

1 STATE OF MISSOURI  
2 PUBLIC SERVICE COMMISSION  
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6 TRANSCRIPT OF PROCEEDINGS  
7 Prehearing Conference  
8 March 31, 2006  
9 Jefferson City, Missouri  
Volume 2  
10  
11  
12 Cathy J. Orlor, )  
13 Complainant, )  
14 vs. ) Case No. WC-2006-0082, et al.  
15 Folsom Ridge, LLC, Owning )  
16 and Controlling the Big )  
17 Island Homeowners )  
18 Association, )  
Respondent. )  
19  
20 MORRIS L. WOODRUFF, Presiding,  
21 SENIOR REGULATORY LAW JUDGE.  
22  
23 REPORTED BY:  
24 KELLENE K. FEDDERSEN, CSR, RPR, CCR  
25 MIDWEST LITIGATION SERVICES

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19 FOR: Office of the Public Counsel  
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FOR: Staff of the Missouri Public  
Service Commission.

PRESENT: Cathy Orler, Complainant  
Benjamin Pugh, Complainant  
Cindy Fortney, Complainant  
Stan Temares, Complainant  
Judith Kenter, Complainant  
Joseph Schrader, Complainant (Via telephone)

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

2 JUDGE WOODRUFF: All right. Well, welcome  
3 everyone. We're here for a prehearing conference in Case  
4 No. -- actually, several case numbers which have been  
5 consolidated. The lead case is WC-2006-0082. It's  
6 various complaints against Folsom Ridge, Limited Liability  
7 Corporation, and the Big Island Homeowners Association.

8 We're going to begin today by taking  
9 entries of appearance, beginning with Folsom Ridge.

10 MR. COMLEY: Thank you, your Honor. Let  
11 the record reflect the entry of appearance of Mark W.  
12 Comley, Newman, Comley & Ruth, 601 Monroe Street,  
13 Jefferson City, Missouri 65101, and also the entry of  
14 appearance of Mr. Charles McElyea, his address is on  
15 pleadings already on file, on behalf of Folsom Ridge,  
16 Limited Liability Company.

17 JUDGE WOODRUFF: And Mr. McElyea, you're  
18 also on the phone, I believe.

19 MR. McELYEA: That's correct.

20 JUDGE WOODRUFF: We have a number of  
21 Complainants here, and I'll go down the list and have them  
22 state their name for me. First of all, Ms. Orler?

23 MS. ORLER: Cathy Orler, O-r-l-e-r.

24 JUDGE WOODRUFF: Thank you. And Benjamin  
25 Pugh?

1 MR. PUGH: Benjamin Pugh.

2 JUDGE WOODRUFF: Ben Weir is a Complainant.

3 He had sent in a letter indicating that he would not be  
4 able to be here.

5 Stan Temares?

6 MR. TEMARES: Yes. Stan Temares,  
7 T-e-m-a-r-e-s.

8 JUDGE WOODRUFF: And Judy Kenter?

9 MS. KENTER: Yes. Judy Kenter,  
10 K-e-n-t-e-r.

11 JUDGE WOODRUFF: And Joseph Schrader I  
12 believe is on the phone?

13 MR. SCHRADER: Yes, I am.

14 JUDGE WOODRUFF: Duane Stoyer I believe was  
15 another one who's going to be absent.

16 MS. ORLER: Yes. Do you want these  
17 exhibits at this time?

18 JUDGE WOODRUFF: Just a minute on those.  
19 Cindy Fortney?

20 MS. FORTNEY: Cindy Fortney, F-o-r-t-n-e-y.

21 JUDGE WOODRUFF: Dean Leon Fortney?

22 MS. FORTNEY: He should be calling in.

23 JUDGE WOODRUFF: Ms. Fortney, that's your  
24 father, I understand?

25 MS. FORTNEY: Yes, it is.

1 JUDGE WOODRUFF: And he was going to be  
2 trying to call in, but he hasn't called in yet apparently.

3 MS. FORTNEY: Yes.

4 JUDGE WOODRUFF: Well, when he calls in,  
5 we'll bring him on into the line then.

6 For Staff?

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

10 JUDGE WOODRUFF: And for Public Counsel?

11 MR. MILLS: Lewis Mills, P.O. Box 2230,  
12 Jefferson City, Missouri 65102. Thank you.

13 JUDGE WOODRUFF: And for the Department of  
14 Natural Resources? Is there anyone here for DNR?

15 (No response.)

16 JUDGE WOODRUFF: DNR is not technically a  
17 party, but they have been receiving notifications of  
18 proceedings in this case.

19 Did I hear somebody else join on the line?  
20 Apparently not.

21 Okay. Ms. Orler, you indicated you had a  
22 couple letters from some of the other claimants or  
23 complainants.

24 MS. ORLER: This is from Mr. Ben Weir who's  
25 unable to attend today in person, but he did want to make

1 this a part of today's record under his signature, his  
2 letter. And then Mr. Duane Stoyer is in ill health and he  
3 is unable to attend today, and I have a letter stating  
4 that fact.

5 JUDGE WOODRUFF: The letter from Mr. Weir,  
6 is that the one dated March 25th?

7 MS. ORLER: Yes.

8 JUDGE WOODRUFF: He filed that with the  
9 Commission, so it's already an exhibit. It's in the  
10 electronic filing system, so we won't need to worry about  
11 that.

12 Your letter was -- other letter was from  
13 Mr. Stoyer, you said?

14 MS. ORLER: Correct.

15 JUDGE WOODRUFF: Do you want to go ahead  
16 and just mark on that Exhibit A?

17 MS. ORLER: All right.

18 MR. SCHRADER: Judge Woodruff, can I  
19 interrupt for a minute?

20 JUDGE WOODRUFF: Yes. Who is this?

21 MR. SCHRADER: This is Jim Schrader.

22 JUDGE WOODRUFF: Okay.

23 MR. SCHRADER: I can hear you just fine, I  
24 can hear Mr. McElyea just fine, but barely everybody else.  
25 I don't know the layout there, but if there's any way to

1 get the speaker or speakers a little closer to some of the  
2 other people, it would help me.

3 JUDGE WOODRUFF: Mr. Comley, if you'd just  
4 take this and put it on the table up there, move it a  
5 little bit closer. And if some of you want to come up to  
6 the table, that's fine as well.

7 All right. Ms. Orlor has handed me what  
8 has been marked as Exhibit A, which is a letter to Judge  
9 Colleen Dale, who's our Secretary and Chief Regulatory Law  
10 Judge here. It's on behalf of Duane Stoyer. Actually  
11 it's signed by Benjamin Pugh, and it's indicating that  
12 Mr. Stoyer is, in fact, on Hospice for his cancer and  
13 could not be here today. I assume this is -- you'd like  
14 to enter this as an exhibit for today's proceeding?

15 MS. ORLER: Yes, correct.

16 MR. COMLEY: Your Honor, I have no  
17 objection to that exhibit.

18 JUDGE WOODRUFF: All right. It is marked  
19 as Exhibit A, and it will be received into evidence.

20 (EXHIBIT A WAS RECEIVED INTO EVIDENCE.)

21 JUDGE WOODRUFF: All right. Before we do  
22 anything else today, there's several pending motions that  
23 I need to deal with. Mr. Mills?

24 MR. MILLS: Judge, before we start, did I  
25 just miss it, or did we get an entry of appearance for the

1 Big Island Homeowners Association or whatever its newer  
2 name is? Are they represented here today?

3 MR. COMLEY: Yes, they are. Excuse me.  
4 Let the entry also be amended to show that Mr. McElyea and  
5 I are entering our appearance on behalf of Big Island  
6 Homeowners Water & Sewer Association, Inc.

7 JUDGE WOODRUFF: You're both entering on  
8 behalf of both?

9 MR. COMLEY: Yes, we are.

10 JUDGE WOODRUFF: That's a little bit  
11 different than it was in the past, is it not?

12 MR. COMLEY: No. I think the answers that  
13 were filed indicate a double entry.

14 JUDGE WOODRUFF: Okay. I wasn't real clear  
15 on that.

16 MS. ORLER: And Mr. McElyea still  
17 represents -- as of today is representing Folsom Ridge as  
18 well?

19 MR. COMLEY: Yes.

20 JUDGE WOODRUFF: All right. Well, first of  
21 all, I want to take up the -- Ms. Orler's filed a motion  
22 to compel production of documents that was filed on  
23 March 9th. It's a request that Folsom Ridge be compelled  
24 to provide membership lists for the homeowners association  
25 as well as a copy of that organization's bylaws and



1 declaration and covenants. Folsom Ridge and the  
2 association responded on March 16th, and they contend that  
3 there have been no new discovery requests aside from the  
4 request that was denied in December. Orler filed a reply  
5 to that response on March 27th. So I'm going to go ahead  
6 and take that up now.

7                   Technically it appears that Folsom Ridge  
8 and the association are correct in that there was not a  
9 second Data Request filed after that initial one was  
10 denied back when we had this conference back in December.  
11 At that time I denied that motion because at that time  
12 they were requesting documents from the association and  
13 the association was not a party to this case at that time.  
14 Since then the association has become a party.

15                   I could deny the motion and require that  
16 Ms. Orler file a new Data Request, but I'm not going to do  
17 that. That seems to be simply a matter of putting form  
18 over substance. So, Ms. Orler, if you could tell me today  
19 exactly what documents it is that you're looking for.

20                   MS. ORLER: Yes. As per my motion, I am  
21 requesting a membership listing of the Big Island  
22 Homeowners Association for all individuals being billed  
23 and/or serviced, and in addition to that, signed  
24 ratification documents for the amended and restated  
25 declarations of covenants and amended and restated bylaws

1 of the Big Island Homeowners Association.

2 JUDGE WOODRUFF: Thank you. Mr. Comley or  
3 Mr. McElyea, is there any problem with producing those  
4 documents?

5 MR. COMLEY: Your Honor, if you could give  
6 us 20 days, we could get those produced. Would that be  
7 all right, Mr. McElyea?

8 MR. McELYEA: Yes, we can do that.

9 JUDGE WOODRUFF: Ms. Orler, any objection  
10 to 20 days?

11 MS. ORLER: I guess I would ask why there's  
12 a need for 20 days since these are operational documents  
13 that they operate from?

14 JUDGE WOODRUFF: Mr. Comley?

15 MR. COMLEY: Well, this is not the only  
16 matter that as attorneys we're involved in. 20 days is a  
17 normal turnaround time for Data Requests, and that is why  
18 I suggested 20 days.

19 JUDGE WOODRUFF: All right.

20 MS. ORLER: But the request was sent on the  
21 29th of November.

22 MR. COMLEY: As I recall, that request was  
23 denied.

24 JUDGE WOODRUFF: All right. I'm going to  
25 allow the 20 days. That will be April 19th, for you to

1 produce those documents.

2 MR. COMLEY: Thank you.

3 JUDGE WOODRUFF: And just the way that will  
4 work, the parties will produce those documents and provide  
5 them to you, Ms. Orler. They don't have to be filed with  
6 the Commission.

7 MS. ORLER: Thank you.

8 JUDGE WOODRUFF: Then there was also a  
9 motion filed by Folsom Ridge and the association to strike  
10 responses to answers that were filed. The responses --  
11 the answers were filed by the association and Folsom  
12 Ridge. Responses were filed By Ms. Orler.

13 The responses to answers are not required  
14 by the Commission's procedures, so they're really of no  
15 legal effect. However, their presence in the record  
16 doesn't really cause any harm to anyone. They're there,  
17 and there's really no reason to strike them. So the  
18 motion to strike will be denied.

19 Then there was also a motion to dismiss for  
20 unauthorized practice of law. That was a motion filed by  
21 Folsom Ridge and the association actually asking the  
22 Commission to require Ms. Orler to show cause why her  
23 complaint should not be dismissed because allegedly she  
24 was engaging in the unauthorized practice of law.

25 I'm going to deny that motion because I

1 don't believe there's any indication that Ms. Orler is  
2 intending to practice law. But that does bring up an  
3 interesting problem in this case in that there are nine  
4 different complainants, all bringing very similar  
5 complaints. Ms. Orler can obviously represent herself, as  
6 can all the other complainants, but I cannot allow  
7 Ms. Orler to represent the other complainants because she  
8 is not an attorney.

9 I just want to make that clear to everyone  
10 that that is the case. That also brings up a problem when  
11 it actually comes time to conduct this hearing, and that  
12 is that Ms. Orler cannot represent the other parties.  
13 They can all agree with each other obviously, but she  
14 cannot represent the other parties. And that means that  
15 when we actually have the hearing, all the parties will  
16 need to be here.

17 And given the complexity of this case, it's  
18 going to be very problematic to try and do it by  
19 telephone. So I'm going to require the individual  
20 complainants to actually be here in Jefferson City. And I  
21 understand it's going to create some problems for some of  
22 you, and I know certainly Mr. Schrader I believe is in  
23 Florida, right?

24 MR. SCHRADER: That is correct.

25 MS. FORTNEY: And I will most likely be in

1 California because I travel for work.

2 JUDGE WOODRUFF: So you need to decide for  
3 yourselves if you actually need to be in this case as a  
4 separate complainant or if one or two, five, six, whatever  
5 complaints go forward on their own without the others,  
6 that's certainly a possibility as well.

7 MS. ORLER: Would the complainants' absence  
8 from the hearing dismiss their complaints?

9 JUDGE WOODRUFF: Yes, I would have to do  
10 that, because as complainants it's your responsibility to  
11 present your case to prove your case, and I can't let  
12 anybody else do that for you unless you got together and  
13 hired a lawyer.

14 MS. ORLER: And in the instance of the  
15 gentleman who is suffering from terminal cancer, the same  
16 would apply?

17 JUDGE WOODRUFF: Unfortunately, the same  
18 thing would apply, yes.

19 MS. ORLER: Unless he's represented by  
20 legal counsel?

21 JUDGE WOODRUFF: Unless he's represented by  
22 legal counsel. I hate having to do that, but that's a  
23 requirement of the Missouri Bar Association and the  
24 Missouri Supreme Court, and it's a very serious  
25 requirement and something that I could be in great trouble

1 for if I didn't enforce that rule.

2 MS. FORTNEY: I have a question, and this  
3 may -- I don't know, maybe between now and the hearing  
4 maybe there's not going to be a lot of documentations  
5 going back and forth, but in the past if we would have had  
6 to do it individually, there would be nine times, you  
7 know, killing trees all over the place. Does that mean  
8 from now on we also have to respond independently in  
9 documentation, or since all of ours are really filed under  
10 the one case, that was the purpose of it to --

11 JUDGE WOODRUFF: To try and consolidate  
12 things?

13 MS. FORTNEY: Yes.

14 JUDGE WOODRUFF: Unless it's something that  
15 a response is required from each individual complainant,  
16 no, you don't all have to file a separate response.

17 MS. FORTNEY: And that's moving from now  
18 forward?

19 JUDGE WOODRUFF: From now forward, except  
20 for the hearing.

21 MS. FORTNEY: Okay. Right.

22 JUDGE WOODRUFF: And ultimately, of course,  
23 you each need to prove your own case.

24 MS. FORTNEY: Right. Okay. I just don't  
25 want to have to backtrack and go back.

1 JUDGE WOODRUFF: No. And that's why this  
2 was consolidated in the first place so I didn't have to  
3 issue nine separate orders in each case. Mr. Comley, you  
4 look like you want to say something.

5 MR. COMLEY: Well, I'm thinking that I  
6 would expect each complainant, if they had a response to  
7 anything that our camp would file, each complainant would  
8 join in the response in some form or the other. Again,  
9 the issue is whether or not there's one complainant that  
10 is representing the interests of the others, if -- if one  
11 complainant comes up with something everybody agrees to,  
12 then it would be I think some -- everybody has to say we  
13 agree to this.

14 In the absence of a response from one of  
15 the complainants, I would take it as if there has been no  
16 response.

17 JUDGE WOODRUFF: That is correct.

18 MS. FORTNEY: So does that mean that we can  
19 say in the future that under case -- Cathy Orlor's case,  
20 under Ms. Orlor's case, that we agree with what her  
21 response is?

22 JUDGE WOODRUFF: Yes. And I think that  
23 would be advisable.

24 MS. FORTNEY: And It's not going to be  
25 misconstrued or anything that she is representing us

1     legally or something?

2                   MR. COMLEY:  As Ms. Orlor pointed out in a  
3     subsequent pleading, I think that she made an error in so  
4     representing herself, and as long as these kinds of  
5     formalities are observed, then I don't have a problem, and  
6     I don't think the court will.

7                   MS. FORTNEY:  Because we haven't had a  
8     problem with that in the past, and if we all agree, then  
9     that's -- that was our understanding why everything was  
10    consolidated under one and we all understand what's going  
11    on.

12                  JUDGE WOODRUFF:  All right.  Like I say, I  
13    don't want to get caught up too much in formalities, but  
14    there are --

15                  MS. FORTNEY:  I don't either.  It's  
16    happened in the past.

17                  JUDGE WOODRUFF:  -- certain formalities  
18    that need to be required.  Yes.

19                  All right.  I believe that takes care of  
20    all the pending motions, then.  Are there any other  
21    matters anyone wants to bring up?

22                  MR. TEMARES:  I had a quick question.

23                  JUDGE WOODRUFF:  Your name?

24                  MR. TEMARES:  Stan Temares.

25                  JUDGE WOODRUFF:  Okay.  Mr. Temares?



1                   MR. TEMARES: In representing both Folsom  
2 Ridge and HOA with the legal representation here and both  
3 on the telephone, who is paying for the HOA legal  
4 representation?

5                   MR. COMLEY: I don't have to answer that  
6 question.

7                   JUDGE WOODRUFF: That's not particularly  
8 relevant to the Commission at this point.

9                   MR. TEMARES: Well, I just -- supposedly  
10 I'm an HOA member. My bills quarterly go into a monthly  
11 pool of all the homeowners, and out of that pool we  
12 just -- it's spent in representation for the people on the  
13 island, utilities, so on, street cleaning, whatever they  
14 use the money for, but I don't know where the HOA is  
15 getting the money, I guess, itself to pay for legal  
16 representation for us.

17                   And I guess if he doesn't have to answer  
18 that, that's fine. I understand that, but I just --

19                   JUDGE WOODRUFF: It's not a relevant issue  
20 to me as the Commission. It's certainly something you  
21 might want to discuss later on after I've left the room  
22 and certainly with the HOA outside of the context of this  
23 prehearing conference.

24                   MR. TEMARES: I was just kind of confused  
25 about that. Thank you.

1 JUDGE WOODRUFF: Mr. Pugh?

2 MR. PUGH: Ben Pugh. In relationship to  
3 Duane Stoyer, this letter that you have received that's  
4 signed by me, would it -- you say he can't -- everybody  
5 has to represent himself. I talked to his wife yesterday.  
6 He's unable to even talk on the telephone at this stage of  
7 his cancer.

8 I guess my question to you is, could his  
9 son, who's a very educated man, could he represent his  
10 father here as a power of attorney? I don't even know  
11 whether he'd be willing to, but I just -- I'd just like to  
12 know where we stand legally on that.

13 JUDGE WOODRUFF: My first inclination  
14 without actually having done any research on it is  
15 probably not, although the son might be able to substitute  
16 himself as complainant.

17 MS. ORLER: Under the power of attorney?

18 JUDGE WOODRUFF: Yes. That's a  
19 possibility. I don't want to try and make a ruling on it  
20 at this point because I don't know.

21 MR. PUGH: Well, the sad part about this is  
22 I've known Duane Stoyer for years, and this complaint of  
23 his means quite a bit to him, and I can definitely tell  
24 you that he will be very disappointed that the complaint  
25 can't go through even though he is not physically able to

1 participate in it. But I understand you have laws that  
2 you have to go by also, so I can understand where you're  
3 coming from.

4 JUDGE WOODRUFF: If he wants to make any  
5 sort of a formal motion or pleading by writing, he can do  
6 that, and then I'll deal with his situation as best I  
7 can --

8 MR. PUGH: Okay.

9 JUDGE WOODRUFF: -- and see what we can do  
10 with it. Again, I don't want to try to be rigid about  
11 this, but it's going to be a difficult case to handle with  
12 nine complainants and without being able to represent each  
13 other.

14 MR. PUGH: Well, I really don't -- I'm just  
15 thinking, trying to think ahead. I really don't know  
16 whether his son would be willing to take on that, but I --  
17 his son is well aware of the complaint, and I kind of  
18 think that he would probably want to represent him if he  
19 could.

20 JUDGE WOODRUFF: Well, think about it, and  
21 if there's something -- if you come up with an idea, he  
22 can go ahead and file a motion to do that and we'll deal  
23 with it.

24 All right. I want to ask counsel for  
25 Staff, Mr. Krueger, what does Staff view its role in this

1 case as?

2 MR. KRUEGER: We believe that some kind of  
3 new entity needs to be formed, a regulated, a Commission  
4 regulated utility or legitimate homeowners association or  
5 not-for-profit corporation. We think that that's the best  
6 solution. We believe that it would be best if this could  
7 be accomplished rather than having to go to the necessity  
8 of a hearing.

9 At the same time, we know that the  
10 complainants are anxious to get their issues resolved and  
11 presented to the Commission. So we feel like we need to  
12 go ahead and work on a procedural schedule, set that up,  
13 but at the same time try to effect some kind of a solution  
14 where a Commission regulated entity or some other  
15 legitimate entity that's not subject to regulation of the  
16 Commission be formed to provide the services.

17 JUDGE WOODRUFF: All right. Does Staff  
18 anticipate filing evidence or presenting testimony in this  
19 case?

20 MR. KRUEGER: I think we would, yes.

21 JUDGE WOODRUFF: All right. Any other  
22 matters anyone wants to bring up?

23 MS. ORLER: I guess I would have a  
24 question. This would be in lieu of the ultimate formal  
25 hearing, if I understood you correctly?

1                   MR. KRUEGER: Well, if the matter can be  
2 resolved by some kind of an agreement, then a hearing  
3 wouldn't be necessary. But my suggestion is that we would  
4 proceed toward a hearing, while at the same time trying to  
5 negotiate something, something else that would be  
6 satisfactory to all parties.

7                   JUDGE WOODRUFF: I'll just add that  
8 frequently at the Commission the parties will agree  
9 amongst themselves as to the way a case should be  
10 resolved. They'll file what's called a stipulation and  
11 agreement that the Commission can then approve or  
12 disapprove.

13                   But that's entirely up to the parties, and  
14 it has to be -- basically has to be a unanimous agreement.  
15 Otherwise, we go ahead with the hearing. It's nothing  
16 that can be forced on any party.

17                   MS. FORTNEY: Did I understand right that  
18 still there might be some evidence and things like that  
19 that, testimony that needs to go on and hear? So there  
20 would be --

21                   MR. KRUEGER: I think what I said was the  
22 Staff would probably want to file testimony.

23                   MS. FORTNEY: Okay.

24                   JUDGE WOODRUFF: That brings up the next  
25 question. The reason, real reason I wanted you all to be

1 here today was so that you can give me a procedural  
2 schedule as to how you want to proceed to the hearing.  
3 Frequently in cases that are before the Commission we have  
4 what's called prefiled testimony, which is parties write  
5 down in advance -- the witnesses write down in advance the  
6 questions and the answers that they would like the  
7 Commission to consider.

8                   Everybody offers that testimony, then they  
9 can write rebuttal testimony and surrebuttal testimony,  
10 which is rebuttal to the rebuttal testimony. And then  
11 when we actually get to the hearing, the Commission -- or  
12 the hearing before the Commission is only for  
13 cross-examination based on that prefiled testimony.

14                   For consumer complaints like this, we don't  
15 always do that, and I'm going to leave that up to you to  
16 discuss amongst yourselves, how you think that would --  
17 could best be done. If we don't have prefiled testimony,  
18 basically everyone would have to come in, present your  
19 evidence through witnesses and be subject to  
20 cross-examination all in the hearing room.

21                   MS. FORTNEY: Everyone individually?

22                   JUDGE WOODRUFF: We'd have to try and  
23 figure out exactly how to do that, yes. Certainly if one  
24 or two of you want to call a particular witness, the  
25 others could have a chance to question that same witness.

1 We wouldn't have to call the same witness nine times.  
2 Again, we have to try and figure out the best way to do  
3 that as we can. I'll leave that up to your discussions  
4 today, whether or not you think you want to have prefiled  
5 testimony or if you just want to come in and do it live.

6 MS. ORLER: And would a response to what  
7 you have just presented take place in the form of a  
8 pleading filed with the Commission then, or how do we  
9 respond to what you just presented after we've had a  
10 chance to discuss it?

11 JUDGE WOODRUFF: What I'm going to ask you  
12 to do is, I'm going to ask counsel for Staff if he's  
13 agreeable to file a report a week from now just explaining  
14 what you've agreed upon. If you can't agree, that's fine,  
15 too, and you can all file your own report saying, I think  
16 I'd like to do it this way, and somebody else can say, we  
17 want to do it that way, and then it'll be up to the  
18 Commission to decide exactly how we're going to do it.

19 MS. FORTNEY: And who does that report go  
20 to?

21 JUDGE WOODRUFF: That would just be filed  
22 in the case. It would come to me, and ultimately it would  
23 probably get decided by the Commissioners.

24 I'm also going to ask you to develop a list  
25 of issues that you want the Commission to decide, keeping

1 in mind, of course, that -- I think there was some mention  
2 of this in some of the replies and the motions that have  
3 been filed -- that the Commission cannot issue  
4 injunctions, for example. We just don't have the  
5 authority to do that. We also can't enforce most  
6 environmental laws. So if there's a problem with  
7 something that DNR needs to resolve, we can't do that. So  
8 try and narrow your issues.

9 The big issue, of course, is whether these  
10 companies are providing service without a certificate, but  
11 there may be other issues that you need to discuss amongst  
12 yourselves and try and narrow that down so that we have a  
13 clear idea exactly what we're going to do here.

14 Ms. Fortney?

15 MS. FORTNEY: Yes. There may be a couple  
16 of issues that are out of the control of PSC or DNR, but  
17 if I remember right, in that meeting we had talked about  
18 possibly under regulations that a lot of times when a  
19 utility is regulated then there's -- there are additional  
20 things that are above and beyond that can be stated within  
21 those laws, and so is that -- that would come up at that  
22 time?

23 JUDGE WOODRUFF: Yes.

24 MS. FORTNEY: So we would still have a  
25 chance to address those issues we have outstanding but in



1 another forum?

2 JUDGE WOODRUFF: Yes. And again, I'll ask  
3 Staff to file a list of witnesses -- or excuse me -- a  
4 list of issues as well.

5 MS. FORTNEY: Those issues?

6 JUDGE WOODRUFF: Yes, that you can agree  
7 upon. That can be put down as part of the procedural  
8 schedule. It doesn't have to be done a week from now.

9 MS. ORLER: So the issues, we've been  
10 developing a list to this point, and there are obvious  
11 issues that fall within the jurisdiction of the PSC and  
12 then resulting issues that were created from the very  
13 reason that we are here that can only be addressed in the  
14 civil court level. So we would address, then, the issues  
15 that do fall within the jurisdiction of the Public Service  
16 Commission, but because the civil court issues were  
17 originated or generated from the PSC issues, we would make  
18 a list of those and set those aside?

19 JUDGE WOODRUFF: Certainly you could do  
20 that, yes. And again I'm not trying to limit your issues  
21 at this point. I want you to discuss that amongst  
22 yourselves. I just want to make sure that that is  
23 something that you discuss today.

24 MS. ORLER: We don't want to waste the  
25 court's time because we realize that some of the issues

1 are not within the jurisdiction of the PSC. However,  
2 those issues were generated from the very reason that we  
3 are here before the PSC.

4 JUDGE WOODRUFF: Sure. Okay. I have a  
5 copy of the Commission's schedule running through October,  
6 and you can pick day or dates that you want to propose for  
7 the hearing. And like I say, the hearings will be here in  
8 Jefferson City, the larger courtroom behind me.

9 MS. FORTNEY: Like one day, two days?

10 JUDGE WOODRUFF: However long you think.  
11 That's something you need to discuss and who your  
12 witnesses are going to be and how long you think it will  
13 take for them to testify. That also is going to depend  
14 upon whether or not you file prefiled testimony. A live  
15 hearing takes longer than just a cross-examination hearing  
16 does.

17 MS. ORLER: Do you have a listing of the  
18 hearing procedures, like the purpose of this meeting today  
19 is to schedule a date for an evidentiary hearing, then  
20 what follows suit to an evidentiary hearing prior to a  
21 formal hearing?

22 JUDGE WOODRUFF: Well, the evidentiary  
23 hearing is the formal hearing.

24 MS. ORLER: All right. Okay.

25 JUDGE WOODRUFF: Once the hearing is

1 completed and we've taken the evidence, we'll probably  
2 allow for post hearing briefs if the parties want that,  
3 and then it would go to the Commission for decision and we  
4 would issue a decision. Then you have ten days to request  
5 a rehearing, and thereafter you can appeal to the circuit  
6 court if you're unhappy with the result. But that's a  
7 little bit further down the line.

8 Ms. Fortney?

9 MS. FORTNEY: It sounded like someone  
10 joined us or got bumped off the phone.

11 MR. COMLEY: It sounded like there was some  
12 sort of operator on there.

13 JUDGE WOODRUFF: Can you tell who's on the  
14 phone now?

15 MR. SCHRADER: I'm still here, Schrader.

16 JUDGE WOODRUFF: Mr. McElyea?

17 MR. MCELYEA: I'll still here.

18 JUDGE WOODRUFF: Okay. These hearings or  
19 these phone connections can be a little problematic  
20 sometimes. Once in a while somebody winds up jumping onto  
21 the line that shouldn't be here.

22 All right. Well, I'm going to ask again  
23 that Staff file a report what's decided today as far as  
24 procedural schedule, proposed procedural schedule, and  
25 file that by April 10, which is a week from Monday.

1                   I hope everyone's still there on the phone.  
2   There's a lot of crackling there. Mr. McElyea, are you  
3   still there?

4                   MR. McELYEA: Yes, I'm still there. Sounds  
5   like the 4th of July here.

6                   JUDGE WOODRUFF: All right. Well, with  
7   that, then, I'm going to excuse myself from the room and  
8   the on-the-record portion of this proceeding. You can all  
9   stay on the telephone line and in the room to discuss  
10   these matters amongst yourselves, and if you have any  
11   questions that you need to have answered by me, I'll be  
12   upstairs. Thank you all. We're off the record.

13                  WHEREUPON, the recorded portion of the  
14   prehearing conference was concluded.

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