

1 APPEARANCES

2 MR. SAM D. RITCHIE

MS. RACHEL LEWIS

3 Public Service Commission
200 Madison Street, Suite 800

4 P.O. Box 360
Jefferson City, Missouri 65102-0360
5 573.751.6514

FOR: Staff

6

7

MS. CHRISTINA BAKER

8 Office of the Public Counsel
200 Madison Street, Suite 650

9 P.O. Box 2230
Jefferson City, Missouri 65102
10 573.751.5558

FOR: Office of the Public Counsel

11

12

MR. REX DEFFENDERFER (Appearing by telephone)

13 MS. LAVADA COTTRILL (Appearing by telephone)

1782 North Deffer Drive

14 Nixa, MO 65714-8422

417.725.5305

15 FOR: Rex Deffenderfer Enterprises, Inc.

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1 JUDGE STEARLEY: All right. We're going
2 to go on the record here. I'm going to make a little
3 introduction and then I'll ask you to enter your
4 appearance and then I'll pick up with our discussion,
5 all right?

6 MR. DEFFENDERFER: Okay. Could you hold
7 you just a second? Lavada Cottrill, the president of
8 the company, is on phone here.

9 JUDGE STEARLEY: Okay. Good morning.
10 Today is Monday, March the 6th. We scheduled this
11 time to have a procedural conference -- March the
12 7th, excuse me.

13 Thank you for that correction. It is
14 Monday.

15 MR. DEFFENDERFER: Yes, it is Monday.

16 JUDGE STEARLEY: We're here for a
17 procedural conference in the matter of Rex
18 Deffenderfer Enterprises, Incorporated request for an
19 increase in annual water system operating revenues,
20 File No. WR-2011-0056. I'll begin by taking entries
21 of appearance beginning with the Staff of the
22 Missouri Public Service Commission.

23 MR. RITCHIE: Morning. Representing the
24 staff, Sam Ritchie and Rachel Lewis, P.O. Box 360,
25 Jefferson City, Missouri 65102.

1 JUDGE STEARLEY: And the Office of the
2 Public Counsel?

3 MS. BAKER: Thank you. Christina Baker,
4 P.O. Box 2230, Jefferson City, Missouri 65102,
5 appearing on behalf of the Office of the Public
6 Counsel and the rate payers.

7 JUDGE STEARLEY: Thank you, Ms. Baker.
8 And for Rex Deffenderfer Enterprises?

9 MR. DEFFENDERFER: Jim Deffenderfer,
10 general manager, and Lavada Cottrill, president and
11 owner.

12 JUDGE STEARLEY: All right. Thank you,
13 Mr. Deffenderfer.

14 The reason I called for this second
15 procedural conference, Mr. Deffenderfer, you had
16 placed a call to me last Monday following the last
17 conference and expressed some concerns. It appeared
18 to me there didn't be -- there wasn't a meeting of
19 the minds with regard to the arbitration process.
20 Also --

21 MR. DEFFENDERFER: That's correct.

22 JUDGE STEARLEY: -- I did a little bit of
23 review myself on what would be allowed from a legal
24 spectrum.

25 So to start with, Mr. Deffenderfer, you

1 go ahead and if you wouldn't mind repeating your
2 concerns that you had voiced to me last Monday.

3 MR. DEFFENDERFER: Well, basically what I
4 wanted originally was a definition. In the letter
5 that stated we needed to give a positional
6 statement --

7 JUDGE STEARLEY: Uh-huh.

8 MR. DEFFENDERFER: -- by March 10th, it
9 said it had to constitute -- or reference legal
10 authority. In my conversation with Staff at the
11 meeting, they informed me that that usually entails
12 judgments and rulings and court cases and items of
13 that nature. Well, I wasn't happy with that and
14 since they couldn't really go into more detail with
15 me, since it would be a conflict of interest, I
16 decided to call Judge Stearley about this. He
17 proceeded to back up that definition of what
18 constitutes legal authority.

19 And I am sorry, but this -- I'm not a
20 lawyer; I can't quote you court cases and legal
21 procedures. I wouldn't even know how to go about
22 looking up such legal authority. So in my opinion
23 that gives Staff and OPC a vast, vast advantage over
24 RDE Water Company when it comes to this hearing, when
25 it comes to this arbitration.

1 This is not what we were told or led to
2 believe what arbitration entailed. What this
3 sounds more like is an actual hearing, not an
4 arbitration. And in that case, in my opinion,
5 this -- this is not -- this is not arbitration, this
6 is not a true arbitration.

7 I thought we were going before a judge,
8 we would argue our case, back him up -- back that up
9 with our evidence; you guys would argue your case,
10 back that up with your evidence; and the judge would
11 decide. But according to the papers and the letters
12 that I have received, we have to document legal
13 authority. And the definition that I have been given
14 is nothing -- it's lawyer talk. I'm sorry, but we're
15 not lawyers.

16 JUDGE STEARLEY: That's --

17 MR. DEFFENDERFER: That's my argument.

18 JUDGE STEARLEY: That's quite all right,
19 Mr. Deffenderfer. And I'm glad you raised it because
20 when I drafted the order and referred to the
21 positional statements, I was following the language
22 in our rule, and actually that requires a correction
23 on my part. Because you are not a lawyer, as you
24 correctly observe, you are working for a company that
25 has incorporated. And by Missouri law, the

1 corporation, if it's going to be represented in a
2 legal fashion, would have to have an attorney
3 authorized to practice law in Missouri. So, in order
4 for there to be any citations to legal authority or
5 legal argument, you would indeed have to be an
6 attorney, not just from the perspective of knowing
7 how to research that or formulate that, but I could
8 not entertain any legal argument on your part because
9 you are not an attorney, and as a private individual,
10 you are forbidden by law from representing the
11 company in a legal capacity.

12 So any position statement you would file
13 would be basically -- would be based solely upon your
14 lay knowledge. And any final offer for any
15 particular resolution of any particular issue would
16 have to be based upon your lay knowledge.

17 MR. DEFFENDERFER: Yes, sir.

18 JUDGE STEARLEY: Now, if we have an
19 arbitration proceeding here at the Commission, and
20 counsel has indicated to me that they sort of
21 perceive this as proceeding in what would be called a
22 mini-hearing type process.

23 MR. DEFFENDERFER: Hello?

24 JUDGE STEARLEY: Hello?

25 MR. DEFFENDERFER: Hello? we lost you

1 there for a second.

2 JUDGE STEARLEY: Okay. Can you hear me
3 now?

4 MR. DEFFENDERFER: Right up to the point
5 where you said counsel.

6 JUDGE STEARLEY: Okay. From presentation
7 last week for Staff counsel and from Office of the
8 Public Counsel, the type of proceeding they envision
9 would be sort of characterized as a mini hearing
10 where the -- all of you would come before me,
11 witnesses could be called and provide testimony.

12 If we have that type of proceeding, the
13 Company could make available yourself or any other
14 person they wanted to, but I would have to be the
15 person that called you and put you on the witness
16 stand, and I would have to be the person who asked an
17 initial round of questions. It would then be subject
18 to cross-examination by the other attorneys. You,
19 not being a licensed attorney, would not be able to
20 cross-examine witnesses of Staff or Public Counsel.

21 MR. DEFFENDERFER: So basically the -- my
22 opinion is correct. The arbitration was presented to
23 us and -- well -- well, the way it's been -- the way
24 it's set up right now, it's not legal and binding.

25 JUDGE STEARLEY: well, it's legal and

1 binding if you consent to it.

2 MR. DEFFENDERFER: I'm not going to
3 consent to being -- to have that kind of advantage
4 given to Staff and to OPC where we wouldn't be able
5 to legally cross-examine witnesses or question their
6 documents because I'm not a licensed lawyer.
7 Basically what you're saying is we're going to court
8 but you're not allowed to defend yourself.

9 JUDGE STEARLEY: In a manner of
10 speaking -- I wouldn't say you're not allowed to
11 defend yourself, but you are disadvantaged from the
12 perspective of not having legal counsel in this type
13 of proceeding.

14 MR. DEFFENDERFER: Well, see, that is not
15 at all how arbitration was presented to us.

16 JUDGE STEARLEY: How do you believe it
17 was presented to you?

18 MR. DEFFENDERFER: The way it was
19 presented to us was, and just like I said in my
20 opening statement, was that we would be allowed to
21 give evidence as to why we believe salaries should
22 be raised above what OPC and Staff is willing to give
23 us or let us have. And they would make their
24 arguments -- nothing was ever said about presenting
25 legal authority, cross-examining witness, providing

1 testimony. Nothing was ever said to that effect.

2 JUDGE STEARLEY: So --

3 MR. DEFFENDERFER: We will both make
4 statements and affidavits to that effect.

5 JUDGE STEARLEY: Uh-huh. So do you -- do
6 you perceive this as being basically what's described
7 as final offer arbitration where each party just
8 submits in writing their respective position?

9 MR. DEFFENDERFER: No, no. It sounds to
10 me like what they presented to us was being a
11 hearing.

12 JUDGE STEARLEY: Uh-huh.

13 MR. DEFFENDERFER: Where we actually
14 didn't need legal counsel in order to go before a
15 judge and argue our case. That's how -- that's how a
16 hearing was presented to us.

17 JUDGE STEARLEY: Right.

18 MR. DEFFENDERFER: Not an arbitration.
19 The way this arbitration's turned out, it sounds to
20 me like since we're the very first case to go through
21 the PSC through arbitration, that we've actually
22 found a little glitch in the system.

23 JUDGE STEARLEY: Well, you can appear at
24 arbitration and I can elicit your positions on the
25 various issues, but you are --

1 MR. DEFFENDERFER: But we can't cross-
2 examine the witnesses.

3 JUDGE STEARLEY: You're disadvantaged in
4 that regard.

5 MR. DEFFENDERFER: And we can't argue
6 against their evidence because we're not lawyers.

7 JUDGE STEARLEY: You would not be able to
8 file like a legal argument or a briefing --

9 MR. DEFFENDERFER: Exactly.

10 JUDGE STEARLEY: -- afterwards, that's
11 correct.

12 MR. DEFFENDERFER: And I've already been
13 as much as told that if I come up with my arguments,
14 which are not based on legal authority, the
15 definition of legal authority, that if opposing
16 counsel -- or not opposing counsel, I'm sorry, but
17 the OPC and the Staff do quote legal authority, that
18 my -- it doesn't matter how good my argument is, it's
19 going to be thrown out; it'll be trumped by their
20 legal authority. In my case, sir, that constitutes a
21 catch-22 in the system itself.

22 There's nothing wrong with arbitration if
23 it had been gone through as it was presented to us.
24 But it's not going through as presented to us. We
25 have been misled severely. And I'm highly upset

1 about this.

2 JUDGE STEARLEY: I can understand that,
3 and I'm trying to keep this within the confines of
4 what's allowable by law.

5 MR. DEFFENDERFER: Well, from what I
6 understand from what you've told me today, that we
7 cannot legally represent ourselves in an arbitration
8 hearing and get a fair hearing -- or arbitration, I'm
9 sorry, I'm mixing up my terms here, not hearing, but
10 an arbitration proceeding, we cannot legally
11 represent ourselves in that arbitration proceeding to
12 our full advantage without hiring legal counsel. And
13 that is not how the arbitration proceedings were
14 presented to us at all, in any way, shape, or form.

15 JUDGE STEARLEY: All right. Let me
16 inquire of Staff counsel and Office of Public Counsel
17 and see if they have any other suggestions or ideas
18 regarding this.

19 MR. DEFFENDERFER: Okay.

20 JUDGE STEARLEY: Starting with you,
21 Mr. Ritchie.

22 I want to let you know I discussed this
23 at length last week with my fellow judges and our
24 chief judge to make sure just how far I would be
25 allowed to go in allowing you to present your case

1 and avoid the conflict we have with crossing into
2 acting in an attorney-type capacity, so.

3 MR. DEFFENDERFER: Well, Judge, it sounds
4 to me like there's a -- there's a severe disadvantage
5 for us to go into arbitration. Severe disadvantage.
6 I'm sorry, but it sounds to me like it was set up to
7 give only OPC and Staff the advantage and not the
8 water company unless we had the money to hire an
9 attorney to go into it. And that's -- I'm sorry,
10 sir, but that's not the way it was represented to us.

11 JUDGE STEARLEY: I understand,
12 Mr. Deffenderfer.

13 Mr. Ritchie, do you have any thoughts or
14 suggestions on this situation?

15 MR. RITCHIE: One thought we have would
16 be presenting the case in a -- at an arbitration
17 similar to a manner in which Mr. Deffenderfer has
18 described, where each party would present its
19 position to the arbitrator and then a decision would
20 be made after each of the three positions was
21 presented. I think that would uphold the spirit of
22 the small water company ratemaking procedure.

23 JUDGE STEARLEY: Okay. Are you referring
24 to dispensing with the sort of mini hearing you were
25 talking about and just having presentation in

1 writing? Did you want the presentation to be in
2 person, by witnesses, or how were you envisioning
3 that?

4 MR. RITCHIE: I think we envision that in
5 person.

6 JUDGE STEARLEY: Okay. Now, in doing
7 that in person then, are you saying you will forgo
8 yourself a cross-examination process and just have
9 each side present its case so to speak?

10 MR. RITCHIE: It seems to be the position
11 that we're in right now. I don't see how we could
12 allow cross-examination here and still proceed in a
13 satisfactory manner to all the parties.

14 JUDGE STEARLEY: All right. And your
15 thoughts, Ms. Baker?

16 MS. BAKER: I mean, basically what you're
17 talking about is all three parties standing up
18 saying, we want this, not being able to elicit any
19 questions, not being able to delve into the
20 background of where these numbers come from. So I
21 mean, you're kind of talking about a popularity
22 contest in this regard because, you know, it's -- you
23 know, whose expert do you like best.

24 I am extremely uncomfortable with this
25 arbitration and I'm sure the Company is as well

1 because quite frankly, you know, the Company and OPC
2 are both going against Staff who are members of the
3 Public Service Commission. And so we are at a
4 disadvantage in that regard, not being able to cross,
5 not being able to put forward our positions, not
6 being able to ask and point out weaknesses. And so I
7 find it very uncomfortable as I know the Company
8 does.

9 JUDGE STEARLEY: Okay. And I understand
10 your positions and I hope you understand mine of kind
11 of being caught in a Catch-22 either because I really
12 don't want to surrender my law license to the
13 Missouri Supreme Court anytime soon for allowing the
14 unauthorized practice of law here at the Commission.

15 So I understand we're all kind of in a
16 bind, and I'm hoping we can work out some arrangement
17 where this can proceed. If it doesn't go by
18 arbitration and the parties then don't reach a
19 settlement, the only options remaining are the
20 Company either proceeding to evidentiary hearing in
21 which case it has to get counsel or withdrawing their
22 request for a rate increase. And I realize this is a
23 bad situation for the Company, but I'm just trying to
24 ferret out how we can perhaps try to reach some
25 agreement on how we can proceed.

1 Mr. Deffenderfer, if I understand you
2 correctly, you're saying the Company can't afford to
3 retain counsel?

4 MR. DEFFENDERFER: Well, the only way
5 we'd be able to afford to retain counsel if is we
6 were allowed to put the fees incurred in this rate
7 case.

8 JUDGE STEARLEY: Uh-huh.

9 MR. DEFFENDERFER: That's the only way.
10 And I'm not talking about having it amortized over 50
11 years either. I'm talking about in one year. We
12 cannot afford to hire an attorney for five to ten
13 thousand dollars to fight this case. It's the reason
14 why we went to arbitration.

15 MR. RITCHIE: I can say that if the
16 Company did hire counsel, that the rate case expense
17 would become an issue in this rate case.

18 MR. DEFFENDERFER: Would become an
19 issue?

20 MR. RITCHIE: Yes.

21 MR. DEFFENDERFER: Define "issue."
22 Define that for me please, that's a very vague term,
23 I'm sorry.

24 JUDGE STEARLEY: I think what
25 Mr. Ritchie's trying to say is that then becomes a

1 contested issue in the matter. The parties would
2 have to verify --

3 MR. DEFFENDERFER: A contested issue?

4 JUDGE STEARLEY: The parties would have
5 to verify what the proven expenses were and then
6 there would be an argument regarding how they should
7 be recovered versus a one-year recovery or it's
8 commonly spread out over two or three years.

9 MR. DEFFENDERFER: Well, you're talking
10 about an expenditure that is -- let's put it this
11 way. If we get a -- hire an attorney to represent us
12 in this arbitration, then you're talking about us not
13 being able to provide adequate services to our
14 customers, period. If we have -- we have standard
15 maintenance that we do and if we can't do it because
16 we don't have the money because we spent it on a
17 lawyer defending ourselves in an arbitration
18 proceeding, which we weren't supposed to have an
19 attorney for in the first place, it's the reason why
20 we went this direction. We do not have the
21 money.

22 It's a case -- it's a case of Catch-22
23 with you guys. No offense with that term, "you
24 guys," I'm just referring to PSC in general, is that
25 you will not reimburse us for any expenditures until

1 we actually make the expenditures. You don't take
2 into account the rise in gas prices or anything
3 else. But I will not, I will not allow this company
4 to be put into a position --

5 COURT REPORTER: I'm sorry?

6 MR. DEFFENDERFER: We'll be at a
7 disadvantage if we do not get an attorney it sounds
8 like to me. And if we do get an attorney, we have to
9 be compensated this year or at least within the next
10 three. I might be able to -- two years, a two-year
11 amortization would be fine us with; I just had a hand
12 signal from Lavada that said two years would be
13 acceptable.

14 But that will have to be decided -- I'm
15 not going to have this -- I'm not going to hire an
16 attorney and have his fees contested. I want it
17 stated from the outset, an agreement from the outset
18 that his fees will be put in as part of this rate
19 increase. It's not negotiable.

20 I mean, this right here, sir, the
21 arbitration as presented to us by you, sir, Judge
22 Stearley and by OPC and by Staff is not an
23 arbitration; it's a hearing. It's a court
24 proceeding; it's not an arbitration. And that's --
25 that's our position. We cannot afford to argue with

1 you guys about this, we can't. I know -- I know that
2 staff has no sympathy for our position, but that's
3 just the way it is. It's reality. If you make us
4 hire a lawyer to fight for his own fees, this company
5 will go under and you guys will have the fees and
6 you'll have to deal with this company. It's as
7 simple as that. That's how tight our budget is.

8 JUDGE STEARLEY: All right. I understand
9 your position here, Mr. Deffenderfer. And I know
10 some of the traditional ratemaking practices do not
11 comport well with some of our small companies, and
12 there's been a great deal of discussion on that.
13 There's been attempts by the Commission. In fact the
14 Commission went to the Supreme Court last year to try
15 to get them to alter court rules that would allow
16 people to represent small companies in these matters,
17 and they would not allow us to change that in any
18 way, shape, or form.

19 So I'm back to asking the other parties
20 in the room here if they -- if there's any ground for
21 them to negotiate with Mr. Deffenderfer.

22 MS. LEWIS: May I first respond to his
23 comments that staff is not sympathetic. We are
24 sympathetic to the situation; we are trying to come
25 to a resolution. The, you know, the purpose of the

1 small company rate procedure was to avoid some of
 2 these, and we're in a situation where we're still
 3 trying to do that. We are sympathetic to your
 4 situation, we're sympathetic to OPC's position, and
 5 we're also sympathetic and well-aware of our
 6 position.

7 In response to OPC's argument that --
 8 that the Company and OPC are more -- at more of a
 9 disadvantage by simply bringing in -- by allowing
 10 each party to present their position and the evidence
 11 to support, it wouldn't be a popularity contest. It
 12 would be based on the evidence that everybody
 13 presented for their position and then the arbitrator
 14 would decide neutrally. I think that avoids some of
 15 the conflicts of the unauthorized practice in the
 16 rule, that corporations must be represented by an
 17 attorney. It goes to the spirit of this.

18 But if that's OPC's firm position, then
 19 of course Staff is willing to, you know, work with
 20 the Company and try to come to some resolution.

21 But it's not -- we're not here today
 22 because Staff is not sympathetic to the situation.
 23 We're very sympathetic and we're very aware of
 24 everybody's restraints from each perspective.

25 JUDGE STEARLEY: Ms. Baker, any other

1 thoughts?

2 MS. BAKER: I mean, it's just a situation
3 where we have issues that are coming before the
4 Commission, especially the ones that Public Counsel
5 has brought on, on the depreciation and the
6 depreciation reserve where it -- it is -- it is a
7 situation of we believe one thing, Staff believes
8 another thing. And without being able to delve into
9 the why's and the, you know, it -- into, you know,
10 what cases have said before on this particular issue,
11 it will just turn into, we think this, they think
12 that, and the arbitrator will just have to pick.

13 MR. DEFFENDERFER: Well, a true
14 arbitration, if I may interrupt here -- if I am
15 interrupting, I apologize to anybody. But what I'd
16 like to say here is that a true arbitration are two
17 or more parties that have a disagreement. They have
18 mutually chosen to pick somebody to hear their side
19 of the argument or their position, and that person
20 makes the decision. That is -- that is the
21 definition of arbitration.

22 JUDGE STEARLEY: It's pretty much what
23 you'd call baseball arbitration.

24 MR. DEFFENDERFER: Yeah. Now, in that
25 situation, wouldn't the arbiter be in a position to

1 ask questions to clarify any confusion in the
2 arguments of any case -- any party?

3 JUDGE STEARLEY: Yes.

4 MR. DEFFENDERFER: So why would we need
5 to have cross-examination of witnesses by OPC, Staff,
6 or the Company?

7 JUDGE STEARLEY: If the --

8 MR. DEFFENDERFER: The arbiter himself
9 would be able to determine whether or not their legal
10 authority and their standpoints have any legal
11 standing, would he not?

12 JUDGE STEARLEY: As long as the parties
13 all consent to that perspective or that presentation,
14 I certainly do not have a problem with it. It still
15 leaves the outlying thing that Staff witness or
16 Public Counsel witnesses could cite to relevant law,
17 which would still, in your perspective I think, leave
18 you at a little bit of a disadvantage,
19 Mr. Deffenderfer.

20 MR. DEFFENDERFER: Yeah, because we
21 wouldn't be able to -- we wouldn't be able to fight
22 that.

23 JUDGE STEARLEY: And even if I were the
24 person doing the questioning, they could cite to
25 things that you perhaps didn't have expertise in.

1 MR. DEFFENDERFER: True.

2 JUDGE STEARLEY: But it would eliminate
3 the cross-examination portion by other attorneys.

4 MR. DEFFENDERFER: Well, then, sir, it
5 comes back down to one simple thing. If -- we're
6 very willing to get an attorney if we're allowed to
7 put his fees up front into this rate case, not the
8 next one, and we do not want it amortized over seven
9 years or even three because we cannot afford it and
10 not continue the level of service we want to give our
11 customers. So his fees would have to be included in
12 this rate case with no more than a two-year
13 amortization.

14 And it sounds to me like we just keep
15 coming back to the same thing, we're not going to be
16 able to legally -- well, no, let's put it this way.
17 Let me strike that.

18 we would not be able to present our case
19 in its best possible light without hiring an
20 attorney, because we would not be able to argue
21 witness -- or cross-examine witnesses if we went to
22 the hearing as stated now or went to arbitration as
23 stated now nor if we did it with either suggestion,
24 either by Company or by Staff and OPC, we wouldn't be
25 able to represent ourselves to the best ability -- to

1 the best of our ability without having an attorney
2 present. And just -- it just comes down to the --
3 are you guys going to let us have an attorney?
4 That's the question. Can we reach an agreement to
5 amortize fees over two years into this rate case?
6 Can we agree to that before the arbitration
7 proceeds?

8 JUDGE STEARLEY: That would be have to be
9 an agreement struck by the parties,
10 Mr. Deffenderfer. I wouldn't be part of that.

11 MR. DEFFENDERFER: That question was
12 actually directed at Staff and OPC.

13 JUDGE STEARLEY: Right. I'm assuming
14 so. And I just want to make clear there's a process
15 with this where there's usually a verification to
16 make sure all costs are prudent and reasonably
17 incurred. Now, that may speak more to the attorneys
18 than you and your motivations, but there are
19 attorneys that have engaged in practices that aren't
20 prudent when they're doing representation, and
21 consequently a party would recommend a compensation
22 or reimbursement not be given for those types of
23 services. So --

24 MR. DEFFENDERFER: Well, at the very
25 least it sounds to me like this entire proceeding

1 needs to be suspended until such time as an agreement
2 over the attorney's fees can be reached.

3 JUDGE STEARLEY: Well, I can certainly
4 suspend the current procedural schedule, and I can
5 allow the parties an opportunity to engage in further
6 discussions and maybe you can reach some agreements
7 not only on the way you wish to proceed, but maybe on
8 some of the actual issues in the case if there's more
9 time allotted for that. I believe -- what is our
10 operational law date?

11 MS. LEWIS: May 26th.

12 MS. BAKER: And I don't believe that the
13 Company has asked for a two-month extension, but that
14 might be something we would --

15 JUDGE STEARLEY: Right. In the normal
16 deadline of things, the parties would have their
17 cases fully presented to the Commission by May 26th.
18 And that would -- that would mean any hearings,
19 arguments, briefings by attorneys, et cetera would
20 all be presented to the Commission by then.

21 You can ask for an extension in that
22 period of time. The Commission needs to make a
23 decision though, unless the parties would agree
24 otherwise, which I think you could reasonably agree
25 to go beyond that 11-month deadline immediately which

1 is July 26th, although that's not preferable, where
2 there would be a final decision by the Commission.

3 I understand these are perhaps a little
4 bit unusual circumstances and I know this is, at
5 least to my knowledge, the first time we've had a
6 case under the small company rate increase rule where
7 the parties actually were discussing having
8 arbitration. So, yes, it's true we're ferreting out
9 some of the problems with the rule and what's
10 involved with setting up these types of proceedings,
11 Mr. Deffenderfer.

12 MR. DEFFENDERFER: Oh, I understand. I
13 completely understand the first time you go through
14 anything, you're going to run into problems like
15 this. I have no problem with that.

16 JUDGE STEARLEY: And if you were a sole
17 proprietor as opposed to having a company, you could
18 engage in representing yourself.

19 MR. DEFFENDERFER: Which would still put
20 us at a disadvantage.

21 JUDGE STEARLEY: Which would still
22 because you're not an attorney.

23 MR. RITCHIE: I think Judge Stearley
24 made a good point a minute ago that this is the first
25 time we've gone along the arbitration route, and I

1 just want to comment on a -- something that
2 Mr. Deffenderfer mentioned earlier is that he felt
3 misled on what this process would entail. And I
4 don't think it was ever anyone's intention to mislead
5 any of the parties. This was presented in the manner
6 that the rule contemplates, and when it said that
7 parties need not be represented by counsel, we just
8 saw this as a way of resolving the case in a way that
9 the Company wouldn't have to hire a lawyer.

10 And we saw it occurring in a certain way,
11 but it's new for everyone here and it was never
12 anyone's intention to mislead you in the process.

13 JUDGE STEARLEY: And I apologize for any
14 confusion my order may have added to that situation
15 when I referred to the lay position statements.

16 MR. DEFFENDERFER: Well, I really don't
17 have any problem with the way the position statements
18 need to be filed. It's just that one term, "legal
19 authority" and the definition thereof.

20 JUDGE STEARLEY: Understood.

21 MR. DEFFENDERFER: As far as -- as far
22 as -- it really has nothing to do with the positional
23 paper. That just started it; that just started my --
24 my investigation into the actual definition, the PSC
25 definition of arbitration, which is not my definition

1 of arbitration.

2 JUDGE STEARLEY: And I think it's good
3 that you brought your concerns to my attention,
4 Mr. Deffenderfer, so we can have this kind of talk
5 and work on this.

6 MR. DEFFENDERFER: well, how about this
7 proposal if everybody there can agree to this: Let's
8 postpone the positional statements. And what was the
9 next date on here?

10 JUDGE STEARLEY: There was a joint
11 statement of issues, position statements --

12 MR. DEFFENDERFER: We had a March 10th
13 position statement due which there is no way we're
14 going to be able to do that regardless of how we go.
15 There's no way.

16 JUDGE STEARLEY: What I would suggest,
17 Mr. Deffenderfer, is I would issue an order today
18 that's going to suspend this procedural schedule.

19 MR. DEFFENDERFER: I suggest a suspension
20 of one week so that Company, Staff, and OPC can have
21 an informal off-the-record conference about
22 attorney's fees.

23 JUDGE STEARLEY: And actually what I
24 prefer would be to suspend this entire schedule, give
25 you an opportunity to meet and confer amongst

1 yourselves and have Staff file a new proposed
2 schedule if the parties can reach an agreement on
3 that.

4 MR. DEFFENDERFER: Okay.

5 JUDGE STEARLEY: Because I'm not sure
6 what's going to happen out of this. If you come to
7 some agreement on the way attorney's fees are going
8 to be handled and you hire an attorney, you may
9 decide you want to, after consulting with an
10 attorney, go to evidentiary hearing versus the
11 arbitration process. So I don't want to try to make
12 any predictions on what will follow.

13 I think it would just be best to suspend
14 the procedural schedule, give you all an opportunity
15 to get together and discuss these issues, and have
16 you file a status report with me in a week to ten
17 days.

18 MS. LEWIS: I would request that we have
19 a time line because we don't want to indefinitely
20 suspend, but if it's seven to ten days, that's fine.

21 MR. DEFFENDERFER: I'm more than willing
22 to agree to a one-week suspension.

23 JUDGE STEARLEY: Well, I will -- I --
24 that's what I'm going to do is I'm going to suspend
25 the schedule. I'm going to wait to reset any dates

1 until I have an opportunity to hear back from all of
2 you. And today is the 7th. Let's see, get the
3 calendar.

4 MS. LEWIS: Ten days would be the 17th.

5 JUDGE STEARLEY: Thursday. why don't I
6 have you all file a status report with me on
7 Thursday, the 17th.

8 MS. LEWIS: And do you mean Staff files?

9 JUDGE STEARLEY: Yes. If you wouldn't
10 mind --

11 MS. LEWIS: Okay.

12 JUDGE STEARLEY: -- being the primary
13 leader in getting that filed for me.

14 MR. DEFFENDERFER: Do you want me or the
15 Company I mean?

16 JUDGE STEARLEY: I'm going to have Staff
17 file a status report.

18 MR. DEFFENDERFER: Oh, okay. Just
19 Staff?

20 JUDGE STEARLEY: Just Staff. And if you
21 all have agreed to a different procedural schedule,
22 Staff can include that in the status report.

23 MR. DEFFENDERFER: That is -- that's okay
24 with us.

25 JUDGE STEARLEY: Okay. Any questions

1 from anyone for me at this point?

2 Okay. Well, hearing none, I'm going to
3 end the official on-the-record portion of this
4 conference and I'm going to leave the room,
5 Mr. Deffenderfer, and I'm going to let you all have
6 some discussions here.

7 If for any reason you need to contact me,
8 I would prefer that you do it by conference call so
9 that all the parties are in on the call or by email
10 where it would be a group email.

11 MR. DEFFENDERFER: Okay. No problem.

12 JUDGE STEARLEY: Well, if there's nothing
13 more, we'll -- sorry?

14 MR. RITCHIE: No.

15 JUDGE STEARLEY: Okay. Thank you all.
16 We'll go ahead and go off the record.

17 (Off the record.)

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CERTIFICATE

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2 I, Shelley L. Mayer, a Certified Court Reporter,
3 CCR No. 679, the officer before whom the foregoing
4 hearing was taken, do hereby certify that the
5 witness whose testimony appears in the foregoing
6 hearing was duly sworn by me; that the testimony of
7 said witness was taken by me to the best of my
8 ability and thereafter reduced to typewriting under
9 my direction; that I am neither counsel for, related
10 to, nor employed by any of the parties to the action
11 in which this hearing was taken, and further, that I
12 am not a relative or employee of any attorney or
13 counsel employed by the parties thereto, nor
14 financially or otherwise interested in the outcome
15 of the action.

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18 _____
19 Shelley L. Mayer, CCR
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