

1 STATE OF MISSOURI
2 PUBLIC SERVICE COMMISSION
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6 TRANSCRIPT OF PROCEEDINGS
7 Public Hearing
8 January 16, 2008
9 Jefferson City, Missouri
Volume 1

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12 In the Matter of New Proposed)
Small Company Rate Increase) Case No. AX-2005-0363
13 Procedure Rules)

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15 COLLEEN M. DALE, Presiding,
CHIEF REGULATORY LAW JUDGE.

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ROBERT M. CLAYTON,
18 LINWARD "LIN" APPLING,
COMMISSIONERS.

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

2 JUDGE DALE: Good morning. We are here in
3 the matter of new proposed small company rate increase
4 procedure rules, Case No. AX-2005-0363. It's December 16,
5 2008, and we'll begin with entries of appearance.

6 MR. KRUEGER: Keith R. Krueger for the
7 Staff of the Missouri Public Service Commission. My
8 address is P.O. Box 360, Jefferson City, Missouri 65102.

9 MS. BAKER: Christina Baker, Senior Public
10 Counsel, P.O. Box 2230, Jefferson City, Missouri 65102,
11 appearing on behalf of the Office of Public Counsel and
12 ratepayers.

13 JUDGE DALE: Thank you. We're here to take
14 comments and testimony. We'll begin with Staff. You may
15 call your witness.

16 MR. KRUEGER: Dale Johansen.

17 (Witness sworn.)

18 JUDGE DALE: You may be seated.

19 DALE JOHANSEN testified as follows:

20 DIRECT EXAMINATION BY MR. KRUEGER:

21 Q. State your name and address for the record,
22 please

23 A. Dale Johansen. My work address is Missouri
24 Public Service Commission, Post Office Box 360, Jefferson
25 City, Missouri 65102.

1 Q. By whom are you employed and in what
2 capacity?

3 A. I work for the Public Service Commission,
4 and I'm a Utility Engineering Specialist 2.

5 Q. Did you participate in the drafting of
6 proposed Rule 4 CSR 240-3.050?

7 A. I did.

8 Q. Do you support the adoption of this rule?

9 A. I do.

10 Q. Do you recommend any substantive changes to
11 the rule as from the way it was published in the Missouri
12 Register?

13 A. I do not have any substantive changes. I
14 do have some editorial changes; one change regarding a
15 drafting error that I notice, and one change regarding the
16 organization of a couple of sections of the rule.

17 Q. Okay. Would you describe the first of
18 these changes, please.

19 A. Yes. In Section 3, line 1, we propose to
20 change the word will to shall. So it would read the
21 secretary shall cause a rate case to be opened. In line 8
22 of Section 3, we would also propose to change the word
23 will to shall. So that would read, Regulatory Law Judge
24 who shall establish on a case-by-case basis. Line 12 of
25 Section 3, again change the word will to shall. So that

1 would read, the Regulatory Law Judge shall issue a written
2 opinion.

3 Q. Okay. And what is the next change that you
4 recommend?

5 A. In Section 11, in line 3, we propose to
6 change the word this to the phrase the filing of the
7 disposition agreement.

8 Q. And what is the reason for that recommended
9 change?

10 A. In the first sentence of that section,
11 there's a reference to a disposition agreement being filed
12 not later than 150 days after a case is opened, but the
13 rule does provide for extensions of that filing date, so
14 we thought we should change -- remove the word this and
15 add that phrase to make it clear that what we're talking
16 about is prior to the time of the filing of the agreement,
17 not necessarily prior to the time of 150 days.

18 Q. Okay. Thank you. And what is the next
19 change?

20 A. Also in Section 11, we propose to add at
21 the end of the last sentence the phrase, regarding
22 unresolved issues identified in the agreement. And if I
23 could, I'll just read that sentence in its total now. If
24 the disposition agreement filed by the Staff provides for
25 only partial resolution of the utility's request, it may

1 contain provisions whereby the signatories request that
2 the assigned Regulatory Law Judge initiate an arbitration
3 procedure regarding unresolved issues identified in the
4 agreement.

5 Q. And what is the reason for that recommended
6 change?

7 A. We just wanted to make it clear that the
8 arbitration procedure would be limited to items identified
9 by the parties to the agreement.

10 Q. And what is your next recommended change?

11 A. In Section 18, line 3, it talks about an
12 approval notice being mailed to the customers, and we
13 would suggest removing the word approved, and that's for
14 consistency with other sections of the rule that talks
15 about notices being mailed out.

16 Q. Okay. Thank you. Are there other changes?

17 A. Yes. In Sections 20 and 21, there are --
18 and Section 20, line 5, there's a reference to Section 25
19 of the rule, and for a reason I'll explain in just a
20 moment, that needs to be changed to Section 24, and the
21 same change in line 5 of Section 21.

22 Q. Okay. And what is the reason why those
23 need to be changed?

24 A. We're proposing to strike what is currently
25 Section 22 and the last sentence of what is currently

1 Section 25 and combine those into a new section, so it
2 would require renumbering of the sections. And then in --

3 Q. Does that result in any substantive change
4 to the rule?

5 A. No, it does not. It's simply organization.
6 In conjunction with that, what is currently Section 23
7 would become Section 22. What is currently Section 24
8 would become Section 23. What is currently Section 25
9 would become Section 24. And then the combination that I
10 just mentioned of what is currently Section 22 and the
11 last sentence of current Section 25, those two combined
12 would become Section 25.

13 Q. Okay. Just for clarity, would you read
14 what the proposed revised Section 25 would say?

15 A. Yes. The Commission shall set just and
16 reasonable rates which may result in a revenue increase
17 more or less than the increase originally sought by the
18 utility or which may result in a revenue decrease. In
19 doing so, the Commission may approve, reject or alter a
20 disposition agreement or an arbitration opinion and any
21 related partial disposition agreement.

22 Q. Are there any other changes that you
23 recommend?

24 A. What is currently Section 25 and would
25 become Section 24, on line 3, again, we would change the

1 word will to shall. So that would read, the Commission's
2 decision and order regarding the case shall be issued and
3 effective.

4 Q. Any other changes?

5 A. That's it.

6 Q. And with the changes that we have just
7 talked about, do you recommend that the Commission adopt
8 this rule with the revisions to the rule as published in
9 the Missouri Register?

10 A. I do.

11 MR. KRUEGER: No other questions.

12 JUDGE DALE: Mr. Krueger, I would ask that
13 you please file this document -- that you would please
14 file this document you have given us in EFIS, if you
15 would, please.

16 MR. KRUEGER: I will sure do that.

17 JUDGE DALE: Commission questions.

18 COMMISSIONER CLAYTON: Do these need to be
19 filed in EFIS or do they need to be filed in the official
20 record of the rulemaking? Is EFIS the same?

21 JUDGE DALE: Yes.

22 COMMISSIONER CLAYTON: Weren't they
23 different at one time, the rulemaking docket was part of
24 what the Secretary of State had and EFIS was different?
25 Are they the same?

1 JUDGE DALE: At this point, for purposes of
2 this version of the rule, yes, they are the same.

3 COMMISSIONER CLAYTON: Maybe I'm not
4 remembering that correctly. I just had a couple of
5 questions.

6 QUESTIONS BY COMMISSIONER CLAYTON:

7 Q. Can you walk me through this process just
8 very briefly and quickly? Give me an idea of the timeline
9 from the day that you would receive the letter or the
10 request to increase rates from a small company.

11 A. Sure. And I'll do it in the context of the
12 current process and then in the context of the process
13 that would exist if this rule is adopted.

14 Currently, a letter is submitted to the
15 attention of the secretary of the Commission that requests
16 an increase in the company's operating revenues, and that
17 is assigned what we call a tracking file in EFIS. The
18 Staff makes its assignments as to who's to work in regard
19 to that request, does an audit of the utility's books and
20 records, provides a proposal to the company and the Office
21 of Public Counsel regarding what the Staff believes the
22 company's revenue requirement is. At that point --

23 Q. How much time does that normally take?

24 A. That process is to be completed within 150
25 days from the time --

1 Q. In this rule or today?

2 A. In the current rule and as proposed.

3 Q. Okay. So the letter comes in, so you're
4 talking about plus up to 150 days for the Staff response?

5 A. Well, up to 150 days for an agreement to be
6 reached regarding the request.

7 Q. Okay. How many days does it take to get a
8 Staff response?

9 A. Normally about 90.

10 Q. So you're at plus 90 days for a Staff
11 position, and then that's tendered to the parties,
12 normally the utility and the Office of Public Counsel?

13 A. That's correct.

14 Q. Okay. Now, from that period where the
15 Staff response goes out, how much time generally does it
16 take for communications or responses from Public Counsel
17 or the utility to the Staff recommendation?

18 A. We usually provide -- provide them with 30
19 days to respond, and then another 30 days to actually get
20 an agreement hammered out between the parties, either only
21 between the company and Staff or unanimous agreement
22 between the company, Staff and Public Counsel. So that
23 gets us to what we call day 150.

24 Q. Okay. So the day 150. So is there any
25 difference between the current rule and this proposed rule

1 up to this point?

2 A. The main difference in the proposed rule is
3 that a formal docketed case will be opened at the time the
4 request is received rather than it being reviewed in the
5 context of what we call an informal process through the
6 tracking file.

7 Q. And with the creation of that case, does it
8 become a contested case at that point? Do the ex parte
9 rules and formal pleadings kick in at that point, or is it
10 just kind of a tracker within EFIS for keeping track of
11 the file, or do you know?

12 A. I don't know.

13 Q. Okay. Go ahead, then.

14 A. Once the -- an agreement is reached, at
15 least between the company and the Staff, under the current
16 procedure that's the point in time when tariff revisions
17 are filed by the company, and currently that's when the
18 docketed case is opened.

19 Q. Okay.

20 A. And then depending upon whether it's a
21 unanimous agreement or an agreement only between the
22 company and the Staff, the process is a little bit
23 different from the standpoint of how that tariff filing is
24 processed.

25 Under the proposed rule, again, the main

1 difference would be that the docketed case is opened
2 initially. Other than that, there won't be much
3 difference in the process. The proposed rule does specify
4 that at day -- by day 90 the Staff will provide the
5 company and Public Counsel with its initial
6 recommendations, and then by day 120 the Staff will
7 actually provide a settlement proposal to the company and
8 Public Counsel, and then by day 150 is the filing of a
9 disposition agreement.

10 And that's another minor difference in the
11 process is currently at day 150 the company files its
12 tariff revisions and then the Staff subsequently files the
13 agreement. Under the proposed rule, the agreement itself
14 would be the day 150 filing, and then five days after that
15 -- within five days after that is when the tariff
16 revisions will be filed.

17 Q. Let me ask you one other question here. In
18 the draft of the rule, in the old Section 25 there's -- in
19 the copy that I have it has red strikeout language, and
20 then that language seems to be replaced in a new
21 Section 25 that is in blue type. I'm not sure if this is
22 an exhibit number. Maybe we ought to note it as an
23 exhibit or --

24 JUDGE DALE: Certainly. We certainly can
25 mark it as Exhibit 1.

1 (EXHIBIT NO. 1 WAS MARKED FOR
2 IDENTIFICATION BY THE REPORTER.)
3 BY COMMISSIONER CLAYTON:

4 Q. So on Exhibit 1, I'm referring to page 25
5 where you have strikeout language and then you have new
6 blue language. Are you following what I'm talking about?

7 A. Correct. Yes.

8 Q. Now, is there any language in the current
9 rule existing law that says anything about a disposition
10 that may involve a revenue increase more or less than the
11 increase originally sought, or is this new language?

12 A. The current rule does not include this type
13 of language.

14 Q. Okay.

15 A. The assumption has always been that the
16 requested increase is limited to what is requested, with
17 one exception, and that is a -- the most recent Timber
18 Creek Sewer Company case.

19 Q. Yeah.

20 A. But this is new language that would
21 basically clarify what the amount of the increase that is
22 eventually agreed upon can be.

23 Q. Are there any limitations on that? I mean,
24 so the Staff could come back with a rate increase if it
25 felt it justified as, say, twice as much as what they

1 asked?

2 A. As proposed, there is no limit on that.

3 Q. There is no limit?

4 A. Correct.

5 COMMISSIONER CLAYTON: I don't think I have
6 any more questions for this witness. I may have some
7 questions for Mr. Krueger, though, if that's okay.

8 JUDGE DALE: Do you have questions?

9 MS. BAKER: I have no questions.

10 JUDGE DALE: Do you have questions? Then I
11 would -- I think that would be the appropriate time.

12 COMMISSIONER CLAYTON: Mr. Krueger, do you
13 have any legal authority which suggests that this language
14 is appropriate in terms of due process? Specifically I'm
15 referring to a letter coming in suggesting a rate
16 increase, there's going to be some sort of public notice.

17 Presumably there'll be some sort of public
18 notice, and then you have some disposition -- potential
19 disposition agreement between the Staff, the utility,
20 maybe Office of Public Counsel, and that the increase
21 could be any amount higher than what perhaps the notice
22 has been -- or what the public has been given notice of
23 the rate increase. Do you have any legal authority which
24 suggests that this is appropriate?

25 MR. KRUEGER: I don't have anything readily

1 at hand, but I can find some and cite it for you.

2 COMMISSIONER CLAYTON: Was any thought put
3 into that at all?

4 MR. KRUEGER: Yes, I'm sure it was. I've
5 discussed it with Kevin Thompson.

6 COMMISSIONER CLAYTON: Okay. Is there
7 any -- last question for Mr. Johansen.

8 Is there any language in this that relates
9 to setting interim rates?

10 MR. JOHANSEN: No, there is not.

11 COMMISSIONER CLAYTON: Any final
12 disposition like in the Timber Creek case?

13 MR. JOHANSEN: No, there's not.

14 COMMISSIONER CLAYTON: So there's nothing
15 in here that would allow for -- that sets a new standard
16 for when interim rates would be allowed or not allowed?

17 MR. JOHANSEN: No, but one thing that this
18 rule -- that the proposed rule does do, it sets a -- an
19 11-month time limit on the process. Currently the rule
20 does not include a time limit. What we've attempted to do
21 here is basically say that the proposed resolution will be
22 presented to the Commission within nine months of the
23 request being filed, and then the Commission's decision
24 will be issued within 11 months. So we have put the time
25 limit there.

1 COMMISSIONER CLAYTON: Thank you.

2 JUDGE DALE: Thank you, Mr. Johansen. You
3 may step down.

4 Ms. Baker, do you wish to make comments?

5 MS. BAKER: I have no witnesses, but Public
6 Counsel has supported the changes with this rule to try to
7 help make the small rate case procedure work more
8 smoothly, to ensure that Public Counsel has every
9 opportunity to review the materials, to make comments, and
10 to make sure that the ratepayers' concerns are taken into
11 account. So we do back the rule change today.

12 JUDGE DALE: Thank you.

13 COMMISSIONER CLAYTON: Ms. Baker, I have a
14 couple of questions along the lines of the questions that
15 I asked Mr. Johansen. First of all, I want to talk about
16 this draft or this version of the rule compared to the
17 version that we had way back from the original '05
18 rulemaking.

19 And as I recall, Public Counsel had a
20 problem with the old version, and memory is fuzzy as
21 others have said, still is fuzzy. I think it was
22 basically that Public Counsel was kind of blocked out of
23 the small case disposition case process and that the only
24 ability to be involved would be to file a motion to
25 suspend the tariff, the compliance tariffs that followed

1 the disposition agreement once it was filed, and that the
2 Commission could conceivably reject your motion to suspend
3 without holding a hearing, and I recall the discussion.
4 And I'm not sure if you were in the Public Counsel's Office
5 at that time --

6 MS. BAKER: No, I was not.

7 COMMISSIONER CLAYTON: -- but Public
8 Counsel opposed the rule. Can you talk about the
9 difference in this case and what gives Public Counsel
10 comfort in this version of the rule in contrast to the
11 other?

12 MS. BAKER: This version of the rule allows
13 for an arbitration sequence where if Public Counsel has an
14 issue to where we just do not agree with the Staff and the
15 company disposition, that can be brought in front of the
16 Regulatory Law Judge and our issues can be heard, the
17 opposing issues can be heard. And that way at least we
18 have some mechanism where we can bring our concerns to the
19 Commission through the Law Judge.

20 And with the previous case -- or with the
21 previous rule, if we did not agree, we were stalemated at
22 that point. There was no mechanism to move forward to try
23 to get over that issue, and there was also no mechanism
24 where we could agree on certain issues and then leave one
25 issue for arbitration or possibly an evidentiary hearing

1 later. So it gives Public Counsel a lot more
2 opportunities to get their issues heard, and the
3 arbitration, I believe, is what makes this a more
4 palatable rule than the previous.

5 COMMISSIONER CLAYTON: So is Public Counsel
6 in this rule trading a full-blown evidentiary hearing
7 for -- is it binding arbitration or is it nonbinding
8 arbitration?

9 MS. BAKER: Let me find the section.

10 COMMISSIONER CLAYTON: And then I guess if
11 so, explain to me why you think that gives Public Counsel
12 enough power to be involved in the process.

13 MS. BAKER: Okay. The section is 16 for
14 the arbitration process, and -- look over this a little
15 bit. For that -- if the disposition agreement filed by
16 Staff provides only partial resolution, then the
17 arbitration -- there's a use of an arbitration process to
18 resolve the specific issues.

19 We can go through the arbitration process,
20 and Public Counsel can still come out of it and not have
21 our issues relieved or taken care of. We still have the
22 ability to go in and ask for the suspension of the tariffs
23 and force the evidentiary hearing.

24 COMMISSIONER CLAYTON: Okay. So you're not
25 giving up your right to an evidentiary hearing?

1 Section 15 suggests that you still have the ability to
2 request a local public hearing or an evidentiary hearing?

3 MS. BAKER: Yes.

4 COMMISSIONER CLAYTON: So the arbitration
5 is actually -- that's an additional due process or
6 additional procedure that Public Counsel would have? It
7 doesn't supplant a traditional evidentiary hearing?

8 MS. BAKER: That's correct. And I believe
9 even in the original rule, there was some question of
10 whether Public Counsel could request an evidentiary
11 hearing because that would come from the company.

12 COMMISSIONER CLAYTON: That answers my
13 question, the fact that you have that ability and that the
14 Public Counsel can step in and get due process on its
15 issues.

16 MS. BAKER: Yes.

17 COMMISSIONER CLAYTON: I think that's very
18 important. The arbitration I think is extra and it's --

19 MS. BAKER: Well, that gives us two options
20 to make the situation --

21 COMMISSIONER CLAYTON: Don't get greedy,
22 Public Counsel.

23 MS. BAKER: I like to be greedy.

24 COMMISSIONER CLAYTON: Let me ask you one
25 other area of questions here.

1 MS. BAKER: Sure.

2 COMMISSIONER CLAYTON: And that is this
3 subsection 25 that I asked Mr. Johansen, the ability to
4 have a disposition agreement that is more or less than the
5 increase originally sought by the utility, and because the
6 small case things operate differently than a typical
7 evidentiary hearing, if you have a circumstance where a
8 letter is filed saying we request the rate increase, I
9 assume -- do you get notice of that request from the
10 start?

11 MS. BAKER: Yes.

12 COMMISSIONER CLAYTON: Okay. And Public
13 Counsel then requests a local public hearing to give the
14 public an opportunity to chime in on the rates or customer
15 service, that sort of thing, and the notice goes out that
16 says it's a million dollar rate request.

17 Subsequently to that, the agreement comes
18 out that -- that it's for a million two, million three.
19 According to this, that that's appropriate, that's okay,
20 and I guess I need -- I need to know what Public Counsel's
21 rationale for supporting that language that would allow
22 for an increase greater than what the public has been
23 notified is possible?

24 MS. BAKER: Public Counsel understands that
25 a lot of the companies who come in to use the small rate

1 case procedures are lacking in their financial acumen.
2 When they come in, maybe it's a common circumstance is the
3 father was the owner of the utility. He passed away. The
4 daughter comes in and says, this is -- this is what daddy
5 had.

6 And so we do understand that there are
7 situations where they don't have the -- enough information
8 within the utility itself to know what they need, and
9 what -- what they are allowed to have. The issue that
10 we've had in the past is that there was nothing in the
11 rule that allowed for an extra amount above what they have
12 asked for, and there was no notice to the customers that
13 that could be possible.

14 COMMISSIONER CLAYTON: Well, eventually
15 there's no -- I guess you'd have to alter what -- the
16 Commission would have to alter what notice it gives to the
17 public. The public notice would have to be, well, they've
18 requested a million dollars increase but we may grant them
19 more depending on what the evidence shows. Are you
20 suggesting that?

21 MS. BAKER: Well, the notices are reviewed
22 by the Public Counsel, and so that would probably be
23 something that we would put into those notices.

24 COMMISSIONER CLAYTON: Well, this would be
25 changing what the current notice would be. I mean, this

1 is a change in policy. I don't think the Commission has
2 granted rate increases that are greater than what was
3 originally requested, so --

4 MS. BAKER: And that is correct. And so if
5 this rule does come into effect, then that would be
6 language that Public Counsel would ask to be added into
7 the notices.

8 COMMISSIONER CLAYTON: Do you think we need
9 to set that out in the rule, to clarify that the public
10 should receive that notice, that -- that the notice that
11 is sent to the public needs to reflect that it is possible
12 to have a greater increase than what they requested?

13 MS. BAKER: I'm looking at the section for
14 the notices being approved by Public Counsel.

15 COMMISSIONER CLAYTON: We can just leave
16 you to read that. I'm sure you'll do the right thing.

17 MS. BAKER: That seems maybe a little bit
18 too detailed to go into a rule, but I guess if that were
19 found to be acceptable by the Commission, Public
20 Counsel --

21 MR. KRUEGER: Your Honor, I believe
22 Mr. Johansen may be able to shed some light on that.

23 JUDGE DALE: Mr. Johansen.

24 MR. JOHANSEN: Can I do it from here?

25 JUDGE DALE: Yes. Please make sure that

1 you speak into the microphone, and remember that you're
2 still under oath.

3 MR. JOHANSEN: Yes. There are actually
4 three different notices that are possible. There's a
5 notice that goes to the customers when the request is
6 originally filed, that would indicate what amount of
7 increase the company has asked for.

8 After the disposition agreement is
9 completed in a situation where the Public Counsel has not
10 signed off on that agreement, there's a second customer
11 notice that goes to -- that is mailed out, and that notice
12 would say how much of an increase that the company and
13 Staff have agreed upon. So that would be the indication
14 that, let's say the company asked for a \$100,000 increase,
15 and the company/Staff agreement reflects a \$120,000
16 increase. The customers would receive notice of that.

17 The other opportunity for notice is if
18 there is a -- if the Public Counsel requests a local
19 public hearing and the Commission holds one, there's also
20 a notice that goes out then, which it would be another
21 opportunity for the customers to be advised of what the
22 final opportunity for the increase is.

23 COMMISSIONER CLAYTON: I guess what my
24 concern is, let's say with those three examples of a
25 notice, the company makes its request for the \$100,000,

1 notice is sent out to them that we've made this request
2 for \$100,000. Public Counsel files a request for a local
3 public hearing and one is scheduled. Notice goes out to
4 the public that the hearing is going to be held. The
5 yellow sheets are passed out suggesting that the company
6 has asked for a \$100,000 rate increase. Public hearing is
7 held, consumer issues are resolved, and then say 30, 60
8 days after that the company and Staff come to an agreement
9 for a rate increase of \$150,000, and then at that point it
10 comes before us for approval.

11 And the question that I have, it's not such
12 a big deal if it's just a matter of change or a small
13 percentage, but, I mean, there's no limitation here.
14 What happens if the company starts off -- or the strategy,
15 is that you start off saying -- asking, well, we're going
16 to start asking for 50,000, and then, you know, expecting
17 that it's going to end up being 150,000, and the public
18 doesn't get a chance to comment on that?

19 MR. JOHANSEN: Well, from a timing
20 standpoint, the -- the public hearing is held after the
21 company/Staff agreement is filed, and after -- so the
22 second customer notice that goes out is before the local
23 public hearing.

24 COMMISSIONER CLAYTON: Now, current
25 practice, that doesn't always happen.

1 MR. JOHANSEN: No. The current practice it
2 does happen. The public hearing is held only after the
3 company/Staff agreement is filed.

4 COMMISSIONER CLAYTON: Maybe I'm confusing
5 this with a large company rate increase, but I remember at
6 least one example where there was an agreement that wasn't
7 released and we went to public hearing, and we had some
8 controversy with that, and I want to say that it's
9 happened -- well, I'm struggling with the small water --

10 MR. JOHANSEN: There are instances in large
11 company rate cases where the local public hearings are
12 held prior to the time the Staff files its testimony.

13 Under the small company procedure currently
14 and as proposed, the local public hearing occurs after the
15 company/Staff agreement is filed. So the maximum amount
16 of the increase that could occur will be known at the time
17 of the local public hearing, and in fact, the customers
18 will have been notified of that even if there's not a
19 local public hearing.

20 COMMISSIONER CLAYTON: Now, do you agree
21 with that characterization Mr. Johansen said?

22 MS. BAKER: That is the way that it occurs,
23 yes. The only time that the Public Counsel begins its
24 process is after the Staff has come back with their
25 recommendation.

1 COMMISSIONER CLAYTON: Okay. Public
2 Counsel's comfortable with the way this notification
3 system is set up?

4 MS. BAKER: As far as the process goes,
5 yes, we are. We may ask for the initial notice to put in
6 a little caveat saying this is the amount that the company
7 has asked for, but the rule does allow for there to be
8 more in certain circumstances, and I don't think that
9 would be denied, my request at all.

10 COMMISSIONER CLAYTON: Does Public Counsel
11 believe we need to include any limitation on an amount
12 which could be greater than the original request?

13 MS. BAKER: I don't believe that there
14 would be any limitation. The issue is that they have to
15 come to us and show us the documentation for it, and
16 that's what our review is for. Certainly if it is more
17 than what they've asked for, my guess is we'll be looking
18 at it a little bit more carefully.

19 COMMISSIONER CLAYTON: So you don't think
20 there needs to be a cap of, say, no more than 25 percent
21 of the original request or something?

22 MS. BAKER: I don't see that as being --

23 COMMISSIONER CLAYTON: Let me ask the
24 parties this. Let's say -- let's say the small -- the
25 small company component of this thing doesn't work and you

1 proceed to a -- I assume you -- do you ever proceed -- let
2 me ask this question with the arbitration. Do you ever
3 proceed to a full-blown rate case or is it completely
4 resolved at the arbitration?

5 MR. JOHANSEN: No. The --

6 COMMISSIONER CLAYTON: Let's say you don't
7 have an agreement. You don't have an agreement. Say
8 Public Counsel's the troublemaker and they're not agreeing
9 to it. So what happens at that point?

10 MR. JOHANSEN: Well, the -- the agreement
11 that the company and the Staff files could include
12 provision for arbitration. Let's say the company and the
13 Staff can't agree on everything, we've got a couple of
14 issues that we can't agree on --

15 COMMISSIONER CLAYTON: Keep the example
16 simple. I just want to know -- okay. Go ahead.

17 MR. JOHANSEN: Okay. The arbitration is an
18 option. It does not preclude Public Counsel asking for an
19 evidentiary hearing. The -- and that's one of the things
20 we wanted to make sure in the new rule that we did was to
21 make it clear at what point Public Counsel can ask for an
22 evidentiary hearing and what happens --

23 COMMISSIONER CLAYTON: Let's presume that
24 they do.

25 MR. JOHANSEN: What happens if they do,

1 what happens if they do is that the case converts, if you
2 will, to an evidentiary hearing process.

3 COMMISSIONER CLAYTON: Yeah.

4 MR. JOHANSEN: And the main thing is that
5 that is still done, then, within the 11-month time period.

6 COMMISSIONER CLAYTON: Okay. That's fine.
7 So -- so you don't have a disposition, you file your
8 motion to suspend or you file an objection, I mean you
9 meaning Public Counsel. The record doesn't reflect who
10 I'm gesturing to. I'm gesturing, in a polite way, not an
11 impolite way.

12 MS. BAKER: Thank you.

13 COMMISSIONER CLAYTON: So you have this --
14 let's say you have a unanimous disposition -- or
15 nonunanimous disposition agreement with utility and
16 company on all the issues. Let's remove that component.
17 Public Counsel objects to the whole deal. So then you
18 convert to a contested case. Rules of evidence generally
19 apply, no ex parte communications theory. At that point,
20 is there an application filed or is it a stipulation that
21 is filed to start that case? Like, do you have an
22 application for a rate increase like you would have in a
23 large company case?

24 MR. JOHANSEN: Well, no. Actually, the --
25 the nonunanimous stipulation, if you will, has already

1 been filed. That is what prompts Public Counsel's
2 opportunity to ask for an evidentiary hearing. If that is
3 done, then the -- then there's a -- basically you would
4 have a prehearing conference where the parties would agree
5 on the issues that are to be heard, and there would be a
6 procedural schedule set. We would decide if there's going
7 to be prefiled testimony or live testimony.

8 COMMISSIONER CLAYTON: At the beginning of
9 the contested case, though, you'd have that dollar amount,
10 and at that point there wouldn't be an occasion, I don't
11 think, where the rate increase would come in greater than
12 what that amount is at that point?

13 MR. JOHANSEN: Correct.

14 COMMISSIONER CLAYTON: At the beginning of
15 the contested case?

16 MR. JOHANSEN: That's correct.

17 COMMISSIONER CLAYTON: Now, let's presume
18 that you don't have a settlement, that the company sends
19 its letter, you-all respond with your audit. They ask for
20 100,000. You go back and say, we think you're only
21 entitled to 50,000. Public Counsel's somewhere in there,
22 too. So then it goes -- if you don't have an agreement,
23 then I assume that the company would then file a typical
24 rate increase, typical rate case?

25 MR. JOHANSEN: Give me a second to find the

1 section. We have that instance specifically dealt with.

2 COMMISSIONER CLAYTON: Good.

3 MR. JOHANSEN: Section 21 deals with that
4 situation, and basically it says that if at any time after
5 the case is opened it -- if the utility and the Staff
6 can't even reach an agreement on even a portion of the
7 request, the --

8 COMMISSIONER CLAYTON: I got it -- they
9 file a motion to instigate --

10 MR. JOHANSEN: Either the Staff or the
11 company can file a motion to start the contested case
12 procedures. So even if there's no agreement between the
13 company and the Staff, the process doesn't stop.

14 COMMISSIONER CLAYTON: All right. At that
15 point, if you have a motion filed by either the Staff or
16 the company, that motion is filed, are we finished using
17 this process and then we then go to different sections in
18 regulations?

19 MR. JOHANSEN: Well --

20 COMMISSIONER CLAYTON: Because you're doing
21 a contested case, an evidentiary hearing. There's nothing
22 left to do in the small company rate case rule, is there?

23 MR. JOHANSEN: From the standpoint of the
24 rule itself, no. Those procedures would be carried out in
25 that case.

1 COMMISSIONER CLAYTON: You've exhausted the
2 rule at that point?

3 MR. JOHANSEN: Correct.

4 COMMISSIONER CLAYTON: And at that point
5 the short circuiting the whole deal doing it in a
6 simplified process ends and you begin the longer process,
7 full of due process obligations?

8 MR. JOHANSEN: Correct. Yes.

9 COMMISSIONER CLAYTON: Okay. And at that
10 point you would have a maximum -- you'd have a rate
11 request and then I think -- would you-all agree that the
12 Commission could not grant more than what they're
13 requesting at that point because this rule isn't in place.
14 Would you agree with that?

15 MS. BAKER: Yes, I believe so.

16 MR. JOHANSEN: Yeah, I would, too.

17 MR. KRUEGER: Commissioner, that still
18 would have to be completed within the 11 months from the
19 time of the filing of the initial case and presented to
20 the Commission within nine months after the initial
21 filing.

22 COMMISSIONER CLAYTON: Public Counsel, any
23 other reservations about this at all?

24 MS. BAKER: No.

25 COMMISSIONER CLAYTON: Thank you.

1 JUDGE DALE: Is there anyone else here who
2 wishes to comment on the proposed rule? Hearing none,
3 then we will be adjourned. Thank you.

4 WHEREUPON, the public hearing in this case
5 was concluded.

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1 C E R T I F I C A T E

2 STATE OF MISSOURI)
3 COUNTY OF COLE) ss.

4 I, Kellene K. Feddersen, Certified
5 Shorthand Reporter with the firm of Midwest Litigation
6 Services, and Notary Public within and for the State of
7 Missouri, do hereby certify that I was personally present
8 at the proceedings had in the above-entitled cause at the
9 time and place set forth in the caption sheet thereof;
10 that I then and there took down in Stenotype the
11 proceedings had; and that the foregoing is a full, true
12 and correct transcript of such Stenotype notes so made at
13 such time and place.

14 Given at my office in the City of
15 Jefferson, County of Cole, State of Missouri.

16

17 Kellene K. Feddersen, RPR, CSR, CCR
18 Notary Public (County of Cole)
My commission expires March 28, 2009.

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