



1 APPEARANCES

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12 MR. REX DEFFENDERFER (Appearing by telephone)  
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FOR: Rex Deffenderfer Enterprises, Inc.

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1 JUDGE STEARLEY: Let's go ahead and go on  
2 the record. Thank goodness we can't record that  
3 music in the transcript.

4 All right. Today is Monday, February  
5 28th, 2011. The Commission set this time for a  
6 procedural conference in the matter of Rex  
7 Deffenderfer Enterprises, Incorporated request for an  
8 increase in annual water system operating revenues,  
9 File No. WR-2011-0056.

10 I'll begin by taking entries of  
11 appearance starting with staff.

12 MR. RITCHIE: Good morning. Representing  
13 the Staff of the Missouri Public Service Commission,  
14 Sam Ritchie and Rachel Lewis, P.O. Box 360, Jefferson  
15 City, Missouri 65102.

16 JUDGE STEARLEY: Okay. Thank you,  
17 Mr. Ritchie.

18 And for the Office of the Public  
19 Counsel?

20 MS. BAKER: Thank you. Christina Baker,  
21 P.O. Box 2230, Jefferson City, Missouri 65102,  
22 appearing on behalf of the Office of the Public  
23 Counsel and the rate payers.

24 JUDGE STEARLEY: Okay. Thank you,  
25 Ms. Baker.

1           we're are waiting for the company to join  
2           us by telephone, and I know they have been notified  
3           both by order and by staff counsel this morning, and  
4           thus far they have not entered an appearance. I'm  
5           going to go ahead and get started with the procedural  
6           conference. If they join us, that is -- that is  
7           fine; if not, I'm going to rely on the parties to  
8           contact the company after this conference just to  
9           convey for them what we discussed this morning.

10           The main reason I've called this  
11           conference is we have set this case for arbitration.  
12           I wanted to go ahead and make sure all the parties  
13           are on the same page regarding the procedure that  
14           would be followed in the arbitration.

15           Commission rule refers to this as being  
16           the final offer method wherein the parties present  
17           their positions to me along with the evidence for  
18           their cases, and I would render a decision within --  
19           or a written opinion within 20 days I should say  
20           after which it goes to the Commission for a final  
21           approval of whatever decision is to be made.

22           In the procedural order, I set out that  
23           section 536.070 would be the guidelines for  
24           presenting evidence, but I wanted to inquire of the  
25           parties, since this is arbitration and it's not quite

1 as formal as an evidentiary hearing, as to what their  
2 understanding of the final offer method would be. If  
3 they're going to be presenting witness, if they're  
4 going to want to cross-examine witnesses, and if you  
5 would clarify for me how you want to proceed.

6 MR. RITCHIE: well, I think we see this  
7 as sort of a mini hearing, and we do plan on  
8 presenting witnesses and evidence in that manner and  
9 the opportunity to cross-examine opposing witnesses.

10 JUDGE STEARLEY: Okay. Ms. Baker?

11 MS. BAKER: That's my understanding as  
12 well.

13 JUDGE STEARLEY: All right. Now, the  
14 company, who's not with us yet, has the option not to  
15 be represented by counsel as proceeding by rule. And  
16 again, that's one of the reasons I wanted to have  
17 this conference this morning is to make sure they're  
18 understanding that if they do not obtain counsel,  
19 they're going to be subject to the same legal  
20 requirements as parties normally would be in this  
21 type of a process. So if they are going to present  
22 witnesses, they will be sworn, they will be subject  
23 to cross-examination. If they wish to conduct cross-  
24 examination, they may.

25 And I also wanted to point out with

1 regard to the evidentiary statutes, if any  
2 evidentiary material is going to be offered by  
3 affidavit, those affidavits need to be filed in EFIS  
4 and copies submitted to the parties no later than  
5 eight days prior to the arbitration proceeding.  
6 Otherwise they can be subject to objection and can be  
7 excluded.

8 Do the parties have any questions for me  
9 or any points they'd like to make at this time?

10 MS. BAKER: So as far as position  
11 statements go, in that -- at the end of the position  
12 statements, you want the final offer of what our side  
13 is looking for on each issue?

14 JUDGE STEARLEY: Yes. Yes, I will. It's  
15 my understanding at this point there's approximately  
16 six issues, but I know there's going to be a joint  
17 statement of issues being filed.

18 MR. RITCHIE: That's correct.

19 JUDGE STEARLEY: So I would expect the  
20 position statements to be detailed and for them to  
21 have the final offer included.

22 Hello?

23 MR. DEFFENDERFER: Hello? Did I get  
24 through?

25 JUDGE STEARLEY: Yes. This is Judge

1 Stearley. who am I speaking with?

2 MR. DEFFENDERFER: My name's Jim  
3 Deffenderfer.

4 JUDGE STEARLEY: How are you,  
5 Mr. Deffenderfer?

6 MR. DEFFENDERFER: I'm just fine, Judge.  
7 How are you today?

8 JUDGE STEARLEY: Well, I'm glad you were  
9 able to make it by phone. We had gone ahead and  
10 started with our procedural conference, so I'll bring  
11 you up to date. Basically I was holding this  
12 conference to make sure all parties are on the same  
13 page regarding the procedure that's going to be  
14 followed at the arbitration.

15 MR. DEFFENDERFER: Okay.

16 JUDGE STEARLEY: You as the company by  
17 commission rule do not have to be represented by  
18 legal counsel.

19 MR. DEFFENDERFER: Uh-huh.

20 JUDGE STEARLEY: But you can at your  
21 choosing. There's been a date set for the filing of  
22 position statements.

23 MR. DEFFENDERFER: Uh-huh.

24 JUDGE STEARLEY: And position statements  
25 should present a detailed position on each of the

1 issues presented and a final offer proposal that you  
2 wish the Commission to adopt at the end of each of  
3 those issues.

4 MR. DEFFENDERFER: Okay.

5 JUDGE STEARLEY: At the arbitration  
6 hearing itself, witnesses can be called, sworn  
7 testimony will be taken, and those witnesses will be  
8 subject to cross-examination.

9 MR. DEFFENDERFER: Okay.

10 JUDGE STEARLEY: And we're following  
11 statutory guidelines for presentation of evidence  
12 which are found in section 536.070 of the Missouri  
13 Revised Statutes.

14 MR. DEFFENDERFER: I'm sorry, Judge, I  
15 lost you for about ten seconds. I didn't hear a word  
16 you said.

17 JUDGE STEARLEY: That's all right. For  
18 guidance in presenting evidence, we are following the  
19 statute on evidence for administrative procedures  
20 which is section 536.070 in the Missouri Revised  
21 Statutes. And one element of that I called  
22 everyone's attention to particularly is if any  
23 parties are going to rely on preventing evidence by  
24 form of an affidavit, those affidavits need to be  
25 filed with the Commission and copies served upon the

1 other parties at least eight days prior to the  
2 arbitration proceeding.

3 MR. DEFFENDERFER: Okay.

4 JUDGE STEARLEY: Do you have any  
5 questions for me?

6 MR. DEFFENDERFER: Yes, sir. All  
7 these -- these procedural rules, are they written  
8 down anywhere? Is there a website or something I --  
9 a PSC website or something I can go to to look at?

10 JUDGE STEARLEY: Well, we can -- I can  
11 have staff counsel be sure and provide you with an  
12 online link to section 536.070.

13 MR. DEFFENDERFER: Okay.

14 JUDGE STEARLEY: As well as an online  
15 link to the Commission's procedural rules.

16 MR. DEFFENDERFER: That would be nice.  
17 And I am sorry for my lateness, but I wasn't  
18 notified -- I didn't have any notification about this  
19 conference, and the number I was given to call this  
20 morning was disconnected. I'm sorry.

21 JUDGE STEARLEY: That's quite okay.  
22 We're glad you were able to join us. If you hadn't  
23 been able to, I was going to direct Staff Counsel and  
24 the Office of Public Counsel to make contact with you  
25 and go over what we had discussed, so. At any rate,

1 I'm glad we were able to patch you through here.

2 MR. DEFFENDERFER: All right. Thank you  
3 very much. And your last name is Sterling?

4 JUDGE STEARLEY: Stearley,  
5 s-t-e-a-r-l-e-y.

6 MR. DEFFENDERFER: S-t-e-a-r-l-e-y?

7 JUDGE STEARLEY: That's correct.

8 So does anyone else have any questions  
9 regarding the procedure we're going to follow?

10 Are there any preliminary matters we need  
11 to take up at this point?

12 MS. BAKER: No.

13 JUDGE STEARLEY: All right. Very well.  
14 well, I'm going to conclude -- we have a court  
15 reporter, Mr. Deffenderfer, who's recording this  
16 portion of this conference. I'm going to go ahead  
17 and conclude the on-the-record portion of this, but I  
18 will leave you on the line if you wish to have some  
19 discussions with Staff Counsel and the Office of the  
20 Public Counsel here prior to getting off the phone  
21 this morning.

22 MR. DEFFENDERFER: All right.

23 JUDGE STEARLEY: And with that we're off  
24 the record.

25 (Off the record.)

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CERTIFICATE

I, Shelley L. Mayer, a Certified Court Reporter, CCR No. 679, the officer before whom the foregoing procedural conference was taken, do hereby certify that the witness whose testimony appears in the foregoing procedural conference was duly sworn by me; that the testimony of said witness was taken by me to the best of my ability and thereafter reduced to typewriting under my direction; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this procedural conference was taken, and further, that I am not a relative or employee of any attorney or counsel employed by the parties thereto, nor financially or otherwise interested in the outcome of the action.

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Shelley L. Mayer, CCR