STATE OF MISSOURI

PUBLIC SERVICE COMMISSION

____

TRANSCRIPT OF PROCEEDINGS

Rulemaking Hearing

August 7, 2018

Jefferson City, Missouri

Volume 1

____

In The Matter Of A Proposed)
Rule Regarding Incentives For) File No. AX-2018-0240
Acquisition of Nonviable)
Utilities)

MORRIS L. WOODRUFF, Presiding
CHIEF REGULATORY LAW JUDGE

DANIEL Y. HALL, Chairman,
COMMISSIONER

REPORTED BY:
Beverly Jean Bentch, CCR No. 640
TIGER COURT REPORTING, LLC

I N D E X

Page

P R O C E E D I N G S

JUDGE WOODRUFF: Let's go ahead and get started. We're here for a rulemaking hearing. This is Commission File AX-2018-0240. It's concerning the proposed rule for 4 CSR 240-10.085 which are Incentives for Acquisition of Nonviable Utilities.

The Commission has published this proposed rule in the Missouri Register, and the rulemaking hearing was properly set for today at 10:00 a.m. This is a rulemaking hearing, not a contested case hearing. Therefore, it's much more informal than the rulemaking hearing. I'm not going to take entries of appearance from anybody. Nobody is going to be sworn to give testimony.

We're just taking comments. Really the only structure we have for it is that I'll ask members of the public to speak. You can speak from where you're at if you're in the front row. If you're in the back, I ask you to come forward to the podium just so that you can be seen, and I'll let you give your -- speak your peace. I may have some questions. I'm expecting Chairman Hall to be here later. He may have some questions for you after you've given your statement.

I'll ask staff to go last so that they have a chance to respond to the other comments. So with that, then we're ready to begin taking comments. Who would like to go first?

MR. COOPER: Do you want to go ahead, Ryan?

MR. SMITH: Sure.

JUDGE WOODRUFF: If you'd identify yourself for the benefit of the court reporter.

MR. SMITH: I will, sure. Ryan Smith for Office of the Public Counsel. I'm Senior Counsel here. I'm also joined at the table with Caleb Hall. He's also with the Office of the Public Counsel.

I wanted to start my comments thanking the Commission for their efforts to create a rule essentially designed to encourage healthy utilities to try to acquire small distressed utilities.

I think that's a good goal, but public counsel does have some concerns with this particular rule and the way in which that goal is trying to be achieved. So public counsel has filed some comments which have detailed our concerns, but today I'd like to highlight three strong priorities.

The first one concerns the size of the systems to be acquired. The second concerns the scope of a rate of return premium and a debit acquisition adjustment. The third concerns the legal authority.

With the first, there's a problem with the size of the systems to be acquired. 393.146, the statute upon which this rule relies as its authority, states acquisition of small water or sewer corporations by capable public utilities. Proposed rule only refers to nonviable utilities.

Public counsel's critique is that nonviable should be limited to small utilities. Public counsel believes the Commission's intent was really only for small utilities that this rule be applied to. The way this rule is currently structured Missouri-American could acquire large municipal systems like Columbia or St. Louis or Kansas City and come to the Commission and request a rate of return premium or a debit acquisition adjustment per these colossal acquisitions.

Public counsel does not believe the Commission means to grant to Missouri-American or another large utility the ability to request these types of incentives. So that's our first comment.

CHAIRMAN HALL: Well, let me stop you there.

MR. SMITH: Sure.

CHAIRMAN HALL: So what change are you recommending to the rule and where?

MR. SMITH: Well, so, we would recommend that non -- one way you could do it is just have nonviable defined. It has a definition already. But you could just line it up in sync with 393.146 and state that nonviable shall mean for purposes of this rule, you know, only a small water or sewer utility.

CHAIRMAN HALL: And that would be --

MR. SMITH: So it's defined in the rule as 8,000 customers or less.

CHAIRMAN HALL: You mean in the statute?

MR. SMITH: In the statute. I do mean that. Thank you, Chairman.

CHAIRMAN HALL: So you recommend that where we say nonviable utility we should say small water corporation as defined in 393.146? That's your recommended?

MR. SMITH: Yes, yes, and sewer. I think it would be appropriate to also apply to a sewer corporation.

CHAIRMAN HALL: You're really open to it being a system that large?

MR. SMITH: Well, I think the statute says small, a small system and defines it in such a way that's less than 8,000. Our preference, of course, would be 1,000 or less upon which there's different statutory authority referring to a lone system that could be administered between EIERA, which is an acronym, but I can't remember exactly what it stands for in the Commission, and that there is some suggestion that perhaps this type of mechanism could apply to 1,000, but I think there is support in the statute for 8,000 or less. So we don't think that would be --

CHAIRMAN HALL: And would that still be your preference even if we were to eliminate the reference to 393.146 as the statutory authority for the rule? That's going to be one of my questions for staff. It doesn't seem to me that that statute is the correct statute to provide authority here; that it's the more general statutes that are appropriate.

If we were to delete 393.146 as the enabling statute, do you still think that we should take the definition of small water corporation from that statute?

MR. SMITH: Well, one of our -- I want to directly address your question. Before I do, I do want to say that our third point is that we question whether there would be legal authority for this.

CHAIRMAN HALL: You question it under 393.146. You don't question it under any of our more general statutes which we specifically list as authority as well or if you do, I missed it.

MR. SMITH: Well, I think we would question it under those as well.

CHAIRMAN HALL: Why?

MR. SMITH: Well, more from a practical like more from a necessity argument.

CHAIRMAN HALL: Yeah, I'm not interested in that. I'm interested in whether legally what your legal argument is for why those general statutory powers of the Commission don't provide us rulemaking authority here and if you don't have an argument there, that's fine.

MR. SMITH: I mean, I think the argument would be more from an accounting perspective that, for example, a debit acquisition adjustment, one of our comments is I think the Commission wants to -- or wants to have the authority to award to a company an amount that the assets might not actually reflect.

CHAIRMAN HALL: Let's move back to my original question.

MR. HALL: Mr. Chairman, if possibly I could address your question. I think there might be potential conflict where if the Commission so chooses to adopt a rule, not referencing 393.146 but having an acquisition of nonviable utilities that applies to both small and large water corporations, you're going to have potential conflict with the statute that's specifically addressing these small water utilities.

CHAIRMAN HALL: No, no, that's silly. Okay.

Moving on to my original question, which is if we do delete reference to 393.146 as the authority for the rule, do you still think that we should cite 393.146 definition of small water corporation as one of the components of a nonviable utility or should we just -- because I think -- I mean, I think you raised a pretty good point that we're not intending this to cover the acquisition of a 30,000 customer system. I agree with you on that.

So I'm looking for if we wanted to narrow it to the smaller systems, and we delete reference to 393.146, should we just come up with a number. It's systems under something.

MR. SMITH: I think that would make sense.

CHAIRMAN HALL: And if we did that, what number would that be from OPC's perspective? Is it 1,000? Is that what you said?

MR. SMITH: Yeah, I think the statute has provided 8,000 or 1,000. There are statutes referencing each of those, and so we think either of those would have a basis in the statute.

CHAIRMAN HALL: Okay. All right. Thank you.

MR. SMITH: Okay. So the second comment we had are the scope of the rate of return premiums and debit acquisition adjustments. Both Liberty Water and Missouri-American Water argue in their comments that the rate of return premiums should apply to the entirety of the company's rate base, not just the portion of the rate base for the acquired system. And a utility can dream but in the reality of the regulatory world I don't think that that's the right result, first of all.

I don't think that's what justice -- I don't think that would be a just result. And again, citing the 393.146, I think that would be specifically inconsistent with that statute. The same is true of debit acquisition adjustments. We don't believe that there should be a rate of return on the debit acquisition adjustment. Maybe 393.146 you could read that there maybe could be a return of, an argument for that, but we don't think there should be a rate of return premium on top of the debit acquisition adjustment. So that the second comment really concerns the scope and is responsive to Missouri-American and Liberty Water's argument that the scope should be much broader than OPC thinks the Commission intended.

The third and final comment has to do with the legal authority for this rule. And I think we've discussed that. Our comment is comment 21 related to that.

CHAIRMAN HALL: And how does that argument -- If we were to delete reference to 393.146, how does that argument change?

MR. SMITH: I think my colleague Caleb Hall did point out a good point that if you have a statute which is talking about those instances in which a rate of return premium would be appropriate and it is specifically talking about the kind of a situation where that would be appropriate, but then a rule is promulgated promoting a situation other than what that statute provided, that could potentially be a conflict.

CHAIRMAN HALL: Yeah. And I think that's again I'll say silly because you make the point in your filing that we're talking about two very different scenarios here.

MR. SMITH: I agree.

CHAIRMAN HALL: It seems to me you're talking out of both sides of your mouth then. We're talking about very different situations and very different mechanisms. Now, you're right, it is to deal with the same problem but it's two dramatically different mechanisms. One is a forced acquisition. One is a voluntary acquisition.

MR. SMITH: I agree with that.

CHAIRMAN HALL: Okay. Your second point, I guess you call it a scope?

MR. SMITH: Yes.

CHAIRMAN HALL: My understanding is that Missouri-American and Liberty and staff and OPC all identified an ambiguity -- maybe OPC didn't as much as the other three -- identified an ambiguity that under the draft rule does the rate of return apply just to the acquired assets or does it apply to the entire rate base for the acquiring utility, right?

MR. SMITH: Right.

CHAIRMAN HALL: Okay. And staff is recommending that we explicitly limit it to the acquired system. And you agree with staff on that --

MR. SMITH: Yes.

CHAIRMAN HALL: -- point. Okay. Okay. Thank you.

MR. SMITH: Sure.

JUDGE WOODRUFF: Anything else, Mr. Smith?

MR. SMITH: Nothing.

JUDGE WOODRUFF: Anyone else wishing to comment?

MR. COOPER: Yes, Your Honor. Ms. Cheryl Norton, President of Missouri-American Water Company, will provide some comments on behalf of the company.

JUDGE WOODRUFF: If you could identify

yourself for the record as well.

MR. COOPER: My name is Dean Cooper, attorney appearing for Missouri-American.

MS. NORTON: Thank you, Judge. Chairman Hall and Judge Woodruff, we're here today to just -- First of all, we want to say thank you for bringing this rule forward. We think that it's a really great effort by the Commission to try to help solve some of the water and sewer issues that we see across the state of Missouri. It's a nationwide issue that there are a lot of small systems and medium-sized systems that are really struggling to perform and to provide good clean safe water and so we really acknowledge the fact that you're trying to make a difference here and we appreciate that.

Over the years we've acquired some systems that you would have considered nonviable or troubled systems, and we've been able to do that because we have expertise and we have the operational knowledge to be able to go in and fix it and be able to make the investments that they need to get those systems back online and where they need to be. We've also passed on several systems and some systems that have been brought to our attention by the Public Service Commission, by the OPC, and sometimes we just can't justify taking on those systems because it doesn't make sense for our business or for our customers. We want to make sure that we're balancing both of those things as we look at these systems. So sometimes there's just not enough incentive for us to take on those troubled systems and so we can't help in those communities.

So we think that because of that and because of those issues that this is a great time to have this conversation about what we can do to make this more available to customers all across the state of Missouri. And so today I'd like --

CHAIRMAN HALL: I'm sorry. Can I interrupt for a second? Because you raised a point that I really have some questions about and that is you noted that Missouri-American has made a number of acquisitions but then it's also decided to not do certain acquisitions?

MS. NORTON: Correct.

CHAIRMAN HALL: And under the proposed rule we say that this incentive applies only in situations where you can prove that but for this incentive you wouldn't do the purchase.

MS. NORTON: Uh-huh.

CHAIRMAN HALL: How hard is that going to be to prove? When you've got the system over here that you acquire and then the one over here that you do not --

MS. NORTON: Right.

CHAIRMAN HALL: -- is it just a simple accounting where you can just -- I mean, how would you prove that?

MS. NORTON: It would be very challenging to prove it. Okay. So typically the kind of systems that we take over and that we consider fairly quickly would be systems that are very close to our current systems. So kind of within our footprint. The systems that get to be 45 minutes to an hour farther from our system we take a much closer look at and really kind of try to consider does that make sense for us because you've got to have staff to go and no matter how many customers you have there you want to take care of them. If they call, you want to be there that day. You don't want to make them wait two or three days until you're going to be in the area. We look at that distance.

We also look at the needs of that community, the kinds of capital investments that they need, the rate structure. There are many, many factors that we look at before we decide, you know. We also may take on a small system if we think there's other growth opportunities in that area. So there's many, many factors that go into that. I think it would be really hard to prove that we would or would not take one on.

CHAIRMAN HALL: Well, I'm struggling because you say there are some that you acquire and some that you don't and then -- but that the existence -- but that you appreciate our willingness to consider incentives because those incentives might encourage you to make those purchases.

MS. NORTON: Uh-huh.

CHAIRMAN HALL: So somebody -- There's a bean counter somewhere --

MR. JENKINS: That would be Jim Jenkins.

CHAIRMAN HALL: Okay. I'm aware of his bean counting. Okay. If you could try to explain how it is that this type of incentive might encourage you to acquire a system that you might not otherwise.

MR. JENKINS: My name is Jim Jenkins, and I work for American Waterworks. And to respond to your question, Chairman, in bean counter world it is tough. One of the things that was really appealing to us and it's reflected in our comments is what we're talking about here are nonviable systems and we're talking about customers that quite frankly are in peril.

I mean, Cheryl sees it, and I'm sure the Commission sees it, and I'm sure public counsel sees it. You can get technical people here arguing all around these issues. I think one of the appealing things that you've got in this rule is let's just define what nonviable is. Our recommendation is that only one of those kind of standards hits as nonviable and then we can move forward to whatever the Commission or this rule decides with respect to incentives and we can make our arguments in that type of framework. Does that help first and I'll be glad to keep going.

CHAIRMAN HALL: I'm interested in my question as to how you would prove or attempt to prove that but for this incentive the acquisition would not take place. But putting that question on hold just for a second, you referenced another issue that I had a question on. And I think your -- I think that Missouri-American is proposing another or between 1 and 2 of the definition of nonviable and I guess maybe I need to go back to --

MR. JENKINS: We're recommending in all the places.

CHAIRMAN HALL: I think that was the intent here. You've got 1, 2, 3 or 4. So I think that means any of those would apply.

MR. JENKINS: That's what we wanted to be clear.

MS. NORTON: That's what we thought. We wanted to be clear.

CHAIRMAN HALL: We're clear on that. Maybe I have to call my third grade teacher and have her verify that.

MR. JENKINS: My third grade teacher got on to me about my writing skills. Don't call her.

CHAIRMAN HALL: How would a bean counter prove that but for this incentive --

MR. JENKINS: Right.

CHAIRMAN HALL: -- the acquisition would not take place? That is an issue that we really, really struggled with here because we did not want -- you guys are acquiring, what, two, three, four systems a year, something like that? We don't want each of those acquisitions coming in with one of these requests for this incentive, and so we're trying to figure out how to apply this mechanism in a targeted fashion where it's needed and not have big litigation on every single acquisition.

MR. JENKINS: So I think it gets down to defining nonviable. I think you've taken a good stab at that so we don't get into this in every acquisition we make. Out of those two or three that we make, some would fall into this category probably, others would not. That's kind of my first response with that.

When we look at trying to get to your first question, you know, is there a recipe bait that would exactly explain, I don't think so. The challenge we have is that these small systems that we run into can just really have some pretty serious operational questions and I know Cheryl and I talk from time to time. Some of these companies that when you step into a nonviable system is just many questions to try to address and customers at peril that you've got to address and maybe certain piece of equipment is not working. Our expertise we can fix it, but it's a lot of effort. So then we take a look at in terms of stepping into that to those challenges for the greater public interest is is we would look at these incentives.

So this equity, the rate of return type premium is clearly incentive that we would favor. And when you look at it in terms of bean counting world, if we make a million dollar investment, that incentive really translates to us like $5,000 if you just limit it on each individual asset deal, if you will. So $5,000?

MS. NORTON: Yeah.

MR. JENKINS: $5,000. So that's what we wrestle with is that enough of incentive to step in to those kind of headaches. You can quickly run through that with the kind of experts that we have to help these companies and help the customers out to solve these issues. That's really what we're stepping into with these incentives.

CHAIRMAN HALL: I'm not sure I understand the $5,000. We've got two potential incentives here. One is the rate of return and then the other is the debit acquisition adjustment.

MR. JENKINS: Yeah.

CHAIRMAN HALL: And the rate of return is limited to 100 points. There is no limit on the debit acquisition adjustment.

MR. JENKINS: Yes. And I answered that only with the rate of return. And perhaps for clarity in this rule is it the overall rate of return or is it the return on equity, the equity incentive? The $5,000 type response is an equity incentive of, you know, kind of on a typical capital structure that runs about 50/50.

CHAIRMAN HALL: What I'm hearing you say is that the 100 points isn't enough or it needs to be applied to the entire rate base of the utility, and I understand those arguments but what I'm really getting at is if you had to come -- if we promulgate this rule and you acquire a troubled system and you come in and try to prove that but for the incentive you wouldn't have made the purchase, how do you go about doing that? I mean, is it simply a matter of getting someone up there to say -- someone on the stand to say looking at these numbers without the incentive this is what we would get as a return on the investment and it wouldn't have been enough but with the incentive this is the return we got on the system and that was enough and then let the other parties cross-examine? Is that how that would work? Is there a rule of thumb that Missouri-American has somewhere as to what -- I mean, not a -- I mean, I don't want you to divulge trade secrets or anything.

Is there a rule of thumb somewhere as to what kind of return you have to get on the system and I understand that it's different if the system is right next door to your service territory versus across the state. I know that there's differences if the system is in really bad shape or it's in great shape. Is there some kind of rule of thumb there at all or no, there just isn't?

MR. COOPER: Chairman, Dean Cooper for Missouri-American. First I was going to say that I think this is a real problem because it's the old proving the negative, how do you prove the negative. I think you're right. I think you would attempt to do it by putting a witness -- providing a witness that would say but for this we wouldn't have done it.

But where you go beyond that is pretty tough.

I mean, maybe you put it in the contract as a regulatory out and say this deal is -- the contract is no good if we don't get this incentive, but that seems a little harsh in some of these situations because of the time that's going to be involved before you find out whether you're moving forward or not.

CHAIRMAN HALL: Frequently the acquisitions are not complete when we do -- when we issue an order on the acquisition case, right?

MR. COOPER: Usually the contracts have already been signed and executed but they have a regulatory out that's pending your decision.

CHAIRMAN HALL: Right, so that it would be no different. I guess it would -- you'd have that same regulatory out.

MR. COOPER: I guess what I was saying you could have a specific regulatory out that would help you with this, I suppose. Again, I don't know if that's where you want to go with that process either.

CHAIRMAN HALL: Well, I mean, actually the problem you're raising is even bigger because the reality is this -- the Commission issuing the order on the transfer case or the CCN case is not necessarily the same Commission that's going to be here at the next rate case. And so you're kind of -- I mean, and we struggled with that in a big bad way in terms of drafting this rule because there's no way around that. That's just the law. Unless you change the law, that's what it is. So we have that problem already.

But I mean, getting back to my question, why couldn't Ms. Norton get on the stand, say this amount of return, it wasn't enough for us to do the acquisition, this amount of return, it was enough for us to do the acquisition and then let all the other parties cross-examine? Isn't that how we'd have to do it and is that a problem? Ms. Norton?

MS. NORTON: Yeah, I think it would be really challenging to do that because is there a cut and dry rate of return that we look at? No, there's kind of a range, if you will, but it has much more to do with the system itself and all those other factors that go into it in addition to the rate of return. That's only one small piece of whether or not we would try to take on a system because frankly if we're only talking about, you know, 100 customers, 200 customers, the impact to the overall business, that rate of return is so small. As Jim said, if we invest a million dollars, the up side of 100 basis points is $5,000. And I can tell you that in the most recent one that we've taken on that's very troubled, $5,000 is nothing compared to what it's taking to fix that system and to get it where it needs to be and to make it to where those customers are actually paying for the service that they're getting.

MR. SMITH: Could I ask just a clarifying question?

CHAIRMAN HALL: Sure.

MR. SMITH: Is the $5,000 number that's being quoted an annual number?

MR. JENKINS: Yes. Once it would get reflected in rates, it would be annual and probably work its way down just a little bit as assets were recovered.

MR. LaGRAND: Brian LaGrand for Missouri-American Water. I calculated that was just a million dollars. I was doing it on just an ROE premium. If it was rate of return premium, you would apply 100 basis points to the million dollars of rate base. So it would be $10,000 if it's on the entire amount. That's where we came up with that, if that's helpful.

MR. JENKINS: To follow up on the question and as a non-attorney and I just think practicality with a rule like this it would be nice once you met the nonviable standard, whether that criteria is nonviable, we've got customers at risk, it would be nice not to rehash why we think something is viable, nonviable, why we would do it or not. In my opinion, just in terms of practicality to shift it from meets the nonviable then these discretionary incentives are available from the Commission and we make our case for them, not the other way around.

I just get concerned about spending a lot of time arguing the practicalities of why we step into a deal or not. Certainly I get concerned about the process and having one time about 15 years ago here with an acquisition on a small system having spent a good day on the witness stand, just a lot of resources that I think would maybe water down the rule but wouldn't be effective. That's just a comment.

CHAIRMAN HALL: The problem is that you've already identified that you have acquired nonviable systems --

MR. JENKINS: Yeah.

CHAIRMAN HALL: -- without this incentive. So how do we prevent that request for all purchases of nonviable systems because there could be some where you don't need the incentive. Would it make sense to have some kind of shifting burden of proof where you have to come forward and articulate that but for the incentive you would not consummate the acquisition and provide some kind of prima facie evidence of that and then the burden shifts to other parties to show why it's not true that you would have acquired it regardless? I'm just throwing out a concept.

MS. NORTON: Frankly, if it gets so hard to do, and if we're concerned about being able to prove it, the incentive wouldn't be good enough to do it. The real issue that we have with these systems is that period between when we take it on and when we get our next rates in place. Okay? So that period of time is the biggest issue.

So if we could remove the lag associated with that instead of doing it the way we currently do, so you're making these investments, you're depreciating your assets, you're doing all those things and so you're taking a fairly good hit for the small system if you do the small systems, this nonviable system. So trying to find ways to reduce that lag between the rate case period is a huge incentive I think for being able to take these on and being able to show that this makes sense.

There are probably some small or nonviable systems that we have taken that we've taken for reasons other than any of these things that you're talking about. It's more about these customers deserve to be able to drink the water. We're dealing with one right now that, you know, the staff came to us and said please consider taking this system. I said it's too far away, it's too small, it doesn't make sense for us, but we'll take a look at it because these customers haven't been able to drink their water for years. So we did that.

And so none of the things that we're talking about here, that is absolutely a system that under normal circumstances you run the numbers, we're not going to take it, but we took it anyway. So does that mean that that system wouldn't qualify for this because we did it because it was the right thing to do? That's where I struggle with trying to prove it. Does that make sense?

CHAIRMAN HALL: Yeah, I understand that. I guess -- I mean, if you're going to take over systems solely out of concern for customers, which I appreciate, and I know staff appreciates and I know OPC appreciates, maybe we don't need this.

MS. NORTON: I would beg to differ.

CHAIRMAN HALL: That's what we're trying to do is we're trying to find -- trying to come up with a targeted mechanism for those systems that your bean counter over here, who has no social conscience, he said no, Cheryl, you can't do this, our shareholders will kill you. This is -- but with this incentive you can do it. And so we're trying to come up with a mechanism that targets this for that situation.

I understand -- I guess we're kind of going in circles now. I understand your concern that you don't want to have to get on the stand and get grilled by OPC and have them come up with the 15 systems that you purchased without this acquisition and have you explain why this one is so much worse. I get that.

MS. NORTON: Not for $5,000. It's not worth that.

CHAIRMAN HALL: But of course, the reality is we take out that requirement and keep in the public interest requirement, they're going to do the same thing anyway.

MS. NORTON: Uh-huh.

CHAIRMAN HALL: So all we're doing in this draft rule is provide a specific criteria to be used when they're grilling you by us when we write our order. I get your concern. And I interrupted you. I think you were on your first point.

MS. NORTON: I know. Right? We did cover a few of them, I think. Back to the four different definitions of what's nonviable, I think we're all in agreement on what that should be. We do think that the flexibility towards that ROE incentive is constructive and we would like to, or the ROR, we would like to figure out how that could work and what makes sense but again 100 basis points on a small nonviable system is probably not much of an incentive, to be honest.

CHAIRMAN HALL: Let me stop you again for a second and I guess turn to staff. The ROR, that was intended to apply to the entire rate of return, not just the ROE, correct?

MR. WESTON: This is Jacob Weston speaking for staff and yes, the intent was to be the rate of return.

CHAIRMAN HALL: Is there a reason that needs to be clarified that it's not just ROE or why didn't Missouri-American view it just as ROE?

MR. WESTON: You know, I don't see a need for an explicit clarification. I suppose if there is a concern of ambiguity, which I previously had not read into this, we could use our rate of return acronym, the (ROR), to make that absolutely clear. My understanding is that rate of return is always understood to encompass return on equity and cost of debt within a capital structure.

CHAIRMAN HALL: That was my understanding as well.

MR. JENKINS: Agree. Your question, and I think counsel over there makes a good point, we run into just wanting to make sure it's clear. I think the suggestion about putting return, rate of return, because a lot of people -- even technically you're correct a lot of people take that rate of return and just jump to return on equity. So that was just our point was just making sure that we're clear on that.

CHAIRMAN HALL: Okay.

MS. NORTON: One of the other concerns that we had with the rule as written when you start talking about the records of those systems, those nonviable systems, we have seen everything from a great record keeping process, to shoe box full of papers, to nothing at all. If you're requiring a study for each of these systems, chances are if they're nonviable there's a really good chance they're not going to have the kinds of records that you would need to provide to do the kind of study that is mentioned in this rule. So we think that would be nearly impossible to be able to complete that kind of study. What we would suggest is that if you don't have the records that you could have an engineering study or an engineering analysis done and use one of the tools that's available through that kind of a process to determine what that value should be, what the asset value should be.

CHAIRMAN HALL: Let me stop you again for a second there and turn to staff, because that is actually how I read the draft rule or at least that was my understanding of the intent, but what I'm wondering is where it says shall be furnished, and I'm looking at Liberty's comments because they echoed what Missouri-American's concerns just articulated.

Is there a reason why shall be furnished needs to be modified to clarify that if the documents don't exist they don't exist and estimates will be sufficient?

MR. WESTON: My answer to that, and again this is Jacob Weston speaking for staff, my answer to that, Chairman, is I don't think shall ought to be modified. I think it is an appropriate command or directive to companies interested in taking advantage of this potential opportunity that if there is a situation where there is no documents, exactly as Ms. Norton just described, the kinds of steps that a company can take to estimate what the appropriate financial value is and then use that documentation to support it is contemplated in this plant in service study.

CHAIRMAN HALL: Should we say such records if they exist shall be furnished? Does that --

MR. WESTON: Right. So if the items exist, they shall be furnished. If they do not and they do not exist, then the estimates are what are asked for.

CHAIRMAN HALL: We may need to clarify that.

That's my understanding of the intent, and I think that's reasonable, but I do think that both Liberty and Missouri-American make reasonable -- raise reasonable concerns about possible inconsistency between shall be furnished and then later in the rule allowing estimates.

MR. WESTON: And I understand that concern, Chairman, and I think I would just reiterate that I think the rule already contemplates that by identifying that section (B) if any of the items that are required are unavailable, they shall be furnished later and that they shall be furnished later already includes the ability to estimate. I think the rule clearly contemplates that.

CHAIRMAN HALL: How does Missouri-American respond to that? Liberty is not here, right?

MR. COOPER: Chairman, I think it's still sort of -- Well, we'll start with the shall be furnished. I think that's still cumbersome. Just the sentence itself, if they're unavailable at the time, they shall be furnished later. Well, just may be unavailable and impossible to furnish later. I do think there's some adjustment there that would be helpful just in that sentence.

CHAIRMAN HALL: I am going to interrupt. I'm sorry. So Mr. Weston, can you respond to that? I think that is reasonable.

MR. WESTON: I understand the concern. And if there was a way to clarify it specifically, then I would suggest that instead of saying they shall be furnished it could be they and/or estimates shall be furnished by acquiring and have the estimates be cited to later on in the rule to identify exactly when we're referring to estimates.

CHAIRMAN HALL: I think that makes sense.

MR. JENKINS: Jim Jenkins. In having dealt with this, in famous words that's got coined here, bean counter world, resemble that comment, the point is that the records are at times awful. And a reference to allow estimates, you know, it's my experience across the country is entirely appropriate for these kinds of assets being acquired. Certainly parties have the avenue to challenge the estimates, if you will. But I think including that in the rule would really help because the last thing, you know, any of us want to do is try to chase down data that doesn't exist. So thank you.

CHAIRMAN HALL: In the staff assisted rate case, we provided -- In the recently promulgated staff assisted rate case, we provided a somewhat modified auditing or accounting standard for small systems.

Would that be of any use here?

MR. WESTON: Chairman, this -- So I think the staff assisted rate case rule for small systems allows the use of estimates and for staff to make estimates based on the information they have on hand. And I think the rule makes that clear. I don't think it changes specific auditing standards. I'd be very clear about that. But what it does do is it says that estimates are appropriate especially if the information doesn't exist. And I think that this rule very accurately reflects that if the actual documentation doesn't exist, or the seller doesn't have it, it was destroyed or what have you, that estimates -- at least some reasonable basis for the estimate is acceptable to support the estimate.

CHAIRMAN HALL: Okay.

MS. NORTON: Chairman, we still find it confusing about the study where it's mentioned first in the rule and then where it talks about the plant in service study. We still feel that clarification would be helpful if it's the same thing or if it's two separate things.

CHAIRMAN HALL: So where would you like the further clarification?

MR. COOPER: So in, let's see, I guess it's 3(C), which I think is where our last discussion was kind of circling around which was ways to show that the estimates are valid or appropriate and then when we go back to (6), there's a specific requirement to file a plant in service study that's referenced in that way I guess maybe three times in that section. And so I don't know -- I think the question that's arising is that later plant in service study to be filed with the rate case, is that just a rehashing of what was used to support the estimates or is that something new and different and it calls for sort of a specialized potentially expensive study that would add to the cost.

CHAIRMAN HALL: Let me turn to staff on the filing requirements (3)(C). What is the purpose of that first sentence?

MR. WESTON: The purpose of that first sentence is to show and to not make it -- The purpose of the first sentence is not to allow a crunch. The company that's making the acquisition that's interested in doing this we think has the ability to provide some kind of estimate, some kind of analysis of what the value is. Value of the rate base is important because that's what helps establish rates. It's also what helps establish what the actual acquisition incentive is that's being requested. And we understand that exactly -- Staff is very aware of the scenarios where some small nonviable systems have no documentation and that can't always be a basis to say well, we just don't know so let's just agree that it's a certain number. We still need to see some basis for what the value is. And so particularly in a subsequent rate case where the owning -- the new buyer has had time to actually operate those assets, actually is familiar with what they are, has had the opportunity to interact with them and have work done on them, they'll have a greater sense of what's actually there at the time that a rate case actually occurs and has more of a knowledge and fact basis to make those estimates that are being sought to actually determine what the rate base valuation is and therefore what an appropriate acquisition incentive could be if so decided by the Commission.

MR. HALL: If I might.

CHAIRMAN HALL: Can't we accomplish all that by deleting the first sentence?

MR. WESTON: I'm sorry?

CHAIRMAN HALL: Can't we accomplish all that by deleting the first sentence and simply just relying on the second sentence that any information not available from the seller shall be estimated?

I agree with you that we don't want the company to come in here and say we couldn't get it, no idea. But don't we address that concern with the second sentence?

MR. WESTON: I think tentatively, yes, the second sentence is meant to explain that first sentence and explain why the need for estimations is there. I think that by deleting the first sentence it will leave it squarely in whichever future Commission is making the determination to decide if they believe the estimates and the support for them are appropriate, which I think is already the case.

CHAIRMAN HALL: And then the -- How do you respond to the second concern raised by Mr. Cooper on -- I guess it's on (6)?

MR. WESTON: This is the plant in service study question?

CHAIRMAN HALL: Yes.

MR. WESTON: So staff's view is that the information needed for the plant in service study is the same information that's being provided at the time of the application. It's just that at the time of this subsequent rate case that plant in service study, it has all that information spelled out and explains exactly what we are trying to establish here, what is the value of rate base, what is actually in the ground, what is the CIAC, all of those aspects of that determination.

It allows for the applying utility that may not have that information at the time of the actual application again that time in between to get the information and make its own investigation and findings and then provide documents to support any estimates it has.

CHAIRMAN HALL: So would Missouri-American respond to that?

MR. COOPER: Well, I guess it probably just asks for clarification essentially, because I think what Mr. Weston said was is that what they contemplate is the same information that was available at the time of the application but it's maybe taking that information and it's kind of coming forward with sort of the summary I guess, how the CIAC, the plant in service, the so on and so forth, all translates into rate base come rate case time. If that's all that that plant in service study is supposed to be, I think that a little bit of clarification would be helpful because I think when the water company folks hear plant in service study, I believe they think about something different than what was described there.

CHAIRMAN HALL: Okay.

MS. NORTON: Agreed.

CHAIRMAN HALL: Which gets to, and maybe it's next issue on your list, I'm not sure, but on page 3 of your comments Missouri-American indicates that it would prefer that the plant in service study take place at the time of acquisition rather than leaving it to the rate case.

MS. NORTON: Yes.

CHAIRMAN HALL: What's staff's response to that? And then I'd like OPC to respond to that as well.

MR. WESTON: Chairman, I think our response is very similar to my earlier response. The idea of delaying a plant in service study as defined in the regulation until the time of the rate case is to give the applying utility time enough to actually work with the assets, to actually do any investigation or engineering review that it needs to to be able to provide that information concisely and fully and thoroughly at the rate case to establish rate base so we know what kind of acquisition we're talking about at that time.

If the company is able to provide it at the time of the application and do it all up front, I don't see why that wouldn't be a problem.

CHAIRMAN HALL: Well, then maybe we need to make it clear that that is an option.

MS. NORTON: Typically our due diligence would uncover -- we would know what we were getting for the most part --

CHAIRMAN HALL: I would hope so.

MS. NORTON: -- and be able to do that. If there was anything that we discovered after the fact, we would disclose that during a rate case anyway. For the most part, we would know what we were getting.

CHAIRMAN HALL: Maybe we need to clarify that if it is possible for the company to do this analysis at the time of acquisition, then it should do so. If it can't because it doesn't have the information it needs, it could be done before the next rate case.

MR. WESTON: Chairman, if I might. I think that's an appropriate fix. I think the concern with requiring it at the time of the application is that there might be other utilities that want to take advantage of this that by all means should take advantage of this rule if they do it right and the Commission decides that it's appropriate for them to do so, which may not have the resources or the ability that Missouri-American has. And so by requiring it at that point in time you might limit some of those.

CHAIRMAN HALL: I totally agree with that. Does OPC have thoughts on that?

MR. SMITH: Yeah, we had commented, for example, on our item No. 12. We share

Missouri-American's thoughts about if a record wasn't available at the time of the acquisition we kind of wondered how it might later become available post acquisition. When you are in that acquisition case and you're trying to figure out what the debit adjustment would be, what sort of incentive would be, you wouldn't really know if you didn't have a complete analysis at that point in time. We think it would be better to have a complete analysis from our perspective so you could sort of figure out the debit adjustment would be -- what that would be, if any.

CHAIRMAN HALL: Okay. Other comments?

MS. NORTON: Yes. So also as we mentioned in our comments, the requirement to go in and file a rate case within 12 months after the acquisition case is something that would be very challenging for us to do.

CHAIRMAN HALL: Right, right, and that was why in the proposed rule we gave the option of 12 months or as determined by the Commission in the CCN or acquisition case order. Is your concern that the 12 months would be a default or something like that?

MS. NORTON: We would be concerned about being required to come in in that 12 months.

CHAIRMAN HALL: And we struggled with that concept in the drafting. And would it -- What would staff's response or OPC's response be if we simply said the company has to come in for a rate case as set forth in the order, in the transfer or CCN order and not have a 12-month deadline in there at all?

MR. WESTON: From staff's perspective, we think that would be fine. The concern being that you actually want the company to come in. So there would be at the very least a Commission order requiring a rate case during some period of time.

CHAIRMAN HALL: Does OPC have a thought on the issue?

MR. SMITH: I think we would agree with Missouri-American. We don't want Missouri-American to come in and, you know, specifically just because they acquire one system. Just the efficiency of resources, you know, wouldn't be worth the resources. So your proposed fix, I think you had said as ordered by the Commission, just provided that I don't know if the Commission could order in the next general rate case rather than a specific time period. I'm not sure Missouri-American would necessarily want to --

CHAIRMAN HALL: I think we would simply say in the order approving the acquisition, and the acquisition adjustment if one existed, we would say and Missouri-American must come in for a rate case and it would probably be when the -- is it three years or four years for ISRS?

MS. NORTON: It's three years from the time we put ISRS into place. So it ends up usually being three and a half to four years before we come in again.

CHAIRMAN HALL: We're not going to require Missouri-American to come in early for a rate case earlier than they would otherwise. That doesn't make any sense at all. There are other acquiring utilities that we would want to see in pretty quickly. So nobody is opposed to elimination of the 12 month as long as there's something in the rule that would give the Commission I guess direction or guidance that it needs to set a deadline to come in for the next rate case?

MR. SMITH: Chairman, I'm not opposed, but the conversation raised a potential other issue that OPC raised about who would be the utility that would be awarded this. I'm not sure if the rule has any restrictions on that right now. And I don't know if there needs to be. Right now the statute says a capable public utility and they define that as a utility basically over 8,000. It's just Missouri-American. But what it does allow is if you're under 8,000 you can petition to become a capable public utility.

CHAIRMAN HALL: Again, you're going back to

393.146 and I think that's an irrelevant statute myself.

MR. SMITH: Well, even if it's irrelevant, we think there's -- we think those utilities that would apply for this, and I think the purpose statement in the proposed rule suggests this too, we would want them to have as the purpose statement says the resources to rehabilitate the acquired utility within a reasonable time frame. So just --

CHAIRMAN HALL: I would agree with that.

MS. NORTON: So the next point that I wanted to just touch on was in the event where there's maybe a financially insolvent utility. Many of these utilities have taken out a lot of debt and so their debt sometimes because of the projects that they've done or the way they've managed their capital projects, their debt can actually be higher than the value of their system. So when you look at the original cost. So we would ask that if we had to pay more to pay off their debt that that would be included as well like the acquisition adjustment.

We think the rule may allow that through that debt acquisition adjustment but just want to clarify that that would be the kind of situation. We've seen that with certain utilities that their debt is very high. It may be slightly higher than the value of their system.

CHAIRMAN HALL: So how would you specifically change the wording to address that concern?

MS. NORTON: I'm sorry?

CHAIRMAN HALL: How would you change the language to address that concern? Would it be in the definition of debit acquisition adjustment?

MS. NORTON: Yeah, uh-huh.

CHAIRMAN HALL: Because I think my understanding of the intent was to allow for that.

MS. NORTON: We thought that. We wanted to be clear on that.

MR. WESTON: Chairman, staff's view is that the definition (1)(A) -- or I'm sorry, (1)(C), does actually include that, the excess acquisition cost over depreciated original cost of the acquired system. We believe that actually includes those debt costs that Missouri-American referenced.

MS. NORTON: Okay. We just wanted to clarify that.

CHAIRMAN HALL: Is there a reason we should say including possible debt or does that --

MR. WESTON: Well, I don't think I would be opposed to that. The only thing I'm concerned about necessarily adding a specific thing like that if we don't have the -- right, then you start changing what excess over means without -- excess acquisition cost over depreciated original cost of the acquired system, for example, but not limited to debt cost. We'd have to do that kind of language.

CHAIRMAN HALL: Okay. Does OPC have a thought on that?

MR. SMITH: We think that language is unnecessary because the rule we think is clear as written and, you know, we would have to take a look at specifically what it is the facts and circumstances as to whether we would, of course, support or be against that type of request in the actual proceeding.

CHAIRMAN HALL: Okay.

MS. NORTON: Okay. I still have a couple more topics I want to touch on. Thank you for your patience.

CHAIRMAN HALL: No problem.

MS. NORTON: So in addition to looking at the rate of return premium and the debt acquisition adjustment, we think that again kind of closing that gap between when we do the acquisition and the rate case would be a great incentive for us to purchase some of these nonviable systems. And in order to do that, we would want to look at maybe deferred depreciation on both the acquired assets and the new capital investment, kind of the post acquisition capital that we put in prior to the next rate case, the carrying cost on the post acquisition capital at the company's pre tax cost of capital and also be able to defer the operating expenses for that acquired system for recovery in the company's next general rate case. Basically look for ways that we can kind of reduce that lag from when we acquire those troubled systems until we get into that next rate case.

We think that there are ways that we could also help with the customers. So we could --

CHAIRMAN HALL: So on that point you're essentially just arguing for additional mechanisms --

MS. NORTON: Yes.

CHAIRMAN HALL: -- other than the debit acquisition adjustment and the rate of return premium?

MS. NORTON: Yes. Those are some additional mechanisms that we think would be really helpful to consider.

CHAIRMAN HALL: Does staff or OPC have response to that request?

MR. WESTON: Yes.

MR. SMITH: Sure, OPC does. I think if such a mechanism were to be considered we'd want to limit its scope. For example, we wouldn't want something like this to continue in perpetuity. I think whatever acquisition adjustment or rate of return premium they'd be looking at I think it would have to only be on the rate base that's actually built to make this system nonviable. I think that would need to be a reasonable restriction on the request.

And we might also consider, you know, if -- there could be a situation where the cost of improving the system to bring it up into compliance are really large like -- I mean, to me really large is probably different to Missouri-American; but I think if you got a system that needed improvements in the seven or eight figures, I'm not sure it would be appropriate to, you know, include that much rate base. So maybe there's some reasonable restriction on that. But I think the rule does say on rate of return premiums, and we brought this up in our comments and the associated system improvement cost. So I think that probably covers Missouri-American's thoughts.

MR. COOPER: Well, on a going forward basis coming out of the next rate case, I think you're right. It touches on those improvement costs. But I think the point is the regulatory lag that's experienced between when those assets are placed in service and that next rate case.

MR. SMITH: And I know, Chairman, 393.146, we're thinking of maybe stepping away from that. They actually do have a procedure to deal with that to prevent regulatory lag. They basically have the large utility come in and take advantage of the small utility rate case and they get a rate that incorporates those improvements. So I think they're asking for something a little different than that. It sounds sort of like a deferral account.

MS. NORTON: Uh-huh.

MR. WESTON: Chairman, Jacob Weston for staff. I think staff's view is that the kind of deferral mechanisms that Ms. Norton put forward are already available in some ways to be requested and they don't necessarily need to be enumerated within the regulation itself; that that request could happen at the time an application was filed. Not to --

CHAIRMAN HALL: Which application?

MR. WESTON: The original applications required for the acquisition incentive at the time of the acquisition or CCN case. I think that request could be made at that point in time. It doesn't necessarily need to be reflected in the rule. I think there's --

CHAIRMAN HALL: Let me stop you for a second there. I think you're right. At the same time, any of these mechanisms could probably be requested legally in the application. So what we're trying to do in this rule is to kind of standardize the approach to requesting and awarding those mechanisms. I guess my larger concern with doing that in the rule is that it's not in the proposed rule.

MR. WESTON: Right.

CHAIRMAN HALL: And I don't know if we can -- I don't know if we can add a mechanism in the final rule that there's no semblance of in the proposed rule. That's the legal concern I have.

MR. WESTON: I think that is a fair concern.

CHAIRMAN HALL: Any other response to that additional mechanism?

MR. WESTON: I don't think so.

MS. NORTON: So that pretty much concludes most of our comments. I would just like to say that these systems are usually in urgent need. So anything that we can do to expedite the process so it doesn't take so long from the time that we bring it forward until we can close on the deal would be greatly appreciated. So we'd like to look for ways within the groups to be able to expedite these as quickly as possible. We'd appreciate your attention to that as well.

CHAIRMAN HALL: Is there something we could do within this rule to address that?

MR. COOPER: I suppose you could set a goal within the rule. We have that sort of timing, similar sort of timing feature to the small utility rate case rule where the Commission rule says this is when we want to conclude this case within this sort of time period. I think you could do something similar to that in this rule that would be helpful. Of course, those are always subject to waiver in specific situations in that, but that would be helpful.

MS. NORTON: Uh-huh.

CHAIRMAN HALL: All right. The concern about whether or not the rate of return applies to just the acquired system or the entire utility's rate base, would there be a reason to give the Commission the discretion within the rule as to that issue? I guess I'll ask staff first.

MR. WESTON: Yes, Chairman. I think much about the rule depends on the Commission's discretion and its considered discretion in each case. I don't think that there's necessarily a problem with putting that language in there. I will state that staff when we filed our comments we did try to clarify that, make it very clear that we are intending that that rate of return premium would just apply to the acquired property. The reason for that is in particular about trying to incent specific behavior. You're trying to reward specific actions rather than a more globalized reward for doing the right thing. We want you to give a meritorious company the opportunity to get something back for doing right. And the acquisition of a small system might be honestly a drop in the bucket for a company the size of Missouri-American. It might not be for a different company. You want to make sure that the reward is proportionate for what's being expended.

CHAIRMAN HALL: OPC?

MR. SMITH: Public counsel agrees with the comments staff just made.

CHAIRMAN HALL: I think staff said that giving the Commission the discretion between the two is okay.

MR. SMITH: Oh, yeah, we do not agree with that.

CHAIRMAN HALL: I didn't think you would.

MR. SMITH: If the Commission had the discretion to add 100 basis points to all of the rate base of Missouri-American, our office would very likely hire rate of return experts in these types of proceedings because I don't think we want the exception to become the rule. I think if you apply 100 basis points across the board rather than the weighted rate base that that would just not be appropriate for what this rule is trying to accomplish.

CHAIRMAN HALL: You wouldn't argue that it's never appropriate; you would just argue that for Missouri-American when it purchases a $500,000 100-rate payer system it might be inappropriate to give them 100 point bump on their entire ROR but there could be situations where you had a smaller utility purchasing an even smaller utility where we should look at the entire acquiring utility's rate base?

MR. SMITH: Yeah. I wonder if that would tie in to (5) when we were talking about bringing those smaller utilities in for a rate case early. If you're applying a rate of return premium on all of the rate base, that sort of to me starts to get into ratemaking more so than maybe this rule wants to.

CHAIRMAN HALL: Missouri-American?

MR. COOPER: Certainly I think we believe that it would be helpful for the rule to specify that the Commission has that discretion. I think as everybody said there's going to be a number of different circumstances that the Commission could look at and making it clear that at least that's something that the Commission would consider would be helpful.

CHAIRMAN HALL: Okay. Let me switch gears for a second. Do you think that there's any question as to whether or not the Commission has authority to promulgate this rule under the more general statutes -- where are they -- oh, 386.040 and 386.250 and 393.140?

MR. COOPER: I guess I always have concern because I never know what the Court of Appeals is going to do.

CHAIRMAN HALL: Yeah, we just learned that today.

MR. COOPER: Beyond that, I don't think I have as much concern about your authority to promulgate the rule as I do about the issue that you specified earlier, Chairman, which is how binding or not binding it's going to be in the future rate case with a future Commission. That's a bigger problem to me than the authority for promulgating the rule itself.

CHAIRMAN HALL: Okay. Let me ask that -- direct that question to staff and then in addition to that question why we included 393.146 at all.

MR. WESTON: Sure. I do think the Commission has the authority under the general reg provisions to propose and promulgate this rule. I think the authority under 040 -- 386.040 and 386.250 very broadly provide the Commission that discretion and that authority to do that to make that legislative style regulation.

I think the reference to 146 was actually offered by OPC at the workshop on this case.

CHAIRMAN HALL: Well, isn't that ironic.

MR. WESTON: I think the other reason to reference 146 is that 146 while not being the statute from which the authority for this regulation is stemming forth, it does provide the public policy directive for the basis behind the regulation. Now, whether or not that reg needs to be cited in the rule for that purpose I guess I have different thoughts on that -- conflicting thoughts on that.

I do think there's at least clear public policy stated if you take public policy best stated as a statute, then public policy does suggest that the acquisition of nonviable utilities is good public policy. I think that's captured in the purpose statement of this rule as well.

CHAIRMAN HALL: OPC?

MR. SMITH: Yeah, Mr. Weston is correct, we did suggest that because that was the statute -- the closest statute that we saw to this rule is why we made that suggestion, and I think we share Mr. Cooper's concern that, you know, if we're involved in establishing rate of returns on certain amounts of rate base and if we're predetermining the award of an acquisition premium, I think that could be a little more questionable when you depart from 393.146 and rely instead on the other general ratemaking provisions.

MR. WESTON: Chairman, if I might just add something. It is not staff's intent that reference to 146 limits the regulation. So we don't want there to be that kind of -- We agree that the purpose is different.

CHAIRMAN HALL: Does staff have other comments?

MR. WESTON: Just a couple, Chairman. I'll just note that we filed our comments in this case as everyone else has. The two major recommendations that we have are actually language changes, one of which we've talked about, the other one not as much.

The one that we've talked about is in reverse order the second recommendation we've made which is to address the concerns about ambiguity and that just applying that ROR to the acquired rate base. That's the change in the language. So it would just make it to the acquired system, not the total rate base for the utility and we've already discussed that.

The second recommendation is to remove language that says within a reasonable period of time and delete that as unnecessary. That's in (1)(A)2. The reason for that is concern over argument over what is a reasonable period of time in particular if there's a failure to comply with an order of the Department of Natural Resources or the Commission. And the concern was that then you get into this guessing game of when a system may become noncompliant. We think there are already mechanisms in place that would provide what that time period would be with the Commission either there's an order identifying become compliant within so many days or with the Department of Natural Resources frequently companies that are interested in acquiring problematic systems. I've already spoken with DNR. They're already aware of particular DNR deadlines and may have those systems and they already have a schedule of compliance to get back into compliance with Department of Natural Resources statutes and regs. We think removing that reasonable period of time eliminates some possible frictions, some possible ambiguity and lets the purpose of that rule speak more clearly.

CHAIRMAN HALL: Was that in response to a comment from another stakeholder?

MR. WESTON: I think that might have been in response to comments at the workshop and we wanted to make that clear.

CHAIRMAN HALL: Okay.

MR. WESTON: If I might add one more thing. It's not in our filed comments but it is in kind of response to the discussion we've had this morning. I think OPC and yourself and the company have made an interesting point that we don't want the purpose of this rule to go out and acquire 30,000, 50,000 customer systems. It's intended to help small systems. We think that the small rate case staff assisted rules already identify the 8,000 number. We think that's appropriate. We also don't want necessarily it to be limited to only regulated systems. There are some very small municipal systems out there that would be appropriate for consideration under this rule. So we just wanted to make staff's viewpoint on those clear.

JUDGE WOODRUFF: If I can jump in with a question. You mentioned small municipal systems. Would this ever have application beyond the water and sewer or small electrical systems that could fall under this?

MR. WESTON: This rule does not contemplate that, no.

MR. SMITH: Judge, to your point I think the title does say nonviable utilities and then defines nonviable utility but then in the purpose statement it says water or sewer utilities. So maybe there's a -- if it is going to be just for water or sewer, maybe that should be somewhere in the rule itself.

JUDGE WOODRUFF: Asking broader, should it apply to small electrical? Would it ever be appropriate for it to?

MR. WESTON: I don't know that staff -- That's a good question, Judge. I don't know that there are enough small electric utilities that staff actually regulates. I don't know that we have any small electric utilities. I think the only potential --

JUDGE WOODRUFF: I'm thinking of small municipal. Are there -- I don't know. Natural gas for that matter.

MR. WESTON: Right. There are some natural gas systems that are considered small, steam. I don't think staff's intent was ever for this to go beyond the immediate issue of failing small water and sewer that we see with some regularity.

JUDGE WOODRUFF: Anything else from staff?

MR. WESTON: I have nothing further, Your Honor.

MR. WOODRUFF: Anyone else in the room wishing to make any further comments? All right. Then we are adjourned. Thank you.

(Off the record.)

CERTIFICATE OF REPORTER

I, Beverly Jean Bentch, RPR, CCR No. 640, Certified Court Reporter with the firm of Tiger Court Reporting, LLC, within the State of Missouri, do hereby certify that I was personally present at the proceedings had in the above-entitled cause at the time and place set forth in the caption sheet thereof; that I then and there took down in Stenotype the proceedings had; and that the foregoing is a full, true and correct transcript of such Stenotype notes so made at such time and place.

Beverly Jean Bentch

Beverly Jean Bentch, CCR No. 640

S