

1 STATE OF MISSOURI  
2 PUBLIC SERVICE COMMISSION  
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6 TRANSCRIPT OF PROCEEDINGS  
7 Prehearing Conference  
8 January 14, 2005  
9 Jefferson City, Missouri  
10 Volume 3  
11  
12 In the Matter of the Joint )  
13 Application of Missouri-American )  
14 Water Company and Both Osage Water )  
15 Company and Environmental )  
16 Utilities, L.L.C. for Authority )  
17 for Missouri-American Water )  
18 Company to Acquire the Water and ) Case No. WO-2005-0086  
19 Sewer Assets of Both Entities, and )  
20 for the Transfer to Missouri- )  
21 American Water Company of )  
22 Certificates of Convenience and )  
23 Necessity to Continue Operation of )  
24 Such Assets as Water and Sewer )  
25 Corporations Regulated by the )  
Missouri Public Service Commission )  
  
20  
21 LEWIS MILLS, Presiding,  
22 DEPUTY CHIEF REGULATORY LAW JUDGE.  
23  
23 REPORTED BY:  
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1 P R O C E E D I N G S

2 JUDGE MILLS: We're on the record this  
3 morning for a continuation of the prehearing in Case  
4 WO-2005-0086.

5 What I want to try to do today is see if we  
6 can at the very least figure out a list of issues, maybe  
7 order of witnesses, order of cross-examination, that kind  
8 of thing. Typically by this point in a proceeding the  
9 parties will have agreed on these items. In this case the  
10 parties have tried and been unable to agree on these  
11 things. I thought it might be helpful if we went through  
12 some of them on the record.

13 And let me just start by seeing if I can  
14 get some agreement on a general point. Is there anyone,  
15 any party that disagrees that the general standard in this  
16 case is the one in -- the not detrimental standard in  
17 393.190?

18 MR. SNODGRASS: Staff does not disagree  
19 with that standard.

20 MS. O'NEILL: Yeah, we agree with that, the  
21 not detrimental to the public interest.

22 MR. SNODGRASS: That's the correct standard  
23 from our point of view.

24 MR. COOPER: We don't have any objection to  
25 that.

1 JUDGE MILLS: And I think I -- obviously  
2 that's the ultimate conclusion in the case, and I think as  
3 we start working on the list of issues, I think we ought  
4 to be mindful of that and see -- make sure that we're  
5 listing issues that relate to that ultimate issue that  
6 actually will help us get to that point and not take us  
7 somewhere else, because I think with the multitude of  
8 parties in this case and the issues that have been raised  
9 so far, I think there's a risk that we will -- that we can  
10 get bogged down and go in some different direction and  
11 start wasting a lot of time taking evidence on stuff that  
12 may or may not help us establish a record that will let  
13 the Commission decide that ultimate issue.

14 So with that having been said, as I said  
15 yesterday on the record, I think there's probably some  
16 stuff that we can -- that we can get the parties to  
17 stipulate to that may help, and I was hoping that  
18 Mr. Allen would be here because I think one of the things  
19 that we may be able to -- that the parties may be able to  
20 stipulate to is exactly what Hancock Construction's  
21 judgment is, I mean, what the initial amount was, what the  
22 court issued. I mean, there may be some disagreement --  
23 Mr. Cooper, you're shaking your head.

24 MR. COOPER: Yeah.

25 JUDGE MILLS: There may be some

1     disagreement about what has been paid, at what rate the  
2     interest should accrue, when it should accrue and that  
3     kind of stuff. There ought to be some, I would hope, some  
4     agreement on the basic underlying judgment issued by the  
5     court. Is that not correct?

6                     MR. COOPER: I guess my client is, you  
7     know, is only kind of tangentially interested in that  
8     particular issue, but I just -- from the discussions that  
9     took place previously, those lead me to believe that, yes,  
10    that while the existence of the judgment lien probably  
11    could be stipulated to, what is owed at this point in time  
12    probably couldn't.

13                    JUDGE MILLS: Okay. Well, let me ask you  
14    another question, and you may not know this. Is  
15    Mr. Williams planning to appear on behalf of Osage Water  
16    as an attorney or as a witness?

17                    MR. COOPER: The way it has been, the  
18    pleadings have been filed thus far, I would say as an  
19    attorney.

20                    JUDGE MILLS: Okay. Is there going to be a  
21    witness on behalf of Osage Water who's going to be able to  
22    -- Mr. Mitchell, you're going to be able to talk about  
23    what's been paid, what's owed and that kind of thing?

24                    MR. COOPER: I believe Mr. Williams  
25    identified Mr. Mitchell.

1 JUDGE MILLS: Okay. That should work,  
2 then.

3 How about from Department of Natural  
4 Resources, is -- are the amounts owed and the current fees  
5 or any of that in dispute? Do you know?

6 MR. DUGGAN: I need to update what the fees  
7 are for the various facilities, but the judgment is the  
8 judgment and that amount is fine. We're not going to say  
9 that's a moving target.

10 JUDGE MILLS: Is there interest accruing on  
11 that?

12 MR. DUGGAN: Yeah, but we'll waive that.  
13 We'll waive that for purposes of this. And it does  
14 include some fees, and we'll make sure there's no overlap  
15 there.

16 JUDGE MILLS: Okay. Because the fees, I  
17 assume, are ongoing, and the judgment's based on old past  
18 due fees?

19 MR. DUGGAN: That's correct.

20 JUDGE MILLS: Mr. Mitchell, is that -- do  
21 you think that's doable?

22 MR. MITCHELL: I think some fees have been  
23 paid since the judgment. So we may need to rectify that.

24 MR. DUGGAN: Yeah. I'll just have to get  
25 that number. I don't know if we'll need to even put a

1 witness on once we know what that number is. We can  
2 probably stipulate to it.

3 JUDGE MILLS: Right. Even if we put on a  
4 witness and they testify for five minutes, by the time we  
5 get them on, swear them in, get them down, it could be  
6 half an hour just to establish something that may have  
7 been able to have been done in advance.

8 MR. DUGGAN: Sure.

9 JUDGE MILLS: Okay. What else? How else  
10 can we narrow this down?

11 MR. SNODGRASS: Well, Judge, while we're  
12 talking about the issue of witnesses, I think it's  
13 appropriate now for Staff to raise an issue. Yesterday in  
14 the hearing room --

15 JUDGE MILLS: Is this your one concern you  
16 mentioned off the record?

17 MR. SNODGRASS: Well, no. This is one of  
18 our multitude of concerns, Judge, but I'll try to not go  
19 into all of those at this point.

20 Our concern is, at the beginning of the  
21 hearing yesterday when we mentioned that Mr. Meyer and  
22 Mr. Johansen would be absent on a day of the hearing due  
23 to their necessity of attending a local public hearing,  
24 Mr. Williams indicated he was going to invoke the rule on  
25 witnesses. Now, that has Staff concerned. We do not want

1 to be in the position of having some kind of request made  
2 trying to exclude these witnesses from testifying.

3 So if that's the case, we'd like the Court  
4 to direct Mr. Williams to indicate whether or not he has  
5 an objection to Mr. Meyer or Mr. Johansen testifying.  
6 Because if he does, we have no other witnesses who are  
7 familiar with this case at this point in time.

8 JUDGE MILLS: Let me ask you this: And I  
9 must have missed something. On what basis do you think  
10 that he may have a problem? I mean, otherwise it seems  
11 unfair to single out Mr. Williams to make him sort of  
12 stipulate to the witnesses.

13 MR. SNODGRASS: We're only asking the Court  
14 to have him clarify whether he has an objection to these  
15 witnesses or not.

16 JUDGE MILLS: I guess what I'm asking is,  
17 why do you think he might? Why wouldn't I make  
18 Ms. O'Neill clarify that she doesn't have an objection or  
19 Mr. Cooper?

20 MR. SNODGRASS: Well, I believe that  
21 Mr. Meyer or Mr. Johansen may have been involved in some  
22 previous --

23 MS. O'NEILL: Judge, maybe I can -- that's  
24 not the rule he's talking about, Cliff.

25 MR. SNODGRASS: He's not? Okay.

1 MS. O'NEILL: When he's talking about  
2 invoking the rule, it's my understanding --

3 JUDGE MILLS: Hang on a second. Who's  
4 talking about invoking what rule?

5 MS. O'NEILL: Yesterday in the prehearing,  
6 and I think it was during part of the time on the record,  
7 but perhaps not -- I'm sorry. I'm talking too fast --  
8 there was some discussion about the fact that Mr. Meyer  
9 and Mr. Johansen may have to attend that local public  
10 hearing that I thought I was going to have to attend, and  
11 that they may not be present for part of the testimony  
12 that may include ratemaking testimony if we were going to  
13 do rate testimony live, and that that would make it very  
14 difficult for them to then testify in response to whatever  
15 it is Missouri-American might put on since we don't know  
16 what it is.

17 JUDGE MILLS: Okay.

18 MS. O'NEILL: Mr. Williams then made a  
19 comment, well, I'm going to invoke the rule anyway. The  
20 rule he's talking about, I'm 99 1/2 percent sure, is the  
21 common law rule of excluding witnesses who are going to  
22 testify in the proceeding from hearing any prior testimony  
23 before they get on the stand.

24 That would also impact my witnesses if  
25 we're going to do ratemaking testimony, Ms. Bolin,

1 Mr. Trippensee and Mr. Allen, and we would also object to  
2 invoking the rule in this proceeding. I don't think it's  
3 appropriate in this administrative proceeding.

4 JUDGE MILLS: At this point no one has  
5 asked us to, and if they do, I think I would do my best  
6 not to laugh at them, but I don't think we're going to --  
7 I don't think the Commission's going to do that. The way  
8 the evidence is presented in a case like this, I mean,  
9 it's just -- I just don't think it's doable to have some  
10 witnesses testify and then others who are supposedly  
11 rebutting them to a certain extent not be able to hear  
12 what the evidence said.

13 MR. SNODGRASS: Well, the reason I brought  
14 this up is that when that remark was made, everybody had a  
15 quizzical look on their face, and I was under the  
16 assumption nobody knew what he was requesting when he made  
17 that remark. So now I've been educated. So if I  
18 embarrassed myself, I apologize, but I'm just trying to  
19 protect my Staff client.

20 JUDGE MILLS: Sure. I agree. I guess that  
21 all went over my head yesterday if it was on the record.  
22 Mr. Cooper, do you have a position on that question?

23 MR. COOPER: I don't, no.

24 JUDGE MILLS: Whether or not witnesses  
25 should be excluded when other witnesses are --

1                   MR. COOPER: I don't have a position at  
2 this time, your Honor, on the motion that has yet to be  
3 made.

4                   JUDGE MILLS: I'll refrain from ruling on  
5 it in that case.

6                   Okay. Yeah. And in terms of scheduling,  
7 when are your witnesses going to have to be leaving for  
8 that local public hearing? That's 2 on the first day?

9                   MR. SNODGRASS: I believe so, yes.

10                  JUDGE MILLS: I'm going to be discussing  
11 this case with the Commissioners in agenda next Thursday,  
12 the next available agenda, because there isn't one on  
13 Tuesday, and one of the things that I'm going to suggest  
14 to them is that they may want to consider reinstating the  
15 schedule that you-all proposed and that I established  
16 initially. And there may be -- based on comments from the  
17 Bench yesterday, there may be some sympathy towards that,  
18 and that may help.

19                  MR. COOPER: I guess you can only do what  
20 you can do, your Honor, but if that question could be  
21 determined before next Thursday, it obviously would be  
22 helpful to everyone. And we certainly -- we being  
23 Missouri-American Water Company I think would support such  
24 an approach just because I think that it would make more  
25 sense with in particular the rate issues that we intend to

1 bring before the Commission.

2 MR. SNODGRASS: Staff's definitely on board  
3 with that idea, Judge. Thank you.

4 MS. O'NEILL: And we wouldn't oppose going  
5 back to the original procedural schedule.

6 JUDGE MILLS: And there may be -- I know  
7 some of the Commissioners are out of town. There may be a  
8 way to get some resolution on that before next Thursday,  
9 but there may not be.

10 In terms of the list of issues, I mean,  
11 you-all tell me this: I have, I think, on one occasion  
12 had to issue an Order in a case in which the parties were  
13 not able to agree on the issues, and it's a mess from the  
14 perspective of trying to issue a decision to not have a  
15 list of issues or at least one list of issues and then  
16 maybe one or two that not everybody agrees on.

17 But to have a bunch of issues that are very  
18 similar but worded slightly different, it's -- it's  
19 awkward from our point of view to do it that way. And I  
20 would strongly encourage you-all to try to come together  
21 to the extent you can on a single list of issues with  
22 maybe a few exceptions if there need to be exceptions, but  
23 at least on the main issues to try and come to a way of  
24 phrasing them so that at least it's consistent.

25 Otherwise what you end up with is the

1 Commission basically throws out everyone's list of issues  
2 and makes up their own, which may or may not work out well  
3 for a particular party. And it certainly can be done that  
4 way. As I said, it's sometimes awkward, to try to get the  
5 Commission --

6 MS. O'NEILL: Judge, I think part of the  
7 problem was we had some problems getting together before  
8 last Thursday for various scheduling reasons, and I was  
9 really, really sick Thursday. So I knew we had a  
10 deadline, and I wasn't able to get, because of everybody's  
11 schedules, agreement to something that I had proposed, and  
12 because I was -- frankly should not have been in the  
13 building, I filed mine before I went home. And that may  
14 be part of the reason everybody ended up filing their list  
15 of issues. I think they're fairly similar.

16 JUDGE MILLS: What I was leading up to is,  
17 having encouraged you to do that, I want to ask you if you  
18 think it would be helpful for me to stay here and do this  
19 on the record or would it be more advantageous for us to  
20 go off the record and me get out of your way?

21 MR. SNODGRASS: Actually, I think because  
22 of my embarrassment on some of these accounting issues, I  
23 would prefer that we go off the record, you stay here and  
24 listen to the comments of my Staff client on some of these  
25 issues. That might help resolve these issues without me

1 walking back and forth to my Staff client on the record.

2 JUDGE MILLS: That's not one of the

3 options. We're not going to go off the record and get

4 input from the parties.

5 MR. SNODGRASS: This is only on the issues,

6 though.

7 JUDGE MILLS: Well, nonetheless, that's --

8 MR. SNODGRASS: Okay. I prefer to go off

9 the record, then, and discuss the issues, frankly.

10 MS. O'NEILL: Judge, as far as things that

11 will still be at issue, some of them may be at issue now

12 but may not by the end of the day, and we may be able to

13 come up with some compromised language or get close.

14 Would you be available later in the day if we wanted you

15 to come back down and we could just kind of clarify?

16 JUDGE MILLS: Absolutely.

17 MS. O'NEILL: That might work better,

18 because I think some of it will --

19 MR. SNODGRASS: The other issue here is --

20 I'm sorry.

21 MS. O'NEILL: -- work out, work itself out

22 if we have a chance to all sit in the same room.

23 MR. SNODGRASS: This written pleading is

24 due today according to the procedural schedule. I believe

25 it is.

1 JUDGE MILLS: Yeah. I think I granted an  
2 extension, and whatever you asked for was what I granted.  
3 Was it the 14th? Okay.

4 MR. COOPER: I think your Order in the end  
5 looking at it talks about you granted Staff's motion to --  
6 for the parties to file separate lists of issues on the  
7 7th and then -- and a list of witnesses, order of  
8 witnesses and order of cross-examination on the 14th. So  
9 I'm not sure the Order really specifies a list of issues  
10 today necessarily, but --

11 MR. SNODGRASS: It specifies a list of  
12 witnesses and order of witnesses and order of cross is due  
13 today, Judge.

14 JUDGE MILLS: Got you. Yeah. And it may  
15 be that you can't agree on a list of issues, and, you  
16 know, if that happens, it happens. I don't -- I don't  
17 really have any way to force you to do that. But I think  
18 it's probably in everybody's interest to try to get them  
19 narrowed down and as closely refined as everyone can agree  
20 to.

21 Mr. Cooper, Mr. Duggan, you haven't had --  
22 and please don't be afraid of offending me. If you think  
23 you can do better without me, go ahead and say so. I  
24 think that's typically the way it's done around here, but  
25 I'd be happy to stay.

1                   MR. COOPER: Well, ultimately we're going  
2 to have to rope Mr. Comley and Mr. Allen and Mr. Williams  
3 back into this experience. So I don't know that even if  
4 we were to stay on the record and hammer through this we  
5 would necessarily get to any sort of resolution here  
6 today, or on the record that we would get to a resolution.  
7 So I -- for that reason, I guess I would lean towards  
8 perhaps just going off the record to discuss these things.

9                   Now, the one point in regard to list of  
10 issues that I might make is that my feeling is that the  
11 differences between the parties on some of the issues are  
12 not real great, that were pretty close on some of the  
13 issues. The real differences become the areas where some  
14 parties want to raise issues and other parties don't think  
15 they're proper to be in the case at all.

16                  JUDGE MILLS: Right.

17                  MR. COOPER: You know, one way that we've  
18 tackled that in the past is essentially you start with the  
19 question is this even a proper issue for the Commission,  
20 which sometimes allows you to get to an agreed-to list of  
21 issues. The problem with that approach is, is that it  
22 really doesn't avoid any testimony because you still have  
23 to go through all the testimony on that issue even if  
24 ultimately the Commission says, we're just throwing it all  
25 out.

1                   So yeah, I raise that as two options. I  
2   don't know that -- I don't know that if we follow the  
3   first one, which is more likely to get to an agreed-to  
4   list of issues, it necessarily addresses your concern,  
5   which is that we may go down different paths that are a  
6   waste of time or of little use in the end here.

7                   JUDGE MILLS: Right. Really, I think those  
8   are two separate problems. They're sort of interrelated,  
9   but they can be viewed as separate. I mean, it's helpful  
10  in terms of structuring an Order in the case to have an  
11  agreed-upon list of issues, and anything that's not agreed  
12  upon, it's clearly set out separately. There is a list of  
13  agreed-upon issues, then there's one or two or three or  
14  however many that not everyone agrees are in the case or  
15  agrees should be in the case but don't agree on how to  
16  properly phrase them.

17                   And to the extent that you-all can get to  
18  that point, I mean, I have -- I would like to see if I can  
19  get the Commission to limit the scope of the issues before  
20  we get into hearing, if they will do that, particularly if  
21  we're going with a four-day live direct type hearing in  
22  ten days. So to the extent that you-all can as sort of a  
23  consensus view, here are most of the issues and then here  
24  are one or two or several that not everyone agrees to, it  
25  may make it easier for me to go to the Commission and say,

1 here are all the issues that everyone agrees to, here are  
2 some that other people don't agree should be in the case,  
3 and then here's why they don't agree, and then the  
4 Commission can either say, yeah, we're going to hear that  
5 or, no, we're not, or we'll hear it even though it may not  
6 be necessary for resolution.

7 MR. SNODGRASS: I guess I'd like to raise  
8 one other Staff concern here, Judge, and that is we're  
9 usually assigned the responsibility of putting this  
10 pleading together as far as list of witnesses, order of  
11 witnesses, order of cross. I'm wondering if I'm going to  
12 have today to do that since we haven't even agreed on a  
13 list of issues yet. I'm wondering if I could postpone  
14 that until Tuesday. I don't think any of the parties here  
15 have an objection to that.

16 JUDGE MILLS: Yeah. I don't think that's a  
17 problem. I think you'll probably have a fairly good -- at  
18 least the people that are -- the parties that are present  
19 today will have a fairly good idea of what that's going to  
20 look like. So it's not as though it's going to come as a  
21 surprise.

22 If you-all could get in touch with  
23 Mr. Allen and Mr. Comley and make sure that whatever  
24 agreement you come to in terms of when the witnesses are  
25 likely to appear, that it fits with whatever conflicts

1     they may have, then I don't have any problem with that  
2     actually being filed on Tuesday.

3                     MR. SNODGRASS: All right. Another  
4     question we have for your Honor, and I'll try not to run  
5     any more issues by you at this point in time, but --

6                     JUDGE MILLS: Actually, this is a great  
7     time for them. The more we can get resolved early on in  
8     this, the easier I think the hearing's going to go.

9                     MR. SNODGRASS: Procedurally I think Staff  
10    is inquisitive as to how the witness testimony process  
11    would be unfolding. Would you anticipate one witness or  
12    the witnesses going forward on each issue, a witness  
13    coming up -- I'm not quite sure.

14                    JUDGE MILLS: No. I would anticipate that,  
15    for example, we'll call a Missouri-American witness who  
16    will undergo direct examination on anything --

17                    MR. SNODGRASS: Anything that they wish.

18                    JUDGE MILLS: -- that Missouri-American  
19    wants to elicit from that witness. Then we'll go on to  
20    the next witness and so forth. And depending on the  
21    vagaries of questions from the Bench, we may call those  
22    people back, and there may be additional issues that arise  
23    and we may call them back because the parties want them  
24    back for some reason.

25                    In general, I don't plan to, for example,

1 have a Missouri-American witness talk for an hour about,  
2 you know, rate base, then go sit down and come back --

3 MR. SNODGRASS: Right. That's all we  
4 needed to know.

5 JUDGE MILLS: -- a day later and talk about  
6 something else.

7 MR. SNODGRASS: I understand. That's fine.  
8 Thank you, Judge.

9 MS. O'NEILL: Judge, since -- and I guess  
10 depending on what issues are actually being heard, this  
11 may have different -- raise different concerns. But  
12 especially if we're going to have ratemaking testimony in  
13 this case and it's all going to be live, I'll probably be  
14 asking for a break between direct, the company direct and  
15 cross-examination so that we can review the direct  
16 testimony so we can at least have some manner of doing  
17 cross-examination.

18 I think that back when the Commission used  
19 to do all live testimony or mostly live testimony in rate  
20 cases they did that as a matter of course, and I think  
21 that it would not be -- I would not be effective as an  
22 attorney if I wasn't able to do that.

23 JUDGE MILLS: And I don't have a problem  
24 with a brief recess. I mean, I don't think we have time  
25 to break for a couple hours between witnesses, but a few

1 minutes I don't think I would have a problem with.

2 MS. O'NEILL: Like 30 or 45 or are you  
3 talking 5? Because 5 is like nothing.

4 JUDGE MILLS: Well, we've got four days of  
5 hearing. We've got a number of witnesses, a number of  
6 issues. Actually, we've only got three and a half days of  
7 hearing if we're going to adjourn at two o'clock on  
8 Monday, and I -- I don't think we're going to go as much  
9 as an hour. I certainly don't know that we have to keep  
10 it to five minutes.

11 MS. O'NEILL: Because obviously --

12 JUDGE MILLS: And some of these things are  
13 going to fall around lunch breaks and regularly scheduled  
14 bathroom breaks or whatever, and so that gives you an hour  
15 right there or 15 minutes or whatever, in addition to  
16 whatever additional time we take.

17 MS. O'NEILL: Because, I mean, you know, if  
18 it's complex accounting or, you know, engineering or  
19 auditing things that I haven't heard before and I haven't  
20 been able to obtain through the discovery process, which  
21 frankly is probably going to happen at this point, unless  
22 there's a whole bunch of discovery I'm going to get later  
23 today, Dean, maybe.

24 MR. COOPER: Have you asked questions?

25 MS. O'NEILL: I've asked you for discovery.

1                   MR. COOPER: Oh, okay. Yeah. It must have  
2 gone to the company.

3                   MS. O'NEILL: No. I sent you e-mails  
4 asking for discovery to bring it to the prehearing, just  
5 generally what you were going to present because we had no  
6 idea, but anyway -- which may be an issue we need to bring  
7 up, too.

8                   You know, if I get stuff that -- you know,  
9 at this point in time, you know, we need to know what's  
10 going to happen. We need to know what they're asking for  
11 in advance if we're going to be able to go somewhat  
12 smoothly down the road as far as direct, cross, that sort  
13 of thing. I think otherwise it's just going to be a train  
14 wreck.

15                  JUDGE MILLS: Well, we've got the  
16 application. You-all are going to work on a list of  
17 issues. I mean, I don't think there's any way to inform  
18 you ahead of time of exactly what's going to be coming,  
19 but if something -- if the witness is being asked  
20 questions about stuff that has nothing to do with the  
21 relief sought in the application or outlined in the list  
22 of issues, then I think you can object to it.

23                  MS. O'NEILL: See, that's part of the  
24 problem. The application doesn't even say what kind of  
25 rate increase they're asking for. I mean, we don't have a

1     number.

2                     JUDGE MILLS:  There hasn't been any  
3     evidence yet.

4                     MS. O'NEILL:  I know, but they haven't even  
5     told us what they're asking for.  So how can we even audit  
6     to see whether or not it's a reasonable request?

7                     JUDGE MILLS:  I think you're --

8                     MS. O'NEILL:  We can't audit -- I mean, we  
9     can't even do any kind of significant running of numbers  
10    without something from them, and they haven't given it to  
11    us.

12                    JUDGE MILLS:  Well, that may be the case,  
13    and certainly something to bear in mind is that they have  
14    to prove on the record what it is they want.

15                    MS. O'NEILL:  It's a lot harder to  
16    cross-examine somebody if they say they need \$8 million  
17    unless you know why they're asking for it, and if you  
18    don't know -- if you only find out on direct why they're  
19    asking for it, it's very difficult to then go back and  
20    look at those underlying things, other than just blanketly  
21    say, \$8 million, that's nuts.

22                    JUDGE MILLS:  And I agree, and that's why  
23    rate cases typically take 11 months and have three rounds  
24    of prefiled testimony, but that's not something we're  
25    doing here.  And I don't know that it --

1 MS. O'NEILL: We could solve this problem,  
2 too, and you know how.

3 JUDGE MILLS: I don't know if this is  
4 something that cuts any harder against people that are  
5 opposing the application than it does against the people  
6 that are trying to support the application. I don't think  
7 it's going to be an easy job for either side to try and  
8 get this all done in a short week, but I don't know.

9 I've heard your concerns. I'm sympathetic.  
10 I'm not going to say today that we're going to take a  
11 two-hour break between each witness. I think it's going  
12 to depend on how quickly we're moving the first day and  
13 who knows. And as I said, the Commission may decide that  
14 they're willing to go back to the original schedule and  
15 this may all be academic.

16 MS. O'NEILL: Also, since my microphone's  
17 on, this morning I filed in EFIS and I've given everybody  
18 a copy of our -- Office of Public Counsel's request for a  
19 local public hearing, and I don't know whether or not the  
20 parties need time to read that and time to respond to  
21 that. I have not asked for it to be set before the 24th  
22 because we don't have time to do it.

23 JUDGE MILLS: I will tell you that any  
24 motions, this one, for example, if there's anything else  
25 that are filed today, I will endeavor to get before the

1 Commission next Thursday for resolution. So if anybody  
2 wants to respond to Public Counsel's motion, it needs to  
3 be Wednesday noon probably at the latest to have your  
4 response considered.

5 MR. SNODGRASS: I don't think Staff has any  
6 opposition whatsoever to that at this point in time.

7 MR. COOPER: I think my client will at  
8 least want to respond to the motion.

9 JUDGE MILLS: And just because not all the  
10 parties are represented today, I'm -- normally I would say  
11 I've told you on the record when you have to respond by,  
12 but I'll issue a notice today just so Mr. Allen and  
13 Mr. Comley know that if they want to respond, they have to  
14 respond by Wednesday at noon.

15 MS. O'NEILL: Okay. Thank you.

16 MR. SNODGRASS: Thank you, your Honor.

17 JUDGE MILLS: Anything else you-all want  
18 from me?

19 MR. DUGGAN: I guess I need a  
20 clarification. Do we still have pretrial briefs due next  
21 Wednesday? I don't think that's changed, but I want to  
22 make sure.

23 JUDGE MILLS: That has not changed. As I  
24 said, if we're going to do something different in  
25 schedule, I'm going to hopefully get the Commissioners to

1 understand that the sooner we can change that, the easier  
2 it will make your lives.

3 MR. SNODGRASS: May I ask you, Judge, on  
4 the record, when do you think you'll have an opportunity  
5 to discuss that with the Commission about the schedule?

6 JUDGE MILLS: I know one Commissioner is  
7 here today for sure. I've talked to another one on the  
8 phone who I know is not here today and probably I'm not  
9 going to be able to talk to the rest of the day. So it  
10 probably won't be until Tuesday. But if at all possible,  
11 I will get something resolved as soon as -- well, I will  
12 get something resolved as soon as possible, and as soon as  
13 I can I'll issue an Order by delegation that says what's  
14 been done.

15 MR. SNODGRASS: We appreciate that, Judge.  
16 If that can be done, we appreciate that. Thank you very  
17 much. We appreciate your efforts.

18 JUDGE MILLS: Thank you. Anything else?  
19 Let me ask you this before we go off the record. It's my  
20 intention -- this is what we usually do in a prehearing,  
21 and this one has obviously been anything but a typical  
22 prehearing. Typically we would dismiss the court reporter  
23 at this point and just go off the record. Does anybody  
24 see any need to either ask the court reporter to stay or  
25 schedule a time to go back on the record at the end of the

1 day to capture what you-all discussed?

2 MR. SNODGRASS: Staff does not. Staff

3 doesn't see a need to keep the court reporter here today.

4 MR. COOPER: MAWC doesn't see any reason to

5 keep her.

6 MS. O'NEILL: We don't have a problem with

7 it.

8 MR. DUGGAN: I agree.

9 JUDGE MILLS: Okay. That's what we'll do,

10 then. We're off the record.

11 WHEREUPON, the recorded portion of the

12 prehearing conference was concluded.

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