 1   STATE OF MISSOURI

 2   PUBLIC SERVICE COMMISSION

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 6   TRANSCRIPT OF PROCEEDINGS

 7   Rulemaking Hearing

 8   April 7, 2014

 9   Jefferson City, Missouri

                     Volume 1

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12   In the Matter of a Proposed   )

      Amendment to Commission Rule   ) File No.

13   4 CSR 240-2.090 Regarding Data) AX-2014-0193

      Requests   )

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16   MORRIS L. WOODRUFF, Presiding,

                  CHIEF REGULATORY LAW JUDGE.

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               DANIEL Y. HALL,

18   COMMISSIONER.

19

20   REPORTED BY:

21   KELLENE K. FEDDERSEN, CSR, RPR, CCR NO. 838

      MIDWEST LITIGATION SERVICES

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

 2                (WHEREUPON, the hearing began at

 3    10:00 a.m.)

 4                JUDGE WOODRUFF:  Okay.  It's

 5    ten o'clock by my clock over here, so we'll go

 6    ahead and get started.  This is a public comment

 7    hearing on a rulemaking to Commission proposed rule

 8    to amend Commission Rule 4 CSR 240-2.090 regarding

 9    data requests.  This is Commission File No.

10    AX-2014-0193.

11                And this is a rulemaking hearing.

12    It's not a contested case hearing, so I don't have

13    to swear parties in or take entries of appearance

14    or swear witnesses.  This is a chance to offer

15    comments.

16                We had two prefiled comments, one

17    from Kansas City Power & Light Company and the

18    other from Midwest Gas Users Association, and they

19    both have representatives here.  So I'll go ahead

20    and ask them at this point if they wish to make any

21    further comments, Mr. Fischer first for KCPL.

22                MR. FISCHER:  Thank you, Judge.  May

23    it please the Commission?

24                Kansas City Power & Light did file

25    some written comments, and I think the gist of
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 1   them, they are looking for a little more

 2   flexibility in the rule on Section H where it would

 3   require that all answers to DRs be done through

 4   EFIS.

 5   There are times where the data is

 6   just so voluminous that it's more workable to enter

 7   into an agreement with Staff or some other party to

 8   give them a disk rather than filing the answer

 9   through EFIS. And there are actually some, I

10   think, restrictions on the size of files that you

11   can file through EFIS.

12   And it seems that we -- if there was

13   some flexibility where if you reached an agreement

14   with Staff or another party or had an order from

15   the Commission to grant you some more flexibility,

16   that would be helpful.

17   The waiver process itself in the

18   discovery process isn't all that helpful because of

19   the time it takes. We're often under typically a

20   rule that we're supposed to respond within 20 days,

21   and then if it gets down to rebuttal or

22   surrebuttal, it might be 10 or 5. And if you're

23   sitting there asking -- needing to get a waiver,

24   it's just not workable given that time period.

25   So we came up with just a little

 1   language here this morning that I thought I'd

 2   propose for consideration. Perhaps we could add

 3   some -- a phrase like "unless otherwise agreed by

 4   the parties to the data requests or otherwise

 5   ordered by the Commission".

 6   That would give particularly

 7   companies that had a lot of voluminous data that

 8   they would more easily just give to Staff on a disk

 9   or some other way some more flexibility.

10   I recently had a gas case where one

11   of the 200 data requests out of the box was give us

12   all the franchise agreements that you have in the

13   state. Well, that's about 80 franchise agreements.

14   And you can spend a couple hours putting those in

15   through EFIS, but the Staff was quite happy just to

16   look at them during the onsite audit, and it wasn't

17   necessary to actually have them forever on the

18   Internet. And we agreed that we'd just provide it

19   them physically.

20   So a little more flexibility along

21   that line would be helpful in day-to-day practice,

22   I think, and we propose something along that line.

23   JUDGE WOODRUFF: And that would be in

24   addition to subsection H?

25   MR. FISCHER: That's right. Yeah.

 1   COMMISSIONER HALL: Could you say

 2   your proposal again?

 3   MR. FISCHER: The language that we

 4   had was to add at the end of the proposed

 5   subsection H the phrase "unless otherwise agreed by

 6   the parties to the data requests or otherwise

 7   ordered by the Commission."

 8   COMMISSIONER HALL: Thank you.

 9   JUDGE WOODRUFF: Commissioner Hall,

10   did you have any other questions for Mr. Fischer?

11   COMMISSIONER HALL: At this point,

12   no.

13   JUDGE WOODRUFF: Okay. Anything

14   else, Mr. Fischer?

15   MR. FISCHER: That's all I've got.

16   Thanks.

17   JUDGE WOODRUFF: Thank you.

18   Mr. Conrad for the Midwest Gas Users Association.

19   MR. CONRAD: Since the podium's over

20   there, I'll --

21   JUDGE WOODRUFF: That's all right. I

22   can bring the camera over there to you.

23   MR. CONRAD: Your Honor, and may it

24   please the Commission? We just had two comments.

25   First of all, I looked this morning

 1   at the prefiled comments that GMO had and which

 2   Mr. Fischer has referred to. We have no problem

 3   with those.

 4   And the only concern, and I think

 5   this is echoed, I didn't obviously have time to

 6   research the point, but I think there is another

 7   rule dealing with voluminous material that's

 8   provided in response to data requests or

 9   interrogatories, and that says you can make those

10   available at a location that's convenient with a

11   20-watt light bulb and file cabinets and the usual

12   thing that I'm used to. But if GMO wants to do

13   that by CD, we don't have any problem with that.

14   The only question would be, who

15   defines what voluminous is? And you might give

16   some thought to how that could be reconciled with

17   that other rule.

18   Two points that we had made, your

19   Honor, in our prefiled comments was with respect to

20   2, it looks like H, and also C. C is the easy one,

21   and I think we have handled those circumstances

22   before by parties' agreement. And it struck me

23   that the proposed rule did not give the Commission

24   the authority to waive those requirements on its

25   own motion or at the motion of a party that says I

 1   need to have something expedited.

 2   So in that case, we have proposed

 3   some language there, "unless otherwise ordered by

 4   the Commission," which would, it seems, cover that.

 5   The larger issue is one surrounding H

 6   and appears to be the requirement that anything

 7   that is proposed -- or a data request that is posed

 8   by Commission Staff or is responded to by any party

 9   has to come through EFIS.

10   We've had this somewhat pitched

11   battle before in various rate cases. It's a

12   problem for us and probably is a problem -- maybe

13   Mr. Fischer is referring obliquely to this when he

14   talks about the volume limitations and the several

15   hours that it would take.

16   EFIS does not work the same when you

17   are outside the firewall. When I come into it from

18   my office or from our consultant's office, it's

19   slower. I have to go through multiple times to

20   pose individual requests. If there are five

21   requests, I have to go through five times. If

22   there are 30, I have to go through it 30 times.

23   I do not think that Staff has that

24   difficulty. They may have to go into it individual

25   times, but they have a lot faster system because

 1   they are on an intranet. They're not coming in

 2   through Bornio or wherever the Internet connection

 3   may be routed. That's the problem for us.

 4   There's another aspect of it, and

 5   that is when we have multiple requests, which I

 6   sometimes get from our consultants, they may have a

 7   string of 15 or 20 data requests, which I then

 8   break up and, rather than put all 15 or 20 or

 9   however many under one request on EFIS, I do that

10   individually.

11   Some of them are objected to. Some

12   of them may not be. Some of them may not be

13   responsive. Your Honor well knows, it is the

14   practice when we get into the hearing room, here's

15   a data request, here's the response, and it goes

16   into the record that way.

17   That is -- that is cumbersome to do

18   if you have 15 or 20 data requests on one sheet.

19   So we have to do that individually. As a result, I

20   would get responses back individually, and that

21   might be okay, except I then have to go into EFIS

22   for every one of those responses, and that's very

23   cumbersome, very slow. It impacts us from a budget

24   perspective. We do things on the basis of time,

25   and it just takes a lot more time.

 1   JUDGE WOODRUFF: What is the practice

 2   now as far as responding to data requests? Do you

 3   do it by e-mail?

 4   MR. CONRAD: The practice, as far as

 5   I know, has been twofold. When Staff sends out a

 6   data request to the utility, they send out a

 7   request, individual request numbered, and they send

 8   out through EFIS a -- I don't know whether it's

 9   kind of a header. Sometimes it has the actual

10   request in it. Other times it doesn't.

11   If it's a highly confidential

12   request, then I have to go into EFIS, log in and

13   get to that request. But typically what I do is I

14   will send those either individually or in a group

15   to our consultant. The consultant then goes

16   through it and says back to me, I would like to see

17   the response to No. 1, No. 7, No. 14, whatever it

18   happens to be.

19   I will then generate a request to the

20   utility, please send me a copy of your response to

21   Data Request -- Staff Data Request 1, 7, 14,

22   whatever it happens to be. And that seems to work.

23   Now, it's a rare day that we have to query Staff,

24   but we occasionally have had to query Staff,

25   particularly on --

 1   JUDGE WOODRUFF: By that sending them

 2   an e-mail or phone call you mean?

 3   MR. CONRAD: Well, what we have done

 4   in the past -- and I think Mr. Thompson can testify

 5   to this, too -- I have sent the data request to

 6   Staff people, and they may vary because we may have

 7   some questions on this issue and particular people

 8   within the Staff, and I send them to him.

 9   And he can address, I guess, if he

10   chooses to, how those get routed internally. But I

11   presume they would go to the individual person.

12   Sometimes we can identify the person. Sometimes

13   Staff becomes a multi-headed hybrid, and I

14   sometimes don't know who is responsible for this.

15   I can query with respect to testimony, but not on a

16   more broader level issue. And sometimes I get

17   responses back from people I didn't expect.

18   So there's the problem from our

19   perspective. What we've proposed is just that if

20   the utilities and Staff want to work out a system,

21   that's fine, as we're talking about here. For

22   others, it ought to be permissive and should be

23   encouraged but not required. It just -- it's

24   additional time for us.

25   JUDGE WOODRUFF: All right. Thank

 1   you. Commissioner Hall, do you have any questions?

 2   COMMISSIONER HALL: Not at this time.

 3   Thank you.

 4   JUDGE WOODRUFF: Okay. Thank you,

 5   Mr. Conrad. And just so the record is clear, you

 6   are Stuart Conrad representing Midwest Gas Users

 7   Association?

 8   MR. CONRAD: And Midwest Energy.

 9   JUDGE WOODRUFF: Users Association?

10   MR. CONRAD: Gas and electric.

11   JUDGE WOODRUFF: Okay. Thank you.

12   Mr. Thompson, you're here for Staff, I believe?

13   MR. THOMPSON: I am here for Staff.

14   JUDGE WOODRUFF: Do you wish to make

15   any statements?

16   MR. THOMPSON: I have no comment at

17   this time. Thank you, Judge.

18   JUDGE WOODRUFF: Kim Happy.

19   MS. HAPPY: Good morning.

20   JUDGE WOODRUFF: Identify yourself

21   also.

22   MS. HAPPY: I'm Kim Happy. I am the

23   data center manager at the Missouri Public Service

24   Commission. I'm primarily charged with maintaining

25   the Commission's case records and managing and

 1   maintaining EFIS records.

 2   While developing my understanding of

 3   the data request process, I discovered that the

 4   process is inefficient due to the lack of

 5   centralization. The intention of the rulemaking is

 6   simply to streamline the process and attempt to

 7   gain consistency and regularity of the process.

 8   Standards for filing data requests

 9   are currently being decided during procedural

10   conferences, which means that the process varies

11   from case to case. A rule would set a regular and

12   consistent standard that could be evenly applied to

13   all matters before the Commission.

14   From a recordkeeping standpoint, a

15   streamlined process will better enable the

16   Commission and stakeholders to locate and identify

17   data request records. The lack of centralization

18   causes unfair and unnecessary delays in responses

19   to discovery requests, subpoenas and sunshine

20   requests.

21   Centralization will reduce staff time

22   and cost for the agency. It eliminates the

23   duplication of data in multiple locations, and

24   instead provides a single source for the data.

25   And what I mean by that is if Mr. Conrad sends

 1 multiple e-mails to multiple staff, they tend to

 2 download it in multiple places and, therefore, that

 3 increases the amount of space that we're taking up

 4 on the server, and server space is expensive.

 5   EFIS provides many beneficial

 6 tracking mechanisms that allow users to view and

 7 track the data requests and responses. Users can

 8 quickly identify which questions have not been

 9 responded to and which ones might be overdue. They

10 can be searched by any combination of case number,

11 the requester's name and company, the responder's

12 name and company, the date, the case type, and the

13 entire description can be searched.

14   EFIS is the same application for

15 internal users and external users with regards to

16 speed and function. Internal users and external

17 users use the same screens, have the same

18 submission requirements and retrieve and view the

19 data in the same format.

20   Accessing EFIS through the intranet

21 link versus the Internet link is the same, except

22 when accessing EFIS through the intranet internal

23 users bypass the log-in screen and they're logged

24 in using their network credentials.

25   The amount of effort required to

 1   submit or respond to a data request using EFIS is

 2   minimal. The submission screen to develop a

 3   request consists of eight required fields. Six out

 4   of eight of those fields are drop-down boxes, and

 5   some of those drop-down boxes auto populate from

 6   data that's already in EFIS.

 7   To respond to a data request, there

 8   are four required fields, and three out of four of

 9   those fields are also drop-down boxes. So it's

10   just a matter of selecting boxes.

11   Documents or attachments filed in

12   EFIS cannot exceed 20 megabytes. However, there is

13   no limit to the number of documents or attachments

14   that a submission can contain. Responders and

15   requesters can attach an unlimited amount of

16   documents in one submission so long as no one

17   submission exceeds the 20 megabyte limit.

18   The practice we handle in the data

19   center is when we receive larger documents, they're

20   broken down into multiple parts to accommodate the

21   limitations, which is the same practice we use for

22   case filings as is for data requests.

23   If the document format does not allow

24   the document to be broken down into multiple

25   smaller parts, filers typically submit a response

1   into EFIS indicating that the response is too

2   voluminous to upload, and then a CD or DVD is

3   provided to the data center.

4   And I believe that the 20 megabyte

5   limit is lenient given that the Missouri court's

6   e-filing system has a seven megabyte limit per

7   attachment and 21 megabyte limit per submission.

8   EFIS was implemented -- when it was

9   implemented, it was intended to serve as a

10   centralized repository for all of the Commission's

11   records. During the development of the data

12   request module and during later enhancements, input

13   from the industry and other stakeholders was

14   solicited.

15   Those recommendations were

16   incorporated into the current design, and those

17   involved in the development and enhancements

18   addressed concerns and developed a solution that

19   was beneficial to all stakeholders, and the

20   security of that data was, I think, their top

21   priority.

22   It has been suggested that sending

23   data requests using e-mail is a more secure option.

24   However, those assertions are incorrect. EFIS is a

25   secure site and, as such, any documents uploaded

 1   directly into EFIS are secure, while the opposite

 2   can be said of e-mail documents. If e-mail

 3   documents are not being encrypted, they are sent in

 4   what is known as plain text across multiple e-mail

 5   servers and networks, which makes the e-mail

 6   susceptible and vulnerable and the attachments to

 7   the e-mail. I think this puts the e-mail at

 8   greater risk.

 9   If stakeholders are genuinely

10   concerned about the security of the data being

11   transmitted, I would strongly encourage them to

12   utilize EFIS for data request purposes and abandon

13   the practice of e-mailing the data.

14   I understand that EFIS is not without

15   its flaws, but I feel the centralization of data

16   requests in EFIS is a benefit to all stakeholders.

17   JUDGE WOODRUFF: Thank you. You

18   heard Mr. Fischer's suggestions.

19   MS. HAPPY: I did, and I do agree. I

20   think, you know, the size limitations can sometimes

21   be a problem. And so kind of what I mentioned, one

22   of the things we did is if -- we do work with the

23   companies. If they have come to us and they said

24   it's just too much data or a lot of times Excel

25   spreadsheets cannot be split up into multiple

 1 documents, so we submit kind of a reference sheet

 2 in EFIS as a data request response. So there's

 3 still a response to the data request, and then we

 4 allow them to provide the CD and DVD to the data

 5 center. I think they supply the other parties with

 6 the same information, and we have an index of that.

 7   Part of our problem is that if you're

 8 sending responses to multiple people in the agency,

 9 no one outside of that person who received it may

10 know that it's even been received. So it's

11 difficult to know what's been responded to and

12 what's not been responded to. And if you have

13 staff turnover, you know, it's kind of -- it's hard

14 to track and maintain those records. And for me,

15 from a recordkeeping standpoint, it's difficult.

16   And to maybe sort of expand on the

17 rule a little bit, I would suggest that where it

18 says on Section H any data request issued to or by

19 the Staff of the Commission shall be submitted and

20 responded to in the Commission's Electronic Filing

21 and Information System, and I would maybe add that

22 except when EFIS limitations prevent such filing.

23 And then that way they would have an option to

24 submit it outside of EFIS.

25   JUDGE WOODRUFF: Okay. That's

 1   alternative language from Mr. Fischer's proposal?

 2   MS. HAPPY: Correct.

 3   COMMISSIONER HALL: Why is that

 4   language from your perspective better than the

 5   language proposed by Mr. Fischer? Wouldn't your

 6   issue -- wouldn't that issue be subsumed in the

 7   language?

 8   MS. HAPPY: I think that what I would

 9   like to see accomplished with the rule is to have

10   the -- to have the records centralized, and I think

11   that his rule leaves it more open-ended and it

12   gives them an opportunity to not use EFIS for other

13   purposes outside of system limitations.

14   COMMISSIONER HALL: But couldn't

15   there possibly be some other reason why?

16   MS. HAPPY: There could, I guess.

17   COMMISSIONER HALL: And if it's

18   unless otherwise agreed to by the parties, Staff

19   could essentially put a veto on any --

20   MS. HAPPY: Yeah. And what we would

21   get back to is currently what the problem is right

22   now, that it is kind of handled case by case. So

23   from my perspective, and maybe it's a selfish

24   perspective, but it's difficult for us to keep

25   track of all the different cases and how that

 1 process is to be applied. There's just no

 2 consistency to it.

 3   JUDGE WOODRUFF: Moving over to

 4 Mr. Conrad's concerns, is there any way to

 5 accommodate his concerns?

 6   MR. CONRAD: Well --

 7   JUDGE WOODRUFF: I'm asking Ms. Happy

 8 first, and then I'll come back to you, Mr. Conrad.

 9   MS. HAPPY: I think his concerns have

10 to do with responding to the data requests and the

11 amount of time that it takes. And I'm not exactly

12 sure what his process is, but I know that the Staff

13 of the Commission, I think there are three support

14 staff in Kevin Thompson's group and they submit

15 every data request and response that is handled by

16 Staff, and I -- that's not their sole functions.

17 They do all the other case management for the

18 attorneys and do pleadings and stuff. I think

19 they're able to manage it and make it workable.

20   JUDGE WOODRUFF: Mr. Conrad, do you

21 wish to respond?

22   MR. CONRAD: Well, the -- what I was

23 able to hear of Ms. Happy's comment was there is at

24 least one factual inaccuracy. When we send data

25 requests, the few times that we have had to do this

 1   for Staff, and that's what we're talking about, we

 2   have sent them to whoever the lead Staff counsel

 3   is. Maybe that's Mr. Thompson. Maybe that was

 4   somebody else in the particular case, because as I

 5   said, I don't know, and she herself mentions,

 6   there's staff turnover. I don't always know who's

 7   going to be responsible in a particular area.

 8   So when we negotiate the procedural

 9   schedule and the other aspects of that procedural

10   order, which you signed, you've seen, we talk about

11   using kind of the FERC model, which is everybody's

12   data request comes to the attorneys. And that's

13   what I do is I send them to the attorney, and it's

14   then their responsibility, and in fact, that order

15   usually says it's their responsibility to observe

16   if there's HC, if there's something else that's a

17   problem, then they take care of it. But we've

18   dealt with it that way.

19   So I -- the statement that I thought

20   I heard made that we would -- we would send to

21   Staff person A and Staff person B and Staff person

22   C and D and on out is just not correct. That's

23   not -- that's not what I do.

24   She is right in saying that our

25   problem is essentially responses as -- but it has

 1   to do with when we send something to Staff or when

 2   we get a response back from Staff, that's something

 3   that we requested. If it's something that Staff

 4   requested from a utility, I've described to you

 5   already, please send me a copy of your response to

 6   Staff Data Request No. 1, 2, 3. That seems to --

 7   that seems to work, and I haven't picked up any

 8   objections from any of the utilities that we deal

 9   with about that.

10   But it does -- one thing that we do

11   sometimes negotiate about is the utility doesn't

12   want to respond to us before they respond to Staff.

13   And I've said in our request, if you have already

14   responded to Staff and the response is available,

15   it's not another 20 days or 10 days or whatever it

16   happens to be. Just send it on out. You've

17   already got it. You've already put it together.

18   So there's no reason for any delay other than the

19   paper shuffling. That's the only aspect of it.

20   Now, when we deal with the Staff, and

21   I again stress, that's rare. I'd like it to be

22   rarer, but that -- sometimes I -- I don't get to

23   deal the cards.

24   JUDGE WOODRUFF: Sure. Now --

25   MR. CONRAD: The cards are dealt to

 1   me.   When we deal with Staff, that's the problem.

 2   JUDGE WOODRUFF: If I can ask you

 3   mechanically how you do it now when you're dealing

 4   with Staff.   Do you send an e-mail to Mr. Thompson

 5   or --

 6   MR. CONRAD: With the data request.

 7   It might be Mr. Thompson.   It be might be

 8   Mr. Dottheim.

 9   JUDGE WOODRUFF: Or whoever.

10   MR. CONRAD: Whoever.

11   JUDGE WOODRUFF: Would it be an

12   alternative if you sent an e-mail to the data

13   center?

14   MR. CONRAD: Sure.   Be happy to put

15   them on the list.   And again, we follow the FERC

16   model, and I think this has been followed, Judge,

17   in all of the procedural orders that I've dealt

18   with, is the data requests go to attorneys.   That's

19   how we do it at FERC.

20   JUDGE WOODRUFF: Let me ask you,

21   Ms. Happy, would that be alternative that would be

22   workable for the data center, if Mr. Conrad sent an

23   e-mail essentially to you and then you would enter

24   it into EFIS?

25   MS. HAPPY: I mean, that would help

 1 centralize it, but I have concerns about e-mailing

 2 sensitive information in general unless they're

 3 practicing some form of encryption.

 4   JUDGE WOODRUFF: If you could speak

 5 up, Mr. Conrad can't --

 6   MR. CONRAD: I'm not hearing.

 7   MS. HAPPY: I would discourage

 8 sending attachments that are sensitive unless

 9 you're doing some form of encryption in your

10 e-mail.

11   MR. CONRAD: Well, Ms. Happy, with

12 all respect, as a lawyer I'm subject to the

13 Missouri Supreme Court rules regarding how to

14 handle confidential material. They require me on

15 e-mails to put a disclaimer on those e-mails. I

16 think they have done that by rule. They may have

17 specific wording. We try to follow it. But I'm

18 subject to a little bit different set of scriptures

19 than non-lawyers. And I don't mean any disrespect.

20   MS. HAPPY: I just -- my point was

21 simply that if you wanted to protect the data, that

22 if you were concerned about the sensitive nature of

23 the data not being intercepted because it's being

24 routed through servers without being encrypted.

25 And there's no requirement for you to do that.

 1   MR. CONRAD: And when we -- to try to

 2   respond to the judge's question, when we send

 3   something to let's say Mr. Thompson that happens to

 4   be HC, I don't -- I try to avoid that. In fact, we

 5   put in the standard procedural order that parties

 6   should try to avoid putting HC material in the data

 7   request itself. You know, they may obliquely refer

 8   to it in some way that the parties can find it.

 9   So I typically don't do that, and I

10   typically don't send -- don't send attachments with

11   that. So I don't know that that's -- that that in

12   itself is going to be a problem.

13   What we have done in the standard

14   order -- I'm referring to a standard order. I know

15   there's probably 15 versions of it out there. But

16   what we have done in that is we send it to the

17   attorneys, for instance Mr. Fischer. Mr. Fischer

18   knows or should know, I presume he does, who within

19   GMO or KCPL should look at highly confidential

20   material.

21   And I don't sends it, for instance,

22   if they have consultants and consultants have not

23   filed the HC commitment, he's -- he should be aware

24   of that. And if they have and that consultant

25   needs to have it, then that's -- that's his

1   responsibility to make that further distribution.

2   But since it's done by e-mail, it's

3   typically pick somebody, and I presume you have

4   most of your consultants on the distribution list

5   or individually if you use Outlook.

6   So I don't know if that's -- I want

7   to be responsive to your question, not evasive, but

8   Ms. Happy does not address the core issue in what I

9   heard. Maybe I didn't hear it all. And that's

10   that EFIS may very well be the same application it

11   runs here. I access the same application she does,

12   but I don't get to it the same way. I don't get to

13   it by an intranet.

14   And I haven't studied what Staff

15   people do, but what little I have observed over the

16   few years that I've been kicking around here is it

17   moves pretty quickly. Moves very quickly. And

18   they're able to go back and forth between

19   functions.

20   And I don't think -- and it's -- I've

21   referred to it, probably wrongly, but it's a bias

22   that they do not see what I see. They do not see

23   the delays. They do not see the cumbersome aspect

24   of it because they're not working through an

25   Internet. They're working behind a firewall in an

 1   intranet.

 2   JUDGE WOODRUFF: Well, thank you.

 3   Mr. Hanauer for the Staff. John Hanauer, anything

 4   you wanted to add?

 5   MR. HANAUER: I guess, you know,

 6   whether you're submitting attachments via e-mail or

 7   EFIS, in a computer network they're going to be

 8   routed the same path. So there's no real

 9   difference in that.

10   I'm going to disagree with Kim.

11   There will be a speed difference when you're

12   accessing EFIS internally, and it's -- it's by an

13   order of ten typically at least.

14   JUDGE WOODRUFF: Ten times faster for

15   behind the firewall?

16   MR. HANAUER: And that's a minimum.

17   Generally it will be much, much faster internally.

18   Internally our users are operating at a thousand

19   megabit connection speed. Upstream DSL connections

20   are about a hundredth of that.

21   But if you're -- if you're talking

22   about 20 meg attachment size limits, that's not

23   going to be -- that can be measured in seconds, the

24   difference in speed.

25   You know, what Kim said about e-mail

 1 being insecure just in its nature is spot on.

 2 Anyone with access to any network in between the

 3 sender and the recipient would have access to that

 4 attachment, unless the attachment was encrypted or

 5 the e-mail was encrypted. That's all I've got.

 6   JUDGE WOODRUFF: Okay. Commissioner

 7 Hall, do you have any questions?

 8   COMMISSIONER HALL: So it would -- so

 9 Internet would be slower, but it would be a couple

10 seconds slower?

11   MR. HANAUER: Right, if you're

12 talking about uploading 20 megs at a time maximum.

13 Generally the attachments in EFIS are much smaller

14 than that.

15   COMMISSIONER HALL: Okay.

16   JUDGE WOODRUFF: What about the other

17 aspects of switching between items within EFIS that

18 Mr. Conrad was talking about, would that also be

19 slower for him?

20   MR. HANAUER: Yes.

21   JUDGE WOODRUFF: And how much slower?

22   MR. HANAUER: Milliseconds.

23   JUDGE WOODRUFF: I'll give you a

24 final chance, Mr. Conrad. Yes, Kevin. Kevin

25 Thompson.

 1   MR. THOMPSON: Thank you, Judge. I

 2   just wanted to kind of summarize why we're here.

 3   This proposed rule is part of a general program to

 4   kind of standardize and regularize the use of DRs

 5   by Staff. There are literally hundreds if not

 6   thousands of DRs that go out in the course of a

 7   case, particularly a major rate case.

 8   And in the past the DRs were being

 9   issued directly by members of the technical staff.

10   When I first became the General Counsel in 2006, I

11   insisted that the DRs be submitted to the General

12   Counsel's Office for review before they were

13   issued, so that at least there was some involvement

14   of the legal branch of Staff in the discovery

15   process.

16   Last year we told Staff that they

17   could no longer issue DRs themselves, that they all

18   were going to be issued by counsel, and that they

19   would submit proposed DRs to counsel for review and

20   for submission to EFIS.

21   At the same time, we also took the

22   step of using EFIS as our primary DR interface, our

23   device. EFIS as it currently exists permits Staff

24   to submit DRs and to receive responses, and perhaps

25   you can ask Staff a DR through EFIS.

 1   But parties can't send each other

 2   DRs. Mr. Conrad could not submit a DR to the

 3   utility, for example. Neither could the utility

 4   send a DR to Mr. Conrad using EFIS. Now,

 5   eventually in the future when EFIS is rebuilt and

 6   there's a new addition, perhaps it will become the

 7   primary interface for everyone doing discovery, but

 8   right now it's just for Staff.

 9   And Ms. Happy has clearly explained

10   the various reasons why we considered the use of

11   EFIS to be superior to the use of e-mail, which had

12   been the primary method in the past. Thank you.

13   JUDGE WOODRUFF: I'll give you the

14   last word, Mr. Conrad. Just a moment. Other

15   people in the room wish to --

16   COMMISSIONER HALL: I wanted to

17   ask --

18   MR. CONRAD: I don't know if there is

19   a --

20   JUDGE WOODRUFF: Mr. Conrad, just a

21   moment. The Commissioner has a question first.

22   COMMISSIONER HALL: To Staff Counsel.

23   I mean, there is no strategic advantage whatsoever

24   for this rule change from your perspective, is

25   there?

 1   MR. THOMPSON: None whatsoever.

 2   COMMISSIONER HALL: Yeah. I mean, if

 3 anything, it would benefit all the other parties to

 4 a case more so than you because now everyone else

 5 is going to be able to access much easier data

 6 requests to and from Staff?

 7   MR. THOMPSON: As far as I know,

 8 that's true.

 9   MS. HAPPY: That's correct.

10   COMMISSIONER HALL: And I think

11 that's important because there were some -- in the

12 comments there's some -- there's an issue raised

13 that perhaps this -- this proposed rule is

14 inappropriate in that it's proposed by Staff and

15 for Staff's advantage, and I just didn't see that

16 at all. And I think it's important that we

17 understand and recognize that.

18   JUDGE WOODRUFF: Thank you. Another

19 person wanted to testify.

20   MS. GIBONEY: Sarah Giboney for

21 Ameren Missouri. The company just wants to make

22 the comments that it has no objection to the

23 proposed amendment. It also has no objection to

24 the change proposed by Mr. Fischer and would prefer

25 that change to the language proposed by Ms. Happy.

 1   But also would note that the company

 2   had intended, where records were voluminous, to do

 3   exactly what Ms. Happy suggested, which would be to

 4   file sort of a placeholder filing that would say

 5   something like the documents are too voluminous or

 6   can't be broken into subparts and the party will

 7   serve the response by sending a disk by mail.

 8   Basically, accommodate the need for Staff to track

 9   those requests, but to be able to send them in the

10   way that makes sense depending on the type of data

11   being provided. That's all.

12   JUDGE WOODRUFF: Thank you.

13   Mr. Conrad.

14   MR. CONRAD: To respond to the

15   Commissioner's question, we do have a different set

16   of strictures. The consultant aspect of it, I may

17   have a consultant, sir, that is not authorized to

18   look at particular material on the Staff website,

19   but that over -- that kind of begs the question.

20   I have to go in one at a time, and

21   that's why I will send a request to the company,

22   and I'm obligated to send that request to the

23   company under most of our scenarios because

24   occasionally companies will respond and say, I'm

25   sorry, that's highly confidential. You haven't

 1   filed whatever it is.

 2   Now, as far as an attorney goes,

 3   supposedly attorneys are entitled to see that, but

 4   not all consultants are. And the classification of

 5   the material pursuant to the Commission's existing

 6   rules is either proprietary or highly confidential.

 7   And there are two different levels of

 8   who can look at that material. That's -- that's

 9   different. I have to -- I have to look at that. I

10   cannot give -- I'm bound to not give out my EFIS ID

11   and log-in information to a consultant who might

12   not be authorized to see everything that's there.

13   So I have to filter that. Then the consultant has

14   to work with it.

15   It is a matter of time for us. I --

16   I have no standard of reference. I haven't put a

17   stopwatch on something. But I can tell you, it

18   does take more than two or three seconds sometimes,

19   maybe more, to get through.

20   Now, we have a relatively fast

21   connection at our office. We're not yet on Google

22   Fiber, but I can guarantee you it doesn't measure

23   up to an intranet. We have to come through

24   whatever servers are out there. I don't -- we

25   don't get to choose those. And sometimes EFIS will

 1 respond fairly quickly, and other times it will sit

 2 there and go through several computer cycles or a

 3 cup of coffee, whichever first occurs, before it

 4 will even come up.

 5   And then going back and forth between

 6 functions is also cumbersome, and I would have to

 7 do that multiple times. That impacts time. Sure,

 8 we bill time, but my clients don't -- they don't

 9 appreciate billing for me time spent on EFIS.

10   JUDGE WOODRUFF: Or drinking a cup of

11 coffee.

12   MR. CONRAD: That's all I'm concerned

13 with. It's a rare day that we have to query

14 Staff. So, you know, in large measure, it's

15 probably not a major -- a major objection.

16   But for those times that we do, I

17 just simply like to be able to do things the way --

18 now, insofar as data requests to other parties, and

19 that kind of came up, if I send a data request to

20 Mr. Fischer saying please send me a copy of your

21 response to Staff Data Request 1, 2, 3, 4,

22 whatever, I will send that to Mr. Thompson in our

23 example so he is aware.

24   And that's fulfilling the obligation

25 that we have under that procedural order that I'm

 1   obligated to send that to other attorneys. But

 2   it's then up to Mr. Thompson whether he puts that

 3   in his desk drawer or routes it out to other

 4   people. That's -- that's Mr. Thompson's concern.

 5   COMMISSIONER HALL: But if this rule

 6   goes into effect, you would no longer have to make

 7   that request because you could just get on EFIS and

 8   get --

 9   MR. CONRAD: No, sir.

10   COMMISSIONER HALL: Why is that?

11   MR. CONRAD: Because of what I just

12   told you, is I -- the consultant may not have

13   access properly to all of those materials, and so I

14   can't -- I can't send them to him.

15   Number two, you're asking me to go

16   into EFIS how many times? Five times if there's

17   five responses. 25 times if there's 25 responses.

18   Now, my salary, my compensation, and my clients are

19   billed on the basis of time. That's a little

20   different than some other people here in this room.

21   JUDGE WOODRUFF: Okay.

22   MR. CONRAD: My time gets charged.

23   Somebody else's doesn't.

24   JUDGE WOODRUFF: Anything else,

25   Commissioner Hall?

 1   COMMISSIONER HALL: I guess I'm still

 2   confused about when -- when responses would be

 3   filed on EFIS that contained highly confidential

 4   information, how would that -- how would that be

 5   dealt with under this proposed rule?

 6   MS. HAPPY: EFIS has a built-in

 7   security mechanism. They can assign three

 8   different security classifications. One is public,

 9   one is highly confidential and one is proprietary.

10   So when they upload their attachment, they

11   designate the security themselves when they import

12   it into EFIS.

13   COMMISSIONER HALL: Okay.

14   MS. HAPPY: And then the security,

15   only -- EFIS is locked down so that only certified

16   members of the service list have access to the data

17   requests, and they have to be Missouri attorneys or

18   attorneys on -- have a bar number, I guess I should

19   say. I have it broken down, and then --

20   COMMISSIONER HALL: Are they broken

21   down case by case?

22   MS. HAPPY: No. Well, yeah. Yeah.

23   Basically, it's the certified service list that

24   dictates who has access to the highly confidential

25   information. However, anyone --

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 1                COMMISSIONER HALL:  So a lawyer in

 2   one case would not be able to access highly

 3   confidential information in another case?

 4                MS. HAPPY:  Correct.  And then I

 5   think -- let me see.  The PSC Staff and the Office

 6   of Public Counsel have access, and then anyone

 7   listed as a data request contact in the company's

 8   contact list, they can also see it.  So members of

 9   the staff or the company that Mr. Conrad represents

10   could also see it if they needed to.  If it was

11   their company's data request, they could see them.

12                MR. CONRAD:  How would they get into

13   EFIS, Ms. Happy?

14                MS. HAPPY:  They have a log-in.  They

15   all have a user ID and a password.

16                MR. CONRAD:  Who does?

17                MS. HAPPY:  Any --

18                MR. CONRAD:  All my clients do?

19                MS. HAPPY:  Anyone that is using

20   EFIS, actively using EFIS has a user ID and

21   password.

22                MR. CONRAD:  Let me ask the question

23   again.  Are all my clients on that list?

24                MS. HAPPY:  I couldn't answer that.

25                COMMISSIONER HALL:  But anyone who
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 1 wanted to get on could get on, though?

 2   MS. HAPPY: That's correct.

 3   COMMISSIONER HALL: So they could be

 4 on. If they're not on, they could be on.

 5   MR. CONRAD: They may be restricted

 6 as to what they can see. That doesn't do me any

 7 good. I have, sir, an ethical responsibility.

 8   COMMISSIONER HALL: Restricted by

 9 what?

10   MR. CONRAD: Pardon me?

11   COMMISSIONER HALL: You said

12 restricted as to what they can access. Restricted

13 by what?

14   MR. CONRAD: Whether it's HC, whether

15 it's proprietary or whether it's public. Three

16 classes.

17   COMMISSIONER HALL: Okay.

18   MR. CONRAD: And I have -- if I'm

19 representing people in a case, I have an ethical

20 responsibility to see all of that.

21   COMMISSIONER HALL: Right.

22   MR. CONRAD: And I have to make that

23 decision. Now, that's great so far as running up

24 time on clients, but it doesn't -- it doesn't sit

25 well with clients. As I just made the comment to

 1   the Judge, I don't -- I don't like to send bills to

 2   clients say time spent researching on EFIS.

 3   COMMISSIONER HALL: Okay.

 4   MR. CONRAD: Sir, all I'm asking for,

 5   if Staff and the utilities want to do their own

 6   thing, that's fine. When the few times that we

 7   have to query Staff, I would just like to say, if

 8   we can work with EFIS, fine. If we can't, we're

 9   not going to be required to.

10   JUDGE WOODRUFF: Let me clarify

11   something, because I'm a little confused here, too.

12   When you talk about querying Staff, you would be

13   sending Staff an e-mail; is that right?

14   MR. CONRAD: Probably, yes.

15   JUDGE WOODRUFF: There's nothing in

16   this rule that says you can't send an e-mail to

17   Staff.

18   MR. CONRAD: Well, but if I'm sending

19   a data request under a rule that says if I'm

20   querying Staff, I have to fulfill EFIS -- let's

21   look at the draft of the rule. Maybe I'm

22   misreading. I read H to say any data request

23   issued to or by the Staff of the Commission. Any

24   data request issued to the Staff of the Commission

25   shall be submitted and responded to in the

 1   Commission's electronic filing system. So your

 2   rule, sir, does require me to go through EFIS.

 3   JUDGE WOODRUFF: For when you're

 4   filing a response --

 5   MR. CONRAD: To Staff.

 6   JUDGE WOODRUFF: -- to or from Staff?

 7   MR. CONRAD: Sure. That's why I'm

 8   here.

 9   JUDGE WOODRUFF: Okay. What I'm

10   getting to is, you can still send an e-mail to

11   Kevin Thompson saying what's going on with this

12   data request? That doesn't have to go through

13   EFIS.

14   MR. THOMPSON: No.

15   MR. CONRAD: No. If it's just a

16   status request or --

17   JUDGE WOODRUFF: Right.

18   MR. CONRAD: No. I agree.

19   JUDGE WOODRUFF: The rule would

20   require a formal -- if you had a formal data

21   request to Staff, that has to at least initially go

22   into EFIS? Correspondence between can go --

23   MR. CONRAD: Yes, sir. The way the

24   rule is worded, yes, sir.

25   JUDGE WOODRUFF: Okay.

 1   MR. CONRAD: Proposed rule.

 2   JUDGE WOODRUFF: I wanted to be clear

 3   on that. Okay. Any other comments anyone wishes

 4   to offer? All right. Looks like we are adjourned.

 5   Thank you.

 6   (WHEREUPON, the rulemaking hearing

 7   concluded at 10:48 a.m.)

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 1             C E R T I F I C A T E
 2   STATE OF MISSOURI)
                        ) ss.
 3   COUNTY OF COLE      )
 4             I, Kellene K. Feddersen, Certified
 5   Shorthand Reporter with the firm of Midwest
 6   Litigation Services, do hereby certify that I was
 7   personally present at the proceedings had in the
 8   above-entitled cause at the time and place set
 9   forth in the caption sheet thereof; that I then and
10   there took down in Stenotype the proceedings had;
11   and that the foregoing is a full, true and correct
12   transcript of such Stenotype notes so made at such
13   time and place.
14             Given at my office in the City of
     Jefferson,
15
     County of Cole, State of Missouri.
16

             _____
17             Kellene K. Feddersen, RPR, CSR, CCR
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