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STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

TRANSCRIPT OF PROCEEDINGS
Late Prehearing Conference
September 26, 2005
Jefferson City, Missouri
Volume 3

In the Matter of an)
Examination of Class Cost)
of Service and Rate Design)
in the Missouri Jurisdictional) Case No. EO-2002-384
Electric Service Operations of)
Aquila, Inc., formerly known)
as UtiliCorp United, Inc.)

KEVIN A. THOMPSON, Presiding,
DEPUTY CHIEF REGULATORY LAW JUDGE

REPORTED BY:

PAMELA FICK, RPR, CCR #447, CSR
MIDWEST LITIGATION SERVICES

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0020

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

2 JUDGE THOMPSON: We'll go ahead and go
3 on the record. Good morning. We're here for a late
4 prehearing conference in the matter of an examination
5 of class cost of service and rate design in the
6 Missouri jurisdiction electric service operations of
7 Aquila, Inc., formerly known as UtiliCorp United,
8 Inc. This is Commission Case No. EO-2002-384. My
9 name is Kevin Thompson. I'm the regulatory law judge
10 assigned to preside over this matter.

11 Let's take oral entries of appearance at
12 this time, and we'll begin with the company.

13 MR. SWEARENGEN: Thank you, Judge.
14 James C. Swearengen and Janet Wheeler, Brydon,
15 Swearengen & England, 312 East Capitol Avenue,
16 Jefferson City, Missouri, appearing on behalf of
17 Aquila, Inc.

18 JUDGE THOMPSON: Very well. We'll work
19 our way around the room. Let's start with
20 Mr. Conrad.

21 MR. CONRAD: Okay. Thank you, Judge.
22 On behalf of Sedalia Industrial Energy Users
23 Association and Ag Processing, Stu Conrad, Finnegan,
24 Conrad & Peterson, 3100 Broadway, Suite 1209, Kansas
25 City, Missouri 64111.

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1 And, Judge Thompson, I'm not sure if I
2 have done so before, but if I did not, I should have,
3 and that is also enter the appearance of Jeremiah
4 Finnegan of the same law firm and address.

5 JUDGE THOMPSON: For the same clients?

6 MR. CONRAD: Yes. Oh, yes.

7 JUDGE THOMPSON: Thank you.

8 MAJOR PAULSON: Major Craig Paulson on
9 behalf of the Federal Executive Agencies, 139 Barnes
10 Drive, Suite 1, Tyndall Air Force Base, Florida
11 34203.

12 JUDGE THOMPSON: Thank you.

13 MR. KEEVIL: Appearing on behalf of the
14 Empire District Electric Company, Jeffrey A. Keevil
15 of the law firm Stewart & Keevil, L.L.C., 4603 John
16 Garry Drive, Suite 11, Columbia, Missouri 65203.

17 And Judge, while I'm on that, if I could
18 make a statement here, I discovered late last week
19 after not receiving most of the testimony nor your
20 order which was issued about a week ago Friday, that
21 for some reason I do not appear on the service list,
22 although my clients were made a party by virtue of
23 being in that Aquila rate case, and we are listed as
24 being among those who were drawn into the case which
25 you issued back whenever it was. So if the proper --

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1 JUDGE THOMPSON: Thanks for letting me
2 know that. I will make sure that you're entered as a
3 party and that, in fact, everyone else is entered as
4 a party that should be. Sir.

5 MR. STEINMEIER: Your Honor, please let
6 the record reflect the appearance of William D.
7 Steinmeier and Mary Ann Garr Young, William D.
8 Steinmeier, PC, P.O. Box 104595, Jefferson City,
9 Missouri 65110-4595 appearing on behalf of the City
10 of St. Joseph, Missouri.

11 JUDGE THOMPSON: Very well. Mr. Comley.

12 MR. COMLEY: Appearing on behalf of the
13 City of Kansas City, let the record reflect the entry
14 of Mark W. Comley, Newman, Comley and Ruth, 601
15 Monroe, Suite 301, Jefferson City, Missouri 65101.

16 JUDGE THOMPSON: Thank you. Mr. Mills.

17 MR. MILLS: Lewis R. Mills, Jr. on
18 behalf of the Office of Public Counsel and the
19 public. My address is Post Office Box 2230,
20 Jefferson City, Missouri 65102.

21 JUDGE THOMPSON: Thank you.

22 Mr. Williams.

23 MR. WILLIAMS: Appearing for the staff
24 of the Missouri Public Service Commission, Dana K.
25 Joyce and Jason Williams, P.O. Box 360, Jefferson

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1 City, Missouri 65102.

2 JUDGE THOMPSON: Thank you. And I think
3 there's some parties that are not present, is that
4 correct, or have I mis --

5 MR. WILLIAMS: Judge, I saw Mr. Kaufmann
6 outside. I think he may be showing up shortly.

7 JUDGE THOMPSON: He's coming this way?

8 MR. WILLIAMS: I believe.

9 JUDGE THOMPSON: Okay. The purpose of
10 this late prehearing conference is primarily for the
11 parties to discuss and agree on the issues that we
12 presented to the Commission for determination at the
13 evidentiary hearing which is coming up in November.
14 I believe November 7th through November 10th.

15 We also have an outstanding issue as to
16 late -- or excuse me, local public hearings which
17 have been requested by the Public Counsel, only the
18 company is opposed. I think we indicated the week
19 that we would be holding those, October 17th, as I
20 recall, which is about the only week we're -- there's
21 a sufficient opening.

22 Aquila has indicated that there's not
23 sufficient time to provide notice by bill insert and
24 that it would cost approximately \$130,000 to provide
25 a postcard notice to all the ratepayers; is that

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1 correct, Mr. Swearengen?

2 MR. SWEARENGEN: That is correct, Your
3 Honor.

4 JUDGE THOMPSON: Okay. So I have a
5 question for the Public Counsel, which is, can those
6 local public hearings not be held simultaneously with
7 the local public hearings that are already scheduled
8 in the ongoing rate case? I realize that they would
9 be, then, after the evidentiary hearing, but my
10 understanding of what the courts have said about
11 local public hearings is that they are part of the
12 evidentiary hearing, the purpose being to take the
13 testimony of the public.

14 So I don't see that, myself, as an
15 insuperable burden, but I would be more than happy to
16 hear from you and from the other parties as to your
17 position on that suggestion.

18 MR. MILLS: They certainly could be held
19 in conjunction with those other hearings. That does,
20 of course, preclude the possibility of discussing
21 settlement in this case.

22 JUDGE THOMPSON: Well, gosh, you know,
23 the case has been pending since 2002. If you haven't
24 settled it yet, I don't know that I'm all that
25 disturbed by that. And, of course, you can always

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1 pick up the phone in your office and call the other
2 parties and say, Hey, let's settle that Aquila class
3 cost of service case.

4 MR. MILLS: When -- when does the
5 Commission anticipate issuing an order in this case?
6 I know there was some reason it was scheduled the way
7 it was so that the order would come out sometime in
8 advance of the order in the rate case.

9 JUDGE THOMPSON: Well, the hearing would
10 be concluded in November. If the local public
11 hearings were held simultaneously with the rate case
12 hearings, I think those are also in November, is that
13 correct?

14 MR. MILLS: Around Thanksgiving, I
15 believe.

16 MR. SWEARENGEN: No. The rate case
17 hearings are later.

18 JUDGE THOMPSON: Excuse me.

19 MR. MILLS: Yeah, later.

20 JUDGE THOMPSON: So the record would be
21 complete by the end of November, and then the parties
22 would have an opportunity to brief which would take
23 up part of December. And then you've got the
24 holidays and then you've got the actual evidentiary
25 hearing on the rate case which is set for, I believe,

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1 at this point, five weeks, which takes up most of
2 January and part of February. There would then be
3 something of a breather in the rate case while you
4 were briefing that, and that's when the order in the
5 class cost of service case would have to be written
6 and issued.

7 So, you see, I'm speaking from the point
8 of view of practicalities as to when I would have
9 sufficient time to do that. So that's -- that's kind
10 of how the schedule looks to me.

11 Of course, the Commission has its whole
12 new briefing theory whereby the principal briefs are
13 filed I think before the hearing; isn't that the
14 idea? The notion being that, of course, you know
15 what your witnesses are going to say and then you get
16 a reply brief where you can say -- throw whatever
17 insults you want at what the other guy's witnesses
18 have said. In that case, the interval for briefing
19 need not be as long as traditionally. Perhaps the
20 order could be done in December with an eye to that.
21 Of course, we've got to get five commissioners to
22 agree, or at least three of them, to agree on an
23 order. So there you are.

24 Anyway, does anyone have -- anyone else
25 have any thoughts, positions they'd like to share on

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1 this notion of whether we can combine those local
2 public hearings? I'm just thinking about saving --
3 yeah, I'm concerned about two things: I'm concerned
4 about the cost, \$130,000, which maybe isn't a lot
5 when it's spread over -- I don't know, how many
6 ratepayers do you have?

7 MR. SWEARENGEN: Well, we're talking,
8 okay, 200,000.

9 JUDGE THOMPSON: You know, every Sunday
10 at church somebody grabs me by the collar and wants
11 to show me the 92 cent thing on their cell phone bill
12 and ask me what that is. I'm just wondering if this
13 \$130,000, I'm sure, would be of great concern to some
14 of the ratepayers regardless of how big it is when
15 it's actually passed onto them.

16 MR. MILLS: That is a concern.

17 MR. SWEARENGEN: One of the problems --
18 let me -- I think that the notices for the electric
19 case local hearings have already gone to press.

20 JUDGE THOMPSON: That's for the rate
21 case?

22 MR. SWEARENGEN: Yes. For those local
23 hearings.

24 JUDGE THOMPSON: Right.

25 MR. SWEARENGEN: And if we're going to

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1 include -- if we're going to have a notice for the
2 cost of service case -- I'd have to check -- I would
3 assume that you would -- we would want to do it in
4 the cycle billing process to hold the cost down, but
5 whether that's doable or not, I don't know. I'd have
6 to check.

7 JUDGE THOMPSON: So you're saying even
8 if they're combined --

9 MR. SWEARENGEN: We may be running into
10 some additional costs, that's right.

11 JUDGE THOMPSON: Okay. Well, that's
12 certainly a valid point.

13 MR. SWEARENGEN: I just don't know the
14 answer for sure.

15 JUDGE THOMPSON: All right. I have to
16 admit I'm also concerned with the possibility that
17 the company has raised that ratepayers will be
18 confused by having notices and hearings on two
19 different cases at one time, particularly since I'm
20 not -- I'm not convinced that they will really
21 understand what the class cost of service case is
22 about and what it means for them.

23 So that if we send people notices
24 suggesting that there's a certain percentage
25 decrease, that that customer class is going to see,

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1 as staff has proposed, then the actual rate case, in
2 fact, doesn't result in a decrease for anybody, you
3 see? There's a danger of causing public angst
4 unnecessarily, is my thought.

5 MR. MILLS: But there's -- there's a
6 corresponding danger that if the Commission decides,
7 for example, to raise on a revenue-neutral basis to
8 the company, but certainly not a revenue-neutral
9 basis to the customers, if they decide to raise
10 residential rates by 10 percent in this case and then
11 by another 10 percent in the following case, that's a
12 double whammy and --

13 JUDGE THOMPSON: That certainly is.

14 MR. MILLS: -- and I think the public
15 needs the opportunity to hear about that. I mean,
16 it's all well and good to say it's revenue-neutral,
17 but the public does not see it that way; it's either
18 up or down for them.

19 JUDGE THOMPSON: Well, and you're
20 absolutely right. It is not revenue-neutral for
21 them. Somebody is gonna pay less and somebody's
22 gonna pay more, even if the revenue of the company is
23 identical.

24 MR. MILLS: And I think the impact to
25 the customers can be as great from this case as it

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1 can from the rate case.

2 JUDGE THOMPSON: That's true.

3 MR. SWEARENGEN: I think part of the
4 problem is I don't know when the last time we had a
5 cost of service case in front of the Commission.
6 It's been quite a few years and I don't recall
7 whether in those cases we had local public hearings
8 or not. And maybe that doesn't really matter, but
9 the timing involved is coming together with the rate
10 cases --

11 JUDGE THOMPSON: But the whammy would
12 all come out of the rate case in the sense that
13 that's where the new rates would actually be made and
14 implemented, and that's another reason why I -- I, at
15 least, would like to combine the local public
16 hearings because I think, intellectually, it may even
17 be more honest to say well, there's two tracks here,
18 either one of which or both may lead to an increase
19 for you. One of them is case X in which we're doing
20 this, and one of them is case Y in which we're doing
21 this. Now, you see what I'm saying?

22 MR. MILLS: Yeah. And, of course,
23 there's still a pending motion to reconsider that
24 says you're not to consolidate the two cases, which
25 has not yet been ruled on.

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1 JUDGE THOMPSON: That's true.

2 MR. MILLS: Which would remove some of
3 that problem; in fact, remove all of that problem.

4 JUDGE THOMPSON: Well, I'm certainly not
5 gonna rule on that here, so I won't respond.

6 MR. SWEARENGEN: If it's of any value, I
7 mean, the company really has no objection if we're
8 going to go ahead and have the local hearings in this
9 case in conjunction with the local hearings in the
10 rate case, I don't know what that does to -- Lewis
11 pointed out the -- the problem if we get this settled
12 before then or whether we could even then get it
13 settled, or whether --

14 JUDGE THOMPSON: When you're talking
15 about settling, you're talking about what happened in
16 the Laclede gas case; is that correct?

17 MR. MILLS: Right.

18 JUDGE THOMPSON: Which they're hearing
19 right now in the next room?

20 MR. MILLS: Yes.

21 JUDGE THOMPSON: The idea being that
22 there's a settlement that's being discussed, it's not
23 finalized and this might be perceived as some kind of
24 skullduggery by the public or certain newspapers?

25 MR. MILLS: Well, I think -- certain

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1 newspapers, the public, certain senators and several
2 members of the Commission itself, although they set
3 up that schedule, they seem quite taken aback that
4 the Public Counsel and other parties would have
5 engaged in settlement discussions during the
6 scheduled settlement conference in advance of local
7 public hearings. So to the extent that -- that this
8 is denominated as a settlement conference, I -- I
9 certainly can't participate in a settlement
10 conference. You said on the record this morning that
11 it was simply to talk about the list of issues, and
12 we can certainly do that.

13 JUDGE THOMPSON: Now, why can't you
14 participate in a settlement conference?

15 MR. MILLS: Because I don't want to get
16 myself in -- in the same position that I found --
17 that the office found itself in in the Laclede case
18 in which the commissioners were, pretty much in
19 public, accusing the parties of doing deals without
20 the public input. I need to have the public input
21 before I can engage in settlement discussions.

22 JUDGE THOMPSON: Well --

23 MR. CONRAD: I don't have the scheduling
24 in front of me. I think somebody else does. My
25 vague recollection in this case is that this actually

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1 was set up and denominated towards a settlement
2 conference.

3 MR. MILLS: I believe it was.

4 MR. CONRAD: Without -- without regard
5 to what --

6 JUDGE THOMPSON: Right.

7 MR. CONRAD: -- you indicated, yeah,
8 settlement conference, September 26th through
9 September 28th, so --

10 JUDGE THOMPSON: Well, you guys who are
11 part of this Bar and come down here a lot to see
12 what's gonna happen to your clients know that the
13 Commission has been -- has been going through some
14 anxiety over the past couple years with the process,
15 particularly with rate cases, and really with all the
16 big cases in terms of can we do it better, can we do
17 it the way that the commissioners have less to read,
18 what should we actually call these things, this is
19 what we always used to call the late prehearing
20 conference, which is what I called it on the record
21 this morning; because as far as I'm concerned, that's
22 as good a description as any.

23 And if you call it a settlement
24 conference, then you have the problem of -- exactly
25 the problem of perception that Public Counsel has

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1 mentioned, which is very real, has been very real in
2 the Laclede case and puts all sorts of stress,
3 pressures on participants that don't help in any way
4 towards moving towards a resolution of the case.

5 So that's neither here nor there. But
6 the purpose of this gathering is still whatever it
7 has traditionally been at this point in a contested
8 case.

9 MR. CONRAD: Judge, I don't know if
10 this -- if this offers any comfort. It's at least
11 intended as that. Were the parties to discuss a
12 mutually satisfac -- I'll not use the term
13 settlement, so I'll use the term mutually
14 satisfactory resolution of the mutually acceptable
15 solution, the Commission would, nonetheless, at some
16 point in time, be presented with a document which
17 would then have to evaluate in its -- in its role as
18 saying is this consistent with the public interest.

19 JUDGE THOMPSON: Right.

20 MR. CONRAD: So it would seem to me that
21 at least one thing that -- that Public Counsel might
22 want to think about would be whether the -- the
23 vehicle of the public hearing, which is -- which, as
24 you're suggesting would be taken as part of the
25 record in the proceedings, would not be entered into

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1 and received by the Commission as going to that
2 question. And then you would have, at least that
3 hypothetical, which I grant has a number of if's,
4 and's and but's in it, that then would have a
5 specific post on which -- on which public comment
6 would be -- would be taken. So I guess I'm --
7 JUDGE THOMPSON: In other words, if you
8 produce the document before the local public --
9 MR. CONRAD: -- if it's the chicken or
10 the egg -- well -- well, for example -- yeah, I guess
11 what I'm going to is Mr. Mills is suggesting that
12 he's been shackled, and I'm not unsympathetic to his
13 feeling. I'm just suggesting to him that there might
14 be another -- another interpretation because, you
15 know, parties, when we settle any case, we always
16 settle it as among ourselves and then present that --
17 that package to the Commission for its evaluation.
18 And it gets the final say because we
19 typically put in the boilerplate that nobody's bound
20 if the Commission doesn't agree.
21 JUDGE THOMPSON: Right.
22 MR. CONRAD: So, you know, maybe that's
23 not so much for the bench, but perhaps for Mr. Mills.
24 JUDGE THOMPSON: Well, I mean, that's a
25 very good possibility. I think a lot of the problem

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1 in the Laclede case came from the fact that the
2 details of the settlement at that point I don't think
3 had been able to be read by the parties were
4 confidential; is that correct?

5 MR. MILLS: Privileged, I believe,
6 rather than confidential, but yeah.

7 JUDGE THOMPSON: At any rate, not able
8 to be placed out in public for the public to comment
9 on. You know, here's this case, and oh, by the way,
10 we're contemplating settling it in this fashion; what
11 do you think about that, right? That's what, I
12 guess, you want to take to your clients, the
13 public --

14 MR. MILLS: Right.

15 JUDGE THOMPSON: -- to get comment on?

16 MR. MILLS: And the way the Commission
17 resolved it in the Laclede rate case was to hold two
18 sets of local public hearings which, you know, turned
19 out to be expensive and a not terribly elegant
20 solution because, you know, because if you try to
21 rush to a local public hearing, you either get
22 inadequate notice or expensive notice.

23 MR. SWEARENGEN: Well, let me ask --
24 we're talking about local hearings now, after the
25 evidentiary hearing in this case?

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1 JUDGE THOMPSON: Right.

2 MR. SWEARENGEN: So I'm not sure how
3 that's gonna help you work around trying -- let's say
4 we litigate some of this and then you find out, maybe
5 after your local hearing, that your clients have
6 preferred you go at it in a little different way. I
7 mean, I don't know. I mean I appreciate your
8 problem.

9 MR. MILLS: That's a problem too, but
10 one of the reasons that you settle cases is to
11 eliminate the cost and the trouble and the time it
12 takes to prepare prefiled testimony, prepare and
13 conduct a hearing, and that's just not gonna be an
14 option if you have local public hearings after the
15 evidentiary hearing, so...

16 I mean, it doesn't -- it doesn't
17 entirely preclude settlement, which is why I was
18 asking when the order might be issued, because we
19 won't really even be able to seriously begin
20 discussing settlement until sometime after the
21 evidentiary hearing. But there may, as the judge
22 points out, may be a time interval in there that
23 settlement could be discussed.

24 MR. CONRAD: And the challenge with that
25 is it saves time and money.

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1 MR. MILLS: Right. Exactly.

2 JUDGE THOMPSON: Well, maybe it's
3 cheaper to hold a separate set of local public
4 hearings prior to the evidentiary hearing in this
5 case, which is what I proposed but I'm not happy
6 about, I think the week of October 17th. There would
7 be the cost of notice, but I don't know how you can
8 avoid it other than not having local public hearings.
9 As Mr. Mills points out, this is hardly revenue-neutral
10 to his clients.

11 MR. MILLS: How much -- how much advance
12 time does it take to get a -- to get a bill insert?

13 MR. SWEARENGEN: I think we're beyond
14 that point, aren't we, to do for cycle billings? For
15 cycle billings --

16 MR. MILLS: How much time does it take?

17 UNIDENTIFIED SPEAKER: Well, it takes a
18 month to mail out a cycle billing, so that's 30 days
19 plus the time to create whatever it is you're going
20 to put in that. So probably at least two weeks.

21 MR. MILLS: Two weeks? Okay.

22 UNIDENTIFIED SPEAKER: I'm guessing.

23 MR. MILLS: Okay.

24 UNIDENTIFIED SPEAKER: So we're talking
25 a month and a half.

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1 JUDGE THOMPSON: Okay.

2 MR. SWEARENGEN: And then, of course,
3 depending on the language or the form of the notice
4 itself, that may create initial issues.

5 JUDGE THOMPSON: Can you do notice by
6 newspaper ad instead of the mail?

7 MR. MILLS: I think that's certainly --
8 as I said, you know, if you -- if you end up doing it
9 on the -- on the fast track, you end up either with
10 expensive or inefficient notice, and I think one of
11 the complaints that a number of people, including, I
12 think, some of the commissioners had in the Laclede
13 rate case, was that there wasn't sufficient notice of
14 the first round of local public hearings.

15 JUDGE THOMPSON: How was it done in that
16 case?

17 MR. MILLS: I think it was done by
18 newspaper. I don't think there was any direct notice
19 to customers. The second one was done, I believe, by
20 a postcard mailing which created its own set of
21 problems.

22 MR. CONRAD: Well, I don't -- by making
23 this comment, I don't -- I don't want to open up a
24 whole new line of discussion. We are on -- my
25 clients are on record as not opposing Mr. Mills'

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1 request.

2 JUDGE THOMPSON: That's correct.

3 MR. CONRAD: And we intend to -- to stay
4 there, and I think the utility has responded and said
5 they're not opposed. But the question remains what
6 Your Honor hints at in the sense of a discussion
7 about confusion --

8 JUDGE THOMPSON: Uh-huh.

9 MR. CONRAD: -- is what, given the
10 nature of this process -- of this particular case
11 process, what would public input to that bring to us?

12 JUDGE THOMPSON: An aroused and upset
13 public.

14 MR. MILLS: Or possibly not. I mean, I
15 think a very meaningful public input is a low
16 turnout. That -- that speaks volumes to the interest
17 of the public and the merit of the company's
18 increase. I mean, I think, you know, a lot of people
19 look at it as though if you hold a local public
20 hearing and nobody shows up, you've wasted your time.
21 But I think that's absolutely incorrect. I think
22 that's an important thing to know.

23 MR. CONRAD: With respect to this one,
24 Mr. Mills isn't -- isn't talking about the company's
25 input.

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1 MR. MILLS: No. It's revenue-neutral.

2 MR. CONRAD: It's not before the public
3 in this case.

4 MR. MILLS: No. Although again, that
5 certainly is true.

6 MR. WILLIAMS: But there is the issue of
7 a possible increase to a particular customer, of
8 class or classes --

9 MR. MILLS: Right.

10 MR. CONRAD: Yes.

11 MR. SWEARENGEN: That's why we said, you
12 know, generally we believe the public ought to be
13 notified of these things and I guess reluctantly took
14 the position that we were afraid here, given the
15 timing with the rate case, the complexity of this
16 proceeding and the confusion, and plus the cost, that
17 we just wanted to bring those matters to the
18 Commission's attention and their concern about what
19 we were gonna really end up doing here.

20 JUDGE THOMPSON: Well, I think that's
21 very fair, and I think the Commission will, indeed,
22 be concerned, but the Commission's already decided
23 not to consolidate the cases primarily for the
24 reasons raised by Mr. Conrad, that the class cost of
25 service shifts the validity of that case. And the

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1 reasoning behind that can very well be disrupted and
2 confused if you put into the rate case we're also
3 thinking about increasing the revenue.

4 MR. SWEARENGEN: Let me -- let me just
5 toss out one other thing. I think that to the extent
6 we can settle any or all of this case, those
7 possibilities are increased if we can go ahead and
8 get the local hearings in this cost of service case
9 out of the way before we have the evidentiary
10 hearings.

11 JUDGE THOMPSON: Okay.

12 MR. SWEARENGEN: I really -- I really
13 believe that. I appreciate where -- where Lewis
14 Mills is in this case. I mean, he's not gonna have
15 any guidance on how to try the case, he isn't gonna
16 know what his clients think until after the
17 evidentiary hearings, and that's -- that's a tough
18 position to be in.

19 So I think if we can find some way to at
20 least get that out of the way -- what we may end up
21 doing, ultimately, is saving money on the back side
22 by settling some or all of the case, once he's in a
23 position to go forward in that direction.

24 JUDGE THOMPSON: Okay.

25 MR. SWEARENGEN: And my instincts tell

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1 me that we would be better served to move in that
2 direction than we would be to put the hearing in --
3 the local hearing in after the evidentiary hearings.

4 JUDGE THOMPSON: Okay. Well then, I'll
5 go to the Commission and tell them that we need to
6 have local public hearings the week of October 17th,
7 unless you think the calendar would provide for it
8 earlier.

9 MR. WILLIAMS: Judge, and staff
10 believes, as indicated in its filing, that to have
11 adequate notice to the public, they need to have some
12 indication of the possible magnitude of rate changes
13 that might affect them.

14 JUDGE THOMPSON: Well, that's the second
15 issue we need to talk about. And I've been -- I've
16 been saving some filings here made as late as Friday
17 by staff and by the company. This is staff's
18 proposal that the notice include a chart showing the
19 percentage change for each class advocated by each
20 party to the case, correct? And there's been some
21 sniping back and forth as to whether staff's
22 illustrated chart is accurate or not accurate, or
23 which service area is included or isn't included and
24 how the public might -- might respond to these
25 things. Do I hear any comments?

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1 MR. CONRAD: Well, I have been working
2 on a, I guess a response, but it seems to have been
3 overtaken by sur replies to the -- sur responses or
4 something, but I guess our -- our sense is that the
5 numbers, without -- without intending to comment on
6 the merit or lack thereof, putting out a notice or to
7 put it out there, it's clear that there may not be
8 agreement as to even how one party's proposal would
9 have impact, and it has a tendency of locking
10 people in, which goes to some extent to the earlier
11 discussion about, well, would we be doing a public --
12 a public hearing at that date and time proposed in
13 order to create a milieu in which one or more parties
14 felt that they were able to discuss some kind of
15 resolution to it, and then you end up appearing to
16 lock people into a position, admittedly which they
17 have filed, but they -- the bases of some of the
18 filings are not the same. So I --

19 JUDGE THOMPSON: So what you're saying,
20 it's apples and oranges?

21 MR. CONRAD: Yeah, a little bit.

22 JUDGE THOMPSON: Yes.

23 MR. CONRAD: And that's -- that's part
24 of the challenge in a case of this nature. Until the
25 experts and the wizards do their wiz -- wizzing, no

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1 pun intended --

2 JUDGE THOMPSON: Are you getting all
3 this down?

4 MR. MILLS: You need to say "wizardry."

5 MR. SWEARENGEN: I would like to have a
6 copy of this transcript.

7 MR. CONRAD: Wizardry, yes. Thank you,
8 thank you, counsel. Until their wizardry is
9 completed, it is a little bit difficult to say that
10 you have a target that hasn't stopped moving. So, I
11 mean, that's a -- that's a problem.

12 MR. SWEARENGEN: And once again, in a
13 perfect world, I mean, I think it would be great if
14 they could do that. If you have a notice that laid
15 out all these possible scenarios, but I'm not -- I'm
16 not sure that we've got time to resolve all that
17 among ourselves first, and then get the notice out.

18 MR. CONRAD: It's clear we don't have
19 any problem with the public hearing or the notice,
20 but what we -- what we tell people that this is
21 about, and I think there could be some wording that
22 would hopefully be mutually acceptable.

23 JUDGE THOMPSON: Couldn't you have a
24 handout at the local public hearing that would give
25 you some lead time to resolve some of these issues of

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1 apples and oranges?

2 MR. MILLS: With all due respect, no, I
3 don't think that's adequate. I mean, unless the
4 public -- unless the public knows that they're at
5 least from the residential class, unless they know
6 the range of exposure that they're confronting, you
7 know, they won't know whether it's worth their time
8 to turn out to the local public hearing. I think, at
9 the very least, the notice has to say, you know,
10 there are proposals in this case that would raise
11 your rates by X percent, and I think we need to give
12 them the maximum --

13 JUDGE THOMPSON: What if it was limited
14 to that rather than a chart?

15 MR. MILLS: I think that would be fine.
16 I'm not sure that, at least from the residential
17 class, that -- it would be nice to have at least some
18 indication of what the other classes would do because
19 I think you're gonna hear from members of the public
20 that it's not necessarily fair to raise their rates
21 so that industrial rates can go down.

22 And so I think it would be good for the
23 notice to at least speak in general terms of what
24 other classes may -- you know, the range of results
25 for other classes. Doesn't have to be in the form of

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1 a chart, but I think the end points ought to be laid
2 out so that people know what's going on in this case.
3 I mean, it's easy to sit here and say, oh, this is a
4 really complicated case and it's revenue-neutral and
5 so we can't really tell the public what's going on,
6 but I think we need to tell them what they're -- what
7 they're faced with, the possibilities that may hit
8 them as a result of this case.

9 MR. CONRAD: And again, with respect to
10 Mr. Mills' position, his statement to some extent in
11 my view begs the question, it's not -- it's not a
12 proposal that somebody's rates go up so that somebody
13 else's rates can go down and, unfortunately, that's
14 the terminology that he's chosen. The proposal, I
15 think, and work in the case is to try to bring all of
16 the rates into approximation as much as we can
17 related to the cost that that group of customers
18 imposes on the company to provide them with service.

19 Now, that's what I mean about the
20 wording of the notice, and I think -- I think some
21 wording can be -- can be achieved that may not -- may
22 not be argumentative, but is nonetheless factual with
23 respect to the case.

24 MAJOR PAULSON: I think that's, I mean,
25 a key point, and I mean, obviously if you go to the

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1 public and you say, you know, this group's proposing
2 your rates go up this percent and this group's
3 proposing they go down this percent, I mean, you know
4 what the public's gonna say; they're gonna say we
5 want lower rates.

6 MR. WILLIAMS: Judge, that goes back to
7 staff's motion for clarification that the Commission
8 ordered -- in its order where it declined to
9 consolidate the cases. Just what is the scope of
10 this case?

11 JUDGE THOMPSON: Well, you know, this
12 case has been pending, as I pointed out, from 2002.
13 I would hope the parties would have some notion of
14 what the scope of the case is since you've been
15 working on it for three years.

16 MR. WILLIAMS: But the Commission's also
17 added parties recently to this case --

18 JUDGE THOMPSON: That's right.

19 MR. WILLIAMS: -- and the concern is
20 whether or not the scope's changed as a result of
21 that.

22 JUDGE THOMPSON: I don't think
23 there's -- there's anything in that order suggesting
24 that the scope of the case is gonna change because
25 these parties are being added. Rather, they were

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1 added because -- out of fairness: It seemed like
2 they should have an opportunity to be heard and to
3 litigate, should they choose, with respect to the
4 outcome of this case.

5 MR. CONRAD: And I think --

6 JUDGE THOMPSON: Most of them have
7 responded that they don't want to be in it and that
8 they should be allowed not to participate.

9 MR. CONRAD: And I think the only thing
10 we had asked, in a very narrow request that we had,
11 is that just -- if the Commission brought them in,
12 that they --

13 JUDGE THOMPSON: Take the cases with
14 filing.

15 MR. CONRAD: -- take the case as it was
16 and shouldn't be heard to go back to argue about the
17 structure of the sample, for example, on the word
18 research and that type of stuff, which I have no idea
19 if anybody has attempted to do anything, but that
20 seems to me to be only fair.

21 JUDGE THOMPSON: Well, the Commission's
22 order went out August 29th, and nobody has filed
23 anything since then indicating that they don't want
24 to take the case. As I indicated, the ones I've
25 heard from have basically said, please, please,

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1 please don't make us a part of this case, so...

2 MR. SWEARENGEN: I would hope that we
3 could come up with some language that -- for a notice
4 that adequately addresses Lewis Mills' concerns and
5 Stu Conrad's concerns and we could get that out and
6 have these local hearings in front of an evidentiary
7 hearing.

8 JUDGE THOMPSON: I was gonna say, I
9 think that that will be part of your homework this
10 week, is to work on the wording of that notice.
11 Mr. Steinmeier?

12 MR. STEINMEIER: Your Honor, just a
13 semi-random thought: I don't know if anybody's ever
14 actually done market research into the efficacy of
15 bill inserts as notices. I never even -- literally
16 never read it. I raise the points mostly because
17 there isn't time to do one on the normal cycle here
18 anyway.

19 There was discussion of an early local
20 public hearing and a price tag of possibly \$135,000
21 to provide written notice and special mailing. I
22 just wonder how far 135K would go toward a more
23 focused media notice process instead of individual
24 ratings mailed to everybody that are gonna get
25 tossed. Just a question that perhaps can be

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1 discussed among the parties.

2 JUDGE THOMPSON: You mean like an ad
3 that comes on during Survivor?

4 MR. CONRAD: I think we're all desirous
5 of trying to save some bucks, and as Mr. Steinmeier
6 points out, I think his question is somewhat broader
7 and larger, in a sense, and he's saying let's not do
8 something just because that's the way we did it
9 before.

10 And that's -- there's some merit in
11 exploring that, which seems to me that 135,000 --
12 there are -- what, St. Joe has a daily newspaper,
13 obviously Kansas City has a daily --

14 MR. STEINMEIER: And I'm pretty sure
15 they even have television in St. Joseph now. I
16 think, you know, between newspapers and television
17 and radio, you might make that money go a lot
18 further, hitting people who are kind of watching out
19 for the news in their lives, anyway, than by bill
20 inserts.

21 MR. MILLS: That certainly is a
22 possibility. I don't have any idea of what the cost
23 of advertising, for example, during Survivor would
24 be. I imagine it's likely to be over 135K pretty
25 quickly and not leave room for newspaper ads as well.

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1 And I'll point out that in the second
2 round of Laclede local public hearings in which
3 customers were notified by a direct mailing, separate
4 from the bill insert, a mailing directly to the
5 customers, I think both of those two local public
6 hearings, one in the county and one in the city, had
7 a better turnout than any Laclede hearing in decades.

8 JUDGE THOMPSON: And has Laclede
9 typically given notice by media?

10 MR. MILLS: No. Typically, the notice
11 has been given by bill insert or bill imprint in a
12 separate mailing. Of course, there was a lot of
13 press around that case as well, and that certainly
14 feeds into the number of people that show up.

15 But, you know, I think at least one data
16 point is that separate mailing and then there was a
17 big turnout.

18 MR. SWEARENGEN: And that's what we're
19 talking about here, a separate mailing.

20 JUDGE THOMPSON: Right, I understand.

21 MR. SWEARENGEN: We're not talking about
22 a bill insert.

23 MR. MILLS: Well, but we can certainly
24 look into the cost of a focused media campaign. And
25 I'm not sure that we'll be able to do something like

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1 that for 135,000 that will hit every customer.
2 JUDGE THOMPSON: I think whatever kind
3 of notice or wording of the notice that the parties
4 here are able to agree on would certainly be
5 satisfactory. If you're not able to agree, then we
6 have to go down the road of having the Commission
7 decide what's going to be acceptable notice where the
8 parties can't agree, and I think the Commission
9 probably would go with the traditional mail,
10 something to each ratepayer.

11 I mean, that's legally sufficient
12 notice, after all. And you're telling them there's
13 going to be a hearing, it's going to affect their
14 pocketbook or may affect their pocketbook. They have
15 an opportunity to show up and be heard. I think you
16 would want to give the same kind of notice that you
17 give to somebody, for example, of a zoning change in
18 their neighborhood or something of that sort, which
19 is typically by a letter.

20 So if the parties can't agree, I think
21 that's the direction we'll go. And I hope the
22 parties will be able to agree on what to do and how
23 to word it, because otherwise, I'm going to be
24 wording it, and I'm sure I'll offend everybody in
25 this room, not to mention all of the ratepayers and

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1 their families if I'm the one that has to word it.
2 So I'd rather have you do that, as you can see.

3 So, okay. Anything else we need to talk
4 about this morning?

5 MR. KEEVIL: Judge, before you go off
6 the record, just for the record, I'd request leave to
7 be excused intermittently throughout this conference.

8 JUDGE THOMPSON: Absolutely.

9 MR. KEEVIL: What's the current policy
10 on that regarding public hearings these days anyway,
11 Judge? I don't know. It used to be intervenors
12 didn't even show up for those when a policy
13 may have --

14 JUDGE THOMPSON: I think we still
15 recognize intervention without representation.
16 That's the route the client wants to go.

17 MR. STEINMEIER: I'm sorry, but I just
18 missed that exchange or at least the significance of
19 it.

20 JUDGE THOMPSON: I think he wanted to
21 know if he has to show up at the local public
22 hearing.

23 MR. STEINMEIER: That's what I thought
24 he wanted to know.

25 JUDGE THOMPSON: And I was gonna say no,

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1 I don't care if he shows up.

2 MR. STEINMEIER: That's the answer I
3 wanted to hear.

4 JUDGE THOMPSON: That's always been my
5 view, you know. When I've had cases down there in
6 front of Judge Kinder, he never cares if I show up or
7 not. He does something with that case whether I'm
8 there or not, I can guarantee. I may not like it if
9 I don't go down there, but he's not gonna wait for
10 me.

11 MR. MILLS: There is a Commission rule
12 that allows parties to be dismissed from a case for
13 not -- failing to show up at a prehearing, a local
14 public hearing, or a hearing.

15 JUDGE THOMPSON: Well, that's true. For
16 example, I could dismiss Mr. Cochran for not showing
17 up this morning. And you know what? I'd be doing
18 exactly what he wants, right? Maybe that's why he's
19 not here.

20 MR. CONRAD: Please don't throw him in
21 that briar patch.

22 JUDGE THOMPSON: Exactly right. Exactly
23 right. You know, my view is you're in the case, you
24 want to participate in the proceedings, welcome. You
25 don't, okay. I'm not gonna let you out of the case

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1 unless you don't want to be in it. You ask me to let
2 you out, right, then I'll see if the Commission wants
3 to let you out. But I'm not gonna throw you out
4 because you don't show up at the local public
5 hearings. See, I can't even talk this morning. All
6 right.

7 MR. CONRAD: Judge, just a housekeeping
8 thing.

9 JUDGE THOMPSON: Sure.

10 MR. CONRAD: At least on the
11 presupposition that this was gonna be a settlement
12 conference, we had at least prepared to have
13 discussions on that. However, because of the Senate
14 Bill 179 thing that's going on, my wizard is up there
15 working his wizardry.

16 JUDGE THOMPSON: So you're left unable
17 to --

18 MR. CONRAD: So -- so and I think others
19 may have some interest in that too. But when Your
20 Honor chooses to adjourn, we can kind of discuss a
21 little bit of, you know, procedure. But just to let
22 that be known.

23 And I think he is -- he is pretty well
24 committed into that which was scheduled, I think, on
25 top of this -- I mean, this was the prior schedule,

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1 but it's just one of those problems of being in two
2 places at one time, which thus far has proved
3 challenging even for Mr. Brubaker.

4 MR. MILLS: And along those same lines,
5 the Commission has also, for today's schedule, an
6 on-the-record presentation in the Laclede rate case
7 where my witness is required to attend, so --

8 JUDGE THOMPSON: But you weren't gonna
9 participate in settlement discussions anyway so --

10 MR. MILLS: Exactly.

11 JUDGE THOMPSON: So you're not behind in
12 any way.

13 MR. MILLS: But even to go so far as to
14 outline the issues that are outstanding, it's very
15 helpful to have a witness who knows what's going on.

16 JUDGE THOMPSON: Whose case has been
17 bedeviled from the first.

18 MR. SWEARENGEN: Can we work on the
19 notice after we adjourn here? Is that possible?

20 MR. MILLS: I think we could.

21 MR. SWEARENGEN: That would be
22 wonderful.

23 MR. MILLS: Then we have a general
24 direction from the Commission that we're likely to be
25 proceeding towards local public hearings the week of

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1 October 17th?

2 JUDGE THOMPSON: That's exactly right.
3 What I will do is contact the venues and find out
4 what evenings are available. I would plan to do two
5 evenings because I think the public is better able to
6 attend an evening meeting rather than a luncheon
7 meeting. I remember being called a tool, a tool of
8 the utility at a lunch meeting one time. It was very
9 disturbing.

10 MR. KEEVIL: Did you serve lunch?

11 JUDGE THOMPSON: We should have. Maybe
12 the guy was hungry.

13 MR. STEINMEIER: Was the specific tool
14 identified?

15 JUDGE THOMPSON: I think we're ready to
16 adjourn. I think we've generally gone -- sat here as
17 long as we need to. So I will leave you guys to do
18 whatever it is you're going to do. Write me a
19 notice. Hearing nothing further, the recorded
20 portion of this prehearing conference is adjourned.
21 Thank you all very much for showing up today.

22 (WHEREUPON, the proceedings were
23 adjourned.)
24
25