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STATE OF MISSOURI

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PUBLIC SERVICE COMMISSION

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TRANSCRIPT OF PROCEEDINGS

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Proposed Rulemaking Hearing

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June 3, 2010

Jefferson City, Missouri

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Volume 1

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In the Matter of a Proposed

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Rulemaking To Create a Small

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Case No. AX-2010-0249

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Formal Complaint Procedure

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MORRIS L. WOODRUFF, Presiding,

CHIEF REGULATORY LAW JUDGE.

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KELLENE K. FEDDERSEN, CSR, RPR, CCR

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MIDWEST LITIGATION SERVICES

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

2 JUDGE WOODRUFF: Let's come to order,
3 please. Good afternoon, everyone. Welcome to the
4 rulemaking hearing concerning proposed amendment to
5 4 CSR 240-2.070 to create a small formal complaint process
6 rule.

7 You may have noticed that we are without a
8 court reporter this morning, this afternoon. There -- one
9 of the court reporters had a serious car accident
10 yesterday, and they've been trying to scramble and,
11 unfortunately, couldn't find anybody to cover for this.
12 We're going to go ahead and proceed. We are, in fact,
13 recording everything over the usual system we use, and a
14 transcript will be made after from that recording.
15 Shouldn't create any difficulties for us for today.

16 Let's start today by taking entries of
17 appearance, beginning for Staff.

18 MS. BRUEGGEMANN: Good afternoon. My name
19 is Shelley Brueggemann representing the Staff of the
20 Missouri Public Service Commission. Our address is
21 200 Madison Street, Jefferson City, 65102.

22 JUDGE WOODRUFF: Thank you. And MEEA and
23 MTIA filed comments. Is someone representing them?

24 MR. BOUDREAU: I'll defer to Mr. Dority.

25 MR. DORITY: Thank you, Judge. Larry

1 Dority with Fischer & Dority, P.C. Our address is
2 101 Madison, Suite 400, Jefferson City, Missouri 65101,
3 appearing today on behalf of Missouri Telecommunications
4 Industry Association, Windstream Missouri, Inc., Atmos
5 Energy Corporation, Kansas City Power & Light Company, and
6 KCP&L Greater Missouri Operations Company. Thank you.

7 MR. BOUDREAU: Good morning. Paul Boudreau
8 appearing on behalf of the Missouri Energy Development
9 Association, the law firm of Brydon, Swearingen & England,
10 Post Office Box 456, Jefferson City, Missouri. Thank you.

11 JUDGE WOODRUFF: Public Counsel?

12 MS. BAKER: Thank you, your Honor.
13 Christina Baker, P.O. Box 2230, Jefferson City, Missouri
14 65102, appearing on behalf of the Office of the Public
15 Counsel.

16 JUDGE WOODRUFF: Okay. I believe that's
17 all the attorneys in the room. Hope I didn't miss
18 anybody.

19 All right. Well, of course, the purpose of
20 this proceeding is to take comments from the public about
21 the proposed rulemaking. Who would like to start?

22 MS. MEISENHEIMER: That would be me.

23 JUDGE WOODRUFF: Okay. The first person to
24 step up today gets to go. Actually, why don't you go over
25 to the podium rather than the witness chair. First of

1 all, let me swear you in.

2 (Witness sworn.)

3 JUDGE WOODRUFF: Thank you. Would you tell
4 us your name, please.

5 MS. MEISENHEIMER: My name is Barbara
6 Meisenheimer. I'm employed with the Missouri Office of
7 the Public Counsel. We represent utility consumers, and
8 we wanted to weigh in on the rulemaking to provide our
9 comments.

10 JUDGE WOODRUFF: Go right ahead.

11 MS. MEISENHEIMER: Generally, we are
12 supportive of many of the concerns raised by Staff, MTIA
13 and MEDA, and so specifically let me run through some of
14 the concerns that we share with them. Also, I've prepared
15 a written summary of the comments that I can either pass
16 out and provide you with copies of. Do you need a certain
17 number of copies?

18 JUDGE WOODRUFF: Just one copy for me is
19 fine. I'll go ahead and mark it as Exhibit 1. It will be
20 received into the record.

21 MS. MEISENHEIMER: The purpose statement of
22 the proposed rule change indicates that the new procedures
23 are intended to reduce procedural barriers for customers
24 and to expedite PSC decisions. The Public Counsel
25 certainly supports the goal of reducing barriers for

1 consumers and expediting Commission decisions where
2 possible. However, we do not believe that the proposed
3 rule in its current form will necessarily achieve that
4 objective.

5 Public Counsel supports the Staff comments
6 regarding the inclusion of ambiguous language in Part 14,
7 new Part 14 of the rule. In addition, the rule change
8 gives no indication of what standards are to apply to
9 determine whether a dispute is less than \$3,000.

10 There's no indication of who's to make that
11 monetary determination, nor is there a mechanism to object
12 or to seek reconsideration of that decision. It is also
13 not clear whether and to what extent a monetary value
14 could be placed on non-monetary issues that arise in
15 customer complaints, such as service quality issues.

16 The proposed changes also indicate there
17 will be some kind of comparison done in each complaint
18 case where the dispute is less than 3,000 to determine
19 whether the existing process is in conflict with the new
20 process to determine which applies, but it's unclear who
21 is to do this and how long it should take. It's not
22 mentioned. It also doesn't say whether there is a limit
23 to a material conflict or just any conflict.

24 Additionally, the proposed rule changes
25 include vague language such as it says an informal summary

1 manner and a reasonable opportunity, which are ambiguous
2 as to the actual meaning. This is especially concerning
3 since complaints are usually filed by individuals who have
4 no legal representation to argue what those terms should
5 reasonably mean.

6 Public Counsel agrees with the Staff and
7 MEDA and MTIA comments that the proposed rule change
8 should include the exact procedural rules and requirements
9 that are to be utilized and the exact standard by which
10 the Commission would decide the case.

11 Public Counsel also agrees with Staff and
12 MEDA and MTIA comments that the rule should not designate
13 Staff as an advisor in the small formal complaint. A
14 customer entering the small complaint process has probably
15 already gone through the Commission's informal complaint
16 process. In that process the Staff typically investigates
17 and may advocate a position and a resolution. And so it
18 would be difficult for the Staff in one role to play an
19 advocate for resolution and then in this new process to
20 then become an advisor on the same issue.

21 Public Counsel agrees with Staff's
22 recommendation that the language authorizing and
23 referencing Regulatory Law Judge Report and Order be
24 changed to establish an RLJ recommended order which would
25 be voted on ultimately by the Commission and delete any

1 reference to a Regulatory Law Judge Report and Order and
2 insert just the phrase Report and Order in its place.

3 Public Counsel would not only agree with
4 the proposed rule, that the proposed rule appear to be an
5 unlawful delegation, but would also state that it would
6 defeat the intended purpose of reducing procedural
7 barriers and expediting Commission decisions.

8 A customer entering the small company
9 process has already likely gone through an unresolved
10 informal complaint, and as the rule -- as the proposed
11 rule is written, a customer would now have to go through
12 an additional process before they could ultimately get to
13 requesting the Commission hear their issue and decide
14 their issue. And so we have some concern that it creates,
15 if you will, an additional hoop that a customer might have
16 to go through.

17 As well, typically customers would not have
18 the same level of resources to ask the Commission to
19 review an RLJ decision as the utility might. So there's
20 also an issue in terms of the resources that are required
21 to get through this additional process.

22 Public Counsel agrees with MEDA and MTIA's
23 recommendation that the existing informal dispute
24 resolution process should be preserved and that the
25 Commission should allow parties to participate by

1 telephone. Each of these recommendations supports the
2 goals of reducing procedural barriers and expediting
3 Commission decisions, and it also provides an economical
4 method for customers, the utility and other parties such
5 as Public Counsel to participate.

6 Specifically, the proposed rule, while not
7 actually contained within the rule itself, but there was a
8 note, a fiscal note I guess attached to that which
9 identified additional resources that Public Counsel might
10 be required to employ to be able to participate in this
11 additional procedure. And we certainly want to
12 participate to the greatest extent that we can in
13 proceedings before the Commission, but our resources are
14 very limited at this point.

15 Public Counsel also agrees with Staff's
16 comments that the small formal complaint procedure is to
17 apply only to disputes involving less than \$3,000, blocks
18 disputes which cannot be quantified in dollar amount. In
19 order to support the goal of reducing procedural barriers
20 and expediting Commission decisions, the Commission may
21 want to explore expanding disputes that qualify under this
22 rule in this or subsequent rulemakings.

23 JUDGE WOODRUFF: Let me ask you generally,
24 Ms. Meisenheimer, is Public Counsel supportive of the idea
25 of creating a separate sort of procedure if we can work

1 out some of the bugs?

2 MS. MEISENHEIMER: If some of the
3 significant bugs could be worked out, and I'm not sure
4 that you can overcome certain of the hurdles for us.

5 Ultimately -- and the use of the term
6 person in the beginning, I think it's the first paragraph
7 of the rule, there's an issue. I mean, when I initially
8 read it, I assumed that this rule would apply only to
9 customers, not to Public Counsel, but I don't know how the
10 term person might be interpreted. Does that mean that
11 Public Counsel -- if Public Counsel files, wants to file a
12 complaint that's monetary value is less than \$3,000, that
13 we then fall under a procedure where ultimately we may
14 never be able to come before the Commission itself for a
15 decision?

16 So there's some significant concerns. We
17 certainly support the idea of trying to find ways to make
18 the process more accessible to customers and to help them
19 to become more involved in bringing complaints when they
20 really feel that they have an issue. At this point, in
21 this form, I don't think we're there, and I think it needs
22 some significant revisions potentially before we could be
23 supportive.

24 JUDGE WOODRUFF: Okay. I hadn't even
25 thought about the idea that this would apply to Public

1 Counsel. It certainly wasn't the intent. So that may be
2 something we can look into. I will tell you the
3 Commission's intent in creating this amendment was to try
4 and expedite the process for customers, individuals.

5 MS. MEISENHEIMER: And we are certainly
6 supportive of that. To the greatest extent possible, we
7 support using technology to allow for participation from
8 remote locations. It also assists our office in being
9 able to participate in more cases if there's video
10 conferencing or telephone participation that would be
11 allowed in the process.

12 It's just there are some items in it as
13 it's been proposed that we have concerns about and agree
14 with the concerns raised by the other parties.

15 JUDGE WOODRUFF: Okay. Talked about the
16 fiscal note. There is a fiscal note on here for
17 approximately \$2,000 for travel expenses for Public
18 Service Commission and Office of the Public Counsel. If
19 we are to allow -- and that's based on the rules
20 requirement that basically the RLJ travel to the city or
21 county where the customer is located to conduct the
22 hearing.

23 Would some of your concerns go away with
24 the telephone, the use of the telephone?

25 MS. MEISENHEIMER: Certainly it would go a

1 long way to mitigate the concern with respect to travel
2 expenses because we could participate from a local
3 location. Public Counsel also has an issue in terms of
4 the bodies that we have to participate in numerous
5 proceedings that are going on before the Commission.
6 We've lost a couple of attorney positions since I've been
7 with the office, and that's a real challenge for us.

8 But we really would like to have the
9 opportunity to participate as much as possible. So I
10 guess it would help, but maybe not totally eliminate, but
11 I think it would help considerably if there were remote
12 access.

13 JUDGE WOODRUFF: Would Public Counsel
14 prefer having the hearings here in Jefferson City?

15 MS. MEISENHEIMER: I don't know that I
16 would go that far, and I think that the -- the difficulty
17 for me, it certainly would make it easier for our
18 attorneys to be here, but the focus should be on the
19 customer that has the complaint. And having them here in
20 Jeff City can be time prohibitive and cost prohibitive for
21 customers, especially if those proceedings go on, say, for
22 more than one day or multiple appearances are required.

23 JUDGE WOODRUFF: Thank you very much,
24 Ms. Meisenheimer.

25 Anyone else wish to give testimony?

1 Mr. Dority. I'll go ahead and swear you in.

2 (Witness sworn.)

3 JUDGE WOODRUFF: Thank you. Identify
4 yourself.

5 MR. DORITY: My name is Larry Dority, and
6 I'm appearing on behalf of a number of entities that I
7 provided oral entry of appearance for a moment ago. And
8 as the record reflects, Judge, and I think as you had
9 mentioned, both of Missouri Energy Development Association
10 and the Missouri Telecommunications Industry Association
11 filed joint comments dated May 28th with the Commission in
12 this docket, and I won't go over those in detail, but I
13 would just like to observe some of the primary points that
14 we wish to make.

15 We certainly share the Commission's goal of
16 improving the process for addressing customer disputes and
17 making the hearing locations more convenient for the
18 customers. We feel that our comments were generally
19 positive, and we hope that the Commission would take our
20 criticisms as being constructive in that regard.

21 The first point was to preserve the
22 existing informal dispute resolution process. As you are
23 aware, the Commission's current rules require the informal
24 complaint process to be utilized as a prerequisite for
25 filing a formal complaint procedure, and we would hope

1 that that would also be required for those customers that
2 are going to utilize the small complaint procedure as
3 well. We found that the informal dispute resolution
4 process oftentimes works out many of the alleged issues
5 that are involved.

6 We would also hope that the mediation
7 process which is provided for in the Commission's rules be
8 available to utilize. I've always appreciated Gay Fred
9 and her department's way they approach customer
10 complaints. They always have asked that -- you know, they
11 want to be sure that the customer has been in touch with
12 the company, has had opportunity for a dialog with the
13 company, and given the companies the opportunity to
14 respond and react before the actual complaint process is
15 initiated here at the Commission, and I think those are
16 very important. We want to make sure that the new rule
17 embodies those as well.

18 Permitting telephonic hearings, we've had a
19 discussion with Ms. Meisenheimer regarding that, not only
20 from the state agency perspective, but also the regulated
21 companies themselves, particularly in the telephone
22 industry for the MTIA companies I'm representing here this
23 afternoon. CenturyLink, for instance, does business in
24 over 280 exchanges, AT&T in over 160 exchanges located
25 throughout the state of Missouri, to which a customer

1 would be entitled to a venue before hearing the complaint.
2 Of course, the interexchange carriers operate in virtually
3 every exchange within the state having statewide
4 certification.

5 So we feel that having the opportunity for
6 telephonic hearings is important not only for the
7 customer, for the agencies that may be involved, but also
8 for the companies themselves.

9 We would want to have the opportunity to
10 object to the use of the small complaint process. Right
11 now it appears to be totally within the discretion of the
12 Commission as to whether or not it can be invoked.
13 Obviously if there are questions of general applicability
14 of a tariff, those are issues that may impact more than
15 just this particular customer. The companies are very
16 concerned that they would have the ability to have those
17 more broad, generic inquiries addressed by the
18 Commissioners and not -- not this particular process.

19 We would, of course, want to recognize the
20 minimum complaint requirement for utility rate complaints
21 that are embodied both in statute and in the Commission's
22 current rule. I don't think I need to elaborate on that.

23 We've talked about the unlawful delegation
24 of the RLJ decision, and we also suggest, as
25 Ms. Meisenheimer did, it would be simply a recommended

1 decision for action by the full Commission, and we would
2 also suggest that there be an opportunity for comments by
3 the parties once that RLJ recommended decision is issued
4 because, quite frankly, all parties may be in support of
5 it. That may be an end to it. Or we would also want to
6 have the opportunity to point out any shortcomings that
7 may be embodied in the RLJ's order.

8 You've heard testimony regarding the
9 objection to having the Staff participate as both an
10 advocate and investigative and also as the advisor to the
11 RLJ in this rule as it's now worded. We share those
12 concerns. We just don't think that the Staff can operate
13 under both types of scenarios.

14 The Commission's arbitration rule that I've
15 had some experience with clearly provides for the RLJ
16 having an advisor to assist him in his role as the
17 arbitrator in the case, but I think Chapter 36 also
18 provides that those particular folks that are designated
19 as advisors also then are behind the ex parte wall, if you
20 will, and would not engage direct communication with the
21 parties.

22 Of course, that's not what I think the rule
23 anticipates or contemplates where then Staff would be
24 going out and investigating the complaint, having inquiry,
25 dialog with both the complainant and the impacted utility.

1 I just don't think you can do both. We would ask the
2 Commission to take note of that concern as well.

3 Those are our primary comments. Since they
4 were filed, Judge, I'm assuming they will be a part of the
5 record and we don't have to offer them as an exhibit.

6 JUDGE WOODRUFF: That's correct.

7 MR. DORITY: I'd be happy to answer any
8 questions. I know Mr. Boudreau will have some comments as
9 well from the MEDA perspective.

10 JUDGE WOODRUFF: I do have a question about
11 the Staff investigation role of the Staff. Would it be
12 possible for Staff to do an investigation, file the report
13 and then have no further role in the case other than as a
14 possible witness if someone wanted to call them?

15 MR. DORITY: I think so. In fact, in my
16 particular experience, that has been the role of the
17 Staff. The RLJ oftentimes in a complaint will direct the
18 Staff to investigate and file a report, and those Staff
19 members will be available for testimony and subject to
20 cross-examination should the complaint actually go to
21 hearing. So they essentially stand in the shoes of a
22 party at that point. Again, they are a party and not an
23 advisor in an adjudicatory role to the RLJ.

24 JUDGE WOODRUFF: I may have questions for
25 Staff about that. It's something the Commission's

1 struggling with and trying to figure out how best to do
2 all this.

3 MR. DORITY: Thank you, Judge.

4 JUDGE WOODRUFF: I certainly appreciate the
5 comments. Mr. Boudreau?

6 MR. BOUDREAU: Judge, I don't have anything
7 further to add other than to echo the comments that have
8 been made by my friend and colleague Mr. DORITY. We're
9 certainly willing to answer any questions that you may
10 have. I don't have anything further to add. We certainly
11 support the written comments as written and filed and the
12 comments offered today.

13 JUDGE WOODRUFF: We'll go to Staff. Before
14 we go to Staff, is there anybody else here who wanted
15 to -- anybody that hasn't spoken so far?

16 (No response.)

17 JUDE WOODRUFF: Okay.

18 MS. FRED: Good afternoon, Judge.

19 JUDGE WOODRUFF: I need to swear you in.

20 (Witness sworn.)

21 JUDGE WOODRUFF: Thank you. You need to
22 identify yourself.

23 MS. FRED: My name is Gay Fred. I'm
24 consumer services manager for the Missouri Public Service
25 Commission. I'm here today on behalf of Staff. Staff has

1 filed comments already in this rulemaking. So, once
2 again, I'll just say that generally Staff supports the
3 Commission and their initiative to try to look at
4 developing an efficient way to address consumer complaints
5 before the Commission.

6 My department is commonly involved
7 extensively in pro se complaints, so we reviewed this
8 rulemaking as having an impact. However, I will say there
9 seems and there appears to be some need for additional
10 clarification. While we support the comments of the
11 Office of Public Counsel, the MTIA, the MEDA, we also
12 believe there's an opportunity here that perhaps we need
13 to be able to make additional comments either based on
14 their comments made here today or simply to add more
15 details that might be informative and of some assistance
16 in developing this rulemaking.

17 I do want to point out just briefly on
18 Staff's role in the informal complaint investigations
19 today. I believe OPC made some comment that the informal
20 complaint process, that Staff investigates the complaint
21 and often advocates a position.

22 The role of my department in a pro se
23 complaint, informal complaint is to be a neutral party.
24 So we investigate it and we provide the facts that we've
25 discovered, obtained from the complainant or from the

1 utility or any other party who's a part of the case. We
2 try to present those facts in our Staff report, but we're
3 not advocating a position one way or the other.

4 However, I do believe there are
5 opportunities where we have taken our process and moved it
6 on to an operations department expert who's more
7 technically equipped to address perhaps a technical issue,
8 and they may take a position or make a recommendation on
9 their analysis or their investigation of that technical
10 aspect of the complaint.

11 So just to kind of give you the difference
12 there, that my department generally tries to take a
13 neutral approach to complaints in presenting just the
14 facts and how those are in compliance with the rules and
15 regulations of the company's approved tariff. And then if
16 it were an element that is beyond our level of expertise,
17 billing and service issues, we then will refer those on to
18 our operations department technical staff.

19 JUDGE WOODRUFF: Sometimes the Commission
20 does get recommendations from Staff that say we've
21 investigated this and we believe it's without merit and it
22 should be dismissed, do you not?

23 MS. FRED: True. There are opportunities
24 if we see that they're not in violation -- if we see that,
25 in investigation of the complaint, the utility involved

1 has not violated a Commission rule or their approved
2 tariff, we will make that recommendation based on that
3 merit alone. Okay.

4 JUDGE WOODRUFF: Do you see the Staff
5 making that same sort of recommendation under the proposed
6 rule?

7 MS. FRED: That's why I think it's a little
8 unclear and that needs to be clarified a little bit better
9 in this rule so we have a clear understanding of what
10 Staff's role is in this. The point about the Staff being
11 an advisor and then also doing the investigative work,
12 that seems very fuzzy. That's a very gray area and would
13 need to be clearly defined.

14 JUDGE WOODRUFF: What would Staff, would
15 you like your role to be in these kind of cases?

16 MS. FRED: Currently our role is to
17 investigate, to be non-- a neutral party to look at the
18 facts and present the facts before the Commission.

19 JUDGE WOODRUFF: Staff is happy with that
20 role?

21 MS. FRED: Staff is happy with that role.
22 We feel like that's a good role for us to be in, and then
23 for the decision to be made based on the merits of the
24 facts.

25 JUDGE WOODRUFF: Sorry to interrupt you.

1 MS. FRED: No. That's fine. So I guess
2 basically that's -- as far as the technology, being able
3 to let customers and other parties participate through
4 telephony or webcasting, I'm the worst person to ask if I
5 advocate technology because I definitely do. And so
6 I'm -- I support that 100 percent. I'm sure Staff
7 supports that 100 percent. We want to make this process
8 as efficient and streamlined and very easy for the
9 consumer.

10 They find the process intimidating. At the
11 same time, they're not familiar with the process. They're
12 not necessarily familiar with judicial processes. So a
13 lot of my involvement in a case up front is to educate the
14 customer as much as possible on the process, their role,
15 Staff's role, Office of the Public Counsel, any other
16 parties, utility, whoever else is involved, the various
17 parties' roles.

18 But even with that said, I still believe
19 customers oftentimes are confused and intimidated by the
20 formality of the process, and so to ease their comfortable
21 -- uncomfortableness with the process and being able to
22 understand what the role is I think would be a benefit to
23 the consumer.

24 JUDGE WOODRUFF: Does traveling to their
25 hometown help ease the stress of filing this kind of

1 complaint, including the hearing?

2 MS. FRED: Well, a number of the cases
3 we've heard recently has been telephony. I mean, they've
4 been able to come over on a conference. I believe most of
5 them like to participate that way, and that seems to work
6 well. I don't think Staff would object to continuing that
7 process.

8 If Staff is expected to go and travel to
9 their domicile, then you're going to have additional
10 expense and time out of the office for the Staff, which
11 means other work gets put off to the side and gets behind.

12 JUDGE WOODRUFF: That's what I wanted to
13 get at is if Staff would prefer to keep the hearings here
14 by telephone rather than going to Cape Girardeau or to
15 St. Louis.

16 MS. FRED: It would be Staff's preference
17 to keep them in Jefferson City.

18 JUDGE WOODRUFF: Okay. Anything else you
19 want to add?

20 MS. FRED: No, nothing else.

21 JUDGE WOODRUFF: Thank you, Ms. Gay. Is
22 there anyone else who would like to make any comments?

23 I do have a general question for the --
24 well, for Ms. Brueggemann in particular, and the other
25 attorneys can weigh in on this also. It concerns the

1 suggestion that this would be an unlawful delegation of
2 authority to allow the RLJ to make the decision. I know
3 there was a case came out in the Western District just a
4 few weeks ago involving I believe it was the Aquila rate
5 case. I haven't looked at that for a couple weeks. Does
6 that have any impact on the Commission's delegation of its
7 authority?

8 MS. BRUEGGEMANN: I have not reviewed that
9 case, and so, if anything, I would be able to file
10 something. But if Mr. Dority or Mr. Boudreau have --

11 MR. DORITY: Judge, I'd be happy to give
12 you just a brief synopsis of our review. I think you're
13 referring to State of Missouri ex rel Aquila, Inc., et al.
14 versus Public Service Commission, 2010 Missouri Appeals
15 Lexus 499 and 11, and that was decided by the Missouri
16 Western District Court of Appeals on April 20th, 2010.

17 JUDGE WOODRUFF: That's what I'm referring
18 to.

19 MR. DORITY: They declined -- the Court
20 declined to find that an improper delegation specifically
21 occurred in that particular case. However, they appear to
22 infer that limits may exist as to what the Commission can
23 delegate under Section 386.240, and if I may just quote
24 from the Court's decision, without more specific
25 identification of particular in particularly significant

1 substantive issues the Regulatory Law Judge decided in the
2 Commission's stead, we reject the industrial intervenors'
3 claim that the act of issuing tariff compliance orders is
4 per se a nondelegable task which must in all instances be
5 ordered by the Commission. In doing so, you do not
6 foreclose the possibility that in a future case the
7 Commission's delegation of a particular issue to a
8 Regulatory Law Judge may be found to be unlawful.

9 So it's probably as clear as mud at this
10 point in terms of what the Western District may look at.
11 Again, this was an order approving compliance tariffs
12 issued pursuant to a Report and Order decided by the
13 Commission. As we're all aware, the Commission has
14 delegated to the RLJs the ability to render decisions on
15 PGA pass throughs, again, where it's primarily doing the
16 math and making sure that, you know, the tariffs are filed
17 in conformance with -- I'm sorry, the adjustments are
18 filed in conformance with the existing tariffs that are on
19 file and previously approved by the Commission.

20 So I'm not sure that this case really gives
21 us a clear definitive snapshot of what the Commission may
22 delegate under the statute but is certainly the most
23 recent decision addressing the issue.

24 JUDGE WOODRUFF: We certainly don't want to
25 tempt fate. Okay. Anything else anyone else would like

1 to add?

2 (No response.)

3 JUDGE WOODRUFF: All right. Well, thank
4 you all for coming, and with that we are adjourned. Thank
5 you.

6 WHEREUPON, the public hearing in this case
7 was concluded.

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STATE OF MISSOURI

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COUNTY OF COLE

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I, Kellene K. Feddersen, Certified

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Shorthand Reporter with the firm of Midwest Litigation

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Services, do hereby certify that I was personally present

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