

1 BEFORE THE PUBLIC SERVICE COMMISSION

2 STATE OF MISSOURI

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4 TRANSCRIPT OF PROCEEDINGS

5 Discovery Conference

6 February 10, 2012

7 Jefferson City, Missouri

8 Volume 19

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10

11 In the Matter of)

12 Missouri American Water)

13 Company's Request For Authority)

14 To Implement A General Rate)File No. WR-2011-0337

15 Increase For Water and Sewer)

16 Service Provided in Missouri)

17 Service Areas)

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 HAROLD STEARLEY, Presiding

20 CHIEF REGULATORY LAW JUDGE

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 REPORTED BY:

24 NANCY L. SILVA, RPR, CCR

 TIGER COURT REPORTING, LLC

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A P P E A R A N C E S

1
2 W.R. ENGLAND, III

Brydon, Swearngen & England, PC

3 P.O. Box 456

Jefferson City, Missouri 65102

4 573.635.7166

FOR: Missouri American Water Company

5
6 LARRY DORITY

Fischer & DORITY, PC

7 101 Madison Street, Suite 400

Jefferson City, Missouri 65109

8 573.636.6758

FOR: City of Brunswick, Missouri

9 Public Water Supply Districts 1 and 2 for Andrew
County, Missouri

10
11 LISA LANGENECKERT

Sandberg, Phoenix & von Gontard

12 600 Washington Avenue, 15th Floor

St. Louis, Missouri 63101

13 314.231.3332

FOR: BJC HealthCare

14
15 CHRISTINA BAKER

Office of Public Counsel

16 200 Madison Street

P.O. Box 2230

17 Jefferson City, Missouri 65102

573.751.4857

18 FOR: Office of Public Counsel and the Public

19
20 KEVIN THOMPSON

RACHEL LEWIS

21 Missouri Public Service Commission

P.O. Box 360

22 Jefferson City, Missouri 65102

573.751.6514

23 FOR: Staff of the Missouri Public Service
Commission

24

25

1 APPEARANCES (cont.)

2

STUART CONRAD (via telephone)

3 Finnegan, Conrad & Peterson, L.C.

3100 Broadway, Suite 1209

4 Kansas City, Missouri 64111

816.753.1122

5 FOR: Ag Processing

6

JOHN REICHART (via telephone)

7 Missouri American Water

727 Craig Road

8 St. Louis, Missouri 63141

314.996.2279

9 FOR: Missouri American Water Company

10

CRAIG JOHNSON

11 Johnson & Sporleder

304 East High, Suite 200

12 P.O. Box 1670

Jefferson City, Missouri 65102

13 573.659.8734

FOR: Empire District Electric Company

14

15 ERIC J. STEINLE (via telephone)

Spencer Fane Britt & Brown, LLP

16 1000 Walnut Street, Suite 1400

Kansas City, Missouri 64106

17 816.292.8173

FOR: City of Riverside, Missouri

18

19

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21

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1 JUDGE STEARLEY: Let's go ahead and go on
2 the record. Today is Friday, February 10, 2012.
3 The Commission set this time for a discovery
4 conference and to rule on some pending motions in
5 File No. WR-2011-0337 captioned as: In the Matter of
6 Missouri American Water Company's Request for
7 Authority to Implement a General Rate Increase for
8 Water and Sewer Services Provided in the Missouri
9 Service Areas.

10 (Phone rang.)

11 JUDGE STEARLEY: Sounds like we just had
12 someone else join us on the phone.

13 MS. LANGENECKERT: This is Lisa
14 Langeneckert.

15 JUDGE STEARLEY: Hello, Ms. Langeneckert.
16 I'm just getting ready to take entries of appearance.

17 MS. LANGENECKERT: Thank you, Judge.

18 JUDGE STEARLEY: And we will begin with the
19 Commission Staff.

20 MR. THOMPSON: Thank you, Judge.

21 Kevin Thompson and Rachel Lewis for the
22 Staff of the Missouri Public Service Commission,
23 P.O. Box 360, Jefferson City, Missouri 65102.

24 JUDGE STEARLEY: Thank you, Mr. Thompson.

25 For Missouri American.

1 MR. ENGLAND: Thank you, your Honor. Let
2 the record reflect the appearance of W.R. England
3 appearing on behalf of Missouri American Water
4 Company. Our address here in town is Brydon,
5 Swearngen & England, P.O. Box 456, Jefferson City,
6 Missouri 65102.

7 JUDGE STEARLEY: Okay. Thank you,
8 Mr. England.

9 For the Office of the Public Counsel.

10 MS. BAKER: Thank you. Christina Baker,
11 P.O. Box 2230, Jefferson City, Missouri 65102,
12 appearing on behalf of the Office of the Public
13 Counsel.

14 JUDGE STEARLEY: Thank you, Ms. Baker.

15 And it looks like we have counsel for City
16 of Brunswick.

17 MR. DORITY: Yes. Thank you, Judge
18 Stearley. Appearing on the behalf of the City of
19 Brunswick, Missouri, and the Public Water Supply
20 Districts 1 and 2 for Andrew County, Missouri, Larry
21 Dority with the firm Fischer and Dority, PC. Our
22 address is 101 Madison, Suite 400, Jefferson City,
23 Missouri 65101.

24 JUDGE STEARLEY: Thank you, Mr. Dority.

25 Mr. Johnson, are you here for Empire?

1 MR. JOHNSON: Yes, I am, your Honor. Craig
2 Johnson, Johnson & Sporleder, 304 East High, Suite
3 200, Jefferson City, Missouri 65102.

4 JUDGE STEARLEY: Thank you very much.

5 Now for parties appearing by phone: Ag
6 Processing.

7 MR. CONRAD: Yes, sir. Stu Conrad, 3100
8 Broadway, Suite 1209, Kansas City, Missouri 64111,
9 with the law firm of Finnegan, Conrad, Peterson, for
10 Ag Processing.

11 JUDGE STEARLEY: Thank you, Mr. Conrad.

12 For BJC Healthcare.

13 MS. LANGENECKERT: Thank you, Judge
14 Stearley. Lisa Langeneckert appearing on behalf of
15 BJC Health Care with the law firm of Sandberg, Phoenix
16 & von Gontard. The address is 600 Washington Avenue,
17 15th Floor, St. Louis, Missouri 63101.

18 JUDGE STEARLEY: Okay. Thank you,
19 Ms. Langeneckert.

20 Did I miss anyone?

21 MR. STEINLE: Yes, Judge. This is Eric
22 Steinle appearing on behalf of the City of Riverside,
23 Missouri, of the law firm of Spencer Fane Britt &
24 Brown, 1000 Walnut Street, Suite 1400, Kansas City,
25 Missouri 64106.

1 JUDGE STEARLEY: Thank you, Mr. Steinle.

2 And Mr. Reichart, I believe you're also on
3 the phone for Missouri American.

4 MR. REICHART: That's correct, your Honor.
5 I think I previously made an appearance. John J.
6 Reichart on behalf of Missouri American Water,
7 727 Craig Road, St. Louis, Missouri 63141.

8 JUDGE STEARLEY: Thank you, Mr. Reichart.
9 Is there anyone else on the phone who has
10 not identified themselves?

11 (No response.)

12 JUDGE STEARLEY: Okay. Hearing none, we
13 will pick up with today's discovery conference.
14 Before I get in to some of the motions regarding the
15 subpoenas, at this point let me ask if any of the
16 other parties present had any other discovery issues
17 at this time that needed to be addressed?

18 MR. CONRAD: Judge, this is Stu Conrad. We
19 do not have -- may be unique now, but we do -- we do
20 not have -- I think we may have a couple of DRs
21 outstanding, but they're not, as far as I know, under
22 dispute.

23 JUDGE STEARLEY: All right. Very well.
24 Well, we did have the discovery cutoff date set for
25 the 6th --

1 MR. CONRAD: Right.

2 JUDGE STEARLEY: -- so I trust that if
3 something pops up before hearing, parties will not
4 wait and will just contact me for a phone conference
5 as soon as possible.

6 Well, let's go ahead and move on to the
7 subpoenas for depositions, and we have a motion to
8 quash, and response.

9 First, let me say that from after reading
10 the parties' pleadings here, with respect to at least
11 four of the proposed opponents, the parties don't seem
12 to have an issue with agreeing on having depositions
13 taken, perhaps at a later time next week; is that
14 correct?

15 MR. THOMPSON: Judge, I'm willing to
16 produce Mr. Harrison, Ms. Bolin, Mr. Bush, and
17 Mr. Foster in Jefferson City for deposition on
18 Tuesday, Wednesday, and/or Thursday of next week.

19 JUDGE STEARLEY: All right. And the rules
20 do allow for depositions by phone as well, which could
21 possibly accommodate the parties.

22 Mr. Conrad, I believe you indicated you
23 were willing to take depositions next Thursday. Would
24 the days that Mr. Thompson's proposed be amenable?

25 MR. CONRAD: I'm sorry, Judge. I couldn't

1 hear everything that Mr. Thompson was saying. I think
2 what we were at least suggesting was that, since
3 Monday seems to be a holiday -- I finally was able to
4 find Lincoln's birthday on the 12th on one calendar
5 that I had. Most of them have nothing on them. I
6 don't know if that's an editorial comment about
7 Lincoln, but that, apparently, is the source of the
8 problem vis-a-vis Monday. I was hoping that we might
9 be able to start on Tuesday, Wednesday, and Thursday.
10 Might be a lot to do on Thursday.

11 JUDGE STEARLEY: Okay. Mr. Thompson --

12 MR. CONRAD: I'll try -- you know, I'll try
13 to work with counsel, if they're willing.

14 JUDGE STEARLEY: Okay. Mr. Thompson has
15 indicated with respect to the four witnesses, other
16 than Ms. Voss, he's willing to work with you for
17 Tuesday, Wednesday, and Thursday.

18 MR. CONRAD: Great.

19 JUDGE STEARLEY: So if we can resolve the
20 issue on those four witnesses, the parties can make
21 contact by phone or however and set those times up for
22 those witnesses. Is that --

23 MR. THOMPSON: Thank you, Judge.

24 JUDGE STEARLEY: Is that acceptable?

25 MR. THOMPSON: Yes, sir.

1 MR. CONRAD: It is here. All I need to do
2 is I just need to arrange for a reporter, so I've got
3 to restart that process.

4 JUDGE STEARLEY: All right. Well, I'll let
5 you and Mr. Thompson or Ms. Lewis confer on that and
6 trust you will make the necessary arrangements.

7 With regard to Ms. Voss, would the parties
8 like to make any additional argument before we dive on
9 into that?

10 MR. THOMPSON: There's one additional
11 point, Judge, that I wasn't aware of when I filed the
12 Motion to Quash and the Motion in Limine. These
13 discovery things are often produced at breakneck speed
14 and occasionally counsel misses something. I know
15 you'll be startled to hear that.

16 It's also our contention that under
17 Rule 57.09(e), that the Commission, in fact, was not
18 authorized to issue deposition subpoenas because proof
19 of service of notice of deposition to all parties was
20 not tendered at the time the subpoenas were requested,
21 so we would add that additional argument based on
22 Supreme Court Rule 57.09(e).

23 JUDGE STEARLEY: All right. I'm grabbing
24 the rule. Mr. Conrad, would you like to address
25 Mr. Thompson's arguments?

1 MR. CONRAD: Well, 57.09? I'm trying to
2 pull that up.

3 JUDGE STEARLEY: 57.09(e), Motion to
4 Terminate or Limit Examination. Do I have the correct
5 rule, Mr. Thompson?

6 MR. THOMPSON: 57.09(e) is Subpoenas for
7 Deposition.

8 MR. CONRAD: Proof of service of a notice?

9 JUDGE STEARLEY: Well, maybe I don't
10 have -- I've got 57.03. There, 57.09(e): Proof of
11 Service. Notice of deposition is provided in 57.03,
12 and 57.04 is sufficient to authorize issuance of a
13 subpoena for taking deposition.

14 MR. THOMPSON: In this case, Judge --

15 MR. CONRAD: I'm not sure -- I'm not sure
16 where that -- where that takes us. It says it's
17 sufficient. It doesn't prohibit anything else, but I
18 think that's -- that's kind of beside the point.

19 The larger point here -- I had called
20 Kevin, or Mr. Thompson, rather, yesterday afternoon,
21 and he was kind enough to return the call, and I think
22 I began by saying that it sounded, looking at some of
23 this, that we might have a headbutt for no real
24 reason.

25 I would agree with him if Ms. Voss was

1 serving exclusively as an attorney, but when I asked
2 him that, he declined to make that concession, and he
3 can speak for himself, but the -- the sense that we
4 had was, based on the Commission's flair head [sic],
5 the -- what I believe, I guess, is current listing of
6 Staff on the website, the current telephone directory,
7 current key Staff positions, all of those identify her
8 not as a supervising attorney -- it seems now to be
9 contended -- but rather as someone who is a highly-
10 placed person in the Commission Staff, and it's --
11 it's that aspect that we would want to query.

12 I don't have any particular desire to
13 query her, qua, attorney, any more than I would -- or
14 I might like to query Mr. Thompson, but I doubt that I
15 get the answers I was looking for, so that's -- I
16 think that, in a nutshell, is the problem.

17 I don't know what her status is, and it
18 seems based on Mr. -- I'll, you know, yield to my
19 colleague at the Bar, but it seems, based on what I've
20 been told, that she kind of has a mixed -- a mixed
21 message, and that's troublesome, because it's kind of
22 like our old friend at KCPL, hire Schiff Hardin --
23 that's a law firm -- to be their consultants and then
24 fought to hide behind that as attorney-client
25 privilege, when it's not.

1 Attorneys do lots of things that aren't
2 subject to an attorney-client privilege so,
3 Mr. Thompson, I'll -- you know, it's the Judge's
4 hearing, not mine.

5 MR. THOMPSON: Judge, Ms. Voss' position
6 can be best compared to that of the public counsel.
7 Mr. Mills is an attorney. He's also the director of
8 that agency. He appears and represents the Office of
9 the Public Counsel in some actions, and he directs the
10 activities of all the personnel of that office,
11 including attorneys and the nonattorney staff who
12 appear as expert witnesses, and it's the same with
13 Ms. Voss.

14 She supervises and directs the activities,
15 the case-related activities of the office of Staff
16 counsel, and she also supervises and directs the
17 activities of what were formerly known as the
18 Utilities Services Division and the Utility Operations
19 Division from which the expert witnesses are drawn who
20 appear in our cases, including the four expert
21 witnesses that Mr. Conrad wants to depose and the
22 various other expert Staff witnesses who will appear
23 in this case and other cases.

24 Not only does Ms. Voss direct and
25 supervise our activities, those of attorneys and

1 nonattorneys alike, but she will also, undoubtedly,
2 appear on behalf of Staff in some, or even all, of
3 these cases.

4 At the moment we have no particular plan
5 for her to appear in the water case, but if she is
6 deposed by Mr. Conrad, then I think we lose that
7 ability. A lawyer is not permitted to be a witness in
8 his own case, and we would be, then, unable to use her
9 as counsel.

10 She has been privy to all our strategies,
11 directs our tactics, reviews all of our pleadings and
12 has participated in the greatest way in Staff's
13 preparation of this case for litigation, and if she
14 were brought to a deposition, I think that we would
15 object to almost every question as privileged.

16 JUDGE STEARLEY: Well, I'm not aware, and I
17 don't have a crystal ball to know what questions
18 Mr. Conrad might have for Ms. Voss. Is your argument
19 that there's no possible question he could ask that
20 would not fall into an attorney-client privilege area
21 given her role?

22 MR. THOMPSON: I think my first line-
23 argument, Judge, is that it is inappropriate and is
24 simply unknown for a party to depose counsel for
25 another party in an ongoing litigation.

1 anything that would -- that would cause her to violate
2 an attorney-client privilege, but if she is
3 responsible, as Mr. Thompson seems to suggest, for
4 directing strategy, as a member of the Staff, then I
5 think that would be an area that -- that's appropriate
6 for inquiry as to that Staff roll.

7 Maybe Mr. Thompson can respond to one
8 question, and that is, When Ms. Voss has contact with
9 one or more of the Commissioners, does she file an
10 ex parte notice?

11 MR. THOMPSON: I'm sorry. I didn't hear
12 that last question.

13 JUDGE STEARLEY: Can you repeat that last
14 question, Mr. Conrad?

15 MR. CONRAD: Yeah. When she has contact
16 with one or more of the Public Service Commissioners,
17 does she file an ex parte notice?

18 MR. THOMPSON: I am not personally aware
19 whether she does or not.

20 MR. CONRAD: Well, if she's representing
21 Staff, it would seem to me that when she does, she's
22 acting as representing of a party and would need to do
23 this. If she's a member of -- similar to
24 Mr. Henderson's position, as some kind of a director
25 that's responsible to the Chairman or the Commission

1 as a whole, then she might not need to be, but if
2 we're mixing apples and oranges -- and I don't recall
3 seeing Mr. Thompson in this or any other case, at
4 least in recent times, of any notice of ex parte
5 contact for Ms. Voss, so I have presumed from that
6 that she was somehow a director, that I look at her --
7 her titling and where she appears to be on the Org
8 Chart. I don't have an Org Chart in front of me, but
9 at least based on the Staff listings, she appears to
10 be a director.

11 Now, you've indicated to me that she's --

12 MR. THOMPSON: Well, I think she played
13 both of those rules, Mr. Conrad.

14 MR. CONRAD: -- you regard her as your
15 boss.

16 I have to tell you, Judge, I'm confused as
17 to her status.

18 MR. THOMPSON: Let me repeat. She plays
19 both of those roles.

20 JUDGE STEARLEY: If Ms. Voss is acting in
21 two roles, is it conceivable that some of her actions
22 would be involved in attorney matters that are not
23 attorney-client privileged?

24 MR. THOMPSON: That is conceivable.

25 JUDGE STEARLEY: I am assuming matters of

1 trial strategies, as a general rule --

2 MR. THOMPSON: If Mr. Conrad wants to ask
3 about Ms. Voss' conversations with Human Resources as
4 to the filing of absent notices and the purchase of
5 office chairs, then I think that would not be
6 privileged, and certainly Ms. Voss is involved in
7 those things as an administrator, but she also has
8 conversations with myself and with Ms. Lewis as to the
9 strategy and tactics to pursue in cases, including
10 this present one.

11 MR. CONRAD: Do those conversations get
12 back and forth to the Commission?

13 MR. THOMPSON: I can't imagine that they
14 would, no.

15 MR. CONRAD: Well, again, I haven't seen an
16 ex parte, so I don't know. I'm just confused. If
17 she's -- if she's involved in directing members of the
18 Staff exclusive of those -- and I'm including
19 Mr. Thompson's and -- Ms. Thompson [sic] and his
20 office as members of the Staff, broadly, but in the
21 sense of Staff counsel office for which he is, I take
22 it, director or chief Staff counsel -- I'm sorry -- I
23 don't -- I don't have a disagreement with him about
24 those things, but where she might be directing some
25 member of the Staff to take a particular position,

1 then that seems to me to not be attorney-client.
2 That's directing the Staff. That's -- that's what a
3 director does, I think.

4 I don't know. As I say, Judge, I'm just
5 confused. I'm confused. The Commission can call its
6 personnel what it wants, and that's -- we're just
7 playing -- playing games with -- with titles. The
8 real -- the real question here is, What is it that she
9 does? What's her function? I appreciate
10 Mr. Thompson's characterization, but there -- there
11 also would be areas that, using his example, that I
12 think probably Mr. Mills could be -- could be asked
13 about.

14 JUDGE STEARLEY: It's difficult for me to
15 make a decision when I don't know what question would
16 be asked and I don't know what objection might follow
17 based upon the reasons. Now, it's possible --

18 MR. THOMPSON: Well, Judge, given the
19 nature of this, the unprecedented nature of this
20 proposed deposition, we would request that, if your
21 decision is that it go forward, that you be present
22 and preside.

23 JUDGE STEARLEY: I was just going to -- you
24 took the words right out of my mouth. I would suggest
25 that if we do go forward with that, that I be present

1 to rule immediately upon objections.

2 MR. THOMPSON: Thank you, Judge.

3 JUDGE STEARLEY: Is that something that the
4 parties would agree to and, if so, we could set up an
5 appropriate time?

6 MR. CONRAD: It's certainly agreeable from
7 this perspective, and you could even do that, if you
8 want to, by telephone.

9 MR. THOMPSON: That's agreeable to Staff.

10 JUDGE STEARLEY: Okay. If it's agreeable
11 to do by phone, I mean, we could -- however you would
12 wish to set it up, might want to make myself
13 available.

14 MR. THOMPSON: There's one final issue,
15 Judge, I want to make sure we're clear on and --

16 JUDGE STEARLEY: Certainly.

17 MR. THOMPSON: -- that is the issue of the
18 subpoena duces tecum.

19 JUDGE STEARLEY: Yes.

20 MR. THOMPSON: It is Staff's view that the
21 subpoenas were improperly issued and improperly served
22 and out of time and that, therefore, even though we're
23 agreeing to make the deponents available for
24 deposition, we are not waiving those defects in the
25 subpoena duces tecum and we will not agree to produce

1 any documents.

2 JUDGE STEARLEY: The defect -- one defect,
3 I think you said, was notice --

4 MR. THOMPSON: That is correct.

5 JUDGE STEARLEY: -- in less than ten days,
6 and if I'm reading the rule correctly, that applies to
7 nonparties.

8 MR. THOMPSON: That's exactly right. Not
9 one of those deponents is a party.

10 JUDGE STEARLEY: Well, who is Staff as a
11 party then, Mr. Thompson? Please explain that to me.

12 MR. THOMPSON: Staff? Who is Staff? I
13 don't know. I don't know who Staff is, but I do know
14 that none of these deponents are Staff. They are
15 members of Staff by virtue of their employment with
16 the Public Service Commission, but they are not
17 Staff. They are not parties any more than an employee
18 of AGP is a party to this case or an employee of
19 Missouri American Water Company is a party to this
20 case.

21 JUDGE STEARLEY: Has Staff got Articles of
22 Incorporation filed with the Secretary of State?

23 MR. THOMPSON: No, Staff does not.

24 JUDGE STEARLEY: I don't find that,
25 necessarily, a valid comparison. It may be difficult

1 for me to wrap my head around this, but you're telling
2 me Staff is an entity that's hollow and not composed
3 of anything.

4 MR. THOMPSON: Well, Judge, these deponents
5 are government employees who have particular duties
6 and particular assignments within their -- the course
7 of their official duties, and they are assuredly and
8 emphatically not parties in this case. They are
9 employees of this agency assigned to do certain work
10 in certain cases.

11 JUDGE STEARLEY: Okay. So if any party in
12 this case would serve a subpoena upon Staff for taking
13 of depositions, who would Staff produce for witnesses?

14 MR. THOMPSON: If they asked Staff as a
15 corporate party to produce a witness, they would
16 produce whatever witness was appropriate for the topic
17 set out in that notice. As you know, such a notice
18 has to describe the topics which would be inquired
19 about, and Staff would produce appropriate witnesses
20 for the topics that were noticed.

21 JUDGE STEARLEY: Mr. Conrad, do you have
22 any response?

23 MR. CONRAD: Well, yeah, but I think we're
24 swallowing camels and spitting up gnats. The ten-day
25 deal that Mr. Thompson's referring to does not apply,

1 and I think he acknowledges it's a nonparty.

2 It is difficult for me to conceive of how
3 Staff, which does not intervene, is automatically a
4 party, but as your Honor very aptly characterized, is
5 not a hollow entity.

6 MR. THOMPSON: Staff is a party by virtue
7 of a Commission rule that makes Staff a party to every
8 case.

9 MR. CONRAD: If they are nonparties and not
10 subject to the direction and not under some level of
11 supervision from them, then it would seem to follow
12 from that that -- that if -- that they would need, by
13 Staff, some entity for Staff to, themselves, be
14 subpoenaed in order to compel their attendance at a
15 hearing, and I -- at least insofar as my limited
16 practice over the few years that I've been, that
17 hasn't been done, so it's a little bit -- a little bit
18 ironic to say on one hand that the Staff witnesses are
19 somehow not parties and so we have some concoction of
20 a ten-day rule, but they apparently appear for Staff.

21 Now, I don't know where this is all
22 going. That's why I'm saying we're swallowing camels
23 and spitting up gnats. I think we're -- this is
24 ultimately the decision -- difference with --
25 distinction without a difference.

1 MR. THOMPSON: Well, Judge, if you rule the
2 way Mr. Conrad would like you to rule, then the only
3 group of expert witnesses involved in any of these
4 cases, only Staff, would be treated as parties. I see
5 no reason why these government employees need to be
6 singled out and treated more burdensomely than any
7 other witnesses involved in this case.

8 JUDGE STEARLEY: Well, Mr. Conrad, I'm
9 assuming that you chose these witnesses to get to
10 particular subject matters.

11 MR. CONRAD: Yes, sir, we did. I've
12 been -- I didn't ask, for example, for the rate-of-
13 return of witness or the capital-structure --

14 JUDGE STEARLEY: So --

15 MR. CONRAD: -- witness.

16 JUDGE STEARLEY: -- if Mr. Conrad corrected
17 his notice of deposition and subpoena and just gave
18 you a blanket notice and subpoena and asked you to
19 produce four witnesses to address that subject
20 matter --

21 MR. THOMPSON: I've already agreed to
22 produce the witnesses once, other than Ms. Voss.

23 JUDGE STEARLEY: I understand, and now
24 we're going a step farther on the documents and gave
25 you ten days' notice on that. Then my assumption

1 would be, your response would be to provide a list of
2 names of who those people would be that would be able
3 to produce the documents on that subject matter. Is
4 that the proper procedure --

5 MR. THOMPSON: If --

6 JUDGE STEARLEY: -- you're telling me?

7 MR. THOMPSON: If Mr. Conrad complied with
8 the Supreme Court rules, then Staff would do what the
9 Supreme Court rules require to be done. If Staff's
10 employees were served with a subpoena duces tecum ten
11 days or more prior to the date set for compliance,
12 Staff would comply, unless there was some other
13 defect.

14 If subpoenas were served on the individual
15 witnesses that were requested for deposition, they
16 would appear, again, unless there was some other
17 defect and the Commission were to quash.

18 We're not talking about one defect here.
19 We're talking about several. The service was wrong.
20 The interval was wrong. The issue was wrong. No
21 court would enforce those subpoenas.

22 MR. CONRAD: Might I offer one slight
23 additional comment?

24 JUDGE STEARLEY: Certainly.

25 MR. CONRAD: The rules that you're

1 referring to are basically for the conduct of a trial
2 in circuit court. That's not -- there are certainly
3 some similarities, and we tried, I think, to hew
4 reasonably closely to those rules, but they don't just
5 rubber -- however I want to say it -- cookie cutter
6 apply themselves into an administrative proceeding
7 where you have a multiheaded entity, such as Staff, or
8 for the example, a utility. It just -- it doesn't
9 quite fit the process, and in many instances we
10 make -- we all do, both Judge Stearley, Mr. Thompson,
11 Skip or Mr. England, we all make reasonable
12 accommodations to those rules simply in recognition
13 that they apply to circuit court proceeding in
14 entirely different milieu, in an entirely different
15 environment, and they don't all just precisely fit the
16 administrative requirements. That's why there's kind
17 of separate little statutes, if you will, and the
18 Commission even has its own set of rules with respect
19 to the administrative practice.

20 You don't usually have a lawsuit in
21 circuit court where you have an entity that just
22 simply comes in without intervening, without filing a
23 petition, without filing some kind of a pleading in
24 that circuit court to say, We have some kind of an
25 interest here, make us a party, and then comes in with

1 a squad of witnesses -- to borrow biblical, a cloud of
2 witnesses -- like the Staff does at the Missouri
3 Public Service Commission. It's just -- it just
4 simply isn't the same.

5 Now, we all try to work within the rules
6 and the constraints that we get, but basically you get
7 them down -- reduct, a surgeon -- you get them down to
8 notice, and clearly they had notice, and it's apparent
9 from the attachments, or should be from the
10 attachments to each of the subpoenas what it is we're
11 looking for from that particular witness so, you know,
12 this is -- this is kind of a little bit of a -- I
13 think this is a game, I -- honestly. I'm sorry. I
14 hate to so characterize it, but it's a game, and Staff
15 wants to play this side of it, but in another case
16 that you'll probably have in some future time, or
17 maybe already have, Staff has been on the other side
18 and wants to be pretty -- pretty liberal with its
19 rules with respect to how it goes after some of the
20 utilities.

21 And, frankly, we applaud that because we
22 depend on Staff. I made that -- try and make that
23 clear in my pleadings that, you know, we're not trying
24 to harass them or take them away from their work on
25 the -- on the utility.

1 These are fairly targeted questions
2 that -- that we would expect to ask. I can't predict
3 which -- how the witness is going to answer, so what
4 the follow-up's going to be, but it just strikes me
5 that the rules are there, but they also have to be
6 approached with some sensibility and some sensitivity
7 for the fact that this is not a circuit court
8 proceeding.

9 MR. THOMPSON: Well, this certainly is not
10 a circuit court proceeding, but this is one area of
11 Commission practice where the law specifically makes
12 the circuit circuit rules applicable.

13 JUDGE STEARLEY: Let me back up for just a
14 second. On the demand for production of documents,
15 Mr. Conrad, is this the result of not getting
16 responses to data requests, or is this a request for
17 completely new information?

18 MR. CONRAD: Well, it's -- it's both, and I
19 think, too, the instances -- and actually, I think
20 that it might be -- I'm fessing my memory here, so
21 don't hang this like an albatross, but I think it
22 might be either Mrs. Bolin, or Ms. Bolin and one of
23 the other witnesses are in a certain sense either/or,
24 that I'm not sure as we went through the responses and
25 as we went through the testimony and have, to some

1 extent, listened to some -- some discussions that we
2 have had at various times with those witnesses about,
3 for instance, district-specific pricing and studies on
4 that, who really did it, who really is responsible for
5 it.

6 And one of the problems, Judge, that we
7 have -- and this is not necessarily an unsalutary
8 procedure in itself, but it creates problems when you
9 move it down. The Staff has got into the mode now of
10 doing what's called a Staff report, and that's fine,
11 and that goes on for multiple pages, and then several
12 witnesses may have contributed to that report, but
13 they're not specifically filing testimony, so
14 sometimes it's a little hard to go through that and
15 say, Well, Ms. Bolin, did you do this or did
16 Mr. Harrison do this or did Mr. Foster do this?

17 Well, I just want to find out who so we
18 can then get those things into the record, and
19 that's -- that's, for a large part, what I'm asking.
20 Then if they have -- they have gotten some
21 communications back and forth that have affected how
22 the tenor, if you will, of their testimony from other
23 Staff members, as opposed to Mr. Thompson's office,
24 I'd like to know that. That may -- that may take us
25 somewhere. I don't know.

1 That's why the problem's with discovery,
2 is if you knew every time what the answer was going to
3 be, you might not ask it. It's a pretty good rule in
4 the hearing room, but it's not necessarily the rule
5 when you're trying to do discovery. You're really
6 trying to discover things, maybe trying to make a
7 point in the hearing room.

8 It's -- to some extent, it kind of tries
9 to shorten the hearing if we get the right person to
10 ask the right set of questions to, instead of getting
11 a finger point that says, Oh, well, you should have
12 asked that to so-and-so and he's already been
13 excused. Well, that's what I meant about recalling
14 witnesses. That often causes more commotion than what
15 this has already caused.

16 MR. THOMPSON: Mr. Conrad will certainly be
17 able to ask those kinds of questions in the
18 depositions next week. All the testimony has been
19 filed in this case, including Staff's cost of service
20 reports, and Mr. Conrad can go through them page by
21 page and ask each of these deponents what sentences
22 they were responsible for.

23 MR. CONRAD: Are the district-specific cost
24 studies in the record, Mr. Thompson?

25 MR. THOMPSON: It's my understanding that

1 they have been produced on two different occasions as
2 part of the work papers that have been provided to all
3 parties.

4 MR. CONRAD: Well, that's -- that's not
5 work papers. That's not filed.

6 MS. LEWIS: But we've identified in all of
7 our pleadings and filings who is responsible and what
8 each witness is responsible for.

9 Mr. Conrad has not submitted any data
10 requests to Staff to inquire into this information,
11 nor has he raised it in any of the multiple discovery
12 conferences we've had in this case, which was meant to
13 revolve -- absolve the Commission from having to make
14 these late-in-the-case determinations.

15 The only MR I could find from AGP was a
16 request for copies of documents that we sent in
17 response to an OPC data request. We have provided
18 those. There has been no follow-up communication that
19 that information was insufficient. We've tendered the
20 witnesses, but the documents he's requested, even had
21 they been properly served on us or properly noticed
22 that -- and followed -- followed the rules, most of
23 those are privileged, we've filed -- were filed, which
24 are equally available to him, and as Mr. Thompson
25 said, he can go through during the deposition but

1 shouldn't be able to have open contact to the --

2 MR. CONRAD: Well, Judge, as I said in my
3 case for a prepared response --

4 JUDGE STEARLEY: Please, one at a time.

5 MR. CONRAD: -- I'm not aware of any
6 requirements that says that I have to precede
7 depositions with any particular type of discovery, so
8 I -- I understand your question is -- is trying to get
9 to the point of, Well, what are we -- what are we
10 looking for from the witness? I've tried to make that
11 clear, and if you look into -- now, parties to the
12 case that have been involved in lots of discussions
13 may seem more in those than your Honor does, but the
14 descriptions of the materials, I think, are fairly
15 pointed as to what -- what it is that they're -- that
16 they're being asked.

17 MS. LEWIS: They're very broad and seek
18 mostly information that's already been provided to
19 Mr. Conrad that should not be the burden of Staff to,
20 at the last minute, locate all these documents, print
21 them off, and provide them in hopes --

22 MR. CONRAD: I don't want stuff that's
23 already been provided.

24 MS. LEWIS: -- that Mr. Conrad might ask a
25 question about them. That's just inappropriate at

1 this point in the game.

2 MR. CONRAD: I've disclaimed that in my
3 response. I said I didn't want -- want duplicate
4 copies of stuff, but I could also ask a witness about
5 materials that have been provided, couldn't I?

6 MS. LEWIS: Yes.

7 JUDGE STEARLEY: Certainly.

8 MR. THOMPSON: You certainly can.

9 MR. CONRAD: Sure.

10 JUDGE STEARLEY: Well, here's how we're
11 going to proceed: Counsel will get together and
12 arrange times next week for the depositions of all
13 five witnesses, will arrange a time for me to be
14 present for Ms. Voss' deposition so that I can rule on
15 objections as they are given.

16 Following the depositions, Mr. Conrad, the
17 designs of our discovery conferences were to try to
18 not have discovery bleeding over into the evidentiary
19 hearings. At this point I'm going to modify the
20 subpoenas, which I believe the rule allows me to do,
21 and we'll quash those portions of them requiring the
22 production of documents.

23 Upon your depositions, though, Mr. Conrad,
24 if you identify specific documents through your
25 depositions that you have not been provided with, you

1 Ms. Voss?

2 MR. CONRAD: I think that could potentially
3 work. Why don't we not tie up the judge on that, but
4 I think that's reasonable.

5 MR. THOMPSON: Okay. Thank you. And we'll
6 e-mail back and forth or have a telephone call about
7 the others.

8 MR. CONRAD: Might be more efficient to
9 have a phone call.

10 MR. THOMPSON: Okay.

11 MR. CONRAD: Whatever.

12 MR. THOMPSON: I'll give you a call when I
13 get back to the office.

14 MR. CONRAD: I am there, or I'll wait.
15 Judge, thank you.

16 JUDGE STEARLEY: All right. Thank you all
17 very much. Are there any other additional --

18 MR. CONRAD: Does that take care of the --
19 there was also a Motion in Limine.

20 JUDGE STEARLEY: Yeah, I believe that
21 pertains solely to Ms. Voss.

22 MR. CONRAD: Ms. Voss.

23 JUDGE STEARLEY: I believe we resolved that
24 at the same time here.

25 MR. CONRAD: Okay. So at least subject to

1 all that, should she be listed or not?

2 MR. THOMPSON: She is listed. When you

3 instructed you wanted her on the list, I put her on

4 the list --

5 MR. CONRAD: Yes.

6 MR. THOMPSON: -- and then I filed the

7 Motion in Limine.

8 MR. CONRAD: Okay. So --

9 MR. THOMPSON: So she's listed.

10 MR. CONRAD: At least at this point she

11 stays --

12 MR. THOMPSON: That's correct.

13 MR. CONRAD: Okay.

14 -- subject to, you know, whatever.

15 JUDGE STEARLEY: All right. Are there any

16 other discovery issues we need to take up?

17 MS. LEWIS: No, not from Staff's

18 perspective.

19 JUDGE STEARLEY: I, briefly, while we're

20 still on the record, wanted to touch on the issue of

21 reconciliation, and since I had issued an order

22 regarding that earlier this morning, Mrs. Lewis, you

23 come forward and provided that Staff can offer some

24 additional clarification to the reconciliation.

25 MS. LEWIS: Uh-huh --

1 JUDGE STEARLEY: -- and provided me an
2 example thereof which I found to be very, very
3 helpful, and you have to understand we, on the ninth
4 floor, are not accountants and we need a little help
5 understanding this, so I needed some additional
6 information for myself and the Commissioners, and it
7 looks to me as that will provide an explanation for --
8 as long as we get that same column presentation
9 throughout the entire length of the reconciliation, I
10 believe you showed me what was the first page.

11 MS. LEWIS: Yeah, we didn't have the
12 complete thing. We didn't want to do anything further
13 until we had further instructions from you so --

14 JUDGE STEARLEY: That is quite acceptable,
15 and I provided you a copy. I'm going to rescind this
16 morning's order, so there will be no further
17 obligation other than the additional --

18 MR. CONRAD: Is this a reconciliation or a
19 reconcilement?

20 JUDGE STEARLEY: Reconcilement of the
21 Judge's order concerning the reconciliation.

22 MS. LEWIS: With regard to the example
23 provided, it was just not possible for us to follow
24 that given the number of issues in this case, and we
25 apologize for the misrepresentation to you, the

1 Commission, but it just wasn't possible when we got
2 down to the brass tacks of putting this together.

3 JUDGE STEARLEY: I understand that.

4 MS. LEWIS: Thank you for allowing us to
5 modify it.

6 JUDGE STEARLEY: I appreciate that
7 explanation. How soon can you file a complete form?

8 MS. LEWIS: I know Staff has been working
9 on it today.

10 MS. BOLIN: Tuesday or Wednesday, depending
11 on depositions.

12 MS. LEWIS: Depending on when we have to
13 prepare for deposition and participate in a
14 deposition.

15 JUDGE STEARLEY: Let's say no later than
16 Wednesday.

17 MS. LEWIS: Wednesday at close of
18 business? Okay.

19 JUDGE STEARLEY: And I will have that order
20 issued in EFIS before I leave today that I provided
21 you with a copy of --

22 MS. LEWIS: Yes, we have a copy. Thank
23 you, Judge.

24 MR. THOMPSON: Thank you, Judge.

25 JUDGE STEARLEY: Thank you all, and --

1 MR. CONRAD: Judge, I appreciate your
2 accommodation to moving this to 2:30.

3 JUDGE STEARLEY: Oh, that's -- that's --

4 MR. CONRAD: I should've said that in the
5 beginning but --

6 MR. THOMPSON: I do, too, Judge.

7 JUDGE STEARLEY: It's not a problem at
8 all. And I certainly appreciate all the efforts of
9 the parties to get these issues resolved and get the
10 information to the Commission that it needs to decide
11 in the case.

12 Is there anything else we need to take up?

13 (No response.)

14 JUDGE STEARLEY: Hearing none, we'll go
15 ahead and adjourn, and parties will be contacting me
16 regarding Ms. Voss' deposition.

17 MR. THOMPSON: Thank you.

18 MS. LEWIS: Thank you.

19 MR. CONRAD: Thank you.

20 (The hearing ended.)

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CERTIFICATE

I, Nancy L. Silva, RPR, a Certified Court Reporter, CCR No. 890, the officer before whom the foregoing hearing was taken, do hereby certify that the witness whose testimony appears in the foregoing hearing was duly sworn; that the testimony of said witness 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 hearing 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.

Nancy L. Silva, RPR, CCR