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STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

PREHEARING CONFERENCE

September 2, 1998
Jefferson City, Missouri
Volume I

In the Matter of the Assessment)
Against the Public Utilities in)
the State of Missouri for the) Case
Expenses of the Commission for) No. 00-99-44
the Fiscal Year Commencing July 1,)
1998.)

BEFORE:

DALE A. ROBERTS, Presiding,
CHIEF REGULATORY LAW JUDGE.

REPORTED BY:

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

2 (Written Entries of Appearance filed.)

3 JUDGE ROBERTS: Good morning, ladies and
4 gentlemen. My name is Dale Roberts. I'm the law
5 judge to whom this case has been assigned.

6 We're here for the Commission's Case
7 No. 00-99-44, which is in the matter of the assessment
8 against the public utilities in the state of Missouri
9 for the expenses of the Commission for the fiscal year
10 commencing July 1, 1998. An Application for Rehearing
11 and Stay was filed on July 28th, and the Commission --
12 and, actually, that application was filed in Case
13 No. 11,110, and the Commission subsequently docketed
14 the application into this case to treat this specific
15 issue.

16 There have been a number -- a number of
17 interventions granted, and just looking around the
18 room it doesn't appear that everybody appeared today,
19 so I want to start with entries of appearance,
20 starting first, please, with the Applicants.

21 MR. BOUDREAU: Let the record reflect the
22 appearance of Paul A. Boudreau and James C. Swearengen
23 with the law firm of Brydon, Swearengen and England,
24 312 East Capital Avenue, Post Office Box 456,
25 Jefferson City, Missouri, 65102, appearing on behalf

1 of West Elm Place Corporation, The Empire District
2 Electric Corporation, St. Joseph Light and Power
3 Company, Associated Natural Gas Company, Missouri-
4 American Water Company, and UtiliCorp United.

5 MR. PENDERGAST: Thank you, your Honor.

6 Michael C. Pendergast appearing on behalf of
7 Laclede Gas Company. My business address is 720 Olive
8 Street, St. Louis, Missouri, 63101.

9 MR. FISCHER: James M. Fischer, 101 West
10 McCarty Street, Suite 215, Jefferson City, Missouri,
11 appearing today on behalf of Southern Missouri Gas
12 Company, L.P., Atlas Energy Company through its
13 division Greeley Gas Company and United Cities Gas
14 Company, Fidelity Natural Gas Company and Fidelity
15 Telephone Company.

16 JUDGE ROBERTS: Go ahead, Mr. Haas.

17 MR. HAAS: The Staff appears by William K.
18 Haas. My address is Post Office Box 360, Jefferson
19 City, Missouri, 65102.

20 JUDGE ROBERTS: Mr. Bub?

21 MR. BUB: Leo Bub for Southwestern Bell
22 Telephone Company. Our address is One Bell Center,
23 St. Louis, Missouri, 63101.

24 JUDGE ROBERTS: The Commission on
25 September 1st issued an order granting intervention

1 which also granted intervention to Missouri Gas
2 Energy. Is anyone here on behalf of MGE?
3 (No response.)
4 JUDGE ROBERTS: I don't hear any response.
5 It also granted intervention to Kansas City
6 Power and Light. Is anyone here on behalf of KCP&L.
7 (No response.)
8 JUDGE ROBERTS: I don't hear anything.
9 Did I miss anyone?
10 (No response.)
11 JUDGE ROBERTS: Okay. A very interesting
12 case. I don't know where to start. Are there any
13 motions or requests to take up?
14 MR. BOUDREAU: I don't think there is
15 anything pending.
16 JUDGE ROBERTS: Okay.
17 MR. BOUDREAU: Just -- you had asked that
18 the Applicants respond to some particular issues. We
19 filed that responsive pleading, I believe, earlier
20 this week.
21 JUDGE ROBERTS: Yes.
22 MR. BOUDREAU: But as far as I know, there
23 is no outstanding motions on our behalf, at any rate.
24 JUDGE ROBERTS: Thank you.
25 And I will note for the record that the

1 Commission would also like to have that and would
2 direct a response to the order from the Intervenor.
3 I had planned to take that up here. KCP&L and MGE are
4 not here.

5 At least Southwestern Bell, and Mr. Fischer,
6 for your multiple clients, the order that established
7 this case set out a number of questions, and we would
8 appreciate any response that you can provide to those,
9 as well, maybe in the next two weeks, if that sounds
10 all right.

11 I don't know what to say about MGE and
12 KCP&L. Certainly, the Commission's rules say failure
13 to appear for hearing subjects a party to dismissal
14 unless a party files a motion to that effect. I'll
15 wait and see if the Commission is going to take that
16 up sua sponte.

17 Our questions, then -- there were a number
18 of questions raised by the Petition, and the
19 Applicants in their responsive pleading the other day
20 set out their statements, I think, of jurisdiction and
21 a pretty clear statement of their claim.

22 I'm not sure, Mr. Boudreau, that we've
23 actually ruled on the stay portion of it, and you are
24 nodding your head yes. Go ahead.

25 MR. BOUDREAU: Well, I believe that's

1 correct. I don't believe that -- I think that the
2 Commission reserved -- if I recall, the order reserved
3 ruling on the request for stay.

4 JUDGE ROBERTS: And unless you want to renew
5 your request or make some demand for that, it's my
6 understanding the parties have sort of voluntarily
7 paid and done so under protest, and I believe that
8 certainly preserves your rights. And as I understand
9 it, payments under protest are established in a
10 specific account or cost center, or something of that
11 sort, with -- with the -- possibly with the Director
12 of Revenue.

13 In any event, unless you are uncomfortable
14 with that situation, I don't know that it's necessary
15 for the Commission to rule on the stay, and I'll leave
16 that up to you, maybe at the conclusion of the
17 prehearing.

18 MR. BOUDREAU: I may want to address that
19 issue, and it may be appropriate, then, to wait until
20 the conclusion of the prehearing, or at least the
21 on-the-record portion of it.

22 JUDGE ROBERTS: Okay. I guess one of my
23 questions -- I know that the Applicants are -- it
24 appeared to be unclear to the Applicants how the
25 Commission arrived at the amount of the assessment.

1 And I guess my first question is, have you-all started
2 exchanging information yet on that issue in terms of
3 data requests or casual conversations, or have you
4 been waiting for the prehearing?

5 MR. BOUDREAU: Well, if I may, to my
6 knowledge -- I haven't sent any data requests, and I
7 haven't received any, and I doubt -- and I suspect
8 that's probably the case with everybody else.

9 What I'm hoping will take place after the
10 on-record portion of the prehearing today is a
11 discussion for the -- on an informal basis for the
12 purposes of maybe developing some of the information,
13 developing some of the -- bettering our understanding
14 of what's transpired and how the numbers have been
15 arrived at. And I believe that general approach is
16 agreeable to Staff, and I think that they've indicated
17 that they are in a position to, perhaps, enlighten us
18 somewhat on some background information.

19 We thought that would be more conducive to
20 finding out what the issues are and what the facts are
21 than going the formal route at this point. So that's
22 my understanding.

23 MR. HAAS: Yes, your Honor. Helen Davis is
24 here today to explain the calculations behind the
25 assessment.

1 JUDGE ROBERTS: Okay. Is it also correct,
2 and I'm not sure if this will cause any particular
3 Applicant or Intervenor -- from the original
4 application it appeared there was an issue about
5 simply the increase assessment which appeared to be
6 caused by the Hancock distribution. I'm trying not to
7 read anything into the application that maybe isn't
8 there, but I'm not so sure that there may not have
9 been a second issue or a sub-issue of that in terms of
10 some inequity of the distribution of assessments from
11 larger companies to smaller companies? Is that an
12 issue with anyone, or is that incorrect?

13 MR. BOUDREAU: I don't know that that's an
14 issue that's been articulated to me by any of the
15 companies that we represent. There may be an issue
16 about -- there may be some questions, let me put it
17 this way, about how the amounts were assessed between
18 different utility groups, but it's not necessarily a
19 question of big versus large, as I understand it.

20 MR. PENDERGAST: Yeah. I would like to echo
21 that. I think, in fact, in the response that we
22 filed, in addition to mentioning, obviously, the
23 Hancock issue, we talked about, you know, wanting to
24 get some additional information on the allocation of
25 those expenses between companies and between

1 industries. And I think hopefully Staff's
2 presentation today to us will be helpful in giving us
3 better understanding of how that's worked.

4 MR. FISCHER: We didn't raise any issues in
5 our motions to intervene along that line. We were
6 primarily interested in the Hancock transfer amounts
7 and how those were determined.

8 JUDGE ROBERTS: Okay. Mr. Bub, I'm not
9 trying to cut you out back there in the back.

10 MR. BUB: Your Honor, the only issue that we
11 raised at this point was the Hancock refund issue.

12 JUDGE ROBERTS: All right. And I -- I would
13 think that, you know, providing that information
14 shouldn't be a problem. You know, I would assume that
15 Staff can tell you pretty quickly how they -- how they
16 run those numbers and how they distribute costs from
17 phone to gas to electric and from small to big
18 companies and all of that sort of thing. And I
19 suspect that none of that is really a contested issue.
20 I think this whole thing turns on the Hancock
21 distribution.

22 And on that I guess there are two issues
23 that I've tried to work through, the first being the
24 effective date of the order and the time of the
25 application for rehearing. I've tried to do some

1 preliminary research into that. We certainly have
2 some authority that says -- that talks about effective
3 dates and orders, but there is also some authority
4 that distinguishes contested matters from uncontested
5 matters.

6 The Commission is certainly not refusing to
7 hear this matter irrespective of whether -- I mean,
8 obviously, it wasn't filed before the effective date
9 of the order and admittedly it could not have been
10 since the order was effective on the date it was
11 issued. But if that's an issue that we need to make a
12 finding on, or a conclusion, you know, somebody feel
13 free to raise it. Otherwise -- which -- and this sort
14 of leads to the larger issue.

15 As I read the cases, the Commission does not
16 have the authority to determine a constitutional
17 issue. Administrative agencies in Missouri, as I
18 understand it, are required to apply the laws that
19 they are given, and if -- and if some party thinks it
20 is unconstitutional, we put together the record,
21 deduce the evidence and basically allow you to take it
22 up.

23 Is that your understanding of the procedure
24 here, either one of you?

25 MR. BOUDREAU: Generally, yes. I think I

1 have -- though I haven't researched the principal
2 point, I think that you are correct in saying that the
3 Commission is not in a position to determine
4 constitutional issues. We have to raise
5 constitutional issues to the extent necessary to
6 preserve them, but I think the Commission is more in
7 the position of a fact finder, determining what's
8 happened and determining how the application of the --
9 of the law, whether it's been done -- whether the
10 facts have comported with the requirements under the
11 law, and specifically the statute governing the
12 determination of PSC assessments.

13 So I -- I at this point don't presently
14 intend on taking the discussion into a large
15 constitutional debate or -- and it may be that there
16 is really no -- nothing to be gained by asking the
17 Commission to determine whether or not the PSC
18 assessments need to be taken into account in terms of
19 calculating total state revenue under the Hancock
20 amendment. Those are all issues that may be outside
21 of the scope of what we can reasonably expect to be
22 determined here before the Commission.

23 But I think we can address whether or not
24 the assessments comport with the requirements of a
25 statute or the standards of a statute for making the

1 assessments. I think that's something that's well
2 within the Commission's power and jurisdiction.

3 MR. PENDERGAST: And speaking for Laclede, I
4 think it will be helpful, too, to obtain some
5 additional information on how the transfers were
6 actually effectuated. You know, we understand that
7 there was some sort of executive order issued from the
8 Office of Administration, and we'd like to be able to
9 take a look at that and see how that process
10 developed. And that will help us sort out, I think,
11 whether or not we really do have a constitutional
12 issue here or not.

13 I think it's entirely possible that there
14 could be no constitutional issue involved, instead
15 just a statutory issue of whether or not these funds
16 are -- can revert to general revenues. Irrespective
17 of whether they get counted in what is considered
18 revenue under Hancock, there is the additional
19 question of whether or not they can revert to general
20 revenue, and that may be a statutory issue rather than
21 one that's really decided one way or another by -- by
22 the Hancock provisions. So I think it will be helpful
23 to delve into that and see where we are.

24 MR. BOUDREAU: I would echo those comments.

25 JUDGE ROBERTS: Mr. Boudreau, let me ask

1 you, when you say -- when you mentioned a few moments
2 ago your comments about whether the assessment
3 comported with the statute, you're not talking about
4 the trans-- subsequent transfer under Hancock. You're
5 talking about how the assess-- whether the assessment
6 was properly made?

7 MR. BOUDREAU: Generally, yes. What I'm --
8 what I'm focusing on is the standard under the statute
9 for whether or not the Hancock transfer is reasonably
10 related to the regulation of public utilities, which I
11 believe is one of the standards set out in the
12 statute, and the other issue is whether or not it's an
13 expense to be incurred. That suggests to me that the
14 assessments are based on a forward looking or budgeted
15 analysis.

16 And so there is some question in my mind as
17 to whether or not a transfer that happened prior to
18 the budgeted year is something that ought to be
19 included in that year's assessment, so there is a
20 number of related issues in here.

21 There is a related issue as to whether --
22 and it is a Hancock-related issue, as to whether or
23 not if -- if the transfer out of the Fund to
24 facilitate the Hancock tax distributions, if that was
25 appropriate, is it appropriate for it to be recovered

1 then in the following year? It's, perhaps, a
2 sub-issue of one of the primary issues, but that's the
3 primary --

4 JUDGE ROBERTS: Okay.

5 MR. BOUDREAU: -- area of inquiry as far as
6 I'm concerned.

7 JUDGE ROBERTS: All right. I guess while
8 we're on that topic, let me raise an issue that I
9 think we alluded to in the initial order, and it
10 certainly doesn't require an answer now. I'm asking a
11 lot of questions, and I'm usually more hands-on in my
12 prehearings than some people because I like to see the
13 issues narrowed as much as possible as early as
14 possible.

15 But I suspect that where this case may be
16 headed is some stipulated set of facts and potentially
17 some argument on the record, legal argument, really,
18 and I think, in fact, the responsive pleading that was
19 filed by the initial Applicants just two days ago sort
20 of suggested that.

21 This doesn't appear to me as a case in which
22 we're going to require witnesses. I mean, we may, but
23 it seems like the Staff witnesses are going to say
24 these are how many dollars we assessed and these are
25 to whom they were assessed, and that -- I don't know

1 that we'll have witnesses to address the issues that
2 really seem to be the focus here in terms of Hancock
3 and the transfer and those kinds of issues.

4 But when we do -- assuming we do get to that
5 argument of legal issues on the record, one of the
6 questions that came up is it is maybe a fine line
7 interpretation of the statute, but three -- 386.370
8 Subpart 4, talks about a remaining amount in the Fund
9 shall not revert, and it's silent as to -- so clearly
10 it would seem when you get to the end of the year, if
11 you have \$100 left over, that \$100 doesn't go to the
12 general revenue. It stays in the Fund and offsets the
13 next year.

14 But the statute appears to be silent as to
15 whether transfers happen at the beginning of the year,
16 the middle of the year, you know, any other time, and
17 that's -- I guess I would just ask you to sort of tuck
18 that issue away and -- because certainly it's
19 something that we've looked at and probably needs to
20 be addressed at some point along with everything else.

21 MR. PENDERGAST: If I could comment on -- on
22 that and maybe expand on it a little bit, I think one
23 of our primary concerns and something that's really
24 motivated our application for rehearing is, obviously,
25 press with this as well. And, you know, the Hancock

1 amendment obviously has a number of provisions to it.
2 They have protections through requiring voter approval
3 for increases in taxes. They have, obviously,
4 protections designed to restrain the level of growth
5 in state revenues. And the way this process is
6 developed, it almost sets up a situation where if
7 there is additional monies necessary in order to meet
8 the limitation on state revenues, that what you do are
9 go to sources where the people that are being levied
10 against have no right to go ahead and vote, have no
11 right to go ahead and challenge the recovery of it,
12 and let's just take the money from there in order to
13 go ahead and effectuate the refund someplace else.

14 And, quite frankly, I don't know where that
15 stops. And, you know, if there is another refund that
16 comes along and there is some additional money needed
17 to make it, do we look at another, you know, million
18 dollars, two million dollars, three million dollars,
19 and have that levied against us without any
20 opportunity to go ahead and vote on it or say that
21 that's inappropriate?

22 So, you know, I think it is a real question
23 as to how that whole process is supposed to work.
24 And -- and given the fact that there are some
25 statutory protections out there, those statutory

1 protections may have been designed to prevent that
2 kind of thing from developing.

3 JUDGE ROBERTS: Are you suggesting the
4 utility companies don't have unlimited resources?

5 MR. PENDERGAST: Yeah, I think I -- I think
6 we'd all agree on that.

7 MR. BOUDREAU: That's something we can
8 probably stipulate to.

9 MR. PENDERGAST: Yeah, that will be
10 Stipulation No. 1.

11 JUDGE ROBERTS: Well, are there any -- any
12 other issues that the parties want to address?

13 MR. BOUDREAU: There is one -- I want to
14 come back, if I may, if there is no other new issues
15 any of the parties want to bring up, is to talk again
16 about the stay. We've requested that the
17 Commission --

18 JUDGE ROBERTS: Yes.

19 MR. BOUDREAU: -- stay the application or
20 the effectiveness of the order. And one of the things
21 that seems appropriate to me is that if it can be
22 determined with some degree of accuracy what the
23 incremental amount of the assessment is that is
24 attributable just to the Article 10 transfer, that if
25 that portion of the order were stayed, I mean, if it

1 were stayed to the extent of incremental amount of the
2 assessment, what appears to be the primary disputed
3 issue, that that would be something that we would at
4 this point renew our request, suggest that that would
5 be a way to accomplish that to our satisfaction. In
6 other words, not stay what appears to be at this point
7 non-contested issues.

8 It's not our goal here to try and interrupt
9 the flow of revenues or monies into the PSC
10 operations. But I don't know whether or not that can
11 effectively or reliably be done, and that's something
12 that maybe I would like to explore with the Staff in
13 our informal discussions.

14 I'm -- the bigger issue to me is I'm not
15 sure that the payment under protest gives me the
16 sufficient degree of comfort that if it's ultimately
17 determined that some of the amount of the assessment
18 was not -- was not statutorily authorized, whether or
19 not there is a remedy left for us then. So I'm not
20 sure that the -- I'm not confident enough that payment
21 under protest is going to give my clients the
22 protection that I'd like them to have at this stage,
23 so I do -- I don't want to walk away from a request
24 for stay. I would like to inquire whether
25 mechanically there is some low intensity way to

1 facilitate that.

2 But having said that, I would like to renew
3 our request for stay.

4 MR. FISCHER: Similarly, I would note that
5 not all of the companies did pay their first quarter
6 under protest, but they are very much interested in
7 the outcome of this proceeding. And to the extent
8 that they need to protest in order to have a remedy,
9 they need to be aware of that, if that's the -- if
10 that's the current practice or best procedure. And
11 there are other companies that I know are interested
12 in this proceeding but have not sought to intervene
13 because they assumed that perhaps the outcome would
14 affect everyone equally. But if they need to
15 intervene, we need to take care of that, too.

16 JUDGE ROBERTS: So you're not just talking
17 about companies who are represented here today who
18 paid but not under protest? You're talking about --

19 MR. FISCHER: Well, I'm talking about two
20 things. Some of the companies that are represented
21 here today, particularly the clients that I have
22 represented --

23 JUDGE ROBERTS: Okay.

24 MR. FISCHER: -- have not paid under
25 protest, but they, of course, are interested in the

1 outcome. And they have not paid their full amount of
2 their -- their assessment for this year.

3 And there is a second group of folks that
4 have not intervened at all, but, obviously, are
5 affected by the current assessment.

6 JUDGE ROBERTS: And I can't give you that
7 answer. I mean, I -- I -- this is a great case.
8 There's a lot of fun issues here, and that's -- you
9 know, one of them is what -- I'm comfortable about how
10 tax payments under protest are handled. I've done the
11 research and I've found how those are handled. I'm
12 not positive that the treatment is the same for the
13 utility assessment paid under protest. I don't think
14 this is a tax, and I'm not sure what, if anything, the
15 case law says on this, and so I don't want to mislead
16 you and say, trust us. We'll take care of you. I'm
17 not sure that's our determination in the first place.

18 I guess I'm saying file whatever you feel
19 like you have to file if you feel like you have to
20 file anything at all.

21 MR. FISCHER: With that uncertainty, I
22 guess, we would support the stay request by the --

23 JUDGE ROBERTS: Sure.

24 MR. FISCHER: -- primary Applicants.

25 JUDGE ROBERTS: And on that, I was going to

1 ask, Mr. Haas, do you know -- certainly, there is
2 not -- hopefully, this is not revealing any sort of
3 trial strategies, any trial strategies necessary in
4 this case, but your witnesses, do you think they know
5 right off or that they will know by the end of the day
6 what the increased assessment was that was caused by
7 the Hancock transfer?

8 MS. HELEN DAVIS: We haven't done a total
9 assessments calculation. We have done --

10 MR. HAAS: Let's just let Helen Davis answer
11 the question.

12 MS. HELEN DAVIS: At this time we haven't
13 done a total assessment calculation in reference to
14 the Hancock transfers. We have done some individual
15 companies. I think some of them that have actually
16 filed in this case were calculated as far as the
17 difference there. But as far as the total assessment,
18 we have not at this point done that. I would say we
19 probably could do that today.

20 MR. FISCHER: Your Honor, there -- part of
21 the public record in this docket, though, or the
22 earlier docket, did have an Article 10 transfer amount
23 shown at \$534,114. I was assuming that that was the
24 total in the aggregate that had been assessed related
25 to the Hancock amendment.

1 JUDGE ROBERTS: Was that the amount set out
2 in what was captioned or titled Order 52?

3 MR. FISCHER: In a document entitled,
4 "Calculation of PSC assessment," that reaches the
5 total fiscal year '99 PSC assessment of 14 thousand --
6 fourteen million four hundred -- excuse me --
7 \$14,776,876. That was a sub amount that was
8 identified as an Article 10 transfer amount.

9 MR. BOUDREAU: What that doesn't -- what
10 that doesn't tell you, though, is how much each
11 particular company's assessment is affected by that.

12 JUDGE ROBERTS: Sure.

13 MR. PENDERGAST: It's also my understanding
14 that there was another payment that wasn't reflected
15 in the order, that maybe Staff can clarify that,
16 another transfer of some 600,000, that I think is
17 probably reflected by a fairly significant reduction
18 in the carryover from previous years in this order.
19 So I think if you add those two up, you're probably
20 somewhere near \$1,000,000, but we could maybe get some
21 clarification on that.

22 I also wanted to just mention very briefly
23 that the other big item that the Commission mentioned
24 as a reason for the increase this year was the move to
25 the Hotel Governor, and based on what I've been able

1 to find out, those allocations of office space and
2 that sort of thing have typically been included, but
3 we do have some questions. We've got a couple of
4 questions we wanted to ask about that, and I didn't
5 want to be precluded from doing it because I hadn't
6 mentioned it. That's all.

7 JUDGE ROBERTS: Sure. And if that needs to
8 be -- I mean, certainly Hotel Governor was mentioned
9 somewhere in the Application for Rehearing and Stay,
10 and if that needs to be a part of this as an ongoing
11 contested issue, keep that one alive again also.

12 Mr. Haas, understanding your witnesses
13 aren't under oath and we're doing the prehearing here
14 today, if you asked your witness to go find out the
15 exact amount of increase in assessment caused by the
16 Hancock transfer, for example, for West Elm Place, how
17 long do you think it would take to find that
18 information? An hour, a day, a week?

19 MS. HELEN DAVIS: For one particular
20 company, I would say -- I mean, we've got it pretty
21 well -- 15 minutes, I would say, to do each company.
22 That's a max.

23 JUDGE ROBERTS: Okay. So it appears that by
24 the end of the day you should know the Hancock
25 increase for each of your -- for each of your clients.

1 And I don't know -- and, similarly, if the
2 parties want to know what was the increase for each of
3 us caused by the move to Hotel Governor, is that
4 information --

5 MS. HELEN DAVIS: We haven't at this point
6 made any calculation in regard to the Hotel Governor,
7 but I would think that could also be prepared.

8 JUDGE ROBERTS: I don't suppose you-all are
9 requesting that we stay the move to the Hotel Governor
10 or the cost there?

11 MR. FISCHER: Your Honor, would you like us
12 to?

13 JUDGE ROBERTS: Well --

14 MR. PENDERGAST: We can do it if it would be
15 helpful.

16 JUDGE ROBERTS: I can't answer that
17 question.

18 MR. SWEARENGEN: The room rates there can't
19 be too high.

20 JUDGE ROBERTS: I guess that I would just
21 ask the parties -- certainly, you have the opportunity
22 to do this, anyway, but at the end of the day or as
23 soon as you can ascertain what the Hancock increase
24 is, if you want to file a renewed request for the stay
25 with more detail and, you know, help us out here in

1 terms of will a protest protect your assessments, and
2 that's -- you know, I don't know that there is a black
3 and white answer on that, but --

4 MR. BOUDREAU: For what it's worth, I think
5 my analysis of it is very similar to what you
6 articulated. There is some real question in my mind
7 as to whether what I call the customary protest
8 procedures that are applicable to tax, taxes, are
9 applicable to PSC assessments. I think there is some
10 pretty strong indication that the assessments are true
11 assessments, they are not a tax called an assessment,
12 and that the tax remedies in my view -- I'm very
13 doubtful, frankly, of whether or not the tax remedies
14 apply to a PSC assessment, for what that's worth.

15 JUDGE ROBERTS: Okay. Well, as I said,
16 file -- file what you need to file, and we'll take it
17 up as soon as we're able. And I will say this,
18 getting back to the long-range plan, the Commission
19 has a rule set out at 4 CSR 240-2.140, which is the
20 rule on briefs and oral arguments, and Subpart 4 of
21 that suggests the Commission may at its discretion
22 order the parties to file Suggested Findings of Fact
23 and Conclusions of Law. And, actually, it also
24 provides for Proposed Order paragraphs.

25 And I don't know that we've done that, at

1 least not since I've been here, but I've been
2 discussing it recently with the Commissioners, and,
3 certainly, this appears to be a case where that would
4 be most helpful. So if you want to anticipate
5 Proposed Findings of Fact -- if you want to anticipate
6 the opportunity to file Proposed Findings of Fact and
7 Proposed Conclusions of Law, please do so.

8 And although that rule anticipates doing it
9 at the briefing stage, there is nothing to stop us
10 from -- or to stop you from offering those earlier, if
11 you think that will help narrow the issues and sort of
12 identify exactly what needs to be argued at the motion
13 hearings, that we sort of anticipate, that's fine.

14 MR. SWEARENGEN: Judge, I'm glad to hear you
15 say that, because I've been an advocate for a long
16 time of doing that in all cases. It used to be the
17 practice over here. The parties were free to submit
18 Proposed Findings of Fact or Proposed Reports and
19 Orders. I think it was my experience that that tended
20 to expedite matters considerably, so I'm glad to hear
21 that the Commission is considering that.

22 JUDGE ROBERTS: All right. As long as they
23 are filed in the case, I don't have a problem with it.
24 And I think there are -- we're exploring it, and there
25 is some concern that that is maybe extra work. I

1 think, in fact, if it narrows the issues, it might in
2 the long run make less work. But this is a case where
3 we can try it and see. I would like to do it,
4 personally, so --

5 Anything else?

6 (No response.)

7 JUDGE ROBERTS: If this goes -- are you able
8 to project if this -- if we have some kind of a
9 hearing on this, do you think you will need to bring
10 witnesses? I know it's preliminary, but if Staff is
11 able to tell you today, here are the dollars. You
12 were assessed, you know, \$10 for Hancock and \$1 for
13 the hotel, are we really just going to be arguing
14 legal issues?

15 MR. BOUDREAU: Perhaps, I'm being overly
16 optimistic, but I've always thought that the facts
17 here may very well not be disputed. It may be fairly
18 clear to everybody what's transpired. What -- we know
19 what the law is, and I'm still hopeful that we can
20 just figure out what the facts are, and to the extent
21 that that will help us isolate, of course, what the
22 legal issues are, and just submit the case on briefs.
23 It's always hard to tell how these things are going to
24 develop.

25 JUDGE ROBERTS: Sure.

1 MR. BOUDREAU: And I'm still hopeful that we
2 can do that without the necessity of actually having
3 to have a contested case. I never really anticipated
4 that it would have to get to that stage.

5 JUDGE ROBERTS: Okay. Well -- and I didn't
6 think so either. Certainly, we wouldn't refuse it, I
7 don't think. I don't know that we would, but it
8 appeared to be something that could be argued on the
9 issues.

10 And I suspect that there will be some
11 hearing time, and I'm confident it will be -- it's
12 just too hard, I think, with issues like these to do
13 them purely on briefs, but I think we may ask -- we
14 will either call for Proposed Findings or file briefs
15 and then do some oral argument on the issues and maybe
16 some post-hearing briefs, just speculating on my part.

17 And I would hope that that would take less
18 than a day. The hearing room time for that, I would
19 think, would be four hours maybe.

20 MR. BOUDREAU: I wouldn't think it would
21 take very long.

22 JUDGE ROBERTS: Okay. Because what I --
23 what I may do, our calendar is something, I think all
24 of you know, that is booked heavily far in advance,
25 and I may try and go ahead and find a day. I think

1 the soonest that I can find a day on the hearing
2 calendar is probably sometime in December. There
3 might be a day here or there sooner since one-day --
4 one-day hearings are easier to sneak in than anything
5 else, and we have some empty one-day opportunities.

6 MR. BOUDREAU: It seems to me it might be
7 prudent to keep a day set aside if for no other reason
8 the Commissioners may have questions. It's one thing
9 for us to submit it and say here is what we think the
10 facts are, but they may have some questions.

11 Although, at that point, I don't know who the
12 witnesses would be. If we stipulate the case on
13 stipulated facts, there really technically isn't a
14 witness, although people can be brought in, I suppose.

15 JUDGE ROBERTS: Sure. And I'm confident the
16 Commissioners will have questions about the legal
17 issues. I think there is a lot to discuss here.

18 MR. BOUDREAU: Okay.

19 JUDGE ROBERTS: Since it is probably just a
20 one-day hearing or less and those are easier to fit in
21 between other matters, sooner better than later? I
22 mean, from the way our conversation has gone here
23 today, it suggests to me that you're not going to --
24 it's not going to require a great deal of time for
25 discovery. The facts may be facts that everyone can

1 stipulate to, and then it's a matter of you-all doing
2 your legal research and deciding what you can argue
3 and what you can support, in which case, I don't know,
4 maybe we'll get this on the calendar sometime in
5 October maybe.

6 MR. BOUDREAU: I think it would be
7 beneficial to all concerned to try and get this
8 resolved as quickly as possible, as a general
9 statement. I don't see any reason why we can't move
10 this along fairly quickly.

11 MR. PENDERGAST: I concur in that.

12 JUDGE ROBERTS: Okay. Now, is there
13 anything else?

14 (No response.)

15 JUDGE ROBERTS: It's a fascinating case. I
16 could sit here and talk to you about it all day, but
17 I'm sure you'd rather I leave so you can talk to each
18 other about it.

19 Well, I'll look at the hearing calendar, and
20 if I can identify a day, I may come back in and give
21 you guys that to sort of set one aside.

22 If you have any questions, I'll be in the
23 building all day. Otherwise, if you want to file --
24 as soon as you're ready to file something in terms of
25 renewed requests for stay or briefs on the payment

1 under protest in terms of utility assessments, I would
2 love to read it and see where it goes.

3 MR. BOUDREAU: Okay.

4 JUDGE ROBERTS: Anything else?

5 MR. BOUDREAU: Not at this point.

6 JUDGE ROBERTS: Hearing nothing, I'm sorry
7 to take up so much of your time, but, certainly, this
8 is sculpting the direction we're heading.

9 We'll go off the record. Thank you very
10 much.

11 WHEREUPON, the on-the-record portion of the
12 prehearing conference was concluded.

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