

STATE OF MISSOURI

PUBLIC SERVICE COMMISSION

TRANSCRIPT OF PROCEEDINGS

Pre-Hearing Conference

October 6, 2015

Jefferson City, Missouri

Volume 1

ROMAN DZHURINSKIY and
ZINAIDA DZURINSKAYA,

Complainants,

vs.

UNION ELECTRIC COMPANY d/b/a
AMEREN MISSOURI,

Respondent.

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) File No.
) EC-2016-0001
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DANIEL JORDAN, Presiding
SENIOR REGULATORY LAW JUDGE

REPORTED BY: Erin R. Donato, CCR No. 1385(T)

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P R O C E E D I N G S

(The Court went on the record at 10:09 a.m.)

THE COURT: The Commission is calling the action in file No. EC-2016-0001. That is the case of Dzhurinskiy vs. Union Electric Company. We're here for a prehearing conference this morning. I'm Daniel Jordan. I am the regulatory law judge assigned to this action.

We'll begin by taking entries of appearance. And if you have any representatives of clients with you, please introduce them also. We'll begin with the complainants.

Mr. Dzhurinskiy, I believe you're on the line? Mr. Dzhurinskiy?

MR. DZHURINSKIY: Yes, yes, I can hear you.

THE COURT: And is Mrs. Dzurinskaya with you?

MR. DZHURINSKIY: Yes, my wife.

THE COURT: Very good. I hope I'm pronouncing that correctly.

MR. DZHURINSKIY: Yes, that's fine.

THE COURT: And for Ameren?

MS. GIBONEY: For Ameren, Sarah Giboney, 111 South Ninth Street, Columbia, Missouri 65201.

1 And here in the hearing room is Ameren's
2 representative Cathy Hart. And then by telephone?

3 MS. TATRO: Wendy Tatro, 1901 Chouteau
4 Avenue, St. Louis, Missouri 63103.

5 THE COURT: Thank you. And for the
6 Commission staff?

7 MR. WILLIAMS: For Commission staff,
8 William Hampton Williams II, PO Box 360, Jefferson
9 City, Missouri 65102.

10 THE COURT: And is there staff
11 representative today?

12 MR. WILLIAMS: Yes. We do have two
13 staff representatives, Mike Scheperle and Michael
14 Stahlman.

15 THE COURT: Very good. And for the
16 Office of Public Counsel?

17 MR. OPITZ: For the Office of Public
18 Counsel, I'm Tim Opitz, PO Box 2230, Jefferson
19 City, Missouri 65102.

20 THE COURT: Thank you, everyone. We're
21 here to discuss a few matters. First, primarily
22 procedural matters involving scheduling. There is
23 a pending motion for summary determination and a
24 motion to extend time related to that motion for
25 summary determination. I imagine that will be --

1 certainly can be, and I hope it will be the subject
2 of discussion amongst the parties as far as
3 scheduling. Any objection to that?

4 MS. GIBONEY: No, Judge.

5 THE COURT: All right.

6 MR. OPITZ: Judge, may I inquire?

7 THE COURT: Yes.

8 MR. OPITZ: Are you -- based on your
9 order, I was under the impression that we were
10 going to discuss the motion to continue during the
11 on-the-record portion of this. Are you suggesting
12 now that you're going to leave that to us to
13 discuss afterwards?

14 THE COURT: Well, I'm asking what's your
15 choice? We can discuss that motion to continue,
16 which basically asks to extend time to do
17 discovery, to respond to the motion for summary
18 determination. Does OPC have something that it
19 wants to -- an argument that it wants to make to
20 the Commission?

21 MR. OPITZ: Yes, Judge. Public Counsel
22 would oppose this motion to continue. It's our
23 position that there is no ambiguity. The tariff is
24 clear. This case was filed on July 1st of 2015.
25 Ameren had an opportunity and did file a response

1 to the complaint in answer to the complaint.
2 Thereafter, staff filed its report in which it
3 articulated its legal analysis and made its
4 recommendation that the complainant is entitled to
5 relief. After a period of days, Ameren Missouri
6 had the opportunity and did respond substantively
7 to the staff's recommendation. On that same date,
8 public counsel filed its motion for summary
9 determination which largely concurred with the
10 legal arguments of the Commission staff.

11 Since that time the company has made this
12 motion for an extension of time to conduct
13 discovery. It's my position that there is no
14 discovery necessary. The tariff language is clear.
15 There's no reason for the delay here because
16 there's nothing that is necessary to be discovered.

17 With that said, since this motion has
18 been made, I will say that public counsel will
19 commit to responding as expeditiously to any
20 discovery sent to us by the company, or any party,
21 so that there is -- you know, if they do want to
22 conduct discovery, they can do so within the time
23 allowed for by the Commission's rules. And so for
24 those reasons, it's our belief that delaying this
25 procedural schedule serves no purpose other than to

1 deny the complainants the relief that the
2 Commission may determine they're entitled to.

3 THE COURT: Okay. I'll take some
4 responses to that. First from Ameren, then from
5 the complainants, and then from staff. Ameren?

6 MS. GIBONEY: Judge, I think it became
7 apparent after Ameren's answer was filed and staff
8 filed its report that the tariff is interpreted
9 differently, at least by the company and by staff,
10 which gives some indication that there might be an
11 ambiguity. And if the Commission determined that
12 the tariff was ambiguous, then applying the rules
13 of statutory construction it would resort to
14 evidence, which means fact of the tariff's intended
15 meaning. And those are the facts that we would
16 like to discover and develop, basically what the
17 parties' interpretations are.

18 And that is important, what the parties
19 mean. Because the tariff, as you know, is not only
20 a law, but it's also a species of contract and
21 generally reached by negotiation among OPC and
22 staff and the company and potentially other
23 parties. So that would be if the Commission
24 determined it was ambiguous, we would still need to
25 be able to show facts.

1 Even if the Commission determined that it
2 was not ambiguous, that it was plain meaning, the
3 company's still entitled to present evidence that
4 that plain meaning leads to an absurd or illogical
5 result, and we would also like to obviously develop
6 some facts, do some discovery to show that there is
7 an obvious, absurd and illogical result with both
8 staff and OPC's interpretation. So those would be
9 the reasons that we would like to conduct some
10 discovery.

11 And it really wasn't as apparent that
12 that would be necessary until staff's report was
13 filed and then OPC's motion for summary
14 determination was filed. And as to any possible
15 delay, this is not meant to minimize in any way the
16 importance of the complaint, but this is the first
17 time that this particular tariff has come before
18 the Commission in a complaint. And so we think it
19 merits taking some time to develop this.

20 And in addition there is a, relatively
21 speaking, low dollar amount involved. And so, for
22 example, this is not a case where complainant is
23 facing a disconnection for a thousand-dollar bill
24 or something like that. We're talking about, you
25 know, we'll say in the range of \$5 a month while

1 we're trying to come to a conclusion of this
2 complaint. And so we don't see any reason -- while
3 there's no reason to inordinately delay it, we
4 don't see any reason that we cannot develop this
5 complaint as it deserves to be developed.

6 THE COURT: Okay. Mr. Dzhurinskiy, did
7 you have anything to say about Ameren's request for
8 more time to put together the facts of its case?

9 MR. DZHURINSKIY: I do think a little
10 out of proportion. I agree with the staff there is
11 no -- there is no reason to make a discovery and
12 make it a longest time to finally evolve. I
13 believe it's not just because of my complaint, it's
14 probably because of thousands of people in this
15 state. That is why Ameren wants to make this case
16 continue. I don't think it's right. I agree with
17 the staff you need to make a summary determination.
18 There is nothing to discover anymore. Anything is
19 just statutes and rules and regulations.

20 THE COURT: Okay, thank you,
21 Mr. Dzhurinskiy. Staff, anything to add in this
22 regard?

23 MR. WILLIAMS: I'd like to add two
24 points.

25 THE COURT: Yes.

1 MR. WILLIAMS: At the outset of this
2 complaint, there was a factual question as to
3 whether or not Mr. Dzhurinskiy had received
4 assistance, which is a payment was made from a
5 low-income assistance program. Since July 1st, I
6 believe when this case was initiated, that has been
7 supplemented in the record through OPC's filing on
8 September 14th.

9 Because there's no other outstanding
10 facts with regard to the application of the tariff
11 itself, the language itself, we believe that
12 there's -- we're unsure as to what further facts
13 remain undiscovered regarding the tariff itself and
14 Mr. Dzhurinskiy's application.

15 With regard to the issue of
16 interpretation and the issues claimed by Ameren in
17 their answer in reply to staff's brief, Ameren has
18 attempted to use extrinsic evidence to prove the
19 existence of an ambiguity in a clear tariff.
20 Courts have ruled against this time and time again.
21 You know, the Commission has -- and in recent years
22 been ruled against by the courts for interpreting
23 unambiguous tariffs. And we would just like to see
24 that, you know, the Commission follow the rule of
25 law.

1 THE COURT: Okay. I want to do a little
2 bit of probing as to this action. I want to first
3 clarify what remedies the parties are seeking.
4 First, Mr. Dzhurinskiy, I understand that you want
5 your bill corrected. Am I right with that? Am I
6 right about that?

7 MR. DZHURINSKIY: Yes, I would like my
8 bill to be corrected. And I also raise a situation
9 that involves the future, how it's going to be set.
10 Because it's supposed to be determination, what
11 exactly, not just only at this time Ameren is going
12 to correct my bill. What's going to be next?
13 Because they are going to apply for a mediation
14 again. And I (hard to hear) a guess.

15 I would, like I explained to the
16 Commission staff and other counsel, I cannot rely
17 on my application that I use as far as heating my
18 home. So now for two months I'm in receipt again,
19 and I would like to know what Ameren is going to
20 do, not just only to correct my bill, what actions
21 they are going to do to correct everything, what's
22 been assessed in this right.

23 THE COURT: Very good.

24 MR. DZHURINSKIY: You'll probably hear
25 from other customers. It's not about me. It's not

1 just fighting for my \$5 a month. It's fighting for
2 other families, several thousand dollars, customers
3 who receive assistance the same way like us, most
4 probably since '07.

5 THE COURT: Well, I think you raise an
6 important point there, Mr. Dzhurinskiy, and I will
7 turn now to staff and ask what remedies staff is
8 going to ask the Commission to make.

9 MR. WILLIAMS: Judge, our primary
10 concern in this case is Ameren's asserted defense
11 of its interpretation of the tariff. We were
12 concerned that Ameren believes it has the authority
13 to unilaterally interpret and apply its tariff
14 without notification to the Commission regarding
15 how it's going to be applied. And it's an
16 authority that has not been extended to individuals
17 in the past under law. It's not an authority that
18 has been extended to companies in the past.

19 We believe that if it is Ameren's belief
20 that they're not entitled to compensate, or I guess
21 remedy Mr. Dzhurinskiy due to the tariff's
22 language, their proper recourse is to file
23 corrected tariff sheets with the definitions as
24 they believe or as they -- I guess that meets their
25 intent with the Commission for its consideration

1 and approval .

2 The notion of going through a complaint
3 process for the Commission to discover how it is
4 applying its tariff is not in the interest of the
5 Commission. I think it undermines the regulatory
6 scheme, and I think ultimately it creates -- it has
7 larger implications than this case alone.

8 THE COURT: Is staff planning to seek an
9 order to file -- for filing of a new tariff?

10 MR. WILLIAMS: That is something that we
11 can discuss. I think that this is -- this was
12 something that we had contemplated. Because like I
13 said, and even Mr. Dzhurinskiy mentioned this as
14 well, some of the arguments that were included in
15 Ameren's response go beyond this complaint itself.
16 And what we want to do is make sure that the
17 tariffs that are filed on record are being
18 implemented to the understanding of the customers.

19 THE COURT: Okay. And Office of Public
20 Counsel, are you planning to seek any further
21 remedies such as I mentioned in discussions with
22 staff or any others?

23 MR. OPITZ: Thank you, Judge. Our
24 primary remedy that we're seeking is summary
25 determination in favor of the complainants, finding

1 that the complainants meet the qualifications that
2 are listed in Ameren's tariff sheet. Within that
3 same order, we would ask that the Commission
4 require Ameren to exclude the complainants and all
5 other qualifying low-income customers from paying
6 this rider EEIC charge.

7 We would not be in favor of an order for
8 requiring the filing of a new tariff. It's my
9 position that the tariff is clear and unambiguous.
10 And it's simply a matter of Ameren Missouri not
11 following its tariff. And so the long and short of
12 it is we would seek an order requiring them to
13 follow the tariff that's on file. A tariff that
14 was drafted by the company that was the underlying
15 reason for the tariff was a stipulation agreement
16 to which the company was a signatory and one of the
17 primary drafters.

18 THE COURT: Okay. Before I get to
19 Ameren, I want to do a little probing of the larger
20 issues that Mr. Dzhurinskiy and the other parties
21 have stated, or at least implied in this action.
22 And I think my first question will be for Ameren's
23 representatives. I'm going from my memory of
24 what's been filed in this action so far. Ameren
25 has residential customers of a million, a

1 million-point-2, 1.2 million.

2 MS. HART: 1.2.

3 THE COURT: 1.2 million. And anyone
4 else feel free to jump in if they have some numbers
5 they think are better. And then if I also recall
6 further, the number of residents that may be
7 eligible, the other residents as Mr. Dzhurinskiy
8 mentions, eligible for this benefit to have this
9 charge removed from their bill, 3 percent of that
10 customer base?

11 MS. GIBONEY: That was the testimony of
12 Bill Davis during the rate case.

13 THE COURT: That's my recollection.

14 MS. GIBONEY: Direct testimony that was
15 filed by Bill Davis in the rate case.

16 THE COURT: And I'm not real good with
17 moving decimal points around. How many people is
18 that, 3 percent of a million? I don't have my
19 calculator. That's back on the bench.

20 MS. GIBONEY: 30,000, plus another.

21 THE COURT: Plus another, counsel?

22 MS. GIBONEY: I can't do that math.

23 THE COURT: Okay, that's fine. But
24 somewhere up from 30,000 people?

25 MS. GIBONEY: Yeah.

1 THE COURT: Okay, all right. And do I
2 also remember that this program of removing the
3 charge started in June of 2015, according to the
4 tariff? Does that sound right?

5 MS. GIBONEY: I think that's correct.
6 Wendy, do you recall? Wasn't it the June billing?

7 MR. OPITZ: I believe it was the June
8 billing.

9 THE COURT: Let me get some more volume
10 on here. Try that again.

11 MS. TATRO: I'd have to look. We did
12 have it implemented a little bit earlier than the
13 rate case final order because we implemented it
14 with the change in the EEIC rider.

15 STAFF REPRESENTATIVE: It was late May,
16 May 27th.

17 THE COURT: So we're looking at late
18 May.

19 MS. GIBONEY: But the June billing.

20 THE COURT: So where are we now? We're
21 in October, four months, 4 times 30, at least 120
22 days. All right. Does staff counsel remember off
23 the top of its head its authority, the Commission's
24 authority to seek penalties from the circuit court?
25 Am I correct that's a thousand dollars maximum?

1 MR. WILLIAMS: Yeah, it's a thousand
2 dollars per day per offense.

3 THE COURT: Okay, per offense. So a
4 thousand dollars for, say, 120 days so far times
5 30,000 customers. That's a lot of zeros, isn't it?

6 MS. GIBONEY: Those are company
7 customers.

8 MS. TATRO: Yeah, those are company
9 customers who are already receiving the discount.
10 Those are customers that -- when Mr. Davis came up
11 with that number, that was customers that were
12 certainly receiving LIHEAP or the other qualifying
13 assistance. So those have already been opted out
14 automatically. The system does that automatically.
15 The difference here is, he's not getting assistance
16 on the Ameren Missouri bill.

17 THE COURT: Okay. So we already have
18 accounted for those 30,000 people. Those are the
19 people we know about.

20 MS. TATRO: Right.

21 MS. GIBONEY: That would be -- Judge,
22 just to be clear, those are people who would be --
23 that we think would be eligible based on poverty
24 levels, whether or not they've applied for LIHEAP
25 or received it is a totally different issue.

1 THE COURT: Okay. So those are
2 people -- so that was my question. These are
3 people that are eligible. You're telling me
4 they're eligible, but not necessarily getting it
5 today. We don't know.

6 MS. GIBONEY: Who based on their income
7 level would apply to receive it, just based on what
8 we think their income level is. But we don't know
9 whether they have applied, and we don't know
10 whether they've been determined to be eligible
11 because there's other things that could affect your
12 eligibility.

13 THE COURT: Staff counsel, want to take
14 up on this?

15 MR. WILLIAMS: Yeah, Judge. I believe
16 that the program was set up to automatically flag
17 individuals who have received LIHEAP assistance.
18 There should not be an application process
19 necessary.

20 MS. GIBONEY: You have to apply for
21 LIHEAP.

22 MR. WILLIAMS: Well, I understand that.

23 MS. TATRO: I think you guys are talking
24 past each other.

25 MR. WILLIAMS: I believe we are.

1 THE COURT: Let's give the reporter a
2 break here. And why don't I inquire on those? And
3 we can do it in kind of question and answer.
4 Staff's idea is that the customers are flagged when
5 they receive assistance. Is that correct?

6 MR. WILLIAMS: Yes.

7 THE COURT: That's your reading, okay.
8 How do they get flagged for -- to Ameren when they
9 receive assistance for a LIHEAP bill? What does
10 the tariff provide with that?

11 MR. WILLIAMS: The answer, Judge, is
12 that there's no automatic flagging involved when
13 assistance is provided to another utility.

14 THE COURT: Okay.

15 MR. WILLIAMS: I believe that the
16 initial question was regarding the 3 percent that
17 was contemplated in representing the case. That
18 was with regard to Ameren customers who are
19 receiving LIHEAP or some of the other program
20 assistance applied to Ameren.

21 MS. GIBONEY: I don't think that's
22 exactly correct. I believe the 3 percent number
23 was the number of Ameren customers that Ameren
24 estimated would be, if they applied, potentially
25 eligible to receive LIHEAP or energy assistance.

1 THE COURT: That's my recollection of
2 the record.

3 MR. WILLIAMS: Okay.

4 THE COURT: My question is, of course
5 Ameren knows when its customers get assistance.

6 MS. GIBONEY: Correct.

7 THE COURT: How does it know? What
8 flags Ameren as to LIHEAP or anyone else?

9 MR. WILLIAMS: I believe this case
10 represents that, that this would be a circumstance
11 where the customer who has received assistance to
12 another program would notify the company of its
13 receipt. We have in the Commission rules procedure
14 for billing adjustments where there has been an
15 overcharge in this case. What the customer did was
16 notify Ameren, provide, I believe, a letter of
17 eligibility, which was again, as I mentioned
18 earlier, a point of contention in this case.
19 However, that's been supplemented where a letter
20 showing disbursement from the Missouri Department
21 of Social Services the paper was made.

22 THE COURT: I think that's the state of
23 the record as to Mr. Dzhurinskiy. Ameren's not
24 disputing that the Dzhurinskiys have received this
25 assistance anymore, is it?

1 MS. GIBONEY: I will say that the
2 company cannot, and this would be a problem among
3 all customers of Ameren who receive LIHEAP towards
4 their primary heat source, which is in Ameren,
5 that's my category, as to that category of people,
6 which includes the Dzhurinskiys, Ameren has no way
7 to verify. And I don't mean a practical way, I
8 mean a legal way to verify that those people have
9 received that assistance.

10 THE COURT: And can you give me a little
11 bit more background in the law of -- that you're
12 referring to here? Because as I read the tariff,
13 you know, just off the top of my head, I didn't see
14 the flagging mechanism to which staff counsel
15 refers. So can you give me a little more
16 background of the law on this? I have a feeling
17 there is some as far as confidentiality of utility
18 bills, but I'm not real clear. And then I'll take
19 response from public counsel as well.

20 MS. GIBONEY: There would be contract
21 provisions that would affect that, and there would
22 also be legal -- there would be law that would
23 affect that. On the contract side, as a home
24 energy supplier, Ameren Missouri, and that's a
25 contract we have with the Department of Social

1 Services, they're not permitted to disclose any
2 information about anyone who receives any type of
3 emergency assistance on the company's bills. We
4 are not permitted to disclose that to any other
5 utility or anyone else.

6 On the Department of Social Services
7 side, or actually the state generally, I believe
8 it's Section 208.120 of the Missouri Revised
9 Statutes, provide that no state employee, period,
10 can disclose any information about any applicant or
11 recipient for benefits unless that information
12 directly pertains to that application. So in other
13 words, the Department of Social Services can
14 disclose information about, you know, my
15 application for LIHEAP to my home energy supplier
16 but cannot disclose that to, you know, the public
17 or someone else.

18 THE COURT: Right. So we're talking
19 about a body of law that relates only, kind of
20 indirectly to utilities, it's really social
21 services law.

22 MS. GIBONEY: That's right.

23 THE COURT: And their obligations as to
24 confidentiality and keeping the confidence of
25 information regarding benefits. Is that where we

1 Look for this?

2 MS. GIBONEY: That's correct. And so to
3 extend that issue, if the company were to contact
4 the Department of Social Services and say, can you
5 confirm to me that this particular person who is
6 our customer received energy assistance towards
7 another utility's bill? I believe that 208.120
8 prevents that disclosure.

9 THE COURT: They just say no, like the
10 Commission has to say no when it's asked for
11 information regarding an industry that it's
12 gathered in the course of an investigation.
13 Okay, I understand that idea conceptually. I see
14 where you're pointing me towards.

15 Office of Public Counsel, do you have
16 anything to add to this conversation?

17 MR. OPITZ: Yes, Judge. So in regard to
18 the confidentiality, I believe the situation that
19 would be contemplated is much like the complainants
20 in this case where they did receive LIHEAP funding.
21 They are an Ameren customer, but that LIHEAP
22 funding was not applied to their Ameren utility
23 bill. The customer attempted to provide
24 information and eventually was able to provide the
25 letter showing that they received the funding.

1 If it is a step where once that customer
2 has given this information to Ameren and said I
3 should be exempt, I believe that there could be
4 some system worked out where if the customer
5 submits a written waiver or something saying to the
6 social services, or request social services to then
7 contact the company. I don't think this is a
8 barrier that's impossible to get past. And it's --
9 it's something that they must do under this tariff.

10 THE COURT: I'm seeing, as
11 Mr. Dzhurinskiy said earlier, a couple of issues
12 that are involved in this complaint. The first is
13 his bill, and I'm pretty sure the resolution of
14 that will not be complicated. Other issues that
15 are implicated in this action are far more
16 complicated. So my inclination now, since OPC has
17 asked for a ruling on the motion to extend the time
18 to respond to summary determination, is that I will
19 grant it. I will leave it to the parties to fold
20 the discussion of the length of that extension into
21 their discussion of the procedural schedule as a
22 whole.

23 So that's been educational for me, and I
24 hope this provides also a framework for the
25 parties' discussion for the rest of this

1 conference. So I've made my ruling on that, and I
2 think that's all I had to say as far as this
3 prehearing conference goes. Do the parties have
4 any more matters that I can help them with before
5 we go off the record and I leave the room?

6 MS. GIBONEY: Judge, can I ask a
7 question? So the motion -- you've granted our
8 motion to extend the time. And the parties are to
9 determine how long that extension will last? Is
10 that what I'm gathering?

11 THE COURT: Right. And if you can't,
12 I'll make a ruling on that too.

13 MS. GIBONEY: All right, thank you.

14 THE COURT: I'd like staff to do a few
15 things. Number 1, let me know when the parties are
16 done so we can lock up and hang up the phone when
17 Ms. Tatro is done.

18 MR. WILLIAMS: Sure.

19 THE COURT: My hope is that the parties
20 will work out a proposed procedural schedule today.
21 And so I hope that staff will be able to file a
22 motion for a proposed procedural schedule on behalf
23 of all parties end of today, early tomorrow. Does
24 that sound realistic?

25 MR. WILLIAMS: Yes.

1 THE COURT: Okay. And that's all I've
2 got. What else can I do for the parties while
3 we're here on the record? Anything?

4 MR. OPITZ: Judge, may I ask or inquire
5 as to the contents of the procedural schedule that
6 you might be looking for in this case? As you're
7 aware, I have filed a motion for summary
8 determination. So it's -- it would be my position
9 that there's no need for a hearing or additional
10 testimony. Is that something that you're looking
11 for in terms of the procedural schedule?

12 THE COURT: Well, I see what you're
13 saying. We won't need anything more if the
14 Commission grants the motion for summary
15 determination.

16 MR. OPITZ: Okay.

17 THE COURT: So what I'm envisioning is
18 that as resolution for the motion for summary
19 determination first, and then more stuff after
20 that, if necessary.

21 MS. TATRO: So, Judge, just to make sure
22 I understand, you're asking us to provide a
23 procedural schedule that includes dates beyond the
24 determination, and we'll just cancel them if the
25 Commission makes the ruling on the summary

1 determi nation?

2 THE COURT: That's correct.

3 MS. TATRO: Thank you.

4 THE COURT: And I think everybody here
5 understands what kinds of things go into a
6 procedural schedule. The parties may want to do
7 prefile testimony. They might not want to.
8 Discovery deadlines are helpful. Discovery
9 conferences can be helpful. I can leave a lot of
10 that to the parties. I think you have an idea of
11 what I have in mind.

12 MS. GIBONEY: That does raise a question
13 I had. I imagine that we will want to subpoena for
14 deposition Heather Jones who's the LIHEAP
15 coordinator for the Missouri Department of Social
16 Services because she's not a party to this action.
17 And can we just submit the subpoena to you in an
18 e-mail?

19 THE COURT: Are we talking about a
20 subpoena duces tecum?

21 MS. GIBONEY: Well, we'd want to both
22 depose her and gather documents, yes.

23 THE COURT: Right. So I think -- I'm
24 trying to remember. I'm trying to remember whether
25 the PSC has a procedure different from Chapter 536

1 for subpoena duces tecum, and I don't remember off
2 the top of my head what the regulation provides.

3 MS. GIBONEY: There is a rule about the
4 subpoenas, but I believe it says submit them to the
5 secretary or the judge. And the reason I'm
6 inquiring is because the sample subpoena that's on
7 the Commission's website just refers to testifying
8 at a hearing. It doesn't refer to a deposition.

9 THE COURT: For discovery, which you get
10 under 536.

11 MS. GIBONEY: Okay. And maybe Wendy's
12 familiar with this and I'm asking a question I
13 don't need to ask. But it occurred to me this
14 morning that --

15 THE COURT: Yeah. My answer is, I don't
16 know the answer off the top of my head.

17 MS. TATRO: I think it's a good
18 question. I don't know the answer either, Sarah.
19 I haven't done that before.

20 THE COURT: Okay. What else can I do
21 for the parties while we're on the record? Not
22 hearing anything. All right, and I've done my
23 instructions to staff, staff counsel, so thank you
24 all for being here. I appreciate your thorough
25 discussion of these issues. Ms. Tatro by phone and

1 Mr. Dzhurinskiy by phone, thank you for your
2 patience. And with that, I will adjourn this part
3 of the prehearing conference and we will go off the
4 record.

5 (The Court went off the record at 10:41 a.m.)
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CERTIFICATE OF REPORTER

I, Erin R. Donato, a Certified Court Reporter, CCR No. 1385(T), the officer before whom the foregoing pre-hearing conference was taken, do hereby certify that the proceedings were taken by me to the best of my ability and thereafter reduced to typewriting under my direction; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this pre-hearing conference was conducted; and further, that I am not a relative or employee of any attorney or counsel employed by the parties thereto, nor financially or otherwise interested in the outcome of the action.



Erin R. Donato, CCR, RPR, CRR



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