thank you, your Honor. Let the
22 record reflect the appearance of Paul S. DeFord, the law
23 firm of Lathrop and Gage appearing on behalf of Metropolitan
24 Sewer District. Also appearing is Randy Hayman.

25 MR. HAYMAN: General counsel, Metropolitan

1 St. Louis Sewer District.

2 JUDGE THOMPSON: Nice to meet you, sir.

3 MR. HAYMAN: My pleasure. And also our
4 director of finance, Jan Zimmerman.

5 MS. ZIMMERMAN: Nice to see you.

6 JUDGE THOMPSON: Nice to see you, ma'am.

7 Let the record reflect that Staff, although
8 directed to appear at this time and place, is not here.

9 We had an eventful few days at the end of last
10 week. The compliance tariffs were filed by
11 Missouri-American Water Company after a long, many months
12 ordeal of a rate case with -- I think we had 12 days of
13 hearing, if I'm not correct -- incorrect. I may be
14 incorrect. Several days of hearing anyway.

15 We had three Stipulations and Agreements, we
16 had a hearing on the Stipulations and Agreements. We had
17 approval by the Commissioners, rejection of the original
18 tariffs and then all that was left was for the compliance
19 tariffs to be filed.

20 They were filed, Staff filed its memorandum on
21 Thursday afternoon and pursuant to that memorandum and
22 pursuant to my delegated authority, I issued an order
23 approving the compliance tariffs effective April 16th.

24 I believe it was that same day, the 15th, in
25 the afternoon that the Metropolitan Sewer District filed a

1 pleading requesting reconsideration pointing out that --
2 alleging that there were two sheets in the compliance
3 tariffs that contained matters not previously raised in the
4 case, explaining they had not intervened because there was
5 nothing in the case up to that moment that had affected them
6 and that they were surprised and prejudiced by the
7 appearance of this matter at this late date and approved on
8 one day's notice and requesting that the Commission, in
9 fact, not approve it on an expedited basis.

10 I conferred with my superiors and with the
11 Commissioners, and as a result, issued an order suspending
12 the compliance tariffs for a period of one week and setting
13 this hearing this morning for the company to show cause why
14 we should not reject the compliance tariffs.

15 Of course, as you know, it is traditional here
16 that we deal with tariff filings as a group, so we can't
17 simply reject the two sheets that questions were raised
18 about. It has to be all or nothing. So that's my summation
19 of where we find ourselves this morning. And I guess it was
20 Missouri-American that was directed to show cause, so
21 Mr. England, I'll offer you the podium.

22 MR. ENGLAND: Thank you, your Honor. Your
23 Honor, I believe there were a number of tariffs, as you
24 pointed out, that were filed for purposes of complying with
25 the Commission's order approving Stipulations and

1 Agreements, plural, in this case.

2 As I understand, the only two tariffs --
3 tariff sheets, that is, that are really the subject of the
4 objection are two tariff sheets for the St. Louis County
5 District. And they are, I believe, Second Revised Sheet
6 No. RT-15 and Fifth Revised Sheet No. RT-16.

7 With respect to those two tariff sheets, I
8 would say that the company believes that they are in
9 compliance with the understanding of the parties, at least
10 the understanding of the company and the Staff regarding
11 revenue requirements, rates and what have you in the
12 St. Louis district.

13 I will admit that they were never the subject
14 of public testimony or debate during this proceeding. It
15 was not an effort on our part to prejudice anyone. It was
16 an effort to more correctly reflect the status quo of the
17 situation that currently exists between the company and MSD.

18 Having said that and in an effort to perhaps
19 separate this from the rate case, I note that in the
20 pleading filed by MSD, paragraph 14, they specifically
21 request that, quote, The Commission should reject these
22 proposed tariff sheets as unjust and unreasonable and
23 instruct MAWC to resume good faith negotiations while
24 leaving in place the existing contractual relationship,
25 period.

1 In the event negotiations prove unsuccessful
2 within a reasonable period, comma, the parties could bring
3 the matter to the Commission for resolution, period, end
4 quote.

5 While we do not agree that the sheets are
6 unjust and unreasonable and we certainly do not agree that
7 we have acted -- or negotiated in anything but good faith,
8 we are willing to voluntarily pull those two tariff sheets
9 from the instant filing so that the remainder of the sheets
10 can go into effect as soon as you can issue an order doing
11 so.

12 We are certainly willing to continue
13 negotiations with MSD and we are willing to bring this
14 matter back to the Commission if, after a reasonable period
15 of time, we are unable to reach voluntary agreement with MSD
16 in this matter. And hopefully that would resolve the issue
17 certainly as far as the rate case is concerned.

18 JUDGE THOMPSON: Okay. Thank you very much,
19 Mr. England.

20 Mr. Snodgrass, why don't you go ahead and do
21 your oral entry of appearance at this time.

22 MR. SNODGRASS: Yes. Judge, my name is Cliff
23 Snodgrass. I apologize for being a few minutes late this
24 morning.

25 JUDGE THOMPSON: That's quite all right.

1 MR. SNODGRASS: I represent Staff of the
2 Missouri Public Service Commission in this case.

3 JUDGE THOMPSON: Thank you.

4 I don't know who to let at the podium next.
5 Would you like to respond to the comments that Mr. England
6 had, Cliff, or should we allow Mr. DeFord to step up?

7 MR. SNODGRASS: I would prefer Mr. DeFord to
8 go ahead and have at it.

9 MR. DEFORD: I'll tag team to Mr. Hayman, and
10 then if I could go next, that would be great too.

11 MR. HAYMAN: Good morning.

12 JUDGE THOMPSON: Good morning, sir.

13 MR. HAYMAN: On behalf of Metropolitan Sewer
14 District, we appreciate the Commission's willingness to take
15 such a prompt look at this matter. I'm Randy Hayman,
16 general counsel for the Metropolitan St. Louis Sewer
17 District.

18 The district's board of trustees consists of
19 highly trained, experienced people -- business people and
20 they have given its staff the mandate of running the
21 district in a fiscally responsible manner. Financial
22 decisions affecting rates charged to our customers must have
23 a clear and actionable business focus.

24 Paying more money for less water data
25 information is both illogical and without any basis in law

1 or accepted business practice. What MO-Am has proposed to
2 the Public Service Commission is neither fair nor in the
3 best interest of MSD or, more importantly, that of our
4 customers.

5 I also think it's important to note that my
6 correspondence, which is part of the pleading on March 29th,
7 I wrote back to Mr. Abernathy after our last meeting, which
8 was on March 23rd. It was my understanding at that time
9 that, yes, the rate commission was going -- I mean, the rate
10 case was going forward before the Commission, but that we
11 would, during a short period of time, negotiate a contract
12 and then bring that contract and tariff back to the
13 Commission and more or less it would be stapled to the rate
14 case.

15 It's come to my attention that they've signed
16 the agreement on last Thursday and expedited to come into
17 effect on this past Friday. That's why we've taken the
18 expedited action that we have to protect the district and
19 our customers.

20 JUDGE THOMPSON: Thank you.

21 MR. HAYMAN: Thank you.

22 MR. DEFORD: Your Honor, I think in light of
23 Mr. England's statement, we're not here to blow up the
24 entirety of the rate case. And withdrawal of the two tariff
25 pages I think satisfies our concern at least for the moment.

1 And we would be more than pleased to engage in negotiations
2 with the company and set a reasonable deadline to bring the
3 matter back to the Commission for resolution if the parties
4 can't agree.

5 JUDGE THOMPSON: Okay. Thank you, Mr. DeFord.
6 Ms. O'Neill?

7 MS. O'NEILL: Good morning. I would just like
8 to state that the Office of the Public Counsel, when it
9 entered into two of the three stipulations and decided not
10 to object to this third stipulation involved in the rate
11 case, did that have after considering a lot of different
12 interests for a lot of different customers.

13 We believe that we've considered all factors
14 that were relevant and brought to our attention during that
15 period of time and we would still believe that those
16 settlements are in the best interest of the customers.

17 We believe that if these two disputed tariff
18 sheets are withdrawn -- and they weren't part of our
19 negotiations -- that there would not be anything
20 objectionable in the rest of the Complainant's tariff. So
21 if Missouri-American is indeed willing to do so, we would
22 not object to that.

23 JUDGE THOMPSON: So, Ms. O'Neill, you say
24 these two sheets were not part of the negotiated settlement,
25 as far as you recall?

1 MS. O'NEILL: My recollection is that the
2 negotiated settlement and the -- the discussions that I
3 participated in and the discussions I was made aware of, we
4 did not discuss Metropolitan Sewer District when I was
5 there.

6 These are two parties that have a
7 long-standing relationship and it's always been subject to
8 contract. I don't know that my office was made aware of
9 problems in negotiating the new contract at all. I know
10 that they have a contract they negotiate from time to time.

11 JUDGE THOMPSON: Thank you.

12 Commissioner Murray, any questions for
13 Ms. O'Neill?

14 COMMISSIONER MURRAY: No, thank you.

15 JUDGE THOMPSON: Mr. Snodgrass?

16 MR. SNODGRASS: Yes, Judge. After
17 consultation with the Staff, Staff has no objection with
18 withdrawal of the two tariff pages at issue here in this
19 case. We certainly encourage negotiations between these two
20 parties and hopefully a fair and reasonable agreement can be
21 reached.

22 Staff's basic position on this matter is that
23 without an enforceable contract between MSD and the company,
24 the tariff sheets at issue anyway can't be enforced because
25 the tariffs themselves are based on an existing contract

1 between these parties.

2 We understand that the contract between MSD
3 and the company has been extended for approximately
4 120 days. That's our understanding at this point in time.
5 But if there is no contract after the extension expires,
6 Staff takes a position that the tariffs are not enforceable
7 because they have to be based on an existing agreement
8 between these two contracting parties. That's the Staff's
9 position at this point in time.

10 JUDGE THOMPSON: Okay. Thank you,
11 Mr. Snodgrass. Is it true that the two tariffs -- the two
12 sheets in question were not part of the negotiations, as far
13 as you know?

14 MR. SNODGRASS: Yes. As far as I know, Judge,
15 that's a correct statement.

16 JUDGE THOMPSON: And isn't it unusual for a
17 new matter to be included in a compliance tariff?

18 MR. SNODGRASS: I'm not sure the Staff
19 considers this to be a new matter, frankly, your Honor.

20 JUDGE THOMPSON: Okay.

21 MR. SNODGRASS: From understandings that we've
22 had with discussions with the company, we're not sure that
23 this is a new matter.

24 JUDGE THOMPSON: But the issues in these two
25 sheets were not part of any of the three Stipulations and

1 Agreements; is that true?

2 MR. SNODGRASS: Well, it's my understanding
3 that the company already had a tariff regarding these
4 matters and that these issues have been going on for years
5 between these particular parties. So we don't regard this
6 as new matters.

7 JUDGE THOMPSON: Well, let me respond to that.
8 Up on the ninth floor where the judges live, we're not
9 subject matter experts and we do not review tariff sheets to
10 determine whether or not they're in compliance with
11 agreements or with orders of the Commission or whether
12 they're even just and reasonable.

13 We rely on the experts that the various
14 parties bring, the testimony in the hearing room about the
15 tariff sheets. And in the case of compliance tariffs, we
16 rely, of course, on the memorandum and recommendation
17 produced by the Staff. And we assume that Staff's subject
18 matter experts will review those tariffs and ensure that
19 they are, in fact, compliant with the Commission order that
20 they are presented as a representation of, if I'm making
21 sense.

22 So the problem, from my point of view, and the
23 thing I would like to make sure you understand is that where
24 the Commission has already approved a settlement of the case
25 and has directed the compliance tariffs be filed, the

1 Commission is saying, We have approved this and you may now
2 file tariffs that express -- that implement what we have
3 approved.

4 Now, these two sheets, not being part of any
5 of those three agreements consequently, had never been
6 considered by the Commission. You see? And so it was, of
7 course, inappropriate for them to be presented in a way
8 where they would be approved by delegation. You see what
9 I'm saying?

10 They needed to come to the full Commission and
11 be considered and approved by the Commissioners, either as
12 part of a settlement or separately or however, but that's
13 the way it needs to be done.

14 And I just want to make sure that in the
15 future that Staff understands a compliance tariff is exactly
16 that, a tariff that implements a previously agreed,
17 previously approved situation. Okay? One that has been
18 before the Commissioners, has been approved by the
19 Commission and then can be approved by delegation relying
20 upon Staff's memorandum and recommendation.

21 Where tariff sheets include new matter that
22 the Commissioners have never seen, well, that has to go to
23 the Commissioners. Okay? So that's simply my read on that.
24 I want you to take note of that for the future.

25 Now, with respect to the suggestions that

1 we've got of withdrawing the two sheets and continuing
2 negotiations and allowing the other sheets to go into
3 effect, I'm wondering if there is a single-issue rate-making
4 problem. And perhaps you can advise me on that,
5 Mr. England. Is it possible to separate out the contents of
6 these two sheets and let them be approved at a different
7 time?

8 MR. ENGLAND: The answer I believe is yes, but
9 you raise a good question, your Honor. And kind of
10 elaborating on your earlier discussion with Staff, while
11 these tariff sheets were not the discussion of settlement
12 negotiations with the parties for rate design or revenue
13 requirement, they, nevertheless, embody a revenue stream
14 that was inherent in the Staff's case.

15 And I think that's what Mr. Snodgrass was
16 getting at. And I fully agree with his characterization
17 that these tariff sheets really have no force and effect
18 unless there is an underlying agreement embodying the terms
19 and conditions of the relationship between the parties. And
20 the tariff sheets specifically refer to those agreements.

21 In the past -- and this gets, I think, to your
22 most current question -- my understanding is that when new
23 contracts were reached with MSD, they were filed with the
24 Commission, not necessarily for approval of the contracts,
25 but a tariff sheet was then filed with the contract along

1 with the contract that is -- that embodied a rate and you
2 approved it and you approved it outside the context of the
3 general rate case. And that's been historically the
4 practice, as I understand, with this company and with these
5 types of -- these contractual arrangements.

6 So that's a rather long-winded way of saying
7 that if we reach agreement in the future, we believe that
8 it's appropriate for us to file that agreement with the
9 Commission. Now, it may be that the rates are less than
10 they have been in the past, may be that they are the same or
11 they could be increased, but my understanding is those have
12 been done outside the context of a rate case.

13 JUDGE THOMPSON: Thank you, Mr. England.

14 Commissioner Murray?

15 COMMISSIONER MURRAY: Yes. I'd like to ask if
16 this was an issue that should have been included in the
17 Stipulation and Agreement because -- and the reason I ask
18 that question is that if these charges reflect the revenue
19 requirement that was agreed upon in the Stip and Agreement,
20 won't the revenue fall short if those charges are not
21 included?

22 MR. ENGLAND: That's correct. And obviously
23 that's one of our concerns.

24 COMMISSIONER MURRAY: So was it inadvertently
25 left out in the Stip and Agreement or --

1 MR. ENGLAND: I think that's a good
2 description. Obviously hindsight's 20/20. I wish now it
3 would have been specifically identified in those agreements,
4 but it wasn't.

5 COMMISSIONER MURRAY: And it was not
6 negotiated within the context of the Stip and Agreement; is
7 that right?

8 MR. ENGLAND: No. Other than an
9 understanding -- and I'll let Staff speak for themselves --
10 that we had a test year revenue stream associated with this
11 contract that was included in both com-- or excuse me, both
12 company and Staff's case. And it was our understanding or
13 hope that that would continue in the future.

14 COMMISSIONER MURRAY: But the revenue stream
15 that was included was based upon the terms of the existing
16 contract, was it not?

17 MR. ENGLAND: Correct.

18 COMMISSIONER MURRAY: But the tariff sheets
19 that were filed made changes in that, did they not?

20 MR. ENGLAND: My understanding is the tariffs
21 made changes in the way in which the revenue was expressed.
22 The existing sheet expresses it on a per usage or per
23 occurrence type basis and the revised sheet reflects a flat
24 annual amount, but the annual amount reflected in the new
25 tariff sheet, if you will, is the same that's been there

1 historically in both company's and Staff's case.

2 COMMISSIONER MURRAY: So for annual dollar
3 amount, there was no change?

4 MR. ENGLAND: That's my understanding.

5 COMMISSIONER MURRAY: Is that the
6 understanding of the district?

7 MR. DEFORD: Not exactly, your Honor. What
8 Mr. England said is absolutely true. What the current
9 tariff did is reflect a per account read. And what happened
10 apparently was they quantified that for a period -- I guess
11 the test year with a true-up and then turned that into a
12 flat rate and plugged that into a tariff sheet.

13 I guess what the sewer district would point
14 out is that I don't believe that this is a charge for either
15 water service or sewer service, so I believe that these are
16 non-jurisdictional revenues, but I don't think this has
17 really anything to do with, you know, the rate case and
18 submission of those contracts in the past for Commission
19 approval.

20 I think it may have been appropriate, but it
21 nonetheless -- and, again, agreeing with Mr. England, I
22 don't think this raises the spectra of single-issue
23 rate-making because this is non-jurisdictional revenue.
24 This is not something that the company needs to put in a
25 tariff or for that matter, should be in a tariff. So I

1 suppose, you know, this is kind of a unique circumstance.

2 The company is statutorily entitled to the
3 data that we're seeking here upon reasonable request. And I
4 think that it's appropriate to compensate the company for
5 that data, but again, I don't believe that it's appropriate
6 or necessary to put that charge in a tariff.

7 MR. HAYMAN: If I may add too, your Honor, I
8 think it's important to note that, yes, the \$760,000 was the
9 status quo up until about August or September of '03. At
10 that point, we began negotiating, put them on notice that we
11 wanted less information, we're narrowing down and
12 fine-tuning our request. And with that, logically there
13 should be a lesser cost involved. And that's what we have
14 been trying to negotiate in good faith since September of
15 '03.

16 COMMISSIONER MURRAY: All right. And then,
17 Mr. England, in relation to the Stip and Agreement and the
18 revenue requirement that was calculated in the Stip and
19 Agreement, is it the company's position that the Stip and
20 Agreement is still just and reasonable and acceptable to the
21 company absent these two tariff sheets?

22 MR. ENGLAND: Yes.

23 COMMISSIONER MURRAY: And then I just have a
24 couple questions related to the statute that allowed -- that
25 deals with sewer district requests for records and books.

1 And I guess I'll ask the company to respond and the sewer
2 district as well.

3 But 249.645 provides that any private water
4 company, and I'll leave out some words, supplying water to
5 premises located within a secure district shall, upon
6 reasonable request, make available to such sewer district
7 its records and books so that such sewer district may obtain
8 therefrom such data as must be necessary to calculate the
9 charges for sewer service.

10 It doesn't -- that statutory reference doesn't
11 say anything about charging for making those records
12 available. Where do you get the authority to charge for
13 that?

14 MR. ENGLAND: I'm sorry. Is that directed to
15 the company?

16 COMMISSIONER MURRAY: Mr. England.

17 MR. ENGLAND: I believe Mr. DeFord pointed out
18 that it's conditioned upon reasonable request. And we would
19 believe that a reasonable request would include a request to
20 compensate the company for that information.

21 COMMISSIONER MURRAY: Okay. And that's how
22 both of you have been interpreting it. Is that correct,
23 Mr. DeFord?

24 MR. DEFORD: We'd love to have it for free,
25 but I do think a reasonable request would include some

1 compensation to the company.

2 COMMISSIONER MURRAY: Okay. And then any
3 costs related to disconnection and reconnection addressed in
4 250.236, the statute there specifically sets out that those
5 costs shall be reimbursed to the private water company by
6 the city. But there's nothing in there about how those
7 costs are calculated. Is that based on just actual costs of
8 connecting and reconnecting, or do you know?

9 MR. ENGLAND: I think historically we've tried
10 to base it on our actual costs.

11 COMMISSIONER MURRAY: Thank you.
12 Thank you, Judge.

13 JUDGE THOMPSON: Yes, ma'am.

14 To follow up on what Commissioner Murray was
15 just asking, those connection and reconnection costs, is
16 that what we see on Tariff Sheet RT-15?

17 MR. ABERNATHY: Yes, that's right.

18 JUDGE THOMPSON: And those certainly are
19 jurisdictional charges, are they not?

20 MR. ABERNATHY: I believe so, sure.

21 JUDGE THOMPSON: Okay.

22 MR. DEFORD: We would agree that those are
23 pursuant to I think 393.015.

24 JUDGE THOMPSON: What is it that you guys
25 object to about RT-15? Just the amount of the charges?

1 MR. DEFORD: The amount of the charges and the
2 lack of notice that they would be increased. We didn't know
3 that that proposal was on the table.

4 MR. ABERNATHY: Well, it had been part of our
5 negotiation. We would disagree with that somewhat. We all
6 knew it was being discussed as far as turn-on/turn-off as
7 well as the data usage too.

8 JUDGE THOMPSON: I seem to recall that -- from
9 early on the case involved -- included increasing connection
10 and disconnection fees which was indicated had not been
11 increased for quite some time. Does that include these,
12 Mr. England?

13 MR. ENGLAND: I know what you're talking about
14 and I don't recall if our -- I don't want -- I don't know if
15 there's a tie-in between the two, but you're right, the
16 regulated reconnection and connection fees I believe were
17 the subject of the original filing, were discussed by the
18 parties in the context of negotiations and I think were
19 addressed in the Stipulation and Agreement. But these are
20 different cha-- these are charges we charge --

21 JUDGE THOMPSON: These are different?

22 MR. ENGLAND: -- these are charges that we
23 charge a sewer district for termination of water service for
24 failure of the customer to pay his sewer charges.

25 JUDGE THOMPSON: Okay.

1 MR. DEFORD: For what it's worth, your Honor,
2 there was no revised page RT-15 in the May 19th --

3 JUDGE THOMPSON: In the original filing. And
4 there was no Sheet 16 either?

5 MR. DEFORD: That's correct.

6 JUDGE THOMPSON: Okay. And, Mr. England, do
7 you agree that the charge on Tariff Sheet 16, in other
8 words, that there doesn't need to be a tariff for that
9 charge?

10 MR. ENGLAND: Let me explain to you what the
11 practical side of that is. Generally, I think I've maybe
12 taken that position, that it's not, but the fact of the
13 matter is we either include the revenues above the line for
14 purposes of rate-making purposes or you have to come up with
15 an allocation of cost to put below the line for services
16 associated with deregulated activities.

17 And I can't -- I didn't represent the company
18 back in '93 when this began, but I suspect it was easier for
19 them to simply tariff this, bring it above the line and then
20 you avoid the argument of how many costs are you going to
21 shove below the line to properly reflect this service. So
22 as a practical matter, I think it's easier the way it's
23 historically been handled.

24 JUDGE THOMPSON: Okay. And since we're
25 speaking of practicalities, you're going to withdraw the

1 compliance tariff and refile them minus these two sheets?

2 MR. ENGLAND: I will do -- I mean, yes, sir.

3 Whatever you would like us to do to get the other tariff

4 sheets implemented as quickly as possible.

5 JUDGE THOMPSON: I think that's what you're

6 going to have to do since we only with deal with them as a

7 group.

8 MR. ENGLAND: Withdraw the entire group and

9 then refile everything?

10 JUDGE THOMPSON: Withdraw the entire group and

11 then refile everything except the two disputed sheets.

12 MR. ENGLAND: We can do that.

13 JUDGE THOMPSON: And we will need a memorandum

14 from Staff telling us that they are in compliance and making

15 clear there is nothing extra fallen into the group and we'll

16 get you in order as quickly as we can.

17 MR. ENGLAND: Thank you.

18 JUDGE THOMPSON: Anything else? Very well.

19 We are adjourned.

20 MR. DEFORD: Your Honor, one thing.

21 JUDGE THOMPSON: What's that, Mr. DeFord?

22 MR. DEFORD: We'd like to kind of put some

23 parameters on the time for negotiations, if we could. I

24 think we've agreed that 90 days and then we'll bring this

25 back to the Commission if the parties haven't resolved the

1 dispute between them.

2 JUDGE THOMPSON: Very good. I think that's

3 acceptable.

4 MR. HAYMAN: And the district will make every

5 effort to do it quicker than 90 days.

6 JUDGE THOMPSON: That's fine. Well, you're

7 all here in town so you can start today. If there's nothing

8 else --

9 COMMISSIONER MURRAY: Just one thing.

10 JUDGE THOMPSON: Yes, Commissioner.

11 COMMISSIONER MURRAY: Assuming worst case

12 scenario and there's no agreement and the parties can't

13 agree, can the company refuse to make available those

14 records?

15 MR. HAYMAN: No. Absolutely not. Because the

16 language in the statute says they shall provide us with that

17 information.

18 COMMISSIONER MURRAY: Okay.

19 MR. HAYMAN: And while we do -- you know, in

20 the past we have paid for and we believe that that is fair,

21 when it says upon reasonable request, that does not

22 necessarily state, and I haven't seen case laws meaning that

23 that means we do have to, in fact, pay for it.

24 Upon reasonable request means it's a timely

25 request, not too voluminous to be overwhelming and

1 burdensome. So the bottom line is they do have to provide
2 us with the information.

3 COMMISSIONER MURRAY: And what's the history
4 of this? How long has this gone on, do you know?

5 MR. HAYMAN: At least since I believe '83.

6 MR. ABERNATHY: I think it was actually '93.

7 MR. HAYMAN: '93. I'm sorry.

8 COMMISSIONER MURRAY: And the history is that
9 there has been a contractual agreement including a fee for
10 doing so?

11 MR. HAYMAN: That's correct. That's correct.
12 And as long as it's reasonable, we're in line with that.

13 COMMISSIONER MURRAY: Thank you.

14 JUDGE THOMPSON: Anything more?

15 Hearing nothing further, we are adjourned.
16 Thank you all very much.

17 WHEREUPON, the hearing was adjourned.

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