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STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION  
  
TRANSCRIPT OF PROCEEDINGS  
  
Hearing  
  
July 26, 2002  
Jefferson City, Missouri  
Volume 6

Office of the Public Counsel,	)	
	)	
Complainant,	)	
	)	
vs.	)	Case No. WC-2002-155
	)	
Warren County Water and Sewer	)	
Company and Gary L. Smith,	)	
	)	
Respondents.	)	

LEWIS R. MILLS, JR, Presiding,  
DEPUTY CHIEF REGULATORY LAW JUDGE.

REPORTED BY:  
  
KELLENE K. FEDDERSEN, CSR, RPR, CCR  
ASSOCIATED COURT REPORTERS

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9 FOR: Office of the Public Counsel  
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13 FOR: Staff of the Missouri Public  
Service Commission.

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

2 (EXHIBIT NOS. 21 AND 22 WERE MARKED FOR  
3 IDENTIFICATION BY THE REPORTER.)

4 JUDGE MILLS: Okay. Let's go on the record.  
5 We're back on the record to reconvene the hearings in Case  
6 No. WC-2002-155. Although the hearing was adjourned some  
7 weeks ago, the Commission has admitted two late-filed  
8 exhibits, and we are reconvening the hearing for the purpose  
9 of allowing Respondents to conduct cross-examination of DNR  
10 Witness Mueller with respect to those exhibits.

11 Before we begin, let's go around the room and  
12 take entries of appearance, starting with Staff.

13 MR. KRUEGER: Keith Krueger for the Staff  
14 of the Missouri Public Service Commission. My address is  
15 P.O. Box 360, Jefferson City, Missouri 65102.

16 JUDGE MILLS: Thank you.

17 For Public Counsel?

18 MR. COFFMAN: Appearing on behalf of the  
19 Office of the Public Counsel, John B. Coffman, P.O. Box  
20 7800, Jefferson City, Missouri 65102.

21 JUDGE MILLS: And for the Respondents?

22 MR. SCHAEFER: Kurt Schaefer with the law firm  
23 of Lathrop and Gage for Gary Smith and Warren County Water  
24 and Sewer Company. My address is 326 East Capitol Avenue,  
25 Jefferson City, Missouri 65101.

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1 JUDGE MILLS: Thank you. It seemed to me --  
2 and I wasn't really paying a whole lot of attention to what  
3 was going on -- but it seemed to me before we went on the  
4 record, there was some confusion about the two late-filed  
5 exhibits. Is everyone on the same page here?

6 MR. SCHAEFER: Well, Judge, I knew about the  
7 first exhibit that they sought to add, which is proposed  
8 Exhibit WC-2002-155, and I've spoken to Ruth O'Neill about  
9 that in the past.

10 I was not aware that there was a second  
11 exhibit. I am not the primary attorney on this case,  
12 though, so it is possible that someone else in my office got  
13 notice of that and I just don't know it.

14 JUDGE MILLS: Let me ask you this: How did  
15 you know we were having a hearing?

16 MR. SCHAEFER: I believe I found out about  
17 that from Mr. DeFord.

18 JUDGE MILLS: Well, then, it's very possible  
19 Mr. DeFord got the Orders that admitted those exhibits and  
20 you didn't. I'm sure that if someone in your firm knew that  
21 we were having a hearing, the hearing was set in the same  
22 Order that admitted the second exhibit. As long as someone  
23 became aware of the hearing, they probably became aware of  
24 it by receiving the Order and that same order admitted the  
25 exhibit.

1                   MR. SCHAEFER: What's the date of that Order,  
2 Judge?

3                   JUDGE MILLS: 11th of July, 2002.

4                   MR. SCHAEFER: Well, I'll have to check on  
5 that. But I can't say right now that we definitely did not  
6 have notice.

7                   MR. COFFMAN: Your Honor, I wouldn't have an  
8 objection to a few minutes -- to give Counsel a few minutes  
9 to review the second document. It's similar to the first.

10                  MR. SCHAEFER: I'd appreciate just a minute to  
11 read that document if you don't mind, Judge.

12                  JUDGE MILLS: And just to be sure we're on the  
13 same page, I'm going to take a five-minute recess and have  
14 you call Mr. DeFord and make sure that you-all did receive  
15 that document.

16                  MR. SCHAEFER: Thank you, Judge.

17                  JUDGE MILLS: So let's go off the record.

18                  (AN OFF-THE-RECORD DISCUSSION WAS HELD.)

19                  JUDGE MILLS: Let's go back on the record.

20                  Mr. Schaefer, I understand you've had a  
21 chance to look at the document but were unable to contact  
22 Mr. DeFord.

23                  MR. SCHAEFER: That's true. I have had a  
24 chance to read the document and we can go ahead and proceed.  
25 I just don't think it matters that much. I think I can go

1 ahead and address whatever I need to address at this point.

2 JUDGE MILLS: Okay. Mr. Coffman, why don't  
3 you begin with some brief direct?

4 MR. COFFMAN: Thank you.

5 JUDGE MILLS: Actually, before you do,  
6 theoretically you might still be sworn because we're  
7 reconvening the hearing, but let me go ahead and swear you  
8 again.

9 (Witness sworn.)

10 JUDGE MILLS: Go ahead, Mr. Coffman.

11 PAUL E. MUELLER testified as follows:

12 DIRECT EXAMINATION BY MR. COFFMAN:

13 Q. Good morning, Mr. Mueller. Would you state  
14 your name again for the record.

15 A. Paul E. Mueller.

16 Q. And by whom are you employed?

17 A. The Missouri Department of Natural Resources  
18 out of the St. Louis regional office.

19 Q. And in what capacity?

20 A. I'm an environmental specialist and field  
21 inspector.

22 Q. And you already testified earlier in this same  
23 case on June 3rd, 2002, did you not?

24 A. Yes.

25 Q. Are you familiar with a couple of exhibits

1 that have been marked and admitted by the Commission, the  
2 first one beginning with a cover letter from the Department  
3 of Natural Resources dated May 31, 2002?

4 A. Yes, I'm familiar with it. I drafted it.

5 Q. And this is Exhibit 21. And if you would just  
6 briefly describe what this document is, if you recognize it.

7 A. The first two pages are a cover letter signed  
8 by the St. Louis regional director, and then it's followed  
9 by a Report of Inspections, reporting on inspections I did  
10 on May 14th, 2002. Samples were also taken at that time, so  
11 there is a sample report at the end of it. And violations  
12 were also found, so a Notice of Violation was drafted and  
13 sent with it.

14 Q. Is this entire exhibit as it's stapled  
15 together a record that is typically kept in the course of  
16 business in your job at the Department of Natural Resources?

17 A. Yes.

18 Q. Did you create or prepare or participate in  
19 the creation of this document?

20 A. Yes, I did prepare it.

21 Q. Okay. And let me ask you to describe the  
22 other exhibit, which has been marked as Exhibit 22. Do you  
23 recognize that?

24 A. The June 20th letter?

25 Q. Yes.

1           A.       That's a letter that I drafted. Again, it was  
2 written following the investigation of a fish kill in the  
3 lake below Plant No. 1. Samples were taken at Plant No. 1  
4 at that time, and the sample was in violation of the plant's  
5 permit limits.

6           Q.       And by Plant No. 1, you mean a plant in the  
7 bay that Warren County Water and Sewer Company has its  
8 wastewater treatment?

9           A.       Right. Yes, Warren County Water and Sewer  
10 Company Plant No. 1.

11          Q.       So you also prepared this entire Exhibit --

12          A.       Yes, I did.

13          Q.       -- 22?

14                 MR. COFFMAN: At this point, I will offer  
15 Mr. Mueller for cross-examination by the Company.

16                 JUDGE MILLS: Okay. Thank you.

17                 Exhibit 21 and 22 have previously been  
18 admitted by order of the Commission, so we're ready to  
19 proceed with cross-examination.

20                 I suppose, Mr. Krueger, you would be first.  
21 Do you have any questions?

22                 MR. KRUEGER: No questions, your Honor.

23                 JUDGE MILLS: Mr. Schaefer?

24                 MR. SCHAEFER: Thanks, Judge.

25 CROSS-EXAMINATION BY MR. SCHAEFER:



1 Q. Good morning, Mr. Mueller.

2 A. Good morning.

3 Q. Mr. Mueller, the Missouri Clean Water  
4 Commission and the Department of Natural Resources have the  
5 primary responsibilities for regulating water quality in the  
6 State of Missouri, correct?

7 A. Yes.

8 Q. And in your capacity as exercising your  
9 authority for the Missouri Department of Natural Resources  
10 and carrying out those authorities, you conducted these  
11 inspections, correct?

12 A. Yes.

13 Q. Mr. Smith and Warren County Water and Sewer,  
14 they have in the past been issued a wastewater discharge  
15 permit from the Department of Natural Resources, correct?

16 A. Yes, they have.

17 Q. And a wastewater discharge permit permits the  
18 holder of that permit to discharge pollutants to waters of  
19 the State of Missouri, correct?

20 A. Provided it's below the limit set in that  
21 permit.

22 Q. Right. Within a certain criteria, it is their  
23 permit to pollute by discharging pollutants into waters of  
24 the state, correct?

25 A. Yes.

1 Q. What is the receiving waters for the discharge  
2 from Warren County Water and Sewer?

3 A. Incline Lake.

4 Q. And what is -- let me ask you this: The  
5 purpose of issuing a wastewater treatment permit is to  
6 protect the human health and environment, correct?

7 A. Yes.

8 Q. If the director of the Department of Natural  
9 Resources determines that there is a threat to human health  
10 or the environment, he can take immediate action in the form  
11 of an administrative order, can't he?

12 A. I'm not familiar what's required to do an  
13 administrative order.

14 Q. Have you ever been involved in the issuance of  
15 an administrative order?

16 A. No, I have not.

17 Q. Are you personally aware that such a thing  
18 exists in the laws of the State of Missouri?

19 A. Yes.

20 Q. And additionally, the director of the  
21 Department of Natural Resources can issue an administrative  
22 order for civil penalties, correct?

23 A. I'm not familiar enough exactly how civil  
24 penalty administrative orders work.

25 Q. But you are familiar with any violations that

1 may have been received by the Warren County Water and Sewer  
2 Company, correct?

3 A. Yes.

4 Q. And has the director of the Department of  
5 Natural Resources issued any administrative order ordering  
6 Gary Smith or Warren County Water and Sewer to take an  
7 immediate action?

8 A. There's actions pending, but I'm not sure  
9 where they're at at this time.

10 Q. Okay. But to date, right now, has he made any  
11 of those orders?

12 A. No, he has not.

13 Q. Has he ordered any penalties or fines for Gary  
14 Smith?

15 A. Not at this time.

16 Q. Or Warren County Water and Sewer?

17 A. No.

18 Q. Is it your understanding that there are  
19 various relationships between the Department of Natural  
20 Resources and the Missouri Clean Water Commission, but that  
21 the Clean Water Commission of the State of Missouri is the  
22 ultimate authority in water quality issues in the State of  
23 Missouri?

24 A. Yes.

25 Q. Is it true that the Missouri Clean Water

1 Commission can, through the Attorney General's Office, take  
2 immediate action to seek injunctive relief against someone  
3 that they believe is creating an imminent threat to human  
4 health or the environment?

5 A. I'm not familiar with their authorities.

6 Q. Have you ever been involved in a case that the  
7 Clean Water Commission has referred to the Attorney  
8 General's Office for prosecution?

9 A. Yes.

10 Q. Okay. Has that been done in this case?

11 A. Yes.

12 Q. It has?

13 A. I believe it has.

14 Q. Okay. Do you know what stage that's at?

15 A. My understanding is the water pollution  
16 enforcement section referred it to the Commission, and then  
17 it was referred to the Attorney General's Office, but I'm  
18 not sure if it's completely through that process or where it  
19 is in that process.

20 Q. Okay. Is the process that the director of the  
21 Department of Natural Resources has to make a request to the  
22 Clean Water Commission to make a recommendation, then, to  
23 the Attorney General's Office?

24 A. Yes.

25 Q. Do you know if the Clean Water Commission has

1 actually made a recommendation to the Attorney General's  
2 Office?

3       A.       Not without looking in the file. Personally,  
4 I'm not sure where it is in this case.

5       Q.       So as you sit here today, you don't know that  
6 that recommendation's been made?

7       A.       No, I'm not sure.

8       Q.       Well, the Attorney General hasn't sought any  
9 injunctive relief from Gary Smith or Warren County Water and  
10 Sewer, has he?

11      A.       Not that I'm aware of.

12              MR. SCHAEFER: If I could just grab the  
13 exhibit, Judge.

14              JUDGE MILLS: Sure.

15 BY MR. SCHAEFER:

16      Q.       We're here today because of certain Notices of  
17 Violations that were recently issued to Mr. Smith and to  
18 Warren County Water and Sewer; is that correct?

19      A.       That's what I understand.

20      Q.       Okay. And those Notices of Violation were  
21 issued after inspections of the facility?

22      A.       Yes.

23      Q.       Is a Notice of Violation something that the  
24 recipient of the Notice of Violation has the right to  
25 appeal?

1           A.       I'm not sure with the enforcement section how  
2 they handle that.

3           Q.       Okay.

4           A.       What an exact definition of appeal is.

5           Q.       Okay. I believe that the NOV that was issued  
6 on May 14th is the first exhibit that we're dealing with  
7 today at this hearing. That was issued for various reasons,  
8 including exceeding discharge limits; is that correct?

9           A.       That's right.

10          Q.       And would that be exceeding discharge limits  
11 that are in his permit to discharge a certain level of  
12 pollution into the lake, Incline Lake?

13          A.       Yes.

14          Q.       As you sit here today, can you tell me how far  
15 he has exceeded the limits of his permit?

16          A.       Plant No. 1 has a BOD limit of 30, and  
17 on the day of inspection it had an exceedance to 97 with a  
18 223 percent. And it also has a non-filtered residue limit  
19 of 30, and on the day of inspection it was at 84 milligrams  
20 per liter, which is exceedance of 108 percent.

21          Q.       As you sit here today, can you say that those  
22 exceedances created at that time an imminent threat to the  
23 human health or the environment?

24          A.       I felt they were great exceedances and was  
25 damaging the waters near the plant, yes.

1 Q. And I understand your testimony they were  
2 exceedances.

3 A. Yes.

4 Q. But can you testify today that those created  
5 an imminent threat to the public health or the environment?

6 A. If a child would get into the water near this  
7 plant where it's discharging, yes, the child could get  
8 easily very sick.

9 Q. All right. Did you initiate any action to  
10 seek an immediate order from the director of the Department  
11 of Natural Resources?

12 A. I referred my information to the Water  
13 Pollution Control Enforcement Section, and that would be  
14 their job duty.

15 Q. But as you testified, no order's been issued,  
16 correct?

17 A. Not that I know of.

18 Q. And no injunctive relief has been sought,  
19 correct?

20 A. Not that I know of.

21 Q. The NOV what you're looking at, what's the  
22 date of the issuance of that NOV?

23 A. May 31st.

24 Q. What's the date of the cover letter on that  
25 NOV?

1           A.       May 31st.

2           Q.       And in this case, you testified here before  
3 the Commission, I believe, on June 3rd, 2002?

4           A.       I believe that was the date.

5           Q.       And before that you had supplied some written  
6 testimony?

7           A.       Yes.

8           Q.       Okay. My question to you is, if your  
9 testimony was on June 3rd, 2002, yet this NOV was issued on  
10 May 31st, 2002, why didn't you mention that in your  
11 testimony here on June 3rd?

12          A.       I'm not sure why it hadn't been entered into  
13 evidence at that time.

14          Q.       Let me ask you this: Prior to the time of  
15 your testimony on June 3rd, had you discussed that NOV with  
16 Ms. Ruth O'Neill or anyone from the Office of the Public  
17 Counsel?

18          A.       I believe I did, but the exact time and date I  
19 wouldn't know at this time.

20          Q.       Even though you may not know the exact time or  
21 date, would it have been before June 3rd when you testified?

22          A.       Yes.

23          Q.       Okay. In inspecting the Warren County Water  
24 and Sewer Company wastewater facilities, do you have an  
25 opinion as to whether or not those facilities need to be



1 upgraded?

2 A. Yes, I do.

3 Q. What is your opinion on that?

4 A. They definitely need upgraded.

5 Q. I'm sorry? I couldn't hear you.

6 A. They need upgraded. They're extremely  
7 overloaded for the population on the plant.

8 JUDGE MILLS: Mr. Mueller, just let me  
9 interrupt for a second. Can you pull the microphone closer  
10 to you? It's a little difficult to hear sometimes.

11 Thank you.

12 BY MR. SCHAEFER:

13 Q. Mr. Mueller, do you understand that Warren  
14 County Water and Sewer is a privately owned wastewater  
15 treatment facility?

16 A. Yes, I do.

17 Q. And do you understand the implications that  
18 come with that status as far as being regulated by the  
19 Public Service Commission?

20 A. Yes.

21 Q. What is your understanding as far as what is  
22 required of a private sewer company to seek a rate increase  
23 from the Public Service Commission?

24 A. I know they have to apply to the Public  
25 Service Commission and get prior approvals.

1           Q.       Okay. Do you know, in fact, that Mr. Smith  
2 has attempted to seek a rate increase from the Public  
3 Service Commission for the purpose of upgrading the  
4 wastewater treatment facilities?

5           A.       Mr. Smith had stated that to me at one time.

6           Q.       Okay. Do you know whether or not the Public  
7 Service Commission granted him that increase?

8           A.       My understanding was no.

9           Q.       Okay. Do you know the current rate that  
10 Mr. Smith charges for sewer service?

11          A.       I do not.

12          Q.       Okay. What is your understanding of the  
13 definition of an owner or operator under Chapter 644, the  
14 Clean Water Law of the State of Missouri?

15          A.       A person that's responsible for the  
16 maintenance and upkeep of a treatment plant.

17          Q.       Okay. Is it your understanding that also  
18 would include the person that has financial responsibility  
19 for overseeing that facility?

20          A.       The owner would. The operator necessarily  
21 wouldn't.

22          Q.       Okay. Well, let's talk about the owner. Is  
23 it your understanding that the owner of that facility that  
24 controls the financial aspect of operating that facility  
25 would be considered an owner for purposes of Chapter 644?

1           A.       Yes.

2           Q.       And, in fact, if I own or operate a  
3 wastewater treatment facility, yet I have someone else  
4 doing the day-to-day operation of that facility, if I deny  
5 proper funds to that person to run that facility to such an  
6 extent that the facility cannot meet water quality standards  
7 of the State of Missouri, would I also be responsible under  
8 Chapter 644 for any violations that may occur at that  
9 facility?

10          A.       The owner is held responsible more than what  
11 the operator's held.

12          Q.       Do you believe that Gary Smith and the Warren  
13 County Sewer Company can continue to comply with water  
14 quality standards of the State of Missouri without an  
15 upgrade of the Warren County Sewer Company facilities?

16          A.       No, he cannot comply without upgrades.

17          Q.       Okay. Are you aware of the Department of  
18 Natural Resources providing any testimony or providing any  
19 information to the Public Service Commission for any request  
20 that Mr. Smith may have made for a rate increase to improve  
21 his facilities?

22          A.       Not directly familiar with anything.

23          Q.       Are you aware of whether or not it's routine  
24 for the Department of Natural Resources to provide input to  
25 that decision to be made by the Public Service Commission?

1           A.       We routinely copy the Public Service  
2 Commission in our reports.

3           Q.       Okay. What reports would that be?

4           A.       When we do an inspection of the wastewater  
5 facility or water facilities, facilities that are operated  
6 by a Public Service Commission-regulated, we do copy them in  
7 the reports.

8                   MR. SCHAEFER: Okay. That's all the questions  
9 I have, Judge.

10                   I do have a procedural issue, but I guess we  
11 can take that up after everyone's finished the testimony.

12                   JUDGE MILLS: Okay. Mr. Coffman, redirect?

13                   MR. COFFMAN: No redirect.

14                   JUDGE MILLS: Okay. Mr. Mueller, you may step  
15 down.

16                   (Witness excused.)

17                   JUDGE MILLS: Okay. Mr. Schaefer, what was  
18 your procedural issue?

19                   MR. SCHAEFER: May I approach, Judge?

20                   JUDGE MILLS: Sure.

21                   MR. SCHAEFER: The basis of the Office  
22 of the Public Counsel's motion to introduce proposed  
23 Exhibit WC-2002-155 (sic) was that it did not come to their  
24 attention until after the hearing on June 3rd. This witness  
25 has just testified that he told Ruth O'Neill about the NOV

1 and made her aware of it before June 3rd, so I would ask  
2 that the Commission reconsider, because I don't think  
3 there's a basis to admit that into the record after that  
4 hearing because she knew about it.

5                   So, again, I would ask you to reconsider,  
6 because I believe that your previous ruling was based on the  
7 fact that there was a statement from Ms. O'Neill that she  
8 was not aware of this NOV.

9                   MR. COFFMAN: Your Honor.

10                  JUDGE MILLS: Just a minute. I'm reading the  
11 pleading to which Mr. Schaefer is referring, the June 7th  
12 pleading filed by the Office of the Public Counsel, a motion  
13 to reopen the case for taking of additional evidence signed  
14 by Ms. Ruth O'Neill and filed on June 7th.

15                  Mr. Schaefer, can you point to me where in  
16 that pleading it says that she was not previously aware of  
17 this Notice of Violation?

18                  MR. SCHAEFER: I don't have a copy of the  
19 pleading in front of me, Judge.

20                  JUDGE MILLS: I'll hand you one.

21                  MR. SCHAEFER: Okay. I believe the basis for  
22 Ms. O'Neill's request is in paragraph 4 of that document  
23 where in paragraph 3 it talks about the May 14th Notice of  
24 Violation and cover letter. Paragraph 4, it says the Public  
25 Counsel had access to this letter and attachments at the

1 time of the hearing if these exhibits would have been  
2 offered into evidence at that time.

3 JUDGE MILLS: I believe in an earlier  
4 paragraph it states the date on which Public Counsel  
5 actually received the documents.

6 MR. SCHAEFER: It says they received the  
7 document on June 7th, 2002.

8 JUDGE MILLS: Right.

9 MR. SCHAEFER: I believe the witness just  
10 testified these were issued on May 31st and that he had  
11 discussed the NOV and the actual -- I asked him about the  
12 document, and he discussed the document with Public Counsel  
13 before that hearing. So my request would be that you  
14 reconsider.

15 JUDGE MILLS: The basis of admitting those  
16 exhibits was not that Public Counsel was not in some fashion  
17 aware of them; it was that Public Counsel had only received  
18 them after the closing of the hearing. The period of time  
19 between May 31, we have a calendar up here, May 31 was a  
20 Friday. That's when the notice was issued. If it was  
21 mailed that day, it probably wouldn't have been received by  
22 your clients or by anyone until perhaps Monday the 3rd.

23 The hearing was held Monday the 3rd and  
24 Tuesday the 4th of June, and it's certainly within the realm  
25 of reason for Public Counsel to not have received it until

1 the 7th, even though they requested it earlier. So I think  
2 the fact that it was issued on the 31st and made a part of  
3 the record on the 7th, I don't see that there's any need to  
4 reconsider.

5 MR. SCHAEFER: Judge, I would just like to  
6 clarify. I believe the witness' testimony was that he had  
7 made Ms. O'Neill aware of that document before the hearing.

8 JUDGE MILLS: Yes, I heard that testimony.

9 MR. SCHAEFER: And I believe he might have  
10 faxed to her or whatever, but that's my request, Judge.

11 MR. COFFMAN: Your Honor, I think your  
12 understanding is correct. I believe that Ms. O'Neill was  
13 made aware contemporaneously with the hearing of this  
14 document, but it was not in hand until June 7th; hence, the  
15 late filing of it.

16 JUDGE MILLS: And I think to the extent that  
17 there was any due process concerns because it wasn't  
18 admitted at the original hearing, those have been cured by  
19 your opportunity to cross-examine today, and I assume you've  
20 had as much opportunity as you need; is that correct?

21 MR. SCHAEFER: I have, Judge, but it's just  
22 the fact that we've had to appear here today at the expense  
23 of appearing here today.

24 JUDGE MILLS: Okay. Sometimes things like  
25 that can't avoided. Okay. Was that the only procedural

1 item you had to take up?

2 MR. SCHAEFER: Yes, Judge, that's it.

3 JUDGE MILLS: We're going to talk about  
4 briefing schedules. I want to get Supplemental Briefs. I  
5 don't think they need to be extensive, having to do with the  
6 evidence that's been received since the close of the hearing  
7 and the cross-examination today. I assume that you-all will  
8 probably want transcripts before you do that, so as soon as  
9 I have a copy of the transcript in hand, I will issue a  
10 notice setting a briefing schedule.

11 There really isn't -- there hasn't been much  
12 cross-examination. The nature of these two late-filed  
13 exhibits are fairly similar to the previous Notice of  
14 Violations. I don't anticipate it will take you very long  
15 to brief the additional issues that are raised. I'm going  
16 to give about a week from the time that you get the  
17 transcripts in hand for Supplemental Initial Briefs, and  
18 then something in the nature of two weeks for Reply Briefs.

19 Does anyone have a problem with that?

20 MR. COFFMAN: No. We would suggest August 6th  
21 or 7th for all briefing. The sooner the better as far as  
22 we're concerned.

23 JUDGE MILLS: Well, since today is the  
24 26th, realistically, transcripts probably no earlier than  
25 August 2nd and possibly as late as early the following week,



1 which means you might only have a day or two if we say  
2 August 6th or 7th. I'm not sure that's adequate.

3                   So why don't we just cue it off of the day the  
4 transcripts are actually in hand, and do a week and two  
5 weeks, and I don't -- there aren't any holidays that are  
6 going to fall in there. Does anyone have any conflicts that  
7 might require -- vacations, other hearings, anything?

8                   (No response.)

9                   JUDGE MILLS: Okay. I'll set it for a week  
10 and two weeks, and if anybody has a problem with that, at  
11 that point we can always file something.

12                  MR. COFFMAN: I don't know, the Bench may be  
13 aware, but we've not received an Initial Brief yet from the  
14 Company.

15                  JUDGE MILLS: I don't believe one has been  
16 filed.

17                  MR. COFFMAN: But provided that it's filed,  
18 say, a week before Reply Briefs are due, we can reply  
19 quickly.

20                  JUDGE MILLS: I was intending to give two  
21 weeks from the Supplemental Initial Briefs until the Reply  
22 Briefs. I have no idea whether counsel for Respondents is  
23 going to attempt to file its Initial Brief late, but they  
24 may do so, and if they do and if you feel you need extra  
25 time to reply to it, you can ask for that.

1 MR. COFFMAN: Thank you.

2 JUDGE MILLS: Is there anything further we  
3 need to take up on the record?

4 (No response.)

5 JUDGE MILLS: Okay. Seeing nothing, we're  
6 adjourned.

7 WHEREUPON, the hearing of this case was  
8 concluded.

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I N D E X

OFFICE OF THE PUBLIC COUNSEL'S EVIDENCE

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EXHIBITS INDEX

MARKED RECEIVED

EXHIBIT NO. 21

May 31, 2002 Letter to Gary Smith from  
Mohamad Alhalabi, Attached Inspection  
Report

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EXHIBIT NO. 22

June 20, 2002 letter to Gary Smith from  
Mohamad Alhalabi, Attached Notice of  
Violation

384 \*

\*Previously received by order of the Commission.