

BEFORE THE PUBLIC SERVICE COMMISSION
STATE OF MISSOURI

TRANSCRIPT OF PROCEEDINGS
Discovery Conference
December 28, 2011
Jefferson City, Missouri
Volume 10

In The Matter Of Missouri-American Water)
Company's Request For Authority To) File No.
Implement A General Rate Increase For) WR-2011-0337
Water and Sewer Service Provided In The)
Missouri Service Areas)

HAROLD STEARLEY, Presiding
SENIOR REGULATORY LAW JUDGE

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PROCEEDING

1
2 JUDGE STEARLEY: Let's go ahead and go on the
3 record. Good morning. Today's Wednesday, December 28th,
4 2011. The Commission set this time for a discovery
5 conference in File Number WR-2011-0337, captioned as In The
6 Matter Of Missouri-American Water Company's Request For
7 Authority To Implement A General Rate Increase For Water And
8 Sewer Service Provided In The Missouri Service Areas.

9 My name is Harold Stearley and I'm the
10 regulatory law judge presiding today. We had originally
11 opened a phone connection for possible callers and no one
12 called in and we disconnected. So if we missed anyone for
13 this conference, they can call me late after the fact.

14 All right. We will take entries of appearance
15 from counsel who are present, starting with
16 Missouri-American.

17 MR. ENGLAND: Thank you, Your Honor. Let the
18 record reflect the appearance of Dean Cooper and Trip England
19 on behalf of Missouri-American Water Company. Our mailing
20 address and other information is on the written entry
21 appearance we supplied to the court reporter.

22 JUDGE STEARLEY: All right. Thank you very
23 much, Mr. England. And for the Office of the Public Counsel.

24 MS. BAKER: Thank you. Christine Baker
25 appearing for the Office of the Public Counsel and the

1 ratepayers.

2 JUDGE STEARLEY: Thank you, Ms. Baker. For
3 the industrial intervenors.

4 MR. CONRAD: For Ag Processing, Judge, Stu
5 Conrad with the law firm of Finnegan, Conrad & Peterson, and
6 I've given an address to the reporter.

7 And I think we had also earlier entered an
8 appearance for David Woodsmall who has an address down here.

9 JUDGE STEARLEY: All right. Thank you,
10 Mr. Conrad. For the Staff of the Commission.

11 MS. LEWIS: Rachel Lewis on behalf of the
12 Staff of the Public Service Commission. Our address is also
13 on the written entry of appearance.

14 JUDGE STEARLEY: All right. Thank you,
15 Ms. Lewis.

16 We had had a phone conference with
17 Missouri-American and Ag Processing about three weeks ago, I
18 think it was. So to begin with, were the issues we were
19 discussing that day, were those resolved or is there
20 something still outstanding?

21 MR. CONRAD: In some ways, we're making
22 progress, Judge. To try to put it back in context, I think
23 where we had -- where we had left that was on the issue of
24 the e-mails.

25 JUDGE STEARLEY: Yes.

1 MR. CONRAD: And on the 20th of December,
2 Missouri-American did provide about -- well, some pages --

3 COURT REPORTER: I'm sorry, I can't hear you.

4 MR. CONRAD: I'm sorry, a little over 1,400
5 pages of e-mails -- if I need to repeat, let me know -- which
6 we have frankly started to go through, but because of the
7 holiday, we did not make it all the way through that.

8 But we did make it far enough to come to the
9 realization that it seems like sometimes we -- we climb up
10 three feet -- three feet and slip back two and a half. The
11 e-mails that I have thus far reviewed in making a quick run
12 through the rest of them, all seem to be subject to one
13 problem, and that is most of them make reference -- in fact,
14 virtually all of them, Judge -- make reference to an
15 attachment, or in some instances several attachments, Excel
16 spreadsheets usually, in some instances a .pdf file.
17 But none of those attachments have been provided, at least I
18 have not discovered in the 1,400 pages, Counsel, where they
19 have been.

20 JUDGE STEARLEY: And for clarity, this all is
21 to relate to projected capital improvements, right?

22 MR. CONRAD: Yes. Now, just as a sample, I'm
23 going to provide that to opposing counsel and so that Your
24 Honor can see, because I didn't go to all the hassle of
25 trying to put this into a pleading because it would have

1 necessitated, since it's marked as confidential, that I do it
2 twice. But -- and I also tried to save paper and I apologize
3 for the small print.

4 But for example, just on the very first page,
5 happened to be page 4 of 1,480. So the number was 1,480.
6 Notice right in the middle of that, attachment 2010 Missouri
7 .xls deleted. And there is no attachment.

8 On the facing page, page 13 of 1,480, there
9 are references to three Excel sheets. Now, this -- I have
10 gathered from material on into this that the company uses
11 Lotus Notes, and frankly some of the people that use it are
12 not happy using Lotus Notes. But be that as it may, that
13 apparently is where all the pretty little pictures come from,
14 and that's why I printed it out in color, so you can all
15 enjoy those.

16 But just for a real quick example there on the
17 right-hand side, those spreadsheets have not been provided.
18 Now, in here, and I'm not sure if we went far enough, Judge,
19 there's in the very last page, page 201 that I had reproduced
20 here, 201 of 1,480, here is the 2010 through 2014 final
21 budget. And then there is an attachment which has been
22 deleted.

23 Now, I don't know it identifies who deleted
24 it. I'm not familiar with Lotus Notes, but it does not put a
25 date on when it was deleted. So I don't know if it was

1 deleted by recipient early on in the process or as some part
2 of this production deal. On the physical page right before
3 that, page 191 of 1,480 that carries over, in the middle of
4 that, you'll see here is our first draft of all of your 2011
5 through 2015 capital budget lists merged into one file and
6 then on the -- page 192, which is the page on -- following on
7 the left, MORP and DV spreadsheet, Excel spreadsheet, but
8 there's no attachment.

9 So I -- I'm left with having multiple pages of
10 e-mails which appear to be from the people that we have
11 requested them from, but there appear to be devoid of the --
12 of the guts and the e-mail itself in many instances is as
13 that one that you saw, is somewhat explanatory of what the
14 attachment is. But many of them are just saying here's --
15 you know, here's such-and-such or attached to such-and-such,
16 and then there's the little logo, but there's no attachment.

17 So -- now, when I -- when I get a car, I'm not
18 usually in the mode of thinking that I need to request a
19 steering wheel along with it. So I -- I guess if it's
20 necessary to have requested attachments along with the
21 e-mail, I mea culpa, you know. I really didn't kind of
22 expect that.

23 But so much of business today, Judge, is done
24 on e-mail and back and forth with attachments, and you know
25 from your own experience and experience here in the

1 Commission.

2 So I guess to answer your original question,
3 there has been compliance in the sense of producing the
4 e-mails, but not compliance insofar as producing the
5 attachments which are referenced in the e-mails. So I'm
6 still kind of in a -- in a frustrated position. And I hope
7 you can understand, I've put this -- it wasn't my intent to
8 make this some kind of record document, but just so you can
9 see what I'm talking about. And maybe counsel has response
10 if they know, but I understand that -- that counsel
11 represents the company for the purposes of these rate cases
12 and probably not generally.

13 MR. ENGLAND: Yeah, I'll be honest with you,
14 as a matter of fact, I didn't even get the e-mail, or at
15 least I was copied but didn't receive it, primarily because
16 it was so big. So when I inquired a day or two later, they
17 said, well, they had sent it to me in two packages.

18 I have to accept Mr. Conrad's representations
19 as accurate. I have not had a chance to go through it, and
20 frankly was not planning on spending a lot of time going
21 through it. My suspicion is that a lot of these were drafts
22 that roll up to the final five-year budget, which we did give
23 Mr. Conrad. And I'm not -- I'm not telling you we can't
24 produce all of these, I'm just wondering out loud how
25 particularly helpful they will be if they're not the final

1 approved five-year capital budget plan.

2 MR. CONRAD: Well, just produce the ones with
3 the smoking guns.

4 MR. ENGLAND: How about the ones we don't want
5 to produce?

6 JUDGE STEARLEY: If you have a definitive
7 list.

8 MR. ENGLAND: That would be helpful, I agree,
9 Your Honor, but I'm afraid not. I'll go back and see what we
10 can do in the way of producing these. I know that
11 Ms. Hutchings [phonetic], I believe, is the primary funnel
12 through whom all of these kind of get disseminated and come
13 back, and we may be able to produce the attachments.

14 And maybe she thought, and purely speculation,
15 that she was doing AGP a favor by not attaching them simply
16 because they're voluminous and at some point they become -- I
17 hesitate to use the word "irrelevant," because that has legal
18 connotations, but not helpful because they aren't -- they
19 don't get rolled up into the final budget.

20 JUDGE STEARLEY: Okay. Have you received that
21 final?

22 MR. CONRAD: Well, that was early on in the
23 initial thing, but now I think -- I'm stumbling on the
24 gentleman's name -- but he had -- Facodill [phonetic].

25 MR. ENGLAND: Facodill, uh-huh.

1 MR. CONRAD: He had sent through a page 2 or
2 something here a few days ago that he said had not been
3 reproduced correctly in the materials that had been provided
4 earlier. And honestly, in the throws of going through this
5 stuff, Mr. England, I did not have a chance, really, to go
6 back and compare.

7 MR. ENGLAND: I'm not sure that there was
8 anything of real significance there in the fact that it was
9 missing a page.

10 MR. CONRAD: There may not. But I'm trying to
11 answer the judge's questions.

12 MR. ENGLAND: Yeah.

13 MR. CONRAD: We did get what purported to be a
14 capital budget, but Mr. England took pains, I think, to note
15 that portions of it had not been approved or not even placed
16 before their company's board.

17 MR. ENGLAND: I don't know about that.
18 Certainly had not been approved by the board. They only
19 approve the first year.

20 MR. CONRAD: Okay. But there was some
21 question about how many years were covered by that. And also
22 in none of that were there any references to these new what
23 I'll call the aqua districts.

24 JUDGE STEARLEY: Okay.

25 MR. CONRAD: And we thought that was maybe not

1 strange given some of the sizes, but perhaps strange in the
2 aggregate there didn't seem to have been any real planning or
3 reference with respect to those materials. That's -- that's
4 basically it.

5 I don't know who -- you mentioned Mrs.
6 Hutchins -- Ms. Hutchins. Just on the very first page. This
7 one attachment was -- appears to have been deleted by,
8 someone Neil M. Ameri [phonetic], and I don't -- so if she
9 was the one who was doing us a favor by deleting things, then
10 that doesn't seem to be reflected at least in that one
11 instance, so I -- I confess, I don't know.

12 Looking at just -- quickly at page 35, here is
13 my 2011 budget and the 2012 through 2015. This is one, two,
14 three, four pages in, judge, on the right-hand side.

15 JUDGE STEARLEY: Uh-huh.

16 MR. CONRAD: And then there's a 2011
17 Brunswick. And obviously Brunswick is of some interest to
18 all of us in the case. And that -- none of them are there.
19 Some of them don't say they've been deleted, they're just not
20 there, so.

21 JUDGE STEARLEY: Well, Mr. England, I suggest,
22 then, you go back and go through the attachments with the
23 company. If there's some that the company has objections to
24 providing, you need to make that clear. If not, then they
25 need to be produced.

1 MR. CONRAD: And Judge, I'd offer if
2 there's -- if there are particular problems with particular
3 things, as Mr. England has mentioned, drafts of this that are
4 rolled up I think was his terminology or something else, I'll
5 be eager to talk to him about that because our purpose in
6 this is not to -- to discombobulate, if you will, the
7 company's operations. I mean, I can see from even the
8 portions that I've been through that there's a lot of
9 material that -- that they've gone through. And there's even
10 references in some of this to Texas. I wasn't aware there
11 was an operation down in Texas. But whatever. I'm not
12 interested in Texas.

13 MR. ENGLAND: No, I understand.

14 MR. COOPER: They don't own it anymore anyway.

15 MR. CONRAD: Well, let me rephrase that. I'm
16 interested in Texas, but not in the context of this case.

17 JUDGE STEARLEY: And I know Missouri-American
18 hasn't had the aqua territories too long, so I'm not sure if
19 they have capital expenditures planned or not. If they don't
20 in any of those districts, you should make that affirmative
21 statement so counsel will know.

22 MR. CONRAD: Well, to -- to further to that,
23 one thing that we did discover earlier was there was a
24 \$250,000 threshold on some of these -- these projects. And
25 on some of these tiny districts where there's not even

1 metering, you know, a fifty- or hundred-thousand-dollar
2 capital improvement in those districts would have a dramatic
3 effect on the rates those folks pay because there's not that
4 many ratepayers, but it would be below that company
5 threshold.

6 JUDGE STEARLEY: Right.

7 MR. ENGLAND: Let me kind of explain and
8 reiterate what I thought I mentioned last time. The
9 company's planning for capital expenditures does go out five
10 years. The company's planning for revenues, rates, things of
11 that nature, usage, what have you, is a three-year view. And
12 what we provide is that three-year view as well as the
13 five-year view that has been finalized as of this point in
14 time. And I believe that was 2011 through 2015.

15 To the extent that there were expenditures --
16 excuse me, let me back up. In addition to identifying large
17 projects by name, those being over \$250,000, they also
18 provided budget amounts, if you will, estimated amounts by
19 category, whether that's replacement of mains, things of
20 that -- meters, things of that nature. You can't always know
21 what mains need to be replaced because they break. But they
22 do have a budget for districts for items less than 250,000,
23 but they just roll that up into a number.

24 Just pulling a number out of the air, let's
25 say \$500,000 they intend to spend on replacing mains in the

1 St. Joseph district next year. And usually that's based on
2 historical trends and historical amounts, updated costs and
3 things of that nature. In the 2011 amount, there are
4 specific amounts by these smaller districts that are less
5 than 250,000 because we are almost at the end of 2011 and we
6 know what we've spent there or what we anticipate spending in
7 the next couple of days.

8 It's my understanding that that budget will
9 roll a year shortly and we will have a 2012-to-2016 view.
10 That has not been approved. That has not been submitted to
11 the board, at least has not been approved by the board to my
12 knowledge. As soon as it is, we will get that to Mr. Conrad
13 of course.

14 And so that's -- that's what I was referring
15 to earlier when I said perhaps we didn't want to inundate AGP
16 with all of these preliminary budgets, projections, whatever
17 you want to call it. And they are done on a district basis.
18 I don't know where these attachments are, how easy it is to
19 get them, so I will look into that. I've heard you, and we
20 will see if we can't find them and bundle them up and send
21 them on. If I have a problem, I'll call you and Mr. Conrad
22 and we'll set up a call and I'll explain the problem.

23 JUDGE STEARLEY: Okay. Sounds good. Is that
24 workable?

25 MR. CONRAD: That's where we are right now.

1 JUDGE STEARLEY: Okay. Are there any other
2 issues, Mr. Conrad?

3 MR. CONRAD: No, not with respect to that --
4 that bit of discovery. I mean, this may roll -- roll forward
5 into as we've talked about before in this context into
6 depositions. But we're not at that -- not at that stage yet.

7 JUDGE STEARLEY: Okay.

8 MR. CONRAD: I feel like I'd like to have a
9 little bit of data before we --

10 JUDGE STEARLEY: Sure.

11 MR. CONRAD: -- we have people come in to
12 identify what it is.

13 JUDGE STEARLEY: Okay. All right. Public
14 Counsel, do you have any issues or problems?

15 MS. BAKER: No issues today, Your Honor.

16 JUDGE STEARLEY: Staff?

17 MS. LEWIS: We have a couple, Your Honor, from
18 Staff. We want to mention that DR 158 and DR 258, we want to
19 first work with the company to see if we can't get any more
20 complete response to those DRs, and we also are seeking some
21 information from continuing property records that we have not
22 received yet. At this point, we're willing to work with the
23 company to see if we can resolve the discovery issues. If
24 not, then we may have to require a conference with you.

25 JUDGE STEARLEY: Okay.

1 MS. LEWIS: In the near future.

2 MR. ENGLAND: What were the DR numbers again?

3 MS. LEWIS: DR 158 and DR 258.

4 JUDGE STEARLEY: And again, you don't need to
5 wait until the next scheduled conference.

6 MS. LEWIS: Okay.

7 JUDGE STEARLEY: If you need to, we can set up
8 a phone conference with me sooner.

9 MS. LEWIS: Sounds good. Thank you.

10 MR. ENGLAND: Judge, one final item on the
11 company's behalf. We received from Staff, I believe on
12 December 20th, revisions to their original case. And that
13 effect was a reduction of over -- over the recommended
14 revenue requirement of over three million dollars. We were
15 hoping we would get work papers to support that, but to date
16 have not received them. My understanding was we were
17 supposed to provide those, if not contemporaneous, shortly
18 after the filing. And maybe they are forthcoming, but
19 obviously time is becoming of the essence here.

20 JUDGE STEARLEY: Yeah, we're getting in the
21 final countdown. Ms. Lewis?

22 MS. LEWIS: I believe they are in the process
23 of being ready to send to the parties, so we will get them
24 out.

25 JUDGE STEARLEY: Okay. If you haven't

1 received those in let's say ten days, why don't you give me a
2 call and we can -- if we need to, we can take that up in a
3 phone conference and you can update me on the status of
4 DR 158 and 258 at that time as well. If you get the work
5 papers, you know, you don't need to worry about a conference.

6 MR. ENGLAND: Judge, with all due respect,
7 presumably they are in existence and I don't -- I'm afraid by
8 your last comment they're going to wait ten days to give them
9 to me.

10 MS. LEWIS: We won't wait ten days.

11 MR. ENGLAND: Okay.

12 JUDGE STEARLEY: Yeah, I don't want you to
13 wait until the last possible minute.

14 MR. ENGLAND: Thank you, Your Honor. That's
15 all I had.

16 JUDGE STEARLEY: Okay.

17 MS. BAKER: I think the only other issue that
18 Public Counsel has going at the moment is it's been brought
19 to our attention that there was an error in Staff's filing
20 about their -- about Public Counsel's response on the
21 customer comment cards. And that was brought to our
22 attention last Thursday. It's my understanding that a
23 retraction would be filed.

24 MS. LEWIS: Yes, due to holiday schedules,
25 that pleading has not been finalized. The error required

1 much work on Staff's part to determine results from an injury
2 discrepancy with OPC and we will file a pleading explaining
3 that to the Commission.

4 MS. BAKER: Because we have a filing due on
5 Friday.

6 JUDGE STEARLEY: That's correct. When will we
7 see Staff's filing?

8 MS. LEWIS: Certainly by tomorrow.

9 JUDGE STEARLEY: All right. Very good. Thank
10 you for the updates. Anything else we need to take up then?

11 MS. LEWIS: Nope, not from Staff's point of
12 view.

13 JUDGE STEARLEY: All right. We'll go ahead
14 and adjourn the on-the-record portion of this. If Staff
15 needs to have any other discussions, you've got the room.

16 MS. LEWIS: Thank you, Your Honor.

17 JUDGE STEARLEY: Thank you.

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CERTIFICATE OF REPORTER

STATE OF MISSOURI)

) ss:

COUNTY OF GASCONADE)

I, JENNIFER L. LEIBACH, Registered Professional Reporter, Certified Court Reporter, CCR #1108, and Certified Realtime Reporter, the officer before whom the foregoing matter was taken, do hereby certify that the witness/es whose testimony appears in the foregoing matter was duly sworn; that the testimony of said witness/es was taken by me to the best of my ability and thereafter reduced to typewriting under my direction; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this matter was taken, and further that I am not a relative or employee of any attorney or counsel employed by the parties thereto, nor financially or otherwise interested in the outcome of the action.

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