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BEFORE THE ARIZONA CORPORATION COMMISSION

2 WILLIAM BRADY, )  
3 ) DOCKET NO. E-01345A-03-0772  
4 COMPLAINANT, )  
5 VS. ) PREHEARING CONFERENCE  
6 ARIZONA PUBLIC SERVICE COMPANY, )  
7 an Arizona corporation, )  
8 RESPONDENT. )

9 At: Phoenix, Arizona

10 Date: January 6, 2004

11 Filed: JAN 21 2004

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14 REPORTER'S TRANSCRIPT OF PROCEEDINGS

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25 ARIZONA CORPORATION COMMISSION

ORIGINAL

1 BE IT REMEMBERED that the above-entitled and  
2 numbered matter came on regularly to be heard before the  
3 Arizona Corporation Commission, in Hearing Room 100 of said  
4 Commission, 1200 West Washington Street, Phoenix, Arizona,  
5 commencing at 2:07 p.m., on the 6th day of January, 2004.

6

7 BEFORE: PHILIP J. DION, III, Administrative Law Judge

8

9 APPEARANCES:

10 For Arizona Public Service Company:

11 SNELL & WILMER, L.L.P.  
12 By Mr. Jeffrey B. Guldner  
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14 For the Complainant:

15 Mr. William Brady  
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JODIE GUHR  
Certified Court Reporter  
AZ CCR No. 50191

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1 ALJ DION: Good afternoon, everybody. Welcome to  
2 the Arizona Corporation Commission. My name is Phil Dion.  
3 I'll be presiding over the pre-hearing today in the  
4 complaint filed by Mr. Brady against Arizona Public Service  
5 Company. The docket number is E-01345A-03-0772. This is  
6 the time set for the pre-hearing. There was a procedural  
7 order issued in this case, setting this matter for a  
8 pre-hearing today, and this is the time and the place set  
9 for that pre-hearing.

10 Before I recognize the various parties, I will say,  
11 try to speak slowly and clearly, because we do have a court  
12 reporter who's trying to type down everything that we're  
13 saying. And above all, let's try not to talk over each  
14 other, as it's going to make her job a whole lot easier.

15 With that, I will go ahead and take appearances,  
16 and I'll start with Mr. Brady. Can you just state your name  
17 for the record, sir?

18 MR. BRADY: William Brady.

19 ALJ DION: And on behalf of Arizona Public Service?

20 MR. GULDNER: Good afternoon, Your Honor, Jeff  
21 Guldner of Snell & Wilmer on behalf of APS. I also have  
22 with me Bruce Gardner of the Pinnacle West Law Department,  
23 and, from the company, John Lucas and Cynthia Janka.

24 ALJ DION: Good afternoon, everybody.

25 I'll also note for the record that Lisa Vandenberg

1 from the Commission's legal division is present. Although  
2 Staff is not a party in this case, she is here today.

3 I have reviewed the complaint, and I have reviewed  
4 the answer in this case. And I just want to say, briefly,  
5 before I get into talking a little bit about those, this is  
6 the time and the place set for the pre-hearing. It's really  
7 where we just iron out all the details as to what's going to  
8 happen between now and a hearing, if one is necessary in  
9 this case. We'll talk a little bit about discovery,  
10 meaning, what exhibits, what witnesses people are going to  
11 present at the hearing, and make sure that the other parties  
12 have adequate notice of that so that they're able to either  
13 call witnesses or present exhibits of their own.

14 We'll also talk about the scheduling of the  
15 hearing, when it'll take place, how long it'll take place,  
16 things like that.

17 From that point, generally what happens is that a  
18 court reporter needs about 10 business days to about two  
19 weeks to generate what's known as the record, which is  
20 everything we've said during the hearing, and then I will  
21 get that, and from there, I will draft what's known as a  
22 proposed opinion and order, and that has various findings of  
23 facts, conclusions of law, it might have a discussion  
24 section in it, and then it has some ordering paragraphs, and  
25 that proposed opinion and order is then presented to each

1 side. Each side has the ability to file what are known as  
2 exceptions. If they think one of the facts or conclusions  
3 of law or something is incorrect, based on the record, they  
4 can file exceptions and say -- and point those out and argue  
5 those to the commissioners.

6 Once all those things are filed, the commissioners  
7 review that, and then they'll take place in the open  
8 meeting, and the commissioners will vote. They can accept  
9 what I say entirely, they can reject it entirely or they can  
10 amend it any way they see fit. So, really, the best way to  
11 look at it is just a recommendation. What I file is just a  
12 recommendation to the commissioners, and they can do  
13 whatever they see fit, once they get together at that open  
14 meeting.

15 So, all those things combined, after the hearing,  
16 something will probably be in the open meeting somewhere in  
17 the order of two to probably three months after that,  
18 depending on schedules, depending on the open meeting and,  
19 quite frankly, depending on what other hearings have  
20 transpired before or prior to your hearing, but that's  
21 generally the time frame we're looking at. So, somewhere,  
22 from today, I would say, on the outside, six months. It  
23 just kind of depends on what you guys have to tell me as to  
24 how much time you need to prepare.

25 So, that being said, that's just the basics of how

1 the Commission works. The rest of the stuff is really how a  
2 trial works. We'll talk a little bit about that and the  
3 procedural schedule.

4 As I said, I have read the complaint, and I have  
5 read the answer. And it seems like there has been quite a  
6 dialogue that has gone on between Mr. Brady and APS, and at  
7 some point, the dialogue has stopped and we have reached a  
8 point in which this is being submitted to, really, a third  
9 party for a decision. That seems to be where we are in this  
10 case. And that's fine. That's my job. I'll do that every  
11 day, all day, but I just want to make sure that that's the  
12 route that we want to go down, just simply because, in these  
13 situations, you know, the Commission will ultimately make a  
14 decision, and sometimes it's better to be part of the  
15 solution instead of relying entirely upon someone else to  
16 solve it for you, because it, quite frankly, might not go  
17 the way you would like it to. And so, before we kind of  
18 head down that path, I just wanted to make sure we're going  
19 to do that.

20 I, in no way, shape or form, am going to act as a  
21 settlement judge. I'm not here to settle this case. I'm  
22 not here to make the sides come together. That's not my  
23 role today. But because this is sort of a unique case,  
24 where a lot of dialogue has happened and then kind of has  
25 suddenly stopped, I just want to make sure where we are and

1 really question if that dialogue is not going to continue in  
2 the future, or if there is something that may result from  
3 today's meeting, considering we've got all of the players  
4 together, kind of, one last time.

5 In reading your complaint, Mr. Brady, you've made  
6 mention of a number of things that you've called rules. It  
7 says, Rule 7.13 and 1.13. Those two rules appear in your  
8 complaint.

9 Can you tell me where you got those rules and what  
10 you're referring to?

11 MR. BRADY: The rules themselves were obtained -- I  
12 believe Connie sent me the first paperwork, and the other  
13 rules are available on the Internet, as far as basic rules.  
14 And I don't know how strictly they bind APS's action, but  
15 it's apparently a guideline. If nothing more, it's a  
16 guideline that they're to follow in relation to handling  
17 services to the public.

18 ALJ DION: Okay. Mr. Guldner, is this part of the  
19 tariff that's filed by APS? Or, are you familiar with what  
20 Mr. Brady is talking about?

21 MR. GULDNER: With respect to the rule, I see the  
22 Rule 7.13 in the complaint. That's probably a reference to  
23 our Schedule 3, which is the service act -- or, the schedule  
24 that relates to line extensions. I believe I have a copy of  
25 that. Let me see if I can find it. Just a second.

1 MS. JANKA: Schedule 3, design deposit.

2 MR. GULDNER: So that reference relates to the  
3 applicable tariff for our line extension.

4 ALJ DION: Okay. So -- and I'm just trying to  
5 understand, because there are a number of rules that we're  
6 going to talk about, Mr. Brady.

7 MR. BRADY: Uh-huh.

8 ALJ DION: It appears that we're talking about  
9 APS's tariff that they filed with the Commission rather than  
10 a Commission rule. It's something they have filed with the  
11 Commission. It's a tariff's set of schedule and fees that  
12 they've filed with the Commission, probably pursuant to a  
13 rate case or some other Commission action. And then those  
14 things are filed with them -- or, excuse me -- with the  
15 Commission, and then those are the expected rates and the  
16 things that are expected to happen from APS to its  
17 customers, based upon some prior action with the Commission.

18 Does that sound like what you're talking about,  
19 Mr. Brady?

20 MR. BRADY: Yes. Oh, yeah.

21 ALJ DION: Okay. And that's what I wanted to kind  
22 of go over, because there are -- companies file tariffs for  
23 various reasons. The big reason is, if you move into an  
24 area, at least you know what your charges are probably going  
25 to be if something isn't already developed. The other

1 reason is so that, obviously, people get charged similarly,  
2 if in similar situations. But there are also what are known  
3 as Commission rules, and these are the rules promulgated by  
4 the Commission and then subsequently approved. And these  
5 rules are the things by which we will also judge Arizona  
6 Public Service Company. So I just wanted you to understand  
7 that.

8 So, I just wanted to understand that what you were  
9 talking about -- and I would probably like -- by the time we  
10 get to the hearing, I'm assuming the schedules will be  
11 entered into evidence. But, Mr. Brady, you've talked to me,  
12 and you've said, based upon this rule, something should  
13 happen; based upon that rule, something else should happen.

14 I want you to understand, first and foremost, that  
15 you filed the complaint, so you have what's known as the  
16 burden of proof. In this area, that's a preponderance of  
17 the evidence. What does that mean? Well, you can go to law  
18 scholars, and some people say 51 percent, and some people  
19 say 50.1. Some say 50.11. More likely than not, that's  
20 probably a really good definition of what it is. So, you  
21 have to prove that APS violated either the rules or its  
22 tariffs, and that they did so more likely than they didn't  
23 do so. That's probably the best way that I can explain it.

24 And so, if we have a hearing and you present your  
25 case and APS doesn't think you've shown that, they don't

1 even -- they don't have to produce a witness. They don't  
2 have to give me a piece of paper, nothing. They don't  
3 really have to do anything. It's not their burden. It's  
4 your burden to show what you said has either violated the  
5 tariff or violated Commission code. Okay? So, I just  
6 wanted to let you know that. It's not beyond a reasonable  
7 doubt, which is a much higher standard, and we reserve that  
8 for criminal cases.

9 But, you do have the burden. So if something is  
10 going to go one way or the other, the benefit of the doubt,  
11 if it's a 50/50 situation, it's going to go to APS and this  
12 company, and that's because you are the complainant, not  
13 because you're not a company.

14 Do you understand that?

15 MR. BRADY: Right.

16 ALJ DION: Okay. That being the case, my  
17 understanding is that you have a piece of property up in  
18 Black Canyon City that I believe you're planning to build a  
19 residence for your daughter; is that correct? Or,  
20 there's --

21 MR. BRADY: Yes.

22 ALJ DION: -- another residence going up besides  
23 the one that you have, and you're trying to get electricity  
24 to that future residence; is that correct?

25 MR. BRADY: Well, the residence is built, but yes.

1 ALJ DION: Okay. I'm sorry. So you've got a piece  
2 of property, and there's a building on it, and you're trying  
3 to get electricity to it?

4 MR. BRADY: Permanent power, yes.

5 ALJ DION: Okay. I have received an answer from  
6 APS regarding a couple of things. One of the things I  
7 wanted to go over and just try to figure out was going on,  
8 Mr. Brady, is where we are on the easement issue. It seems  
9 to be an issue here. And I'm trying to figure out where we  
10 are in regards to easements and obtaining easements, and I  
11 want to make sure that we're talking about the same thing,  
12 and so, I'll start.

13 An easement is essentially -- and you may already  
14 know this, but I just want to say it for the record -- it is  
15 just essentially giving somebody a right-of-way on property  
16 that you own or lease or rent, or somehow have an ownership  
17 interest in, and they have a right-of-way to either  
18 establish or maintain, in this case, utilities or the  
19 facilities through which the utility operates, meaning,  
20 whether it's water, it's a main, whether it's electrical,  
21 it's power lines. Easements can also be a right-of-way,  
22 meaning I can just travel across your land. I might be  
23 locked in and I need a way to get my car onto my property  
24 and so I work out a deal with my neighbor and he gives me an  
25 easement and I build a driveway. It's not my land, I can't

1 sell it, but I do have an interest in that property, and  
2 when I sell my piece of property, that interest carries over  
3 to the next person. So, I want to make sure that we're  
4 talking about the same thing, and my understanding is that  
5 part of the problem in this case is the easement.

6 Mr. Guldner, is there anything in APS's tariff that  
7 would contradict or supersede the Commission's rules on  
8 easements and right-of-ways?

9 MR. GULDNER: Judge Dion, I think that the Schedule  
10 3 provision is consistent with the easement provision in  
11 R14-2-206, of which provides that the form of the easement  
12 be acceptable to the utility. And that's essentially the  
13 same standard that appears in Schedule 3, with respect to  
14 the easements that we require from customers.

15 ALJ DION: Okay. Is that -- I just want to know --  
16 is that the crux of the problem? Is that what we're looking  
17 at? Is it a situation where -- I mean, I've read this, and  
18 in reading the three pages Mr. Brady filed, it seems to me  
19 there -- there might be a burying issue, too, whether --  
20 dependent upon where the line is eventually -- if it is  
21 established, where it is established. I didn't say that  
22 correctly.

23 If a line is eventually established, there is some,  
24 I understand, interest from Mr. Brady perhaps burying some  
25 of that line. But before we get to that, it seems to me

1 that the issue here is an easement or right-of-way issue,  
2 and that I want to make sure that we all know what the  
3 Commission's rules are and what they say, because I think  
4 based upon that, then we'll have a better grasp on what the  
5 hearing will probably be about and evidence will be about.

6 Essentially what the rule says -- there's a rule,  
7 Mr. Brady. I'm going to -- you don't have to believe me.  
8 You can look it up if you want, but it's R14-2-406 -- excuse  
9 me -- 206. It's R14-2-206, and then it's subset C, and it's  
10 called "Easements and Right-of-ways," and it's listed under  
11 the general area of service lines and establishments. And  
12 there's another area called "Line Extensions." That's the  
13 next rule, 14-2-207. And yours is kind of both. It's kind  
14 of a line extension, in that you want to get power from an  
15 already existing line and we're going to extend that to this  
16 new residence. I should ask that.

17 Are you currently being served by APS at your home  
18 or at the piece of property adjacent to this one that  
19 we're --

20 MR. BRADY: Yeah, adjacent.

21 ALJ DION: Okay. So you've already got service  
22 from APS is what I'm saying. Right?

23 MR. BRADY: Yes.

24 ALJ DION: And this one is sort of a line  
25 extension, in that you're seeking to get electricity to

1 another piece of property you have, but it's also  
2 establishing service at that residence, too, because it's my  
3 understanding your daughter is going to live there and  
4 things like that; is that right?

5 MR. BRADY: Yes.

6 ALJ DION: So I think that there's kind of an  
7 overlap, so I wanted to give you both rules so that you're  
8 able to look at it. But, I think the easement part, even  
9 though it's under establishment of service and you've kind  
10 of already been established, it hasn't been established at  
11 that residence, and so I think it's probably the best place  
12 to look.

13 And it talks about the customer shall grant  
14 adequate easement and right-of-way satisfactory to the  
15 utility to ensure that customer's proper service connection.  
16 Failure on the part of the customer to grant adequate  
17 easement and right-of-way shall be grounds for the utility  
18 to refuse service.

19 And then it goes on to talk about if somebody is --  
20 if you've put something in the way, like a fence, an  
21 easement, what the utility can do if you put some  
22 obstruction in the easement. And so, I wanted you to be  
23 familiar with that rule because it seems to me that some of  
24 this stuff is really based upon the easements and the rights  
25 of way.

1 Did you understand, kind of, my definition of the  
2 easement?

3 MR. BRADY: Yeah.

4 ALJ DION: Okay. And I want to go a little bit  
5 further. The idea behind it is, is that, you know, it's  
6 so -- there's also probably an easement so that they can  
7 come and just read the meter, too. So, not only fixing  
8 facilities or, you know, a broken line or a torn down line,  
9 the company's able to come on in order to read their  
10 equipment in order to properly bill you, et cetera, et  
11 cetera. So there's also an easement in that regard as well,  
12 a service easement in that regard. But I think that the  
13 crux of the issue is the facilities and where they're going  
14 to be placed and the easements.

15 Do you understand, pursuant to the rule, it's  
16 really incumbent upon you to grant the easement to APS?  
17 Does it -- in my reading of the rule, do you understand that  
18 that's probably where -- you know, I mean that's what the  
19 Commission is saying, is that you -- as the provider -- you  
20 have to do a certain amount in order to obtain the service?  
21 Do you --

22 MR. BRADY: Yes, I comprehend that.

23 ALJ DION: Okay. Okay. Well, I just wanted to do  
24 that because there was some mention of the -- and that's  
25 where I'm going. There was some mention about a BLM and

1 things like that. Is there -- I mean, in this case, is  
2 there an issue about an easement in your mind? Do you have  
3 any issue regarding that?

4 MR. BRADY: No, not on the property that's  
5 hopefully going to be designed to provide the service.

6 ALJ DION: Okay. And so there's not an issue with  
7 that property of getting an easement to that particular  
8 residence?

9 MR. BRADY: Correct.

10 ALJ DION: Okay. Are there any issues involving  
11 any other property owners, or anything, in order to get to  
12 that piece of property? In other words, is that property  
13 landlocked by something else that may be causing a problem?

14 MR. BRADY: It's a long story. And there's several  
15 options that were presented that cross private property,  
16 that cross BLM property, that cross property my son now  
17 owns, that crosses property I retained. There's no set  
18 definition of, we're going from point A to point B. We're  
19 going from point A, B, C or D, to a point E, which would be  
20 the new residence. And that's where the talks fell apart.  
21 And there was no definitive direction to take on which line  
22 to build. There are six line options, two of which I flatly  
23 rejected, and one of which APS flatly rejected, and the  
24 other three are not acceptable to me --

25 ALJ DION: Okay.

1 MR. BRADY: -- from a cost and footage basis. And  
2 I don't believe they're as short as the middle -- well, the  
3 first two or the sixth option, that APS did not want to  
4 address.

5 ALJ DION: And I'll sort of get into that when we  
6 get to the hearing. I just want to make sure that -- there  
7 seem to me to be a bit of an issue as to the easements and  
8 who's responsible, and I just wanted to point out that rule  
9 in case that might help clarify anything for the parties in  
10 discussing or figuring out what we're going to do for the  
11 hearing. So, really, that's my only impetus. As to point A  
12 to point B and that other stuff, I'll hear about that at a  
13 different time.

14 But, I wanted to -- I'm just trying to find out,  
15 you know, is it a situation where the easement is -- is it a  
16 situation where easements aren't being granted by a third  
17 party, or easements aren't being procured, and is that piece  
18 of property landlocked, and, you know, kind of what the  
19 problem from an easement point view is, not from a cost, not  
20 from what's right, not from what's wrong. I just want to be  
21 able to know that at some point, this piece of property will  
22 be able to be connected, and it will be able to be done so  
23 through the easements that are going to be able to be  
24 procured by the customer, because that really appears to  
25 what the rules said. And there's something in there.

1 Mr. Guldner, can you add a little bit to this?

2 MR. GULDNER: Judge, I think as we looked at the  
3 issues that Mr. Brady raised in the complaint, we viewed the  
4 easement issue as really a threshold, that if we're not  
5 going to get over the easement issue -- and I'm encouraged  
6 to hear Mr. Brady say that that doesn't sound like that's  
7 necessarily the crux of his complaint. If we can't get an  
8 easement from the customer that's acceptable to the company,  
9 then it's going to be pretty hard to move forward on that  
10 issue.

11 I think we read the complaint to include two  
12 concerns, in the concerns that Mr. Brady had raised in some  
13 negotiations with the company, which involved the right  
14 to -- for Mr. Brady to abandon the easement and to change  
15 the language in the standard utility agreement, utility  
16 easement agreement, to include language that would allow an  
17 abandonment of the easement and require us to remove  
18 facilities irrespective of whether that's serving other  
19 customers or, you know, otherwise necessary for service, and  
20 then also an issue around the reasonable unrestricted access  
21 of APS personnel to install and then maintain the facilities  
22 as they're constructed. And so, if we don't actually have  
23 those issues with the easement, it probably does move more  
24 into, then, the route selection.

25 ALJ DION: Okay. And the long and the short of it,

1 that's why I'm talking about it, because that's how I saw  
2 it, too. If we can't figure out the easement sort of a  
3 deal -- and I don't mean we, because this is not  
4 something -- like I said, I'm not settling this -- then I  
5 know exactly where we're going to head in the hearing.  
6 Okay. If that is something that can be figured out, then I  
7 think that really narrowly defines a hearing. And perhaps a  
8 hearing may not be necessary. That seemed to me to be the  
9 obstacle in this case, and it's one I'm going to leave you  
10 with when we're all done, too, but I wanted to find that  
11 out.

12 As I understood it, the situation regarding -- I'm  
13 losing my voice again here -- the situation regarding  
14 facilities and the abandonment, and things like that, there  
15 had been some resolution. We're moving towards a resolution  
16 of almost a situation of, if that were to occur, then there  
17 would be like a pro rata payment. And it seemed like that  
18 dialogue was moving down a route that didn't appear to me to  
19 be a huge obstacle and something that could be worked out  
20 between the parties.

21 Regarding the availability of an easement or  
22 workers, I will say that if we have to discuss that at a  
23 hearing, Mr. Brady, you're going to have to convince me,  
24 again, more likely than not, that if something were to  
25 happen to APS's facilities, that it is better or it is in

1 the public interest, again, more likely than not, that  
2 they're going to have to contact you, bring you out to that  
3 area and do things, and so I wanted to just prepare you for  
4 that.

5 What happens in a situation if you go on vacation?  
6 What happens if, you know, there are other people that are  
7 hooked up to this line and you can't be located? There are  
8 a lot of questions. And I'm just -- I'm not picking on you.  
9 I'm just trying to prepare you for some of the things that  
10 I'm going to have questions about, regarding that, and how  
11 far does that go. If somebody is reading a meter, you know,  
12 what happens?

13 And really, the way that we judge these things and  
14 the way you try to do it is, you know, what's reasonable in  
15 the situation; what would reasonable people do when faced  
16 with things. And it's not really just how it effects you.  
17 It's how it effects people, so to speak, down the line and  
18 the public at large because -- and I would probably reverse  
19 the question to you and say, well, let's say, two or three  
20 people down, something happens and we have to get them out  
21 to do it, and your establishment of power is delayed by two  
22 or three hours, how reasonable is that? And so, those are  
23 some of the questions that I would probably be asking you.

24 And again, I think that's something else that's not  
25 real difficult to work out with the company. I think that

1 the difficult part is the easement.

2 I, like Mr. Guldner, was encouraged, not because I  
3 don't want to do a hearing -- it doesn't matter to me, to be  
4 really honest -- but that's what I thought the problem was.  
5 And it sounds to me like that's something that perhaps --  
6 you know -- that you and the company may be able to move  
7 along in that front. But that, quite frankly, is my largest  
8 concern, is that, how -- how to -- you know -- how to make  
9 it feasible for that piece of property to get electricity.

10 I will say -- I don't think I'm jumping -- you  
11 know, I don't think I'm going to say anything shocking -- it  
12 is in the public interest for people to have electricity,  
13 generally. It's a good thing. We live in the desert. It's  
14 nice to have. In cooler climates, and in Flagstaff, it's  
15 nice to be warm.

16 But I will also say that it's subject to a degree  
17 of reasonableness. And if those things -- if there are  
18 conditions placed upon that that a person doesn't want or is  
19 unwilling to live with, then, okay, there are other  
20 alternatives, and you can go ahead and check those out, but  
21 I just wanted to let you know that -- you know, I talked a  
22 little bit about "more likely than not" -- there's also a  
23 reasonableness standard that's going to be judged. And it's  
24 not going to be just your situation. There's going to be a  
25 public interest situation that I'm going to be required to

1 think about, too.

2 So, like I said, I just wanted you to be able to  
3 figure -- or, be able to -- when preparing for a hearing, if  
4 that's the way this goes -- be able to really tailor your  
5 questions or your evidence so that you can present that case  
6 to me. And I'm spending a lot of time with you. I'm not  
7 trying to pick on you. If you think I am, I apologize.  
8 It's just like I said. I don't want you to be intimidated.  
9 I don't want you to be afraid of the process in any way.  
10 And I don't want it to be confusing. You know, I'm just  
11 trying -- and I'm not going to build your case for you.  
12 You're going to have to do that. But I also want this to --  
13 if we do have a hearing, I want the time to be well spent.  
14 And I don't want us to be spinning our wheels. And so I  
15 think if I just take this time out now, hopefully I can  
16 preempt a lot of stuff that would happen later on and the  
17 hearing, however long it takes, is a productive one.

18 Based on that, I don't think I have too much. I  
19 don't have too many other questions. I know there was some  
20 issue regarding burying the lines. Is that something that  
21 is still intriguing to you, Mr. Brady? If this were to move  
22 ahead, is that still an option that you're considering?

23 MR. BRADY: It could be, but --

24 ALJ DION: Okay.

25 MR. BRADY: -- that's not anything that will stop

1 the project --

2 ALJ DION: No, no, no.

3 MR. BRADY: -- whatsoever.

4 ALJ DION: I just wanted to -- there's a rule on  
5 that, and I just wanted you --

6 MR. BRADY: Yes.

7 ALJ DION: Are you familiar with that?

8 MR. BRADY: I'm aware of it, yes.

9 ALJ DION: Okay. I just wanted you to know that  
10 there was a rule on that, as well -- we talked about the  
11 easements -- and so you would be able to make a more  
12 informed decision if that's something that happens on down  
13 the line. I had it. It's on the same page, so I thought  
14 I'd at least mention it to you.

15 MR. BRADY: Okay.

16 ALJ DION: That being the case, I would again  
17 encourage you guys to talk. I think Mr. Brady has said  
18 something that I didn't necessarily -- I wasn't prepared for  
19 his answer in that he understood that he -- not that he  
20 understood the easements, but he didn't necessarily think  
21 that that's going to be -- that was the sticking point.  
22 That being the case, that hurdle, if that can be overcome,  
23 then I think a lot of the other things are -- may be able to  
24 be negotiated. And if that's the case, Mr. Brady's  
25 residence will hopefully have power, which I think is what

1 you want in the first place.

2 Is that right, Mr. Brady?

3 MR. BRADY: Yes.

4 ALJ DION: Okay. If not, though -- and I'm going to  
5 plan for the "if not" -- we're going to have a hearing.

6 Mr. Brady, based on what I've told you and that  
7 you're going to have to prove more likely than not that APS  
8 has either violated a rule or their tariff, how many  
9 witnesses do you think that you would call besides yourself  
10 to testify in this case?

11 MR. BRADY: Probably two.

12 ALJ DION: Okay. Two more. So, a total of three  
13 witnesses?

14 MR. BRADY: Counting myself, yes.

15 ALJ DION: Okay. And you may have some exhibits  
16 that you'd like to present, either photographs or documents,  
17 things like that?

18 MR. BRADY: Yes.

19 ALJ DION: Okay. Mr. Guldner, APS?

20 MR. GULDNER: We're looking at probably two, maybe  
21 three witnesses.

22 ALJ DION: Okay. So, about a day?

23 MR. GULDNER: I think so.

24 ALJ DION: Does that sound about right?

25 MR. BRADY: Don't ask me.

1 ALJ DION: Mr. Brady, I looked at you and I said  
2 it, but I was --

3 MR. BRADY: Okay.

4 ALJ DION: -- thinking in my mind and asking  
5 Mr. Guldner, actually.

6 A day sound about right, Mr. Guldner?

7 MR. GULDNER: (Indicating.)

8 ALJ DION: Okay. Traveling. Mr. Brady, is there  
9 anything that would prevent you from coming and being here  
10 at -- we usually start at 10 o'clock. Is there anything  
11 that would prevent you from getting here at about 9 o'clock?

12 MR. BRADY: No.

13 ALJ DION: Okay. I'll try to keep you out of rush  
14 hour a little bit, but I'd like to start earlier so that,  
15 you know, if we're all here, it's just a day and we don't  
16 start going into the next day.

17 Does that sound reasonable to everybody?

18 MR. BRADY: Sounds fair to me.

19 ALJ DION: Okay. So why don't we look at that.

20 Now, how long, Mr. Brady, do you think it would  
21 take you to prepare for something like this? A week? Two  
22 weeks? Three months?

23 MR. BRADY: Probably two weeks.

24 ALJ DION: Two weeks? Okay.

25 Mr. Guldner, your schedule?

1 MR. GULDNER: We're probably -- just because  
2 Mr. Brady mentioned that there's a couple of witnesses, and  
3 we may try to do some informal discovery, I think we could  
4 be ready within 30 days --

5 ALJ DION: Okay.

6 MR. GULDNER: -- to go to hearing.

7 ALJ DION: All right. That's what I was kind of  
8 looking at. I'm looking at sometime in February. I need to  
9 get the book, which is the hearing schedule, and see if it's  
10 possible.

11 In the interim, I would say that, you know,  
12 although you're preparing for a hearing, as I said before,  
13 it's always better to be part of the solution that you're  
14 ultimately getting at to live with than having someone else  
15 decide it for you. And so, based on what I've heard today,  
16 I don't think that a hearing is definite, but again, I  
17 wanted to plan for the contingency that it is going to  
18 happen.

19 I don't think I have any other questions.

20 Mr. Brady, I've done the yeoman's bit of talking  
21 here today. Did you have anything that you wanted to tell  
22 me procedurally or have a question, anything that --

23 MR. BRADY: No, I don't believe so.

24 ALJ DION: Okay. Mr. Guldner, is there anything  
25 from your client? Do you have any questions? Anything

1 procedurally I didn't cover?

2 MR. GULDNER: No, I think we're set.

3 ALJ DION: Okay. Then what I'm going to do is go  
4 off the record.

5 (Brief recess, 2:42 p.m.)

6 ALJ DION: We're back on the record.

7 I thought of a question I didn't ask last time, and  
8 I want everyone to be aware of it.

9 Currently APS has a rate case that has been filed.  
10 I'm not the assigned ALJ on that case, and I don't know too  
11 much about it, but APS did bring up in its answer that there  
12 may be some bearing, on that case, upon this case.

13 Mr. Guldner, can you explain to Mr. Brady and I  
14 what you mean?

15 MR. GULDNER: Yes, Your Honor. Currently our  
16 Schedule 3, which explains how line extension allowances are  
17 provided, is based on a footage basis, a number of feet. If  
18 you're within a number of feet, it's at no charge to the  
19 customer, under certain terms and conditions, and subject to  
20 a \$25,000 outside amount under -- if you hit the 25,000, you  
21 go to a different test. But the gist of it is that there's  
22 currently a footage-based allowance for residential line  
23 extensions like Mr. Brady's.

24 In the rate case, one of the proposals that the  
25 company has made is to change the footage-based approach to

1 a dollar allowance. If that is accepted, and based on the  
2 time line that we've talked about here, I don't think -- the  
3 rate case probably won't be decided until later in the fall  
4 of this year. But if it were decided earlier than the  
5 resolution of this case, that might alter Schedule 3, and,  
6 in particular, Mr. Brady, it might alter the method by which  
7 the footage allowance or the dollar allowance is evaluated.

8 ALJ DION: Okay. Currently, Mr. Guldner, has there  
9 been a Staff Report drafted in that case?

10 MR. GULDNER: Judge Dion, the current procedural  
11 disposition of the rate case is, Staff testimony is going to  
12 be filed on this Friday, the 9th. There's a procedural  
13 conference that has been going on this morning to discuss a  
14 motion to delay that. And so, absent a ruling on that  
15 motion, we expect the Staff testimony, which will address  
16 Schedule 3, to be filed on Friday.

17 ALJ DION: Okay. What's the time line on that one,  
18 Mr. Guldner, if you know, the time line for the rate case?  
19 Is it fall of '03?

20 MR. GULDNER: I think we're --

21 ALJ DION: Four? Sorry.

22 MR. GULDNER: It's fall of 2004. We are expecting  
23 probably 20 to 30 hearing days. And that pushes, as you  
24 know, the time clock out, if you do that.

25 I think we represented this morning in the

1 procedural conference that we believe, under the current  
2 procedure, that a decision would not be required by the  
3 Commission until late October, early November.

4 ALJ DION: So the hearing is going to be greater  
5 than 10 days? Is that what you're saying?

6 MR. GULDNER: Yeah.

7 ALJ DION: Okay. What does all that mean, all that  
8 stuff we just talked about, Mr. Brady? Not a whole lot. It  
9 means that -- I asked about the Staff Report. Generally  
10 nothing really happens until a Staff Report and a hearing  
11 schedule has been done. It's possible that this would  
12 happen, but it would take the commissioners all getting  
13 together and ruling upon APS's filing, really, without a  
14 hearing, without a Staff Report being submitted. So, while  
15 it is possible, it's probably unlikely that -- the time  
16 frame, as I said, we're looking at, is, if we can get this  
17 done in February, then I would look probably towards the  
18 April open meeting. I'd have to look at the open meeting  
19 dates. It might be March, but I think it might be April,  
20 based on some dates, April or May, which is most likely  
21 going to be well in advance of APS's rate case even going to  
22 the hearing, let alone the commissioners making a decision.  
23 It's something you need to know about, but it's something  
24 that I think -- based on what Mr. Guldner is saying -- is  
25 something that -- although you need to be aware about --

1 that the risk of that is probably not as imminent as if we  
2 were in August or September, things like that. It appears  
3 that the tariff is going to remain the same. But again,  
4 that's something you're going to need to be advised of. And  
5 you can certainly always ask questions of Mr. Guldner, as  
6 you're going through this process, if anything has changed,  
7 and that's probably the best way to keep up to date.

8 With that in mind, I'm going to go get the hearing  
9 book and we'll go ahead and schedule this. And I'm looking  
10 towards February, or perhaps mid-February. And again, all  
11 the witnesses will be in and around that time? There's not  
12 nothing --

13 MR. BRADY: (Indicating.)

14 ALJ DION: Okay. All right. Then if you'll excuse  
15 me, let's go back off the record.

16 (Recessed, 2:48 p.m. until 2:54 p.m.)

17 ALJ DION: We're back on the record in this matter.

18 We've had an informal discussion the last five  
19 minutes or so, just kind of talking about time lines and the  
20 date of the hearing.

21 The parties have agreed that Wednesday,  
22 February 18th, at 9 o'clock, will be the date of the hearing  
23 in this matter. The parties also have agreed that they will  
24 exchange witness lists and exhibits by January 23rd, 2004.

25 I explained to the parties that the witness and

1 exhibit lists should be filed with docket control, with the  
2 appropriate -- with the original and the appropriate amount  
3 of copies. But copies of the exhibits themselves do not  
4 need to be filed with docket control. However, they  
5 should -- a copy of those exhibits should be given to the  
6 opposing side, and a copy to the hearing division, addressed  
7 to my attention, so that I can have a copy for the hearing  
8 that we've scheduled on the 18th. I think that's all we  
9 talked about.

10 Mr. Brady, was there anything else we talked about?

11 MR. BRADY: Not that really matters that  
12 shouldn't --

13 ALJ DION: Is that basically the sum and substance  
14 of what we talked about?

15 MR. BRADY: Yes.

16 ALJ DION: Mr. Guldner, do you agree with that?

17 MR. GULDNER: It is.

18 ALJ DION: Okay.

19 MR. GULDNER: And Judge Dion, just one  
20 clarification, more for Mr. Brady's point on that, we have  
21 probably a couple of what we call "demonstrative exhibits",  
22 which are going to be a blowup. And we'll make sure we give  
23 you, on an eight-and-a-half by 11 sheet, what that is, but  
24 we wanted to have it big enough so that it could be used by,  
25 you know, both you and us, or whoever wants to do it, to

1 talk about the different route alternatives. So, we  
2 wouldn't be serving you a copy of the blown up --

3 MR. BRADY: Okay.

4 MR. GULDNER: -- demonstrative exhibit, but we'll  
5 provide a smaller copy.

6 ALJ DION: Okay. You agree with what I said,  
7 Mr. Guldner?

8 MR. GULDNER: I do.

9 ALJ DION: Mr. Brady, you agree with what I said,  
10 what we talked about?

11 MR. BRADY: Yeah.

12 ALJ DION: Okay. So that's the situation. And  
13 again, the hearing is set for Wednesday, February 18th, at  
14 9 o'clock. The witness and exhibit lists should be filed by  
15 Friday, the 23rd. They can certainly be filed sooner, but I  
16 expect it by 5 o'clock on that Friday, that that information  
17 will be filed.

18 If there is anything -- if there is a reason -- if  
19 something happens, if there's anything out there that I need  
20 to know about, then please contact -- either Mr. Brady  
21 contact Mr. Guldner, or Mr. Guldner contact Mr. Brady. Go  
22 ahead and feel free to contact me. We can always have  
23 another pre-hearing if there's something that needs to be  
24 worked on or if there are any motions that are going to be  
25 filed. You know, I want to let you know that this is kind a

1 short set, so to speak, six weeks, kind of quicker than  
2 normal, but if something comes up in the interim, I would  
3 prefer to just handle it in a situation like this, or even  
4 telephonically, with a court reporter present, rather than  
5 go ahead and push this date back. I think this is a  
6 realistic date, and I think it's something in this case that  
7 we can get done sooner than later. And I think I began this  
8 whole thing by saying, we're supposed to be faster, and  
9 we're supposed to be more efficient, so we're certainly  
10 going to try to be in this case.

11 Is there anything else, Mr. Brady?

12 MR. BRADY: Nothing further.

13 ALJ DION: Okay. Mr. Guldner, did you have  
14 something?

15 MR. GULDNER: Judge Dion, we will discuss with  
16 Mr. Brady the potential of resolving this case. That's  
17 certainly something we're interested in doing. If we are  
18 successful in doing that, we will of course contact you.  
19 And I think having the hearing set at least gives us a bogie  
20 to shoot at to try to resolve it before that date. So,  
21 we'll do our best to do that.

22 ALJ DION: Okay. And if that's done, I just --  
23 again, this is just a procedural sort of a thing. There's  
24 two ways you can go about that. If you're able to work it  
25 out, then certainly just a motion to dismiss the complaint

1 is probably the fastest, easiest and cleanest way to do it.

2 If there's something out there, for some reason,  
3 that you guys think the commissioners need, if we're moving  
4 away from the norm or if we're going against a tariff or if  
5 we're doing something that we don't normally do and you  
6 think that's something the commissioners need to sign off  
7 on, then we still may have a hearing, so to speak. It will  
8 be just, you'll tell me what the settlement is, and I'll  
9 weigh and balance and see if that's something that I think  
10 is a good idea, and then I will say, yes, I do, or, no, I  
11 don't. Either case, that's presented just like the hearing  
12 would be. That's presented to the commissioners. Those are  
13 the two routes.

14 I would imagine, though, if you're able to work it  
15 out, that probably the motion to dismiss is the most likely  
16 of those two routes, based on the things we talked about.  
17 And based upon the things that -- the negotiations that have  
18 gone on, I don't see an issue like that, but I can't be -- I  
19 can't be all-seeing. So, you may have something for me.

20 In any event, we'll go ahead and conclude the  
21 pre-hearing today. As I said, the hearing will take place  
22 on February 18th. Again, it'll be much more formal than we  
23 were today, and there will be -- you know, it'll be, really,  
24 a question and answer.

25 Again, Mr. Brady, you have the burden of proof.

1 You'll have your witnesses. APS will have the chance to  
2 question them. Then I also get the chance to question them.  
3 And then APS will, if they choose, put some witnesses on.  
4 If they do, you'll have a chance to question them, and I  
5 will, too. There'll be closing arguments or, perhaps,  
6 closing briefs. We'll talk about that at the hearing date.  
7 I would imagine closing arguments are probably going to be  
8 the way this goes, but there'll be some discussion about  
9 that at that time.

10 But, in any event, that's the schedule. I don't  
11 think this is a case where there's a need for pre-filed  
12 testimony or anything like that. I think it's pretty  
13 straightforward. If this goes to hearing, there will be  
14 witnesses that will be presented, and then based upon the  
15 evidence, I'll make findings of facts and conclusions of  
16 law. Okay?

17 All right. Thank you, everybody, for coming. I  
18 hope you guys have a good new year.

19 MR. BRADY: Thank you.

20 (The hearing concluded at 3:00 p.m.)

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1 STATE OF ARIZONA )  
 ) ss.  
 2 COUNTY OF MARICOPA )

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I, JODIE GUHR, Certified Court Reporter No. 50191  
 for the State of Arizona, do hereby certify that the  
 foregoing printed pages constitute a full, true and accurate  
 transcript of the proceedings had in the foregoing matter,  
 all done to the best of my skill and ability.

14

WITNESS my hand this 19th day of January, 2004.

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 JODIE GUHR, RPR, CCR  
 AZ Certificate No. 50191

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