

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

Rulemaking on Expedited Complaint Procedure)
Proposed Rule 4 CSR 240-2.071) Case No. AX-2005-0364

COMMENTS OF MCI ON PROPOSED RULE 4 CSR 240-2.071

COMES NOW MCI, and for its comments regarding Proposed Rule 2.071, known as the Expedited Small Complaint Procedure, respectfully states the following:

1. Current Rule 2.070 (Informal Complaint Rule). The proposed rule should not supplant or replace rule 2.070, which provides for informal resolution of disputes. The informal resolution process set forth in Rule 2.070 works well and is used to resolve most of the complaints received by the Commission. A complaining party should be required to use Rule 2.070 before resorting to Proposed Rule 2.071. If the complaining party is unsuccessful in resolving his or her complaint under the informal resolution process, such party may then use the Expedited Small Complaint Procedure. Rule 2.071 should be clarified to reflect these concerns.

2. Judicial discretion. The rule should provide for dismissal if the facts warrant that result. The rule currently requires that all complaints be set for hearing before a regulatory law judge. The RLJ should have the discretion to dismiss a complaint brought under this rule if the facts warrant a dismissal, rather than require both parties to go to hearing. Section 2.071(4) of the proposed rule should be amended to allow for dismissal of a complaint.

3. Regulated services. The proposed rule currently applies to “complaints against companies regulated by the [PSC]” The rule should be limited to complaints

regarding services regulated by the Commission, not companies regulated by the Commission. The rule as presently written is over inclusive because it covers all services offered by a company regulated by the Commission, whether or not those services are themselves regulated by the PSC. There are many services offered by utilities which are not regulated by the Commission. The first sentence of 2.071(1) needs to be rewritten to clarify that the rule covers regulated services, not regulated companies.

4. Define “small complaint.” The proposed rule should define a “small complaint” applicable under this proposed rule. MCI suggests that a dollar limit of \$1,000 is a reasonable limit. That is, a dispute in excess of \$1,000 may not be brought under the proposed Expedited Small Complaint Procedure. Also, individual customers should be the only customer class able to use this rule; it should not be available to other classes of customers, such as business customers. The proposed rule should be amended to include these limitations.

5. Procedural matters. The proposed rule allows a complainant to file a complaint without an attorney. The rule should be clarified to permit the use of discovery and cross-examination. Most, if not all, of the respondents to a complaint brought under this rule engage attorneys to represent them in matters before the Commission. The rule should be amended to expressly allow for discovery and cross-examination and allow, but not require, either party to use an attorney in matters brought under the proposed rule. Finally, section 2.071(5) provides for a motion for rehearing process; however, the rule does not set out who will preside over the motion for rehearing. The rule should be amended to allow for the Commission to preside over motions for rehearing filed under section 2.071(5).

6. Neutral investigator. Section 2.071(4)(D) of the proposed rule states that the RLJ will provide the Commission’s technical staff and the Office of Public Counsel with a copy of the complaint and that the Staff and OPC may conduct a “neutral investigation of the matter and present their findings at the hearing.” Public Counsel should not be involved in hearings under this rule, particularly in this capacity as a “neutral” investigator for the following reasons. First, Public Counsel is an advocate for consumers; he is not a “neutral” third party. Secondly, involving multiple parties in what is supposed to be an “expedited” complaint procedure makes no sense.

WHEREFORE, MCI prays that the Commission consider its comments and modify the proposed rule accordingly.

Respectfully submitted,

**CURTIS, HEINZ,
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CERTIFICATE OF SERVICE

Copies of this document were served on all counsel of record by e-mail on July 15, 2005.

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