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Missouri Public
Service Commission

May 28, 2010

Mr. Steven C. Reed
Secretary of the Commission
Missouri Public Service Commission
P.O. Box 360
Jefferson City, Missouri 65102

**Re: Proposed Small Formal Complaint Process Rule
Commission Case No. AX-2010-0249**

Dear Mr. Reed:

The Missouri Telecommunications Industry Association ("MTIA") and the Missouri Energy Development Association ("MEDA") generally support the Missouri Public Service Commission's ("Commission's") proposed rule for handling small formal complaints. We share the Commission's goal of improving the process for addressing customer disputes and making hearing locations more convenient for customers.

Through the following comments, we wish to stress the importance of preserving existing Commission procedures that are effective in informally resolving customer disputes; suggest permitting telephonic hearings; and offer comments designed to eliminate procedural irregularities in the proposed rule:

1. Preserve Existing Informal Dispute Resolution Processes.

MEDA and MTIA members have found the informal complaint and mediation processes available under existing Commission rules to be valuable tools for resolving customer complaints. Currently, 4 CSR 240-2.070(3) requires an informal complaint to be made to the Commission under 4 CSR 240-2.070(2) before a formal complaint can be pursued ("if a complainant is not satisfied with the outcome of the informal complaint, a formal complaint may be filed . . ."). By referring a complaint to the company early, the company is often able to resolve the disputed issue on an informal basis. In addition, 4 CSR 240-2.125 provides procedures for supervised mediation. This rule permits the Commission to suspend formal proceedings in a complaint case and toll all time limitations in that case pending the completion of the mediation process.

We do not believe the Commission intends the proposed small complaint procedure to supplant the informal complaint and mediation procedures. However, a potential conflict exists in that the proposed rule contains no informal complaint prerequisite. Thus, under

Section 14 (which states ". . . the provisions of Sections (1)-(13) of this rule shall apply unless they are in direct conflict with the provisions of this section, in which case, the provisions of this section shall apply . . ."), the informal complaint prerequisite could be read out of the rules. In order to avoid losing this valuable procedure, we suggest making clear in the proposed rule that the existing informal dispute resolution and mediation procedures remain applicable both before and when a small formal complaint is filed.

2. Permit Telephonic Hearings.

MEDA and MTIA support the Commission's proposal to make the hearing process more convenient for customers by holding hearings in the county where the utility service is rendered. We also believe the hearing process could be made more accessible by allowing either party to participate by telephone. Adding this option would also reduce the fiscal impact of the proposed rule, as it could reduce travel expenses.

3. Add Opportunity for Objecting to use of Small Complaint Process.

MEDA and MTIA recommend adding an opportunity for either party to object to the use of the small complaint process. As written, the proposed rule allows the Commission "to hear and decide . . . formal complaints as it deems fit. Should the Commission issue such an order, the complaint shall no longer qualify for treatment under this section." See proposed 4 CSR 240-2.070(14)(B). But there is no mechanism under the proposed rule for a party to seek such an order from the Commission. Occasionally, a small dollar complaint is raised that requires Commission interpretation of a tariff of general application. In such a case, either party (or both) may believe that a full contested case hearing would be more appropriate. We therefore suggest adding to Section 14(A) a provision that either party to the complaint may within the time allotted for filing an answer, file an objection to the use of the small formal complaint procedure. Upon the filing of such an objection, procedural deadlines (e.g., for filing an answer) should be suspended until the Commission rules on the objection.

4. Recognize Minimum Complainant Requirement for Utility Rates Complaints.

MEDA and MTIA suggest clarifying the rule to avoid a potential conflict with a statutory complaint-filing requirement. Section 386.390(1) RSMo authorizes the filing of complaints against public utilities but provides, in pertinent part, that "no complaint shall be entertained by the Commission . . . as to the reasonableness of any rates or charges of any gas, electrical, water, sewer or telephone corporation . . . unless the same be signed by . . . not less than twenty-five consumers or purchasers, or prospective consumers or purchasers of such gas, electricity, water, sewer or telephone service." 4 CSR 240-2.070(3) also incorporates this requirement.

The proposed rule, however, appears to allow a small formal complaint regarding the reasonableness of utility rates or charges to be filed by a single customer, in conflict with the statutory twenty-five complainant requirement. And the conflicts provision in the proposed rule (Section 14) would appear to result in the statutory twenty-five-complainant requirement being improperly overridden. In order to help this rule withstand scrutiny, MEDA and MTIA recommend adding language to paragraph 14 stating "Notwithstanding the foregoing, the requirements in Section 3 for initiating a complaint concerning the reasonableness of utility rates or charges shall continue to apply."

5. Avoid an Unlawful Delegation Issue by Making RLJ's Decision a Recommended Decision.

MEDA and MTIA question whether the Commission, through this proposed rule, can delegate to an RLJ "the commission's authority to hear the case, make rulings, and issue a report and order or other appropriate order disposing of the case." Proposed 4 CSR 240-2.070(14)(C). This delegation would appear to conflict with Section 536.080(2) RSMo., which provides that "In contested cases, each official of an agency who renders or joins in rendering a final decision" is required, prior to such final decision, to "either hear all the evidence, read the full record including all the evidence, or personally consider the portions of the record cited or referred to in the arguments or briefs." To avoid challenges that the proposed rule constitutes an unlawful delegation of authority, we recommend amending the rule to make the RLJ's decision a recommended decision, which the Commission, after an opportunity for comment by the parties, could adopt, modify, or reject. The Commission employs a similar process for arbitrations. See 4 CSR 240-36.040(19), (20), (21) and (24).

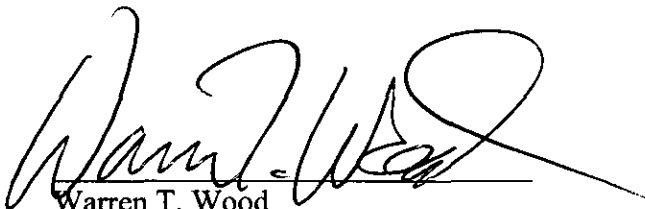
6. Staff Should Not Serve Both an Investigatory and a Judicial Role.

MEDA and MTIA believe that the Staff investigatory function under the proposed rule should be separated from the judicial advisory function. Under current Commission procedures and practices, the Commission ordinarily directs Staff to investigate a complaint and make a recommendation. Staff participates as a party and conveys its factual findings, its conclusions and its recommendation to the Commission, under oath and subject to cross-examination by other parties. The proposed small formal complaint rule, however, combines the investigatory and judicial advisory functions, effectively insulating all substantive Staff communication with the RLJ (including factual findings, conclusions and recommendation) from discovery and cross-examination by the parties. Basing decisions on such *ex parte* communications would violate the parties' due process rights. The proposed rule would better withstand scrutiny by limiting Staff's participation to performing an investigation and making a recommendation, without serving in an advisory capacity to the RLJ.

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We appreciate your bringing these comments to the Commission's attention for its appropriate consideration.

Respectfully submitted,

A large, stylized handwritten signature in black ink, appearing to read "Warren T. Wood".

Warren T. Wood
President, MEDA

A handwritten signature in black ink, appearing to read "Richard Telthorst".

Richard Telthorst
President, MTIA