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STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION  
  
TRANSCRIPT OF PROCEEDINGS  
Rulemaking Hearing  
December 21, 2017  
Jefferson City, Missouri  
Volume 1

In The Matter of a Proposed Rule)  
Regarding Staff Assisted Small ) File No. AX-2018-0050  
Utility Rate Cases )

MORRIS L. WOODRUFF, Presiding,  
CHIEF REGULATORY LAW JUDGE  
Daniel Y. Hall, Chairman,  
COMMISSIONER

REPORTED BY:  
Rebecca A. Brewer, CCR, RPR, CRR

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A P P E A R A N C E S

For Staff of the Missouri Public Service Commission:

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1 comments and concerns and I'm going to let staff  
2 and the commissioners respond to that and in kind  
3 of a back and forth developmental itemization by  
4 issues. That will help me when I actually have  
5 to try to make the final rule making on this  
6 also.

7 MR. SMITH: Judge, also I wanted to have  
8 judicial notice be taken of OPC's prior comments  
9 in the workshop. Would that be appropriate to do  
10 now or wait?

11 JUDGE WOODRUFF: Let's wait for that and  
12 we'll discuss that when it comes up. All right.  
13 Let's go ahead and get started, then, with Staff.

14 MR. WESTEN: Judge, if I may ask  
15 permission to just stay in my seat here.

16 JUDGE WOODRUFF: You may do that.

17 MR. WESTEN: I guess what would be  
18 appropriate is probably just a quick overview of  
19 the current rule, kind of the history and why  
20 this proposal --

21 JUDGE WOODRUFF: First of all, tell us who  
22 you are.

23 MR. WESTEN: That would likely help. My  
24 name is Jacob Westen. I'm counsel for the Staff  
25 Counsel's Office. And I'm here representing

1 Staff. And my information has been provided with  
2 the court reporter. May it please the  
3 Commission, I'd like to do just a brief overview  
4 of the current rule and the issues with that rule  
5 and the ways that the proposed rule changes those  
6 and helps address some issues. This rulemaking  
7 is to rescind the current small rate case rule  
8 for CSR 240.050 and replace it with a new  
9 proposed rule -- I'm sorry, 3.05 -- my apologies.  
10 The current rate case, small utility rate case  
11 procedure, is 4 CSR 240-3.050 and the new  
12 proposed rule is 4 CSR 240-10.075. It modifies  
13 those rate case procedures. This has been a  
14 process that's been going on for some time. The  
15 workshop that was originally began in April 2017,  
16 that workshop is WW-2017-0283. And the process  
17 began even prior to then. Staff had been, for  
18 about a year, evaluating how the rules operated,  
19 the effectiveness of them, how it affected the  
20 parties and had been working on potential changes  
21 to the rule that we wanted to propose. With the  
22 workshop, we got public comments from OPC, from  
23 stakeholders, interested stakeholders, lots of  
24 different companies participated. And in July of  
25 2017 we had a formal workshop setting where the

1 public and interested parties provided comments.  
2 They had provided written comments ahead of time  
3 and were able to provide comments during the  
4 workshop and afterwards staff compiled those  
5 comments and provided them to the Commission and  
6 filed them in this case and Staff then attempted  
7 to balance the comments that were made because  
8 there were different viewpoints and competing  
9 viewpoints to try to address those concerns as  
10 best as possible and make changes to the -- that  
11 pre-proposed rule. From the edits to the  
12 proposed rule at that time, this docket was  
13 opened. The major issues that Staff found with  
14 the operation of the previous small rate case  
15 rule are, globally speaking, are issues with the  
16 efficacy of it when it's getting a small utility  
17 to a finite, finished case quickly, making sure  
18 those rates are implemented quickly so that the  
19 small utility can operate successfully, making  
20 sure that fairness to all the parties involved  
21 with the rule and utility counsel and Staff and  
22 the customers, making sure that the -- the Staff  
23 is able to provide assistance to the  
24 unsophisticated companies that might have trouble  
25 being able to put together a rate case. These

1 are all the major goals of the small utility rate  
2 case and Staff believes with these proposals we  
3 can enhance those goals. This is an anecdotal  
4 observation on my part. But in the few years  
5 that I've been practicing with Staff, I believe  
6 that even a small rate case procedure is a  
7 complex and can be a challenging process for a  
8 small system and there's a fear of that  
9 complexity or concern about that complexity and  
10 about the potential adversarial nature of this  
11 and the company that wants to avoid that process  
12 will soon find itself in financial constraints  
13 and hardship and that, of course, leads to a  
14 system that may have trouble operating. And it's  
15 in all of these stakeholders' interests, OPC,  
16 Staff, the Commission, the customers, the  
17 company, the neighbors of that system, to have a  
18 rate case process that allows a utility to come  
19 in, to effectively adjust and address its rates  
20 as needed, and to get to the conclusion of that  
21 process as efficiently as possible. We have made  
22 a couple very important changes to the rule and I  
23 want to address those briefly. We did file  
24 comments as to the proposed rule on  
25 December 15th. All of those comments are in

1 the case. At this point in time I'd ask to have  
2 the Commission take notice of those comments.

3 JUDGE WOODRUFF: They're in the record. I  
4 don't need to take notice of them.

5 MR. WESTEN: But I want to hit on just a  
6 couple major changes here that I think are worth  
7 drawing note of -- note to. The first one is a  
8 change to the timing of the local public hearing.  
9 The current rule has a local public hearing able  
10 to be requested at Day 150. That's five months  
11 into the process. The proposed rule makes the  
12 request for local public hearing must occur  
13 within the first 60 days unless the parties agree  
14 that a local public hearing is not necessary.  
15 That allows Staff and OPC and the parties to hear  
16 customer concerns prior to completely finishing  
17 an investigation or an audit. It allows more  
18 customer feedback and allows Staff to become  
19 aware of service issues or other issues that may  
20 not be addressed as part of the audit process  
21 earlier on in the case so they can be resolved by  
22 the end of the case. Another big item that is  
23 changed in the proposed rule is clarification of  
24 the Staff assistance that occurs and that is  
25 primarily through the Staff audit. The proposed



1 rule clarifies that Staff audit will follow  
2 internal procedures that don't apply a one size  
3 fits all approach but are reasonably flexible  
4 enough to allow the Staff to follow general and  
5 accepted rate making approaches for all small  
6 utilities and making sure we provide general  
7 consistencies in those rate making policies and  
8 this also ensures that we're going -- Staff will  
9 be evaluating utility's rate base with every rate  
10 proceeding. It allows Staff to, with the  
11 evidence that is available, the documentation  
12 that is available, build a cost of service  
13 appropriate for that company. It allows a little  
14 bit more flexibility to Staff to estimate based  
15 on actual evidence what those items are. This  
16 isn't required but it does allow that flexibility  
17 to exist. It also makes clear that with some of  
18 these companies they need help with communicating  
19 and providing notice to their customers and Staff  
20 can assist with that. It may need help drafting  
21 tariffs. Staff can assist with that. We're not  
22 going to stand in the shoes of the company.  
23 We're not going to represent the company, but to  
24 the extent there are technical issues, the  
25 company may have difficulty preparing or

1 performing, Staff can assist with that process:  
2 Those are, I think, the two biggest changes. Oh,  
3 there's one other important point. Also, a  
4 change and a couple points in the customer  
5 notice. The proposed rule has the customer  
6 notice going out with the notice of the local  
7 public hearing. That's at the 60-day mark. Or  
8 if there is a notice that there will be no local  
9 public hearing, after that decision is made, a  
10 customer notice of the rate case is sent at that  
11 time. This is different from the current rule,  
12 which has several customer notices sent  
13 throughout the life of the case. Staff's  
14 experience has been that with multiple customer  
15 notices, with different proposals, that it  
16 confuses customers. They seem to think their  
17 rates have been raised multiple times, changed  
18 multiple times throughout the process, and we're  
19 trying to avoid customer confusion. Another  
20 important change is that the total time for the  
21 process has been reduced by 30 days. The current  
22 rule is for 11 months. The new rule has been  
23 shortened to 10 months and the idea behind  
24 shortening that total length of time for the  
25 rules to go into effect is to allow these small

1 utilities to reach their rates faster so they are  
2 not stuck in a holding pattern while the case  
3 processes.

4 Those are the major comments that I wanted  
5 to address. We do have further comments in our  
6 file document and I'm happy to answer any  
7 questions at this time.

8 JUDGE WOODRUFF: Do you have any  
9 questions?

10 MR. HALL: Not at this point. I think go  
11 ahead and hear OPC's comments and they can we can  
12 engage in a back and forth.

13 JUDGE WOODRUFF: I have a clarifying  
14 question. One of your comments was a concern  
15 that utilities were afraid to come in for rate  
16 increases.

17 MR. WESTEN: Yes.

18 JUDGE WOODRUFF: From Staff's perspective,  
19 what's the downside of that?

20 MR. WESTEN: The downside to being afraid  
21 to come in?

22 JUDGE WOODRUFF: Yes.

23 MR. WESTEN: It's been my experience and I  
24 think comments from Staff, our observations have  
25 been that when you have a company who is afraid

1 to come in to have their rates addressed,  
2 concerned about that process, that they don't.  
3 And rates don't change. And you find -- you find  
4 the regulatory environment includes rates that  
5 were set for some companies a couple years ago  
6 and rates that were set for companies 22, 23, 10  
7 years ago. Those rates no longer cover those  
8 utilities' actual cost of services. Those rates  
9 are -- have essentially remained artificially  
10 low. And that leads to problems where the  
11 company is unable to actually pay for the service  
12 that it needs. It may not be able to meet  
13 specific environmental upgrades that are being  
14 asked of it by DNR. It may not be able to meet  
15 just operational requirements paid for a  
16 certified operator. And if the company's able to  
17 come in and does come in, at the very least, we  
18 can set rates to cost of service, which is the  
19 whole point of rate regulation.

20 JUDGE WOODRUFF: All right. Then we'll  
21 move over to Public counsel. At this point you  
22 want to make any -- we'll call it an opening  
23 statement and then we'll move into specific  
24 concerns.

25 MR. SMITH: Sure. And I would request the

1 same leniency as to be able to give this opening  
2 statement from my chair, if that's okay.

3 JUDGE WOODRUFF: Absolutely.

4 MR. SMITH: And, also, I'd like to have  
5 the Commission take judicial notice of OPC's  
6 comments, Item 8 and Item 4, in the workshop case  
7 WW-2017-0283.

8 JUDGE WOODRUFF: Okay. We don't really --  
9 we're not concerned about taking judicial notice  
10 of this because this is a very, you know, still  
11 informal process. It's not a contested case  
12 proceeding. My understanding is what you're  
13 talking about is the -- off the counsel's initial  
14 comments and amended comments, two written  
15 documents, is that correct?

16 MR. SMITH: In the workshop, exactly.

17 JUDGE WOODRUFF: In the workshop, which  
18 was Case No. WW-2017-0283. What I would suggest  
19 is we just go ahead and mark those as exhibits  
20 and we'll admit it into the record in that way.  
21 That way it's clear that it's in the record for  
22 this ruling and I happened to make a copy of them  
23 a few minutes ago. So I'll go ahead and I'll  
24 make the initial comments as Exhibit 1. And the  
25 amended comments as Exhibit 2.

1 (Hearing Exhibit 1 and Exhibit 2 marked.)

2 MR. SMITH: I have some very brief  
3 prepared comments and I think my initial comments  
4 had been responsive to Staff's opening but, also,  
5 I wanted to say a few things responsive to  
6 Staff's opening. One thing that was mentioned  
7 was the word "unsophisticated." I don't know  
8 that all small utilities under the rule are truly  
9 unsophisticated. We have companies like Liberty  
10 who operate in the state of Missouri who  
11 technically meet the small utility definition.  
12 We have growing companies, CSW water, who is  
13 getting bigger. In the most recent case they  
14 hired two rate of return experts. So one idea,  
15 and this is not put into our written comments,  
16 but there is some evidence in the statute, so  
17 what is a small utility? The rules right now  
18 have numbers on that. In the statutes, under  
19 393.146 and 393.320 as well as 393.145 all define  
20 that in kind of a similar way. And it matches  
21 the rules. But note those statutes pertain to  
22 acquisitions by a larger, more capable company.  
23 I think, without saying it, they mean Missouri  
24 American Water, but because I think that's the  
25 only company that would really meet -- meet that

1 requirement. And then also 393.145 talks about a  
2 receivership, so these are kind of the end of  
3 life statutes. There is a different statute,  
4 393.147, which talks about you -- basically a  
5 loan program between the Commission and EIERA.  
6 OPC had investigated that. We understand that  
7 that program is no longer active but that statute  
8 specifically references a customer account of  
9 1,000, so the only statute that talks about  
10 actually trying to help existing utilities that  
11 are small references a figure of 1,000. So  
12 perhaps -- or if we're trying to help  
13 unsophisticated actors, perhaps some  
14 consideration should be given to the size and  
15 level of sophistication of the parties availing  
16 themselves of this procedure.

17 JUDGE WOODRUFF: If I can interrupt for a  
18 moment. First of all, I'm not sure you  
19 identified yourself for the record.

20 MR. SMITH: Absolutely. I'm sorry, Ryan  
21 Smith with OPC, or Office of the Public Counsel.  
22 My information has already been provided.

23 JUDGE WOODRUFF: And I want to ask a  
24 question of Staff about your comment about  
25 limiting this to 1,000. Where is the -- what's

1 the basis for the 8,000? And would 1,000 work  
2 better?

3 MR. WESTEN: I think the 8,000 number is  
4 sourced from the statutes that Mr. Smith  
5 identified and because those are identified as  
6 small utilities that may have operational issues  
7 or need receivership or need to be acquired.  
8 And, right, this rule talks about small gas and  
9 water, it's not just specific to water. Although  
10 I think --

11 JUDGE WOODRUFF: I don't think there are  
12 any small gas corporations at this point.

13 MR. WESTEN: I'm not familiar with any  
14 small gas systems right now in operation. I  
15 can't answer today as to whether or not 8,000 or  
16 1,000, which number is better. I would be  
17 concerned about limiting the regulation to  
18 something smaller than what has already been  
19 identified in statute as being a small utility.  
20 But I don't know that I can provide any kind of  
21 answer as the efficacy of 8,000 or 1,000 or  
22 fewer. The largest system that is a small system  
23 in operation in Missouri today, I believe, is  
24 Raytown and they have 5,000 -- 6,000 customers at  
25 this point in time. I think their primary source



1 of water is they actually purchase it from the  
2 city of Kansas City. So I don't -- I don't know  
3 that limiting it, just based on number count,  
4 would be an appropriate metric. I don't think  
5 it's a bad metric. Obviously we're using it  
6 right now for what we have, but I don't know that  
7 I can comment one way or the other as to whether  
8 1,000 is better than 8,000 or not.

9 JUDGE WOODRUFF: Back to you, then,  
10 Mr. Smith.

11 MR. SMITH: Another comment made by Staff  
12 was as to the timing of the local public hearing  
13 and their support for a change in the timing.  
14 OPC doesn't generally oppose a change in the  
15 timing. But we do have some problems with having  
16 it as soon as 60 days. Part of the problem with  
17 having it that early in the case is that the  
18 audits haven't been developed, which means you  
19 might be coming to the consumers without a lot of  
20 information. And from OPC's perspective, that is  
21 a concern. From an optics perspective of the  
22 customer, it's whether or not, really, any of the  
23 parties are prepared to answer questions that  
24 they may have. And we don't really know yet what  
25 the proposals of the various parties are at that

1 point, so the company, often times, files a  
2 letter, that's how they often times start this  
3 case. And with the really small companies, the  
4 initial letter often has a number that isn't  
5 exactly consistent with fact and that gets vetted  
6 through the Staff and OPC auditing process. So  
7 our primary concern with 60 days, although we're  
8 not opposed to having it earlier, in fact, we  
9 think having it earlier could be a good thing.  
10 It could get customers' voice in earlier, it  
11 could encourage settlement conversations earlier,  
12 it could help us with our audit. It could be  
13 some good things. The downside we see with 60  
14 days is that idea that we really don't have our  
15 cases even developed at the preliminary stage.  
16 Furthermore, I understand that customer notice  
17 would be restricted to a one-time notice of  
18 basically right before that LPH. So one of the  
19 things OPC uses in its motions to petition -- go  
20 ahead.

21 MR. HALL: I'm sorry, what we were -- what  
22 the judge suggested is kind of a general overall  
23 opening, general principles, and because you're  
24 kind of now going point by point on issues and, I  
25 mean, they're important issues. But what is

1 really appropriate, I think, is for -- go point  
2 by point and then go back and forth. So if  
3 you've got some overall principles that you want  
4 to get in the record, please go forward. If  
5 you've got individual points, I think we need to  
6 follow protocol that the judge laid out.

7 MR. SMITH: Okay. I apologize. I was  
8 just trying to -- I didn't understand.

9 JUDGE WOODRUFF: This is a very fluid  
10 process. We try to make this as informal as  
11 possible so we can get the information, but --

12 MR. SMITH: Okay. All right. Then I'll  
13 return to my prepared remarks and then perhaps  
14 after we can go more point by point. So, now  
15 that these comments are part of the record, OPC,  
16 through its filing, also would be incorporating  
17 those comments. They include but are not limited  
18 to things like the change in the ceiling on  
19 continuances, OPC believes a full 60-day  
20 continuance is appropriate. Contraction of the  
21 time period to try the case, I think we just saw  
22 a recent case that used the full-time period to  
23 try a case. We think that that is important in  
24 particular for those cases that do get contested.  
25 There's some suggestion in the rule as to Staff's

1 role and we think that it might not really be  
2 necessary. Staff already actually does provide a  
3 lot of help to these utilities, sometimes even  
4 going and making on site visits. We believe that  
5 additional customer notice should be given, more  
6 so than what the current rule requires. We do  
7 have an issue with the timing of the local public  
8 hearing and other comments that were made in the  
9 previous workshop. Perhaps the most important  
10 thing from OPC's perspective are twofold. First  
11 would be the potential procedure whereby Staff  
12 would, in OPC's interpretation, be at risk of  
13 acting as sort of a proxy for the utility and be  
14 at risk of acting in a way that could cause some  
15 confusion on who carries the burden in a trial.  
16 That's a real concern for OPC; is to the legality  
17 of that. And then the second large concern is  
18 that OPC would be -- other than the terms of the  
19 new rule, we would have a number of  
20 pre-conditions that would attach if we wanted to  
21 conduct our own investigation. And there are  
22 about seven different conditions that are  
23 currently discretionary. I think the language  
24 changes that discretionary to a mandatory. OPC  
25 does not know how to interpret what the words

1 "conduct its own investigation" means. And we  
2 believe some clarity on that could be helpful.  
3 We also believe that if we do not conduct our own  
4 investigation and an agreement is reached, would  
5 there be any investigation we could do responsive  
6 to that agreement, is an open question. In  
7 summary fashion, the additional burdens on OPC  
8 would be that in order to investigate the case,  
9 we would have to create a preliminary report, an  
10 audit, an analysis work papers, evaluation of  
11 recordkeeping practices, a list of cost of  
12 service items, and a settlement proposal. We  
13 would be doing this concurrent with Staff's --  
14 Staff's Day 90 preliminary report and then we'd  
15 also be giving our settlement proposal concurrent  
16 with the Day 120 Staff settlement proposal.  
17 Settlement proposal would require OPC produce a  
18 settlement response on revenues, rate design,  
19 services charges/fees, appreciation rates,  
20 updated work papers, and any other documents  
21 supporting OPC's settlement proposal. OPC is  
22 concerned that if these are all pre-conditions to  
23 doing any sort of investigation, OPC's concerns  
24 with its resources, if it will actually be able  
25 to conduct investigations in these cases. So

1       those are OPC's big concerns. But with that, I  
2       think I would -- I'd turn it over to the more  
3       discrete smaller issues.

4                JUDGE WOODRUFF: Mr. Chairman, any  
5       questions or comments?

6                MR. HALL: Okay. So OPC's overall  
7       concerns are two; the first is the burden of  
8       proof.

9                MR. SMITH: Yes.

10               MR. HALL: And the second is additional  
11       burdens on OPC under the rule?

12               MR. SMITH: Those are the largest, yes.

13               MR. HALL: Thank you.

14               JUDGE WOODRUFF: What I propose to do is  
15       I've got a copy of the proposed rule in front of  
16       me. 15 paragraphs on it. Or -- on it. I'm just  
17       going to go through the first section and ask  
18       either Staff or Public Counsel if you have any  
19       problems or concerns or changes you'd like to be  
20       made to it. The first one is just the  
21       definitions, which we talked about that some with  
22       the 10,000 customers. And the definition of a  
23       disposition agreement. Anything further anybody  
24       wants to talk about for that?

25               MR. WESTEN: Yes, Judge. Staff actually

1 does have one comment that we filed that we do  
2 think is worth bringing up at this point,  
3 regarding the definition of disposition  
4 agreement. And I actually think that our  
5 proposed change to this definition, this  
6 addition, actually mitigates some of OPC's  
7 general large concerns. That change is -- we  
8 have proposed that the definition of disposition  
9 agreement have the following line added to the  
10 end of it; that it has the same weight as a  
11 stipulation and agreement as defined under 4 CSR  
12 240-2.115. That is the current definition of  
13 stipulation and agreement in our practice rules.  
14 That definition is not changing under this  
15 proposal. And Staff thinks it's important that  
16 you tie disposition agreement and stipulation and  
17 agreement together. They're both settlement  
18 documents. They both have the same effect. They  
19 are intended to resolve the case, either in whole  
20 or in part, unanimously or non-unanimously. And  
21 if a disposition agreement is treated the same as  
22 a stipulation and agreement, that the practice  
23 rule treatment of a disposition agreement that is  
24 non-unanimous but resolves all issues and how  
25 that's presented at hearing, I think, would

1 address some of OPC's concerns. Changing this  
2 definition at this point in time wouldn't have a  
3 negative impact on the process. It's just  
4 ensuring that the agreement is understood as  
5 being a proposed resolution to the case.

6 JUDGE WOODRUFF: Mr. Smith, any comments  
7 from Public Counsel on that?

8 MR. SMITH: Yeah. We don't oppose  
9 changing the definition to the definition as  
10 suggested by Staff. But I think we would have  
11 some questions as to whether a change in  
12 definition actually did resolve any of our  
13 concerns. One of the ideas, I think, of this  
14 small utility rate case procedure is try to  
15 settle things earlier and if OPC isn't going to,  
16 you know, have the resources to conduct its own  
17 investigation until at some point after  
18 disposition agreement or stipulation agreement,  
19 and if that's what Staff means by settling or  
20 resolving some of our concerns, I think that that  
21 might not be in the best interest of this rule.  
22 I guess I would maybe take issue with the  
23 characterization but not with the actual proposal  
24 to change the definition, if that makes sense.

25 JUDGE WOODRUFF: All right. Staff, you



1 indicated, you thought it would take care of some  
2 concerns, can you elaborate?

3 MR. WESTEN: I can. If we're going to go  
4 issue by issue, we can respond to it at this  
5 point in time.

6 JUDGE WOODRUFF: Go ahead and do it now.

7 MR. WESTEN: I think the major point that  
8 OPC has raised, Mr. Smith has raised, is the  
9 legality of potentially being viewed as a proxy  
10 for the utility. In OPC's comments they  
11 suggested it might be unlawful that the Staff  
12 would be stepping into the shoes of the company.  
13 I think this change and the way that the rules  
14 currently operate and would operate, even without  
15 this change, mitigates OPC's concerns. Our  
16 current practice rules say that at -- let me find  
17 the definition here -- our current practice rules  
18 240-2.115, Sub 2, Sub D, provide that a  
19 non-unanimous stipulation and agreement to which  
20 a timely objection has been filed shall be  
21 considered to be merely a position of the  
22 signatory parties to that stipulation, except  
23 that no party shall be bound by that stipulation.  
24 All issues shall remain for determination after  
25 hearing. If a disposition agreement is objected

1 to by OPC, it does not become a decision about  
2 the -- that disposition agreement. The ultimate  
3 issue still goes to hearing for the Commission to  
4 decide. And the disposition agreement, or  
5 stipulation agreement, that settlement document  
6 merely becomes a joint position of the parties.  
7 If there's an agreement between what the company  
8 wants and what Staff wants, what we believe is  
9 the best outcome of the case, Staff presenting  
10 its position on what the best outcome of that  
11 case is the presentation of the stipulation and  
12 agreement. Therefore we're not representing the  
13 company's interests. The company's interests are  
14 just aligned with what Staff is proposing at that  
15 point in the hearing. Therefore there's no --  
16 Staff isn't stepping into the shoes of the  
17 company or representing the burden of the  
18 company. We don't think that, then, the proposed  
19 rule would violate -- we don't think it currently  
20 violates the statutes that OPC decided nor do we  
21 think it would if you were to adopt the change to  
22 the definition of disposition and agreement.

23 JUDGE WOODRUFF: Any further response?

24 MR. SMITH: Well, I think you'd have to  
25 take the proposed rule as a whole to really get

1       some good interpretation around this. I think  
2       elsewhere in the rule there's some discussion  
3       that the utility could be relieved or be excused  
4       from the hearing, unless you wanted to subpoena  
5       them. I think that does continue even with  
6       Staff's new definition of disposition agreement.  
7       I think OPC would just disagree there.

8                JUDGE WOODRUFF: We can talk about that as  
9       we get to the next station. Let's move on, then,  
10      to Subsection 2, which describes the process for  
11      the small utility rate cases. Any comments or  
12      concerns on that Section 2?

13             MR. WESTEN: None from Staff.

14             JUDGE WOODRUFF: From Public Counsel?

15             MR. SMITH: None from OPC.

16             JUDGE WOODRUFF: Move on to Subsection 3,  
17      then, which is commencement.

18             MR. SMITH: OPC does have a couple  
19      comments on this.

20             JUDGE WOODRUFF: All right.

21             MR. SMITH: So, under B and C  
22      specifically, so 3B and C, we are -- OPC thinks  
23      that this actually might be a good thing that you  
24      could maybe initiate a rate case by complaint  
25      and, however, for both B and C, OPC would suggest

1       some sort of intervening procedural step that by  
2       virtue of filing a complaint you would not just  
3       automatically start a small utility rate case and  
4       I don't think the rule intends for that to  
5       happen. So we would suggest something like  
6       adding "and in order of the Commission" or some  
7       sort of intervening procedure such as an order by  
8       a Commission that can just create that additional  
9       procedural step to preserve utilities' rights,  
10      different parties' rights. And just to make it  
11      clear, for example, if a tariff is being  
12      proposed, such as in C, I think it would make  
13      sense for the utility to say whether they're, you  
14      know, are they, in fact, taking advantage of the  
15      small utility rate case or not. And we think  
16      maybe an order early on could just clarify that  
17      from the outset. So we suggested some  
18      modifications to B and C.

19                JUDGE WOODRUFF: Let me ask Staff about  
20      this, particularly about C. If a -- say Liberty  
21      Water was mentioned earlier, which is a fairly  
22      sophisticated company, multi-national company, if  
23      they went ahead and filed a tariff with no  
24      intention of making it a small company  
25      proceeding, couldn't they do that?

1           MR. WESTEN: Yeah, I agree. I think  
2           that's absolutely what they could do. To  
3           Mr. Smith's point, if the tariff is filed with  
4           no -- with no statement as to what process the  
5           utility's interested in taking advantage of, I  
6           think the default would be that it's planning on  
7           pursuing the standard rate case process with  
8           filing a tariff. And as to the other comments  
9           about B as well, I think our -- again, our  
10          Chapter 2 practice rules actually address those  
11          concerns. With the filing of the complaint, the  
12          Commission has to take action on the complaint by  
13          providing notice of that and issuing an order.  
14          Same with the tariff, filing of a tariff,  
15          Commission has to suspend that tariff before it  
16          goes into effect, so I think a subsequent order  
17          is already considered by the practice rules. And  
18          that would be an appropriate point in time if  
19          there is a question for clarification as to the  
20          method and process by which the company is  
21          interested in filing.

22                 JUDGE WOODRUFF: Okay. Anything else from  
23          Public Counsel?

24                 MR. SMITH: We just think it would be in  
25          the interest of certainty and clarity to have it

1 say in the rule. But we generally agree with  
2 Staff's comments.

3 JUDGE WOODRUFF: Let's move on to 4, then,  
4 which indicates Staff will assist a small utility  
5 in processing the case. Any comments on that? I  
6 think Public Counsel had some written comments  
7 marked on that.

8 MR. SMITH: We do.

9 JUDGE WOODRUFF: Anything else you want to  
10 add?

11 MR. SMITH: I mean, I think what's  
12 contained in our written comments says our  
13 thoughts about it, which is that we don't think  
14 this is necessary and, you know, consistent with  
15 Staff's function and responsibilities to the  
16 Commission isn't really defined. Maybe that's a  
17 good thing. Maybe it's good to leave that open  
18 for discretion, but we just think that this is  
19 kind of an unnecessary rule, although we  
20 understand the spirit of the rule. We -- OPC  
21 thinks it's already being achieved. I have  
22 observed cases where Staff has, you know, went  
23 down to a small utility and rummaged through, you  
24 know, piles of invoices and things like that that  
25 we think Staff provides quite a bit of assistance

1 to these small utilities already.

2 MR. HALL: Well, let me ask a question,  
3 then. What is the harm with that rendition? I  
4 understand it's not your position that it's not  
5 necessary.

6 MR. SMITH: The harm is that it risks, in  
7 terms of the overall interpretation of the rule,  
8 the potential harm is that it could confuse the  
9 burden of proof when read together with other  
10 rules over who is carrying that burden.

11 MR. WESTEN: If I might respond? I  
12 understand -- I understand Mr. Smith's statements  
13 and his concerns, Staff certainly doesn't want to  
14 be viewed as doing the work for the company. We  
15 don't do that. The point of assisting the  
16 company, as Mr. Smith identified, we help review  
17 the invoices in the shoe box and build a cost of  
18 service study and to the extent that this would  
19 need clarification, Staff assistance is a  
20 representation and our assistance, we want it to  
21 be not inconsistent with our function and our  
22 responsibilities to the Commission and to the  
23 extent that there is a conflict of interest,  
24 Staff would not be able to provide that kind of  
25 assistance to the company in presenting a case

1 and that's not what we do. We don't present  
2 cases for companies.

3 MR. HALL: Would there be any reason to  
4 make it clear, either here or somewhere else in  
5 the rule, that Staff is not representing the  
6 company?

7 MR. WESTEN: Clarification statement that  
8 says Staff will assist but does not represent a  
9 small utility makes sense. Further adding that  
10 the assistance is not inconsistent with Staff's  
11 function might help kind of pars that out as  
12 well.

13 JUDGE WOODRUFF: Is there anything  
14 existing in the proposed rule that says  
15 explicitly that the utility has the burden of  
16 proof?

17 MR. WESTEN: I don't -- I don't know if  
18 there's anything that explicitly states the  
19 utility has the burden of proof in the current  
20 rule.

21 MR. SMITH: Judge, I think the statute  
22 would say that. So for whatever that's worth.

23 JUDGE WOODRUFF: Would Public Counsel feel  
24 more comfortable with this rule if there was an  
25 explicit statement in there?



1           MR. SMITH: In part. I think, as we move  
2 through this, there is a later part of the rule  
3 that perhaps causes more concern than 4, but I  
4 think that would be an improvement.

5           JUDGE WOODRUFF: Okay. Let's move on,  
6 then, to 5, which is the rate case timeline. Any  
7 comments or concerns?

8           MR. HALL: I've got a question. On 5,  
9 where it says Staff will file a timeline, is it  
10 envisioned that the Commission would approve that  
11 timeline or would the -- would Staff just file it  
12 and it would go into -- it would be  
13 self-effectuating?

14          MR. WESTEN: Staff's position is that it  
15 would be self-effectuating. This is a  
16 restatement of the current rule requirements that  
17 Staff provide a timeline available for the  
18 parties to view just to be aware of deadlines  
19 throughout the case.

20          MR. HALL: And then the same question --  
21 and I'm not opposed to that -- on A, under that,  
22 where the timeline can be extended for up to 30  
23 days, again, that would be self-effectuating?

24          MR. WESTEN: Yes, the idea is that if  
25 there is an agreement between Staff and utility

1           that we can extend that just by providing the  
2           notice that we're not -- we don't need to see the  
3           Commission's approval for an order, we can just  
4           extend the deadline or extend the timeline as  
5           needed to continue working on the case.

6           MR. HALL: Is there any reason to -- on  
7           both of those two items -- and I don't have a  
8           position on it, but to include other parties?  
9           So, I mean, I guess maybe on filing the timeline  
10          itself, maybe just having Staff there makes a lot  
11          of sense. But in terms of extensions, is there a  
12          reason to include other parties?

13          MR. WESTEN: I mean, the point of the rule  
14          is to be helpful to the utility, to help move  
15          things along to the utility and ultimately if the  
16          utility wants to extend the process, they're kind  
17          of the ultimate arbiter as to that. And, I mean,  
18          I don't think -- I don't want to cut OPC out, but  
19          ultimately if the utility says, Hey, I need more  
20          time or, Hey, we agree we need more time, they're  
21          the ones who are taking the hit because the case  
22          is moving longer for them to get their rates. So  
23          their statement, I think, is all that's really  
24          needed to effectuate that.

25          JUDGE WOODRUFF: Would this provision

1 allow for the extension of the 10-month deadline  
2 into an 11-month deadline, then?

3 MR. WESTEN: Actually, I want to -- no, I  
4 don't think it does. And also want to make a  
5 clarification. I said 10 months earlier. That  
6 was actually incorrect. It's nine months. A  
7 case must be completed in a nine-month period.  
8 This is for the initial investigation and audit  
9 process of the case. So this would only be able  
10 to extend the 90, the 120, and 150-day deadlines  
11 out by 30 more days. If there needed to be a  
12 further extension of the ultimate case, I think  
13 that that would fall under the final waiver  
14 provision that any rule could be waived for good  
15 cause and I ultimately think that would be -- the  
16 company would have to be involved in making that  
17 request.

18 MR. HALL: And if OPC or another party  
19 wanted an extension within -- related to this  
20 timeline and either Staff or the utility did not  
21 agree, nothing would prevent OPC from filing  
22 something with the Commission asking for that  
23 additional time.

24 MR. WESTEN: I don't think there's any  
25 prohibition like that in this rule.

1           MR. SMITH: So, from OPC's perspective, we  
2 would certainly prefer that if the rule does  
3 mention parties such as Staff and utility who may  
4 agree to extend the timeline, even if the rule  
5 doesn't specifically prohibit us, I think if it's  
6 permissive as to those parties, it does make  
7 sense for it also to be permissive to OPC.  
8 Again, the 30 days is something that we oppose.  
9 We would prefer 60 days. We have seen cases in  
10 which that full-time period has been used and I  
11 think it's also worth mentioning as to the  
12 timeline and I think Mr. Westen did mention this,  
13 this timeline that's getting filed is, as I  
14 understand it, would not be for the entire rate  
15 case but only for the period up to essentially  
16 150 days.

17           JUDGE WOODRUFF: So the concern would be  
18 that it would be squeezing the time for a  
19 hearing, if necessary, as well as for a  
20 Commission decision?

21           MR. SMITH: Exactly -- and, yeah, that's  
22 exactly it. Yeah.

23           JUDGE WOODRUFF: Mr. Westen?

24           MR. WESTEN: I might have one addition.  
25 So, part of the reason why the language is

1       contemplating Staff utilities is because the  
2       major requirements of the early process, that  
3       audit investigation, Staff is always obligated to  
4       file a preliminary report at Day 90. Staff is  
5       always obligated and the company is always  
6       obligated to respond to an initial offer to  
7       settle at Day 120. The Staff and the company are  
8       always obligated at Day 150 to provide some kind  
9       of potential resolution or notice that there's  
10      been no resolution reached. The idea is really  
11      between Staff and the company during those pieces  
12      that the idea that the extension would need to  
13      occur because it's that party that's obligated  
14      all the time and not just in a permissive  
15      fashion, to respond to these deadlines.

16               MR. SMITH: Yeah, I think that may be true  
17      under the existing rule but under the proposed  
18      rule, OPC would also be always required at Day  
19      90. They would also be also required to  
20      settlement -- at the settlement time, so I think  
21      if there's a change in OPC's response to the  
22      writing in the proposed rule, that if this is  
23      just a remnant of the existing rule, then that,  
24      too, would need to update so we could have a  
25      matching.

1 JUDGE WOODRUFF: Sounds like we're leading  
2 into some later issues here.

3 MR. SMITH: We are.

4 JUDGE WOODRUFF: Let's move on, then, to  
5 No. 6, which is local public hearing, had some  
6 discussion about that earlier. Anything anybody  
7 wants to add at this point?

8 MR. WESTEN: I don't think Staff has  
9 anything to add at this point.

10 JUDGE WOODRUFF: Let me ask: Would it  
11 ever be appropriate to have two local public  
12 hearings, one early in the process and one late  
13 in the process?

14 MR. WESTEN: I don't think -- from Staff's  
15 perspective, I don't think that would necessarily  
16 be beneficial. I just -- the time expense, the  
17 logistics of that, it might be confusing to the  
18 customers. And just depending on when a second  
19 hearing would be set could really be problematic  
20 logistically, especially if there's a hearing  
21 upcoming and parties are in the process of  
22 preparing for hearing. If the question is  
23 between information from the public earlier and  
24 information notifying the public later, I don't  
25 see why Staff or the Public Counsel couldn't

1 initiate its own meeting on its own to begin with  
2 to get that information and then have a local  
3 public hearing later. But I don't see, or vice  
4 versa, but I don't see a need for two meetings.

5 JUDGE WOODRUFF: Public Counsel?

6 MR. SMITH: Judge, I think there could be  
7 a situation where that is appropriate, but I  
8 think I'd also agree with Staff that these local  
9 public hearings are resource heavy and that's  
10 actually -- I guess, this bleeds into 7. But I  
11 thought I heard Staff say that it could be  
12 confusing to have more than one local public  
13 hearing. I'm not sure I would agree that it  
14 would be confusing. I think more information is  
15 always better for customers. But I do think,  
16 from a resources perspective, it does make more  
17 sense, especially for small utilities, to have  
18 one. Now, with that said, there have been cases  
19 where small utilities have had two. And the  
20 reason why is because they might be located in  
21 two different areas.

22 JUDGE WOODRUFF: Sure. I understand. I  
23 was talking about sequential rather than  
24 different areas.

25 MR. SMITH: Right.

1 JUDGE WOODRUFF: Move on, then, to 7,  
2 which is the notice requirement. Any concerns?

3 MR. WESTEN: Staff doesn't have any  
4 comments.

5 JUDGE WOODRUFF: Anything from Public  
6 Counsel?

7 MR. SMITH: So, this would require notice  
8 10 days prior to a local public hearing. One of  
9 the things that OPC uses in -- when it files its  
10 motions requesting for a local public hearing is  
11 we like to see which customers have made comments  
12 in the case file. It helps us gauge kind of an  
13 interest by the viewing public. If the notice is  
14 going to go out to customers for the first time  
15 just 10 days before the local public hearing, one  
16 of our concerns is that there wouldn't really be  
17 a population of public comments because the  
18 public is not yet aware that there's a case.  
19 Which would, in turn, I guess it would reduce our  
20 ability to provide an informed motion based on  
21 the necessity of a local public hearing. We  
22 don't have a good sample size of public comments.  
23 And there are other factors why we would have a  
24 local public hearing. For example, larger rate  
25 increase or something like that. But another



1 thing that I had heard --

2 JUDGE WOODRUFF: I don't mean to interrupt  
3 for a moment. My understanding of the rule is  
4 the assumption there will always be a local  
5 public hearing.

6 MR. SMITH: Yes.

7 JUDGE WOODRUFF: Is that a good thing or  
8 bad thing?

9 MR. SMITH: I think there are probably  
10 arguments that it could be a good thing. There  
11 are probably arguments that it could be a bad  
12 thing. From OPC's perspective, well, I'll say  
13 this: I think it does say -- the default is that  
14 there's a local public hearing. But the parties  
15 can agree as between themselves that one should  
16 not be held. How we make that determination, I'm  
17 a little worried about, because notice isn't  
18 given until 10 days prior to the local public  
19 hearing. I think that could better inform the  
20 parties' judgment on whether to cancel or hold  
21 the local public hearing as well as other  
22 factors. You know, OPC is always in favor of  
23 more public notice, more public hearing, so it's  
24 a default, we consider that to be a good thing,  
25 but we're also very aware that these are resource

1 heavy events. It does take time. There's  
2 usually -- yeah, there's always a court reporter  
3 there. There's a number of Commission staff,  
4 sometimes there's security.

5 JUDGE WOODRUFF: Always security.

6 MR. SMITH: Right. So in recognition of  
7 those costs, you know, OPC also considers that,  
8 to be honest with you, because in terms of the  
9 overall revenue requirement, that could actually  
10 end up being a cost if company has counsel and  
11 company brings counsel and, you know, if the  
12 company hires an expert, which they do sometimes,  
13 they could do that. And then in terms of just  
14 overall regulatory costs, it also raises those  
15 costs. But absolutely. More -- we're generally  
16 in favor of more -- of more public notice, just  
17 at what cost.

18 JUDGE WOODRUFF: Anything else?

19 MR. WESTEN: One thought about public  
20 comments and the public hearing being engaged,  
21 completely understanding OPC's perspective as  
22 wanting to use public comments as a gauge of  
23 interest, but having a hearing that early in the  
24 case might substitute the need for those filed  
25 comments, those individuals who would be filing

1        comments are able to appear earlier on and  
2        actually provide live testimony instead of  
3        providing those filed comments. So it may  
4        not actually be a gauge of interest. We might  
5        have more investment and more interest and more  
6        interaction in that initial public hearing than  
7        we currently receive. Just kind of a thought.

8                JUDGE WOODRUFF: Does anyone know how --  
9        the percentage of the small company rate cases  
10       that has a hearing now under the old procedure?

11               MR. WESTEN: The number I've been told is  
12       about a quarter give a hearing. I'm sorry, a  
13       quarter have local public hearings.

14               MR. SMITH: I've only been here for a  
15       year, I'm sorry. Keri, do you have a  
16       guesstimate? She doesn't have a good  
17       guesstimate. I'm sorry.

18               JUDGE WOODRUFF: All right. Well, let's  
19       move on, then, to investigation and audit, which  
20       is Section 8.

21               MR. SMITH: I'm sorry to do this, I just  
22       did want to squeeze in a notice. We think  
23       additional notice is not going to be confusing to  
24       customers. We think additional written notice  
25       will be helpful to customers. And to having

1 additional written notice is what's already  
2 required in the existing rule, so we would --  
3 we'd be in favor of additional notice, both prior  
4 to this 60 days and at some point after, such as  
5 what's contemplated in the existing rule.

6 MR. WESTEN: Staff's only comment on that  
7 is that there is currently more notice provided  
8 for in the current small rate case rules than  
9 there are in large rate case rules. And this  
10 would essentially make the proposed rule  
11 essentially matches the notice in large rate  
12 cases.

13 MR. SMITH: Not OPC's understanding.

14 JUDGE WOODRUFF: Move on, then, to  
15 investigation and audit.

16 MR. WESTEN: Staff does not have any  
17 changes proposed here. We do have some comments  
18 in response to OPC's filed comments, so I'll let  
19 them make their statements.

20 MR. SMITH: Also, for 7E, the customer  
21 notice leading up to 7E, it says the customer  
22 notice will state that Staff will file a copy of  
23 the notice in the case file. We would just point  
24 out the customer notice probably doesn't need to  
25 state that Staff will file a copy of the customer

1 notice in the case file. And perhaps that could  
2 go elsewhere, so --

3 JUDGE WOODRUFF: I see what you're saying.

4 MR. WESTEN: Yeah, Staff has no issue with  
5 that suggestion. The best place for it to go  
6 would probably be in the actual language of 7  
7 itself rather than in a sublettering.

8 JUDGE WOODRUFF: Okay.

9 MR. SMITH: So for 8, we have A, B, C, D,  
10 E, F and F1 and 2. So, yeah, OPC did file some  
11 comments on this. What is meant by conduct an  
12 investigation, we think some additional clarity  
13 could be provided. The current rule has similar  
14 language, actually. The only difference is that  
15 in 8, under the proposed rule, is that the term  
16 "conduct an investigation" is further conditioned  
17 by a number of requirements on OPC. But before  
18 we get to those, we have 8A, which is a  
19 description of what may occur during the  
20 investigation. One of the things described here  
21 is that Staff's audit and investigation will  
22 follow Staff internal procedures. I thought I  
23 heard during Mr. Westen's opening that he said  
24 that this would not require a one size fits all  
25 approach. But I think the plain language says to

1 ensure reasonable consistency. So OPC is okay  
2 with, you know, an investigation that does follow  
3 some sort of internal procedures. We don't have  
4 any problems with that. We think Staff maybe  
5 would have some problems just because these cases  
6 are very fact specific. We would just ask that  
7 if -- if there is an internal procedure, that it  
8 be in writing and available for OPC to review.  
9 As to D --

10 MR. WESTEN: Actually, Ryan, do you mind  
11 if I go ahead and respond to that particular  
12 piece?

13 MR. SMITH: Yes, go ahead.

14 MR. WESTEN: So, the language in the  
15 proposed rule, 8A, spells that an investigation  
16 may include a review of any and all information  
17 and materials related to the utility's cost of  
18 providing services and its operating revenues,  
19 the design of its utility rates, the utility  
20 service charges or fees, all provisions of the  
21 utility's tariffs, and any operational or  
22 customer service issues that are discovered  
23 during the investigation. The Staff's audit and  
24 investigation will follow Staff's internal  
25 procedures, designed to ensure reasonable

1 consistency in the recommended rate treatment,  
2 and goes on. That initial sentence spells out  
3 what an investigation is. That initial sentence  
4 is almost exactly the same as the current rule,  
5 which you can find at 4 CSR 240-3.050 Sub 6. And  
6 then the further subsections in the proposed  
7 rule, I think, further kind of spells out what an  
8 investigation requires. Because that is already  
9 the process, investigation's already defined in  
10 the current rule, I'm a little surprised that  
11 there's a question as to we don't know what  
12 "conduct an investigation" means. Since we  
13 believe that's spelled out right here in the rule  
14 and is in our current rule and is what the  
15 parties are ostensibly doing. I just wanted to  
16 make this clear. This doesn't change that piece  
17 of it at all. The investigation is the same.  
18 The difference is clarifying that Staff will be  
19 and follow these internal procedures that are  
20 designed to provide reasonable consistency in the  
21 recommended rate treatment of the utility's rate  
22 base revenue and expenses with enough flexibility  
23 and reasonable flexibility to allow Staff so  
24 that's it's not a one size fits all, but can be  
25 consistent with the different systems. That's

1 the big change in this proposed rule.

2 JUDGE WOODRUFF: Go ahead and identify  
3 yourself.

4 MS. DIETRICH: Natelle Dietrich,  
5 N-A-T-E-L-L-E, D-I-E-T-R-I-C-H, Commission Staff  
6 Director. To address the Staff internal  
7 procedure comments, we have several internal  
8 procedures that are in writing. They are general  
9 in nature saying, for instance, a -- one of the  
10 things listed here is reasonable consistency in  
11 addressing customer service issues, so the  
12 internal procedure that we have addressing that  
13 type of thing says Staff will contact the  
14 customer, Staff will go out to the site, things  
15 like that. It doesn't get into the specifics  
16 that Staff will do this at this time, we'll only  
17 do it this way every time. So that's what's  
18 meant by not a one size fits all approach. It's  
19 a general guideline as to how to approach these  
20 types of things, these types of investigations  
21 and audits, not a one size approach -- one size  
22 fits all approach where we do the exact same  
23 thing in the exact same order, considering  
24 everything exactly the same and so that's how the  
25 one size fits all approach fits in.



1 MR. HALL: And are those internal  
2 procedures publicly accessible?

3 MS. DIETRICH: They are not, but there's  
4 no reason why we couldn't share it if somebody  
5 requested to see them.

6 JUDGE WOODRUFF: They would be  
7 sunshinable?

8 MR. WESTEN: Yes.

9 MS. DIETRICH: They're on the intranet  
10 right now. This particular one's not developed  
11 because it's early in the process, but once it  
12 was, it would be also -- it would be with the  
13 other internal procedures.

14 MR. WESTEN: Yes, Judge, I see no reason  
15 why this wouldn't be a sunshinable record of the  
16 Commission.

17 MR. HALL: So, then, the other concern  
18 raised by OPC is what does it mean to conduct an  
19 investigation. And I don't quite understand that  
20 question. Mainly it says conduct an  
21 investigation as set forth below. Does that  
22 answer the question?

23 MR. SMITH: From OPC's perspective? It  
24 clarifies, but if you go further in the rule, you  
25 have things like D and F, which indicate that the

1 Public Counsel, if conducting its own  
2 investigation, shall -- and then it talks about  
3 additional things that OPC shall do that do not  
4 match up with the existing rule. And that's --  
5 that's really where the concern is. Right now,  
6 Staff files a Day 90 report and then OPC has --  
7 and the utility, OPC and the utility both respond  
8 to that report at Day 100. And then from there,  
9 and OPC is conducting its own investigational  
10 audit of these cases. In that investigation, it  
11 is true, Mr. Westen's point, that it is, in part,  
12 spelled out of a discretionary nature. But it  
13 becomes less discretionary from OPC's perspective  
14 if you look at things like F, where it says if  
15 you want to do an investigation, then you shall  
16 provide to all parties a report of that  
17 investigation, an audit. So an audit, when I see  
18 that word, I assume that means audit on  
19 everything, an analysis work papers, an  
20 evaluation of the utility's recordkeeping  
21 practices, a list of the cost of service items  
22 that are still under consideration. And an  
23 explanation for why those are not yet resolved.  
24 And, also, as a condition of the investigation,  
25 and we're not there yet, but if OPC wants to

1       conduct its own investigation, then OPC, under  
2       this rule, would also be required to meet 9,  
3       which gets into settlement proposals, which  
4       currently the Staff gives a Day 120 settlement  
5       recommendation and OPC and the utility respond.  
6       So this would change that.

7               MR. HALL: Okay. So putting 9 aside for a  
8       second because there are other issues there. But  
9       going back to 8, is there a reason on -- on D, on  
10      8D, if we were to say Staff's investigation shall  
11      include an update.

12             MR. SMITH: That would be fine.

13             MR. HALL: Do we need to have any OPC  
14      investigation include that?

15             MR. SMITH: Sometimes it does, but we  
16      would prefer of it to be a discretionary option,  
17      if that makes sense.

18             MR. WESTEN: More information is better  
19      for the company. It's better for the parties.  
20      It's fair to all the parties involved. Also, the  
21      Day 90 report, this preliminary report, as its  
22      name suggests, is preliminary. It is subject to  
23      change as discovery continues, as the parties  
24      continue to negotiate and investigate the case.  
25      I understand that the -- the request -- let me

1 address 8D first. I don't think there's any  
2 issue with making it Staff's investigation  
3 focusing on the utility's rate base. And making  
4 that discretionary for OPC. This is something  
5 that Staff will do in most of the cases now  
6 anyway, but this is a new requirement to the  
7 proposed rule, that we will always investigate  
8 the value of the rate base. As to the point of  
9 it being information that's provided at Day 90,  
10 that information does change. So the extent that  
11 there is a burden upon OPC to provide more  
12 information than what would otherwise, that  
13 information is going to change if they don't have  
14 a completed investigation. There are other items  
15 that they can update throughout the process.

16 MR. SMITH: And if that's, you know,  
17 Staff's interpretation, that, you know, we'd be  
18 happy to work with an interpretation where if we  
19 don't have it available, you know, that we're --  
20 we can respond in that way, but the way I  
21 interpret the rule is that in order for OPC to do  
22 any sort of investigation, we shall do certain  
23 things. And so I'm just trying to make sure that  
24 within our resources we were able to participate  
25 in these cases. And that's a concern from my

1 perspective.

2 MR. WESTEN: Well --

3 MS. DIETRICH: And, I guess, a concern  
4 from my perspective, at least on 8, is that if  
5 OPC is conducting an investigation, the parties  
6 should not be surprised, just like they are not  
7 surprised with Staff's investigation, and so to  
8 the extent information is available, it should be  
9 free flowing.

10 MR. SMITH: Well, I'm not sure what is  
11 meant by "free flowing." I mean, right now we  
12 can essentially reduce resources. If there's an  
13 item that OPC thinks that consumers could be  
14 harmed by the most, we can sort of focus our  
15 resources on that one item and investigate it.  
16 So I think, you know, creating a situation where  
17 OPC is now doing work on items that it probably  
18 otherwise would not investigate, you know, those  
19 are -- those are policy choices and we have  
20 limited resources so we would just, you know,  
21 need to better pick which cases we get involved  
22 with.

23 MR. HALL: What if 8F made it clear that  
24 that would -- that OPC has to provide that if it  
25 has it?

1 MR. SMITH: So, I --

2 MR. HALL: Because, I mean, I think the  
3 goal here is to make sure that all the parties  
4 have all the information of all the other parties  
5 at early stages of the process.

6 MR. SMITH: Yeah, and at Day 100, which is  
7 just 10 days later, right now, we do provide a  
8 lot of this information and one of the things OPC  
9 does enjoy the benefit of is that when Staff does  
10 provide its work papers, we're able to not  
11 duplicate efforts. If we see other work papers  
12 and think that, you know, what has been done is  
13 reasonable, there are many cases where we are  
14 able to see that information and then respond in  
15 a timely manner within 10 days and raise those  
16 issues. So, as Ms. Dietrich says, there are no  
17 surprises later on. So -- but, yeah, I think  
18 your suggestion could help, definitely.

19 MR. WESTEN: If I might just have a brief  
20 response. This goes back to the point I  
21 identified early on in my opening statements  
22 about fairness and, again, earlier in discussion  
23 on this point. We've had companies ask for what  
24 OPC's position is. And obviously it is  
25 information that would be useful to a company in

1 deciding whether or not the process is being  
2 beneficial to them, if they are likely to get  
3 what they are seeking or not, if they are  
4 anticipating having to hire an attorney or hire  
5 experts because they are getting ready to  
6 experience a lot of opposition or if this is  
7 going to be an easy case. And having a position  
8 from OPC, even -- even just the basic  
9 presentation of what it thinks rate base is worth  
10 or what revenue requirement is or an analysis  
11 that's not simply relies upon Staff's position  
12 would be, I think, useful to the company and  
13 useful to Staff and useful to OPC. And the -- I  
14 think that's my comment.

15 JUDGE WOODRUFF: If Public Counsel were  
16 directed to respond to Staff's position within 10  
17 days, which seems to be what Mr. Smith would be  
18 talking about, would that --

19 MR. WESTEN: I'm sorry, Judge, could you  
20 repeat your question?

21 JUDGE WOODRUFF: If Public Counsel were  
22 directed by the rule to respond to Staff's  
23 statement of position within 10 days, would that  
24 satisfy Staff's concerns?

25 MR. WESTEN: I don't think so. Because at

1       this point in time, all that Staff or all that  
2       OPC has to file with the current rule is we  
3       disagree with Staff's findings or we don't -- we  
4       don't concur with Staff's findings and it can be  
5       as simple as that and then we don't see what  
6       OPC's position is. The company isn't familiar  
7       with what OPC's position is until there's a  
8       decision on whether or not to settle at Day 150  
9       or right before or after.

10               MR. SMITH: If we would -- we would take a  
11       little bit of an objection or I guess objection  
12       is the wrong word, but we would disagree with the  
13       characterization of that process, in a number of  
14       ways, we -- and these are all more by experience  
15       type of stories being told to you. We think the  
16       current process of having the ability to respond  
17       at Day 100 does help OPC and the utility. Keep  
18       in mind, the utility is not, you know, does not  
19       have this burden. This is something that Staff  
20       would have and now OPC would have. We already  
21       do, because I've seen it happen, provide work  
22       papers. We provide comparisons as to our revenue  
23       requirement and Staff's revenue requirement.  
24       That often times comes along with the Day 100  
25       response. So, you know, I don't know who those



1 people were that Mr. Westen was describing who  
2 asked him or people that -- his co-workers about  
3 what is OPC's position. But, you know, they  
4 could ask us and we're happy to talk with them.  
5 In fact, you know, OPC is sometimes excluded from  
6 settlement discussions. But, you know, we are  
7 just trying to make -- do the best with the  
8 resources that we have. And it is a struggle.

9 MS. DIETRICH: Perhaps, as a compromise on  
10 this, Mr. Smith said at one point that OPC, when  
11 it looks at its resources, may not investigate  
12 all the issues or all the aspects that Staff  
13 would, perhaps the solution would be that OPC  
14 submits or files, at some point, earlier in the  
15 process the extent of the scope of their  
16 investigation so that parties were not surprised  
17 and then this provision could be lessened so that  
18 they would only have to provide the information  
19 on the scope that they have investigated. What  
20 we're trying to do is make sure that we know what  
21 they've investigated and that we receive the  
22 information on what they've investigated.

23 MR. WESTEN: If I might add something just  
24 real quick to that. The rule is permissive. It  
25 does say OPC may conduct an investigation.

1 That's what 8A says. And I understand counsel's  
2 argument if they are conducting -- the language  
3 if they are conducting an investigation they must  
4 provide information. It feels like a  
5 pre-condition, but it's not a pre-condition.  
6 They do have discretion as to whether they can  
7 participate in the case or not. The statute that  
8 governs OPC allows them to have discretion in  
9 what cases they participate in already and  
10 there's nothing more in this rule that's required  
11 of OPC than what already occurs. In the proposed  
12 rule, it simply spells out the things that OPC  
13 ought to be doing already under the current  
14 rules, which is providing its responses to Staff.  
15 And if that is what the current rule states, then  
16 it's unclear why having that more clearly spelled  
17 out in the proposed rule is problematic.

18 MR. SMITH: That is not currently what the  
19 rule states. It's a condition. On F, look at  
20 the language, it says "shall." Okay? And in  
21 terms of our resources that were discussed, you  
22 know, we don't have a rate of return expert in  
23 this case or a capital structure person. We  
24 often times have to rely on outside parties, so I  
25 mean, yeah, it is helpful to look at Staff's

1 numbers and see where they're at. That would --  
2 routinely in these cases we're not going to be  
3 able to really provide a Day 90 report on that  
4 subject in the same way Staff would be able to  
5 because they have those resources. So we're just  
6 asking to preserve the current rights that exist  
7 in the existing rule. And I don't think it's a  
8 big ask, actually.

9 JUDGE WOODRUFF: From what I understand  
10 from what you're saying, you're not so much  
11 concerned about providing the information as you  
12 are about the timing?

13 MR. SMITH: Yes.

14 JUDGE WOODRUFF: So you'd be willing to  
15 provide additional information at Day 100 rather  
16 than Day 90?

17 MR. SMITH: Yes. And to the extent we'd  
18 have, like if we don't have a rate of return  
19 expert, we might just have to evaluate internally  
20 about what to do if there's, I guess, what  
21 appears to us to be a red flag that we need to  
22 look at.

23 JUDGE WOODRUFF: And that's just because  
24 you just want to be able to see Staff's --

25 MR. SMITH: Right. Exactly.

1 JUDGE WOODRUFF: -- response from Staff on  
2 that?

3 MR. WESTEN: The only response I have on  
4 that is if OPC is willing to provide more  
5 information than a simple we disagree with the  
6 findings that it's beneficial to all the parties,  
7 I think having language in the proposed rule that  
8 suggests what that information should be is very  
9 useful. I can provide for you an example right  
10 now in Case No. WR-2015-0192, the Day 100  
11 response that we received from Public Counsel  
12 essentially said -- and this is from a previous  
13 counsel, not Mr. Smith, so this is not Mr. Smith,  
14 but per the Day 100 requirement, Day 90  
15 information is not acceptable for Public Counsel  
16 to determine its position at this time. Public  
17 Counsel will wait for the Day 120 final Staff  
18 audit information before determining its  
19 position. This is what we are trying to avoid.  
20 Not just for Staff but frankly the whole point of  
21 these rules to help and assist the small utility  
22 get through the process. If the utility doesn't  
23 know what kind of case it's going to be filing or  
24 what it's going to be dealing with part way  
25 through the process, it doesn't know whether or

1 not it needs to hire experts or if it needs to  
2 hire an attorney, if it's going to be spending  
3 that money which ultimately gets, then, put on to  
4 the rate payers.

5 MR. SMITH: Keri, you had a comment about  
6 the case that was cited to?

7 JUDGE WOODRUFF: Just identify yourself.

8 MS. ROTH: Keri Roth with OPC.

9 JUDGE WOODRUFF: How do you spell it?

10 MS. ROTH: K-E-R-I, R-O-T-H. I just  
11 wanted to say in response to that case number  
12 that Mr. Westen just spoke of, the attorney that  
13 was on that case is no longer in our office, I  
14 believe, and, also, we were having difficulties  
15 getting information from that company owner. I  
16 could not get a response from that owner  
17 whatsoever. I had to rely on trying to work with  
18 Staff auditors to obtain information because I  
19 couldn't get a response whatsoever to phone call,  
20 returns, no e-mails returns. So that was a very  
21 difficult case to put an audit together on for  
22 our office.

23 MR. SMITH: And part of perhaps why you  
24 saw that language, I believe, in the timeline,  
25 there's certain language like if there's no

1 response, then Staff is to assume that its audit  
2 is correct, which OPC would obviously, if there  
3 is that sort of language, want to preserve its  
4 rights so that may have been more preservation of  
5 rights type of response.

6 JUDGE WOODRUFF: We don't need to go into  
7 details on that earlier case.

8 MR. SMITH: Sure.

9 JUDGE WOODRUFF: Are we ready to move on,  
10 then, to settlement proposals?

11 MR. WESTEN: Yes, Judge.

12 JUDGE WOODRUFF: Any comments on  
13 settlement proposals?

14 MR. WESTEN: I think it responds to what  
15 OPC has filed. We do have one additional  
16 suggestion that I think would be appropriate for  
17 9A. It currently says Staff's confidential  
18 settlement proposal not later than 120 days after  
19 a small utility rate case is opened, we believe  
20 we should edit it to say Staff shall, comma, and  
21 the Public Counsel may, comma, provide all  
22 parties to the case a confidential settlement  
23 proposal.

24 JUDGE WOODRUFF: That would take out the  
25 language about it conducting its own

1 investigation?

2 MR. WESTEN: Public Counsel may if  
3 conducting its own investigation or in proposing  
4 a settlement. I'm sorry, working off two edits  
5 here.

6 MS. DIETRICH: You want me to read? Not  
7 later than 120 days after a small utility rate  
8 case is opened, Staff shall and the Public  
9 Counsel, if proposing its own settlement, may  
10 provide to all parties to the case a confidential  
11 settlement proposal as follows.

12 JUDGE WOODRUFF: Okay. Public Counsel?

13 MR. SMITH: Yeah, I mean, if that were  
14 changed to Public Counsel, if proposing its own  
15 settlement agreement may provide to the parties  
16 and then it would refer down to 3 and 4, I think  
17 that it actually would be responsive to OPC's  
18 comments and to an extent -- well, just to make  
19 sure that a settlement proposal wouldn't be a  
20 settlement response, but I guess if he wanted to  
21 respond to, say, Staff's settlement proposal, I  
22 don't know if our counteroffer would then fall  
23 under these rules or not. I'd have to think  
24 about that. But, yeah, generally that seems like  
25 a step forward from OPC's perspective.

1 MS. DIETRICH: 9C, I think, addresses the  
2 response to any of the settlement proposals.

3 MR. SMITH: Thank you. Yeah, I think that  
4 might be a good solution.

5 JUDGE WOODRUFF: That's what I want to  
6 hear.

7 MR. HALL: Well, I'm not sure that there's  
8 a meeting of the minds here. I'm hearing two  
9 different things. What I heard OPC suggest is  
10 not later than 120 days after a small utility  
11 rate case is open, Staff shall and the Public  
12 Counsel may provide to all the parties a  
13 confidential settlement proposal. Is that not  
14 what OPC was proposing?

15 MR. SMITH: We would just want to make  
16 sure it's not pre-conditioned on this "if  
17 conducting its own investigation."

18 MR. HALL: Right. That is what I heard  
19 OPC say. So Staff is countering that proposal  
20 with a different one?

21 MS. DIETRICH: No, I was just clarifying  
22 the language because Mr. Westen skipped over the  
23 part about if conducting its own investigation  
24 and we had suggested changes to that language  
25 also.



1 MR. WESTEN: I misspoke.

2 MR. HALL: Okay. It sounds like to me OPC  
3 wants to get rid of "if conducting its own  
4 investigation" and Staff wants to keep that  
5 language in that.

6 MS. DIETRICH: No, we were suggesting that  
7 that language be changed to "if proposing its own  
8 settlement" because, actually, Section 8 is what  
9 talks about the investigation and Section 9 is  
10 settlement. So that language didn't make sense,  
11 anyway.

12 MR. HALL: Okay.

13 JUDGE WOODRUFF: Let's move on to 10.

14 MR. HALL: Well, staying on 9, though, for  
15 a second. I'm sorry. So, with that change is  
16 OPC fine with 3 and 4 of Section 9?

17 MR. SMITH: I mean, I think we probably  
18 just wouldn't be doing that many settlement  
19 proposals under this scenario because things like  
20 rate design, that's kind of a tough ask to -- it  
21 would be Dr. Mark who would probably be doing  
22 that. So we'd be pulling him off of the bigger  
23 cases to essentially work up a rate design  
24 proposal for a small utility. I mean, I guess 3  
25 and 4 would be okay. But I just don't know that

1 we would, under these requirements, actually be  
2 making that many settlement proposals. And if  
3 the goal is to make more settlement proposals  
4 maybe, you know, I don't know.

5 MR. HALL: Well, what if on 3 and 4 that  
6 was made discretionary so that you could propose  
7 settlements for portions of a case?

8 MR. SMITH: I think that would be a very  
9 helpful change from OPC's perspective.

10 MS. DIETRICH: Staff would be okay with  
11 that since its discretionary anyway.

12 JUDGE WOODRUFF: Okay. Let's move on to  
13 10, then. It's allowing the regulatory law judge  
14 to meet with participants and mediate  
15 discussions. Any concerns or thoughts about  
16 that?

17 MR. WESTEN: Staff has no additions or  
18 statements.

19 JUDGE WOODRUFF: I'll just add as an aside  
20 that this regulatory law judge mediation, I'll be  
21 very happy to do that. I don't think I've ever  
22 been asked to in the past but if that would be  
23 helpful to move the process along, we would  
24 assign somebody to do that.

25 MR. SMITH: Before we go too far, there

1 was also 9B and C that talked about response. C,  
2 it says, Any parties suggesting changes to the  
3 settlement shall provide to all other parties any  
4 audit work papers, rate design work papers, or  
5 other documents in its possession that supports  
6 its suggestions. My experience is that companies  
7 routinely do not have these readily available to  
8 provide. So I have a prediction that small  
9 utilities may violate that sentence a number of  
10 times and maybe just changing "shall" to "may"  
11 or, you know, might solve it and I'm talking  
12 about 9C. That last sentence there. But 10, I  
13 agree with.

14 MR. HALL: Well, back on C, doesn't "in  
15 its possession" take care of that.

16 MR. WESTEN: Chairman, that's what Staff  
17 would suggest; that if a party has those  
18 documents that they provide them. If they don't,  
19 they don't -- they are not obligated to.

20 MR. SMITH: I think you're right,  
21 Chairman.

22 MR. HALL: I guess maybe it needs to be  
23 clear that "in its possession" refers back to  
24 each item and not just "or other documents." But  
25 that's how I would read it.

1 MR. SMITH: I think you're right.

2 JUDGE WOODRUFF: All right. We've already  
3 talked about 10. Move on to 11, disposition  
4 agreements. I believe Staff had some comments  
5 about that earlier.

6 MR. WESTEN: Yeah, Judge, I only want to  
7 reiterate that we think making sure the earlier  
8 definition of disposition agreement leads to the  
9 definition of stipulation and agreement. With  
10 that edit, we have no comments for this section.

11 JUDGE WOODRUFF: Public Counsel?

12 MR. SMITH: Let me -- this is kind of a  
13 lengthy section so let me make sure I don't miss  
14 anything here. Just a second.

15 MR. HALL: I'll just make one comment. On  
16 11A, 1 and 2, where it says at least Staff and  
17 the utility, I wonder if we can't come up with a  
18 more legal sounding "at a minimum" or something  
19 like that. "At least" just doesn't sound like  
20 the kind of language we would usually put in  
21 rules.

22 MR. WESTEN: Being a wordsmith on the fly  
23 here, I'll do what I can.

24 MR. SMITH: So OPC's major comment is with  
25 respect to E. It says Paragraph 11E and 11E1.

1 This is where we think if -- if read in  
2 combination with all the other things, such as 4  
3 CSR 240.2.0754, about how Staff shall assist a  
4 small utility, things like that, when you read  
5 that together with this paragraph, 11E and 11E1,  
6 it causes some concerns from OPC about the effect  
7 of this. Basically says if there's a full  
8 resolution, meaning between Staff and the  
9 utility, I guess full resolution doesn't mean as  
10 to all parties but I think as to all issues, and  
11 then it says the utility or Staff, either one,  
12 can present evidence in support of this  
13 disposition agreement. And then it goes on to  
14 say, The utility can be excused from being a part  
15 of the evidentiary hearing if they do so by  
16 affidavit that can be granted. However,  
17 representatives of the utility may still be  
18 called as witnesses. OPC's best guess is this is  
19 trying to solve the problem that a lot of small  
20 companies don't have counsel or perhaps it's  
21 maybe expensive to get counsel and, as I  
22 understand it, up until Day 150, a lot of small  
23 utilities don't have counsel, but around that  
24 point in time, once it's more clear that the case  
25 will be going for an evidentiary hearing, that's

1 usually when they lawyer up. So our concern is  
2 just, I guess, there could be confusion about  
3 who's carrying the burden. We -- we think --  
4 we're not comfortable with this language. We  
5 think it arguably violates several -- several  
6 different laws.

7 MR. WESTEN: Staff does have a response to  
8 this. So, in OPC's filed comments on the 15th,  
9 it doesn't identify several different laws. It  
10 identifies specifically 393.150.2, which is the  
11 statute that provides that party making the  
12 request must bear the burden of proof in  
13 presenting that request to the Commission. OPC  
14 also cites a case called -- I think it's in the  
15 matter of Fischer v. Missouri Public Service  
16 Commission in a case from 1982. I think my  
17 earlier comment's already in the record, tried to  
18 address this. We think with the change in the  
19 definition, the clarification to that disposition  
20 agreement definition, it ties the idea that a  
21 disposition agreement is a stipulation and  
22 agreement and therefore receives the same  
23 treatment in our practice and procedure rules in  
24 Chapter 2 and therefore becomes, in a contested  
25 case situation, where it is non-unanimous but all

1 the issues are resolved by that agreement, merely  
2 a joint position of those parties. And in  
3 presenting that joint position Staff can present  
4 evidence for that position on the ultimate  
5 question, which is what is the appropriate rate  
6 for this small utility. We think that alleviates  
7 OPC's legal concerns about 393.150. We also  
8 think it absolutely alleviates the concerns about  
9 the Fischer case. Fischer -- the point of  
10 Fischer is that the Commission cannot change the  
11 nature of a contested case hearing from the  
12 ultimate issues that had been requested to making  
13 the hearing only about whether or not to approve  
14 a stipulation and agreement. In that case, all  
15 the parties, except OPC, filed a non-unanimous  
16 resolution. OPC did not sign on to that and the  
17 Commission changed the nature of the hearing to a  
18 question of whether or not to adopt the  
19 stipulated agreement or not. OPC still presented  
20 all the information as though it were a full  
21 contested hearing but that wasn't the question  
22 that was presented to the Commission. By  
23 presenting a joint position, which is not the  
24 stipulation and agreement but merely a joint  
25 position, you are not presenting the disposition

1 agreement. And in anticipation of Mr. Smith's  
2 statement that he says may present evidence in  
3 support of a disposition agreement, which I  
4 understand his perspective, again, the language  
5 of Chapter 2's stipulation and agreement  
6 language, which is 240-2.115 Sub 2, Sub D, it  
7 merely becomes the position of the signatory  
8 parties to the stipulated position. That -- that  
9 mitigates the concern there. It is simply  
10 presenting the question that is presenting  
11 evidence to the ultimate question before the  
12 Commission. And that is what's your rates fee  
13 and the Staff can present that information. The  
14 company, if it had a different position, if it no  
15 longer wanted to join in that agreement and  
16 wanted to present something different would still  
17 have its own burden to prove that position was  
18 the best position. We think that this addresses  
19 OPC's concerns spot on, head on.

20 MR. SMITH: Yeah, OPC's going to continue  
21 to maintain its concerns and Mr. Westen is right,  
22 the plain language of E says that it may present  
23 evidence in support of the disposition agreement.  
24 So this rule -- this proposed rule seems to  
25 contemplate that the evidentiary hearing will



1 basically just be about, you know, whether or not  
2 this disposition agreement is a good agreement,  
3 which is exactly the issue in State, ex rel.  
4 Fischer vs. Public Service Commission. So  
5 Mr. Westen did correctly cite to that case. So,  
6 I mean, I think that that's a concern. Also,  
7 that case cited to 386.420, there were due  
8 process concerns that were cited to. 393.150.2  
9 is -- deals with the burden of proof. We think  
10 that there's a concern from that perspective. 4  
11 CSR -- or, sorry, 240-2040 talks about what --  
12 who Staff counsel shall represent. They shall  
13 represent the Commission Staff in investigations,  
14 contested cases, and other proceedings. It just  
15 seems kind of strange if you're going to have an  
16 evidentiary hearing and Staff, as I understand  
17 it, is an extension of the Commission, to some  
18 extent. You essentially have Staff there but not  
19 the utility. That seems concerning. I don't  
20 know specifically what this is trying to address.  
21 I gave you my best guess earlier. My best guess  
22 is that small utilities often times have to weigh  
23 whether or not to get counsel and so I think this  
24 was stuck in there to try to help out utilities  
25 that perhaps had settled the case without counsel

1 and didn't want to hire counsel, but I don't  
2 really know what this is trying to accomplish  
3 exactly. And I think this whole thing probably  
4 ought to be eliminated or strongly reworded.

5 MR. WESTEN: I have just one final point  
6 as to Staff's counsel representation in 2.040.  
7 Staff counsel is representing Staff's  
8 investigation in a joint position. That is the  
9 decision that the Staff has made in reaching the  
10 non-unanimous agreement. That becomes Staff's  
11 position and Staff would be representing Staff's  
12 position to the Commission.

13 JUDGE WOODRUFF: Let's move on, then, to  
14 the --

15 MS. DIETRICH: Excuse me, going back to  
16 the language question on 11A, 1 and 2, I was  
17 working on that while the attorneys were taking  
18 care of the legal issues. A suggestion for 11A1,  
19 deleting between "at least" and changing it to  
20 "involving" comma, "at a minimum," comma, Staff  
21 and the utility and then I would also put a comma  
22 after utility and insert the word "and." So the  
23 sentence would read: A disposition agreement  
24 involving, comma, at a minimum, comma, Staff and  
25 the utility, comma, and providing for a full

1 resolution of the small utility rate case. And  
2 then the same type of change in 2.

3 JUDGE WOODRUFF: Any responses to that  
4 clarification?

5 MR. SMITH: I'm agreeable to that  
6 suggestion.

7 JUDGE WOODRUFF: Moving on, then, to 12,  
8 the evidentiary hearing procedures. Any concerns  
9 on that one?

10 MR. WESTEN: Staff had no comments.

11 JUDGE WOODRUFF: Public Counsel?

12 MR. SMITH: Just a second. I think that  
13 we had no comments on 12.

14 JUDGE WOODRUFF: All right. 15, which is  
15 the time for submission.

16 MR. WESTEN: Staff had no comments at this  
17 point.

18 MR. SMITH: Yeah, OPC's comment would just  
19 be that we have had cases which were fully tried  
20 in this time period and especially if there are  
21 continuances. That does squeeze the parties a  
22 little bit. It seems like, maybe it's just my  
23 small tenure here, but it does seem like the  
24 Commission's calendar gets really busy and so  
25 that's another consideration. And that should be

1 considered when contracting this. OPC recently,  
2 in the Indian Hills rate case, had a hard time  
3 finding spots on the Commission's calendar and  
4 that played into, you know, when the case was  
5 ultimately heard. I think being able to have  
6 more flexibility does provide additional process  
7 for all parties involved. You know, if I were  
8 the utility, I could see why I would want to  
9 shorten it. But I think from a due process  
10 perspective, from a calendaring perspective, from  
11 sort of a sanity perspective, I think it makes  
12 more sense to keep the current time periods and  
13 even if we choose not to keep the current time  
14 periods, my suggestion would be if there's a  
15 continuance on the front end, then, you know, you  
16 stick in extra time on the back end or something  
17 to contemplate that now you have less time to  
18 actually submit written testimony and things like  
19 that.

20 JUDGE WOODRUFF: I have a question for  
21 Staff on this, too, when you talk about fully  
22 submit to the Commission for decision, does that  
23 mean final briefs?

24 MR. WESTEN: Yes. That's what I would  
25 take it as; parties' briefs to the Commission.

1 JUDGE WOODRUFF: And the order has to be  
2 effective not later than 270 days which, in  
3 effect, means the Commission has 20 days to make  
4 the decision.

5 MR. WESTEN: A shortened timeline would  
6 affect everyone involved.

7 JUDGE WOODRUFF: Okay.

8 MR. WESTEN: I also think that Section 15,  
9 waiver of provisions, this rule for good cause,  
10 would help alleviate concerns and particularly in  
11 a hotly contested litigated case and would grant  
12 both the parties and the Commission the ability  
13 to expand the rules as needed to make sure we  
14 meet the appropriate timelines.

15 JUDGE WOODRUFF: 14, it just says suggest  
16 reasonable rates, which may be more than we  
17 originally sought, were to decrease any concerns  
18 of that issue.

19 MR. WESTEN: No, we think that this is  
20 important simply because we think it is important  
21 that small systems who are going to be affected  
22 by these rules be aware if they come in, they may  
23 receive a rate decrease, based on what is just  
24 and reasonable for those systems.

25 JUDGE WOODRUFF: Or may get an increase

1 more than what they asked for?

2 MR. WESTEN: They may get an increase more  
3 than what they asked for, true, that does happen.

4 MR. SMITH: OPC doesn't oppose Paragraph  
5 14.

6 JUDGE WOODRUFF: 15 is just the waiver  
7 provision we mentioned before. Any concerns on  
8 that?

9 MR. WESTEN: None from Staff.

10 MR. SMITH: This is more of just a  
11 curiosity that if we do have a waiver of  
12 provisions already, do we need one in the rule?  
13 If we do just for caution, I guess I'm okay with  
14 that, too.

15 JUDGE WOODRUFF: My question would be:  
16 Should we make it more explicit that the  
17 timelines can be expanded?

18 MR. WESTEN: I think, as written, it  
19 already includes the timelines. I don't know  
20 that it would hurt to suggest that this includes  
21 all provisions of this rule may be waived,  
22 including timelines.

23 MR. SMITH: Yeah, OPC would be supportive  
24 of that.

25 JUDGE WOODRUFF: We've gone through every

1 section of the rule now. Any further general  
2 comments?

3 MR. WESTEN: None from Staff. Maybe  
4 just -- well, I'm sorry, just one very brief one.  
5 First off, thank you for your patience as we've  
6 gone through these rules and I appreciate the  
7 opportunity to provide comments. Providing water  
8 and sewer service, which is the utilities that  
9 are most directly affected by these rules, is  
10 very important. And it's probably the most  
11 important services that any business can do. And  
12 we just think it's really useful to have rules  
13 that are clear to the utilities and clear to the  
14 parties involved, that they have obligations they  
15 have to meet and that we can help them when we  
16 can to build the cases they need to make sure  
17 they're going to continue and operate and provide  
18 safe and adequate service. Thank you.

19 JUDGE WOODRUFF: Mr. Chairman, anything  
20 else you'd like to add?

21 MR. SMITH: Nothing to add. Well, I'll  
22 just say thank you to everyone for a great deal  
23 of work on this rule. It's been a long process.  
24 I think we have something in place that is moving  
25 in the right direction and what's our deadline,

1 Judge, for finalizing this?

2 JUDGE WOODRUFF: We have 59 days from  
3 today to go it to the governor's office for  
4 review also. So working on it for the next few  
5 weeks.

6 MR. HALL: Thank you.

7 JUDGE WOODRUFF: Thank you all for coming.  
8 I think it's been a very productive two hours.  
9 Thank you.

10 (Ending time of the hearing: 11:54 a.m.)

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(Exhibits retained by the court reporter to be attached to the original transcript.)

1 STATE OF MISSOURI)  
 )SS  
2 CITY OF ST. LOUIS)

3 I, Rebecca Brewer, Registered Professional  
4 Reporter, Certified Real-time Reporter, and  
5 Notary Public in and for the State of Missouri do  
6 hereby certify that the testimony that appears in  
7 the foregoing hearing was taken by me to the best  
8 of my ability and thereafter reduced to  
9 typewriting under my direction; that I am neither  
10 counsel for, related to, nor employed by any of  
11 the parties to the action in which this hearing  
12 was taken, and further that I am not relative or  
13 employee of any attorney or counsel employed by  
14 the parties thereto, nor financially or otherwise  
15 interested in the outcome of the action.

16 Rebecca Brewer RPR, MO-CCR,  
17 Notary Public within and for the State of Missouri

18  
19 My Commission expires April 7, 2021  
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25

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