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4 STATE OF MISSOURI
5 PUBLIC SERVICE COMMISSION
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8 IN THE MATTER OF THE APPLICATION OF NOEL WATER COMPANY,
9 INC. FOR A GENERAL INCREASE IN WATER REVENUE THROUGH THE
10 INFORMAL RATE PROCEEDINGS FOR SMALL COMPANIES AS PROVIDED
11 FOR IN RULE 4 CSR 240-3.050

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14 Case No. WR-2009-0395
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18 PROCEDURAL HEARING
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26 MAY 26, 2009

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION
TRANSCRIPT OF PROCEEDINGS

Procedural Hearing

May 26, 2009

Jefferson City, Missouri

Volume 1

In The Matter Of The Application)
Of Noel Water Company, Inc. For)
A General Increase In Water)
Revenue Through The Informal Rate) Case No. WR-2009-0395
Proceedings For Small Companies)
As Provided For In Rule 4 CSR)
240-3.050)

HAROLD STEARLEY, presiding,
SENIOR REGULATORY LAW JUDGE

REPORTED BY:

Patricia A. Stewart
RMR, RPR, CCR 401
Midwest Litigation Services
3432 West Truman Boulevard, Suite 207
Jefferson City, Missouri 65101
(573) 636-7551

1 APPEARANCES:

2

FOR OFFICE OF THE PUBLIC COUNSEL:

3

Christina Baker, Senior Public Counsel

4

P. O. Box 2230

Jefferson City, Missouri 65102

5

(573) 751-5565

6

FOR STAFF OF THE MISSOURI PUBLIC SERVICE COMMISSION:

7

Shelley Brueggemann, Deputy Counsel

8

Sam Ritchie, Legal Counsel

P. O. Box 360

9

Jefferson City, Missouri 65102

(573) 751-4140

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

2 JUDGE STEARLEY: All right. Good morning.

3 Today is Tuesday, May 26, 2009, and we are
4 here for the procedural conference in the matter of the
5 application of Noel Water Company, Incorporated for a
6 general increase in water revenue through the informal
7 rate proceedings for small companies as provided for in
8 Rule 4 CSR 240-3.050, File No. WR-2009-0395.

9 My name is Harold Stearley. I'm the
10 presiding officer over this matter. Judge Daniel Jordan
11 is also with us this morning and some backup for me today
12 in case I forget to go over anything that we're going to
13 cover in today's rule.

14 And we'll begin by taking entries of
15 appearance, starting with the Office of Public Counsel.

16 MS. BAKER: Thank you.

17 Christina Baker, Senior Public Counsel,
18 P. O. Box 2230, Jefferson City, Missouri 65102.

19 JUDGE STEARLEY: Thank you, Ms. Baker.

20 And Staff for the Missouri Public Service
21 Commission.

22 MS. BRUEGGEMANN: Representing the Staff
23 today is Shelley Brueggemann and Sam Ritchie. We also
24 have Staff experts here today in case it's necessary.

25 JUDGE STEARLEY: All right. Thank you.

1 We have no representative from the Company
2 for this conference today, although we have provided a
3 phone bridge in case they want to call in, and their
4 presence is really not required.

5 This is a procedural conference addressing a
6 motion for clarification and/or reconsideration of setting
7 the procedural schedule, which is primarily a duty of
8 Staff and more of interest to Staff and the Public
9 Counsel, so their presence is really not required.

10 I know we've been working with this new rule
11 now for, what, maybe six, nine months, and we're trying to
12 work some of the bugs out of the rule as time goes on. So
13 hopefully by going through some of the items, the timeline
14 that's been submitted, we can get some clarification that
15 will make things go a little bit more expeditiously.

16 As an initial matter I'd like to say that
17 the Commission adopted Staff's timeline formally in this
18 case anticipating that it would lead to this conference
19 and we could work out some of these matters, but as a
20 general rule that's not required. These are informal
21 proceedings.

22 Plus the rule specifically states in
23 Subpart 5 that the Staff shall file a timeline under which
24 the case will proceed.

25 So when Staff files the timeline, presuming

1 that is in compliance with the time periods laid out in
2 the rule, that is, in fact, the procedural schedule for
3 these cases.

4 So just a matter of clarification in that
5 regard. The Commission should not need to formally adopt
6 these schedules, and you probably won't see that happening
7 in the future, but we did it specifically for this case,
8 hopefully to lead to some clarification in the timeline
9 itself.

10 Also, in Public Counsel's motion, one thing
11 I'll take up early, I believe there was a request that a
12 settlement mediator be appointed.

13 Sub 3 of the rule provides that the
14 regulatory law judge assigned to the case can be asked at
15 any time to mediate any dispute.

16 The Commission really sees no point in
17 designating a separate settlement mediator but would
18 encourage the parties instead to please call upon us, the
19 regulatory law judges, if there are problems with the
20 cases.

21 Prior to there being any hearing set there
22 is not a problem with ex parte contact. Certainly we want
23 to keep these proceedings as informal as possible to
24 minimize costs on these companies, which can ultimately
25 get passed on to the rate payers.

1 You all are certainly free to contact me
2 with any disputes and we can arrange a conference, whether
3 by phone or another conference, such as to work out any
4 disputes. So please don't hesitate to call.

5 There is an issue we'll take up momentarily
6 regarding data requests. And, again, if there is any
7 discovery disputes, I would appreciate being called upon
8 early to try to mediate any of those.

9 I had a case recently where I was at home on
10 a Friday handling a discovery dispute by teleconference.
11 An evidentiary hearing in that case was set to start
12 Monday. That's a little bit late in the proceeding to be
13 trying to iron out discovery disputes.

14 I'm more than happy to do that. I can do it
15 at home even on my days off, but I think earlier in the
16 process is perhaps better than the day before a hearing
17 starts.

18 So by all means please feel free to call
19 upon us with any of these issues.

20 Do the parties want to bring up anything to
21 me before I start going through Public Counsel's list of
22 items they put forward in their motion?

23 MS. BAKER: I'm sure that I will have
24 questions at the end as far as procedure goes.

25 JUDGE STEARLEY: And you can interject

1 anywhere as we go along here as well.

2 MS. BRUEGGEMANN: I think it may be easiest,
3 Your Honor, if we just respond to Public Counsel's motions
4 since there is a lot contained. It's very specific. It
5 may be easiest to go through it that way.

6 JUDGE STEARLEY: Okay.

7 The first thing I have outlined out here is
8 looking at Days 90 to 110 of the timeline, Day 90 being
9 the day that Staff provides the Utility and Public Counsel
10 with its preliminary report, and Public Counsel requesting
11 a 20-day response period instead of a 10-day response
12 period at that point in the timeline.

13 I know these are tight time tables, and I'm
14 going to have some suggestions for maybe freeing up some
15 additional days as we go along here as well.

16 But is there a particular reason why 10 days
17 has been selected and why additional days can't be
18 provided?

19 MS. BRUEGGEMANN: Well, I guess I do need to
20 back up a little bit and maybe say some things that
21 everybody at the table is already aware of.

22 If you look at the front page of our
23 timeline, the introduction makes sure to set out -- as
24 you've said before, that this is a timeline. Again, we
25 all know it's filed under Subsection 5.

1 It's assuming that the investigation will
2 result in a possible increase to the utility company's
3 revenues as needed. It knows that it's part of the
4 informal case and that if this goes to an evidentiary
5 hearing pursuant to Subsection 20, then at that point it
6 becomes a contested case where a specific procedural
7 schedule has to be set just to be able to deal with the
8 contested case procedure and setting up evidentiary
9 hearing.

10 So the idea of this was establishing target
11 dates in the timeline, along with briefly describing case
12 activity within the timeline and also specifically citing
13 rule sections in the timeline, so that all of the parties
14 were more clear on the holes in the rule, if you will, and
15 they could also be clear on what Staff was attempting to
16 do throughout when we're talking about these things.

17 So if you look at the first page of the
18 timeline -- I'm not going to go through every single
19 section, because many of these on the far right side of
20 the timeline, the rule section is cited. Even where we
21 file our timeline it cites to Section 5, the draft of the
22 initial customer notice is sent. It should cite to
23 Section 7 because that's required also.

24 But then we have some other things in there.
25 Like at Day 20 Staff requests for information needed for

1 audit communicated to Utility by assigned Staff.

2 That's getting to the point of Subsection 6
3 that requires Staff to conduct an investigation, but
4 that's also for clarification of Staff's internal
5 deadlines.

6 We have so many different departments,
7 Auditing, Water and Sewer. There is Depreciation,
8 Analyst, different people working on these cases, that
9 just for coordination purposes it's very helpful to Staff
10 to have specific internal deadlines, so that we all know
11 where Auditing is in the procedure or when Auditing is
12 coming to a completion or Auditing should have to --
13 should be expected to almost be complete with its
14 investigation, when the case coordinator can expect to see
15 the next batch of information coming to him.

16 So that in this case, Jim Russo, so that he
17 can go ahead and process that information, whether it be
18 into the disposition agreement or passing it on to OPC and
19 the party as workpapers, whatever that might be.

20 So I just need to point out that many of the
21 deadlines in here are for internal deadline purposes and
22 also to give OPC and the Company an idea of where at in
23 our process and what they can expect.

24 So the Company can expect, okay, Staff is
25 going to be asking us for more information of our books

1 and records. Great. Okay. That's going to be at Day 20.
2 That's going to be followup at Day 50. That's going to be
3 also at Day 40. They have a process in mind, so that this
4 isn't as hard for them and that they have a little bit of
5 an agenda, too, to know what they have to be prepared for.

6 So in light of that, you look at Day 80 and
7 Day 85. We have our basic audit investigation, work
8 completed and other internal deadlines. Then at 85 the
9 initial audit, slash, investigation report completed and
10 provided to case coordinator.

11 Well, remember, this is two separate things.
12 This is Auditing's initial audit and this is any other
13 investigation report as to the operations, the facilities,
14 anything that has to do with or could affect rates needs
15 to be provided to the case coordinator by that day.

16 That way the case coordinator has in theory
17 five days, because it could be a weekend that crosses in
18 the middle of that, the ability to put that together at
19 Day 90, the overview of Staff's initial audit, slash,
20 investigation results and provide those to the Utility and
21 OPC.

22 So that is where Day 90 comes from and
23 that's also the preliminary report that I believe OPC
24 referenced in their filing, also an initial audit, slash,
25 investigation result is the audit and whatever

1 investigation aside from that was provided. Then you get
2 to Day 100 and Day 120, and I don't think you can separate
3 the two.

4 At Day 100, 10 days after the preliminary
5 report was provided to the Company and OPC, this states
6 that the Utility and OPC submit responses regarding
7 Staff's case overview to the case coordinator or Staff
8 assumes information provided is acceptable.

9 Now, what this really means, you have to
10 look at Day 120, because Day 120, also required by the
11 rule, requires Staff's settlement proposal packet be sent
12 to the Utility and OPC and then we start arranging
13 conference calls.

14 So what happens is at Day 100 typically
15 OPC's expert and someone from the Utility contacts -- and
16 it's typically Jim Russo -- the case coordinator by phone
17 and says, look, I'm looking at the preliminary report that
18 you provided to me and these are some initial problems I
19 see with it or, you know, I see this number doesn't look
20 right to me or on the facilities I seem to remember
21 something from another time that would indicate something
22 different.

23 That's where we talk about the errors/
24 omissions to be identified and suggested changes to be
25 included. Because, remember, this is still a preliminary

1 report at Day 90.

2 So what we do is we take some of those
3 comments, we think you should rework your numbers. Well,
4 if we have to rework any numbers, we have to go back to
5 the source of those numbers, and that means the auditors
6 have to go back, and hopefully they have the information
7 at their hands, but if they don't they may have to go back
8 on site to the Company to go ahead and evaluate that.
9 That's not going to be a one-day-turnaround-time thing.

10 If it's an investigation, if they're saying,
11 look, we don't see anything in the investigation that
12 shows you looked at the well pumps more closely or
13 whatever happened to the continuing property record, I
14 thought they replaced the well pump three years ago and,
15 you know, just something like that.

16 So maybe there is some reason or maybe there
17 is an incoming complaint that said my water is sour, you
18 know. Maybe there is some reason that OPC or the Utility,
19 but probably OPC, is saying, we think you need to look at
20 your investigation further.

21 So that, too, takes time. And so we have to
22 go ahead and put that information together. And then once
23 we have that information together, then we have to put
24 together the settlement proposal packet. And that's no
25 small ordeal.

1 I mean, basically the settlement proposal
2 packet first has the disposition agreement in it. Then it
3 will have -- and, Jim Russo, could you state off the top
4 of your head all of the attachments that go into the
5 disposition agreement?

6 MR. RUSSO: Example tariff sheets,
7 ratemaking income statement, the audit workpapers, EMS
8 run, rate design, billing comparison, depreciation rates,
9 the EMSD report, the manager report from the EMSD
10 Department. And we do -- we do a case summary, which may
11 or may not be there at that point in time, depending where
12 we're at.

13 MS. BRUEGGEMANN: But all of the substantive
14 information that he was referring to, the EMSD reports,
15 the auditing workpapers, the rate design worksheets, any
16 type of possible investigatory report and the actual
17 proposed disposition agreement that takes all of that
18 information and forms it into suggested conditions and
19 terms, if you will, is a pretty big feat.

20 And we have to double-check. Once Mr. Russo
21 has put that together, then we have to send it back
22 through to all of the Staff that worked on it to try to
23 make sure there aren't other errors, typographical or
24 otherwise, in this proposal packet before it goes out.

25 JUDGE STEARLEY: Okay. So if I'm

1 understanding correctly, you need to keep intact 20 days
2 between Day 100 and Day 120?

3 MS. BRUEGGEMANN: We prefer to.

4 MS. BAKER: They would prefer to. But, of
5 course, that limits us just to 10 days for review. And
6 they have 120 days that they have this in front of
7 them. This is not something that is brand new to them.
8 They have 120 days to this. We're given 10.

9 JUDGE STEARLEY: I understand that. I think
10 what might be helpful -- and we'll come back to this -- is
11 if we can free up a couple other days in other parts of
12 the schedule. They may be able to shift and build into
13 this to allow Public Counsel perhaps a few more days.

14 MS. BRUEGGEMANN: Well, I'm not sure that we
15 can, Your Honor, because under the rule it says the 90-
16 day preliminary report will be provided at 90 days and
17 then no later than 120 days the settlement proposal packet
18 will be sent out.

19 But the other half of this is that on the
20 settlement proposal packet, it's not just a 10-day
21 turnaround time. The preliminary report is so that OPC
22 has an idea of what's coming.

23 And so that if they see any glaring errors
24 or omissions or big things when they first look at it,
25 that they can give us a heads-up, and we can try to deal

1 with some of that then before we send out the settlement
2 proposal and so that we can also streamline negotiations.

3 But in actuality, once we send out the
4 settlement proposal packet at Day 120, then that's when
5 the real negotiation begins with the Utility, Staff and
6 OPC, and that's when everybody starts having the
7 conference calls.

8 If you see, 10 days after the settlement
9 proposal packet is sent out, typically a conference call
10 tries to be set up. And then after that, on the 15 days
11 later, Staff -- the Utility and OPC are supposed to notify
12 Staff of whether they agree with the settlement proposal.

13 But, remember, these are all -- you know,
14 these are deadlines in a timeline so that everybody has an
15 idea.

16 Many times this Day 135 isn't met, or many
17 times on that Day 100, it's around Day 100 when we get a
18 response back from OPC's expert to the case coordinator.
19 It's --

20 MS. BAKER: Wait a minute. I'm going to
21 interject here, because I want to make it very clear that
22 this is Staff's timeline.

23 MS. BRUEGGEMANN: Correct.

24 MS. BAKER: Public Counsel is not given this
25 ahead of time to review. I have asked for it to be given

1 to us to review ahead of time so that we can make comments
2 on it and I've been refused.

3 Well, that was fine when this was an
4 informal thing. Now that this is a procedural schedule in
5 this, every target date, every calendar date is to be
6 adhered to by every party.

7 MS. BRUEGGEMANN: Right.

8 MS. BAKER: So I want to point out that we
9 are not given this to look at. This is all Staff saying
10 this is what you're going to do, this is what you're going
11 to do.

12 I also want to point out that Staff doesn't
13 meet their timelines. Here we are with this, with the
14 procedural schedule intact, where we're supposed to be
15 meeting these timelines, and Staff has missed a timeline.

16 And so it is not Public Counsel that misses
17 all of the time. Public Counsel has a very difficult time
18 with this because the target keeps changing. Staff
19 changes it daily. And I have one person to work on this.

20 And so 10 days for meeting a timeline that
21 is now set is too short, especially when Staff has 20 days
22 in order to fix it. I don't think that that is correct.

23 And so if this is going to be the procedural
24 schedule that we all adhere to, I want it so that it is
25 workable for us, because we don't get to comment on it.

1 JUDGE STEARLEY: By the rule as it's set up,
2 you don't get to comment on it.

3 MS. BAKER: True. But by the rule it does
4 not include all of those things.

5 By the rule the only thing that this is
6 supposed to include at a minimum are the sections from 9,
7 10 and 13. There is a whole lot in here that have dates
8 that are made up by Staff and dates that are imposed on
9 Public Counsel that are made up by Staff.

10 JUDGE STEARLEY: And that is contemplated in
11 the rule, Ms. Baker.

12 MS. BAKER: And so that's why -- that's why
13 a lot of the things that we're asking for are just
14 clarifications.

15 I appreciate that we're having a set
16 schedule because we are having difficulty keeping to
17 Staff's set schedule. And so we think that there are some
18 things that need to be tweaked in this, and that's what
19 we're asking.

20 JUDGE STEARLEY: And there may be, but just
21 for clarity, when Staff files the timeline in these cases,
22 that's the procedural schedule, whether it's adopted
23 formally or not. That's what the rule provides.

24 MS. BAKER: And that's fine.

25 JUDGE STEARLEY: It doesn't provide a

1 negotiation on what that timeline is going to be.

2 It delegates all that discretion to Staff.

3 MS. BAKER: Okay.

4 JUDGE STEARLEY: If we get into problems
5 where there needs to be rule modifications, and the
6 Commission may want to modify this rule for other reasons
7 of its own, we may need to come back with a rulemaking
8 procedure.

9 MS. BAKER: I understand.

10 JUDGE STEARLEY: But as we have this now,
11 once Staff files this timeline, that's the procedure,
12 whether the Commission adopts it or not formally.

13 Now, at a minimum it includes the dates
14 specified under certain subsections, one of which is going
15 to be when the preliminary report is provided, one of
16 which is when that settlement proposal comes in. That
17 date is not modified. Day 120 is not modified.

18 MS. BAKER: Right. But there are 30 days in
19 between --

20 JUDGE STEARLEY: There may be days before
21 that where there is some flexibility, and that's what
22 we're going to need to look at.

23 MS. BRUEGGEMANN: I'm sorry. There is
24 30 days before what?

25 JUDGE STEARLEY: No. I said there may be

1 days. I didn't say 30. I believe that --

2 MS. BAKER: That was me. I was saying
3 between 90 and 120 are 30 days.

4 And so all Public Counsel is asking for is
5 for the 20 days to be for Public Counsel's response and
6 then the 10 days be on Staff.

7 JUDGE STEARLEY: It may be you're going to
8 have to reach a compromise and make it 14/16, 15/15,
9 something of that order to make this work.

10 MS. BAKER: I mean, I am willing to work on
11 this --

12 JUDGE STEARLEY: Day 90 to Day 120 are not
13 going to --

14 MS. BAKER: -- because this has been imposed
15 on us by Staff. So I'm willing to negotiate how -- I'm
16 telling you 10 days is not enough.

17 MS. BRUEGGEMANN: If I can go back to the
18 statements of imposition or Staff's timeline or the
19 ability of OPC not to be able to review.

20 This is -- this is a draft template
21 timeline. So for every case that we have that comes
22 through in these small water and sewer cases, this 100,
23 120, 130, 135, 140, 145, 150, this is our template.
24 This is what we do. This is what we fill out.

25 The case activity language does not change.

1 The responsible party language does not change. The
2 target date does not change. The only thing that possibly
3 changes or is added in for clarity is the target due date
4 and the actual calendar due date.

5 So to say that this is some sort of document
6 that is ever changing and not provided is I think not
7 correct.

8 Also, when it came to the rule development
9 and the actual passing of the rule, a timeline draft
10 was -- many -- many timeline drafts were continuously sent
11 to the working group, sent to the Commissioners, sent to
12 everyone involved.

13 So for OPC especially to say that they've
14 never had an opportunity to comment on the timeline or to
15 have input into the timeline is also incorrect.

16 The timeline development I believe started
17 back as early as 2005; but, of course, this rule wasn't
18 filed until November of 2007 and wasn't -- didn't become
19 effective until May 2008.

20 So the timelines that were closer to that
21 date I think were more pertinent to the discussion of
22 being able to adapt the rule and just have a working
23 timeline so that everybody had an idea.

24 JUDGE STEARLEY: Okay. Regardless of the
25 history of this, we've got a rule. We've got certain

1 deadlines that are defined in the rule. We've got the way
2 the procedural schedule is set by the rule.

3 I would like to look at this on a going-
4 forward basis. I do not want to look at this as a
5 historical stone-throwing event, where we're going to say,
6 well, I didn't get to put input on this or I didn't get to
7 do that and another person or party tells me, well, that's
8 incorrect.

9 What I would like to do is focus on
10 constructively working through this timeline and making
11 sure that all of the parties' needs are met, and we can
12 all walk out of here with a schedule that is acceptable to
13 us.

14 And hopefully, and on a going-forward basis,
15 we can all work together on this. And if there is rule
16 changes that need to be brought up subsequently, a
17 rulemaking proceeding, we can do so.

18 So I would like to concentrate right now on
19 this 30 days, going between Day 90 and 120.

20 The preliminary report gets filed or
21 submitted to the other parties on Day 90. That's provided
22 for in the rule.

23 MS. BAKER: Yes.

24 JUDGE STEARLEY: It's what it's going to be.
25 The rule reads no later than, so it could be provided

1 earlier.

2 MS. BRUEGGEMANN: No. Actually,
3 technically, we really can't provide it any earlier. The
4 30 days is about as much time as we can process it
5 through, even though the rule allows for Staff somehow
6 magically coming up with it before that 120 deadline.

7 JUDGE STEARLEY: Well, I'm talking about the
8 90 days for the preliminary report.

9 MS. BRUEGGEMANN: Right. Well, and that,
10 too, that three months, when we go into these companies,
11 and many times they have their receipts and their accounts
12 in shoe boxes. They don't have books built. They don't
13 have continuous property records. They don't have
14 records.

15 They're not like larger companies where you
16 go in and say, open your books up to me, let me take a
17 look, and they bring a book out and actually open it up.

18 A lot of this is Auditing actually
19 rebuilding and building for them, depending on how long
20 that they've been -- haven't been in for a rate case,
21 actually building up the books and getting in there.

22 Essentially if you look at the timeline by
23 Day 10 there is a letter sent to the Utility and OPC
24 regarding which Staff is assigned, and then by Day 20 the
25 first auditing communications are sent to the Utility as

1 Auditing goes ahead and takes a look at the Company a
2 little bit and formulates what it needs to be asking for
3 as documents and information.

4 So that whenever it goes on its on-site
5 review, typically at Day 45 maybe -- and this is also EMSD
6 too. I mean, I keep saying Auditing. But EMSD is doing a
7 lot of the same things, looking at their billing, looking
8 at their management, looking at their -- the actual bills
9 that they have on for rule compliance.

10 I mean, everybody is working as soon as they
11 can as soon as this case is filed. So that 90 days is
12 actually pretty stringent to meet in and of itself.

13 JUDGE STEARLEY: Let me ask this: Can five
14 days be shaved off that 90 days?

15 MS. BRUEGGEMANN: I think, if anything, the
16 100 -- I think Staff could try to do, like, the 100-day
17 mark to a 104 mark, your 14/16 idea, and give two weeks to
18 OPC.

19 Because -- and why I don't think this is a
20 problem --

21 JUDGE STEARLEY: Mr. Russo is shaking his
22 head over there when I asked if five days could come off
23 of that.

24 So I'm trying to find out -- and that's what
25 I want to know -- is what is the bottom line on this case.

1 MS. BAKER: We feel that it should be given
2 more leeway to Public Counsel's review, because I have one
3 person who reviews this. They have many, many staff who
4 have been doing this, who take our response and put it
5 into a settlement proposal packet.

6 It doesn't stop while we're reviewing. They
7 can still make their documents. They can still do the
8 template. I think that it should err towards giving
9 Public Counsel some more time.

10 JUDGE STEARLEY: There is a lot of other
11 areas in this rule which I think do err toward giving
12 Public Counsel a lot of leeway, but our staff does need to
13 be able to complete its full audit so the people know what
14 numbers they're working with.

15 MS. BAKER: If we do that, then I want to
16 focus a lot more on some of the other suggestions that I
17 have, because what we get --

18 JUDGE STEARLEY: We'll work through those
19 too.

20 What I'm getting from Staff is, if I
21 understand correctly, is you need 90 days --

22 MS. BRUEGGEMANN: Yes.

23 JUDGE STEARLEY: -- no matter what to get to
24 the point where you're going to have this preliminary
25 report?

1 MS. BRUEGGEMANN: Right.

2 MS. BAKER: And I have no problems with
3 that. That's in the rules.

4 JUDGE STEARLEY: So we're not going to work
5 backwards on shortening that time period.

6 Now --

7 MS. BRUEGGEMANN: If I can finish what I was
8 saying earlier. I didn't quite get to finish, if that's
9 okay.

10 JUDGE STEARLEY: Okay. Go ahead.

11 MS. BRUEGGEMANN: Thank you.

12 When it comes to the settlement proposal
13 packet, I think at the 120-day mark, as required, we have
14 to look at also the 150-day mark, where the executed
15 disposition agreement gets filed.

16 And then after that it also needs to be
17 noted that negotiations typically still continue towards a
18 unanimous stipulation and agreement, if you've ever seen a
19 case where -- or been a party to a case where Staff filed
20 the Company/Staff disposition agreement, and then in a
21 later timeframe, in a few weeks down the road, a unanimous
22 disposition agreement was filed after the fact.

23 So negotiations are continuing throughout
24 this.

25 At the Day 120 mark, with the settlement

1 proposal packet, I just -- I think it should be noted
2 that, yes, the initial response of OPC's right now is set
3 at the 10 days, and I know we're discussing the 10 days.
4 But it is set at the 10 days.

5 But that doesn't stop after that Day 100.
6 OPC still has the ability to continue reviewing that
7 information for the next 20 days.

8 And then at that point, at Day 120, they
9 receive a settlement proposal packet for anything that
10 might have changed, if they noted it or if the Utility
11 noted it. Then they have a settlement proposal packet.
12 So they begin reviewing that, comparing for differences.

13 I know that Mr. Russo and OPC's experts
14 typically have a good communication to be able to discuss
15 these things.

16 So then the settlement proposal packet is
17 being reviewed by OPC and the Utility, and then we all get
18 together -- or Staff, Utility and OPC, or it may just be
19 the experts that all get together, a conference call or
20 meeting, you know, 10 or 12 days after the fact, whatever
21 their schedules actually abide by.

22 That Day 130 mark for the conference call is
23 not set in stone, or it wasn't in the draft. Remember,
24 we're talking about the draft.

25 I'm talking going back to generally -- the

1 timeline in general, aside from the procedural schedule in
2 this case, that you kind of have to arrange it as everyone
3 is available to have this conference call.

4 So that September 14th may not work for a
5 primary Staff member or a primary OPC expert or the
6 Utility. That just may not be a day that ends up working,
7 because, you know, everybody is coming into this after
8 100 days and saying, well, I now have a hearing set or I
9 now have to testify or something else goes on.

10 So if you look, then, if you are going to
11 135 -- I mean, there is continuous time for the parties to
12 continuously be talking to each other to discuss this and
13 to be able to go through it formally.

14 The preliminary report is more informal and
15 to give everybody a first glance at what's coming on
16 Day 120. That's what the intent of it was meant to do.
17 Then the Day 120 is where the serious proposal comes in.

18 And, again, that preliminary report is sent
19 out so that a general idea can get had -- a general
20 feeling can get had from everybody of what else they would
21 like to generally see.

22 But the details, the numbers, everything is
23 going to continue to change throughout this negotiation
24 process.

25 Because, unfortunately, when Staff sends out

1 its preliminary review or its settlement proposal, I'm not
2 sure it's ever been where everybody has immediately signed
3 off on the dotted line when we -- Utility and OPC, when we
4 send out that first settlement proposal packet. It just
5 doesn't happen.

6 So from the discussion restricting it to
7 just the 90, 100 and 120 days, it makes it sound like that
8 is a key review point, only that 10 days. That's not it.

9 MS. BAKER: Well, if I can point out, on
10 their schedule itself it says we respond or Staff assumes
11 the information provided is acceptable. That's a big
12 "or."

13 I mean, that puts a big emphasis on that
14 timeline and a big emphasis on the fact that we had better
15 respond. That makes it much bigger than what Shelley is
16 pointing out.

17 MS. BRUEGGEMANN: But it's not binding,

18 MS. BAKER: It is now. It is now.

19 MS. BRUEGGEMANN: It's the procedural
20 schedule, but before that --

21 MS. BAKER: I mean, if we want to get beyond
22 this, if you're having trouble with giving Public Counsel
23 20 days for response, I'm fine with splitting it 15/15.
24 We just need more time. That's all I'm asking for, and I
25 don't see why that is so hard to give.

1 JUDGE STEARLEY: Part of what I understand
2 here is that once the settlement proposal is provided at
3 Day 120, until you get to Day 150, where an actual
4 disposition agreement is filed, there is continual
5 negotiations going on here.

6 MS. BAKER: There is also continual
7 documentation that is given to us to review. We are not
8 given a set document to review on Day 90. We review a
9 little bit, then they change and we get another set to
10 review.

11 JUDGE STEARLEY: Day 120 provides for the
12 settlement offer comes in for all of the Staff's
13 documentation --

14 MS. BAKER: Right.

15 JUDGE STEARLEY: -- workpapers, et cetera,
16 which is another portion that I believe you are requesting
17 that those be provided earlier, along with the preliminary
18 report.

19 MS. BRUEGGEMANN: Well, actually, the
20 accounting schedules, the proof -- the revenue worksheets
21 and Staff's workpapers are already provided with the
22 preliminary report at Day 90, even though the rule does
23 not specify that.

24 A listing of the supporting documentation
25 which Staff utilized; we don't put together a list. If

1 OPC's expert asks for some supporting documentation, if we
2 have it, we'll provide it, unless it's voluminous, and
3 then we'll ask OPC's expert to come upstairs or
4 downstairs, whatever floor they're on, to come and look at
5 it, but also it includes the physical location.

6 So we're already providing accounting
7 schedules, revenue worksheets and workpapers.

8 MS. BAKER: And then we are asking for the
9 list as well.

10 JUDGE STEARLEY: Okay. Well, here is what I
11 would propose is that Day 100 be changed to Day 105.

12 MS. BRUEGGEMANN: Can it be just straight
13 two weeks? Can it be Day 104, the 14/16?

14 MS. BAKER: How are we going to play
15 weekends?

16 JUDGE STEARLEY: Are we going to fight over
17 one day?

18 Let's make it 105 and split it right in the
19 middle. The rule requires that Staff is going to provide
20 anything it has not provided in that preliminary report,
21 from what I read, workpapers, workpapers and rate design,
22 and everything is coming in at Day 120.

23 I see no point in changing, altering the
24 rules in terms of you're going to have all of the
25 information. It appears you've made this one request that

1 all that information be given to you at 90 days with the
2 preliminary report.

3 MS. BAKER: Well, because that's what we're
4 reviewing. That's what we're being asked to respond to.

5 JUDGE STEARLEY: And Staff is indicating
6 that you're getting almost all of that information.

7 MS. BRUEGGEMANN: Yeah. We already have it
8 continuously.

9 MS. BAKER: And so then it would be fine to
10 put that into the procedural schedule then?

11 JUDGE STEARLEY: Well, the rule provides
12 that the Staff will provide the following with its
13 settlement proposal.

14 MS. BAKER: But what I'm saying is what we
15 get on 90 will be different from what we get on 120.

16 JUDGE STEARLEY: Exactly.

17 MS. BAKER: And so if we could get at 90
18 what she says we apparently get already at that point, put
19 that into the writing, because this is the procedural
20 schedule, that's what Public Counsel is asking for.

21 JUDGE STEARLEY: That is by rule.

22 MS. BAKER: Uh-huh.

23 JUDGE STEARLEY: Those items are
24 discretionally provided up until Day 120, no later than
25 120 that you're getting that.

1 MS. BAKER: And Public Counsel is asking
2 that we also get.

3 So I fully understand that you can deny my
4 request. But I'm saying that if you ever want a response
5 at Day 100 or 105 that is meaningful from Public Counsel,
6 we have to see those things that come in with what we're
7 getting on 90. Otherwise, it's just numbers from Staff.
8 We don't know where they came from, what they are,
9 anything.

10 JUDGE STEARLEY: And my understanding is the
11 preliminary report is supposed to put you on track with
12 general guidelines, and you're getting the specific
13 settlement proposal at Day 120.

14 MS. BAKER: Ted, what do we get at 90?

15 MR. ROBERTSON: The only real concern I have
16 is the auditors' supporting workpapers. Russo can correct
17 me if I'm wrong.

18 But at times on Day 90 we get all of the
19 documents he described, but the actual workpapers behind
20 those numbers, those lead schedules that Staff puts
21 together that Russo provides me, those are -- those are
22 the calculations that show how they got to it.

23 And without those calculations, those
24 workpapers, we're just looking at adding good numbers and
25 sometimes don't know where they came from, don't know how

1 that they arrived at them.

2 MR. RUSSO: There are times that those
3 workpapers are not provided to me by the auditors on
4 Day 90, the exception instead of the norm, but there have
5 been times that OPC has not received those backup
6 workpapers on Day 90. It may be Day 93. It may be
7 Day 95.

8 But there are times that the auditors just
9 haven't for whatever reason completed their work on them
10 or forwarded them to me, which I can't explain, and that's
11 what Ted is referring to.

12 MS. BAKER: And that's why we're trying to
13 get this into the procedural schedule that we are all to
14 adhere to, to try to help get those documents from
15 whichever section of Staff they're supposed to come from.

16 JUDGE STEARLEY: The Commission is not going
17 to alter the rule, as it's said, that you receive those
18 documents no later than 120 days. I would assume Staff is
19 going to get this information to you as timely as they
20 possibly can. And the Day 90, as stated, is more for a
21 general guideline.

22 Once you get the settlement packet, there is
23 another 30 days built into this schedule for more specific
24 analysis and negotiation. I can see allowing you an extra
25 period of time for evaluating the preliminary report and

1 figuring out what you need to make data requests,
2 whatever, but I don't see any advantage to changing or
3 shortening up what is already provided for in the rule
4 that those documents be provided.

5 MS. BAKER: Okay. Well, then can we define
6 what we are going to get on Day 90, so that we know what
7 we are supposed to respond to?

8 MS. BRUEGGEMANN: Your Honor, I think the
9 rule says it clearly. The Staff shall provide the
10 preliminary report of its investigation and audit to the
11 Utility and the Public Counsel.

12 MS. BAKER: I mean, that could be as little
13 as, yeah, we're working on it. I mean, what is a
14 preliminary report? What makes them meet that deadline?

15 JUDGE STEARLEY: A preliminary report by
16 just basic terminology to me sounds like an overview. It
17 also sounds like you're getting an audit.

18 So what is Staff exactly providing?

19 MS. BRUEGGEMANN: The accounting schedules
20 and the revenue worksheets, to go ahead and look at the
21 rate design proposal, and then the workpapers to follow
22 that up. But the accounting schedules and the revenue
23 worksheets are the primary parts of that and then --

24 JUDGE STEARLEY: The report, is there some
25 type of executive summary with that summarizing anything

1 or --

2 MR. RUSSO: No. The revenue requirement
3 shows the auditors' EMS run, the audit workpapers. It
4 also shows on the preliminary rate -- rate design
5 workpapers that I provided on Day 90. We don't do an
6 executive summary, a work document of any kind, at that
7 point.

8 MS. BAKER: And I think that's where we're
9 having difficulty, because what we are getting on Day 90
10 that we are supposed to respond to is not set in stone.

11 We don't always get the same things. We
12 don't always get it on Day 90. And that's why we're
13 asking for a set definition in this case as to what we are
14 going to get on Day 90.

15 JUDGE STEARLEY: Well, Mr. Russo has
16 described some impediments to getting all workpapers to
17 you in Day 90 but that's provided for for an allowance of
18 Day 120, that you're getting all of that no later than
19 Day 120.

20 The response that you say you're being
21 required to provide at what we're now going to say is
22 Day 105 doesn't sound to me like it's requiring a great
23 deal of response. It doesn't sound like to me you can say
24 anything that is not provided for you at that time or you
25 wish to have you can't say we request that information be

1 provided no later than Day 120 or this will not be
2 acceptable to us at this time until we have additional
3 information.

4 The response that is being required doesn't
5 sound like it's asking you to concede any part of the
6 case. So I don't -- I don't understand where Staff needs
7 to provide you anything more than a preliminary overview
8 of the results of its investigation and its audit at
9 Day 90, which has been presented as trying to tip you off
10 as to the major elements of this case, of which you're
11 going to get the specifics within a 30-day time frame.

12 MS. BAKER: I mean, I disagree, because it
13 has in there, or Staff assumes information provided is
14 acceptable. I mean, they are putting a very, very strong
15 statement there for our response. So that means our
16 response needs to be as thorough as it can be.

17 JUDGE STEARLEY: Your response need only say
18 it's not acceptable because we don't have enough
19 information.

20 MS. BAKER: Okay.

21 MS. BRUEGGEMANN: And in the past and in
22 other cases that is what the understanding is, a phone
23 call that says, I don't have enough information right now.

24 MS. BAKER: But this is now a procedural
25 schedule --

1 JUDGE STEARLEY: This will be --

2 MS. BAKER: -- and since we're doing that --

3 MS. BRUEGGEMANN: Right.

4 MS. BAKER: -- I want to know --

5 JUDGE STEARLEY: I'm not going to go back to
6 this again. Whether the Commission adopts a timeline
7 filed by Staff is irrelevant by provision of the rule that
8 is the procedural schedule.

9 If we get to an evidentiary hearing, we may
10 be looking at adopting a further procedural schedule. So
11 the fact that the Commission adopted this formally to
12 bring us to this conference today doesn't change that.

13 MS. BAKER: Okay. As long as all parties
14 understand that.

15 JUDGE STEARLEY: Well, I think I've made
16 that clear. So I think everyone should understand that.

17 MS. BAKER: All right.

18 So back on 90. May I get a list of what we
19 are expecting to get? Can you reiterate what you are
20 going to give to us?

21 MS. BRUEGGEMANN: The accounting scheduleS.

22 MR. RUSSO: Typically it's the EMS run, the
23 accounting schedules, preliminary rate design. Any
24 workpapers that I have from any source, I provide them
25 then or as soon as I get them, if it's Day 92 or Day 95 or

1 when Ted calls and reminds me, maybe I have got something
2 I forgot to give him. But they're always -- as soon as
3 they're available to me, they're passed on to OPC.

4 I can't think of anything else at Day 90
5 right now.

6 MS. BAKER: We have requested just a listing
7 of the documentation that you have and where it is
8 located. Can that be provided?

9 MS. BRUEGGEMANN: I don't think at this
10 time, no.

11 MR. RUSSO: We'd have to talk to the
12 auditors about that. I don't know what they keep a list
13 of.

14 MS. BRUEGGEMANN: Part of the problem from
15 my discussion with auditors -- and Paul Harrison was
16 unavailable to be here today, although we talked to him
17 last week -- is that, again, first of all, they don't
18 necessarily keep a list of the supporting documentation;
19 but as they're going through, I mean, they have a
20 reference to receipts they've looked at or other
21 documentation they look at, so far as I understand it.

22 A lot of times the physical location of the
23 documentation is on site at the Company's place of
24 business.

25 What they will do is do their audit on site

1 and put numbers in -- and I think Ted will want to say
2 something apparently -- put their numbers in to their
3 computer and their spreadsheets. And then once they've
4 actually put them in, if it's voluminous or if the Company
5 doesn't have a copier, which is somewhat regular, they
6 won't make copies of the receipts and other documentation
7 that they have, that the Company has. They will look at
8 them on site.

9 And so then the response is to OPC, Company
10 has them. They're probably better organized now because
11 we went and looked at all of them, so you'll have to go on
12 site to the Company.

13 JUDGE STEARLEY: Mr. Robertson.

14 MR. ROBERTSON: Everything Shelley said is
15 correct. There is no doubt.

16 What we're looking at here was a request to
17 try to speed things along a little bit because of the way
18 the timeline is set. I'm not really looking for a
19 detailed list of every invoice that they have or something
20 like that. I'm looking just for a general list of
21 documentation, specifically accounting or operational
22 documentation, that they have in their possession or they
23 don't have in their possession.

24 For example, if they have a general ledger,
25 which is very important, a lot of small companies don't,

1 but a checkbook. Sometimes they make copies of the
2 checkbook statements or the actual check register or
3 whatever. Sometimes Staff brings -- makes copies and
4 brings some of the invoices back to the office with them.
5 Sometimes they don't.

6 I mean, it's all over the board with all of
7 those small companies, just for exactly the reasons
8 Shelley said. Sometimes they have documentation.
9 Sometimes they don't.

10 I'm just looking for a general list of what
11 Staff has on site, so that I can avoid having to send data
12 requests and the timeframe for data request responses. If
13 they have something on site, I know they've got it there.
14 Within a day or two I can go get it or I can go make
15 copies of it or I can go look at it.

16 I'm really not looking for an exhaustive,
17 detailed list of every invoice they have. I'm just
18 looking for a general category -- I can't speak English --
19 category of items they do have, like general ledgers,
20 invoices, invoice payables, check book registers, those
21 kinds of things, just so I can avoid sending data requests
22 and go out and waste more time.

23 MR. RUSSO: I do have a suggestion,
24 possibly, that maybe Ted can develop this quick checklist
25 thing he's referring to and he can provide that to us and

1 we can probably do his checkmarks for him, I mean, if he
2 can develop one, and it could be a going-forward thing.

3 JUDGE STEARLEY: I think that anything that
4 can be formatted and put into standardized forms that
5 expedite things is a good idea.

6 MS. BAKER: If I prepared a checklist, or at
7 least a list of the things that we are looking for, is
8 there any problem with adding this in as we've requested?

9 MS. BRUEGGEMANN: I have to say there is a
10 problem. I mean -- I'm sorry. There is not an auditor
11 here and -- but the thing is, you know, typically Ted does
12 send through DR requests.

13 But putting it on the Day 105 or Day 1-- or
14 excuse me. We're still back at Day 90. Putting it on the
15 Day 90 requirement, as of Day 90 this is absolutely due,
16 is kind of difficult at this point.

17 JUDGE STEARLEY: Mr. Russo, by Day 90 your
18 auditors have figured out where all of these items are
19 within the Company's records, or as much as you can find
20 anyway?

21 MR. RUSSO: Sometimes. There is a lot of
22 times on Day 90 -- and that's why it's a preliminary audit
23 in that sense -- they're still waiting on things from the
24 Company. The Company -- these companies, some of them are
25 pretty primitive in that sense. Their recordkeeping is

1 not nonexistent, so it's really difficult.

2 MS. BAKER: But then they can put that on
3 the checklist.

4 JUDGE STEARLEY: I think that's the answer
5 to that. I am going to direct OPC to prepare a checklist,
6 provide it to Staff. As you're going through your
7 auditing, check off what you find. If there is items that
8 are missing, you're going to get the checklist as best as
9 Staff knows what they have, Mr. Robertson.

10 MR. ROBERTSON: Actually I'd just add a
11 little bit here.

12 The formality of setting up a standardized
13 list is not -- it's a great idea, but it won't really work
14 for these small companies, simply because every small
15 company is different.

16 The auditors -- we're all familiar with what
17 we're looking at to create these audits, the workpapers
18 and everything. They know what invoices are. They know
19 what general ledgers are.

20 All I'm really asking for them to provide me
21 is a general list of what they have, what they're using to
22 develop their workpapers, which they're going to give me
23 copies of.

24 JUDGE STEARLEY: Granted, every one of these
25 companies is different, but I'm finding it difficult that

1 you're telling me you can't list out 25, 30, 40 items that
2 any company may or may not have and Staff can check off
3 from that list what the Company does have. I don't
4 understand why that is such a problem.

5 MR. BUSCH: This is Jim Busch.

6 In all respect OPC -- I used to work there.
7 They've got Ted and Mr. Trippensee are their auditors.
8 They can start their investigation when Staff does.

9 They are asking for Staff to do all of the
10 work and then at Day 90, then they start to do the audit,
11 what information does Staff have. There is nothing that
12 prevents them from sending out data requests to the
13 Company to get that information upfront, so they don't
14 have 10 days to review everything that Staff has done.

15 They are choosing to wait until Day 90, or
16 waiting for Staff to do all of the work and then to
17 provide it to OPC. They can get out there much sooner,
18 get the information that they want and then start
19 reviewing what Staff has done if they disagree.

20 MS. BAKER: I want to point out that this is
21 in the rule that they are to provide us documentation on
22 Day 90. There is nothing in there that says that we have
23 to follow you around before Day 90.

24 MR. BUSCH: I'm not suggesting you follow us
25 around.

1 MS. BAKER: And you have many, many people
2 who go around to these. We have two.

3 JUDGE STEARLEY: Ms. Baker, I do have to
4 take Mr. Busch's comment, though, as being valid, in that
5 Public Counsel has means to investigate some of these
6 things on their own, just like you have the means to meet
7 with the public on your own, who is your client.

8 I don't see whereas a simple checklist on
9 items that the Auditing Department has found by Day 90,
10 that someone just checks in the blank, is a problem.

11 MS. BAKER: And if they will fill it out --

12 JUDGE STEARLEY: And I don't see why it's
13 impossible for someone to sit down and prepare a
14 checklist, even though these companies may be different in
15 nature or the extent of documentation that they have.

16 MS. BAKER: Public Counsel is more than
17 willing to try in this case.

18 JUDGE STEARLEY: I don't see any problem
19 with having standardized data requests. If a company
20 cannot answer questions or if another party can't answer a
21 question, you can simply respond to that.

22 But I don't see whereas these obstacles
23 exist, because companies are different in their nature,
24 their accounting, that items can't be standardized and
25 prepared ahead of time to help facilitate these processes

1 going at a quicker rate or much smoother.

2 MS. BAKER: I agree. And that's why we were
3 asking what are we going to get at Day 90, because this
4 can --

5 MR. ROBERTSON: I'm an auditor, so I know
6 what the auditors do.

7 For them to come up with the schedules and
8 documentation that Jim provides us on Day 90, they have to
9 develop workpapers. They have to develop schedules,
10 calculations. They have those at that time ready to
11 provide, as far as maybe they have to print them out,
12 format them, because they are there because they use them
13 to put the schedules together. They exist.

14 So whether or not they can give it to us
15 with a day or two afterwards, that should only be a
16 formality. It's not like they don't exist. The
17 workpapers do exist.

18 JUDGE STEARLEY: It sounds like from
19 Mr. Russo's comments they do provide those to you as soon
20 as he gets access to them, and that's prior to Day 120
21 when they're absolutely required to be provided.

22 MR. ROBERTSON: And I don't disagree with
23 that, and they're very good about that. Jim does get them
24 to me as soon as they possibly can.

25 The point being made is they do exist. It's

1 not something they have to make up after Day 90. They
2 already exist.

3 But now according to the rules, as I
4 understand it, they don't have to provide them until
5 Day 120, is the way the rule reads.

6 All I'm trying to do is -- with all credit
7 to Jim. He does a great job, tries to get them to us as
8 soon as possible so we can look at them so that we're not
9 wasting time.

10 I mean, 30 days -- if you want us to respond
11 to something in 10 days based on documents we don't even
12 have until 20 days later, you don't get a valid response.

13 JUDGE STEARLEY: If I understand also,
14 Mr. Robertson, that's not the end of the process here.
15 There is a settlement proposal that comes in. There is
16 times for negotiation, continued auditing, whatever is
17 allowed there.

18 I get the impression from the parties here
19 is that they're looking at some of these dates and feeling
20 like some type of definitive decision has to be reached at
21 Day 100 or Day 120, and that's not the way I see this
22 timeline at all.

23 So if there is a response required at
24 Day 100, which we're now making Day 105, it doesn't have
25 to be a formalized, complete response, we agree to this.

1 As I said, it can simply say it's not acceptable at this
2 time because we need additional information and
3 information that is forthcoming.

4 So let's back up a little bit. This is an
5 informal process. Let's not get into being too rigid here
6 on what responses are supposed to be on certain dates.

7 It sounds to me like the parties are working
8 diligently to meet these timelines and providing
9 information when they're available.

10 If having a standardized check-off list is
11 helpful to facilitate that, I don't see any problem with
12 having that done, in addition to the materials Mr. Russo
13 said can be provided at Day 90, others which filter in
14 after Day 90, Day 120 being the cutoff.

15 Does that sound acceptable? It certainly
16 seems reasonable to me.

17 MS. BAKER: It's a step forward.

18 MR. ROBERTSON: I have no problem with what
19 you're saying. All I'm really looking for, if we can get
20 the workpapers supporting the lead schedules that Jim
21 provides on Day 90.

22 I hate to give you a response on Day 100 or
23 10 days later that it's not acceptable. Maybe it is. Do
24 you want us to give you that response every time?

25 JUDGE STEARLEY: And your response may have

1 to be until such time as I receive additional information,
2 it's not acceptable.

3 MR. ROBERTSON: I understand that. But if
4 you have that documentation on Day 90 with the other
5 documents, maybe on Day 100 you can say, yeah, when you
6 put it together, we're ready to sign.

7 JUDGE STEARLEY: Maybe you can and maybe
8 you're going to have to wait until Day 130.

9 MR. ROBERTSON: That's kind of where we're
10 at right now.

11 JUDGE STEARLEY: And that time period is
12 built into this schedule, so I don't see that as being
13 problematic.

14 MS. BAKER: As long as we all understand
15 that a response like that, that it's not acceptable and
16 that we need more information, does not trigger that, or
17 Staff assumes information provided is acceptable.

18 JUDGE STEARLEY: I don't see how it could
19 trigger that.

20 MS. BRUEGGEMANN: The note there, for
21 clarification, was so that -- it was just there so that
22 Staff could emphasize, we just need some sort of response.

23 MS. BAKER: You're not going to get much of
24 a response. That's it.

25 MS. BRUEGGEMANN: But my point is, it's only

1 there to just say, please tell us something. We need some
2 sort of response. Don't be silent. That was the intent
3 of the "or" put in there.

4 MS. BAKER: That's a very strong "or."

5 JUDGE STEARLEY: Why don't you change "or"
6 to "or the other party shall notify Staff what additional
7 information they require."

8 MS. BAKER: I mean, it's their timeline,
9 their wording. I apparently have no say on their wording,
10 so . . .

11 JUDGE STEARLEY: I mean, it seems odd to me
12 to dig in on items like this. There is time provided in
13 this schedule. There is information to filter in, for
14 people to have a chance to digest it, for them to engage
15 in settlement talks without bogging down over something
16 like that.

17 MR. BUSCH: I think putting that language --
18 because maybe the Company doesn't know what information
19 they need. This is also the Company's response as well,
20 not just OPC's response.

21 MS. BAKER: I don't really even know why the
22 "or" is in there.

23 MS. BRUEGGEMANN: Can he finish?
24 Just finish.

25 MR. BUSCH: I was close enough.

1 MS. BRUEGGEMANN: I'm sorry, Your Honor.
2 What was the language that you suggested? I didn't write
3 it down. Or the parties shall --

4 JUDGE STEARLEY: Shall notify Staff what
5 additional information they require.

6 MR. ROBERTSON: Your Honor, that's a no-
7 brainer. Any time --

8 JUDGE STEARLEY: Maybe this whole thing is a
9 no-brainer, Mr. Robertson.

10 MS. BAKER: It isn't.

11 MR. ROBERTSON: On Day 90 they provide the
12 first documents. They're just essentially lead schedules.
13 They're just a set of numbers, with no documentation
14 behind them on how they got to those numbers.

15 If you don't have the documentation to them
16 behind them as an auditor, now, you can't make a rational
17 situation to sit there and say we will notify them what we
18 need.

19 JUDGE STEARLEY: I think what the problem is
20 is that people regard this Day 100 as a magic day when a
21 decision has to be made, and no decision has to be made.

22 MS. BAKER: All right.

23 MR. ROBERTSON: And I don't disagree. What
24 we're trying to do is work through this process
25 efficiently, and all we're trying to do, all we're trying

1 to request, is so we can get documentation and process
2 these cases as soon as possible. That's it.

3 Now, if you want to just have a deadline
4 date where we say, not enough, we can do that, but it
5 doesn't really do anything for the case, for Staff, for us
6 or the small company.

7 JUDGE STEARLEY: Well, we could cut Day 100
8 completely out of the schedule if that would make
9 everybody happy, and we'll just say Day 90 you get the
10 preliminary report and Day 120 you get everything else. I
11 mean --

12 MR. ROBERTSON: 30 days later -- you get the
13 preliminary report. 30 days later we get the
14 documentation to support that. It means for 30 days we've
15 done nothing. Is that what --

16 MS. BAKER: Again, what would we get at
17 Day 90 I think -- I guess is the question?

18 JUDGE STEARLEY: I think we went through
19 that.

20 MS. BAKER: Okay. If that is still -- we
21 would still get those things at Day 90 --

22 JUDGE STEARLEY: Day 90 is still set.
23 That's part of the rule. It doesn't go away.

24 MS. BAKER: The inclusion of a response for
25 OPC anywhere between Day 90 and Day 135 is purely Staff's

1 response. That is not contemplated in the rule at all.

2 JUDGE STEARLEY: Well, it's contemplated in
3 the fact that time -- that the rule provides that Staff
4 files the timeline. Now --

5 MS. BAKER: Right. Right.

6 MS. BRUEGGEMANN: And the only reason it's
7 in there, the only reason it's in there was just to kind
8 of go a little bit towards what Ted was saying, but not
9 quite so far, the reason it was in there is so that Staff
10 could start getting an idea of what the big, major,
11 glaring errors or problem spots or trouble issues were
12 going to be or what was glaringly lacking, so Staff could
13 continue its work with that in mind prior to sending out
14 the settlement proposal packet.

15 JUDGE STEARLEY: I think Day 100, which is
16 going to become Day 105, should remain. The response that
17 should be provided is what do you need additionally other
18 than the information that's been provided to you?

19 There is nothing from what I can see that
20 means from Day 90 to 120 nobody is working and nothing
21 happens. It seems to me people are working. They're
22 getting more documentation together. They're putting
23 together a settlement proposal, which comes in, after
24 which you have another 30 days to work on that and
25 additional information that you have.

1 You seem to be bogging down over that you're
2 making some kind of definitive declaration of what is
3 acceptable and what is not acceptable on this magic
4 Day 100, and I don't think that that's what was intended
5 and I don't think that's what is required.

6 MS. BAKER: As long as that is true,
7 because, yes, we come into this after this is done. And
8 so if that is -- if that is what the response is, then
9 that helps.

10 JUDGE STEARLEY: I think I've made it clear.

11 MS. BAKER: All right.

12 JUDGE STEARLEY: The response should be for
13 Public Counsel and/or the Company to notify Staff what
14 additional information it would like to have.

15 MR. ROBERTSON: Can I ask for clarification
16 there? When you say that are you referring to -- and I
17 keep harping on this. I'm sorry. Being the auditor,
18 that's what I live and die by.

19 But the supporting workpapers behind the
20 documents that they provide us on Day 90?

21 JUDGE STEARLEY: You can list out to Staff
22 whatever documentation you haven't received that you think
23 you need.

24 The rule provides you should have all
25 documentation basically by Day 120. Mr. Russo has

1 indicated they're going to filter that information to you
2 as soon as it becomes available to them.

3 MS. BAKER: Then I would ask --

4 MR. ROBERTSON: They do. They do. But in a
5 regular case the parties agreed to provide the workpapers,
6 supporting workpapers, within a day or two, because they
7 do exist, and it takes a couple days to format them out
8 and print them, whatever.

9 There is no difference here between a big
10 company and these little cases. The workpapers -- the
11 auditors have the workpapers. It's just a matter of
12 putting them in a format where they provide them.

13 Now, I don't see the problem. I'm kind of
14 confused. I don't think the auditors would have a problem
15 with that.

16 JUDGE STEARLEY: I don't see where there is
17 a problem at all. The rule provides you get the papers,
18 and apparently you do get the papers.

19 MR. ROBERTSON: I'm talking about within a
20 few days. I'm not talking about a week or two weeks
21 later.

22 JUDGE STEARLEY: I understand,
23 Mr. Robertson, but the rule provides no later than
24 Day 120.

25 As I said, if Public Counsel is not happy

1 with the 120 days, we can come in with a rulemaking
2 procedure and people can suggest ways of tweaking or
3 modifying this rule.

4 The way the rule is written now, you're
5 going to get a preliminary report at Day 90. All
6 workpapers are provided no later than Day 120. If you can
7 get them ahead of time, great. At Day 115, whatever you
8 are missing you can notify Staff about. And I don't see
9 where we need to discuss this further.

10 MS. BAKER: I guess, can I suggest then that
11 this language about, or Staff assumes information provided
12 is acceptable, be removed and --

13 JUDGE STEARLEY: I made a suggestion to
14 Staff about that.

15 MS. BAKER: And I don't think that was ever
16 accepted.

17 JUDGE STEARLEY: And Staff asked me
18 specifically for my language, to repeat that.

19 MS. BRUEGGEMANN: I'm thinking about it.

20 My only issue with it is that it just --
21 like, Mr. Busch specified, this is also to the Company.

22 JUDGE STEARLEY: I understand. And if any
23 party wants to say it's not acceptable, say it's not
24 acceptable.

25 MS. BRUEGGEMANN: Well, I'm thinking about

1 what --

2 JUDGE STEARLEY: I don't understand what you
3 are worried about.

4 MS. BAKER: Because they're --

5 JUDGE STEARLEY: This is not locking into
6 any type of case decision.

7 MS. BAKER: There may be information that
8 they have that we don't know that they have. And if we
9 didn't say that we didn't get it, does that mean --

10 JUDGE STEARLEY: That's the purpose of a
11 data request.

12 MS. BAKER: Again, how do we know that they
13 have it?

14 I don't want -- I just feel that that
15 language puts us in a box a little bit more than it
16 should. I don't see that that is necessary.

17 JUDGE STEARLEY: You can identify for Staff
18 whatever missing information you believe could be out
19 there that you would like to have, and you can identify
20 that for the Company with a data request as well.

21 MS. BAKER: Right. What I would put into it
22 is, and any other information that we have not received
23 cannot be considered acceptable.

24 JUDGE STEARLEY: Well, that takes care of
25 the problem, doesn't it?

1 MS. BAKER: But then why have the language?
2 I mean, it's extraneous language.

3 JUDGE STEARLEY: So one of you is arguing to
4 me that I want this language and the other is arguing to
5 me I don't want to have to respond to that language.

6 Now, it seems to me we're at a five-year-old
7 level at this point, and I think this cannot be handled in
8 this way.

9 MS. BRUEGGEMANN: Maybe a solution is just
10 adding something to alleviate OPC's fear, that Utility and
11 OPC submit responses regarding Staff's case overview to
12 case coordinator or your language states that they do not
13 have information to give a response at this time --

14 JUDGE STEARLEY: Just like any answer would
15 be to a petition.

16 MS. BRUEGGEMANN: Yes. And then the or
17 Staff assumes information provided is acceptable is in
18 there for the Company to know, you have to tell us your
19 response. You have to give us some sort of response.

20 So maybe that's the cure is to just put at
21 the end of that or a little -- you know, the or with the
22 language that you two have been discussing and that would
23 solve it, wouldn't it?

24 MS. BAKER: I've already stated that I don't
25 see why that language is in there. I've said it several

1 times, so . . .

2 JUDGE STEARLEY: You can indicate to the
3 Company that they need to provide you with different
4 information or else you're going to assume it's all of the
5 information they have.

6 MS. BRUEGGEMANN: Changing the language in
7 there or just telling them?

8 JUDGE STEARLEY: You can change the language
9 in your timeline.

10 No one is asking for a concession at this
11 point in the timeline. No party is conceding anything at
12 this point in the timeline.

13 MS. BAKER: I take your word for that,
14 because that's not how the language reads to me.

15 JUDGE STEARLEY: The only time that they're
16 going to be conceding anything is if you sign a
17 disposition agreement, Ms. Baker.

18 You have the option of taking this to an
19 evidentiary hearing.

20 MR. ROBERTSON: That's true.

21 THE COURT REPORTER: Excuse me. I need to
22 change paper.

23 JUDGE STEARLEY: Why don't we take a short
24 intermission.

25 (A RECESS WAS TAKEN.)

1 JUDGE STEARLEY: All right. We're back on
2 the record.

3 Before I pick up again, there was one other
4 thing I wanted to mention to you, Mr. Busch, is something
5 that the Commission would like to see in those letters
6 that come in from the Company.

7 I believe you and I spoke before, because we
8 had one company where the offices were located in a
9 different city and we got confused as to where the
10 customers were when we were getting ready to set up a
11 local public hearing.

12 So please have those letters include the
13 location of the Company's office, location of the
14 customers, if at all possible the customer account and the
15 date of the regular billing cycle, because we like to try
16 to minimize mailing expenses when these notices go out.
17 If they can be included in billing statements, that can be
18 helpful.

19 So I kind of backtracked there. I wanted to
20 pass that on before I forgot.

21 MS. BRUEGGEMANN: The Company office,
22 location of customers, billing cycle and --

23 MR. BUSCH: Number of customers.

24 JUDGE STEARLEY: Number of customers, yes.

25 MR. RUSSO: Four things.

1 MS. BRUEGGEMANN: Thank you.

2 JUDGE STEARLEY: What I was starting to say
3 when we concluded is that I think being that we attorneys
4 are generally used to adversarial processes, we may be
5 getting bogged down a little bit on the informal
6 proceeding a little bit, and you need to keep in mind
7 these are supposed to be kept informal as much as
8 possible.

9 It minimizes the time involved, the expense,
10 and I think it promotes a little bit more negotiation and
11 settlement on the part of the parties as well.

12 And I think we're at the point where I
13 wanted to address Public Counsel's request that the time
14 for responses to data requests be shortened to 10 days.

15 Data requests, of course, are covered in the
16 Commission's Rule 4 CSR 242.090, and normally there is a
17 20-day response period.

18 I see no purpose in building in anything
19 into this timeline or into the rules on small Company rate
20 cases different requirements on data requests. The time
21 on data requests and responses can be modified by simple
22 agreement of the parties or by showing a good cause.
23 These timelines are compressed in these cases.

24 Has there been some difficulty with getting
25 responses to data requests?

1 MS. BAKER: Yes. Timely, certainly.

2 MS. BRUEGGEMANN: I'm not aware of DRs that
3 have been past due, past the 20 days.

4 JUDGE STEARLEY: Again, let me emphasize as
5 is noted in the early part of this rule, the RLJ can be
6 contacted at any time for any type of mediation of any
7 issue in these cases. And we also have our rule discovery
8 conferences as well.

9 So rather than let -- if there are issues
10 that develop, rather than let them slide and become a
11 problem timewise, I'd appreciate that you contact the RLJ
12 as quickly as possible.

13 MS. BAKER: That's one part of it.

14 The other part is having to wait 20 days for
15 a response before we have to respond is a different one.

16 JUDGE STEARLEY: Is there something that's
17 being prohibited in response time here of the data
18 requests?

19 MS. BRUEGGEMANN: Well, sometimes the data
20 requests that are being issued are, you know, 20
21 questions, with three subparts each.

22 So, you know, we just need -- we have to get
23 it from one section and from another section and from
24 another section, and sometimes we even go ahead and let
25 one part of Staff, one department, answer a few of the

1 questions that they've gotten done sooner, send those
2 through, and then keep whoever has the other sections,
3 still taking more time to answer those.

4 JUDGE STEARLEY: Mr. Robertson.

5 MR. ROBERTSON: Again, Shelley is correct.
6 There are sometimes there are multi parts to a data
7 request.

8 Again, the only reason for a request for a
9 shortened response time is because of the timeframe in
10 small rate cases itself. It was just an attempt to try to
11 make it more efficient because of the limited amount of
12 time to do the investigations.

13 It's not because of any inherent problem
14 we're having in getting responses back. Every time we
15 send data requests, the responses are coming back almost
16 completely answered, if not completely answered. That's
17 not the problem.

18 It's just we're looking at a way to save
19 time, as I explained with the other items we've already
20 explained.

21 JUDGE STEARLEY: There is always a
22 continuing obligation to supplement interrogatories. Data
23 requests are a little bit more informal perhaps than
24 adversarial proceedings in the circuit court, but there is
25 always an affirmative obligation to supplement those

1 requests when additional data becomes available.

2 If it's an issue that data is not available
3 and it can just be supplemented over time, that should be
4 an ongoing process.

5 Does Staff see any particular problem with
6 just saying we're going to shorten the response time to
7 10 days on data requests?

8 MS. BRUEGGEMANN: Well, it depends on when
9 they come.

10 See, the problem is, if they're hitting a
11 data request when -- issuing a data request 10 days prior
12 to the settlement proposal packet being sent out, we can't
13 do it. We can't do both.

14 We're sitting there trying to get all of
15 Staff involved. We need the 20 days. So it just -- I
16 can't -- we can't blanketly --

17 MR. BUSCH: Also, our auditors don't just
18 work on one small water case. So it could be --

19 THE COURT REPORTER: I'm sorry?

20 MR. BUSCH: The auditors who are doing the
21 work, who a lot of the data requests are going to go to,
22 those auditors may be on site doing an audit for another
23 major rate case, and so it may take them some time to be
24 able to respond back to those data requests in 10 days.

25 So I think that could be difficult from our

1 auditing perspective if we only get 10 days, where
2 everything -- everything could be out of pocket.

3 MS. BAKER: If we go back to the 90-day
4 target date. If we have any data requests that need to go
5 out, just to see what we have and what we not have and
6 what is not acceptable or not, a 20-day time frame would
7 put us past our response for that. A 10-day time frame
8 would at least give us a few days to look at the responses
9 from the data requests.

10 And so, you know, other cases do allow for
11 the parties to limit the time for data requests. And so
12 in order for us to get our responses in time --

13 JUDGE STEARLEY: All right. The response
14 you're looking at, though, again, is going back to
15 Day 100, which I see as not being a definitive response --

16 MS. BAKER: But, again, if you go to 120,
17 where we get the settlement package proposal --

18 JUDGE STEARLEY: And then you're going to
19 get --

20 MS. BAKER: -- and then in 15 days we're
21 supposed to notify whether we agree or not, we don't have
22 20 days for data requests there either.

23 JUDGE STEARLEY: And, again, what prohibits
24 Public Counsel from saying we don't agree on these issues
25 until we have the data we requested and have an

1 opportunity to examine that data?

2 MS. BAKER: Then it's being set up that we
3 will never agree. We will never be able to agree with the
4 settlement proposal because we can't have the data to make
5 that response.

6 JUDGE STEARLEY: It seems to me you're going
7 to have until Day 150. Preliminary -- we're having
8 arguments over preliminary responses which don't get to
9 the merits of these cases.

10 MS. BAKER: Again, these are not responses
11 that are by the rules. These are responses that have been
12 posed by Staff. And so, again, you know, if --

13 JUDGE STEARLEY: Nothing prohibits the
14 parties from responding in a manner which says we do not
15 agree or we cannot agree until we have such information to
16 examine.

17 If it results in you never having an
18 opportunity to agree until Day 140, 145 or 150, so what?

19 MS. BAKER: I mean, then the Commission
20 looks at Public Counsel and says, they never agree with
21 anything that comes along.

22 JUDGE STEARLEY: The Commission never sees
23 any of this --

24 MS. BAKER: They see --

25 JUDGE STEARLEY: -- until the disposition

1 agreement is filed on Day 150.

2 MS. BAKER: Right. But you will never have
3 one that is agreed to by Public Counsel because we don't
4 have enough time to review.

5 MR. BUSCH: Your Honor, we just had two
6 cases where Public Counsel did not agree but they did not
7 oppose.

8 JUDGE STEARLEY: And I have one of those
9 case. I'm aware of that.

10 MR. BUSCH: That just happened.

11 JUDGE STEARLEY: Whether you agree at
12 Day 135 is irrelevant to the Commission.

13 MS. BAKER: Okay.

14 But on Day 140 it says a copy is sent to
15 OPC. OPC may or may not sign. All right? Then by 145
16 the signed disposition agreement is to be returned to
17 Staff. That is 25 days from when the settlement proposal
18 comes.

19 That's 20 days for data requests and only
20 five days for us to make a comment and ask for any
21 changes.

22 MS. BRUEGGEMANN: If I can point out a
23 reality real quick about these cases. I think something
24 that's being overlooked in the conversation that I'd like
25 to point out is that the Utility, OPC's staff and the

1 Staff that are working on this case, not typically the
2 attorneys, are in communication with each other or can be.

3 And typically if Mr. Russo knows that a
4 company is coming close to agreeing or needs more
5 information on the specific issues to determine whether
6 they would agree or not, especially if it looks like they
7 might agree with you, Mr. Russo is doing everything he can
8 to get that information as quickly as possible to the
9 parties, because the ultimate goal is -- it causes Staff a
10 lot less work to file a unanimous disposition agreement
11 than it does to file just a Company and a Staff agreement,
12 period.

13 You don't have to go through developing and
14 filing a second customer notice. You don't have to go
15 through still negotiating out a unanimous disposition
16 agreement while you're in the middle of filing a
17 Company's/Staff disposition agreement.

18 It's ineffective for us to take a rigid
19 stance in these cases and somehow try to block or try to
20 not get information to the other parties as fast as we
21 possible can to initiate and hopefully streamline
22 negotiations to get to a settlement.

23 Now, sometimes we just can't get the
24 information. And the Utility themselves, they're
25 typically unsophisticated. So 10 days, sometimes they're

1 mailing back responses. They don't necessarily even have
2 e-mail and sometimes they do have e-mail.

3 But the 10 days for the Utility may or may
4 not be possible, but for the information that Staff is
5 responsible for, but we are trying to get it through as
6 fast as we possibly can to, if it's possible, get a
7 reasonable unanimous disposition agreement, to get to that
8 ultimate point.

9 And so that's the reality of what we're all
10 talking about right now.

11 MS. BAKER: Might I suggest, then, that what
12 we do is we say that data requests be responded to in
13 10 days. If that is not feasible, then let us know and
14 then it will be extended to 20 days per the rule.

15 MS. BRUEGGEMANN: I see no difference in
16 that than us just making an informal agreement that that's
17 what we're trying to do.

18 JUDGE STEARLEY: Let me ask this: At the
19 point after which the settlement proposal is filed, what
20 information are you missing?

21 MS. BAKER: At the time that the settlement
22 proposal is filed, it changes dramatically. There are
23 multiple documents that go out to the Company apparently,
24 because Public Counsel often sees the disposition
25 agreement filed on Day 150 that is not what was given at

1 Day 120. It changes.

2 And there are changes that are made by
3 Staff, some of it because of Staff, some of it because of
4 the Company and some of it because of Public Counsel, but
5 there are multiple iterations of that settlement package.

6 JUDGE STEARLEY: There are changes that
7 happen obviously by the time you get to the agreement.

8 MS. BAKER: Right.

9 JUDGE STEARLEY: What information are you
10 missing in terms of Company information, the audit,
11 et cetera?

12 MS. BAKER: It's usually trying to get more
13 information from the Company as to what their documents
14 show, what their books show. You know, there is all kinds
15 of things, what documentation they have.

16 And we ask Staff for some of it, and
17 sometimes they don't have it. Like they said, some of it
18 they don't copy. It's still within the hands of the
19 Company. And so in order for us to look at it, we have to
20 have -- we have to contact the Company.

21 There is a myriad of pieces of information
22 that we don't have.

23 JUDGE STEARLEY: Okay. So Day 120 you get
24 the settlement proposal. How long does it take you to
25 figure out what information you don't have?

1 MR. ROBERTSON: It varies from company to
2 company. I mean, depending on when we get the workpapers
3 and the time it takes to analyze those --

4 JUDGE STEARLEY: Well, you're going to get
5 those at Day 120 for sure, if not earlier.

6 MR. ROBERTSON: Day 120 for sure. So it
7 takes a period of time to go through those things. Every
8 company is different, depending on the size of the
9 company.

10 JUDGE STEARLEY: Give me a ballpark.

11 MR. ROBERTSON: I don't think there is a
12 ballpark. I could tell you that within -- certainly
13 within a week we have a pretty good general idea of
14 certain areas.

15 And when I say areas, certain costs or
16 revenues or plan or whatever, things you put the audit
17 together. We have a general idea with where we think we
18 need more information about those areas.

19 And those areas are different for each
20 company. They won't always be the same because each audit
21 is --

22 JUDGE STEARLEY: So by Day 130 there is a
23 conference call. Are you able by Day 130 to have a good
24 idea of what information you need? You're talking to the
25 Staff on the phone, with the Company.

1 MR. ROBERTSON: I wouldn't be as definitive
2 as you are, but I would say by Day 130, if we have all of
3 the workpapers that support the costs, I would say by 130
4 we'd have a pretty good idea of here are other areas that
5 we need more information about.

6 JUDGE STEARLEY: Okay. Can you make that
7 request then at that time you're having a conference call?
8 Is that normally the way it's done?

9 MR. ROBERTSON: The way we usually do that
10 is I will first approach Staff and try to get information
11 from them if they have it. If they don't have the
12 information, then I then have to contact the Company.
13 And if I have to contact the Company, it's usually a data
14 request is prepared, it takes time to prepare those, a day
15 or so, get them sent out and then you wait 20 days for the
16 information.

17 That's the reality of it. Now, if Staff has
18 the information, Staff is always good about getting us the
19 information as soon as I request it, if they have it. If
20 they don't have it, which is the case many times, we have
21 to seek other avenues.

22 JUDGE STEARLEY: Okay. You also have
23 10 days built in between the time the settlement proposal
24 is made and you have a conference call. Do you need that
25 full 10 days to evaluate the proposal?

1 MR. ROBERTSON: Between what dates now?

2 JUDGE STEARLEY: The settlement proposal is
3 filed on Day 120 and then you make your conference call on
4 Day 130 or thereabouts.

5 MR. ROBERTSON: It's what we were just
6 talking about.

7 JUDGE STEARLEY: Right. Do you need the
8 full 10 days before having that conference call to
9 evaluate the settlement proposal?

10 MR. ROBERTSON: Again, I would say it would
11 depend on the Company. Some of these companies are a
12 little more complicated even though they're all smaller.

13 I would say it depends on the Company and
14 the individual cases. As a general rule, I'd say on the
15 larger, more complicated small cases, yes. On some of the
16 simpler ones, no.

17 You want a ballpark. I can't give you a
18 ballpark because each of these cases is different, the
19 size, the amount of money. Some of them you can look at
20 in a day or two. Some it takes a couple of weeks.

21 MS. BAKER: It seems that the 10 days
22 between there is at least a sufficient amount of time for
23 us to get preliminary questions that we need to gather
24 information during the settlement proposal while we're on
25 the phone with the company.

1 MR. ROBERTSON: You're referring to the
2 conference call between the Company, Staff and the Public
3 Counsel. Right?

4 JUDGE STEARLEY: Yes. I'm just -- I'm
5 looking at places in the timeline where we can produce a
6 couple more days, if it's helpful.

7 MR. ROBERTSON: I don't know that that's set
8 in concrete. The quicker we have the supporting
9 workpapers -- and I don't really see what the problem is.
10 They already exist at the 90 days. They'll make changes
11 afterwards because it's usually dynamic. But at least for
12 whatever information they provide on the 90 days, they've
13 got workpapers prepared already.

14 So I don't know what the complication is,
15 other than the fact that Jim may not have it, but the
16 auditors do. If you have that information upfront,
17 you're --

18 JUDGE STEARLEY: Right. I think we've gone
19 through that.

20 MR. ROBERTSON: But I still don't
21 understand, if it already exists, why do you need to wait
22 30 days to get it? Now, we don't always do. But if
23 you're going to have a procedural schedule --

24 JUDGE STEARLEY: That's written in the rule,
25 and the rule is written no later than.

1 MR. ROBERTSON: Okay. I understand.

2 JUDGE STEARLEY: So you're provided that
3 information.

4 MR. ROBERTSON: But that goes back to your
5 question about how long does it take you to look at
6 information. The quicker you've got the information, the
7 quicker you're able to come up with if there is going to
8 be problem areas or not.

9 So versus having it within a few days and
10 start looking at it and saving 20 days before the 120 and
11 then another 10 days after that, I'm just confused.

12 You're asking me, can you cut days out
13 between 120 and 130 on something that could have been
14 resolved a lot sooner?

15 JUDGE STEARLEY: No. What I was asking is
16 if you could evaluate a settlement proposal in less than
17 10 days.

18 MR. ROBERTSON: My response to you, it would
19 depend on the Utility, depend on the size and how
20 complicated --

21 JUDGE STEARLEY: That's fine. That's all I
22 need to know.

23 Data requests should be filed as soon as
24 possible after Day 130, 15-day turnaround. If the parties
25 cannot work out agreements on these things in a reasonable

1 matter, the Commission is going to start turning this into
2 a formal proceeding and we will dictate to you what the
3 timelines will be.

4 MS. BRUEGGEMANN: So you're saying it's an
5 automatic 15-day response time after Day 130?

6 JUDGE STEARLEY: After Day 120. Once that
7 settlement proposal goes out, we have a 15-day turnaround.

8 If Staff is unable to provide information,
9 just like as practiced everywhere in the world of law, you
10 provide a response that says we are unable to provide that
11 information at this time. We have a continuing obligation
12 to update you with information that is available, and
13 we'll provide it when it is available.

14 MR. BUSCH: This goes for the Company too,
15 Your Honor?

16 JUDGE STEARLEY: Yes, it does.

17 Public Counsel wanted some type of
18 certification that the audit was complete at Day 100.

19 MS. BRUEGGEMANN: And if I can clarify that,
20 Your Honor.

21 The Staff's audit is considered complete at
22 this time, again, I believe was a notation that -- to kind
23 of go with the preliminary report, that if Staff didn't
24 receive any information or didn't receive any information
25 about glaring errors or omissions or things that it needed

1 to change, then we're putting that -- that preliminary
2 report turns into our settlement proposal packet.

3 And so that's -- that's what that means is
4 if we don't receive any information, then it's going to --
5 that turns into the settlement proposal packet.

6 As we all know, an audit is never complete
7 until the final disposition agreement has been approved or
8 an evidentiary hearing has been held by the Commission in
9 all reality. But for purposes, these purposes, that's
10 what that means.

11 MS. BAKER: The reason why we asked for that
12 is because we have had some difficulty even past the 120
13 date where Staff is still changing its own numbers within.

14 These are not changes that are made just by
15 Public Counsel or the Company, that Staff is making a
16 moving target of what its settlement proposal is.

17 And so what we are trying to do is to make a
18 date when we can rely on the fact that Staff is done with
19 their portion of it pending the comments that come from
20 Public Counsel and the Company.

21 MS. BRUEGGEMANN: And If I can point out the
22 rule, Your Honor.

23 The rule for 120 points out that Staff shall
24 provide a settlement proposal and everything that will be
25 included in that. It has to include draft revised tariff

1 sheets, draft disposition agreement reflecting Staff's
2 recommendation, et cetera, et cetera.

3 A disposition agreement is a document that
4 sets forth the signatories' proposed resolution of some or
5 all of the issues pertaining to the Utility's revenue
6 increase request.

7 Therefore, the settlement proposal that
8 Staff sends out on Day 120, if OPC and the Company were
9 willing to sign that day, is what Staff is willing to
10 sign.

11 Now, if we start receiving information or if
12 we become aware of other information that changes that, we
13 know that the Company won't sign, without another party
14 signing a disposition agreement, we don't have one. It's
15 just a draft that is sent out.

16 So I'm not sure --

17 MS. BAKER: We have had other cases where
18 there have been changes that have been made to Staff's
19 settlement proposal at 120 that have come from Water and
20 Sewer within Staff, like, they apparently were not done
21 with their investigation. They changed it.

22 And so that's what we're trying to get
23 resolved with this is when can we rely on the fact that
24 Staff is done with their -- with their audit, their
25 investigation, so that the changes that we're looking at

1 come just from Public Counsel and the Company.

2 MS. BRUEGGEMANN: And that is Day 120.

3 MS. BAKER: So then I don't see why there is
4 any problem with asking for some documentation that Staff
5 has done.

6 JUDGE STEARLEY: Go ahead.

7 MR. BUSCH: There could be something that
8 comes up from a customer or anything else after Day 120
9 that would cause us to ask --

10 MS. BRUEGGEMANN: Day 90.

11 MR. BUSCH: What?

12 MS. BRUEGGEMANN: After Day 90.

13 MR. BUSCH: Or even after Day 120. I mean,
14 we get information from customers that could make us have
15 to look at stuff.

16 So an audit is ongoing because we're trying
17 to come up with the best possible number to provide to the
18 Commission to --

19 JUDGE STEARLEY: I would agree. And I also
20 think that there may be data requests, which we just
21 discussed, coming in after that time and more information
22 may get disclosed. I don't see any purpose to locking in
23 an audit when that is, in fact, not only a moving target
24 for Public Counsel, it's a moving target for Staff.

25 So any request to certify an audit is

1 complete will be denied.

2 There is also a request for a certificate of
3 mailing to be sent to the regulatory law judge after a
4 second customer notice goes out at Day 160. Notice is
5 actually filed in the case on Day 170.

6 And I assume that Public Counsel is
7 concerned about a scenario where a Company says it mailed
8 a notice but failed to mail a notice?

9 MS. BAKER: Yes, which we've had in six
10 cases.

11 JUDGE STEARLEY: And in those cases wasn't
12 the issue with notice corrected?

13 MS. BRUEGGEMANN: Yes.

14 MS. BAKER: It was corrected after the
15 customers started calling in saying we didn't get our
16 notice until after the 20 days is over. No one even knew
17 that that had happened.

18 MS. BRUEGGEMANN: The date was wrong on
19 those notices I believe.

20 MS. BAKER: No. They failed to mail it out
21 on that date.

22 JUDGE STEARLEY: Are these the cases where
23 we reset the timeline?

24 MS. BRUEGGEMANN: Yes.

25 MS. BAKER: And so in order to just

1 alleviate this upfront, just a simple cert-- you know,
2 certificate. They can send an e-mail, they can call,
3 something, just to say that they did it on the date that
4 it says on the notice.

5 Because that date on the notice triggers
6 everything else from the rule, including responses that I
7 have, and so I don't think it is too much to ask that they
8 at least tell us that they did mail it on that date.

9 JUDGE STEARLEY: How does Staff normally
10 verify a notice has been sent?

11 MR. RUSSO: Well, the Company sends us
12 something. But what really happens is you can tell by the
13 public comments or you can tell because the customer calls
14 in.

15 If you don't get anything on some of these
16 companies, we would do a followup. Because some of these
17 companies, you would expect the customers, even on a
18 second notice, to be contacting Staff one way or another,
19 or contacting OPC.

20 JUDGE STEARLEY: Okay.

21 MS. BAKER: But it does happen.

22 JUDGE STEARLEY: Here is what I'm going to
23 direct: On Day 170 when Staff files the copy of the
24 customer notice -- or is it the Company that files the
25 notice?

1 MS. BRUEGGEMANN: No. The Staff files a
2 copy.

3 JUDGE STEARLEY: That's what I thought, when
4 Staff files it.

5 Staff can include a statement that they have
6 verified with the Company that notice has been sent. You
7 can make a simple phone call to the Company, whatever.
8 They can phone the Company, contact them by e-mail,
9 however they wish to do so.

10 But when they file the second customer
11 notice, it should include a statement that they verified
12 with the Company that notice was sent.

13 Now, Public Counsel wants clarification
14 regarding dates for filing position statements. We're
15 looking at Day 185 and Day 225, depending on the algorithm
16 we're following. And I'd like to make clear what the
17 Commission wants.

18 On Day 185, which is when Public Counsel,
19 depending on the algorithm, you'll either be filing a
20 request for local public hearing -- and, actually, that's
21 going to be the same in either event.

22 At the point that you hit Day 185, Staff and
23 the Company will have filed the disposition agreement,
24 that Public Counsel presumably has not joined, which
25 presumably you're going to be filing -- you're either

1 going to be filing some type of position statement that
2 you're not opposing the agreement or you're going to
3 request a local public hearing.

4 MS. BAKER: Or an evidentiary hearing.

5 JUDGE STEARLEY: Or an evidentiary hearing.

6 At that time what the Commission wants to
7 see is the reason why you're requesting these hearings.

8 So the Commission wants a position statement
9 of Public Counsel, something that is detailed.

10 Staff and the Company by filing a
11 disposition agreement has basically given the Commission
12 its position in detail.

13 So if there is going to be a request for an
14 evidentiary hearing, a local public hearing, Public
15 Counsel should file that statement, that should include
16 your position as to why those hearings are necessary.
17 The Commission wants something detailed. They want an
18 explanation.

19 If you're disagreeing with certain positions
20 of Staff's audit, you need to identify those and tell us
21 what they are. Tell us what are the reasons you're not
22 joining the disposition.

23 MS. BAKER: So I'm doing more? You are
24 asking for a position statement and a request, which is
25 not what the rule says.

1 JUDGE STEARLEY: The request should, in
2 effect, be giving a position statement as to why you're
3 making the request. It should be detailed.

4 MS. BAKER: But the rule says "or." It does
5 not say "and."

6 JUDGE STEARLEY: If you make a request for a
7 local public hearing, the Commission wants a reason why
8 you're making it.

9 MS. BAKER: More than Public Counsel feels
10 that it is necessary to gain input from -- from its own
11 client before --

12 JUDGE STEARLEY: Yes.

13 MS. BAKER: -- it makes a decision?

14 JUDGE STEARLEY: Yes. Because you can do
15 that on your own without the Commission ordering a local
16 public hearing. You can meet with your own client and
17 have your own hearing if you wish.

18 If you want the Commission to order a local
19 public hearing, the Commission wants a sufficient cause
20 for doing so.

21 MS. BAKER: I would like an order from the
22 Commission that tells me the definition of what it
23 believes is sufficient cause, because I don't want to
24 second-guess and risk my client on not getting a local
25 public hearing because all of a sudden what I think is

1 sufficient cause is not what the Commission thinks is
2 sufficient cause. And I don't think that is too much to
3 ask.

4 JUDGE STEARLEY: Good cause is defined
5 legally, Ms. Baker. So you can name good cause for the
6 Commission, and you don't need to be splitting words with
7 me.

8 If you are alleging there is a quality issue
9 or a service issue, you can inform the Commission of that.

10 MS. BAKER: How detailed though?

11 JUDGE STEARLEY: If you're saying there is
12 an issue with Staff's audit, you can tell us that.
13 You can tell us specifically what that audit issue is.

14 MS. BAKER: I mean, that sounds like you are
15 requiring me to do a position statement on a request for a
16 local public hearing, which is not what the rule says.

17 JUDGE STEARLEY: It's part and parcel of
18 both.

19 Staff and the Company have already provided
20 at this point in the proceeding a position statement that
21 is detailed, often 70 pages in length, as to what their
22 position is, and the Commission wants to hear what your
23 position is.

24 MS. BAKER: So it's a position statement
25 "and"?

1 MS. BRUEGGEMANN: If I can jump in for
2 clarification with the rule real quick.

3 JUDGE STEARLEY: Before you do that, I will
4 point out the order that has already been issued in case,
5 which says "and," if that clears up what you're doing for
6 Noel Water.

7 MS. BAKER: That's fine. I mean, if we're
8 going beyond the rule, I want to know.

9 MS. BRUEGGEMANN: Just a clarification with
10 15 where it starts --

11 JUDGE STEARLEY: I think that would be part
12 of any grant of a hearing.

13 MS. BRUEGGEMANN: It starts with 15, or
14 requesting that the Commission hold a local public hearing
15 or an evidentiary hearing and providing the reasons for
16 its position or request.

17 JUDGE STEARLEY: Exactly.

18 MS. BAKER: Right. But that's a whole lot
19 different than saying I believe that the customers have
20 the right to give their information to the Commission, but
21 that does not include me telling a detailed position
22 statement against the disposition agreement that went out.
23 That's very different.

24 And so if that is what I am being asked to
25 do by the Commission, I want to know details.

1 JUDGE STEARLEY: The public is provided a
2 means to provide comment to the Commission in writing, by
3 telephone and electronically. They can state their
4 position any time, and notice goes out to them in multiple
5 levels of this.

6 Public Counsel is free to have its own local
7 public hearing and meet with its client at any time it
8 wishes. Court reporters are authorized to swear
9 witnesses, and you can file a transcript of that if you
10 wish to provide a detailed report.

11 The Commission doesn't have to set a local
12 public hearing in these cases. It's totally
13 discretionary. So if you're going to make a request for
14 the Commission to set one of those hearings, the
15 Commission wants to notice the reasons for its position,
16 which sounds very much to me as the same as a position
17 statement.

18 MS. BAKER: Or request. Or request. The
19 reasons for its position, if you file a position statement
20 or --

21 JUDGE STEARLEY: Or your request.

22 MS. BAKER: -- request the reasons for --

23 JUDGE STEARLEY: So your reasons --

24 MS. BAKER: But that is --

25 JUDGE STEARLEY: -- Ms. Baker.

1 MS. BAKER: But my reading of that did not
2 including giving a position statement "and," but if that's
3 what you want --

4 JUDGE STEARLEY: If you're going to justify
5 to this Commission a reason for having these hearings, it
6 should be something more than this is a big rate increase
7 for these customers.

8 MS. BAKER: All right.

9 JUDGE STEARLEY: It should be something
10 detailed.

11 MS. BAKER: Now, how does that differ from
12 the position statement that I am going to file later, or
13 does that negate that one?

14 JUDGE STEARLEY: If later, if after a local
15 public hearing and you're making a request for an
16 evidentiary hearing, your position statement may, in fact,
17 be the same. It may, in fact, have changed. You may have
18 additional reasons that you wish to add to that.

19 MS. BAKER: But I still get the chance to do
20 another?

21 JUDGE STEARLEY: Certainly. Certainly you
22 do.

23 MS. BAKER: All right.

24 JUDGE STEARLEY: There is no prohibition on
25 that whatsoever.

1 MS. BAKER: I don't want it to come back and
2 say, oh, no, you had your chance for a position statement
3 back before. You don't get to do it again.

4 JUDGE STEARLEY: No. You can add whatever
5 you wish.

6 MS. BAKER: All right.

7 JUDGE STEARLEY: Regarding the dates, I
8 believe we're talking about working days on this portion
9 of the rule. Working days I read to be business days.

10 MS. BAKER: I'm not sure what you're
11 pointing out to me.

12 JUDGE STEARLEY: Well, the point is is your
13 specific request asked for are you filing on November 7th
14 versus November 9th.

15 MS. BAKER: No. My --

16 JUDGE STEARLEY: Or are you trying to
17 distinguish between the two dates?

18 MS. BAKER: Well, my question was because
19 when the customer notice goes out, like on this -- on
20 Target Day 160, which is October 13th, that is the last
21 day for the customer notice to go out. They can do it
22 earlier.

23 So if the customer notice goes out with
24 October 10th --

25 JUDGE STEARLEY: Right.

1 MS. BAKER: -- does that trigger my date?

2 Because then it would be October 10th. It goes out

3 20 days for comment, would be October 30th.

4 JUDGE STEARLEY: It does change your date.

5 MS. BAKER: Okay. That's my question --

6 JUDGE STEARLEY: Yes, it does change your
7 date.

8 MS. BAKER: -- is that a floating date?

9 JUDGE STEARLEY: That's a floating date. It
10 depends on when the notice goes out, because that triggers
11 the deadline for when responses are due.

12 MS. BAKER: And that was my question. I
13 didn't understand.

14 JUDGE STEARLEY: All right. I wanted to
15 clarify, because if you look at Day 225 of this, the
16 target date is 12-17, calendar due date is 12-17. If
17 we're going by working days or business days, I believe
18 the correct date would be 12-21.

19 MS. BAKER: See, that's not my timeline.

20 JUDGE STEARLEY: So I want to be sure we're
21 all on the same page of that as well.

22 MS. BRUEGGEMANN: Let's make sure we clarify
23 that.

24 We're talking about the copy of the final
25 customer notice?

1 JUDGE STEARLEY: If you're looking at page 5
2 of your --

3 MS. BRUEGGEMANN: I'm looking at 4. That's
4 my problem. Okay.

5 So we're on page 5 where it was just a
6 Utility/Staff agreement, second customer notice and a
7 request for a local public hearing that was granted.
8 So then we're at Day 225.

9 JUDGE STEARLEY: Let's say the local public
10 hearing occurs on 12-7, as you have scheduled --

11 MS. BRUEGGEMANN: Okay.

12 JUDGE STEARLEY: -- then Public Counsel gets
13 10 working days --

14 MS. BRUEGGEMANN: Okay.

15 JUDGE STEARLEY: -- to respond, which would
16 take you -- if I'm looking at the calendar correctly -- to
17 the 21st.

18 So let's be sure we're all looking at the
19 same dates there as well, and working days referring to
20 business days, so we're not cutting days off into the
21 other there.

22 MS. BAKER: As long as I understand I keep
23 my floating date from the date?

24 JUDGE STEARLEY: Certainly you keep the
25 floating date. And that's one question I had is we

1 have -- at Day 150 a disposition agreement is filed and
2 then we have five days before tariffs are filed and then
3 we have five days before customer notice goes out.

4 Why can't the tariffs come in on the same
5 day as the disposition agreement?

6 MS. BRUEGGEMANN: Because the tariffs
7 typically -- the disposition agreement sets out everything
8 the Company has to look for, has the example tariff
9 sheets, has everything in it, but it's a lot for the
10 companies to be able to deal with.

11 And then when you file the tariff, they have
12 to be right. You know, the example sheets filed with the
13 disposition agreement we think are as close to right as we
14 can get them, but you do a last review of all of the
15 tariff filings to make sure everything is absolutely
16 correct.

17 And it's actually abiding by, you know,
18 correctly implementing, so any last-minute errors, any
19 last-minute omissions, and then Company has to go ahead
20 and then authorize the tariff filings.

21 So it's just to double-check the system, if
22 you will.

23 JUDGE STEARLEY: All right. Are any of the
24 parties having a problem with the form of notice?

25 MS. BRUEGGEMANN: Notice for?

1 MS. BAKER: To the customers.

2 JUDGE STEARLEY: For the customers on any of
3 these issues.

4 MS. BRUEGGEMANN: Staff and OPC have the
5 right to review and have been reviewing those notices
6 prior to.

7 JUDGE STEARLEY: I'm seeing a five-day gap
8 here again. And given these close timelines, I'm just
9 wondering from why some of these gaps can't be closed.

10 MS. BRUEGGEMANN: Well, if I can put it on a
11 bigger perspective real quick for a discussion.

12 When we're getting to the tail end of it,
13 beyond the Day 150 that we were all talking about earlier,
14 you know, we're getting local public hearing and
15 evidentiary hearings.

16 Sub 24 says the proposed full resolution of
17 the small Utility rate case must be finally presented to
18 the Commission no later than nine months after the case is
19 open.

20 And with the local public hearing, 275 is
21 how many months in?

22 MR. RUSSO: Close.

23 MS. BRUEGGEMANN: That's six months. Right?
24 That's nine months. That's close to -- that's 25 days
25 short. So that's nine months and five days that the

1 Notice Closing Case issue is occurring.

2 So backwards, order approving tariff
3 revisions issued 235, going backwards some more, position
4 statement at 235 and then we are at 40 days before that.
5 So we're at seven and a half months at 235.

6 I mean, if we're having the local public
7 hearings and if we're having some of these other things,
8 and second customer notices and things like that, I think
9 that the days there -- starting to shorten up days, we're
10 going to start making mistakes, because five days isn't
11 actually a long time.

12 JUDGE STEARLEY: Okay. Five days could be a
13 long time.

14 Customer notice, if you-all are agreeing on
15 format, where you're just plugging in final numbers, it
16 seems to me you could have that out quicker, the day those
17 tariff revisions are filed. There is ways you can save
18 some time on this schedule.

19 MS. BRUEGGEMANN: But this isn't the only
20 case we're doing like this. So caseload and keeping the
21 companies straight and keeping everything straight start
22 shortening all of these timelines.

23 We don't have everybody relooking at things
24 to make sure -- mistakes still happen that we see have to
25 get corrected right now as it is. But if we don't have

1 some of these extra days built in and we start shorting
2 them, then more mistakes are going to happen, and that's
3 my ultimate fear.

4 MS. BAKER: Don't put it down that they're
5 waiting five days for me to respond for these things
6 because they are not.

7 JUDGE STEARLEY: I am not. I'm not keeping
8 score cards.

9 MS. BAKER: Well, I'm just saying.

10 MR. BUSCH: Your Honor, a lot of times it
11 could be trying to get ahold of the companies as well.

12 JUDGE STEARLEY: Okay. I'm walking through
13 this so the Commission has a full understanding of these
14 timelines and what the purposes of these days are.

15 MS. BRUEGGEMANN: Yeah, because some of them
16 don't have e-mail. Some of them are not checking e-mails.
17 Some of them are not in their offices every day of the
18 week. Some of them only have working hours two days,
19 three days a week possibly, depending, you know, if it's a
20 60-person system, so . . .

21 JUDGE STEARLEY: We also have 30 days built
22 in here for the time for a request for a local public
23 hearing is made until the local public hearing is held.

24 We need to give 10 days notice for a hearing
25 and we need to factor in -- this is why the Commission

1 needs to know billing cycles, so notices can go out in
2 conjunction with the billing. But it's possible that
3 these local public hearings can be set sooner than
4 30 days.

5 MS. BRUEGGEMANN: I think all of these are
6 floating dates off of what the Commission does, but the
7 Commission wanted initially the 30 days in the beginning.

8 JUDGE STEARLEY: What I'd like Staff to do
9 is put notations on these days that are floating dates.
10 I'd like you to put parentheticals around them saying
11 they're floating days so that everyone is clear.

12 If something can happen sooner, like, notice
13 going out sooner that triggers a change in the dates, that
14 everyone knows these are floating dates.

15 And if notice, say, goes out quicker, where
16 the response time is going to be shorter, Staff can file
17 an updated time on it.

18 I think we got through all of your requests.

19 MS. BAKER: Let me make sure.

20 Actually, I think I saw one that was missed.

21 My 10A, requesting clarification, that on
22 Target Day 80 the basic audit/slash investigation work to
23 be completed on that day by both Staff, Auditing
24 Department and the Staff Water and Sewer Department,
25 because that indicates an audit and an investigation.

1 JUDGE STEARLEY: And I believe the response
2 to that would be the same as what we talked about,
3 certification of the audit complete, that those are
4 ongoing processes.

5 MS. BAKER: Oh. So then I guess my question
6 is then why do we have that on Day 80 if that will never
7 happen?

8 MS. BRUEGGEMANN: And it does happen. It's
9 an internal Staff deadline, as I said, and extensive
10 detail in the beginning, that many of these Day 80,
11 Day 85, going back to Day 50 and Day -- well, 70 includes
12 the Utility also -- Day 20.

13 These are internal deadlines, to make sure
14 that all of our departments are staying on task, because
15 it is a massive undertaking to coordinate and make sure
16 you're getting all of the pieces of the puzzle from
17 everybody to put into what we're putting out there in the
18 preliminary report and settlement proposal.

19 So that everybody in all of the other
20 departments on all of the other floors knows this is my
21 deadline to get it to my case coordinator or he's going to
22 e-mail me and calling me and I don't have an excuse. I
23 know what it is.

24 So that's why it says responsible party says
25 assigned Staff. You know, it is to get to the preliminary

1 report at Day 90.

2 MS. BAKER: So you are including your Water
3 and Sewer people in there?

4 MS. BRUEGGEMANN: Any EMSD and anyone else
5 that may or may not have a part of it. That's when he
6 wants to try to get it, but --

7 MS. BAKER: That's all I'm asking for is
8 that at this point that it includes the whole Staff?

9 MS. BRUEGGEMANN: Yes, assigned Staff. And
10 the assigned Staff are listed in EFIS under the case
11 notation of every case.

12 MS. BAKER: So then it sounds like they
13 agree to my clarification?

14 MS. BRUEGGEMANN: Well, I don't think it's
15 necessary to clarify because it's only our -- it's only
16 Staff trying to control internally what we're trying to do
17 to make sure we meet our 90-day mark.

18 MS. BAKER: Because the reason why we bring
19 this up is because, again, we are finding that past the
20 120 date the Water and Sewer people are still making
21 significant changes, almost like they just get the audit
22 results on Day 80.

23 MS. BRUEGGEMANN: I think none of us are
24 familiar with what you're speaking of.

25 MS. BAKER: I mean, I'm speaking of another

1 case in which a significant change was made after the
2 settlement proposal came down, and it turned out that the
3 reason why that significant change was made was because of
4 a Staff member, not because of the Company.

5 MS. BRUEGGEMANN: But I think we all
6 addressed that earlier, Your Honor, with the discussions
7 of if new information arises.

8 JUDGE STEARLEY: Yes, and I agree with that.
9 There is not going to be a requirement or any type of
10 certification that something has been completed at that
11 point because there may always be additional information
12 that is discovered in these cases on an ongoing basis.

13 MS. BAKER: Then I would suggest, in order
14 to keep Public Counsel from being drawn into internal
15 things for these procedural schedules, that Staff not put
16 things like that into them.

17 Because this is being put into the case as
18 being the definite procedural schedule for the case. If
19 it's an internal document, it doesn't need to be in the
20 file.

21 JUDGE STEARLEY: Well, Staff is certainly
22 free to file a timeline that excludes dates that are only
23 for its internal personnel.

24 MS. BRUEGGEMANN: We were just trying to be
25 transparent to the Utility and OPC and the --

1 JUDGE STEARLEY: I understand. If that's
2 creating confusion, it's better not to have it in the
3 timeline. As long as your Staff knows its own --

4 MS. BRUEGGEMANN: Well, since it says basic
5 audit/investigation work completed, not audit/
6 investigation work completely finalized, I don't see the
7 confusion.

8 JUDGE STEARLEY: I'm not saying that you
9 have to change what you filed.

10 MS. BRUEGGEMANN: Okay. We'll think about
11 it. We'll think about everything that's been said this
12 morning, obviously.

13 MS. BAKER: Let me make sure that everything
14 is here.

15 We did go over what was 10F, requesting
16 where it now states OPC files its position statement --

17 JUDGE STEARLEY: Right.

18 MS. BAKER: -- that it would be or requests
19 evidentiary hearing on 185 and 225, that Public Counsel
20 has the ability to ask for an evidentiary hearing at those
21 dates per the rule.

22 I don't want to be limited away from not
23 being able to ask for an evidentiary hearing.

24 JUDGE STEARLEY: No. You can certainly ask
25 for one. There is nothing that prevents you from

1 requesting an evidentiary hearing.

2 MS. BAKER: Okay.

3 JUDGE STEARLEY: The rule says if you
4 request one, there shall be one.

5 MS. BAKER: Okay.

6 MS. BRUEGGEMANN: I guess, too, we've
7 already summarized most of what's been done.

8 Does Staff need to file an amended timeline?

9 JUDGE STEARLEY: The only amendment that I
10 think we actually made today in terms of the timeline is
11 Day 100 to Day 105.

12 MS. BRUEGGEMANN: And the asterisk, if you
13 will, for the floating days, but I think that's all
14 understood now.

15 JUDGE STEARLEY: Yes, I think that's
16 understood, but that's what we'd like to see going
17 forward.

18 MS. BRUEGGEMANN: Okay. So a going-forward
19 timeline being filed.

20 JUDGE STEARLEY: Right. And I gave you a
21 direction for how data requests should be handled after
22 Day 120.

23 MS. BRUEGGEMANN: In this case?

24 JUDGE STEARLEY: Yes.

25 MS. BAKER: I guess the last question that I

1 have is how do you want to handle when this procedural
2 schedule is not met?

3 JUDGE STEARLEY: Any time something is filed
4 out of time, the person filing it should request a leave
5 to file it out of time and state the reasons why there has
6 been a delay.

7 MS. BAKER: If that has not occurred so far?

8 JUDGE STEARLEY: I'm sorry?

9 MS. BAKER: If that has not occurred so far?

10 JUDGE STEARLEY: What do you mean?

11 MS. BAKER: We had a document that was due
12 to be sent to OPC on Target Day 10, letter sent to Utility
13 and OPC regarding expected Staff activities and
14 identifying participating Staff members, target date 5-16,
15 calendar date 5-18. We did not receive it until the 19th.

16 MS. BRUEGGEMANN: I can make a motion orally
17 right now, Your Honor.

18 MS. BAKER: I just want to know going
19 forward how we're supposed to handle these things.

20 JUDGE STEARLEY: Right. Let me make this
21 clear. Items that have to be filed in EFIS, or filed with
22 the Commission, would require that they seek leave of the
23 Commission to file those dates late.

24 Any time there is something internal that's
25 not requiring a filing with the Commission that's being

1 shared, that I would consider to be a matter of discovery,
2 where you contact the regulatory law judge, who is the
3 mediator, in all of these instances on any subject and
4 say, Judge, we didn't receive this from Staff.

5 I would anticipate you would give whatever
6 party was supposed to provide you with that information a
7 courtesy call first, because it could just be an oversight
8 because people are busy, and you call the Staff and they
9 say, oh, we're sorry, here it is, and then you don't have
10 to contact me.

11 MS. BAKER: Okay. But that indicates that
12 that is an informal procedure and that we are beyond an
13 informal procedure. We are now into a formal procedure.
14 And so --

15 JUDGE STEARLEY: This is still an informal
16 ratemaking procedure.

17 MS. BAKER: It is, but this is a formal
18 procedural schedule that has been approved by the
19 Commission.

20 JUDGE STEARLEY: All procedural schedules by
21 this rule are formal procedural schedules --

22 MS. BAKER: All right.

23 JUDGE STEARLEY: -- whether the Commission
24 adopts them or not.

25 MS. BAKER: And so I don't want this to turn

1 into something where OPC is required to meet the deadlines
2 on this but Staff doesn't and, oops, we forgot. I want to
3 make it clear --

4 JUDGE STEARLEY: Once again, I'm going to
5 make this very clear. You all find a copy of the rule and
6 you will turn to Subsection 3 of the rule, and you will
7 read, the regulatory law judge assigned to this case may
8 be asked at any time to mediate disputes that arise while
9 this case is pending.

10 Does everyone understand that the Commission
11 is not sitting up there with a score card saying, oh, OPC
12 missed this by 6 hours and Staff missed this by 10 hours
13 and that somehow is going to affect their decision on just
14 and reasonable rates of the Company?

15 You-all need to be providing each other
16 information, timely data requests and working
17 cooperatively.

18 MS. BAKER: And I fully agree with that.

19 JUDGE STEARLEY: And if something is late,
20 you give the other party a courtesy call and request it.
21 If you do not get the information you requested, I don't
22 want you waiting two weeks later. I want you picking up
23 the phone and calling me and saying, Judge, we didn't
24 receive this information. We called Staff. They're not
25 providing this. That settles the matter.

1 MS. BAKER: Public Counsel is very happy to
2 have a procedural schedule in this where it is very open
3 to every party that they are set on due dates, and so I
4 just want to make it very clear that I want to know what
5 is available to me when we are not getting the information
6 that we are supposed to have.

7 JUDGE STEARLEY: If you're not getting the
8 information you're supposed to have, you need to follow
9 the instructions I just gave you.

10 MS. BAKER: That's fine.

11 JUDGE STEARLEY: Just as with that discovery
12 issue I had a couple of weeks ago. Waiting to the end of
13 the case and complaining you're having problems getting
14 data or filings is too late. You need to timely come
15 forward and tell us these things, and we can resolve all
16 these matters early.

17 But if it's something that is supposed to be
18 actually filed with the Commission and it's late, you need
19 to seek leave to file.

20 MS. BRUEGGEMANN: Yes, Your Honor.

21 JUDGE STEARLEY: And I think with the last
22 round of cases that the Commission made it clear when it
23 wants its request for local public hearings.

24 These cases do change substantially --
25 you've noted that yourself -- by the time they get to the

1 proposed settlement agreement.

2 And Missouri Utilities is a classic example.
3 I just saw last week a Staff/Company disposition agreement
4 come in, where the Company initially asked for about
5 12,500 on its water and it's now down to \$172.

6 So there is no point in requesting a local
7 public hearing prior to knowing what the case is actually
8 going to be about or setting one prior to that where the
9 Commission would be giving the public information that may
10 not be the actual amount that is being requested. That's
11 why the Commission wants those requests to come in after
12 that disposition.

13 MS. BAKER: Since we're on the record for
14 that, I want to point out that, quite frankly, that was
15 asked for by Staff as well. So it was not Public Counsel
16 alone acting in that one.

17 JUDGE STEARLEY: Okay. I'm not interested
18 in who made what request.

19 MS. BAKER: I understand.

20 JUDGE STEARLEY: I just want to understand
21 for purposes of clarity. I'm hoping we can all leave the
22 room today and we have a lot more clarity on this
23 procedure.

24 MS. BRUEGGEMANN: Since that's on the
25 record, I need to state I think we were supporting local

1 public hearing, is what we were supporting, getting the
2 requests out there.

3 JUDGE STEARLEY: Is there anything else that
4 we need to try to clear up with this?

5 MS. BRUEGGEMANN: Not that I'm aware of.

6 MS. BAKER: I'm sure there will be --

7 JUDGE STEARLEY: Judge Jordan has been
8 listening patiently through all of this.

9 Is there anything that I missed going over?

10 Because we've had a lot of discussion
11 internally amongst adjudication to make sure these
12 proceedings goes smoothly.

13 JUDGE JORDAN: I'll add nothing.

14 JUDGE STEARLEY: Okay. All right.

15 Well, I thank you all for being here and
16 spending the time today. I didn't know we would go this
17 long, but I'm glad that we have.

18 And I do want to emphasize, please feel free
19 to contact us to clear up any disputes early on in this
20 proceeding.

21 MS. BRUEGGEMANN: Thank you, Your Honor.

22 MS. BAKER: You can count on it.

23 JUDGE STEARLEY: Thank you.

24 MS. BAKER: Thank you.

25 JUDGE STEARLEY: We're off the record.

1 WHEREUPON, the Procedural Conference
2 concluded.
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CERTIFICATE OF REPORTER

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Patricia A. Stewart

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