

1 STATE OF MISSOURI  
2 PUBLIC SERVICE COMMISSION  
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7 TRANSCRIPT OF PROCEEDINGS

8  
9 EARLY PREHEARING CONFERENCE

10

11 June 30, 2005

12 Jefferson City, Missouri

13 Volume 1

14

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16 In the Matter of the Tariff )  
Filing of Aquila, Inc., to )  
17 Implement a General Rate )  
Increase for Retail Electric )  
18 Service Provided to Customers ) Case No. ER-2005-0436  
in its MPS and L&P Missouri ) Tariff No. YE-2005-1045  
19 Service Areas )

20

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

22

23 REPORTED BY:

24 STEPHANIE L. KURTZ MORGAN, RPR, CCR  
MIDWEST LITIGATION SERVICES

25

## 1 APPEARANCES:

2

JAMES C. SWEARENGEN, Attorney at Law

3 JANET WHEELER, Attorney at Law

Brydon, Swearengen &amp; England, P.C.

4 312 East Capitol

P. O. Box 456

5 Jefferson City, Missouri 65102-0456

(573) 635-7166

6

FOR: Aquila, Inc.

7

STUART CONRAD, Attorney at Law

8 Finnegan, Conrad &amp; Peterson

3100 Broadway

9 1209 Penntower Office Center

Kansas City, Missouri 64111

10 (816) 753-1122

11 FOR: SIEVA and AG Processing, Inc.

12 WILLIAM D. STEINMEIER, Attorney at Law

William D. Steinmeier, P.C.

13 2031 Tower Drive

P. O. Box 104595

14 Jefferson City, Missouri 65110

(573) 659-8672

15

FOR: City of St. Joseph, Missouri.

16

JEFFREY A. KEEVIL, Attorney at Law

17 Stewart &amp; Keevil

Southampton Village at Corporate Lake

18 4603 John Garry Drive, Suite 11

Columbia, Missouri 65203

19 (573) 499-0635

20 FOR: The Empire District Electric Company.

21 MAJOR CRAIG PAULSON, Attorney at Law (VIA TELEPHONE)

139 Barnes Drive, Suite 1

22 Tyndall Air Force Base, Florida 32403

23 FOR: Federal Executive Agencies.

24

25

## 1 APPEARANCES (CONTINUED):

2  
3 MARK W. COMLEY, Attorney at Law  
4 Newman, Comley & Ruth  
5 601 Monroe, Suite 301  
6 P. O. Box 537  
7 Jefferson City, Missouri 65102  
8 (573) 634-2266

9 FOR: City of Kansas City.

10 JOHN B. COFFMAN, Attorney at Law  
11 1623 University Avenue  
12 Columbia, Missouri 65201  
13 (573) 424-6779

14 FOR: AARP.

15 SHELLEY WOODS, Assistant Attorney General  
16 Supreme Court Building  
17 207 West High Street  
18 P. O. Box 899  
19 Jefferson City, Missouri 65102  
20 (573) 751-3321

21 FOR: Missouri Department of Natural Resources.

22 LEWIS R. MILLS, JR., Public Counsel  
23 200 Madison Street, Suite 650  
24 P. O. Box 2230  
25 Jefferson City, Missouri 65102-2230  
(573) 751-4857

FOR: Office of the Public Counsel and the Public.

NATHAN WILLIAMS, Associate General Counsel  
STEVEN DOTTHEIM, Chief Deputy General Counsel  
200 Madison Street  
P. O. Box 360  
Jefferson City, Missouri 65102  
(573) 751-3234

FOR: Staff of the Missouri Public Service  
Commission.

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

2 JUDGE THOMPSON: We are here in the matter of the  
3 tariff filing of Aquila, Inc., to implement a general rate  
4 increase for retail electric service provided to customers in  
5 its MPS and L&P Missouri service areas, Case No. ER-2005-0436.

6 My name is Kevin Thompson. I'm the Regulatory Law  
7 Judge assigned to preside over this matter. And we will begin  
8 with oral entries of appearance.

9 Mr. Swearengen?

10 MR. SWEARENGEN: Yes. Thank you. let the record  
11 show the appearance of James C. Swearengen and Janet Wheeler,  
12 Brydon, Swearengen & England, 312 East Capitol Avenue,  
13 Jefferson City, Missouri, appearing on behalf of Aquila, Inc.

14 JUDGE THOMPSON: Very well.

15 And Staff?

16 MR. WILLIAMS: Dana K. Joyce, Steven Dottheim,  
17 Nathan Williams, P. O. Box 360, Jefferson City, Missouri  
18 65102.

19 JUDGE THOMPSON: Thank you.

20 Public Counsel?

21 MR. MILLS: Lewis R. Mills, Jr., Post Office  
22 Box 2230, Jefferson City, Missouri 65102, appearing on behalf  
23 of the Office of Public Counsel and the Public.

24 JUDGE THOMPSON: Mr. Conrad?

25 MR. CONRAD: On behalf of Sedalia Industrial Energy

1 Users Association and AG Processing, Inc., Stuart W. Conrad,  
2 Finnegan, Conrad & Peterson, 3100 Broadway, Suite 1209, Kansas  
3 City, Missouri 64111.

4 JUDGE THOMPSON: Thank you.

5 Mr. Steinmeier?

6 MR. STEINMEIER: Let the record reflect the  
7 appearance of Bill Steinmeier and Mary Ann Young, William D.  
8 Steinmeier, P.C., P. O. Box 104595, Jefferson City, Missouri  
9 65110, appearing on behalf of the City of St. Joseph,  
10 Missouri.

11 JUDGE THOMPSON: Thank you.

12 Mr. Keevil?

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

18 JUDGE THOMPSON: Major Paulson?

19 MR. PAULSON: Major Craig Paulson, appearing on  
20 behalf of the Federal Executive Agencies. My address is  
21 139 Barnes Drive, Suite 1, Tyndall Air Force Base, Florida  
22 32403.

23 Thank you.

24 JUDGE THOMPSON: Mr. Comley?

25 MR. COMLEY: Appearing on behalf of the City of

1 Kansas City, let the record reflect the entry of Mark W.  
2 Comley of Newman, Comley & Ruth, 601 Monroe Street, Jefferson  
3 City, Missouri 65101.

4 JUDGE THOMPSON: Mr. Coffman?

5 MR. COFFMAN: John. B. Coffman, 1623 University  
6 Avenue, Columbia, Missouri, 65201, appearing on behalf of  
7 AARP.

8 JUDGE THOMPSON: Very well. Any other counsel  
9 present?

10 MS. WOODS: Shelly Woods, Assistant Attorney  
11 General, Post Office Box 899, Jefferson City, Missouri 65102,  
12 appearing on behalf of the Missouri Department of Natural  
13 Resources.

14 JUDGE THOMPSON: Thank you.

15 MR. CONRAD: And, Your Honor, I neglected to make  
16 mention of the fact that Jeremiah Finnegan of the same law  
17 firm address may also be involved in this case.

18 JUDGE THOMPSON: Thank you, Mr. Conrad. We will  
19 show the entry of the appearance of Mr. Finnegan today as  
20 well.

21 Okay. Is that everybody?

22 (NO RESPONSE.)

23 JUDGE THOMPSON: I believe it is.

24 About a half an hour ago we met for the prehearing  
25 conference in Aquila's steam heat case. Several of you were

1 not involved in that case, and so were not present. At that  
2 time we discussed whether or not the cases should be  
3 consolidated, at least for the purposes of hearing, so that  
4 scheduled matters would occur simultaneously in order to save  
5 the parties money and perhaps process the two cases more  
6 efficiently.

7 And I would be interested in hearing from -- from  
8 those of you who were not present earlier, as well as those of  
9 you who were, as to whether you think that that's a -- a good  
10 idea or not a good idea or anything else along those lines.

11 Mr. Comley, any thoughts?

12 MR. COMLEY: Well, it's -- it's kind of sprung on  
13 me, but I'm thinking that City of Kansas City's interests are  
14 somewhat tangential to the heating case. And I would think  
15 that the consolidation would not in any which materially  
16 affect our interest.

17 But, again, I haven't really examined that heating  
18 case, and to the extent it may affect what's going on in the  
19 electric case.

20 JUDGE THOMPSON: I -- I don't know that it affects  
21 it much at all. It would simply allow many witnesses and --  
22 and counsel to just show up once, rather than -- than show up  
23 twice for -- for two different Aquila hearings in successive  
24 weeks.

25 Major Paulson, any thoughts on th e--

1 MR. PAULSON: It sounds fine to me, Your Honor.

2 JUDGE THOMPSON: Okay.

3 Mr. Coffman?

4 MR. COFFMAN: I think consolidation is -- would be  
5 fine, although AARP is not intervening in either of these  
6 other two cases.

7 I -- I just would note that when things are in a  
8 kind of quasi consolidated state, such as being consolidated  
9 for the purposes of hearing, there's several practical issues  
10 that are -- I think are difficult.

11 JUDGE THOMPSON: You think all or nothing would --  
12 would procedurally be cleaner?

13 MR. COFFMAN: Yes.

14 JUDGE THOMPSON: Okay.

15 MR. COFFMAN: It just my opinion.

16 JUDGE THOMPSON: Very well. Believe me I'm -- I'm  
17 happy to do whatever is easiest for me.

18 Ms. Woods?

19 MS. WOODS: I would tend to agree with Mr. Coffman  
20 and Major Paulson. It makes sense to me.

21 JUDGE THOMPSON: Okay. Very well.

22 We have some pending interventions, some of which  
23 are contested and some of which are not. Why don't I run  
24 through the list, and you can tell me if -- if your  
25 application is contested. Contested applications for



1 intervention, of course, must go to the Commission. The  
2 uncontested ones I can rule on right here.

3 City of St. Joseph; is that intervention -- is  
4 anyone opposed to your application for intervention?

5 In fact, I --

6 MR. STEINMEIER: Well, if I'm not mistaken, it's  
7 been granted.

8 JUDGE THOMPSON: -- I've already granted some.

9 MR. MILLS: Yeah, you've granted them.

10 JUDGE THOMPSON: Okay. You know, I've just been  
11 thinking telephone way too much. I apologize. And you can  
12 see how they --

13 So we've already granted all the uncontested  
14 interventions. That makes this easier. Great.

15 The Commission should be ruling on the contested  
16 ones sometime next week. Does anyone have anything to bring  
17 to my attention at this time?

18 MR. MILLS: While we're on the subject of contested  
19 application to intervene, I believe the only one that's  
20 contested is AARP. And for the rec--

21 JUDGE THOMPSON: No, there was another one.

22 MR. COFFMAN: No.

23 MR. MILLS: Oh, I'm sorry. Calpine (phonetic sp.).  
24 Well, I -- I don't have anything to say about Calpine.

25 But with respect to the -- the proposed

1 intervention of AARP, I would just note for the record that  
2 the Office of Public Counsel has no objection to the  
3 intervention of -- of AARP as a party.

4           However, if the Commission decides not to grant  
5 intervention to AARP, the Office of Public Counsel is fully  
6 capable and fully intends to represent the interests of the  
7 ratepayers that are AARP members.

8           JUDGE THOMPSON: Nicely put.

9           MR. MILLS: Thank you.

10          MR. COFFMAN: Your Honor?

11          JUDGE THOMPSON: Sir?

12          MR. COFFMAN: I made this argument in the reply  
13 filed, I believe, on Friday.

14          JUDGE THOMPSON: Is this all about how AARP should  
15 be allowed to intervene?

16          MR. COFFMAN: Yes.

17          JUDGE THOMPSON: Well, don't make it to me, because  
18 it's the Commissioners who have to decide that.

19          MR. COFFMAN: All right. Well, I would just note  
20 that any reference to the Office of the Public Counsel as a --  
21 you know, a justification to deny AARP's intervention is  
22 irrelevant, pursuant to the statute and to case law, which I  
23 think makes it clear that the Office --

24          JUDGE THOMPSON: That the Office of the Public  
25 Counsel is irrelevant?

1           MR. COFFMAN: That the -- no, that the -- that the  
2 authority granted to the Public Counsel to represent the  
3 Public can in no way be used as an argument to deny  
4 intervention to proper parties, pursuant to --

5           JUDGE THOMPSON: Okay.

6           MR. COFFMAN: -- the law.

7           JUDGE THOMPSON: Can you tell me how the -- your  
8 client's interests; that is, your client or its members'  
9 interest is different than that of the general public?

10          MR. COFFMAN: Yes. The usage patterns for electric  
11 consumption are -- is different for seniors than for other  
12 customers. There are different needs that seniors have -- or  
13 special needs that -- that differ from other customers.

14          There are -- have recently been programs approved  
15 by this Commission in other electric companies' rate cases  
16 that -- that are targeted towards either seniors alone or --  
17 or low-income seniors that would be of particular interest in  
18 this case.

19          And whereas AARP does not intend to only focus on  
20 rate design issues, there are particular rate design issues  
21 that would be particular to seniors as well in terms of  
22 service and access to service issues that we would wish to  
23 explore, and do so with expert testimony.

24          JUDGE THOMPSON: Very well.

25          MR. COFFMAN: It would be a chance for AARP to

1 provide the expert testimony of one, if not more, experts in  
2 this case.

3 JUDGE THOMPSON: Okay. And this is all set out in  
4 your written pleading?

5 MR. COFFMAN: I believe so, except, I mean, the  
6 intent that we actually would provide expert witnesses.

7 JUDGE THOMPSON: Okay. And I'll be sure to bring  
8 that to the Commission's attention.

9 MR. COFFMAN: There is -- there are relevant  
10 case -- case law decisions that I could refer you to as well  
11 that were not in my written motion, if you would be  
12 interested.

13 JUDGE THOMPSON: Well, I think you might want to  
14 supplement what you've already filed --

15 MR. COFFMAN: Okay.

16 JUDGE THOMPSON: -- in that direction.

17 Anything else at this point?

18 MR. CONRAD: Well, Judge, quickly just to do a roll  
19 back, I'm not -- I'm not clear like on what is meant on  
20 consolidation. We can certainly discuss that, you know, in  
21 the context of the procedural schedule.

22 I think that's --

23 JUDGE THOMPSON: At -- at this point I'm leading  
24 towards having the proc-- an identical procedural schedule in  
25 the two cases. I'm not leaning towards consolidating them, in

1     that there would be only one decision.

2                 I think there'll be two separate decisions,  
3     especially consolidated for purposes of hearing even with all  
4     of the difficulties that that might -- would rise to.

5                 I think it's more efficient in terms of the use of  
6     everyone's time. And if, as I think you pointed out cogently  
7     in our -- our earlier prehearing conference, Mr. Conrad, if  
8     the unpeeling of the onion should reveal issues in the  
9     two cases that take them in different directions, then the  
10    procedural schedules can be amended and the cases can then be  
11    tried separately, in order to facilitate that.

12                MR. CONRAD: I would lift up one additional point  
13    here that we did not address in the context of the steam heat  
14    case in the HR docket, and that is the -- what we've toyed  
15    around and tossed around is called the 384 docket, which is a  
16    docket that goes back to -- it's actually EO-2002-384XXX.

17                JUDGE THOMPSON: I recall that.

18                MR. CONRAD: So it is --

19                JUDGE THOMPSON: That is a class cost of service --

20                MR. CONRAD: Yes.

21                JUDGE THOMPSON: -- docket that's been sitting  
22    around on my case list, by the way, for the past three years  
23    occasioning queries from Commissioners from time to time.

24                MR. CONRAD: I think it's gonna be the endeavor of  
25    at least this party to -- to coordinate, you know, that -- the

1 wind up, if you will, in the hearing in that case in such a  
2 way that the results can be used here, and avoid duplication  
3 and retrying, in effect, that issue.

4 But, there again, I'm -- I -- I -- I would support  
5 your initial inclination about keeping those -- those separate  
6 for the time being. We can work on a -- a track.

7 JUDGE THOMPSON: So you believe that 384 should be  
8 kept separate for the time being as well?

9 MR. CONRAD: I -- I do.

10 JUDGE THOMPSON: Okay.

11 MR. CONRAD: Until we have -- have resolved how  
12 we're gonna try to -- to put it together.

13 JUDGE THOMPSON: Because, I mean, a class cost of  
14 service study is -- is a traditional aspect --

15 MR. CONRAD: Correct.

16 JUDGE THOMPSON: -- in a rate case.

17 And this one has been out there for quite sometime.  
18 Frankly, I don't know how much work has been done or -- or I  
19 guess there has been some. I understand there were draft  
20 studies circulated at one time.

21 MR. CONRAD: There's actually been quite a bit  
22 that's been done, particularly, from the Company and since the  
23 data collection.

24 JUDGE THOMPSON: Okay.

25 MR. CONRAD: And that's probably taken the largest

1 share of the time heretofore and in the sense of the experts  
2 working together to try to work on the methodology on the  
3 front end, and then monitoring the data collection and so on  
4 on the back end.

5 And we're -- we're just now getting to the point  
6 of -- of looking at studies based on that.

7 JUDGE THOMPSON: Okay. And I assume this is  
8 electric --

9 MR. CONRAD: Yeah.

10 JUDGE THOMPSON: -- customers?

11 MR. CONRAD: Yes, sir, it is.

12 JUDGE THOMPSON: Very well.

13 Sir?

14 MR. SWEARENGEN: If I could make one comment, I  
15 think the Company's preference is to keep these three cases  
16 separate for decisional purposes. But we wouldn't have any  
17 objection to processing them on the same track.

18 What I -- what I -- what we are interested in,  
19 though, to the extent that we have common issues, and let's  
20 just say the cost of capital probably is a good example.

21 JUDGE THOMPSON: Uh-huh.

22 MR. SWEARENGEN: That we would have a cost of  
23 capital issue or issues in the electric case, and we would  
24 also have the same issues over in the steam case. It doesn't  
25 make sense to try it twice.

1 JUDGE THOMPSON: Right.

2 MR. SWEARENGEN: So --

3 JUDGE THOMPSON: Right. That was my thinking.

4 MR. SWEARENGEN: If there's a way that we can try  
5 those in one docket and then have the decision be applicable  
6 in the second docket, that would make sense, and I think would  
7 conserve resources.

8 MR. CONRAD: And we're certainly eager to look at  
9 those things and explore -- and extract opportunities, as  
10 Mr. Swearngen mentions. Whether that's -- whether that's an  
11 opportunity or not remains to be seen.

12 JUDGE THOMPSON: Right. I guess it depends on the  
13 issues that come.

14 MR. CONRAD: Exactly.

15 JUDGE THOMPSON: And there will be -- I -- I would  
16 expect there to be many more issues in the electric case than  
17 in the steam case, but I could be wrong. Customer base, I  
18 think, is quite a bit smaller, is it not?

19 MR. SWEARENGEN: In the steam side --

20 JUDGE THOMPSON: Yeah.

21 MR. SWEARENGEN: -- it is.

22 MR. MILLS: If I may, just with respect to the --  
23 the question of EO-2002-384, and -- and this certainly isn't  
24 right for your decision this morning, but I just wanted to  
25 alert you that Public Counsel may have a different take on



1     this than -- than that advanced by Mr. Conrad.

2                 I -- I -- to me you have to do some kind of rate  
3     design in a rate case, otherwise you don't know what rates  
4     come out. And it doesn't make any sense to me to do an entire  
5     rate design case separately, and then do rate decision issues  
6     in the -- in the rate case.

7                 JUDGE THOMPSON: Well, I would think you'd want to  
8     have the rate design settled a little bit earlier than when  
9     you get into the rate case so that you can just bring that  
10    decision over. But I could perhaps be wrong about that.

11                MR. MILLS: That -- that's one way to do it.  
12    Another way, of course, would be to consolidate them and do  
13    rate design and revenue requirement in one case, which is the  
14    way it is typically done.

15                MR. COFFMAN: If I --

16                JUDGE THOMPSON: That's fine, too.

17                MR. DOTTHEIM: And generally the Commission has  
18    tried to avoid changing rate design any more times than  
19    absolutely necessary.

20                So if a decision can be effectuated in both cases  
21    at the same time, I think that might be the goal that everyone  
22    should -- should strive for.

23                JUDGE THOMPSON: Okay. Well, then, that sounds  
24    like you're leaning towards consolidating at least 384 with  
25    436, am I right?

1           MR. SWEARENGEN: I don't know that that's really  
2 the case. I think you can try the rate design and cost of  
3 service over in the cost of service case and not make the  
4 change until you get to the rate case.

5           I mean, traditionally, that's the way it's been  
6 done.

7           MR. DOTTHEIM: And -- and -- and I wasn't at this  
8 point literally addressing the -- the consolidation. It's, I  
9 think, more as Mr. Swearngen was addressing of the -- the  
10 timing.

11          JUDGE THOMPSON: Okay. Very well.

12          MR. MILLS: I mean, and -- and one last -- well,  
13 maybe not the last -- at least may -- maybe one of the last  
14 for me, at any rate, on consolidation is -- is the question of  
15 discovery --

16          JUDGE THOMPSON: Okay.

17          MR. MILLS: -- and the -- the protective order that  
18 either is issued or is likely to be issued in -- in the -- in  
19 the cases, I -- I think prohibits using discovery obtained in  
20 one case in any other matter.

21          And -- and if we don't consolidate, we'll have to  
22 issue identical DRs and get identical responses from the  
23 Company on a lot of different areas simply to -- to comply  
24 with the terms of the protective order.

25          MR. DOTTHEIM: Or -- or otherwise reach some sort

1 of agreement that the Commission might agree to as far as the  
2 use of DRs in one case in another case.

3 MR. COFFMAN: Your Honor?

4 JUDGE THOMPSON: Sir?

5 MR. COFFMAN: It's -- that -- that's one of the  
6 practical issues, of course, that has to be dealt with if it's  
7 not consolidated completely.

8 And I would add that it -- it might be better to  
9 actually go for a complete consolidation, given that some  
10 parties who wish to address rate design may be only in the  
11 electric case, and if -- I'm sure would want their full rights  
12 to litigate issues, which may be perceived as re-litigating  
13 issues that had already occurred in the cost of service case  
14 if that were a -- a separate hearing or a separate process.

15 I'm not just su-- I'm not sure I understand the  
16 benefit to not fully consolidating them. Maybe someone else  
17 could -- could explain it to me.

18 But as I understand, if -- if the concern is that  
19 it might be difficult to unlink the cases, I -- I -- I'm not  
20 aware of anything. For instance, if one case were to settle  
21 out, nothing that would prevent the Commission from  
22 unconsolidating and delinking the cases at any point that it  
23 wished to down the road.

24 JUDGE THOMPSON: I -- I can assure you there will  
25 be no stumbling blocks to settlement. We will tolerate no

1     such stumbling blocks.

2                     Mr. Dottheim?

3                     MR. DOTTHEIM: Yes. I -- and I don't know if  
4     Mr. Coffman is suggesting bootstrapping one party that -- that  
5     hasn't chosen to intervene at a prior time in one case, but  
6     has intervened in -- in at least one of the cases, and in that  
7     manner having that party participate in the -- the other cases  
8     that it hadn't previously taken the time or effort or what  
9     have you to intervene.

10                    JUDGE THOMPSON: Who would have thought that I  
11     would have tossed the apple of discord into this by raising  
12     the specter of consolidation.

13                    Well, my head hurts, so I'm going to recess this  
14     prehearing conference and go back to the telephone room where  
15     we're really doing some exciting things, and let you guys talk  
16     about this stuff as long as you'd like.

17                    The room is yours until five o'clock.

18                    MR. COFFMAN: Your Honor, one -- one remaining  
19     matter. Since AARP has not yet been granted intervention and  
20     has not offered a test-year true-up recommendation, which  
21     pursuant to your May 31st order was, I guess, a requirement of  
22     intervenor --

23                    JUDGE THOMPSON: Yeah, that -- that kind of makes a  
24     difficulty. But what I would recommend is that you just go  
25     ahead and file your recommendations. And if you are granted

1 intervention, then they will be considered along with the  
2 others.

3 MR. COFFMAN: Fair enough.

4 JUDGE THOMPSON: Rather than holding up the  
5 test-year true-up train.

6 MR. COFFMAN: Or I -- I could just offer now on the  
7 record AARP's concurrence in Aquila's test year, and  
8 opposition to Aquila's true-up recommendation.

9 JUDGE THOMPSON: Okay. And -- and what are the  
10 reasons for your opposition, if I could be so bold?

11 MR. COFFMAN: As far as the test year, I -- I  
12 need -- I don't think there's any reason to use any other test  
13 year than what is granted.

14 JUDGE THOMPSON: Yeah.

15 MR. COFFMAN: The true-up, as I understand it, is  
16 based primarily, if not exclusively, on the South Harper plant  
17 for which I -- I think there were many issues about whether  
18 that would be proper to include in -- in rate base, including  
19 the recent Court of Appeal's decision involving injunction on  
20 that plant.

21 JUDGE THOMPSON: Okay.

22 MR. COFFMAN: But if -- if -- I mean if --  
23 AARP would be opposed to the true-up, as it relates to the  
24 South Harper plant. If there are other reasons for a true-up,  
25 perhaps it could be --

1 JUDGE THOMPSON: Does this mean you're not gonna be  
2 doing a separate filing? I mean, that's okay. I just want to  
3 know.

4 MR. COFFMAN: Yes. Yes, that would be my  
5 preference.

6 JUDGE THOMPSON: Very good. Very good.  
7 Anyone else have anything?

8 (NO RESPONSE.)

9 JUDGE THOMPSON: Hearing nothing, we will recess  
10 the recorded portion of the prehearing conference. As I said,  
11 you have the room for the rest of the day if you want.  
12 Hopefully you can settle every issue in all three of those  
13 cases.

14 Major Paulson, I'm gonna leave you on the phone so  
15 you can participate in these discussions.

16 MR. PAULSON: Thank you. And thank you very much  
17 for allowing me to participate via telephone. I appreciate  
18 it.

19 JUDGE THOMPSON: Happy to do it, sir. Happy to do  
20 it.

21 WHEREUPON, the on-the-record portion of the  
22 prehearing conference was concluded.

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