

September 14, the Office of the Public Counsel (Public Counsel) filed its objection to the Agreement and requested a hearing.

On September 18, Public Counsel supplemented its request for a hearing and specified that it opposes the overall rate of return calculation included as item (4) of the Agreement. Public Counsel further requested a waiver of the 270-day deadline, citing as good cause several outstanding data requests, including its unresolved motion for the production of documents.⁴

The Company responded that Public Counsel's issue identification so late in the process deprives the Company of due process as it will have no meaningful opportunity to engage a rate of return expert and conduct discovery as to Public Counsel's position due to the deadlines imposed by the Rule. Elm Hills also notes the hearing process will create additional costs to the customers greater than the value of the issues that would be tried, given the cost of an expert and other litigation expenses. The Company complained indirectly that Public Counsel's specified list of issues, as required by subsection 12 of the Rule,⁵ is insufficient.⁶

The Commission directed the parties to submit a proposed procedural schedule. The parties could not agree on the specifics of a schedule, but Public Counsel and Elm Hills both submitted schedules that would fit within the time limits established by the Rule. In its scheduling filing, Public Counsel further argued that Elm Hills' position regarding a loss of due process due to the Rule's upcoming deadlines also constitutes good cause

⁴ The Commission will address Public Counsel's production motion separately.

⁵ 20 CSR 4240-10.075(12)(A) states, "Any party may file a request for an evidentiary hearing. A request for an evidentiary hearing shall include a specified list of issues that the requesting party believes should be the subject of the hearing."

⁶ See Elm Hills' Response to [Public Counsel's] Objection to Non-Unanimous Deposition Agreement and Request for an Evidentiary Hearing, filed September 21, para. 11.

for waiving the deadlines.⁷ In its scheduling filing, Elm Hills argued that delay resulting from waiver of the Rule's deadlines would violate its right to fair and reasonable rates, since all parties appear to agree that some rate increase is necessary.

The Commission has considered the request for an evidentiary hearing and waiver of the Rule's pending deadlines and balanced the interests of the ratepayers, the shareholders, and Elm Hills. The Commission's actions in this Order will address the Company's due process concerns with time constraints. Additional rate case expense, while unfortunate, should not be the basis for refusal to conduct an otherwise necessary hearing.

The Commission finds that Public Counsel's request for a hearing was reasonable, timely, and was made with enough specificity to meet the requirements of subsection (12)(A) of the Rule. Public Counsel's request also meets the requirement of due process to give adequate notice to the Company of the issues that will be the subject of the hearing. The Commission will grant Public Counsel's request for an evidentiary hearing.

The Commission finds good cause exists to waive the Rule's pending 240 and 270-day deadlines. Good cause is found in the need for Public Counsel to conclude its discovery and resolve pending data requests. Good cause is also found in the Company's due process concerns about preparation for a hearing given the pending deadlines set out in the Rule. The Commission will grant Public Counsel's request to waive the Rule's pending deadlines.

⁷ See Response to Commission Order Regarding a Procedural Schedule, Second Request for a Rule Waiver, and Other Matters. In this September 22 filing, Public Counsel also makes a second request to waive the Rule's deadlines, independent of its first. The outcome of this Order makes Public Counsel's second request moot. From the same filing, the Commission will consider Public Counsel's request regarding live sur-rebuttal testimony in lieu of three rounds of pre-filed testimony as not yet ripe as this Order will direct the filing of a new proposed procedural schedule which may address Public Counsel's concern.

By granting the requested evidentiary hearing and deadline waiver, the Commission does not anticipate a resolution in this case before October 24, and thus will need to suspend the tariffs filed by Elm Hills on September 9. The Commission will suspend replacement tariffs YW-2021-0057 and YS-2021-0058 with effective dates of October 24.

Section 393.150, RSMo (2016), authorizes the Commission to suspend the effective date of proposed tariff sheets for 120 days to allow for a hearing. Accordingly, in order to provide sufficient time to determine if Elm Hills' proposed tariff sheets are just and reasonable, the Commission will suspend the tariff sheets for 120 days beyond the effective date.

In light of the Commission's waiver of the Rule's deadlines, the Commission will request a new joint proposed procedural schedule from the parties. The Commission requests the parties include the following as part of a proposed procedural schedule leading to an evidentiary hearing:

- Submission of a Joint Stipulation of Facts;
- Submission of List of Issues and Order of Hearing Components, and Position Statements at least four days in advance of the hearing;
- At least one settlement conference;
- Allowance for ten business days for transcript preparation;
- An evidentiary hearing held via WebEx.

Any request for expedited hearing transcripts must be made before the procedural schedule is established.

The Commission may delegate any adjudicative authority to the regulatory law judge assigned to this action.⁸ To ensure that all discovery disputes are ruled upon expeditiously, the Commission will delegate its authority to the regulatory law judge assigned to this action to rule on discovery disputes and to rule on all motions to compel discovery. The Commission will set forth further provisions for discovery by separate order when setting a full procedural schedule.

THE COMMISSION ORDERS THAT:

1. No later than October 8, 2020, the parties shall submit a joint proposed schedule as described in this order.
2. The replacement tariffs filed by Elm Hills, YW-2021-0057 and YS-2021-0058 with effective dates of October 24, are suspended until February 21, 2021, or until otherwise ordered by the Commission.
3. The regulatory law judge assigned to this action shall have full authority to rule on any discovery dispute, including the pending motion for production of documents.
4. This order shall be effective when issued.



BY THE COMMISSION

A handwritten signature in black ink that reads "Morris L. Woodruff".

Morris L. Woodruff
Secretary

Silvey, Chm., Kenney, Rupp, Coleman, and
Holsman CC., concur.

Hatcher, Regulatory Law Judge

⁸ Section 386.240, RSMo (2016).