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STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION

TRANSCRIPT OF PROCEEDINGS  
Prehearing Conference  
July 11, 2001  
Jefferson City, Missouri  
Volume 2

In the Matter of the Application of )  
United Cities Gas Company, a Division )  
of Atmos Energy Corporation, for an )  
Accounting Authority Order Related to ) Case No. GA-98-464  
Investigation and Response Actions )  
Associated With Its Former )  
Manufacturing Gas Plant Site in )  
Hannibal, Missouri. )

VICKY RUTH, Presiding,  
REGULATORY LAW JUDGE.

REPORTED BY:  
KELLENE K. FEDDERSEN, CSR, RPR  
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1 P R O C E E D I N G S

2 JUDGE RUTH: We'll go ahead and go on the  
3 record, please.

4 Good morning. We are here for a second  
5 prehearing conference in GA-98-464, In the Matter of the  
6 Application of United Cities Gas Company, a Division of  
7 Atmos Energy Corporation, For an Accounting Authority Order  
8 Related to Investigation and Response Actions Associated  
9 with its Former Manufacturing Gas Plant Site in Hannibal,  
10 Missouri.

11 I am Vicky Ruth, and I am the Regulatory Law  
12 Judge assigned to this case. Today's date is July 11, 2001,  
13 and it is 10:30 a.m.

14 We will begin by taking entries of appearance.  
15 United Cities?

16 MR. FISCHER: Yes, your Honor. Let the record  
17 reflect the appearance of James M. Fischer, Fischer &  
18 Dority, PC, 101 Madison Street, Suite 400, Jefferson City,  
19 appearing on behalf of United Cities Gas Company, a Division  
20 of Atmos Energy Corporation.

21 JUDGE RUTH: Thank you. And Staff?

22 MR. FREY: Representing the Staff of the  
23 Missouri Public Service, Dennis L. Frey, P.O. Box 360,  
24 Jefferson City, Missouri 65102.

25 JUDGE RUTH: Thank you. And Public Counsel?

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1                   MR. MICHEEL: Douglas E. Micheel appearing on  
2 behalf of the Office of the Public Counsel and the Public,  
3 P.O. Box 7800, Jefferson City, Missouri 65102-7800.

4                   JUDGE RUTH: Thank you. Are there any  
5 preliminary matters that we need to address?

6                   Okay. Seeing none, I just want to state that  
7 this prehearing conference has been scheduled to allow some  
8 further discussion regarding the Motion to Dismiss on the  
9 question of jurisdiction.

10                  I've read the pleadings. The Commissioners  
11 have talked with me individually some on those pleadings,  
12 and at this point I'm not yet convinced by either side. I  
13 want the parties to have an opportunity to answer a few  
14 questions and hopefully expand or at least reiterate some of  
15 the arguments.

16                  Starting with the questions, I'd like to ask  
17 Staff a few. Staff, the Motion to Dismiss that you filed  
18 March 22nd, 2001, in paragraph 10, you make a  
19 characterization. You state that United Cities' request for  
20 a one-year extension of the AAO was a, quote, 11th hour  
21 filing, end quote.

22                  I note that United Cities filed its request  
23 for the extension on February 5th, 2001, which was just over  
24 a month prior to the AAO's scheduled termination of March 9,  
25 2001.

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1                   My first question would be, if that's an 11th  
2 hour filing, help me understand when they should have filed  
3 it, how much time was necessary?

4                   MR. FREY: Your Honor, I'm not sure we have a  
5 definite time period in mind, but I think the -- I think the  
6 way things unfolded in this particular case would strongly  
7 suggest that it was not -- that sufficient time in all  
8 probability wasn't allowed to conclude a hearing in this  
9 case.

10                  So we -- I guess you could say maybe they  
11 should have filed it three months earlier or perhaps four  
12 months, something like that.

13                  JUDGE RUTH: So you think they definitely  
14 should have left enough time to have a hearing and then give  
15 the Commissioners time for that briefing schedule and to  
16 issue an Order with an effective date, of course. So we're  
17 talking probably more than three or four months earlier?

18                  MR. FREY: Perhaps.

19                  JUDGE RUTH: Maybe even up to six?

20                  MR. FREY: There was no request, as I recall,  
21 for expedited treatment either in this case.

22                  JUDGE RUTH: Okay. Well, that all brings me  
23 to my next question. The request for the one-year extension  
24 was filed February 5th, as I noted. Public Counsel promptly  
25 filed a Response in Opposition on February 6th, and then

1 United Cities quickly responded to that on February 8th. We  
2 had another quick round from Public Counsel filing a  
3 response on February 13th. So from February 5th to the 13th  
4 we had several filings by United Cities and Public Counsel.

5                   We did not hear from Staff at all until  
6 March 2nd, which was nearly a month after the Company made  
7 its request. As noted by United Cities, Commission rule  
8 4 CSR 240-2.080 provides, quote, parties shall be allowed  
9 not more than ten days from the date of filing in which to  
10 respond to any pleading unless otherwise ordered by this  
11 Commission, end quote.

12                   Thus, Staff belatedly filed its response 25  
13 days after United Cities' filing, not meeting the ten-day  
14 requirement and not asking for leave to file out of time.

15                   You mentioned a moment ago that the way things  
16 worked out in this case, United Cities did not make its  
17 request in time, and I wonder how much of that, quote, the  
18 way things worked out, end quote, was due to Staff's belated  
19 request or response?

20                   MR. FREY: Your Honor, I'm not sure that I  
21 know -- I'm not sure I know the answer to that question.  
22 Respectfully, the Company did not object to the late filing.  
23 Staff obviously belatedly decided to weigh in on this issue.

24                   And again, with all due respect, the Staff's  
25 pleading could have been disallowed by the Commission, and I

1 would add that by and large when you consider the position  
2 of the Staff in this case, it's irrelevant whether or not  
3 the Staff filed late a pleading in this case.

4 JUDGE RUTH: Okay. I've asked Staff a couple  
5 of questions. If Public Counsel or United Cities wants to  
6 comment on any of these issues only, I will give you an  
7 opportunity and then we'll move on. Public Counsel?

8 MR. MICHEEL: I would like to comment on the  
9 first question that you had, the 11th hour filing by United  
10 Cities Gas Company, your Honor.

11 It's Public Counsel's view that it doesn't  
12 matter when United Cities filed it, if they filed this a  
13 year ago, because the Order granting the AAO was a final  
14 order that was not appealed, that they did not file a motion  
15 for rehearing for. That Order on its face says the Company  
16 has two years to file for a rate case. If they don't file  
17 for a rate case, the Order is self-executing. It's null and  
18 void.

19 It's our position that this request for an  
20 extension is nothing more than a collateral attack on a  
21 final Commission Order, and the only way United Cities could  
22 receive the moneys for that AAO is to file the rate case,  
23 and we've made that abundantly clear, I think, in our  
24 pleadings. I think I've said that from the initial time.

25 So I don't think that the Commission should

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1 get hung up on the filing nature. I mean, this is much  
2 akin, and I think I sat in on the AmerenUE hearing where  
3 they discussed whether or not the Commission Staff could  
4 file a complaint, and the decision of the Commission was,  
5 well, it was too late for AmerenUE because they hadn't  
6 appealed the Order.

7           The same thing is true here, your Honor. This  
8 AAO has been effective. It has been in effect. There was  
9 no Motion for Rehearing. United Cities had every  
10 opportunity to do that. There is nothing contained in the  
11 four corners of that Order that says the Company can come in  
12 and seek to modify the Order or extend the Order before the  
13 time.

14           So I think this whole timing argument is a red  
15 herring. Simply put, this is nothing more than a collateral  
16 attack on a final Commission Order. That should end the  
17 Commission's analysis and I don't think we should be caught  
18 up on the time.

19           JUDGE RUTH: I appreciate your response. I  
20 want to ask you a quick question. In your Position  
21 Statement that you filed on March 22, in paragraph 3, along  
22 with what you just said, you state that the Commission has  
23 no power to reopen a proceeding and modify or set aside an  
24 Order made by it where the matter has passed out of its  
25 control. By operation of law, the Commission's decision is



1 final and cannot be altered. And then you quote the  
2 collateral estoppel.

3 I just have a question. This is not a tariff  
4 where there is a statute or a statutory operation of law  
5 date. You are obviously saying that this -- in this case  
6 the Commission has no discretion to go in and change its own  
7 Order.

8 MR. MICHEEL: That's right. There is an  
9 effective Order. There is an effective date on the initial  
10 Order. It is effective. Once that Order is effective, the  
11 Commission is -- in my view, it passes out of their ability  
12 to do anything.

13 What we're searching for in the law and what I  
14 need as a practitioner before this Commission is some belief  
15 that there's going to be finality in the Commission's  
16 decisions so that we can rely on it.

17 The Office of the Public Counsel noted that  
18 this AAO had a two-year deadline. If the Company hadn't  
19 come in and filed for a rate case prior to that two-year  
20 deadline, by its own terms the Accounting Authority Order  
21 became null and void.

22 If the Commission chooses to go down this road  
23 where we have a Commission Order that is final, not  
24 appealable, and yet allows companies to open up that Order  
25 or revisit it or get it extended, I don't think as a

1 practitioner we can look to any sort of finality for any  
2 decisions from the Commission, and that's what this is all  
3 about.

4                   I mean, we have a final, nonappealed Order  
5 here that says if they don't do something for two years,  
6 they don't get the AAO. There are absolutely no provisions  
7 in there that allow the Commission to open it up, and once  
8 an Order is passed, you know, it's not before this  
9 Commission anymore.

10                   It's a final Order, and the Commission in my  
11 view, like I said in my pleading, is powerless to alter  
12 that. I mean, we need some finality in these Orders, and we  
13 have that finality in this Order.

14                   JUDGE RUTH: So when the Commission issued an  
15 Order prior to that March 9th deadline indicating that it  
16 was taking the matter under advisement and was considering  
17 it, it's your opinion that has no force of -- that gives you  
18 notice that it's not -- that it may not be final, but in  
19 your opinion, it's not?

20                   MR. MICHEEL: That's right. That's right. In  
21 my opinion, I don't think the Commission has authority to  
22 reopen this Order. I mean, I'm certainly not going to tell  
23 the Commission it can't issue Orders, and if they issue an  
24 Order for a prehearing like this, to protect my clients I'm  
25 certainly going to show up and respect that Order.

1                   But I will tell you quite candidly, if the  
2 Commission chooses -- which they can. Obviously they have  
3 that ability. If they choose to extend this Order or  
4 something like that, I mean, I can tell you right now I will  
5 be arguing in the circuit court that this Commission was  
6 without authority to do that, that it is an unjust  
7 collateral attack on that Order, and that that Order was  
8 final.

9                   So I mean, I just want to be candid with you  
10 and straightforward and direct. So yes, I will show up --  
11 if the Commission chooses to have a hearing on this, I will  
12 certainly show up and protect my clients, but I think, you  
13 know, with respect to this case, this case is a closed case  
14 and the Commission has no more power to do anything in this  
15 case.

16                  If the Company chooses to file another  
17 application for an AAO, that's another matter. That would  
18 start a separate case on a separate time track. But as it  
19 relates to these dollars in this AAO, my view, by the own  
20 self-execution of the Commission's Order, it's null and  
21 void.

22                  JUDGE RUTH: I have a question, and I don't  
23 have the exact words in front of me, but that AAO said that  
24 the Company either needed to file a rate case within the 24  
25 months of the effective date or it would become null and

1 void.

2                   By those words, are you saying that could the  
3 Commission have -- it didn't leave a third alternative of a  
4 one-year extension. Could the Commission even extend it one  
5 year if we had done this before the deadline?

6                   MR. MICHEEL: No. And that goes to my  
7 answering the first question, your Honor, that you asked to  
8 Mr. Frey and the Staff about the 11th hour nature. I think  
9 the timing is irrelevant, your Honor.

10                   I think that the moment this Order became  
11 final, nonappealable, that was the end of the inquiry with  
12 respect to this Order, and then when we interpret the Order,  
13 we look at the four corners of the Order and say, What does  
14 the Order say on its face?

15                   And the Order says on its face, if the Company  
16 doesn't come in within two years from the final date that  
17 that Order is final and file for a rate increase, file a  
18 rate case or have a rate case pending, that the items  
19 deferred from the manufactured gas plants are null and void.

20                   And I think that's the end of this  
21 Commission's inquiry. I think it's a rather simple inquiry  
22 personally.

23                   JUDGE RUTH: You think it's simple, but please  
24 be patient and bear with me because I have to make sure I  
25 understand it well enough to convince Commissioners, which

1 at this point they've not made a decision.

2 MR. MICHEEL: And I understand. You know, I'm  
3 just saying my position, your Honor.

4 JUDGE RUTH: Okay. Mr. Fischer, would you  
5 like to respond?

6 MR. FISCHER: Yes, your Honor.

7 In terms of the 11th hour nature of the  
8 filing, I'd like to recall the environment that we were in  
9 at the time. We had until March the 9th to make a decision  
10 about whether to file a rate case last year.

11 As you recall, the time, we had just  
12 experienced a very dramatic fly up in natural gas costs, and  
13 the Company, United Cities, had some of the highest gas  
14 prices in the state. A decision was made by the Company  
15 that it was not a good idea for the ratepayers or for the  
16 Company to file a rate case in that environment, having just  
17 experienced this dramatic increase in natural gas prices.

18 Rather than do that, the Company made the  
19 decision to request an extension of the AAO in this case for  
20 a one-year period, which would only have the impact of  
21 allowing the Company to defer those costs and have those  
22 looked at at the next rate case.

23 There would be no decision on how the  
24 ratemaking would be treated. It would just reserve the  
25 right for the Company to have the Staff and Public Counsel

1 look at what they've done in connection with the DNR mandate  
2 that they take care of this environmental problem and they'd  
3 look at that in the next rate case.

4           If we hadn't asked for an extension, we would  
5 not have that opportunity to make an argument in the rate  
6 case, and we felt it was better to ask for an extension of  
7 the AAO at that point rather than file a rate case for  
8 this -- to capture these costs, especially in light of the  
9 fly up in natural gas prices.

10           Now, with regard to whether the Commission has  
11 jurisdiction to do that, I guess I would respectfully  
12 disagree with Public Counsel and Staff on that, and we've  
13 laid out our position in the pleadings, but this is a  
14 creation of the Commission.

15           In many states they don't put any kind of  
16 restriction on how long you have to take care of those costs  
17 that have been deferred into that particular account. In  
18 this particular Order, we had a two-year period. We  
19 requested that it be modified prior to the expiration of  
20 that, and the Commission did indicate that it was at least  
21 open to that by ordering a prehearing conference to talk  
22 about that.

23           We felt that that was the best alternative.  
24 We believe that it is within the Commission's jurisdiction  
25 to extend that, just like you after a rate case or any other

1 Order can issue an Order for rehearing of that after the  
2 effective date of the original Order provided that someone  
3 comes in and asks for a change in the Order prior to the  
4 effective date of that Order, which is what we've done here.

5               Prior to the effective date of the end of that  
6 two-year period we asked for a modification, and we felt  
7 that was the best alternative that would protect and balance  
8 all of the interests here, certainly allow the Staff and  
9 Public Counsel to make arguments that it was imprudent for  
10 us to bring up that environmental problem as ordered by DNR  
11 in a rate case.

12               The alternative is, as Staff and Public  
13 Counsel would just have the Company do, is write off the  
14 costs.

15               JUDGE RUTH: First of all, the rehearing  
16 argument that Mr. Fischer has mentioned and was in one of  
17 his pleadings, I would like Public Counsel and Staff to  
18 argue how you think that is different, because I'm sure you  
19 feel that the rehearing question is different, but explain  
20 it to me.

21               MR. MICHEEL: Certainly. I believe it is  
22 Section 386.500 of the statutes that deals with rehearing,  
23 and it says that the companies can request rehearing before  
24 the effective date of any Order, and they have to have that  
25 motion for rehearing on file before the effective date.

1                   If you look at Order paragraph 6 of this  
2 particular AAO that we're talking about, that Order shall  
3 become effective on March 9th, 1999. That was the effective  
4 date of that Order. I'm not exactly certain when the Order  
5 was issued. It was sometime in February.

6                   JUDGE RUTH: February 25th.

7                   MR. MICHEEL: February 25th. So the Company  
8 had that time frame from February 25th to March 8th to file  
9 their Motion for Rehearing. Absent a filing for Motion for  
10 Rehearing, the Company cannot -- or any party cannot file an  
11 appeal at the circuit court, and that Order becomes a final  
12 Order.

13                   So Mr. Fischer cites in here, for example, if  
14 you'll look -- if you'll look at his pleading on page 6, he  
15 talks about the Missouri Gas Energy case GR-98-140, the  
16 Missouri Gas Energy Case GR-96-285.

17                   I was involved in both of those cases, and I  
18 can tell as a matter of fact Missouri Gas Energy and all the  
19 parties filed their Motions for Rehearing -- and some of  
20 them were granted by the Commission in that case -- prior to  
21 the effective date of the Order.

22                   Okay. Here there was absolutely no Motion for  
23 Rehearing filed prior to the effective date of the  
24 March 9th, 1999 Order, which is when it was effective, and  
25 the statute is very clear. If you don't filed a Motion for

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1 Rehearing before that effective date, you cannot appeal. If  
2 you cannot appeal, the Order becomes final and that's it.

3           The Commission cannot revisit that. There is  
4 nothing in this Order that says the Commission can modify it  
5 or revisit it. And as, you know, relates to what happens in  
6 Tennessee or some of the other states that Mr. Fischer has  
7 put in there, I don't think that's at all relevant to what  
8 we do here in Missouri in the Missouri Public Service  
9 Commission case where we set out the standards for granting  
10 AAOs.

11           And it's in my papers where I specifically  
12 state the Commission has already determined that there  
13 should be a specific time frame for AAOs, and that's the way  
14 we've been doing it here in Missouri since at least 1991.  
15 So that's a decade-old practice that we've had here in this  
16 state where we say it has to be for a limited time frame.  
17 So I think that is certainly in apposite.

18           I think if you look at 386.500, which is the  
19 rehearing one, and 386.510, which is the review, that  
20 clearly sets out that this is not appropriate for the  
21 statutes and consistent with the statutes.

22           And when you couple that with 386.550 which  
23 states, In all collateral actions or proceedings the Orders  
24 of the court and decisions of the Commission which have  
25 become final shall be conclusive. By operation of this

1 Order, it became final in March 9th, 1999.

2                   You know, 386.550 says, you know, shall be  
3 conclusive. That's not wishy-washy or squishy. Shall is  
4 saying it will be conclusive.

5                   And again, I just respectfully disagree with  
6 Mr. Fischer, and when you look closely at the cases, even in  
7 the Union Electric cases cited there, the EO-95-400, on page  
8 6 of his brief, obviously the rehearing in that case was  
9 also filed before the final effective date of the Order.

10                  There's no rehearing here, your Honor. They  
11 didn't file a Motion for Rehearing. They had every right to  
12 do that. They chose not to.

13                  JUDGE RUTH: You see no analogy? Even though  
14 it's not a rehearing, you see no analogy between the two  
15 situations?

16                  MR. MICHEEL: No, your Honor. I mean, we have  
17 a statutory framework set up for seeking rehearing. There  
18 is no analogy and there's no authority to modify the Order.

19                  Once again, I go back to the finality idea. I  
20 as a practitioner and every practitioner before this  
21 Commission deserves to know that when an Order is final,  
22 that's what's going to happen. Here I am. I'm in 2001, you  
23 know, the middle of the year, past the middle of the year in  
24 2001 and I'm arguing about a case that I thought I'd put to  
25 bed on March 9th, 1999.

1                   I don't think that's fair. I don't think it's  
2 fair to the ratepayers either. I mean, it said in two years  
3 if they don't come in it shall be null and void. I think  
4 we're entitled to rely on that. I think that position is  
5 wholly consistent with the statutory framework set up by the  
6 Legislature.

7                   And I guess, you know, this whole idea of the  
8 price runup and all that, that's just a red herring. I  
9 mean, these are the rules, you know, and the Company could  
10 have come in. And since they filed this, the Company's  
11 still not here. They filed in March. There's no rate case  
12 on file. You know, I don't know. Now maybe gas prices are  
13 too low. I don't know why they haven't filed.

14                  But the fact of the matter is, the Order said  
15 they should file before the two years and they didn't, and  
16 the Order's self-executing and final.

17                  JUDGE RUTH: Let me ask you a theoretical or a  
18 general question. You've talked about how finality is  
19 required, the Commission cannot in your opinion change an  
20 Order after the effective date.

21                  I just want to make sure I understand. So are  
22 you arguing that once any Order has become effective, except  
23 for those rehearing situations where there's a statute, if  
24 an Order becomes effective the Commission cannot alter,  
25 amend or correct the Order after the effective date?

1                   MR. MICHEEL: No. I imagine they can correct  
2 the Order perhaps after the effective date, and certainly  
3 they can start new cases. For example, we can have rate  
4 case. I mean, if a company is given X amount or X return on  
5 equity in a case, they can file a new case to seek, you  
6 know, new rates, and I don't think that is disturbing or  
7 collaterally attacking an Order.

8                   But this is clearly collaterally attacking  
9 this specific Order. I mean, it's the same facts, the same  
10 situation and everything. So, I mean, in this case, based  
11 on these facts, I don't think the Commission can alter this  
12 Order. And indeed, when they start a new case, I think  
13 Mr. Fischer has every right to file for a new AAO going  
14 forward from when this AAO expired, and that wouldn't be a  
15 collateral attack.

16                  However, I do certainly believe that the items  
17 that were deferred pursuant to this Order, per this Order,  
18 by this Order must be written off. I mean, that's what the  
19 Order says, it's null and void.

20                  So certainly the Company does have the right  
21 and ability to file for a new case for a new AAO if they so  
22 choose, but with respect to these, no, and I don't think the  
23 Commission has authority to alter that. And I'm unaware of  
24 any time the Commission has done that in my almost ten years  
25 of practicing here.

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1 JUDGE RUTH: Thank you. Now, Staff, I want to  
2 give you an opportunity if you wish to respond to  
3 Mr. Fischer's argument about the rehearing where he says  
4 that they are somewhat analogous.

5 MR. FREY: The Staff agrees with the Public  
6 Counsel's position on that, your Honor, that they are not  
7 analogous, that the statute provides for rehearing within --  
8 before the effective date of the Order, and that the Company  
9 had waived it's right to rehearing.

10 JUDGE RUTH: Thank you, Mr. Frey.

11 MR. FISCHER: Your Honor, could I address  
12 Public Counsel's response regarding the fact we could have  
13 filed for a new AAO without a problem?

14 I would just point out that indeed the  
15 original AAO did contemplate in its own language on page 3  
16 the possibility that there would be a subsequent Accounting  
17 Authority Order granted for these same costs, and in our  
18 pleading -- in our pleading, our original request, we had an  
19 alternative in our prayer for relief asking that in the  
20 alternative the Commission issue a subsequent Accounting  
21 Authority Order to authorize United Cities to defer to  
22 Account 182.3 all costs incurred in connection with the  
23 investigation, assessment and environmental response action  
24 at the Hannibal manufactured gas plant.

25 Effectively what we were trying to do was, if

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1 the Commission was not comfortable extending the Order by a  
2 year, which is what our principal request was, in the  
3 alternative we were asking that basically the Commission  
4 issue a second subsequent Order which was contemplated in  
5 that original AAO that would capture those same costs and  
6 give us basically the same substantive relief only it would  
7 give us a three-year period.

8                   There's nothing that prohibits the Commission  
9 from going back on a retrospective basis from capturing  
10 costs, which is what exactly this original Order did allow  
11 us to do. We were just asking that they use their  
12 discretion to do that, to basically give us another year for  
13 the Commission to look at it in a subsequent rate case.

14                   JUDGE RUTH: Okay. I just need you to back up  
15 a minute. I have the Accounting Authority Order that was  
16 issued in February 1999, and you said on page 3?

17                   MR. FISCHER: Page 3, the ordered paragraph 2.  
18 It says that the Accounting Authority Order will apply to  
19 costs incurred or payments received between March 31, 1998  
20 and the effective date of the rates beginning established in  
21 United Cities' next case, and then this was the language I  
22 was referring to, or in the beginning of the deferral period  
23 of any subsequent Accounting Authority Order granted for the  
24 same costs, whichever is earlier.

25                   Our alternative position was that the

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1 Commission issue a subsequent, a second if you will,  
2 Accounting Authority Order dealing with this same matter  
3 based upon the record that we had here, the pleadings that  
4 we had here, asking that it just be extended out for a  
5 three-year period.

6 JUDGE RUTH: Okay. So I want to make sure I  
7 understand where some of your arguments are found. In the  
8 February 5th, 2001 document, at the bottom of the first  
9 page, is that what you're referring to where it says, Unless  
10 the Commission modifies its Order or, in the alternative,  
11 grants United Cities a subsequent Accounting Authority Order  
12 for the same costs?

13 MR. FISCHER: That relates to it, but I was  
14 really referring to the next page, on page 2, in the  
15 wherefore clause where we say, Wherefore, for the reasons  
16 stated herein, and then we ask for an extension for a year  
17 or, in the alternative, issue a subsequent Accounting  
18 Authority Order to authorize United Cities to defer in  
19 account 182.3 all costs incurred in connection with the  
20 investigation, assessment and environmental response actions  
21 at the Hannibal manufactured gas plant.

22 JUDGE RUTH: Okay. Just a moment. I want  
23 Staff and Public Counsel then to respond.

24 Public Counsel, you had mentioned you wouldn't  
25 object, or you noted that the Company has the right to

1 request a new Accounting Authority Order. Have they not  
2 done so?

3 MR. MICHEEL: I don't believe they have, your  
4 Honor. I think they need to file a separate case requesting  
5 a new Accounting Authority Order, and I think that we would  
6 have the opportunity to respond to that.

7 JUDGE RUTH: But I -- you say that. I'd like  
8 some more reasons why this is not sufficient. They ask for  
9 something and said, In the alternative, we want a new  
10 Accounting Authority Order. The Commission can give it a  
11 new number. The number is not necessarily what's important.  
12 Isn't it the fact that they have asked for it here?

13 MR. MICHEEL: Well, I think that's apparently  
14 something that the Commission could consider doing, but we  
15 are opposed to granting a new Accounting Authority Order.

16 JUDGE RUTH: Right. I understand. And we are  
17 not getting to the merits, and I don't want to in any way  
18 imply that we are discussing the merits here as to whether  
19 the Accounting Authority Order should be granted. That is  
20 not the subject of today's prehearing conference.

21 We're just talking about whether the  
22 Commission has the authority or the jurisdiction, and now  
23 we're getting into this issue of did they ask for a second  
24 or a new Accounting Authority Order.

25 MR. MICHEEL: Well, I think the Commission

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1 does have authority to grant a new and different Accounting  
2 Authority Order. As I said earlier, I don't think the  
3 Commission has authority to grant an Accounting Authority  
4 Order with respect to the costs that were deferred pursuant  
5 to this Accounting Authority Order because paragraph 3 says,  
6 if they don't come in for a rate case, the Accounting  
7 Authority Order for these costs are null and void.

8                   So on a going-forward basis, I think the  
9 Commission probably has that authority to do that, but I  
10 think the Company should file a request, a specific request  
11 for that. And I don't know that I necessarily agree with  
12 Mr. Fischer's interpretation of paragraph 2 there and what  
13 paragraph 2 means.

14                   JUDGE RUTH: Now, where are you talking?

15                   MR. MICHEEL: Paragraph 2 of the order section  
16 of the Accounting Authority Order.

17                   JUDGE RUTH: Okay.

18                   MR. MICHEEL: I mean, that says that the  
19 Accounting Authority Order will apply to costs incurred or  
20 payments received between March 31, '98 and the effective  
21 date of the rates established in United Cities' next general  
22 rate case or the beginning of the deferral period of any  
23 subsequent Accounting Authority Order granted for the same  
24 costs, whichever is earlier.

25                   My interpretation of that is, it says you have

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1 this two-year time frame, from the March 3rd, '98 to the  
2 next rate case, and any number after that you can -- in  
3 other words, they could come in for another rate case before  
4 the effective date of this Order, and then they could  
5 request at that time an Accounting Authority Order going  
6 forward for costs in the future that they're going to incur  
7 with respect to the manufactured gas plant.

8                   That's my interpretation of what that  
9 paragraph stands for. So I don't think it -- I don't  
10 necessarily agree with Mr. Fischer's interpretation of that  
11 language.

12                   JUDGE RUTH: Okay. And I want you to back up.

13                   MR. MICHEEL: Okay.

14                   JUDGE RUTH: I'm sorry, but I need you to  
15 state again, you said that you don't -- you don't think that  
16 a new Accounting Authority would apply to those same costs.

17                   MR. MICHEEL: Yes.

18                   JUDGE RUTH: I'm sorry. I just need you to  
19 explain that to me. I don't see why it wouldn't.

20                   MR. MICHEEL: Well, I guess the Company could  
21 ask for that to happen, but we would obviously argue against  
22 that, and the reason we would argue against that is this  
23 particular Order took those particular costs into account  
24 and set a particular time frame, two years, where the  
25 Commission said, Look, we're giving you this special

1 accounting treatment in recognition of regulatory lag and  
2 the fact that you don't want to have to come in all the  
3 time, but we're not in the business of allowing you to defer  
4 on your books items for four and five years.

5 JUDGE RUTH: Let me interrupt you, though. I  
6 mean, I think it was Mr. Fischer's, one of his pleadings  
7 noted that the Commission recently gave a three-year  
8 Accounting Authority Order.

9 MR. MICHEEL: Sure.

10 JUDGE RUTH: So what the Commission would be  
11 doing is give one for two years and another one for one  
12 year. So the years are --

13 MR. MICHEEL: But it's that relation back,  
14 your Honor, that I'm -- that I'm saying they can't do. It's  
15 capturing this time from March 31st, '98 up until March 9th,  
16 2001 that I would be objecting to and saying that's  
17 inappropriate.

18 JUDGE RUTH: So the appropriate period would  
19 begin when?

20 MR. MICHEEL: Could begin from, I would guess,  
21 March 9th, 2001 going forward when this one expired. And I  
22 think the Company is clearly within its rights to file for  
23 an Accounting Authority Order for that.

24 JUDGE RUTH: Okay. Can you respond to the  
25 date issue?

1                   MR. FISCHER: Yes, your Honor. I would just  
2 point out that in the original Accounting Authority Order  
3 that was issued on February 25th, 1999, related back and  
4 ordered that the Accounting Authority Order will apply to  
5 costs incurred or payments received between March 31, 1998,  
6 almost a full year retroactive, and that there's no  
7 prohibition against the Commission going back  
8 retrospectively and capturing those costs as is evidenced by  
9 the original Accounting Authority Order.

10                   I don't believe there would be any reason why  
11 in a subsequent Accounting Authority Order the Commission  
12 couldn't go back to the original date of March 31, 1998 and  
13 capture those same costs on a retrospective basis.

14                   JUDGE RUTH: Public Counsel and Staff, on that  
15 comment alone, do you wish to respond?

16                   MR. FREY: Yes, your Honor.

17                   First of all, with respect to Mr. Fischer's  
18 pointing out that they have asked in the alternative for a  
19 new accounting authority to cover those very same costs, not  
20 just the same type of costs but on a retrospective basis, I  
21 think we would all agree that in effect that's just a nice  
22 way of doing exactly what Mr. Micheel has been arguing  
23 against all along, which is basically to revisit costs that  
24 have already been identified or set aside for treatment in  
25 the original AAO which has already expired. And so I don't

1 think it would be appropriate on that basis.

2 JUDGE RUTH: Just a moment. I have a  
3 question, though. Mr. Micheel, much of his argument against  
4 the request has to do with his perceived lack of  
5 jurisdiction or authority that the Commission has. He says  
6 that the Commission cannot change that Order, cannot extend  
7 the March 9, 2001 deadline in other words.

8 The alternative that Mr. Fischer has proposed  
9 is different in that the Commission would not then be  
10 changing the March 9th, 2001 date. It would have a  
11 retroactive period of three years, thereabouts, instead of  
12 like the example we have in front of us. This Accounting  
13 Authority Order had a retroactive period of about a year.

14 So I'm not saying that the Commission should  
15 do that. I'm just saying that it's different. Then it  
16 wouldn't be a question of jurisdiction. It would be a  
17 question of should the Commission go back three whole years.

18 MR. FREY: I understand that, your Honor, and  
19 without addressing that specifically, I would say the fact  
20 that the Order is final indicates that they -- that that  
21 cannot be done as to those retrospective costs at this time.

22 JUDGE RUTH: Okay. I don't follow you. State  
23 that again.

24 MR. FREY: That the Order is final and --

25 JUDGE RUTH: Which Order?

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1                   MR. FREY:  -- and is null and void.  The  
2 Accounting Authority Order is null and void.  Did I say  
3 final?  I meant it's null and void, and, therefore, surely  
4 we have finality in this case that those costs cannot be  
5 revisited.

6                   The other thing that we've been talking about  
7 here --

8                   JUDGE RUTH:  When you say they can't be  
9 revisited, you're arguing --

10                  MR. FREY:  They can't be incorporated into a  
11 subsequent Accounting Order.  Suppose -- I mean, what's  
12 happening is the longer this period goes, the whole issue of  
13 retroactive ratemaking is becoming implicated it seems to  
14 me.

15                  You mentioned we're going to extend from two  
16 years to three years.  Actually, we would be extending  
17 virtually from three years to four years now because this  
18 thing started in March of 1998, which makes it we're talking  
19 about in effect four years worth of costs now.

20                  JUDGE RUTH:  I'm sorry to interrupt you, but I  
21 want to go back.  You said that the Commission can't issue,  
22 we cannot revisit this as a new Accounting Authority Order  
23 that pulls the time period all the way back from March 31,  
24 1998.  You said we can't do that, and I want you to explain  
25 again why we can't.

1 I'm not saying we should, but that argument is  
2 a little different than what Mr. Micheel has argued. This  
3 would not be a question of trying to extend an Order that  
4 was dead under Mr. Micheel's theory. It would be a new  
5 Accounting Authority Order that goes retroactive for more  
6 years than is perhaps standard. I don't know how many years  
7 they normally go back.

8 MR. FREY: The accounting -- as I understand  
9 it, the Accounting Authority Order is set up to deal with  
10 the whole problem of regulatory lag, and what has been done  
11 by establishing that particular Accounting Order is to  
12 identify a period of time during which the Company can  
13 collect costs and then elect under its own business  
14 decision, using its sound business judgment, to file a rate  
15 case to collect those costs.

16 The Order said, If you don't file, then this  
17 Order is null and void. And we would take the position that  
18 that takes care of those costs right there and they would be  
19 written off once the Order becomes null and void.

20 JUDGE RUTH: So you're saying even if --

21 MR. FREY: They should be written off, your  
22 Honor.

23 JUDGE RUTH: Even if the Company would have --  
24 instead of filing a request for a one-year extension, had  
25 just opened a new case asking for an Accounting Authority

1 Order that went back to the March '98 date, went back the  
2 three years, you would say you can't do that?

3 MR. FREY: Well, I think --

4 JUDGE RUTH: In other words, they can't do  
5 their in the alternative because -- and it's not the three  
6 years back that bothers you, the fact that it -- like, this  
7 AAO only goes back one year, and the new alternative AAO  
8 that the Company's proposing would go back three years.

9 It's not the three years that bothers you,  
10 it's the fact that it covers costs that were already covered  
11 in the previous AAO?

12 MR. FREY: That's correct, which has, as we've  
13 pointed out repeatedly, expired at this time.

14 JUDGE RUTH: And why can't they have -- okay.  
15 That one's expired. Why can't they go back three years and  
16 catch it again?

17 MR. FREY: Well, I mean, once again, we go  
18 into this whole question of finality and how many bites of  
19 the apple is the Company entitled to as to these particular  
20 costs. The Staff would say they've had their bite of the  
21 apple and that's it and that those costs would be written  
22 off upon the expiration.

23 JUDGE RUTH: Who's harmed and how by going  
24 back three years?

25 MR. FREY: Who's harmed?

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1 JUDGE RUTH: You said they've had their bite  
2 of the apple, and --

3 MR. FREY: Well, obviously the ratepayer would  
4 be harmed if --

5 JUDGE RUTH: Mr. Fischer I think argues they  
6 wouldn't be harmed because it will be addressed in a  
7 subsequent rate case.

8 MR. FREY: Yes, but to the extent that those  
9 numbers are -- those dollars are included, obviously it's a  
10 detriment to the ratepayer.

11 JUDGE RUTH: But that would be for -- that  
12 decision would be made in the rate case. Am I wrong,  
13 Mr. Micheel? I'm sorry. I thought you were shaking your  
14 head.

15 MR. MICHEEL: I just want to jump in at some  
16 point, your Honor. That's all.

17 JUDGE RUTH: Go right ahead.

18 MR. MICHEEL: First of all, with respect to  
19 why we can't go back to the March '98 issue that you were  
20 asking Mr. Frey about, why they can't just refile and go  
21 back --

22 JUDGE RUTH: In other words, why we can't do  
23 their in the alternative?

24 MR. MICHEEL: Yes, in the alternative.  
25 Certainly for that one year where it expired, they could

1 request that one year. But in terms of reaching back, your  
2 Honor, it's my belief that that would be a collateral attack  
3 on this Order.

4           Okay. This Order said if they don't do it in  
5 two years, it's null and void. And so the Order goes null  
6 and void, and to get around that Order the Company comes in  
7 and says, Gee, we want a new AA. We want the AAO extended  
8 and, by the way, go back to February of '98 again for the  
9 one that was just null and void where the Commission said if  
10 you don't come in for two years it's null and void. You  
11 know, I mean, that again in my view is a violation of  
12 386.550.

13           With respect to who is harmed by this, I mean,  
14 the way we have the regulatory structure set up now, if the  
15 Company doesn't come in for a rate case, which is their  
16 absolute right, they can be here any day they want to come  
17 in. The Commission's got 11 years -- 11 months -- I wish it  
18 were 11 years, but it's not -- 11 months to process that  
19 rate request.

20           The assumption is, your Honor, that when the  
21 company is not coming in for a rate increase or to increase  
22 rates, that they're happy with the money they're making and  
23 they're making enough money. And the whole idea of the AAO  
24 is a stopgap matter, you know, for these things that pop up,  
25 and the Commission specifically limits it to a time frame to

1 say, Hey, we're giving you an opportunity, but that  
2 opportunity is not going to go on forever.

3           In this case, you'd be taking costs four years  
4 away from 1998 and you'd be saying, Okay, let's force those  
5 costs on ratepayers in 2002. I mean, I think at that point  
6 that's fundamentally unfair to the ratepayers and it's a  
7 fundamental perversion of the ratemaking system that the  
8 legislature set up. I think that's what the harm is there.

9           We've given them special treatment already,  
10 your Honor. We've treated these costs differently. We've  
11 said, Hey, for two years if you don't come in -- we'll give  
12 you two years to come in for a rate case and we'll take a  
13 look at these costs. I mean, two years is enough. That's  
14 what the Commission Order says.

15           And to the extent that you reach it back  
16 again, like I said, that's yet again a collateral attack on  
17 this Order. And if that happens, what you're going to have,  
18 mark my words, you're going to have utilities allowing these  
19 Orders to expire. Then they're going to be coming in and  
20 they're going to be saying, Hey, that one expired, but let's  
21 reach back again to '98, and March 9th of '99 you said that  
22 was okay, so how can you fight it now?

23           And, you know, you're going to cause a  
24 situation where we may be deferring things for who knows how  
25 many years. I mean, this one, if you did that, it would be

1 four years. I mean, in all that time the Company hasn't  
2 come in for a rate case. That's fundamentally unfair.

3           And the burden it would put on the accountants  
4 to audit, to ensure that in that time frame, for example, in  
5 this case, the accountants would have to go back and look  
6 starting in March of '98 to figure out whether or not the  
7 Company was earning its authorized return or earning enough  
8 money to determine whether or not it needed those funds,  
9 because we're taking these out of period and plopping them  
10 down into a test year that they're not even related to, your  
11 Honor.

12           So it's fundamentally unfair. Again, it would  
13 be a collateral attack on this Commission's Order in this  
14 case.

15           JUDGE RUTH: Okay. Mr. Fischer, I wanted to  
16 ask you a question. Mr. Micheel has strenuously argued that  
17 the Commission cannot go back to the 1998 date and pull all  
18 those years into a new Accounting Authority Order. He has  
19 stated that, in his opinion, the Commission has the  
20 authority to now go back to the March 9, 2001 date when the  
21 previous Accounting Authority Order had a termination date  
22 set. Can you respond to that, please?

23           MR. FISCHER: Yes, your Honor. Of course,  
24 we'd like to be able to go back that far, but I don't think  
25 there's any legal impediment for the Commission attempting

1 to capture these extraordinary costs related to the DNR  
2 mandated environmental cleanup going back three years.

3               There's nothing that would say the Commission  
4 does not have that discretion. I haven't heard Staff say  
5 that that's not a -- that we can't do that. They're saying  
6 because there was an Order they don't think it should be  
7 done. But I don't believe there's anything that says that  
8 you couldn't go back and capture all of the costs associated  
9 with that plan.

10              JUDGE RUTH: Well, I think they have said, the  
11 parties, Public Counsel and Staff have said it's not the  
12 three years that's the problem, it's the fact that some of  
13 those costs were subject to another Accounting Authority  
14 Order, and Public Counsel has argued that the Commission  
15 cannot do that.

16              MR. FISCHER: I guess I --

17              JUDGE RUTH: That goes into collateral  
18 estoppel argument, finality, et cetera. So I want you to  
19 respond.

20              MR. FISCHER: I would respectfully disagree  
21 with that analysis. There's not a reason why a second Order  
22 could not, for example, say we believe it's in the public  
23 interest to capture all of the costs associated with that  
24 environmental cleanup. These are nonrecurring extraordinary  
25 costs which are the only kind of costs that are associated

1 with Accounting Authority Orders.

2                   The Commission will review whether any of  
3 these cleanup costs were imprudent in the next rate case,  
4 and we may disallow every dollar.

5                   JUDGE RUTH: So how long could the Commission  
6 take such a tactic?

7                   MR. FISCHER: I think that's in the discretion  
8 of the Commission.

9                   JUDGE RUTH: So we could, instead of having  
10 rate cases, just continue Accounting Authority Orders  
11 indefinitely?

12                  MR. FISCHER: Your Honor, in many states  
13 there's absolutely no restriction on when a company has to  
14 file a rate case that they would consider those costs.  
15 There's no harm because the Commission can look at these  
16 costs and say, Hey, we're going to disallow some of them,  
17 they're imprudent, or we're going to amortize them over a  
18 ten-year period to make sure there's not a rate impact on  
19 the Company's ratepayers. So I don't see a harm here.

20                  There is a definite harm to the Company,  
21 though, if the Company is now required to write off these  
22 costs which were prudently incurred and mandated by one of  
23 the other state agencies in this state. They will have to  
24 write those off. It will go to their bottom line. It will  
25 knock down their earnings for the period written off.

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1 JUDGE RUTH: Thank you. Public Counsel and  
2 Staff, do you have any responses?

3 MR. MICHEEL: I'd just like to respond to the  
4 last statement Mr. Fischer made about how it's going to harm  
5 the Company. First of all, we couldn't even know if this is  
6 going to be material. I mean, Atmos is a  
7 multi-million-dollar company. I believe that the costs that  
8 are incurred here are right around \$300,000.

9 JUDGE RUTH: 377,000.

10 MR. MICHEEL: 377. 400,000.

11 MR. FISCHER: I think it's a half a million if  
12 you include what they expected for the next year.

13 MR. MICHEEL: That's not going to make a blip,  
14 your Honor, on the bottom line. And remember, the  
15 assumption is when this Company doesn't come in for a rate  
16 case that they're earning their authorized return. And so  
17 to that extent, perhaps they're even over-earning.

18 JUDGE RUTH: If that's their assumption,  
19 they've argued, though, that there were other reasons why  
20 they didn't come in.

21 MR. MICHEEL: Well, but again, they make --

22 JUDGE RUTH: I mean, haven't they argued that  
23 assumption?

24 MR. MICHEEL: Well, no, they haven't, your  
25 Honor, because they make a business decision, okay, and I

1 guess they -- you know, Mr. Fischer alludes to the fact that  
2 they made some business decision because gas prices were  
3 high last winter not to come in for a rate case. Likewise,  
4 gas prices are in the 3.50 range right now, and they're not  
5 in here for a rate case and it's the middle of the summer.  
6 If there's a great time to get a rate case on file and  
7 processed in the gas world, it's right now. They're not in  
8 for a case, and there's no indication that they're coming in  
9 any time soon.

10               So again, the assumption is, until they come  
11 in, they should be -- they're happy with their revenue, and  
12 they're making those business decisions all the time. And  
13 part and parcel of making those business decisions, your  
14 Honor, is knowing what this Accounting Authority Order says,  
15 and it says on its face, If you don't come in for a rate  
16 case before the two years expire, it's null and void.

17               And I have to believe they have smart folks  
18 running the company and they knew what the consequences of  
19 that were.

20               JUDGE RUTH: Staff, did you have a response?

21               MR. FREY: No, your Honor.

22               JUDGE RUTH: Okay. I don't have any more  
23 questions. I want to give each of the parties an  
24 opportunity to, if you wish, to summarize or add anything  
25 additional. Otherwise, we'll conclude. But let's start



1 with -- actually, we'll start with the Company.

2                   MR. FISCHER: Well, your Honor, in  
3 retrospective, I wish I just had just asked for a subsequent  
4 Accounting Authority Order that go back three years to  
5 capture these same costs. I think that that's clearly  
6 within the Commission's discretion to grant.

7                   JUDGE RUTH: You say you wish you had. I  
8 thought you did in the alternative.

9                   MR. FISCHER: Well, I did, except I -- I did  
10 in the alternative. What I was suggesting, I wish I would  
11 have said that up front, that's our first recommendation,  
12 because I think that would have perhaps kept some of the  
13 controversy from going forward.

14                   Clearly we did ask for that in the  
15 alternative, and to the extent the Commission feels  
16 uncomfortable extending that by a one-year period like we  
17 originally requested in our first position, I would ask that  
18 the Commission adopt the second alternative position by  
19 issuing a second subsequent Accounting Authority Order  
20 covering the same costs and asking it go back to the same  
21 period of time so that we can capture the full amount of the  
22 costs associated with that environmental cleanup.

23                   JUDGE RUTH: Well, I said I had no further  
24 questions, but that raises one. If the Commission were to  
25 look at your alternative proposal, would there need to be a

1 hearing to address that second Accounting Authority Order  
2 since it appears that Staff and Public Counsel object?

3 MR. FISCHER: Your Honor, I don't think  
4 there's a statutory provision that requires a hearing for an  
5 Accounting Authority Order. In the first case there was not  
6 a hearing, and in any Accounting Authority Order case I've  
7 been involved with there haven't been although --

8 JUDGE RUTH: But in the first case I thought  
9 Staff recommended that the Accounting Authority Order be  
10 granted.

11 MR. FISCHER: That's true. That's true. I  
12 guess to the extent you thought a hearing was required, I  
13 mean, obviously that's within your discretion. I don't know  
14 of a statute that requires a hearing for that, but I think  
15 you could -- I think you could take administrative notice of  
16 your findings in the original case and go forward with a  
17 second Accounting Authority Order.

18 JUDGE RUTH: And if the Commission were to  
19 look at the alternative, the new Accounting Authority Order,  
20 it's your company's position that that Accounting Authority  
21 Order should go back all the way to March of 1998? You are  
22 not saying it would go back only to March 9 of 2001?

23 MR. FISCHER: Yes, your Honor. We'd ask that  
24 the full amount of the costs be included in that Accounting  
25 Authority Order, which was the same effect as extending the

1 original one by one year.

2 JUDGE RUTH: Because I just ask that because  
3 Public Counsel had indicated they would have no objection to  
4 the question of you-all just asking for one that goes back  
5 to March 9 of 2001, and I wanted to make sure I understand  
6 you. That's not what you're looking at; you're looking at  
7 it going back to '98?

8 MR. FISCHER: Yes, your Honor.

9 JUDGE RUTH: Okay. Staff?

10 MR. FREY: Your Honor, Staff stands by its  
11 position as set forth in the pleadings, namely that this AAO  
12 cannot be extended as requested by United Cities, but that  
13 by its terms it has expired, it is void due to the failure  
14 of the Company to file for a rate case within the time  
15 period specified by the Commission, namely by March 9th of  
16 this year.

17 The statutes provide that a party may timely  
18 seek rehearing of a Commission Order prior to its effective  
19 date, and failure to do so prevents that party from  
20 appealing the Order. In this case, United Cities filed --  
21 didn't file such a request.

22 The courts recognize at some point there needs  
23 to be some finality, and the parties need to be assured of  
24 their rights and obligations. Staff would argue that at  
25 minimum surely an Order is final upon its expiration.

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1                   We would point out as well, however, that if  
2 the Commission were to decide that it has the authority in  
3 this case to extend the subject AAO, we would be opposed to  
4 its extension in principle. At the time of the expiration,  
5 the Company had almost three years worth of costs set aside,  
6 and this begins to call into question the unusual  
7 extraordinary nature of these types of costs, and hence the  
8 reason for the AAO in the first place.

9                   Moreover, to extend the AAO increasingly  
10 implicates the whole question of retroactive ratemaking once  
11 you get out into the four-year realm. AAOs are an attempt  
12 to address the problem of regulatory lag, and they're not --  
13 they don't exist just simply for the purpose of stockpiling  
14 costs for an indefinite period until the Company decides  
15 that it's in their best interests to file a rate case, that  
16 perhaps their earnings situation is such that it's now  
17 appropriate.

18                  Staff would suggest that the Company's  
19 business decision not to file a case to recover the costs is  
20 based on its assessment that its earnings picture is  
21 satisfactory.

22                  With regard to a subsequent AAO, an issue that  
23 you have raised here, a question that you have raised here,  
24 Staff would certainly be opposed to the granting of an AAO  
25 without a hearing in this matter.

1 JUDGE RUTH: Do you believe the Commission is  
2 required to hold a hearing?

3 MR. FREY: The Commission respectfully, your  
4 Honor, can do -- of course, can rule however it chooses in  
5 this matter, but I think the appropriate thing that -- the  
6 Staff would certainly press for a hearing. I don't know  
7 that there's a statutory requirement that the Commission  
8 hold a hearing in this case, but we would certainly urge  
9 that one be held.

10 JUDGE RUTH: Thank you. And Mr. Micheel?

11 MR. MICHEEL: I'll go backwards. First of  
12 all, the Office of the Public Counsel is opposed to any  
13 extension of the AAO, even the one-year extension, and I  
14 would specifically request a hearing on that AAO.

15 With respect to whether or not the Commission  
16 is required to grant that hearing, that issue is an open  
17 legal issue. You can see State ex rel Office of the Public  
18 Counsel vs. Missouri Public Service Commission where we  
19 raised that argument before the Court of Appeals, and  
20 unfortunately I failed to preserve that argument. So it's  
21 an open question on whether or not a hearing is required.

22 Office of Public Counsel believes that, yes,  
23 hearings are required before all AAOs are granted, and  
24 that's 393.140 either subsection 5 or subsection 8.

25 JUDGE RUTH: Before all of them?

1                   MR. MICHEEL: Yes, before all AAOs. Now, we  
2 haven't raised that since the MoPub case, but certainly  
3 that's our belief, and it's an unsettled question of law,  
4 your Honor. And if you'll look at the Office of the Public  
5 Counsel case vs. Missouri Public Service Company you'll see  
6 that it's an unsettled question of law.

7                   But it's our view that there should be a  
8 hearing, and we're specifically requesting that the  
9 Commission hold a hearing if it goes -- decides to go along  
10 with this alternative for many of the reasons Mr. Frey set  
11 out, most importantly whether or not these are extraordinary  
12 costs and things like that.

13                  I think it would behoove the Commission to get  
14 some testimony from our expert witnesses, for example  
15 Mr. Robertson, our accountant, as to why -- or  
16 Mr. Oligschlaeger for that matter for the Staff, as to why  
17 it would be inappropriate for this Commission to extend the  
18 AAO or to grant an AAO in this case.

19                  With respect -- so certainly we do not object,  
20 and let me make it very clear. The Company certainly can  
21 file and request a new AAO or request the extension, but I  
22 think we should be given an opportunity to file testimony  
23 and specifically requested that a hearing be held.

24                  With respect to bundling up the costs since  
25 March of 1998, certainly we're opposed to that for all of

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1 the reasons that I've stated, the finality reason, the  
2 collateral attack reason, the fact that I don't believe that  
3 this Commission has jurisdiction, and the fact that from a  
4 public policy standpoint I think when you start going out  
5 four years on AAOs you're treading on very soft ground there  
6 and actually you're acting contrary to numerous Commission  
7 AAO Orders where they say they want a closed time period,  
8 and indeed they have the two-year time period here.

9                   So we are opposed to the one-year extension.  
10 And certainly we're opposed to the alternative of granting  
11 the three-year relation back which would make it a four-year  
12 AAO.

13                   JUDGE RUTH: Thank you. Now, when we finish  
14 the hearing, I was going to talk to the court reporter about  
15 the possibility of getting the transcript of this slightly  
16 expedited.

17                   With that in mind, I will tell you that I'm  
18 going to encourage the parties or strongly encourage but not  
19 require the parties to file a pleading that summarizes your  
20 arguments. You don't have to. The Commissioners will be  
21 provided a copy of the transcript.

22                   However, by the nature of a prehearing  
23 conference, we've bounced around from party to party and  
24 subject to subject. I feel that you've provided some very  
25 good information today. It's helped me quite a bit. But

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1 with the -- with that in mind, that the Commissioners were  
2 not able to be here, I would encourage you to file a  
3 supplemental pleading, but I'm not going to require you to.

4 I don't -- I don't know if you can tell me  
5 this, but I'd like to set a date as to when you think you  
6 could file something if you're going to file something, or  
7 if you know you're not going to, that's fine, too.

8 MR. MICHEEL: When will we get the transcript,  
9 your Honor?

10 MS. RUTH: Let's go off the record.

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

12 JUDGE RUTH: Off the record we had a brief  
13 discussion of timing, looking at whether this transcript  
14 needed to be expedited, and the parties have agreed that  
15 there is not a need to expedite the transcript.

16 Therefore, it will be provided within ten  
17 business days of today, and I have gathered that the parties  
18 believe that they will probably be filing a response, and  
19 they would like until August 10th then to file that  
20 supplemental pleading; is that correct?

21 MR. MICHEEL: Yes, your Honor. How should we  
22 denote that pleading, just so I get the name right?

23 JUDGE RUTH: Just a moment. You know, you're  
24 welcome to denote it supplemental suggestions in either  
25 support or opposition to whatever you did before, and I

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1 noted in your last batch you did say you're providing this  
2 as requested by the Regulatory Law Judge. Feel free to  
3 explain that again, why you're doing this, because it was  
4 suggested during today's hearing that it would be a good  
5 idea.

6 Are there any other matters that need to be  
7 addressed before we go off the record?

8 (No response.)

9 Okay. Seeing none, this hearing concluded.  
10 Thank you very much for your patience today. I appreciate  
11 your coming in, and again I did find it helpful. Thank you.

12 WHEREUPON, the recorded portion of the  
13 prehearing conference was concluded.

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