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STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

PREHEARING CONFERENCE

June 29, 2000
Jefferson City, Missouri
Volume 14

In the Matter of Missouri Gas Energy's)
Tariff Sheets Designed to Increase Rates) Case No.
for Gas Service in the Company's Service) GR-96-285
Area)

BEFORE:

SHELLY A. REGISTER, Presiding,
REGULATORY LAW JUDGE.

REPORTED BY:

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FOR: Missouri Gas Energy.

FOR: Midwest Gas Users Association, et al.

FOR: Office of the Public Counsel and the
Public.

FOR: Staff of the Missouri Public Service
Commission.

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

2 (Written Entries of Appearance filed.)

3 JUDGE REGISTER: Good morning. We're here for
4 the prehearing conference in Case No. GR-96-285 in the
5 matter of Missouri Gas Energy's Tariff Sheets Designed
6 to Increase Rates for Gas Service in the Company's
7 Service Area.

8 It is 10 a.m. on June 29th, 2000. We're in
9 the Public Service Commission's hearing room, Room 520
10 and I am Shelly Register, your Regulatory Law Judge.

11 And I'd like for us to go ahead and proceed
12 with appearances.

13 Mr. Duffy, would you proceed?

14 MR. DUFFY: Gary W. Duffy, Brydon, Swearengen
15 & England, P.C., P. O. Box 456, Jefferson City,
16 Missouri 65102 appearing for Missouri Gas and Energy.

17 JUDGE REGISTER: Thank you, Mr. Duffy.

18 Mr. Schwarz?

19 MR. SCHWARZ: Tom Schwarz and Robert Franson
20 for the Staff of the Missouri Public Service
21 Commission, P. O. Box 360, Jefferson City, Missouri
22 65102.

23 JUDGE REGISTER: And Mr. Franson is not
24 present?

25 MR. SCHWARZ: He's not present right now,

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1 that's correct.

2 JUDGE REGISTER: Do you expect him to come in?

3 MR. SCHWARZ: No, ma'am.

4 JUDGE REGISTER: Okay.

5 Mr. Micheel?

6 MR. MICHEEL: Douglas Micheel appearing on
7 behalf of the Office of Public Counsel and Public,
8 P. O. Box 7800, Jefferson City, Missouri 65102-7800.

9 JUDGE REGISTER: Mr. Conrad?

10 MR. CONRAD: And, Your Honor, let the record
11 please show the appearance of Stuart W. Conrad of the
12 law firm of Finnegan, Conrad & Peterson, 3100 Broadway,
13 Suite 1209, Kansas City, Missouri 64111 on behalf of
14 Midwest Gas Users Association, et al.

15 I would like to also -- although I would -- I
16 would -- who is also not here today, to advise the
17 bench that Mr. Finnegan -- Jeremiah D. Finnegan will be
18 possibly involved in this -- in this case at some point
19 in time, so I want you to be aware of that. Thank you.

20 JUDGE REGISTER: Thank you, Mr. Conrad.

21 And I got a withdrawal from him previously on
22 behalf of the County of Jackson?

23 MR. CONRAD: On Jackson County.

24 JUDGE REGISTER: But he's still representing
25 CMSU in your case; is that correct?

1 MR. CONRAD: Yes.

2 JUDGE REGISTER: Okay.

3 MR. CONRAD: As far as I -- as far as I'm

4 aware.

5 JUDGE REGISTER: Okay.

6 Any other appearances?

7 (No response.)

8 Okay. I did receive a letter from Frank

9 Taylor on behalf of the Home Builders' Association of

10 Kansas City, which, correct me gentlemen if you can,

11 was that previously referred to in this case as Kansas

12 City Developers?

13 MR. MICHEEL: Yes.

14 JUDGE REGISTER: That's the group that was

15 referred to previously as Kansas City Developers, and

16 they indicated that they wanted to continue to receive

17 the mailings, but would not be present today.

18 Also received a letter from Brent Stewart for

19 Riverside Pipeline and Mid-Kansas Partnership stating

20 the same.

21 MR. DUFFY: At some appropriate time I'd like

22 to ask a question about the status of all these other

23 people.

24 JUDGE REGISTER: Okay. Let me read off who I

25 have. If I've got it correctly, my last service list I

1 went through and I also have not present today then is
2 on behalf of Williams Natural Gas Company. I have
3 listed as counsel Richard S. Brownlee, III. I have
4 KCPL, James Fischer and William Riggins. I have City
5 of Kansas City, Mark Comley, Kathleen Hauser and
6 William Geary on behalf of Mountain Iron and Supply
7 Company. I have Victor Scott and Patrick Baumhoer.

8 MR. DUFFY: I thought they filed a motion to
9 withdraw from the case.

10 JUDGE REGISTER: Okay. Thank you very much.

11 MR. MICHEEL: That's my recollection also.

12 JUDGE REGISTER: Victor Scott, right?

13 MR. MICHEEL: Yes.

14 MR. DUFFY: Yes.

15 JUDGE REGISTER: Okay. I will check on that
16 and make sure. Okay. Thank you.

17 Gas Service Retirees Association of Missouri,
18 Bruce Dotson.

19 MR. MICHEEL: I think Mr. Dotson also sent a
20 letter.

21 MR. SCHWARZ: Saying he doesn't actively want
22 to participate.

23 JUDGE REGISTER: Okay. They going to -- they
24 didn't withdraw actually, but they -- they were not
25 actively participating?

1 MR. SCHWARZ: That's my recollection.

2 JUDGE REGISTER: Okay. Was that the same kind
3 of letter that Mr. Scott sent or was his actually a
4 withdrawal?

5 MR. SCHWARZ: I think it's -- well --

6 JUDGE REGISTER: I can check the file. It
7 would be in the later months.

8 MR. DUFFY: I have Mr. Dotson's letter, and it
9 says, My clients did not participate in the appeal.
10 They will not actively participate in the remand
11 proceeding so long as the rate design issues are the
12 only matter before the Commission. My clients however
13 wish to remain a party of record for the purposes of
14 receiving pleadings and notices, commission orders and
15 other communications regarding this proceeding.

16 JUDGE REGISTER: Thank you, Mr. Duffy. And
17 then County of Jackson I have listed as Jane McQuenny
18 representing them now. Local 53 IBEW, James Waers,
19 St. Joseph's Light & Power Company, Gary Myers,
20 UtiliCorp, Mark Marz, M-A-R-Z, city of St. Joseph,
21 Lisa M. Robertson.

22 What was your question, Mr. Duffy. Do you
23 want to go ahead?

24 MR. DUFFY: Well, I -- I guess I would just
25 like some clarification as to whether we are supposed

1 to treat these entities that are not showing up as
2 parties from a standpoint of -- do we serve them with
3 copies of pleadings that are filed when we go to the
4 hearing? Do we need to have copies of exhibits to
5 provide to them in some fashion? I mean, I'm just --
6 these people are kind of in limbo. They're here. But
7 they're not here.

8 JUDGE REGISTER: Right.

9 MR. DUFFY: So I -- I'd like some direction as
10 to how I'm supposed to treat them.

11 JUDGE REGISTER: Does anyone else want to make
12 a statement in that regard?

13 (No response.)

14 What I would say is that as long as they want
15 to remain as parties and they're just monitoring the
16 correspondence and -- and the issues to make sure the
17 issues don't come up that we continue to serve them
18 documents and pleadings.

19 When it comes to the hearing, is that
20 they've -- they have advised us they're not gonna be
21 present and participating, I don't see any reason for
22 you to have copies of documents available to them.

23 They -- they have notified us that they're not
24 going to be present and participating, so if they show
25 up, then we should remind them of that.

1 MR. DUFFY: And then I guess when it comes
2 time for Briefs, we would serve them with copies of
3 Briefs?

4 JUDGE REGISTER: Let me consider that,
5 Mr. Duffy, and discuss that with my Chief --

6 MR. DUFFY: Okay.

7 JUDGE REGISTER: -- and the other judges,
8 because if that is an issue -- if you're not
9 introducing any new issues when it comes to the
10 Briefs --

11 MR. CONRAD: And while you reflect on that, I
12 think perhaps Mr. Duffy would share in this concern.
13 We're all here going to -- going to work some, I think,
14 balance of warning after you recess to try to get this
15 organized, and the usual things that we'll hear
16 witnesses and thus.

17 I think the concern that I would have is after
18 we do that while I'm not -- I'm not in a mode usually
19 to -- to move to, you know, get somebody out of a case
20 because they have a cut. I think the concern that I
21 would have which I hope Mr. Duffy would share is that
22 somebody comes in from -- from size with something,
23 shall we say new, and either through -- through Brief
24 or something that's -- that's kind of not expected, but
25 they're still -- they're still a party of record and so

1 in theory they could do that.

2 JUDGE REGISTER: I believe that all of the
3 parties have been notified of this prehearing
4 conference. And I think the -- the rules allow us to
5 dismiss anybody who doesn't appear. We have not had
6 that practice of late, and I would want to give the
7 parties notice before I did that, but I certainly do
8 believe that they waive any issue that they could have
9 raised on this date in that their failure to be here
10 would -- is -- is their waiver.

11 MR. DUFFY: Well --

12 JUDGE REGISTER: And so I don't believe that
13 they should be able to come in later and raise new
14 issues that you don't discuss here today.

15 MR. DUFFY: I -- I agree with that, except the
16 discussion that's gonna take place today will likely
17 evolve into us trading facsimiles of a proposed issue
18 list, and so then the question arises, do we have to
19 serve these people with our proposed issue lists prior
20 to them being filed? Do they get the right to have
21 input?

22 I -- you know, I think maybe a solution you
23 could consider would be to just issue an order saying
24 that all of these other people that are not here are
25 allowed to -- I think the term is participate without

1 intervention or something like that, so that they --
2 you know, we would serve them with copies of pleadings,
3 but they wouldn't be entitled to participate in the
4 negotiations or something like that and get copies of
5 orders.

6 MR. CONRAD: And as that -- if I might
7 interject here, I think there is -- that's -- that's a
8 reasonable suggestion because this is -- this is a
9 remand of a case that was in 1996 under the rules that
10 were in existence at that time which didn't permit
11 exactly that although the new rules now don't.

12 MR. DUFFY: Okay.

13 MR. CONRAD: And I think you're --

14 MR. DUFFY: Well, that creates a conundrum
15 then if you don't have a rule that allows that.

16 JUDGE REGISTER: Well, actually --

17 MR. DUFFY: Or -- or I guess you could issue
18 an Order determining the status of the particular
19 parties' extent that they can participate and achieve
20 the same result, but call it something different.

21 MR. SCHWARZ: If -- if I might suggest -- I
22 mean, it would appear to me that if you're a party --
23 or a party, I would -- I would think it might be
24 cleaner just to issue a notice that if any party wants
25 to have any issue considered that they have to provide

1 Mr. Conrad, Mr. Micheel and Mr. Duffy and Staff with a
2 proposed issue statement seven days before the issues
3 list is due.

4 I don't think anybody's interested in it, but
5 that'll resolve it and nobody can complain then
6 about -- I don't think about irregularities.

7 MR. MICHEEL: And that would also give those
8 folks an opportunity to participate if they so choose.

9 JUDGE REGISTER: I think that's what I'll do
10 is I'll issue a notice following this -- following this
11 prehearing conference that any parties not represented
12 at this prehearing conference should notify those
13 counsel for parties that were present if they wish to
14 participate or -- or if they wish to present issues
15 in -- in the development of the list of issues.

16 Otherwise I don't believe that it's
17 unreasonable for the parties who are present here to
18 develop those issues. And then once the final is being
19 filed copy that. I don't think that you need to
20 include them in your discussions or your faxing back
21 and forth while you're negotiating those issues,
22 because they're -- they've already indicated they don't
23 want to participate in that.

24 And -- and I will -- I will issue that notice
25 that will direct them to notify you if they want to

1 have any more increased participation.

2 MR. MICHEEL: One other thing the hearing memo
3 that we initially filed in June of '96 period of time
4 does set out each parties' position with respect to the
5 issues that are now on remand, and certainly those
6 parties that -- that we've discussed today don't have
7 any position statements in the initial hearing memo.

8 JUDGE REGISTER: I believe what I can do also
9 with that notice is to notify them that if they have no
10 position, there's no need for them to file a position
11 statement, and that only the parties who are present
12 and participating fully and have a position need file a
13 position statement and that will eliminate -- okay.

14 MR. DUFFY: Then I assume that the -- the
15 service list that you attach to that order will be the
16 service list that we'll use from now on in the case --
17 reflect who is really a party and who isn't.

18 JUDGE REGISTER: No. I will probably leave
19 the service list attached. It'll have to go to all of
20 the parties who are officially parties, but if they
21 limit their participation and they request their
22 participation be limited, then I think that -- actually
23 I may issue as an Order as opposed to a notice that
24 they've requested limited participation and that they
25 should notify you if they have additional issues.

1 And the service -- the official service list
2 that they should still continue to get notice as long
3 as they are parties.

4 MR. DUFFY: I guess what I -- the one I was
5 talking about is Mountain Iron who's -- who's asked to
6 withdraw.

7 JUDGE REGISTER: Oh, yes. I'm sorry. Yes, I
8 will clarify that and remove those parties -- or those
9 people from the service list. Yeah, we will correct
10 that. And they were the only one that we noted that we
11 think has withdrawn?

12 MR. DUFFY: Except the -- I think I've tried
13 to send things to Martin Marz and they've come back as
14 undeliverable, so I have no idea where -- what happened
15 to them or --

16 MR. MICHEEL: Is he with Blackwell, Sanders,
17 Peper, Martin?

18 MR. DUFFY: I believe so.

19 MR. MICHEEL: I think they moved in Omaha to
20 some different address.

21 JUDGE REGISTER: And they're -- the -- the
22 firm has changed too, so I bet you that forwarding
23 address has been changed. I'll make a note to check
24 that address and we should be able to follow up on
25 that.

1 He was representing UtiliCorp. If we haven't
2 been able to get mail to Marz, then we will redirect
3 and send something directly to UtiliCorp. They can
4 forward it on to their counsel wherever they're at.

5 MR. DUFFY: I would suggest you send it to
6 John McKinney at Missouri Public Service, and I think
7 it's right in town.

8 JUDGE REGISTER: Okay.

9 MR. MICHEEL: Yeah.

10 JUDGE REGISTER: Thank you, Mr. Duffy. Okay.
11 Our procedural order sets us for hearing on August 8th
12 and 9th, but it also set us for hearing at the Governor
13 Building, and I was being overly optimistic obviously.
14 And we are not going to be in the Governor Building
15 until August 18, 19, 20 -- that's the dates.

16 So as long as I'm making notices, I'll be
17 issuing the notice that we will be here in this room
18 for the hearing.

19 MR. DUFFY: Thanks for telling me that,
20 because otherwise I wouldn't have known.

21 JUDGE REGISTER: Well, I was just a little
22 anxious to get there I guess. Okay. This -- now the
23 procedural schedule has the various standard notes, but
24 one of them is -- is the policy of filing the
25 transcript within two weeks after the hearing.

1 Does anybody at this time think they're gonna
2 need to expedite the transcript shorter than that
3 period?

4 MR. DUFFY: I don't believe so.

5 JUDGE REGISTER: Okay. And the -- the order
6 says that if you -- five days before the hearing date,
7 if you decide you do need that, you need to let me know
8 so that we can let the court reporters know.

9 Statement of Issues, List of Witnesses and
10 Order of Cross on July 18, stating the positions due
11 July 25th and the evidentiary hearing. I wanted to
12 ask, do you think that you will be changing your
13 statement of issues from what we had in the Order
14 reopening of the case of remand where we had, I think,
15 picked them up from the motions and they came from the
16 previous hearing memorandum, allocation of cost for
17 services and meter regulators was 4A1, 4A2 was
18 allocation of cost for mains, class costs of service
19 results and class rate increases.

20 Those were, I guess, identified as what was
21 under rate design that was still at issue previously.
22 Is that something that you're -- you're proposing to
23 discuss today?

24 Mr. Conrad?

25 MR. CONRAD: Yes. And I think -- I guess it

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1 would be my general sense, Judge Register, that there
2 probably would not be a dramatic change in that. One
3 concern I had which we -- we can take up later after --
4 after we go off the record is there -- there did seem
5 to be some slight confusion on the numbering between --
6 between hearing memo and what was going on, and maybe
7 that's just confusion in my mind, but if -- if that's
8 resolved, we can even stay with the same set of
9 numbers, even though they started in the middle --
10 middle of the day.

11 JUDGE REGISTER: Does this help in terms of
12 what evidence was previously filed or in terms of these
13 Roman Numeral IV and VI in terms of what else is
14 presented or is there any reason to stay with these or
15 can you renumber them just 1, 2, 3, 4?

16 MR. CONRAD: We could certainly renumber them.
17 There -- there were a number of other issues and
18 those -- those numbers, I think, were drawn from the
19 original hearing memo. And if there's any -- if
20 there's any value in preserving that relationship, then
21 that would be the value of preserving the numbers.
22 Otherwise it could probably be done and just
23 reformulate the statements.

24 JUDGE REGISTER: That's what I'd -- I'd like
25 to say is if -- if there's no -- if you see no value in

1 relating to evidence that's presented or anything
2 that's drafted in terms of what you're going to want me
3 to consider on these issues only what's on remand, then
4 I would like to see you go ahead and -- and -- if there
5 is no relationship, go ahead and renumber those, and so
6 we know clearly what we're discussing only in this
7 case.

8 MR. CONRAD: Now, what --

9 JUDGE REGISTER: You're not necessarily tied
10 to these numbers unless you have some reason to do so.

11 MR. CONRAD: There would be -- perhaps --
12 perhaps at the briefing level or -- or during the
13 hearing, there might be occasion to refer to an exhibit
14 or material or something that was already in from the
15 prior -- from the prior record.

16 I frankly haven't -- haven't analyzed all of
17 that at this point. As long as we can do that
18 without -- without adding to the confusion.

19 JUDGE REGISTER: Well, you have some time
20 before the list of issues has to be filed, and so I'll
21 let you counsel review that and determine what's --

22 Mr. Micheel?

23 MR. MICHEEL: Just a point of clarification.
24 The hearing memo doesn't have a Roman Numeral IV in it.
25 It has Roman Numerals I through III, and -- and the

1 class cost service rate design issues are under number
2 VI, so I just think, you know, it -- it got confused
3 somewhere down the line, but that's the -- that's where
4 the inconsistencies lie, Your Honor.

5 JUDGE REGISTER: The 1 through 6 is not Roman
6 Numerals, it's --

7 MR. MICHEEL: No. It would be -- Roman
8 Numeral II would be issues so it would be 26.1.1

9 MR. CONRAD: Let's just say we did it a
10 different way back then.

11 MR. SCHWARZ: Per-- perhaps we could adopt
12 some of the numbering systems from the Internal Revenue
13 Code which go down to --

14 JUDGE REGISTER: Okay. Well, you know, the
15 last number in each of these is 1, 2, 3, 4, maybe we
16 should just drop the first two sets under our table.

17 Okay.

18 MR. DUFFY: Just so I'm clear, I don't sense
19 that you have any particular, you know, persuasion one
20 way or the other on it as long as we make clear to you
21 what issues we're talking about. If -- if we decide
22 it's better to renumber them for clarity, we can do
23 that?

24 JUDGE REGISTER: That's correct. Thank you.

25 MR. DUFFY: Okay. And -- and one other thing

1 that Stu brought this up about the exhibits. We do
2 have all of these exhibits that already have been
3 entered into the record --

4 JUDGE REGISTER: Right.

5 MR. DUFFY: -- so when we go to this remand
6 hearing, am I assuming correctly that we will start
7 with the next highest numbered exhibit then -- would be
8 the like 170s something or other?

9 JUDGE REGISTER: Yes, sir.

10 MR. DUFFY: Okay.

11 JUDGE REGISTER: I have the original list of
12 exhibits here, but the ones you've identified are the
13 ones that I've pulled out and -- and we've identified
14 it as a -- that need to be reviewed for this case --

15 MR. DUFFY: Right.

16 JUDGE REGISTER: -- and I think that's
17 identified in your pleadings, so we have that as a
18 record, but when we add new ones, my last number is
19 here 181 out of Revenue rec-- reconciliation, January
20 6th, 1997. So our next number if we were to add new --
21 new exhibits at this point would be 182.

22 MR. DUFFY: And as far as you're concerned, we
23 don't have to do anything with regard to evidence
24 that's already in the record?

25 JUDGE REGISTER: No. That is admitted into

1 the record of this case. Since we're still in this
2 case, that is al-- already admitted and we don't even
3 have to consider offering. We'll only have to consider
4 the offering of the new testimony --

5 MR. DUFFY: Okay.

6 JUDGE REGISTER: -- that is offered and take
7 objections, et cetera on those.

8 MR. DUFFY: Okay.

9 JUDGE REGISTER: Everything else that was
10 previously in this case will remain so and considered
11 by the Commission as admitted evidence.

12 MR. DUFFY: Okay. Thank you.

13 JUDGE REGISTER: Are there anything -- any
14 other things that we need to discuss related to the
15 issues in this case?

16 (No response.)

17 Does it still look like we're going to just
18 need two days of hearing? You're gonna tell me the
19 second day is just for safety sake?

20 MR. CONRAD: Well, no, but --

21 MR. DUFFY: I guess that's something that we
22 probably will talk about.

23 MR. CONRAD: We need to talk about that, I
24 think. It would certainly be my hope that we could do
25 it in two days. I -- I really kind of wracked what

1 little brain I have left about how long we had
2 originally scheduled this thing for back in '97 when we
3 were all younger and better able to deal with these
4 complex issues.

5 And I couldn't remember whether we had allowed
6 like two and a half or three days or -- what we -- what
7 we originally put on the schedule or what we talked
8 about. Doug, do you remember? Did we have --

9 MR. MICHEEL: I think it was two days.

10 JUDGE REGISTER: Well, we'll stay with the two
11 days and -- and I'll look at the calendar and see if
12 we need more time than that, but we are starting at
13 8:30 now. The commissioners want to have as full a day
14 as possible, and so we -- we don't have to mark that
15 many exhibits. Since the exhibits are already marked,
16 we should be able to maximize our days.

17 Are we going to need opening arguments for
18 this hearing?

19 MR. DUFFY: I would say that if the Commission
20 wants we can certainly produce very brief opening
21 statements to just kind of set the tone, but not
22 belabor it. I'd certainly be willing to do that.

23 JUDGE REGISTER: That might --

24 MR. CONRAD: I would agree with that.

25 JUDGE REGISTER: That might bring everybody

1 who wasn't here the last time around into the -- what
2 are we here for now, and what -- what is the issue
3 before them now.

4 MR. DUFFY: I've -- my recollections in the
5 past sometimes we have a constraint with the hearing
6 reporter in that they have to leave at five o'clock or
7 something like that. I don't know what the latest
8 provision is. If we were running late, would it be
9 possible to go into the early evening hours or is that
10 not possible?

11 JUDGE REGISTER: We can talk to the court
12 reporter. It depends. I have had them in other cases
13 replace their court reporter if somebody isn't able to
14 stay, but if we let them know in advance, they're
15 better able to plan those things. And I don't know of
16 any constraint from the Commission, but I can double
17 check.

18 MR. DUFFY: Okay.

19 JUDGE REGISTER: Do you think that might be a
20 possibility the second day or even the first day?

21 MR. DUFFY: I would say a possibility on the
22 second day if it -- if we get into a time crunch. I've
23 just been in situations in the past where I've been
24 told in advance, no, this case shuts down at five
25 o'clock no matter what. I didn't know whether that was

1 still the rule or not.

2 MR. MICHEEL: Yeah. The Commission's policy
3 changes. When we initially tried this case, it was
4 you're gonna stay as long as it takes, and we were here
5 a couple of nights until 9:30, ten o'clock starting at
6 eight and then the policy since, Gary indicated has
7 changed, and they said, no, we're going 8 to 5.

8 MR. CONRAD: Some changes are for the -- the
9 better. I would -- well, I don't have a huge
10 conceptual problem of going past five. Just as a
11 matter of principle, I've been in hearings, I'm sure
12 that Mr. Duffy and Mr. Micheel and also esteemed
13 counsel for the Staff have also have gone until 9 or
14 9:30. And if you're starting at 8:30, then that
15 frankly does not advance the ball very far, because
16 after some point in time not only the witnesses but the
17 reporters, the attorneys, everybody else becomes even
18 more grumpy than I usually am, and probably that's not
19 what we -- what we want.

20 MR. SCHWARZ: If the suggestion was that at
21 some stage I become more grumpy than Stuart normally
22 is --

23 MR. CONRAD: And just to -- to take it out of
24 the pending area, it is -- it is a fact that our office
25 is not here in Jefferson City. And it's -- I don't

1 have in that sense the luxury of -- of walking five or
2 ten minutes.

3 JUDGE REGISTER: You don't want to stay
4 another lovely evening here in Jefferson City?

5 MR. CONRAD: No, it's not -- it's not that,
6 but sometimes in between you need -- you need to have a
7 little bit of attitude adjustment and gear shifting to
8 handle other things that have come into your office
9 that day that sometimes other clients say that we have
10 to have this done right now.

11 JUDGE REGISTER: My experience has been it
12 just depends on who has obligations. They have to
13 leave at five and sometimes that's counsel and
14 sometimes it's the court reporter and sometimes it's
15 the judge. And so I don't have anything that has --
16 requires me to leave here at five.

17 If anybody else would have that kind of
18 restriction, let me know and I will try to -- I will
19 let the court reporter's office know.

20 I don't know -- you don't know whether you'd
21 even be doing this? At this point, I don't think they
22 do the scheduling this far in advance, but I'll make a
23 note that we could run after five. And I wouldn't
24 expect to run late, but if we're -- I don't have any
25 problems running through until six, and if we're

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1 finishing a witness or that kind of thing.

2 That's within reason, but it gives us the
3 flexibility to decide at the time what -- how much we
4 want to finish into and going from there so --

5 MR. DUFFY: I'm just asking for ground rules.

6 JUDGE REGISTER: Yeah.

7 MR. DUFFY: I'm not advocating any particular
8 position.

9 JUDGE REGISTER: Well, and it gives me an
10 opportunity to check and see if anybody else has an
11 objection in -- in the office in terms of other judges
12 or the chief judge has a rule that I don't really know
13 about. I think that -- that they leave the running of
14 the hearings to each individual judge and -- and then
15 that'll give me an opportunity to give a heads up to
16 the court reporter's office that we may want to run
17 past five, and they can make arrangements if they need
18 to.

19 MR. DUFFY: Okay.

20 JUDGE REGISTER: Okay. Do we have any idea at
21 this point how many witnesses we expect to call for
22 cross-examination?

23 MR. DUFFY: MGE will have one witness.

24 MR. MICHEEL: Public Counsel will have two.

25 And I would point out that in the initial hearing Barry

1 Hall filed testimony. He's no longer with our office,
2 so Hong Hu will be adopting his testimony and that's
3 set out in Mr. Kime's rebuttal remand testimony.

4 JUDGE REGISTER: Okay.

5 MR. DUFFY: Along those same lines, Mr. Lewis
6 would be our witness instead of Mr. Gilmore who was our
7 original witness.

8 JUDGE REGISTER: And you'll have those
9 indications in your list of witnesses?

10 MR. DUFFY: Yes, ma'am.

11 JUDGE REGISTER: Mr. Conrad?

12 MR. CONRAD: We would technically have, Your
13 Honor, two, based on the list that would have been
14 submitted back around the middle of May. I frankly
15 need to verify that the material that was covered in
16 Mr. Nowak's testimony is really part of this -- of the
17 cost of service agreement. My -- my vague recollection
18 as we -- as we're learning not to say, but I'll say it
19 anyway, subject to change, is that it pertained to
20 issues that were specific to CMSU and to another --
21 another client. So I'm not sure that those issues
22 are -- are going to be before us in this, but I will --
23 I will verify that.

24 JUDGE REGISTER: Okay.

25 MR. CONRAD: And if that was -- if that's not

1 the case, then it would be one witness being Mr. Keys.
2 JUDGE REGISTER: Mr. Schwarz?
3 MR. SCHWARZ: Staff will have three witnesses.
4 JUDGE REGISTER: So at this time we'll have
5 seven total. Okay. Any -- there shouldn't be any
6 discovery at this point in this case should there, or
7 am I oversimplifying this?
8 MR. DUFFY: Well, there has -- there hasn't
9 been any lately, let's put it that way. And we -- you
10 know, we did go through the procedure of filing some
11 supplemental testimony to try to flesh out what we
12 thought were -- were new and different issues, and
13 there was rebuttal testimony filed by the staff and the
14 Public Counsel, so I think that -- I think the parties
15 are generally aware of what the positions are and so I
16 don't anticipate any additional discovery.
17 JUDGE REGISTER: You don't expect any.
18 Mr. Micheel?
19 MR. MICHEEL: No. And to the extent that we
20 have some depending on how extensive it is, I -- no, I
21 would commit to doing quick turn around and trying to
22 keep this hearing on track and --
23 JUDGE REGISTER: Okay.
24 MR. MICHEEL: -- getting it done.
25 JUDGE REGISTER: Mr. Schwarz?

1 MR. SCHWARZ: I don't anticipate any
2 additional discovery.

3 JUDGE REGISTER: Mr. Conrad?

4 MR. CONRAD: At this moment, I'm not
5 anticipating any, but I wouldn't want to write it off
6 and close the door. There was mention right away, and
7 I think Mr. Duffy made reference to is there some new
8 filing from Staff of additional testimony that --

9 MR. DUFFY: Filed rebuttal.

10 MR. CONRAD: Of --

11 JUDGE REGISTER: Rebuttal testimony on remand
12 of Daniel Beck.

13 MR. SCHWARZ: Why don't you keep that one.

14 JUDGE REGISTER: Yeah, you might want to check
15 your service list, Mr. Schwarz.

16 MR. CONRAD: Yeah, we hadn't seen this.

17 JUDGE REGISTER: And I -- because I noticed
18 when I was going through that the last thing that had
19 Mr. Franson's signature on it didn't look like a full
20 service list.

21 MR. DUFFY: The problem I think -- I -- I
22 think I wrote a letter to the Commission or somebody
23 because when -- when Mr. Finnegan withdrew in Jackson
24 County I think the Commission --

25 JUDGE REGISTER: Took him off?

1 MR. DUFFY: -- knocked Mr. Conrad and
2 Mr. Finnegan off of the service list and so --
3 JUDGE REGISTER: Okay.
4 MR. DUFFY: -- so Mr. Schwarz may be using one
5 of those old lists.
6 JUDGE REGISTER: One of the old lists because
7 the current one is updated?
8 MR. DUFFY: Yeah.
9 JUDGE REGISTER: Okay. So that's -- you might
10 want to che-- have Mr. Franson check on that because
11 that also would include the copy -- the one I was
12 looking at was the copies of those three exhibits that
13 I asked Staff to file.
14 MR. DUFFY: It's my understanding that
15 Mr. Lewis filed rebut-- supplemental direct on remand
16 and Mr. Kime filed some rebuttal to that and Mr. Beck
17 filed some rebuttal on that, and that's all that I'm
18 aware of in terms of new testimony files.
19 JUDGE REGISTER: That's all I have.
20 MR. CONRAD: Well, and for the record, just --
21 I -- I've just now received a copy of what would appear
22 to have been filed on June -- June 20 which is rebuttal
23 testimony on remand of Daniel Beck.
24 JUDGE REGISTER: I'm glad you mentioned that
25 because I did want to point that out to Mr. Schwarz.

1 That's 167 and 168 and 169.

2 MR. CONRAD: It's not -- it's not long, but we
3 haven't --

4 JUDGE REGISTER: Right.

5 MR. CONRAD: -- we haven't seen it before
6 today so --

7 JUDGE REGISTER: And I'm -- I would expect
8 that you have copies of Exhibits 167, '68, and '69, but
9 I wanted to make sure the parties all got copies if it
10 was filed with the Commission so that you were -- you
11 were able to ascertain that it's the same thing that
12 was filed by the Commission is what you have in case
13 there were any objections to that.

14 So that was the document I had, the
15 response -- the order directly filing on these three
16 exhibits, Mr. Schwarz, that weren't -- didn't include
17 Mr. Taylor, didn't include Mr. Finnegan or Mr. Conrad,
18 but I think it got everybody else including Victor
19 Scott twice.

20 MR. CONRAD: Well, 167 through 169 I think
21 were in the earlier series.

22 MR. DUFFY: Yes.

23 JUDGE REGISTER: They were?

24 MR. CONRAD: Yes.

25 JUDGE REGISTER: And they were -- they were

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1 the last three documents identified by Mr. Duffy as
2 those that -- that -- that he believed would need to be
3 considered by the Commission on nonrate design issues,
4 but when I went to the Commission's file, we did not
5 have a copy of those three documents in our record. So
6 I asked the Staff -- I directed the Staff to complete
7 the -- the official record by filing a copy of those
8 documents with us.

9 And that was the service that I think that you
10 were -- you might want to take a look at the docket
11 sheets before you leave today, Mr. Conrad, to see if
12 there's anything else --

13 MR. CONRAD: Okay.

14 JUDGE REGISTER: -- that you might have been
15 missed -- missed on that was --

16 MR. CONRAD: Okay.

17 JUDGE REGISTER: -- because I think -- I think
18 that's accurate what happened in Jackson County. I
19 don't think I got a copy of that letter, but
20 Mr. Roberts probably did, our Chief Judge, and they
21 probably took care of that without me even knowing it.

22 Okay. I have a pending motion, Application
23 for Rehearing or Reconsideration of Midwest Gas Users
24 Association of -- of the Order of May 11, 2000
25 permitting filing of supplemental testimony. That is

1 the only pending action I have -- or request I have
2 is -- note of. Is there anything else that I've
3 missed?

4 MR. CONRAD: I don't think so, but I -- I
5 might not know.

6 JUDGE REGISTER: Well, we should -- that's
7 what prehearing conferences are for -- for getting
8 everybody on the same page. Well, I only have one more
9 question, and hopefully this will be a discussion. Is
10 there any potential for settlement of this hearing on
11 remand?

12 MR. MICHEEL: We're certainly willing to
13 discuss it.

14 MR. CONRAD: We're -- we're here.

15 JUDGE REGISTER: That's part of what you're
16 intending to do today?

17 MR. CONRAD: It may be a brief discussion, but
18 we're certainly here.

19 JUDGE REGISTER: Well, let me ask one more
20 just to kind of give me a brief up to date. What I'd
21 like for each of you to tell me, what -- what you see
22 the issues in this case being, and basically, you know,
23 where your positions or issues or concerns are at this
24 time. I'm gonna ask Mr. Duffy to start off.

25 MR. DUFFY: Well, I guess I would answer that

1 by saying that the -- the issues are the ones that were
2 present back in the original case since the Commission
3 did not -- or that the courts have determined the
4 Commission did not hold a hearing on those issues.

5 Our position is there are other issues then
6 that have arisen since then, namely an impoundment of
7 funds in Circuit Court that have a bearing on how the
8 Commission should act, but in -- in brief summary, our
9 position is the Commission should afford the parties a
10 hearing if they still desire a hearing, and the
11 Commission should reach the same result that they did,
12 only this time after hearing based on evidence.

13 Does that answer your question?

14 JUDGE REGISTER: Well, it's probably not all
15 that I was looking for.

16 MR. DUFFY: Okay.

17 JUDGE REGISTER: Let me ask you -- let me be
18 more specific.

19 MR. DUFFY: Okay.

20 JUDGE REGISTER: In terms of allocation of
21 cost of services, the allocation of cost of mains, the
22 class cost of service results and class rate increases,
23 I guess the -- the costs are those that -- that MGE is
24 set forth as those that they're -- of the costs they've
25 had, and it's the other parties challenging those

1 costs; is that accurate?

2 MR. DUFFY: Well, I would -- I would say that
3 there are at least a couple of cost of service studies
4 I think in the record, and I may be wrong about that
5 because it's been a long time.

6 MR. CONRAD: There's three.

7 MR. DUFFY: Three. Okay. So there are three
8 cost of service studies in the case, and then I believe
9 all of those are based on MGE's actual cost, but with
10 different allocation methods applied to them.

11 Then the -- the question is, you know, should
12 the Commission adopt some particular result of -- of
13 one of those cost of service studies or should they do
14 something else that is based upon those studies, but
15 perhaps not the exact mathematical result of those
16 studies.

17 JUDGE REGISTER: Okay.

18 MR. DUFFY: Does that answer your question?

19 JUDGE REGISTER: I think that's where I was
20 looking.

21 Mr. Conrad, do you want to let me --

22 MR. CONRAD: Sure. I think I can -- I can
23 summarize. I guess I would preface this by saying
24 the -- the last three weeks of my life we've been
25 deeply engaged in a water case here at the Commission.

1 JUDGE REGISTER: I heard you were here.

2 MR. CONRAD: And my ability to give attention
3 to this one has only resumed recently, and I have not
4 finished full review of all the materials nor has
5 our -- our address. So with -- with that caveat, I
6 would agree that I -- I do not believe as we took this
7 case -- let me back up a second.

8 I guess -- I guess our view, Judge Register,
9 of this case, is that we would be at a point in time
10 that the parties in -- in the actual hearing -- I can't
11 recall precisely the day, the record will reflect that,
12 submitted to the Commission a settlement stipulation
13 which they all were agreeable to and which MGE, it's my
14 recollection, said we would not oppose, and that was
15 then taken up by the Commission and ultimately produced
16 the result to which Mr. Duffy referred.

17 I guess it would be our review of this case
18 that we, in effect, as a result of those judicial
19 processes in agreement are now in effect back at
20 that -- at that point in time. And I think it is a
21 fair statement that at that point in time everybody had
22 their case at that point in time ready to -- to go and
23 the witnesses were all here or were -- or were
24 scheduled and were ready to go on those issues.

25 At that point in time, there were three

1 studies as I recall. There had been one cost of
2 service study done by Mr. Gilmore, one cost of service
3 study done by Mr. Beck, et al. and Ann Ross had done
4 some work on --

5 MR. SCHWARZ: Allocation.

6 MR. CONRAD: -- on the back end of that, and
7 then I believe Mr. Kime and Mr. Hall collectively had
8 done a cost of service study. Those -- those studies
9 did not obviously dovetail any result. Mr. Key's
10 reviewed Mr. Gilmore's study and although he has done
11 cost of service studies in the past and submitted too,
12 did not do that in this case because it looked to him
13 whatever his testimony was about Mr. Gilmore's study
14 was in-- incorrect.

15 And that's really the posture of the case. I
16 don't think that there was argument in that -- this
17 part of the case as to any particular cost that -- that
18 something had been overspent or overrun or that there
19 had been an imprudent expenditure or something like
20 that. I mean, there's nothing like an accounting
21 adjudgment in which a cost item would be disallowed.

22 The -- the focus of the case would be not
23 arguing about the size of the pie to use that analogy,
24 but -- but debating the appropriate methodologies to
25 use to establish the respective slices of the pie for

1 the class cost of service. And that would be, I think,
2 where we would take it.

3 Now, beyond that I really wouldn't -- I didn't
4 think you wanted an opening statement at this point,
5 but -- but I think that's where -- where the case is.

6 JUDGE REGISTER: That's fine. I appreciate
7 that, Mr. Conrad.

8 MR. MICHEEL: Your Honor, I'd also point out
9 that our -- our class cost of service study was based
10 on the accounting schedules that were filed with the
11 Staff's nonrate design testimony, so -- and I know -- I
12 know Mr. Duffy didn't mean to misspeak, but we didn't
13 take MGE's as filed accounting schedules based our cost
14 of study service on that, instead, we based it on what
15 we commonly call the Staff's run -- our cost of service
16 study and you can find that -- I mean, it's clearly set
17 out in Mr. Kime's direct testimony which is Exhibit 18.

18 JUDGE REGISTER: And that's part of the
19 exhibits that were identified?

20 MR. MICHEEL: Yes, it is, Your Honor.

21 JUDGE REGISTER: If there are other exhibits
22 that we determine along the way that aren't in our list
23 of what we think -- what we thought would be a direct
24 issue here, be sure to advise that -- myself and the
25 Commission that -- that there is something outside

1 those documents, because those were the only documents
2 that I had copied, because all of our -- our files had
3 to be recreated for the Commissioners and for myself.

4 So we'll need to pull those and have copies
5 made if we need to be reviewing those -- or the
6 Commissioners can pull the official file if they want
7 to look at those staff run or whatever they are, but
8 let me know if it's one of the exhibits that's outside
9 of the ones that we identified as being relevant to
10 this case so that we can -- we can do that.

11 Do you have anything else you wanted to add at
12 this point, Mr. Micheel, in terms of the Public
13 Counsel's position in this case?

14 MR. MICHEEL: I think you'll see the Public
15 Counsel's position is set out in the rebuttal remand
16 testimony of Mr. Kime. We haven't changed our position
17 from the position that we initially filed. There is
18 some comment on some of the issues raised in
19 Mr. Lewis's testimony, but I don't need to get into
20 that at this time.

21 JUDGE REGISTER: In other words, specifics
22 that you have just noted on -- on what you based your
23 position on the statements Mr. Duffy and Mr. Conrad
24 have made are generally accurate?

25 MR. MICHEEL: Yes, I think so. I mean, we

1 haven't changed our position from the time we filed our
2 testimony those many years ago. That's what we're
3 recommending the Commission do plain and simple.

4 JUDGE REGISTER: Mr. Schwarz, anything you
5 wanted to add here?

6 MR. SCHWARZ: No, I think that they've set it
7 out.

8 JUDGE REGISTER: Is there anything else that
9 we need to handle at this prehearing conference?

10 MR. CONRAD: Your Honor, I don't think there's
11 anything at this moment. I'm just prying my witness
12 and he doesn't either. We'll go ahead with the
13 discussions after you leave. If -- will you be
14 available if something should come up?

15 JUDGE REGISTER: I will be here all day. I
16 should be in and around my office. If you go to my
17 office -- if you can't locate me, check with Dana or --
18 I usually try to -- if I go anywhere try to put it on
19 my board, but I'll be in the area so -- okay.

20 If nothing else, we'll go off the record and
21 let the parties proceed.

22 Thank you, gentlemen.

23 WHEREUPON, the on-the-record portion of the
24 prehearing conference was concluded.

25